

VOL. II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

ZACHARY FOWLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000489

APPENDIX

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ZACHARY FOWLER - BY MR. MOYER

1 Q NOW, SO YOU'RE TELLING US WHEN YOU PUT IN YOUR STATEMENT
2 THAT YOU REALIZED YOU DIDN'T HAVE YOUR FLEX WITH YOU WHY DID YOU
3 PUT THAT IN YOUR STATEMENT?

4 A WELL, THAT GOES BACK TO JUST A MOMENT AGO. THE THINGS THAT
5 WERE PUT IN MY STATEMENT, SIR, WAS TO GET ME HELP SO THAT I
6 DIDN'T GET A LIFE IMPRISONMENT -- IN PRISON OR MY FRIENDS AT THE
7 TIME.

8 Q SO YOU MADE THAT UP ABOUT YOU DIDN'T HAVE YOUR FLEX WITH
9 YOU?

10 A NO, SIR. THAT'S WHAT HE WANTED TO PUT IN MY STATEMENT.

11 Q WHAT DOES IT MATTER IF YOU HAVE YOUR FLEX WITH YOU OR NOT?

12 A ONCE AGAIN, LIKE I SAID, THAT'S WHAT HE WANTED TO PUT IN MY
13 STATEMENT.

14 Q SO YOU DON'T KNOW?

15 A I DON'T UNDERSTAND THAT.

16 Q SO YOU TOLD HIM YOU HAD FLEX WITH YOU?

17 A YES, SIR, I DID.

18 Q AND HE SAID, "HMMM. THAT'S REAL IMPORTANT. LET'S LEAVE
19 THAT PART OUT," AND HE PUT IN THAT YOU SAID YOU HAD NO FLEX?

20 A THAT'S WHAT HE WANTED TO PUT IN MY STATEMENT SO THAT I COULD
21 GET HELP.

22 Q SO YOU'RE SAYING YOU HAD \$100 WORTH OF FLEX. THAT -- A ROCK
23 OF CRACK OR A ROCK OF FLEX, FAKE CRACK, WOULD SELL FOR 20 BUCKS,
24 RIGHT?

25 A YES, SIR.

ZACHARY FOWLER - BY MR. MOYER

1 Q AND SO YOU HAD FIVE ROCKS THEN?

2 A YES, SIR.

3 Q WHAT HAPPENED TO THEM?

4 A THEY'RE IN MY RED BAG.

5 Q OKAY. AND SO YOUR TESTIMONY IS THEN, NOW, THAT WHAT YOU

6 SIGNED IN YOUR STATEMENT IS WRONG ABOUT THAT AND YOU WENT UP

7 THERE AND YOU DIDN'T HAVE THE FLEX. WAS THERE ANY OTHER REASON

8 WHY YOU DIDN'T WANT TO DO THIS DEAL IN THE PARKING LOT?

9 A LIKE I SAID, PLUS THE CITY POLICE DEPARTMENT IS RIGHT BESIDE

10 IT. IT'S RIGHT THERE BESIDE WEST GREENVILLE PLAZA. DIRECTLY

11 BESIDE IT. SO I DIDN'T WANT TO MAKE A TRANSACTION THERE BECAUSE,

12 LIKE I SAID, POLICE OFFICERS BE AT THE WEST GREENVILLE PLAZA.

13 Q OKAY. YOU COULDN'T HAVE JUST SAT IN YOUR CAR? I MEAN, HOW

14 LONG DOES IT TAKE TO DO A LITTLE DEAL LIKE THAT?

15 A SIR, ONCE AGAIN, IF THEY WANTED TO TRY MY DRUG RIGHT THERE,

16 THEY COULD WANT MORE.

17 Q WELL, WHY DID YOU STOP IN THE MIDDLE OF THE STREET ON

18 WOODLAWN AVENUE?

19 A BECAUSE I KNEW IT WASN'T A BUSY STREET.

20 Q AND YOU DIDN'T HAVE MUCH ON YOU. YOU ONLY HAD FIVE ROCKS,

21 RIGHT?

22 A RIGHT.

23 Q AND SO IF THEY WANTED MORE, THERE'D BE NOTHING YOU COULD DO?

24 A WELL, YES, SIR. WE COULD HAVE MADE ARRANGEMENTS, YES, SIR.

25 Q ALL RIGHT. DID YOU HAVE A PHONE ON YOU?

ZACHARY FOWLER - BY MR. MOYER

1 A NO, SIR, I DID NOT HAVE A PHONE.

2 Q OKAY. WELL, SO THEN YOU DROVE OVER TO WOODLAWN AVENUE?

3 A YES, SIR.

4 Q AND WHEN YOU GOT OVER THERE YOU SAID THE OTHER CAR FOLLOWED
5 YOU AND YOU STOPPED IN THE MIDDLE OF THE STREET, RIGHT?

6 A YEAH. THAT'S WHAT THE STATEMENT SAYS.

7 Q IS THAT WHAT HAPPENED?

8 A YES, THAT IS WHAT HAPPENED.

9 Q AND WHEN YOU GOT THERE YOU GOT OUT OF THE CAR AND YOU WALKED
10 OUT WITH YOUR GUN?

11 A NO, SIR, I DID NOT WALK OUT WITH MY GUN.

12 Q WELL, YOU GOT A GUN OUT OF THE CAR?

13 A YEAH, I DID.

14 Q AND WHERE WAS THIS -- YOU SAID THE GUN WAS IN YOUR RED BAG?

15 A YES, SIR.

16 Q AND WHY DID YOU TAKE THE GUN WITH YOU?

17 A I TOOK MY GUN WITH ME BECAUSE IT WAS IN MY BAG WITH MY FLEX.

18 Q WHY DO YOU KEEP YOUR GUN IN YOUR BAG WITH YOUR FLEX?

19 A FOR PROTECTION.

20 Q AND SO WHEN YOU WALKED OVER THERE, THEN -- SO YOU'RE SAYING
21 THE PART IN YOUR STATEMENT THEN ABOUT HAVING THE GUN IN YOUR
22 RIGHT POCKET, THAT'S SOMETHING THAT INVESTIGATOR CONROY JUST MADE
23 UP ALSO?

24 A YES, SIR. THAT'S NOT EVEN POSSIBLE.

25 Q OKAY. IT'S NOT -- WHY IS THAT?

ZACHARY FOWLER - BY MR. MOYER

1 A IF YOU LOOK AT THE GUN, IT WOULDN'T HAVE BEEN ABLE TO FIT IN
2 MY POCKET.

3 Q WELL, HOW -- HOW DO YOU KNOW? THAT'S A VERY SMALL GUN.

4 A IF YOU SEEN -- IF YOU HAD THE EVIDENCE OF MY CLOTHES THAT I
5 WORE, IT'S NOT EVEN POSSIBLE.

6 Q WELL, IS IT TRUE THEN THAT IT WAS LIKE THE WITNESS SAID THAT
7 AS SOON AS YOU WALKED AROUND FROM THE CAR YOU HAD IT IN YOUR
8 HAND?

9 A NO, SIR.

10 Q AND SO WHEN YOU WALKED UP THERE THEN, YOU HAD THIS BAG AND
11 YOU HAD A GUN AND YOU STARTED TO HAVE THIS CONVERSATION WITH THEM
12 AND DURING THIS WHOLE CONVERSATION YOU NEVER SAW ANYBODY WITH A
13 GUN, DID YOU?

14 A NO, SIR.

15 Q AND NO ONE EVER SAID, "LET'S GET HIM"?

16 A NO, SIR.

17 Q NO ONE EVER SAID, "SHOOT HIM"?

18 A NO, SIR.

19 Q NO ONE EVER SAID, "GIVE IT UP"?

20 A NO, SIR.

21 Q AND SO YOU'RE SAYING YOU FELT SCARED BECAUSE SHE MADE A
22 MOVEMENT WITH HER MONEY TOWARDS HER PURSE?

23 A YES, SIR, AS WELL AS THE MOVEMENT THAT RONALD HARRIS WAS
24 MAKING IN THE BACK SEAT.

25 Q OKAY. AND YOU SAID HE MADE A MOVEMENT WITH HIS HAND TOWARDS

ZACHARY FOWLER - BY MR. MOYER

1 HIS POCKET. AND SO BASED ON THAT YOU DECIDED TO SHOOT THREE
2 PEOPLE?

3 A YES, SIR. IT WAS OFF INSTINCT.

4 Q IT WAS OFF INSTINCT?

5 A YES, SIR.

6 Q WHAT KIND OF INSTINCT REQUIRES YOU TO SHOOT THREE PEOPLE
7 BECAUSE SOMEBODY MOVES THEIR HAND REAL QUICK?

8 A NO, SIR. FEARFUL INSTINCT THAT HE WAS GETTING A WEAPON TO
9 HARM ME.

10 Q WELL, WHY WERE YOU -- WHAT MADE YOU SO SCARED THAT THEY WERE
11 GETTING A WEAPON TO HARM YOU?

12 A BECAUSE I DIDN'T KNOW THESE PEOPLE. AND FOR HIM TO BE IN
13 THE BACK SEAT WITH MONEY ON HIS LAP, REACHING FOR HIS POCKET
14 SUDDENLY AND FOR HER TO BE JERKING AWAY TOWARDS HER POCKETBOOK,
15 THAT'S FEARFUL. THAT WOULD MAKE A PERSON FEAR. WHY WOULD HE BE
16 REACHING IN HIS POCKET? HE DOESN'T KNOW ME.

17 Q AND THAT JUSTIFIES YOU TO SHOOT SOMEBODY IN SELF-DEFENSE?

18 MR. CREECH: OBJECTION, YOUR HONOR.

19 MR. MOYER: IT'S HIS TESTIMONY.

20 THE COURT: OVERRULED. GO AHEAD.

21 Q THAT JUSTIFIES YOU TO SHOOT SOMEONE IN SELF-DEFENSE?

22 A YES, SIR. IF I FELT AS IF I'M IN IMMINENT DANGER.

23 Q IF THAT HAPPENS AGAIN, IF YOU WALKED OUT AND THERE'S TWO

24 OTHER PEOPLE STANDING -- THREE PEOPLE STANDING THERE AND ONE OF
25 THEM MAKES A MOVEMENT TO HER PURSE, ANOTHER ONE PUTS HIS HAND IN

ZACHARY FOWLER - BY MR. MOYER

1 HIS POCKET, ARE YOU GOING TO SHOOT ALL THREE OF THEM TOO?

2 A NO, SIR, ESPECIALLY NOT IF IT'S NOT A DANGEROUS SITUATION.

3 Q WELL, WHAT MADE THIS SO DANGEROUS?

4 A IT WAS A DRUG DEAL GONE BAD.

5 Q WHAT WENT BAD? ALL SHE DID WAS MOVE HER HAND TOWARDS HER
6 PURSE.

7 A AS WELL AS HIM REACHING IN HIS POCKET.

8 Q DID THEY EVER GET OUT OF THE CAR?

9 A SIR, IT WASN'T NO TIME FOR THEM TO GET OUT OF THE CAR.

10 Q SO WHEN YOU WERE WALKING OUT THEY DIDN'T ALL OF A SUDDEN GET
11 OUT OF THE CAR AND SURROUND YOU?

12 A NO, SIR, THEY DID NOT.

13 Q NOTHING LIKE THAT?

14 A NO, SIR.

15 Q AND YOU FREAKED OUT AND YOU SHOT. WELL, WHO DID YOU -- WHO
16 DID YOU SHOOT FIRST?

17 A I SHOT MS. GALLOWAY FIRST, BUT THAT WAS NOT THE FIRST SHOT
18 THAT WAS SHOT. THE FIRST ONE THAT WAS SHOT WAS TOWARDS RONALD
19 HARRIS IN THE BACK SEAT.

20 Q AND YOU WERE STANDING WHERE?

21 A I WAS STANDING IN THE MIDDLE OF THE CAR WHERE I COULD SEE
22 ALL THREE PEOPLE.

23 Q AND YOU JUST LEANED BACK AND WHAT PART OF THE BODY DID YOU
24 SHOOT AT?

25 A I SHOT DOWNWARD TOWARDS EVERYONE.

ZACHARY FOWLER - BY MR. MOYER

- 1 Q OKAY. I MEAN, WHERE ON HIS BODY? WHERE DID YOU AIM AT?
- 2 A TOWARDS HIS LOWER BODY, HIS LOWER ABDOMEN.
- 3 Q HIS LOWER ABDOMEN?
- 4 A YES, SIR.
- 5 Q YOU SHOT THAT FIRST. AND THEN YOU SHOT SUSAN GALLOWAY?
- 6 A YES, SIR, IN THE ARM.
- 7 Q AND THEN YOU SHOT RON HARRIS?
- 8 A YES, SIR, IN THE STOMACH.
- 9 Q I'M SORRY. MICHAEL POWELL.
- 10 A YES, SIR.
- 11 Q YOU SHOT HIM IN THE STOMACH?
- 12 A YES, SIR, THROUGH HIS WRIST.
- 13 Q AND YOU WERE WITHIN ABOUT THAT FAR FROM SUSAN GALLOWAY WHEN
- 14 YOU SHOT HER, WEREN'T YOU?
- 15 A YES. THAT'S A GOOD---
- 16 Q TO LEAVE ALL THAT STIPPLING ON HER ARM?
- 17 A YES, SIR.
- 18 Q AND AFTER YOU SHOT HER YOU GRABBED THE MONEY OUT OF HER
- 19 HAND, DIDN'T YOU?
- 20 A NO, SIR, I DID NOT.
- 21 Q SO YOU DON'T REMEMBER THE \$20 BILL TEARING?
- 22 A YES, SIR. THAT HAPPENED WHEN SHE JERKED AWAY TOWARDS HER
- 23 PURSE.
- 24 Q WHEN SHE JERKED AWAY TOWARDS HER PURSE. AND THEN YOU TOOK
- 25 THE OTHER \$20 FROM HER HAND?

ZACHARY FOWLER - BY MR. MOYER

- 1 A NO, SIR. THAT'S NOT EVEN POSSIBLE.
- 2 Q AND SO THAT'S ANOTHER PART THE OFFICER MADE UP?
- 3 A YES, SIR, HE DID.
- 4 Q THAT YOU TOOK THE MONEY FROM HER HAND?
- 5 A YES, SIR. ONCE AGAIN, THAT STATEMENT WAS FOR ME TO HELP
- 6 MYSELF AND MY FRIENDS.
- 7 Q OKAY. AND SO YOU'RE TELLING US THEN THAT HE MADE THAT UP?
- 8 A YES, SIR, HE DID.
- 9 Q ABOUT THE FACT THAT YOU TOOK THE MONEY OUT OF HER HAND AND
- 10 USED IT TO GO BUY HAMBURGERS FOR THE GIRLS AND YOU?
- 11 A YES, SIR. WHEN HE WAS TAKING MY STATEMENT HE WASN'T TAKING
- 12 MY STATEMENT. WHAT HE WAS DOING WAS ASKING QUESTIONS. HE WOULD
- 13 ASK ME A QUESTION, "SO DID YOU SPEND THE MONEY?" AND THEN WHEN I
- 14 WOULD SAY YES, THEN HE WOULD WRITE THE STATEMENT, "SO THAT'S
- 15 WHERE YOU SPENT THE DEAD WOMAN'S MONEY?" OR SOMETHING LIKE THAT.
- 16 HE DIDN'T -- THAT'S NOT MY STATEMENT.
- 17 Q OKAY. NOW, AFTER YOU SHOT THOSE PEOPLE -- LET ME -- ON
- 18 OTHER QUESTION ABOUT THAT. BEFORE YOU SHOT THEM YOU DIDN'T SHOW
- 19 THEM THE CRACK, DID YOU?
- 20 A NO, SIR, I DIDN'T HAVE TIME TO SHOW THEM.
- 21 Q OKAY. AND YOU DIDN'T SHOW THEM ANY MONEY?
- 22 A WHY WOULD I SHOW THEM ANY MONEY?
- 23 Q YOU DIDN'T SHOW THEM ANY MONEY, DID YOU?
- 24 A WHY WOULD I? NO, SIR.
- 25 Q IS THE ANSWER NO?

ZACHARY FOWLER - BY MR. MOYER

1 A YES, SIR, THAT'S THE ANSWER. NO.

2 Q OKAY. AND SO YOU -- AND SO THEY WERE GOING TO ROB YOU THEN?

3 A I FELT, YES, SIR.

4 Q OF SOMETHING YOU HADN'T EVEN SHOWN?

5 A WELL, SIR, IT WAS NEVER AN OPPORTUNITY GIVEN TO THEM. ONCE

6 HE ASKED FOR THE \$400 WORTH OF CRACK AND I WAS REACHING IN MY

7 BAG, THAT'S WHEN ALL THESE EVENTS OCCURRED.

8 Q WELL, YOU DIDN'T HAVE \$400 WORTH OF CRACK, DID YOU?

9 A HE DIDN'T KNOW THAT EITHER.

10 Q WERE YOU GOING -- SO YOU WERE GOING UP THERE TO RIP THEM

11 OFF, WEREN'T YOU?

12 A NO, SIR.

13 Q YOU THINK THEY WANTED FLEX?

14 A WHEN YOU ASK FOR DRUGS---

15 Q DID THEY WANT FLEX?

16 A THAT'S THE TYPE OF DRUG THAT I WAS SELLING.

17 Q FAKE CRACK?

18 A YES, SIR. IT HAPPENS ALL THE TIME.

19 Q WHY WOULD SOMEBODY WANT FAKE CRACK? WHAT DOES FAKE CRACK DO

20 FOR YOU?

21 A I DON'T KNOW. I DON'T DO DRUGS, SO I CAN'T ANSWER THAT

22 QUESTION, SIR.

23 Q IT WOULD BE LIKE SMOKING A PIECE OF PAPER, WOULDN'T IT?

24 A I DON'T KNOW.

25 Q I MEAN, WHAT'S THE POINT?

ZACHARY FOWLER - BY MR. MOYER

- 1 A I DON'T KNOW.
- 2 Q WELL, WHERE DID YOU GET IT?
- 3 A WHERE DID I GET IT?
- 4 Q DID YOU MAKE IT YOURSELF?
- 5 A NO, SIR.
- 6 Q WHERE DID YOU GET IT?
- 7 A I GOT IT FROM THE HOUSE.
- 8 Q FROM WHAT -- I MEAN, WHERE DID YOU GET IT TO PUT IN YOUR
- 9 HOUSE?
- 10 A I DON'T UNDERSTAND.
- 11 Q ALL RIGHT. YOU GOT IT FROM YOUR HOUSE AT TO
- 12 TAKE WITH YOU THAT DAY?
- 13 A YES, SIR.
- 14 Q WHERE DID YOU ORIGINALLY GET THIS FLEX?
- 15 A FROM THE HOUSE FROM A CANDLE.
- 16 Q FROM A CAN IN THE HOUSE?
- 17 A NO, SIR, A CANDLE.
- 18 Q FROM A CANDLE?
- 19 A YES, SIR.
- 20 Q OKAY. AND SO YOU'RE TELLING ME WHEN YOU WALKED UP THERE TO
- 21 SELL THEM WAX YOU WEREN'T TRYING TO RIP THEM OFF?
- 22 A NO, SIR, THAT'S NOT RIPPING ANYONE OFF. THAT'S SELLING THEM
- 23 FLEX. FLEX IS CRACK. IT'S JUST NOT A HUNDRED PERCENT CRACK,
- 24 SIR.
- 25 Q WELL, IT'S NO PERCENT CRACK, IS IT? IT'S CANDLE WAX.

ZACHARY FOWLER - BY MR. MOYER

1 A EXACTLY. I COULD -- IT'S PLENTY OF OTHER FLEXES, SIR. I
2 COULD SELL BAKING SODA.

3 Q EXACTLY. AND IT'S SO YOU CAN RIP SOMEBODY OFF, ISN'T IT?
4 IT'S SO YOU CAN GO OUT IN THE STREET -- AND DRUG DEALS ARE QUICK.
5 AND SO YOU CAN JUST -- SOMEBODY WANTS CRACK. SOMEBODY YOU DON'T
6 KNOW. SO YOU CAN SELL SOME FAKE CRACK, GET THEIR MONEY, AND
7 BEFORE THEY HAVE A CHANCE TO TEST IT OUT, YOU'RE DONE. THAT'S
8 THE WHOLE POINT, ISN'T IT?

9 A NO, SIR.

10 Q WELL, PLEASE EXPLAIN TO ME WHY SOMEBODY WOULD WANT CANDLE
11 WAX INSTEAD OF CRACK?

12 MR. CREECH: I OBJECT TO THE FORM, YOUR HONOR.

13 THE COURT: OVERRULED.

14 A PLEASE RESTATE THE QUESTION.

15 Q WHY WOULD SOMEBODY WANT CANDLE WAX WHEN THEY ASK FOR CRACK?

16 A I DON'T EVEN KNOW WHY THAT PERSON WOULD WANT CRACK, SO I
17 CAN'T ANSWER THAT QUESTION.

18 Q YOU KNOW WHY PEOPLE WANT CRACK. THEY WANT CRACK SO THEY CAN
19 GET HIGH.

20 A HOW DO I KNOW THAT? I DON'T DO IT, SIR.

21 Q YOU DON'T KNOW WHAT CRACK IS FOR?

22 A I DON'T DO IT, SO I DON'T KNOW WHY THEY WOULD WANT IT. SEE
23 WHAT I'M SAYING?

24 Q I DIDN'T ASK YOU IF YOU DID IT.

25 A YES, SIR.

ZACHARY FOWLER - BY MR. MOYER

1 Q I ASKED YOU IF YOU KNOW WHY PEOPLE WANT CRACK. DO YOU KNOW
2 WHAT THEY DO WITH CRACK?

3 A I DON'T DO IT. I DON'T -- DO YOU SEE WHAT I'M SAYING, SIR?

4 Q I REALIZE THAT.

5 A OKAY.

6 Q I REALIZE THAT. MY QUESTION IS, DO YOU KNOW WHAT PEOPLE DO
7 WHEN THEY GET CRACK?

8 A NO, SIR. I DON'T KNOW WHAT THEY DO WHEN THEY GET CRACK.

9 Q YOU DON'T KNOW THEY SMOKE IT?

10 A IS THAT -- IS THAT WHAT THEY DO? I MEAN, I DON'T DO IT,
11 SIR.

12 Q OKAY. NOW, AFTER THIS HAPPENED, YOU GOT INTO YOUR CAR AND
13 Y'ALL DROVE AWAY, RIGHT?

14 A YES, SIR.

15 Q AND YOU DIDN'T STOP AND -- YOU DIDN'T STOP AND CALL THE
16 POLICE THAT YOU JUST HAD TO DEFEND YOURSELF FROM BEING RIPPED
17 OFF, DID YOU?

18 A NO, SIR, I DID NOT.

19 Q CAN YOU TELL US WHY?

20 A WELL, SIR, AT THE TIME, I WAS AFRAID. I DID KNOW THAT I HAD
21 JUST SHOT SOMEONE. I DIDN'T KNOW AT THE TIME THAT I HAD KILLED
22 ANYONE DURING THIS OR IF I HAD SERIOUSLY INJURED ANYONE. I DID
23 NOT KNOW THIS.

24 Q BUT YOU KNEW YOU DID IT IN SELF-DEFENSE, RIGHT?

25 A YES, SIR.

ZACHARY FOWLER - BY MR. MOYER

- 1 Q SO WHICH MEANS YOU DIDN'T DO ANYTHING WRONG, RIGHT?
- 2 A YES, SIR.
- 3 Q AND ALL YOU HAD WAS CANDLE WAX ON YOU?
- 4 A YES, SIR.
- 5 Q YOU COULDN'T GET IN TROUBLE FOR THAT?
- 6 A WELL, I HAD---
- 7 Q SO WHY DID YOU---
- 8 A I HAD MARIJUANA.
- 9 Q YOU HAD MARIJUANA?
- 10 A I DID HAVE MARIJUANA. YES, SIR.
- 11 Q OKAY. AND SO YOU WERE AFRAID THAT IF YOU -- DOES THAT
- 12 EXPLAIN WHY YOU DIDN'T CALL THE POLICE?
- 13 A NO, SIR.
- 14 Q OKAY.
- 15 A I WAS SCARED. I DIDN'T WANT TO BE IN ANY TROUBLE.
- 16 Q WELL, IF YOU HADN'T DONE ANYTHING WRONG DON'T YOU THINK --
- 17 IF ALL YOU HAD DONE WAS ACTED IS SELF-DEFENSE---
- 18 A YES, SIR.
- 19 Q ---DON'T YOU THINK TELLING THE POLICE MIGHT HAVE BEEN A GOOD
- 20 IDEA?
- 21 A NO, SIR.
- 22 Q YOU DON'T THINK SO?
- 23 A I DIDN'T AT THAT TIME. NO, SIR, I DIDN'T.
- 24 Q AND YOU DIDN'T STOP AND TELL ANYBODY?
- 25 A WELL, SIR, I DID WAVE AT -- I BELIEVE THAT'S MS. SHAW NOW,

ZACHARY FOWLER - BY MR. MOYER

1 IF I'M NOT MISTAKEN, THE HOUSE THAT'S RIGHT IN FRONT.

2 Q YOU JUST SMILED AND WAVED AS YOU WENT BY?

3 A NO, SIR, I DID NOT SMILE AND WAVE.

4 Q YOU JUST WAVED?

5 A NO, SIR. I DIRECTED THEM TOWARDS THE CAR. WHAT I SAID WAS,
6 "THEY NEED HELP." I YELLED THAT.

7 Q "THEY NEED HELP"?

8 A YES, SIR.

9 Q SO WERE YOU CONCERNED ABOUT THEM?

10 A WELL, NO -- JUST REPEAT THE QUESTION, PLEASE.

11 Q WERE YOU CONCERNED ABOUT THEM; IS THAT WHY YOU TOLD MS. SHAW
12 TO GO CHECK ON THEM BECAUSE THEY NEEDED HELP?

13 A YES, SIR.

14 Q BUT YOU WEREN'T CONCERNED ENOUGH THAT YOU CALLED THE POLICE
15 OR YOU CALLED 911?

16 A IT WASN'T THAT I WASN'T CONCERNED AND I DIDN'T DO IT. I WAS
17 CONCERNED ABOUT MYSELF TOO, AS IN GETTING IN TROUBLE. I DIDN'T
18 WANT TO GET IN ANY TROUBLE.

19 Q ALL RIGHT. YOU GRADUATED FROM HIGH SCHOOL?

20 A YES, SIR, I DID.

21 Q YOU CAN READ AND WRITE?

22 A YES, SIR.

23 Q NO PROBLEM WITH THAT, RIGHT?

24 A NO, SIR.

25 Q I'M SURE YOU'RE A SMART GUY. YOU SOUND LIKE YOU'RE AN

ZACHARY FOWLER - BY MR. MOYER

1 INTELLIGENT YOUNG MAN. AND SO YOU HAD NO TROUBLE READING YOUR
2 STATEMENT AND THAT WAIVER OF RIGHTS WHEN THE OFFICER GAVE IT TO
3 YOU, DID YOU?

4 A NO, SIR, I DID NOT.

5 Q AND WHEN THE OFFICER WENT OVER THAT WITH YOU YOU ASKED TO
6 ADD THAT LAST LINE ABOUT "THIS WAS SELF-DEFENSE"?

7 A YES, SIR.

8 Q AND THE OFFICER PUT THAT IN THERE, DIDN'T HE?

9 A YES, SIR, HE DID.

10 Q AND YOU'RE TELLING US THAT THE REST OF THAT STATEMENT THE
11 OFFICER JUST MADE UP BECAUSE HE TOLD YOU THAT IT WOULD HELP YOU
12 OUT IF YOU JUST SAID WHAT HE WANTED YOU TO SAY?

13 A YES, SIR. EVERYTHING UP UNTIL THE SELF-DEFENSE PART WAS
14 JUST ME AND HIM.

15 Q AND SO YOU JUST INITIALED EVERY SINGLE PARAGRAPH ON THERE
16 AND THAT MEANT NOTHING?

17 A AT THE TIME WHAT THOSE INITIALS MEANT WAS THAT I WASN'T
18 GOING TO GET A LIFE SENTENCE IN PRISON. MY FRIENDS WASN'T GOING
19 TO GET A LIFE SENTENCE IN PRISON.

20 Q THE OFFICER WAS ASKING YOU IF THAT'S WHAT YOU WANT TO SAY,
21 RIGHT? WHEN HE SAID, "IF THAT'S WHAT YOU WANT TO SAY, PUT YOUR
22 INITIALS THERE."

23 A NO, SIR.

24 Q AND THEN AT THE END OF THE STATEMENT YOU SIGNED IT, AND YOU
25 NEVER TOLD HIM, "YOU KNOW WHAT, I THINK YOU NEED TO PUT IN THERE

ZACHARY FOWLER - BY MR. MOYER

1 THAT IT WASN'T -- OR THAT I REALLY DID HAVE THE FLEX WITH ME."

2 YOU NEVER CHANGED ANYTHING ELSE, DID YOU?

3 A NO, SIR.

4 Q AND YOU DIDN'T CHANGE IT BECAUSE THAT IS WHAT HAPPENED,
5 RIGHT?

6 A NO, SIR, THAT DID NO HAPPEN.

7 Q AND SO YOU THINK IT'S MORE HELPFUL FOR YOU TO LET AN OFFICER
8 CONSTRUE WHAT YOU SAY THAN IT IS FOR YOU TO PUT DOWN IN A MURDER
9 INVESTIGATION WHAT YOU WANT TO SAY?

10 MR. CREECH: OBJECT TO THE FORM, YOUR HONOR, AND THE
11 RELEVANCE.

12 THE COURT: OVERRULED.

13 A PLEASE REPEAT THE QUESTION.

14 Q SO YOU'RE TELLING US THAT AT THE TIME YOU THOUGHT, "IT WOULD
15 HELP ME OUT BETTER IF I JUST LET THE OFFICER MAKE ME CONFESS TO
16 THIS MURDER. THAT WOULD HELP ME BETTER THAN IF I TELL HIM WHAT
17 REALLY HAPPENED"?

18 A YES, SIR. BECAUSE HE TOLD ME THAT IF I DID NOT, VALENCIA
19 SULLIVAN AND DIANA TISDALE COULD GET LIFE IN PRISON.

20 Q ISN'T IT TRUE THAT YOU WERE INTENDING TO RIP THEM OFF THE
21 MOMENT YOU SAW THEM, WEREN'T YOU?

22 A NO, SIR, THAT'S NOT TRUE.

23 Q ISN'T IT TRUE THAT WHEN YOU WALKED OUT OF THAT CAR YOU HAD
24 THE GUN BECAUSE YOU REALIZED YOU DIDN'T HAVE YOUR FLEX WITH YOU
25 AND YOU WERE WALKING UP THERE BECAUSE YOU WANTED THAT MONEY?

ZACHARY FOWLER - BY MR. MOYER

1 A NO, SIR, THAT'S NOT TRUE.

2 Q AND YOU DIDN'T HAVE ANY MONEY AND YOU WANTED THAT MONEY AND
3 IF YOU COULDN'T GET IT BY SELLING FLEX, YOU WERE GOING TO GET IT
4 BY ROBBING THEM; ISN'T THAT TRUE?

5 A THAT'S ALSO NOT TRUE.

6 Q AND ISN'T IT TRUE THAT WHEN YOU WALKED UP THERE AND YOU SAW
7 THAT CAR START TO GO, YOU SAW THAT MAN START TO PUT THAT CAR INTO
8 GEAR AND YOU SAW SUSAN HOLDING ONTO HER MONEY BECAUSE SHE DIDN'T
9 WANT TO LOSE IT TO SOMEBODY WHO DIDN'T HAVE THE CRACK THAT YOU
10 WANTED THAT YOU WEREN'T GOING TO LET THAT MONEY GET AWAY AND THE
11 ONLY WAY YOU COULD NOT LET THAT MONEY GET AWAY WAS BY SHOOTING
12 THEM; ISN'T THAT THE TRUTH?

13 A THAT'S ALSO NOT TRUE.

14 MR. MOYER: NOTHING FURTHER.

15 THE COURT: ANY REDIRECT?

16 MR. CREECH: NO REDIRECT, YOUR HONOR.

17 THE COURT: OKAY. MR. FOWLER, YOU CAN STEP DOWN. THANK
18 YOU.

19 (WITNESS STEPS DOWN AT 10:49 A.M.)

20 THE COURT: YES, SIR, MR. CREECH.

21 MR. CREECH: YOUR HONOR, I JUST WANT TO TAKE UP A MATTER
22 OUTSIDE THE PRESENCE OF THE JURY.

23 THE COURT: OKAY. ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
24 GOING TO GO AHEAD AND TAKE A BREAK. I'M GOING TO HAVE SOME MENUS
25 BROUGHT UP SO YOU CAN ORDER LUNCH TODAY AND YOU CAN DO THAT

CALVIN COX - DIRECT BY MR. CREECH

1 DURING THE BREAK. DON'T DISCUSS THE CASE. CONTINUE TO KEEP AN
2 OPEN MIND. WE'LL BE BACK WITH YOU AS SOON AS WE CAN. WE HAVE TO
3 TAKE UP ONE LEGAL MATTER OUT HERE WITH THE LAWYERS. ALL RIGHT.
4 THANK YOU.

5 (JURY EXITS COURTROOM AT 10:50 A.M.)

6 THE COURT: OKAY. YES, SIR, MR. CREECH.

7 MR. CREECH: YOUR HONOR, I CALL CALVIN COX.

8 CALVIN COX, HAVING BEEN DULY SWORN,

9 TESTIFIED AS FOLLOWS:

10 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

11 WITNESS: MY NAME IS CALVIN F. COX, JUNIOR.

12 BY MR. CREECH:

13 Q MR. COX, WHERE DO YOU LIVE?

14 A RIGHT NOW I LIVE UP ON SALUDA LAKE. I'VE BEEN UP THERE FOUR
15 YEARS.

16 Q OKAY. DO YOU KNOW SUSAN GALLOWAY?

17 A YES, SIR, I DO.

18 Q HOW DID YOU KNOW HER?

19 A WE MOVED TO PICKENS COUNTY IN 1966, AND WE JUST ACROSS THE
20 ROAD FROM EACH OTHER.

21 Q OKAY. AND SO YOU'VE KNOWN HER OVER THE YEARS; IS THAT
22 RIGHT?

23 A YES, SIR.

24 Q ALL RIGHT. WHERE ARE YOU CURRENTLY EMPLOYED?

25 A I'M RETIRED.

CALVIN COX - DIRECT BY MR. CREECH

1 Q FROM WHERE DID YOU RETIRE?

2 A THE UNITED STATES ARMY, SIR.

3 Q AND WHAT -- THE UNITED STATES ARMY. WHAT RANK DID YOU
4 RETIRE?

5 A COMMAND SERGEANT MAJOR.

6 Q OKAY. AND DID YOU SERVE IN ANY THEATERS?

7 A YES. I WAS IN VIETNAM, THREE AND A HALF TOURS, PANAMA,
8 KOSOVO, AND THE DESERT STORM.

9 Q OKAY. NOW, YOU KNEW SUSAN GALLOWAY SINCE 1966; IS THAT
10 CORRECT?

11 A YES, SIR.

12 Q ALL RIGHT. DID YOU EVER HAVE OCCASION TO -- DO YOU REMEMBER
13 BACK IN 2003 WHEN YOU WERE AT DIXIE AUTO PARTS?

14 A YES, SIR, I DO.

15 Q WHAT HAPPENED THAT DAY?

16 A I HEARD SUZIE COMING DOWN THE DRIVEWAY. SHE WAS FUSSING AND
17 CARRYING ON. AND THEN SHE CAME INTO THE YARD THERE AND WAS
18 TALKING TO THE OWNER'S SON, AND I JUST BACKED AWAY. I GOT WAY
19 OFF BECAUSE I DIDN'T WANT TO BE INVOLVED IN IT. AND FOR SOME
20 REASON SHE TURNED ON ME. SHE GRABBED ME BY THE THROAT AND SHE
21 SAID, "I'LL RIP IT OUT."

22 Q AND SHE GRABBED YOU BY THE THROAT; IS THAT RIGHT?

23 A YES, SIR.

24 Q AND HAD YOU MADE ANY KIND OF -- OR TAKEN ANY ACTIONS TOWARDS
25 HER OR ANYTHING?

CALVIN COX - DIRECT BY MR. CREECH

1 A I DID TAKE ACTIONS TO, YOU KNOW---

2 Q WHAT DID YOU DO?

3 A I FILLED OUT A REPORT. THE OWNER SAID -- I DIDN'T WANT TO,
4 BUT HE SAID, "NO, YOU NEED TO GO AHEAD AND FILL OUT THE REPORT
5 AND SEE WHAT HAPPENS AND PROSECUTE."

6 Q ALL RIGHT. SO YOU HAD HER PROSECUTED FOR COMING UP AND
7 PUTTING HER HAND AROUND YOUR NECK, IS THAT RIGHT?

8 A YES, SIR.

9 Q DID YOU DO ANYTHING TO CAUSE HER TO COME UP AND PUT HER
10 HANDS AROUND YOUR NECK?

11 A NOT THAT MORNING. I DON'T BELIEVE SO.

12 Q OKAY. DID YOU EVER MAKE ANY THREATS TO HER PRIOR TO HER
13 DOING THAT?

14 A NO, I DON'T BELIEVE SO.

15 Q DID THE -- NOW, DID SHE END UP PLEADING GUILTY TO THAT
16 CHARGE?

17 A YES, SIR.

18 Q WERE YOU IN THE COURTROOM WHEN THAT HAPPENED?

19 A YES, SIR. IT WAS IN MAGISTRATE'S COURT. IT WAS ME AND THE
20 MAGISTRATE AND HIS SECRETARY.

21 Q DID YOU EVER HAVE TO HELP SUSAN OUT FINANCIALLY?

22 A YES, SIR. I PICKED UP SOME BAD CHECKS SHE WROTE FROM TIME
23 TO TIME. SHE PAWNED HER CAR AND GOT A TITLE LOAN AND THEY WAS
24 ABOUT TO GET IT, AND I WENT AND BOUGHT THE CAR BACK FOR HER AND
25 KEPT THE TITLE, AND THEN SHE WENT AND GOT HER A DUPLICATE TITLE

CALVIN COX - DIRECT BY MR. CREECH

1 AND DONE IT AGAIN.

2 Q OKAY. DID YOU KNOW SUSAN GALLOWAY WAS ADDICTED TO DRUGS?

3 A SUSIE HAD PROBLEMS FROM TIME TO TIME.

4 Q AND WHEN -- WHAT TIMES OF THE MONTH WOULD SHE HAVE MORE OF
5 AN ADDICTION PROBLEM, DRUG PROBLEM?

6 A AROUND THE FIRST OF THE MONTH, WHEN WE GOT PAID.

7 Q WHY WAS THAT?

8 A WELL, SHE GOT HER SOCIAL SECURITY CHECK.

9 Q AND SHE WOULD THEN TAKE THAT MONEY AND GO OFF ON A DRUG
10 BINGE; IS THAT RIGHT?

11 A YES, SIR, OCCASIONALLY. QUITE OCCASIONALLY.

12 Q OKAY. AND WOULD THERE BE TIMES, INTERVALS OF TIME THAT
13 WOULD GO BY AND YOU'D NEVER EVEN SEE HER?

14 A OH, YEAH. IT'D BE A COUPLE OF -- A WEEK, TEN DAYS,
15 SOMETIMES TWO WEEKS WE WOULDN'T SEE HER.

16 Q OKAY. AND BACK IN 2003 I THINK IT WAS JULY THE -- EXCUSE
17 ME, JANUARY THE 5TH OF 2003, SHE CAME IN -- YOU WERE IN DIXIE AUTO
18 PARTS, CORRECT?

19 A UH-HUH (AFFIRMATIVE).

20 Q SHE CAME INTO THE STORE; IS THAT RIGHT?

21 A YEAH.

22 Q SHE CAME UP TO YOU, CORRECT?

23 A NO. SHE WENT TO TALK TO THE OWNER'S SON FIRST, AND THEN I
24 COULD JUST HEAR IT GETTING HEATED UP, AND I JUST BACKED WAY UP.
25 I SAID, BOY, I DON'T WANT TO GET IN THIS.

CALVIN COX - BY MR. MOYER

1 Q AND THEN THAT'S WHEN SHE CAME OVER TO YOU?

2 A AND THEN SHE CAME OVER TO ME, AND I DON'T KNOW WHAT PROVOKED
3 IT THAT DAY, WHETHER IT WAS HER MEDICATION OR WHAT. BUT SHE
4 GRABBED ME BY THE THROAT, YOU KNOW, "I'LL RIP IT OUT." AND I'VE
5 NEVER HIT A WOMAN.

6 Q DID YOU THINK ABOUT DOING IT THAT DAY?

7 A I THINK ABOUT IT THAT I SHOULD HAVE MAYBE, BUT I DIDN'T.

8 MR. CREECH: ALL RIGHT. YOUR HONOR, THAT'S WHAT WE WOULD
9 PROFFER AT THIS POINT.

10 MR. MOYER: JUST A COUPLE OF QUESTIONS.

11 THE COURT: MR. MOYER.

12 BY MR. MOYER:

13 Q WHAT DID YOU SAY -- YOU SAY THERE WERE TWO INCIDENTS, YOU
14 SAID? THERE WAS TWO DIFFERENT TIMES YOU HAD A PROBLEM WITH HER?

15 A NO. IT WAS ONLY ONE TIME.

16 Q ONE TIME.

17 A YES, SIR.

18 Q WHEN DID THAT TAKE PLACE?

19 A IN JANUARY OF 2003. I DON'T KNOW THE EXACT DATE, SIR.

20 Q OKAY. AND WHEN DID YOU STOP HANGING AROUND HER?

21 A PROBABLY 2001, 2002. WE JUST, YOU KNOW, I JUST GOT TIRED OF
22 IT.

23 Q HOW ABOUT 2003, DID YOU SEE MUCH OF HER?

24 A WELL, I LIVED ACROSS THE HIGHWAY, AND I'D GO DOWN THERE TO
25 THE JUNKYARD. I'D RUN THE FRONTEND LOADER OR THE OFFICE FOR THEM

CALVIN COX - BY MR. MOYER

1 WHEN I NEEDED TO GET AWAY FROM THE HOUSE, YOU KNOW, JUST
2 SOMEWHERE I COULD GO.

3 Q BUT YOU DIDN'T HANG OUT WITH HER OR...

4 A NO. BEFORE THEN, YES, SIR, THERE THROUGH THE YEARS.

5 Q I'M TALKING ABOUT AFTER 2003?

6 A I DON'T THINK SO, NO, SIR. WE DIDN'T HAVE ANY -- AFTER
7 THAT.

8 Q SO THIS DRUG PROBLEMS, YOU SAID, THAT'S WHEN Y'ALL WERE
9 TOGETHER BEFORE 2003? OR THAT YOU KNOW OF?

10 A SAY---

11 Q THE DRUG PROBLEM YOU TALKED ABOUT, THAT WAS FROM BEFORE 2003
12 WHEN YOU USED TO HANG OUT WITH HER A LOT?

13 A YEAH. SHE USED TO COME TO THE HOUSE, AND HER AND MY WIFE,
14 THEY WOULD GO PLACES, YOU KNOW, AND GO EAT, WHAT HAVE YOU, OR IF
15 -- MY WIFE WANTED TO GO TO A SKATE -- ICE SKATING UP HERE AT THE
16 AUDITORIUM, AND I JUST DON'T DO PEOPLE GOOD, AND I SAID, "WELL,
17 GET SUSIE TO GO WITH YOU," AND SHE DONE THAT. THEY'D GO OUT TO
18 EAT, WHATEVER.

19 MR. MOYER: ALL RIGHT. I HAVE NOTHING FURTHER.

20 THE COURT: ANY REDIRECT?

21 MR. CREECH: NO REDIRECT, YOUR HONOR.

22 THE COURT: OKAY. MR. COX, THANK YOU, SIR.

23 (WITNESS STEPS DOWN AT 11:01 A.M.)

24 MR. MOYER: YOUR HONOR, MY MOTION WOULD BE TO EXCLUDE ALL
25 OF THAT TESTIMONY. I DON'T SEE HOW ANY OF IT IS RELEVANT.

MATTERS AND MOTIONS

1 STARTING OFF WITH THE INCIDENCE OF VIOLENCE IN 2003. I MEAN,
2 UNDER STATE V. BROWN, THE COURT RULED THAT THE RULE HAS LONG BEEN
3 ESTABLISHED IN THE STATE THAT SPECIFIC INSTANCES OF VIOLENT ON
4 THE PART OF THE DECEASED ARE NOT ADMISSIBLE UNLESS THEY WERE
5 DIRECTED BY THE DEFENDANT -- DIRECTED AGAINST THE DEFENDANT OR IF
6 DIRECTED AGAINST OTHERS WERE SO CLOSELY CONNECTED IN POINT OF
7 TIME OR OCCASION WITH THE HOMICIDE AS REASONABLY TO INDICATE THE
8 STATE OF MIND OF THE DECEASED." THERE IS NO TESTIMONY THAT HE
9 KNEW ABOUT IT. EVEN IF HE DID, IT WAS SO LONG AGO, IT -- AND IT
10 WAS A SIMPLE ASSAULT AND BATTERY. SO I DON'T SEE HOW THAT'S
11 ADMISSIBLE.

12 THE COURT: MR. CREECH.

13 MR. CREECH: I THINK IT WOULD BE ADMISSIBLE UNDER 404(A) (2)
14 THAT TALKS ABOUT CHARACTER OF THE VICTIM. EVIDENCE OF A
15 PERTINENT TRAIT OR CHARACTER OF THE VICTIM OF THE CRIME OFFERED
16 BY AN ACCUSED OR BY THE PROSECUTION TO REBUT THE SAME. THAT'S --
17 IT'S AN UNPROVOKED ATTACK ON THIS GUY. SHE CAME UP AND DID THAT.
18 THIS WAS, I THINK, THREE YEARS PRIOR TO THAT. WHY CAN'T WE SHOW
19 EVIDENCE? THE RULE, I THINK, I THINK CLEARLY ALLOWS THAT KIND OF
20 EVIDENCE IN A CASE LIKE THIS. AND ALSO, UNDER 405 BECAUSE WE
21 ASSERTED A CLAIM OF SELF-DEFENSE, WE SHOULD BE ABLE TO GET INTO
22 THE SPECIFIC DETAILS OF THE INCIDENT AS OPPOSED JUST TO
23 REPUTATION OR OPINION OF THE PERSON TESTIFYING ABOUT THE
24 DECEASED'S CHARACTER.

25 THE COURT: WELL, THERE IS NO EVIDENCE THAT MR. FOWLER KNEW

MATTERS AND MOTIONS

1 ABOUT THIS INCIDENT, IS THERE?

2 MR. CREECH: NO, THERE'S NOT AT ALL. BUT IT WOULD STILL GO
3 TO WHAT THE VICTIM'S MIND FRAME -- OR THE DECEASED'S MIND FRAME
4 WAS IN TERMS OF AGGRESSION AND WHAT SHE WAS DOING, AND IT WOULD
5 REFLECT MORE ON HER ACTIONS OF THAT DAY.

6 THE COURT: BUT HOW IS THAT RELEVANT TO ANY ISSUE IN THE
7 CASE? WHAT---

8 MR. CREECH: AS TO WHETHER SHE WAS, YOU KNOW, AGGRESSIVE
9 TOWARDS MR. FOWLER. IT WOULD BE RELEVANT TOWARDS THAT ISSUE.

10 THE COURT: BUT IF---

11 MR. CREECH: EVEN IF HE DIDN'T KNOW ABOUT IT, IT WOULD BE
12 RELEVANT.

13 THE COURT: BUT WOULDN'T HE HAVE TO KNOW ABOUT IT FOR IT TO
14 BE RELEVANT TO SELF-DEFENSE?

15 MR. CREECH: IT WOULD BE -- TO SELF-DEFENSE IT WOULD BE
16 RELEVANT. IT'S RELEVANT TO THE ACTION, AND I THINK SELF-DEFENSE
17 AS A WHOLE, NOT NECESSARILY JUST HIS MINDSET OR HIS KNOWLEDGE BUT
18 AS A WHOLE AS TO WHO WAS AN AGGRESSOR IN THE CASE.

19 THE COURT: ALL RIGHT. WELL---

20 MR. CREECH: I DON'T THINK HE HAS TO KNOW IF -- I MEAN, IF
21 THERE IS AN ISSUE AS WHAT SHE DID. AND I THINK THE RULE ALLOWS
22 IF WE CAN SHOW EVIDENCE OF WHAT'S GONE ON IN THE PAST, I DON'T
23 THINK WE NECESSARILY HAVE TO SHOW HE KNEW ABOUT IT. I DON'T
24 THINK MR. FOWLER HAS TO SHOW HE KNEW ABOUT IT. IT GOES TO WHAT
25 HER ACTIONS WERE THAT DAY. THE JURY IS TRYING TO FIGURE OUT, YOU

MATTERS AND MOTIONS

1 KNOW, HOW SHE WAS ACTING. I MEAN, IT'S -- THERE IS A RELEVANCE
2 PART OF IT TO SELF-DEFENSE. THERE IS ALSO -- WE'RE OFFERING IT
3 FOR ANOTHER REASON TO SHOW WHO WAS AN AGGRESSOR OR HER ACTIONS
4 THAT DAY AND WHETHER IT COULD BE CONFIRMED THROUGH THIS OR
5 WHETHER THIS WITNESS COULD SHED LIGHT ON THOSE ACTIONS FOR THE
6 JURY. I DON'T THINK IT'S AN EITHER-OR THING. I THINK IT WOULD
7 RELEVANT -- WELL, IT'S EITHER ONE ACTUALLY.

8 THE COURT: OKAY. ALL RIGHT. LET'S TAKE A BREAK. WE'LL
9 COME BACK AT ABOUT 11:15 AND TAKE THAT UP AND ALSO ANY CHARGE
10 ISSUES. SO WE'LL SEE YOU IN ABOUT TEN MINUTES.

11 (A RECESS WAS TAKEN FROM 11:05 TO 11:18 A.M.)

12 THE COURT: ALL RIGHT. THE PROFFERED TESTIMONY OF MR. COX
13 REGARDED A PREVIOUS SPECIFIC INSTANCE OF CONDUCT THAT MS.
14 GALLOWAY HAD ATTACKED HIM VIOLENTLY, APPARENTLY UNPROVOKED, AND
15 IT'S BEING OFFERED ON THE BASIS THAT IT RELATES TO THE DEFENSE
16 THEORY THAT SHE WAS THE FIRST AGGRESSOR, AND I FIND THAT UNDER
17 THE CASE OF *STATE VERSUS HAWKINS*, 301 S.C. 50, THE FOUNDATION IS
18 INSUFFICIENT TO ALLOW MR. COX TO TESTIFY. IN ORDER TO HAVE A
19 PROPER FOUNDATION FOR A VICTIM'S REPUTATION FOR VIOLENCE, THE
20 DEFENDANT MUST HAVE SOME KNOWLEDGE OF THAT REPUTATION. HERE IT
21 IS UNDISPUTED MR. FOWLER HAD NO KNOWLEDGE OF THIS INSTANCE. AND
22 *STATE VERSUS TURNER* WOULD REQUIRE THAT. THAT'S 29 S.C. 34. AND
23 LIKEWISE, SPECIFIC ACTS OF VIOLENCE ARE NOT ADMISSIBLE UNDER THE
24 *JERNIGAN* CASE. RULE 404(A) TYPICALLY ALLOWS EVIDENCE RELATED TO
25 THE CHARACTER OF AN ALLEGED VICTIM. UNDER 404(A) (2) IF IT'S A

MATTERS AND MOTIONS

1 PERTINENT TRAIT OF CHARACTER OF THE ALLEGED VICTIM OF A CRIME
2 OFFERED BY AN ACCUSED, THAT'S THE PORTION OF 404(A)(2) WHICH THE
3 DEFENDANT, MR. FOWLER, IN THIS CASE IS SEEKING TO INTRODUCE MR.
4 COX'S TESTIMONY. HOWEVER, HERE I THINK IT WOULD NOT BE RELEVANT
5 OR PERTINENT, AND IT WOULD BE OUTWEIGHED BY THE DANGER OF UNFAIR
6 PREJUDICE AND CONFUSION OF THE ISSUES. AND I QUOTE THE
7 MITCHELLSON VERSUS UNITED STATES CASE TO SUPPORT THAT. THE ISSUE
8 OF A PREVIOUS INCIDENCE OF VIOLENCE BY MS. GALLOWAY WOULD BE
9 PERTINENT IF MR. FOWLER KNEW ABOUT IT BECAUSE IT WOULD GO TO THE
10 REASONABLENESS OF HIS BELIEF THAT SHE WAS GOING TO CAUSE HIM
11 BODILY HARM OR USE DEADLY FORCE OR OTHERWISE WOULD GO TO HIS
12 STATE OF MIND. AND THAT COULD BE RELEVANT IF SELF-DEFENSE IS
13 CHARGED TO THE JURY, WHICH I'M SURE WE'LL TALK ABOUT IN A MOMENT.
14 BUT I SIMPLY DON'T SEE HOW THE PREVIOUS INCIDENT OF ASSAULT AND
15 BATTERY BY A VICTIM WOULD BE ADMISSIBLE ON ITS OWN WITHOUT THAT
16 LINK OF KNOWLEDGE TO THE DEFENDANT. RULE 405 ALLOWS SPECIFIC
17 INSTANCES OF CONDUCT AND THE LANGUAGE SPECIFICALLY STATES THAT
18 THOSE SPECIFIC INSTANCES OF CONDUCT ARE ADMISSIBLE IN CASES IN
19 WHICH CHARACTER OR A TRAIT OF CHARACTER OF A PERSON IS AN
20 ESSENTIAL ELEMENT OF A CHARGE, CLAIM OR DEFENSE. AND HERE I
21 DON'T UNDERSTAND WHERE MS. GALLOWAY'S CHARACTER IS AN ESSENTIAL
22 ELEMENT OF ANY OF THE CHARGES MR. FOWLER FACES OR ANY OF THE
23 DEFENSES HE SEEKS TO RAISE.
24 MR. CREECH, HOW WOULD THAT BE RELATED TO AN ESSENTIAL
25 ELEMENT OF A CHARGE OR DEFENSE?

MATTERS AND MOTIONS

1 MR. CREECH: IT WOULD GO TO SELF-DEFENSE. I MEAN, I WOULD
2 CITE TO THE COURT THE UNITED STATES FOURTH CIRCUIT CASE, U.S. v.
3 COVINGTON WHERE THEY TALK ABOUT IN THAT CASE -- IT'S 455 F.3d --
4 AND IT REFERS TO RULE 405(B). THE DEFENDANT IN THAT CASE IS
5 GOING TO TRY AND OFFER EVIDENCE OF THE DECEASED'S VIOLENT
6 CHARACTER. THE FOURTH CIRCUIT WROTE, FEDERAL RULES OF EVIDENCE
7 PERMIT EVIDENCE OF PERTINENT TRAIT OF CHARACTER OF A VICTIM OF A
8 CRIME TO BE OFFERED BY AN ACCUSED UNDER 404(A)(2). FURTHERMORE,
9 WHEN THE CHARACTER OR TRAIT OF CHARACTER OF A PERSON IS AN
10 ESSENTIAL ELEMENT OF A CHARGE, CLAIM OR DEFENSE, PROOF MAY ALSO
11 BE MADE OF SPECIFIC INSTANCES OF THAT PERSON'S CONDUCT. THE
12 COURT -- AND THAT'S CITING 405(B). THE FOURTH CIRCUIT COURT
13 SAYS, ESSENTIALLY THEY DIDN'T ALLOW THAT EVIDENCE BECAUSE THEY
14 SAID THAT IN THE INCIDENT CASE WATSON'S PROPENSITY FOR VIOLENCE
15 -- WATSON WAS THE VICTIM -- WAS NOT DIRECTLY RELEVANT BECAUSE THE
16 DEFENDANT CLAIMED THAT HE HAD AN ALIBI, NOT THAT HE ACTED IN
17 SELF-DEFENSE. AND SO -- AND THERE'S NO DISCUSSION IN THE FOURTH
18 CIRCUIT CASE ABOUT, YOU KNOW, REQUIREMENT OF KNOWLEDGE. AGAIN,
19 WE WOULD DEEM THAT TO BE RELEVANT AS TO HER PROPENSITY FOR
20 VIOLENCE AND WHAT SHE MAY HAVE DONE PRIOR TO OR DURING THIS
21 INCIDENT TO HELP THE JURY DECIDE WHAT HAPPENED.

22 THE COURT: OKAY. WELL, I DON'T BELIEVE MY DECISION IS
23 CONTRARY TO THE FOURTH CIRCUIT CASE BECAUSE THERE THEY'RE TALKING
24 ABOUT A SPECIFIC INSTANCE OF CONDUCT IS ADMISSIBLE IF IT GOES TO
25 AN ESSENTIAL ELEMENT OF A CHARGE OR DEFENSE. AND IT WOULD BE

MATTERS AND MOTIONS

1 PERHAPS ADMISSIBLE IF MR. FOWLER KNEW ABOUT HER VIOLENT PAST
2 CONDUCT. BUT HERE I THINK IT JUST DOES NOT MEET THAT EVIDENTIARY
3 THRESHOLD AND SO I'M GOING TO EXCLUDE THE TESTIMONY. I THINK IT
4 DOES NOT GO TO ANY ISSUE IN THE CASE BECAUSE OF THE LACK OF HIS
5 KNOWLEDGE OF HER CONDUCT. DOES THE STATE HAVE ANYTHING THEY WISH
6 TO ADD?

7 MR. MOYER: NO, YOUR HONOR.

8 THE COURT: ALL RIGHT. NOW, MR. CREECH, ARE YOU GOING TO
9 HAVE ANY FURTHER WITNESSES?

10 MR. CREECH: YOUR HONOR, WE WOULD JUST OFFER THIS ONE
11 DOCUMENT INTO EVIDENCE. IT'S THE GREENVILLE COUNTY CORONER'S
12 OFFICE OFFICIAL CORONER'S REPORT WITH A SEAL ON IT. WE WOULD
13 OFFER IT AS AN OFFICIAL DOCUMENT.

14 MR. MOYER: YOUR HONOR, I'M GOING TO OBJECT TO THAT. BUT
15 BEFORE WE GET TO THAT, I DON'T KNOW IF WE HAVE SPOKEN ABOUT --
16 DOES THAT MEAN THAT WITNESS IS NOT BEING CALLED? IS THAT -- IS
17 THAT CORRECT?

18 MR. CREECH: THAT'S CORRECT. YES.

19 MR. MOYER: OKAY. I JUST WANTED TO MAKE SURE BECAUSE HE
20 ALSO TESTIFIED ABOUT SOME PRIOR DRUG USE. I WOULD HAVE HAD AN
21 OBJECTION TO THAT.

22 I DO HAVE A SERIES OF OBJECTIONS TO THIS DOCUMENT THAT MR.
23 CREECH WANTS TO GET INTO EVIDENCE. IT CONTAINS BLATANT HEARSAY.
24 IT'S JUST AN ATTEMPT TO GET AROUND HAVING TO CALL A WITNESS TO
25 EXPLAIN THE CONTENTS OF THE DOCUMENT.

MATTERS AND MOTIONS

1 **THE COURT:** WHAT'S IN THE DOCUMENT? I'M NOT SURE.

2 **MR. CREECH:** IT'S JUST A -- THERE'S A NARRATIVE. THERE'S A
3 NARRATIVE IN THE CORONER'S REPORT THAT SAYS ACCORDING TO A
4 WITNESS NUMBER 1, WHO IS MR. POWELL, THE VICTIM WENT INTO A PAWN
5 SHOP AND PAWNED A BRACELET AND TOOK UP CONVERSATION WITH ANOTHER
6 CUSTOMER. THE VICTIM WENT OUTSIDE AND GOT IN THE CAR. THE
7 VICTIM AND WITNESS NUMBER 1 FOLLOWED THE SUSPECT TO THE INCIDENT
8 LOCATION. THE SUSPECT WALKED UP TO THE CAR AND ATTEMPTED TO MAKE
9 A DRUG DEAL WITH THE DRIVER. THE SUSPECT ASKED FOR MONEY AND
10 WITNESS NUMBER 1 REACHED IN POCKET AND SUSPECT THEN STARTED
11 SHOOTING HIS GUN. WITNESS NUMBER 1 AND THE VICTIM WERE BOTH SHOT
12 AND TRANSPORTED BY EMS. THE GREENVILLE CITY POLICE DEPARTMENT
13 RESPONDED TO THE SCENE. THE SCENE WAS PROCESSED BY GREENVILLE
14 COUNTY FORENSIC.

15 IT SAYS THIS IS AN OFFICIAL CORONER'S REPORT. THIS
16 INFORMATION IS A REFLECTION OF RECORDS MAINTAINED BY THIS OFFICE
17 AND IT HAS THE CORONER'S SEAL AND SIGNATURE.

18 **THE COURT:** OKAY. YES, SIR, MR. MOYER. WHY WOULDN'T THAT
19 BE AN EXCEPTION TO THE HEARSAY RULE IF IT'S AN OFFICIAL RECORD?

20 **MR. MOYER:** WELL, IT'S -- UNDER RULE 902 THE AUTHENTICITY
21 REQUIREMENT IS CERTAINLY ESTABLISHED. HOWEVER, THE RELEVANCE OF
22 THAT DOCUMENT AND ALSO THE 403 ANALYSIS. IT WOULD BE EXTREMELY
23 AND UNFAIRLY PREJUDICIAL. THE DEFENSE WANTS TO ARGUE FROM THIS
24 ALONE THAT A WITNESS SAID SOMETHING. HE WANTS TO ARGUE WHAT ONE
25 OF THE VICTIMS SAID BASED ON THAT DOCUMENT WITHOUT KNOWING HOW

MATTERS AND MOTIONS

1 THAT INFORMATION GOT ON THAT DOCUMENT, WITHOUT HAVING A PERSON
2 TESTIFY WHO MADE THAT REPORT HOW THEY GOT THAT INFORMATION, HOW
3 IT WAS PRODUCED INTO THAT DOCUMENT, WHO THEY GOT THAT FROM. I
4 THINK -- MY UNDERSTANDING OF WHAT CORONERS DO, THEY TALK TO THE
5 POLICE OFFICERS AND THEY TALK TO THE MEDICAL EXAMINER AND JUST
6 GET A LITTLE BIT OF INFORMATION FROM VARIOUS SOURCES AND PUT IT
7 IN THERE, AND TO BE ABLE TO EXTRAPOLATE FROM THAT AND ARGUE WHAT
8 HE WANTS TO ARGUE FROM IT WOULD BE -- FIRST OFF, IT WOULD HAVE NO
9 RELEVANCE. AND IT WOULD BE UNFAIR AND PREJUDICIAL. IT WOULD
10 HAVE NO RELEVANCE BECAUSE HIS CLIENT DIDN'T EVEN CLAIM THAT MR.
11 POWELL REACHED IN HIS POCKET. SO FOR THAT REASON IT HAS NO
12 RELEVANCE. AND IT'S UNFAIRLY PREJUDICIAL BECAUSE THE WITNESS IS
13 UNABLE TO EXPLAIN HOW THAT HEARSAY GOT IN THAT DOCUMENT. HE'S
14 ESSENTIALLY TRYING TO GET AROUND RULE 613 IS THE WAY I SEE IT,
15 AND YOU NEED AN ACTUAL PERSON TO COME IN AND TESTIFY. YOU HAVE
16 TO FIRST LAY THE FOUNDATION OF THE WITNESS. THEN YOU HAVE TO
17 HAVE A WITNESS COME IN AND TESTIFY AND SAY IT.

18 SO FIRST OFF, THE FOUNDATION WASN'T LAID WITH A WITNESS.
19 AND SO SECONDLY, EVEN IF THIS WITNESS WERE IN HERE, I DON'T THINK
20 THE WITNESS COULD TESTIFY. AND YOU CAN'T GET AROUND THAT BY
21 PUTTING THIS DOCUMENT IN.

22 MR. CREECH: YOUR HONOR, I THINK THE DOCUMENT SPEAKS FOR
23 ITSELF. IT'S AN OFFICIAL REPORT OF THE CORONER'S OFFICE AND THIS
24 IS WHAT THEY -- THEY BASE INFORMATION ON -- THEY MAKE THE
25 REPORTS, AS MR. MOYER SAID, BASED ON INFORMATION THEY RECEIVE.

MATTERS AND MOTIONS

1 AGAIN, IT'S PART OF AN OFFICIAL REPORT. IT'S PART OF AN OFFICIAL
2 DOCUMENT. I THINK IT WOULD BE -- IT WOULD CERTAINLY BE RELEVANT.
3 ESPECIALLY, YOU KNOW, I DON'T THINK THERE IS ANY KIND OF HEARSAY
4 RULE. I MEAN, IF IT'S AN OFFICIAL DOCUMENT, IT'S AN OFFICIAL
5 DOCUMENT. AND THAT'S WHY THERE IS AN EXCEPTION TO THE HEARSAY
6 RULE FOR THIS OFFICIAL DOCUMENT. THE -- SO -- I MEAN, I DON'T
7 THINK IF THERE IS AN OFFICIAL DOCUMENT I DON'T KNOW THERE'S
8 EXCEPTION TO THAT EXCEPT TO THE HEARSAY RULE HAS CERTAIN PORTIONS
9 OF THE DOCUMENT AREN'T ALLOWED IN. SO IT'S AN OFFICIAL RECORD OF
10 THE CORONER'S OFFICE.

11 MR. MOYER: AND ACTUALLY, IF I COULD RESPOND TO THAT, IT
12 DOESN'T -- IT DOES FAIL THE HEARSAY TEST. UNDER RULE 803(A)
13 PUBLIC RECORDS AND REPORTS, IT EXCLUDES, HOWEVER, IN CRIMINAL
14 CASES MATTERS OBSERVED BY POLICE OFFICERS AND OTHER LAW
15 ENFORCEMENT PERSONNEL. HOWEVER, PROVIDED THAT THE INVESTIGATIVE
16 NOTES INVOLVING OPINIONS, JUDGMENTS OR CONCLUSIONS ARE NOT
17 ADMISSIBLE. SO THAT REPORT IS INVOLVING AN OPINION, A JUDGMENT
18 OR A CONCLUSION, AND SO IT WOULD VIOLATE THE HEARSAY RULE.

19 THE COURT: MAY I SEE THE REPORT?

20 MR. CREECH: YES, SIR.

21 THE COURT: (REVIEWS REPORT) AND WHEN MR. POWELL TESTIFIED
22 -- I'M LOOKING AT MY NOTES -- BUT WHAT DID HE SAY ABOUT WHETHER
23 HE REACHED IN HIS POCKET? I -- WHAT IS YOUR RECOLLECTION OF
24 THAT?

25 MR. CREECH: WELL, THERE WAS -- I THINK THAT HE -- I THINK

MATTERS AND MOTIONS

1 I ASKED HIM DID YOU EVER TELL THE ASSISTANT CORONER THAT YOU
2 REACHED INTO YOUR POCKET? AND I THINK IT'S MY RECOLLECTION HE
3 SAID THAT. BUT THERE WAS OTHER TESTIMONY SAYING THAT, LIKE MR.
4 HARRIS, FOR INSTANCE, THAT MR. POWELL FREAKED OUT, AND I CAN'T
5 REMEMBER IF HE SAID HE REACHED IN HIS POCKET BUT HE DID SAY
6 REACH.

7 MR. MOYER: JUDGE, THAT'S WHY THAT RULE 613 IS WHAT IT IS.
8 I MEAN, THE WITNESS WOULD HAVE HAD TO BEEN ASKED THE TIME, THE
9 PLACE, WHAT WAS GOING ON, WHO DID HE SAY IT TO, AND THEN THE
10 WITNESS GETS ON THE STAND AND SAYS THE TIME, THE PLACE AND WHAT
11 WAS SAID. AND SO THE FOUNDATION WASN'T LAID, SO AT THIS POINT
12 THE WITNESS CANNOT BE ALLOWED. AND AS I SAID, THIS BY ITSELF IS
13 A VIOLATION OF HEARSAY AND RULE 803(A). IT'S NOT AN EXCEPTION.

14 THE COURT: OKAY. WELL, I AGREE WITH THE STATE. I WOULD
15 HAVE TO FIND THAT THE HEARSAY EXCEPTION FOR RECORDS AND REPORTS
16 BY A PUBLIC OFFICER DOESN'T APPLY HERE BECAUSE THE CORONER IS
17 PART OF LAW ENFORCEMENT, IN A SENSE, AT THAT POINT, AND THAT IS
18 SPECIFICALLY EXCLUDED BY THE RULE. AND SECOND, IT INVOLVES
19 MATTERS OF CONCLUSIONS DRAWN BY HIM AS FAR AS THE INVESTIGATION.
20 AND SO I GRANT THE STATE'S OBJECTION TO THIS AND SUSTAIN IT. YOU
21 CAN MARK IT AS A COURT'S EXHIBIT.

22 MR. CREECH: THANK YOU, YOUR HONOR. IT'S TWO PAGES.

23 (CORONER'S REPORT MARKED AS COURT'S EXHIBIT NUMBER 1)

24 THE COURT: OKAY. NOW WHAT ABOUT THE REQUESTS TO CHARGE?
25 DOES THE STATE HAVE ANY SPECIFIC ONES THAT WOULD NOT BE COVERED

MATTERS AND MOTIONS

1 BY THE STANDARD CHARGES?

2 MR. MOYER: YOU KNOW, I DO HAVE ONE AND I'M NOT SURE IF
3 THIS IS COVERED BY YOUR STANDARD CHARGE OR NOT. THIS REFLECTS A
4 RECENT CASE FROM, ACTUALLY, JUST A FEW MONTHS AGO, STATE V.
5 KINARD, REGARDING THE LAW OF MALICE FOR PURPOSES OF ASSAULT AND
6 BATTERY WITH INTENT TO KILL AND MURDER. IT REALLY FOCUSES ON THE
7 FELONY MURDER ASPECT OF MALICE.

8 THE COURT: OKAY. MR. CREECH, WHAT'S YOUR POSITION?

9 MR. CREECH: WE WOULD JUST ASK THAT YOU CHARGE AS TO FELONY
10 MURDER JUST PERMISSIVE INFERENCE THAT MALICE AS THERE ARE
11 INFERENCES -- AS ARE THE OTHER INFERENCES OF MALICE. I THINK
12 IT'S STATE V. NORRIS AS TO THE FELONY MURDER. SO IF THIS IS -- I
13 MEAN, IF THAT COMPORTS WITH THE COURT'S GENERAL MALICE CHARGE,
14 WE'D JUST ASK THAT THAT BE INCLUDED.

15 MR. MOYER: WHEN I HANDED YOU THAT IT WAS WITHOUT QUITE
16 KNOWING WHAT YOU WERE GOING TO CHARGE ANYWAY. IT COULD BE WHAT
17 I'VE ASKED THAT YOU DO IS INCORPORATED WITH WHAT YOU'RE ALREADY
18 GOING TO DO.

19 THE COURT: OKAY. NO, I APPRECIATE YOU HANDING IT UP. I
20 WILL COMPARE IT TO WHAT I ALREADY HAVE. ANY FURTHER REQUESTS TO
21 CHARGE FROM THE STATE?

22 MR. MOYER: NO, SIR.

23 THE COURT: OKAY. YES, SIR, MR. CREECH.

24 MR. CREECH: YOUR HONOR, THE DEFENSE HANDS UP 13 REQUESTS.

25 THE COURT: ALL RIGHT. WE'LL MAKE ALL OF THESE COURT'S

MATTERS AND MOTIONS

1 EXHIBITS.

2 MR. CREECH: YOUR HONOR, WE WOULD ASK THE COURT TO CHARGE
3 ON VOLUNTARY MANSLAUGHTER AS WELL AS SELF-DEFENSE. WE THINK IF
4 THERE IS ANY EVIDENCE OF SELF-DEFENSE WE THINK THAT IT BECOMES A
5 JURY QUESTION AND ASK THE COURT TO CHARGE THAT. OF COURSE, BASED
6 ON MR. FOWLER'S TESTIMONY, WHAT HE SAW, WHAT HE THOUGHT, THIS WAS
7 A DANGEROUS SITUATION THAT HE FELT -- AND WE THINK HE PRESENTED
8 SOME EVIDENCE OF SELF-DEFENSE AND ASK THAT YOU CHARGE THAT.

9 ALSO, AS TO MANSLAUGHTER, WE WOULD ASK -- ALSO ASK THE COURT
10 TO CHARGE MANSLAUGHTER AS WELL BASED ON AN OVERT ACT BY THE
11 VICTIM, MS. GALLOWAY, AND MR. FOWLER'S BELIEF THAT SHE WAS GOING
12 TO REACH IN HER POCKETBOOK FOR A WEAPON AND HE WAS PUT IN FEAR.
13 SO THAT WOULD BE OUR REQUEST.

14 THE COURT: WHAT IS THE OVERT ACT NOW THAT YOU'RE RELYING
15 ON?

16 MR. CREECH: RIGHT. WHEN MRS. GALLOWAY PULLED THE MONEY
17 BACK FROM HIM SUDDENLY AND THEN REACHING TOWARDS HER POCKETBOOK
18 WHICH HE THOUGHT COULD CONTAIN A WEAPON, THE SUDDENNESS OF IT,
19 THE UNUSUALNESS OF IT. DURING THIS TRANSACTION IN THIS LOCATION
20 WITH THESE STRANGERS AND THE CONTACT THAT WAS GOING ON,
21 ESPECIALLY WITH WHAT HE HAD SEEN FROM THE BACK SEAT. HIS -- WHEN
22 SHE PULLS AWAY LIKE THAT, THEN THAT'S AN OVERT ACT, ESPECIALLY IN
23 THE DIRECTION THAT SHE'S REACHING TOWARDS HER POCKETBOOK. I
24 THINK HE TESTIFIED IT WAS MAYBE A FOOT AWAY FROM WHERE SHE WAS,
25 AT HER FEET ESSENTIALLY AS SHE WAS SEATED IN THE CAR. SO THAT'S

MATTERS AND MOTIONS

1 WHAT THE...

2 THE COURT: YES, SIR.

3 MR. MOYER: MAY I RESPOND, YOUR HONOR? I'M GOING THE
4 OBJECT TO EITHER VOLUNTARY MANSLAUGHTER OR SELF-DEFENSE BEING
5 CHARGED IN THE CASE, AND WE CAN START WITH VOLUNTARY MANSLAUGHTER
6 BECAUSE THAT'S WHAT HE JUST ASKED FOR.

7 IT'S NOT AN OVERT ACT. IT'S NOT AN OVERT THREAT. AND
8 THERE'S NO TESTIMONY IN THIS RECORD THAT THE VICTIM MADE ANY
9 THREAT WHATSOEVER. THERE IS TESTIMONY THAT HE PERCEIVED IT AS A
10 THREAT. THAT'S WHAT HE SAID. I GUESS THAT CAN BE A JURY
11 QUESTION. BUT THAT'S NOT THE STANDARD. THE QUESTION IS WHETHER
12 THERE WAS AN OVERT THREAT, NOT A VEILED THREAT.

13 ALL SHE DID -- THE ONLY TESTIMONY IN THE CASE -- IS THAT SHE
14 MOVED HER HAND AWAY FROM THE DEFENDANT AND STARTED GOING TOWARDS
15 HER PURSE. THAT'S IT. ANY WAY THAT THAT COULD CREATE ADEQUATE
16 LEGAL PROVOCATION FOR MANSLAUGHTER, I THINK, IS JUST IS A STRETCH
17 BEYOND REASON. HE TRIED TO INCORPORATE THE ACTIONS OF RON HARRIS
18 IN THE BACK SEAT AS WELL. I THINK THE CASE LAW IS -- ACTUALLY,
19 THE CASE LAW IS VERY CLEAR THAT THE OVERT THREAT MUST COME FROM
20 THE VICTIM ONLY. THERE CAN BE NO -- THERE CAN BE NO THIRD PARTY.
21 PROVOCATION FROM A THIRD PARTY WOULD NOT COME INTO PLAY AT ALL.

22 AND I CAN HAND UP THREE CASES, YOUR HONOR, IF IT PLEASE THE
23 COURT -- STATE v. LOCKLEAR, STATE v. HARRIS AND STATE v. WHARTON
24 -- ALL OF WHICH STAND FOR THE PROPOSITION THAT THE PROVOCATION
25 MUST COME FROM THE VICTIM ONLY. AND IN FACT, IN ONE OF THOSE

MATTERS AND MOTIONS

1 CASES, LOCKLEAR, THE COURT CONSIDERED THE POSSIBILITY OF PEOPLE
2 ACTING IN CONCERT, AND THE COURT REJECTED THAT AS WELL. EVEN IF
3 IT IS PERCEIVED THAT THE VICTIM IS ACTING IN CONCERT WITH ANOTHER
4 INDIVIDUAL, THAT WOULD NOT BE ENOUGH TO IMPUTE THE ACTIONS OF THE
5 OTHER INDIVIDUAL TO HER ACTIONS. SO WHAT WE'RE LEFT WITH THEN IS
6 NOTHING MORE THAN HER MOVEMENT OF HER HAND TOWARDS HER PURSE.

7 THE COURT: OKAY. YES, SIR, MR. CREECH.

8 MR. CREECH: YOUR HONOR, I WOULD -- THAT'S THE STATE'S
9 CHARACTERIZATION OF HER MOVING. OBVIOUSLY WE HAVE A DIFFERENT
10 CHARACTERIZATION IN THAT IT WAS JERKED AWAY SUDDENLY. AND
11 THEY'VE INTRODUCED INTO EVIDENCE A RIPPED \$20 BILL, WHICH WOULD
12 INDICATE THE FORCE SHE USED WITH -- IN MAKING THE MOVEMENT IN
13 PULLING HER HAND IN THE DIRECTION OF AN AREA WHERE A GUN COULD BE
14 HELD OR DOWN BY THE CAR.

15 I MEAN, AGAIN, THIS WAS NOT A -- THIS WASN'T JUST A SUDDEN
16 MOVEMENT THAT WAS KIND OF CASUALLY EXPECTED ON THE PART OF
17 DEFENDANT. IT WAS, AGAIN, SHE PULLED IT AWAY IN A THREATENING
18 MANNER. IT WAS DONE SUDDENLY AND WITH ENOUGH FORCE, APPARENTLY,
19 TO, YOU KNOW, THEY SAY -- THEY INTRODUCED THIS \$20 BILL THAT WAS
20 RIPPED. SO, I MEAN, I THINK THE FAIR INFERENCE WOULD BE IT WAS,
21 YOU KNOW, THE VELOCITY AND THE SPEED WITH WHICH SHE PULLED HER
22 HAND AWAY WOULD LEAD HIM, YOU KNOW, TO THE CONCLUSION THAT HE
23 DID. AND AGAIN, IT'S A THREATENING ACT. I DON'T THINK SHE HAS
24 TO SAY -- MAKE A THREAT, SO TO SPEAK. IF SHE MAKES A THREATENING
25 ACT IN THAT MANNER IN THIS CONTEXT BY HER, IF THIS HAD BEEN A

MATTERS AND MOTIONS

1 NORMAL TRANSACTION, SHE WOULD HAVE JUST LET HIM HAVE THE MONEY OR
2 HANDED IT TO HIM AND THERE WOULD HAVE BEEN NO SUDDEN MOVEMENTS.
3 YOU KNOW, EVERY POLICE OFFICER HAS TESTIFIED HOW THEY HAVE -- HOW
4 THEY RESPOND TO THESE SUDDEN TYPES OF MOVEMENTS IN CARS. AND
5 EVEN WHEN THEY CAN'T SEE HANDS, SO TO SPEAK, THAT IT'S -- AGAIN,
6 WE WOULD CONTEND THAT AS PART OF THIS CASE AND IN THE CONTEXT OF
7 THIS CASE AND THE LOCATION OF THE PARTIES THAT THAT SUDDEN
8 UNUSUAL MOVEMENT, FORCEFUL MOVEMENT MADE TOWARDS AN AREA WHERE
9 SHE COULD BE KEEPING A GUN WOULD BE -- HE WOULD DEEM THAT
10 THREATENING.

11 THE COURT: ALL RIGHT. WHAT ABOUT THE SELF-DEFENSE CHARGE?
12 WHAT EVIDENCE IS THERE TO SUPPORT THAT, MR. CREECH?

13 MR. CREECH: YOUR HONOR, THAT WOULD, AGAIN, BASED ON HIS
14 TESTIMONY, HE STATED THAT, YOU KNOW, HE SAW A BULGE IN THE BACK
15 SEAT PASSENGER'S POCKET. HE NEVER SAW THE GUY'S HAND. HE SAW A
16 SUDDEN MOVEMENT INTO THE POCKET. HE THEN -- AT THAT POINT THEN
17 THE GUY STARTS TO BRING THE GUN OUT OF HIS POCKET. AT THAT POINT
18 HE THOUGHT THAT THE GUY HAD A GUN. HE SAW THE MONEY ON THE GUY'S
19 LAP, SO HE RULED OUT THAT THERE WAS A REASON TO GO INTO HIS
20 POCKET FOR MONEY. HE DID SHOOT THREE TIMES. AGAIN, SHE PULLED
21 BACK THE MONEY AT THE SAME TIME THAT HE SAW THIS TAKING PLACE,
22 AND HE SAW OTHER MOVEMENTS IN THE CAR. HE SAW WHAT HAS BEEN
23 DESCRIBED AS EVIDENCE OF OTHER MOVEMENTS IN THE CAR. POWELL --
24 THE BACK SEAT PASSENGER SAID MR. POWELL WAS FREAKING OUT.

25 AND SO AGAIN, CONSIDERING THE CONTEXT OF THE WHOLE

MATTERS AND MOTIONS

1 SITUATION, THEY APPROACHED HIM. THIS IS A DANGEROUS SITUATION.
2 POLICE OFFICERS HAVE TESTIFIED ABOUT THAT. SO AT THAT POINT WHEN
3 THEY -- WHEN HE SEES SOMEBODY REACHING IN A POCKET, SEES THE
4 BULGE IN THE POCKET, THERE WAS NO REASON FOR THE PERSON TO REACH
5 IN THE POCKET, HE SEES THE WOMAN JERK THE MONEY AWAY, HE THINKS
6 THAT THERE'S ABOUT TO BE AN ASSAULT ON HIM. SO WE THINK THERE IS
7 SOME EVIDENCE OF THAT IN THE RECORD.

8 THE COURT: YES, SIR, MR. MOYER.

9 MR. MOYER: WELL, HE HAS TO DO MORE THAN THINK HE WAS IN A
10 DANGEROUS SITUATION. IT HAS TO BE A SITUATION WHERE A REASONABLE
11 PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME
12 BELIEF, AS YOUR HONOR KNOWS. HE ACTUALLY FAILS ALL THREE PRONGS
13 OF THE TEST.

14 BEING WITHOUT FAULT IN BRINGING ON THE DIFFICULTY, I MEAN,
15 THE SLATER CASE EARLIER THIS YEAR WHERE A PERSON WENT UP TO A CAR
16 WHERE THERE WAS AN ALTERCATION GOING ON AND THE FACT THAT HE
17 ENTERED THAT SITUATION WITH AN UNLAWFUL WEAPON, THE COURT HELD
18 THAT PROXIMATELY CAUSED THE EXCHANGE OF GUNFIRE AND THE DEATH OF
19 THE VICTIM EVEN THOUGH HE WAS ACTUALLY RUNNING AWAY FROM THE
20 SCENE AND SHOOTING BACK AT THE TIME, AND NO SELF-DEFENSE WAS
21 CHARGED IN THAT CASE.

22 AS FAR AS BELIEVING HE WAS IN IMMINENT DANGER, HE SAID HE
23 THOUGHT THAT, BUT HOW ANY REASONABLE PERSON OF ORDINARY FIRMNESS
24 AND COURAGE COULD HAVE FROM THE FEW ACTIONS HE DESCRIBED BELIEVED
25 THAT HE WAS IN DANGER OF LOSING HIS LIFE OR SUSTAINING SERIOUS

MATTERS AND MOTIONS

1 BODILY INJURY, HE SAW NO WEAPONS. NO ONE SAID THEY SAW A WEAPON.
2 NO ONE MADE A THREATENING WORD AGAINST HIM. THERE WERE NO
3 ARGUMENTS. ALL WE HAD WERE TWO PEOPLE MOVING THEIR HANDS, ONE
4 TOWARDS A POCKET AND ONE TOWARDS A PURSE. HE'S DOING A DRUG
5 DEAL. HE FAILED THAT TEST AS WELL.

6 AND FINALLY, AS FAR AS NO OTHER PROBABLE MEANS OF AVOIDING
7 THE DANGER, THEY'RE COOPED UP IN A CAR. HE IS STANDING OUTSIDE
8 THE VEHICLE. AND HIS TESTIMONY IS THAT AS SOON AS HE SEES TWO
9 HANDS MOVING HE STARTS SHOOTING. HE DID NOTHING AT ALL TO TRY TO
10 AVOID THE DANGER OR TO STEP AWAY OR, YOU KNOW, AVOID THE DANGER
11 OF THAT SITUATION.

12 SO THE STATE'S ARGUMENT IS THAT HE FAILS ALL THREE TESTS.

13 MR. CREECH: YOUR HONOR, OUR RESPONSE WOULD BE AS TO THE
14 TRYING TO RETREAT, HE TESTIFIED THAT HE FELT LIKE IF HE HAD
15 TURNED AROUND HE WOULD HAVE BEEN SHOT IN THE BACK. AND I THINK
16 THAT ONE OF THE VICTIMS EVEN TESTIFIED IN THAT REGARD, YOU KNOW,
17 THAT IF HE HAD HAD A GUN HE WOULD HAVE SHOT HIM IN THE BACK. HE
18 HAS NO DUTY TO RETREAT IF IT'S GOING TO INCREASE HIS DANGER.
19 THAT WOULD BE THE DEFENDANT'S POSITION.

20 THERE WAS NOWHERE THAT HE COULD RUN. HE COULD NOT RUN BACK
21 INTO THE CAR BECAUSE HE WOULD BE PUTTING THEM IN DANGER IN THE
22 CAR. THE DRIVER'S SIDE DOOR DID NOT HAPPEN. AND HE HAS THE
23 RIGHT TO ACT ON APPEARANCES, AND WE THINK THIS IS A CLASSIC
24 APPEARANCES CASE. SO WE THINK HE'S GOT THE RIGHT TO ACT ON
25 APPEARANCES. AND WHETHER IT'S REASONABLE OR NOT, WE THINK

MATTERS AND MOTIONS

1 THAT'S A JURY QUESTION.

2 WE PRESENTED SOME EVIDENCE FROM POLICE OFFICERS AND OTHERS
3 THAT THESE ARE DANGEROUS TYPES OF SITUATIONS, AND THE COURT CAN
4 ALMOST TAKE JUDICIAL NOTICE OF THAT FACT, AS MANY DRUG CASES AS
5 THERE ARE IN THIS COURTHOUSE. BUT WE THINK THAT BECOMES A JURY
6 QUESTION AT THIS POINT.

7 AND AS FAR AS BRINGING ON THE DIFFICULTY, IN TERMS OF THE
8 SLATER CASE, JUDGE, I THINK THAT WAS A PERSON THAT WALKED INTO AN
9 ONGOING FIGHT WITH A COCKED PISTOL. AND THE SUPREME COURT, YOU
10 KNOW, SAID THAT SELF-DEFENSE WAS NOT PROPERLY CHARGED. THIS IT
11 NOT LIKE THAT. I MEAN, THERE'S NOT AN ONGOING FIGHT. HE'S NOT
12 TRYING TO PUT HIMSELF IN THE MIDDLE OF A FIGHT. HE'S NOT DOING
13 ANYTHING TO INCREASE THE TENSION BETWEEN TWO PEOPLE IN TERMS OF
14 TWO PEOPLE FIGHTING. IN THAT CASE I WOULD THINK IT WOULD HAVE TO
15 BE LIMITED TO ITS FACTS AS OPPOSED TO JUST A BROAD-BASED DENIAL
16 TO THE RIGHT OF SELF-DEFENSE, YOUR HONOR. I THINK IT WOULD BE A
17 CASE-BY-CASE ANALYSIS ON BRINGING ON THE DIFFICULTY. THE FACTS
18 IN THIS CASE ARE DIFFERENT FROM THE FACTS IN SLATER.

19 MR. MOYER: JUST REAL QUICK IN REPLY, YOUR HONOR. FIRST
20 OFF, AS FAR AS THE VICTIM SAYING HE WOULD HAVE SHOT HIM IN THE
21 BACK, HE SAID, "YES, AFTER I'D BEEN SHOT." YES, HE MAY HAVE
22 SHOT. SO THAT COMMENT CERTAINLY WOULDN'T COME INTO PLAY IN THIS
23 SITUATION.

24 AS FAR AS HIM HAVING NO DUTY TO RETREAT IF IT WOULD INCREASE
25 THE DANGER, HE WAS NEVER IN ANY DANGER TO BEGIN WITH. HE NEVER

MATTERS AND MOTIONS

1 SAID HE SAW A WEAPON. SO THE FACT THAT HE THINKS THAT RETREATING
2 MIGHT CAUSE HIM TO BE IN MORE DANGER, YOU HAVE TO BE IN DANGER TO
3 BEGIN WITH BEFORE YOU CAN END UP BEING IN MORE DANGER.

4 AND IF HIS TESTIMONY IS THAT THIS WAS -- THE REASON THIS WAS
5 A DANGEROUS SITUATION IS BECAUSE OF THE DRUG DEAL, THAT GETS BACK
6 TO THE FIRST PRONG OF TEST. HE DIDN'T HAVE TO GET INVOLVED IN
7 THIS DRUG DEAL. HE CHOSE TO GET OUT OF THAT CAR AND WALK OVER
8 THERE. I MEAN, THAT'S UNCONTROVERTED. SO HE WAS NOT AT FAULT.
9 IT DOESN'T MEAN YOU HAVE TO BE THE ONLY FAULT. YOU CANNOT BE AT
10 FAULT IN BRINGING ON THE DIFFICULTY. SO HE SAYS THERE THAT THERE
11 WAS A DIFFICULTY BECAUSE IT WAS A DRUG DEAL AND EVERYBODY KNOWS
12 DRUG DEALS ARE DANGEROUS, WHERE HE'S THE REASON IT HAPPENED,
13 BECAUSE HE WALKED OVER THERE AND -- HE WALKED OVER THERE TO DO A
14 DRUG DEAL WITH A LOADED GUN. THAT'S THE REASON IT WAS DANGEROUS.

15 THE COURT: SO IN A DRUG DEAL CONTEXT YOU COULD NEVER HAVE
16 SELF-DEFENSE?

17 MR. MOYER: NO, I WOULDN'T SAY THAT. WELL, PERHAPS. I
18 HAVE TO THINK THROUGH THAT A LITTLE MORE. IF YOU'RE AT FAULT IN
19 BRINGING ON THE DIFFICULTY, I WOULD SAY IF YOU DON'T HAVE A
20 WEAPON MAYBE IN A SITUATION LIKE THAT IT COULD CHANGE THE
21 EQUATION. BUT, CERTAINLY, GOING INTO A DRUG DEAL WITH A LOADED
22 FIREARM, I THINK, WOULD CERTAINLY NEGATE.

23 MR. CREECH: YOUR HONOR, THAT MAY BE A GREAT JURY ARGUMENT.
24 BUT I THINK THE TEST IS, IS THERE ANY EVIDENCE OF SELF-DEFENSE?
25 AGAIN, IF HE'S -- I MEAN, IT WOULD BE JUST A BROAD-BASED KIND OF

MATTERS AND MOTIONS

1 DENIAL OF SELF-DEFENSE IN EVERY DRUG DEAL IF SOMEONE CAN'T -- YOU
2 KNOW, IS NOT ALLOWED TO USE SELF-DEFENSE.

3 THERE WAS NO, YOU KNOW -- AGAIN, THIS IS NOT LIKE IN THE
4 SLATER CASE WHERE THERE WAS A FIGHT BETWEEN TWO PEOPLE THAT THE
5 DEFENDANT INTERJECTED HIMSELF INTO. I MEAN, FOR ALL INTENTS AND
6 PURPOSES IT'S OUR POSITION THAT THE CIRCUMSTANCES WERE KIND OF
7 HEIGHTENED, THE DANGER MADE MORE AWARE, WHEN THE VICTIMS BEGAN
8 THEIR CONDUCT IN THE CAR, AND THAT'S WHAT -- IT WAS NOT CAUSED BY
9 MR. FOWLER.

10 THE COURT: WELL, MR. CREECH, I UNDERSTAND THE TESTIMONY
11 ABOUT THE SUDDEN MOVEMENTS AND SO FORTH, BUT WORDS WERE USED THAT
12 -- I MEAN, I UNDERSTAND YOUR POSITION IF THERE ARE HOSTILE ACTS,
13 BUT WERE THERE SOME HOSTILE WORDS? I JUST DON'T RECALL FROM THE
14 TESTIMONY, OTHER THAN MR. FOWLER SAYING THAT MS. GALLOWAY SAID
15 SHE WANTED TO BUY \$40 AND THE GENTLEMAN IN THE BACK SEAT SAID
16 \$400 AND THAT INCREASED HIS ANXIETY ABOUT THE WHOLE AFFAIR. WERE
17 THERE SOME OTHER WORDS OUT THERE THAT...

18 MR. CREECH: THERE HAD BEEN, I THINK, SOME -- AT THE
19 PARKING LOT WHEN HE -- AS TO MR. POWELL IN THE CAR HAD MADE SOME
20 LOOKS AT MR. FOWLER AND HE LOOKED ANGRY WAS THE TESTIMONY. THERE
21 WAS NO -- AS FAR AS I CAN REMEMBER, THERE WERE NO VERBAL THREATS
22 LIKE "WE'RE GOING TO KILL YOU" OR SOMETHING LIKE THAT THAT WOULD
23 BE BASED ON A HOSTILE ACTS SITUATION AND WHAT HE PERCEIVED AT THE
24 TIME. (PAUSE) YOU KNOW, WE WOULD ASSERT THERE WERE
25 UNCOMMUNICATED THREATS, ESSENTIALLY, IS WHAT WE THOUGHT -- WHAT

MATTERS AND MOTIONS

1 WE WOULD ASSERT THE EVIDENCE SHOWS. AND THAT WOULD BE UNDER
2 STATE VERSUS BELLAMY.

3 THE COURT: (PAUSE) ALL RIGHT. BEAR WITH ME ONE SECOND.

4 (PAUSE FROM 11:57 A.M. TO 12:02 P.M.)

5 ALL RIGHT. WELL, AS TO THE REQUEST TO CHARGE VOLUNTARY
6 MANSLAUGHTER, I DECLINE TO DO SO UNDER THE APPLICABLE LAW. I
7 FIND THAT THE RECORD CLEARLY IS DEVOID OF ANY EVIDENCE TO SUPPORT
8 SUCH A CHARGE AND THERE IS NO EVIDENCE WHATSOEVER THAT TENDS TO
9 REDUCE THE CRIME FROM MURDER TO MANSLAUGHTER. EVEN VIEWING THE
10 EVIDENCE IN THE LIGHT MOST FAVORABLE TO MR. FOWLER, WHICH I AM
11 REQUIRED TO DO -- AND I'M NOT MAKING ANY FINDINGS REGARDING THE
12 WEIGHT OF THE EVIDENCE AND, IN FACT, I PRESUME THE CREDIBILITY OF
13 THE EVIDENCE AT THIS POINT, AND THERE SIMPLY ISN'T EVIDENCE, AND
14 THE RECORD IS BARREN OF ANY PROOF TO SUPPORT SUCH A THEORY.
15 THERE IS NOT ADEQUATE PROVOCATION.

16 I FIND THAT THERE WAS NOT EVIDENCE OF A THREAT OF AN
17 IMMINENT DEADLY ASSAULT OR ANY TYPE OF ASSAULT FOR THAT MATTER.
18 THERE WAS SIMPLY MOVEMENTS MADE TO THE VICTIM'S PURSE AND OTHER
19 MOVEMENTS MADE WITH THEIR HANDS, EVIDENCE THAT MR. FOWLER SENSED
20 OR THOUGHT THERE WAS A BULGE IN ONE OF THE -- ONE PART OF THE
21 CLOTHING OF ONE OF THE OCCUPANTS IN THE CAR, BUT THAT IS NOT
22 ENOUGH TO PROVOKE A DEADLY RESPONSE ON HIS PART.

23 THERE WAS NO EVIDENCE OF A FIGHT. THERE WAS NO TYPE OF
24 ACTION THAT WOULD AROUSE HEAT OF PASSION NECESSARY TO SUPPORT A
25 VERDICT FOR MANSLAUGHTER. THERE WAS NO EVIDENCE THAT WOULD

MATTERS AND MOTIONS

1 INFLAME MR. FOWLER.

2 THERE WAS EVIDENCE THAT THE INCIDENT INVOLVED A DRUG DEAL
3 WHERE MR. FOWLER WAS ATTEMPTING TO DEFRAUD THE VICTIMS WITH WHAT
4 HE TERMED FLEX, WHICH IS FAKE CRACK. AND CERTAINLY THE TENSIONS
5 WERE HIGH AT THAT MOMENT, BUT SIMPLY BECAUSE OF THE CONTEXT
6 DOESN'T MEAN THAT ANY TWITCH ON THE PART OF THE VICTIM IS
7 ADEQUATE PROVOCATION THAT WOULD INSIGHT THE HEAT OF PASSION
8 NECESSARY TO WARRANT A MANSLAUGHTER CHARGE.

9 WORD ALONE CERTAINLY CAN'T SUPPORT A MANSLAUGHTER CHARGE.
10 CASE LAW IS CLEAR ON THAT. AND I SIMPLY DON'T FIND ANYTHING ELSE
11 IN THE RECORD THAT WOULD REQUIRE SUCH A CHARGE.

12 I FIND THAT THE OVERT THREATENING ACT THAT MR. CREECH SPOKE
13 ABOUT WAS NOT THREATENING. THE CLOSEST I CAN FIND IS IN STATE
14 VERSUS LOWRY WHERE THEY TALKED ABOUT IT BEING A JURY ISSUE AS TO
15 WHETHER THREATENING CONDUCT WHEN THE DECEASED APPROACHED THE
16 DEFENDANT IN A THREATENING MANNER AND THE EVIDENCE WAS
17 CONFLICTING ABOUT THAT. THERE WAS SUFFICIENT EVIDENCE TO WARRANT
18 A MANSLAUGHTER CHARGE, BUT IN THAT CASE THERE HAD BEEN RECENT
19 PREVIOUS ENCOUNTERS BETWEEN THE VICTIMS AND TO THE POINT THERE
20 WAS A FIGHT BETWEEN THEM AND HEATED WORDS EXCHANGED AND THERE WAS
21 A WEAPON POINTED. SO THAT CASE IS CLEARLY DISTINGUISHABLE.

22 SO I SIMPLY DON'T FIND ANY EVIDENCE IN THE RECORD TO SUPPORT
23 THE CHARGE OF MANSLAUGHTER. I APPRECIATE THE ARGUMENTS BOTH
24 SIDES HAVE MADE, BUT IT WOULD NOT BE APPROPRIATE TO INSTRUCT THE
25 JURY ON THAT.

MATTERS AND MOTIONS

1 AS TO SELF-DEFENSE, THE ELEMENTS OF SELF-DEFENSE ARE: THE
2 DEFENDANT MUST BE WITHOUT FAULT IN BRINGING ON THE DIFFICULTY
3 AND, SECOND, HE MUST HAVE ACTUALLY BELIEVED HE WAS IN IMMINENT
4 DANGER OF LOSING HIS LIFE OR SUSTAINING SERIOUS BODILY INJURY OR
5 WAS ACTUALLY IN SUCH IMMINENT DANGER AND, THIRD, THAT A
6 REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD
7 HAVE HAD THE SAME BELIEF AND, FOURTH, THAT MR. FOWLER HAD NO
8 OTHER PROBABLE MEANS OF AVOIDING THE DANGER OF LOSING HIS OWN
9 LIFE OR SUSTAINING SERIOUS BODILY INJURY THAN TO ACT AS HE DID IN
10 THIS PARTICULAR INSTANCE.

11 OF COURSE, I CAN'T WEIGH THE EVIDENCE AT THIS POINT. I DO
12 HAVE CONCERNS REGARDING THE SLATER CASE ABOUT WHETHER MR. FOWLER
13 CAN MEET THE FIRST PRONG. HOWEVER, I'M LIKEWISE CONCERNED THAT
14 THE MERE FACT THAT HE HAD A WEAPON AND IT'S UNDISPUTED HE WAS AGE
15 21 AT THE TIME HE HAD THE WEAPON, THAT IN ITSELF SHOULDN'T
16 PRECLUDE HIM FROM RAISING THIS DEFENSE OF SELF-DEFENSE UNDER
17 THESE CIRCUMSTANCES.

18 THE OTHER PORTIONS OF THE SELF-DEFENSE ELEMENTS INVOLVE
19 LARGELY SUBJECTIVE DETERMINATIONS THAT A JURY SHOULD MAKE. THERE
20 IS ENOUGH EVIDENCE FOR THE JURY TO DO SO, ALTHOUGH I WOULD SAY
21 THAT IT IS SOMEWHAT HARD TO LOCATE IN THE RECORD.

22 BUT I AM PARTICULARLY CONCERNED ABOUT THE DUTY TO RETREAT.
23 CERTAINLY NO ONE HAS A DUTY TO RETREAT ON A PUBLIC STREET OR
24 HIGHWAY OR EVEN IN AN AUTOMOBILE, IF YOU ARE ON A PUBLIC STREET
25 OR HIGHWAY YOU HAVE A DUTY TO RETREAT. AND MR. FOWLER WASN'T IN

MATTERS AND MOTIONS

1 HIS HOME, HE WASN'T IN HIS OFFICE OR ANYTHING OF THAT NATURE, AND
2 CERTAINLY HE'S NOT MAKING AN ARGUMENT THAT HE WAS. BUT HE ALSO
3 TESTIFIED THAT HE FELT HE WOULD INCREASE THE DANGER IF HE DID
4 RETREAT, AND SO I AM GOING TO AT THIS STAGE GIVE HIM THE BENEFIT
5 OF THE DOUBT AND CHARGE SELF-DEFENSE.

6 IS THERE ANYTHING FURTHER BEFORE WE GO INTO CLOSING
7 ARGUMENTS?

8 MR. CREECH: NOTHING FROM THE DEFENSE, YOUR HONOR, EXCEPT I
9 DO -- SINCE WE DID PRESENT SOME EVIDENCE, I WOULD JUST RENEW MY
10 DIRECTED VERDICT MOTIONS.

11 THE COURT: YES, SIR, CERTAINLY.

12 MR. CREECH: AND THE OTHER MOTIONS AS WELL.

13 YOUR HONOR, COULD WE HAVE JUST A BRIEF -- I KNOW IT'S TWELVE
14 O'CLOCK. I DON'T KNOW WHAT THE STATE -- I KNOW I'M GOING TO
15 FIRST. CAN WE TAKE A BRIEF -- A LITTLE BREAK OR IS THERE ANY
16 WAY---

17 THE COURT: ABOUT TEN MINUTES, IS THAT FINE?

18 MR. CREECH: THAT'S FINE.

19 THE COURT: OKAY. ALL RIGHT. WE'LL TAKE A TEN-MINUTE
20 RECESS AND WE'LL RESUME AT THAT TIME.

21 (A RECESS WAS TAKEN FROM 12:22 TO 12:26 P.M.)

22 THE COURT: OKAY. ANYTHING ELSE BEFORE WE BRING THE JURY
23 IN?

24 MR. MOYER: NOTHING FROM THE STATE.

CLOSING ARGUMENTS - BY MR. CREECH

1 MR. CREECH: NOTHING FROM THE DEFENSE, YOUR HONOR.

2 THE COURT: ALL RIGHT. YOU CAN BRING THEM IN.

3 (JURY REENTERS COURTROOM AT 12:26 P.M.)

4 THE COURT: OKAY. YES, SIR, MR. CREECH.

5 MR. CREECH: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
6 COURT.

7 THE COURT: YES, SIR.

8 MR. CREECH: GOOD LATE MORNING. WELL, ACTUALLY AFTERNOON.
9 IT IS AFTERNOON. LADIES AND GENTLEMEN, YOU ARE GOING TO GET THIS
10 CASE IN JUST A MINUTE. THE JUDGE - I'M GOING TO MAKE MY CLOSING
11 ARGUMENT. MR. MOYER, ON BEHALF OF THE STATE, WILL MAKE THEIR
12 CLOSING ARGUMENT. THE JUDGE WILL GIVE YOU INSTRUCTIONS ON THE
13 LAW, AND THEN THIS CASE IS YOURS. YOU'RE GOING BACK IN THE JURY
14 ROOM. YOU'RE GOING TO TAKE THE LAW THAT THE JUDGE GAVE YOU AND
15 EVERYTHING THAT YOU'VE HEARD TODAY AND YESTERDAY AND THE DAY
16 BEFORE, AND YOU'RE GOING TO DECIDE THIS CASE. AND YOU HAVE TO
17 DELIBERATE. AND DELIBERATE MEANS DISCUSS AND DEBATE AND TALK AND
18 LOOK OVER EVERYTHING AND EXAMINE IT AND REVIEW IT, AND GO INTO
19 THAT JURY ROOM AND TALK ABOUT THIS CASE.

20 YOU ARE JUDGES. YOU REALLY ARE. YOU'RE JUDGES. OKAY? AND
21 YOU'RE HERE TO MAKE A DECISION, A DECISION WITHOUT EMOTION, A
22 DECISION WITHOUT PASSION, AND TO LOOK AT EVERYTHING, AS I SAY.
23 AND WHEN YOU GO BACK IN THAT JURY ROOM ONE THING YOU MAY WANT TO
24 DO BEFORE YOU GET STARTED IS, YOU KNOW, EVERYONE GO AROUND THE
25 ROOM -- I KNOW THEY DO THIS -- THEY SAY THEY DO THIS AT THE U.S.

CLOSING ARGUMENTS - BY MR. CREECH

1 SUPREME COURT. THEY HAVE A CONFERENCE WITH ALL OF THE JUSTICES
2 ON THAT COURT WHEN THEY ARE TRYING TO DECIDE A CASE. THEY GO
3 AROUND THE TABLE -- THEY HAVE A BIG TABLE -- AND ONE PERSON
4 SPEAKS AT A TIME AND EVERYONE -- NO ONE SPEAKS TWICE UNTIL
5 EVERYONE HAS SPOKEN ONCE.

6 MR. MOYER: I WOULD OBJECT TO ANY INSTRUCTION TO THE JURY
7 ABOUT HOW TO HANDLE THEIR JURY DELIBERATIONS.

8 THE COURT: WELL, I -- OVERRULED. I THINK HE CAN MAKE
9 ARGUMENTS. GO AHEAD.

10 MR. CREECH: BUT IN THAT ROOM NO ONE SPEAKS TWICE UNTIL
11 EVERYONE HAS SPOKEN ONCE, AND I WOULD -- I WOULD -- I JUST WOULD
12 SUGGEST THAT. YOU CAN DO IT ANY WAY YOU WANT TO, BUT I WOULD
13 SUGGEST THAT WOULD BE A PRODUCTIVE WAY TO MAYBE DISCUSS THE CASE
14 IN AN ORDERLY FASHION. BECAUSE, LADIES AND GENTLEMEN, THIS CASE
15 -- YOU'VE BEEN HERE FOR THREE DAYS, TWO AND A HALF DAYS, AND
16 YOU'VE HEARD A LOT OF TESTIMONY.

17 LADIES AND GENTLEMEN, HE SHOT SO THAT HE COULD LIVE. HE WAS
18 IN FEAR. HE DID THE BEST HE COULD UNDER THESE CIRCUMSTANCES, AND
19 HE SHOT SO THAT HE COULD LIVE. IT IS SO EASY TO COME BACK NOW
20 AND SAY, "OH, THIS COULD HAVE HAPPENED. THIS COULD HAVE
21 HAPPENED." BUT WHEN YOU GO BACK TO THAT DAY AND THAT TIME, HE
22 DID WHAT HE THOUGHT WAS BEST TO DO AND HE SHOT TO SAVE HIS LIFE.
23 MR. FOWLER DID.

24 THE JUDGE IS GOING TO INSTRUCT YOU ON THE LAW OF SELF-
25 DEFENSE, AND WE ALL KNOW WHY WE HAVE THE LAW OF SELF-DEFENSE. WE

CLOSING ARGUMENTS - BY MR. CREECH.

1 KNOW THAT. IT'S A TIME-HONORED TRADITION NOT ONLY IN THIS
2 COUNTRY BUT IN ENGLAND AND CENTURIES BACK. AND WE HAVE SELF-
3 DEFENSE SO WE CAN PROTECT OURSELVES FROM THESE SITUATIONS. AND
4 SELF-DEFENSE, WE HAVE THAT IN THIS COUNTRY.

5 AND YOU HAVE TO LOOK AT IT AND GO BACK AND LOOK AT THE
6 CIRCUMSTANCES AS THEY THEN AND THERE EXISTED. DID HE DO WHAT WAS
7 REASONABLE AND DID HE FEAR? DID HE FEAR FOR HIS LIFE? DID HE DO
8 WHAT WAS REASONABLE?

9 THERE ARE ELEMENTS OF SELF-DEFENSE AND THE JUDGE IS GOING TO
10 TELL YOU ABOUT THIS. BUT DID HE FEAR FOR HIS LIFE? WERE HIS
11 FEARS REASONABLE? DID HE ACT AS A REASONABLE PERSON WOULD UNDER
12 THE CIRCUMSTANCES THEN AND THERE PREVAILING? WAS HE AT FAULT AT
13 ALL IN BRINGING ON THE DIFFICULTY? AND WAS THERE ANY WAY FOR HIM
14 TO FLEE? AND THE JUDGE IS GOING TO TELL YOU, YOU KNOW, IF HE
15 COULD HAVE FLED WITHOUT INCREASING HIS DANGER -- OKAY? -- THAT IF
16 HE INCREASED HIS DANGER THEN HE DIDN'T HAVE TO FLEE. SO IF HE
17 TURNS AROUND TO TRY TO GET OUT OF THERE AND HE THINKS HE'S GOING
18 TO GET SHOT IN THE BACK, THEN HE HAS NO DUTY TO FLEE. OKAY?

19 BUT WHAT YOU'VE GOT TO CONSIDER IS THIS -- WHAT YOU'VE GOT
20 TO CONSIDER IS THIS -- THE JUDGE IS GOING TO TELL YOU ABOUT HIS
21 RIGHT -- ALL OF OUR RIGHT -- TO ACT ON APPEARANCES. IF IT
22 APPEARED -- IF HE THOUGHT IT WAS REASONABLE TO THINK THAT SOMEONE
23 IN THAT CAR WAS ARMED, THEN HE CAN SHOOT IN SELF-DEFENSE, EVEN IF
24 IT TURNS OUT LATER THAT HE WAS WRONG. EVEN IF IT TURNS OUT LATER
25 THAT HE WAS WRONG.

CLOSING ARGUMENTS - BY MR. CREECH

1 NOW, THESE FOLKS HAVE GOTTEN ON THE STAND AND SAID THEY
2 DIDN'T HAVE A WEAPON ON THEM. NEVER FOUND A WEAPON. THERE WERE
3 SOME OF THESE BULLETS THAT WERE FOUND IN THE CAR BUT THERE WAS
4 NEVER A WEAPON FOUND. SO EVEN IF HE WAS WRONG BUT IT APPEARED TO
5 HIM, THEN HE CAN SHOOT IN SELF-DEFENSE. THAT'S WHAT HE DID IN
6 THIS CASE.

7 WE THINK THIS IS A CASE OF SELF-DEFENSE. BUT WE ALSO THINK
8 THIS IS A CASE WHERE THE STATE HAS NOT MADE ITS BURDEN, HAS NOT
9 PROVED BEYOND A REASONABLE DOUBT. AND THAT'S NOT JUST MERE
10 LANGUAGE. REASONABLE DOUBT IS A SUBSTANTIAL CONCEPT IN OUR
11 JUSTICE SYSTEM AND YOU HAVE TO PROVE BEYOND A REASONABLE DOUBT --
12 THAT IS ONE OF THE HIGHEST BURDENS. THAT'S NOT JUST SOME
13 EVIDENCE. THAT IS SUBSTANTIAL, SUBSTANTIAL EVIDENCE. AND WE
14 DON'T THINK THAT WAS DONE IN THIS CASE. I MEAN, WE GO BACK AND
15 LOOK, IF YOU REMEMBER, WHEN MR. SHAW THE FORENSICS TECHNICIAN
16 CAME UP ON THE STAND AND HE TESTIFIED, HE SAID HE WAS TOLD THAT
17 THERE HAD BEEN A \$20 BILL ON THE FRONT SEAT OF THAT CAR, BUT IT
18 APPARENTLY -- HE THOUGHT THE WIND HAD COME THROUGH AND BLOWN IT
19 OFF, AND THEN HE WENT IN AND FOUND A RIPPED \$20 BILL. IF THAT'S
20 TRUE, THEN MR. FOWLER NEVER TOOK ANY MONEY, BECAUSE THERE WAS A
21 \$20 BILL THERE ON THE FRONT SEAT AND THEN A RIPPED \$20 BILL WAS
22 ALSO FOUND IN THE CAR. IF THAT'S THE TRUTH, OKAY? AND ACCORDING
23 TO THAT OFFICER THAT'S WHAT HE UNDERSTOOD. THEN MR. FOWLER IS
24 NOT GUILTY AND HE NEVER TOOK ANY MONEY AT ALL. AND THERE IS NOT
25 ONE SINGLE WITNESS WHO SAYS MR. FOWLER -- NO WITNESS SAW MR.

CLOSING ARGUMENTS - BY MR. CREECH

1 FOWLER TAKE ANY MONEY, AND MR. FOWLER TESTIFIED, AS YOU HEARD
2 HIM, THAT THE MONEY TORE.

3 BUT THE STATE HAS THE BURDEN OF PROOF IN THIS CASE, AND YOU
4 CAN'T GO BACK AND SPECULATE OR ANYTHING ELSE. THEY'VE GOT TO
5 BRING YOU -- YOU -- THE INFORMATION. THEY'VE GOT TO BRING YOU
6 THE EVIDENCE. BECAUSE THEY HAVE TO SATISFY THE BURDEN OF PROOF
7 -- AND THAT'S JUST THE WAY IT IS -- ON EVERY SINGLE ELEMENT.

8 I THINK THERE ARE FIVE INDICTMENTS IN THIS CASE. YOU'RE
9 GOING TO HAVE TO GO THROUGH EVERY INDICTMENT. YOU'RE GOING TO
10 HAVE TO LOOK AT EVERY SINGLE ELEMENT. YOU'RE GOING TO HAVE
11 DISCUSS ALL OF IT. WHAT IS THE EVIDENCE ON ALL OF THESE
12 INDICTMENTS? BEYOND A REASONABLE DOUBT. YOU KNOW, A DOUBT IS
13 SOMETHING -- A REASONABLE DOUBT IS SOMETHING -- A DOUBT TO WHICH
14 YOU CAN ATTACH REASON. IS THERE ANY DOUBT THAT -- DO I HAVE A
15 DOUBT WHETHER HE TOOK MONEY? WELL, GOSH, THE FORENSICS OFFICER
16 SAID HE CAME IN AND WAS TOLD THERE WAS A \$20 BILL IN THE CAR
17 BEFORE GOT THERE, AND THEN HE FOUND ANOTHER HALF A \$20 BILL.
18 THAT GIVES ME REASON TO DOUBT THAT HE TOOK THE MONEY. THAT'S
19 FROM THEIR OWN TESTIMONY. THEIR OWN TESTIMONY.

20 THIS CASE, AS WE KNOW, HAS BEEN REplete WITH
21 INCONSISTENCIES, THINGS SAID IN ONE STATEMENT NOT SAID IN ANOTHER
22 STATEMENT, THINGS ONE WITNESS SAID THAT THEN THAT WITNESS SAYS HE
23 DIDN'T SAY, AND THAT'S THROUGHOUT THIS CASE. WHEN THEY TOOK MR.
24 FOWLER DOWN TO DO AN INTERROGATION -- OKAY? AND I KNOW THE
25 STATE'S GOING TO SAY, "LOOK AT THIS STATEMENT, HE SIGNED IT. HE

CLOSING ARGUMENTS - BY MR. CREECH

1 DID THIS AND DID THAT." YOU KNOW, THINK OF THIS AS A 20-YEAR-
2 OLD. THINK HOW MANY INSURANCE CONTRACTS DO YOU READ PARAGRAPH BY
3 PARAGRAPH BEFORE YOU SIGN IT? HOW MANY DOCUMENTS DO YOU SIGN
4 WITHOUT SIGNING IT? YOU SAY, "I WOULD NEVER SIGN THAT." AND
5 IT'S EASY TO COME UP HERE AND SAY NOW, OKAY? BUT WHEN YOU'RE 20
6 YEARS OLD AND YOU'VE BEEN TOLD, "SIGN THIS STATEMENT SO THAT WE
7 CAN HELP YOU," AND YOU'RE LOOKING FOR HELP FROM AN ADULT, THEN
8 THERE IS REASON TO SIGN THAT STATEMENT.

9 THAT STATEMENT HAS DEMONSTRATED NOT CORRECT. THE WITNESS,
10 MR. POWELL, SEATED IN THE DRIVER'S SEAT, HE SAID THAT HE SAW HIM
11 GET OUT WITH A RED BAG. A RED BAG. THE DEFENDANT SAID, "I GOT
12 OUT WITH THE RED BAG." IT'S NOT IN THAT STATEMENT. BUT THE
13 WITNESS SAYS HE GOT OUT WITH A RED BAG. THAT STATEMENT IS
14 DEMONSTRABLY FALSE. THE WITNESS SAW HIM WITH THE RED BAG. THE
15 STATEMENT DOESN'T HAVE IT IN IT. THEY DIDN'T GET THAT RIGHT.
16 INVESTIGATOR CONROY WAS TAKING NOTES -- TAKING NOTES -- IN A
17 MURDER-HOMICIDE INVESTIGATION, AND AFTER HE GOT THE CONFESSION,
18 WHICH HE WANTED AND WANTED BADLY. HE TOOK HIS NOTES AND SHREDDING
19 THEM. NOW, IF YOU WORKED AT ANY COMPANY AND YOU WERE SHREDDING
20 NOTES OR SHREDDING DOCUMENTS, I THINK YOU'D BE FIRED IN A
21 HEARTBEAT. YOU ABSOLUTELY -- I MEAN, IF THAT CRUCIAL EVIDENCE --
22 AND THAT EVIDENCE WAS SHREDDING IN THIS CASE.

23 WHAT ABOUT DETECTIVE JUSTICE WHEN HE TOOK THE STAND? I
24 ASKED HIM ABOUT MR. POWELL SAYING THAT MR. FOWLER CAME AROUND TO
25 "MY WINDOW." MY WINDOW. THAT WAS NOT CORRECT. AND MR. POWELL

CLOSING ARGUMENTS - BY MR. CREECH

1 TRIED TO SAY WAS, "WELL, WHAT I MEANT WAS WINDOWS IN ALL OF THE
2 CAR." THAT WAS NOT RIGHT IN THE STATEMENT THAT THE OFFICERS
3 TOOK. CLEARLY NOT RIGHT.

4 SO THINK OF THOSE INCONSISTENCIES, BECAUSE THOSE STATEMENTS
5 THEY HAVE TO PROVE WERE VOLUNTARY, FREELY GIVEN, CORRECT BEYOND A
6 REASONABLE DOUBT. THE HIGHEST STANDARD. THIS ISN'T A, WELL,
7 MAYBE THEY DID A GOOD JOB. THEY'VE ALMOST GOT TO DO A PERFECT
8 JOB, IF NOT PERFECT, IN THIS CASE. ANY MISTAKES -- ANY MISTAKES
9 -- ARE REASONABLE DOUBT. AND IF THERE IS REASONABLE DOUBT AS TO
10 WHETHER THIS WAS DONE PROPERLY, WHETHER ALL OF THE FACTS ARE
11 KNOWN, WHETHER IT'S A CONSISTENT CASE, A CONSISTENT STORY FROM
12 THEM -- FROM THEM, THEY HAVE THE BURDEN, OKAY? IF THEY COME UP
13 HERE AND TRY TO SHIFT IT ON US OR SAY SOMETHING LIKE, "OH, HE
14 SAID THIS AND THIS AND THAT AND THAT'S NOT RIGHT," UH-UH, YOU
15 REMEMBER -- YOU REMEMBER THIS -- IT'S THEIR BURDEN. THEY HAVE TO
16 PROVE THE CASE, AND IT'S GOT TO BE RIGHT, AND IT'S GOT TO BE
17 PERFECT. THAT'S WHAT THE STANDARD THAT THE LAW SAYS. IT'S NOT A
18 STANDARD THAT WE MAKE UP, AND IT'S NOT A STANDARD THAT YOU CAN
19 LOWER, OKAY? AND THEY'VE GOT TO MEET IT. THAT'S THEIR JOB. SO
20 IF THEY TRY TO IN ANY WAY SAY, "WELL, YOU KNOW, LOOK WHAT THIS
21 SAYS," YOU'VE GOT TO IGNORE THAT AND YOU'VE GOT TO HOLD THEM TO
22 THEIR BURDEN. YOU'VE GOT TO HOLD THEM TO THEIR BURDEN OF PROOF.
23 THAT'S JUST THE -- THAT IS WHAT IT IS.

24 THAT'S WHAT MAKES THE UNITED STATES OF AMERICA THE GREATEST
25 COUNTRY ON THE FACE OF THE EARTH IS PROOF BEYOND A REASONABLE

CLOSING ARGUMENTS - BY MR. CREECH

1 DOUBT. BECAUSE THE GOVERNMENT CAN'T COME IN AND JUST TRY TO TAKE
2 SOMEBODY'S FREEDOM OR THEIR LIBERTY, GOD-GIVEN FREEDOM OR
3 LIBERTY, UNLESS THEY'VE GOT ALMOST A PERFECT CASE. AND THAT'S
4 THE WAY THE FRAMERS OF THIS COUNTRY SET OUR SYSTEM UP, AND IT'S
5 WORKED PRETTY DARN GOOD FOR THE PAST 200 SOMETHING YEARS. SO
6 CONSIDER THAT WHEN YOU GO IN TO DELIBERATE.

7 LADIES AND GENTLEMEN, WE BELIEVE THAT THIS EVIDENCE SHOWS
8 THAT ON JUNE THE 7TH OF 2006, MIKE POWELL, SUSAN GALLOWAY AND RON
9 HARRIS CAME OVER TO GREENVILLE IN A CAR THAT WAS UNREGISTERED.
10 THEY CAME OVER HERE OSTENSIBLY TO GO TO A PAWN SHOP. THEY HAD
11 BEEN SPENDING THE NIGHT TOGETHER, ALL OF THEM, BEFORE THIS, USING
12 COCAINE THAT NIGHT. MR. POWELL DID NOT ADMIT TO THAT OR DIDN'T
13 EVEN BRING IT UP WHEN THEY ASKED HIM THEIR QUESTIONS. BUT THEN
14 WHEN I ASKED MY QUESTIONS -- AND WE HAD TO GO THROUGH IT SEVERAL
15 TIMES -- HE ADMITTED, "YEAH, I USED COCAINE THE NIGHT BEFORE THIS
16 HAPPENED." RON HARRIS SAID, "I HAD NO IDEA THEY WERE GOING TO
17 BUY COCAINE." HE SPENT THE NIGHT WITH THEM. HE DIDN'T KNOW THEY
18 WERE DOING COCAINE THAT NIGHT?

19 THESE FOLKS WANTED COCAINE, AND THEY WANTED IT BADLY. AND
20 THEY CAME OVER HERE AND SUSAN GALLOWAY WENT IN THAT PAWN SHOP AND
21 SHE SAW A YOUNG MAN. SHE SAW A TARGET. SHE SAW SOMEBODY FROM
22 WHOM SHE COULD GET WHAT SHE WANTED. AND AFTER HE LEFT AND AFTER
23 SHE LEFT, THEY FOLLOWED HIM. THEY COULD HAVE GONE HOME. NO ONE
24 MADE THEM FOLLOW. THEY COULD HAVE GONE HOME. HOW COULD HE HAVE
25 LURED THEM THERE IF THEY'RE THE ONES THAT MADE THE DECISION TO

CLOSING ARGUMENTS - BY MR. CREECH

1 FOLLOW HIM? THAT WAS THEIR CONSCIOUS DECISION. AND THEY MADE
2 TURN AFTER TURN UNDER THE RAILROAD TRESTLE BACK OVER TO THE LEFT
3 BECAUSE THEY TARGETED HIM AND THEY WERE FOLLOWING HIM. THESE
4 FOLKS WERE 40-SOMETHING YEARS OLD, 50-SOMETHING YEARS OLD. HE
5 WAS 20 YEARS OLD. THEY SAW THAT. THEY KNEW THAT. THEY KNEW IT.
6 THEY LOOKED AT HIM. THEY SAID, "LET'S GET THIS KID. THIS KID'S
7 IN HERE, I BET THIS KID THINKS HE'S A BIG SHOT. COME ON. WE'LL
8 SHOW HIM." THAT'S EXACTLY WHAT THEY WERE DOING.

9 AND THEN WHEN HE CAME UP TO THAT CAR DOOR, AS HE TESTIFIED,
10 FIRST OFF, MR. HARRIS TESTIFIED THAT HE SAW POWELL FREAK OUT.
11 SUSAN GALLOWAY JERKS THE MONEY BACK, RIGHT THERE IN THE DIRECTION
12 OF WHERE HER POCKET BOOK -- WHERE A GUN IS. THE GUY IN THE BACK
13 SEAT, WHO ADMITTED -- WHO ADMITTED -- HE HAD \$200 ON HIM -- \$200
14 ON HIM -- HE SAYS, "I DIDN'T KNOW THEY WERE USING COCAINE. I
15 KIND OF SUSPECTED THEY WERE GOING TO BUY COCAINE. I DIDN'T
16 REALLY KNOW IT." HE HAD \$200 ON HIM. I THINK HE KNEW.

17 SO THEY GO ALL THE WAY OVER THERE. THEY FOLLOW HIM.
18 THEY'RE AT THE SCENE. AND WHEN HE GOES TO GIVE THEM THIS STUFF,
19 OKAY, THAT'S WHEN SHE JERKS THE MONEY BACK, AND THAT'S THE RUSE,
20 OKAY? HE FELT THE FEAR. OKAY? HE DIDN'T WANT HIS -- HE DIDN'T
21 WANT TO DIE ON THE STREET THERE. HE WANTED TO LIVE. AND THAT'S
22 WHEN HE SHOT.

23 NOW, WE CAN SAY, "WELL, GOSH, YOU KNOW, MAYBE HE SHOULDN'T
24 HAVE GONE OVER THERE IN THE FIRST PLACE." WELL, YOU KNOW, MAYBE
25 HE SHOULDN'T. BUT DOES THAT MEAN THAT HE GIVES UP HIS RIGHT TO

CLOSING ARGUMENTS - BY MR. CREECH

1 DEFEND HIMSELF? DOES HE GIVE UP THE RIGHT TO DEFEND HIMSELF
2 BECAUSE HE MADE A FOOLISH DECISION TO GO SELL AN ADDICT SOMETHING
3 THAT WAS FAKE? NO, HE DOESN'T. THAT RIGHT IS SO IMPORTANT HE
4 DOES NOT GIVE IT UP. AND THAT RIGHT IS ALL OF OUR RIGHTS.
5 THAT'S OURS TOO.

6 SO WHEN YOU LOOK AT THIS CASE, WE'VE HEARD INCONSISTENCIES
7 ABOUT HOW MANY BULLET HOLES, HOW MANY WOUNDS, HOW MANY BULLET
8 HOLES WERE IN MR. POWELL VERSUS HOW MANY WERE SHOT. I THINK ONE
9 DOCTOR TESTIFIED HE HAD FIVE BULLET WOUNDS. ONE BULLET MADE FIVE
10 BULLET WOUNDS? THAT DOESN'T ADD UP.

11 AND AGAIN, IF IT DOESN'T ADD UP -- IF IT DOESN'T ADD UP,
12 THEN THE WAY THIS WORKS IS YOU HAVE TO GIVE HIM THE BENEFIT OF
13 THE DOUBT. THAT IS THE RULE. AND THAT'S THE RULE THAT WE
14 FOLLOW. YOU HAVE TO GIVE HIM THE BENEFIT OF THE DOUBT.

15 DOES HE WISH MAYBE THAT THIS HAD NEVER HAPPENED? DOES HE
16 WISH THAT MAYBE HE COULD GO BACK AND REDO THIS? SURE.
17 CERTAINLY. IN HINDSIGHT, AT THE TIME, I THINK HE MADE THE BEST
18 DECISION HE COULD. I THINK THAT HE WAS TARGETED. THEY FOLLOWED
19 HIM. THEY SAW THIS KID AND THOUGHT THAT THEY COULD TAKE
20 ADVANTAGE OF HIM, AND HE RESPONDED.

21 LADIES AND GENTLEMEN, BECAUSE OF THAT, BECAUSE HE ACTED IN
22 SELF-DEFENSE -- AND THE JUDGE IS GOING TO TELL YOU ABOUT SELF-
23 DEFENSE, OKAY? HE'S GOING TO TELL YOU WHAT THE STATE HAS TO
24 PROVE AND WHAT THE STATE HAS TO DISPROVE IN SELF-DEFENSE. AND
25 YOU'RE GOING TO HAVE TO LISTEN TO THAT VERY CLOSELY, AND IT'S

CLOSING ARGUMENTS - BY MR. MOYER

1 GOING TO TAKE 24 EARS, AND YOU'RE GOING TO HAVE TO ALL GO BACK
2 THERE AND DISCUSS THIS.

3 BUT AT THE END OF THE DAY ZACHARY FOWLER MADE THE DECISION,
4 THE BEST DECISION THAT HE COULD UNDER THESE CIRCUMSTANCES, AND HE
5 DID IT SO THAT HE COULD LIVE. I WOULD ASK YOU TO FIND HIM NOT
6 GUILTY. THANK YOU.

7 THE COURT: THANK YOU, MR. CREECH.

8 YES, SIR, MR. MOYER.

9 MR. MOYER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
10 COURT.

11 LADIES AND GENTLEMEN, THIS WASN'T A -- THIS WAS NOT A DRUG
12 DEAL GONE BAD. THIS WAS AN ARMED ROBBERY GONE BAD. THE VICTIMS
13 THOUGHT IT WAS A DRUG DEAL. WHEN THEY LEFT THE PAWN SHOP ABOUT
14 1:20 IN THE AFTERNOON ON JUNE THE 7TH OF 2006, SUSAN GALLOWAY
15 CERTAINLY THOUGHT IT WAS GOING TO BE A DRUG DEAL. AND THAT'S WHY
16 SHE FOLLOWED THIS DEFENDANT, BECAUSE HE HAD AGREED TO SELL HER
17 SOME DRUGS. AND WHEN THEY SHOWED UP THERE AND THE DEFENDANT GOT
18 OUT AND IT BECAME OBVIOUS VERY QUICKLY THAT THIS WAS NOT A DRUG
19 DEAL GONE BAD, THIS WAS AN ARMED ROBBERY GONE BAD, THAT
20 DEFENDANT, ZACHARY FOWLER, SHOT AND KILLED SUSAN GALLOWAY OVER 40
21 BUCKS.

22 THAT DEFENDANT WAS WILLING -- HE WAS WILLING TO KILL THREE
23 PEOPLE FOR A CHEESEBURGER AT PETE'S RESTAURANT. THAT'S WHAT THIS
24 CASE BOILS DOWN TO. AND WHAT YOUR ULTIMATE DECISION IS GOING TO
25 BE, LADIES AND GENTLEMEN, IS YOU'RE GOING TO HAVE TO DECIDE WAS

CLOSING ARGUMENTS - BY MR. MOYER

1 HIS KILLING JUSTIFIED? IS IT JUSTIFIED TO KILL A WOMAN FOR
2 REACHING FOR HER PURSE? BECAUSE THAT'S ALL SHE DID IN HIS
3 TESTIMONY.

4 UNDER THE LAW CAN YOU GO TO A DRUG DEAL ARMED WITH A WEAPON,
5 ARMED WITH A DEADLY WEAPON WITH THE INTENT OF RIPPING SOMEBODY
6 OFF WITH FAKE CRACK COCAINE AND THEN WHEN SOMEBODY DOES NOT GIVE
7 UP THE MONEY AND SIMPLY MOVES HER HAND TOWARDS HER PURSE DOES
8 THAT JUSTIFY YOU TO KILL THAT PERSON? THAT'S WHAT THE CASE BOILS
9 DOWN TO.

10 THIS HAPPENED APPARENTLY BY CHANCE A LITTLE BIT AFTER ONE
11 O'CLOCK ON JUNE THE 7TH OF 2006. THE VICTIM, AS WE KNOW, WAS
12 THERE TO PAWN THIS NECKLACE. SHE GOT 40 BUCKS. SHE GOT TWO \$20
13 BILLS. THE DEFENDANT SHOWED UP BY CHANCE, AND HE WAS PAWNING
14 THIS JACK AND HE GOT \$40 FOR THE JACK. I'M SORRY. HE GOT \$5 FOR
15 THAT JACK. AND WHILE INSIDE THE STORE THEY HAD A CONVERSATION.
16 THERE IS NO DISPUTE ABOUT THAT. THEY HAD A CONVERSATION AND THIS
17 DEFENDANT AGREED TO SELL DRUGS TO THE VICTIM. HE DIDN'T TELL HER
18 THAT IT WAS FLEX. HE DIDN'T TELL HER IT WAS CANDLE WAX. HE SAID
19 IT WAS DRUGS BECAUSE HE WANTED MONEY. HE WANTED SOME MONEY. HE
20 WAS DRIVING AROUND GREENVILLE FOR FIVE BUCKS FOR A JACK. HE WAS
21 DRIVING AROUND GOING TO PAWN SHOPS TO GET MONEY. WHAT FOR?
22 BECAUSE HE NEEDED GAS, ACCORDING TO HIS TESTIMONY. BECAUSE HE
23 WANTED SOME FOOD. BECAUSE HE WAS HUNGRY. WE KNOW THAT THEY
24 TALKED, AND HE SAID HE WAS GOING TO FLEX HER. THAT'S THE TERM HE
25 USED IN HIS STATEMENT.

CLOSING ARGUMENTS - BY MR. MOYER

1 WELL, THEY WALK OUT OF THE PAWN SHOP. THE DEFENDANT GOES
2 AND WALKS UP THE VICTIM ONE MORE TIME. THEY HAVE A VERY BRIEF
3 CONVERSATION. HE SAYS, "FOLLOW ME." YOU HAVE TO ASK YOURSELF,
4 WHY DID HE SAY FOLLOW ME IN THE PARKING LOT? WHAT WAS HE SO
5 CONCERNED ABOUT? A DRUG DEAL WOULD TAKE SECONDS. ALL HE HAD TO
6 DO WAS HAND THE WOMAN THE DRUGS, AND ALL SHE HAD TO DO WAS HAND
7 HIM THE MONEY. THERE'S NOTHING TO WORRY ABOUT. HE WANTED TO GET
8 OUT OF THERE BECAUSE HE WANTED TO GET ON A QUIET STREET WHERE HE
9 COULD ROB HER.

10 AND SO THEY STARTED DRIVING DOWN THE STREET AND THE VICTIMS
11 WERE FOLLOWING, MR. POWELL AND MR. HARRIS SEATED IN THE BACK SEAT
12 OF THE CAR, AND THEY DROVE ALONG THE STREET AND THEY DROVE ONTO
13 WOODLAWN AVENUE. AND THE DEFENDANT STOPPED IN THE MIDDLE OF THE
14 STREET. MR. POWELL PULLED UP RIGHT A LITTLE BIT TO THE LEFT OF
15 THE CAR, AND THEN THE DEFENDANT GOT OUT OF THE CAR AND HE WALKED
16 OVER. MR. HARRIS SAID HE COULD SEE -- AS SOON AS HE GOT OUT OF
17 THAT PASSENGER SIDE AND GOT AROUND THE CAR HE COULD SEE THE GUN
18 IN HIS HAND. AND YOU HAVE TO THINK ABOUT HOW QUICKLY THAT MUST
19 HAVE BEEN.

20 AGAIN, THINK ABOUT THIS BEING THE CAR. HE WOULD HAVE BEEN
21 AROUND THE END OF THE CAR BEFORE MR. HARRIS COULD SEE THAT GUN,
22 BECAUSE HE SAID THE CAR WAS BLOCKING IT. AND JUST A FEW STEPS
23 AND HE'S THERE AT THE WINDOW, AND IMMEDIATELY, ACCORDING TO THE
24 VICTIMS, HE IS SAYING, "GIVE IT UP. GIVE UP THE MONEY AND
25 NOTHING WILL HAPPEN AND YOU'LL BE OKAY." AND HE LOOKS OVER AT

CLOSING ARGUMENTS - BY MR. MOYER

1 MIKE POWELL, AND HE COULD SEE MIKE POWELL WHO STARTED REACHING
2 FOR THE GEAR SHIFT, AND HE SAYS, "DON'T DO IT. DON'T DO IT."
3 AND HE LOOKS BACK AT SUSAN GALLOWAY, AND SHE MOVED HER HAND A
4 LITTLE BIT BECAUSE SHE REALIZED WHAT WAS HAPPENING, AND SHE DID
5 NOT GIVE UP THAT MONEY.

6 THE TESTIMONY IS THERE WAS NO ESCAPING THE FACT THAT THIS
7 HAPPENED VERY QUICKLY. THINK THROUGH THE TIME FRAME OF WHAT
8 HAPPENED. THE DEFENDANT PAWNED THAT JACK AT 1:20. THE POLICE
9 CALL WENT OUT AT 1:25. THAT MEANS THAT GAVE FIVE MINUTES FOR
10 THEM TO HAVE A CONVERSATION AT RED'S PAWN'S SHOP, FOR THE
11 DEFENDANT TO GET IN HIS CAR, TO PULL OUT AND DRIVE OVER TO
12 WOODLAWN AVENUE AND FOR THE VICTIM'S TO FOLLOW, AND THEN FOR THE
13 INCIDENT TO HAPPEN. FIVE MINUTES. THERE WAS NO LONG
14 CONVERSATION THERE. THE DEFENDANT WAS GOING TO ROB THEM
15 IMMEDIATELY, AND HE WALKED UP AND HE DID THAT.

16 SO HE WALKS UP TO THE PASSENGER WINDOW. THERE'S NO DISPUTE
17 ABOUT THAT. YOU HEARD SOME TESTIMONY ABOUT MR. POWELL IN THE
18 HOSPITAL WHEN HE HAD BEEN SHOT IN THE STOMACH, AND MR. POWELL
19 SAID, "THEY CAME UP TO MY WINDOW." OBVIOUSLY WE KNOW WHAT HE
20 MEANT. HE MEANT THE WINDOW TO MY CAR. THERE'S NO DISPUTE WHICH
21 WINDOW THE DEFENDANT CAME UP TO. HE CAME UP TO THE FRONT
22 PASSENGER WINDOW. AND WE CAN'T HOLD AGAINST MR. POWELL SOME
23 DISCREPANCIES IN HIS STATEMENT HE GAVE WHEN HE HAD JUST BEEN SHOT
24 IN THE BELLY AND THE POLICE OFFICERS ARE TRYING TO GET A
25 DESPERATE STATEMENT FROM HIM, HOPING HE DOESN'T DIE. AND THEY

CLOSING ARGUMENTS - BY MR. MOYER

1 GET THAT STATEMENT FROM HIM THEN.

2 THE DEFENDANT WALKS OVER TO THE PASSENGER SIDE OF THE CAR
3 AND HE SAYS, "GIVE UP THE MONEY." SUSAN'S NOT GOING TO GIVE IT
4 UP. SHE GRIPS IT. MIKE IS TRYING TO LEAVE, AND NEITHER SUSAN
5 NOR MIKE DO WHAT HE SAYS. AND THE DEFENDANT AT THAT TIME,
6 KNOWING HIS MONEY IS ABOUT TO LEAVE, KNOWING THAT MONEY IS ABOUT
7 TO DRIVE AWAY, HE PULLS OUT THE GUN AND HE STARTS SHOOTING, AND
8 HE SHOOTS AT ALL THREE PEOPLE.

9 HOW MANY SHOTS WERE FIRED? MOST LIKELY THREE. THAT SEEMS
10 THE MOST LOGICAL. WE KNOW WE HAVE THREE SHELL CASINGS, AND WE
11 KNOW WE HAVE ONE PROJECTILE.

12 THERE WAS ONE SHELL CASING, AS YOU REMEMBER, THAT WAS FOUND
13 A LITTLE BIT FARTHER BACK ON THE STREET. AND YOU MAY WONDER, WHY
14 WAS THAT SHELL CASING WAY BEHIND THE CAR? IF YOU THINK WAY BACK
15 TO YESTERDAY WHEN MARY SHAW TESTIFIED, AFTER THE SHOOTING TOOK
16 PLACE HER CAR ROLLED -- THE CAR INVOLVING THE VICTIMS ROLLED
17 FORWARD. SHE SAW IT ROLLING FORWARD AFTER THE SHOTS. REMEMBER?
18 SHE LOOKED UP AND SAID IT LOOKED LIKE IT WAS GOING IN SLOW
19 MOTION, LIKE SOMEONE HAD JUST BEEN KILLED IN THE CAR. SO THAT'S
20 WHY THAT SHELL CASING WAS BACK BEHIND. THERE WERE TWO SHELL
21 CASINGS INSIDE THE CAR, ONE IN THE BACK SEAT, ONE THAT GOT IN
22 SUSAN GALLOWAY'S PURSE, AND THAT PURSE WAS TAKEN WITH HER TO THE
23 HOSPITAL AND THEN THE OFFICERS GOT THAT SHELL CASING OUT OF
24 THERE.

25 THE DEFENDANT HIMSELF SAID ON THE STAND AND SAID IN HIS

CLOSING ARGUMENTS - BY MR. MOYER

1 STATEMENT THAT HE SHOT AT THE VICTIMS THREE TIMES -- ONE -- THREE
2 -- HE SHOT A TOTAL OF THREE TIMES, ONCE AT EACH VICTIM. AND AS
3 IMPLAUSIBLE AS IT MAY SOUND THAT A BULLET CAN GO THROUGH
4 SOMEBODY'S ARM AND THEN INTO HIS STOMACH, THAT'S WHAT HAPPENED.
5 AND IT'S REALLY NOT ALL THAT IMPLAUSIBLE BECAUSE YOU HEARD DR.
6 ERIC CHRISTENSEN TESTIFY THAT THAT IS VERY LIKELY. AND IT HAD TO
7 HAVE BEEN THE CASE BASED ON THE NUMBER OF PROJECTILES FOUND AND
8 BASED ON THE NUMBER OF SHELL CASINGS THAT WERE FOUND. SO HE SHOT
9 AT EACH ONE OF THEM. THE SHELL CASINGS MATCHED THE GUN. THE
10 PROJECTILE MATCHES THE GUN.

11 AND AFTER THE DEFENDANT SHOOTS, WHAT DOES HE DO? HE TAKES
12 THE MONEY FROM SUSAN GALLOWAY'S HAND AND HE -- AND SHE AT THAT
13 POINT, EVEN AFTER HAVING BEEN SHOT, SHE IS GRIPPING THAT MONEY SO
14 HARD THAT ONE OF THE \$20 BILLS RIPS FROM HER HAND. AND YOU HEARD
15 TESTIMONY THAT WHEN THE OFFICERS SHOWED UP THAT RIPPED \$20 BILL
16 MUST HAVE BEEN IN THE SEAT BECAUSE THEY TOLD THE FORENSICS
17 OFFICER, "GO LOOK IN THE SEAT. THAT'S WHERE THE \$20 BILL IS."
18 BY THE TIME HE GOT OVER THERE WITH THE DOORS BEING OPENED, THAT
19 RIPPED \$20 BILL WAS STUCK IN THE MIDDLE OF THE CAR. WE KNOW
20 WHERE THE OTHER \$20 BILL WENT BECAUSE THE DEFENDANT TOLD US. HE
21 GOT IT. AND THAT'S THE MONEY HE USED TO BUY THE CHEESEBURGERS AT
22 PETE'S RESTAURANT JUST A SHORT PERIOD OF TIME AFTER THIS
23 HAPPENED. HE RIPPED IT OUT OF HER HAND. LATER, WHEN TALKING TO
24 INVESTIGATOR CONROY, HE SAID TO HIM -- HE LAUGHED ABOUT IT, AND
25 HE SAID, "THE BITCH PISSED ME OFF BECAUSE SHE WOULDN'T LET GO OF

CLOSING ARGUMENTS - BY MR. MOYER

1 THE MONEY AND THE MONEY RIPPED." THAT WAS HIS RESPONSE TO THAT.

2 THE DEFENDANT CASUALLY THEN WALKED BACK TO THE CAR AND GOT
3 IN THE PASSENGER SEAT, AND THEY GO. THEY LEAVE. THEY DON'T STOP
4 ANYWHERE. THEY DON'T TELL ANYBODY. THEY DON'T CALL 911. BUT HE
5 GETS BACK AND HE GOES TO HIS HOUSE AND, ACCORDING TO HIS
6 TESTIMONY, THEY CHILL OUT FOR A LITTLE BIT AND THEN THEY GO TO
7 THE RESTAURANT WHERE THEY EAT, AND THEN HE'S ARRESTED.

8 WE KNOW HOW OFFICERS FOUND OUT ABOUT THIS INCIDENT. WHEN
9 THEY SHOW UP ALL WE HAVE -- WE HAVE TWO PEOPLE IN THE CAR, BOTH
10 BLOODY. WE HAVE RON HARRIS WHO HAD FLED THE CAR AND GOT SOMEBODY
11 TO CALL THE POLICE, AND HE -- AND HE'S TALKING TO THE POLICE
12 OFFICERS AND HE SAYS, "OH, YEAH, I REMEMBER. I HAD JUST SAW THE
13 GUY AT RED'S PAWN SHOP."

14 SO THEY SEND AN OFFICER OVER TO RED'S PAWN SHOP, AND THAT'S
15 WHERE THEY GOT THE NAME OF THE PERSON WHO HAD BEEN WITH THE
16 DEFENDANT, THIS DIANA TISDALE, AND THEY WERE ABLE TO FIND OUT
17 WHERE SHE LIVES, AND THAT LED THEM TO GO OVER TO HER RESIDENCE,
18 AND THAT LED THEM TO DO THE SEARCH WHICH PRODUCED THE GUN AND
19 WHICH PRODUCED THE BOX OF SHELL CASINGS AND WHICH PRODUCED THE
20 CLIP AND THE SHIRT THAT HE WAS WEARING. THAT LED TO THE OFFICERS
21 TALKING TO THE DEFENDANT.

22 AND AS YOU RECALL, WHAT WAS THE DEFENDANT'S FIRST RESPONSE
23 WHEN THEY SHOWED UP? HE WAS NERVOUS. HE WAS ACTING SCARED. HE
24 LOOKED LIKE HE WAS GOING TO RUN, ACCORDING TO THE OFFICERS. AND
25 SO THEY TOOK HIM AND THEY PUT HIM IN INVESTIGATIVE DETENTION AND

CLOSING ARGUMENTS - BY MR. MOYER

1 THEY PUT HIM IN THE POLICE CAR. AND THE OFFICER CAME IN AND SAT
2 IN THE CAR AND WENT OVER HIS RIGHTS WITH HIM, AND THE DEFENDANT
3 TOLD THEM AT THAT TIME, "GO AHEAD. YOU CAN SEARCH THE HOUSE.
4 AND IF YOU DON'T FIND ANYTHING, THAT MEANS I CAN GO." HE'S
5 ALREADY HIDING THE GUN. HE'S ALREADY -- THE GUN THAT HE HAD
6 HIDDEN IN THE HOUSE HE IS WANTING TO KEEP HIDDEN.

7 FINALLY, AS TIME WENT ON, HE REALIZES HE'S CAUGHT. HE
8 REALIZES HE'S CAUGHT. HIS GIRLFRIEND IS IN THE HOUSE. HE KNOWS
9 DIANA TISDALE HAD JUST PAWNED THE JACK. "WHAT CAN I DO?" AND SO
10 HE DECIDES TO START TALKING, AND HE TELLS THE OFFICERS AT THAT
11 TIME, "I SCREWED UP. I KILLED THAT WOMAN. IT WASN'T SUPPOSED TO
12 GO LIKE THIS. BUT I KILLED HER." AND HE TOLD INVESTIGATOR
13 CONROY WHERE THE GUN WAS, AND THEN HE TOOK HIM BACK TO THE LAW
14 ENFORCEMENT CENTER AND HE ADMITTED TO THE KILLING. HE SAID, "IT
15 WASN'T SUPPOSED TO GO LIKE THIS." IT WASN'T SUPPOSED TO GO LIKE
16 THIS BECAUSE THEY WEREN'T SUPPOSED -- WHEN YOU HAVE A GUN STUCK
17 IN YOUR FACE, YOU'RE NOT SUPPOSED TO DRIVE AWAY. YOU'RE SUPPOSED
18 TO GIVE UP THE MONEY. IT WASN'T SUPPOSED TO GO LIKE THAT.
19 THAT'S WHAT HE WAS SUPPOSED TO DO.

20 LADIES AND GENTLEMEN, WHAT I CONTEND TO YOU HAPPENED IN THIS
21 CASE IS THAT THIS DEFENDANT WAS INTENDING TO COMMIT A ROBBERY
22 FROM THE OUTSET. WHY IN THE WORLD WOULD HE BE DRIVING AROUND TO
23 ALL OF THESE PAWN SHOPS IN THE MIDDLE OF THE DAY? WHO GOES TO
24 PAWN SHOPS? WELL, IF YOU'VE EVER BEEN TO ATLANTIC CITY AND
25 YOU'VE SEEN PAWN SHOPS ON EVERY CORNER, YOU KNOW A LOT OF TIMES

CLOSING ARGUMENTS - BY MR. MOYER

1 IT'S VERY DESPERATE PEOPLE, FOR A DIFFERENT REASON---

2 MR. CREECH: OBJECTION, YOUR HONOR. OBJECTION TO THAT
3 COMMENT.

4 THE COURT: OVERRULED. GO AHEAD.

5 MR. MOYER: IN DIFFERENT LOCATIONS IN ATLANTIC CITY IT'S
6 PEOPLE WHO ARE DESPERATE FOR OTHER REASONS, IN MANY SITUATIONS
7 PEOPLE WHO NEED MONEY SO THEY CAN SPEND IT ON DRUGS. IT'S WHERE
8 YOU CAN FIND WEAK PEOPLE. IT'S WHERE YOU CAN FIND SOMEBODY YOU
9 CAN PREY ON. AND THAT'S WHY HE WAS GOING TO THESE PAWN SHOPS.
10 HE DIDN'T HAVE THE FLEX WITH HIM.

11 NOW, DID HE THINK HE DID? I DON'T KNOW. MAYBE HE THOUGHT
12 HE DID WHEN HE LEFT HE HAD HIS FLEX WITH HIM. IN HIS STATEMENT
13 HE SAID HE THOUGHT HE DID. IT'S VERY POSSIBLE HE WENT OUT
14 WITHOUT HAVING -- WITHOUT -- INTENTIONALLY NOT HAVING IT. BUT HE
15 DID KNOW HE HAD THE GUN WITH HIM, AND HE HAD A GUN WITH TWO
16 DIFFERENT CLIPS FULL OF BULLETS. AND HE HAD A CONVERSATION WITH
17 SUSAN GALLOWAY AND AGREED TO HAVE THIS DRUG TRANSACTION.

18 THEN WHAT HAPPENS? THEY DRIVE AWAY TO THIS OTHER LOCATION
19 WHERE IT'S ON A BACK STREET WHERE NOBODY'S GOING TO KNOW, WHERE
20 NOBODY'S GOING TO SEE. AND AS SOON AS HE GETS OUT OF THE CAR HE
21 HAS THE GUN. HE'S BEEN INTENDING TO ROB THEM FROM THE VERY
22 BEGINNING. AND WHEN HE WALKS UP TO THE CAR THAT'S WHAT HE TRIES
23 TO DO, AND IT DOESN'T GO THE WAY HE WANTS BECAUSE THEY DIDN'T
24 GIVE IT UP. THEY DIDN'T STOP. THEY DIDN'T STAY.

25 NOW, VERY QUICKLY, I JUST WANT -- HIS HONOR IS GOING TO

CLOSING ARGUMENTS - BY MR. MOYER

1 INSTRUCT YOU ON THE LAW OF SELF-DEFENSE. IT'S NOT ENOUGH, LADIES
2 AND GENTLEMEN, TO THINK THAT YOU'RE IN DANGER IN ORDER TO GET
3 SELF-DEFENSE. THAT'S NOT ENOUGH. THERE ARE THREE ELEMENTS.
4 THERE ARE ACTUALLY FOUR ELEMENTS. ONE CLEARLY DOESN'T APPLY, SO
5 I'LL BOIL IT DOWN TO THREE.

6 IN ORDER TO BE FOUND NOT -- FOR YOU AS JURORS TO FIND THE
7 DEFENDANT GUILTY OF NOT -- TO FIND HIM NOT GUILTY BASED ON SELF-
8 DEFENSE, YOU MUST FIRST FIND THAT HE WAS WITHOUT FAULT IN
9 BRINGING ON THE DIFFICULTY. HE MUST BE WITHOUT FAULT AT BRINGING
10 ON THE DIFFICULTY. LADIES AND GENTLEMEN, IF HE WENT UP TO THAT
11 CAR WITH THE INTENTION OF DOING AN ARMED ROBBERY, HE WAS AT FAULT
12 IN BRINGING ON THE DIFFICULTY. THOSE PEOPLE COULD HAVE ALL HAD
13 GUNS, AND THEY COULD HAVE ALL POINTED THE GUNS AT HIM AT THAT
14 POINT, AND IF HE HAD SHOT THEM, HE WOULD NOT BE EXCUSED BY SELF-
15 DEFENSE BECAUSE HE HAD BROUGHT ON THE DIFFICULTY. IF YOU GO OUT
16 TO COMMIT A CRIME, PEOPLE CAN DEFEND THEMSELVES. THEY WOULD HAVE
17 HAD A RIGHT TO DEFEND THEMSELVES. BUT HE WALKED OVER THERE TO
18 COMMIT AN ARMED ROBBERY. HE WAS AT FAULT IN BRINGING ON THE
19 DIFFICULTY.

20 WELL, LET'S SAY HIS VERSION OF THE STORY IS CORRECT. LET'S
21 SAY HE WAS WALKING OVER THERE WITH THE INTENT OF SELLING THEM
22 CRACK, AND HE HAS A GUN IN HIS POCKET. AND HE SAYS THIS IS A
23 DANGEROUS, SCARY SITUATION. WELL, WHY IS IT A DANGEROUS AND
24 SCARY SITUATION? BECAUSE OF WHAT HE DID. BECAUSE HE WAS WALKING
25 OVER TO A CAR WITH FAKE CRACK AND WITH A LOADED GUN. THAT'S WHY

CLOSING ARGUMENTS - BY MR. MOYER

1 IT BECAME A DANGEROUS SITUATION. SO HE WAS AT FAULT IN BRINGING
2 ON THE DIFFICULTY. HE DOES NOT MEET THAT TEST.

3 IN ADDITION TO BEING AT FAULT WITHOUT -- IN ADDITION TO MUST
4 HAVING BEEN NOT -- WITHOUT FAULT IN BRINGING ON THE DIFFICULTY,
5 IN ORDER TO GET SELF-DEFENSE HE MUST BELIEVE THAT HE WAS IN
6 IMMINENT DANGER OF LOSING HIS LIFE OR SUSTAINING SERIOUS BODILY
7 INJURY AND A PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE
8 HAD THE SAME BELIEF.

9 SO IT'S NOT JUST THE FACT THAT HE THOUGHT HE WAS IN DANGER.
10 THAT'S NOT ENOUGH. DID HE THINK HE WAS IN DANGER? I WOULD
11 SUBMIT NOT. BUT LET'S TAKE HIS VERSION FOR A MOMENT. LET'S SAY
12 THAT EVERYTHING HE SAID ON THAT STAND IS TRUE AND THAT WHEN HE
13 WALKED UP TO THAT CAR AND HE SAW THOSE PEOPLE MOVING, HE REALLY
14 DID FEEL LIKE HE WAS IN DANGER IS NOT ENOUGH. BECAUSE YOU TELL
15 ME, LADIES AND GENTLEMEN, WOULD AN ORDINARY PERSON REASONABLY --
16 OF ORDINARY FIRMNESS AND COURAGE, WOULD THAT PERSON HAVE BELIEVED
17 IN THAT SITUATION THAT THEY WERE GOING TO DIE? WHAT DID HE
18 TESTIFY TO? WHAT HAPPENED? THE ONLY THING HE SAID THAT WAS
19 DANGEROUS THAT HAPPENED IS SUSAN GALLOWAY REACHED TOWARDS HER
20 PURSE AND DIDN'T GIVE HIM THE MONEY. HE SAID RON HARRIS REACHED
21 TOWARDS HIS POCKET. AND, LADIES AND GENTLEMEN, IF WE ARE
22 JUSTIFIED TO BE ABLE TO GO OUT AND START GUNNING PEOPLE DOWN FOR
23 JUST REACHING FOR A PURSE, I MEAN, THIS WOULD BE THE WILD WEST.
24 THAT IS NOT REASONABLE. THAT WOULD NOT MAKE IT JUSTIFIED.

25 LADIES AND GENTLEMEN, I SUBMIT TO YOU WHAT HAPPENED IS WHAT

CLOSING ARGUMENTS - BY MR. MOYER

1 THE VICTIMS TOLD YOU HAPPENED, THAT AS SOON AS HE WALKED AROUND
2 THE CAR HE HAD THE GUN IN HIS HAND AND IT WAS GOING TO BE A
3 ROBBERY. EITHER WAY, LADIES AND GENTLEMEN, HE DID NOT BELIEVE --
4 HE WAS NOT IN IMMINENT DANGER OF ANY SERIOUS BODILY INJURY OR
5 DEATH.

6 AND FINALLY, LADIES AND GENTLEMEN, THE FINAL ELEMENT -- AND
7 HE MUST MEET ALL THREE OF THESE -- THERE WAS NO OTHER PROBABLE
8 MEANS OF AVOIDING THE DANGER. AND I APOLOGIZE FOR HAVING TO HOLD
9 THIS UP. I THOUGHT WE WERE GOING TO HAVE AN EASEL I COULD PUT
10 THIS ON. BUT THERE HAS TO BE NO OTHER PROBABLE MEANS OF AVOIDING
11 THE DANGER.

12 NOW, IT'S NOT ANY ONE OF THOSE ELEMENTS, BUT IT'S ALL THREE.
13 SO IN OTHER WORDS, UNDER THE LAW YOU HAVE A DUTY TO RETREAT.
14 UNLESS YOU ARE IN YOUR OWN HOME OR INSIDE YOUR OWN CAR, IF A
15 DANGEROUS SITUATION COMES UP AND YOU FEEL LIKE YOU ARE IN DANGER
16 OF LOSING YOUR LIFE OR SUFFERING SERIOUS BODILY INJURY, YOU STILL
17 -- BEFORE YOU CAN TAKE THAT FATAL BLOW YOU STILL HAVE A DUTY TO
18 RETREAT. AND IT'S BECAUSE IN OUR SOCIETY WE TREAT LIFE AS
19 SACRED. WE VIEW LIFE AS SACRED. AND TAKING SOMEBODY ELSE'S LIFE
20 HAS TO BE A LAST RESORT. YOU CAN'T JUST START BLAZING AWAY WHEN
21 THERE IS A PERCEIVED DANGER AND THEN SAY, "OOPS. I GUESS I WAS
22 WRONG." NO. YOU HAVE TO TAKE EVERY REASONABLE STEP, AND THERE
23 IS A DUTY TO RETREAT, AND IT'S WHAT HE SHOULD HAVE DONE IN THAT
24 SITUATION.

25 THOSE PEOPLE ARE COOPED UP IN A LITTLE CAR. HE IS STANDING

CLOSING ARGUMENTS - BY MR. MOYER

1 OUTSIDE. ALL THEY DID WAS MOVE THEIR HANDS. ALL HE HAD TO DO
2 WAS TAKE A STEP AWAY, WAS MAYBE WAIT ANOTHER MOMENT. WELL, LET'S
3 SEE. ARE THEY ARMED? ARE THEY GOING TO DO SOMETHING TO ME? IS
4 IT REASONABLE TO JUST START FIRING AWAY AS SOON AS YOU SEE A
5 SUDDEN MOVEMENT LIKE THAT? ABSOLUTELY NOT, LADIES AND GENTLEMEN.

6 NOW, IN CLOSING, LADIES AND GENTLEMEN, IT'S NOT AN ENJOYABLE
7 TASK TO ASK YOU TO CONVICT THIS DEFENDANT. I KNOW IT'S A
8 DIFFICULT THING. IT'S A SAD OUTCOME FOR EVERYBODY INVOLVED.
9 THERE ARE NO WINNERS. BUT WHAT I NEED TO ASK YOU TO REMEMBER IS
10 THAT WE ARE HERE BECAUSE OF THE ACTIONS OF ZACHARY FOWLER. HE'S
11 THE ONE WHO BROUGHT US HERE. HE'S THE ONE WHO HAS WRECKED THE
12 LIVES OF THE PEOPLE WHO WERE IN THAT CAR WITH GARY MICHAEL
13 POWELL. HE'S THE ONE WHO IS GOING TO CAUSE SADNESS IN THE HEARTS
14 OF HIS OWN LOVED ONES AS A RESULT OF THE VERDICT. HE IS THE ONE
15 WHO BROUGHT US TO THIS LOCATION.

16 AND IT'S NOT EASY TO JUDGE SOMEBODY. I REALIZE THAT. BUT
17 AS HIS HONOR TOLD YOU AT THE OUTSET OF THIS CASE, YOU ARE NOT
18 JUDGES OF PEOPLE. YOU ARE JUDGES OF THE FACTS. YOU'RE NOT HERE
19 TO JUDGE WHETHER THE DEFENDANT IS A GOOD PERSON OR A BAD PERSON.
20 YOU'RE HERE TO DECIDE WHETHER, ON JUNE THE 7TH OF 2006, HE MADE A
21 CHOICE THAT VIOLATES OUR LAW. OUR LEGISLATORS MADE THE LAW. OUR
22 JUDGES HAND DOWN THE SENTENCES. YOU SAY WHAT THE FACTS ARE IN
23 THE CASE. WE'RE NOT HERE TO JUDGE PEOPLE.

24 WE'RE NOT HERE TO JUDGE SUSAN GALLOWAY EITHER. SHE'S BEEN
25 DRAGGED THROUGH THE MUD. SHE'S BEEN CALLED EVERY NAME IN THE

JURY CHARGE

1 BOOK, A DRUG ADDICT AND SO FORTH. AND YOU WERE NOT ABLE TO HEAR
2 FROM THE PEOPLE WHO LOVED HER AND HAD GOOD THINGS TO SAY ABOUT
3 HER BECAUSE IT'S NOT RELEVANT IN THE CASE.

4 YOU DON'T WEIGH THE LIVES, THE MERIT OF PEOPLE. IT'S
5 WHETHER THE DEFENDANT KILLED A HUMAN BEING. AND SUSAN GALLOWAY'S
6 FAMILY AND HER LOVED ONES ARE NEVER GOING TO SEE HER AGAIN
7 BECAUSE OF THE ACTIONS OF THIS---

8 MR. CREECH: OBJECTION, YOUR HONOR.

9 THE COURT: ALL RIGHT. OVERRULED. GO AHEAD.

10 MR. MOYER: SO YOU'RE A VITAL PART OF THIS JUSTICE SYSTEM.
11 WITHOUT HAVING JURORS LIKE YOU TO MAKE DECISIONS IN CASES LIKE
12 THIS THERE WOULD BE NO CONSEQUENCE FOR WRONGDOING. SO WHAT I'M
13 ASKING YOU, LADIES AND GENTLEMEN, IS TO FIND THIS DEFENDANT
14 GUILTY OR ALL OF THESE CHARGES. THANK YOU.

15 THE COURT: ALL RIGHT. THANK YOU, MR. MOYER.

16 LADIES AND GENTLEMEN, YOU'VE HEARD ALL THE EVIDENCE IN THE
17 CASE, AND YOU'VE HEARD THE ARGUMENTS OF THE LAWYERS, AND NOW IT'S
18 MY DUTY TO INSTRUCT YOU ON THE LAW THAT APPLIES TO THIS CASE AND
19 IT'S YOUR DUTY TO FIND THE FACTS FROM THE EVIDENCE IN THIS CASE
20 AND TO THOSE FACTS YOU ARE TO APPLY THE LAW AS I GIVE IT TO YOU.
21 AND YOU SHOULD NOT BE CONCERNED WITH WHAT THE LAW SHOULD BE BUT
22 WITH WHAT IT IS. AND THAT MEANS YOU MUST NOT BE INFLUENCED BY
23 ANY PERSONAL LIKES OR DISLIKES, OR OPINIONS OR PREJUDICES IN THIS
24 MATTER OR UNDUE SYMPATHY. AND THAT MEANS YOU MUST DECIDE THIS
25 CASE SOLELY ON THE EVIDENCE BEFORE YOU AND ACCORDING TO THE LAW.

JURY CHARGE

1 AND YOU WILL RECALL YOU TOOK AN OATH TO DO JUST THAT WHEN WE
2 BEGAN THIS CASE ON MONDAY.

3 NOW, IN FOLLOWING MY INSTRUCTIONS YOU MUST FOLLOW ALL OF
4 THEM AND NOT SINGLE OUT SOME AND IGNORE OTHERS, BECAUSE THEY ARE
5 ALL EQUALLY IMPORTANT. AND YOU SHOULD NOT READ INTO THESE
6 INSTRUCTIONS OR INTO ANYTHING I HAVE SAID OR DONE DURING THIS
7 TRIAL AS INDICATING ANY SUGGESTION OR OPINIONS THAT I MAY HAVE AS
8 TO THE FACTS OF THIS CASE, BECAUSE, AS I TOLD YOU AT THE OUTSET,
9 YOU ARE THE JUDGES OF THE FACTS AND I'M CERTAINLY NOT GOING TO
10 INTRUDE ON YOUR PREROGATIVE TO DETERMINE THOSE FACTS, JUST AS YOU
11 WOULD NOT INTRUDE ON MY PREROGATIVE TO TELL YOU WHAT THE LAW IS.

12 NOW, LADIES AND GENTLEMEN, I TOLD YOU AT THE BEGINNING OF
13 THE CASE THAT YOU DECIDE WHAT THE FACTS ARE BY EVALUATING OR
14 WEIGHING THE EVIDENCE YOU HAVE HEARD DURING THIS TRIAL. I CAN'T
15 GIVE YOU A SET OF SCALES TO TAKE BACK IN THE JURY ROOM WITH YOU
16 TO CONDUCT SOME PHYSICAL EXPERIMENT ABOUT THE WEIGHT OF THE
17 EVIDENCE. CERTAINLY THAT WOULDN'T BE PRACTICAL. IT IS INSTEAD
18 ENTIRELY A MENTAL PROCESS, AND YOU WEIGH AND EVALUATE EVIDENCE BY
19 DETERMINING WHAT YOU'VE HEARD DURING THIS TRIAL HAS THE RING OF
20 TRUTH TO IT AND IS WORTHY OF BELIEF. AND YOU DO THAT BY USING
21 YOUR GOOD COMMON SENSE AND YOUR SOUND JUDGMENT AND YOUR LIFE
22 EXPERIENCES.

23 NOW, LADIES AND GENTLEMEN, I TOLD YOU AT THE BEGINNING, THE
24 EVIDENCE CONSISTS PRIMARILY OF TWO SOURCES. THE FIRST IS THE
25 SWORN TESTIMONY OF A WITNESS. AND THE SECOND SOURCE IS BY WAY OF

JURY CHARGE

1 AN EXHIBIT. THERE ARE CERTAIN THINGS THAT ARE NOT EVIDENCE AND
2 WHICH YOU MAY NOT CONSIDER IN DETERMINING THE FACTS IN THIS CASE.
3 I TOLD YOU AT THE BEGINNING THAT THE STATEMENTS OF THE LAWYERS
4 ARE DESIGNED TO HELP YOU INTERPRET THE EVIDENCE AND ASSIST YOU IN
5 UNDERSTANDING THAT EVIDENCE, AND THEIR ARGUMENTS ARE DESIGNED TO
6 DO THAT AS WELL. BUT WHAT THE LAWYERS SAY IS NOT EVIDENCE
7 BECAUSE, AGAIN, THEY ARE NOT WITNESSES. LIKEWISE, THE LAWYERS
8 HAVE A DUTY TO OBJECT WHEN THEY THINK EVIDENCE IS IMPROPER, AND
9 THEY ARE ETHICALLY BOUND TO DO THAT. AND YOU CERTAINLY WOULDN'T
10 HOLD IT AGAINST THEM FOR DOING THEIR JOB, SO YOU SHOULD NOT BE
11 INFLUENCED BY THE OBJECTIONS. AND LIKEWISE, ANY TESTIMONY THAT
12 HAS BEEN STRICKEN OR EXCLUDED DURING THIS TRIAL SHOULD NOT BE
13 CONSIDERED BY YOU IN ANY MANNER BECAUSE IT IS NOT EVIDENCE. AND
14 ANYTHING YOU MAY HAVE HEARD WHEN COURT WAS NOT IN SESSION IS NOT
15 EVIDENCE.

16 YOU ARE TO DECIDE THIS CASE SOLELY ON THE EVIDENCE RECEIVED
17 AT THE TRIAL, AND THAT IS THE WITNESSES' TESTIMONY AND THE
18 EXHIBITS.

19 NOW, THOSE ARE THE SOURCES OF EVIDENCE AND THERE ARE ALSO
20 DIFFERENT TYPES OF EVIDENCE WITHIN THAT SOURCE. I'M NOT TRYING
21 TO CONFUSE YOU, BUT I JUST WANT YOU TO UNDERSTAND THAT WHAT I'M
22 TALKING ABOUT IS DIRECT AND CIRCUMSTANTIAL EVIDENCE. DIRECT
23 EVIDENCE IS DEFINED AS DIRECT PROOF OF A FACT, SUCH AS THE
24 TESTIMONY OF AN EYEWITNESS. CIRCUMSTANTIAL EVIDENCE IS INDIRECT
25 EVIDENCE. IT IS PROOF OF A CHAIN OF FACTS FROM WHICH YOU CAN

JURY CHARGE

1 INFER OR FIND THAT ANOTHER FACT EXISTS, EVEN THOUGH THAT FACT HAS
2 NOT BEEN PROVEN DIRECTLY. YOU ARE ENTITLED TO CONSIDER BOTH
3 KINDS OF EVIDENCE.

4 AND LET ME GIVE YOU A BRIEF EXAMPLE AND HELP YOU UNDERSTAND
5 THE DIFFERENCE BETWEEN DIRECT AND CIRCUMSTANTIAL EVIDENCE.
6 DIRECT EVIDENCE, AS I'VE SAID, PROVES A FACT DIRECTLY, SUCH AS
7 THE TESTIMONY OF A WITNESS WHO CAME IN AND TESTIFIED THEY SAW A
8 JET PLANE FLYING ACROSS THE SKY. THAT WOULD BE DIRECT EVIDENCE
9 THAT THE JET FLEW ACROSS THE SKY.

10 SOME EVIDENCE, ON THE OTHER HAND, PROVES A FACT INDIRECTLY,
11 SUCH AS A WITNESS WHO WOULD TESTIFY THAT THEY SAW ONLY A WHITE
12 TRAIL OF THE KIND THAT JETS OFTEN LEAVE IN THE SKY. THIS
13 INDIRECT EVIDENCE IS SOMETIMES REFERRED TO AS CIRCUMSTANTIAL
14 EVIDENCE.

15 IN EITHER INSTANCE, EACH WITNESS' TESTIMONY IS EVIDENCE THAT
16 THE JET PLANE FLEW IN THE SKY, AND THE LAW PERMITS YOU TO GIVE
17 EQUAL WEIGHT TO BOTH DIRECT AND CIRCUMSTANTIAL EVIDENCE. BUT IT
18 IS FOR YOU AND YOU ALONE TO DETERMINE HOW MUCH WEIGHT TO GIVE TO
19 ANY OF IT, WHETHER IT IS DIRECT OR CIRCUMSTANTIAL.

20 NOW, LADIES AND GENTLEMEN, AS I TOLD YOU AT THE OUTSET, IN
21 DETERMINING THE FACTS YOU WILL HAVE TO NECESSARILY DETERMINE THE
22 CREDIBILITY OF EVERY WITNESS THAT TESTIFIES AND THE BELIEVABILITY
23 OF ALL THE EXHIBITS. I'M NOT GOING TO REHASH WHAT I TOLD YOU AT
24 THE OUTSET THAT YOU COULD USE TO DETERMINE CREDIBILITY BUT I WILL
25 TELL YOU THAT YOU CAN BELIEVE EVERYTHING A WITNESS SAYS OR YOU

JURY CHARGE

1 CAN BELIEVE NOTHING A WITNESS SAYS OR YOU CAN BELIEVE SOME THINGS
2 A WITNESS SAYS AND REJECT OTHER THINGS THE WITNESS SAYS. YOU MAY
3 BELIEVE ONE WITNESS OVER SEVERAL OR SEVERAL OVER ONE. BUT YOU
4 CERTAINLY DON'T DETERMINE THIS MATTER OF CREDIBILITY BY SIMPLY
5 COUNTING UP THE NUMBER OF WITNESSES FOR EACH SIDE BECAUSE YOUR
6 SOLE OBJECTIVE IS TO DETERMINE THE TRUE FACTS AND TO DETERMINE
7 WHETHER THE STATE HAS MET ITS BURDEN OF PROOF. AND IT DOES NOT
8 MATTER TO YOU WHETHER THE TRUE FACTS COME FROM A WITNESS FOR THE
9 DEFENDANT OR A WITNESS FOR THE PROSECUTION.

10 NOW, LADIES AND GENTLEMEN, YOU HAVE HEARD TESTIMONY IN THIS
11 TRIAL FROM PERSONS DESCRIBED AS EXPERTS. AND I'VE TOLD YOU, I
12 BELIEVE, WHEN THE FIRST PERSON TESTIFIED WHO WAS QUALIFIED AS AN
13 EXPERT, THAT AN EXPERT WITNESS IS ALLOWED TO GIVE THEIR OPINIONS,
14 BUT THEIR TESTIMONY IS TO BE JUDGED BY YOU IN THE SAME WAY YOU
15 JUDGE ANY OTHER WITNESS' TESTIMONY, AND THE CREDIBILITY OF THAT
16 TESTIMONY IS ENTIRELY UP TO YOU. YOU CAN BELIEVE AS MUCH OR AS
17 LITTLE OF EACH EXPERT WITNESS' TESTIMONY AS YOU THINK PROPER.

18 NOW, LADIES AND GENTLEMEN, LET ME GO OVER WITH YOU THE
19 ELEMENTS OF EACH CRIME THAT MR. FOWLER IS CHARGED WITH.

20 BEFORE I DO THAT, LET ME AGAIN EMPHASIZE TO YOU SOME
21 PRINCIPLES THAT APPLY TO ANY CRIMINAL OFFENSE AND THAT YOU MUST
22 APPLY IN THIS CASE. I TOLD YOU AT THE OUTSET THAT MR. FOWLER IS
23 CHARGED IN A NUMBER OF INDICTMENTS, AND I TOLD YOU THAT THE
24 INDICTMENTS ARE NOT EVIDENCE. OF COURSE, AN INDICTMENT IS NOT A
25 WITNESS AND IT'S NOT AN EXHIBIT. SO IT WOULD NOT BE SOMETHING

JURY CHARGE

1 YOU COULD CONSIDER IN DETERMINING THE FACTS OF THE CASE. SIMPLY
2 BECAUSE MR. FOWLER HAS BEEN CHARGED AND INDICTED IN THIS CASE
3 DOESN'T MEAN ANYTHING AND DOESN'T CREATE ANY SUSPICION OF GUILT.
4 IT DOESN'T CONSTITUTE PROOF.

5 MR. FOWLER HAS THE ABSOLUTE RIGHT TO REMAIN SILENT AND ALSO
6 THE RIGHT TO PLEAD NOT GUILTY. AND ONCE HE MAKES THAT PLEA, THAT
7 PUTS THE BURDEN OF PROOF ON THE STATE. THE INDICTMENT IS SIMPLY
8 THE FORMAL WRITTEN INSTRUMENT THAT CONTAINS THE CHARGES MADE
9 AGAINST HIM AND LETS HIM KNOW WHAT HE IS CHARGED WITH.

10 MR. FOWLER IS PRESUMED INNOCENT, AS I TOLD YOU AT THE
11 BEGINNING. THAT PRESUMPTION OF INNOCENCE STARTS AT THE TRIAL
12 WHEN THE TRIAL BEGINS AND IT REMAINS WITH HIM, AND EVEN INTO YOUR
13 DELIBERATIONS MR. FOWLER WILL CONTINUE TO BE PRESUMED INNOCENT.
14 AND THAT PRESUMPTION OF INNOCENCE CAN ONLY BE REMOVED IF YOU FIND
15 THE STATE HAS PROVEN EACH ELEMENT OF THE CRIME BEYOND A
16 REASONABLE DOUBT.

17 NOW, THERE ARE SIX DIFFERENT CHARGES AGAINST MR. FOWLER.
18 YOU WILL HAVE TO CONSIDER EACH CHARGE SEPARATELY AND CONSIDER THE
19 EVIDENCE THAT RELATES TO EACH CHARGE AND DETERMINE WHETHER THE
20 STATE HAS MET ITS BURDEN OF PROOF AS TO EACH CHARGE. AND YOU
21 MUST NOT BE INFLUENCED BY YOUR DECISION ON ONE CHARGE IN MAKING
22 YOUR DECISION ON THE OTHER CHARGES. YOU MUST DO THAT
23 INDEPENDENTLY AS TO EACH CHARGE.

24 IT IS AN IMPORTANT AND CARDINAL RULE OF THE LAW THAT ANYONE
25 CHARGED WITH A CRIME, NO MATTER WHAT THAT CRIME MAY BE, IS ALWAYS

JURY CHARGE

1 PRESUMED INNOCENT OF THE CHARGE. THAT CERTAINLY IS A BEDROCK OF
2 OUR SYSTEM OF JUSTICE AND A FOUNDATION OF THE LAWS OF THIS
3 COUNTRY. THE PRESUMPTION OF INNOCENCE, AS I SAID, ACCOMPANIES
4 MR. FOWLER THROUGHOUT THE TRIAL AND INTO YOUR DELIBERATIONS. AND
5 THE PRESUMPTION OF INNOCENCE HAS BEEN LIKENED TO A ROBE OF
6 RIGHTEOUSNESS THAT IS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT
7 AND REMAINS WITH HIM UNLESS AND UNTIL IT HAS BEEN STRIPPED BY
8 EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT BEYOND A
9 REASONABLE DOUBT AND YOU DETERMINE WHETHER THE STATE HAS MET ITS
10 BURDEN OF PROOF.

11 THIS PRESUMPTION OF INNOCENCE IS NOT SOME TECHNICALITY OR
12 LEGAL THEORY. IT IS NOT SOME PHRASE. IT IS AN IMPORTANT AND
13 VITAL PRINCIPLE OF LAW TO WHICH EVERY DEFENDANT IS ENTITLED
14 UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF GUILT
15 BEYOND A REASONABLE DOUBT.

16 NOW LET ME DEFINE FOR YOU THE PHRASE "REASONABLE DOUBT"
17 BECAUSE WE'VE BEEN TALKING ABOUT IT QUITE A BIT. A REASONABLE
18 DOUBT IS DEFINED IN THE LAW AS THE KIND OF DOUBT THAT WOULD CAUSE
19 A REASONABLE, SINCERE, HONEST AND CONSCIENTIOUS PERSON TO
20 HESITATE TO ACT IN AN IMPORTANT MATTER IN THEIR OWN AFFAIRS.

21 NOW, LADIES AND GENTLEMEN, THIS IS A CRIMINAL CASE. IT IS
22 NOT A CIVIL CASE. IN A CIVIL CASE IN ORDER FOR ONE PARTY TO WIN
23 THEY SIMPLY MUST PROVE SOMETHING IS MORE LIKELY TRUE THAN NOT
24 TRUE. THEY MUST PROVE THEIR CASE BY WHAT'S CALLED THE GREATER
25 WEIGHT OF THE EVIDENCE. IF YOU HAD TO IMAGINE A SET OF SCALES,

JURY CHARGE

1 IN A CIVIL CASE ONE PARTY CAN WIN IF THEY PROVE THE SCALES ARE
2 TIPPING JUST SLIGHTLY IN THEIR FAVOR. A CRIMINAL CASE HAS A MUCH
3 HIGHER BURDEN OF PROOF. SO PLEASE PUT THAT CIVIL STANDARD OF
4 PROOF OUT OF YOUR MIND. AND PROOF BEYOND A REASONABLE DOUBT IS
5 PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

6 NOW, OF COURSE, THERE ARE VERY FEW THINGS THAT WE KNOW IN
7 THIS WORLD WITH ABSOLUTE CERTAINTY. AND IN CRIMINAL CASES THE
8 LAW DOES NOT REQUIRE THAT PROOF OVERCOME EVERY POSSIBLE DOUBT.
9 IF BASED ON YOUR VIEW OF THE EVIDENCE YOU ARE FIRMLY CONVINCED
10 THAT MR. FOWLER IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND HIM
11 GUILTY. ON THE OTHER HAND, IF YOU THINK THERE IS A REAL
12 POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE HIM THE BENEFIT
13 OF THE DOUBT AND FIND HIM NOT GUILTY.

14 AND I WILL TELL YOU FURTHER THAT MR. FOWLER IS ENTITLED TO
15 EVERY REASONABLE DOUBT THAT MAY ARISE IN THIS CASE. AND WHAT
16 THAT MEANS IS SIMPLY THIS, IF AS TO ANY FACT WHICH IS ESSENTIAL
17 TO A CONVICTION OR A FINDING OF GUILT YOU AS A JURY HAVE A
18 REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD BE RESOLVED, IT IS
19 YOUR DUTY TO RESOLVE THAT DOUBT IN FAVOR OF MR. FOWLER.

20 NOW, LADIES AND GENTLEMEN, YOU HEARD EVIDENCE OF A STATEMENT
21 ALLEGED TO HAVE BEEN MADE BY MR. FOWLER THAT WAS ADMITTED INTO
22 EVIDENCE. WHILE THE COURT HAS DETERMINED THAT THE STATEMENT IS
23 ADMISSIBLE, I INSTRUCT YOU THAT YOU, THE JURY, MAKE THE ULTIMATE
24 DECISION AS TO WHETHER THE DEFENDANT MADE THE STATEMENT. IF THE
25 DEFENDANT DID MAKE THE STATEMENT, YOU MUST DETERMINE WHETHER THE

JURY CHARGE

1 STATEMENT WAS MADE BY HIM VOLUNTARILY AND OF HIS OWN FREE WILL.
2 AND THAT MEANS THAT THE STATEMENT WAS NOT CAUSED BY PRESSURE,
3 FORCE, FEAR, THREATS, COERCION OR INTIMIDATION OR BY HOPE OR
4 PROMISE OF LENIENCY OR A REWARD OF ANY KIND.

5 IN DETERMINING WHETHER A STATEMENT WAS VOLUNTARILY MADE YOU
6 MAY CONSIDER BOTH THE CHARACTERISTICS OF THE DEFENDANT, THE
7 DETAILS OF THE QUESTIONING, THE AGE OF THE DEFENDANT, THE
8 DEFENDANT'S EDUCATION LEVEL, THE DEFENDANT'S MENTAL ABILITY OR
9 CAPACITY, HIS INTELLIGENCE, HIS BACKGROUND AND ENVIRONMENT, THE
10 PLACE AND LENGTHY OF DETENTION, THE NATURE OF THE QUESTIONING,
11 AND YOU MAY CONSIDER ALL OF THE SURROUNDING CIRCUMSTANCES BEFORE
12 YOU GIVE ANY WEIGHT TO AN ALLEGED STATEMENT. THE STATE HAS THE
13 BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT THE ALLEGED
14 STATEMENT WAS VOLUNTARILY MADE. IF YOU DETERMINE THAT IT WAS,
15 YOU MAY GIVE THE STATEMENT ANY FURTHER CONSIDERATION YOU DEEM
16 PROPER. IF YOU DETERMINE THE ALLEGED STATEMENT WAS NOT THE FREE
17 AND VOLUNTARY STATEMENT OF MR. FOWLER, THEN YOU MAY NOT CONSIDER
18 THE STATEMENT AT ALL AS EVIDENCE.

19 NOW, IN ORDER TO ESTABLISH CRIMINAL LIABILITY CRIMINAL
20 INTENT IS REQUIRED. FOR EXAMPLE, THE MENTAL STATE REQUIRED TO BE
21 PROVEN BY THE STATE FOR A PARTICULAR CRIME MIGHT BE PURPOSE,
22 INTENT, KNOWLEDGE, RECKLESSNESS, MALICE OR CRIMINAL NEGLIGENCE.
23 CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND A REASONABLE
24 DOUBT, AND CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE
25 DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE

JURY CHARGE

1 SITUATION. THERE IS NO WAY, OF COURSE, TO PROVE INTENT TO A
2 MATHEMATICAL CERTAINTY. THERE IS NO WAY SCIENCE CAN DISSECT A
3 PERSON'S BRAIN AND DETERMINE WHAT THAT PERSON HAD IN MIND AT A
4 CERTAIN TIME. SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE
5 INFERRED FROM THE CIRCUMSTANCES.

6 AND I WILL GO OVER WITH YOU THE ELEMENTS OF THE CRIMES AT
7 THIS POINT, AND I WILL FIRST START WITH THE CHARGE OF MURDER.
8 THE DEFENDANT IS CHARGED WITH MURDER, AND IN ORDER TO CONVICT MR.
9 FOWLER OF MURDER THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
10 THAT MR. FOWLER KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT.

11 MALICE IS DEFINED AS HATRED, ILL WILL OR HOSTILITY TOWARDS
12 ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT
13 WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO INFLICT AN
14 INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL
15 INTENT. MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXIST
16 FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED BUT MALICE
17 MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE AND AT THE
18 TIME OF THE ACT AND, THEREFORE, THERE MUST BE A COMBINATION OF
19 THE PREVIOUS EVIL INTENT AND THE ACT.

20 MALICE AFORETHOUGHT MAY BE EXPRESS OR IMPLIED OR INFERRED.
21 THE TERMS EXPRESS AND INFERRED DO NOT MEAN DIFFERENT KINDS OF
22 MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN OR
23 PROVEN TO EXIST, THAT IS, BY EITHER DIRECT EVIDENCE OR BY
24 INFERENCE FROM THE FACTS AND CIRCUMSTANCES THAT ARE PROVED.

25 EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS THAT

JURY CHARGE

1 EXPRESS HATRED OR ILL WILL FOR ANOTHER OR WHEN THE PERSON
2 PREPARED BEFOREHAND TO DO THE ACT THAT WAS LATER ACCOMPLISHED.
3 FOR EXAMPLE, BY LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF
4 PREPARATION THAT SHOW THE DEED WAS WITHIN THE DEFENDANT'S MIND
5 WOULD BE EXPRESS MALICE.

6 MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL
7 DISREGARD FOR HUMAN LIFE. INFERRED OR IMPLIED MALICE MAY ALSO BE
8 SHOWN AND ARISE WHEN THE DEED IS DONE WITH A DEADLY WEAPON.

9 HOWEVER, THIS INFERENCE OF MALICE DOES NOT MEAN THAT YOU ARE
10 REQUIRED TO FIND THAT MALICE EXISTS. THE DECISION ABOUT WHETHER
11 MALICE EXISTS IS ONE THAT IS TO BE MADE BY YOU AFTER CONSIDERING
12 ALL OF THE EVIDENCE, INCLUDING EVIDENCE OF THE USE OF A DEADLY
13 WEAPON. AND YOU MAY GIVE THE USE OF A DEADLY WEAPON, IF YOU FIND
14 THAT OCCURRED, WHATEVER WEIGHT YOU WISH. THE MERE FACT THAT A
15 DEADLY WEAPON WAS USED, IF YOU FIND IT WAS USED, DOES NOT REQUIRE
16 YOU TO DETERMINE MALICE EXISTED, AND IT DOES NOT REQUIRE YOU TO
17 FIND THAT THE STATE HAS MET ITS BURDEN OF PROOF AS TO THAT ISSUE.

18 A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT OR SUBSTANCE THAT
19 IS LIKELY TO CAUSE A DEATH OR GREAT BODILY HARM. WHETHER AN
20 INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS
21 AND CIRCUMSTANCES. THE FOLLOWING ARE EXAMPLES OF INSTRUMENTS
22 THAT MAY BE DEADLY WEAPONS: A PISTOL, A SHOTGUN, A RIFLE, A
23 KNIFE, A SLINGSHOT, METAL KNUCKLES, A RAZOR, A FIREBOMB. A GUN
24 MAY BE A DEADLY WEAPON EVEN IF IT IS NOT OPERATING.

25 NOW, MALICE, LADIES AND GENTLEMEN, IMPORTS A WICKEDNESS AND

JURY CHARGE

1 IT EXCLUDES ANY JUST CAUSE OR LEGAL EXCUSE. MALICE SPRINGS FROM
2 DEPRAVITY, FROM A DEPRAVED SPIRIT, FROM A HEART DEVOID OF SOCIAL
3 DUTY AND FATALLY BENT ON MISCHIEF. IT DOES NOT NECESSARILY
4 IMPORT ILL WILL TOWARDS THE SPECIFIC PERSON WHO IS INJURED BUT
5 RATHER SIGNIFIES A GENERAL MALIGNANCY TOWARDS AND RECKLESSNESS
6 FOR THE LIFE AND SAFETY OF ANOTHER OR A CONDITION OF THE MIND
7 THAT SHOWS A HEART DEVOID OF SOCIAL DUTY AND FATALLY BENT ON
8 MISCHIEF. THERE HAS TO BE A COMBINATION BETWEEN THIS EVIL INTENT
9 EXISTING AFORETHOUGHT JUST BEFORE AND AT THE TIME OF THE
10 COMMISSION OF THE ACT.

11 NOW, LADIES AND GENTLEMEN, THERE IS ANOTHER SECOND CHARGE --
12 AS I'VE TOLD YOU, THERE ARE SIX CHARGES IN ALL THAT YOU WILL HAVE
13 TO CONSIDER. BUT THE SECOND CHARGE IS ASSAULT AND BATTERY WITH
14 INTENT TO KILL AND MR. FOWLER HAS BEEN CHARGED WITH THIS. IN
15 ORDER TO CONVICT HIM OF THIS CHARGE, THE STATE MUST PROVE THREE
16 ESSENTIAL ELEMENTS, EACH BEYOND A REASONABLE DOUBT.

17 FIRST, THE STATE MUST PROVE THAT MR. FOWLER COMMITTED AN
18 ASSAULT. SECOND, THEY MUST PROVE THAT THE DEFENDANT, MR. FOWLER,
19 COMMITTED A BATTERY. AND THIRD, THEY MUST PROVE THE DEFENDANT
20 COMMITTED THE ASSAULT AND BATTERY WITH MALICE AFORETHOUGHT.

21 AN ASSAULT IS DEFINED AS THE UNLAWFUL ATTEMPT TO COMMIT A
22 VIOLENT INJURY UPON ANOTHER PERSON MADE BY A PERSON WHO HAD THE
23 PRESENT ABILITY TO COMPLETE THE ATTEMPTED OR THREATENED INJURY.
24 IT IS NOT NECESSARY THAT THE ATTEMPTED OR THREATENED INJURY
25 ACTUALLY TAKE PLACE.

JURY CHARGE

1 A BATTERY IS THE UNLAWFUL TOUCHING OF ANOTHER PERSON BY A
2 PERSON WHO HAS COMMITTED THE ASSAULT. IT IS THE COMPLETION OF
3 THE ASSAULT BY USING OR APPLYING FORCE TO ANOTHER PERSON, HOWEVER
4 SLIGHT, IN A RUDE, ANGRY OR RESENTFUL MANNER WITHOUT LEGAL
5 JUSTIFICATION FOR DOING SO. AN UNLAWFUL TOUCHING CAN BE CAUSED
6 BY PART OF THE ACCUSED'S BODY OR BY ANY OBJECT THE ACCUSED PUTS
7 IN MOTION.

8 NOW, I'VE ALREADY DEFINED MALICE FOR YOU WHEN I WAS TALKING
9 ABOUT MURDER. AND, OF COURSE, MALICE AGAIN HAS THE SAME
10 DEFINITION IN THE CONTEXT OF ASSAULT AND BATTERY OF A HIGH AND
11 AGGRAVATED NATURE.

12 A SPECIFIC INTENT TO KILL IS NOT AN ELEMENT OF ASSAULT AND
13 BATTERY WITH INTENT TO KILL, BUT THERE MUST BE A GENERAL INTENT
14 TO COMMIT SERIOUS BODILY INJURY. INTENT MEANS INTENDING THE
15 RESULT THAT ACTUALLY OCCURS, NOT ACCIDENTALLY OR INVOLUNTARILY.
16 INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND ALL
17 THE CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY
18 INFER INTENT. EVIDENCE OF THE CHARACTER OF THE ASSAULT, THE
19 CHARACTER OF THE INSTRUMENT USED, THE MANNER IN WHICH IT WAS
20 USED, THE PURPOSE TO BE ACCOMPLISHED AND THE RESULTING WOUNDS OR
21 INJURIES MAY BE CONSIDERED IN DETERMINING THE INTENT WITH WHICH
22 THE ASSAULT WAS COMMITTED. INTENT MAY BE INFERRED WHEN IT IS
23 DEMONSTRATED THE DEFENDANT VOLUNTARILY AND WILLFULLY COMMITS AN
24 ACT, THE NATURAL TENDENCY OF WHICH IS TO DESTROY ANOTHER PERSON'S
25 LIFE.

JURY CHARGE

1 REMEMBER, THE STATE BEARS THE BURDEN OF PROVING MALICE, AND
2 THE DEFENDANT IS NOT REQUIRED TO PROVE THE ABSENCE OF MALICE.

3 NOW, LADIES AND GENTLEMEN, THE NEXT CHARGE YOU NEED TO
4 CONSIDER IS ASSAULT WITH INTENT TO KILL. IN ORDER TO PROVE
5 ASSAULT WITH INTENT TO KILL THE STATE MUST PROVE BEYOND A
6 REASONABLE DOUBT THAT MR. FOWLER WITH MALICE AFORETHOUGHT
7 UNLAWFULLY ATTEMPTED OR OFFERED TO COMMIT A VIOLENT INJURY UPON
8 ANOTHER PERSON, HAD THE PRESENT ABILITY TO COMPLETE THE ATTEMPTED
9 INJURY. I'VE ALSO DEFINED FOR YOU THE TERM ASSAULT, WHICH IS THE
10 INTENTIONAL CREATION OF A REASONABLE FEAR OF IMMEDIATE BODILY
11 HARM. IT IS NOT NECESSARY THAT THE ATTEMPTED INJURY OR HARM
12 ACTUALLY TAKE PLACE FOR EXAMPLE, IF I WALK UP TO YOU AND WHEN WE
13 ARE WITHIN ARM'S REACH I DRAW BACK TO HIT YOU, THAT IS DEFINED AS
14 AN ASSAULT UNDER THE LAW. AND I'VE ALSO, AGAIN, DEFINED FOR YOU
15 MALICE, AND YOU MAY USE THE SAME DEFINITION THAT I USED WHEN I
16 WAS TALKING OF MURDER.

17 NOW, LADIES AND GENTLEMEN, A SPECIFIC INTENT TO KILL IS NOT
18 AN ELEMENT OF ASSAULT WITH INTENT TO KILL, BUT THERE MUST BE A
19 GENERAL INTENT TO COMMIT SERIOUS BODILY INJURY. AND AGAIN, I
20 TALKED TO YOU ABOUT INTENT WHEN I WAS TALKING ABOUT ASSAULT AND
21 BATTERY WITH INTENT TO KILL, AND YOU CAN USE THE SAME DEFINITION
22 FOR ASSAULT WITH INTENT TO KILL.

23 THE NEXT CHARGE TO CONSIDER IS ARMED ROBBERY. IN ORDER TO
24 CONVICT MR. FOWLER OF ARMED ROBBERY THE STATE MUST PROVE BEYOND A
25 REASONABLE DOUBT FOUR THINGS: FIRST, THAT THE DEFENDANT, MR.

JURY CHARGE

1 FOWLER TOOK PERSONAL PROPERTY FROM THE PERSON OR PRESENCE OF
2 ANOTHER; SECOND, THAT HE CARRIED THE PROPERTY AWAY, INTENDING TO
3 PERMANENTLY DEPRIVE THE OWNER OF IT AND KEEP IT FOR HIS OWN USE;
4 AND THIRD, THAT THE TAKING AND CARRYING AWAY WAS DONE WITH
5 VIOLENCE OR BY PUTTING THE OWNER OF THE PROPERTY IN FEAR OF
6 VIOLENCE; AND FINALLY, THAT THE DEFENDANT WAS ARMED WITH A DEADLY
7 WEAPON DURING THE ROBBERY. AND I DEFINED FOR YOU WHAT A DEADLY
8 WEAPON IS EARLIER, AND THAT DEFINITION WOULD APPLY TO ARMED
9 ROBBERY AS WELL.

10 THE NEXT CHARGE IS POSSESSION OF A FIREARM OF A PERSON UNDER
11 21. I WILL TELL YOU THAT SECTION 16-23-30 OF THE SOUTH CAROLINA
12 CODE PROVIDES THAT IT IS UNLAWFUL FOR A PERSON UNDER THE AGE OF
13 21 TO POSSESS OR ACQUIRE HANDGUNS WITHIN THIS STATE, AND THE
14 STATE WOULD HAVE TO PROVE THAT BEYOND A REASONABLE DOUBT TO
15 OBTAIN A CONVICTION FOR THAT.

16 THE FINAL CHARGE AND THE SIXTH CHARGE IS POSSESSION OF A
17 WEAPON DURING THE COMMISSION OR ATTEMPT TO COMMIT A VIOLENT
18 CRIME. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT MR.
19 FOWLER WAS IN POSSESSION OF A FIREARM OR VISIBLY DISPLAYED WHAT
20 APPEARED TO BE A FIREARM DURING THE COMMISSION OF A VIOLENT
21 CRIME. A FIREARM IS DEFINED AS A MACHINE GUN, AUTOMATIC RIFLE,
22 REVOLVER, PISTOL OR ANY WEAPON WHICH WILL OR IS DESIGNED TO OR
23 MAY BE READILY CONVERTED TO EXPEL A PROJECTILE. IN ORDER TO FIND
24 THE DEFENDANT GUILTY OF POSSESSION OF A WEAPON DURING THE
25 COMMISSION OF A VIOLENT CRIME, YOU MUST FIRST FIND THE DEFENDANT

JURY CHARGE

1 GUILTY OF EITHER COMMITTING A VIOLENT CRIME OR ATTEMPTING TO
2 COMMIT A VIOLENT CRIME.

3 I WILL INSTRUCT YOU FURTHER THAT ARMED ROBBERY, ASSAULT AND
4 BATTERY WITH INTENT TO KILL AND MURDER ARE DEFINED AS VIOLENT
5 CRIMES UNDER SOUTH CAROLINA CODE SECTION 16-1-60 AS WELL AS DRUG
6 TRAFFICKING, CARJACKING OR ATTEMPTED ARMED ROBBERY, AIDING AND
7 ABETTING, HOMICIDE, INFLECTING GREAT BODILY INJURY ON A CHILD,
8 ALLOWING GREAT BODILY INJURY TO BE INFLECTED ON A CHILD,
9 ACCESSORY BEFORE THE FACT OF ANY OF THESE CRIMES, AND CRIMINAL
10 SEXUAL CONDUCT FIRST AND SECOND DEGREE. THEY ARE ALL DEFINED AS
11 VIOLENT CRIMES UNDER THE LAW. YOU WILL HAVE TO DETERMINE FROM
12 THE EVIDENCE IF A VIOLENT CRIME OCCURRED.

13 NOW, LADIES AND GENTLEMEN, MR. FOWLER HAS RAISED THE DEFENSE
14 OF SELF-DEFENSE, AND I NEED TO INSTRUCT YOU ON THAT DEFENSE. AND
15 I WILL TELL YOU THAT SELF-DEFENSE IS WHAT IS KNOWN IN THE LAW AS
16 A COMPLETE DEFENSE, AND IF IT IS ESTABLISHED, YOU MUST FIND MR.
17 FOWLER NOT GUILTY.

18 THE STATE HAS THE BURDEN OF DISPROVING SELF-DEFENSE BY PROOF
19 BEYOND A REASONABLE DOUBT. IF YOU FIND FROM THE EVIDENCE THAT
20 SELF-DEFENSE HAS BEEN ESTABLISHED, MR. FOWLER SHOULD BE ACQUITTED
21 AND WILL BE REQUIRED TO BE ACQUITTED. IF YOU HAVE A REASONABLE
22 DOUBT OF MR. FOWLER'S GUILT AFTER CONSIDERING ALL OF THE
23 EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST
24 FIND HIM NOT GUILTY. ON THE OTHER HAND, IF YOU HAVE NO
25 REASONABLE DOUBT OF GUILT AFTER CONSIDERING ALL OF THE EVIDENCE,

JURY CHARGE

1 INCLUDING THE EVIDENCE OF SELF-DEFENSE, YOU MUST FIND HIM NOT
2 GUILTY. IF THE STATE DISPROVES EVEN ONE OF THE ELEMENTS OF SELF-
3 DEFENSE, THEN THE DEFENSE FAILS.

4 I WILL TELL YOU THAT THE FOLLOWING ELEMENTS ARE REQUIRED TO
5 ESTABLISH SELF DEFENSE. FIRST, IT MUST BE PROVEN OR SHOWN THAT
6 MR. FOWLER WAS WITHOUT FAULT IN BRINGING ON THE DIFFICULTY. IF
7 MR. FOWLER'S CONDUCT WAS THE TYPE THAT WAS REASONABLY CALCULATED
8 TO AND DID PROVOKE A DEADLY ASSAULT, MR. FOWLER WOULD BE AT FAULT
9 FOR BRINGING ON THE DIFFICULTY AND WOULD NOT BE ENTITLED TO AN
10 ACQUITTAL BASED ON SELF-DEFENSE.

11 SECOND, AND THE SECOND ELEMENT OF SELF-DEFENSE, IS THAT MR.
12 FOWLER WAS ACTUALLY IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY
13 INJURY OR THAT HE ACTUALLY BELIEVED HE WAS IN IMMINENT DANGER OF
14 DEATH OR SERIOUS BODILY INJURY. IF MR. FOWLER WAS ACTUALLY IN
15 IMMINENT DANGER, IT MUST BE SHOWN THAT CIRCUMSTANCES WOULD HAVE
16 WARRANTED A PERSON OF ORDINARY FIRMNESS AND COURAGE TO STRIKE THE
17 FATAL BLOW TO PREVENT DEATH OF SERIOUS BODILY INJURY. IF MR.
18 FOWLER BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS
19 BODILY INJURY, IT MUST BE SHOWN THAT A REASONABLY PRUDENT PERSON
20 OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF.
21 IN DECIDING WHETHER DEFENDANT ACTUALLY WAS OR BELIEVED HE WAS IN
22 IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY, YOU SHOULD
23 CONSIDER ALL THE CIRCUMSTANCES SURROUNDING THE INCIDENT. A
24 DEFENDANT DOES NOT HAVE TO SHOW THAT HE WAS ACTUALLY IN DANGER.
25 IT IS ENOUGH IF HE BELIEVED HE WAS IN IMMINENT DANGER AND A

JURY CHARGE

1 REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD
2 HAVE HAD THE SAME BELIEF. IN OTHER WORDS, THE DEFENDANT HAS THE
3 RIGHT TO ACT ON APPEARANCES, EVEN THOUGH HIS BELIEFS MAY HAVE
4 BEEN MISTAKEN. IT IS FOR YOU TO DECIDE WHETHER THE DEFENDANT'S
5 FEAR OF IMMINENT OR IMMEDIATE DANGER OF DEATH OR SERIOUS BODILY
6 INJURY WAS REASONABLE AND WOULD HAVE BEEN FELT BY AN ORDINARY
7 PERSON IN THE SAME SITUATION.

8 WORDS ACCOMPANIED BY HOSTILE ACTS MAY, DEPENDING ON THE
9 CIRCUMSTANCES, ESTABLISH SELF-DEFENSE, AND THREATS MADE BY A
10 VICTIM MAY BE CONSIDERED IN DETERMINING WHETHER A VICTIM ACTUALLY
11 WAS OR REASONABLY BELIEVED HE WAS IN IMMINENT DANGER.

12 INTOXICATION OF A VICTIM MAY BE CONSIDERED IN DECIDING
13 WHETHER THE DEFENDANT'S FEAR OF DEATH OR BODILY HARM WAS
14 REASONABLE.

15 AND THE FINAL ELEMENT OF SELF-DEFENSE IS THE DEFENDANT HAD
16 NO OTHER PROBABLE WAY TO AVOID THE DANGER OF DEATH OR SERIOUS
17 BODILY INJURY OTHER THAN TO ACT AS HE DID IN THIS PARTICULAR
18 INSTANCE. THE DEFENDANT, HOWEVER, HAS NO DUTY TO RETREAT IF BY
19 DOING SO THE DANGER OF BEING KILLED OR SUFFERING SERIOUS BODILY
20 INJURY WOULD INCREASE.

21 NOW, A PERSON CANNOT BE REQUIRED TO MAKE AN EXACT
22 CALCULATION OR MEASUREMENT AS TO THE DEGREE OR AMOUNT OF FORCE
23 THAT MAY BE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM.
24 THEREFORE, IN SELF-DEFENSE, THE DEFENDANT HAS THE RIGHT TO USE
25 THE FORCE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM AND IT

JURY CHARGE

1 DOES NOT HAVE TO BE LIMITED TO THE DEGREE OR AMOUNT OF FORCE USED
2 BY THE VICTIM. THE DEFENDANT HAS THE RIGHT TO USE SO MUCH FORCE
3 AS APPEARED TO BE NECESSARY FOR COMPLETE SELF-PROTECTION AND
4 WHICH A PERSON OF ORDINARY REASON AND FIRMNESS WOULD HAVE
5 BELIEVED TO BE NEEDED TO PREVENT DEATH OR SERIOUS BODILY HARM.
6 IF A DEFENDANT IS JUSTIFIED IN DEFENDING HIMSELF OR OTHERS IN
7 FIRING THE FIRST SHOT, THEN THE DEFENDANT IS ALSO JUSTIFIED IN
8 CONTINUING TO SHOOT UNTIL IT IS APPARENT THAT THE DANGER OF DEATH
9 OR SERIOUS BODILY INJURY HAS COMPLETELY ENDED.

10 NOW, LADIES AND GENTLEMEN, THAT COVERS THE ELEMENTS OF EACH
11 CRIME, THE SIX CHARGES. IT ALSO COVERS THE LAW OF SELF-DEFENSE,
12 WHICH WOULD BE A DEFENSE TO THE CHARGES OF MURDER, ASSAULT WITH
13 INTENT TO KILL, ASSAULT AND BATTERY WITH INTENT TO KILL.

14 AND I NEED TO TELL YOU IN CONCLUSION THAT YOU DON'T SERVE AS
15 JURORS IN THIS CASE TO BE PARTISANS OR ADVOCATES FOR EITHER SIDE.
16 YOU WERE CHOSEN BECAUSE BOTH SIDES BELIEVED YOU COULD BE FAIR AND
17 IMPARTIAL. THAT MEANS THAT YOU ARE TO DECIDE THIS CASE USING
18 YOUR GOOD COMMON SENSE AND YOUR LIFE EXPERIENCES AND BRING THOSE
19 THINGS TO BEAR ALONG WITH YOUR SENSE OF LOGIC AND REASON ON WHAT
20 YOU'VE HEARD DURING THE COURSE OF THIS TRIAL.

21 THIS TRIAL WAS NOT VERY LONG BY SOME STANDARDS, CERTAINLY
22 STANDARDS THAT ARE IN OTHER STATES WHERE YOU SEE TRIALS TAKE A
23 PROTRACTED AMOUNT OF TIME. BUT THAT DOESN'T MEAN THIS CASE IS
24 NOT IMPORTANT. IT'S OBVIOUSLY VERY IMPORTANT TO BOTH THE STATE
25 AND TO MR. FOWLER. THE IS BOTH SIDES' DAY IN COURT AND THEY

JURY CHARGE

1 CHOSE YOU TO DETERMINE THIS CASE BECAUSE THEY BELIEVED ALL OF YOU
2 COULD BE FAIR AND YOU COULD DECIDE THIS CASE WITHOUT ANY BIAS OR
3 PREJUDICE.

4 NOW, ONCE YOU DETERMINE THE FACTS FROM THE EVIDENCE, YOU
5 TAKE THE LAW I'VE JUST GIVEN YOU AND APPLY IT TO THOSE FACTS, AND
6 THEN YOU WILL BE ABLE TO REACH A VERDICT. AND LET ME TELL YOU
7 THAT IF YOU WENT TO THE DICTIONARY AND LOOKED UP THE WORD
8 "DELIBERATION," YOU WOULD SEE IT IS DEFINED AS A CAREFUL
9 CONSIDERATION, A WEIGHING UP WITH A VIEW TO A DECISION. AND I'VE
10 ALREADY TALKED TO YOU ABOUT THIS MATTER OF WEIGHING AND
11 EVALUATING THE EVIDENCE. WE CALL THEM DELIBERATIONS FOR A
12 REASON. YOU ARE TO CONSIDER THE EVIDENCE IN THIS CASE CAREFULLY
13 AND DELIBERATELY AND DISCUSS IT IN A CALM, THOROUGH AND COURTEOUS
14 MANNER.

15 AND REMEMBER, YOU'RE NOT PARTISANS OR ADVOCATES FOR EITHER
16 THE STATE OR MR. FOWLER. YOU ARE INSTEAD JUDGES, JUDGES OF THE
17 FACTS, AND YOUR SOLE INTEREST IS TO DETERMINE WHAT THE FACTS ARE
18 AND WHETHER THE STATE HAS MET ITS BURDEN OF PROOF.

19 SO EACH OF YOU NEEDS TO LISTEN TO YOUR COLLEAGUES AND FELLOW
20 JURORS' POINTS AND POINTS OF VIEW AND TALK THROUGH AND DISCUSS
21 THE EVIDENCE. AND YOU MUST HAVE A UNANIMOUS VERDICT AND EACH OF
22 YOU MUST DECIDE THE CASE FOR YOURSELF. BUT YOU SHOULD DO SO ONLY
23 AFTER YOU HAVE IMPARTIALLY CONSIDERED THE EVIDENCE AND TALKED IT
24 THROUGH AND CONSIDERED OTHER PEOPLE'S OPINIONS AND PERSPECTIVES.

25 NOW, THE GENIUS OF OUR JURY SYSTEM IS IT ALLOWS 12 PEOPLE

JURY CHARGE

1 FROM 12 DIFFERENT WALKS OF LIFE, 12 DIFFERENT BACKGROUNDS AND
2 LIFE EXPERIENCES TO COME TOGETHER AND DISCUSS THE EVIDENCE AND
3 ULTIMATELY REACH A VERDICT. AND, OF COURSE, WE CAN'T HAVE A
4 VERDICT UNLESS THE VERDICT IS UNANIMOUS, BUT DON'T SIMPLY DECIDE
5 THIS CASE IN ORDER TO GET IT OVER WITH OR BECAUSE OTHER JURORS
6 AGREE. REMEMBER THAT IN THE END YOUR VOTE IS JUST THAT, IT'S
7 YOUR VOTE AND NO ONE ELSE'S. AND YOU CERTAINLY ARE ENTITLED TO
8 YOUR OPINION. ALL 12 OF YOU ARE. AND DO NOT CHANGE AN HONEST
9 BELIEF ABOUT THE WEIGHT AND EFFECT OF THE EVIDENCE SIMPLY TO
10 REACH A VERDICT OR SOLELY FOR THE SAKE OF REACHING A UNANIMOUS
11 VERDICT.

12 NOW, MR. FOREMAN, YOU ARE ONLY AUTHORIZED TO SIGN THE
13 VERDICT FORM, WHICH WILL BE DELIVERED BACK TO YOU MOMENTARILY,
14 WHEN THE VERDICT IS UNANIMOUS. AND AS I'VE TOLD YOU, I CAN ONLY
15 COMMUNICATE WITH YOU IN WRITING. SO IF YOU NEED TO SEND ME A
16 NOTE, THAT'S THE ONLY WAY TO DO IT. I CAN ONLY COMMUNICATE IN
17 WRITING OR OUT HERE ON THE RECORD. AND PLEASE DON'T TELL ME HOW
18 THE JURY IS DIVIDED AT ANY TIME, IF THE JURY IS DIVIDED. I DON'T
19 NEED TO KNOW THAT, DON'T WANT TO KNOW THAT.

20 AND RECORD IS CLOSED. YOU'VE HEARD ALL THE EVIDENCE IN THE
21 CASE. THERE ARE NOT GOING TO BE ANY MORE WITNESSES. THERE ARE
22 NOT GOING TO BE ANY MORE EXHIBITS. YOU MAY HAVE HEARD REFERENCE
23 TO ITEMS DURING THE COURSE OF THIS TRIAL THAT AREN'T EXHIBITS.
24 AND IF THEY AREN'T BACK THERE WITH YOU, I CAN'T GIVE THEM TO YOU.

MATTERS AND MOTIONS

1 SO PLEASE UNDERSTAND THAT YOU ARE BOUND BY THE RECORD AT
2 THIS POINT AND PLEASE RETIRE NOW TO THE JURY ROOM AND DON'T --
3 WHEN YOU GET THE VERDICT FORM, IT'S GOING TO HAVE EACH ONE OF THE
4 SIX CHARGES SET FORTH, AND IT WILL HAVE YOU DETERMINE A VERDICT
5 OF GUILTY OR NOT GUILTY AS TO EACH CHARGE. PLEASE DON'T BE
6 INFLUENCED BY WHICH OPTION IS FIRST. I HAVE TO PUT ONE OPTION
7 FIRST AND I DON'T HAVE ANY SECRET MESSAGE I AM SENDING THERE OR
8 DON'T WANT TO GIVE IT ANY SIGNIFICANCE, BECAUSE IT DOESN'T MEAN
9 ANYTHING. IT'S SIMPLY ONE HAS TO GO FIRST.

10 SO PLEASE GO BACK TO YOUR JURY ROOM AT THIS TIME EXCEPT THE
11 ALTERNATES. IF Y'ALL WILL JUST STAY RIGHT OUTSIDE WITH MR.
12 LYNCH. AND YOUR SIGNAL YOU CAN BEGIN DELIBERATING WILL BE WHEN
13 YOU GET THE EXHIBITS AND THE VERDICT FORM. ALL RIGHT? THANK YOU
14 VERY MUCH.

15 (JURY EXITS COURTROOM AT 1:36 P.M.)

16 THE COURT: ALL RIGHT. ANY OBJECTIONS OR EXCEPTIONS---

17 MR. MOYER: NONE FROM THE STATE.

18 THE COURT: ---TO THE CHARGE OTHER THAN THE PREVIOUS
19 REQUESTS MADE, MR. CREECH?

20 MR. CREECH: JUST OTHER THAN THE PREVIOUS REQUESTS, JUDGE,
21 WE HAVE NO OTHER PROBLEMS, YOUR HONOR.

22 YOUR HONOR, IF I COULD, JUST THE OBJECTION I MADE DURING HIS
23 CLOSING ARGUMENT WOULD JUST BE THAT HE APPEALED TO THE PASSION OF
24 THE JURY AND SOME FACTS THAT MAY HAVE BEEN OUTSIDE OF THE RECORD.
25 I JUST WANTED TO PUT THAT ON THE RECORD. THANK YOU.

MATTERS AND MOTIONS

1 **THE COURT:** ALL RIGHT. SO I THINK THE ARGUMENT WAS FAIR
2 AND WITHIN THE INFERENCES THAT COULD BE DRAWN FROM THE RECORD.
3 AND I WILL TRY TO MAKE THE REQUESTS TO CHARGE PART OF THE RECORD.

4 IF Y'ALL WILL JUST INSURE THAT WE HAVE ALL OF THE EXHIBITS
5 SO THEY CAN GO AHEAD AND BE SENT BACK, AND I'LL LET YOU REVIEW
6 THE VERDICT FORM BEFORE WE SEND IT BACK AS WELL.

7 (PAUSE WHILE ATTORNEYS REVIEW EXHIBITS)

8 **THE COURT:** LOOK AT THE VERDICT FORM, IF YOU WOULD, MR.
9 CREECH AND MR. MOYER.

10 **MR. CREECH:** NO OBJECTIONS, YOUR HONOR.

11 **THE COURT:** ALL RIGHT. OKAY. ALL RIGHT. WE'LL BE AT EASE
12 UNTIL WE HEAR SOMETHING ELSE. THANK YOU VERY MUCH.

13 (DELIBERATIONS BEGIN AT 1:45 P.M.)

14 (AT EASE FROM 1:45 TO 2:36 P.M.)

15 (JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 2)

16 **THE COURT:** OKAY. WE HAVE A NOTE FROM THE JURY I'LL MAKE
17 COURT'S EXHIBIT 1. THERE ARE THREE QUESTIONS.

18 THE FIRST QUESTION: IS IT COMMON PRACTICE FOR DETECTIVE'S
19 TO SHRED NOTES?

20 I PROPOSE TO RESPOND BY SAYING I CAN'T ANSWER THAT QUESTION.
21 THE RECORD IS CLOSED.

22 SECOND: CAN WE SEE WORDING OF ELEMENTS? I DON'T KNOW WHICH
23 PART THEY ARE TALKING ABOUT.

24 I'M GOING TO ASK THEM WHICH SPECIFIC ELEMENTS THEY WANT.

25 THREE: WE NEED TO SEE THE STATEMENT OF DEFENDANT.

MATTERS AND MOTIONS

1 MS. KOFFSKEY LOOKED, AND I BELIEVE THE WRITTEN STATEMENT IS
2 IN EVIDENCE, ISN'T IT? THEY MAY BE TALKING ABOUT OTHER
3 STATEMENTS. I DON'T KNOW WHAT THEY'RE TALKING ABOUT.

4 SO LET'S TAKE THEM ONE AT A TIME. THE FIRST, IS IT COMMON
5 PRACTICE FOR DETECTIVES TO SHRED NOTES?

6 MR. CREECH: WE WOULD JUST ASK YOUR NORMAL CHARGE AND
7 THAT'S JUST A FACTUAL -- YOU'VE GOT TO PAY ATTENTION TO THE
8 EVIDENCE IN THE RECORD.

9 THE COURT: OKAY.

10 MR. MOYER: JUST THAT YOU CAN'T ANSWER THE QUESTION.

11 THE COURT: SECOND: CAN WE RECEIVE WORDING OF ELEMENTS?

12 MR. CREECH: YEAH, THERE'S -- I MEAN, I DON'T KNOW IF
13 THEY'RE ASKING FOR THE STATUTE TO GO BACK INTO THE JURY ROOM WITH
14 THEM, AND WE WOULD OBJECT TO THAT. I'M NOT SURE.

15 MR. MOYER: I HAVE NO PROBLEM WITH YOUR WRITTEN CHARGE
16 GOING BACK TO THE JURY.

17 THE COURT: ALL RIGHT. AND THIRD: WE NEED TO SEE THE
18 STATEMENTS OF THE DEFENDANT.

19 I DON'T KNOW WHAT THEY'RE ASKING FOR.

20 MR. MOYER: PROBABLY OUGHT TO GET THEM TO CLARIFY IT.

21 THE COURT: OKAY.

22 MR. MOYER: BECAUSE LIKE YOU SAID, THEY HAVE THE STATEMENT.

23 MR. CREECH: WELL, I WOULD JUST, YOU KNOW, MERELY EXPLAIN,
24 YOU'VE GOT ALL THE EVIDENCE. THE RECORD IS CLOSED.

25 MR. MOYER: PERHAPS WE BETTER MAKE SURE IT DIDN'T GET LOST

MATTERS AND MOTIONS

1 BETWEEN HERE AND THERE.

2 THE COURT: DIDN'T Y'ALL CHECK AND MAKE SURE---

3 MR. MOYER: WE CHECKED IT HERE BUT, I MEAN -- IT WOULD BE
4 STRANGE BUT...

5 CAN WE FIND OUT WHAT EXHIBIT NUMBER IT IS AND ASK THEM IF
6 THEY HAVE EXHIBIT NUMBER -- I THINK IT'S NUMBER 1.

7 COURT REPORTER: IT'S NUMBER 2. THE WAIVER OF RIGHTS IS
8 NUMBER 1.

9 MR. MOYER: CAN WE TELL THEM THE ONLY STATEMENT BY THE
10 DEFENDANT IN THE RECORD IS EXHIBIT NUMBER 2 AND---

11 MR. CREECH: WELL, I MEAN, THAT'S -- I MEAN, HE'S -- I
12 DON'T KNOW IF THAT'S EXACTLY ACCURATE. I MEAN, I DON'T KNOW IF
13 THEY'RE TALKING ABOUT THE WRITTEN STATEMENT OR IF THEY'RE TALKING
14 ABOUT VERBAL STATEMENTS. SO I WOULD OBJECT TO THAT INSTRUCTION.

15 THE COURT: OKAY. JUST BRING THEM ON BACK IN AND I'LL
16 ANSWER THE QUESTIONS AND INQUIRE FURTHER.

17 (OFF RECORD DISCUSSION REGARDING TRIAL DOCKET)

18 (JURY REENTERS COURTROOM AT 2:41 P.M.)

19 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I RECEIVED
20 YOUR NOTE AND YOU ASKED ME, FIRST OF ALL, "IS IT COMMON PRACTICE
21 FOR DETECTIVES TO SHRED NOTES?" AS I TOLD YOU RIGHT BEFORE YOU
22 DEPARTED THE COURTROOM TO BEGIN YOUR DELIBERATIONS, THE RECORD IS
23 CLOSED AT THIS POINT. IF THERE IS SOMETHING THAT'S NOT IN
24 EVIDENCE, I CAN'T GIVE IT TO YOU. I CAN'T -- THERE ARE NOT GOING
25 TO BE ANY MORE WITNESSES IN THE CASE. YOU'LL JUST HAVE TO RELY

MATTERS AND MOTIONS

1 ON YOUR MEMORY AND YOUR RECOLLECTIONS OF WHAT THE WITNESSES'
2 TESTIMONY WAS, AND OF COURSE YOU HAVE THE EXHIBITS BACK WITH YOU.

3 AND THE SAME GOES FOR YOUR THIRD QUESTION, WHICH IS, "WE
4 NEED TO SEE THE STATEMENT OF THE DEFENDANT." AGAIN, IF THERE WAS
5 SOMETHING REFERENCED DURING THE TRIAL THAT IS NOT AN EXHIBIT, THE
6 RECORD IS CLOSED. WE CAN'T GIVE YOU ANY EXHIBITS AT THIS POINT
7 AND WE CAN'T HAVE ANY MORE WITNESSES. SO YOU'LL JUST HAVE TO
8 RELY ON YOUR MEMORY AND YOUR RECOLLECTION.

9 THE SECOND QUESTION YOU ASKED ME WAS, "CAN WE SEE WORDING OF
10 ELEMENTS?" I JUST ASK YOU TO CLARIFY THAT FOR ME. I READ TO YOU
11 THE ELEMENTS OF THE CRIME FOR EACH SIX CHARGES AND I'M NOT SURE
12 WHICH ONES YOU'RE REFERRING TO. AND I ALSO READ TO YOU THE
13 ELEMENTS OF SELF-DEFENSE. SO IF YOU COULD JUST CLARIFY WHICH ONE
14 SPECIFICALLY YOU WANT, I'LL BE GLAD TO ANSWER THAT. JUST DO IT
15 IN WRITING. TAKE THAT BACK WITH YOU AND YOU CAN JUST WRITE IT ON
16 A NEW SHEET OF PAPER WOULD PROBABLY BE THE BEST WAY.

17 THANK YOU. ALL RIGHT.

18 (JURY EXITS COURTROOM AT 2:44 P.M.)

19 THE COURT: OKAY. SO THAT NOTE HAS BEEN MADE COURT'S
20 EXHIBIT 2, AND WE'LL JUST WAIT HERE A FEW MINUTES TO SEE IF WE
21 DON'T HAVE A NEW NOTE FORTHCOMING.

22 MR. MOYER: HAS IT BEEN ESTABLISHED, I MEAN, DO WE KNOW
23 THAT STATE'S EXHIBIT NUMBER 2 IS IN THE JURY ROOM?

24 THE COURT: WE CAN -- I DON'T MIND BRINGING THE EXHIBITS
25 BACK OUT AND LETTING Y'ALL LOOK AT THEM. I'M NOT GOING TO SEND

MATTERS AND MOTIONS

1 THE BAILIFF IN THERE TO LOOK FOR EXHIBIT NUMBER 2 SPECIFICALLY.
2 THAT MIGHT HIGHLIGHT IT FOR THEM.

3 (AT EASE FROM 2:45 TO 2:49 P.M.)

4 (JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 3)

5 THE COURT: MS. OWENS IS GOING TO COLLECT THE EXHIBITS AND
6 BRING THEM OUT HERE.

7 OKAY. IT SAYS -- THIS WILL BE COURT'S EXHIBIT 2. "IF
8 ALLOWED, WE WOULD LIKE TO SEE THE ELEMENTS OF SELF-DEFENSE AND
9 MURDER AND HAVE -- OR HAVE THEM REREAD TO US."

10 MR. CREECH: JUST THOSE TWO OFFENSES---

11 THE COURT: WELL---

12 MR. CREECH: ---OR FOR EVERYTHING?

13 THE COURT: RIGHT.

14 MR. CREECH: I DON'T OPPOSE, YOU KNOW, YOU JUST SENDING
15 YOUR CHARGE, YOUR COMPLETE CHARGE BACK, JUDGE, AS OPPOSED TO THE
16 STATUTES OR ELEMENTS OR ANYTHING LIKE THAT. THE STATUTE -- BUT I
17 DON'T HAVE A PROBLEM WITH YOUR ENTIRE CHARGE GOING BACK TO THE
18 CHARGE. THE ENTIRE CHARGE.

19 THE COURT: YOU MEAN THE WHOLE THING?

20 MR. CREECH: YEAH.

21 THE COURT: NO, I MEAN, YOU'RE TALKING ABOUT---

22 MR. CREECH: YES. FROM THE MINUTE YOU START AND YOU TOLD
23 THEM ABOUT THEIR DUTIES AND EVERYTHING UNTIL THE END AS OPPOSED
24 TO JUST KIND OF SELECTED OUT LEGAL PARTS OF, YOU KNOW, THE
25 ELEMENTS.

MATTERS AND MOTIONS

1 **THE COURT:** DO YOU WANT TO CHECK THE EXHIBITS THERE TO SEE...

2 (PAUSE WHILE ATTORNEYS CHECK EXHIBITS WITH BAILIFF)

3 (EXHIBITS RETURNED TO JURY ROOM AND DELIBERATIONS CONTINUE)

4 **THE COURT:** ALL RIGHT. WELL, I'M GOING TO SEND BACK THE
5 MURDER CHARGE AND THE PRESUMPTION OF INNOCENCE AND REASONABLE
6 DOUBT CHARGE. I'M NOT GOING TO GIVE THEM ANYTHING ELSE.

7 **MR. CREECH:** AND THE SELF-DEFENSE CHARGE, YOUR HONOR?

8 **THE COURT:** SELF-DEFENSE, YES. I'M SORRY. IT'S GOING TO
9 TAKE ME A MINUTE TO SEND THEM BACK A CLEAN COPY. MEANWHILE,
10 Y'ALL CAN BE LOOKING AT THIS MURDER CHARGE, PRESUMPTION OF
11 INNOCENCE AND REASONABLE DOUBT AND MAKE SURE IT'S OKAY. (PAUSE)

12 **MR. CREECH:** JUDGE, WE WOULD JUST RESTATE OUR PREVIOUS
13 OBJECTIONS.

14 (AT EASE FROM 2:54 TO 3:00 P.M.)

15 **THE COURT:** LOOK AT THIS SELF-DEFENSE CHARGE. (ATTORNEYS
16 REVIEW CHARGE) I'LL TAKE THAT FOOTNOTE OUT OF THERE. (ATTORNEYS
17 CONTINUE TO REVIEW CHARGE)

18 OKAY. I'VE GOT THE CHARGE. I'LL MAKE IT COURT'S EXHIBIT 4.
19 AND RECENT CASE LAW ALLOWS THE COURT IN ITS DISCRETION TO GIVE
20 THE JURY A WRITTEN CHARGE UNDER CERTAIN CIRCUMSTANCES, AND I FIND
21 THAT THE CIRCUMSTANCES HERE WOULD MAKE IT EASIER FOR THE JURY TO
22 DO ITS JOB OF APPLYING THE LAW. I UNDERSTAND THE OBJECTION YOU
23 HAVE, MR. CREECH, BUT I AM RESPECTFULLY GOING TO GO AHEAD AND
24 GIVE THE JURY THE CHARGE ON PRESUMPTION OF INNOCENCE, DEFINITION
25 OF REASONABLE DOUBT AND MURDER AND SELF-DEFENSE. OKAY. TAKE

MATTERS AND MOTIONS

1 THAT ON BACK TO THEM.

2 (MURDER, SELF-DEFENSE, PRESUMPTION OF INNOCENCE AND
3 REASONABLE DOUBT PORTIONS OF CHARGE GIVEN TO JURY MARKED AS
4 COURT'S EXHIBIT NUMBER 4)

5 (BAILIFF TAKES COURT'S EXHIBIT 4 BACK TO THE JURY ROOM)

6 (AT EASE FROM 3:07 TO 4:20 P.M.)

7 THE COURT: OKAY. WE HAVE A NOTE. I DIDN'T SEE YOU COME
8 IN, MR. MOYER. I'M SORRY. THE NOTE SAYS, PLEASE LET US SEE
9 ELEMENTS AND DEFINITIONS FOR ALL CHARGES. I WILL MAKE THAT A
10 COURT'S EXHIBIT AND IT'S GOING TO TAKE ME A MINUTE TO GET THAT
11 TOGETHER. BUT IS THERE ANY OBJECTION TO THAT OTHER THAN THE
12 PREVIOUS OBJECTIONS, WHICH I'LL BE GLAD TO INCORPORATE AT THIS
13 STAGE?

14 MR. CREECH: JUST AS YOU SAID, THE SAME OBJECTIONS.

15 THE COURT: ALL RIGHT. I'LL GET IT TOGETHER AND LET Y'ALL
16 LOOK AT IT BEFORE I SEND IT BACK. IT WILL TAKE ME A LITTLE BIT
17 OF TIME.

18 (JURY QUESTION MARKED AS COURT'S EXHIBIT NUMBER 5)

19 (AT EASE FROM 4:24 TO 4:33 P.M.)

20 (ATTORNEYS REVIEW CHARGE PREPARED BY THE COURT)

21 MR. CREECH: YOUR HONOR, WE JUST -- WE OBJECT TO THE -- YOU
22 KNOW, WE DON'T HAVE A PROBLEM WITH THE WHOLE CHARGE GOING BACK,
23 BUT WE JUST WOULDN'T WANT THE STATUTE -- THE STATUTORY LANGUAGE,
24 ET CETERA.

25 THE COURT: GIVE THEM THE WRITTEN CHARGES, ASSAULT AND

MATTERS AND MOTIONS

1 BATTERY WITH INTENT TO KILL, POSSESSION OF A WEAPON DURING
2 COMMISSION OF A VIOLENT CRIME, ARMED ROBBERY AND ASSAULT WITH
3 INTENT TO KILL. AS SOON AS I GET THE ASSAULT WITH INTENT TO
4 KILL, I'LL LET YOU LOOK AT THAT. I THINK THAT'S ONE Y'ALL HAVE
5 NOT LOOKED AT. (PAUSE) IF YOU WANT TO LOOK AT THIS ONE, ASSAULT
6 WITH INTENT TO KILL. (ATTORNEYS REVIEW DOCUMENT)

7 MR. CREECH: THANK YOU, JUDGE.

8 THE COURT: (PAUSE) OKAY. SO WE'LL MAKE THIS COURT'S
9 EXHIBIT 6.

10 (ASSAULT AND BATTERY WITH INTENT TO KILL, POSSESSION OF A
11 WEAPON DURING COMMISSION OF A VIOLENT CRIME, ARMED ROBBERY AND
12 ASSAULT WITH INTENT TO KILL PORTIONS OF CHARGE GIVEN TO JURY
13 MARKED AS COURT'S EXHIBIT NUMBER 6)

14 THE COURT: (PAUSE) THERE'S ONE MORE. IT'S POSSESSION OF
15 A FIREARM BY SOMEONE UNDER 21. I'M TYPING THAT UP AND WE'LL LET
16 Y'ALL LOOK AT IT.

17 (AT EASE FROM 4:38 TO 4:44 P.M.)

18 THE COURT: OKAY. Y'ALL WANT TO LOOK AT THIS ONE?
19 (ATTORNEY'S REVIEW CHARGE)

20 (POSSESSION OF A FIREARM BY A PERSON UNDER 21 CHARGE GIVEN
21 TO JURY MARKED AS COURT'S EXHIBIT NUMBER 7)

22 THE COURT: OKAY. SEND THAT ONE BACK PLEASE. IT'S COURT'S
23 EXHIBIT 7. OKAY. WE'LL BE AT EASY TILL WE HEAR SOMETHING ELSE.

24 (AT EASE FROM 4:44 TO 4:51 P.M.)

25 THE COURT: OKAY. I UNDERSTAND WE HAVE A VERDICT.

VERDICT

1 OBVIOUSLY I DON'T KNOW WHAT THE VERDICT IS, BUT I WISH TO
2 COMPLIMENT THE LAWYERS ON BOTH SIDES FOR THE EXCELLENT JOB THEY
3 DID FOR THEIR CLIENTS. I APPRECIATE EVERYONE'S DECORUM DURING
4 THIS TRIAL. IF ANYONE EVEN SENSES THEY MAY NOT BE ABLE TO
5 CONTROL THEIR EMOTIONS WHEN THE VERDICT IS READ, THE TIME TO
6 LEAVE IS RIGHT NOW, BECAUSE WE'RE NOT GOING TO HAVE ANY OUTBURSTS
7 AT THE PUBLISHING OF THE VERDICT. AND CONTEMPT CARRIES UP TO TEN
8 YEARS IN JAIL AND I DON'T WANT TO HAVE A SITUATION THAT I HAVE TO
9 TAKE CARE OF BECAUSE I WILL TAKE CARE OF IT.

10 OKAY. YOU CAN BRING THE JURY ON IN.

11 (JURY REENTERS COURTROOM AT 4:54 P.M.)

12 THE COURT: OKAY. MR. RICE, HAS THE JURY REACHED A
13 UNANIMOUS VERDICT, SIR?

14 MR. FOREMAN: PARDON ME, SIR?

15 THE COURT: HAS THE JURY REACHED A UNANIMOUS VERDICT?

16 MR. FOREMAN: YES, SIR, WE HAVE, YOUR HONOR.

17 THE COURT: OKAY. IF YOU WOULD HAND THAT VERDICT TO MR.
18 LYNCH, WE WILL RECEIVE IT AND PUBLISH IT, OKAY? (MR. FOREMAN
19 COMPLIES) (THE COURT REVIEWS THE VERDICT FORM)

20 OKAY. YES, MA'AM.

21 MADAME CLERK: YOUR HONOR, THESE ARE CASES 2007-GS-23-249,
22 248, 247, 246 AND 245, THE STATE OF SOUTH CAROLINA VERSUS ZACHARY
23 MARQUIS FOWLER.

24 NUMBER ONE, AS TO THE CHARGE OF MURDER, WE, THE JURY,
25 UNANIMOUSLY FIND THE DEFENDANT, ZACHARY MARQUIS FOWLER, GUILTY.

VERDICT

1 NUMBER TWO, AS TO THE CHARGE OF ASSAULT WITH INTENT TO KILL,
2 WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT, ZACHARY MARQUIS
3 FOWLER, GUILTY.

4 NUMBER THREE, AS TO THE CHARGE OF ASSAULT AND BATTERY WITH
5 INTENT TO KILL, WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT,
6 ZACHARY MARQUIS FOWLER, GUILTY.

7 NUMBER FOUR, AS TO THE CHARGE OF POSSESSION OF A WEAPON BY
8 ONE UNDER 21, WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT,
9 ZACHARY MARQUIS FOWLER, GUILTY.

10 NUMBER FIVE, AS TO THE CHARGE OF POSSESSION OF A FIREARM
11 DURING A VIOLENT CRIME, WE, THE JURY, UNANIMOUSLY FIND THE
12 DEFENDANT, ZACHARY MARQUIS FOWLER, GUILTY.

13 NUMBER SIX, AS TO THE CHARGE OF ARMED ROBBERY, WE THE JURY
14 UNANIMOUSLY FIND THE DEFENDANT, ZACHARY MARQUIS FOWLER, GUILTY.

15 THESE ARE SIGNED BY MR. RICE, OUR FOREPERSON.

16 LADIES AND GENTLEMEN OF THE JURY, IF YOU AGREE THESE ARE THE
17 VERDICTS YOU REACHED IN YOUR DELIBERATION ROOM, PLEASE RAISE YOUR
18 RIGHT HAND. (EACH JUROR RESPONDS BY RAISING HIS/HER RIGHT HAND)
19 THANK YOU.

20 THE COURT: OKAY. ANY MATTERS OR MOTIONS BEFORE THE JURY
21 IS DISCHARGED FROM THE STATE?

22 MR. MOYER: NO, YOUR HONOR.

23 THE COURT: FROM THE DEFENSE?

24 MR. CREECH: YOUR HONOR, WE'D JUST ASK THAT YOU POLL THE
25 JURY.

VERDICT

1 THE COURT: OKAY. YES, MA'AM. POLL THE JURY.

2 MADAME CLERK: ALL RIGHT. I WILL ASK YOU TWO QUESTIONS.

3 NUMBER ONE: IS THIS THE VERDICT YOU REACHED IN YOUR DELIBERATION
4 ROOM? NUMBER TWO: DO YOU STILL AGREE WITH THAT VERDICT?

5 WHEN I CALL YOUR NAME, PLEASE RESPOND BY YES OR NO.

6 RICHARD WILLIAMS?

7 JUROR NUMBER 146: YES.

8 MADAME CLERK: THANK YOU.

9 JOEL RICE?

10 JUROR NUMBER 105: YES.

11 MADAME CLERK: JAMES THOMAS?

12 JUROR NUMBER 135: YES.

13 MADAME CLERK: CARLA RICHARDS?

14 JUROR NUMBER 107: YES.

15 MADAME CLERK: CURTIS THOMASON?

16 JUROR NUMBER 157: YES.

17 MADAME CLERK: KATHERINE SCHMIDT?

18 JUROR NUMBER 118: YES.

19 MADAME CLERK: BONNIE SHNIPES?

20 JUROR NUMBER 124: YES.

21 MADAME CLERK: PETER MIERKE?

22 JUROR NUMBER 82: YES.

23 MADAME CLERK: ROBERT VANDERMEY?

24 JUROR NUMBER 138: YES.

25 MADAME CLERK: RUTH GARCIA?

VERDICT

1 JUROR NUMBER 38: YES.

2 MADAME CLERK: JUDY AXSOM?

3 JUROR NUMBER 151: YES.

4 MADAME CLERK: AND CAROL CLARK?

5 JUROR NUMBER 22: YES.

6 THE COURT: OKAY. ANY OTHER MOTIONS OR MATTERS BEFORE THE
7 JURY IS DISCHARGED FROM THE DEFENSE?

8 MR. CREECH: NOT FROM THE DEFENSE, YOUR HONOR.

9 THE COURT: ALL RIGHT. OKAY. LADIES AND GENTLEMEN, I WANT
10 TO THANK YOU FOR YOUR SERVICE THIS WEEK. THIS DOES CONCLUDE YOUR
11 SERVICE. WE HAVE ONE OTHER CASE THAT WE'RE GOING TO START
12 TOMORROW THAT A JURY WAS SELECTED ON THIS AFTERNOON. BUT YOU
13 DON'T HAVE TO BE INVOLVED IN THAT AND YOU DON'T HAVE TO COME BACK
14 AGAIN THIS WEEK.

15 YOU HAVE A THREE-YEAR EXEMPTION NOW FROM CIRCUIT COURT JURY
16 DUTY. I CAN'T DO ANYTHING ABOUT MAGISTRATE'S COURT OR FEDERAL
17 COURT OR CITY COURT, BUT AS FAR AS CIRCUIT COURT YOU HAVE A
18 THREE-YEAR EXEMPTION.

19 WE, AS I'VE SAID TO YOU BEFORE, UNDERSTAND WE TOOK YOU AWAY
20 FROM YOUR LIVES AND YOUR JOBS AND YOUR FAMILIES THIS WEEK AND PUT
21 YOU IN A POSITION WHERE YOU HAD TO DECIDE DIFFICULT ISSUES. WE
22 DON'T HAVE PROFESSIONAL JURORS IN THIS COUNTRY. INSTEAD, WE HAVE
23 TO RELY ON CITIZENS WHO HAVE BETTER THINGS TO DO THAN TO BE IN
24 COURT. BUT I THINK YOU WOULD AGREE THAT THERE IS NOTHING MORE
25 IMPORTANT THAN THE JURY SYSTEM, AND I HOPE THAT NONE OF YOU OR NO

SENTENCING

1 MEMBER OF YOUR FAMILY IS EVER IN A COURTROOM SITTING AT ONE OF
2 THESE TABLES WHETHER YOU'RE ON ONE SIDE OR THE OTHER. BUT IF YOU
3 EVER WERE IN THAT POSITION, I THINK IF YOU LOOKED ACROSS THE
4 COURTROOM INTO THE JURY BOX, THE LAST THING YOU WOULD WANT TO SEE
5 IS 12 PEOPLE WHO DIDN'T HAVE ANYTHING BETTER TO DO. SO WE
6 APPRECIATE YOU BEING HERE AND WE APPRECIATE THE SERVICE YOU
7 BROUGHT TO YOUR COMMUNITY. Y'ALL HAVE A GOOD REST OF THE WEEK.
8 THANK YOU VERY MUCH.

9 (JURY DISMISSED AT 4:58 P.M.)

10 THE COURT: OKAY. ARE YOU READY TO PROCEED WITH
11 SENTENCING?

12 MR. CREECH: YOUR HONOR, I'D LIKE TO MAKE A MOTION---

13 THE COURT: YES, SIR. CERTAINLY, MR. CREECH. I APOLOGIZE.
14 GO AHEAD. MAKE ANY POST-TRIAL MOTIONS YOU WOULD LIKE.

15 MR. CREECH: I JUST WOULD RENEW MY MOTION FOR DIRECTED
16 VERDICT AND INCORPORATE ALL THE MOTIONS THAT WERE MADE THROUGHOUT
17 THE TRIAL. I'D ALSO MOVE FOR A NEW TRIAL BASED ON INSUFFICIENCY
18 OF THE EVIDENCE. THOSE WOULD BE MY MOTIONS.

19 THE COURT: OKAY. I RESPECTFULLY DENY THE MOTIONS. I
20 THINK THERE WAS SUFFICIENT EVIDENCE FOR IT TO BE A JURY ISSUE,
21 AND THE JURY HAS SPOKEN. OKAY. (PAUSE)

22 MR. CREECH: YOUR HONOR, WE'RE READY TO PROCEED.

23 THE COURT: OKAY. YES, SIR.

24 ALL RIGHT. YES, SIR, MR. MOYER.

25 MR. MOYER: I HAVE NOTHING FURTHER. NONE OF THE VICTIMS OR

SENTENCING

1 THE OFFICER WISH TO ADDRESS THE COURT.

2 THE COURT: THE OFFICER DID NOT OR---

3 MR. MOYER: HE DOES NOT.

4 THE COURT: OKAY. ALL RIGHT.

5 YES, SIR, MR. CREECH.

6 MR. CREECH: YOUR HONOR, IN MITIGATION I'D OFFER MR. FOWLER
7 BEFORE YOUR HONOR IS 21 YEARS OF AGE. HE WAS 20 WHEN THIS
8 HAPPENED. HE HAS NO PRIOR RECORD. I THINK HE HAS ONE OTHER, I
9 THINK, CHARGE, BUT THERE WAS NEVER A CONVICTION. HE HAS NO PRIOR
10 RECORD. HE IS SUPPORTED HERE TODAY WITH HIS FAMILY. HIS AUNT
11 JANICE IS HERE. SHE'S BEEN WITH HIM THIS WHOLE TIME. AND ALL
12 HIS COUSINS, THEY'RE HERE IN SUPPORT OF HIM AS WELL. SO THIS IS
13 OBVIOUSLY A VERY PAINFUL DAY AND HE WOULD JUST ASK THAT YOU SHOW
14 SOME UNDERSTANDING ESPECIALLY AS CONSIDERS HIS YOUTH. (OFF)
15 RECORD WITH DEFENDANT)

16 THE COURT: YES, SIR, MR. FOWLER. ANYTHING YOU WANT TO
17 TELL ME?

18 DEFENDANT: TO BE HONEST, SIR, I DON'T REALLY KNOW WHAT TO
19 SAY. I DON'T KNOW.

20 THE COURT: (PAUSE) ALL RIGHT, SIR. I HAVE NOTICED
21 THROUGHOUT THE TRIAL THAT YOU DO HAVE SUPPORT FROM YOUR FAMILY,
22 AND THAT'S A VERY PRECIOUS THING. AND I ALSO WATCHED YOU TESTIFY
23 AND I KNOW YOU'RE A HIGH SCHOOL GRADUATE, AND YOU SEEM TO BE
24 ARTICULATE. THE FACTS OF THE CASE SPEAK FOR THEMSELVES, AND IT
25 IS SAD THE WRECKAGE OF LIVES THAT CONTINUE TO PILE UP IN THIS

SENTENCING

1 COUNTRY WHEN HANDGUNS AND DRUGS INTERACT. THE STATISTICS THAT
2 I'VE SEEN, 2004 THERE WERE 30,000 PEOPLE KILLED IN THIS COUNTRY
3 FROM FIREARMS, AND ALMOST 40 PERCENT OF THOSE WERE FROM MURDERS,
4 AND I WOULD SUSPECT A HIGH PERCENTAGE OF THOSE HAD DRUGS INVOLVED
5 AS WELL.

6 BUT GIVEN THE NATURE OF THIS ACTION, THE SENTENCE FOR THE
7 MURDER IS YOU'RE TO BE COMMITTED TO THE DEPARTMENT OF CORRECTIONS
8 FOR LIFE.

9 ON POSSESSION OF A WEAPON DURING A VIOLENT CRIME, IT'S FIVE
10 YEARS CONCURRENT.

11 THE ARMED ROBBERY IS 30 YEARS CONCURRENT.

12 THE ASSAULT AND BATTERY WITH INTENT TO KILL IS 20 YEARS
13 CONCURRENT.

14 ASSAULT WITH INTENT TO KILL IS 20 YEARS CONCURRENT.

15 POSSESSION OF A PISTOL CHARGE IS ONE YEAR CONCURRENT.

16 GOOD LUCK TO YOU, SIR.

17 MR. MOYER: YOUR HONOR, MAY IT PLEASE THE COURT.

18 THE COURT: YES, SIR.

19 MR. MOYER: IT'S MY UNDERSTANDING THAT ASSAULT WITH INTENT
20 TO KILL---

21 THE COURT: HOLD ON JUST A SECOND. WHAT WAS THAT, MR.
22 MOYER?

23 MR. MOYER: IT'S MY UNDERSTANDING THAT ASSAULT WITH INTENT
24 TO KILL CARRIES A MAXIMUM OF TEN YEARS.

25 MR. CREECH: TEN MAXIMUM.

SENTENCING

1 THE COURT: I'M SORRY. YOU'RE CORRECT. TEN YEARS ON THAT.

2 I'M SORRY. CONCURRENT. THANK YOU.

3 OKAY. THANK YOU VERY MUCH.

4 MR. CREECH: THANK YOU, YOUR HONOR.

5 (DEFENDANT'S VOIR DIRE MARKED AS COURT'S EXHIBIT NUMBER 8)

6 (STATE'S REQUESTS TO CHARGE MARKED AS COURT'S EXHIBIT NUMBER

7 9)

8 (DEFENDANT'S REQUESTS TO CHARGE MARKED AS COURT'S EXHIBIT

9 NUMBER 10)

10 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

11

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CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH 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 GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 15TH DAY OF AUGUST 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

APRIL 2, 2008



DAWN V. KOFFSKEY
COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)ZACHARY MARQUIS FOWLER #323544)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2012-CP-23-05182

APPLICATION FOR

POST-CONVICTION RELIEF

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 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 PERRY CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence GENERAL SESSIONS IN GREENVILLE, SC
3. Name(s) of co-defendant(s) (if any) DIANA TISDALE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 07-95-23-245 MURDER
 - (b) 07-95-23-246 ARMED ROBBERY AND POSSESSION OF A WEAPON DURING ON BACK →
 - (c) 07-95-23-247 ASSAULT WITH INTENT TO KILL
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) AUGUST 15, 2007 LIFE
 - (b) AUGUST 15, 2007 30 YEARS + 5 YEARS

4(B) THE COMMISSION OF A VIOLENT CRIME.

4(D) 07-95-23-248 ASSAULT AND BATTERY WITH INTENT TO KILL
4(E) 07-95-23-249 POSSESSION OF A PISTOL WHEN UNDER THE AGE OF 21

5(D) AUGUST 15, 2007 20 YEARS

5(E) AUGUST 15, 2007 1 YEAR

- (c) AUGUST 15, 2007 10 YEARS
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. COURT OF APPEALS
- ii. SUPREME COURT REGARDING THE PETITION FOR WRIT OF HABEAS CORPUS TO THE ^{ON BACK} —
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DENIED
- ii. DENIED
- iii. _____
- (c) the date of each such result:
- i. IM NOT 100% SURE OF WHEN THE COURT OF APPEALS DENIED MY CASE ^{ON BACK} —
- ii. OCTOBER 5, 2011
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

8(a)ii COURT OF APPEALS

613

8(c) i BUT MR. SAVITZ FILED THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT - COURT OF APPEALS ON [REDACTED] AUGUST 20, 2010 SO IT COULDN'T HAVE BEEN AFTER AUGUST 20, 2010 [REDACTED] NOR OUTSIDE OF THE ESTABLISHED GUIDELINE TIME FRAME HE HAD TO FILE IT.

- (a) I WAS ILLEGALLY SEIZED WHICH VIOLATES MY 4TH & 14TH ^{ON BACK} →
- (b) _____
- (c) _____

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

- (a) IN AFFECTIVE ASSISTANCE OF TRAIL COUNSEL & DIRECT APPEAL ATTORNEY
- (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? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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. DIRECT APPEAL - APPEALED TRAIL JUDGES JURY CHARGE INSTRUCTION
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. COURT OF APPEALS COLUMBIA, SC
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. DENIED
- ii. _____
- iii. _____

10(a) AMENDMENT CONSTITUTIONAL RIGHTS.

615

- iv. _____
- (d) the date of each such disposition:
- i. IM NOT 100% SURE OF THE EXACT DATE THE COURT OF APPEALS CAN BACK
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. N/A
- 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. N/A
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. N/A
- 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) ILLEGAL SEARCH & SEIZURE (4TH AMENDMENT VIOLATION)
- (b) _____
- (c) _____

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

13(D)1 DENIED FILE, BUT - - - DURING AUGUST 20, 2010 WHICH WAS IN COMPLIANCE
TO THE ESTABLISHED TIME FRAME HE HAD TO FILE IT 817

16(A) MY DIRECT APPEAL ATTORNEY STATED THESE ISSUES WERE NOT MY STRONGEST
SO HE WASNT GOING TO ARGUE THEM.

- (a) your arraignment and plea? _____
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

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. THOMAS M. CREECH JR. P.O. BOX 10411 GREENVILLE, SC 29603
 - ii. JOSEPH SAVITZ 1330 LADY STREET, SUITE 401 COLUMBIA SC 29201
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. BOND HEARING, PERLIMINARY HEARING, TRIAL
 - ii. COURT OF APPEALS, PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL
 - iii. _____

19. State clearly the relief you seek in filing this application:

SENTENCE REVERSAL, VACATED SENTENCE

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

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Zachary M. Foulk

SWORN to and subscribed before me this 3rd
day of January, 2014.

Steven T. McLauchly (L.S.)
Notary Public

My Commission Expires: January 7, 2016

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jackery M. Fowler
Applicant

SWORN or affirmed to and subscribed before me this

3rd day of November, 2011.

James T. McLauchlin
Notary Public

My Commission Expires: November 7, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	C.A. No.: 2012-CP-23-5182
Zachary Fowler,	)	
	)	
Applicant	)	
	)	AMENDED PETITION FOR
v.	)	POST CONVICTION RELIEF
	)	
State of South Carolina	)	
	)	ENTERED COMPUTER
Respondent.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2013 DEC 16 PM 5:20

The Defendant, by and through his counsel, Caroline M. Horlbeck, respectfully amends his Petition for Post Conviction Relief to add the following allegations:

1. Counsel was ineffective in that Counsel advised Applicant not to testify during the Jackson vs. Denno hearing in the trial of this case;
2. Counsel was ineffective in that Counsel failed to adequately and effectively challenge the voluntariness of Applicant's statement and the absence of coercion;
3. Counsel was ineffective in that Counsel failed to adequately and effectively challenge the legality of Applicant's detention;
4. Counsel was ineffective in that Counsel failed to adequately and effectively challenge the legality of Applicant's arrest warrants;
5. Counsel was ineffective in that Counsel failed to adequately and effectively challenge the legality of the State's search warrants;
6. Counsel was ineffective in that Counsel failed to adequately and effectively challenge Applicant's indictments;
7. Counsel was ineffective in that Counsel failed to incorporate the existence of two .22 live bullets found in victims' automobile into the defense in the trial of this case;

Copy to A.G.

Respectfully submitted,

Caroline Horlbeck

Caroline Horlbeck
Attorney for the Defendant
101 Whitsett Street
Greenville, S.C. 29601

Greenville, South Carolina

16th day of December, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-5182
COUNTY OF GREENVILLE	)	
	)	
Zachary Marquis Fowler,	)	
S.C.D.C. #323544,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed August 10, 2012, the Respondent would show this Court:

I.

The Applicant is currently incarcerated with the South Carolina Department of Corrections. The Greenville County Grand Jury indicted the Applicant at the January 2007 term of General Sessions for murder (2007-GS-23-0245), armed robbery and possession of a weapon during the commission of a violent crime (2007-GS-23-0246), assault with intent to kill (AWIK) (2007-GS-23-0247), assault and battery with intent to kill (ABIK) (2007-GS-23-0248), and possession of a pistol under 21 years of age (2007-GS-23-0249). Thomas M. Creech, Jr., Esquire, represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On August 15, 2007, the Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of life imprisonment for murder, thirty (30) years for armed robbery, ten (10) years for AWIK, twenty (20) years for ABIK, and one (1) year for possession of a pistol under age 21.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of

Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Fowler, Op. No. 2010-UP-372 (S.C. Ct. App. filed July 21, 2010). By order dated October 5, 2011, the South Carolina Supreme Court denied the subsequent petition for writ of certiorari.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Department of Corrections records, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges his conviction was unlawful for the following reasons:

1. Ineffective assistance of trial counsel.
 - a. Failed to adequately challenge Applicant's seizure under the 4th and 14th Amendments.
2. Ineffective assistance of appellate counsel.
 - a. Failed to effectively challenge Applicant's seizure.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441,

442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985). In analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009); Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (noting courts apply the Strickland test to determine if appellate counsel was deficient for failing to raise an issue and whether the defendant was prejudiced from the failure to raise the issue). Appellate counsel, however, is not required to raise every non-frivolous claim, but instead may select among them in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000).

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

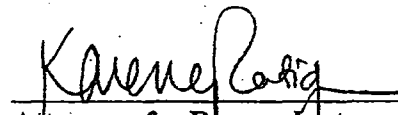
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

March 26, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2012-CP-23-5182

ZACHARY MARQUIS FOWLER, 323544)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

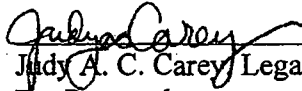
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Zachary Marquis Fowler, 323544
 Perry Correctional Institution
 430 Oaklawn Road
 Pelzer SC 29669**

DATED this 26th day of March, 2013.


 Judy A. C. Carey Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

ZACHARY FOWLER,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2012-CP-23-5182

DECEMBER 17, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

CAROLINE HORLBECK, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

Zachary Fowler -vs- State of South Carolina (2012-CP-23-5182)
Index

2

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Certificate of Reporter

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Zachary Fowler -vs- State of South Carolina (2012-CP-23-5182)
Exhibit List

3

PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
P-1	Arrest warrants	21	
P-2	Indictments	23	
P-3	Letter from Paul Wickensimer to Zachary Fowler dated 11/22/11	36	38

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1 **DECEMBER 17, 2013.**

2 (WHEREUPON, Court convened with all parties present
3 and the following proceedings were had.)

4 THE COURT: All right. Ms. Ratigan.

5 MS. RATIGAN: Thank you, Your Honor. May it
6 please the court: Last case of the day is Zachary
7 Fowler versus the State of South Carolina. The docket
8 number is 2012-CP-23-5182. Mr. Fowler was indicted for
9 murder, armed robbery, possession of a weapon during the
10 commission of a violent crime, assault with intent to
11 kill, assault and battery with intent to kill,
12 possession of a pistol by one under twenty-one years of
13 age. He was represented on these charged by Mr. Creech.

14 The case was brought to trial in August of 2007.
15 Mr. Fowler was found guilty of the charges as indicted.
16 Judge Hill sentenced him to concurrent sentences of life
17 for murder, thirty years for armed robbery, five years
18 for possession of a weapon during the commission of a
19 violent crime, ten years for assault with intent to
20 kill, twenty years for assault and battery with intent
21 to kill and one year for the possession of a pistol by
22 one under twenty-one years of age. A notice of appeal
23 was filed and perfected. The Court of Appeals affirmed
24 the convictions and sentences.

25 In July of 2010, appellate counsel then filed a

Zachary Fowler -vs- State of South Carolina (2012-CP-23-5182)
Thomas M. Creech, Jr. - Direct Examination by Ms. Horlbeck

5

1 subsequent petition for Writ of Certiorari at the State
2 Supreme Court. That petition was denied in October of
3 2011. This application was timely filed and the state
4 if ready to proceed.

5 THE COURT: All right. Ms. Horlbeck.

6 MS. HORLBECK: Judge, we would call Mr.
7 Creech.

8 THE COURT: Come around and be sworn, Mr.
9 Creech.

10 THE CLERK: Mr. Creech, please place your left
11 hand on the bible and raise your right hand.

12 You do solemnly swear or affirm that the testimony
13 you're about to give in this case will be the truth, the
14 whole truth and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you. Please state your full
17 name for the record.

18 THE WITNESS: Thomas M. Creech, Jr.

19 THE CLERK: Thank you. You may be seated.

20 THOMAS M. CREECH, JR.,

21 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MS. HORLBECK:

24 Q. Mr. Creech, do you recall representing Mr. Fowler
25 in the trial of this case?

1 A. I do, yes.

2 Q. Okay. And I'm going to direct your attention to
3 some -- specifically the *Jackson versus Denno* motion
4 that you made pretrial. Do you recall that?

5 A. I do, yeah.

6 Q. Okay. All right. And do you recall Detective
7 Conroy testifying?

8 A. I do, vaguely. Yeah.

9 Q. And if you don't recall something, let me know and
10 I'll be happy to let you review the transcript?

11 A. Okay. That'll be great.

12 Q. Okay. Do you recall -- I'm going to direct your
13 attention specifically to some of the behaviors that
14 Detective Conroy noticed when he knocked on the door and
15 the door was opened. Do you recall that?

16 A. I do vaguely. Yes.

17 Q. Okay. Do you recall Mr. -- or Detective Conroy
18 testifying that Mr. Fowler seemed nervous and jittery?

19 A. If that's what's in the transcript. I don't have
20 an independent recollection of Detective Conroy
21 testifying to that. But if it's in the transcript I'll
22 be happy to look at it.

23 Q. All right.

24 A. And if he does say that in the transcript, I
25 certainly don't doubt it.

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7.

1 Q. Okay. I'm going to hand you the transcript. When
2 I get back to the table, I'll tell you what page I'm
3 looking at. I'm looking at page forty-nine, and it
4 starts, I believe, around line 6.

5 A. Okay.

6 Q. All right. Detective Conroy testified that Mr.
7 Fowler seemed nervous and jittery. Is that what the
8 transcript said?

9 A. It does, yeah.

10 Q. All right. And did he also testify that Mr.
11 Fowler looked as if he wanted to run? On line 10?

12 A. Yes, it does.

13 Q. And that Mr. Fowler was looking around, on line
14 12?

15 A. Yes.

16 Q. And also that Mr. Fowler was shaking, on line 12?

17 A. Yes.

18 Q. And to your recollection of the trial, were those
19 some of the reasons that Detective Conroy outlined as
20 his reason for placing Mr. Fowler in his patrol vehicle?

21 A. I believe so. Yes.

22 Q. Okay.

23 A. I'll have to look and see what he says.

24 Q. All right. Yeah, look and see what it says.

25 A. That seems to indicate that, yes, that was the

1. reason why he took him into custody.

2 Q. Okay. All right. And turning to page 73 in that
3 same volume, volume one. All right. And line 4, when
4 detective Conroy placed Mr. Fowler in the patrol
5 vehicle, was Mr. Fowler handcuffed?

6 A. Yes.

7 Q. All right. And also, on line -- I mean, on page
8 73, was there a detective that was standing beside the
9 patrol car that Mr. Fowler had been placed inside of?

10 A. Yeah. It was Detective Justice. And I asked him
11 -- in the Jackson Denno hearing, I asked, at line 6, my
12 question was, he, meaning Zack, was definitely not free
13 to leave; is that right? And the answer was, that's
14 correct.

15 Q. Right. Thank you. I was getting ready to point
16 that out. All right. And do you recall -- I'm going to
17 turn your attention to the subject of a photo line-up.
18 Do you recall that being one of the reasons Detective
19 Conroy placed Mr. Fowler in the patrol vehicle? I'm
20 looking at page -- well, actually, it's in a number of
21 pages, but I'm looking at page 73, lines 8 and 9.

22 A. Uh-huh (affirmative). Yeah, that's what he says.

23 Q. Okay. All right. And do you recall that another
24 detective was actually going to assemble that line-up?

25 A. I don't have any independent recollection. But

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9

1 that, you know, makes sense to me that that's what he
2 would have done.

3 Q. All right. I'm looking at page 69, lines 16 and
4 17.

5 A. Yeah. That's what it says.

6 Q. All right. And was it Detective -- do you
7 remember the detective's name? Was it Bradford? Does
8 that ring a bell, the name of the detective that was
9 actually going to assemble that line-up? If you don't,
10 you can look on page 70, lines 3 and 4.

11 A. Yeah, Bobby Bradford.

12 Q. Okay. And ultimately that line-up was never
13 assembled and never shown to any victims; is that
14 correct?

15 A. According to the transcript, apparently it was
16 never shown to the victims.

17 Q. Okay. And I think Detective -- do you recall
18 Detective Conroy testifying that the line-up of the --
19 the line-up that was supposed to be assembled never
20 actually made its way -- it was never actually assembled
21 and it never showed up? And that's on line -- I mean,
22 page 80, line 14.

23 A. He says, according to the transcript, Detective
24 Conway testified, we never called it off; it just never
25 showed up.

1 Q. All right. It being the photo line-up?

2 A. Yeah. And then it says, and then he pointed the
3 gun out to us and I figured there was no reason to show
4 the photo line-up.

5 Q. All right. And ultimately, because of the
6 pointing out of the gun, the line-up was never assembled
7 and never shown to the victims?

8 A. Uh-huh (affirmative). That's correct. Yes. I'm
9 sorry. Yes.

10 Q. Okay. Now, do you recall the circumstances
11 surrounding Detective Conroy's giving the -- giving Mr.
12 Fowler his *Miranda* rights? I'm looking -- start off on
13 page 73, line 13.

14 A. Yeah, it says Detective Conroy testified, when I
15 went back out there, he said he wanted to talk.

16 Q. Okay.

17 A. I advised him -- that is the time I advised him of
18 his rights.

19 Q. Okay. And Detective Conroy didn't ask Mr. Fowler
20 any specific questions; is that correct? And I'm
21 continuing on to page 74, lines 17 through 18?

22 A. That's correct. He did not.

23 Q. And I think, again, on page 74, line 5, Detective
24 Conroy testified that he didn't know what Mr. Fowler
25 wanted to talk about?

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11

1 A. That's what it says, yeah. I didn't know what he
2 -- apparently on page 74, line 3 of the transcription,
3 he said, I -- he meaning Zachary, he said, I want to
4 talk. What did he mean, I want to talk about.

5 Detective Conroy states, I don't know what he wanted to
6 talk about. He asked what was going on and I advised
7 that they were getting a search warrant for his vehicle
8 and residence. And he said, you don't need one. I
9 said, I'm going to advise you of your rights. And then
10 the next question is, and you had already called
11 Detective Mize at that point to get the search warrant?

12 Answer, line 11, page 74, that is correct.

13 Q. Okay. So Detective Conroy didn't himself obtain
14 the search warrant; is that correct?

15 A. No. Apparently, according to this, he had called
16 another detective to go do that while, I guess,
17 Detective Conroy stayed at the scene.

18 Q. Okay. And that other Detective that was called
19 was Detective Mize; is that correct?

20 A. Yes.

21 Q. All right. And the reason for the search warrant
22 was that Detective Conroy had seen marijuana and bullets

23 and that kind of thing, and also a car that matched the
24 car described by the victims in front of the trailer?

25 A. That is -- I don't have a copy of the search

- 1 warrant in front of me, so I don't really know.
- 2 Q. Does that sound right? I mean, if it's ---
- 3 A. I just don't have an independent recollection.
- 4 Q. Okay. Turn to page 72, lines 8 through 16.
- 5 That's where I'm referring to.
- 6 A. Yeah. So you saw bullets in -- the question to
- 7 Detective Conroy is: So you saw bullets in a box and
- 8 marijuana, and based on that what did you get the search
- 9 warrant for? Based on -- Answer: Based on that for
- 10 other evidence involved in the homicide investigation.
- 11 And he said -- next question was: And it was based just
- 12 on seeing bullets and marijuana in the house; is that
- 13 correct? Answer: No, sir, that's not all. There was
- 14 the evidence in reference to the homicide as well. The
- 15 location, the vehicle matching the description and --
- 16 Question: And you related that information to which
- 17 officer? Answer: Monty Mize, Detective Mize.
- 18 Q. Okay.
- 19 A. And then question: Did you see any other
- 20 evidences besides the marijuana? Answer: I think there
- 21 was some other narcotics on the table with the
- 22 marijuana.
- 23 Q. All right. So did Detective Conroy tell Detective
- 24 Mize what to put in the search warrant application?
- 25 A. That's, I guess, what happened. Yes.

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13

1 Q. Okay. I mean, Detective Conroy didn't get the
2 search warrant; did he?

3 A. No, he didn't. No, no. No, he didn't.

4 Q. He told Mize to get it; correct?

5 A. Yeah. That's right.

6 Q. Okay. To your recollection do you recall whether
7 or not Mr. -- or Detective Mize told the issuing judge
8 that the information in the search warrant was actually
9 second-hand and coming from Detective Conroy and not
10 Mize?

11 A. I don't know that.

12 Q. Okay. I'm looking at page 153, lines 10 through
13 14.

14 A. Yeah, he did. They asked Detective Mize at the
15 hearing, did you tell the magistrate all that
16 information had come from Detective Conroy? And
17 Detective Mize says, I don't know that I actually told
18 him that. He asked if that's -- again for me to swear
19 that I knew this would be true and I was relaying the
20 facts from Detective Conroy.

21 Q. Okay. All right. Do you recall whether or not
22 the day in question, the day that Mr. Fowler was placed
23 in the patrol car, was it a hot day according to
24 Detective Conroy?

25 A. I believe it was, yes.

1 Q. Okay. And was Detective Conroy able to recall
2 whether or not the air conditioning was on inside the
3 trailer? Do you know that? And if you don't, I'm
4 looking on page 68.

5 A. Yeah. I can't remember, but it does -- I think it
6 was hot. I don't know if it was -- I know that heat was
7 a factor ---

8 Q. Okay.

9 A. --- in all this.

10 Q. Is that one of the reasons Detective Conroy says
11 he put Mr. Fowler in the car?

12 A. That's what he, that's what he says, yeah.

13 Q. Okay. But he couldn't recall if the AC -- if the
14 air conditioning was on in the trailer? And I'm looking
15 at page 68, lines 19 through 20?

16 A. Right. He said he doesn't recall if the air
17 conditioning was on in the trailer or not, when I asked
18 him that question.

19 Q. And do you recall whether or not Detective Conroy
20 wanted to keep Mr. Fowler and his girlfriend, Valencia
21 Sullivan, separate? That's another reason why he put
22 Mr. Fowler in the car?

23 A. Yes. It does say that on page 69, line 7.

24 Q. Okay. All right. Now, in Mr. Fowler's statement
25 when he made it, he actually asserted self-defense;

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15

1 isn't that correct?

2 A. Yes, he did.

3 Q. Do you recall the incident happening around one
4 thirty in the afternoon?

5 A. I believe that's correct. Yes.

6 Q. And Mr. Fowler was actually placed in the
7 interview room at five thirty in the afternoon that same
8 day?

9 A. I don't know that, but if you state that I have no
10 reason to ---

11 Q. Okay.

12 A. --- dispute it.

13 Q. I'm looking at page 54, lines 8 through 9.

14 A. Okay. Yes.

15 Q. Okay. And at the time of the making of that
16 statement, do you recall whether or not Mr. Fowler was
17 actually under arrest? And that's on page 54, lines 14
18 and 15?

19 A. He was in custody, but they did not have an arrest
20 warrant.

21 Q. Okay. But he was handcuffed to the chair?

22 A. Yes. He was in custody.

23 Q. Okay. All right. And did you and Mr. Fowler
24 discuss him -- the possibility of him testifying at --
25 during the *Jackson v. Denno* hearing?

1 A. I mean, my -- I think we would have. Yes.

2 Q. Okay. Do you have any specific recollection of
3 what your advice was?

4 A. My general thought was the statement -- he lays
5 out self-defense in his statement. So, you know, it
6 wasn't going to be necessarily a bad thing if they read
7 the statement to the jury. But the other thing is, from
8 a strategy standpoint, I would not want -- I don't like,
9 and I would not have wanted Zack to take the stand in
10 the *Jackson v. Denno* hearing and they just get a preview
11 of his testimony. You know, the prosecution would then
12 know exactly what he's going to testify to at the trial.

13 Q. Uh-huh (affirmative).

14 A. That just gives them an advanced -- you know, a
15 practice run, you know, for the trial and gives them an
16 advantage, you know.

17 Q. Okay.

18 A. So that was my trial strategy for not calling him
19 during the *Jackson v. Denno* hearing.

20 Q. Do you think he would have done himself any good
21 if he had testified during that hearing?

22 A. Probably not.

23 Q. Okay. All right. And I'm going to ask you a few
24 questions about the trailer. There were actually three
25 of them -- three people living inside that trailer; is

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17

1 that correct?

2 A. That's, I think, what I recall, you know. That
3 was -- I think staying, living.

4 Q. Staying?

5 A. Yeah. I mean, I would have to, you know, look at
6 the definition of residing and apply the evidence and
7 facts to that definition. But I think there were three
8 people were staying there, three people, I think.

9 Q. Okay. Mr. Fowler was one of the people -- one of
10 the persons staying inside the trailer?

11 A. I believe he admitted staying there. Yeah.

12 Q. His girlfriend Valencia Sullivan, was she also
13 staying?

14 A. I believe so.

15 Q. And Nikki Tisdale, she was also staying inside the
16 trailer?

17 A. I believe so.

18 Q. All right. Now, to your knowledge was Detective
19 Conroy ever able to identify the owner of the trailer
20 before he started ---

21 A. I don't know if he ever was or not.

22 Q. Okay. Well, you don't know?

23 A. I don't think he, I don't think he did, but I
24 don't know.

25 Q. Okay. I'm looking at page 67, lines 24 through

1 says, Detective Conroy asked me to stay there with her
2 while he went outside. I assumed he was speaking with
3 the other individual that was in the trailer.

4 Q. Okay. And he was -- Detective or Officer Hamlett
5 was inside the trailer with Valencia, Ms. Sullivan?

6 A. Yes.

7 Q. Okay. All right. And do you recall Valencia's
8 statement being that Mr. Fowler had fired the shots?

9 A. Yes.

10 Q. All right. Do you recall whether or not Detective
11 Hamlett heard her say those things?

12 A. I don't recall.

13 Q. All right. I'm looking at page 131, lines 3
14 through 5.

15 A. Do you remember her saying anything like he's the
16 one that shot them, or something like that? No.

17 Q. Okay. All right. Did you have a chance to review
18 the arrest warrants in this case?

19 A. Prior to, prior to -- or during my representation?

20 Q. Right. Yes.

21 A. Yes.

22 Q. Okay.

23 A. I'm sure I would have.

24 Q. All right. Do you recall whether or not the
25 arrest warrants were signed by the issuing judge?

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21

1 A. I don't, I don't recall whether they were or not.

2 MS. HORLBECK: I beg the Court's indulgence
3 while I grab these.

4 Q. Mr. Creech, I'm just going to hand you these. I
5 think everybody's got a copy of it, and the Judge has a
6 copy.

7 MS. HORLBECK: Can we just mark these as a
8 packet, Applicant's 1?

9 (WHEREUPON, Plaintiff Exhibit Number 1 was marked
10 for identification.)

11 Q. Okay. Mr. Creech, I think Applicant's 1 has some
12 duplicates in there. But can you take a look at those
13 warrants and see if any of those have been signed by the
14 issuing judge?

15 A. No, they have not. These warrants appear ---

16 Q. Look at them all, because like I said, I think
17 there are some duplicates in there.

18 A. Yeah, what's been -- what you're showing to me as
19 Plaintiff's Exhibit Number 1 is a packet and there is no
20 signature of a judge.

21 Q. Okay. Did you make any motions pretrial or
22 otherwise during the trial that the arrest warrants

~~23 weren't legal because they lacked an issuing judge's~~
24 signature?

25 A. No, I did not. From looking through the

1 transcript, that motion would not be contained in the
2 transcript. I did not make that motion.

3 Q. Okay. Do you think that would have changed
4 anything if you had made that motion?

5 A. It's unlikely normally because usually the
6 defendant is tried on an indictment that's been
7 presented to the grand jury. The grand jury signs the
8 charging document that the defendant is tried on and it
9 then gives the court jurisdiction over the case. So,
10 you know, the judge failing to sign the arrest warrant
11 probably would have had no effect on anything in the
12 case.

13 Q. Okay.

14 A. I mean, there, you know, maybe -- like I say, we
15 make that motion, maybe he gets let out of jail for some
16 reason for that, but he would have been indicted anyway.
17 That would not have ended the case or made Mr. Fowler
18 not guilty or something like that.

19 Q. Okay. While we're on the subject of the
20 indictment, the date of arrest was actually June the
21 7th, 2006; does that sound about right?

22 A. It was served on him on June the 7th, 2006,
23 according to this Plaintiff's Exhibit Number 1 that I'm
24 looking at.

25 Q. Okay. And do you recall the date he was indicted?

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23

1 Was that around the -- during the January term of 2007?

2 A. I would just have to defer to the indictments.

3 Q. Okay.

4 MS. HORLBECK: Mark this packet as Applicant's.

5 2, just for identification purposes.

6 (WHEREUPON, Plaintiff Exhibit Number 2 was marked
7 for identification.)

8 Q. All right. Mr. Creech, I'm handing you Petitioner
9 -- or Plaintiff's 2 and just ask that you take a look at
10 those and tell us what they are?

11 A. These appear to be the indictments.

12 Q. Okay. And were those ---

13 A. He was indicted January 3rd, 2007.

14 Q. Okay. All of them, I'm assuming?

15 A. I'll have to look and see.

16 Q. Okay.

17 A. Yeah, all of them.

18 Q. I'm sorry. I missed ---

19 A. Yes. All of them.

20 Q. Okay. All right. Now, there were some -- do you
21 recall whether or not there were some 22 live bullets
22 actually found in the victim's car?

~~23 A. I believe that's correct. Yeah.~~

24 Q. Okay. Did you make, did you make any argument
25 about that in your closing argument?

1 A. I don't recall. I'd just have to look in the
2 transcript.

3 Q. Do you want a chance to ---

4 A. I mean, if you say I did or if you say I didn't,
5 it's not in the transcript, but I'll accept what's in
6 the transcript. I just can't recall off the top of my
7 head.

8 Q. If you'll look at your closing argument beginning
9 on page 535, line 8. If you would just review that and
10 see if that -- there was an argument about that. If
11 there was I may have missed it.

12 A. Yeah. I mean, I'm scanning this -- my closing
13 argument. I don't see where I did. I would defer to
14 the transcript to be the source, the official source.
15 If it's not in there, then I didn't make it.

16 Q. Okay. All right. That's all I have. Please
17 answer any questions that Ms. Ratigan may have.

18 MS. HORLBECK: I'm just going to leave these
19 up here.

20 **CROSS-EXAMINATION**

21 **BY MS. RATIGAN:**

22 Q. Mr. Creech, were you appointed or were you
23 retained in this case?

24 A. I was appointed by the court.

25 Q. And did you file the usual discovery motions?

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25

1 A. I did, yes.

2 Q. And did you receive the discovery from the state?

3 A. I did, yes.

4 Q. Did you review those materials with your client?

5 A. I did, yes.

6 Q. Did that include a written statement that he had
7 given to Investigator Conroy?

8 A. Yes. Certainly.

9 Q. And were you aware that Mr. Fowler had also given
10 oral statements to Investigator Justice and to Sergeant
11 Miller?

12 A. Yes. I believe so.

13 Q. And you reviewed all of those with Mr. Fowler?

14 A. Yes. I would have when I reviewed the discovery.

15 Q. And would you have reviewed with him the effect
16 that the gun being found in his residence would have had
17 upon your case?

18 A. That would have -- I certainly would have made
19 that -- or talked about that in the course of my
20 representation of him.

21 Q. And were you aware that the assault with intent to
22 kill victim had identified Mr. Fowler or did that just
~~23 come up at trial; do you recall?~~

24 A. I don't recall.

25 Q. But he did identify your client as the shooter at

1 trial?

2 A. Yes, I believe so.

3 Q. And were you aware of a statement from a Mary Shaw
4 that identified the shooter's car being very similar to
5 your client's car?

6 A. I believe so. Yes.

7 Q. Okay. And did you review with Mr. Fowler kind of
8 his version of events, his version of what had happened?

9 A. Yes.

10 Q. And what was your trial strategy going into this
11 trial?

12 A. It was -- well, we had a two-prong approach.
13 First, we were -- trial strategy, the majority, the
14 primary trial strategy was that he acted in self-
15 defense. And that this was an act that took place kind
16 of in the heat of the moment upon what we believe
17 sufficient provocation. So that's why we asked the
18 court to instruct on voluntary manslaughter, but the
19 court declined. So at that point, obviously, the case
20 -- but the case was a self-defense case.

21 Q. Okay. You said it was a two-prong. Was that to
22 argue self-defense and then voluntary? Was that the
23 second ---

24 A. Yes.

25 Q. Okay. And you obviously would have reviewed the

1 self-defense theory, the elements, with your client?

2 A. Yes. Yes, I did. I provided the elements of
3 self-defense in writing to Mr. Fowler while he was
4 incarcerated at the county jail.

5 Q. Did Mr. Fowler ever make bond; do you remember?

6 A. I do not think that he did. No.

7 Q. So you would have been meeting with him down at
8 the jail?

9 A. Yes.

10 Q. Did you have multiple meetings with him about the
11 case?

12 A. Yes.

13 Q. Would it be fair to say that the state's kind of
14 version of events was that it was a drug deal that had
15 gone bad?

16 A. Yes.

17 Q. And that it ended up with one being -- victim
18 being killed, one being wounded and one not being
19 injured at all?

20 A. Yes.

21 Q. And did you discuss with Mr. Fowler that basically
22 this is how the state was going to present their case?

23 A. Yes.

24 Q. And do you recall challenging the issue of --
25 about the consent to search at trial?

1 A. Yes, we did. I was just looking at the
2 transcript. We did challenge that.

3 Q. And do you recall one of the problems with that
4 argument being that Mr. Fowler had told the officers,
5 they didn't need to get a warrant; they could just
6 search?

7 A. That was going to be an issue. Yeah.

8 Q. And did you discuss with Mr. Fowler again that
9 this was going to be an issue and going to be
10 potentially harmful to your argument?

11 A. Yeah. Well, the thing about it -- and then our
12 response was that he was in custody or that he was
13 handcuffed in the back of the car when he made the --
14 that alleged statement to Detective Conroy. In addition
15 to whether Mr. Fowler even -- whether they had
16 identified the proper person, did he even give consent
17 to search in the first place.

18 MS. RATIGAN: That's all I have, Your Honor.

19 THE COURT: Any redirect?

20 MS. HORLBECK: None, Your Honor.

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

22 MS. HORLBECK: Judge, we would call Zachary
23 Fowler.

24 THE CLERK: Mr. Fowler, please place your left
25 hand on the bible and raise your right hand.

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1 You do solemnly swear or affirm that the testimony
2 you're about to give in this case will be the truth, the
3 whole truth and nothing but the truth, so help you God?

4 THE WITNESS: Yes, ma'am.

5 THE CLERK: Thank you. Please state your full
6 name for the record.

7 THE WITNESS: Zachary Marquis Fowler.

8 THE CLERK: Thank you. You may be seated.

9 **ZACHARY FOWLER,**

10 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

11 **DIRECT EXAMINATION**

12 **BY MS. HORLBECK:**

13 Q. Mr. Fowler, do you recall who represented you
14 during the trial of this case?

15 A. Yes, ma'am.

16 Q. And what's the name of your attorney? Or what was
17 the name of your attorney?

18 A. Mr. Thomas Creech.

19 Q. All right. When he -- how long did he represent
20 you on these charges, if you recall?

21 A. Since he was retained. I was incarcerated 6/7/06,
22 until my trial in August 13th.

23 Q. How many times do you think you and Mr. Creech met
24 to discuss this case?

25 A. Several. Several. Three, four, maybe five, he

1 came.

2 Q. And did he provide you a copy of your discovery or

3 ---

4 A. He may have sent it to me.

5 Q. Before or after your conviction?

6 A. Oh, before my conviction.

7 Q. Okay. And did you have a chance to review it?

8 A. Yes, ma'am.

9 Q. Okay. What was your theory of the case? I mean,
10 you heard Mr. Creech testify that this was either a --
11 well, essentially either a self-defense or a voluntary
12 manslaughter defense. Do you agree with that?

13 A. Yes, ma'am. I agree with that's what he was
14 telling me we were going to come to court and argue.

15 Q. Okay. All right. And do you, do you recall --
16 and stop me if we're not starting where you want to
17 start. But do you recall Mr. Creech making a --
18 requesting a *Jackson versus Denno* hearing in this case?

19 A. Yes, ma'am. He -- when we got to trial, his
20 pretrial matters was a *Jackson versus Denno* hearing. At
21 that hearing, before we went in, he instructed me that
22 taking the stand wouldn't be my best option, being that,
23 like he said, it would give the prosecution a heads-up
24 on what it was we was going to testify to.

25 Q. Okay. And when you say he advised you of that,

1 did you and he have a chance to discuss that?

2 A. I'm going to say we actually had a chance to
3 discuss it. He more or less just told me that that was
4 going to be our best trial strategy and that's what we
5 were going with.

6 Q. Okay. And at what point did he advise you that
7 you not testifying during the *Jackson v. Denno* hearing
8 would be the best trial strategy? Did he tell you this
9 days before the trial or as soon as you came into the
10 courtroom for the trial or ...

11 A. When I got in the courtroom for trial.

12 Q. All right. Did you have the opportunity to tell
13 him then that you wanted to testify?

14 A. Well, at that particular time I was just going off
15 the advice that he had to give me. I didn't have an
16 understanding of what a *Jackson versus Denno* hearing
17 actually was.

18 Q. Okay. All right. And now you do; correct?

19 A. Right. Which is why I will state that that's why
20 I feel that Mr. Creech was ineffective.

21 Q. Okay.

22 A. He was ineffective by not allowing me to take the
23 stand, which is the sole purpose of a *Jackson versus*
24 *Denno* hearing; to contest the voluntariness of the
25 statement.

1 Q. Okay. And if you had taken the stand, what would
2 you have been able to contribute to the lack of
3 voluntariness and the existence of coercion?

4 A. Well, I definitely would have had the opportunity
5 to tell the judge that I was coerced into giving the
6 statement by the promise that was made to me by Mr.
7 Miller, Sergeant Miller.

8 Q. Okay.

9 A. Not knowing anything about dealing with police
10 officers, being handcuffed, I was scared, nervous,
11 didn't know what was going on. I would have been able
12 to relay that information to the judge.

13 Q. Okay. All right. So you mentioned that Officer
14 Miller made some promises to you. Tell the court a
15 little bit about that.

16 A. Well, Valencia Sullivan and Diana Tisdale were two
17 individuals that were with me at the time of the crime.
18 And I was told that if I was to allow them to just go
19 down with me and not tell them what happened, that they
20 were going to get a life sentence along with me. So I
21 attempted to keep them from getting in trouble by
22 writing a statement on myself, taking all the blame.

23 Q. Uh-huh (affirmative). And when you say write a
24 statement, in your statement is it fair to say you
25 explained what happened, but you said you did it in

1 self-defense?

2 A. Well, the reason why I was even able to put self-
3 defense in the statement is because another detective
4 came in at the end of the statement. The statement was
5 wrote for me. They told me that I needed to sign it or
6 they were going to get life sentences.

7 Q. Okay. All right. When you say they were going to
8 get life sentences, specifically who did the officer say
9 would get life sentences if you didn't sign the
10 statement?

11 A. Diana Tisdale and Valencia Sullivan.

12 Q. Okay. All right. And at the time you signed the
13 statement, where were you?

14 A. I was handcuffed to a chair in an interview room
15 at the law enforcement center.

16 Q. All right. How long had you been handcuffed to
17 the chair at the law enforcement center?

18 A. The entire time I was there, and it started around
19 five thirty when they gave me the opportunity to sit in
20 the interview room and go over the statement.

21 Q. And before getting to the law enforcement center,
22 where were you?

23 A. I was detained in a patrol vehicle handcuffed
24 behind ---

25 Q. Okay. Were you able to get in and out of the

1 patrol vehicle like you wanted?

2 A. No, ma'am. And I was told I was not free to
3 leave.

4 Q. All right. Was anybody else with you while you
5 were in the patrol vehicle?

6 A. Detective Justice was standing beside the vehicle.

7 Q. Okay. All right. And do you think, do you think
8 you were prejudiced by the fact that you did not testify
9 or that Mr. -- do you think that you were prejudiced by
10 the fact that Mr. Creech advised you not to testify
11 during your *Jackson versus Denno* hearing?

12 A. Yes, ma'am. I was prejudiced.

13 Q. All right. I mean, do you have any other reasons
14 to add other than the ones that you've already ---

15 A. I was prejudiced due to the fact of the
16 ineffectiveness by Mr. Creech. The evidence obtained
17 illegally would not have been used against me for the
18 state's claim against me. The evidence played a major
19 factor in the conviction, because had not this
20 information, which is the statement, been allowed in,
21 the armed robbery indictment would have been dismissed,
22 mitigating murder to manslaughter.

23 Q. Okay. Did you and Mr. Creech have the opportunity
24 to review the indictments in your case?

25 A. No, ma'am. The first time I seen the indictment

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1 was the copy I believe you have, Your Honor, that says
2 guilty across it. That was the first time I ever seen
3 the indictment.

4 Q. Okay. Now, you -- tell the court a little bit
5 about the situation with your indictments?

6 A. All right. The indictment does not comply with
7 Rule 3(c), Your Honor. I would like to show you. They
8 were not filed within the ninety day mark with the Clerk
9 of Court, nor have I received an extension asking for an
10 extension of another ninety day period. I received
11 these indictments from the South Carolina Commission of
12 Indigent Defense, Your Honor. I don't know if you have
13 these indictments. I have a copy of the one that you
14 should have just received. I also have this one where
15 it's stamped by the Clerk of Court 6/28/07. These
16 indictments, by the 9th, following the compliance of
17 Rule 3(c), I feel that my case should be overturned,
18 vacated and overturned, because due to the indictments
19 not being validly obtained, I was not legally convicted
20 of the sentence of this crime.

21 Q. All right. Did your attorney make a motion to
22 contest the legality of the indictments at your trial?

23 A. No, ma'am.

24 Q. Okay.

25 A. I furthermore believe that they were not procured

1 in a legal manner. I have the presentment from the
2 presiding judge. The presentment from the presiding
3 judge is not signed. It says that he does hereby accept
4 -- he accepts the indictments. He never accepted them.
5 There's no signature on them. There's no date. In my
6 opinion, I don't believe that they were ever filed
7 according to the laws in this state.

8 Q. And when you say they weren't signed, they weren't
9 signed by who?

10 A. The presiding judge, Judge John C. Few.

11 Q. Okay. And was that -- did your attorney ever
12 argue that?

13 A. No. I don't believe he was aware. I came upon
14 that document through the Clerk of Court. And the Clerk
15 of Court has made a statement that I have everything
16 that they have on my record. So I don't believe he was
17 aware. I don't think he was aware of it. If he was
18 then he didn't say anything about it.

19 Q. Okay. Now, ...

20 MS. HORLBECK: I'll have this marked as
21 Applicant's 3 or Plaintiff's 3.

22 (WHEREUPON, Plaintiff Exhibit number 3 was marked
23 for identification.)

24 Q. Mr. Fowler, I'm showing you Applicant's 3 and ask
25 you to look at that and identify it for us.

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1 A. Plaintiff's Exhibit 3, this is a letter from the
2 office of the Clerk of Court stating that I, Zachary
3 Fowler, have received bill of indictments, sentencing
4 sheets, warrants and motions for the above-referenced.
5 And in this particular letter they had enclosed the
6 grand jury presentment report, which covered my
7 indictments. And the letter that was enclosed, the
8 presentment, the Honorable Judge John C. Few, presiding
9 judge over the Thirteenth Judicial Circuit, just stating
10 that the grand jury makes the following presentment. We
11 do, hereby, certify that all twelve jurors have reviewed
12 indictment numbers 07-GS-23-001 through 07-GS-23-0394
13 and have rendered a true bill on each, with the
14 following exceptions. There were no exceptions. So I'm
15 taking it that all the indictments between 01 through
16 0394 were indicted. And it's signed by Betty Murphy,
17 grand jury foreman. It says, I do hereby accept the
18 grand jury's presentment. And John C. Few's name is not
19 signed nor is it dated. And this is a true copy of this
20 paper given to me on 11/22/11.

21 Q. Okay. So just to make sure I understand, is the
22 significance of Applicant's 3 the fact that that letter
23 states that Judge Few never signed -- Judge Few's
24 signature is never on those indictments?

25 A. No, ma'am. It's not.

1 Q. Okay. All right.

2 MS. HORLBECK: Judge, I'd ask to move this
3 into evidence, Applicant's 3.

4 MS. RATIGAN: I have no objection, Your Honor.

5 THE COURT: Without objection.

6 (WHEREUPON, Plaintiff Exhibit Number 3 was admitted
7 into evidence.)

8 Q. All right. And is it your position, then, that
9 because Judge Few's signature is missing from the
10 indictments that those indictments are invalid and that
11 your attorney should have made a motion at the trial to
12 try to quash those indictments?

13 A. Yes, ma'am. That's correct.

14 Q. Okay.

15 A. They were not procured legally.

16 Q. All right. Did you and your attorney have the
17 opportunity to review your arrest warrants?

18 A. I brought it to his attention, that the arrest
19 warrants were not signed. Basically what he testified
20 to, he didn't believe that was going to be a significant
21 argument, that it was really going to do anything.

22 Q. All right. And do you think that if your attorney
23 had made a motion to dismiss the -- or to challenge the
24 legality of the arrest warrants, do you think that would
25 have changed the outcome of your case?

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1 A. Yes, ma'am. Due to the fact, this statement of
2 the piece of evidence was obtained through an arrest
3 that was illegal. It started with an illegal detention
4 that turned into -- well, converted into an arrest
5 without probable cause. Evidence that is obtained after
6 an arrest warrant or from an arrest warrant, if the
7 arrest warrant at that point in time is not legitimate,
8 then everything behind it is illegal, as well. It
9 wasn't my argument, or the reason why I was telling him
10 to bring forth this information was not because I
11 thought it would get me out of jail or I wouldn't have
12 been convicted of the sentence. It was to suppress
13 evidence obtained upon that arrest warrant.

14 Q. Okay. But your attorney didn't challenge the
15 arrest warrants; did he?

16 A. No, ma'am.

17 Q. All right. And do you believe that that
18 prejudiced you at trial?

19 A. Yes, ma'am. It prejudiced me. And I feel that if
20 prejudiced the evidence obtained would not have been
21 used to substantiate the claims of the state against me
22 to convict me of this crime.

23 Q. Okay. Now, you mentioned your detention. Do you
24 recall your attorney making a motion to challenge the
25 detention as illegal?

1 A. Well, yes, but no. What I mean by that is that at
2 the *Jackson versus Denno* hearing, he contested the
3 voluntariness through acts that constituted an illegal
4 arrest. He stated that I was handcuffed, placed in a
5 patrol vehicle and was held there for over two and a
6 half hours, three hours. He contested these were the
7 acts that brought forth the statement when in all
8 actuality the argument should have been it was an
9 illegal detention that converted into an arrest without
10 probable cause.

11 Q. Okay. What's the basis for your position that the
12 detention was illegal?

13 A. First off, Detective Conroy states I was nervous,
14 which is the reason why I was placed in the car. Of
15 course, to be clear on this that detectives are not
16 psychiatrists, so therefore behavior like that is equal,
17 if not more greater, related to innocence than it is
18 guilt. But this is the reason why I was placed in the
19 car and handcuffed, not free to leave. Totally not free
20 to leave, with Detective Justice standing beside me.

21 Q. Okay. So your allegation is that Mr. Creech
22 didn't make the correct arguments for *Jackson versus*
23 *Denno* and for the detention?

24 A. Right. He argued that it was not involuntary when
25 he should have suppressed the arrest -- he should have

1 moved to suppress the arrest.

2 Q. Okay. All right. And did Mr. Creech include in
3 his motion anything about the photo line-up, to your
4 recollection?

5 A. Repeat the question.

6 Q. To your recollection, did Mr. Creech during the
7 trial, did he incorporate the photo line-up issue into
8 any of his arguments?

9 A. Yes, ma'am. He did.

10 Q. And were you satisfied with the way that he made
11 those arguments or did you have a different way that you
12 believe those should have been made?

13 A. I don't believe that he attacked it the best he
14 could. The reason why I say that, no case law was
15 brought forth on our defense to solidify his argument
16 that he believed was the problem through the separation.
17 The separation was for Detective Conroy's purposes, you
18 know, why he verified to dispel his suspicion. He took
19 it upon his self because, as it says in the transcript,
20 he didn't know who the parties was at the time. He
21 didn't know who were involved.

22 Q. Okay. And at the time -- this whole time you were
23 in the patrol car; correct?

24 A. Yes, ma'am.

25 Q. Okay. And was -- do you recall Detective Conroy

1 testifying at your trial that he was trying to get
2 together a photo line-up?
3 A. Yes, ma'am. He did.
4 Q. All right. And tell the court a little bit about
5 that photo line-up issue and how it plays into your
6 detention and the illegality of your detention?
7 A. Well, after I was placed in the patrol vehicle,
8 because I looked nervous, supposedly, according to
9 Conroy's testimony, they were waiting on the photo line-
10 up to begin. This photo line-up was never assembled.
11 It was never showed to the victims. And if it was done,
12 it wasn't shown. And I have nowhere in my motion or
13 discovery a photo line-up. I don't know if the state
14 could present one. But there's not a photo line-up.
15 This is the reason for the detention. Still, yet, it
16 was never -- it never showed up. It was never done.
17 Conroy goes on to justify the detention by stating that
18 after the statement from Valencia and my confession is
19 why it was called off or decided to be called off. The
20 law is clear on this, you know, detention cannot be
21 justified by information that is obtained after the
22 detention. The detention must be justified by its
23 initiation, whatever the reason being. The initiation
24 was the photo line-up. The photo line-up was never
25 done. It was never assembled. It goes on to say, even

1 though he was supposedly relying on Valencia's
2 statement, Valencia never stated that anyone shot anyone
3 or I was the one that shot them. That's from the
4 testimony of Mr. Creech. And my statement came about
5 two and a half to three hours later. But these are the
6 reasons why I was supposedly detained.

7 Q. Okay. All right. And while you were in the
8 patrol car, do you recall receiving your *Miranda*
9 warnings?

10 A. Yes, ma'am.

11 Q. Okay. And were you -- after being given your
12 *Miranda* warnings, were you -- did anybody -- did any
13 detective ask you any specific questions?

14 A. I was never asked any specific questions, not even
15 after I told Mr. Conroy that I wanted to talk, he never
16 asked me any questions.

17 Q. Okay.

18 A. Which is the purpose of the investigatory
19 detention is to verify the suspicion of the officer.
20 They are to ask for identification, things related in
21 scope to the incident they're investigating, things of
22 that nature, but that was never done.

23 Q. Okay. And is it your position that the -- that
24 because there was no questioning, that the suspicions of
25 the officer were never verified or unverified? Does

1 that make sense?

2 A. Yes, ma'am. There was no method ever implicated.

3 There was never a method. It was, in my opinion, just
4 to way to seek information of the crime.

5 Q. Okay. Do you recall Investigator Conroy

6 testifying that it was a hot day outside?

7 A. Yes, ma'am.

8 Q. All right. Tell the court a little bit about that
9 issue and how it plays into your illegal detention?

10 A. 706, it was Sergeant Jones, it was hot,
11 summertime. Conroy states that one of his reasons for
12 separating me or placing me in the vehicle was because
13 it was hot outside, even though he could not recall
14 whether or not the air conditioning was on in the
15 trailer. Which it strikes me to be odd, because in a
16 detention, there should be the least means -- the least
17 intrusive means possible, you know. It should just be
18 -- he could have found somewhere else to place me. It
19 didn't have to be so intrusive or where I was placed in
20 handcuffs and in a vehicle just because it was hot
21 outside. So that's how that fits.

22 Q. All right. What do you think -- what is your
23 position about what the officer -- about what
24 Investigator Conroy was really trying to do?

25 A. Just seeking information. He was just seeking

1 information. And he did anything in his possible will
2 at that time to get information. So if he could have
3 just placed me in a car and hold me there while he
4 walked through the house and look around to see if he
5 can find something or get someone like Valencia in the
6 house to tell him some information, that's what he was
7 doing. Because he says that Valencia says I'm the one
8 that shot them, but Officer Hamlett, Detective Hamlett,
9 was detaining her the entire time while they were in the
10 trailer. That was his job as told by Detective Conroy.
11 Still yet, he never heard her say any of those things.
12 But he heard. I don't understand how that is.

13 Q. Okay. Now, let's talk a little bit about the
14 trailer. Who was staying in the trailer, to your
15 knowledge?

16 A. I stayed at the trailer. Valencia stayed at the
17 trailer. And Nikki Tisdale stayed at the trailer.

18 Q. Okay. Did you ever tell Detective Conroy or any
19 other detective who owned the trailer or who rented the
20 trailer?

21 A. No. Because he never asked any questions. He
22 never asked me who stayed there either.

23 Q. And you never told any of the detective or any of
~~24 the officers who lived or stayed at the trailer?~~

25 A. No, ma'am.

1 Q. Okay. And what's your position about whether or
2 not the consent to look inside or go inside the trailer
3 was valid? Explain that to the court.

4 A. Well, if you go through the transcript -- let me
5 look at my notes and make sure ... The information that
6 -- the information -- he didn't know who lived at the
7 trailer. He didn't know who owned the trailer. He
8 didn't know any of these things upon arrival at the
9 trailer or whatever. But when he got there he
10 immediately asked for a search warrant by Mr. Mize and
11 provided information, while I don't know how he got that
12 information because he stated in the transcript that he
13 didn't know any of that information.

14 Q. Okay. And how do you think the absence of
15 knowledge of who was renting or owning the trailer and
16 the lack of consent from one of those people, how do you
17 think that prejudiced you in your case? Or tell the
18 court how that plays into your argument?

19 A. Well, the reason why I was prejudiced through
20 this, search warrants were obtained through this
21 information, through information, untruthful
22 information, that clearly helped build the state's case
23 to convict me.

24 Q. Okay. Tell the court what was untrue about the
25 search warrant?

1 A. In the search warrant, it states that the driver
2 of the vehicle is also the legal resident of
3 Drive. These search warrants was obtained
4 maybe thirty minutes after Conroy got there. This is
5 when he states that he didn't know who the owner was,
6 all these things like that. All he knew was the
7 defendant was a black, tall, skinny male. He knew that
8 Diana Tisdale was a black female. He knew that in this
9 party there was two females and a male. They knew that
10 from running her driver's license, they had found out
11 where she was from. They knew through running her
12 license that she had an address at Alder Drive. And
13 through running that they found out that she was a
14 victim of a petit larceny at Appaloosa,
15 Drive, Drive. And this is the only
16 information they knew. But when he obtained the search
17 warrant, he states that the legal residence was -- of
18 that home was the driver of the vehicle, but he never
19 knew any of that information.

20 Q. Okay. Well, who obtained the search warrant? Was
21 it Detective Conroy or somebody else?

22 A. No, ma'am. He relayed that information to
23 Detective Mize, Monty Mize.

24 Q. Okay. And did Detective Mize tell the magistrate
25 who issues the search warrant, was that magistrate told

1 that the information was coming third hand?

2 A. No. No, ma'am. He never said that.

3 Q. All right. And what's your position about the
4 impact that had on the legality of the search warrant?

5 A. It's not in compliance with 17-13-140, is the
6 statute, 17-13-140.

7 Q. Did your attorney make that motion on the grounds
8 -- did your attorney move to suppress the search warrant
9 on grounds that it violated that statute?

10 A. No, ma'am. He did not.

11 Q. Okay. And how do you think that prejudiced your
12 case?

13 A. I was prejudiced because the evidence obtained
14 through this illegal search was used to convict and
15 sentence me.

16 Q. All right. Now, there were some -- twenty-two
17 live bullets found in the victim's car; do you recall
18 that evidence in your case?

19 A. Yes, ma'am.

20 Q. Did you review that evidence with Mr. Creech?

21 A. Yes, ma'am. I had the evidence -- I have his
22 notes right here at my hand stating that he knew about
23 it. And I also have the property and evidence sheet
24 stating that it was two live heads that -- two 22
25 cartridges in the vehicle.

1 Q. And when you say in the vehicle; in whose vehicle?

2 A. The victim's vehicle.

3 Q. Okay. And did your attorney incorporate the
4 existence or the presence of those -- of that ammunition
5 in the victim's car, was that incorporated into your
6 attorney's closing argument or into your defense?

7 A. He never spoke on it period. The only reason it
8 was even spoke of is because the state was asking about
9 the evidence that was found in the vehicle that day.
10 And she said it was two 22 caliber bullets in the car,
11 and that was the end of it. But he never brought any
12 argument or he didn't enter this into evidence on my
13 behalf so that, you know, maybe it would have swayed the
14 jury's mind to our defense, you know, being that our
15 trial strategy was self-defense.

16 Q. And as part of your self-defense trial strategy,
17 what was your position regarding whether or not the
18 victims were armed? What were your thoughts at the time
19 on whether or not they were armed?

20 A. Well, I told Detective Conroy that I thought a gun
21 was in his pocket, the guy, the passenger in the
22 backseat's pocket. I believe the gun was in his pocket,
23 which is where the 22 caliber bullets were found, in the
24 backseat.

25 Q. All right. Do you think that then the presence of

1 ammunition in the victim's car, was that crucial to your
2 defense?

3 A. Yes, ma'am, with that with that being the case,
4 when he got out of the car and ran into the store ---

5 Q. When who got out of the car and ran into the
6 store? One he the -- how many people, to your
7 recollection, were in the victim's car?

8 A. Three.

9 Q. And when you say he got out, are you referring to
10 one of the victims in the car?

11 A. Yeah, the one that I told Detective Conroy I
12 believed had the gun.

13 Q. All right. And did you see what that victim did?

14 A. At what point in time?

15 Q. Did you see him -- you mentioned somebody running
16 out of the victim's car?

17 A. Oh, no, ma'am. No, ma'am. I never seen anything.
18 I jumped back in the car.

19 Q. Okay.

20 A. But being that his testimony or statement was when
21 he went to get help ---

22 Q. When you say he, you mean one of the victims?

23 A. Yeah. .

24 Q. Okay.

25 A. He said that he went to go and get help. Then he

1 got out of the car and left the scene and went somewhere
2 else. So, you know, being that we said it was self-
3 defense, that left the possibility that maybe the
4 individual threw the gun in the bushes or, you know, got
5 rid of it period.

6 Q. Okay. All right. Are there any other allegations
7 against Mr. Creech or about his representation that I've
8 missed or not covered? Anything else you want to tell
9 the court?

10 A. Basically the argument of the *Jackson versus Denno*
11 hearing, not to beat a dead horse, but he argued
12 voluntariness of -- the main argument that he put forth
13 was it was an illegal detention. The illegal detention
14 in and of itself converted into arrest without probable
15 cause. Being that was his argument, I believe that was
16 ineffective because he did not -- he didn't try to
17 suppress the arrest because of the illegal detention. I
18 believe that he would have been better prepared had he
19 done that, had he went into the trial approaching as if
20 he wanted to suppress the original from the illegal
21 detention and illegal -- an arrest without probable
22 cause. That's basically the whole argument.

23 Q. Okay. Anything else?

24 A. No. That should do it.

25 Q. Okay. Please answer any questions that Ms.

1 Ratigan has.

2

CROSS-EXAMINATION

3 **BY MS. RATIGAN:**

4 Q. Mr. Fowler, did you review the evidence with Mr.

5 Creech before the trial, State's evidence?

6 A. Yes, ma'am.

7 Q. All right. And did you tell Mr. Creech what had

8 happened regarding the shooting?

9 A. Yes. We discussed it.

10 Q. And did you tell Mr. Creech what happened

11 regarding talking to Investigator Conroy and giving that

12 statement?

13 A. Yes. We discussed it.

14 Q. And did you tell Mr. Creech about the promises you

15 said that Miller made to you?

16 A. Yes, ma'am.

17 Q. Okay. And did you talk with Mr. Creech about the

18 oral statements you had given to Justice and Miller?

19 A. Yes, ma'am.

20 Q. All right. And basically what you're saying today

21 is even though Mr. Creech argued to suppress the

22 statements and the search, you wanted him to make

23 different arguments?

24 A. (No verbal response.)

25 Q. That what he argued was not sufficient? You

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1 wanted him to argue additional things?

2 A. Yes, ma'am.

3 Q. Okay. And you testified that the line-up, the
4 photo line-up was the basis that you were being detained
5 in the patrol car?

6 A. That's what Conroy stated.

7 Q. Okay. But wasn't the detention also because they
8 were waiting for the search warrants?

9 A. No, ma'am.

10 Q. No? Okay. And didn't you give the officers
11 consent to search the trailer?

12 A. No, ma'am.

13 Q. You did not?

14 A. What happened was I asked Conroy a question. I
15 said, if you go in and look and don't try anything, that
16 mean I'm off the hook? I asked him that question
17 because he was telling me I wasn't free to go. Me not
18 knowing or understanding what I was going through at the
19 time, I wanted to know, because he was telling me I
20 wasn't free to leave. So I was intending to get an
21 understanding of when I would be free to leave. He took
22 my question as a statement and turned it into a
23 statement of consent.

24 Q. So you never told Investigator Justice that they
25 could search without the search warrant?

1 A. No. This whole conversation happened with Conroy.

2 Q. That's not what I'm asking you. I'm saying, did

3 you tell Justice that he could ---

4 A. No, ma'am.

5 Q. --- search without a warrant? Okay. And didn't

6 you tell the officers where the weapon was located?

7 A. Yes, ma'am, I did.

8 Q. And didn't Mr. Creech argue to the Judge that Mr.

9 Mize did not tell the magistrate that he had got the

10 information from Conroy? Didn't he make that argument

11 for you?

12 A. Yes, ma'am, he did.

13 Q. Okay. And your argument is that you were just

14 acting in self-defense?

15 A. Yes, ma'am.

16 Q. That it was kind of a drug deal that had gone bad

17 and you saw what you thought was a weapon and you fired

18 to protect yourself?

19 A. That's correct.

20 Q. And then you immediately got in your car and left

21 the scene?

22 A. That's correct.

23 Q. And you were pretty upset by what had happened?

24 A. Yeah. I was frightened.

25 Q. Okay. But didn't you wave at a woman who was

1 outside washing her car who witnessed the whole thing?

2 A. Yes, ma'am, I did.

3 Q. Well, why would you wave at this person if you
4 were upset and you just felt like you were in fear for
5 your life?

6 A. As I attempted to explain at trial, I was trying
7 to wave somebody down to get some help.

8 Q. But you didn't stop the car, you just waved and
9 kept driving?

10 A. Yes, ma'am. That's correct.

11 MS. RATIGAN: That's all I have, Your Honor.

12 THE COURT: Any redirect?

13 MS. HORLBECK: No, Judge.

14 THE COURT: All right. Thank you, sir. You
15 may step down.

16 You may call your next witness.

17 MS. HORLBECK: Judge, that's all we have, but
18 I would just make a brief final argument.

19 THE COURT: Anything from the state?

20 MS. RATIGAN: No, Your Honor. We would rest
21 on the record.

22 THE COURT: All right. Ms. Horlbeck, be glad
23 to hear from you.

24 MS. HORLBECK: Judge, he is claiming that his
25 attorney should have attacked the unlawful detention

1 with the following case law: *Florida versus Royer*,
2 which is 103 S.Ct. 1319, which specifically states that
3 nervousness and looking around is at least equally far
4 more frequently consistent with complete innocence. And
5 that case also states on page 1324 that reasonable
6 suspicion of criminal activity warrants a temporary
7 seizure for questioning. On page 1325, it says -- that
8 same case states the police may not try to verify their
9 suspicions by means that approach the conditions of
10 arrest.

11 Also, to support the unlawful detention, Mr. Fowler
12 cites *Washington versus Lambert*, which is 98 F.3d 1181,
13 which states -- that case just briefly states when
14 police have only reasonable suspicion to make a stop,
15 drawing weapons and using handcuffs and other restraints
16 violate the Fourth Amendment.

17 And the last thing I'd cite for that is Delgado
18 Velasquez, 856 F.2d 1298, that an initial seizure can't
19 be justified by information obtained as a result of that
20 seizure.

21 And Judge, he would just argue that his attorney
22 failed to adequately and effectively argue these things.

23 And if I could just briefly consult with my client.
24 He's motioning to me.

25 THE COURT: That's last -- excuse me. That

Zachary Fowler -vs- State of South Carolina (2012-CP-23-5182)
Zachary Fowler - Cross-Examination by Ms. Ratigan

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1 last cite, was 856 F.2d 898?

2 MS. HORLBECK: 1298. I'm sorry.

3 THE COURT: 1298.

4 MS. HORLBECK: He also states -- I'm going to
5 get my client to say the name of that because I just
6 don't -- I'm afraid I'm going to massacre it.

7 MR. FOWLER: The one she just read, Your
8 Honor, is in regards to the legal detention and in
9 regard to arrest without probable cause. I wanted her
10 to put in *Dunaway versus New York*, *Wansong versus New*
11 *York*, and that's in regards to the statement that was
12 obtained. All those cases are cases together. That's
13 all. Thank you.

14 MS. HORLBECK: And Judge, just a couple more
15 points I'd like to make. The search warrant -- I think
16 he's made them fairly clear, but just to reiterate.
17 Detective Conroy saw items to be seized in the trailer,
18 but he asked Detective Mize to actually obtain the
19 search warrant. And Mr. Fowler's position is that that
20 is a violation of the statute and that the magistrate
21 should have been informed that the information was
22 coming secondhand and not directly from Detective Mize
23 and that that -- those facts would invalidate the search
24 warrant.

25 Judge, with respect to the arrest warrants, there

1 are not signed by any issuing judge. And we would argue
2 that those are invalid and should have been suppressed
3 and that his attorney should have made a motion to
4 suppress those arrest warrants. And in support of that,
5 we would cite *Davis versus Sanders*, which is 40 S.C.
6 507. Also, 19 S.E. 138. And also *State versus Covert*,
7 which is 382 S.C. 205.

8 And Judge, finally, the indictments -- the date of
9 arrest was June the 7th, 2006, and he clearly was not
10 indicted until January the 3rd, 2007. And his position
11 is that those -- the time line is in clear violation of
12 Rule 3 of the South Carolina Rules of Criminal
13 Procedure, which requires that the solicitor take action
14 on the warrant and prepare an indictment and present the
15 indictment to the grand jury within ninety days. There
16 is no evidence of an application for extension of time.
17 This was not argued, as well, at the trial, Judge.

18 And at this point, we would ask that the court
19 overturn the conviction. And that's all we have.

20 MS. RATIGAN: I'll just very, very briefly,
21 Your Honor, make a couple of quick points. First, I
22 would note that one of the cases that Ms. Horlbeck just
23 cited, *Florida versus Royer*, actually Judge Hill relied
24 upon that case on page 145 in denying the motion to
25 suppress. So he was well aware of that line of case law

Zachary Fowler -vs- State of South Carolina (2012-CP-23-5182)

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Zachary Fowler - Cross-Examination by Ms. Ratigan

1 and specifically cited that particular case when he
2 denied the motion to suppress.

3 I would simply argue there is -- the entire first
4 volume of the record basically is the *Jackson versus*
5 *Denno* hearing. It goes on, I guess through almost about
6 page 160. Mr. Creech very thoroughly argued both to
7 suppress the oral and written statements, the consent to
8 search and the search warrant. Basically all the issues
9 brought up today were argued by Mr. Creech. Mr. Fowler
10 is just saying now he wishes they had been more
11 thoroughly argued. But they were in fact thoroughly
12 argued and presented to the court. I would note Rule 3
13 (c) under *State v. Culbreth*, that is a ministerial
14 action in terms of presenting the indictments. And
15 furthermore, Mr. Fowler has not provided any evidence
16 that he was prejudiced by the pre-indictment delay.

17 And lastly, Your Honor, I would just argue, this is
18 a case with overwhelming evidence. The assault with
19 intent to kill victim identified Mr. Fowler as the
20 shooter. The gun was found in his residence. The
21 eyewitness identified -- described the car from the
22 shooter as being similar to Mr. Fowler's and Mr. Fowler
23 gave a statement. There was no evidence presented that
24 the jury accepted, no credible evidence, of self-
25 defense. And even more to that point, Judge Hill did

1 not even charge voluntary to the jury. He did not find
2 it was supported by the evidence.

3 Therefore, we would argue that in light of all this
4 that Mr. Fowler hasn't met his burden.

5 THE COURT: Okay. Thank you. Obviously, it's
6 a large transcript. I'll review it and try to make a
7 decision in the next -- certainly in the next month.
8 Thank you very much.

9 MS. RATIGAN: Thank you, Your Honor.

10

11 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record of all the proceedings had and evidence
8 introduced in the trial/hearing of the captioned case,
9 relative to appeal, in the Common Pleas Court,
10 Greenville County, South Carolina, on the 17th day of
11 December, 2013.

12 This transcript may contain quoted material. Such
13 material is reproduced as read by the speaker.

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

16 May 20, 2014

17

18

19

20

A handwritten signature in cursive script, reading "Susan Danette Hanks", written over a horizontal line.

Circuit Court Reporter



Office of the Clerk of Court
Greenville, South Carolina
Paul B. Wickensimer
Clerk of Court

Circuit Court Division
 Greenville County Courthouse
 305 East North Street
 Greenville, South Carolina 29601
 (864) 467-8551 FAX (864) 467-8540

November 22, 2011

Zachary Fowler #323544
 P.C.I.
 SMU B-Y-7
 430 Oaklawn Rd.
 Pelzer, SC 29669

Re: Request for "Grand Jury Scheduling Print Out That Shows My Name on the Roster of When my Case Was Scheduled to Go Before the Grand Jury"- 2007-GS-23-0245, 2007-GS-23-0246, 2007-GS-23-0247, 2007-GS-23-0248, 2007-GS-23-0249

Dear Mr. Fowler:

We are in receipt of your letter postmarked 11/7/2011. The Clerk of Court's Office does not set the docket for cases to go before the Grand Jury. Please contact the Solicitor's Office.

You have already been sent copies of the Grand Jury convening schedules for 2007. Enclosed please find the Grand Jury Presentment/Report which covered your indictments. With this mailing we have provided copies of everything the Clerk of Court's Office can provide relating to the Grand Jury and the above referenced indictments.

Copies of your true billed indictments, sentencing sheets, warrants, and motions for the above referenced cases were mailed to you on 4-21-2008. If you desire additional copies, payment of the standard copy fee of \$.25 per page must be paid in advance.

Sincerely,
 Paul B. Wickensimer
 Clerk of Court



STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

GRAND JURY SESSIONS

JANUARY 3, 2007

IN THE COURT OF GENERAL SESSIONS

PRESENTMENT

TO: THE HONORABLE JOHN C. FEW
PRESIDING JUDGE, THIRTEENTH JUDICIAL CIRCUIT

The Grand Jury makes the following presentment: We do hereby certify that at least twelve jurors have reviewed Indictment numbers 07-GS-23- C001 THROUGH 07-GS-23- 0394 and have rendered a true bill on each with the following exceptions:

INDICTMENT NUMBER

ACTION TAKEN

Respectfully Submitted,

Betty Murphy
GRAND JURY FOREMAN

I do hereby accept the Grand Jury's Presentment.

Certified Copy
JOHN C. FEW, JR.
PRESIDING JUDGE
THIRTEENTH JUDICIAL CIRCUIT
Greenville County, SC
Date 1-22-11

Greenville, South Carolina

_____, 2007

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Zachary Marquis Fowler,
S.C.D.C. #323544,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-23-5182**ORDER OF DISMISSAL**FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 FEB 17 PM 4:40

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 10, 2012. The Respondent made its return on March 26, 2013. An evidentiary hearing into the matter was convened on December 17, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Thomas M. Creech, Jr., Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibit 3.¹

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted

¹ Applicant's Exhibits 1 and 2 were identified but not admitted.

at the January 2007 term of the Greenville County Grand Jury for murder (2007-GS-23-0245), armed robbery and possession of a weapon during the commission of a violent crime (2007-GS-23-0246), assault with intent to kill (AWIK) (2007-GS-23-0247), assault and battery with intent to kill (ABIK) (2007-GS-23-0248), and possession of a pistol under 21 years of age (2007-GS-23-0249). He was represented by Thomas M. Creech, Jr., Esquire.

After the State brought the case to trial, the Applicant was found guilty. On August 15, 2007, the Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of life imprisonment for murder, thirty years for armed robbery, five years for possession of a weapon during commission of a violent crime, ten years for AWIK, twenty years for ABIK, and one year for possession of a pistol under age 21.

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Fowler, Op. No. 2010-UP-372 (S.C. Ct. App. filed July 21, 2010). By order dated October 5, 2011, the South Carolina Supreme Court denied the subsequent petition for writ of certiorari.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
 - a. Failed to adequately challenge Applicant's seizure under the 4th and 14th Amendments.
2. Ineffective assistance of appellate counsel.
 - a. Failed to effectively challenge Applicant's seizure.

In an Amended Petition for Post Conviction Relief filed by counsel on December 16, 2013, the Applicant makes the following allegations:

2


1. Ineffective assistance of trial counsel:
 - a. Advised the Applicant not to testify during the Jackson v. Denno hearing.
 - b. Failed to adequately and effectively challenge the voluntariness of the Applicant's statement.
 - c. Failed to adequately and effectively challenge the legality of the Applicant's detention.
 - d. Failed to adequately and effectively challenge the legality of the Applicant's arrest warrants.
 - e. Failed to adequately and effectively challenge the legality of the State's search warrants.
 - f. Failed to adequately and effectively challenge the Applicant's indictments.
 - g. Failed to incorporate the existence of two .22 live bullets found in victims' automobile into the defense at trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v.

3


State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he met with trial counsel several times about the case and they reviewed the discovery materials. The Applicant stated he told trial counsel his version of events and the circumstances surrounding his statements to Officers Conroy, Justice, and Miller (including that Miller made promises in exchange for his statement). The Applicant stated trial counsel said he should not testify at the Jackson v. Denno² hearing because it would give the State "a heads up." The Applicant stated he could have testified that he was coerced by Miller's promises and was nervous. The Applicant admitted trial counsel argued to suppress the statements (based on voluntariness) but that he wanted trial counsel to have made a different argument (one that was based upon an illegal detention). The Applicant stated the search warrants were based upon "untruthful" information. The Applicant admitted trial counsel argued the information for the search warrant was given to the magistrate third-hand, but the Applicant stated trial counsel did not argue it violated the statute. The Applicant stated he told trial counsel the arrest warrants were not signed but counsel said there was no significant argument to be made. The Applicant stated trial counsel did not contest that the indictments were not filed within 90 days of his arrest. The Applicant stated trial counsel should have mentioned in closing argument that there were live .22 rounds in the victims' car because it would have helped his

² 378 U.S. 368, 84 S. Ct. 1774 (1964).

4 

self-defense argument.

Trial counsel testified he was appointed in this case and filed the usual discovery motions. Trial counsel testified he had multiple meetings with the Applicant. Trial counsel testified he reviewed the State's evidence with the Applicant (including the statements) and discussed the Applicant's version of events. Trial counsel testified the trial strategy was to argue self-defense and voluntary manslaughter. Trial counsel testified the State's version of events was that this was a drug deal gone bad and that he reviewed this theory with the Applicant. Trial counsel testified he would have discussed with the Applicant that he did not want him to testify at the Denno hearing because it would preview their defense for the State. Trial counsel testified that it likely would not have helped for the Applicant to testify in the Denno hearing. Trial counsel testified he challenged whether Valencia Sullivan could give consent to a trailer where she, the Applicant, and Nicki Tisdale were staying. Trial counsel confirmed, however, that the Applicant gave consent for the police to search the trailer without a search warrant and testified he discussed the impact of the consent on the case. Trial counsel testified he did not recall making any motions about the arrest warrants but that it was unlikely a challenge to the warrants would have ended the case. Trial counsel noted the Applicant was indicted almost seven months after he was arrested.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly handle the Denno hearing. Trial counsel testified he told the Applicant that he did not

⁵ 

want him to testify at the Denno hearing because it would inform the State of the defense they would use at trial. This Court finds both that trial counsel's testimony is credible and that he articulated a valid strategic reason he advised the Applicant not to testify. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). This Court has reviewed the trial transcript and finds trial counsel presented a detailed argument in favor of suppressing the Applicant's statements. (Trial transcript, pp.44-134). This Court finds the Applicant has failed to articulate why trial counsel would have been more successful if he had instead argued about the voluntariness of detention.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly challenge the search warrant. This Court has examined the trial transcript and notes trial counsel presented a comprehensive argument in favor of suppressing evidence obtained pursuant to the search in this case. (Trial transcript, pp.136-56). This Court notes, however, that the Applicant consented to the search while the officers were waiting for the procurement of a search warrant. The Applicant has failed to articulate what else trial counsel should have argued that would have resulted in the suppression of the evidence.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly challenge the arrest warrants. Trial counsel testified he did not make any motions regarding the legality of the warrants. Trial counsel testified, however, that it was unlikely such a motion would have changed anything or ended the Applicant's case. This Court agrees. This Court finds that, assuming arguendo there was an error in the arrest warrants, the Applicant has failed to prove his case was prejudiced as a result or that the outcome of his trial would have been different if trial counsel had challenged the warrants. See Johnson v. State, 325 S.C. at 186,

6 

480 S.E.2d at 735.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have challenged that the indictments in his case were issued more than 90 days after his arrest. This Court finds the failure to indict within the 90-day period does not automatically nullify the warrants. See State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681, 681 (1984) ("[T]he failure of the solicitor to act upon a warrant within ninety (90) days . . . does not within itself invalidate a warrant or prevent subsequent prosecution."). Further, this Court finds the Applicant failed to provide evidence of any prejudice that resulted from the delay. See, e.g., State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) (noting one must prove prejudice in order to prevail on an allegation that one's speedy trial rights were violated).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have mentioned in closing argument that live .22 rounds were found in the victims' car. This Court finds trial counsel did not err in not making this argument to the jury. While the Applicant argues this evidence would have supported his self-defense argument, this Court finds this is entirely speculative, as these bullets could have been in the victims' car well in advance of the shooting. Regardless, the Applicant cannot demonstrate any resulting prejudice because the State presented overwhelming evidence of his guilt.³ See Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

³ The State presented the following evidence: (1) the victim of the AWIK charge positively identified the Applicant as having shot (unprovoked) into the victims' car, (2) the murder weapon was found in the Applicant's residence after he gave consent to search, (3) an eyewitness to the shooting described a car similar to the Applicant's vehicle, and (4) the Applicant gave incriminating statements to police.

7 Aug 7

Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

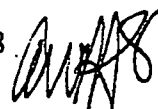
All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

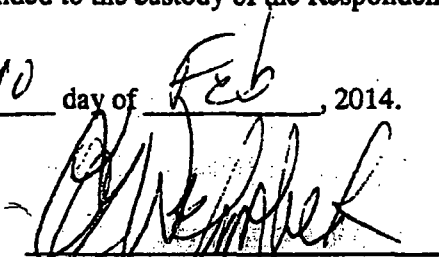
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.



IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 10 day of Feb, 2014.


G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit

Pickens, South Carolina.

WITNESSES

T Conroy *W. L. L.*

Greenville Police Department

6/7/2006

ARREST WARRANT NUMBER

1818379

ACTION OF GRAND JURY

TRUE BILL

Betty Murphy
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0116

Indictment for

MURDER

VIOLATION § 16-03-0010

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-23

LM 000005

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JANUARY TERM 2007

8-15-07

guilty THE STATE
vs.

ZACHARY MARQUIS FOWLER

309

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on January 3, 2007 the Grand Jurors of Greenville
County present upon their oath:

That ZACHARY MARQUIS FOWLER did in Greenville County, on or about the 7th day of June, 2006,
unlawfully and with malice aforethought kill Susan Galloway by means of shooting her, and that Susan Galloway
died as a proximate result thereof. This is in violation of §16-3-0010 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.


SOLICITOR

WITNESSES

T Conroy White/s

Greenville Police Department

6/7/2006

ARREST WARRANT NUMBER

1818380, 1818381

ACTION OF GRAND JURY
TRUE BILL

Butter McArthur
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-23-

LMM

000000

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JANUARY TERM 2007

8-15-07

THE STATE

GUILTY

VS.

ZACHARY MARQUIS FOWLER

☒ 013910549

Indictment for

ARMED ROBBERY AND POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

VIOLATION § 16-11-0330 and 16-23-0490

310

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY AND POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on January 3, 2007 the Grand Jurors of Greenville
County present upon their oath:

COUNT ONE

ARMED ROBBERY

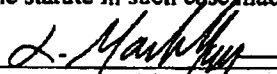
That ZACHARY MARQUIS FOWLER did in Greenville County, on or about the 7th day of June, 2006, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Cash from the person or presence of Susan Galloway, Gary Powell and/or Ronald Allen Harris. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That ZACHARY MARQUIS FOWLER did in Greenville County, on or about the 7th day of June, 2006, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-0490 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.


SOLICITOR

WITNESSES

T Conroy

White/S

Greenville Police Department

6/7/2006

ARREST WARRANT NUMBER

1818384

ACTION OF GRAND JURY

TRUE BILL

Billie M. Murrell
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-23-

LMM

000287

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JANUARY TERM 2007

8-13-07

GUILTY THE STATE

VS.

ZACHARY MARQUIS FOWLER

Indictment for

0768

ASSAULT WITH INTENT TO KILL

VIOLATION § C/L

311

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

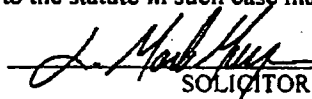
INDICTMENT FOR
ASSAULT WITH INTENT TO KILL

At a Court of General Sessions, convened on January 3, 2007 the Grand Jurors of Greenville

County present upon their oath:

That ZACHARY MARQUIS FOWLER did in Greenville County, on or about the 7th day of June, 2006, with malice aforethought commit an assault upon Ronald Allen Harris and the defendant had the apparent present ability to complete the act. This is in violation of the Common Law of the State of South Carolina.

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


SOLICITOR

WITNESSES

T Conroy

White / S

Greenville Police Department

6/7/2006

ARREST WARRANT NUMBER

1818383

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-23-

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JANUARY TERM 2007

8-15-07

GUILTY THE STATE

VS.

ZACHARY MARQUIS FOWLER

✓
0014

Indictment for

ASSAULT AND BATTERY WITH INTENT TO
KILL

VIOLATION § 16-03-0620

312

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

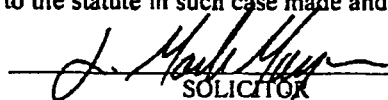
INDICTMENT FOR
ASSAULT AND BATTERY WITH INTENT TO KILL

At a Court of General Sessions, convened on January 3, 2007 the Grand Jurors of Greenville

County present upon their oath:

That ZACHARY MARQUIS FOWLER did in Greenville County, on or about the 7th day of June, 2006, willfully, unlawfully and with malice aforethought, either express or implied, commit an assault and battery upon Gary Powell. This is in violation of §16-3-0620 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.


SOLICITOR

WITNESSES

T Conroy

White

Greenville Police Department

6/7/2006

ARREST WARRANT NUMBER

1818382

ACTION OF GRAND JURY

TRUE BILL

Betta M. ...
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-23-

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JANUARY TERM 2007

8-15-07

THE STATE

GUILTY VB.

ZACHARY MARQUIS FOWLER

Indictment for

2364

POSSESSION OF A PISTOL UNDER 21 YEARS
OF AGE

VIOLATION § 16-23-0030

313

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

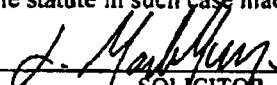
INDICTMENT FOR
POSSESSION OF A PISTOL UNDER 21 YEARS OF AGE

At a Court of General Sessions, convened on January 3, 2007 the Grand Jurors of Greenville

County present upon their oath:

That ZACHARY MARQUIS FOWLER did in Greenville County, on or about the 7th day of June, 2006, while at
Ave, Greenville, South Carolina, willfully and unlawfully have in his possession and under his control a pistol,
the said defendant being under the age of twenty-one (21). This is in violation of § 16-23-30 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.


SOLICITOR