

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Robin B. Stilwell, Circuit Court Judge

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S.C. Supreme Court

RUSSELL SIMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000639

APPENDIX

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

The State,)
) TRANSCRIPT OF RECORD
-vs-) 2006-GS-42-3064-3068;3070-3073
)
Russell Lee Sims,)
) January 22-24, 2007
Defendant.) Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE; and a jury

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

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Circuit Court Reporter

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1 (Proceedings January 22, 2007)

2 (State's Exhibits Nos. 1 through 32 were premarked by
3 the solicitor's office.)

4 THE COURT: All right. Any matters to address before
5 we bring the jury around?

6 MR. GOWDY: Not from the state, Your Honor.

7 MR. McPHERSON: Yes, sir. There is one matter.

8 Your Honor, they want to get into during the trial
9 some 404-B evidence, and I'm asking for a motion in limine
10 that they not use that in their opening statement, they not
11 talk about it until you've had a chance to rule on this
12 particular issue.

13 It involves a completely different offense, and I'm
14 not even sure why they want to bring it up or bring it into
15 evidence. Obviously, we're opposed to it. I know they
16 intend to bring it in.

17 THE COURT: Well, we'll address all of that after we
18 get the jury picked. Have you got anything we need to talk
19 about before the jury is picked?

20 MR. McPHERSON: No, sir.

21 THE COURT: Okay. Have y'all got the indictments over
22 there?

23 MR. GOWDY: Mr. Stalvey was smart enough to leave them
24 for me, Your Honor. We are not going forward on the grand
25 larceny.

Jury qualification

1 (Bench conference held off the record.)

2 (The following takes place in the presence of the jury
3 venire.)

4 THE COURT: All right. Ladies and gentlemen, we are
5 ready to begin with jury selection in the first case that's
6 going to require some of your participation. The title of
7 that case is the State vs. Russell Lee Sims.

8 Mr. Sims has been accused by the solicitor of having
9 committed ten separate and distinct criminal offenses,
10 although they are alleged to have arisen out of one
11 particular event or course of events that the state alleges
12 occurred on or about May the 20th of 2006.

13 These incidents and these offenses are alleged to have
14 occurred at a location on Miller Road in the Campobello
15 community of Spartanburg County. And, as I've stated, it
16 is alleged to have occurred back on May the 20th of 2006.

17 Now, before we can begin with jury selection in the
18 case I'm going to be asking you some questions, and the
19 purpose of the questions is to find out if there is some
20 reason why any one of you jurors should not be selected to
21 participate in the trial of this particular case. And so
22 as these questions are asked should you need to respond to
23 them, I'm going to ask that you please stand, and I will
24 address those matters with you individually in the event
25 that should become necessary.

Jury qualification

1 One of those questions is also going to be whether or
2 not you know anything about this case, have you heard
3 anything about the case from any person or any source,
4 including television or radio or newspapers or talk at work
5 or anywhere else.

6 So I'm going to be telling you a little bit about the
7 case based upon the allegations that have been made. I'm
8 also going to be identifying for you certain persons that
9 are alleged to have been involved in the particular
10 incidents.

11 I will also recognize and identify for you the lawyers
12 involved in the trial of the case. I'll also recite a list
13 of potential witnesses that might be called to testify
14 during the trial of the case. And, again, that purpose is
15 to find out if you have any connection with any person
16 involved in the case, as well as whether or not you have
17 any previous -- if you've been exposed to any previous
18 information that relates to the case.

19 Now, as I've told you, the defendant, that is the
20 person who has been accused of these offenses, is Russell
21 Lee Sims.

22 Mr. Sims, as I told you, is accused of having
23 committed ten separate offenses that are set forth in
24 documents called indictments. Indictments are legal
25 documents. They're required to be prepared and presented

Jury qualification

1 to a grand jury. They're the means by which a person is
2 brought into this court and is formally accused of a crime.

3 They're not proof of anything. They just contain the
4 allegations that are brought by the state. They don't
5 prove anything. The state has the burden of presenting
6 evidence in court to establish any person's guilt beyond a
7 reasonable doubt where they have been accused of a crime.

8 But in this case the defendant, Mr. Sims, is charged
9 in one indictment with the crime of burglary in the first
10 degree.

11 The state alleges by way of this indictment that
12 Mr. Sims did here in Spartanburg County on or about May the
13 20th of 2006, did wilfully and intentionally enter a
14 dwelling that belonged to Cornell Hall located at [REDACTED]
15 [REDACTED] Road in Campobello in Spartanburg County; that he
16 entered that dwelling without consent and with the intent
17 to commit a crime therein. And they make further
18 allegations as to facts they contend are true that occurred
19 after Mr. Sims entered the dwelling.

20 The state also claims that Mr. Sims committed the
21 crime of armed robbery. By way of a separate indictment
22 they allege that Mr. Sims did on May the 20th of 2006
23 commit the crime of robbery while armed with a deadly
24 weapon. They allege that he was either armed with a deadly
25 weapon or while using a representation of a deadly weapon.

Jury qualification

1 And they further claim that he did take, steal and
2 carry away from the person or presence of Diane Jackson by
3 the use of force or intimidation certain monies and/or a
4 Park Avenue automobile and/or some checks, and that he took
5 those items with the intention of permanently depriving the
6 true owners of use and possession of the property, that
7 property belonging to Diane Jackson and/or Robert Jackson,
8 Robert Jackson being the father of Diane Jackson.

9 They also claim that Mr. Sims committed the crime of
10 attempted armed robbery in that he did attempt to take,
11 steal and carry away from the person or presence of Robert
12 Jackson certain goods or monies that belonged to Robert
13 Jackson.

14 They also allege by way of a separate indictment that
15 Mr. Sims did commit the crime of assault and battery with
16 intent to kill in that he did on May the 20th of 2006, and
17 with malice aforethought, commit an assault and battery
18 upon one Derrick Hall by shooting Mr. Hall in the chest
19 which resulted in severe injuries and facts indicating he
20 intended to kill the victim.

21 They also allege that Mr. Sims committed the crime of
22 assault and battery with intent to kill as it relates to
23 one Cornell Hall. They allege that on May the 20th of 2006
24 he committed an assault and battery upon Cornell Hall by
25 shooting him and intended to kill him.

Jury qualification

1 They also allege in four separate indictments that
2 Mr. Sims committed the crime known as pointing or
3 presenting a firearm at some person.

4 They allege that on May the 20th of 2006 that Mr. Sims
5 did unlawfully and not acting in self-defense, did point or
6 present a firearm at Jerohmia Watts, at China T. [redacted] at
7 India T. [redacted] and at Diane Jackson.

8 The last indictment charges that Mr. Sims did commit
9 the crime of murder in that he did on May the 20th of 2006
10 wilfully and with malice aforethought kill one Robert
11 Jackson by shooting him with a firearm and that Robert
12 Jackson died as a proximate result of that gunshot wound.

13 And in that same indictment they further allege that
14 Mr. Sims did possess a firearm during the commission of a
15 violent crime, that violent crime being the offense of
16 murder.

17 Now, as to all of those allegations and as to each of
18 the indictments and each of the charges set forth therein
19 the defendant, Mr. Sims, has entered a plea of not guilty.
20 And that plea of not guilty places upon the state the
21 burden of proving all of the allegations that they have
22 made by way of those indictments.

23 It places upon them the burden of proving each of the
24 essential elements that makes up each of the crimes alleged
25 in those separate indictments; and therefore the burden is

Jury qualification

1 upon the state to establish the defendant's guilt to the
2 satisfaction of 12 jurors beyond a reasonable doubt before
3 any verdict of guilty could be returned as to any of the
4 charges set forth in any of those indictments.

5 And therefore we are going to be selecting 13 of you
6 to participate in the trial of the case. There will be 12
7 primary jurors and one additional juror that will serve as
8 an alternate. And by way of your participation you're
9 going to be called upon to simply listen to the testimony
10 that will be coming from the witness stand and to consider
11 any other evidence introduced during the trial of the case.

12 When you go back to deliberate you'll carefully
13 examine that evidence. From that evidence you'll decide
14 the facts. That is you'll determine what you believe
15 occurred back on May the 20th of 2006 as it relates to
16 these allegations. And then once you make that
17 determination of fact you'll apply the law as I will have
18 provided it to you, and you will determine whether or not
19 Mr. Sims has been proven guilty of any crime beyond a
20 reasonable doubt.

21 If he has been proven guilty of a crime beyond a
22 reasonable doubt, your verdict would be guilty. And if he
23 has not been proven beyond a reasonable doubt to have
24 committed one or more of these offenses, then your verdict
25 would be not guilty in that respect.

Jury qualification

1 Now, as I told you, I'm going to be identifying some
2 people for you. First, I'm going to identify the
3 defendant, Russell Lee Sims.

4 If you will, please stand and face the jury panel.
5 (Whereupon, the defendant stood.)

6 THE COURT: Mr. Sims is the person who is accused of
7 these offenses to which he's entered a plea of not guilty.
8 All right. Thank you. Be seated.

9 With Mr. Sims at the defense table is Clay Allen who
10 is the public defender for Spartanburg County and William
11 McPherson who is an assistant public defender for
12 Spartanburg County. And they are going to be representing
13 Mr. Sims in the trial of this case.

14 (Whereupon, Mr. Allen and Mr. McPherson stood.)

15 THE COURT: Thank you.

16 As I told you, in this case the person who is alleged
17 to have been killed by Mr. Sims is Robert Jackson.

18 William Jackson is present. I'll ask Mr. William
19 Jackson if you'll please stand.

20 (Whereupon, William Jackson stood.)

21 THE COURT: William Jackson is Robert Jackson's -- if
22 you will, turn and face the jury panel. William Jackson is
23 Robert Jackson's brother. He is here. So he might be a
24 potential witness. But he is also here so you can see who
25 he is, and by that you may be able to determine whether or

Jury qualification

1 not you knew Robert Jackson who is deceased. Thank you,
2 Mr. Jackson. You can be seated.

3 Also in additional indictments, you've heard other
4 persons who are alleged to be victims. And they include
5 Cornell Hall.

6 Mr. Hall, if you will, please stand and face the jury
7 panel.

8 (Whereupon, Mr. Hall stood.)

9 THE COURT: Derrick Hall. Thank you. Be seated.
10 Diane Jackson is not in here, is she?

11 MR. GOWDY: No, sir, she is not.

12 THE COURT: Okay. But you heard the other persons who
13 are alleged to be victims. And those include Diane
14 Jackson. I think it was three of her children.

15 MR. GOWDY: Jerohmia Watts.

16 THE COURT: Jerohmia Watts.

17 MR. GOWDY: India and China T. [REDACTED]

18 THE COURT: India and China T. [REDACTED]

19 All right. And in this case presenting the case on
20 behalf of the state is Trey Gowdy, the solicitor for the
21 7th Judicial Circuit, and Alex Stalvey, an assistant
22 solicitor for the 7th Judicial Circuit. They'll present
23 the case on behalf of the state.

24 There are other persons who I'm going to list for you
25 who are potential witnesses in this case. They might not

Jury qualification

1 all be called to testify, but they potentially will be. So
2 I'm going to recite an entire list of the potential
3 witnesses because I'll need to know if you have any
4 connection with any of these persons or you know them in
5 any fashion.

6 They include the following persons. All of these
7 persons are employed with the sheriff's department.

8 Allen Wood; Lorin Williams; Chris Jenkins; Brian
9 Andrews; Jason Bryant; Wendy Buie; David Hogsed; Kevin
10 Bobo; Benjamin Brown; Randy Bogan; Russell Holthaus; Robert
11 Rosenberg; Jamie Tate; Dominick Baird; Hugh Murphy; Deanna
12 Burgess; Curtis Kessler; William Reid Lindsay; Margaret
13 Greer; and Rusty Clevenger. Those are all employed with
14 the sheriff's department.

15 The following individuals are employed with the state
16 law enforcement division: Laurie Shacker; Betty Butler;
17 Larry Ross; Amy Stephens; Brandon Williams; Karonda
18 Williams; Nikki Perry; and Kenneth Whitler. All employed
19 with the state law enforcement.

20 The following persons are employed with the
21 Spartanburg Public Safety Department: David Michael Wood;
22 David Reeves; Milner Beech.

23 The following are employed as emergency medical
24 technicians: Jeff Jones; Jeff Howard; and T. Rosson.

25 The following persons are employed with the

Jury qualification

1 Spartanburg Regional Medical Center: Damarie Freire; David
2 Wren, pathologist; Richard Orr, medical doctor; Darlene
3 Myles, medical doctor; Jason Michael Dierking, medical
4 doctor; Charles Morrow, medical doctor; Christine
5 Lambardozi, medical doctor; and Toby Bishop with Medivac
6 One.

7 The following persons are residents of Campobello
8 living at or near the location where the incident is
9 alleged to have occurred.

10 Those include Joanne Hall; Mae Carol Hall; Elaine Mae
11 Hall.

12 And we also have one additional witness, and that is
13 Jerry Petties who is employed with MTD Enterprises located
14 on Union Street here in Spartanburg.

15 There appears to be two perhaps additional witnesses.
16 Those include, says, B. Brown. Now, I imagine there might
17 be a lot of people with those initials. Can you narrow
18 that down some?

19 MR. McPHERSON: What was the last name -- Brown?

20 THE COURT: Well, I have got an L. Williams and B.
21 Brown. And because those names are right common, we might
22 need to narrow those down some.

23 MR. McPHERSON: Judge, those are the same ones they
24 listed in their sheet.

25 THE COURT: They are with the sheriff's department?

Jury qualification

1 MR. McPHERSON: Yes, sir, all but the last one.

2 THE COURT: All right. That's Eric Sims.

3 We also have an Eric Sims who is a potential witness.

4 Now, that having been said, does any member of the
5 jury panel know any person who has just been identified for
6 your benefit? Do you have any connection, whether you're
7 related by blood or marriage or whether you work with any
8 of those people or whether you've had some contact with
9 them in some fashion, personal, professional, business or
10 otherwise, or you've met them in any way.

11 I need to know if any member of the jury panel knows
12 any person who has just been identified. That includes the
13 lawyers, that includes the defendant, that includes the
14 persons who are alleged to be victims, as well as those
15 potential witnesses that have been listed. So if you have
16 any connection or you know any of those persons, I would
17 ask that you please stand.

18 All right. I'm going to start over here to my right.
19 I will work across the room to my left. Is everybody
20 standing that needs to respond to the question about having
21 any connection, having met any of those persons who have
22 all just been identified?

23 All right. You can stay where you are.

24 I'm going to start to my right. I'll work to my left.
25 If you'll give me your name and your juror number, and then

Jury qualification

1 tell me how that questions relates to you.

2 What I'll do is I'll start over here. I'm going to do
3 the front row. I'll go back row by row, and then I'll go
4 to the other side.

5 You, ma'am, please.

6 JUROR NO. 161: My name is Tammy Waters, Juror 161. I
7 know Jeff Howard. I've met him, and I work with his sister
8 and father.

9 THE COURT: And your number was what?

10 JUROR NO. 161: 161.

11 THE COURT: All right. And how do you know him?

12 JUROR NO. 161: I've met him through his father. And
13 I actually work with his father and his sister.

14 THE COURT: Okay. But you don't really know, actually
15 know, him as a friend.

16 JUROR NO. 161: I mean, I've met him. I know him, not
17 personally but just --

18 THE COURT: Well, would any connection you have in
19 that regard, would it have any bearing upon your decision
20 in the case?

21 JUROR NO. 161: No, sir.

22 THE COURT: Would it affect your judgment in any way?

23 JUROR NO. 161: No, sir.

24 THE COURT: All right. Thank you. You may be seat.

25 Yes, ma'am.

Jury qualification

1 JUROR NO. 2: Angela Arledge, Juror No. 002. I was
2 raised up --

3 THE COURT: Can you speak just a little bit louder,
4 please, ma'am?

5 JUROR NO. 2: Angela Arledge, 002. I was raised up
6 with Russell and his family.

7 THE COURT: All right. So you know the defendant,
8 Mr. Sims, and his family.

9 JUROR NO. 2: Uh-huh.

10 THE COURT: Is there anything about your connection
11 with Mr. Sims or the family that would in any way interfere
12 with your ability to be fair and impartial if you were
13 selected as a juror in this case?

14 JUROR NO. 2: No.

15 THE COURT: Ma'am?

16 JUROR NO. 2: No.

17 THE COURT: All right. Thank you. You may be seated.
18 Next row. Yes, ma'am.

19 JUROR NO. 142: Toronda Smith, Juror 142. I do know
20 Mr. Cornell. I know him personally.

21 THE COURT: All right. And would that have any
22 bearing upon your decision in this case if you were
23 selected to serve as a juror?

24 JUROR NO. 142: No, sir.

25 THE COURT: And what was your number again?

Jury qualification

1 JUROR NO. 142: 142.

2 THE COURT: 142. All right. Thank you, ma'am. You
3 may be seated.

4 Next on the row.

5 JUROR NO. 76: Vicki James, 76. I work at Spartanburg
6 Regional. I don't know the doctors personally, but I do
7 know them.

8 THE COURT: And how are you employed at the hospital?

9 JUROR NO. 76: I am a receptionist in M. R. I.

10 THE COURT: Okay. Would the fact that you know those
11 doctors have any bearing upon your decision in this case?

12 JUROR NO. 76: No.

13 THE COURT: Okay. Thank you. Be seated.

14 Yes, ma'am.

15 JUROR NO. 21: Marilyn Cameron, No. 21. I didn't
16 understand you a minute ago, and I just wanted to know if
17 we had heard anything. We talked. My mom knows the
18 Halls -- my mom knows the Halls. I don't know them
19 directly but indirectly.

20 THE COURT: All right. But you live in the community?

21 JUROR NO. 21: Yes. I live on Highway 11.

22 THE COURT: Okay. And at least some of your family
23 members know some of these people. And would that --
24 ma'am?

25 JUROR NO. 21: I don't know any of them directly. My

Jury qualification

1 mom knows them.

2 THE COURT: Right. Well, would that have any bearing
3 upon your decision in this case if you were asked to be a
4 juror?

5 JUROR NO. 21: I don't think so.

6 THE COURT: Well, do you think there is some --

7 JUROR NO. 21: I don't know; I don't know. I don't
8 remember the whole case. I understand you're wanting to
9 know.

10 THE COURT: Well, I am going to get to that about
11 having any knowledge of the case. Right now my question
12 was do you have any knowledge of any of these witnesses or
13 potential witnesses.

14 JUROR NO. 21: Not personally.

15 THE COURT: Okay. But your mother does. I'm just
16 saying would that have any bearing upon your decision, the
17 fact that your mother knows the Halls.

18 JUROR NO. 21: Yes. She knows the Halls.

19 THE COURT: Would that have any bearing upon your
20 decision in this case?

21 JUROR NO. 21: No, sir.

22 THE COURT: All right. Thank you. Be seated.

23 Yes, ma'am.

24 JUROR NO. 11: No. 11, Pam Blackwood. And I am not
25 sure if I know Mr. Cornell Hall. The name rings a bell. I

Jury qualification

1 work for the school district. So I am not sure if he has
2 been a substitute with us before.

3 THE COURT: Okay. Well, of course you see who he is.

4 JUROR NO. 11: Well, I just thought I recognized him.
5 I wasn't sure.

6 THE COURT: All right.

7 JUROR NO. 11: Just the name. We have so many to come
8 through.

9 THE COURT: Okay. Would that fact by itself have any
10 bearing upon your decision in the case?

11 JUROR NO. 11: No, sir.

12 THE COURT: Thank you. Be seated.

13 Yes, sir.

14 JUROR NO. 73: Casey Jackson, No. 73. I was treated
15 by Dr. Lambardozi in August of '05. And I know I haven't
16 seen her since.

17 THE COURT: Would it have any bearing upon your
18 decision?

19 JUROR NO. 73: No, Your Honor.

20 THE COURT: Thank you. Be seated.

21 Yes, sir. Oh, front row. Excuse me.

22 JUROR NO. 64: I know Dr. Richard Orr. He is my
23 physician.

24 THE COURT: All right. And you are?

25 JUROR NO. 64: Linda Houser, 064, Juror 64.

Jury qualification

1 THE COURT: Would that have any bearing upon your
2 decision in this case?

3 JUROR NO. 64: No.

4 THE COURT: Thank you. Be seated.

5 Next row.

6 JUROR NO. 96: No. 96, James Mabry. Dealt with at
7 least three or four of the county sheriff's department
8 employees and two of the E. M. S. workers through
9 professional fire service.

10 THE COURT: Would that have any bearing upon your
11 decision in the case?

12 JUROR NO. 96: No, sir.

13 THE COURT: Thank you. Be seated.

14 Yes, sir.

15 JUROR NO. 169: 169. I know Mr. Bryant, Jason Bryant.
16 An old neighbor and childhood friend.

17 THE COURT: Would it have any bearing upon your
18 decision?

19 JUROR NO. 169: No, sir.

20 THE COURT: Thank you. Be seated.

21 Yes, ma'am.

22 JUROR NO. 37: No. 37. I know Milner Beech. I work
23 with his wife.

24 THE COURT: And would that have any bearing upon your
25 decision in this case?

Jury qualification

1 JUROR NO. 37: No, sir.

2 THE COURT: Thank you, ma'am. You may be seated.

3 Now, as I told you, these are incidents that are
4 alleged to have occurred back on May the 20th of 2006.
5 They are alleged to have occurred at a location at or near
6 [REDACTED] Road in the Campobello community of Spartanburg
7 County.

8 There may have been something in the newspaper that
9 relates to the case; there may have been something on the
10 radio that relates to the case; there may have been
11 something on the television that relates to the case either
12 at or about, or on or about May the 20th of 2006; or maybe
13 even sometime later. I am not certain of that. But there
14 may have been some type of media coverage relating to this
15 case.

16 So I need to ask if any member of the jury panel has
17 been exposed to any type of media coverage that relates to
18 this particular case, as well as whether or not you have
19 been exposed to any other source of information about the
20 case, that is you've talked to somebody who apparently knew
21 something about the case and they were discussing the case
22 with you or you overheard a conversation with people
23 talking about the case in some fashion.

24 I just need to know if any member of the jury panel
25 has been exposed to any type of information that may relate

Jury qualification

1 to this particular case from any source. If so, please
2 stand.

3 All right. I've got two. Give me your number again,
4 please, ma'am.

5 JUROR NO. 142: Juror 142, Toronda Smith.

6 THE COURT: All right. And tell me what. Don't tell
7 me what you've heard or seen or read. Just tell me what
8 source that you believe you received information from.

9 JUROR NO. 142: Through another personal family member
10 that's close kin to the Halls.

11 THE COURT: It was a member of your family?

12 JUROR NO. 142: No. Family of the Halls personally.

13 THE COURT: Oh, it was a member. Somebody who is
14 related to the Halls has discussed the case with you.

15 JUROR NO. 142: Just briefly, yes, sir.

16 THE COURT: Okay. And is there anything about those
17 discussions that you had with that person that would in any
18 way impair your ability if you were selected as a juror to
19 be fair and impartial to both sides, both the state and the
20 defendant?

21 JUROR NO. 142: No, sir.

22 THE COURT: Could you put aside that information and
23 not allow that information that you received from that
24 person to influence your judgment in any way?

25 JUROR NO. 37: Yes, sir.

Jury qualification

1 THE COURT: All right. Thank you. You may be seated.
2 Yes, sir.

3 JUROR NO. 105: 105. I'm from Campobello. And I have
4 my wife's in-laws, my in-laws live up next to that area.
5 And I've heard a lot of gossip about it.

6 THE COURT: All right. So you've heard a lot of
7 people talking about the incident?

8 JUROR NO. 105: Yes, sir.

9 THE COURT: Do you appreciate that when people talk
10 about incidents the information that is exchanged may be
11 accurate or may not be accurate?

12 JUROR NO. 105: Yes, sir. I'm aware of that.

13 THE COURT: Now, based upon what you've heard about
14 the case, is there anything that would interfere or impair,
15 interfere with or impair, your ability to be fair and
16 impartial to both sides in this case?

17 JUROR NO. 105: It could, sir.

18 THE COURT: All right. We'll excuse you from service
19 in the case.

20 That's Juror 105.

21 Anyone else believe that you might have been exposed
22 to some type of information that relates to this case? If
23 so, please stand.

24 (No response.)

25 THE COURT: Is there any member of the jury panel who

Jury qualification

1 is now or has ever been employed by any type of law
2 enforcement agency -- sheriff's department, municipal law
3 enforcement agency, state law enforcement division, jail
4 facility, Department of Corrections, state law enforcement
5 division? I may have already said that. Military police
6 department.

7 I need to know if you are now or ever have been
8 employed as a law enforcement officer. And let me include
9 in that question whether or not you have an immediate
10 family member, an immediate family member being defined as
11 a parent, a spouse, a child or a sibling -- a parent, a
12 spouse, a child or a sibling.

13 Have you or any member of your immediate family ever
14 been employed as a law enforcement officer, or are you or
15 they now employed as a law enforcement officer? If so,
16 please stand.

17 (No response.)

18 THE COURT: Nobody. Well, that's unusual. We usually
19 have several. Everybody understand the question?

20 Okay. Yes, sir.

21 JUROR NO. 78: I have a cousin. He is not in
22 Spartanburg County. He's employed in Union County.

23 THE COURT: Okay. What's your name?

24 JUROR NO. 78: Juror No. 78.

25 THE COURT: 78. Would that have any bearing upon your

Jury qualification

1 decision?

2 JUROR NO. 78: No, sir.

3 THE COURT: Okay. Thank you. Be seated.

4 Now, when I say if you're connected with law
5 enforcement officer like that, it doesn't have to be in
6 Spartanburg. It could be anywhere.

7 Okay. Is there any member of the jury panel who has,
8 you or some member of your immediate family, ever been the
9 victim of any type of violent crime?

10 Those violent crimes would include murder,
11 manslaughter, armed robbery, assault and battery with
12 intent to kill, burglary, criminal sexual conduct, or any
13 other similar type of an offense that might be classified
14 as a violent crime. I need to know if any member of the
15 jury panel or any member of your immediate family has ever
16 been the victim of such an offense.

17 I also need to know whether you or any family member
18 has ever been accused of such an offense. So are you or a
19 family member, have you ever been a victim or have you ever
20 been accused of the commission of a violent crime? If so,
21 please stand.

22 All right. Juror 142, was it?

23 JUROR NO. 142: I have to say it out loud?

24 THE COURT: No, ma'am. If you want to come down here,
25 you can do that. All right. Come down here.

Jury qualification

1 I meant to tell y'all that. If you prefer not to
2 disclose that information in front of the audience, you can
3 come down here and discuss it with me.

4 (Bench conference held off the record with juror and
5 counsel.)

6 THE COURT: All right. Next.

7 THE BAILIFF: Juror No. 84, sir.

8 (Bench conference held off the record with juror and
9 counsel.)

10 THE COURT: Next.

11 THE BAILIFF: 21, Your Honor.

12 (Bench conference held off the record with juror and
13 counsel.)

14 THE COURT: Juror No. 21 is excused from service in
15 the case.

16 THE BAILIFF: No. 64, Your Honor.

17 (Bench conference held off the record with juror and
18 counsel.)

19 THE COURT: Next.

20 THE BAILIFF: 156, Your Honor.

21 (Bench conference held off the record with juror and
22 counsel.)

23 THE COURT: Next.

24 THE BAILIFF: 27, Your Honor.

25 (Bench conference held off the record with juror and

Jury qualification

1 counsel.)

2 THE BAILIFF: 111, Your Honor.

3 (Bench conference held off the record with juror and
4 counsel.)

5 THE BAILIFF: 153, Your Honor.

6 (Bench conference held off the record with juror and
7 counsel.)

8 THE BAILIFF: 58, Your Honor.

9 (Bench conference held off the record with juror and
10 counsel.)

11 THE BAILIFF: 35, Your Honor.

12 (Bench conference held off the record with juror and
13 counsel.)

14 THE BAILIFF: 107, Your Honor.

15 (Bench conference held off the record with juror and
16 counsel.)

17 THE COURT: Anyone else need to respond to that
18 question, that is you or a family member has been the
19 victim of a violent crime or accused of the commission of a
20 violent crime? If so, please come forward.

21 (Bench conference held off the record with Juror No.
22 73 and counsel.)

23 THE COURT: Anyone else?

24 (No response.)

25 THE COURT: Is there any member of the jury panel who

Jury qualification

1 has not already provided me with the information who has
2 ever had a case that has been brought against you or a
3 family member or was handled on your behalf or on behalf of
4 a family member by the 7th Judicial Circuit Solicitor's
5 Office? Anyone ever been involved in a case as a victim or
6 as a defendant or connected with a family member that was
7 handled by the 7th Judicial Circuit Solicitor's Office and
8 you haven't already provided me with that information? If
9 so, please stand.

10 Yes, ma'am. You may, sure.

11 (Bench conference held off the record with Juror No.
12 11 and counsel.)

13 THE COURT: All right. Is there any member of the
14 jury panel who is a member of or do you contribute time or
15 money to any type of organizations which might be
16 characterized as a law enforcement support type of
17 organization?

18 That includes Mothers Against Drunk Drivers, Citizens
19 Against Violent Crime, the troopers association, the
20 honorary sheriff's association, any neighborhood watch
21 association or any other similar type of organization.

22 Do you belong to any; do you give money to any; or do
23 you donate your time to any to assist them in any way? If
24 so, please stand.

25 All right. Your name and number, please, ma'am.

Jury qualification

1 JUROR NO. 128: 128.

2 THE COURT: All right. What organization?

3 JUROR NO. 128: It's the highway department.

4 THE COURT: Troopers association?

5 JUROR NO. 128: Troopers association.

6 THE COURT: You send them money. Did you get anything
7 back like jelly or something?

8 JUROR NO. 128: No.

9 THE COURT: All right. Would that affect your
10 judgment?

11 JUROR NO. 128: No.

12 THE COURT: Thank you, ma'am. Be seated.

13 Yes, sir.

14 JUROR NO. 6: No. 6. South Carolina Troopers
15 Association and the sheriff's association.

16 THE COURT: Would that have any bearing upon your
17 decision?

18 JUROR NO. 6: No, sir.

19 THE COURT: Okay. Thank you, be seated.

20 Anyone else?

21 (No response.)

22 THE COURT: Is there any member of the jury panel that
23 has any connection with the Children's Advocacy Center?
24 That is are you employed there, have you benefited from any
25 service provided there, do you know anybody who works there

Jury qualification

1 at the Child Advocacy Center, Children's Advocacy Center?

2 If so, please stand.

3 (No response.)

4 THE COURT: All right. Has any member of the jury
5 panel already formed an opinion or made up your mind as to
6 how you think this case ought to come out based upon what
7 you've heard up to this point or based upon any other
8 consideration? Have you already formed an opinion or made
9 up your mind? If so, please stand.

10 (No response.)

11 THE COURT: Does any member of the jury panel know of
12 any reason whatsoever why you believe you could not be fair
13 and impartial if you were selected as a juror to serve in
14 this particular case? Anyone know of any reason whatsoever
15 based upon what you've heard, based upon the nature of the
16 charges or based upon any other consideration? Anyone know
17 of any reason whatsoever why you could not be fair and
18 impartial if you were selected to serve as a juror in this
19 case? If so, please stand.

20 (No response.)

21 THE COURT: All right. Any other questions requested
22 by the state?

23 MR. GOWDY: Not from the state, Your Honor.

24 THE COURT: By the defendant?

25 MR. McPHERSON: No, Your Honor.

Jury qualification

1 THE COURT: All right. Now, this week you're going to
2 have a chance to serve as a juror in a criminal case as
3 this one and perhaps a civil case next door where Judge
4 Hayes is.

5 Jurors are selected differently in criminal court than
6 they are in civil court. Even though you can serve in
7 both, the process is a little bit different.

8 But in this particular case you're going to be asked
9 to come forward. As your name is called you'll be asked to
10 come forward.

11 If you're towards the wall you can come around the
12 tables where the lawyers are seated. If you're towards the
13 center you can simply come up the center aisle.

14 But I need for you to take a stance in the middle of
15 the floor about two paces past where the desks are where
16 the lawyers are seated.

17 Turn and face your fellow jurors. Each side has a
18 chance to have you excused from service in this case or
19 agree to have you seated for service in the case.

20 If either side asks that you be excused from service
21 you can simply go back and have a seat where you are now.
22 If both agree to have you seated for service in the case
23 you'll be having a seat in that jury box to your right and
24 to my left.

25 So if you'll please come forward as your name is

Jury qualification

1 called you'll be instructed if you're to be excused from
2 service or seated for service in the case.

3 (Whereupon, a jury was impanelled.)

4 THE COURT: All right. Those who have been selected,
5 I'm going to ask you to please go with a bailiff to a jury
6 room, and I will bring you back in just a few minutes.

7 (The following takes place outside the presence of the
8 jury.)

9 THE COURT: Are there any matters to be addressed
10 regarding jury selection by the state?

11 MR. GOWDY: Not from the state, Your Honor.

12 THE COURT: From the defendant?

13 MR. McPHERSON: No, Your Honor.

14 (Whereupon, the remaining members of the jury venire
15 were excused.)

16 THE COURT: All right. I understand we have some
17 pretrial matters to address. How long are they going to
18 take?

19 MR. GOWDY: We have a Denno hearing, Your Honor, that
20 I don't expect to take long at all. It's a short statement
21 and there's only one witness.

22 I believe we can probably handle Mr. McPherson's
23 motion-in-limine argument pretty quickly. We're not going
24 into it in our case in chief unless his defense is certain
25 things. So that should eliminate his concerns about that

1 incident.

2 Other than that, we're ready to go.

3 THE COURT: What do you think, 15 minutes?

4 MR. GOWDY: I would say 30 at the -- I would say 30.

5 THE COURT: All right. Do you agree with that, Mr.

6 McPherson? Do you think that's a fair estimate?

7 MR. McPHERSON: Thirty minutes?

8 THE COURT: Yes, sir.

9 MR. McPHERSON: Yes, sir.

10 THE COURT: Okay. All right. Bring the jury in.

11 (The following takes place in the presence of the
12 jury.)

13 THE COURT: All right. Ladies and gentlemen, we've
14 got a few things we need to do before we can begin with the
15 trial of the case. One is to have lunch.

16 I also have some other matters I need to address that
17 shouldn't take too long before we can actually begin the
18 trial of the case.

19 So what I'm going to ask you to do is if you'll excuse
20 yourselves now, but please report back to that jury room
21 that you've just been shown to. Please report back there
22 at 3:15 this afternoon, at 3:15 this afternoon.

23 Now, in the meantime from now until you have arrived
24 at a decision in this case you are not permitted to talk
25 about the case with any person whatsoever in any fashion

1 whatsoever. And that includes family; it includes friends;
 2 it even includes your fellow jurors. You are not permitted
 3 to discuss the case until after you've reached a decision
 4 except while you are involved in jury deliberations. And
 5 of course no evidence has been received yet, so that comes
 6 at the end of the trial. So no discussions about the case
 7 with any person whatsoever.

8 Also you have to base any decision on what you see and
 9 hear during the trial of this case. You're not permitted
 10 to allow yourselves to be influenced by any outside
 11 consideration.

12 So don't allow anyone to try to discuss your business
 13 with you and do not permit yourselves to be exposed to any
 14 type of media coverage, whether it be television or radio
 15 or newspaper. Ignore it, put it aside, don't watch it,
 16 don't listen to it, don't read it.

17 Also, do not attempt to conduct any research or do
 18 your own investigation, whether it be through some primary
 19 sources or internet service or whatever. You can't conduct
 20 any research about any issue. Again, as I say, you have to
 21 base your decision upon what you see and hear during the
 22 trial and the law that I will provide you. You can't
 23 supplement that with your own research or investigation.
 24 So no discussions, no exposure to any information about the
 25 case, media or otherwise, and no research or investigation

Jason Bryant (In-camera)
Direct examination by Mr. Gowdy

1 into any issue.

2 With that, do have a good lunch. Please report back
3 to your jury room at 3:15 this afternoon, 3:15.

4 If you're not sure how to get back to that room, talk
5 to the bailiffs. They'll assist you with those directions
6 before you leave. Have a good lunch. We'll see you at
7 3:15.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: All right. Court is in recess until 2:45,
11 2:45.

12 (Whereupon, a recess was taken.)

13 THE COURT: All right. The first issue is the
14 voluntariness of any statement?

15 MR. GOWDY: Yes, sir. We're prepared to go forward on
16 that if the Court would like for us to do that first.

17 THE COURT: Okay.

18 MR. GOWDY: Your Honor, the state would call Officer
19 Jason Bryant with the Spartanburg County Sheriff's
20 Department.

21 JASON BRYANT, having been
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. GOWDY

24 Q Good afternoon, Detective?

25 A How are you doing, sir?

Jason Bryant (In-camera)
Direct examination by Mr. Gowdy

1 Q Would you introduce yourself to the Court?

2 A My name is Jason Bryant and I'm with the Spartanburg
3 County Sheriff's Office.

4 Q How long have you been employed with the sheriff's
5 department?

6 A Over ten years.

7 Q What capacity do you currently serve?

8 A I serve as a violent crimes investigator.

9 Q As part of your duties as a violent crimes
10 investigator do you on occasions interview suspects?

11 A That is correct, sir.

12 Q Did you do so in this case?

13 A Yes, sir, I did.

14 Q How many times?

15 A I'm sorry, sir? I didn't hear you.

16 Q How many times did you interview suspects?

17 A We had spoken a total of two times.

18 Q All right. Could you give the Court the dates on
19 which you spoke to this defendant?

20 A Yes, sir. The first date that I spoke to him was on
21 5/22 of '06 and then the second date that I spoke to him
22 was on 7/8 of '06.

23 Q All right. Let's start with the May 22nd interview
24 first.

25 When did the crimes alleged in this indictment take

Jason Bryant (In-camera)
Direct examination by Mr. Gowdy

1 place? When did they occur?

2 A On 5/20 of '06.

3 Q And when was this defendant arrested?

4 A He was arrested on 5/22 of '06.

5 Q All right. So he was arrested two days after the
6 incidents took place, and you interviewed him the day of
7 his arrest.

8 A That's correct, sir.

9 Q Where did you interview him?

10 A At the Spartanburg County Jail.

11 Q Did he appear to be under the influence of drugs or
12 alcohol when you interviewed him?

13 A No, sir, not at all.

14 Q Are you familiar with what people under the influence
15 of drugs or alcohol look like or sound like?

16 A Yes, sir, I am.

17 Q Did you promise him anything in exchange for his
18 statement?

19 A Not at all.

20 Q Did you threaten him in any way?

21 A No, sir, not at all.

22 Q Did you make any promises to him?

23 A No, sir.

24 Q Any assurances to him?

25 A No, sir.

Jason Bryant (In-camera)
Direct examination by Mr. Gowdy

1 Q Who all was present during your interview?

2 A Just myself and him.

3 Q Did you go through his Miranda warnings prior to
4 beginning the interview with the defendant?

5 A Yes, sir, I did.

6 Q And do you do that based on memory or off of a card or
7 off of a sheet?

8 A I did it off of a standard preinterrogation waiver
9 form.

10 Q Did you bring that with you?

11 MR. GOWDY: I would like to have this marked as -- if
12 you would, mark it as State's No. -- I tell you what. Just
13 mark it as State's Exhibit 33. Can you do that?

14 (Pre-interrogation waiver form marked State's
15 Suppression Exhibit No. 33 for Identification.)

16 Q I'm showing you what's been marked as State's
17 Exhibit 33 and ask you whether or not that is the waiver of
18 rights form that you went over with this defendant on May
19 22nd.

20 A Yes, sir. That's a copy of it.

21 Q And did he appear to understand the rights as you gave
22 them to him?

23 A Yes, sir, he did.

24 Q Do you know how long he had been in custody when you
25 began your interview?

Jason Bryant (In-camera)
Direct examination by Mr. Gowdy

1 A He had been arrested shortly after 2:00 o'clock if I
2 remember correctly, and this was about 4:00 p.m.

3 Q Okay. And you went over each one. And you have them
4 listed as five different rights, is that correct?

5 A Yes, sir.

6 Q And you went over each one of those rights with him.

7 A That's correct.

8 Q Did you go over them with him individually?

9 A Yes, sir, I did.

10 Q And did he appear to understand those rights as you
11 gave them to him?

12 A Yes, sir, he did.

13 Q Did he indicate to you whether or not he wished to
14 waive his rights and talk to you?

15 A He spoke with me, yes, sir.

16 Q All right. And how did he memorialize or indicate to
17 you that he wished to waive his rights?

18 A He had signed them in two different areas. After I'd
19 read him his rights he had signed that he understood his
20 rights fully. And then during the second part of the
21 preinterrogation waiver form in the second paragraph, he
22 had agreed to talk to myself in regards to the Miller Road
23 case. And he had also signed there.

24 (Pause.)

25 MR. GOWDY: Your Honor, we would -- he is making an

Jason Bryant (In-camera)
Direct examination by Mr. Gowdy

1 objection based upon it being a photocopy of the original,
2 Your Honor.

3 MR. McPHERSON: I want to see the original if I may,
4 Judge.

5 THE COURT: Where is the original?

6 THE WITNESS: Sir, it's right there in my case file.

7 THE COURT: Give him the case file.

8 A Here is the original, sir.

9 Q That's the second interview, right?

10 A Yes, sir.

11 Q We will leave that right there.

12 MR. McPHERSON: No objection.

13 MR. GOWDY: Your Honor, we would move State's 33 in
14 for purposes of this hearing.

15 (Pre-interrogation waiver form marked State's
16 Suppression Exhibit No. 33.)

17 Q All right. He signed that he understood his rights.

18 A That's correct, sir.

19 Q How long did you talk to him?

20 A We spoke briefly, not more than 20 minutes.

21 Q And nothing promised him in exchange for his
22 cooperation?

23 A No, sir, not at all.

24 Q No threats made.

25 A No, sir.

Jason Bryant (In-camera)
Direct examination by Mr. Gowdy

1 Q All right. Tell the Court what he told you.

2 A On 5/22 of '06 at about 4:00 p.m. he advised me that
3 he had shot Mr. Jackson while he was on the porch because
4 he had thought that Mr. Jackson was going back in to get
5 his rifle.

6 He then stated that Diane had told him to take
7 everything, the money and the keys, and that he had stated
8 that him and Diane had got into an argument over a female,
9 in which he couldn't remember the female's name.

10 Then Mr. Sims stated that he had left and went down
11 the road and that Derrick was shooting a shotgun. He
12 stated that he stopped the vehicle and got out. He then
13 stated that he had shot Derrick.

14 When I had asked him about Cornell, the third victim,
15 he didn't know anything about Cornell. And then he stated
16 all of a sudden he remembered that Cornell had appeared
17 like he was going towards Derrick's shotgun. So that's
18 when he had shot him.

19 Q Did y'all discuss the case any further or was that the
20 extent of what he told you?

21 A At that time I asked him if I could get a voluntary
22 statement from him, and he refused to put anything on
23 paper.

24 Q He refused to write it. Did you offer to write it out
25 for him if he wanted?

Jason Bryant (In-camera)
Direct examination by Mr. Gowdy

- 1 A Yes, sir, I did.
- 2 Q And did he take you up on that offer?
- 3 A No, sir, he didn't.
- 4 Q So that's the extent of your interview on May 22nd.
- 5 A That's correct.
- 6 Q When did you interview him next?
- 7 A On 7/8 of '06.
- 8 Q All right. And what was the purpose of that
- 9 interview? What had happened that day that led you to go
- 10 back?
- 11 A That was the date of Robert Jackson's death. And I
- 12 had upgraded the charges from assault and battery with
- 13 intent to kill to murder.
- 14 Q Okay. Do you know whether or not he retained counsel
- 15 between May 22nd and the time of Mr. Jackson's death?
- 16 A No, sir.
- 17 Q Were you informed at any point that he had counsel?
- 18 A No, sir, I weren't.
- 19 Q All right. Did he invoke his rights at any point on
- 20 May 22nd?
- 21 A No, sir.
- 22 Q All right. When you went back and interviewed him on
- 23 June the 8th -- was it?
- 24 A That's correct.
- 25 Q -- did you go over his Miranda warnings with him

Jason Bryant (In-camera)
Direct examination by Mr. Gowdy

1 again?

2 A I did.

3 Q Did you threaten him in any way?

4 A No, sir, I didn't.

5 Q Did you make him any promises?

6 A No, sir, I didn't.

7 Q Was he still in custody when you interviewed him on
8 June the 8th?

9 A That's correct.

10 Q All right. Did you go over the same Miranda --

11 A Yes, sir, I did.

12 Q -- waiver form with him?

13 A I did.

14 Q All right. Do you have a copy of that?

15 A I do, sir. Here's the original for 7/8, sir.

16 Q Okay.

17 (Pre-interrogation waiver form marked State's
18 Suppression Exhibit No. 34 for Identification.)

19 Q Showing you State's Exhibit 34. That is, or is that
20 the form that you went over with Mr. Sims on June the 8th?

21 A Yes, sir, it is.

22 Q Did you go over each one of his rights individually?

23 A I did.

24 Q Did he appear to understand his rights?

25 A Yes, sir.

Jason Bryant (In-camera)
Direct examination by Mr. Gowdy

- 1 Q Did he ask you to stop and explain anything to him?
- 2 A No, sir.
- 3 Q Would you have done so if he'd asked?
- 4 A Yes, sir.
- 5 Q Did he appear to understand the words that you were
6 using?
- 7 A He did.
- 8 Q And did you understand his during your conversation
9 with him?
- 10 A Yes, sir.
- 11 Q How long did this interview last?
- 12 A It lasted shorter than the first one, less than, less
13 than 15 minutes.
- 14 Q And tell the Court what Mr. Sims told you on the
15 June 8th.
- 16 A He stated on that date that I couldn't charge him with
17 murder because I had charged him with assault and battery
18 with intent to kill and that his uncle was one of the
19 wealthiest men in Spartanburg and that these charges would
20 never stick.
- 21 Q Okay. Is that all he told you?
- 22 A That was it.
- 23 Q Okay.
- 24 MR. GOWDY: Your Honor, we would move State's 34 into
25 evidence for purposes of this hearing.

Jason Bryant (In-camera)
Cross-examination by Mr. McPherson

1 MR. McPHERSON: Judge, I'm going to object to State's
2 34 as it's the same thing as State's 33, same date, same
3 everything. It is not dated June. It's dated May 22 of
4 '06.

5 Q Do you have one dated June 8th?

6 A Yes, sir. Here it is.

7 MR. GOWDY: My apologies, Judge. We will ask that
8 that be marked as State's 34, and I will withdraw this one.

9 MR. McPHERSON: No objection for the purposes of this
10 hearing.

11 MR. GOWDY: Move State's 34 in, Your Honor, for
12 purposes of this hearing only.

13 (Substituted pre-interrogation waiver form marked
14 State's Exhibit No. 34.)

15 Q No further contact with this defendant after June the
16 8th?

17 A No, sir.

18 MR. GOWDY: Those are all the questions I have for
19 Detective Bryant.

20 Q Please answer any questions the Court or the defense
21 attorney may have for you, please.

22 A Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. McPHERSON

25 Q Did you do a report, sir?

Jason Bryant (In-camera)
Cross-examination by Mr. McPherson

- 1 A I'm sorry, sir?
- 2 Q Did you do like an investigation report or incident
3 report or something like that?
- 4 A Yes, sir, I did.
- 5 Q And was that turned in to the solicitor's office --
- 6 A Yes, sir, it was.
- 7 Q -- when you turned in your case report?
- 8 A Yes, sir.
- 9 Q Was the, I notice from reading the investigation
10 report that you have May 20, 2006. I mean, that's the
11 start of your report.
- 12 A That's correct.
- 13 Q And then it goes to 10:40 p.m., and you go on into
14 what happened at 10:40 p.m. And then that carries on over
15 to page two. And on page two you next move to May 22nd,
16 correct?
- 17 A That's correct.
- 18 Q And then there's about half a page left, correct?
- 19 A That's correct.
- 20 Q And there's no June 7, or was it July, July 8. Or
21 what day was it you went over there? I'm confused.
- 22 A It was 7/8 of '06.
- 23 Q July the 8th of '06.
- 24 A Yes, sir.
- 25 Q Do you have a copy of that report?

Jason Bryant (In-camera)
Cross-examination by Mr. McPherson

1 A No, sir.

2 Q You don't have a copy of the report?

3 A I didn't do an investigative writeup on that
4 interview.

5 Q You didn't think that was important?

6 A No information was gained in regards to the crime.

7 Q But you were still carrying on part of your
8 investigation duties, were you not?

9 A That's correct.

10 Q And don't you tend to document everything you do?

11 A There was no information in regards to the crime.

12 Q What I mean, but you read him his Miranda warnings, is
13 that correct?

14 A That's correct.

15 Q And I think he gave you additional information, is
16 that correct?

17 A No, sir, not on the 7/8 of '06.

18 Q He didn't say anything more?

19 A Other than these charges wouldn't stick and you can't
20 charge me with that because you've already charged me with
21 assault and battery with intent to kill.

22 Q And you didn't think that was important to write down
23 on your statement?

24 A No, sir.

25 MR. MCPHERSON: Could I see State's 34, I believe it

Jason Bryant (In-camera)
Cross-examination by Mr. McPherson

1 is?

2 Q Now, State's Exhibit 34, was that tendered to the
3 solicitor's office or did you just retain that in your file
4 since it wasn't very important?

5 A I just know it from memory.

6 Q I'm sorry?

7 A I just know it from memory.

8 Q I'm talking about State's Exhibit 34. That's his
9 Miranda warnings.

10 A This, this form here is Exhibit 34. Is that the one
11 you're inquiring about?

12 Q Just a minute.

13 MR. MCPHERSON: May I approach?

14 Q All right. I'm showing you what's been marked as
15 State's Exhibit 34.

16 A Okay. This one here also is 34.

17 Q I think that one was withdrawn.

18 A Okay.

19 Q Okay. I want you to take a look at that document.

20 A Yes, sir.

21 Q The question I'm asking you is was a copy of State's
22 Exhibit 34 that you see before you right now that's dated
23 July the 8th of 2006, was that submitted to the solicitor's
24 office?

25 A Yes, sir.

Jason Bryant (In-camera)
Cross-examination by Mr. McPherson

1 Q Are you certain you submitted it to the solicitor's
2 office?

3 A Yes, sir.

4 Q Now, where did you -- let's go back to May 22, 2006.
5 When you first interviewed the defendant, where was he?

6 A He was in the Spartanburg County Jail.

7 Q And where in the Spartanburg County Jail?

8 A It was in the magistrate's bond-room area.

9 Q Okay. And could you describe that area, please?

10 A It's a large open room with several rows of seating
11 and a high judge's bench which the judge sets bonds in.

12 Q Okay. And who all was in that room?

13 A Just myself and him.

14 Q No one else?

15 A No, sir.

16 Q Okay. And then you went through each of his rights
17 with him individually?

18 A I'm sorry, sir?

19 Q You went through each right with him.

20 A That's correct.

21 Q One at a time.

22 A Yes, sir.

23 Q And then you stopped and asked him if he understood
24 those rights.

25 A That's correct.

Jason Bryant (In-camera)
Cross-examination by Mr. McPherson

- 1 Q And did you ask him to initial each right as you read
2 them off to him?
- 3 A I didn't ask him to initial each one.
- 4 Q Wouldn't that be a good practice?
- 5 A I asked him to sign if he understood his rights fully.
- 6 Q I'm just asking you wouldn't it be a good practice in
7 your opinion if you just had him initial it after he read
8 it.
- 9 A Six of one and half dozen of the other.
- 10 Q Just answer yes or no. Would it be a good practice to
11 have him initial after each right, yes or no?
- 12 A It would be as good as the other.
- 13 Q Now, I notice this document is witnessed by who?
- 14 A If I could see the document, please.
- 15 MR. MCPHERSON: May I approach?
- 16 Q All right. I'm handing to you what's been marked as
17 State's Exhibit 33.
- 18 A It's been witnessed by myself.
- 19 Q And who notarized it?
- 20 A Myself.
- 21 Q So you notarized your own signature.
- 22 A Yes, sir, in that situation I did.
- 23 Q And is that the protocol a notary is supposed to
24 follow and notarize your own signature?
- 25 A If you're by yourself during that time.

Jason Bryant (In-camera)
Cross-examination by Mr. McPherson

1 Q That's what they taught you to do?

2 A I have done it before several times.

3 Q Nobody has ever questioned you about that?

4 A No, sir.

5 Q You don't think that would be a conflict of interest
6 to take an oath as to your own signature?

7 A No, sir.

8 Q All right. I'm going to show you what's marked as
9 State's Exhibit 34. Do you recognize that document?

10 A Yes, sir, I do.

11 Q And who witnessed that document?

12 A I did, sir.

13 Q And who notarized it?

14 A I did.

15 Q And I guess the answers would be the same that you,
16 even though I suggest to you that perhaps it's a conflict
17 of interest to notarize your own signature, you don't see a
18 problem with that?

19 A Not if you're by yourself, no, sir.

20 MR. MCPHERSON: Pass the witness. I'm sorry. That's
21 all I have.

22 MR. GOWDY: Nothing on redirect, Your Honor.

23 THE COURT: You may step down.

24 MR. GOWDY: That would be the state's showing for the
25 Denno hearing, Your Honor.

Russell Lee Sims (In-camera)
Direct examination by Mr. McPherson

1 MR. MCPHERSON: Your Honor, the state would call the
2 defendant, Russell Sims, to the stand for the limited
3 purpose of this hearing.

4 THE COURT: Okay.

5 RUSSELL LEE SIMS, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. MCPHERSON

8 Q Would you state your name for the record, please?

9 A My name is Russell Lee Sims, III.

10 Q How old are you, Mr. Sims?

11 A Twenty-one.

12 Q All right. Now, do you recall being arrested on May
13 22 of 2006?

14 A Yes, sir.

15 MR. MCPHERSON: May I approach the bench?

16 THE COURT: Yes, sir.

17 Q Do you recall talking to Jason Bryant on May 22, 2006,
18 at approximately 4:00 p.m?

19 A Yes, sir.

20 Q Okay. Do you recall whether or not he read you your
21 Miranda warnings?

22 A Yes, sir.

23 Q Did he?

24 A He did.

25 Q All right. And did you sign this statement that's

Russell Lee Sims (In-camera)
Direct examination by Mr. McPherson

- 1 been marked as State's Exhibit 33?
- 2 A Yes, sir, I signed it.
- 3 Q Okay. I'm showing you what's marked as State's
- 4 Exhibit 34. Did you sign that statement?
- 5 A Can I see that, take a look at that one again?
- 6 (Whereupon, the document was given to the witness.)
- 7 A Yes, sir.
- 8 Q So you're saying you signed both statements?
- 9 A It wasn't a statement.
- 10 Q I'm sorry. I mean the Miranda warning rights.
- 11 A Okay.
- 12 Q Did you talk to Mr. Bryant on May 22 of 2006 as he
- 13 suggested?
- 14 A Yes, I did. I just told him a few things.
- 15 Q And is what he told you, is what he testified to
- 16 correct? I'm sorry?
- 17 A As far as?
- 18 Q All right. Okay. On May 22 -- on May 22, when did
- 19 you sign that statement?
- 20 A I didn't sign it on May 22.
- 21 Q When did you sign it?
- 22 A When he came back the second time.
- 23 Q The second time would have been July the 8th, of 2006?
- 24 A Yes, sir.
- 25 Q So is it your testimony here today that State's

Russell Lee Sims (In-camera)
Direct examination by Mr. McPherson

1 Exhibit 33 was signed on July the 8th of 2006 and not May
2 22, 2006?

3 A No, sir.

4 Q What is your testimony then?

5 A I signed it on the, on the 7th, the 8th, or whatever
6 the day was.

7 Q Okay. But not on May 22 as shown on the statement?

8 A No, sir.

9 Q Now I'm showing you what's marked as State's
10 Exhibit 34 dated July the 8th. Do you recognize that
11 document?

12 A Yes, I recognize that.

13 Q And when did you sign that one?

14 A On the 8th.

15 Q Are you saying you signed them both on the 8th?

16 A Yes, sir.

17 Q So is it your testimony that on the 22nd of May of
18 2006 he did not give you your Miranda warnings?

19 A No, sir. I didn't sign anything.

20 Q And did he not give you your Miranda warnings then?

21 A Miranda warnings?

22 Q Did he tell you before he talked to you on May 22, the
23 first time, your rights, your Miranda rights? I have a
24 right to remain silent. Anything you say can and will be
25 used against you.

Russell Lee Sims (In-camera)
Cross-examination by Mr. Gowdy

1 A No, sir; no, sir. I don't remember that.

2 Q So you're saying he didn't tell you anything on May
3 22.

4 A No, sir. He just wanted me to give, he just came to
5 me and told me to tell them, give them, tell him what
6 happened. That's all he said.

7 Q Was anybody present in that room with you?

8 A No, sir.

9 MR. MCPHERSON: That's all I have, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. GOWDY

12 Q Mr. Sims, were you under the influence of drugs or
13 alcohol on May 22nd, 2006?

14 A No, sir.

15 Q Are you sure?

16 A Yes, sir.

17 Q Where had you been earlier that day?

18 A I was with Diane.

19 MR. MCPHERSON: Your Honor, I am going to object.

20 This has nothing to do with the taking of the statement,
21 and I put him on the stand for the limited purpose.

22 MR. GOWDY: Your Honor, I'm just trying to prove it
23 was a voluntary statement and he wasn't under the influence
24 of drugs or alcohol and hadn't been drinking, hadn't been
25 using drugs.

Russell Lee Sims (In-camera)
Cross-examination by Mr. Gowdy

- 1 THE COURT: You can ask him about that.
- 2 Q Had you been using drugs on May 22nd?
- 3 A No, sir.
- 4 Q Drinking any alcohol?
- 5 A No, sir.
- 6 Q Where were you when you got arrested?
- 7 A I was in the projects in Highland.
- 8 Q And you were in Diane Jackson's car, right?
- 9 A No, sir.
- 10 Q Whose car were you in?
- 11 A I was on foot.
- 12 Q You were on foot. Do you know what it means when
- 13 someone says I have the right to remain silent?
- 14 A Yes, sir.
- 15 Q Do you know what it means when I say anything I can --
- 16 anything I say can and will be used against me in a court
- 17 of law?
- 18 A Yes, sir.
- 19 Q How far did you go in school?
- 20 A I made it to the 9th, but I made it to the 8th.
- 21 Q Okay. "I have the right to talk to a lawyer." Do you
- 22 know what that means?
- 23 A Yes, sir.
- 24 Q "To have him present." Do you know what that means?
- 25 A Yes, sir.

Russell Lee Sims (In-camera)
Cross-examination by Mr. Gowdy

- 1 Q "While I'm being questioned." Are you with me so far?
2 Do you understand all of it?
- 3 A Yes, sir. Okay.
- 4 Q "If I cannot afford to hire a lawyer one will be
5 appointed to represent me before any questioning if I so
6 wish." Do you understand what that means?
- 7 A Yes, sir.
- 8 Q "I have the right to stop answering questions at any
9 point." Do you understand that what means?
- 10 A Yes, sir.
- 11 Q All right. You will agree with me that that is your
12 signature, correct?
- 13 A Yes, sir.
- 14 Q And you will agree with me that there's a little
15 difference in your signature on July the 8th and your one
16 on May the 22nd, wouldn't you? Look at your two
17 signatures.
- 18 A Same thing.
- 19 Q A little difference though, isn't there? You don't
20 see any difference, Mr. Sims?
- 21 A One in print and one cursive.
- 22 Q Yeah. One is in print and one is in cursive -- one is
23 in print and one is in cursive. You want this Court to
24 believe that you signed them back to back on July the 8th.
- 25 A If that's what they asked me to do.

Russell Lee Sims (In-camera)
Cross-examination by Mr. Gowdy

1 Q Oh, he told you to do one in print and one in cursive.

2 I missed that part of your direct testimony.

3 A I wasn't asked.

4 Q So that detective not only forced you to sign two
5 documents, including one that was dated the wrong date. He
6 even told you to do one in cursive and one in print?

7 A It wasn't no date on it as I recall. Not on the 22nd.

8 Q Now, Mr. Sims, let's be real clear with what you're
9 saying. What you're saying is that detective on July the
10 8th came and laid two documents out for you, right?

11 A Yeah.

12 Q And that one of them had the wrong date on it.

13 A It wasn't no date on it, on the other one.

14 Q Oh, so he filled it all in afterwards. He made you
15 sign a blank document?

16 A He didn't make me sign it. I offered to sign.

17 Q You offered to sign a blank document.

18 A Because he told me I wouldn't have to write a written
19 statement.

20 Q Okay.

21 A It was about the murder. He said that it wasn't a
22 murder, but he said that he died. He said the guy died.
23 So then I --

24 Q Well, we will let the jury decide whether that's a
25 murder or not, Mr. Sims. My question to you is this. Not

Russell Lee Sims (In-camera)
Cross-examination by Mr. Gowdy

1 only are you telling this Court that you signed a blank
2 document. You're now telling the Court that that detective
3 instructed you to sign one of them in print and one of them
4 in cursive.

5 A Yeah, to prove that I wrote it.

6 Q To prove you wrote it?

7 A To prove that --

8 Q It wouldn't prove it if you wrote it both in cursive?

9 A Yeah.

10 Q Yeah, what?

11 A It's even better if it's in print and cursive.

12 Q Why, why? Who told you that?

13 A I don't know. Ask him.

14 Q I'm asking you.

15 A I'm not the detective. I just follow orders.

16 Q You follow orders.

17 A That's all.

18 Q He ordered you to sign one in print and one in
19 cursive.

20 A No order, but not like that.

21 Q Come on, Mr. Sims. You signed it on May the 22nd,
22 didn't you?

23 A No.

24 Q Just like the detective said, right? And that's why
25 one is in cursive and one is in print, because you did it

Russell Lee Sims (In-camera)
Cross-examination by Mr. Gowdy

1 on two different days, right?

2 A If I didn't write a statement why would I write, why
3 would I give a signature? If I recall you reading back on
4 the statement where it says he didn't give me a statement,
5 why would I write a signature on those statements?

6 Q Well, Mr. Sims, there's a difference between writing a
7 statement and signing a Miranda waiver form. What you just
8 saw was a Miranda waiver form where you waived your rights.
9 You know the rights I just went over with you like the
10 right to remain silent? Do you remember all of those? You
11 waived all of those. Nobody's saying you wrote out a
12 statement. You gave a verbal statement though, didn't you?

13 MR. MCPHERSON: Your Honor, I object. He's not --

14 MR. GOWDY: I just asked the question.

15 Q Didn't you? Didn't you give a verbal statement to
16 him?

17 A A verbal statement?

18 Q Yeah. You told him that you shot Robert Jackson.

19 A I told him things that go, that go on. I didn't tell
20 him exactly what happened. He put this in his own
21 statement. He put it in his own -- his own way.

22 Q So he made it up.

23 A His own statement.

24 Q He made it up.

25 A He didn't make up the pieces, but he put them

Russell Lee Sims (In-camera)
Cross-examination by Mr. Gowdy

1 together.

2 Q Well, did you tell him that you shot Robert Jackson?

3 A I told him I did.

4 Q Okay. Did you tell him you shot Cornell Hall?

5 A But I did not say nothing about he was going as far as
6 to get a rifle. I never mentioned rifle. I don't say
7 rifle. I said shotgun.

8 Q So you admit that you told this detective you shot
9 Robert Jackson.

10 A Yes, I did.

11 Q And you admit that you told this detective that you
12 shot Derrick Hall.

13 A Yes, I did.

14 Q And you forgot that you shot Cornell Hall until
15 somebody had to remind you.

16 A No.

17 Q You remember shooting him too?

18 A Yes.

19 Q Who did you shoot first?

20 A Derrick.

21 Q How many times did you shoot Derrick?

22 A Once.

23 Q How many times did you shoot Cornell?

24 A Once, maybe twice.

25 Q Was he on the ground one time when you shot him?

Russell Lee Sims (In-camera)
Cross-examination by Mr. Gowdy

1 A Yes, he was.

2 Q He was laying down?

3 A Yes, he was.

4 Q How many times did you shoot Mr. Jackson?

5 A Twice.

6 MR. McPHERSON: Your Honor, I am going to object. The
7 purpose of this hearing --

8 THE COURT: Sustained.

9 MR. GOWDY: Those are all the questions I have, Your
10 Honor.

11 THE COURT: Anything else?

12 MR. McPHERSON: No. No questions.

13 THE COURT: You may step down.
14 Anything else on behalf of the defense?

15 MR. McPHERSON: No, Your Honor.

16 THE COURT: Any argument you wish to make?

17 MR. McPHERSON: Your Honor, we would submit to the
18 Court that the statement made on May 22, 2006, is not
19 admissible because the defendant was not given his Miranda
20 warnings and because the evidence shows through Russell
21 Sims that the Miranda warnings' statement that's dated
22 5/22/06 was not given to the defendant to sign until July
23 the 8th of 2006 and that this officer has backdated the
24 information and therefore we're asking that you suppress
25 the statement made on May 22, 2006.

1 THE COURT: All right. Anything else?

2 MR. MCPHERSON: No. That's all.

3 THE COURT: All right. Well, there is clearly a
4 conflict in the testimony. But I do find the state has
5 established by the greater weight or preponderance of the
6 evidence that the defendant was in custody, that he was
7 fully advised of his Miranda rights, that he understood
8 those rights, he voluntarily gave up those rights, he
9 agreed to make a statement.

10 He did give an oral statement to the detective. And
11 he was not coerced, compelled, threatened nor promised
12 anything that caused him to provide that statement; and
13 therefore I do find that each of the statements as
14 testified to by the detective were freely and voluntarily
15 made.

16 All right. Anything further before the jury is
17 brought in?

18 MR. GOWDY: Your Honor, there was a reference earlier
19 this morning to a 404-B notice that we had given the
20 defense. I wanted to put on the record or let the Court
21 understand what that incident was.

22 This alleged murder and assault and battery with
23 intent to kill and other crimes occurred on May 20th.

24 On May the 9th in the city of Spartanburg the state
25 has evidence that this defendant went for a job interview,

1 was unsuccessful in his efforts to get a job, demanded gas
2 money to reimburse him for coming despite the fact that he
3 was on foot and when the gas money was denied went outside
4 and shoot the wheel of out of a commercial van.

5 The significance of that is the shell casing matches
6 identically with the shell casings found on May the 20th on
7 Miller Road.

8 So I wanted to let the defense be on notice that we
9 had that incident. We don't plan obviously to use that in
10 our case in chief unless they challenge the identity of the
11 shooter on Miller Road or unless they challenge that he did
12 not have access to a firearm at any point, because that
13 prior incident in the city of Spartanburg obviously would
14 undercut both of those.

15 So the reference to the 404-B, I told Mr. McPherson so
16 long as we don't start going down the road that Mr. Sims
17 isn't the shooter and Mr. Sims didn't have access to a gun
18 that match those ballistics, we're not going into that
19 404-B incident.

20 MR. McPHERSON: We accepted that. We're in agreement
21 with that.

22 THE COURT: Okay. All right. Anything else?

23 MR. GOWDY: That's it, Your Honor.

24 MR. McPHERSON: No. We have nothing further.

25 THE COURT: Okay. Bring the jury in. Ask Mr. Mahan

1 to take the foreperson's seat.

2 (The following takes place in the presence of the
3 jury.)

4 THE COURT: Good afternoon, ladies and gentlemen.

5 We are ready to begin with the trial of the case for
6 which you were selected.

7 Mr. Mahan, I'm going to ask you to serve as the
8 foreperson of the jury. And as the foreperson you'll have
9 three specific duties that none of the other jurors will
10 have.

11 Number one, you're going to be asked to serve as the
12 spokesperson for the jury. And if during the trial you or
13 a fellow juror has any difficulty or problem or question,
14 if you'll let me know of that fact if you're here in the
15 courtroom -- if you're outside the courtroom you can tell
16 the bailiff -- they will relay those comments to me. I'll
17 try to assist you in resolving any difficulty or answering
18 any question.

19 Secondly, you're going to be asked to preside over
20 jury deliberations when the time comes. That of course
21 won't be until after all of the evidence has been received
22 and I have instructed you on the law that's applicable in
23 the case. But when the time comes for jury deliberations
24 you're going to be asked to preside over that process in
25 the jury room simply to ensure that it's carried out in

1 some orderly fashion.

2 And, thirdly, you'll be asked to actually write the
3 verdict or the decisions of the jury. You'll do that on a
4 verdict form I'll provide you at the trial's conclusion on
5 which you will indicate the jury's unanimous decision as to
6 a particular charge.

7 Now, the foreperson has those specific duties that
8 I've just indicated. That does not mean however that he is
9 any more important than any of you other jurors, because
10 the decision of a jury panel is the unanimous consensus
11 opinion of all 12 jurors. And so all of you are going to
12 have an equal say and an equal vote in what the ultimate
13 decisions will be in this case.

14 Someone simply has to be delegated those
15 responsibilities that I have just indicated, and I have
16 delegated those to Mr. Mahan in appointing him as
17 foreperson. But so far as the ultimate decisions in this
18 case are concerned all of you 12 jurors are equally
19 important because, as I have stated, the verdict has to be
20 unanimous. All of you must be in agreement.

21 Now, Mr. Jeter, you've been selected as an alternate
22 juror. And the function of an alternate juror is take the
23 place of one of the original 12. If during the trial of
24 this case one of these original 12 cannot continue to serve
25 for some reason, that is if a juror is called away because

Jury sworn

1 of an emergency or an illness or some other reason and they
2 cannot continue, then you would be called upon to take that
3 person's place.

4 If that occurs, you then become the 12th juror. If
5 that occurs, then you would go back and participate in jury
6 deliberations when that time comes.

7 If however when the time comes for jury deliberations
8 the original 12 are able to engage in that function of the
9 jury, then your service ends. You don't get to participate
10 any further, because the decision of a jury is that of 12.
11 And no more than 12 can participate in that deliberative
12 process.

13 But it is important that you pay just as careful
14 attention as we ask of all of the jurors in the case
15 because it does occur from time to time for one reason or
16 another one of these original 12 may be called away. In
17 that event you become the 12th.

18 So we appreciate your participation as an alternate
19 juror just as we appreciate the participation of all of you
20 jurors who have been selected for the purpose of deciding
21 the verdicts in this particular case.

22 You may swear the panel.

23 (Whereupon, the jury was duly sworn.)

24 THE COURT: All right. Ladies and gentlemen, as you
25 know, you have been selected to decide the verdicts in the

1 case of the State vs. Russell Lee Sims.

2 Mr. Sims has been charged with separate and distinct
3 criminal offenses. There are ten total. They are alleged
4 to all have -- to have arisen out of one particular event
5 or course of events that the state alleges occurred back on
6 May the 20th of 2006.

7 And as I told you previously, as I read from these
8 indictments prior to your selection, Mr. Sims is charged
9 with the crime of burglary in the first degree; he is
10 charged with the crime of armed robbery and attempted armed
11 robbery; he's charged with two counts of assault and
12 battery with intent to kill; he's charged with four counts
13 of pointing and presenting a firearm; he's charged with one
14 indictment alleging murder, and also in that indictment the
15 offense of possession of a firearm during the commission of
16 a violent crime.

17 Now, as I told you, with regard to those indictments
18 Mr. Sims has entered a plea of not guilty. That plea of
19 not guilty, as I told you, places upon the state the burden
20 of proving the allegations that they have set forth in each
21 of those indictments, the burden of proving each of the
22 essential elements that make up the crimes that are alleged
23 in each of those indictments; and therefore the burden is
24 upon the state to establish the defendant's guilt to the
25 satisfaction of you 12 jurors beyond a reasonable doubt

1 before any verdict could be, any verdict of guilty could
2 be, returned as to any particular indictment.

3 Now, when a person is charged with a crime the burden
4 is never upon that person. The burden is never upon a
5 defendant to prove that he is not guilty or to prove that
6 he is innocent, because in many cases that might not even
7 be possible.

8 The burden is always upon the state because they bring
9 the charge against another to establish that person's guilt
10 beyond a reasonable doubt before a person could ever be
11 found guilty of a particular criminal offense.

12 Now, the way the trial will proceed is that in a
13 moment the lawyers are going to address you in what are
14 called opening statements.

15 There are two occasions in the trial of a case where
16 lawyers are permitted to address the jury, and that is at
17 the beginning of the trial before any evidence has been
18 introduced, then again at the conclusion of the trial after
19 all of the evidence has been received.

20 Keep in mind however that the lawyers' statements,
21 whether they're the opening statements or the closing
22 statements, are not evidence in the case, because the
23 lawyers aren't witnesses to anything about this case.
24 They're not going to be telling you anything that they know
25 about this case of their only personal knowledge or

1 perception or experience. They're not going to testify
2 from the witness stand and be subjected to direct and
3 cross-examination as each of the witnesses will be. And so
4 what they tell you in their statements is not evidence.
5 You can't rely upon that in making your ultimate
6 determination of fact and ultimately your decision in the
7 case.

8 You should listen to what they have to say however
9 because the statements do serve a purpose. The opening
10 statements serve to provide you with a basic understanding
11 as to what this case is about so that you'll have some
12 context in which to place the evidence that we will be
13 receiving shortly thereafter.

14 The closing statements occur after all of the evidence
15 has been received. And, again, while those statements are
16 not evidence, it does permit the lawyers an opportunity to
17 discuss with you the evidence that you have seen and heard
18 during the trial. And through that discussion each will
19 have an opportunity to try to persuade you or to convince
20 you that that evidence does or does not support a
21 particular decision.

22 And, as I've stated, it's in between the opening and
23 the closing statements of the lawyers that we actually
24 receive the evidence upon which you will base your
25 decision.

1 The state, as I told you, has the burden of proof. So
2 the state has an obligation to present evidence. Otherwise
3 you could never find a person guilty of a crime because the
4 state hasn't proven it if they don't offer evidence. So
5 the state is going to go forward first in their
6 presentation of evidence.

7 After the state has concluded with that presentation
8 the defendant has the same opportunity to present evidence
9 by way of testimony or otherwise. But the defendant is
10 under no obligation to testify or to present evidence,
11 because, as I told you, the burden is not upon a defendant
12 to prove that he is not guilty because that might not even
13 be possible.

14 The burden is always upon the state in bringing a
15 charge to prove his guilt. And so during the trial of a
16 criminal case a defendant may not testify, may not call any
17 witnesses, may not produce any evidence. And if that were
18 to occur you as jurors cannot consider that fact in any
19 way. You can't hold that against a person charged with a
20 crime if they don't testify or they don't present evidence
21 because they don't have to. They don't have any obligation
22 or burden to. And you can't consider it against them.
23 However a defendant in a criminal trial is afforded that
24 opportunity to present evidence if he should wish to do so.

25 After all of that evidence has been received and after

1 you've heard the final summations of the lawyers, I will
2 then instruct you fully on the law that's applicable in
3 cases of this nature. Then you'll be asked to go back into
4 the jury room and begin with your deliberations in the
5 case.

6 And through that process you 12 jurors are simply
7 going to be called upon through the exercise of good
8 judgment and common sense conscientiously applied to the
9 testimony and the evidence in the case, from that evidence
10 to decide the facts; after deciding the facts, apply the
11 law that I will provide you; and arrive at a fair and just
12 decision.

13 It's important now that you give every witness the
14 same degree of attention as they testify, because often it
15 occurs during the trial of a case you might have several
16 witnesses testify. There may be some conflicts in that
17 testimony. One witness may testify contrary to another.

18 Well, if there is a conflict or if there is contrary
19 information provided and it's necessary to resolve that
20 conflict in order to arrive at a decision, you 12 jurors
21 will decide that conflict. That is you'll decide what is
22 the most credible evidence. And that's the evidence that
23 you will accept. And you will reject any evidence that you
24 find not to be credible or believable.

25 So one of your duties, and it is your prerogative to

1 decide what testimony is the most believable testimony.
2 And so in doing that you'll have to assess the credibility
3 of witnesses as they testify.

4 And you can believe everything that a witness
5 testifies to, and you may choose to believe none of it.
6 You may believe some portion of a witness' testimony and
7 reject some other portion of that same witness' testimony.

8 And in a given case you could believe one witness as
9 opposed to many, or many as opposed to one. Simply put,
10 whatever your good judgment and common sense tells you is
11 the most credible testimony is the testimony you should
12 accept.

13 But it's important that you give every witness the
14 same degree of attention as they testify so that when you
15 go back to begin your deliberations you'll be in a proper
16 position to be able to fairly assess each witness'
17 credibility in light of not only that witness' testimony
18 but in light of all of the other testimony and other
19 evidence received during the trial of the case.

20 It's also important that you keep an open mind
21 throughout the course of the trial. And by that I simply
22 mean that you are not to begin making up your minds or
23 formulating your opinions as to what you think the ultimate
24 decisions in this case ought to be until all of the
25 evidence has been received, until I have instructed you as

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1 to the law that's applicable in the case and until you've
2 been asked to go back into your jury room and begin with
3 your deliberations in the case. That is the process that
4 is designed for you 12 jurors to arrive at a fair and just
5 decision in this case.

6 So I do want to thank you in advance for your
7 participation, as well as your careful attention. I would
8 ask that you please give the lawyers your attention now as
9 they give you their opening statements.

10 Mr. Stalvey.

11 MR. STALVEY: May it please the Court, Your Honor.

12 THE COURT: Yes, sir.

13 MR. STALVEY: Ladies and gentlemen, the reason that we
14 are here today is that on May the 20th of 2006 the
15 defendant in this case, Russell Sims, chose to end the life
16 of a man that had done nothing but welcome him into his
17 home for the time that they knew each other.

18 The reason that we are here today is because on that
19 night the defendant in this case chose to try and end the
20 lives of two other men that had done nothing but welcome
21 him to family barbecues and church gatherings.

22 Ladies and gentlemen, the reason we are here today is
23 because the defendant in this case on that night chose to
24 terrorize a woman and her family that had done nothing but
25 show him love and support the entire time they knew him.

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1 Now, ladies and gentlemen, as the judge instructed you
2 before, you are the judges of the facts of this case. And
3 the facts of this case are that on May the 20th of 2006 the
4 defendant and Diane Jackson were on their way back from
5 Spartanburg headed to Campobello.

6 They were in a relationship at the time. And on the
7 way back Diane was driving the car. The defendant was in
8 the passenger seat. Diane's two kids and her grandchild
9 were in the back seat.

10 For some reason that's inexcusable and that we will
11 not know, the defendant with an 11-year-old, an
12 eight-year-old and two-year-old in the back seat decides
13 he's going to shoot some signs. As they pull into
14 Campobello he announces he's going to shot some signs to
15 Diane. He asked two-year-old Jerohmia, her grandchild, if
16 he wants to shoot some signs.

17 Diane says put up that gun, put the gun away, there
18 are kids in this car. Well, he ignored that, ladies and
19 gentlemen.

20 So he starts firing the gun out the window. She says
21 put the gun away, I'm going to call the police. And he
22 didn't like that, ladies and gentlemen. He ignored her
23 again.

24 But this time he turned to her as she drove the car
25 and put the gun to her head. Then he turned to the kids in

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1 the back seat, the 11-year-old, the eight-year-old, the
2 two-year-old and pointed the gun at each of them. But as
3 you can imagine, the kids are screaming. They're crying.
4 They're shouting. Diane's telling them to put the gun
5 away, just stop.

6 And as they pull up to [REDACTED] Road where Diane
7 lived with her father, Robert Jackson, age 75, and her two
8 kids, Diane rushes the kids inside to get away from the
9 defendant. She rushes them inside to hide from the
10 defendant. They are trying to get away.

11 Robert Jackson who is enjoying a quiet night at his
12 home as most 75-year-old men would do hears all of this
13 commotion, hears the children crying, hears them screaming.

14 He runs out on his front porch. He says what's going
15 on. The defendant rushes past him, up the porch past
16 Mr. Jackson into the house the whole time announcing I'm
17 going to reload, I'm going to reload.

18 Mr. Jackson stands on the front porch and demands that
19 the defendant leave his house. Well, the defendant ignored
20 Mr. Jackson's request.

21 The defendant ran back out on the front porch and at
22 close range pointed the pistol at Mr. Jackson and fired two
23 rounds hitting him in the throat. Mr. Jackson died of
24 those injuries on July 8th of 2006.

25 Now, while the defendant and Mr. Jackson were out on

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1 the front porch Diane Jackson stood in the doorway. She
2 saw this entire incident happen. She saw the defendant
3 shoot her father.

4 And when the defendant tried to get back in the house
5 she said, no, don't come in, don't come in. He forced his
6 way back in that house, ladies and gentlemen.

7 He forced her to the ground. He put the gun to her
8 head and said tonight's your night to die. But he didn't
9 kill her, ladies and gentlemen.

10 He demanded her money. He demanded she take him back
11 to Spartanburg. She refused. She said I need to stay here
12 with my father, just leave, just leave.

13 So the defendant walks back out on the front porch,
14 points the gun at Mr. Jackson who is slumped down on the
15 railing of his own front porch, puts the gun to his head
16 and says give me all your money. Diane says he doesn't
17 have any money, just leave, just leave. The defendant gets
18 in her car and heads up the road.

19 Now, ladies and gentlemen, while this is all going on
20 Derrick Hall, Diane's cousin, is 200 yards up the road
21 where he lives. He's burning trash out in his front yard.
22 And he thinks he hears gunshots down at Diane and her
23 father's house.

24 So he goes into his house. He gets the shotgun. He
25 walks next door to his Uncle Cornell Hall's house and walks

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1 through the front door and says I think I heard some
2 gunshots down there.

3 Derrick's mother was in the house and she said,
4 Derrick, put the gun down. She said that's going to cause
5 nothing but problems, lay the gun down. And Derrick lays
6 the gun down.

7 Derrick's cousin, Elaine, is also in the living room.
8 And they come out to the front door and see the defendant
9 pull up in their front yard in Diane's car. They see the
10 defendant run up the steps.

11 They see the defendant force his way into the house.
12 And the minute he gets into that house he shoots Derrick
13 Hall hitting him in the arm. The bullet travels through
14 his chest barely missing his heart and lodges right here in
15 the side. Derrick Hall stumbles back. He tries to push
16 his cousin and his mother out of the way.

17 Cornell Hall, age 48, moments before had just been
18 quietly enjoying his newspaper at his dining room table.
19 He hears the defendant come in. He hears the shots. He
20 comes around, comes from the dining room into the living
21 room and immediately is shot at close range by the
22 defendant in the stomach. Then the defendant after
23 shooting Cornell Hall in the stomach, after Cornell Hall
24 goes down to the floor, advances on him and shoots him
25 again, this time hitting him in the arm.

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1 Ladies and gentlemen, the defendant announces to
2 everybody in the house don't move or are you're going to
3 die.

4 He runs through the house. He runs back out into the
5 living room. He picks up Derrick's shotgun which has been
6 laying on the floor the entire time, has been laying on the
7 floor before the defendant even entered the residence. He
8 takes that shotgun and he leaves. The defendant is
9 arrested two days later in Spartanburg. And that's what
10 happened that night.

11 Now, ladies and gentlemen, another thing you're going
12 to have to do during this trial is determine if the
13 defendant intended to kill those three men that night.

14 And, ladies and gentlemen, we can't look into the mind
15 of the defendant from that night. We can't read his
16 thoughts and tell what his intentions were. But we can
17 infer from his actions that he intended to kill Robert
18 Jackson that night.

19 How? Well, it's very simple. He shot a 75-year-old
20 man two times in the throat at close range.

21 MR. MCPHERSON: Your Honor, I'm going to object. He's
22 giving argument now instead of what the evidence is going
23 to show.

24 THE COURT: Yeah. Let's -- you can give them a brief
25 explanation about what you intend to show. But let's don't

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1 do a final argument. Let's do an opening statement.

2 MR. STAVLEY: Thank you, Your Honor.

3 Ladies and gentlemen, the testimony that you will hear
4 during this case will show you what his intent was. Ladies
5 and gentlemen, the testimony that you will hear during this
6 case will show you that the defendant did what he did that
7 night with no reason, no provocation whatsoever.

8 As the judge told you, what I am telling you is not
9 testimony. As you are aware, I was not there that night.
10 Solicitor Gowdy was not there that night.

11 But I tell you who was there that night. Derrick Hall
12 was there that night, and he's going to tell you first hand
13 what happened. Cornell Hall was there that night. He's
14 going to tell you first hand what happened. Diane Jackson
15 was there that night. She's going to get up and tell you
16 what happened.

17 Ladies and gentlemen, we weren't there, but you will
18 hear from the police officers that responded to the scene
19 that collected evidence; you will hear from the doctors
20 that treated the victims; you will hear from paramedics
21 that responded to the scene. They were all there that
22 night.

23 And, ladies and gentlemen, after you hear all of this
24 testimony and after you give it fair consideration and
25 after you give it your undivided attention and you consider

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1 all of this evidence, it will be clear to you this
2 defendant is guilty.

3 Now, ladies and gentlemen, I spoke to you earlier
4 about choices. It was the defendant's choices that night.
5 Nobody made him do that. It was his choices that night.

6 At the close of this case we're going to ask you to
7 hold him accountable for those inexcusable and
8 incomprehensible decisions that he made. At the close of
9 this case we're going to ask that you find this defendant
10 guilty of all charges he faces.

11 MR. McPHERSON: Your Honor, again, he's not telling
12 the jury what the evidence is going to show.

13 THE COURT: Overruled.

14 MR. STAVLEY: I'm finished, Your Honor.

15 THE COURT: Okay.

16 MR. McPHERSON: May it please the Court.

17 THE COURT: Yes.

18 MR. McPHERSON: The evidence is going to show that
19 Mr. Jackson, Diane Jackson, Cornell, Derrick were all
20 related and they all lived in the same area and they all
21 lived in the country.

22 The deceased, Robert Jackson, had a daughter. Her
23 name was Diane Jackson. And they lived in one home out
24 near Campobello.

25 Diane Jackson and Russell Sims were boyfriend and

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1 girlfriend, and they had been dating and going together for
2 over a year.

3 Diane Jackson was with Russell when he purchased the
4 weapon. Diane Jackson is the one who went out and bought
5 the bullets for the gun. So I want you to have a little
6 background about what happened.

7 Now, Diane and Russell had lived together at Diane's
8 home. Sometimes Russell would stay there three or four
9 nights a week, not seven days a week. But he would stay
10 there a majority of the week with Diane. And they would
11 sleep in the same room and the gun would stay in the room
12 with Diane and Russell. The gun was kept under the
13 mattress. They hid it so the kids wouldn't find it.

14 Now, they were coming back from Spartanburg, and there
15 was some arguing going on but nothing bad. Diane had
16 indicated that she was going to take Russell home. And
17 Russell had his gun with him. And when they got out in the
18 country and when they were almost home he fired the gun out
19 the window into the ground several times. He wasn't
20 shooting at anybody or anything, and he wasn't trying to
21 hurt anybody or anything.

22 But it did upset Diane and the children. And this was
23 just, you know, when he fired the weapon, they were only
24 like a few hundred yards away from the home that Russell
25 was staying a good part of the time.

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1 When they got home Russell went into the house, got
2 his clothes because he was leaving. He got the bullets and
3 he went back outside.

4 Diane was trying to get the children inside the home.
5 And as Diane was putting the children away inside the home
6 Mr. Jackson came out the front door, went down the stairs,
7 went around to the porch. And you'll see pictures that
8 will better describe this.

9 And he goes and gets a shotgun, and he retrieves a
10 shotgun that he keeps close to his side all the time. He
11 retrieved this shotgun. And the defendant is over there
12 reloading his gun because he was going to do some target
13 practicing while he was waiting on Diane.

14 And Mr. Jackson confronts him with the shotgun. He
15 hears that shotgun click. And then he sees Mr. Jackson
16 coming at him with the shotgun in a very threatening
17 manner.

18 So Russell shoots him twice trying to disarm him, not
19 to kill him. And Russell does get the gun away from him.
20 He gets the shotgun. It's a 20-gauge shotgun, and takes it
21 away from Mr. Jackson.

22 And he throws the gun on the ground. And Mr. Jackson
23 knows he has been shot so he is walking back up to the
24 porch saying he shot me.

25 And Russell Sims is telling Diane I've got to go, you

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1 know I need to get out of here, let me have your car and
2 give me some money and let me go, excuse me, and she gives
3 him the car. She gave him the car and gave him some money
4 or gave him a check and told him to leave.

5 But he did not rob her or threaten her. He did not
6 threaten the children. He did not point any gun at Diane.
7 He did not point any gun at the children. He is going to
8 deny this.

9 So he's going to go down maybe a couple of hundred
10 yards to one of the relatives' houses, Cornell's house, and
11 wait for the police to come. And he wants to run what
12 happened by Cornell.

13 And when he gets into the car he throws the shotgun
14 that he took away from Mr. Jackson in the back seat, and he
15 puts the pistol in the front.

16 And then when he goes up to Cornell's house he has the
17 pistol tucked into his back belt area. And as he goes to
18 the door he sees Cornell pump his shotgun ready to fire at
19 him. And Russell reaches in and fires and hits Derrick.
20 Then he goes in to retrieve that shotgun because he can't
21 leave.

22 He's out in the country. And there are only -- the
23 house is full of people, and he's afraid if he leaves
24 somebody will shoot him in the back as he's running for his
25 car.

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1 So he goes to get the shotgun. And as he's running
2 for the shotgun Cornell also runs for the shotgun. So he
3 shoots Cornell just trying to wound him to get the gun
4 away. He grabs the shotgun and he leaves.

5 So now he's got two shotguns in his car. He leaves to
6 go home. And on the way home, still out in that area,
7 there's a lake out in that area. He stops. He throws the
8 handgun into the lake. And then he goes on to a friend and
9 gives the two shotguns to a friend.

10 Then he calls Diane later and says come get your car,
11 you can have your car back. And she refuses to come and
12 get it. And of course she's mad at him, so she really
13 wouldn't talk to him.

14 But the defendant is claiming this would have never
15 happened had he not been threatened by all the parties that
16 he shot. And they threatened him first, and that he didn't
17 have any way of retreating. He is out on strange
18 territory. He's out in the country and it's nighttime.
19 And they're sitting there getting ready to pull the trigger
20 on him.

21 Can you imagine what it's like to have a shotgun
22 shoved in your face? It's very fearful. You don't know if
23 they're going to pull the trigger or not. But when
24 somebody points a weapon at you there's only one thing you
25 can assume, is that they're going to use it.

Jamie Tate
Direct examination by Mr. Gowdy

1 Since he happened to have a handgun on him he used his
2 first. Therefore we're going to ask you to acquit him on
3 all the charges. Thank you.

4 MR. GOWDY: Your Honor, may it please the Court. The
5 state would call Deputy Tate.

6 JAMIE TATE, having been first
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. GOWDY

9 Q Good afternoon, Deputy.

10 A Good afternoon.

11 Q I want you to introduce yourself to the jury. And
12 speak up good and loud where the last lady and gentleman
13 can hear you. Okay?

14 A All right. I am Deputy Jamie Tate with the
15 Spartanburg County Sheriff's Office.

16 Q How long have you worked for the sheriff's office?

17 A For about four and a half years.

18 Q What division are you currently in?

19 A I'm in uniform patrol.

20 Q What does someone in uniform patrol do? What are your
21 daily responsibilities and duties?

22 A We answer 9-1-1 calls for service.

23 Q What area do you currently patrol?

24 A I work the Landrum-Campobello area.

25 Q All right. Are you familiar with Miller Road in the

Jamie Tate
Direct examination by Mr. Gowdy

1 Campobello community?

2 A Yes, sir.

3 Q On May 20th of 2006 did you respond to a call on
4 Miller Road?

5 A Yes, sir.

6 Q Do you recall generally what time of the day or night
7 that would have been?

8 A It was after dark, roughly I would say 8:00 or
9 9:00 o'clock, somewhere around in there.

10 Q I want to show you what's been marked for
11 identification purposes as State's Exhibits 17, 18, 19 and
12 20 and ask you whether or not you recognize what is
13 depicted in any of those four pictures.

14 A Yes, sir, I do.

15 Q What is that?

16 A That is Miller Road and the residences on Miller Road.

17 MR. GOWDY: Your Honor, we would move 17 through 19
18 inclusive, 17 through 20 inclusive, into evidence.

19 MR. McPHERSON: We have no objection.

20 THE COURT: What are the numbers again?

21 MR. GOWDY: 17, 18, 19 and 20, Your Honor. Permission
22 to publish to the jury.

23 THE COURT: You may.

24 (Photographs marked State's Exhibits Nos. 17, 18, 19
25 and 20.)

Jamie Tate
Direct examination by Mr. Gowdy

1 Q Show you State's Exhibit 17, Deputy. Try to at least.
2 Tell the jury what they are looking at.

3 A They're looking at the road. Miller Road is on the
4 right side of the residences where the wood line is and
5 when you're going down the road off of the main street.

6 Q Use that. Be careful with it. Show the jury where
7 the road is.

8 A This right here is the road, right down through here.

9 Q All right. You can scarcely see it, right, barely see
10 the road?

11 A Right.

12 Q Okay. And that is Miller Road?

13 A That is.

14 Q And what county is that in?

15 A It's in Spartanburg County.

16 Q Okay. And you received a call to respond?

17 A We did at [REDACTED]. The call came out for [REDACTED] Road,
18 which is this residence right here.

19 Q Okay. Tell the jury what you found when you got to
20 [REDACTED].

21 A When we arrived at [REDACTED] there were two gunshot victims.
22 There were several other people out in the yard. And we
23 found, at the doorway we found, some shell casings. We
24 were trying to secure the scene and get the people off and
25 medical treatment for the two victims.

Jamie Tate
Direct examination by Mr. Gowdy

1 Q Now, when you say you found some shell casings, is it
2 part of your job as a uniform patrol deputy to collect
3 evidence, or is that somebody else?

4 A That's I. D. We just secure the scene. We don't
5 recover any evidence.

6 Q All right. And when you say near the door, was that
7 inside the house or outside the house?

8 A It was inside the house.

9 Q Inside the house you so what appeared to be shell
10 casings, is that correct?

11 A Yes, sir.

12 Q All right. And you identified two victims.

13 A Yes, sir.

14 Q Okay. Had E. M. S. or any medical assistance arrived
15 at this point?

16 A No, sir.

17 Q Okay. Did you stay at [REDACTED] or did you leave?

18 A We were at [REDACTED] and we heard some commotion down the
19 street. Somebody came running up the road and said that
20 there was another gunshot victim on down the road, which
21 they identified it as [REDACTED] Road, which is this house
22 right here at the very end.

23 Q Okay. Tell the jury what you found when you got to
24 [REDACTED] Road.

25 A When we got to [REDACTED] Road we came up to the porch

Jamie Tate
Direct examination by Mr. Gowdy

1 which is on the other side and saw blood on the porch. And
2 Mr. Jackson was, an elderly black male was, laying inside
3 the residence right beside the couch a few feet from the
4 door.

5 Q Let me show you what's been marked as State's
6 Exhibit 21 and ask you whether or not you recognize that.

7 A I do.

8 Q What is that?

9 A That's the porch where the blood was at and the porch
10 that we entered the residence at.

11 Q All right. Is that [REDACTED] or is that [REDACTED]

12 A That's [REDACTED]

13 Q All right. Show again to the jury where [REDACTED] is.

14 A [REDACTED] is right here.

15 MR. GOWDY: Your Honor, we would move State's 21 into
16 evidence.

17 MR. MCPHERSON: No objection.

18 THE COURT: It is admitted.

19 (Photograph marked State's Exhibit No. 21.)

20 MR. GOWDY: Permission to publish, Your Honor.

21 THE COURT: You may.

22 Q All right. That is [REDACTED] Road?

23 A Yes, sir.

24 Q All right. And how did you go into [REDACTED] Road?

25 A We went in through this door right here.

Jamie Tate
Direct examination by Mr. Gowdy

1 Q Did you notice anything on your way into the door?

2 A We did. We noticed blood on the railing right here,
3 on the freezer and on the -- on the top of the porch where
4 he would be standing. And we walked in, and the gunshot
5 victim was right to the right laying in the floor right
6 inside the doorway.

7 Q All right. He was laying in the floor.

8 A Yes, sir.

9 Q Were you able to determine where he was bleeding from?

10 A He had blood around his neck area and the upper part
11 of his body.

12 Q Were lay people attempting to render aid to him?

13 A No E. M. S. was on the scene.

14 Q No E. M. S., no professionals, were on the scene,
15 right?

16 A That's correct.

17 Q Were family and friends around him?

18 A Ms. Jackson was there.

19 Q Okay. He's laying on the ground?

20 A Yes, sir.

21 Q Were you able to determine where he had been shot?

22 A Around the neck area, upper part of the body is where
23 the blood was at.

24 Q Okay. Did you ask Mr. Jackson or did he indicate to
25 you the identity of the shooter?

Jamie Tate
Cross-examination by Mr. McPherson

1 A He did. We, we walked in and talked to him and told
2 him to hang on, that some E. M. S. was on their way to take
3 care of him. And when asked if anybody else was there --
4 we had to clear the house and make sure no one else was in
5 the residence -- and he stated that Diane's friend was the
6 one that shot him.

7 Q Okay. Did you pass that information that Diane's
8 friend was the one that shot him? Did you pass that
9 information on to your colleagues in law enforcement?

10 A We did. We talked to Diane Jackson, and she gave us
11 information on her vehicle and who was in the vehicle. And
12 we BOLO'd it, which is to-be-on-the-lookout to all agencies
13 in Spartanburg country.

14 Q All right. You sent out a BOLO which is an acronym
15 for be on the lookout --

16 A Correct.

17 Q -- for a Diane Jackson's car.

18 A Right.

19 Q Please answer any questions the Court or the defense
20 may have for you, Deputy. Thank you for your time.

21 CROSS-EXAMINATION

22 BY MR. MCPHERSON

23 Q State's Exhibit 21, would you show me where you
24 observed the blood?

25 A The blood was on the floor right here right as you get

Jamie Tate
Cross-examination by Mr. McPherson

1 on top of the steps and on this white refrigerator right
2 here.

3 Q I think you mentioned something about the railing too.

4 A Right. There was some on the railing right here where
5 the post goes up and it comes across right here. There was
6 some right there.

7 Q When you walked up the stairs there was some on that
8 railing too?

9 A Well, it's right here on the freezer and right in this
10 area right here. There's some blood on the green paint.

11 Q Did you make a statement? Did you make a statement?
12 Did you write a report?

13 A Negative. The other officer that arrived with me, she
14 wrote the report.

15 Q And who is the officer that wrote the report?

16 A That would be Deputy Buie.

17 Q So Deputy Buie wrote your statement for you?

18 A No. She wrote the incident report to the incident
19 that happened at Miller Road.

20 Q Okay. Did you read Deputy Buie's statement or report?

21 A I haven't read it, no.

22 Q Don't you normally write a report when you go to an
23 incident?

24 A We do. And she, she was the one that wrote the
25 report. We just do one incident report for an incident.

Jamie Tate
Cross-examination by Mr. McPherson

- 1 Q But didn't you think it was important to record in
- 2 writing that Mr. Jackson told you that Diane's boyfriend
- 3 had shot him?
- 4 A I don't remember if I wrote a voluntary statement, but
- 5 the investigators responded to the scene, and I passed that
- 6 information on to the investigators.
- 7 Q But you didn't think it was important to write that
- 8 down?
- 9 A I just --
- 10 Q Yes or no?
- 11 A She did the report. It's important, yes.
- 12 Q But not important enough to write it down.
- 13 A I didn't, I didn't say that. It was important.
- 14 Q You didn't write it down, did you?
- 15 A I don't recall if I wrote that down on paper or not.
- 16 I don't recall.
- 17 Q If you did write it down couldn't you retrieve the
- 18 paper?
- 19 A Yes. If I wrote it down it should be in the case
- 20 file.
- 21 Q Would it be on a report that you made or on a report
- 22 that Buie did?
- 23 A I didn't understand your question.
- 24 Q The fact that Mr. Jackson made this statement to you,
- 25 that's very important, don't you think?

Jamie Tate
Redirect examination by Mr. Gowdy

1 A It is.

2 Q And don't you think that if you -- well, if you wrote
3 it down, could I see a copy of it?

4 A I don't have a copy. I don't have any paperwork and I
5 don't --

6 Q Would it be fair to say that you did not write it
7 down?

8 A It's possible.

9 Q Would it be fair to say that you did not write it
10 down?

11 A That would be fair because I don't have a case file.

12 Q Just yes or no.

13 A Yes, that would be fair.

14 MR. MCPHERSON: I have no more questions.

15 REDIRECT EXAMINATION

16 BY MR. GOWDY

17 Q Just very briefly one follow-up question.

18 Deputy, did you think it was very important to let
19 your colleagues in law enforcement know to be on the
20 lookout for Diane's friend and her car the night these
21 three men were shot?

22 A We did, we did.

23 Q And you did that, right?

24 A Yes, sir.

25 Q Thank you.

Diane Jackson
Direct examination by Mr. Stalvey

1 THE COURT: You may step down.

2 MR. GOWDY: Your Honor, we would ask he be excused to
3 go back to work, Your Honor.

4 THE COURT: He may be.

5 (Whereupon, the witness was excused.)

6 MR. STAVLEY: Your Honor, at this time the state would
7 call Diane Jackson to the stand.

8 DIANE JACKSON, having been
9 first sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. STALVEY

11 Q Good afternoon, Ms. Jackson.

12 A Hello.

13 Q How are you doing?

14 A All right.

15 Q If you could, please give your name for the benefit of
16 the court reporter.

17 A My name is Diane Jackson.

18 Q And, if you could, just tell us. Where were you
19 working on May the 20th of 2006?

20 A I wasn't working that day.

21 Q You weren't? Are you working now?

22 A Not -- no.

23 Q Ms. Jackson, forgive me for asking, but could you tell
24 the jury how old you are?

25 A Forty-two.

Diane Jackson
Direct examination by Mr. Stalvey

1 Q And, Ms. Jackson, do you have any children?

2 A Yes.

3 Q And what are their names and ages, please?

4 A China, she's 11; India's eight; and Agrogodorth (sic)
5 is 19.

6 Q Okay. And, Ms. Jackson, do you have any
7 grandchildren?

8 A Jerohmia, Ashley's little boy.

9 Q How old is he?

10 A He is three now.

11 Q Ms. Jackson, do you know the defendant in this case?

12 A Yes, I do.

13 Q Did you know the defendant on May the 20th of 2006?

14 A Yes.

15 Q And, if you could, tell the jury what the nature of
16 y'all's relationship was.

17 A We were boyfriend and girlfriend.

18 Q Ms. Jackson, were you with the defendant during the
19 early evening hours of May the 20th of 2006?

20 A Yes, I was.

21 Q Ms. Jackson, could you describe to the jury what
22 happened that night?

23 A Well, it all started. Ashley had called me to keep
24 Jerohmia that night. And R. L. got mad about what I was
25 going to put on, and we started arguing about that.

Diane Jackson
Direct examination by Mr. Stalvey

- 1 And we went to Ashley's house. I got Ashley, I mean,
- 2 I got Jerohmia. On the way back we stopped and got
- 3 something, some movies, got some food.
- 4 Q Can I stop you? Where does Ashley live?
- 5 A She stays Spartanburg, Norris Ridge.
- 6 Q And where were you going when you left Spartanburg?
- 7 A Back to Campobello.
- 8 Q Okay. Where do you live?
- 9 A In Campobello, [REDACTED] Road.
- 10 Q Is that where y'all were going?
- 11 A Yeah.
- 12 Q And who else lived there?
- 13 A My dad.
- 14 Q Did your children live with you?
- 15 A Oh, yes.
- 16 Q That's fine. And, if you could, tell us what happened
- 17 on that car ride home.
- 18 A Well, when we almost got home R. L. pulled the gun out
- 19 from under the seat. And he asked Jerohmia did he want him
- 20 to shoot any signs. And I told him to put the gun back.
- 21 And I said if you don't put it back I'm going to call the
- 22 police. And when I said that he got mad.
- 23 Q What did he do after you told him to put it away or
- 24 you were going to call the police?
- 25 A He put it to my head.

Diane Jackson
Direct examination by Mr. Stalvey

1 Q He put it to your head?

2 A Yeah.

3 Q And then what happened?

4 A Then the kids started screaming, and then he put the
5 gun back there.

6 Q What do you mean when you say he put it back there?

7 A I mean he waved it.

8 Q Did he point it at anyone?

9 A Well, he waved it in the back like that.

10 Q Okay. Where were the kids sitting?

11 A Jerohmia was in the middle. I can't remember. I
12 think China was on the right side and India was behind me.
13 I can't remember.

14 Q But were they in the back seat?

15 A Oh, yeah, they was in the back seat.

16 Q And was that where the defendant was waving the gun?

17 A Yes.

18 Q What happened after that, Ms. Jackson?

19 A So as we went on down the road he started shooting out
20 the window. Like I said, he got mad when I told him I was
21 going to call the police.

22 And so he -- when we got back to my house he started
23 shooting out the window again by Derrick's house, by where
24 Derrick and them live at. And so when we got to my house
25 he jumped out of the car and ran in the house. And I was

Diane Jackson
Direct examination by Mr. Stalvey

1 trying to get the kids. The kids was screaming and
2 hollering. And my dad walked out on the porch, and he said
3 what's going on, what's going on.

4 So after I finally got the kids in the house I took
5 them in the back, so, you know, I told them to get down.
6 And so by that time R. L. had came back on the porch.

7 And my dad still was asking what's going on, what's
8 going on. And then as I was going out the door I heard two
9 gun -- I heard gunshots. And my dad said, Diane, he done
10 shot me. And so then he shot him again.

11 And he was like, he was acting like, he was coming
12 back in the house. So I was trying to hold the door so he
13 wouldn't come in. And he kicked the door in. And I fell
14 back. And when he got in the house he put the gun to my
15 head and said tonight you might just die. Can I?

16 Q Yes, ma'am.

17 A He said, "Tonight is your night to die, Bitch."

18 And so I begged him, you know, not to shoot me. I
19 said let me stay here with my kids and take care of my
20 daddy.

21 And then he ran back there where the kids were at.
22 And he told me to be quiet or he was going to shoot them.

23 So he ran back in the living room. And he put the gun
24 back to my head and told me give me your money. And I
25 first, I said I didn't have no money.

Diane Jackson
Direct examination by Mr. Stalvey

1 And then he ran on the porch where my dad was. And my
2 dad was laying there bleeding. And he told him give him
3 your money, give me, well, his money. He told my dad give
4 him his money.

5 And so I told him to leave him alone because he didn't
6 have any money. I said, here, just take mine. I told him,
7 I told him to get my money. And I did tell him here's the
8 keys. I just told him to leave; I just told him to leave.

9 Q Did you have money?

10 A I had a child support check and probably about \$20.

11 Q Is that what he took from you?

12 A Yeah.

13 Q Child support check?

14 A Yeah.

15 Q What happened after he left, Ms. Jackson?

16 A Well, I went out on the porch to see to try to find
17 out where my dad was bleeding from so I could try to stop,
18 stop the bleeding. And then I was talking to 9-1-1.

19 And so my little girl helped me. My dad said, he says
20 get me in the house. He said pull me in the house.

21 Well, I heard him stop. I thought he was coming back.
22 So I pulled my dad in the house. Me and my little girl
23 pulled my dad in the house.

24 Q Who, who helped you pull your daddy into the house?

25 A My eight-year-old, India.

Diane Jackson
Direct examination by Mr. Stalvey

- 1 Q India. And where did y'all pull him into the house?
- 2 A In front of the couch.
- 3 Q I know this is hard.
- 4 A Yeah.
- 5 Q But can you describe to this jury what your father
- 6 looked like when you pulled him into the house?
- 7 A He had blood everywhere. He was saying help me, Lord,
- 8 help me, Lord, Diane, I'm going to die, I'm going to die.
- 9 Q Ms. Jackson, at any time during this incident did your
- 10 father have a gun?
- 11 A No, he didn't.
- 12 Q Do you know if your father had a gun in the house?
- 13 A No, he didn't have a gun in the house.
- 14 Q Ms. Jackson, let's go back to the car ride down Miller
- 15 Road. Your testimony is you saw the defendant point the
- 16 gun at you.
- 17 A Yes.
- 18 Q Did he say anything to you when he pointed it?
- 19 A Just started laughing.
- 20 Q Did he say anything when he pointed the gun at your
- 21 11-year-old, China?
- 22 A He just pointed it. He didn't really say. He was
- 23 just laughing is all.
- 24 Q How about when he pointed it at India?
- 25 A He just laughed. He didn't say anything.

Diane Jackson
Direct examination by Mr. Stalvey

1 Q And it's your testimony he also pointed it at
2 two-year-old Jerohmia?

3 A Yeah. I mean, he waved the gun in the back.

4 Q What did he say when he pointed the gun at Jerohmia?

5 A Nothing but laugh.

6 Q Ms. Jackson, let's go back to when y'all got to the
7 house. Did he say anything when he ran into the house?

8 A No. He said something after he was, when he was
9 loading up his gun, but I can't remember what he was
10 saying, recognize or something he was saying.

11 Q Okay. Ms. Jackson, where were you standing when you
12 saw the defendant shoot your father?

13 A I was standing in the doorway in front of the screen
14 door.

15 Q Did you hear him say anything when he shot your
16 father?

17 A I heard him, something, say something about recognize
18 or something, don't recognize me or something.

19 Q Ms. Jackson, I'm going to put up what has already been
20 entered as State's Exhibit 21. Can you see that behind
21 you?

22 A Yeah.

23 Q Can you see that?

24 A Yes.

25 Q Okay. That's how this thing works. Point and press

111

Diane Jackson
Direct examination by Mr. Stalvey

1 that.

2 A Okay.

3 Q Okay. Ms. Jackson, if you could, tell us what that is
4 a picture of.

5 A That's the front of the house.

6 Q Okay. Is that where you live?

7 A Yeah, yeah.

8 Q Okay. Is that where the defendant shot your father?

9 A Yes.

10 Q Where were you standing?

11 A In the doorway in the house.

12 Q Now, Ms. Jackson, I'm going to show you what is marked
13 as State's 22 and 23 for identification purposes only. Can
14 you tell me what these two, where these two pictures were
15 taken?

16 A That's on the front porch and that's my bedroom and
17 that's the living room.

18 Q And do these photos fairly and accurately represent
19 the way your house looked that evening?

20 A Yes.

21 MR. GOWDY: Your Honor, at this time the state moves
22 to enter what's marked as State's 23 and 22.

23 MR. McPHERSON: No objection.

24 THE COURT: They are admitted.

25 (Photographs marked State's Exhibits Nos. 22 and 23.)

Diane Jackson
Direct examination by Mr. Stalvey

1 Q Ms. Jackson, I'm going to put up what's marked as
2 State's 23. What's that a picture of?

3 A The living room.

4 Q And what door is that?

5 A That's the front door.

6 Q Okay. And what is that right in front of the front
7 door in front of that couch?

8 A That's where my dad, that's where I had pulled my
9 daddy in there. He was laying right there.

10 Q Those his clothes?

11 A Yeah. They cut them off of him.

12 Q Ms. Jackson, I'm going to show you what's marked as
13 State's 22. Do you know what that is?

14 A No, yes.

15 Q If you could, speak up and tell this jury what that is
16 in that picture.

17 A That's where my dad had slumped down to. That's where
18 he was.

19 Q Do you have that pointer?

20 A Yeah.

21 Q Can you show the jury where your dad slumped down?

22 A Right there.

23 Q How can you tell that's where he slumped down?

24 A I see the blood and I saw him when he slumped down.

25 Q Thank you, ma'am. Please answer any questions the

Diane Jackson
Cross-examination by Mr. McPherson

1 Court or the defense attorney may have for you.

2 A Okay.

3 CROSS-EXAMINATION

4 BY MR. MCPHERSON

5 Q Your name is Diane Jackson, right?

6 A Yes.

7 Q And you were at one point the girlfriend of Russell
8 Sims, correct?

9 A Yes, I was.

10 Q And how old did you say you are?

11 A Forty-two.

12 Q And how old is Russell?

13 A Twenty-one now.

14 Q Okay. So there was about 20 years age difference, is
15 that correct?

16 A Yes.

17 Q All right. And you had been dating Russell on and off
18 for about a year, hadn't you?

19 A Yeah.

20 Q And he used to come to your home and sleep in the same
21 bedroom that you slept in, correct?

22 A Yes.

23 Q And that would go on for, say, three or four nights a
24 week.

25 A Yes.

Diane Jackson
Cross-examination by Mr. McPherson

- 1 Q And that was going on for about a year, right?
- 2 A Yeah.
- 3 Q And your dad lived in that home, is that correct?
- 4 A Yes, he did.
- 5 Q And it was actually his home before he died, right?
- 6 A Yes.
- 7 Q And I believe you're an only child, right?
- 8 A Yeah.
- 9 Q And so the only other people that lived there were
10 your children. I mean, your dad, you and the children.
- 11 A Yeah.
- 12 Q And that would be China and India.
- 13 A Yeah.
- 14 Q And then of course Russell would stay there several
15 nights a week.
- 16 A Yes.
- 17 Q Right?
- 18 A Yes.
- 19 Q Now, China and India --
- 20 A Excuse me.
- 21 Q China and India, they didn't sleep in the same room
22 with you and Russell, did they?
- 23 A No.
- 24 Q Okay. They slept in their, a different bedroom.
- 25 A Yes.

Diane Jackson
Cross-examination by Mr. McPherson

- 1 Q Is that correct?
- 2 A Yes.
- 3 Q They had their own bedroom.
- 4 A Yes. They did.
- 5 Q Did they have separate bedrooms or did they share a
6 bedroom?
- 7 A They shared a bedroom.
- 8 Q Okay. Was that next to your bedroom or somewhere
9 else?
- 10 A Like in front of my bedroom.
- 11 Q I'm sorry?
- 12 A Like in front of my bedroom.
- 13 Q Okay. Now, you were with Russell -- you knew that
14 Russell had that gun, didn't you?
- 15 A Well, he --
- 16 Q Yes or no.
- 17 A Well, I knew he had the gun at one time, yes.
- 18 Q Well, he kept that gun at your house a lot of the
19 time, didn't he? Yes or no. Just answer.
- 20 A Sometimes, sometimes, yeah.
- 21 Q I'm sorry. Yes?
- 22 A Yeah.
- 23 Q And he kept that gun when he left it at your house
24 under the mattress, correct? Yes or no?
- 25 A Well, excuse me. Sometimes when I saw it, yes, I

Diane Jackson
Cross-examination by Mr. McPherson

1 mean, yeah.

2 Q So you knew the gun was there in the house.

3 A Not all the time, no.

4 Q But a lot of the time, right?

5 A Yeah.

6 Q Now, how long had he had that gun prior to this
7 incident to the best of your knowledge, to the best of your
8 knowledge?

9 A I don't know.

10 Q It had been quite some time though, hadn't it?

11 A No.

12 Q Maybe a month or two?

13 A Maybe.

14 Q You would agree, you would agree that he had had it at
15 least a month or two?

16 A Yeah.

17 Q And you would agree with me that when he --

18 A I'm sorry, I'm sorry.

19 Q You would agree with me that when he stayed at your
20 house he kept that gun with him under the mattress in your
21 bedroom so it would be kept away from the kids.

22 A I didn't want to see no gun though.

23 Q But you knew that when he did keep it in the house he
24 would keep it under the mattress away from the kids.

25 A When a lot of times he would take his clothes off I

Diane Jackson
Cross-examination by Mr. McPherson

1 didn't see anything.

2 Q But you've already told us you knew that sometimes he
3 would put that gun under the mattress, right?

4 A Yes, sometimes.

5 Q All right. Now, you were with him when he bought that
6 gun, weren't you?

7 A No.

8 Q And the truth is you're the one that bought the
9 bullets for the gun. Weren't you?

10 A Yeah.

11 Q You went to a pawn shop and purchased the bullets,
12 didn't you?

13 MR. STAVLEY: Objection, Your Honor. She just
14 answered that question.

15 MR. McPHERSON: It's a different question.

16 THE COURT: Sustained. Okay. What's different about
17 it, the location?

18 MR. McPHERSON: I asked her, I said you went to --

19 THE COURT: I know what the question was. I'm asking
20 the difference. The location of the purchase?

21 MR. McPHERSON: Yes.

22 THE COURT: I think -- I sustain the question. She
23 said no.

24 Q All right. Now, had Russell Sims -- what do you call
25 him? What name do you go by when you, when you would talk

Diane Jackson
Cross-examination by Mr. McPherson

1 to him?

2 A R. L.

3 Q R. L. for Russell Lee?

4 A Yes.

5 Q Now, what was the relationship between R. L., or
6 Russell, and your dad?

7 A I mean, they talked sometimes, but.

8 Q But there was one time when your dad, one time prior
9 to this incident when your dad, ordered Russell out of the
10 house, R. L. out of the house, isn't that correct?

11 A Yes.

12 Q And he told him if he came back he would kill him,
13 isn't that correct?

14 A No. R. L. told him that he would kill him.

15 Q So he told him to get out of the house and never come
16 back, is that correct?

17 A Yes.

18 Q All right. So Russell took his stuff and left, is
19 that correct?

20 A Yes, yes.

21 (Witness crying.)

22 Q Yes?

23 A Yes.

24 Q I'm sorry. It's just that --

25 A I'm sorry.

Diane Jackson
Cross-examination by Mr. McPherson

1 Q I have a hard time hearing you.

2 Now, it's your house and your dad's house, or rather
3 you're living there with your dad. And you know your dad
4 has ordered Russell out of the house and he's told Russell,
5 or R. L., never come back. But yet here's Russell back at
6 your house again, right?

7 A Yes. But they had talked since then. And he said it
8 was okay.

9 Q And the only way they could talk was for you to bring
10 Russell back out there again, isn't that correct?

11 A I didn't understand the question.

12 Q The only way your dad could talk to Russell is for you
13 to bring Russell out there to talk to your dad, isn't that
14 correct?

15 A Yes.

16 Q And so you brought Russell back out there, correct?

17 A Yes.

18 Q Knowing though that your dad had ordered him out of
19 the house and had told him never to come back.

20 A But I had talked to my dad before I even brought him
21 back there.

22 Q All right. Now, your dad owned a shotgun, didn't he?

23 A He had one, but it came up missing.

24 Q Right.

25 A Before, no, before.

Diane Jackson
Cross-examination by Mr. McPherson

1 Q It was a 20-gauge shotgun, wasn't it?

2 A I don't know anything about guns. I don't know what
3 kind it was.

4 Q Well, when he had this shotgun he used to keep it
5 close to him. Not on him all the time, but, I mean, if he
6 was sitting in the living room -- I mean, that's the living
7 room, right?

8 A Yes.

9 Q And I'm showing you what's been marked as State's
10 Exhibit 23.

11 Now, where would the T. V. set be in that living room?

12 A The T. V?

13 Q Yes. Take the pointer and show the jury as best you
14 can.

15 A Well, you can't see the T. V.

16 Q Well, I know.

17 A But it's like in front of, in front of the couch.

18 Q In front of the couch?

19 A Yeah.

20 Q And your dad would sit on the couch, wouldn't he?

21 A Yes.

22 Q All right. And when he would sit on the couch and
23 watch T. V. sometimes he'd have that shotgun shoved up
24 under the couch with him.

25 A No, no.

Diane Jackson
Cross-examination by Mr. McPherson

1 Q Now, my understanding is when you're coming back home
2 with R. L. in the front seat you're driving the vehicle,
3 correct?
4 A Yes.
5 Q And R. L. is in the passenger seat, correct?
6 A Yes.
7 Q And the three children are in the back.
8 A Yes.
9 Q Two of them are your children.
10 A Yes, sir.
11 Q Two of them are your children, correct?
12 A Yes.
13 Q That's China and India.
14 A Yes.
15 Q And then the other girl, or Jerohmia?
16 A It's a little boy.
17 Q Little boy.
18 A Yeah.
19 Q You say that that's your grandson?
20 A Yeah.
21 Q By blood?
22 A No. She's really my goddaughter, but I raised her
23 ever since she was little.
24 Q Well, there's really not a grandson.
25 A No.

Diane Jackson
Cross-examination by Mr. McPherson

1 Q Well, I'm sorry. Now, you're driving the vehicle.

2 And when does R. L. first shoot the weapon?

3 A When we were going down the street like almost when we
4 got to my house.

5 Q So you're not too far from your house, correct?

6 A No. I mean yes.

7 Q And you would agree with me that your house is out in
8 the country.

9 A Yes. It is.

10 Q All right. You would agree with me when he fired the
11 weapon he didn't shoot at anybody or any houses.

12 A Well, we were going by houses.. He was just shooting
13 out the window.

14 Q But he didn't shoot at any houses or anybody. You
15 would agree with that.

16 A Yeah.

17 Q All right. Now, when was the first time he pointed
18 that weapon? Well, let me ask you this. What kind of gun
19 was it?

20 A I don't know anything about guns. I don't know what
21 kind it was.

22 Q You don't know. I mean, is it a rifle?

23 MR. STAVLEY: Objection, Your Honor. She just
24 answered the question.

25 THE COURT: Well, go ahead. Overruled.

Diane Jackson
Cross-examination by Mr. McPherson

- 1 Q Do you know the difference between a rifle and a
2 handgun?
- 3 A Well, it was a handgun. I know it wasn't no rifle.
4 Okay.
- 5 Q Do you know what color it was?
- 6 A Black.
- 7 Q Okay. And how big was it?
- 8 A I don't know. It was about that big. I don't know.
- 9 Q You don't know how big it was?
- 10 A No.
- 11 Q Had you ever heard him shoot it before?
- 12 A No.
- 13 Q Never? Okay. Now, do you know the difference between
14 a single shot revolver and an automatic?
- 15 A Yeah.
- 16 Q Do you know what kind of gun this was? Was it a
17 single shot, revolver or automatic?
- 18 A Well, it shot several times, so I guess it was an
19 automatic.
- 20 Q Okay. Now, so the first time he shot he's not too far
21 from your house, is that correct?
- 22 A Yes.
- 23 Q Do you recall how many times he shot?
- 24 A No. I don't know how many times he shot, no.
- 25 Q Kind of fired off kind of like pow, pow, pow,

Diane Jackson
Cross-examination by Mr. McPherson

1 something like that?

2 A Yeah, yeah.

3 Q Okay. And you got very upset?

4 A Yes. I was scared.

5 Q And the children?

6 A Yes. My kids was scared.

7 Q Okay. Now, where were you when he started pointing
8 the gun at you and the children?

9 A When he pointed the gun we were almost at home. Like
10 I said, he got mad.

11 Q I'm sorry?

12 A He got mad when I told him to put the gun down or I
13 was going to call the police.

14 Q This was before you got home though.

15 A Yes, yes.

16 Q So where were you when that happened?

17 A That's when he first pulled it out. We were almost at
18 home then. I mean, we was like in between Campobello and
19 Inman.

20 Q Okay. But I mean were you on Miller Road or some
21 other road.

22 A No. I wasn't. We wasn't on Miller Road then, no.

23 Q So you were on some other road then.

24 A Yes. I came.

25 Q And he pulled it out. And was it at that point that

Diane Jackson
Cross-examination by Mr. McPherson

1 he pointed it at the children's head or at your head?
2 A He pointed, he pointed the gun when he first pulled it
3 out.
4 Q He pointed it?
5 A He pointed it at me first and then pointed it back to
6 those kids.
7 Q Okay. And that's on a different road?
8 A Yes.
9 Q And you are driving, correct?
10 A Yes.
11 Q And even though you're driving you can see him
12 pointing it at the kids.
13 A Yes.
14 Q Okay. Now, you didn't stop the car and order him out
15 of the car for doing that, did you?
16 A No, because I was afraid he was going to kill me.
17 Q But you didn't stop the car and order him out, did
18 you?
19 A No.
20 Q All right. But you could have.
21 A That wouldn't have done any good because he probably
22 wouldn't have got out.
23 Q But you could have though, couldn't you?
24 A Well, yes, but.
25 Q Now, surely when somebody points a gun at you it

Diane Jackson
Cross-examination by Mr. McPherson

1 scares you really bad.

2 A Yes. He did.

3 Q And when he pointed it at the children that scared you
4 even worse.

5 A Yes, it did.

6 Q And yet you're telling this jury you didn't stop the
7 car or anything and just order him out right there on the
8 spot like you're not going to behave this way and ride in
9 my car.

10 A Yes, but, like I said, he wouldn't have done anything.
11 He wouldn't have got out.

12 Q All right. Now, did you make a statement to the
13 police at or near the time of the incident in question?

14 A After it happened.

15 Q Yes. You told them what happened, didn't you?

16 A Yes, I did.

17 Q And you went in. And did you write your statement or
18 did somebody write it for you?

19 A I wrote it myself.

20 Q Okay. And so you put everything that was important in
21 your statement, correct?

22 A Yes.

23 Q And that statement was written the night of the
24 offense.

25 A Yes.

Diane Jackson
Cross-examination by Mr. McPherson

- 1 Q Right?
- 2 A Yes.
- 3 Q While the events were still fresh in your mind.
- 4 A Yes.
- 5 Q Now, you had already told Russell you were taking him
6 home, is that correct?
- 7 A Yes, I did.
- 8 Q And so you had told him to go in the house and get his
9 clothes.
- 10 A Well, that's what I thought he was going in there to
11 get.
- 12 Q Well, he did go in and get his clothes, did he not?
- 13 A Well, yes, he did. Yes, he did.
- 14 Q So he was planning on leaving, wasn't he?
- 15 A But he stopped.
- 16 Q And he came back out with his clothes in hand, didn't
17 he?
- 18 A Yes, he did.
- 19 Q And he was preparing to leave.
- 20 A No.
- 21 Q But the only way he was preparing to leave, because he
22 had his clothes with him, right?
- 23 A Yes. But he was standing there putting bullets in the
24 gun.
- 25 Q Just answer my questions.

Diane Jackson
Cross-examination by Mr. McPherson

1 MR. STAVLEY: Objection, Your Honor. May the witness
2 answer Mr. McPherson's questions? He is not allowing her
3 to finish answering.

4 THE COURT: All right. Let her finish her response.
5 Do you need to finish your response, Ms. Jackson?

6 Q All right. He came out with his clothes, correct?

7 A Yes.

8 Q And then you went in the house with the children.

9 A Yes.

10 Q And you put the children away.

11 A Yes.

12 Q Or you were in the process of putting the children
13 away, right?

14 A Yes, I was.

15 Q And that's when you heard some shots.

16 A No. I was standing in the door. This was after I got
17 the kids settled because I was like coming like towards the
18 door.

19 MR. McPHERSON: May I approach the witness?

20 THE COURT: Yes.

21 Q I'm showing you a two-page handwritten document. Do
22 you recognize this document?

23 A Yes.

24 Q You need to speak up.

25 A Yes.

Diane Jackson
Cross-examination by Mr. McPherson

- 1 Q All right. What is it?
- 2 A That's what happened.
- 3 Q No. I mean, who signed that statement?
- 4 A Oh, I signed it.
- 5 Q Who wrote it?
- 6 A Wrote that?
- 7 Q Yes.
- 8 A Well, that's not my handwriting, but I wrote the
9 statement.
- 10 Q Okay. And when is this statement dated?
- 11 A The 21st.
- 12 Q 21st of May of 2006?
- 13 A Yes.
- 14 Q And it was signed at 12:55?
- 15 A Yes.
- 16 Q A.M.
- 17 A Yes.
- 18 Q So that would have been a few hours after your dad had
19 been shot.
- 20 A Yes.
- 21 Q And that's why the events are still fresh in your
22 mind, right?
- 23 A Yes.
- 24 Q Now, I want you to take a moment and read what you put
25 in your statement. Do you see that?

Diane Jackson
Cross-examination by Mr. McPherson

- 1 A What does that say? I mean, I can't. What does that
2 say?
- 3 Q "I heard some shots. I ran to the door. R. L. was
4 trying to come in."
- 5 A Yes. But I was standing.
- 6 Q Do you see that?
- 7 A Yes. But I was standing.
- 8 Q Can you show me? I'm going to hand you this
9 statement. You tell me where in this statement, where it
10 says I saw Russell, or R. L., shoot my dad or Robert
11 Jackson or whatever you call him.
- 12 A I was standing in the door.
- 13 Q Well, show me where you say that.
- 14 A No. It doesn't say that on the paper, no.
- 15 Q And yet this is while the events are still fresh in
16 your mind. What does it say on the paper?
- 17 A Said, "I heard some shots."
- 18 Q And what?
- 19 A "I ran to the door."
- 20 Q And you signed that statement, didn't you?
- 21 A Yes, I did.
- 22 Q And you didn't try to correct it, did you?
- 23 A No.
- 24 Q Now, how far away is your home from where Russell
25 would normally stay?

Diane Jackson
Cross-examination by Mr. McPherson

- 1 A Say what, now?
- 2 Q Well, where R. L., Russell. When Russell wasn't
3 staying with you, where would he stay?
- 4 A At his mother's or his father's house.
- 5 Q Okay. And where do they live?
- 6 A Spartanburg.
- 7 Q Okay. About how many miles away is that from where
8 you live?
- 9 A Probably about 30 miles.
- 10 Q About 30 miles.
- 11 A I'm guessing. I don't know.
- 12 Q Does R. L. drive normally?
- 13 A No.
- 14 Q So you would usually drive him around, correct?
- 15 A Yes.
- 16 Q He doesn't have a driver's license, is that right?
- 17 A No.
- 18 Q To the best of your knowledge.
- 19 A No. I don't know of any driver's license.
- 20 Q And he doesn't own a vehicle that you know of, does
21 he?
- 22 A No.
- 23 Q So the only way he can get home from your house is in
24 your car. Would you agree with that?
- 25 A Yes.

Diane Jackson
Cross-examination by Mr. McPherson

1 Q Now, after your dad was shot he told you that he
2 needed to go home, didn't he?

3 A Yes.

4 Q And he asked you to take him home, didn't he?

5 A Yes.

6 Q And you refused.

7 A Yes, because I thought he was going to do something to
8 me.

9 Q And he told you he needed some money.

10 A Well, he put the gun to my head and told me, yeah, he
11 needed some money.

12 Q The truth is you gave him your check. Did you give
13 him any cash?

14 A I think it was about \$20.

15 Q And you gave him a check, didn't you?

16 A Yeah. That's all I had.

17 Q All right. And you gave him your car keys, correct?

18 A Yeah.

19 Q And would you agree with me when you're on the phone
20 with 9-1-1 that you don't tell 9-1-1 R. L. stole my car and
21 he stole my money? Would you agree with me you told 9-1-1
22 I gave him my car keys, I gave him my car keys and the
23 money and he left and went down the road?

24 A Well, after he demanded it, yes.

25 Q But you would agree with me you told 9-1-1 that at

Diane Jackson
Redirect examination by Mr. Stalvey

1 least two times.

2 A Yes, because I was scared, yeah.

3 Q But you never told them -- and this was right after
4 the incident -- that he had just robbed you and stolen your
5 automobile.

6 A Well, I didn't think that was important. I was
7 worried about my dad.

8 Q And you would also agree with me, wouldn't you, that
9 you were getting kind of mad at 9-1-1 because it was taking
10 so long for them to get somebody out there to help your
11 dad?

12 A Yes, I did.

13 Q Took a long time, didn't it?

14 A Yes, it did.

15 MR. McPHERSON: Just a minute, please, Judge.

16 (Pause.)

17 Q I don't have any more questions.

18 MR. STAVLEY: Brief redirect, Your Honor.

19 THE COURT: Yes.

20 REDIRECT EXAMINATION

21 BY MR. STAVLEY

22 Q Ms. Jackson, just a few more questions.

23 Mr. McPherson asked you about your father's shotgun,
24 and you testified it had gone missing.

25 A Yes.

Diane Jackson
Redirect examination by Mr. Stalvey

1 Q When did it go missing?

2 A This was before this all happened.

3 Q About how long before?

4 A Maybe about a month.

5 Q Do you know what happened to it?

6 A No.

7 Q Have you got any idea what happened to it?

8 A Yeah.

9 Q What do you think happened to it?

10 MR. McPHERSON: Your Honor, I'm going to object. It
11 has already been asked and answered. She doesn't know what
12 happened to it. She said she didn't know what happened to
13 it.

14 Q Ms. Jackson, you also answered a question about never
15 seeing the defendant shoot the gun. You never saw the
16 defendant shoot the gun?

17 A No.

18 Q Did you ever see him do target practice?

19 A Target practice?

20 Q Do you even know what target practice is?

21 A Yeah, I know what target practice is.

22 Q But did you ever see him do anything like that?

23 A No.

24 Q Ms. Jackson, I'm going to show you the statement that
25 the defense attorney was just showing you. I can't

Diane Jackson
Redirect examination by Mr. Stalvey

1 remember where he was. Just to refresh your recollection,
2 ma'am, do you see on this line right here? What's the next
3 sentence?

4 A Where, right here?

5 Q Yes, ma'am. What does that say?

6 A "My dad said what's going on." Is that what you're
7 talking about?

8 Q When did he say this?

9 A He said this when we first came out to the porch when
10 we was in the yard.

11 Q And what does that say?

12 A R. L. told him I'm going to show you in a minute.

13 Q R. L. said I'm going to show you in a minute?

14 A Yeah.

15 Q Ms. Jackson, the defense attorney also asked you about
16 giving the defendant your keys and your child support check
17 and your \$20.

18 A Yes.

19 Q He asked you about some 9-1-1 calls that you made.

20 A Yeah.

21 Q Well, let me ask you, Ms. Jackson. Would you have
22 given the defendant your keys, your \$20, your child support
23 checks if he hadn't had a gun to your head?

24 A No.

25 Q Would you have given the defendant your keys, your \$20

Diane Jackson
Redirect examination by Mr. Stalvey

1 and your child support check if he hadn't just shot your
2 father?

3 A No.

4 MR. STAVLEY: No further questions, Your Honor.

5 MR. MCPHERSON: No more.

6 THE COURT: Okay. Step down. Thank you.

7 Ladies and gentlemen, we're going to recess for lunch.
8 Keep in -- excuse me. For supper, and spend the night too.
9 We will start back in the morning at 9:30.

10 Keep in mind the caution I gave you when you did
11 recess for lunch. Don't talk about the case; don't allow
12 yourselves to be exposed to any type of media coverage that
13 relates to the case; don't conduct any research or do your
14 own investigation to any issue that might arise during the
15 trial of the case.

16 With that, do have a good evening. Please report
17 directly to your jury room at 9:30 in the morning, 9:30 in
18 the morning.

19 (The following takes place outside the presence of the
20 jury.)

21 THE COURT: Court is in recess until 9:30 in the
22 morning.

23 END OF PROCEEDINGS JANUARY 22, 2007

24

25

Derrick Hall
Direct examination by Mr. Gowdy

1 (Proceedings January 23, 2007)

2 (The following takes place outside the presence of the
3 jury.)

4 (Photograph marked State's Exhibit No. 35 for
5 Identification.)

6 THE COURT: All right. Are we ready for the jury?

7 MR. GOWDY: The state is, Your Honor.

8 MR. McPHERSON: The defense is.

9 THE COURT: Okay. Bring them in.

10 (The following takes place in the presence of the
11 jury.)

12 THE COURT: Good morning, ladies and gentlemen.

13 As you know, when we recessed yesterday the state had
14 begun with their presentation of evidence. So we are going
15 to continue with that presentation this morning.

16 Solicitor.

17 MR. GOWDY: May it please the Court, Your Honor. The
18 state would call Mr. Derrick Hall.

19 DERRICK HALL, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. GOWDY

22 Q Good morning, Mr. Hall.

23 A Good morning.

24 Q If I could get you to speak up in a good strong voice
25 where the last two ladies in the jury box can hear you,

Derrick Hall
Direct examination by Mr. Gowdy

1 okay?

2 A Okay.

3 Q Introduce yourself to the jury and tell them how old
4 you are.

5 A My name is Derrick Hall and I'm 27.

6 Q Where do you live, Derrick?

7 A [REDACTED] Campobello.

8 Q How long have you lived there?

9 A All of my life.

10 Q Do you have other relatives that live in the area or
11 on Miller Road?

12 A Yes, sir.

13 Q Who are some of the other relatives you have that live
14 on that road?

15 A My mother, my uncle, my cousins and my other uncle and
16 my aunt and my other uncle that lives at the end of the
17 road.

18 Q Let me show you what's been previously introduced as
19 State's Exhibit 17 and ask you whether or not you recognize
20 that.

21 A Yes, sir.

22 Q What is that?

23 A That's a picture of Miller Road.

24 Q Okay.

25 MR. GOWDY: Your Honor, permission to publish this to

Derrick Hall
Direct examination by Mr. Gowdy

- 1 the jury again.
- 2 THE COURT: Yes.
- 3 MR. GOWDY: Thank you, Your Honor.
- 4 Q See that little laser pointer in front of you?
- 5 A Yeah.
- 6 Q I want you to show the jury where you live, Derrick.
- 7 A Okay. I live right here, because my uncle lives here,
8 and I live right in front of him right here.
- 9 Q All right. Where did your Uncle Robert live?
- 10 A He lived right here.
- 11 Q All right. And the physical address for your home is
12 what Miller Road?
- 13 A [REDACTED]
- 14 Q Okay. Do you work, Derrick?
- 15 A Yes, sir, I did work, but I can't work now.
- 16 Q Why can't you work now?
- 17 A Because I have a viral infection in my heart.
- 18 Q Where did you work before this incident?
- 19 A Mascot Homes.
- 20 Q All right. I want you to go back to May the 20th of
21 2006 with me. Okay?
- 22 A Yes, sir.
- 23 Q Were you at your home in the early evening hours?
24 And, if so, what were you doing?
- 25 A Yes, sir. I was at home. I was, I had took some

Derrick Hall
Direct examination by Mr. Gowdy

1 trash out to burn. Put it in the barrel and lit it. And I
2 went back in the house. Then I come back out to check,
3 check on the trash to make sure that it didn't fall on the
4 ground. And I heard my cousin drive by real fast.

5 Q Cousin who?

6 A Diane.

7 Q Okay.

8 A And I heard something that sounded like fireworks. So
9 I had looked around across the hill to see if any kids was
10 shooting fireworks, but I didn't see any kids. So I just
11 stayed out there watching the trash.

12 And then the next thing I hear, I hear her two
13 daughters scream, and then I have never heard kids scream
14 like that. It was like they was right beside me when they
15 screamed.

16 Q When you say her two daughters, do you know her two
17 daughters?

18 A China and India.

19 Q China and India?

20 A Yes, sir.

21 Q Those are Diane's daughters?

22 A Yes, sir.

23 Q You would be their uncle or their cousin?

24 A I am their cousin.

25 Q Okay. Have you been around them before?

Derrick Hall
Direct examination by Mr. Gowdy

- 1 A Yes, sir.
- 2 Q Family gatherings, get-togethers?
- 3 A Yes, sir.
- 4 Q You've heard them scream before?
- 5 A I've heard them scream, but this is a different kind
6 of scream.
- 7 Q All right. Based on hearing your two small cousins
8 scream, what did you do?
- 9 A Well, I figured something was wrong with the kids. So
10 I went back to my house. And I went to my closet and I got
11 my gun out of my closet. And then I went next door to my
12 uncle's house to tell him what I had heard.
- 13 Q All right. What kind of gun was it, Derrick?
- 14 A It was a Mossberg 12-gauge.
- 15 Q Shotgun?
- 16 A Shotgun.
- 17 Q All right. You said you went to your uncle's house.
18 Show the jury with that laser pointer what house you went
19 to.
- 20 A I went to my Uncle Cornell's house right here and --
- 21 Q By the time you retrieved your shotgun and went to
22 your Uncle Cornell's house --
- 23 A Right.
- 24 Q -- where had Diane's car gotten to, or where were you
25 hearing the screams come from?

Derrick Hall
Direct examination by Mr. Gowdy

1 A Well, her car was at her house down here and that's
2 where the screams was coming from. But it was so loud it
3 was like the kids were right beside me.

4 And so when I went in my Uncle Cornell's house I had,
5 I told him they was something wrong with those kids because
6 they were screaming. And so he told me not to go down
7 there. And he told me to, I should go home and put my gun
8 up. So I sat it in the floor but I could get back --

9 Q Hang on one second before we get there. Hang on one
10 second. Okay. I want to talk about your Uncle Cornell for
11 a second.

12 A Okay.

13 Q He lives in the house directly beside you, right?

14 A Right, yes, sir.

15 Q Who all lives in the house with your Uncle Cornell?

16 A My mother, my Aunt Joanne, her two granddaughters and
17 her daughter.

18 Q What time of the evening or night did this take place,
19 did you retrieve your shotgun and go to your uncle's house?

20 A I would say it was about 8:30 or 9:00. I'm not really
21 sure of the time, but I do know for a fact it was real
22 dark.

23 Q All right. So this is the middle of May but it was
24 real dark.

25 A Yes, sir.

Derrick Hall
Direct examination by Mr. Gowdy

- 1 Q You walk into your Uncle Cornell's house carrying the
2 shotgun because you heard sounds.
- 3 A Yes, sir.
- 4 Q All right. And your Uncle Cornell who is what age?
- 5 A He is 48.
- 6 Q And you are?
- 7 A Twenty-seven.
- 8 Q And he tells you to put the gun down.
- 9 A Yes, sir.
- 10 Q And what do you do?
- 11 A I sat it down in front of the chair.
- 12 Q You did what he told you to?
- 13 A Yes, sir.
- 14 Q How about your mama? Was she there?
- 15 A Yes, sir. She was there too.
- 16 Q All right. All right. Pick back up for the jury.
17 You lay the gun down. Uncle Cornell tells you to. You're
18 in his house. What happens next?
- 19 A Well, I was getting ready to take the gun back home
20 and put it back in the closet. And my mom was standing in
21 front of the front door, the storm door. And at this time
22 I had come up behind her getting ready to go back home.
23 But the gun was still on the floor, you know, in front of
24 her big old chair. And by this time he'd already pulled up
25 in front of the house. And my cousin, Elaine, had told my

Derrick Hall
Direct examination by Mr. Gowdy

1 mom that he has a gun.

2 MR. McPHERSON: Objection. That's hearsay.

3 THE COURT: Overruled.

4 Q Say that again, Derrick. What did your Cousin Elaine
5 say?

6 A She told my mom he has a gun, but she just froze. And
7 so by the time, you know, that I could really do anything,
8 he had already pulled the front door open, and he had a
9 handkerchief over the gun. And when he raised it up I
10 pulled my mother out of the way, and he shot me in the side
11 of my shoulder right there.

12 Q All right. I want to stop you right before we get to
13 the part where you got shot. Okay?

14 A Yes, sir.

15 Q You told the jury "he". Tell the jury who you're
16 talking about. Who is he?

17 A Russell Sims.

18 Q I want to show you what's been marked for
19 identification purposes as State's 35 and State's 25 and
20 ask you whether or not you recognize what is depicted in
21 those two pictures.

22 A Yes, sir. That's my Uncle Cornell's house, and this
23 is the area where I was standing at by this small chair by
24 the lamp where the front door is.

25 MR. GOWDY: Your Honor, we would move State's 25 and

Derrick Hall
Direct examination by Mr. Gowdy

1 35 into evidence.

2 MR. McPHERSON: No objection.

3 THE COURT: 25 and 35?

4 MR. GOWDY: Yes, sir, Your Honor.

5 (Photographs marked State's Exhibits Nos. 25 and 35.)

6 MR. GOWDY: Permission to publish to the jury.

7 THE COURT: You may.

8 MR. GOWDY: Thank you, Your Honor.

9 Q First I want to show you State's 35, Derrick. It's a
10 little dark but I think the jury can make that out. Tell
11 the jury what they're looking at.

12 A That's a picture of my Uncle Cornell's house.

13 Q Is that the front of the house or the back of the
14 house?

15 A The front of the house.

16 Q Okay. And when you say he pulled up, you said he was
17 Russell Sims.

18 A Yes, sir.

19 Q All right. How close is this house to the roadway?

20 A It's fairly close. I mean, you can go down the steps.
21 And the road, like I say, a good six or seven feet, you
22 know, from the steps or more. But it's not too far away
23 from the road.

24 Q Did he pull off the road into the front yard?

25 A Yes, sir. He pulled right here in front of the steps.

Derrick Hall
Direct examination by Mr. Gowdy

1 It's like a little pathway, a little driveway. And he
2 pulled in front of the steps.

3 Q Okay. Derrick, I want you to tell the jury what car
4 he was driving when he pulled off the road.

5 A He was driving my Cousin Diane's car.

6 Q And who else was in the car with him?

7 A He was by himself.

8 Q And where were you when he pulled off the road?

9 A I was inside the house.

10 Q I show you State's 25. Tell the jury what they are
11 looking at.

12 A This is a picture of the, I think it's the, living
13 room. And when he pulled up my mom was standing right
14 here. I was standing right here beside this chair. So
15 when he pulled the door open and raised the gun up I pulled
16 her out of the way, and that's when I got, you know, shot
17 in my shoulder.

18 Q All right. I want to be absolutely crystal clear
19 about this. Were you in the courtroom yesterday?

20 A Yes, sir.

21 Q Okay. I want to be absolutely crystal clear about
22 this.

23 Where was your shotgun --

24 A Okay.

25 Q -- when R. L. Sims came through the front door?

Derrick Hall
Direct examination by Mr. Gowdy

1 A Well, in this picture you can't really see, but it's
2 like a chair over here. And the gun was on the floor in
3 front of that chair. It was a good amount of distance
4 between me and the gun.

5 Q All right. Let me state this differently. Was the
6 shotgun in your hands when R. L. Sims came through the
7 front door?

8 A No, sir.

9 Q Did you ever point the shotgun at R. L. Sims?

10 A No, sir.

11 Q Step down for just a second, Derrick. Step down for
12 just a second.

13 (Whereupon, the witness left the stand.)

14 Q All right. You testified to the jury that you pushed
15 your mama out of the way.

16 A Yes, sir.

17 Q All right. And you got shot. Show the jury. Leave
18 your shirt on, but show the jury where you got shot.

19 A Okay. He was at close range. And when I pulled my
20 mama away he shot me right here. And the bullet traveled
21 all the way across my chest cavity, and you've got marks
22 right here. That's from the bullet. I got a viral
23 infection in my heart. That's why I can't work now.

24 Q All right. I am going to ask you to take your seat.
25 Thank you.

Derrick Hall
Direct examination by Mr. Gowdy

1 (Whereupon, the witness returned to the stand.)

2 Q You mentioned R. L. Sims. Had you ever met him before
3 May the 20th?

4 A I had met him a couple of times before, but I really
5 didn't, you know, say much to him. Just spoke to him and
6 went on.

7 Q Did you know that he was seeing your Cousin Diane?

8 A Yes, sir.

9 Q Did you ever have occasions to be around him? Did you
10 invite him to any family functions?

11 A Well, my mom, you know, she would do a cookout, and
12 she would invite Diane. So, you know, of course she would
13 bring him too, so.

14 Q Did you ever have any confrontations or provocations
15 with R. L. Sims prior to May the 20th of 2006?

16 A No, sir.

17 Q On May 20th of 2006 had you seen him at any point
18 prior to him showing up on the front porch of your Uncle
19 Cornell's house with the gun?

20 A No, sir.

21 Q Never said anything to him.

22 A Never said anything to him.

23 Q How close were you to your Uncle Robert?

24 A We were very close because, you know, he had, this is,
25 I mean, he had watched me grow up from the time I was a

Derrick Hall
Direct examination by Mr. Gowdy

1 baby until the time I become a grown man. So I was fairly
2 close to him.

3 Q Would you visit his house on occasion?

4 A Yes, sir.

5 Q Do you recognize what's in State's 21?

6 A Yes, sir. That's a picture of my Uncle Rob's house.

7 Q And that, of course, is the house at the end of the
8 road, right?

9 A Yes, sir.

10 Q In the days and weeks before May 20th had you been to
11 your Uncle Rob's?

12 A Yes, sir.

13 Q Did you see a shotgun anywhere at your Uncle Rob's
14 house in the days and weeks prior to May 20th of 2006?

15 A No, sir, because, see, I usually go down there to cut
16 his grass for him. And he would be sitting in the front
17 room watching the T. V. And he could see me through the
18 window. So he would tell me to come on in, and I would go
19 in. And he never had a shotgun lying around.

20 Q So while he was watching television on the couch he
21 didn't have a shotgun laying beside him.

22 A No, sir.

23 Q All right. You told the jury that you pushed your
24 mama out of the way and R. L. Sims came in. Did he say
25 anything to you before he shot you?

Derrick Hall
Direct examination by Mr. Gowdy

1 A He just raised the gun up, and he said, oh, my God,
2 and he shot me in my shoulder.

3 Q Okay.

4 A That was it.

5 Q Could you tell that you had been hit?

6 A Yes, sir.

7 Q Tell the jury what it feels like to be struck by a
8 bullet.

9 A When that bullet went in my shoulder it made my chest
10 feel like it was on fire. I didn't bleed much. It just
11 swolled up. And I could feel it traveling across my chest
12 cavity.

13 Q Who all was in the house at the time R. L. Sims --
14 well, let me stop myself for one second. Did you hear
15 anybody invite R. L. Sims into your Uncle Cornell's house?

16 A No, sir.

17 Q Did you invite him into your Uncle Cornell's house?

18 A No, sir.

19 Q Did you hear your mama invite him into the house?

20 A No, sir.

21 Q Were you there when he came into the house?

22 A Yes, sir.

23 Q All right. He comes in. He shoots you. You've
24 already told the jury you were nowhere near your shotgun
25 when you got shot, correct?

Derrick Hall
Direct examination by Mr. Gowdy

1 A Yes, sir.

2 Q After he shoots you -- are there children in the
3 house?

4 A Yes, sir.

5 Q Where are they?

6 A They was in the next room.

7 Q Is your Uncle Cornell there?

8 A Yes, sir.

9 Q Where was he?

10 A He was in like the kitchen area. They have like a
11 little bar. And he was sitting there reading the
12 newspaper.

13 Q All right. What did you do after you were shot?

14 A I got my little cousin and my little brother, and I
15 got them to a back room so they wouldn't be in, you know,
16 so they didn't get shot.

17 Q All right. Did you hear any more gunshot? Did you
18 hear your Uncle Cornell get shot?

19 A Yes. I heard two more shots, and-but like I said, I
20 stayed in the room with my little brother and my little
21 cousin until, until he finally left.

22 Q All right. You wound up being transported to the
23 hospital, is that correct?

24 A Yes, sir.

25 Q You were released that night if I am not mistaken, or

Derrick Hall
Direct examination by Mr. Gowdy

1 shortly thereafter. You were not hospitalized overnight
2 like your Uncle Cornell or your Uncle Robert, correct?

3 A Yes, sir.

4 Q But you later had to go back and have the bullet
5 removed.

6 A Yes, sir.

7 Q Is that correct?

8 A Yes, sir.

9 Q And where was the bullet lodged before it was removed?

10 A It was lodged right here in my side, and it was almost
11 poking out through the skin. So it ain't like they had to
12 make a deep incision to get it out.

13 Q In fact, they didn't even have to put you to sleep,
14 right?

15 A No, sir.

16 Q All right. But it entered the other side of your
17 body.

18 A Yeah. It entered this side and wound up lodged on
19 this side.

20 Q Okay. Are you still suffering complications from the
21 shooting?

22 A Yes, sir.

23 Q Tell the jury what side effects and complications you
24 still suffer.

25 A Well, I have this little machine that my doctor give

Derrick Hall
Cross-examination by Mr. McPherson

1 me. It's called a C-pack machine.

2 MR. MCPHERSON: Your Honor, I am going to object on
3 the grounds of relevance. Not relevant.

4 THE COURT: Let me see y'all just a minute.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 THE COURT: I sustain the objection.

8 Q Derrick --

9 A Yes, sir.

10 Q -- do you see the person who shot you in the
11 courtroom?

12 A Yes, sir.

13 Q I want you to point him out for the jury.

14 A Sitting right there.

15 Q At any point on May the 20th did you raise a weapon or
16 point a weapon at R. L. Sims?

17 A No, sir.

18 Q Thank you, Derrick. Please answer any questions the
19 defense attorney may have for you.

20 CROSS-EXAMINATION

21 BY MR. MCPHERSON

22 Q Derrick, let's go back and talk about this shotgun
23 that you had. You had what kind of shotgun?

24 A A Mossberg.

25 Q Mossberg. Automatic?

Derrick Hall
Cross-examination by Mr. McPherson

- 1 A It was a pump.
- 2 Q Pump. And how many shells would it hold?
- 3 A Like seven.
- 4 Q And you would admit, would you not, that you loaded
- 5 the shotgun before you went over to your uncle's house?
- 6 A Yes, sir.
- 7 Q And it had how many loaded shells in there?
- 8 A I had like five in it. I didn't put but like five
- 9 bullets in it.
- 10 Q You had like five or six number six shot?
- 11 A Yes.
- 12 Q And it's a pump gun, right?
- 13 A It's a pump shotgun.
- 14 Q In other words for the jury that doesn't understand,
- 15 you load that weapon after you put the shells in there by
- 16 doing a pump action, correct?
- 17 A Yes, sir.
- 18 Q And then all you have to do is just pull the trigger,
- 19 is that correct?
- 20 A Yes, sir.
- 21 Q I'm sorry?
- 22 A Yes, sir.
- 23 Q Okay. Now, you would agree with me that Diane --
- 24 where Diane lived was a fair distance from where you lived.
- 25 A Yes, sir.

Derrick Hall
Cross-examination by Mr. McPherson

- 1 Q Maybe two tenths of a mile?
- 2 A I don't know if it's quite that far.
- 3 Q Well, it's a pretty good way. And there are several
4 houses in between your house.
- 5 A Actually there's just two houses.
- 6 Q Huh?
- 7 A Actually just two houses between my house and her
8 house.
- 9 Q Okay. Now, when you first heard the shooting, you
10 would agree with me that you made the remark that that's
11 just Diane's boyfriend acting like a fool.
- 12 A No, sir.
- 13 Q You didn't say that?
- 14 A No, sir.
- 15 Q You don't recall making a statement to -- who is
16 Elaine Mae Hall?
- 17 A That's my cousin.
- 18 Q Was she present?
- 19 A Yes, sir.
- 20 Q And where was she when all of this happened?
- 21 A She was at, she was at her house. She lives with my
22 Uncle Cornell.
- 23 Q So you said she lived with your Uncle Cornell?
- 24 A Yes, sir.
- 25 Q Okay. So she was at the house where the shooting took

Derrick Hall
Cross-examination by Mr. McPherson

1 place.

2 A Yes, sir.

3 Q All right. And you don't recall making the remark to
4 her that you told Diane -- you told Elaine Mae Hall that it
5 was Diane's boyfriend shooting and acting like a fool.

6 A No, sir.

7 Q So, okay. You just deny that.

8 MR. GOWDY: Asked and answered twice.

9 Q Now, you would agree with me that you went to your
10 uncle's house with a loaded shotgun.

11 A Yes, sir. I did.

12 Q And you would agree with me that you had intentions
13 of -- the reason you take a gun with you is because you
14 intend to use it, right?

15 A I didn't intend to use it.

16 Q Well, you just --

17 A It was a safety precaution.

18 MR. GOWDY: Your Honor, I would object. I would ask
19 that this witness be allowed to finish his answer without
20 being interrupted.

21 THE COURT: Let him finish his answer.

22 Q You would agree with me that you took this gun and you
23 loaded it because you knew that you might want to use it.

24 A No. I took it with me for a safety reason, because I
25 didn't know what was going on.

Derrick Hall
Cross-examination by Mr. McPherson

- 1 Q But you had it loaded in case you had to use it.
- 2 A It was loaded.
- 3 Q And it was loaded in case you decided to use it,
4 correct?
- 5 A If I had to.
- 6 Q And you're telling me that you have a loaded gun in
7 your hand and the defendant, Russell Sims, approaches the
8 house with a gun. And so you lay your shotgun down and
9 make yourself completely vulnerable to him.
- 10 A No. I did not have the gun in my hands when he pulled
11 up. The gun was on the floor and in front of the chair.
- 12 Q You just laid the gun down on the floor.
- 13 A On the floor.
- 14 Q Flat on the floor.
- 15 A Yes.
- 16 Q Didn't lay it against the wall.
- 17 A No, I didn't lay it against the wall, because when my
18 uncle told me to put the gun down, I put it down.
- 19 Q Your uncle was in a different room, wasn't he?
- 20 A He was in like the kitchen. But you can look through
21 the doorway and see through the living room. And he, and I
22 went in there where he was at. He told me to put the gun
23 down. So I put it down.
- 24 Q The truth is when R. L. Sims approached the house you
25 saw him. You pumped the gun and aimed it at him, isn't

China T. [REDACTED]

Direct examination by Mr. Gowdy

1 that correct?

2 A That's not correct.

3 Q And then he shot you, isn't that correct?

4 A That's not correct.

5 Q And your mother was behind you at that time trying to
6 keep you --

7 A That's not correct.

8 Q -- from shooting.

9 A That's not correct.

10 Q Isn't that correct?

11 A That's not correct. That's not how it happened.

12 MR. McPHERSON: I have no further questions.

13 MR. GOWDY: Nothing on redirect, Your Honor.

14 THE COURT: You may step down.

15 MR. GOWDY: Your Honor, the state would call Ms. China T. [REDACTED]

17 [REDACTED] China T. [REDACTED] having been

18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. GOWDY

20 Q Good morning, China.

21 A Good morning.

22 Q I want to get you to speak up in as good and strong
23 and clear voice as you can where the last two ladies can
24 hear you. Okay?

25 A Okay.

China T. [REDACTED]

Direct examination by Mr. Gowdy

- 1 Q We're going to have to do better than that.. Act like
2 you're telling at me. Okay?
- 3 A Okay.
- 4 Q All right. That's better. Tell the jury how old you
5 are.
- 6 A Eleven.
- 7 Q What grade are you in?
- 8 A Sixth.
- 9 Q What school do you go to?
- 10 A Campobello-Grambling.
- 11 Q What's your favorite class?
- 12 A Language arts.
- 13 Q What's your mother's name?
- 14 A Diane Jackson.
- 15 Q Do you have a sister?
- 16 A Yes, sir.
- 17 Q What's her name?
- 18 A India T. [REDACTED]
- 19 Q Is she older or younger?
- 20 A Younger.
- 21 Q Do you know a man named R. L. Sims?
- 22 A Yes, sir.
- 23 Q I want you to think back to the last time you saw him
24 or the last time you rode in a car with him. Okay?
- 25 A Okay.

China T.

Direct examination by Mr. Gowdy

1 Q Tell the jury what happened.

2 A We was riding down the road. And then he started
3 shooting inside, and he started waving the gun at us. And
4 we started crying. And my mama told him to stop.

5 And then we, we had got to our house. And then our
6 grandpa heard us crying. And he came outside trying to
7 figure out what was wrong with us.

8 And then he went in the house and he got some bullets.
9 And then we had -- we was in the house. And then he shot
10 my grandma. And then my mama was yelling he shot daddy, he
11 shot daddy.

12 And then after he shot daddy, our grandpa, he came in
13 the room where we was hiding at. He pointed at us and he
14 said if you don't stop crying I'm going to shoot you. And
15 we stopped crying.

16 And then he pointed the gun at my mama. And then he
17 asked my mom for money and her keys. And she gave it to
18 him.

19 And then he asked my grandpa for his money and his
20 keys. And then he didn't have any. And then he asked him
21 again. And he said no. And then he went and got in my
22 mama's car and drove off and went to my Uncle Cornell's
23 house.

24 Q Where were you sitting in the car?

25 A Behind my aunt.

China T. [REDACTED]

Direct examination by Mr. Gowdy

- 1 Q Where was your sister India sitting?
- 2 A Behind my mama.
- 3 Q Who was driving?
- 4 A My mama.
- 5 Q Where was R. L. sitting?
- 6 A In the front with mama.
- 7 Q Who was in between your sister and -- who was in
8 between you and your sister?
- 9 A My nephew Jerohmia.
- 10 Q And how old is Jerohmia?
- 11 A Three.
- 12 THE COURT: Excuse me just a minute, China.
13 Let me ask you. Don't blow into the microphone. It
14 reverberates and causes us not to be able to hear you.
- 15 THE WITNESS: Okay.
- 16 Q Where were you living in May of 2006?
- 17 A With my grandpa and my mama.
- 18 Q Do you know the name of the street?
- 19 A Miller Road.
- 20 Q Do you know what your address was?
- 21 A [REDACTED]
- 22 Q Did you ever see your grandpa Robert Jackson with a
23 gun?
- 24 A No.
- 25 Q Never saw him with a shotgun?

China T. [REDACTED]

Direct examination by Mr. Gowdy

- 1 A No.
- 2 Q How about on May 20th of 2006, the day he was shot?
- 3 Did you ever see him with a gun?
- 4 A No.
- 5 Q Did your mom ask R. L. Sims to quit firing the gun out
- 6 of the car?
- 7 A Yes.
- 8 Q Did he stop?
- 9 A No.
- 10 Q Were you, were you scared?
- 11 A Yes.
- 12 Q Why were you scared?
- 13 A Because he was pointing the gun at us.
- 14 Q Could you see the gun?
- 15 A Yes, sir.
- 16 Q Were you crying?
- 17 A Yes, sir.
- 18 Q Was your sister crying?
- 19 A Yes, sir.
- 20 Q Was Jerohmia crying?
- 21 A Yes, sir.
- 22 Q By the time you got to your house that you share with
- 23 your grandfather were y'all still upset?
- 24 A Yes, sir.
- 25 Q Did your grandfather come outside?

China T. [REDACTED]

Cross-examination by Mr. McPherson

1 A Yes, sir.

2 Q Did he have anything in his hand when he came outside?

3 A No, sir.

4 Q What did R. L. have?

5 A A gun.

6 Q Please answer any questions the defense attorney may
7 have for you. Thank you.

8 CROSS-EXAMINATION

9 BY MR. MCPHERSON

10 Q China, you knew that at some point your grandpa owned
11 a shotgun, didn't you?

12 A No, sir.

13 Q So you never knew he owned a gun?

14 A No, sir.

15 Q Were you here yesterday?

16 A Yes, sir.

17 Q You heard your mother testify that he had owned a gun,
18 right?

19 A No, sir. I wasn't here.

20 Q You don't hear that?

21 A No.

22 Q Did you, do you recall she said that the gun had
23 turned up missing?

24 MR. GOWDY: Your Honor, I think she just answered she
25 wasn't here during that part of the testimony.

China T.

Cross-examination by Mr. McPherson

1 THE COURT: Well, she did say that.

2 But you can't pit one witness against another. Their
3 testimony has to be considered by the jury in light of all
4 of the evidence. You can't pit one against the other.

5 MR. GOWDY: Yes, sir.

6 Q Okay. Now, you knew that R. L. had a gun, didn't you?

7 A No, sir.

8 Q So you had never seen that gun before?

9 A No, sir.

10 Q When is the first time you saw that gun?

11 A When he was shooting that day and waving at us.

12 Q I'm sorry?

13 A When he was shooting that day and waving it at us.

14 Q Okay. When was the first time he shot it?

15 A Huh?

16 Q Where were you when he shot it the very first time?

17 A We was riding down the road.

18 Q Okay. What road?

19 A I don't know the name of the road, but we was riding
20 down the road.

21 Q Okay. So it wouldn't be Miller Road?

22 A No, sir.

23 Q It was some other road?

24 A Yes, sir.

25 Q Okay. And how many times did he shoot it on this

China T.

Cross-examination by Mr. McPherson

- 1 other unnamed road?
- 2 A Not much.
- 3 Q Well, more or less, how many times?
- 4 A Like three or four.
- 5 Q Okay. And was that all that he shot it?
- 6 A Yes, sir.
- 7 Q He didn't shoot it after that until he got home?
- 8 A He was shooting it as we was going down the road to
- 9 our house.
- 10 Q How many times did he shoot it again?
- 11 A One. Well, after we got to our house he shot grandpa
- 12 one.
- 13 Q Okay. But when you're in the car traveling he shot it
- 14 again?
- 15 A Yes, sir.
- 16 Q On Miller Road?
- 17 A Yes, sir.
- 18 Q How many times on Miller Road?
- 19 A One.
- 20 Q One time. And then when he got to your house he shot
- 21 how many times?
- 22 A One to my grandpa.
- 23 Q Okay. Now, did you see what happened?
- 24 A Not all of it, but some.
- 25 Q You were back in your bedroom, were you not?

China T.

Cross-examination by Mr. McPherson

- 1 A No. I was in my grandpa's room.
- 2 Q I'm sorry?
- 3 A I was in my grandpa's room.
- 4 Q In your grandpa's room?
- 5 A Yes, sir.
- 6 Q Okay. But he was outside, is that right?
- 7 A Yes, sir.
- 8 Q So what went on outside between R. L. and your grandpa
- 9 you didn't see.
- 10 A No, sir.
- 11 Q So if your grandpa had pulled a weapon, you didn't see
- 12 that.
- 13 A No, sir.
- 14 Q And you can't say for absolute certainty that your
- 15 grandpa didn't pull a weapon, because you didn't see it.
- 16 A Yeah. I didn't see it.
- 17 Q All right.
- 18 MR. McPHERSON: I have no further questions.
- 19 MR. GOWDY: I have nothing on redirect of this
- 20 witness, Your Honor.
- 21 THE COURT: You may step down.
- 22 MR. GOWDY: Your Honor, may it please the Court, the
- 23 state would call Ms. India T.
- 24
- 25

India T. [REDACTED]

Direct examination by Mr. Gowdy

- 1 [REDACTED] India T. [REDACTED] having been
2 first duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MR. GOWDY
4 Q I'm over here. Okay. Do you see me? I'm going to
5 get you to lean forward so the ladies and gentlemen of the
6 jury can hear you. Not too close to the microphone. But
7 tell them your name. Okay?
8 A India.
9 Q I want you to speak up loud like you're yelling at me.
10 All right.
11 A India.
12 Q That's good. What's your last name, [REDACTED] India T.
13 A [REDACTED].
14 Q What's your sister's name?
15 A China.
16 Q Is your mama's name Diane Jackson?
17 A Yes, sir.
18 Q How old are you?
19 A Eight years old.
20 Q Where do you go to school?
21 A Campobello-Grambling.
22 Q What grade are you in?
23 A Third.
24 Q Do you like school?
25 A Yes.

India T.

Direct examination by Mr. Gowdy

1 Q What's your favorite class?

2 A Math.

3 Q Math. All right. I want to go back to May the 20th
4 last year. Do you remember the last time you rode in a car
5 with R. L. Sims?

6 A Yes, sir.

7 Q I want you to tell the jury about that ride. Where
8 were you sitting?

9 A I was sitting behind my mama.

10 Q Do you remember where your sister was sitting?

11 A She was sitting behind R. L.

12 Q Was anybody else in the back seat with you?

13 A My nephew.

14 Q What's his name?

15 A Jerohmia.

16 Q Do you know how old he is?

17 A Three years old.

18 Q Okay. Do you know where y'all were headed? Where
19 were you going?

20 A Home.

21 Q Where is home?

22 A Campobello-Grambling. I mean, not
23 Campobello-Grambling, but Campobello.

24 Q Do you know the name of the street you live on?

25 A Miller Road.

India T.

Direct examination by Mr. Gowdy

- 1 Q Do you live at the end of the street?
- 2 A Uh-huh.
- 3 Q Who did you used to live with?
- 4 A My grandpa and my mama.
- 5 Q Tell the jury what happened on the way home. Was your
6 mama driving?
- 7 A Yes, sir.
- 8 Q Where was R. L. Sims sitting?
- 9 A Beside my mama.
- 10 Q Tell the jury what happened.
- 11 A We were riding in the car and we were on our way home.
12 And he had pulled a gun out. And then he started waving it
13 and stuff. And then we was on some road. I don't know
14 what road we was on, but we were.
- 15 He had pulled the gun out, and then he started waving
16 it and stuff. And then me and my sister was crying, and my
17 nephew was crying too. And then he started saying
18 something. I don't know. But my nephew started crying and
19 stuff.
- 20 And then we got on our street. And then he, uh, uh,
21 asked my mama something. And then when we got home we was
22 crying and stuff.
- 23 And he got out of the car. And he went and got his
24 bullets. And he put it on my mama's Jeep, her old Jeep.
25 And he, my, me and my sister and my nephew started crying.

India T.

Direct examination by Mr. Gowdy

1 Well, we was yelling and crying.

2 And then my grandpa had came outside to see what was
3 wrong with us. And then he said R. L., said do you want to
4 know what re-up is, re-up, re-up. And then my grandpa said
5 yeah.

6 And then we went in the house and we hid. And my
7 grandpa and my mama was in our room. And then my mama had
8 went in the living room.

9 And then he had, my mama had, heard a gunshot. And
10 then my mama looked out the door. And he shot my grandpa
11 in the neck. And then he tried to get in the house. And
12 then my mama tried to keep him out. And then he shot
13 through the wall.

14 Q When you were riding in the car with your mama driving
15 and R. L. Sims in the front seat did he ever fire the gun
16 out of the window?

17 A Yeah.

18 Q Do you know how many times?

19 A No.

20 Q Were you upset?

21 A Yeah.

22 Q Were you scared?

23 A Yeah.

24 Q Were you crying?

25 A Yeah.

Direct examination by Mr. Gowdy

- 1 Q And were you still upset and scared and crying when
2 you got to your house?
- 3 A Uh-huh.
- 4 Q Did your grandpapa come outside?
- 5 A Uh-huh.
- 6 Q Did your grandpapa have anything in his hand at all?
- 7 A No.
- 8 Q Have you ever seen your grandpapa with a gun?
- 9 A No, sir.
- 10 Q How long have you lived in that house?
- 11 A I don't know.
- 12 Q Your whole life, as far back as you can remember?
- 13 A Yeah.
- 14 Q Have you ever seen a gun in your grandpapa's house?
- 15 A No.
- 16 Q How did your grandpapa get from the steps or the
17 ground back inside?
- 18 A He didn't get on the ground.
- 19 Q Where was he, where was he, where was he when he got
20 shot? Where did he fall?
- 21 A He fell on the porch where he was.
- 22 Q How did he get from the porch inside?
- 23 A Me and my mama. I helped my mama put him, carry him
24 in the house.
- 25 Q That's all the questions I have for you. Please

India T.

Cross-examination by Mr. McPherson

1 answer any questions the defense attorney has.

2 CROSS-EXAMINATION

3 BY MR. MCPHERSON

4 Q Now, let's go back to -- your mama takes you in the
5 house, is that correct? This is after y'all arrive at the
6 house. And you, and I guess China and Jerohmia, are going
7 inside the house, right?

8 A We ran in the house. Well, my mama told us to run, go
9 in the house and hide.

10 Q Okay. So you went into the house. And then you go
11 into what room?

12 A My grandpa's room.

13 Q Okay. And your mama is in there with you?

14 A No. She was in our room.

15 Q I'm sorry?

16 A She was in my, she was in me and my sister's room.

17 Q Okay. She was in your room and your sister's room.

18 A Yeah.

19 Q Okay. And then you hear the gunshots, is that right?

20 A Not until my mama came in our room.

21 Q Okay, so.

22 A Until she went in the living room.

23 Q And you remember all of that. Do you remember your
24 mama going into the living room and that she was looking
25 out the door? Do you remember that?

India T.

Cross-examination by Mr. McPherson

- 1 A Well, she wasn't looking out the door.
- 2 Q She wasn't looking out the door. She was just in the
- 3 living room?
- 4 A She was trying to lock the door.
- 5 Q Was this before or after the shots?
- 6 A I can't remember.
- 7 Q Okay. So it could have been after the shots.
- 8 A It was after I think.
- 9 Q I'm sorry?
- 10 A It was after, I think.
- 11 Q So it was after the shots your mama went in the living
- 12 room and tried to shut the door, is that right?
- 13 A Uh-huh.
- 14 Q Okay. Now, you love your mama, don't you?
- 15 A Uh-huh.
- 16 Q And you mind your mama, don't you?
- 17 A Uh-huh.
- 18 Q And you'll do anything your mama tells you to do,
- 19 isn't that right?
- 20 A Uh-huh.
- 21 MR. MCPHERSON: I have no further questions.
- 22 MR. GOWDY: I have nothing on redirect, Your Honor.
- 23 THE COURT: Okay. You may step down.
- 24 MR. GOWDY: Your Honor the state would call
- 25 Mr. Cornell Hall.

Cornell Hall
Direct examination by Mr. Gowdy

- 1 Q All right. Where did you work? Are you disabled?
- 2 A I am.
- 3 Q Where did you work before you became disabled?
- 4 A I was working at Joseph A. Banks Clothiers, which is a
5 men's store over by Westgate Mall.
- 6 Q Yes, sir.
- 7 A Yeah. I worked there for about two years.
- 8 Q Okay. Who lives beside you on either side?
- 9 A On the left side, my nephew Derrick Hall lives; and on
10 my right is my Uncle Fred Miller.
- 11 Q Who lives with you in your home?
- 12 A In my home is my oldest sister, Joanne, her daughter,
13 Elaine, and Elaine's two children. No. There's three
14 children -- Briana, Travon and Kinia Brooks, and my sister,
15 Mae Hall.
- 16 Q I show you State's 35. Do you recognize that?
- 17 A I do. That's my house.
- 18 Q I know the jury has seen this, but let me show them
19 one more time. That is your residence, right?
- 20 A Yes, sir. That's correct.
- 21 Q Which you share with some of your other family members
22 that live with you.
- 23 A Okay.
- 24 Q Is that correct?
- 25 A They do. That is correct.

Cornell Hall
Direct examination by Mr. Gowdy

1 Q And as we're facing your house right now the road is
2 on this side of the house, correct?

3 A That's correct, yes, sir.

4 Q All right. Who lives to the right of you?

5 A To the right of me, my Uncle Fred Miller and Esten
6 Graham and then Robert Jackson.

7 Q Where does Derrick live?

8 A Derrick lives on the left side of me.

9 Q Okay.

10 A Yes, sir.

11 Q Okay. Let me show you what's been marked as State's
12 26 and 27 and ask you if you recognize what's in those two
13 pictures.

14 A Yes, sir, I do.

15 Q What is that?

16 A Okay. No. 27 is my dining room and No. 26 is my
17 kitchen, which we have a rough, a breakfast nook. And the
18 breakfast nook is where I was sitting. And I was reading
19 the paper.

20 Q Okay. All right. So this is your dining room and
21 your kitchen.

22 A Yes, sir. That's correct.

23 MR. GOWDY: Your Honor, we would move 26 and 27 into
24 evidence.

25 MR. MCPHERSON: No objection.

1 THE COURT: They are admitted.

2 (Photographs marked State's Exhibits Nos. 26 and 27.)

3 MR. GOWDY: Permission to publish to the jury.

4 THE COURT: Yes.

5 Q Let me first show you 26. Tell the jury what they are
6 looking at.

7 A Right there they're looking at my kitchen and my den.
8 And this little area right there is my nook, kitchen nook,
9 where we sit most of the time. And we'll eat there. And
10 that's where I was sitting and eating.

11 Q Use that pointer if you need to, if you need to. The
12 picture is a little dark. Just push that red button, and
13 just be careful where we aim.

14 A All right.

15 Q All right.

16 A This is where I was sitting on that Saturday night. I
17 was sitting there and I was reading the newspaper. And
18 then all of a sudden I heard somebody say he's got a gun.
19 And so as I heard that I got up and I began, I called
20 myself running for safety. And as I ran, I ran from there,
21 and I ran over to my dining room area which is on the
22 opposite side.

23 Q What is that?

24 A This is my dining area.

25 Q All right. So you ran from?

Cornell Hall
Direct examination by Mr. Gowdy

- 1 A Yes, sir, from my kitchen.
- 2 Q Show me with the pointer what direction you would run,
3 or which direction you did run.
- 4 A Okay. I came from right there.
- 5 Q Yes, sir.
- 6 A And I came through this way.
- 7 Q Into that room.
- 8 A Into this room.
- 9 Q Okay.
- 10 A And as I ran right along here, and by the time I got
11 right along there, that's when R. L. came in. And we met
12 face to face. And that's when I was shot at close range.
- 13 Q All right. Did you have anything whatsoever in your
14 hand when R. L. Sims shot you?
- 15 A No, sir. I didn't have anything at all.
- 16 Q Do you own a gun, Mr. Hall?
- 17 A Sir, I don't own a gun. I don't even know how to
18 shoot a gun, believe it or not.
- 19 Q Have you ever owned a gun?
- 20 A I have never ever in my entire life owned a gun, never
21 wanted to own a gun.
- 22 Q Had you seen R. L. Sims that day?
- 23 A No, I hadn't.
- 24 Q Had you seen him before? Did you know who he was?
- 25 A I seen him before. I seen him just a couple of times

Cornell Hall
Direct examination by Mr. Gowdy

1 when he came over to my cousin Diane. But as far as that,
2 I really didn't know him that well, just by meeting him
3 with being with her. That's the only time I ever saw him.

4 Q Did you have any unpleasantness with him at any time?

5 A Never, ever. We never shared any unkind words. Our
6 conversation was always very brief, because I didn't know
7 him that well, and neither did he know me. So I didn't
8 really have a lot to say to him. And our conversation
9 would always be hello, how are you doing. And it was
10 always very casual and very brief.

11 Q But at no point on May the 20th did you see him or
12 have any confrontation with him.

13 A None whatsoever.

14 Q Did you invite him into your home?

15 A No, sir. He came in on his own.

16 Q Did you give him permission to come into your home?

17 A I did not give him permission to come in by no means.
18 He came in on his own.

19 Q What were you doing at the little table in your
20 kitchen?

21 A Okay. I was sitting there and I was reading a
22 newspaper. I was talking to a member at my church. I was
23 telling him that he really needed to get his life together.
24 And I told him that, you know, if he wanted to I'd talk
25 with him more about it. And I told him, I said, well, I'll

Cornell Hall
Direct examination by Mr. Gowdy

1 see you tomorrow as he was getting ready to exit.

2 MR. McPHERSON: Your Honor, that's not relevant.

3 THE COURT: Sustained.

4 Q So he wound up leaving.

5 A He left. He sure did.

6 Q Okay. All right. And what time of the day or night
7 is this?

8 A I would say this is roughly between 8:30, a quarter of
9 9:00 perhaps.

10 Q Was it dark outside?

11 A It was dark.

12 Q Okay. At some point did your nephew --

13 A My nephew.

14 Q -- Derrick come to your house?

15 A Derrick was already out there as a matter of fact,
16 yeah.

17 Q All right. Did he tell you he had heard something?

18 A He did.

19 Q Was he aware that something was going on in the
20 neighborhood?

21 A He did tell me that he heard something, because I
22 think when I saw Derrick he had had his gun. And I told
23 him to put his gun down, you know, because, you know, he
24 had heard something, a commotion going on down at my Uncle
25 Robert's house. So I told him to put the gun down because

Cornell Hall
Direct examination by Mr. Gowdy

1 that will only create some problems. So he put the gun
2 down.

3 Q All right. Were you standing or sitting when R. L.
4 Sims shot you?

5 A When R. L. shot me I was standing, because I had just
6 ran from my kitchen area to my dining area. So by the time
7 he had entered in my house we kind of met at close range.
8 And then he shot me in my stomach, and then I fell to the
9 floor. And then he shot me again in my arm, in my right
10 arm.

11 Q He shot you while you were laying on the ground?

12 A Yes, sir, he shot me while I was lying on the, on the
13 floor.

14 Q Did he say anything to you before he shot you?

15 A I don't recall him saying anything. All I just
16 remember, him shooting me and me falling to the floor. And
17 then he shot me in my arm.

18 Q And you hadn't done anything to him.

19 A I hadn't done anything. I couldn't figure out why was
20 I a target of his, because we'd never had any, shared any
21 harsh words between the two of us. And I couldn't figure
22 out why he would come to my house to shoot me or to shoot
23 us.

24 Q All right. I want you as best you can to tell the
25 jury what injuries you suffered from those two gunshot

Cornell Hall
Direct examination by Mr. Gowdy

1 wounds.

2 A Okay. Once I got shot, I got shot, I got shot in my
3 stomach, and I had to go to the hospital for 15 days. It
4 damaged my colon and it ruined my liver. Half my colon had
5 to be taken out. I did a lot of bleeding.

6 After the 15 days of being hospitalized I got out. I
7 had to go back in June, June 13th, and I had to stay for
8 two days. I had to go through a blood transfusion.

9 MR. McPHERSON: Your Honor, I am going to object on
10 the grounds of relevance. Not relevant.

11 THE COURT: He can describe the nature of the wounds
12 but not how many doctor visits he had.

13 Q Just the nature of your injuries. Your liver was
14 impacted, is that right?

15 A My liver, yes, sir. And half my colon had to be
16 removed.

17 Q Your colon was shot.

18 A Yes. And my liver was damaged.

19 Q A shot in the arm.

20 A Yes.

21 Q And you stayed in the hospital for how long?

22 A Fifteen days.

23 Q Okay. Were you in the courtroom yesterday?

24 A I was.

25 Q You may have heard a reference to your going for a gun

Cornell Hall
Cross-examination by Mr. McPherson

1 and that that's why you were shot.

2 A Oh, there's no truth in that, sir.

3 Q Did you ever make any movements whatsoever towards any
4 weapon?

5 A I sure didn't.

6 Q What were you trying to do?

7 A I wasn't doing anything. I was sitting in the comfort
8 of my own home minding my own business.

9 Q Did you ever threaten R. L. Sims in any way, shape or
10 form?

11 A Never threatened him. I had no reason to threaten
12 him. We never had any type of confrontation. So I had no
13 reason to threaten him by no means.

14 Q Do you see the person that shot you in this courtroom?

15 A Yes, sir, I do.

16 Q I want you to point him out to the jury.

17 A This gentleman right over here, Russell Sims, a/k/a,
18 R. L. Sims.

19 Q Thank you, Mr. Hall. Please answer any questions the
20 defense attorney may have for you.

21 CROSS-EXAMINATION

22 BY MR. MCPHERSON

23 Q Now, did you make a statement with the police?

24 A Did I make what?

25 Q Did you give the police a statement?

Cornell Hall
Cross-examination by Mr. McPherson

- 1 A I may have perhaps.
- 2 Q You don't recall?
- 3 A I don't.
- 4 Q You don't recall giving them like a tape-recorded
5 statement?
- 6 A No, sir, I sure don't.
- 7 MR. McPHERSON: May I approach the witness?
- 8 THE COURT: Yes.
- 9 MR. GOWDY: Your Honor, can we have a brief side bar
10 on this issue?
- 11 THE COURT: Sure.
- 12 (Bench conference held off the record in the presence
13 of the jury but out of the hearing of the jury.)
- 14 MR. GOWDY: Thank you, Your Honor.
- 15 THE COURT: Okay.
- 16 MR. McPHERSON: May I approach the witness?
- 17 THE COURT: Yes.
- 18 Q I'm going to show you a document. Do you recognize
19 the signature on this document?
- 20 A Yes. That is my signature.
- 21 Q Okay. Would you take a moment and read this?
22 (Pause.)
- 23 Q Okay. And this statement is dated June the 6th.
- 24 A Yes, sir.
- 25 Q Do you recall making that statement, or you still

Cornell Hall
Cross-examination by Mr. McPherson

- 1 don't recall it?
- 2 A I did make that statement, sir.
- 3 Q You did?
- 4 A I made that statement to the officer.
- 5 Q I'm sorry?
- 6 A I made that statement to the officer.
- 7 Q Okay. And in that statement did you state anywhere
8 about a shotgun that Derrick had?
- 9 A No, sir.
- 10 Q So you just completely left that out when you were
11 telling the officer.
- 12 A I sure did.
- 13 Q Now, you didn't think that was important?
- 14 A Oh, I didn't say that it wasn't important, but at that
15 particular time it just didn't come to my mind to tell him
16 that. I did not say that was not an important issue,
17 because it was important at that particular time. It just
18 didn't come to my mind. It just didn't register for me to
19 mention it to the officer.
- 20 Q Okay. Now, when you heard the gunshot you didn't run
21 away from the gunshot. You ran toward the gunshot, didn't
22 you?
- 23 A Well.
- 24 Q Is that correct or not?
- 25 A When the, when I heard that he had came in the house I

Cornell Hall
Cross-examination by Mr. McPherson

1 ran for safety, but evidently I ran into him, because I
2 didn't realize what part of my house that he was at. So
3 once I ran over into my dining area, that's when he came in
4 my house and that's when I got shot, because I didn't have
5 a clue as to what area he was in.

6 Q But you were running toward the front of your house,
7 were you not?

8 A I ran. I ran to my dining area.

9 Q But that's -- you're running toward the front of your
10 house, are you not?

11 A I call myself running for safety.

12 Q Let me ask you this. If you were going to the front
13 door would you go from the kitchen to the dining area into
14 the front?

15 A No, sir. I'd come from the nook and come through the
16 living room. I wouldn't go through the dining room.

17 Q The dining room goes into the front area, does it not?

18 A My dining room is, let me see. I'd come from my
19 dining room and come into the kitchen.

20 Q Does the dining room go into the front area or not?

21 A It does, yes, it does.

22 Q So it's fair to say you ran toward the gunshot.

23 A No. It's not safe to say that. I called myself
24 running to safety, but R. L. just happened to come in
25 during the same time. So as I ran, he ran toward me

Cornell Hall
Cross-examination by Mr. McPherson

1 basically, and because I was trying to run to safety. So
2 when I was trying to run to safety, then we just kind of
3 met each other.

4 Q So you were running to safety toward the gunshot.

5 A No, sir.

6 Q Okay. Now, when you first saw Derrick with the
7 shotgun, where were you and where was he?

8 A When I first saw Derrick with the shotgun I was
9 sitting in my kitchen at my little kitchen nook and I was
10 reading the paper. Derrick had the shotgun, but then he --
11 I told him to put the shotgun down. So he placed the
12 shotgun down. I don't remember where he put it because I
13 wasn't even paying any more attention because I was reading
14 the paper.

15 Q Well, did you see him put it down?

16 A I don't have a clue about where he put it. He put it
17 down.

18 Q Did you see him put it down? Yes or no.

19 A He put it down. I know he put it down.

20 Q Did you --

21 A Because why I know he put it down, because as I saw
22 him walking he didn't have the gun any more. So I know for
23 a fact he had put it down.

24 Q And you saw him walking in what direction?

25 A I saw him walking. He walked toward one of the

Cornell Hall
Cross-examination by Mr. McPherson

1 bedrooms in my house. So I knew he didn't have the gun
2 then.

3 Q And so is he walking toward the front of the house or
4 the back of the house?

5 A He's walking toward the back to one of the bedrooms.

6 Q So he would have put that gun down in the back of the
7 house?

8 A He put the gun down in the front.

9 Q In the front of the house.

10 A In the front of the house as I had instructed him to
11 do.

12 Q Okay. Now, I'm going to show you what's been marked
13 as State's Exhibit 26. Now, let me. What is up in here?

14 A That's my fireplace, the mantel.

15 Q Okay. And so what is this area right here?

16 A Okay. That's the den area. And as you come up a
17 little further this is my, my nook. That right there is
18 one of the sofas in my den.

19 Q Okay. Now, if you're trying to -- now, when Derrick
20 came in you were sitting here, is that correct?

21 A I was sitting right there, yes, sir.

22 Q And where was he when you first saw him with the
23 shotgun?

24 A Okay. When I first saw Derrick he had came in, and he
25 was right there in my den, in my den area, because you have

Cornell Hall
Cross-examination by Mr. McPherson

1 to go from my den area into the other back bedroom. He was
2 back there.

3 Q He was up in this area.

4 A He was right in that area.

5 Q Now, my understanding when you leave this kitchen area
6 here, you go this way to get to your dining room.

7 A Yeah. You go back kind of to your left, to your
8 right, basically.

9 Q Which way?

10 A Back to your right.

11 Q This way?

12 A Yes, sir.

13 Q So would there be a door over this way?

14 A Yeah. It's kind of like a little open. I don't know
15 what you call it, but you can go through that way.

16 Q Is that the way he went?

17 A Derrick, no, sir. Derrick went back. He went back
18 the other way. He went back toward the bedrooms.

19 Q Okay. Now, when you went back towards the bedroom, he
20 had the gun with him.

21 A No, he didn't.

22 Q He had already put it down?

23 A He had already placed it down.

24 Q And where did he place it down?

25 A He placed it beside one of the chairs in the living

Cornell Hall
Cross-examination by Mr. McPherson

1 room.

2 Q So you saw him put it down.

3 A I didn't see him put it down. But, like I say, he
4 didn't have it. I know he didn't have it, because as I saw
5 him walking to our bedrooms he had nothing in his hand.
6 And I could see that very clearly that he didn't have
7 anything in his hand. So I knew he had placed the gun
8 beside the chair.

9 Q Now, you made a tape-recorded statement too, did you
10 not?

11 A Tape-recorded?

12 Q Yeah. When you first arrived at the hospital.

13 A I may have. I don't, I don't remember.

14 Q And isn't it true in that statement you didn't tell
15 the officer about Derrick having a shotgun?

16 A Probably during that time I was more or less a little
17 incoherent. So a lot of things I probably didn't even
18 quite remember. So, you know, I don't know if I made a
19 statement or not. I can't remember.

20 Q So twice you were given an opportunity to mention the
21 shotgun and twice you didn't mention it.

22 A Well, I didn't say that it wasn't important. It just
23 didn't register in my mind to mention it that particular
24 time, because you have to realize I had been shot and I was
25 in excruciating pain. So a lot of things basically, you

Cornell Hall
Redirect examination by Mr. Gowdy

1 know, I'm not going to remember.

2 Q Briefly, it's true that you had had R. L. over to your
3 home for like barbeques and stuff like that.

4 A That is correct, sir. We have invited him. We
5 invited Diane, and basically we were going to invite him as
6 well. That was her friend.

7 Q And he had been over there several times.

8 A Not several times, maybe once or twice perhaps,
9 because we hadn't really known him that long for him to be
10 invited to our house more than once or twice.

11 Q Okay. Now, you're related to Derrick.

12 A Derrick is my nephew.

13 Q All right. And you're related to Diane.

14 A Diane is my first cousin.

15 Q Would you agree with me that blood is thicker than
16 water? You've heard that expression.

17 A I sure have.

18 Q And would you agree with that?

19 A Sometimes, in some cases they are. Not all.

20 MR. MCPHERSON: No further questions.

21 MR. GOWDY: Very briefly on redirect.

22 REDIRECT EXAMINATION

23 BY MR. GOWDY

24 Q Did Derrick ever point the gun at R. L. Sims that you
25 saw?

Cornell Hall
Redirect examination by Mr. Gowdy

1 A No, sir.

2 Q Was a shotgun ever involved in any way, shape or form
3 with R. L. Sims coming into your house?

4 A Not at all.

5 Q Well, then why would you think to tell the police
6 about it?

7 A I had no reason because a gun wasn't even involved.

8 Q Right. Did you tell the police R. L. Sims shot you?

9 A I sure did.

10 Q Did you tell the police R. L. Sims came into your
11 house without permission?

12 A I sure did.

13 Q Were those the things that you thought were important
14 to tell law enforcement?

15 A Those were of utmost importance to me.

16 MR. GOWDY: No further questions.

17 THE COURT: All right. You may step down.

18 Ladies and gentlemen, we're going to take a short
19 break before we go any further. So I'll ask you to please
20 go to your jury room.

21 Remember the caution I have given you previously.

22 Don't discuss the case in any fashion. We'll bring you
23 back after that break.

24 (The following takes place outside the presence of the
25 jury.)

Elaine Hall
Direct examination by Mr. Stalvey

1 THE COURT: Court is in recess for 15 minutes.

2 (Whereupon, a recess was taken.)

3 THE COURT: All right. Are we ready for the jury?

4 MR. GOWDY: The state is, Your Honor.

5 THE COURT: Bring them in.

6 (The following takes place in the presence of the
7 jury.)

8 THE COURT: All right. You may continue.

9 MR. STAVLEY: May it please the Court, Your Honor.

10 The state calls Elaine Hall to the stand.

11 ELAINE HALL, having been first
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. STALVEY

14 Q Ms. Hall, could you please introduce yourself to the
15 jury?

16 A Yes. My name is Elaine Hall.

17 Q And where do you live, ma'am?

18 A [REDACTED] Road.

19 Q And were you at [REDACTED] Road on the night of May
20 20th of 2006?

21 A Yes, sir.

22 Q And if you could, please describe to the jury what
23 happened that night.

24 A Okay. It was about 8:30, I was lying down in one of
25 the bedrooms, and I heard a gunshot. And I got up and I

Elaine Hall
Direct examination by Mr. Stalvey

1 went to the living room. And I was telling my uncle and my
2 aunty that I heard a gunshot. But they thought that it was
3 someone shooting fireworks. And I continued telling them,
4 no, that it was, it was a gunshot.

5 So I went back in, in the bedroom. And then I
6 couldn't, I couldn't lay down. So I got back up and I went
7 back in the room. And then around that time my cousin,
8 Derrick, came in. And he said that he heard the kids
9 screaming, he had never heard them scream like that before.

10 So I went out on the porch. And then that's when I
11 heard four more shots.

12 And so I went back in the house and I told them. And
13 then my aunty, she came to the door. And me and her both
14 was standing in the door. And Derrick came up. And that's
15 when I saw my cousin Diane's car come by our house. And it
16 pulled up and it stopped.

17 And around that time he -- that's when I saw R. L.
18 come running up the steps. And he just opened up the door.
19 And he was like, oh, my God, oh my God. And that's when he
20 shot my cousin Derrick in the chest.

21 And my cousin, he, he was trying to move my, my aunty
22 back from the door so she couldn't get shot, because I saw
23 him. And, you know, I let him know that he had a gun. And
24 I saw all of this stuff.

25 And then, you know, it happened so fast because, I

Elaine Hall
Direct examination by Mr. Stalvey

1 mean, where I live, you know, it's all family. So we're
2 not used to stuff like that. And, you know, he came in.
3 And then he asked us all are we ready to die, that we are
4 all going to die tonight.

5 And my aunty, she was getting ready to run towards the
6 back room. And that's when he shot again. And then around
7 that time my uncle, he came around the corner. And that's
8 when he shot him in the stomach. And he went to the floor.

9 Q Now, I'm sorry, Elaine. Let me stop you right there.
10 When you say your uncle, who are you referring to?

11 A My Uncle Cornell.

12 Q Cornell Hall?

13 A Yes, sir.

14 Q Okay.

15 A My uncle went down. And then as he went down he came
16 over, and he shot him again. And my cousin and my, well,
17 my little cousin and my daughter, my oldest daughter, was
18 there. And they ran to the book room.

19 Derrick. He ran behind them to get them to safety.
20 And he just went. He went around where my Uncle Cornell
21 was. And he went over to where my baby was. At the time
22 my son was 14 months old. And he was in his playpen. And
23 he was the only one that was in there because everybody
24 else, I mean, my cousin had already been shot and my uncle,
25 he was lying on the floor. He had been shot. So my son

Elaine Hall
Direct examination by Mr. Stalvey

1 was in there by himself.

2 Q How many times had your uncle been shot at that point?

3 A Twice.

4 Q Okay.

5 A And then my son was by hisself. R. L. went near my
6 son.

7 Q Okay. Ms. Hall, let me stop you right there and take
8 you back.

9 MR. STALVEY: May I approach the witness, Your Honor?

10 THE COURT: Yes.

11 Q Now, your testimony is that you saw the defendant pull
12 up in your cousin's car.

13 A Correct.

14 Q Can you tell me what that's a picture of?

15 A That's my Cousin Diane's car.

16 MR. STAVLEY: Your Honor, at this time I would move to
17 enter what's marked as State's 24 into evidence.

18 MR. McPHERSON: No objection.

19 THE COURT: It's admitted.

20 (Photograph marked State's Exhibit No. 24.)

21 Q Ms. Hall, is that the car that pulled up to [REDACTED]
22 Road that night?

23 A Yes, sir, it is.

24 Q And, Ms. Hall, when the defendant got out of that car
25 did you see him run up to the front door?

Elaine Hall
Direct examination by Mr. Stalvey

- 1 A Yes, I did.
- 2 Q Okay. Where were you?
- 3 A I was standing in the door right beside my cousin and
4 my aunty.
- 5 Q Okay. Did the defendant have a gun?
- 6 A Yes. He had it behind him, and then. But once he was
7 coming running up the steps I saw it.
- 8 Q Okay. And when the defendant, when the defendant --
9 did you hear anybody give permission for the defendant to
10 come into [REDACTED] Road?
- 11 A No. He just snatched our door open and came on in.
- 12 Q Okay. And when the defendant forced his way into [REDACTED]
13 Miller Road did he say anything?
- 14 A He just said, "Oh, my God, oh, my God." And he asked
15 my cousin Derrick where my knife at, where my knife at.
16 And then that's when he told us, he said y'all are going to
17 die tonight.
- 18 Q Okay. And you testified that you saw the defendant
19 shoot Derrick.
- 20 A Yes.
- 21 Q Did he say anything when he shot Derrick?
- 22 A When he shot him he was saying, "Oh my God, oh my
23 God."
- 24 Q Okay. And you also testified that you saw the
25 defendant shoot your Uncle Cornell.

Elaine Hall
Direct examination by Mr. Stalvey

- 1 A Correct.
- 2 Q Okay. What did he do after he shot your Uncle Cornell
3 the first time?
- 4 A He was standing over him and he was saying something
5 about y'all are going to respect me or something of that
6 nature.
- 7 Q Okay. Now, Ms. Hall, where was your Uncle Cornell
8 positioned when the defendant shot him again?
- 9 A He was on his knees. He had fell down to the floor,
10 and then he shot him again.
- 11 Q Now, Ms. Hall, when the defendant pulled up to [REDACTED]
12 Miller Road did anyone inside [REDACTED] Road have a gun?
- 13 A No, not pointed at him. My cousin had already had his
14 lying on the floor.
- 15 Q So you saw your cousin lay it down on the floor?
- 16 A Uh-huh.
- 17 Q And that gun was laying on the floor the entire time
18 from when the defendant pulled up until the defendant left,
19 is that correct?
- 20 A Correct.
- 21 Q Did you see your Uncle Cornell with a gun?
- 22 A No, sir.
- 23 Q Have you ever seen your Uncle Cornell with a gun?
- 24 A My uncle has never owned a gun in his life.
- 25 Q Ms. Hall, please answer any questions the defense

Elaine Hall
Cross-examination by Mr. McPherson

1 attorney may have for you.

2 CROSS-EXAMINATION

3 BY MR. MCPHERSON

4 Q Ma'am, do you recall talking to an Officer Buie,
5 B-U-I-E, when you, when they first arrived on the scene?

6 A There was so many peoples there, no, I don't recall.

7 Q Do you recall talking to a police officer?

8 A I spoke with one, but I don't know who he was.

9 Q And do you remember you related to them the incident
10 that happened that night?

11 A Yes, and I remember that I was also hysterical because
12 nothing like that has happened to us before.

13 Q So you would agree that when you made that statement
14 to that officer you were still under the stress of the
15 event and that you were highly excited.

16 A I was scared.

17 Q Right. Would you agree you were still under the
18 stress that that event had caused?

19 A I was upset. I was shaking and I was nervous, yes.

20 Q Okay. And do you recall telling Officer Buie -- and I
21 know you don't remember the name -- but do you recall
22 telling an officer that you saw Russell Sims drive by the
23 house and he shot like four times toward the house?

24 A He shot one time when he passed.

25 Q Do you recall telling the officer that he shot four

Elaine Hall
Cross-examination by Mr. McPherson

1 times toward the house?

2 A It was four more times. I heard four more shots on
3 down by my Uncle Robert's house.

4 Q Do you recall -- I'm asking you though. Do you recall
5 telling the officer --

6 MR. STAVLEY: Objection, Your Honor.

7 THE COURT: Overruled.

8 Q All I want to know is do you recall telling the
9 officer that he had a shotgun and that he shot it four
10 times, I mean, that he had a gun and that he shot it four
11 times toward the house?

12 A No, I didn't. I can't recall saying that. I recall
13 saying that he shot one time when he went by our house and
14 I heard four more shots on down at my Uncle Robert's house.
15 That's what I remember.

16 Q Okay. And then when he went past the house you heard
17 four or five more shots?

18 A Four shots.

19 Q And then you observed Russell drive back to your
20 house.

21 A That's correct.

22 Q The house you were living in, correct?

23 A That's correct.

24 Q And then do you recall telling the officer that you
25 saw him run inside your home, the home in which you live,

Elaine Hall
Cross-examination by Mr. McPherson

1 with the handgun and a shotgun?

2 A No. I did not say with the handgun and the shotgun
3 because he didn't have a handgun. I mean, he had the
4 handgun but not the shotgun. He didn't take the -- when he
5 left our home, that's when he took my brother's, I mean, my
6 cousin's gun.

7 Q So you deny telling the officer that he ran inside
8 with a handgun and a shotgun.

9 A I did not say a handgun and a shotgun. I said a
10 handgun.

11 Q Didn't you tell the officer when he got inside he set
12 the shotgun down and started shooting with the handgun?

13 A No, sir, I did not.

14 Q You didn't say that?

15 A No, I did not.

16 Q "The subject then picked up the shotgun and left."

17 A That's when, that's when he left, was when he went
18 over to my son's playpen and pointed the gun at him, and
19 the gun clicked. He ran out of the house. And he grabbed
20 my brother's, well, my cousin's gun and went out. And
21 that's when he got in my cousin's, Diane, car and left.

22 Q And you would agree with me, would you not, that the
23 statement that I read to you is quite different from what
24 you're telling now?

25 A I don't know what you're reading but I know what I

Elaine Hall
Cross-examination by Mr. McPherson

1 said.

2 Q So you just deny saying that altogether.

3 A But some of the comments that you said, yes, I do
4 disagree with you.

5 MR. McPHERSON: I have no further questions.

6 MR. STAVLEY: No redirect, Your Honor.

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

8 MR. McPHERSON: I'm sorry. Your Honor, I have one
9 more question I would like to ask this witness.

10 THE COURT: All right. Take your seat and let him ask
11 one more question.

12 BY MR. McPHERSON

13 Q Did you make a statement to the police, a handwritten
14 statement, on the 20th of May of 2006?

15 A Yes, I did.

16 Q And isn't it true you told the police that Derrick
17 told you it was Diane's boyfriend shooting and acting a
18 fool?

19 A Maybe I did. I don't, I don't, I don't know.

20 MR. McPHERSON: May I approach the witness?

21 THE COURT: Yes.

22 Q I'm showing you a document. Do you recognize the
23 signature on that document?

24 A Yes. That is my signature.

25 Q Okay. I would like for you to read right here.

Elaine Hall
Redirect examination by Mr. Stalvey

1 A Yes.

2 Q Do you see that?

3 A I sure do.

4 Q Is that in your handwriting or somebody else's?

5 A That's my handwriting.

6 Q Okay. Would you read this line right here, what you
7 wrote?

8 A "Derrick told me it was Diane's boyfriend shooting and
9 acting a fool."

10 Q And that statement was made the same day of the
11 incident, was it not?

12 A Correct.

13 MR. MCPHERSON: No further questions.

14 MR. STAVLEY: Your Honor, in light of the follow-up
15 questions, the state does have redirect.

16 THE COURT: Okay.

17 MR. STALVEY: May I approach the witness, Your Honor?

18 THE COURT: Yes.

19 REDIRECT EXAMINATION

20 BY MR. STAVLEY

21 Q Ms. Hall, I'm going to show you the statement that the
22 defense attorney just showed you.

23 A Okay.

24 Q I believe he asked you about this statement right
25 here.

Elaine Hall
Redirect examination by Mr. Stalvey

1 A Correct.

2 Q If you could, read what you said after that.

3 A "I was standing with my front door open and I heard
4 about four shots at the other house where my Uncle Rob
5 lives".

6 Q Continue.

7 A "I saw Diane's car pull up at our house, and Diane's
8 boyfriend came running up on the porch. I could see him
9 holding a gun in his hand, but we were back in the living
10 room by now. And I came and I started, and he started
11 shooting. I saw Russell shoot my Uncle Cornell. My uncle
12 fell to the floor. He was lying there balled up saying he
13 shot me, he shot me. Russell said he, he would kill
14 everybody in the house if they moved. I saw him turn and
15 shoot at Derrick. Derrick said he shot me, I can't feel it
16 but I'm hit. Derrick had a shotgun that he had laid down
17 in the living room. Russell turned to run out the door,
18 and he took the shotgun with him. My uncle was telling me
19 to call, call for help because he had been shot." End of
20 statement.

21 Q Thank you, Ms. Hall.

22 MR. STALVEY: No further questions.

23 MR. McPHERSON: I have a couple of follow-ups.

24 THE COURT: Okay.

25

Elaine Hall
Recross-examination by Mr. McPherson

1 RE CROSS-EXAMINATION

2 BY MR. MCPHERSON

3 Q In that statement you just read, you saw Russell shoot
4 your Uncle Cornell first, right? That's what you said,
5 right?

6 A Yes, but.

7 Q And then you saw him shoot --

8 MR. STAVLEY: Your Honor, objection. She's trying to
9 answer the defense attorney's question and he continually
10 does not let her answer.

11 THE COURT: Okay. Let her answer.

12 A I wrote down everything that I saw as I was instructed
13 to do it to the best of my knowledge, because I was upset
14 and it had been, I mean, that had been a terrible night.

15 It might not have been in the order that it happened,
16 but I know, I mean, I was right there when it all happened.
17 I mean, it's like deja vu.

18 Q Would you agree with me in the statement that you just
19 read from you said I saw Russell shoot my Uncle Cornell?

20 A Yes.

21 Q And then after that you say I saw him turn and shoot
22 Derrick.

23 A Yes.

24 MR. MCPHERSON: I have no further questions.

25 THE COURT: You may step down.

Brian Andrews
Direct examination by Mr. Gowdy

1 MR. GOWDY: May it please the Court. The state would
2 call Deputy Brian Andrews.

3 BRIAN ANDREWS, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. GOWDY

6 Q Good morning, Deputy Andrews.

7 A Hey.

8 Q I will get you to introduce yourself to the jury.
9 Tell them where you work and how long you have been there.

10 A I'm Sergeant Andrews with the Spartanburg County
11 Sheriff's Office. And I've worked at the sheriff's office
12 for approximately nine and a half years.

13 Q Are you in uniform patrol?

14 A Yes, sir.

15 Q In May of 2006 were you in uniform patrol?

16 A Yes, sir.

17 Q Did you receive information on or about May 20th of
18 2006 to be on the lookout for a certain automobile?

19 A That's correct.

20 Q Did you find that automobile?

21 A We did.

22 Q Let me show you what's been already admitted as
23 State's Exhibit 24 and ask you whether or not that's the
24 car that you found.

25 A That is. And it is in the same spot as it was

Brian Andrews
Direct examination by Mr. Gowdy

1 identified by myself when I did.

2 Q All right. So there was what's cop-called in law
3 enforcement talk a BOLO or be on the lookout for that car.

4 A Correct.

5 Q And you found it.

6 A Yeah. We were actually given, you know, several
7 physical descriptions, one being that the driver's-side
8 mirror was knocked off, the tag number, who it belonged to.
9 And I believe that it was actually entered as a stolen
10 vehicle too.

11 Q All right. Tell the jury where you found this car.

12 A This vehicle was found I believe in the government
13 home section of Spartanburg city limits at what's called
14 Camp Croft Apartments.

15 Q All right. Do you know where Campobello is?

16 A I do.

17 Q Are Camp Croft Apartments anywhere near Campobello,
18 South Carolina?

19 A No. I'd probably estimate maybe 25 or 30 miles away.

20 Q What day did you find this automobile?

21 A I'm not certain without looking at the report.

22 Q Let me ask you this. If I told you that your report
23 says May 22nd, would you disagree with that?

24 A No, sir.

25 Q All right. Once you found the car was it locked or

Brian Andrews
Direct examination by Mr. Gowdy

1 unlocked?

2 A I believe it was locked. We didn't -- we made a check
3 of the displayed vehicle and confirmed that it was actually
4 the vehicle in question that we were looking for.

5 At that time I believe we did not disturb the outer
6 parts because we had known at the time that we were going
7 to use, you know, the entire vehicle for evidence purposes.
8 So I believe we might have made a check for the driver's
9 side and passenger-side door, but I believe it was locked
10 at the time.

11 Q Now, there's a different unit at the sheriff's
12 department that processes crime scenes, right?

13 A That's correct.

14 Q And that would not be you. You would call a different
15 group to come and process the car.

16 A Yes, sir.

17 Q Did you visually inspect the car?

18 A We did.

19 Q All right. Let me ask you whether or not you saw any
20 shotguns in the back seat of that car.

21 A No. In fact, when we, when we actually confirmed the
22 car we made some visual inspections through the windows and
23 specifically scanning the vehicle to make sure there wasn't
24 any weapons or anything that we, you know, were going to
25 have to recover at the time. There was nothing out of the

Brian Andrews
Direct examination by Mr. Gowdy

1 ordinary inside the vehicle.

2 Q All right. Show you a Spartanburg County Sheriff's
3 Office tow report and ask whether or not that refreshes
4 your recollection as to what date you recovered that car.
5 And then tell me if it refreshes your recollection, and
6 then I'll take the document back.

7 A Yes. That's actually the copy of the report that I
8 filled out on the scene, and it was dated from the 22nd.

9 Q May 22nd is when you found the car, right?

10 A That's correct.

11 Q And you found it in Camp Croft Apartments.

12 A Yes, sir.

13 Q Which is far away from Campobello.

14 A Yes, sir.

15 Q And you didn't see any guns in the car.

16 A No, sir.

17 Q Please answer any questions that the defense attorney
18 may have for you.

19 MR. McPHERSON: I have no questions.

20 THE COURT: You may step down.

21 MR. GOWDY: Your Honor, we would ask Deputy Andrews be
22 excused to go back to work.

23 THE COURT: He may be.

24 MR. GOWDY: Thank you, Your Honor.

25 (Whereupon, the witness was excused.)

Russell Holthaus
Direct examination by Mr. Gowdy

1 MR. GOWDY: At this point we would call Deputy Rus
2 Holthaus.

3 RUSSELL HOLTHAUS, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. GOWDY

6 Q It's almost good afternoon. How are you?

7 A Okay.

8 Q Can you introduce yourself to the jury? Tell them
9 your name, where you work and what division you work in.

10 A Yes. I'm Rus Holthaus. I work with the Greer police
11 department. I'm assigned to the forensics unit in
12 Spartanburg County as an agreement of the task force to
13 facilitate crime scenes in the county limits and city
14 limits.

15 Q So the jury understands that, while you may work for a
16 different jurisdiction, there is a county-wide forensic
17 unit. And tell them what you mean by forensic unit. What
18 do y'all do?

19 A We collect evidence on crime scenes, process evidence
20 and send to it SLED for analysis. We photograph, actually
21 physically pick up the evidence, tag it, bag it and seal it
22 and send it for analysis.

23 Q And you work in conjunction with other officers and
24 deputies on a, on a county-wide unit, is that correct?

25 A That's correct.

Russell Holthaus
Direct examination by Mr. Gowdy

1 Q How long have you been on that unit?

2 A A year.

3 Q Okay. Did you respond to a crime scene on May 20th of
4 2006 in the Campobello area?

5 A Yes, I did.

6 Q Who did you respond with? Who were you working with
7 that night?

8 A Deputies of the county and Deputy Bogan.

9 Q Randy Bogan?

10 A Randy Bogan.

11 Q And what is Randy's position in the sheriff's
12 department?

13 A He is a forensics officer, and he's also a team leader
14 for homicide and major crime scenes.

15 Q Did y'all work side by side, hand in glove, that
16 night?

17 A Yes, sir.

18 Q Let me show you what's been admitted as State's
19 Exhibit 18. Do you recognize that?

20 A Yes, I do. That's the Miller Road area.

21 Q All right. That's the Miller Road area. I have
22 published this. The jury has seen this before, Officer.

23 Do you know how to use one of these?

24 Show the jury the two places that you processed for
25 evidence on May the 20th.

Russell Holthaus
Direct examination by Mr. Gowdy

- 1 A [REDACTED] and [REDACTED]
- 2 Q All right. Which residence did you arrive at first?
- 3 A I arrived at [REDACTED] I parked up here because they had
4 everything else shut down. So you couldn't get in and out.
5 So I stayed up in this area. I did actually walk the
6 entire length of this area when I was doing my first
7 assessments waiting for Deputy Bogan to arrive.
- 8 Q Which -- there were two distinct crime scenes, is that
9 fair to say?
- 10 A That's correct.
- 11 Q [REDACTED] Road?
- 12 A [REDACTED] and [REDACTED]
- 13 Q All right. Between [REDACTED] Road and [REDACTED]
14 Road, which crime scene did you process first?
- 15 A I processed [REDACTED] while I was waiting for Deputy Bogan
16 to arrive.
- 17 Q All right. And together y'all processed [REDACTED] is that
18 correct?
- 19 A Correct.
- 20 Q All right. Now, by the time you arrived had the
21 victims been transported?
- 22 A Yes. They were already transported.
- 23 Q All right. And are there detectives assigned to cases
24 that investigate the who-part of it?
- 25 A That's correct.

Russell Holthaus
Direct examination by Mr. Gowdy

1 Q All right. But that's not you.

2 A No, sir.

3 Q You're crime scene analysis.

4 A That's it.

5 Q I want to start with [REDACTED] even though that was the
6 second house you processed. Okay?

7 A Correct.

8 Q Let me show you what's been admitted as State's 21 and
9 ask you whether or not you recognize that.

10 A Yes. That's the front of [REDACTED] Road.

11 Q All right. I'm going to put this where the jury can
12 see it. I want you to give the jury an idea of what a
13 crime scene specialist or analyst would do to process the
14 scene.

15 A To begin with, I'd walk the perimeter of the scene
16 trying to watch and look for everything I could see that
17 would be on the outside to begin with.

18 Then I would take overall pictures where I've already
19 walked of the entire residence, which would mean all four
20 sides. And then I'd take the corners of the house too.

21 I would then, if there's any evidence that I can see
22 outside, I would go ahead and label it and mark it so
23 nobody would walk on it or disturb it.

24 Then I would proceed inside the home. We would
25 proceed up the steps in that. As we were proceeding there

Russell Holthaus
Direct examination by Mr. Gowdy

1 I would take any pictures and mark anything as I could.

2 Q And you would mark it with what?

3 A Placards which was either letters or numbers.

4 Q Is it fair to say that virtually every photograph the
5 jury has seen with the exception of the aerial photographs
6 you or Deputy Bogan took?

7 A I took all the photographs, yes, sir.

8 Q You took all the photographs in this case except the
9 aerials in this case.

10 A Except the aerials.

11 Q Let me show you what's been marked for identification
12 purposes as State's 36 through 39 inclusive and ask you
13 whether or not you recognize what is depicted in those four
14 photographs.

15 A Yes, I do. 1 and 2 are casings that were located
16 outside the residence approximately three feet right and
17 left of the bottom of the stairwell to [REDACTED] Road.

18 The other one shows the relationship between 1 and 2
19 and the ground outside of Miller Road. And 3 is what was
20 believed to be blood spatter on the top of the porch
21 outside the front door right near the edge where the steps
22 are.

23 Q And you took these photographs.

24 A Yes, sir.

25 MR. GOWDY: Your Honor, we would move 36 through 39

Russell Holthaus
Direct examination by Mr. Gowdy

1 inclusive into evidence.

2 MR. McPHERSON: No objection.

3 THE COURT: They are admitted.

4 (Photographs marked State's Exhibits Nos. 36 through
5 39.)

6 MR. GOWDY: Thank you, Your Honor. Permission to
7 publish to the jury.

8 THE COURT: Yes.

9 Q Let's start. Try to leave this where the jury can
10 have some orientation of the house while we're going over
11 this.

12 Let's start with No. 1. Tell the jury what they're
13 looking at.

14 A No. 1 is a Speer manufacture .380 automatic shell
15 casing.

16 Q All right. And to the best of your ability using the
17 front area of that home, can you show the jury where you
18 found that?

19 A One would be just about out in this area short of that
20 post, three feet.

21 Q Okay. Let me show you State's 39. What are we
22 looking at there?

23 A That is also a Speer manufacture .380 shell casing.

24 Q That's a separate one.

25 A Separate one, yes, sir.

Russell Holthaus
Direct examination by Mr. Gowdy

- 1 Q All right. And to the best of your ability, show the
2 jury where you would have found State's 2.
- 3 A State's 2 is off of this out in this area
4 approximately three feet.
- 5 Q Let me show you State's 36. Tell the jury what they
6 are looking at.
- 7 A This would be a side view. This is shell casing one
8 and shell casing two, their relationship to each other.
- 9 Q How many Speer shell casings? And when you say Speer,
10 is that the name brand?
- 11 A That's the manufacture.
- 12 Q Manufacture brand of the shell casing found.
- 13 A Correct.
- 14 Q Okay. How many shell casings did you find at [REDACTED]
15 Miller Road?
- 16 A Those two, these two.
- 17 Q Okay. Let me show you State's Exhibit 3. I believe
18 you testified that's what you believed to be blood.
- 19 A Blood spatter, yes, sir.
- 20 Q Blood spatter. All right. And where on State's 21
21 did you find that?
- 22 A It's in the center at the top of the stairs right in
23 that area.
- 24 Q Did you also process the inside of the home?
- 25 A Yes.

Russell Holthaus
Direct examination by Mr. Gowdy

- 1 Q Did you find what appeared to be bloodstains inside
2 the home?
- 3 A Correct.
- 4 Q All right. By the time you arrived Mr. Jackson had
5 been transported.
- 6 A Correct.
- 7 Q Okay. Let me ask you this, Officer Holthaus. Is a
8 weapon something that you would look for and recover if you
9 saw at a crime scene?
- 10 A Correct.
- 11 Q Okay. And you searched [REDACTED] Road.
- 12 A Correct.
- 13 Q Did you find a shotgun at [REDACTED] Road?
- 14 A No, I did not.
- 15 Q Did you find any shell casings for a shotgun at [REDACTED]
16 Miller Road?
- 17 A No, I did not.
- 18 Q No shotgun, no shell casings.
- 19 A No, I did not.
- 20 Q Did you find a case for a shotgun?
- 21 A No, I did not.
- 22 Q Did you find any gun oil or a cloth for a shotgun?
- 23 A No, I did not.
- 24 Q When you recover evidence like those shell casings,
25 tell the jury what you do with them.

Russell Holthaus
Direct examination by Mr. Gowdy

1 A I individually package each shell casing and label it
2 with the same placard number. These shell casings are
3 placed into a coin-size type envelope. All the
4 information, the date and time, what type of casing it is
5 is placed on it. My initials are placed on it. And it's
6 sealed. And then it's sealed inside of a large envelope.

7 Q So you put each individual shell casing in what we
8 call a coin envelope?

9 A Correct.

10 Q All right. And when you secure that evidence and you
11 put it in the coin envelope and you seal it, what do you
12 then do with it?

13 A I do a chain of evidence, and then I submit it to the
14 evidence room of the sheriff's office for further process,
15 which means they'll send it to SLED for analysis.

16 Q All right. And with respect to the two shell casings
17 you found at [REDACTED] Road, did you follow that process?

18 A Correct.

19 Q All right. I want us to go to [REDACTED] Road. Okay.
20 Let me show you State's Exhibit 35. Do you recognize that?

21 A Yeah. That's [REDACTED] Road.

22 Q And it's previously introduced as State's 35.

23 MR. GOWDY: Publish this to the jury.

24 Q And, again, so I have your testimony correct, you
25 actually processed that house first.

Russell Holthaus
Direct examination by Mr. Gowdy

1 A Yes, sir.

2 Q All right. The victims had been transported by the
3 time you got there.

4 A Yes.

5 Q Okay. You follow the same process at [REDACTED] that you did
6 at [REDACTED]

7 A Correct.

8 Q Did you document it with photographs?

9 A I photographed all the way around and then inside.

10 Q In fact, the photograph that the jury is looking at
11 right now, did you take that?

12 A I took that one indeed.

13 Q And did you commence the search for evidence that you
14 thought might be relevant in this case?

15 A Yes, I did.

16 Q Tell the jury what you found.

17 A At this particular location I found five shell
18 casings, all of them Speer manufacture, all of them
19 .380 caliber.

20 The first one was one that we found outside the home,
21 and it was in the driveway area just behind where the
22 patrol car of Deputy Buie had pulled up.

23 I went ahead and photographed it and collected it
24 immediately due to weather conditions as it was getting
25 very wet and stormy that night.

Russell Holthaus
Direct examination by Mr. Gowdy

1 Q Okay. Let me show you what's been marked for
2 identification purposes as State's Exhibit 32 and ask you
3 whether or not you recognize that.

4 A Yes. That's a shell casing that I took a picture of.

5 Q All right. At?

6 A At [REDACTED] Road.

7 Q All right.

8 MR. GOWDY: We would move State's 32 into evidence.

9 MR. McPHERSON: No objection.

10 THE COURT: It's admitted.

11 (Photograph marked State's Exhibit No. 32.)

12 MR. GOWDY: Permission to publish to the jury, Your
13 Honor.

14 THE COURT: Yes.

15 Q Officer Holthaus, I am going to show you State's
16 Exhibit 32 and ask you to describe for the jury what they
17 are looking at.

18 A That is a spent .380 Speer manufactured shell casing
19 that was located outside on the asphalt just off the grass
20 at [REDACTED] Road.

21 Q All right. I'm going to see if we can do this. Okay.
22 I'm going to show you State's Exhibit 18 which is an aerial
23 photo. Show the jury again where [REDACTED] Road is.

24 A [REDACTED] is right here.

25 Q And to the best of your ability, and step down to do

Russell Holthaus
Direct examination by Mr. Gowdy

1 it to get it as precise as you can. Show the jury where
2 you found that shell casing.

3 (Whereupon, the witness left the stand.)

4 A There's the front porch. It was approximately right
5 there in that area.

6 Q Was it on asphalt?

7 A Just on the edge of it.

8 Q On the edge of the asphalt.

9 A Correct.

10 (Whereupon, the witness returned to the stand.)

11 Q Was it closer to the house or to the roadway?

12 A It was in the, it was actually about, what, eight
13 inches into the roadway.

14 Q It was into the roadway.

15 A Correct.

16 Q That shell casing was in the roadway.

17 A Correct.

18 Q In front of that house.

19 A Correct.

20 Q Okay. Let me show you what's been marked for
21 identification purposes as State's Exhibit 28 and ask you
22 whether or not you recognize that.

23 A Yes. That's the inside of the residence at [REDACTED]
24 Road.

25 Q What do those four placards denote or represent?

Russell Holthaus
Direct examination by Mr. Gowdy

1 A Those are the four shell casings that I collected
2 inside the residence.

3 MR. GOWDY: Your Honor, we would move State's 28 into
4 evidence.

5 MR. McPHERSON: No objection.

6 THE COURT: It is admitted.

7 (Photograph marked State's Exhibit No. 28.)

8 MR. GOWDY: Permission to publish State's 28, Your
9 Honor.

10 THE COURT: Yes, sir.

11 Q All right. Officer Holthaus, tell the jury what they
12 are looking at.

13 A This is in the living room looking towards the dining
14 type area in the front room of [REDACTED] Road. Up here is
15 your front door. This is a shell casing; this is a shell
16 casing; this and this are shell casings. This is
17 approximately three feet. This is about 91 inches. And
18 then these are in the dining area.

19 Q Let me show you what's been previously admitted as
20 State's 25. What is the jury looking at there?

21 A That's the living room area looking into the dining
22 room and the front door of [REDACTED] Road.

23 Q Where in relation to the front door did you find the
24 shell casings?

25 A One was right about here. The other one was just

Russell Holthaus
Direct examination by Mr. Gowdy

1 here. And then your other two were right in here.

2 Q Okay. Did you collect those shell casings?

3 A I did.

4 Q Did you follow the same process and procedure that you
5 just outlined at [REDACTED] Road?

6 A Yes, I did.

7 Q Did you do a search of [REDACTED] Road like you did
8 [REDACTED] Road?

9 A I did indeed.

10 Q Did you find any weapons at [REDACTED] Road?

11 A I did not.

12 Q Did you find any ammunition for weapons at [REDACTED]
13 Road?

14 A I did not.

15 Q Let me show you what has been marked as State's
16 Exhibits 5 through 9 inclusive. I want you to take your
17 time and look at that. Tell me whether or not you
18 recognize it.

19 A Those are the five shell casings that I collected, A
20 being in the roadway; B, C, D and E all being from the
21 front living room, B and C. D and E were in the dining
22 room; all of them marked on the envelope and sealed.

23 Q Four inside the residence, one in the roadway.

24 A Correct.

25 Q All right. Using the state's exhibit numbers which

Russell Holthaus
Direct examination by Mr. Gowdy

1 are 6, 7, 8 and 9, can you determine which one was found in
2 the roadway?

3 A State's Exhibit 6 was the one that was in the roadway.

4 Q All right. With State's 5, 6, 7 and 8 and 9, what did
5 you do with those exhibits?

6 A Those exhibits I collected from inside the residence.

7 Q Right.

8 A But each one we collected and placed into the envelope
9 separate of each other and sealed. And all five were
10 packaged in one bag then and sent to SLED for analysis.

11 Q All right. Did you drop it off at the Spartanburg
12 County Sheriff's Department or were present when it was
13 dropped off at the Spartanburg County Sheriff's Department?

14 A Correct.

15 Q Did you drop it into -- did you seal it? Do you seal
16 it?

17 A Yeah, I sealed it.

18 Q All right. And do you drop it into a secure evidence
19 lock box for an evidence custodian to then retrieve?

20 A That's right.

21 MR. GOWDY: Your Honor, we would move State's 5, which
22 includes 6, 7, 8 and 9 inclusive in, subject to further
23 testimony to be taken additionally.

24 MR. McPHERSON: Well, Your Honor, he is just going to
25 wait until he introduces it into evidence and include the

Russell Holthaus
Direct examination by Mr. Gowdy

1 chain and then introduce them into evidence?

2 MR. GOWDY: Your Honor, then I will introduce them as
3 what was recovered at Miller Road.

4 THE COURT: All right.

5 MR. McPHERSON: No objection then.

6 THE COURT: They are admitted.

7 (Cartridge cases marked State's Exhibits Nos. 5, 6, 7,
8 8 and 9.)

9 MR. GOWDY: Your Honor, permission to publish to the
10 jury.

11 THE COURT: You may.

12 Q Let me show you State's Exhibits 11 and 12 and ask you
13 whether or not you recognize them.

14 A Yes, I do. State's Exhibits 11 and 12 were number one
15 and number two casings at [REDACTED] Road, and I was
16 present while they were collected. I actually filled out
17 the envelope myself while Deputy Bogan collected them.

18 Q Showing you State's 36. What the jury is looking at
19 is placard one and two, is what is laying in front, setting
20 in front of you on the desk.

21 A Correct.

22 Q All right. You were present when it was collected and
23 present when it was turned in.

24 A Correct.

25 Q Was it sealed?

Russell Holthaus
Direct examination by Mr. Gowdy

1 A It was sealed, placed in a larger envelope and turned
2 into evidence at the same time that I turned my evidence
3 in.

4 MR. GOWDY: Your Honor, we would move State's 11 and
5 12 in as what was recovered from [REDACTED] Road.

6 MR. McPHERSON: No objection.

7 THE COURT: They are admitted.

8 (Cartridge cases marked State's Exhibits Nos. 11 and
9 12.)

10 MR. GOWDY: Permission to publish to the jury, Your
11 Honor.

12 THE COURT: Yes, sir.

13 Q And again, Officer Holthaus, the purpose of your
14 turning it in is for further testing to be done?

15 A Correct.

16 Q And that testing is not done in Spartanburg?

17 A No, it's not.

18 Q No weapons found at [REDACTED] or [REDACTED] Road?

19 A No.

20 MR. McPHERSON: Your Honor, I am going to object.
21 Asked and answered. He previously asked these questions.

22 THE COURT: All right. Well, I am not sure I can
23 remember every question. But just don't be repetitive.

24 MR. GOWDY: Yes, sir, Your Honor.

25 Q No weapons found.

Russell Holthaus
Cross-examination by Mr. McPherson

1 A No weapons found.

2 Q Thank you. Please answer any questions that the
3 defense attorney may have for you.

4 CROSS-EXAMINATION

5 BY MR. MCPHERSON

6 Q Are you familiar with automatic weapons?

7 A Yes, sir.

8 Q Now, when you fire an automatic weapon does the shell
9 automatically eject from the gun?

10 A Yes.

11 Q In other words, it automatically, the shell casing
12 automatically, comes out of the gun and is thrown some
13 distance from the gun, is that correct?

14 A That's correct.

15 Q So where you found the shell doesn't really tell you
16 anything as far as where the gun -- you can't relate that
17 back to where the gun was other than you can say it was
18 probably in this vicinity.

19 A I can only approximate.

20 Q Now, when you searched [REDACTED] [REDACTED] Road how -- did you
21 go through drawers and stuff like that?

22 A Individual drawers?

23 Q Yes.

24 A Just ones that were open. I didn't open every drawer.
25 I did not move every item.

Russell Holthaus
Cross-examination by Mr. McPherson

- 1 Q Did you go into the bedrooms and search the drawers?
- 2 A Not the drawers.
- 3 Q So it's possible shotgun shells could have been in one
4 of those drawers at [REDACTED] Road, possible.
- 5 A Possible.
- 6 Q Now, when you found two casings at [REDACTED] Road,
7 that would indicate the gun had been fired four times or
8 two times?
- 9 A To me, I have two casings. Possibly two times.
- 10 Q And you didn't find any other shells --
- 11 A That was it.
- 12 Q -- around [REDACTED] Road.
- 13 A That was correct.
- 14 Q And I believe you indicated you walked that whole
15 road.
- 16 A That's correct.
- 17 Q I assume you had a flashlight or some lights with you.
- 18 A That's correct.
- 19 Q And you were looking for shells as you were walking
20 the road.
- 21 A Yes, sir.
- 22 Q And you didn't find any.
- 23 A Did not find any.
- 24 Q Now, when shell casings have been ejected from a gun
25 and before you get there it's possible people could have

Margaret Greer
Direct examination by Mr. Gowdy

1 moved them around, maybe intentionally or inadvertently, by
2 kicking them, by mistake or whatever. Do you agree with
3 that?

4 A That's a possibility.

5 MR. MCPHERSON: I have no further questions.

6 MR. GOWDY: Your Honor, nothing on redirect. And we
7 would ask that Officer Holthaus be excused.

8 THE COURT: You may step down. You may also be
9 excused.

10 THE WITNESS: Thank you.

11 (Whereupon, the witness was excused.)

12 MR. GOWDY: Could defense counsel and I approach for
13 just a second?

14 THE COURT: Sure.

15 (Bench conference held off the record in the presence
16 of the jury but out of the hearing of the jury.)

17 MR. GOWDY: Your Honor, the state would call Deputy
18 Margaret Greer.

19 MARGARET GREER, having been
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. GOWDY

22 Q How are you?

23 A I am fine. Thank you.

24 Q Would you introduce yourself to the jury and tell them
25 where you work and how long you have been there and what

Margaret Greer
Direct examination by Mr. Gowdy

1 department you are in?

2 A Okay. I am Margaret Greer. I work for Spartanburg
3 County Sheriff's Office. I've worked there for about three
4 years. I was previously in law enforcement at Spartanburg
5 city for 11 years prior to that. I work in the evidence
6 room at Spartanburg County Sheriff's Office.

7 Q Tell the jury what some of your duties and
8 responsibilities are in the evidence room at Spartanburg
9 County.

10 A I am responsible, me and another officer responsible,
11 for the intake and safekeeping of any evidence that comes
12 into the Spartanburg County Sheriff's Office. We are also
13 responsible for transporting the evidence to and from the
14 state law enforcement division in Columbia.

15 Q Let me show you, Deputy Greer, what has already been
16 introduced as State's 5 through 9 inclusive and State's 11
17 and 12 and ask you whether you either received either of
18 those into evidence and/or transported them to SLED.

19 A I actually transported both. I received, I received 5
20 through 9, is that right? I received 5 through 9. Robert
21 Rosenberg actually received 11 and 12.

22 Q All right. Tell the jury who Robert Rosenberg is.

23 A He is the other evidence officer that works in the
24 evidence room.

25 Q All right. Are there certain safeguards and

Margaret Greer
Direct examination by Mr. Gowdy

1 procedures that you have in place before you will accept
2 evidence from one of your investigators or detectives?

3 A Yes, sir. We make sure that all of the evidence has
4 been sealed, is properly -- all of their paperwork is
5 properly filled out and all the evidence bags are properly
6 filled out. Everything is sealed.

7 Q And if it's not done right you ain't taking it, right?

8 A That's correct.

9 Q Were the items before you sealed according to your
10 procedures and processes on May the 20th?

11 A Yes, sir, they were.

12 Q All right. And I believe you testified 5 through 9
13 you actually transported to SLED yourself.

14 A I transported both.

15 Q You transported both.

16 A Yes.

17 Q Tell the jury what you mean by transporting evidence
18 to SLED.

19 A Basically what happens is in this case the I. D. unit
20 had filled out the SLED paperwork. I actually pull the
21 evidence from the boxes, make sure that everything is
22 exactly right, that we have the paperwork that SLED will
23 need, that's packaged to their standards. And then I will
24 drive down to Columbia and give it to an evidence custodian
25 there. And they would enter it into the computer.

Margaret Greer
Direct examination by Mr. Gowdy

1 Q All right. And just like you have your safeguards and
2 procedures, SLED does as well, is that correct?

3 A Yes, sir.

4 Q They have certain guidelines by which if they're not
5 followed they won't accept evidence?

6 A That's correct.

7 Q When evidence is logged into your department do you
8 keep a list of who has access to it?

9 A Yes, we do.

10 Q All right. One other thing.

11 MR. GOWDY: A moment of the Court's time, Your Honor.

12 (Pause.)

13 Q Can you open this for me? Do you have it?

14 (Pause.)

15 A Do you have scissors?

16 Q I could have done that. The difficulty you are having
17 and that I experienced in opening that bag is a testament
18 to the fact that's sealed, is that correct?

19 A That's correct. This has actually gone to SLED and
20 they have heat-sealed it.

21 Q Okay. Deputy Greer, let me show you State's 13, 14
22 and 10 for identification purposes only and ask you whether
23 or not you transported any of those items to SLED for
24 analysis.

25 A Yes. I transported all of these items to SLED.

Margaret Greer
Direct examination by Mr. Gowdy

1 Q You take every item that's in front of you to SLED?

2 A That's correct.

3 MR. GOWDY: Those are all the questions I have, Your
4 Honor.

5 Q Please answer any questions the defense attorney may
6 have for you.

7 MR. McPHERSON: I have no questions.

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

9 Is that all you have got now?

10 MR. GOWDY: Yes, sir, until 1:30.

11 THE COURT: Ladies and gentlemen, we are going to
12 recess for lunch. Keep in mind my caution previously
13 given. No discussion, no media exposure; no investigation
14 or research.

15 Do have a good lunch. I will ask you report back to
16 your jury room at 2:00 o'clock this afternoon, at
17 2:00 o'clock this afternoon. Have a good lunch.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Court's in recess until 2:00 o'clock.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right. Are we ready for the jury?

23 MR. GOWDY: The state is ready, Your Honor.

24 MR. McPHERSON: The defense is.

25 THE COURT: All right. Bring them in.

Dr. Charles Morrow
Direct examination by Mr. Gowdy

1 (The following takes place in the presence of the
2 jury.)

3 THE COURT: All right. Good afternoon, ladies and
4 gentlemen. We are going to continue with the state's
5 presentation.

6 MR. GOWDY: May it please the Court, Your Honor. The
7 state would call Dr. Charles Morrow.

8 DR. CHARLES MORROW, having
9 been duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. GOWDY

11 Q Good afternoon. Doctor, can I get you to introduce
12 yourself to the jury and tell them where you are employed
13 and how long you have been there?

14 A I am Charles Morrow. I am employed by Spartanburg
15 Regional Medical Center. I have been there since 2001 as
16 the trauma director for their trauma surgery department.

17 Q Can you give the jury the benefit of your educational
18 background?

19 A I went to college at the Citadel, medical school at
20 the University of South Carolina, did my surgical
21 training --

22 MR. McPHERSON: Your Honor, we will stipulate he is
23 qualified to testify as a doctor, a medical doctor.

24 THE COURT: All right. Do you need to go any further
25 with it?

Dr. Charles Morrow
Direct examination by Mr. Gowdy

1 MR. GOWDY: No, sir, Your Honor.

2 THE COURT: Okay.

3 Q Dr. Morrow, you are a critical care surgeon. Am I
4 stating that correctly?

5 A That's right.

6 Q Is that what a layperson like myself might consider a
7 trauma doctor?

8 A Probably so. Once you completed your residency in
9 general surgery and go on and do a fellowship in multiple
10 things, presently there's not a fellowship for trauma
11 surgery, but there is a fellowship for critical care and
12 most do that.

13 Q Are you board certified?

14 A I am.

15 Q In what fields?

16 A Both general surgery and surgical critical care.

17 Q Do you have a private practice or do you typically see
18 patients that come through the emergency room?

19 A Fully employed by the hospital, so we typically see
20 trauma patients coming through the emergency room.

21 Q Do you recall seeing as patients Derrick Hall, Cornell
22 Hall and Robert Jackson?

23 A I do.

24 Q That would have been in May of 2006, although your
25 treatment of them may have lingered beyond May 20th.

Dr. Charles Morrow
Direct examination by Mr. Gowdy

1 A That's correct.

2 Q Let me start with Derrick Hall. Do you recall whether
3 you performed any procedures on him with respect to
4 bullets?

5 A I do recall treating Derrick Hall for a bullet that I
6 took out of him in our office.

7 Q Let me show you what's been marked for identification
8 purposes as State's Exhibit 10 and ask you whether or not
9 you recognize that.

10 A That would seem appropriate for what I recall taking
11 out.

12 Q All right. Would you have put your name or any other
13 identifying information on the container where you put the
14 projectile?

15 A Usually we just put some identification on it so that
16 when it goes out, and took it out, and so, yeah, that would
17 be my name. I personally wouldn't have written that. The
18 nurses would have written that on there with the patient's
19 name.

20 Q There is a nurse attending you when you would do
21 something like a bullet extraction?

22 A That's correct.

23 Q And the bullet would have been placed in a container
24 and sealed?

25 A Right. What would happen is I would make an incision

Dr. Charles Morrow
Direct examination by Mr. Gowdy

1 and take the bullet out with basically what would look like
2 a pair of tweezers, and the nurse would hold the container
3 out for me. And I would drop it with the tweezer in a
4 sterile container and she would seal it back up.

5 Q And the patient name on that container is what?

6 A Derrick Hall.

7 Q And you were the physician?

8 A That's correct.

9 Q Do you recall, Dr. Morrow, where the bullet entered
10 Derrick Hall?

11 A Seems to me that it entered somewhere on his left side
12 and took it out under his arm and ilium area.

13 Q If a bullet enters your left side and is lodged on
14 your right side, can it potentially come in contact with
15 vital organs?

16 A I think the better question is how could it not come
17 in contact with a vital organ. Everything that is vital is
18 right there in the middle of your chest. And so going
19 across your chest is kind of no man's land for a bullet.
20 And it is remarkable that he did not have a significant
21 injury to his heart or to his aorta or lung. For a bullet
22 to go from one side to the next is incredible that it
23 happened.

24 Q Let me move to Mr. Cornell Hall. Did you see him as a
25 patient on or about or shortly after May the 20th?

Dr. Charles Morrow
Direct examination by Mr. Gowdy

1 A I did.

2 Q Can you tell the jury what injuries you treated him
3 for after May 20th?

4 A He initially came in on the 20th and had multiple
5 gunshot wounds. The most serious of them was to his belly,
6 to his abdomen.

7 That night he had a section of his colon removed,
8 section of small intestine removed. And he had a
9 several-day hospital course following that. And then we
10 followed him in our office until he had fully recovered
11 from all of those surgeries. And that's where I would see
12 him.

13 Q Do you have an opinion as a critical care expert on
14 whether or not gunshot wounds to the area where Mr. Cornell
15 Hall suffered them could have been fatal or potentially
16 fatal?

17 A Certainly. This was not just a little flesh wound.
18 The bullet actually went through the skin, went inside the
19 abdominal cavity and went through the intestine. And he
20 had several holes in the intestine. Left unaddressed those
21 would have leaked stool straight from the abdominal cavity.
22 And that longterm would have been something he would not
23 have survived or would have been in the hospital for weeks
24 and months trying to recover from what would have been.

25 Q Are there also more organs, vein or artery, in your

Dr. Charles Morrow
Direct examination by Mr. Gowdy

1 abdominal area that could have been fatal?

2 A No doubt. Intestines are the least. Being shot in
3 the belly, more worried about being shot in the spine or
4 being shot in the aorta, because it runs down the very
5 center of your belly. Your vena cava, which is the largest
6 vein in the body, because it delivers everything back up to
7 your heart, runs in the same area. Your kidneys are there;
8 your liver is there. All of those things are pretty tough
9 to operate on if you get a bullet to go through. As it's
10 going it tumbles and carries everything up with it. So
11 that's, it's life threatening, often life-ending kind of
12 injury.

13 Q All right. Let me move to -- I believe Mr. Hall was
14 also shot in the arm. But an arm wound, is it fair to say,
15 is potentially fatal but not as likely as an abdominal
16 injury?

17 A Most arm wounds can be pretty disabling, but you don't
18 generally die from your arm wound. If you imagine the most
19 life-threatening thing that can happen to your arm, is you
20 put a hole through the artery that goes down your arm. But
21 if you just put some pressure on that you can keep a person
22 from bleeding to death from that, whereas inside the chest
23 or inside the belly it's difficult to get to that and get
24 enough pressure on it to make it stops bleeding in time.

25 Q And let's move to Mr. Robert Jackson. I believe that

Dr. Charles Morrow
Direct examination by Mr. Gowdy

1 you treated him and followed up with him as a patient.

2 A That's right.

3 Q Seventy-five-year-old gentleman?

4 A Yes.

5 Q Can you describe to the jury the nature of his
6 injuries as best you recall them?

7 A He too was operated on the night he came in for a
8 gunshot wound to his neck. And they -- based on our
9 standard operating procedure for someone shot in the neck,
10 this area was explored.

11 He had a large vein that had a hole in it. That was
12 tied off or occluded, and because your windpipe is right
13 there.

14 So he remained on a ventilator, because you're going
15 to get some swelling from the blast and from the operation.
16 He then went to the intensive care unit where we treated
17 him for an extended period of time.

18 And because of his underlying health, because of his
19 age, he had a downhill spiral really for over a period of
20 weeks where he had pneumonia. He was on the ventilator for
21 a long time and required a tracheostomy, which is just a
22 breathing tube into your windpipe. And because he's on the
23 ventilator or the breathing machine for so long, went into
24 kidney failure.

25 So obviously he had a lot of medical problems, all of

Dr. Charles Morrow
Direct examination by Mr. Gowdy

1 them, you know, stemming from got shot, got an operation in
2 the middle of the night and had a fair amount of blood loss
3 and ultimately led to his demise.

4 Q Do you have an opinion, Dr. Morrow, to a reasonable
5 degree of medical certainty whether or not the gunshot
6 wound suffered by Mr. Robert Jackson either caused or
7 contributed to his ultimate death?

8 A I think what, what happened is you have a guy who is
9 in -- 75 years old, has some underlying medical problems
10 but is functioning okay at home and is kind of teetering on
11 being sick and being healthy and/but is getting around.
12 And he got shot. And that was just enough of an injury to
13 stress his body to put him over the edge.

14 And we've all seen people who once they get a little
15 bit of stress, we see that their organs just can't mount
16 that response. And that's what happened in his case. And
17 he had one organ after the next get into trouble. And so
18 certainly the gunshot wound is the thing that started the
19 ball rolling for him to eventually cause him to die.

20 Q And he never left the hospital from the time he was
21 admitted May 20th. He died at the hospital, correct, or
22 restorative care?

23 A Right. He stayed in our intensive care unit and then
24 went to our sister hospital, if you will, the hospital for
25 restorative care, and ultimately died there.

Damarie Freire
Direct examination by Mr. Stalvey

1 Q Thank you, Dr. Morrow. Please answer any questions
2 the defense attorney may have for you.

3 MR. McPHERSON: I have no questions.

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

5 MR. STAVLEY: Your Honor, the state would --

6 MR. GOWDY: We would ask Dr. Morrow be excused.

7 THE COURT: He may be.

8 (Whereupon, the witness was excused.)

9 MR. STAVLEY: May it please the Court, Your Honor.

10 THE COURT: Yes.

11 MR. STAVLEY: The state would calls Nurse Damarie
12 Freire to the stand, please.

13 DAMARIE FREIRE, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. STALVEY

16 Q Nurse Freire, could you please introduce yourself to
17 the jury?

18 A Damarie Freire. I worked at Spartanburg Regional from
19 October up until -- rather, I'm sorry, from December up
20 until October of '06 as an L. P. N.

21 Q And did you, were you in the courtroom for
22 Dr. Morrow's testimony?

23 A Yes.

24 Q Were you working for Dr. Morrow in early June of 2006?

25 A Yes.

Damarie Freire
Direct examination by Mr. Stalvey

1 Q And did you hear him testify about a procedure that he
2 did on Derrick Hall?

3 A I did.

4 Q Did you hear him testify that he took a bullet out of
5 the side of Derrick Hall?

6 MR. STALVEY: May I approach the witness, Your Honor?

7 A Yes.

8 THE COURT: And did you also hear him testify that a
9 nurse opens this container up?

10 A Yes.

11 Q Were you the nurse that opened that container up?

12 A Yes.

13 Q And did he drop that bullet in there?

14 A Yes.

15 Q And what did you do? Did you seal it up?

16 A What I do is after the bullet has been placed in
17 there, I take it and seal it and put in it a biohazard bag.
18 And it's my responsibility to call the sheriff's office to
19 deliver that, that bullet.

20 Q And, Nurse Freire, did you deliver that bullet to the
21 sheriff's office?

22 A I did. I also have to label it with the patient's
23 name.

24 Q Okay. Do you remember who you handed it over to at
25 the sheriff's office?

Jason Bryant
Direct examination by Mr. Gowdy

1 A This gentleman right here.

2 MR. STALVEY: Your Honor, please let the record
3 reflect that Nurse Freire has pointed out Jason Bryant of
4 the sheriff's office.

5 THE COURT: Okay.

6 MR. STALVEY: No further questions.

7 Q Please answer any questions that the defense attorney
8 may have for you.

9 MR. McPHERSON: I have no questions, Your Honor.

10 THE COURT: You may step down. You may also be
11 excused. Thank you.

12 (Whereupon, the witness was excused.)

13 MR. GOWDY: Your Honor, we would call Detective Jason
14 Bryant.

15 JASON BRYANT, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. GOWDY

18 Q You are Detective Jason Bryant?

19 A Yes, I am.

20 Q And you work for the Spartanburg County Sheriff's
21 Department?

22 A That is correct.

23 Q In what capacity?

24 A I'm a violent crimes investigator.

25 Q How long have you been there?

Jason Bryant
Direct examination by Mr. Gowdy

1 A Over ten years.

2 Q Did you go to Spartanburg Regional and retrieve an
3 extracted bullet from the nurse who just testified?

4 A Yes, I did.

5 Q And was it sealed when you received it?

6 A That's correct.

7 Q In a container?

8 A Yes, sir.

9 Q And what did you do with it when you received it from
10 Nurse Freire?

11 A I then placed the container and such in evidence at
12 the Spartanburg County Sheriff's Office.

13 Q Let me show you State's Exhibit 10 and ask you whether
14 or not that is the extracted bullet that you received from
15 Nurse Freire that you placed in evidence at the Spartanburg
16 County Sheriff's Department.

17 A That's correct.

18 MR. GOWDY: Your Honor, we would move State's 10 in as
19 the bullet extracted from Derrick Hall during a surgical
20 procedure.

21 MR. McPHERSON: No objection.

22 THE COURT: It's admitted.

23 (Fired bullet marked State's Exhibit No. 10.)

24 Q Thank you, Detective. Please answer any questions the
25 defense may have for you.

Betty Butler
Direct examination by Mr. Gowdy

1 MR. McPHERSON: I have no questions.

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

3 THE WITNESS: Thank you, sir.

4 MR. GOWDY: Your Honor, the state would call Ms. Betty
5 Butler with SLED.

6 BETTY BUTLER, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. GOWDY

9 Q Good afternoon, ma'am.

10 THE COURT: Excuse me just a minute. If that's a
11 telephone, it needs to be taken up right now. I don't want
12 to have to search the whole room.

13 (Pause.)

14 THE COURT: All right. Nobody is to leave the
15 courtroom.

16 Go ahead and examine the witness.

17 MR. GOWDY: Yes, sir, Your Honor.

18 Q Would you introduce yourself to the jury, please,
19 ma'am?

20 A I am Betty Butler.

21 Q Can you tell the jury where you work and how long you
22 have been there?

23 A I am a forensic technician in the evidence control
24 department and was there over ten years.

25 Q All right. And is that what we commonly refer to as

Betty Butler
Direct examination by Mr. Gowdy

1 SLED?

2 A Yes. It's also known as SLED.

3 Q South Carolina Law Enforcement Division. But we
4 shorten it to SLED.

5 A Yes.

6 Q All right. Can you tell them what your duties and
7 responsibilities are?

8 A Part of my duties at that time was to log in evidence
9 that the agencies bring in.

10 What we do is when agencies bring in evidence, we log
11 it in to our SLED system.

12 All evidence has to have a SLED laboratory request
13 form. Once the evidence has that form we separate the
14 evidence from the different departments.

15 We log it into our SLED system which is our tracking
16 system. We put a lab number on it, a container number on
17 it. That way we can track it wherever it goes.

18 We put it into a heat-sealed pouch or envelope and
19 have it sealed, have the submitting agency initial and date
20 the evidence. And after we finish logging in, then we put
21 it in a secure area back in our evidence control
22 department.

23 Q So law enforcement agencies from all around the state
24 will bring evidence to be analyzed to your department.

25 A Yes.

Betty Butler
Direct examination by Mr. Gowdy

1 Q And you will document it and seal it and follow the
2 procedures that SLED has.

3 A Yes.

4 Q And if it's D. N. A., it'll go to the D. N. A.
5 department. If it's fingerprints, it goes to fingerprints.
6 How about ballistics?

7 A Yes. If it's firearms it goes. We seal it up. And
8 in this case seal up, put evidence tape over it and have
9 the submitting agency initial and date it, log into our
10 system. And we put it into our evidence control department
11 into a sealed vault where --

12 Q Let me show you, Agent, some exhibits and ask you.
13 These are a series of shell casings. And ask you whether
14 or not you received those from the Spartanburg County
15 Sheriff's Department and locked them into evidence at SLED.

16 A What we normally go by in the evidence control
17 department is the lab number and the container number.

18 Q Do you see either of those on those exhibits? Do you
19 want me to open it?

20 A Yes, please. Yes, I do. I see L-069840 which is the
21 lab number I gave it at that particular time.

22 Q And then the process would be for you to put it in a
23 controlled environment for someone from ballistics or
24 another department to then come retrieve and do whatever it
25 is they wanted to do with it.

Ken Whitler
Direct examination by Mr. Gowdy

1 A Yes.

2 Q Okay. And would that also be the same process
3 followed with State's Exhibit 10?

4 A Yes. I see lab number L-069840, item ten, yes.

5 Q Okay. Thank you. Please answer any questions the
6 defense attorney may have for you.

7 MR. MCPHERSON: I have no questions.

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

9 MR. GOWDY: Your Honor, we would call Special Agent
10 Ken Whitler of SLED.

11 KEN WHITLER, having been first
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. GOWDY

14 Q Good afternoon, sir. Can you introduce yourself to
15 the jury? Tell them where you work and how long you have
16 been there.

17 A My name is Kenneth H. Whitler, and it's spelled
18 W-H-I-T-L-E-R. I am employed by the South Carolina Law
19 Enforcement Division. That's also known as SLED. And I
20 have been employed by SLED since 1997.

21 Q What department are you employed in?

22 A I am currently assigned to the firearms, toolmark
23 department. And I'm a firearms toolmark examiner.

24 Q Can you tell the jury what kind of educational
25 background or training that you have had to be able to

Ken Whitler
Direct examination by Mr. Gowdy

1 study markings of firearms and what we generally consider
2 ballistics?

3 A There is no college that you can go to to get a degree
4 in firearms identification. You have to learn it from
5 other qualified examiners. When I was employed by the F.
6 B. I. laboratory I went to their training program, which
7 consisted of about two years of training with qualified
8 examiners.

9 And during that training period you are given a series
10 of tests. You work on real cases. You study assignments.
11 But during this period you shoot a lot of guns and look at
12 a lot of bullets and cartridge cases.

13 At the end of the period when the examiners feel that
14 you're ready they give you a series of three tests that you
15 have to successfully complete. If you complete those
16 examinations then you are allowed to conduct examinations
17 for the F. B. I. laboratory.

18 I passed those tests, was certified by the F. B. I.
19 laboratory. And I was a qualified firearms examiner in
20 1991.

21 In 1997 I retired from the F. B. I. and came to work
22 for SLED doing basically the same job in firearms
23 identification.

24 Q Agent Whitler, do you have an idea of how many times
25 you have previously been qualified as an expert in either

Ken Whitler
Direct examination by Mr. Gowdy

1 state or federal court?

2 A I have been qualified at least 150 times in various
3 state and federal and territorial courts.

4 MR. GOWDY: Your Honor, at this point we would move
5 Special Agent Whitler in as an expert in ballistics,
6 markings and firearms and toolmarkings.

7 THE COURT: Any objection?

8 MR. McPHERSON: No objection, Your Honor.

9 THE COURT: He is so qualified.

10 MR. GOWDY: Thank you, Your Honor.

11 Q Agent Whitler, can you give the jury a sense of how
12 you compare or how you can tell whether or not an item may
13 or may not have been fired by a certain weapon?

14 A Our examination is basically a one-to-one comparison.
15 We have a microscope that has two stages or something to
16 hold the bullet. And through this microscope you're able
17 to look at two objects the same time, and they appear to be
18 side by side.

19 What we're doing is looking to see if the marks on one
20 bullet or cartridge case equal, match the marks on the
21 other bullet and cartridge case.

22 If there's sufficient agreement of those microscopic
23 marks on the bullet or cartridge case, then we're able to
24 say that bullet or those bullets were fired by the same gun
25 or those cartridge cases were fired by the same gun.

Ken Whitler
Direct examination by Mr. Gowdy

1 If there is a gun submitted, then instead of -- we
2 will use a test bullet that we have personally test-fired
3 the gun, taking that test bullet, compare it. And then
4 we're able to say that that bullet and cartridge case was
5 fired by that particular gun if there's sufficient
6 agreement of the marks.

7 If there's not sufficient agreement of the marks, then
8 we -- if it has the same class characteristics, then we'll
9 say that the bullet or cartridge case could have been fired
10 by this gun or another firearm with similar rifling
11 characteristics or pretrace marks.

12 If the class characteristics are wrong, maybe the
13 bullet has six land and grooves on it, the barrel of the
14 firearm has five, then we're able to say that bullet was
15 not fired by that particular firearm.

16 Q Let me show you, Agent, what has been previously
17 introduced as State's 10, 5 through 9 conclusive, and 11
18 and 12 and ask whether or not you analyzed the items that
19 are set forth before you.

20 A Yes. I have examined these. I point out one of these
21 doesn't have an exhibit number on it.

22 Q Yes, sir. I think that they all come housed in
23 State's Exhibit 5. You are correct.

24 A This one.

25 Q Right. How -- you heard Ms. Butler testify that the

Ken Whitley
Direct examination by Mr. Gowdy

1 law enforcement agencies drop the evidence off with her.

2 How do you get the exhibits then to be analyzed?

3 A Once we are assigned a case we, the analyst has to go
4 downstairs to the log-in department and physically retrieve
5 the evidence from one of the log-in technicians.

6 Q And would it be sealed at the time of your retrieval?

7 A Yes. They require that it be sealed when they accept
8 it. And when we receive it of course it's still in the
9 same condition they receive it, which is sealed.

10 I will take it up to my office and conduct an
11 examination if I'm going to conduct an examination right
12 then, or either it will be stored in my evidence locker
13 until I do conduct the examination.

14 When I do conduct the examination I open it up,
15 conduct the examination and then reseal the evidence and
16 take it back downstairs to the evidence, to the log-in
17 department. And they, in turn, return it to the
18 contributing agency.

19 Q Is that the process that you followed in this case?

20 A That's correct.

21 Q Did you analyze the -- let's just talk about the shell
22 casings. Seven shell casings that were submitted to you,
23 five from [REDACTED] Road and two from [REDACTED] Road, did
24 you compare those shell casings with one another?

25 A Yes, I did.

Ken Whitler
Direct examination by Mr. Gowdy

- 1 Q Can you tell the jury what your findings were?
- 2 A The -- all of these cartridge cases were fired by the
3 same firearm.
- 4 Q How are you able to tell the jury that the same gun
5 fired each one of those seven shell casings?
- 6 A I looked at the breech face marks on the cartridge
7 cases. And, like I said, I put them on a comparison
8 microscope. And the marks on one cartridge case matched
9 the marks on the other cartridge case.
- 10 Q Now, there is a difference, Agent Whitler, I believe
11 between being able to say that it was a gun like this or
12 similar to this and being absolutely able to definitely say
13 it was fired by a certain gun, is that right?
- 14 A That's correct.
- 15 Q You don't have the gun. And you can't say the second
16 of those two, correct? If you don't have the gun, you
17 can't necessarily say, obviously you can't say, what gun
18 fired it.
- 19 A That's correct.
- 20 Q But you can say all seven of these were fired by the
21 same gun.
- 22 A That's correct.
- 23 Q Now, let's move to the bullet. What tests or
24 examinations did you perform on that projectile?
- 25 A I looked at this one. There were also two other

Ken Whitler
Direct examination by Mr. Gowdy

1 bullets submitted in this case.

2 Q Yes, sir. I was just going to ask you about the one
3 taken from Derrick Hall.

4 A Okay. What I did is looked at this bullet, examined
5 it, looked at the class characteristics on it and discussed
6 and then compared it to the other bullets that were
7 submitted.

8 Q Did you do any comparison or do you know whether or
9 not this bullet is capable of coming from that shell
10 casing?

11 A Yes. This bullet is consistent with being a bullet
12 that's similar in construction to bullets that are loaded
13 in the .380 auto caliber cartridges. These cartridge cases
14 are all .380 auto caliber cartridge cases.

15 Q Which means what kind of firearms could shoot those
16 bullets for lack of a more technical term?

17 A Well, any firearm that has the, that is chambered for
18 .380 auto caliber cartridges. Most of these cartridges are
19 chambered for pistols. There may be a few revolvers
20 running around but-or some specialty guns, but anything
21 that's chambered for .380 auto cartridge, these could have
22 been fired by it.

23 Q The name Speer, what does the name Speer mean?

24 A That's the name of the cartridge company that may have
25 manufactured the cartridge cases.

Ken Whitler
Direct examination by Mr. Gowdy

1 Q Thank you, Agent Whitler. Please answer any questions
2 the defense attorney may have for you.

3 MR. McPHERSON: I have no questions.

4 THE COURT: Thank you, you may step down.

5 MR. GOWDY: Your Honor, we would ask that the SLED
6 agent be excused.

7 THE COURT: He may be.

8 (Whereupon, the witness was excused.)

9 MR. GOWDY: Your Honor, can Mr. McPherson and I
10 approach the bench for one moment?

11 THE COURT: Yes.

12 (Bench conference held off the record in the presence
13 of the jury but out of the hearing of the jury.)

14 THE COURT: All right. Ladies and gentlemen, we are
15 going to need to take a short break before we can continue.

16 So I'll ask you to please go to your jury room. Do
17 not discuss the case. I'll bring you back shortly.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Court is in recess for 15 minutes.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right. Are we ready for the jury?

23 MR. GOWDY: Yes, sir, Your Honor.

24 MR. McPHERSON: The defense is ready.

25 THE COURT: Okay. Bring them in, please.

Dr. John David Wren
Direct examination by Mr. Gowdy

1 (The following takes place in the presence of the
2 jury.)

3 THE COURT: All right. Solicitor.

4 MR. GOWDY: May it please the Court, Your Honor. The
5 state would call Dr. David Wren.

6 DR. JOHN DAVID WREN, having
7 been first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. GOWDY

9 Q Good afternoon, Dr. Wren.

10 A Hi.

11 Q Could you introduce yourself to the jury? Tell them
12 where you work and how long you have been there.

13 A My name is John David Wren. I'm a medical doctor with
14 a specialty in pathology. I work for Spartanburg Pathology
15 Consultants. And I'm based at Spartanburg Regional Medical
16 Center where I'm the laboratory medical director.

17 Q How long have you been practicing in the field of
18 pathology?

19 A I started my residency at the Medical University of
20 South Carolina on February the 1st, 1979.

21 MR. McPHERSON: Judge, we will stipulate as to his
22 qualifications as a pathologist and a medical doctor.

23 THE COURT: Do you need to go any further based upon
24 that agreement?

25 MR. GOWDY: Your Honor, I was going to move him in as

Dr. John David Wren
Direct examination by Mr. Gowdy

1 an expert in the field of forensic pathology in particular.

2 MR. McPHERSON: We will so stipulate.

3 THE COURT: All right. He is so qualified.

4 MR. GOWDY: Thank you, Your Honor.

5 Q Dr. Wren, how many autopsies have you performed in
6 your career?

7 A Since 1989 I have done about 160 to 170 a year. So I
8 haven't kept track, but it's probably about 3,000 by now.

9 Q Do you recall, Dr. Wren, performing an autopsy on a
10 Mr. Robert Jackson?

11 A Yes. I performed an autopsy on an individual
12 identified as Robert Lee Jackson in the Spartanburg
13 Regional Medical Center Autopsy Room on July the 8th of
14 2006. I began at approximately 12:00 noon.

15 Q Dr. Wren, during the course of your autopsy on
16 Mr. Robert Jackson did you determine where he had suffered
17 gunshot wounds?

18 A Well, externally he had been reportedly shot in the
19 neck. Externally there was very little residual evidence
20 of a gunshot wound. It had healed.

21 He had several other scars in his neck as well as a
22 tracheostomy, which is a hole placed just above the, right
23 at the lower part of the neck for a breathing tube. But I
24 was able to trace the scar tissue in his neck itself on
25 internal exam.

Dr. John David Wren
Direct examination by Mr. Gowdy

1 Q And how many gunshot wounds did it appear that he had
2 suffered?

3 A One as far as I could tell.

4 Q All right. Do you --

5 A He did have an exit, looked like an exit, too in the
6 back of his neck.

7 Q Okay. Do you have an opinion on what caused
8 Mr. Jackson's death?

9 A Yes. I think his death is a result of a cascade of
10 things that happened after he was shot ultimately leading
11 to multisystem organ failure and probable sepsis as a
12 result of the gunshot wound to the neck.

13 Q Do you believe or is it your opinion to a reasonable
14 degree of medical certainty that the gunshot wounds
15 Mr. Jackson suffered on May the 20th either caused or
16 contributed to his ultimate death?

17 A It definitely contributed to it. He wasn't in
18 excellent health, but, nevertheless, the sequence of events
19 that happened after he was shot could be directly traced to
20 him being shot and what happened shortly thereafter,
21 including the surgery he went under.

22 Q Thank you, Dr. Wren. Please answer any questions the
23 defense may have for you.

24

25

Dr. John David Wren
Cross-examination by Mr. McPherson

1 CROSS-EXAMINATION

2 BY MR. MCPHERSON

3 Q Doctor, when you were tracing the gunshot wound, I
4 believe your report indicates that it had healed, is that
5 correct?

6 A Yes, sir. There was scar tissue there, and there was
7 no evidence of an infectious process in that area.

8 Q Okay. So as far as you could tell that wound in the
9 neck had completely healed.

10 A Yes, sir.

11 Q All right. Now, and also in your report you list
12 final necropsy diagnoses.

13 A Final necropsy diagnoses means it's a compilation of
14 things that I find when I do the autopsy itself plus those
15 findings that I find microscopically when I look at the
16 tissues that are removed to confirm or disprove the things
17 that I see grossly.

18 Q Do you have a copy of your report before you?

19 A Yes, sir.

20 Q Number one, what is that? Would you tell the jury
21 what that means?

22 A Well, all of that is related to his, basically his,
23 cardiovascular system, meaning his heart and his blood
24 vessels.

25 He had a serious pericardial effusion which is a

Dr. John David Wren
Cross-examination by Mr. McPherson

1 watery fluid collecting around the heart. He had chronic
2 inflammation in the epicardium which is the outside
3 covering of the heart.

4 He had an area of healed fat necrosis of the
5 pericardial fat. It's found around the heart itself. And
6 he had an area of prior fat necrosis that had healed there.

7 He had an enlarged heart, and he had biventricular
8 hypertrophy meaning that both ventricles that pump blood --
9 the left ventricle pumps blood through the body through the
10 aorta and the right ventricle pumps the blood that's
11 received by the heart to the lungs for oxygenation. Both
12 of those were hypertrophied, meaning that the wall of the
13 heart was thicker than it should be or normally is.

14 He had moderately severe -- well, I'm sorry. He had
15 right-sided dilatation of the heart meaning that the right
16 side of the heart was failing, dilating because it could
17 not handle the work load that was -- that it was subjected
18 to. And he had moderately severe to severe coronary artery
19 atherosclerosis of his major vessels, the blood vessels,
20 the three main blood vessels in the heart.

21 He had ischemic cardiomyopathy of the heart, meaning
22 that over the years, and you can't tell how recently it was
23 if it's healed other than up to two weeks. If it's earlier
24 than two weeks you will see residual things. But after two
25 weeks once ischemic cardiomyopathy is healed, it will just

Dr. John David Wren
Cross-examination by Mr. McPherson

1 leave scar tissue. And one can see little bands of scar
2 tissue scattered between the muscle fibers themselves.

3 And he had small vessel arteriosclerosis meaning that
4 he had hardening of the arteries of his small vessels in
5 his heart which cannot be bypassed. If you have hardening
6 of the arteries in atherosclerosis in the major vessels at
7 the inside of the heart itself the vessels are okay. One
8 can bypass those to profuse a heart better.

9 And I thought he had probably some mitral
10 regurgitation meaning that when his left ventricle would
11 contract to force blood to the aorta it would go back
12 through the mitral valve which is a valve that divides the
13 right -- left atrium and the left ventricle. It keeps
14 blood from flowing backwards.

15 He had what I thought was some, that he might have
16 mitral regurgitation. And he had some atherosclerosis of
17 the hardening of the artery of his aorta.

18 Q That's all in that number one?

19 A Yeah.

20 Q What about number two? What is that?

21 A That pertained to his lungs. He had pleural
22 effusions, again, serious, meaning that it's real watery
23 and liquid and doesn't have much protein in it.

24 It usually shows up in things like congestive heart
25 failure or fluid overload where it leaks out into the

Dr. John David Wren
Cross-examination by Mr. McPherson

1 thoracic cavity on, in this case both sides. One can have
2 a fusion on one side, and sometimes or more likely it's
3 from a malignancy. But he had it on both sides.

4 He had emphysema of his lungs at the apexes of his
5 lungs. He had moderately severe anthracosis of his
6 pleural, meaning that it's essentially soot and things that
7 cannot be removed by the tissue macrophages that try to
8 remove foreign materials all through his pleural lymphatics
9 around the heart so his, I mean around the lungs so his,
10 lungs looked dark in color. And they're streaky dark
11 unless it's extremely profuse.

12 He had acute and chronic passive congestion of his
13 lungs. And that means that, simply means that, blood had
14 backed up in his heart. Acutely means that it's recently
15 happened.

16 Chronic passive congestion, when one has that we can
17 see macrophages under the microscope and we can see if
18 they've had any hemorrhage. Or most of the time some blood
19 will leak out, and that will be attempted to be removed by
20 the macrophages which are scavengers, cells that remove,
21 like I said, foreign material. And although blood is not a
22 foreign material, it is when it gets into the alveolar
23 spaces or the little breathing sacs in the lung. It will
24 form iron pigment, and we can see that under the
25 microscope.

Dr. John David Wren
Cross-examination by Mr. McPherson

1 He had pulmonary edema which is fluid overload.
2 Again, like I said, when you have the effusion it also
3 backs up in the lung spaces. And I try to explain it to
4 the medical students and the physicians that are just
5 coming through it that I teach up there. If you take your
6 hair and rub it between your fingers, that's the first
7 sound that a doctor hears in a stethoscope. Those are
8 called rrawls, but as it gets worse and worse one can
9 actually hear it by listening with just your ears. Old
10 people call it the death rattle.

11 He also had a pulmonary hypertension. That means that
12 the heart, the heart had had to work hard to get the blood
13 through the lungs. And the blood vessels show evidence of
14 high blood pressure on that side of the heart. Those are
15 all the things.

16 Q Was all this that you've just explained as a direct
17 result of the gunshot, or is this stuff that he already had
18 and the gunshot just contributed to it?

19 A You're talking about one and two, or just two?

20 Q One and two.

21 A Well, he -- I guess the best, quickest answer is to
22 say it's a combination, because the way I explain high
23 blood pressure to people is that if a child is born with
24 heart disease, we find out right away.

25 And if you take the number of children that show signs

Dr. John David Wren
Cross-examination by Mr. McPherson

1 of heart problems, if they have a congenial heart disease
2 versus age, it increases expedientially up until they're
3 about 20 years of age. And by that time everybody is
4 showing problems. A lot of them die, but everybody shows
5 problems.

6 Then if you talk about hardening of the arteries
7 either inside the heart or the vessels of the heart, that
8 can show up as early as early to mid 20's. It shows up in
9 the aorta even as early as the late teens. But if you're
10 unlucky enough to be born with bad genes that cause
11 arteriosclerosis or hardening of the arteries, it starts
12 and can show up, as I said, in the early to mid 20's. And
13 it increases in a line that parallels the heart problems of
14 congenitals. And it goes up expedientially too. And if a
15 person has severe enough atherosclerosis, or we do
16 autopsies on people that have bad arteries and heart
17 attacks as early as 25.

18 Now, hypertension doesn't sound too bad to the lay
19 people because it doesn't show up very early. The symptoms
20 are usually flushed face, or sometimes when one wakes up in
21 the morning they might have a headache in the back of their
22 head. Those are the very few things that happen.

23 However, the problem is accumulating over the years.
24 And by the time one becomes 60 if they haven't been treated
25 it starts showing up if they have perfectly good arteries.

Dr. John David Wren
Cross-examination by Mr. McPherson

1 If they have hypertension the heart starts to fail. And
2 when that happens it's too late. You can treat the
3 symptoms. You can treat the -- help the heart to function
4 a little bit more efficiently, but it's going to continue
5 to fail. And those people get congestive heart failure.

6 In his case some of it was probably related to his
7 lung problems, because not only did he have left-sided
8 heart enlarged, which is an indication of high blood
9 pressure, but the right side was enlarged too meaning that
10 the heart had trouble pumping the blood through the lungs.
11 And when that happens you get pulmonary hypertension.
12 Blood backs up into the lungs and causes those symptoms I
13 told you about and backs on up into the liver and causes
14 central passive congestion and even can cause central
15 hemorrhagic necrosis, which is hemorrhage surrounding the
16 blood vessels that leave the liver. It can also back up in
17 the legs and cause, or on hands or arms or anywhere and
18 cause, retention of fluid which is called pitting edema if
19 it's in the legs.

20 It's hard to say, you know, exactly which, how much of
21 each, was the result of that. But as everybody gets to be
22 his age they're going to have some problems. God didn't
23 promise us but 70 years.

24 Q Right. When a guy, when a person, is like 74, 75
25 years of age, they've already started developing all of

Dr. John David Wren
Cross-examination by Mr. McPherson

1 these problems you were just explaining, aren't they, or
2 most of them?

3 A Not everybody. Some people live to be a hundred.

4 Q Most everybody?

5 A I said some. More and more are.

6 Now, if you want to talk about things that were
7 definitely caused by his gunshot wound --

8 Q I want to know what was caused by old age, or just
9 what in your opinion he had before he was shot.

10 A Well, now, I can't tell you, I can't tell you what
11 caused his emphysema because we have two, we have two genes
12 that -- everybody has two genes that we -- one we inherit
13 from each of our parents that are normal genes that cause
14 the lungs to remove things that dissolve the lung tissue.

15 There are probably a hundred different mutations of
16 those genes that if you inherit one of them from one parent
17 and you inherit a normal gene from the other, not only are
18 you more susceptible to emphysema but the emphysema is
19 worse.

20 Now, if you're unfortunate enough to have both of them
21 abnormal, then you have severe problems. And even if you
22 don't smoke one can get emphysema.

23 So I can't tell you without doing blood tests what
24 that emphysema was from. And I don't know whether he
25 smoked.

Dr. John David Wren
Cross-examination by Mr. McPherson

1 But I can say for sure with the anthracosis in his
2 lungs, which is the result of inhaling smoke or cigarette
3 smoke or dust or dirt or wherever he worked, he could have
4 been in a dusty environment. All of that stuff can lead to
5 the anthracosis that I talked about in his lymphatics of
6 his lungs.

7 But the pulmonary edema, the inter alveolar hemorrhage
8 that was acute was a result solely of his -- well, not
9 solely, but the majority of that was from his gunshot
10 wound.

11 Q What about the chronic passive congestion?

12 A Chronic passive congestion means that he probably had
13 had some episodes of possibly congestive heart failure, but
14 one can't say for sure. He could have been hurt and
15 swallowed blood, you know, and breathed in some blood, and
16 it could not have been removed. But he did have chronic
17 passive congestion.

18 Q What's the other alternative? Other than him
19 swallowing blood, what would be the other?

20 A A blood vessel breaking in the lungs, if he an episode
21 of severe congestive heart failure. And it doesn't take
22 long for those macrophages to form, by the way. It takes
23 less than ten days for that to happen. And he was in the
24 hospital. I don't know exactly how long, but it was a
25 couple of months, I believe.

Dr. John David Wren
Cross-examination by Mr. McPherson

1 Q Now, do you know whether or not he had diabetes?

2 A No, sir. He didn't have any, he didn't have any
3 evidence of diabetes in his kidneys, which is one place you
4 see it.

5 You see what's called a Kimmelstiel-Wilson nodules in
6 the glomeruli of the kidney. And I didn't see any of
7 those, but that doesn't mean he doesn't have any.

8 Q Is it possible the hospital could have treated him for
9 diabetes?

10 A I'm sure they did if they found out his blood sugar
11 was high if they're good doctors.

12 Q And what's number three?

13 A He had anterior peritoneal adhesions. The lining of
14 the stomach, I mean, the lining of the abdominal cavity is
15 called the peritoneum. There was scar tissue there.

16 He had some mucosal hemorrhage in his stomach, acute
17 gastric mucosal hemorrhage. He had some interloop
18 adhesions of the small intestine, meaning that the small
19 intestine instead of being able to lie free in the abdomen
20 and move about, they'd adhered to each other.

21 He had a scar in his abdomen, extended from just below
22 the breastplate all the way to his pubic bone, but I
23 didn't, I didn't see any evidence of what kind of surgery
24 he might have had. But he definitely had some surgery. He
25 didn't have his gallbladder removed. It was there.

Dr. John David Wren
Cross-examination by Mr. McPherson

1 Q Okay. Do you have any idea what kind of surgery it
2 would have been?

3 A No, sir.

4 Q Okay. And what's number four?

5 A Hepatosplenomegaly means the liver and the spleen were
6 enlarged. He had central passive congestion of the liver.
7 And I just explained what can cause that, the heart
8 failing. And when that happens -- if you see central
9 passive congestion only, that has just happened, because if
10 it gets severe enough you get tissue dying around the
11 central veins in the liver. And once that heals you get
12 scar tissue around there. And that's called in pathology
13 terms, that's called cardiac cirrhosis meaning that
14 something's happened to back the blood up around the veins
15 because it comes in around the portal tracks.

16 If you can imagine on a hexagon and the portal track
17 being in the middle of that hexagon and blood coming into
18 that either from the small intestine or from the aorta, and
19 you can imagine that blood radiating to the six corners of
20 the hexagon where the central veins is, the blood
21 percolates out through the sinusoid and goes to the central
22 veins.

23 If blood starts backing up from the heart but back
24 into the liver, then oxygenate, then the blood will not be
25 as oxygenated because a lot of oxygen is used in the liver

Dr. John David Wren
Cross-examination by Mr. McPherson

1 for the metabolic processes.

2 Part of the blood doesn't have any oxygen in it
3 anyway, or very little, because it's coming from the
4 intestines where it's already been used up. But it's
5 bringing the nutrients to the liver for the liver to
6 metabolize to keep us alive.

7 But as the blood backs up, becomes static enough to
8 where the tissue around those veins will die, and instead
9 of getting cirrhosis like most people think about, we get
10 cirrhosis -- the scar tissue around those veins. And
11 that's cardiac cirrhosis. He didn't have that, but he did
12 have the early signs of congestion in the liver.

13 He had a chronic portal triaditis with very mild
14 portal triaditis with very mild periportal fibrosis that
15 is -- as I was talking, I told you the blood came into the
16 heart in a portal track. And when it comes into the portal
17 track oxygenated blood comes in. Unoxygenated blood from
18 the intestines comes in with nutrients in it. And leaving
19 in that same area is the bile from the gallbladder, I'm
20 sorry, going to the gallbladder. Or if one doesn't have
21 the gallbladder it goes on down into the duodena. But he
22 had inflammation there.

23 Now, without a bunch of tests you can't tell what
24 caused it. And he had some fibrosis or scar tissue forming
25 around that area.

Dr. John David Wren
Cross-examination by Mr. McPherson

1 Now, most of the time, and it's getting real
2 complicated, but I guess the best way to explain it is if
3 one gets hepatitis -- hepatitis B is one of the severe
4 types we get from bad blood or body fluids.

5 If one gets hepatitis B, then several things can
6 happen. About two-tenths of a percent or a very small
7 amount of those people will die with acute disease. About
8 40 percent of those people if they have hepatitis, and you
9 don't, you actually don't have to have clinically
10 recognizable hepatitis, I mean, if somebody looked at you,
11 you might not be real sick, but you would have hepatitis
12 nevertheless.

13 Your bilirubin may not go very high. And it takes --
14 just about double in the body for the eyes to turn yellow
15 and the skin to turn yellow. And depending on how high it
16 goes, you can make one look like a pumpkin.

17 But about 40 percent of those people, whether they
18 have clinically significant or just insignificant
19 hepatitis, will form the antibody to kill that virus any
20 time it shows up again.

21 Those people are permanently immune from hepatitis.
22 Just like somebody has measles or mumps or chickenpox or
23 whatever, hardly anyone ever gets those again because their
24 immune system is able to recognize it, form the antibody.
25 And when the virus shows up again, if you're unlucky enough

Dr. John David Wren
Cross-examination by Mr. McPherson

1 to be exposed to it again, it fights it off and you don't
2 have a problem.

3 Now, those people that don't die and those people that
4 are completely well, there's a spectrum that happens. And
5 in that spectrum some people -- all our immune systems are
6 slightly different. And they're depending on a lot of
7 things. But, nevertheless, those people don't form the
8 antibody that's needed.

9 They do form some antibodies, but they keep the virus
10 a little bit in check. And you can have either chronic
11 persistent hepatitis or chronic active hepatitis. And when
12 that happens one eventually winds up, if you live long
13 enough and don't die from another cause, one will get
14 cirrhosis.

15 Cirrhosis starts through several stages. It starts
16 with normal fibrosis around those portal tracks. It goes
17 out a little bit, goes out a little bit further. And
18 eventually it bridges between the portal vein and the
19 central vein. And when that happens one has cirrhosis.
20 Everybody knows the consequences of cirrhosis. Well, he
21 had early periportal fibrosis.

22 And more than likely he had hepatitis C. Hepatitis C
23 has recently been discovered. People get it very easily.
24 A lot of people have had it.

25 And I forgot to mention with hepatitis B it can

Dr. John David Wren
Cross-examination by Mr. McPherson

1 eventually lead to liver cancer, but hepatitis C can too.
2 And hepatitis C, for some reason the immune system doesn't
3 respond as well as it does to hepatitis B or hepatitis A.
4 And so a person gets lingering hepatitis. The liver
5 enzymes are slightly elevated. They get fibrosis. It gets
6 worse and worse and worse if they live long enough.

7 But that was probably what he had, although I can't
8 say for sure, because there are lots of other things that
9 cause periportal fibrosis. But it wasn't the result of his
10 gunshot wound.

11 And then I said microscopic collections of
12 inflammatory cells along sinusoids suggestive of early
13 sepsis and early acute splenitis, which definitely was a
14 result of his decubitus ulcers which were severe ulcers on
15 his hips as a result of him being nonmobile after being
16 shot.

17 And sepsis is a bacterial inflammation in the
18 bloodstream. And if you're not treated for that you die.

19 Q Doctor, is it true that you listed like eight --

20 A Sir?

21 Q -- final necropsy diagnosis, seven things?

22 A Eight things.

23 Q Eight things. Is it possible?

24 A Well, actually there were 11. I'm sorry.

25 Q Eleven of them. Is it possible he could have died

Dr. John David Wren
Cross-examination by Mr. McPherson

1 from something else other than the gunshot wound? I mean,
2 I am just asking you is it possible, not what your opinion
3 is, just is it possible.

4 A Well, yeah, it's possible for anybody to die of
5 anything.

6 Q But you would admit that he had a lot of things wrong
7 with him prior to the gunshot.

8 A Well, there was evidence that he had things wrong with
9 him.

10 Now, a lot of people, as you and I both know, react
11 differently to problems they have. I've seen people. I've
12 seen people that have had -- I know one of our pathologists
13 has had three bypass procedures three different times, and
14 he's still alive. Other people you see 25 years old,
15 they're dead with a blockage in one little place. So you
16 can't say this is bad, that the results are going to be
17 bad. One can only say that it's not good.

18 Q Now, when you form your opinion, also history plays an
19 important part, does it not?

20 A Yeah.

21 Q And history being that you know he was shot with a
22 gun, correct?

23 A Yes, sir.

24 MR. MCPHERSON: I have no further questions.

25 MR. GOWDY: Just very briefly, Your Honor.

Dr. John David Wren
Redirect examination by Mr. Gowdy

1 REDIRECT EXAMINATION

2 BY MR. GOWDY

3 Q Dr. Wren, is it fair to say that this 75-year-old
4 gentleman had some preexisting conditions prior to May
5 20th of 2006?

6 A Yes, sir.

7 Q And is it fair to say that there were some conditions
8 that he suffered from after May 20th that were directly
9 attributable to the gunshot?

10 A That's correct.

11 Q Is it also fair to say that on those preexisting
12 conditions that he had they would have been exacerbated or
13 made worse because he had been shot with a gun?

14 A That's correct.

15 MR. McPHERSON: Your Honor, I'm going to object to him
16 leading the witness.

17 THE COURT: Don't lead him.

18 MR. GOWDY: Yes, sir, Your Honor.

19 Q Do you have an opinion, Dr. Wren, on whether or not
20 the gunshot wound could have exacerbated any of his
21 preexisting conditions?

22 A Definitely it puts additional stress on the body. And
23 any time any organ is stressed, if it has a preexisting
24 condition it's going to get worse.

25 Q What is a ventilator?

Dr. John David Wren
Redirect examination by Mr. Gowdy

1 A It's a machine that actually helps one to breathe if
2 they are not breathing well.

3 Q If he were on a ventilator after the gunshot wound but
4 not on one prior to that, would you consider that to be
5 something that was caused or contributed to by the gunshot
6 wound?

7 A Definitely.

8 Q How about the presence of a -- did you say a
9 tracheostomy?

10 A Tracheostomy.

11 Q Tracheostomy?

12 A Yes, sir.

13 Q He did not have one on May the 19th but he had one
14 after May the 20th. Would you say that that was
15 contributed to or caused by the gunshot wound?

16 MR. MCPHERSON: Your Honor, again, I'm going to object
17 to him leading the witness.

18 THE COURT: Don't lead him. Rephrase it.

19 Q Would you say that having a -- do you believe that the
20 gunshot wound could have contributed to his requiring a
21 tracheostomy?

22 A I think that's what the notes say, that it was
23 necessary to do a tracheostomy to help him get off the
24 ventilator which is put down your throat. And they did the
25 tracheostomy because he was doing a little better

Dr. John David Wren
Redirect examination by Mr. Gowdy

1 evidently. And they could use that rather than keeping him
2 so sedated that he couldn't move, you know, if he were able
3 to move.

4 Q Could the loss of blood have an impact on a patient
5 with a preexisting condition such as this one had?

6 A Yes. Any time the -- if a person is just
7 hypothetically, say a person is right at the borderline of
8 their heart failing, and then you do, one does something to
9 lose blood and you're not able to oxygenate that tissue as
10 well as you were, even though it's borderline, then it's
11 going to cause additional problems. It's going to cause
12 the heart to fail quicker.

13 Q Do you remain of the opinion that the gunshot wounds
14 he suffered on May the 20th either caused or contributed to
15 his ultimate death?

16 MR. McPHERSON: Your Honor, I am going to object.
17 That's been asked and answered.

18 THE COURT: Let me see y'all just a minute.

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 Q Dr. Wren, do you have an opinion on whether or not the
22 gunshot wound was the proximate cause of his death?

23 A I stated it was my opinion this individual died as a
24 result of multisystem organ failure secondary to the
25 consequences of a gunshot wound to the neck.

Motion

1 Q Thank, you Dr. Wren.

2 MR. GOWDY: No further questions.

3 MR. McPHERSON: No more questions.

4 THE COURT: Thank you. You may step down. You may
5 also be excused.

6 (Whereupon, the witness was excused.)

7 MR. GOWDY: Your Honor, the state rests.

8 THE COURT: All right. Ladies and gentlemen, that is
9 all of the testimony or other evidence to be offered by the
10 state, at least in their case in chief.

11 Before we go any further I've got some matters to
12 address with the lawyers, and so I'll ask you please go to
13 the jury room. Do not discuss the case. I'll bring you
14 back in just a few minutes.

15 (The following takes place outside the presence of the
16 jury.)

17 THE COURT: All right. Any matters we need to address
18 before we go further?

19 MR. McPHERSON: Yes, Your Honor.

20 The state, I mean the defense, moves for a directed
21 verdict on each and every indictment that you have before
22 you on the grounds that the state has failed to prove this
23 offense -- shall I go through each indictment?

24 THE COURT: If you have a specific ground you want to
25 state with respect to those separate indictments.

Motion

1 MR. MCPHERSON: I'll just do them altogether, Judge.

2 THE COURT: Okay.

3 MR. MCPHERSON: That they failed to prove that this
4 offense happened in Spartanburg County; that they failed to
5 prove that it happened on May the 20th of 2006; and they
6 failed to prove each and every element as in all ten of the
7 indictments.

8 THE COURT: Well, I think you're going to have to be a
9 little more specific than that.

10 Tell me. Look at the indictments and tell me where
11 they failed to offer any proof as it relates to the
12 essential elements of the offenses that are charged.

13 Are you saying there are some offenses and there are
14 some elements of those offenses that they have failed to
15 offer proof on, or are you just saying that the proof they
16 have offered should fail as a matter of law because it's
17 not credible enough to support beyond a reasonable doubt a
18 conviction?

19 MR. MCPHERSON: I'm saying the second one.

20 THE COURT: What are you saying?

21 MR. MCPHERSON: I am saying that the proof is not
22 credible.

23 THE COURT: Oh, okay. Well, I think there is
24 sufficient evidence that has been introduced into the
25 record that would satisfy each of the essential elements of

Motion

1 each of the crimes that have been alleged against this
2 defendant.

3 The determination as to the credibility of that
4 testimony and that evidence is for the jury to make that
5 finding. And therefore since there is sufficient direct
6 evidence and substantial circumstantial evidence, I find
7 that your motions for a directed verdict as to each of the
8 indictments should be denied.

9 Any other motions you have?

10 MR. MCPHERSON: No, Your Honor.

11 Do we need to do a motion to settle his record, the
12 defendant's record? We would like to know.

13 THE COURT: You want the, you want to inquire of the
14 state as to what, if any, criminal offenses they would tend
15 to offer for purposes of impeachment if the defendant chose
16 to take the witness stand?

17 MR. MCPHERSON: That's correct.

18 THE COURT: All right. What prior convictions would
19 the state intend to offer that would comply with the rule?

20 MR. GOWDY: I don't believe there are any that would
21 comply with the rule, Your Honor.

22 THE COURT: Okay. They have none.

23 MR. MCPHERSON: That's all we have, Your Honor, and --

24 THE COURT: All right. Have you discussed with
25 Mr. Sims his right to testify as well as not testify during

1 the trial of this case?

2 MR. McPHERSON: Yes, I have.

3 THE COURT: And does he appear to you to understand
4 that right?

5 MR. McPHERSON: He appears to understand that right.

6 THE COURT: And has he indicated to you that he has
7 reached a decision in that regard?

8 MR. McPHERSON: He has so indicated.

9 THE COURT: And what has he indicated to you?

10 MR. McPHERSON: He wants to testify.

11 THE COURT: All right. Mr. Sims, do you understand
12 when you're charged with a crime you have an absolute right
13 to remain silent?

14 And by that I simply mean that nobody can make you
15 take the witness stand and testify during the trial of this
16 case. You never have to make any statement or answer any
17 questions as they relate to a charge that has been brought
18 against you by the state. So you have an absolute right to
19 remain silent if you wish to.

20 At the same time, if you wish to testify and provide
21 this jury with any testimony or information or evidence
22 about the case, then this is the only opportunity that you
23 will have to do so.

24 In other words, the state has completed their
25 presentation. You now have an opportunity to testify as

1 well as to call witnesses and to present other evidence.
2 And this is the only opportunity that you will have to do
3 so.

4 Now, have you discussed with your lawyers your right
5 to testify as well as not testify?

6 THE DEFENDANT: Yes, sir. It has been explained to
7 me.

8 THE COURT: Sir?

9 THE DEFENDANT: Yes. It has been explained to me.

10 THE COURT: And do you understand that if you choose
11 not to testify that I would instruct the jury that they may
12 not consider that fact in any way whatsoever in their
13 deliberations or in their determination as to whether or
14 not your guilt has been proven? Do you understand that?

15 THE DEFENDANT: I understand it.

16 THE COURT: Do you also understand that if you choose
17 to take the witness stand and you do testify that you will
18 have to answer not only your lawyer's questions but you'll
19 also have to answer the prosecutor's questions even if the
20 responses to those questions might tend to prove you guilty
21 of one or more of these charges that they claim you
22 committed?

23 THE DEFENDANT: I understand.

24 THE COURT: Have your lawyers explained to you the
25 advantages and disadvantages of your testifying as well as

1 not testifying?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And do you understand what those
4 advantages and disadvantages are?

5 THE DEFENDANT: Pretty much.

6 THE COURT: Sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And having that appreciation, have you had
9 time to reflect upon your decision as to whether or not you
10 will testify?

11 THE DEFENDANT: Yes, sir. I would.

12 THE COURT: And have you reached a decision? You
13 have?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And what is that decision?

16 THE DEFENDANT: My decision is I will testify.

17 THE COURT: And is that a decision that you reached of
18 your own free will and accord?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did anybody force you into it?

21 THE DEFENDANT: No, sir.

22 THE COURT: Anybody suggest that that's what you ought
23 to do in this case?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you made that decision on your own?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you're satisfied with it?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Thank you. Be seated.

5 All right. Are y'all ready to proceed with the
6 defense?

7 MR. McPHERSON: Yes, sir.

8 THE COURT: All right. Bring the jury in, please.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: All right. Ladies and gentlemen, as you
12 know, the state has concluded with their presentation. So
13 we're now going to proceed with any to be offered by the
14 defense.

15 Mr. McPherson.

16 MR. McPHERSON: Your Honor, I would like to get an
17 exhibit marked as a court exhibit.

18 THE COURT: All right.

19 (Incident report marked Court's Exhibit 1.)

20 MR. McPHERSON: And I would move to introduce this
21 into evidence as a Court's Exhibit 1 not to be given to the
22 jury.

23 THE COURT: All right, sir.

24 MR. McPHERSON: And I move to publish what we've
25 agreed to between the state and the defense as to what's to

1 be stipulated. And I would like to publish that
2 stipulation to the jury.

3 THE COURT: You may.

4 MR. McPHERSON: Thank you.

5 There was an Officer Wendy Buie who has kidney stones
6 and couldn't make it today. Therefore we've reached an
7 agreement so we can go on, go forward with this trial.

8 "It is stipulated and agreed between the defense and
9 the state with the expressed consent of the defendant that
10 a Deputy Wendy Buie, that if she were called as a witness
11 and sworn to tell the truth, she would testify as follows:
12 Deputy Buie spoke with Elaine Hall on the night of May
13 20th of 2006 at [REDACTED] Road Campobello at approximately
14 2100 hours.

15 "Elaine Hall, a witness, states that the subject
16 identified as Russell Sims drove by [REDACTED] Road and
17 shot a gun towards the home. She then states they drove to
18 the end of Miller Road when she heard approximately four or
19 five more shots.

20 "Then she observed Russell drive back to [REDACTED]
21 Road and run inside with a handgun and a shotgun. When he
22 got inside he sat the shotgun down and started shooting
23 with the handgun, shooting Cornell and Derrick.

24 "The subject picked up the shotgun and left the house
25 and in a 1991 gray Buick with tag number 370 UMC."

Russell Lee Sims
Direct examination by Mr. McPherson

1 That's the end of the stipulation.

2 The state would call, I mean the defense would call,

3 Russell Sims.

4 RUSSELL LEE SIMS, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. MCPHERSON

7 Q Russell, would you tell the jury your full name?

8 A My name is Russell Lee Sims, III.

9 Q And how old are you, Russell?

10 A I am 21.

11 Q And what do you go by?

12 A I go by R. L.

13 Q All right. How far did you go in school?

14 A I went to the 9th, but I finished the 8th.

15 Q Okay. And are you married?

16 A No, sir.

17 Q Have you ever been married?

18 A No, sir.

19 Q Do you have children?

20 A No, sir.

21 Q Okay. Do you know a person by the name of Diane
22 Jackson?

23 A Yes, sir.

24 Q How is it you know Diane Jackson?

25 A We dated.

Russell Lee Sims
Direct examination by Mr. McPherson

- 1 Q I'm sorry? Oh, you dated?
- 2 A Yes, sir.
- 3 Q And how long did y'all date?
- 4 A Like a year and a month.
- 5 Q How long did you know Diane Jackson prior to the
6 alleged incident?
- 7 A A year.
- 8 Q Okay. And how would you describe y'all's
9 relationship?
- 10 A Okay. I mean, it was great. I mean, no problems.
- 11 Q Would you consider yourself boyfriend and girlfriend?
- 12 A Yes, sir.
- 13 Q And would you live with her a good part of the time?
- 14 A Yes, sir.
- 15 Q Where did you live with her?
- 16 A [REDACTED] -- Miller Road in Campobello.
- 17 Q Okay. Now, when did you start living with her?
- 18 A Like two days after we met.
- 19 Q Okay. And how many -- would you sleep in the same bed
20 with her?
- 21 A Yes, sir.
- 22 Q And, more or less, how many nights or how many days
23 out of each week would you stay with her?
- 24 A Three days, sometimes a week.
- 25 Q So anywhere from three days to a week?

Russell Lee Sims
Direct examination by Mr. McPherson

- 1 A Yes, sir.
- 2 Q All right. Now, who all lived in the home of Diane
3 Jackson?
- 4 A Diane, her father and two kids, I mean, two daughters,
5 and China and India.
- 6 Q Okay. Now, did China and India have a separate room
7 from Diane?
- 8 A Yes.
- 9 Q Now, would it be fair to say that you slept at Diane's
10 house almost weekly for that year?
- 11 A Yes.
- 12 Q Now, do you drive?
- 13 A No, sir.
- 14 Q Do you have a driver's license?
- 15 A No, sir.
- 16 Q How would you normally get around?
- 17 A I mean, when I am with her?
- 18 Q Yes.
- 19 A With Diane.
- 20 Q Would she drive most of the time or all of the time?
- 21 A All the time.
- 22 Q Okay. And what car would y'all use all the time?
- 23 A Her Buick.
- 24 Q Okay. Now, did you at some point buy a weapon?
- 25 A Yes, sir.

Russell Lee Sims
Direct examination by Mr. McPherson

- 1 Q Could you tell the jury where you bought the weapon
2 and who was with you when you bought the weapon?
- 3 A I bought a weapon from a friend of mine, and Diane was
4 with me.
- 5 Q Okay.
- 6 A And her kids were with me.
- 7 Q Okay. When you bought this weapon how far away would
8 you -- how far away in days or months would you estimate
9 was it was prior to the incident, the alleged incident?
- 10 A I'm not sure, but it's been a couple of months. It
11 had been some months.
- 12 Q Okay. Now, when you bought the weapon, did it come
13 with shells too or bullets too?
- 14 A No, sir.
- 15 Q And what kind of gun was it that you bought?
- 16 A It was a .380.
- 17 Q A .380 what?
- 18 A .380 automatic.
- 19 Q And how many rounds would that hold, more or less?
- 20 A Nine.
- 21 Q Okay. Now, how did you get to your friend's house
22 where you bought the gun?
- 23 A Diane.
- 24 Q Diane took you?
- 25 A Yes, sir.

Russell Lee Sims
Direct examination by Mr. McPherson

- 1 Q In the Buick?
- 2 A Yes, sir.
- 3 Q And were the kids with her?
- 4 A Yes, sir.
- 5 Q Now, did Diane know that you bought the gun?
- 6 A She found out that night.
- 7 Q Okay. Now, where would you normally keep that gun
- 8 when you stayed with Diane?
- 9 A Under the mattress.
- 10 Q All right. Now, at some point you got bullets for the
- 11 gun.
- 12 A Yes, sir.
- 13 Q Who got the bullets?
- 14 A Diane got the bullets.
- 15 Q Were you with her when she bought the bullets?
- 16 A Yes, sir.
- 17 Q And where did she buy the bullets?
- 18 A She got them from the pawn shop at Gun and Pawn in
- 19 Inman.
- 20 Q Okay. And how, how much prior to the incident would
- 21 you say she got the bullets, more or less?
- 22 A I mean, it's been months.
- 23 Q At least a month or more?
- 24 A It has been a little over a month though.
- 25 Q Okay. Now, where were the bullets kept?

Russell Lee Sims
Direct examination by Mr. McPherson

1 A The bullets were kept either under the mattress or
2 under the car seat.

3 Q Okay. Now, when you lived with Diane what was your
4 relationship like with Robert Jackson?

5 A I couldn't, I mean, I couldn't get a conversation out
6 of him. He wasn't, he wasn't the talkative type so, you
7 know, we just stayed our separate ways.

8 Q Okay. Do you know whether or not Robert Jackson had a
9 weapon of any sort?

10 A Yes. He did.

11 Q And what kind of weapon did he have?

12 A He had a shotgun.

13 Q Do you know what kind of shotgun?

14 A Yes, I do. It was a .20 gauge.

15 Q And what -- do you know, was it like a pump gun,
16 single-shot, or how would you describe it?

17 A No. It was the kind that flipped down and flipped
18 back up.

19 Q So it was either one or two shots to the best of your
20 knowledge?

21 A It was a one-shot to the best of my knowledge, single
22 shot.

23 Q Do you know where he normally kept that gun?

24 A I don't know. From, to my knowledge he kept it in his
25 room or in the living room with him or somewhere around him

Russell Lee Sims
Direct examination by Mr. McPherson

1 to my knowledge.

2 Q Did you ever see the gun?

3 A Yes. As a matter of fact, we all seen the gun.

4 Q Okay. And where did you see the gun?

5 A When I first seen the gun?

6 Q Yeah.

7 A When I first seen the gun we walked in the house and
8 he had it inside, in the chair with him, on the couch.

9 Q On the couch?

10 A Yes, sir.

11 Q Okay. More or less, how many times did you see that
12 gun?

13 A After that I didn't see it no more. I mean, I seen
14 it. Well, after that I seen it one time in his room. And
15 Diane said don't walk past his room like that.

16 Q Okay. Now, did you ever have a run-in with
17 Mr. Jackson?

18 A Yes, sir.

19 Q And would you tell the jury about that incident?

20 A Well, one time I was coming out of her room and I was,
21 and I was spitting. And it had went inside her so-called
22 daughter -- son's food in his plate. And she got mad and
23 started yelling at me. And he came in the house. And he
24 started fussing, jumping in something that he didn't have
25 nothing, that he didn't have no business jumping in. And

Russell Lee Sims
Direct examination by Mr. McPherson

- 1 he told me to get out of his house. And I left his house.
2 And I told him if I was to come back in your house what
3 would you do. And he said he would shoot me. And I said
4 go get it, go get it. And then Diane just said come on, R.
5 L., come on. And she got me and put me in the car. And we
6 left.
- 7 Q Okay. Did you believe him when he said he would shoot
8 you?
- 9 A Yes, I did.
- 10 Q Did you ever go back to the house?
- 11 A Not after.
- 12 Q All right. Now, how long did you stay away from the
13 home?
- 14 A Like two weeks.
- 15 Q And then what happened?
- 16 A And then she started sneaking me up there into a room.
- 17 Q You weren't afraid of Mr. Jackson, Robert Jackson?
- 18 A I mean, Robert Jackson didn't even know. I mean, at
19 the time I did, I had my weapon on me. So if he -- you
20 know, that's why I kept it under the mattress with me, in
21 case, because I had seen his shotgun prior to the incident.
- 22 Q Why did you go back if he told you he would kill you?
- 23 A Because Diane said that he wasn't worried about it any
24 more and he let it go.
- 25 Q Okay. But you were worried about it a little bit?

Russell Lee Sims
Direct examination by Mr. McPherson

- 1 A In between.
- 2 Q Okay. Now, the day of the incident you were with
3 Diane.
- 4 A Yes, I was.
- 5 Q Do you recall where y'all were coming from?
- 6 A Yes. We came from Bi-Los and then the movie flick and
7 Save-A-Lot.
- 8 Q Okay. Did you have the gun with you?
- 9 A Yes, I did.
- 10 Q And did you normally carry the gun with you everywhere
11 you went in Diane's car?
- 12 A Yes, I did.
- 13 Q And where would you usually keep it?
- 14 A I would keep it under the seat.
- 15 Q Okay. And normally it would stay under the seat, or
16 would you pull it out?
- 17 A It would stay under the seat until I get out.
- 18 Q Okay. Now, tell the jury what happened as y'all are
19 coming back.
- 20 A Well, as we were coming back, it really started over a
21 ball that Jerohmia had in the car that went out the window.
22 And she started fussing.
- 23 And so we were going down the street. And we was
24 almost, like was, like she said, between Inman and
25 Campobello.

Russell Lee Sims
Direct examination by Mr. McPherson

1 And then the winder, I let the winder down. While she
2 was nagging I just pulled the gun out from under the seat
3 and I pointed it out the winder. And she said, no, you
4 better not. And I pulled it back in. And I said I ain't
5 going to do that.

6 And I looked behind in the back seat and I said,
7 Jerohmia, do you want me to shoot out the window, and they
8 was like, Jerohmia, say no, say no, say no, tell him no,
9 tell him no. And Jerohmia didn't say nothing.

10 So we rode a little bit farther. And then I shot it
11 out the window anyway. And then that's when they started
12 getting all scary. And then --

13 Q What did you shoot at?

14 A I didn't shoot at -- I mean, wasn't nobody around. It
15 was just like wooded, a wooded area. And then as we went
16 along, further along, we got around by the houses that was
17 nobody outside. And I shot on the ground as we rode past
18 the houses, residence.

19 Q Okay. And then what happened?

20 A Oh, and then we got down to her house. And I got out
21 of the car. She told me that she was going to take me
22 home.

23 And the kids was crying. I can say they were crying.
24 We got out of the car. Well, I got out of the car and I
25 went in the house. She said she would take me home. So I

Russell Lee Sims
Direct examination by Mr. McPherson

1 went in the house. He came outside, and I walked right
2 past him. I went in her room. I got my --

3 Q Did you say anything to him?

4 A I didn't say nothing to him.

5 Q Did he say anything to you?

6 A Uh-uh.

7 Q Okay. So you go. You went inside.

8 A I went inside. I got my clothes and I got my shells
9 out from under, out from under the mattress, because I
10 wasn't going to be there. I always take my, you know,
11 shells with me sometimes, you know, after I was staying
12 there. But I got my shells and I got my clothes and I went
13 out there in the Jeep. And then I started reloading the
14 gun up.

15 Q And where did you put the clothes?

16 A On the Jeep.

17 Q Okay. Now, why were you reloading the gun?

18 A Because I was going to go out to the street and
19 shoot'm off.

20 Q Okay. And then what happened?

21 A And then what happened, then as I was coming outside
22 they was still outside talking, Diane and her father. What
23 they was talking about, I do not know.

24 But when I came outside she took her kids in the house
25 and, you know, and if I was so much of a threat, she would

Russell Lee Sims
Direct examination by Mr. McPherson

1 have told her daddy to come in the house. I heard her. I
2 recall her telling her daddy he didn't -- daddy, he didn't
3 do nothing, he didn't do nothing, ain't nothing, ain't
4 nothing. And he was still out there, and then he was
5 arguing and fussing.

6 And I went back to the Jeep. And I started loading up
7 my, my, my shells. And he was -- I tuned him out while he
8 was fussing back there. I guess that made 'm even hotter,
9 while he was fussing.

10 And he went on the side of the house, on the side of
11 the porch. And then he -- I thought I saw some wood, but I
12 didn't know it was no gun. And then when he got around to
13 the front porch where the light was, and I walked over.
14 And he turned around, and then he clicked it. And then he
15 pointed it at me. That's when I grabbed him. And he
16 tussled with me. And then I shot him and then pulled the
17 gun out of his hands and threw the gun when we going up the
18 steps. That's how it happened. Telling all lies.

19 MR. MCPHERSON: Could I look through some exhibits a
20 minute?

21 THE COURT: Sure.

22 Q Do you know how to work this pointer? Do you see that
23 red button there?

24 A Yes.

25 Q And I'm going to show you what's marked as State's

Russell Lee Sims
Direct examination by Mr. McPherson

1 Exhibit 21. Do you recognize State's Exhibit 21?

2 A Yes. That's the Jacksons' house.

3 Q I'm sorry?

4 A That's Diane and Robert Jackson's house.

5 Q Now, more or less, where was it you saw Mr. Jackson go
6 and get the gun?

7 A He got the gun from, on the side over there. There's
8 a hole on the side of the vinyl siding.

9 Q So there's a hole underneath that porch?

10 A Yes. He went over there, and he came back around here
11 in the light, because that light stayed on. You can't see
12 over there at night. It be real dark.

13 Q Okay. When he got --

14 A Out through here.

15 Q When he got in the light you were able to see what he
16 had?

17 A Uh-huh.

18 Q Now, when you first saw him with the gun, what did you
19 think it was?

20 A I didn't know what it was because, you know, I had put
21 a little heater thing under there. And I didn't know if he
22 messed with that. I didn't know what it was. I just
23 thought it was something wooden to be honest with you.

24 Q Okay. And then what happened?

25 A Because what happened?

Russell Lee Sims
Direct examination by Mr. McPherson

- 1 Q Yes.
- 2 A Oh, then I, then I took the gun from him and shot him
3 and I was --
- 4 Q Okay. Now, what? Did he point the gun at you or not?
- 5 A Yes, he did.
- 6 Q And did he actually click the barrel?
- 7 A Yes, he did.
- 8 Q Did you hear it click?
- 9 A Yes, I did.
- 10 Q Did you think he was going to shoot you?
- 11 A I know he was going to shoot me.
- 12 Q Okay. Did you have a chance to run from him?
- 13 A No, sir.
- 14 Q Could you have retreated?
- 15 A No, sir.
- 16 Q Why not?
- 17 A Because I was too close. He would have shot me.
- 18 Q So when you shot him were you shooting to kill?
- 19 A No, sir.
- 20 Q Why did you shoot him?
- 21 A I shot him for, in defense to get the weapon out of
22 his hand.
- 23 Q Okay. To protect yourself?
- 24 A To protect myself, exactly.
- 25 Q Do you remember how many times you shot?

Russell Lee Sims
Direct examination by Mr. McPherson

1 A It was twice, but it was real, the shots were together
2 as in a nervous rate.

3 Q Could you make a sound like how fast the shots were?

4 A It was like pow, pow.

5 Q Okay. Then what happened?

6 A Then we started, he started, he was on his way up the
7 steps. And he was yelling Diane, Diane, this boy done shot
8 me, this done shot me.

9 Then Diane came to the door. And he was up the steps
10 first. And then she started trying to close the door. And
11 then I ran up the steps. And then I pushed the door. And
12 I didn't kick the door, because I barely even pushed it. I
13 didn't even like touch the door.

14 She opened the door because she knew he was on the
15 porch hurt. As far as her trying to say I forced the door,
16 I didn't never force no door. As big as she is, there
17 ain't no way in the world I could have got that door open
18 if she didn't want me to get that door open.

19 Q Okay. So then what happened after that?

20 A So then I went in the house. I ain't stepped past the
21 living room. And I told her, I said now I'm going to need
22 me some money, now I'm going to need me some money.

23 I didn't say give me no money, give me your money. I
24 said I'm going to need me some money, I'm going to need me
25 some money, for the fact that I knowed I shot him and I'm

Russell Lee Sims
Direct examination by Mr. McPherson

1 probably going to have to go to jail or whatever.

2 And Diane said, she said, here, just take my money,
3 just take my keys, just, just, just take it and go, just
4 go, just go, just go, just go.

5 I thought that she was doing it to, you know, help me
6 out, to help me or whatever, when she gave me that, because
7 I ain't asked her to give me no money. I didn't ask her to
8 give me no keys. I just said I need some money.. I didn't
9 say you gave to give me nothing. I didn't say I couldn't
10 get it on my own. I just said I need some money. I was
11 talking to myself, you know, but she gave me everything.
12 And then on my way out, on my way out the door, I went down
13 the steps on the ground. I picked up the gun.

14 Q Wait. Why did you pick up the gun?

15 A I picked up the gun because he wasn't there to see who
16 was injured. I didn't shoot to kill him. I was just
17 shooting just enough to get the weapon away from him. When
18 I stepped in the living room I was in the doorway where I
19 could see him and see her at the same time in case he get
20 up and try to go back and get the weapon.

21 Q Okay.

22 A And they was still talking to each other.

23 Q So you got the weapon, the shotgun.

24 A Yes, sir; yes, sir.

25 Q All right. Now, at any point up to this point, you

Russell Lee Sims
Direct examination by Mr. McPherson

- 1 know prior to that evening, did you point the gun at Diane?
- 2 A No, sir.
- 3 Q Did you point the gun at China?
- 4 A No, sir.
- 5 Q Did you point the gun at India?
- 6 A No, sir.
- 7 Q Did you point the gun at Jerohmia?
- 8 A No, sir.
- 9 Q At any point during that evening or any other time --
- 10 A At no point.
- 11 Q -- did you point the gun at any of those four that I
- 12 just named off?
- 13 A No, sir. They was scared because I shot the gun out
- 14 the winder. They were comfortable with me having the gun,
- 15 just not shooting it around them. That's the only reason
- 16 they went off like that, because I shot it out the winder.
- 17 I would never point no gun at the kids, and I definitely
- 18 wouldn't point it at Jerohmia.
- 19 Q Okay. Now, have you ever target practiced out in that
- 20 area?
- 21 A Yes, I have.
- 22 Q And where had you done some target practice?
- 23 A In the back yard.
- 24 Q Okay. And was Mr. Jackson around when you
- 25 target-practiced?

Russell Lee Sims
Direct examination by Mr. McPherson

- 1 A No, sir.
- 2 Q Do you know if the kids were around when you
3 target-practiced?
- 4 A No, sir.
- 5 Q They weren't around either?
- 6 A No, sir.
- 7 Q Was Diane around?
- 8 A No, sir.
- 9 Q So you were out there by yourself when you
10 target-practice.
- 11 A Yes, sir.
- 12 Q And did the neighbors bother you when you fired the
13 weapon?
- 14 A No, sir.
- 15 Q Anybody come down there and check on you to see what
16 was going on?
- 17 A No, sir.
- 18 Q All right. How many times did you fire that weapon
19 prior to this incident in the back yard or in that area?
- 20 A I done it twice.
- 21 Q Okay. Either time was Mr. Jackson around?
- 22 A No, sir.
- 23 Q Were the kids around?
- 24 A No, sir. They were in the house.
- 25 Q They were in the house?

Russell Lee Sims
Direct examination by Mr. McPherson

1 A Uh-huh.

2 Q So they could have heard the shots, maybe muffled
3 shots?

4 A Yes. They heard the shots.

5 Q Was Diane around?

6 A No, sir. She was in the house.

7 Q But she would have heard you shooting in the back
8 yard?

9 A Yes, sir.

10 Q And how far away in the back were you in the back
11 yard?

12 A I was right at the end of the back step.

13 Q Okay.

14 A Which both rooms is on the -- which both rooms are on
15 the back.

16 Q Okay. Then what happened? All right. Let's go back
17 now. You picked up the shotgun. Then what did you do?

18 A And then I opened the driver door and I clicked a
19 button that pops all the doors open, and I put the shotgun
20 in the back. And then I closed. And I looked at Diane.
21 And she was on the porch talking to her father. And I just
22 got on in the car.

23 And I put the pistol on the seat, on the front seat.
24 And then I made my way up the street. And then as I's
25 going up the street I told myself I ain't going to go out

Russell Lee Sims
Direct examination by Mr. McPherson

1 like that right there. And I said I'm fixing to get me a
2 witness. And I stopped and go tell Cornell, to go tell
3 Cornell what happened before the story, because I knowed
4 Diane will lie, the lie they came in here doing already. I
5 knowed they would lie.

6 So I went down there to tell Cornell. I pulled on the
7 side of the road. I mean, I pulled on the side in front of
8 their house. And I got out. I put the gun in the back of
9 my, in the back of my pants. And I put my shirt over it.

10 And then as I got up on the steps Derrick was already
11 at the door with a gun. And whoever he said mama is, I
12 don't know who she is, but Ms. Elaine. That's who it was.
13 Elaine was holding his shoulder, was on his shoulder. And
14 he jerked her.

15 And when he jerked her, I pulled my gun out. And then
16 when he clicked it, that's when I opened the door and I
17 fired. And I closed the door back. And I jumped back in
18 case he was to shoot.

19 Then I looked in. And I did say, oh, my God.
20 Everybody said, oh, my God, because I didn't come there to
21 shoot him. And then so I looked inside and I didn't see
22 Derrick. So I went inside and then looked.

23 Q Why did you go inside?

24 A To make sure that Derrick was all right because I
25 didn't, I didn't mean to shoot him. I don't know why he

Russell Lee Sims
Direct examination by Mr. McPherson

1 pointed a weapon at me if I ain't pointing no weapon at
2 him.

3 Q Okay. Now, when he pointed that weapon at you, why
4 didn't you run?

5 A I couldn't have ran.

6 Q Why not?

7 A Because he would have shot me.

8 Q So in your opinion you couldn't have retreated if you
9 had wanted to.

10 A No, sir.

11 Q All right. So you go into the house.

12 A Yes, sir.

13 Q And then what?

14 A And then I was --

15 Q Did you see the shotgun when you went into the house?

16 A Not at the minute, sir. I was looking for it. He, he
17 had shot. He dropped the shotgun after he, after he was
18 hit.

19 I went inside to look for Derrick to see, know wha'
20 mean, the way he got hit at and everything else, because I
21 didn't mean to shoot him. And as I went inside I walked
22 slowly and I looked around. And I seen Cornell running
23 down the hallway. Then he dove on the floor. And then I
24 looked down by him. That's when I seen that gun. And
25 that's when I went over and I shot him. And then I was

Russell Lee Sims
Direct examination by Mr. McPherson

1 going to go out the door. And I said why not take the gun
2 because I don't know what's in this house. They can come
3 and get this gun while I'm on my way out this door. So I
4 grabbed the gun and I got out, and I got out in the car.
5 And I went around the corner, and that's when I disposed of
6 the handgun.

7 Q Okay. Where did you dispose of the handgun?

8 A It's this red building around the corner from, from
9 Miller Road. And there's a pathway that leads to this big
10 lake. And I threw it out there.

11 Q So you threw it in the lake. How far would that be
12 from, say, Cornell's house?

13 A Like just about, I mean, you have to put the picture
14 up. You hold the picture up, and I can show you.

15 Q All right. I'm showing you what's marked as State's
16 Exhibit 18. Is this the picture you're speaking of?

17 A Yes. It's like, it's a road that goes to the top, and
18 then you curve around here, and you come around. It's back
19 down right in there, the red building, the other side of
20 the trees.

21 Q And you threw the gun out in the middle of the lake?

22 A Yes, sir.

23 Q What about the shotguns?

24 A I left them in there.

25 Q You left them in where?

Russell Lee Sims
Direct examination by Mr. McPherson

1 A I left them in the car.

2 Q Okay. And then what did you do?

3 A Then I went, I came back to Spartanburg.

4 Q Okay. Where did you go when you came back to
5 Spartanburg?

6 A First I stopped by a friend's and then I went to my
7 mother's house.

8 Q Okay. What's the friend's name whose house you went
9 by?

10 A The friend's name is, we call him Pop, but his real
11 name is Clearance -- Clearance.

12 Q Do you know his last name?

13 A Yeah. Clearance Sinclair.

14 Q Okay. And why did you go by the Sinclairs --
15 Sinclair?

16 A Sinclair.

17 Q Okay. Why did you go by there?

18 A I went there because I knowed I needed some, after I,
19 after I had got into it, after I got into another, another,
20 knowing I got myself deeper into the trouble that I didn't
21 mean to get into, they was shocking me, that I knew I was
22 going to need some witnesses.

23 So I gave him the weapons. I never told him where I
24 got the weapons, but just to hold the weapons for me. I
25 told him to hold the gun. And I said somebody pulled it on

Russell Lee Sims
Direct examination by Mr. McPherson

1 me and I got them. I never hold him how I got it or
2 whatever. I just told him to hold the weapon for me. And
3 I went to another friend.

4 Q Okay. Who is the other friend you went to?

5 A Other friend's name is Al.

6 Q And why did you go to that friend?

7 A I went to him to give him the other shotgun. I gave
8 Clearance the 20-gauge and I gave Al the Mossberg pump.

9 Q Okay. Then what happened?

10 A And then I was stopped right over -- I went over to
11 some local friend's house which Diane knew about, that we
12 go over there on certain days, certain occasions. And I
13 went and I took the car over there. And then I called her
14 and I told her to come and get her car, come and get her
15 money and all of this stuff. And she told me she was going
16 to come and get it.

17 Then I called back later and she said, I said why
18 didn't you come and get it. She said, no, I'm not going to
19 coming to get it, you're going to try to kill me, you're
20 going to try to kill me. I said ain't nobody trying to
21 kill you, if I wanted to kill you it would have happened
22 that day. I'm not, I'm not, I ain't trying to kill nobody.
23 That's the point I was trying to get to her. Mr. Jackson
24 was alive and Cornell was alive and Derrick was alive as
25 far as I know, because he moved from that spot. So I know

Russell Lee Sims
Direct examination by Mr. McPherson

1 he was alive.

2 Q Okay. But you told Diane she could come and get her
3 car.

4 A Yes, I did.

5 Q Okay. Now, would you have shot Mr. Jackson, Robert
6 Jackson, if he had not threatened you with this shotgun
7 first?

8 A No, sir.

9 Q Would you have shot Derrick if he had not threatened
10 you with his shotgun first?

11 A No, sir.

12 Q Would you have not shot -- would you or would you not
13 have shot Cornell if he weren't going for that weapon?

14 A No, sir. I was waiting on him to ask me what was
15 going on. But even at though, instead of asking what
16 happened, I could have told him that I shot Derrick by
17 mis -- Derrick pointed the gun at me and I shot him, then
18 have told him about the other situation. But he dived.
19 And when he dived, I seen the gun by his, by the end of his
20 feet.

21 Q Now, did you believe you were in imminent danger of
22 losing your life --

23 A Yes, I did.

24 Q -- with Mr. Jackson?

25 A Yes, I did.

Russell Lee Sims
Direct examination by Mr. McPherson

- 1 Q With Derrick?
- 2 A Yes, I did.
- 3 Q And when Cornell was going for the gun?
- 4 A Yes, I did.
- 5 Like Cornell, like Cornell said, we never had any
- 6 previous, previous problems with each other. We got along
- 7 well. He was a good person the way I see it. But after I,
- 8 you know, you know, if you hear some gunshots, you run
- 9 toward the gunshots and you die right by a weapon, that,
- 10 that tells anybody something, anybody.
- 11 Q Could you have avoided being shot if you had just
- 12 turned and left the situation?
- 13 A No, sir.
- 14 Q Did you honestly believe that they would have shot
- 15 you, all three of these people would have shot you, if you
- 16 hadn't have acted in self-defense?
- 17 A Could you repeat that?
- 18 Q Did you believe there was no other, you had no other,
- 19 alternative other than to shoot them?
- 20 A Oh, yes, I believe I had no other alternative.
- 21 Q Were you afraid of losing your own life?
- 22 A Yes, I was. Don't say nothing about that.
- 23 Q Now, you made some phone calls from the jail, is that
- 24 correct?
- 25 A Yes, I did.

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 Q And.

2 MR. MCPHERSON: I have no further questions.

3 THE COURT: Solicitor.

4 MR. GOWDY: May it please the court, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. GOWDY

7 Q Mr. Sims, that is a fascinating story that you just
8 told the jury, which makes me wonder.

9 MR. MCPHERSON: Your Honor, objection. He's
10 testifying instead of asking questions.

11 THE COURT: I sustain the objection. Don't make
12 comments.

13 Q Which makes me wonder, Mr. Sims, why that is the first
14 time any of us have ever heard it.

15 Do you remember on May 22nd being interviewed by that
16 man sitting right there in the blue shirt?

17 A Being interviewed?

18 Q Do you remember that? Do you remember when he came to
19 the jail and asked you what happened?

20 A That's all I remember him asking me.

21 Q Do you remember that, because you signed your name to
22 a waiver of rights form? You remember that, don't you,
23 Mr. Sims?

24 A No.

25 Q You don't remember him coming to the jail and

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 interviewing you on May the 22nd?

2 A He didn't interview me.

3 Q That's a yes or no question. Do you remember him
4 coming to you --

5 MR. McPHERSON: Your Honor, I'm going to object.

6 Q -- and asking you what happened?

7 MR. McPHERSON: Your Honor, objection.

8 THE COURT: Wait just a minute.

9 What is the objection?

10 MR. McPHERSON: The objection is he won't let him
11 answer the question.

12 MR. GOWDY: I am going to give him a chance to answer.

13 MR. McPHERSON: He's making him give yes or no, and he
14 won't let him answer the question.

15 THE COURT: Well, if it's a direct question that can
16 be answered with a simple yes or no, you can do that. If
17 you need to explain it, you are permitted to do that also.

18 A Oh, we're good, we're good. No.

19 Q Do you remember being interviewed by that man right
20 there?

21 A Interviewed? I remember him being there.

22 Q He came and asked you questions. Do you not know what
23 interview means?

24 MR. McPHERSON: Objection. He won't let him finish
25 answering the questions.

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 A What do interview mean? I just talked to him.

2 Q Do you know what interview means?

3 THE COURT: Just a minute, please. Just a minute.

4 MR. McPHERSON: I have an objection.

5 MR. GOWDY: Yes, sir.

6 MR. McPHERSON: He won't allow him to finish answering
7 the questions.

8 THE COURT: Well, I thought he was finished. But be
9 certain he's through before you ask him the next question.

10 MR. GOWDY: Yes, sir, Your Honor.

11 Q Do you know what it means to be interviewed?

12 A If you want a yes, then yes.

13 Q No. I want the truth, Mr. Sims. Do you know what it
14 means to be asked questions?

15 A Yes, I do.

16 Q Okay. Did that detective ask you questions on May the
17 22nd at the Spartanburg County Detention Center?

18 A He only asked me a couple of questions. I told him
19 what I wanted to tell him.

20 Q Right. You never once told that detective that Robert
21 Jackson had a gun, never once told him.

22 A I never once told him what went on either.

23 Q Yes, you did. You told him you thought Mr. Jackson
24 was going to get a gun. You never once said he had one.

25 MR. McPHERSON: Objection. He didn't ask a question.

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 THE COURT: Overruled.

2 A Well, first of all, I just told him things that go on,
3 and he put his own statement together and came back on July
4 the 8th to get a signature because he didn't get no
5 signature on that day because I did not fill out a
6 statement. So he called hisself saying putting it in print
7 and putting it in cursive so he can make like I got this on
8 this date and this on that date.

9 Q What in the world are you talking about, Mr. Sims?
10 What I asked you -- I didn't ask you anything about cursive
11 or print. Don't look at your defense attorney. Look at me
12 when I'm asking you questions.

13 A I will.

14 Q I didn't ask you anything about cursive or print.
15 What I asked you is did you deny, do you deny telling that
16 detective that you thought 75-year-old Robert Jackson was
17 going to get a gun and you shot him because you thought he
18 was going to get a gun. Do you deny it or do you admit it?

19 A I deny it.

20 Q You deny it. Do you deny telling this detective that
21 you heard shots from Robert Jackson's residence as you were
22 riding down Miller Road?

23 A I told him that.

24 Q Okay.

25 A But this wasn't on that day.

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 Q Then what day would you possibly have been talking
2 about, Mr. Sims, other than the day Mr. Jackson was shot
3 and Mr. Hall was shot?

4 A Well, if you want to know, by the time he got to the
5 one to give the statement, I didn't, I didn't tell him the
6 statement. I was telling him things that go on in the
7 neighborhood. And then before he got to the statement he
8 put his own statement together. I didn't, I didn't fill
9 out no statement. I didn't write no statement. I didn't
10 sign no signature. Proceed.

11 Q You will agree with me that you had an opportunity on
12 May the 22nd --

13 A I had an opportunity, yes.

14 Q -- to tell that detective what you just told this
15 jury.

16 A Yes.

17 Q And you never once did it, right?

18 A Right.

19 Q Never said one word about anybody named Sinclair or Al
20 or the shotgun being taken. Not one single word two days
21 after this shooting when you were so concerned about Robert
22 Jackson's condition you wanted to stop by and tell Cornell
23 that you just shot him. Two days after that you never once
24 told that detective anything about two shotguns being
25 taken, did you?

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 A No.

2 Q Okay. Where are those shotguns?

3 A Because I was going to tell my brother's friend. I
4 said I won't talk to nobody but my attorney.

5 Q Well.

6 A That's why I didn't tell them nothing.

7 Q Well, we're going to get to your attorney in just a
8 second, Mr. Sims. Right now I'm talking to you about those
9 shotguns. When can we expect? When can this jury expect
10 those two witnesses to bring in those two shotguns you gave
11 them?

12 A Whenever they're contacted.

13 Q Okay. Well, that's your job, Mr. Sims, isn't it? You
14 knew you were going to be on trial.

15 A You can't use them phones in there.

16 Q When can we expect Mr. Sinclair and Mr. Al to bring
17 the two shotguns that you just told this jury you gave to
18 them?

19 A I can't keep up with them.

20 Q You admit that on May the 22nd you never once said one
21 word to this detective about two shotguns being taken.

22 Agreed?

23 A I agree.

24 Q You agree with me that you did not tell this detective
25 on May the 22nd that Robert Jackson had a shotgun, pointed

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 it at you, clicked it where you could hear it and you shot
2 him in the throat only to defend yourself. You never once
3 told that detective that on May the 22nd, did you?

4 A Isn't that the same question?

5 Q How about the same answer? What's the same answer,
6 Mr. Sims?

7 A The same answer is no.

8 Q Okay. I want to see if I understand what happened on
9 May the 20th. You were riding in the car with a lady
10 that's driving, Diane Jackson, right? And in the back is
11 her 11-year-old daughter China, correct? And in the middle
12 is a two-year-old named Jerohmia. Correct? I need an
13 answer. The court reporter's got to take it down. We
14 can't just nod our head.

15 A Correct.

16 Q And then beside Jerohmia on the other side is a little
17 child named India, right?

18 A Correct.

19 Q And you threw Jerohmia's ball out the window. And
20 they all got upset with you, correct?

21 A Correct.

22 Q Okay. And then you started taking instructions from a
23 two-year-old on whether or not you should fire your weapon
24 out the window. Did I understand that part of it
25 correctly?

Russell Lee Sims
Cross-examination by Mr. Gowdy

- 1 A I did ask them that, correct.
- 2 Q You turned around and asked a two-year-old whether --
- 3 how old are you?
- 4 A I'm 21.
- 5 Q You asked a two-year-old whether you should fire a
- 6 weapon out of a moving car.
- 7 A There was no one around; there was nobody around. I
- 8 didn't try to shoot nobody. It was wooded area.
- 9 Q There were people in the car, weren't there, Mr. Sims?
- 10 A We were off the highway by then.
- 11 Q There were people in your car, weren't there?
- 12 A Yes, there were.
- 13 Q And they were upset, correct?
- 14 A Yes, they were.
- 15 Q They were crying, correct?
- 16 A Yes, they were.
- 17 Q Did they ask you to quit?
- 18 A No, sir.
- 19 Q They never asked you to stop shooting the gun.
- 20 A No, sir.
- 21 Q All right. So you've got crying children; you've got
- 22 a crying mother; you've got you shooting a gun out the
- 23 window, correct?
- 24 A Correct.
- 25 Q You've got you firing another shot right in front of

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 Cornell Hall's house, because that's where they found the
2 shell casing, right?

3 A Correct.

4 Q And fired it again. All right. And Robert Jackson is
5 just sitting in his house, a 75-year-old man, minding his
6 own business. And his grandkids and his daughter show up,
7 and they're screaming and they're crying. And you get out
8 with a gun, right?

9 A Correct. But they weren't screaming.

10 Q Were they laughing, Mr. Sims?

11 A By the time I got in the house.

12 Q They didn't go run and hide?

13 A They didn't go run and hide.

14 Q They didn't go run and hide in the closet.

15 A In the closet?

16 Q They didn't go run and hide inside the house.

17 A Where they going to hide at?

18 Q Well, they weren't outside. They didn't watch you
19 shoot Mr. Jackson, did they?

20 A Who did? Who watched me shoot Mr. Jackson?

21 Q You did.

22 A Exactly.

23 Q They were scared and they ran inside, correct?

24 A If they were scared, if they felt that, I mean, if
25 they felt as though I was that violent, wouldn't they have

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 told their grandfather to come in the house too?

2 Q Well, Mr. Sims, you raise a really good point, and I'm
3 glad you mentioned that, because here's a man -- it's his
4 house, right, not yours?

5 A Uh-huh.

6 Q It's his house. You ain't got a house, do you?

7 A Do I have a house?

8 Q That's a simple question. Do you have a residence?

9 A Yes, I have a residence.

10 Q Of your own?

11 A No, sir.

12 Q All right. You're staying at another man's house,
13 right?

14 A Uh-huh.

15 Q All right. You're staying in his house. His
16 grandkids come up screaming and hollering. You're firing a
17 weapon. You come in and you start reloading that weapon.
18 And you want the jury to believe that he didn't have a
19 right to do anything about it?

20 A For one, he didn't even see my weapon. Nobody seen my
21 weapon until afterwards.

22 Q You were reloading it, weren't you --

23 A With my back turned.

24 Q -- to go target shooting?

25 A With my back turned. The Jeep is out in the --

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 Q How do you know --

2 A The Jeep is out in the parking lot. I had the Jeep.
3 For one, the gun was up under my clothes when I took the
4 clothes back outside on top of the Jeep. He didn't see no
5 gun.

6 Q You reload the gun under your clothes, Mr. Sims?

7 MR. MCPHERSON: Your Honor --

8 A If he do re-up me, why was he asking me what re-up
9 means, if he seen my gun?

10 Q I guess because he's a 75-year-old.

11 THE COURT: Just a minute, now. You have to take
12 turns with the questions and answers. We have got to have
13 a pause there.

14 MR. GOWDY: Yes, sir, Your Honor.

15 Q My question to you, Mr. Sims, is simply this.

16 Mr. Jackson came outside to find out what the gunshots
17 were about, what his grandchildren were crying about, what
18 his daughter was crying about, why they rushed into his
19 house. And he comes out and he finds you with a gun,
20 correct?

21 A No, sir. He was already outside. I went in the
22 house. Him and Diane was talking.

23 Q You went inside to get more bullets.

24 A You forgot to mention that.

25 Q You went inside to get more bullets, didn't you --

Russell Lee Sims
Cross-examination by Mr. Gowdy

- 1 A Yes, I did.
- 2 Q -- because you were going to target shoot.
- 3 A Target shoot?
- 4 Q That's what you said.
- 5 A I mean, if that's -- if she didn't come outside that's
6 what I was going to do.
- 7 Q At night.
- 8 A Yeah, at night.
- 9 Q Okay.
- 10 A I shot out the window at night. Nobody was around. I
11 normally go to the woods and shoot.
- 12 Q When is Mr. Sinclair or Clearance or Al coming to
13 testify before this jury about those two shotguns?
- 14 A They can do it as soon as I get them.
- 15 Q Can we expect them today?
- 16 A Can I get a phone today, get a phone call?
- 17 Q Sure. You've got two lawyers over there. Both of
18 them have phones.
- 19 On July the 8th do you remember telling this detective
20 that he couldn't charge you with murder and that these
21 charges wouldn't stick because your uncle was one of the
22 richest men in Spartanburg?
- 23 A Was that on the statement?
- 24 Q Do you remember saying that?
- 25 A No, sir.

Russell Lee Sims
Cross-examination by Mr. Gowdy

- 1 Q You deny saying that.
- 2 A No, sir.
- 3 Q Well, do you deny it, or do you not?
- 4 A I deny it.
- 5 Q Mr. Sims, after you shot Robert Jackson you did not
6 call 9-1-1.
- 7 A Diane had the cell phone.
- 8 Q Okay. So the answer is no.
- 9 A The answer is no.
- 10 Q Okay. You did not call 9-1-1. You did not stop to
11 render aid to him, correct?
- 12 A Render aid how?
- 13 Q Help him, comfort him.
- 14 A So I'm going to stay out there by myself while she is
15 closing the door?
- 16 Q Did you or did you not?
- 17 A I did not.
- 18 Q Okay. You left.
- 19 A I didn't see -- I didn't see blood.
- 20 Q You left in her car.
- 21 A Uh-huh.
- 22 Q All right. And you want the jury to believe that you
23 stopped at Cornell's house. You wouldn't stay where you
24 were, but you stopped at Cornell's house just to let him
25 know what was going on.

Russell Lee Sims
Cross-examination by Mr. Gowdy

- 1 A Uh-huh.
- 2 Q Okay. Now, that's the first time you ever told that
3 sorry, correct?
- 4 A Yes, sir.
- 5 Q You never told him that on May the 22nd.
- 6 A No, sir.
- 7 Q All right. And your attorney made reference to some
8 telephone calls from prison. You will agree with me that
9 in the phone conversations you had with all of the folks
10 since you've been in prison you never once told a single
11 solitary soul that you stopped by the Hall house to let
12 Cornell know what was going on.
- 13 A I don't tell everything if you're not my attorney.
- 14 Q Well, you've never told this before. In fact, when
15 you were interviewed by Detective Bryant you didn't even
16 remember shooting Cornell, did you?
- 17 A Huh?
- 18 Q He had to remind you that you shot a second guy
19 inside.
- 20 A Did I write that?
- 21 Q Do you remember denying initially that you shot
22 Cornell?
- 23 A I do deny it.
- 24 Q Okay.
- 25 A On this statement.

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 Q You said that you saw a shotgun. Did it ever dawn on
2 you, did it ever occur to you that it might be a good idea
3 to just keep driving? Never dawned on you.

4 A No, because by the time I would have got to
5 Spartanburg the police probably would have been on my
6 behind. So I had to tell them.

7 Q Well, they were anyway, weren't they?

8 A No.

9 Q They didn't come and arrest you?

10 A No.

11 Q The police never arrested you, Mr. Sims? How did you
12 get here?

13 A This actually was taken on -- this actually happened
14 May the 20th. I was arrested on May 22nd.

15 Q Right. And how long -- when did they start looking
16 for you, Mr. Sims? On the 20th, right?

17 A No, sir. They wasn't looking for me on the 20th. She
18 knowed exactly where I been. She gave them locations or
19 they wouldn't have found me that evening.

20 Q You want the jury to believe --

21 A I didn't run.

22 Q You want this jury to believe that you stopped by
23 Cornell Hall's house just to let him know that you'd shot
24 his Uncle Robert.

25 A No, not just to let him know, to let him know why I

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 shot his -- Robert Jackson.

2 Q Mr. Sims, you've made a series of phone calls since
3 you've been in the jail, haven't you?

4 A I suppose.

5 Q Do you understand the question? You called Diane.

6 A Uh-huh.

7 Q You asked her to drop charges, right?

8 A Asked her to drop everything but the, the shooting
9 charge.

10 Q You have blamed pills that you were supposed to be
11 taking. Do you remember doing that in one of your
12 telephone calls? Do you remember claiming that you blacked
13 out?

14 A That I blacked out?

15 Q Uh-huh.

16 A I think I remember saying that.

17 Q Okay. Do you remember denying to your own mother that
18 you shot Derrick or Cornell?

19 A I didn't want to put no stress on my mother, so I
20 didn't tell my mother pretty much anything until she come
21 to visit me at that point.

22 Q Do you think shooting one person would not have been
23 too much stress, but if she found out you shot three that'd
24 be too stressful?

25 A I mean, if I had been convicted of shooting and they

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 just automatically came and got me for shooting them, then
2 it would have been stressful.

3 Q Mr. Sims she asked you why you shot Mr. Jackson. Do
4 you remember what you said?

5 A She wasn't doing that out to hurt me or nothing.

6 Q My question is do you remember what she said. Do you
7 remember what you said to your mother, that you had to pop
8 the old dude? Those are your words. You had to pop the
9 old dude because you thought he was going to get a gun. Do
10 you remember saying that? Don't look at your lawyer,
11 Mr. Sims.

12 A I didn't anything about the papers. No.

13 Q Do you remember denying specifically ever shooting
14 Cornell or Derrick Hall?

15 A Are you talking -- I'm talking to who?

16 Q Does it matter?

17 A Yes, it does.

18 Q Is it depending on who you're talking to as to whether
19 or not you tell the truth or not, Mr. Sims?

20 A Yes, sir.

21 Q So when you're talking to him, it's not the truth.

22 A When I'm talking to Jason Bryant?

23 Q Yeah. Is that the truth then?

24 A I didn't tell him nothing. What I told him was --

25 Q Right. That's my point kind of. You didn't tell him

Russell Lee Sims
Cross-examination by Mr. Gowdy

- 1 any of what you just told this jury.
- 2 A Uh-uh.
- 3 Q Didn't --
- 4 A You got it off their statements basically, a couple of
5 things I said and a couple of things they said. He tried
6 to put it together and make his own statement.
- 7 Q All right. Do you remember blaming pills you were
8 taking?
- 9 A No, sir.
- 10 Q Remember saying you blacked out?
- 11 A Yes, sir.
- 12 Q Do you remember saying, well, actually you've never
13 said that Mr. Jackson had a gun. The first time you ever
14 have said that was today, correct?
- 15 A Yes, sir.
- 16 Q Never once said it to anybody else until you came in
17 front of this jury on a murder trial and decided that you
18 needed to change your story because having access to a gun
19 might not be good enough. I have to actually put a gun in
20 his hand, so I'm going to change my story.
- 21 A Not true. Why would I explain my defense?
- 22 Q To your mother?
- 23 A To anybody.
- 24 Q You could have driven by Cornell and Derrick Hall's
25 house, correct?

Russell Lee Sims
Cross-examination by Mr. Gowdy

- 1 A Uh-huh.
- 2 Q You could have just kept going and thrown the gun in
3 the lake like you wound up doing, right?
- 4 A And then it would have looked like I just shot and
5 left, because Diane was the only witness.
- 6 Q It can still look that way, Mr. Sims. It can still
7 look that way.
- 8 A Okay.
- 9 Q You go into a house. Were you invited in?
- 10 A Invited where?
- 11 Q Into the Hall house.
- 12 A I didn't just go into their house.
- 13 Q That's a very simple question and I want a simple
14 answer to it. Were you ever invited into Cornell Hall's
15 house? And, if so, by whom?
- 16 A No.
- 17 Q Okay. You deny ever being invited into the house. So
18 if you came into the house it was without permission,
19 correct?
- 20 A It was without permission?
- 21 Q Correct.
- 22 A No. I had permission to come there.
- 23 Q From whom?
- 24 A I mean, if I go to their house, they automatically
25 know. They know who I am anyway.

Russell Lee Sims
Cross-examination by Mr. Gowdy

- 1 Q All right. You're missing my question, Mr. Sims. Did
2 anybody give you permission on May the 20th to come into
3 Cornell's house at [REDACTED] Road?
- 4 A No, sir.
- 5 Q All right. So you came in without permission.
6 Agreed?
- 7 A Agreed.
- 8 Q And you came in with a gun.
- 9 A Agreed.
- 10 Q All right. And when you came in you shot twice as
11 soon as you got through the front door because there are
12 two shell casings right near the front door.
- 13 A That's my point exactly.
- 14 Q You shot Derrick once and then you shot at somebody
15 else.
- 16 A Who is that somebody else?
- 17 Q And Derrick runs away from the gun, right?
- 18 A Derrick drops the gun and runs.
- 19 Q He runs away from the gun. And all you had to do was
20 pick it up. If that's what you were concerned about, you
21 could have picked it up.
- 22 A I closed the door. I didn't see. I looked, I looked.
23 I, I put my head back when I closed the door. I thought he
24 was going to still shoot the shotgun off. So them shotgun
25 shells, they spread. I know they spread. So I got out of

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 the way, and I didn't hear no shots. So I looked back in
2 the door, and he wasn't in there.

3 Q So you closed the door. And you could have left if
4 you wanted to.

5 A I ain't going to just leave just --

6 Q Here is what I don't understand, Mr. Sims.

7 Mr. Jackson has a gun. You want this jury to believe that
8 you were so fearful for your life that you had to shoot him
9 twice. He never once shot you, correct?

10 A I would have been shot.

11 Q There are no marks on you, right?

12 A No marks?

13 Q There are no gunshot wounds on you, are there?

14 A No, sir.

15 Q All right. So Mr. Jackson was going to shoot you, but
16 he never got around to it. And you shoot him twice, right?

17 A Yes, sir.

18 Q And then Derrick's going to shoot you, but he never
19 got around to it. So you shoot at him twice.

20 A No, sir.

21 Q Well, you shot twice, didn't you?

22 A I shot him once.

23 Q Okay. What's the other shell casing? Whose gun did
24 that come from?

25 A You could have fooled me.

Russell Lee Sims
Cross-examination by Mr. Gowdy

- 1 Q You fired four times inside that residence, Mr. Sims.
- 2 A No, I didn't.
- 3 Q The four shell casings, somebody plant those?
- 4 A Well, how many times was Cornell shot?
- 5 Q Twice.
- 6 A Okay. Then that's three shots.
- 7 Q Right. And what I'm asking you, Mr. Sims, is where
- 8 the fourth one came from.
- 9 A You tell me.
- 10 Q I'm asking you. I wasn't there. You're the one that
- 11 shot him, Mr. Sims.
- 12 A I shot, but I didn't see. Is there any holes in the
- 13 walls, any pieces of printouts of holes or anything in the
- 14 wall?
- 15 Q Mr. Sims, Robert Jackson had a gun according to you.
- 16 Never used it. And you shot him twice. Derrick has a gun
- 17 according to you. Never uses it. You shoot at him. You
- 18 shoot him at least once. Can we agree on that?
- 19 A Uh-huh.
- 20 Q And there are two shell casings right where he was
- 21 standing. And then we get to Cornell who doesn't have a
- 22 gun, who has never owned a gun, who has never had a gun in
- 23 his house, won't allow them and you shoot him twice.
- 24 A How am I supposed to know what that man had?
- 25 Q And it's everybody else's fault, isn't it, Mr. Sims?

Russell Lee Sims
Cross-examination by Mr. Gowdy

- 1 A Pretty much.
- 2 Q It's everybody's fault but yours. You didn't do
3 anything wrong, did you?
- 4 A Protect myself.
- 5 Q You're shooting down the roadway.
- 6 A You said that's what I did wrong, like that.
- 7 Q Shooting down the roadway, bringing a gun to another
8 man's house who asked you not to come back to his house and
9 going into a house without permission that you were not
10 invited to.
- 11 A Who asked me not to come back to their house?
- 12 Q I thought you told us -- I thought you said
13 Mr. Jackson didn't want you coming back to his house.
- 14 A When why I come back up there?
- 15 Q I guess because you're going to do what you want to
16 do, Mr. Sims, because he's a 75-year-old man and he can't
17 tell you what to do.
- 18 A No, because Diane told me that he let that go and he
19 wasn't worried about it any more.
- 20 Q Well, then why did you have to bring a gun back if you
21 weren't worried?
- 22 A Because I purchased my gun, and I wasn't going to just
23 leave my gun anywhere.
- 24 Q What do you need a gun for, Mr. Sims?
- 25 A I bought a gun because prior to all of that my brother

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 was shot. I was with my brother. My brother was shot in
2 the leg. We were standing outside having a good time, and
3 we got caught up between some shootout, people having a
4 shootout.

5 Q So you thought you might need it riding in the car
6 with Diane and three children. Thought you might be in
7 some kind of danger.

8 A Oh, it was also for their protection.

9 Q For their protection?

10 A Yes, sir. They wasn't complaining before, not at all.

11 Q You reload the gun at Mr. Jackson's house, correct?

12 A Yes, sir.

13 Q You admit now that you could have driven past that
14 Hall residence. You did not have to stop, right?

15 A I did not have to stop, right.

16 Q So you agree with me that your telling people in the
17 past that Derrick was on the front porch pointing the
18 shotgun at you was a lie.

19 A Who did I tell in the past?

20 Q Oh, well, you told him, you told people on the
21 telephone.

22 MR. McPHERSON: Your Honor, I'm going to object to
23 him, to the prosecutor --

24 A I thought he said something about a shooting.

25 THE COURT: Just a minute, just a minute, please.

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 A He said something about a shooting. I don't remember
2 hearing that.

3 THE COURT: Mr. Sims, I'm trying to address a
4 question. Will you please be quiet right now?

5 THE WITNESS: Yes, sir.

6 THE COURT: Sir?

7 MR. MCPHERSON: I'm objecting because they've switched
8 roles and the prosecutor is answering the questions. And
9 he was allowing the defendant, Russell Sims, to ask him a
10 question and then he was answering.

11 THE COURT: Okay. Mr. Sims, don't ask Mr. Gowdy any
12 questions unless you don't understand a question. Then you
13 can ask him to clarify it. So don't ask him any questions
14 unless you're asking him to clarify the question he's
15 asking.

16 And, Mr. Gowdy, don't answer any of his questions.

17 MR. GOWDY: Yes, sir, Your Honor.

18 THE WITNESS: Yes, sir.

19 Q You admit, Mr. Sims, that you could have driven past
20 Cornell Hall's house and never stopped there.

21 A You just asked that question.

22 Q How about an answer?

23 A I said yes.

24 Q All right. So Derrick was not standing on the front
25 porch. Nobody was pointing a shotgun at you. You could

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 have just driven off.

2 A I could have driven off. But when I got there he was
3 pointing a shotgun at me.

4 Q All right. But you didn't have to stop. You brought
5 yourself to it, right? Nobody made you go.

6 A What made him go there with a shotgun if he wasn't
7 intending on using it? That's the question you need to
8 worry about, I think.

9 THE COURT: Mr. Sims -- excuse me. Mr. Sims, as I
10 just instructed you, don't ask Mr. Gowdy any questions
11 about what happened or why somebody did something or didn't
12 do something. You can ask him a question if you need for
13 him to clarify some question he's asked you, but don't ask
14 him what happened out there. Do you understand?

15 THE WITNESS: Okay. I'm sorry.

16 Q You threw one gun in the lake according to your story.

17 A Yes, sir.

18 Q All right. And you gave two -- one shotgun to one
19 friend and one shotgun to another friend.

20 A Yes, sir.

21 Q All right. And I'm going to ask you, and this is
22 going to be my final question to you. When can we expect
23 either one of those men to come and testify that you
24 brought them a shotgun between May 20th and May 22nd?

25 A When can they testify between May 20 and --

Russell Lee Sims
Cross-examination by Mr. Gowdy

1 Q When can this jury hear from somebody other than you
2 that you took shotguns by two people's house?

3 A It'll be tomorrow if they want to be, or whenever,
4 today.

5 Q We'll see if that happens.

6 MR. McPHERSON: Your Honor, I'm going to object to him
7 making comments.

8 THE COURT: All right. Don't comment.

9 MR. GOWDY: Yes, sir, Your Honor.

10 THE COURT: Do you have any other questions you want
11 to ask of the witness?

12 MR. McPHERSON: No, Your Honor.

13 THE COURT: All right. Thank you. You may step down,
14 Mr. Sims.

15 Ladies and gentlemen, we're going to recess for the
16 afternoon.

17 So let me caution you again. During the overnight
18 recess don't talk about the case; don't allow yourselves to
19 be exposed to any type of media coverage that might relate
20 to the case; don't allow anyone to try to discuss the case
21 with you; do not conduct any research or do your own
22 investigation into any issue.

23 With that, you're excused for the afternoon. Have a
24 good evening.

25 Please report directly to your jury room at 9:30 in

1 the morning, 9:30 in the morning.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Let me see y'all just a minute, please.

5 (Bench conference held off the record.)

6 THE COURT: All right. Court is in recess until
7 9:30 in the morning.

8 END OF PROCEEDINGS JANUARY 23, 2007

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1 (Proceedings January 24, 2007)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Any matters to address before the jury is
5 brought in?

6 MR. GOWDY: Not from the state, Your Honor.

7 MR. MCPHERSON: Not from the defense.

8 THE COURT: Is the defense going to be offering any
9 additional testimony or evidence?

10 MR. MCPHERSON: No, sir.

11 THE COURT: Is there any reply?

12 MR. GOWDY: No, sir, Your Honor.

13 THE COURT: Are there any instruction requests?

14 MR. MCPHERSON: Yes, sir.

15 THE COURT: Okay. Well, let me hear from you.

16 MR. MCPHERSON: Judge, we are requesting self-defense
17 and manslaughter.

18 THE COURT: Well, just go back to the table. We need
19 to announce this so that the court reporter can get it all
20 down.

21 All right. Tell me your specific requests, Mr.
22 McPherson.

23 MR. MCPHERSON: Okay. We are requesting self-defense
24 on the murder charges and the assault and battery with
25 intent to kill charges. We're asking for special requested

1 charge, this request, number one, whether or not defendant
2 has to retreat and if it's not possible and he did
3 everything that appears reasonable, he has a right to stand
4 his ground.

5 We -- the jury, request number one, if the other
6 requirements for the right to use deadly force and
7 self-defense are satisfied the defendant need not retreat
8 in order to avoid the need for preventive force if it is
9 not possible or did not reasonably appear possible to
10 retreat without danger of being killed or suffering serious
11 bodily injury.

12 THE COURT: Okay. What else?

13 MR. McPHERSON: Okay. Number two, request number two,
14 is imminent danger, the defendant has a right to react to
15 imminent danger.

16 THE COURT: Okay.

17 MR. McPHERSON: Number three is the amount of force
18 the defendant uses, he doesn't have to -- it's few words --
19 have speculate as to what amount of force he has to use.

20 THE COURT: Okay.

21 MR. McPHERSON: Number four, the appearances from the
22 perspective of the defendant in the self-defense issue.

23 THE COURT: Okay.

24 MR. McPHERSON: Number five, words accompanied by
25 hostile acts. This would be primarily with Mr. Jackson.

1 THE COURT: Okay.

2 MR. McPHERSON: Number six would be prior
3 difficulties. I believe there was testimony regarding a
4 prior difficulty between Mr. Jackson and R. L. Sims, the
5 defendant.

6 THE COURT: Okay.

7 MR. McPHERSON: Number seven, threats by assailant.
8 That would be that Robert Jackson had threatened to kill R.
9 L. Sims in the past.

10 THE COURT: Okay.

11 MR. McPHERSON: Number eight was withdrawn and so
12 noted on our first page.

13 THE COURT: Okay. Well, I don't have number eight, so
14 but anyway.

15 MR. McPHERSON: Anyhow, I withdraw number eight.

16 THE COURT: Okay.

17 MR. McPHERSON: Number nine, we're asking for
18 voluntary manslaughter under the self-defense issue if you
19 find that the defendant believed that he was in danger of
20 serious bodily injury and death and believed that deadly
21 force was necessary to avoid this danger, but if you find
22 either of these beliefs was not reasonable, then you should
23 consider whether the threat constituted adequate legal
24 provocation as the term used in defining the crime of
25 voluntary manslaughter.

1 So we are asking that you give the voluntary
2 manslaughter charge as to, as it pertains to, Robert
3 Jackson.

4 THE COURT: All right.

5 MR. McPHERSON: And number ten, we are asking for a
6 lesser included offense of assault and battery of a high
7 and aggravated nature on the, on the Derrick Hall and
8 Cornell Hall, and that there was testimony that the
9 defendant did not intend to kill anyone.

10 THE COURT: Okay. Anything else?

11 MR. McPHERSON: That's it.

12 THE COURT: All right. Mr. Gowdy, what's the state's
13 position on the self-defense request?

14 MR. GOWDY: Your Honor, with respect to the Robert
15 Jackson incident, I do think there is a factual predicate
16 no matter how incredible it is for self-defense with
17 respect to Robert Jackson.

18 I think it is a much, much closer question with
19 respect to Cornell and Derrick Hall.

20 Of course we defer to the Court's wisdom on this
21 matter, and the Court's going to do what the Court thinks
22 the evidence tends to show, but as I recall the evidence,
23 and I don't think there is any conflict in it, this
24 defendant brought a gun up to the home of Cornell Hall.
25 The state's witnesses said they saw it; he admitted he

1 brought it up.

2 I believe that even if this defendant's testimony was
3 correct and that Derrick Hall had a gun he would have been
4 justified at having one given the circumstances, the shots
5 being fired, the shots being fired down the roadway and
6 this defendant coming up with the gun. That's with respect
7 to Derrick Hall.

8 It is an even closer question with respect to Cornell
9 Hall who there's no evidence was armed and was shot twice.
10 The second time he was shot it was either down on his knees
11 or laying down.

12 So self-defense, there is a factual predicate for
13 Robert Jackson if believed. Cornell and Derrick are
14 tougher issues. Manslaughter -- I don't remember any
15 testimony of sudden heat of passion with respect to the
16 Jackson-R. L. Sims conflict at this --

17 THE COURT: I am going to get to that in a minute.

18 MR. GOWDY: Okay.

19 THE COURT: I am just on self-defense right now.

20 MR. GOWDY: Okay. Self-defense. Jackson, I
21 understand. Cornell and Derrick Hall I'll leave up to the
22 Court, but brought a gun to somebody else's residence under
23 the circumstances surrounding that night after every single
24 witness, but it's undisputed the witnesses from the state
25 saw the gun. And he admitted he brought the gun.

1 In fact, if I remember correctly the defense put into
2 evidence at the end of the day that he brought two guns up
3 to the house, the shotgun and the handgun. So that was
4 their evidence, not ours.

5 So it is an extraordinarily close question. We
6 obviously don't think self-defense applies with Cornell and
7 Derrick, but I'll leave that up to the Court.

8 THE COURT: Well, of course, as you know, it's not for
9 me to determine the credibility of that testimony or that
10 evidence. The jury may find one way or another on those
11 types of issues. It's no question it's an extremely close
12 question. In fact, it might not be actually close at all.

13 But, nevertheless, there is some evidence I think that
14 if believed, that could perhaps support the defense of
15 self-defense.

16 Mr. McPherson, do you want to address Mr. Gowdy's
17 argument about Cornell Hall and Derrick Hall?

18 MR. MCPHERSON: Well, there is some evidence that the
19 defendant had put the gun in his back waistline, in his
20 belt waistline in his back, when he was approaching the
21 house. He looked in the house through the screen door or
22 the glass door and saw Derrick Hall pump the shotgun, and
23 then he pulls out his gun and opens the door and fires.

24 THE COURT: All right. I will instruct the jury on
25 self-defense.

1 All right. Voluntary manslaughter, Mr. Gowdy.

2 MR. GOWDY: Your Honor, I don't recall any testimony
3 with respect to any sudden heat of passion, which is an
4 indispensable element of manslaughter. Provocation aside,
5 requires both. No testimony of sudden heat of passion.

6 It's either murder or not guilty with respect to
7 Robert Jackson, would be the state's position.

8 THE COURT: Mr. McPherson.

9 MR. MCPHERSON: Well, our position would be if the
10 jury chose not to believe one of these elements, then they
11 would, could consider it as adequate legal provocation in
12 that he was acting on the spur of the moment and
13 therefore we --

14 THE COURT: Well, when you talk about the self-defense
15 argument not being established or there being some element
16 of self-defense that might be lacking, and then therefore
17 that justifies the voluntary manslaughter instruction,
18 aren't you sort of referring to an imperfect self-defense
19 argument?

20 In other words, if you don't meet -- let's assume
21 you're describing four elements. If you don't meet the
22 four and you only have three, then you have imperfect
23 self-defense.

24 Well, we don't have imperfect self-defense in South
25 Carolina. So if you're going to get a charge on voluntary

1 manslaughter, the definition of voluntary manslaughter is
2 the intentional killing of a human being in the sudden heat
3 of passion resulting from a sufficient legal provocation.

4 Sudden heat of passion upon sufficient legal
5 provocation means such as would naturally disturb the sway
6 of reason and render the mind of an ordinary person
7 incapable of cool reflection and produce what according to
8 human experience may be called an uncontrollable impulse to
9 do violence.

10 MR. MCPHERSON: Yes, sir.

11 THE COURT: In this case I don't know of any evidence
12 outside of the defendant's testimony that would give rise
13 to voluntary manslaughter.

14 And even considering the defendant's own testimony, he
15 didn't testify that he had an uncontrollable impulse based
16 upon Mr. Jackson or anybody else having a weapon. What he
17 testified to was that he intended to shoot them. He did
18 not say he intended to kill them. He did say he intended
19 to shoot them.

20 From his own testimony it was an intentional act. It
21 was a calculated act, and it was committed for the purpose
22 of defending himself. So that sounds like to me that's a
23 cool, calculated, intentional act but designed to defend
24 himself.

25 Well, if the jury doesn't believe that self-defense is

1 applicable, then it's murder. There is no heat of passion.
2 If they think self-defense is applicable, then of course he
3 is not guilty.

4 MR. MCPHERSON: Well, I believe heat of passion could
5 be inferred from the circumstances in this case.

6 THE COURT: Where? What circumstances would we infer
7 that from?

8 MR. MCPHERSON: From the fact that Mr. Jackson
9 approached him, clicked the gun and pointed the gun at him.

10 THE COURT: Well, I know, but Mr. Sims says based on
11 that act he thought somebody was going to shoot him so he
12 got his gun out and he fired in order to defend himself.

13 He didn't say he was mad at anybody or upset or out of
14 control or unable to control any sort of impulse.

15 For voluntary manslaughter to be applicable, the act
16 has to be compelled by sudden heat of passion based upon
17 sufficient legal provocation. But an intentional act, if
18 you're mistaken, I think is murder and not manslaughter
19 unless it's accident, which in this case it's not because
20 the act was intentional.

21 I'm going to decline your request to instruct the jury
22 on the law of voluntary manslaughter, but I'll note your
23 exception to it.

24 Any other request by the defense?

25 MR. MCPHERSON: Just I had requested an assault and

1 battery of a high and aggravated nature.

2 THE COURT: And I'll instruct them on that lesser
3 included offense.

4 Does the state need to be heard on that?

5 MR. GOWDY: No, sir.

6 THE COURT: All right. Anything else?

7 MR. McPHERSON: No, Your Honor.

8 THE COURT: Okay.

9 MR. GOWDY: Your Honor, could I inquire of the Court
10 as to whether the Court would consider -- there is a case
11 that stands for the proposition of one who inflicts an
12 injury on another, that is deemed by law to be, a person is
13 deemed by law to be guilty of homicide where the injury
14 contributes mediately or immediately to cause another, the
15 fact that other causes also contribute to the death does
16 not relieve the actor from responsibility. I don't know
17 what the Court's proximate cause charge is with respect to
18 the murder.

19 THE COURT: Well, it's proximate cause. It's the
20 but-for. But for the gunshot wound Mr. Jackson would not
21 have died, even though he might have had a condition sort
22 of like the egg-shell-plaintiff rule. Although he may have
23 had conditions that may have contributed to his death,
24 based upon the evidence if but-for the fact that he was
25 shot he probably would not have died, at least wouldn't

1 have died as he did, then proximate cause would be
2 established. It's, I think it's simply a but-for test.
3 You can't leave it to speculation. But if the evidence
4 supports the fact that but for that gunshot wound he would
5 not have died, then that meets the proximate-cause element.

6 MR. GOWDY: Thank you.

7 MR. McPHERSON: Judge, one more.

8 I would ask for assault and battery of a high and
9 aggravated nature on Robert Jackson also because there was
10 testimony from the doctor that he could have died from some
11 other cause.

12 THE COURT: Well, I think that that, I think the
13 pathologist's testimony was that anybody could die of
14 anything at any time. But that's not, that's just, I mean,
15 that is total, pure speculation.

16 I mean, you know, a meteor could drop on your head.
17 But what the doctor did testify to, his testimony was that
18 the gunshot wound or that Mr. Jackson's death was directly
19 traceable to that gunshot wound. So based upon that, I
20 think your request for an aggravated assault and battery
21 instruction as to Mr. Jackson would be inappropriate.

22 Let me see y'all just a minute.

23 (Bench conference held off the record.)

24 THE COURT: All right. Anything further before the
25 jury comes in?

1 MR. GOWDY: Not from the state, Your Honor.

2 MR. McPHERSON: No, sir.

3 THE COURT: Okay. Bring them in, please.

4 (The following takes place in the presence of the
5 jury.)

6 THE COURT: Good morning, ladies and gentlemen.

7 As you know, when we recessed yesterday the defense
8 was in the midst of their presentation of evidence. So we
9 will continue with that presentation this morning.

10 Mr. McPherson.

11 MR. McPHERSON: The defense rests.

12 THE COURT: Does the state have any reply evidence it
13 wishes to present?

14 MR. GOWDY: No, sir, Your Honor.

15 THE COURT: All right. Ladies and gentlemen, that is
16 all of the testimony or evidence to be offered in the trial
17 of this case; and therefore what remains to be done are the
18 lawyers' final summations, after which I'll instruct you on
19 the law, and then you'll begin with your deliberations in
20 the case.

21 So I'm going to ask that you please give the lawyers
22 your careful attention now as they give you their final
23 summations, and then I'll provide you with the legal
24 instruction.

25 Does the state wish to open?

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1 MR. GOWDY: No, sir, Your Honor.

2 THE COURT: All right. Mr. McPherson.

3 MR. MCPHERSON: May it please the Court.

4 We have before you today ten counts against Robert --
5 against Russell Sims. The first count is murder; and we
6 have armed robbery; and we have attempted armed robbery; we
7 have like four counts of reckless pointing; we have assault
8 and battery with intent to kill. That would be on Cornell
9 and Derrick. We have a burglary of a habitation that's
10 pertaining to Cornell's home.

11 Now, we want to go into the murder charge and address
12 that first. The defendant is charged with killing Robert
13 Jackson by shooting him with a gun and that he died as a
14 proximate result of that.

15 You're going to be given the charge on malice
16 aforethought, which means he did it intentionally.
17 Aforethought means he had an opportunity to think about
18 what he was doing.

19 But R. L. Sims has set forth a defense of
20 self-defense. And you heard the testimony. And I guess
21 the main witness the state has against Russell Sims dealing
22 with murder is Diane Jackson who told you she saw
23 everything.

24 And the only problem is she had given a statement
25 previously that she didn't see anything, and then she said,

Closing arguments

1 she insisted, that she had seen everything that went down.
2 And she told you how R. L. Sims had pointed the gun at her
3 children and pointed the gun at her, how he had stolen from
4 her and tried to take money off of her father.

5 And yet in the statement that she gave to the police
6 when they investigated this matter the night of the offense
7 she told them I heard the gunshots and then I ran to the
8 door and saw my father coming. And this was after he had
9 been shot. And she didn't see anything. And she's not
10 being truthful with you. I don't know why. But how can
11 you convict somebody when they're not, when it's based on
12 perjured testimony?

13 And then you heard R. L. Sims. He gets up and tells
14 you that he's, that he never pointed the gun at the
15 children.

16 He admits he had a gun; he admits that he had fired
17 that gun on the way home; and he admits Diane got mad and
18 that she was going to take him home.

19 He went into the house, got his clothes, got the
20 bullets; and he was outside reloading the gun with his back
21 to Robert Jackson.

22 Robert Jackson went around to the side of the porch
23 and took out his gun and threatened R. L., the defendant in
24 this case, and threatened to kill him, pointed the gun
25 right at him. And it's almost like in-your-face kind of

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1 deal. And he doesn't have any choice. Because he has the
2 gun in his hand, he fires to disabled Robert Jackson and to
3 get the gun away from him before he is killed. And he
4 acted reasonably in this situation.

5 Now, he tells you, and he told you, that he did not
6 steal anything or rob anybody, that he just was kind of in
7 a panicky mode because he had just shot his girlfriend's
8 father and that he is telling Diane I need to go, I need to
9 go.

10 Remember, she's the one that drove him everywhere he
11 went. And she says here's my keys. And he also told her I
12 need some money. But he wasn't threatening her in any way.
13 He tells her I need money, I need to go. And so she gives
14 him his car keys.

15 And she admits that when she was talking on 9-1-1 that
16 twice she told the 9-1-1 operator that she gave him these
17 things, not that he stole these things or that he took them
18 from her.

19 And then to the children in the armed robbery, as to
20 the children in the, as to the weapons and pointing, he
21 denied that, says it's not true.

22 You heard the children testify, but I want to caution
23 you the children that testified are Diane Jackson's
24 children, and they're under her care and under her
25 supervision. And they take orders from her. And they're

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1 going to do what she tells them to do.

2 And if Diane is willing to take this stand and tell
3 the lies that she told you, then she's willing to put her
4 children up to lying to you also, because the children have
5 to obey their mom, because they love their mom. They're
6 going to have to spend quite a few years with their mom.
7 So they don't have much choice other than to go along with
8 what mom tells them to do. So I submit to you the children
9 are not being truthful to you when they testified about the
10 pointing of the gun.

11 As to the armed robbery of Mr. Jackson, the defendant
12 completely denies that. He says it's not true, he didn't
13 do anything. In fact, he was trying to help Mr. Jackson,
14 if anything.

15 He didn't want to shoot him, but he felt threatened.
16 He felt for his life. It was either my life or his life.
17 So he shot him and took the gun.

18 Then as to the assault and battery with intent to
19 kill, he wisely took Robert Jackson's gun with him because
20 it could have been used again. Here you have got a loaded
21 gun laying there on the ground. Who knows what's going to
22 happen?

23 But then he goes down to Cornell's house. Remember,
24 Cornell is a minister. And he's just going that far in
25 order to speak to Cornell. He doesn't know there's going

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1 to be problems at Cornell's house.

2 He has the gun tucked into his back belt. He
3 approaches the house. And much to his surprise, Derrick is
4 in there with a shotgun. And then Derrick pumps the gun.
5 And that scares him to death. He's again afraid. This is
6 like his worst nightmare coming true.

7 And so he fires. He opens the door and fires and hits
8 Derrick. And then he says like, oh, my God, oh, my God.
9 And he runs into the house to see what happened to Derrick.
10 He didn't want to shoot Derrick, but, again, it's
11 self-defense, either me or Derrick.

12 So he goes in. And he doesn't. And this would
13 address the burglary of the habitation. He did go in
14 without permission. We will concede that. But he didn't
15 go in to commit a crime. And that's going to be the issue
16 in this case.

17 He went in to check on Derrick, and that's his
18 testimony. And once he got inside, then, according to his
19 testimony, Cornell goes for the gun. And this thing is
20 just getting into a worse nightmare. So he shoots him
21 twice to disable him. And then he takes the gun and takes
22 the shotgun that Derrick had and leaves.

23 Then go back and look at the testimony that you had
24 from Derrick Hall. Number one, Derrick Hall never
25 mentioned, or at first when the police are interviewing him

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1 he doesn't mention, he had a shotgun. He just completely
2 omits that from what he's telling the police.

3 Then what does Cornell say? Cornell twice gave
4 statements to the police, and twice he failed to mention
5 that Derrick had a shotgun.

6 Then you have Elaine Hall. And her story is
7 completely different from everybody else, because, and the
8 reason for this is, it's because they hadn't had time to
9 get together and decide what they're going to say and make
10 up their own side of the story.

11 She says I saw, and here is how she takes care of
12 Derrick's shotgun. I saw, she observed Russell drive back
13 at [REDACTED] Road, run inside with the handgun and the
14 shotgun. Nobody else testified that he ran inside with the
15 shotgun. But she told the officer this when Officer Buie
16 arrived on the scene. She told Officer Buie that she saw
17 him run inside with the handgun and the shotgun.

18 Now, when these things were still fresh on your mind
19 you're not going to make those kind of mistakes unless
20 you're just lying. And I would submit to you that Halls
21 are lying, that they made up their story. They have been
22 caught in lies. And if you convict, you're going to
23 convict based on lies. And they have been caught lying.

24 Again, I submit to you that Russell -- they're going
25 to make a big issue of out this burglary of a habitation,

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1 first degree burglary, meaning that went in at nighttime,
2 went in to commit a crime, or one of these other options.

3 But he did not go into that home to cause further
4 damage. He went in that home, and he so stated. He went
5 in that home to check on Derrick.

6 And I want to remind you that he went to talk to a
7 minister, Minister Cornell Hall. And he was going to wait
8 there until the police arrived. But then things just blew
9 out of proportion.

10 So I submit to you that the defendant is not guilty of
11 these charges. And we're requesting that you come back
12 acquit the defendant on each and every charge.

13 You're also going to have a charge in self-defense,
14 that if there is evidence of self-defense, then the state
15 has to prove to you beyond a reasonable doubt that this
16 case was not self-defense.

17 The burden is not on us. The burden is on the state
18 to prove otherwise, to prove it to you beyond a reasonable
19 doubt. Thank you very much.

20 THE COURT: Mr. Gowdy.

21 MR. GOWDY: May it please the Court.

22 Good morning, Mr. Foreman and ladies and gentlemen of
23 the jury.

24 This will be the last time anyone on behalf of the
25 State of South Carolina stands in front of you in this

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1 trial. So I would be remiss if I did not begin by thanking
2 you for your service in this case. Jury duty is difficult.
3 We acknowledge that. We acknowledge your service.

4 We especially thank you for your careful attention to
5 what at times was some very detailed testimony. It's
6 difficult to listen to small children have to renounce what
7 India and China T. had to relive for you. It's
8 difficult frankly to hear grown men have to describe being
9 shot. So I want to begin by thanking you for your service
10 in this case.

11 You are judges. Judge Cole is the judge of the law.
12 When this ends, when I sit down, when my voice goes silent,
13 Judge Cole will give you the law in this case. To the
14 extent that I say anything that disagrees with what Judge
15 Cole says, you disregard what I say, and you listen to
16 Judge Cole. He is the judge of the law.

17 But just like he's the judge of the law, you are the
18 judges of the facts. You don't have on a black robe. This
19 may be the only time you ever come into a courtroom. But
20 you are judges every bit as much as he is. You are judges
21 of the facts.

22 You, and you alone, will decide what happened on May
23 the 20th on Miller Road in a little community we call
24 Campobello. The part of the way you will do that, and
25 indeed perhaps maybe your most important function as a

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1 juror, is to decide who is telling the truth and who is
2 not, to separate fact from fiction.

3 And that may seem like a daunting task. It may seem
4 difficult at first blush to say, well, how am I going to be
5 able to separate the truth from what's not true, how can I
6 separate the fact from fiction.

7 Ladies and gentlemen, you do it every single day of
8 your lives. There's not a prosecutor in there when you
9 make your important decisions in life. There's not a
10 judge. But you use your common sense. You use your
11 education; you use your experience, your background.

12 You make important decisions as to spouse and as the
13 owner of a company, as a coworker, as a friend, as a
14 parent, as a child. You make important decisions every
15 single day. And you do it without the help of a defense
16 attorney or a prosecutor or the judge. You do it based on
17 common sense. And that same common sense will serve you
18 well as you decide the issues in this case.

19 I want us to go back in time. I want us to take a
20 photograph, if you will, a snapshot in time. I want us to
21 go back to May the 20th.

22 I want us to go back before Robert Jackson was shot.
23 I want us to go back even before Diane Jackson's car ever
24 got on Miller Road. And I want you to look with me at a
25 snapshot of four different men doing four different things.

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1 I want us to take a snapshot of Robert Jackson, a
2 75-year-old man in the sanctuary of his own home at the end
3 of the road. At the end of Miller Road is a 75-year-old
4 man in his own home minding his own business.

5 Then I want you to take a snapshot of Cornell who is
6 sitting at a little breakfast nook inside his own home
7 reading his paper.

8 Then I want your mind to go to Derrick who is burning
9 trash in his front yard. And I couldn't help but notice
10 when Cornell was describing the flurry of activity in his
11 home, there's a sister there, there are nieces and nephews.
12 There is the sound of children in the home. And Cornell as
13 a man 48 years old is reading the newspaper. It is a
14 Saturday morning, the night before church.

15 And then there's Derrick next door, and he's burning
16 trash. And he told you that he would walk in and out of
17 the house to check to make sure that the trash -- that the
18 fire had not escaped the trash can.

19 I want you to have those three images in your mind of
20 three men minding their own business. And then I want you
21 to think about what R. L. Sims is doing.

22 He was surrounded by children too except these
23 children were screaming and crying and terrified. He's in
24 a car with Diane Jackson. He's shooting out the window.
25 He's waving the gun around. He's pointing the gun. He has

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1 been asked to put the gun away.

2 This is a two-year-old and an 11-year-old daughter and
3 a seven-year-old in the back seat, and he's bringing out a
4 gun firing it out the window. I want that contrast to stay
5 with you as we go through that evidence because that's how
6 this case started, R. L. Sims driving down in somebody
7 else's car firing a gun indiscriminately, randomly. And
8 then you have three men, the three victims who are minding
9 their own business. That's how this case started.

10 And we know he fired once he got on Miller Road. We
11 know that because Elaine Hall said that. We know that
12 because Derrick Hall heard it. And we know it because
13 Officer Russell Holthaus bought you the shells from the
14 pavement and from the roadway. We know he was firing that
15 gun as that car was going down Miller Road. So that's the
16 contrast by which I want you to view this evidence.

17 Robert Jackson in his home; Cornell Hall in his home,
18 Derrick Hall outside and inside his home checking on fire;
19 and that defendant firing a gun, taking advice from a
20 two-year-old on whether or not he ought to shoot a gun.
21 That's the backdrop for what we're fixing to go through.

22 So he gets to [REDACTED] Road. And that 75-year-old
23 man that Dr. Wren testified, sure, he had some health
24 problems, there are lots of folks in their 70's that fight
25 this or fight that, I tell you this. He wasn't in a

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1 hospital on May the 20th. He wasn't in a hospital on May
2 the 19th. He's sitting is his home.

3 And that car comes up and he hears this kid screaming.
4 And you may remember what Derrick Hall said. I said,
5 Derrick, surely you heard those kids screaming before,
6 surely you heard those children yell before. And do you
7 remember what Derrick said? Not like that. This is
8 different. Derrick, you're right. This is different.

9 R. L. Sims comes. He's firing his gun. The kids are
10 screaming. They're running inside. Imagine the visual
11 imagery of children running up the stairs in their
12 grandfather's house to go hide in the closet.

13 I want you to imagine that visual imagery. They go
14 hide and they go seek shelter. And there is Diane Jackson
15 when she goes inside. And she's got her father there and
16 her boyfriend here and a 75-year-old man. And I can see it
17 plain as day. Ambles down those stairs, because that's his
18 home, to find out what's going on.

19 R. L. Sims wants you to believe that Robert Jackson
20 had a shotgun. And herein sets up one of your first
21 decisions as a juror. I'll talk to you about contrast.
22 Here's a very smart contrast.

23 R. L. Sims says that Robert Jackson had a gun. Diane
24 Jackson says he didn't; Derrick Hall says he didn't. India
25 and China T. [REDACTED] say they've never seen a gun at their

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1 grandfather's house. Russ Holthaus didn't find a shotgun,
2 didn't find shotgun shells. He didn't find a shotgun case.

3 All you have is the word of that defendant that Robert
4 Jackson had a gun. That is all you have. And from the
5 witness stand yesterday I asked him where the shotgun was.
6 I asked him when can we expect to hear from the person you
7 took that shotgun to. And you still don't have a shotgun
8 in front you and you still don't have any testimony from
9 anybody that that defendant took a shotgun to --

10 MR. MCPHERSON: Your Honor, I'm going to object.
11 That's improperly shifting the burden to the defense.

12 MR. GOWDY: No, it's not.

13 THE COURT: Overruled.

14 MR. GOWDY: This is a good time for me to tell you
15 this.

16 A defendant in a criminal case has no obligation
17 whatsoever to testify, and no inference of guilt can be
18 drawn from his or her decision not to, but, and this is a
19 big but, if a defendant does testify you can judge his or
20 her testimony by the exact same standard you judge anybody
21 else's by, which means you decide whether to believe any of
22 what they said. You decide whether to believe -- whether
23 their testimony was the truth or not. That is your
24 decision.

25 So I point out to you again there is no shotgun from

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1 Robert Jackson's house in front of you and there is nobody
2 that was called to tell you that this defendant brought him
3 a shotgun.

4 All you have is his word and the reason he has to say
5 that. And that's the first time he said it, was yesterday,
6 was that Robert Jackson had a gun. He admitted he didn't
7 tell the police. What he told the police is I thought he
8 was going to get a gun.

9 Well, there is a huge difference, ladies and
10 gentlemen, between whether I think somebody is going to do
11 something and whether they've got it, as his defense
12 attorney said, pointing right at you. That is a huge
13 difference. And I'll tell you what the difference is.

14 He wants you to find him not guilty based on
15 self-defense, and the only way that can happen is if you
16 believe Robert Jackson had a gun. So we've got a change
17 from the story that we were told originally that I thought
18 he was going to get a gun. I got to change it. I got to
19 say he had one.

20 I worked for a man named Red Dawkins in a tobacco
21 warehouse. And Red used to tell us you can say anything
22 and the fact that you say it doesn't make it so.

23 I can tell you anything. I can tell you it's snowing
24 outside. I can tell you that I could beat Tiger Woods in
25 golf. But it's not true. Those are just words. You can

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1 say anything. You can come here and say a 75-year-old dead
2 man had a gun, but that don't make it true.

3 What other evidence is there? No shell casings found.
4 No shotgun shells found at the house. And nobody that knew
5 Robert Jackson well said he had a shotgun at the time this
6 incident took place. Nobody. So we have the absence
7 evidence of a shotgun. You have the fact that the
8 defendant's story is changed.

9 And he admitted yesterday, because I asked him. I was
10 very clear about it. Did you even tell your mother that
11 Robert Jackson had a shotgun? Remember, he told me I don't
12 tell everybody my business. He ain't told anybody that.
13 Y'all are the first 12, first 13 people, to ever hear
14 Robert Jackson had a shotgun.

15 And the reason he told you is he wants you to find him
16 not guilty based on self-defense. The only way that's
17 going to happen is if you believe Robert Jackson had a
18 shotgun despite the fact that there is no evidence of that.

19 It is a 75-year-old man walking down the stairs
20 justifiably, understandably to find out why are my
21 grandkids and why is my daughter screaming and why do you
22 have a gun at my house that you're reloading. Those are
23 legitimate questions for a man to ask in his own home.

24 And he winds up shot in the throat. That's a really
25 interesting place to shoot somebody when you want to just

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1 disable them. No foot, no leg, no arm, just right straight
2 through the throat twice, I might add.

3 And then the man who takes advice on whether or not he
4 ought to shoot a gun from a two-year-old decides he's going
5 to be the collective ball conscience of the community and
6 go up to Cornell Hall's house and tell him what's going on.

7 I am going to talk to you for a minute about armed
8 robbery. That's your decision. You're the judges of the
9 facts. You decide.

10 But I am going to tell you this. Diane Jackson was
11 extremely clear when she told you that if he hadn't had a
12 gun and if he hadn't just shot her dead she wouldn't have
13 given him her cash, she wouldn't have given him her check
14 and she wouldn't have given him the car. And where did we
15 find that car and when did we find that car? We found it
16 two days later in the city of Spartanburg. And Campobello
17 is way up here.

18 He wants you to believe that she just gave him that
19 car because he asked nicely for it, he just said let me
20 borrow your car, let me borrow some money, let me borrow a
21 check. I know I just shot your father, I know I've just
22 terrorized your family, I know I got a gun in my hand, but
23 let me just borrow some stuff.

24 That's for you to decide. No question he had a gun;
25 no question he'd already used it; no question he wound up

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1 with Diane Jackson's money, checks and car.

2 So let's leave Miller Road. Let's leave it in our
3 minds. Let's leave it as India and Diane are helping
4 Robert Jackson lay down in the floor. Let's leave that
5 image of a 75-year-old man bleeding on his own floor
6 because his daughter's boyfriend shot him.

7 And let's go up to [REDACTED] where this defendant who
8 doesn't call 9-1-1 to help Robert Jackson, who doesn't stop
9 to render aid, has a sudden pang of moral conscience and
10 decides that he's going to go tell Cornell Hall what
11 happened.

12 But he's going to need a gun to do that, right? So he
13 puts the gun right here according to him. Our witnesses
14 say he had the gun out. I get the feeling there might have
15 been some animosity between these families. He comes out
16 with that gun.

17 And the undisputed testimony from the state, from
18 witnesses the state called, is that Derrick Hall's shotgun
19 was on the ground. And our common sense tells us it was
20 because if it had been in his hand he'd be dead.

21 Why in the world would you let a man come in with a
22 gun to your house if you got a shotgun in your hand? That
23 shotgun was down. Why was it down? Because his uncle
24 Cornell told him to put it down and his mama told him to
25 put it down. And he put it down.

Closing arguments

1 Do you want a contrast? Here's a 27-year-old man
2 that's in somebody else's house, and he's being respectful,
3 and he lays the gun down because he's asked to. And you
4 contrast that with R. L. Sims who takes firearm advice from
5 a two-year-old.

6 So he marches up the stairs with his gun drawn and he
7 shoots Derrick. And he says he only shot him once. But
8 you know better because you know the two shell casings were
9 right in the entryway of that door. You know he fired
10 twice. You don't shoot somebody in the chest. You ain't
11 that good of a shot to hit a moving person in the chest
12 unless that's where you wanted it. But the doctor says
13 Derrick was lucky and has no idea how it missed everything
14 that it could have hit inside a man's chest.

15 He shoots Derrick. And you'll hear. You heard what
16 he said to Diane in that house. I'm only going to say it
17 once. But tonight's your night to die, bitch, is what he
18 said to Diane.

19 And then when he comes in to Minister Cornell Hall's
20 house, he comes in because he needs to talk to a minister
21 about what he's just done. He starts talking about
22 recognize, you're going to recognize me.

23 He shoots Derrick Hall once. Derrick Hall leaves,
24 flees, and then he shoots Cornell Hall. The man has never
25 owned a gun, never fired a gun. He's at his table reading

Closing arguments

1 the newspaper. He gets up because he hears he's got a gun,
2 he's got a gun. And he gets shot here.

3 And I want this image to stay with you during your
4 deliberations. When you hear the defense attorney talk
5 about self-defense, I want this image to stay with you. R.
6 L. Sims standing over Cornell Hall who's already been shot
7 once, shoots him again. He shoots an unarmed man who's
8 already been shot once. He shoots him again.

9 And he wants you to let him go based on self-defense?
10 Do you want a contrast? Cornell Hall looking up after
11 being shot once. No weapon.

12 Burglary. Mr. Sims admitted burglary yesterday. I
13 asked him did anybody give you permission. No. Anybody
14 tell you it's okay to come in Cornell Hall's house with a
15 gun. No. No permission. Wasn't invited in.

16 He came in with a gun at night and he shot two people.
17 If that is not burglary, then there is no such thing as
18 burglary.

19 So he leaves [REDACTED] And I find it interesting to note
20 that every male over the age of 12 that he has come in
21 contact with in the last 30 minutes has wound up getting
22 shot -- Robert Jackson, Cornell Hall, Derrick Hall. Every
23 male over a certain age winds up getting shot, and there's
24 not a scratch on him.

25 One guy spends a couple of weeks in the hospital; one

Closing arguments

1 guy has to have a bullet taken out that barely misses his
2 heart; and one guy dies. One guy gets an autopsy. And
3 there's not a bandaid on him. Nothing happened to him.
4 But he wants you to believe just what he told me yesterday.
5 It's everybody else's fault. I didn't do nothing wrong.

6 So we leave [REDACTED] Road. And he throws the
7 handgun in the lake, or so he says. He claims he took
8 these two shotguns to a friend's house, but that's all we
9 have got is a claim.

10 And then the police ask him about it, and he doesn't
11 say one word about Robert Jackson having a gun. Not one.
12 Not a word.

13 And even when he's talking to his mom he denies
14 shooting Cornell and Derrick. They want to call it
15 self-defense. There's just a flat out denial.

16 Ladies and gentlemen, there are going to be a series
17 of charges with you back in the jury room, and there's
18 going to be murder. And Judge Cole is going to tell you
19 that murder is the unlawful killing of another person with
20 malice aforethought.

21 Now, malice is one of those terms that only a lawyer
22 can come up with. It's not a word we use in our everyday
23 lives, but I think what the judge is going to tell you is
24 is that it means a wicked or depraved heart, a heart or a
25 spirit fatally bent on mischief. It's bad intentions.

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1 Malice aforethought does not mean premeditation. On
2 the movies and on television we think of murder where
3 you've got to think about it. You got to premeditate. Not
4 so in South Carolina.

5 Malice aforethought can arise in an instant: Malice
6 can be inferred from the use of a deadly weapon like a
7 handgun. Malice can be inferred from the fact that he's
8 sitting there putting one bullet after another while he's
9 reloading at Robert Jackson's house.

10 Robert Jackson was a 75-year-old man that had some
11 health problems, but every doctor that came and testified
12 in front of you said the gunshot wounds began a process
13 that led to his death. And our common sense tells us that
14 because on May the 19th he was fine. He wasn't in the
15 hospital. He was in his own home.

16 And come May 20th this man sends him to the hospital,
17 and he never leaves from a ventilator to a tracheotomy, to
18 restorative care until finally he dies.

19 Is this a murder case where you walk up and shoot
20 somebody in the head and they die instantly? Of course
21 not. But he shot him twice. And the unmistakable medical
22 testimony is that those two gunshot wounds began a process
23 that resulted in Robert Jackson's death. And that is
24 murder under the law in South Carolina.

25 Armed robbery you find is self-explanatory. It is

Closing arguments

1 taking from the person or presence of another something of
2 value like a check, like money, like a car while armed with
3 a deadly weapon like a gun.

4 Pointing and presenting a firearm. Diane Jackson said
5 he did it. He admitted he had in the car. He admitted he
6 was waving it around. And even India said that once they
7 got back to [REDACTED] Road that he came in and he pointed
8 the gun at her and told her to quit crying. That's the R.
9 L. Sims. That's the R. L. Sims from May the 20th of 2006.

10 Burglary is easy. He entered Cornell Hall's house
11 without permission with a gun at night with the intent to
12 commit a crime, a crime he wound up committing twice, two
13 assault and batteries with intent to kill.

14 Remember Dr. Morrow. You usually don't hear doctors
15 talk about luck, talk about how lucky Derrick was, how that
16 bullet hit him. The fact that he is lucky doesn't mean
17 that R. L. Sims should be rewarded for that.

18 Assault and battery with intent to kill. You listen
19 to what the judge says on that. But it's exactly what
20 happened to Cornell and Derrick Hall.

21 So you have murder; you have armed robbery; you have
22 the attempted armed robbery of a man who had been shot in
23 the throat twice.

24 You have burglary; you have pointing and presenting
25 firearms; you have assault and battery with intent to kill.

Jury charge

1 You have heard from the state's witnesses. You heard
2 R. L. Sims' version yesterday. Guess what, ladies and
3 gentlemen? He doesn't write the last version. I don't
4 write the last version. You do.

5 When you go back into the jury room you are going to
6 write the final chapter of what happened to May the 20th of
7 2006. You are the authors of the final chapter. And
8 you're going to do it on something called a verdict.

9 Verdict is a word that we borrowed from our Latin
10 ancestors, the word veredicto. It means to speak the
11 truth. When I hear the word veredicto and I hear the
12 phrase speak-the-truth I think of one of my favorite
13 phrases, which is this. More than beauty, more than
14 riches, more than fact I desire the truth.

15 Write the truth on your verdict forms for Robert
16 Jackson, for the children, for Cornell Hall, for Derrick
17 Hall. When you come into this courtroom speak the truth in
18 a voice so loud everybody can hear it.

19 THE COURT: Mr. Foreman and ladies and gentlemen of
20 the jury panel, you of course have heard and seen all of
21 the evidence, as well as the final summations of the
22 lawyers. And therefore it now becomes my duty and
23 obligation to instruct you on the law that's applicable.
24 Then you'll be asked to go back into the jury room and
25 begin with your deliberations in the case. Through that

Jury charge

1 process you'll examine the evidence, decide the facts,
2 apply the law and arrive at a fair and just decision in the
3 case.

4 It is your exclusive duty to determine what the facts
5 are. You do that through your own common sense examination
6 and evaluation of all of the testimony and the other
7 evidence that has been received during the trial of this
8 case.

9 You 12 jurors alone will decide what weight, value and
10 effect to give to any particular testimony or other
11 evidence in the case. Your sole objective is to simply
12 reach the truth in the matter, and by doing that you will
13 have fulfilled your obligations as jurors, and that is to
14 simply give both the state and the defendant a fair and
15 impartial trial.

16 Now, in this case, as you know, the state through the
17 solicitor has brought certain charges against the
18 defendant. They have accused him of having committed
19 certain offenses arising out of a particular event or
20 course of events which the state alleges occurred on or
21 about May the 20th of 2006. And they allege by way of
22 those documents that I referred to earlier called
23 indictments that he has committed ten separate and distinct
24 criminal offenses arising out of that course of events.

25 They allege that he committed the crime of murder;

Jury charge

1 they allege that he committed the crime of assault and
2 battery with intent to kill, two separate individuals; they
3 allege that he has committed the crime of armed robbery;
4 they allege that he has committed the crime of attempted
5 armed robbery; they allege that he has committed the crime
6 of burglary in the first degree; and they allege that he
7 has committed the crime of pointing or presenting a firearm
8 at a person, and they allege that he committed that on four
9 separate incidences or occasions arising out of that same
10 course of conduct.

11 Now, as I told you, those indictments aren't evidence
12 of anything. Those indictments are going to be in the jury
13 room with you because it's on the back of each of those
14 indictments, Mr. Foreman, that you're going to be asked to
15 indicate the jury's unanimous decision as to that
16 particular charge.

17 So while the indictments will be in the jury room,
18 because those indictments will serve as the verdict forms
19 in this case, other than serving as the verdict form those
20 indictments serve no purpose so far as you 12 jurors are
21 concern, that is they are not proof of anything. They
22 don't establish anything.

23 They're simply allegations made by the state against
24 this defendant. They set forth the charge the state claims
25 he has committed. But other than serving as the verdict

Jury charge

1 form, they will serve no purpose so far as you jurors are
2 concerned, because, as I told you and as I will tell you,
3 the state has the burden of proving any allegation they
4 make against a defendant in a charge. They have an
5 obligation to prove those allegations and that charge
6 beyond a reasonable doubt.

7 Now, as to the charges that have been brought against
8 this defendant he has entered a plea of not guilty. And,
9 as I told you, that plea of not guilty places upon the
10 state the burden of proving all of the allegations that
11 they have set forth in each of those indictments, the
12 burden of proving each of the essential elements that
13 constitute each of the offenses that they have alleged
14 against the defendant; and therefore the burden is upon the
15 state to establish the defendant's guilt to the
16 satisfaction of you 12 jurors beyond a reasonable doubt
17 before any verdict of guilty could be returned.

18 The burden is never upon a defendant or a person
19 accused of having committed some crime to prove that they
20 are not guilty or to prove that they are innocent because
21 in many cases that might not be possible. The burden is
22 always upon the state in bringing a charge against another
23 to establish that person's guilt beyond a reasonable doubt.

24 Now, you are instructed that it is a vital, important
25 and cardinal rule of law that every defendant in a criminal

Jury charge

1 trial, and it doesn't matter how serious the offense might
2 be, that person is always to be presumed innocent of any
3 charge brought against him.

4 That presumption of innocence remains with any
5 defendant, as it does with this defendant, from the time
6 that he is placed under arrest and throughout the course of
7 the criminal process and even throughout the course of the
8 actual trial in the case.

9 That presumption of innocence will be with Mr. Sims
10 even at the time that you go back into your jury room to
11 begin with your deliberations in this case. And that
12 presumption of innocence will be with him in that jury
13 room, and it will remain with him forever unless you 12
14 jurors determine that he is no longer entitled to that
15 presumption of innocence.

16 That is after you have carefully considered all the
17 evidence in the case, and from that evidence you've decided
18 the facts, and after deciding the facts you apply the law
19 that I have provided you, if you 12 jurors determine beyond
20 a reasonable doubt that his guilt has been proven as it
21 relates to a particular charge, then, but only then, he
22 would no longer be entitled to that presumption of
23 innocence. But it's only if, unless and until you are
24 satisfied that his guilt has been proven beyond a
25 reasonable doubt that he would no longer be entitled to

Jury charge

1 that presumption of innocence.

2 Now, while the state does have the burden of proving a
3 defendant's guilt beyond a reasonable doubt, that doesn't
4 mean that the state has to prove his guilt beyond all doubt
5 or beyond any possible doubt. But it does require that the
6 state prove his guilt to your satisfaction beyond a
7 reasonable doubt.

8 The term reasonable doubt should be given its plain
9 and ordinary meaning. A reasonable doubt is the kind of
10 doubt that would cause a reasonable person to hesitate to
11 act upon the information provided. And a defendant in a
12 criminal trial is entitled to any reasonable doubt that
13 arises from the evidence or lack of evidence in a case.
14 And if upon any factual issue essential to a finding of a
15 verdict of guilty you have some reasonable doubt as to how
16 that issue should be resolved, it would be your duty to
17 resolve that reasonable doubt in favor of the defendant.

18 Therefore if upon your consideration of the whole case
19 at it relates to a particular indictment, if you have a
20 reasonable doubt as to the defendant's guilt as it relates
21 to that particular charge, it would your duty to resolve
22 that reasonable doubt in his favor and to return a verdict
23 of not guilty as to that charge.

24 And, on the other hand, after you've carefully
25 considered all of the evidence in the case and applied the

Jury charge

1 law, if you have no reasonable doubt as to the defendant's
2 guilt as it relates to a particular charge, then of course
3 it would your corresponding duty to convict the defendant
4 or to find him guilty of any crime you find has been proven
5 to your satisfaction beyond a reasonable doubt.

6 Now, the same law that provides that you are the
7 judges of the facts also provides that I am the judge of
8 the law. And that simply means nobody is going to tell you
9 how to arrive at your determination of fact in this case.
10 You do that, as I have told you, through the exercise of
11 good judgment and common sense conscientiously applied to
12 the testimony and the evidence in the case.

13 You must however accept the law as I give it to you as
14 being the law that is applicable in this particular case.
15 And you can't concern yourself with what you thought the
16 law was before you came to serve as a juror this week or
17 what you think the law ought to be.

18 You must under your oath as a juror accept the law as
19 I provide it to you as being the law that is applicable in
20 this particular case. And then you simply take that law
21 and you apply it to the facts as you 12 jurors determine
22 those facts to be based upon your common sense examination
23 and evaluation of all of the evidence received during the
24 trial of this case.

25 Now, as I've previously told you, because you are the

Jury charge

1 judges of the facts you are therefore necessarily the sole
2 judges of the credibility and the believability of each
3 witness that has testified during the trial of this case.
4 And you 12 jurors alone will decide what weight, value and
5 effect to give to any particular witness' testimony, or
6 even a portion of testimony. And so there are a number of
7 factors which you should consider in arriving at your
8 assessment as to a particular witness' credibility, and I'm
9 going to list those factors for you.

10 You may consider the demeanor of the witness, that is
11 how the witness appeared to you as the witness testified.
12 Did the witness appear to you to be straightforward in
13 responding to questions, or was the witness hesitant or
14 evasive in responding to questions that were asked of that
15 witness? Simply put, did the witness appear to you to be
16 telling the truth and to have knowledge of the facts to
17 which that witness has testified.

18 You may also consider whether or not the testimony of
19 a witness is consistent, or is it inconsistent with not
20 only that witness' testimony in court but other statements
21 if you find such statements were made outside of court, as
22 well as whether or not the testimony of a witness is
23 consistent or inconsistent with other witnesses' testimony
24 or other evidence received during the trial of the case.

25 You may also consider how the witness came to know the

Jury charge

1 facts to which that witness has testified. That is what
2 was that particular witness' opportunity and ability to
3 perceive the existence of those facts to which they have
4 testified, and then what is their ability to be able to
5 come into court and to accurately recollect to you as to
6 what they have previously seen or heard, or felt for that
7 matter.

8 You may also consider any bias or prejudice or
9 interest that a witness might have in the outcome of a
10 case. And by that I simply mean do you find some reason
11 that a particular witness would testify one way or another
12 to help or hurt one side or the other. You may consider
13 any interest that a witness might have in the outcome if
14 you determine that a witness does have such an interest and
15 you find that that interest would bear upon that particular
16 witness' credibility.

17 You may also consider whether or not the testimony of
18 a witness is strengthened, or is it weakened by other
19 testimony or other evidence received during the trial of
20 the case?

21 Now, there have been certain witnesses that testified
22 that were qualified as experts in a particular field. And
23 ordinarily lay witnesses aren't permitted to testify in an
24 opinion form. But where a witness has been qualified as an
25 expert in a particular field, then they may testify in an

Jury charge

1 opinion form based upon their consideration of the facts
2 that relate to a particular matter.

3 You may consider those expert opinions just as you do
4 any other testimony, but it's still for you to decide the
5 weight, value and effect to be given to any expert witness'
6 testimony, just as you do any other witness' testimony.
7 You can accept it or reject it just as you do any other
8 testimony.

9 Now, because you are the sole judges of the facts and
10 the judges of the credibility of each witness you are
11 permitted to believe as much or as little of what a witness
12 has testified to as you deem is appropriate. Therefore you
13 may believe everything that a witness testified to; you may
14 choose to believe none of it. You may believe some portion
15 of a witness' testimony and reject some other portion of
16 that same witness' testimony. In a given case you could
17 believe one witness as opposed to several, or several as
18 opposed to one.

19 Whatever your good judgment and common sense tells you
20 is the most believable and credible testimony is the
21 testimony you should accept, and you should reject any
22 testimony or other evidence that you find not to be
23 credible or believable.

24 Again, your sole objective is to simply reach the
25 truth in the matter, and it should not matter from what

Jury charge

1 source that truth may come, whether it be from a witness
2 for the state or a witness for the defense or a combination
3 of testimony and evidence received from both sides in the
4 case.

5 Now, while there are various forms of evidence such as
6 testimony, photographs, documents, charts and other types
7 of physical exhibits, there are really only two types of
8 evidence. Either or both of those types of evidence may be
9 used to prove any fact in issue. But the two types of
10 evidence are direct evidence and circumstantial evidence.

11 Now, direct evidence is the testimony of a person who
12 testifies from actual knowledge of a fact. In other words,
13 it's the testimony of a person who has perceived the
14 existence of some fact by having used their senses, and
15 then they come into court and they testify as to what
16 they've previously perceived.

17 Circumstantial evidence, on the other hand, is the
18 proof of some other fact or set of facts which taken either
19 singly or collectively may prove the existence of a fact in
20 question as a necessary consequence, that is through an
21 inference.

22 An inference is simply a deduction of fact which may
23 logically and reasonably be drawn from the proof of some
24 other fact or set of facts. In other words, you may infer
25 that at a particular event occurred or that a particular

Jury charge

1 fact exists based upon the proof of sufficient factual
2 circumstances which would reasonably warrant your arriving
3 at such a conclusion.

4 Now, the law however makes absolutely no distinction
5 between the weight or the value to be given to direct
6 evidence as opposed to circumstantial evidence, nor is a
7 greater degree of certainty required of circumstantial
8 evidence as opposed to direct evidence.

9 Whatever the type of evidence used to prove any fact
10 in issue, you should consider all of the evidence presented
11 during the trial of the case. And if after carefully
12 considering all of that evidence in your minds you are not
13 convinced of the guilt of the defendant beyond a reasonable
14 doubt, then it would your duty to resolve that doubt in his
15 favor and return a verdict of not guilty as to that
16 particular charge.

17 Now, we have ten separate and distinct charges or
18 indictments. And you'll be called upon to render ten
19 separate and distinct decisions as to those particular
20 indictments.

21 So I'm going to instruct you on the law as it relates
22 to each of those separate and distinct criminal offenses.
23 And there's no significance to the order in which I give
24 them to you. I just have to give them to you in some
25 order. But when you go back to deliberate you can

Jury charge

1 deliberate in whatever fashion and whatever order so far as
2 the indictments are concerned as you deem is appropriate.
3 But I'm going to begin with the indictment that charges the
4 defendant with the crime of murder and with possession of a
5 firearm during the commission of a violent crime.

6 That indictment alleges that on or about May the 20th
7 of 2006 the defendant, Mr. Sims, did wilfully and with
8 malice aforethought kill one Robert Jackson by shooting him
9 with a gun and that he died as a proximate result of that
10 gunshot wound.

11 Also contained in this indictment is a count two.
12 It's a separate charge. It alleges that Mr. Sims did on
13 the same date and time as alleged in the murder count, that
14 he did possess a firearm during the commission of a violent
15 crime as defined under the law. And in this case the state
16 alleges that that violent crime was the crime of murder.

17 So I'm going to instruct you now on the law as it
18 relates to the offense of murder, and then I'll follow that
19 with the statutory offense of possession of a firearm
20 during the commission of a violent crime.

21 Now, murder is defined in the law as the killing of
22 any person with malice aforethought either expressed or
23 implied.

24 In order for you to find the defendant guilty of the
25 crime of murder it would be necessary that the evidence in

Jury charge

1 this case has established to your satisfaction beyond a
2 reasonable doubt that the defendant did commit some act or
3 acts which proximately caused the death of the decedent, in
4 this case Robert Jackson; and further that that killing was
5 done by the defendant with malice aforethought. Malice
6 aforethought is an essential element of the crime of
7 murder.

8 Now, also as I told you, the acts of the defendant
9 have to proximately cause the death of the decedent. That
10 is the acts must be the proximate cause of Mr. Jackson's
11 death.

12 Now, the law defines the proximate cause of a death to
13 be something which produces a natural chain of events which
14 in the end brings about the death. The proximate cause is
15 the direct cause without which the death would not have
16 occurred.

17 Now, it is the law in this state that a criminal
18 defendant takes his or her victim as he finds it.
19 Therefore a person is responsible for the result of his
20 criminal acts which prove to be fatal to another even
21 though the criminal acts committed may not have resulted in
22 a death if the victim had been more healthy or had been of
23 a more normal constitution.

24 The legal test for the crime of murder is whether or
25 not the criminal acts of the person accused of the murder

Jury charge

1 were the proximate cause of the death of the decedent. In
2 other words, but for those criminal acts the death of
3 Mr. Jackson would not have occurred. As I've stated, the
4 killing must have been accompanied by malice aforethought.

5 Now, malice is a term connoting an ill will. It's an
6 intent to do harm. It is a technical term importing
7 wickedness and excluding just cause or legal excuse. It is
8 something which springs from depravity and from a heart
9 devoid of social duty and fatally bent on mischief.

10 Malice may be likewise defined as a state of mind
11 which indicates a formed purpose and design to do a
12 wrongful act under circumstances that exclude any legal
13 right to do it.

14 The words expressed or implied malice do not mean
15 different types of malice but merely the manner in which
16 malice may be shown to have existed. That is to say either
17 by direct evidence or by circumstantial evidence from which
18 you can imply the existence of malice.

19 Now, malice may be expressed as where there is an
20 expressed threat to kill or where there is a lying in wait
21 or where the circumstances show directly that an intent to
22 kill was entertained by the defendant at the time that any
23 killing took place.

24 Malice may be inferred, though no expressed intent to
25 kill is proven by direct evidence, where the facts and the

Jury charge

1 circumstances which have been proven by the evidence in
2 this case satisfy you beyond a reasonable doubt that malice
3 was present in the mind of the defendant at the time that
4 any killing took place.

5 The existence of malice may be inferred from the
6 circumstances that are shown to have existed at the time of
7 the event, and you are permitted to infer the existence of
8 malice from proof of an unlawful and an intentional killing
9 of another without justification or legal excuse.

10 You are permitted to infer malice from the wrongful
11 intent to injure another person through the infliction of
12 serious bodily harm indicative of a wicked or depraved
13 spirit.

14 You are permitted to infer the existence of malice
15 from the proof of the intentional use of a deadly weapon in
16 the commission of a criminal act resulting in a death.

17 And you are further permitted to infer malice from the
18 intentional commission of an act which is inherently
19 dangerous to human life. And you are permitted to infer
20 the existence of malice from the proof of the commission of
21 reckless acts which are inherently dangerous to human life
22 and which are done so recklessly as to manifest a depravity
23 of mind signifying an extreme disregard for or an extreme
24 indifference to human life.

25 Now, malice as an essential element of the crime of

Jury charge

1 murder does not necessarily mean an actual or a specific
2 intent to take human life, but rather it may be described
3 as the state of a person's mind signifying a general
4 malignant recklessness and extreme disregard for or
5 indifference to human life.

6 Now, even if the facts proven are sufficient to give
7 rise to an inference of malice permitted under the law,
8 such an inference is simply an evidentiary fact to be taken
9 into consideration by all of you jurors during your
10 deliberations. And you may consider those along with all
11 the other evidence in the case. And you may give any
12 inference such weight you deem it should receive, if any.

13 Simply stated, you are permitted to infer the
14 existence of malice from proof of any one or more of those
15 circumstances that I have just described, but you are in no
16 way required to do so.

17 Simply put, the state is required to prove malice just
18 as it must prove any other essential element of the crime
19 of murder, but it is for you 12 jurors to determine whether
20 or not in this case the evidence establishes the existence
21 of malice beyond a reasonable doubt. And you determine
22 that based upon your consideration of all of the evidence
23 and any reasonable inference that might be derived from
24 that evidence.

25 Now, as I've stated, it is also essential that there

Jury charge

1 exist not only malice but there also be malice
2 aforethought.

3 Now, the law does not require that malice must exist
4 for any appreciable length of time before the commission of
5 some act which proximately causes the death of another.
6 Indeed, it may be conceived at the very moment the act is
7 committed.

8 It is sufficient in the law so long as the state has
9 satisfied you beyond a reasonable doubt both the existence
10 of malice and the commission of an act or acts by the
11 defendant which produces the fatal result.

12 Now, while the state must prove beyond a reasonable
13 doubt that a killing did occur and that that killing was
14 accompanied by malice aforethought in order to establish
15 the crime of murder, it is not necessary that the state
16 prove any motive for such a killing, although there may be
17 evidence relating to such a fact introduced during the
18 trial of the case.

19 Now, in that indictment charging murder there is also
20 the offense of possession of a firearm during the
21 commission of a violent crime. That's a statutory criminal
22 offense set forth in 16-23-490. And that statute provides
23 that it shall be unlawful to possess a firearm or to
24 visibly display what appears to be a firearm during the
25 commission of a violent crime. And under the law of this

Jury charge

1 state murder is defined and classified as a violent crime.

2 So in order for the defendant to be found guilty of a
3 violation of that particular section of law it would be
4 necessary that the evidence in the case establish to your
5 satisfaction beyond a reasonable doubt that the defendant
6 committed the crime of murder and that during the
7 commission of that crime he also did, in fact, possess a
8 firearm or did visibly display what appeared to be a
9 firearm.

10 Now, the next two indictments that I'm going to refer
11 to are two indictments charging the defendant with assault
12 and battery with intent to kill.

13 One indictment alleges that he did commit with malice
14 aforethought an assault and battery upon one Derrick Hall
15 with the intent to kill Mr. Hall. And there is a separate
16 indictment alleging the same or similar allegations, but
17 they relate to a separate individual, that being Cornell
18 Hall.

19 Now, assault and battery with intent to kill includes
20 the offenses of assault and battery. So I'm going to
21 define for you the term assault. I'll define for you the
22 term battery. And I will then define for you the term
23 assault and battery with intent to kill. And I am also
24 going to instruct you on the law that relates to a lesser
25 included offense being assault and battery of a high and

Jury charge

1 aggravated nature.

2 Now, an assault is defined as the unlawful attempt to
3 do violence or to do injury to the person of another where
4 there is the present ability to complete that attempt by
5 way of a battery.

6 A battery is defined as the unlawful and intentional
7 touching or striking of the person of another without their
8 consent by the person committing the assault or by some
9 object put in motion by that person. That is it is the
10 completion of an act doing violence or injury to the person
11 of another. And a battery may be further defined as the
12 carrying into effect an assault by using or applying force
13 to the person of another, however slight, in a rude, angry,
14 resentful or unlawful manner and without just cause or
15 legal excuse.

16 An assault and battery with intent to kill is defined
17 as an unlawful act of a violent nature towards the person
18 of another, the natural tendency of which is to cause death
19 or result in serious bodily harm and the act is accompanied
20 with malice aforethought either expressed or implied. And
21 the malice aforethought necessary to establish the crime of
22 assault and battery with intent to kill is the same as the
23 malice aforethought that I have defined for you in my
24 instruction as to the crime of murder. Malice aforethought
25 is the same as it relates to murder and assault and battery

Jury charge

1 with intent to kill.

2 Now, with regard to assault and battery with intent to
3 kill and with regard to any crime, criminal intent is a
4 necessary element that must be proven to your satisfaction
5 beyond a reasonable doubt.

6 Intent is the state of a person's mind that directs
7 his actions towards a specific object or goal. An intent
8 would necessarily include those consequences that represent
9 the very purpose for which an act is done, as well as those
10 consequences that are known to be substantially certain to
11 result from an act even though not actually or specifically
12 intended.

13 Criminal intent is the state of a person's mind that
14 operates jointly with the commission of an act in the
15 commission of a criminal offense. Criminal intent is a
16 mental state of conscious wrongdoing in contrast to an act
17 that is done inadvertently, mistakenly or accidentally and
18 without a criminal intent.

19 Now, with regard to assault and battery with intent to
20 kill, while a specific intent to kill may be established by
21 the evidence in a given case, it is not necessary that a
22 specific intent to kill be proven in order for the
23 defendant to be found guilty of the crime of assault and
24 battery with intent to kill.

25 There must however be proven beyond a reasonable doubt

Jury charge

1 that the defendant maintained at least a general criminal
2 intent in order for the offense of assault and battery with
3 intent to kill to be established.

4 Where a person is engaged in the commission of a
5 criminal act accompanied by criminal intent, that is a
6 mental state of conscious wrongdoing, he is legally
7 responsible for all the consequences that necessarily flow
8 from the commission of that act that are a natural and
9 probable consequence of it even though the result was not
10 actually intended as a part of the original design so long
11 as it is proven that the result was reasonably known to be
12 substantially certain to occur.

13 It further is not necessary in order to establish the
14 element of criminal intent that intent be proven by direct
15 or positive evidence. Intent may be proven and established
16 by circumstantial evidence, that is by inference, the same
17 way as any other fact or any other element of the crime may
18 be proven.

19 In your determination as to whether or not intent has
20 been proven you are permitted to infer the existence of any
21 criminal intent from the declarations and conduct of the
22 defendant, as well as from any other circumstances proven
23 by the evidence in the case from which you might reasonably
24 and logically infer such an intent so long as you are
25 satisfied of its existence beyond a reasonable doubt.

Jury charge

1 Included within assault and battery with intent to
2 kill is the lesser included offense of assault and battery
3 of a high and aggravated nature. And an assault and
4 battery of a high and aggravated nature includes those
5 terms assault and battery that I have previously defined
6 for you. But an assault and battery of a high and
7 aggravated nature is an assault and battery which is
8 accompanied by some circumstance of aggravation.

9 Now, some examples of facts which might be considered
10 a circumstance of aggravation would include the use of a
11 deadly weapon in the commission of an assault and battery,
12 the infliction of serious bodily harm that results from a
13 battery; serious harm and injury meaning more than slight.
14 It means substantial injury.

15 Another fact which might be considered a circumstance
16 of aggravation is a difference in the sexes of the parties
17 or a great disparity between the ages or physical
18 conditions or abilities of the parties involved in the
19 assault.

20 Now, in this case with respect to the crimes of murder
21 and the two indictments for assault and battery with intent
22 to kill, the defendant has raised what is known in the law
23 as the defense of self-defense.

24 The law recognizes the right of every person to defend
25 himself from death or from sustaining serious bodily harm.

Jury charge

1 And to do this a person may use such force as is reasonably
2 necessary even to the point of taking human life.

3 The right of self-defense however is founded upon
4 necessity, either actual or reasonably apparent necessity.
5 And self-defense is a complete defense to the charge of an
6 unlawful homicide or an unlawful assault and battery should
7 you find that it exists based upon your evaluation of all
8 of the evidence received during the trial of the case and
9 any reasonable inferences that you might draw from that
10 evidence.

11 The existence of self-defense entitles a person
12 charged with the commission of an unlawful homicide or an
13 unlawful assault and battery to a verdict of not guilty.

14 Now, although the defendant has raised the defense of
15 self-defense, the burden of proof is not upon the defendant
16 to prove the existence of self-defense, because, as I have
17 previously instructed you, the burden is always upon the
18 state to prove the defendant's commission of any crime they
19 alleged against him beyond a reasonable doubt. And this
20 would therefore necessarily require that the state prove
21 beyond a reasonable doubt the absence of self-defense.

22 But in your consideration as to whether or not
23 self-defense exists in this particular case there are four
24 basic elements that are required to exist before
25 self-defense can be made out where deadly force is employed

Jury charge

1 in order to repeal an assault.

2 First, it must be shown that the defendant was without
3 fault in bringing on the immediate difficulty which
4 resulted in any necessity for the use of deadly force which
5 resulted in the taking of human life or the infliction of
6 serious bodily harm. One cannot provoke or initiate or
7 otherwise through his own fault bring about a difficulty
8 and then claim the right of self-defense in the use of
9 deadly force.

10 As to the second element that must be shown to exist
11 before self-defense would be made out, understand that
12 every assault or every attack will not justify the use of
13 deadly force in order to defend against that assault.

14 In other words, you could not respond with a cannon to
15 an assault by a feather. It must be shown that at the time
16 that any fatal act was committed or that serious injury was
17 inflicted that the defendant actually believed that he was
18 in imminent danger of losing his own life or sustaining
19 serious bodily injury or that he actually was in such
20 imminent danger. And the term imminent danger means an
21 immediate or present danger and not a past or future
22 danger.

23 The third element that is required in order for
24 self-defense to exist is that if the defense is based upon
25 a belief of imminent danger, then it must be shown that

Jury charge

1 that belief was reasonable, that is that a reasonable
2 prudent person if they had been acting under the same or
3 similar circumstances would have entertained the same
4 belief as the defendant.

5 Now, the law of self-defense also encompasses
6 preventative action taken to protect one's own life if such
7 action is taken in anticipation of an imminent danger of
8 losing one's own life or of sustaining serious bodily
9 injury and it is a response to that immediate threat.

10 The defendant has the right to act upon appearances.
11 He may be mistaken. The law does not hold someone to a
12 refined assessment of danger as might be accomplished by an
13 adequate time to reflect, provided however that the
14 defendant acts as a person of ordinary reason, courage and
15 firmness would have acted or should have acted in meeting
16 the appearance of any danger.

17 One does not have to wait until his assailant gets the
18 advantage, for one always has a right to act upon the law
19 of self-preservation and has the right to prevent his or
20 her own life from being taken and not to allow an assailant
21 to get the advantage over him.

22 There is however a requirement of objectivity. That
23 is the belief must be reasonable. That is a reasonable and
24 prudent person if acting under the same or similar
25 circumstances would have entertained the same belief and

Jury charge

1 would have been warranted in so acting.

2 Now, some factors that might be considered that would
3 give a defendant the right to judge the conduct of his
4 adversary more harshly than otherwise might be appropriate
5 would include but not necessarily be limited to the
6 existence of any prior difficulties between the parties as
7 well as any prior threats by the deceased against the
8 defendant.

9 Now, as to the fourth element it must be shown that
10 the defendant had no other means of avoiding the danger of
11 losing his life or of sustaining serious bodily injury
12 other than to act as he did under those particular
13 circumstances, because, as I've stated, self-defense is
14 founded upon necessity. It is therefore a person's duty to
15 avoid the use of deadly force and the taking of human life
16 or inflicting serious injury where it is possible to avoid
17 taking that action even to the extent of retreating from
18 one's adversary if that can be done without increasing the
19 danger to one's self.

20 In other words, to avoid the necessity of using deadly
21 force against another, the person assaulted must retreat
22 from the aggressor unless it is shown that by retreating
23 the defendant would have increased the danger of sustaining
24 serious bodily injury or loss of life to himself.

25 Now, with regard to self-defense, if you have a

Jury charge

1 reasonable doubt as to the defendant's guilt after
2 considering all of the evidence received during the trial,
3 including any evidence that might relate to the issue of
4 self-defense, then it would be your duty to resolve that
5 reasonable doubt in favor of the defendant and to find him
6 not guilty.

7 If, on the other hand, you have no reasonable doubt as
8 to the defendant's guilt after you have considered all of
9 the evidence in the case, including any evidence relating
10 to the issue of self-defense, then it would your duty to
11 find the defendant guilty of any unlawful homicide or any
12 unlawful assault and battery that you find has been proven
13 to your satisfaction beyond a reasonable doubt based upon
14 the elements that I have defined for you as it relates to
15 those crimes of murder and assault and battery with intent
16 to kill and aggravated assault and battery.

17 Now, the next indictment charges the defendant with
18 burglary in the first degree. And that indictment alleges
19 that on May the 20th of 2006 the defendant did wilfully
20 enter a dwelling that belonged to Cornell Hall and that he
21 entered that dwelling without consent and also with the
22 intent to commit a crime therein; and further that after
23 entering the dwelling without consent and with the intent
24 to commit a crime therein, either that occurred in the
25 nighttime, or the defendant was armed with a deadly weapon,

Jury charge

1 or the defendant caused injury to a person who was not a
2 participant in any crime, or the defendant used or
3 threatened the use of a dangerous instrument, or the
4 defendant displayed what appeared to be a firearm.

5 Now, Section 16-11-311 is the statutory provision that
6 defines the criminal offense of burglary in the first
7 degree. And burglary in the first degree is defined as
8 follows: A person is guilty of burglary in the first
9 degree if that person enters a dwelling without consent and
10 with the intent to commit a crime therein. That's
11 burglary.

12 It's burglary in the first degree if one or more of
13 the additional facts are established, that is that when in
14 effecting entry or while in the dwelling or in flight from
15 the dwelling the defendant is armed with a deadly weapon,
16 or he causes physical injury to some other person, or he
17 threatens the use of a dangerous instrument, or he displays
18 what appeared to be a firearm, or the entering or the
19 remaining occurred in the nighttime, then proof of that
20 additional fact would make it burglary in the first degree.

21 So based upon that foregoing statute, before you could
22 find the defendant guilty of the crime of burglary in the
23 first degree it would be necessary that the state prove the
24 following four elements beyond a reasonable doubt: Number
25 one, they have to prove that he entered a dwelling.

Jury charge

1 Entry is an indispensable element in the crime of
2 burglary, and entry is the act of going into the dwelling.
3 It is not necessary however that the entire body of a
4 person shall be in the dwelling. The least entry is
5 sufficient. But it must be shown that the defendant did,
6 in fact, make an entry into the dwelling in some fashion.
7 It does not however necessarily require force be used in
8 order to accomplish the entry, but it does require an entry
9 in order for the crime of burglary to be made out.

10 It also must be a dwelling. And a dwelling is defined
11 in the law as a building or a structure which is ordinarily
12 or normally used for sleeping, living or lodging by any
13 person.

14 In addition, there must be an entry of a dwelling
15 without consent. Entering a dwelling without consent means
16 to enter a dwelling without the consent of the owner or
17 other person authorized to grant such permission.

18 There must be an entry of a dwelling without consent
19 and with the intent to commit a crime therein. There must
20 be an intent to commit a crime, whether the crime is
21 committed or not. But there must be an intent to commit a
22 crime before the offense of burglary may be made out.

23 The mere entering of a dwelling without an intent to
24 commit a crime does not constitute the crime of burglary.
25 It is only when there is an entering without consent

Jury charge

1 accompanied with an intent to commit a crime that the crime
2 of burglary is made out. And a crime of any grade would be
3 sufficient in order to satisfy this particular element.

4 It's also necessary that that intent to commit a crime
5 exist at the time of the entry into the dwelling. It's not
6 sufficient that the intent is formed after the entry into
7 the dwelling. On the other hand, where the intent to
8 commit exists at the time of entering it is no defense to a
9 charge of burglary that the intent was abandoned after the
10 entry.

11 The entry of a dwelling without consent and with the
12 intent to commit a crime therein completes the crime for
13 burglary.

14 Now, with regard to the fourth element which is
15 necessary to be established in order for burglary in the
16 first degree to be made out, there must be an additional
17 fact proven by the evidence in the case to your
18 satisfaction beyond a reasonable doubt. And that
19 additional fact would be one or more of the following.

20 There may be more than one proven, but at least one of
21 these facts must be proven in order for any burglary to be
22 first degree. But, as I say, all may be proven; some may
23 be proven; or none may be proven. But before it could be
24 burglary in the first degree at least one of these
25 additional factors must be established by the evidence in

Jury charge

1 the case.

2 That is that when the burglary was committed the
3 defendant was armed with a deadly weapon, or he caused
4 physical injury to a person not a participant in the crime,
5 or he used or threatened the use of a dangerous instrument,
6 or he displayed what appeared to be a firearm, or the
7 entering or the remaining in the dwelling occurred in the
8 nighttime.

9 Now, the next indictment I'm going to deal with is the
10 indictment as it relates to the crime of armed robbery.
11 Armed robbery is a stealing accomplished by force while
12 armed with a deadly weapon.

13 Larceny in the law is referred to as stealing -- is
14 defined as a taking and a stealing and a carrying away of
15 the personal property of another with the intention of
16 depriving the true owner of the use and possession of that
17 property and converting that property to the taker's own
18 use.

19 A robbery, as I have stated, is defined as a larceny
20 by force, is defined in the law as the taking and the
21 stealing and the carrying away of the personal property of
22 another of any value from either the person or the presence
23 of any person without their consent and with an intent to
24 steal and by using force or violence or by threatening the
25 use of force or violence in order to accomplish that

Jury charge

1 larceny, that is by way of intimidation and putting the
2 person in fear.

3 Forcing a person to surrender property from fear and
4 intimidation or otherwise by the use of force or violence
5 is a robbery under the law.

6 Section 16-11-330 is the statutory provision defining
7 armed robbery. And that statute provides that a person who
8 commits the crime of robbery as I have defined that term
9 for you while armed with a pistol, dirk, slingshot, metal
10 knuckles, razor or other deadly weapon is guilty of the
11 crime of armed robbery.

12 The defendant in this case is also charged with the
13 crime of attempted armed robbery in a separate indictment.
14 They allege that he attempted an armed robbery upon the
15 person of Robert Jackson, that is he attempted to take
16 monies or other goods from the person or presence of
17 Mr. Jackson.

18 Where a person is charged with the commission of a
19 crime they may also be convicted of an attempt to commit
20 that crime, in this case an attempted armed robbery.

21 An attempt to commit a crime is the commission of an
22 overt act done in furtherance of an intent to do a specific
23 thing which tends towards the accomplishment of the
24 intended goal but which falls short of completion for some
25 reason.

Jury charge

1 An attempt to commit a crime means the making of an
2 effort or the doing of an act towards the commission of the
3 crime intended, in this case the crime of armed robbery.
4 To constitute an attempt to commit a crime there must be
5 shown more than mere preparation and an intent that a crime
6 be done. But in addition there must be proven some act
7 done that directly moves towards the completion of the
8 commission of the crime.

9 There must be the intent to commit a specific criminal
10 offense accompanied by some act towards its completion
11 which would become part and parcel of that criminal
12 offense, in this case armed robbery, if it had been
13 completed and which, except for some intervening cause,
14 prevented the completion would have resulted in the crime
15 being committed.

16 And the remaining four indictments charge the
17 defendant with the violation of Section 16-23-410. And
18 that code section relates to the pointing or presenting a
19 firearm at any person. There are four separate
20 indictments.

21 The state alleges four different victims. Those
22 include Jerohmia Watts, China T. [REDACTED] India T. [REDACTED]
23 and Diane Jackson.

24 So the law -- the law is as to each of those separate
25 indictments, but whether the crime has been committed or

Jury charge

1 not will depend upon your determination of fact in the
2 case.

3 But Section 16-23-410 provides that it is unlawful for
4 a person to present or point at another person a loaded or
5 unloaded firearm except when acting lawfully in
6 self-defense or when engaged in a theatrical or other type
7 of a performance.

8 Now, to present a firearm means to offer for viewing;
9 and notice means to exhibit, to display or show in a
10 threatening or a menacing manner. To point a firearm means
11 to aim or to direct the firearm towards another person.

12 Now, Mr. Foreman and ladies and gentlemen of the jury,
13 I am not in any way concerned with what your decisions are,
14 but I do tell you that the verdicts of the jury must be
15 unanimous. That is all 12 of you must be in agreement as
16 to what any decision is as it relates to a particular
17 indictment.

18 Now, as you are well aware, you're going to have all
19 of these indictments in the jury room with you. As I say,
20 they'll be in the jury room with all of the evidence in the
21 case. But the indictments, again, are not evidence. They
22 are not proof of anything. They're simply going to be in
23 the jury room to serve as the verdict forms in this case.

24 On the back of each of these indictments, Mr. Foreman,
25 you'll see in the lower left-hand corner there's a word

Jury charge

1 verdict. And it's going to be beneath that word that
2 you'll indicate the jury's unanimous decision as it relates
3 to their decision on that particular charge.

4 As I told you, there are ten separate indictments.
5 There are actually 11 separate criminal offenses, because
6 the murder indictment has two separate offenses, one being
7 murder, the other being possession of a firearm during the
8 commission of a violent crime. So there are ten
9 indictments.

10 There are 11 decisions that you're going to have to
11 render. You'll render two of those decisions on the murder
12 indictment. And then of course you'll render a single
13 decision as to each of the other indictments.

14 Now, with respect to the murder indictment, I'm going
15 to mark on the back, on the lower left-hand corner where it
16 says verdict. I'm going to insert the words count one and
17 count two.

18 Count one refers to the count one of the indictment,
19 which is murder. Count two refers to count two in this
20 indictment, which is possession of a firearm during the
21 commission of a violent crime.

22 With respect to each of those offenses, if the state
23 satisfies you beyond a reasonable doubt the defendant has
24 committed the crime alleged, then your verdict would be
25 guilty.

Jury charge

1 If the state has failed to satisfy you of any
2 essential element that constitutes that crime beyond a
3 reasonable doubt, then your verdict would be not guilty.

4 So count one, with regard to murder, the two potential
5 verdict forms are guilty or not guilty. With respect to
6 count two, again, you have two potential verdict forms,
7 guilty or not guilty.

8 But understand in order to be found guilty of count
9 two the defendant must have been found guilty of count one.
10 So while you may find the defendant, depending upon your
11 view of the facts, now -- you could find the defendant
12 guilty of count one and technically not guilty of count
13 two. But you could not find the defendant guilty of count
14 two and not guilty of count one.

15 With regard to the two indictments charging assault
16 and battery with intent to kill, if the state has proven
17 that offense and each of those elements constituting that
18 charge beyond a reasonable doubt, your verdict would be
19 guilty.

20 If you have a reasonable doubt as to some element
21 constituting assault and battery with intent to kill but
22 you have no reasonable doubt as to the state's having
23 proved the lesser included offense of aggravated assault
24 and battery, then you're also going to be able to consider
25 the lesser included offense of assault and battery of a

Jury charge

1 high and aggravated nature. And you could find the
2 defendant guilty of that lesser included offense.

3 If the state has proven beyond a reasonable doubt the
4 crime of assault and battery with intent to kill, then the
5 verdict form would be guilty. That means guilty of the
6 crime that's actually in the indictment.

7 If the state has failed to satisfy you of one or more
8 of those elements or if you have a reasonable doubt as to
9 whether the defendant is guilty of the greater or of the
10 lesser, as I've stated, you always resolve a reasonable
11 doubt in favor of the defendant.

12 In that event, if you have a reasonable doubt of the
13 greater or lesser but you are convinced beyond a reasonable
14 doubt that the defendant has been proven guilty of the
15 lesser, then in that event the verdict form would be guilty
16 of assault and battery of a high and aggravated nature.
17 You'd have to write that out.

18 Then of course if the state has failed to prove one or
19 more of the essential elements of both of those offenses,
20 that is the greater or the lesser, beyond a reasonable
21 doubt, then in that event your verdict would be not guilty.

22 So with regard to the two assault and battery with
23 intent to kill indictments, the verdict forms are guilty,
24 or guilty of assault and battery of a high and aggravated
25 nature, or not guilty.

Jury charge

1 The next indictment is the indictment for burglary in
2 the first degree. With respect to that indictment you have
3 two potential verdict forms. They are guilty or not
4 guilty.

5 The indictment for armed robbery, two potential
6 verdict forms, guilty or not guilty.

7 Indictment for attempted armed robbery, two potential
8 verdict forms, guilty or not guilty.

9 And indictments, the four separate indictments,
10 charging pointing or presenting a firearm, again, two
11 potential verdict forms, guilty or not guilty.

12 With respect to all of the charges your verdicts may
13 be the same; they may be different. That will depend upon
14 your determination of fact and your application of the law
15 that I have provided you.

16 So you could find the defendant guilty of all of the
17 charges; you can find the defendant not guilty of all of
18 the charges; you could find the defendant guilty of some
19 charges and not guilty of other charges. That just depends
20 upon your determination of fact and your application of
21 law. But, again, whatever decision is reached as to a
22 particular charge, it has to be unanimous. All 12 jurors
23 must be in agreement.

24 Now, during your deliberations there may come a time
25 where you have a question about some testimony or the facts

Jury charge

1 or proof or evidence or something of that nature.
2 Understand that no additional evidence may be presented now
3 that the case is going to be submitted to you for your
4 deliberations. So if you've not already seen it, you've
5 not already heard it, you don't have it in the jury room,
6 you can't get it. No additional evidence may be received
7 because it's now going to you for your deliberations.

8 If however you have a question about what a witness
9 testified to and you disagree as to -- you jurors disagree
10 as to what that witness said or what that fact was, if you
11 think a question like that can be answered by having
12 testimony replayed, I can always bring you back to have
13 some portion or all of a witness' testimony replayed for
14 your benefit.

15 I don't have any transcripts. We can't print it out
16 and send it to you. But if you need to have testimony
17 replayed, if you'll let me know we'll locate that witness'
18 testimony and we'll play it in whole or in part depending
19 upon what the jury's wish is.

20 If at any time you have a question about the law
21 that's applicable, if you need an additional instruction,
22 if you need an additional or better explanation, or you
23 need some clarification of the law that you are to apply, I
24 can always answer those questions.

25 So while I can't respond to questions of fact, I can

Jury charge

1 respond to any question as it relates to the law that's
2 applicable.

3 So, Mr. Foreman, if at any time you need to direct
4 some question to me, if you'll write it on a piece of
5 paper, give it to the bailiff, he'll provide it to me, and
6 I'll try to respond to any difficulty, problem or question
7 that you may have during your deliberations.

8 If there are any smokers on the panel, you are
9 permitted to smoke during deliberations, but you cannot
10 smoke in the jury room. If you want to smoke you have to
11 go outside. So if at any time one or more jurors feels the
12 need to go out and smoke a cigarette, let the bailiff know.
13 They'll take you outside to accomplish that purpose.

14 But you are instructed that deliberations must stop.
15 And deliberations may only resume when all 12 jurors are
16 present. So if at any time a juror is absent,
17 deliberations have to stop. They may only resume when all
18 12 are present so that all may participate.

19 Because of the hour, I'm also going to ask the clerk
20 of court to come back to the jury room to take your lunch
21 orders. It'll take about an hour for lunch to be ordered,
22 prepared and brought to the jury room for your benefit. So
23 I'll send the clerk back there to take your lunch orders
24 unless you tell her you don't want to take lunch orders.
25 Then she won't. But if you feel like that's appropriate,

Jury charge

1 then she'll bring some menus and you'll be able to select
2 some limited things. You don't get to order anything you
3 want, but you'll get something that'll provide you some
4 nourishment, I'm sure. But you'll let her know about that.

5 All right. With that, I am going to ask the 12
6 primary jurors to go with the bailiff back to the jury
7 room. Do not however begin your deliberations yet. I've
8 got some matters I need to address with the lawyers.

9 If I don't need to bring you back for any reason, I'll
10 send word by way of the bailiff that you may begin
11 deliberations. In that event he'll bring to the jury room
12 all of the exhibits which have been admitted during the
13 trial.

14 And to you, Mr. Foreman, he'll also bring the
15 indictments which will serve as the verdict forms.

16 One other issue. If one or more jurors felt it
17 appropriate or necessary to take notes during the trial,
18 you can use those notes for your own benefit and your own
19 purposes. But those notes are for the note-taker's use
20 only.

21 In other words, no other juror can rely upon someone
22 who took notes as being what some witness said or what some
23 fact is unless you just agree that's the case. I'm just
24 saying you don't rely upon a note-taker's notes. They're
25 for that person's purposes only.

Jury charge

1 You have to determine the facts based upon your own
2 recollection and your discussions between your fellow
3 jurors. And, as I say, if you have a question about
4 testimony or the like, we can bring you back and have it
5 replayed in order to answer any such questions. So notes
6 are for the note-taker's uses and purposes only.

7 All right. With that, please go to your jury room but
8 await my instruction as to when to begin deliberations.

9 (Whereupon, the jury retired to deliberate at
10 11:45 a.m.)

11 (Whereupon, the alternate juror was excused.)

12 THE COURT: Are there any exceptions taken to the
13 instruction or requests for additions to the instruction by
14 the state?

15 MR. GOWDY: No objections; no exceptions.

16 THE COURT: By the defense?

17 MR. McPHERSON: Yes, Your Honor. We would except to
18 the fact that you omitted the charge of voluntary
19 manslaughter as to Robert Jackson.

20 THE COURT: Okay. Is that your only exception?

21 MR. McPHERSON: Yes, sir.

22 THE COURT: Okay. Let me ask y'all to verify the
23 exhibits before they go back, please.

24 (Pause.)

25 THE COURT: All the exhibits are accounted for?

1 MR. ALLEN: Yes, sir.

2 THE COURT: All right. Take them back. And here are
3 the verdict forms. Ask the jury to begin and notify us
4 when they've reached a decision.

5 We will be at ease while the jury is deliberating.

6 (Whereupon, a recess was taken.)

7 THE COURT: The jury has indicated they wish to hear a
8 portion of Dr. Wren's testimony, that testimony beginning
9 with the cross-examination by the defense counsel. And so
10 we're going to bring them back to have that heard.

11 All right. Bring them in, please.

12 (Whereupon, the jury returned to the courtroom at
13 2:07 p.m.)

14 THE COURT: All right. Mr. Foreman, I have your note
15 indicating that you and your fellow jurors wish to have the
16 portion of Dr. Wren's testimony replayed beginning with the
17 defense's cross-examination of Dr. Wren.

18 THE FOREMAN: That's correct.

19 THE COURT: All right. So we're going to go ahead.
20 And we'll start that tape of that beginning at that point,
21 and it'll just simply play until its conclusion unless you
22 tell us to stop at any time.

23 And if for some reason any juror cannot hear the tape
24 clearly or whatever as it begins to play, raise your hand
25 and let me know so that we can make arrangements to be

Verdict

1 certain that you all are able to hear it. Okay.

2 (Whereupon, the cross-examination testimony of Dr.

3 John David Wren was replayed to the jury.)

4 THE COURT: Do you want to hear the redirect also?

5 THE FOREMAN: Yes, sir.

6 THE COURT: Okay.

7 (Whereupon, the redirect testimony of Dr. John David

8 Wren was replayed to the jury.)

9 THE COURT: Okay. If you will, please retire to your
10 jury room and continue with your deliberations.

11 (Whereupon, the jury retired to deliberate at

12 2:40 p.m.)

13 THE COURT: We will continue to be at ease while the
14 jury is deliberating.

15 (Note from the jury marked Court's Exhibit No. 2.)

16 (Note from the jury marked Court's Exhibit No. 3.)

17 (Whereupon, a recess was taken.)

18 THE COURT: All right. I am told the jury has reached
19 a verdict. Are we ready to receive it?

20 MR. GOWDY: The state is, Your Honor.

21 MR. McPHERSON: The defense is ready.

22 THE COURT: Okay. Bring them in.

23 (Whereupon, the jury returned to the courtroom at

24 4:40 p.m.)

25 THE COURT: Mr. Foreman, have you and your fellow

Verdict

1 jurors reached a unanimous decision as to each of the
2 separate indictments?

3 THE FOREMAN: Yes, we have.

4 THE COURT: And have you indicated those decisions on
5 the back of the indictments as requested?

6 THE FOREMAN: Yes, we have.

7 THE COURT: And did you sign your name as the
8 foreperson?

9 THE FOREMAN: Yes, I did.

10 THE COURT: If you will, please hand those up by way
11 of the bailiff.

12 (Pause.)

13 THE COURT: All right. You may publish the verdicts.

14 THE DEPUTY CLERK: State of South Carolina, County of
15 Spartanburg, State vs. Russell Lee Sims, Indictment No.
16 2006-GS-42-3066, indictment for murder, we, the jury, find
17 the defendant guilty on count one for firearm during the
18 commission of a violent crime, guilty, which is count two.

19 On Indictment 2006-GS-42-3064, burglary first degree
20 of a dwelling, guilty.

21 Indictment No. 2006-GS-42-3072, assault and battery
22 with intent to kill, lesser charge, guilty, assault of a
23 high and aggravated nature.

24 Indictment No. 2007-GS-42-0205, assault with intent to
25 kill, the lesser charge, guilty of assault of a high and

Verdict

1 aggravated nature.

2 Indictment No. 2006-GS-42-3071, armed robbery, guilty.

3 Indictment No. 2006-GS-42-3070, attempted armed
4 robbery, guilty.

5 Indictment 2006-GS-42-3073, weapon, pointing and
6 presenting firearm at person, guilty.

7 2006-GS-42-3068, weapon, presenting and present --
8 pointing and presenting firearm at a person, guilty.

9 Indictment No. 2006-GS-42-3067, weapon, pointing and
10 presenting firearm at person, guilty.

11 And Indictment No. 2006-GS-42-3065, weapon, pointing
12 and presenting firearm at person, guilty. Signed this day,
13 January the 24th of 2004, by Douglas Mahan, the foreperson.

14 Ladies and gentlemen of the jury, is this your verdict
15 and still your verdict?

16 (Whereupon, all jurors responded in the affirmative.)

17 THE CLERK: If so, please, raise your right hand. So
18 say you all.

19 THE COURT: All right. Does the defendant wish to
20 have the jury polled?

21 MR. McPHERSON: Yes, Your Honor.

22 THE COURT: All right. Poll the jury, please, ma'am.

23 THE DEPUTY CLERK: Ladies and gentlemen of the jury, I
24 will be asking you a question. And that question will be
25 if this is your verdict and still your verdict, stand and

Verdict

1 answer yes or no as I call your name.

2 Juror No. 149, Donald Starnes.

3 THE JUROR: Yes.

4 THE DEPUTY CLERK: No., Juror No. 97, Douglas Mahan.

5 THE JUROR: Yes.

6 THE DEPUTY CLERK: Juror No. 137, Kimberly Roper.

7 THE JUROR: Yes.

8 THE DEPUTY CLERK: Juror No. 70, Richard Irby.

9 THE JUROR: Yes.

10 THE DEPUTY CLERK: Juror No. 166, Debra Whitehead.

11 THE JUROR: Yes.

12 THE DEPUTY CLERK: Juror No. 100, Randy Mathis.

13 THE JUROR: Yes.

14 THE DEPUTY CLERK: Juror No. 101, Kimberly Mayes.

15 THE JUROR: Yes.

16 THE DEPUTY CLERK: Juror No. 88, Brandi Ligon.

17 THE JUROR: Yes.

18 THE DEPUTY CLERK: Juror No. 104, Roger McCarter.

19 THE JUROR: Yes.

20 THE DEPUTY CLERK: Juror No. 136, Barry Ridley.

21 THE JUROR: Yes.

22 THE DEPUTY CLERK: Juror No. 87, Latosha Liburd.

23 THE JUROR: Yes.

24 THE DEPUTY CLERK: Juror No. 161, Tammy Waters.

25 THE JUROR: Yes.

Sentence

1 THE DEPUTY CLERK: The jury has been polled.

2 THE COURT: All right. Any other matters to be
3 addressed with the jury present?

4 MR. GOWDY: Not from the state, Your Honor.

5 MR. McPHERSON: Not from the defense.

6 (Whereupon, the trial jury was excused.)

7 THE COURT: All right. Do y'all need some time to
8 prepare the sentencing sheets?

9 MR. GOWDY: We have them prepared, Your Honor.

10 THE COURT: Okay.

11 MR. ALLEN: May we approach, Your Honor?

12 (Bench conference held off the record.)

13 THE COURT: All right. Anything further on the behalf
14 of the state prior to the imposition of sentence?

15 MR. GOWDY: No, sir, Your Honor.

16 I have spoken to Mr. Jackson's family, as well as
17 Cornell and Derrick Hall. They believe that the Court --
18 obviously was present during their testimony and has a full
19 appreciation of the gravity in this case. And they would
20 not have anything in addition to offer.

21 THE COURT: All right. Anything further on behalf of
22 the defendant?

23 MR. McPHERSON: Your Honor, the state would move for
24 a -- I mean the defense would move for a new trial as
25 stated in our motion for a directed verdict and also

Sentence

1 because of the denial of our request for voluntary
2 manslaughter.

3 THE COURT: All right. Each of those -- that motion
4 is denied based on each of the grounds.

5 MR. McPHERSON: I do have something I would like to
6 present to the Court.

7 THE COURT: All right.

8 MR. McPHERSON: Your Honor, I have subpoenaed the
9 defendant's mental health records from Spartanburg Area
10 Mental Health Center. These records indicate that the
11 defendant had previously been treated for symptoms of
12 paranoia. He had psychiatric symptoms. And we discussed
13 these problems as to whether or not we should have him
14 examined and came to the conclusion that he is competent to
15 testify, that he was competent, that we didn't have any
16 trouble talking to him, that he does have a problem with
17 paranoia. And he was given a drug called Ambilify (sic)
18 that he was supposed to be taking. And I'm going to tender
19 it to the state. I mean, I would like to hand it up to the
20 Court.

21 (Pause.)

22 THE COURT: Okay. I have reviewed the records.

23 MR. McPHERSON: Your Honor, we would just ask that you
24 consider that in your sentencing.

25 His mother is here in the courtroom. We would ask

Sentence

1 that you consider the fact that the solicitor indicated
2 that there was no record in his past and that there wasn't
3 a record of anything they could use in his past. We would
4 ask that you consider his tender age, his youth, youthful
5 age.

6 THE COURT: Mr. Sims, is there anything you would like
7 to add to what your lawyers have told me?

8 THE DEFENDANT: Excuse me?

9 THE COURT: Is there anything you would like to add to
10 what your lawyer has told me before I impose a sentence?

11 THE DEFENDANT: Well, I don't think it was fair. You
12 know, I ain't no killer, know what I'm saying. I ain't no
13 killer. They still lied, know what I am saying. They
14 ain't die. One person died because he had some problems
15 already because she smoked around him. And she knew he had
16 problems and she wanted him to die anyway. That isn't the
17 way she wanted him to die, but it happened. And she didn't
18 like how fast it happened, know what I'm saying, and put it
19 all on me, know what I'm saying. And if I wanted to kill,
20 everybody in the house would have been dead, in her house
21 and their house, in both houses. So if I was a killer
22 wouldn't everybody be dead, because I got my box of shells
23 and shotguns and everything? Come on, man. Get the
24 picture, man.

25 THE COURT: I think I have the picture.

Sentence

1 THE DEFENDANT: I had the picture when I came in here.
2 See what I'm saying? Stuck.

3 I will say I do owe y'all that, know what I'm saying.
4 I didn't point that gun at Jerohmia. They making all that
5 up. I'm sorry for everything, know what I'm saying.
6 That's how it happened, you know. I ain't lying though.
7 There ain't nothing to lie about.

8 THE COURT: All right. On Indictment No. 2006-3065,
9 that's an indictment for pointing and presenting a firearm,
10 Sentence of the Court is you be confined to the South
11 Carolina Department of Corrections for a period of five
12 years.

13 Indictment 2006-3067, an indictment for pointing and
14 presenting a firearm, Sentence of the Court is you be
15 confined to the South Carolina Department of Corrections
16 for a period of five years.

17 Indictment 2006-3068, an indictment for pointing and
18 presenting a firearm, Sentence of the Court is you be
19 confined to the South Carolina Department of Corrections
20 for a period of five years.

21 Indictment 2006-3073, an indictment for pointing and
22 presenting a firearm, Sentence of the Court is you be
23 confined to the South Carolina Department of Corrections
24 for a period of five years.

25 On Indictment 2007-205, an indictment for assault and

Sentence

1 battery with intent to kill, wherein you have been found
 2 guilty by the jury of the lesser included offense, the
 3 Sentence of the Court is you, Russell Lee Sims, be confined
 4 to the South Carolina Department of Corrections for a
 5 period of five years.

6 Indictment 2006-3072, an indictment for assault and
 7 battery with intent to kill, wherein you have been found
 8 guilty by the jury of the lesser included offense, the
 9 Sentence of the Court is you, Russell Lee Sims, be confined
 10 to the South Carolina Department of Corrections for a
 11 period of five years.

12 Indictment 2006-3070, an indictment for attempted
 13 armed robbery wherein you have been found guilty by the
 14 jury of that offense, the Sentence of the Court is you be
 15 confined to the South Carolina Department of Corrections
 16 for a period of 20 years.

17 Indictment 2006-3071, an indictment for armed robbery,
 18 wherein you have been found guilty by a jury of that
 19 offense, the Sentence of the Court is you, Russell Lee
 20 Sims, be confined to the South Carolina Department of
 21 Corrections for a period of 30 years.

22 Indictment 2006-3064, an indictment for burglary in
 23 the first degree, wherein you have been found guilty by a
 24 jury of that offense, the Sentence of the Court is you,
 25 Russell Lee Sims, be confined to the South Carolina

Sentence

1 Department of Corrections for the period of your natural
2 life.

3 Indictment 2006-3066, count two, possession of a
4 firearm during the commission of a violent crime, the
5 Sentence of the Court is five years.

6 Count one, the indictment for murder, wherein you have
7 been found guilty by a jury of that offense, the Sentence
8 of the Court is you, Russell Lee Sims, be confined to the
9 South Carolina Department of Corrections for the period of
10 your natural life.

11 Now, Mr. Sims, you have a right to appeal the
12 decisions of the jury and the Sentence of the Court. You
13 must file any notice of your intent to appeal those
14 judgments within ten days of today's date.

15 END OF REQUESTED TRANSCRIPT OF RECORD

16

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Certificate

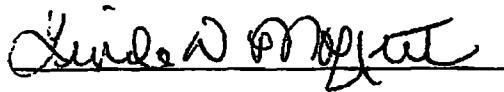
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 22nd, 23rd and 24th days of January 2007.

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

August 14, 2007



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RUSSELL LEE SIMS,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error by refusing to instruct the jury on the lesser-included offense of voluntary manslaughter, since Sims testified that he killed his girlfriend's father after he pointed a gun at him and they "tussled."

STATEMENT OF FACTS

On January 22 through 24, 2007, Russell Lee Sims stood trial in Spartanburg County, before Judge J. Derham Cole and a jury, on indictments charging him with murder, two counts of assault and battery with intent to kill, first-degree burglary, armed robbery, attempted armed robbery, possession of a firearm during the commission of a violent crime and four counts of pointing a firearm. By his own admission, Sims shot and killed his girlfriend's father and wounded two of her cousins, but he testified that he had done so in self-defense. ROA p. 49, line 20 – p. 60, line 6; ROA p. 64, lines 14-22. The jury found Sims guilty of everything except the two ABIKs, instead finding him guilty of assault and battery of a high and aggravated nature, and the judge sentenced him to life imprisonment.

ARGUMENT

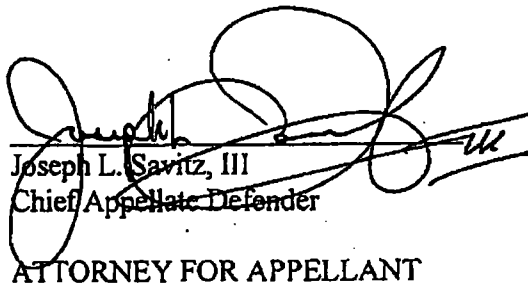
The trial judge committed reversible error by refusing to instruct the jury on the lesser-included offense of voluntary manslaughter, since Sims testified that he killed his girlfriend's father after he pointed a gun at him and they "tussled."

Sims testified that his girlfriend's father pointed a gun at him and "[t]hat's when I grabbed him. And he tussled with me. And then I shot him." ROA p. 49, line 20 – p. 50, line 18. Based on this testimony, defense counsel requested instructions on voluntary manslaughter and self-defense. ROA p. 94, line 17 – p. 95, line 3. The judge declined to charge voluntary manslaughter because he believed that an intentional killing could not be manslaughter. ROA p. 99, line 11 – p. 100, line 23. Defense counsel took exception to its omission from the judge's final instructions. ROA p. 148, lines 12-19. He moved for a new trial on this basis after the jury found Sims guilty. ROA p. 146, line 23 – p. 147, line 4.

Voluntary manslaughter is the unlawful killing of another in sudden heat of passion aroused by sufficient legal provocation. *State v. Cottrell*, Supreme Court Opinion No. 26424, decided January 28, 2008; *State v. Damon*, 285 S.C. 125, 328 S.E.2d 628 (1985). A refusal to charge voluntary manslaughter is only justified if there is absolutely no evidence which would tend to reduce the crime for murder to that lesser-included offense. *State v. Gilliam*, 296 S.C. 395, 373 S.E.2d 596 (1988). "[A]n overt, threatening act or a physical encounter may constitute sufficient legal provocation." *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144, 168 (2007), citing *State v. Gardner*, 219 S.C. 97, 64 S.E.2d 130 (1951).

Sims testified that he shot the victim after the victim pointed a gun at him and they fought. This testimony supported a charge on voluntary manslaughter. *Cottrell*. For this reason, the Court should reverse Sims' conviction for murder and remand for a new trial.

Respectfully submitted,



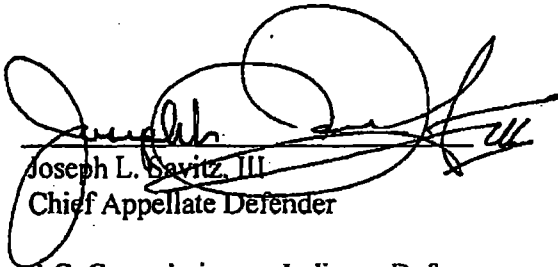
Joseph L. Savitz, III
Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 8th day of September, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 8, 2008



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

RUSSELL LEE SIMS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Al Simons, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 8th day of September, 2008.


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SUBSCRIBED AND SWORN TO before me
this 8th day of September, 2008.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 19, 2017

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FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error by refusing to instruct the jury on the lesser-included offense of voluntary manslaughter, since Sims testified that he killed his girlfriend's father after he pointed a gun at him and they "tussled."

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court was correct in denying Defendant's request for a jury instruction on voluntary manslaughter when no evidence that Defendant acted upon a sudden heat of passion was presented and the victim's actions were lawful.

STATEMENT OF THE CASE

On January 22-24, 2007, Appellant Russell Lee Sims ("Sims") was tried by a jury on the following charges: burglary in the first degree, armed robbery and attempted armed robbery, two counts of assault and battery with intent to kill, one count of first degree burglary, four counts of pointing and presenting a firearm, murder, and possession of a firearm during the commission of a violent crime. He was tried in the Seventh Circuit Court of General Sessions in Spartanburg County before Judge J. Derham Cole.

At trial, Sims requested the judge instruct the jury on self-defense and manslaughter in regards to the murder indictment. R. pp. 92-94, line 3. The initial instruction requested on voluntary manslaughter was stated as follows:

if you find that the defendant believed that he was in danger of serious bodily injury and death and believed that deadly force was necessary to avoid this danger, but if you find either of these beliefs were not reasonable, then you should consider whether the threat constituted adequate legal provocation as the term used in defining the crime of voluntary manslaughter.

R. p. 94, lines 18-25. The court heard brief arguments on the instruction. The court then denied the request for the jury instruction. In doing so, it first analogized Sims' request as being equivalent to a request for an imperfect self-defense instruction, and refused to grant such an instruction because the theory of imperfect self-defense has not been recognized in South Carolina. R. p. 98, lines 14-25. The court then addressed the requirements for a voluntary manslaughter charge. In further declining to give the instruction, the court found that none of the testimony indicated that Sims' actions were the result of an

uncontrollable impulse, or that a sudden heat of passion compelled his actions.

R. p. 99, line 14; R. p. 100, line 21.

[E]ven considering the defendant's own testimony, he didn't testify that he had an uncontrollable impulse based upon Mr. Jackson or anybody else having a weapon. What he testified to was that he intended to shoot them . . . From his own testimony, it was an intentional act. It was a calculated act, and it was committed for the purpose of defending himself. So that sounds like to me that's a cool, calculated, intentional act but designed to defend himself.

Id. The court noted defense counsel's exception to the court's decision to not instruct the jury on the charge. R. p. 100, lines 22-23. Sims later took exception to the fact that the court omitted the charge of voluntary manslaughter. R. p. 143, lines 17-19.

On January 24, 2007, Sims was convicted of on the murder charge, along with one count for possession of a firearm during the commission of a violent crime, one count of first degree burglary, two counts of assault of a high and aggravated nature, armed robbery, attempted armed robbery, and all four counts of pointing and presenting a firearm at a person.¹ R. p. 144, line 14, R. p. 145, line 18. For the murder conviction, Sims received a life sentence. R. p. 151, lines 8-9. He received a sentence of five years for the possession of a firearm during the commission of a violent crime conviction; a life sentence for the first degree burglary; five year sentences for each of the two assault of a high and

¹ The ABHAN convictions stemmed from the shootings of two of Diane Jackson's cousins at a house down the street from Mr. Jackson's home. The first degree burglary count also stemmed from the later incidents at the cousin's house. The armed robbery conviction was for Sims taking money, a check, and a car from Diane Jackson after Sims shot Mr. Jackson. The attempted armed robbery conviction stemmed from Sims' attempt to take money from Mr. Jackson after he shot him. Mr. Jackson had no money. The four counts of pointing and presenting a firearm stemmed from the car ride from Spartanburg to Campobello discussed in the statement of facts. Sims pointed the gun at each occupant in the vehicle. The events related to these charges are not discussed in detail herein.

aggravated nature convictions; a thirty year sentence for the armed robbery conviction; a twenty year sentence for the attempted armed robbery conviction; and five year sentences for each of the pointing and presenting a firearm at a person convictions. R. p. 149, line 8 – R. p. 151, line 10. Sims moved for a new trial on the ground that the court denied his request for a voluntary manslaughter instruction. R. p. 146, line 23 – R.p. 147, line 2. The motion was denied. R. p. 147, lines 3-4. Sims timely filed notice of appeal on January 31, 2007. Before this Court is Sims' direct appeal of his murder conviction. He requests this Court reverse the conviction and order a new trial only on the murder charge. The State respectfully requests this Court deny Sims' appeal and affirm his conviction for the murder of Robert Jackson.

STATEMENT OF FACTS

On the night of May 20, 2006, Russell Lee Sims shot Robert Jackson on the porch of Mr. Jackson's home in Campobello, SC. Sims admits that he shot the seventy-five (75) year-old Mr. Jackson. R. p. 50, lines 16-17. There is some dispute as to whether Mr. Jackson pointed a shotgun at Sims prior to the shooting. Compare R. p. 13, lines 22-25 and R. p. 15, line 23 – R.p. 16, line 4, with R.p. 50, lines 11-15.

Sims was dating Mr. Jackson's only daughter, Diane. R. p. 40, lines 1-12. She and her two daughters lived with Mr. Jackson in his Campobello home. R. p. 3, lines 12-15. Sims lived in Spartanburg, but he would spend from three days to a full week at Jackson's home every week. R. p. 40, line 22 – R.p. 41, line 1. He owned a .380 automatic handgun. R. p. 42, lines 15-18. Sims kept the gun in three places: on his person, under the front passenger seat in Diane's car when they traveled together, and under Diane's mattress when Sims was staying at Jackson's home. R. p. 43, lines 7-9; R.p. 47, lines 10-14; see R.p. 87, lines 20-23. He also kept ammunition for the gun under the mattress at her home. R. p. 44, lines 1-2.

On May 20, 2006, Sims traveled with Diane and her two children to pick up her goddaughter's son in Spartanburg. See R. p. 2, line 23 – R. p. 3, line 11. On the way back to Jackson's home, Sims pulled his handgun up from under the passenger seat of the car. R. p. 48, lines 1-3. He started shooting into the woods from the passenger side window while the car was moving. R. p. 48, lines

10-11. This upset the children.² R. p. 48, lines 11-12. They were crying when they arrived home. R. p. 48, line 23. Once they arrived, Diane informed Sims that she would be taking him home shortly. R. p. 48, line 25. Sims testifies that he entered Jackson's home to retrieve his belongings, including the ammunition for his handgun. R. p. 49, lines 8-12. On his way into the home, he passed Mr. Jackson, who had just come outside to speak with Diane. R. p. 48, line 25 – R.p. 49, line 2. Sims and Jackson did not speak to one another. R. p. 49, lines 3-6. After retrieving his belongings, Sims exited the house and stood by a Jeep parked outside. R. p. 49, lines 12-13. Mr. Jackson remained standing on his front porch while his daughter took the children inside of the house. R. p. 49, line 21 – R.p. 50, line 5.

There is some contention as to what happened next.³ At trial, Sims testified that Mr. Jackson began yelling at him. R. p. 50, lines 7-8. Sims ignored Mr. Jackson, which he states made Mr. Jackson angrier. R. p. 50, lines 8-9. **Sims began reloading his handgun in the yard.**⁴ R. p. 49, lines 13-14; R.p. 50, lines 6-7. According to Sims, Jackson then went to the side of the porch and retrieved a one-shot, 20-gauge shotgun.⁵ R. p. 50, lines 10-14. Sims could not initially tell that Jackson had the shotgun at first because it was dark. R. p. 50, lines 10-14. However, Sims approached Mr. Jackson and saw the shotgun once

² The State presented evidence that the children may also have been upset because Sims pointed the gun at each of them during the ride to Campobello. R. p. 7, line 14 – R. p. 8, line 5.

³ The primary conflict in the testimony was over whether Mr. Jackson had access to a shotgun on the night of the shooting.

⁴ Sims states that he was reloading the gun so he could shoot the gun out in the street. R. p. 49, lines 18-19.

⁵ Diane Jackson denied that her father had a shotgun at the house at the time. R. p. 7, lines 9-13. She stated that the shotgun had been missing for about a month at the time of the shooting. R. p. 16, lines 1-4. Her children also deny seeing Mr. Jackson's shotgun that night. R. p. 22, line 22 – R.p. 23, line 4; R.p. 28, lines 6-15.

Jackson turned around. R. p. 50, lines 12-13. According to Sims, Mr. Jackson clicked the barrel of the shotgun and pointed it at him. R. p. 50, line 14. "That's when I grabbed him. And he tussled with me. And then I shot him and then pulled the gun out his hands and threw the gun when we going up the steps."⁶ R. p. 50, lines 15-18. Sims later contradicts this testimony regarding the sequence of the shooting. "[T]hen I took the gun from him and shot him." R. p. 52, line 2. Sims shot Jackson twice in the neck with his handgun. R. p. 53, lines 1-2; R.p. 34, lines 7-10. Jackson died over a month later from complications that resulted from the trauma caused by the gunshots. R. p. 35, lines 8-25.

⁶ Sims later testifies that he after seeing the shotgun; he took the gun from Jackson and then shot him. R. p. 52, line 2.

ARGUMENT

SIMS' MURDER CONVICTION SHOULD BE AFFIRMED BECAUSE THERE WAS NO EVIDENCE HE ACTED IN A SUDDEN HEAT OF PASSION. THE VICTIM'S ALLEGED PROVOCATION WERE ACTS OF SELF-DEFENSE AND CANNOT BE CONSTRUED AS LEGALLY ADEQUATE PROVOCATION.

The State respectfully requests this Court deny Sims' appeal and affirm Sims' conviction in the murder of Robert Jackson. The trial court was correct in denying Sims' request for a jury instruction on voluntary manslaughter. There was no evidence introduced at trial that could support a finding that Sims acted in a sudden heat of passion, or that his actions resulted from an uncontrollable impulse. Further, the evidence presented shows that anything done by Mr. Jackson's constituted adequate legal provocation because Mr. Jackson's alleged actions prior to the shooting were lawful. Since an instruction on voluntary manslaughter requires evidence of both sudden heat of passion and adequate legal provocation, a lack of evidence for either element of voluntary manslaughter would suffice to disallow an instruction on voluntary manslaughter. Since neither sudden heat of passion nor adequate legal provocation was present, the trial court was correct to not instruct the jury on voluntary manslaughter. Thus, there was no reversible error and the conviction should be affirmed.

Standard of review

"An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." State v. Williams, 367 S.C. 192,

195, 624 S.E.2d 443, 445 (Ct.App.2005) (quoting Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). Furthermore, "the trial court's refusal to give a requested jury instruction must be both erroneous and prejudicial to warrant reversal." State v. Light, 363 S.C. 325, 610 S.E.2d 504 (Ct.App.2005). "The evidence presented at trial determine the law to be charged." Id. If there is any evidence to support the requested charge, the trial court should grant the request. Williams, at 195, 624 S.E.2d at 445. The evidence must be reviewed in the light most favorable to appellant. State v. Cottrell, 376 S.C. 260, 262, 657 S.E.2d 451, 452 (2008).

A. A voluntary manslaughter instruction was not warranted because there was no evidence that Sims' actions were the result of an uncontrollable impulse, or that he acted in the sudden heat of passion.

This Court should affirm Sims' conviction because the trial court was correct in denying Sims' request for a jury instruction on voluntary manslaughter. No evidence supporting the elements of voluntary manslaughter was presented at trial. More specifically, none of the evidence indicated that Sims shot Mr. Jackson in a sudden heat of passion or that Sims acted upon an uncontrollable impulse when he pulled the trigger. Further, Sims' allegation that he and Mr. Jackson were engaged in a "tussle" prior to the shooting is insufficient to support a finding that Sims acted upon an uncontrollable impulse in the sudden heat of passion. Since there was no evidence that Sims acted in a sudden heat of passion, the trial court had no factual basis for an instruction on voluntary manslaughter.

It is proper for a trial court to refuse to charge voluntary manslaughter in a murder case where it very clearly appears there is no evidence whatsoever tending to reduce the crime from murder to manslaughter. State v. Locklair, 341 S.C. 352, 360, 535 S.E.2d 420, 424 (2000). "Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." Id. at 359, 535 S.E.2d at 424 (quoting State v. Johnson, 333 S.C. 62, 508 S.E.2d 29 (1998)). Both heat of passion and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter. Locklair, 341 S.C. at 359-60, 535 S.E.2d at 424; see State v. Gilliam, 296 S.C. 395, 397, 373 S.E.2d 596, 597 (1988). Sudden heat of passion upon sufficient legal provocation that mitigates a felonious killing to manslaughter must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called "an uncontrollable impulse to do violence." Id. at 360, 535 S.E.2d at 424.

In determining whether the act that caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing. State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 565 (1969). In cases where both self-defense and voluntary manslaughter jury instructions may be involved, the court should review the facts to see if a charge on both is warranted. Gilliam, 296 S.C. at 396-7, 373 S.E.2d at 597. "Both self-defense and the lesser included offense of voluntary manslaughter should be submitted to the jury if supported by the evidence." Id. "The rationale for this rule is that the jury may fail

to find all the elements of self-defense but could find sufficient legal provocation and heat of passion to conclude the defendant was guilty of voluntary manslaughter." Id. However, a jury instruction for a charge of voluntary manslaughter is not warranted when no evidence is presented that shows the defendant was overcome by a sudden heat of passion that would produce that uncontrollable impulse. State v. Walker, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996).

It is clear from the record that the trial court engaged in the analysis envisioned by the South Carolina Supreme Court in Gilliam. The court clearly reviewed the evidence presented at trial to see if there was any evidence presented to support a jury instruction on voluntary manslaughter. R. p. 99, line 11 – R.p. 100, line 20. It found that there was no evidence that could support a finding that Sims acted in a sudden heat of passion. R. p. 99, lines 14-16; R.p. 100, lines 13-14. On that finding, the court refused to grant Sims' request for a jury instruction on voluntary manslaughter. R. p. 100, lines 21-23. Therefore, to prevail on appeal, Sims must show that the trial court's finding of a lack of evidence of sudden heat of passion was erroneous. Sims would need to show that there was evidence presented at trial that indicated his actions were in a heat of passion.

At issue is whether the fact Sims and Mr. Jackson engaged in a "tussle" is evidence that Sims acted in a sudden heat of passion. It is not. There are two threshold questions a trial court must address before it can give a voluntary manslaughter instruction. First, is there any evidence on the record that can show the defendant acting in a sudden heat of passion? Second, is there any evidence on the record that can show the defendant's actions were the result of adequate legal

provocation? These are two distinct issues that must be addressed separately. Both have to be answered in the affirmative for the trial court to instruct the jury on voluntary manslaughter. Furthermore, a finding that there is evidence of adequate legal provocation has no bearing on whether a defendant may have acted in a sudden heat of passion. See State v. Cole, 338 S.C. 97, 102, 525 S.E.2d 511, 513 (2000). Nor does the fact that there is evidence that a defendant acted in a sudden heat of passion necessarily imply that a defendant's actions were the result of adequate legal provocation. See State v. Komahrens, 290 S.C. 281, 285-6, 350 S.E.2d 180, 184 (1986).

This is clearly the dilemma the trial court faced in denying Sims' request for a voluntary manslaughter instruction. See R. p. 100, lines 13-14. At trial, defense counsel's argument in support of a voluntary manslaughter instruction essentially consisted of two statements. "I believe heat of passion could be inferred from the circumstances of the case." R. p. 100, lines 4-5. When asked which circumstances, counsel replied "[f]rom the fact that Mr. Jackson approached him, clicked the gun and pointed the gun at him." R. p. 100, lines 8-9. While it is clear that the testimony about Mr. Jackson's pointing the shotgun at Sims may be evidence of adequate legal provocation, it is not evidence that Sims was overtaken by any impulse. Nor is there evidence that Sims was overcome by a sudden heat of passion as a result of engaging in the alleged "tussle" with Mr. Jackson. Without any evidence that Sims acted upon a sudden heat of passion, there was no factual basis for a voluntary manslaughter instruction.

Reviewing the facts in the light most favorable towards the defendant, none of the evidence presented at trial suggests that Sims acted in a sudden heat of passion when he shot Mr. Jackson.⁷ In fact, Sims' testimony does not indicate whether he had any emotional response to any interaction he had with Mr. Jackson on May 20, 2006. Sims passed Mr. Jackson to enter the house without speaking to him. R. p. 48, line 25 – R.p. 49, line 6. After retrieving his clothing and ammunition, Sims waited outside for Diane while he reloaded his handgun. Sims states that Mr. Jackson was "fussing" while he waited, but Sims just "tuned him out." R. p. 50, lines 7-8. This, according to Sims, "made 'm [Mr. Jackson] even hotter, while he was fussing." R. p. 50, lines 8-9. However, Sims says nothing of how the "fussing" affected him. Sims never discloses whether he became angry with Mr. Jackson immediately before the shooting. Nor does he acknowledge he feared Mr. Jackson that evening, even after Mr. Jackson allegedly confronted him with the shotgun. Sims' testimony provides no factual basis upon which anyone could find he shot Mr. Jackson in a sudden heat of passion.

The alleged "tussle" between Sims and Mr. Jackson over the shotgun also fails to provide any evidence that Sims acted in a sudden heat of passion. Sims admits that he initiated the contact after seeing the shotgun. R. p. 50, lines 10-15. However, in describing the "tussle," Sims never indicates that he becomes angry with or afraid of Mr. Jackson. In fact, Sims' testimony suggests that he retained full control of his faculties during the "tussle." He states "I shot him for, in defense to get the weapon out of his

⁷ Sims is the only individual who testifies that Mr. Jackson had a shotgun on the night of the shooting. He is also the only witness who was privy to the interaction between him and Mr. Jackson immediately prior to the shooting. He is the only person who provides any favorable testimony about the shooting. For those reasons, we rely upon his testimony for the facts. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 392 (2001).

hand." R. p. 52, lines 21-22. Mind you, no shots were ever fired from the shotgun over which they allegedly "tussling." Sims shot Mr. Jackson with the handgun Sims had just reloaded while waiting in Mr. Jackson's yard.

Further, there are no other facts or surrounding circumstances that would support a finding that the "tussle" stirred an uncontrollable impulse in Sims to shoot Mr. Jackson. By all accounts, Mr. Jackson was an old man. The treating trauma surgeon testified that it appeared that Mr. Jackson was not in good health at the time of the shooting. R. p. 35, lines 8-11; see R.p. 34, lines 18-20. The forensic pathologist confirmed that Mr. Jackson was in fairly poor health prior to the shooting. See R. p. 38, lines 17-18. There was no evidence presented that suggests Mr. Jackson would have made a formidable combatant in a "tussle" with Sims. In fact, at one point during his testimony Sims hinted that the "tussle" might have been over before he fired the shots. While explaining to the jury a second time what happened on May 20, 2006, Sims states "then I, then I took the gun from him and shot him." R. p. 52, line 2. And by Sims' own admission, he was generally not afraid of Mr. Jackson because Sims had his handgun. See R. p. 46, lines 17-21.

Sims should not be allowed to rely upon the holding in State v. Penland, 275 S.C. 537, 273 S.E.2d 765 (1981), for a presumption there was sufficient evidence of sudden heat of passion. In Penland, the South Carolina Supreme Court held the trial court properly charged the jury on voluntary manslaughter where there was evidence of the pointing of a gun at the appellant and there was a subsequent struggle. The court did not discuss the facts of the case in Penland, and it is unclear whether the statement given by the appellant in that case provided more insight to the appellant's state of mind

at the time of the shooting. That being said, Penland cannot be read to presume that there is sufficient evidence a defendant acted in a sudden heat of passion simply because there was a pointing of a gun and a possible struggle over the gun. As noted by Chief Justice Toal in her concurring opinion in State v. Childers, reading Penland this way would "impermissibly blend the concept of voluntary manslaughter with the defense of self-defense." 373 S.C. 367, 376, 645 S.E.2d 233, 237-8 (2007). Such a presumption would undermine a trial court's ability to determine the law to apply based on the facts of the case, especially when the facts clearly show the defendant did not act in a sudden heat of passion in killing the victim. Further, such a presumption could unduly prejudice either the State or a defendant, depending upon the facts and circumstances of a case. It should remain the trial court's decision to determine the law to be instructed based on the facts of each individual case.

There was no evidence presented at trial by either the State or Sims that indicated that Sims shot Mr. Jackson in a sudden heat of passion. That the two may have "tussled" over Mr. Jackson's shotgun was of no consequence because there was no evidence that Sims developed any passion during the "tussle," or that out of the "tussle" arose an uncontrollable impulse. Since there was no evidence of heat of passion during the shooting, the trial court had no factual basis upon which to grant a voluntary manslaughter jury instruction. Therefore, the trial court's refusal to grant such an instruction was correct and should be affirmed.

B. A voluntary manslaughter instruction was not warranted because the alleged actions of Mr. Jackson could not constitute legally adequate provocation.

The trial court's decision to deny Sims' request for a voluntary manslaughter jury instruction should be affirmed because there was no legally adequate provocation. The alleged provocation was a combination of Mr. Jackson pointing a shotgun at Sims followed by a "tussle" initiated by Sims. Mr. Jackson's pointing a shotgun at Sims is not a legally adequate provocation because Mr. Jackson was attempting to defend himself, which was lawful under South Carolina law. Similarly, the alleged "tussle" between Sims and Mr. Jackson could not constitute legally adequate provocation because Mr. Jackson was defending himself from Sims' attack. Since lawful acts cannot serve as the basis for a factual finding of legally adequate provocation, it would have been improper for the court to grant a jury instruction on voluntary manslaughter in this case.

"The law does not reduce from murder to manslaughter every homicide committed in the heat of passion; it must be passion justly excited by legal provocation." State v. Norris, 253 S.C. 31, 38, 168 S.E.2d 564, 567 (S.C. 1969). If adequate provocation does not exist, then a homicide cannot be manslaughter, even if it was committed in the heat of passion. Id. "The exercise of a legal right, no matter how offensive to another, is never in law deemed a provocation sufficient to justify or mitigate an act of violence." Id. at 39, 168 S.E.2d at 567.

It is fairly evident that Mr. Jackson was acting in self-defense when he allegedly pointed a shotgun at Sims. It is undisputed that prior to the confrontation, Sims had fired shots from a moving car along Miller Road. R. p. 48, lines 14-18. Some of these shots were fired just down the street from Mr. Jackson's house. See R. p. 72, line 25 –

R.p. 73, line 2.⁸ It is also undisputed that the children in that car were crying when they arrived at Mr. Jackson's home. R. p. 48, line 23. Further, Sims admits that he reloaded his gun in Mr. Jackson's yard. R. p. 50, lines 6-9. Sims was armed when he approached Mr. Jackson near the porch. Sims' testimony indicates that Mr. Jackson had his back to Sims when he approached. "And then when he got around to the front porch where the light was, and I walked over. And he turned around, and then he clicked it. And then he pointed it at me." R. p. 50, lines 12-15. While Sims testified that he tried to conceal the fact that he was reloading his gun in the yard from Mr. Jackson, it is unclear if he was successful in doing so. R. p. 74, line 20 – R.p. 75, line 6.

Nevertheless, if and when Mr. Jackson aimed a shotgun at Sims, Mr. Jackson would have had good reason to believe that Sims was going to assault him. Mr. Jackson did not react in a way disproportionate to the threat posed by Sims. Mr. Jackson never fired the shotgun at Sims. Sims does not allege that Mr. Jackson verbalized some threat when he pointed the shotgun at him. Based on the evidence presented at trial, there appears to be reason to believe Mr. Jackson was acting in self-defense in pointing the shotgun at Sims.

"A victim's attempts to resist or defend himself from a crime cannot satisfy the sufficient legal provocation element of voluntary manslaughter." State v. Shuler, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001). The South Carolina Supreme Court has consistently held it is improper to instruct on voluntary manslaughter when the alleged provocation arose from the victim's attempt to protect himself from the defendant's crime. In State v. Tyson, 283 S.C. 375, 323 S.E.2d 770 (1984), the court rejected the

⁸ Cornell Hall lived down the street on Miller Road from Mr. Jackson. See R. p. 57, line 23 – R.p. 58, line 8.

defendant's request for a voluntary manslaughter instruction when the victim struggled with the defendant during an attempted robbery. Id. at 379, 323 S.E.2d at 772. The Court held that there was no evidence of sufficient legal provocation; "it is clear the victim simply was defending himself against an armed robber and was killed in that attempt." Id. Similarly, the court in Shuler held a voluntary manslaughter instruction was not warranted where the victim fired a gun at the defendant during an attempted kidnapping and robbery. 344 S.C. at 633, 545 S.E.2d at 820.

Any involvement that Mr. Jackson had in the alleged "tussle" over the shotgun was clearly in self-defense. Sims was armed with his now reloaded handgun. Sims initiated the "tussle." Sims was attempting to take Mr. Jackson's shotgun away from him. Mr. Jackson had reason to fear for his safety. Sims was not only assaulting Mr. Jackson at the time; he was arguably attempting to rob him of his shotgun. It was during this "tussle" that Sims shot Mr. Jackson with the handgun, not the shotgun. Mr. Jackson's involvement in the "tussle" clearly did not go as far as the actions of the victims Tyson and Shuler. Mr. Jackson only had limited involvement in an alleged "tussle" over a shotgun that was never fired. He never fired a shot at Sims. There likely was no struggle. Mr. Jackson was an old man who was not in good health. Sims was over fifty years his junior and was armed with a newly reloaded semiautomatic handgun.⁹ Clearly, Mr. Jackson's actions could not constitute adequate legal provocation to warrant a voluntary manslaughter jury instruction.

That Sims and Jackson had a contentious history bears little weight in the determination of whether Mr. Jackson provoked Sims. It is clear from both the

⁹ Sims was twenty-one years old at trial. R. p. 39, lines 9-10. He presumably would have been at least twenty on the day of the shooting.

testimony of Sims and Diane Jackson that there was previous tension between him and Mr. Jackson. According to Sims, Mr. Jackson threatened to shoot him in an incident a few months prior to the shooting.¹⁰ R. p. 46, lines 2-3. However, the evidence presented at trial does not reveal whether anything said prior to the shooting related back to the previous tension between the two men. In fact, both Diane Jackson and Sims suggest that the previous tension had been resolved; Mr. Jackson backed off of a threat that had prevented Sims from visiting the Jackson home for two weeks. See R. p. 46, lines 22-24.

Since the alleged provocation by Mr. Jackson was clearly lawful conduct, the trial court had no facts before it to support a finding there was legally adequate provocation. Therefore, the trial court's decision to not instruct the jury on voluntary manslaughter was correct.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests this Court to deny Sims' appeal and affirm his conviction in the murder of Robert Jackson. Since the remaining convictions of armed robbery, attempted armed robbery, first degree burglary, possession of a firearm during the commission of a violent crime, assault of a high and aggravated nature, and pointing and presenting a firearm at a person were not challenged in the appeal, these convictions must be affirmed.

Respectfully submitted,

¹⁰ Diane Jackson claimed that Sims was the one who made the threat. R. p. 12, lines 12-14.

HENRY DARGAN McMASTER
Attorney General

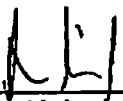
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By: 

Alphonso Simon Jr.

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February 24, 2009.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY

J. Derham Cole, Circuit Court Judge

THE STATE

RESPONDENT,

V.

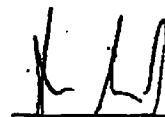
RUSSELL LEE SIMS,

APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 24th day of February, 2009.



ALPHONSO SIMON, JR.
Assistant Attorney General

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY

J. Derham Cole, Circuit Court Judge

THE STATE

RESPONDENT,

V.

RUSSELL LEE SIMS,

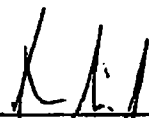
APPELLANT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same via inter-office mail to his attorney of record, Joseph L. Savitz, III, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211-1589.

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

This 24th day of February, 2009.


ALPHONSO SIMON, JR.
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
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ATTORNEY FOR RESPONDENT

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

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

The State,

Respondent,

v.

Russell Lee Sims,

Appellant.

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2010-UP-080
Submitted January 4, 2010 – Filed February 2, 2010

AFFIRMED

Senior Appellate Defender Joseph L. Savitz, III, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Donald J.
Zelanka, and Assistant Attorney General Alphonso

Simon, Jr., all of Columbia; and Solicitor Harold W. Gowdy, III, of Spartanburg, for Respondent.

PER CURIAM: Russell Lee Sims appeals his convictions for murder, possession of a firearm during the commission of a violent crime, first degree burglary, two counts of assault and battery of a high and aggravated nature, armed robbery, attempted armed robbery, and four counts of pointing and presenting a firearm at a person. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005) (stating this court will only reverse the trial court's decision as to a jury instruction if the trial court abused its discretion); State v. Walker, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996) (indicating a jury instruction on voluntary manslaughter is not warranted when no evidence is presented to demonstrate the defendant was overcome by a sudden heat of passion that would induce an uncontrollable impulse).

AFFIRMED.

SHORT, THOMAS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

RUSSELL LEE SIMS,

APPELLANT

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

Opinion No. 2010-UP-080

PETITION FOR REHEARING

Pursuant to Rule 221(b), SCACR, counsel for Russell Lee Sims petitions for rehearing because (1) the Court has applied the wrong standard of appellant review to the trial judge's refusal to charge the lesser-included offense of voluntary manslaughter and (2) perhaps he was directed by that standard of review overlooked the evidence supporting the sudden heat of passion necessary for manslaughter.

The Court sites *State v. Williams*, 367 S.C. 192, 624 S.E.2d 443 (Ct. App. 2005) for the proposition that "this court will only reverse the trial court's decision as to a jury instruction if the trial court abused its discretion". *Williams* dealt with a defendant's right to defend himself against excessive force by an arresting officer during an unlawful arrest, *not* a lesser-included offense.

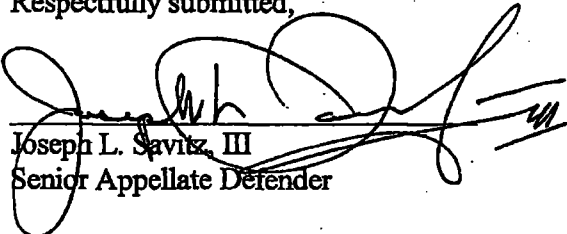
Where there is evidence supporting a lesser-included offense a judge has no discretion about whether to charge that offense. See *State v. Gilliam*, 296 S.C. 395, 373 S.E.2d 596 (1988). Moreover, the evidence must be viewed and the light most favorable to the defendant. *State v. Cottrell*, 376 S.C. 260, 657 S.E.2d 451 (2008).

Sims testified that his girlfriend's father had pointed a gun at him and "[t]hat's when I grabbed him. And he tussled with me. And then I shot him." ROA p. 49, line 20- p. 50 line 18. The trial judge declined to charge voluntary manslaughter because he believed that an intentional killing could not be manslaughter. ROA p. 99 line 11- p. 100 line 23. He did, however, instruct the jury on self-defense.

The threat of an eminent deadly assault is sufficient to require an instruction on voluntary manslaughter. *State v. Jackson*, 301 S.C. 41, 389 S.E.2d 650 (1990). "There can be little argument" that an unprovoked attack with a deadly weapon constitutes legal provocation sufficient to warrant a charge on manslaughter." *State v. Knoten*, 347 S.C. 296, 555 S.E.2d 391, 397 (2001). This includes pointing a gun at the defendant with apparent deadly intent. *State v. Penland*, 275 S.C. 537, 273 S.E.2d 765 (1981).

For these reasons, the Court should grant rehearing, reverse Russell Lee Sims' convictions and remand for a new trial.

Respectfully submitted,



Joseph L. Savitz, III
Senior Appellate Defender

This 17th day of February, 2010.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

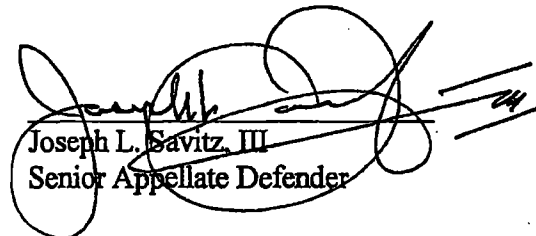
V.

RUSSELL LEE SIMS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 17th day of February, 2010.


Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 17th day
of February, 2010.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 1, 2019.

The South Carolina Court of Appeals

The State,

Respondent,

v.

Russell Lee Sims,

Appellant.

The Honorable J. Derham Cole
Spartanburg County
Trial Court Case No. 2006-GS-42-03064

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. However, we hereby substitute the attached opinion for opinion no. 2010-UP-080.

It is, therefore, ordered that the Petition for Rehearing be denied.

Paul E. Shortz J.
Paul W. Thomas J.
U. Ke J.

Columbia, South Carolina

3/18/2010

cc: Senior Appellate Defender Joseph L. Savitz, III
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Donald J. Zelanka
Assistant Attorney General Alphonso Simon, Jr.
Harold W. Gowdy, III, Esquire

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

J. Derham Cole, Circuit Court Judge

Opinion No. 2010-UP-080 (S.C. Ct. App. filed 2/2/2010, refiled March 18, 2010)
06-GS-42-3064-3068, 3070-3073, 07-GS-42-205

THE STATE,

RESPONDENT,

V.

RUSSELL LEE SIMS,

PETITIONER

PETITION FOR WRIT OF CERTIORARI

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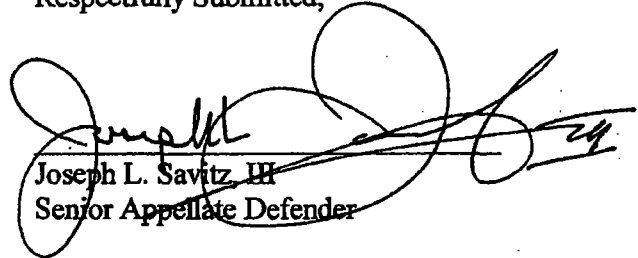
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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on March 18, 2010.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Joseph L. Savitz, III", is written over a horizontal line. The signature is stylized and includes a large loop on the right side.

Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR PETITIONER

STATEMENT OF ISSUE RAISED

The Court of Appeals committed reversible error of law by affirming the trial judge's refusal to instruct the jury on the lesser-included offense of voluntary manslaughter, where there was evidence Sims killed his girlfriend's father after he pointed a gun at him and they "tussled."

STATEMENT OF THE CASE

On January 22 through 24, 2007, Russell Lee Sims stood trial in Spartanburg County, before Judge J. Derham Cole and a jury, on indictments charging him with murder, two counts of assault and battery with intent to kill, first-degree burglary, armed robbery, attempted armed robbery, possession of a firearm during the commission of a violent crime and four counts of pointing a firearm.

By his own admission, Sims shot and killed his girlfriend's father and wounded two of her cousins, but he testified that he had done so in self-defense. ROA p. 49, line 20 – p. 60, line 6; ROA p. 64, lines 14-22. The jury found Sims guilty of everything except the two ABIKs, instead finding him guilty of assault and battery of a high and aggravated nature, and the judge sentenced him to life imprisonment.

On direct appeal to the South Carolina Court of Appeals, Sims argued:

The trial judge committed reversible error by refusing to instruct the jury on the lesser-included offense of voluntary manslaughter, since Sims testified that he killed his girlfriend's father after he pointed a gun at him and they "tussled."

Final Brief of Appellant, p. 3. The Court of Appeals affirmed pursuant to Rule 220(b)(1), SCACR, in an unpublished opinion, holding that there was no evidence of the sudden heat of passion necessary for manslaughter. *State v. Russell Lee Sims*, unpublished opinion number 2010-UP-080, filed February 2, 2010, withdrawn, substituted and re-filed March 18, 2010. The Court also denied Sims' petition for rehearing on the date his opinion was refiled. He now petitions the South Carolina Supreme Court for writ of certiorari.

ARGUMENT

The Court of Appeals committed reversible error of law by affirming the trial judge's refusal to instruct the jury on the lesser-included offense of voluntary manslaughter, where there was evidence Sims killed his girlfriend's father after he pointed a gun at him and they "tussled."

Sims testified that his girlfriend's father pointed a gun at him and "[t]hat's when I grabbed him. And he tussled with me. And then I shot him." ROA p. 49, line 20 – p. 50, line 18. Based on this testimony, defense counsel requested instructions on voluntary manslaughter and self-defense. ROA p. 94, line 17 – p. 95, line 3.

The judge declined to charge voluntary manslaughter because he was unaware an intentional killing could be manslaughter, but instructed the jury on self-defense. ROA p. 99, line 11 – p. 100, line 23. Defense counsel took exception to its omission from the judge's final instructions. ROA p. 148, lines 12-19. He moved for a new trial on this basis after the jury found Sims guilty. ROA p. 146, line 23 – p. 147, line 4.

Voluntary manslaughter is the unlawful killing of another in sudden heat of passion aroused by sufficient legal provocation. *State v. Cottrell*, 376 S.C. 260, 657 S.E.2d 451 (2008). The refusal to charge voluntary manslaughter is only justified when there is absolutely no evidence which would tend to reduce the crime for murder to that lesser-included offense. *State v. Gilliam*, 296 S.C. 395, 373 S.E.2d 596 (1988). "[A]n overt, threatening act or a physical encounter may constitute sufficient legal provocation." *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144, 168 (2007), citing *State v. Gardner*, 219 S.C. 97, 64 S.E.2d 130 (1951).

In its unpublished opinion, the Court of Appeals cites *State v. Williams*, 366 S.C. 192, 624 S.E.2d 443 (Ct. App. 2005), for the proposition that "this court will only reverse the trial court's decision as to a jury instruction if the trial court abused its discretion." *Williams* dealt with a

defendant's right to defend himself against excessive force by an arresting officer during an unlawful arrest, *not* a lesser-included offense.

Where there is evidence supporting a lesser-included offense, a judge has no discretion about whether to charge that offense to the jury. *See State v. Gilliam*, 296 S.C. 395, 373 S.E.2d 596 (1988). Moreover, the evidence must be viewed in the light most favorable to the defendant. *State v. Cottrell*.

The threat of an imminent deadly attack is sufficient to require an instruction on voluntary manslaughter. *State v. Jackson*, 301 S.C. 41, 389 S.E.2d 650 (1990). "There can be little argument that an unprovoked attack with a deadly weapon constitutes legal provocation sufficient to warrant a charge on manslaughter." *State v. Knoten*, 347 S.C. 296, 555 S.E.2d 391, 397 (2001). This includes pointing a gun at the defendant with apparently deadly intent. *State v. Penland*, 275 S.C. 537, 273 S.E.2d 765 (1981).

Sims testified that he shot the victim after the victim pointed a gun at him and they fought. This testimony supported a charge not only on self-defense but on voluntary manslaughter. *Cottrell*. For this reason, the Court should grant certiorari, reverse Sims' conviction for murder and remand for a new trial.

Respectfully submitted,



Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of June, 2010

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County
J. Derham Cole, Circuit Court Judge

Opinion No. 2010-UP-080 (S.C. Ct. App. filed 2/2/2010, Refiled March 18, 2010)
06-GS-42-3064-3068, 3070-3073, 07-GS-42-205

THE STATE,

RESPONDENT,

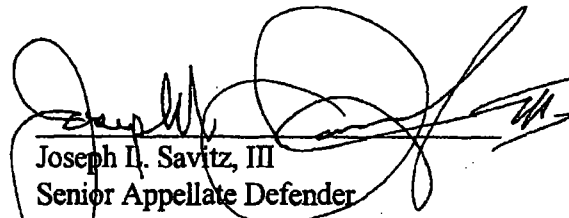
V.

RUSSELL LEE SIMS,

PETITIONER

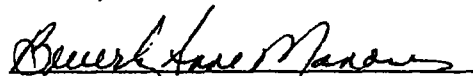
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Donald J. Zelenka, Esquire, and the S.C. Court of Appeals this 18th day of June, 2010.



Joseph I. Savitz, III
Senior Appellate Defender
ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day
of June, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: November 9, 2019

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
The Honorable J. Derham Cole, Circuit Court Judge

On Petition for Writ of Certiorari to the Court of Appeals
Opinion No. 2010-UP-080 (S.C. Ct. App. Filed 2/2/2010;
substituted and refilled on 3/18/2010)

THE STATE

RESPONDENT,

V.

RUSSELL LEE SIMS,

APPELLANT

RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

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ATTORNEYS FOR RESPONDENT

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PETITIONER'S QUESTIONS PRESENTED

1. The Court of Appeals committed reversible error of law by affirming the trial judge's refusal to instruct the jury on the lesser-included offense of voluntary manslaughter, where there was evidence Sims killed his girlfriend's father after he pointed a gun at him and they "tussled."

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Whether the Court of Appeals correctly held the trial court did not err by refusing to charge voluntary manslaughter when there was no evidence that Sims acted upon a sudden heat of passion and the victim's actions were lawful.

STATEMENT OF THE CASE

On January 22-24, 2007, Appellant Russell Lee Sims ("Sims") was tried by a jury on the following charges: burglary in the first degree, armed robbery and attempted armed robbery, two counts of assault and battery with intent to kill, one count of first degree burglary, four counts of pointing and presenting a firearm, murder, and possession of a firearm during the commission of a violent crime. He was tried in the Seventh Circuit Court of General Sessions in Spartanburg County before Judge J. Derham Cole.

At trial, Sims requested the judge instruct the jury on self-defense and manslaughter in regards to the murder indictment. (R. pp. 92-4). The initial instruction requested on voluntary manslaughter was stated as follows:

[I]f you find that the defendant believed that he was in danger of serious bodily injury and death and believed that deadly force was necessary to avoid this danger, but if you find either of these beliefs were not reasonable, then you should consider whether the threat constituted adequate legal provocation as the term used in defining the crime of voluntary manslaughter.

(R. p. 94, II 18-25). The court heard brief arguments on the instruction. The court then denied the request for the jury instruction. In doing so, it first analogized Sims' request as being equivalent to a request for an imperfect self-defense instruction, and refused to grant such an instruction because the theory of imperfect self-defense has not been recognized in South Carolina. (R. p. 98, II 14-25). The court then addressed the requirements for a voluntary manslaughter charge. In further declining to give the instruction, the court found that none of the testimony indicated that Sims' actions were the result of an uncontrollable impulse,

or that a sudden heat of passion compelled his actions. (R. p. 99, I 14; R. p. 100, I 21).

[E]ven considering the defendant's own testimony, he didn't testify that he had an uncontrollable impulse based upon Mr. Jackson or anybody else having a weapon. What he testified to was that he intended to shoot them From his own testimony, it was an intentional act. It was a calculated act, and it was committed for the purpose of defending himself. So that sounds like to me that's a cool, calculated, intentional act but designed to defend himself.

Id. The court noted defense counsel's exception to the court's decision to not instruct the jury on the charge. (R. p. 100, II 22-23). Sims later took exception to the fact that the court omitted the charge of voluntary manslaughter. (R. p. 143, II 17-19).

On January 24, 2007, Sims was convicted of on the murder charge, along with one count for possession of a firearm during the commission of a violent crime, one count of first degree burglary, two counts of assault of a high and aggravated nature, armed robbery, attempted armed robbery, and all four counts of pointing and presenting a firearm at a person.¹ (R. p. 144, I 14; R. p. 145, I 18). For the murder conviction, Sims received a life sentence. (R. p. 151, II 8-9). He received a sentence of five years for the possession of a firearm during the commission of a violent crime conviction; a life sentence for the first degree

¹ The ABHAN convictions stemmed from the shootings of two of Diane Jackson's cousins at a house down the street from Mr. Jackson's home. The first degree burglary count also stemmed from the later incidents at the cousin's house. The armed robbery conviction was for Sims taking money, a check, and a car from Diane Jackson after Sims shot Mr. Jackson. The attempted armed robbery conviction stemmed from Sims' attempt to take money from Mr. Jackson after he shot him. Mr. Jackson had no money. The four counts of pointing and presenting a firearm stemmed from the car ride from Spartanburg to Campobello discussed in the statement of facts. Sims pointed the gun at each occupant in the vehicle. The events related to these charges are not discussed in detail herein.

burglary; five year sentences for each of the two assault of a high and aggravated nature convictions; a thirty year sentence for the armed robbery conviction; a twenty year sentence for the attempted armed robbery conviction; and five year sentences for each of the pointing and presenting a firearm at a person convictions. (R. p. 149, l 8 – R. p. 151, l 10). Sims moved for a new trial on the ground that the court denied his request for a voluntary manslaughter instruction. (R. p. 146, l 23 – R. p. 147, l 2). The motion was denied. (R. p. 147, ll 3-4).

Sims timely filed notice of appeal on January 31, 2007. After full briefing, the South Carolina Court of Appeals issued an opinion affirming petitioner's conviction. Petitioner filed a Petition for Rehearing on February 17, 2010. (App. pp. 3-4). The Court of Appeals denied the petition on March 18, 2010. (App. pp. 6-7). However, the Court of Appeals substituted and refilled the opinion in this case. (App. pp. 1-2). Petitioner now seeks review of the South Carolina Court of Appeals' opinion in this Court.

RESPONDENT'S STATEMENT OF FACTS

On the night of May 20, 2006, Russell Lee Sims shot Robert Jackson on the porch of Mr. Jackson's home in Campobello, SC. Sims admits that he shot the seventy-five (75) year-old Mr. Jackson. (R. p. 50, II 16-17). There is some dispute as to whether Mr. Jackson pointed a shotgun at Sims prior to the shooting. Compare (R. p. 13, II 22-25 and R. p. 15, I 23 – R. p. 16, I 4, with R. p. 50, II 11-15).

Sims was dating Mr. Jackson's only daughter, Diane. (R. p. 40, II 1-12). She and her two daughters lived with Mr. Jackson in his Campobello home. (R. p. 3, II 12-15). Sims lived in Spartanburg, but he would spend from three days to a full week at Jackson's home every week. (R. p. 40, I 22 – R. p. 41, I 1). He owned a .380 automatic handgun. (R. p. 42, II 15-18). Sims kept the gun in three places: on his person, under the front passenger seat in Diane's car when they traveled together, and under Diane's mattress when Sims was staying at Jackson's home. (R. p. 43, II 7-9; R. p. 47, II 10-14; see R. p. 87, II 20-23). He also kept ammunition for the gun under the mattress at her home. (R. p. 44, II 1-2).

On May 20, 2006, Sims traveled with Diane and her two children to pick up her goddaughter's son in Spartanburg. See (R. p. 2, I 23 – R. p. 3, I 11). On the way back to Jackson's home, Sims pulled his handgun up from under the passenger seat of the car. (R. p. 48, II 1-3). He started shooting into the woods from the passenger side window while the car was moving. (R. p. 48, II 10-11).

This upset the children.² (R. p. 48, II 11-12). They were crying when they arrived home. (R. p. 48, I 23). Once they arrived, Diane informed Sims that she would be taking him home shortly. (R. p. 48, I 25). Sims testifies that he entered Jackson's home to retrieve his belongings, including the ammunition for his handgun. (R. p. 49, II 8-12). On his way into the home, he passed Mr. Jackson, who had just come outside to speak with Diane. (R. p. 48, I 25 – R. p. 49, I 2). Sims and Jackson did not speak to one another. (R. p. 49, II 3-6). After retrieving his belongings, Sims exited the house and stood by a Jeep parked outside. (R. p. 49, II 12-13). Mr. Jackson remained standing on his front porch while his daughter took the children inside of the house. (R. p. 49, I 21 – R. p. 50, I 5).

There is some contention as to what happened next.³ At trial, Sims testified that Mr. Jackson began yelling at him. (R. p. 50, II 7-8). Sims ignored Mr. Jackson, which he states made Mr. Jackson angrier. (R. p. 50, II 8-9). Sims began reloading his handgun in the yard.⁴ (R. p. 49, II 13-14; R. p. 50, II 6-7). According to Sims, Jackson then went to the side of the porch and retrieved a one-shot, 20-gauge shotgun.⁵ (R. p. 50, II 10-14). Sims could not initially tell that Jackson had the shotgun at first because it was dark. (R. p. 50, II 10-14).

² The State presented evidence that the children may also have been upset because Sims pointed the gun at each of them during the ride to Campobello. (R. p. 7, I 14 – R. p. 8, I 5).

³ The primary conflict in the testimony was over whether Mr. Jackson had access to a shotgun on the night of the shooting.

⁴ Sims states that he was reloading the gun so he could shoot the gun out in the street. (R. p. 49, II 18-19).

⁵ Diane Jackson denied that her father had a shotgun at the house at the time. (R. p. 7, II 9-13). She stated that the shotgun had been missing for about a month at the time of the shooting. (R. p. 16, II 1-4). Her children also deny seeing Mr. Jackson's shotgun that night. (R. p. 22, I 22 – R. p. 23, I 4; R. p. 28, II 6-15).

However, Sims approached Mr. Jackson and saw the shotgun once Jackson turned around. (R. p. 50, ll 12-13). According to Sims, Mr. Jackson clicked the barrel of the shotgun and pointed it at him. (R. p. 50, l 14). "That's when I grabbed him. And he tussled with me. And then I shot him and then pulled the gun out his hands and threw the gun when we going up the steps."⁶ (R. p. 50, ll 15-18). Sims later contradicts this testimony regarding the sequence of the shooting. "[T]hen I took the gun from him and shot him." (R. p. 52, l 2). Sims shot Jackson twice in the neck with his handgun. (R. p. 53, ll 1-2; R. p. 34, ll 7-10). Jackson died over a month later from complications that resulted from the trauma caused by the gunshots. (R. p. 35, ll 8-25).

⁶ Sims later testifies that he after seeing the shotgun; he took the gun from Jackson and then shot him. (R. p. 52, l 2).

ARGUMENT

This Court should deny this petition for writ of certiorari. It fails to raise a novel question of law. There was no dissent in the decision of the Court of Appeals. The decision of the Court of Appeals is not in conflict with a prior decision of this Court. No constitutional issues are raised in the petition. There is no federal question in this petition. Finally, the Court of Appeals correctly affirmed Petitioner's convictions.

I. The Court of Appeals correctly held that the trial court did not abuse its discretion in denying Petitioner's request for a voluntary manslaughter charge.

Petitioner was not entitled to a voluntary manslaughter charge. As correctly noted by the Court of Appeals, there was no evidence that Petitioner "was overcome by a sudden heat of passion that would render a reasonable person incapable of cool reflection and produce an uncontrollable impulse to do violence."

Standard of Review

"An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (S.C. Ct.App.2005)(quoting Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). Furthermore, "[t]o warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." State v. Patterson, 367 S.C. 219, 232, 625 S.E.2d 239, 245 (S.C. Ct. App. 2006). "The law to be charged must be determined from the evidence presented at trial." Id. If there is any evidence to support the requested charge, the trial court should grant the request. Williams,

367 S.C. at 195, 624 S.E.2d at 445. The evidence must be reviewed in the light most favorable to appellant. State v. Cottrell, 376 S.C. 260, 262, 657 S.E.2d 451, 452 (2008).

"Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000).

"Sudden heat of passion upon sufficient legal provocation" that mitigates a felonious killing to manslaughter must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called "an uncontrollable impulse to do violence."

State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993)(quoting State v. Gardner, 219 S.C. 97, 64 S.E.2d 130 (1951)). In determining whether voluntary manslaughter should be charged as a lesser offense of murder, the trial court must view the evidence in the light most favorable to the defendant. State v. Cottrell, 376 S.C. 260, 262, 657 S.E.2d 451, 452 (2008). The charge need not be given "where it clearly appears that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007).

A. Petitioner was not entitled to a voluntary manslaughter instruction because there was no probative evidence he acted upon a sudden heat of passion.

No evidence supporting the elements of voluntary manslaughter was presented at trial. More specifically, none of the evidence indicated that Sims shot Mr. Jackson in a sudden heat of passion or that Sims acted upon an uncontrollable impulse when he pulled the trigger. Further, Sims' allegation that

he and Mr. Jackson were engaged in a "tussle" prior to the shooting is insufficient to support a finding that Sims acted upon an uncontrollable impulse in the sudden heat of passion. Since there was no evidence that Sims acted in a sudden heat of passion, the trial court had no factual basis for an instruction on voluntary manslaughter. Thus, the Court of Appeals properly affirmed Petitioner's conviction.

It is proper for a trial court to refuse to charge voluntary manslaughter in a murder case where it very clearly appears there is no evidence whatsoever tending to reduce the crime from murder to manslaughter. State v. Locklair, 341 S.C. 352, 360, 535 S.E.2d 420, 424 (2000). "Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." Id. at 359, 535 S.E.2d at 424 (quoting State v. Johnson, 333 S.C. 62, 508 S.E.2d 29 (1998)). Both heat of passion and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter. Locklair, 341 S.C. at 359-60, 535 S.E.2d at 424; see State v. Gilliam, 296 S.C. 395, 397, 373 S.E.2d 596, 597 (1988). Sudden heat of passion upon sufficient legal provocation that mitigates a felonious killing to manslaughter must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called "an uncontrollable impulse to do violence." Id. at 360, 535 S.E.2d at 424.

In determining whether the act that caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are taken

into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing. State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 565 (1969). In cases where both self-defense and voluntary manslaughter jury instructions may be involved, the court should review the facts to see if a charge on both is warranted. Gilliam, 296 S.C. at 396-7, 373 S.E.2d at 597. "Both self-defense and the lesser included offense of voluntary manslaughter should be submitted to the jury if supported by the evidence." Id. "The rationale for this rule is that the jury may fail to find all the elements of self-defense but could find sufficient legal provocation and heat of passion to conclude the defendant was guilty of voluntary manslaughter." Id. However, a jury instruction for a charge of voluntary manslaughter is not warranted when no evidence is presented that shows the defendant was overcome by a sudden heat of passion that would produce that uncontrollable impulse. State v. Walker, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996).

Contrary to Petitioner's statements in his Petition, the Court of Appeals is not relying upon State v. Williams, 367 S.C. 192, 624 S.E.2d 443, 445 (Ct.App.2005), in affirming Petitioner's convictions. While State v. Williams was cited by the Court of Appeals in the first opinion, the substituted and refilled opinion only cites to State v. Walker, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996), and State v. Cottrell, 376 S.C. 260, 262, 657 S.E.2d 451, 452 (2008). Furthermore, Williams is a proper citation for the proposition that a trial court's decision on a jury instruction can only be reversed if the trial court abused its discretion. See State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26

(Ct.App.2006); State v. Holland, 385 S.C. 159, 166, 682 S.E.2d 898, 901 (Ct.App.2009); see generally State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007).

It is clear from the record that the trial court engaged in the analysis envisioned by this Court in Gilliam. The court clearly reviewed the evidence presented at trial to see if there was any evidence presented to support a jury instruction on voluntary manslaughter. (R. p. 99, I 11 – R. p. 100, I 20). It found that there was no evidence that could support a finding that Sims acted in a sudden heat of passion. (R. p. 99, II 14-16; R. p. 100, II 13-14). On that finding, the court refused to grant Sims' request for a jury instruction on voluntary manslaughter. (R. p. 100, II 21-23). Therefore, to prevail on appeal, Sims must show that the trial court's finding of a lack of evidence of sudden heat of passion was erroneous. Sims would need to show that there was evidence presented at trial that indicated his actions were in a heat of passion.

At issue is whether the fact Sims and Mr. Jackson engaged in a "tussle" is evidence that Sims acted in a sudden heat of passion. It is not. There are two threshold questions a trial court must address before it can give a voluntary manslaughter instruction. First, is there any evidence on the record that can show the defendant acting in a sudden heat of passion? Second, is there any evidence on the record that can show the defendant's actions were the result of adequate legal provocation? These are two distinct issues that must be addressed separately. Both have to be answered in the affirmative for the trial court to instruct the jury on voluntary manslaughter. Furthermore, a finding that there is

evidence of adequate legal provocation has no bearing on whether a defendant may have acted in a sudden heat of passion. See State v. Cole, 338 S.C. 97, 102, 525 S.E.2d 511, 513 (2000). Nor does the fact that there is evidence that a defendant acted in a sudden heat of passion necessarily imply that a defendant's actions were the result of adequate legal provocation. See State v. Kornahrens, 290 S.C. 281, 285-6, 350 S.E.2d 180, 184 (1986).

This is clearly the dilemma the trial court faced in denying Sims' request for a voluntary manslaughter instruction. See (R. p. 100, II 13-14). At trial, defense counsel's argument in support of a voluntary manslaughter instruction essentially consisted of two statements. "I believe heat of passion could be inferred from the circumstances of the case." (R. p. 100, II 4-5). When asked which circumstances, counsel replied "[f]rom the fact that Mr. Jackson approached him, clicked the gun and pointed the gun at him." (R. p. 100, II 8-9). While it is clear that the testimony about Mr. Jackson's pointing the shotgun at Sims may be evidence of adequate legal provocation, it is not evidence that Sims was overtaken by any impulse. Nor is there evidence that Sims was overcome by a sudden heat of passion as a result of engaging in the alleged "tussle" with Mr. Jackson. Without any evidence that Sims acted upon a sudden heat of passion, there was no factual basis for a voluntary manslaughter instruction.

Reviewing the facts in the light most favorable towards the defendant, none of the evidence presented at trial suggests that Sims acted in a sudden heat of

passion when he shot Mr. Jackson.⁷ In fact, Sims' testimony does not indicate whether he had any emotional response to any interaction he had with Mr. Jackson on May 20, 2006. Sims passed Mr. Jackson to enter the house without speaking to him. (R. p. 48, I 25 – R. p. 49, I 6). After retrieving his clothing and ammunition, Sims waited outside for Diane while he reloaded his handgun. Sims states that Mr. Jackson was “fussing” while he waited, but Sims just “tuned him out.” (R. p. 50, II 7-8). This, according to Sims, “made ‘m [Mr. Jackson] even hotter, while he was fussing.” (R. p. 50, II 8-9). However, Sims says nothing of how the “fussing” affected him. Sims never discloses whether he became angry with Mr. Jackson immediately before the shooting. Nor does he acknowledge he feared Mr. Jackson that evening, even after Mr. Jackson allegedly confronted him with the shotgun. Sims' testimony provides no factual basis upon which anyone could find he shot Mr. Jackson in a sudden heat of passion.

The alleged “tussle” between Sims and Mr. Jackson over the shotgun also fails to provide any evidence that Sims acted in a sudden heat of passion. Sims admits that he initiated the contact after seeing the shotgun. (R. p. 50, II 10-15). However, in describing the “tussle,” Sims never indicates that he becomes angry with or afraid of Mr. Jackson. In fact, Sims' testimony suggests that he retained full control of his faculties during the “tussle.” He states “I shot him for, in defense to get the weapon out of his hand.” (R. p. 52, II 21-22). Mind you, no shots were

⁷ Sims is the only individual who testifies that Mr. Jackson had a shotgun on the night of the shooting. He is also the only witness who was privy to the interaction between him and Mr. Jackson immediately prior to the shooting. He is the only person who provides any favorable testimony about the shooting. For those reasons, we rely upon his testimony for the facts. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 392 (2001).

ever fired from the shotgun over which they allegedly "tussling." Sims shot Mr. Jackson with the handgun Sims had just reloaded while waiting in Mr. Jackson's yard.

Further, there are no other facts or surrounding circumstances that would support a finding that the "tussle" stirred an uncontrollable impulse in Sims to shoot Mr. Jackson. By all accounts, Mr. Jackson was an old man. The treating trauma surgeon testified that it appeared that Mr. Jackson was not in good health at the time of the shooting. (R. p. 35, II 8-11; see R. p. 34, II 18-20). The forensic pathologist confirmed that Mr. Jackson was in fairly poor health prior to the shooting. See (R. p. 38, II 17-18). There was no evidence presented that suggests Mr. Jackson would have made a formidable combatant in a "tussle" with Sims. In fact, at one point during his testimony Sims hinted that the "tussle" might have been over before he fired the shots. While explaining to the jury a second time what happened on May 20, 2006, Sims states "then I, then I took the gun from him and shot him." (R. p. 52, I 2). And by Sims' own admission, he was generally not afraid of Mr. Jackson because Sims had his handgun. See (R. p. 46, II 17-21).

Sims should not be allowed to rely upon the holding in State v. Penland, 275 S.C. 537, 273 S.E.2d 765 (1981), for a presumption there was sufficient evidence of sudden heat of passion. In Penland, this Court held the trial court properly charged the jury on voluntary manslaughter where there was evidence of the pointing of a gun at the appellant and there was a subsequent struggle. The court did not discuss the facts of the case in Penland, and it is unclear whether the

statement given by the appellant in that case provided more insight to the appellant's state of mind at the time of the shooting. That being said, Penland cannot be read to presume that there is sufficient evidence a defendant acted in a sudden heat of passion simply because there was a pointing of a gun and a possible struggle over the gun. As noted by Chief Justice Toal in her concurring opinion in State v. Childers, reading Penland this way would "impermissibly blend the concept of voluntary manslaughter with the defense of self-defense." 373 S.C. 367, 376, 645 S.E.2d 233, 237-8 (2007). Such a presumption would undermine a trial court's ability to determine the law to apply based on the facts of the case, especially when the facts clearly show the defendant did not act in a sudden heat of passion in killing the victim. Further, such a presumption could unduly prejudice either the State or a defendant, depending upon the facts and circumstances of a case. It should remain the trial court's decision to determine the law to be instructed based on the facts of each individual case. As so aptly stated by this Court in State v. Starnes, Op. No. 26868 (S.C.Sup.Ct. filed August 16, 2010):

[T]he mere fact that a person is afraid is not sufficient, by itself, to entitle a defendant to a voluntary manslaughter charge. Consistent with our law on voluntary manslaughter, in order to constitute "sudden heat of passion upon sufficient legal provocation," the fear must be the result of sufficient legal provocation and cause the defendant to lose control and create an uncontrollable impulse to do violence. Succinctly stated, to warrant a voluntary manslaughter charge, the defendant's fear must manifest itself in an uncontrollable impulse to do violence.

A person may act in a deliberate, controlled manner, notwithstanding the fact that he is afraid or in fear. Conversely, a person can be acting under an uncontrollable impulse to do violence and be incapable of cool reflection as a result of fear. The latter situation constitutes sudden heat of passion, but the former does not. Evidence that fear caused a person to kill another person in a

sudden heat of passion will mitigate a homicide from murder to manslaughter – it will not justify it. This is the distinction between voluntary manslaughter and self-defense.

There was no evidence presented at trial by either the State or Sims that indicated that Sims shot Mr. Jackson in a sudden heat of passion. That the two may have "tussled" over Mr. Jackson's shotgun was of no consequence because there was no evidence that Sims developed any passion during the "tussle," or that out of the "tussle" arose an uncontrollable impulse. Since there was no evidence of heat of passion during the shooting, the trial court had no factual basis upon which to grant a voluntary manslaughter jury instruction. Therefore, the trial court's refusal to grant such an instruction was correct. Thus, the South Carolina Court of Appeals did not err in affirming Petitioner's convictions.

B. A voluntary manslaughter instruction was not warranted because the alleged actions of Mr. Jackson could not constitute legally adequate provocation.

The trial court's decision to deny Sims' request for a voluntary manslaughter jury instruction should be affirmed because there was no legally adequate provocation. The alleged provocation was a combination of Mr. Jackson pointing a shotgun at Sims followed by a "tussle" initiated by Sims. Mr. Jackson's pointing a shotgun at Sims is not a legally adequate provocation because Mr. Jackson was attempting to defend himself, which was lawful under South Carolina law. Similarly, the alleged "tussle" between Sims and Mr. Jackson could not constitute legally adequate provocation because Mr. Jackson was defending himself from Sims' attack. Since lawful acts cannot serve as the basis for a factual

finding of legally adequate provocation, it would have been improper for the court to grant a jury instruction on voluntary manslaughter in this case.

"The law does not reduce from murder to manslaughter every homicide committed in the heat of passion; it must be passion justly excited by legal provocation." State v. Norris, 253 S.C. 31, 38, 168 S.E.2d 564, 567 (S.C. 1969). If adequate provocation does not exist, then a homicide cannot be manslaughter, even if it was committed in the heat of passion. Id. "The exercise of a legal right, no matter how offensive to another, is never in law deemed a provocation sufficient to justify or mitigate an act of violence." Id. at 39, 168 S.E.2d at 567.

It is fairly evident that Mr. Jackson was acting in self-defense when he allegedly pointed a shotgun at Sims. It is undisputed that prior to the confrontation, Sims had fired shots from a moving car along Miller Road. (R. p. 48, II 14-18). Some of these shots were fired just down the street from Mr. Jackson's house. See (R. p. 72, I 25 – R. p. 73, I 2).⁸ It is also undisputed that the children in that car were crying when they arrived at Mr. Jackson's home. (R. p. 48, I 23). Further, Sims admits that he reloaded his gun in Mr. Jackson's yard. (R. p. 50, II 6-9). Sims was armed when he approached Mr. Jackson near the porch. Sims' testimony indicates that Mr. Jackson had his back to Sims when he approached. "And then when he got around to the front porch where the light was, and I walked over. And he turned around, and then he clicked it. And then he pointed it at me." (R. p. 50, II 12-15). While Sims testified that he tried to conceal the fact that he was reloading his gun in the yard from Mr. Jackson, it is unclear if

⁸ Cornell Hall lived down the street on Miller Road from Mr. Jackson. See (R. p. 57, I 23 – R. p. 58, I 8).

he was successful in doing so. (R. p. 74, l 20 – R. p. 75, l 6). Nevertheless, if and when Mr. Jackson aimed a shotgun at Sims, Mr. Jackson would have had good reason to believe that Sims was going to assault him. Mr. Jackson did not react in a way disproportionate to the threat posed by Sims. Mr. Jackson never fired the shotgun at Sims. Sims does not allege that Mr. Jackson verbalized some threat when he pointed the shotgun at him. Based on the evidence presented at trial, there appears to be reason to believe Mr. Jackson was acting in self-defense in pointing the shotgun at Sims.

“A victim's attempts to resist or defend himself from a crime cannot satisfy the sufficient legal provocation element of voluntary manslaughter.” State v. Shuler, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001). The South Carolina Supreme Court has consistently held it is improper to instruct on voluntary manslaughter when the alleged provocation arose from the victim's attempt to protect himself from the defendant's crime. In State v. Tyson, 283 S.C. 375, 323 S.E.2d 770 (1984), the court rejected the defendant's request for a voluntary manslaughter instruction when the victim struggled with the defendant during an attempted robbery. Id. at 379, 323 S.E.2d at 772. The Court held that there was no evidence of sufficient legal provocation; “it is clear the victim simply was defending himself against an armed robber and was killed in that attempt.” Id. Similarly, the court in Shuler held a voluntary manslaughter instruction was not warranted where the victim fired a gun at the defendant during an attempted kidnapping and robbery. 344 S.C. at 633, 545 S.E.2d at 820.