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THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 11-GS-40-897 and 11-GS-40-898

The State of South Carolina, ... Respondent,

v.

Leslie Todd Parvin, ... Petitioner.

APPENDIX VOLUME IV
(RECORD ON APPEAL – VOLUME IV)

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SC Court of Appeals

1 Q. And are you also aware that in the military you have
2 confidentiality with chaplains and that individuals who are
3 homosexual could confide in a chaplain and that that would
4 be held confidential with that chaplain?

5 A. That's correct.

6 Q. That is correct, right?

7 And do you know Colonel Wright, who is the point person
8 for Don't Ask Don't Tell with the Pentagon?

9 A. I do not.

10 MS. PRINGLE: I don't have anything further.

11 THE COURT: Anything further?

12 MS. SIMPSON: No, Your Honor.

13 THE COURT: Thank you. You can step down.

14 MS. CAMPBELL: The State would call John Taylor.

15 DR. JOHN TAYLOR, having been first duly sworn,
16 testified as follows:

17 THE CLERK: Have a seat in the witness box. State
18 your name for the record and spell your name, please.

19 THE WITNESS: John Michael Taylor, T-A-Y-L-O-R.

20 DIRECT EXAMINATION BY MS. CAMPBELL:

21 Q. Sir, I want to turn your attention back to June the
22 30th of 2009. Did you conduct an interview of the defendant
23 in this case in regards to veterans benefits?

24 A. A communication between a psychologist and patient in
25 this state are privileged and I don't wish to testify.

1 MS. CAMPBELL: Your Honor, may we approach?

2 MS. PRINGLE: We would object, Your Honor.

3 THE COURT: Objection to what, approaching?

4 MS. PRINGLE: He doesn't waive his -- privileged.

5 (Whereupon, the lawyers approached the bench for
6 an off-the-record discussion)

7 MS. CAMPBELL: I will move onto the next question.

8 BY MS. CAMPBELL:

9 Q. Did you, in fact, conduct an interview with the
10 defendant in this case with regards to veterans benefits?

11 A. Again, that's asserting privilege here.

12 THE COURT: Sir, you are required to answer the
13 questions.

14 THE WITNESS: Yes, sir.

15 Can I get a court order to --

16 THE COURT: That's what I'm doing now.

17 THE WITNESS: Okay.

18 THE COURT: I'm directing you to answer questions.

19 THE WITNESS: Thank you, sir. Appreciate that.

20 BY MS. CAMPBELL:

21 Q. And I'm going to limit it very briefly, okay?

22 A. Okay.

23 Q. Did you actually generate a report chronicling your
24 interview with the defendant?

25 A. Yes, I did.

1 Q. And I'm going to turn you to the third page of that
2 report. And I have got a copy specifically just as to two
3 separate issues you asked him about.

4 Did you ask him anything about his marriage?

5 MS. PRINGLE: Objection. Prior objection, Your
6 Honor, 401, 403, 405; privileged as well.

7 THE COURT: Objection is overruled.

8 MS. CAMPBELL: Thank you, sir.

9 A. Yes, I did.

10 BY MS. CAMPBELL:

11 Q. What did he report to you?

12 A. He said that they were having some marital conflicts,
13 but they were working on it in counseling.

14 Q. In counseling?

15 A. Yes, ma'am.

16 Q. Did you also ask him currently about his drinking
17 habits?

18 A. Yes, I did.

19 Q. And what did he indicate his drinking habits were?

20 A. He said he was drinking a 12 pack of beer per day.
21 When he came home he was drinking heavily. Prior to that
22 was drinking both beer and bourbon.

23 Q. Stating?

24 A. He stated "I was drinking enough where I couldn't count
25 it."

1 Q. And the date of that interview, sir?

2 A. July 10th, 2009.

3 Q. July 10th, 2009?

4 A. Yes.

5 MS. CAMPBELL: Thank you, sir.

6 I have nothing further.

7 THE COURT: By the defense?

8 MS. PRINGLE: If it please the court?

9 THE COURT: Yes.

10 CROSS EXAMINATION BY MS. PRINGLE:

11 Q. Dr. Taylor, you just said July 10th, 2009?

12 A. Actually that's -- I'm sorry, that's not accurate.

13 June 29th, 2009. He was approved for on July 10th, 2009.

14 Q. All right. And these statements were made to you as
15 part of an exit interview, correct?

16 A. Yes.

17 Q. And this was an exit interview that you were conducting
18 to assist in assessing what benefits would be afforded to
19 Mr. Parvin for serving for 20 years in the Army, right?

20 A. That is correct.

21 Q. And during this interview you learned a couple of
22 things, some of which you said to Ms. Campbell, correct?

23 A. That's correct.

24 Q. You learned that he had some physical problems,
25 specifically his back?

1 A. Yes, ma'am, that's correct.

2 Q. And under Axis III, you actually found that he had
3 degenerative disc disease?

4 A. That was his report, yes.

5 Q. Degenerative joint disease?

6 A. Yes, ma'am.

7 Q. And both of those findings are on your report on June
8 29th of 2009?

9 A. That's correct.

10 Q. And you also learned that he had been deployed several
11 times?

12 A. Yes, ma'am.

13 Q. He had been deployed to combat zones and war zones?

14 A. Yes, ma'am.

15 Q. And so you understood that he had spent a fair portion
16 of his life in war zones in combat?

17 A. Yes, ma'am.

18 Q. One of the --

19 THE COURT: Ladies and gentlemen, I'm going to
20 have you go to the jury room. Please do not discuss the
21 case.

22 (The following takes place outside the presence of
23 the jury panel)

24 THE COURT: What are you seeking to elicit from
25 the witness?

1 MS. PRINGLE: I'm going to ask him if it's unusual
2 for someone who has witnessed and experienced the horror
3 that Todd Parvin has, that he was aware of, and is it
4 unusual for that, a person who has been through that, to
5 have marital difficulties; that sometimes it's difficult to
6 come back and reintegrate; that sometimes a spouse doesn't
7 necessarily understand it and that seeking counseling would
8 be the appropriate and proper treatment; the things that he
9 witnessed is not something that a spouse could ever
10 understand.

11 THE COURT: No problem thus far. What else?

12 MS. PRINGLE: I am totally restricted and I'm not
13 going into PTSD. I don't intend to go into PTSD. I'm going
14 to ask him about some of the specifics in his report about
15 the things that Todd witnessed and the horror that he
16 experienced.

17 I'm going to ask him also about the followup that
18 she didn't bring out about him drinking in order to get to
19 sleep, and that since he has gotten treatment, which he got
20 for eight months, his alcohol intake reduced, and that's
21 all.

22 THE COURT: All right. Bring the jury.

23 Stand while the jury is getting ready to come in.

24 (Off the record)

25 (Back on the record)

1 (The following takes place in the presence of the
2 jury panel)

3 THE BAILIFF: The jury is seated, Your Honor.

4 THE COURT: All right, you may proceed.

5 MS. PRINGLE: Thank you, Your Honor.

6 If it please the court?

7 THE COURT: Yes.

8 BY MS. PRINGLE:

9 Q. Dr. Taylor, a couple of things that Mr. Parvin told
10 you. One, he told you that in his last tour of duty alone
11 he had handled the remains and processing of 70 dead
12 soldiers, correct?

13 A. That's correct, ma'am.

14 Q. And that was part of his duties as a chaplain's
15 assistant?

16 A. Yes, ma'am.

17 Q. And he told you about horrific things that he witnessed
18 and experienced when a Chinook helicopter crashed on a
19 mountainside?

20 A. That's correct.

21 Q. In which he carried out, hiked in and out off this
22 mountainside, carried out the remains of friends and fellow
23 soldiers?

24 A. Yes, ma'am.

25 Q. And in your experience -- and those are -- how long was

1 this interview?

2 A. Anywhere from 20 to 25 minutes.

3 Q. In your experience, in conducting these interviews and
4 as a psychologist, is it unusual for someone who has
5 experienced those kinds of things to experience some
6 distress?

7 A. No, it's not.

8 Q. Some emotional distress?

9 A. That's typical.

10 Q. And when a person, a soldier has been in war, has gone
11 to combat zones and seen those things and come home, is it
12 unusual to have some marital difficulty?

13 A. That's not unusual.

14 Q. And is it unusual to have difficulty -- I think the
15 word the military uses sometimes is reintegrating back into
16 your family?

17 A. That's not unusual.

18 Q. And sometimes a spouse might not understand the things
19 that he's seen and experienced, is that true?

20 A. That's often the case.

21 Q. And what he told you is that he was reporting marital
22 conflict, but they were working on it?

23 A. That's correct.

24 Q. He didn't say "I don't love my wife", did he? He
25 didn't say he didn't love his wife?

1 A. Not to my recollection.

2 Q. He didn't say they were breaking up?

3 A. I don't remember any of that.

4 Q. He didn't say he was struggling with his sexuality?

5 A. That did not come up.

6 Q. He didn't say anything about that, other than "my wife
7 and I are having a little trouble and we are working on it"?

8 A. That's correct.

9 Q. And you would agree, sir, he was honest in this? He
10 said some things to you that were not --

11 MS. CAMPBELL: Objection.

12 THE COURT: Objection sustained.

13 BY MS. PRINGLE:

14 Q. He said some things in this interview that are not
15 flattering to himself?

16 A. That's correct.

17 Q. Including the comments about drinking alcohol, correct?

18 A. That's correct.

19 Q. One followup to the questions that Ms. Campbell asked
20 you, he told you that he was drinking alcohol to sleep, to
21 help him sleep --

22 A. That's correct.

23 Q. -- is that right?

24 And that since he had gotten treatment, his alcohol
25 intake had reduced -- been reduced significantly?

1 A. Yes, to twelve beers per day.

2 Q. Okay. And, in fact, he explained to you that that
3 was -- that had gotten much better or had reduced and
4 decreased after eight months of therapy that he sought?

5 A. Yes.

6 MS. PRINGLE: I have no further questions.

7 THE COURT: Any redirect?

8 MS. CAMPBELL: Just one question.

9 REDIRECT EXAMINATION BY MS. CAMPBELL:

10 Q. He had mentioned that he had reduced his drinking and
11 was now drinking only a 12 pack of beer a day?

12 A. That's correct.

13 Q. Thank you, sir.

14 MS. CAMPBELL: I have nothing further.

15 THE COURT: Anything further?

16 MS. PRINGLE: No.

17 THE COURT: You may step down.

18 Next witness, please.

19 MS. CAMPBELL: The State would call Captain Stan
20 Smith.

21 THE CLERK: You remain under oath.

22 State your name for the record.

23 THE WITNESS: James Standon Smith.

24 DIRECT EXAMINATION BY MS. CAMPBELL:

25 Q. Major Smith, I just have a few questions, just little

1 areas, okay?

2 State's Exhibit No. 80, what does that show?

3 A. It's the outside view of the crime scene from a
4 straight-on viewpoint.

5 Q. And during the course of this trial there has been some
6 talk about the white house that's shown there in that shot?

7 A. It's pictured right here in the middle. This one.

8 Q. And is there a door shown right there?

9 A. It is.

10 Q. And when you look at State's Exhibit -- and this would
11 have been a crime scene photo, right?

12 A. Yes.

13 Q. And when you look at State's Exhibit 80, is the door
14 open or shut and that crime scene is secure?

15 A. It's shut.

16 Q. Okay. You also testified earlier, but were limited, as
17 far as a search warrant that was executed when the defendant
18 was arrested that day?

19 A. I did.

20 Q. I'm going to show you a number of photographs marked
21 State's Exhibits -- excuse me, Court's Exhibits --

22 MS. CAMPBELL: Your Honor, at this point 2 through
23 12. Should I convert those?

24 THE COURT: State's Exhibits.

25 MS. CAMPBELL: I'm going to get those remarked,

1 and then State's Exhibit -- Court's Exhibit 13 and then
2 State's Exhibit 218.

3 Beg the court's indulgence while we remark these.

4 (Court's Exhibit No. 3 remarked as State's Exhibit
5 No. 220 for identification)

6 (Court's Exhibit No. 4 remarked as State's Exhibit
7 No. 221 for identification)

8 (Court's Exhibit No. 5 remarked as State's Exhibit
9 No. 222 for identification)

10 (Court's Exhibit No. 6 remarked as State's Exhibit
11 No. 223 for identification)

12 (Court's Exhibit No. 7 remarked as State's Exhibit
13 No. 224 for identification)

14 (Court's Exhibit No. 8 remarked as State's Exhibit
15 No. 225 for identification)

16 (Court's Exhibit No. 9 remarked as State's Exhibit
17 No. 226 for identification)

18 (Court's Exhibit No. 10 remarked as State's
19 Exhibit No. 227 for identification)

20 (Court's Exhibit No. 11 remarked as State's
21 Exhibit No. 228 for identification)

22 (Court's Exhibit No. 12 remarked as State's
23 Exhibit No. 229 for identification)

24 (Court's Exhibit No. 13 remarked as State's
25 Exhibit No. 230 for identification)

1 BY MS. CAMPBELL:

2 Q. I'm going to show you what's been marked now as State's
3 Exhibits 220 through 230. Do you recognize those?

4 A. I do.

5 Q. And are those photographs that were taken during the
6 course of the search warrant that day?

7 A. They are.

8 Q. And what do those photographs depict, sir?

9 A. Different pieces of drug paraphernalia; a couple of
10 bongos, pipes, if you will. Some residue actually of
11 marijuana that was found in one of the rooms. A scale
12 that's typically used in the sale of marijuana. And some
13 Swisher Sweet cigars that they use to assist in smoking --

14 MR. SHEALEY: Objection, Your Honor.

15 A. -- marijuana.

16 MR. SHEALEY: May we approach?

17 THE COURT: Yes, sir.

18 (Whereupon, the lawyers approached the bench for
19 an off-the-record discussion)

20 MS. CAMPBELL: State's Exhibit 220 through 230,
21 Your Honor, at this time I would offer them into evidence,
22 as well as 218.

23 MR. SHEALEY: Your Honor, we have a matter law to
24 discuss before we have these entered into evidence.

25 THE COURT: All right. We will let you go back to

1 the jury room. Don't discuss anything.

2 (The following takes place outside the presence of
3 the jury panel)

4 THE COURT: Yes, sir.

5 MR. SHEALEY: Your Honor, we are -- just a point
6 of clarification. I want to make sure that, number one,
7 some of these photos aren't actually from the second search.
8 We want to be sure on that point, because there are some
9 that we are not real clear on that might be from the second
10 search a year later while Mr. Parvin was in jail and there
11 is some drug paraphernalia.

12 Number two would be that these photos with the
13 bong and a pipe appear to be from his son's room, and we
14 would object again, especially to the relevance of that,
15 because it's from his son's room.

16 THE COURT: All right. Ms. Campbell?

17 MS. CAMPBELL: Your Honor, they are off of a
18 search warrant which is in question. It's part of standard
19 followup. The photographs were attached.

20 THE COURT: Search on what date?

21 MS. CAMPBELL: Search on -- his arrest date was
22 August the 19th of 2010, not the one in 2011.

23 MR. SHEALEY: I mean, the majority of these photos
24 are the drug paraphernalia, but for the bong, per the search
25 warrant return are from Josh Parvin's room and not actually

1 Todd Parvin's room, so the relevance of that, a teenage boy
2 having marijuana at this murder trial, we would object to
3 that not being relevant.

4 THE COURT: All right, Ms. Campbell?

5 MS. CAMPBELL: Your Honor, the defendant has
6 talked about how he runs a tight household, and I don't know
7 if that's the exact wording. He's talked over and over
8 today talked about what a wonderful person he is, how he has
9 no trouble, he's law abiding and all these things. Whether
10 or not it's his marijuana or somebody else's, it's household
11 marijuana and the impact of knowledge is imputed to him.
12 The fact that this is the type of household he chooses to
13 run, Your Honor, would be relevant to that issue.

14 In addition to that, Your Honor, we would at this
15 time offer these into evidence.

16 MR. SHEALEY: And Your Honor --

17 MS. CAMPBELL: And some of the -- the bong and the
18 pipe were actually found in the master bedroom.

19 MR. SHEALEY: So that's about two of those photos.
20 The rest would be found in Josh's room.

21 And when he's talking about an orderly house, the
22 question was answered specifically as to the birth of his
23 sons, and Shanna, his wife, ran an orderly house. He didn't
24 never say "I would never have those in my house," or
25 anything of that, but that -- he was never charged with the

1 marijuana. His sons weren't charged with it, so to enter
2 the photos that --

3 As an officer of the court, I'm pretty sure we can
4 all say some of those are from the child's room bear nothing
5 about this case, no relevance to this case. They want to go
6 through and say exactly per the search warrant return was
7 found in Todd Parvin's room, perhaps that's fair, but the
8 kids room should not be an issue, assuming it is probative,
9 though.

10 THE COURT: All right. I'll rule on the pictures
11 as they're individually introduced and the ruling would be
12 based on where they were located. If they are located in
13 the master bedroom, they're likely to be in. If they are
14 located in the sibling's room, they're likely to be out.

15 MS. CAMPBELL: Okay, Your Honor, I will
16 withdraw State's Exhibits --

17 Beg the court's indulgence for just one minute,
18 Your Honor.

19 THE COURT: All right.

20 (Off the record)

21 (Back on the record)

22 MS. CAMPBELL: Your Honor, we would willing to
23 withdraw State's Exhibits 220, 221, 222, and 224, and we
24 will proceed under your --

25 MR. SHEALEY: Can I look at those real quick?

1 (Off the record)

2 (Back on the record)

3 MR. SHEALEY: Your Honor, while we have this brief
4 break, I would move to have all the testimony by Major Smith
5 as to the prior stuff that she is now seeking not to
6 introduce; referencing the marijuana, we have paraphernalia,
7 we have pipes, and I would ask that the record be stricken
8 as to the stuff that was not in his room.

9 THE COURT: All right. Bring the jury, please.

10 (The following takes place in the presence of the
11 jury panel)

12 THE BAILIFF: The jury is seated, Your Honor.

13 THE COURT: Thank you. The objection is
14 sustained. The jury is to disregard the last response.

15 BY MS. CAMPBELL:

16 Q. Let me be more specific.

17 Major, during the course of this search warrant did you
18 find evidence of drug use in the master bedroom and the
19 master bathroom?

20 A. Yes.

21 Q. I show you what's been marked as State's Exhibit No.
22 223. Is that a photograph that was taken during the course
23 of the search warrant?

24 A. Yes, a photograph of a bong, as it's commonly called,
25 and I believe I actually found a glass pipe in the master

1 bathroom myself.

2 Q. I'll show you State's Exhibit No. 217 and 219. Are
3 those the two items that you referring to?

4 A. That's the bong and that's the glass pipe.

5 MS. CAMPBELL: Your Honor, at this time I would
6 offer State's Exhibit 223, 219, and 217 into evidence.

7 THE COURT: What says the defense?

8 MR. SHEALEY: Your Honor, we would object under
9 Rule 401, 403 and 405.

10 THE COURT: They are admitted over objection.

11 BY MS. CAMPBELL:

12 Q. I'm going to show you State's Exhibit No. 219. First
13 can you say for the record what that is and where it was
14 found during the search warrant?

15 A. It's a glass pipe used for smoking marijuana. It was
16 found in the master bathroom, and I actually found that
17 myself during the search warrant.

18 Q. And then State's Exhibit No. 217, is that depicted here
19 in State's Exhibit 223?

20 A. It is.

21 Q. And that would have been a picture taken from the
22 master bedroom?

23 A. Yes.

24 Q. And where in the master bedroom was that found?

25 A. I believe it was found in a closet.

1 Q. And what is this, sir?

2 A. It's what commonly referred to as a bong.

3 Q. It's a bong?

4 A. It's used for smoking marijuana, yes, ma'am.

5 Q. And those were the items that were found in the master
6 bedroom and the master bathroom?

7 A. That's correct.

8 Q. During the course of the scope of the house, with that
9 the evidence like that, did also find some other evidence
10 that was brought your attention or concerned you that day?

11 A. Yes.

12 MR. SHEALEY: Objection, Your Honor.

13 Approach?

14 (Whereupon, the lawyers approached the bench for
15 an off-the-record discussion)

16 MR. SHEALEY: Your Honor, I'll state she called
17 Detective Gleason.

18 THE COURT: Well, I haven't heard the question
19 yet.

20 BY MS. CAMPBELL:

21 Q. Was there also other evidence in the home that caught
22 your attention?

23 A. Yes.

24 Q. I'm going to show you what's been marked as State's
25 Exhibits No. 225 through 230, and then 218.

1 First, without saying what they are, do you recognize
2 those?

3 A. I do.

4 Q. And 218 as well?

5 A. I do.

6 Q. And do those fairly and accurately depict what y'all
7 found that day when you went into the home?

8 A. They do.

9 MS. CAMPBELL: Your Honor, at this time we would
10 offer them into evidence.

11 (Off the record)

12 (Back on the record)

13 MR. SHEALEY: Your Honor, we would object to these
14 under Rule 401, 403, and 405.

15 THE COURT: Let me see them, please.

16 MS. CAMPBELL: Yes, sir.

17 (Off the record)

18 (Back on the record)

19 THE COURT: They are admitted over objection.

20 MS. CAMPBELL: Thank you, sir.

21 BY MS. CAMPBELL:

22 Q. I'm going to show you what's been marked as State's
23 Exhibit No. 228, just taking these in any order.

24 Basically describe to the jury what is depicted in
25 these pictures.

1 A. These are weapons that we found in the house that were
2 in locations that were a little bit unusual for normal
3 storage of weapons.

4 Q. And what do you mean by that, sir?

5 MR. SHEALEY: I'm going to object, Your Honor, to
6 what she's getting in as speculation.

7 THE COURT: It's overruled.

8 BY MS. CAMPBELL:

9 Q. Go ahead, sir.

10 A. What I mean was there were weapons that appeared to be
11 for the ready, to be accessed. And, of course, by that
12 time, once we learned that the defendant was inside the
13 house the whole time, that led us to believe that there
14 possibly were some attempts to think about some sort of
15 barricade, or something of that nature.

16 Q. And specifically where did you find weapons as you
17 mentioned that were set up in a certain manner, and I'll
18 show you State's Exhibits Number 225 and 226. Does that
19 show some of what we are talking about?

20 A. Particularly 226. In the two front bedrooms there were
21 shotguns that were laying out on the beds; not under the
22 beds or in a closet, but laying on the beds, and those were
23 the front two bedrooms. I believe they belonged to two of
24 the sons.

25 In the first bedroom on the right there was a 12-gauge

1 pistol grip shotgun with double-aught buckshot loaded in the
2 weapon. There was also a 20-gauge shotgun with shells on an
3 expended thing, a stock, laying right on the bed.

4 Q. Is that what you are referring to as State's Exhibit
5 No. 226?

6 A. Yes.

7 Q. And what is that, sir?

8 A. That's a 12-gauge pistol grip shotgun. It had three
9 double-aught buckshot shells in it. The double-aught buck
10 is the most powerful shotgun shell that -- as far as
11 knockdown power, other than a slug.

12 Q. And you mentioned there were in two rooms, and were
13 those upstairs or downstairs?

14 A. They were -- it was all single story. It was on the --
15 off the hallway.

16 Q. And what part of the house were they located where
17 those guns were?

18 A. Well, as you entered -- as we entered the house, there
19 is a kitchen, and then there was a pool room area. There
20 was a pool table. Then you made sort of a right and it went
21 down a hallway. And the defendant was arrested by
22 Investigator Gonzalez, or first confronted at that corner of
23 the hallway. The pistol grip shotgun and the 20-gauge were
24 in a bedroom, the first one on the right, which would be
25 sort of right behind where he was first encountered.

1 A single barrel shotgun would the next bedroom down,
2 which would be across from the master bedroom, which would
3 be back on the left.

4 Q. And were those located on the front or the back of the
5 house, or which area?

6 A. The three shotguns were located in the front of the
7 house.

8 In the bedroom there was another shotgun in the corner
9 and there was a 357 magnum in a closet in a case that was
10 unzipped. And there was also a 22 rifle that was positioned
11 on a rack on the inside of the closet with the closet door
12 being open.

13 Q. I'm showing you 229 and 218. Do you have recognize
14 those?

15 A. Yes.

16 Q. And are those some of the other guns that were --

17 A. The shotgun is the one in the corner there in your
18 right hand. In your left hand depicts the 22 rifle that was
19 on a hook on the inside of the closet.

20 Q. Thank you.

21 228, sorry,

22 A. That's a 357 magnum that was found on the closet shelf
23 in an unzipped container --

24 Q. In which bedroom?

25 A. -- case.

1 The master bedroom.

2 Q. And y'all actually collected those guns?

3 A. We did.

4 Q. There also has been a question about whether or not a
5 certain beer can was tested for DNA. I'll show you what's
6 been marked as State's Exhibit 27. Let me make sure this is
7 in evidence.

8 Does that show a beer can there?

9 A. It does.

10 Q. And was any testing ever requested on that beer can?

11 A. No.

12 Q. Why not?

13 A. It was pretty obvious that it was in the possession of
14 the victim there. It was right by where he --

15 MR. SHEALEY: Objection, Your Honor. He's not
16 qualified to answer these questions. They had their CSI.

17 COURT REPORTER: I'm sorry, Mr. Shealey?

18 MR. SHEALEY: They had their CSI.

19 THE COURT: What says the State?

20 MS. CAMPBELL: Your Honor, this is just
21 explaining -- there has been questions on whether or not
22 there was testing done. He's explaining the reasons they
23 didn't do the testing. They are the ones that brought it
24 up.

25 MR. SHEALEY: This would be his opinion. He's not

1 an expert in this field. This is a reply case.

2 THE COURT: I sustain the objection.

3 BY MS. CAMPBELL:

4 Q. How many crime scenes have you been to, sir?

5 A. Hundreds.

6 Q. And in reviewing State's Exhibit No. 27, did you feel
7 any need to test that beer can?

8 A. No, ma'am.

9 MS. DAVIS: Objection, Your Honor.

10 THE COURT: Objection is overruled.

11 BY MS. CAMPBELL:

12 Q. And where was the beer can located?

13 A. Laying right next to the victim.

14 Q. That would be Pablo Gutierrez?

15 A. Mr. Gutierrez, yes, ma'am, right by his head area.

16 Q. There also has been testimony about where these
17 neighborhoods were located, certain routes that were taken
18 by the defendant on the date in question?

19 A. Yes, ma'am.

20 Q. I'm going to show you what's been marked as State's
21 Exhibit No. 212. I'll first ask, do you recognize this?

22 A. I do.

23 Q. And does this show an overview of the general area,
24 including Decker Boulevard, Faraway Drive, and the two
25 neighborhoods which have been discussed here today?

1 A. It does.

2 MS. CAMPBELL: Your Honor, at this time I would
3 offer it into evidence.

4 THE COURT: What says the defense?

5 (Off the record)

6 (Back on the record)

7 MR. SHEALEY: Object to cumulative, Your Honor.

8 THE COURT: It's admitted over objection.

9 MS. CAMPBELL: Thank you, sir.

10 Your Honor, may the witness step down for a
11 moment?

12 THE COURT: Yes.

13 (Witness off the witness stand)

14 BY MS. CAMPBELL:

15 Q. Orientate this whatever way you want.

16 State's Exhibit No. 212, can you see -- there is
17 testimony about Decker Boulevard and a convenience store
18 there?

19 A. This is Decker Boulevard right here at the top left
20 corner. And there is a convenience store at the corner of
21 Faraway and Decker, right there. I'm not sure if that was
22 what was alluded to or not, but there is one there in that
23 area. There is also one at the end of Decker, the first
24 one.

25 Q. And as far as the road where -- Bay Springs, where is

1 that located on this map?

2 A. Bay Springs is over in this area right here and then it
3 just curves around right there.

4 Q. And the place where this murder occurred, where is it
5 located?

6 A. Okay. If you come down Faraway Drive, you would have
7 to turn onto Overhill. And then Woodfield Drive is where it
8 happened. Woodfield at Ardmore, which is right here.

9 Q. And if you are coming down Faraway Drive and proceeding
10 to the defendant's home, if he were going home that day,
11 would this be on your way, or not?

12 A. No, ma'am, it would be out of the way. To go to the
13 defendant's home, Faraway Drive is a straight shot. The
14 most likely route would be to go eastbound, cut back into
15 several off the streets back into his residence.

16 Q. So he would actually have to turn the opposite
17 direction of where his home was?

18 A. He would have had to veer off to the right and go back
19 into the neighborhood, yes.

20 Q. Yes, sir.

21 (Witness back on the witness stand)

22 BY MS. CAMPBELL:

23 Q. That's if he was going home?

24 A. That's correct.

25 Q. And in the course of your investigation did y'all do

1 any investigation into any metal scrapping, or anything of
2 that nature?

3 A. No, ma'am.

4 Q. Why not?

5 A. It had not been brought to our attention.

6 MS. CAMPBELL: Thank you, sir.

7 I have nothing further.

8 THE COURT: By the defense?

9 MR. SHEALEY: Briefly, Your Honor.

10 CROSS EXAMINATION BY MR. SHEALEY:

11 Q. Ms. Campbell just showed you -- talking about that beer
12 can, right?

13 A. Yes, sir.

14 Q. And you didn't say anything about the beer can the
15 first time that you testified in this trial, right?

16 A. I don't believe I was asked about it.

17 Q. She didn't ask you anything about it then?

18 A. I don't believe so, no, sir.

19 Q. Between now and then she's asked you to come in here
20 and talk a little bit about it, right?

21 A. Well, I knew bit, yes, sir.

22 Q. And your opinion is it wasn't tested and that was your
23 call?

24 A. I knew it wasn't tested. I'm not saying I made the
25 call. It wasn't tested. It was pretty obvious to me it

1 belonged to the victim. It's the only can in the area by
2 him.

3 Q. Okay.

4 A. And there was evidence that he had been drinking.

5 Q. Okay. That's why his fingerprints would have been
6 found on it, right?

7 A. Yes, sir.

8 Q. But they weren't. You are the head investigator in
9 this case and you are aware his fingerprints were not found
10 on that can?

11 A. Sometimes it's just common sense, and it's right by his
12 head.

13 Q. So --

14 A. And there was a bullet hole in it.

15 Q. Fingerprints are not found on that.

16 So what do you do? Let's test it for DNA. Did you
17 want to test it for DNA? No.

18 A. We tested enough cans to show the ownership of the cans
19 to identify people. We tested at least two cans that
20 belonged to the defendant. That was the importance of
21 testing the cans.

22 We didn't test every can in the yard. There was a bag
23 full of cans. Once you got to the point of identifying
24 people, it wasn't probative.

25 Q. And you sat here for Terry Gleason's testimony, right?

1 A. Yes.

2 Q. And you sat here for my expert's testimony, correct?

3 Were you here that day?

4 A. I was here.

5 Q. Okay. Now, you are aware that there was a beer can
6 found in Pablo's shoulder, correct?

7 A. There is a piece of metal.

8 Q. Uh-huh, that Terry Gleason said was consistent with the
9 beer cans on the scene, right?

10 A. Yes, sir.

11 Q. And there is a hole in that can, right?

12 A. There is.

13 Q. And you would agree that this shot to that shoulder
14 wound where the beer can was found was from back to front is
15 the way that was shot, correct?

16 A. I believe that's correct, yes, sir.

17 Q. So for the beer can to get in the shoulder, it has to
18 come from the direction of back to front, correct?

19 A. No, sir. I don't know what happened. He could have
20 rolled over on it after it was shot out of his hand. We
21 don't know that. How it got on his shoulder, we have no
22 idea how that happened. We don't know that -- when he fell
23 there, we don't know he remained in one still position. He
24 could have rolled over writhing in pain. We don't know
25 that.

1 Q. You don't know?

2 A. No.

3 Q. You didn't ask for it to be tested for DNA.

4 A. The DNA again was to identify people involved in the
5 crime, and it was successfully done.

6 Q. And you trust -- your expert, Terry Gleason, you trust
7 what she says?

8 A. Sure.

9 Q. And I want to talk about these guns that you found.
10 You got guns in your home, don't you?

11 A. I do, but I don't keep them on my kids beds.

12 Q. Okay. Let's talk about this. You found several guns
13 in that first right bedroom, correct?

14 A. Yes, sir.

15 Q. Okay. There was a Mossburg, that pump action shotgun,
16 right?

17 A. Pistol grip shotgun, yes, sir.

18 Q. Right. That was on the bed?

19 A. It was.

20 Q. I think you found a 20-gauge single shot shotgun. Does
21 that sound right?

22 A. We did.

23 Q. Found a 22-caliber rifle?

24 A. I recall specifically the ones that were on the beds,
25 because those are the ones that caught my attention. I

1 think there were other guns in the room, possibly under the
2 beds, in the corners. The ones on the beds were the unusual
3 ones, sort of out of place.

4 Q. You first stated those two guns were in that front
5 right room as you go in?

6 A. Well, the first two on the bed for sure, yes, sir, and
7 there may have been another one in that room as well.

8 Q. And being the supervising investigator of this case,
9 Major Captain Stan Smith, you are aware that that's Josh
10 Parvin's room?

11 A. I knew it was one of the teenage sons.

12 Q. Right. He's an 19 year old at the time?

13 A. I'm not sure which is which, but yes, sir.

14 Q. Okay. Now, you also noticed some guns in the farther
15 back bedroom, the second one on the right. That would be
16 John's room, correct?

17 A. I don't know which one it was. It was a teenage son.
18 I testified to that.

19 Q. Okay. It was one of the sons, and you are the lead
20 head investigator in this case.

21 And in there you found a 20-gauge single shot shotgun,
22 correct?

23 A. I did.

24 Q. A 22-caliber rifle. Does that sound fair?

25 A. Yes, sir.

1 Q. And a BB gun?

2 A. I think the BB gun was found somewhere. That may have
3 been where it was found.

4 Q. Okay. Now, if we are talking about looking down the
5 hall in the first room on your left, you are aware that's
6 James, right? He's the youngest.

7 A. Again, I don't know which was which, but I'll take your
8 word for it if you say that.

9 Q. And there we found a Remington 870 in the closet,
10 correct?

11 A. Sounds right.

12 Q. Another 20-gauge single shot shotgun?

13 A. Yes, sir.

14 Q. And a 22-caliber Cricket rifle. Are you familiar with
15 the Cricket?

16 A. No, sir.

17 Q. It's the one with the pretty little colors on it, about
18 yeah big, sufficient for shooting squirrels?

19 A. I assume.

20 Q. It's a Cricket, right?

21 A. You said a 22-caliber is not deadly?

22 Q. I'm saying it's called a Cricket. Is that what you
23 remember?

24 A. I believe that's what was in the search warrant, yes,
25 sir.

1 Q. Okay.

2 A. I know for a fact a 22-caliber weapon is deadly, if
3 that's what you are getting to.

4 Q. Now, in Todd's room you found a 12-gauge shotgun. Does
5 that sound about fair, leaning against a wall?

6 A. There was one, yes, sir.

7 Q. There was a 357 Rossi pistol in the closet in the
8 master bedroom?

9 A. There was.

10 Q. And there was a 22 rifle as well. Does that sound
11 fair?

12 A. On the rack inside the closet, yes.

13 Q. On the rack inside the closet?

14 A. Right.

15 Q. Okay. Now, did you ever test any of these items for
16 DNA, especially in the boys room, to see if those were -- if
17 Todd Parvin are stacked those up for some -- to prepare for
18 some kind of onslaught?

19 A. No, sir.

20 Q. Didn't decide to do that in this case?

21 A. No.

22 Q. Didn't test for those fingerprints?

23 A. No, sir.

24 Q. Okay. Now, you have sat here throughout this trial,
25 you know what kind of training Todd has. And we have drawn

1 a picture up here together and talked about the house
2 generally, ranch style house. You got three ways to get in
3 the house, right? The kitchen, which is where y'all came?

4 A. Yes, sir.

5 Q. All right. You have got the front door, which is on
6 the front of the house?

7 A. Right.

8 Q. And on the outside of the house you have got the
9 sliding door, which is in that room where he was arrested,
10 right?

11 A. That's right.

12 Q. Now, you talked here about possible barricade
13 situation? You got -- any weapons found blocking that
14 kitchen, or in ready at the kitchen, in that kitchen?

15 A. No, I testified earlier where they were found. They
16 were found on the beds.

17 Q. Right. That's the other side of the house in the boys
18 rooms, but the warrant I'm talking about, did you find any
19 weapons set up for barricade in that kitchen?

20 A. No, sir.

21 Q. Did you find any booby traps in that kitchen?

22 A. No, sir.

23 Q. Any claymores?

24 A. No, sir.

25 Q. Okay. Did you find any weapons set up or posted around

1 that sliding door?

2 A. No, sir.

3 Q. Okay. Did you find anything in the foyer next to that
4 front door?

5 A. No, but what the significance about where we found the
6 weapons was it was near where Investigator Gonzalez first
7 encountered the defendant. That was the significance. So
8 there was a close relationship there between -- especially
9 the weapons in the front right bedroom and the defendant
10 where he was first encountered.

11 Q. Name the weapon that was found in the room with the
12 pool table where Todd was arrested. Name the weapon found
13 in that room.

14 A. He was found, again, according to my recollection of
15 the testimony, at the corner of the hallway. And the weapon
16 that would be found there would be that 12-gauge pistol grip
17 shotgun with double-aught buckshot in it, in very close
18 proximity to that location.

19 Q. In Josh's room?

20 A. Very close proximity to that location.

21 Q. Did you ever take the time to talk to Josh, or any of
22 the boys, about how they usually keep their guns?

23 A. No, sir.

24 Q. You just want to come in here and say that Todd Parvin
25 is a man made for war, set up to --

1 A. I said there were guns positioned on the beds, which is
2 highly unusual.

3 Q. Okay. If it's unusual, wouldn't you want to talk to
4 the boys about how they keep their guns and just rule that
5 out?

6 A. No, sir. Not at that point, no, sir.

7 Q. Okay. And have you done that ever since?

8 A. I believe they had been traumatized enough. I don't
9 believe we would have had access after that.

10 Q. You bet they have been traumatized.

11 A. Yes, sir.

12 Q. Did Luck Campbell ever ask you as part of your
13 investigation to go talk to those boys about where they keep
14 their guns?

15 A. No, sir.

16 Q. If you are going to come in here and say something like
17 that, like it's a barricade, wouldn't you find it prudent to
18 talk to those boys and rule that out?

19 A. I didn't say it was a barricade. I testified as to the
20 position of the guns and what it appeared that it could be.
21 The unusual nature of where they were found alarmed me.

22 Q. Okay.

23 A. And I -- you know, I don't know what was in the
24 defendant's mind at that point in time.

25 Q. Okay.

1 A. We knew he had military training. We knew he had been
2 on the run for several weeks. We knew we had been lied to
3 that day about where he was. It was a dangerous situation.
4 And as I testified previously, I was responsible for my men
5 and I made an error in judgment that day not going straight
6 in and trying to go to her first and try to handle it
7 tactfully. We subsequently were lied to. He's in there
8 lurking in the house.

9 Q. Lurking?

10 A. Yes, sir.

11 Q. Lurking?

12 A. That's what I consider it to be.

13 Q. Okay.

14 A. If not, he would have come out and volunteered himself.

15 Q. All right. And, again, you didn't test the guns for
16 DNA and you didn't talk to the boys to see if they were
17 their guns?

18 A. No, sir.

19 Q. Or they kept them in their usual way they keep those
20 guns?

21 A. On their beds?

22 Q. Right.

23 A. No, sir.

24 Q. You didn't decide to do that?

25 A. We didn't do that, no.

1 Q. With a 19 year old and an 18 year old and a 15 year old
2 at the time in the house?

3 A. No, sir.

4 Q. Okay. Now, you talked a lot about the house. Did you
5 notice the three patron member NRA plaques on the wall that
6 they kept?

7 A. I remember some things on the wall. I couldn't recite
8 them now from memory.

9 Q. Didn't take any pictures of them?

10 A. We took some pictures of some of the photographs on the
11 wall, yes, sir.

12 Q. But not the NRA membership?

13 A. I don't recall.

14 Q. So --

15 A. We probably have pictures of it?

16 Q. You know that this family cherishes their right to bear
17 arms, correct?

18 A. I believe they do. Yes, sir I believe they do.

19 MR. SHEALEY: Nothing further.

20 THE COURT: Redirect?

21 MS. CAMPBELL: No, sir.

22 That's all we have.

23 THE COURT: Thank you.

24 MS. CAMPBELL: And that's all the State would
25 have, as far as reply testimony.

1 THE COURT: All right, ladies and gentlemen, you
2 have heard the State's reply.

3 Any further evidence?

4 MS. DAVIS: Your Honor, if we could have just a
5 brief recess?

6 THE COURT: All right. Ladies and gentlemen, I
7 will have you go to the jury room one more time. Please do
8 not discuss the case.

9 (The following takes place outside the presence of
10 the jury panel)

11 THE COURT: We will take a few minutes.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 THE COURT: Anything else from the defense?

15 MS. DAVIS: Your Honor, we do plan to recall Mr.
16 Parvin.

17 COURT REPORTER: I'm sorry?

18 MS. DAVIS: We plan to recall Mr. Parvin.

19 THE COURT: On what issue?

20 MS. DAVIS: Your Honor, to address the issue
21 brought up in reply regarding the guns, and I believe there
22 is some testimony about the route home. Those limited
23 issues.

24 THE COURT: All right, what says the State?

25 MS. CAMPBELL: Whatever you are inclined, Your

1 Honor.

2 THE COURT: We'll allow it on those limited
3 issues.

4 If you will bring the jury, please.

5 MR. SHEALEY: Should we place him in the witness
6 box again before the jury gets in?

7 THE COURT: All right. Go ahead.

8 (Whereupon, the defendant was placed on the
9 witness stand prior to the jury coming in the courtroom)

10 (The following takes place in the presence of the
11 jury panel)

12 THE BAILIFF: The jury is seated, Your Honor.

13 THE COURT: All right.

14 Defense?

15 MS. DAVIS: Thank you, Your Honor.

16 Defense calls Todd Parvin.

17 THE COURT: All right. Mr. Parvin, you are still
18 under oath.

19 THE WITNESS: Yes, Your Honor.

20 DIRECT EXAMINATION BY MS. DAVIS:

21 Q. We just heard some from the State about some guns that
22 were found in your house. I want to talk to you a little
23 bit about those, okay?

24 A. Okay.

25 Q. The first question is when you were arrested on August

1 19th, did you have any intention of barricading yourself in
2 or having a standoff with the police?

3 A. None at all.

4 Q. And when they came in the house where were you?

5 A. I was behind the pool table in my den.

6 Q. And when they told you to put your hands up, what did
7 you do?

8 A. I put my hands up slowly.

9 Q. And why did you put your hands up slowly?

10 A. I didn't want to get shot.

11 Q. And the other guns that they talked about, at the time
12 that you were arrested, was your father -- and he actually
13 just stepped out. Was your father living with you?

14 A. Yes, my father had lived with me since -- for a few
15 years by that point.

16 Q. And was your sons -- were all three of your sons living
17 with you?

18 A. Yes, they were.

19 Q. And your wife was living with you?

20 A. Yes.

21 Q. And they talked about a gun being found in the first
22 bedroom on the right. Do you know whose room that is?

23 A. I think that would be Josh's room.

24 Q. And do you know how many weapons Josh had?

25 A. He had -- as far as firearms, he would have had the two

1 that I had given him growing up.

2 All the boys have a 22 rifle and a 20-gauge single shot
3 shotgun. They get their 22's when they were 10 years old.
4 They got their 20-gauge shotguns when they were 12. It was
5 used to familiarize them with firearms, and we did a limited
6 amount of shooting. Me and my youngest have done a limited
7 amount of hunting. Didn't have a whole lot of time in the
8 military. We don't have a lot of expensive firearms or
9 anything like that, but we did buy single shot 22's and
10 20-gauge for each of the boys, so -- and it was kind of
11 light a right of passage.

12 And now Josh's 22 was actually -- I would guess -- it's
13 a Remington from like the 1950's that my stepdad refurbished
14 for him and then gave that to him. So that was
15 really the -- the tradition kind of got started by my
16 stepdad, Randall Custer, and then we continued it after that
17 with the other boys. He's partial to Josh probably, because
18 Josh is named after him.

19 Q. And so your oldest son, Josh Parvin, he had weapons?

20 A. He did.

21 Q. And where would he keep his weapons in terms of -- were
22 they in his room?

23 A. Right, I -- I didn't usually see his 22. I had seen
24 his 20-gauge propped up beside his bed, and I had seen the
25 12-gauge in question on his bed. I didn't know -- I hadn't

1 had any -- at this time I hadn't asked him, you know, what's
2 that about, but that Mossburg Maverick was actually a kind
3 of job that we did together. He had purchased it from a
4 friend and it had a completely busted stock in the back and
5 somebody had done a really bad job of trying to saw off the
6 very end of it. And we took it, cleaned it really, really
7 well, put it back together again, put the pistol grip on it,
8 and I had to refurbish the firing pin also to get it working
9 again, and that's how -- that's how he has that 12-gauge.

10 Q. And your second oldest son, John, did he have guns
11 also?

12 A. He has the same, the 22 single shot rifle and the
13 20-gauge single shot shotgun.

14 Q. And from what you know is they kept them in their
15 bedrooms?

16 A. Yes, they all kept them in their bedrooms.

17 There was a time where they all stayed under our bed
18 when they were younger. When they first got them at 10 and
19 12 they didn't keep firearms and ammunition in their rooms.
20 After they got older and showed that they were responsible,
21 they did -- they started keeping their firearms in their own
22 room, much as I had done growing up, my dad had done also.
23 It's definitely not out of character for our family.

24 Q. And your youngest son, James, he also is the same way,
25 he had guns?

1 A. He has a 20-gauge single shot and the 22 single shot
2 referred to as the Cricket. My dad actually picked that one
3 out. I think I was deployed at the time of that first day.

4 Q. And your wife, Shanna, did she have a weapon also?

5 A. She has a Rossi 357 magnum that we purchased from Jim's
6 Pawn at Fort Bragg, North Carolina. I paid payments on them
7 way back when, when we were first married.

8 Q. And, Todd, on August 19th did you lay any weapon -- or
9 I think they had said that there was two weapons on a bed.
10 Did you lay any weapons out waiting for police?

11 A. Not at all. The only thing I did prior to them getting
12 there was put my shoes on.

13 Q. And you had seen them outside?

14 A. Yes, I had.

15 Q. And in terms of also a gun, are you an NRA member?

16 A. I am. I'm referred to it as a super life member. I
17 have had my life membership for a number of years and have
18 upgraded it twice and now I'm a patron member.

19 Q. And I think lastly they had mentioned something about
20 you were out that day on July 30th, that you had stopped and
21 got beer?

22 A. Yes.

23 Q. And there is some testimony just now in the State's
24 reply about how you came home. When you initially
25 testified, you never said that you got beer and were driving

1 straight home?

2 A. Not to my knowledge, no.

3 Q. And after you got beer, what did you continue to do as
4 you made your way home?

5 A. I was -- I had gone up Faraway knowing that there was a
6 convenience store there, and I took Faraway back down into
7 the -- back down into the neighborhood and was -- and that's
8 when I saw the gentlemen and stopped, like I said -- like I
9 said before.

10 MS. DAVIS: I have nothing further, Your Honor.

11 MS. CAMPBELL: Just a couple of questions.

12 THE COURT: Yes.

13 CROSS EXAMINATION BY MS. CAMPBELL:

14 Q. You testified that you were going up Faraway and you
15 ended up going back into that other neighborhood?

16 A. No. No, ma'am. What I -- what I recall is is that
17 I -- I was about finished with everything I was doing and
18 it's -- I remembered Faraway being the street that that main
19 school was on, so I turned towards Decker on Faraway, went
20 up Faraway, parked at the store, got the beer, got back in
21 my vehicle and took Faraway back down. That's what I'm
22 testifying to. That's when I saw the two individuals that I
23 met.

24 Q. While you were going down Faraway?

25 A. I believe so. I think Faraway and their street meets.

1 If it doesn't, I'm -- like I kind of said earlier, I don't
2 really -- I'm not real familiar with the street signs and
3 stuff.

4 Q. If I tell you that it doesn't meet and you couldn't see
5 the house from Faraway --

6 A. That doesn't surprise me. I probably crisscrossed
7 along or something and saw that from another route.

8 That's -- I was pretty clear whenever I testified earlier
9 that -- I was pretty clear that I don't know all the streets
10 and that I think this is how I went.

11 Q. Now, you testified about guns. Your sons sleep with
12 guns?

13 A. I don't know.

14 Q. And if they were sleeping with a gun, do you think
15 that's a responsible way of handle guns?

16 A. I would -- I would probably talk with them about it and
17 try to figure out what was going on.

18 Q. And this was your household, right?

19 A. Definitely, ma'am.

20 Q. And the master bedroom where the bongs were found --

21 A. Yes, ma'am.

22 Q. -- that's your bedroom?

23 A. Yes, ma'am.

24 Q. Not your father's?

25 A. No, ma'am.

1 MS. CAMPBELL: Beg the court's indulgence.

2 (Off the record)

3 (Back on the record)

4 BY MS. CAMPBELL:

5 Q. Which two sons were out of town during this time
6 period?

7 A. John and -- John and James.

8 Q. They weren't even in the house?

9 A. They were not.

10 MS. CAMPBELL: That's all I have.

11 THE COURT: Anything else?

12 MS. DAVIS: No, sir, Your Honor.

13 THE COURT: All right.

14 Any additional witnesses?

15 MS. DAVIS: No, Your Honor.

16 THE COURT: All right.

17 Ladies and gentlemen, you have now heard the
18 defense -- you have heard all the evidence in the case. We
19 are going to have you step out. We are going to plan for
20 you to have a jury view, meaning to be taken out to the
21 location, the incident location, so you can have your own
22 observation of it. Of course, whenever there is a jury
23 view, you cannot do anything other than look. You can't.
24 talk with each other about what you are looking at. You
25 can't talk with anyone else, including the folks who are

1 taking you there, but it's done to help you be able to put
2 photographs and other things and testimony into context, so
3 we are going to plan to do that today. We are going to be
4 through today after that is done and plan to start back at
5 9:30 tomorrow morning. So while I talk with the lawyers
6 about the details about that, we will have you go to the
7 jury room and then bring you back one more time. Please
8 don't discuss the case.

9 (The following takes place outside the presence of
10 the jury panel)

11 (Whereupon, Mr. Parvin returned to the defense
12 table)

13 THE COURT: All right. Any other matters of law?

14 MR. SHEALEY: Yes, Your Honor.

15 Now, after both the State and defense's case, I
16 think it's appropriate to ask again for a directed verdict.
17 My law clerk is going to pass down some cases that I would
18 be specifically arguing, Dickie, which is a new case that
19 came out in September regarding self-defense. It was
20 authored by Jean Toal.

21 THE COURT: What does it say?

22 MR. SHEALEY: It basically says that unless the
23 State -- if there is any evidence of self-defense and unless
24 the State can then rebut the elements of self-defense, it's
25 not appropriate for this charge of murder to be sent to the

1 jury.

2 That's a similar analogous case. It was a
3 security officer who, in 2004, was working in Cornell Arms
4 here in Columbia. He lived at Cornell Arms, working there,
5 and kind of -- the victim, a Mr. Boot and his friend, a Mr.
6 Stroud, became most intoxicated at the Jimmy Buffet concert.
7 Mr. Boot began causing a disturbance and the defendant asked
8 him to leave. It was Mr. Dickie's job to escort him out.
9 The testimony was when he escorted him out, he had a pistol
10 on him, which was part of the job of a security guard. And
11 they left briefly and then Mr. Boot returned, yelled some
12 obscenities at him, and both Mr. Boot and Mr. Stroud
13 advanced upon him, at which time Mr. Dickie, without
14 warning, shot Mr. Boot, as he thought he was reaching for
15 something, three times and killed Mr. Boot.

16 Mr. Dickie was convicted. His lawyers argued for
17 a directed verdict. He was convicted of voluntary
18 manslaughter at his trial and received a 16 year sentence.

19 In September of this year, after being affirmed on
20 appeal, his case was reversed, overturned, and Justice Toal
21 submits and writes that the State did not disprove the
22 elements of self-defense, and, therefore, these lawyers
23 should have won a directed verdict.

24 It goes extensively into the law of self-defense
25 and states that "a person is justified in using force in

1 self-defense," when, number one -- and these are the four
2 basic factors that we are all familiar with:

3 "The defendant was without fault in bringing on
4 the difficulty.

5 "The defendant actually believed he was in
6 imminent danger of losing his life or sustaining serious
7 bodily injury, or he actually was in such imminent danger.

8 "3. If the defense is based upon the defendant's
9 actual belief of imminent danger, that a reasonable man of
10 ordinary firmness and courage would have entertained the
11 same belief.

12 "4. The defendant had no other probable means of
13 avoiding the danger of losing his own life or sustaining
14 serious bodily injury than to act as he did in this
15 particular instance."

16 I would apply these law or this rationale to our
17 case specifically.

18 The other testimony was that in Dickie, the
19 security guard, Dickie, was a veteran. He was disabled
20 partially and had a 33 percent, had a hard time moving.
21 That is analogous here.

22 But basically what the testimony has been and now
23 we have heard from all the evidence, and we have heard from
24 Todd, and that he -- no longer is he at fault in bringing on
25 the difficulty. Well, he testified that he did own this

1 Norinco 45-caliber, that he routinely carried it in his car.
2 He mentions carrying it while scrapping and he's had it for
3 several years, registered with the Army. The State has
4 presented evidence that he did not have a concealed weapons
5 permit in South Carolina.

6 He's testified that at the time of this meeting
7 where he encounters Edgar and Pablo and the other gentlemen
8 that day at this location, that he had it in the car; that
9 when he went on the beer run to the Shell gas station, that
10 he took it from between the center console and put it in his
11 waistband so as not to be, you know, more available to
12 someone he's just meeting, which would be Edgar. It stays
13 in his waistband until he has the final confrontation with
14 Edgar and Pablo.

15 As I said, the State has presented evidence that
16 he doesn't have a concealed weapons permit. There is no
17 evidence that he was starting a fight that day. He was
18 extremely -- he showed his tattoos. He complimented Alfredo
19 of his boots and told them exactly where he lived up and to
20 the time of the fight.

21 I would cite both State v. Burriss, which is 334
22 S.C. 256, and State v. Slater, which is 373 S.C. 66. They
23 both stand for the proposition that unlawful possession of a
24 firearm alone, with nothing more, does not automatically bar
25 a self-defense charge, anticipating an argument by the State

1 that Todd, yes, he did not have a license to carry it, but
2 those cases say that you are allowed, even if being in
3 unlawful possession of a weapon, to arm yourself in
4 self-defense without being at fault in bringing on the
5 difficulty. I don't think the State has established that he
6 is -- other than not having a permit, that he's bringing on
7 any other difficulty here. I don't think that it would be
8 rebutted at this point beyond a reasonable doubt, which is
9 what Dickie demands.

10 The next prong would be that the defendant
11 believes he was in imminent danger of losing his life or
12 receiving substantial bodily injury. Well, he actually was
13 in imminent danger. I would submit that Todd believed he
14 was actually in imminent danger, and that he was in imminent
15 danger. He testified after coming back from the store when
16 things were friendly, they were drinking beer, that
17 eventually things became less friendly, there were less
18 translation in their conversation and eventually it was just
19 he, Edgar and Pablo. At this point Edgar refuses to
20 translate English any more, per Todd's testimony, that he
21 asked him to please speak English to him, that he told him
22 at point "well, I'm going to leave." Edgar, per Todd's
23 testimony, was that he wanted some type of more money. Todd
24 at this point, at this juncture, says, "well, I never got my
25 change." This starts an argument where Todd said that Edgar

1 becomes angry. There is cursing involved. He does give him
2 back his change. At this point Todd says he is more scared
3 than he has ever been in his life, that he's not allowed to
4 leave, that Edgar is walking back slowly towards the opening
5 of his dwelling, and that Pablo is a much larger man than
6 Todd, was behind him. And you heard through the evidence
7 that Todd is 100 percent disabled through the veterans
8 department, that he has degenerative joint disease, that he
9 has hip disease, that he has elbow disease, that he has a
10 pinched nerve, he doesn't move very well in terms of
11 running. He states that at this time he tries to sit down
12 in an attempt to placate his potential captors at this
13 point; that at this point he said he's going to leave and he
14 makes a -- he bolts for the gate, which is the closing gate;
15 that Pablo puts his arm around his head and one hand on his
16 weapon at the same --

17 THE COURT: Are you reciting all these facts
18 because you don't think I heard them, or are you just kind
19 of talking into the record, or --

20 MR. SHEALEY: I'm sure that you have heard them,
21 but I'm just trying to argue my point as to why I think --
22 why I think he thinks and the evidence shows that he's
23 been -- that he's putting him in fear of his life.

24 Your Honor, at this point Edgar says "we have guns
25 too," and Todd reacts and begins shooting, first at Edgar in

1 his testimony, who is saying "we have guns" and is opening
2 the door to this building, and then next to Pablo, who is
3 reaching for his own firearm trying to arm himself with it.

4 I would cite State v. Rash, which is at 182 S.C.
5 42. One may act on appearances --

6 THE COURT: That was totally irrelevant, based on
7 the questioning of the right to charge self-defense. It has
8 nothing to do with this case.

9 MR. SHEALEY: Well, Your Honor, I think that
10 initially it's going to be a question of --

11 THE COURT: A 1936 case where a policeman killed
12 someone and was then charged with murder and the judge
13 didn't charge self-defense.

14 MR. SHEALEY: I would also cite --

15 THE COURT: Any case in which the issue is whether
16 or not it's reversible error to not charge self-defense is
17 of no benefit to me, and that would be the Rash and also the
18 Slater case.

19 MR. SHEALEY: Well, Your Honor, I'm citing
20 particularly this here and the contents of Dickie as they
21 analyze each element and whether the State has rebutted each
22 element or not.

23 But the basic law, Your Honor, is he doesn't have
24 on allow someone to get a jump on him, that he can -- he can
25 react when the appearance of danger as an ordinary person of

1 coolness and courage and he doesn't -- he can take
2 reasonable steps towards not letting them get the draw on
3 him, which is what I think --

4 THE COURT: Let's plain black letter law. You are
5 not telling me anything.

6 MR. SHEALEY: Just for the record, so we have a
7 clear record here, Your Honor.

8 THE COURT: Well, the record it's clear based on
9 the testimony. You just want to --

10 MR. SHEALEY: I'm just trying to preserve his
11 rights as to this directed verdict motion. Your Honor, I
12 won't be a whole lot longer.

13 But also the entire fight took five seconds, as
14 you heard.

15 Your Honor, we have the testimony from their own
16 experts in firearm analysis, from my expert, who I brought
17 here, Mr. Robert Tressel, is that the scene is consistent
18 with most of the fighting being happening inside the fence,
19 which is not what the eyewitness, Mr. Roberto Gonzales,
20 says. He says that Todd shot all these shots from outside
21 the fence, maliciously and coolly, and then walked to his
22 car.

23 I believe the crime scene corroborates Mr.
24 Parvin's story and that he did act as he said he acted.

25 The last cause of this would be whether Todd had

1 no other probable means to avoid the danger than to act as
2 he did. And, as you know, the defendant is not required to
3 retreat, but if there is no other probable means of avoiding
4 danger of losing his own life or sustaining serious bodily
5 injury, then to act as he did in this particular instance.
6 And I would cite again, State v. Wiggins, 330 S.C. at 545.
7 And here his testimony is that he actually did try to
8 retreat. At the time when he was being told he could not
9 leave, he sat for a moment to placate his captors and then
10 try to move as quickly as he could to the opening of the
11 gate. At this point he was intercepted by Pablo and
12 threatened by Edgar. So although he doesn't have a duty to
13 retreat, I would argue that here he tried at first before
14 being forced to use force with force.

15 And just quite simply, Your Honor, reading Dickie,
16 it states the obvious, which is our law, that unless the
17 elements of self-defense, once they are established and once
18 they are put into evidence can be rebutted by the State, it
19 is not proper and it has to be rebutted beyond a reasonable
20 doubt. And unless this is not -- unless this is done, it's
21 not proper to submit the charge of murder to the jury.

22 THE COURT: All right. What says the State?

23 MS. CAMPBELL: Your Honor, Dickie is a unique
24 case. In that case, as they referred to the facts in
25 dispute in that case. And this case obviously there are two

1 versions of what happened that day. There is a real
2 credibility issue in this case, as far as the defendant's
3 testimony and as far as what is corroborated by the crime
4 scene and not.

5 Your Honor, I feel like it is a jury issue, but I
6 do not think a directed verdict would be appropriate, but
7 you know the law better than I do.

8 THE COURT: Well, the Dickie case is very fact
9 specific. We have a security guard on duty and this man
10 Boot comes and is tailgating and starts causing problems at
11 the Cornell Arms Apartments and he is shot by the security
12 guard. Along the way he threatened the security guard.

13 The case was rather hotly contested. The decision
14 was made in a 3-2 decision by the Supreme Court in which --
15 I'm very impressed with the dissent that was written by
16 Justice Beatty to the offense relied upon earlier during the
17 trial portion. Pretty sound reasoning. And also by Justice
18 Pleicones, another centered opinion. After the shooting,
19 however, the security guard immediately put the gun back in
20 his pocket and he called 911.

21 I don't believe that if the defendant claims
22 self-defense it puts the burden on the State to present
23 reply testimony to go point by point to refute a defendant's
24 claim that I killed someone in self-defense. The State in
25 its case in chief presented evidence that the defendant, in

1 effect, shot these two people and killed them in cold blood.
2 If that's believed by the jury, then the jury could conclude
3 that he's guilty and that self-defense did not apply.

4 Further distinguishing factors, not only with this
5 case cited by Mr. Shealey, these victims were at home
6 minding their business. The testimony could easily be
7 construed to mean that the defendant was the aggressor,
8 brought upon the trouble and committed the offense as
9 alleged.

10 I would respectfully deny the motion and the jury
11 will decide who to believe and who not to believe.

12 MR. SHEALEY: Thank you, Your Honor.

13 THE COURT: All right. Any other matters of law?

14 MS. CAMPBELL: No, sir.

15 I didn't know how the defense would feel about
16 this, if we just caution the jury that it's been 16 months
17 since this occurred, the crime scene, so there may be some
18 changes that we don't have any control over it.

19 THE COURT: Well, obviously I can caution the jury
20 concerning that, just as I caution the parties, the State
21 and the defense about that.

22 MS. CAMPBELL: Yes, sir. That's all we would
23 request.

24 THE COURT: All right. Now, as far as the
25 transportation of the jury to the location, who would be

1 doing that, officers?

2 (UNKNOWN POLICE OFFICER): We have three officers.

3 THE COURT: All right. Who are the officers?

4 Any objection to that by the defense?

5 MS. DAVIS: No, Your Honor.

6 THE COURT: All right. We will have the clerk
7 swear those officers who will be guarding the jury.

8 COURT REPORTER: If they will all state their
9 names for the record, too, please.

10 THE CLERK: State your name for the record.

11 OFFICER GRAVELY: Gerald Gravelly.

12 OFFICER HARPER: Collins Harper, C-O-L-L-I-N-S.

13 OFFICER OWENS: Garrett Owens.

14 THE CLERK: Raise your right hand.

15 Do you swear or affirm that you will take charge
16 of this jury while they are absent from this court; you will
17 not speak to them regarding this matter, nor will you allow
18 anyone to speak to them regarding this matter, so help you
19 God?

20 OFFICER GRAVELY: I do.

21 OFFICER HARPER: I do.

22 OFFICER OWENS: I do.

23 THE CLERK: Thank you.

24 THE COURT: All right. Before we bring the jury
25 in for that, to deal with that issue, regarding requested

1 jury charges, is there anything anyone wants to say?

2 MS. CAMPBELL: Your Honor, we have never been
3 provided their jury charges.

4 (Off the record)

5 (Back on the record)

6 THE COURT: I think -- are the bailiffs also
7 going? We have two bailiffs? How about swear the bailiffs
8 as well.

9 THE CLERK: State your name for the record,
10 please.

11 BAILIFF ADDISON: Roland Addison, A-D-D-I-S-O-N.

12 BAILIFF BROOME; William Broome, B-R-O-O-M-E.

13 THE CLERK: Raise your right hand.

14 Do you swear or affirm that you will take charge
15 of this jury while they are absent from this court; you will
16 not speak to them regarding matter, nor will you allow
17 anyone to speak to them regarding this matter; so help you
18 God.

19 BAILIFF ADDISON: I do.

20 BAILIFF BROOME: I do.

21 THE CLERK: Thank you.

22 THE COURT: All right, aside from the bailiffs and
23 the officers, do any of the parties, any of the lawyers want
24 to accompany them, or the jury only?

25 What says the State, or the defense?

1 MR. SHEALEY: We just think it would be best if
2 they just go by themselves and not the lawyers hanging
3 around.

4 THE COURT: All right. What says the State?

5 MS. CAMPBELL: That's fine.

6 THE COURT: The jury only and the escorting
7 officers.

8 So we will bring the jury back in and let them
9 know.

10 We will have them -- we will have them get out and
11 they can stay there no more than ten minutes and then come
12 back.

13 (The following takes place in the presence of the
14 jury panel)

15 THE BAILIFF: The jury is seated, Your Honor.

16 THE COURT: All right. Ladies and gentlemen, Mr.
17 Foreman, members of the jury, you will now be taken to view
18 the scene of the alleged crimes. And while you are on your
19 way to and from the scene and while at the scene do not
20 discuss the case with anyone, including your fellow jurors,
21 and do not ask any questions of anyone there, including the
22 officers who escort you there, the bailiffs and the
23 officers.

24 You will be taken there, get out of the van and
25 you will be there for about ten minutes. Then you will be

1 brought back here to the jury room. And after you come back
2 to the jury room, you will be excused. You might get back
3 after we are gone, I don't know. So you won't come back in
4 the courtroom. You will just be excused when you get back
5 from the jury view, you need to be back in the jury room at
6 9:30 tomorrow morning for closing arguments.

7 So if you will go with the officers, bailiffs, and
8 have a good evening.

9 (The following takes place outside the presence of
10 the jury panel)

11 THE COURT: All right, regarding any jury charges?

12 MR. SHEALEY: Can we have just one more brief
13 moment to discuss particular different jury charges with our
14 client?

15 THE COURT: All right.

16 MS. CAMPBELL: Your Honor, the investigator just
17 brought it to my attention. There are people apparently
18 living there in the house, and he didn't know if you wanted
19 him to go explain to the people what was going on so that
20 they wouldn't react adversely.

21 THE COURT: Well --

22 MS. CAMPBELL: I just didn't want, you know, there
23 to be --

24 THE COURT: Well, maybe I need to go ahead and
25 handle that, since the officer has testified in the case.

1 MS. CAMPBELL: Yeah. I mean, I'm just saying I
2 don't want there to -- they won't know why all these people
3 are descending on their house.

4 They all speak Spanish.

5 THE COURT: Where is the interpreter? Did he
6 come?

7 MS. CAMPBELL: I have got a victim witness person
8 in my office and she can speak Spanish.

9 THE COURT: Ask them to hold up for a second.

10 THE BAILIFF: Your Honor, may I approach?

11 THE COURT: Ask them to hold up a second.

12 THE BAILIFF: Yes, sir, they are held up. I need
13 to ask you a question.

14 THE COURT: All right.

15 (Off the record)

16 (Back on the record)

17 THE COURT: All right, we need someone to speak
18 Spanish out there then.

19 MS. DAVIS: Your Honor, we have sent our clerk to
20 see if they can get ahold of Britt Hunt, who was here
21 earlier in the week to see if he would be able to go.

22 THE COURT: All right. We'll be at ease for
23 awhile.

24 (Off the record)

25 (Back on the record)

1 THE COURT: Officer, you can go there ahead of the
2 jury. Do you want us to hold the jury here, or you can go
3 there and be gone by the time they get there?

4 OFFICER GONZALEZ: Yes, sir, just enough time for
5 me to tell them there will be a lot of people around there,
6 not to come outside the house, they are to stay inside the
7 house.

8 THE COURT: All right.

9 OFFICER GONZALEZ: I'll be gone hopefully by the
10 time the jury gets there.

11 MS. CAMPBELL: We can get him to radio us as he's
12 leaving the scene.

13 THE COURT: All right. Any problem with that?

14 MS. DAVIS: Your Honor, I would just ask if we
15 have a moment to see if Mr. Hunt could to the scene, since
16 Investigator Gonzalez has testified, as he alluded to --

17 MS. CAMPBELL: The jury wouldn't see him if he
18 leaves ahead of time out of there before they get there.

19 THE COURT: All right, we will do that. You can
20 get a head start and we will hold the jury here. Have him
21 there and be gone before the jury gets there.

22 MS. CAMPBELL: Thank you, Your Honor.

23 THE COURT: All right. We will take a few
24 minutes.

25 (Whereupon, proceedings were recessed)

1 (Whereupon, proceedings were reconvened)

2 THE COURT: All right. Charge conference.

3 What says the State?

4 MS. CAMPBELL: As far as our charges, Your Honor?

5 THE COURT: Yes.

6 MS. CAMPBELL: Your Honor, Ms. Simpson ran
7 upstairs. There were an additional two charges that I
8 requested her to get and submit to you this morning. It's
9 being done right now. Just one on malice aforethought.

10 And, Your Honor, under credibility of witnesses, I
11 believe you have got your own credibility charge.

12 I have never seen defendant's request charge
13 number two. I don't think that's an appropriate charge to
14 the jury, as far as the law goes, and I note they don't cite
15 any precedence for it.

16 THE COURT: What about this number two? What is
17 that, credibility of investigation?

18 MR. SHEALEY: Yes, Your Honor. We just -- we
19 think that goes to some of those directives and particulars
20 there, the course, the actions that an investigator takes
21 involved in this case; whether he tested the beer can on the
22 scene for DNA when he's saying that it's been shot and
23 obviously held in the victim's hand, or whether he tests a
24 gun on a bed after he made the allegation that it was part
25 of a barricade. So we think that's certainly something that

1 plays into this and --

2 THE COURT: Well, that would be the witness,
3 wouldn't it? Credibility of the witness, wouldn't it?

4 MR. SHEALEY: Well, some lay witnesses, sure, we
5 want them to judge their credibility. We also want them to
6 judge the credibility of this actual investigation. When
7 you are making these claims, we want them to think about
8 Stan Smith and Investigator Gwyn.

9 THE COURT: What's your authority for this type of
10 charge?

11 MR. SHEALEY: You know, I think I might have
12 gotten this out of Ralph King Anderson. I know how much you
13 love to have a charge submitted from him, but, I mean, I
14 didn't cite a case, but it's something that we think having
15 the jury thinking would be about the entire contents of this
16 week and a couple day trial.

17 THE COURT: I'm not going to charge number two.

18 MR. SHEALEY: Yes, sir.

19 MS. CAMPBELL: Number three, Your Honor, I believe
20 it's the standard State v. Gardy charge. We have no problem
21 with that. I haven't reviewed the entire language, but it
22 looks to be -- it appears to be the standard charge.

23 THE COURT: All right.

24 MS. CAMPBELL: Number four, Your Honor, I believe
25 is included in your standard charge.

1 THE COURT: All right.

2 MS. CAMPBELL: Number five, Your Honor, I think
3 they are entitled to a charge. I have to look at this
4 language in the recent case law, but I believe it's a
5 correct charge on good character.

6 COURT REPORTER: On what, I'm sorry?

7 MS. CAMPBELL: Good character.

8 THE COURT: Let me see. Let me read this thing.
9 "When a person is charged with a crime, the law permits the
10 proof of his good character and reputation, because under
11 some circumstances a person might be entitled to a verdict
12 of not guilty, in taking into consideration his good
13 character and reputation, when without it, a verdict of
14 guilty might be authorized. Evidence of good character and
15 good reputation may in and of itself create a doubt as to
16 guilt and should be considered by the jury, along with all
17 the other evidence, in determining the guilt or innocence of
18 the defendant. The weight you give to that testimony, like
19 all other testimony in the case, is for you to determine and
20 decide, in your good judgment."

21 A condensed form of that is what the standard
22 charge, which says "the defendant has presented evidence of
23 his good reputation and character to show that it would be
24 inconsistent with the defendant committing the crime. The
25 weight you give that testimony, like all other testimony in

1 this case, is for you to decide in your good judgment. You
2 may consider testimony of the defendant's good character,
3 along with all the other evidence, to decide whether or not
4 the defendant committed the crimes."

5 MS. CAMPBELL: We believe that's a proper charge,
6 Your Honor. I just looked at the case.

7 THE COURT: All right.

8 MR. SHEALEY: Respond?

9 THE COURT: Yes, sir.

10 MR. SHEALEY: Your Honor, we think this is, the
11 one we submitted, is appropriate in this case. This is
12 direct from Ralph King Anderson's Requests to Charge, and
13 this case has been a lot about character evidence. They are
14 saying this stuff. Obviously the motive is he's homosexual,
15 engagement for money, which caused him to enrage and
16 slaughter two men. We are saying he's not homosexual, and
17 we put good character in to say he's not homosexual, he's
18 trustworthy, he's honest, and he's peaceful. We think that
19 to not have this charge submitted to the jury would
20 basically cut out and dilute the character case that we put
21 forward without this particular instruction. We think this
22 particular case warrants it over just a general kind of
23 character case.

24 THE COURT: All right. Well, I have known Judge
25 Anderson for years and years, but I don't use his charge

1 book, and I think the standard charge is better than his
2 charge, so I'm going to charge the standard charge.

3 MS. CAMPBELL: Thank you, Your Honor.

4 Number six, Your Honor?

5 THE COURT: Yes, ma'am.

6 MS. CAMPBELL: I believe that this would be -- the
7 standard language that's used, not this language, but it
8 would be part of your charge, as far as acting on
9 appearances, as well as number seven.

10 THE COURT: What says the defense?

11 MR. SHEALEY: Your Honor, as to charge six, we
12 think that this appropriate. Obviously he may act on
13 appearances. He may be mistaken. Just telling the jury he
14 needs to understand the law doesn't hold him to a refined
15 assessment. We think this is important in this case when he
16 has to perceive a danger, coupled with a threat. That's
17 something that's certainly an issue here, and this
18 particular charge we think applies so that you don't have
19 to, you know, obviously allow somebody to get the drop on
20 you. That's what at issue here. He has training as well in
21 that that we have put into evidence in the military. So
22 that, coupled with this charge, is extremely appropriate in
23 this case and we think should be charged to this jury.

24 THE COURT: Well, the jury would be charged on
25 right to act on appearance. That's not the issue. The

1 issue is whether this specific wording that you seem to
2 prefer, from whatever source you got it from, is better or
3 more suitable than the standard charge on these issues
4 that's given throughout this state.

5 MR. SHEALEY: I think it is.

6 THE COURT: I think that any request that seeks to
7 ask the court to comment on the facts is not an appropriate
8 charge and the -- the more general reference to the law
9 regarding the defendant's right to act on appearances is the
10 better charge, although there isn't much difference between
11 the two, except this one says he doesn't have to wait until
12 his assailant gets the drop on him. Of course, categorizing
13 the victims in this case as assailants could be considered
14 to be an unfair characterization of the evidence.

15 MR. SHEALEY: Your Honor, we would assert that is
16 in evidence. That is from Todd Parvin's analysis.

17 THE COURT: Well, I'm not going to call them
18 assailants, as requested in this charge.

19 MR. SHEALEY: Well, I don't know if we could think
20 of a different way to call them attackers, or --

21 THE COURT: I'm not going to call them anything.
22 I'm not going to call them anything, other than what is
23 referenced in the standard charge, which says that he
24 doesn't have to show that he was actually in danger. It's
25 enough that he believes he was in imminent danger and a

1 reasonably prudent person of ordinary firmness and courage
2 would have had the same belief. He has a right to act on
3 appearances, even though his beliefs may be mistaken. If
4 you decide that -- it's up to you to decide whether the
5 defendant's fear of immediate danger of death or serious
6 bodily injury is reasonable and would have been felt by an
7 ordinary person in the same situation. That's the charge
8 I'm going to give regarding acting on appearances.

9 MR. SHEALEY: Just for the record, the key
10 language that we feel would be missing by not charging this
11 charge is that by having someone -- not allowing somebody to
12 get the drop on you.

13 THE COURT: I'm sure that you can incorporate that
14 in your argument; if you are going to do the argument, use
15 that as that trait, if you would like. You would be the one
16 arguing the case. I'm giving the law.

17 MR. SHEALEY: Yes, sir.

18 THE COURT: All right. How about number seven?

19 MS. CAMPBELL: Your Honor, number seven, we just
20 ask -- I think it's included in your -- the language would
21 be in your normal -- we just ask for the standard
22 self-defense charge.

23 THE COURT: Mr. Shealey?

24 MR. SHEALEY: I mean, I think this is probably
25 somewhat similar to what you have, but we think this is

1 something that we submitted out of abundance of caution, but
2 we think the force here -- there is a lot of testimony about
3 shooting four times in the back and that -- and that the
4 bottom line of this is particularly important here, that the
5 case law says that you are justified, once you -- you can
6 arm yourself in self-defense, to continue shooting until the
7 apparent imminent danger to his life and body has ceased.
8 We wouldn't want -- I want the jury to understand that
9 that's the law of South Carolina, and that here it's not to
10 be overawed by the evidence that there are three shots to
11 the back and that would have stopped someone alone from
12 thinking about something like that. We ask the Court that
13 they be charged on the law in that regard.

14 THE COURT: Well, there some question of this
15 evidence whether the summary of the entire law of
16 self-defense, including the previous one regarding acting on
17 appearances, which is listed here as number three. This
18 element of self-defense in number four, it's a separate
19 element altogether and that it does include the right to use
20 the force necessary to avoid death or serious bodily injury
21 and the defendant's right to continue shooting until it's
22 apparent that the danger has completely ended. So there is
23 nothing new about it or unique about that request as opposed
24 to the standard charge.

25 MR. SHEALEY: I don't think the law of the

1 standard charge instructs the jury that they can -- that
2 once you are in self-defense -- it says, yes, you can act as
3 he did in this particular case, given no other probable
4 means of avoiding the danger. I think that's -- it's pretty
5 consistent thinking about one shot, you know, acting in
6 self-defense when you can't avoid the situation, but I think
7 here when you have as many shots as you do to a back, and
8 testified by the pathologist and other witnesses who then
9 testified as experts in a crime scene, that I think it's
10 important for them to know that the law says that you can
11 shoot until the apparent danger to your life and body has
12 ceased. This was a five second fight, per Todd Parvin's
13 testimony. It's very quick even for other witness'
14 testimony. I think they have to understand that.

15 THE COURT: Well, that's part of the standard
16 charge.

17 MR. SHEALEY: But that -- in State v. Hendricks,
18 the first part --

19 THE COURT: The judiciary that creates the
20 standard charge is familiar with State v. Hendricks.

21 MR. SHEALEY: If that's in your standard charge,
22 then I have no problem with not submitting this particular
23 one.

24 THE COURT: I think it's a matter of wording, but
25 I don't subscribe to the notion of pulling words and phrases

1 out of other cases just because they sound good as relates
2 to this particular case. I mean, the point is clear that he
3 thought he had a right to act in self-defense, then he had
4 no other probable way to avoid the danger than to act as he
5 did, then he's not guilty.

6 MR. SHEALEY: I only add this little clause from
7 State v. Hendricks, the illustrative, when they are talking
8 about shooting until a danger has ceased, and I didn't
9 realize that was in your standard charges.

10 THE COURT: Well, the standard charge, it says
11 that "he can shoot until it's apparent that the danger of
12 death or serious bodily injury has completely ended."

13 So whether I use that phrase, that "the threat has
14 completely ended," or if I pull out of State v. Hendricks,
15 someone else says "has ceased," what's the difference?
16 Ceased, ended, same thing.

17 MR. SHEALEY: I don't have a problem with that
18 distinction, if it's in your standard charges.

19 THE COURT: I'm glad you don't have a problem with
20 it.

21 All right, number eight.

22 MS. CAMPBELL: They have submitted State v.
23 Burriss. I think that was an accidental shooting case.

24 I would just ask that you use your standard charge
25 where everyone considered all these, but whatever Your Honor

1 thinks is appropriate.

2 I would have to look at that again to make sure if
3 that's a correct statement.

4 THE COURT: All right, Mr. Shealey?

5 MR. SHEALEY: I just think that this charge is
6 extremely important when we are talking about prong one of
7 self-defense, which is whether someone is at fault in
8 bringing on the difficulty.

9 There has been evidence presented that he doesn't
10 have his license to carry a weapon legally in this state,
11 and I'm sure the solicitor will argue that and was breaking
12 the law at the time before he even encountered Mr. Pablo and
13 Mr. Edgar. And I think that because the law in our state
14 does say that if you are allowed to arm yourself, even --
15 you have the right to arm yourself, even if you don't have a
16 permit. Even if you were carrying a firearm unlawfully, you
17 can still do so at the time of the shooting.

18 State v. Burriss was -- it was about an accidental
19 shooting where they addressed that. Someone who claimed
20 accident, but that at the time that they pulled the weapon
21 and claimed the shooting was accident, they were rightfully
22 allowed to arm themselves in self-defense.

23 State v. Slater, which I also cite, goes on to
24 address that further in the context of a self-defense
25 shooting where they addressed this, told Mr. Slater that he

1 wasn't entitled to this benefit, because he actually
2 interjected himself in a fight that he had no business being
3 involved in and had already taken place with his gun, but
4 went on to affirm Burriss and say again what it stands for,
5 that even if you are in unlawful possession of a weapon, it
6 doesn't preclude you to arm yourself in self-defense at the
7 time of the shooting and it doesn't make you at fault. I
8 think that's particularly important in dealing with this
9 case and the evidence presented by the State that he does
10 not have a concealed weapons permit.

11 THE COURT: All right. Anything else from the
12 State?

13 MS. CAMPBELL: No, Your Honor.

14 I would just note in Slater it basically goes to
15 why self-defense should not be -- it distinguishes Burriss
16 because the Burriss facts were in themselves somewhat unique
17 again, Your Honor.

18 I just don't know that that's the proper charge to
19 the jury. I understand the argument.

20 THE COURT: All right. Let's look at Mr. Slater's
21 case here where he appealed that the court committed
22 reversible error in failing to charge the jury on
23 self-defense.

24 He attended a step show down at North Charleston.
25 He saw some people around his truck. He went to see what

1 was going on. He got his gun. He was intentionally
2 shooting it in the air and caused a commotion. He changed
3 his mind a few moments later.

4 Then he went to -- saw another disturbance in the
5 parking lot and wanted to see what was going on with that.
6 In the second parking lot someone was getting robbed. He
7 said that he walked up to the robbers and surprised them and
8 a man turned and pointed a gun at him and he turned around,
9 started running back. Said he ran. He heard gunshots and
10 responded by shooting his own gun. Found out who he was and
11 arrested him.

12 At trial he had admitted shooting the gun, but
13 said he didn't mean to shoot anyone.

14 He requested a charge of self-defense. The court
15 declined. He did charge manslaughter. The jury convicted
16 him of murder.

17 The court reviewed the law of self-defense saying
18 that if there is any evidence in the record from which it
19 could reasonably be inferred that the defendant acted in
20 self-defense, then he's entitled to that instruction.

21 "In the instant case Slater fails to meet the
22 first requirement of self-defense charge. Specifically
23 Slater was not without fault in bringing on the difficulty.

24 "Any act of the accused in violation of law and
25 reasonably calculated to produce the occasion amounts to

1 bringing on the difficulty and bars the right to assert
2 self-defense." State v. Bryant.

3 "The record clearly reflects that he approached
4 the altercation that was already underway with a loaded
5 weapon. He brought on the difficulty."

6 The court went on -- and this is a Supreme Court
7 case. The court went on to talk about State v. Burriss,
8 "where contradicted evidence illustrates that Slater acted
9 in violation of the law by carrying a weapon." The Court of
10 Appeals relied on Burriss in finding that "Slater's unlawful
11 possession of a weapon did not foreclose the possibility of
12 asserting self-defense. Although we agree that the mere
13 unlawful possession of a firearm, with nothing more, does
14 not automatically bar a self-defense charge, we reject the
15 position that the unlawful possession of a weapon could
16 never constitute an unlawful activity which would preclude
17 the assertion of self-defense."

18 Burriss, deals with the defense of accident.
19 Burriss claimed that he was lawfully armed in self-defense
20 when he accidentally fired. "Because a defendant must be
21 acting lawfully to use the defense of accident, we discussed
22 whether a person in unlawful possession of a weapon may
23 lawfully arm himself in self-defense. Clarifying an
24 ambiguity in this Court's prior case law, we noted that
25 where the defendant's unlawful possession of a weapon is

1. merely incidental to the defendant's lawful act of arming
2. himself in self-defense, the unlawful possession of the
3. weapon will not prevent the use of an accident defense.

4. "We further explain, however, that the unlawful
5. possession of a firearm can, under some circumstances,
6. constitute an unlawful activity so as to preclude an
7. accident defense if the weapon is the proximate cause of the
8. killing. Burriss takes the additional step of applying the
9. rule in the context of accident, the analysis is equally
10. applicable when determining if a defendant in an unlawful
11. possession of a weapon is entitled to a charge on
12. self-defense.

13. "Here, Slater's unlawful possession of the weapon
14. was the proximate cause of the homicide. He was not merely
15. in unlawful possession of a weapon, he carried the cocked
16. weapon in open view into an already violent attack in which
17. he had no prior involvement. Slater's actions, including
18. the unlawful possession of the weapon, proximally caused the
19. exchange of gunfire, and ultimately the death of the victim.
20. Consequently, Slater fails to meet the requirement that he
21. be without fault in bringing on the difficulty and may not
22. avail himself to the charge of self-defense.

23. "Accordingly, the trial court correctly found that
24. Slater was not entitled to a self-defense charge and the
25. Court of Appeals erred in reversing Slater's conviction on

1 this ground.

2 "For the foregoing reasons, we reverse the Court
3 of Appeals decision reversing the trial court's exclusion of
4 a jury charge on the law of self-defense."

5 All right, Mr. Shealey what about that, the case
6 that you just handed up to me?

7 MR. SHEALEY: Yes, sir.

8 What Slater does is it talks about Burriss
9 generally to the principle that just being in unlawful
10 carrying of a weapon doesn't preclude you from the right to
11 arm yourself in self-defense; and then Burriss was an
12 accidental shooting, so they had to address it whether once
13 you are armed in self-defense, was it really is an accident
14 or not.

15 THE COURT: But Burriss claimed that he was in
16 lawful possession.

17 MR. SHEALEY: Right.

18 THE COURT: Claims he was in lawful possession of
19 it.

20 MR. SHEALEY: Right.

21 And Burriss was like if this guy was robbed in the
22 middle of a drug deal and claimed he pulled the gun against
23 two men and then it accidentally went off.

24 But what Slater says here, this is obviously a
25 case Slater where Slater claims self-defense, even though he

1 heard a fight going on in the parking lot, he went and got
2 his gun, arrogantly presented it, cocked the weapon in open
3 view into an already ongoing violent attack, is what you
4 just read.

5 THE COURT: He took gasoline to a fire.

6 MR. SHEALEY: Yes, sir, and that's why he didn't
7 let Slater have self-defense. Not because he was in
8 unlawful carrying of a weapon, but because he took the -- he
9 took a loaded gun to a fight that was ongoing. And they
10 discussed that the Burriss analysis that allows you to claim
11 self-defense, even though you are in unlawful possession of
12 a weapon, applies to self-defense cases as well. They just
13 didn't feel like Slater was -- because he ended up being the
14 proximate cause. Not because he was in unlawful carrying,
15 but because he took that loaded gun, the gasoline to the
16 fire, and shot somebody in the middle of an ongoing fight
17 that had nothing to do with him.

18 But what we do think this firmly stands for the
19 proposition that you are not at fault in terms of the
20 self-defense in bringing on the difficulty simply for being
21 in unlawful possession of a weapon by itself.

22 So that is what we are asking the jury to know so
23 they don't think, that, well, the State said he was breaking
24 the law now by carrying that gun. Would that mean that he
25 is at fault? And the cases like Burriss and Slater say not

1 that alone. Just simply doing that you are not at fault.
2 You still have the right to arm yourself without being at
3 fault in a self-defense situation.

4 THE COURT: Well, you know, people often read
5 these cases and they see what they want to see in them and
6 generally construe the facts in the light most favorable
7 and --

8 MR. SHEALEY: At the time you are talking about
9 the analysis on page 70, Your Honor.

10 THE COURT: 70, of which?

11 MR. SHEALEY: Of slater, that you just started.

12 THE COURT: I'm back to Burriss where he went to
13 visit a friend at his apartment and several people were
14 there when he got there, including Kenneth Scott the victim,
15 and a fellow named James Pickens. They were smoking --
16 Kenneth and James were smoking laced marijuana -- a
17 marijuana cigarette laced with crack. And while he was
18 waiting for his friend to come out Kenneth asked him if he
19 had any drugs. He told him no and said he would send James
20 down the block to get some, and if James was unsuccessful,
21 they would rob Appellant. He had a \$100 in his pocket. He
22 went down the street and came back in two or three minutes,
23 bought some drugs. They then attacked the defendant,
24 pulling him to the ground trying to get in his pockets. He
25 drew a gun and shot twice in the ground causing them to back

1 away. One of them ran inside the house and James stayed
2 near the appellant in the yard. As appellant was attempting
3 to get off the ground, Kenneth came to the back door of the
4 apartment, standing partially behind the screen door, and
5 James again began advancing towards the defendant and
6 defendant picked up his gun and it went off killing him,
7 killing Kenneth. He was 16 at the time of the incident.

8 So I'm not sure why you explained he was lawfully
9 in possession of that handgun.

10 MR. SHEALEY: I think there he admitted to being
11 assaulted or robbed, but if I may just turn your attention
12 to page 262, and it's down where they are kind of really
13 synthesizing the cases of McCaskill and Goodson, saying that
14 "read together McCaskill and Goodson stand for the
15 proposition a person can be acting lawfully, even if he is
16 in unlawful possession of a weapon, if he was entitled to
17 arm himself in self-defense at the time of the shooting."

18 And that's what -- and that's what Mr. Burriss is
19 claiming, that he was entitled to arm himself in
20 self-defense at the time of the shooting, although when the
21 gun went off it was an accident. So it was kind of a unique
22 analysis that later Slater goes on and says that same
23 analysis applies to your standard self-defense analysis when
24 talking about whether you are allowed to not be at fault,
25 even though you are in unlawful possession of a weapon. So

1 both these stand for the same things; one was an accident
2 analysis and the other went on to discuss self-defense
3 analysis.

4 THE COURT: What says the State?

5 MS. CAMPBELL: Strictly, Your Honor, I think you
6 go to the last one and I -- however, I would then that
7 neither of those cases say -- talk about jury charge to the
8 jury. I submit they are talking about when and if the
9 defendant might be entitled to an actual charge on
10 self-defense. I don't think it addresses that that should
11 then be extended to charge a jury as to that whether or not
12 he would be entitled to self-defense.

13 Your Honor, I did want to note, too, that
14 Investigator Gonzalez had called in and he's left the
15 residence.

16 THE COURT: All right. I think the folks on are
17 on their way.

18 MS. CAMPBELL: I just wanted to let you know.

19 THE COURT: I told them -- they waited about 15 or
20 20 minutes after him, so --

21 MS. CAMPBELL: Perfect.

22 THE COURT: Okay. Thank you.

23 MS. CAMPBELL: In Slater, Your Honor, in addition
24 it talks about -- and it kind of distinguishes Burriss, once
25 again, as being specific. I just don't think it would be a

1 proper charge and taking your self-defense charge as a whole
2 would be proper.

3 THE COURT: All right. Well, I'm inclined to give
4 this charge, you know, even though the Supreme Court, they
5 seem to waffle on this whole issue of self-defense and it's
6 referenced by this shooting, this Cornell Arms shooting. I
7 think it's right here in town. The Attorney General
8 appealed. 3-2 decision, and it's just a -- not only that
9 case, but just seems to be throughout there are
10 inconsistencies in the application of the law regarding
11 self-defense. And I think the defendant should be given the
12 benefit of the doubt with regard to a jury charge. I don't
13 believe it will or should control a jury's decision, but
14 they are entitled to weigh that. And I say in this
15 particular case. I don't know that they will decide the
16 case solely based on whether or not the defendant had a gun,
17 or should have had a gun at the time, but I'm inclined to
18 charge that, and I'm going to see if there is anything
19 further beyond these two cases on that issue. All right.

20 MS. CAMPBELL: Thank you, Your Honor.

21 THE COURT: And if I charge it, the language I
22 give is I'm going to say that -- after giving the whole
23 self-defense language, it's going to say "finally, a person
24 can be acting lawfully even if he's in unlawful possession
25 of a weapon if he was entitled to arm himself in

1 self-defense at the time of the shooting."

2 MS. CAMPBELL: Thank you, Your Honor.

3 THE COURT: Then I might reiterate "it's up to
4 you, the jury, to determine this and all issues related to
5 self-defense."

6 MS. CAMPBELL: Thank you.

7 THE COURT: Yes, sir.

8 MR. SHEALEY: Just as to the State's requests to
9 charge, we would object to a few of these.

10 We would ask that you use your charge on the
11 definition of malice.

12 They presented a charge citing State v. Mouzon in
13 terms of definition of malice being imparting ill will
14 towards the individual injured, but signifies rather a
15 general malignant recklessness of the lives and safety of
16 others, a condition of the mind which shows a heart
17 regardless of social duty and fatally bent on mischief.

18 This is a 1957 case that is regarding a vehicular
19 homicide. I really don't think it's analogous to our
20 present situation regarding self-defense or a fight. Where
21 you have a fight over sex, or whether it's a fight over
22 whatever it is, I think it's a very broad antiquated
23 definition and I would ask that you just use your standard
24 malice charge.

25 THE COURT: All right. Ms. Campbell?

1 MS. CAMPBELL: Your Honor, I do think it's a
2 correct statement of the law, this charge, and you may have
3 language to that argue and charge, judge. I can't remember.
4 We would just request that language be included.

5 THE COURT: Tell me again what the part of it
6 y'all are arguing about?

7 MS. CAMPBELL: I believe he's arguing about
8 language in State v. Mouzon charge, "malice does not
9 necessarily impart ill will toward the individual injured,
10 but signifies rather a malignant recklessness of the lives
11 and safety of others, or a condition of mind which shows a
12 heart regardless of social duty and fatally bent on
13 mischief."

14 I believe, and I could be mistaken, judge, but
15 that language in your malice charge anyway.

16 MR. SHEALEY: And I would specifically object to
17 the language regarding recklessness. I think that was from
18 Mouzon regarding a vehicular car under control where he
19 killed a man in 1957. I didn't think that was in the
20 general malice charge.

21 MS. CAMPBELL: I believe it's quoted as State v.
22 Jimmy Wilds also.

23 COURT REPORTER: Sorry, State versus?

24 MS. CAMPBELL: Jimmy Wilds, which is a 2003 case.

25 THE COURT: All right. Part of it says "inference

1 of malice may also arise when the deed is done with a deadly
2 weapon." - Is that the current stage of the law still, malice
3 may be inferred through the use of a deadly weapon?

4 MR. SHEALEY: No, sir.

5 MS. CAMPBELL: Your Honor, we would withdraw those
6 based on -- I didn't know where they were going. I don't
7 think it's proper in cases where self-defense is alleged, so
8 I would withdraw those.

9 We submitted these, Your Honor, not knowing where
10 the defense was going.

11 THE COURT: That's State versus --

12 MR. SHEALEY: Belcher, Your Honor.

13 THE COURT: Belcher.

14 MS. CAMPBELL: Yes, sir, we agree that we should
15 withdraw the ones about the use of a deadly weapon.

16 MR. SHEALEY: There are spaced throughout, so that
17 would be the general one entitled malice, which is --

18 MS. CAMPBELL: It would be one paragraph on that
19 one.

20 MR. SHEALEY: There is -- and I have an objection
21 to the language of that anyway, because of Mouzon, that
22 would be the final paragraph from there.

23 Well, anything that talks about an inference of
24 malice through the use of a deadly weapon cannot be -- it
25 would be reversible error giving that charge.

1 We would ask that your standard malice charge not
2 charge regarding inferences with the use of a deadly weapon
3 for malice, which is not permitted anymore.

4 THE COURT: There is no request by the defense of
5 any lesser included --

6 COURT REPORTER: I'm sorry? Somebody coughed.

7 THE COURT: There is no request for any lesser
8 included offenses, is there?

9 MR. SHEALEY: Yes, you are correct. We -- we
10 haven't submitted that pretrial and we are still discussing
11 that. We would like to think it over tonight, but at this
12 time we haven't submitted it, so we -- I will think on it
13 overnight, but we are not sure yet.

14 THE COURT: Well, we will charge the jury at 9:30
15 in the morning.

16 MR. SHEALEY: Yes, Your Honor, I understand that.

17 THE COURT: Fish or cut bait, if that's what you
18 want.

19 MR. SHEALEY: At this time we are not submitting
20 it.

21 THE COURT: All right. So the jury would be given
22 the verdict form guilty or not guilty?

23 MR. SHEALEY: Yes, sir.

24 THE COURT: Okay. Mr. Parvin, you have conferred
25 with your clients on that and you are in agreement?

1 THE DEFENDANT: Yes, I am, Your Honor.

2 THE COURT: All right. Well, the part of the
3 State's request seeks to have me compare --

4 MS. CAMPBELL: Yes, sir, and -- I mean, again, we
5 submitted these not -- I was trying to anticipate in order
6 to be covered. Your Honor, many of these I would withdraw
7 right now.

8 THE COURT: Okay. Well, as it relates to the
9 definition of malice, I'm not going to add anything to the
10 standard definition of malice. It would be basically
11 "malice is hatred, ill will, or hostility towards another
12 person. The intentional doing of a wrongful act without
13 just or excuse and with the intent to inflict an injury or
14 under the circumstances what the law would infer as evil
15 intent." That would be the gist of the definition. I'm not
16 going to expand it beyond that.

17 MS. CAMPBELL: Your Honor, you are going to
18 express --

19 THE COURT: I'm not going to add the language
20 requested by the State.

21 MS. CAMPBELL: Can we argue that, Your Honor?

22 THE COURT: You can argue whatever, while you are
23 at it, based on the evidence to argue.

24 MS. CAMPBELL: Just as far as your definition of
25 aforethought?

1 THE COURT: Well, "it doesn't require that malice
2 exists for any particular period of time, but it must exist
3 in the mind of the defendant just before and at the time --

4 MS. CAMPBELL: That's fine.

5 THE COURT: -- the act was committed. It's a
6 combination a previous evil intent and the act," the
7 standard definition of malice. I'm just going to pull out
8 the inference with the use of a deadly weapon.

9 MR. SHEALEY: Yes, sir. That's all I want
10 clarification on:

11 I don't know if we can agree about -- I don't
12 think any evidence has been regarding voluntary intoxication
13 in the defense's case. I don't know if that's something
14 that we can take out of the equation.

15 MS. CAMPBELL: The testimony is that he was there
16 drinking that day. That may be a factor the jury considers,
17 so we would request a voluntary intoxication.

18 MR. SHEALEY: I don't think there has been any
19 evidence that that would be a defense to this crime, that
20 he's blamed any of his actions on drinking. I think he said
21 that he was attacked and drinking was something that was
22 going on at that scene, but I don't think it would be
23 appropriate to call out attention to the fact that this may
24 be -- that this is not a defense, when he's never said it's
25 a defense. I think that would be an inappropriate potential

1 comment on the facts.

2 THE COURT: Well, the only evidence of
3 intoxication is evidence that I think Lopez, one of the
4 guys -- Edgar?

5 MR. SHEALEY: Yes.

6 MS. CAMPBELL: I believe he testified that he was
7 over the limit of what he allowed himself to drink, that he
8 had drunk a 24 ounce and a 12 ounce. Now, the jury may
9 think that could have influenced him, but whenever there is
10 any evidence, I thinking intoxicating -- and this is right
11 before and up around the time this happened.

12 We would request, Your Honor, since there is
13 evidence that he was ingesting alcohol just prior to this
14 occurring, that the jury not think that that could be an
15 excuse for it, because under the law it's not, and we would
16 just say it's clearly evidence in the defendant's own
17 testimony that he was drinking that day. There is more
18 evidence in the circumstantial evidence about him drinking,
19 since we have got either his DNA and/or his fingerprints on
20 five different beer cans. So there is clearly an inference
21 that the defendant was ingesting multiple beers that day.
22 And, of course, that could have influenced his acts. Our
23 only concern is that the jury may think that since he was
24 drunk, he wasn't responsible, and that's the purpose of the
25 charge.

1 MR. SHEALEY: There is plenty of evidence that
2 people were ingesting alcohol, but nowhere in this record
3 has he ever said that his acts are influenced by that. So
4 that's what we mean by it's not been offered as a defense.
5 He's not saying "oh, I'm sorry, I was drunk and I
6 overreacted." So I don't think this charge is appropriate
7 to have the jury think about that, because that's not
8 anywhere in the record.

9 THE COURT: I think the defendant would have to
10 claim that his acts were influenced by the use of alcohol in
11 order for that to be a charge. And, of course, the State
12 wants to say that circumstantially he must have been under
13 the influence --

14 MS. CAMPBELL: Because of these actions -- I mean,
15 they are the ones that put character into evidence. They
16 are the ones that did all that. There have been multiple
17 talks about how much beer he drinks a day; 12 packs.
18 Just -- I think it's been riddled, Your Honor, with
19 references to intoxicating, both by the victims and the
20 defendant in this case. We have got circumstantial evidence
21 at the scene of him having handled at least -- or there is
22 DNA being on at least five different beer cans. We just
23 feel like that it would be appropriate in these cases, Your
24 Honor. I don't think we are limited just that he claims he
25 only did it because he was drunk. I think that any evidence

1 showing that he may have been intoxicated, to whatever
2 degree, just this charge merely takes it out of the realm of
3 the jury's consideration --

4 THE COURT: All right.

5 MS. CAMPBELL: -- as far as a defense.

6 THE COURT: Anything else?

7 MR. SHEALEY: I just think that he hasn't offered
8 that defense, so I think to say it's not a defense shouldn't
9 be something that should be addressed to the jury. They can
10 speculate in their own minds regarding the use of alcohol on
11 all the parties involved, but he has not ever said that "my
12 actions are because I was drunk that day and I'm sorry.
13 It's not fault, it's the beer." I think he had said that
14 and put that in issue, certainly they have a right to know
15 that being intoxicated is not a defense, but he's never put
16 that issue in, so I don't think it's appropriate.

17 THE COURT: All right. The case the State handed
18 up to me on State v. South. It's a death penalty case from
19 Lexington. He's been executed.

20 He was a hitchhiker who said at one point was
21 forced to drive his truck by a police officer who had
22 stopped another driver and he shot the officer later and
23 fled in his truck.

24 There was testimony that he grew up in foster
25 homes; that he abused alcohol and drugs; frequently used

1 various drugs - LSD, cocaine, Quaaludes, hashish, mushrooms,
2 alcohol, and inhaled theon two or three times as day for a
3 year. On the day of the offense he had taken a gram of
4 cocaine, smoked several marijuana cigarettes, drank 36 to 42
5 beers; has a .20 BA at the time. All right. That's the
6 backdrop of that one.

7 A written report was introduced at the trial
8 claimed he was suffering from Post-Traumatic Stress Disorder
9 because of his substance abuse; he had diminished mental
10 capacity; a brain tumor; and the doctor says he's
11 chronically stressed, deteriorated condition due to the
12 substance abuse; and his impending threat of additional
13 loses has adversely affected his ability to think rationally
14 in acting conforming with the law.

15 The court has rejected the resistible impulse test
16 as an insanity defense.

17 Jack Swerling, his original lawyer, testifying
18 about the tumor. He said that there isn't any issue of
19 insanity.

20 So, I mean, that case doesn't help us a whole lot
21 as far what you cited to support --

22 MS. CAMPBELL: I have a better case.

23 THE COURT: Something else?

24 MS. CAMPBELL: Yes. State v. Todd, which is 339
25 S.E. 2d 339.

1 THE COURT: All right.

2 MS. CAMPBELL: There was some evidence showing
3 they found he had been drinking prior to the shooting.
4 Could find no error in the court's charge to the jury on
5 voluntary intoxication. That might be more appropriate, and
6 I apologize for that other cite.

7 THE COURT: And Todd is one of those
8 opening-the-door cases.

9 Let's see what we have. What's the cite on that?
10 A 1975 case?

11 MS. CAMPBELL: 1986 case, Your Honor.

12 THE COURT: Okay.

13 MS. CAMPBELL: 349 S.E. 2d 339.

14 THE COURT: 1986.

15 What's the cite again?

16 MS. CAMPBELL: 349 S.E. 2d 339.

17 THE COURT: T-O-D-D, Todd?

18 MS. CAMPBELL: Yes, sir, T-O-D-D.

19 THE COURT: All right, that one doesn't come up.

20 MS. CAMPBELL: Can I print that out for you?

21 THE COURT: Yes.

22 MR. SHEALEY: I have got it here and I'll briefly
23 look at it, but I think what they are saying in Todd is that
24 they are saying it's not reversible error necessarily, but
25 they are not citing the proposition that it should be

1 charged. They are saying it's not reversible error.

2 I just don't think it should be charged, unless
3 the defendant himself puts his own intoxication at issue as
4 a defense to this. He's not saying that this has anything
5 to do with this crime. There is no evidence of that. The
6 only evidence is that everybody was drinking that day.

7 THE COURT: All right.

8 MS. CAMPBELL: I have got other case law.

9 THE COURT: You all can submit whatever and I'll
10 defer that issue until in the morning.

11 MS. CAMPBELL: Thank you.

12 THE COURT: As of right now I'm not going to
13 charge it, but I may change my mind based on if you can give
14 me some authority.

15 MR. SHEALEY: There is another one we object to.
16 It's talking about drawing inferences from not putting
17 evidence in, citing that you can permit inference that the
18 party fears to produce the evidence and this fear is some
19 evidence that the circumstance or document or witness, if
20 brought, would have exposed facts unfavorable to a party,
21 citing *Vodusek v. Bayliner Marine Corporation*.

22 That's a -- I don't think that's really
23 appropriate here. This is a civil personal injury case
24 about spoliation of a boat. I just don't think that's
25 appropriate to inject into this, being it's a civil case.

1 THE COURT: What's your request?

2 MR. SHEALEY: Because they're drawing an inference
3 at the top one page from the absence and loss and
4 destruction of evidence.

5 THE COURT: Okay.

6 MR. SHEALEY: And it's also a comment on the
7 facts, Your Honor.

8 THE COURT: What's does that refer to?

9 MS. CAMPBELL: It refers to basically destruction
10 of evidence, or as far as the car and the gun. He did
11 testify on the stand that he did destroy evidence in this
12 case deliberately.

13 MR. SHEALEY: The language shares something about
14 a party failing to produce it. So I don't -- he told them
15 that he doesn't have a gun. He told them plainly that he
16 destroyed the car. This isn't really an appropriate charge.
17 He can talk about more of what someone didn't show to you.
18 He doesn't have a burden to show that. It's kind of
19 borderline on a burden shifting as well, but they can decide
20 to believe him or not as to the car, as to the van, but I
21 don't think he has a duty to bring evidence of a destroyed
22 van in here. He already admitted it, but -- and it's a
23 civil case. It's admiralty law.

24 THE COURT: Well, I think it's for the jury to
25 draw whatever inference and what to do from the various

1 facts and everything else, destroying the gun. I don't
2 believe the court should give them a charge on that.

3 MS. CAMPBELL: Thank you, Your Honor.

4 THE COURT: What else have you got?

5 MR. SHEALEY: Well, I'm sure co-counsel will
6 correct me if I'm wrong, but I think we have gone through
7 everything, as long as we have addressed the matters taken
8 up, but impermissible inference of the deadly weapon that
9 talks about in Mouzon; we'd like to have your standard
10 malice charges. I think all the rest are fairly standard.
11 We just ask for your standard charges as to those issues.

12 THE COURT: All right. Okay. Well, 9:30.

13 Who is going to argue for who and for how long?

14 MS. CAMPBELL: The State will open on the law.

15 THE COURT: The State will open on the law. Open
16 on the law and close in reply.

17 All right.

18 MS. DAVIS: That would be me.

19 THE COURT: Ms. Davis, it will be you, huh?

20 All right. Well, get a good night's rest and we
21 will be back in the morning.

22 MR. SHEALEY: Thank you, judge.

23 MS. DAVIS: Thank you, Your Honor.

24 (Off the record)

25 (Back on the record).

1 THE COURT: Let's come to order. We are going
2 back on the record.

3 MS. CAMPBELL: There were several of those long
4 guns that we marked into evidence, Your Honor. We would
5 withdraw those at this time so the clerk doesn't have to
6 take possession of them.

7 THE COURT: Any objection?

8 MR. SHEALEY: No objection to that.

9 THE COURT: All right.

10 MS. CAMPBELL: Thank you, Your Honor.

11 THE COURT: Withdrawn.

12 COURT REPORTER: Those are exhibits numbers, Ms.
13 Campbell? I'm pretty sure I have them, but just to be sure.

14 MS. CAMPBELL: I will get them.

15 COURT REPORTER: 213, 214, 215, and 216.

16 MS. CAMPBELL: I think that's right.

17 (Off the record)

18 (Back on the record)

19 (NOTE: THE COURT REPORTER'S DIGITAL RECORDING
20 SYSTEM WAS NOT TURNED ON AT THE VERY START OF THIS COLLOQUY)

21 THE COURT: --- "is not a defense. The law to be
22 charged is to determine the evidence presented at trial if
23 there was some evidence showing the appellant had been
24 drinking prior to the shooting. Therefore, we find no
25 prejudicial error in the trial court's charge to the jury on

1 the law of voluntary intoxication."

2 So that is the case. It favors the State's
3 position on the issue. That was a 1986 case, and the court
4 uses the word "there is no prejudicial error." So that
5 brings the issue back closer to a 50/50 on whether it should
6 be charged or not, so I want both sides to submit something
7 additionally.

8 MR. SHEALEY: I would just say, Your Honor, that
9 although Mr. Todd didn't get a new trial in that event and
10 they didn't say it was prejudicial error, I don't think
11 necessarily they are advocating that a voluntary
12 intoxication defense charge be charged every time there is
13 evidence of alcohol use. And so I think they are not saying
14 it's not necessarily error. They are saying it's not
15 prejudicial error. So in a case, especially as this one,
16 maybe finding a balance out there and ask the jury to
17 consider whether that's something they should resolve it.
18 You normally wouldn't with your normal charges, but I think
19 it's something that shouldn't be charged. I don't think
20 that case is advocating it. They are just saying they have
21 no problem with it.

22 THE COURT: All right. I understand what it says,
23 but, you know, the State -- it's not -- the defense doesn't
24 have to request it -- or request it or assert that as a
25 defense in order for it to be charged. If there is some

1 evidence that places it in issue, then the point of the case
2 is that it may be charged. It may be charged, may not be
3 charged. I tend to prefer to charge it, unless there are --
4 unless -- unless it's claimed or refuted as a basis for some
5 action, but I could be persuaded either way. I'm just
6 telling you that.

7 I was leaning your way. The State has handed me a
8 case that suggests that where there is evidence of drinking
9 before a shooting, that it may be appropriate so -- that's
10 1986.

11 Y'all back already?

12 THE BAILIFF: Yes, sir.

13 THE COURT: All right. Good. Any trouble?

14 THE BAILIFF: No, sir.

15 THE COURT: Good.

16 MR. SHEALEY: If I might do some research on that
17 issue and I may be presenting something to you?

18 THE COURT: Yeah, I'll give everyone a fair shake
19 at it. I'll defer my ruling on that until the morning. I
20 don't want you thinking that I've decided it firmly.

21 MR. SHEALEY: Yes, sir.

22 (Off the defendant)

23 (Back on the record)

24 THE COURT: Let's have the defendant stay here and
25 make sure the jury is gone. They had just gotten back.

1 (Whereupon, proceedings were recessed until
2 December 20, 2011)
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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 LESLIE TODD PARVIN,) 2011-GS-40-0897
7 DEFENDANT.) 2011-GS-40-0898
8) DECEMBER 20, 2011
9) COLUMBIA, SOUTH CAROLINA

10 (VOLUME VII)

11 B E F O R E :

12 THE HONORABLE CLIFTON NEWMAN, JUDGE. ; And a Jury.

13
14 A P P E A R A N C E S :

15 KATHRYN LUCK CAMPBELL, ASSISTANT SOLICITOR
16 NICOLE M. SIMPSON, ASSISTANT SOLICITOR
17 MEGHAN WALKER, ASSISTANT SOLICITOR
18 ATTORNEYS FOR THE STATE

19 FIELDING PRINGLE, ASSISTANT PUBLIC DEFENDER
20 LUKE SHEALEY, ASSISTANT PUBLIC DEFENDER
21 JENNIFER DAVIS, ASSISTANT PUBLIC DEFENDER
22 ATTORNEYS FOR THE DEFENDANT

23 MICHAEL R. WATTS
24 CIRCUIT COURT REPORTER
25

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21	S-21	PHOTOGRAPH	439	
22	S-22	PHOTOGRAPH		1299
23	S-23	PHOTOGRAPH	439	

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-24	PHOTOGRAPH		526
4	S-25	PHOTOGRAPH		526
5	S-26	PHOTOGRAPH		526
6	S-27	PHOTOGRAPH		527
7	S-28	PHOTOGRAPH	439	
8	S-29	PHOTOGRAPH	429	
9	S-30	PHOTOGRAPH		527
10	S-31	PHOTOGRAPH	439	
11	S-32	PHOTOGRAPH	440	
12	S-33	PHOTOGRAPH	440	
13	S-34	PHOTOGRAPH		530
14	S-35	PHOTOGRAPH		530
15	S-36	PHOTOGRAPH		531
16	S-37	PHOTOGRAPH		531
17	S-38	PHOTOGRAPH		531
18	S-39	PHOTOGRAPH		531
19	S-40	PHOTOGRAPH		531
20	S-41	PHOTOGRAPH		531
21	S-42	PHOTOGRAPH		532
22	S-43	PHOTOGRAPH		532
23	S-44	PHOTOGRAPH		534
24	S-45	PHOTOGRAPH		534
25	S-46	PHOTOGRAPH		534

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-47	PHOTOGRAPH		535
4	S-48	PHOTOGRAPH		535
5	S-49	PHOTOGRAPH		535
6	S-50	PHOTOGRAPH		535
7	S-51	PHOTOGRAPH		535
8	S-52	PHOTOGRAPH		535
9	S-53	PHOTOGRAPH		536
10	S-54	PHOTOGRAPH		536
11	S-55	PHOTOGRAPH		536
12	S-56	PHOTOGRAPH		536
13	S-57	PHOTOGRAPH		536
14	S-58	PHOTOGRAPH		538
15	S-59	PHOTOGRAPH		538
16	S-60	PHOTOGRAPH		538
17	S-61	PHOTOGRAPH		538
18	S-62	PHOTOGRAPH		538
19	S-63	PHOTOGRAPH		538
20	S-64	PHOTOGRAPH		538
21	S-65	PHOTOGRAPH		538
22	S-66	PHOTOGRAPH	442	
23	S-67	PHOTOGRAPH	442	
24	S-68	PHOTOGRAPH		538
25	S-69	PHOTOGRAPH		538

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-70	PHOTOGRAPH		538
4	S-71	PHOTOGRAPH		538
5	S-72	PHOTOGRAPH		538
6	S-73	PHOTOGRAPH		538
7	S-74	PHOTOGRAPH		538
8	S-75	PHOTOGRAPH		538
9	S-76	PHOTOGRAPH		538
10	S-77	PHOTOGRAPH		538
11	S-78	PHOTOGRAPH		521
12	S-79	PHOTOGRAPH		521
13	S-80	PHOTOGRAPH		521
14	S-81	PHOTOGRAPH		521
15	S-82	PHOTOGRAPH		521
16	S-83	PHOTOGRAPH		523
17	S-84	PHOTOGRAPH		523
18	S-85	PHOTOGRAPH		523
19	S-86	PHOTOGRAPH		523
20	S-87	PHOTOGRAPH		577
21	S-88	PHOTOGRAPH		577
22	S-89	PHOTOGRAPH		577
23	S-90	PHOTOGRAPH		577
24	S-91	PHOTOGRAPH		578
25	S-92	PHOTOGRAPH		578

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-93	PHOTOGRAPH		578
4	S-94	PHOTOGRAPH		578
5	S-95	PHOTOGRAPH	445	
6	S-96	PHOTOGRAPH	445	
7	S-97	PHOTOGRAPH	445	
8	S-98	PHOTOGRAPH		589
9	S-99	PHOTOGRAPH		589
10	S-100	PHOTOGRAPH		589
11	S-101	PHOTOGRAPH		589
12	S-102	PHOTOGRAPH		589
13	S-103	PHOTOGRAPH		589
14	S-104	PHOTOGRAPH		589
15	S-105	PHOTOGRAPH		589
16	S-106	PHOTOGRAPH		578
17	S-107	PHOTOGRAPH	446	
18	S-108	PHOTOGRAPH	446	
19	S-109	PHOTOGRAPH	446	
20	S-110	PHOTOGRAPH		581
21	S-111	PHOTOGRAPH		581
22	S-112	PHOTOGRAPH		581
23	S-113	PHOTOGRAPH		581
24	S-114	PHOTOGRAPH		581
25	S-115	PHOTOGRAPH		581

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-116	PHOTOGRAPH	446	
4	S-117	PHOTOGRAPH	446	
5	S-118	PHOTOGRAPH	446	
6	S-119	PHOTOGRAPH	446	
7	S-120	PHOTOGRAPH	447	
8	S-121	PHOTOGRAPH	447	
9	S-122	BLOWUP	447	
10	S-123	BLOWUP OF DIAGRAM		543
11	S-124	CELL PHONE CHARGER		
12	S-125	GSR KIT		
13	S-126	BUCCAL SWAB		792
14	S-127	CELL PHONES		540
15	S-128	BUDWEISER BOX		581
16	S-129	GREEN SHIRT, RED HAT, BLUE HAT		567
17	S-130	NAIL SCRAPINGS		
18	S-131	EDGAR LOPEZ CLOTHES		571
19	S-132	SWABS		792
20	S-133	PROJECTILE		489
21	S-134	SWAB		792
22	S-135	CARTRIDGE CASING		842
23	S-136	PRINT CARDS		595
24	S-137	PABLO GUZMAN-GUTIERREZ CLOTHES		571
25	S-138	SWABS		792

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-139	PROJECTILE		841
4	S-140	BOX OF BEER CANS		565
5	S-141	SWAB OF DEFENDANT		724
6	S-142	LATENT PRINT CARD		636
7	S-143	LATENT PRINT CARD		636
8	S-144	LATENT PRINT CARD		594
9	S-145	PHOTOGRAPH	449	
10	S-146	PHOTOGRAPH	449	
11	S-147	PHOTOGRAPH	449	
12	S-148	PHOTOGRAPH	449	
13	S-149	PHOTOGRAPH	449	
14	S-150	PHOTOGRAPH	449	
15	S-151	PHOTOGRAPH	449	
16	S-152	PHOTOGRAPH	449	
17	S-153	PHOTOGRAPH	449	
18	S-154	PHOTOGRAPH	449	
19	S-155	PHOTOGRAPH		596
20	S-156	PHOTOGRAPH		596
21	S-157	PHOTOGRAPH		596
22	S-158	PHOTOGRAPH		596
23	S-159	PHOTOGRAPH		596
24	S-160	PHOTOGRAPH		596
25	S-161	PHOTOGRAPH		596

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-161	PHOTOGRAPH		596
4	S-162	PHOTOGRAPH		596
5	S-163	PHOTOGRAPH		596
6	S-164	PHOTOGRAPH		596
7	S-165	PHOTOGRAPH		596
8	S-166	PHOTOGRAPH		596
9	S-167	PHOTOGRAPH		613
10	S-168	PHOTOGRAPH		613
11	S-169	3 PAGES OF FINGERPRINT CARDS		658
12	S-170	BUSINESS RECORDS FROM LOUISIANA		665
13	S-171	BUSINESS RECORDS FROM LOUISIANA		665
14	S-172	CHART	451	
15	S-173	CHART	451	
16	S-174	BUSINESS RECORDS - JAMESON INN		683
17	S-175	BUSINESS RECORDS - JAMESON INN		683
18	S-176	PHOTOGRAPH		746
19	S-177	PHOTOGRAPH		746
20	S-178	PHOTOGRAPH		746
21	S-179	PHOTOGRAPH		746
22	S-180	PHOTOGRAPH		746
23	S-181	PHOTOGRAPH		746
24	S-182	PHOTOGRAPH		746
25	S-183	PHOTOGRAPH		746

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-184	PHOTOGRAPH		746
4	S-185	PHOTOGRAPH		746
5	S-186	PHOTOGRAPH		746
6	S-187	PHOTOGRAPH		746
7	S-188	PHOTOGRAPH		746
8	S-189	PHOTOGRAPH		746
9	S-190	PHOTOGRAPH		746
10	S-191	PHOTOGRAPH		746
11	S-192	PHOTOGRAPH		746
12	S-193	PHOTOGRAPH		746
13	S-194	BLOWUP PHOTOGRAPH		728
14	S-195	BLOWUP	453	
15	S-196	BLOWUP	453	
16	S-197	BUCCAL SWAB		792
17	S-198	BLOWUP		
18	S-199	BLOWUP		880
19	S-200	BLOWUP		880
20	S-201	SWAB		792
21	S-202	SWAB		792
22	S-203	SWAB		792
23	S-204	SWAB		792
24	S-205	SUMMARY	453	
25	S-S06	SUMMARY	453	

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-207	SUMMARY	454	
4	S-208	ROSSI GUN	454	
5	S-209	TAURUS GUN	454	
6	S-210	BOX OF MISCELLANEOUS AMMUNITION	454	
7	S-211	PAPERWORK FOR KIA VAN		866
8	S-212	BLOWUP MAP		1471
9	S-213	GUN	454	
10	S-214	GUN	454	
11	S-215	GUN	454	
12	S-216	GUN	454	
13	S-217	BONG		1463
14	S-218	PHOTOGRAPH		1466
15	S-219	GLASS PIPE		1463
16	S-220	PHOTOGRAPH	455	
17	S-221	PHOTOGRAPH	455	
18	S-222	PHOTOGRAPH	455	
19	S-223	PHOTOGRAPH		1463
20	S-224	PHOTOGRAPH		1457
21	S-225	PHOTOGRAPH		1465
22	S-226	PHOTOGRAPH		1465
23	S-227	PHOTOGRAPH		1465
24	S-228	PHOTOGRAPH		1465
25	S-229	PHOTOGRAPH		1465

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-230	PHOTOGRAPH		1465
4				
5	D-1	PHOTOGRAPH		600
6	D-2	PHOTOGRAPH		600
7	D-3	DOCUMENT FROM JAMESON INN		685
8	D-4	1 PAGE DOCUMENT		937
9	D-5-A	PURCHASE ORDER DOCUMENT		1645
10	D-5-B	RECEIPT DOCUMENT		1645
11	D-5-C	DRIVER'S LICENSE DOCUMENT		1645
12	D-6-A	PURCHASE ORDER DOCUMENT		1645
13	D-6-B	DRIVER'S LICENSE DOCUMENT		1645
14	D-7-A	PURCHASE ORDER DOCUMENT		1645
15	D-7-B	RECEIPT DOCUMENT		1645
16	D-8-A	PURCHASE ORDER DOCUMENT		1645
17	D-8-B	RECEIPT DOCUMENT		1645
18	D-9	PURCHASE ORDER		1645
19	D-10-A	PURCHASE ORDER		1645
20	D-10-B	RECEIPT DOCUMENT		1645
21	D-10-C	DRIVER'S LICENSE DOCUMENT		1645
22	D-11-A	PURCHASE ORDER		1645
23	D-11-B	RECEIPT		1645
24	D-11-C	DRIVER'S LICENSE DOCUMENT		1645
25	D-12-A			1645

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	D-12-B			1645
4	D-13-A			1645
5	D-13-B			1645
6	D-13-C			1645
7	D-14	PHOTOGRAPH	1050	
8	D-15	PHOTOGRAPH	1050	
9	D-16	PHOTOGRAPH	1050	
10	D-17	PHOTOGRAPH	1050	
11	D-18	PHOTOGRAPH	1051	
12	D-19	PHOTOGRAPH	1051	
13	D-20	PHOTOGRAPH	1051	
14	D-21	PHOTOGRAPH	1051	
15	D-22	PHOTOGRAPH	1051	
16	D-23	PHOTOGRAPH	1051	
17	D-24	PHOTOGRAPH	1051	
18	D-25	PHOTOGRAPH	1051	
19	D-26	PHOTOGRAPH	1051	
20	D-27	PHOTOGRAPH	1051	
21	D-28	PHOTOGRAPH	1051	
22	D-29	PHOTOGRAPH	1051	
23	D-30	PHOTOGRAPH	1052	
24	D-31	PHOTOGRAPH	1052	
25	D-32	PHOTOGRAPH	1052	

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	D-33	PHOTOGRAPH	1052	
4	D-34	1 PAGE POEM	1052	
5	D-35	1 PAGE POEM	1052	
6	D-36	1 PAGE POEM	1052	
7	D-37	PHOTOGRAPH	1052	
8	D-38	PHOTOGRAPH	1052	
9	D-39	PHOTOGRAPH	1052	
10	D-40	AWARD DOCUMENT		1352
11	D-41	AWARD DOCUMENT		1078
12	D-42	AWARD DOCUMENT	1052	
13	D-43	AWARD DOCUMENT		1078
14	D-44	AWARD DOCUMENT	1053	
15	D-45	AWARD DOCUMENT		1078
16	D-46	AWARD DOCUMENT		1078
17	D-47	AWARD DOCUMENT		1078
18	D-48	AWARD DOCUMENT		1078
19	D-49	AWARD DOCUMENT		1078
20	D-50	AWARD DOCUMENT		1078
21	D-51	AWARD DOCUMENT		1078
22	D-52	AWARD DOCUMENT		1078
23	D-53	AWARD DOCUMENT		1078
24	D-54	MULTIPLE DOCUMENTS		1226
25				

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	CT-1	MULTIPLE DOCUMENTS	178	
4	CT-2	COLORED PHOTOGRAPH	1013	
5	CT-3	PHOTOGRAPH	1013	
6	CT-4	PHOTOGRAPH	1013	
7	CT-5	PHOTOGRAPH	1013	
8	CT-6	PHOTOGRAPH	1013	
9	CT-7	PHOTOGRAPH	1013	
10	CT-8	PHOTOGRAPH	1013	
11	CT-9	PHOTOGRAPH	1013	
12	CT-10	PHOTOGRAPH	1014	
13	CT-11	PHOTOGRAPH	1014	
14	CT-12	PHOTOGRAPH	1014	
15	CT-13	COLORED PHOTOGRAPH	1014	
16	CT-14	BRIEF DOCUMENT	1339	
17	CT-15	JUROR NOTE	1701	
18	CT-16	JUROR NOTE	1701	
19	CT-17	JUROR NOTE	1701	
20	CT-18	JUROR NOTE	1751	
21	CT-19	JUROR NOTE	1751	
22	CT-20	JUROR NOTE	1751	
23	CT-21	JUROR NOTE	1751	
24	CT-22	JUROR NOTE	1751	
25				

1 (PROCEEDINGS, DECEMBER 20, 2011)

2 THE COURT: All right. Good morning.

3 MR. SHEALEY: Good morning.

4 MS. CAMPBELL: Good morning.

5 THE COURT: Yes, sir.

6 MR. SHEALEY: Thank you, Your Honor. Good
7 morning.

8 May it please the court, I have passed up the
9 Harrison case in our requests to charge number five
10 regarding good character. I took time last night and this
11 morning to reread that case and similar cases, such as Green
12 and Lyles and their cites, and I would ask you to please
13 read it and reconsider your decision regarding charging
14 defense's charge on this.

15 What the Harrison case says, and goes through
16 these cases and talks about character evidence, and I would
17 ask you specifically to reference page six of that case,
18 which said, "generally, where requested and there is
19 evidence of good character, a defendant is entitled to an
20 instruction to the effect that evidence of good character
21 and good reputation may in and of itself create a doubt as
22 to guilt and should be considered by the jury, along with
23 all the other evidence, in determining guilt or innocence of
24 the defendant."

25 And they -- Mr. Harrison was convicted and they

1 found that it was reversible error for the court not to
2 instruct on this specific charge, and through the error
3 analysis it discussed some of the cases that had preceded
4 it, such as Green, such as Lyles.

5 And in a case, such as our case, where obviously
6 by the claim of self-defense, the State is claiming murder,
7 it is not a harmless error situation that would be
8 reversible error, according to the court's decision in the
9 past. And we would just ask you to please read the case and
10 reconsider your decision regarding charging the character
11 charge. We have had, as you are aware, many witnesses
12 coming from all over the world to talk about Todd's good
13 character.

14 THE COURT: Well, in that case did the court
15 instruct the jury at all on good character?

16 MR. SHEALEY: In the Harrison case?

17 THE COURT: Yes, sir.

18 MR. SHEALEY: It doesn't talk about that, but it
19 talks about not instructing on the particular charge of
20 considering whether it goes -- to whether it creates a doubt
21 as to guilt. That's what they are talking about. They are
22 not talking about a general charge, about taking into
23 consideration character. They are talking about a
24 particular charge, when requested, and there is evidence of
25 good character, that reputation may in and of itself create

1 a doubt as to guilt and should be considered by the jury.
2 And that's the instruction that was found to be reversible
3 error not to have been given in the Harrison case, and
4 that's the instruction that we are requesting the court to
5 give in this case. So it's more of a specific instruction
6 as opposed to the court's general instructions on character
7 evidence.

8 THE COURT: Well, let's see the charge, the
9 court's charge, the general charge on that.

10 It says, "the defendant has presented evidence of
11 his good reputation and character to show that it would be
12 inconsistent with the defendant committing the crimes. The
13 weight you give that testimony and all other testimony in
14 this case is for you to decide in your good judgment. You
15 may consider the testimony of the defendant's good
16 character, along with all the other evidence, in deciding
17 whether or not the defendant committed the crime."

18 MR. SHEALEY: Yes, sir, I would --

19 THE COURT: I'll come back to you.

20 MR. SHEALEY: Yes, sir.

21 THE COURT: I'll hear from the State first, and
22 then I'll come back to you.

23 MS. CAMPBELL: May it please the court, Your
24 Honor?

25 THE COURT: Yes.

1 MS. CAMPBELL: This Harrison case was just handed
2 to me. It's my understanding in that case that there was no
3 charge on character evidence.

4 We feel like the charge that the court has told
5 them you would give on character evidence would be
6 sufficient in this case, as far as addressing character
7 evidence, and that it's actually something that they should
8 consider as to whether or not he committed the crime, which
9 I believe equates to the actual language they are asking
10 for. Your Honor, I think Harrison looks like there was no
11 charge at all on character evidence.

12 MR. SHEALEY: Your Honor, I have to take exception
13 to that. Looking at Harrison, the charge that they wanted
14 is the charge that I'm asking you. The charge they didn't
15 give was "the evidence of good character and good reputation
16 may in and of itself create a doubt as to the guilt that
17 should be considered by you." That was what Harrison's
18 defense lawyers wanted. That's what I want. That's what
19 the court in Harrison refused to give and it was found to be
20 reversible error. It is something that goes above and
21 beyond the court's general instruction and they feel that
22 it's warranted in cases like this, not that just to have
23 taken into account the good character, but to know -- that
24 jury has to know that they can consider as a reasonable
25 doubt.

1 THE COURT: Well, the case that you cited was an
2 eleven year old case, prior to these charges being crafted,
3 so it's not that you handed up something new.

4 MR. SHEALEY: This -- this principle is -- this
5 case has been law, Your Honor. It discusses Lyles and
6 Green, which are older cases, the same principle. It's
7 still good law.

8 THE COURT: I'm not questioning any of that. The
9 question I have in my mind -- it's not in your mind, I have
10 heard your position -- it's whether or not what I have is
11 sufficient.

12 All right. We will skip over that and move to the
13 issue of voluntary intoxication.

14 Anything else from defense?

15 MR. SHEALEY: Yes, Your Honor.

16 I looked at this issue a little bit and I did read
17 the Todd case that the State was referencing and to me there
18 really isn't a whole lot out there. The Todd case does say
19 that well, it's in evidence, so you can charge it. So I
20 don't know whether that means you should charge it. And I
21 don't think there is a lot out there on this issue, because
22 most people know that in a murder trial, or a trial with
23 malice, something like that, it's a mental state, that
24 voluntary intoxication is not a defense.

25 So here it has not been raised at all. It's not

1 in any evidence. The evidence is that three individuals who
2 were involved here had all been drinking, but at no point
3 has the defense ever said that Todd's actions were caused by
4 being drunk. He never said that. No one has said that. So
5 I think for the State to put it in issue through a jury
6 charge, cautioning the jury to not think about that because
7 that's not a defense, then they get to attack it, they put
8 it in issue, have the jury think about it and then get to
9 say, "well, don't listen to that, that's not a defense,"
10 when we haven't put it in issue at all.

11 So although I think anything in evidence can be
12 charged, the question is whether it's appropriate here. And
13 I do not feel it's appropriate for the jury to begin
14 thinking about it like that when the defense has not made it
15 an issue whatsoever in terms of a defense for Todd Parvin.

16 THE COURT: What says the State?

17 MS. CAMPBELL: May it please the court, there has
18 been a lot of testimony in this case about who was drinking
19 that day, how much everyone was drinking that day.

20 In addition to this, the burden is on the State to
21 prove criminal intent and malice in this case. The fact
22 that the defendant was drinking, that's in evidence; that he
23 was drinking in excess of what he normally drinks, according
24 to him, came into evidence. We have gone back and forth on
25 how much he drinks a day, Your Honor. That information we

1 put up in our case in chief and information that came out
2 during their case. There has been back and forth, Your
3 Honor. 'I don't think they are going to stipulate that we
4 meet the elements of murder. If they were doing that, then
5 we wouldn't be requesting this charge.

6 We have to prove criminal intent. We have to
7 prove malice. Anything that might weigh in the jury's mind
8 about whether or not he was intoxicated and that that
9 negates anything, it is a proper charge, I believe according
10 to Todd, Your Honor. I believe that whenever the State or
11 the defense requests if there is any evidence where a charge
12 would be appropriate, that we would be allowed to do that.
13 I think they have conceded there it's proper in Todd that
14 when there is evidence of drinking, that it could be
15 charged.

16 We would simply request a voluntary intoxication
17 charge so that that would not be an issue for this jury to
18 consider when considering criminal intent and malice. There
19 has been a lot of talk about drinking, Your Honor,
20 specifically on that day.

21 The circumstantial evidence further on puts the
22 defendant's DNA and/or fingerprints on at least five
23 different beer cans there at the scene, which would also
24 contradict what his testimony was about how many he drank
25 and things of that nature that day. The inference clearly

1 could be that he become intoxicated having drunk five or
2 more beers.

3 THE COURT: All right. Anything else?

4 MR. SHEALEY: I would just argue, if you go back
5 to Todd's testimony, I think he has not brought up the fact
6 that he was drunk.

7 THE COURT: Which Todd are you on now?

8 MR. SHEALEY: My client Todd Parvin, not the case
9 Todd.

10 THE COURT: All right.

11 MR. SHEALEY: He has not brought up that he was
12 intoxicated. He referenced the beers he drank. The defense
13 has never put that in issue. It did come out. The reply
14 we --

15 THE COURT: Of course, the jury doesn't care what
16 you put in, but the jury takes the case based on the
17 evidence and the reply, whether you put it in or the State
18 puts it in, they take the evidence as a whole. It's not --
19 it's not based on -- they are not going to decide the case
20 based on what you argue or based on what Ms. Campbell
21 argues.

22 MR. SHEALEY: I understand, Your Honor. I think
23 that's appropriate for them to take the evidence as a whole,
24 but we -- the defense has not suggested, even by inference,
25 that Todd was out of control due to the drinking. That's

1 never been an issue. It has been brought up in reply
2 somewhat by bringing this doctor in, as he had an exit exam,
3 and that was through the State, but it's never been an
4 excuse. It's never been offered to mitigate whatsoever
5 anything that happened that day. It's strictly self-defense
6 from the defense perspective, and I think it just is a --

7 THE COURT: What if the jury said "well, he seems
8 to be a pretty good guy. He has a good reputation and
9 probably if he wasn't drinking, he wouldn't have killed
10 those guys. We will give him the benefit of the doubt based
11 on all that."

12 MR. SHEALEY: I just don't think it's been put at
13 issue, so I think it's somewhat misleading.

14 THE COURT: What if the jury kind of -- what if
15 their deliberations go in that direction; "we think he's a
16 good guy. He has a good reputation; has a lot of quality
17 people vouching for his good name and reputation; and if he
18 wasn't drinking, he probably wouldn't have done it. We'll
19 give him a pass on it."

20 MR. SHEALEY: We certainly want the jury to think
21 about all the issues, but to focus that is highlighting that
22 an issue is what that jury charge does, when it's something
23 that's not an issue in this case as a defense. And what we
24 are doing here by instructing is highlighting it for them to
25 think about more than they normally would, when that's not

1 been an issue in terms of an excuse or any mitigation as to
2 Todd's behavior that day. I just don't think it's
3 appropriate in this particular case.

4 THE COURT: Okay. Well, the defendant said that
5 he drank in excess of his limits, his self-imposed limits,
6 on that day. I think that's his testimony.

7 Well, I'm going to charge voluntary intoxication,
8 and I'm also going to charge the language from the Harrison
9 case that evidence of good character and good reputation may
10 in and of itself create a doubt as to guilt.

11 MR. SHEALEY: Thank you, Your Honor.

12 MS. CAMPBELL: Your Honor, that was one in
13 addition to your other charge that you --

14 THE COURT: Yeah, I'm adding a sentence to that
15 charge.

16 MS. CAMPBELL: Thank you.

17 THE COURT: I'm putting that sentence in there.

18 (Off the record)

19 (Back on the record)

20 THE COURT: All right. We got a couple of -- we
21 have a couple notes from the jury. One says, "a juror would
22 like to inform the court that he worked with one of the
23 witnesses. She was a part-time employee who circulated
24 certainly between departments. He did not know her very
25 well, and, in fact, didn't even know who she was when the

1 witness list was called. Only upon her taking the witness
2 stand did he recognize her. This would not impair his
3 ability to judge fairly. Is this an issue?"

4 MS. CAMPBELL: Your Honor, that is information we
5 turned over to the defense that she -- we did turn that over
6 when Ms. Linfert became aware that she recognized he had
7 worked with her several years ago and has had no -- and just
8 recognized him from working with him, and that was the
9 extent and that's the information that she turned over.

10 THE COURT: Okay. Anything from the defense on
11 that, regarding that juror?

12 MS. PRINGLE: What juror number was it, Your
13 Honor?

14 THE COURT: I don't know.

15 MS. PRINGLE: We're not sure how we're certain
16 that's the same situation.

17 MS. CAMPBELL: That's the same information I
18 turned over to you.

19 MS. PRINGLE: I just would ask which juror, what
20 number, who the witness was.

21 If it was -- if it was Ms. Linfert, she's in the
22 courtroom and I think perhaps she wouldn't need to be in the
23 courtroom if that's the case. I'm not sure it's a problem,
24 but if we do have a juror who knows this particular witness
25 and this one witness is actually still here, I'm not --

1 THE COURT: I'm not going to ban anyone from the
2 courtroom.

3 MS. PRINGLE: We would ask for --

4 THE COURT: I'm not going to ban anyone from the
5 courtroom.

6 MS. PRINGLE: We would at least ask to know who
7 the juror is and who the witness was before taking a
8 position.

9 THE COURT: All right.

10 Could you go find out which juror this pertains
11 to.

12 MS. CAMPBELL: Beyond that, Your Honor, it says
13 that it wouldn't affect his impartiality.

14 THE COURT: It says that it would not affect him.

15 MS. CAMPBELL: Thank you.

16 THE COURT: Then the next issue says, the next
17 note says, "the alternate would like to inform the court
18 that she has picked up a child at a house across from the
19 crime scene location we visited yesterday. She does not
20 know any of the parties to this case or any witnesses. Is
21 this an issue?"

22 She has picked someone up across the street from
23 the house where this took place.

24 MS. CAMPBELL: No issue from the State, Your
25 Honor.

1 MS. PRINGLE: We have no issue with the defense.

2 THE COURT: All right. We'll be at ease. Let me
3 find out who this juror is.

4 (Off the record)

5 (Back on the record)

6 THE COURT: It's referenced Juror 211. 211. He
7 was the alternate and now he's on the panel.

8 Is that the same person the State was referring
9 to?

10 MS. CAMPBELL: Yes, sir.

11 THE COURT: All right. You already know about
12 that.

13 What says the defense?

14 MS. PRINGLE: Your Honor, if it please the court,
15 the difference between when the information was brought to
16 our attention and the situation that we are now is that --

17 THE COURT: I'm not going to saddle you to
18 anything brought -- I'm only going to focus on now, not what
19 was brought up before.

20 MS. PRINGLE: Yes, sir.

21 Our understanding was that Ms. Linfert, Audra
22 Linfert, who is the crime scene intelligence -- or the
23 intelligence analyst who discovered the tag and really broke
24 this case for them. I mean, she is probably what the most
25 central figure in the investigation, but she's the one that

1 linked the tag to Todd Parvin, as far as turning the
2 investigation towards Todd Parvin, so she's a pretty
3 significant witness.

4 It was not our understanding or our impression
5 that that juror had any reason to know her. He apparently
6 recognized her when she took the witness stand. Obviously
7 he could not remember her name, but we just -- we would
8 object to him remaining. I understand he said he could
9 be -- he could remain impartial in the form of note, but I
10 think because of the significance of this witness, I
11 understand you are not going to ask her to leave, but also
12 she's sitting right there. I think it's just -- it creates
13 a problem, Your Honor. We have another alternate and we
14 would object to him remaining on the jury.

15 THE COURT: It creates what problem?

16 MS. PRINGLE: Well, I think it creates a problem
17 for him. Mr. Parvin is entitled to a fair and impartial
18 jury. I think jurors -- it's incumbent upon them to state
19 when they send notes or they make representations about
20 their fairness, they want to appear fair. They want to
21 claim that they can be fair.

22 THE COURT: Well, I'll read the note again. It
23 says, "a juror would like to inform the court that he worked
24 with one of the witnesses. She was a part-time employee who
25 circulated between departments. He did not know her very

1 well, and, in fact, didn't even know who she was when the
2 witness list was called. Only upon her taking the witness
3 the stand that he recognized her. This would not impair his
4 ability to judge fairly. In this an issue?"

5 Do you think it would impair his ability to judge
6 fairly?

7 MS. PRINGLE: I don't know, but I know that we
8 have another alternate who has no connection and no link to
9 anyone on this case, particularly the central figure who I
10 suspect will be highlighted significantly by Ms. Campbell
11 during her closing argument, and we would just ask you to
12 note our objection.

13 THE COURT: Well, I'm not just noting your
14 objection. I'm hearing arguments to rule on the issue. I
15 don't want any perfunctory noting objections.

16 What says the State?

17 MS. CAMPBELL: Your Honor, we have no problem with
18 asking Ms. Linfert to go to the back of the courtroom, if
19 this alleviates the focus of their concern.

20 THE COURT: All right. Now she's in the back row.
21 How about that, Ms. Pringle?

22 MS. PRINGLE: We just maintain our objection, Your
23 Honor.

24 THE COURT: Okay. I'll give y'all a chance to
25 give me some law on this issue. We'll take a few minutes.

1 They seem to have instant capabilities to generate the law
2 and briefs and all that, so I'll give you just a moment to
3 do that.

4 MS. CAMPBELL: Your Honor, my understanding of
5 what the case law is is that as long as they indicate they
6 could be fair and impartial, this is not a problem, but I
7 will be glad to try to get some case law.

8 COURT REPORTER: I'm sorry, Ms. Campbell? What
9 was the last thing that you said?

10 MS. CAMPBELL: That I will get some case law.

11 (Off the record)

12 (Back on the record)

13 MS. CAMPBELL: Your Honor?

14 THE COURT: Yes.

15 MS. CAMPBELL: Just to make sure that there is no
16 possible prejudice, Ms. Linfert is leaving the courtroom
17 completely.

18 THE COURT: Well, what if I remove the juror, then
19 she's coming back, or --

20 MS. CAMPBELL: No, sir.

21 (Off the record)

22 (Back on the record)

23 THE COURT: Well, we are going to -- we are going
24 to proceed with closing arguments in about five minutes.
25 This is not an issue that needs to be instantly decided.

1 The jury won't start deliberating I guess until about two
2 hours, or so, we have some time to decide that issue, so we
3 will be able to be back in about five minutes, Mr. Shealey.

4 MR. SHEALEY: Yes, sir.

5 THE COURT: Then we will press on and address that
6 issue before deliberation.

7 (Off the record)

8 (Back on the record)

9 THE COURT: We are going to address that issue
10 before deliberation. We'll have some time to deal with
11 that.

12 Then the court reporter indicates some issues with
13 some of the exhibits, some of the defense exhibits, A, B's,
14 and C's, and so forth. If y'all can confer about those and
15 see what's in and what's not.

16 We are going to be at ease for just a few minutes.

17 (Whereupon, proceedings were recessed)

18 (Whereupon, proceedings were reconvened)

19 THE COURT: Anything else before we bring the
20 jury?

21 MS. WALKER: Briefly, Your Honor, if I may hand up
22 some case law?

23 THE COURT: Case on what?

24 MS. WALKER: The jury.

25 THE COURT: I say y'all have the ability to

1 generate some instant research.

2 MS. WALKER: We try.

3 THE COURT: Tell me about these cases, Ms. Walker.

4 MS. WALKER: Yes, sir.

5 Your Honor, the first one, State v. Holland, is a
6 case that's actually factually close to this case. There
7 was a juror who -- approximately -- there was approximately
8 2,500 other persons who were employed at that same plant,
9 and one of the State's witnesses, that juror said that he
10 could be -- that juror stated he could be fair and
11 impartial, and he was not excused and that was not -- that
12 was not error.

13 And State v. Valenti actually outlines and cites
14 State v. Fuller, in which the court held that jurors can
15 properly serve if he were free of any bias or prejudice, if
16 he could give the issues a fair and impartial trial, and he
17 would be uninfluenced by any opinions that were previously
18 formed.

19 In this case, Your Honor, the juror hasn't
20 mentioned that he's formed any previous opinion, as the
21 juror in Valenti did.

22 He thought that -- Valenti is a case about a -- is
23 a murder case and he thought that the victims in this case
24 from watching the news had died by unlawful means. He had
25 already formed that opinion, but said that he could serve

1 without the previously formed opinion causing him any undue
2 bias. We don't have anything that rises to that level in
3 this instance, Your Honor. The juror says that he can be
4 fair and impartial, and we should take him at his word for
5 that, and it would be proper for him to continue to serve.

6 THE COURT: All right. Are you all generating
7 anything on the issue? If so, I will wait to hear from you
8 otherwise.

9 MS. PRINGLE: Your Honor, I'm not going to be able
10 to find any case law that says that if the juror says he
11 could be fair and impartial but that's not enough. I'm not
12 going to contest that. I understand that that is -- as we
13 all know, that is the law. We deal with that in jury
14 qualifications.

15 At this point in time, you know, I would just
16 renew what I said earlier, which is that I think, you know,
17 every juror wants to be fair and impartial and they want to
18 represent that they could be fair and impartial and it's a
19 very hard thing to say otherwise. We know that's what he
20 said in his note. We just think, beyond that, I just heard
21 that being, you know, a place of 2,500 people or 40 people,
22 we do have an alternate, and I guess to me airing on the
23 side of caution, we have got an alternate, why not put her
24 in?

25 THE COURT: Well, as of yesterday we had two, and

1 if we lose another then we have mistrial, so -- not that
2 that's an overriding factor, but, you know, you all here in
3 Richland deal with the luxury of having total strangers to
4 everyone on a jury. You know, in my part of the world it's
5 not at all uncommon for jurors to know the defendant, the
6 victims, and everyone else. And in most small counties in
7 this state it's commonplace where some of the parties --
8 some jurors may know some of the parties, the officers, the
9 victims, etcetera, and the test is whether or not they can
10 be fair and impartial.

11 We'll call it at the end, but the cases generally
12 speak -- if jurors are removed, it's based on some
13 misconduct by the juror in concealing some information, and
14 we seem to have the opposite situation here, but we will
15 call it officially at the end, but it's not likely that I'm
16 going to excuse this juror.

17 Are y'all ready for closing?

18 MS. CAMPBELL: The State is ready, Your Honor.

19 MS. DAVIS: Yes, sir, Your Honor.

20 THE COURT: All right. Let's bring the jury.

21 THE BAILIFF: Yes, sir.

22 (The following takes place in the presence of the
23 jury panel)

24 THE BAILIFF: Your Honor, the jury is present.

25 THE COURT: All right. Good morning.

1 THE JURY: Good morning.

2 THE COURT: Day number seven.

3 You have now heard all of the evidence, received
4 all of the evidence. It's now time for closing arguments.

5 The closing arguments are not evidence. Questions
6 asked by the lawyers during the course of the trial, the
7 questions are not evidence. Testimony is evidence and the
8 matters introduced through exhibits and the like are all
9 evidence.

10 Certainly this is an important phase of the trial,
11 closing arguments, and I ask that you give the lawyers your
12 attention at this time.

13 The State would first open on the law.

14 MS. CAMPBELL: May it please the court?

15 THE COURT: Ms. Campbell.

16 MS. CAMPBELL: Good morning.

17 THE JURY: Good morning.

18 MS. CAMPBELL: The first thing I want to do on
19 behalf of the State of South Carolina, the citizens of
20 Richland County, and the families that have been here
21 through the week of these victims, I want to thank you for
22 your service in this case. I know when you showed up over a
23 week ago to serve on jury duty, you probably didn't have any
24 idea of what kind of service would be required of you, but I
25 think as you have seen over the last several days, your

1 service is very important to this State, to the citizens of
2 Richland County, and to this family, as well as to the
3 defendant.

4 You know, they say that jury duty is the greatest
5 service one can render one's country in times of peace. And
6 I think it's become apparent as this case has been presented
7 to you that it is very important, because the roles in this
8 courtroom are very well defined.

9 The role of the prosecution is to bring forth all
10 the admissible, relevant evidence pertaining to this case
11 and whether or not this defendant is guilty of murder or
12 not.

13 The defense's role is to defend their client to
14 the best of their ability.

15 The judge's role is to determine what's
16 admissible. At certain times it may be inadmissible and
17 later admissible, as y'all have seen better than any other
18 jury over the last week or so.

19 But the most important role, ladies and gentlemen,
20 and nobody is going to get up here and dispute this, is your
21 role. Each of you, individually, and then once you have
22 heard from both sides and the judge has charged you as to
23 what the law is you must apply, collectively as a jury as to
24 what happened back on July the 30th of 2010, because you
25 have heard two very different stories. One is murder and

1 one is self-defense.

2 Now, as the judge just told you, what do you use
3 to help you in determining that information? You must
4 determine it from the actual evidence in the case. As he
5 said, what is the evidence? The evidence is the actual
6 testimony from sworn witnesses from this stand and the
7 physical evidence which will go back with you to the jury
8 room, which you will have back there, so that you can look
9 at it. I know you have seen a number of the photos. You
10 will have the time to look at all of that evidence and make
11 determinations based on that.

12 And in that same vein, as the judge just said,
13 questions by the attorneys, fishing expeditions,
14 speculation, innuendo, conjecture, that is not evidence, or
15 just plain wishful thinking the evidence wasn't settled
16 overwhelming in this case.

17 Now, I want to apologize on behalf of the State if
18 over the last week we have done anything to offend any of
19 you in any way. At times we get caught up with the legal
20 wrangling, what's admissible not now, later admissible. I
21 have never objected this much in my life. All those things
22 can be perceived, but please don't hold that against the
23 State, against the citizens, against the families of these
24 victims who are no longer with us. We apologize. We do not
25 mean to do anything to offend you in any way.

1 Now, a criminal case is unique, as it should be.
2 In a criminal case the defendant has the absolute right to
3 confront each and every witness against him. That's what
4 our constitution guarantees and that's the way it should be.

5 You have heard references in this case to reports
6 generated by experts, pathologists, ballistics experts,
7 trace evidence experts, things of that nature. You have
8 heard references to statements taken from witnesses.

9 In criminal cases the law demands, as it should,
10 that each and every witness is going to give testimony, or
11 give opinion, or give relevant information, come before you.
12 It's live testimony, so that the defendant has the right to
13 confront them about their testimony. That is a right that
14 is absolute in our Constitution.

15 It's also very important, ladies and gentlemen,
16 because the law recognizes you should have the opportunity
17 to observe each and every witness that comes before you, to
18 determine their credibility, based on their demeanor, their
19 appearance, their education and their background, so that
20 you can determine based on the relevant credible or
21 believable evidence what happened back in July of 2010, at
22 Edgar Lopez and Pablo's house, and that's the reason for
23 that.

24 You have also heard references to chain witnesses,
25 witnesses we got up here, "has anyone altered or tampered

1 with anything?" Before anything, any testing can come
2 before you, the State must prove that none of this evidence
3 was compromised, that no one altered it or tampered with it,
4 that it was skewed in any way. So prior to it being
5 admitted we must put up those witnesses, and that's the
6 reason you heard from them.

7 You have also heard reference to some witnesses
8 who haven't been called before you. And the very simple
9 reason, ladies and gentlemen, is that the State is allowed
10 to call each and every witness who has something else to
11 add, something different. We can't call every single police
12 officer that responded to the scene, if they don't have
13 anything to add about how that scene presented. We can't
14 call the same person over and over, although there has been
15 some of that in this case, but as far as the State, to say
16 the same thing over and over.

17 You have heard references to how family members
18 from next door ran to the victims aid. They don't have
19 anything. They weren't there to see anything; therefore,
20 they have nothing to add.

21 You heard from the witnesses who observed the
22 defendant leading up to the events that cost two men, and no
23 matter how they are characterized in this case, two human
24 beings their life back in July of 2010.

25 Now, the burden is on the State of South Carolina

1 to prove this defendant's guilt beyond a reasonable doubt.
2 And as Ms. Simpson told you in her opening, in this case the
3 best evidence, that is a burden the State welcomes. Proof
4 beyond a reasonable doubt is the highest level of proof of
5 any court in our nation. It's not just that it has to be
6 more probable that it happened. We have to prove it beyond
7 a reasonable doubt. The judge will instruct you what is a
8 reasonable doubt.

9 And when I'm going through this and talking about
10 the law in this case, if I say anything that contradicts
11 what the judge says, take it as the judge says, because I'm
12 going to talk about what he charges and I'm going to talk a
13 little bit about what the law is, what our case law is. If
14 the judge corrects me in any way, you take the law as the
15 judge gives it to you.

16 And in that same vein, as you are listening to
17 argument today, if either side, either the State or the
18 defense, mischaracterizes the facts, that is your province,
19 your role. You must determine what the testimony was and
20 who was credible.

21 Proof beyond a reasonable doubt. The simplest way
22 to define that, as some judges charge, is proof that would
23 make a reasonable man hesitate to act.

24 But the law in our state and in our nation has
25 defined it in a way that may be a little more helpful, and

1 listen to the judge. In civil cases the State only -- or
2 the parties only have to prove that a fact is more probable
3 than not, but in criminal cases it has to be more powerful
4 than that.

5 What is proof beyond a reasonable doubt? Our
6 state and our nation has defined proof beyond a reasonable
7 doubt as proof that leaves you firmly convinced of the
8 defendant's guilt. And perhaps that's the simplest way to
9 put it. Are you firmly convinced of the defendant's guilt?

10 It goes further. There are very few things in
11 this world that we know with absolute certainty and in
12 criminal cases the law does not require proof that overcomes
13 every possible doubt.

14 If, based on your consideration of the evidence,
15 you are firmly convinced that the defendant is guilty of the
16 crime charged, you must find him guilty.

17 If, on the other hand, you think there is a real
18 possibility that he is not guilty, you must give him the
19 benefit of the doubt and find him not guilty.

20 Very simply, very few things we know with absolute
21 certainly, and criminal cases does not require proof that
22 overcomes every possible doubt. Just that proof that leaves
23 you firmly convinced of the defendant's guilt.

24 And I submit again, ladies and gentlemen, there
25 are two different versions of facts in this case. One is

1 murder; one is self-defense, and we will talk about
2 credibility in a minute, as far as what is believable and
3 what it shows.

4 Now, murder is the most heinous offense in our
5 books, or at least one of them. It probably has the
6 shortest definition. In our state we don't have different
7 levels of murder. We don't have different degrees of
8 murder.

9 What is the definition of murder? Murder is the
10 unlawful killing of any person with malice aforethought,
11 either express or inferred. And I want to talk a little bit
12 about those terms.

13 Killing of any person with malice aforethought.
14 And what do those terms mean?

15 The judge will charge you the killing with malice.
16 What does the term malice mean? Malice can be hatred, or it
17 can be ill will, or it can be hostility towards another
18 person. The very simplest way to define it is the
19 intentional doing of a wrongful act without just cause or
20 excuse and with an intent to inflict an injury or under
21 circumstances that the law will infer as evil intent.

22 Express malice and inferred malice, very simply,
23 ladies and gentlemen, those are just the ways the malice is
24 seen. It doesn't mean a different kind of malice.

25 Express malice typically is shown when a person

1 speaks words which express hatred or ill will for another;
2 or when the person prepared beforehand to do the act, such
3 as lying in wait.

4 The law recognizes that in very few murder cases
5 is the defendant going to walk up to another person, pull
6 out, with witnesses there or videotapes so someone can hear
7 it, a gun and say I want to kill you. Therefore, we don't
8 have to prove in every case express malice; although I
9 submit, ladies and gentlemen, in this case there was an
10 argument going on in which the defendant was angry with
11 these victims when he pulled out the gun and shot them. So
12 in this case you have express malice and you also have
13 inferred malice.

14 Malice may be inferred from conduct as showing a
15 total disregard for human life. Basically malice can be
16 shown when someone pulled out a gun and shoots someone
17 multiple times.

18 It is going to be hard for anyone, I submit, to
19 argue that this case does not have malice.

20 Malice is a term that imports wickedness and
21 excludes just cause or legal excuse. It springs from
22 wickedness, depravity, a depraved spirit from a heart devoid
23 of social duty and fatally bent on mischief.

24 It's a wrongful act, without just cause or excuse,
25 with an intent to inflict an injury or under circumstances

1 the law will infer such an intent.

2 The case law goes a little further in defining
3 what malice can be in cases. It goes so far as to say
4 malice does not necessarily imply ill will towards the
5 individual injured, but signifies rather a general malignant
6 recklessness of the lives and safety of others where
7 condition of mind which shows a heart regardless of social
8 duty and fatally bent on mischief. Regardless of social
9 duty and fatally bent on mischief.

10 And I submit this defendant's actions back on --
11 and we are talking about we are holding him responsible for
12 the actions back in July of 2010. Was he fatally bent on
13 mischief? A heart regardless of social duty?

14 And you also have the term malice aforethought.
15 And listen carefully to the judge's charge, because at no
16 point is he going to tell you that in the state and their
17 having to prove whether or not this defendant committed
18 murder that we have to prove motive, nor is he going to tell
19 you that we have to show it was premeditated. The law in
20 this state, as far as the simple charge of murder, which you
21 have before you today, merely says that we must show that he
22 had malice in his heart, in any of those ways we just talked
23 about, just before and at the time of the actual shooting
24 itself. He doesn't have to plan it for hours, even minutes,
25 even seconds before. He doesn't have to have an actual

1 motive, although I submit in this case there is motive. We
2 don't have to prove that. Listen carefully to the judge.
3 Those are not elements of murder, according to our case law.

4 Where there is malice aforethought, what does that
5 mean? And the judge will charge you. It must be a
6 combination of just before and at the time that the actual
7 fatal blow was struck that the defendant had malice in his
8 heart.

9 Malice need not exist for any appreciable time
10 before the actual killing occurs. Malice may be conceived
11 the very moment the fatal blow is given.

12 So at the time when he goes to pull out his gun
13 and starts shooting, did he have malice in his heart? And I
14 submit, ladies and gentlemen, unless you believe, truly
15 believe, that this was self-defense, no one is going to get
16 up here and argue that malice wasn't present that day.

17 Now, the judge is also going to instruct you on
18 the law of self-defense, and he's going to mention to you.
19 What is the law of self-defense? And the judge will tell
20 you it's a complete defense. It has actually four different
21 prongs which must be established to prove self-defense.

22 The defense got up here and said we must disprove
23 each and every prong. That's not true. We must simply
24 disprove whether or not the elements of self-defense were
25 met. And I submit if you believe the defendant, even his

1 version fails to meet the elements of self-defense. But
2 more importantly, if you believe the credible evidence,
3 corroborated by the crime scene, corroborated by the
4 evidence, then it is definitely not self-defense.

5 The judge will go into more detail with this.
6 This is a summary.

7 What are the elements of self-defense?

8 And the very first element of self-defense, which
9 must be proven in order for you, because remember all four
10 must be met for you to find self-defense, if the defendant
11 was without fault at bringing on this chain of events which
12 led to homicide.

13 And I submit, ladies and gentlemen, under his own
14 version he goes out to this place, starts drinking with
15 people, at some point arms himself unlawfully and goes back
16 into the crime scene. He must prove that he is without
17 fault in bringing on the difficulty.

18 More importantly, he must prove that he was in or
19 believed himself to be in actual imminent danger of losing
20 his life or sustaining serious bodily injury. And, again,
21 the judge will give you more detail on that.

22 The judge will also tell you he has the right to
23 act on appearances. But in that same vein, it must be what
24 a reasonable person would perceive, or perceived. And I
25 will go back to credibility.

1 The third thing is if his defense is based on the
2 belief of imminent danger, the defendant must show that a
3 reasonably prudent person of ordinary firmness and courage
4 would have entertained the same belief and would have struck
5 the fatal blow in order to save himself.

6 And, finally, ladies and gentlemen, and I'll get
7 back to his story, if it's not in your own home, if he's
8 somewhere else and the defendant had no other probable means
9 of avoiding the danger; i.e., the duty to retreat.

10 The law recognizes self-defense does occur. The
11 State recognizes there are self-defense cases all the time
12 out there. This is not self-defense in this case with these
13 facts and this evidence.

14 Those are the elements of self-defense. Listen
15 carefully to the judge as he addresses you on that element.
16 Does he meet any of those prongs? Would a reasonable
17 person, even acting on appearances, as the law says, even
18 though he was unlawfully in possession of the pistol, if he
19 arms himself at the time - he had already armed himself
20 earlier - in order to save his life, the law recognizes,
21 even if it's unlawful possession, if he is entitled to arm
22 himself in self-defense at the time of the shooting, that
23 would be okay. Those are not the facts before you. Even
24 the defendant's own version of what happened that day does
25 not meet all the elements of self-defense.

1 Now, you have also heard from a number of
2 witnesses. I counted them, somewhere between thirteen and
3 seventeen, who came up to talk about the defendant's
4 character, and that's something that you should consider.
5 That is his right to put forth that evidence.

6 The State was the first to tell you this man for
7 twenty years of his life honorably served his country. That
8 is not in dispute. He served his country. He went abroad.
9 He did his job well. The State does not and would not ever
10 dispute that. He is to be admired for that.

11 But you can consider evidence of character,
12 because we are talking about a time period a year after he
13 had left the structure and the discipline of the Army. We
14 are talking about what happened after he had been on his
15 own, away from all the values that meant so much to him and
16 made him such a good soldier. Because just as he is
17 entitled for you to consider character or reputation, the
18 victims in this case also must be considered as to what
19 their fault was that day.

20 Reputation or character evidence to show that it
21 would be inconsistent with the defendant committing the
22 crime. The weight that you give the testimony, with all
23 other testimony in the case, that alone, if you think it is
24 such that excuses him for what he did that day. If you are
25 going to give him a pass for these murders, that alone can

1 be considered by you. However, the judge will tell you this
2 is just one factor that you consider, along with everything
3 else in this case. It must be balanced. It must be
4 considered by you, because no one is going to get up here
5 and say that this defendant, Leslie Parvin, for twenty years
6 served his country well. He did. All the State asks is
7 that when you are considering that, you also consider what
8 he chose, the decisions he made, and what he did in July of
9 2010.

10 The judge will also instruct you. There has been
11 a lot of talk in this case about drinking, blood alcohol,
12 things of that nature. The law recognize that some jurors
13 may consider that as an excuse. The judge will charge you
14 that voluntary intoxication, when someone willingly goes out
15 there and drinks, or takes drugs, whatever, it is not an
16 excuse or a defense to a crime, regardless of whether the
17 crime is one involving general or specific intent.

18 A person who voluntarily ingests alcohol or drugs
19 and thereby becomes intoxicated is no less responsible for
20 his acts while in such a condition. If one voluntarily
21 drinks intoxicating liquors, wine, or beer, or ingests drugs
22 and becomes intoxicated, to whatever degree, and if in while
23 in that condition commits an act which would be a crime if
24 it was committed by a sober person, the fact of intoxication
25 would not relieve him of responsibility.

1 So in your deliberations, the fact that he made
2 have exceeded his limit that day, whatever the limit is,
3 should not enter, because he's just as responsible, because
4 those are choices he made, decisions, just like all the rest
5 that day, that led to the murder of these men.

6 The judge may also instruct you on criminal
7 intent. And just like in trying to determine whether or not
8 malice existed at the time of these crimes, criminal intent
9 is a mental state, a conscience wrongdoing. It's up to you
10 to determine what the defendant intended to do based on the
11 circumstances shown to have existed.

12 Criminal intent can arise from actions or a
13 failure to act. It may arise from negligence, recklessness,
14 or an indifference to duty or to consequences, but is
15 considered by the law to be the equivalent of criminal
16 intent.

17 And, ladies and gentlemen, if you determine he
18 didn't act in self-defense, there is absolutely no one that
19 is going to get up here and argue that there was not
20 criminal intent.

21 The law recognizes that we can't take someone's
22 brain and dissect it to determine exactly whether or not he
23 had a criminal intent or malice in his heart at the time to
24 determine it to a mathematical probability even. The law
25 recognizes that you must look to the circumstances leading

1 up to, at the time of the event, and even after - in this
2 case three weeks after the events - in determining whether
3 or not this defendant had criminal intent; and, in that same
4 vein, malice.

5 And, ladies and gentlemen, I submit, based on the
6 evidence, credible evidence that's before you, this case
7 reeks of malice. There is no issue as to whether or not
8 there was criminal intent.

9 And, again, the State is not required, and listen
10 carefully to the judge, to prove that this defendant went
11 there with the intent to kill anyone. That is not what the
12 State has to do. That's not our burden. We don't have to
13 prove that he intended to kill anyone, until the point he
14 pulled out the gun and makes the decision to start shooting,
15 to make sure those two people will never make a fool of him
16 again. That is what our duty is, and listen to the judge as
17 he charges you.

18 Now, in every case there are different kinds of
19 evidence, two different kinds. There is direct evidence and
20 then there is circumstantial evidence.

21 In this case you heard from several eyewitnesses.
22 Typically that's direct evidence. When a person would come
23 to court to tell you what they observed, what they saw, what
24 they smelled, what they heard, what they felt, it's the type
25 of evidence that's perceived in the sense that you heard

1 from a number of eyewitnesses about what was leading up to
2 that, the events that day, about what they observed of the
3 defendant, about what they observed of the victims. You
4 have even got a videotape that actually shows you what the
5 victim, Edgar Lopez, looked like just before he was
6 murdered. That is direct evidence.

7 Circumstantial evidence. It doesn't mean that one
8 type of evidence is better than the other. And
9 circumstantial evidence is proof of a chain of facts and
10 circumstances indicating the existence of a fact.

11 The law makes absolutely no distinction between
12 the weight or value to be given either direct or
13 circumstantial evidence, nor is a greater degree of
14 certainty required of circumstantial evidence than of direct
15 evidence.

16 You should weigh all the evidence in the case.
17 And after all the evidence, if you were not convinced of the
18 guilt of the defendant beyond a reasonable doubt, you must
19 find him not guilty.

20 If, on the other hand, you are convinced of the
21 defendant's guilt, you must find him guilty.

22 In this case circumstantial evidence. Typically
23 in most cases it's DNA evidence, fingerprint evidence,
24 placing of the person at a crime scene; ID. In this case
25 you have got DNA on the beer cans, you have got fingerprints

1 on the beer cans, which show that this defendant was there.
2 That's circumstantial evidence.

3 In this case luckily you have not only eyewitness
4 testimony, but you have circumstantial evidence, that when
5 taken together show you, and luckily in this case a picture
6 of what happened that day out in that yard. So not that one
7 type is better than the other, but luckily in this case you
8 have got one corroborating the other.

9 Now, the judge will also instruct you that you
10 heard from several expert witnesses. And the law recognizes
11 that certain people, if they have certain training, can come
12 in and testify as to an opinion. I'm not an expert in the
13 case. I can't get up there and testify as an expert on any
14 way and give an opinion, but the law recognizes that certain
15 people, because of their training are able to come forward.

16 The judge will tell you when determining whether
17 or not to believe an expert witness, that you judge it the
18 same way as you do any other witness. It's the same level
19 of scrutiny that a lay witness, that a non-expert witness,
20 you give them. You can determine and consider whether or
21 not they actually have the training to enable them to make a
22 decision and enable them to give an opinion. Those are all
23 factors you must determine.

24 The judge will tell you you can believe an expert
25 witness or not believe an expert witness. It is totally up

1 to you.

2 And the last thing I want to talk to you about
3 right now is credibility of witnesses. The judge will
4 instruct you that you alone must determine who is believable
5 in this case. And in this case you have heard two complete
6 renditions of what happened back in July of 2010. So
7 credibility, as in most criminal cases, is key.

8 In determining credibility, you can consider
9 factors. What was the witness like? What was their
10 demeanor like on the stand? Was it forthright or hesitant?
11 Was their testimony corroborated on the one hand or not
12 corroborated? Was the testimony of the witness consistent?
13 Did the witness have a reason to be biased or prejudiced?
14 Did they have a reason to try to make a story fit a certain
15 stack of evidence? Those are all factors.

16 The judge will tell you you can believe one
17 witness against many; many against one; none of what a
18 witness says; all of what a witness says; part of what a
19 witness says. And he will talk to you about credibility.

20 Ladies and gentlemen, this case rests on
21 credibility. You can consider when a witness came forward
22 with their testimony, when they came forward with their
23 story. Were they able to give details consistent. All of
24 those things you must determine.

25 But most importantly, as Ms. Simpson pointed out

1 in her opening, you have the tools. They're already with
2 you. They came with you to this courthouse; common sense.
3 Use your every-day experiences in determining who was
4 believable in this case and who was not.

5 Now, the defendant had absolutely no duty to put
6 up any evidence. That is their right under our
7 Constitution, as it should be. But once they put up
8 evidence, you hold it to the same standard as the State's
9 witnesses. They don't get a lesser standard, as far as
10 credibility goes. You judge it the same way as the State's
11 witnesses. Once they choose to put it up and what they
12 choose to put up, you judge the same way as the State's
13 case.

14 And I beg you, this case is all about credibility,
15 who you believe and who you don't, because there are two
16 completely different stories before you. One is murder and
17 one is self-defense. And I submit, ladies and gentlemen,
18 and I will have an opportunity to address you again about
19 the facts in a little while, if you look at the credible
20 believable, the evidence that just makes any sense, you have
21 to hold Leslie Parvin responsible for what he did on
22 Woodfield Drive for his choices, his decisions, and that's
23 all we ask.

24 THE COURT: Ms. Davis.

25 MS. DAVIS: Thank you, Your Honor. May it please

1 the court?

2 THE COURT: Yes.

3 Stand for just a moment.

4 (Off the record)

5 (Back on the record)

6 THE COURT: All right.

7 MS. DAVIS: Now, Ms. Campbell just got up here and
8 told you that y'all heard two very different stories about
9 what happened July 30th of 2010.

10 I'll tell you you heard one story. You heard the
11 State's story. You heard Todd Parvin tell you the truth.
12 He told you from this stand the truth about what happened to
13 him July 30th; not a story, the truth.

14 Todd Parvin is the only man who has walked in his
15 boots. No one here in this courtroom saw what Todd Parvin
16 saw that day. No one here felt what Todd felt that day. No
17 one here had to make the decision that Todd Parvin had to
18 make that day. His testimony, you know he wishes he did not
19 have to make that decision. He is a man who spent twenty
20 years valuing life. He told you life is precious to him.

21 The State wants you to believe that that's the man
22 who went to 1901, wanted to pay for sex with Edgar Lopez,
23 and when they didn't give it to him, he was enraged. He
24 shot and murdered these two people, two people, when one of
25 them was saying "no, I'm not going to have sex with you

1 now." That man?

2 Nobody in this room could walk in his boots. No
3 one has made -- no one had to make the decision he had to
4 make that day.

5 The State has told you a story. I don't have
6 anything fancy to tell you. I don't have anything fancy to
7 show you, but I have always been told and I have always
8 learned that if you have the truth, that's all you need. We
9 have the truth. Todd told you the truth.

10 We have truth. They have the power. They have
11 the power of the entire State of South Carolina. They own
12 the power. We have the truth. So what I'm going to ask you
13 to do at the end of this is speak truth to power.

14 In opening statement Ms. Simpson got up here and
15 very clearly told you that this happened because Todd paid
16 Edgar Lopez \$200 for sex. And I understand Ms. Campbell
17 really shouldn't have to prove motive, but they told you
18 outright that was the motive, that's what led to this.
19 That's what led to two murders; not one, but two. He killed
20 two people, based on their theory because of this.

21 She said -- I'm sorry, Ms. Simpson said he was
22 leading a double life. There is no evidence of him leading
23 a double life. You heard from Todd. You heard from the men
24 who know him, that knew him from the minute he started in
25 the Army until after he retired. None of those men believe

1 this story. They came and told you from their own mouths.
2 They came from the Pentagon, from Kentucky, from Ohio, from
3 Korea, to tell you their opinion, how they know Todd. They
4 told you he is a peaceful man who avoids conflict. They
5 told you he is an honest man to a fault. They told you he
6 exercised good judgment. They told you they would trust him
7 with their life. These are men who took time away from
8 families, time away from Christmas, time away from the
9 holidays to be here to tell you those things about Todd.
10 They would not do that if it weren't the truth. They are
11 not going to fly here from Korea to tell you something
12 that's a lie. Those men would not do that. They were
13 telling you the truth. Todd Parvin was telling you the
14 truth.

15 They also mentioned a quote that "no man is above
16 the law." I agree. No one is above the law. We have never
17 asked you to hold Todd Parvin above the law.

18 Frankly, the law is on his side. He acted in
19 self-defense. He acted with the most primal reaction you
20 have when you are being threatened, when your life is being
21 threatened, when the only thing you can think about is how
22 you might not see your family again and they are just a mile
23 away. He has that right and he acted on it. Todd is not
24 above the law.

25 The State is not above the law. The law tells

1 them they have to prove their case beyond a reasonable
2 doubt. We heard some of what that means, and maybe I was
3 sitting in a different courtroom this week, but if what they
4 told you over the last five, six days is beyond a reasonable
5 doubt and there is a reason to convict a man of two counts
6 of murder, I'm worried, because their motive rests on the
7 words of Edgar.

8 And I know his family is here, and Todd expressed
9 his hurt that he's not here, but the bottom line is their
10 motive comes from Edgar's word only, a man who had a blood
11 alcohol level of .379; a man who we saw in the video --
12 initially there was no audio. We played the audio. You
13 could hear Edgar. I'm not saying it's pleasant to watch
14 because you know what happens to him. But if you walked
15 into a convenience store and saw that man - drunk, and loud,
16 and acting how he was - talk about credibility? Is that the
17 guy that you are going to listen to? Is that the guy, the
18 words from him, that's what you are going to use to convict
19 a man of two counts of murder; who is saying this
20 transaction or this \$200 is being paid for him for sex in a
21 jovial, joking, talking to a child, in the middle of the
22 convenience store, loud as can be? I have no idea what was
23 in Edgar's mind. Frankly, at that alcohol level, he
24 probably didn't know, but that is not proof beyond a
25 reasonable doubt. I don't know why he said those things.

1 The State could have enhanced that video. You
2 could hear Edgar on it. They could have enhanced it. They
3 have the power to do that. They didn't even play --

4 MS. CAMPBELL: Objection, Your Honor.

5 THE COURT: Objection is overruled.

6 MS. DAVIS: They didn't even play you the audio,
7 but we did, because I needed you to see, I needed you to
8 hear that that's the man they are saying that you should
9 trust. That's their credibility.

10 The State welcomes their burden. You have heard
11 that a couple of times, that they welcomed their burden in
12 this case. Let's be honest. They don't have a choice.
13 They have to prove that. They have to meet that burden.
14 They are the State of South Carolina. They're the power.
15 They are the ones bringing two charges against Todd for
16 murder. They don't have a choice to not welcome the burden.
17 They have to; although, I tell you they have not met that
18 burden, and I don't believe they relish having that burden,
19 not in this case.

20 I think there is some implication that we have
21 heard also that -- or I'm assuming it might come up, that
22 Todd on his way home stopped and got Modelo beer. I guess
23 that's some implication that he is going to go looking for
24 Hispanic male, or that was his way in. I have no idea.
25 Everyone drinks every kind of beer. When I was in Ireland,

1 I drank Guinness. They drink Budweiser. Same in this
2 situation. Todd had Modelo. He's an American. The
3 Hispanics, the two Hispanic gentlemen, Edgar and Pablo, they
4 had Budweiser. That proves nothing. There is nothing
5 there. That means nothing. I'm assuming that implication
6 will come up because it came up in openings and it makes no
7 sense. It gets us nowhere.

8 I think sometimes also Ms. Campbell might get up
9 and sometimes shock you about muddying the waters, some sort
10 of joke. I can never remember it. I know it has to do with
11 lawyers and stirring clear water to make it dirty. I guess
12 the implication they are trying to confuse people or
13 something to that effect. I never really listened to it. I
14 can't really remember it, but she likes to say it, and I
15 assume she might. I never understood it, because she's a
16 lawyer too. And in this case, if you sit back and listen to
17 the evidence you heard and what they have tried to tell you,
18 she's the only person trying to muddy the water. The State
19 is the only one trying to muddy the waters here.

20 We have heard from I don't know how many experts
21 that they put up; experts in ballistics, experts in
22 fingerprints, experts in DNA, experts in -- I think another
23 experts in ballistics, experts in crime scene analysis.
24 Five, six experts. You have heard from each of them. They
25 all -- I'm sorry, none of them said or told you that what

1 Todd said happened, the truth, was inconsistent. None of
2 them.

3 Now, she really crossed Robert Tressel, if you
4 remember him. He was an expert we put up in crime scene
5 analysis. She crossed him I know -- I think the implication
6 was he didn't know anything. He works for the State just
7 across the border in Georgia. He would be sitting at their
8 table as the lead investigator -- crime scene investigator,
9 I'm sorry. He knew what he was talking about. He told you
10 what that crime scene showed and that it was all consistent
11 with how Todd said it happened.

12 He was qualified as an expert as well. I assume
13 she's going to get up there and tell you that "don't listen
14 to anything from that guy. He doesn't know what he's
15 talking about." He was qualified as an expert. She didn't
16 object. He is an expert in that field, just like the five
17 or six that she put up. Do we not believe anything that
18 they tell us? I highly doubt she's going to ask you to do
19 that. Really it doesn't matter, because no one that they
20 put up disagreed with him. No one.

21 Even in reply she called David Collins, ballistics
22 guy, and said the exact same thing; that when he is looking
23 at this, looking at the shell casings, he had the exact same
24 opinion that most of this fight happened inside the fence.
25 Same opinion.

1 He also told you that with most Norincos, that
2 type of gun, they eject rear and back -- or, I'm sorry, to
3 the right and rear. It's the same thing Trish Collins told
4 you, their expert; the same thing Robert Tressel told you,
5 our expert. Everything at that crime scene matches what
6 Todd Parvin told you, because it's the truth. It matches
7 because he told you all the truth.

8 And she could have called -- she did reply. We
9 saw that. She responded to our case. She could have called
10 anybody from SLED. She could have called a forensic
11 pathologist, multiple -- any number of experts that she has
12 access to to respond to say "nope, that's wrong; nope, don't
13 believe that; nope, it's inconsistent and here is why it's
14 ridiculous." She didn't do that, because no one can tell
15 you that, because we have the truth.

16 We also know that they took fingernail scrapings
17 from Edgar and from Pablo. They never tested them. We were
18 told -- you were told in openings how there is no evidence
19 of a struggle. They didn't look for any evidence of a
20 struggle. Fingernail scrapings could, and I'm not saying it
21 definitely would, but certainly could show that someone had
22 grabbed someone, say, by the neck. Never tested them. So
23 because they never tested them, I guess that means there is
24 no evidence of a struggle. No evidence of a struggle?
25 State's picture of Pablo's shirt, a tear. No evidence of a

1 struggle.

2 And we also know that they had permission, signed
3 permission, from Esau Hernandez, who lived at the house, and
4 told them, written, you have permission to seek and search
5 the entire location on his property; the house, the shed,
6 the garage, all of it. They never searched Edgar's house.
7 They never went in there. We know that that's where the
8 beer was kept. Todd told us they were going in and out of
9 there to get the beer. It certainly wasn't in this cooler.
10 There is an old empty beer. They are going in and out of
11 that shed -- out of that garage, out of his residence. They
12 never looked in there. Why?

13 Todd says he was going for that door and he said
14 "we got guns too." No one ever looked in his house. No one
15 ever looked in that garage to see what he might have been
16 close to getting.

17 Now, there is this beer can that we suddenly heard
18 of I think on the seventh day. I can't find the picture of
19 it now. There is a beer can. I'm sure they will show it to
20 you that has a hole in it. And Stan Richards, I believe --
21 well, I don't believe, I know. Stan Richards sat right here
22 and told you that that beer can was being held; that it was
23 such common sense that he could tell you guys that.

24 They put up five, six experts, experts in crime
25 scene analysis, in ballistics, in every field imaginable.

1 Not one of them, not one of them could tell you about the
2 common sense that Stan Smith can? I assure you if they
3 could have told you that, they would have. They didn't
4 because they couldn't.

5 Stan Smith's common sense, that's the evidence we
6 rely on to convict of man of two counts of murder? That, on
7 top of the man with .379 alcohol level? That's what they
8 are asking you with a straight face to do and not be
9 offended?

10 Yeah, I think they got a board that they are going
11 to show you how you should be offended. I think you should
12 be. I really think you should be, that that's what they are
13 putting before you to convict a man of two counts of murder.
14 That's it? That is it? That's their story and that's the
15 best they have is Edgar's ramblings -- and I apologize. And
16 I do, because I know Todd told you and he meant it, that he
17 regrets having Edgar and Pablo's life taken. He regrets it.
18 I don't know how to make that more clearer. He told you
19 himself. He had went through his entire career in
20 deployments, in combat, and never had to kill a man. Never
21 even had to fire his weapon. And on this day that changed
22 and he had to make that decision. None of us were there.
23 None of us had to be in his boots, none of us had been in
24 his boots, but he did it because it was necessary. He did
25 it to protect himself. He did it so he could get home to

1 his family, who was just a mile away. But we are supposed
2 to take the words of Stan Smith's common sense, he says, and
3 Edgar, who with that alcohol level. I just have no idea --
4 I have no idea what he was thinking. I don't know what he
5 was saying. I don't know why he was saying it, but I know
6 it wasn't true.

7 This is -- I guess this is my version of common
8 sense. If you are going to pay a man for sex, first of all,
9 two hundred bucks, are you going to pay it up front and then
10 hang out and court the guy, I guess, or -- I don't know what
11 their theory is. I don't get it. I don't understand it. I
12 don't get what happens. He shows up and says "here, take it
13 in advance and you pay me later, or I'll cash in later."
14 That makes no sense. All right. Obviously I don't --
15 obviously I have no idea how to even respond to that. It's
16 ridiculous. And to use that as a basis of someone saying
17 "oh, now you are not going to do it. I'm going to kill you
18 and this guy for no reason"? That guy? That Todd Parvin
19 would do that?

20 I guess there is a lot the State wants you to
21 ignore. The State wants you to ignore Todd, ignore what he
22 told you, ignore him when he says he was there and he had a
23 couple of beers. And the DNA -- it will go back there, some
24 of it with you. You heard the testimony. DNA was on two
25 beer cans. I guess fingerprints were on two others. They

1 are handing beer back and forth to each other. He admitted
2 he had a Modelo and a Budweiser. That's consistent. It's
3 what the DNA shows us.

4 He told you how he was showing his tattoos; how he
5 told them where he lived. He didn't give them an address,
6 but pretty specific. He parked his van right out front
7 where everyone could see it; showed them the most
8 identifying pictures, tattoos, a person can show. And
9 that's the man who was there I guess for the first time in
10 twenty years to be a homosexual, to be gay, a mile from his
11 house, and he's going to tell everybody, make sure everyone
12 knows exactly who he is. Even though this is such a secret,
13 he wanted to keep it from everybody for decades. Does that
14 make any sense? We are all in the same courtroom. We all
15 heard the same things. It makes no sense.

16 Todd told you when he comes back, there's a couple
17 of people out front. They eventually walk away. He comes
18 over, he is starting to feel uneasy.

19 Initially Edgar, who is the only one who spoke
20 English, was translating for him, was telling him what
21 everyone was saying, was responding to him, and at some
22 point that changed. At some point he wasn't telling him
23 what everyone was saying. At some point he wasn't telling
24 him what anybody was saying, and Todd kept asking "what's
25 going on? What are you doing?" He kind of gets ushered

1 back over into -- well, you saw it. Y'all went to the scene
2 last night. Back into that area, that small confined space;
3 the garage and the shed and the tree. They get back over
4 there. That's where they had been before. And he tells
5 you -- he told you from his own mouth that he knows
6 something is wrong, something has changed and that he wants
7 to leave. Not only does he want to leave, he tries to
8 leave. And when he does that, Pablo, who is 6'1", big guy,
9 tall guy, blocks him, doesn't let him get to the gate. Now
10 Todd knows he's right, something is wrong, something is
11 terribly wrong, because Edgar is telling him "you are not
12 leaving. You're not going anywhere. Come in this shed with
13 me. You can't go." And meanwhile the other guy is behind
14 him. And they are talking to each other in Spanish. But
15 guess what, Todd doesn't know Spanish. He doesn't know what
16 they are saying to each other. He just knows they are
17 acting together. He knows that he is being kept from the
18 gate. He knows that Edgar is telling him "we got guns too,"
19 and is getting something, reaching for something, while
20 Pablo grabs for his weapon.

21 And he had a weapon on him. He did. We know
22 that, and he did not have a concealed weapons permit. That
23 does not mean he did not act in self-defense. That is not
24 the law in South Carolina, and you will hear that. The
25 judge will instruct you on all the law.

1 The fact he had a weapon on him does not mean this
2 is not self-defense. It certainly doesn't mean that he
3 brought about the harm. He's trying to get out of there.
4 He's trying to leave. He did more than the law required.
5 He tried to leave and couldn't.

6 When Pablo reaches for his gun, he gets him away
7 and Edgar is going for a gun, he shoots. And he told you he
8 shoots, and he told you he shot every round from that gun in
9 about five seconds. I'm sure he doesn't know exactly how
10 long. I'm sure he wasn't timing it, because he was too
11 worried being scared that he was about to die, and he told
12 you that, how he wanted to get home to his family, how he
13 didn't know if he was going to get home to his family. That
14 is what happened.

15 These two men had been drinking for quite some
16 time. Pablo had an alcohol level of .333. I don't know
17 what they were thinking. I have no idea. I know, based on
18 their actions, based on what they did to Todd, that it
19 wasn't good, and Todd reacted the only way he could, and he
20 regrets it. He does not regret making the decision, but he
21 regrets taking life. He told you that. He meant that. He
22 spent his life protecting it.

23 This is not a man -- this is not a man who loses
24 his temper, who flies off the handle. We heard several,
25 many, fourteen people telling you in all sorts of situations

1 that Todd would have been in and all the stressful
2 situations and all the combat situations that he would not
3 react aggressively. He would avoid conflict. But the
4 State's story is that that's the man who is enraged and
5 kills two people because of this. It makes no sense.

6 I guess the State also wants you to ignore their
7 own witnesses. Chauncey Smith, who was one of the first
8 people that we heard from back last week, Monday or Tuesday,
9 he was the responding officer, and he told you how when he
10 got to the scene it was before EMS had arrived and that he
11 knows his job is to secure the scene. He told you that's
12 what he did. He secured the scene. And the reason this is
13 important is because Ms. Campbell and the other solicitors
14 spent a lot of time talking about how these shell casings
15 could have been kicked, or knocked around, or destroyed, or
16 changed, or altered, or whatever the case may be. They
17 spent a lot of time on that. We know from Chauncey Smith
18 that that didn't happen. He secured the scene when he got
19 there. And I understand, I remember, I heard that a couple
20 of people came out trying to help, rightfully so, I
21 understand that, but there is no, no, evidence that they
22 disturbed the scene either.

23 None of their own witnesses, none them saw any
24 damage to the casings, saw any evidence that they had been
25 stepped on. Nothing. They're all -- not all. The majority

1 of them inside the fence area where most of the fight
2 happened, and Todd told you that. That's consistent.

3 They also in -- could have, I'm sorry, responded
4 with a pathologist. Luke Campbell spent a good bit of time
5 talking to Robert Tressel about how he never conferred with
6 a forensic pathologist, he never talked with the
7 pathologist. She could have had a pathologist come back in.
8 We heard from Clay Nichols. He is the pathologist. He
9 never told you this was inconsistent. He never told you
10 this was implausible. He never told you anything about
11 that. She could have called him back in after Todd
12 testified and he could have said "here is why that's
13 ridiculous. Here is why that's wrong. Here is why that's a
14 lie." She didn't call him back. Why? If he could say
15 those things, she would have. She didn't because he
16 couldn't say it, because what Todd told you was the truth.

17 The State spent four days initially on this case
18 putting up their evidence. They spent about a day and a
19 half of that proving identity that it was Todd. We told you
20 that in the first five minutes. We knew that. We know
21 that. We admit that. All that evidence, that whole day and
22 a half, doesn't mean anything. We know he was there.

23 They spent some time, another day, with the lay
24 witnesses, as we call them. That would have been the guys
25 who had been out there that day. It would have been

1 Alfredo, Jose, and have them testify. What they could tell
2 you is that Todd was friendly; he showed his tattoos to
3 everyone; he offered them a beer; commented on I think it
4 was Alfredo's boots; that his van was parked out front.
5 They couldn't tell you anything about the argument. They
6 couldn't tell you anything about a fight, because they
7 weren't there.

8 The only witness we heard from that says he saw
9 some of what happened was Roberto Merrin Gonzales, who lived
10 across the street. And we know from the evidence that what
11 he saw was the end of that fight. We know that because he
12 was very clear, very certain to say that he saw Todd always
13 outside the fence. Outside. That wouldn't have been
14 accurate. It was accurate at the end. He missed the whole
15 beginning part. He walked out and saw the very end. He saw
16 that final second, or two, or whatever that would have been.
17 It happened fast. He caught the end of that. We know that
18 because of the evidence at the scene.

19 You don't have to take just Todd's word for it.
20 The crime scene is consistent with him. The crime scene
21 shows you what he told you was the truth. Muddying waters
22 is ignore the crime scene. Ignore it, people knocked around
23 stuff, kicked it, booted it, rolled it, whatever. All those
24 shell casings, ignore, I guess.

25 Not one piece of evidence, that I'm aware of, did

1 they show you to prove malice. We heard what malice is.
2 It's a wickedness in your heart; evilness; bent on doing
3 wrong. Todd Parvin? He had that wicked, depraved heart, a
4 man who spent his life protecting other's lives?

5 The State spent days trying to make you feel like
6 they had proved something to you. They entered in lots of
7 evidence, lots of pictures. You heard lots of testimony.
8 Spent days making you feel that they had done their job,
9 making you feel like they have met their burden. This
10 decision is not based on feelings. They did not prove their
11 case. They did not meet their burden.

12 Todd didn't call 911. We know this. He admitted
13 this. Biggest mistake of his life. He got out of there.
14 He went home. He was scared. He told his wife and his son
15 to go to a hotel. He did not call 911.

16 Investigator Gwyn, when I asked him this, said he
17 would have arrested him anyway. "If he had called 911,
18 yeah, I probably would have arrested him anyway."

19 All right. So what does that prove? Nothing. It
20 proves Todd made a mistake. He knows that. It means he
21 should have called 911, but he didn't. But that does not --
22 that does not prove malice. Nothing after the moment he
23 fired that gun proves malice. Don't let them lead you that
24 way, because it's not true and it's not the law.

25 Malice has to be proven, has to be shown beyond a

1 reasonable doubt before, at the time the gun is fired. And
2 we know what was going on in his mind at the time the gun
3 was fired. He was scared to death. That is not malice.

4 He should have called 911. He's been in jail
5 sixteen months because of that, although Investigator Gwyn
6 we know said it wouldn't have mattered. Basically he would
7 have arrested him anyway.

8 Todd went to Texas. He ran to his mom. He had
9 taken life. He was trying to process what that meant to
10 him. After never, never having to do that ever in twenty
11 years in the military, this happens on the day he's just a
12 mile or so from his house, and he now has to live with the
13 fact that he has taken not one, but two people away from
14 their families, away from their friends, and this is a man
15 who gets that. He knows what that means. He didn't call
16 911.

17 And when he got back home to his wife and to his
18 family he knew that he should, but he could not make that
19 decision to leave his family again. He couldn't do it.
20 That doesn't mean that it was malice. It doesn't prove
21 anything. What Todd told you was the truth.

22 We know that he did the scrap metaling. He told
23 you about that. There is records to support that. That was
24 not his job. That was not his business. He was not trying
25 to make that a Fortune 500 company. It was a hobby. He

1 told you it was a hobby that he did. He would do it
2 sometimes by himself, sometimes alone -- or sometimes with
3 his father, sometimes with his son. We have records to
4 support that. Please look at them. This is not some wild
5 cockamamy story that what the heck am I going to tell these
6 guys I was doing out there. He's telling you the truth. We
7 know that because we have got records showing it. In 2008,
8 2009, 2010, this is something that they did. Whether or not
9 he regrets stopping there that day, I'm sure we know the
10 answer to it.

11 Self-defense. That's what this case is about.
12 Todd did what he had to do that day. He met all of the
13 elements required for self-defense.

14 He did not bring about the harm. The law is not
15 that because he had a weapon on him he couldn't defend
16 himself -- because it was an unlawful weapon, I'm sorry.
17 That's not the law. He defended himself with the gun he did
18 have on him. He had to.

19 He had to actually believe he was in danger, or
20 actually be in danger. But we have -- but -- there is no
21 doubt when Todd talked to you that he actually believed he
22 was in danger. We know that. And based on Edgar and
23 Pablo's actions, there is no doubt that he was in danger.

24 No other way, no other probable means for him to
25 get away. He has no duty to retreat, but he told you when

1 he knew something was wrong he tried to leave. He tried to
2 get up and get out that gate and get in his van but was
3 stopped, was blocked, and was told "you couldn't leave."

4 He defended himself. That's the bottom line. He
5 told you the truth.

6 Todd alone, Todd alone is enough, but if it's not,
7 listen to General Bailey, Colonel Wright, Colonel Birch,
8 Colonel Ahl. Those men know him. Those men trust him.

9 And if that's not enough, listen to Robert
10 Tressel; the crime scene matched.

11 And if that's not enough, listen to some of their
12 own witnesses. Chauncey Smith; evidence wasn't disturbed --
13 I'm sorry, "the scene was secured."

14 David Collins, the gun goes right and to the rear.
15 Looks like the fight happened inside.

16 Nothing that they did, nothing that they told you
17 disproves any element of self-defense, because they can't.

18 You all took an oath at the beginning of this
19 case. You took an oath that you would render a verdict
20 based on the evidence. We know the evidence.

21 Todd Parvin is not guilty. Todd Parvin spent his
22 life protecting others, and I'm going to ask you to protect
23 him.

24 MS. CAMPBELL: Objection, Your Honor.

25 THE COURT: Objection is overruled.

1 MS. DAVIS: I'm going to ask you to protect him.
2 I'm going to ask you to take the oath that you took, hold
3 onto it when you go back into that jury room, when you go
4 back and deliberate, when you go back and talk about this.
5 That oath is important. Follow it. The evidence that you
6 heard from the State does not prove murder, does not prove
7 malice.

8 Todd Parvin is not guilty. You can believe him,
9 you can believe fourteen people that came in to tell you
10 about him, or you can believe the crime scene evidence
11 itself. All of it, all of it shows you the truth.

12 I'm going to ask each of you to speak truth to
13 power. Todd is not guilty.

14 THE COURT: Ladies and gentlemen, I'll have you go
15 to the jury room for a break for about five or ten minutes.
16 Please do not discuss the case.

17 (The following takes place outside the presence of
18 the jury panel)

19 THE COURT: This question about duty to retreat,
20 that wasn't part of the requests to charge.

21 The State has said that the defendant had no duty
22 to retreat. The instruction on that is that a lawful guest
23 in another's home has no duty to retreat before using deadly
24 force in self-defense against an intruder.

25 A lawful guest is a person who enters the premises

1 of another by either express or implied invitation.
2 However, a guest has a duty to retreat, where possible, if
3 the attacker is the owner or occupier of the property.

4 Is that a request to charge by the State or the
5 defense?

6 MR. SHEALEY: Not by the defense, Your Honor.

7 THE COURT: Is that a correct statement of the
8 law?

9 MR. SHEALEY: I would have to look at the cases,
10 but I'm not aware of a duty to retreat if it means that you
11 have someone get the jump on you or puts you in --

12 THE COURT: There is a duty of retreat where you
13 are a guest on someone's property.

14 There is no duty to retreat where you are a lawful
15 guest against an intruder. You have no right to take over
16 someone's property.

17 MR. SHEALEY: We just would ask that it not be
18 charged. I don't think the State's position is that --
19 their position is that he killed these men after a sexual
20 arrangement went awry, not that he was ever even attacked by
21 these --

22 THE COURT: Well, the problem is where Ms. Davis
23 elected to tell the jury there is no duty to retreat as part
24 of self-defense, but the question whether or not, based upon
25 that argument, the correct test of the law should you tell

1 it to the jury as opposed to leaving it as she stated. Of
2 course, I don't expect you to agree.

3 MR. SHEALEY: I'm sure Your Honor will tell the
4 jury whatever it is you feel is most appropriate.

5 We aren't requesting that charge.

6 I think she was addressing clause four of the
7 standard self-defense that you don't have to, even if it's
8 even reasonable to avoid the danger. Here she's talking
9 about him going for the gate.

10 THE COURT: It says where possible, and your
11 argument is it's not possible, he couldn't get out.

12 MR. SHEALEY: I'm saying that -- right, he did do
13 that, actually. He couldn't get out.

14 THE COURT: So it's a still correct principle of
15 law.

16 MR. SHEALEY: Although, I don't think it's
17 necessary. I think clause four of the standard self-defense
18 encompasses what we are talking about.

19 THE COURT: That there is no duty to retreat, or
20 there is?

21 MR. SHEALEY: That, where possible, you try to
22 avoid the danger, and that's what he did.

23 I would just go -- if you were planning on
24 charging it, I don't think it's anything that would rise to
25 the level of needed to be charged, but I'll just leave that

1 to Your Honor.

2 THE COURT: All right. Ms. Campbell, anything
3 else on that?

4 MS. CAMPBELL: No, Your Honor, we just request to
5 charge.

6 THE COURT: All right. We will take about five,
7 seven minutes, or so.

8 (Whereupon, proceedings were recessed)

9 (Whereupon, proceedings were reconvened)

10 THE COURT: Yes, sir.

11 MR. SHEALEY: Your Honor, there is one thing I
12 think we forgot, a housekeeping matter. There was a
13 question from the court reporter prior to closing arguments
14 about whether some defense exhibits were properly admitted
15 or not. We did discuss that and met with Ms. Campbell.
16 These were the scrap metal exhibits that we went through
17 with the records custodian from A-1, and my memory was that
18 we went through them, we authenticated them, that they were
19 admitted. There was some question by the court reporter and
20 I think Ms. Campbell didn't have any objection to that,
21 but --

22 THE COURT: Are they all in?

23 MS. CAMPBELL: We have no objection.

24 THE COURT: Madam Court Reporter, all of those
25 exhibits and the subparts are in.

1 Okay. If you will bring the jury in.

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

4 THE BAILIFF: Your Honor, the jury is present.

5 THE COURT: All right. Very good. Thank you.

6 MS. CAMPBELL: May it please the court?

7 THE COURT: Yes.

8 MS. CAMPBELL: In every case and preparing for
9 trial, in a murder case we try to anticipate what the
10 defense will be.

11 In preparing for this one, is Parvin going to
12 claim that it was an ID case; you have the wrong person;
13 simply misidentified through the photo lineup?

14 Is he going to say, well, there was a shooting,
15 but it's just a lesser included of the crime of murder,
16 which is manslaughter. And as you will hear from the judge,
17 there are no lesser includeds in this case.

18 Or is it self-defense?

19 And as I listened to the closing argument and the
20 opening argument, they talk about self-defense. How many
21 times did Ms. Davis say "believe Todd"? But in this case
22 it's a little more unique than that, because they have kind
23 of gone to Plan B, because when you can't believe the story
24 of the defendant because it is so implausible and so full of
25 holes, then go to Plan B; bash the victims, they're a couple

1 of drunk Mexicans; bash the State, they are going get up
2 here and try to muddy the water. Some joke that's supposed
3 to be coming up. Talk about how Stan Smith made sense.
4 Call him the wrong name. "He doesn't know what he's talking
5 about." He's only been in law enforcement since 1984. Or
6 when that doesn't work, just talk about what a great
7 American Leslie Todd Parvin is. Tell the jury, because even
8 though, yeah, he committed these murders, he's a great
9 American, just give him a pass. They don't really count.
10 They aren't really human beings. That's the defense in this
11 case?

12 I have been involved in a lot of cases and this
13 one reached what I consider a new low. The elusions, the
14 racism, the bigotry, the stereotypes that have been alluded
15 to over the last week. The references to homosexuality,
16 like it's a curse. The disparaging remarks about these
17 victims because they are from another country.

18 And the defendant got up here and in their opening
19 statement and they say "you should be offended," and I do
20 agree with that. You should be offended over the tactics of
21 the last week. Ladies and gentlemen, racism, it wasn't
22 acceptable in 1950, and it's not acceptable today. Leslie
23 Parvin doesn't get a pass because he has a different
24 background, he's a different race than his victims. When he
25 comes in this courtroom he drinks from the same cup of

1 justice as any other defendant that's brought into this
2 courthouse. He is not above the law.

3 Now, the defense has got up here and talked over
4 and over with these military people who have known him on
5 and off for twenty years. None of them, let's be clear,
6 were there on July the 30th. None of them even got up here
7 and told you they had had any recent contact with him after
8 he retired.

9 No one is disputing his service to his country,
10 his service when he was within the structure and the
11 discipline of the Army, when he held tight those values of
12 leadership, loyalty, honor, discipline, responsibility.

13 And let's be very clear in this case, because
14 there's been references to how the State is relying on Edgar
15 Lopez to say this man is a homosexual. Having listened to
16 them, it's like it's worse than calling him a murderer. The
17 State is not getting up here and saying that Leslie Parvin
18 is a homosexual. We don't care if he's homosexual,
19 bisexual, heterosexual. We don't care if he was a 39 year
20 old man out for an adventure, experimenting in his life,
21 maybe going through a mid-life crisis; a poor choice. We
22 are not up here to say that.

23 We aren't even going to say that we have to prove,
24 and the judge will tell you, exactly what led up to the
25 events, although we have credible evidence at least what was

1 to said, and I'll get back to the witnesses they didn't want
2 to talk about.

3 What we have to prove is that on July the 30th of
4 2010, and what the focus in this case needs to be on, not
5 whether or not whatever his sexual preferences are. What we
6 must prove are the elements of murder; that there was a
7 killing of another human being, in this case two, with
8 malice aforethought.

9 She says there is no evidence of malice? Three to
10 the back. Because Leslie Parvin, and we will get back to
11 his testimony, and she said we are going to get up here and
12 say ignore Todd. No, we beg you, listen to everything he
13 got up here and said. I beg you to listen to his testimony.
14 It is crucial in this case, because with his own testimony
15 he admits guilt, because he worked so hard to try to make it
16 fit every single thing from the crime scene, that it didn't
17 even make sense, because he had to explain away so much.

18 And, remember, he did all this identifying factors
19 and identifying things? Well, on the date in question, and
20 they said why would he kill Pablo? Well, he had to kill
21 Pablo because he had to take out all the witnesses to make
22 sure he got away with it. And, ladies and gentlemen, that
23 speaks volumes. He had to take out Pablo, because he didn't
24 know about old Roberto across the street, and everybody else
25 was gone. That's why he had to take out Pablo. Their

1 inference is that makes it not a murder because he killed
2 both of them? I submit that makes it more of a murder.

3 Now, I want to talk to you about the facts for a
4 little while. Some of the facts --

5 THE COURT: Ms. Campbell, excuse me, ma'am.

6 Would you remove those shoes from the table,
7 please?

8 You may proceed.

9 MS. CAMPBELL: Thank you, sir.

10 Some of the facts they didn't want to go over and
11 people, witnesses, they didn't want to talk about. And they
12 said, and I find this unbelievable, that what Mr. Gonzales
13 across the street said totally corroborated the defendant's
14 story. Just based on what the defendant said things took
15 place, it totally contradicts everything.

16 And then they didn't want to talk about some of
17 the other witnesses in this case. Jose Monroy went over
18 there that afternoon. Do you remember, heard some
19 conversation to some extent about homosexuality, something
20 of that nature; didn't know the defendant in this case; was
21 sitting there having a beer, along with everybody else. And
22 what did he tell you he observed? His observations of the
23 defendant.

24 Adan Soto and his wife, what did they tell you,
25 and it's corroborated by that video.

1 And, by the way, the video on the audio part, it
2 was in the video we put it. It wasn't played because you
3 can't make out what the victim in the case is saying. The
4 video was there and we put it in for your perusal.

5 What did they tell you? They had a conversation,
6 each of them separately. And they don't dispute any of
7 these facts, admits the defendant talked about how he gotten
8 this \$200. He even showed it Adan Soto out there in the
9 parking lot.

10 And you saw this defendant (sic), who they are
11 saying you aren't supposed to believe, this vicious person
12 who later chooses to, and this is ironic, attempt to in his
13 own back yard kidnap for some unknown reason a person that
14 he knows is armed while he is not armed, and you are
15 supposed to like see this video and make him out to be this
16 aggressor.

17 The video itself, look at it. You did look at it.
18 He's happy. He's drunk, let's get with it. And, oh, this
19 is a great conspiracy going on with these two drunk people.
20 Is he aggressive? Does he look like a mean drunk? Look at
21 his own actions in the video. I submit that speaks volumes.
22 He's happy-go-lucky. He drops the beer. He is drunk.
23 Aggressive? Kidnapper?

24 And they completely skipped Dimas Fernandez. Do
25 you remember what he tells you about what he saw as he was

1 leaving that day? The defendant was over there at the
2 chairs, said he got angry and he threw down the beer.
3 Remember? And I'll get back to the crime scene and how
4 that's corroborated, because we aren't trying to muddy the
5 waters. Dimas Fernandez then heard shots shortly
6 thereafter. I guess he missed the part where they were
7 kidnapping him.

8 Alfredo Vidal, he saw him; boots.

9 And let's get one thing straight, ladies and
10 gentlemen. But for, and I believe it's Alfredo, this case
11 is never solved, because he got rid of all of the witnesses,
12 or he thought he did. But for that one tag number he gets
13 away with murder. But for that one witness having the
14 wherewithal to observe that it was a Louisiana tag with the
15 number that was close, that good police work, and I'll talk
16 about that in a minute, great police work in this case,
17 caught him, he would is still be at home drinking his beer,
18 because he thought he had gotten rid of all the witnesses.

19 Alfredo, he talked about, I believe, the boots.
20 What was he able to tell you? And this has been a long time
21 and they didn't want to bring it up because they don't want
22 you to remember.

23 And I submit, ladies and gentlemen, were they
24 credible? Were they believable, those witnesses, even
25 though they speak another language? Did they get up here

1 and tell you carefully what they knew, what they remembered.
2 They didn't get up here and all of them say "oh, we saw the
3 American shoot." They told you what they knew. That makes
4 them credible. Each one of them had a little piece of the
5 puzzle. Each one of them had just a little bit of
6 information that proved to be vital in solving this case,
7 because as much as the defendant wants to get up here and
8 then sixteen months later tell you about it, in the first
9 three weeks they were still trying to figure out who did it.
10 We have gotten away from all that.

11 Alfredo, and finally Roberto. Roberto Gonzales,
12 and I beg you to judge his credibility, his believability.
13 I think it was referenced he was actually an independent
14 witness. No association with either the defendant or the
15 victims, other than being a neighbor. He's an independent
16 witness. That makes him credible in and of itself. And
17 I'll tell you why he should be even more credible, because
18 he got up here and he told you what he saw. And they are
19 going to say that it corroborates what he testified to? He
20 didn't see Pablo grabbing anybody. He saw the defendant
21 walk. Remember, walk prior to pulling a gun. He saw the
22 defendant shoot Edgar first. Then Pablo puts up his hands,
23 going to turn. He saw him shoot Pablo multiple times. And
24 remember when he characterized it? "It's like he knew he
25 was going to do it." Then he walked over to the gate.

1 He puts him just outside the fence. That is the
2 testimony. He didn't see any evidence of self-defense. He
3 didn't see Edgar running at the defendant, like his story
4 is, because, remember, his story has got to work. He's got
5 to put him coming towards him, because he's got that gunshot
6 wound to the face. It's a little too close to explain it
7 otherwise. It's a problem when you are having to make it
8 fit sixteen months later.

9 What else did Roberto tell you; that the person
10 after the shooting calmly and coolly walked to his van and
11 then drove off. All of that is undisputed, even by him.

12 I submit Roberto's testimony alone proves this
13 case beyond a reasonable doubt. But, in this case, ladies
14 and gentlemen, you don't even have to only have that one
15 eyewitness, because it's the only one he didn't take care of
16 before he left the scene.

17 Who else did you hear from the State? And you
18 heard from Dr. Nichols. And amazingly somehow Dr. Nichols,
19 who testified for the State as the forensic pathologist, and
20 was cross-examined by the defense, we are somehow supposed
21 to call him back up to say the same thing he said the first
22 time? That doesn't even make sense. He testified to his
23 findings. He can't say which gunshot wound was inflicted
24 first. He can tell you the angles, and I'll talk about that
25 in a minute, and what the reasonable evidence shows as far

1 as what happened at that crime scene. He can tell you
2 approximate distances. So he doesn't go back out, because
3 he knows his limits of his expertise and he's a medical
4 doctor with like twenty years of training. He can only tell
5 you what's presented at the autopsy, what the cause of death
6 is, what the contributing factors are. He's the one --

7 We are the ones that brought in the fact that
8 these victims have high blood alcohol levels. We aren't
9 here to muddy the water or to try to hide evidence.

10 Dr. Nichols told you about which of all these
11 wounds would be fatal. All of them. It's a 45 caliber gun.
12 The majority of the projectiles are never even recovered at
13 the scene because the actual caliber is such a large
14 caliber. They're through-and-throughs, all but one, which
15 just happened to ricochet around in his chin on Pablo, what
16 he can tell you.

17 And then our other favorite part of this is Mr.
18 Tressel talked about how if you get shot in your stomach,
19 you don't bleed. That is ludicrous. We aren't going to put
20 up an expert to tell you that. That doesn't even take
21 expert knowledge. If you get shot, you bleed immediately.

22 You heard from the crime scene investigators. And
23 remember this. When everybody is out there processing this
24 crime scene, there isn't anybody jumping up and down saying
25 self-defense.

1 MS. DAVIS: Objection, Your Honor.

2 THE COURT: Basis for the objection?

3 MS. DAVIS: Doyle, Fifth Amendment.

4 MS. CAMPBELL: He wasn't arrested for 19 days.

5 THE COURT: That is your argument. You can
6 restate it, if you would like to.

7 MS. CAMPBELL: I'm sorry?

8 THE COURT: I didn't hear what you said, actually.

9 MS. CAMPBELL: I just said that nobody is there
10 saying self-defense.

11 THE COURT: The objection is overruled.

12 MS. CAMPBELL: Thank you.

13 Nobody was there saying self-defense when
14 Investigator Woods, Beeler went to the criminal scene and
15 processed the crime scene.

16 And then in her closing argument she kept going
17 back to Chauncey Smith. Chauncey Smith did his job. Once
18 he got to that crime scene, he did the best he could to make
19 sure nothing was disturbed.

20 Then there is David Collins and Terri Gleason, the
21 experts in this case, the experts with actual training, told
22 you they can't control what happens before they get there.

23 We are talking about this one shell casing that I
24 am sure y'all are sick as I am of hearing about it. This
25 one shell casing that for whatever reason is over here, and

1 I will get back to this for you, because even his own
2 version can't put that shell casing over there. His own
3 version, the only way the shell casing got to where it was
4 was that it was kicked, with his own words, which I don't
5 want you to ignore.

6 What else do you find at the crime scene? And
7 this is very important, and you are going to have all these
8 pictures, because we preserved the evidence. We tell you
9 what happened. The positions of the bodies and the
10 positions of the shell casing. You have seen these over and
11 over. It's very important, because according to his
12 testimony, people are at different points, they are running
13 around and they are up and down. All the shell casings but
14 one are either in --

15 And it's amazing, too. He's always on the inside
16 of this fence. So how do they explain, according to his
17 version, the shell casings on the outside of the fence? The
18 eyewitness puts him at the fence, puts him on the outside.
19 And is it consistent if you think about it? And I know
20 y'all are tired of hearing about how the gun was held and
21 all those things and how it's ejected. Think about it.
22 What did Roberto tell you? He's at the fence. He goes and
23 he turns. Is his hand over the fence, is it near the fence,
24 because that makes a difference. All Roberto said was he
25 was standing outside the fence, but though these two

1 victims -- and we know the two victims were inside the
2 fence, because nobody, not even them, are going to get up
3 here and argue that they then wandered back in. They were
4 inside the fence and they saw right there at the fence both
5 of them, and that is significant, because if you think about
6 it, if the defendant basically in the gate, did he turn
7 around? Did he see Edgar slightly to his left? Did he then
8 turn and shoot at him with the fence line right here? And
9 where did the shell casing go? Back and to the right?
10 Would they then fall at his feet, depending on his angle?
11 Their expert didn't address that.

12 Then Pablo puts his hand up. And what's going
13 through Pablo's mind at that point in the last three to four
14 seconds of his life -- excuse me, less than three, or five,
15 whichever way they want it. He's putting his hands up
16 thinking oh, my God, I have got to get away. He twists, and
17 we know this. It's common sense more than anything. One
18 graze to the front, three to the back, and he's still
19 actually twisting and trying, I submit, to get behind the
20 tree when he falls to take cover. And is that consistent
21 with the defendant being just outside that gate, firing in
22 this direction? Does that make sense? Their expert didn't
23 address those.

24 The crime scene investigation. Again, the experts
25 told you as far as exactly where they are found. We can't

1 say he's inside or outside. We don't submit that we can.
2 However, is it consistent with what the eyewitness saw that
3 they say is credible now, because he saw the tail end of
4 this.

5 You also heard from Kristen Polis. She went back
6 and reprocessed things.

7 You heard from Stan Richards who got information
8 from the defendant in this case.

9 You heard from Investigator Trish Odom. She's the
10 one that actually compared the fingerprints in this case.

11 And what's interesting, when considering the
12 defendant's testimony, you know, a lot of times they lose it
13 in the detail. Little details that just keep adding up,
14 inconsistencies, things that couldn't happen. Very
15 specific, this defendant, about how much he drank that day.
16 He has a policy, the two-beer four-beer policy. Remember?
17 He says that he exceeded his limit, because one of them was
18 a 24 ounce that day, but he adhered to the two beer thing,
19 and he didn't have any other beers that day, according to
20 him. He's very specific about details in this case. But we
21 know from looking at the crime scene and the actual testing
22 that was done, the swab from the gate -- excuse me, the swab
23 from the Modelo cans, on five different cans, three his DNA
24 is there, two others his fingerprints. Or even if these are
25 the same ones, his fingerprints. Four. It doesn't add up,

1 but he was very specific in that in trying to sell his
2 story.

3 You also heard from other witnesses.

4 Oh, let me back up. The beer can? Common sense.
5 They attacked Major Smith over this observation. It must
6 have been damaging. Pablo died. His beer can got shot out
7 of his hand, just as he's attacking him and grabbing his
8 gun? I guess he was swigging it with one hand and grabbing
9 the gun with the other. Another detail.

10 You also heard from Louisiana DMV.

11 Agent John Roberts. They didn't even talk about
12 gunshot residue. All we know is that their hand was in the
13 proximity. There was absolutely no evidence in this case
14 that either of these defendants (sic) had handled a gun. It
15 would be on their hands, on the palms. Absolutely no
16 evidence in this case that they were anything but victims of
17 murder.

18 You heard from Investigator John Barron too. They
19 talked about that and what he tested.

20 Oh, and by the way, you aren't supposed to convict
21 because we didn't test their nail scrapings? Their nail
22 scrapings? There is no evidence in the defendant's own
23 testimony that either Pablo or Edgar ever scratched him that
24 day. The most he said is that he tried to grab him and grab
25 his gun. If there had been any testimony, that would have

1 come out from the defendant himself, had he been scratched.
2 So this whole fallacy about, oh, we didn't test the nail
3 scrapings, so that would have made a difference? It
4 doesn't. It doesn't work under their own theory.

5 You heard from Investigator Terri Gleason, and
6 I'll get back to the reply testimony in a minute. She
7 testified to what she's able to tell you. In this case a
8 gun was never recovered. It was destroyed by the defendant.
9 It was never recovered. We don't know where it is. He
10 wasn't able to tell us that. It's gone. What she is able
11 to tell you is that everything there was the same caliber,
12 everything there is consistent. The projectiles that we
13 were able to recover, one at the autopsy and one there in
14 the shed, were consistent.

15 And I'll get back to his story about where things
16 happened, but, you know, it hit me last night. I was
17 thinking. Okay. He's got the victim Lopez going into the
18 white building, and the door is right there at the end of
19 the sidewalk and it goes straight up at a slight angle. And
20 according to him he was reaching in, even though the door
21 was shut when the police get there, for a gun. And then he
22 shoots him, but his expert's story is he's still coming at
23 him at that point. And we know every one of Edgar's is a
24 through-and-through. So if he shoots him as he's running
25 towards him, remember, because then he has to shoot him

1 again, because he's coming for him, that first shot, why
2 isn't it in the white shed? Where is it? Is that more
3 consistent with him having been right where he fell at a
4 angle where it could have gone through?

5 You heard from Agent Jim Moore, who just said that
6 he didn't have a weapons permit.

7 Roland Hill, that he had, remember, registered
8 that Norinco back in 2003. Maybe he forgot it. Maybe he
9 thought it didn't matter because he had already gotten away
10 with it. He killed all the witnesses. Who was going to
11 implicate him; and who is going to believe a couple of
12 Mexicans anyway? That's their theory.

13 Investigator Robert Oates. Yeah, he showed his
14 tattoos.

15 And no one from the State has gotten up here to
16 say that on the date in question when he stopped there at
17 Woodfield Park and made acquaintances with these people did
18 he intend to kill anyone in the beginning. That was not the
19 State's case. That has never anything we had purported. So
20 when he got there trying to become friends with these
21 people, and I'll get back to the metal scrapping story, he's
22 wanting something. He wants to ingratiate himself. He's
23 showing off his tattoos. For what reason?

24 And it doesn't matter, ladies and gentlemen, if he
25 wanted to have sex with one of them. It doesn't matter if

1 he didn't. It doesn't matter even if they were like, oh, we
2 told people you were a homosexual and he got enraged with
3 that now. It doesn't matter, because he killed the only two
4 people that can tell you that.

5 What we do have to prove is just before and at the
6 time he acted with malice. And I submit shooting people
7 with a 45 caliber handgun - one in the face, one to the
8 chest, three in the back - nobody is going to get up here
9 and say that's not malice.

10 You also heard from other investigators, Debby
11 Goff. At this point when she's interviewing people,
12 remember it's still a who done it.

13 We've heard from Investigator Willie Gonzalez. He
14 was brought in to go back in and re-interview with any of
15 the witnesses to see if they have any more details; still
16 consistent, still the same.

17 You've heard from Investigator Matt Ellis. On the
18 date in question, when they finally were able to -- and this
19 is important, because remember how he said he has to leave
20 because he is worried they would know where his house is,
21 because he's mentioned Windsor Lake. He hasn't said where
22 in Windsor Lake, and he doesn't live on Windsor Lake
23 Boulevard, which is what the witness testified to,
24 specifically. He lives on Bay Springs, but he's worried
25 that's his whole reason that his family is going to get in

1 trouble if he doesn't react and kill these people, because
2 he is worried they will have his keys and know where he
3 lives. Well, his license, even if they were to get him, is
4 a Texas license without the address on it, and his car is
5 registered in Louisiana. So exactly what identifying
6 information is going to be left there, and we will get back
7 to that.

8 Debby Goff does a composite, which I submit looks
9 amazingly like him.

10 You also heard from Investigator Matt Ellis. On
11 the day in question after they were able to link up this
12 Louisiana plate, where they have the wrong number, but it's
13 close enough that they are able to figure it out, they then
14 go on a search engine, Accurint, and they are able to get
15 information, which puts him right where the identified
16 information was, right in the area. At that point Matt
17 Ellis goes onto a computer and pulls up Google Maps, and you
18 will have that map, and lo and behold there is the missing
19 Kia. Things starts falling into place. Things happen
20 quickly.

21 Investigator Kevin Isenhoward makes contact with
22 Shanna Parvin. Basically they are trying to do the nice
23 thing and basically try to take this defendant, who is armed
24 and dangerous, into custody. And at that point the police
25 start gathering information. Remember Shanna Parvin, "he's

1 not at the house." Why was she lying if she thinks he
2 hadn't done anything wrong? The father, "he's not in the
3 house." Why does he not tell the truth if his son hasn't
4 done anything wrong? And both of them have been in the
5 courtroom this week. We did not force them to testify. Are
6 they not telling the truth because they know he has done
7 something wrong? And it doesn't get any more wrong than
8 murder.

9 Kerry Johnson participated, and then Major Stan
10 Smith.

11 But the most significant thing, and he talked
12 about -- the defendant said this in his own saying, when
13 confronted with the police, Willie Gonzalez goes in to take
14 him down, the guns are down in the bedroom, and I'll get
15 back to why we even got into those, his story is "what's
16 going on?"

17 Now, they put up a number of witnesses from the
18 Army. All of them served honorably. They did what they
19 should do. The chaplain community is a tight-knit
20 community. They espouse loyalty, and all those men
21 epitomize what the Army, the military, the spouses - honor,
22 loyalty - and in the chaplain community - forgiveness. And
23 they came and they told you about their opinions about him,
24 and nobody is disputing that, and they should be commended
25 for that, because the man they knew is simply not the man

1 that Edgar Lopez and Pablo Gutierrez Guzman saw on July the
2 30th, and none of them could testify to that.

3 But once they put up witnesses, and I'll get to
4 the defendant in a second, they put up this investigator
5 from I believe he said Homer, Georgia, which is a small town
6 down in Georgia, and he was hired by the defense to come in
7 and testify on accident reconstruction -- not accident,
8 excuse me, crime scene reconstruction. He told you about
9 how much he gets paid, but he was big on telling you how it
10 didn't matter to him if he testified or not. You know, it
11 didn't matter. And I submit, ladies and gentlemen,
12 basically at that point he had put in ten hours into this
13 case, and at \$150 an hour, which I believe is his going
14 rate, at that point he had made \$1,500, but his testimony
15 was it didn't matter to him. For him to come to court and
16 sit here for half a day and testify to what he testified to,
17 which I submit is simply irresponsible, as far as where he
18 can say exactly where that defendant was standing when those
19 shots were fired. By his own testimony, which contradicted
20 earlier testimony, he told you about how shell casings
21 bounce around. It made him a whopping \$2,500 for a day.
22 4,000, excuse me, plus expenses, and he was home in time for
23 dinner, because he left.

24 His training is on the scene. He worked with the
25 medical examiner's office, the coroner's office here. He

1 testified he's an expert in DNA, gunshot residue,
2 ballistics, and crime scene investigator. Never met with
3 the experts. Never had the gun, and kept referring -- do
4 you remember to "Todd's story. "Oh, yeah, everything is
5 consistent with Todd's story." I guess -- I don't know
6 their relationship. All that based on having never met with
7 any of the experts, never talking to law enforcement, and
8 reviewing reports. And by the way, reports like he couldn't
9 submit, because he never had a report.

10 And I want to talk to you about the defendant's
11 testimony. Some of what we got into, as I said, we have
12 jumped it over and over. You notice we didn't talk about
13 his drinking habits until he brought it up. We weren't able
14 to talk about his marital issues until he brought it up.
15 Those are not permissible and that's the reason that those
16 things happened.

17 As far as the fourteen people that did testify for
18 him, and as far as each one of them, they asked "is he a
19 homosexual?" They didn't ask if he had propositioned
20 someone. I think they did one, but those were their
21 questions to them. This isn't an environment where the
22 policy is don't ask don't tell. And basically there can be
23 ramifications, unfortunately, and fortunately now that's no
24 longer the truth, but at the time that was the truth. And
25 they sat here and talked about how the State has gotten up

1 here and talked about a double life, and they are right. We
2 are saying he led somewhat of a double life. He kept things
3 perhaps from his family or from his military friends that
4 wouldn't perhaps reflect that well with him. That's the
5 essence of a double life is keeping it secret. You keep
6 secret the side you don't want the people that you respect
7 and admire to know.

8 He got up here and he testified for almost a whole
9 day and he told you about his background, as he should. He
10 served honorably, he served well, about his five deployments
11 overseas where he served his country. He's a chaplain's
12 assistant.

13 But in that same manner and one thing you can
14 consider is he also testified he was talking about how he
15 was just kind of naive, which totally contradicted what
16 everyone, all his military people, said about him; that he's
17 smart, that he was progressive; that he performed well under
18 stress; that he reacted appropriately. And I started
19 thinking about why would he get up there and talk about how
20 he was naive? Because even Leslie Todd Parvin knows his
21 story is absolutely so ludicrous, that you would have to
22 be -- play the dumb card to believe it, because his story
23 doesn't make any sense, just on its face, not to talk about
24 the inconsistencies. Even Leslie Todd Parvin knows his
25 story is ridiculous and that's why he wanted to get it out

1 of there about how naive he is. This man served his
2 country, went abroad. He is trained. He told you he can
3 detect when someone has got a bomb underneath their
4 clothing. That's his training. He's a bodyguard. He is
5 trained in self-defense, and he wants to get up here and
6 tell you how naive he is?

7 We asked him some questions, and this is the
8 direct testimony, just some of it. No, there is a lot more.
9 I'm not saying -- we are putting up three and four
10 intervals.

11 "After the beer and you were on your way home,
12 what happened? Where did you go?

13 "It was Decker. I bought the 12 pack of beer. I
14 was coming back one of those main roads coming back into
15 Faraway. It is between my neighborhood and Woodfield. I
16 don't pay attention to road signs. I was coming back that
17 direction headed for home."

18 And it seems like again a small detail, "headed
19 for home." He had to turn in the exact opposite direction
20 in order to get back over to where it was.

21 But more than that what did he say? And this is
22 important. This is what he's waited sixteen months to tell
23 you. "I was headed for home. I saw that there were two
24 gentlemen sitting outside under a shade tree. It was late
25 afternoon." This is as he's going down Faraway? You can't

1 even see this house from Faraway. It's over like two
2 blocks. You have the map, though.

3 "It was late afternoon. I figured they had gotten
4 off work. I was thinking about the contacts I was looking
5 for --

6 COURT REPORTER: Ms. Campbell, you need to read a
7 little slower.

8 MS. CAMPBELL: I'm sorry.

9 "Where I would go. Say I would go by a
10 convenience store in the morning before work when I was
11 still in the military. I would notice there was a lot of
12 construction guys, crews work, Hispanic guys. I was
13 thinking hey, this could be somebody I could ask about. I
14 slowed down. They waved. I waved back and they motioned
15 over. At that point I almost stopped, so it seemed kind of
16 natural to go ahead and pull over and stop."

17 Because his whole case, and they put in evidence
18 about this metal scrapping. This business he wants to
19 promote into an enterprise, that he can do in his
20 retirement.

21 And remember it's important, because all this and
22 his movements are restricted in this case because he can't
23 really move things. Remember when he testified on direct
24 about how he moved furniture? And then when I asked him on
25 cross about moving furniture? Well, he had taken a nap to

1 get over it. He's so in dire straights that he can move
2 furniture, but he can't move furniture?

3 Again, inconsistencies, details. It's hard to
4 keep your stories straight when you aren't telling the
5 truth.

6 He says he went down a way and he's going to do
7 this metal scrapping. I submit he stopped there because he
8 just goes randomly through neighborhoods. Not because --
9 oh, and they talked too -- and we aren't asking you to
10 convict Leslie Parvin because he bought Modelo beer that
11 day. That's just one of a number of many little details in
12 this case which point to his overwhelming guilt, as far as
13 murder. But we aren't asking you just to rely on that, even
14 though he buys Modelo beer and ends up at Edgar's house,
15 where he happens to then pull over and just jumps out of the
16 car with his 12 pack of beer to these strangers because he
17 wants to make contacts for his business?

18 If he's metal scrapping, why not get contacts from
19 his military people? Those are good contacts. Why would
20 you go into a strange neighborhood and talk to strangers to
21 try to promote this career?

22 And it gets more ludicrous. And if he's into
23 metal scrapping, look at the crime scene. Why didn't he ask
24 for some beer cans? They're everywhere. There is this huge
25 big vat of them. He could have made a fortune. Metal

1 scrapping? That's the defense. But it goes on.

2 His testimony has been, and, again, if I say
3 anything different from what the testimony was, I don't mean
4 to. Please take it as you remember it, but as I recall it
5 he then goes in. They have some beers. He says two. The
6 evidence may say more.

7 At some point Edgar goes and says "let's go to the
8 store," so he does. And at that point he says other people
9 are over there. I don't remember if he said that the first
10 time he testified or the second. I can't remember that. He
11 then gets into the car and drives Edgar to the store, where
12 you all see Edgar in the store. This is Edgar. At which
13 point he then is asked "oh, Edgar says, oh, I don't have any
14 money. I need some," and he gives him a number of bills.
15 He says two -- at first he said his wallet was empty, then
16 he says it wasn't, but it doesn't matter. He says he gives
17 him two twenties, whatever. And at that point on his direct
18 he said "I was starting to think I'm getting" -- I don't
19 know the word. Was it panhandled, or scammed, or something
20 of that point, but remember that? And later when I asked
21 him about it on cross, he didn't want to talk about that,
22 because at that point if you were thinking -- because he is
23 trained in the military to like, you know, look at people
24 and figure out if they have bombs on them, or weapons. If
25 you are thinking something is not right? And the reason he

1 had to back off that was because that doesn't work for him
2 in his story when he thinks about it. He didn't think that
3 one through.

4 Edgar goes in the store. He sees the friends,
5 which is corroborated by everything on the video. You can't
6 hear what Edgar is saying, but you can hear him and he's not
7 loud. He's talking. You see him playing on one of those
8 videos with one of the witness' children. He's not
9 aggressive. He's not threatening. He's not loud. He's not
10 violent. He's drunk. He then gets back into the car with
11 his -- he's having to carry it now. One of the beers
12 actually breaks. You see him wiping it up on the counter.
13 And you can hear what the girl at the counter says. There
14 is no dispute about that. He then gets back into the car
15 and he drives him back.

16 And then there is testimony at that point he sees
17 that two guys are there, and I never got it clear if they
18 were there when he left or when they came back. And, of
19 course, that contradicts what the other witnesses says, but
20 whatever. He gets out and he thinks these are the contacts,
21 these contacts he's making for his future business of metal
22 scrapping, which makes absolutely no sense. They can't even
23 speak English, and then things get weird.

24 And, oh, by the way, I forgot something. He
25 doesn't feel comfortable enough with leaving his gun out on

1 the console with Edgar in the car. He thinks it's prudent
2 to then stick it in his waistband. That's his story,
3 although I submit it contradicts also what the other
4 witnesses said they observed him before they went to the
5 store.

6 But, again, he then gets back out. He's got the
7 gun in his waistband. And according to Todd -- Leslie Todd
8 Parvin, he then at some point shows them his tattoos, which
9 we know. He is stuck with that fact, even though it doesn't
10 really make sense in his whole story, because he knows the
11 witnesses saw his tattoos, and they are unique. It proved
12 to be a critical issue in this case, as far as identifying
13 the defendant. And he shows them the tattoos for fun, or is
14 he trying to ingratiate himself for other reasons? We don't
15 have to prove why.

16 Then what happens? They start leaving him out of
17 the conversation, according to Leslie Todd Parvin, and he
18 starts feeling weird. So at that point is he scared? No,
19 we back off that, because that doesn't work either for the
20 self-defense. And it goes on.

21 So at some point -- and by the way, according to
22 his testimony, according to everyone's testimony, the only
23 person out there that day with a gun is Leslie Todd Parvin.
24 There is no one -- there is no allegation, there is no
25 evidence, whether they searched the house or not, that

1 anyone else had a gun, even by his own testimony. So the
2 only person that's armed and ready to shoot is Leslie Todd
3 Parvin.

4 But his story gets better. And at that point he's
5 worried. He thinks he might better leave, because they are
6 leaving him out of the conversation. And at some point, and
7 I'm not sure when, they're either in the middle of the
8 yard -- remember at one point he made a big deal about they
9 are over in the middle of the yard over towards the edge of
10 the brick house, or they are over there where the seats are,
11 but at some point, according to him, they move over to where
12 those seats are. And at that point, by then, I'm assuming,
13 Edgar has threatened him, threatened him, because he said he
14 didn't know what he wanted; if he wanted to get him into
15 that shed or what. He said he's going to get guns. And,
16 again, the only person with a gun is Leslie Todd Parvin.
17 And somehow, according to him, Edgar ends up at the white
18 shed, house, whatever you want to call it, and Pablo is
19 going and blocking his way out of that gate. Pablo is still
20 drinking his beer. And then his story is they threatened
21 him, they tell him that he can't leave. So he, quote,
22 unquote, and this is just some of his testimony again, he
23 crouched down on the seat. Then he bolted for the gate.
24 Those are his words, not mine. Once he bolted for the gate,
25 Pablo grabbed him around the head and was grabbing the

1 weapon from his waistband, again, as he's holding his beer.

2 He said "his hand was covering the weapon and
3 getting Pablo's hand away from it, pushing him away from me.
4 I drew the weapon and began firing, trying to get out of the
5 gate. Two to three seconds, probably. I shot at Edgar
6 because he was reaching into the house."

7 So he puts Edgar being shot the first time
8 reaching into the house, a through-and-through, that,
9 according to them, wouldn't have dropped him, so he
10 continued to propel towards him.

11 Turned immediately back around and shot at Pablo.
12 So Pablo in this period of time, because remember with him
13 it only takes two or three seconds. Pablo doesn't have an
14 opportunity to react, according to his testimony. Shoots
15 first. Shoots immediately. Second shot, Pablo. So how did
16 Pablo have the wherewithal to start turning around and get
17 far enough away from him from this incident? Remember?
18 Starts turning around and then gets three to the back and
19 then fall on a tree, on the other side of the tree, with his
20 feet further away. Is that even possible from his scenario?

21 "I thought my family was in danger, but if I died
22 I got my keys to my house and my address. I didn't run.
23 I'm not this steady anymore anyway. If I was even working
24 outside, I even told my wife you need to peek out here every
25 15 minutes or so. Instances where I fell down. I'm not the

1 steadiest guy with the numbness in my legs." So now he not
2 only has back problems, but he has got numbness in his legs.

3 "After the shots were fired with Pablo, what
4 happened with Edgar?

5 "Edgar was coming at me. He had gotten up to the
6 gate and I fired."

7 So Edgar is coming directly from where he was
8 reaching in, having been shot once, reaching into the house,
9 coming directly at him; momentum. And remember when we put
10 up David Collins to talk about momentum, would a gun shot
11 throw him back? No. As he's coming towards him, like he
12 testified he was, he wouldn't have landed stretched out on
13 his back.

14 "He got up to the gate and I fired. I was
15 thinking had I stumbled into Cartel dudes of some sort."

16 And, remember, he's kind of sensitive on that
17 Cartel thing, so he didn't think of it until afterwards.
18 Pablo and Edgar, who put out straw for a living, are Cartel
19 dudes?

20 Again on cross, and his story. I'm getting to
21 what he did afterwards in just a second. I'm almost done.

22 "So you are in the yard and everyone there is in
23 the middle when all this is happening, right?

24 "We are in the middle of the yard, yes, ma'am."
25 This is on cross.

1 "So you are scared, you are worried, and thinking
2 of all these things and you ultimately leave and you think
3 about the Mexican Cartel later and Edgar is saying give me
4 more money, basically robbing you?

5 "You are right.

6 "No. Give me mine, that's what you are telling
7 the jury?"

8 "Because critical in his whole story, because he's
9 trying to make it work for Roberto, what Roberto says,
10 because remember one of the witnesses, "is it Roberto?

11 "No, it's the other one.

12 "They actually see him exchange the money?"

13 He's got it worked right into it. So while he's
14 being robbed and fears his life he demands his change,
15 because he's got it worked out in detail. Really? Demands
16 his change, which he gave to him. While Edgar was robbing
17 this defendant, unarmed Edgar, he gives him his change,
18 because guess who's got the gun?

19 "Then at some point you end up near the gate?

20 "No, that all was occurring in the tight area
21 where we originally started."

22 He contradicts himself. And the reason for that
23 is simple, ladies and gentlemen. It's hard to keep it
24 straight.

25 And you know what the really tone in his

1 testimony? Every time I asked him a question on
2 cross-examination, his response was "no, I testified
3 earlier. No, in my testimony I said." Never was it "well,
4 what happened was this." Never was it "well, then he came
5 at me." Just another detail.

6 And then what does this person, who just had to
7 shoot, this person trained in military exercises, trained in
8 self-defense, do after he's committed this? Remember, and
9 let me be straight about this. The Army provides structure
10 and discipline. "I'm a person that needs structure and
11 discipline to work well." It had been a year since he had
12 that structure and that discipline. He was getting ready to
13 turn forty. He was retired. He had a lot of time on his
14 hands. And they even went so far as to ask him that he's
15 never been written up since he's been in Alvin S. Glenn
16 Detention Center, because he's had that structure and
17 discipline back. Well, there wasn't any structure and
18 discipline on July the 30th. He needed that. There was
19 alcohol.

20 He gets into his van. He leaves the scene. He
21 goes immediately home. Now, his own testimony, when he gets
22 there he tells his wife and his son to go to a hotel for one
23 night. Had it been for longer? Maybe. For one night? Is
24 he trying to get them out in case the police come; in case
25 he didn't take out all the witnesses at the scene?

1 And what does he do? And he was in shock,
2 remember? What does he do that night while he's in shock,
3 because he's just had to kill two people in self-defense,
4 according to him? He's the victim. He takes the gun. He
5 takes a grinder and somehow makes it non-operable, or tears
6 it up, or whatever, and then leaves it in the garage and
7 doesn't know what happened to it?

8 I submit he destroyed the evidence, like any good
9 murderer would do. People that are acting in self-defense
10 don't have to get rid of the weapon. People acting in
11 self-defense don't have to leave town. People acting in
12 self-defense protect their family. People acting in
13 self-defense don't destroy the car that may link you to the
14 scene, even if it's registered three states away. Those are
15 the actions of a man who is for honor, discipline,
16 responsibility? I submit those are the actions of every
17 murderer. This one is no different from any other. Those
18 were his choices and his actions.

19 And where does he go? And he is worried that the
20 Mexican Cartel is coming and he leaves his family? Two of
21 his kids, and I'll get back to the guns, aren't even there.
22 They come back to the house and he doesn't stop them, that
23 week, and he's worried about retaliation? He's not worried.
24 He's taken care of anybody, everybody. So he goes to some
25 hotel. He stays in contact with his family, who I submit

1 protect him, understandably.

2 On the 5th of August he has the car crushed. I
3 don't think that was in the plans for the family vehicle.
4 At some point his father goes to get him. He then goes and
5 spends times with his relatives, who said he's all acting
6 fine. And when he thinks the coast is clear and he's gotten
7 away with it he comes back to South Carolina and then joins
8 his family. And you heard about on the 19th how he was
9 concerned that day with doing his son's homework. His life
10 was back where he wanted it, because Leslie Todd Parvin knew
11 he had gotten away with murder. There was nothing to link
12 him to the crime, but for Alfredo, he's right. He got rid
13 of all the evidence, so he thought.

14 Self-defense? It's not even possible, his
15 version. The crime scene alone proves that.

16 Now, in every case you think about what does a
17 murderer look like. For that matter, what does a rapist, a
18 child molester, a child killer look like, and unfortunately
19 we know the local priest, coach, a teacher, or even a young
20 mother. Unfortunately there are things that push certain
21 people to do certain things.

22 Voluntary intoxication is not a defense.

23 He needs to be held responsible for his actions.
24 We not only ask that you not ignore Leslie Todd Parvin's
25 testimony, we beg you to look at it, and look at it closely.

1 You heard testimony about when he was arrested,
2 that he was allowed to talk to his wife and what she said to
3 him when their code, the Ace of Spades. And According to
4 his definition of their code, the Ace of Spades meant don't
5 talk.

6 Leslie Todd Parvin counted on the fact he could
7 get rid of all the witnesses.

8 He was counting on the fact that even if the
9 police got a break somehow that the witnesses wouldn't come
10 forward, even if there were some. I mean, they are from
11 another country. Who cares?

12 He counted on the fact that even if the witnesses
13 came forward, the police did their job, even if they got
14 him, that his lawyers would get up here and just talk about
15 the victim, how drunk he was, how he's from another country.

16 He counted on the fact that if he just got up here
17 because of his years of service and came up with a story,
18 that a jury would buy it.

19 And he counted on the fact that even if the story
20 was so ridiculous, that no one could believe it; but because
21 he served his country, he would get a pass. He just killed
22 two Mexicans, and he counted on the fact that the jury would
23 buy it.

24 All we are asking, ladies and gentlemen, hold him
25 responsible. He's here today. He's alive. He has his

1 family. The victims in this case have no recourse. They
2 have no more moments. They have no more Christmases. They
3 are human beings. All we ask is that you return a verdict
4 that tells Leslie Todd Parvin he didn't get away with it and
5 hold him responsible for his actions and what he did,
6 because either you believe him, and even believing him it
7 could be self-defense. But if his story doesn't pass
8 muster, and I submit it doesn't come close, Leslie Todd
9 Parvin, his own actions after this even show he knows he
10 committed murder. Hold him responsible. Thank you.

11 THE COURT: Ladies and gentlemen, you have now
12 heard closing arguments.

13 We have ordered lunch for you and it should be
14 here. I know it's got to be here. It's 1:20, so I think we
15 will take about a half an hour to have you eat lunch and
16 then come back for the charge on the law and then you will
17 start deliberating. It's now 1:20. We are going to take
18 one half an hour for lunch and then the jury charge and
19 deliberations.

20 Please go to the jury room. Please do not discuss
21 the case.

22 (The following takes place outside the presence of
23 the jury panel)

24 THE COURT: We will reconvene in one half hour.
25 We are in recess.

1 (Whereupon, proceedings were recessed)

2 (Whereupon, proceedings were reconvened)

3 THE COURT: You may bring the jury.

4 THE BAILIFF: Yes, sir.

5 (The following takes place in the presence of the
6 jury panel)

7 THE BAILIFF: Your Honor, the jury is present.

8 THE COURT: All right. Mr. Foreman, members of
9 the jury, you have heard the testimony, evidence, and
10 arguments of the State and the defendant. I will now
11 explain to you the law that applies to this case.

12 Under the Constitution and laws of South Carolina
13 you are the finders of the facts in this case. I do not
14 have the right to pass upon the facts or even to express any
15 opinion that I might have as to them, because this is a
16 matter solely for you, the jury, to determine.

17 As jurors then it is your duty to determine the
18 effect, the value, the weight, and the truth of the evidence
19 presented during this trial.

20 In evaluating the evidence please remember that
21 questions posed by counsel and arguments of counsel are not
22 evidence. The evidence consists of testimony from witnesses
23 who you have heard from from the witness stand and exhibits
24 that have been introduced into evidence.

25 You are also the judges, the sole judges, of the

1 credibility, that is the believability of the witnesses who
2 have testified and the evidence which has been presented in
3 this case.

4 In passing upon credibility you may take into
5 consideration many things, such as the demeanor or manner of
6 testifying; whether the witness had reason to be biased or
7 prejudiced where a witness' testimony or other evidence was
8 contradicted, on the one hand, or supported and
9 corroborated, on the other hand. All of these things you
10 will consider, bearing in mind that you should give the
11 defendant the benefit of any reasonable doubt. It becomes
12 your duty as jurors to analyze and to evaluate the evidence
13 and determine that evidence which convinces you of its
14 truth.

15 Now, the Rules of Evidence ordinarily do not
16 permit witnesses to testify to opinions or conclusions. An
17 exception to this rule exists for witnesses we call expert
18 witnesses. A witness who by education and experience has
19 become an expert in some art, science, profession or calling
20 may state an opinion as to relevant matter in which the
21 witness claims to be an expert, and they also state the
22 reasons for the opinion. You should consider any expert
23 opinion received in evidence in this case, and like any
24 other evidence, give it the weight you think it deserves.

25 The defendant has presented evidence of his good

1 reputation and character to show that it would be
2 inconsistent with the defendant committing the crimes. The
3 weight you give to that testimony, like all other testimony
4 and evidence in this case, is for you to decide in your own
5 good judgment. Evidence of good character and good
6 reputation may in and of itself create a doubt as to guilt
7 and should be considered along with all the other evidence
8 in deciding whether or not the defendant committed the
9 crimes.

10 There are two types of evidence which are
11 generally presented during a trial. That is direct evidence
12 and circumstantial evidence.

13 Direct evidence is the testimony of a person who
14 claims to have actual knowledge of a fact, such as an
15 eyewitness. It is evidence which immediately establishes
16 the main fact to be proved.

17 Circumstantial evidence is proof of a chain of
18 facts and circumstances indicating the existence of a fact.
19 It is evidence which immediately establishes collateral
20 facts from which the main fact may be inferred.

21 Circumstantial evidence is based on inference and
22 not on personal knowledge or observation.

23 The law makes absolutely no distinction between
24 the weight or the value to be given either direct or
25 circumstantial evidence, nor is a greater degree of

1 certainty required of circumstantial evidence than of direct
2 evidence.

3 You should weigh all of the evidence in this case.
4 After weighing all of the evidence, if you are not convinced
5 of the defendant's guilt beyond a reasonable doubt, you must
6 find the defendant not guilty.

7 As the trial judge it is my responsibility to
8 preside over the trial of this case and to rule upon the
9 admissibility of the evidence offered during this trial.
10 You are to consider all the testimony which has been
11 presented from this witness stand, together with the
12 exhibits which have been made a part of the record in this
13 case.

14 I have the additional duty to charge you the law
15 applicable to this case. And as the presiding judge I am
16 the sole judge of the law of this case. It is your duty as
17 jurors to accept as correct and apply the law as I now state
18 it to you and then reach your verdict.

19 And, finally, I charge you in this regard that you
20 should not be concerned with what you think the law ought to
21 be, but rather what I charge you that the law is.

22 Now, the fact that the defendant was arrested,
23 charged and indicted is not evidence in this case and cannot
24 be considered as evidence of guilt in this case, nor does it
25 create any presumption or inference of guilt.

1 The indictments are simply the formal written
2 instruments which contain the charges made against the
3 defendant. An indictment is a formal document by which this
4 case is brought into court.

5 The defendant has pled not guilty to the charges
6 in the indictments, and that plea places the burden on the
7 State to prove the defendant guilty.

8 A person charged with committing a criminal
9 offense in South Carolina is never required to prove himself
10 innocent.

11 And I charge you that it is an important rule of
12 the law that the defendant in a criminal trial, no matter
13 what the seriousness of a charge may be, will always be
14 presumed to be not guilty of the crime for which the
15 indictment was issued, unless guilt has been proven by
16 evidence satisfying you of that guilt beyond a reasonable
17 doubt. This presumption of innocence does not end when you
18 begin your deliberations, but it accompanies the defendant
19 throughout the trial, until you reach a verdict of guilt
20 based on evidence satisfying you of that guilt beyond a
21 reasonable doubt.

22 The presumption of innocence is like a robe of
23 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

1 defendant's guilt beyond a reasonable doubt.

2 The presumption of innocence is not just a mere
3 legal theory. It's not just a legal phrase. It is a
4 substantial right to which every defendant is entitled,
5 unless you, the jury, are satisfied of the defendant's guilt
6 beyond a reasonable doubt based on the evidence presented
7 during the trial. The State must prove the defendant's
8 guilt beyond a reasonable doubt.

9 So what is a reasonable doubt in the law? A
10 reasonable doubt is a doubt which makes an honest sincere
11 juror in search of the truth to hesitate to act.

12 Proof beyond a reasonable doubt must, therefore,
13 be proof of such a convincing character that a reasonable
14 person would not hesitate to rely and act upon it in the
15 most important of his or her own affairs.

16 Proof beyond a reasonable doubt can also be
17 described as proof that leaves you firmly convinced of the
18 defendant's guilt.

19 Now, there are very few things in this world that
20 we know with absolute certainty and in criminal cases the
21 law does not require proof that overcomes every possible
22 doubt.

23 If, based on your consideration of the evidence,
24 you are firmly convinced that the defendant is guilty, then
25 you must find him guilty.

1 If, on the other hand, you think there is a real
2 possibility that he is not guilty, you must then give him
3 the benefit of the doubt and find him not guilty.

4 The defendant is charged with the murder of Edgar
5 Lopez and the murder of Pablo Guzman-Gutierrez.

6 As to each count, in order to prove the defendant
7 guilty of murder, the State must prove beyond a reasonable
8 doubt that the defendant killed another person with malice
9 aforethought.

10 Malice is hatred, ill will or hostility towards
11 another person. It is the intentional doing of a wrongful
12 act without just cause or excuse and with an intent to
13 inflict an injury or under circumstances that the law will
14 infer an evil intent.

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

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

1 Express malice is shown when a person speaks words
2 which express hatred or ill will towards another, or when
3 the person prepared beforehand to do the act which was later
4 accomplished. For example, lying in wait for a person, or
5 any other acts of preparation going to show that the deed
6 was in the defendant's mind would be express malice.

7 Malice may be inferred from the conduct showing a
8 total disregard for human life.

9 The indictments in this case alleged two different
10 offenses against the defendant, the charges of murder of
11 Edgar Lopez and murder of Pablo Guzman-Gutierrez. Each
12 indictment charges a separate and distinct offense. You
13 must decide each indictment separately on the evidence and
14 the law applicable to it, uninfluenced by your decision as
15 to any other indictment. The defendant may be convicted or
16 acquitted on any or both of the offenses charged. You will
17 be asked to write a separate verdict of guilty or not guilty
18 for each indictment.

19 The defendant has raised the defense of
20 self-defense. Self-defense is a complete defense and if it
21 is established you must find the defendant not guilty.

22 The State has the burden of disproving
23 self-defense by proof beyond a reasonable doubt.

24 If you have a reasonable doubt of the defendant's
25 guilt after considering all the evidence, including the

1 evidence of self-defense, then you must find the defendant
2 not guilty.

3 On the other hand, if you have no reasonable doubt
4 of the defendant's guilt after considering all of the
5 evidence, including the evidence of self-defense, then you
6 must find the defendant guilty.

7 The following elements are required to establish
8 self-defense:

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

16 Two, imminent danger. The second element of
17 self-defense is that the defendant was actually in imminent
18 danger of death or serious bodily injury, or that the
19 defendant actually believed he was in imminent danger of
20 death or serious bodily injury.

21 If the defendant was actually in imminent danger,
22 it must be shown that the circumstances would have warranted
23 a person of ordinary firmness and courage to strike the
24 fatal blow or blows to prevent death or serious bodily
25 injury. If the defendant believed he was in imminent danger

1 of death or serious bodily injury, it must be shown that a
2 reasonably prudent person of ordinary firmness and courage
3 would have had the same belief.

4 In deciding whether the defendant actually was or
5 believed he was in imminent danger of death or serious
6 bodily injury you should consider all the facts and
7 circumstances surrounding the crime, including the physical
8 condition and characteristics of the defendant and the
9 victims.

10 Third, right to act on appearances. The defendant
11 does not have to show that he was actually in danger. It is
12 enough if the defendant believed he was in imminent danger
13 and a reasonably prudent person of ordinary firmness and
14 courage would have had the same belief. The defendant has a
15 right to act on appearances, even though the defendant's
16 beliefs may have been mistaken.

17 It is for you to decide whether the defendant's
18 fear of immediate danger or of death or serious bodily
19 injury was reasonable and would have been felt by an
20 ordinary person in the same situation.

21 Words accompanied by hostile acts. Words
22 accompanied by hostile acts may, depending on the
23 circumstances, establish self-defense.

24 Size and age. Relevant sizes and ages and weights
25 of the defendant and the victims -- victim or victims may be

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

3 Threats by the victim or victims. Threats made by
4 the victim may be considered in determining whether the
5 defendant actually or believed he was in imminent danger.

6 Intoxication. The intoxication of a victim may be
7 considered in deciding whether the defendant's fear of death
8 or bodily injury was reasonable.

9 No other way to avoid danger. The final element
10 of self-defense is that the defendant had no other probable
11 way to avoid the danger of death or serious bodily injury
12 than to act as the defendant did in this particular
13 instance.

14 Degree of force. The person cannot be required to
15 make an exact calculation as to the degree or amount of
16 force which may be needed to avoid death or serious bodily
17 injury. Therefore, in self-defense the defendant has a
18 right to use the force needed to avoid death or serious
19 bodily harm. The force used in self-defense does not have
20 to be limited to the degree or amount of force used by the
21 victim or victims. The defendant has a right to use so much
22 force as appeared to be necessary for complete
23 self-protection in which a person of ordinary reason and
24 firmness would have believed to be needed to prevent death
25 or serious bodily harm.

1 Continuing until the threat of harm has ended. If
2 the defendant is justified in defending himself in firing
3 the first shot, then the defendant is also justified in
4 continuing to shoot until it's apparent that the danger of
5 death or serious bodily injury has completely ended.

6 Now, a lawful guest in another's home or at
7 another's home has no duty to retreat before using deadly
8 force in self-defense against an intruder.

9 The lawful guest is a person who enters the
10 premises of another by either express or implied invitation.
11 However, a guest has a duty to retreat, where possible, if
12 the attacker is the owner or occupier of the property.

13 Finally, a person can be acting lawfully even if
14 he is in unlawful possession of a weapon if he was entitled
15 to arm himself in self-defense at the time of the shooting.

16 And I reiterate that it is up to you to determine
17 all the issues relating to self-defense.

18 Now, I charge you that voluntary intoxication is
19 never an excuse or a defense to a crime. The person who
20 voluntarily renders himself intoxicated is no less
21 responsible for his acts while in such a condition. If a
22 person voluntarily drinks intoxicating liquors and becomes
23 intoxicated and while in that condition commits an act which
24 would be a crime if it had been committed by a sober person,
25 the fact of drunkenness would not relieve the intoxicated

1 person from responsibility. Voluntary intoxication is not
2 an excuse for or a defense to a crime.

3 Now, in order to establish criminal liability,
4 criminal intent is required. Criminal intent must be proven
5 by the State beyond a reasonable doubt. Criminal intent is
6 always a matter that must be determined by the jury from the
7 circumstances surrounding the situation.

8 There is no way to prove intent to a mathematical
9 certainty. There is no way medical science can dissect a
10 person's brain and determine what the person had in mind, so
11 the law says that criminal intent may be inferred from the
12 circumstances shown to have existed. This is how you make
13 your determination of whether or not the element requiring
14 intent was present.

15 It is not necessary to establish intent by direct
16 and positive evidence, but intent may be established by
17 inference, in the same way as any other fact, by taking into
18 consideration the acts of the parties and all the facts and
19 circumstances of the case.

20 Criminal intent is a mental state, a conscious
21 wrongdoing. It is up to you to determine what the defendant
22 intended to do based on the circumstances shown to have
23 existed.

24 Now, Mr. Foreman and members of the jury, I am
25 required to charge you the law as I have done during and

1 through these instructions now being given to help guide you
2 to a just and lawful verdict. Whether some of these
3 instructions will apply will depend upon what you find to be
4 the facts. The fact that I have instructed you on the
5 various subjects in this case must not be taken as
6 indicating an opinion of this court as to what you should
7 find to be the facts as to what your verdict should be.

8 And Mr. Foreman, members of the jury, you have
9 been selected by both the State and the defendant to be fair
10 and impartial jurors. It is your duty then in your joint
11 deliberations to determine the truth in this case, giving
12 the defendant the benefit of every reasonable doubt on each
13 and every issue. And from the facts which you determine to
14 be true, you take and apply the law which I have just given
15 you and thus arrive at a verdict which speaks the truth of
16 this case.

17 I have told you the standards that you have to
18 apply to the charge of murder. I will give you a copy of
19 these instructions in written form. During your
20 deliberations you may refer to the instructions to guide
21 your decision making. You must consider the instructions as
22 a whole, but not follow some and ignore others. Please
23 return the instructions to the court at the time the verdict
24 is rendered.

25 You have heard the evidence and now you have heard

1 the law.

2 Whatever your verdict as to each charge, Mr.
3 Foreman, you will indicate by writing on the back of the
4 indictment which you will have in the jury room under the
5 word verdict guilty or not guilty as to each indictment.
6 And you would write the verdict and sign and date it.
7 Certainly there is no significance in the order in which I
8 state the possible verdicts. One must be stated before the
9 other.

10 Remember that although the foreperson is the only
11 juror who signs and writes the verdict, it is not his alone.
12 The verdict has to be unanimous. And, Mr. Foreman, you are
13 not authorized to write the verdict until all of you have
14 agreed as to what the verdict should be in this case.

15 Ladies and gentlemen, I'm going to send you to
16 your jury room, all of you except the thirteenth juror, the
17 alternate. The first twelve will be the deliberating panel,
18 but do not begin to discuss the case until you have received
19 a copy of this jury charge, the indictments, and the
20 exhibits. Once you have received these things, that will be
21 your signal to begin your deliberations.

22 Once you begin your deliberations, you will
23 deliberate until you have reached a verdict, at which time
24 you will knock on the door, advise the bailiff, and we will
25 bring you out to receive your verdict.

1 So if you will go to the jury room at this time.
2 Wait for the exhibits, indictments, and the jury charges and
3 that would be your signal to begin deliberating on this
4 case.

5 (Whereupon, at 2:25 p.m., the jury panel retired
6 to the jury room, awaiting instructions to begin
7 deliberations)

8 THE COURT: And the alternate, do you have
9 anything in the jury room?

10 THE ALTERNATE: Yes.

11 THE COURT: All right. We will have the bailiff
12 bring it out to you. You can stay right there.. You can
13 stay right there.

14 (Off the record)

15 (Back on the record)

16 THE COURT: And I did not discharge juror number
17 211. I did not discharge juror number 211. I find that he
18 can be fair and impartial and would be part of the
19 deliberating in the jury room.

20 Any additional exceptions to the jury charge,
21 State or the defense?

22 MS. CAMPBELL: No, sir.

23 MR. SHEALEY: Just briefly, Your Honor.

24 Just as to the duty to retreat charge that you
25 included, I was thinking more about this and I forgotten to

1 mention this earlier, but I just think being that the
2 evidence is that Pablo didn't actually live there, that it
3 wouldn't be applicable to him as an attacker or owner or
4 occupier of the property, so I would just object to that.

5 THE COURT: I gave the entire charge. It applies
6 to intruders and others.

7 MR. SHEALEY: Yes, sir.

8 THE COURT: Your objection is noted for the
9 record.

10 THE COURT: All right, Madam Alternate. Thank you
11 very much. We picked alternates so that we can -- we have
12 to have twelve. If we don't end up with twelve jurors, then
13 we have to declare a mistrial and start from scratch and go
14 over this entire thing again. So all of you made it except
15 for the one we had to let go yesterday who had some bad leg
16 problem and had to go to the doctor, but the others
17 survived. So, therefore, you cannot participate in the
18 deliberations, but I certainly want to thank you on behalf
19 of the State and the defense for your participation in this
20 case and your willingness to serve.

21 We will excuse you now. Please do not discuss
22 with anyone what you think the verdict should be. You are
23 welcome to come and sit in the audience, if you want to see
24 it all the way through. You are welcome to leave if you
25 want to do that.

1 Any other words before dismissal of this juror?

2 MS. CAMPBELL: No, Your Honor.

3 THE COURT: All right. Thank you very much and
4 you are free to go.

5 (Whereupon, the alternate juror was discharged)

6 THE COURT: And if counsel will check the
7 exhibits.

8 (Off the record)

9 (Back on the record)

10 (Whereupon, at 2:47 p.m., the evidence and verdict
11 form and jury charge were sent to the jury room and
12 instructed to start deliberating)

13 THE COURT: The juror notes?

14 COURT REPORTER: Mark them as Court's Exhibits?

15 THE COURT: Yes.

16 (Juror Note marked as Court's Exhibit No. 15 for
17 identification)

18 (Juror Note marked as Court's Exhibit No. 16 for
19 identification)

20 (Juror Note marked as Court's Exhibit No. 17 for
21 identification)

22 (Whereupon, proceedings were recessed, pending the
23 verdict of the jury panel)

24 (Whereupon, proceedings were reconvened)

25 THE COURT: Now, we have three more bond hearings

1 and we have a note from the jury. The lawyers are here and
2 we don't have the defendant here.

3 POLICE OFFICER: The defendant is in cell, Your
4 Honor?

5 THE COURT: Is that downstairs?

6 POLICE OFFICER: It's right here.

7 THE COURT: Right there, okay. And we'll have him
8 come in in a minute, but I'll tell the lawyers what the note
9 says.

10 The note says "are we able to get a copy of the
11 transcripts, please? Specifically the neighbors across the
12 street testimony." The neighbor across the street's
13 testimony, a copy of the transcript.

14 So as you all chew on that, we are going to
15 arrange to get the defendant in here. I think we have to
16 break this down and deal with this trial, since we don't
17 want to hold the jury up too unreasonably long. Of course,
18 we will decide the issue and then decide when we will bring
19 them back.

20 (Off the record)

21 (Back on the record)

22 THE COURT: This would be on the record.

23 "Yes, we would like to hear the neighbor's
24 testimony as well as Mr. Parvin's first testimony."

25 It's a couple of hours of listening. Four hours

1 of listening? Mr. Parvin's first testimony was --

2 MS. CAMPBELL: The testimony from the neighbor is
3 relatively short, but Mr. Parvin's testimony, as I recall,
4 he was on the stand the first time until like three o'clock
5 in the afternoon, from around 9:30 or ten.

6 THE COURT: All right. We will take a short break
7 and we will bring the jury.

8 Anything from the defense?

9 MS. DAVIS: No, sir, Your Honor, if that's what
10 they are requesting.

11 THE COURT: All right. We will take a break.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened).

14 THE COURT: Mr. Parvin's testimony they want to
15 limit to the events of -- "can you limit Mr. Parvin's
16 testimony to just the events of that day, please?" That's
17 another note from the jury.

18 Bring them on.

19 (The following takes place in the presence of the
20 jury panel)

21 THE BAILIFF: Your Honor, the jury is present.

22 THE COURT: All right.

23 (Whereupon, the requested testimony began to be
24 replayed to the jury panel)

25 MS. DAVIS: Yes, Your Honor, may we approach?

1 THE COURT: All right.

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 THE COURT: Mr. Foreman, I need you to go back to
5 the jury room, please.

6 (The following takes place outside the presence of
7 the jury panel)

8 THE COURT: All right, the defense claims that
9 this is the Biggers Hearing, and let me hear it and let's
10 see.

11 COURT REPORTER: Okay.

12 (Whereupon, replayed testimony was started)

13 (Whereupon, replayed testimony was stopped)

14 THE COURT: Play the testimony.

15 COURT REPORTER: The whole thing? Okay.

16 MS. CAMPBELL: I think the outburst they were
17 referring to in the Biggers Hearing was talking about at the
18 end of the Biggers Hearing:

19 THE COURT: Well, let's be sure which one it is.

20 (Whereupon, replayed testimony was started)

21 (Whereupon, replayed testimony was stopped)

22 (Off the record)

23 (Back on the record).

24 (The following takes place in the presence of the
25 jury panel)

1 THE COURT: Mr. Foreman, it's now 5:20. If you
2 will go back and discuss with the jurors whether or not you
3 want to stay later today or whether you want to break and
4 come back in the morning. If you will let us know that,
5 please.

6 (The following takes place outside the presence of
7 the jury panel)

8 (Off the record)

9 (Back on the record)

10 THE COURT: All right, if you would bring the
11 jury, please.

12 (The following takes place in the presence of the
13 jury panel)

14 THE BAILIFF: Your Honor, the jury is present.

15 THE COURT: All right. The court has noted that
16 you all want to break for the day and reconvene in the
17 morning.

18 Once you begin deliberating on a case, the case is
19 in your hands. You have listened to the testimony and then
20 you deliberate and you decide the case. The case is in your
21 hands for a decision.

22 Certainly it's fine for us to break for the day.
23 I would emphasize the fact that the case is in your hands,
24 and emphasize a second point, and that is that when you have
25 a break during deliberations, you have to stop deliberating

1 entirely. You cannot -- because you can only deliberate
2 with all jurors present and participating in deliberations.
3 That's especially important once the case is in your hands,
4 because the natural inclination would be to go home and
5 start deliberating with a family member or a loved one.
6 That would be improper. You can only deliberate with folks
7 on the jury that have heard the same testimony and really
8 the same evidence and not to someone who hadn't heard any of
9 it. So we are going to have you break for the day and to
10 reconvene at 9:30 tomorrow morning. I ask that you abide by
11 that admonition to discuss the case at all with your fellow
12 jurors or with anyone else. Just kind of let it go. And
13 then tomorrow morning at 9:30, when you return, you will
14 resume deliberating with your fellow jurors and hopefully
15 whatever playback issue that delayed you here today would be
16 fixed by in the morning so that you could hear back whatever
17 you want to hear back. So with that we will have y'all
18 leave and see you at 9:30 tomorrow morning.

19 When you come back, you will come back to the jury
20 room and resume deliberating until you come into the
21 courtroom. All right.

22 Thank you very much. Have a good evening.

23 (The following takes place outside the presence of
24 the jury panel)

25 THE COURT: Anything else?

1 MS. CAMPBELL: Yes, Your Honor.

2 The only concern I would have is just has been a
3 problem in the past as far as the jurors are leaving,
4 especially now that they have the case, that sometimes they
5 actually meet a family members either from our side or from
6 the defense side. I didn't know if you could maybe keep
7 everybody in here for a period of time, or have escort for
8 the jurors to make sure there is no interaction that would
9 be deemed inappropriate. And this is, Your Honor, I'm
10 sorry, just based on how we come in and out of the
11 courthouse. And I'm not saying that anybody would mean to
12 do it. It's just in order to make sure none of the jurors
13 were tainted in any way or it would cause us a problem.

14 THE COURT: All right. Well, we will just hold
15 everyone in here while we figure out what's going on with
16 being able to hear this testimony.

17 Of course, everyone should know, but any attempt
18 to contact a jury or influence a juror in any way is a
19 separate crime in itself, as well as be contemptuous and
20 would subject to any violation and be sent to jail for
21 contempt of court.

22 Anything from the defense?

23 MS. PRINGLE: No.

24 (Whereupon, proceedings were adjourned to December
25 21, 2010)

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6) 2011-GS-40-0897
7) 2011-GS-40-0898
8) DECEMBER 21, 2011
9) COLUMBIA, SOUTH CAROLINA
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DEFENDANT.

(VOLUME VIII)

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JUDGE. ; And a Jury.

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

KATHRYN LUCK CAMPBELL, ASSISTANT SOLICITOR
NICOLE M. SIMPSON, ASSISTANT SOLICITOR
MEGHAN WALKER, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

FIELDING PRINGLE, ASSISTANT PUBLIC DEFENDER
LUKE SHEALEY, ASSISTANT PUBLIC DEFENDER
JENNIFER DAVIS, ASSISTANT PUBLIC DEFENDER
ATTORNEYS FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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14	S-127	CELL PHONES		540
15	S-128	BUDWEISER BOX		581
16	S-129	GREEN SHIRT, RED HAT, BLUE HAT		567
17	S-130	NAIL SCRAPINGS		
18	S-131	EDGAR LOPEZ CLOTHES		571
19	S-132	SWABS		792
20	S-133	PROJECTILE		489
21	S-134	SWAB		792
22	S-135	CARTRIDGE CASING		842
23	S-136	PRINT CARDS		595
24	S-137	PABLO GUZMAN-GUTIERREZ CLOTHES		571
25	S-138	SWABS		792

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-139	PROJECTILE		841
4	S-140	BOX OF BEER CANS		565
5	S-141	SWAB OF DEFENDANT		724
6	S-142	LATENT PRINT CARD		636
7	S-143	LATENT PRINT CARD		636
8	S-144	LATENT PRINT CARD		594
9	S-145	PHOTOGRAPH	449	
10	S-146	PHOTOGRAPH	449	
11	S-147	PHOTOGRAPH	449	
12	S-148	PHOTOGRAPH	449	
13	S-149	PHOTOGRAPH	449	
14	S-150	PHOTOGRAPH	449	
15	S-151	PHOTOGRAPH	449	
16	S-152	PHOTOGRAPH	449	
17	S-153	PHOTOGRAPH	449	
18	S-154	PHOTOGRAPH	449	
19	S-155	PHOTOGRAPH		596
20	S-156	PHOTOGRAPH		596
21	S-157	PHOTOGRAPH		596
22	S-158	PHOTOGRAPH		596
23	S-159	PHOTOGRAPH		596
24	S-160	PHOTOGRAPH		596
25	S-161	PHOTOGRAPH		596

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-161	PHOTOGRAPH		596
4	S-162	PHOTOGRAPH		596
5	S-163	PHOTOGRAPH		596
6	S-164	PHOTOGRAPH		596
7	S-165	PHOTOGRAPH		596
8	S-166	PHOTOGRAPH		596
9	S-167	PHOTOGRAPH		613
10	S-168	PHOTOGRAPH		613
11	S-169	3 PAGES OF FINGERPRINT CARDS		658
12	S-170	BUSINESS RECORDS FROM LOUISIANA		665
13	S-171	BUSINESS RECORDS FROM LOUISIANA		665
14	S-172	CHART	451	
15	S-173	CHART	451	
16	S-174	BUSINESS RECORDS - JAMESON INN		683
17	S-175	BUSINESS RECORDS - JAMESON INN		683
18	S-176	PHOTOGRAPH		746
19	S-177	PHOTOGRAPH		746
20	S-178	PHOTOGRAPH		746
21	S-179	PHOTOGRAPH		746
22	S-180	PHOTOGRAPH		746
23	S-181	PHOTOGRAPH		746
24	S-182	PHOTOGRAPH		746
25	S-183	PHOTOGRAPH		746

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-184	PHOTOGRAPH		746
4	S-185	PHOTOGRAPH		746
5	S-186	PHOTOGRAPH		746
6	S-187	PHOTOGRAPH		746
7	S-188	PHOTOGRAPH		746
8	S-189	PHOTOGRAPH		746
9	S-190	PHOTOGRAPH		746
10	S-191	PHOTOGRAPH		746
11	S-192	PHOTOGRAPH		746
12	S-193	PHOTOGRAPH		746
13	S-194	BLOWUP PHOTOGRAPH		728
14	S-195	BLOWUP	453	
15	S-196	BLOWUP	453	
16	S-197	BUCCAL SWAB		792
17	S-198	BLOWUP		
18	S-199	BLOWUP		880
19	S-200	BLOWUP		880
20	S-201	SWAB		792
21	S-202	SWAB		792
22	S-203	SWAB		792
23	S-204	SWAB		792
24	S-205	SUMMARY	453	
25	S-S06	SUMMARY	453	

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-207	SUMMARY	454	
4	S-208	ROSSI GUN	454	
5	S-209	TAURUS GUN	454	
6	S-210	BOX OF MISCELLANEOUS AMMUNITION	454	
7	S-211	PAPERWORK FOR KIA VAN		866
8	S-212	BLOWUP MAP		1471
9	S-213	GUN	454	
10	S-214	GUN	454	
11	S-215	GUN	454	
12	S-216	GUN	454	
13	S-217	BONG		1463
14	S-218	PHOTOGRAPH		1466
15	S-219	GLASS PIPE		1463
16	S-220	PHOTOGRAPH	455	
17	S-221	PHOTOGRAPH	455	
18	S-222	PHOTOGRAPH	455	
19	S-223	PHOTOGRAPH		1463
20	S-224	PHOTOGRAPH		1457
21	S-225	PHOTOGRAPH		1465
22	S-226	PHOTOGRAPH		1465
23	S-227	PHOTOGRAPH		1465
24	S-228	PHOTOGRAPH		1465
25	S-229	PHOTOGRAPH		1465

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-230	PHOTOGRAPH		1465
4				
5	D-1	PHOTOGRAPH		600
6	D-2	PHOTOGRAPH		600
7	D-3	DOCUMENT FROM JAMESON INN		685
8	D-4	1 PAGE DOCUMENT		937
9	D-5-A	PURCHASE ORDER DOCUMENT		1645
10	D-5-B	RECEIPT DOCUMENT		1645
11	D-5-C	DRIVER'S LICENSE DOCUMENT		1645
12	D-6-A	PURCHASE ORDER DOCUMENT		1645
13	D-6-B	DRIVER'S LICENSE DOCUMENT		1645
14	D-7-A	PURCHASE ORDER DOCUMENT		1645
15	D-7-B	RECEIPT DOCUMENT		1645
16	D-8-A	PURCHASE ORDER DOCUMENT		1645
17	D-8-B	RECEIPT DOCUMENT		1645
18	D-9	PURCHASE ORDER		1645
19	D-10-A	PURCHASE ORDER		1645
20	D-10-B	RECEIPT DOCUMENT		1645
21	D-10-C	DRIVER'S LICENSE DOCUMENT		1645
22	D-11-A	PURCHASE ORDER		1645
23	D-11-B	RECEIPT		1645
24	D-11-C	DRIVER'S LICENSE DOCUMENT		1645
25	D-12-A			1645

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	D-12-B			1645
4	D-13-A			1645
5	D-13-B			1645
6	D-13-C			1645
7	D-14	PHOTOGRAPH	1050	
8	D-15	PHOTOGRAPH	1050	
9	D-16	PHOTOGRAPH	1050	
10	D-17	PHOTOGRAPH	1050	
11	D-18	PHOTOGRAPH	1051	
12	D-19	PHOTOGRAPH	1051	
13	D-20	PHOTOGRAPH	1051	
14	D-21	PHOTOGRAPH	1051	
15	D-22	PHOTOGRAPH	1051	
16	D-23	PHOTOGRAPH	1051	
17	D-24	PHOTOGRAPH	1051	
18	D-25	PHOTOGRAPH	1051	
19	D-26	PHOTOGRAPH	1051	
20	D-27	PHOTOGRAPH	1051	
21	D-28	PHOTOGRAPH	1051	
22	D-29	PHOTOGRAPH	1051	
23	D-30	PHOTOGRAPH	1052	
24	D-31	PHOTOGRAPH	1052	
25	D-32	PHOTOGRAPH	1052	

1		EXHIBITS		
2	NO.	DESCRIPTION	ID.	EV.
3	D-33	PHOTOGRAPH	1052	
4	D-34	1 PAGE POEM	1052	
5	D-35	1 PAGE POEM	1052	
6	D-36	1 PAGE POEM	1052	
7	D-37	PHOTOGRAPH	1052	
8	D-38	PHOTOGRAPH	1052	
9	D-39	PHOTOGRAPH	1052	
10	D-40	AWARD DOCUMENT		1352
11	D-41	AWARD DOCUMENT		1078
12	D-42	AWARD DOCUMENT	1052	
13	D-43	AWARD DOCUMENT		1078
14	D-44	AWARD DOCUMENT	1053	
15	D-45	AWARD DOCUMENT		1078
16	D-46	AWARD DOCUMENT		1078
17	D-47	AWARD DOCUMENT		1078
18	D-48	AWARD DOCUMENT		1078
19	D-49	AWARD DOCUMENT		1078
20	D-50	AWARD DOCUMENT		1078
21	D-51	AWARD DOCUMENT		1078
22	D-52	AWARD DOCUMENT		1078
23	D-53	AWARD DOCUMENT		1078
24	D-54	MULTIPLE DOCUMENTS		1226
25				

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	CT-1	MULTIPLE DOCUMENTS	178	
4	CT-2	COLORED PHOTOGRAPH	1013	
5	CT-3	PHOTOGRAPH	1013	
6	CT-4	PHOTOGRAPH	1013	
7	CT-5	PHOTOGRAPH	1013	
8	CT-6	PHOTOGRAPH	1013	
9	CT-7	PHOTOGRAPH	1013	
10	CT-8	PHOTOGRAPH	1013	
11	CT-9	PHOTOGRAPH	1013	
12	CT-10	PHOTOGRAPH	1014	
13	CT-11	PHOTOGRAPH	1014	
14	CT-12	PHOTOGRAPH	1014	
15	CT-13	COLORED PHOTOGRAPH	1014	
16	CT-14	BRIEF DOCUMENT	1339	
17	CT-15	JUROR NOTE	1701	
18	CT-16	JUROR NOTE	1701	
19	CT-17	JUROR NOTE	1701	
20	CT-18	JUROR NOTE	1751	
21	CT-19	JUROR NOTE	1751	
22	CT-20	JUROR NOTE	1751	
23	CT-21	JUROR NOTE	1751	
24	CT-22	JUROR NOTE	1751	
25				

1 (PROCEEDINGS, DECEMBER 21, 2011)

2 THE COURT: All right. Good morning.

3 All right. Madam Court Reporter, you have got it
4 ready?

5 COURT REPORTER: Yes, sir.

6 THE COURT: All right. Bring the jury. Tell them
7 we are ready.

8 (The following takes place in the presence of the
9 jury panel)

10 THE BAILIFF: Your Honor, the jury is present.

11 THE COURT: All right. Thank you.

12 Good morning.

13 JURY PANEL: Good morning.

14 THE COURT: All right, Madam Reporter.

15 (Whereupon, the requested testimony was replayed
16 to the jury panel)

17 THE COURT: We will have you go to the jury room
18 for just a few moments.

19 (The following takes place outside the presence of
20 the jury panel)

21 THE COURT: When do they next get back on subject?

22 COURT REPORTER: About three minutes later.

23 THE COURT: If you can go to that.

24 COURT REPORTER: Yes, sir.

25 THE COURT: We will be at ease for a few minutes.

1 (Whereupon, proceedings were recessed)

2 (Whereupon, proceedings were reconvened)

3 THE COURT: All right. Let's bring them on.

4 (Off the record)

5 (Back on the record)

6 THE COURT: We have a note from the jury. The
7 note says "the jury will return a verdict shortly. Please
8 give us a few minutes."

9 All right, we will be at ease.

10 (Whereupon, proceedings were recessed)

11 (Whereupon, at 11:27 a.m., proceedings were
12 reconvened)

13 THE COURT: I understand the jury has a verdict.
14 If you will bring them in.

15 (Whereupon, at 11:28 a.m., the jury panel returned
16 to open court to report its verdict)

17 THE BAILIFF: Your Honor, the jury is present.

18 THE COURT: All right. Mr. Foreman, if you will
19 stand for me.

20 Has the jury reached a verdict?

21 JURY FOREMAN: Yes, we have, Your Honor.

22 THE COURT: All right. Is it unanimous?

23 JURY FOREMAN: Yes, Your Honor.

24 THE COURT: All right. The defendant will stand.
25 If you will pass it up to me, please. You may be

1 seated.

2 Madam Clerk, you may publish the verdicts.

3 THE CLERK: State of South Carolina, County of
4 Richland, Case Number 2011-GS-40-0898, the State versus
5 Leslie Todd Parvin, indicted for murder, verdict guilty.
6 Signed by the foreperson, number 119, on December 21st,
7 2011.

8 State of South Carolina, County of Richland, State
9 versus Leslie Todd Parvin, Indictment 2011-GS-40-0897,
10 indictment for murder, verdict guilty. Signed by the
11 foreperson, juror 119, on December 21st, 2011.

12 Is this the verdict of the entire jury?

13 JURY FOREMAN: Yes, it is.

14 THE CLERK: Thank you.

15 THE COURT: All right. Ladies and gentlemen, if
16 this is your verdict, please let me know by raising your
17 right hands.

18 (Whereupon, all jurors raised their right hand)

19 THE COURT: Thank you very much.

20 Any additional polling requested?

21 MS. DAVIS: Yes, Your Honor.

22 THE COURT: All right. If you will poll the
23 jurors individually, please.

24 THE CLERK: Ladies and gentlemen of the jury, I'm
25 going to call your number. I'm going to ask you two

1 questions. Please respond to both questions with a yes or
2 no.

3 Juror 119, was this your verdict?

4 JUROR NUMBER 119: Yes.

5 THE CLERK: Is it still your verdict?

6 JUROR NUMBER 119: Yes.

7 THE CLERK: 74, was this your verdict?

8 JUROR NUMBER 74: Yes.

9 THE CLERK: Is it still your verdict?

10 JUROR NUMBER 74: Yes.

11 THE CLERK: 225, was this your verdict?

12 JUROR NUMBER 225: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR NUMBER 225: Yes.

15 THE CLERK: 53, was this your verdict?

16 JUROR NUMBER 53: Yes.

17 THE CLERK: Is it still your verdict?

18 JUROR NUMBER 53: Yes.

19 THE CLERK: 245, was this your verdict?

20 JUROR NUMBER 245: Yes.

21 THE CLERK: Is it still your verdict?

22 JUROR NUMBER 245: Yes.

23 THE CLERK: 79, was this your verdict?

24 JUROR NUMBER 79: Yes.

25 THE CLERK: Is it still your verdict?

1 JUROR NUMBER 79: Yes.

2 THE CLERK: 50, was this your verdict?

3 JUROR NUMBER 50: Yes.

4 THE CLERK: Is it still your verdict?

5 JUROR NUMBER 50: Yes.

6 THE CLERK: 282, was this your verdict?

7 JUROR NUMBER 282: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR NUMBER 282: Yes.

10 THE CLERK: 182, was this your verdict?

11 JUROR NUMBER 182: Yes.

12 THE CLERK: Is it still your verdict?

13 JUROR NUMBER 182: Yes.

14 THE CLERK: 35, was this your verdict?

15 JUROR NUMBER 35: Yes.

16 THE CLERK: Is it still your verdict?

17 JUROR NUMBER 35: Yes.

18 THE CLERK: 46, was this your verdict.

19 JUROR NUMBER 46: Yes.

20 THE CLERK: Is it still your verdict?

21 JUROR NUMBER 46: Yes.

22 THE CLERK: 211, was this your verdict?

23 JUROR NUMBER 211: Yes.

24 THE CLERK: Is it still your verdict?

25 JUROR NUMBER 211: Yes.

1 THE CLERK: The jury has been polled, Your Honor.

2 THE COURT: The verdict appears to be the
3 unanimous verdict of the jury and the court so orders
4 finding the defendant guilty of two counts of murder.

5 Any post-trial motions?

6 MS. PRINGLE: Your Honor, we will submit
7 post-trial motions in writing coming. We would ask the
8 court to consider deferring sentencing.

9 COURT REPORTER: Ma'am, you need to speak up a
10 little bit.

11 MS. PRINGLE: We would ask you to consider
12 deferring sentencing. We have a presentation that we would
13 like to bring to the court at a later date, but we are not
14 prepared to do today.

15 THE COURT: All right. What says the State?

16 MS. CAMPBELL: Your Honor, the State is ready to
17 proceed with sentencing, as we do in every case.

18 THE COURT: And what matters do you --

19 MS. PRINGLE: Your Honor, as the court is aware,
20 and, of course, the State is aware, Mr. Parvin was in the
21 military for twenty years. He was diagnosed in 2007 with
22 Post-Traumatic Stress Disorder. We would like to present to
23 you documentation, perhaps bringing in a few physicians to
24 speak to you before sentence due to what extent that played
25 into this, if at all. It was no defense. There was nothing

1 to be done with that at trial, but I would like for you to
2 hear about it in some detail when you consider sentencing.
3 I think that is a complex and complicated in this situation.
4 Therefore, I defer.

5 THE COURT: Ms. Campbell?

6 MS. CAMPBELL: May it please the court, Your
7 Honor, Post-Traumatic Stress Disorder was something that we
8 were aware of. They were the ones that moved to exclude it
9 from any inclusion in this trial. As she just stated, it's
10 not a defense to this. As far as in mitigation, I'm sure
11 they can address that adequately in their presentation here
12 today.

13 THE COURT: Well, of course, where one has been
14 found guilty of murder, the sentence is 30 years to life
15 imprisonment. And we have got two counts of murder in this
16 case ranging from still 30 years to life imprisonment.

17 MS. CAMPBELL: Yes, sir.

18 THE COURT: But regardless to the extent of
19 mitigation that might be offered through some medical
20 testimony, he still will receive the minimum of 30 years up
21 to life imprisonment on each offense.

22 What else is there that you want me to consider?
23 Do you believe that it will have some bearing on the
24 sentence on the lower end of it or less than what I might
25 otherwise impose?

1 MS. PRINGLE: I know we can't -- if there is
2 anything other than the 30. I understand that he will
3 receive at least 30 day for day. I understand that. I
4 would plead with you to consider that, the lower end.

5 I don't think anyone wins here today. This is a
6 terribly sad day for everyone involved. There were two
7 people that lost their lives. Todd's family has lost their
8 husband, their father. And, again, they lost it when he
9 came back from his last tour in Afghanistan, and I don't
10 know that I can convince you to give him 30, but I would
11 hope that I can. I think if anyone deserves it, he does.

12 THE COURT: Well, I -- I'm sorry, go ahead.

13 MS. PRINGLE: Consideration towards the lower end.
14 He is 40 years old, and I would just -- I would like to make
15 a more thorough presentation, Your Honor.

16 THE COURT: All right.

17 First let me address the jury, and you all may be
18 seated.

19 Ladies and gentlemen, I want to thank you for your
20 services. I know you have spent a good portion of your life
21 at this point in this case. An amazing transformation seems
22 to take place with jurors. When they are called for jury
23 duty, they seemingly are hesitant about wanting to be picked
24 on a case and hoping they won't be picked on a case, but
25 after the service begins, the jurors become invested in the

1 case and want to see it through. And I can see that in all
2 of your eyes, each of your eyes during your service in this
3 case. And since the true commitment that you have in this
4 case to see to it that justice is done, that you arrived at
5 a fair and just verdict in this case.

6 Certainly the verdict in this case is supported by
7 the evidence, and so the next phase of things is to sentence
8 the defendant. You have no role in that, but I often invite
9 jurors to stick around for the sentencing.

10 Where the jury has found someone guilty, the
11 defense has the right to file post-trial motions and also to
12 present evidence regarding sentencing.

13 The statute in the case is where a person is
14 guilty of murder, the law says it must be punished by death
15 or by mandatory minimum imprisonment of 30 years to life.
16 In this case the State did not seek the death penalty, so
17 death is not an option, but the defendant is facing a
18 mandatory minimum term of imprisonment for 30 years to life,
19 and he can get 30 years, 40 years, 50 years, up to life
20 imprisonment, and whatever sentence he receives there is no
21 parole. It's day for day, whatever the sentence is. And
22 the sentence can be concurrent, meaning both sentences run
23 at the same time, or they can be consecutive.

24 I think given the nature of this and given the
25 fact that the law provides that the defendant may be given

1 ten days to file post-trial motions, and also there is a
2 wide latitude between 30 years and life, obviously, for a
3 person who is 40, did you say? 40 years old?

4 MS. PRINGLE: Yes, sir.

5 THE COURT: 40 years old, so I'm going to grant
6 the defendant's request to have an opportunity to present
7 whatever evidence they might have regarding Post-Traumatic
8 Stress, or anything else they want to submit at a sentencing
9 hearing that will be scheduled in the next few weeks.

10 So I want to thank you all for your services. You
11 have done a tremendous job in this case and rendered a
12 verdict that you are satisfied with. You obviously
13 deliberated long and hard now over the span of two days.
14 I'm always encouraged when the jury takes a while to reach a
15 verdict, because it means that you have fairly looked at the
16 case and that you are satisfied with the verdict that you
17 have rendered.

18 So the defendant will be remanded to the Alvin S.
19 Glenn Detention Center. The case will be scheduled for a
20 sentencing hearing.

21 Now, how much time do you need about to get this
22 doctor on board?

23 MS. PRINGLE: Just given the holiday is coming,
24 maybe Wednesday, or the end of next week. We can schedule
25 it with that.

1 THE COURT: All right. Well, as you know, on
2 January 1 I'm out of here. I'm off to other places,
3 Edgefield County specifically and then Fairfield County, so
4 I won't be around Richland during that time for a term of
5 court, so it needs to be done before the new year I would
6 think, since it's coming the week after Christmas.

7 Are y'all working during that time?

8 MS. CAMPBELL: Yes, sir, we will be here. We will
9 be available whenever you need us.

10 THE COURT: That means you are working during that
11 time?

12 MS. CAMPBELL: That's right, sir.

13 THE COURT: Okay. Well, we will set it up during
14 that time and figure out the date. Do you want to set the
15 day and time now?

16 MS. PRINGLE: Whatever you wish, Your Honor.

17 THE COURT: Well, we have Christmas on Sunday, and
18 the courthouse is closed the day after on Monday. And the
19 27th is a state holiday. Is it a county holiday?

20 MS. CAMPBELL: We are working that day, Your
21 Honor. Perhaps Wednesday or Thursday of next week.

22 THE COURT: All right. We will schedule the
23 sentencing next Wednesday at ten a.m..

24 MS. PRINGLE: Thank you, Your Honor.

25 THE COURT: Wednesday the 28th at ten a.m..

1 Anything that you need to tell the jury, Madam
2 Clerk?

3 THE CLERK: Yes, sir. I will walk back there.

4 THE COURT: All right. Very good.

5 The jury is excused.

6 (Whereupon, at 11:42 a.m., the jury panel was
7 discharged)

8 THE COURT: Court is adjourned.

9 (Whereupon, at 11:43 a.m., proceedings were
10 concluded)

11 (Jury Note marked as Court's Exhibit No. 18 for
12 identification)

13 (Jury Note marked as Court's Exhibit No. 19 for
14 identification)

15 (Jury Note marked as Court's Exhibit No. 20 for
16 identification)

17 (Jury Note marked as Court's Exhibit No. 21 for
18 identification)

19 (Jury Note marked as Court's Exhibit No. 22 for
20 identification)

21 (END OF REQUESTED TRANSCRIPT OF RECORD)

22

23

24

25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the dates of December 12, 2011 thru December 21, 2011.

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

I do further certify that Bonnie Kelly, Circuit Court Reporter for the 5th Judicial Circuit recorded these proceedings and that I, Michael R. Watts, transcribed these proceedings.

August 5, 2012



Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
Warrant Numbers: M720026-027

The State of South Carolina,)
)
)

vs.)
)
)

Leslie Todd Parvin,)
Defendant.)

MOTION FOR NEW TRIAL

JEANETTE M. MCBRIDE
C.C.P. & G.S.

2012 JAN -6 PM 2:46

RICHLAND COUNTY
FILED

Defendant was convicted of two counts of murder on December 21, 2011. He was sentenced to thirty five years on December 28, 2011. Defendant now moves for a new trial and renews all previous motions and objections to specifically include: 1) Defendant's pre-trial motion to exclude the statement allegedly made by the Defendant to Edgar Lopez offering him \$200 for sex, 2) improper reply testimony, and 3) improper use of a confidential psychological record for impeachment and in reply.

- 1) **Motion to Exclude Statement made by Edgar Lopez to Adan Soto and Marlin Avila that "the fucking white American gave me \$200 to have sex with him but I'm not going to do it".**

Defense counsel moved to exclude this testimony on the grounds of hearsay and SCRE 404(b) and SCRE 802 prior to the start of trial. Counsel renewed their objection when the testimony was introduced during trial. Over counsels' objection, two witnesses were permitted to testify that this statement was made by the Defendant. This Court permitted the statement as an exception to the hearsay rule as a present sense impression under SCRE 803(1) and further found that the requirements of 404(b) were met to permit admission. This testimony should not have been allowed.

The statement at issue did not qualify as a present sense impression. Even if the statement was actually made by the Defendant, Mr. Lopez' retelling of the statement was just that, a re-telling. He was describing an event that had happened, assuming it happened at all, in the past. This is not a present sense impression. Thus, this statement should have been excluded as hearsay under SCRE 802.

Additionally, counsel objected to the admission of this statement under SCRE 404(b). The

State's theme in prosecuting the Defendant was that the denial of sex for money provided the motive for the killings. The State argued that the Defendant became enraged when denied sex and killed Edgar Lopez out of anger and killed Mr. Guzman to eliminate any witnesses to the shooting. However, there is no support for this in the record. There were no witnesses who heard what the actual argument was about. We only know that there was an argument. There is absolutely no evidence that there was any connection between the statements allegedly made by the Defendant earlier in the day and the shootings of Edgar Lopez and Pablo Guzman. In fact, this motive makes absolutely no sense considering that Mr. Guzman had nothing to do with the supposed transaction between Edgar Lopez and the Defendant. To cope with the inconsistency of the killing of Mr. Guzman with the State's theory, the State argued that Guzman was killed to eliminate any eye witnesses to the shooting of Edgar Lopez. It is nonsensical to argue that the Defendant killed Mr. Guzman to eliminate any witnesses to the shooting. First of all, there were other witnesses present who weren't killed: Esau Monroy the homeowner, and the neighbor across the street Roberto Gonzalez, both of whom saw the Defendant. The Defendant who is an intelligent, highly trained, military veteran was well aware that he had left his DNA and finger prints all over this scene. He was well aware that he had shown at least four people at the scene his very unique identifying tattoos. He was well aware that he had told the people at the scene that he lived at the curve on Windsor Lake Blvd. which happens to be the exact place where he actually resided. He didn't shoot Pablo Guzman to eliminate all the eyewitnesses.

Therefore, as a preliminary matter, the statement made by Edgar Lopez was not even relevant to the shootings because there is no evidence to link the alleged statement and the shootings. But even if it was relevant, this statement is a smear against the character of Todd Parvin in violation of Rule 404(b). This testimony portrayed him as a predator on the Hispanic community, a man having a "mid life crisis or experimenting" as argued by the State in closing, who would approach random strangers and proposition them for homosexual sex. The State argued that this evidence provides the

motive for the shooting and therefore meets an exception to the general rule prohibiting introduction of bad character evidence. As argued above, there is no evidence to support a connection between the alleged statement and the argument that resulted in the shootings. Moreover and importantly, the State must satisfy by clear and convincing evidence that this statement actually took place and that the Defendant actually made the statement. However, the statement was relayed by a man with a blood alcohol level of .379. When told to Ms. Avila, the statement was relayed in the middle of a busy convenience store among other customers coming and going and in the presence of a child. Edgar Lopez was visibly drunk and talking like a drunk man. This is obvious from the in store video, especially when the audio is played. Edgar Lopez is the loudest person in the store. There is no dispute that he was extremely intoxicated. This was argued by the State and is evident from all the evidence presented at trial. The State did not prove by clear and convincing evidence that the Defendant actually made the statement to Edgar Lopez or that this agreement for sex actually took place. Thus, this evidence should not have been admitted.

2) Improper reply Testimony

The State is limited to offering testimony in reply that addresses the character traits put into issue by the defendant. During trial, the defense introduced evidence relating to the Defendant's traits for truthfulness, non-violence, and heterosexuality. Evidence that the Defendant smoked marijuana, owned guns, drank to fall asleep, and had marital problems is not responsive to the character traits put in issue by the Defendant.

The vast majority of the State's case in reply was improper both in mode of presentation and in the nature of the evidence offered. If permissible at all, the State should have been restricted to asking the character witnesses if they knew the particular items of bad character evidence offered by the State. SCRE 405. This evidence includes specifically: 1) that the Defendant and his wife had had marital problems and that the Defendant had a history of alcohol abuse, 2) that the Defendant had a marijuana bong in his room, and 3) that there were guns all over the Defendant's house

including on the beds in the front bedroom. The permissible manner in which the Solicitor could attempt to refute the good character evidence offered by the Defendant would have been to ask the witnesses if they knew these facts and if those facts changed their opinion of the Defendant. With very limited exception, the State did not ask any of the character witnesses these questions. Instead, the State sought to stage a second trial in reply offering extrinsic evidence to prove the alleged poor character of the Defendant through the testimony of multiple witnesses and photographs.

The fact that the Defendant and his wife had marital problems and that the Defendant was consuming large amounts of alcohol one year prior to the incident was completely irrelevant and improper reply to the Defendant's witness testimony that he was not a homosexual and that he loved his wife and was a devoted husband and father. The statements used to establish these particular facts were plucked from the Defendant's exit psychological exam performed under privilege and with confidentiality by psychologist Dr. John Taylor for the military. The offensiveness of using this record in this manner will be addressed below. However, the use in the State's case in reply by offering Dr. John Taylor to testify that he was told these things by the Defendant was absolutely improper under SCRE 405 which governs methods of proving character evidence. Additionally, the Defendant did not deny making these statements on direct. Therefore, they were not inconsistent with the Defendant's testimony and should not have been permitted under SCRE 801. If permissible at all, the State was restricted to asking the Defendant and the good character witnesses about this on cross examination.

Testimony through Stan Smith that the Defendant had a "bong typically used to smoke marijuana" in his room was inadmissible reply testimony. Again, even if admissible at all, the State was restricted to asking the witnesses on cross examination if they knew the Defendant had a bong in his room and if that changed their opinion of him. The State didn't ask one witness about this. Instead they re-called and elicited testimony from Stan Smith, the chief investigating officer on the case who had already testified, and offered photos of the bong and made mention in the presence of

the jury of other items of marijuana found in the home that were ultimately excluded after the jury heard about them. A bong is not relevant reply testimony to the good character evidence introduced by the Defendant. The Defendant sought to prove to the jury through good character witnesses the Defendant's devotion to his family and love for his wife to contradict the outrageous assertion that he was out trolling the streets for homosexual sex for money. Thus, the character witnesses testified to Todd as a family man and as a loving husband. The presence of a bong in his room is not responsive to this testimony and should have been excluded. Additionally, there was no evidence that the bong contained marijuana residue or that the Defendant ever smoked marijuana from it. Moreover, the Defendant lived in a home with three teenage sons, his wife, and his father. Under no circumstance should actual evidence of the bong, to include photographs of it, have been admitted.

Testimony that the Defendant had multiple guns in his home was inadmissible reply evidence. The State introduced photos and testimony about the dozen or so guns found in the Defendant's home, including testimony that suggested the Defendant was planning some kind of stand off or barricade with law enforcement because there were long guns on the beds in the front bedrooms of the house. Pre-trial, counsel objected to introduction of this evidence as speculative and irrelevant. The evidence did not come in during the State's case in chief. The State argued that it was relevant in reply to the good character evidence offered by the Defendant. But it was not. In fact there was no evidentiary value to this testimony at all other than to portray the Defendant as some kind of gun fiend with a violent nature. The presence of these guns as a planned barricade was total speculation on behalf of law enforcement. The good character evidence introduced by the Defendant did not change the speculative and irrelevant nature of the testimony offered by the State. Additionally, actual evidence and testimony offered in reply should not have been permitted under SCRE 405. The State, if permitted at all to go into this evidence, should only have been allowed to ask about the presence of the guns on cross examination. The State did not ask a single witness or the Defendant about them.

The State's mode of proof provided it an unfair advantage in violation of the rules of evidence and the due process clause of the United States and South Carolina Constitutions. Instead of cross examining the witnesses about the information it alleged was admissible, the State was allowed to stage a second trial replete with witness testimony and photographs. This testimony and evidence should not have been permitted.

3) **Improper use of a confidential military veteran's record for impeachment of the Defendant on cross and in reply**

During cross examination of the Defendant, the State asked him about statements he made to a psychologist with the United States military during an exit exam to assess him for benefits related to service incurred psychological disabilities. Specifically the State asked about statements that he made to the doctor that he and his wife were having marital problems and statements that he had consumed large quantities of alcohol in the past. The Defendant did not refute those statements made to Dr. Taylor on cross but attempted to explain the difference between his testimony on direct and the statements made over a year prior to the incident to a psychologist with the military. The State then offered Dr. Taylor in reply to introduce the exact statements made by the Defendant during this confidential encounter. The Defendant objected to the testimony and claimed privilege. The doctor also claimed privilege. The Court ordered the doctor to testify despite the claim of privilege by both the Defendant and the psychologist.

The State should never have been permitted to utilize these records in this manner. Veterans of the military are encouraged to engage in these interviews so that a solid assessment of their mental state can be made. They are reassured that these records and findings will never be used against them in the military or elsewhere. They are assured as to the confidentiality of the entire process. The State's use of this document at trial makes a mockery of these assurances. It also placed counsel in the untenable position of attempting to explain what had been said during this assessment totally out

of context.¹

This assessment related to the Defendant's diagnosis of post traumatic stress disorder incurred during his twenty years of military service and multiple combat tours of duty. The Defendant was diagnosed in 2007 and continues to suffer the effects of PTSD to this day. Records to this effect have been provided to the Court and are being attached to this document for the record. There is no diminished capacity defense in South Carolina. It simply doesn't exist. *State v. Gill*, 552 S.E.2d 26 (2001). Thus, unless PTSD rendered the Defendant incapable of distinguishing right from wrong under the M'naghten standard there was no mental health defense available to him.² This is a most unfortunate state of the law in South Carolina, but it is the current state of the law. For this reason counsel sought to exclude any mention of PTSD for fear that it would confuse or frighten the jury. The presence of PTSD would not and could not negate the mental state of malice. The entire trial proceeded accordingly and PTSD was not mentioned by either side. In fact, even if the State had attempted to introduce evidence of the Defendant's mental illness, this evidence would have been excluded.

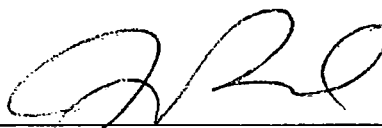
Nonetheless, the State cross examined the Defendant about these statements made to Dr. Taylor and presented Dr. Taylor to testify to these statements that related to how he was coping with his PTSD, how it was affecting his marriage, and his alcohol consumption used to cope with his mental health state. Counsel attempted to cross examine Dr. Taylor in a way that explained the alcohol use without delving into the facts of the Defendant's mental illness. The State had made it clear that it would object if defense counsel attempted to go into PTSD during cross. It was impossible to cross examine Dr. Taylor in a way that did not leave the jury with the inexplicable impression that the Defendant was simply an alcoholic who didn't get along with his wife. Outside of the context of PTSD, these facts make no sense. You have a man who has led the utmost

¹ A copy of this report is attached for the record.

² A finding of Guilty but Mentally Ill is for all intents and purposes a verdict of guilty with the provision that the defendant receive some mental health treatment upon admission to the Department of Corrections. S.C. Code Ann. §

honorable life, who has led a life beyond reproach, but who has struggled with the psychological impact of war and being away from his family for long periods of time. As a result he suffered the injury of PTSD. In the report he explains that he was drinking to help him sleep. Inability to sleep is a common effect of PTSD and alcohol use for numbing that kind of pain is common. However this could not be explained to the jury and the testimony was left for their consideration in a vacuum.

Drinking to help sleep is a far cry from the testimony that State sought to impeach which was the Defendant's testimony that he had a personal drinking rule for social situations. The Defendant never said on direct "I don't ever drink more than two or three beers a day". He said he had a personal rule for drinking at social gatherings and explained this in detail. The statements he was cross examined on dealt with his telling his doctor that he was drinking to help him fall asleep in the context of how he was dealing with his PTSD. Thus, these statements did not properly impeach his direct testimony. Furthermore they were taken out of context and totally misleading. This testimony and cross examination should not have been allowed.



Jennifer Davis
Fielding Pringle
Luke Shealey
Attorneys for Defendant

Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

This 6 day of January, 2012

17-24-20.

DORN VETERANS' HOSPITAL

*** FINAL ***

Processing time: 36

For MENTAL DISORDERS (EXCEPT PTSD AND EATING DISORDERS) Exam

Name: PARVIN, LESLIE

SSN: 457-41 4634 (P4634)

C-Number: 457414634

DOB: JAN 26, 1971

Address: 7930 BAY SPRINGS D

City, State, Zip+4:
COLUMBIA SOUTH CAROLINA 29223

Res Phone: 803-708-3072

Bus Phone:

Entered active service: JUL 6, 1989

Last rating exam date: APR 10, 2009

Released active service: Not specified

Priority of exam: Original SC

Examining provider: TAYLOR, JOHN M

Examined on: JUN 29, 2009

Examination results:

MENTAL DISORDER EVALUATION

PRIORITY OF EXAM: Original service connected

HISTORY: Mr. Parvin is a 38-year-old Caucasian male with 12 years of education. He served in the United States Army from July of 1989 and will be retiring in June of 2009. He will have an honorable discharge. He is a veteran of Desert Storm. He has had three tours of duty in Afghanistan. The veteran's claims folder was not available for review at the time of the examination.

When asked to describe his emotional difficulties the veteran stated, "Since after I moved to Fort Jackson, I got therapy for eight months for posttraumatic stress disorder. My psychiatrist kept it as anxiety disorder, not otherwise specified because I have obsessive-compulsive disorder symptoms." When asked to describe his posttraumatic stress disorder symptoms he stated, "Feeling kind of flat. I have heightened responses. I do get anxiety attacks if I'm in a situation which feels unsafe to me. I react to loud noises. I have intrusive thoughts." In regard to intrusive thoughts, he says he has these daily. He is reporting maintaining sleep and gets approximately five to six hours of sleep per night. He stated he is taking medication and that his sleep is better. When he first came back from his third tour of duty in Afghanistan, he was sleeping very little and had to drink alcohol to sleep. He is reporting nightmares weekly. They are about Afghanistan, or his family being in trouble. When he has these, he wakes up anxious. He often thrashes around in his sleep stating, "I will act out my dreams." He denies flashback symptoms. In regard to traumatic events,

Continued on next page
VA Form 2507

Name: PARVIN, LESLIE

SSN: 457414634

C-number: 457414634

For MENTAL DISORDERS (EXCEPT PTSD AND EATING DISORDERS) Exam

Exam Results Continued

he stated that he had to deal with recovering dead personnel when he was in Afghanistan. He stated that in one battle, early on he had to help retrieve seven soldiers. In 2006, a Chinook helicopter crashed on the side of a mountain and he and some other soldiers had to hike in to recover the bodies that were burned and they had to "pack them out." He stated that during his tour in Afghanistan that he assisted in the recovery and processing of 70 dead soldiers. In regard to social situations he stated, "I don't like them. I don't want to be in them. I want to know where the exits are." He states he is able to go to restaurants and can go to movies. He stated the worst difficulty is when he comes in situations that he is not expecting there to be crowds or to feel somewhat unsafe. In those, he states that he has a heightened response in terms of hypervigilance and anxiety. He is reporting difficulty with anger control which is improved with medication. In regard to the obsessive-compulsive disorder symptoms, he stated he has to say certain prayers in a certain way in order to fend off anxiety. He states he believes if he does not say them in this way that something bad can happen. He also engages in counting and frequent checking behaviors. He said these started once he came back from Desert Storm. He is reporting depression. He denies current suicidal ideation but has had this in the past. He does report startle to noise. He avoids programs about war. He does not watch news about Afghanistan or Iraq, and does not like to talk about his experiences.

PAST MEDICAL HISTORY: Past medical history is significant for degenerative disk disease, degenerative joint disease, gastroesophageal reflux disease, restless leg syndrome, erectile dysfunction, hypertension, hypercholesterolemia, glucose intolerance and sleep apnea.

PAST PSYCHIATRIC HISTORY: The veteran denies any psychiatric history prior to service in the military. He denies any inpatient treatment. He is receiving outpatient treatment for approximately the past eight months consisting of cognitive and behavioral therapy and medication management. He denies any family psychiatric history.

SOCIAL/OCCUPATIONAL HISTORY: The veteran was born and raised in Texas. He denies any childhood history of trauma or abuse. He was an average student. He denied any behavioral or substance use problems in school. He has been married one time for 19 years. He lives with his wife, three sons and his father. He is reporting marital conflict at this point, although they are working on it in counseling. He denies any current or previous legal charges or arrests. He currently drinks approximately a 12-pack of beer per day. He stated that when he came home from his last tour he was drinking heavily. He was drinking both beer and bourbon stating, "I was drinking enough where I couldn't count

Continued on next page
VA Form 2507

Name: PARVIN, LESLIE SSN: 457414634 C-number: 457414634
For MENTAL DISORDERS (EXCEPT PTSD AND EATING DISORDERS) Exam

Exam Results Continued

it." He stated he was doing this to help him sleep. Since getting treatment, however, his alcohol intake has significantly decreased. He denies using drugs. Currently, he is in the military and has no plans at this point for what he is going to do once he retires. He is capable of performing his activities of daily living and does them routinely and independently.

MENTAL STATUS EXAMINATION: At the time of the examination, the veteran was alert and oriented to personal information and place. Temporal orientation was normal. He provided an accurate history. Insight was adequate. Affect was blunted. Response latencies were normal. He demonstrated adequate attention and was not distractible. Spontaneous speech was fluent, grammatic and free of paraphasias. Immediate, recent and remote memory was all within normal limits.

During the interview, he was noted to be logical and goal directed. He is reporting a history of depression. He denies suicidal ideation or plan. He denies homicidal ideation or plan. There is no evidence of disorder in thought process or content. He made good eye contact. There was no pressured speech, grandiosity, irritability or restlessness noted.

DIAGNOSTIC IMPRESSIONS:

Axis I Posttraumatic stress disorder, chronic, moderate.

Axis II No diagnosis.

Axis III Degenerative disk disease, degenerative joint disease, restless leg syndrome, sleep apnea, glucose intolerance, erectile dysfunction

Axis IV Problems related to social environment; problems related with primary support group.

Axis V GAF 50 (current).

DISCUSSION: This veteran is presenting with posttraumatic stress disorder which is more likely than not related to his multiple combat deployments. I do not have the veteran's claims folder available for review, so I cannot compare this current presentation to that previously observed. Currently, he is experiencing a moderate degree of impairment in social functioning and there more likely than not may be moderate degree of impairment in occupational functioning. His overall level of disability is moderate. This veteran is competent to manage his own funds.

John M Taylor, PhD Licensed Clinical Psychologist

/228559 JMT D:06/29/2009 T:06/30/2009 03:14 CT Blkr

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VA Form 2507

Name: PARVIN, LESLIE

SSN: 457414634

C-number: 457414634

For MENTAL DISORDERS (EXCEPT PTSD AND EATING DISORDERS) Exam

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This exam has been reviewed and approved by the examining provider.

VA Form 2507

REPORT: Print C&P Final Report (Manual)

Page: 126

Printed on: Jul 13, 2009 9:08:32 am

System: VISTA.COLUMBIA-SC.MED.VA.GOV

Division: 319

ROA_1766

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
Warrant Numbers: M720026-027

The State of South Carolina,)

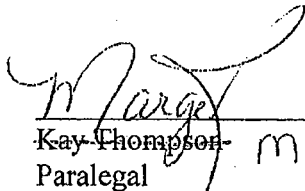
vs.)

Leslie Todd Parvin,)
Defendant.)

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2012 JAN -6 PM 2:46
LEAHETTE W. GORRIDE
C.C.P. & G.S.

I certify that on this date I served the Motion for new trial in the above-captioned case on The State of South Carolina by delivering copies of these documents to the State's attorney of record, Assistant Solicitor Luck Campbell, by delivering said copies to her office located at The Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, Third Floor, 1701 Main Street, Columbia, South Carolina 29201, and leaving them with her clerk or other person of authority at said office.



~~Kay Thompson~~ Margi Rogers
Paralegal

Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

This 6 day of January, 2012

**RICHLAND COUNTY PUBLIC DEFENDER
RICHLAND COUNTY JUDICIAL CENTER**

1701 MAIN STREET
POST OFFICE BOX 192
COLUMBIA, SC 29201

PHONE (803) 765-2592
FAX (803) 929-6156
TDD # (803) 748-4999

January 6, 2012

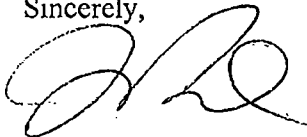
The Honorable Clifton Newman
Chief Judge for Administrative Purposes
Court of General Sessions, Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street
Columbia, South Carolina 29201

Re: Request for hearing in the case of *The State v. Leslie Todd Parvin*

Dear Judge Newman;

Please find enclosed the Defendant's Post Trial Motion for a New Trial. Please don't hesitate to contact me with any questions or problems you may have in this regard, and, of course, please let me know if I may be of any assistance to you in getting this matter heard.

Sincerely,



Jennifer Davis
Deputy Public Defender

cc: Assistant Solicitor Luck Campbell
Attachment

Todd, 290 S.C. 212, 349 S.E.2d 339 (1986). During the defense's case-in-chief, evidence of the defendant's character for peace and honesty was exhaustively presented as well as witnesses' personal knowledge of any alleged homosexual acts committed by the defendant. The defendant, Leslie Todd Parvin, testified for several hours; he made several statements that the State sought to rebut via reply testimony. The defendant testified that he had strict rules regarding drinking in which he would consume no more than two to four beers a day depending on the social situation, a lesson he tried to pass on to his teenage sons. He further testified that he would never do anything to put law enforcement in harm's way – bolstering his attorney's claim during opening statements that he was arrested without incident, lastly the defendant and several defense witnesses, including the defendant's teenage son, testified about intimate details of the Parvin's marriage.

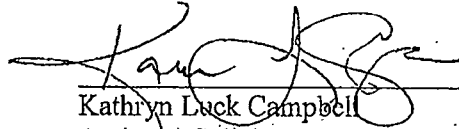
In reply, the State presented testimony ruled by this Court to be permissible. All reply testimony offered by the State was offered to contradict issues presented by defense witnesses or address the credibility of defense witnesses. Major Stan Smith testified that the defendant did not vacate his home when police presence around the home became apparent; the defendant instead sent his teenage son out of the home, he further testified that several guns were found scattered throughout the home – a stark contrast to the contentions of both the defendant and his attorney, Luke Shealey. Evidence of drug paraphernalia found in the home was also offered by Major Smith in reply to one defense witnesses' testimony that he knew Leslie Parvin to be an honest, law abiding citizen as well as the defendant's contention that he and his wife "run a tight ship" in their home.

Reply evidence was presented to rebut the defendant and other defense witnesses regarding the state of the defendant's marriage. The state contends this is proper reply testimony

because it addresses the credibility of defense witnesses. In support of this proposition the State relies on *State v. Smith*, 279 S.C. 440, 308 S.E.2d 794 (1983) which held that a witness could testify on reply that she had been intimate with defendant at a time he had claimed to love the murder victim where, during cross-examination, defendant was evasive in his responses to questions about other relationships with women while he was with the victim. Therefore the reply testimony was admissible because it bore on defendant's credibility.

The defense contends that information regarding defendant's abuse of alcohol was offered improperly, claiming that it violated the ruling that no information regarding Post Traumatic Stress Disorder (PTSD) would be offered by either party and that it is improper character testimony. Evidence was offered simply to refute defendant's claims that he drinks no more than four beers at one time – not as evidence of bad character. Furthermore, at no time during Dr. Taylor's testimony was PTSD mentioned. Defense counsel's Attachment entitled Compensation and Pension Exam Report, contains the documentation of defendant's drinking habits. That report specifically states that the information contained in the report was not gathered for the purpose of diagnosing Post Traumatic Stress Disorder. Throughout the motion defense counsel confuses testimony offered to rebut statements made by the defendant as improper character evidence. At no point during the State's reply testimony did any witness offer evidence of the defendant's reputation for dishonesty or violence. All reply evidence was offered to reject claims made by the defendant that: the defendant drank no more than four beers at one time, the defendant's marriage was without trouble or discord, the defendant was a law abiding citizen that ran a tight ship at home and lastly, that the defendant was arrested without incident.

THEREFORE, defense motion for a new trial should be DENIED.

A handwritten signature in black ink, appearing to read 'Kathryn Luck Campbell', is written over a horizontal line.

Kathryn Luck Campbell
Assistant Solicitor
Fifth Judicial Circuit

This 17 day of January, 2012
Columbia, South Carolina

WITNESSES

✓
(S) B Gwyn – Richland County Sheriff

ARREST WARRANT NUMBER

M720026

ACTION OF GRAND JURY

Merna Gaidner
Foreperson of Grand Jury FEB 11 2011
Date:

VERDICT

Guilty

Lewis L. Hutchison, Jr.
Foreperson of Petit Jury
Date: 12/21/11

DOCKET NO. 2011-GS-40-0897

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

February TERM 2011

42

THE STATE

vs.

Leslie Todd Parvin

Indictment for
MURDER

SC Code: 16-03-0010

CDR Code: 0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ROA_1773

WITNESSES

✓
(S) B Gwyn – Richland County Sheriff

ARREST WARRANT NUMBER

M720027

ACTION OF GRAND JURY

TRUE BILL

Mena Gardiner
Foreperson of Grand Jury
Date: FEB 11 2011

VERDICT

Guilty

Louisa L. Hutton, Jr.
Foreperson of Petit Jury
Date: 12/21/11

DOCKET NO. 2011-GS-40-0898

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

February TERM 2011

42

THE STATE
vs.

Leslie Todd Parvin

Indictment for
MURDER

SC Code: 16-03-0010
CDR Code: 0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ROA_1774

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 11-GS-40-897 and 11-GS-40-898

The State of South Carolina, ... Respondent,
v.
Leslie Todd Parvin, ... Appellant.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Michael J. Anzelmo
SC Bar No. 72933
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803.799.2000

Attorneys for Leslie Todd Parvin

Columbia, South Carolina

July 26, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 11-GS-40-897 and 11-GS-40-898

The State of South Carolina, ... Respondent,

v.

Leslie Todd Parvin, ... Appellant.

PROOF OF SERVICE

I, the undersigned attorney in the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Leslie Todd Parvin, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by emailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Record on Appeal

Counsel Served:

Brendan McDonald
S.C. Attorney General's Office
P. O. Box 11549
Columbia, SC 29211



Michael J. Anzelmo
Attorney for Appellant

July 26, 2013