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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Georgetown County

George C. James, Jr., Circuit Court Judge

RECEIVED

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S.C. Supreme Court

VLADIMIR WALT PANTOVICH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001433

APPENDIX

LAURA R. BAER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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Andy Seifert - Direct by Mr. Castro

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1 A It was right next to it, maybe 20, 25 foot. It was like
2 -- it's like a little fish camp, you know, several trailers.

3 Q Did you ever have the opportunity to see Sheila and Walt
4 interact?

5 A Yes.

6 Q Have you ever personally observed Sheila act violent
7 towards Walt?

8 A Yes.

9 Q Please describe for the jury if you would that occasion.

10 A It was about two o'clock in the afternoon. We heard a
11 woman screaming expletives, looked out the door, seen Walt
12 getting in the vehicle to leave and she was taking stuff off
13 the porch and throwing it at him and screaming and cussing at
14 him and he got in his vehicle and left.

15 Q Did he throw anything back at her?

16 A No, I didn't even hear him say anything to her.

17 Q In all this time that you've known Walt and you've
18 testified about 12 years, have you ever seen Walt act violent?

19 A No.

20 Q Did you ever see Walt hit Sheila?

21 A Never.

22 Q Have you ever seen Walt act violent toward anybody?

23 A No.

24 Q Andy, I have no further questions, but please answer any
25 questions that the Solicitor might have for you.

1 A Thank you.

2 CROSS EXAMINATION

3 BY MR. BRYAN:

4 Q Good afternoon.

5 A Good morning.

6 Q What is your date of birth?

7 A [REDACTED].

8 Q [REDACTED]?

9 A Yes.

10 Q And what is your Social Security number?

11 MR. CASTRO: Your Honor ---

12 MR. BRYAN: We asked for that information prior to
13 them testifying. We did not receive it.

14 MR. CASTRO: --- may we approach?

15 THE COURT: Yes, come around.

16 (Whereupon, a bench conference was held in the presence,
17 but out of the hearing of the jury.)

18 THE COURT: All right, Mr. Bryan, you can continue
19 questioning.

20 BY MR. BRYAN:

21 Q So, and how long did you know Sheila?

22 A I can't remember exactly when I met her, but about seven
23 and a half years.

24 Q And you testified that the violence toward Walt was as
25 he was leaving, she came out -- I'm sorry.

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1 THE COURT: All right, let's take a quick break.
2 We'll excuse the jury to the jury room right quick. All
3 right, we're going to take a short recess, about a 10-minute
4 recess.

5 (Whereupon, the following takes place outside the
6 presence of the jury.)

7 THE COURT: One of the jurors contacted the bailiff
8 and said she was feeling kind of woozy and I don't know
9 whether she got hot or dehydrated or whatever, but we're going
10 to take a little break to see if she can continue or if we
11 need to substitute, and I say her. It might have been him. I
12 don't know which one it was but we'll certainly find out.

13 MR. AXELROD: And Your Honor, if you have to we have
14 another alternate. We're not opposed to, and at this point,
15 Your Honor, even if it got to the point that we went below 12
16 I wouldn't oppose that at this point. I mean, if all -- if
17 they're sick, we let them go and I know in preliminary motions
18 I said I wanted a full 12, but if you were to let this one go
19 and we were down to 12 and somebody got ill again, I would not
20 move for a mistrial. I would go with 12 or less.

21 THE COURT: Well, I don't know we'll need to do that,
22 but let's just check on her right quick. It might be
23 something very temporary. I don't know, but let's just, let's
24 check and see.

25 All right, we'll stand in recess for about 10 minutes.

1 We'll be back in just a minute.

2 *****OFF THE RECORD*****

3 (On the record.)

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right, after meeting back in the
7 chambers, I think with consent of the attorneys we've excused
8 -- we've agreed to excuse Juror Number 77 due to some illness
9 and seat the second alternate, Ms. McCray; is that correct,
10 Juror Number 100? Is that correct?

11 MR. BRYAN: Yes, sir, Your Honor.

12 THE COURT: Is that correct?

13 MR. AXELROD: Yes, sir, Your Honor.

14 THE COURT: Okay, all right, anything before we bring
15 the jury back out?

16 MR. BRYAN: Yes, sir, Your Honor, I'd asked at side
17 bar that in, so that we don't have to send the jury back out
18 after I ask just a few questions of this witness, that we ask
19 that Defense counsel not ask or solicit inadmissible testimony
20 about the nature of prior incidents on behalf of the victim.
21 In other words, character is admissible through reputation for
22 peacefulness or violence under the rules of evidence. Prior
23 difficulties between the two parties is admissible under the
24 case law between the two parties, means Vladimir Pantovich and
25 Sheila McPherson. It doesn't mean everybody else in the

1 world. It means only those two people and nobody else; and
2 so, I would ask that the question or any question similar to,
3 "Have you ever seen Walt be violent," not be asked of
4 subsequent witnesses. That is under the case law of State
5 versus David Taylor. That case was decided November 23rd,
6 1998, the Supreme Court of South Carolina. It states, "In
7 homicide cases evidence that the accused and the decedent had
8 previous difficulty is admissible. The evidence is admissible
9 to show the animus of the parties and to aid the jury in
10 deciding who was the probable aggressor. The general details
11 of the difficulty however are not admissible." So, there is
12 that in addition to the case law that supports the proposition
13 that there is no basis to establish who would be the primary
14 aggressor and what would be in the mind of the Defendant.
15 That's the issue, what's in the mind of the Defendant. If she
16 assaulted -- if the victim assaulted some other person at some
17 other location then that would not be in his mind if he was
18 unaware of it; and therefore, it would be irrelevant and only
19 prejudicial to the jury.

20 THE COURT: All right, and what was the case you've
21 got?

22 MR. BRYAN: I've got, the first one I quoted was the
23 State versus Taylor. That's 333 S.C. 159.

24 THE COURT: Have you got it there?

25 MR. BRYAN: Yeah, yeah.

1 THE COURT: All right, Mr. Castro.

2 MR. CASTRO: Thank you, Your Honor. I think the rules
3 are plainly clear, starting with Rule 401. The testimony on
4 the stand was that this witness never watched Walt be violent
5 in the past. Rule 401, "Relevant evidence means any
6 evidence," and you're familiar with Rule 401, but I think
7 Rule, starting with Rule 401, it's admissible.

8 Proceeding on to Rule 403, 403(A), "Character evidence,
9 generally evidence of a pertinent trait of character offered
10 by an accused." The offer here is that he's not acted
11 violent in the past. He's testified to that fact. I think
12 clearly Rule 403 allows that to -- for her to say that she's
13 not witnessed violent conduct and then proceeding on to Rule
14 Number 405(A), reputation, methods of proving character,
15 "Proof may be made by testimony as to reputation or in the
16 form of an opinion." She certainly has an opinion, has
17 testified that she ---

18 THE COURT: Well, I mean, I think that's what Mr.
19 Bryan is saying. She can testify, "Yeah, in my opinion he's
20 not a violent person," but he's objecting to her testifying
21 saying, "I've never seen him be violent."

22 MR. CASTRO: Well, I think what he specifically
23 objected to was when I asked her, "Have you ever seen him be
24 violent toward anybody?"

25 THE COURT: Right.

1 MR. BRYAN: That's correct.

2 MR. CASTRO: I think the question, if I ask, "Have you
3 ever witnessed him being violent," certainly she can give an
4 opinion on that. To preclude her from doing such would be
5 basically silence a witness from saying anything.

6 MR. BRYAN: They just have to put it in under the
7 rules and say, "Do you know his reputation for peacefulness
8 or violence?"

9 MR. CASTRO: And I don't think I have to preface it
10 with those words.

11 THE COURT: All right, let me, let me take a look at
12 this case. I'm trying to find what part you're saying it
13 holds that that's improper.

14 All right, as I see your case it says evidence that the
15 accused and the decedent had previous difficulties is
16 admissible, but it doesn't say that what they're seeking is
17 inadmissible.

18 MR. BRYAN: I'm sorry, Your Honor. It doesn't say?

19 THE COURT: The case you gave me it says, "Evidence
20 that the accused and the decedent had previous difficulty is
21 admissible as evidence."

22 MR. BRYAN: Yes, sir.

23 THE COURT: That doesn't say that what they're doing
24 means that, you know, what their testimony they're seeking is
25 inadmissible. So, what I'm looking for is where you state

1 that it's inadmissible for them to ask that question.

2 MR. BRYAN: Your Honor, I'm sorry. The case law that
3 I actually passed up was in reference to another of two issues
4 we talked about. This is -- the issue that we're dealing with
5 right now is handled in 405.

6 THE COURT: Right.

7 MR. BRYAN: Rule 405. It says, "In all cases in
8 which evidence of character or a trait of character of a
9 person is admissible, proof may be made by testimony as to
10 reputation or testimony in the form of an opinion. On cross
11 examination inquiry is allowable into relevant specific
12 instances of conduct." So, it clearly makes a distinction
13 that on cross examination inquiry is allowed into specific
14 instances of conduct, which leads one to the obvious
15 conclusion that on direct examination the rule is that the
16 offer of proof may be made by testimony as to reputation or
17 opinion. "My opinion is he's peaceful. My opinion is he's
18 not violent." Not, "I have never seen him be violent."
19 That would be a more of a reference to specific acts or lack
20 thereof. So, specific acts of conduct ---

21 THE COURT: All right.

22 MR. BRYAN: I'll withdraw that. I'll let them ask
23 that question.

24 THE COURT: Yeah, and I think he can. All right,
25 anything before we bring the jury back in?

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1 MR. BRYAN: No, Your Honor.

2 THE COURT: All right, bring the jury back in, please.

3 (Whereupon, the following takes place in the presence of
4 the jury.)

5 THE COURT: All right, ladies and gentlemen, welcome
6 back. Sorry. We did have several matters of law we had to
7 take up. Likewise, we had to deal with another juror who
8 became ill and is unable to continue with us. So, Ms. McCray,
9 we will now seat you as a member of this jury. Okay, that's
10 why we have the alternates is because from time to time these
11 matter do arise and that's why we've got the two alternates is
12 just as this case where we've needed to substitute two jurors.

13 I appreciate you for serving on this jury and we will now
14 continue with the direct examination of Ms. Seifert by ---

15 MR. BRYAN: I think we were starting ---

16 THE COURT: You were doing the ---

17 MR. CASTRO: We had finished, Your Honor.

18 MR. BRYAN: --- starting in cross.

19 THE COURT: You had finished.

20 MR. CASTRO: Yes, sir.

21 THE COURT: We're getting ready to start the cross
22 examination, all right.

23 MR. BRYAN: Thank you, Your Honor.

24 BY MR. BRYAN:

25 Q So, you testified that you knew Sheila for seven years?

- 1 A Approximately, yeah.
- 2 Q And you knew Walt for 13. So, you knew Walt the whole
3 time.
- 4 A Pardon me?
- 5 Q You knew Walt the whole time you knew Sheila.
- 6 A Yes, sir.
- 7 Q And so, in the seven years that you knew them, the acts
8 of violence that you saw Sheila commit were that you saw Walt
9 leaving and she was throwing stuff at him while he was
10 leaving.
- 11 A Yes.
- 12 Q And you don't know what, if anything, he did to her
13 inside before she come out throwing stuff at him?
- 14 A No.
- 15 Q And you certainly were not at the evening
16 that she lost her life.
- 17 A Certainly not.
- 18 Q And you have never once in the seven years you knew
19 Sheila ever seen her physically strike Walt, beat her up, hit
20 him with anything?
- 21 A Other than throwing things at him, no.
- 22 Q I don't have any other questions.
- 23 THE COURT: Anything on redirect?
- 24 MR. CASTRO: Nothing, Your Honor.
- 25 THE COURT: All right, you may step down.

1 Call your next witness.

2 MR. CASTRO: We would call Chris McCune.

3 THE COURT: All right, please get the witness.

4 MR. BRYAN: Your Honor, may we approach while they're
5 coming in?

6 THE COURT: Yeah.

7 (Whereupon, a bench conference was held in the presence
8 but out of the hearing of the jury.)

9 WHEREUPON, Christine McCune was called to the stand, duly
10 sworn by the Clerk and testified as follows:

11 THE CLERK: Please be seated. State your name for the
12 record, spelling your last name, please.

13 MS. MCCUNE: Christine McCune, M-C-C-U-N-E.

14 DIRECT EXAMINATION

15 BY MR. CASTRO:

16 Q Good morning, Chris.

17 A Good morning.

18 Q Do you know Walt Pantovich?

19 A Very well.

20 Q Please tell the jury how long you've known Walt.

21 A Twelve, 13 years, maybe even a little bit longer than
22 that.

23 Q And how is it that you know Walt?

24 A I started as his bartender, and we became friends from
25 there.

1 Q Are you familiar with the line of work that Walt has
2 done?

3 A Yes.

4 Q Have you had the occasion to work with Walt?

5 A Yes.

6 Q And please describe for the jury how it is that you came
7 to work with Walt.

8 A My husband and I did vinyl siding and he was doing a
9 home and needed some soffit work done. So, my husband and I
10 did the job for him.

11 Q And if you could characterize the amount of work that
12 you've done with Walt. Could you please tell the jury what
13 that is or quantify it. Was it once?

14 A No, we've done several jobs over the years with him, for
15 Walt.

16 Q And could you describe for the jury, if you would, how
17 long a job might, typical job might take?

18 A Some could take one to two days, others up to two weeks,
19 just depended on the size of the job.

20 Q Have you had an experience then to see Walt over an
21 extended period of time?

22 A Oh, absolutely.

23 Q Please tell the jury what you think about Walt.

24 A Walter is a wonderful man. He is kind, caring. My
25 family loves him. My daughter has known him since she was a

1 little girl and she thinks he's wonderful.

2 Q Now, have you and your husband ever had the opportunity
3 to socialize with Walt?

4 A Yes.

5 Q And when you socialized with Walt was Sheila present?

6 A On a couple of occasions, yes.

7 Q Have you ever witnessed any violent behavior by Sheila
8 toward Walt?

9 A Verbal, not physical.

10 Q Could you please tell the jury about that experience?

11 A We were at the bar one bike week, and the bar being the
12 Lighthouse Lounge, which was Iron Heads and Sheila had been
13 drinking. We all had, and they were on the motorcycle. I
14 don't believe Walt was drinking that day because he was
15 driving and Sheila was getting a little out of hand.

16 Q Now, during this extended period of time that you've
17 known Walt, you testified I think that you've known him for 12
18 to 13 years.

19 A Uh-huh.

20 Q Have you ever seen Walt lose his temper?

21 A No, and I was his bartender for nine or 10 of those
22 years.

23 Q Have you ever seen Walt become violent?

24 A No.

25 Q Did you ever witness Walt act in a violent manner toward

1 Sheila?

2 A No.

3 Q Did you ever witness Walt act in a violent manner toward
4 anyone?

5 A Never.

6 Q Thank you, Chris. Please answer any questions the
7 Solicitor might ask you.

8 A All right.

9 CROSS EXAMINATION.

10 BY MR. BRYAN:

11 Q Did you testify that you never saw Sheila lay a hand on
12 Walt, never?

13 A No, I've never seen her physically touch Walt.

14 Q I don't have any other questions.

15 THE COURT: Redirect?

16 MR. CASTRO: No redirect, Your Honor.

17 THE COURT: All right, you may step down. Thank you,
18 ma'am.

19 You can call your next witness.

20 MR. CASTRO: Your Honor, we would call Maureen Moans.

21 THE COURT: All right.

22 MS. MOANS: I don't want to swear on the Bible.

23 THE COURT: Okay, you can raise your right hand.

24 WHEREUPON, Maureen Moans was called to the stand, duly
25 sworn by the Clerk and testified as follows:

1 THE CLERK: Thank you. Please be seated and state
2 your name for the record, spelling your last name, please.

3 MS. MOANS: Maureen Moans, M-O-A-N-S.

4 THE CLERK: Thank you.

5 THE COURT: Ms. Moans, and I can understand that and
6 sympathize. A lot of people do not want to swear on the
7 Bible, but you have affirmed to tell the truth. You
8 understand that?

9 MS. MOANS: Yes.

10 THE COURT: And you realize that if you do not tell
11 the truth then that would subject you to penalties of perjury.

12 MS. MOANS: Yes, sir.

13 THE COURT: Okay, just wanted to make sure that you
14 realize you're under the same oath ---

15 MS. MOANS: Yes, sir.

16 THE COURT: --- as those that do take an oath on the
17 Bible to swear the truth.

18 MS. MOANS: Right, right.

19 THE COURT: All right, thank you very much. All right.

20 MR. CASTRO: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. CASTRO:

23 Q Good morning, Maureen.

24 A Good morning.

25 Q Maureen, do you know Walt Pantovich?

- 1 A Yes, sir.
- 2 Q Please explain to the jury if you would how you know Walt.
- 3 A I met him through my daughter and my son-in-law, Skip. He
- 4 kind of worked a little bit for Skip like fixing tables and
- 5 making wood things for the bar and stuff like that.
- 6 Q And could you please tell the jury how long approximately
- 7 that you have known Walt?
- 8 A Probably about eight, nine years, something like that.
- 9 Q Please tell the jury if you would how you feel about Walt.
- 10 A I always thought Walt was a good guy, you know, a nice
- 11 person. I loved to listen to him talk. I loved his accent.
- 12 Q Now, are you familiar with Sheila McPherson?
- 13 A Yes, sir.
- 14 Q And please tell the jury how is it that you came to know
- 15 Sheila McPherson.
- 16 A Sheila was my next-door-neighbor. She came to live. She
- 17 bought that trailer, I believe, next door to us, and I knew
- 18 her like about four or five years, something like that, and we
- 19 were pretty close.
- 20 Q Could you please tell the jury where that is that you
- 21 lived?
- 22 A Peachtree Landing in South Carolina.
- 23 Q Now, you just testified that you had a close
- 24 relationship.
- 25 A Yes, sir.

1 Q Could you describe that a little bit?

2 A Could say that I was her confidant. She came and would
3 tell me things that had happened to her, you know, in her past
4 and that.

5 Q So, she would confide in you?

6 A Yes, sir.

7 Q Did you ever witness any violent behavior coming from
8 next door?

9 A Yes, sir.

10 Q In this period of time that you testified that you knew
11 Sheila did you ever see Sheila display violence towards Walt?

12 A Yes, sir.

13 Q And I'm going to focus your attention if you would on
14 one particular occasion. Did you ever stand outside your
15 residence and take a smoke break, smoke a cigarette?

16 A Did you say stand?

17 Q Or, yes, ma'am, or sit.

18 A Sit, I had a porch and I would go out onto the porch to
19 smoke my cigarettes.

20 Q And on one particular occasion did you hear anything
21 coming from next door?

22 A Yes, sir.

23 Q Could you describe for the jury what you heard?

24 A Which particular occasion are you speaking of?

25 Q Was there ever an incident that you witnessed between

1 Walt and Sheila?

2 A Oh, yes, sir; yes, sir. I heard argument going on,
3 fussing, fighting, cussing, and it escalated into fighting and
4 with Sheila, I guess, running Walt off and throwing things out
5 there at him.

6 Q Did you have the opportunity to observe Walt as he left?

7 A It looked like the side of his face right here looked
8 like had been scratched. There was like blood kind of, not a
9 lot, you know, coming down like this on him, something.

10 Q So, you observed ---

11 A Yeah, like somebody had ---

12 Q Somebody had what?

13 A Had scratched him or something.

14 Q Did you ever see Walt act violently toward Sheila?

15 A No, sir.

16 Q Did you ever see Walt act violently toward
17 anybody?

18 A No, sir, I didn't.

19 Q Now, you testified a few moments ago that Sheila would
20 confide in you?

21 A Yes, sir.

22 Q Were you ever told ---

23 MR. BRYAN: Objection to hearsay unless it's
24 something told by the Defendant.

25 Q Were you ever informed by anybody that Walt mistreated

Maureen Moans - Direct by Mr. Castro

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1 Sheila?

2 MR. BRYAN: Objection, Your Honor, may we approach?

3 Excuse me, may we approach?

4 THE COURT: All right, sustain any hearsay testimony
5 unless it falls within one of the hearsay exceptions.

6 MR. CASTRO: One moment, Your Honor. May we approach,
7 Your Honor?

8 THE COURT: All right.

9 (Whereupon, a bench conference was held in the presence
10 but out of the hearing of the jury.)

11 THE COURT: All right, Mr. Castro.

12 MR. CASTRO: Yes, sir.

13 THE COURT: You can continue.

14 MR. CASTRO: Thank you.

15 BY MR. CASTRO:

16 Q Maureen, a little while ago I asked you if or I kind of
17 restated you stated that Sheila confided in you.

18 A Yes, sir.

19 Q Did Sheila ever complain to you that Walt was abusing
20 her?

21 A No, sir.

22 Q Did you have a nickname for Walt?

23 A I used to call him the gentle giant.

24 Q I'm sorry?

25 A I used to call him the gentle giant.

1 Q The gentle giant?

2 A Yes, sir.

3 Q Thank you, Maureen. Please answer any questions the
4 Solicitor might have for you.

5 A Okay.

6 CROSS EXAMINATION

7 BY MR. BRYAN:

8 Q Did you ever see Sheila McPherson strike Walt
9 Pantovich?

10 A I didn't actually see her physically touch him.
11 I just seen, you know, the marks that was on him from
12 her.

13 Q Uh-huh, how many times was that?

14 A That was that one night.

15 Q And were you in there -- you didn't see who did what to
16 who first; did you?

17 A No, sir, I did not.

18 Q I don't have any other questions.

19 THE COURT: Anything on redirect?

20 MR. CASTRO: No redirect, Your Honor.

21 THE COURT: All right, ma'am, you can step down.

22 A Okay.

23 THE COURT: Call your next witness.

24 MR. CASTRO: Thank you, Your Honor, we'd call Debbie
25 Crisman.

Debbie Crisman - Direct by Mr. Castro

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1 WHEREUPON, Debbie Crisman was called to the stand, duly
2 sworn by the Clerk and testified as follows:

3 THE CLERK: Thank you. Please be seated and state
4 your name for the record, spelling your last name, please.

5 MS. CRISMAN: My name is Debbie C-R-I-S-M-A-N.

6 DIRECT EXAMINATION

7 BY MR. CASTRO:

8 Q Good morning, Debbie.

9 A Good morning, Chris.

10 Q Debbie, do you know Walt Pantovich?

11 A Yes, sir, I do.

12 Q Could you please tell the jury approximately when it was
13 that you first met Walt?

14 A I met Walt in the year of 1994.

15 Q And could you please describe for them that occasion?

16 A I was with my fiancée. They were mutual friends and he
17 introduced us.

18 Q Was Walt at your wedding?

19 A Yes, he was.

20 Q At some point in time later on did you ever date Walt?

21 A I did. My husband had passed away and Walt and I
22 started dating sometime after that.

23 Q Do you know when it was about that you started dating
24 Walt?

25 A The year 2001. I had gotten tickets to go to a

1 Darlington race. I had never been to a race before. Walt and
2 I were friends and going into a scenario I was not familiar
3 with I wanted someone I could go with that I would feel
4 comfortable with that I knew would take care of me.

5 Q Did he take care of you at the race?

6 A Yes, he did.

7 Q Did you stop dating at some point in time?

8 A We dated for approximately two years and, yes, we did
9 quit dating.

10 Q So, after you stopped dating did you remain friends?

11 A Yes, sir, we did.

12 Q Please describe for the jury Walt if you would.

13 A Walt was kind, caring. If anybody, any of his friends
14 ever needed anything he would do anything in his power to try
15 and help them.

16 Q Now, you're familiar with what Walt does for a living;
17 aren't you?

18 A Yes, sir.

19 Q Did Walt ever help you out at your house?

20 A Yes, sir. On two occasions after we had quit dating I
21 had two sons that lived with me that were younger. I had a
22 commode that needed, stopped up, if you know what young boys
23 can do sometimes. So I wouldn't have to call a plumber, he
24 came and he snaked out my commode. Another occasion was after
25 Hurricane Charlie came through, a couple of months later a

Debbie Crisman - Direct by Mr. Castro

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1 neighbor pointed out to one of my sons I had some roof
2 shingles on my house and he came over on that occasion and
3 reattached them for me.

4 Q Fixed your shingles?

5 A Yes, sir.

6 Q And when you wanted or when you needed Walt to help you
7 how would you go about contacting Walt?

8 A One occasion I had called on his pager and he contacted
9 me and asked me not to do that again because Sheila would get
10 upset, if I needed something done to contact one of our mutual
11 friends so that they could let him know.

12 Q And did he tell you why Sheila would get upset?

13 A He said she would just get very angry. She didn't want
14 him to have communication with me.

15 Q But this was -- was this after you had stopped dating?

16 A This was sometime after we had stopped dating, yes, sir.

17 Q Have you ever met Sheila McPherson in person?

18 A No, sir.

19 Q Has Sheila -- have you ever had contact with Sheila?

20 A On three occasions Sheila would, out of the blue, call

21 ---

22 MR. BRYAN: Objection, Your Honor, hearsay.

23 THE COURT: Well, I haven't heard her get into what
24 Sheila said. Can't get into what someone has said.

25 MR. BRYAN: As long as she doesn't say what Sheila

1 said.

2 A I can't tell you what she told me?

3 THE COURT: No, you can't say what she said.

4 A Okay.

5 THE COURT: All right, go ahead.

6 Q Were you contacted by Sheila?

7 A Yes, sir, I was.

8 Q What means did she use to contact you?

9 A Telephone.

10 Q Was this one telephone call?

11 A No, sir.

12 Q Approximately how many telephone calls were there?

13 A Three.

14 Q And in these telephone calls were you threatened with

15 physical violence?

16 MR. BRYAN: Objection, Your Honor.

17 THE COURT: Sustained.

18 MR. CASTRO: Your Honor, may we approach?

19 (Whereupon, a bench conference was held in the presence

20 but out of the hearing of the jury.)

21 BY MR. CASTRO:

22 Q Getting back to the telephone calls, in your mind did

23 you perceive a threat from the telephone calls?

24 A Yes, sir.

25 Q What did you consider the telephone calls to be?

Debbie Crisman - Direct by Mr. Castro

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1 A Harassment.

2 MR. BRYAN: Objection, Your Honor.

3 THE COURT: I'm going to allow that. Go ahead.

4 Q I'm sorry. What did you consider the telephone calls to
5 be?

6 A Harassment.

7 MR. BRYAN: I'm going to object to the foundation. I
8 don't think it's relevant unless Mr. Pantovich knew about it.

9 THE COURT: All right, I overrule. Go ahead.

10 Q How did you go about making these harassing phone calls,
11 these harassing phone calls stop?

12 A I told her if she continued to call me I would call the
13 police.

14 Q Did the phone calls stop?

15 A Yes, sir.

16 Q Now, during this entire period of time that you've known
17 Walt and during the period of time that you dated Walt were
18 you ever afraid of him?

19 A No, sir.

20 Q During this entire period of time that you've known
21 Walt, including the period of time that you dated Walt, was he
22 ever violent with you?

23 A No, sir.

24 Q Did you ever observe any violent conduct displayed by
25 Walt?

1 A No, sir.

2 Q Thank you, Debbie. Please answer any questions the
3 Solicitor might have for you.

4 CROSS EXAMINATION

5 BY MR. BRYAN:

6 Q So, your testimony is that you were calling your ex-
7 boyfriend, Walt Pantovich, after you all were no longer
8 dating?

9 A I was calling a friend, sir.

10 Q Okay, so, he was not your ex-boyfriend?

11 A He was an ex-boyfriend but we remained friends.

12 Q Okay, so, my question to you is if you can answer the
13 question yes or no and then you can explain it, you were
14 calling your ex-boyfriend who you dated for two years shortly
15 after you all broke up; right?

16 A Not shortly, no.

17 Q Okay, how long after?

18 A It was several months, sir.

19 Q Several months?

20 A Yes, sir.

21 Q So, you all dated for two years. Then you didn't date
22 for a couple of months and you were calling Walt Pantovich who
23 you had just been dating; right, two months earlier? You were
24 calling him; is that not true?

25 A For assistance, not for any other reason.

1 Q Okay, and his current girlfriend while you were calling
2 your ex-boyfriend was Sheila McPherson. He was dating her
3 while you were calling him; right, for assistance?

4 A Yes, sir.

5 Q Okay, and she called you three times and told you to
6 quit calling Walt.

7 A Sir, she called me before I ever called him for
8 assistance.

9 Q Okay, and you told her to quit calling and she did.

10 A Yes, sir.

11 Q Okay, and she threatened you, but she never -- you said
12 you never saw her in your life; did you?

13 A I never knew her.

14 Q So, she clearly never carried out any threat; right?

15 A No, sir.

16 Q And she never laid a hand on you.

17 A No, sir.

18 Q I don't have any other questions.

19 THE COURT: Anything on redirect?

20 MR. CASTRO: Nothing, Your Honor.

21 THE COURT: All right, you may step down. Thank you,
22 ma'am.

23 Call your next witness. Any more witnesses?

24 MR. CASTRO: Yes, sir. We'd call Tammy Eschman, Your
25 Honor.

1 WHEREUPON, was called to the stand, duly sworn by the
2 Clerk and testified as follows:

3 THE CLERK: Thank you. Please be seated and state
4 your name for the record, spelling your last name, please.

5 MS. ESCHMAN: Tammy Jean Eschman, E-S-C-H-M-A-N.

6 MR. CASTRO: Ready, Your Honor?

7 THE COURT: Yes.

8 DIRECT EXAMINATION

9 BY MR. CASTRO:

10 Q Good morning, Tammy.

11 A Good morning.

12 Q Tammy, where do you live?

13 A 3831 Roberta Lane, Myrtle Beach, South Carolina, 29588.

14 Q Could you please tell the jury what kind of work that
15 you do?

16 A I'm a bookkeeper and a tax accountant.

17 Q So, you're busy right now?

18 A Yes, sir, it's my busy time of year.

19 Q Tammy, do you know Walt Pantovich?

20 A Yes, I do.

21 Q Please tell the jury how you know Walt.

22 A I lived next door to him when -- on, when I lived on or
23 at 1

24 Q And so, you lived next door?

25 A Yes, I did.

Tammy Eschman - Direct by Mr. Castro

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1 Q Approximately what time, what period of time was that?

2 A Okay, I moved there in July of 2003 and I left in April
3 of 2005.

4 Q Please tell the jury what you think about Walt.

5 A Walt has a heart of gold. He's never been anything but
6 gentlemanly and nice to me. He's a good person. I couldn't
7 have anything bad to say about him.

8 Q And who is it that lived next door to you on 1

9

10 A Walt and Sheila.

11 Q And you testified that you moved there when?

12 A I'm thinking. I believe it was July of 2003.

13 Q Okay, now, when you first moved there were you actually
14 working at that time?

15 A No, sir, I wasn't. I lived there for three months
16 before I went to work full time.

17 Q Were you at home during the day?

18 A Yes, I was.

19 Q Did you get to know your neighbor at all, Sheila?

20 A Yes, I did.

21 Q Did Sheila ever have any company come visit in her home?

22 A There were people in and out of Sheila's house
23 constantly.

24 Q And when you say constantly is that during the day?

25 MR. BRYAN: Objection to the relevance of people in

1 and out of Sheila's home.

2 THE COURT: Relevance, what's the relevance?

3 MR. CASTRO: I'll move on, Your Honor.

4 THE COURT: All right, sustained.

5 BY MR. CASTRO:

6 Q Did you ever witness Sheila display violence towards
7 Walt?

8 A Yes, I did.

9 Q Did you ever witness Sheila throw things at Walt?

10 A Yes, I did.

11 Q Could you please describe to the jury what you
12 witnessed?

13 A I saw her throwing pots, pans, flower pots, anything
14 that wasn't nailed down that she could get her hands on she'd
15 throw it at him.

16 Q Did you witness on a particular occasion or more than
17 one occasion?

18 A More than one occasion. That was on a continual basis.

19 Q Did you ever see Walt throw anything back at her?

20 A No, never.

21 Q I'm going to narrow your focus a little bit more if I
22 could. Did Walt ever come to your house and ask you to call
23 the police?

24 A Yes, sir.

25 Q At that particular period of time did you notice any

1 injuries to Walt?

2 A Yes, sir.

3 Q Please describe to the jury what injuries that you
4 noticed.

5 A Okay, I noticed he had little like nicks on his face and
6 cuts on the back of his hands and he had a little bit of blood
7 on his shirt collar.

8 Q Did Walt tell you how he received those injuries?

9 A Yes, sir.

10 Q How did he ---

11 MR. BRYAN: Objection to, objection to hearsay, self-
12 serving statements.

13 THE COURT: Sustained.

14 MR. CASTRO: He's a party in the case, Your Honor.

15 THE COURT: Yeah, self-serving, sustained.

16 BY MR. CASTRO:

17 Q Did you come to learn how those injuries were inflicted
18 to Walt?

19 A Yes, sir.

20 Q And what did you learn about those injuries?

21 A I learned that they were caused by Sheila had unscrewed
22 a ---

23 MR. BRYAN: Objection, Your Honor.

24 THE COURT: Sustained, sustained.

25 MR. CASTRO: Your Honor, I would refer to -- may we

1 approach?

2 (Whereupon, a bench conference was held in the presence
3 but out of the hearing of the jury.)

4 THE COURT: All right, I sustain the objection. Go
5 ahead.

6 MR. CASTRO: Thank you, Your Honor.

7 BY MR. CASTRO:

8 Q Tammy, I'm going to narrow your focus a little bit more.
9 In the summer of 2004, did you have the occasion to be working
10 outside in your yard?

11 A Yes, sir.

12 Q Did you see Walt present anywhere?

13 A Yes, sir. He was in his yard sitting in a patio chair.

14 Q And what was he doing at the time?

15 A Reading his newspaper.

16 Q Did you personally observe any violent conduct from
17 Sheila towards Walt?

18 A Yes, sir.

19 Q Please explain to the jury what you witnessed.

20 A Okay, I saw -- Sheila came from behind their trailer
21 through the yard and picked up a piece of wood, like a piece
22 of lumber or a piece of two by four. She picked it up in
23 passing. Walked up behind Walt and hit him up side the head
24 with this piece of lumber hard enough where she knocked him
25 out of his chair and he landed on the ground.

Tammy Eschman - Direct by Mr. Castro

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1 Q Knocked him out of the chair on to the ground.

2 A Yes, sir.

3 Q How did Walt react to being cracked in the head with a
4 two by four?

5 A Needless to say he was upset. He yelled at her but he
6 never touched her. He never threatened her. He was vocal
7 about, you know, "Why did you hit me? What you doing that
8 for," but other than saying, you know, verbal, then they just
9 went inside.

10 Q Did you witness him touch her?

11 A No, sir.

12 Q The entire time that you lived there did you ever see
13 Walt hit Sheila?

14 A No, sir.

15 Q Have you ever seen Walt act violent?

16 A No, sir.

17 Q Do you know why Walt stayed with Sheila?

18 A Because he loved her and he wanted to help her.

19 MR. CASTRO: The Court's indulgence for one moment,
20 Your Honor.

21 BY MR. CASTRO:

22 Q Did Walt ever come over to your trailer and ask for
23 help?

24 A Yes, sir.

25 Q You remember that occasion?

- 1 A Oh, yes, sir.
- 2 Q What kind of help did he need?
- 3 A Sheila was sick and he wanted to call an ambulance.
- 4 MR. BRYAN: Objection to the relevance.
- 5 THE COURT: What's the relevance?
- 6 MR. CASTRO: His conduct towards her.
- 7 THE COURT: Okay, I sustain the objection.
- 8 MR. CASTRO: Please answer any questions the Solicitor
- 9 might have for you.
- 10 A Yes, sir.
- 11 CROSS EXAMINATION
- 12 BY MR. BRYAN:
- 13 Q So, after this wicked blow to the back of the head you
- 14 called 911?
- 15 A Did I call the 911?
- 16 Q Yes, ma'am.
- 17 A No, sir.
- 18 Q When you saw, you saw it and you saw her, this brutal
- 19 attack, so you called the police; right?
- 20 A No, sir.
- 21 Q You called EMS?
- 22 A No, sir.
- 23 Q You didn't, did he not need any medical treatment?
- 24 A No, sir.
- 25 Q And these incidents occurred at [REDACTED]

Tammy Eschman - Cross by Mr. Bryan

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- 1 A No, sir. This was (
- 2 Q That's in Socastee?
- 3 A Yes, sir.
- 4 Q And that was in 2004?
- 5 A It was the summer of -- let's see, I moved there in July
- 6 of 2003. So, I would assume it was 2004.
- 7 Q When did Walt and Sheila leave [REDACTED] ?
- 8 A I had bought a home and moved. When I moved from
- 9 [REDACTED] (Walt had already moved out and I believe he
- 10 was in [REDACTED] at and Sheila was still living next door at
- 11 that time.
- 12 Q And that was when?
- 13 A That would have been in April of 2005.
- 14 Q Okay, and did you ever go to [REDACTED]
- 15 A No, sir.
- 16 Q Do you know Christine McCune?
- 17 A No, sir.
- 18 Q Or the Eschmans?
- 19 A I'm Tammy Eschman.
- 20 Q I'm sorry, you -- Andy Seifert?
- 21 A No, sir.
- 22 Q Or Debbie Crisman, Maureen Moans, you don't know them?
- 23 A Maureen I know, yes, sir.
- 24 Q She lives at [REDACTED] ; right?
- 25 A Well, she used to.

1 Q Or used to.

2 A Yeah, she lived there when I was there.

3 Q And you testified that Walt wanted to help her?

4 A Yes, sir.

5 Q You think doing something like that to somebody is
6 helping them?

7 MR. AXELROD: Your Honor, objection, he's badgering the
8 witness here. He sees ---

9 THE COURT: Sustained.

10 Q I don't have any other questions.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MR. CASTRO:

14 Q Did Walt ever tell you he loved Sheila?

15 A Yes, sir.

16 Q Thank you.

17 THE COURT: All right, you may step down.

18 You can call your next witness.

19 MR. AXELROD: Your Honor, that's our case.

20 THE COURT: All right, anything in reply?

21 MR. BRYAN: No, Your Honor, oh, I'm sorry, Your
22 Honor, can we have just one minute?

23 THE COURT: All right, we'll take -- it's a good
24 time. We'll take about a 15-minute break. The Defense has
25 concluded their case. I'll excuse the jury to the jury room.

1 It's still preliminary. Do not begin any type of
2 deliberations, do not speak of the case even among yourselves.
3 Don't read any newspaper accounts, any TV reports or anything.
4 We'll excuse you back to the jury room right now. I've got
5 some matters of law I need to take up with the attorneys and
6 we'll check our time schedule then. Thank you very much.

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

9 THE COURT: All right, all right, Mr. Bryan, do you
10 anticipate any rebuttal?

11 MR. BRYAN: Yes, sir, one, one witness in reply.

12 THE COURT: All right, let's take about a 15-minute
13 recess, then we'll come back. Will that give you time to get
14 your reply in order? 15 minutes time enough to get your reply
15 in order?

16 MR. BRYAN: That'll be fine, more than enough, yes,
17 sir.

18 THE COURT: Okay, all right, we'll stand in recess for
19 15 minutes.

20 *****OFF THE RECORD*****

21 (On the record.)

22 MR. AXELROD: Your Honor, prior to the State bringing
23 in the reply witness, I want to -- at this time I'd like to
24 renew my motions since I've rested my case at this point, Your
25 Honor, to perfect my record.

1 THE COURT: All right, hold for one second.

2 All right, I'll hear your motions.

3 MR. AXELROD: Your Honor, at this time I'd move once
4 again for a directed verdict, that there's no evidence that
5 can be submitted to the jury for the charge of murder.
6 There's been nothing shown that Walt acted with malice
7 aforethought to commit this crime.

8 THE COURT: All right, motion is noted. It's denied.

9 MR. AXELROD: Your Honor, I want to perfect the record
10 and just renew the motion I was unable to re-cross Marco
11 Pantovich.

12 THE COURT: All right, that motion is noted.
13 Likewise, it's denied.

14 MR. AXELROD: Concerning three drawings that were
15 submitted in the State's case in chief, Item number 64 and 65
16 are two hand-drawn pictures by a trainee, not the doctor that
17 was testifying to them and I requested they be excluded and
18 they were not excluded. Exhibit Number 66 was a photograph
19 but it had writing or notes on, by a trainee on the report and
20 I objected to that coming in as hearsay statements on an
21 exhibit.

22 THE COURT: And so, what are you asking now?

23 MR. AXELROD: I'm just, I'm just -- I'm renewing my
24 motions for the suppression of those documents that I
25 requested at that point in the trial.

Motions

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1 THE COURT: All right, motion is noted. It's denied.

2 MR. AXELROD: Concerning Katie Coy, it's clear the fire
3 poker is an integral part of this case. Katie Coy testified
4 that there was no DNA evidence on it, but she was not the one
5 that tested the fireplace poker, as the Court was aware of
6 that also, that she got the fireplace poker, it's brought to
7 SLED at some point. I was unable to even cross examine
8 anybody on how the test was conducted. I was unable even to
9 cross examine anybody as to where the test was conducted on
10 the physical nature of the poker itself because Katie Coy was
11 only able to testify to the results. I -- the Court allowed
12 me to make my motion for a mistrial outside the presence of
13 the jury and, you know, I felt Your Honor at that time that
14 the State put forth an incomplete chain and knowing that it
15 was incomplete. The State argued that, well, I had notice and
16 I would argue to the, I argued to the Court that it was --
17 it's not a notice issue but an evidentiary issue and I just
18 want to perfect that, Your Honor.

19 THE COURT: All right, motion is noted, denied.

20 MR. AXELROD: Also, I made a motion for a mistrial
21 based on the statement by the Solicitor. He asked Walt
22 Pantovich have you ever been arrested. I think that went
23 directly to his credibility and ultimately to his character
24 and that's what's at issue here. It was a statement made to
25 the Defendant impeaching his character on a question that was

1 impermissible in this type of case.

2 THE COURT: Denied.

3 MR. AXELROD: That'd be all, Your Honor.

4 THE COURT: All right, anything before we bring the
5 jury back in?

6 MR. BRYAN: No, Your Honor,

7 MR. AXELROD: Your Honor, I would -- I don't know if
8 I'm entitled to an NCIC, if there is an NCIC or I don't know
9 who's testifying. I don't know anything at this point. So,
10 I'm just trying to see if I'm entitled to something.

11 MR. BRYAN: We'll get it to him. I'm sorry, Your
12 Honor. She just came down from Connecticut and I did not have
13 it in advance. We'll get it to him before he's -- I have not
14 run it. I don't know if there's anything on it. The witness
15 tells me she doesn't have any prior convictions, but we'll run
16 it right now and get it to them before I'm through.

17 THE COURT: All right, anything else?

18 MR. BRYAN: Nothing from the State, Your Honor.

19 THE COURT: All right, let's go ahead and bring the
20 jury in.

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

22 THE COURT: All right, ladies and gentlemen, welcome
23 back. Mr. Bryan, you can call your first witness.

24 MR. BRYAN: Thank you, Your Honor. If it please the
25 Court, the State calls Nanette Ouimette.

Nanette Ouimette - Direct by Mr. Bryan

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1 WHEREUPON, Nanette Ouimette was called to the stand, duly
2 sworn by the Clerk and testified as follows:

3 THE CLERK: Thank you. Please be seated and state
4 your first name for the record and could you please spell your
5 first and last name, please?

6 MS. OUIMETTE: My first name is Nanette, N-A-N-E-T-T-E,
7 Ouimette, O-U-I-M-E-T-T-E.

8 DIRECT EXAMINATION

9 BY MR. BRYAN:

10 Q How do you know -- do you know Vladimir Pantovich?

11 A I'm the mother of two of his children.

12 Q And were you ever married?

13 A No.

14 Q How old -- what are the ages and names of those two
15 children?

16 A My oldest son is Nicholas, he's 18 and Sebastian is 16.

17 Q And where do you live?

18 A I live in New Hampshire.

19 Q And where does Nicholas and Sebastian live?

20 A They live in New Hampshire with me.

21 Q When's the last time Walt saw Nicholas or Sebastian?

22 A Six or seven years ago.

23 Q And how many times has he seen Nicholas, his two
24 children since 1990 ---

25 MR. AXELROD: Objection, Your Honor, the relevance.

1 MR. BRYAN: It's been asked 15 times through ten
2 different witnesses about the grandkids and he loves the kids
3 and he sees the kids.

4 MR. AXELROD: I'll withdraw, I'll withdraw, I'll
5 withdraw that objection, Your Honor.

6 MR. BRYAN: I didn't bring it in evidence.

7 THE COURT: All right, go ahead.

8 MR. BRYAN: Just answer my ---

9 THE COURT: Ask a question.

10 MR. BRYAN: Thank you, Your Honor.

11 THE COURT: It's overruled.

12 BY MR. BRYAN:

13 Q How many times have you seen, has Mr. Pantovich seen his
14 two kids since 1994?

15 A He came to visit them once in Connecticut and they went
16 to see him in Myrtle Beach twice.

17 Q That's since ---

18 A Since '94.

19 Q --- in the last 13 years?

20 A Yes.

21 Q Three times?

22 A Yes.

23 Q And have you ever denied him any access to ---

24 A Never.

25 Q Excuse me. Let me finish. I'm sorry. So, we got a

1 court reporter and once I'm through then you answer so we
2 don't talk over each other.

3 A Okay.

4 Q Have you ever denied Mr. Pantovich any access to his
5 kids?

6 A Never.

7 Q When's the last time he asked to see them?

8 A About seven years ago.

9 Q Would you characterize Walt as a gentle person?

10 A No.

11 Q Are there any specific instances that cause you to say
12 that he is not -- would you -- yeah, are there any specific
13 instances which would cause you to form that opinion?

14 A Yes, he was verbally abusive and on several occasions he
15 hit me with an open hand, never a fist.

16 Q When you say several occasions, describe the first one
17 that you recall.

18 A The first one was when we lived in Gainesville, Florida.

19 Q And what, what happened on that occasion?

20 A He woke me up and he was verbally abusive and hit me
21 open handed.

22 Q And why did he wake -- why did he wake you up?

23 A I'm not really sure.

24 Q Okay, was anyone else present?

25 A Yes, my son Nicholas was in the room. He was six months

1 old and his son and daughter, Marco and Maria, were living
2 with us.

3 Q And what, what happened when he woke you up?

4 A He got physical with me. He slapped me around a few
5 times and Marco and Maria woke up and tried to diffuse
6 everything.

7 Q Any other times that he was physically violent towards
8 you?

9 A Yes.

10 Q Describe the next time that you recall.

11 A We were living in Socastee and he wanted to go through
12 my purse and I refused. He again got physical with me and
13 would not let me get my children and leave.

14 Q Why did he want to go through your purse?

15 A Because he said I had drugs in my purse.

16 Q Did you have drugs in your purse?

17 A No, I did not.

18 Q And so, he went through your purse to see if you had
19 drugs in your purse and then what happened?

20 A I went next door to call the police so I could get my
21 children out of the house.

22 Q Is that all he did? He didn't lay a hand on you? He
23 just went through your purse?

24 A No, he got physical with me. I had to bite him so he
25 would release me.

1 Q Okay, how did he have you so that you needed to bite
2 him?

3 A He had my arms, my shoulders holding on to me.

4 Q Any other instances of violence that you recall?

5 A Yes.

6 Q What's the other one, what's another one?

7 A Oh, we had come home from work and he had been drinking
8 and he was mad because I did not want to go to bed and he
9 again slapped me around and told me he was going to buy a gun.

10 Q And is that -- when did that occur in relationship to --
11 well, tell the jury what he said about the gun.

12 A He just informed me that he was going to buy a gun. I
13 did not know if it was for me or for him, but it was the
14 following day that I left him.

15 Q And was that -- when he said that he was going to buy a
16 gun, did you take that as a threat?

17 A I did.

18 Q And was it in the context of a disagreement or were you
19 all getting along at that point or having a ---

20 A It was in the midst of a fight.

21 Q Okay, and what did you do as a result of him saying he
22 was going to buy a gun?

23 A I left the next day. I called the domestic hotline and
24 they suggested that I leave and I did. I packed up and I left
25 and I never went back.

1 Q Did you ever have any instances around Christmastime
2 that happened?

3 A Yes.

4 Q Tell the jury about that.

5 A My mother had come down to visit and we were drinking
6 and Walt was again abusive. He was calling my mother names,
7 he shoved me around a little bit, and again, I left him, but I
8 was only gone for two weeks.

9 Q Okay, so, you left him and you went back?

10 A I went back, yes.

11 Q And then that took you to the incident where you had a
12 fight and he said something about a gun and ---

13 A That was 10 months later.

14 Q Right, and at that point you left?

15 A Yes.

16 Q And tell the jury how you left.

17 A He got up in the morning and went to work the morning
18 after he said he was going to buy the gun, and I woke up Marco
19 who was living with us at the time, his son, and he had told
20 -- Marco had told me that if I ever needed help leaving he
21 would help and I said, ``Marco, I'm ready to'' ---

22 Q I'm sorry, he told you that if you ever needed what?

23 A Help to leave.

24 Q All right.

25 A That he would help me leave.

1 MR. CASTRO: Your Honor, I'm going to object to
2 hearsay.

3 THE COURT: Sustained.

4 Q All right, so, what did you do, how did you leave?

5 A I woke Marco up and asked him if he would come with me
6 and he helped me pack. He drove my car for me. I drove the
7 motor home and we went to Connecticut.

8 Q Okay, and what happened when you were in Connecticut?
9 Did you ever -- when was the next time you heard from Mr.
10 Pantovich?

11 A He called almost every day. He threatened to blow up my
12 camper. He threatened to burn down my brother-in-law's house.
13 He said he was coming up and somebody was going to get hurt
14 and he never did, he never did show.

15 Q Did you hide from him?

16 A No, I was at my brother-in-law's. He knew where I was.

17 Q Was there ever an incident that happened on "-----"

18

19 A Yes.

20 Q What happened on "-----" ?

21 A The night that he wanted to go through my purse he took
22 a baseball bat and he smashed my windshield and the rear
23 window of my car and then followed me through town. When I
24 finally did get to leave with the kids he followed me and
25 tried to get me to come home.

- 1 Q Did you attack him in any way before he took the
2 baseball out and smashed your windshield?
- 3 A No. I did bite him but that was to get released from
4 his grip.
- 5 Q Okay, so ---
- 6 A But I did not attack him.
- 7 Q So, that's when he went through your purse; is that
8 right?
- 9 A Yeah, that's the same incident. It was earlier that he
10 had gone in my purse.
- 11 Q And he grabbed you and had a hold of you and you bit him
12 to get loose?
- 13 A Yes.
- 14 Q And then he smashed up your windshield with the baseball
15 bat?
- 16 A Yes, yes.
- 17 Q Is that uncommon for him to have a baseball bat?
- 18 A No.
- 19 Q Explain your answer to the jury.
- 20 A He usually had a weapon of some sort in the vehicles.
21 If it wasn't a baseball bat, earlier in our relationship he
22 had a gun that he kept under the seat.
- 23 Q And once he didn't have a gun what did he carry?
- 24 A A baseball bat.
- 25 Q Everywhere he went?

Nanette Ouimette - Cross by Mr. Axelrod

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1 A Well, it was in the vehicle.

2 Q Thank you. I don't have any other questions.

3 CROSS EXAMINATION

4 BY MR. AXELROD:

5 Q Did Walt ever buy a gun?

6 A I don't know whose gun he had. He had a gun. I don't
7 know if he ever bought one.

8 Q Do you like Walt?

9 A Excuse me?

10 Q Do you like Walt?

11 A There was a time I did, yes.

12 Q Isn't it true that Walt caught you having a relationship
13 with his son, Marco?

14 A No.

15 Q Nothing further.

16 THE COURT: Anything on redirect?

17 MR. BRYAN: No, Your Honor.

18 THE COURT: All right, you may step down.

19 Call your next witness.

20 MR. BRYAN: The State rests, Your Honor.

21 THE COURT: All right, are we ready to go into closing
22 arguments?

23 MR. BRYAN: I'm ready, Your Honor.

24 MR. AXELROD: Your Honor, I think, I think we probably
25 need to have a conference at least of what the charge would be

1 for the argument.

2 THE COURT: All right, ladies and gentlemen of the
3 jury, I'll excuse you. We've got some matters of law that we
4 need to take up. Procedurally what's happened is they have
5 finished presenting all of the evidence and testimony they're
6 going to present. The next stage will be for the attorneys to
7 give their closing arguments and then for me to instruct you
8 on the law. In preparing those closing arguments and in
9 preparing the closing instructions there are some matters that
10 I need to discuss with the attorneys and that they need to ask
11 me. So, I'm going to excuse you at this time back to the jury
12 room. I may be bringing you in shortly to release you for
13 lunch. I don't know that yet. We'll need to check with the
14 attorneys, but at this time I'll excuse you back to the jury
15 room. Please do not discuss the case, do not begin
16 deliberations at this time. Thank you very much. Everyone
17 remain in place while the jury is excused.

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right, stand in recess for, I guess,
21 for about 15 minutes. You all want to come on back to
22 chambers and we'll try to get a handle on how long we'll take
23 for closing arguments and jury charges.

24 *****OFF THE RECORD*****

25 (On the record.)

1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right, as we discussed in chambers I
4 think it's a good time for us to go ahead and break for lunch.
5 So, I was just going to cut the jury loose until two o'clock
6 and that'll give us time to go over charges, closing arguments
7 and things of that nature. So, anything from the State before
8 we bring the jury in?

9 MR. BRYAN: No, Your Honor.

10 MR. AXELROD: Your Honor, probably if we're going to
11 bring the jury in we need to bring Walt back.

12 THE COURT: Okay, yeah, let's bring the Defendant back
13 in, please.

14 (Mr. Pantovich enters courtroom.)

15 THE COURT: All right, anything from the State before
16 we bring the jury in?

17 MR. BRYAN: No, Your Honor.

18 THE COURT: Anything from the Defense? All right,
19 please bring the jury in.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: Ladies and gentlemen, welcome back. We're
23 at that time of the trial where we now go into closing
24 arguments and I'll charge you on the law of the case.
25 However, because of the length of those arguments and the

1 charges it's a good time for us to take our lunch break at
2 this time. So, I'm going to excuse you to go to lunch. As a
3 matter of a fact I'm going to give you a good long lunch.
4 Please be back at 2:15, okay, in your jury room at 2:15, and
5 because we have some other legal matters we need to take up.
6 Once again, I caution you, don't read any newspaper accounts,
7 don't conduct any independent investigations, don't go on the
8 internet, don't watch TV, don't listen to the radio, don't
9 discuss this case with anyone, even among yourselves because
10 it's not yet time to deliberate, but at this time I'll excuse
11 you to go to lunch, hope everyone has a good lunch and we'll
12 see you back at 2:15.

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: All right, anything before we break for
16 lunch?

17 MR. AXELROD: Yes, sir, Your Honor, as an abundance of
18 caution, I mentioned to the Court that I wanted to renew my
19 motions once again after the State put up their reply witness
20 and the Court instructed me just to renew them as a whole, the
21 six motions that I've been renewing each time.

22 THE COURT: All right, all motions I'll allow you to
23 renew them in that fashion. They're noted and denied.

24 MR. AXELROD: Thank you, Your Honor.

25 THE COURT: All right, we'll break for lunch. It's a

1 little after 12. I'll have my jury charges ready for you at
2 about 1:15. If you all want to come in I'll give you a copy
3 of them. That'll give you an hour to look over it so you can
4 form your objections or additions or whatever challenges;
5 okay?

6 MR. BRYAN: Thank you, Your Honor.

7 MR. AXELROD: That'd be fine.

8 THE COURT: All right, we'll stand in recess till
9 2:15.

10 *****OFF THE RECORD*****

11 (On the record.)

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: For the record, I've provided both the
15 State and the Defense a copy of my charges right about 1:30,
16 between 1:15 and 1:30 when they got it.

17 MR. AXELROD: Your Honor, if possible may my client be
18 brought in?

19 THE COURT: Oh, yeah. I'm sorry. I didn't realize he
20 wasn't in here.

21 (Mr. Pantovich enters courtroom.)

22 THE COURT: All right, unless there's some matter to
23 address right now, we ready to go into closing arguments or
24 does anybody want to raise any objections to the charges or
25 additions to the charges?

1 MR. BRYAN: None from the State, Your Honor.

2 MR. AXELROD: Your Honor, before I ask for what I would
3 like to be added to the charges, on the Court's charge on page
4 22 and 23, and on page 22 we have basically three big
5 paragraphs and on page 23 we just have one sentence from the
6 preceding page. I would ask that the last two paragraphs be
7 struck. I don't think it has any bearing in this case at all.
8 I would just think that it's -- the charges are enough pages
9 as we have to deal, that this is concerning moral [sic]
10 combat.

11 THE COURT: All right, Mr. Bryan.

12 MR. BRYAN: I think it's obviously applicable, Your
13 Honor. I think it's an issue for the trier of fact to
14 determine whether they decide that Mr. -- the totality of Mr.
15 Pantovich's testimony was the truth or some part thereof and
16 to determine based on that testimony whether they were engaged
17 in mutual combat.

18 THE COURT: I understand your motion, Mr. Axelrod,
19 but I deny it. I'm going to leave that charge, those charges
20 in there.

21 MR. AXELROD: Yes, sir, Your Honor. Your Honor,
22 there's -- concerning charges I think that the Court did not
23 put in and we kind of went as fast as we could through the
24 Court's charge. My charge of number 19, 24 and 25, we would
25 ask to be admitted into this charge. 19 is good character of

1 the Defendant. Mr. Castro looked. He said he was unable to
2 find this in that charge and charge number 24 on self-defense,
3 reputation for violence and turbulence, it's a charge that's
4 acceptable in this type of case and we would ask that that
5 charge be put in and also the charge number 25, self-defense,
6 propensity for violence.

7 THE COURT: All right, let me see them. I left my
8 copies back in the office, if I could just take a look at
9 those.

10 MR. BRYAN: What were the numbers again, 25 and ---

11 MR. AXELROD: 19, 24 and 25.

12 MR. BRYAN: Your Honor, my only objection to number
13 19 is that if you have a more balanced charge that indicates
14 that anything about whether the good character, is possible
15 that if you have a more balanced charge that indicates the
16 fact that once the character is put in evidence that they can
17 decide whether it's good character or not good character based
18 on the testimony of prior acts of violence committed by the
19 Defendant. So, if you have a charge on good character or
20 character of the Defendant, I'd ask that we use that one in
21 lieu of whatever Mr. Axelrod handed up.

22 THE COURT: All right.

23 MR. BRYAN: So, and if you don't have another charge
24 Ervin's has the charge on page 28. I would ask that we use
25 those.

1 MR. AXELROD: Your Honor, it's the same -- what the
2 charge I have State v. Green. It's the same charge. I have
3 the complete charge, and I would like it given to the jury. I
4 think it's appropriate.

5 THE COURT: Okay, I've reviewed it. I think the
6 charges I've got adequately covers everything. I'm going to
7 deny your motion. I'll let you if you want to mark these as
8 Court's exhibits.

9 MR. AXELROD: Absolutely

10 THE COURT: And I'll show that -- they -- those don't
11 go back to the jury. They're to preserve the record. That'll
12 show that you requested that those charges be made and I
13 denied that motion.

14 MR. AXELROD: And that would be the one for reputation
15 for turbulence and violence and also the ---

16 THE COURT: That's the ones you handed up to me, 19
17 and what were the numbers?

18 MR. AXELROD: 24 and 25.

19 THE COURT: All right.

20 MR. AXELROD: Your Honor, may I just staple these and
21 you want to make it one exhibit?

22 THE COURT: Yeah, yeah, we'll make them one exhibit
23 and that'll be a Court's Exhibit.

24 (Whereupon, Court's Exhibit Four [Requests to Charge by
25 Defense] appropriately marked.)

1 THE COURT: All right, anything else before we bring
2 in the jury?

3 MR. BRYAN: Nothing from the State, Your Honor.

4 THE COURT: Mr. Axelrod, anything before we bring in
5 the jury?

6 MR. AXELROD: No, sir, Your Honor, it's time to rock and
7 roll.

8 THE COURT: Okay, I'll still, if anything comes up
9 during the course of my closing arguments [sic], I'll give you
10 another opportunity after I charge them to raise any
11 additional objections or exceptions to my charge at that time
12 also if you want to.

13 Any idea about how long we need for closing?

14 MR. AXELROD: I have absolutely no idea, Your Honor,
15 some time.

16 THE COURT: Okay, well, I mean, are you talking about
17 -- you won't need more than an hour; will you?

18 MR. AXELROD: I do not think I would exceed an hour,
19 Your Honor, no, sir.

20 THE COURT: Okay, that'll be fine.

21 All right, you can bring the jury in, please.

22 (Whereupon, the following takes place in the presence of the
23 jury.)

24 THE COURT: All right, ladies and gentlemen, welcome
25 back. I hope everyone had a good lunch.

1 Now, at this portion of the trial the parties have
2 presented their evidence in this case, and it's now time for
3 the attorneys to make their closing arguments. Now, just like
4 their opening statements these closing arguments of the
5 attorneys are not evidence in this case. Their statements and
6 arguments are meant to help you understand the evidence and
7 apply the law to the evidence. You should disregard any
8 remark, statement or argument made by the attorneys which is
9 not supported by the evidence presented during the trial of
10 this case or the law as I will give it to you and explain it
11 to you following their arguments.

12 All right, Mr. Bryan.

13 MR. BRYAN: Thank you, Your Honor. May it please the
14 Court.

15 THE COURT: Yes, sir.

16 MR. BRYAN: So, the process where we're at now is
17 that I'm going to have the opportunity to open on the law,
18 which means I'll just talk about just the law. I'll be real
19 brief. Mr. Axelrod can then make his summation or closing
20 argument and then I'll make my closing argument. So, I'll be
21 real brief. Whatever I say right now will only be about the
22 law and the Judge will give you the law and if I say anything
23 different than what the Judge says then obviously you follow
24 the Judge's instructions, but my intention at this point is
25 just to comment briefly upon what the Judge is going to charge

1 you as far as what the law in this case is going to be, and
2 what I want to start with is actually now what the Judge is
3 going to charge you, but the one thing the Judge is not going
4 to charge you and I just want to make sure that everybody is
5 clear on the fact that there is no issue of insanity in this
6 case. So, I won't comment on the facts. Maybe I'll come back
7 to it in my summation but you won't hear any charge on
8 insanity.

9 MR. AXELROD: Your Honor, if he's going to comment on
10 the law, it's the law, not what's not the law in this case.

11 THE COURT: All right, overruled, go ahead.

12 MR. BRYAN: So, you won't hear the Judge, listen
13 closely and you will not hear anything in his charge about
14 insanity. There is insanity law in South Carolina. There is
15 a plea available for insanity, but there's been no affirmative
16 plea of not guilty by reason of insanity and there's been no
17 other mental health or insanity defense raised; and therefore,
18 the Judge simply just won't charge you about it and it's not
19 for your consideration and your deliberations. So, I don't
20 want there to be any confusion in your jury room as far as
21 insanity. It's not been an issue in the case and it won't be
22 for your consideration. So, the Judge will not charge you on
23 it. What is the law in this case and what's going to be
24 applicable to you is going to be the charge of murder first
25 and foremost, which is the unlawful killing of another with

1 malice aforethought. So, I think unlawful killing is pretty
2 self explanatory. Malice is the intentional doing of a
3 wrongful act without just cause and with the intent to inflict
4 injury under circumstances that the law will infer intent.
5 Malice does not have to exist for any particular amount of
6 time. It just has to be present at the time -- just before,
7 in an instant before and during the murder itself. So, that's
8 malice, and then the Judge will also charge you because you're
9 the finders of the fact on voluntary manslaughter. So, your
10 determination will be whether the Defendant is guilty of
11 murder, guilty of voluntary manslaughter or not guilty.
12 Voluntary manslaughter requires first and foremost sufficient
13 legal provocation; and so, I would ask that you listen closely
14 to the Judge's charge on what is sufficient legal provocation
15 and I will have some comment relative to the facts in my
16 closing, but he'll tell you that it's sudden heat of passion
17 and that that would produce an uncontrollable impulse to do
18 violence in the ordinary person. I'll tell you that
19 sufficient legal provocation must be the type that would make
20 a person of ordinary reason and caution become enraged and
21 lose control. So, that's the way a normal person would react
22 is the standard for establishing what is sufficient legal
23 provocation, and then finally, self-defense, there's four
24 elements to self-defense and I'd ask that you listen closely.
25 The Defense must prove that the Defendant was entitled to each

1 and every element of self-defense or he must raise that
2 defense and establish each and every element, the first of
3 which is that the Defendant was without fault in bringing on
4 the difficulty, so that he had no fault in bringing on the
5 difficulty. Contemptuous language would be an example that
6 the Judge will give you, also mutual combat is something to
7 listen for in his charge on self-defense and he'll say that
8 the Defendant must be in imminent danger of death or serious
9 bodily injury for self-defense to be available, and also that
10 there was no other way for the person claiming self-defense to
11 the avoid the difficulty.

12 Reasonable doubt, the Judge will charge you about that.
13 He'll tell you that a reasonable doubt is not every possible
14 doubt, it's not beyond any doubt. It is simply evidence
15 which after deliberation would leave you firmly convinced.
16 That's the standard. It's not beyond any, you can give a
17 reason for anything. You can always have a doubt. You could
18 have a doubt that Screven Street is still outside the door.
19 That doesn't make it a reasonable doubt, and that's the law.
20 The Judge, Mr. Axelrod will give you his closing and then at
21 that point then I'll be allowed to give you my summation.

22 THE COURT: Mr. Axelrod.

23 MR. AXELROD: Thank you, Your Honor.

24 May it please the Court, Your Honor?

25 THE COURT: Yes, sir.

1 MR. AXELROD: Good afternoon. I told you when we
2 started this trial this will be something that you'd remember
3 for a long time. This is a serious case. We have a hundred
4 pictures, bad picture, can't get away from them. They are
5 what they are, they say what they say. An event occurred.
6 As the Solicitor stated in the law, the Judge is going to
7 charge you with murder. He's going to charge you that -- the
8 elements of murder. They're going -- you're going to
9 basically have to decide whether Walt acted with malice
10 aforethought when Sheila died. Basically did he plan it? Did
11 he plan it two weeks ago? Did he plan 10 seconds ago before
12 the event? Was it planned with malice aforethought. The
13 Judge is going to tell you, he's going to tell you what the
14 law is, and the law you can liken towards a box, a rigid metal
15 box and each piece of that law, whether it's the charge of
16 murder, whether it's the charge of voluntary manslaughter,
17 whether that's the charge of self-defense or the charge of
18 reasonable doubt, the burdens, whatever those different
19 charges are and they're going to be 20 pages of them, that
20 becomes the box, and as each charge gets put on each side that
21 box just keeps coming a little bit smaller and a little bit
22 smaller. That is the box that you have to deal with. That is
23 the box you have to deal with whether or not you like it. You
24 took an oath that you would uphold the law and apply the facts
25 because that's your province for sure, the facts as you saw

1 them, as you think them, whatever you think they are that's
2 your decision. You all have opinions. When you go back into
3 that jury room each one of you will have your opinions of what
4 you saw from a witness, whether you want to believe a witness,
5 believe part of a witness, believe all of the witness or
6 believe none of the witness. You will decide that, and you
7 will apply that law to those facts, and the Judge is going to
8 tell you if you have a doubt, if you have a doubt as to
9 whether Walt committed murder, if you say, ``Well, I'm not
10 sure if he planned it. He might have," whether you want to
11 or not, you have an obligation to come back not guilty on that
12 charge. That's the law. Some laws we do not like. Some laws
13 we'd rather they be a different way and we say, ``I wish it
14 wasn't this way," or, ``I'm going to ignore that because that
15 doesn't make sense." It'd just be a lot easier to say,
16 ``Well, he probably had a plan or he at that point he probably
17 planned it," but if you're not sure beyond a reasonable doubt
18 you have to come back with a not guilty, not guilty. Then the
19 Court is going to tell you, ``If you come back with not guilty
20 to murder, then we're going to deal with voluntary
21 manslaughter," and that's basically someone gets into a fight
22 in the heat of passion and loses their temper and strikes
23 somebody and you can -- you might say, ``Well, that fits the
24 category here of Walt. Why not? It is the easiest thing for
25 us to do today. We'll go back into that jury room. We'll

1 deliberate and we'll just say the heck with murder. We'll
2 come back with voluntary and we'll be done for the day," but
3 it's not that simple. The Judge is going to charge you that
4 Walt says, "Hey, I acted in self defense at that moment. I
5 didn't know what else to do. I acted in self-defense," and
6 the Judge is going to charge you, he's going to tell you, this
7 Court will tell you that self-defense is a complete defense to
8 both murder and voluntary manslaughter. If it is established
9 you must find the Defendant not guilty and he's going to tell
10 you something else which I want to tell you and make you
11 remember. I do not want you to think that we have to prove
12 self-defense because we don't. This Court will instruct you
13 the State has the burden of disproving self-defense by proof
14 beyond a reasonable doubt.

15 So, what we have here if you come back and you say,
16 "Hey, it's not murder," and you say, "Hey, maybe it's
17 voluntary manslaughter," and you say, "Hey, maybe he did act
18 in self-defense," and if you have a doubt as to whether Walt
19 acted in self-defense, the Court will tell you to uphold your
20 oath, whether you like it or not, and you have to come back
21 with a not guilty.

22 We weren't there. We weren't there. The pathologist
23 told us that this woman was a walking drug cocktail that day.
24 She had methadone in her. That is used to withdraw from
25 heroine. She had marijuana in her, trace amounts of alcohol.

1 She had cocaine in her, substantial amount, metabolite showing
2 there was extensive cocaine use. She had pills in her for
3 treating depression and she had medicine in her that treats
4 schizophrenia, and Walt told you she was different that day.
5 Her voice was deep and her face was flushed.

6 Credibility, do we want to believe Walt? Walt told the
7 truth. He told the truth when it hurt. He told the truth all
8 the time. When the Solicitor said, "Why did you wrap her in
9 the blanket," he said, "I didn't want to get blood in the
10 trunk." He told you the truth. He told you the truth. It's
11 about credibility.

12 We brought up witnesses to say what a nice guy he was.
13 They bring up somebody, Nanette, the old girlfriend, and I
14 asked her, I said, "Well, you know, wasn't Walt upset when
15 you were having a relationship with his son, Marco?" She
16 said no. They could have brought back Marco to disprove that.
17 He was here. He testified. They didn't because they know,
18 they know that's what happened.

19 Walt told you, he told the police, "I lost it." He told
20 the police, "My son did the right thing calling the police."
21 We're not in that situation that Walt was in that day. Walt,
22 however Walt reacted, that was how he reacted. He didn't know
23 whether to dump the body, to run, to hide, to kill himself.
24 He did not know what to do, but he didn't drive to Florida and
25 he didn't drive to Georgia and he didn't drive to California.

1 He didn't take an airplane to Mexico. He didn't go there. He
2 went to the one place where he knew he'd get caught. He went
3 to his son's house. He drives a straight line towards his
4 son's house and the police were waiting. He son said, "I
5 think dad's coming here," because Walt wanted to turn himself
6 in. He didn't know how. He was never in this situation
7 before.

8 He said, "I remember her laying down. I was hitting
9 her." That's what he remembers. She comes at him with a
10 poker. He's defending himself. He picks up the bat. In that
11 split second Sheila or seconds after that Sheila lost her
12 life. Yes, she did, and the Court is going to tell you that
13 if you are justified, an example would be, if you are
14 justified in firing the first shot, you are justified in
15 firing 14 more until all sense of fear against you is put
16 aside. So, if Walt was justified in swinging that bat that
17 first time, whether you like it or you don't, he was entitled
18 to swing that bat to protect himself till there was no longer
19 a threat against him. That is the law in the State of South
20 Carolina today. It might be a law you do not agree with, but
21 it is the law, and you took the oath to apply the law. So, if
22 you're back in the jury room and you say, "Well, if he had
23 only hit her one time I could see it," I'm sorry. You have
24 to come back with not guilty. It is not the amount of blows.
25 The States gives you all these pictures for the extent of the

1 injuries and it was extensive, but in determining the guilt or
2 the innocence of Walt in this case, you have to look at that
3 act as one act, one act, no different then he hit her one time
4 or a thousand times, and I think the pathologist told us four
5 to six times.

6 Self-defense, without fault, he's in his own home, the
7 Court will tell you he has no duty to retreat from his own
8 home. He's in his home and he did not want her there. He
9 told you that. She's coming at him with a fireplace poker and
10 he defended himself. Would a person in the same situation do
11 the same thing, that's what the Judge is going to ask you and
12 no other way of avoidance. He told you he was backed into
13 that corner. He was against the door. It happened in a
14 split-second. He told you he loved her. You heard from
15 Tammy, Walt loved her, he wanted to help her. He wanted to
16 help a woman that was on drugs that he cared about. He told
17 you, "I grabbed the bat and I hit. I didn't know what to
18 do." He was trying to call the police. She pulled the plug
19 out of the wall, he couldn't call the police and it escalated
20 and the event occurred.

21 The Solicitor says, "Well, how did you, how did you get
22 to talk to Marco?" He goes, "I plugged the phone back in
23 behind the computers." If Walt was to testify himself and
24 get on that stand, you would go back there and you'd say,
25 "You know, it could just be self-serving testimony. Why

1 should I believe him? He's just getting up there trying to
2 save his butt," but when you listen to what he told the
3 Solicitor and he told Mr. Castro that how it went down. He
4 told things that were detrimental to his position, but he told
5 you what the truth was I believe. He told you the truth
6 there, and you have to, you have to take that to some degree
7 and say was it self-serving or not? When the witnesses went
8 on the stand, the people that have known him for the last 13
9 years, Andy said he was a nice man, he wasn't violent. Chris
10 said he had no temper and was kind and caring person. Walt's
11 testimony goes from I believe self-serving to plausible.

12 We're starting to corroborate this man's position with people
13 that had no reason to come forward but to speak the truth.

14 Maureen said that Sheila told her that Walt never abused
15 her. That's important. That's important. The woman he's
16 living with, the woman that is dead now told Maureen, "He
17 never hurt me." Maureen called him a gentle giant. Debbie,
18 a former girlfriend, said she was never afraid of him. We go
19 from self-serving to plausible to believable, and at the same
20 time, conversely, the more believable it becomes, the
21 reasonable doubt will increase. You do not have an easy
22 choice here. We weren't there. Did Walt's story make sense
23 to you? If it did, then you have doubt. If it did not make
24 sense to you, you have no doubt.

25 Walt told you he was slapped, he was spit on. You heard

1 testimony his face was scratched, got hit up side the head
2 with a two by four. He was in a violent, tumultuous, drug-
3 infested relationship from one side, from Sheila. He said she
4 broke his glasses. He tried to protect himself the best he
5 could. The State is going to tell you Walt is six foot two,
6 195 pounds and Sheila was, I don't know, five foot four, 140
7 pounds. It reminds me of a play of Shakespeare. Shakespeare
8 said, "Though she was small she was fierce." Thirteen years
9 of people testifying about this man's character, that he'd
10 give the shirt off his back, so whatever they needed done,
11 says something about Walt. You heard that -- you heard from
12 people that have known Sheila the past four or five years,
13 basically tell you she acted crazy. That makes Walt's story
14 believable. Schizophrenic medicine and he tells you she
15 looked different that day, face was red and her voice was
16 deeper. He didn't know what was in her, what got into her
17 that day.

18 Katie Coy testified that there was no trace evidence on
19 the poker. Walt tells you he picks it up. I asked her, she
20 said, "I could pick up a pen and wouldn't even have trace
21 evidence," because she was, she was testing for blood,
22 serology. She was testing for blood, the presence of blood
23 and from blood DNA, but you know what I thought was
24 interesting, if they're looking for DNA on something that
25 doesn't have to be there, if I pick up a pen there's no

1 guarantee that there's going to be DNA on it, but let me tell
2 you what would be on it, it's called a fingerprint. There
3 would be a fingerprint on it. Why didn't we dust for
4 fingerprints?

5 The police stopped their investigation once Walt was
6 apprehended. We know that her death came at Walt's hands. We
7 know that. We don't know why but why not go and look and see
8 whether there was fingerprints on that poker? Let's just say
9 they tested for fingerprints and there were no fingerprints.
10 ``I have no doubt. You know, what happened here?'' Well, say
11 they tested for fingerprints and found Walt's fingerprints.
12 That would make his story more believable, but you know what?
13 They didn't test. So, you don't know what to think. They
14 heightened your burden. They're telling you, ``Well, don't
15 worry about what the facts really are. You just do what we
16 want you to do,'' but that's not how we work in this state or
17 in this country. Proof beyond all reasonable doubt, where are
18 the fingerprints? They just didn't think it was important,
19 not an important fact for you to consider.

20 We'll never know what happened, none of us. We might
21 guess, but today the buck stops here. It ends with you,
22 because you are going to decide something, and you're going to
23 have to decide whether Walt committed murder and you're going
24 to have to decide whether Walt committed voluntary
25 manslaughter and you're going to have to decide whether Walt

1 was telling you the truth and defended himself at that very
2 moment, and if you have a doubt there, if you have any doubt
3 there, a reasonable doubt of what might have happened or
4 whether it was self-defense or whether it was murder or
5 whether it was voluntary manslaughter you have to come back
6 not guilty. Walt is not guilty. He has regrets. He has
7 remorse. You're going to have to be firmly convinced and the
8 Court will use that language of Walt's guilt beyond a
9 reasonable doubt, firmly convinced. We just had the Super
10 Bowl. What's beyond all reasonable doubt? If you start at
11 one goal line and you get the ball over the 50 yard line, you
12 reach what's called in civil law the preponderance, one step
13 over. If you get maybe all the way down to the 10 yard line
14 you get what's called clear and convincing evidence, might be
15 used in a Family Court situation, but in a criminal trial,
16 beyond all reasonable doubt is not getting to the goal line.
17 It is not, absolutely. You've got to make a touchdown. You
18 have to go all that way. You've got to start at one goal line
19 and you've got to take it all the way down to the one inch
20 line and you've got to take it in with Franco Harris or some
21 other football player because if you get stopped on that one-
22 inch line they have not proved their case beyond all
23 reasonable doubt, even if you think they should.

24 Walt told you he was in fear. Walt told, Walt told the
25 truth. When the Solicitor asked him, he said, "I remember,

1 what I remember she's laying there and I was hitting her with
2 the bat," and he kept hitting her with the bat and he put her
3 in the trunk and he tied her up and he wrapped her in a
4 blanket and put a bag on her head and drove to Marco's house
5 and said, "Here I am. Take me."

6 I asked the officers, "Did he cooperate?" They said
7 yes. Walt cannot take back what happened, but we have to look
8 at Walt's actions at that very moment in that heat of the
9 passion, the anger, when she's coming at him, when he picked
10 it up and he swung he defended himself. We have to look
11 through Walt's eyes, not our eyes. What was, what was Walt
12 perceiving at that moment because that's how we have to decide
13 whether it's self-defense. We have to be in Walt's position.
14 What would a person do that was being attacked by somebody
15 high on drugs wielding a fireplace poker, swinging it at him?
16 We could say, "Hey, maybe he should have just blocked it and
17 walked out the door or ran away," but at that moment what he
18 did was he picked up a bat, he defended himself and he's not
19 guilty and you're going to have to make that decision today,
20 and I'll grant you it's not an easy decision. It's a decision
21 that you'll live with, we will live with, we'll all live with,
22 but it's the best system in the world. Sitting in that box
23 right now it's what we've got. It's what we need. It keeps
24 us from anarchy. For 200 years people have sat in this box
25 and God willing for 200 more they'll be still sitting in this

1 box. Go back and deliberate, keep your opinions, fight for
2 what you think is right, bring back a not guilty.

3 THE COURT: Mr. Bryan.

4 MR. BRYAN: Thank you, Your Honor. May it please the
5 Court.

6 Enough is enough. Mr. Axelrod said four times. I think
7 the pathologist said there were four just to the back of the
8 arm. That's not counting at least the four to the back, the
9 ones to the side, and I don't know how you hit somebody on
10 both sides of their head with a baseball bat flush on the ear,
11 but he managed to do that to her, too. So, I've got ten right
12 there, not to mention the big hole in the top of her head.
13 So, I'm counting more than four. Now, the pathologist may not
14 have been able to tell you exactly how many times he hit her,
15 which should be some evidence to you right there, but she did
16 tell you that it was a significant amount of force. He hit
17 her hard enough to break her ribs in the back, break her ribs
18 on the side, damage internal organs which are protected by the
19 ribs and that's not counting splitting her head wide open and
20 busting both sides of her ears.

21 Now, I don't want to force these pictures on you. So,
22 you can look at them or you cannot look at them, but don't
23 turn your head away from the pictures if you're considering a
24 verdict of self-defense or voluntary manslaughter because in
25 this case those pictures are what show what happened that

1 night. Sheila is not here to tell you. The only person you
2 heard from was Mr. Pantovich and he conveniently forgot the
3 important parts. After she waved the fire poker around he
4 didn't remember anything until he sat down after he was done
5 beating her to death, but these pictures are going to tell you
6 what the proper verdict in this case is and I submit to you
7 that these pictures are going to show you more than four
8 shots. If you can count four shots out of that we're not
9 doing the same kind of math.

10 Self-defense, again I would implore you to listen to the
11 Judge's charge and fortunately we're going to have, you're
12 going to have the Judge's charge with you in your jury room.
13 The Judge is not going to charge you anything about one shot
14 and 14 shots, what the Judge is going to tell you and he's not
15 going to tell you that we have to prove or disprove. What
16 he's going to say is if the defense established, if it is
17 established by the Defendant then we must disprove it. Well,
18 that presumes that he has shown that he's without fault in
19 bringing on the difficulty, that he had no ability to retreat
20 and also that he was in imminent danger, that the
21 circumstances would have warranted not just Walt, not through
22 Walt's eyes because I don't know that any of you can see what,
23 through Walt's eyes, but he's going to tell you that an
24 ordinary person, person of ordinary firmness and courage,
25 would have been warranted in striking the fatal blow.

1 Now, what Mr. Pantovich did testify to is that Sheila had
2 fallen down. He sat right on the witness stand and told you
3 that she chased him around with the fire poker and she never
4 hit him. That's what his testimony was, "She never hit me,"
5 and then he said she lost her balance, and, "Then I was on
6 top of her and that's all I remember." Well, fortunately for
7 us we have the pictures and they can fill in the details where
8 he forgot. So, the question about self defense is was Mr.
9 Pantovich justified in doing that damage while Sheila
10 McPherson was on the ground. That's the issue on self
11 defense. Is that what an ordinary, normal, reasonable person
12 would do when somebody is on the ground? One shot, two shots,
13 three shots, four shots, she is five foot, five foot three,
14 five foot five, 130 pounds. She is on the ground, and Mr.
15 Axelrod tells you that he was justified in doing that damage
16 to her and I would submit to you that is in no way a
17 reasonable verdict to return. There's just nothing in the
18 evidence to suggest this man right here with these injuries,
19 this might be something that happens when somebody is fighting
20 for their life, keep him off, here's his injuries.

21 The defense's case is they bring some people in, a couple
22 of Mr. Pantovich's friends from 2004 to say everything nasty
23 they can say about her, which is she threw stuff at him a
24 couple of times. He said she spit on him. Well, that is not
25 what the tormenter, what the aggressor in a relationship does.

1 That is what the tormented does. That is what the hopeless,
2 helpless frustrated victim does. After Walt's done doing
3 whatever he does to her inside, she chases him out of the
4 house throwing stuff at him, five foot three, well, she abused
5 that man sitting over there. Now, if you believe that, you
6 bring back a verdict of not guilty.

7 She spit on him. So, so, he beat her to death with a
8 metal bat. Oh, by the way, the spitting was in 2004 or I
9 don't know when it was, but it certainly -- he didn't say that
10 happened the night of the incident. The night of the incident
11 he said she chased him around with a fire poker. Well, that's
12 what he said. There's the fire poker. It's in the stand.
13 Did she put it back after she got done chasing him around?
14 No, she didn't put it back. She was dead on the floor. I
15 tell you that that doesn't make any sense. There is no way
16 that you can believe that she chased him around with a fire
17 poker and it ended up back in the stand. That is the most
18 ridiculous thing I have ever heard.

19 Fingerprints, Mr. Axelrod knows you can't get
20 fingerprints off of a fire poker. You'd be a lot more likely
21 to get some trace evidence off of it than you would be to get
22 a fingerprint. These things don't have fingerprints. You
23 don't get a fingerprint off of a round object like that, and
24 even if you did what would it prove? It's a fire poker in her
25 house. It might prove that she tended the fire once or twice.

1 His fingerprints might be on it. Her fingerprints could be on
2 it, wouldn't prove anything. It doesn't matter. What does it
3 matter? He said she didn't hit him with it. It's a red
4 herring, and I'm just imploring you to keep your eyes on the
5 ball.

6 What happened in this case is Vladimir Pantovich couldn't
7 take it anymore. So, he executed his own justice. In opening
8 arguments Mr. Axelrod said that you, the jury, keep us from
9 anarchy and chaos, and that's one thing I agree on him with or
10 agree with him on. Enough is enough. He beat her to death
11 and then he brought in a couple of his friends to say some
12 nasty things about her that got nothing to do with nothing.
13 There's no evidence in this record that justifies what he did
14 to her. There is no sufficient legal provocation. There is
15 no evidence even from him. Out of his own mouth he couldn't
16 even tell you anything that would justify a verdict of
17 anything besides murder in this case.

18 The gentle giant, that's what the defense wants you to
19 believe, the gentle giant. Well, maybe in public, maybe with
20 the bartender down at Iron Heads or the Lighthouse or wherever
21 they came from, but not what his -- not what the mother of his
22 kids said. She said he beat her until she had enough beatings
23 and then she left. She went back. She got beat some more.
24 She had enough of that and then she left, and when she left
25 the second time she left in a hurry while he was not home with

1 the aid of his son, and all Mr. Axelrod has for that is to
2 imply that there was some illicit affair going on with Marco
3 and Nanette Ouimette or Ouimette. What she'll tell you is, I
4 just found it astonishing, he's been carrying a bat around
5 waiting to use it on somebody for how many years? The
6 similarities are pretty startling really. She told you from
7 that witness stand, she came down here from Connecticut or New
8 Hampshire. She said that he went through her purse trying to
9 find drugs, that he was handling her physically. She had to
10 bite him to get away and then he took a baseball bat which he
11 used in lieu of a weapon. So, he carried a gun around with
12 him all the time, but when he didn't have a gun he carried a
13 baseball bat instead and then he went and he smashed out the
14 windows of her car and then when she had the courage to leave
15 him, which I think we can all agree was good judgment, then
16 he threatened to kill her and kill her brother. What did Mr.
17 Pantovich testify to? He said she never hit him, said she
18 lost her balance, she fell down, "All I remember is I was
19 standing over her hitting her with that bat," and then this
20 is the important thing, he was in a panic, right. He was
21 scared to death, didn't know what to do. Tell me if this
22 person is in a panic. Tell me if this person wants to get
23 caught, he's trying to turn himself in.

24 (State's 47 [911 Tape] played in open court.)

25 MR. BRYAN: Now, if that doesn't tell you what you

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1 need to know about all that ridiculous testimony by Mr.
2 Pantovich about how panicked and afraid he was, I don't know..
3 what will. I can't convince you. This is what he did after
4 he was dead, after she was dead. He said he sat there for
5 about 15 minutes, gave him an opportunity to think about what
6 he was going to tell his son, not going to call your son and
7 say, "Hey, I just murdered this woman in cold blood. I beat
8 her until she was dead."

9 MR. AXELROD: Your Honor, objection. The Solicitor just
10 entered a legal conclusion. That's left to the province of
11 the jury. I would ask for a -- at least a curative if not a
12 mistrial at this point based on that.

13 THE COURT: All right, overruled. This isn't
14 evidence. It's just closing arguments, overruled. Go ahead.

15 MR. AXELROD: Your Honor, may I approach?

16 (Whereupon, a bench conference was held in the presence
17 but out of the hearing of the jury.)

18 THE COURT: Overruled. All right, go ahead.

19 MR. BRYAN: Walt Pantovich murdered Sheila McPherson.
20 That's what he did. Then he tied her up in rope, put a bag
21 over her head so she wouldn't bleed into his trunk, stuffed
22 her in the trunk of his car and attempted to flee and hide her
23 body. He called his son, as Nanette Ouimette told you in the
24 past when they had had some difficulties, Marco intervened. He
25 didn't expect his son was going to call 911. That's why he

1 called his son. He never had any idea that law-enforcement
2 would be waiting for him to arrest him with her dead body in
3 the trunk along with the murder weapon. The guilty flee when
4 the innocent stand bold as a lion. That's a proverb which has
5 truth in it because it makes sense, that if he wanted to get
6 caught, A, he wouldn't have lied and sent them to Socastee.
7 He could have just sat right there. They were coming. So,
8 that's just the most ridiculous thing you've ever heard is
9 that he fled in order to get caught. So, if you believe that
10 you should probably find him not guilty or guilty of a lesser
11 included as well.

12 He also told you that he wrapped her up, I won't show you
13 that, you'll have it if you want to look at it, he wrapped her
14 up in a bunch of cord and rope, tied her in knots and stuffed
15 her in his trunk because he was still afraid of her. Now, if
16 you believe that, again, you should find him not guilty, but
17 of course, the truth of the matter is, what you know, he was
18 trying to dispose of the evidence so that you would not be
19 able to see it, so that he would not be held accountable.
20 When 911 called she was already in the trunk and this is the
21 state of mind he was in. "I'm okay." Did he sound panicked
22 to you? Did he sound afraid? He sounds as calm as he could
23 be. When that call was made and when he's saying, "I'm fine.
24 I'm in Socastee," Sheila McPherson is dead, tied up in his
25 trunk with a bag over her head getting ready to get hauled

1 into North Carolina or wherever he was going to dispose of her
2 body.

3 He was trying to take the rug with him, too, but when 911
4 called he had to hurry up. That entire bit of testimony you
5 heard from Vladimir Pantovich was completely incredible and
6 the Judge will charge you as far as credibility that one of
7 the things that you should consider is whether somebody has a
8 reason to lie, whether they have incentive or motive or bias
9 in the case.

10 He tried to hide the evidence at the crime scene. He
11 took the placemat. He took the murder weapon. He took her. He
12 wrapped her up so she wouldn't bleed anymore. He tried to
13 destroy all the evidence so that you wouldn't have it. What
14 he didn't count on was that Marco was going to do the right
15 thing, and had Marco not done the right thing we would not be
16 here today. He sat in this chair, he thought about it he said.

17 Sufficient legal provocation, the Judge will also charge
18 you, requires that it would make an ordinary person become
19 enraged and lose control. So, you're ordinary people. You've
20 got to figure out whether what he did was justified based on
21 what he says she did, although other than the fact that he
22 said it, there's no reason to believe that she did anything to
23 him.

24 The Judge will charge you about malice. The State has
25 proved malice from the nature of the offense, from the nature

1 of the injuries, from the repetitive nature of the blows. The
2 Judge won't charge you anything about justified in one strike
3 you're justified in every strike. What he will charge you is
4 that from the use of a deadly weapon you can imply malice.
5 This is a deadly weapon. Particularly, he'll say, the Judge
6 will tell you that an ordinary weapon, an ordinary object can
7 become a deadly weapon and in this case that's exactly what
8 happened and particularly with a man who carried around when
9 he didn't have his gun. Also, it's implied from the nature of
10 the attack, the brutality of it, and again, I'm not going to
11 go through, I'm not going to make you look at every one of
12 these pictures again, but I just implore you if you're settled
13 on what the obvious verdict in this case is, that that man
14 right there murdered Sheila McPherson by beating her to death
15 with a baseball bat, tied her up and put her in the trunk and
16 went to dispose of the evidence, if you're settled with that,
17 I won't ask you to look at the pictures again. If you're
18 giving any consideration or if one of the jurors in the back
19 or more is giving some consideration to self defense I'd ask
20 you to look at these pictures and determine whether an
21 ordinary person would respond with a five, foot three woman
22 and a fire poker that never hit him, if you're justified in
23 doing this. There's no sufficient legal provocation that
24 justifies these injuries. Any of those blows would have been
25 plenty for Walt to walk out the door. In fact, according to

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1 his testimony he didn't have to hit her once. She was already
2 on the ground. He could have walked away any time, just like
3 he did when she was throwing stuff at him. That was his
4 choice. That's not what he chose to do. He chose to beat her
5 death until she didn't have any breath left and enough is
6 enough. It wasn't enough for him, but you're the only people
7 who can hold him accountable for what he did. You 12 and
8 nobody else is ever going to be in a position to hold him
9 accountable. Not me, I can't do it. My job is simple. All I
10 do is present the evidence. I don't make the pictures. I
11 don't create the evidence. I don't, I don't write the law.
12 All I do is present the witnesses and the evidence for your
13 consideration and then what the Judge does is he gives you the
14 law and then you apply the law, the facts in the case to the
15 law and you are the only people who can ever provide justice
16 in this case, and I implore you, do your duty, each and every
17 one of you, come back with a just verdict and the only verdict
18 that's obvious in this case because there is nothing in the
19 record and no testimony from which any reasonable person could
20 say that that was self defense.

21 The Defendant can say all the nasty things about her he
22 wants after she's dead. It doesn't justify what he did to her
23 and you're the only people who can hold him accountable for it
24 and that's what we ask you to do is to bring back a verdict
25 that speaks the truth.

1 THE COURT: All right, ladies and gentlemen, by my
2 calculations you've been going for about an hour, not quite an
3 hour of closing argument. So, I think it's a good time for us
4 to stretch our legs. We'll bring you back in shortly and I'll
5 give you the, charge you with the law in this case, but at
6 this time I think it's a good time for us to take about a 10
7 minute break. Excuse you to the jury room, let you stretch
8 your legs, go to the restroom, get you something to drink,
9 then bring you back out shortly.

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right, Mr. Axelrod, you raised an
13 objection during the State's closing arguments. Do you want
14 anything on the record?

15 MR. AXELROD: Your Honor, just I would ask for a
16 mistrial because and I'm going to look for the case law for
17 the Court, Your Honor. I didn't object for no small purpose
18 there. I believe that even though he's charged with murder,
19 absolutely he's charged with murder, the Solicitor, it's an
20 improper closing argument for the Solicitor to tell the jury
21 that he's a murderer and he committed murder because that's a
22 -- the term murderer, murder that's a legal conclusion that's
23 going to be left to the province of the jury. If the jury
24 came back with a voluntary manslaughter, he's not a murderer
25 there and I think it's impermissible, I don't have the case

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1 law, for some reason I'm thinking it's there, because a
2 Solicitor cannot say the word murdered or murderer in a
3 closing argument to a jury. It infects the jury because it's
4 their province to decide if, in fact, it is. He's well within
5 his parameters to say he killed her, he brutally killed her,
6 whatever he did, he killed her, he killed her, he killed her,
7 but he's not allowed to say murderer and I say it infects this
8 jury. They're not going to be able to take that out of what
9 they heard at this point because what it's doing is the State
10 is bolstering it through his, through the Solicitor's argument
11 he's bolstering that Walt is a murderer and I say that's what
12 I say was impermissible. I think it goes against the due
13 process and violation of his rights.

14 THE COURT: All right, your motion is noted. However,
15 I deny your motion for a new trial on those grounds.

16 MR. AXELROD: Yes, sir. I take exception but I
17 understand.

18 THE COURT: I understand.

19 All right, for everybody else, when we bring the jury
20 back in, I'm going to be charging them with the law. I'm
21 going to ask the bailiffs to close the doors. I don't want
22 anybody getting up, sitting down, leaving or coming in during
23 my charge. So, if you're in here when I start my charge
24 you're in here for the duration. If you want to leave before
25 I start my charge now is the time for you to go ahead and

1 leave. We'll stand in recess for about 10 minutes.

2 *****OFF THE RECORD*****

3 (On the record.)

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Anything from the State before we bring
7 the jury in?

8 MR. BRYAN: No, Your Honor.

9 THE COURT: Anything from the Defense?

10 MR. AXELROD: No, sir, Your Honor. Just that is the
11 Court going to give it to the jury to start deliberations as
12 soon as you charge?

13 THE COURT: Yeah, well, I'll address any challenges or
14 anything but I anticipate them starting their deliberations
15 today, yeah.

16 MR. AXELROD: And I would just ask the Court if they're
17 able, if the Court would consider allowing them to start
18 deliberation in the morning to allow a full time for
19 deliberation, right before the dinner hour, it's 4:30,
20 whatever it would be, I would just say that it's a little bit
21 too late in the day for them to start. I understand the
22 Court's position but I did mention to the clerk, the law clerk
23 and I don't know where I read it or saw it, but I thought the
24 chief justice had suggested that they not be given major cases
25 to a jury after four. I could be wrong. I'm just saying what

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1 I think I heard and ---

2 THE COURT: Okay, well, we'll go ahead and we'll give
3 it to them, you know, depending upon, you know, how many legal
4 matters we've got to take up and when the time to start to
5 deliberate and if, you know, but we'll check and see, but
6 right now I anticipate them starting, at least beginning their
7 deliberations this evening.

8 MR. AXELROD: Yes, sir.

9 THE COURT: All right, all right, please bring the
10 jury in.

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

13 THE COURT: All right, ladies and gentlemen of the
14 jury, welcome back. The parties have made their opening
15 statements, presented their witnesses and other evidence and
16 concluded their closing arguments and now is the time of the
17 trial when I charge you with the law of this case. I'll give
18 you a copy of these instructions in written form and during
19 your deliberations you may refer to the instructions to guide
20 you in your decision-making. However, you must consider the
21 instructions as a whole and not follow some instructions and
22 ignore other instructions. I also ask that you return these
23 written instructions to the courtroom at the time you render
24 your verdict.

25 Now the indictment in this case charges the Defendant,

1 Vladimir Pantovich, with murder. The fact that the Defendant
2 was arrested, charged and indicted in this case is not
3 evidence in this case and cannot be considered by you as
4 evidence of guilt in this case, nor does it create any
5 presumption or inference of guilt. The indictment is simply
6 the formal written instrument which contains the charge made
7 against the Defendant and it is the formal document by which
8 this case is brought to trial. Now, the Defendant has pled
9 not guilty to the indictment, and that plea puts the burden on
10 the State to prove the Defendant guilty. A person charged
11 with committing a criminal offense in South Carolina is never
12 required to prove his or her innocence. I charge you that it
13 is an important rule of the law that the Defendant in a
14 criminal trial, no matter what the seriousness of the charge
15 may be, will always be presumed to be innocent of the crime
16 for which the indictment was issued, unless guilt has been
17 proven by evidence satisfying you of that guilt beyond a
18 reasonable doubt. This presumption of innocence does not end
19 when you begin your deliberations but it accompanies the
20 Defendant throughout the trial until you reach a verdict of
21 guilt based on evidence satisfying you of that guilt beyond a
22 reasonable doubt. The presumption of innocence is like a robe
23 of righteousness placed about the shoulders of the Defendant
24 which remains with the Defendant until it has been stripped
25 from the Defendant by evidence satisfying you of the

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1 Defendant's guilt beyond a reasonable doubt. Now the
2 presumption of innocence is not a mere legal theory. It is
3 not just a legal phrase. It is a substantial right to which
4 every Defendant is entitled unless you, the jury, are
5 satisfied from the evidence of the Defendant's guilt beyond a
6 reasonable doubt.

7 Now, what is a reasonable doubt in the law? Some of you
8 may have served as jurors in civil cases where you were told
9 that a party need only prove that a fact is more likely true
10 than not true, such as by a greater weight or a preponderance
11 of the evidence. However, in criminal cases the standard of
12 proof required for the State to prove ones guilt is more
13 powerful and certain than that. It must be beyond a
14 reasonable doubt. A reasonable doubt is the kind of doubt
15 that would cause a reasonable person to hesitate to act. In
16 other words, proof beyond a reasonable doubt is proof that
17 leaves you firmly convinced of the Defendant's guilt. There
18 are very few things in the world that we know with absolute
19 certainty and in criminal cases the law does not require proof
20 that overcomes every possible doubt. If based on your
21 consideration of the evidence you are firmly convinced that
22 the Defendant is guilty of the crime with which he is charged,
23 you must find the Defendant guilty. On the other hand, if you
24 think there is a real possibility that the Defendant is not
25 guilty, you must give the Defendant the benefit of that doubt

1 and find him not guilty.

2 Now, I remind you that during this trial you and I have
3 certain duties to perform. As the trial judge it's my
4 responsibility to preside over the trial of this case and I
5 also have the duty to rule on the admissibility of the
6 evidence offered during this trial. You are to consider only
7 the competent evidence before you. If there was any testimony
8 ordered stricken from the record in this case during this
9 trial you must disregard that testimony. You are to consider
10 only the testimony which has been presented from the witness
11 stand, any exhibits which have been made a part of the record
12 in this case and any stipulations of the attorneys. I have
13 the additional duty to charge you the law applicable to this
14 case, and as the presiding Judge, I am the sole judge of the
15 law of this case and it is your duty as jurors to accept and
16 apply the law as I now state it to you. If you already have
17 an idea as to what the law is or what the law ought to be and
18 it does not agree with what I now tell you the law is, you
19 must abandon your idea of what the law is or should be because
20 you are sworn to accept the law and apply the law exactly as I
21 state it to you. In every case tried in this court before a
22 jury, the jury is the sole and exclusive judge of the facts in
23 the case. A trial judge cannot intimate, state, comment on or
24 make any statement to a trial jury about the facts in the
25 case, and since you, the jury, are the sole judge of the facts

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1 in this case, you are not to infer from what I have said
2 during the process of this trial in ruling upon the
3 admissibility of evidence or otherwise or anything that I say
4 now during the course of these instructions to you that I have
5 an opinion about the facts of the case. The law does not
6 allow me to have an opinion about the facts of this case and
7 this matter is solely for you the jury to determine. As
8 jurors it is your duty to determine the effect, the value, the
9 weight and truth of the evidence presented during this trial.

10 Now, there are two types of evidence which are generally
11 presented during a trial, direct evidence and circumstantial
12 evidence. Direct evidence is the testimony of a person who
13 claims to have actual knowledge of a fact, such as an
14 eyewitness. It is evidence which immediately establishes the
15 main fact to be proved. Circumstantial evidence is proof of a
16 chain of facts and circumstances indicating the existence of a
17 fact. It is evidence which immediately establishes collateral
18 facts from which the main fact may be inferred.
19 Circumstantial evidence is based on inference and not on
20 personal knowledge or observation. The law makes absolutely
21 no distinction between the weight or value to be given either
22 to direct or circumstantial evidence, nor is a greater degree
23 of certainty required of circumstantial evidence than of
24 direct evidence. You should weigh all of the evidence in this
25 case and after weighing all of the evidence if you are not

1 convinced of the guilt of the Defendant beyond a reasonable
2 doubt you must find the Defendant not guilty.

3 Now, necessarily you must determine the credibility of
4 the witnesses who have testified in this case. Credibility
5 simply means believability. It becomes your duty as jurors to
6 analyze and to evaluate the evidence and determine which
7 evidence convinces you of its truth. In determining the
8 believability of a witness who has testified in this case you
9 may believe one witness over several witnesses or several
10 witnesses over one witness. You may believe a part of the
11 testimony of a witness and reject the remaining part of the
12 testimony of that same witness. You may believe the testimony
13 of a witness in its entirety or reject the testimony of a
14 witness in its entirety. You may consider whether any witness
15 has exhibited to you any interest, bias, prejudice or other
16 motive in this case and you may also consider the appearance
17 and manner of the witness while on the witness stand. Now,
18 the rules of evidence ordinarily do not permit a witness to
19 testify to opinions or conclusions. However, an exception to
20 this rule is for witnesses we call expert witnesses. A witness
21 who by education or experience has become expert in some art,
22 science or profession or calling may state an opinion as to a
23 relevant and material matter in which the witness claims to be
24 an expert and may also state the reasons for the opinion. You
25 should consider any expert opinion received in evidence in

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1 this case and like any other evidence give it the weight you
2 think it deserves. If you decide that the opinion of an expert
3 witness is not based on sufficient education or experience or
4 if you conclude that the reasons given in support of the
5 opinion are not sound or that the opinion is outweighed by
6 other evidence, you may disregard the opinion entirely. An
7 expert witness's testimony is to be given no greater weight
8 than that of other witnesses simply because the witness is an
9 expert. Further, you are not required to accept an expert's
10 opinion even though it's not contradicted.

11 Now, in order to establish criminal liability criminal
12 intent is required. Criminal intent is a mental state, a
13 conscious wrongdoing. Criminal intent must be proven by the
14 State beyond a reasonable doubt. Criminal intent can arise
15 from action or a failure to act. It may arise from
16 negligence, recklessness or an indifference to duty or to
17 consequences that is considered by the law to be the
18 equivalent of criminal intent. It is up to you to determine
19 what the Defendant intended to do based on the circumstances
20 shown to have existed. Criminal intent is always a matter
21 that must be determined by the jury from the circumstances
22 surrounding the situation. There is no way to prove intent to
23 a mathematical certainty. There's no way medical science can
24 dissect a person's brain and determine what the person had in
25 mind. So the law says that criminal intent may be inferred

1 from the circumstances shown to have existed. This is how you
2 make a determination of whether or not the element requiring
3 intent was present. It is not necessary to establish intent
4 by direct and positive evidence, but intent may be established
5 by inference in the same way as any other fact, by taking into
6 consideration the acts of the parties and all the facts and
7 circumstances of the case.

8 Now, the Defendant is charged with murder. The State
9 must prove beyond a reasonable doubt that the Defendant killed
10 another person with malice aforethought. Malice is hatred,
11 ill will or hostility towards another person. It is the
12 intentional doing of a wrongful act without just cause or
13 excuse and with an intent to inflict an injury or under
14 circumstances that the law will infer an evil intent. Malice
15 aforethought does not require that malice exist for any
16 particular time before the act is committed, but malice must
17 exist in the mind of the Defendant just before and at the time
18 the act is committed. Therefore, there must be a combination
19 of the previous evil intent and the act.

20 Malice aforethought may be express or inferred. These
21 terms express and inferred do not mean different kinds of
22 malice but merely the manner in which malice may be shown to
23 exist, that is either by direct evidence or by inference from
24 the facts and circumstances which are proved. Express malice
25 is shown when a person speaks words which express hatred or

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1 ill will for another or when the person prepared beforehand to
2 do the act which was later accomplished. For example, lying
3 in wait for a person or any other acts of preparation going to
4 show that the deed was within the Defendant's mind would be
5 express malice. Malice may be inferred from conduct showing a
6 total disregard for human life. Inferred malice may also
7 arise when the deed is done with a deadly weapon. A deadly
8 weapon is any article, instrument or substance which is likely
9 to cause death or great bodily harm. Whether an instrument
10 has been used as a deadly weapon depends on the facts and
11 circumstances of each case. Ordinarily, objects may become
12 deadly weapons when the facts show that they have been used to
13 inflict serious bodily harm or death.

14 Now, if you find that the State has failed to prove
15 beyond a reasonable doubt that the Defendant committed murder,
16 you may consider whether the State has proved beyond a
17 reasonable doubt that the Defendant committed voluntary
18 manslaughter. Included within the offense of murder is the
19 lesser offense of voluntary manslaughter. To prove voluntary
20 manslaughter the State must prove beyond a reasonable doubt
21 that the Defendant took the life of another in the sudden heat
22 of passion based upon sufficient legal provocation. Both heat
23 of passion and sufficient legal provocation must be present at
24 the time of the killing to constitute voluntary manslaughter.
25 Now sudden heat of passion may for a time effect a person's

1 self control and temporarily disturb a person's reasoning,
2 reason. The sudden heat of passion must be the type that
3 would make an ordinary person unable to coolly reflect on his
4 actions and would produce an uncontrollable impulse to do
5 violence. Sufficient legal provocation must be the type that
6 would make a person of ordinary reason and caution become
7 enraged and to lose control temporarily. The provocation
8 needed for voluntary manslaughter must come from some act of
9 or related to the victim. Words alone, regardless of how
10 vulgar or insulting, are not enough to be legal provocation.
11 The exercise of a legal right, no matter how offensive it is
12 to another, is never sufficient legal provocation for
13 voluntary manslaughter. Where death is caused by the use of a
14 deadly weapon the words must be accompanied by some overt
15 threatening act which would have produced the heat of passion.
16 If the heat of passion had cooled or if there was enough time
17 between the provocation if any and the killing of the passion
18 of a reasonable person to cool, excuse me, if the heat of
19 passion had cooled or if there was enough time between the
20 provocation and the killing of the passion of a reasonable
21 person to cool, the killing would not be voluntary
22 manslaughter. In deciding whether a reasonable person would
23 have had enough time to cool off, you should consider all of
24 the circumstances surrounding the killing. You may consider
25 the nature of the provocation, if any, the Defendant's mental

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1 and physical state and the circumstances and relationships
2 between the parties. In deciding whether the Defendant was
3 provoked and acting with heat of passion you should consider
4 all of the circumstances. Some of the types of concerns you
5 should consider are the nature of the provocation, the
6 Defendant's physical and mental condition, the Defendant's
7 situation at the time of conflict, and the Defendant's
8 education and background.

9 Now, in this case the Defendant raises the defense of
10 self-defense. Self-defense is a complete defense to both
11 murder and voluntary manslaughter. If it is established you
12 must find the Defendant not guilty. The State has the burden
13 of disproving self-defense by proof beyond a reasonable doubt.
14 If you have a reasonable doubt of the Defendant's guilt after
15 considering all of the evidence, including the evidence of
16 self-defense, then you must find the Defendant not guilty. On
17 the other hand, if you have no reasonable doubt of the
18 Defendant's guilt for murder after considering all of the
19 evidence, including the evidence of self-defense, then you
20 must find the Defendant guilty of murder. If you have
21 reasonable doubt as to the Defendant's guilt for murder, but
22 have no reasonable doubt of the Defendant's guilt for
23 manslaughter, after considering all of the evidence, including
24 the evidence of self-defense, then you must find the Defendant
25 guilty of voluntary manslaughter. Now, the following elements

1 constitute the defense of self-defense: First, the Defendant
2 must be without fault in bringing on the difficulty. If the
3 Defendant's conduct was the type which was reasonably
4 calculated to and did provoke a deadly assault the Defendant
5 would be at fault in bringing on the difficulty and would not
6 be entitled to acquittal based on self-defense. If the
7 Defendant voluntarily participated in a mutual combat for
8 purposes other than protection, the killing of the victim
9 would not be self-defense. This is true even if during the
10 combat the Defendant feared death or serious bodily injury.
11 For mutual combat there must be a mutual intent and
12 willingness to fight. This intent may be shown by the facts
13 and conduct of the parties and the circumstances surrounding
14 the combat. In addition it must be shown that both parties
15 were armed with a deadly weapon.

16 Now, the second element of self-defense is that the
17 Defendant was actually in imminent danger of death or serious
18 bodily injury or that the Defendant actually believed he was
19 in imminent danger of death or serious bodily injury. If the
20 Defendant was actually in imminent danger it must be shown
21 that the circumstances would have warranted a person of
22 ordinary firmness and courage to strike the fatal blow to
23 prevent death or serious injury. If the Defendant believed he
24 was in imminent danger of death or serious bodily injury it
25 must be shown that a reasonably prudent person of ordinary

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1 firmness and courage would have had the same belief. The
2 Defendant does not have to show that he was actually in
3 danger. It is enough if the Defendant believed he was in
4 imminent danger and a reasonably prudent person of ordinary
5 firmness and courage would have had the same belief. The
6 Defendant has the right to act on appearances, even though the
7 Defendant's beliefs may have been mistaken. Now, it is for
8 you to decide whether the Defendant's fear of imminent or
9 immediate danger of death or serious bodily injury was
10 reasonable and would have been felt by an ordinary person in
11 the same situation.

12 At times a battered person actually is in imminent danger
13 of violence when he acts. Depending on the facts of the case
14 the Defendant may act in self-defense if he believes he is in
15 imminent danger of death or serious bodily harm even though
16 the batterer is not being physically abusive when the
17 Defendant acts. This is because battered persons can
18 experience a heightened sense of imminent danger arising from
19 the perpetual terror of physical and mental abuse. Often the
20 terror does not decrease even when the batterer is absent or
21 asleep. Where torture appears, excuse me, interminable and
22 escape impossible, the belief that only the death of the
23 batterer could provide relief may be reasonable in the mind of
24 a person of ordinary firmness.

25 Now, words accompanied by hostile acts may, depending on

1 the circumstances, establish self defense. Evidence of prior
2 difficulties between the Defendant and the victim may be
3 construed in deciding whether a threat existed, whether the
4 Defendant had a reason to believe a threat existed and how
5 serious that threat was. The relative sizes, ages and weights
6 of the Defendant and the victim may be considered in deciding
7 the apparent or actual need for force in self-defense and the
8 amount of force needed. The reputation of the victim as a
9 violent person may be considered in deciding whether there was
10 a need for force, whether the Defendant had reason to believe
11 there was a need for force and whether deadly force was
12 reasonably necessary. Prior instances of violence by the
13 victim may be considered in deciding whether the Defendant
14 actually believed he was in imminent danger or death or
15 serious bodily injury or was actually in imminent danger.

16 The intoxication of the victim may be considered in
17 deciding whether the Defendant's fear of death or bodily harm
18 was reasonable. In deciding whether the Defendant actually
19 was or believed he was in imminent danger of death or serious
20 bodily injury you should consider all of the facts and
21 circumstances surrounding the crime, including the physical
22 condition and characteristics of the Defendant and the victim.

23 Now, the final element of self-defense is that the
24 Defendant had no other probable way to avoid the danger of
25 death or serious bodily injury than to act as the Defendant

1 did in this particular instance. If the Defendant was on his
2 own premises the Defendant had no duty to retreat before
3 acting in self-defense. Also, a battered person who acts
4 while on his own premises has no duty to retreat.

5 Now, a person cannot be required to make an exact
6 calculation as to the degree or amount of force which may be
7 needed to avoid death or serious bodily harm. Therefore, in
8 self defense, the Defendant has the right to use the force
9 needed to avoid death or serious bodily harm. The force used
10 in self-defense does not have to be limited to the degree or
11 amount of force used by the victim. The Defendant has the
12 right to use so much force as appeared to be necessary for
13 complete self protection and which a person of ordinary reason
14 and firmness would have believed to be needed to prevent death
15 or serious bodily harm. If the Defendant is justified in
16 defending himself by use of force then the Defendant is also
17 justified in continuing the use of force until it is apparent
18 that the danger of death or serious bodily injury has
19 completely ended.

20 Now, there are three possible verdicts which you may find
21 in this case. There's no significance whatsoever to the order
22 in which I give you these verdicts. It's just that I have to
23 give you one verdict ahead of another one. The possible
24 verdicts in this case are that we, the jury, find the
25 Defendant guilty of murder or we, the jury, find the Defendant

1 guilty of manslaughter or we, the jury, find the Defendant not
2 guilty. Now, ladies and gentlemen, your verdict must be a
3 unanimous one. Ms. Alford, as foreperson, when the jury
4 agrees on a verdict you will write the verdict on the verdict
5 form, date the verdict form and sign your name as foreperson
6 under the verdict you choose. When the jury has reached a
7 verdict I ask that you knock on the jury room door and inform
8 the bailiff that you've reached a verdict and at that time
9 we'll receive you back into the courtroom to publish your
10 verdict.

11 So, at this time I ask that you return to the jury room,
12 but please do not begin deliberations until you've been told
13 by the clerk or the bailiff to do so. There's some matters
14 which must be discussed with the attorneys before you begin
15 your deliberation. So, I'll excuse you at this time but when
16 it's time to deliberate we'll send the evidence back to the
17 jury room with the verdict form with a copy of the
18 instructions and directions from the bailiffs or someone to
19 begin your deliberations.

20 Thank you very much.

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right, any additions or challenges to
24 the jury instructions by the State?

25 MR. BRYAN: No, Your Honor.

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1 THE COURT: Any from the Defendant?

2 MR. AXELROD: No, sir, Your Honor.

3 THE COURT: All right, we'll stand in recess. Let's
4 get the -- who's going to take the evidence back there to
5 them? All right, yeah, let's get the attorneys up here to go
6 through the evidence, make sure we have everything.

7 (Exhibits reviewed and agreed to by attorney for State
8 and attorneys for Defense.)

9 THE COURT: All right, I understand you all have gone
10 through the exhibits and we've got what's going back but
11 there's one piece that's not.

12 MR. BRYAN: Yes, sir. This is State's 59, and by
13 consent I think of both parties we're not going to send it
14 back. It's the answering machine where Marco Pantovich calls
15 his father and does not get a response. He says, "Hello,
16 Dad. Hello, Dad," something like that. He was just there.
17 There's also the disk, also it has some 911 communications by
18 Horry County or Surfside which was not published. Nobody
19 testified to, authenticated, 911 operator named Tamika, other
20 conversations so we would by agreement leave it here and if
21 they want to hear it we can just publish if they want to
22 rehear it we could just republish that particular portion that
23 they heard earlier.

24 THE COURT: All right, is that agreeable?

25 MR. CASTRO: That is my understanding of the agreement,

1 yes, sir, and we are agreeable to that.

2 THE COURT: All right, so, State's Exhibit Number 59
3 is not going to go back to the jury room because it's got some
4 additional information. If they want to review it we can
5 bring them out and just play them the portion that was in
6 evidence.

7 MR. CASTRO: Yes, sir.

8 THE COURT: Because there's no way to redact that
9 other part?

10 MR. BRYAN: It's not that there's no way to redact it.

11 THE COURT: Or is there not? If there's not I don't
12 want to create a problem if you all have got it worked out.

13 MR. BRYAN: We can but then we would have a separate
14 piece of evidence that wasn't what we've agreed.

15 THE COURT: I mean, I don't want to throw a monkey
16 wrench if you all have got it, if you all are satisfied with
17 the arrangement you've got now.

18 MR. CASTRO: I'm satisfied with the arrangement as it
19 is now.

20 THE COURT: All right, then let's go ahead and we'll
21 do it that way. That'll be fine.

22 All right, and here's the verdict form and my
23 instructions and if you want to go ahead.

24 All right, you all can go ahead and tell them they can
25 begin their deliberations. Is that everything? All right,

Question from Jury

1 let's stand in recess for about 15 minutes.

2 (Whereupon, deliberations begin at 4:20 p.m.)

3 *****OFF THE RECORD*****

4 (On the record.)

5 (Question from jury at 5:10 p.m.)

6 (Whereupon, the following takes place outside the
7 presence of the jury.)

8 THE COURT: On Pantovich, let me see the attorneys
9 back in chambers.

10 *****OFF THE RECORD*****

11 (On the record.)

12 (Following takes place outside the presence of the jury.)

13 THE COURT: All right, gentlemen, as we discussed,
14 everyone can please be seated.

15 MR. AXELROD: Your Honor, I think we should bring Walt
16 out through each stage if we could.

17 THE COURT: Okay.

18 (Mr. Pantovich enters courtroom.)

19 THE COURT: All right, gentlemen, a question has come
20 in from the jury written on a sheet of paper, "Is there any
21 duty to leave premises if the residence is both the residence
22 of the victim and the Defendant?" I've responded on this
23 same note, I just put, "Answer: no," the answering being
24 that there is no duty to leave ones own premises. I'm going
25 to mark it as Court's Exhibit and send it back this way, let

1 you all take a look at it before I send it back and see if
2 there's any objections.

3 MR. AXELROD: No objections, Your Honor. I saw it in
4 chambers.

5 MR. BRYAN: And I saw it. The State's request is that
6 you recharge self-defense.

7 MR. AXELROD: And Your Honor, I would say that that
8 would be at this point inappropriate. They have the complete
9 25-page charge back there.

10 THE COURT: All right, yeah, I'm not going to charge
11 them the whole self-defense. I think their question was
12 pretty specific. If it had kind of delved into where they
13 didn't understand the charge I may have, but this was a pretty
14 specific question on one issue and I think I don't want to
15 mislead them by charging them a bunch of law when they have a
16 specific question and there is an answer to that specific
17 question.

18 MR. BRYAN: Thank you, Your Honor.

19 MR. AXELROD: Thank you.

20 THE COURT: All right, if you would please take that
21 back to the jury and we will stand in recess while they
22 continue their deliberations.

23 (Reply to question taken to jury at 5:45 p.m., back on record
24 at 6:47 p.m.)

25 THE COURT: And I assume the jury is still

1 deliberating. We haven't reached a decision yet. Rather than
2 ordering dinner and staying late I think I'm going to go ahead
3 and excuse the jury for the evening with instructions that
4 they cease their deliberations, do not talk to anybody, do not
5 look at anything and do not resume their deliberations until
6 they've been instructed by the Court tomorrow. Is that
7 agreeable or any objections in that regard?

8 MR. AXELROD: Yes.

9 MR. BRYAN: No objection, Your Honor.

10 MR. AXELROD: No objection, Your Honor.

11 THE COURT: All right, start back -- we've gone late
12 this evening. Let's give them some rest, maybe start back at
13 10 tomorrow?

14 MR. AXELROD: That'd be wonderful, Your Honor.

15 MR. BRYAN: That's okay with me, Your Honor.

16 THE COURT: All right, anything before we bring the
17 jury back in?

18 MR. AXELROD: No, sir, Your Honor.

19 THE COURT: All right, if you'd please bring the jury
20 back in to the courtroom.

21 (Whereupon, the following takes place in the presence of
22 the jury.)

23 THE COURT: All right, ladies and gentlemen, welcome,
24 welcome back. We've had a long day. I understand you're
25 still deliberating. You have not yet reached a decision and

1 that's fine. It shows that you are deliberating. You are
2 reviewing the evidence closely and I encourage you to do that,
3 and so, I don't want you to think that your having not reached
4 a verdict at this point in time that there's anything wrong
5 with that. I appreciate your interest. I appreciate your
6 deliberations and I appreciate the way you're closely looking
7 at the evidence in this case. However, it has been a long day
8 and I think now is a good time for us to stop your
9 deliberations, for us to recess for the evening. We'll come
10 back tomorrow and I'll instruct you when to resume your
11 deliberations. It is very important at this point in time
12 that you not discuss this case with anyone. I'm directing you
13 at this point in time to stop even discussing it among
14 yourselves. I'll tell you when to resume your deliberations.
15 Do not discuss this case with anyone. Do not watch any TV
16 accounts of it. Do not read any newspaper accounts of the
17 trial. Do not listen to any radio accounts of the trial. Do
18 not conduct any independent investigations into the trial. It
19 is still very important and vital to this case that you base
20 your decision exclusively on the testimony and evidence
21 presented at trial, without any outside influences. If there
22 are outside influences, generally that results in a mistrial
23 and the County -- we just come back. It doesn't end the case.
24 We come back and we start all over. So, please do not speak
25 about this case with anyone. Do not watch anything on TV,

1 listen to anything on the radio, read anything in the
2 newspaper about it. Cease your deliberations. I'll excuse
3 you and we'll recess. You can go home. Please be back at ten
4 o'clock tomorrow. I'm going to give you a little break.
5 We'll start at ten o'clock. Be in the jury room at ten
6 o'clock tomorrow morning. Also, it's important that you not
7 take any of the evidence or remove anything from the jury room
8 that is part of this case.

9 All right, hope everyone has a good evening and we'll see
10 you tomorrow morning at ten o'clock.

11 (Jury exits courtroom at 6:47 p.m.)

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right, anything before we recess for
15 the evening?

16 MR. BRYAN: No, sir, Your Honor.

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

18 THE COURT: All right, we'll resume at ten o'clock
19 tomorrow morning.

20 *****OFF THE RECORD*****

21 (On the record, Friday, February 2, 2008.)

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right, anything from the State before
25 I bring the jury back in?

1 MR. BRYAN: No, Your Honor.

2 THE COURT: Anything from the Defense?

3 MR. AXELROD: No, sir, Your Honor.

4 THE COURT: All right, please bring the jury in.

5 (Whereupon, jury enters courtroom at 10:04 a.m.)

6 THE COURT: Ladies and gentlemen of the jury, welcome
7 back. I hope everyone had a nice evening, was restful. At
8 this point in time I just wanted to bring you back in to let
9 you know that now is the time that you can resume your
10 deliberations in this case. Your deliberations, however, are
11 confined to deliberations among you and your fellow jurors
12 only and is confined to the jury room. So, at this time, we
13 just needed to get this on the record that I brought you back
14 in, that I told you that you can now resume your deliberations
15 in this case and let you retire now to the jury room and we'll
16 send all of the exhibits and evidence in behind you. Thank
17 you very much.

18 (Whereupon, jury exits courtroom and continues
19 deliberations at 10:08 a.m.)

20 THE COURT: All right, you want to look over the
21 exhibits or anything before we send them back? I think we
22 just boxed them up from and they're all still there. We can
23 just go ahead and take them back in then.

24 MR. AXELROD: However the court reporter has done will
25 be fine, Your Honor.

1 THE COURT: Any objection to going ahead and sending
2 the exhibits back?

3 MR. BRYAN: No, sir, Your Honor.

4 THE COURT: Anything?

5 MR. AXELROD: No, sir, Your Honor.

6 THE COURT: All right, we'll go ahead and send them
7 back. Thank you.

8 *****OFF THE RECORD*****

9 (On the record.)

10 (Verdict reached at 12:27 p.m.)

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: Thank you very much. Please be seated.
14 All right, Madam Clerk, I understand the jury has reached a
15 verdict; is that correct?

16 THE CLERK: Yes, Your Honor.

17 THE COURT: All right, all right, I say this not
18 because anybody has given me any cause to but out of a sense
19 of precaution I just want everybody in the courtroom to know
20 that when the verdict is published, regardless of what the
21 verdict is, that there not be any outbursts or any overt
22 displays of emotion. Certainly the most difficult part of
23 this trial is the duties and the obligations of the jury, not
24 that I take offense, not the attorneys take offense, but I
25 want to make sure that this jury does not take any offense or

1 perceive anything as a criticism of their decision.
2 Therefore, I don't want any outbursts, any overt displays of
3 emotion or anything of that nature, and if there is then
4 you're going to be subject to the contempt powers of the
5 Court, and I just say that just simply I wanted to make sure
6 that that was in place, not that anybody has given me any
7 cause to give that instruction but out of a sense of
8 precaution I wanted to give that instruction. Now, is there
9 anything from the State before we bring the jury in to publish
10 the verdict?

11 MR. BRYAN: No, Your Honor.

12 THE COURT: Anything from the Defendant?

13 MR. AXELROD: No, sir, Your Honor.

14 THE COURT: All right, if you'd please bring in the
15 jury.

16 (Whereupon the following takes place in the presence of
17 the jury.)

18 THE COURT: All right, ladies and gentlemen of the
19 jury, welcome back. Madam Forelady of the jury, I understand
20 the jury has reached a verdict; is that correct?

21 FOREPERSON: Yes, Your Honor.

22 THE COURT: Have you written the verdict on the
23 verdict form and signed it and properly filled it out?

24 FOREPERSON: Yes, sir.

25 THE COURT: All right, if you'd please give it to the

Verdict

1 bailiff.

2 (Complies with request. Court reviews.)

3 THE COURT: All right, if the Clerk would please
4 publish the verdict.

5 THE CLERK: Indictment Number 2006-GS-22-126, The
6 State of South Carolina versus Vladimir Pantovich, we, the
7 jury, find the Defendant, Vladimir Pantovich, guilty of
8 manslaughter. Ladies and gentlemen of the jury, is this your,
9 was this your verdict and is it still?

10 (Jurors indicate affirmatively.)

11 THE CLERK: Thank you.

12 THE COURT: All right, thank you very much.

13 Any polling of the jury by the Plaintiff, I mean, by the
14 State?

15 MR. BRYAN: No, Your Honor.

16 THE COURT: Any by the Defendant?

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

18 THE COURT: All right, ladies and gentlemen of the
19 jury, this concludes your service. I sincerely thank you for
20 your service this week. You've had the most difficult task
21 out of any of us, and I really appreciate your service.
22 You've really done a good service to the citizens of this
23 county, to the citizens of this state, to the judicial system
24 and I appreciate it. You're certainly welcome to stay with
25 us. We have a few matters that we need to tend to while we

1 conclude this case. However, if you'd like at this time if
2 you want to be excused I'll likewise give you the opportunity
3 to leave for anyone who wishes to be excused.

4 Everyone please remain in place for those who want to be
5 excused while they leave and thank you very much.

6 All right, Mr. Axelrod.

7 MR. AXELROD: Your Honor.

8 THE COURT: Please bring your client forward. Any
9 reason not to go forward with sentencing at this time?

10 MR. AXELROD: No, sir, Your Honor.

11 THE COURT: All right.

12 MR. AXELROD: And, Your Honor, I'd also ask that Bishop
13 Dickson can come up. He's going to speak on his behalf.

14 THE COURT: All right.

15 All right, Mr. Axelrod, any mitigating circumstances?

16 MR. AXELROD: Yes, sir, Your Honor.

17 Your Honor, Walt stands before you. He's 57 years old
18 and the Court has heard this entire case, and we stand by, we
19 stand by the jury's verdict. We have to. They deliberated
20 for five hours and some minutes. They put their time to it,
21 but what I want to tell the Court is that I believe that Walt,
22 he told the truth. It was evident that he told the truth
23 throughout his testimony. He gave testimony that was damning
24 to his position. I've known him for two years now. I've
25 known the bishop for two years now and I'm going to ask the

1 bishop to speak on his behalf, and at this time if the bishop
2 could and then I'll finish up, Your Honor, because I don't
3 have that much more to say.

4 THE COURT: All right, sir.

5 MR. AXELROD: Bishop, you have to tell the Court your
6 full name.

7 THE COURT: Yes, sir.

8 MR. DICKSON: Bishop Alan D. Dickson, D-I-C-K-S-O-N.

9 THE COURT: All right, sir.

10 MR. DICKSON: First of all, sir, I've sat here for many
11 days and I just want to commend you the way you've presided in
12 this courtroom.

13 THE COURT: All right, thank you.

14 MR. DICKSON: I've known Walt for about seven years,
15 first as he did repairs, did some maintenance on my house up
16 at Pawleys Island, then as the years went on we became
17 friends, and I found him to be an honest man, dependable and
18 good as his word.

19 After he was brought to prison I began to visit with him
20 frequently in prison. I took him a bible with commentary. We
21 met frequently. He attended all the services. I've been
22 ordained for 50 years, for 25 years a bishop. I've seen
23 jailhouse conversions. I've seen authentic ones and I can
24 testify that this man is a changed human being. I see in him
25 the fulfillment of 2nd Corinthians the 5th Chapter, the 17th

1 verse, ``If anyone is in Christ he is a new creation, the old
2 is gone, the new is come.'' I believe that with all my heart
3 and I can come to bear witness of that. I would plead with
4 you, sir, to grant him mercy in your sentence.

5 THE COURT: All right, sir. Mr. Axelrod. Thank you
6 very much. I appreciate that input.

7 MR. AXELROD: Your Honor, what I'm going to ask this
8 Court to do is to consider the mercy for Walt, for the Court
9 to impose a ten-year sentence, suspended on the service of
10 five years and five more years of probation. I don't think
11 that would shock the conscience of this Court based on the
12 facts of this case, sir, and Your Honor, at this time I'm
13 going to ask Walt if he'd like to address the Court.

14 THE COURT: All right.

15 Now, Mr. Pantovich, anything you want to say?

16 MR. PANTOVICH: Your Honor, I want to tell Sheila's
17 family how sorry I am. I was sorry. I'm going to regret that
18 for the rest of my life and I did love her and I still love
19 her and I want to apologize to them. I want to apologize to
20 my family, Father, Your Honor, for not being father, too good
21 of a father for them and too good of a grandfather to them,
22 Father. I was thinking more about myself than -- I was good
23 provider but I wasn't there for, to give them real love the
24 father should give them and I want to thank for my friends
25 that come supported me here and I want to thank you for

1 residing [sic] a very fair trial. I want to thank Mr. Bo
2 Bryan for doing his work. I want to thank my lawyers very
3 much and thank you, Lord. Thank you, sir.

4 THE COURT: All right, thank you. Anything else on --
5 anybody on Mr. Pantovich's behalf?

6 MR. AXELROD: No, sir, Your Honor.

7 THE COURT: All right, Mr. Bryan, any prior -- let me
8 hear his criminal history.

9 MR. BRYAN: Other than some arrests he does not have
10 any convictions that I'm aware of, Your Honor, and as far as
11 the State's position on sentencing, we believe that although
12 the jury did find sufficient legal provocation I think it was
13 clear that there was just no need for what happened. It was
14 clear from Mr. Pantovich's testimony that he didn't have to do
15 what he did and the brutality of it I think warrants a
16 sentence closer to the maximum than the ten years suspended on
17 five that is requested by the Defendant.

18 THE COURT: All right, sir.

19 All right, Mr. Pantovich, the jury has found you guilty
20 beyond a reasonable doubt on the charge of voluntary
21 manslaughter. This is both a violent and a most serious
22 offense. If you are ever convicted or plead guilty to a most
23 serious offense again then the penalty you're looking at is
24 life in prison without the possibility of parole. If you're
25 found guilty of two more violent offenses the same sentence.

1 Also, it's going to be required that you serve 85 percent of
2 this sentence.

3 All right, Mr. Pantovich, the sentence of the Court is
4 that you be confined to the State Department of Corrections
5 for a period of 18 years.

6 Good luck to you.

7 MR. PANTOVICH: Thank you, sir. Thank you, sir.

8 MR. AXELROD: Your Honor, at this time I'd like to renew
9 my motions if I could.

10 THE COURT: Noted and denied.

11 MR. AXELROD: Your Honor, just to protect the record I'd
12 like to go through each one briefly if I may.

13 THE COURT: All right.

14 MR. AXELROD: Your Honor, during the trial, I had -- we
15 had a motion in limine for the NCICs to be provided. When
16 they, when they put up the reply witness I was never given
17 that NCIC, which obviously the Court, I guess they told the
18 Court I was going to. I never got it. I want to make that
19 motion now. It's a new motion at this point, Your Honor.

20 THE COURT: All right, and what is your motion?

21 MR. AXELROD: Motion that -- for the mistrial that I was
22 unable to fairly impeach the witness. If the witness had
23 prior -- it's a violation of the Sixth Amendment to confront
24 my witness without knowing what I can impeach the witness
25 with. They promised the Court that I would be given the NCIC

Motions

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1 but I never was. I make a motion for a mistrial based on
2 that.

3 THE COURT: Well, Mr. Bryan, let me hear you on that.
4 He's saying you all promised to give him the report and never
5 gave him the report.

6 MR. BRYAN: I don't think I've got an obligation to
7 give him the report. I'm not aware of any ---

8 THE COURT: And I know that and I ruled earlier but I
9 also remember that when you called the reply witness and he
10 requested an NCIC report you all said, "That's no problem,
11 we'll give it to him."

12 MR. BRYAN: Oh, we have it. Sorry, Your Honor, we
13 have it and it came back as clean. We'll run him a copy. We
14 can put it -- make it a Court's Exhibit if you wish to, but
15 there's nothing on it.

16 THE COURT: Okay, but still, you admit that was not
17 given to him.

18 MR. BRYAN: Yes, sir.

19 THE COURT: As --- okay.

20 MR. BRYAN: And we'll, we'll -- if you want to grant
21 the motion we'll try it again next month.

22 THE COURT: All right, let me hear your next motion.

23 MR. AXELROD: Your Honor, I was denied a re-cross on
24 Marco Pantovich. I just renew that motion, sir, and I'd move
25 for a mistrial based on that, Your Honor.

1 THE COURT: All right, go head and tell me your
2 motions.

3 MR. AXELROD: Yes, sir, Your Honor, Exhibit 64, 65 and
4 66, 64 and 65 is hand-drawn pictures by a trainee with hearsay
5 testimony on it. It was given to the jury without redaction.
6 Number 66 also was a photograph with hearsay testimony on it
7 with no redaction.

8 THE COURT: I'm assuming all of these are motions for
9 a new trial and you're just giving me the reasons.

10 MR. AXELROD: Yes, sir, Your Honor.

11 THE COURT: Okay, all right, what else?

12 MR. AXELROD: Your Honor, it was clear that the SLED
13 officer, Katie Coy, she testified to the results of the test
14 but she never took the swabs. So, there was a major break of
15 the chain on a fungible item that we needed to have the chain,
16 and once again, I asked a motion for a mistrial based on that.

17 THE COURT: All right.

18 MR. AXELROD: Also, the Solicitor's statement to Walt,
19 however slight that the State thinks it is, they asked Walt
20 have you ever been arrested and the only curative charge that
21 the Court gave the jury was to disregard that last question.
22 I would make a motion for the mistrial because it went to the
23 heart of his credibility and his character and that was what
24 was at issue in this case, sir.

25 THE COURT: All right.

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1 MR. AXELROD: Make a motion for a new trial for the
2 denial of those three charges that were a Court's Exhibit. I
3 think it was number, I'm not sure, Your Honor, I think it was
4 Number 19, 24 and 25 if I was correct. It was motions to --
5 it actually showed for the propensity of violence and
6 turbulence of the victim and I think they were appropriate
7 charges in this case and I think they were warranted and I'd
8 make a motion for a mistrial that we weren't granted those.

9 THE COURT: All right.

10 MR. AXELROD: The Solicitor's closing argument calling
11 Walt a murderer and saying that he murdered Sheila.

12 MR. BRYAN: I didn't, I didn't call him a murderer. I
13 said he murdered her.

14 MR. AXELROD: If I may, Your Honor.

15 THE COURT: All right.

16 MR. AXELROD: Sir, the Solicitor called Walt a murderer
17 and said he murdered Sheila. My motion for a mistrial was
18 that to call her [sic] a murderer or to say that he murdered
19 somebody is a legal conclusion that has to be left to the
20 province of the jury once they decide if in fact he's guilty
21 of murder and in this case they came back with a voluntary
22 manslaughter charge. I believe that was impermissible because
23 what it does is it was bolstering the Court's, it's
24 bolstering the State's case when the Solicitor says, "He
25 murdered her." He can say he killed her, he can say whatever

1 he wants to say, but I say that those words were improper and
2 inflammatory and prejudicial and move for a mistrial based on
3 that.

4 THE COURT: All right.

5 MR. BRYAN: Your Honor, if I can speak to that, I'd
6 like to answer just for the record that I think the record
7 will reflect I never said murder. I mentioned that the jury
8 should find him guilty of the charge which he was indicted by
9 the Grand Jury for which is murder and that he had committed
10 the offense of murder. I think I'm allowed to argue to the
11 jury that I'd like to convict him for the offense which he is
12 indicted for and I'd ask Mr. Axelrod if he has some case law
13 to the contrary. He mentioned yesterday he had some case law
14 he'd hand up. I'd like to see it so I don't make the same
15 mistake if he's got some case law to support his proposition.

16 THE COURT: All right, well, I'm not going to make him
17 produce any case law unless I need it to look at it, so.

18 MR. BRYAN: Thank you, Your Honor.

19 THE COURT: All right, go ahead.

20 MR. AXELROD: And Your Honor, at this time I would make
21 a motion for a new trial. Still there was no evidence that
22 could go to that jury for the verdict that they brought back,
23 sir, and I believe that perfects my record.

24 THE COURT: All right.

25 All right, on your motion for a new trial for the denial

Motions

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1 of re-cross, for the introduction of Exhibits 64, 65, 66, for
2 your argument that a sufficient chain of custody was not
3 established, for the statements regarding arrest, the
4 introduction of Exhibits 19, 24 and 25 and for alleged
5 references or alleged improprieties during closing arguments I
6 deny those, your motion based upon my earlier rulings on those
7 grounds.

8 MR. AXELROD: Yes, sir, and the one thing I was, I
9 believe there were jury charges I requested, 19, 24, 25.

10 THE COURT: Okay, the jury, yeah, and I -- I'm sorry.
11 I said exhibits. You're right, jury charges.

12 MR. AXELROD: Thank you, sir.

13 THE COURT: I deny your motions for the previous
14 reasons granted. I also deny your motion for a new trial. I
15 find there is sufficient evidence to support the jury's
16 decision and as I understand from the Solicitor while I'm -- I
17 disagree with -- they don't have to provide you with an NCIC
18 report but when they say they're going to I wish they would,
19 but the fact that there was nothing on the NCIC report
20 according to the Solicitor's Office then I'm going to deny
21 your motion on that, that grounds.

22 MR. BRYAN: Your Honor, just so I can tell you what
23 happened. My -- Margie Cooper is my administrative assistant.
24 She handed them to me after she had testified, after she had
25 done cross examination and at that point I did not give it to

1 him based on the fact that it was nothing on it and he had
2 already finished his cross. So, we failed to ---

3 THE COURT: But be that as it may ---

4 MR. BRYAN: And I apologize for -- I'm just saying I
5 apologize for doing it, but that's the reason I didn't give it
6 to him.

7 THE COURT: Be that as it may when you do get one and
8 you do voluntarily agree to give it, you know, it's best to
9 comply with what you promised to do, but be that as it may, I
10 am going to deny your motion for a new trial on that grounds.

11 All right, sir.

12 MR. AXELROD: Thank you, sir. Have a nice day, sir.

13 THE COURT: Anything else?

14 MR. AXELROD: No, sir.

15 THE COURT: All right.

16 (Adjourned.)

17

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Certificate

C E R T I F I C A T E

1
2
3
4 I, the undersigned, Grace L. Hurley, Official Court
5 Reporter for the State of South Carolina, do hereby certify
6 that the foregoing is a true, accurate and complete
7 Transcript of Record of hearing held in the case of The
8 State versus Vladimir Pantovich, held in the Court of
9 General Sessions for Georgetown County, Georgetown County
10 Courthouse, Georgetown, South Carolina, on February 4
11 through 8, 2008.

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

14
15
16
17 Grace L. Hurley

18 Grace L. Hurley, CVR-CM

19 Official Reporter
20
21

22 June 15, 2008.
23
24
25

FORM 5

2012 CP 22 00635

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Georgetown)

#326633)

Vladimir Walt Panovich)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEFALMA Y. WHITE
CLERK OF COURT

2012 JUN 22 AM 11:38

FILED
GEORGETOWN COUNTY, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kirkland Correctional Institution
4344 Broad River Road B2-10
Columbia, South Carolina 29210
2. Name and location of Court which imposed sentence Georgetown County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-GS-22-126 Voluntary Manslaughter
 - (b) _____
 - (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:
 (a) 08 February 2008 18 yrs / 85% (violent)
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty _____
 (b) after a plea of not guilty ✓ trial by jury for murder / found guilty of lesser
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? yes

8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. Court of Appeals State of South Carolina
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. dismissed
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. Submitted 1 May 2011 - Filed 8 June 2011
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. Unpublished Opinion No. 2011-UP-275
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) _____
 (b) _____
 (c) _____

10. State concisely the grounds on which you base your allegations that you are being held in custody unlawfully:

(a) Innaffective Assistance of Counsel (Trial + Appellate)
 (b) No Expert Testimony to rebut States Expert (Fundiment Fairness)
 (c) Other Issues to be Announced According to Rule 71-160 SCACR

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

(a) Counsel Failed to use adversarial skills ^{Estelle V. Smith 451 U.S. 454 (1981)}
 (b) Counsel Failed to provide Expert witness to testify (Von Dolen) (Rule 702)
 (c) Violations of both U.S. & State Constitutions (due Process/Equal Protection)

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? only direct appeal
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief?
N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____
 ii. _____
 iii. N/A
 iv. _____

(b) the name and location of the Court in which each was filed:

i. _____
 ii. _____
 iii. N/A
 iv. _____

(c) the disposition thereof:

i. _____
 ii. N/A

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) PCR Remedy Appropriate

(b) PCR Remedy Appropriate
 (c) PCR Remedy Appropriate

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

- (a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 i. Stewart Axelrod, Public Defender Georgetown
 ii. Stewart Axelrod, Public Defender " "
 iii. Stewart Axelrod, Public Defender " "
 iv. Joseph Savitz III, Senior Appellate Defender
 (b) the proceedings at which each such attorney represented you:
 i. Arraignment & Plea of Not Guilty
 ii. Trial
 iii. Sentencing
 iv. Direct Appeal

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

To have my sentence and conviction vacated and remanded for a new trial and to have all charges dismissed and/or to lesser included offense of involuntary.

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

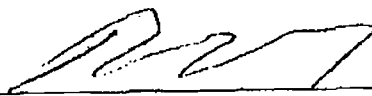
No

STATE OF SOUTH CAROLINA

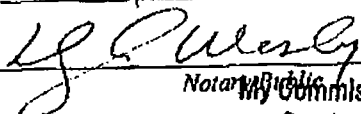
VERIFICATION

County of Richland

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


 Applicant

SWORN to and subscribed before me this 14th
 Day of May, 2012.

 (L.S.)
 Notary Public

My Commission Expires
 October 8, 2014
 My Commission Expires: _____

FILED
 GEORGETOWN COUNTY, S.C.
 2012 JUN 22 AM 11:38
 ALMA Y. WHITE
 CLERK OF COURT

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

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

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

[Signature]
Applicant

ALMA Y. WHITE
CLERK OF COURT

2012 JUN 22 AM 11:38

FILED
GEORGETOWN COUNTY, S.C.

SWORN or affirmed to and subscribed before me this
14th day of May, 2012.

[Signature]
Notary Public
My Commission Expires
My Commission Expires: October 8, 2014

TATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

2012-CP-22-635

Vladimir Walt Pantovich, 326633

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

FILED
GEORGETOWN COUNTY, S.C.
2012 SEP 26 PM 3:34
ALMA Y. WHITE
CLERK OF COURT

Respondent, making its Return to the Application for post conviction relief (PCR) filed June 22, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the April 2006 term of the Grand Jury for murder (2006-GS-26-126), Stewart Axelrod, Esquire, represented Applicant.

On February 8, 2008, Applicant was tried and convicted of manslaughter before the Honorable Benjamin Culbertson who sentenced Applicant to eighteen years imprisonment. Applicant appealed and argued the trial court erred in allowing an expert to testify from drawings and notes she had not prepared. Applicant's

appeal was dismissed, with the date of the remittitur June 28, 2011.

Attached herewith and incorporated herein are the records of the Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and the transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "no expert testimony to rebut states expert (fundamental fairness)"
3. "other issues to be announced according to Rule 71-160 SCACR"

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient.

Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

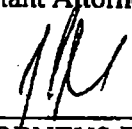
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

9/25, 2012.

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF GEORGETOWN) CASE NO: 2012-CP-22-0635
3 PCR HEARING

4 B E F O R E: The Honorable George C. James
5 March 21, 2014
6

7 VLADIMIR W. PANTOVICH,

8 Claimant/Applicant,

9 vs.

10 STATE OF SOUTH CAROLINA,

11 Respondent.
12

13 APPEARANCES:

14 Tristan Shaffer, Esq.
15 For the Claimant/Applicant.

16
17 Joshua L. Thomas, Esq.
18 For the Respondent.
(Office of the Attorney General)

19
20
21
22 Court Reporter:

23 Natalie Dahl, RPR
24
25

 ORIGINAL

I N D E X

WITNESSES

PAGE

STUART AXELROD

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Redirect-Examination by Mr. Shaffer.....	16

EXHIBITS

APPLICANT'S

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CALL OF THE CASE
P R O C E E D I N G S

1
2 THE COURT: All right. First one.

3 MR. THOMAS: Vladimir Pantovich versus State of
4 South Carolina, 2012-CP-22-635. This is an April 2006
5 indictment for murder --

6 THE COURT: Is he coming in?

7 MR. THOMAS: I'll wait for him, I apologize.

8 (A brief pause in the proceedings. Whereupon,
9 Mr. Pantovich enters the courtroom.)

10 MR. THOMAS: Sorry, Your Honor. This is an
11 April 2006 indictment for murder. He was represented
12 by Stuart Axelrod on that. He went to trial on
13 February 4th through the 8th, 2008. The jury
14 convicted him of voluntary manslaughter. The
15 Honorable Judge Culbertson sentenced him to 18 years
16 on that. An appeal was filed by Joseph Savitz, the
17 Office of Appellant Defense, filed an Anders brief.
18 The Court of Appeals dismissed that in Unpublished
19 Opinion No. 2011-UP-275. He filed his PCR in June of
20 2012 alleging ineffective assistance of counsel. He
21 is represented by Tristan Shaffer. State is ready to
22 proceed.

23 THE COURT: Anything you want to put on the
24 record before you call your first witness?

25 MR. SHAFFER: Yes, Your Honor. We had previously

CALL OF THE CASE

1 -- we sent quite a few possible allegations to the
2 Attorney General. We're going to focus primarily on
3 the "Good Character of the Defendant" charge that was
4 requested. Your Honor, we sent over a memorandum
5 yesterday which explains our position on that issue.
6 After pulling Court's Exhibit No. 4 this morning, I
7 realized there were two other charges as well that
8 were not included.

9 THE COURT: You are talking about jury charges?

10 MR. SHAFFER: Yes, Your Honor. We would move to
11 -- to include ineffective assistance of counsel for
12 failure to brief the other two charges as well,
13 because I believe that both of them should have been
14 charged.

15 THE COURT: Failure to brief them?

16 MR. SHAFFER: Yes, Your Honor, ineffective
17 assistance of appellant counsel.

18 THE COURT: Okay.

19 MR. SHAFFER: We might be able to save a little
20 time here. I already had done the alternative of the
21 ineffective assistance of trial counsel for failure to
22 properly preserve the issue, I think that the State's
23 position is that it is properly preserved; is that
24 correct?

25 MR. THOMAS: That would be correct.

CALL OF THE CASE

1 MR. SHAFFER: Based on that, we can go forward on
2 the second issue. I believe it is ineffective
3 assistance of appellant counsel.

4 THE COURT: So you would be, in effect,
5 abandoning your claim of ineffective assistance of
6 trial counsel?

7 MR. SHAFFER: Yes, Your Honor, for failure to
8 preserve these issues.

9 THE COURT: What other jury charges are you
10 talking about other than good character?

11 MR. SHAFFER: May I actually hand them up? One
12 is a self-defense charge, reputation for violence.
13 This is a copy of State's Exhibit -- Court's Exhibit 4
14 that was introduced. They are both additional --

15 THE COURT: Let's make it clear for the record,
16 Court's Exhibit 4 at the trial, not today?

17 MR. SHAFFER: Yes, Your Honor. Actually, could
18 we make that a Court's exhibit for today?

19 THE COURT: Any objection?

20 MR. THOMAS: Should make it an applicant's
21 exhibit.

22 THE COURT: It will be Applicant's Exhibit 1,
23 three pages long. It is Defendant's Request of
24 Instruction 19, No. 24, No. 25. We can put a sticker
25 on that in a minute. So are you still going to need

CALL OF THE CASE

1 to call Mr. Axelrod at any time?

2 MR. SHAFFER: Yes, I'll call him.

3 THE COURT: First?

4 MR. SHAFFER: Yes, Your Honor. I do not think
5 that we need to call Mr. Savitz, to be honest with
6 you, unless the Court wants his testimony. I don't
7 think that it will necessarily add anything.

8 (Applicant's Exhibit 1 marked.)

9 THE COURT: The exchanges we had yesterday
10 certainly are not on the record, but I couldn't figure
11 out exactly what the end result of all of that was.

12 MR. SHAFFER: Your Honor, he requested -- well,
13 the State originally requested -- or told me that they
14 were planning on calling Mr. Savitz. They informed me
15 earlier this week they were not going to call
16 Mr. Savitz.

17 THE COURT: He's in Abbeville.

18 MR. SHAFFER: Yes, Your Honor. I was going to
19 attempt to call him by phone and have him testify over
20 the phone, Your Honor. After thinking about it and
21 speaking with Mr. Savitz, I mean, he's either going to
22 say one of two things, either he didn't think it was
23 preserved, or that basically he missed the issue. So
24 I don't think it will really add anything. There is
25 no strategy that he could have added. I mean -- thank

STUART AXELROD - DIRECT EXAMINATION

1 you, Your Honor.

2 THE COURT: Call your first witness.

3 MR. SHAFFER: Stuart Axelrod.

4 (STUART AXELROD, having been duly sworn,
5 testified as follows:)

6 THE COURT: So it is clear, Mr. Thomas, the State
7 is stipulating that the issue of whether or not these
8 charges would be given to the jury was properly
9 preserved?

10 MR. THOMAS: Your Honor, I would. Just so the
11 record is clear on that, there was a charge conference
12 between Mr. Axelrod and the State and Judge Culbertson
13 at which point they asked for those four to be
14 charged. It starts on Page 537 of the record, of the
15 transcript. It might start before that on Page 538,
16 Line 5. The Court says: Okay. I've reviewed it. I
17 think the charges I've got adequately covers
18 everything. I'm going to deny your motion -- which
19 was the motion to include these three charges -- and
20 then he goes on to say, It is preserved for the
21 record.

22 There is some case law, Your Honor, Alexander,
23 that basically says you don't have to renew that
24 objection, that as long as there is a discussion on
25 the record, it is preserved, and that is the State's

STUART AXELROD - DIRECT EXAMINATION

1 position.

2 THE COURT: All right. He's been sworn. Okay.

3 DIRECT-EXAMINATION

4 BY MR. SHAFFER:

5 Q Mr. Axelrod, you represented Mr. Pantovich?

6 A I did, yes.

7 Q If you could, tell us briefly what the
8 allegations were.

9 A He was charged with murder, with killing his
10 girlfriend at the time. They had an argument and she
11 attacked him. I believe -- I'm not sure if he picked
12 up a baseball bat -- I forgot what instrument -- but in
13 self-defense he hit her. She died, and then he put her
14 into the trunk of his car and called his son and drove
15 to North Carolina. The police were waiting for him,
16 and he turned himself in.

17 Q Okay. And so it wasn't a question of who
18 actually killed her, correct?

19 A Correct. It was -- yes. It was a self-defense
20 case to me, is how I presented it.

21 Q Okay. And you called several witnesses to
22 testify about his character, correct?

23 A I did. I had a lot -- I was -- I think I was
24 appointed -- I was in private practice. I guess I was
25 appointed. I might have had a contract with the Public

STUART AXELROD - DIRECT EXAMINATION

1 Defender's Office; I was appointed that way. I had a
2 lot of people that come to me and tell me -- friends of
3 his -- and they wanted to help me with the case and
4 find witnesses. Everybody I talked to about this case,
5 they said to me that this was just a kind, nice man and
6 out of character for what he was charged with. People
7 from like New York, just people that would -- that he
8 knew that were tourists that would come here that
9 befriended him over the years. They were of great
10 assistance to me.

11 I had two bishops at one point, retired Greek
12 Orthodox bishops. He was a nice person. My normal
13 person charged with murder -- and I don't think he
14 ever had a record, I don't know. But what he was
15 charged with and everything that I researched and did
16 on this case was this was not the man that would do
17 what he was charged with.

18 Q And you said you had Greek Orthodox bishops?

19 A Bishop Dixon, a retired bishop, and then for the
20 trial I had another. I had two purple bishops sitting
21 there for the whole trial. You know, that said a lot
22 for me. The bishops were -- Bishop Dixon was actively
23 trying to assist as well. It was just -- you know,
24 Walt is of Russian decent and speaks with a rough voice
25 and he appears -- I mean, he was a nice person. To

STUART AXELROD - DIRECT EXAMINATION

1 this day he's working in the chaplain's office now.

2 He's not a bad guy.

3 Q And the bishops sat there in bishop outfits
4 during the trial?

5 A Yes, sir, two purple bishops. I felt like a
6 chess set. I never had that before.

7 Q And what was your strategy behind actually
8 calling these witnesses to testify to his character?

9 A Well, you know, what you had here is -- and I'm
10 not sure what to tell the Court, but the victim in this
11 case, the decedent, his girlfriend, she was smaller.
12 She was diminutive. Walt, I think he is 6'2", if I
13 remember. I had a size disparity, and here I am
14 arguing self-defense, you know. I know that the victim
15 had a propensity for violence towards Walt because I
16 had witnesses that said that they would be together and
17 she always would be hitting on him. I went for the
18 defense that -- in the Green charge that, you know -- I
19 lost my thought there. Can I see what was marked, that
20 Exhibit 4?

21 MR. SHAFFER: Your Honor, may I hand him
22 Applicant's Exhibit 1?

23 Q (MR. SHAFFER) I'll show you what is marked
24 Applicant's Exhibit 1.

25 A What I wanted to do was -- I felt I had -- I

STUART AXELROD - DIRECT EXAMINATION

1 wanted these charges of good character for the
2 Defendant. I put up witnesses to show the character,
3 because, ultimately, that is all I had, and it was all
4 I needed. That is what it was. It was a unique case
5 in itself, you know, the good character of the
6 Defendant.

7 And then on 24 was the reputation for violence,
8 turbulence of the victim. 25 was the propensity for
9 violence of the victim that, you know, you can't use
10 really a reasonable person standard, I don't think,
11 because if Walt knows his girlfriend would be violent
12 towards him, then he can react in a different way than
13 if there was no violence.

14 You know, you could argue, I guess, that the
15 State tried to look at this as an imperfect
16 self-defense, that, okay, it starts off as
17 self-defense and turns into a passion into a
18 manslaughter, and that would be probably an imperfect
19 self-defense to some agree. This was self-defense.
20 He defended himself against a woman that attacked him.

21 Society looks at she's little and he's taller,
22 but you couldn't look at that in this case. I don't
23 know who called him a gentle giant, if I did or
24 someone else, but he was well liked and loved by the
25 entire community he was with. The decedent in this

STUART AXELROD - DIRECT EXAMINATION

1 case was not.

2 Q And the allegation was -- his testimony was she
3 attacked him with a fireplace poker?

4 A Yes. Yes, and he defended himself.

5 Q And Applicant's Exhibit 1 is three different jury
6 charges. You presented those to the judge, correct?

7 A Yeah. If I remember right, we had a charge
8 conference in chambers and we went over everything. He
9 -- I thought that based on the State V. Green I was
10 entitled to the full charge, read directly to the jury.
11 What I would have done if I had given it, I would have
12 read this charge to the jury in my closing. The judge
13 told me -- you know, the judge -- it was a tenacious
14 relationship for a little bit because I think in the
15 beginning of this trial we did a direct -- I did a
16 cross, and then they did a redirect. I went up to do a
17 recross and the judge asked what I was doing, and I
18 said, I'm going to do recross, and he said, No, it's
19 not in the rules, you'll follow the rules.

20 The judge told me at some point not to argue with
21 him when he ruled, and it was like, okay. In chambers
22 we had that discussion. That is why I think that that
23 piece of the transcript -- he let me put them in and
24 mark them as exhibits and he said they are here to
25 preserve the record and that will show that you

STUART AXELROD - CROSS-EXAMINATION

1 requested that the charges be made and I denied the
2 motion. That is how he maintained that court for that
3 trial. Whatever he ruled, that was it. I couldn't
4 object to it any further.

5 You know, I was winning the trial, is my opinion.
6 I thought I was entitled to all of these, and I argued
7 for them. I think under Johnson, you know -- and I
8 told him that -- I'm entitled to this, and he just
9 chose not to. I think, actually, that we probably
10 would have won the trial with this. Because this
11 dovetail to my whole position of the case of his good
12 character and the propensity for the decedent to be,
13 you know, mean.

14 Q Okay.

15 MR. SHAFFER: No further questions, Your Honor.

16 THE COURT: Mr. Thomas.

17 CROSS-EXAMINATION

18 BY MR. THOMAS:

19 Q Good morning, Mr. Axelrod.

20 A Good morning, sir.

21 Q Just for the record, how long have you been
22 practicing criminal law?

23 A Since 1998.

24 Q And how many meetings did you have with
25 Mr. Pantovich before trial?

STUART AXELROD - CROSS-EXAMINATION

1 A Probably a lot.

2 Q You feel like you had enough meetings to
3 adequately prepare?

4 A Yes, sir.

5 Q Did you -- and I'm assuming you filed the Rule 5
6 Brady discovery motions?

7 A Yes.

8 Q And you reviewed all of that with him, all the
9 State's responses?

10 A Yes. We went over everything together.

11 Q You discussed with him what your trial strategy
12 was as far as your defenses, and they were basically
13 character and self-defense?

14 A Yes. That is how I prepped for the trial.

15 Q And you explained to him that voluntary
16 manslaughter was a lesser included, and that was an
17 option the jury could convict him of?

18 A To be honest, I don't remember. I can read that
19 part of the transcript, but I don't know if I ever
20 asked for the voluntary or if the judge just gave it.
21 I'm not sure if I asked for it or not.

22 MR. THOMAS: May I approach?

23 THE COURT: Yes, sir.

24 Q (MR. THOMAS) Do you have a copy of the transcript?

25 A I have a piece -- just brought a piece with me.

STUART AXELROD - CROSS-EXAMINATION

1 Q That is Volume 2 of the transcript.

2 A If you can direct me to the page.

3 Q Absolutely. Look at Page 581.

4 A Yes, sir.

5 Q Starting at Line 12.

6 A Yes, sir.

7 Q If you could, read from Line 12 to 24.

8 THE COURT: Out loud?

9 MR. THOMAS: Not out loud, just to yourself.

10 A (Witness examines document.)

11 (A brief pause in the proceedings.)

12 A Yes, sir.

13 Q (MR. THOMAS) While we're at it, if you could, read
14 Page 582, Line 22.

15 A Yes, sir. (Witness examines document.)

16 (A brief pause in the proceedings.)

17 A Yes, sir.

18 Q (MR. THOMAS) After reading that, would you say that
19 Judge Culbertson charged the jury that a battered
20 person can be in imminent danger of violence?

21 A Yes.

22 Q And that the prior difficulties between the
23 Defendant and the victim could help establish
24 self-defense?

25 A Yes.

STUART AXELROD - REDIRECT EXAMINATION

1 Q And that the reputation of the victim was a
2 factor that the jury could consider?

3 A Yes.

4 THE COURT: Reputation for violence.

5 MR. THOMAS: Yes, reputation of the victim as a
6 violent person.

7 A Yes.

8 Q (MR. THOMAS) And they could also consider prior
9 instances of violence by the victim?

10 A Yes.

11 Q And the victim's intoxication?

12 A Yes.

13 MR. THOMAS: I think that is all I have. Thank
14 you.

15 REDIRECT-EXAMINATION

16 BY MR. SHAFFER:

17 Q In that charge, did they charge anything about
18 the State V. Green issue?

19 A No, sir.

20 MR. SHAFFER: Thank you.

21 THE COURT: All right. Mr. Shaffer, while Mr.
22 Axelrod is still up here, I thought you mentioned in
23 the beginning that you were also alleging ineffective
24 assistance of appellant counsel for failure to argue
25 on appeal, failure to charge self-defense.

ARGUE THE CASE BY THE ATTORNEYS

1 Self-defense was charged?

2 MR. SHAFFER: Yes, Your Honor. The supplemental
3 self-defense charges, I don't think they are
4 adequately covered by the judge's charge.

5 THE COURT: Specifically the three that you are
6 talking about is what has been put in evidence?

7 MR. SHAFFER: Yes, sir, Page 2 and 3 of that
8 Applicant's Exhibit 1, Your Honor.

9 THE COURT: All right.

10 MR. SHAFFER: We don't have any further
11 witnesses. We would like to argue the case.

12 THE COURT: Would you hand me the marked
13 exhibits? Do you want your transcript back,
14 Mr. Thomas?

15 MR. THOMAS: Yes. If I may approach. Thanks.

16 THE COURT: Thank you, Mr. Axelrod. Yes, sir.

17 MR. SHAFFER: Your Honor, I'm not sure if you had
18 a chance to review the brief, and I apologize -- or
19 the memorandum. I apologize, I submitted it
20 yesterday. Clearly, if this was preserved, this would
21 have been an issue that could have reversed the trial.
22 I think --

23 THE COURT: Reversed the trial?

24 MR. SHAFFER: Or grant a new trial on appeal.

25 THE COURT: Let's get it clear. It was

ARGUE THE CASE BY THE ATTORNEYS

1 preserved, it just wasn't argued?

2 MR. SHAFFER: Yes, Your Honor. It was preserved
3 at the trial level. The appellant counsel filed an
4 Anders brief. His Anders brief was based off of, I
5 believe it was, a Melendez-Diaz claim involving
6 confrontation and scientific information. That was
7 not preserved, Your Honor, and it was meritless as
8 stated in his brief by the fact it was Anders. He had
9 no reason not to file a brief on the three charges
10 that were submitted and preserved. Certainly the
11 State V. Green issue, Your Honor, I believe it was a
12 meritorious issue. The other two, I don't think the
13 charge adequately covers it, but obviously that is a
14 question for you for the other two charges.

15 THE COURT: 24 and 25?

16 MR. SHAFFER: Yes, sir, Your Honor.

17 Charge 19, first page of Applicant's Exhibit 1,
18 clearly is good law in South Carolina. I would point
19 to that Lee-Grigg case, the most recent case, where
20 essentially -- I mean, it made out a claim for, you
21 know -- essentially she requested it, it wasn't
22 charged, it was relevant to her defense, which was an
23 accident in that case. Here it is relative to his
24 defense of self-defense.

25 It also negates heat of passion, Your Honor.

ARGUE THE CASE BY THE ATTORNEYS

1 There is a lot of evidence that he previously in other
2 altercations was calm despite the fact that she
3 attacked him. I think it would negate that element,
4 therefore, it was directly related to the charge he
5 was convicted of, and I think it was relevant to
6 self-defense.

7 THE COURT: If it negates heat of passion,
8 doesn't that point back to murder?

9 MR. SHAFFER: At that point they found beyond a
10 reasonable doubt there was no malice. I guess we
11 could speculate -- I don't know that they would have
12 gone to murder if there was no heat of passion, but I
13 don't think that is a proper speculation under the
14 law. I think that is sort of --

15 THE COURT: Guessing?

16 MR. SHAFFER: Guessing.

17 THE COURT: Okay. Does the transcript reflect at
18 all why Judge Culbertson -- let's assume that he
19 charged 24 and 25 in substance. Is there any
20 explanation from him why he did not charge No. 19?

21 MR. SHAFFER: He merely stated that he believed
22 his charge adequately covered the issue -- or
23 everything. There is no explanation other than that.

24 THE COURT: All right. Mr. Thomas.

25 MR. THOMAS: Your Honor, if I could, I have case

ARGUE THE CASE BY THE ATTORNEYS

1 law, and I'll pass it all up at once, if that is okay
2 with Your Honor. May I approach?

3 THE COURT: Yeah.

4 MR. THOMAS: I don't have copies for your law
5 clerk. My business center is ill-equipped in my
6 hotel.

7 Your Honor, I think first and foremost Judge
8 Culbertson's decision to not charge the good character
9 charge, obviously it is preserved for the record. It
10 is clear from the record that this was an issue that
11 came up at trial. In order to prove a claim of
12 ineffective assistance of counsel, you have to show
13 not only deficient -- ineffective assistance of
14 appellant counsel. I agree with Mr. Shaffer's
15 contention that you have to show both deficiency and
16 prejudice, and I understand his case law, Smith versus
17 Robbins, which I provided a copy to the Court.

18 On the copy I've given to the Court, if you look
19 on Page 16, Section 4, that is where Mr. Shaffer gets
20 the argument that filing of an Anders brief doesn't
21 necessarily mean that counsel was not deficient. I
22 would propose that the way that is laid out, that is
23 merely dicta in that case. Even if it's not dicta,
24 the Court goes on to say that where counsel has
25 complied with valid state procedure in determining if

ARGUE THE CASE BY THE ATTORNEYS

1 the appeal is frivolous, there is no reason to presume
2 prejudice --

3 THE COURT: What does all of that mean? I mean,
4 that's intricate procedural statements. What should
5 Mr. Savitz have done, get at it that way? Should he
6 have presented this in a non-Anders brief? Should he
7 have presented the failure to charge No. 19? Assuming
8 he -- in other words, he filed an Anders brief, and
9 you are saying, what? You are saying that when he
10 files an Anders brief that he's not properly arguing
11 the failure to charge No. 19, right?

12 MR. SHAFFER: Yes, Your Honor.

13 THE COURT: Okay. And so what is the rule when
14 appellant counsel doesn't do that?

15 MR. SHAFFER: Your Honor, I think that you still
16 have to apply Strickland in the case of ineffective --

17 THE COURT: Clearly. That is what we talked
18 about earlier in Conway this week. Are they supposed
19 to count on a staff attorney at the Supreme Court or
20 Court of Appeals to say, oh, there's an Anders brief,
21 there is a good issue here, and we still are going to
22 ask the parties to brief? How does it work with the
23 prejudice? Where does the buck stop?

24 MR. SHAFFER: I think it stops with Mr. Savitz.
25 The Court -- in reviewing the Anders case in South

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1 Carolina, the Court doesn't make a ruling on the
2 merits of the case. There is a South Carolina Supreme
3 Court order that says Anders is not on the merits, it
4 is merely an acknowledgment of the fact that the
5 Court, after reviewing it, didn't find an issue. Your
6 Honor, because of the fact it is not on the merits,
7 you can't appeal it any further. The only recourse is
8 to bring it in a PCR, Your Honor.

9 THE COURT: I understand that. But is my ruling
10 to be based on whether or not Mr. Savitz didn't argue
11 it at all, that he just filed an Anders brief, and
12 that is where the ineffective assistance was, or are
13 we supposed to count on the staff attorneys and law
14 clerks to find the issue?

15 MR. SHAFFER: If that was the case, Your Honor,
16 you would find nothing but Anders briefs, Your Honor,
17 because there --

18 THE COURT: Easiest thing to do.

19 MR. SHAFFER: Yeah.

20 THE COURT: So when we are talking about Smith
21 versus Robinson, start over on that and help me out.

22 MR. THOMAS: If I could back up a step before I
23 do that, Your Honor. A deficiency -- we have to show
24 a deficiency first. Did Mr. Savitz have to file a
25 brief on this issue? And I know that Mr. Shaffer

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1 cited to Lee-Grigg. I also passed up State versus
2 Green, which is where we get the case law that says
3 that you are entitled to a good character charge.

4 The outcome of Smith versus Green says the
5 refusal to instruct the jury on the issue of good
6 character isn't a reversal error if there is no
7 prejudice to the appellant.

8 The difference I think in Lee-Grigg and Harrison,
9 which I believe is cited in Mr. Shaffer's memorandum,
10 is that there was a question of whether the person
11 possessed the drug in Harrison and whether they
12 actually had -- Lee-Grigg was a check forgery case --
13 whether they had permission to sign the checks.

14 In this case, there was no doubt. The Applicant
15 admitted at trial that he committed a homicide. The
16 question was whether it was justified by self-defense
17 or whether it was some sort of lesser degree.

18 THE COURT: Homicide is not against the law,
19 necessarily.

20 MR. THOMAS: If it is justified, yes. So there
21 was no question whether he committed the acts he was
22 accused of committing, as opposed to Lee-Grigg and
23 Harrison where there was a question. I would say that
24 in light of that and the overwhelming evidence that he
25 did commit the homicide, I don't think that Mr. Savitz

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1 performed efficiently by not filing a merits brief on
2 this issue.

3 Skipping ahead to Smith versus Robbins, which is
4 528 U.S. 259, that case basically says -- and that is
5 why I said it's dicta, because the Court goes on to
6 say that most cases in which the Defendant's appeal
7 has been found pursuant to a valid state procedure to
8 be frivolous, based on the Anders procedure, it is
9 going to be difficult to show any prejudice.

10 I would also -- I also passed up a case out of
11 Florida. I admit there is no case from South Carolina
12 that says that counsel -- that an applicant can never
13 be prejudiced by an Anders brief. But there is a
14 case, Towbridge V. State out of Florida, located at 45
15 Southern Reporter 3d, 484. This is a 2010 case where
16 they basically say that an Anders brief is required --
17 what happens is the Court has to review the record
18 independently for any issues of merit, and basically
19 it is presumed when a Court complies with the Anders
20 procedures, that they reviewed every preserved issue,
21 and that basically if an issue is easily identifiable
22 in the phase of the record, which I submit this is,
23 there is clearly a charge conference on it, then the
24 Court is presumed to have reviewed that issue and
25 found no merit to it.

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1 THE COURT: And that is what I'm getting at, and
2 I didn't say it artfully. Does the simple fact that
3 the Anders process was followed lock them out?

4 MR. THOMAS: Your Honor, I think -- I would hate
5 to say there is a, per se, rule that Anders means
6 there can never be a prejudice in ineffective
7 assistance of --

8 THE COURT: Appellant counsel.

9 MR. THOMAS: -- appellant counsel. I think that
10 is drawing a hard line we don't want to do. I think
11 in a case where there is something that is clearly an
12 issue, clearly a review of the record by a law clerk
13 or staff attorney that would have recognized that
14 there is an issue regarding this charge, I think the
15 fact that the Court did not ask for briefing on the
16 issue, that they went ahead and dismissed, that is an
17 acknowledgment by the Court that there was no merit to
18 that issue.

19 THE COURT: And that brings us full circle about
20 what we talked about Monday or Tuesday, whenever
21 Mr. Shaffer was first in Conway. We don't know
22 whether or not the appellant court just relied on the
23 perfunctory -- and perhaps incomplete -- analysis of
24 staff attorneys and just kind of rubber stamped it.
25 We don't know. You are saying there is a presumption

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1 that there is no meritorious issue if the Anders
2 process was properly followed. Is "properly followed"
3 the correct wording, or just "followed"?

4 MR. THOMAS: I think that is what Smith says, as
5 long as it complies with a valid state procedure, I
6 think that you have to presume regularity of the court
7 functions.

8 THE COURT: I think I would have to, because I
9 certainly will not bring the staff attorneys and the
10 appellant judges here to say what do you do in this
11 case, but that is the problem I have with the Anders
12 argument, and I guess I'll have to resolve it. I
13 don't know how I can address it. Let's say I look at
14 it and say, Gosh, I thought Judge Culbertson should
15 have charged it and I think Mr. Savitz should have
16 briefed it, you are saying, no, as long as there is no
17 meritorious issue and the appellant court followed
18 that process, then he's out?

19 MR. THOMAS: Essentially, Your Honor, yes. And I
20 would point also to the last case I passed up, State
21 versus McKennedy, 348 S.C 270, 2002 case. It is in a
22 little bit of different context. Mr. Shaffer said an
23 Anders doesn't preserve it for review, but that is
24 basically the case. It talks about the Anders
25 procedure and it says that the Court of Appeals is

ARGUE THE CASE BY THE ATTORNEYS

1 obligated to make a full review of the record and
2 independently conclude there is no issue of merits. I
3 just think we have to presume that when the Anders
4 procedure is initiated in that way, the Court does, in
5 fact, whether we say it is a staff attorney or law
6 clerk, we don't know that, so we have to presume that
7 the judge looked at it.

8 THE COURT: You say we have to presume that, and
9 Mr. Shaffer says Mr. Pantovich is reduced to saying we
10 have to hope that they do.

11 MR. THOMAS: I think just -- and that is the last
12 thing I'll say. You have to presume -- the law of the
13 state is you have to presume the regularity of court
14 proceedings.

15 THE COURT: In Lee-Grigg, what if there had been
16 an Anders brief and just a perfunctory dismissal of
17 the appeal? In other words, how do we ever know? You
18 just have to presume?

19 MR. THOMAS: I think you have to presume, Your
20 Honor. I think it would be presumptuous of us to say
21 that we can get into the minds of the Court of Appeals
22 and staff there in deciding whether they thought this
23 was a valid appeal or not. I don't know the procedure
24 history of Lee-Grigg, I haven't looked at it.

25 MR. SHAFFER: Briefly, he cites the South

ARGUE THE CASE BY THE ATTORNEYS

1 Carolina case that says basically that -- what was it,
2 Kennedy?

3 MR. THOMAS: Yeah.

4 THE COURT: McKennedy.

5 MR. SHAFFER: From 2002, Your Honor. In 2008 the
6 supreme court said under Anders procedure in South
7 Carolina, it is not a review of the merits.

8 THE COURT: What case is that?

9 MR. SHAFFER: That is an order, Your Honor, and I
10 have it cited -- that would be State V. Lyles, Your
11 Honor. It is an order at 381 S.C 442. That is an
12 order that basically says the Supreme Court is no
13 longer going to entertain cert positions from Anders
14 briefs because we find that in South Carolina it is
15 not a review of the merits.

16 It also says -- well, I mean, if you look at the
17 case and the finding of the Court of Appeals, it
18 doesn't say "affirm." It says "appeal dismissed,"
19 Your Honor. That is what they title all the Anders
20 briefs. That is because they are not reviewing it
21 under the merits, and it doesn't go to the Supreme
22 Court, and it is not appealable from that point, Your
23 Honor.

24 The -- he also cites to the Towbridge case from
25 Florida, and I apologize if it sounds complex, but

ARGUE THE CASE BY THE ATTORNEYS

1 basically under the Florida proceeding, perhaps maybe
2 it is a review of the merits, I don't know, Your
3 Honor, but certainly they are making it sound like --
4 the State is basically arguing that unless you review
5 on the merits, it is not properly Anders, which would
6 create a real problem with every Anders brief that's
7 been filed since 2008. I know it is a complex
8 argument to make to Your Honor, but essentially that
9 is saying that people have been denied due process in
10 all of their Anders briefs since 2008 if South
11 Carolina courts are not following proper procedure.

12 THE COURT: So you are saying the order in Lyles
13 did away with McKennedy?

14 MR. SHAFFER: Yes, Your Honor.

15 MR. THOMAS: I think both of those cases there is
16 federal habeas and federal court implications floating
17 around both of them. Both of them -- I think at least
18 the Lyles and McKennedy -- are addressing issues
19 relating to federal habeas. I think the law in
20 McKennedy that the court had to conclude independently
21 regardless of counsel's conclusion whether or not the
22 appeal has merit, I think that is still good law.

23 THE COURT: Then why don't -- I'm not going to
24 ask that question. Okay.

25 MR. SHAFFER: Just real briefly. This is

ARGUE THE CASE BY THE ATTORNEYS

1 probably the most simple argument I'll make.

2 Mr. Savitz had 25 years of experience doing appellant
3 work at that time. If he missed it, it is conceivable
4 that the Court of Appeals' staff attorney, no matter
5 how bright they were or attentive they were, could
6 have missed the issue.

7 THE COURT: That is the problem I have. The
8 presumption versus what might have happened.

9 MR. SHAFFER: Yes, Your Honor.

10 THE COURT: May have had a bad day, may have been
11 busy.

12 MR. SHAFFER: Yes, Your Honor. I could tell you
13 based off of a ruling on it, if the Court doesn't look
14 at the Anders as merits, which is what Lyles tells the
15 Court not to see Anders briefs as merits, I think that
16 based off of the merits of the argument, that that
17 would have been reserved on appeal. If this was not
18 an Anders review, if he briefed another issue, Your
19 Honor, that was not affirmed, I think that this Court
20 would have no problem in finding that he was
21 ineffective for failing to brief that issue, because
22 that issue was successful, Your Honor.

23 THE COURT: Okay. I understand the issue. The
24 last thing I'll say is the question I had in Conway:
25 Am I supposed to put myself in the shoes of an

ARGUE THE CASE BY THE ATTORNEYS

1 appellant judge on what would have been done if it
2 would have been briefed, or a staff attorney, or just
3 go with the presumption? I have to figure that out.

4 MR. THOMAS: That is why I tried to put on the
5 record the facts of Green and distinguish that from
6 Lee-Grigg as overwhelming evidence.

7 THE COURT: All right. Mr. Pantovich, I'm
8 issuing an order in this case, it will rule in your
9 favor or it will rule against you. Mr. Shaffer can
10 educate you on the procedural steps that may be taken
11 after I issue my order. If you don't like what is in
12 the order, there is a motion for reconsideration
13 and/or an appeal, and he can educate you on that. If
14 I rule in your favor, of course the State would have
15 the opportunity to appeal. All right.

16 MR. PANTOVICH: Thank you, sir.

17 THE COURT: Thank you.

18 (Whereupon, the proceedings concluded.)
19
20
21
22
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25

1 CERTIFICATE OF REPORTER
2

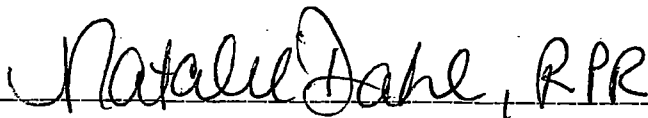
3 State of South Carolina)

4 County of Georgetown)
5

6 I, Natalie Dahl, Official Court Reporter for the
7 State of South Carolina, do hereby certify that the
8 foregoing is a true, accurate and complete Transcript
9 of Record of the proceedings had and evidence
10 introduced in the matter of the captioned case for
11 Georgetown County, South Carolina, on the 21st day of
12 March, 2014.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.
15

16 September 5, 2014
17

18 
19

20 Natalie Dahl, RPR

21 Court Reporter
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

EXHIBITS

Plaintiff(s) State
vs.
Defendant(s) Vladimir Pantovich

Case #: 12-cr-22-635 665
Judge: James
Trial Date: 3-21-14
Attorney: Rosh Thomas
Attorney: Tristan Shaffer

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
13 page jury charges	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
10	10	10
11	11	11
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Court
Reporter

Natalie Dahl / Brooke Cannon 3/21/14

Defendant's Requested Instruction Number 19

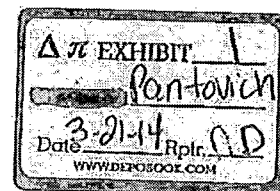
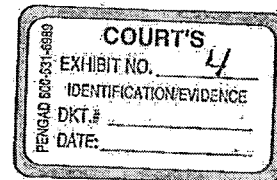
GOOD CHARACTER OF DEFENDANT

An accused, when charged with a crime, has the right of proving his general good character. He may introduce evidence of his good character which is inconsistent with the crime charged against him.

Evidence of the general good character of the accused is for the purpose of showing the improbability that the defendant would have committed the crime charged. The good character of the accused is like all other evidence in the case and is entitled to such effect and weight as you, the jury, may determine.

Good character evidence alone may create a reasonable doubt as to the commission of the crime charged. Thus, under some circumstances, a person might be entitled to a verdict of not guilty when his good reputation is taken into consideration even though a verdict of guilty might be authorized without the evidence of good character.

See State v. Green, 278 S.C. 239, 294 S.E.2d 335 (1982).



NO

Defendant's Request to Charge 24**Self-Defense – Reputation for Violence and Turbulence**

In a case where self-defense has been raised, you may consider the victim's reputation for turbulence and violence in the community as it bears on self-defense. In considering the actions of the defendant, you are warranted in considering the bad character and reputation for turbulence and acts of violence of the victim. If the defendant knew the victim was of such character and reputation, then he would be warranted in construing his actions more harshly and acting upon hostile appearances more readily than he would have been entitled to do to a man of good character and reputation. If the victim was a person of violent and dangerous character, more prompt and decisive measures of defense are justifiable than if she was of a peaceable disposition. Further, you may consider the victim's temper at the time of the fatal encounter.

Defendant's Request to Charge 25**Self-Defense – Propensity for Violence**

In considering the actions of the defendant, the jury is warranted in considering the propensity for acts of violence of the victim. If the defendant knew the victim was of such propensity, then the defendant would be warranted in construing the victim's actions more harshly and acting upon hostile appearances more readily than he would have been entitled to do to a man who was not of such propensity.

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Vladimir W. Pantovich, #326633,

Case No. 2012-CP-22-635

Applicant,

MEMORANDUM OF LAW
IN OPPOSITION TO
POST-CONVICTION RELIEF

v.

State of South Carolina,

Respondent.

FILED
GEORGETOWN COUNTY, S.C.
2014 APR 21 PM 4:09
ALMA R. WHITE
CLERK OF COURT

This matter comes before the Court pursuant to an Application for Post-Conviction Relief (PCR) filed June 22, 2012. The Court convened an evidentiary hearing into the application on March 21, 2014, at the Georgetown County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. At the conclusion of the hearing, the Court granted respondent's request file a response to Applicant's Memorandum in Support of Post-Conviction Relief. Respondent respectfully submits the Court should deny Applicant's application for post-conviction relief.

I. Question Presented

Was appellate counsel ineffective in filing an Anders¹ brief in Applicant's direct appeal from his voluntary manslaughter conviction?

II. Law/Analysis

Applicant contends appellate counsel was ineffective for not filing a merits brief on the issue of whether the trial judge erred in not charging the jury on Applicant's character. However, the Court of Appeals' review of Applicant's direct appeal pursuant to Anders gave

¹ Anders v. California, 386 U.S. 738 (1967)

him a full and fair review of his conviction. See Poston v. State, 303 S.C. 167, 168, 399 S.E.2d 592 (1989) ("Moreover, this Court's full review of Poston's appeal, as provided for in Anders, accorded Poston his full constitutional and statutory rights."). Even assuming this Court reviews appellate counsel's decision to submit an Anders brief under the Strickland² standard, Applicant has shown neither a deficiency nor prejudice.

Appellate counsel does not have a duty to raise every possible issue on appeal. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (citing Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 (1990)). Essentially, Applicant must show his preferred issue would have been meritorious if raised on appeal. Assuming the trial judge erred in failing to charge the jury on Applicant's character, Applicant must also show the error was not harmless. State v. Green, 278 S.C. 239, 240, 294 S.E.2d 335 (1982). However, Applicant cannot show the error was not harmless where there is overwhelming evidence of his guilt. Id. Here, the record conclusively establishes Applicant committed homicide. Applicant admitted to his son, the police, a television news crew, and the jury that he beat the victim with a baseball bat. The victim's blood covered Applicants' house. Applicant was arrested fleeing to North Carolina with the victim's dead body in his trunk. Both the physical and testimonial evidence overwhelmingly support the conclusion Applicant is guilty of voluntary manslaughter.

In cases where appellate courts have reversed a trial judge's decision to not charge on the defendant's character, there was a factual question as to whether the defendant committed the acts that formed the basis for a criminal charge. In State v. Harrison, 343 S.C. 165, 167, 539

² Strickland v. Washington, 466 U.S. 668 (1984). Applicant bases his assertion the Court should apply the Strickland standard on dicta from two cases. First, he cites a footnote from Bennett v. State, 383 S.C. 303, 680 S.E.2d 273 (2009). Second, he cites to section IV of Smith v. Robbins, 538 U.S. 259, 284 (2000). Because neither of these portions of authority were necessary to the resolution of the cases before those courts, this Court is not bound to adhere to them and may presume the Court of Appeals' review of Applicant's direct appeal was sufficient.

S.E.2d 71, 72 (Ct. App. 2000), the defendant was convicted of simple possession of cocaine. His defense to that charge was he was not in possession of the cocaine. Id. at 174, 539 S.E.2d at 75. In State v. Lee-Grigg, 387 S.C. 310, 314, 692 S.E.2d 895, 897 (2010), the defendant was convicted of forgery. There, her defense was that she was authorized to seek reimbursements for expenses related to her role as a director of an abused women's shelter. Id. at 314-15, 692 S.E.2d at 897. In each of those cases, there was a question as to whether each defendant had engaged in the conduct that formed the *corpus delicti* of their crime.

In Applicant's case, there is no question Applicant committed the act of killing the victim. Thus, his case is more apposite to Green, where the defendant admitted his participation in the crime. Green, 278 S.C. at 240, 294 S.E.2d at 335. Applicant's only defense to his charge was a claim of self-defense. In that vein, the trial judge thoroughly charged the jury on self-defense, including charging that it was allowed to consider the victim's prior history of physical abuse, her prior difficulties with Applicant, her reputation as a violent person, and her intoxication. Instances of Applicant's prior character can have no logical bearing on whether he acted in self-defense when he killed the victim. Furthermore, the jury clearly considered the character evidence because it convicted Applicant of voluntary manslaughter, apodictically determining he did not kill the victim with malice aforethought. In light of the entire record before the Court, Applicant simply has not shown appellate counsel performed deficiently in failing to brief the issue of the judge's character charge.

Regardless, Applicant was not prejudiced by appellate counsel's decision to file an Anders brief. By filing an Anders brief, appellate counsel ensured the Court of Appeals

reviewed the entire trial record for any potential issues of merit. In State v. McKennedy, 348 S.C. 270, 559 S.E.2d 850 (2002), the South Carolina outlined the Anders procedure as follows:

“[A]ccording to Anders, the reviewing court is obligated to make a full examination of the proceedings on its own. After such an examination, if the reviewing court agrees with the attorney, it may dismiss the appeal or proceed to a decision on the merits. On the other hand, if the court disagrees with the attorney's analysis of the appeal, it must afford the defendant ‘the assistance of counsel to argue the appeal.’ The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal.”

McKennedy, 348 S.C. at 279, 559 S.E.2d at 855. Accordingly, this Court must presume the Court of Appeals reviewed this preserved³ issue before dismissing Applicant's direct appeal. See McHam v. State, 404 S.C. 465, 475, 746 S.E.2d 41, 46 (2013) (“Under the Anders procedure, an appellate court is required to review the entire record, including the complete trial transcript, for any preserved issues with potential merit.” (citing State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991))). Applicant has presented no evidence to counter the presumption of regularity that attaches to court proceedings. Cf. Pringle v. State, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986) (citing State v. Britt, 235 S.C. 395, 111 S.E.2d 669 (1959); State v. Jones, 211 S.C. 319, 45 S.E.2d 29 (1947); State v. Waring, 109 S.C. 52, 95 S.E. 143 (1918)).

Furthermore, the United States Supreme court has indicated it is a difficult burden to prove prejudice in cases where counsel has filed an Anders brief. Smith v. Robbins, 528 U.S. at 287 (“[I]n most cases in which a defendant's appeal has been found, pursuant to a valid state procedure, to be frivolous, it will in fact be frivolous.”). The burden is high because “it is reasonable to presume that when the court affirms an Anders appeal it has fully considered and

³ Counsel for both Applicant and Respondent stipulated trial counsel properly preserved the challenge to the trial judge's charge.

rejected all potential issues that were apparent on the face of the record.” Towbridge v. State, 45 So. 3d 484, 487 (Fla. Dist. Ct. App. 2010). The Anders procedure requires the court to independently examine the trial proceedings and consider “any errors apparent on the face of the record.” Id. at 486-87 (citing State v. Causey, 503 So. 2d 321 (Fla. 1987); In re Anders Briefs, 581 So. 2d 149 (Fla. 1991)). Trial counsel clearly requested and was denied the inclusion of the character charge in a pretrial conference, and the trial judge went as far as to say the issue was preserved for the record. (Trial Tr. 538:10-13). Applicant has presented no evidence to show the character charge was not apparent from the face of the transcript or overlooked by the Court of Appeals. Therefore, under the facts of this case, the Court of Appeals’ compliance with the Anders procedure negates any shortcomings from appellate counsel’s decision to not brief the character charge issue.

III. Conclusion

Applicant has failed to demonstrate appellate counsel failed to brief a meritorious issue on appeal. He has likewise failed to demonstrate an irregularity in the Anders procedure such that this Court can determine the Court of Appeals did not independently determine his preferred issue is meritless. Therefore, Respondent submits this Court should deny the application for post-conviction relief.

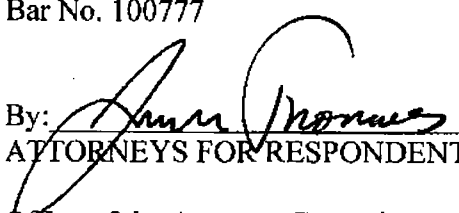
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

March 28, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Vladimir W. Pantovich, #326633,)

Case No. 2012-CP-22-635

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

FILED
GEORGETOWN COUNTY, S.C.
2014 JUN 16 PM 3:54
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed June 22, 2012. Respondent made a timely Return on or about September 25, 2012. The Court convened an evidentiary hearing into the matter on March 21, 2014, at the Georgetown County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel, Stuart M. Axelrod, Esquire, testified at the hearing. The Court had before it a copy of the trial transcript, the records of the Georgetown County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and exhibits introduced at the hearing. Counsel for Applicant and Respondent also submitted memoranda in support of their respective positions. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. In April 2006, the

Georgetown County Grand Jury indicted Applicant for murder (2006-GS-22-126). Stuart M. Axelrod, Esquire ("trial counsel"), represented Applicant. On February 4, 2008, Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. On February 8, 2008, the jury found Applicant guilty of the lesser included offense of voluntary manslaughter. Judge Culbertson sentenced Applicant to fourteen (14) years imprisonment.

Applicant filed a timely notice of appeal. Joseph L. Savitz, III, Esquire ("appellate counsel"), of the Office of Appellate Defense, perfected the appeal with the filing of an Anders¹ brief. The South Carolina Court of Appeals dismissed Applicant's appeal on June 8, 2011. State v. Pantovich, Op. No. 2011-UP-275 (S.C. Ct. App. filed June 8, 2011). The remittitur was returned to the circuit court on June 28, 2011.

II. ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel (Trial & Appellate)"
 - a. "Counsel failed to use adversarial skills *Estelle v. Smith* 541 U.S. 454 (1981) 6th amendment right"
2. "No Expert Testimony to rebut States Experts (Fundament Fairness)"
 - a. "Counsel failed to provide Expert witness to testify (Van Dolen) (Rule 702)"

At the PCR hearing, Applicant proceeded on only an allegation of ineffective assistance of appellate counsel for failure to file a merits brief arguing the trial court erred by refusing to instruct the jury on the good character evidence defense.

¹ Anders v. California, 386 U.S. 738 (1967).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Trial counsel testified his theory of the case was Applicant struck the victim with a baseball bat in self-defense. He further testified everyone he interviewed indicated Applicant was not a violent person. Trial counsel testified he had no defense other than the self-defense theory because of the size disparity between Applicant and the victim. He also recalled the victim had a history of fighting with Applicant. Trial counsel identified Applicant's Exhibit One as three (3) proposed jury charges he submitted to the trial judge. One charge (Charge #19) addressed the Applicant's good character. Two other charges (Charges #24 & #25) dealt with the victim's reputation and propensity for violence. Trial counsel testified none of his proposed charges were issued by the trial judge. He further testified there was no State v. Green² charge in the judge's instructions. However, on cross-examination trial counsel testified the trial judge did include instructions on the victim's prior history of physical abuse, her prior difficulties with Applicant, her reputation as a violent person, and her intoxication.

² State v. Green, 278 S.C. 239, 294 S.E.2d 335 (1982) (discussing charge on defendant's good character).

B. Ineffective Assistance of Appellate Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. An allegation of ineffective

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assistance of appellate counsel requires an applicant show appellate counsel failed to raise a viable issue on appeal. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (citing Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 (1990)). The applicant must also prove prejudice by showing "there is a reasonable probability he would have prevailed on appeal." Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003) (citations omitted).

The Court finds Applicant failed to meet his burden of proof regarding his allegation of ineffective assistance of appellate counsel. Even assuming, *arguendo*, appellate counsel was deficient in failing to brief the trial judge's refusal to include Applicant's requested charges, Applicant has not shown how he was prejudiced by appellate counsel's performance. Specifically, the Court find the trial judge adequately covered Applicant's Charges #24 and #25 in his instructions to the jury. (Trial Tr. 581:12-582:22).

Regarding Charge #19, the good character instruction, Applicant has not shown he was prejudiced by appellate counsel's decision to file an Anders brief because the Court of Appeals' dismissal indicates it found no reversible error in the trial judge's instructions. To show prejudice in this regard, Applicant must also show an irregularity in the Court of Appeals' Anders procedure to be entitled to a new trial. Respondent argued that even if Applicant had shown a deficiency in the procedure, he still cannot prove prejudice because there is overwhelming evidence of Applicant's guilt. See State v. Green, 278 S.C. 239, 240, 294 S.E.2d 335 (1982) (holding that although a defendant is generally entitled to a good character instruction when he presents supporting evidence, he cannot show prejudice from the lack of the charge where there is overwhelming evidence of guilt). However, the Court finds there was not

A/5

overwhelming evidence of Applicant's guilt, and decides this case based on Applicant's failure to rebut the presumption of regularity in the Court of Appeals' Anders review.

The Court find Applicant has not proven there was an irregularity in the Court of Appeals' Anders procedure such that he would be entitled to a new trial. In State v. McKennedy, 348 S.C. 270, 559 S.E.2d 850 (2002), the South Carolina Supreme Court outlined the Anders procedure as follows:

"[A]ccording to Anders, the reviewing court is obligated to make a full examination of the proceedings on its own. After such an examination, if the reviewing court agrees with the attorney, it may dismiss the appeal or proceed to a decision on the merits. On the other hand, if the court disagrees with the attorney's analysis of the appeal, it must afford the defendant 'the assistance of counsel to argue the appeal.' The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal."

McKennedy, 348 S.C. at 279, 559 S.E.2d at 855. A presumption of regularity attaches to judicial proceedings, and this presumption should extend to the Court of Appeal's review under the Anders procedure. See Pringle v. State, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986) (citing State v. Britt, 235 S.C. 395, 111 S.E.2d 669 (1959); State v. Jones, 211 S.C. 319, 45 S.E.2d 29 (1947); State v. Waring, 109 S.C. 52, 95 S.E. 143 (1918)). Accordingly, this Court must presume the Court of Appeals reviewed this preserved³ issue before dismissing Applicant's direct appeal. See McHam v. State, 404 S.C. 465, 475, 746 S.E.2d 41, 46 (2013) ("Under the Anders procedure, an appellate court is required to review the entire record, including the complete trial transcript, for any preserved issues with potential merit." (citing State v.

³ Counsel for both Applicant and Respondent stipulated trial counsel properly preserved the challenge to the trial judge's charge. See State v. Johnson, 333 S.C. 62, 508 S.E.2d 29 (1998) (objection to a judge's charge is preserved where there is an on-the-record opportunity for discussion).

Williams, 305 S.C. 116, 406 S.E.2d 357 (1991))). The Court is not persuaded by Applicant's argument that a dismissal pursuant to Anders is procedurally distinct from an affirmation pursuant to a merits brief.⁴ Under either scenario, the Court of Appeals is required to make an independent determination that preserved issues do not warrant a new trial. A dismissal simply means the court reviewed all issues, not simply those counsel believes are meritorious. The end result in either scenario is that the Court of Appeals finds the defendant is not entitled to relief. Therefore, the Court of Appeals' compliance with the Anders procedure here creates a presumption of regularity, which the Court finds has not been rebutted by Applicant.

Furthermore, the United States Supreme Court has indicated applicants face a difficult burden to prove prejudice in cases where counsel has filed an Anders brief. Smith v. Robbins, 528 U.S. 259, 287 (2000) ("[I]n most cases in which a defendant's appeal has been found, pursuant to a valid state procedure, to be frivolous, it will in fact be frivolous."). The burden is high because "it is reasonable to presume that when the court affirms an Anders appeal it has fully considered and rejected all potential issues that were apparent on the face of the record." Towbridge v. State, 45 So. 3d 484, 487 (Fla. Dist. Ct. App. 2010). The Anders procedure requires the court to independently examine the trial proceedings and consider "any errors apparent on the face of the record." Id. at 486-87 (citations omitted); see also McHam, 404 S.C. at 475, 746 S.E.2d at 46 (Court of Appeals reviews all preserved issues for merit). Trial counsel clearly requested and was denied the inclusion of the character charge in a pre-charge

⁴ While a dismissal pursuant to the Anders procedure may not technically be a dismissal "on the merits," State v. Lyles, 381 S.C. 442, 444-45, 673 S.E.2d 811, 813 (2009), such a distinction is not relevant in the context of an ineffective assistance of counsel claim. The standard here is whether, but for counsel's failure, Applicant would have prevailed on appeal. In that context, there is no distinction between a review of a merits brief and a review of an Anders brief.

conference, and the trial judge went as far as to say the issue was preserved for the record. (Trial Tr. 536:21-538:25). The discussion regarding the character charge is clearly apparent from the face of the transcript. Applicant has presented no evidence to support a theory this issue was overlooked by the Court of Appeals. Therefore, this Court must presume the Court of Appeals' compliance with the Anders procedure included a review of this issue. Thus, Applicant was not prejudiced by appellate counsel's decision to file an Anders brief.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

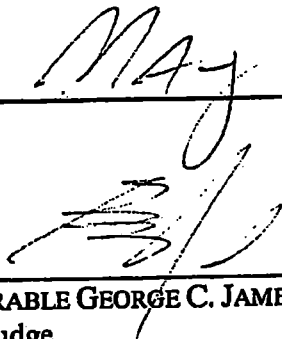
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf.

Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 16 day of May, 2014.



THE HONORABLE GEORGE C. JAMES, JR.
Presiding Judge

Junete, South Carolina

AXELROD

& ASSOCIATES
ATTORNEYS AT LAW

604 Sixteenth Ave. North • Myrtle Beach, SC 29577



Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

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STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on April 5, 2006, the Grand Jurors of Georgetown County present upon their oath:

That Vladimir Pantovich did in Georgetown County on or about March 7, 2006, wilfully feloniously and intentionally with malice aforethought, kill Sheila McPherson by beating Sheila McPherson to death; and Sheila McPherson did die as a proximate result thereof in violation of §§16-3-0010, South Carolina Code of Laws (1976), as amended, and the Common Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

RB3

WITNESSES:

GEORGETOWN COUNTY
SHERIFF'S OFFICE

ARREST WARRANT NUMBER:

K-088108

0116 § 16-03-0010

D/L#: [REDACTED]

DOI: 3-07-06

SID:

ACTION OF GRAND JURY

TRUE BILL

Date

4/5/6
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

DOCKET NO. 06-GS22-126✓

The State of South Carolina,

County of Georgetown

21357

RBB

COURT OF GENERAL SESSIONS

APRIL TERM 2006

THE STATE

vs.

VLADIMIR PANTOVICH

[REDACTED]
Murrells Inlet, S.C. 29576

DOB: [REDACTED]

SS#: [REDACTED]

J. GREGORY HEMBREE, SOLICITOR

INDICTMENT FOR

MURDER