

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAR 26 2015

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions
Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2013-002444

THE STATE,

RESPONDENT,

v.

DEMETRISS ALSHAWN GLENN,

APPELLANT.

RECORD ON APPEAL

ALAN WILSON
Attorney General
JOHN W. MCINTOSH
Chief Deputy Attorney General
DONALD ZELENKA
Senior Assistant Attorney General
KAYCIE S. TIMMONS
Assistant Attorney General
SC Bar No. 100237
Office of the Attorney General
PO BOX 11549
Columbia, SC 29211
(803) 734-0265

DONALD V. MYERS
Solicitor Eleventh Judicial Circuit
PO BOX 874
Lexington, SC 29072
(803) 785-8285

Counsel for Respondent

David Proffitt
Proffitt & Cox, LLP
140 Wildewood Park Drive, Suite A
Columbia, S.C. 29223-4311
Telephone: (803) 834-7097
Email: dproffitt@proffittcox.com

Robert M. Dudek
Chief Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, SC 29201
Telephone: (803) 734-1330
Email: rdudek@sccid.sc.gov

Attorneys for Appellant

INDEX

Notice of Appeal.....	ROA-1 to -2
Indictments and sentencing sheets.....	ROA-3 to -17
Transcript of trial.....	ROA-18 to -554
Exhibit List.....	ROA-23 to -29
Monday, November 4, 2013 Opening Remarks by the Court.....	ROA-30
Jackson v. Denno Hearing	
Testimony of Witnesses:	
Barry Sowards	
Direct Examination.....	ROA-44 to -48
Cross Examination.....	ROA-48 to 0-49
Joseph Chappell	
Direct Examination.....	ROA-49 to -67
Cross Examination.....	ROA-67 to -68
Ruling of the Court.....	ROA-69
Motions in Limine.....	ROA-69 to -90
Tuesday, November 5, 2013 Jury Sworn	
Opening Remarks by the Court.....	ROA-93 to -104
Opening Remarks by the State.....	ROA-104 to -110
Opening Remarks by Defense.....	ROA-111 to -112
Testimony of Witnesses:	
Melissa Hayes	
Direct Examination.....	ROA-115 to -125
Cross Examination	ROA-125 to -126
James Kemfort	
Direct Examination.....	ROA-126 to-141
Cross Examination	ROA-141 to -143

Glenn Ross
Direct Examination.....ROA-143 to -181
Cross Examination.....ROA-181 to -184
Redirect Examination..... ROA-184 to -194

Marsha Renee Stickland
Direct Examination.....ROA-185 to -229
Cross Examination.....ROA-229 to -230

Robert Gregory Tice
Direct Examination.....ROA-232 to -238

Catherine Leisy
Direct Examination.....ROA-239 to -254
Cross Examination.....ROA-254 to -255

John Barron
Direct Examination.....ROA-255 to -263
Cross Examination.....ROA-263 to -264

Cathy Etheredge
Direct Examination.....ROA-264 to-280
Cross Examination.....ROA-280 to -281
Redirect Examination.....ROA-281 to -282

Barry Sowards
Direct ExaminationROA-282 to -297
Cross Examination.....ROA-297 to -298

Wednesday, November 6, 2013

Testimony of Witnesses:

Joseph Chappell
Direct Examination.....ROA-307 to -354
Cross Examination.....ROA-354 to -356

Charlie Plumley
Direct Examination.....ROA-361 to -376
Cross Examination.....ROA-376 to -379

Jennifer Wells Herd
Direct Examination.....ROA-379 to -385
Cross Examination.....ROA-385 to -386

Tyrone Williams	
Direct Examination.....	ROA-387 to -411
Cross Examination.....	ROA-411 to -414

Janice Ross, M.D.	
Direct Examination.....	ROA-419 to -432
Cross Examination.....	ROA-432 to -433
Redirect Examination.....	ROA-433

State Rests.....ROA-433

Motions for Directed Verdict.....ROA-434 to -441

Ruling of the Court.....ROA-441

Defense Rests.....ROA-450

Thursday, November 7, 2013

Motions on Jury Charges and Rulings of the CourtROA-453 to -467

Closing Arguments

By the State.....	ROA-471 to-494
By the Defense.....	ROA-494 to -515

Charge of the Court.....ROA-531 to -533

Jury Verdict.....ROA-538

Sentence of the Court.....ROA-554

Court Reporter’s Certification.....ROA-555

Affidavit of Drew Radeker and jury charges requested by Appellant.....ROA-556 to -583

Certificate of Counsel regarding Record on Appeal..... ROA-584

1 door all jibber about having just admitted to the
2 fact that he was an accessory to a crime, he had
3 evidence from an ongoing investigation and had
4 communications with a suspect.

5 But miraculously, remember when I asked
6 him, we asked him if he had any pending charges,
7 "Oh, no," although being a convicted felon, he had a
8 gun in his house. He had had communications with a
9 suspect in a crime that the guy told him he might
10 have killed somebody. Nothing, no charges pending,
11 nothing.

12 And they said he didn't have a deal. He
13 didn't need a deal. That was his deal. He gets to
14 get out of jail before Thanksgiving. Now, let's
15 talk about some more of these -- I keep going back
16 to my little sheet here. What else did Tyrone
17 Williams say, their star witness? Let's see, he
18 said -- he couldn't get his conversations right.
19 Remember that?

20 The prosecutor several times had to like
21 ask him the same question many times. And remember
22 what he said about Mr. Tice? He told the story
23 that, you know, "Oh, he was bleeding. He was hit by
24 a bottle." But then what do you hear from the
25 pathologist? Most likely, it was a stool. Tyrone

1 Williams said it was a bottle.

2 And they questioned him a couple of times,
3 and then he eventually said, "Oh, I think he said
4 something about a stool." Come on. Either he knows
5 something, or he doesn't. And they tried to explain
6 this away by saying "Well, that's the story Shawn
7 told him." Well, is it, or is the guy just lying?
8 I mean, really.

9 After a while, you have to ask yourself
10 what do you believe. What do you believe? Who do
11 you believe? Because it boils down to credibility
12 with these guys, because none of this -- none of it
13 -- points to our guy.

14 They put up 16 witnesses, from my count.
15 Two of them -- two -- said anything about my guy was
16 involved in this murder. Only two witnesses said
17 that Shawn had anything to do with this murder, and
18 these weren't eyewitnesses.

19 These weren't people who had a first-hand
20 knowledge of anything. These are people who had no
21 kind of experience with what happened that night,
22 none. They admit that. They weren't there.

23 They don't know. All they know is what
24 they supposedly told prosecutors that Shawn told
25 them. They had every opportunity to question the

1 people who would know.

2 They could have went to the horse's mouth.
3 As a matter of fact, they did go to the horse's
4 mouth. You heard the testimony on the stand. At
5 least three investigators talked to Marie Driggers
6 and Kenneth Walters.

7 They said they gave statements. But you
8 didn't see them here, did you? Because they had
9 something to say that the prosecutors didn't want
10 you to hear.

11 MR. GRAHAM: Objection, Your Honor.

12 THE COURT: Sustained.

13 MR. GRAHAM: The facts on that is that he
14 knows those people are charged, and they have their
15 trials coming up.

16 THE COURT: Sustained, and that comment is
17 stricken.

18 MR. CORNWELL: I didn't say anything about
19 what they did, Your Honor. And I think we're
20 allowed to comment on the fact that it calls --

21 THE COURT: I made my ruling.

22 MR. CORNWELL: I'm sorry. Your Honor, I
23 apologize, Your Honor.

24 THE COURT: All right.

25 MR. CORNWELL: You heard the officers

1 testify. You didn't see him here. They had every
2 opportunity. All we have is the word of Kenneth
3 Walters -- I'm sorry. All we have is the word of
4 two liars. That's all we have.

5 Let's talk about some more
6 inconsistencies. You heard Mr. Williams --
7 Detective Sowards talk about his conversation with
8 Mr. Williams. One of the first things he wants to
9 know is about the Crime Stoppers money. What's his
10 motivation to lie?

11 You heard about, let's see, Mr. Plumley
12 and Mr. Williams. One of the things they were
13 consistent about, Shawn was passed out in the back
14 seat. Shawn was passed out in the back seat while
15 Walters and Driggers are in the front seat planning
16 how they're going to pull this off.

17 But somehow they want you to believe that
18 through the power of ESP or whatever that Shawn
19 absorbs this conversation and knew what was going
20 on. And they say, "Well, they planned this ahead of
21 time. They talked about this before." Well, Mr.
22 Williams got up there and said something about,
23 "Yes, we talked about a robbery two weeks before.
24 But I don't know, they said something about a case."
25 He couldn't even be sure they were talking about the

1 same robbery.

2 Both of them say asleep in the back seat,
3 passed out in the back seat, intoxicated. Does that
4 sound like the mastermind of a criminal enterprise?
5 Does that sound like something that a person who was
6 the mastermind would do? Would you go to the
7 trouble of planning something and then fall asleep
8 and let other people execute it? That is not what a
9 mastermind does.

10 The prosecution in their opening referred
11 to him as alpha dog. He wasn't the mastermind. I
12 told you -- we told -- he told you in the opening
13 that you'd hear that Marie Driggers planned this,
14 that you would hear Marie Driggers had tried to plan
15 one before, and that you would hear that Marie
16 Driggers is the one that texted Kenneth Walters in
17 the car -- Kenneth Walters, not my client, not Shawn
18 -- you'd hear all of that. And you did. You heard
19 it -- from the State's witnesses, their own
20 witnesses. You heard it.

21 And now they want you to believe that
22 Shawn is the mastermind, although their own
23 witnesses said Marie was the mastermind. She
24 planned all of this. they want you to somehow
25 believe that he was the ringleader, even though

1 Tyrone Williams told you one of the first times that
2 he met her, she tried to rope him into an armed
3 robbery or some deal similar. But Shawn's the
4 mastermind. He's the alpha dog. He's the one
5 behind it.

6 That's what they want you to believe,
7 although all of their own evidence points to the
8 contrary. That's what they want you to believe,
9 because they formed this theory early on, and
10 they're not willing to let go of the bone.

11 No matter how wrong they are, now much the
12 evidence points in a different direction, they've
13 got an idea in their head and they're going to stick
14 with it.

15 They've got in their head that Shawn did
16 this, despite the fact they have no evidence to
17 prove it. They could have brought some people, but
18 instead they get the two witnesses who can come in
19 here and say anything they want about what happened,
20 as long as they say Shawn did it. That's what they
21 did.

22 And that's exactly what those guys did.
23 They got up there on the stand and told the best
24 story they could think to tell. And the prosecutor
25 was telling you, "Hey, they could have told a better

1 lie." Yes, they could have if they knew the whole
2 story, they knew what was going on. But they
3 didn't.

4 There's an explanation for why their story
5 wasn't perfect. It's because they were lying, not
6 because they didn't supposedly get the facts
7 straight from Shawn. It's because they were making
8 it up.

9 That's why they didn't get the facts
10 straight. There were no facts to get straight.
11 They just didn't get their lies straight. Let's
12 call it like it is. As I said earlier, they had 16
13 witnesses.

14 Beg the Court's indulgence, Your Honor.

15 THE COURT: Yes, sir.

16 MR. CORNWELL: They had 16 witnesses.

17 Y'all remember grade school, when you were in
18 school? You remember how to figure out a GPA?
19 Sixteen witnesses here. Two -- they only called two
20 witnesses, two witnesses that can tie -- that they
21 say can tie Shawn to the crime scene.

22 Two divided by 16 equals .125. Multiply
23 that times 100, and what do you get? Twelve
24 percent. They failed. That is an F. They failed
25 to prove to you beyond a reasonable doubt that Shawn

1 was at that crime scene.

2 They had 16 questions, and they answered
3 two. They didn't get two right, because they
4 answered wrong. But we'll give them credit for
5 putting witnesses on the stand. F, that's what 12.5
6 percent is. They make a lot of noise about the
7 comments, about the statements that they say were
8 made, "I handled it."

9 Guess what? He didn't say that. He
10 didn't say it. Their witnesses said he said it.
11 That's what happened. That's what you heard. Shawn
12 [sic] Williams didn't get on that stand and say
13 that. Nobody say that. All they have is the words
14 of the two liars who said he said it.

15 I talked to Tyrone Williams. The first
16 question I asked, "What's your name?" "Tyrone
17 Parker." Who's Tyrone Parker? It's a fake name.
18 You heard the prosecutor say, "Hey, they could have
19 told a lot of stories. They could have told a lot
20 of stories."

21 They could have told the truth. That's
22 what they should have done, but they didn't. They
23 got up there and lied.

24 What other inconsistencies can we bring
25 out in their story? You heard Mr. Williams say that

1 he saw Shawn shortly after the murder, a day, maybe
2 two. And he ran into him at the hotel, had his
3 shirt off.

4 You didn't hear anybody, even the officer
5 who talked to Mr. Glenn, testify to observing any
6 injuries on him, although supposedly their witnesses
7 say our guy smashed a guy with a bottle that smashed
8 -- no glass cuts, nothing.

9 Nobody says anything to that effect, no
10 injuries on Mr. Glenn. Somehow he gets into a
11 scuffle. Somehow he brandishes a bottle which he
12 smashes over somebody's head and escapes any visible
13 injury. Really? What do you believe? Reasonable
14 doubt, it's there.

15 What else can we point out, huh? Let's
16 talk about this stool. The State says it's the
17 murder weapon. They make a lot of hay about how
18 there's some separation here at the top of this
19 stool.

20 Looking at this picture, how they
21 originally found the stool in the house, I can't see
22 any separation on the top of the chair. I can't see
23 it. I can't see it.

24 But when Renee Strickland comes to collect
25 the chair from the house after it's been moved to a

1 different location on top of the washing machine,
2 the separation is clear as day. Also, if you notice
3 on the leg, there's a stain there -- a stain on the
4 leg of the chair that supposedly my client wiped so
5 clean of any evidence.

6 According to the testimony of the liars,
7 according to the testimony of their murderer,
8 according to the testimony of their convicted
9 counterfeiter, according to the testimony of the two
10 people who had every reason to lie and manufacture
11 stories, my client wiped this chair down clean.
12 Clear as day, the stain is on the leg.

13 Reasonable doubt, people, that's what
14 we're talking about. You can't send a person to
15 prison if you have reasonable doubts about any
16 element of this crime, of the crime that he's
17 charged with. And the judge is going to instruct
18 you.

19 When you are back in that jury room,
20 you're going to have to answer some questions.
21 Y'all are going to start deliberating, and your
22 fellow jurors might want to -- it might get heated.
23 Some people might disagree. You might want to send
24 Shawn to jail, or somebody else might want to acquit
25 him. You're going to have to talk it out.

1 And when you go back in that jury room,
2 some people might say, "Those guys said that he told
3 them he did these certain things." But this is the
4 thing. If you don't believe those guys, that is
5 well within your power to do, and the judge will
6 instruct you on that.

7 You don't have to believe a word they say.
8 You can choose to say, "I don't believe them," and
9 acquit Mr. Glenn, because that's your right as a
10 juror.

11 As a matter of fact, it's your duty as a
12 juror if you find testimony unbelievable, to act
13 accordingly. If you go back there and you're like,
14 "I just don't know. I just don't know. The State
15 put up a case.

16 They had lots of evidence, but it doesn't
17 seem like to me any of it ties Shawn to the scene,"
18 a fellow juror says, "Yes, but it does show that
19 Timothy Tice was killed," in his opinion, you can
20 disagree.

21 What you need to tell them is that "Hey,
22 it doesn't matter if it shows he was murdered. It
23 has to show that Shawn Glenn did the murder."
24 That's what you tell them.

25 I beg the Court's indulgence.

1 THE COURT: Yes, sir.

2 MR. CORNWELL: I think one of the things
3 that's most telling is that when Tyrone Williams was
4 on the stand and the prosecutor was questioning him
5 about the phrase that they've made so essential to
6 their, "I handled it," he couldn't get even that
7 right, couldn't get that whole conversation right.
8 He had to be asked a couple of times before he got
9 it right.

10 The temptation is going to be for you guys
11 to render a verdict because a man is dead. And
12 that's not the right way to approach this. We're
13 here to determine whether or not the State has
14 proven their case beyond a reasonable doubt that
15 Shawn is guilty of what they say he's guilty of.

16 That's your job, to weigh the evidence,
17 the facts that were presented, look at it and decide
18 what you believe, you find credible, and you make
19 that determination.

20 The fact that this tragic, terrible event
21 has occurred, the fact that the family is grieving
22 at the loss of a loved one does not relieve you of
23 the responsibility to ensure that a man does not go
24 to prison without having a fair trial.

25 It does not give anyone the authority to

1 ignore reasonable doubt, no matter how sad the
2 family gets, no matter how much they're grieving, no
3 matter how much you sympathize with them, because I
4 sympathize with them also, but I'm not a juror.

5 Your responsibility is to render a just
6 verdict. And justice in this case would be finding
7 Shawn Glenn not guilty. Thank you.

8 THE COURT: Thank you, Mr. Cornwell.

9 CHARGE OF THE COURT

10 Ladies and gentlemen, when we started this
11 case, I told you that you are the triers of the
12 facts -- you're the judge of the facts, and I'm the
13 judge of the law.

14 And so while the lawyers are presenting to
15 you the facts of the case, it's been appropriate for
16 me to be out of the way to allow them to do that.
17 But we've reached the portion of this trial now
18 where you and I are in this together, you as the
19 judges of the facts and me as the judge of the law.

20 So I think it is appropriate that I come
21 down to be with you as I give you the charge on the
22 law. I don't want to misstate anything or leave
23 anything out, so I'm going through this verbatim,
24 and you will have a copy of this in the jury room.
25 So if you would, give me your attention as I give

1 you the law that is applicable to the trial of this
2 case.

3 Mr. Foreman and members of the jury,
4 you've all heard the evidence and the arguments of
5 both parties. I will now explain to you the law
6 which applies to this action.

7 The indictments charge the defendant,
8 Demetriss Alshawn Glenn, with the offenses of
9 murder, burglary in the first degree, and armed
10 robbery.

11 I remind you that the fact that the
12 defendant was arrested, charged, and indicted in
13 this case is not evidence in this case, and it
14 cannot be considered by you as evidence of guilt in
15 this case; nor does it create any presumption or
16 inference of guilt.

17 The indictments are simply the formal
18 written instruments which contain the charges made
19 against the defendant. They are the formal
20 documents which brings this case into this
21 courtroom.

22 Now, I'm going to give you a copy of these
23 instructions in written form to have with you in the
24 jury room. During your deliberations, you may refer
25 to these instructions to guide your decision making.

1 You must consider the instructions as a whole and
2 not follow some and ignore others.

3 The defendant has pled not guilty to these
4 indictments and to these charges, and that plea puts
5 the burden on the State to prove the defendant
6 guilty. A person charged with committing a criminal
7 offense in South Carolina is never required to prove
8 him- or herself innocent.

9 I charge you that it is an important rule
10 of law that a defendant in a criminal trial, no
11 matter what the seriousness of the charge may be,
12 will always be presumed to be innocent of the crime
13 for which the indictment was issued unless guilt has
14 been proven by evidence satisfying you of that guilt
15 beyond a reasonable doubt.

16 This presumption of innocence does not end
17 when you begin your deliberations, but it
18 accompanies the defendant throughout the trial until
19 you reach a verdict of guilt based on evidence
20 satisfying you of that guilt beyond a reasonable
21 doubt.

22 The presumption of innocence is not a mere
23 legal theory. It's not just a legal phrase. But it
24 is a substantial right to which every defendant is
25 entitled unless you, the jury, are satisfied from

1 the evidence of the defendant's guilt beyond a
2 reasonable doubt.

3 As I said, the State has the burden of
4 proving the defendant guilty beyond a reasonable
5 doubt. So what is a reasonable doubt in the law?
6 Some of you may have served as jurors in civil cases
7 where you told that it is only necessary to prove
8 that a fact is more likely true than not true, such
9 as by the greater weight or the preponderance of the
10 evidence.

11 In criminal cases, the State's proof must
12 be more powerful than that. It must be beyond a
13 reasonable doubt. Proof beyond a reasonable doubt
14 is proof that leaves you firmly convinced of the
15 defendant's guilt.

16 There are very few things in this world
17 that we know with absolute certainty. And in
18 criminal cases, the law does not require proof that
19 overcomes every possible doubt.

20 The State's burden simply requires proof
21 beyond any reasonable doubt. Now, I remind you that
22 during this trial, you and I have certain duties to
23 perform.

24 As the trial judge, it is my
25 responsibility to preside over the trial of this

1 case, and I also have the duty to rule on the
2 admissibility of the evidence offered during this
3 trial.

4 You are to consider only the competent
5 evidence before you. You are to consider only the
6 testimony which has been presented from the witness
7 stand, any exhibits which may have been made a part
8 of the record in this case, and any stipulations or
9 agreements of counsel.

10 I have the additional duty to charge you
11 the law applicable to this case. As the presiding
12 judge, I am the sole judge of the law in this case,
13 and it is your duty as jurors to accept and to apply
14 the law as I now state it to you.

15 If you already have an idea as to what the
16 law is or what the law ought to be and it does not
17 agree with what I now tell you the law is, you must
18 abandon your idea, because you are sworn to accept
19 the law and to apply the law exactly as I state it
20 to you.

21 In every case tried in this Court before a
22 jury, the jury becomes the sole and the exclusive
23 judge of the facts of the case. A trial judge
24 cannot intimate, state, comment on, or make any
25 statement to a trial jury about the facts in a case.

1 Since you, the jury, are the sole judge of
2 the facts in this case, you are not to infer from
3 what I have said during the process of this trial in
4 ruling on the admissibility of evidence or otherwise
5 or anything that I say now during the course of this
6 instruction to you that I have any opinion about the
7 facts in this case.

8 The law does not allow me to have an
9 opinion about the facts in this case. This is a
10 matter solely for you, the jury, to determine. As
11 jurors, it is your duty to determine the effect,
12 value, weight, and truth of the evidence presented
13 during this trial.

14 Now, there are two types of evidence which
15 are generally presented in a trial. There's direct
16 evidence, and there's circumstantial evidence.
17 Direct evidence is the testimony of a person who
18 claims to have actual knowledge of a fact, such as
19 an eyewitness. It is evidence which immediately
20 establishes the main fact to be proved.

21 Circumstantial evidence is proof of a
22 chain of facts and circumstances indicating the
23 existence of a fact. It is evidence which
24 immediately establishes collateral facts from which
25 the main fact may be inferred. In other words,

1 circumstantial evidence is based on inference and
2 not on personal knowledge or observation.

3 Now, crimes may be proven by
4 circumstantial evidence. The law makes absolutely
5 no distinction between the weight or value to be
6 given to either direct or circumstantial evidence,
7 nor is there a greater degree of certainty required
8 of circumstantial evidence than of direct evidence.

9 You should weigh all of the evidence in a
10 case and give it whatever consideration you find
11 appropriate. Now, to the extent the State relies on
12 circumstantial evidence, all of the circumstances
13 must be consistent with each other and when taken
14 together point conclusively to the guilt of the
15 accused beyond a reasonable doubt and to the
16 exclusion of every other reasonable hypothesis.

17 If these circumstances merely portray the
18 defendant's behavior as suspicious, then the proof
19 has failed. The State has the burden of proving the
20 defendant guilty beyond a reasonable doubt. This
21 burden rests with the State regardless of whether
22 the State relies on direct evidence, circumstantial
23 evidence, or some combination of the two.

24 So necessarily you must determine the
25 credibility of the witnesses who have testified in

1 this case. And credibility simply means
2 believability. It becomes your duty as jurors to
3 analyze and to evaluate the evidence and determine
4 which evidence convinces you of its truth.

5 In evaluating eyewitness testimony, you
6 should remember that the State must prove the
7 identity of the defendant as the person who
8 committed the crime beyond a reasonable doubt. In
9 determining the believability of witnesses that have
10 testified in this case, you may believe one witness
11 over several witnesses or several witnesses over one
12 witnesses.

13 You may believe a part of the testimony of
14 a witness and reject the remaining part of that
15 testimony. You may believe the testimony of a
16 witness in its entirety or reject that testimony in
17 its entirety. You may consider whether any witness
18 has exhibited to you any interest, bias, prejudice,
19 or other motive in this case.

20 You may consider whether a witness is
21 seeking a personal gain as well as the appearance
22 and the manner of a witness while on the witness
23 stand. Now, rules of evidence ordinarily do not
24 permit witnesses to testify to opinions or
25 conclusions. An exception to this rule exists for

1 witnesses that we call expert witnesses.

2 A witness who by education and experience
3 has become an expert in some science, art,
4 profession, or calling may state an opinion as to a
5 relevant and material matter in which the witness
6 claims to be an expert and may also state the
7 reasons for that opinion. You should consider any
8 expert opinion received into evidence in this case
9 and, like any other evidence, give it the weight you
10 think it deserves.

11 An expert witness' testimony is not to be
12 given any greater weight than that of any other
13 witness simply because the witness is an expert.
14 And furthermore, you're not required to accept an
15 expert's opinion, even though it's not
16 contradictory.

17 Now, a statement alleged to have been made
18 by the defendant has been admitted into evidence in
19 this case. While the Court has determined that the
20 statement is admissible, I instruct you that you,
21 the jury, make the ultimate decision of whether or
22 not the defendant made the statement.

23 If the defendant did make the statement,
24 you must determine whether the statement was made by
25 the defendant voluntarily and of his own free will.

1 This means that the statement was not
2 caused by pressure, force, fear, threats, coercion,
3 or intimidation or by hope or a promise of leniency
4 or a reward of any kind. In determining whether the
5 statement was voluntary, you should consider both
6 the characteristics of the defendant and the details
7 of the questioning.

8 The State has the burden of proving beyond
9 a reasonable doubt that the alleged statement was
10 made by the defendant and that it was voluntarily
11 given. You must carefully consider all of the
12 surrounding circumstances before you give any weight
13 to an alleged statement.

14 Now, I instruct you and I emphasize the
15 fact that the defendant did not testify in this case
16 is not a factor to be considered by you in any way
17 in your deliberation and in your consideration on
18 the question of the guilt or innocence of the
19 defendant.

20 It must not be considered by you in any
21 manner whatsoever. A defendant has the
22 constitutional right to remain silent, and the
23 assertion of this right must not be considered by
24 you in your deliberations. I repeat, under your
25 oath, you are to draw no conclusions whatsoever from

1 the fact that the defendant in this case did not
2 testify.

3 The fact that this defendant did not
4 testify should not even be discussed in the jury
5 room. The burden of proof, as I have stated to you,
6 is on the State. The defendant is not required to
7 prove his or her innocence. The burden of proof
8 remains on the State to prove guilt beyond a
9 reasonable doubt.

10 Now, there are several indictments or
11 charges in this case. Each charge is a separate
12 crime. You must consider each charge separately.
13 That is, you must decide separately what the
14 evidence in the case shows about each crime charged.

15 Your decision on one charge should not
16 affect your decision on another charge. You take
17 each indictment or charge on its own merit. The
18 defendant may be convicted or acquitted on any or
19 all of the offenses charged. You will be asked to
20 write a separate verdict of guilty or not guilty for
21 each charge.

22 Now, the defendant is charged with the
23 crime of murder. The following are the elements
24 that the State must prove beyond a reasonable doubt
25 to prove murder: one, that the defendant killed

1 another person; and, two, that he did so with malice
2 aforethought.

3 Malice is hatred, ill will, or hostility
4 toward another person. It is the intentional doing
5 of a wrongful act without just cause or excuse and
6 with the intent to inflict an injury or under
7 circumstances that the law will infer an evil
8 intent.

9 Malice aforethought does not require that
10 malice exist for any particular time before the act
11 is committed. But malice must exist in the mind of
12 the defendant just before and at the time that the
13 act is committed. Therefore, there must be a
14 combination of the previous evil intent and the act.

15 Malice aforethought may be express or
16 inferred. These terms, express and inferred, do not
17 mean different kinds of malice but merely the manner
18 in which malice may be shown to exist. That is,
19 either by direct evidence or by inference from the
20 facts and circumstances which are proved.

21 Express malice is shown when a person
22 speaks words which express hatred or ill will for
23 another or when the person prepared beforehand to do
24 the act which was later accomplished.

25 For example, lying in wait for a person or

1 any other acts of preparation going to show that the
2 deed was within the defendant's mind would be
3 express malice.

4 Inferred or implied malice may be found to
5 exist when circumstances demonstrate a wanton or a
6 reckless disregard for human life or when a
7 reasonably prudent person would have know that
8 according to common experience, there was a plain
9 and strong likelihood that death would follow the
10 contemplated act.

11 If two or more combine together to commit
12 an unlawful act such as a robbery and in the
13 execution of that criminal a homicide is committed
14 by one of the actors as a probable or natural
15 consequence of the acts done in pursuant of the
16 common design, then all present participating in the
17 unlawful undertaking are as guilty as the one who
18 committed the fatal act.

19 The common purpose may not have been to
20 kill in a murder. But if it was unlawful as, for
21 instance, to break in and steal, and in the
22 execution of this common purpose a homicide is
23 committed by one as a probable or natural
24 consequence of the acts done in pursuant of the
25 common design, then all present participating in the

1 unlawful common design are as guilty as the slayer.

2 Now, the defendant is charged with first-
3 degree burglary. The State must prove beyond a
4 reasonable doubt that the defendant entered a
5 dwelling without consent. A dwelling is any
6 building or portion of a building in which a person
7 ordinarily sleeps. But a building is a dwelling
8 even if the residents are temporarily absent from
9 that building.

10 The State does not have to prove that
11 force was used to gain entry. If a person enters a
12 building by using deception, artifice, trick, or
13 misrepresentation to get consent to enter, this is
14 an entry without consent.

15 Next, the State must prove beyond a
16 reasonable doubt that the defendant intended to
17 commit a crime, either a felony or misdemeanor, at
18 the time of the entry. The mere entry into a
19 dwelling without consent is not burglary. If the
20 intent to commit a crime is formed after the entry,
21 it's not burglary.

22 On the other hand, if the defendant
23 intended to commit a crime at the time of the entry,
24 it is a burglary, even if the intent was abandoned
25 after entry. It does not matter that the intended

1 crime was not completed. The defendant's actions
2 after he entered the dwelling can be evidence used
3 to determine if he had intent to commit a crime at
4 the time of the entry.

5 Intent may be shown by acts and conduct of
6 the defendant and other circumstances from which you
7 may naturally and reasonably infer intent. In
8 effecting entry or while in the dwelling or
9 immediate flight thereof, the State must prove
10 beyond a reasonable doubt the defendant or an
11 accomplice either, one, was armed with a deadly
12 weapon; and/or, two caused physical injury to a
13 person who was not a participant in the crime;
14 and/or, three, used or threatened to use a dangerous
15 instrument; and/or, four, displayed what was or what
16 appeared to be a pistol, revolver, or other firearm;
17 and/or, five, the entering or the remaining occurred
18 in the night time.

19 And night time is the period between
20 sunset and sunrise during which there is not enough
21 daylight to recognize a person's face except by
22 artificial light or moonlight.

23 Now, finally, the defendant is charged
24 with armed robbery. In order to prove this offense,
25 the State must first prove beyond a reasonable doubt

1 that the defendant took personal property from the
2 person or presence of another person.

3 Property is in the presence of a person if
4 it is within the person's reach, inspection,
5 observation, or control so that the person could, if
6 not overcome with violence or prevented by fear,
7 could keep possession of that property.

8 The State must also prove beyond a
9 reasonable doubt that the defendant carried the
10 property away, intending to permanently deprive the
11 owner of that property and to keep the property for
12 the defendant's own use.

13 The slightest removal of the property or
14 the complete possession of the property, even for an
15 instant, by the defendant is sufficient to show a
16 taking and carrying away of the property. The
17 taking and carrying away of the property must have
18 been done with violence or by putting the owner of
19 the property in fear of violence.

20 It is not essential that a victim in an
21 armed robbery must be alive when the robbery occurs.
22 However, in order to be guilty of armed robbery in
23 conjunction with a homicide, the State must prove
24 the victim's death and the taking are part of a
25 continuous chain of events so interconnected as to

1 be inseparable.

2 If the taking was made possible by an
3 antecedent assault, the offense is robbery
4 regardless of whether the victim died before or
5 after the taking of the property.

6 Finally, the State must prove beyond a
7 reasonable doubt that the defendant was armed with a
8 deadly weapon during the robbery.

9 A deadly weapon is any article,
10 instrument, or substance which is likely to cause
11 death or great bodily harm. Whether an instrument
12 has been used as a deadly weapon depends on the
13 facts and circumstances of each case.

14 Now, if a crime is committed by two or
15 more people who are acting together in committing a
16 crime, the act of one is the act of all. A person
17 who joins with another to commit an unlawful is
18 criminally responsible for everything done by the
19 other person which happens as a probable or natural
20 consequence of the acts done in carrying out the
21 common plan and purpose.

22 For example, two people can be guilty of
23 killing another person when only one of the two had
24 a gun, there was only one bullet, and only one of
25 the two fired the shot that caused the death.

1 If two or more people are acting together,
2 assisting each other in committing the offense, the
3 act of one is the act of all, or it is sometimes
4 said the hand of one is the hand of all.

5 The State must prove beyond a reasonable
6 doubt by the competent evidence the theory of the
7 hand of one is the hand of all. A principal in a
8 crime is one who either actually commits the crime
9 or who is present aiding, abetting, or assisting in
10 the committing of the crime. When a person does an
11 act in the presence of and with the assistance of
12 another, the act is done by both.

13 Where two or more acting with a common
14 plan or intent are present at the commission of a
15 crime, it does not matter who actually commits the
16 crime. All are guilty.

17 The hand of one is the hand of all.
18 Present at the commission of a crime means to be
19 sufficiently near to aid and abet and assist in the
20 commission of the crime.

21 However, mere presence at the scene of a
22 crime is not sufficient to convict one as a
23 principal on the theory of aiding and abetting.
24 Intent is also a necessary element, for there must
25 have been a common decision or intent to commit a

1 crime, and the crime must have been committed
2 pursuant thereto with the person aiding and abetting
3 by some overt act.

4 Intent may be shown by acts and conduct of
5 the defendant and other circumstances from which you
6 may naturally and reasonably infer intent. And the
7 State must prove these elements beyond a reasonable
8 doubt.

9 Now, Mr. Foreman and ladies and gentlemen
10 of the jury, as you retire to begin your
11 deliberations, I want to express to you the hope
12 that each of you will be mindful of the importance
13 of your responsibility. You're not called upon to
14 serve as jurors very often. And the proper
15 performance of the duty requires each of you to
16 reach the height of freeing your mind of all
17 improper influences.

18 As the presiding officer of this Court, I
19 am vitally concerned that whatever verdict you find
20 will be the result of you going into the jury room,
21 confining your consideration to the evidence and to
22 the law that you have heard in this courtroom,
23 weighing it fairly and impartially, as I have every
24 confidence you will do.

25 Your verdict in this case cannot be based

1 on sympathy, compassion, prejudice, or emotion or
2 some other consideration that is not found in the
3 evidence. And remember, ladies and gentlemen, your
4 verdicts in this case must be unanimous.

5 Now, Mr. Foreman, this notebook will go
6 back into the jury room with you. And in the front
7 cover is the verdict form. All of the other
8 evidence that I have up here will also be back in
9 the jury room with you.

10 As you go through your deliberations, as
11 you arrive at verdicts -- as I told you, there are
12 three separate charges for you to consider -- this
13 verdict form, Mr. Foreman, you'll fill that out, and
14 you'll just reflect whatever the verdict of the jury
15 is.

16 And it's a very simple form. It just
17 deals with each of the charges, so you'll consider
18 the murder charge, and you'll either find the
19 defendant guilty or not guilty. You will consider
20 the burglary first charge, again, those same two
21 options, as well as the armed robbery.

22 Once you have reached a unanimous verdict
23 on these charges, you'll reflect that on the verdict
24 form, sign the sheet, knock on the door and let the
25 Bailiff know that you've arrived at a verdict, and

1 then we'll receive your verdict, okay?

2 Now, your lunch may very well be here. If
3 it is, we will send it straight back there to you.
4 If it's not here yet, you can go ahead and when it's
5 time, you can begin your deliberations. And we'll
6 send it in as soon as it gets here. I'm going to
7 leave up to you all to decide how you want to do it.
8 You can either eat and deliberate, or you can eat
9 and then deliberate, however you want do it -- eat
10 while you do it or after you do it.

11 Also, as I said earlier, every member of
12 the jury must be present during the deliberations so
13 that if anyone has to be excused or whatever, please
14 stop the deliberations until those folks return, all
15 right?

16 Now, I'm going to get you to step back
17 into the jury room and not start your deliberations
18 until you receive this notebook and the exhibits.
19 That's your cue to begin your deliberations, okay?

20 I'm going to discuss with the lawyers to
21 make sure I haven't left anything out. If I need to
22 re-charge you on anything, I'll bring you back out
23 and do that. If not, I'll send these items back,
24 and you can begin, okay? So go ahead and return to
25 your jury room, please.

1 (Whereupon, the jury left
2 the courtroom at 12:34 p.m., to deliberate their
3 verdicts, after which the following proceedings were
4 had:)

5 THE COURT: All right, are there any
6 objections or exceptions from the State regarding
7 the charge?

8 MR. GRAHAM: No, sir, Your Honor.

9 THE COURT: From the defense?

10 MR. RADEKER: Only those we already noted
11 during the charge conference.

12 COURT REPORTER: Can we state on the
13 record? Your Honor, we're sending back State's
14 Exhibits One through Seventy-Two. Seventy-three
15 through eighty-three are ID only. Eighty-four
16 through eighty-nine are photographs in evidence that
17 will be going back, also.

18 THE COURT: All right, that's it.

19 MR. HUBBARD: All those IDs will remain.

20 THE COURT: The ones that are IDs will be
21 taken out.

22 COURT REPORTER: We already have them
23 separated.

24 THE COURT: All right, send them back,
25 bring the alternate out, and tell the rest of them

1 that they can begin their deliberations.

2 (Whereupon, the evidence
3 was sent in to the jury room at 12:46 p.m., after
4 which the alternate was brought into the courtroom.)

5 THE COURT: As the alternate, I want to
6 thank you for your service. You're done for the
7 week, and I appreciate your service. Thank you very
8 much.

9 MR. CROUCH: Thank you.

10 (Whereupon, the alternate
11 was dismissed and Court was in recess awaiting the
12 verdicts of the jury.)

13 THE COURT: We're waiting for Mr. Cornwell
14 and Mr. Radeker. But while we're doing that, let me
15 go ahead and take care of this. Whether it's a
16 civil case or a criminal case, I always let the
17 audience know that the lawyers understand the Court
18 personnel understand, but sometimes the lay folks
19 don't understand.

20 I never ask anybody, but like I said,
21 whether it's a criminal case or a civil case, I
22 never ask anybody to agree with a jury's verdict.
23 There is always going to be one side that disagrees.

24 But what I do expect and what I do demand
25 and that is whatever verdict the jury has reached in

1 this case that it be received in a proper and a
2 professional manner.

3 The jury, they have no personal interest
4 in a case that they sit on, but folks in the
5 audience do. You have the folks for the plaintiff
6 or the victim in this case, the defense in this
7 case.

8 And obviously there are personal interests
9 involved for you folks. But what you need to
10 understand is that there is not with the jury. And
11 so whether you agree or disagree with their verdict,
12 it is what it is. It is their verdict. And so I'm
13 asking that it be received in a professional manner.

14 Again, you don't have to agree. I don't
15 ever ask people to agree, but I do ask that we give
16 them the respect and the courtesy that they deserve
17 as jurors in this case.

18 You can come on in, guys. I'm just giving
19 my standard talk about receiving the jury's verdict.

20 And I say that kind of in the same vein
21 that I spoke to you yesterday about if you could not
22 control your emotions with regards to the testimony
23 yesterday. It's kind of the same admonition.

24 If you don't think you can control your
25 emotions, it's best that you take yourself out of

1 the courtroom while the jury's verdict is received,
2 because if there are any outbursts or whatever or
3 any disrespect toward the jury's verdict, then that
4 individual or individuals are going to be locked up.

5 It's just not appropriate. And so just if
6 you would, please receive the verdict, whatever it
7 may be. I sit as you do. I have no idea what their
8 verdict is. But just receive that, and everything
9 will be good, okay?

10 Is the State ready to receive the jury's
11 verdict?

12 MR. GRAHAM: The State's ready, Your
13 Honor.

14 THE COURT: Is the defense ready?

15 MR. CORNWELL: Yes, Your Honor.

16 THE COURT: Okay. All right, let's ask
17 the jury to join us, please.

18 (Whereupon, the jury
19 entered the courtroom at 2:45 p.m. with the verdict,
20 after which the following proceedings were had:)

21 THE COURT: All right, Mr. McSwain, has
22 the jury reached a unanimous verdict, sir?

23 MR. McSWAIN: We have.

24 THE COURT: All right, if you would please
25 pass that to the Bailiff, I would appreciate that,

1 sir. Thank you.

2 (Whereupon, the jury
3 foreman complied.)

4 All right, Madam Clerk, if you would
5 publish the jury's verdict, please, ma'am.

6 CLERK OF COURT: Yes, sir.

7 VERDICTS OF THE JURY

8 CLERK OF COURT: Indictment 2013-GS-32-
9 3351, State versus Demetriss Alshawn Glenn, "We, the
10 jury, find the defendant, Demetriss Alshawn Glenn,
11 on the charge of murder, guilty of murder."

12 As to Indictment 2013-GS-32-3352, charge
13 first-degree burglary, "We, the jury, find the
14 defendant, Demetriss Alshawn Glenn, guilty of first-
15 degree burglary."

16 As to Indictment 2013-GS-32-3101, charge
17 armed robbery, "We, the jury, find the defendant,
18 Demetriss Alshawn Glenn, guilty of armed robbery."

19 And it is so signed John McSwain, Foreman,
20 November 7, 2013.

21 Mr. Foreman, ladies and gentlemen of the
22 jury, if these are your verdicts, please indicate so
23 by raising your right hand.

24 (Whereupon, the jurors
25 complied.)

1 All hands were raised, Your Honor.

2 THE COURT: All right, thank you very
3 much, ladies and gentlemen. Folks, I want to thank
4 you for your service this week. Jury service -- and
5 I said it earlier in the week, and I would repeat it
6 -- it's not convenient for you as jurors. And I
7 realize that, and I know that.

8 It takes you away from your routine. It
9 takes you away from your family, from your work.
10 But I will tell you it is what separates this
11 country from every other country on the globe. Our
12 system of justice in this country is not perfect.
13 It was created by man, and therefore it's going to
14 have its flaws.

15 But I will tell you this. In all my years
16 of being involved in the law, which is over 25
17 years, as well as studies that I've done in other
18 jurisdictions throughout the world, it is by far the
19 best system of justice on this planet. And it is
20 that way because of folks such as you who give up
21 your time and come and help us in resolving these
22 matters.

23 You will receive a check for your service
24 this week. It's rather embarrassing, the amount.
25 We could not possibly pay you for your time. Your

1 time is just that valuable.

2 But the County does provide for some type
3 of sustenance pay. I don't even know what it is in
4 Lexington.

5 CLERK OF COURT: It's \$15 per day. And we
6 get their mileage one way, but we pay roundtrip, so
7 it's like 52 cents per mile.

8 THE COURT: Okay. So as you can see, it's
9 not to compensate you for your time. It is just a
10 small thank-you, I guess. I don't know. But
11 whatever it is, you'll receive that. If you need a
12 work excuse, we've got that taken care of. That
13 does conclude your service for this week.

14 I would go ahead and remind you, you've
15 earned an exemption so that if for the balance of
16 this year as well as for the years of 2014 and 2015,
17 if you receive a notice or a summons for jury
18 service in Circuit Court, you can exercise that
19 exemption and be excused from service. But I tell
20 folks all the time it is just an exemption. It
21 doesn't mean you're not qualified to serve again.

22 If you get a summons and you want to serve
23 again, I would encourage you to do that. Some
24 people say it's easy for me to say. I'm 58 years
25 old, and I have never ever been summoned, even

1 summoned, for jury duty, except it was about six
2 years ago now. And it was for a term of court that
3 I was presiding over.

4 So I've never had the opportunity to sit
5 as a juror in a case. It's something I've always
6 wanted to do, but maybe I make it out to be more
7 exciting than it really is. I know it's hard work.

8 But I do want to thank you for your work
9 here. Now, what I'm going to do, ladies and
10 gentlemen, I'm going to excuse you. And when I do
11 that, you are free to go.

12 If you've forgotten anything you left in
13 the jury room, you can pick that up. But I always
14 tell juries this. You've worked this case. You've
15 decided this case. And in just a few minutes from
16 now, however long it takes me to handle the post-
17 trial matter, we're going to proceed to sentencing.

18 If you want to be present for that, you
19 are welcome. It's a public forum, as you can see.
20 And so you're more than welcome to stay and be
21 present for that if you'd like.

22 I'm going to leave that up to you to make
23 that decision, okay? But as far as your service for
24 this term of court, you've completed that service.
25 And so I want to thank you.

1 respectfully deny that motion.

2 MR. CORNWELL: Thank you, Your Honor.

3 THE COURT: All right. At this time, I've
4 got the proposed sentence sheets here. I'll be
5 happy to hear from the State with regards to
6 sentencing.

7 MR. HUBBARD: Thank you, Your Honor. We
8 did not go over it earlier. Mr. Glenn does have a
9 prior record, Your Honor, and we discussed that he
10 had a burglary from 1991. He received a YOA
11 sentence and I believe probation, and we ultimately
12 carried that to a revocation. He has a 2000
13 conviction for a hit-and-run with personal injury.

14 He has a 2011 petty larceny. He has a
15 2011 malicious injury to personal property, and I
16 believe there's a 2011 possession of crack cocaine.
17 I believe some of the members of the family would
18 like to address Your Honor.

19 THE COURT: All right. If I could get
20 your name for the record, please.

21 MS. TICE: My name is Courtney Claire
22 Tice.

23 THE COURT: Yes, ma'am.

24 MS. TICE: Your Honor, Timothy Tice was my
25 father.

1 THE COURT: Yes, ma'am.

2 MS. TICE: I would just like to thank you.
3 I would like to thank everybody in here who helped
4 the prosecution's side. I would like to thank Mr.
5 Charles, Mr. Rick, Marcus, and everybody.

6 And I would just like to say I know my
7 daddy wasn't perfect, but he was a good man, and he
8 loved life. He would give the shirt off his back
9 for anyone.

10 And I feel like our justice system really
11 went through today, by the grace of God. And I
12 appreciate you, and I appreciate everything
13 everybody has done for me. And it's been hard on me
14 you know, I'm 23 years old, and I know it hurts my
15 grandmother.

16 She was the very first one, and she was
17 the first one to call my family. And I just wanted
18 you to know that I am so proud of our system, and I
19 believe in it now, and I know that it fully works.
20 And our family, it's going to be hard for us to be
21 at peace, but we'll be at peace now. We really
22 appreciate it.

23 THE COURT: Thank you very much, ma'am.
24 Thank you for being here.

25 MR. HUBBARD: Your Honor, she wanted me to

1 pass up a photograph.

2 Yes, ma'am.

3 MS. ALLISON: Yes, sir, my name is Allison
4 (inaudible) and I'm the mother of Timmy Tice's
5 little girl that he never got to see.

6 THE COURT: Yes, ma'am.

7 MS. ALLISON: She's two years old now.
8 She turned two the day that he was murdered. And
9 like Ms. Courtney said, I just wanted to thank
10 everybody.

11 Your staff, I don't know what to call
12 them, they have been so good to this family.
13 They've helped with every bit the way. We couldn't
14 go through it without them. And I just for Amy's
15 sake -- she's too little to be here -- but I just
16 wanted to say thank you.

17 THE COURT: Sure. Thank you, ma'am.

18 MR. HUBBARD: Your Honor, I think that's
19 all for the family. You've heard the facts. You've
20 heard the testimony. We just ask that you give an
21 appropriate sentence.

22 THE COURT: All right, sir.

23 Mr. Cornwell and Mr. Radeker?

24 MR. CORNWELL: Thank you, Your Honor.

25 Your Honor, obviously we're here at trial,

1 so our stance on the facts is different than what
2 the prosecution's stance on the facts are.

3 THE COURT: Sure.

4 MR. CORNWELL: However, we do respect the
5 verdict of the jury. And although we may not agree
6 with it, they have made their decision, and we're
7 here to accept the consequences of that, Your Honor.
8 I said this in my closing, and I genuinely mean what
9 I said, on behalf of our firm and our client, that
10 this is a very, very sad occasion. And our
11 condolences are extended to the family, Your Honor.

12 It's a tragic thing that happened.
13 Although we took the stance that Mr. Glenn is not
14 guilty of what they accused him of, it doesn't take
15 away the fact that we do feel sympathy for the
16 family, Your Honor.

17 Mr. Glenn is a young man. He just had his
18 birthday, as a matter of fact, yesterday, his third
19 birthday he's spent behind bars here, Your Honor.
20 He turned, what, 30?

21 MR. GLENN: Thirty-one.

22 MR. CORNWELL: Thirty-one -- thirty-one
23 years old. He's a young man. He's looking at the
24 possibility of his entire life, the rest of his life
25 spent in jail here today, Your Honor. We're asking

1 the Court to extend any leniency that it can, Your
2 Honor, in regards to his sentence.

3 He has a chance, if he's able to get a
4 minimum sentence, 30 years, Your Honor, to actually
5 make something of his life. He can live that long
6 and go to prison and do what he needs to do to
7 better himself so that when he gets out, if he gets
8 30 years, he'll be an old man. By his standards,
9 Your Honor, he'll be 61. And that may not be old as
10 far --

11 THE COURT: I don't find that to be
12 terribly old.

13 MR. CORNWELL: It may not be old in terms
14 of, you know, life expectancy.

15 THE COURT: I understand what you're
16 saying.

17 MR. CORNWELL: But, you know, at that age,
18 he'll be past whatever problems he could get into.
19 I just don't see him as a 60-year-old, 61-year-old
20 man causing the community any harm or whatever, Your
21 Honor.

22 We believe that a minimum sentence would
23 be fair, a minimum sentence would serve the purposes
24 of justice in this case, Your Honor.

25 Our client has been respectful the entire

1 time we've dealt with him. He's been intelligent
2 the entire time we've dealt with him. He's a guy
3 who has great potential to be a good person. And he
4 is a good person from my dealings with him, Your
5 Honor. From everything I understand, he's an
6 individual who is giving.

7 He's willing to share. He's willing to
8 help people out. He's willing to do whatever it
9 takes to help his friends out, Your Honor. And, you
10 know, perhaps that's what got, you know, us here
11 today, Your Honor. We don't know.

12 But we will ask that you extend any
13 leniency you can. And I think his stepfather may
14 want to address the Court when given the
15 opportunity.

16 THE COURT: I'm more than happy to hear
17 from anyone who would like to address the Court. If
18 I could just get your name for the record, please.

19 MR. THOMPSON: Solomon David II.

20 THE COURT: All right, Mr. Thompson.

21 MR. THOMPSON: Demetriss, since I've been
22 knowing him, he has been a little child since I've
23 been in his presence, raised him from a child. I
24 never too much known him to get into much of
25 nothing. But following, he was a follower. He was

1 never a leader. He always followed.

2 I was always trying to tell him, to teach
3 him, not to be a follower, be a leader. Don't
4 follow nobody. Do what's right. As of being a
5 cold-blooded killer, no, sir, I never seen that type
6 in him, from all the years I've known him.

7 And I'm strictly -- I give my condolence
8 to this family. I can imagine what they're going
9 through. For me to even sit here to think about him
10 doing something like that, it's not possible. Now,
11 I don't know what's there, because I wasn't there.

12 THE COURT: Yes, sir.

13 MR. THOMPSON: I can't speak on that. But
14 as him being a cold-blooded killer, I can speak on
15 that. I know that for a fact he's not that. He's
16 not that, Your Honor. He made some bad choices.

17 He shouldn't have even been there or
18 nowhere around them people. That's what he's guilty
19 of, making bad choices and being around the wrong
20 people. That's all I have to say.

21 THE COURT: Thank you, Mr. Thompson.

22 MR. THOMPSON: Thank you.

23 THE COURT: I appreciate you being here,
24 sir.

25 MR. CORNWELL: Your Honor, I think his

1 sister may want to speak, Your Honor.

2 THE COURT: Yes. Yes, ma'am.

3 MS. JONES: Asia Jones.

4 THE COURT: Yes, Ms. Jones.

5 MS. JONES: Can I please say I'm the baby
6 of seven, and I've always known my brother is not
7 bad person. And just basically I'm upset too
8 because I just lost a brother this year. And we
9 need him. We just need him bad, Your Honor. And do
10 I ask that you give him the minimum sentencing,
11 because he's not a bad person. That's it, thank
12 you.

13 THE COURT: Thank you, ma'am.

14 MR. CORNWELL: Your Honor, you sat through
15 this case just like, you know, we did. You heard
16 all the evidence presented, all the facts presented,
17 Your Honor.

18 And what I would put out there, Your
19 Honor, is, you know, the story told today, if you
20 believe what was told during the trial, Your Honor,
21 a picture was painted of Mr. Glenn.

22 And the witnesses that they produced say
23 that he was asleep or passed out in the back of that
24 car. And they came out to get him, and he ran in
25 there to help a friend. He didn't participate in

1 that armed robbery in a sense of going in there to
2 do this. There's some testimony that said that was
3 along for the ride.

4 I think that's what Charlie Plumley said,
5 Your Honor. And we would submit that Mr. Glenn may
6 have taken actions that broke the law, Your Honor.
7 But it wasn't to go in there and purposefully kill
8 Timothy Tice, Your Honor.

9 And we'd just ask that the Court extend
10 any leniency that it can. I think my client would
11 like to address the Court, given the opportunity
12 also, Your Honor.

13 THE COURT: Sure. I'll be happy to hear
14 from him.

15 MR. GLENN: I just wanted to say thank
16 you, Your Honor.

17 And to the people in the courtroom and
18 apologize, you know what I'm saying, to the victim's
19 relatives and to my relatives to have to drag them
20 through all of this, you know what I'm saying. But
21 like I said from the very first beginning, that
22 man's blood ain't on my hands, you know what I'm
23 saying.

24 And just whatever the Court, you know what
25 I'm saying, deems fit, I know the jury found me

1 guilty, you know. I guess I've got to, you know
2 what I'm saying, accept what comes my way now, you
3 know. I don't deny my affiliation, you know what
4 I'm saying, with certain people, other people, you
5 know what I'm saying, involved in this case.

6 But, you know, it is what it is, Your
7 Honor. And I just want to say, you know, I
8 apologize to everybody in this Court, you know, from
9 the prosecution's side to the defense side, you know
10 what I'm saying, because, I mean, we didn't even
11 have to be here today, you know.

12 I'm the reason why we're here today, you
13 know what I'm saying. So I just want to apologize
14 to everybody for bringing them through this mess,
15 you know what I'm saying. But like I say, I ain't
16 had nothing to do with that, you know. But, you
17 know, the jury found me guilty, so thank you, Your
18 Honor.

19 THE COURT: Thank you, sir.

20 These things are just always so difficult.
21 It's the worst part of my job. For what it's worth,
22 I do believe that no one went there with the intent
23 to kill somebody. I don't believe this was a
24 situation that Mr. Tice was targeted to be killed or
25 anything of that nature.

1 Unfortunately, I think what it was, was an
2 armed robbery that went bad. And once it went bad,
3 things occurred that I think moved it away from
4 simply an armed robbery and a burglary that went bad
5 to a murder case.

6 Everything portrayed throughout this case
7 was extremely sad and disturbing -- the way folks
8 live their lives, the decisions that they make,
9 young people who have thrown their lives away to
10 meth and crack and prostitution.

11 I attend a Bible study on Thursday
12 mornings, and I was there this morning with my
13 pastor. And one of the things we talked about was,
14 you know, some people don't follow the way they're
15 supposed to live because it's too hard, or they say
16 it's too hard. And that's a deception that the
17 enemy wants us to buy into.

18 It's really not hard to live the right
19 way. It's incredibly difficult to live in sin and
20 to live the wrong way. Getting yourself tied into
21 drugs or prostitution or stealing, all of those
22 things cause difficulties in people's lives.

23 To live within the law and to live the way
24 you should live doesn't cause problems. We're all
25 creatures who inherently have a sinful heart. And

1 so we're drawn toward those things, those "pleasures
2 of life."

3 But no one seems to understand that those
4 pleasures of life lead to an incredibly sad life and
5 an incredibly difficult life. And I heard all the
6 testimony and all the evidence in this case, and I
7 don't have any issue with the jury's verdict. It
8 absolutely is appropriate based on the testimony and
9 the evidence presented during this time.

10 SENTENCE OF THE COURT

11 On Indictment 2013-GS-32-3101, on the
12 charge of armed robbery, the sentence of the Court
13 is that you be committed to the State Department of
14 Corrections for a period of 30 years.

15 On Indictment 2013-GS-32-3351, count of
16 murder, and on 2013-GS-32-3352, count of burglary in
17 the first degree, the sentence of the Court is that
18 you be committed to the South Carolina Department of
19 Corrections for the remainder of your natural life.

20 All of those are to run concurrent with
21 each other.

22 That's the sentence of the Court.

23 MR. HUBBARD: Thank you, Your Honor.

24 - End of Transcript -

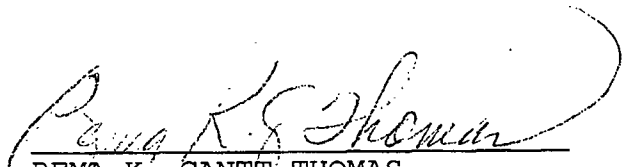
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR 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 EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON NOVEMBER 4 THROUGH 7, 2013, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT CHAPIN, SOUTH CAROLINA, THIS THE SEVENTH DAY OF FEBRUARY, 2014.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions
Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2013-002444

THE STATE,

RESPONDENT,

V.

DEMETRISS ALSHAWN GLENN,

APPELLANT.

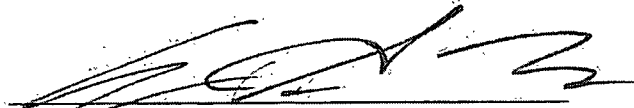
AFFIDAVIT OF ANDREW S. RADEKER

I, the undersigned, Andrew S. Radeker, being duly sworn, state under oath as follows:

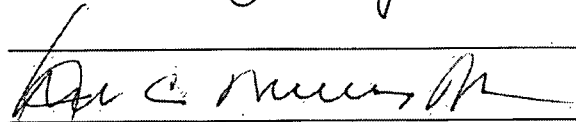
1. I am an attorney licensed to practice law in the State of South Carolina and am over the age of eighteen years.
2. I have personal knowledge of the facts set forth in this affidavit to the extent specified herein and, if called as a witness, I could competently testify to these facts.
3. My address is Harrison & Radeker, PA, PO Box 50143, Columbia, SC, 29250. My telephone number is (803) 779-2211.
4. I, along with attorney Casey Cornwell, represented Demetriss A. Glenn at trial before the Honorable Thomas A. Russo, from November 4-7, 2013.
5. We asked the Court instruct the jury on involuntary manslaughter, defense of others and the right to act on appearances, among other instructions.
6. The proposed jury charges which we presented to the Court during the charge conference are attached as Exhibit A.

Further affiant sayeth not.

WITNESS my hand this 21st day of January, 2015, at Columbia, South Carolina.


Andrew S. Radeker

SWORN TO and subscribed before me this
21st day of January, 2015.


Notary Public for the State of South Carolina
My commission expires 9/17/23

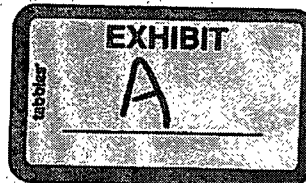
STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON)	INDICTMENT No.(s):2011-GS-32-03198
Plaintiff,)	2011-GS-32-03199
-vs-)	2013-GS-32-03101
Demtriss Alshawn Glenn,)	Defendant's Requests
Defendant.)	to Charge

1. ARMED ROBBERY - § 16-11-330

THE DEFENDANT IS CHARGED WITH ARMED ROBBERY. IN ORDER TO PROVE THIS OFFENSE, THE STATE MUST FIRST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT TOOK PERSONAL PROPERTY FROM THE PERSON OR PRESENCE OF ANOTHER PERSON.

PROPERTY IS IN THE PRESENCE OF A PERSON IF IT IS WITHIN THE PERSON'S REACH, INSPECTION, OBSERVATION, OR CONTROL SO THAT THE PERSON COULD, IF NOT OVERCOME WITH VIOLENCE OR PREVENTED BY FEAR, KEEP POSSESSION OF THE PROPERTY.

THE STATE MUST ALSO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT CARRIED THE PROPERTY AWAY INTENDING TO PERMANENTLY DEPRIVE THE OWNER OF THE PROPERTY AND TO KEEP THE PROPERTY FOR THE DEFENDANT'S OWN USE. THE SLIGHTEST REMOVAL OF THE PROPERTY OR THE COMPLETE POSSESSION OF THE PROPERTY, EVEN FOR AN INSTANT, BY THE DEFENDANT IS SUFFICIENT TO SHOW A TAKING AND CARRYING AWAY OF THE PROPERTY.



THE TAKING AND CARRYING AWAY OF THE PROPERTY MUST HAVE BEEN DONE WITH VIOLENCE OR BY PUTTING THE OWNER OF THE PROPERTY IN FEAR OF VIOLENCE.

FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON DURING THE ROBBERY. A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE.

THE FOLLOWING ARE EXAMPLES OF INSTRUMENTS WHICH MAY BE DEADLY WEAPONS: A PISTOL, A SHOTGUN, A RIFLE, A DIRK, A DAGGER, A KNIFE, A SLING SHOT, METAL KNUCKLES, A RAZOR, GASOLINE, A FIRE BOMB OR MOLOTOV COCKTAIL, AND LIGHTER FLUID.¹ A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT OPERATING.²

[FIST AS A DEADLY WEAPON]: A HAND OR FIST IS NOT NORMALLY CONSIDERED A DEADLY WEAPON. HOWEVER, UNDER SOME CIRCUMSTANCES, DEPENDING ON THE MANNER AND MEANS OF ITS USE, THE WOUNDS INFLICTED, AND OTHER RELEVANT FACTS, A HAND OR FIST MAY BE CONSIDERED A DEADLY

¹ State v. Campbell, 287 S.C. 377, 339 S.E.2d 109 (1985); S.C. Code Ann. § 16-11-330(A).

² State v. Bailey, 273 S.C. 467, 257 S.E.2d 231 (1979).

WEAPON. IT IS FOR YOU TO DECIDE IN THIS CASE, BEYOND A REASONABLE DOUBT, WHETHER OR NOT A HAND OR FIST IS A DEADLY WEAPON.^{3]}

[ORDINARY OBJECTS: ORDINARY OBJECTS MAY BECOME DEADLY WEAPONS WHEN THE FACTS SHOW THAT THEY HAVE BEEN USED TO INFLECT SERIOUS BODILY HARM OR DEATH.^{4]}

2. **FIRST DEGREE BURGLARY - § 16-11-311**

THE DEFENDANT IS CHARGED WITH FIRST DEGREE BURGLARY. THE STATE MUST FIRST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ENTERED A DWELLING WITHOUT CONSENT.

A DWELLING IS ANY BUILDING OR PORTION OF A BUILDING IN WHICH A PERSON ORDINARILY SLEEPS. A BUILDING CONSTRUCTED AS A DWELLING THAT HAS NEVER BEEN OCCUPIED CANNOT BE CONSIDERED A DWELLING FOR PURPOSES OF BURGLARY. BUT, A BUILDING IS A DWELLING EVEN IF THE RESIDENTS ARE TEMPORARILY ABSENT FROM THE BUILDING.

IN ORDER TO PROVE THAT THE DEFENDANT ENTERED THE DWELLING, THE STATE DOES NOT HAVE TO SHOW THAT THE DEFENDANT'S ENTIRE BODY ENTERED THE DWELLING. THE SMALLEST ENTRY IS SUFFICIENT. IT MAY BE ANY PART OF THE BODY, SUCH AS A HAND OR FOOT, OR EVEN AN INSTRUMENT,

³ State v. Bennett, 328 S.C. 251, 493 S.E.2d 845 (1997); State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992).

⁴ State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992).

SUCH AS A HOOK OR OTHER INSTRUMENT. IN ADDITION, THE STATE DOES NOT HAVE TO PROVE THAT FORCE WAS USED TO GAIN ENTRY.

IF A PERSON ENTERS A BUILDING BY USING DECEPTION, ARTIFICE, TRICK, OR MISREPRESENTATION TO GET CONSENT TO ENTER, THIS IS AN ENTRY WITHOUT CONSENT.

NEXT, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT INTENDED TO COMMIT A CRIME, EITHER A FELONY OR A MISDEMEANOR, AT THE TIME OF THE ENTRY. THE MERE ENTRY INTO A DWELLING WITHOUT CONSENT IS NOT BURGLARY. IF THE INTENT TO COMMIT A CRIME IS FORMED AFTER THE ENTRY, IT IS NOT BURGLARY. ON THE OTHER HAND, IF THE DEFENDANT INTENDED TO COMMIT A CRIME AT THE TIME OF THE ENTRY, IT IS A BURGLARY EVEN IF THE INTENT WAS ABANDONED AFTER THE ENTRY. IT DOES NOT MATTER THAT THE INTENDED CRIME WAS NOT COMPLETED. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT.⁵

FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT: [(1) WHEN ENTERING, WHILE IN THE DWELLING, OR WHEN FLEEING, THE DEFENDANT OR AN ACCOMPLICE WAS ARMED WITH A DEADLY WEAPON OR EXPLOSIVE.

A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT

⁵ State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996).

HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE.

THE FOLLOWING ARE EXAMPLES OF INSTRUMENTS WHICH MAY BE DEADLY WEAPONS: A PISTOL, A SHOTGUN, A RIFLE, A DIRK, A DAGGER, A KNIFE, A SLING SHOT, METAL KNUCKLES, A RAZOR, GASOLINE, A FIRE BOMB OR MOLOTOV COCKTAIL, AND LIGHTER FLUID.⁶ A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT OPERATING.⁷

[ORDINARY OBJECTS: ORDINARY OBJECTS MAY BECOME DEADLY WEAPONS WHEN THE FACTS SHOW THAT THEY HAVE BEEN USED TO INFLICT SERIOUS BODILY HARM OR DEATH.⁸]

[(2) WHEN ENTERING, WHILE IN THE DWELLING, OR WHEN FLEEING, THE DEFENDANT OR AN ACCOMPLICE CAUSED PHYSICAL INJURY TO ANYONE NOT PARTICIPATING IN THE CRIME.]

[(3) WHEN ENTERING, WHILE IN THE DWELLING, OR WHEN FLEEING, THE DEFENDANT OR AN ACCOMPLICE USED OR THREATENED TO USE A DANGEROUS OBJECT.]

[(4) WHEN ENTERING, WHILE IN THE DWELLING, OR WHEN FLEEING, THE DEFENDANT OR AN ACCOMPLICE DISPLAYED WHAT WAS OR APPEARED TO BE A

⁶ State v. Campbell, 287 S.C. 377, 339 S.E.2d 109 (1985); S.C. Code Ann. '16-11-330(A).

⁷ State v. Bailey, 273 S.C. 467, 257 S.E.2d 231 (1979).

⁸ State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992).

KNIFE, PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM.]

[(6) THE DEFENDANT ENTERED OR REMAINED IN THE DWELLING IN THE NIGHTTIME. NIGHTTIME IS THE PERIOD BETWEEN SUNSET AND SUNRISE DURING WHICH THERE IS NOT ENOUGH DAYLIGHT TO RECOGNIZE A PERSON'S FACE, EXCEPT BY ARTIFICIAL LIGHT OR MOONLIGHT.]

3. *HAND OF ONE, HAND OF ALL*

IF A CRIME IS COMMITTED BY TWO OR MORE PEOPLE WHO ARE ACTING TOGETHER IN COMMITTING A CRIME, THE ACT OF ONE IS THE ACT OF ALL. A PERSON WHO JOINS WITH ANOTHER TO ACCOMPLISH AN ILLEGAL PURPOSE IS CRIMINALLY RESPONSIBLE FOR EVERYTHING DONE BY THE OTHER PERSON WHICH OCCURS AS A NATURAL CONSEQUENCE OF THE ACTS DONE IN CARRYING OUT THE COMMON PLAN AND PURPOSE. FOR EXAMPLE,⁹ TWO PEOPLE CAN BE GUILTY OF KILLING ANOTHER PERSON WHEN ONLY ONE OF THE TWO HAD A GUN, THERE WAS ONLY ONE BULLET, AND ONLY ONE OF THE TWO FIRED THE SHOT THAT CAUSED THE DEATH. IF TWO OR MORE PEOPLE ARE TOGETHER, ACTING TOGETHER, ASSISTING EACH OTHER IN COMMITTING THE OFFENSE, THE ACT OF ONE IS THE ACT OF ALL OR, AS IT IS SOMETIMES SAID, "THE HAND OF ONE IS THE HAND OF ALL".

PRIOR KNOWLEDGE THAT A CRIME IS GOING TO BE COMMITTED, WITHOUT MORE, IS NOT SUFFICIENT TO MAKE A PERSON GUILTY OF THAT CRIME. MERE

⁹ When giving examples, be sure they do not constitute a charge on the facts of the case. State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000).

KNOWLEDGE THAT ANOTHER PERSON IS GOING TO COMMIT A CRIME, EVEN IF THE DEFENDANT IS PRESENT WHEN THE CRIME IS COMMITTED, IS NOT SUFFICIENT TO CONVICT THE DEFENDANT AS A PRINCIPAL. GUILT AS A PRINCIPAL IS SHOWN BY ACTUAL OR CONSTRUCTIVE PRESENCE AT THE SCENE AS A RESULT OF PRIOR ARRANGEMENT. THEREFORE, A FINDING OF A PRIOR ARRANGED PLAN OR COMMON SCHEME IS NECESSARY FOR A FINDING OF GUILT AS A PRINCIPAL. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT BY COMPETENT EVIDENCE THE THEORY OF THE HAND OF ONE IS THE HAND OF ALL.¹⁰

A PRINCIPAL IN A CRIME IS ONE WHO EITHER ACTUALLY COMMITS THE CRIME OR WHO IS PRESENT AIDING, ABETTING, OR ASSISTING IN COMMITTING THE CRIME. WHEN A PERSON DOES AN ACT IN THE PRESENCE OF AND WITH THE ASSISTANCE OF ANOTHER, THE ACT IS DONE BY BOTH. WHERE TWO OR MORE, ACTING WITH A COMMON PLAN OR INTENT, ARE PRESENT AT THE COMMISSION OF A CRIME, IT DOES NOT MATTER WHO ACTUALLY COMMITS THE CRIME. ALL ARE GUILTY. THE HAND OF ONE IS THE HAND OF ALL. PRESENT AT THE COMMISSION OF A CRIME MEANS TO BE SUFFICIENTLY NEAR TO AID AND ABET AND ASSIST IN THE COMMISSION OF THE CRIME. HOWEVER, MERE PRESENCE AT THE SCENE OF A CRIME IS NOT SUFFICIENT TO CONVICT ONE AS A PRINCIPAL ON THE THEORY OF AIDING AND ABETTING. INTENT IS ALSO A NECESSARY ELEMENT, FOR THERE MUST HAVE BEEN A COMMON DESIGN OR INTENT TO COMMIT THE CRIME AND THE CRIME MUST HAVE BEEN COMMITTED PURSUANT

¹⁰ State v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (1989).

THERE TO WITH THE PERSON AIDING AND ABETTING BY SOME OVERT ACT. INTENT MEANS INTENDING THE RESULT WHICH ACTUALLY OCCURS; NOT ACCIDENTALLY OR INVOLUNTARY. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT.¹¹ THE STATE MUST PROVE THESE ELEMENTS BEYOND A REASONABLE DOUBT.

WHEN THE STATE RELIES ON CIRCUMSTANTIAL EVIDENCE, YOU MAY NOT CONVICT A DEFENDANT UNLESS EVERY CIRCUMSTANCE RELIED ON BY THE STATE IS PROVEN BEYOND A REASONABLE DOUBT, AND ALL OF THE CIRCUMSTANCES SO PROVEN ARE CONSISTENT WITH EACH OTHER AND, TAKEN TOGETHER, POINT CONCLUSIVELY TO THE GUILT OF THE ACCUSED TO THE EXCLUSION OF EVERY OTHER REASONABLE HYPOTHESIS. IT IS NOT SUFFICIENT THAT THE CIRCUMSTANCES CREATE A PROBABILITY, EVEN IF IT IS A STRONG ONE. IF, ASSUMING THE CIRCUMSTANCES ARE TRUE, THERE IS A REASONABLE HYPOTHESIS WHICH DOES NOT INCLUDE THE GUILT OF THE ACCUSED, THE PROOF HAS FAILED.¹²

4. VOLUNTARY MANSLAUGHTER

[IF YOU FIND THAT THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED MURDER, YOU MAY CONSIDER WHETHER THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED VOLUNTARY MANSLAUGHTER.]

¹¹ State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996).

¹² State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989).

[INCLUDED WITHIN THE OFFENSE OF MURDER IS THE LESSER OFFENSE OF VOLUNTARY MANSLAUGHTER.]

THE DEFENDANT IS CHARGED WITH VOLUNTARY MANSLAUGHTER. TO PROVE VOLUNTARY MANSLAUGHTER, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT TOOK THE LIFE OF ANOTHER IN THE SUDDEN HEAT OF PASSION BASED ON SUFFICIENT LEGAL PROVOCATION. BOTH HEAT OF PASSION AND SUFFICIENT LEGAL PROVOCATION MUST BE PRESENT AT THE TIME OF THE KILLING TO CONSTITUTE VOLUNTARY MANSLAUGHTER.

SUDDEN HEAT OF PASSION MAY, FOR A TIME, AFFECT A PERSON'S SELF-CONTROL AND TEMPORARILY DISTURB A PERSON'S REASON. THE SUDDEN HEAT OF PASSION MUST BE THE TYPE THAT WOULD MAKE AN ORDINARY PERSON UNABLE TO COOLY REFLECT ON HIS ACTIONS AND WOULD PRODUCE AN UNCONTROLLABLE IMPULSE TO DO VIOLENCE.

SUFFICIENT LEGAL PROVOCATION MUST BE THE TYPE THAT WOULD MAKE A PERSON OF ORDINARY REASON AND CAUTION BECOME ENRAGED AND TO LOSE CONTROL TEMPORARILY. THE PROVOCATION NEEDED FOR VOLUNTARY MANSLAUGHTER MUST COME FROM SOME ACT OF, OR RELATED TO, THE VICTIM.¹⁷

WORDS ALONE, HOWEVER VULGAR OR INSULTING, ARE NOT ENOUGH TO BE LEGAL PROVOCATION. WHERE DEATH IS CAUSED BY THE USE OF A DEADLY

¹⁷ State v. Locklair, 341 S.C. 352, 535 S.E.2d 420 (2000).

WEAPON, THE WORDS MUST BE ACCOMPANIED BY SOME OVERT, THREATENING ACT WHICH COULD HAVE PRODUCED THE HEAT OF PASSION.

THE EXERCISE OF A LEGAL RIGHT, NO MATTER HOW OFFENSIVE IT IS TO ANOTHER, IS NEVER SUFFICIENT LEGAL PROVOCATION FOR VOLUNTARY MANSLAUGHTER.

IF THE HEAT OF PASSION HAD COOLED, OR IF THERE WAS ENOUGH TIME BETWEEN THE PROVOCATION, IF ANY, AND THE KILLING FOR THE PASSION OF A REASONABLE PERSON TO COOL, THE KILLING WOULD NOT BE VOLUNTARY MANSLAUGHTER. IN DECIDING WHETHER A REASONABLE PERSON WOULD HAVE HAD ENOUGH TIME TO COOL OFF, YOU SHOULD CONSIDER ALL THE CIRCUMSTANCES SURROUNDING THE KILLING. YOU MAY CONSIDER THE NATURE OF THE PROVOCATION, IF ANY; THE DEFENDANT'S MENTAL AND PHYSICAL STATE; AND THE CIRCUMSTANCES AND RELATIONSHIPS BETWEEN THE PARTIES.

5. INVOLUNTARY MANSLAUGHTER

[IF YOU FIND THAT THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED VOLUNTARY MANSLAUGHTER, YOU MAY CONSIDER WHETHER THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED INVOLUNTARY MANSLAUGHTER.]

[INCLUDED WITHIN THE OFFENSE OF VOLUNTARY MANSLAUGHTER IS THE LESSER OFFENSE OF INVOLUNTARY MANSLAUGHTER.]

TO PROVE INVOLUNTARY MANSLAUGHTER, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT UNINTENTIONALLY KILLED THE VICTIM WITHOUT MALICE, BUT WHILE ENGAGED IN AN UNLAWFUL ACTIVITY NOT NATURALLY TENDING TO CAUSE DEATH OR GREAT BODILY HARM OR THAT THE DEFENDANT UNINTENTIONALLY KILLED THE VICTIM WITHOUT MALICE, WHILE ENGAGED IN A LAWFUL ACTIVITY WITH RECKLESS DISREGARD FOR THE SAFETY OF OTHERS.¹⁸

UNINTENTIONAL MEANS THAT THE DEFENDANT DID NOT INTEND FOR ANYONE TO BE KILLED OR SERIOUSLY INJURED.

RECKLESS DISREGARD FOR THE SAFETY OF OTHERS IS MORE THAN MERE NEGLIGENCE OR CARELESSNESS. MERE NEGLIGENCE OR CARELESSNESS IS THE FAILURE TO USE THE CARE THAT A PERSON OF ORDINARY REASON WOULD USE UNDER THE SAME CIRCUMSTANCES. RECKLESSNESS IS A CONSCIOUS FAILURE TO USE ORDINARY CARE.

RECKLESS DISREGARD FOR THE SAFETY OF OTHERS MEANS THAT YOU ARE NOT INTERESTED IN THE CONSEQUENCES OF YOUR ACTS OR THE RIGHTS AND SAFETY OF OTHERS.

IF A PERSON WHO KNOWS, OR SHOULD KNOW, THAT ORDINARY CARE REQUIRES CERTAIN PRECAUTIONS BE TAKEN FOR THE SAFETY OF OTHERS WHEN USING A DANGEROUS INSTRUMENTALITY, SUCH AS A GUN OR CAR, BUT THAT PERSON FAILS TO USE THOSE PRECAUTIONS WITHOUT CONCERN, THE PERSON'S ACTIONS ARE CONSIDERED RECKLESS.

¹⁸ State v. Chapman, 336 S.C. 149, 519 S.E.2d 100 (1999).

THE STATE MUST ALSO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT'S ACT WAS THE PROXIMATE CAUSE OF DEATH.

PROXIMATE CAUSE IS THE DIRECT CAUSE; IT IS THE IMMEDIATE CAUSE; IT IS THE EFFICIENT CAUSE; IT IS THAT CAUSE WITHOUT WHICH THE DEATH OF THE VICTIM WOULD NOT HAVE RESULTED. THERE MUST BE A CHAIN OF CAUSATION FROM THE TIME OF THE INJURY INFLICTED BY THE DEFENDANT UNTIL THE TIME OF THE VICTIM'S DEATH. PROXIMATE CAUSE DOES NOT NECESSARILY MEAN THE THAT IT OCCURRED IMMEDIATELY PRIOR TO DEATH.¹⁹

THERE MAY BE MORE THAN ONE PROXIMATE CAUSE. THE ACTS OF TWO OR MORE PERSONS MAY COMBINE TOGETHER TO BE A PROXIMATE CAUSE OF THE DEATH OF A PERSON. THE DEFENDANT'S ACT MAY BE REGARDED AS THE PROXIMATE CAUSE IF IT IS A CONTRIBUTING CAUSE OF THE DEATH OF THE VICTIM. THE FACT THAT OTHER CAUSES ALSO CONTRIBUTE TO THE DEATH OF THE VICTIM DOES NOT RELIEVE THE DEFENDANT FROM RESPONSIBILITY. THE DEFENDANT'S ACT NEED NOT BE THE SOLE CAUSE OF THE DEATH, BUT MUST BE A PROXIMATE CAUSE CONTRIBUTING TO THE DEATH OF THE VICTIM.

IT IS NOT A DEFENSE TO SHOW THAT THE VICTIM MIGHT HAVE RECOVERED HAD HE [SHE] BEEN TREATED ACCORDING TO THE MOST APPROVED SURGICAL OR MEDICAL STANDARDS OR AS A REASONABLY PRUDENT DOCTOR WOULD HAVE TREATED IN THE CASE OR EVEN BY SHOWING THAT THE TREATMENT WAS NEGLIGENT. IF, HOWEVER, THE DEATH WAS CAUSED NOT BY THE WOUND OR THE INJURY THAT THE VICTIM HAD, BUT WAS CAUSED BY THE GROSS, ERRONEOUS, WILLFUL, DELIBERATE TREATMENT, THE DEFENDANT WOULD NOT

BE LIABLE. IN OTHER WORDS, NEGLIGENCE ON THE PART OF SOMEONE ELSE WOULD NOT RELIEVE THE DEFENDANT FROM LIABILITY IF THE INJURY WAS THE PROXIMATE CAUSE OF THE VICTIM'S DEATH. HOWEVER, GROSS NEGLIGENCE OR INTENTIONAL ACTIVITY ON THE PART OF THE PRACTITIONERS WOULD RELIEVE THE DEFENDANT OF LIABILITY. THE PROPRIETY OF THE MEDICAL PROCEDURES IS AN INTEGRAL QUESTION IN DETERMINING CAUSATION.²⁰

THE VIOLATION OF A STATUTE, IF IT IS THE PROXIMATE CAUSE OF AN INJURY, IS EVIDENCE OF RECKLESSNESS.

6. MURDER

THE DEFENDANT IS CHARGED WITH MURDER. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT.

MALICE IS HATRED, ILL-WILL, OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO INFLICT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT.

MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE AND AT THE TIME OF THE ACT IS

¹⁹ State v. Clary, 222 S.C. 549, 73 S.E.2d 681 (1952).

²⁰ State v. Burton, 302 S.C. 494, 397 S.E.2d 90 (1990).

COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE TERMS, "EXPRESS" AND "INFERRED" DO NOT MEAN DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OR WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED; FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESS MALICE.²¹

MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR HUMAN LIFE. INFERRED MALICE MAY ALSO ARISE WHEN THE DEED IS DONE WITH A DEADLY WEAPON. A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE.

THE FOLLOWING ARE EXAMPLES OF INSTRUMENTS WHICH MAY BE DEADLY WEAPONS: A PISTOL, A SHOTGUN, A RIFLE, A DIRK, A DAGGER, A KNIFE, A SLING SHOT, METAL KNUCKLES, A RAZOR, GASOLINE, A FIRE BOMB OR MOLOTOV

²¹ When giving examples, be sure they do not constitute a charge on the facts of the case. State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000).

COCKTAIL, AND LIGHTER FLUID.²² A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT OPERATING.²³

[FIST AS A DEADLY WEAPON: A HAND OR FIST IS NOT NORMALLY CONSIDERED A DEADLY WEAPON. HOWEVER, UNDER SOME CIRCUMSTANCES, DEPENDING ON THE MANNER AND MEANS OF ITS USE, THE WOUNDS INFLICTED, AND OTHER RELEVANT FACTS, A HAND OR FIST MAY BE CONSIDERED A DEADLY WEAPON. IT IS FOR YOU TO DECIDE IN THIS CASE, BEYOND A REASONABLE DOUBT, WHETHER OR NOT A HAND OR FIST IS A DEADLY WEAPON.²⁴]

[ORDINARY OBJECTS: ORDINARY OBJECTS MAY BECOME DEADLY WEAPONS WHEN THE FACTS SHOW THAT THEY HAVE BEEN USED TO INFLICT SERIOUS BODILY HARM OR DEATH.²⁵]

7. SELF-DEFENSE AND DEFENSE OF OTHERS

SELF-DEFENSE

THE DEFENDANT HAS RAISED THE DEFENSE OF SELF-DEFENSE.

SELF-DEFENSE IS A COMPLETE DEFENSE AND, IF IT IS

ESTABLISHED, YOU MUST FIND THE DEFENDANT NOT GUILTY. THE

STATE HAS THE BURDEN OF DISPROVING SELF-DEFENSE BY PROOF

BEYOND A REASONABLE DOUBT.¹³ IF YOU HAVE A REASONABLE

DOUBT OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL THE

²² *State v. Campbell*, 287 S.C. 377, 339 S.E.2d 109 (1985); S.C. Code Ann. § 16-11-330(A).

²³ *State v. Bailey*, 273 S.C. 467, 257 S.E.2d 231 (1979).

²⁴ *State v. Bennett*, 328 S.C. 251, 493 S.E.2d 845 (1997); *State v. Davis*, 309 S.C. 326, 422 S.E.2d 133 (1992).

²⁵ *State v. Davis*, 309 S.C. 326, 422 S.E.2d 133 (1992).

¹³ *State v. Addison*, 343 S.C. 290, 540 S.E.2d 449 (2000).

EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND THE DEFENDANT NOT GUILTY. ON THE OTHER HAND, IF YOU HAVE NO REASONABLE DOUBT OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND THE DEFENDANT GUILTY.

THE FOLLOWING ELEMENTS ARE REQUIRED TO ESTABLISH SELF-DEFENSE.

(1) WITHOUT FAULT

FIRST, THE DEFENDANT MUST BE WITHOUT FAULT IN BRINGING ON THE DIFFICULTY. IF THE DEFENDANT'S CONDUCT WAS THE TYPE WHICH WAS REASONABLY CALCULATED TO, AND DID, PROVOKE A DEADLY ASSAULT, THE DEFENDANT WOULD BE AT FAULT IN BRINGING ON THE DIFFICULTY AND WOULD NOT BE ENTITLED TO AN ACQUITTAL BASED ON SELF-DEFENSE.

[CONTEMPTUOUS LANGUAGE:

SELF-DEFENSE IS NOT AVAILABLE TO A PERSON WHO USES LANGUAGE WHICH IS SO CONTEMPTUOUS THAT A REASONABLE PERSON WOULD EXPECT IT TO BRING ON A PHYSICAL ENCOUNTER, AND WHICH DID ACTUALLY CONTRIBUTE TO THE PHYSICAL ENCOUNTER.14]

(2) IMMINENT DANGER

THE SECOND ELEMENT OF SELF-DEFENSE IS THAT THE

DEFENDANT WAS ACTUALLY IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY OR THAT THE DEFENDANT ACTUALLY BELIEVED HE (SHE) WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY.

IF THE DEFENDANT WAS ACTUALLY IN IMMINENT DANGER, IT MUST BE SHOWN THAT THE CIRCUMSTANCES WOULD HAVE WARRANTED A PERSON OF ORDINARY FIRMNESS AND COURAGE TO STRIKE THE FATAL BLOW TO PREVENT DEATH OR SERIOUS BODILY INJURY. IF THE DEFENDANT BELIEVED HE (SHE) WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY, IT MUST BE SHOWN THAT A REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF.

IN DECIDING WHETHER THE DEFENDANT ACTUALLY WAS, OR BELIEVED HE (SHE) WAS, IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY, YOU SHOULD CONSIDER ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE CRIME, INCLUDING THE PHYSICAL CONDITION AND CHARACTERISTICS OF THE DEFENDANT AND THE VICTIM.

[WORDS ACCOMPANIED BY HOSTILE ACTS

WORDS ACCOMPANIED BY HOSTILE ACTS MAY, DEPENDING ON THE

CIRCUMSTANCES, ESTABLISH SELF-DEFENSE. 15]

(3) NO OTHER WAY TO AVOID DANGER

THE FINAL ELEMENT OF SELF-DEFENSE IS THAT THE DEFENDANT HAD NO OTHER PROBABLE WAY TO AVOID THE DANGER OF DEATH OR SERIOUS BODILY INJURY THAN TO ACT AS THE DEFENDANT DID IN THIS PARTICULAR INSTANCE.

DUTY TO RETREAT/INCREASED RISK OF HARM

THE DEFENDANT HAD NO DUTY TO RETREAT IF, BY DOING SO, THE DANGER TO HIMSELF OR THE PERSON HE WAS TRYING TO PROTECT OF BEING KILLED OR SUFFERING SERIOUS BODILY INJURY WOULD INCREASE.

DEGREE OF FORCE

A PERSON CANNOT BE REQUIRED TO MAKE AN EXACT CALCULATION AS TO THE DEGREE OR AMOUNT OF FORCE WHICH MAY BE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM. THEREFORE, IN SELF-DEFENSE, THE DEFENDANT HAS THE RIGHT TO USE THE FORCE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM. THE FORCE USED IN SELF-DEFENSE DOES NOT HAVE TO BE LIMITED TO THE DEGREE OR AMOUNT OF FORCE USED BY THE VICTIM. THE DEFENDANT HAS THE RIGHT TO USE SO MUCH FORCE AS APPEARED TO BE NECESSARY FOR COMPLETE SELF-PROTECTION, AND WHICH A PERSON OF ORDINARY REASON AND FIRMNESS WOULD HAVE BELIEVED TO BE NEEDED TO PREVENT DEATH OR SERIOUS BODILY HARM.

15 State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989).

CONTINUING UNTIL THREAT OF HARM IS ENDED

IF THE DEFENDANT IS JUSTIFIED IN DEFENDING HIMSELF

(HERSELF) OR OTHERS AND IN FIRING THE FIRST SHOT, THEN THE

DEFENDANT IS ALSO JUSTIFIED IN CONTINUING TO SHOOT UNTIL IT IS

APPARENT THAT THE DANGER OF DEATH OR SERIOUS BODILY INJURY

HAS COMPLETELY ENDED.

DEFENSE OF OTHERS

UNDER THE LAW OF SELF-DEFENSE, THE DEFENDANT MAY TAKE ANOTHER'S LIFE IN THE DEFENSE OF OTHERS. THE RIGHT TO INTERVENE TO PROTECT ANOTHER PERSON IS SUBJECT TO THE SAME RIGHTS AND LIMITATIONS AS THE RIGHT OF SELF-DEFENSE.

THE DEFENDANT MAY TAKE THE LIFE OF PERSON WHO ASSAULTS A FRIEND, RELATIVE, OR BYSTANDER IF THAT FRIEND, RELATIVE, OR BYSTANDER WOULD HAVE HAD THE RIGHT OF SELF-DEFENSE.

TO SHOW THAT THE PERSON BEING DEFENDED HAD THE RIGHT OF SELF-DEFENSE, IT MUST FIRST BE SHOWN THAT THE PERSON BEING DEFENDED AND THE DEFENDANT WERE BOTH WITHOUT FAULT IN BRINGING ON THE DIFFICULTY. IF THE CONDUCT OF THE PERSON DEFENDED OR THE DEFENDANT WAS THE TYPE WHICH WAS REASONABLY CALCULATED TO, AND DID, PROVOKE A DEADLY ASSAULT, THE PERSON WOULD BE AT FAULT IN BRINGING ON THE DIFFICULTY AND WOULD NOT HAVE THE RIGHT OF SELF-DEFENSE. THEREFORE,

THE DEFENDANT WOULD NOT HAVE THE RIGHT TO USE DEADLY FORCE IN DEFENDING THAT PERSON.

THE DEFENSE OF ANOTHER PERSON IS EXCUSABLE IF THE DEFENDANT HAD REASONABLE GROUNDS TO BELIEVE, AND IN GOOD FAITH DID BELIEVE, THAT THE PERSON BEING DEFENDED WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY HARM FROM THE VICTIM.

IN DECIDING WHETHER THE PERSON DEFENDED ACTUALLY WAS, OR THAT THE DEFENDANT ACTUALLY BELIEVED THE PERSON WAS, IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY, YOU SHOULD CONSIDER ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE CRIME, INCLUDING THE PHYSICAL CONDITION AND CHARACTERISTICS OF THE PARTIES.

RIGHT TO ACT ON APPEARANCES

THE DEFENDANT DOES NOT HAVE TO SHOW THAT THE DEFENDANT OR THE PERSON THE DEFENDANT DEFENDED WAS ACTUALLY IN DANGER. IT IS ENOUGH IF THE DEFENDANT BELIEVED THAT HE OR THAT PERSON WAS IN IMMINENT DANGER. THE DEFENDANT HAS THE RIGHT TO ACT ON APPEARANCES EVEN THOUGH THE DEFENDANT'S BELIEFS MAY HAVE BEEN MISTAKEN. THE DEFENDANT MUST SHOW THAT, UNDER THE CIRCUMSTANCES AS THEY APPEARED TO THE DEFENDANT, THE DEFENDANT BELIEVED HE OR THE PERSON DEFENDED WAS IN DANGER AND THAT A REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF

UNDER THE SAME CIRCUMSTANCES.²⁶ IT IS FOR YOU, THE JURY, TO DECIDE WHETHER THE DEFENDANT'S FEAR OF IMMEDIATE DANGER OF DEATH OR SERIOUS BODILY INJURY TO HIMSELF OR THE PERSON DEFENDED WAS REASONABLE AND WOULD HAVE BEEN FELT BY AN ORDINARY PERSON IN THE SAME SITUATION. THE DEFENDANT DOES NOT HAVE TO WAIT UNTIL THE VICTIM GETS THE DROP ON THE DEFENDANT OR THE PERSON HE DEFENDED; THE DEFENDANT HAS THE RIGHT TO ACT UNDER THE LAW OF SELF-PRESERVATION TO PREVENT THE VICTIM FROM GETTING THE DROP ON THE DEFENDANT OR THE PERSON DEFENDED.

SIZE AND AGE

THE RELATIVE SIZES, AGES, AND WEIGHTS OF THE PARTIES MAY BE CONSIDERED IN DECIDING THE APPARENT OR ACTUAL NEED FOR FORCE IN SELF-DEFENSE AND THE AMOUNT OF FORCE NEEDED.

10. MERE PRESENCE

MERE PRESENCE AT THE SCENE IS NOT SUFFICIENT TO PROVE SOMEONE GUILTY OF A CRIME. A DEFENDANT'S PRESENCE WHERE A CRIME IS BEING COMMITTED OR MERE ASSOCIATION WITH A PERSON WHO COMMITS A CRIME DOES NOT MAKE A DEFENDANT AN ACCOMPLICE OR AN AIDER AND ABETTER OF THE PERSON COMMITTING THE CRIME.

THE BURDEN IS ON THE STATE TO PROVE EVERY ELEMENT OF THE CRIME CHARGED. IF YOU FIND, AFTER REVIEWING ALL THE EVIDENCE, THAT THE

²⁶ Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); State v. Jackson, 277 S.C. 271, 87 S.E.2d 681 (1995).

STATE HAS PROVED THAT THE DEFENDANT WAS ONLY PRESENT AT THE SCENE OF A CRIME, AND THAT THEY HAVE NOT PROVED, BEYOND A REASONABLE DOUBT, ANY OTHER PARTICIPATION IN THE CRIME, THEN YOU MUST FIND THE DEFENDANT NOT GUILTY. THE LAW IS THAT PROOF OF AT THE SCENE OF THE CRIME IS NOT SUFFICIENT TO FIND SOMEONE GUILTY.²⁷

11. PRESUMPTION OF INNOCENCE

THE DEFENDANT HAS PLED NOT GUILTY TO THIS INDICTMENT, AND THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF THE LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT BY

²⁷ State v. Green, 261 S.C. 366, 200 S.E.2d 74 (1973).

EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

12. REASONABLE DOUBT²⁹

WHAT IS A REASONABLE DOUBT IN THE LAW? A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES, WHERE YOU WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT TRUE, SUCH AS BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL CASES, THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE

FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND THE DEFENDANT GUILTY. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM [HER] NOT GUILTY.³⁰

13. DIRECT AND CIRCUMSTANTIAL EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL - DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.³¹

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.³²

THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL OF THE

²⁹ ³⁰ It is within the trial judge's discretion to refuse to define reasonable doubt at all. State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996).

³⁰ State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001); State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998).

³¹ State v. Salisbury, 343 S.C. 520, 541 S.E.2d 247 (2001).

EVIDENCE IN THE CASE. AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY.³³

WHEN THE STATE RELIES ON CIRCUMSTANTIAL EVIDENCE, YOU MAY NOT CONVICT A DEFENDANT UNLESS EVERY CIRCUMSTANCE RELIED ON BY THE STATE IS PROVEN BEYOND A REASONABLE DOUBT, AND ALL OF THE CIRCUMSTANCES SO PROVEN ARE CONSISTENT WITH EACH OTHER AND, TAKEN TOGETHER, POINT CONCLUSIVELY TO THE GUILT OF THE ACCUSED TO THE EXCLUSION OF EVERY OTHER REASONABLE HYPOTHESIS. IT IS NOT SUFFICIENT THAT THE CIRCUMSTANCES CREATE A PROBABILITY, EVEN IF IT IS A STRONG ONE. IF, ASSUMING THE CIRCUMSTANCES ARE TRUE, THERE IS A REASONABLE HYPOTHESIS WHICH DOES NOT INCLUDE THE GUILT OF THE ACCUSED, THE PROOF HAS FAILED.³⁴

14. FAILURE OF DEFENDANT TO TESTIFY

I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATION AND IN YOUR CONSIDERATION ON THE QUESTION OF THE GUILT OR THE INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU

³² State v. Salisbury, 343 S.C. 520, 541 S.E.2d 247 (2001).

³³ State v. Grippon, 327 S.C. 79, 83-84, 489 S.E.2d 462, 464 (1997); State v. Graddick, 345 S.C. 383, 548 S.E.2d 210 (2001)(Grippon did not invalidate the traditional circumstantial evidence charge).

³⁴ State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989).

IN ANY MANNER WHATSOEVER. A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS. I REPEAT, UNDER YOUR OATH, YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS [HER] INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

Respectfully submitted,

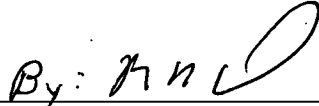
F. Casey D. Cornwell
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
casey@harrisonfirm.com (email)
ATTORNEY FOR DEFENDANT

**THIS PAGE INTENTIONALLY
LEFT BLANK**

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 26, 2015

By: 

David Proffitt
Proffitt & Cox, LLP
140 Wildewood Park Drive, Suite A
Columbia, S.C. 29223-4311
Telephone: (803) 834-7097
Email: dproffitt@proffittcox.com

Robert M. Dudek
Chief Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, SC 29201
Telephone: (803) 734-1330
Email: rdudek@sccid.sc.gov

Attorneys for Appellant

 ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions
Thomas A. Russo, Circuit Court Judge

RECEIVED

MAR 26 2015

SC Court of Appeals

Appellate Case No. 2013-002444

THE STATE,

RESPONDENT,


V.

DEMETRISS ALSHAWN GLENN,

APPELLANT

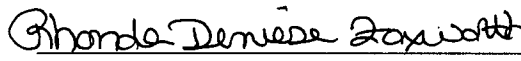
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Kaycie S. Timmons, Esquire, Assistant Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 26th day of March, 2015.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 26th day of March, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021.