

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED

APR 24 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

THEODORE MANNING,

APPELLANT

SUPPLEMENTAL RECORD ON APPEAL

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*****THE FOLLOWING EXHIBITS WILL BE TRANSPORTED TO THE COURT OF APPEALS: STATE'S EXHIBITS 133 (CD), 226 (PHOTO) AND 227 (PHOTO).**

Statement of

Theodore Roosevelt Manning DOB 10/10/79
8047 Bluff Road
Gadsden, S.C. 29052

Made at

Columbia, South Carolina, this 29 day of May, 2009, at 2044 hours, in the presence of Sgt. McDaniels of the Richland County Sheriff's Department.

I, Theodore R. Manning IV, understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer. Do make the following statement:

Q: Sgt. Shawn McDaniels

A: Theodore R. Manning IV

Q: What can you tell me about the incident that took place at your residence 8047 Bluff Road on 05/06/09?

A: Nikki showed up to my house about 9:05 that morning. She came in the house and grabbed my hand and told me that her car was on "E". I told her that I would take care of that. She told me that her light had come on when she got to the Fort Jackson Blvd. exit. She told me that she thought that she wasn't going to make it. She led me upstairs to the bedroom. She told me that she liked what I done with the place. We got in bed and started having sex. After we finished we got up and she went downstairs and went to her car. She got her phone out of her car and started checking some of her messages. She told either Mike or Mark that she was going to be with her grandmother all day. Then

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: For Hysug

Signed: Kee-ene

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 11 pages and a true copy has been given to me this 29 day of May, 2009.

Sworn to and subscribed before me
This 29 day of May, 2009

Signed: Kee-ene

Notary Public for South Carolina
My commission expires 65304

she started making phone calls. She kept walking from the car to the edge of the yard by the mailbox. Then she came back to the car and got a calendar and started talking about her schedule. She was just talking to different co-workers about her schedule and when she was going to work. Then I heard she made some more calls and I heard her mention about gas again. I told her that I got her. That is when she got off the phone. She came back up to me and we started talking about the relationship or the relationship that we had. She told me that she wished it would have worked. I told her that she had her mind set and I had my mind set and that's just what it was...a difference of an opinion. She was like I need gas and I said "let me get my wallet". I went upstairs got the wallet and came back downstairs. She got in the passenger side and I got in the driver's side. She said be careful because it might give out of gas. We went to Freedman's. I filled the car up. then she was like "What you want to do?" I told her nothing and we went back to the house. She said "I am kinda tired, can I lay down for a few?" I said fine you know where the bed is. She said are you going to join me. I told her okay. We went back upstairs, had sex again. We got up she started walking through the other bedrooms. She told me that I needed to throw the boxes out of one of them. Then she went in the other bedroom. She said what are you going to do with this. I told her that I think I make it my daughter's room. She mentioned how she decorated her house again. Cause that is one of her things that she do big. She likes to decorate. I said what would you do to this room. She looked around and said "paint it, put some borders up and then she saw my bag was open. The gun was sitting in the bag. It was a 380 highpoint. She picked it up. I told her to stop playing. I grabbed the gun and took it away from her and when I pulled it back from her, she turned around and it went off. I about...shit myself. I didn't know what to do. I got scared and I started shaking. I grabbed my phone. I didn't know who to call so I hit redial and I called Kendra. I told her that I didn't know what to do and I needed her. She came to the house. She said that she was off anyway. She wasn't feeling well. When she got to the house she told me to pull the car in the garage.

Q: Which car?

A: The Honda....Nikki's car.

Q: What happened after that?

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: For [Signature]

Signed: [Signature]

Witness: _____

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Sworn to and subscribed before me
This 29 day of May, 2009

Signed: [Signature]

Notary Public for South Carolina
My commission expires 6/30/11

000002

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A: She went in the house and she told me that she would take care of it. I didn't know what to say. I was like "How?" and she said "I'll take care of it". She went downstairs and she got a bucket, she had bleach. She put a bunch of bleach in the bucket and a little bit of water and she came upstairs and she started mopping the floor. She started mopping down the stairs. She mopped the garage floor all around the car. Then she was like "It's such a pretty car...I want to keep it" I was like "Huh!!"...like surprise.. I could not believe what she was saying. She asked me was I going to strip the car and if there was anything that she could have. When she asked me I said stripped the car...what do you mean. She said is there anything in there that I can use. She said that she saw Nikki's purse on the seat. It was tan and brown. She looked inside of it and said "I can keep this it's a real coach" She was looking at Nikki's drivers license and her credit cards. She had ATM cards in there. Then that is when Kendra said "Let's get rid of the car" I asked her "Where... I do not know anywhere". First she said Irmo, Lexington, and Aiken. She said that she had family around there and she knew the area. She asked me what about Winnsboro, where my family was from. I told her I didn't know anywhere in Winnsboro. She said "Well I got a full tank of gas...let's just get on the interstate and ride until we find somewhere". After that she said "Is there anything in the car that I can use?" She asked me about the rims cause the car had rims. I told her that I didn't know. She said "Try to take them off" I took the rims off but they wouldn't fit her car, because she had 4 lug and the rims are universal 5. She asked me if I was sure and I said "they just won't fit your car" and so I put them back on Nikki's car. After that she said grab the gas can. It was in the garage by the corner. She asked if there was anything in it. It was something in it, so I said yeah there's gas in it. So we went up and got on 77 and started riding toward Charlotte like North. She told me to call her friend Leone because she could not call out from her cell phone. Her phone was off. She could get incoming but she couldn't make outgoing calls. She called her because she wanted her to pick up her kids cause she wasn't going to make it. I tried to do it on a three-way at first, but it kept disconnecting, so I called her and told her that Kendra needed her to get the kids. She was like where is Kendra and I told her that she was behind me. She said that she would get the kids. I called Kendra back and said that Leone said that she was going to get the kids. She told me to tell Leone to call her. I called her back and told her that Kendra wanted you to call her. After that I gave her a few minutes I tried to call Kendra

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: For Holyson

Signed: [Signature]

Witness: _____

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Sworn to and subscribed before me
This 29 day of May, 2009

Signed: [Signature]

[Signature]
Notary Public for South Carolina
My commission expires 05/30/11

000003

Page 3

back but her phone wasn't picking up. Kendra was driving her car and she had me driving the Honda. I kept calling and it kept going to voice-mail. Then finally it went to her phone and she answered. She told me that she just told Leone that she was doing something with me and she would get the kids later. After that we kept riding and we came up on an exit and she said take this exit. We got off on the exit and I asked if she knew this was the right exit. She said "Do you recognize anything out there?" I told her no. She said "let's ride it and see what's further down". We go further down the road, and it was like a little dirt road. It was daytime. We saw the little dirt road and I kept going and she started flashing her lights and blowing her horn. She was behind me. So I pulled into the church parking lot. It was big and white that is all I remember. I pulled in and she asked me if I saw the dirt road. She told me "Go down the dirt road and see what else is down there" I called her back and told her that I didn't see anything. She asked me how far down was I. I told her that I didn't know I guess a good ways. She got out her car and came down the dirt road. She had already put her stuff in Nikki's purse and had it on her arm. When she got to the car she saw that Nikki had some knitting stuff in the car and so she took the crochet needles. She saw that she had some shades so she took the shades. It was some tan like big face shades. After that she said "pour the gas" I poured what was in the gas tank on the car. She took a rag that was out of the car and she stuck it in the gas tank. She said "make sure that it's wet", so I poured some of the gas...I mean some of the liquid that was in the tank on the rag. She pulled out her lighter, cause I told her that I didn't have anything on me. She tried to light it...it wouldn't light. She gave it to me and told me to try...it still wouldn't light. It was actually water in the tank. So when we figured that it was water in the gas can she said "Well we need to go and get gas" We went back to the car. She gave me the keys and said "you are going to drive" We left the church and started going back toward the interstate. A cop pulled up behind us and was following us toward the interstate. I started getting really scared cause I didn't know what was going on. She said "you need to relax and calm down like me" She told me "slow down, watch your speed and put your seatbelt on". I slowed down, got back on the interstate and she had already sat back in the front seat and put the shades on...it was Nikki's shades. I got on the interstate and the time that we got on the on-ramp the cop flew past us. I think it was a state trooper. We started going and we got to the exit that was right before and it said gas. It had the

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Witness: For [Signature] Signed: [Signature]

Witness: _____

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Sworn to and subscribed before me
This 29th day of May, 2009

Signed: [Signature]

Notary Public for South Carolina
My commission expires 053011

000004

Page 4

little gas sign that let us know which direction. I asked her which gas station cause it was like three of them. She said "This one" and that was the BP that was on the right. I got out and she gave me the gas can and she said get some gas. She said "Don't use your card...I am going inside to pay". She paid for like two dollars. I put the two dollars in the can. She came out and she looked at me and said "Do you think that is enough" I told her that I did not know. She went back in the store and paid for more gas. When she came out this time she had two of the Miller High Life 22ounce cans. I was messing up the gas, so she told me that you gotta put the handle up first and give it a second and then start pumping it. I did that and she got a plastic bag that was in her car. She said "see not cleaning out my car comes in handy" I put the gas can down in back floor of the car behind the driver's seat. It was her car. When I got in the car she said "you are going to have to drink this" She was trying to get me to drink one of the beers. I told her that I didn't want it. She said "You are the man and you are all nervous and I am cool and calm." We went and got back on the interstate and we got back where the dirt road was. She said park on the upper side that was closer to the dirt road. I did that and she slid over. She said "I am going to keep the car running" I told her that I didn't have anything on me. I was talking about a lighter or anything. She gave me her lighter. She took the paper bag that the beers was in and twisted it up and gave it to me. She told me after I poured the gas on the car, to light the bag and drop it on the gasoline to start the fire. I did that and I came back up the dirt road. I got to the church and there was another car in the church and she said "he just pulled up...hurry up" We started driving off, she had me driving still. She was in the front seat but she turned and said "I'm trying to see the fire" We got back on the interstate and started riding. She was still looking back as if she was excited or happy. Then she said I see smoke. It was like black smoke going up from that area. She said "I think that's it" After that I told her that I wanted to go home. She was still looking at the bank cards. She said "do you know the pin?" I told her that I think I do. She said "Do you know the pin" I said "Yeah" So she told me to go to the bank. We got some money out the account and so we drove around and she drove to the ATM again and she told me to get some more out. This time she backed up all the way around the bank when we left. I asked why she did that and she said "so they won't get my plate" She told me to go ahead and drink. She asked me about the other ATM cards she was like "What about using it to order something" I told her that I didn't know the pin

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: For Holly Swain

Signed: [Signature]

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 11 pages and a true copy has been given to me this 24th day of May, 2009.

Sworn to and subscribed before me
This 24th day of May, 2009

Signed: [Signature]

[Signature]
Notary Public for South Carolina
My commission expires 2-23-11

000005

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for it. After that she told me to call Leone and tell her that she would be on her way. Then we went to my house. She told me don't worry about the bleach, she would get it later. While I was downstairs in the garage she said that she would take care of the rest. Then she came back downstairs and told me that she would talk to me later. She told me to go and get some rest.

Q: Where is the gun that was used to shoot Nikki?

A: Last time I saw it was upstairs. She hasn't told me anything about the gun since. When I told her that they took my gun, she asked me which one. I told her that they took my 9 millimeter highpoint, and she said "Good"

A few weeks went by and I told her that the police came and asked me questions about Nikki. She wanted to know what I told them. I told her that I told them that she had showed up at 9 something and then she had left at 1:30 with a full tank of gas. She told me "Good...you got just as much to lose as I do" I was like "What that mean?" She said "We are in this to the end...till death do us part" That was how she worded it. Then when they came and I told her that they were asking questions about her because of the bleach and the carpet cleaning from the next day. She said "don't worry about it...I got my alibi, I got plenty of people that would say that they were with me or that they saw me" Then a couple of more days went by, so I went by and saw her. She said that she wanted to see me. She showed me a newspaper article that she had saw. Then she said that she saw the video surveillance from the bank. She said that it's a good thing that you had your head down the whole time. She said "In the other video you really couldn't tell that it was you...I saw it a couple of times and I really couldn't make it out" She said that Jordan saw it and she didn't say anything. Normally if she see a picture or anything of me...she would say "Teddy bear" Jordan is Kendra's daughter. I asked her if I should start worrying and she told me "No" She said "You are fine just relax" I told her that it's kind of hard to relax I been stressed out every since. She told me about going out of town to Georgia or North Carolina. She said "If we go to Georgia, or North Carolina and use her cell phone that might throw off the police...because they had sightings of her car in Charlotte and she was suppose to meet friends in Georgia" She said "I don't know why they are still down here" meaning the Charlotte police. She said "Aiken isn't far enough, and Augusta is too

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: For Hays

Signed: PTJ-Ring

Witness: _____

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Sworn to and subscribed before me
This 29th day of May, 2009

Signed: PTJ-Ring

W. Wilson
Notary Public for South Carolina
My commission expires 2/3/04

000006

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close...you don't have to call nobody, just send a text message...in the text say something like..."I know everybody is worried about me, I just needed some time to clear my head...I'm fine" and then throw away the phone after that". Then that is when her place got searched. I got woke up around 8:00 at night. It was Detective Hopkins. I missed her call so I called her right back and she was asking questions about Kendra. At 10:00 Kendra called me, and when Kendra called me Detective Hopkins was already beeping into her line. She asked me if that was a 704 number and I told her that that was her. I told her that she needed to call them back because they needed to talk to her. I got off the phone with her and I called Detective Hopkins and I told her that I had spoke with Kendra and that she needed to call her back. She asked me how did I speak to her and I told her that she called me from a prepaid phone that she had. I talked to Kendra later on that night and she said that they were sitting in her parking lot waiting on her when she got home with the kids. She told me that they searched her car and searched her apartment and they were asking questions about me and she said your phone must be tapped. Then she said "but...I told them the truth...I didn't know it was a crime buying bleach" We got off the phone and I called her back later and she said that she was smoking a few cigarettes and her nerves were starting to calm down and that she was fine. She called back around 10:00 that morning and she was crying and she said that they went through her mail, searched her car and they went through everything. She said that they took pictures of her car and took pictures of the engine. She said that they took pictures of her license plate. She also said that they took her bank receipts, a chain that her sister had gave her, and some work gloves that I had left in her car from when I had worked on it. I told her what she had been telling me "calm down...you said that it would be okay" She said "It's just my nerves" I told her that she needed to get with her lawyer, because that is what everyone was telling me that I needed to do. That was it. She called me throughout the day off and on. All day throughout the day she kept calling. I think it was like on Wednesday.

Q: How long have you known Kendra?

A: Off and on...about maybe three or four years.

Q: Do you know her by name and sight?

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: [Signature]

Witness: _____

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Sworn to and subscribed before me
This 24th day of May, 2009

Signed: [Signature]

[Signature]
Notary Public for South Carolina
My commission expires 05/30/11

000007

A: Yes. Kendra...I forgot her middle name, she don't really use it...Goodman. She go by "D.J."

Q: What type of relationship do you and Kendra currently have?

A: We were friends.

Q: Have you ever been intimate?

A: Yes.

Q: When was the last time you and Kendra were intimate?

A: Like the beginning of the month.

Q: Would that be this month of May in 2009?

A: Yes.

Q: What were you wearing during the moment you and Kendra decided to burn Nikki's car?

A: It was a real light gray t-shirt. It had the word "STAFF" on the back. Some grey work pants. Black Nike's. They are like "Flights" They are in the bedroom. They are real beat up.

Q: Where did you get that shirt from and where are the clothes right now?

A: I got it from when I worked at my Mom's Camp Sunshine. It is a camp that work with handicap kids. That was back when I was in High School. Kendra asked me for that shirt she said that she wanted to get rid of it. She said that she saw it on the camera. She also asked me after they told her that they searched my house, she asked me did they find that shirt. I told her no. I told her that it was in the bottom of the clothes basket in the closet. That is when she said give it to her cause she wanted to get rid of it. I didn't. It is still in the clothes basket in the closet in the master bedroom. It is a round basket sitting on the floor.

Q: What was Kendra wearing during the time that you and her burned Nikki's car?

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: Jim Hays

Signed: P. J. R. R.

Witness: _____

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Sworn to and subscribed before me
This 24 day of May, 2009

Signed: P. J. R. R.

Will McGinnis
Notary Public for South Carolina
My commission expires 05304

000008

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A: I don't remember she had a skirt on...like a jean skirt. I do not remember what kind of shirt she had on. Kendra told me that she had made up a story in her head about what had happened. She told me that Nikki was fine and she ran off to Mexico.

Q: Right before Nikki was shot did you actually grab the gun from her?

A: Yes.

Q: So the gun was completely in your hands?

A: The handle of it was in my hand. The front end of the gun was like in her hand but it was inside of her jacket. Her jacket was big on her so it was over her hand. She went to turn around and when she pulled her hand it was like the gun just went off.

Q: Did you have your finger on the trigger?

A: I do not think so, but I am not sure. All I know is that I pulled it and then it went off.

Q: What did Nikki say?

A: She didn't say anything...she just fell. There was no blood anywhere. I couldn't tell whether she got hit or whether she just fainted. She just hit the floor. It wasn't like she fell to the floor hard. It was almost like she just sat down. I didn't see no blood. I tried to shake her to see if she was going to wake up. She didn't move and that is when I got scared I mean really scared. I didn't know who to call and I just kept pressing the call button and I called Kendra.

Q: Who went inside and bought the gas?

A: Kendra did.

Q: Did you ever see where Nikki was shot at?

A: She didn't have any blood. Later on...like after we got her in the car. It was like a few drops on her shirt.

Q: Did you see Kendra mopping?

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: Jan Holyson

Signed: Y. T. R. [Signature]

Witness: _____

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Sworn to and subscribed before me
This 24th day of May, 2009

Signed: Y. T. R. [Signature]

[Signature]
Notary Public for South Carolina
My commission expires 05300

000009

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A: She mopped the entrance to the bedroom. She mopped the hallway from where the bedroom door is all the way to the steps. She mopped down the steps, each step. She mopped at the bottom of the steps...like a 90 degree angle from the base of the steps all the way to the door. She mopped the steps going to the garage. She mopped the floor from at the bottom of the steps all the way around to Nikki's car, and when I moved the car she mopped that area again.

Q: How did you know that Nikki was dead?

A: She didn't have a pulse.

Q: What was Nikki wearing right before you and Kendra placed her in the car?

A: Like a peach jumpsuit from New York and Company. She had a white T-shirt on that said New York and Company on the front, and some white New Balance sneakers.

Q: Did Nikki have any jewelry or tattoos?

A: She had a big red butterfly on her stomach...under her belly button. She had a belly ring.

Q: How did you meet Nikki?

A: Online. It was Tagged.com

Q: In retrospect what if anything would you do differently?

A: I would have called somebody else for help. I would have never let her touch the gun. I would not have let it go this far.

Q: Is there anything that you would like to add to this statement?

A: I would like to apologize to Nikki, her family and her friends. I never meant to hurt her. I never would have did it intentionally. She deserves so much more. She is just one of those people that you never forget. Everybody has their faults but...even when you knew she wasn't telling you the truth...there was still something about her. I never felt so bad in my life about doing anything. I want to apologize to my family, and my friends for putting them through this mess. I should have just told the truth from the beginning,

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: For Holly S. Wynn

Signed: Y. T. R. King

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 11 pages and a true copy has been given to me this 20th day of May, 2009.

Sworn to and subscribed before me
This 20th day of May, 2009

Signed: Y. T. R. King

W. S. Wynn
Notary Public for South Carolina
My commission expires 6-5-2011

instead of just being scared. I let everybody down. I let myself down. I just wish that I could take it all back. I got so many different feelings and the biggest one is that I let everybody down.

Q: Did you paint or make anything alterations or removals after she was shot in the house?

A: No.

Q: How do you know her pin number?

A: She told me once while we were in Charlotte her pin number because she wanted me to go to the bank for her, but I didn't go. It was like 74 or 19 something. I do not know where she got the numbers from. She told me like twice that day. That was probably in March. It was like the first time that I went up there. The first time she came down here back in March she gave the keys to her house. She came down and she spent the night. Actually she came down right after she got off work and she spent the night.

Q: Is this statement the whole truth?

A: Yes.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: Ina Holys Wynn

Signed: X C J R

Witness: _____

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Sworn to and subscribed before me
This 29 day of May, 2009

Signed: P J - R

W M S H
Notary Public for South Carolina

My commission expires 653011

000011

Page 11

Statement of

Theodore Roosevelt Manning IV
8047 Bluff Road
Gadsden, S.C. 29052

Made at
Columbia, South Carolina, this 30 day of May, 2009, at 138 hours, in the
presence of Sgt. McDaniels/ Sgt. K. Isenhoward of the Richland County Sheriff's
Department.

I, Theodore Roosevelt Manning IV, understand that I have the right to remain
silent. Anything I say can be used against me in court. I have the right to talk to a
lawyer for advice before you ask me any questions, and to have a lawyer with me
during any questioning. If I cannot afford a lawyer, one will be appointed for me
before any questioning, if I wish. If I decide to answer questions now, without a
lawyer present, I still have the right to stop answering at any time. I also have the
right to stop answering at any time until I talk to a lawyer.
Do make the following statement:

Q: Sgt. Shawn McDaniels/ Sgt. K. Isenhoward

A: Theodore Roosevelt Manning IV

Q: Is it true that you would like to change a part of your first statement?

A: Yes.

Q: Are you doing this of your own free will and accord?

A: Yes.

Q: Have you been properly advised of your Miranda Rights?

A: Yes.

I have made the foregoing statement freely and voluntarily without fear, threat, promise
or reward or hope of reward of any kind.

Witness: Sgt. W. M. A.

Signed: X. C. Isen

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting
of 3 pages and a true copy has been given to me this 30th day of May, 2009.

Sworn to and subscribed before me
This 30th day of May, 2009

Signed: X. C. Isen

[Signature]
Notary Public for South Carolina
My commission expires 10/28/2014

Q: Were you fully honest when you gave your first statement?

A: No.

Q: What would you like to change or add to your statement?

A: It was a disagreement between the two of us. I was disregarding some of her questions when it came to the relationship...which turned into an argument that got heated. Nikki picked up the firearm, pointed it at me. I asked her what the hell was she thinking. She asked me was I still serious, referring to whether or not I wanted to have kids with her. I told her that it was just friends with benefits, which made her even madder. I told her stop playing and took the gun from her. I grabbed her hands and just took it from her. Then I pointed it at her and asked her "Are you fucking crazy" I told her that "You can't be mad at me because when I came up to see you last you were asking me if I wanted to be friends with benefits". She was still talking about whether I was serious. The whole time she was crying...even when she was pointing the gun at me she was crying. She hit the gun and I asked her again "Are you fucking crazy" She told me "You're just like everybody else. You said that you were going to be there for me and you hurt me just like everybody else". She went to take a step like motioned toward me, but she pivot when she did it and I pulled the trigger to show her to stop playing. I didn't see where the bullet went. I didn't see where she got hit anywhere. I couldn't tell if she got hit anywhere. She just sat down, her eyes were closed, she wasn't breathing, she didn't have a pulse. I thought that she just had fainted. I kept pressing the call button and it called Kendra back.

Q: Did you ever try to call 911?

A: No.

Q: Why was Kendra the first person that you called?

A: To be honest I didn't know who to call. She was just the last person that I had talked to.

Q: When the firearm was discharged were you the only one in possession of the gun?

A: Yes.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: Sgt. McNeil

Signed: Y. T. - R. R.

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this 30th day of May, 2009.

Sworn to and subscribed before me
This 30th day of May, 2009

Signed: Y. T. - R. R.

Notary Public for South Carolina

My commission expires 10/08/2017

000013 Page 2

Q: Did Nikki in anyway strike or hit the gun by accident thus causing the gun to discharge?

A: No.

Q: Were you completely honest in your first statement regarding the actions of Kendra?

A: Yes.

Q: Is there anything that you would like to change in reference to Kendra actions on 05/06/09 from your first statement?

A: No, she didn't get scared until they searched her house and car. She said that they told her something. I do not know what they told her. it wasn't like she got scared that night, she got scared that morning. She was pissed that they searched in front of her daughter.

Q: Explain to me why Kendra would feel the need to help you get rid of a body?

A: Maybe because she said that she would love me to the end.

Q: Is there anything else that you would like to add to this statement?

A: No.

Q: Is this statement the whole truth?

A: Yes.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: Sgt. W. Dea

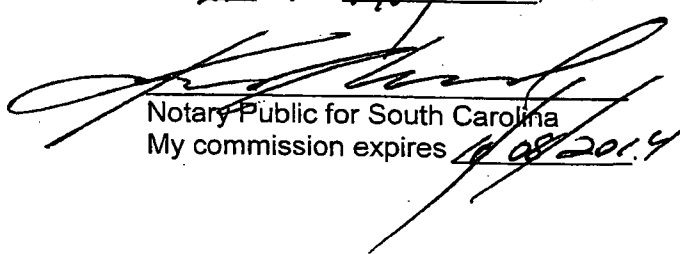
Signed: XYS - King

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this 30th day of May, 2009.

Sworn to and subscribed before me
This 30th day of May, 2009

Signed: XYS - King

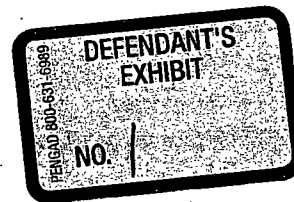

Notary Public for South Carolina
My commission expires 08/2014

000014 Page 3

STATE OF SOUTH CAROLINA

County of Richland

SEARCH WARRANT

Date: 05/21/2009Officer: Sgt. Robinson

000015

STATE OF SOUTH CAROLINA}

COUNTY OF RICHLAND }

SEARCH WARRANT

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF _____

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

The location to be searched is the address of 8047 Bluff Road. This is the residence of Theodore Manning. The residence is described as a split level red brick/yellow sided dwelling with white trim. The second level is on the right side of the house and the left side is a single level. The numbers for the address are located on a gray mailbox which directly accesses Bluff Road. The search is to include all vehicles and outbuildings on the curtilage of the property.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Evidence of murder which includes clothing, blood, blood stains, ammunition, bullets, shell casings, spent projectiles, firearms, weapons, latent fingerprints, and trace evidence such as hairs, fibers and body fluids. Property belonging to the victim, which may include but not limited to, mobile phone, purse, clothing, and jewelry. Evidence of a clean up which may include solvents, cleaning chemicals, and paints. Evidence of ownership and occupancy of the residence located at 8047 Bluff Road, Gadsden, South Carolina 29052, such as papers, bank statements, utility and phone bills, and other personal papers and effects located in the residence that may be used to identify occupants of the residence, and other items of evidence that may constitute the crimes of Murder.

This Search Warrant shall not be valid for more than ten days from the date of issuance.
A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbia, S.C.
May 22, 2004

[Signature] (L.S.)
Signature of Judge

000016

STATE OF SOUTH CAROLINA}

COUNTY OF RICHLAND }

SEARCH WARRANT

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF _____

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

DNA buccal swabs from Theodore Roosevelt Manning IV (DOB 10/10/1979).

This Search Warrant shall not be valid for more than ten days from the date of issuance.
A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbia, S.C.
May 22, 2009

MBL

Signature of Judge (L.S.)

000017

STATE OF SOUTH CAROLINA}

COUNTY OF RICHLAND }

AFFIDAVIT

Personally appeared before me, one Inv. Tommy Croxton who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Evidence of murder which includes clothing, blood, blood stains, ammunition, bullets, shell casings, spent projectiles, firearms, weapons, latent fingerprints, and trace evidence such as hairs, fibers and body fluids. Property belonging to the victim, which may include but not limited to, mobile phone, purse, clothing, and jewelry. Evidence of a clean up which may include solvents, cleaning chemicals, and paints. Evidence of ownership and occupancy of the residence located at 8047 Bluff Road, Gadsden, South Carolina 29052, such as papers, bank statements, utility and phone bills, and other personal papers and effects located in the residence that may be used to identify occupants of the residence, and other items of evidence that may constitute the crimes of Murder.

DNA buccal swabs from Theodore Roosevelt Manning IV (DOB 10/10/1979).

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

The location to be searched is the address of 8047 Bluff Road. This is the residence of Theodore Manning. The residence is described as a split level red brick/yellow sided dwelling with white trim. The second level is on the right side of the house and the left side is a single level. The numbers for the address are located on a gray mailbox which directly accesses Bluff Road. The search is to include all vehicles and outbuildings on the curtilage of the property.

A 2001 four door Toyota Avalon, VIN 4T1BF28B11U127963, SC Tag ARV245, white in color registered to Theodore Roosevelt Manning IV.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

Sworn to and Subscribed before me

this 22 day of May, 2009

[Signature] (L.S.)
Signature of Judge

T. Croxton for
Affiant Sgt D. Robinson

Address Richland County Sheriff's Department5623 Two Notch Road, Columbia, S.C. 29223Phone (803) 576-3042

000018

STATE OF SOUTH CAROLINA}

COUNTY OF RICHLAND }

AFFIDAVIT

On 05/11/2009 at approximately 2136 hours, Officer R.B. Pickler (2467) from the Charlotte-Mecklenburg Police Department (CMPD), located at 601 East Trade Street, Charlotte, North Carolina 28202 was dispatched to a call for service in reference to a missing person. Upon arrival to 8618 Rozumny Drive, Charlotte, North Carolina 28216, police learned from the reporting person, Akilah Weaver, that the victim, Nikki McPhatter, resides at this address. Weaver continued to advise that she was a very good friend of McPhatter's and she had not heard from her since May 5, 2009. McPhatter's supervisor, Don Carter, also advised detectives that McPhatter has not reported to work, which is uncharacteristic. CMPD officers completed a missing persons report under agency number 20090511-2136-00.

During the course of the investigation, Detectives interviewed family, friends and co-workers, who advised that McPhatter was enroute to South Carolina to end a relationship with a boyfriend known only as, "Teddy".

Detectives obtained bank records and learned that on 05/06/2009 at approximately 1852 hours, multiple attempts to access McPhatter's ATM/Debit card were completed. Detectives obtained bank video surveillance and two black males were observed completing the transactions.

Detectives obtained a court order to access McPhatter's telephone records. During a search of the records, officers were able to locate a telephone number that belonged to a Theodore Roosevelt Manning IV.

On 05/21/2009, Detectives from CMPD responded to South Carolina and were able to locate and interview Manning. In addition, detectives were able to independently verify from several sources that the telephone number listed on McPhatter's phone records belonged to Manning. During Manning's interview, he advised that he last saw McPhatter at his residence located at 8047 Bluff Road. He confirmed that the telephone number was his and he advised that he and McPhatter did have sexual intercourse inside his residence. Manning also stated during his interview that he had followed McPhatter in the above listed vehicle to a gas station to fill up McPhatter's vehicle.

A court order was obtained on McPhatter's cellular telephone tower information and detectives learned that the last time McPhatter's mobile phone accessed a cellular tower was on 05/06/2009 at 1506 hours. The cellular tower is located at 2522 Old Eastover Road, Eastover, South Carolina 29044.

Based on these facts, it is believed that there is probable cause to believe that evidence of murder contained within the residence located at 8047 Bluff Road, 8047 Bluff Road, Gadsden, South Carolina 29052. Therefore, I request the issuance of a search warrant based on the affidavit and the facts contained therein.

Sworn to and Subscribed before me

this 22 day of May, 2009

MBH (L.S.)

Signature of Judge

Chaylen for Sgt D. Robinson
Affiant

Address Richland County Sheriff's Department

5623 Two Notch Road, Columbia, S.C. 29223

Phone (803) 576-3042

000019

Film No.	File No.
SEARCH WARRANT ©	
In the matter of: Theodore Roosevelt Manning IV B/M, 10/10/1979 8047 Bluff Road Gadsden, South Carolina 29052	
Date issued:	Time issued: ☐ a.m. ☐ p.m.
Name of Applicant Detective B.G. Fitch, #2737	
Name of additional affiant	
Name of additional affiant	
RETURN OF SERVICE	
I certify that this SEARCH WARRANT was received and executed as follows	
Date received	Time received ☐ a.m. ☐ p.m.
Date Executed	Date and time of return
☐ I made a search of:	
As commanded.	
☐ I seized the items listed on the attached inventory. ☐ I did not seize any items. ☐ This warrant was not executed within 48 hours of the date of issuance and I hereby return it not executed.	
Signature of Officer Making Return	
Department or Agency of Officer Charlotte Mecklenburg Police	

UMPV
STATE OF NORTH CAROLINA
Mecklenburg County

In the general court of Justice
Superior Court Division

To any officer with authority and jurisdiction to conduct the search authorized by this SEARCH WARRANT:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on page two attached hereto and related to the commission of a crime is located as described in the application.

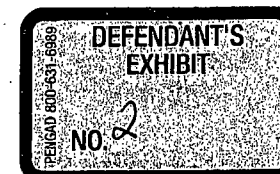
You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and / or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

You are directed to execute this SEARCH WARRANT within forty-eight (48) hours from the time indicated on this Warrant and make due return to the clerk of the Issuing Court.

This SEARCH WARRANT is issued upon information furnished under oath by the person or persons shown.

This SEARCH WARRANT was RETURNED to me on this date and time shown below	
Date	Time: ☐ a.m. ☐ p.m.
Signature	
☐ Magistrate ☐ Superior Court Judge ☐ District Court Judge ☐ Deputy CSC ☐ Clerk of Superior Court	

SEARCH WARRANT ISSUED BY	
Date	
Signature	
☐ Magistrate ☐ Superior Court Judge ☐ District Court Judge ☐ Deputy CSC ☐ Clerk of Superior Court	



APPLICATION FOR SEARCH WARRANT

I, Detective B.G. Fitch, 2737, Charlotte-Mecklenburg Police Department, 601 E. Trade St. Charlotte, NC

(Insert name and address of law enforcement officer, rank and agency)

Being duly sworn, request that the court issue a warrant to search the person, place, vehicle, and other items described in this application and to find and seize the property and person described in this application. There is probable cause to believe that:

See Attachment pages

(Describe property to be seized; or if search warrant is to be used for searching a place to serve an arrest warrant or other process, name person to be arrested)

Constitute evidence of a crime and the identity of a person participating in a crime,
Murder - a violation of North Carolina G.S. 14-17

(Name of Crime)

And is located **(check the appropriate box)** or boxes and fill in specified information)

☒ In the following premises:

See Attachment pages

(Give addresses and, if useful, describe premises)

And

☐ On the following person(s):

See Attachment Pages

(Give name(s) and, if useful, describe person(s))

And

☐ In the following vehicle(s):

See Attachment Pages

(Describe vehicle(s))

And

☐ Other names, places or item(s):

See Attachment Pages

(Name and /or describe other places or items to be searched, if applicable)

The applicant swears to the following facts to establish probable cause for the issuance of a search warrant:

See Attachment Pages

SWORN AND SUBSCRIBED TO BEFORE ME		
Date		
Signature		
☐ Superior Court Judge ☐ District Court Judge ☐ Deputy CSC ☐ Clerk of Superior Court ☐ Magistrate		Signature of Applicant

☐ In addition to the affidavit included above, this application is supported by **additional affidavit(s)** attached, made by:

☐ In addition to the affidavit included above, this application is **supported by sworn testimony**, given by:

This testimony has been (check appropriate box) ☐ reduced to writing, ☐ tape-recorded and I have filed each with the clerk.

** If a continuation is necessary, continue the statement on an attached sheet of paper with a notation saying "see attachment." Date the continuation and include on it the signatures of applicant and issuing official.

3
000021

Continuation page attached to the SEARCH WARRANT application, dated Monday, May 25, 2009

CONTINUATION OF "PROPERTY/EVIDENCE TO BE SEIZED"

Evidence of murder which includes clothing, blood, blood stains, ammunition, bullets, shell casings, spent projectiles, firearms, weapons, latent fingerprints, and trace evidence such as hairs, fibers and body fluids. Property belonging to the victim, which may include but not limited to, mobile phone, purse, clothing, and jewelry. Evidence of a clean up which may include solvents, cleaning chemicals, and paints. Evidence of ownership and occupancy of the residence located at 8047 Bluff Road, Gadsden, South Carolina 29052, such as papers, bank statements, utility and phone bills, and other personal papers and effects located in the residence that may be used to identify occupants of the residence, and other items of evidence that may constitute the crimes of Murder.

DNA buccal swabs from Theodore Roosevelt Manning IV (DOB 10/10/1979).

CONTINUATION OF "PREMISES, PERSON, VEHICLE OR OTHER ITEM(S) TO BE SEARCHED"

The structure is a single story residence located at 8047 Bluff Road, Gadsden, South Carolina 29052. The residence is red brick with tan trim, brown entrance doors with a storm/screen door. The mailbox in the front yard has a blue sign that indicates the numerical address of 8047.

A 2001 four door Toyota Avalon, VIN 4T1BF28B11U127963, SC Tag ARV245, white in color registered to Theodore Roosevelt Manning IV.

CONTINUATION OF "PROBABLE CAUSE AFFIDAVIT"

On 05/11/2009 at approximately 2136 hours, Officer R.B. Pickler (2467) from the Charlotte-Mecklenburg Police Department (CMPD), located at 601 East Trade Street, Charlotte, North Carolina 28202 was dispatched to a call for service in reference to a missing person. Upon arrival to 8618 Rozumny Drive, Charlotte, North Carolina 28216, police learned from the reporting person, Akilah Weaver, that the victim, Nikki McPhatter, resides at this address. Weaver continued to advise that she was a very good friend of McPhatter's and she had not heard from her since May 5, 2009. McPhatter's supervisor, Don Carter, also advised detectives that McPhatter has not reported to work, which is uncharacteristic. CMPD officers completed a missing persons report under agency number 20090511-2136-00.

During the course of the investigation, Detectives interviewed family, friends and co-workers, who advised that McPhatter was enroute to South Carolina to end a relationship with a boyfriend known only as, "Teddy".

Detectives obtained bank records and learned that on 05/06/2009 at approximately 1852 hours, multiple attempts to access McPhatters ATM/Debit card were completed. Detectives obtained bank video surveillance and two black males were observed completing the transactions.

Detectives obtained a court order to access McPhatter's telephone records. During a search of the records, officers were able to locate a telephone number that belonged to a Theodore Roosevelt Manning IV.

On 05/21/2009, Detectives from CMPD responded to South Carolina and were able to locate and interview Manning. In addition, detectives were able to independently verify from several sources that the telephone number listed on McPhatter's phone records belonged to Manning. During Manning's interview, he advised that he last saw McPhatter at his residence located at 8047 Bluff Road. He confirmed that the telephone number was his and he advised that he and McPhatter did have sexual intercourse inside his residence. Manning also stated during his interview that he had followed McPhatter in the above listed vehicle to a gas station to fill up McPhatter's vehicle.

4

SWORN AND SUBSCRIBED TO BEFORE ME:

Judge / Magistrate

Applicant(s)

Date

Date

000022

Continuation page attached to the SEARCH WARRANT application, dated Monday, May 25, 2009

A court order was obtained on McPhatter's cellular telephone tower information and detectives learned that the last time McPhatter's mobile phone accessed a cellular tower was on 05/06/2009 at 1506 hours. The cellular tower is located at 2522 Old Eastover Road, Eastover, South Carolina 29044.

Based on these facts, it is believed that there is probable cause to believe that evidence of murder contained within the residence located at 8047 Bluff Road, 8047 Bluff Road, Gadsden, South Carolina 29052. Therefore, I request the issuance of a search warrant based on the affidavit and the facts contained therein.

5

SWORN AND SUBSCRIBED TO BEFORE ME:

Judge / Magistrate

Applicant(s)

Date

Date

000023

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
Warrant Number: M235247

The State of South Carolina,)
)
)

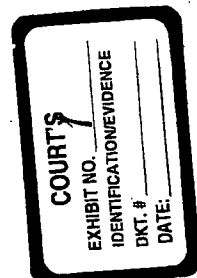
MOTIONS LIST

vs.)
)
)

Theodore Roosevelt Manning iv,)
Defendant.)

- D 1. Motion to Prevent Solicitor from being acknowledge or allowed to address the jury pool, venire or panel
2. Renew Rule 5 and Brady Motions
3. Renew Riddle Motion
4. Motion to Complete Pre-Trial Before Jury Selection
5. Motion to Have Prosecution Produce Rap Sheets for All Jurors
6. Motion to Have Transcripts of Pre-Trial Provided
- 7. Motion to Enforce the protections of 16-11-450
8. Motion to Suppress Evidence of Search Warrant
9. Motion to Suppress Telephone Call
- 10. Motion for Judgment on the Viability of Res Gestae
- D — 11. Motion to Exclude any Evidence or Testimony of the Burning of the Car and Body
a. In the Alternative a Woods' Charge
- 12. Motion to Exclude any Evidence or Testimony of the Financial Transaction Card Theft or Fraud
a. In the Alternative a Woods' Charge
- Denied — 13. Motion to Exclude any Testimony of Any Sexual Activity of the Defendant Following the Killing
- Granted — 14. Motion in Limine to Exclude Testimony of Additional Gun Found in Car
15. Motion in Limine to Exclude any Testimony or Reference to Client's Sexual Orientation
16. Motion to Exclude all Photographs that show any burning or autopsy
17. Jackson v. Denno
18. Motion to Suppress Statement(s) taken by Richland County Sheriff's Department
19. Motion to Forbid the State from Referring to Nikki McPhatter as a Victim
20. Motion to Forbid the State from Confusing the Terms: Not Guilty and Innocent
21. Motion to Restrict the Term "Murder".
22. Motion to Forbid the State from Referring to Statements made by Defendant as Confessions
23. Motion in Limine to Prevent Reference to the Case being Barney Giese's Last Trial
24. Motion to Limine to Prevent the Description of: "Execution" or "Execution-style" Killing
25. Motion for an Order to Enforce Rules of Direct Examination, SCRE Rule 611, Against 5th Circuit Solicitor's Office
26. Motion to Prevent Shackling
27. Motion to Allow Defendant to attend all meetings and bench conferences
28. Motion to keep ordinary work hours
29. Motion to Address Belcher

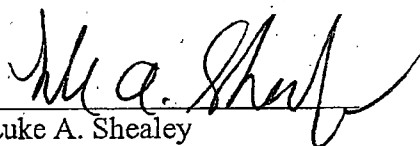
000024



30. Motion to Exclude any reference to the Defendant's arrest for Criminal Domestic Violence.
31. Motion to Exclude any Handwritten Items Found - 901
32. Motion to for Only One Camera Feed
33. Motion to Change the Order and Method of Closings
34. Sequestration

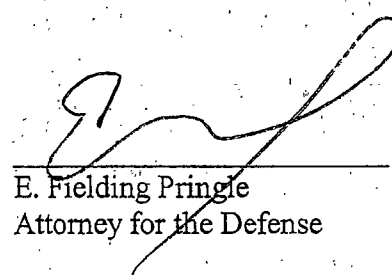
DATED this 4th day of October, 2010.

Respectfully Submitted,



Luke A. Shealey
Attorney for the Defense

James Hunter May
Attorney for the Defense



E. Fielding Pringle
Attorney for the Defense

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIFTH JUDICIAL CIRCUIT
Warrant Numbers: 2006-GS-40-4641

STATE OF SOUTH CAROLINA)

REQUESTS TO CHARGE

vs.)

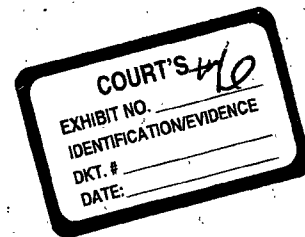
THEODORE MANNING, IV)

Defendant.)
_____)

DEFENDANT'S REQUEST TO CHARGE NO. 1

BURDEN OF PROOF

A defendant is presumed to be innocent until proven guilty beyond a reasonable doubt. If you have a reasonable doubt as to whether the State has proven that the Defendant did not act in self defense or in defense of his premises, then you must find the Defendant not guilty.



See *State v. Bellamy*, 293 S.C. 103, 359 S.E.2d 63 (1987); overruled on other grounds, *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991)(abolition of *in favorem vitae*); *Cage v. Louisiana* 498 U.S. 36 (1990); In re: Winship 397 U.S. 358 (1990).

000026

DEFENDANT'S REQUEST TO CHARGE NO. 2

(CASTLE DOCTRINE)

A person may use deadly force to protect his dwelling. Thus, he may use deadly force to eject a trespasser who is in his dwelling or in the area immediately surrounding his dwelling. Unless the trespasser is peaceable and well-behaved, the Defendant is not required to ask the trespasser to leave before using force.

State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007) (Appellant's requested charge would not have been inappropriate).

DEFENDANT'S REQUEST TO CHARGE NO. 3

(CASTLE DOCTRINE)

Under the defense of home and habitation, the owner of a dwelling may defend against one who enters upon the premises in a wanton, riotous, or violent manner, or with intent to commit a felony on the occupants or the habitation itself, even to the extent of killing the assailant, if such degree of force be reasonably necessary to accomplish the purpose of preventing a forcible entry against his will. This rule of immunity extends to the curtilage of the home as well. Curtilage includes outbuildings, the yard around the dwelling or the garden of a dwelling. The common denominator between these places that are considered curtilage is they are places where the property owner alone has the right to be, to the exclusion of the general public.

Under the Castle Doctrine, "one attacked, without fault on his own part, on his own premises, has the right in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense."

For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances. Stated differently, unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser.

State v. Rye, 375 S.C. 119, 651 S.E.2d 321(2007); *State v. Bradley*, 126 S.C. 528, 120 S.E. 240 (1923); *State v. Dickey* 380 S.C. 384, 669 S.E.2d 917 (Ct. App. 2008)

DEFENDANT'S REQUEST TO CHARGE NO. 4

(DWELLING-DEFINED)

The word "dwelling" includes any house, apartment or building in which a person may sleep.

State v. Smalls, 519 793, 336 S.C. 301 (Ct. App. 1999)

000029

DEFENDANT'S REQUEST TO CHARGE NO. 5

The defense of self defense and the defense of habitation are not the same. Unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger of sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's premises, the law permits an owner to use reasonable force to expel the trespasser. Under both defenses the State has the burden of disproving the defenses with proof beyond a reasonable doubt.

State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007)

DEFENDANT'S REQUEST TO CHARGE 6

(SELF DEFENSE)

The defense of self-defense requires that (1) Defendant was without fault in bringing on the difficulty; (2) the Defendant was in actual imminent danger of death or sustaining serious bodily injury or (3) the Defendant actually believed he was in imminent danger of losing his life or sustaining serious bodily injury and that a reasonably prudent person of ordinary firmness and courage would have entertained the same belief; and (4) that Defendant had no other probable means of avoiding the danger.

However, there is no duty to retreat where an attack occurs in one's dwelling, his yard or elsewhere on property owned and lawfully occupied by him. The State has the burden of disproving the defense of self defense by proof beyond a reasonable doubt.

State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998); *State v. Long*, 325 S.C. 59, 480 S.E.2d 62 (1997).

REQUEST TO CHARGE NO. 7

(NO DUTY TO RETREAT- CURTILEGE DEFINED)

A defendant has no duty to retreat when attacked in his home or at his place of business. This rule of immunity extends to the curtilage of the property as well. Curtilage includes outbuildings, the yard around the dwelling or the garden of a dwelling. The common denominator between these places that are considered curtilage is they are places where the property owner alone has the right to be, to the exclusion of the general public.

State v. Wiggins, 330 S.C. 539, 500 S.E.2d 489 (1998)

DEFENDANT'S REQUEST TO CHARGE 8

(SELF DEFENSE)

The defendant has raised in this case what is called the defense of self-defense. Self-defense is a complete defense. And if it is established, you must find the defendant not guilty. The State had the burden of disproving self-defense by proof beyond a reasonable doubt as I have already defined that term for you. If you have a reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, then you must find the defendant not guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant guilty.

The following elements are required to establish self-defense:

First, the defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense.

The second element of self-defense is that the defendant was actually in imminent danger of death or serious bodily injury or that the defendant actually believed that he was in imminent danger of death or serious bodily injury. If the defendant was actually in imminent danger, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury. If the defendant believed that he was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would have had the same belief.

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In deciding whether the defendant actually was or believed that he was in imminent danger of death or serious bodily injury, you should consider all the facts and circumstances surrounding the crime, including the physical condition and characteristics of the defendant and the victim.

The defendant does not have to show that he was actually in danger. It is enough that the defendant believed he was in imminent danger and a reasonable and prudent person of ordinary reason and ordinary firmness and courage would have had the same belief.

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

I will further charge you that evidence of prior difficulty between the defendant and the victim may be considered in deciding whether the threat existed, whether the defendant had a reason to believe that a threat existed and how serious the threat was.

I will further charge you that relative sizes, ages and weights of the defendant and the victim may be considered in deciding the apparent or the actual need for force in self-defense and the amount of force that was needed.

The final element of self-defense is that the defendant had no probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular circumstance. I will charge you that if the defendant was on his own premises, on his own property, the defendant had no duty to retreat before acting in self-defense. A defendant has no duty to retreat if by doing so the danger of being killed or suffering

serious bodily injury would increase. And I would further charge you that a person cannot be required to make an exact calculation as to the degree or the amount of force which may be needed to avoid death or serious bodily harm; therefore, in self-defense the defendant has the right to use the force needed to avoid death or serious bodily harm.

The force used in self-defense does not have to be limited to the degree or the amount of force used by the victim. The defendant has the right to use so much force as appeared to be necessary for complete self-protection and which a person of ordinary reason and firmness would have believed they needed to prevent death or serious bodily harm. If the defendant is justified in defending himself or others and in firing the first shot, then the defendant is also justified in continuing to shoot until it is apparent that the danger of death or serious bodily injury has completely ended.

State v. Rye, 375 S.C. 119, 132; 651 S.E.2d 321, 327(2007)

DEFENDANT'S REQUEST TO CHARGE NO. 9

(SELF DEFENSE- APPEARANCES)

In the consideration of whether self-defense is applicable, you should try as near as you can to put yourself in defendant's situation at the time he fired the fatal shot. You should consider the circumstances by which he was surrounded, and take into consideration the person with whom he was dealing, and all of the facts which surrounded him, as you obtained the same from the testimony, and as near as you can, view the situation from defendant's standpoint. Unless the State shows that a person of ordinary reason, coolness and prudence would not have acted as defendant did under the circumstances that surrounded him at the time the fatal [shot was fired] then you should find the defendant not guilty.

State v. Rye, 375 S.C. 119, 136, 651 S.E.2d 321, 329 (2007) (Requested charge is correct statement of law)

DEFENDANT'S REQUEST TO CHARGE NO. 10

(IMMINENT DANGER)

If Defendant is in imminent danger or if the Defendant's belief that he is in imminent danger of death or receiving bodily harm is reasonable, he need not wait until actual attack or injury or until force is used by the aggressor before exercising his right to use deadly force in self defense. In other words, a Defendant need not wait until the assailant "gets the drop on him" in order to use force in self defense.

State v. Rash 182 S.C. 42, 50, 188 S.E. 435 (1936)(defendant need not wait until the assailant gets the drop on him in order to exercise the right of self defense by use of deadly force.)

DEFENDANT'S REQUEST TO CHARGE 11
(MALICE)

Malice is a legal term implying wickedness and excluding a just cause or excuse.

The term malice indicates a formed purpose and design to do a wrongful act under the circumstances that exclude any legal right to do it.

State v. Belcher, 685 S.E.2d 802 (2009)

DEFENDANT'S REQUEST TO CHARGE NO. 12

Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. Evidence of acting in the heat of passion alone will not suffice to reduce murder to voluntary manslaughter. Rather, both heat of passion and sufficient legal provocation must be present at the time of the killing. To mitigate a felonious killing to manslaughter, the sudden heat of passion "must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence."

The sudden heat of passion, upon sufficient legal provocation, which mitigates a felonious killing to manslaughter, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence.

State v. Dickey 380 S.C. 384, 669 S.E.2d 917 (Ct. App. 2008); *State v. Walker*, 478 S.E.2d 280 (1996); *State v. Byrd*, 323 S.C. 319, 322, 474 S.E.2d 430, 432 (1996); *State v. Kornahrens*, 350 S.E.2d 180 (1986); *State v. Tyson*, 323 S.E.2d 770 (1984)

DEFENDANT'S REQUEST TO CHARGE NO. 13

Any person has the right to arrest a felon and take him to a judge or magistrate to be dealt with according to law if the person views the felony being committed or has certain information that a felony has been committed or views the commission of a larceny. If after notice of arrest, the suspect attempts to flee or forcibly to resist arrest, the person making the arrest may use reasonable means to effect the arrest, including the use of deadly force.

S.C. Code § 17-13-10; *State v. Cooney* 320 S.C. 107, 463 S.E.2d 597 (1995) (holding the *Tennessee v. Garner* does not apply to citizens arrest).

DEFENDANT'S REQUEST TO CHARGE NO. 14

If a killing is unintentional and occurs "while the perpetrator [is] engaged in a lawful enterprise, and [is] not the result of negligence, the homicide will be excused on the score of accident."

State v. Brown, 205 S.C. 514, 521, 32 S.E.2d 825, 828 (1945).

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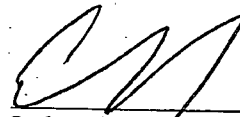
DEFENDANT'S REQUEST TO CHARGE NO. 15

Manslaughter is defined as "the unlawful killing of another without malice."

S.C.Code Ann. § 16-3-50 (Supp. 2000); Carter v. State, 301 S.C. 396, 398, 392 S.E.2d
184, 185 (1990).

State v. Lee, 60 S.E. 524 (1908).

Respectfully submitted,



Luke Shealey
James H. May
Fielding Pringle

October 12, 2010

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
Indictment Nos: 06-GS-40-4641

The State of South Carolina,)
)
)
)

vs.)
)
)
)

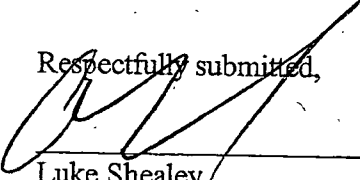
REQUESTED JURY CHARGE

Theodore Manning,)
Defendant.)

The lack of a recording is a factor to consider in your determination of the issue of the voluntariness of a confession. If you find that the state deliberately failed to utilize readily available means to preserve the best evidence of what transpired during the interrogation you may consider this fact in your assessment of the voluntariness of the confession as well as whether or not the State has met its burden of proof beyond a reasonable doubt. You should also consider evidence gathered in this manner with caution.

Commonwealth v. DiGiambattista, 442 Mass. 423 (2004).

Respectfully submitted,



Luke Shealey
James H. May
Fielding Pringle
Attorneys for Defendant

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

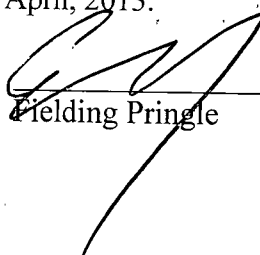
V.

THEODORE MANNING,

APPELLANT

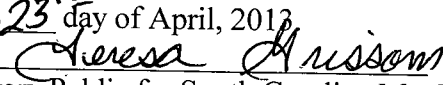
CERTIFICATE OF SERVICE

I certify that a true copy of the Supplemental Record on Appeal and a proposed Transportation Order in the above referenced case have been served upon William M. Blitch, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of April, 2013.


Fielding Pringle

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of April, 2013.


Teresa Arissom

Notary Public for South Carolina My Commission Expires: 6/22/19

RECEIVED

APR 24 2013

SC Court of Appeals