

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County
Steven H John, Circuit Court Judge

RECEIVED

MAY - 3 2012

TYRONE JACOBS,

S C Supreme Court

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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IN THE COURT OF GENERAL SESSIONS
07-GS-26-0911

STATE OF SOUTH CAROLINA,
PLAINTIFF,
vs
TRYONE JACOBS,
DEFENDANT

TRANSCRIPT OF RECORD

MAY 19-21, 2008
CONWAY, SOUTH CAROLINA

BEFORE

THE HONORABLE, KRISTI LEA HARRINGTON, JUDGE, AND A JURY

APPEARANCES

BY JIMMY A RICHARDSON, II, ESQ
ATTORNEY FOR STATE

BY RALPH J WILSON, ESQ
ATTORNEY FOR TRYONE JACOBS

BRENDA R BABB
Circuit Court Reporter

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1

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11

VOIR DIRE

5

1 THE COURT I AM JUDGE HARRINGTON AND WE ARE
2 ABOUT TO BEGIN THE TRIAL OF THE STATE OF SOUTH CAROLINA V
3 TYRONE JACOBS I JUST QUALIFIED YOU TO SERVE AS A MEMBER
4 OF THE JURY PANEL FOR THIS TERM OF GENERAL SESSIONS I AM
5 NOW GOING TO ASK YOU MORE SPECIFIC QUESTIONS TO SEE IF YOU
6 CAN RENDER A FAIR AND IMPARTIAL VERDICT IN THIS PARTICULAR
7 CASE

8 MR RICHARDSON, IF YOU WILL, PLEASE, STAND,
9 IDENTIFY YOURSELF AND WITH WHOM YOU ARE EMPLOYED

10 MR RICHARDSON THANK YOU, YOUR HONOR, MY NAME
11 IS JIMMY RICHARDSON, I'M ASSISTANT SOLICITOR HERE WITH THE
12 Horry COUNTY SOLICITOR'S OFFICE

13 THE COURT LADIES AND GENTLEMEN OF THE JURY
14 PANEL, DOES ANYBODY KNOW MR RICHARDSON, CLOSE PERSONAL
15 FRIEND, RELATED BY BLOOD, MARRIAGE, HAVE ANY SOCIAL
16 BUSINESS, OR PROFESSIONAL RELATIONSHIP WITH MR RICHARDSON
17 OR WITH THE SOLICITOR'S OFFICE, IF SO PLEASE STAND

18 THANK YOU, THERE ARE NONE

19 MR WILSON, IF YOU WILL, PLEASE, STAND, IDENTIFY
20 YOURSELF AND WITH WHOM YOU ARE EMPLOYED AND WHO IS SEATED
21 AT YOUR TABLE WITH YOU?

22 MR WILSON MY NAME IS RALPH WILSON, I AM AN
23 ATTORNEY, I PRACTICE HERE IN CONWAY WITH MY SON RALPH
24 WILSON, JR THIS IS MY PARALEGAL DANIELLE DEL PERCIO WE
25 REPRESENT DEFENDANT, THE DEFENDANT IN THIS PARTICULAR CASE

VOIR DIRE

6

1 THE COURT ARE ANY MEMBERS OF THE JURY PANEL
2 RELATED TO MR WILSON OR ANY OF THE PERSONS HE IDENTIFIED
3 WITH WHOM HE PRACTICES LAW OR IS SEATED AT THE TABLE
4 RELATED BY BLOOD, MARRIAGE, HAVE ANY SOCIAL, BUSINESS, OR
5 PROFESSIONAL RELATIONSHIP, EVER BEEN REPRESENTED BY MR
6 WILSON OR ANYONE IN HIS FIRM, IF SO PLEASE STAND?

7 YES, MA'AM, IF YOU WOULD, PLEASE, AND THIS GOES
8 FOR EVERY MEMBER OF THE JURY PANEL, IF YOU WILL, PLEASE,
9 IDENTIFY YOURSELF FIRST BY YOUR JUROR NUMBER AND THEN STATE
10 YOUR NAME, YES, MA'AM?

11 JURY PANEL MEMBER I'M JUROR NUMBER 117, MR
12 WILSON REPRESENTED MY FATHER'S MURDER CASE IN 1992

13 THE COURT ALL RIGHT, IS THERE ANYTHING ABOUT
14 THAT REPRESENTATION THAT WOULD AFFECT YOUR ABILITY TO GIVE
15 BOTH THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL
16 TRIAL?

17 JURY PANEL MEMBER NO, MA'AM

18 THE COURT ALL RIGHT, AND ONCE AGAIN FOR THE
19 RECORD YOUR NUMBER?

20 JURY PANEL MEMBER 117

21 THE COURT ALL RIGHT, THE, THE WAY A CRIMINAL
22 TRIAL PROCEEDS IS THE STATE PRESENTS AN INDICTMENT WHICH IS
23 MERELY A PIECE OF PAPER IT IS NOT EVIDENCE, IT IS MERELY
24 THE WAY THIS CASE COMES BEFORE THE COURT THE DEFENDANT IN
25 THIS CASE HAS BEEN INDICTED FOR MURDER

VOIR DIRE

7

1 THE STATE ALLEGES THAT TYRONE JACOBS DID IN HORRY
2 COUNTY ON OR ABOUT NOVEMBER 10TH, 2006, UNLAWFULLY KILL THE
3 VICTIM DAVID BENNETT WITH MALICE AFORETHOUGHT, EITHER
4 EXPRESSED OR IMPLIED BY MEANS OF SHOOTING THE VICTIM AND
5 THAT THE VICTIM DID DIE AS A PROXIMATE RESULT THEREOF THE
6 DEFENDANT HAS PLED NOT GUILTY TO THESE CHARGES

7 DOES ANYONE KNOW, RELATED BY BLOOD, MARRIAGE, HAS
8 ANY SOCIAL CONTACT WITH THE VICTIM DAVID BENNETT OR ANY
9 MEMBER OF MR BENNETT'S FAMILY, IF SO PLEASE STAND?

10 THANK YOU, THERE ARE NONE

11 I'M NOW GOING TO CALL A LIST OF POSSIBLE
12 WITNESSES, IF ANYBODY ON THE PANEL IS RELATED BY BLOOD,
13 MARRIAGE, CLOSE PERSONAL FRIEND, HAS A SOCIAL, PERSONAL, OR
14 BUSINESS OR PROFESSIONAL RELATIONSHIP WITH ANY OF THE
15 WITNESSES, PLEASE STAND

16 CHRIS BENNETT,

17 CURTIS BENNETT,

18 LEMMY BENNETT,

19 LORENZO BENNETT,

20 ROMAN BENNETT,

21 TIMMY BENNETT,

22 SAMUEL GILLINS,

23 ROBERT MCCULLOUGH,

24 ALFONSO REED, ALFONSO REEVES,

25 TOBIAS RICHBURG,

VOIR DIRE

8

1 PETER CESTARE,
2 SERGEANT JAY BRANTLY,
3 DETECTIVE TIM TROXELL,
4 ROBERT DEAL,
5 FRAN HUMPHRIES,
6 DR EDWARD PROCTOR,
7 NEIL LIVINGSTON,
8 ROBBIE CAULDER,
9 STUART COTTINGHAM,
10 TODD COX,
11 ROSIE BENNETT,
12 MARVIN JACOBS,
13 JAMES BENNETT,
14 PATSY JACOBS,
15 PATRONE, I DO NOT HAVE A FIRST NAME, MR , MR
16 WILSON?
17 MR WILSON WHAT'S THAT NAME?
18 THE COURT PATRONE?
19 MR WILSON GIVE ME ONE SECOND AND I WILL LOOK
20 IT UP
21 THE COURT THANK YOU
22 MR WILSON YOUR HONOR, I'M NOT REAL SURE OF
23 HIS FIRST NAME HE'S A HORRY COUNTY POLICE OFFICER AND HIS
24 FIRST INITIAL IS "N "
25 THE COURT "N" PATRONE

VOIR DIRE

9

1 MR RICHARDSON I BELIEVE IT'S NICK, YOUR
2 HONOR

3 THE COURT NICK, AND HE WOULD BE, HE'S WITH
4 WHAT LAW ENFORCEMENT?

5 MR WILSON HORRY COUNTY POLICE DEPARTMENT
6 THE COURT AND OFFICER PATRONE WITH THE HORRY
7 COUNTY POLICE DEPARTMENT,

8 JAMES SUGGS,
9 JAMES STEINMAN,
10 BRIAN FORTMAN,
11 SHAWAN SOLES,
12 KATHLEEN AMICK,
13 SAMUEL GILLINS,
14 JAY BRANTLEY,
15 STEVE CLARK,
16 ALISHIA MILLER,
17 ROSIE BENNETT,
18 FONZIE REESE,
19 DARLENE RICHBURG

20 IS THERE ANY MEMBER OF THE JURY PANEL THAT IS
21 RELATED BY BLOOD, MARRIAGE, OR HAS A CLOSE PERSONAL,
22 BUSINESS, SOCIAL OR PROFESSIONAL RELATIONSHIP WITH ANY OF
23 THOSE INDIVIDUALS THAT I CALLED OUT, IF SO PLEASE STAND?

24 YES, SIR?

25 JURY PANEL MEMBER YES, MA'AM, JUROR NUMBER

VOIR DIRE

10

1 170 DR EDWARD PROCTOR IS A CLOSE PERSONAL FRIEND,
2 BUSINESS ASSOCIATE

3 THE COURT IS THERE ANYTHING ABOUT THAT
4 RELATIONSHIP THAT WOULD AFFECT YOUR ABILITY TO GIVE EITHER
5 SIDE A FAIR AND IMPARTIAL TRIAL?

6 JURY PANEL MEMBER NO, MA'AM

7 THE COURT ALL RIGHT, AND ONCE AGAIN YOUR NAME?

8 JURY PANEL MEMBER 170

9 THE COURT 170

10 JURY PANEL MEMBER RUELL HICKS

11 THE COURT THANK YOU; HAS ANY MEMBER OF THE
12 JURY PANEL BEEN A VICTIM OF A VIOLENT CRIME, IF SO PLEASE
13 STAND?

14 THANK YOU, THERE ARE NONE

15 HAS ANY JUROR OR A MEMBER OF YOUR FAMILY BEEN
16 REPRESENTED BY ANYONE IN MR WILSON'S OFFICE, IF SO PLEASE
17 STAND?

18 (NO RESPONSE)

19 HAS ANY JUROR OR FAMILY MEMBER EVER BEEN EMPLOYED
20 BY THE SOLICITOR'S OFFICE OR BEEN IN, OR HAD ANY MATTER
21 REPRESENTED OR HANDLED BY THE SOLICITOR'S OFFICE, IF SO
22 PLEASE STAND?

23 THANK YOU, THERE ARE NONE

24 HAS ANY JUROR, CLOSE PERSONAL FRIEND, OR FAMILY
25 MEMBER EVER BEEN CHARGED WITH A VIOLENT CRIME, IF SO PLEASE

VOIR DIRE

11

1 STAND?

2 (NO RESPONSE)

3 I READ THE INDICTMENT, WERE ANY MEMBERS OF THE
4 PANEL OF THIS JURY POOL WERE ANY MEMBERS ON THE GRAND JURY
5 WHO PRESENTED AN INDICTMENT IN THIS MATTER, IF SO PLEASE
6 STAND?

7 THANK YOU, THERE ARE NONE

8 HAS ANY MEMBER OF THE JURY PANEL EXPRESSED OR
9 FORMED AN OPINION ABOUT THIS CASE AS TO THE GUILT OR
10 INNOCENCE OF MR JACOBS, IF SO PLEASE STAND?

11 THANK YOU, THERE ARE NONE

12 DOES ANY MEMBER OF THE JURY PANEL HAVE ANY BIAS
13 OR PREJUDICE IN CONNECTION WITH THIS CASE OR ANY OF THE
14 PARTIES THAT HAVE BEEN PREVIOUSLY MENTIONED, IF SO PLEASE
15 STAND?

16 THANK YOU, THERE ARE NONE

17 DOES ANY MEMBER OF THE JURY PANEL KNOW OF A
18 REASON WHY YOU COULD NOT GIVE THE STATE AND THE DEFENDANT A
19 FAIR AND IMPARTIAL TRIAL IN THIS CASE? IF YOU CAN THINK OF
20 ANY REASON WHATSOEVER THAT YOU CANNOT GIVE BOTH THE STATE
21 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL, PLEASE STAND?

22 THANK YOU, THERE ARE NONE

23 MR RICHARDSON, ANY ADDITIONAL QUESTIONS FOR THE
24 JURY PANEL?

25 MR RICHARDSON NO, MA'AM

JURY SELECTION

12

1 THE COURT ANY ADDITIONAL QUESTIONS, MR
2 WILSON?
3 MR WILSON NONE, YOUR HONOR
4 THE COURT ANY OBJECTIONS TO THE CLERK DRAWING
5 THE JURY?
6 MR WILSON NONE
7 MR RICHARDSON NO, MA'AM
8 THE COURT ALL RIGHT, MADAM CLERK, IF YOU'LL
9 DRAW OUR JURY
10 MADAM CLERK WHEN I CALL YOUR NAME, PLEASE,
11 COME UP TO THE FRONT AND STAND BESIDE THE PODIUM AND FACE
12 THE BACK OF THE COURTROOM
13 PATRICIA SCHASSLER
14 MR RICHARDSON WHAT NUMBER IS THAT?
15 MADAM CLERK 340, I'M SORRY
16 THE COURT IF YOU'LL JUST STAND RIGHT THERE
17 COUNSEL, DO YOU NEED ANY ADDITIONAL TIME TO REVIEW THE
18 ANSWERS AS GIVEN OR DO WE NEED TO TAKE A SHORT BREAK?
19 MR RICHARDSON NO, MA'AM
20 THE COURT BEFORE WE STRIKE THE JURY
21 MR WILSON WE'RE READY
22 THE COURT ALL RIGHT
23 MR RICHARDSON PLEASE PRESENT THE JUROR
24 MADAM CLERK DEFENSE?
25 MR WILSON SEAT THE JUROR

JURY SELECTION

13

1 MADAM CLERK PLEASE BE SEATED IN THE JURY BOX
2 175, CRAIG HOBART
3 WHAT SAY THE STATE?
4 MR RICHARDSON PLEASE PRESENT THE JUROR
5 MADAM CLERK DEFENSE?
6 MR WILSON SEAT THE JUROR
7 MADAM CLERK PLEASE BE SEATED IN THE JURY BOX
8 14, FRANK BASSETT
9 WHAT SAY THE STATE?
10 MR RICHARDSON PLEASE PRESENT THE JUROR
11 MADAM CLERK DEFENSE?
12 MR WILSON SEAT THE JUROR
13 MADAM CLERK PLEASE BE SEATED IN THE JURY BOX
14 439, KIM WITKOWSKI
15 WHAT SAY THE STATE?
16 MR RICHARDSON PLEASE PRESENT THE JUROR
17 MADAM CLERK DEFENSE?
18 MR WILSON SEAT THE JUROR
19 MADAM CLERK PLEASE BE SEATED IN THE JURY BOX
20 276, DIANNE MERRITT, 267, I'M SORRY
21 WHAT SAY THE STATE?
22 MR RICHARDSON PLEASE PRESENT THE JUROR
23 MADAM CLERK DEFENSE?
24 MR WILSON SEAT THE JUROR
25 MADAM CLERK PLEASE BE SEATED IN THE JURY BOX

JURY SELECTION

14

1 374, FRANKIE STEPHENS
2 WHAT SAY THE STATE?
3 MR RICHARDSON PLEASE PRESENT THE JUROR
4 MADAM CLERK DEFENSE?
5 MR WILSON SEAT MS STEPHENS
6 MADAM CLERK PLEASE BE SEATED IN THE JURY BOX
7 MADAM CLERK 90, JEANNE DEGRAZIO
8 WHAT SAY THE STATE?
9 MR RICHARDSON PLEASE PRESENT THE JUROR
10 MADAM CLERK DEFENSE?
11 MR WILSON WE'D EXCUSE MS DEGRAZIO FROM THE
12 TRIAL OF THIS PARTICULAR CASE, PLEASE
13 MADAM CLERK YOU'RE EXCUSED FROM THIS
14 PARTICULAR CASE
15 98, SANDRA DOWNS
16 WHAT SAY THE STATE?
17 MR RICHARDSON PLEASE PRESENT THE JUROR
18 MADAM CLERK DEFENSE?
19 MR WILSON WE'D EXCUSE MS DOWNS FROM THE
20 TRIAL OF THIS PARTICULAR CASE
21 MADAM CLERK YOU'RE EXCUSED FROM THIS
22 PARTICULAR CASE
23 18, NIKKI BAZZANO
24 THE COURT LADIES AND GENTLEMEN, IF YOU ARE
25 EXCUSED I NEED YOU TO REMAIN IN THE COURTROOM UNTIL THE

JURY SELECTION

15

1 JURY IS SELECTED SO IF YOU'LL JUST RETURN BACK TO YOUR SEAT
2 IF YOU WERE NOT SELECTED TO HEAR THIS PARTICULAR MATTER,
3 THANK YOU

4 MADAM CLERK WHAT SAY THE STATE?

5 MR RICHARDSON PLEASE PRESENT THE JUROR

6 MADAM CLERK DEFENSE?

7 MR WILSON SEAT MS BAZZANO

8 MADAM CLERK PLEASE BE SEATED IN THE JURY BOX
9 353, CHRISTOPHER SMITH

10 WHAT SAY THE STATE?

11 MR RICHARDSON PLEASE PRESENT THE JUROR

12 MADAM CLERK DEFENSE?

13 MR WILSON WE'D EXCUSE MR SMITH FROM THE
14 TRIAL OF THIS PARTICULAR CASE

15 MADAM CLERK YOU'RE EXCUSED FROM THIS
16 PARTICULAR CASE

17 219, DIANE KINGSLEY

18 WHAT SAY THE STATE?

19 MR RICHARDSON PLEASE PRESENT THE JUROR

20 MADAM CLERK DEFENSE?

21 MR WILSON SEAT MS KINGSLEY

22 MADAM CLERK PLEASE BE SEATED IN THE JURY BOX
23 23, MICHAEL BERKSHIRE

24 WHAT SAY THE STATE?

25 MR RICHARDSON PLEASE PRESENT THE JUROR

JURY SELECTION

16

1 MADAM CLERK DEFENSE?
2 MR WILSON SEAT MR BERKSHIRE
3 MADAM CLERK PLEASE BE SEATED IN THE JURY BOX
4 117, KATHY FLOYD
5 WHAT SAY THE STATE?
6 MR RICHARDSON PLEASE PRESENT THE JUROR
7 MADAM CLERK DEFENSE?
8 MR WILSON SEAT THE JUROR
9 MADAM CLERK PLEASE BE SEATED IN THE JURY BOX
10 409, VICTORIA VANVLERAH
11 WHAT SAY THE STATE?
12 MR RICHARDSON PLEASE PRESENT THE JUROR
13 MADAM CLERK DEFENSE?
14 MR WILSON I'M SORRY, WHAT NUMBER, MS CLERK?
15 MADAM CLERK 409
16 MR WILSON SEAT THE JUROR
17 MADAM CLERK PLEASE BE SEATED IN THE JURY BOX
18 170, RUELL HICKS
19 WHAT SAY THE STATE?
20 MR RICHARDSON PLEASE PRESENT THE JUROR
21 MADAM CLERK DEFENSE?
22 MR WILSON WE'D EXCUSE THE JUROR FROM THE
23 TRIAL OF THIS PARTICULAR CASE
24 MADAM CLERK YOU'RE EXCUSED FROM THIS
25 PARTICULAR CASE

JURY SELECTION

17

1 144, DEBORAH GRIFFITH

2 WHAT SAY THE STATE?

3 MR RICHARDSON PLEASE PRESENT THE JUROR

4 MADAM CLERK DEFENSE?

5 MR WILSON WE'D EXCUSE THE JUROR FROM THE

6 TRIAL OF THIS PARTICULAR CASE

7 MADAM CLERK YOU'RE EXCUSED FROM THIS

8 PARTICULAR CASE

9 166, PATRICIA HENRY

10 WHAT SAY THE STATE?

11 MR RICHARDSON PLEASE PRESENT THE JUROR

12 MADAM CLERK DEFENSE?

13 MR WILSON YOUR HONOR, I HAVE GOT THIS

14 PARTICULAR JUROR AS SELF EMPLOYED WOULD YOU ASK HER WHAT
15 KIND OF WORK SHE ACTUALLY DOES?

16 JURY PANEL MEMBER I'M A PROPERTY MANAGER I
17 WORK FOR HOMEOWNERS ASSOCIATIONS AND SUPPLY SERVICES FOR
18 THEM SUCH AS MAINTAINING GROUNDS AND THE POOLS, COLLECTING
19 THE ASSESSMENTS AND PAYING THEIR BILLS, GETTING PROPOSALS
20 OF INSURANCE SO THAT THEY'RE, YOU KNOW, SAFE AND SOUND AND
21 JUST GENERAL ASSOCIATION, IF YOU'LL FAMILIAR WITH
22 CONDOMINIUMS AT ALL

23 THE COURT OKAY, MR WILSON, DOES THAT SATISFY
24 YOU?

25 MR WILSON YES, MA'AM, THANK YOU VERY MUCH,

JURY SELECTION

18

1 YOUR HONOR

2 THE COURT THANK YOU

3 MR WILSON SEAT THE JUROR

4 MADAM CLERK PLEASE BE SEATED IN THE JURY BOX

5 392, BETTY THOMAS

6 MR RICHARDSON YOUR HONOR, IS THIS THE

7 ALTERNATES?

8 MADAM CLERK YEAH, THAT WAS THE PANEL, THIS

9 WOULD BE AN ALTERNATE

10 WHAT SAY THE STATE?

11 MR RICHARDSON , PLEASE PRESENT THE JUROR 1

12 MADAM CLERK DEFENSE?

13 MR - WILSON , WE'D EXCUSE THE JUROR FROM THE

14 TRIAL OF THIS PARTICULAR CASE

15 MADAM CLERK YOU'RE EXCUSED FROM THIS

16 PARTICULAR CASE

17 204, SHERRILL JOHNSON

18 WHAT SAY THE STATE?

19 MR RICHARDSON PLEASE PRESENT THE JUROR

20 MADAM CLERK DEFENSE?

21 MR WILSON SEAT THE JUROR

22 MADAM CLERK PLEASE BE SEATED IN THE JURY BOX

23 THE COURT WE'RE DOING ONE ALTERNATE OR TWO?

24 MR RICHARDSON DO YOU RECKON ONE IS ENOUGH?

25 MR WILSON I THINK ONE IS APPROPRIATE

JURY SELECTION

19

1 THE COURT ALL RIGHT, THEN THAT WILL ---

2 MR RICHARDSON ONE WILL BE FINE, THANK YOU

3 THE COURT THANK YOU ALL RIGHT, WOULD YOU

4 TAKE OUR JURY AND SHOW THEM THEIR NEW LIVING ARRANGEMENTS

5 FOR THE NEXT COUPLE OF DAYS SO THAT THEY FAMILIARIZE

6 THEMSELVES WITH THE JURY, JURY PANEL ROOM

7 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
8 12 50 P M)

9 THE COURT LADIES AND GENTLEMEN THAT WERE NOT
10 PICKED TO BE ON THIS PARTICULAR JURY, YOU ARE EXCUSED FOR
11 THE REMAINDER OF THE DAY YOU ARE TO CALL BACK TO THE JURY
12 LINE THAT YOU WERE GIVEN AFTER 6 P M AND YOU WILL BE GIVEN
13 INSTRUCTIONS FOR THE REMAINDER OF THE WEEK THANK YOU
14 AGAIN FOR YOUR SERVICE FOR JURY DUTY AND HAVE A WONDERFUL
15 AFTERNOON, THANK YOU

16 (WHEREUPON, THE JURY VENIRE WERE EXCUSED)

17 THE COURT ANY MOTIONS PERTAINING TO THE JURY
18 SELECTION PROCESS OR TO THE SELECTED JURY, FROM THE STATE?

19 MR RICHARDSON NO, MA'AM

20 THE COURT MR WILSON?

21 MR WILSON NOT FROM THE DEFENSE, YOUR HONOR

22 THE COURT ALL RIGHT, AS FAR AS SCHEDULING
23 PURPOSES IT IS NOW ALMOST 1 00 HOW MANY WITNESSES DO YOU,
24 DO YOU HAVE READY TO CALL, MR RICHARDSON?

25 MR RICHARDSON YOUR HONOR, I THINK THAT MY

JURY SELECTION

20

1 FIRST COUPLE HAVE GONE TO LUNCH, THEY SHOULD BE BACK BY

2 1 30

3 THE COURT OKAY, MY, MY INDICATE, MY PREFERENCE

4 WOULD BE TO LET MY STAFF HAVE A LUNCH BREAK AND THAT WOULD

5 GIVE US TIME TO GO OVER IF THERE'S ANY FURTHER MOTIONS OR

6 MATTERS THAT WE NEED TO TAKE CARE OF THE COURT NEEDS TO

7 LEAVE BETWEEN 3 30 AND 3 45 BUT I DO NOT WANT TO

8 INCONVENIENCE ANY OF THE WITNESSES THAT HAVE BEEN HERE, SO

9 KNOWING THAT THAT'S THE COURT'S PREFERENCE I WAS GOING TO

10 BRING THE JURY IN, RELEASE THEM FOR LUNCH AND THEN PERHAPS

11 START OPENING STATEMENTS, IF THAT SUITS YOU, MR - -

12 RICHARDSON?

13 MR RICHARDSON : YES, MA'AM

14 THE COURT DOES THAT SUIT YOU, MR WILSON?

15 MR WILSON YES, MA'AM

16 THE COURT ALL RIGHT, AND YOU HAVE TOLD MY

17 CLERK THAT WE HAD NOT HAD A CHANCE TO CONFERENCE HOW LONG

18 DO YOU ANTICIPATE YOUR OPENING STATEMENTS TAKING?

19 MR RICHARDSON TEN, 15 MINUTES, YOUR HONOR

20 THE COURT AND YOU, MR WILSON?

21 MR WILSON FIVE OR 10 MINUTES, YOUR HONOR

22 THE COURT ALL RIGHT, COULD YOU BRING IN THE

23 JURY?

24 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT

25 12 55 P M)

JURY SELECTION

21

1 THE COURT LADIES AND GENTLEMEN OF THE JURY, WE
2 ARE GOING TO TAKE A LUNCH BREAK I DON'T KNOW ABOUT YOU
3 BUT I AM STARVING SO I WILL NEED YOU BACK IN YOUR JURY ROOM
4 AT 2 10 AND THEN WE WILL PROCEED WITH THE TRIAL OF THIS
5 CASE

6 YOU HAVE NOT BEEN GIVEN ANY INSTRUCTIONS, YOU
7 HAVE NOT HEARD ANY EVIDENCE SO, PLEASE, DO NOT DISCUSS THIS
8 CASE. DO NOT BEGIN ANY DELIBERATIONS AND I DO NOT
9 ANTICIPATE THAT THERE WILL BE ANY PUBLICITY AT THIS POINT
10 BUT I CAUTION YOU DO NOT READ ANYTHING REGARDING THIS CASE
11 DO NOT READ ANY NEWSPAPERS, INTERNET REPORTS, TELEVISION
12 BROADCASTS OF THIS MATTER

13 MS GLORIA IS YOUR BAILIFF IF YOU NEED
14 ANYTHING, HAVE ANY QUESTIONS OR CONCERNS IF YOU WOULD
15 ADDRESS THEM WITH MS GLORIA AND I WILL SEE YOU BACK HERE,
16 WE WILL BEGIN THE TRIAL OF THE MATTER AT 2 15 BUT BE BACK
17 IN YOUR JURY ROOM AT 2 10 THANK YOU SO MUCH

18 MR RICHARDSON YOUR HONOR?

19 THE COURT YES?

20 MR RICHARDSON MAY I APPROACH?

21 THE COURT YOU MAY

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
23 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
24 OF THE JURY AND THE COURT REPORTER)

25 THE COURT ALL RIGHT, MS GLORIA, IF YOU'LL

JURY SELECTION

22

1 ESCORT OUR JURY OUT

2 (WHEREUPON, THE JURY WAS EXCUSED FOR LUNCH AT
3 12 56 P M)

4 THE COURT ANYTHING FURTHER FROM THE STATE
5 BEFORE WE BREAK FOR LUNCH, MR RICHARDSON?

6 MR RICHARDSON NO, MA'AM

7 THE COURT ANYTHING FROM THE DEFENSE?

8 MR WILSON NOTHING AT THIS TIME, YOUR HONOR

9 THE COURT THANK YOU, WE'LL BE AT EASE UNTIL
10 2 15, THANK YOU

11 MR RICHARDSON - THANK YOU

12 (WHEREUPON, COURT WAS RECESSED FOR LUNCH AND THE
13 FOLLOWING TAKES PLACE ON THE RECORD FOLLOWING THE LUNCH
14 BREAK)

15 THE COURT ANYTHING BEFORE WE BRING IN THE
16 JURY?

17 MR RICHARDSON MAY WE APPROACH?

18 THE COURT YOU MAY

19 MR RICHARDSON JUST AS SCHEDULING

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
21 RECORD OUT OF THE PRESENCE OF THE JURY AND HEARING OF THE
22 COURT REPORTER)

23 THE COURT ANYTHING BEFORE I BRING THE JURY IN
24 FROM THE STATE?

25 MR RICHARDSON NO, MA'AM

JURY SELECTION

23

1 THE COURT FROM THE DEFENSE?

2 MR WILSON YES, MA'AM, YOUR HONOR, AT THIS
3 TIME I'D LIKE TO MAKE A MOTION TO HAVE THE WITNESSES
4 SEQUESTERED IN THE TRIAL OF THIS CASE I THINK THIS IS A
5 FACTUAL CASE WHERE THERE'S A GREAT DEAL OF DISPUTE ABOUT
6 WHAT ACTUALLY OCCURRED AND I WOULD ASK THE COURT TO
7 SEQUESTER THE WITNESSES FOR THAT REASON?

8 THE COURT ANY OBJECTION, MR RICHARDSON?

9 MR RICHARDSON NO, MA'AM

10 THE COURT LADIES AND GENTLEMEN, IF THERE ARE
11 ANY WITNESSES THAT HAVE BEEN LISTED AS POTENTIAL WITNESSES
12 IN THIS TRIAL I AM ASKING THAT YOU REMOVE YOURSELF FROM THE
13 COURTROOM AT THIS TIME YOU MAY -- MR WILSON, YOU WISH
14 THEM TO REMAIN OUT OF THE COURTROOM EVEN AFTER THEY'VE
15 TESTIFIED?

16 MR WILSON NO, MA'AM, NO, MA'AM, THEY'D BE
17 WELCOME TO JOIN US AS SOON AS THEY TESTIFY

18 THE COURT MR RICHARDSON, ARE THERE ANY OF
19 YOUR POTENTIAL WITNESSES IN THE COURTROOM TODAY?

20 MR RICHARDSON NO, MA'AM, I'VE GOT THEM
21 OUTSIDE OF THE COURTROOM

22 THE COURT OKAY, AND I UNDERSTAND THAT YOU'VE
23 EXPLAINED TO YOUR WITNESSES WHAT THE RULE OF SEQUESTRATION
24 INVOLVES?

25 MR RICHARDSON YES, MA'AM

PRELIMINARY CHARGE

24

1 THE COURT MR WILSON, DO YOU HAVE ANY
2 POTENTIAL WITNESSES IN THE COURTROOM TODAY?

3 MR WILSON NO, MA'AM

4 THE COURT ALL RIGHT, AND SHOULD THERE BE ANY
5 THAT COME INTO THE COURTROOM IT'S INCUMBENT UPON THE
6 PARTIES THAT YOU INFORM YOUR WITNESSES AND LET THE COURT
7 KNOW IF THERE'S ANY, ANY PROBLEMS FOLLOWING THE RULE

8 MR WILSON THANK YOU, MA'AM

9 THE COURT THANK YOU, THE RULE HAS BEEN
10 INVOKED PLEASE BRING IN THE JURY

11 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
12 2 20 P M AND THE FOLLOWING TAKES PLACE ON THE RECORD)

13 THE COURT LADIES AND GENTLEMEN OF THE JURY, I
14 TRUST THAT YOU HAD A NICE AND RELAXING LUNCH AND YOU ARE
15 FULL AND PREPARED TO BEGIN TO HEAR THE FACTS OF THIS CASE
16 MS HEATHER, WILL YOU SWEAR IN THE JURY?

17 (WHEREUPON, THE JURY WAS SWORN)

18 THE COURT THANK YOU, LADIES AND GENTLEMEN OF
19 THE JURY, THE CASE WE'RE ABOUT TO TRY AS I INDICATED BEFORE
20 IS THE STATE V TYRONE JACOBS WHAT I NOW SAY TO YOU IS
21 INTENDED TO SERVE AS AN INTRODUCTION TO THE TRIAL OF THIS
22 CASE AS SUCH I WILL INTRODUCE YOU TO SOME OF THE PEOPLE
23 THAT YOU WILL SEE ON A DAILY BASIS AS YOU SIT AND HEAR THE
24 CASES AS PRESENTED

25 YOU'VE ALREADY MET MS GLORIA, SHE IS THE

PRELIMINARY CHARGE

25

1 BAILIFF, AND HER JOB IS TO ENSURE THAT YOU ARE TAKEN SAFELY
2 FROM THE COURTROOM TO THE JURY ROOM AND IF THERE'S ANYTHING
3 THAT YOU NEED, IF YOU ARE TOO HOT, TOO COLD, YOU JUST LET
4 MS GLORIA KNOW AND SHE WILL LET THE COURT KNOW AND I WILL
5 MAKE SURE THAT WE'LL DO THE BEST TO ACCOMMODATE YOU

6 THIS IS MS BRENDA BABB, SHE IS MY COURT
7 REPORTER SHE IS TAKING DOWN EVERYTHING THAT I SAY, THE
8 WITNESSES SAY, THE ATTORNEYS SAY, AND SO YOU MAY
9 OCCASIONALLY HEAR ME SAY, PLEASE SPEAK UP BECAUSE MY COURT
10 REPORTER CAN'T HEAR YOU SHE'S SEATED RIGHT THERE SO IF I
11 CAN'T HEAR I KNOW THAT SHE CAN'T HEAR SO I WILL INDICATE
12 SOMETIMES TO THE WITNESSES OR TO THE ATTORNEYS TO SPEAK UP
13 OR SPEAK MORE SLOWLY

14 THIS IS MY LAW CLERK, BRETT BARKER, HE WILL,
15 YOU'LL OCCASIONALLY SEE HIM RUNNING BACK AND FORTH WE, I
16 ASSURE YOU HE IS NOT PLAYING SOLITAIRE ON HIS LAPTOP I AM
17 CONSTANTLY MONITORING HIM HE IS PULLING CASE LAW AND
18 COMMUNICATING WITH ME BY MY LAPTOP SO THAT I CAN KEEP ON
19 TOP OF THINGS THAT ARE GOING ON NOT ONLY AM I WORKING ON
20 THIS CASE BUT THERE ARE OTHER MATTERS OUTSIDE OF THIS CASE
21 THAT I WORK ON AS WELL SO I WANT TO ASSURE YOU THAT EVEN
22 YOU MAY SEE I AM LISTENING TO EVERYTHING THAT IS GOING ON
23 AND WE ARE NOT PLAYING SOLITAIRE

24 THIS IS HEATHER LEWIS SHE IS EMPLOYED BY THE
25 CLERK OF COURT SHE IS THE ONE THAT JUST SWORE YOU IN

PRELIMINARY CHARGE

26

1 AND YOU HAVE MET AND WILL HEAR FROM THE PARTIES INVOLVED IN
2 THIS CASE

3 MY REMARKS NOW ARE NOT A CHARGE ON THE LAW IN
4 THIS CASE I WILL INSTRUCT YOU ON THE LAW APPLICABLE TO
5 THIS CASE AT THE END OF THE TRIAL BEFORE YOU RETIRE TO
6 CONSIDER YOUR VERDICT THIS IS MERELY AN EXPLANATION OF
7 THE PROCEDURE THAT WE FOLLOW IN THE TRIAL OF THIS CASE SO
8 THAT YOU MAY BETTER UNDERSTAND WHAT IS HAPPENING

9 MOST OF YOUR EXPERIENCE WOULD LIKELY HAVE BEEN
10 WATCHING T V OR READING BOOKS I ASSURE YOU THAT THE
11 PROCEDURES FOLLOWED ARE A LITTLE BIT DIFFERENT THAN WHAT
12 YOU MAY SEE ON LAW AND ORDER SO I'M JUST GOING TO GIVE YOU
13 AN OUTLINE OF HOW MY COURTROOM RUNS

14 THE DEFENDANT IS CHARGED BY AN INDICTMENT AND
15 IT'S MERELY A PIECE OF PAPER HE IS CHARGED WITH THE CRIME
16 OF MURDER, THE ELEMENTS WHICH I WILL EXPLAIN TO YOU LATER
17 THE INDICTMENT IS SIMPLY THE CHARGE BY WHICH THE CASE IS
18 BROUGHT INTO COURT IT IS NOT IN ANY SENSE EVIDENCE OF THE
19 ALLEGATION IT CONTAINS

20 THE DEFENDANT HAS PLED NOT GUILTY TO THIS
21 INDICTMENT THE STATE, THEREFORE, HAS THE BURDEN OF
22 PROVING EACH OF THE ELEMENTS OF THE INDICTMENT BEYOND A
23 REASONABLE DOUBT AND IT WILL BE YOUR DUTY, LADIES AND
24 GENTLEMEN, TO DECIDE WHETHER THE STATE HAS MET THAT BURDEN
25 YOUR PURPOSE AND YOUR JOB HERE TODAY AS JURORS IS

PRELIMINARY CHARGE

27

1 TO FIND AND DETERMINE THE FACTS YOU ARE THE SOLE JUDGE OF
2 THE FACTS IF AT ANY TIME I MAKE ANY COMMENT REGARDING THE
3 FACTS YOU MUST DISREGARD IT

4 YOU ARE TO DETERMINE THE FACTS FROM THE TESTIMONY
5 YOU HEAR AND THE OTHER EVIDENCE INTRODUCED IN COURT IT IS
6 UP TO YOU TO DETERMINE THE INFERENCES WHICH YOU FEEL MAY BE
7 PROPERLY DRAWN FROM THE EVIDENCE IT IS ESPECIALLY
8 IMPORTANT THAT YOU PERFORM YOUR DUTY OF DETERMINING THE
9 FACTS DILIGENTLY AND CONSCIENTIOUSLY BECAUSE ORDINARILY
10 THERE'S NO WAY TO CORRECT AN ERRONEOUS DETERMINATION OF THE
11 FACTS BY A JURY

12 ON THE OTHER HAND AND WITH EQUAL EMPHASIS THE
13 SAME LAW THAT MAKES YOU THE JUDGES OF THE FACTS MAKES ME
14 THE JUDGE OF THE LAW

15 THE LAW AS GIVEN BY THE COURT IS THE ONLY LAW YOU
16 MAY CONSIDER YOU MUST ACCEPT AND FOLLOW IT EVEN THOUGH
17 YOU MAY DISAGREE WITH IT I CANNOT TELL YOU WHAT THE FACTS
18 ARE AND YOU CANNOT DISAGREE WITH ME ABOUT WHAT THE LAW
19 SHOULD BE YOUR JOB IS TO TAKE THE LAW AS I GIVE IT TO YOU
20 AND APPLY IT TO THE FACTS AS YOU FIND THEM FROM THE
21 TESTIMONY OF THE WITNESSES AND ANY OTHER EVIDENCE THAT IS
22 INTRODUCED

23 AFTER DOING THAT YOU WILL RENDER YOUR VERDICT, A
24 TRUE AND JUST VERDICT UNDER THE SOLEMN OATH THAT YOU JUST
25 TOOK AS JURORS

PRELIMINARY CHARGE

28

1 UNTIL I ADVISE YOU TO BEGIN YOUR DELIBERATIONS
2 YOU MUST NOT DISCUSS THIS CASE WITH ANYONE INCLUDING YOUR
3 FELLOW JURORS, FRIENDS, FAMILY MEMBERS, ANYONE INVOLVED IN
4 THIS CASE AFTER THE CASE IS SUBMITTED TO YOU YOU MUST
5 DISCUSS IT ONLY IN THE JURY ROOM WITH YOUR FELLOW JURORS

6 I WILL AT THE END OF EVERY BREAK OR BEFORE WE
7 TAKE A BREAK I WILL REMIND YOU THAT YOU CANNOT BEGIN YOUR
8 DELIBERATION, THAT YOU CANNOT DISCUSS THIS CASE WITH
9 ANYONE YOU WILL GET TIRED OF ME SAYING THAT TO YOU BUT
10 UNTIL I HAVE INSTRUCTED YOU ON THE LAW AND YOU'VE HEARD ALL
11 OF THE EVIDENCE THAT'S PRESENTED YOU MUST NOT DISCUSS THIS
12 CASE OR THE FACTS PRESENTED AMONGST YOURSELVES OR BEGIN
13 YOUR DELIBERATION, YOU WILL SIMPLY NOT HAVE THE TOOLS WITH
14 WHICH TO DO SO

15 THE ATTORNEYS AND THE PARTIES IN THIS CASE HAVE
16 BEEN ADVISED THAT THEY ARE NOT TO TALK TO YOU AT ALL
17 REMEMBER DURING QUALIFICATION I TOLD YOU THEY'RE NOT BEING
18 RUDE, THEY'RE JUST FOLLOWING MY ORDERS, SO REMEMBER DON'T
19 APPROACH THEM EITHER THEY'RE SIMPLY NOT GOING TO SPEAK
20 WITH YOU SHOULD ANYBODY APPROACH YOU OR DO SO IN
21 VIOLATION OF MY ORDERS, PLEASE, TELL THE COURT AND I WILL
22 HANDLE IT ACCORDINGLY

23 DURING THE TRIAL, THIS IS ESSENTIALLY IMPORTANT,
24 DURING THE TRIAL DO NOT READ, LISTEN TO OR WATCH ANY NEWS
25 REPORTS ABOUT THIS CASE, THAT INCLUDES ANYTHING THAT MAY BE

PRELIMINARY CHARGE

29

1 IN THE NEWSPAPERS OR ON THE INTERNET, RADIO OR TELEVISION
2 YOU MUST NOT CONSIDER ANYTHING THAT YOU MAY HAVE READ OR
3 HEARD ABOUT THIS CASE OUTSIDE THE COURTROOM WHETHER BEFORE
4 OR DURING THE TRIAL

5 IT IS IMPORTANT THAT YOU KEEP AN OPEN MIND AND
6 NOT DECIDE ANY ISSUE IN THE CASE UNTIL ALL OF THE EVIDENCE
7 HAS BEEN PRESENTED, THE PARTIES HAVE MADE THEIR CLOSING
8 ARGUMENT, AND I HAVE INSTRUCTED YOU ON THE LAW IN THIS
9 CASE IT IS YOUR SOLEMN RESPONSIBILITY TO DETERMINE THE
10 GUILT OR INNOCENCE OF THE DEFENDANT AND YOUR VERDICT MUST
11 BE BASED SOLELY ON THE EVIDENCE AS IT IS PRESENTED TO YOU

12 NOW IN JUST A MOMENT THE SOLICITOR WILL MAKE WHAT
13 IS CALLED AN OPENING STATEMENT IN WHICH THE SOLICITOR WILL
14 EXPLAIN TO YOU THE ISSUES IN THE CASE OR AT LEAST WHAT THE
15 SOLICITOR THINKS THE ISSUES ARE IN THIS CASE

16 THE ATTORNEY FOR THE DEFENDANT MAY ALSO MAKE AN
17 OPENING STATEMENT ALTHOUGH HE IS NOT REQUIRED TO DO SO

18 WHAT THE ATTORNEYS TELL YOU DURING THEIR OPENING
19 STATEMENTS IS NOT EVIDENCE IN THE CASE, IT IS ONLY THEIR
20 CONTENTIONS AS TO WHAT THE ISSUES ARE

21 THE EVIDENCE IN THIS CASE WILL BE PRESENTED TO
22 YOU BY THE TESTIMONY OF SWORN WITNESSES FROM THE WITNESS
23 STAND RIGHT HERE AND BY EXHIBITS THAT MAY BE INTRODUCED
24 INTO EVIDENCE

25 FROM TIME TO TIME DURING THE TRIAL YOU MAY HEAR

PRELIMINARY CHARGE

30

1 ONE OF THE LAWYERS SAY SOMETHING LIKE, YOUR HONOR, I
2 BELIEVE WE HAVE A QUESTION OF LAW OR MAY WE APPROACH THE
3 BENCH AND SOMETIMES I MIGHT FIND IT NECESSARY TO EXCUSE YOU
4 THE JURY FROM THE COURTROOM WHILE I DISCUSS A MATTER OF
5 LAW

6 THE REASON FOR THIS IS BECAUSE YOU ARE THE JUDGES
7 OF THE FACTS AND I AM THE JUDGE OF THE LAW IT MAY BE
8 NECESSARY FOR ME TO MAKE SOME COMMENT ABOUT THE FACTS IN
9 CONNECTION WITH THE RULING AND I'M NOT SUPPOSED TO TELL YOU
10 WHAT I THINK ABOUT THE FACTS SO I WILL EXCUSE YOU FROM THE
11 COURTROOM SO THAT I CAN LISTEN TO THE ARGUMENTS AND MAKE A
12 RULING

13 IN DETERMINING WHAT THE TRUE FACTS ARE IN THIS
14 CASE YOU MUST DECIDE WHETHER OR NOT THE TESTIMONY OF THE
15 WITNESSES IS BELIEVABLE IT WILL BE MY RESPONSIBILITY TO
16 RULE AS A MATTER OF LAW AS TO WHETHER CERTAIN TESTIMONY IS
17 ADMISSIBLE AT ALL OR NOT BUT ONCE THE TESTIMONY IS ADMITTED
18 WHETHER OR NOT YOU BELIEVE IT IS SOLELY FOR YOU TO
19 DETERMINE

20 IN DECIDING WHETHER TO BELIEVE A WITNESS YOU HAVE
21 THE RIGHT TO CONSIDER THE INTEREST OF THE WITNESS, THE BIAS
22 OF ANY WITNESS, THE PREJUDICE OF ANY WITNESS, THE
23 OPPORTUNITY FOR THE WITNESS TO HAVE SEEN THE MATTERS AND
24 THINGS ABOUT WHICH THE WITNESS MAY TESTIFY AND THE WAY THE
25 WITNESS ACTS ON THE WITNESS STAND

PRELIMINARY CHARGE

31

1 YOU HAVE A RIGHT TO CONSIDER ANYTHING THAT IS IN
2 THE RECORD THAT WILL HELP YOU EVALUATE THE TESTIMONY OF THE
3 WITNESSES THAT MEANS IT IS YOUR DUTY TO PAY CLOSE
4 ATTENTION TO THESE WITNESSES, TO OBSERVE THE WITNESSES, TO
5 LISTEN TO THAT WITNESS, AND TO PAY CLOSE ATTENTION TO THE
6 ATTORNEYS AND TO THE COURT

7 DON'T LET YOUR THOUGHTS WANDER BUT GIVE STRICT
8 ATTENTION TO THE TESTIMONY IN THE CASE SO AT THE END OF ALL
9 THE TESTIMONY AFTER THE ARGUMENTS OF COUNSEL AND THE CHARGE
10 ON THE LAW YOU WILL THEN BE IN A POSITION TO DETERMINE WHAT
11 THE TRUE FACTS ARE AND TO APPLY THE LAW TO THOSE FACTS THUS
12 RENDER A TRUE AND JUST VERDICT

13 IT IS YOUR ADDED DUTY, MR FOREMAN -- MR HOBART,
14 I HAVE APPOINTED YOU THE FOREMAN, AND WHEN YOU RETURN YOU
15 WILL SWITCH PLACES, YOU WILL BE ON THE END SEAT MR
16 HOBART, YOU ARE NOT GOING TO RECEIVE ANY ADDITIONAL
17 MONETARY INDUCEMENT FOR BEING THE FOREMAN WHAT YOUR JOB
18 IS YOU WILL PRESIDE IN THE JURY ROOM YOU WILL BE THE JURY
19 SPOKESPERSON HERE IN COURT IT WILL ALSO BE YOUR DUTY TO
20 WRITE THE VERDICT, MR HOBART, BUT I WILL GIVE YOU FURTHER
21 INSTRUCTIONS ABOUT THAT AT THE CONCLUSION OF THE CASE

22 IN ORDER TO PRESERVE EVERYONE'S RIGHTS I WILL
23 GIVE THE PARTIES AN OPPORTUNITY TO OBJECT TO ANYTHING I'VE
24 JUST SAID ANY EXCEPTIONS TO ANYTHING THAT I'VE SAID, MR
25 RICHARDSON?

OPENING STATEMENT BY STATE

32

1 MR RICHARDSON NO, MA'AM

2 THE COURT ANYTHING FROM THE DEFENDANT?

3 MR WILSON NOTHING, YOUR HONOR

4 THE COURT JUST AS A MATTER OF PROCEDURE WE

5 TYPICALLY WILL START AT 9 15 IN THE MORNING WE WILL TAKE

6 A MORNING BREAK AND BREAK FOR LUNCH AROUND NOON, TAKE

7 APPROXIMATELY AN HOUR, HOUR AND FIFTEEN MINUTES FOR LUNCH,

8 TAKE AN AFTERNOON BREAK, AND RECESS BY FIVE

9 WE WILL STOP AT A NATURAL STOPPING POINT IN THE

10 MIDDLE OF, TESTIMONY OF A WITNESS OR WHEN WE NEED TO TAKE

11 SOME MATTERS OUTSIDE OF YOUR PRESENCE, THAT IS JUST FOR

12 SCHEDULING PURPOSES ONLY I WANT YOU TO KNOW THAT THE

13 COURT DOES CONDUCT OTHER BUSINESS WHILE YOU ARE NOT IN THE

14 COURTROOM UNRELATED TO THIS CASE SOMETIMES IT TAKES A

15 LITTLE BIT LONGER THAN THE COURT ANTICIPATED BUT I WILL

16 ALWAYS RESPECT YOUR TIME AND MS GLORIA WILL TAKE GOOD CARE

17 OF YOU

18 WE WILL BE BREAKING TODAY AT ABOUT 3 40 THE

19 COURT HAS SOME OTHER MATTERS TO TAKE UP UNRELATED TO THIS

20 CASE WE WILL BEGIN IN THE MORNING AT 9 15 NOW YOU WILL

21 HEAR FROM THE SOLICITOR MR RICHARDSON?

22 MR RICHARDSON THANK YOU, YOUR HONOR

23 OPENING STATEMENT

24 BY MR RICHARDSON.

25 LADIES AND GENTLEMEN, AGAIN MY NAME IS JIMMY

OPENING STATEMENT BY STATE

33

1 RICHARDSON I APPRECIATE YA'LL BEING WILLING TO SIT ON
2 THIS JURY I WON'T BORE YOU OR TAKE UP MUCH OF YOUR TIME
3 BUT I DO WANT TO TELL YOU THAT THIS IS A VERY IMPORTANT
4 CASE IT'S A VERY IMPORTANT CASE TO THE STATE, TO MR JOHN
5 AND MS CHRISTINE BENNETT, THE MOTHER AND FATHER OF THE
6 DECEDENT IT'S AN IMPORTANT CASE TO TYRONE JACOBS HE IS
7 HERE CHARGED WITH THE MURDER OF A YOUNG MAN BY THE NAME OF
8 DAVID BENNETT THEY'RE ACTUALLY RELATED YOU'LL HEAR
9 TESTIMONY THAT IT'S NOT A VERY CLOSE RELATIONSHIP BUT
10 COUSINS TO SOME EXTENT AS MANY OF THE WITNESSES THAT YOU'LL
11 HEAR FROM THE STATE WILL CALL WITNESSES AND THEY'LL COME
12 IN AND TESTIFY AND I'LL, IF I THINK ABOUT IT, I'LL TRY TO
13 LET YOU KNOW HOW THEY ARE RELATED TO THE DEFENDANT AND HOW
14 THEY WERE RELATED TO THE DECEDENT DAVID BENNETT AND THEIR
15 COUSINS AND NEPHEWS, THAT SORT OF THING

16 THIS MURDER OCCURRED ON NOVEMBER THE 10TH, 2006,
17 A LITTLE BIT NORTH OF LORIS IN, IF YOU'RE FAMILIAR WITH
18 THAT AREA IT'S WHERE THE AIRPORT IS IT'S A PLACED CALLED
19 BENNETT LOOP ROAD THERE THERE IS A LITTLE RECTANGULAR
20 SHAPE CUTOUT CALLED BENNETT LOOP AND ALL OF THESE FAMILIES
21 BASICALLY LIVE ON THAT ROAD IN THE MIDDLE OF IT, OF THAT
22 ROAD, THERE IS A CHURCH AND BASICALLY ACROSS THE STREET AND
23 DOWN A LITTLE BIT IS A POOL HALL

24 THIS POOL HALL, YOU'LL HEAR TESTIMONY, IS OWNED
25 BY MR ROBERT MCCULLOUGH I BELIEVE HE'LL BE THE FIRST

OPENING STATEMENT BY STATE

34

1 WITNESS THAT COMES UP AND MR MCCULLOUGH WILL TELL YOU HIS
2 RELATIONSHIP WITH BOTH THE DEFENDANT AND THE DECEDENT HE
3 WILL TELL YOU WHAT HE SAW TAKE PLACE ON THAT AFTERNOON OR
4 NIGHT

5 IN THIS CASE YOU'RE GOING TO HAVE SEVERAL
6 WITNESSES THAT WERE THERE AND WATCHED IT, WATCHED WHAT
7 OCCURRED THIS IS NOT A CASE OF WHO DONE IT, IT'S FAR FROM
8 THAT YOU'VE GOT SEVERAL WITNESSES AND WE WILL CALL
9 SEVERAL OF THOSE WITNESSES, NOT ALL OF THEM, BUT WE'LL CALL
10 SOME OF THOSE PEOPLE THAT WERE THERE AND WATCHED THIS GO
11 DOWN SO IT'S NOT WHETHER OR NOT TYRONE JACOBS IS THE
12 TRIGGER MAN TYRONE JACOBS DID PULL A 9MM AND SHOOT DAVID
13 BENNETT YOU'LL HEAR PLENTY OF PEOPLE COME UP AND TELL YOU
14 ABOUT THAT

15 I BELIEVE AT THE END OF THE DAY IT'S GOING TO BE,
16 IT WON'T BE ABOUT WHO DID IT IT'S GOING TO BE ABOUT WHY
17 IT HAPPENED, ALL RIGHT, AND AT SOME POINT, I DON'T THINK
18 I'M GIVING AWAY THE FARM, BUT I'M SURE THAT THEY'RE GOING
19 TO TALK ABOUT SELF DEFENSE AND VOLUNTARILY MANSLAUGHTER AND
20 SOME THINGS THAT DEAL BASICALLY UNDERNEATH MURDER AND I'M
21 HERE TO TELL YOU THAT THIS, WHEN YOU LISTEN TO THIS
22 EVIDENCE, THERE WON'T BE ANY DOUBT BUT THAT THIS YOUNG MAN
23 WAS SHOT THREE TIMES AT A VERY CLOSE RANGE AND DIED AS A
24 RESULT OF THAT AND THAT'S WHY HE'S CHARGED WITH MURDER
25 THAT'S WHY MR JACOBS IS CHARGED WITH THE MURDER OF HIS, I

OPENING STATEMENT BY STATE

35

1 BELIEVE, SECOND COUSIN DAVID BENNETT

2 WHAT YOU'LL FIND OUT IN LISTENING TO THESE
3 EYEWITNESSES THAT WERE THERE TESTIMONY WILL BE THAT IT
4 COULD HAVE BEEN BECAUSE DAVID OWED HIM SOME MONEY IT
5 COULD HAVE BEEN BECAUSE DAVID CALLED HIM A PUNK IT COULD
6 HAVE BEEN BRUISED EGO, THAT TYRONE JACOBS HAD A BRUISED EGO
7 BECAUSE OF ALL THIS THAT WAS GOING DOWN

8 KEEP IN MIND THE STATE HAS NO BURDEN TO PROVE THE
9 MOTIVE I'M GOING TO PUT THE TESTIMONY UP THERE FROM THE
10 EYEWITNESSES I'M GOING TO HAVE THEM TO TESTIFY AS TO WHAT
11 HAPPENED, WHAT THEY HEARD, WHAT THEY SAW, WHAT THEY
12 SMELLED, THINGS THAT THEY WOULD HAVE KNOWN ON THAT DAY, AND
13 ARE WILLING TO COME IN HERE AND TELL YOU ABOUT IT BUT YOU
14 ALSO GOT TO REALIZE THAT THEY'RE ALL RELATED SO WHEN I
15 SAY RELATED I'M SAYING THEY'RE ALL KIN TO EACH OTHER SO
16 I'LL HAVE THEM TO TELL HOW THEY'RE RELATED AND THAT SORT OF
17 STUFF

18 AT THE END OF THE DAY IT IS SIMPLY THAT TYRONE
19 JACOBS TOOK A 9MM, SHOT THIS YOUNG MAN THREE TIMES AND THEN
20 FLED THE AREA HE WAS ARRESTED AND YOU'LL HEAR FROM
21 SEVERAL POLICE OFFICERS THAT WENT IN AND ROPED OFF THE
22 SCENE AND WHAT THEY COLLECTED TO GO ALONG WITH WHAT
23 HAPPENED, AND AT THE END OF THAT I'LL COME BACK AND ASK YOU
24 TO RENDER A JUST VERDICT

25 NOW I WANT TO CAUTION AND TO TELL YOU THAT IT'S

OPENING STATEMENT BY STATE

36

1 GOING TO BE PRETTY EASY FOR YOU AS JURORS TO HEAR THIS
2 STUFF AND THERE'S GOING TO BE THIS YOU'RE GOING TO WANT
3 TO MAKE UP YOUR MIND QUICKLY BUT I ASK YOU THIS, THING IS
4 THE WHOLE THING IS BASED ON FAIRNESS SO I ASK YOU TO KEEP
5 AN OPEN MIND, NOT JUST THROUGHOUT THE STATE'S CASE BUT IF
6 MR WILSON PUTS UP ANYTHING OR IF HE DON'T YOU NEED TO KEEP
7 AN OPEN MIND UNTIL IT'S ALL SAID AND DONE, UNTIL THE LAST
8 WITNESS TAKES THE STAND AND THEN YOU NEED TO MAKE A
9 DETERMINATION AS TO WHETHER OR NOT TYRONE JACOBS SHOULD BE
10 FOUND GUILTY OF MURDER

11 THIS CASE IS NOT GOING TO LAST VERY LONG AT ALL
12 I'VE HAD DISCUSSIONS WITH MR WILSON AND I, IT MAY CONCLUDE
13 TOMORROW IT MAY VERY WELL CONCLUDE WEDNESDAY BUT EITHER
14 WAY IT'S NOT LIKE YOU SEE ON T V WHERE IT'S GOING TO TAKE
15 SIX MONTHS TO GO THROUGH THIS IT'S NOT GOING TO TAKE THAT
16 LONG AT ALL, MAYBE TOMORROW, AT MOST WEDNESDAY THIS CASE
17 WILL BE OVER

18 NOW ALSO JUST LIKE I DON'T WANT TO MAKE, HAVE YOU
19 MAKE UP YOUR MIND EARLY, I DON'T WANT YOU TO TAKE THAT AS
20 SAYING, WELL IT CAN'T BE THAT IMPORTANT IF THEY TRIED IT IN
21 TWO DAYS IT'S NOT LIKE THAT AT ALL YOU'VE GOT A
22 GRIEVING FAMILY AND IT'S VERY IMPORTANT TO THEM AND IT'S
23 VERY IMPORTANT TO THE STATE AND AGAIN IT'S IMPORTANT TO THE
24 DEFENDANT AND THAT'S WHAT THIS WHOLE PROCESS IS SET UP FOR
25 SO DON'T TAKE FROM IT THAT IF IT DOESN'T LAST AN AWFUL LONG

OPENING STATEMENT BY DEFENSE

37

1 TIME THAT IT'S ANY LESS IMPORTANT

2 I APPRECIATE YOUR TIME AND WE WILL GET STARTED
3 BUT FIRST MR WILSON IS GOING TO GIVE YOU A BRIEF OPENING
4 STATEMENT ALSO, THANK YOU

5 THE COURT MR WILSON?

6 MR WILSON THANK YOU, YOUR HONOR

7 OPENING STATEMENT

8 BY MR WILSON

9 MR FOREMAN AND LADIES AND GENTLEMEN, I REPRESENT
10 TYRONE JACOBS, THIS GENTLEMAN SEATED HERE, AND TO THIS
11 INDICTMENT THAT THE SOLICITOR HAS READ FOR YOU AND THAT THE
12 COURT HAS READ FOR YOU, HE HAS PLED NOT GUILTY AND ANY TIME
13 WE COME TO THIS COURT AND A DEFENDANT HAS PLED NOT GUILTY
14 THAT PLACES THE BURDEN OF PROOF UPON THE STATE OF SOUTH
15 CAROLINA A DEFENDANT IS NEVER, EVER REQUIRED TO PROVE
16 ANYTHING IN CRIMINAL COURT THE BURDEN ALWAYS RESTS WITH
17 THE STATE OF SOUTH CAROLINA BUT NOT ONLY MUST THEY PROVE
18 BEYOND A REASONABLE DOUBT THEY MUST PROVE EACH ELEMENT OF
19 THE OFFENSE CHARGED TO YOUR SATISFACTION BEYOND A
20 REASONABLE DOUBT

21 AND YOU SAY WELL WHAT DOES THAT MEAN? THAT'S
22 JUST NOT SOMETHING THAT SOME SMART LAWYER MADE UP TO GET
23 SOMEBODY OFF THAT IS THE LAW OF THIS STATE AND IT'S THE
24 LAW OF EVERY STATE IN THIS UNION SO FAR AS I KNOW

25 WHAT I ASK YOU TO DO AT THE OUTSET OF THIS TRIAL

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 38

1 IS NOTHING MORE THAN TO LISTEN, TO PAY ATTENTION TO THE
2 WITNESSES WHO ARE GOING TO TAKE THE STAND YOU'RE GOING TO
3 BE THE JUDGES OF THE CREDIBILITY, THAT IS THE
4 BELIEVABILITY, AND I ASSURE YOU, LADIES AND GENTLEMEN, THAT
5 IS THE MOST CRITICAL PART OF THIS TRIAL, THE BELIEVABILITY,
6 CREDIBILITY OF THOSE PEOPLE WHO ARE GOING TO TAKE THIS
7 WITNESS STAND AND RAISE THEIR HAND TO GOD ALMIGHTY AND
8 TESTIFY IN THIS CASE THAT IS GOING TO BE THE CRUX FROM
9 WHICH YOU ARE GOING TO HAVE TO MAKE THIS DECISION SO IT'S
10 EXTREMELY, EXTREMELY IMPORTANT THAT YOU LISTEN, THAT YOU
11 PAY ATTENTION.

12 SOMETIMES IT'S NOT SO MUCH WHAT A WITNESS SAYS AS
13 HOW HE SAYS IT OR THE FACT THAT HE DOESN'T SAY IT, THE
14 DEMEANOR WE CALL THAT IN THE LAW THE DEMEANOR OF THE
15 WITNESS HOW WAS THE WITNESS ACTING WHEN THEY'RE
16 TESTIFYING? WERE THEY UNEASY, WERE THEY FORGETFUL, IS WHAT
17 THEY'RE SAYING CORROBORATED BY OTHER EVIDENCE IN THE CASE
18 OR IS IT DISPUTED BY OTHER EVIDENCE IN THE CASE? I ASK YOU
19 TO PAY ATTENTION TO THOSE THINGS AND THE SOLICITOR IS
20 CORRECT, THE DEFENSE IN THIS CASE IS SELF DEFENSE AND HIS
21 HONOR, HER HONOR, WILL INSTRUCT YOU AS TO THE LAW AT A
22 LATER TIME ABOUT THE SELF DEFENSE AND WHAT THAT MEANS AND,
23 AND I DON'T WANT TO SAY ANYTHING THAT MIGHT BE INCONSISTENT
24 WITH WHAT SHE'S GOING TO TELL YOU SO I'M NOT GOING TO GO
25 INTO THAT IN DETAIL AT THIS TIME EXCEPT TO SAY TO YOU THAT

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 39

1 EVERY PERSON HAS THE RIGHT TO DEFEND THEIR OWN LIFE, AND IN
2 THIS CASE WHAT YOU WILL FIND BASED ON THE WITNESSES WHO ARE
3 GOING TO TESTIFY IN THIS CASE IS THAT THE DEFENDANT'S LIFE
4 WAS IN DANGER, IN IMMINENT DANGER, AND HE DID WHAT HE HAD
5 TO DO TO PROTECT HIS OWN LIFE AND SELF DEFENSE IS A
6 COMPLETE DEFENSE IF YOU FIND SELF DEFENSE BUT AGAIN, THE

7 BURDEN OF PROOF IS NOT UPON THE DEFENDANT TO PROVE SELF
8 DEFENSE THE BURDEN OF PROOF IS UPON THE STATE OF SOUTH
9 CAROLINA TO PROVE THE ABSENCE OF SELF DEFENSE AND I SUBMIT
10 TO YOU, LADIES AND GENTLEMEN, THAT IF YOU LISTEN TO THE
11 WITNESSES WHO ARE GOING TO TESTIFY AND IF YOU PAY ATTENTION
12 THAT AT THE END YOU'RE GOING TO BE IN A POSITION TO RENDER
13 A VERDICT THAT SPEAKS THE TRUTH AND NOBODY, NOT THE STATE
14 OF SOUTH CAROLINA NOR THE DEFENDANT HAS ANY RIGHT TO EXPECT
15 OR ASK ANY MORE OF YOU THAN THAT WE JUST ASK FOR YOUR
16 PATIENCE AS WE GO THROUGH THIS PROCESS THANK YOU

17 THE COURT MR RICHARDSON, CALL YOUR FIRST
18 WITNESS

19 MR RICHARDSON YOUR HONOR, THE STATE WOULD
20 CALL ROBERT MCCULLOUGH

21 THE COURT MR MCCULLOUGH, PLEASE COME
22 FORWARD, MS LEWIS, IS GOING TO SWEAR YOU IN

23 ROBERT MCCULLOUGH

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS.

25 MADAM CLERK PLEASE SPEAK INTO THE MICROPHONE

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 40

1 AND STATE YOUR FULL NAME

2 THE WITNESS MY NAME IS ROBERT MCCULLOUGH

3 MADAM CLERK AND SPELL YOUR LAST NAME FOR THE

4 COURT

5 THE WITNESS M-C-C-U-L-L-O-U-G-H

6 THE COURT YOU MAY PROCEED, MR RICHARDSON

7 MR RICHARDSON - THANK YOU, YOUR HONOR

8 DIRECT EXAMINATION

9 BY MR RICHARDSON

10 Q MR MCCULLOUGH, PLEASE TELL THE JURY WHERE

11 YOU LIVE?

12 A ON , LORIS

13 Q

14 A YES

15 Q AND WHAT CITY IS THAT IN?

16 A LORIS, SOUTH CAROLINA

17 Q ALL RIGHT, WHAT DO YOU DO FOR A LIVING?

18 A I RETIRED FROM SCDOT

19 Q OKAY, DO YOU KNOW OF A POOL HALL THERE ON

20 BENNETT LOOP?

21 A WE GOT A STORE THERE

22 Q ALL RIGHT, AND IT'S GOT POOL TABLES IN IT?

23 A YES, IT IS

24 Q DO YOU EVER RUN THAT POOL ROOM?

25 A I BE IN THERE FROM TIME TO TIME

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 41

1 Q ALL RIGHT, WERE YOU WORKING THERE ON
2 NOVEMBER THE 10TH, 2006?

3 A YEAH

4 Q ALL RIGHT, DO YOU KNOW THE DEFENDANT MR
5 TYRONE JACOBS?

6 A YES, I DO

7 Q HOW LONG HAVE YOU KNOWN HIM?

8 A KNOWN TYRONE A GOOD WHILE, HE A FRIEND OF
9 MINE

10 Q YOU CONSIDER HIM A FRIEND?

11 A YES, I DO

12 Q KNOW HIS FAMILY?

13 A YES, I DO

14 Q ALL RIGHT, DO YOU KNOW DAVID BENNETT?

15 A YES

16 Q HOW DO YOU KNOW DAVID?

17 A I KNOW DAVID BY BEING IN THE HOOD SO HE A
18 FRIEND OF MINE, TOO

19 Q FRIEND ALSO, AND AS THE DECEDENT, WHAT DID
20 YOU CALL DAVID?

21 A "DO "

22 Q "DO?"

23 A YES

24 Q ALL RIGHT, DO YOU KNOW MS CHRISTINE AND
25 MR JOHN BENNETT?

MR. MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 42

1 A YES, I DO

2 Q ALL RIGHT, ARE YOU RELATED TO ANY OF THOSE?

3 A NO, NOT REALLY

4 Q NO KINSHIP AT ALL?

5 A NOT REALLY

6 Q BUT YOU SAY- THAT YOU WOULD CALL BOTH THE
7 DEFENDANT AND THE DECEDENT VICTIM FRIENDS?

8 A YES

9 Q ALL RIGHT, DID YOU SEE THEM THERE TOGETHER
10 ON NOVEMBER 10TH, 2006?

11 A YES YOUR HONOR, CAN I SAY SOMETHING?
12 COULD I SAY SOMETHING BEFORE THIS?

13 THE COURT PLEASE ANSWER ANY QUESTION THAT MR
14 RICHARDSON HAS FOR YOU, I CAN'T ANSWER ANY QUESTIONS FOR
15 YOU, OKAY

16 THE WITNESS (CONTINUING)

17 A OKAY

18 Q ALL RIGHT, THEN THE REASON YOU'RE HERE DID
19 YOU VOLUNTEER TO COME IN TODAY?

20 A YA'LL SUBPOENAED ME

21 Q YOU'RE HERE UNDER SUBPOENA?

22 A YES

23 Q ALL RIGHT, NOW THAT SUBPOENA PUT YOU IN A
24 BAD SPOT, DIDN'T IT?

25 A YES, SIR COULD I SAY SOMETHING ON THEIR

MR MCCULLOUGH - DIRECT EXAMINATION BY MR. RICHARDSON 43

1 BEHALF?

2 Q WITH REGARD TO THE SUBPOENA?

3 A YES

4 Q YES, SIR?

5 THE COURT MR MCCULLOUGH, I WANT TO CAUTION
6 YOU TO ANSWER ONLY THE QUESTIONS THAT ARE PRESENTED TO YOU
7 BY EITHER MR RICHARDSON OR MR WILSON, OKAY

8 A OKAY

9 Q MR MCCULLOUGH, WHAT DO YOU HAVE TO SAY
10 ABOUT THE SUBPOENA PART?

11 A I REALLY DIDN'T WANT TO BE HERE, YA'LL
12 SUBPOENAED ME

13 Q ALL RIGHT ---

14 A BOTH OF THESE GUYS MY FRIENDS

15 Q I UNDERSTAND, ALL RIGHT, AND YOU KNOW THAT
16 NOT TO SHOW UP YOU'D BE HAULED INTO JAIL?

17 A YES, I WOULD

18 Q ALL RIGHT, ALL RIGHT, HOW CLOSE DO, IS YOUR
19 HOUSE TO TYRONE JACOBS?

20 A LIKE MAYBE AN EIGHTH OF A MILE, SOMETHING
21 LIKE THAT

22 Q AND HOW CLOSE IS YOUR HOUSE TO WHERE DAVID
23 BENNETT USED TO LIVE?

24 A A LITTLE MORE THAN AN EIGHTH OF A MILE
25 PROBABLY

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 44

1 Q SO EVERYBODY IS IN THERE WITHIN A MILE?

2 A YES

3 Q ALL RIGHT, YOU WERE THERE ON NOVEMBER THE
4 10TH, 2006, APPROXIMATELY HOW MANY PEOPLE WOULD YOU SAY
5 INCLUDING YOURSELF AND MR BENNETT AND JACOBS HOW MANY
6 PEOPLE WERE IN THERE AT THAT POOL HALL?

7 A I SAY AS MANY AS 10, 11, SOMEWHERE ALONG IN
8 THERE

9 Q ALL RIGHT, AND AT, AND AT SOME POINT WAS
10 THERE AN ARGUMENT BETWEEN TYRONE JACOBS AND DAVID BENNETT?

11 A YES, LIKE I SAY IT WASN'T REALLY AN
12 ARGUMENT JUST TALKING LEAD TO AN ARGUMENT

13 Q ALL RIGHT, WELL TELL ME WHAT, TELL ME WHAT
14 YOU KNOW ABOUT THAT?

15 A WELL IT WAS, WELL DAVID WE CALL HIM "DO" HE
16 ASKED ME TO USE MY PHONE AND I TOLD HIM, NO, I SAID, CAUSE,
17 YOU KNOW, I DON'T LET NOBODY USE MY PHONE CAUSE MY WIFE GET
18 ON ME SO MUCH ABOUT IT, AND I TOLD HIM TO USE CHRIS BENNETT
19 PHONE AND HE ASKED CHRIS TO USE HIS PHONE AND CHRIS SAID
20 SOMETHING ABOUT SOME MINUTES OR SOMETHING, AND THEN HIM
21 AND, HIM AND "DO" HAD A LITTLE WORDS AND THEN TYRONE
22 STEPPED UP AND SAID, WELL DON'T LET HIM USE YOUR PHONE
23 HE'S A GROWN MAN, YOU KNOW WHAT I'M SAYING, SHOULD HAVE A
24 PHONE, AND SO THE ARGUMENT PROCEED FROM THERE BY "DO"
25 TELLING TYRONE A PUNK AND THEN TYRONE TOLD HIM HE WASN'T NO

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 45

1 PUNK AND THEY GOT TO ARGUING AND STUFF A LITTLE BIT

2 Q AND THAT WAS INSIDE THE POOL HALL?

3 A YEAH

4 Q AND YOU HEARD "DO" CALL TYRONE A PUNK?

5 A YEAH, AND TYRONE TOLD HIM DON'T CALL HIM NO
6 PUNK SO, YOU KNOW, THEY JUST, THEY JUST --

7 Q NOW WHAT DID YOU DO AS A RESULT OF THAT
8 ARGUMENT?

9 A I TOLD THEM BOYS TO QUIT THAT, CUT THAT
10 JUNK OUT

11 Q DID YOU EVER SEE ANY LICKS PASSED INSIDE --
12 -

13 A NO

14 Q --- THE POOL HALL?

15 A NO, WASN'T NO LICKS

16 Q DID THEY EVER COME TO WHERE THEY WERE GOING
17 TO FIGHT?

18 A NO

19 Q ALL RIGHT, JUST TALKING BACK AND FORTH?

20 A YEAH, YEAH

21 Q ALL RIGHT, NOW YOU TOLD THEM NOT TO, NOT TO
22 CARRY ON LIKE THAT INSIDE THE POOL HALL?

23 A YEAH, I TOLD THEM YA'LL CUT THAT JUNK OUT,
24 YOU KNOW, I ALWAYS TELL EVERYBODY YOU CUT THAT JUNK OUT OR
25 YOU GOT TO LEAVE

MR MCCULLOUGH - DIRECT EXAMINATION BY MR. RICHARDSON 46

1 Q ALL RIGHT, DID EITHER ONE OF THEM LEAVE?

2 A TYRONE WENT ON THE OUTSIDE

3 Q ALL RIGHT, OUTSIDE OF THE POOL HALL?

4 A YES

5 Q ALL RIGHT, DID YOU FOLLOW TYRONE?

6 A YES

7 Q ALL RIGHT, TELL ME WHAT, IF ANYTHING, YOU
8 SAID TO TYRONE WHEN YOU WENT OUTSIDE?

9 A I TOLD HIM DON'T START NO, NO TROUBLE AT
10 THE PLACE, YOU KNOW WHAT I'M SAYING, I SAID, YOU KNOW, YOU
11 START SOME TROUBLE AT THE PLACE. I'M GOING TO HAVE TO CALL
12 THE POLICE ON YOU

13 Q ALL RIGHT, WAS TYRONE JACOBS ARMED?

14 A NOT AS I KNOW OF

15 Q ALL RIGHT, DID THERE EVER COME A TIME THAT
16 TYRONE JACOBS ARMED HIMSELF?

17 A HE SAID A FEW WORDS TO ME AND I SAID A FEW
18 WORDS TO HIM AND HE WALKED TO HIS CAR, I WALKED BACK IN THE
19 INSIDE

20 Q WELL BEFORE YOU GO BACK IN TELL ME WHAT HE
21 SAID TO YOU AND WHAT YOU SAID TO HIM?

22 A WELL I TOLD HIM I SAID, YOU KNOW DON'T
23 START NO TROUBLE TO MY PLACE, I SAID I'LL CALL THE POLICE
24 HE LIKE, "F" YOU, "DO", AND THE POLICE SO I JUST WALKED
25 INSIDE, YOU KNOW WHAT I'M SAYING CAUSE, YOU KNOW, I AIN'T

MR. MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 47

1 GOING TO GET IN ALL THAT ARGUMENT

2 Q NOW TELL ME WHAT HAPPENED WHEN YOU BACK
3 INSIDE?

4 A WHEN I WENT BACK INSIDE FONZIE REEVES WAS
5 TALKING TO "DO" AND HE WAS TELLING "DO", MAN, LEAVE THAT
6 JUNK ALONE SO I WALKED IN AND I SAID, YEAH, "DO" LEAVE THAT
7 JUNK ALONE I SAID, IF TYRONE COME IN HERE AND START ANY
8 TROUBLE OR ANYTHING I SAID I'M GOING TO CALL THE POLICE I
9 SAID, DON'T GO ON THE OUTSIDE CAUSE I TOLD HIM TO GO AWAY
10 TO LEAVE, SO "DO" SAID, YOU KNOW, "F" THAT PUNK, YOU KNOW
11 WHAT I'M SAYING SO CHRIS SAID SOMETHING, CHRIS BENNETT
12 SAID SOMETHING SO I WAS STANDING UP THERE AND I WAS
13 SITTING, I WAS TALKING TO CHRIS AND I CAN TELL "DO" WAS
14 GOING OUTSIDE CAUSE HE NUDGED ME, LIKE BUMPED ME A LITTLE
15 BIT, LIKED PUSHED ME, AND ME AND CHRIS WAS STILL TALKING SO
16 I HEARD THEM OUTSIDE ARGUING

17 Q YOU HEARD "DO" WHO IS DAVID BENNETT?

18 A YEAH

19 Q AND TYRONE JACOBS OUTSIDE ARGUING?

20 A YEAH

21 Q ALL RIGHT, DID YOU GO OUTSIDE?

22 A YES, SIR

23 Q ALL RIGHT, TELL ME WHAT YOU SAW WHEN YOU
24 WENT OUTSIDE?

25 A WHEN I WENT OUTSIDE I SEEN "DO" HE WAS

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 48

1 STANDING ON THE CEMENT AND HIM AND TYRONE WAS TRADING WORDS
2 AND TYRONE BACKED UP, YOU KNOW WHAT I'M SAYING HE BACKED
3 UP FROM "DO" AND "DO" HAD A POOL STICK AND HE HAD IT IN HIS
4 HAND SO HE STEPPED DOWN OFF THE CEMENT AND "DO" HAD THE
5 POOL STICK IN HIS HAND LIKE THIS AND TYRONE, AND TYRONE AND
6 "DO" WAS ARGUING AND TYRONE, YOU THINK I WON'T PUT SOME
7 HOLES IN YOU, AND THEN "DO" LIKE, MAN, I AIN'T SCARED OF NO
8 GUN SO AT THAT TIME TYRONE PULLED A GUN HE DID IT LIKE
9 THIS AND IT CLICKED SO RIGHT THEN THE MORE I'M THINKING,
10 TYRONE, MAN, CUT THAT JUNK OUT I SAID, YA'LL, MAN, LEAVE
11 THAT JUNK ALONG, YOU KNOW WHAT I'M SAYING I'M TRYING TO
12 GET THEM TO CALM DOWN

13 Q UH-HUH --

14 A SO I CAN'T REMEMBER IF TYRONE SAID

15 SOMETHING FIRST OR "DO" SAID SOMETHING FIRST BUT ANYWAY,
16 HE DID THE GUN LIKE THAT AND IT CLICKED YOU KNOW IT HAD
17 CLICKED THE FIRST TIME, RIGHT, BUT THEN THEY SAID A COUPLE
18 OF WORDS TO EACH OTHER AND THEN TYRONE SAID, YOU THINK I'M
19 PLAYING WITH YOU THEN HE LIKE THAT AND HE PULLED IT AND HE
20 SHOT AND "DO" JUST STANDING THERE ACTING LIKE, OH I'M
21 LIKE, TYRONE, MAN, WHAT ARE YOU DOING, MAN, YOU KNOW WHAT
22 I'M SAYING, WHAT YOU DOING, YOU KNOW WHAT I'M SAYING, AND
23 "DO" JUST STANDING THERE LIKE, YOU KNOW, HE DIDN'T KNOW HE
24 WAS SHOT I SAID, "DO", "DO" YOU ALL RIGHT? AND THEN
25 TYRONE SAID, MAN, YOU THINK I'M PLAYING WITH YOU AND THEN

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 49

1 HE SHOT HIM AGAIN AND WHEN HE SHOT HIM THAT SECOND TIME
2 "DO" PICKED THE STICK UP LIKE THIS RIGHT THERE I DON'T
3 KNOW IF HE HIT HIM OR NOT CAUSE THAT SECOND SHOT I WAS
4 MOVING, YOU KNOW WHAT I'M SAYING, AND IT WAS COMING DOWN
5 AND WHEN I TURNED AROUND I SEEN THE STICK, THE SHOT FROM
6 THE STICK, THE POOL STICK WAS IN THE GROUND AND THEN I
7 HEARD ANOTHER SHOT AND "DO" WENT BACK LIKE THIS

8 Q ALL RIGHT ---

9 A THAT'S THE WAY I SEEN IT

10 Q AND THAT WAS OUT AT THE FRONT OF YOUR SHOP
11 THERE?

12 A YES, STORE

13 MR WILSON I HAVE NO OBJECTIONS, YOUR HONOR,
14 TO EITHER ITEM

15 MR RICHARDSON I HAVEN'T MARKED THEM

16 THE COURT THEY HAVE NOT BEEN MARKED?

17 MR RICHARDSON NO, MA'AM

18 THE COURT IF YOU'LL GIVE THEM TO MS BABB AND
19 LET HER MARK THEM

20 (WHEREUPON, STATE'S EXHIBITS NUMBERS 1, 2, AND 3
21 MARKED FOR IDENTIFICATION)

22 MR RICHARDSON (CONTINUING)

23 Q ROBERT, LET ME PASS TO YOU WHAT IS MARKED
24 AND I BELIEVE ALREADY IN EVIDENCE WITHOUT OBJECTION AS
25 STATE'S EXHIBIT NUMBER 1 DO YOU RECOGNIZE THAT?

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 50

1 A YES, SIR
2 Q WHAT IS THAT A PHOTOGRAPH OF?
3 A THAT'S THE STORE
4 Q ALL RIGHT, YOUR STORE ---
5 A NO, MY WIFE'S STORE
6 Q OR YOUR WIFE'S STORE?
7 A YES
8 Q ALL RIGHT, AND THAT'S STATE'S EXHIBIT
9 NUMBER 2, I BELIEVE, ALREADY IN EVIDENCE?
10 A YES
11 Q WHAT IS THAT A PHOTOGRAPH OF? -1 1
12 A OF THE STORE -
13 Q ALL RIGHT, AND IT'S JUST A CLOSE UP?
14 A YES, IT'S JUST A CLOSE UP, ONE'S A FAR AWAY
15 AND ONE'S A CLOSE UP
16 Q NOW LET ME ASK YOU ABOUT THIS, WHAT IS, DO
17 YOU RECOGNIZE STATE'S EXHIBIT NUMBER 3?
18 A YEAH, LOOK LIKE ONE OF MY POOL STICKS
19 Q ALL RIGHT, DO YOU KNOW IF THAT'S THE POOL
20 STICK THAT "DO" HAD ON THE 10TH OF NOVEMBER 2006?
21 A I CAN'T SAY FOR SURE BUT IT LOOK LIKE IT
22 Q ALL RIGHT, AND IT'S BROKEN?
23 A YES
24 Q NOW HOW ABOUT --
25 MR RICHARDSON YOUR HONOR, I WOULD JUST ASK

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 51

1 THAT HE BE ABLE TO STEP DOWN FOR A SECOND SO I CAN PUBLISH
2 THIS TO THE JURY, JUST, I'M NOT GOING TO HAND IT TO HIM,
3 I'LL JUST HOLD IT UP IF THAT'S ALL RIGHT?

4 THE COURT DOES HE NEED TO STEP DOWN? HE COULD

5 --

6 MR RICHARDSON THEY MAY BE ABLE TO SEE IT,
7 I'LL WALK AROUND HERE

8 THE COURT ALL RIGHT, STATE'S EXHIBITS 1, 2,
9 AND 3 INTO EVIDENCE WITHOUT OBJECTION

10 (WHEREUPON, STATE'S EXHIBITS NUMBERS 1, 2, AND 3
11 ENTERED INTO EVIDENCE)

12 MR RICHARDSON (CONTINUING)

13 Q ALL RIGHT, MR ROBERT, IF YOU WILL SHOW THE
14 JURY WHAT CONCRETE YOU WERE TALKING ABOUT AS "DO DIRTY"
15 STANDING ON?

16 A HE WAS STANDING RIGHT HERE BY THIS POST ON
17 THE LITTLE CONCRETE

18 Q ALL RIGHT, THE CONCRETE RIGHT HERE?

19 A YEAH

20 Q ALL RIGHT, AND YOU SAID AT SOME POINT HE
21 STEPPED DOWN OFF OF THE CONCRETE?

22 A YES, HE STEPPED DOWN AROUND MAYBE THAT FAR
23 OFF THE CONCRETE

24 Q AND THAT'S RIGHT IN HERE?

25 A UH-HUH

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 52

1 MR RICHARDSON YOUR HONOR, PERMISSION TO
2 PUBLISH IT TO THE JURY JUST TO LET THEM SEE WHAT THE PLACE
3 LOOKS LIKE?

4 THE COURT GO AHEAD, MR RICHARDSON

5 LADIES AND GENTLEMEN OF THE JURY, THE PROCEDURE
6 THAT HAS JUST BEEN DONE IS CALLING PUBLISHING TO THE JURY
7 ALL OF THE EVIDENCE WHEN I JUST MADE THE ANNOUNCEMENT THAT

8 STATE'S 1'S, 2, AND 3 HAVE BEEN INTRODUCED INTO EVIDENCE

9 MR HOBART, AS THE FOREMAN YOU WILL TAKE THOSE BACK INTO
10 THE JURY ROOM WITH YOU SO YOU WILL HAVE AN OPPORTUNITY,

11 LADIES AND GENTLEMEN OF THE 'JURY,' WHEN EVIDENCE IS ;

12 INTRODUCED TO TAKE EVERY ITEM BACK INTO THE JURY ROOM WITH

13 YOU

14 MR RICHARDSON THANK YOU, YOUR HONOR

15 THE COURT YOU MAY PROCEED, MR RICHARDSON

16 MR RICHARDSON (CONTINUING)

17 Q AND, MR ROBERT, LET ME HAND YOU THIS POOL
18 STICK AND IT'S FINE IF YOU WANT TO JUST STAND UP BACK THERE
19 BUT IF YOU'D SHOW THE JURY HOW "DO" WAS STANDING HOLDING
20 THE POOL STICK AT THE FRONT OF YOUR STORE?

21 A HE WAS HOLDING IT LIKE THIS, LIKE THIS

22 Q WITH HIS HANDS ON THE POOL STICK?

23 A YEAH, LIKE THIS

24 Q ALL RIGHT, DID THERE EVER COME A TIME WHILE
25 YOU WERE STANDING THERE WATCHING THAT HE TRIED TO USE THAT

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 53

1 POOL STICK AS A WEAPON AGAINST TYRONE JACOBS?

2 A I GUESS HE WAS CAUSE WHEN HE, WHEN THE
3 SECOND SHOT, WHEN THE SECOND SHOT HAPPENED HE TURNED IT
4 LIKE THIS, HE TURNED IT LIKE THIS HE WAS GOING TO SWING
5 IT, LIKE I SAY, THE SECOND SHOT I WAS MOVING AND WHEN I
6 TURNED AROUND I SEEN THE POOL STICK IN THE DIRT LIKE THIS,
7 LIKE THIS RIGHT HERE AND I HEARD THAT LAST SHOT

8 Q AND HE HAD ALREADY BEEN SHOT AT THE TIME HE
9 LIFTED UP THAT POOL STICK IN A, IN A MANNER AS TO HIT THE
10 DEFENDANT?

11 A YES

12 Q ALL RIGHT, DO YOU HAVE ANY IDEA WHERE THE
13 FIRST OR SECOND SHOT WENT INTO THE VICTIM, WHAT SHOT CAME
14 FIRST, SECOND OR THIRD?

15 A I REALLY DON'T KNOW, I CAN'T SAY, YOU KNOW
16 WHAT I'M SAYING I REALLY DON'T KNOW WHERE THE FIRST ONE
17 IS AT, THE FIRST ONE OR SECOND ONE

18 Q ALL RIGHT, AND TELL ME HOW FAR AWAY TYRONE
19 JACOBS WAS FROM DAVID WHEN HE FIRST CLICKED THE TRIGGER,
20 NOW I'M GOING TO STAND HERE AND I'LL BACK UP IF I NEED TO?

21 A NO

22 Q AM I TOO CLOSE NOW?

23 A NO, HE WAS STANDING ABOUT, HE WAS ABOUT
24 LIKE THIS RIGHT, ABOUT, ABOUT RIGHT HERE

25 Q ABOUT RIGHT HERE?

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 54

1 A YEAH

2 Q NOW WAS HE STRAIGHT IN FRONT OF HIM OR TO
3 THE LEFT OR TO THE RIGHT?

4 A THEY WAS LIKE, YEAH, THEY WAS LIKE IN AN
5 ANGLE LIKE THIS

6 Q' SO HE WAS LIKE THIS?

7 A YEAH

8 Q FACING HIM?

9 A YEAH

10 Q AND THEN YOU SAW HIM PULL THIS GUN AND AIM
11 IT AND THE GUN ACTUALLY CLICKED?

12 A YEAH, HE DID IT LIKE THIS AND IT CLICKED

13 Q ALL RIGHT, HE DID LIKE THAT AND THE GUN
14 CLICKED?

15 A YEAH

16 Q DID NOT FIRE?

17 A NO

18 Q AND THEN YOU SAY YOU ACTUALLY SAW HIM RACK
19 ONE INTO THE CHAMBER?

20 A YES

21 Q ALL RIGHT, AND AT THAT POINT HOW LONG DID
22 IT TAKE BEFORE HE HAD SHOT HIM? WAS IT LESS THAN A MINUTE?

23 A I CAN'T, REALLY CAN'T REMEMBER I JUST
24 KNOW, I, THE GUN CLICKED AND I HEARD HIM FIRE I KIND OF
25 MOVED OFF A LITTLE PIECE, YOU KNOW WHAT I'M SAYING

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 55

1 Q AT THAT TIME WHEN HE INITIALLY SQUEEZED THE
2 TRIGGER AND IT DIDN'T FIRE DID YOU BELIEVE THAT HE WAS
3 GOING TO SHOOT DAVID BENNETT?

4 A NO

5 Q DO YOU KNOW WHETHER OR NOT DAVID BENNETT
6 AND TYRONE JACOBS WERE RELATED?

7 A YES, COUSINS

8 Q COUSINS, DID, DID, WERE YOU ABLE TO
9 PERCEIVE WHAT DAVID WAS DOING WHEN THAT GUN CLICKED?

10 A YES

11 Q ALL RIGHT, DID, DID HE APPEAR UPSET THAT
12 TYRONE JACOBS WAS FIXING TO SHOOT HIM?

13 A I DON'T, I DON'T, I THINK, NO, I'M NOT
14 QUITE SURE, I CAN'T SPEAK FOR "DO"

15 Q ALL RIGHT --

16 A BUT I'M THINKING HE'S THINKING THE SAME
17 THING I DID THERE AIN'T NO BULLETS IN THAT GUN

18 MR WILSON I'M GOING TO OBJECT TO THE
19 QUESTION FIRST OF ALL HE'S ASKING HIM FOR HIS OPINION OF
20 WHAT HE THOUGHT THE DEFENDANT WAS THINKING OR WHAT HE
21 THOUGHT THE VICTIM WAS THINKING AND I THINK THAT'S
22 IMPROPER

23 MR RICHARDSON WELL ---

24 THE COURT SUSTAINED, REPHRASE YOUR QUESTION,

25 MR RICHARDSON

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 56

1 MR RICHARDSON YES, MA'AM

2 Q (CONTINUING) I DON'T, I DON'T WANT YOU TO
3 TELL ME WHAT HE WAS THINKING I WANT TO BY HIS ACTIONS DID
4 HE APPEAR IN ANY WAY, DID ANY ACTION APPEAR THAT HE WAS
5 GOING TO BE SHOT? DID YOU SEE ANY ACTION FROM DAVID
6 BENNETT?

7 A NO

8 MR WILSON OBJECTION, SAME OBJECTION, YOUR
9 HONOR

10 MR RICHARDSON AND ALL WHAT I'M GETTING AT IS
11 IF HE -
12 THE COURT APPROACH

13 MR RICHARDSON, ---, WHETHER HE WAS, I'M SORRY
14 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
15 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
16 OF THE JURY AND THE COURT REPORTER)

17 MR RICHARDSON (CONTINUING)

18 Q DID DAVID BENNETT MOVE, JUMP, JAR IN ANY
19 WAY TO INDICATE THAT HE WAS APPREHENSION OF BEING SHOT?

20 A NO, HE JUST STOOD THERE, HE SAID, HUMPH, I
21 AIN'T SCARED OF NO GUN

22 Q AND AT THAT POINT HE NEVER LIFTED THE STICK
23 OR DID ANYTHING TO ATTACK THE DEFENDANT?

24 A NO

25 Q THE THREE SHOT, TELL ME IF YOU CAN CLAP

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 57

1 YOUR HANDS HOW CLOSE IN TIME THEY WERE?

2 A IT WAS LIKE POW -- POW -- AND POW

3 Q AND ONCE MR BENNETT HAD BEEN SHOT YOU SAID
4 THAT THE POOL STICK WENT IN THE GROUND AND BROKE WHAT DID
5 MR BENNETT DO?

6 A HE JUST LAID DOWN HE LAID THERE AND HE,
7 IT WAS LIKE HE WAS TRYING TO GET UP, ONE OF HIS LEGS LIKE
8 CARRIED HIM IN A CIRCLE LIKE, YOU KNOW WHAT I'M SAYING

9 Q ALL RIGHT, AND WAS THAT ON THE CONCRETE
10 PORTION OF YOUR --

11 A NO, THAT WAS OUT ON THE DIRT

12 Q HOW FAR FROM THE CONCRETE WAS THAT?

13 A PROBABLY ---

14 Q WHEN HE CAME TO REST?

15 A TWO TO THREE FEET, SOMEWHERE ALONG IN
16 THERE

17 Q WAS THAT BASICALLY WHERE HE HAD BEEN
18 STANDING?

19 A BASICALLY CAUSE HE PROBABLY JUST,
20 BASICALLY

21 THE COURT MR MCCULLOUGH, IF YOU WOULD SCOOT
22 YOUR SEAT FORWARD ---

23 A I'M SORRY

24 THE COURT --- YOU'RE VERY SOFT SPOKEN SO THE
25 JURY CAN HEAR YOU, THANK YOU

MR MCCULLOUGH - DIRECT EXAMINATION BY MR. RICHARDSON 58

1 Y A UH-HUH,

2 MR RICHARDSON (CONTINUING)

3 Q MR MCCULLOUGH, UPON THAT THIRD SHOT WHAT
4 DID YOU DO?

5 A AFTER THE THIRD SHOT?

6 Q YES, SIR?

7 A I, I KIND-OF LIKE JUST WALKED RIGHT ON OUT
8 THE WAY THE SECOND SHOT LIKE I SAID I WAS MOVING, YOU
9 KNOW WHAT I'M SAYING, I WAS MOVING I WAS GETTING CLOSE TO
10 THIS CORNER END OF THE BUILDING, YOU KNOW WHAT I'M SAYING,
11 AND THEN WHEN I HEARD THE THIRD SHOT, YOU KNOW WHAT I'M
12 SAYING I TURNED AROUND AND LIKE I SAID I SEEN THIS STICK
13 IN THE GROUND SO I JUST WALKED-TO THE EDGE OF THE BUILDING,
14 YOU KNOW WHAT I'M SAYING, AND THEN I TURNED AROUND AND I
15 SEE "DO" KICKING SO, YOU KNOW, THEM BOYS RAN OVER THERE AND
16 THEY WERE GOING TO PUT HIM IN THE CAR SO I KIND OF LIKE
17 WALKED BACK UP IN THE BUILDING SHAKING MY HEAD

18 Q ALL RIGHT, DID, DID YOU SEE WHAT HAPPENED
19 TO TYRONE JACOBS AFTER THE THIRD SHOT?

20 A I THINK TYRONE GOT IN HIS CAR HE WENT
21 TOWARDS HIS CAR IS ALL I KNOW, HE LEFT, I GUESS

22 Q DO YOU REMEMBER WHAT TYPE OF CAR TYRONE HAD
23 OR WAS DRIVING?

24 A I THINK HE WAS DRIVING THAT BLACK
25 BONNEVILLE

MR MCCULLOUGH - DIRECT EXAMINATION BY MR. RICHARDSON 59

1 MR WILSON NO OBJECTION, YOUR HONOR

2 THE COURT IS THAT STATE'S EXHIBIT NUMBER 4?

3 MR RICHARDSON YES, MA'AM, STATE'S EXHIBIT

4 NUMBER 4

5 THE COURT WITHOUT OBJECTION INTO EVIDENCE

6 MR RICHARDSON THANK YOU

7 (WHEREUPON, STATE'S EXHIBIT NUMBER 4 MARKED AND
8 ENTERED INTO EVIDENCE)

9 MR RICHARDSON (CONTINUING)

10 Q DO YOU RECOGNIZE THAT VEHICLE?

11 A YES, THAT LOOK LIKE HIS CAR

12 Q ALL RIGHT, AND THAT'S THE CAR THAT YOU
13 BELIEVE THAT HE GOT INTO?

14 A YES, I THINK SO

15 Q DID YOU SEE TYRONE JACOBS AFTER THAT?

16 A NO, SIR

17 Q DID YOU GO TO THE HOSPITAL WITH DAVID
18 BENNETT?

19 A NO, I DIDN'T

20 Q ALL RIGHT, DID YOU GET TO SEE OR TALK WITH
21 TYRONE JACOBS AGAIN AFTER THAT?

22 A NO, I DIDN'T

23 Q ALL RIGHT, DID YOU EVER HEAR ANY
24 CONVERSATION BETWEEN TYRONE AND DAVID ABOUT MONEY?

25 A NOT REALLY CONVERSATION I KNOW "DO" WAS,

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 60

1 WELL I CALL HIM "DO", YOU KNOW WHAT I'M SAYING HE WAS
2 OWING ME \$11 ON A STORE BILL SO I MEAN HE WAS OWING ME LIKE
3 \$6 ON THE STORE BILL HE TOLD ME HE HAD \$11 I TOLD HIM,
4 I SAID, WELL "DO" I'M GLAD TO SEE YOU, I NEED TO GET MY
5 MONEY CAUSE I AIN'T SEEN YOU IN TWO WEEKS HE WAS, LIKE,
6 ROB, LET ME PAY YOU TOMORROW, TOMORROW IS FRIDAY I SAID,
7 NO, I SAID, "DO" LET ME GET MY MONEY NOW, YOU KNOW WHAT I'M
8 SAYING

9 Q UH-HUH --

10 A SO, YOU KNOW, I GOT MY MONEY

11 Q HE PAID-YOU-\$11? ~~TH~~

12 A NO, HE PAID, HE PAID ME \$6

13 Q \$6?

14 A YEAH

15 Q DO YOU HAVE ANY WAY OF KNOWING WHETHER OR
16 NOT TYRONE SAW THAT TRANSACTION?

17 Q I THINK, I THINK HE COME AROUND THERE AND
18 LOOKED AT "DO" LIKE THIS, YOU KNOW WHAT I'M SAYING, AND
19 "DO" WALKED BACK I DON'T KNOW IF THEY SAID ANYTHING TO
20 ONE ANOTHER CAUSE REALLY I WASN'T TOO MUCH PAYING ATTENTION
21 TO THAT CAUSE, YOU KNOW, THEY HADN'T ARGUED OR NOTHING YET
22 THAT'S WHEN "DO" HAD FIRST CAME IN TO THE STORE

23 Q OKAY, DO YOU KNOW WHERE "DO" HAD BEEN
24 BEFORE THAT?

25 A HE MUST HAVE BEEN, "DO" DON'T, "DO" DIDN'T

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 61

1 STAY IN OUR NEIGHBORHOOD HE STAYED MOSTLY WITH HIS
2 GIRLFRIEND OR HIS WIFE WHEREVER SHE IS BUT HE'S LIKE COME
3 OVER THERE LIKE EVERY DAY OR EVERY OTHER DAY OR SOMETIME HE
4 DON'T COME TILL THE WEEKEND, YOU KNOW

5 Q ONCE YOU TOLD MR JACOBS TO LEAVE THE STORE
6 THAT YOU DIDN'T WANT ANY PROBLEM DID HE EVER GO BACK INTO
7 THE STORE?

8 A YEAH, WHEN I, WHEN I WAS TELLING HIM ABOUT
9 DON'T HAVE NO PROBLEM AT THE STORE HE WALKED TO HIS CAR, HE
10 WALKED IN THE INSIDE AND HE WAS WEARING A HOODIE OR
11 SOMETHING, YOU KNOW WHAT I'M SAYING, CAUSE I GUESS HE WAS
12 SHOOTING POOL AT THE TIME BEFORE THE ARGUMENT START HE WAS
13 SHOOTING POOL ON ONE TABLE AND "DO" WAS SHOOTING POOL ON
14 ANOTHER POOL AND AFTER I TALKED TO TYRONE HE WALKED BACK
15 IN THE INSIDE AND HE GRABBED HIS HOODIE OR A SHIRT OR
16 SOMETHING CAUSE HE THREW IT ACROSS HIS THING LIKE THIS
17 AND HE, THEY WALKED ON THE OUTSIDE

18 Q DO YOU KNOW WHEN TYRONE JACOBS ARMED
19 HIMSELF WITH THAT GUN?

20 A I CAN'T SAY THAT NOW

21 Q HOW CLOSE WERE YOU TO DAVID OR "DO" WHEN
22 YA'LL WERE STANDING OUT THERE ON THE PORCH AND YOU FIRST
23 SAW THE PISTOL?

24 A COME IN A LITTLE BIT, WE WERE STANDING
25 ABOUT, ABOUT THIS CLOSE LIKE THIS

MR MCCULLOUGH - DIRECT EXAMINATION BY MR RICHARDSON 62

1 Q WERE YOU TO HIS LEFT?

2 A I WAS TO HIS LEFT

3 Q OKAY, SO HE WAS STANDING --

4 A ON MY RIGHT

5 Q ALL RIGHT, AND THAT'S WHERE YOU FIRST SAW
6 THE PISTOL AND HEARD IT CLICK?

7 A YES

8 Q WERE THERE ANY OTHER PEOPLE STANDING OUT
9 THERE AROUND?

10 A I COULDN'T TELL YOU CAUSE, YOU KNOW, I'M
11 TRYING TO CALM THESE FELLOWS DOWN, YOU KNOW WHAT I'M
12 SAYING, SO I REALLY DON'T KNOW WHO'S ON THE OUTSIDE RIGHT
13 AT THAT MOMENT UNTIL AFTER THE SHOOTING WAS DONE, YOU KNOW
14 WHAT I'M SAYING

15 Q HAVE YOU EVER KNOWN DAVID OR "DO" TO CARRY
16 A GUN?

17 A ME MYSELF I AIN'T NEVER SEEN WITH NE'ER
18 ONE

19 Q AND ON THAT DAY DID YOU EVER SEE ANY SORT
20 OF WEAPON OF AN KIND IN DAVID OR "DO'S" HANDS?

21 A NO, THE ONLY THING "DO" HAD WAS THE POOL
22 STICK

23 Q ALL RIGHT, AND HE NEVER SWUNG THE POOL
24 STICK UNTIL HE HAD BEEN SHOT?

25 A NO

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

63

1 Q YOU WERE QUESTIONED BY THE HORRY COUNTY
2 POLICE, DID YOU GIVE A WRITTEN STATEMENT?

3 A YEAH

4 Q WHEN WAS THAT STATEMENT GIVEN?

5 A THE SAME DAY OF THE SHOOTING

6 Q AND THEY ALSO ANOTHER OFFICER CAME UP AND
7 AUDIO TAPED THE STATEMENT?

8 A YES

9 Q WHEN WAS THAT GIVEN?

10 A THE SAME DAY

11 MR RICHARDSON I HAVE NO FURTHER QUESTIONS

12 Q (CONTINUING) ONE, ONE OTHER JUST TO CLARIFY
13 A JURISDICTIONAL MATTER YOUR STORE, WHAT COUNTY IS IT IN?

14 A HORRY

15 Q HORRY COUNTY, AND ALL OF THIS TOOK PLACE IN
16 HORRY COUNTY?

17 A YES

18 MR RICHARDSON I HAVE NO FURTHER QUESTIONS, IF
19 YOU'D ANSWER ANY QUESTIONS MR WILSON MIGHT HAVE

20 THE COURT MR WILSON?

21 CROSS EXAMINATION

22 BY MR WILSON

23 Q NOW THIS HAPPENED WHAT 7, 8 00 AT NIGHT?

24 A I DON'T KNOW THE EXACT TIME, RALPH, IT WAS
25 GETTING KIND OF DARK THOUGH

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

64

1 Q WELL WHAT WEEK, WHAT NIGHT OF THE WEEK WAS
2 THIS?

3 A I REALLY DON'T REMEMBER THAT, RALPH

4 Q YOU DON'T REMEMBER THAT AND YOU DON'T
5 REMEMBER WHAT TIME IT WAS?

6 A NO

7 Q WELL WAS IT BEFORE MIDNIGHT?

8 A YEAH IT WAS BEFORE MIDNIGHT, RALPH

9 Q AND WAS IT AFTER DUSK DARK?

10 A IT WAS GETTING DARK, RALPH

11 Q GETTING DARK, ALL RIGHT, AND THIS IS IN
12 WHAT, NOVEMBER?

13 A YES

14 Q CORRECT, ALL RIGHT, NOW LET'S TALK A LITTLE
15 BIT FIRST OF ALL ABOUT THE SHOP OR THE POOL HALL, CLUB, OR
16 WHATEVER WE'RE CALLING IT AND I THINK YOU REFERRED TO IT AS
17 THE SHOP OR THE STORE, ISN'T THAT RIGHT?

18 A THAT'S WHAT IT IS

19 Q THAT'S WHAT IT IS, ALL RIGHT, AND YOU GOT,
20 WHAT, TWO POOL TABLES IN THERE, RIGHT?

21 A YEAH

22 Q AND YOU SELL BEER?

23 A I PLEAD THE FIFTH ON THAT, RALPH

24 Q I'M SORRY?

25 A I PLEAD THE FIFTH ON THAT

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON 65

1 Q YOU PLEAD THE FIFTH ON THAT, THAT MEANS YOU
2 AIN'T GOING TO TELL US WHETHER YOU SELL BEER IN THERE OR
3 NOT?

4 A MY SHOP IS NOT ON TRIAL

5 Q WELL I'M JUST ASKING A QUESTION ABOUT WHAT
6 YOU DO AT THE SHOP?

7 A AND I'M GIVING YOU AN ANSWER

8 Q OKAY, YOU'RE GIVING ME AN ANSWER, YOUR
9 ANSWER IS YOU PLEAD THE FIFTH, RIGHT? WHAT ELSE YOU
10 PLEADING THE FIFTH ABOUT?

11 A ACCORDING TO WHAT YOU ASK ME

12 Q WELL LET'S TALK ABOUT WHAT ELSE HAPPENED
13 OUT AT THE CLUB, YOU HAVE QUITE A BIT OF VIOLENCE OUT THERE
14 AT THAT CLUB, DON'T YOU?

15 A NOT REALLY

16 Q WELL YOU SAY NOT REALLY, YOU'VE HAD OTHER
17 SHOOTINGS OUT THERE, RIGHT? IT AIN'T THE FIRST SHOOTING
18 AND IT AIN'T THE LAST, IS IT?

19 A I DON'T KNOW UNLESS YOU GUESS YOU GOD YOU
20 CAN ANSWER THAT

21 Q I'M ASKING YOU IT'S NOT THE FIRST ONE AND
22 IT'S NOT THE LAST ONE, IS IT?

23 A I DON'T KNOW, I CAN'T ANSWER THAT, I CAN'T
24 PREDICT THE FUTURE

25 Q WELL YOU RUN THE CLUB, RIGHT?

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

66

1 A I AIN'T OWNING A CLUB, I RUN A STORE

2 Q YOU RUN THE STORE, OKAY, WELL LET'S, LET'S
3 CALL IT A STORE IF THAT MAKES YOU FEEL BETTER LET'S CALL IT
4 A STORE YOU'VE HAD SHOOTINGS OUT THERE AT THE STORE
5 BEFORE, HAVEN'T YOU?

6 A I HAVE GUYS THEY BEEN OUT THERE IN THE ROAD
7 SHOOTING SO ---

8 Q OKAY ---

9 A --- I CAN'T CONTROL THAT ROAD I ONLY TRY
10 TO CONTROL WHAT'S IN THE YARD

11 Q AND ON THIS PARTICULAR NIGHT WAS THERE SOME
12 DRINKING GOING ON OUT THERE, SOME LIQUOR WAS, LIQUOR AND
13 BEER WAS POURING KIND OF FREELY OUT THERE THAT NIGHT,
14 WASN'T IT?

15 A I DON'T KNOW ABOUT THAT, RALPH

16 Q YOU DON'T KNOW?

17 A YOU GOT TO ASK THE PEOPLE THAT WERE
18 DRINKING IT

19 Q WELL YOU WERE THE ONE SELLING IT, RIGHT?

20 A YOU SURE?

21 Q I'M ASKING THE QUESTION, WERE YOU THE ONE
22 SELLING IT? YOU WERE OPERATING THE CLUB, WERE YOU NOT?

23 A I WAS OPERATING THE STORE

24 Q YOU WERE, OKAY, YOU WERE OPERATING THE
25 STORE AND WAS THE STORE SELLING ILLEGAL BEER AND LIQUOR ---

MR. MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

67

1 A NO

2 Q --- THAT NIGHT, WELL PEOPLE WERE GETTING
3 BEER AND LIQUOR FROM SOMEWHERE THAT NIGHT, WEREN'T THEY?

4 A I DON'T KNOW WHERE THEY GETTING IT FROM,
5 RALPH, YOU GOT TO ASK PEOPLE THAT WERE DRINKING IT

6 Q OKAY, SO YOU DON'T KNOW WHERE THEY WERE
7 GETTING IT BUT THEY WERE GETTING IT AND YOU KNOW FOR A
8 FACT, DON'T YOU, THAT AND YOU CALL THIS FELLOW "DO"?

9 A YES

10 Q RIGHT, MR BENNETT, DAVID BENNETT, YOU
11 REFER TO HIM AS "DO" BUT THAT'S NOT REALLY HIS NICKNAME, IS
12 IT?

13 A IT'S "DO DIRTY "

14 Q "DO DIRTY?"

15 A YEAH

16 Q "DO DIRTY" WHAT DOES THAT MEAN?

17 A HE GOT THAT NAME FROM PENITENTIARY

18 Q FROM THE PENITENTIARY?

19 A NO, OFF THE, OFF THE MOVIE PENITENTIARY

20 Q OFF THE MOVIE PENITENTIARY?

21 A YEAH

22 Q AND, AND "DO DIRTY" WILL DO YOU DIRTY
23 THAT'S WHERE THE NAME COMES FROM, RIGHT?

24 THE COURT EXCUSE ME, MR WILSON LADIES AND
25 GENTLEMEN OF THE AUDIENCE, I WILL HAVE YOU REMOVED IF YOU

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

68

1 CANNOT BEHAVE YOURSELF IN A MANNER THAT IS DIGNIFIED FOR
2 OUR COURTROOM DO I MAKE MYSELF CLEAR? THANK YOU, MR
3 WILSON

4 MR WILSON (CONTINUING)

5 Q BUT ANYWAY "DO DIRTY" WAS OUT THERE THAT
6 NIGHT AND, AND ACTUALLY TYRONE WAS THERE FIRST, WAS HE NOT?

7 A YES

8 Q HE WAS AT THE CLUB THAT NIGHT FIRST OR AT
9 THE STORE, I'M SORRY?

10 A YEAH

11 Q HE WAS AT THE STORE FIRST THAT NIGHT,
12 RIGHT?

13 A UH-HUH

14 Q PLAYING POOL, DRINKING BEER, RIGHT, RIGHT?

15 A HE WAS SHOOTING POOL

16 Q OKAY, HE WAS SHOOTING POOL, YOU TAKE THE
17 FIFTH ON THAT LAST PART, AND BY THE WAY LET'S GET THIS
18 CLEARED UP, I CALLED YOU TO TRY TO TALK TO YOU ABOUT THIS,
19 DID I NOT?

20 A UH-HUH

21 Q AND YOU WOULDN'T TALK TO ME, RIGHT?

22 A RIGHT

23 Q SO YOU DIDN'T WANT TO TALK TO ME?

24 A NO, I DIDN'T TELL YOU THAT

25 Q WHAT DID YOU TELL ME?

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

69

1 A YOU ASKED ME DID "DO DIRTY" HAVE A POOL
2 STICK, I TOLD YOU I ANSWER THE QUESTION, I'LL ANSWER THAT
3 QUESTION WHEN I GET TO COURT

4 Q SO I ASKED YOU IF HE HAD A POOL STICK ---

5 A THAT'S WHAT HE ASKED ME

6 Q YOU WOULDN'T TALK TO ME ABOUT IT, RIGHT?

7 A I TOLD YOU I DON'T KNOW IF I WAS SUPPOSED
8 TO TALK YOU, THAT'S WHAT I TOLD YOU, RALPH, TELL THE TRUTH
9 NOW

10 Q YOU TOLD ME YOU DIDN'T KNOW IF YOU WERE
11 SUPPOSED TO TALK TO ME?

12 A THAT'S RIGHT

13 Q BUT EITHER WAY YOU DIDN'T TALK TO ME ABOUT
14 IT, DID YOU?

15 A NOPE

16 Q ALL RIGHT, NOW LET'S GO ON, SO WE'RE AT THE
17 CLUB, TYRONE IS AT THE CLUB FIRST, NO QUESTION ABOUT THAT,
18 HE'S SHOOTING POOL TENDING TO HIS OWN BUSINESS, RIGHT?

19 A YEAH

20 Q THAT'S RIGHT?

21 A YEAH

22 Q AND LATER ON "DO DIRTY" COMES IN, RIGHT?

23 A UH-HUH

24 Q AND "DO DIRTY" STARTS PLAYING POOL WITH
25 SOME OTHER PEOPLE IN, IN THE CLUB OR IN THE ---

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

70

1 A UH-HUH

2 Q --- I'M SORRY, IN THE STORE, RIGHT?

3 A YES

4 Q ALL RIGHT, AND NOW AT SOME POINT IN TIME
5 YOU SAY "DO DIRTY" PAID YOU \$6 FOR SOME MONEY HE OWED YOU?

6 A UH-HUH

7 Q WAS THAT A BEER TAB OR A LIQUOR TAB OR, OR
8 SOME OTHER KIND OF TAB ---

9 A I FEEL LIKE ---

10 Q --- BUYING CHEWING GUM FOR \$6?

11 A I FEEL LIKE THAT WAS THE STORE BUSINESS
12 BECAUSE I HAVE SODAS, POTATO CHIPS, ALL KIND OF STUFF IN
13 THERE

14 Q OKAY, SO HE BOUGHT \$6 WORTH OF POTATO CHIPS
15 AND, AND ---

16 A I DIDN'T TELL YOU HE BOUGHT \$6 WORTH OF
17 POTATO CHIPS AND STUFF

18 Q OKAY --

19 A I TOLD YOU HE OWED ME A STORE TAB

20 Q ALL RIGHT, SO HE PAID YOU A STORE TAB SIX
21 BUCKS AND AT THAT POINT THERE'S STILL NO TROUBLE BETWEEN
22 THE TWO, RIGHT?

23 A NO

24 Q "DO DIRTY" IS THERE NOW, TYRONE IS THERE?

25 A NO

MR MCCULLOUGH - CROSS EXAMINATION BY MR. WILSON

71

1 Q NO PROBLEM, EVERYBODY'S GETTING ALONG
2 FANTASTIC, RIGHT?

3 A UH-HUH

4 Q OKAY, AND NOW YOU SAY AT SOME POINT IN TIME
5 THERE'S SOME CONVERSATION ABOUT A TELEPHONE?

6 A YEAH

7 Q USE OF A CELL PHONE?

8 A YEP

9 Q ALL RIGHT, AND AS THE USE OF A CELL PHONE
10 DEVELOPS NOW IS THIS CHRIS OR CURTIS, WHICH ONE HAS THE
11 CELL PHONE?

12 A CHRIS

13 Q CHRIS, ALL RIGHT, SO CHRIS HAS THE CELL
14 PHONE AND CHRIS IS A NEPHEW OF "DO DIRTY" ---

15 A YES

16 Q --- IS THAT CORRECT?

17 A YES

18 Q ALL RIGHT, AND CHRIS AND "DO DIRTY" GET
19 INTO SOME AGREEMENT, DISAGREEMENT OR HAVE SOME WORDS ABOUT
20 WHETHER OR NOT HE CAN USE THE CELL PHONE?

21 A NO, "DO" ASKED ME TO USE MY CELL PHONE
22 FIRST I TOLD HIM, I TOLD HIM TO USE CHRIS CELL PHONE

23 Q OKAY --

24 A AND CHRIS TOLD HIM, NO, HE HAD MINUTES OR
25 SOMETHING LIKE THAT

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

72

1 Q OKAY, ALL RIGHT, SO HE BE AS IT MAY THE
2 BOTTOM LINE WAS THAT CHRIS DIDN'T ALLOW "DO DIRTY" TO USE
3 HIS CELL PHONE, IS THAT RIGHT, IS THAT A FAIR STATEMENT?

4 A YES

5 Q ALL RIGHT, AND AS A RESULT OF THAT YOU'RE
6 SAYING THAT TYRONE THEN SAID, DON'T LET HIM USE YOUR PHONE?

7 A YEP

8 Q HE'S A GROWN MAN HE CAN GET HIS OWN PHONE
9 OR SOMETHING TO THAT AFFECT?

10 A YEP

11 Q FAIR STATEMENT?

12 A SOMETHING LIKE THAT

13 Q ALL RIGHT, -AND' NOW AT THAT POINT THEY'RE
14 BOTH IN THE CLUB, YOU'RE IN THE CLUB, YOU OVERHEAR THIS,
15 THESE WORDS BEING PASSED BETWEEN THESE PARTIES, RIGHT?

16 A YES

17 Q RIGHT, AND, AND YOU DON'T WANT NO TROUBLE
18 IN YOUR CLUB, RIGHT, IN YOUR STORE, I'M SORRY, IN YOUR
19 STORE, CORRECT?

20 A UH-HUH

21 Q AND IN FACT YOU TOLD THE POLICE, DID YOU
22 NOT, THAT YOU HAVE A POLICY IF YOU ACT UP IN THE STORE,
23 HAVE ANY KIND OF VIOLENCE WHATSOEVER YOU GET PUT OUT AND
24 YOU CAN NEVER EVER COME BACK IN THERE, ISN'T THAT WHAT YOU
25 TOLD THE POLICE?

MR. MCCULLOUGH - CROSS EXAMINATION BY MR WILSON 73

1 A I TOLD THE POLICE IF YOU START IN MY PLACE
2 I ASK YOU TO LEAVE AND BAR YOU

3 Q ALL RIGHT, YOU'RE BARRED FOREVER, THOSE
4 WERE YOUR WORDS?

5 A IF YOU, IF YOU FIGHT YOU'RE BARRED

6 Q IF YOU FIGHT YOU'RE BARRED FOREVER, CAN'T
7 COME BACK IN THERE, ALL RIGHT SO APPARENTLY THAT WOULD
8 MEAN THAT TYRONE HADN'T FOUGHT ANYBODY IN YOUR STORE,
9 RIGHT, CAUSE HE WOULD HAVE BEEN BARRED HAD HE FOUGHT
10 SOMEBODY BEFORE, RIGHT?

11 A I CAN'T REMEMBER

12 Q WELL YOU JUST SAID THAT YOUR POLICY WAS IF
13 THEY FOUGHT THAT THEY COULD NEVER EVER COME BACK IN THE
14 STORE?

15 A NO, NOW, YOU GOT, YOU GOT, YOU GOT TO
16 REALIZE THIS RIGHT HERE, RALPH, I, YOU KNOW, THIS, THIS
17 LITTLE BUSINESS HAD WENT ON FOR YEARS SO ---

18 Q WHAT BUSINESS?

19 A THIS, THIS LITTLE STORE BUSINESS, YOU KNOW
20 WHAT I'M SAYING

21 Q OKAY --

22 A SO AS YOU GO YOU TRY TO BAR THE ONE THAT
23 START TROUBLE IF YOU KNOW HE A TROUBLE MAKER THEN YOU TRY
24 TO BAR HIM FROM BEING THERE

25 Q ALL RIGHT --

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

74

1 A YOU KNOW WHAT I'M SAYING

2 Q OKAY --

3 A NOW IF THIS MAN HADN'T START THIS FIGHT WHY
4 SHOULD I BAR HIM, YOU KNOW WHAT I'M SAYING

5 Q THAT'S NOT WHAT I'M ASKING, WHAT I'M ASKING
6 WAS, PRIOR TO THIS INCIDENT IF, IF EITHER "DO DIRTY" OR
7 TYRONE HAD BEEN IN A FIGHT IN YOUR STORE YOU' WOULD HAVE
8 BARRED THEM FROM THE STORE, THAT'S WHAT I'M ASKING?

9 A IT'S CAUSED, IT'S CAUSED OF THE
10 CONSEQUENCES, RALPH, YOU KNOW WHAT I M SAYING, IT'S, IT'S
11 ACCORDING IF THEY STARTED THE FIGHT OR HOW IT GOT STARTED
12 OR THIS AND THAT --

13 Q OKAY --

14 A YOU KNOW WHAT I'M SAYING

15 Q SO YOU HAD A POLICY BUT IT WAS A KIND OF
16 SELECTIVE POLICY AND YOU KIND OF ENFORCED IT WHEN YOU FELT
17 LIKE IT NEEDED TO BE ENFORCED BUT WHEN YOU DIDN T IT WAS
18 ALL RIGHT, IS THAT WHAT YOU'RE SAYING?

19 A NO, THAT AIN'T WHAT I'M SAYING YOU SAYING
20 THAT, I AIN'T SAYING THAT

21 Q WELL TELL ME WHAT YOU'RE SAYING?

22 A I'M SAYING IT'S ACCORDING TO HOW IT WENT
23 THAT'S WHAT I'M SAYING

24 Q ACCORDING HOW WHAT WENT?

25 A HOW, HOW, HOW IT STARTS, HOW IT STARTS, HOW

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON 75

1 ITS END, WHO, YOU KNOW, WHO, WHO, YOU KNOW WHAT I'M SAYING,
2 WHO THE MOST VIOLENT

3 Q THAT'S FINE, I WON'T BELABOR THAT, LET'S
4 MOVE ON, LET ME GO TO THE NEXT THING, AS THEY GET IN THE
5 CLUB THAT NIGHT AND YOU SAY THAT TYRONE THEN SAYS SOMETHING
6 TO "DO DIRTY" ABOUT HIM WANTING TO BORROW THE CELL PHONE
7 FROM CHRIS, RIGHT?

8 A YES

9 Q AND HE CALLED HIM A PUNK AND "DO DIRTY"
10 THEN IN RETURN CALLS HIM A PUNK?

11 A YES

12 Q ALL RIGHT, NOW IS THAT THE ONLY THING HE
13 SAID TO HIM WAS YOU'RE A PUNK OR WAS THERE SOME MORE
14 CONVERSATION ALONG WITH THAT YOU'RE A PUNK?

15 A WELL THEY SAID A FEW CUSS WORDS, YOU KNOW
16 WHAT I'M SAYING

17 Q ALL RIGHT, SO, SO WHEN YOU SAY THAT, THAT
18 HE CALLED HIM A PUNK THERE WAS ACTUALLY MORE CONVERSATION
19 THAN JUST CALLING HIM A PUNK, THERE WERE SOME HEATED WORDS
20 EXCHANGED BETWEEN THE TWO OF THEM, FAIR?

21 A I SAY IT'S FAIR BECAUSE I KNOW TYRONE TOLD
22 "DO" DON'T CALL ME NO PUNK

23 Q OKAY --

24 A AND "DO" SAID, PUNK, PUNK

25 Q AND, AND, AND NOW WHERE WERE YOU WHEN THESE

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

76

1 WORDS WERE BEING EXCHANGED BETWEEN THE TWO PARTIES, WHERE
2 WERE YOU?

3 A I WAS STANDING BEHIND THE COUNTER

4 Q ALL RIGHT, YOU WERE STANDING BEHIND THE
5 COUNTER NOW WHEN THEY WERE HAVING THIS ARGUMENT, THESE
6 WORDS HOW CLOSE ARE THEY WHEN THEY'RE HAVING THIS
7 DISCUSSION INSIDE THE CLUB?

8 A ONE IS STANDING MAYBE HERE AND THE OTHER
9 ONE IS STANDING OVER THERE TO THE TABLE

10 Q OVER THERE, THIS TABLE RIGHT HERE?

11 A YEAH, BECAUSE POOL TABLES IS KIND OF FAR
12 APART

13 Q RIGHT, SO THEY WERE KIND OF STANDING ACROSS
14 THE ROOM TALKING TO EACH OTHER?

15 A YEAH

16 Q ALL RIGHT, AND DID YOU COME FROM BEHIND THE
17 COUNTER WHEN THAT STARTED?

18 A WELL SEE, RALPH, THESE COUSINS AND, AND IN
19 OUR, IN OUR NEIGHBORHOOD YOU HEARD THIS BICKERING FROM EACH
20 OTHER ALL THE TIME BUT ONCE YOU SEE THEM START GOING
21 TOGETHER YOU TRY YOUR BEST TO SEPARATE THEM, YOU KNOW WHAT
22 I'M SAYING YOU TRY TO KEEP THEM APART, YOU KNOW WHAT I'M
23 SAYING, AND ONE MAN AIN'T GOING TO KEEP THEM APART

24 Q OKAY, WELL DID THEY GO TOGETHER OR DID THEY
25 COME TOGETHER IN THE CLUB THAT NIGHT?

MR. MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

77

1 A NOT REALLY

2 Q OKAY, AND IN FACT TYRONE LEAVES THE CLUB
3 AND YOU DIDN'T ASK HIM TO LEAVE AT THAT POINT, DID YOU?

4 A NO

5 Q HE JUST WALKED OUT OF THE CLUB?

6 A YEP

7 Q AND "DO DIRTY" STAYED INSIDE THE CLUB,
8 TYRONE WENT OUTSIDE?

9 A UH-HUH

10 Q OKAY, NOW YOU SAID AT SOME POINT THAT
11 TYRONE THEN COMES BACK INSIDE THE CLUB?

12 A HE DID

13 Q ALL RIGHT, NOW IS THIS BEFORE YOU GO OUT
14 AND TALK TO HIM OR AFTER?

15 A HE CAME BACK IN AFTER I TALKED TO HIM

16 Q ALL RIGHT, SO THEN TYRONE GOES OUT THE
17 CLUB, THE ARGUMENT ENSUES, HE LEAVES THE CLUB, HE GOES OUT
18 INTO THE PARKING LOT OR SOMEWHERE OUTSIDE?

19 A YES

20 Q HE THEN COMES, YOU THEN GO OUT ON THE, ON
21 THE STEP AND YOU TALK TO HIM?

22 A YES

23 Q ALL RIGHT, AND THEN HE COMES BACK INTO THE
24 CLUB AFTER THAT?

25 A HE CAME BACK IN AND GRABBED HIS HOODIE

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

78

1 Q ALL RIGHT, COMES BACK IN AND GRABS HIS
2 HOODIE DID YOU SEE HIM WHEN HE GRABBED HIS HOODIE?

3 A YEAH

4 Q ALL RIGHT, DID HE DO ANYTHING OTHER THAN
5 GO, WALK TO WHERE HIS HOODIE WAS AND GET THE HOODIE AND
6 LEAVE?

7 A HE GRABBED HIS HOODIE AND HE WALKED TO THE
8 DOOR

9 Q OKAY, DID HE STOP ANYWHERE IN BETWEEN?

10 A AT THAT TIME I DON'T KNOW BECAUSE I WAS, I
11 WAS TALKING TO CHRIS BENNETT - I CAN'T ANSWER THAT - I
12 DON'T KNOW IF HE STOPPED OR HE KEPT GOING OR WHAT BUT I
13 KNOW DAVID NUDGED ME CAUSE I WAS TALKING TO CHRIS - DAVID
14 CAME BY ME AND NUDGED ME AND I WAS TALKING TO CHRIS AND THE
15 NEXT THING I KNOW I HEARD THEM ARGUING

16 Q BEFORE WE GET TO THAT CAUSE THAT'S AHEAD OF
17 WHERE I WANT TO GO, WHAT I'M ASKING YOU IS YOU'RE SAYING
18 THAT HE CAME BACK INTO THE CLUB, THAT AFTER HE LEFT OUT
19 VOLUNTARILY THAT HE THEN AT SOME POINT, FIRST OF ALL HOW
20 LONG WAS HE OUT BEFORE HE CAME BACK?

21 A PROBABLY TWO, THREE MINUTES

22 Q ALL RIGHT, SO HE'S OUT TWO OR THREE
23 MINUTES, NOW HE HAD TO BE OUT LONG ENOUGH FOR YOU TO COME
24 OUTSIDE AND HAVE A CONVERSATION WITH HIM CAUSE YOU TOLD THE
25 SOLICITOR THAT YOU CAME OUTSIDE AND YOU HAD A CONVERSATION

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

79

1 WITH HIM?

2 A YEAH

3 Q RIGHT?

4 A YEAH

5 Q HOW LONG DID THE CONVERSATION LAST THAT YOU
6 HAD WITH HIM ON THE OUTSIDE?

7 A IT WASN'T REALLY A CONVERSATION CAUSE WHEN
8 I WALKED, WHEN TYRONE WALKED OUTSIDE I WALKED BEHIND HIM,
9 AND THE GOD AND HEAVEN TRUTH, I WALKED OUT BEHIND HIM, I
10 SAID, TYRONE, I SAID, DON'T YOU START THAT BULLSHIT IN
11 HERE I SAID, CAUSE IF YOU DO I'M GOING TO CALL THE POLICE
12 AND I SAY, DON'T, DON'T START NO TROUBLE AT THE PLACE HERE
13 NOW

14 Q ALL RIGHT, WHAT DID HE SAY TO YOU?

15 A HE SAID, HE SAID, HE SAID, WELL "F" "DO
16 DIRTY" AND YOU SO I TURNED AROUND AND WALKED BACK IN

17 Q AND WHAT DID HE DO AFTER HE SAID THAT?

18 A I DON'T, I DON'T KNOW WHAT TYRONE DID

19 Q WELL YOU ---

20 A I CAME BACK IN AND WALKED INSIDE THEN
21 TYRONE WHEN I WALKED INSIDE, WHEN I WALKED INSIDE I WAS
22 TALKING TO, TO "DO", RIGHT I TOLD "DO", I SAID, "DO"
23 DON'T GO BACK OUTSIDE, I SAID, CAUSE TYRONE START THAT BULL
24 JUNK I'M GOING TO CALL THE POLICE ON HIM I DONE TOLD HIM
25 TO LEAVE, SO CHRIS SAID SOMETHING AND I TOLD HIM, SHUT UP,

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

80

1 I SAID, YOU THE ONE THAT GOT ALL OF IT STARTED ANYWAY AND I
2 FELT "DO DIRTY" NUDGE ME AND WHEN I, WHEN I TURNED AROUND
3 "DO DIRTY" AND TYRONE WAS ON THE OUTSIDE

4 Q ALL RIGHT, BACK UP WITH ME CAUSE I, CAUSE
5 I'M, CAUSE I'M MISSING SOMETHING HERE AND ALL I'M TRYING TO
6 FIGURE OUT HERE IS YOU'RE SAYING THAT HE CAME INTO THE CLUB
7 WHILE HE WAS THERE THEY HAD THE ARGUMENT HE LEAVES THE
8 CLUB, HE'S OUT FOR TWO OR THREE MINUTES, YOU COME OUTSIDE
9 AND HAVE A CONVERSATION WITH HIM?

10 A UH-HUH

11 Q THEN HE COMES BACK INTO THE CLUB?

12 A GRABS HIS HOODIE

13 Q NOW YOU AND THIS IS AFTER YOU SAY THAT HE
14 CURSED YOU YOU LET HIM BACK INTO THE CLUB?

15 A HE CAME IN AND GRABBED HIS HOODIE, I TELL
16 YOU THE TRUTH LIKE I SAID I WAS TALKING, I WAS TALKING TO,
17 TO "DO" AND CHRIS ---

18 Q OKAY --

19 A TYRONE WALKED OVER THERE, HE GOT HIS HOODIE
20 OR WHATEVER HE GRABBED A HOODIE OR A SHIRT OR SOMETHING AND
21 HE, AND HE HEADED NEXT THE DOOR

22 Q ALL RIGHT --

23 A SO THERE WASN'T NO NEED FOR ME SAYING
24 SOMETHING, I MEAN THAT DONE CURSED ME, FIXING TO LEAVE, I'M
25 THINKING EVERYTHING GOING TO BE ALL RIGHT

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

81

1 Q ALL RIGHT, SO THEN HE COMES BACK IN THE
2 CLUB, WHEN HE COMES BACK IN THIS TIME IS THERE ANY LOUD,
3 DOES HE DO ANY LOUD CURSING OR ANYTHING OR HE JUST COMES IN
4 AND HE GETS HIS HOODIE AND HE LEAVES?

5 A HE JUST CAME AND GRABBED HIS HOODIE AND
6 LEFT

7 Q COMES IN AND GRABS HIS HOODIE AND HE
8 LEAVES?

9 A YEAH

10 Q NOW WHEN HE LEAVES "DO DIRTY" IS STILL
11 INSIDE THE CLUB, RIGHT?

12 A I GUESS ---

13 Q I'M SORRY?

14 A I GUESS CAUSE I WAS TALKING TO CHRIS ---

15 Q OKAY ---

16 A --- AND I FELT "DO" WHEN HE NUDGED ME

17 Q WELL ---

18 A SO I, YOU KNOW, I DON'T, I CAN'T TELL, I'M
19 OVER HERE HAVING A CONVERSATION WITH THIS MAN RIGHT HERE
20 AND I'M TRYING TO TELL HIM YOU STARTED THIS JUNK, YOU KNOW,
21 WHICH HE REALLY DIDN'T, YOU KNOW WHAT I'M SAYING, CAUSE IT
22 SHOULDN'T BEEN GOING ON NO WAY, YOU KNOW WHAT I'M SAYING
23 I DON'T, I CAN'T TELL YOU WHAT THEY, WHAT WAS SAID OR WHAT
24 WASN'T SAID AT THAT TIME OF THE MOMENT WHEN THEY WAS BEHIND
25 MY BACK

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

82

1 Q WELL YOU WERE STANDING BETWEEN THE DOOR AND
2 "DO DIRTY," CORRECT?

3 A NO, I WAS STANDING BETWEEN THE POOL TABLE

4 Q WELL YOU SAID EARLIER THAT "DO DIRTY"
5 NUDGED YOU OR PUSHED YOU IN ORDER TO GET OUT THE DOOR?

6 A YES, NO, NO, TO GET BY THE POOL TABLE

7 Q TO GET BY THE POOL TABLE?

8 A YEAH

9 Q TO GET TO THE DOOR?

10 A YES

11 Q ALL RIGHT, SO HE WAS TRYING TO GET OUT THE
12 DOOR BUT FOR WHATEVER REASON YOU WERE IN BETWEEN HIM AND
13 THE DOOR?

14 A YES

15 Q ALL RIGHT, AND AIN'T NO QUESTION ABOUT THE
16 FACT THAT HE PUSHED, YOU, YOU TRIED TO STOP HIM, DID YOU
17 NOT?

18 A NOT REALLY, I WAS TALKING TO CHRIS I,
19 WHEN I WALKED IN THERE, WHEN I CAME FROM THE OUTSIDE WITH
20 TYRONE I TOLD, I TOLD, I TOLD "DO" DON'T GO ON THE OUTSIDE

21 Q OKAY --

22 A I SAID, I SAID, I TOLD TYRONE TO LEAVE

23 Q WELL THAT'S WHAT I'M ASKING YOU ---

24 A YEAH

25 Q --- YOU TOLD HIM NOT TO GO OUTSIDE, TRIED

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

83

1 TO GET HIM TO NOT GO OUTSIDE?

2 A YEAH

3 Q AND THEN AFTER YOU TOLD HIM NOT TO GO
4 OUTSIDE THEN HE PUSHED PAST YOU WITH THE STICK IN HIS HAND,
5 DID HE NOT?

6 A YEAH

7 Q A POOL STICK?

8 A YEAH

9 Q AND YOU SAID TO THE SOLICITOR THAT YOU
10 DON'T KNOW IF THAT IS THE POOL STICK BUT YOU KNOW WITHOUT A
11 DOUBT THAT HE HAD A POOL STICK IN HIS HAND HE PUSHED PAST
12 YOU EVEN AFTER YOU TOLD HIM NOT TO GO OUTSIDE AND HE WENT
13 OUTSIDE FOR WHAT?

14 A THAT'S SOMETHING YOU'D HAVE TO ASK HIM, I
15 DON'T KNOW

16 Q DON'T KNOW?

17 A HE WENT OUTSIDE

18 Q YOU DON'T KNOW WHY HE WAS GOING OUTSIDE
19 WITH THAT POOL STICK?

20 A I DON'T KNOW

21 Q AND WHILE HE WAS GOING OUTSIDE WHAT IN THE
22 WORLD WAS HE SAYING TO YOU WHEN HE WAS PUSHING PAST YOU?

23 A HE DIDN'T PUSH PAST ME HE NUDGED ME WHEN
24 HE WENT BY ME, THAT'S WHAT I'M TRYING TO TELL YOU YOU
25 SOUND LIKE HE PUSHING ME, I'M TELLING YOU WHAT HAPPENED

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

84

1 THIS IS HOW I REMEMBER IT, YOU KNOW WHAT I'M SAYING I
2 DON'T KNOW WHY YOU, YOU, YOU COMING UP WITH THIS OR THAT,
3 THAT'S JUST THE QUESTION YOU ASKED I UNDERSTAND THAT BUT
4 I'M TELLING YOU WHAT I REMEMBER AT THE TIME

5 Q LET ME HELP YOU WITH YOUR MEMORY

6 A YEAH

7 Q YOU SAID YOU GAVE A STATEMENT TO THE
8 POLICE, RIGHT?

9 A YES

10 Q AND DID YOU NOT TELL THE POLICE THAT HE
11 PUSHED PAST YOU, DO YOU DENY THAT?

12 A I DON'T DENY THAT

13 Q LOOK AT YOUR STATEMENT?

14 A I SAID I DON'T DENY IT

15 Q YOU DON'T DENY IT?

16 A NO

17 Q OKAY, SO YOU DID SAY THAT, YOU DID TELL THE
18 POLICE THAT HE PUSHED PAST YOU AND THAT'S EXACTLY WHAT
19 HAPPENED?

20 A YEAH

21 Q THAT'S THE STORY YOU TOLD THAT NIGHT?

22 A YEAH

23 Q HE PUSHED PAST YOU IN SPITE OF WHAT HAD
24 HAPPENED WITH A POOL STICK TO GO OUTSIDE BECAUSE WHO'S
25 OUTSIDE AT THAT POINT IN TIME?

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

85

1 A TYRONE OUT THERE

2 Q TYRONE'S OUT THERE, NOW WHEN YOU SAW THE
3 POOL STICK IN HIS HAND WHICH IS NOW MARKED AS EXHIBIT
4 NUMBER, STATE'S EXHIBIT NUMBER 3 ---

5 A UH-HUH

6 Q --- IT WASN'T BROKEN LIKE THIS WHEN YOU SAW
7 IT IN HIS HANDS, WAS IT?

8 A NO

9 Q NO, AND HOW DID THE STICK GET BROKEN?

10 A TO ME MYSELF I SEEN "DO" WHEN HE, WHEN
11 TYRONE MADE THAT SECOND SHOT "DO" PICKED THE STICK UP LIKE
12 THIS RIGHT HERE AND I WAS TRYING TO MOVE AND WHEN I TURNED,
13 WHEN I TURNED AROUND AND LOOKED AGAIN I SEEN THE STICK ON
14 THE GROUND LIKE THAT AND THAT'S WHEN I HEARD THE LAST SHOT
15 AND I SEEN "DO" GO BACK

16 Q WELL DID YOU SEE THE STICK GET BROKE OR YOU
17 DON'T KNOW HOW IT GOT BROKE?

18 A I REALLY, LIKE I SAID THE STICK WAS IN THE
19 GROUND WHEN I HEARD THE SHOT I JUST SEEN THE STICK GO BY
20 LIKE THIS

21 Q WELL YOU SAY IT WAS IN THE GROUND?

22 A YEP

23 Q NOW HOW WAS IT IN THE GROUND, WAS THE SHARP
24 END DOWN OR THE SHARP END UP?

25 A ABOUT LIKE THAT RIGHT THERE

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

86

- 1 Q SO THE SHARP END OF THE STICK WAS DOWN?
- 2 A IT WAS DOWN, YEAH
- 3 Q LIKE THIS?
- 4 A YEAH
- 5 Q AND YOU TOLD THE, THE POLICE, DID YOU NOT,
- 6 THAT HE HAD BOTH HANDS ON THE TOP OF THE STICK, ISN'T THAT
- 7 WHAT YOU TOLD THE POLICE?
- 8 A NO, I TOLD THE POLICE HE HAD, HE HAD, HE
- 9 HAD WHEN THEY, WHEN THEY FIRST START ARGUING WHEN THE GUN
- 10 CLICKED "DO" HAD HIS STICK LIKE THIS
- 11 Q - THAT'S WHAT-I'M ASKING?
- 12 A YEAH
- 13 Q YOU TOLD THE POLICE THAT IN THE BEGINNING
- 14 THAT "DO" HAD THE STICK HAD BOTH HANDS ON THE STICK ---
- 15 A YES
- 16 Q --- KIND OF LIKE THIS?
- 17 A THAT'S WHAT I TOLD THEM
- 18 Q THAT'S WHAT YOU SAID, RIGHT?
- 19 A YES
- 20 Q ALL RIGHT, AND, AND THAT NEVER CHANGED
- 21 BEFORE THE FIRST SHOT IS WHAT YOUR STORY IS, IS THAT RIGHT?
- 22 A YEP
- 23 Q BUT TELL ME THIS WHEN "DO" PUSHES PAST YOU
- 24 AND HE COMES OUTSIDE WITH THAT STICK WHAT IN THE WORLD WAS
- 25 HE SAYING TO TYRONE WHO IS STILL OUTSIDE?

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

87

1 A I DON'T KNOW LIKE I SAID I WAS TALKING TO
2 CHRIS, I HEARD THEM ARGUING ON THE OUTSIDE, RALPH I
3 DON'T, I DON'T KNOW WHAT THEY WERE SAYING I CAN'T TELL
4 YOU WHAT NEITHER ONE OF THEM SAID

5 Q ALL RIGHT, SO WITHOUT A DOUBT YOU HEARD HIM
6 GO OUTSIDE, YOU HEARD AFTER HE GETS OUT THERE NO QUESTION
7 YOU HEAR A LOT OF VOICES, DO YOU?

8 A YES

9 Q DON'T YOU?

10 A YES

11 Q AND YOU DON'T KNOW WHOSE VOICE IT WAS, YOU
12 JUST KNOW THAT TWO OF THEM WERE OUT THERE ARGUING LOUD AND
13 THERE'S NO QUESTION ABOUT THE FACT THAT "DO DIRTY" HAD THAT
14 STICK WHEN HE PUSHED BACK YOU GOING OUTSIDE?

15 A YEAH, YEP

16 Q AND NOW I THOUGHT YOU TOLD THE POLICE THAT
17 YOU ACTUALLY WENT OUTSIDE IMMEDIATELY AFTER "DO DIRTY"?

18 A I SAID WHEN I HEARD THEM ARGUING I WENT ON
19 THE OUTSIDE

20 Q BUT NOW YOU TOLD THE SOLICITOR THAT YOU SAW
21 ALL THESE SHOTS?

22 A YEAH

23 Q WELL DO YOU REMEMBER TELLING THE POLICE
24 THAT YOU RAN BEHIND THE SIDE OF THE BUILDING ---

25 A I ---

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

88

1 Q --- AFTER YOU HEARD THE SHOTS FIRED?

2 A NO, I DIDN'T

3 Q YOU DENY THAT YOU SAID THAT?

4 A I TOLD THE POLICE I RAN WHEN TYRONE CLICKED
5 THE GUN THE FIRST TIME AND THEN THE THIRD SHOT, I MEAN
6 AFTER THE SECOND SHOT I WAS TRYING TO MOVE TO GET TO THE
7 SIDE OF THE BUILDING

8 Q YOU DENY YOU TOLD THE POLICE ---

9 A I DIDN'T ---

10 Q --- THAT YOU RAN BEHIND THE SIDE OF THE

11 BUILDING AFTER THE FIRST SHOT WAS FIRED, DO YOU DENY THAT,
12 THAT'S-ALL I'M ASKING?

13 A NO

14 Q YOU DENY THAT?

15 A NO, I DON'T BELIEVE I TOLD THEM THAT,

16 RALPH

17 Q I UNDERSTAND, DO YOU DENY THAT YOU SAID
18 THAT?

19 A I DON'T DENY I SAID THAT

20 Q SO NOW YOU'RE SAYING SAY YOU DON'T REMEMBER
21 YOU SAID IT NOW OR NOT?

22 A RALPH, EVERYTHING WAS GOING ON, MR WILSON,
23 EVERYTHING WAS GOING SO FAR YOU'RE NERVOUS, YOU KNOW
24 YOU'RE TRYING TO PUT TWO AND TWO TOGETHER, YOU KNOW WHAT
25 I'M SAYING, YOU KNOW, I'M TRYING TO TELL IT THE BEST WAY I

MR MCCULLOUGH - CROSS EXAMINATION BY MR. WILSON

89

1 SEEN IT, YOU KNOW WHAT I'M SAYING

2 Q ALL RIGHT, NOW LET'S TALK ABOUT THE POOL
3 STICK FOR A MOMENT NOW WHEN THE POLICE ARRIVE WHERE DID
4 THEY FIND THAT POOL STICK? WAS IT ON THE GROUND WHERE YOU
5 SAY YOU SAW HIM STICK IT IN THE GROUND, WAS IT ON THE
6 GROUND?

7 A I DON'T KNOW, NOW THAT'S SOMETHING I
8 COULDN'T TELL YOU, RALPH

9 Q WELL NOW IT'S YOUR SHOP, YOUR STORE, AS YOU
10 SAY YOU'RE OUT THERE THE WHOLE TIME, YOU SEE THE POOL
11 STICK ON THE GROUND, THE POLICE COME OUT THERE AND
12 INVESTIGATE THIS THING TO FIND OUT WHAT WENT ON?

13 A UH-HUH

14 Q WHERE IN THE WORLD DID THEY FIND THAT POOL
15 STICK?

16 A I DON'T KNOW, LIKE I SAID I WAS NERVOUS

17 Q WELL DO YOU KNOW WHETHER OR NOT IT WAS
18 HIDDEN BEHIND A GARBAGE CAN ON THE PORCH?

19 A I DON'T KNOW THAT EITHER

20 Q WELL YOU WOULDN'T DENY THAT, WOULD YOU?

21 A I WON'T DENY IT BECAUSE I DON'T KNOW

22 Q OKAY, BUT YOU DIDN'T PUT IT THERE, DID YOU?

23 A I DON'T THINK SO

24 Q AND YOU WEREN'T TRYING TO HIDE IT FROM THE
25 POLICE, WERE YOU?

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

90

1 A I WOULDN'T, I WOULDN'T TRY TO HIDE NOTHING,
2 RALPH, NOT INTENTIONALLY

3 Q ALL RIGHT, NOW LET'S GO BACK TO THE
4 SHOOTING OUTSIDE, THAT NIGHT WHEN THE SHOOTING OCCURRED ---

5 A YES

6 Q --- NOW WHEN THE WHOLE TIME THAT TYRONE WAS
7 INSIDE, THIS CLUB AIN'T NO QUESTION ABOUT THE FACT YOU NEVER
8 SAW ANY KIND OF A WEAPON, RIGHT?

9 A NO

10 Q AND YOU NEVER SAW HIM DRAW A WEAPON ON "DO
11 DIRTY", RIGHT?

12 A INSIDE?

13 Q YEAH, INSIDE THE CLUB?

14 A NO

15 Q ALL RIGHT, AND THE FIRST TIME THAT ANY GUN
16 APPEARED WAS OUTSIDE THE CLUB?

17 A YES

18 Q AFTER "DO DIRTY" CAME OUTSIDE THE CLUB,
19 PUSHED PAST YOU WITH THE STICK IN HIS HAND, NO QUESTION
20 ABOUT THAT, IS THERE?

21 A NO

22 Q AND THERE'S ALSO NO QUESTION ABOUT THE FACT
23 THAT ONCE THEY WERE FACING EACH OTHER IS THERE ANY QUESTION
24 IN YOUR MIND THAT "DO DIRTY" AND TYRONE WERE CLOSE ENOUGH
25 FOR "DO DIRTY" TO HIT HIM WITH THAT STICK, IS THERE ANY

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

91

1 QUESTION IN YOUR MIND ABOUT THAT?

2 A REPEAT THAT AGAIN?

3 Q IS THERE ANY QUESTION IN YOUR MIND ABOUT
4 THE FACT THAT "DO DIRTY" AND TYRONE WERE STANDING CLOSE
5 ENOUGH TO EACH OTHER FOR "DO DIRTY" TO HIT HIM WITH THE
6 POOL STICK IF HE WANTED TO?

7 A YEAH, THEY WERE STANDING CLOSE ENOUGH

8 Q NO QUESTION ABOUT THAT, IS THERE?

9 A NO

10 Q AND AT NO TIME DID HE EVER DROP THAT POOL
11 STICK BEFORE HE WAS SHOT, DID HE?

12 A NO

13 Q NOW HOW LONG HAVE YOU KNOWN "DO DIRTY"?

14 A PROBABLY AS LONG AS I KNOW TYRONE

15 Q OKAY, AND WAS HE DRINKING THAT NIGHT?

16 A THAT'S SOMETHING I COULDN'T TELL YOU

17 Q WELL NOW YOU WERE OUT THERE, YOU'VE KNOWN
18 HIM ALL YOUR LIFE OR ALL HIS LIFE OR AT LEAST A LONG TIME
19 ACCORDING TO YOU AND THIS IS A LITTLE JUKE JOINT POOL AREA
20 AND YOU DON'T KNOW IF HE WAS DRINKING THAT NIGHT?

21 A THAT'S SOMETHING I COULDN'T TELL YOU,
22 RALPH

23 Q WELL DOES HE ACT LIKE THAT NORMALLY, YOU
24 KNOW COME OUT THERE THEY'RE ARGUING GOING ON AND HE PUSHES
25 PAST YOU GOING OUTSIDE WITH A POOL STICK IN HIS HAND, IS

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

92

1 THAT TYPICAL BEHAVIOR FOR HIM OR WAS THIS UNUSUAL?

2 A WELL IT'S HARD TO SAY, RALPH "DO", "DO" -

3 --

4 Q IT WOULD BE HARD TO SAY ---

5 A "DO", "DO" IS HE'S JUST "DO", IT'S HARD TO

6 SAY

7 Q "DO" IS JUST "DO"?

8 A HE S JUST "DO", YOU KNOW WHAT I'M SAYING,

9 THAT'S JUST LIKE TYRONE IS JUST TY

10 Q JUST "DO"?

11 A LIKE I SAID BOTH OF THEM GUYS WAS FRIENDS

12 OF MINE, YOU KNOW WHAT I'M SAYING THEY STILL IS, WELL

13 TYRONE IS, "DO" GONE

14 Q ALL RIGHT, AND, AND JUST A COUPLE OF THINGS

15 AND I'M GOING TO BE FINISHED LET ME ASK YOU THIS, NO

16 QUESTION ABOUT THE FACT THAT YOU DID EVERYTHING YOU COULD

17 THAT NIGHT TO PREVENT "DO DIRTY" FROM GOING OUTSIDE TO

18 FIGHT, DIDN'T YOU?

19 A YEAH, I TOLD HIM NOT TO GO OUTSIDE, YEAH

20 Q AND IN SPITE OF THAT AND, AND TYRONE WAS AT

21 THAT POINT OUTSIDE THE CLUB, THE DOOR WAS CLOSED, RIGHT?

22 A NO, THE DOOR WAS OPEN

23 Q THE DOOR IS CLOSED, HE'S OUTSIDE ---

24 A NO, THE DOOR WAS OPEN

25 Q ALL RIGHT, YOUR DOOR IS OPEN?

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

93

1 A YES

2 Q SO YOU LEAVE YOUR FRONT DOOR OPEN ALL THE
3 TIME?

4 A NO

5 Q IT STAYS OPEN?

6 A YOU LEAVE THE STORE, YEAH, IT'S A STORE YOU
7 WALK IN AND WALK OUT

8 Q ALL RIGHT, SO IT'S JUST AN OPEN, WELL COULD
9 YOU SEE HIM FROM WHERE YOU WERE?

10 A I HEARD THEM ARGUING BEHIND ME I WAS ---

11 Q WHAT I'M ASKING ---

12 A COULD I SEE THEM?

13 Q YEAH, NO, I APOLOGIZE LET ME, WHAT I'M
14 ASKING YOU IS AFTER TYRONE LEFT THE STORE THE SECOND TIME
15 AND HE WAS OUTSIDE COULD YOU SEE HIM OUTSIDE IS WHAT I'M
16 ASKING BEFORE, BEFORE "DO DIRTY" WENT OUTSIDE WITH THE
17 STICK?

18 A NO

19 Q ALL RIGHT, BUT THE DOOR WAS OPEN?

20 A YES

21 Q SO AS FAR AS YOU COULD TELL HE WASN'T OUT
22 THERE OR YOU DIDN'T KNOW WHERE HE WAS IF HE WAS OUT THERE?

23 A I DIDN'T KNOW IF HE WAS OUT THERE

24 Q UNTIL TYRONE, UNTIL "DO DIRTY" GOES OUTSIDE
25 AND THEN THE ARGUING ESCALATES AGAIN?

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

94

1 A YES

2 Q ALL RIGHT, NOW LET ME ASK YOU AT THAT --

3 MR WILSON IF THE COURT WOULD BEAR WITH ME
4 FOR JUST ONE SECOND, PLEASE?

5 THE COURT YES

6 MR WILSON (CONTINUING)

7 Q OKAY, NOW LET ME SHOW YOU WHAT'S MARKED AS
8 STATE'S EXHIBIT 2 AND 1 ---

9 A YES

10 Q --- IN THE TRIAL OF THIS CASE ---

11 A UH-HUH

12 Q --- CAN YOU TAKE A LOOK AT THAT FOR ME?

13 A YES

14 Q AND IS THAT THE FRONT ENTRANCE OF YOUR
15 CLUB?

16 A STORE, YES, IT IS

17 Q STORE, OKAY, AND, AND THIS IS THE DOOR THAT
18 WE'RE TALKING ABOUT?

19 A YES

20 Q ALL RIGHT, NOW I NOTICED THAT ON STATE'S
21 EXHIBIT 1 AND ON STATE'S EXHIBIT 2 THERE'S A WOODEN THING
22 OVER THE WINDOW?

23 A YES

24 Q ONE OF THE WINDOWS, WAS THAT THERE ON THAT
25 NIGHT?

MR MCCULLOUGH - CROSS EXAMINATION BY MR WILSON

95

1 A YES

2 Q ALL RIGHT, AND NOW YOU SAID THIS DOOR WAS
3 OPEN?

4 A YES

5 Q IS THAT CORRECT?

6 A UH-HUH

7 Q ALL RIGHT, ALL RIGHT, AND IF YOU'RE IN
8 YOUR, IN YOUR STORE AND THE DOOR IS OPEN AND YOU'RE LOOKING
9 OUT THE LITTLE CEMENT WALKWAY THERE IS WHAT, THREE, FOUR
10 FEET?

11 A ABOUT THREE AND A HALF FEET, FOUR FEET

12 Q ALL RIGHT, AND SO, AND AFTER THAT THREE OR
13 FOUR FEET DIRECTLY IN FRONT OF YOU IS JUST A DIRT AREA ---

14 A YES

15 Q --- FOR PARKING, IS THAT CORRECT?

16 A UH-HUH

17 Q AND SO IF YOU WERE LOOKING TOWARDS THE DOOR
18 YOU WOULD BE LOOKING RIGHT OUT INTO THE PARKING AREA ACROSS
19 THAT LITTLE CEMENT AREA ---

20 A YEAH

21 Q --- RIGHT?

22 A UH-HUH

23 Q ALL RIGHT, AND YOU'RE SAYING THAT AS FAR AS
24 YOU CAN RECALL YOU DIDN'T SEE TYRONE ONCE AFTER HE WENT
25 OUTSIDE AND BEFORE "DO DIRTY" WENT OUTSIDE?

MR. MCCULLOUGH - REDIRECT EXAMINATION BY MR RICHARDSON 96

1 A NO

2 Q YOU COULDN'T SEE HIM?

3 A NO, I COULDN'T SEE HIM

4 Q NOW WERE YOU LOOKING OUTSIDE TO SEE WHERE
5 HE WAS OR WHAT HE WAS DOING OR YOU JUST WEREN'T PAYING ANY
6 ATTENTION?

7 A I WASN'T PAYING ANY ATTENTION CAUSE I
8 REALLY THOUGHT, YOU KNOW WHAT I'M SAYING, HE HAD LEFT, YOU
9 KNOW WHAT I'M SAYING AND, YOU KNOW, I REALLY DIDN'T, I
10 DON'T KNOW, LIKE I SAID I WAS TRYING NOT TO LET NOTHING
11 HAPPEN SO I REALLY WASN'T LOOKING FOR TYRONE, YOU KNOW WHAT
12 I'M SAYING I REALLY THOUGHT HE LEFT, YOU KNOW WHAT I'M
13 SAYING, CAUSE WHEN HE GRABBED, WHEN HE GRABBED HIS HOODIE
14 OR HIS HAT OR SHIRT WHATEVER HE GRABBED WHEN HE WENT ON THE
15 OUTSIDE I FIGURED HE WAS GOING TO GO AHEAD, YOU KNOW WHAT
16 I'M SAYING

17 Q OKAY, ALL RIGHT, AND, AND, AND JUST SO I'M
18 CLEAR WHEN HE LEFT BOTH TIMES, THE FIRST AND SECOND TIME
19 NEITHER TIME DID YOU RUN HIM OUT, HE LEFT ON HIS OWN?

20 A YES

21 MR WILSON I DON'T HAVE ANY OTHER QUESTIONS,
22 THANK YOU SO MUCH

23 THE COURT MR RICHARDSON?

24 MR RICHARDSON JUST A COUPLE, YOUR HONOR

25 REDIRECT EXAMINATION

MR. MCCULLOUGH - REDIRECT EXAMINATION BY MR RICHARDSON 97

1 BY MR. RICHARDSON:

2 Q MR ROBERT?

3 A YES

4 Q JUST TO CLARIFY NOW, AT ANY TIME BEFORE
5 DAVID BENNETT WAS SHOT DID YOU EVER SEE HIM LIFT THAT STICK
6 OR ANY OTHER WEAPON TOWARD MR TYRONE JACOBS?

7 A NO

8 Q ANY DOUBT IN YOUR MIND AS TO WHAT YOU SAW,
9 HEARD?

10 A NO, NO DOUBT

11 Q ANY SORT OF PROVOCATIVE MOVEMENT?

12 A NO

13 Q PLEASE TELL US IF THERE'S ANY BIAS THAT
14 WOULD CAUSE YOU TO STORY OR LIE ON YOUR FRIEND TYRONE
15 JACOBS?

16 A NO, BOTH OF THEM BOYS MY FRIEND

17 MR RICHARDSON I'VE GOT NOTHING FURTHER

18 MR WILSON NO ADDITIONAL QUESTIONS, YOUR

19 HONOR

20 THE COURT MAY THIS WITNESS BE EXCUSED?

21 MR RICHARDSON YES, MA'AM, FOR THE TRIAL, IS
22 THAT OKAY?

23 THE COURT YES

24 MR RICHARDSON YES, MA'AM

25 THE COURT THANK YOU, YOU MAY STEP DOWN AND YOU

MR MCCULLOUGH - REDIRECT EXAMINATION BY MR RICHARDSON 98

1 MAY BE EXCUSED FROM THE COURTHOUSE, THANK YOU

2 LADIES AND GENTLEMEN OF THE JURY, WE'RE GOING TO
3 TAKE OUR, WE'RE GOING TO BREAK FOR THE DAY SO, MR HOBART,
4 I'M GOING TO TASK YOU WITH YOUR FIRST DECISION OF BEING A
5 FOREMAN WE WILL BE PROVIDING BREAKFAST FOR THE JURY SO I
6 NEED YOU TO DETERMINE IF YOU WOULD LIKE BISCUITS OR

7 DOUGHNUTS AND IF YOU'LL LET MS GLORIA KNOW WE WILL HAVE
8 THOSE HERE IN THE JURY ROOM BY 9 A M BUT IF YOU DO NOT
9 WISH TO PARTAKE OF YOUR BREAKFAST PLEASE BE IN YOUR JURY
10 ROOM NO LATER THAN 9 15

11 PLEASE AGAIN REMEMBER MY ADMONISHMENT DO NOT
12 BEGIN DELIBERATIONS, DO NOT DISCUSS THIS CASE AMONGST
13 YOURSELVES DO NOT DISCUSS THIS CASE I KNOW YOU'RE GOING
14 TO GO HOME AND YOUR SIGNIFICANT OTHER OR FRIENDS ARE GOING
15 TO WANT TO KNOW WHAT YOU'VE DONE TODAY, TELL THEM THAT AT
16 THE CONCLUSION OF THE TRIAL YOU CAN DISCUSS THIS MATTER
17 WITH THEM BUT THE JUDGE HAS INSTRUCTED YOU THAT YOU CANNOT
18 DISCUSS THIS CASE WITH ANYBODY AT THIS POINT

19 THANK YOU, YA'LL HAVE A RESTFUL EVENING I'LL
20 SEE YOU IN YOUR JURY BOX AT 9 15

21 (WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING
22 AT 3 43 P M)

23 THE COURT THANK YOU, YA'LL MAY BE SEATED
24 LADIES AND GENTLEMEN OF THE AUDIENCE, I KNOW I AM A
25 VISITING JUDGE, I JUST WANT TO LET YOU KNOW THE RULES OF MY

MR MCCULLOUGH - REDIRECT EXAMINATION BY MR RICHARDSON 99
1 COURTROOM THERE IS TO BE NO GUM CHEWING THERE IS TO BE
2 NO MOVEMENT WHILE I AM SPEAKING OR THERE IS A WITNESS ON
3 THE STAND IT IS DISRUPTIVE TO EVERYBODY INVOLVED IF YA'LL
4 ARE SPEAKING AMONGST YOURSELVES WHILE A WITNESS IS ON THE
5 STAND DO I MAKE MYSELF CLEAR? WE WILL BE AT RECESS UNTIL
6 9 15 IN THE MORNING ANYTHING FURTHER FROM THE STATE?

7 MR RICHARDSON NO, MA'AM

8 THE COURT ANYTHING FURTHER FROM THE DEFENSE?

9 MR WILSON NOTHING, YOUR HONOR

10 THE COURT I UNDERSTAND YOUR CLIENT'S IN
11 CUSTODY, MR WILSON?

12 MR WILSON HE IS, YOUR HONOR

13 THE COURT ALL RIGHT, AND ONE LAST THING WHEN
14 THE JURY IS COMING AND LEAVING I REQUEST THAT YA'LL STAND
15 OUT OF RESPECT FOR THE JURY, THANK YOU, WE'LL BE IN RECESS,
16 THANK YOU

17 (WHEREUPON, COURT WAS ADJOURNED FOR THE EVENING
18 AND RESUMED AT 9 15 A M ON MAY 20, 2008)

19 (WHEREUPON, STATE'S EXHIBITS NUMBERS 5, 6, 7, 8,
20 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, AND 21
21 MARKED FOR IDENTIFICATION)

22 THE COURT ANYTHING BEFORE WE BRING THE JURY
23 IN?

24 MR RICHARDSON NO, MA'AM

25 THE COURT ANYTHING FROM THE DEFENSE?

MR GILLINS - DIRECT EXAMINATION BY MR RICHARDSON 100

1 MR WILSON NOTHING, YOUR HONOR

2 THE COURT PLEASE BRING IN THE JURY

3 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT

4 9 25 A M)

5 THE COURT GOOD MORNING, LADIES AND GENTLEMEN

6 OF THE JURY, I HOPE YOU HAD A WONDERFUL EVENING AND ENJOYED

7 YOUR BISCUITS MR RICHARDSON, - YOU MAY CALL YOUR NEXT

8 WITNESS

9 MR RICHARDSON THANK YOU, YOUR HONOR, THE
10 STATE WOULD CALL SAMUEL GILLINS

11 SAMUEL L GILLINS

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 MADAM CLERK , , PLEASE SPEAK INTO THE MICROPHONE

14 AND STATE YOUR FULL NAME

15 THE WITNESS MY NAME IS SAMUEL GILLINS, SAMMY

16 L GILLINS

17 MADAM CLERK SPELL YOUR LAST NAME

18 (NO RESPONSE)

19 THE COURT MR RICHARDSON, YOU MAY PROCEED

20 MR RICHARDSON THANK YOU, YOUR HONOR

21 DIRECT EXAMINATION

22 BY MR RICHARDSON

23 Q MR GILLINS, IS IT GILLINS OR GILLIN?

24 A GILLINS

25 Q GILLINS MR GILLINS, ARE YOU, WHERE ARE

MR GILLINS - DIRECT EXAMINATION BY MR RICHARDSON 101

1 YOU FROM?

2 A FROM LORIS

3 Q LORIS, DO YOU LIVE NEAR THE DEFENDANT?

4 A NO, I LIVE OUT, I LIVE OUT THERE NEXT
5 BAYBORO BUT MY MAMA STAYS IN BENNETT TOWN, BENNETT LOOP

6 Q ALL RIGHT, YOUR MOM STAYS OVER THERE?

7 A THAT'S RIGHT

8 Q ALL RIGHT, DO YOU KNOW TYRONE JACOBS?

9 A YES, SIR

10 Q ARE YOU RELATED TO MR JACOBS?

11 A HE'S MAMA'S FIRST COUSIN

12 Q ALL RIGHT, SO THAT WOULD MAKE YOU SECOND
13 COUSIN TO MR JACOBS?

14 A THAT'S RIGHT, SIR

15 Q ALL RIGHT, ARE YOU ANY KIN TO DAVID
16 BENNETT?

17 A ME AND HIS DADDY IS FIRST COUSIN

18 Q SO YOU'RE THE SAME RELATION TO DAVID?

19 A YES, SIR

20 Q ALL RIGHT, WERE YOU AT ROBERT MCCULLOUGH'S
21 STORE ON NOVEMBER THE 10TH, 2006?

22 A YES, SIR

23 Q ALL RIGHT, DID YOU SEE TYRONE THERE?

24 A YES, SIR

25 Q DID YOU SEE DAVID THERE?

MR GILLINS - DIRECT EXAMINATION BY MR RICHARDSON

102

1 A YES, SIR

2 Q ALL RIGHT, WAS, TELL ME WHAT YOU KNOW, WERE
3 YOU INSIDE OF THE SHOP OR OUTSIDE OF THE SHOP?

4 A WELL AT FIRST I WAS INSIDE THE SHOP AND I
5 WALKED ON THE OUTSIDE AND, AND, AND TYRONE HE CAME OUTSIDE
6 HE WALKED OUTSIDE AND HE GOT A PISTOL FROM OUT OF HIS CAR,
7 I THINK IT WAS IN HIS CAR, AND HE STANDING ON THE OUTSIDE
8 WHEN "DO DIRTY" CAME OUT HE WENT, HE SHOT HIM IN THE LEG
9 FIRST

10 Q ALL RIGHT, NOW YOU SAY THAT TYRONE WAS
11 INSIDE THE STORE AND THEN CAME OUT?

12 A THAT'S, RIGHT

13 Q AND GOT A PISTOL?

14 A THAT'S RIGHT

15 Q ALL RIGHT, DID HE SAY ANYTHING INTO THE
16 STORE, DID YOU HEAR TYRONE SAY ANYTHING?

17 A NO, SIR, NO, SIR

18 Q ALL RIGHT, AT SOME POINT DO YOU KNOW WHY
19 DAVID BENNETT CAME OUTSIDE?

20 A NO, SIR, I DON'T, I HAVE NO IDEA

21 Q NOW AT THE FRONT OF THAT STORE WAS, TELL ME
22 WHERE DAVID WAS STANDING OR "DO DIRTY"?

23 A TIME HE WALKED OUT, TIME HE WALKED OUT THE
24 DOOR YOU KNOW THERE'S A LITTLE WALKWAY RIGHT THERE

25 Q UH-HUH?

MR. GILLINS - DIRECT EXAMINATION BY MR RICHARDSON 103

1 A AND HE WAS STANDING RIGHT THERE ON THE
2 WALKWAY

3 Q HE WAS STANDING ON, WAS HE STANDING ON THE
4 CONCRETE OR ON THE DIRT?

5 A THERE WAS A LITTLE CONCRETE PLACE, NO DIRT
6 RIGHT THERE, RIGHT THERE AS YOU WALKING BACK UP IN THE DOOR
7 AND THERE'S DIRT, DIRT RIGHT THERE

8 Q ALL RIGHT, NOW DID, WHEN WAS THE FIRST TIME
9 YOU SAW THE PISTOL?

10 A AT FIRST HE, HE CAME INSIDE, WELL HE WAS
11 INSIDE THE PLACE WITH THE PISTOL ROBERT SAID, TYRONE, I
12 TOLD YOU BEFORE DON'T BRING THAT PISTOL IN MY PLACE AND
13 TYRONE SAID SOME SMART WORD AND THEN HE GOES ON BACK
14 OUTSIDE AND I WENT OUTSIDE

15 Q SO TYRONE HAD THE PISTOL INSIDE OF THE ---

16 A RIGHT, RIGHT

17 Q --- PLACE?

18 A RIGHT

19 Q HE WAS TOLD TO LEAVE?

20 A THAT'S RIGHT

21 Q ALL RIGHT, AND WHEN YOU WALKED OUTSIDE WAS,
22 DID YOU ACTUALLY SEE THE PISTOL?

23 A NO, BUT HE HAD THE PISTOL INSIDE AND WHEN
24 HE WALKED OUTSIDE HE WENT INSIDE OF THE BUILDING

25 Q OKAY, TYRONE DID?

MR GILLINS - DIRECT EXAMINATION BY MR RICHARDSON

104

- 1 A THAT'S RIGHT
- 2 Q ALL RIGHT, AND WHAT DID DAVID DO?
- 3 A WELL HE WAS STILL INSIDE SHOOTING POOL AT
- 4 FIRST
- 5 Q OKAY --
- 6 A STILL IN THERE SHOOTING POOL
- 7 Q OKAY, AND THERE COME A TIME THAT DAVID CAME
- 8 ---
- 9 A CAME OUTSIDE ---
- 10 Q --- OUT?
- 11 A --- THE PLACE, THAT'S RIGHT
- 12 Q ALL RIGHT, DID YOU, DID YOU SEE DAVID WITH
- 13 ANYTHING IN HIS HAND?
- 14 A NO, SIR
- 15 Q DID DAVID HAVE ANY SORT OF A WEAPON?
- 16 A NO, SIR, I DIDN'T SEE NO WEAPON
- 17 Q DID YOU SEE DAVID WITH ANY SORT OF A PISTOL
- 18 OR KNIFE?
- 19 A NO, SIR
- 20 Q DID DAVID HAVE THIS POOL STICK IN HIS HAND?
- 21 A NO, SIR, NOT THAT I CAN RECALL, NO, SIR
- 22 Q ALL RIGHT, YOU DON'T REMEMBER SEEING DAVID
- 23 HOLD THIS POOL STICK?
- 24 A NO, SIR
- 25 Q ALL RIGHT, TELL ME HOW CLOSE WAS TYRONE TO

MR GILLINS - DIRECT EXAMINATION BY MR RICHARDSON 105

1 DAVID WHEN HE FIRST POINTED THE GUN AT HIM AND I'LL STAND
2 HERE AND YOU TELL ME WHEN TO STOP AND I'LL START GOING
3 BACKWARDS? SHOULD I GO BACKWARDS?

4 A A LITTLE BIT, ABOUT LIKE THAT, ABOUT LIKE
5 THAT

6 Q ABOUT RIGHT HERE?

7 A YES, SIR

8 Q ALL RIGHT, AND DID YOU HEAR TYRONE SAY
9 ANYTHING TO DAVID OR DID DAVID SAY ANYTHING TO TYRONE ---

10 A NO, SIR

11 Q --- WHEN THEY ARE AT THIS -- ALL RIGHT,
12 SHOW ME HOW TYRONE PULLED THE WEAPON ON DAVID?

13 A HE, WHEN HE DID LIKE THAT THE GUN SAY SNAP
14 AND HE REACHED BACK AND DONE HIS HANDLE LIKE THAT AND IT
15 POW

16 Q ALL RIGHT, SO THE FIRST TIME HE PULLED THE
17 TRIGGER IT DIDN'T GO OFF?

18 A NO, SIR, IT DIDN'T GO OFF

19 Q AND THEN HE PULLED IT AGAIN AND IT SNAPPED?

20 A THAT'S RIGHT

21 Q ALL RIGHT, WHAT DID DAVID DO?

22 A WHEN HE, WHEN HE, WHEN HE PULLED THE GUN
23 THE FIRST TIME IT SNAPPED HE REACHED BACK AND DRAW THE
24 HAMMER THAT'S WHEN HE SHOT

25 Q ALL RIGHT, AND WHAT DID "DO DIRTY" ONCE HE

MR GILLINS - DIRECT EXAMINATION BY MR RICHARDSON

106

1 GOT SHOT?

2 A HE WENT DOWN LIKE THAT

3 Q ALL RIGHT, DID, DID HE JUST SHOOT HIM ONE
4 TIME, HOW MANY TIMES DID YOU HEAR IT, ONE?

5 A THREE TIMES

6 Q YOU HEARD THE GUN GO OFF THREE TIMES?

7 A THREE TIMES

8 Q ALL RIGHT, AND WHAT DID, AT SOME POINT DID
9 YOU SEE DAVID FALL?

10 A YES, SIR, HE WENT DOWN

11 Q , ALL RIGHT, WAS DAVID STILL IN FRONT OF THAT
12 STORE WHEN HE WENT DOWN?

13 A , STILL IN FRONT, STILL AT THE FRONT OF THE
14 STORE WHERE WE PICKED HIM UP FROM IN FRONT OF THE STORE

15 Q ALL RIGHT, YOU HELPED PICK HIM UP?

16 A YES, SIR

17 Q WHAT DID YOU DO WITH DAVID ONCE YOU PICKED
18 HIM UP?

19 A WE LAID HIM IN THE BACK SEAT OF A TRUCK,
20 THE THING THAT HE WAS DRIVING, NOT WHAT DAVID WAS DRIVING,
21 THIS OTHER FELLOW WREN WAS DRIVING WE LAID HIM IN THE
22 BACK OF HIS TRUCK AND HE TOOK OFF TO THE HOSPITAL WITH HIM

23 Q WREN?

24 A THAT'S RIGHT

25 Q ALL RIGHT, AND YOU HELPED WREN LOAD DAVID

MR GILLINS - DIRECT EXAMINATION BY MR RICHARDSON 107

1 UP ---

2 A YES, SIR

3 Q --- INTO THE VEHICLE?

4 A YES, SIR

5 Q DID DAVID SAY ANYTHING TO YOU?

6 A NO, SIR, NO, SIR, NO

7 Q ALL RIGHT, NOW DID, DID YOU HAVE AN
8 OCCASION TO SEE DAVID AGAIN OR TALK TO DAVID BEFORE HE
9 DIED?

10 A NO, SIR

11 Q ALL RIGHT, HOW ABOUT TYRONE, HAVE YOU
12 TALKED WITH HIM SINCE?

13 A NO, SIR

14 Q BEAR WITH ME JUST A SECOND, DID YOU RIDE
15 WITH DAVID TO THE HOSPITAL?

16 A NO, SIR

17 Q OKAY, DID YOU STAY BEHIND AT THE SHOP?

18 A YES, SIR

19 Q AND THE POLICE OFFICER CAME UP, DID YOU
20 GIVE THEM A STATEMENT?

21 A NO, WHEN I GAVE THEM THE STATEMENT TO THE
22 HOSPITAL WHEN I GAVE MY STATEMENT

23 Q ALL RIGHT, SO YOU STAYED FOR A WHILE?

24 A AND THEN I WENT DOWN TO THE HOSPITAL

25 Q AND WENT TO THE HOSPITAL, WAS DAVID STILL

MR GILLINS - DIRECT EXAMINATION BY MR. RICHARDSON

108

1 ALIVE WHEN YOU GOT DOWN THERE?

2 A NO, SIR, NO, SIR

3 Q DID THE POLICE ASKED YOU WHAT HAD HAPPENED
4 AND YOU TOLD THEM?

5 A THAT'S RIGHT

6 Q AT ANY TIME THAT YOU WERE WATCHING THIS GO
7 ON DID DAVID EVER OFFER TO HURT TYRONE?

8 A NO, SIR, NO, SIR

9 Q YOU NEVER SAW HIM TRY TO STRIKE HIM?

10 A NO, SIR

11 Q DID HE; DID YOU EVER HEAR DAVID SAY, I'M
12 GOING TO HURT YOU OR I'M GOING TO KILL YOU ---

13 A NO, SIR

14 Q --- OR I'M MAD WITH YOU?

15 A NO, SIR, I AIN'T NEVER HEARD OF THAT

16 Q ALL RIGHT, HOW, HOW LONG DID THE WHOLE
17 THING TAKE PLACE OUTSIDE?

18 A BY THE TIME, TIME, TIME HE WALKED OUT THE
19 DOOR THAT'S WHEN IT STARTED, I MEAN THAT'S WHEN HE SHOOT,
20 YOU KNOW

21 Q ALL RIGHT, NOW WHAT DID TYRONE DO ONCE HE
22 SHOT DAVID?

23 A HE JUMPED IN HIS CAR AND HE LEFT

24 Q JUMPED IN HIS CAR AND LEFT?

25 A THAT'S RIGHT

MR GILLINS - CROSS EXAMINATION BY MR WILSON

109

1 Q DO YOU REMEMBER WHAT KIND OF CAR HE LEFT
2 IN?

3 A ALL I KNOW IT WAS A BLACK CAR

4 Q I WANT TO SHOW YOU A PHOTOGRAPH OF A CAR
5 THAT'S ALREADY, THIS PHOTOGRAPH IS ALREADY IN EVIDENCE, BUT
6 YOU TELL ME IF YOU RECOGNIZE THAT?

7 A YES, SIR

8 Q WHAT IS THAT?

9 A THAT'S A PONTIAC, AIN'T IT?

10 Q ALL RIGHT, DO YOU KNOW WHETHER OR NOT
11 THAT'S THE CAR THAT HE LEFT IN?

12 A I THINK THAT'S THE CAR THAT HE LEFT IN
13 RIGHT HERE CAUSE YOU KNOW I DON'T REALLY KNOW THE MAKE AND
14 MODEL OF A CAR CAUSE I CAN'T READ THAT GOOD, SIR, AND I'M
15 GOING TO TELL YOU THE TRUTH

16 Q YOU CAN'T READ GOOD?

17 A NO

18 Q BUT IT LOOKED KIND OF LIKE IT?

19 A THAT'S RIGHT

20 Q ALL RIGHT, NOW DID YOU, HAVE YOU GOT ANY
21 REASON TO BE MAD WITH TYRONE?

22 A NO, SIR

23 Q YOU GOT AN AXE TO GRIND AGAINST TYRONE?

24 A NO, SIR, NO, SIR, NO, SIR, NO REASON

25 Q WHAT ABOUT WITH TYRONE'S FAMILY ARE YOU

MR GILLINS - CROSS EXAMINATION BY MR WILSON

110

1 STILL IN GOOD STANDING WITH THEM?

2 A YES, SIR, YES, SIR

3 MR RICHARDSON ALL RIGHT, I HAVE NO FURTHER
4 QUESTIONS, IF YOU'D ANSWER ANY QUESTIONS MR WILSON HAS FOR
5 YOU

6 A ALL RIGHT

7 THE COURT MR WILSON?

8 MR WILSON THANK YOU, YOUR HONOR

9 CROSS EXAMINATION

10 BY MR WILSON

11 Q MR GILLINS, THAT NIGHT WHEN YOU GOT TO THE
12 CLUB YOU GOT THERE ABOUT WHAT TIME?

13 A I DON'T KNOW WHAT TIME IT WAS WHEN I
14 ARRIVED OUT TO THE CLUB, SIR

15 Q AND TELL US FOR A MINUTE ABOUT THE CLUB,
16 THIS, THIS STORE THAT YOU WERE AT, TELL US WHAT GOES ON OUT
17 THERE?

18 A I SHOOT POOLS IN THERE

19 Q WHAT ELSE?

20 A I MEAN YOU KNOW, THEY JUST SHOOT, SHOOT A
21 LITTLE POOL IN THERE SOMETIMES HE MIGHT HAVE A COUPLE OF
22 BEERS IN THERE

23 Q A COUPLE OF BEERS IN THERE?

24 A YEAH

25 Q HE DON'T HAVE BEER LICENSE OR ANYTHING LIKE

MR GILLINS - CROSS EXAMINATION BY MR WILSON

111

1 THAT, JUST KIND OF HAS A COUPLE OF BEERS IN THERE, ALL
2 RIGHT, AND A LITTLE BIT OF LIQUOR, TOO, RIGHT?

3 A I AIN'T NEVER SEEN LIQUOR IN THERE

4 Q YOU HADN'T SEEN NO LIQUOR IN THERE?

5 A NO, SIR

6 Q WELL HOW MANY OF THOSE BEERS DID YOU HAVE
7 THAT NIGHT?

8 A I AIN'T HAD NOTHING THAT NIGHT

9 Q YOU DIDN'T HAVE ANYTHING TO DRINK THAT
10 NIGHT?

11 A NO, SIR

12 Q SO YOU, HOW LONG HAD YOU BEEN THERE?

13 A I BEEN THERE FOR A GOOD LITTLE WHILE BUT I
14 DON'T HAVE TO HAVE NOTHING TO DRINK

15 Q WELL YOU DON'T DENY THAT YOU DO DRINK,
16 RIGHT?

17 A OH, YEAH, I, I DRINKS

18 Q BUT ON THIS NIGHT YOU HADN'T ANYTHING?

19 A NO, I AIN'T HAD NOTHING TO DRINK

20 Q YOU JUST HANG WITH THE BOYS, KIND OF
21 HANGING OUT?

22 A YEAH, YES, SIR

23 Q AND PLAY SOME POOL?

24 A THAT'S RIGHT

25 Q RIGHT?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

112

- 1 A YES, SIR
- 2 Q NOW YOU SAID TO THE SOLICITOR THAT YOU WERE
- 3 COUSINS TO BOTH THESE FELLOWS?
- 4 A THAT'S RIGHT
- 5 Q IS THAT WHAT YOU SAID?
- 6 A YES, SIR
- 7 Q NOW AS I UNDERSTAND IT, MR GILLINS, "DO
- 8 DIRTY'S" FATHER IS YOUR MOTHER'S BROTHER?
- 9 A UH-UH
- 10 Q HOW IS IT, WHAT RELATIONSHIP?
- 11 A "DO DIRTY" GRANDDADDY AND MY MOTHER WAS
- 12 BROTHERS
- 13 Q ALL RIGHT, HIS GRANDDADDY AND YOUR MOTHER?
- 14 A THAT'S RIGHT
- 15 Q SISTER AND BROTHER?
- 16 A THAT'S RIGHT
- 17 Q OKAY, ALL RIGHT, AND SO HOW ARE YOU RELATED
- 18 THEN TO TYRONE?
- 19 A THROUGH HIS, THROUGH HIS MAMA
- 20 Q HOW?
- 21 A HIS MAMA IS MY FIRST COUSIN
- 22 Q OKAY, SO HIS MAMA IS YOUR FIRST COUSIN?
- 23 A THAT'S RIGHT
- 24 Q SO YOU ARE HIS SECOND COUSIN?
- 25 A THAT'S RIGHT

MR GILLINS - CROSS EXAMINATION BY MR WILSON

113

1 Q IS THAT WHAT YOU'RE SAYING?

2 A YES, SIR

3 Q ALL RIGHT, SO YOU'RE NOT THE SAME
4 RELATIONSHIP, ARE YOU?

5 A YES, SIR

6 Q YOU ARE, ALL RIGHT, NOW ON THIS PARTICULAR
7 NIGHT AT THE CLUB YOU HAD PLAYED WITH POOL WITH "DO DIRTY"?

8 A NO, SIR, I WASN'T PLAYING POOL

9 Q YOU WEREN'T PLAYING POOL?

10 A NO, SIR

11 Q WELL WHAT WERE YOU DOING THERE?

12 A I WAS JUST STANDING JUST TALKING, TALKING,
13 TALKING TO A LOT OF FELLOWS RIGHT THERE INSIDE

14 Q SO YOU WERE JUST IN THE CLUB JUST TALKING
15 AND YOU WEREN'T PLAYING POOL AND YOU WEREN'T DRINKING?

16 A NO

17 Q YOU WERE JUST THERE?

18 A THAT'S RIGHT

19 Q FOR NO PARTICULAR REASON?

20 A THAT'S RIGHT

21 Q ALL RIGHT, AND WHILE YOU WERE THERE FOR NO
22 PARTICULAR REASON YOU SAID THAT AT SOME POINT IN TIME YOU
23 STARTED HAVING A JOKE WITH TYRONE, WITH, WITH "DO DIRTY"?

24 A UH-UH

25 Q YA'LL NEVER HAD A JOKE?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

114

1 A UH-UH

2 Q YA'LL WEREN'T TELLING A JOKE BETWEEN THE
3 TWO OF YOU?

4 A NO, SIR

5 Q OKAY, ALL RIGHT, NOW WELL HELP ME WITH
6 THIS; AT-SOME-POINT IN TIME IN THE CLUB YOU NEVER HEAR AN
7 ARGUMENT BETWEEN "DO DIRTY" AND TYRONE?

8 A NO, SIR

9 Q SO THE ENTIRE TIME YOU WERE THERE THERE WAS
10 NO WORDS SPOKEN ---

11 A NO, SIR, NO, SIR

12 Q --- BETWEEN THE TWO OF THEM THAT YOU HEARD?

13 A NO, SIR

14 Q OKAY, AND NO QUESTION ABOUT THAT?

15 A NO, SIR

16 Q YOU WERE THERE AND THIS ROOM THAT WE'RE IN,
17 THIS ROOM THAT YA'LL ARE IN, THIS POOL ROOM OR WHATEVER YOU
18 WANT TO CALL IT, STORE, JUKE JOINT, WHATEVER YA'LL IT'S
19 NOT AS BIG AS THIS ROOM HERE, IS IT? THE WHOLE THING IS
20 NOT AS BIG AS THIS ROOM, IS IT?

21 A NO, SIR

22 Q AND THERE ARE TWO POOL TABLES IN THERE, YOU
23 ARE AT ONE POOL TABLE, RIGHT, OR YOU WERE SITTING NEAR ONE
24 POOL TABLE OR STANDING NEAR ONE?

25 A I WAS STANDING, I WAS STANDING UP

MR GILLINS - CROSS EXAMINATION BY MR WILSON

115

1 Q OKAY, AND "DO DIRTY" WAS PLAYING POOL AT
2 ONE TABLE?

3 A THAT'S RIGHT

4 Q AND TYRONE WAS AT ANOTHER POOL TABLE?

5 A THAT'S RIGHT

6 Q OKAY, IN THIS SMALL CONFINED AREA, AND YOU
7 NEVER HEARD ANY WORDS BEING SPOKEN BETWEEN THE TWO OF THEM?

8 A NO, SIR, SHORE DIDN'T

9 Q ALL RIGHT, NOT ONE SINGLE CROSS WORD?

10 A NOPE, NO, SIR

11 Q EVER, DID YOU, RIGHT?

12 A NO, SIR

13 Q NO, SIR, ALL RIGHT, AND YOU SAY TYRONE AT
14 SOME POINT LEAVES, RIGHT?

15 A THAT'S RIGHT

16 Q AND HE LEAVES AND HE COMES BACK WITH A GUN?

17 A THAT'S RIGHT

18 Q FOR NO REASON?

19 A THAT'S RIGHT

20 Q NO ARGUMENT?

21 A I DIDN'T, I DIDN'T HEAR NO ---

22 Q NO NOTHING, JUST GOES OUT, GETS A GUN AND
23 COMES BACK?

24 A I DIDN'T HEAR NO ARGUMENT

25 Q ALL RIGHT, AND YOU SAW THE GUN, THOUGH?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

116

1 A YEP, I SAW THE GUN

2 Q YOU SAW THE GUN, AND YOU SAY, DO YOU NOT,
3 THAT WHEN HE CAME BACK IN WITH THE GUN THAT MR MCCULLOUGH
4 WHO TESTIFIED HERE YESTERDAY SAW HIM AND HAD A CONVERSATION
5 WITH HIM AND TOLD HIM TO GET OUT OF HERE WITH THAT GUN,
6 DON'T BRING THAT GUN IN HERE?

7 A YES, SIR, THAT'S WHAT HE SAY

8 Q THAT'S WHAT MR MCCULLOUGH TOLD HIM, RIGHT?

9 A THAT'S WHAT HE SAY

10 Q AND MR MCCULLOUGH THEN RAN HIM OUT OF THE
11 PLACE?

12 A NO

13 Q IS THAT WHAT YOUR TESTIMONY IS?

14 A NO, HE DIDN'T RAN HIM

15 Q WHAT DID HE TELL HIM?

16 A HE JUST SAID, HE SAID, GET OUT, SAID, I
17 TOLD YOU NOT TO BRING THIS GUN IN MY PLACE

18 Q TOLD HIM NOT TO BRING THE GUN IN THE PLACE

19 ---

20 A THAT'S RIGHT

21 Q --- AND TOLD HIM TO GET OUT?

22 A AND TYRONE TURNED AND AROUND AND SAID A FEW
23 WORD AND HE WENT RIGHT ON AROUND BACK, HE WENT ON OUTSIDE

24 Q ALL RIGHT, SO HE TOLD HIM TO GET OUT WITH
25 THE GUN, RIGHT?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

117

1 A THAT'S RIGHT

2 Q ALL RIGHT, AND SO THEN HE LEAVES?

3 A THAT'S RIGHT

4 Q ALL RIGHT, SO NOW WHEN HE LEAVES WITH THE
5 GUN THAT YOU SAY HE'S GOT THAT LEAVES YOU IN THE CLUB,
6 RIGHT?

7 A NO, I WALKED ON THE OUTSIDE THEN

8 Q ALL RIGHT, SO YOU COME OUT WITH TYRONE?

9 A NO, SIR, I DIDN'T COME OUT WITH TYRONE HE
10 HAD DONE LEFT OUT AND I CAME OUT AFTERWARDS

11 Q ALL RIGHT, SO TYRONE LEAVES THE CLUB, HOW
12 LONG DID YOU STAY IN THE CLUB AFTER TYRONE LEAVES?

13 A I DIDN'T STAY IN THE CLUB I SAID I WALKED
14 OUTSIDE

15 Q I UNDERSTAND THAT I'M ASKING YOU HOW LONG
16 YOU SAY THAT TYRONE LEFT FIRST WHAT I'M ASKING YOU SIMPLY
17 IS THIS, HOW LONG WERE YOU OUTSIDE THE CLUB, HOW LONG WAS
18 TYRONE OUTSIDE THE DOOR OF THE CLUB ---

19 A HE HAD BEEN OUT THERE FOR A MINUTE OR TWO

20 Q OKAY, SO A MINUTE OR TWO LATER AND THEN YOU
21 WALKED OUT?

22 A THAT'S RIGHT, I COME OUTSIDE

23 Q ALL RIGHT, SO WHEN YOU WALK OUT WHERE IS
24 "DO DIRTY"?

25 A HE'S STILL INSIDE SHOOTING POOL

MR GILLINS - CROSS EXAMINATION BY MR WILSON

118

- 1 Q STILL INSIDE?
- 2 A THAT'S RIGHT
- 3 Q SHOOTING POOL?
- 4 A YES, SIR
- 5 Q AND TYRONE'S OUTSIDE?
- 6 A THAT'S RIGHT
- 7 Q YOU'RE OUTSIDE?
- 8 A THAT'S RIGHT
- 9 Q DOESN'T SHOOT YOU, DOES HE?
- 10 A NO, HE AIN'T SHOT ME
- 11 Q DON'T SHOOT YOU, DID HE DRAW A GUN ON YOU
- 12 AND SAY, I'M GOING TO BLOW YOUR BRAINS OUT ---
- 13 A NO
- 14 Q --- OR I'M GOING TO KILL YOU?
- 15 A NO, HE DIDN'T SAY THAT TO ME
- 16 Q NEVER CURSED YOU?
- 17 A NO, HE AIN'T NEVER SAID THAT TO ME
- 18 Q DIDN'T DO ANYTHING TO YOU, DID HE?
- 19 A NO
- 20 Q YOU WERE OUTSIDE WITH HIM?
- 21 A THAT'S RIGHT, HE DIDN'T DO NOTHING TO ME
- 22 Q OKAY, AND HE STAYS OUTSIDE, DON'T TRY TO GO
- 23 BACK IN THE CLUB, DOES HE?
- 24 A NO
- 25 Q KNOCK YOU DOWN, PUSH YOU OUT OF THE WAY ---

MR GILLINS - CROSS EXAMINATION BY MR WILSON

119

1 A NO, I WASN'T STANDING ---

2 Q --- TO GET BACK INSIDE THE CLUB?

3 A I WASN'T STANDING IN THE WAY FOR HIM TO
4 PUSH ME DOWN

5 Q OKAY, SO YOU STAYED OUTSIDE THEN WHO COMES
6 OUT NEXT?

7 A THEN "DO DIRTY" WALKED OUTSIDE

8 Q WHO?

9 A "DO"

10 Q "DO"?

11 A THAT'S RIGHT

12 Q WELL LET ME ASK YOU ABOUT ROBERT, ROBERT
13 MCCULLOUGH, DID ROBERT COME OUTSIDE?

14 A YES, SIR

15 Q ALL RIGHT, WELL DID ROBERT COME OUT BEFORE
16 "DO DIRTY" OR DID HE COME OUT AFTER "DO DIRTY"?

17 A COME, COME OUT BEFORE "DO DIRTY"

18 Q ALL RIGHT, SO ROBERT COMES OUT THE CLUB?

19 A THAT'S RIGHT

20 Q SO NOW YOU'RE OUTSIDE THE CLUB, TYRONE'S
21 OUTSIDE THE CLUB, ROBERT MCCULLOUGH IS OUTSIDE THE CLUB,
22 "DO DIRTY" IS STILL INSIDE THE CLUB?

23 A THAT'S RIGHT

24 Q SHOOTING POOL OR DOING WHATEVER IT IS HE'S
25 DOING, RIGHT?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

120

1 A THAT'S RIGHT

2 Q AND IS A GUN DRAWN ON ANYBODY AT THAT
3 POINT?

4 A NO, SIR

5 Q ANYBODY GET SHOT AT THAT POINT?

6 A NO, SIR

7 Q ANY ARGUMENT BETWEEN YOU AND TYRONE AND

8 ROBERT MCCULLOUGH ---

9 A NO, SIR

10 Q --- AT THAT POINT?

11 A NO, SIR, NO, SIR.

12 Q WELL TELL ME WHAT HAPPENS NEXT, WHO COMES
13 OUT THE CLUB NEXT?

14 A "DO DIRTY" CAME OUT THE CLUB

15 Q ALL RIGHT, "DO DIRTY" COMES OUT THE CLUB?

16 A THAT'S RIGHT

17 Q ALL RIGHT, AND YOU'RE ABSOLUTELY,
18 POSITIVELY CERTAIN THAT "DO DIRTY" COMES OUT THE CLUB AFTER
19 ROBERT MCCULLOUGH?

20 A THAT'S RIGHT

21 Q NOT BEFORE?

22 A NO

23 Q OKAY, HE COMES OUT FIRST AND WHEN HE COMES
24 OUT, WHEN HE COMES OUT AFTER ROBERT MCCULLOUGH YOU SAY THAT
25 HE DOES NOT HAVE THIS POOL STICK, RIGHT?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

121

1 A I DIDN'T SEE IT

2 Q YOU DIDN'T SEE IT YOU TOLD US YOU SAW
3 EVERYTHING THAT HAPPENED, RIGHT? YOU JUST DESCRIBED TO THE
4 SOLICITOR EVERY SINGLE DETAIL OF WHAT YOU SAID HAPPENED
5 THAT NIGHT AND YOU TOLD THE SOLICITOR THAT HE DIDN'T HAVE
6 ANY WEAPON AND HE DIDN'T HAVE THIS POOL STICK CAUSE THE
7 SOLICITOR SPECIFICALLY ASKED YOU DID HE HAVE IT AND YOU
8 SAID, NO, DID YOU NOT?

9 A THAT'S WHAT I SAID, SIR

10 Q RIGHT, AND SO YOUR STORY IS WHEN HE CAME
11 OUT OF THAT CLUB THAT NIGHT HE DID NOT HAVE THIS POOL STICK
12 IN HIS HAND, DID HE?

13 A NO, SIR, I DIDN'T SEE THE POOL STICK

14 Q DIDN'T SEE IT AND YOU WOULD HAVE SAW IT, IF
15 HE, IF HE HAD HAD IT IN HIS HAND AND YOU WERE STANDING
16 WITHIN TWO OR THREE FEET OF HIM YOU WOULD HAVE CERTAINLY
17 SEE IT, RIGHT?

18 A THAT'S RIGHT

19 Q YOU COULD SEE A LITTLE GUN THAT YOU SAY HE
20 HAD DOWN BY HIS SIDE BUT YOU COULDN'T SEE A FIVE FOOT LONG
21 POOL STICK?

22 A NO, SIR, I DIDN'T SEE THE ---

23 Q IS THAT RIGHT?

24 A I DIDN'T SEE THE POOL STICK

25 Q DIDN'T SEE IT AND YOU DIDN'T SEE IT BECAUSE

MR GILLINS - CROSS EXAMINATION BY MR WILSON

122

1 HE DIDN'T HAVE IT, RIGHT?

2 A I DIDN'T, I DIDN'T SAY HE DIDN'T HAVE IT, I
3 SAID I DIDN'T SEE IT

4 Q YOU DIDN'T SEE IT, OKAY, ALL RIGHT, BE THAT
5 AS IT MAY HE COMES OUT, YOU TELL THE SOLICITOR THAT AS SOON
6 AS HE WALKED OUT THE DOOR, NO ARGUMENT, RIGHT?

7 A THAT'S RIGHT

8 Q NOT A SINGLE WORD PASSED?

9 A THAT'S RIGHT

10 Q NOT A SINGLE ARGUMENT, RIGHT?

11 A THAT'S RIGHT

12 Q AND HE JUST SHOOTS HIM?

13 A THAT'S RIGHT

14 Q OR HE TRIES TO SHOOT HIM THE FIRST TIME,
15 RIGHT, CAUSE YOU SAY THE GUN CLICKED?

16 A THE GUN ---

17 Q TRIED TO SHOOT HIM?

18 A THE GUN SNAPPED

19 Q THE GUN SNAPS AND THEN HE JUST COCKS IT
20 BACK, SHOOTS HIM, HE FALLS DOWN AND THEN HE SHOOTS HIM TWO
21 MORE TIMES?

22 A THAT'S RIGHT

23 Q THAT'S WHAT YOUR STORY IS, RIGHT?

24 A YES, SIR

25 Q ALL RIGHT, NOW LET ME ASK YOU ABOUT THAT

MR GILLINS - CROSS EXAMINATION BY MR. WILSON

123

1 LET'S TALK ABOUT THAT FOR JUST A SECOND WHEN THE GUN
2 MISFIRES IS "DO DIRTY" STANDING ON THE PAVEMENT OR IS HE
3 STANDING ON THE DIRT?

4 A HE'S ON THE DIRT

5 Q HE'S ON THE DIRT?

6 A YES, SIR

7 Q NOW HOW CLOSE ARE YOU TO "DO DIRTY" AT THIS
8 POINT? HE COMES OUT OF THE CLUB, YOU'RE STILL ON THE
9 PORCH?

10 A NO, I WAS STANDING ON THE SIDE, RIGHT THERE
11 ON THE SIDE

12 Q YOU WERE ON THE SIDE, YOU ON THE DIRT OR
13 ARE YOU ON THE PORCH?

14 A YEAH, I'M THE DIRT STANDING RIGHT UP ON THE
15 DIRT RIGHT THERE

16 Q ALL RIGHT, ALL RIGHT LET ME SHOW YOU
17 WHAT'S MARKED AS STATE'S EXHIBIT NUMBER 1 WHICH IS A
18 PHOTOGRAPH OF THE STORE IS THAT, IS THAT A PICTURE OF THE
19 STORE?

20 A YES, SIR, I WAS STANDING RIGHT HERE

21 Q ALL RIGHT, YOU'RE STANDING OVER HERE BY THE
22 SIDE?

23 A RIGHT HERE ON THIS SIDE HERE, SEE THIS
24 LITTLE POST RIGHT THERE --

25 Q UH-HUH?

MR. GILLINS - CROSS EXAMINATION BY MR WILSON

124

1 A I WAS STANDING RIGHT THERE

2 Q ALL RIGHT, YOU WERE STANDING BY THE POST?

3 A THAT'S RIGHT

4 Q NOW I WANT YOU TO POINT OUT TO ME AND SHOW
5 ME WHERE "DO DIRTY" AND WHERE TYRONE WAS AT? I WANT YOU TO
6 HOLD IT JUST LIKE THAT

7 A OKAY, OKAY, I WAS STANDING HERE AND THERE'S
8 THE DOOR, "DO DIRTY" CAME OUT RIGHT IN HERE, TYRONE CAME
9 FROM AROUND THERE LIKE THIS STANDING RIGHT ALONG IN HERE,
10 RIGHT ALONG HERE AND "DO", AND "DO" TURNED AROUND AND
11 STARTED WALKING BACK LIKE THAT THAT'S WHEN HE SHOT HIM

12 Q ALL RIGHT, SO HE TURNED AROUND LET ME SEE
13 IF I'VE GOT YOUR STORY STRAIGHT SO I'LL BE CORRECT HE
14 COMES OUTSIDE, HE GETS ON THE GROUND, HE'S STILL NOT SHOT
15 TYRONE THEN COMES FROM AROUND THE SIDE OF THE BUILDING?

16 A THAT'S RIGHT

17 Q "DO DIRTY" HAS TURNED AROUND AND IS GOING
18 BACK TOWARDS THE DOOR?

19 A THAT'S RIGHT

20 Q AND THEN SHOOTS HIM FROM THE BACK?

21 A NO, HE AIN'T SHOOT HIM FROM THE, SHOOT HIM
22 IN THE LEG

23 Q OKAY, SHOOTS HIM IN THE LEG?

24 A THAT'S RIGHT

25 Q ALL RIGHT, AND THEN YOU SAY HE SHOT HIM

MR GILLINS - CROSS EXAMINATION BY MR. WILSON

125

1 THREE MORE, TWO MORE TIMES?

2 A THAT'S RIGHT

3 Q HE FELL WHEN HE SHOT HIM IN THE LEG HE FELL

4 ---

5 A RIGHT

6 Q --- RIGHT?

7 A THAT'S RIGHT

8 Q AND HE SHOT HIM TWO MORE TIMES?

9 A THAT'S RIGHT

10 Q AND HIS BACK IS TURNED TO HIM THE ENTIRE
11 TIME?

12 A NO, THE, HE DIDN'T SHOT HIM IN THE BACK, HE
13 SHOT HIM IN THE, IN THE SIDE LIKE HE WAS STANDING ON HIS
14 SIDE

15 Q WELL DO YOU KNOW THAT ONE OF THE SHOTS WAS
16 IN THE CHEST?

17 A NO, SIR, I DIDN'T KNOW THAT I KNOW WHEN,
18 WHEN HE FELL DOWN AND HE LOOKED AROUND LIKE THIS THAT'S
19 WHEN HE SHOT HIM AGAIN HE TURNED AROUND AND LOOKED AND
20 THAT'S WHEN HE SHOT AGAIN, SHOT TWO MORE TIMES

21 Q SO NOW HE FELL, OKAY, SO NOW HE FELL DOWN
22 AND THEN HE TURNED AROUND AND LOOKED?

23 A YES, SIR, CAUSE HE WAS CRAWLING BACK UP IN
24 THE, IN THE PLACE HE WAS CRAWLING UP LIKE THIS

25 Q HE WAS CRAWLING WHERE?

MR. GILLINS - CROSS EXAMINATION BY MR WILSON

126

1 A HE WAS CRAWLING

2 Q HE WAS CRAWLING?

3 A YES, SIR

4 Q OKAY ---

5 A YES, SIR

6 Q ALL RIGHT, I'M JUST TRYING TO GET, HE'S
7 CRAWLING ON HIS HANDS AND KNEES?

8 A HE WAS TRYING TO GET UP, TRYING TO GET
9 INSIDE THE PLACE

10 Q I UNDERSTAND BUT I'M JUST TRYING TO FIND
11 OUT WHAT YOU'RE SAYING ARE YOU SAYING THAT HE'S NOW HE'S
12 ON THE GROUND AND HE'S CRAWLING ON HIS HANDS AND KNEES?

13 A WHEN, WHEN HE WENT, WHEN HE WAS SHOT HE
14 WENT DOWN LIKE THIS ---

15 Q OKAY --

16 A --- AND HE WAS CRAWLING UP LIKE THIS

17 Q ALL RIGHT, SO HE'S DOWN ON HIS HANDS AND
18 KNEES AND HE'S CRAWLING?

19 A YES, SIR, THAT'S THE WAY HE WENT

20 Q SO IF TYRONE IS STILL STANDING UP WITH THE
21 GUN, RIGHT?

22 A THAT'S RIGHT

23 Q SO AND HE'S NOW ON HIS HANDS AND KNEES AND
24 HE'S CRAWLING?

25 A THAT'S RIGHT

MR GILLINS - CROSS EXAMINATION BY MR WILSON

127

1 Q AND HE GETS SHOT IN THE CHEST?

2 A THAT'S RIGHT WHEN HE TURNED AROUND AND
3 LOOK UP AND RUN AROUND, TURN AROUND LIKE THAT THAT'S WHEN
4 HE SHOT, SHOT TWO MORE TIMES

5 Q WELL HELP ME WITH THAT NOW CAUSE I, I'M
6 CONFUSED TELL ME ABOUT THIS TURNING AROUND AND LOOKING
7 WHEN IS THAT OCCURRING?

8 A WHEN "DO" WHEN HE FELL DOWN, WHEN HE FELL
9 DOWN LIKE THIS AND ---

10 MR WILSON YOUR HONOR, CAN I ASK THAT HE COME
11 DOWN AND, AND, AND EXPLAIN THE WAY HE'S SAYING?

12 THE COURT MR GILLINS, IF YOU'LL STEP DOWN
13 (THE WITNESS COMPLIES AND MR WILSON CONTINUES
14 CROSS EXAMINATION)

15 Q COME, COME RIGHT OUT HERE FOR ME AND, AND
16 SHOW US WHAT YOU'RE TALKING ABOUT?

17 A WHEN HE, WHEN HE FELL DOWN LIKE THIS AND HE
18 TURNED AROUND AND LOOKED THAT THAT'S WHEN HE SHOT HIM AGAIN
19 TWO MORE TIMES

20 Q OKAY, ALL RIGHT, AND SO IF YOU WOULD WHEN,
21 WHEN THE FIRST SHOT IS FIRED HE'S STANDING UP AND HIS BACK
22 IS TURNED AND HE'S GOING BACK TOWARDS THE DOOR ---

23 A RIGHT

24 Q OKAY, AND, AND, AND THEN IF I'M TYRONE I'M
25 BACK THIS WAY RIGHT?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

128

1 A THAT'S RIGHT

2 Q ALL RIGHT, TURN AROUND, WHERE IS THE DOOR?

3 A RIGHT HERE

4 Q OKAY --

5 A AND HE'S GOING, HERE'S THE DOOR AND TYRONE

6 BE ON THAT SIDE OVER HERE, I WAS STANDING RIGHT HERE

7 TYRONE WAS ON THAT SAME SIDE I'M STANDING ON RIGHT OVER

8 THERE

9 Q OKAY ---

10 A AND "DO" WAS CRAWLING UP LIKE THIS AND

11 LOOKED UP LIKE THAT AND THAT'S WHEN HE SHOT AGAIN

12 Q OKAY, SO ---

13 A TWO MORE

14 Q SO WHEN, WHEN HE LOOKED UP AND HE SHOT HIM

15 TWO MORE TIMES?

16 A THAT'S RIGHT

17 Q IS THAT WHAT YOU'RE SAYING?

18 A THAT'S WHAT I'M SAYING

19 Q STAND BACK NOW LET ME GO BACK WHEN, WHEN

20 THE FIRST SHOT WAS FIRED SO I'M CLEAR, THIS IS REALLY

21 IMPORTANT WHEN THE FIRST SHOT IS FIRED YOUR STORY IS THAT

22 TYRONE, THAT TYRONE WAS STANDING BEHIND "DO DIRTY" AND THAT

23 "DO DIRTY" WAS HEADING BACK TOWARDS THE DOOR?

24 A YES, SIR

25 Q OF THE CLUB?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

129

1 A YES, SIR

2 Q AND HIS BACK WOULD HAVE BEEN TO TYRONE, IS
3 THAT YOUR STORY?

4 A THAT'S RIGHT, YES, SIR

5 Q NO QUESTION IN YOUR MIND ABOUT THAT THAT'S
6 HOW IT HAPPENED?

7 A THAT'S HOW ---

8 Q AND THAT'S HOW THAT HAPPENED?

9 A THAT'S HOW IT HAPPENED

10 Q ALL RIGHT, SO HE COULDN'T HAVE BEEN SHOT
11 FROM THE FRONT ON THAT FIRST SHOT BECAUSE HIS BACK WAS TO
12 HIM, ISN'T THAT RIGHT BASED ON YOUR STORY?

13 A THAT'S RIGHT

14 Q ALL RIGHT, SO NOW DO YOU ACTUALLY KNOW
15 WHERE HE WAS SHOT THE FIRST TIME?

16 A IN THE LEG

17 Q AND DO YOU KNOW IT WAS IN THE FRONT, DO YOU
18 KNOW THAT?

19 A I DON'T, I DON'T KNOW WHERE ABOUT, I AIN'T
20 KNOW WHICH WAY DID THE BULLET HIT I KNOW HE SHOT HIM IN
21 THE LEG

22 Q WELL HOW WAS IT GOING TO BE IN THE FRONT IF
23 HIS BACK IS TO HIM?

24 A I DIDN'T SAY THE FRONT, SIR

25 Q I'M SAYING IF HE'S SHOT IN THE FRONT HOW

MR GILLINS - CROSS EXAMINATION BY MR. WILSON

130

1 WOULD THAT BE CONSISTENT WITH WHAT YOU'RE SAYING?

2 A I DIDN'T GET WHAT YOU'RE SAYING, SIR?

3 Q DO YOU KNOW, LET ME ASK YOU THIS QUESTION,
4 DO YOU KNOW WHERE THE FIRST BULLET PENETRATED?

5 A NO, SIR, I DIDN'T KNOW WHERE THE ---

6 Q FROM THE FRONT OR BACK?

7 A ALL I KNOW, ALL I KNOW HE WAS ---

8 Q LISTEN TO MY QUESTION, LISTEN TO THE
9 QUESTION DO YOU KNOW WHERE THE FIRST SHOT HIT TYRONE, I'M
10 SORRY, HIT "DO DIRTY"? WAS IT FROM THE FRONT OR FROM THE
11 BACK, THAT'S WHAT I'M ASKING?

12 A WHAT YOU MEAN, FROM THE BACK OF HIS LEG OR
13 THE FRONT OF HIS LEG?

14 Q YEAH, THAT'S CORRECT, FROM THE BACK OR FROM
15 THE FRONT?

16 A WELL I DON'T, I DON'T KNOW WHERE HE SHOT
17 HIM AT ALL I KNOW WHEN HE SHOT THAT'S ALL I DIDN'T, I
18 DIDN'T PAY NO ATTENTION TO WHERE HE SHOT HIM AT OR NOTHING

19 Q OKAY, BUT NO QUESTION ABOUT IT HIS BACK WAS
20 TURNED TO HIM?

21 A THAT'S RIGHT

22 Q ALL RIGHT, SO THE ONLY THINK EXPOSED AT
23 THAT TIME WAS HIS BACK, RIGHT?

24 A THAT'S RIGHT

25 Q ALL RIGHT, AND THEN HE FALLS DOWN AND HE'S

MR GILLINS - CROSS EXAMINATION BY MR WILSON

131

1 CRAWLING?

2 A THAT'S RIGHT

3 Q ALL RIGHT, AND TYRONE IS STILL BEHIND HIM,
4 RIGHT, WITH A GUN?

5 A NO, I AIN'T HE WAS BEHIND I JUST SAY HE
6 WAS BESIDE HIM

7 Q ALL RIGHT, SO, ALL RIGHT SO HE'S BEHIND
8 HIM WHEN HE FIRED THE FIRST SHOT BUT HE MOVES AND NOW HE'S
9 BESIDE OF HIM WHEN THE OTHER SHOT ---

10 A NO, SIR, I DIDN'T SAY HE WAS BEHIND HIM
11 WHEN HE SHOT THE FIRST SHOT, I DIDN'T SAY THAT, NO, SIR

12 Q WELL WHAT DID YOU SAY?

13 A I SAID HE WAS SIDE HIM STANDING UP BESIDE
14 THIS WHERE I SHOW YOU ---

15 MR WILSON YOUR HONOR, MAY I ASK HIM TO COME
16 BACK AROUND?

17 THE COURT MR GILLINS, PLEASE STEP BACK DOWN,
18 OKAY, THANK YOU

19 (THE WITNESS COMPLIES)

20 MR WILSON (CONTINUING)

21 Q SHOW ME --

22 MR WILSON I'M SORRY, YOUR HONOR

23 Q SHOW ME WHERE HE WAS WHEN HE FIRST -- WHAT
24 I'M ASKING JUST RIGHT NOW, THE ONLY THING I CARE ABOUT IS
25 THE FIRST SHOT WHEN THIS FIRST SHOT IS BEING FIRED WHERE

MR GILLINS - CROSS EXAMINATION BY MR WILSON

132

1 IS TYRONE STANDING IN RELATIONSHIP TO "DO DIRTY"?

2 A I SHOWED YOU RIGHT THERE ON THE PICTURE
3 RIGHT HERE, SEE

4 Q I WANT YOU TO SHOW ME WHERE HE WAS
5 STANDING? SHOW ME WHERE TYRONE IS STANDING?

6 A RIGHT HERE

7 Q ALL RIGHT, TYRONE WAS STANDING THERE?

8 A RIGHT HERE

9 Q ALL RIGHT, AND "DO DIRTY" IS STANDING HERE?

10 A HE IS TURNING AND WALKED RIGHT HERE ---

11 Q HOLD ON, HOLD ON WITH ME A SECOND WE'RE
12 GOING TO GO THROUGH IT, ALL RIGHT? YOU STAND RIGHT WHERE
13 TYRONE WAS STANDING

14 A RIGHT

15 Q THAT'S WHERE TYRONE WAS STANDING?

16 A THAT'S RIGHT

17 Q ALL RIGHT, NOW WHERE'S THE DOOR IN
18 COMPARISON TO WHERE TYRONE ---

19 A THE DOOR RIGHT OVER HERE

20 Q THE DOOR IS STRAIGHT IN FRONT OF YOU?

21 A RIGHT

22 Q ALL RIGHT, AND IF I'M "DO DIRTY" I'M TRYING
23 TO GO TO THIS DOOR?

24 A THAT'S RIGHT

25 Q IS THAT RIGHT, IS THAT WHAT YOU'RE SAYING?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

133

1 A THAT'S WHAT I'M SAYING

2 Q NOW AND YOU'RE SAYING THAT HE WAS STANDING
3 TO THE SIDE OF HIM?

4 A THAT'S RIGHT

5 Q TO HIS RIGHT?

6 A THAT'S RIGHT, STANDING BESIDE

7 Q TO HIS RIGHT?

8 A YES, SIR

9 Q OKAY, AND "DO DIRTY" WAS TRYING TO GO TO
10 THE DOOR?

11 A THAT'S RIGHT

12 Q NOW WHY IS "DO DIRTY" OUT HERE AND TYRONE
13 BETWEEN HIM AND THE DOOR? HOW DOES THAT HAPPEN?

14 A I DON'T KNOW HOW THAT HAPPENED LIKE THAT
15 BUT I KNOW HE CAME OUTSIDE

16 Q WELL DIDN'T YOU TELL THE, YOU CAN TAKE THE
17 STAND AGAIN, DIDN'T YOU TELL THE POLICE THAT HE WAS SHOT AS
18 SOON AS HE WALKED OUT THE DOOR WITHOUT ANY WORDS, WITHOUT
19 ANY ARGUMENT HE WAS SHOT?

20 A THAT'S THE WAY HE WAS SHOT

21 Q AND YOU NEVER TOLD THEM THAT HIS BACK WAS
22 TO HIM OR THAT HE CRAWLED AT ANY POINT IN TIME, DID YOU?

23 A YES, SIR

24 Q YOU GAVE A STATEMENT TO THE POLICE THAT
25 NIGHT, DID YOU NOT?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

134

1 A YES, SIR

2 Q ALL RIGHT, SHOW ME ON THERE WHERE YOU SAY
3 HE SHOT HIM IN THE BACK?

4 A I CAN'T READ

5 Q OR WHERE IT SAYS, I'M SORRY?

6 A I CANNOT READ

7 Q ALL RIGHT, WELL DO YOU RECALL GIVING THIS
8 STATEMENT?

9 A YES, SIR

10 Q AND YOU DON'T DENY THAT YOU GAVE A
11 STATEMENT?

12 A I GAVE THE STATEMENT

13 Q ALL RIGHT, AND YOU HAD AN OFFICER WRITE IT
14 FOR YOU?

15 A THAT'S RIGHT

16 Q A POLICE OFFICER WROTE THIS STATEMENT FOR
17 YOU ---

18 A YES, SIR

19 Q --- ON THAT PARTICULAR NIGHT?

20 A YES, SIR

21 Q THE NIGHT THAT THIS INCIDENT OCCURRED?

22 A YES, SIR

23 MR WILSON YOUR HONOR, PLEASE THE COURT, AT
24 THIS POINT I WOULD LIKE TO READ A PORTION OF HIS STATEMENT
25 WHICH I BELIEVE IT'S INCONSISTENT WITH WHAT HIS TESTIMONY

MR GILLINS - CROSS EXAMINATION BY MR WILSON

135

1 IS AT THIS POINT

2 THE COURT ANY RESPONSE, MR RICHARDSON?

3 MR RICHARDSON THAT'S FINE, YOUR HONOR I

4 WOULD, YOUR HONOR, I WOULD JUST ASK THAT THE STATEMENT BE

5 READ IN AND THEN HE POINT OUT WHICH SINCE HE CAN'T READ

6 IF HE COULD READ THE ENTIRE STATEMENT IN AND THEN POINT OUT

7 WHICH PART?

8 THE COURT COUNSEL, APPROACH

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
10 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
11 OF THE JURY AND THE COURT REPORTER)

12 MR WILSON (CONTINUING)

13 Q NOW THIS IS YOUR STATEMENT, TOO, YOU TELL
14 ME IF THIS IS WHAT YOU TOLD THE OFFICER THAT NIGHT AND THIS
15 IS THE SAME NIGHT THAT THIS INCIDENT OCCURRED?

16 "A STORE ON BENNETT LOOP ROAD SHOOTING POOL DAVID
17 BENNETT WAS TOLD TO STEP OUTSIDE BY TYRONE JACOBS DAVID
18 STEPPED OUTSIDE TYRONE HAD A PISTOL, 9MM, DOWN BY HIS
19 THIGH AND HE RAISED IT AND SHOT HIM DAVID BENNETT IN THE
20 LEG DAVID FELL ONTO THE GROUND AND TYRONE FIRED TWO MORE,
21 FIRED TWO MORE TIMES AT DAVID WHILE ON THE GROUND THEN
22 TYRONE RAN AND GOT INTO A CAR BLACK IN COLOR PONTIAC I
23 THEN HELPED TO PICK UP DAVID BENNETT AND HELP PLACE HIM IN
24 A VEHICLE WHERE HE WAS TAKEN, BROUGHT TO THE LORIS
25 HOSPITAL I, OFFICER ALISHIA MILLER, WROTE THE STATEMENT

MR GILLINS - CROSS EXAMINATION BY MR WILSON

136

1 FOR MR SAMUEL GILLINS" NOW IS THAT THE STATEMENT YOU GAVE
2 THAT NIGHT?

3 A THAT'S RIGHT

4 Q ALL RIGHT --

5 THE COURT MR WILSON, JUST SO THAT THE RECORD
6 IS CLEAR IF YOU WOULD MARK THAT AS A DEFENSE EXHIBIT FOR
7 IDENTIFICATION

8 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 1 MARKED
9 FOR IDENTIFICATION)

10 MR WILSON (CONTINUING)

11 Q NOW, SO THAT NIGHT WHEN, WHEN THE POLICE
12 CAME TO YOU AND TALKED WITH YOU ABOUT THIS YOU FORGOT TO
13 TELL THEM THAT HE WAS CRAWLING, THAT WASN'T PARTICULARLY
14 IMPORTANT THAT NIGHT?

15 A NO, SIR, I MEAN, YES, IT WAS IMPORTANT,
16 TOO

17 Q ALL RIGHT, YOU FORGOT ABOUT THAT PART?

18 A IT JUST, YES, SIR

19 Q ALL RIGHT, AND YOU SAY YOU TOLD THEM, TOO,
20 THAT, THAT AFTER THE FIRST SHOT HE FELL HE WAS ON THE
21 GROUND AND THAT WHILE HE'S ON THE GROUND HE GETS SHOT TWO
22 MORE TIMES?

23 A YES, SIR, THAT'S IT

24 Q IS THAT WHAT YOU, IS THAT RIGHT??

25 A YES, SIR

MR GILLINS - CROSS EXAMINATION BY MR WILSON

137

1 Q ALL RIGHT, AND NOW AND YOUR STORY AS I
2 UNDERSTAND IT IS THERE WAS NO ARGUMENT?

3 A NO

4 Q NO DISAGREEMENT?

5 A NO, SIR

6 Q NO POOL STICK?

7 A NO, SIR

8 Q AND, AND WHEN'S THE FIRST TIME YOU EVER SAW
9 THE POOL STICK?

10 A TILL NOW

11 Q JUST NOW?

12 A YES, SIR

13 Q ALL RIGHT, SO YOU NEVER SAW IT THAT NIGHT
14 AT THE CLUB?

15 A I MEAN YOU KNOW THEY GOT POOL STICK INSIDE
16 THE CLUB NOW

17 Q NOW LET ME ASK YOU THIS IF THERE WERE OTHER
18 PEOPLE IN THE CLUB, RIGHT?

19 A YES, SIR

20 Q OTHER FAMILY MEMBERS OF MR , OF "DO DIRTY",
21 RIGHT?

22 A YES, SIR

23 Q IN FACT, WHAT, HIS BROTHER WAS THERE?

24 A YES, SIR

25 Q AND HIS NEPHEW WAS THERE?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

138

1 A UH-HUH

2 Q AND YOU WERE THERE?

3 A THAT'S RIGHT

4 Q AND IN FACT ALL OF YOU GUYS CAME OUT OF THE
5 CLUB AT THE SAME TIME?

6 A NO, SIR

7 Q DID YOU NOT?

8 A NO, SIR

9 Q YOU DENY THAT YA'LL CAME OUT THE CLUB AT
10 THE SAME TIME?

11 A NO, SIR, ALL OF-US DIDN'T COME OUT THE CLUB
12 AT THE SAME TIME

13 Q WELL DID YOU SEE "DO DIRTY" PUSH PAST,
14 ROBERT MCCULLOUGH TO GET OUTSIDE?

15 A NO, SIR

16 Q YOU DIDN'T SEE THAT?

17 A NO, SIR

18 Q SO DID THAT HAPPEN OR IS THAT --

19 A NO, SIR, I DID NOT SEE THAT HAPPEN

20 Q YOU DIDN'T SEE THAT HAPPEN?

21 A NO, SIR

22 Q ALL RIGHT, AND, AND WHEN HE CAME OUT OF THE
23 CLUB, THAT IS WHEN "DO DIRTY" CAME OUT OF THE CLUB WHO CAME
24 OUT WITH HIM?

25 A I DIDN'T, I DIDN'T SEE KNOW WHO CAME WITH

MR GILLINS - CROSS EXAMINATION BY MR WILSON

139

1 "DO" CAUSE "DO", WHEN "DO", WHEN I SEE "DO" COME OUT I SEE
2 "DO" TURN AROUND AND GOING BACK INSIDE THE CLUB BEFORE HE
3 GOT IN THE CLUB THAT'S WHEN TYRONE DONE THE SHOOTING

4 Q WELL WHY WAS HE GOING BACK TO THE CLUB?

5 A I DON'T, I DON'T HAVE NO IDEA WHY HE WAS
6 GOING BACK INSIDE THE CLUB NOW

7 Q WELL HE JUST COME OUT THE CLUB?

8 A SO I DON'T KNOW WHY HE WAS GOING BACK IN
9 THE CLUB, I JUST, I DON'T, I CAN'T SAY, I JUST, I CAN'T SAY
10 WHY HE WAS GOING BACK INTO THE CLUB

11 Q YOU DON'T KNOW WHY HE WAS GOING BACK IN THE
12 CLUB?

13 A NO, SIR, I CAN'T SAY WHY HE WAS GOING BACK
14 IN THERE

15 Q BUT HE HAD, IT WASN'T BECAUSE HE HAD AN
16 ARGUMENT WITH TYRONE?

17 A NO, SIR

18 Q CAUSE THERE WASN'T NO WORDS SPOKEN?

19 A NO, SIR

20 Q NOT A SINGLE WORD?

21 A NO, SIR

22 Q ALL RIGHT, AND SO HE JUST GOES BACK INTO
23 THE CLUB AND AS HE'S GOING BACK INTO THE CLUB NOW THAT'S
24 WHEN YOU SAY TYRONE OPENED FIRE ON HIM?

25 A YES, SIR

MR GILLINS - CROSS EXAMINATION BY MR WILSON

140

- 1 Q AND FOR NO REASON JUST SHOOTS HIM?
- 2 A YES, SIR
- 3 Q ALL RIGHT, AND YOU NEVER SAW A STICK?
- 4 A NO, SIR
- 5 Q ALL RIGHT, NOW THAT NIGHT AT THE CLUB DID
- 6 YOU AND TYRONE HAVE ANY WORDS?
- 7 A UH-UH
- 8 Q DURING THE NIGHT?
- 9 A NO, SIR
- 10 Q ALL RIGHT, NOW ARE YA'LL CLOSE AT ALL?
- 11 A I KNOW HIM
- 12 Q YOU KNOW HIM?
- 13 A YES, SIR
- 14 Q YOU'RE NOT CLOSE TO HIM, ARE YOU?
- 15 A WHEN I SEEN THEM I TALKS TO THEM
- 16 Q ALL RIGHT --
- 17 A CAUSE HOW YOU KNOW, HOWEVER I SEE THEM, YOU
- 18 KNOW, WHEN I DO SEE THEM I TALK TO THEM AND SPEAK TO THEM
- 19 OR WHATEVER
- 20 Q BUT YOU'RE A LOT CLOSER TO "DO DIRTY",
- 21 RIGHT?
- 22 A WELL WE ARE SAME, WHEN I SEE "DO" I TALKS
- 23 TO "DO" THE SAME WAY
- 24 Q BUT I'M SAYING YOU'RE A LOT CLOSER TO HIS
- 25 FAMILY, ARE YOU NOT?

MR GILLINS - CROSS EXAMINATION BY MR. WILSON

141

1 A NO, ALL US FAMILY

2 Q WELL I KNOW YA'LL FAMILY BUT ALL OF YOU
3 DON'T GET ALONG?

4 A OH, I GET ALONG WITH ALL OF THEM

5 Q WELL DO ALL THE REST OF THEM GET ALONG WITH
6 EACH OTHER?

7 A SO FAR AS I KNOW

8 Q AS FAR AS YOU KNOW?

9 A CAUSE LIKE I SAY A LOT OF TIME I DON'T EVEN
10 BE OVER THAT WAY CAUSE I STAY NEXT TO BAYBORO OUT THERE AND
11 SOMETIME WHEN I DO GO OVER TO MY MAMA'S HOUSE IF I SEE THEM
12 THEN I SPEAK TO THEM, YOU KNOW, AND THAT'S IT, YOU KNOW

13 Q ALL RIGHT --

14 A AND I GO MY WAY AND THEY GO THEIR WAY

15 Q ALL RIGHT, NOW LET ME, LET ME ASK YOU THIS
16 IN TERMS OF THE SHOTS YOU SAID THAT THERE WERE THREE HOW
17 CLOSE TOGETHER WERE THE THREE SHOTS THAT WERE FIRED?

18 A HOW CLOSE?

19 Q UH-HUH?

20 A JUST TIME JUST LIKE BAM, BAM, BAM, JUST
21 LIKE THAT

22 Q NOW I WANT TO BE CLEAR ABOUT ONE OTHER
23 THING WHEN YOU SAY THAT, THAT "DO DIRTY", THAT "DO DIRTY"
24 WAS GOING BACK TO THE DOOR AND TYRONE WAS TO HIS RIGHT, IS
25 THAT WHAT YOUR STORY IS?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

142

- 1 A THAT'S RIGHT
- 2 Q SO TYRONE WAS ALWAYS TO THE RIGHT AND
- 3 BETWEEN HIM AND THE DOOR?
- 4 A THAT'S RIGHT
- 5 Q ALL RIGHT, AND TO HIS RIGHT, OFF TO HIS
- 6 RIGHT?
- 7 A THAT'S RIGHT
- 8 Q OKAY, IS THAT RIGHT?
- 9 A THAT'S RIGHT
- 10 Q AND TYRONE STOOD THERE THE WHOLE TIME OR
- 11 DID HE MOVE?
- 12 A NO, SIR, STOOD RIGHT THERE
- 13 Q HE STOOD RIGHT THERE?
- 14 A YES, SIR, CAUSE WHEN HE GOT THROUGH
- 15 SHOOTING THE LAST SHOT THAT'S WHEN HE, WHEN HE SHOT THEM
- 16 THREE TIMES THEN HE JUMPED IN THAT CAR AND LEFT
- 17 Q ALL THREE SHOTS WERE FIRED FROM THE SAME
- 18 POSITION?
- 19 A THAT'S RIGHT
- 20 Q IS THAT WHAT YOUR STORY IS?
- 21 A THAT'S RIGHT
- 22 Q ALL RIGHT, SO AND, AND DID YOU SEE THE
- 23 SHELL EJECTED FROM THE, FROM THE GUN?
- 24 A NO, SIR, I DIDN'T SEE THE SHELLS
- 25 Q YOU DIDN'T SEE THEM?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

143

1 A NO, SIR

2 Q ALL RIGHT, NOW AFTER TYRONE, AFTER "DO
3 DIRTY" WAS TAKEN TO THE HOSPITAL DID YOU OR ANYBODY ELSE GO
4 OUT AND MOVE ANY OF THOSE SHELLS?

5 A NO, SIR

6 Q YOU DIDN'T MOVE THEM?

7 A NO, SIR

8 Q WHAT ABOUT THE POOL STICK?

9 A NO, SIR, NO, SIR, I DIDN'T KNOW NOTHING
10 ABOUT THE POOL STICK LIKE I TOLD YOU

11 Q ALL RIGHT, SO AS FAR AS YOU KNOW NOBODY
12 MOVED THOSE SHELLS?

13 A NO, SIR

14 Q AND NOBODY TOUCHED THEM OR REARRANGED THEM

15 ---

16 A NO, SIR

17 Q --- IN ANY WAY?

18 A NO, SIR

19 Q SO THEY WOULD HAVE BEEN HOWEVER THE POLICE
20 FOUND THEM WOULD HAVE BEEN HOW THEY WERE LEFT?

21 A YES, SIR

22 Q OKAY, IS THAT WHAT YOU'RE SAYING?

23 A YES, SIR

24 Q AND NO QUESTION ABOUT THE FACT THAT THAT
25 WOULD HAVE BEEN TO THE RIGHT OF THE BUILDING -- THIS IS

MR GILLINS - CROSS EXAMINATION BY MR WILSON

144

1 STATE'S EXHIBIT NUMBER 2 WHICH IS A STILL PHOTOGRAPH OF
2 THE, OF THE BUILDING -- AND, AND HE WOULD HAVE BEEN
3 STANDING OFF TO THE RIGHT OVER HERE?

4 A THAT'S RIGHT

5 Q IS THAT RIGHT?

6 A THAT'S RIGHT

7 Q ALL RIGHT, AND HE WAS SHOOTING THE GUN WITH
8 WHICH HAND?

9 A HE HAD THE GUN LIKE THIS

10 Q WHICH HAND?

11 A THE RIGHT HAND

12 Q HE HAD THE GUN IN THE RIGHT HAND?

13 A YES, SIR

14 Q SO IT WAS IN THIS HAND, IS THAT RIGHT?

15 A IT WAS IN THE RIGHT HAND

16 Q OKAY, ALL RIGHT, AND, AND IT WOULD HAVE
17 BEEN OVER HERE TO THE, TO THE RIGHT?

18 A THAT'S RIGHT

19 Q WOULD IT HAVE BEEN OUTSIDE THIS GARBAGE
20 CAN?

21 A THAT'S RIGHT, I WAS STANDING RIGHT OVER
22 HERE

23 Q OKAY --

24 A AND TYRONE WAS STANDING RIGHT ALONG IN
25 HERE

MR GILLINS - CROSS EXAMINATION BY MR WILSON

145

1 Q OKAY, SO TYRONE WAS STANDING JUST INSIDE
2 THE GARBAGE CAN?

3 A RIGHT, RIGHT

4 Q AND YOU WERE STANDING JUST OUTSIDE THE
5 GARBAGE CAN?

6 A RIGHT, RIGHT

7 Q ON THE RIGHT HAND SIDE?

8 A THAT'S RIGHT

9 Q WELL NOW YOU'RE SAYING WHEN YOU'RE LOOKING
10 AT THIS BUILDING ACTUALLY THIS IS THE LEFT SIDE?

11 A UH-HUH

12 Q IS THAT WHERE HE WAS STANDING OR IS IT THE
13 RIGHT SIDE CAUSE THE RIGHT SIDE IS OVER HERE?

14 A LIKE I SAID, YOU KNOW, THE BUILDING, SEE
15 THIS TRASH CAN RIGHT THERE THE POLE RIGHT THERE I WAS
16 STANDING UP HERE BY THIS POLE OVER HERE, OVER HERE BY THIS
17 POLE

18 Q RIGHT

19 A THAT'S WHERE I WAS STANDING AT

20 Q ALL RIGHT, SO, SO FACING THE BUILDING IT'S
21 TO THE RIGHT?

22 A RIGHT

23 Q IS WHAT YOU'RE SAYING?

24 A RIGHT

25 MR WILSON IF THE COURT WILL BEAR WITH ME

MR GILLINS - CROSS EXAMINATION BY MR WILSON

146

1 JUST ONE SECOND, YOUR HONOR

2 Q (CONTINUING) LET ME ASK YOU THIS COULD
3 YOU TELL, DID YOU GIVE A STATEMENT, A TAPED STATEMENT TO
4 THE POLICE?

5 A YES, SIR

6 Q DO YOU REMEMBER THAT?

7 A UH-HUH

8 Q AND DO YOU REMEMBER TELLING THEM IN YOUR
9 TAPED STATEMENT THAT TYRONE, THAT TYRONE WAS ANGRY WHEN HE
10 SHOT "DO DIRTY"?

11 A UH-HUH "I-F"

12 Q AND THAT HE SAID THAT I'LL SHOW YOU WHAT
13 I'LL DO?

14 A YES, SIR, I REMEMBER SAYING THAT

15 Q YOU REMEMBER THAT?

16 A I REMEMBER THAT ON THE TAPE

17 Q ALL RIGHT, DO YOU ALSO REMEMBER TELLING
18 THEM THAT TYRONE TOLD HIM TO COME OUTSIDE AND LET'S FIGHT?

19 A NO, SIR, NO, SIR

20 Q YOU DON'T REMEMBER THAT?

21 A UH-UH

22 Q ALL RIGHT, WHAT, WHERE DOES THE NAME "DO
23 DIRTY" COME FROM, DO YOU KNOW?

24 A UH-UH

25 Q YOU DON'T KNOW WHERE IT COMES FROM?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

147

1 A NO, SIR

2 Q HOW LONG HAVE YOU BEEN CALLING HIM THAT?

3 A I'VE BEEN CALLING HIM "DO" FOR A LONG TIME
4 I DON'T KNOW WHERE HE GET THAT NAME FROM NOW BUT WE ALWAYS
5 CALL HIM "DO DIRTY"

6 Q OKAY, NOW LET'S, LET ME GO BACK WHEN YOU
7 CAME OUTSIDE YOU SAID YOU CAME OUTSIDE WHEN YOU CAME OUT
8 THERE THERE WAS NOBODY OUTSIDE BUT TYRONE, RIGHT?

9 A NO, SIR, I DIDN'T SAY THAT EITHER

10 Q WELL WHO ELSE WAS OUTSIDE WHEN YOU CAME
11 OUT?

12 A NO, SIR, I DIDN'T SAY NOBODY WAS OUTSIDE
13 WHEN I CAME OUT THERE'S SOME MORE PEOPLE STANDING UP OUT
14 THERE

15 Q WHO?

16 A I DON'T KNOW THEM, ALL THEM PEOPLE STANDING
17 UP OUT THERE I DON'T KNOW THEM ALL

18 Q WELL HOW MANY PEOPLE WERE AT THE CLUB THAT
19 NIGHT?

20 A THERE WAS A BUNCH OF PEOPLE OUT THERE TO
21 THE CLUB

22 Q MORE THAN 10?

23 A MORE THAN 10

24 Q MORE THAN 20?

25 A WELL I AIN'T COUNT THE PEOPLE, I DIDN'T

MR GILLINS - CROSS EXAMINATION BY MR WILSON

148

1 COUNT THE PEOPLE

2 Q ALL RIGHT, SO WHEN YOU COME OUTSIDE THE
3 CLUB THERE'S MORE PEOPLE STANDING OUTSIDE?

4 A A LOT OF PEOPLE IS OUTSIDE THE CLUB

5 Q ALL RIGHT, AND, AND WHY DID YOU COME OUT?

6 A CAUSE I JUST CAME OUT TO CATCH SOME AIR

7 Q YOU JUST CAME OUT TO CATCH SOME AIR?

8 A THAT'S RIGHT

9 Q RIGHT?

10 A YES, SIR

11 Q AND HAD NOTHING TO DO WITH THE FACT THAT
12 TYRONE WAS OUT THERE?

13 A NO, SIR, NO, SIR, NO, SIR

14 Q YOU JUST CAME OUT TO CATCH SOME AIR?

15 A THAT'S IT

16 Q ALL RIGHT, AND, AND THEN YOU SAY ROBERT
17 MCCULLOUGH CAME OUT?

18 A THAT'S RIGHT

19 Q HE CAME OUT TO CATCH AIR, TOO?

20 A I DON'T KNOW WHY HE CAME OUT NOW

21 Q ALL RIGHT, AND THEN "DO DIRTY" CAME OUT?

22 A THAT'S RIGHT

23 Q AND HE CAME OUT TO CATCH SOME AIR?

24 A I DON'T KNOW, I DON'T KNOW WHY HE CAME OUT

25 Q ALL RIGHT, SO NOW ALL OF YA'LL ARE OUT

MR GILLINS - CROSS EXAMINATION BY MR WILSON

149

1 THERE, NOW YA'LL NOT TRYING TO GANG UP ON TYRONE, THOUGH,
2 ARE YOU?

3 A NO, SIR

4 Q THAT AIN'T GOT NOTHING TO DO WITH IT,
5 RIGHT?

6 A NO, SIR

7 Q AND YA'LL WEREN'T GOING TO SHOW HIM WHO WAS
8 RUNNING THINGS AROUND THERE?

9 A NO, SIR, I WOULDN'T DO THAT, NO, SIR

10 Q YOU WOULDN'T DO THAT?

11 A NO, SIR

12 Q AND SO YOU JUST CATCHING SOME AIR?

13 A YES, SIR

14 Q AND NOW WHEN ROBERT COMES OUTSIDE YOUR
15 STORY IS THAT ROBERT CAME OUT BEFORE TYRONE CAME OUT, I'M
16 SORRY, BEFORE "DO DIRTY" COMES OUT, RIGHT?

17 A THAT'S RIGHT

18 Q ALL RIGHT, AND HOW LONG IS ROBERT
19 MCCULLOUGH STANDING OUTSIDE BEFORE "DO DIRTY" COMES OUT?

20 A AIN'T BEEN THAT LONG

21 Q A MINUTE, TWO MINUTES, THREE MINUTES?

22 A YEAH, SOMETHING LIKE THAT

23 Q I'M SORRY?

24 A SOMETHING LIKE THAT

25 Q SOMETHING LIKE WHAT, MINUTE?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

150

1 A TWO MINUTES OR A MINUTE, SOMETHING LIKE
2 THAT

3 Q SO HE'S OUTSIDE FOR TWO MINUTES?

4 A THAT'S RIGHT

5 Q BEFORE "DO DIRTY" COMES OUT?

6 A THAT'S RIGHT

7 Q ALL RIGHT, NOW "DO DIRTY'S" BROTHERS WERE
8 ALSO THERE IN THE CLUB, RIGHT?

9 A YES, SIR

10 Q CHRIS AND CURTIS?

11 A YES, SIR

12 Q ALL RIGHT, DID THEY COME OUT?

13 A YES, ALL OF THEM CAME OUT

14 Q THEY ALL CAME OUT, DIDN'T THEY?

15 A AFTERWARDS

16 Q AFTER?

17 A AFTER THE SHOT

18 Q AFTER THE SHOT?

19 A THAT'S RIGHT

20 Q WELL WHAT ABOUT WHEN THE FIRST SHOT WAS
21 FIRED THEY DIDN'T COME OUT THEN?

22 A YES, I SAID WHEN THE SHOT FIRED THAT'S WHEN
23 THEY COME OUT

24 Q ALL RIGHT, WHAT, WHAT ABOUT, LET'S TALK
25 ABOUT THIS FOR A MINUTE ALL YOU GUYS ARE OUT THERE,

MR. GILLINS - CROSS EXAMINATION BY MR WILSON 151

1 ROBERT IS OUT THERE, YOU'RE OUT THERE, TYRONE IS OUT THERE
2 WITH A GUN YOU SAY, AND "DO DIRTY" COMES OUT THERE AND HE
3 DOESN'T HAVE A POOL STICK HE DOESN'T HAVE A THING HE
4 DOESN'T KNOW WHAT'S GOING ON AND YA'LL NOT TRYING TO GET
5 THAT GUN OR STOP THE SHOOTING FROM HAPPENING, NOBODY IS
6 TRYING TO DO ANYTHING?

7 A NO, SIR

8 Q NO, SIR, SO YOU JUST DON'T DO ANYTHING, YOU
9 JUST STAND THERE, IS THAT WHAT YOU'RE SAYING?

10 A THAT'S, IF A MAN GOT A GUN YOU JUST DON'T
11 RUN UP WHEN SOMEBODY GOT A GUN LIKE THAT, NO, SIR

12 Q WELL LET ME ASK YOU ABOUT THAT THEN DID
13 YOU SEE ROBERT RUN AROUND SIDE THE BUILDING?

14 A NO

15 Q DID YOU RUN AROUND THE SIDE OF THE
16 BUILDING?

17 A I MOVE OUT THE WAY

18 Q OKAY --

19 A THAT'S RIGHT

20 Q AND, AND WHAT HAPPENED TO THE OTHER PEOPLE
21 YOU SAID THAT ---

22 A THEY MUST HAVE RAN, TOO

23 Q WELL DID THEY OR DIDN'T THEY?

24 A THEY RAN, TOO, CAUSE WHEN THAT GUN SHOT AND
25 THEY AIN'T STANDING THERE SHOOTING THAT GUN LIKE THAT,

MR GILLINS - CROSS EXAMINATION BY MR WILSON

152

1 EVERYBODY SCATTER

2 Q WELL IF EVERYBODY SCATTERED AND RAN HOW
3 DOES EVERYBODY SEE EVERYTHING?

4 A WELL I SURE SEEN THAT, SIR

5 Q OKAY --

6 A THAT'S ALL I CAN SAY IS WHAT I SEEN, THAT'S
7 ALL I KNOW WHICH IS WHAT I SEEN

8 Q ALL RIGHT, I JUST HAVE A COUPLE OF MORE
9 THINGS AND I'M GOING TO BE THROUGH THAT NIGHT AT THE
10 CLUB, AT THE STORE, AT ANY POINT IN TIME DID YOU SEE "DO
11 DIRTY" WITH ANY KIND OF A WEAPON? . . . --

12 A NO, SIR

13 Q NEVER HAPPENED? . . .

14 A UH-UH

15 Q RIGHT?

16 A NO, SIR

17 Q AND MY UNDERSTANDING FROM YOU YOUR
18 TESTIMONY IS THAT TYRONE HAD A GUN?

19 A YES, SIR

20 Q AND HE CAME AND HE CAME BACK INTO THE CLUB?

21 A YES, SIR

22 Q WITH A GUN?

23 A YES, SIR

24 Q RIGHT, AND THAT ROBERT MCCULLOUGH RAN HIM
25 OUT OF THE CLUB?

MR GILLINS - CROSS EXAMINATION BY MR WILSON

153

1 A I SAID HE SAID, I TOLD YOU NOT TO COME BACK
2 IN HERE WITH THAT GUN NO MORE

3 Q RIGHT, RAN HIM OUT OF THE CLUB WITH THE
4 GUN?

5 A YES, SIR

6 Q AND HE LEFT?

7 A YES, SIR

8 Q AND YOU FOLLOWED HIM OUT?

9 A NO, I DIDN'T FOLLOW HIM OUT

10 Q WELL TWO MINUTES LATER OR A MINUTE YOU WENT
11 OUT?

12 A I JUST WENT OUT I WEREN'T FOLLOWING HIM,
13 I JUST LEFT AND COME OUTSIDE

14 Q ALL RIGHT, AND THEN ROBERT COMES OUT?

15 A THAT'S RIGHT

16 Q THEN "DO DIRTY" COMES OUT?

17 A THAT'S RIGHT

18 Q AND THEN "DO DIRTY'S" BROTHERS ALL COME
19 OUT?

20 A THAT'S RIGHT

21 Q SO THERE ARE FIVE OR SIX OF YA'LL COMING
22 OUT OF THE CLUB AFTER TYRONE LEAVES, FOR WHAT PURPOSE?

23 A NO, WE DIDN'T CAME [SIC] AFTER TYRONE

24 Q I'M SORRY, AFTER TYRONE LEFT OUTSIDE THE
25 CLUB?

MR GILLINS - REDIRECT EXAMINATION BY MR RICHARDSON 154

1 A YEAH, BUT WE DIDN'T CAME [SIC] OUT THERE TO
2 FIGHT NO, TO HURT NO TYRONE I JUST CAME OUTSIDE

3 Q TO GET AIR?

4 A SIR?

5 Q TO GET SOME AIR?

6 A THAT'S IT

7 MR WILSON ALL RIGHT, I DON'T THINK I HAVE
8 ANY OTHER QUESTIONS

9 THE COURT MR RICHARDSON?

10 REDIRECT EXAMINATION

11 BY MR RICHARDSON

12 Q MR GILLINS, HOW OLD ARE YOU?

13 A FIFTY-ONE

14 Q FIFTY-ONE?

15 A I MEAN FIFTY-TWO, EXCUSE ME

16 Q FIFTY-TWO DO YOU KNOW HOW OLD TYRONE IS?

17 A NO, SIR

18 Q HAVE YOU EVER FOUGHT OR HIT TYRONE BEFORE?

19 A UH-UH, NO, SIR

20 MR RICHARDSON OKAY, I HAVE NO FURTHER

21 QUESTIONS

22 THE COURT MR WILSON?

23 MR WILSON NOTHING FURTHER, YOUR HONOR

24 MR RICHARDSON MAY MR GILLINS BE EXCUSED?

25 THE COURT MR GILLINS, YOU MAY STEP DOWN, MAY

OFFICER SUGGS - DIRECT EXAMINATION BY MR. RICHARDSON 155

1 HE BE EXCUSED FROM THE COURTROOM?

2 MR RICHARDSON YES, MA'AM

3 THE COURT ANY OBJECTION, MR WILSON?

4 MR WILSON NO OBJECTION, YOUR HONOR

5 THE COURT THANK YOU, MR GILLINS

6 MR RICHARDSON HE CAN REMAIN IN THE COURTROOM

7 IF CHOOSES TO

8 THE COURT IF HE SO CHOOSES

9 MR RICHARDSON SINCE THE SEQUESTER IS OVER

10 THE COURT MR RICHARDSON, CALL YOUR NEXT

11 WITNESS

12 MR RICHARDSON THE STATE WOULD CALL OFFICER

13 SUGGS

14 OFFICER RANDALL D SUGGS

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS

16 MADAM CLERK- PLEASE SPEAK INTO THE MICROPHONE

17 AND STATE YOUR FULL NAME

18 THE WITNESS I'M OFFICER RANDALL DERRICK SUGGS

19 WITH THE HORRY COUNTY POLICE DEPARTMENT

20 MADAM CLERK SPELL YOUR LAST NAME FOR THE

21 COURT

22 THE WITNESS S-U-G-G-S

23 DIRECT EXAMINATION

24 BY MR. RICHARDSON:

25 Q OFFICER SUGGS, HOW LONG HAVE YOU BEEN

OFFICER SUGGS - DIRECT EXAMINATION BY MR RICHARDSON 156

1 EMPLOYED WITH Horry COUNTY?

2 A SINCE, WITH THE POLICE DEPARTMENT SINCE
3 OCTOBER 2005

4 Q OCTOBER 2005?

5 A YES, SIR

6 Q WERE YOU WORKING ON THE NIGHT OF NOVEMBER
7 THE 10TH, 2006?

8 A YES, SIR

9 Q DID YOU HAVE AN OCCASION TO GO TO BENNETT
10 LOOP ROAD?

11 A YES, SIR, AT 6 48 P M I WAS DISPATCHED TO
12 IN REFERENCE TO A CALL WITH SHOTS FIRED

13 Q WHAT SORT OF PLACE IS IS-THAT A HOME
14 OR A BUSINESS?

15 A THAT'S A RESIDENCE UPON MY ARRIVAL AT
16 6 52 P M I WAS NOTIFIED BY MR MCCULLOUGH THE INCIDENT
17 ACTUALLY AT WHICH IS THE LOOP EXPRESS

18 Q OKAY, SO AT FIRST YOU WENT TO MR
19 MCCULLOUGH'S HOUSE?

20 A IT, IT'S NOT MR MCCULLOUGH'S HOUSE, IT'S
21 ACTUALLY A HOUSE RIGHT DOWN THE STREET I WAS APPROACHED
22 BY MR MCCULLOUGH WHENEVER I TURNED ON THE STREET BY THAT
23 HOUSE

24 Q AND TOLD THAT THE ACTUAL LOCATION OF THE
25 SHOOTING WAS THE ---

OFFICER SUGGS - DIRECT EXAMINATION BY MR RICHARDSON 157

1 A WAS THE LOOP EXPRESS, YES, SIR

2 Q OKAY, AND YOU GO BACK UP TO THE LOOP

3 EXPRESS?

4 A YES, SIR

5 Q WHAT TIME DID YOU SAY YOU GOT TO THE

6 EXPRESS THERE?

7 A I ARRIVED AT EXACTLY 6 52 P M

8 Q WHEN YOU ARRIVED WAS TYRONE JACOBS STILL

9 THERE?

10 A NO, SIR

11 Q WAS DAVID BENNETT STILL THERE?

12 A NO, SIR

13 Q DO YOU KNOW WHAT HAD HAPPENED WITH DAVID

14 BENNETT?

15 A I WAS ADVISED BY MR MCCULLOUGH THAT HE HAD

16 LEFT PRIOR TO MY ARRIVAL IN A PERSONAL VEHICLE TO GO TO

17 SEEK TREATMENT AT THE HOSPITAL

18 Q OKAY, AND DO YOU KNOW WHAT HAPPENED TO THE

19 DEFENDANT?

20 A I WAS ADVISED BY MR MCCULLOUGH SAID THAT

21 HE HAD FLED THE SCENE IN A BLACK IN COLOR PONTIAC TOWARDS

22 THE DEAD END ON BENNETT LOOP

23 Q OKAY, DID YOU EVER -- NOW WHAT OTHER

24 OFFICERS WERE THERE WITH YOU?

25 A OFFICER TIM FIKE WITH THE CITY OF LORIS

OFFICER SUGGS - CROSS EXAMINATION BY MR WILSON

158

1 POLICE DEPARTMENT, OFFICER NICK PATRONE AND LIEUTENANT
2 RONNIE ELLIOTT ARRIVED SHORTLY THEREAFTER

3 Q DID YOU EVER LEAVE TO GO IN THE DIRECTION
4 THAT THE BLACK PONTIAC HAD GONE IN?

5 A YES, SIR, AFTER THE OTHER UNITS ARRIVED ON
6 SCENE MYSELF ALONG WITH OFFICER TIM FOX AND HIS CITY PATROL
7 CAR GOT IN HIS PATROL CAR AND HEADED TOWARDS THE DEAD END
8 ON BENNETT LOOP IN AN ATTEMPT TO LOCATE THE VEHICLE AND THE
9 DEFENDANT

10 Q NOW YOU, THAT OTHER END OF BENNETT LOOP IS
11 A DEAD END? ---

12 A YES, SIR

13 Q WERE YOU ABLE TO LOCATE THE VEHICLE ON THAT
14 NIGHT?

15 A NO, SIR

16 Q ALL RIGHT, AND THEN YOU CAME BACK TO THE
17 SCENE?

18 A YES, SIR, I RESPONDED BACK TO THE SCENE AND
19 SECURED THE CRIME SCENE WITH TAPE AND THAT CRIME SCENE LOG

20 Q YOU JUST WENT AROUND THE SCENE WITH THE
21 YELLOW TAPE AND ---

22 A YES, SIR, AND SECURED IT

23 Q ALL RIGHT, DID YOU TAKE ANY, DID YOU TALK
24 WITH ANYBODY BESIDES MR MCCULLOUGH?

25 A AT THAT TIME WE INTERVIEWED A COUPLE OF

OFFICER SUGGS - CROSS EXAMINATION BY MR WILSON 159

1 PEOPLE ON SCENE TRYING TO SEE WHO HAD SEEN ANYTHING OR
2 WITNESSED ANYTHING AND IF SO WE ADVISED THEM TO STAND BY
3 UNTIL ONE OF THE DETECTIVES ARRIVED OR OTHER PERSONNEL

4 Q AND HOW MANY PEOPLE WOULD YOU SAY WERE AT
5 THE SCENE WHEN YOU ARRIVED?

6 A WHEN I ARRIVED THERE WAS A LARGE, LARGE
7 QUANTITY OF PEOPLE THERE WAS ABOUT 20 PEOPLE ON THE
8 SCENE

9 Q OKAY, DID YOU DO ANYTHING ELSE ON THE NIGHT
10 OF THE 10TH WITH REGARD TO THIS CASE?

11 A JUST SECURED THE CRIME SCENE AND ATTEMPTED
12 TO LOCATE THE DEFENDANT MR JACOBS

13 MR RICHARDSON OKAY, I HAVE NO FURTHER
14 QUESTIONS, IF YOU'D ANSWER ANY QUESTIONS MR WILSON MAY
15 HAVE FOR YOU

16 A YES, SIR

17 THE COURT MR WILSON?

18 MR WILSON THANK YOU, YOUR HONOR

19 CROSS EXAMINATION

20 BY MR WILSON:

21 Q OFFICER SUGGS?

22 A YES, SIR

23 Q THAT NIGHT WHEN YOU ARRIVED IF IT WOULD
24 HAVE BEEN YOUR RESPONSIBILITY THEN TO CORDON OFF THE SCENE
25 AND PUT OUT THE YELLOW TAPE TO MAKE SURE THAT WHATEVER

OFFICER SUGGS - CROSS EXAMINATION BY MR WILSON

160

1 EVIDENCE WAS THERE MIGHT BE PRESERVED, CORRECT?

2 A YES, SIR

3 Q AND YOU DID THAT?

4 A YES, SIR

5 Q ALL RIGHT, AND AFTER YOU ARRIVED THE CRIME
6 SCENE WAS NOT DISTURBED IN ANY WAY AS FAR AS YOU KNOW?

7 A TO MY KNOWLEDGE, NO, SIR, IT WAS NOT,

8 Q OKAY, AND, AND, AND IN WHAT AREA DID YOU
9 ACTUALLY CORDON OFF, DID YOU CORDON OFF THE ENTIRE AREA IN
10 FRONT OF THE ---

11 A YES, SIR,

12 Q --- CLUB?

13 A WE WENT OUTSIDE OF THE PARAMETER OF THE
14 LOOP EXPRESS ALL THE WAY OUT TO THE FRONT TO THE ROAD AND
15 TIED OFF TO THE PATROL CARS, WENT BACK TO A LIGHT POLE AND
16 WENT BACK DOWN TO THE SIDE OF THE STORE

17 Q OKAY, AND HAD YOU HAD ALL THE PEOPLE WHO
18 WERE THERE MOVED BACK OUTSIDE OF THE YELLOW TAPE?

19 A YES, SIR, WE MOVED THEM OUT OF THE CRIME
20 SCENE

21 Q ALL RIGHT, AND THEY WERE NOT ALLOWED THEN
22 TO COME IN AND OUT OF THAT YELLOW TAPE ---

23 A NO, SIR

24 Q --- ONCE YOU DID UNTIL THE CRIME SCENE
25 PEOPLE COULD ARRIVE?

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 161

1 A YES, SIR

2 Q ALL RIGHT, AND SO HOWEVER IT WAS WHEN,
3 HOWEVER THAT CRIME SCENE EXISTED PRIOR TO YOUR ARRIVAL
4 THAT'S HOW IT WAS AT THE TIME THE CRIME SCENE PEOPLE SHOWED
5 UP TO TAKE THE PICTURES AND, AND FIND WHATEVER PHYSICAL
6 EVIDENCE THEY COULD FIND?

7 A YES, SIR

8 MR WILSON THANK YOU SO MUCH

9 MR RICHARDSON I HAVE NOTHING FURTHER, I WOULD
10 JUST ASK THAT OFFICER SUGGS BE EXCUSED

11 MR WILSON WITHOUT OBJECTION, YOUR HONOR

12 THE COURT THANK YOU, OFFICER SUGGS, YOU MAY
13 STEP DOWN

14 A THANK YOU, MA'AM

15 THE COURT CALL YOUR NEXT WITNESS, MR
16 RICHARDSON

17 MR RICHARDSON MAY WE APPROACH?

18 THE COURT YOU MAY

19 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
20 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
21 OF THE JURY AND THE COURT REPORTER)

22 MR RICHARDSON THE STATE CALLS OFFICER ROBERT
23 DEAL, JR

24 OFFICER ROBERT D DEAL, JR.

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS

OFFICER DEAL - DIRECT EXAMINATION BY MR. RICHARDSON 162

1 MADAM CLERK PLEASE SPEAK INTO THE MICROPHONE
2 AND STATE YOUR FULL NAME

3 THE WITNESS ROBERT DAVID DEAL, JR

4 MADAM CLERK SPELL YOUR LAST NAME FOR THE
5 COURT

6 THE WITNESS D-E-A-L

7 THE COURT MR RICHARDSON?

8 DIRECT EXAMINATION

9 BY MR RICHARDSON

10 Q MR DEAL, PLEASE TELL THE JURY WHERE YOU'RE
11 EMPLOYED?

12 A I'M EMPLOYED BY THE HORRY COUNTY POLICE
13 DEPARTMENT

14 Q AND WHAT'S YOUR ASSIGNMENT THERE?

15 A CURRENTLY ASSIGNED TO THE CRIMINAL
16 INVESTIGATIONS DIVISION CRIME SCENE UNIT

17 Q ALL RIGHT, HOW LONG HAVE YOU BEEN WITH THE
18 CRIME SCENE UNIT?

19 A TWO YEARS

20 Q AND HOW LONG HAVE YOU BEEN WITH HORRY
21 COUNTY?

22 A SIX AND A HALF

23 Q AS PART OF THAT, TELL US WHAT YOU DO AS
24 PART OF THE CRIME SCENE UNIT?

25 A I'M TASKED WITH THE RESPONSIBILITY OF

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 163

1 PROCESSING SCENES FROM SIMPLE ASSAULTS, CRIMINAL DOMESTIC
2 VIOLENCE, ON UP TO VIOLENT CRIMES CONSISTING OF STABBINGS,
3 SHOOTINGS, AND HOMICIDES, ALONG WITH PROCESSING GENERALIZED
4 INCIDENTS THAT COMES THROUGH OUR OFFICE FROM THE ROAD

5 Q WERE YOU WORKING ON THE NIGHT OF NOVEMBER
6 THE 10TH, 2006?

7 A YES, I WAS ON CALL

8 Q ALL RIGHT, AND DID YOU HAPPEN TO GO OUT TO
9

10 A YES, SIR

11 Q ALL RIGHT, TELL US WHAT YOU SAW WHEN YOU
12 ARRIVED THERE AS FAR AS THE CRIME SCENE?

13 A WHEN I ARRIVED ON SCENE I NOTICED A
14 CONCRETE BUILDING WHITE IN COLOR THAT HAD A RED BRICK FACIA
15 THAT WAS TAPED OFF WITH YELLOW CRIME SCENE TAPE THERE
16 WERE SEVERAL PATROL UNITS PARKED ON BENNETT LOOP AND THERE
17 WERE NO VEHICLES IN THE DRIVEWAY LEADING UP TO THE
18 STRUCTURE

19 Q WHAT TIME DID YOU ARRIVE?

20 A I ARRIVED ON SCENE ROUGHLY ABOUT 19 56 THAT
21 EVENING

22 Q WAS THAT 7, ABOUT 8 00?

23 A YES, SIR

24 Q DO YOU KNOW APPROXIMATELY WHEN THE SHOOTING
25 TOOK PLACE?

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 164

1 A FROM THE TIMES THAT I RECEIVED FROM
2 DISPATCH ROUGHLY AROUND I BELIEVE AROUND 6 20 THAT EVENING

3 Q TELL ME ABOUT THE WEATHER CONDITIONS AND
4 THE LIGHTING CONDITIONS UPON ARRIVAL AT 8 00?

5 A THE LIGHTING WAS DARK THERE WERE SOME
6 FLOODLIGHTS ATTACHED TO THE STRUCTURE THAT WERE
7 ILLUMINATING THE TEMPERATURE WAS PROBABLY AROUND THE LOW
8 TO MID 60'S THERE WAS A LIGHT DEW ALREADY ESTABLISHED ON
9 THE GROUND WHEN I ARRIVED ON SCENE THE SKIES WERE CLEAR

10 Q ALL RIGHT, NOW WHO, HOW MANY PEOPLE OR WHO
11 DID YOU RECOGNIZE UPON GOING TO ?

12 A WHEN I FIRST ARRIVED ON SCENE I RECOGNIZED
13 DETECTIVE NEIL LIVINGSTON AS THE CASE AGENT, MY SUPERVISOR
14 PETER CESTARE INFORMED ME THAT HE WOULD BE THE LEAD
15 DETECTIVE IN ADDITION INVESTIGATOR ROBBIE CAULDER WAS
16 ALSO ON SCENE

17 Q WAS MR JACOBS STILL AT THE SCENE?

18 A NO, SIR

19 Q HOW ABOUT DAVID BENNETT?

20 A NO, SIR, I WAS TOLD THAT HE WAS TRANSPORTED
21 TO LORIS HOSPITAL

22 Q ALL RIGHT, DID YOU TAKE ANY PHOTOGRAPHS?

23 A I TOOK SEVERAL PHOTOGRAPHS OF THE SCENE

24 Q DID YOU TAKE THOSE PHOTOGRAPHS OF THE FRONT
25 OF THE BUILDING?

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 165

1 A YES, SIR

2 Q ALL RIGHT, DID YOU CREATE A DIAGRAM OF THIS
3 SCENE?

4 A YES, SIR, I CREATED A CRIME SCENE SKETCH
5 USING A COMPUTER SOFTWARE PROGRAM CALLED 3-D EYEWITNESS TO
6 TRY TO ESTABLISH WHAT ITEMS OF EVIDENCE I COLLECTED AND THE
7 WAY THEY WERE LOCATED ON THE SCENE

8 Q DO YOU BELIEVE THAT THIS DIAGRAM WOULD BE
9 USEFUL FOR THE JURY TO VIEW AS FAR AS SHOWING WHERE CERTAIN
10 PIECES OF EVIDENCE WERE PICKED UP?

11 A I DO

12 MR RICHARDSON ALL RIGHT, YOUR HONOR, I'D LIKE
13 TO USE THAT DIAGRAM

14 MR WILSON I HAVE NO OBJECTIONS, YOUR HONOR
15 THE COURT ALL RIGHT, HAS IT BEEN MARKED?

16 MR RICHARDSON YES, MA'AM, IT'S BEEN MARKED
17 AND I WILL GIVE YOU THE NUMBER IN JUST A SECOND, FOR
18 IDENTIFICATION IT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER
19 5 FOR I D PURPOSES

20 WOULD YOU INQUIRE AS TO WHETHER OR NOT THEY CAN
21 SEE THAT?

22 THE COURT EVERYBODY CAN SEE THE DIAGRAM?

23 MR WILSON CAN I REQUEST PERMISSION TO MOVE
24 THIS?

25 THE COURT YOU MAY, MR WILSON

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 166

1 MR RICHARDSON AND I'VE GOT A POINTER I'M JUST
2 GOING TO HAND TO MR DEAL

3 Q (CONTINUING) OFFICER DEAL, IF YOU WOULD
4 POINT OUT JUST FAMILIARIZE THE JURY WITH WHAT YOU'VE GOT AS
5 FAR AS THE BUILDING AND THE SETTING?

6 A RIGHT HERE IS BENNETT LOOP WE HAD SEVERAL
7 PATROL UNITS ALONG WITH MY VEHICLE PARKED ON BENNETT LOOP
8 THE FRONT OF THE STRUCTURE IS ON THE WEST SIDE THIS WAS A
9 CONCRETE PORCH WITH A OVERHANG THE REAR OF THE BUILDING
10 WAS ON THE EAST SIDE THERE WAS TWO ENTRANCES, ONE ON THE
11 REAR AND ALSO ON THE FRONT

12 Q OKAY, NOW YOU HAVE MARKED ON THAT CERTAIN
13 NUMBERS OUT IN THE FRONT YARD OF THAT BUILDING, PLEASE
14 LET'S TO THROUGH A FEW OF THOSE, I, AND TELL THE JURY WHAT
15 THOSE NUMBERS REPRESENT?

16 A THE NUMBERS ON THE SKETCH REPRESENT THE
17 ITEMS OF EVIDENCE THAT I COLLECTED FROM THE SCENE THEY
18 WILL CORRESPOND TO THE ITEMS LISTED DOWN HERE THAT WE
19 PLACED INTO EVIDENCE

20 Q OKAY, NOW LET'S START WITH ITEM NUMBER 7
21 AND I WANT TO PASS TO YOU WHAT'S BEEN MARKED AS, PASS TO
22 YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT NUMBER 21 FOR
23 I D PURPOSES, DO YOU RECOGNIZE THAT?

24 A YES, SIR, IT'S A SPENT CARTRIDGE CASING
25 THAT I RECOVERED FROM THE SCENE ALONG WITH THE PACKAGING

OFFICER DEAL - DIRECT EXAMINATION BY MR. RICHARDSON 167

1 THAT I PLACED IT IN

2 Q ALL RIGHT, AND THE PACKAGING TELLS YOU
3 WHAT?

4 A THE PACKAGING TELLS ME THAT IT'S ITEM
5 NUMBER 7 THAT I COLLECTED FROM THE SCENE, THE DATE THAT I
6 COLLECTED, 11-10 OF '06, MY NAME AND ALSO THE DESCRIPTION
7 OF THE ITEM WHICH WAS A SPENT CARTRIDGE

8 MR RICHARDSON AND, YOUR HONOR, I WOULD MOVE
9 STATE'S EXHIBIT NUMBER 21 INTO EVIDENCE

10 THE COURT ANY OBJECTIONS, MR WILSON?

11 MR WILSON NO OBJECTIONS, YOUR HONOR

12 THE COURT STATE'S 21 INTO EVIDENCE WITHOUT
13 OBJECTION

14 (WHEREUPON, STATE'S EXHIBIT NUMBER 21 ENTERED
15 INTO EVIDENCE)

16 MR RICHARDSON (CONTINUING)

17 Q PLEASE, ROBERT, TELL US WHERE, WHAT THAT IS
18 AND WHERE YOU FOUND IT?

19 A THE CARTRIDGE WAS IDENTIFIED AS A
20 WINCHESTER 9MM CARTRIDGE AND IT WAS LOCATED WHERE NUMBER 7
21 IS IN FRONT OF THE STRUCTURE BETWEEN THE FRONT DOOR AND THE
22 ROAD

23 Q OKAY, SO THAT'S A SPENT SHELL CARTRIDGE?

24 A CORRECT

25 Q AND JUST, PLEASE TELL THE JURY WHAT, WHAT

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 168

1 THAT IS, I MEAN WHAT'S A SPENT SHELL CARTRIDGE?

2 A A SPENT SHELL CARTRIDGE IS A COMPONENT OF A
3 BULLET YOU HAVE A PROJECTILE WHICH IS THE PART THAT IS
4 EXPELLED FROM A BULLET THE CARTRIDGE CASING IS THE
5 HOUSING THAT HOLDS THE PELLET AND THE PROJECTILE WHICH ALSO
6 CONTAINS A, A CAP THAT CAUSES THE ROUND TO PROPEL ITSELF
7 FORWARD

8 Q IS THAT THE PART THAT KICKS OUT OF AN
9 AUTOMATIC THAT STAYS IN ---

10 A YES, THE CARTRIDGE CASING IN A SEMI
11 AUTOMATIC WOULD BE EJECTED AS LONG AS THE WEAPON WAS
12 PROPERLY FUNCTIONING

13 Q ALL RIGHT, SO IT WOULD KICK OUT OF THE
14 WEAPON, IN AN AUTOMATIC WEAPON AND HAD IT BEEN A REVOLVER
15 IT WOULD HAVE STAYED IN THE REVOLVER?

16 A YEAH, IF IT WAS A REVOLVER CARTRIDGE IT
17 WOULD HAVE STAYED INSIDE THE CYLINDER UNLESS IT WAS
18 REMOVED

19 Q NOW AND THAT WAS 7, PLEASE TELL ME FOR
20 REFERENCE POINT, TELL ME WHERE THE FRONT DOOR IS?

21 A THE FRONT DOOR IS LOCATED RIGHT, RIGHT
22 THERE ON THE WEST SIDE

23 Q WHAT HAVE YOU MARKED HERE NUMBER 5 AND
24 NUMBER 6?

25 A 5 AND 6 WERE TWO BLOOD POOLS THAT WERE

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 169

1 LOCATED IN FRONT OF THE CONCRETE PORCH IN ALIGNMENT WITH
2 THE FRONT DOOR THEY WERE SMALL IN SIZE AND WE COLLECTED
3 TWO DNA SWABS FROM THOSE BLOOD POOLS

4 Q DID YOU PHOTOGRAPH THOSE BLOOD POOLS?

5 A YES, SIR, I DID

6 Q NOW WHEN YOU PHOTOGRAPHED THEM DID YOU MARK
7 THEM IN ANY WAY AS A PHOTOGRAPH?

8 A ALL ITEMS OF EVIDENCE THAT WE COLLECT ARE
9 ALWAYS TAGGED WITH A NUMBER NORMALLY IT'S A WHITE
10 PLACARD, I MEANT YELLOW PLACARD FOR VISIBILITY IN OUR
11 PHOTOGRAPHS

12 Q ALL RIGHT, I WANT TO PASS YOU WHAT HAS BEEN
13 PREVIOUSLY MARKED AS STATE'S EXHIBIT NUMBER 14 FOR
14 IDENTIFICATION PURPOSES, DO YOU RECOGNIZE THAT?

15 A YES, IT IS, IT'S EVIDENCE NUMBER 6 WHICH I
16 COLLECTED TWO SWABS

17 Q OKAY, AND, AND THAT'S A PHOTOGRAPH OF THAT?

18 A YES, SIR

19 Q ALL RIGHT, AND LET ME ALSO PASS TO YOU
20 STATE'S EXHIBIT NUMBER 15 FOR IDENTIFICATION PURPOSES?

21 A IT IS ALSO EVIDENCE NUMBER 5 WHICH WAS A
22 BLOOD POOL WHERE I COLLECTED TWO SWABS FROM

23 MR RICHARDSON YOUR HONOR, THE STATE WOULD
24 MOVE STATE'S EXHIBIT NUMBER 15 AND 14 INTO EVIDENCE

25 THE COURT ANY OBJECTION?

OFFICER DEAL - DIRECT EXAMINATION BY MR. RICHARDSON

170

1 MR WILSON NO OBJECTIONS, YOUR HONOR

2 THE COURT STATE'S 14 AND 15 INTO EVIDENCE

3 WITHOUT OBJECTION

4 (WHEREUPON, STATE'S EXHIBITS NUMBERS 14 AND 15
5 ENTERED INTO EVIDENCE)

6 MR RICHARDSON (CONTINUING)

7 Q ROBERT, THESE TWO, ALL RIGHT NUMBER 5 IS
8 THIS BLOOD POOL THAT WOULD HAVE BEEN HERE, CORRECT?

9 A CORRECT

10 Q AND NUMBER 6 YOU MARKED IS THIS BLOOD POOL
11 HERE?

12 A CORRECT

13 Q APPROXIMATELY HOW CLOSE WERE THESE BLOOD
14 POOLS TO THE CONCRETE?

15 A THE BLOOD POOLS WERE CLOSE TO THE EDGE
16 WHEN I DID MY MEASUREMENTS I USED THE NORTH CORNER OF THE
17 STRUCTURE AND THE ROAD AS A REFERENCE POINT BUT THEY WERE
18 VERY CLOSE TO THE CONCRETE PORCH

19 Q WERE THEY AS CLOSE TO THE PORCH AS I AM TO
20 YOU OR CLOSER?

21 A CLOSER

22 Q CLOSER?

23 A I'D SAY PROBABLY IN THAT PROXIMITY

24 Q ALL RIGHT, THAT WOULD BE A COUPLE OR FOUR
25 FEET MAYBE, ALL RIGHT, TELL ME WHAT NUMBER 10 HERE IS IN

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 171

1 REFERENCE TO?

2 A NUMBER 10 WAS ANOTHER SPENT CARTRIDGE
3 CASING LATER IDENTIFIED AS A WINCHESTER 9MM IT WAS
4 LOCATED IN THE SAME PROXIMITY AS ITEM NUMBER 7 IT WAS
5 SOMEWHAT GROUNDED INTO THE DIRT DUE TO PROBABLY TRAMPLING
6 ON BUT IT WAS LOCATED IN THE SAME GENERAL AREA

7 Q THE SAME AREA AS 10, EXCUSE ME, AS 7?

8 A CORRECT

9 Q ALL RIGHT, AND THESE ARE TWO SPENT SHELL
10 CASINGS, CORRECT?

11 A CORRECT

12 Q LET ME PASS TO YOU WHAT HAS BEEN MARKED AS
13 STATE'S EXHIBIT NUMBER 20 FOR IDENTIFICATION PURPOSES, DO
14 YOU RECOGNIZE THAT?

15 A YES, SIR, IT'S A 9MM CARTRIDGE CASE I
16 COLLECTED LABELED AS ITEM NUMBER 10 ON THE 10TH OF
17 NOVEMBER, MY NAME AND IDENTIFIED AS A SPENT CARTRIDGE

18 MR RICHARDSON AND, YOUR HONOR, WE WOULD MOVE
19 STATE'S EXHIBIT NUMBER 20 INTO EVIDENCE

20 THE COURT ANY OBJECTION?

21 MR WILSON NO OBJECTIONS, YOUR HONOR

22 THE COURT STATE'S 20 INTO EVIDENCE

23 (WHEREUPON, STATE'S EXHIBITS NUMBER 20 ENTERED
24 INTO EVIDENCE)

25 MR RICHARDSON THANK YOU, YOUR HONOR

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 172

1 Q (CONTINUING) COMPARING STATE'S EXHIBIT 21
2 AND STATE'S EXHIBIT 20 WHICH YOU'VE GOT MARKED AS NUMBER 7
3 AND NUMBER 10, DO THOSE APPEAR TO BE SIMILAR IN NATURE THE
4 TWO SPENT SHELL CASINGS?

5 A IN MY LIMITED EXPERTISE ALL I CAN IS THE
6 MANUFACTURERS IS SIMILAR IN NATURE

7 Q WELL IS IT SIMILAR OR IS THAT THE SAME
8 MANUFACTURER?

9 A IT IS THE SAME MANUFACTURER WINCHESTER

10 Q OKAY, AND BOTH ARE THE SAME CALIBER SHELL?

11 A CORRECT

12 Q AND THAT'S WHAT SIZE?

13 A 9MM

14 Q 9MM, SO YOU'VE GOT TWO SPENT SHELL
15 CARTRIDGES HERE, YOU'VE GOT TWO BLOOD POOLS HERE AND THAT
16 IS OFF TO THE RIGHT OF THE BLOOD POOL?

17 A CORRECT

18 Q BACK AND RIGHT, ALL RIGHT, HOW ABOUT NUMBER
19 8 WHAT, WHAT HAVE YOU REFERENCED THERE AT NUMBER 8?

20 A NUMBER 8 WAS A TAN IN COLOR HAT THAT WE
21 LOCATED AT THE SCENE WE DID NOT KNOW IF IT WAS THE
22 VICTIM'S OR THE SUSPECT'S OR ANY OTHER PLAYERS OR MEMBERS
23 OUT THERE IN THE SCENE SO WE COLLECTED IT AS EVIDENCE

24 Q HAS ANYBODY, HAVE YOU FOUND OUT WHETHER OR
25 NOT ANYONE COULD I D 8?

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 173

1 A NO, SIR

2 Q ALL RIGHT, SO 8 HAS NOT BEEN IDENTIFIED, IT
3 IS A TAN HAT?

4 A CORRECT

5 Q AND NUMBER 11 RIGHT HERE TELL ME WHAT
6 YOU'VE GOT HERE?

7 A NUMBER 11 WAS A INTACT SHOE IMPRESSION THAT
8 WE FOUND IN THE SCENE THERE WERE SEVERAL SHOE IMPRESSIONS
9 THROUGHOUT THE WHOLE SCENE THAT WE FOUND WHEN WE LOOK AT
10 COLLECTING A SHOE IMPRESSION FOR POSSIBLE COMPARISON WE
11 LIKE TO SEE AS MUCH DETAIL AS WE COULD NUMBER 11 HAD
12 ENOUGH DETAIL ON IT WHERE WE WOULD ESTABLISH THAT IT WAS A
13 NIKE SHOE AND WE COLLECTED IT BY MEANS OF USING DENTAL
14 STONE TO KEEP IT AS EVIDENCE

15 Q WERE THERE OTHER FOOTPRINTS AROUND THIS
16 AREA?

17 A YES SIR, THERE WERE SEVERAL

18 Q ALL RIGHT, WAS THERE ANYTHING PARTICULAR
19 SPECIAL ABOUT NUMBER 11?

20 A NOTHING SPECIAL OTHER THAN WE WERE ABLE TO
21 IDENTIFY AS A NIKE WE DID NOT KNOW WHO IT BELONGED TO
22 STANDARD PRACTICE IS IF WE HAVE FOOTWEAR IN THE SCENE THAT
23 WE CANNOT ACCOUNT FOR WE TRY TO AT LEAST ATTEMPT TO LIFT IT
24 AND ALSO PHOTOGRAPH IT

25 Q AND CORRECT ME IF I'M WRONG, BUT 11 NOR 8

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 174

1 WOULD PAN OUT AS FAR AS EVIDENCE?

2 A THAT'S CORRECT

3 Q NOW NUMBER 2 RIGHT HERE, COULD YOU TELL THE
4 JURY WHAT NUMBER 2 IS?

5 A NUMBER 2 WAS ANOTHER SPENT CARTRIDGE CASING
6 IDENTIFIED AS A 9MM WINCHESTER AND IT WAS LOCATED IN FRONT
7 OF A TRASH CAN THAT WAS TO THE LEFT OF THE FRONT DOOR IF
8 YOU WERE STANDING FROM THE ROAD

9 Q AND I'LL PASS YOU WHAT'S BEEN MARKED AS
10 STATE'S EXHIBIT NUMBER 19 AND, PLEASE, IF YOU RECOGNIZE
11 THAT?

12 A YES, IT'S THE SPENT 9MM CARTRIDGE CASING I
13 COLLECTED ON THE SCENE LABELED AS ITEM NUMBER 2 ON THE 10TH
14 DAY, MY NAME AND THE DESCRIPTION

15 MR RICHARDSON AND I WOULD MOVE STATE'S
16 EXHIBIT NUMBER 19 INTO EVIDENCE

17 THE COURT ANY OBJECTION?

18 MR WILSON NO OBJECTION

19 THE COURT STATE'S 19 INTO EVIDENCE WITHOUT
20 OBJECTION

21 (WHEREUPON, STATE'S EXHIBIT NUMBER 19 ENTERED
22 INTO EVIDENCE)

23 MR RICHARDSON (CONTINUING)

24 Q DO YOU HAVE ANY INFORMATION AS TO HOW
25 NUMBER 2 GOT HERE?

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 175

1 A NO, SIR

2 Q YOU HAD TWO SHELL CASINGS IS THAT 10 AND 7
3 SLIGHTLY TO THE RIGHT OF THE BLOOD POOLS AND THEN YOU'VE
4 GOT ONE THAT'S SIMILAR OVER HERE ON THE CONCRETE?

5 A CORRECT

6 Q CORRECT, NOW AS FAR AS NUMBER 1 THAT YOU'VE
7 GOT MARKED HERE, PLEASE TELL THE JURY WHAT YOU'VE MARKED AS
8 NUMBER 1?

9 A NUMBER 1 WAS A RECOVERED SPENT PROJECTILE
10 THAT WAS LOCATED OFF TO THE LEFT IN THE GRASS OF THE
11 STRUCTURE

12 Q ALL RIGHT, AND NOW WHEN YOU SAY PROJECTILE
13 THAT'S THE, THAT'S THE BUSINESS END OF THE BULLET?

14 A CORRECT

15 Q I WANT TO PASS TO YOU STATE'S EXHIBIT
16 NUMBER 1, EXCUSE ME, NUMBER 18 AND, PLEASE, TELL ME IF YOU
17 RECOGNIZE THAT?

18 A YES, IT'S THE SPENT PROJECTILE THAT I
19 COLLECTED AS ITEM NUMBER 1 ON THE 10TH DAY, MY NAME AND THE
20 DESCRIPTION

21 MR RICHARDSON WE WOULD MOVE STATE'S EXHIBIT
22 NUMBER 18 INTO EVIDENCE

23 MR WILSON NO OBJECTIONS

24 THE COURT STATE'S 18 INTO EVIDENCE WITHOUT
25 OBJECTION

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 176

1 (WHEREUPON, STATE'S EXHIBIT NUMBER 18 ENTERED
2 INTO EVIDENCE)

3 MR RICHARDSON (CONTINUING)

4 Q CAN YOU SAY WHAT SIZE PROJECTILE THIS IS?

5 A ALL I CAN ESTIMATE IS IT'S A 9MM I'M NOT
6 A FIREARM EXAMINER BUT IT ---

7 Q NO SORT OF WRITING OR ANYTHING THAT WOULD
8 INDICATE THIS IS A WINCHESTER OR A 9MM OR ANYTHING?

9 A NO, SIR

10 Q ALIKE, AND YOU FOUND THAT OVER HERE AT
11 NUMBER 1?

12 A CORRECT

13 Q NOW HOW ABOUT NUMBER .9 RIGHT HERE, WHAT,
14 WHAT DID YOU PICK UP THERE?

15 A NUMBER 9 WAS A BEER CAN THAT WAS ON THE
16 FRONT PORCH NEAR THE DOORWAY WE COLLECTED IT AS EVIDENCE
17 SAME AS THE HAT AND THE SHOE IMPRESSION WE DIDN'T KNOW
18 HOW IT WAS INVOLVED IN THE SCENE BUT WE WANTED TO COLLECT
19 IT FOR POSSIBLE FINGERPRINTS AND IDENTIFICATION OF WHO MAY
20 HAVE BEEN IN THE SCENE

21 Q SO DID ANYTHING PAN OUT FROM NUMBER 9?

22 A NO, SIR

23 Q NOW YOU'VE MARKED NUMBER 4 WHAT DOES THAT
24 REFER TO?

25 A NUMBER 4 WAS IDENTIFIED AS A POOL STICK

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 177

1 THAT WE FOUND TO THE RIGHT OF THE FRONT DOOR IT WAS
2 LEANING AGAINST THE FRONT OF THE BUILDING IN TWO PIECES

3 Q THIS IS ALREADY IN EVIDENCE AS STATE'S
4 EXHIBIT NUMBER 3 BUT I'LL ASK YOU IS THIS THE POOL STICK
5 THAT YOU'RE REFERRING TO?

6 A YES, SIR

7 Q ALL RIGHT, AND THAT IS OVER HERE ON THE
8 CORNER, THE RIGHT CORNER OF THE BUILDING, IF YOU'RE FACING
9 THE BUILDING THE RIGHT CORNER?

10 A CORRECT

11 Q ALL RIGHT, WAS IT HIDDEN IN ANY WAY?

12 A NO, SIR

13 Q ALL RIGHT, DO YOU KNOW HOW IT GOT HERE?

14 A NO, SIR

15 Q OKAY, ONLY THAT IT WAS LAID UP AGAINST THE
16 WALL?

17 A THAT'S CORRECT

18 Q AS A MATTER OF FACT DID YOU PHOTOGRAPH
19 THAT?

20 A YES, SIR

21 Q I DON'T HAVE THAT READILY AVAILABLE BUT WAS
22 IT BEHIND THIS TRASH CAN OR HIDDEN IN ANY WAY?

23 A IT WAS LEANED UP AGAINST THE BUILDING
24 BESIDE THE TRASH CAN

25 Q OKAY, NOW WHAT DO YOU HAVE FOR NUMBER 3?

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 178

1 A NUMBER 3 WAS A COPPER JACKETING THAT IS
2 PART OF A PROJECTILE THAT WE FOUND BEHIND THE TRASH CAN ON
3 THE FRONT PORCH

4 Q I PASS TO YOU WHAT'S BEEN MARKED AS STATE'S
5 EXHIBIT NUMBER 17 FOR IDENTIFICATION PURPOSES, PLEASE TELL
6 ME IF YOU RECOGNIZE THAT?

7 A YES, I DO, IT'S THE COPPER JACKETING, I
8 LABELED AS EVIDENCE NUMBER 3 ON THE 10TH DAY OF NOVEMBER,
9 MY NAME AND THE DESCRIPTION

10 Q OKAY, NOW IN TOTAL --

11 MR RICHARDSON, AND I WOULD MOVE THAT INTO
12 EVIDENCE, TOO, PLEASE, NUMBER 17

13 MR WILSON NO OBJECTION

14 THE COURT STATE'S 17 INTO EVIDENCE WITHOUT
15 OBJECTION

16 (WHEREUPON, STATE'S EXHIBIT NUMBER 17 ENTERED
17 INTO EVIDENCE)

18 MR RICHARDSON (CONTINUING)

19 Q IN TOTAL YOU FOUND THREE SPENT 9MM
20 CARTRIDGES?

21 A CORRECT

22 Q YOU FOUND ONE PROJECTILE?

23 A CORRECT

24 Q AT THE SCENE?

25 A CORRECT

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 179

1 Q DID YOU, WERE YOU ABLE TO GET A SECOND
2 PROJECTILE?

3 A YES, I WAS ABLE TO RECOVER A SECOND
4 PROJECTILE DURING THE AUTOPSY THAT DR PROCTOR COLLECTED
5 DURING HIS EXAMINATION

6 Q AND WHAT DID HE DO WITH IT, DID HE COLLECT
7 IT IN YOUR PRESENCE?

8 A YES, HE DID

9 Q AND WHAT DID HE DO WITH IT UPON COLLECTING
10 IT?

11 A UPON HIM COLLECTING IT FROM THE VICTIM HE
12 TRANSFERRED IT TO MY CUSTODY WHERE I PACKAGED IT FOR
13 EVIDENCE

14 Q LET ME, PLEASE, HAND YOU WHAT'S BEEN MARKED
15 AS STATE'S EXHIBIT NUMBER 19 AND TELL ME IF YOU RECOGNIZE
16 THAT?

17 A YES, I DO, IT'S THE SPENT PROJECTILE THAT I
18 COLLECTED AT THE AUTOPSY WITH THE ASSISTANCE OF DR PROCTOR
19 LABELED 2(A) MEANING ITEM 2, (A) STANDS FOR AUTOPSY, ON THE
20 12TH DAY OF NOVEMBER, MY NAME AND THE DESCRIPTION

21 MR RICHARDSON YOUR HONOR, WE WOULD MOVE
22 STATE'S I D NUMBER 16 INTO EVIDENCE ALSO

23 MR WILSON WITHOUT OBJECTION, YOUR HONOR
24 THE COURT STATE'S 16 INTO EVIDENCE WITHOUT
25 OBJECTION

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 180

1 (WHEREUPON, STATE'S EXHIBIT NUMBER 16 ENTERED
2 INTO EVIDENCE)

3 MR RICHARDSON (CONTINUING)

4 Q ALL RIGHT, SO LET'S TALK ABOUT THIS FOR
5 JUST A MINUTE I THINK WE'VE COVERED, IS THERE ANYTHING THAT
- 6 WE'VE MISSED AS FAR AS PICKING UP AT THE SCENE?

7 A NO, SIR

8 Q ALL RIGHT, ALL RIGHT, NOW THIS FROM THE
9 AUTOPSY BUT YOU FOUND THREE SPENT PROJECTILE CASINGS WHICH
10 IS THE PART THAT WOULD HAVE BEEN EJECTED FROM THE GUN AT
11 THE SCENE?

12 A CORRECT

13 Q AND THAT'S NOT TO SAY THAT THERE WASN'T
14 MORE SHOTS OR LESS BUT YOU FOUND THREE CARTRIDGES?

15 A CORRECT

16 Q AND YOU COLLECTED ONE BULLET, I GUESS
17 THAT'S WHAT YOU WOULD CALL A SPENT PROJECTILE?

18 A CORRECT

19 Q AND IS THIS A SEPARATE PROJECTILE?

20 A IT IS A PART OF A PROJECTILE IT HOUSES
21 THE LEAD COMPONENT OF THE BULLET

22 Q OKAY, IS THIS THE PART THAT WOULD ACTUALLY
23 SHOOT INTO SOMETHING?

24 A IT IS PART OF IT

25 Q OKAY, AND FINALLY YOU COLLECTED THIS AT

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 181

1 THE, FROM THE AUTOPSY?

2 A CORRECT

3 Q ALL RIGHT, NOW I KNOW YOU'RE NOT A EXPERT
4 BUT DOES THAT APPEAR TO BE THE SAME SORT OF BULLET OR CAN
5 YOU TELL?

6 A ALL I CAN SAY IS THEY'RE SIMILAR IN NATURE

7 Q OKAY, AND THIS WAS TAKEN FROM DAVID BENNETT
8 FROM HIS CHEST CAVITY?

9 A CORRECT

10 MR RICHARDSON ALL RIGHT, GIVE ME JUST A
11 SECOND

12 Q ALL RIGHT, DID YOU FIND ANY OTHER SPENT
13 PROJECTILE, WHAT WOULD YOU CALL IT SPENT PROJECTILE
14 CARTRIDGES 9MM TO MATCH THE WINCHESTER'S?

15 A I DID RECOVER A SPENT CARTRIDGE CASING
16 WINCHESTER IN A VEHICLE SEARCH OF A PONTIAC THAT WAS TOWED
17 INTO THE HORRY COUNTY POLICE DEPARTMENT IMPOUND LOT

18 Q ALL RIGHT, THERE WAS ONE OTHER 9MM, ONE
19 OTHER 9MM WINCHESTER THAT WAS COLLECTED FROM THE
20 BONNEVILLE?

21 A THAT'S CORRECT WHEN I WAS ABLE, WHEN I
22 RECEIVED THE SEARCH WARRANT FROM DETECTIVE LIVINGSTON FOR
23 THE, THE BLACK PONTIAC DURING THE SEARCH AND INVENTORY OF
24 THE VEHICLE IN THE TRUNK COMPARTMENT OF THE VEHICLE WHERE
25 THE SPARE TIRE WOULD BE THERE WAS A SPENT WINCHESTER 9MM

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 182

1 CARTRIDGE

2 Q JUST TO MAKE SURE THE VEHICLE THAT WE'RE
3 TALKING ABOUT IS, I PASS YOU WHAT'S BEEN MARKED AS STATE'S
4 EXHIBIT NUMBER 4 ALREADY IN EVIDENCE?

5 A YES, THAT'S THE VEHICLE I PROCESSED

- 6 Q AND THAT'S WHERE THE OTHER 9MM SPENT
7 CARTRIDGE WAS FOUND?

8 A THAT'S CORRECT

9 Q NOW DID YOU COMPARE, IS THERE A WAY TO
10 COMPARE THE JACKETS OR THE PROJECTILES OR ANY OF THAT STUFF
11 WITH A GUN?

12 A YES

13 Q ALL RIGHT, AND DID YOU COLLECT THAT GUN TO
14 COMPARE WITH THE, WITH THE PROJECTILE?

15 A AT THE TIME OF ARREST WHEN THE SUSPECT WAS
16 APPREHENDED BY THE U S MARSHALL SERVICE NORTH CHARLESTON
17 POLICE DEPARTMENT AND MEMBERS OF THE HORRY COUNTY POLICE
18 DEPARTMENT, WHEN HE WAS TAKEN INTO CUSTODY THERE WAS NO
19 WEAPON FOUND ON HIS PERSON SO WE WERE NEVER ABLE TO HAVE A
20 WEAPON TO COMPARE THOSE ITEMS TO

21 Q SO WHATEVER GUN THAT WAS USED WAS NEVER
22 FOUND TO COMPARE AGAINST THESE BULLETS AND PROJECTILES?

23 A THAT IS CORRECT

24 Q HOW LONG AFTER THE DATE OF NOVEMBER THE
25 10TH, 2006, WAS THE DEFENDANT ARRESTED?

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 183

1 A AT LEAST A MONTH

2 MR RICHARDSON OKAY, I BELIEVE THAT'S ALL THE
3 QUESTIONS THAT I HAVE, IF YOU WOULD, PLEASE, ANSWER ANY
4 QUESTIONS MR WILSON HAS

5 A CERTAINLY

6 THE COURT MR RICHARDSON, COULD YOU --

7 MR RICHARDSON YES, MA'AM

8 THE COURT LADIES AND GENTLEMEN, THIS IS A
9 CONVENIENT TIME FOR US TO TAKE OUR MORNING BREAK PLEASE
10 DO NOT BEGIN DELIBERATIONS, PLEASE DO NOT DISCUSS THIS
11 AMONGST YOURSELVES WE'LL SEE YOU, WE'LL BE BACK AT 11, 15
12 MINUTE BREAK, THANK YOU

13 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
14 10 45 A M)

15 THE COURT THANK YOU, PLEASE BE SEATED MR
16 DEAL, I'M GOING TO EXCUSE YOU SO YOU MAY HAVE YOUR MID
17 MORNING BREAK AS WELL PLEASE DO NOT DISCUSS YOUR
18 TESTIMONY WITH EITHER THE STATE OR MR WILSON AND WHEN WE
19 COME BACK YOU CAN JUST RESUME YOUR POSITION IN THE WITNESS
20 STAND

21 A OKAY, THANK YOU

22 THE COURT THANK YOU, MR DEAL ANYTHING
23 BEFORE, ANYTHING FROM THE STATE BEFORE WE TAKE OUR BREAK?

24 MR RICHARDSON YES, MA'AM, JUST FOR SCHEDULING
25 PURPOSES

OFFICER DEAL - DIRECT EXAMINATION BY MR RICHARDSON 184

1 THE COURT YES, SIR?

2 MR RICHARDSON I TALKED WITH YOU AND MR
3 WILSON ABOUT THIS AND DR PROCTOR SET ASIDE THIS MORNING,
4 WE TOLD HIM WE WOULD CALL HIM OUT OF ORDER, HE WILL BE IN
5 AT TWO ---

6 THE COURT OKAY

7 MR RICHARDSON --- IF THAT'S OKAY JUST AS FAR
8 AS SCHEDULING GOES AND IF HE NEEDS TO WAIT A WHILE BETWEEN
9 ONE BUT OUR PLAN IS TO PUT HIM ON AS QUICKLY AFTER TWO AS
10 POSSIBLE

11 THE COURT ALL RIGHT, ANYTHING, ANYTHING
12 FURTHER, MR RICHARDSON?

13 MR RICHARDSON NO, MA'AM

14 THE COURT ANYTHING, MR WILSON?

15 MR WILSON NOTHING, YOUR HONOR

16 THE COURT ALL RIGHT, WE'LL BE IN RECESS UNTIL
17 11, THANK YOU

18 MR RICHARDSON THANK YOU, YOUR HONOR

19 (WHEREUPON, A RECESS WAS TAKEN AT THIS TIME)

20 THE COURT PLEASE BRING IN THE JURY

21 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
22 11 08 AND THE FOLLOWING TAKES PLACE ON THE RECORD)

23 THE COURT THANK YOU, PLEASE BE SEATED MR
24 DEAL, YOU MAY TAKE THE SEAT MR WILSON, YOUR WITNESS?

25 MR WILSON THANK YOU, YOUR HONOR

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

185

CROSS EXAMINATION

BY MR WILSON

Q OFFICER, LET ME ASK YOU JUST A FEW
QUESTIONS, WHEN WE'RE FACING, AND I'M REFERRING NOW TO
WHAT'S BEEN MARKED FOR IDENTIFICATION PURPOSES AS 5 --

MR WILSON 5 FOR I D IS THAT WHAT THAT IS?

MR RICHARDSON YES, SIR

MR WILSON (CONTINUING)

Q WHAT'S BEEN MARKED I THINK 5 FOR I D AND
WHICH IS A DRAFT OR A CHART SHOWING THE LOCATION OF, OF
ITEMS OF EVIDENCE THAT YOU COLLECTED ---

A CORRECT

Q --- IS THAT CORRECT, ALL RIGHT, SIR, AND
NOW, AND IS THIS TO SCALE?

A NO, SIR

Q IT'S NOT TO SCALE WHICH MEANS THAT THE
DISTANCES ARE NOT EXACT?

A THAT IS CORRECT

Q ALL RIGHT, AND BUT WHEN YOU'RE FACING THE
BUILDING, THAT IS WHEN YOU'RE FACING THE DOOR OF THE
BUILDING AND YOU COME UP TO THE PLACE AND YOU'RE FACING THE
DOOR THIS IS GOING TO BE YOUR RIGHT, CORRECT?

A THAT'S GOING TO BE YOUR RIGHT CORNER,
THAT'S CORRECT

Q ALL RIGHT, AND THIS IS GOING TO BE YOUR

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

186

1 LEFT?

2 A YES, SIR, LOOKING AT IT

3 Q SO FOR OUR PURPOSES I'M JUST TRYING TO KEEP
4 IT STRAIGHT WHEN I SAY THE RIGHT THAT'S WHERE I'M REFERRING
5 TO IF YOU'RE FACING THE BUILDING AS OPPOSED TO COMING OUT
6 OF IT?

7 A CORRECT

8 Q ALL RIGHT, AND NOW AS I UNDERSTAND IT YOU
9 FOUND THREE CARTRIDGES AND, AND, AND WHEN WE SAY CARTRIDGES
10 WE'RE TALKING ABOUT SHELL CASINGS?

11 A CORRECT

12 Q IS THAT CORRECT, AND WHICH ARE THE OBJECTS
13 WHICH ARE DISPERSED AFTER THE PROJECTILE IS FIRED AND IT
14 KICK, THE GUN WILL KICK OUT A CARTRIDGE?

15 A THAT'S CORRECT

16 Q NOW WHICH SIDE DOES THE GUN KICK IT OUT ON
17 THE LEFT OR THE RIGHT?

18 A DEPENDING UPON THE GUN AND MAKE IT COULD BE
19 LEFT OR RIGHT

20 Q OKAY, SO WE DON'T KNOW BECAUSE WE HAVEN'T
21 FOUND THE GUN, WE DON'T KNOW IF IT WAS KICKED OUT FROM THE
22 LEFT OR FROM THE RIGHT?

23 A THAT'S CORRECT

24 Q ALL RIGHT, AND, AND WHEN A, WHEN A, WHEN A
25 SHELL CASING IS KICKED OUT DO WE KNOW HOW FAR FROM WHERE

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

187

1 THE PERSON IS STANDING WHO FIRES THE WEAPON THAT IT'S
2 ACTUALLY KICKED OUT?

3 A NO

4 Q SO WE DON'T KNOW THAT?

5 A NO, SIR

6 Q SO WE DON'T KNOW IF IT'S INCHES OR FEET OR
7 SOMETIMES INCHES AND SOMETIMES FEET?

8 A EVERY GUN IS DIFFERENT

9 Q EVERY GUN IS DIFFERENT, ALL RIGHT, AND WE
10 ALSO DON'T KNOW, DO WE, WHETHER OR NOT IF IT, IF IT, WELL
11 LET ME BACK UP, IF, IF A SHELL CASING IS EJECTED AND IT
12 HITS A HARD SURFACE IT'S MORE LIKELY TO BOUNCE OR MOVE
13 AROUND?

14 A CORRECT

15 Q WHEREAS IF IT FALLS ON THE DIRT OR ON THE
16 GRASS IT'S MORE LIKELY TO STAY PROBABLY WHERE IT FALLS OR
17 VERY CLOSE TO WHERE IT FALLS?

18 A CORRECT

19 Q ALL RIGHT, AND DO WE KNOW WHETHER OR NOT
20 ANY OF THESE CASINGS ACTUALLY STRUCK CEMENT OR SOME HARD
21 OBJECT BEFORE THEY LANDED WHERE THEY LANDED OR WHERE THEY
22 LANDED WHERE YOU FOUND THEM?

23 A NOT TO MY KNOWLEDGE

24 Q RIGHT, NOW AS I UNDERSTAND IT YOU FOUND
25 THREE SHELL CASINGS AT THE SCENE?

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

188

1 A CORRECT

2 Q AND YOU FOUND A FOURTH SHELL CASING IN THE
3 BLACK PONTIAC LATER ON?

4 A CORRECT

5 Q ALL RIGHT, WELL LET'S TALK ABOUT THE THREE
6 THAT WE DID FIND AT THE SCENE, NOW THAT'S NUMBER 3, 10, AND
7 7, CORRECT?

8 A NO, SIR THE CARTRIDGES CASINGS ARE NUMBER
9 2, NUMBER 7 ---

10 Q TWO IS HERE, 7 IS HERE?

11 A AND NUMBER 10

12 Q AND NUMBER 10 IS HERE, SO YOU FOUND TWO
13 HERE AND ONE HERE, ONE HERE?

14 A CORRECT

15 Q ALL RIGHT, AND THIS IS ACTUALLY PART OF A
16 PROJECTILE?

17 A THAT IS A COMPLETE PROJECTILE, YES, SIR

18 Q ALL RIGHT, NOW OVER ON THE RIGHT HAND SIDE
19 OF THIS BUILDING FACING THE BUILDING AGAIN DID YOU FIND ANY
20 PROJECTILE?

21 A I FOUND COMPONENTS OF A PROJECTILE

22 Q OKAY, AND WHERE DID YOU FIND THAT?

23 A I FOUND IT WHERE NUMBER 3 IS LOCATED BEHIND
24 THE TRASH CAN

25 Q OKAY, NUMBER 3 AND, ALL RIGHT, AND, AND

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

189

1 WHAT DID YOU FIND THERE WHERE NUMBER 3 IS?

2 A I FOUND THE COPPER JACKETING OF THE
3 PROJECTILE

4 Q OKAY, YOU FOUND A COPPER, A JACKET FROM A
5 PROJECTILE?

6 A CORRECT

7 Q BUT YOU DID NOT FIND A SHELL CASING OVER
8 HERE?

9 A THAT'S CORRECT

10 Q ALL RIGHT, NOW AND NUMBER 4 IS THE POOL
11 STICK?

12 A CORRECT

13 Q ALL RIGHT, NOW DO YOU KNOW WHY THERE WAS A,
14 A PIECE OF A SHELL CASE, I'M SORRY, IT WASN'T REALLY A
15 SHELL CASING, PIECE OF A JACKET I THINK IS HOW YOU DESCRIBE
16 IT, RIGHT, FOUND HERE AND THEN ALL THE WAY ON THE OTHER
17 SIDE YOU FIND SHELL CASING ON THE OTHER SIDE?

18 A NO, SIR

19 Q OKAY, HOW FAR IN DISTANCE ARE WE TALKING
20 ABOUT FROM HERE ALL THE WAY DOWN TO 2 HERE?

21 A I'D HAVE TO ESTIMATE ANYWHERE BETWEEN 21 TO
22 24 FEET

23 Q ALL RIGHT, SO 24, 21 TO 24 FEET APART IS
24 WHERE YOU FOUND THE TWO ITEMS?

25 A CORRECT

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

190

1 Q NOW AND THEN YOU FOUND NUMBER 1?

2 A YES, SIR

3 Q WHAT'S MARKED AS NUMBER 1 AND WHAT WAS
4 NUMBER 1?

5 A NUMBER 1 WAS A PROJECTILE, COMPLETE
6 PROJECTILE

7 Q OKAY, SO YOU FOUND AN ACTUAL PROJECTILE
8 HERE ON NUMBER 1?

9 A CORRECT

10 Q ALL THE WAY, AND THIS IS FURTHER DOWN THAN
11 2 AND YOU SAY THIS WAS 21 TO 24 FEET SO THIS IS EVEN
12 FURTHER AWAY?

13 A CORRECT, IT'S OUT IN THE GRASS

14 Q ALL RIGHT, NOW AND THEN YOU'VE GOT 7 AND 10
15 HERE, AND 7 AND 10 ARE HOW CLOSE TOGETHER?

16 A THEY'RE WITHIN A COUPLE FEET OF EACH OTHER

17 Q OKAY NOW AND I THINK YOU SAID THAT 5 AND 6
18 ARE POOLS OF BLOOD, IS THAT CORRECT?

19 A THAT IS CORRECT

20 Q AND THEY WERE, AND THEY WERE HERE?

21 A YES, SIR

22 Q ALL RIGHT, AND, AND, AND 11 WHICH YOU SAID
23 WAS A FOOTPRINT, CORRECT?

24 A SHOE IMPRESSION

25 Q SHOE, SHOE IMPRESSION AND YOU WEREN'T ABLE

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

191

1 TO DO ANYTHING WITH THAT?

2 A NO, SIR, WE WEREN'T ABLE ---

3 Q OTHER THAN TO DETERMINE THEY WERE WEARING
4 NIKE?

5 A THAT'S CORRECT

6 Q ALL RIGHT, ALL RIGHT, AND WHAT ABOUT NUMBER
7 8?

8 A NUMBER 8 WAS THE TAN IN COLOR HAT THAT WE
9 RECOVERED FROM THE SCENE

10 Q OKAY, AND YOU WEREN'T ABLE TO IDENTIFY THAT
11 BEYOND THE FACT THAT IT WAS A TAN HAT YOU FOUND AT THE
12 SCENE?

13 A THAT'S CORRECT

14 Q ALL RIGHT, NOW IN TERMS OF, OF, OF, OF 10
15 AND 7 HOW CLOSE ARE THEY TO THESE BLOOD SPATTERS OR THESE
16 POOLS OF BLOOD I THINK IS HOW YOU DESCRIBED THEM?

17 A WITHIN A COUPLE OF FEET

18 Q OKAY, WITHIN A COUPLE OF FEET AND WERE
19 THERE ANY OTHER BLOOD POOLS ANYWHERE ELSE IN THIS AREA
20 OTHER THAN 5 AND 6?

21 A MORE DISTINGUISHED BLOOD POOLS, NO

22 Q OKAY, BUT DID YOU SEE BLOOD OTHER PLACES
23 OTHER THAN 5 AND 6?

24 A YOU HAD SOME BLOOD TRAILS THAT WERE INNER
25 BETWEEN THE TWO POOLS

OFFICER DEAL - CROSS EXAMINATION BY MR. WILSON

192

1 Q OKAY --

2 A BUT POOL WISE, NO, 5 AND 6 WERE IT

3 Q DID YOU FIND A BLOOD TRAIL FROM 5 OR 6 ON,
4 ON THE CEMENT STEP? DID YOU FIND ANY BLOOD ON THE CEMENT
5 STEP?

6 A NOT THAT I REMEMBER

7 Q THAT YOU RECALL?

8 A NOT THAT I RECALL

9 Q OKAY, NOW YOU MENTIONED BLOOD TRAILS, DID
10 YOU FIND BLOOD TRAILS LEAVING FROM 5 AND 6 OR FROM THIS
11 AREA, WHERE 5 AND 6 ARE LOCATED TO ANY VEHICLE?

12 A NOT THAT I CAN RECALL

13 Q WELL WHERE DID THE BLOOD TRAILS THAT YOU
14 REFERRED TO LEAD?

15 A MOST OF THE BLOOD TRAILS THAT I FIND WERE
16 IN THIS SAME PROXIMITY OF 5 AND 6 IN THIS AREA RIGHT HERE
17 AND THEY WERE NOT LARGE DISTINGUISHED TRIALS, THEY WERE
18 VERY SMALL

19 Q OKAY, ALL RIGHT, NOW AS I UNDERSTAND IT AT
20 THE TIME YOU ARRIVED, YOU ARRIVED AT WHAT TIME?

21 A I BELIEVE MY ARRIVAL TIME WAS AROUND 19 OR
22 7 56

23 Q OKAY, ALL RIGHT, AND WHEN YOU ARRIVED THE
24 CRIME SCENE HAD ALREADY BEEN CORDONED OFF?

25 A THAT'S CORRECT, IT WAS TAPED OFF

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

193

1 Q ALL RIGHT, AND THIS AREA HERE WHERE WE HAVE
2 NUMBER 1 MARKED WAS IT ALSO IN THAT CORDONED OFF AREA?

3 A YES, SIR

4 Q OKAY, AND WAS THERE ANY ITEM OF EVIDENCE
5 THAT YOU KNOW OF FOUND OUTSIDE OF THE AREA, THE YELLOW LINE
6 AREA I'LL CALL IT?

7 A --- AT THE CRIME SCENE ---

8 Q YES?

9 A --- NO

10 Q I'M SORRY?

11 A AT THE CRIME SCENE, NO

12 Q OKAY, ALL RIGHT, I THINK THAT'S ALL I HAVE
13 FROM THE CHART NOW IN ALL FAIRNESS YOU DON'T KNOW WHICH
14 PROJECTILE WAS FIRED IN WHICH ORDER, DO YOU?

15 A THAT S CORRECT

16 Q AND SO YOU DON'T KNOW IF 5 WAS FIRED FIRST
17 OR IF 1 WAS FIRED FIRST OR 6 WAS FIRED FIRST OR IF THE
18 COPPER JACKET WHICH YOU FOUND OVER BY THE TRASH CAN WAS
19 FIRED FIRST?

20 A THAT'S CORRECT

21 Q THERE WOULD BE NO WAY FOR YOU TO KNOW THAT?

22 A THAT'S CORRECT

23 Q ALL RIGHT, AND, AND IN FACT THERE'S REALLY
24 NO WAY TO KNOW NOT ONLY WHICH WAS FIRED FIRST BUT WHICH WAS
25 FIRED LAST, THERE'S REALLY NO WAY TO KNOW WITH ANY DEGREE

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

194

1 OF MATHEMATICAL CERTAINTY THE POSITION FROM WHICH EACH OF
2 THOSE ITEMS WERE FIRED?

3 A ON OUR CARTRIDGE CASINGS YOU COULD
4 PROBABLY, YOU COULD HAVE A POSSIBLE AREA WHERE THE SHOOTER
5 WAS STANDING DEPENDING UPON HOW MANY CARTRIDGES CASINGS YOU
6 HAD IN THAT GENERAL AREA

7 Q YOU COULD DO THAT WITH MATHEMATICAL
8 CERTAINTY, IS THAT WHAT YOU'RE TELLING ME?

9 A ME PERSONALLY, NO, SIR, A FIREARMS
10 EXAMINER, YES

11 Q BUT YOU'RE NOT CAPABLE OF DOING IT? #1

12 A THAT'S CORRECT - C

13 Q ALL RIGHT, AND, WHAT YOU'RE SAYING IF YOU
14 HAD A FIREARMS EXAMINER WHO'S EXPERIENCED IN FORENSIC
15 FIREARM EXAMINATION THAT THAT PERSON MAY BE ABLE TO COME IN
16 AND TELL US WITH SOME DEGREE MORE SPECIFICITY THE LOCATION
17 FROM WHICH THE GUN, FROM WHICH THE BULLET HAD BEEN FIRED?

18 A YES

19 Q ALL RIGHT, AND, AND, BUT YOU'RE NOT ABLE TO
20 DO THAT FOR US?

21 A THAT'S CORRECT

22 Q ALL RIGHT, NOW LET ME ASK YOU THE POOL
23 STICK WHICH I THINK WAS NUMBER 4 ON YOUR LIST?

24 A YES, SIR

25 Q NOW WHEN YOU GOT THERE AND YOU, WHEN YOU'RE

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

195

1 TAKING PICTURES OF, OF DIFFERENT ITEMS, AND DID YOU
2 ACTUALLY TAKE PICTURES OF THE ITEMS AND ACTUALLY WHERE THEY
3 WERE LAID?

4 A WHEN I PHOTOGRAPHED THE SCENE I DO AN
5 INITIAL OVERALL PHOTOGRAPHS BEFORE I START TO PLACE MY
6 PLACARDS FOR EVIDENCE I LEAVE ALL OF THE ITEMS OF
7 EVIDENCE IN PLACE AND PHOTOGRAPH THEM AND LEAVE THEM IN
8 PLACE FOR MY MEASUREMENTS ALSO BEFORE I COLLECT THEM

9 Q NOW IS IT IN YOUR EXPERIENCE AND YOU'VE
10 BEEN DOING THIS I THINK YOU SAID SINCE 2005?

11 A THAT'S CORRECT

12 Q ALL RIGHT, AND HOW MANY CRIME SCENES DO YOU
13 THINK YOU'VE WORKED IN THAT PERIOD OF TIME?

14 A WELL OVER A HUNDRED

15 Q OKAY, AND ON OCCASIONS HAVE YOU HAD CRIME
16 SCENES WHERE THINGS HAVE BEEN MOVED BEFORE YOU GOT THERE?

17 A YES, SIR

18 Q AND, AND SO THINGS CAN BE MOVED?

19 A YES, SIR

20 Q IN FACT THE STICK THAT WE'RE TALKING ABOUT,
21 THE BROKEN STICK THAT YOU FOUND, THE POOL STICK WHICH IS IN
22 EVIDENCE HERE WHICH IS STATE'S EXHIBIT NUMBER 3, YOU FOUND
23 A POOL STICK LEANING UP ON A WALL NEXT TO A TRASH CAN,
24 CORRECT?

25 A CORRECT

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

196

1 Q ALL RIGHT, AND IT WASN'T IN THE YARD AND,
2 AND IT SPECIFICALLY WAS NOT IN THIS AREA WHERE, IT
3 SPECIFICALLY WAS NOT IN THIS AREA WHERE 5 AND 6 WHERE THE
4 BLOOD POOLS WERE, CORRECT?

5 A THAT'S CORRECT

6 Q OR WHERE 10 AND 7 ARE? -

7 A CORRECT

8 Q AND DID YOU AT ANY POINT IN TIME LEARN HOW
9 THE POOL STICK GOT OVER TO THE SIDE?

10 A NO, SIR

11 Q DID YOU LEARN HOW THE POOL STICK GOT -
12 BROKEN? '

13 A NO, SIR

14 Q AND AFTER, WELL LET ME ASK YOU THIS AND I'M
15 NOT ASKING YOU TO TELL ME WHAT ANYBODY TOLD YOU, BUT DID
16 YOU, DID YOU MAKE ANY EFFORT TO QUESTION ANY OF THE PEOPLE
17 AT THE SCENE ABOUT WHAT WENT ON?

18 A NO, SIR

19 Q ALL RIGHT, YOU TAKE ANY STATEMENTS FROM
20 ANYBODY AT THE SCENE?

21 A NO, SIR

22 Q ALL RIGHT, SOMEBODY ELSE WOULD HAVE DONE
23 THAT?

24 A YES, SIR

25 Q OKAY, NOW BUT YOU THOUGHT THAT IT WAS

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

197

1 IMPORTANT ENOUGH TO TAKE A PICTURE OF IT AND TO BRING THAT
2 STICK HERE FOR EVIDENCE, CORRECT?

3 A THAT IS CORRECT

4 Q ALL RIGHT, INSIDE, DID YOU GO INSIDE THE
5 BUILDING?

6 A YES, SIR

7 Q ALL RIGHT, HOW, HOW LARGE WOULD YOU SAY THE
8 INSIDE OF THE INTERIOR OF THAT BUILDING IS? IS IT BIGGER
9 THAN THIS COURTROOM?

10 A NO, SIR

11 Q WHAT, ONE HALF THE SIZE BIG?

12 A PER THE -- THE DIAGRAM STATES ABOUT 24, 25
13 FEET ACROSS AND I BELIEVE IT'S ROUGHLY ESTIMATING ABOUT 50
14 FEET DEEP

15 Q ALL RIGHT, SO 25 BY 50?

16 A ROUGHLY

17 Q ROUGHLY, ALL RIGHT, AND, AND, AND THERE ARE
18 TWO POOL TABLES IN THE PLACE AND THEN THERE'S A BAR BACK
19 THERE, RIGHT?

20 A I BELIEVE THE COUNTER WAS OFF TO THE LEFT
21 HAND SIDE IF YOU'RE COMING IN THE FRONT DOOR

22 Q NOW WHEN YOU WENT IN THERE DID YOU GO
23 BEHIND THE BAR TO SEE IF THERE WAS ALCOHOL OR LIQUOR OR
24 ANYTHING BEING SOLD BACK THERE?

25 A I WENT INSIDE THE ESTABLISHMENT TO LOOK FOR

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

198

1 ANY TYPE OF BLOOD EVIDENCE, PROJECTILES, FIREARM RELATED
2 EVIDENCE

3 Q BUT NOT FOR ALCOHOL?

4 A NO, SIR

5 Q DID YOU KNOW WHETHER OR NOT THEY HAD A
6 LIQUOR LICENSE OR AN ALCOHOL LICENSE OUT THERE AT THAT
7 PLACE?

8 A NO, SIR

9 Q NO, SIR, YOU DON'T KNOW OR, NO, SIR, THEY
10 DON'T HAVE ONE?

11 A NO, SIR, I DON'T KNOW

12 Q OKAY, DID YOU ASK OR CHECK?

13 A NO, SIR

14 Q ALL RIGHT, AND AT SOME POINT IN TIME AS I
15 UNDERSTAND IT YOU SAY THAT YOU FOUND A, A, A SHELL CASING
16 IN THE TRUNK OF THE BLACK PONTIAC?

17 A YES, SIR

18 Q THE SOLICITOR ASKED YOU ABOUT THAT?

19 A YES, SIR

20 Q AND, AND THAT SHELL CASING HOW LONG HAD IT
21 BEEN IN THE TRUNK OF THAT CAR, DO YOU KNOW?

22 A I HAVE NO KNOWLEDGE OF THAT

23 Q DO YOU KNOW IF IT HAD BEEN THERE A MONTH OR
24 A YEAR OR WEEK OR TWO DAYS?

25 A I COULDN'T TELL YOU

OFFICER DEAL - CROSS EXAMINATION BY MR. WILSON

199

1 Q JUST THAT YOU FOUND ONE IN THERE?

2 A THAT'S CORRECT

3 Q ALL RIGHT, AND, AND THAT WAS NOT A LIVE
4 ROUND, THAT WAS A SHELL CASING?

5 A THAT'S CORRECT, SPENT

6 Q ALL RIGHT, NOW --

7 MR WILSON WORK WITH ME JUST ONE SECOND,
8 PLEASE, YOUR HONOR?

9 THE COURT YES, MR WILSON

10 Q LET ME ASK YOU DID YOU, DID YOU SEND, AS
11 PART OF YOUR DUTIES AND RESPONSIBILITIES WHEN YOU COLLECT
12 PHYSICAL EVIDENCE WHETHER IT BE BALLISTICS OR FIBER OR DNA
13 DO YOU THEN PRESERVE IT AND THEN SEND IT TO SLED FOR
14 TESTING ON THOSE OCCASIONS WHEN YOU BELIEVE THAT IT IS
15 BENEFICIAL TO DO SO?

16 A I ALWAYS CONFER WITH THE DETECTIVE THE CASE
17 AGENT AND WE DISCUSS WHAT ITEMS WILL BE SENT AND WE DO ON A
18 LOT OF BASIS SEND ITEMS TO SLED TO BE PROCESSED THAT WE
19 CAN'T DO OURSELVES

20 Q ALL RIGHT, AND, AND IN THIS PARTICULAR CASE
21 ITEM NUMBER 3 WHICH IS, I'M SORRY, STATE'S EXHIBIT NUMBER 3
22 WHICH IS THE POOL STICK DID YOU SEND THAT?

23 A NO, SIR

24 Q WHY NOT?

25 A I PROCESSED IT MYSELF INSIDE THE LAB FOR

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

200

1 LATENTS AND FINGERPRINT

2 Q WHAT ABOUT FOR BLOOD?

3 A THROUGH A VISUAL INSPECTION OF THE POOL
4 STICK WE DIDN'T FIND ANY BLOOD

5 Q SO YOU DIDN'T SEE ANY, YOU SAY VISUAL THAT
6 MEANS WITH YOUR EYE OR DID YOU USE THE MICROSCOPE OR DID
7 YOU USE SOME KIND OF CHEMICAL TO TEST TO DETERMINE WHETHER
8 OR NOT THERE WAS ANY BLOOD?

9 A I USED EYES

10 Q AND YOU DIDN'T SEE ANY AND YOU DUST IT FOR
11 PRINTS OR USE SOME METHOD FOR OBTAINING PRINTS? -- 'I

12 A -THAT'S CORRECT

13 Q AND YOU COULDN'T GET ANY LATENT PRINTS?

14 A WE COULDN'T FIND ANY USABLE RIDGE DETAIL
15 THAT'S CORRECT

16 Q SO, SO YOU DIDN'T SEND IT?

17 A NO, SIR

18 Q ALL RIGHT, NOW THE PROJECTILES DID YOU SEND
19 THOSE?

20 A NO, SIR

21 Q ALL RIGHT, WELL WHAT ABOUT THE, THE SHELL
22 CASINGS?

23 A NO, SIR

24 Q WELL LET ME ASK YOU THIS IN REGARDS TO THE
25 SHELL CASINGS ONE OF THE THINGS THAT WE WOULD WANT TO KNOW,

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

201

1 WOULD WE NOT, IS WHETHER THE GUN THAT FIRED THIS CASING
2 FIRED, WHETHER IT EJECTED FROM THE LEFT OR WHETHER IT
3 EJECTED FROM THE RIGHT BECAUSE THEN WE COULD KIND OF
4 PINPOINT PERHAPS WHERE THE PERSON MIGHT HAVE BEEN STANDING
5 WHEN THE GUN WAS FIRED, RIGHT?

6 A WE WOULDN'T BE ABLE TO OBTAIN THAT BECAUSE
7 WE NEVER RECOVERED A FIREARM

8 Q WELL BUT IF WE CAN TELL WHAT KIND OF WEAPON
9 FIRED IT THEN WOULD WE NOT KNOW WHETHER IT EJECTED FROM THE
10 LEFT OR THE RIGHT?

11 A YOU'D HAVE TO HAVE THE WEAPON TO DETERMINE
12 THAT

13 Q SO ARE YOU SAYING TO ME THEN THAT ANY GUN
14 THAT CAN FIRE A 9MM IS CAPABLE OF FIRING IT FROM THE LEFT
15 OR, I'M SORRY, CAPABLE OF EJECTING THE SHELL FROM THE LEFT
16 OR FROM THE RIGHT?

17 A DEPENDING ON THE MANUFACTURER, CORRECT

18 Q OKAY, AND, AND WE CAN'T DETERMINE THAT FROM
19 THE CASINGS?

20 A THAT'S CORRECT

21 Q WE'D HAVE TO HAVE THE ACTUAL WEAPON IN
22 ORDER TO MAKE THAT DETERMINATION?

23 A THAT IS CORRECT

24 Q ALL RIGHT, AND NOW ARE ALL, ALL 9MM'S SEMI
25 AUTOMATIC?

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

202

1 A NO, SIR

2 Q OKAY, SO WHAT WOULD THEY BE IF THEY'RE NOT
3 SEMIAUTOMATIC?

4 A THEY WOULD BE EITHER FULL AUTO OR THEY
5 WOULD BE A SINGLE FED OR HANG UP

6 Q OKAY, AND IN THIS CASE DO WE KNOW WHICH
7 WE'RE DEALING WITH?

8 A NO, SIR

9 Q WE DO NOT?

10 A ALL WE KNOW IS THAT IT WAS, THE WEAPON THAT
11 WAS USED FROM THE EVIDENCE I HAVE IT POSSIBLY WOULD NOT BE
12 A REVOLVER IS ALL I CAN ESTABLISH

13 Q AND THAT'S BECAUSE THE SHELLS WERE ON THE
14 GROUND?

15 A THAT'S CORRECT

16 Q ALL RIGHT, NOW WHAT ABOUT THE, THE, THE,
17 THE, THE BLOOD YOU SAID THAT THERE WERE TWO POOLS OF BLOOD
18 AND YOU DID SWABS I THINK OF THE BLOOD?

19 A THAT'S CORRECT

20 Q AND YOU SENT THAT TO SLED?

21 A NO, SIR

22 Q NO, SIR, YOU DID NOT?

23 A NO, SIR

24 Q WELL HOW DO WE KNOW THAT THAT'S THE BLOOD
25 OF THE VICTIM?

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

203

1 A WE DON'T

2 Q LET ME ASK YOU, THE SHELL CASE, THE SHELL
3 JACKET THAT YOU FOUND WHICH WAS OVER ON THE FAR RIGHT
4 CORNER OF THE BUILDING AS WE'RE FACING THE DOOR AND I THINK
5 YOU REFERRED TO THAT AS EXHIBIT 3 OR AT LEAST ON YOUR CHART
6 YOU'VE GOT IT LISTED AS 3?

7 A CORRECT

8 Q DID WE SEND THAT TO SLED?

9 A NO, SIR

10 Q DO WE KNOW WHETHER OR NOT THAT'S A 9MM
11 JACKET OR NOT?

12 A NO, SIR

13 Q SO IT COULD HAVE BEEN THERE BEFORE?

14 A THAT'S POSSIBLE

15 Q NOW HAVE YOU EVER BEEN OUT TO THIS CLUB
16 BEFORE?

17 A I HAVE NEVER HAD THE CHANCE TO GO TO THAT
18 ESTABLISHMENT BEFORE THAT NIGHT

19 Q HAVE YOU BEEN SINCE?

20 A NO, SIR

21 Q AND DID YOU TRY TO MAKE A DETERMINATION AS
22 TO WHETHER OR NOT THERE HAD BEEN OTHER SHOOTINGS OUT THERE
23 TO DETERMINE WHETHER OR NOT SOME OF THIS STUFF MIGHT HAVE
24 BEEN DEBRIS FROM OTHER EVENTS?

25 A WHEN I'M PROCESSING THE SCENE ANY ITEMS

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

204

1 THAT I FEEL THAT COULD BE RELATED TO THAT SCENE I'M GOING
2 TO COLLECT I DON'T TRY TO DIFFERENTIATE BETWEEN THOSE
3 ITEMS AT THAT TIME DUE TO THE POSSIBILITY OF LOSING VITAL
4 EVIDENCE

5 Q WELL SPEAKING OF LOSING VITAL EVIDENCE IF
6 WE GOT THE JACKET WOULDN'T WE WANT TO KNOW THAT THAT JACKET
7 IS ALSO CONSISTENT WITH THE OTHER SHELL CASINGS THAT WERE
8 FOUND AND CONSISTENT WITH THE BULLETS THAT WE FOUND?
9 WOULDN'T THAT BE SOMETHING THAT WE WOULD WANT TO KNOW?

10 A YES, SIR

11 Q OKAY, AND BECAUSE WE DIDN'T SEND IT TO SLED
12 WE DON'T KNOW THAT?

13 A THAT IS CORRECT

14 Q NOW LET ME, AND LET ME ASK YOU THIS YOU
15 WOULD AGREE WITH ME THAT, WOULD YOU NOT, THAT IN, WHEN A
16 SHOT IF THESE SHOTS, IF A SHOT WAS FIRED, AND I'M NOW BACK
17 REFERRING TO STATE'S EXHIBIT NUMBER 5 FOR I D , IF A SHOT
18 WAS FIRED IN THIS VICINITY FROM OVER HERE WHERE 3 IS, WHICH
19 IS WHERE YOU FOUND THE SHELL JACKET, THE JACKET FOR THE,
20 FOR THE PROJECTILE, IF A SHOT WAS FIRED OVER IN THAT
21 DIRECTION IT MIGHT BE THE PERSON MAY HAVE TO BE STANDING IN
22 A DIFFERENT PLACE THAN HE'S STANDING IF THERE'S ONE FOUND
23 OVER HERE WHERE 1 IS?

24 A NOT ALWAYS

25 Q SO YOU'RE SAYING TO ME THAT IF HE COULD

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

205

1 STAND ONE PLACE AND ONE SHELL END UP OVER HERE WHERE 1 IS
2 AND ANOTHER END UP OVER HERE WHERE 3 IS?

3 A YES, SIR

4 Q THIRTY SOME FEET AWAY?

5 A YES, SIR

6 Q ALL RIGHT, AND IS THAT WHY YOU DIDN'T SEND
7 IT TO SLED CAUSE YOU JUST FIGURED THAT OUT THAT IT COULD
8 HAVE HAPPENED EITHER WAY SO NO NEED TO SEND IT TO THE
9 EXPERTS AND LET THEM TELL US?

10 A FIREARM, FIREARM EXAMINERS WOULD RELATE TO
11 THE FIREARM ITSELF THE PROJECTILES AND THEIR LOCATION
12 WHEN A BULLET IS FIRED IT CAN IMPACT ANY TYPE OF HARD
13 OBJECT AND FROM THERE ONLY PHYSICS COULD, COULD TELL YOU
14 WHICH DIRECTION IT'S GOING I MEAN THE BULLET, YOU KNOW,
15 WHEN IT LEAVES THE BARREL OF THE GUN IT'S GOING TO GO
16 STRAIGHT UNTIL IT, YOU KNOW, COUNTERACTS ANOTHER FORCE

17 Q WELL BUT WE DON'T KNOW WHAT IT HIT DO WE?

18 A NO, SIR

19 Q WE DON'T KNOW IF IT HIT ANYTHING AT ALL
20 WHICH IS THE PROBLEM, RIGHT?

21 A WELL WE CAN SEE FROM SOME OF THE
22 PROJECTILES THAT IT DID STRIKE SOMETHING

23 Q WELL HOW DO WE KNOW THAT?

24 A BECAUSE OF THE DAMAGE TO THE PROJECTILE

25 Q WELL WHEN WAS THE DAMAGE?

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

206

1 A WHEN IT WAS FIRED

2 Q HOW DO YOU KNOW THAT?

3 A IN NORMAL INSTANCES WHEN A BULLET OR A
4 LOADED CARTRIDGE IS DEFORMED PRIOR TO IT BEING EXPELLED YOU
5 COULD POSSIBLY HAVE FIREARM PROBLEMS OR JAMMING

6 Q WELL YOU SAID POSSIBLY, BECAUSE A BULLET
7 CAN STILL BE DAMAGED, IN FACT, IN FACT PEOPLE ALTER BULLETS
8 ALL THE TIME THEY TAKE A KNIFE AND THEY CUT THE BULLET
9 WHEN THEY WANT IT TO SPLIT AND THEY REALLY WANT TO HURT
10 SOMEBODY YOU CAN TAKE A KNIFE JUST DEFORM THE HEAD OF A
11 BULLET, SO THAT WHAT HAPPENS IS ONCE IT'S FIRED THAT IT
12 ACTUALLY JUST SPLITS OUT AND IT DOES MORE DAMAGE AND YOU
13 KNOW THAT THAT CAN BE DONE, RIGHT?

14 A THAT'S TRUE

15 Q ALL RIGHT, AND SO WE DON'T KNOW THAT THAT
16 DIDN'T HAPPEN IN THIS CASE, DO WE?

17 A NO, SIR

18 Q ALL RIGHT, SO WHEN YOU SAY THAT YOU'RE
19 REALLY NOT, THAT'S NOT REALLY FACTUAL, RIGHT?

20 A WELL YOU CAN TELL FROM THE DEFORMITIES OF
21 THE PROJECTILE

22 Q WELL MY POINT IS IT COULD HAVE BEEN
23 DEFORMED BEFORE IT WAS FIRED, WE DON'T KNOW?

24 A THAT'S CORRECT

25 Q AND, AND THE ONLY WAY THAT WE WOULD KNOW IS

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON 207

1 IF WE SENT IT TO SLED WE HAD IT TESTED, THEY COULD COME IN
2 HERE, THESE FORENSIC EXPERTS AND TELL US WHAT HAPPENED?

3 A POSSIBLY

4 Q POSSIBLY, OKAY, BUT WHEN WE DON'T SEND IT
5 THEN WE TAKE THAT OPPORTUNITY AWAY AND SO THEN THEY DON'T
6 HAVE THE CHANCE TO, TO TELL US, BUT BE THAT AS IT MAY LET'S
7 MOVE ON TO SOMETHING ELSE LET ME ASK YOU THIS IN REGARDS
8 TO, IN REGARDS TO ITEM 2 WHICH IS WHAT?

9 A SPENT CARTRIDGE CASING

10 Q A SPENT CARTRIDGE CASING, ALL RIGHT, AND,
11 AND IT WAS FOUND HERE ON THIS CORNER AND THEN 3 WAS FOUND
12 UP HERE ON THIS CORNER?

13 A THAT'S CORRECT

14 Q OKAY, AND THEN YOU GOT 10 AND 7 OVER HERE?

15 A CORRECT

16 Q CORRECT, NOW IN REGARDS TO NUMBER 2 WAS IT
17 BEHIND THE TRASH CAN? THERE'S A TRASH CAN RIGHT THERE ON
18 THAT CORNER, RIGHT?

19 A THAT'S CORRECT

20 Q WHERE WAS IT IN PROXIMITY TO THAT TRASH
21 CAN?

22 A IT WAS ON THE FRONT SIDE FACING THE ROAD

23 Q ALL RIGHT, ON THE FRONT SIDE OF THE TRASH
24 CAN IN FRONT OF THE TRASH CAN ON THE CEMENT PORCH?

25 A THAT'S CORRECT

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

208

1 Q OKAY, AND THE OTHER ONE ON THE OTHER SIDE
2 WAS ON WHERE?

3 A THE CEMENT PORCH BEHIND THE TRASH CAN

4 Q ON THE CEMENT PORCH BEHIND THE TRASH CAN,
5 HOW WOULD IT GET BEHIND THE TRASH CAN?

6 A DON'T KNOW

7 Q OKAY, WELL YOUR THEORY EARLIER ABOUT, WELL
8 MAYBE IT HIT A HARD OBJECT, RIGHT?

9 A CORRECT

10 Q WELL IF IT HIT THE BRICK WALL THERE'S A
11 BRICK WALL-RIGHT- IN FRONT OF THE TRASH-CAN, RIGHT?

12 A CORRECT

13 Q SO IF IT HIT THE BRICK WALL IT COULD HAVE
14 HIT THE BRICK WALL AND THEN FALLEN DOWN BEHIND THE TRASH
15 CAN, POSSIBLE THEORY, RIGHT?

16 A POSSIBLY

17 Q NOW DID YOU CHECK THE WALL?

18 A YES

19 Q TO SEE IF IN FACT THERE WAS A DENT OR
20 DAMAGE TO THE WALL FROM THE PROJECTILE TO DETERMINE IF
21 THAT'S HOW IT GOT THERE?

22 A I PERFORMED A VISUAL INSPECTION OF THE
23 BRICK FRONT OF THE STRUCTURE

24 Q OKAY --

25 A I WAS UNABLE TO FIND ANY TYPE OF HOLE

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

209

1 MATCHING THE APPROXIMATE SIZE OF THE PROJECTILES THAT WE
2 HAD FOUND AT THE SCENE IN THE BRICK

3 Q ALL RIGHT, SO THAT THEORY GOES OUT THE
4 WINDOW AS TO HOW IT GOT THERE, RIGHT, PRETTY MUCH?

5 A NOT ALL TOGETHER

6 Q OKAY, WELL TELL ME HOW?

7 A THE STRUCTURE, THE STRUCTURE ALSO CONTAINED
8 A LOT OF DAMAGE THERE WERE SOME BRICKS THAT WERE, ON THE
9 BUILDING THAT WERE NOT CONNECTED YOU ALSO HAD MORTAR
10 JOINTS YOU KNOW A PROJECTILE STRIKES ANY TYPE OF HARD
11 SURFACE IT'S NOT ALWAYS GOING TO CREATE A HOLE IT COULD
12 RICOCHET OFF THE, THE BRICK OR THE MORTAR OR ANY OBJECT
13 THAT IT HITS WHAT I WAS LOOKING FOR WAS POSSIBLE THE
14 REMAINS OF THAT PROJECTILE THAT BELONGED TO THAT POSSIBLE
15 COPPER JACKET

16 Q WELL YOU JUST TOLD ME A SECOND AGO THAT YOU
17 DIDN'T SEE ANY PHYSICAL DAMAGE TO THE WALL WHICH WOULD
18 INDICATE TO YOU THAT, THAT IT CAME INTO CONTACT WITH THE
19 WALL?

20 A I SAW NO APPARENT HOLES OR DAMAGE POSSIBLY
21 CAUSED BY A PROJECTILE

22 Q ALL RIGHT --

23 MR WILSON GIVE ME ONE SECOND, PLEASE, YOUR
24 HONOR

25 Q (CONTINUING) LET ME ASK YOU, DID YOU, DID

OFFICER DEAL - CROSS EXAMINATION BY MR WILSON

210

1 YOU DO A GSR KIT ON THE HANDS OF THE VICTIM?

2 A NO, YOUR HONOR NO, SIR, I'M SORRY

3 Q DO YOU KNOW WHO DID?

4 A FROM MY UNDERSTANDINGS I BELIEVE DETECTIVE
5 TODD COX DID IT

6 Q AND JUST SO THAT WE DON'T LEAVE EVERYBODY
7 CONFUSED TELL US WHAT A GSR KIT IS?

8 A GSR KIT IS A GUNSHOT RESIDUE KIT IT IS A
9 COLLECTION FROM THE HANDS, CLOTHING, DIFFERENT SURFACES
10 THAT WE SEND OFF FOR TRACE EXAMINATION THAT LOOKS FOR
11 DIFFERENT METALS THAT ARE A PART OF THE COMPONENTS OF THE
12 PROPELLANT OF THE PROJECTILE BULLET CARTRIDGE

13 Q AND, AND IT'S, IS IT IN POWDER FORM OR WHAT
14 KIND OF FORM IS IT THAT YOU PUT IT ON THE HANDS OF THE
15 PERSON IN ORDER TO TEST?

16 A IT'S A TWO STEP PROCESS THE FIRST STEP IS
17 A DAUBER, IT'S LIKE A STICKY PAD, YOU DAUB THAT OVER THE
18 PERSON'S HAND OR SURFACE THAT YOU'RE CHECKING FOR GUNSHOT
19 RESIDUE

20 THE SECOND STEP IS A SWAB TEST WHERE WE USE A LOW
21 GRADE OF NITRIC ACID TO COLLECT ANY OTHER PARTICLES THAT
22 MAY HAVE NOT BEEN PICKED UP BY THE DAUBERS

23 Q NOW THE GUNSHOT RESIDUE KIT WOULD TEST
24 WHETHER OR NOT THERE'S GUN POWDER ON THE HANDS OF THE
25 PERSON INVOLVED, IS THAT CORRECT?

OFFICER DEAL - REDIRECT EXAMINATION BY MR RICHARDSON 211

1 A THAT'S CORRECT

2 Q AND, AND THAT WOULD MEAN THAT EITHER THEY
3 FIRED THE GUN OR THEY WERE AT LEAST STANDING IN CLOSE
4 PROXIMITY TO A GUN THAT WAS FIRED?

5 A THAT'S CORRECT

6 MR WILSON ALL RIGHT, NO OTHER QUESTIONS
7 THE COURT MR RICHARDSON?

8 MR RICHARDSON YES, MA'AM, JUST A COUPLE
9 FOLLOW UP

10 REDIRECT EXAMINATION
11 BY MR RICHARDSON.

12 Q DID YOU FIND BLOOD IN THE VEHICLE THAT WAS
13 USED TO TAKE DAVID BENNETT TO THE HOSPITAL?

14 A I DID NOT PROCESS THAT VEHICLE SPECIALIST
15 PETER CESTARE, MY SUPERVISOR, DID DO THAT PROCESSING AND HE
16 DID COLLECT DNA SWABS OF BLOOD FROM THE VEHICLE THAT WAS
17 USED TO TRANSPORT

18 Q DID YOU SEND THAT BLOOD TO SLED?

19 A NO, SIR

20 Q COULDN'T THAT HAVE BEEN THE DRIVER OF THE
21 VEHICLE OR SOMEBODY ELSE'S BLOOD?

22 A WE HAD NO OTHER REPORTS OF ANYBODY BEING
23 INJURED AT THAT SCENE OR IN RELATION TO THAT SCENE OR WHO
24 WAS TRANSPORTING A VICTIM

25 Q OKAY, DID YOU PROCESS THAT BLACK PONTIAC?

OFFICER DEAL - REDIRECT EXAMINATION BY MR RICHARDSON 212

1 A YES, I DID

2 Q DID YOU FIND ANY BLOOD IN THAT PONTIAC?

3 A NO, SIR

4 Q OKAY, WOULD YOU HAVE REPORTED THAT HAD YOU
5 FOUND IT?

6 A YES, SIR

7 Q AND THERE IS NO DOUBT BUT THAT SOME OF THE
8 EVIDENCE THAT WAS COLLECTED HAD BEEN MOVED BEFORE YOU GOT
9 THERE?

10 A THAT'S A POSSIBILITY

11 Q WITH REGARD TO THAT POOL STICK, AGAIN, WHERE
12 WAS IT?

13 A IT WAS LAYING UP AGAINST THE FRONT OF THE
14 BUILDING TO THE RIGHT IF YOU'RE LOOKING FROM THE ROAD BY
15 THE TRASH CAN

16 Q AND DID IT APPEAR TO HAVE FALLEN THERE OR
17 WAS IT, DID IT APPEAR TO HAVE BEEN PLACED THERE?

18 A IT APPEARED TO BE PLACED THERE

19 Q OKAY, COULD ANY CRIME SCENE SPECIALIST BE
20 ABLE TO GO IN AND, AND TELL EXACTLY WHERE EVERYONE WAS
21 STANDING IF ITEMS HAD BEEN MOVED?

22 A NO, SIR

23 Q AND WITH REGARD TO THE THREE DIFFERENT
24 TYPES OF GUNS YOU SAID THERE WAS AN AUTOMATIC, A
25 SEMIAUTOMATIC AND REVOLVER?

OFFICER DEAL - REDIRECT EXAMINATION BY MR RICHARDSON 213

1 A CORRECT

2 Q WITH REGARD TO A REVOLVER WOULD YOU HAVE TO
3 CLICK ANY SORT OF SLIDE TO GET THAT REVOLVER TO SHOOT?

4 A NO, SIR

5 Q DO YOU KNOW OF ANY SORT OF REVOLVER THAT
6 YOU WOULD PULL BACK A SLIDE ON?

7 A NO, SIR

8 Q AND REVOLVERS DO THEY EXPEND SHELL CASINGS
9 AUTOMATICALLY?

10 A NO, SIR

11 Q THE CASINGS WHERE WOULD THE CASINGS BE IN A
12 REVOLVER AFTER THEY WERE FIRED?

13 A THEY WOULD STILL BE IN THE CYLINDER WHERE
14 THEY WERE ORIGINALLY HOUSED

15 MR RICHARDSON OKAY, THAT'S ALL THE QUESTIONS
16 I HAVE

17 MR WILSON NOTHING FURTHER, YOUR HONOR

18 THE COURT ALL RIGHT, YOU MAY STEP DOWN, MAY HE
19 BE EXCUSED?

20 MR RICHARDSON YES, MA'AM

21 MR WILSON WITHOUT OBJECTION, YOUR HONOR

22 THE COURT ALL RIGHT, YOU MAY LEAVE THE
23 COURTROOM IF YOU SO CHOOSE CALL YOUR NEXT WITNESS

24 MR RICHARDSON YOUR HONOR, MAY WE APPROACH?

25 THE COURT YOU MAY

OFFICER DEAL - REDIRECT EXAMINATION BY MR RICHARDSON 214

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
2 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
3 OF THE JURY AND THE COURT REPORTER)

4 THE COURT WE ARE GOING TO TAKE OUR LUNCH BREAK
5 AT THIS POINT THERE ARE SOME MATTERS THAT I NEED TO
6 UNRELATED TO THIS CASE THAT I NEED TO HANDLE AS WELL SO YOU
7 WILL NEED TO BE BACK IN YOUR JURY ROOM AT A QUARTER TILL 2,
8 SO YA'LL HAVE A NICE LONG LUNCH TODAY

9 PLEASE REMEMBER MY ADMONISHMENT DO NOT DISCUSS
10 THIS CASE AMONGST YOURSELVES OR WITH ANYONE ELSE DO NOT
11 DURING YOUR LUNCH HOUR TURN ON THE TELEVISION, READ THE
12 NEWSPAPER, THE INTERNET I DO NOT KNOW IF THERE HAVE BEEN
13 ANY NEWS ACCOUNTS OF THIS BUT OUT OF AN ABUNDANCE OF
14 CAUTION DO NOT SPEND YOUR LUNCH BREAK WITH ANY, ANY MEDIA,
15 AND ENJOY YOUR LUNCH MS GLORIA WILL ESCORT YOU, THANK
16 YOU

17 (WHEREUPON, THE JURY WAS EXCUSED FOR LUNCH AT
18 11 45 A M)

19 THE COURT YOU MAY BE SEATED MR RICHARDSON,
20 I UNDERSTAND THAT YOU WILL HAVE DR PROCTOR ON THE STAND AT
21 2 P M , IS THAT CORRECT?

22 MR RICHARDSON YES, MA'AM, THAT IS MY
23 UNDERSTANDING

24 THE COURT ALL RIGHT, AND THEN YOU HAVE A FEW
25 MORE WITNESSES AND THEN YOU PLAN TO REST, IS THAT CORRECT?

OFFICER DEAL - REDIRECT EXAMINATION BY MR RICHARDSON 215

1 MR RICHARDSON YES, MA'AM

2 THE COURT ALL RIGHT, ANYTHING FURTHER FROM THE
3 STATE BEFORE OUR LUNCH BREAK?

4 MR RICHARDSON NO, MA'AM, NOT AT THIS TIME

5 THE COURT ALL RIGHT, MR WILSON, ANYTHING?

6 MR WILSON NOTHING, YOUR HONOR

7 THE COURT ALL RIGHT, I NEED TO SEE THE
8 GENTLEMAN WITH THE CELL PHONE AND EVERYBODY ELSE MAY BE
9 EXCUSED

10 EXPLAIN TO ME WHY YOUR CELL PHONE WENT OFF AND
11 WHY I SHOULDN'T HOLD YOU IN CONTEMPT?

12 AUDIENCE MEMBER THAT'S AN AUTOMATIC ALARM THAT
13 I HAVE, I JUST GOT OFF WORK AT 7 00 AND NORMALLY I WOULD BE
14 SLEEPING THEN GETTING READY TO PICK MY KIDS UP THAT'S AN
15 AUTOMATIC ON-ALARM THAT COMES ON AT 11 30 EVERY DAY

16 THE COURT OKAY, AND I'M NOT GOING TO BAND YOU
17 FROM THE COURTROOM ARE YOU RELATED TO THE DEFENDANT?

18 AUDIENCE MEMBER YES, MA'AM, THAT'S MY NEPHEW

19 THE COURT ALL RIGHT, YOU NEED TO MAKE SURE
20 THAT YOU LEAVE THAT PHONE IN THE CAR DURING THE LUNCH
21 BREAK DEPUTY DID YOU CONFISCATE HIS PHONE?

22 DEPUTY GREEN YES, MA'AM, I GAVE IT TO THE
23 GENTLEMAN IN THE LOBBY

24 THE COURT ALL RIGHT, YOU MAY GIVE IT BACK TO
25 THIS GENTLEMAN I'M NOT GOING TO HOLD YOU IN CONTEMPT

OFFICER DEAL - REDIRECT EXAMINATION BY MR RICHARDSON 216

1 DON'T LET IT HAPPEN AGAIN AND YOU NEED TO LET EVERYBODY
2 ELSE KNOW WHEN THEY COME IN THAT THEY NEED TO HAVE THEIR,
3 THEY NEED TO JUST LEAVE THEIR CELL PHONES IN THE CAR, OKAY
4 ALL RIGHT, THANK YOU

5 THANK YOU, DEPUTY GREEN BE IN RECESS UNTIL, WE
6 WILL BE ALL READY TO GO AT FIVE TILL TWO SO THAT DR
7 PROCTOR CAN --

8 MR RICHARDSON YES, MA'AM

9 THE COURT ALL RIGHT I'LL BE WORKING ON THE
10 CHARGES OVER THE LUNCH BREAK SO IF THERE'S ANYTHING -- I'VE
11 RECEIVED SOME FROM MR WILSON, IF YOU HAVE ANY PROPOSED
12 CHARGES BE MORE THAN HAPPY TO TAKE A LOOK AT THEM, MR
13 RICHARDSON

14 (WHEREUPON, COURT WAS RECESSED FOR LUNCH AND THE
15 FOLLOWING TAKES PLACE ON THE RECORD FOLLOWING THE LUNCH
16 RECESS)

17 THE COURT ANYTHING BEFORE WE BRING THE JURY
18 IN?

19 (WHEREUPON, COURT'S EXHIBIT NUMBER 1 MARKED)

20 MR RICHARDSON YOUR HONOR, IF WE COULD HAVE
21 ONE SECOND, THERE'S A FEW PHOTOGRAPHS THAT WE'VE DISAGREED
22 ON I THINK I'VE NARROWED THOSE DOWN BUT WE MAY BE ABLE TO
23 COME TO AN AGREEMENT ON

24 THE COURT PLEASE MAKE SURE IF YOU HAVE A CELL
25 PHONE THAT IT IS TURNED OFF, NOT ON VIBRATE, THAT IT'S

OFFICER DEAL - REDIRECT EXAMINATION BY MR RICHARDSON 217

1 TURNED COMPLETELY OFF

2 MR RICHARDSON I HAVE OFFERED UP FOUR
3 PHOTOGRAPHS I TALKED WITH DR PROCTOR YESTERDAY ME AND
4 MR WILSON MET ABOUT A SERIES OF ABOUT EIGHT OR NINE
5 PHOTOGRAPHS, HE OBJECTED TO SOME I'VE GONE BACK, TOOK
6 CERTAIN PARTS OF IT OUT WHICH WOULD HAVE INCLUDED A GASTRO
7 AND STUFF IN THE GUYS MOUTH, CUT THAT PART OF IT OFF AND
8 I'VE PRESENTED HIM WITH FOUR THAT DR PROCTOR SAYS THAT HE
9 NEEDS TO TESTIFY FROM

10 THE COURT GO AHEAD AND MARK THEM SO WE CAN
11 REFER TO THEM APPROPRIATELY

12 (WHEREUPON, STATE'S EXHIBITS NUMBERS 22, 23, 24,
13 AND 25 MARKED FOR IDENTIFICATION)

14 THE COURT STATE'S 22, 23, 24 AND 25 WHICH ARE
15 AUTOPSY PHOTOS, MR WILSON, WILL YOU BE OBJECTING TO THESE?

16 MR WILSON YES, MA'AM

17 THE COURT ON THE BASIS OF?

18 MR WILSON MY PRIMARY OBJECTION, YOUR HONOR,
19 IS I THINK THAT THE PHOTOGRAPHS WHILE I THINK THEY ARE
20 PROBABLY SUPERFICIALLY RELEVANT MY CONCERN IS THE FACT THAT
21 THE AMOUNT OF BLOOD AND GORE IN THE PICTURES, YOU KNOW, ARE
22 SO PRONOUNCED THAT I THINK THAT MY THEORY IS IS THAT IT
23 WILL PREJUDICE THE JURY AND I THINK THAT IT WILL INFLAME
24 THEM AND I AM VERY CONCERNED ABOUT THE ADMISSION OF THEM
25 BECAUSE OF THAT AND TO WHAT AFFECT THAT THEY WILL, WILL

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 218

1 HAVE BY SEEING THE BODY IN THAT, IN THAT PARTICULAR STATE
2 IN, IN ADDITION, YOUR HONOR, THOSE PHOTOGRAPHS
3 ARE DONE AFTER THE BODY HAD BEEN WORKED ON BY EMS, WHOEVER
4 CAME AT THE SCENE, OR THE PEOPLE AT THE HOSPITAL AND IS NOW
5 AT AUTOPSY AS OPPOSED TO CRIME SCENE PHOTOS WHICH ARE
6 ACTUALLY TAKEN AT THE SCENE TO SHOW THE CONDITION OR STATE
7 OF THE BODY AT THE TIME AT THAT PARTICULAR TIME AND, AND,
8 AND ANYWAY THOSE ARE MY, THOSE ARE MY REASONS FOR, FOR
9 OBJECTING TO THE PHOTOGRAPHS AND I OBJECT TO ALL FOUR OF
10 THE PHOTOGRAPHS

11 THE COURT ALL RIGHT,--YOUR RESPONSE, MR , 'f
12 RICHARDSON?

13 MR RICHARDSON AND, YOUR HONOR, THAT IS TRUE
14 AND YOU CAN SEE THEY'RE NOT, THOSE PARTICULAR PHOTOGRAPHS
15 ARE NOT PARTICULARLY BLOODY THEY HAVE BEEN CLEANED UP I
16 AGREE WITH MR WILSON SOME OF THOSE THAT I SHOWED HIM THE
17 OTHER DAY PROBABLY WOULD HAVE BEEN PREJUDICIAL SO WE WENT
18 BACK AND TOOK ALL OF THOSE OUT AND CAME BACK WITH THESE

19 I'VE TALKED WITH DR PROCTOR AND THIS IS NOT
20 SUPPOSED TO BE ABOUT HOW THE BODY WAS FOUND AT THE TIME
21 HE'S, HE'S GOING TO BE ABLE TO TESTIFY USING THOSE TO SHOW
22 ENTRANCE AND EXIT WOUNDS AND THERE'S AT LEAST ONE WOUND
23 THAT THE COURT'S ALREADY HEARD THROUGH TESTIMONY THAT DID
24 NOT LEAVE, THAT WENT THROUGH AND LODGED AND THAT PROJECTILE
25 IS IN EVIDENCE BUT I DON'T BELIEVE THAT THEY ARE GORY,

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 219

1 BLOODY AND I DO BELIEVE THAT THE PROBATIVE VALUE CERTAINLY
2 OUTWEIGHS ANY SORT OF PREJUDICE THAT THE JURY MAY HEAR
3 THEY'VE ALREADY HEARD THAT HE WAS SHOT MULTIPLE TIMES AND
4 DR PROCTOR SAYS HE THAT HE NEEDED THOSE TO TESTIFY AS TO
5 ENTRANCE AND EXIT WOUNDS

6 THE COURT MR RICHARDSON, ASSUMING THAT YOU'RE
7 GOING TO LAY THE APPROPRIATE FOUNDATION TO MAKE THEM
8 ADMISSIBLE INTO EVIDENCE BASED UPON THE COURT'S REVIEW OF
9 THE FOUR PHOTOGRAPHS I DO NOT FIND THAT THEY ARE OVERLY
10 PREJUDICIAL

11 MR RICHARDSON THANK YOU, YOUR HONOR

12 MR WILSON THANK YOU, YOUR HONOR

13 THE COURT I WILL NOTE YOUR OBJECTION

14 MR WILSON THANK YOU

15 THE COURT BROOKE, PLEASE BRING IN THE JURY

16 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT

17 2 08 P M)

18 THE COURT THANK YOU, PLEASE BE SEATED GOOD
19 AFTERNOON, I HOPE THAT YA'LL HAD A WONDERFUL LUNCH AND WE
20 WILL NOW RESUME WITH THE TRIAL OF THIS MATTER MR
21 RICHARDSON, CALL YOUR NEXT WITNESS

22 MR RICHARDSON THANK YOU, YOUR HONOR, THE
23 STATE WILL CALL DR EDWARD PROCTOR

24 DR EDWARD L. PROCTOR, JR.

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS.

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 220

1 MADAM CLERK PLEASE STATE YOUR FULL NAME

2 THE WITNESS I AM EDWARD LEROY PROCTOR, JR

3 MADAM CLERK SPELL YOUR LAST NAME FOR THE

4 COURT

5 THE WITNESS MY LAST NAME IS SPELLED P-R-O-C-T-

6 O-R

7 THE COURT YOU MAY PROCEED, MR RICHARDSON

8 DIRECT EXAMINATION

9 BY MR RICHARDSON:

10 Q DR PROCTOR, TELL THIS JURY, PLEASE, WHAT

11 YOU DO FOR A LIVING?

12 A I AM A MEDICAL DOCTOR TRAINED IN THE FIELD

13 OF PATHOLOGY TO INCLUDE ANATOMIC PATHOLOGY, CLINICAL

14 PATHOLOGY AND FORENSIC PATHOLOGY I PRACTICE IN THIS AREA,

15 PRACTICE IN MYRTLE BEACH AND AS A GENERAL PATHOLOGIST I

16 LOOK AT SPECIMENS TAKEN FROM PEOPLE SUCH AS A BIOPSY AT THE

17 TIME OF SURGERY AND GIVE THAT INTERPRETATION

18 WE RUN A CLINICAL LAB WHICH LOOKS AT BLOOD

19 SMEARS, CHEMISTRIES, MICROBIOLOGY AND I DO FORENSIC

20 PATHOLOGY WHICH IS THE MEDICAL LEGAL INVESTIGATION OF

21 DEATH

22 MR WILSON JUST FOR THE RECORD WE'LL

23 STIPULATE TO THE QUALIFICATIONS OF DR PROCTOR AS A

24 FORENSIC PATHOLOGIST HE'S TESTIFIED NUMEROUS TIMES IN

25 THIS VERY COURTROOM

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 221

1 A THANK YOU, SIR

2 MR RICHARDSON (CONTINUING)

3 Q AND, DR PROCTOR, JUST FOR THE JURY'S
4 EDIFICATION WE WON'T GO THAT FAR INTO IT BUT APPROXIMATELY
5 HOW MANY TIMES HAVE YOU TESTIFIED AS AN EXPERT IN FORENSIC
6 PATHOLOGY?

7 A IN THIS COURTROOM OR IN THIS COURTHOUSE
8 PROBABLY TWO OR 300

9 Q AND THEN, OF COURSE ACROSS THIS REGION?

10 A PROBABLY IN MY CAREER PROBABLY FOUR OR 500
11 TIMES I WOULD THINK

12 Q YES, SIR, NOW DID YOU PERFORM AN AUTOPSY ON
13 THE DECEDENT IN THIS CASE MR DAVID BENNETT?

14 A YES, SIR, I DID

15 Q AND DO YOU REMEMBER OR HAVE NOTES AS TO
16 WHAT DATE THAT PROCEDURE TOOK PLACE?

17 A I WAS CONTACTED BY THE DEPUTY CORONER MR
18 DAN BELLAMY ON EITHER THE LATE EVENING OF NOVEMBER 10TH OR
19 MORNING OF NOVEMBER 11TH REGARDING THIS AUTOPSY AND THE
20 CASE WAS PERFORMED ON NOVEMBER 12TH, 2006, AT APPROXIMATELY
21 7 15 A M

22 Q SO IF MR BENNETT DIED ON THE 10TH YOU
23 WOULD HAVE PERFORMED THE AUTOPSY TWO DAYS LATER?

24 A YES, SIR, ROUGHLY, ROUGHLY A DAY AND A
25 HALF

DR. PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON

222

1 Q OKAY, OF COURSE TELL THE JURY, PLEASE, WHAT
2 YOU DO WHEN YOU BEGIN YOUR AUTOPSY?

3 A I PERFORMED A FORENSIC AUTOPSY AT THE
4 REQUEST OF THE OFFICE OF THE CORONER WHEN I AM CONTACTED
5 BY THE CORONER I AM USUALLY GIVEN WHAT HISTORY IS
6 AVAILABLE, MOST OF THE TIME IT'S VERY SKETCHY, AND I TAKE
7 THAT HISTORY AND THEN I WORK IN CONJUNCTION WITH
8 INVESTIGATIVE AUTHORITIES, MOST CASES IN THIS COUNTY WITH
9 THE CRIME SCENE DIVISION AND DETECTIVES OF THE HORRY COUNTY
10 POLICE DEPARTMENT, TAKE THE INFORMATION THEY HAVE I
11 PERFORM A COMPLETE EXTERNAL EXAMINATION OF THE BODY.

12 I DO A DISSECTION OF THE BODY, RECOVER ALL
13 PROJECTILES OR WHATEVER IS NECESSARY TO USE IN DETERMINING
14 A CAUSE AND MANNER OF DEATH I TAKE TISSUES, TAKE BODY
15 FLUIDS AND WE LOOK AT THE TISSUES UNDER THE MICROSCOPE,
16 HAVE TOXICOLOGIC EVALUATION DONE OF BODY FLUIDS AND THEN
17 USE ALL THIS INFORMATION FORMULATE AND CAUSE AND MANNER OF
18 DEATH

19 Q ALL RIGHT, AND SINCE YOU MENTIONED
20 TOXICOLOGY DID YOU PERFORM A TOXICOLOGY REPORT ON MR
21 BENNETT?

22 A YES, SIR, I DID

23 Q ALL RIGHT, AND THAT'S TO LOOK FOR ALCOHOL
24 OR ILLEGAL DRUGS?

25 A THE TOXICOLOGY THAT WE PERFORM WE DO A

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 223

1 BLOOD ALCOHOL AND A BLOOD DRUG SCREEN AND OUR BLOOD DRUG
2 SCREEN IS A SCREEN FOR DRUGS OF ABUSE TO INCLUDE OPIATES
3 SUCH AS HEROIN, MORPHINE, BARBITURATES, BENSODIAZEPINES
4 WHICH ARE VALIUM DRUGS, PCP, MARIJUANA AND COCAINE

5 Q DID YOU FIND ANY OF THOSE DRUGS IN THE
6 DECEDENT'S SYSTEM?

7 A MR BENNETT HAD A BLOOD ETHANOL OF 101
8 MILLIGRAMS PER DECILITER WHICH IS ROUGHLY 1 WHEN CONVERTED
9 TO GRAMS PERCENT WHICH IS WHAT IS THE CALCULATION ON A
10 BREATHALYZER AND OUR BLOOD DRUG SCREEN WAS POSITIVE FOR
11 COCAINE DEGRADATION PRODUCT

12 Q ALL RIGHT, WHAT DOES COCAINE DEGRADATION
13 MEAN, PLEASE?

14 A OKAY, COCAINE DEGRADATION WHEN AN
15 INDIVIDUAL USES COCAINE WHETHER IT'S SNORTED OR INJECTED
16 OR, OR SMOKED OR WHATEVER COCAINE IS RAPIDLY BROKEN DOWN
17 FROM PURE COCAINE TO ITS METABOLITE ECGONINE THAT OCCURS
18 IN LESS THAN ONE HOUR AFTER CONSUMPTION OF COCAINE

19 THE ECGONINE IS GRADUALLY BROKEN DOWN TO THE
20 COCAINE DEGRADATION PRODUCT WHICH IS BENSOYLECGONINE WHICH
21 TAKES PLACE OVER A TIME FRAME USUALLY ONE TO THREE DAYS

22 Q OKAY, DO YOU HAVE ANY IDEA WHEN MR BENNETT
23 WOULD HAVE INGESTED COCAINE?

24 A THE ONLY THING I CAN TELL YOU REGARDING THE
25 INGESTION OF COCAINE BY MR BENNETT WOULD HAVE BEEN WITHIN

DR PROCTOR - DIRECT EXAMINATION BY MR. RICHARDSON

224

1 A TIME FRAME OF ONE TO THREE DAYS

2 Q OKAY, SO WITH THAT HE, WHEN YOU TESTED HIM
3 HE WAS NOT UNDER THE OR THE AMOUNT OF COCAINE FOUND WASN'T
4 IN THAT FIRST STAGE WOULD HAVE MEANT ONE TO THREE HOURS?

5 A THERE WAS, THERE WAS NO PURE COCAINE FOUND
6 WITHIN HIS SYSTEM SO IN TERMS OF PURE COCAINE I CAN TELL
7 YOU IT HAD BEEN AT LEAST TWO TO THREE HOURS TIME ELAPSE
8 WITH CERTAINTY BECAUSE IT'S, PURE COCAINE IS BROKEN TO ITS
9 INITIAL DEGRADATION PRODUCT OR INITIAL BREAKDOWN PRODUCT IN
10 APPROXIMATELY ONE HOUR

11 Q OKAY --

12 A AFTER THAT THE RATES OF BREAKDOWN OF
13 COCAINE IT WOULD BE VERY DIFFICULT FOR ME TO TELL YOU THAT
14 IT WAS HALF A DAY, A DAY OR TWO DAYS IT'S JUST, IT'S JUST
15 BEYOND, BEYOND THE SCOPE OF MY TRAINING AND EXPERIENCE TO
16 BE ABLE TO DO THAT

17 Q AND YOU COULDN'T SAY WHETHER OR NOT OR
18 COULD YOU SAY WHETHER OR NOT AT THE TIME OF DEATH MR
19 BENNETT WAS UNDER THE INFLUENCE OF COCAINE?

20 A AT THE TIME OF DEATH EVERYTHING PRETTY MUCH
21 STOPPED THERE IS SOME METABOLISM OF SOME OF THE DRUGS IN
22 THE SYSTEM BUT I CAN ONLY BASE MY CONCLUSIONS ON WHAT I
23 FIND BASED UPON WHEN I DREW THE BLOOD AND THE BLOOD THAT I
24 HAVE JUST SHOWS THE DEGRADATION PRODUCT WAS THERE PURE
25 COCAINE AT THE ACTUAL TIME OF HIS DEATH VERY UNLIKELY

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 225

1 BECAUSE MOST METABOLISM PRETTY MUCH STOPS I, BUT OTHER
2 THAN TO TELL YOU THAT I JUST CANNOT GIVE YOU A SOLID ANSWER
3 THAT I DON'T KNOW

4 Q ALL RIGHT, IT'S MORE PROBABLE THAN NOT THAT
5 HE WOULD NOT HAVE HAD THE, BEEN UNDER THE INFLUENCE OF
6 COCAINE AT THE TIME OF HIS DEATH?

7 A WITHOUT THE PRESENCE OF PURE COCAINE I CAN
8 CERTAINLY TELL YOU THAT IT WAS AT LEAST TWO TO THREE HOURS
9 HAD ELAPSED

10 Q OKAY ---

11 A PROBABLY LONGER BUT I, I CANNOT BE MORE
12 SPECIFIC THAN THAT

13 Q ALL RIGHT, BUT AS FOR THE ALCOHOL THERE WAS
14 SOME ALCOHOL IN HIS SYSTEM?

15 A THERE WAS ALCOHOL IN HIS SYSTEM, YES SIR

16 Q AT THE TIME THAT HE DIED?

17 A THAT'S CORRECT

18 Q OKAY, NOW WITH REGARDS TO YOUR AUTOPSY OF
19 MR BENNETT I WANT TO PASS TO YOU A GROUP OF PHOTOGRAPHS
20 AND I'LL JUST START NUMERICALLY AND ASK YOU IF YOU
21 RECOGNIZE THEM, FIRST OF ALL STATE'S EXHIBIT NUMBER 22 FOR
22 IDENTIFICATION PURPOSES ONLY, DO YOU RECOGNIZE THAT
23 PHOTOGRAPH?

24 A YES, SIR, I DO

25 Q AND, PLEASE, TELL THE JURY WHAT THAT'S A

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON

226

1 PHOTOGRAPH OF?

2 A THE PHOTOGRAPH THAT I AM LOOKING AT IS A
3 PHOTOGRAPH OF A GUNSHOT WOUND OF ENTRANCE TO THIS MAN'S
4 LEFT SIDE AND IN MY REPORT I HAVE SAID AT THE LEFT CHEST,
5 LEFT UPPER ABDOMEN, WHICH BASICALLY IS AT THE LEFT SIDE
6 JUST AT THE ANGLE OF WHERE YOUR RIBS, WHEN YOU RUB YOUR
7 FINGER ACROSS YOUR RIBS FROM YOUR CHEST TO YOUR ABDOMEN,
8 THAT IS AN ENTRANCE WOUND AT THAT SIDE

9 Q ENTRANCE WOUND?

10 A YES, SIR

- 11 Q AND AS FAR AS BEING ABLE TO TESTIFY TO THE
12 JURY OR GIVING THEM AN UNDERSTANDING OF ENTRANCE AND EXIT
13 WOUNDS DO YOU BELIEVE THAT THAT PHOTOGRAPH WOULD ASSIST
14 THEM IN KNOWING MORE ABOUT ENTRANCE AND EXIT WOUNDS?

15 A IT SURE, IT, TO MY TRAINING IT CERTAINLY
16 SHOWS AN ENTRANCE WOUND IT SHOWS, IT ILLUSTRATES A COUPLE
17 OF THINGS IT SHOWS A BEVELING AROUND THE WOUND, INWARD
18 TOWARDS THE BODY WHICH IS SOMEWHAT, IT'S CERTAINLY
19 INDICATIVE OF AN ENTRANCE WOUND BUT IT ALSO SHOWS A LACK OF
20 GUN POWDER AND GUNSHOT RESIDUE THAT WOULD INDICATE THAT THE
21 WOUND WAS AT A DISTANCE GREATER THAN APPROXIMATELY 18
22 INCHES TO TWO FEET

23 Q THANK YOU, DOCTOR --

24 MR RICHARDSON THE STATE WOULD ASK TO MOVE
25 STATE'S EXHIBIT NUMBER 22 INTO EVIDENCE

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 227

1 THE COURT I'LL ---

2 MR WILSON SUBJECT TO MY OBJECTION

3 THE COURT I'LL NOTE YOUR OBJECTION PURSUANT TO
4 OUR CONFERENCE AT THE BAR AND THAT WAS 22, MR RICHARDSON?

5 MR RICHARDSON YES, MA'AM

6 (WHEREUPON, STATE'S EXHIBIT NUMBER 22 ENTERED
7 INTO EVIDENCE)

8 MR RICHARDSON (CONTINUING)

9 Q DR PROCTOR, LET ME ALSO PASS TO YOU WHAT
10 HAS BEEN MARKED AS STATE'S EXHIBIT NUMBER 23, PLEASE LOOK
11 AT THAT AND TELL ME IF YOU RECOGNIZE THAT PHOTOGRAPH?

12 A YES, SIR, THIS IS A PHOTOGRAPH OF AN EXIT
13 WOUND IN THE RIGHT LOWER ABDOMEN SOMEWHAT POSTERIOR AND
14 JUST ABOVE THE ILIAC CREST WHICH IS THE BONY PROMINENCE OF
15 YOUR HIP AND AGAIN IT SHOWS THE SKIN PUSHING OUTWARD AND IS
16 AN EXIT WOUND

17 Q AND WOULD THAT PHOTOGRAPH HELP THE JURY,
18 HELP THEM TO UNDERSTAND YOUR TESTIMONY REGARDING THE EXIT
19 WOUND?

20 A IT WOULD CERTAINLY ILLUSTRATE THE PUSHING
21 OUT OF THE SKIN AT THAT SITE, YES, SIR

22 Q THANK YOU, DOCTOR --

23 MR RICHARDSON YOUR HONOR, WE WOULD MOVE
24 STATE'S EXHIBIT NUMBER 23 INTO EVIDENCE, PLEASE

25 THE COURT I'LL NOTE YOUR OBJECTION, MR

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON

228

1 WILSON

2 MR WILSON THANK YOU, YOUR HONOR

3 THE COURT STATE'S 22 AND 23 INTO EVIDENCE

4 (WHEREUPON, STATE'S EXHIBIT NUMBER 23 ENTERED
5 INTO EVIDENCE)

6 MR RICHARDSON (CONTINUING)

7 Q DR PROCTOR, I ALSO WANT TO PASS TO YOU
8 WHAT HAS BEEN MARKED AS STATE'S EXHIBIT NUMBER 24 PLEASE
9 LOOK AT THAT AND TELL ME IF YOU RECOGNIZE THAT PHOTOGRAPH?

10 A YES, SIR, THIS IS A PHOTOGRAPH OF A WOUND
11 TO THE BASE OF THE MAN'S LEFT HAND ON THE ULNAR OR OUTSIDE
12 ASPECT THIS IS A WOUND THAT I INADVERTENTLY DID NOT
13 DESCRIBE IN MY FINAL AUTOPSY REPORT, WHICH I'VE NOTED IN MY
14 NOTES AND I THINK EVERYONE HAS BEEN INFORMED OF THIS WOUND
15 SITE, IT IS A SUPERFICIAL GRAZING TYPE WOUND ACROSS THE
16 BASE OF THE WRIST

17 MR RICHARDSON AND, YOUR HONOR, THE STATE
18 WOULD MOVE STATE'S EXHIBIT NUMBER 24 INTO EVIDENCE

19 THE COURT NOTE YOUR OBJECTION, MR WILSON

20 MR WILSON THANK YOU, YOUR HONOR

21 THE COURT STATE'S 24 INTO EVIDENCE

22 (WHEREUPON, STATE'S EXHIBIT NUMBER 24 ENTERED
23 INTO EVIDENCE)

24 MR RICHARDSON (CONTINUING)

25 Q AND FINALLY, DR PROCTOR, I PASS TO YOU

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 229

1 WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER 25 AND ASK IF
2 YOU RECOGNIZE THAT PHOTOGRAPH?

3 A YES, SIR, I DO THIS IS A GUNSHOT WOUND OF
4 ENTRANCE IN THE LEFT UPPER BACK AREA ON THE POSTERIOR
5 AXILLARY LINE, GUNSHOT WOUND OF ENTRANCE AGAIN MOST
6 IMPORTANT THING BEING ILLUSTRATED HERE IS THE LACK OF
7 RESIDUE OR GUN POWDER AROUND THE ENTRANCE SITE

8 Q THANK YOU --

9 MR RICHARDSON AND, YOUR HONOR, WE WOULD MOVE
10 STATE'S EXHIBIT NUMBER 25 INTO EVIDENCE ALSO

11 THE COURT I'LL NOTE YOUR SAME OBJECTION, MR
12 WILSON

13 MR WILSON THANK YOU, MA'AM

14 THE COURT STATE'S 25 INTO EVIDENCE

15 (WHEREUPON, STATE'S EXHIBIT NUMBER 25 ENTERED
16 INTO EVIDENCE)

17 MR RICHARDSON (CONTINUING)

18 Q NOW, DR PROCTOR, NOT LIMITED TO THOSE
19 PHOTOGRAPHS DO YOU REMEMBER OR IS IT NOTED IN YOUR REPORT
20 THE NUMBER OF BULLET WOUNDS TO DAVID BENNETT?

21 A OKAY, IN MY REPORT AND BASED ON MY
22 RECOLLECTIONS THERE WERE SAY GUNSHOT WOUND OF ENTRANCE IN
23 THE LEFT UPPER BACK AREA PASSING LEFT TO RIGHT AND INFERIOR
24 AT ABOUT 45 DEGREE ANGLE WITH AN EXIT IN THE RIGHT
25 POSTERIOR BACK ABOVE THE ILIAC CREST

DR. PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON

230

1 Q AND, DR PROCTOR, BEFORE YOU GO TO THE
2 OTHER ONES WOULD YOU, WOULD YOU MIND JUST IF I HAND YOU
3 THIS DOWEL COULD YOU JUST SHOW THE JURY, PLEASE, AND YOU
4 CAN USE ME AS A DUMMY AS TO THE EXIT AND ENTRANCE WOUND?

5 A OKAY, THE, THE, THERE WAS A GUNSHOT WOUND
6 TO THE LEFT BACK AREA COMING IN IN THIS DIRECTION PASSING
7 LEFT TO RIGHT AT 45 DEGREES AND AN EXIT JUST ABOVE THE BELT
8 LINE RIGHT AT THE BONY PROMISE OF THE LEFT, OF THE RIGHT
9 HIP, THAT'S ONE WOUND

10 THERE WAS A SECOND GUNSHOT WOUND THAT ENTERED THE
11 LEFT SIDE JUST BELOW RIGHT, AT THE LEVEL OF THE RIB CAGE
12 PASSING LEFT TO RIGHT AND EMBEDDING IN DEEP SOFT TISSUE OF
13 THE RIGHT SIDE NOW WE RECOVERED THIS PROJECTILE AND
14 TRANSFERRED IT TO THE HORRY CRIME SCENE DIVISION

15 THE WOUND COMING THROUGH THE LEFT SIDE PROBABLY
16 GRAZED THIS MAN'S WRIST AT THE ULNAR AREA WHICH IS THE
17 OUTER PART OF THE WRIST AS IT CAME THROUGH HERE THAT WAS
18 NOT NOTED IN MY FINAL REPORT, IT WAS IN MY NOTES AND IT WAS
19 INADVERTENTLY LEFT OUT

20 THE LAST WOUND WAS A GUNSHOT WOUND SUPERIOR TO
21 INFERIOR APPROXIMATELY, OH, 45, 50 DEGREES HITTING THE
22 INSIDE ASPECT OF THE RIGHT LEG AND EXITING JUST ABOVE THE
23 ANKLE IN THE ACHILLES AREA

24 Q SO THAT LAST WOUND CAME IN AND EXITED BACK
25 HERE AT THE --

DR PROCTOR - DIRECT EXAMINATION BY MR. RICHARDSON 231

1 A PRETTY MUCH ON THE INSIDE, STAYED ON THE
2 INSIDE AND IN AND OUT ON THE INNER ASPECT OF THAT LEG

3 Q IN TOTAL AND AGAIN ASSUMING THAT THE
4 SUPERFICIAL WOUND TO THE LEFT WRIST WAS PART OF THE SAME
5 WOUND THAT LODGED, THAT SAME PROJECTILE THAT LODGED IN HIS
6 RIGHT SIDE HOW MANY IN TOTAL BULLET PATHS, PROJECTILE PATHS
7 DID YOU FIND?

8 A THREE

9 Q THREE?

10 A YES, SIR

11 Q ONE ON THE LEFT, ONE THROUGH HERE AND ONE
12 THROUGH THE BACK?

13 A THAT IS CORRECT

14 Q OUT THE BACK?

15 A YES, SIR

16 Q AND THE PHOTOGRAPHS THAT ARE NOW INTO
17 EVIDENCE WOULD SHOW THE ONE GOING INTO THE BACK, I BELIEVE
18 GOING ---

19 A THOSE PHOTOGRAPHS ILLUSTRATE AN ENTRANCE
20 WOUND IN THE LEFT BACK AND AN EXIT IN THE RIGHT POSTERIOR
21 BACK ABDOMINAL AREA THERE IS ONE THAT SHOWS THE ENTRANCE
22 WOUND ON THE LEFT SIDE AND I THINK ONE SHOWING THE GRAZING
23 WOUND TO THE OUTER ASPECT OF THE LEFT WRIST AREA WE DO
24 NOT HAVE ONE OF THE LOWER LEG

25 Q DR PROCTOR, WHEN YOU WENT THROUGH THAT

DR. PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 232

1 SERIES OF WOUNDS, OF COURSE THE FIRST ONE YOU POINTED OUT
2 WAS THROUGH THE BACK ---

3 A YES, SIR

4 Q --- AND COMING OUT THE BACK, DO YOU DO THAT
5 IN ANY ORDER AS TO WHICH WOUND YOU BELIEVE CAME FIRST,
6 SECOND OR THIRD?

7 A NO, SIR, THESE WOUNDS I, YOU KNOW, I
8 DESCRIBE WOUND NUMBER 1 IS THE ONE IN THE BACK, WOUND
9 NUMBER 2 AS THE ABDOMEN, AND WOUND NUMBER 3 IS THE LEG I
10 DON'T KNOW WHICH WAS ACTUALLY FIRST, WE JUST SORT OF HAVE
11 TO TAKE THEM IN SEQUENCE AND LABEL THEM AS SUCH

12 Q AND OF THOSE WOUNDS, COULD YOU TELL THIS
13 JURY WITHIN A REASONABLE DEGREE OF MEDICAL CERTAINTY, IF ANY
14 OR ALL OF THOSE WOUNDS CAUSED THE DEATH OF DAVID BENNETT?

15 A THERE WERE TWO WOUNDS TO MR BENNETT EITHER
16 OF WHICH WOULD HAVE BEEN FATAL THE WOUND COMING THROUGH
17 HIS BACK WENT THROUGH HIS LEFT LUNG AND HIS STOMACH AND OUT
18 AT THE LOWER RIGHT SIDE A WOUND TO THE LUNG CAN CAUSE
19 EXTENSIVE HEMORRHAGE THE WOUND TO HIS LEFT SIDE TRAVERSED
20 BODY AND PENETRATED HIS DESCENDING AORTA WHICH IS THE MAIN
21 ARTERIAL TRUNK JUST BEFORE IT BIFURCATED AND WENT TO THE
22 LEGS THAT WOUND IN AND OF ITSELF WOULD HAVE BEEN A FATAL
23 WOUND SO THOSE TWO WOUNDS, THE WOUND TO HIS LOWER LEG, NO,
24 IT WOULD NOT

25 Q AND THE WOUND TO HIS HAND NEITHER ONE OF

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 233

1 THOSE ---

2 A THE ONE TO HIS HAND WAS A SUPERFICIAL
3 GRAZING WOUND THAT WOULD HAVE BLED BUT CERTAINLY WOULD NOT
4 HAVE KILLED HIM

5 Q NOW JUST AS YOU SAY YOU CAN'T PINPOINT
6 WHICH GUNSHOT WOUND CAME FIRST SECOND OR THIRD, CAN YOU
7 TELL THIS JURY WITHIN A REASONABLE DEGREE OF MEDICAL
8 CERTAINTY THE POSITION THAT THE BODY, THAT THE DECEDENT,
9 WAS IN WHEN HE GOT SHOT?

10 A I CAN TELL YOU THE ANGLES OF THE BULLET I
11 CANNOT, I CAN TELL YOU THAT IT'S POSSIBLE TO BE IN CERTAIN
12 POSITIONS BUT I CANNOT GIVE YOU AN ABSOLUTE DEFINITY OF WAS
13 HE STANDING, ON HIS KNEES, LAYING DOWN, IT'S VERY DIFFICULT
14 FOR ME TO DO THAT I, YOU KNOW, I COULD TELL YOU THAT,
15 THAT THE ANGLE OF THE BULLET THAT CAME THROUGH THE LEFT
16 BACK HAD TO BE AT A SUPERIOR TO INFERIOR DIRECTION FROM HIS
17 SHOULDER TO HIS ABDOMEN WAS HE ON THE GROUND WHEN THAT
18 HAPPENED? IT'S POSSIBLE WAS HE TURNING TO FLEE OR
19 TURNING HIS BACK AWAY FROM THE ASSAILANT WITH THE GUN
20 THAT'S CERTAINLY POSSIBLE? BUT TO TELL YOU EXACTLY WHICH
21 IT WAS LIKE I SAY IT'S CERTAINLY POSSIBLE BUT I CAN'T GIVE
22 YOU A DEFINITY AS TO EXACTLY WHAT WAS HAPPENING

23 Q WOULD IT BE FAIR TO SAY THAT THERE WAS A
24 HUNDRED OR EVEN A THOUSAND DIFFERENT POSSIBILITIES FOR THE
25 GUNSHOT FROM THE LEFT AND COMING OUT THE RIGHT SIDE?

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 234

1 Q ANY, ANY SCENARIO THAT WOULD PLACE THE BODY
2 AT AN ANGLE FOR THAT PROJECTILE TO PASS SUPERIOR TO
3 INFERIOR THROUGH IS BACK IS POSSIBLE, YES, SIR

4 Q AND YOU CAN'T TELL THIS JURY IF ONE, TWO,
5 OR ANY OF THE SHOTS WAS WHILE DAVID BENNETT WAS ON THE
6 GROUND?

7 A I CAN, I CAN TELL YOU THAT A SHOT TO THE
8 LEG MOST LIKELY WOULD HAVE MADE HIM RAISE HIS LEG OR
9 POSSIBLY FALL BUT WAS THAT THE FIRST SHOT, THE THIRD SHOT I
10 DON'T KNOW OTHER THAN A SHOT LIKE THAT CERTAINLY THE SHOT
11 TO HIS AORTA WOULD HAVE RESULTED IN FAIRLY RAPID LOSS OF
12 CONSCIOUSNESS BUT AGAIN WAS THAT THE FIRST, SECOND I DON'T
13 KNOW

14 THE SHOT TO HIS UPPER BACK WOULD HAVE CERTAINLY
15 CAUSED A FAIRLY RAPID LOSS OF CONSCIOUSNESS DUE TO THE
16 DEGREE OF BLEEDING FROM THE LUNG SO AGAIN IT'S, I CAN'T
17 TELL YOU WHICH CAME FIRST AND AS LONG AS THE BODY
18 APPROXIMATED ANY ANGLE THAT WOULD ALLOW SOMEONE WITH A
19 WEAPON TO FIRE IT IN THOSE ANGLES IT'S CERTAINLY, IT'S
20 CERTAINLY POSSIBLE

21 Q AND I MAY HAVE BEEN OVERWROUGHT WITH THAT
22 BUT IS IT MORE PROBABLE, LET'S STICK WITH THE LEG SHOT, IS
23 IT MORE PROBABLE, LESS PROBABLE, OR IS IT JUST SPECULATION
24 TO SAY THAT HE WAS STANDING WHEN HE WAS SHOT IN THE LEG?

25 A AGAIN OTHER THAN TO SAY THAT IT IS POSSIBLE

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 235

1 THAT'S, THAT'S THE BEST I CAN DO I CAN'T SAY MORE LIKELY
2 THAN NOT I CAN SAY IT IS POSSIBLE THAT HE WAS

3 Q THAT HE MAY HAVE BEEN STANDING HE MAY HAVE
4 BEEN ON THE GROUND WHEN HE GOT SHOT IN THE LEG?

5 A I DON'T KNOW WHICH

6 Q BUT CERTAINLY IF HE HAD BEEN SHOT IN THE
7 LEG IS IT FAIR TO SAY THAT HE WOULD HAVE GIVEN TO THAT LEG?

8 A IF HE HAD BEEN SHOT IN THAT LEG IN ALL
9 LIKELIHOOD, YES, YES, SIR

10 Q ALL RIGHT, AND IF HE HAD GIVEN TO THAT LEG
11 WOULD THAT HAVE CAUSED OR COULD THAT HAVE CAUSED HIM TO
12 LOWER HIMSELF, HIS BODY CLOSER TO THE GROUND?

13 A BEING SHOT IN THE LEG AND KNOWING BASICALLY
14 A RESPONSE TO PAIN THE LEG WAS EITHER PICKED UP OR WITH THE
15 PERSON SHOT LEANING OVER TO GRAB THE LEG OR LEANING WAY
16 FORWARD DOWN ON THE GROUND TO GRAB THE LEG AND EITHER OF
17 THOSE INSTANCES CERTAINLY WOULD HAVE LOWERED A SHOULDER TO
18 ALLOW

19 Q AND IT'S THE SHOT THROUGH, AND AGAIN I
20 UNDERSTAND IT'S SPECULATION ---

21 A UH-HUH

22 Q --- THERE COULD BE A HUNDRED DIFFERENT
23 WAYS, BUT IS THAT SHOT THROUGH THE UPPER BACK EXITING HERE
24 AT THE HIP IS THAT CONSISTENT WITH BEING DOWN LIKE THIS?

25 A IT'S AS SOMEONE LEANS FORWARD AND DOWN IT

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON

236

1 CERTAINLY OPENS UP THE LEFT SIDE, OR THE RIGHT SIDE,
2 DEPENDING ON WHERE THE ASSAILANT IS WITH THE GUN BUT IF THE
3 ASSAILANT WAS IN FRONT OF THE GUY AND THE GUY LOWERED HIS
4 LEFT SHOULDER IN ANY WAY, SHAPE OR FORM, TO ALLOW THAT 45
5 DEGREES IT CERTAINLY, YOU KNOW, IT CERTAINLY IS POSSIBLE
6 THAT THAT'S THE DIRECTION OF THE BULLET

7 Q AND AGAIN IF YOU CAN'T ANSWER THAT'S FINE,
8 I MEAN WE HAVEN'T TALKED ABOUT THIS ---

9 A UH-HUH

10 Q --- BUT IF THE ASSAILANT WAS SLIGHTLY TO
11 --THE RIGHT OF AND NOW THE DECEDENT, DAVID BENNETT ---|

12 A UH-HUH

13 Q --- AND HE WAS SHOT AT AN ANGLE FROM RIGHT
14 TO LEFT IS THAT CONSISTENT WITH BEING SHOT IN THE UPPER
15 LEFT SHOULDER WHILE YOU'RE BENDING DOWN AND COMING OUT HERE
16 AT THE HIP OR IF YOU CAN'T SAY YOU JUST CAN'T SAY?

17 A WELL I CAN TELL YOU IF THE ASSAILANT IS IN
18 FRONT TO THE RIGHT THAT, YOU KNOW, THAT GIVES YOU SEVERAL
19 SCENARIOS THE, THE, THE VICTIM GRABBING HIS ANKLE AND
20 LEANING FORWARD, THE VICTIM TURNING TO FLEE CERTAINLY, YOU
21 KNOW, IF YOU, IF YOU, IF I CAME AT YOU AND YOU TURNED TO
22 FLEE YOU WOULD CROUCH AND TURN SO THAT AUTOMATICALLY
23 LOWERS, TOO TURNING TO GET AWAY, TURNING TO FACE AWAY ANY
24 OF THOSE SCENARIOS WOULD CERTAINLY FIT

25 Q YES, SIR, BUT WE CAN'T BE SURE OF ANY OF

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 237

1 THAT?

2 A I CANNOT, I CAN ONLY SAY POSSIBLE

3 Q CAN WE BE PRETTY SURE, THOUGH, TO A
4 REASONABLE DEGREE OF MEDICAL CERTAINTY THAT THE ASSAILANT
5 WAS AT LEAST TWO FOOT AWAY FROM THE VICTIM WHEN HE SHOT HIM
6 THROUGH THE, THROUGH THE RIBS?

7 A BASED UPON MY EVALUATION OF THE WOUNDS ON
8 THE DECEASED THERE WAS NO RESIDUE AND NO STIPPLING
9 RESIDUE BEING THE SMOKE AND SOOT COMING OUT THE END OF THE
10 BARREL AND STIPPLING BEING THE HOT POWDER COMING OUT OF THE
11 BARREL AND STIPPLING ACTUALLY BURNS THE SKIN THERE WAS
12 NONE OF THAT ON THE DECEASED AND WITH A LACK OF THAT THAT
13 WOULD INDICATE TO ME BASED ON THE WEAPONS THAT'S BEING USED
14 THAT IT HAD TO BE FROM A DISTANCE AT LEAST 24 INCHES OR
15 GREATER I CAN'T, I CAN'T BE, IT COULD, MAY HAVE POSSIBLY
16 BEEN ACROSS THE ROOM BUT CERTAINLY NO CLOSER THAN
17 APPROXIMATELY 24 INCHES

18 Q SO AT LEAST THAT FAR AWAY?

19 A AT LEAST, AT LEAST TWO FEET AWAY, YES, SIR

20 MR RICHARDSON THE COURT'S INDULGENCE JUST ONE
21 MOMENT, PLEASE

22 THE COURT YES, SIR

23 MR RICHARDSON (CONTINUING)

24 Q DR PROCTOR, WOULD, AND IF IT DOESN'T
25 MATTER, PLEASE, JUST TELL ME BUT WOULD IT MAKE A DIFFERENCE

DR. PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 238

1 WITH REGARDS TO ANGLES THE HEIGHT OF THE SUSPECT, HEIGHT OF
2 THE VICTIM?

3 A WELL IT WOULD, IT WOULD CERTAINLY MAKE A
4 DIFFERENCE IF THEY STANDING ON LEVEL GROUND FACING EACH
5 OTHER WITH THE DECEDENT STANDING IN FRONT OF THE VICTIM
6 THE VICTIM WOULD, EXCUSE ME, THE ASSAILANT, THE ASSAILANT
7 WOULD CERTAINLY BE A LITTLE BIT TALLER WITH A STRAIGHT
8 POINTING GUN, HOWEVER, IF THE VICTIM TURNED OR WAS
9 CROUCHING TO FLEE OR WAS FALLING DOWN THEN AGAIN THAT
10 PROBABLY WOULDN'T REALLY MATTER

- 11 - Q- YES, SIR --

12 A SO AGAIN I CAN'T, IT CERTAINLY IS PART OF
13 THE SCENARIO, YES, IF THE, IF THE DECEASED IS STANDING, BUT
14 THE DECEASED IS CROUCHING OR TURNING AGAIN THAT CHANGES SO
15 I JUST DON'T KNOW

16 Q AND I DO, IF IT'S POSSIBLE I WANT YOU TO,
17 PLEASE, STEP DOWN ONE MORE TIME AND JUST SO THE JURY WILL
18 KNOW THESE INDIVIDUALS, I'M GOING TO PUBLISH THEM TO THE
19 JURY AND JUST HAVE YOU TO POINT OUT WHAT SIDE IT IS AND
20 WHETHER OR NOT IT'S AN ENTRANCE OR EXIT AND I'LL ASK YOU A
21 FEW QUESTIONS ABOUT THAT, IF IT'S ALL RIGHT?

22 MR RICHARDSON IS THAT OKAY FOR HIM TO STEP
23 DOWN?

24 THE COURT YOU MAY STEP DOWN

25 (THE WITNESS COMPLIES)

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 239

1 A THANK YOU

2 MR RICHARDSON I DON'T KNOW IF YA'LL CAN SEE

3 IT

4 MR WILSON PERMISSION TO MOVE SO I CAN SEE?

5 THE COURT YES, MR WILSON

6 MR RICHARDSON (CONTINUING)

7 Q AND I WANT TO GIVE YOU FIRST STATE'S

8 EXHIBIT NUMBER 22 ALREADY IN EVIDENCE, PLEASE, IS THAT AN

9 ENTRANCE OR AN EXIT WOUND, JUST TELL THE JURY?

10 A THIS, THIS PHOTOGRAPH IS PHOTOGRAPH TAKEN

11 FROM THE LEFT SIDE THIS IS CHEST AREA HERE THIS IS AN

12 ENTRANCE WOUND ON THE LEFT SIDE AT WHAT WE CALL THE CHEST

13 ABDOMINAL AREA RIGHT WHERE YOUR RIBS ARE THAT IS AN

14 ENTRANCE WOUND SHOWING NO STIPPLING, NO RESIDUE IT'S SORT

15 OF A VERY CIRCULAR WOUND STRAIGHT IN

16 Q AND YOU CAN TELL AT LEAST IF THE BODY WERE

17 HERE THE HEAD'S UP HERE?

18 A THAT'S CORRECT

19 Q YOU COULD TELL THAT THAT PORTION IS PUSHED

20 IN?

21 A IT'S HARD TO SEE ON THIS PHOTOGRAPH BUT IT

22 IS PUSHED IN IT'S A NICE CIRCULAR RIM OF WHAT WE CALL

23 ABRASION COLLAR AND IT'S VERY CIRCULAR UNIFORM WHERE BULLET

24 GOING IN

25 Q AND THAT PARTICULAR ENTRANCE DID YOU FIND

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 240

1 AN EXIT WOUND FOR THAT ONE?

2 A I DID NOT

3 Q ALL RIGHT, AND THAT IS THE PROJECTILE THAT
4 YOU RETRIEVED AND GAVE OVER TO THE Horry COUNTY POLICE?

5 A YES, SIR

6 Q ALL RIGHT, NOW THIS IS WHAT I HAND YOU
7 STATE'S EXHIBIT NUMBER 23, PLEASE?

8 A THIS IS A PHOTOGRAPH OF THE MAN'S RIGHT
9 SIDE AND AS YOU CAN THERE IS A EXIT WOUND HERE IF YOU
10 LOOK VERY CLOSELY AT THE PICTURE YOU CAN SEE THE SKIN SORT
11 OF BEVELING OUT WHICH INDICATES THE BULLET IS COMING OUT
12 AND THIS IS AT THE RIGHT, RIGHT SIDE, POSTERIOR SIDE JUST
13 ABOVE THE ILIAC CREST

14 Q AND THAT PARTICULAR PROJECTILE WHERE DID
15 YOU, TELL THE JURY WHERE THAT CAME IN AT?

16 A THAT WAS AN EXIT WOUND FROM THE ENTRANCE
17 SITE ON THE LEFT UPPER SHOULDER WHICH WOULD BE BACK HERE

18 Q OKAY, SO THAT WOULD COME ACROSS AND OUT THE
19 BACK?

20 A THAT'S CORRECT

21 Q DR PROCTOR, THIS IS STATE'S EXHIBIT NUMBER
22 24, PLEASE?

23 A THIS IS THE GENTLEMAN'S LEFT HAND YOU CAN
24 BARELY SEE THE THUMB HERE SORT OF SITTING LIKE THIS THIS
25 IS A GRAZING WOUND ACROSS THE ULNAR ASPECT OF THE WRIST

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 241

1 WHICH IS VERY SUPERFICIAL THAT IS CERTAINLY A NON-FATAL
2 WOUND

3 Q AND FINALLY THIS IS STATE'S EXHIBIT NUMBER
4 25, PLEASE?

5 A OKAY, THIS AGAIN IS SHOWING THE ENTRANCE IN
6 THE LEFT UPPER BACK AREA AROUND THE SHOULDER BLADE ENTRANCE
7 WOUND PASSING LEFT TO RIGHT AND INFERIOR WITH THE EXIT
8 WOUND HERE

9 Q THANK YOU --

10 MR RICHARDSON YOUR HONOR, I WOULD LIKE TO
11 PUBLISH ONE OTHER PHOTOGRAPH ACTUALLY, IS 7 AND 8 ALREADY
12 IN EVIDENCE?

13 THE COURT NO, NOT ACCORDING TO THE COURT

14 MR RICHARDSON THANK YOU, YOUR HONOR, THESE
15 APPARENTLY WERE USED FOR ---

16 THE COURT IF COUNSEL WILL APPROACH

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
18 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
19 OF THE JURY AND THE COURT REPORTER)

20 MR RICHARDSON (CONTINUING)

21 Q DR PROCTOR, I DO WANT TO PASS TO YOU
22 WHAT'S BEEN PREMARKED AS STATE'S EXHIBIT NUMBER 7 PLEASE
23 TELL ME IF YOU RECOGNIZE THAT?

24 A THIS IS A PHOTOGRAPH OF A, OF THE LOWER LEG
25 OF THIS GENTLEMAN WITH AN ENTRANCE WOUND ON THE ANTERIOR

DR PROCTOR - DIRECT EXAMINATION BY MR RICHARDSON 242

1 MEDIAL ASPECT OF THE LOWER LEFT

2 Q IS THAT INSIDE OF THE LOWER LEG?

3 A THAT'S THE INSIDE OF THE LOWER LEG, YES,
4 SIR

5 Q AND, PLEASE, STATE'S EXHIBIT NUMBER 8 DO
6 YOU RECOGNIZE THAT?

7 A THIS IS A PHOTOGRAPH OF AN EXIT WOUND JUST
8 BELOW THE ANKLE ON THE MEDIAL SIDE OF THE LEG ADJACENT TO
9 THE ACHILLES TENDON

10 Q AND DID YOU REPORT THESE TWO, THESE WERE
11 TAKEN AT THE AUTOPSY? - - - - -

12 A YES, SIR, THOSE, ALL OF THE PHOTOGRAPHS
13 FROM THE AUTOPSY WERE TAKEN BY THE Horry COUNTY CRIME SCENE
14 OFFICERS

15 Q DO THEY FAIRLY AND ACCURATELY DEPICT MR
16 BENNETT OR AT LEAST HIS LEG AND HEEL AS THEY WOULD HAVE
17 APPEARED AT THE AUTOPSY ON THE 12TH OF NOVEMBER?

18 A YES, SIR

19 MR RICHARDSON YOUR HONOR, THE STATE WOULD
20 OFFER STATE'S EXHIBIT NUMBER 7 AND 8 INTO EVIDENCE

21 THE COURT MR WILSON?

22 MR WILSON THE SAME OBJECTIONS I MADE
23 EARLIER, YOUR HONOR

24 THE COURT I'LL NOTE YOUR OBJECTION

25 MR WILSON THANK YOU, YOUR HONOR

DR PROCTOR - CROSS EXAMINATION BY MR. WILSON

243

1 THE COURT STATE'S 7 AND 8 INTO EVIDENCE OVER
2 DEFENDANT'S OBJECTION

3 (WHEREUPON, STATE'S EXHIBITS NUMBERS 7 AND 8
4 ENTERED INTO EVIDENCE)

5 MR RICHARDSON THE COURT'S INDULGENCE

6 THE COURT YES, SIR

7 Q (CONTINUING) DR PROCTOR, ONE OTHER
8 QUESTION DID YOU NOTE IN YOUR AUTOPSY REPORT THE SIZE,
9 THE HEIGHT OF THE VICTIM?

10 A MR BENNETT MEASURED 69 INCHES IN LENGTH
11 AND WE ESTIMATED HIS WEIGHT AT APPROXIMATELY 225 POUNDS
12 THEREABOUTS

13 Q TWO HUNDRED TWENTY-FIVE, AND, AND 69, IS
14 THAT ABOUT FIVE EIGHT, FIVE NINE?

15 A THAT'S FIVE FEET NINE INCHES, YES, SIR

16 MR RICHARDSON YOUR HONOR, I HAVE NO FURTHER
17 QUESTIONS, DR PROCTOR, IF YOU'D ANSWER ANY QUESTIONS MR
18 WILSON HAS

19 A YES, SIR

20 THE COURT MR WILSON?

21 MR WILSON THANK YOU, YOUR HONOR

22 CROSS EXAMINATION

23 BY MR WILSON

24 Q DR PROCTOR, LET ME I GUESS A GOOD PLACE TO
25 START IS WE AGREE THAT HIS BLOOD ALCOHOL WAS ABOVE THE

DR PROCTOR - CROSS EXAMINATION BY MR WILSON

244

1 LEGAL LIMIT, AT LEAST AS IN SOUTH CAROLINA WHICH IS NOW I
2 THINK 8?

3 A POINT 8, 08, YES, SIR

4 Q AND HIS WAS AT LEAST 10?

5 A CORRECT

6 Q OR 01 I THINK IS WHAT IT WAS?

7 A YES, SIR

8 Q ALL RIGHT, AND YOU SAID THAT THERE WAS A
9 DERIVATIVE OR AT LEAST I THINK GOOD WORD WAS WAS THAT THERE
10 WAS SOME BENZOLECGONINE?

11 A THAT'S CORRECT, IT'S OFTEN TIMES CALLED
12 COCAINE, THERE'S COCAINE BYPRODUCT AND THEN DEGRADATION
13 PRODUCT

14 Q OKAY, AND AND, AND, AND DEGRADATION SIMPLY
15 MEANS THAT ONCE YOU TAKE IT, ONCE YOU INGEST IT JUST LIKE
16 WITH ALCOHOL ONCE YOU INGEST IT THEN IT STARTS TO CHANGE
17 FORMS TO SOME DEGREE?

18 A THAT IS CORRECT

19 Q ALL RIGHT, AND WHAT YOU'RE TELLING US IS IS
20 THAT THE ONLY THING THAT YOU CAN REALLY TELL US IS THAT
21 CERTAINLY WITHIN THREE HOURS, ONE TO THREE HOURS HE HADN'T
22 INGESTED COCAINE PRIOR TO HIS DEATH?

23 A PRIOR, PRIOR TO HIS DEATH I CAN TELL YOU
24 FACTUALLY THAT THERE WAS NO COCAINE IN HIS SYSTEM BECAUSE
25 IF HE HAD HAD PURE COCAINE WITHIN ONE TO POSSIBLY TWO HOURS

DR PROCTOR - CROSS EXAMINATION BY MR WILSON

245

1 PRIOR TO HIS DEATH THE PURE COCAINE WOULD HAVE BEEN TOTALLY
2 METABOLIZED TO THE BREAK DOWN PRODUCT, YES, SIR

3 Q OKAY, SO WHAT WE'RE, WHAT WE KNOW IS THAT
4 AT LEAST TWO HOURS PRIOR TO HIS DEATH THAT HE DIDN'T HAVE
5 COCAINE BUT WE DON'T KNOW ABOUT DURING THE HALF HOURS
6 BEFORE OR THREE HOURS AND TEN MINUTES BEFORE?

7 A CORRECT

8 Q WE DON'T KNOW?

9 A CORRECT

10 Q AND NOW DO WE KNOW THE ACTUAL TIME OF
11 DEATH?

12 A I HAVE A TIME OF DEATH OF 7 14 P M
13 NOVEMBER 10TH WHICH WAS GIVEN TO ME BY THE CORONER AND THE
14 INVESTIGATIVE AUTHORITIES

15 Q OKAY, SEVEN WHAT NOW?

16 A SEVEN, IT SAYS 7 14 SO APPROXIMATELY 7 15
17 P M

18 Q ALL RIGHT, SO ASSUMING THE TIME OF DEATH IS
19 7 14 P M AND IF THAT'S THE CORRECT TIME THEN WE'RE
20 ASSUMING THREE HOURS BEFORE THAT WHICH WOULD PUT US 4 00 OR
21 SO, IS THAT ---

22 A THAT'S CORRECT

23 Q --- A FAIR STATEMENT?

24 A YES, SIR,

25 Q SO HE COULD HAVE INGESTED COCAINE SOMETIMES

DR PROCTOR - CROSS EXAMINATION BY MR WILSON

246

1 AROUND 4 00 AND STILL BE WITHIN THAT LIMIT?

2 A YES, SIR

3 Q NOW THE ALCOHOL, NOW ALCOHOL STARTS TO
4 DISSIPATE ALSO, DOES IT NOT?

5 A THAT IS CORRECT

6 Q WELL LET ME BACK UP, LET'S GO BACK TO
7 COCAINE FOR A MINUTE

8 A UH-HUH

9 Q ONCE THE COCAINE IS IN YOUR SYSTEM AND IT
10 STARTS TO BREAK DOWN IS THERE ANY, IS THERE ANY WAY TO KNOW
11 THE QUANTITY, THAT IS THE AMOUNT OF COCAINE THAT YOU
12 INGESTED WITHIN THAT THREE HOUR PERIOD ---

13 A THE ---

14 Q --- OR PRIOR TO THAT THREE HOUR PERIOD?

15 A IF, IF WE GET A SPECIMEN WITH PURE COCAINE
16 WE CAN GET A QUANTITATIVE LEVEL QUANTITATIVE LEVELS OF
17 COCAINE IT'S HARD TO DETERMINE THE ACTUAL AMOUNT OF POWDER
18 THAT THAT REPRESENTS, I DON'T KNOW BUT WITHOUT HAVING
19 PURE COCAINE IN THE SYSTEM IT'S HARD TO GIVE YOU A
20 QUANTITATIVE LEVEL WE CAN GET LEVELS OF METABOLITE BUT
21 IT'S JUST THAT, IT'S A METABOLITE SO WE DON'T KNOW THE
22 EXACT AMOUNT OF PURE COCAINE, NO, SIR

23 Q OKAY, SO, SO WHAT YOU'RE TELLING US THEN IS
24 THAT WE KNOW THAT AT SOME POINT CERTAINLY AFTER THREE HOURS
25 OR MORE THAT HE INGESTED COCAINE, WE DON'T KNOW THE

DR. PROCTOR - CROSS EXAMINATION BY MR WILSON

247

1 QUANTITY THAT HE INGESTED?

2 A NO, SIR, BASED ON MY EXAMINATION I CANNOT
3 TELL YOU, DON'T KNOW

4 Q WHAT EFFECT, WHAT EFFECT DOES THE
5 INGESTATION OF COCAINE HAVE ON AN INDIVIDUAL IN THE FIRST
6 INSTANCE?

7 A COCAINE USUALLY IS, IS A SORT OF A MIND
8 ALTERING DRUG IT CREATES A EUPHORIA DIFFERENT PEOPLE
9 REACT DIFFERENT WAYS PEOPLE WHO ARE UNACCUSTOMED TO THE
10 USE OF COCAINE IT WILL CERTAINLY GIVE THEM A VERY RAPID
11 HIGH OR THE BETTER WAY, THE BEST WAY FOR ME TO DESCRIBE IT
12 IS PROBABLY A DRUNKENNESS TYPE FEELING IT MAY LAST A
13 LONGER PERIOD OF TIME FOR SOMEONE WHO DOESN'T USE IT MUCH
14 OR BE A VERY MORE INTENSE REACTION THAN SOMEONE WHO DOES
15 USE A LOT OF IT BUT IT, IT CERTAINLY INCREASES THE HEART
16 RATE AND GIVES, GIVES A EUPHORIA IT'S DESCRIBED AS A
17 EUPHORIA

18 Q NOW DO WE KNOW, AND WE KNOW YOU SAID 7 14
19 IS THE TIME OF DEATH, DO WE KNOW WHAT TIME THE ALTERCATION
20 TOOK PLACE?

21 A I DO NOT, NO, SIR

22 Q SO WE DON'T KNOW IF THE ALTERCATION TOOK
23 PLACE PRIOR TO 4 15 OR 4 13 OR WHATEVER THAT MAGIC TIME
24 WOULD BE?

25 A MR WILSON, I CANNOT TESTIFY AS TO WHAT

DR PROCTOR - CROSS EXAMINATION BY MR WILSON

248

1 TIME THAT TOOK PLACE CAUSE I DO NOT KNOW

2 Q ALL RIGHT, BUT YOU ARE AWARE THAT HE WAS
3 TAKEN TO THE HOSPITAL AND THAT, ARE YOU AWARE AS TO WHETHER
4 OR NOT HE WAS ALIVE ONCE HE ARRIVED AT THE HOSPITAL?

5 A NO, SIR

6 Q NO, SIR, YOU ARE NOT AWARE?

7 A I WAS TOLD THAT HE WAS, THE HISTORY, THAT I
8 HAD WHEN I DID THE AUTOPSY WAS THAT HE WAS SHOT MULTIPLE
9 TIMES IN FRONT OF A LOCAL ESTABLISHMENT AND THAT HE WAS
10 PRONOUNCED DEAD AT APPROXIMATELY 7 14 P M

11 Q WHERE?

12 A I WAS NOT TOLD THAT INFORMATION

13 Q OKAY, SO YOU DIDN'T, YOU WEREN'T AWARE THAT
14 HE WAS TAKEN TO THE HOSPITAL?

15 A I CAN TELL YOU FROM THE PICTURES IT LOOKS
16 HE HAD EKG TAPE ON HIM BUT I DON'T, BUT AGAIN THAT MANY
17 TIMES IS PLACED THERE BY EMS PERSONNEL TO SEE IF THERE IS A
18 HEART RATE OR WHAT SO TO TELL YOU, NO, I DON'T KNOW WHERE
19 HE WAS TAKEN

20 Q THE OTHER THING LET ME ASK YOU IS IF HE WAS
21 GIVEN TREATMENT AT THE HOSPITAL ONCE HE ARRIVED THERE WOULD
22 THAT IN ANY WAY EITHER CHANGE THE ALCOHOL AND/OR DRUGS IN
23 HIS SYSTEM?

24 A TREATMENT TO --

25 Q TO SAVE HIS LIFE?

DR PROCTOR - CROSS EXAMINATION BY MR. WILSON

249

1 A TREATMENT TO SAVE HIS LIFE CERTAINLY WITH
2 THE INFUSION OF LOTS OF LIQUIDS, BLOOD COMPONENTS AND
3 PRODUCT THAT WAY WOULD CERTAINLY DILUTE AN ALCOHOL
4 COCAINE, PURE COCAINE IS EITHER THERE OR IT'S NOT SO I
5 WOULD, I WOULD, I WOULD VENTURE, CERTAINLY I DON'T PRACTICE
6 CLINICAL MEDICINE, IT WOULD HARD FOR ME TO GIVE YOU AN
7 ABSOLUTE, BUT I WOULD VENTURE THAT THE ALCOHOL WOULD BE
8 DILUTED BY MASSIVE TRANSFUSION COCAINE WE, YOU KNOW, WE
9 TEST FOR COCAINE, IT'S EITHER THERE OR IT'S NOT

10 Q ALL RIGHT, AND, AND, AND AT THIS POINT WE
11 DON'T KNOW WHETHER OR NOT, WE DON'T KNOW WHAT WAS DONE AT
12 THE HOSPITAL SO WE DON'T HAVE THAT INFORMATION?

13 A NO, SIR, I DO NOT KNOW WHAT WAS DONE

14 Q NOW LET'S TALK FOR A MINUTE I GUESS ABOUT
15 THE ANGLES OF THE BULLETS?

16 A YES, SIR

17 Q AND, AND LET'S, LET'S TAKE ONE SCENARIO
18 THAT BEING THAT IF MR , IF MR DEWBERRY HAD BEEN SHOT, MR
19 BENNETT HAD BEEN SHOT IN THE LEG, IF HE WAS CRAWLING ON
20 HANDS AND KNEES TOWARDS THE DOOR THIS WAY ---

21 A UH-HUH

22 Q --- AND THE PERPETRATOR WAS STANDING TO HIS
23 RIGHT WITH A GUN SHOOTING HIM IS THERE ANY WAY FOR HIM TO
24 HAVE BEEN SHOT IN THE LEFT SIDE AND IN THE LEFT BACK
25 SHOULDER AT THE ANGLE THAT YOU FOUND?

DR PROCTOR - CROSS EXAMINATION BY MR. WILSON

250

1 A WITH THE PERPETRATOR IN FRONT OF AND THE
2 MAN CRAWLING TOWARDS HIM THERE'S CERTAINLY AN ANGLE THAT
3 COULD HAVE GONE FROM LEFT BACK TO THE RIGHT NOW THE
4 SECOND SHOT THE, IF HE WAS CRAWLING I WOULD VENTURE THAT
5 THE VICTIM WOULD HAVE HAD TO AFTER THAT SHOT ROLL FURTHER
6 ONTO THE GROUND EXPOSING HIS LEFT SIDE TO HAVE BEEN SHOT AT
7 A MORE DOWNWARD ANGLE TO MAKE IT GO 180 DEGREES

8 Q ALL RIGHT, NOW AS I RECALL YOUR TESTIMONY
9 EARLIER THE SHOT IN THE BACK OF THE SHOULDER ---

10 A YES, SIR

11 Q --- WAS JUST BELOW THE SHOULDER BLADE,
12 CORRECT? -

13 A IT'S IN THE POSTERIOR AXILLARY LINE, I CAN
14 GIVE YOU THE DISTANCE FROM THE TOP OF THE HEAD BUT IT WAS -
15 --

16 Q I DON'T NEED THOSE TERMS

17 A OKAY, IT WAS IN THE UPPER BACK AROUND THE
18 SHOULDER BLADE AREA JUST BELOW IT, JUST OUTSIDE OF IT SO IT
19 MISSED THE SHOULDER BLADE

20 Q OKAY, JUST MISSED THE SHOULDER BLADE?

21 A UH-HUH

22 Q AND IT WENT DOWNWARD?

23 A YES, SIR

24 Q AND ACROSS?

25 A UH-HUH, THAT'S CORRECT

DR PROCTOR - CROSS EXAMINATION BY MR WILSON

251

1 Q ALL RIGHT, AND HOW IN THE, HOW, AND IF, IF
2 SOMEONE IS STANDING TO HIS RIGHT AND THEY'RE RIGHT HANDED
3 AND THEY'RE FIRING A SHOT AND HE'S CRAWLING IN FRONT OF IT
4 ---

5 A OKAY ---

6 Q --- HOW, HOW IS THAT THAT BULLET CAN ENTER
7 HIS LEFT SHOULDER AT A DOWNWARD ANGLE TOWARD THE RIGHT?

8 A NO IF, THE, THE ASSAILANT WOULD HAVE TO
9 BE STANDING, IF THE VICTIM IS FACING THE ASSAILANT TO
10 RECEIVE THAT TYPE WOUND THE ASSAILANT WOULD HAVE TO BE TO
11 THE VICTIM'S LEFT SHOOTING LEFT TO RIGHT THROUGH THE
12 VICTIM

13 Q THAT'S CORRECT, THERE IS PHYSICALLY NO WAY
14 THAT THE PERPETRATOR, THE SHOOTER, COULD HAVE BEEN TO THE
15 RIGHT IF HE'S ON ALL FOURS AND HE'S CRAWLING TOWARDS THE
16 DOOR IT'S PHYSICALLY IMPOSSIBLE TO HAVE THAT SHOT ENTER THE
17 LEFT SIDE AT A DOWNWARD ANGLE TOWARDS THE BACK?

18 A THE ONLY, THE ONLY WAY THAT COULD HAPPEN IS
19 IF THE VICTIM, AS HE IS CRAWLING TOWARDS THE DOOR, TURNS
20 AWAY, YOU KNOW, EXPOSES HIS LEFT SIDE TO THE ASSAILANT ON
21 HIS RIGHT SIDE THAT WOULD BE ---

22 Q WELL ---

23 A USING THAT SCENARIO, THE SCENARIO YOU'VE
24 GIVEN ME THAT WOULD BE ABOUT THE ONLY WAY IT COULD HAPPEN
25 BUT, BUT WITH AN ASSAILANT ON THE RIGHT OF THE VICTIM, NO,

DR PROCTOR - CROSS EXAMINATION BY MR WILSON

252

1 IT WOULD BE MOST DIFFICULT TO ACHIEVE THOSE ANGLES, YES,
2 SIR, BE, I, I DON'T THINK YOU COULD

3 Q ALL RIGHT, WELL THAT'S MY QUESTION ---

4 A YEAH, HE COULD NOT

5 Q --- CAUSE I THINK THIS IS A REALLY, REALLY
6 VERY IMPORTANT ---

7 A OKAY

8 Q --- AND SO I WANT TO BE CLEAR ABOUT IT ---

9 A UH-HUH

10 Q --- IF, CAUSE YOU, YOU INDICATED THAT THERE
11 MAY BE A WAY THAT THAT COULD HAVE HAPPENED AND, AND I WANT
12 TO BE CLEAR AS TO WHETHER OR NOT THERE IS EVEN THE
13 POSSIBILITY THAT IT COULD HAPPEN AND THAT'S WHAT I'M ASKING
14 YOU IF HE'S STANDING, IF THIS ASSAILANT IS STANDING TO
15 THE RIGHT AND HE'S SHOOTING FROM HIS RIGHT HAND ---

16 A UH-HUH

17 Q --- AND THE VICTIM IS ON HIS FOURS CRAWLING
18 TOWARDS THE DOOR AND HE'S ACROSS FROM HIM TO HIS RIGHT ON
19 HIS RIGHT HOW IS IT THAT THAT WOUND ---

20 A OKAY

21 Q --- COULD ENTER FROM THE LEFT SHOULDER AT A
22 DOWNWARD ANGLE TOWARDS HIS BACK?

23 A OKAY, IF THE, IF THE VICTIM IS TO THE RIGHT
24 OF THE ASSAILANT HE WOULD NOT, HE, HE WOULDN'T BE ABLE TO
25 ACHIEVE THOSE ANGLES

DR PROCTOR - CROSS EXAMINATION BY MR WILSON

253

1 Q COULD NOT HAVE?

2 A NO, SIR, NO, NOT IF HE'S TO THE RIGHT

3 Q IF HE'S TO THE RIGHT?

4 A RIGHT, IF HE IS TO, IF THE VICTIM IS TO THE
5 RIGHT, IF I AM THE ASSAILANT AND YOU'RE THE VICTIM AND YOU
6 ARE TO MY RIGHT ON THIS SIDE I CANNOT SHOOT LEFT TO RIGHT
7 AND DOWN LIKE THIS I'D BE, UNLESS I'M STANDING DIRECTLY
8 OVER YOU IN SOME FASHION TO YOUR RIGHT, BUT, NO

9 Q LET'S TALK ABOUT ANOTHER SCENARIO, TAKE THE
10 SHOT THAT'S IN THE, THE LEFT SHOULDER?

11 A YES, SIR

12 Q AND LET'S SAY THAT THE TWO ARE FACING EACH
13 OTHER AND THE ASSAILANT IS SWINGING TO HIT HIM HIS SHOULDER
14 THEN, HIS LEFT SHOULDER WOULD BE EXPOSED FOR THAT BULLET,
15 WOULD THAT BE A FAIR STATEMENT?

16 A YES, SIR

17 Q AND THAT THAT BULLET COULD THEN BE AT THAT
18 ANGLE?

19 A ABSOLUTELY

20 Q THE OTHER THING IS IF HE'S SWINGING AND IF
21 HE DOES THIS THEN HIS LEFT SIDE IS ALSO EXPOSED FOR THE
22 BULLET?

23 A YES, SIR

24 Q AND BOTH OF THOSE WOULD BE CONSISTENT IF
25 THE TWO WERE FACING EACH OTHER AND IF HE'S SWINGING THAT

DR PROCTOR - CROSS EXAMINATION BY MR WILSON

254

1 STICK TO HIT HIM, THE ASSAILANT?

2 A YES, SIR

3 Q NOW WE DON'T KNOW WHICH SHOT WAS FIRED
4 FIRST, CORRECT?

5 A THAT'S CORRECT

6 Q SO WE DON'T KNOW IF THE SHOT IN THE FOOT
7 WAS FIRST OR IF IT WAS LAST OR IF IT WAS SECOND. OR IF IT
8 WAS SOMEWHERE IN BETWEEN?

9 A NO SIR, I CANNOT TELL YOU

10 Q ALL RIGHT, NOW IF, AND I KNOW WE'RE DOING A
11 LOT OF IFS HERE BUT YOU'RE THE-EXPERT SO WE HAVE TO ASK
12 YOU?

13 A OKAY

14 Q IF THE BULLET THAT, THAT ENTERS THE, THE
15 FOOT WAS THAT SHOT FIRED FROM BEHIND THE VICTIM OR IN FRONT
16 OF THE VICTIM?

17 A BASED UPON THE ANGLES AND THE DIRECTION OF
18 THE BULLET MAINTAINING IT'S DIRECTION SUPERIOR TO INFERIOR
19 ALL ON THE MEDIAL SIDE OR THE INSIDE OF THE FOOT THAT WOUND
20 TO ME WOULD HAVE BEEN FIRED FROM IN FRONT OF THE VICTIM

21 Q IS THERE ANY CONCEIVABLE WAY THAT YOU CAN
22 THINK OF THAT IF THE VICTIM WAS SHOT FROM BEHIND AS HE WAS
23 FLEEING THAT THAT SHOT COULD, COULD, COULD COME OUT THROUGH
24 THE BACK OF HIS HEEL?

25 A I DON'T KNOW OF A SCENARIO IF THE MAN IS

DR PROCTOR - CROSS EXAMINATION BY MR WILSON

255

1 IN THE ACT OF FLEEING AND TURNING TO RUN I DO NOT HAVE A
2 SCENARIO FOR THAT, NO, SIR

3 Q NOW ONE OTHER THING YOU SAID THAT YOU
4 DIDN'T FIND ANY STIPPLING AROUND ANY OF THE WOUNDS, IS THAT
5 FAIR?

6 A YES, SIR

7 Q AND WHAT THAT WOULD MEAN IS THAT IF A GUN
8 IS FIRED WITHIN 18 INCHES OR SO YOU WOULD EXPECT TO SEE
9 SOOT AND MAYBE POWDER BURNS AROUND THE WOUND ITSELF?

10 A YES, SIR

11 Q AND BECAUSE YOU DIDN'T SEE THAT THAT TO YOU
12 WOULD MEAN THAT THEY WERE AT LEAST 18 INCHES, OR AT LEAST
13 THE BARREL OF THE GUN WAS AT LEAST 18 INCHES FROM THE
14 VICTIM AT THE TIME THE GUN WAS DISCHARGED?

15 A THAT IS CORRECT, YES, SIR

16 Q NOW WOULD YOU THEN EXPECT TO FIND POWDER,
17 GUN POWDER, ON THE DEFENDANT'S, ON THE VICTIM'S HAND?

18 A THERE, I WOULD EXPECT, I WOULD, I DON'T DO
19 INVESTIGATION I PRACTICE CLINICAL FORENSICS FROM THE
20 INVESTIGATIVE STANDPOINT BUT ANYONE FIRING A WEAPON USUALLY
21 WILL HAVE GUNSHOT RESIDUE ABOUT THE HANDS UNLESS, YOU KNOW,
22 UNLESS THEY'VE TRIED TO CLEAN IT OFF OR STUFF LIKE THAT
23 BUT I THINK IN THE USUAL COURSE OF THE INVESTIGATION THE
24 RESIDUE TESTS WOULD MOST OF THE TIME SHOW EVIDENCE OF
25 RESIDUE

DR. PROCTOR - REDIRECT EXAMINATION BY MR RICHARDSON 256

1 Q WHAT ABOUT FOR THE VICTIM, THE PERSON WHO
2 IS BEING SHOT IF, IF THE SHOT IS FIRED FROM MORE THAN 18
3 INCHES AWAY, WOULD YOU EXPECT NECESSARILY TO FIND POWDER ON
4 THE HANDS OF THAT VICTIM?

5 A I THINK IT WOULD BE A LOT LESS LIKELY TO
6 FIND IT IN TERMS OF DO I KNOW WHETHER OR NOT YOU WOULD I,
7 I, I DON'T THINK YOU WOULD BUT I, AGAIN I DON'T DO THOSE
8 TESTS SO IT WOULD BE HARD FOR ME TO GIVE YOU A ABSOLUTE
9 DEFINITIVE ANSWER

10 Q WHEN YOU RECEIVED THE BODY OF MR BENNETT
11 IN THIS PARTICULAR CASE WERE THE HANDS BAGGED FOR A
12 PARAFFIN TEST OR GSR TEST, GUNSHOT RESIDUE TEST?

13 A I DID NOT DESCRIBE THEM AS BEING BAGGED, I
14 DO NOT RECOLLECT I DON'T THINK THAT THEY WERE

15 THE COURT BEAR WITH ME JUST ONE SECOND,
16 PLEASE, MA'AM

17 THE COURT CERTAINLY

18 MR WILSON NO OTHER QUESTIONS, DOCTOR, THANK
19 YOU SO MUCH

20 A YES, SIR

21 MR WILSON THANK YOU, YOUR HONOR

22 THE COURT MR RICHARDSON?

23 MR RICHARDSON YES, MA'AM, JUST A COUPLE OF
24 QUESTIONS

25 REDIRECT EXAMINATION

DR PROCTOR - REDIRECT EXAMINATION BY MR RICHARDSON 257

1 BY MR RICHARDSON

2 Q DR PROCTOR, IN THE SCENARIO THAT MR
3 WILSON GAVE YOU TO OPEN UP THIS LEFT SIDE WOULD YOU EXPECT
4 TO SEE A SWING LIKE THIS FROM SOMEONE RIGHT HANDED OR LEFT
5 HANDED?

6 A WELL AGAIN TO OPEN UP THAT LEFT SIDE IF THE
7 MAN WAS LEFT HANDED AND SWUNG AROUND AND HAD EITHER HIT OR
8 MISSED THE ASSAILANT THAT WOULD OPEN UP HIS LEFT SIDE

9 AGAIN IF YOU WERE RIGHT HANDED AND SWUNG THIS WAY
10 AND TURNED BEFORE HE SWUNG IT HIS LEFT SIDE WOULD BE OPEN
11 BEFORE HE SWUNG IN A RIGHT HANDED FASHION

12 Q SO RIGHT HANDED YOU WOULD SWING THIS WAY?

13 A YES, SIR, AND SO EITHER RIGHT HANDED OR
14 LEFT HANDED IS A POSSIBLE SCENARIO CAUSE ANY TURN, WHETHER
15 HE IS SWUNG AND HIT OR MISSED THE ASSAILANT AGAIN, SEE MY
16 RIGHT SIDE? OR IF HE COCKS THE BAT LIKE A BASEBALL PLAYER
17 AND SWINGS RIGHT TO LEFT AND HITS OR MISSES, YOU KNOW
18 WELL HE COCKS THE BAT AND COMES BACK, IF HE MISSES THIS WAY
19 IT DOESN'T EXPOSE IT IF HE COCKS THE BAT THIS WAY TO
20 SWING AT HIM IT OPENS IT UP SO HE'S GOT HIS LEFT SIDE
21 EXPOSED EITHER AS A RIGHT HANDED OR A LEFT HANDED BATTER
22 BECAUSE ONCE HE'S SWUNG LEFT HANDED AND MISSED AND ONE HE'S
23 COCKED IT FROM RIGHT HANDED WAY TO SWING AT HIM THE LEFT
24 SIDE IS SITTING WIDE UP BOTH TIMES

25 Q WOULD YOU, AND AGAIN IF YOU WERE LIKE THIS

DR. PROCTOR - REDIRECT EXAMINATION BY MR RICHARDSON 258

1 WOULD YOU, WOULD IT BE MORE LIKELY OR LESS LIKELY OR MAKE
2 NO DIFFERENCE TO HAVE THE EXIT WOUND BE AT THE OTHER
3 SHOULDER?

4 A WELL MAKE THAT, WHEN YOU MAKE THAT TURN
5 YOU'RE ACTUALLY DIPPING JUST A LITTLE BIT SO THAT ANGLE
6 OPENS IT WIDE OPEN TO COME DOWN AT A SLIGHT ANGLE MOST
7 BATTERS, MOST BATTERS, PEOPLE SHINING A PROJECTILE WHEN
8 THEY TURN TO GET FORCE THEY COCK IT DOWN A LITTLE BIT SO
9 THAT GIVES YOU AN ANGLE

10 Q WOULD YOU EXPECT IT TO COME RIGHT DOWN HERE
11 AT THE HIP?

12 A IT CERTAINLY, ONCE IT, ONCE IT STARTS
13 PASSING THROUGH RIBS AND THAT AREA IT CAN DEFLECT AND IT
14 CERTAINLY CAN, YES, SIR

15 Q IT CAN BOUNCE AROUND AND AGAIN THERE'S IF
16 I'M READING YOUR EARLIER TESTIMONY THERE'S A THOUSAND
17 DIFFERENT WAYS AND ANGLES?

18 A AGAIN WE, YOU, YOU'VE BROUGHT UP MANY
19 ANGLES AS HAS MR WILSON AND, AND, AND THEY HAVE BEEN A LOT
20 OF IFS AND IT'S VERY HARD FOR ME AS AN EXPERT TO SIT UP
21 HERE AND TELL YOU, NO, NOT THIS ONE BUT, YES, THIS ONE BUT
22 WITH ALL OF THE IFS THAT ARE BEING THROWN OUT THE, THE
23 POSSIBILITIES THAT YOU HAVE THROWN OUT AS WELL AS THOSE
24 THAT MR WILSON HAVE THROWN OUT ALL ARE CERTAINLY POSSIBLE,
25 IT, BECAUSE YOU'VE BOTH GIVEN ILLUSTRATIONS WHERE IT HAS

DR PROCTOR - REDIRECT EXAMINATION BY MR RICHARDSON 259

1 OPENED UP THAT LEFT SIDE FOR THE ANGLES TO OCCUR AS THEY
2 HAVE AND IT'S JUST WHICH ONE I DON'T KNOW ARE THEY ALL
3 POSSIBLE, YES, SIR

4 Q AT THE END OF THE DAY THERE WERE THREE
5 SHOTS ONE IN THE BACK TO THE DECEDENT?

6 A AT THE END OF THE DAY THREE GUNSHOTS, ONE
7 IN THE LEFT BACK, ONE IN THE LEFT SIDE AT THE CHEST
8 ABDOMINAL JUNCTION, AND ONE IN THE RIGHT MEDIAL LEG BELOW
9 THE KNEE DOWN NEAR THE ANKLE, YES, SIR

10 Q AND NO QUESTION BUT THAT HE DIED AS A
11 RESULT OF ONE OF THE SHOTS THAT ENTERED THROUGH THE, THE
12 TORSO?

13 A THE CAUSE OF DEATH IN THIS GENTLEMAN WAS
14 MASSIVE HEMORRHAGE FROM ONE OR BOTH OF THE TWO GUNSHOTS TO
15 HIS CHEST AND ABDOMEN OR HIS BACK AND ABDOMEN

16 Q AND IT'S FAIR TO SAY THAT THERE'S NO WAY TO
17 TELL WHETHER OR NOT HE WAS STANDING OR ON THE GROUND WHEN
18 HE WAS SHOT?

19 A I CANNOT SIT HERE AND TELL YOU THAT HE WAS
20 STANDING OR ON THE GROUND AGAIN WE'VE, WE'VE GONE THROUGH
21 SCENARIOS WHERE HE COULD HAVE BEEN BOTH WAYS NO, SIR, I
22 CANNOT TELL YOU

23 MR RICHARDSON I BELIEVE THAT'S ALL I HAVE,

24 DR PROCTOR

25 THE COURT MR WILSON?

DR. PROCTOR - REDIRECT EXAMINATION BY MR RICHARDSON 260

1 MR WILSON NOTHING FURTHER, YOUR HONOR

2 THE COURT MAY THIS WITNESS EXCUSED?

3 MR RICHARDSON YES, THANK YOU, YOUR HONOR

4 THE COURT DR PROCTOR, YOU MAY STEP DOWN AND

5 YOU MAY BE EXCUSED FROM THE COURTROOM

6 A THANK YOU, YOUR HONOR

7 THE COURT THANK YOU, MR RICHARDSON, CALL YOUR

8 NEXT WITNESS

9 MR RICHARDSON YOUR HONOR, IF WE COULD HAVE

10 JUST A FEW MOMENTS MIGHT BE A GOOD TIME TO TAKE A BREAK

11 THE COURT MR RICHARDSON, MR WILSON,

12 APPROACH?

13 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
14 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
15 OF THE JURY AND THE COURT REPORTER)

16 THE COURT LADIES AND GENTLEMEN OF THE JURY,
17 NOW WOULD BE A WONDERFUL TIME FOR US TO TAKE OUR AFTERNOON
18 BREAK PLEASE DO NOT BEGIN YOUR DELIBERATIONS PLEASE DO
19 NOT DISCUSS THIS MATTER AMONGST YOURSELVES WE'LL TAKE A
20 10 MINUTE BREAK, MS GLORIA

21 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
22 3 07 P M)

23 THE COURT THANK YOU, PLEASE BE SEATED MR
24 RICHARDSON, I NOTICED THAT THE QUE HAS PUNCTURED THE
25 PLASTIC BAG IF YOU OR SOMEONE IN YOUR OFFICE COULD FIX

DR PROCTOR - REDIRECT EXAMINATION BY MR RICHARDSON 261

1 THAT I DON'T WANT ANYONE TO GET INJURED ON THE, ESPECIALLY
2 WHEN WE SEND IT BACK TO THE JURY, IF YOU COULD TAKE CARE OF
3 THAT MATTER BEFORE, BEFORE THE NEXT WITNESS

4 MR RICHARDSON THAT WOULD BE OKAY JUST TO TAKE
5 THE STICKER OFF AND PUT IT ON THE NEXT BAG IF THEY REBAGGED
6 IT?

7 THE COURT I THINK BASED UPON THE FACT THAT
8 THAT'S PUNCTURED A BAG DO YA'LL HAVE SOMETHING ELSE YOU
9 COULD PUT IT IN?

10 MR RICHARDSON NOT READILY AVAILABLE, YOUR
11 HONOR I'D HAVE TO TAKE IT DOWN ---

12 MADAM CLERK COULD WE TAPE THE END?

13 THE COURT OKAY, IF WE COULD DO SOMETHING, I
14 JUST DON'T ANYBODY IN THE, ONCE IT'S BACK IN THE JURY ROOM
15 ANYBODY TO CUT THEMSELVES WE'LL BE IN RECESS FOR 10
16 MINUTES

17 (WHEREUPON, A RECESS WAS TAKEN)

18 THE COURT ANYTHING BEFORE WE BRING THE JURY
19 IN?

20 MR RICHARDSON YES, MA'AM, YOUR HONOR

21 THE COURT DO YOU, DO YOU HAVE A MOTION ---

22 MR RICHARDSON I BELIEVE ---

23 THE COURT --- OR DO YOU HAVE ANOTHER WITNESS?

24 MR RICHARDSON YES, MA'AM, I BELIEVE THAT WE
25 ARE, THE STATE IS GOING TO REST WITH THAT

DEFENSE MOTION FOR DIRECTED VERDICT ON MURDER

262

1 THE COURT ALL RIGHT, AND, MR WILSON, IN
2 RESPONSE?

3 MR WILSON YOUR HONOR, AT THIS TIME I WOULD
4 MAKE A MOTION FOR A DIRECTED VERDICT AS TO THE CHARGE OF
5 MURDER IN THIS PARTICULAR CASE

6 I THINK THAT WHILE THERE IS, IS DIRECT TESTIMONY
7 OR AT LEAST EYEWITNESS TESTIMONY WHO INDICATE THAT, THAT THE
8 SHOOTING WAS UNPROVOKED I THINK THAT THE OVERWHELMING
9 EVIDENCE IS THAT IN THIS PARTICULAR CASE THAT, I THINK THE
10 TWO WITNESSES WHO TESTIFIED ABOUT THE SHOOTING ITSELF
11 ACTUALLY WERE INCONSISTENT WITH EACH OTHER IN THEIR
12 TESTIMONY AND ABOUT WHAT HAPPENED AND HOW THE SHOOTING
13 OCCURRED, AND I DON'T THINK THERE'S ANY QUESTION ABOUT THE
14 FACT THAT THE SHOOTING OCCURRED BUT, BUT HOW IT OCCURRED SO
15 THAT, THAT SELF DEFENSE WOULD BE A REAL ISSUE AND BECAUSE
16 OF THE WAY THEY TESTIFIED I WOULD SUBMIT TO THE COURT THAT,
17 THAT AND, AND THEIR CREDIBILITY OR LACK THEREOF IN THIS
18 CASE, THAT THE COURT SHOULD GRANT A DIRECTED VERDICT TO THE
19 DEFENDANT ON THE OFFENSE OF MURDER IN THAT LEGALLY THAT
20 MALICE HAS NOT BEEN MADE OUT BY THE STATE IN THIS
21 PARTICULAR CASE

22 THE COURT YOUR RESPONSE, MR RICHARDSON?

23 MR RICHARDSON YOUR HONOR, I AGREE THAT THERE
24 WERE SOME INCONSISTENCIES BUT NEITHER WERE INCONSISTENT TO
25 THE POINT THAT MR DAVID BENNETT DID ANYTHING PROVOCATIVE

DEFENSE MOTION FOR DIRECTED VERDICT ON MURDER

263

1 BEING SHOT NO ONE SAID THAT HE EVER LIFTED THIS OR TRIED
2 TO USE THIS POOL STICK AS A WEAPON UNTIL HE HAD ALREADY
3 BEEN SHOT ONCE AND BY THE OTHER WITNESS TWICE WELL,
4 EXCUSE ME, ONE WITNESS SAID HE DIDN'T EVEN HAVE A POOL
5 STICK, BUT IT WAS EITHER AFTER THE FIRST TIME HE WAS SHOT
6 OR THE SECOND TIME THAT HE LIFTED THE POOL STICK AND
7 APPARENTLY FROM THAT HE NEVER STRUCK THE DEFENDANT I
8 BELIEVE THAT THERE'S MORE THAN ENOUGH AND MALICE, OF
9 COURSE, YOUR HONOR KNOWS CAN BE EXPRESSED OR IMPLIED

10 CERTAINLY THE ONE WITNESS SAID THAT BEFORE MR
11 JACOBS SHOT HIM HE ASKED HIM DO YOU NOT THINK I'LL FILL YOU
12 FULL OF HOLES SECONDLY, BY THE FACT THAT MR JACOBS HAD
13 TO CHAMBER A ROUND CERTAINLY WOULD APPEAR THAT THERE WAS
14 MALICE AND MALICE CAN BE FORMED AT THE LAST SECOND, LAST
15 INSTANT SO I BELIEVE THAT THERE'S MORE THAN ENOUGH EVEN
16 WITH CERTAIN INCONSISTENCIES ABOUT WHERE WHICH SHOT HIT HIM
17 FIRST AND WHERE HE WAS AT WHEN THE SHOTS TOOK PLACE

18 THE COURT MR WILSON, CONSIDERING THE EVIDENCE
19 IN THE LIGHT MOST FAVORABLE TO THE STATE THE COURT IS
20 RESPECTFULLY DECLINING YOUR MOTION FOR A DIRECTED VERDICT

21 BASED UPON TESTIMONY GIVEN BY THE FIRST WITNESS,
22 MR MCCULLOUGH, I BELIEVE IT WAS ON YOUR CROSS THE
23 STATEMENT THAT WAS MADE BY OR TO THE DEFENDANT WAS "DON'T
24 YOU START THAT BULLSHIT" AND THEN THE STATEMENT BY MR
25 GILLINS THAT THE DEFENDANT STATED "I'LL SHOW YOU WHAT I CAN

COURT TO DEFENDANT

264

1 DO" CLEARLY IN THE LIGHT MOST FAVORABLE TO THE STATE WOULD
2 INDICATE THAT THE DEFENDANT DID ACT WITH MALICE AND THAT
3 SHOULD BE PRESENTED TO THE JURY I DECLINE YOUR MOTION FOR
4 A DIRECTED VERDICT

5 MR WILSON THANK YOU, YOUR HONOR

6 THE COURT HAS YOUR, ARE YOU PLANNING ON
7 CALLING ANY WITNESSES? IS YOUR CLIENT GOING TO TESTIFY,
8 MR WILSON?

9 MR WILSON YOUR HONOR, THE ANSWER IS, NO, WE
10 WILL NOT CALL WITNESSES, WE'LL REST AT THIS TIME I WOULD
11 ASK THAT THE COURT COUNSEL WITH THE DEFENDANT ABOUT HIS
12 RIGHT TO TESTIFY IN THIS CASE

13 THE COURT CERTAINLY MS LEWIS, CAN YOU PLACE
14 THE DEFENDANT UNDER OATH

15 EXAMINATION OF DEFENDANT JACOBS REGARDING RIGHTS
16 BY THE COURT

17 THE COURT MR JENKINS, AT THIS TIME THE
18 COURT'S GOING TO EXPLAIN TO YOU CERTAIN RIGHTS THAT YOU
19 HAVE IF YOU DO NOT UNDERSTAND ANYTHING THAT I SAY TO YOU
20 JUST, PLEASE, LET ME KNOW OR YOU MAY INQUIRE OF YOUR
21 ATTORNEY, DO YOU UNDERSTAND?

22 THE DEFENDANT YES, MA'AM

23 THE COURT WE HAVE NOW REACHED THE STAGE OF THE
24 TRIAL WHERE YOU MAY PRESENT YOUR DEFENSE YOU HAVE THE
25 RIGHT TO CLAIM THE PROTECTIONS PROVIDED TO YOU BY THE FIFTH

COURT TO DEFENDANT

265

1 AMENDMENT OF UNITED STATES CONSTITUTION PART OF THAT
2 INDICATES TO YOU, PART OF YOUR PROTECTION IS THAT NO PERSON
3 SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS
4 AGAINST HIMSELF

5 THIS MEANS THAT YOU CANNOT BE REQUIRED TO TESTIFY
6 IN THIS CASE YOU HAVE THE RIGHT TO TESTIFY IN YOUR OWN
7 BEHALF, HOWEVER NO ONE CAN MAKE YOU TESTIFY THIS IS A
8 PERSONAL RIGHT AND NO ONE CAN WAIVE THIS RIGHT EXCEPT FOR
9 YOU

10 IF YOU DECIDE THAT YOU ARE GOING TO TESTIFY YOU
11 WILL BE SUBJECT TO THE SAME RULES THAT GOVERN OTHER
12 WITNESSES AND YOU MAY EXAMINE AND CROSS EXAMINE ON ANY
13 RELEVANT ISSUE IN THIS CASE

14 IN ADDITION IF YOU HAVE ANY CONVICTIONS INVOLVING
15 DISHONESTY OR FALSE STATEMENTS OR FOR CRIMES PUNISHABLE BY
16 IMPRISONMENT FOR MORE THAN 1 YEAR AND THIS COURT DETERMINES
17 THAT THE PROBATIVE VALUE OF ADMITTING THOSE, THAT EVIDENCE
18 OUTWEIGHS ITS PREJUDICIAL AFFECT THE SOLICITOR WILL BE ABLE
19 TO INTRODUCE YOUR RECORD TO ATTACK YOUR CREDIBILITY

20 IF YOU DO DECIDE THAT YOU ARE GOING TO TESTIFY
21 THE DECISION ON YOUR PART MUST BE FREELY, VOLUNTARILY,
22 KNOWINGLY MADE WITH KNOWLEDGE OF THE PROTECTIONS GIVEN TO
23 YOU BY THE FIFTH AMENDMENT AND THE CONSEQUENCES OF YOUR
24 DECISION TO TESTIFY

25 IF YOU DECIDE NOT TO TESTIFY, MR JACOBS, I WILL

COURT TO DEFENDANT

266

1 INSTRUCT THE JURORS THAT THEY CANNOT GIVE THE FACT THAT YOU
2 DID NOT TESTIFY ANY CONSIDERATION WHATSOEVER AND THAT THERE
3 IS TO BE ABSOLUTELY NO PREJUDICE TO YOU BECAUSE YOU DID NOT
4 TESTIFY IT IS LEFT ENTIRELY UP TO YOU WHETHER OR NOT YOU
5 TESTIFY YOU MAY TALK WITH YOUR ATTORNEY, YOUR FAMILY OR
6 YOUR FRIENDS, OR ANYONE ELSE BUT THE FINAL DECISION IS
7 YOURS AND YOURS ALONE DO YOU UNDERSTAND, MR JACOBS
8 WHAT I HAVE JUST EXPLAINED TO YOU?

9 THE DEFENDANT YES, MA'AM

10 THE COURT HAVE YOU HAD AMPLE TIME TO DISCUSS
11 THIS MATTER WITH FAMILY, FRIENDS, AND YOUR ATTORNEY?

12 HAVE YOU DISCUSSED SPECIFICALLY WITH YOUR
13 ATTORNEY WHETHER OR NOT YOU SHOULD TESTIFY?

14 THE DEFENDANT I'M NOT GOING TO TESTIFY

15 THE COURT DO YOU NEED TO SPEAK WITH MR WILSON
16 TO DISCUSS THIS MATTER ANY FURTHER?

17 THE DEFENDANT NO, MA'AM

18 THE COURT AND YOU AT THIS POINT WHAT IS YOUR
19 DECISION CONCERNING YOUR RIGHT TO TESTIFY AND YOUR DECISION
20 WHETHER OR NOT TO TESTIFY IN THIS TRIAL?

21 THE DEFENDANT I DO NOT WANT TO TESTIFY

22 THE COURT YOU DO NOT WISH TO TESTIFY?

23 THE DEFENDANT NO, MA'AM

24 THE COURT IS THAT YOUR UNDERSTANDING, MR
25 WILSON?

STATE MOTION NOT TO CHARGE SELF-DEFENSE

267

1 MR WILSON YES, MA'AM, IT IS

2 THE COURT THANK YOU, MR JACOBS, YOU MAY BE
3 SEATED MR WILSON, SINCE YOUR CLIENT HAS NOT, HAS CHOSEN
4 NOT TO TESTIFY DO YOU HAVE AN ANNOUNCEMENT CONCERNING THIS
5 CASE, ARE YOU RESTING AT THIS POINT?

6 MR WILSON WE REST AT THIS TIME, YOUR HONOR

7 THE COURT ALL RIGHT

8 MR RICHARDSON AND, YOUR HONOR, I'M SORRY --

9 THE COURT YES?

10 MR RICHARDSON BEFORE YOU BRING THE JURY IN I
11 DO HAVE A MOTION I'D LIKE TO DISCUSS SOMETHING ABOUT A
12 POTENTIAL CHARGE ---

13 THE COURT OKAY

14 MR RICHARDSON --- THAT MAY VERY WELL IMPACT
15 THE DEFENDANT'S TESTIMONY WHETHER OR NOT HE WANTS TO
16 TESTIFY AND IT IS THIS I DON'T BELIEVE THAT THEY'VE PUT
17 UP ENOUGH TO GET A CHARGE ON SELF DEFENSE WITHOUT THE
18 DEFENDANT TAKING THE STAND AND I, I'D JUST LIKE TO BE HEARD
19 ON THAT NOW OR AT SOME TIME BEFORE --

20 THE COURT OKAY, HERE'S JUST FOR SCHEDULING
21 PURPOSES MY INCLINATION IS TO RELEASE THE JURY SINCE BOTH
22 SIDES HAVE RESTED AND WE'LL TAKE UP YOUR MOTION, MR
23 RICHARDSON, AND PREPARE THE CHARGES, BEGIN IN THE MORNING
24 WITH CLOSING AND THE COURT'S INSTRUCTIONS

25 MR RICHARDSON YOUR HONOR, IF, IF I MAY DOES

STATE MOTION NOT TO CHARGE SELF-DEFENSE

268

1 THAT MEAN THEN THAT THE JURY WILL COME OUT WE WILL BOTH
2 REST AND THEN THEY WILL GO BACK?

3 THE COURT I WILL RELEASE THEM FOR THE DAY I
4 WILL ALLOW BOTH SIDES TO FORMALLY REST AND THEN I WILL
5 RELEASE THEM FOR THE DAY MY CONCERN IS THAT IT'S THE
6 LATENESS OF THE HOUR I DO NOT WANT TO INSTRUCT AND CHARGE
7 AFTER 4 P M

8 MR RICHARDSON MY ONLY CONCERN, AND I MAY BE
9 WELL OFF BASE WITH THIS, BUT IF, IF I CLOSE NOW IT'S GOING
10 TO BE NO PROBLEM AT ALL BUT IF MR WILSON CLOSES ON THE
11 RECORD-AND IF YOUR HONOR WERE TO GRANT THE STATE'S MOTION
12 AND NOT CHARGE SELF DEFENSE IT WOULD CERTAINLY PREJUDICE
13 MR WILSON'S CLIENT BECAUSE ALL HE WOULD NEED TO DO REALLY
14 IS TAKE THE STAND AND SAY HE THOUGHT HE WAS IN IMMINENT
15 PERIL AND IF I'M OFF BASE IN THAT FINE AND WELL

16 THE GIST OF MY MOTION IS THEY HAVEN'T PUT UP ANY
17 SORT OF EVEN A SCINTILLA OF EVIDENCE SAYING THAT THEIR
18 CLIENT ACTED IN SELF DEFENSE

19 I'VE GOT SEVERAL CASE LAWS THAT AT SOME POINT I'D
20 LIKE TO GO OVER WITH YOU AND MR WILSON

21 THE COURT MR WILSON, YOUR RESPONSE?

22 MR WILSON MY RESPONSE, YOUR HONOR, IS WE'RE
23 ENTITLED TO RELY FIRST OF ALL THE BURDEN OF PROOF IS UPON
24 THE STATE NOT UPON THE DEFENDANT EVEN TO PROVE SELF
25 DEFENSE IT'S THEIR BURDEN TO DISPROVE SELF DEFENSE, THAT

STATE MOTION NOT TO CHARGE SELF-DEFENSE

269

1 SELF DEFENSE IS NOT AN ISSUE, AND IN ADDITION TO THAT THERE
2 IS CIRCUMSTANTIAL EVIDENCE IN THE, IN THE RECORD OF THIS
3 CASE, SPECIFICALLY FROM DR PROCTOR ABOUT WHAT COULD HAVE
4 HAPPENED IN TERMS OF THIS PARTICULAR EVENT WITH THE
5 SWINGING OF THE STICK AND HOW HE WAS SHOT, THE ANGLE OF THE
6 SHOT

7 THERE WAS TESTIMONY FROM THE WITNESSES ABOUT THE
8 FACT THAT HE CAME OUTSIDE WITH THE STICK, YOU KNOW, TO
9 CONFRONT THE DEFENDANT WHEN YOU LOOK AT THOSE FACTS AND
10 SINCE IT'S HIS MOTION IN THE LIGHT MOST FAVORABLE TO THE
11 DEFENDANT CERTAINLY THERE IS AMPLE EVIDENCE THAT
12 CIRCUMSTANTIAL EVIDENCE OF SELF DEFENSE IN THIS RECORD

13 NOW THERE'S NO DIRECT TESTIMONY FROM THE, FROM
14 THE DEFENDANT BUT THAT'S NOT REQUIRED

15 MR RICHARDSON AND I AGREE I DON'T BELIEVE
16 IT'S REQUIRED BUT DR PROCTOR SAID THAT WAS ONE OF A
17 THOUSAND DIFFERENT WAYS I DON'T THAT THAT COMES TO THE
18 DEGREE OF, OF GETTING TO THAT EVIDENCE ENOUGH TO PUT IN
19 SELF DEFENSE AND I CERTAINLY AGREE THAT THEY DON'T HAVE TO
20 PROVE SELF DEFENSE

21 IT USED TO BE THEY HAD TO PROVE IT TO A
22 PREPONDERANCE OF THE EVIDENCE, NOW THEY JUST HAVE SHOW A
23 REASONABLE DOUBT AND I DON'T BELIEVE THAT THEY HAVE DONE
24 THAT AND, AND WHAT MR WILSON IS TALKING ABOUT WOULD
25 CERTAINLY LET ANY MURDER, ANY SIMPLE ASSAULT, ANY OF THOSE

STATE MOTION NOT TO CHARGE SELF-DEFENSE

270

1 CHARGES COME UP JUST BY THE FACT THAT THERE WAS AN ASSAULT
2 INVOLVED GET THIS CHARGE OF SELF DEFENSE AND THE, AND THE
3 LAW IS CLEAR AGAINST THAT

4 FOR THEM TO BE ABLE TO SHOW SELF DEFENSE THEY
5 HAVE TO, THERE'S FOUR LEGS TO IT AND IF THE STATE IS ABLE
6 TO REMOVE EVEN ONE OF THOSE LEGS THEN THE WHOLE, TABLE
7 FALLS

8 FOR EXAMPLE, YOUR HONOR, ONE OF THEM IS THAT HE
9 HAS A DUTY TO RETREAT UNLESS HE'S IN HIS HOME AND THE
10 EVIDENCE FROM THE STAND FROM EVERY PERSON THAT TESTIFIED
11 SAID THAT HE WENT TO HIS CAR WHILE DAVID BENNETT WAS STILL
12 IN THE PLACE CERTAINLY HE COULD HAVE LEFT AT THAT TIME
13 BUT HE WENT BACK INTO THE SHOP, CAME BACK OUT AND HE ARMED
14 HIMSELF

15 AGAIN EVEN THE SECOND PART IS TO BE ABLE TO USE
16 THE SELF DEFENSE YOU'VE GOT TO BE ABLE TO, TO BE WITHOUT
17 FAULT IN BRINGING IT ON

18 CERTAINLY, ONE, MR MCCULLOUGH SAID THAT AT SOME
19 POINT DAVID DID PICK UP THAT STICK TO HIT THE DEFENDANT BUT
20 IF HE HAD ALREADY BEEN SHOT LIKE MR MCCULLOUGH SAID HE'S
21 AT FAULT IN BRINGING IT ON AND HE CAN'T SHOOT ME AND THEN
22 WHEN I TRY TO HIT BACK HIM SAY, WHOA, WHOA, WHOA, SELF
23 DEFENSE WELL HE WAS AT FAULT IN BRINGING IT ON, EVEN BY
24 BRINGING OUT A WEAPON

25 THERE'S A BRAND NEW CASE ON THAT AND LET ME, LET

STATE MOTION NOT TO CHARGE SELF-DEFENSE

271

1 ME JUST PASS IT UP I DON'T KNOW IF YOU WANT TO GO INTO A
2 FULL BLOWN HEARING BUT I'VE CASE LAW PREPARED FOR YOU AND
3 MR WILSON ON ALL OF THESE

4 THE COURT MR WILSON, LET ME, LET ME ADDRESS
5 IT THIS WAY PERHAPS I DIDN'T MAKE MYSELF TOTALLY CLEAR
6 YOU'VE RESTED, CORRECT?

7 MR WILSON I HAVE

8 THE COURT AND SO WE ARE NOW ADDRESSING
9 SCHEDULING MATTERS ONLY AS FAR AS WHEN WE'RE GOING TO DO
10 CLOSING AND WHAT THE COURT IS GOING TO INCLUDE IN HER
11 INSTRUCTIONS, IS THAT YOUR UNDERSTANDING?

12 MR WILSON THAT'S CORRECT

13 THE COURT IS THAT YOUR UNDERSTANDING, MR
14 RICHARDSON?

15 MR RICHARDSON YES, MA'AM

16 THE COURT SO WHAT I HEAR YOU SAY NOW, MR
17 RICHARDSON, IS HOW MR WILSON IS GOING TO PROCEED WITH HIS
18 CASE I THINK NOW WE'RE ONLY DECIDING WHETHER OR NOT WE
19 ARE GOING TO INSTRUCT AND CLOSE TODAY?

20 MR RICHARDSON YES, MA'AM

21 THE COURT IS THERE ANYTHING ABOUT WHAT THE
22 COURT MAY PUT IN HER INSTRUCTIONS THAT'S GOING TO AFFECT
23 THE WAY YOU HANDLE THE RESTING OF YOUR CASE?

24 MR WILSON YES, MA'AM I, WELL I DON'T KNOW
25 I MEAN, I DON'T KNOW THAT IT WILL AFFECT WHAT I DO I,

STATE MOTION NOT TO CHARGE SELF-DEFENSE

272

1 OBVIOUSLY I AM CONCERNED ABOUT HIS MOTION AND, AND WE DON'T
2 HAVE A RULING FROM THE COURT ON IT AND SO I WANT TO BE
3 HEARD ON THAT OBVIOUSLY

4 THE COURT ALL RIGHT, OKAY, COUNSEL, APPROACH
5 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
6 RECORD OUT OF THE COURT REPORTER) -

7 THE COURT HOW MUCH TIME DO YU NEED?

8 MR WILSON TEN MINUTES?

9 THE COURT OKAY, ALL RIGHT, WE'LL BE AT EASE
10 FOR TEN MINUTES

11 (WHEREUPON, A RECESS WAS TAKEN)

12 THE COURT MR WILSON?

13 MR WILSON YES, YOUR HONOR, I HAVE DISCUSSED
14 THIS MATTER WITH THE DEFENDANT AND HE TELLS ME THAT HE DOES
15 NOT WISH TO TESTIFY

16 THE COURT ALL RIGHT, AND WITH THAT
17 ANNOUNCEMENT ARE YOU, ARE YOU STILL RESTING YOUR CASE?

18 MR WILSON I AM STILL RESTING MY CASE

19 THE COURT OKAY, ALL RIGHT, AND, MR
20 RICHARDSON?

21 MR RICHARDSON NOTHING FURTHER, YOUR HONOR

22 THE COURT ALL RIGHT, DURING THE BREAK MY CLERK
23 HAS BEEN FINALIZING THE CHARGES ARE YA'LL, WHAT IS YOUR
24 PREFERENCE, MR RICHARDSON, DO YOU WANT TO CLOSE AND
25 INSTRUCT THIS AFTERNOON OR DO YOU WISH TO COME BACK IN THE

STATE MOTION NOT TO CHARGE SELF-DEFENSE

273

1 MORNING?

2 MR RICHARDSON I WOULD RATHER COME BACK IN THE
3 MORNING BUT I'M OKAY EITHER WAY, YOUR HONOR

4 THE COURT MR WILSON?

5 MR WILSON TOMORROW MORNING IS FINE WITH ME

6 THE COURT ALL RIGHT, WELL WHAT I'M GOING TO DO
7 IS BRING THE JURY IN, ALLOW, ALLOW EACH SIDE TO REST ON THE
8 RECORD AND THEN WE WILL SPEND, MY CLERK WILL HAVE THE
9 INSTRUCTIONS PRINTED OFF, THE CHARGES PRINTED OFF AND WE'LL
10 INSTRUCT AND ARGUE TOMORROW, TOMORROW MORNING

11 MR RICHARDSON ARE, ARE WE GOING TO BE HEARD
12 THIS AFTERNOON OR TOMORROW?

13 THE COURT WE WILL BE HEARD AS FAR AS THE
14 CHARGES THIS AFTERNOON

15 MR RICHARDSON OKAY, THANK YOU

16 THE COURT ALL RIGHT, ANYTHING FURTHER, MR
17 RICHARDSON?

18 MR WILSON NOTHING

19 THE COURT NO, MA'AM

20 THE COURT ANYTHING FURTHER, MR WILSON?

21 MR WILSON NOTHING, YOUR HONOR

22 THE COURT ALL RIGHT, PLEASE BRING IN THE JURY
23 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT

24 3 58 P M)

25 THE COURT THANK YOU, PLEASE BE SEATED MR

STATE MOTION NOT TO CHARGE SELF-DEFENSE

274

1 FOREMAN, LADIES AND GENTLEMEN OF THE JURY, WE HAVE BEEN
2 TAKING MATTERS RELATED TO THIS CASE OUTSIDE OF YOUR
3 PRESENCE OF THE JURY I APOLOGIZE, THOSE WERE, THAT WAS A
4 LONG TEN MINUTES I KNOW BUT WE HAVE BEEN CONDUCTING COURT'S
5 BUSINESS I ASSURE YOU

6 MR RICHARDSON, YOU MAY PROCEED?

7 MR RICHARDSON YOUR HONOR, THE STATE WOULD
8 REST AT THIS TIME

9 THE COURT THANK YOU, MR RICHARDSON MR
10 WILSON?

11 MR WILSON THE DEFENSE WOULD REST AT THIS
12 TIME, YOUR HONOR

13 THE COURT ALL RIGHT, LADIES AND GENTLEMEN OF
14 THE JURY, THAT INDICATES THAT YOU HAVE HEARD ALL THE
15 TESTIMONY AND EVIDENCE THAT WILL BE PRESENTED IN THIS CASE
16 DUE TO THE LATENESS OF THE HOUR WE WILL RESUME TOMORROW
17 MORNING IN WHICH BOTH PARTIES WILL PRESENT THEIR CLOSING
18 ARGUMENTS AND THE COURT WILL INSTRUCT YOU ON THE LAW

19 AS I STATED DURING THE OPENING, DURING THE
20 OPENING CHARGE OF THE COURT YOU CANNOT BEGIN YOUR
21 DELIBERATIONS UNTIL I HAVE INSTRUCTED YOU ON THE LAW YOU
22 HAVE HEARD ALL THE TESTIMONY THAT WILL BE PRESENTED BY THE
23 STATE AND BOTH SIDES HAVE NOW RESTED

24 WE WILL BEGIN TOMORROW MORNING BACK IN THE JURY
25 BOX AT 9 30 AND WE WILL AGAIN RESUME THE TRIAL OF THIS

STATE MOTION NOT TO CHARGE SELF-DEFENSE

275

1 MATTER

2 AGAIN, PLEASE, REMEMBER MY ADMONISHMENT DO NOT
3 WATCH TELEVISION OR ANY NEWS REGARDING THIS CASE PLEASE
4 DO NOT DISCUSS THIS MATTER, DO NOT BEGIN DELIBERATIONS AND
5 I WILL SEE YOU IN THE MORNING YA'LL HAVE A RESTFUL
6 EVENING, THANK YOU SO MUCH

7 (WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING
8 AT 4 00 P M)

9 THE COURT PLEASE BE SEATED MR RICHARDSON,
10 MR WILSON, WHAT I'D LIKE TO DO IS NOW MEET IN CHAMBERS IN
11 30 MINUTES TO GO OVER THE COURT'S PROPOSED INSTRUCTIONS

12 MR WILSON THANK YOU, YOUR HONOR

13 THE COURT ALL RIGHT, IF, I HAVE RECEIVED, MR
14 WILSON, YOUR SELF DEFENSE INSTRUCTION AND I HAVE, MR
15 RICHARDSON, A COPY OF YOUR, THE CASE THAT YOU HANDED, CASES
16 THAT YOU HANDED TO THE COURT AS WELL AS TO MR WILSON WE
17 WILL BE REVIEWING THOSE AND COMPILING OUR INSTRUCTIONS

18 MR RICHARDSON AND, YOUR HONOR, ONE OTHER
19 THING AS FAR AS I'VE LOOKED OVER MR WILSON'S, I'M SURE
20 THAT YOUR HONOR'S GOT SOME STANDARD CHARGES OR I WOULD
21 ASSUME, I WOULD REALLY FEEL MORE COMFORTABLE WITH THE
22 STANDARD CHARGES BUT BE GLAD TO BE ABLE TO TALK WITH YOU
23 ABOUT THOSE AND WITH REGARD TO THE SELF DEFENSE WE'RE GOING
24 TO DISCUSS THAT IN CHAMBERS ALSO?

25 THE COURT WE WILL DISCUSS THE COURT'S PROPOSED

STATE MOTION NOT TO CHARGE SELF-DEFENSE

276

1 CHARGES, YES

2 MR RICHARDSON THANK YOU

3 THE COURT ANYTHING FURTHER, MR WILSON?

4 MR WILSON NOTHING FURTHER, YOUR HONOR

5 THE COURT IF YOU WANT TO SPEND THE NEXT 30

6 MINUTES JUST MAKING SURE THAT YOU BOTH AGREE AS TO WHAT'S

7 GOING TO GO BACK TO THE JURY IN THE MORNING AND THEN THAT

8 WAY WE WON'T HAVE TO DEAL WITH THAT IN THE MORNING

9 MR RICHARDSON THANK YOU, YOUR HONOR

10 THE COURT ANYTHING FURTHER, MR RICHARDSON?

11 MR RICHARDSON NO, MA'AM

12 THE COURT ANYTHING FURTHER, MR WILSON?

13 MR WILSON NO, MA'AM

14 THE COURT THE JURY WILL BE BACK AT 9 30 IF

15 WE COULD ALL BE IN OUR PLACES BY 9 15 AND THEN WE'LL GO

16 MAKE SURE EVERYBODY IS READY TO GO

17 AS FAR AS ONE THING THE COURT NOTICED, AND I DID

18 NOT GIVE AN INSTRUCTION CONCERNING NOTE TAKING AND THE

19 COURT NOTICED THAT THERE WAS TWO JURORS THAT WERE TAKING

20 NOTES DURING THE TRIAL SINCE THE COURT DID NOT GIVE

21 INSTRUCTIONS I'M NOT GOING TO ALLOW THOSE JURORS TO TAKE

22 THEIR NOTES BACK IN THE JURY ROOM WITH THEM JUST FOR THE

23 RECORD AND I WILL GIVE THEM AN INSTRUCTION REGARDING NOTE

24 TAKING DURING MY CHARGE, ALL RIGHT THE COURT'S IN RECESS

25 UNTIL 9 15

CHARGE CONFERENCE

277

1 (WHEREUPON, A BREAK WAS TAKEN AND THE FOLLOWING
2 TAKES PLACE ON THE RECORD AFTER THE RECESS)

3 THE COURT MR RICHARDSON, COULD WE ADDRESS
4 YOUR REQUEST? YOU'RE NOT REQUESTING OR OBJECTING TO ANY
5 INCLUSION BY THE COURT AND CHARGES REGARDING A SELF DEFENSE
6 INSTRUCTION, IS THAT CORRECT?

7 MR RICHARDSON YES, MA'AM, PLEASE

8 THE COURT OKAY, AND THE BASIS OF THAT
9 OBJECTION WOULD BE WHAT, MR RICHARDSON?

10 MR RICHARDSON YOUR HONOR, UNTIL VERY RECENTLY
11 THE DEFENSE HAD TO GO AT LEAST PROVE A PREPONDERANCE OF THE
12 EVIDENCE AND THEN THE BURDEN SHIFTED TO THE STATE,
13 CERTAINLY THAT HAS CHANGE, BUT THE DEFENSE AT LEAST HAS TO
14 PUT FORTH A REASONABLE DOUBT BEFORE THE STATE WOULD BE
15 CHARGED WITH BREAKING DOWN THIS IDEA OF SELF DEFENSE

16 YOUR HONOR, I'VE PASSED UP SEVERAL CASES FIRST
17 OF ALL I'D LIKE TO REFER TO THE STATE V SANTIAGO CASE
18 WHICH WAS DECIDED IN 2006 BY, OF COURSE, JUDGE GOODSTEIN
19 AND IT WAS AFFIRMED BY APPELLATE COURT WITH JUDGE HEARN
20 IN THAT CASE IT SAID A SELF DEFENSE CHARGE IS NOT REQUIRED
21 UNLESS THE EVIDENCE SUPPORTS IT AND THAT, OF COURSE, CITES
22 GOODSTEIN, AND THEN IT GOES ON TO ESTABLISH SELF DEFENSE
23 FOUR ELEMENTS MUST BE PRESENT

24 "THE DEFENDANT MUST BE WITHOUT FAULT IN BRINGING
25 ON THE DIFFICULTY

CHARGE CONFERENCE

278

1 THE DEFENDANT ACTUALLY BELIEVED HE WAS IN
2 IMMINENT DANGER OF LOOSING HIS LIFE OR SUSTAINING SERIOUS
3 BODILY INJURY AND A REASONABLE PERSON WOULD HAVE
4 ENTERTAINED THE SAME BELIEF "

5 AND, FINALLY "THE DEFENDANT HAD NO PROBABLE MEANS
6 OF AVOIDING THE DANGER OF LOOSING HIS, OF LOOSING HIS LIFE
7 OR SUSTAINING SERIOUS BODILY INJURY OTHER THAN THAT TO ACT
8 AS HE DID "

9 YOUR HONOR, IN THIS CASE WE HAD TWO EYEWITNESSES,
10 ONE SAID THAT HE NEVER EVEN SAW A STICK I CERTAINLY
11 BELIEVE THAT THERE WAS A STICK-PRESENT, MAYBE HE, JUST
12 DIDN'T SEE THAT, BUT THE IMPORTANT OF HIS TESTIMONY IS THAT
13 DAVID BENNETT MADE NO MOVEMENT WHATSOEVER TOWARD TYRONE
14 JACOBS, NOT EVEN WORDS AND, AND, OF COURSE, YOUR HONOR HAS
15 READ THROUGH THAT THAT WORDS ALONE ARE NOT ENOUGH IF NOT
16 ACCOMPANIED BY HOSTILE ACTION, BUT AT MOST DAVID BENNETT
17 CALLED HIM A PUNK SEVERAL TIMES

18 NOW THE OTHER WITNESS, EYEWITNESS THAT TOOK THE
19 STAND, SAID THAT HE WAS ACTUALLY HOLDING THE POOL STICK
20 UNDER HIS CHIN WHEN HE WAS INITIALLY SHOT AGAIN NOT MAKING
21 ANY HOSTILE MOVES TOWARD MR JACOBS AND HE SAID THE ONLY
22 TIME THAT THE DEFENDANT PICKED UP THE STICK AND TRIED TO
23 USE IT AS A WEAPON AGAINST MR JACOBS WAS AFTER HE HAD BEEN
24 SHOT ONCE MAYBE TWICE HE PICKED IT UP AND HE WAS UNABLE
25 TO HIT MR JACOBS WITH THE STICK

CHARGE CONFERENCE

279

1 CERTAINLY WE WOULDN'T HOLD HIM ACCOUNTABLE, MR
2 JACOBS COULDN'T SAY THAT HE WAS WITHOUT FAULT IN BRINGING
3 THAT ON IF HE HAD ALREADY SHOT HIM TO SAY THEN THAT HE WAS
4 ACTING IN SELF DEFENSE OF A POOL STICK AND THAT'S THE ONLY
5 EVIDENCE OF ANY AGGRESSIVE NATURE AND, OF COURSE, THAT CAME
6 FROM DAVID BENNETT AFTER HE HAD BEEN SHOT

7 YOUR HONOR, I THINK THE MAJORITY OF WHAT MY
8 FRIEND, MR WILSON, BASES THIS ON IS DR PROCTOR SAID THAT
9 THE INJURIES COULD HAVE BEEN CAUSED BY AFTER HE SWUNG BUT
10 HE SAID THAT WAS ONE OF A THOUSAND POSSIBILITIES AND
11 CERTAINLY ONE OUT OF A THOUSAND DOESN'T EQUATE TO A
12 REASONABLE STANDARD AGAIN, I KNOW WE DON'T GET THE LUXURY
13 OF GOING OUT TO A PREPONDERANCE OF THE EVIDENCE ANYMORE BUT
14 I, I JUST DON'T REALIZE ANY HOSTILE ACT AT ALL MADE BY OR
15 ANY TESTIMONY OF HOSTILE ACTS MADE BY THE VICTIM TOWARD THE
16 DEFENDANT IN THIS CASE I'M JUST NOT AWARE OF ANY BY ANY
17 OF THE EYEWITNESSES CERTAINLY THE POLICE COULDN'T ADD OR
18 TAKE AWAY FROM ANYTHING LIKE THAT SO ALL OF THE EVIDENCE
19 WOULD HAVE HAD TO COME THROUGH THEM

20 FINALLY, YOUR HONOR, I WON'T ADDRESS THE WHOLE
21 THING ABOUT HIM BEING IN IMMINENT FEAR OR A REASONABLE
22 PERSON BEING IN IMMINENT FEAR UNDER THE CIRCUMSTANCES
23 BECAUSE, OF COURSE, WE ONLY HAVE TO HAVE THAT EVIDENCE OF
24 ONE LEG OF THAT TABLE

25 THE SECOND ONE THAT I WANT TO ADDRESS IS BY BOTH

CHARGE CONFERENCE

280

1 OF THOSE WITNESSES THEY SAY THAT MR JACOBS AND, YOUR
2 HONOR, MAY HAVE A BETTER MEMORY OF THIS THAN ME, BUT MY
3 UNDERSTANDING THAT MR JACOBS LEFT THE FACILITY, WENT OUT
4 TO A CAR, ARMED HIMSELF, AND CAME BACK

5 NOW IF HE WENT TO THE CAR THAT FOURTH LEG OF THE
6 STANDARD BEING THAT HE MUST IF THE ONLY WAY HE COULD USE
7 SELF DEFENSE IS IF HE HAD NO OTHER MEANS NOW CERTAINLY IF
8 THE CASE LAW SAYS THAT IF DAVID BENNETT HAD BEEN STANDING
9 THERE WITH A GUN AND THAT IT'S NOT REASONABLE FOR HIM TO
10 RUN OR HE WOULD HAVE PUT HIMSELF IN WORST STEAD BY TRYING
11 TO RUN THEN CERTAINLY HE CAN USE SELF DEFENSE BUT NOTHING
12 IS HERE SAYING THAT MR BENNETT HAD ANY SORT OF A WEAPON
13 AT MOST HE HAD A POOL STICK AND THAT NEVER BECAME A WEAPON,
14 HE WAS LEANING ON IT SO THE FACT THAT MR JACOBS WENT TO
15 HIS CAR, HAD THE KEYS TO THE CAR, COULD HAVE LEFT AT THAT
16 POINT HE SHOULDN'T BE ABLE TO COME BACK AT THIS POINT AND
17 ARGUE SELF DEFENSE HE CERTAINLY HAD A WAY TO LEAVE HE
18 HAD A MOTIVE TO LEAVE EVEN IF HE DIDN'T HAVE THE CAR THE
19 TESTIMONY IS THAT HE LIVED, I BELIEVE IT WAS AN EIGHTH OF A
20 MILE AWAY HE'S ALREADY OUT BY EVERY PERSON'S STANDARD AT
21 THAT POINT, MR DAVID BENNETT IS STILL INSIDE OF THE
22 BUILDING

23 NOW WHEN HE COMES BACK THERE'S NO WAY TO SAY THAT
24 HE DIDN'T AT LEAST INITIATE OR THAT HE DIDN'T HAVE SOME
25 PART IN BRINGING ON THE CONFLICT MORE ESPECIALLY WHEN HE

CHARGE CONFERENCE

281

1 COMES BACK WITH THE GUN AS HAPPENED HERE IN THE SLATER'S
2 CASE AND THE FACTS WITH SLATER DON'T MATCH UP PERFECTLY
3 WITH THIS, I UNDERSTAND THAT, BUT IF THERE'S ONLY ONE GUN
4 AND THE OTHER FELLOW DOESN'T EVEN HAVE A WEAPON IT'S HARD
5 FOR ME TO SEE THAT MR JACOBS CAN NOW COME BACK AND CLAIM
6 SELF DEFENSE, A MAN GETS SHOT THREE TIMES WITHOUT A WEAPON

7 NOW THERE'S SPECULATION OF COURSE AGAIN WITH DR
8 PROCTOR'S STUFF BUT AGAIN, YOUR HONOR, DR PROCTOR SAID IT
9 COULD BE ONE OUT OF A THOUSAND WAYS AND WE WENT THROUGH
10 DIFFERENT, MAYBE FIVE OR SIX SCENARIOS AND HE SAID, YES,
11 YES, YES, COULD HAVE BEEN ALL OF THOSE, BUT CERTAINLY THAT
12 DOESN'T COME TO A, TO THEIR LEVEL OF AT LEAST CREATING A
13 REASONABLE DOUBT AND TO PUT IT IN WOULD ONLY CONFUSE THE
14 JURY AT THIS POINT

15 THERE'S NOTHING IN EVIDENCE TO SAY THAT THE
16 DEFENDANT COULDN'T HAVE LEFT, LEG FOUR OF THIS THEORY, OR
17 THAT HE WASN'T AT FAULT IN BRINGING ON THE ALTERCATION BY
18 COMING BACK WITH THE GUN AND, YOUR HONOR, I'D CERTAINLY
19 ADDRESS THE OTHER CASES IF YOUR HONOR SEES FIT OR YOU CAN
20 IF YOU HAVE ANY QUESTIONS FOR ME I'D BE GLAD TO ANSWER
21 THEM

22 I JUST WANT TO REITERATE SOMETHING I SAID EARLIER
23 IN THAT EVERY MURDER CASE OR EVERY ASSAULT CASE OR EVERY
24 ASSAULT AND BATTERY HIGH AND AGGRAVATED CASE DOES NOT LEND
25 ITSELF TO A SELF DEFENSE CASE IT'S FACT SPECIFIC AND THEY

CHARGE CONFERENCE

282

1 HAVEN'T PUT UP ANY FACTS TO SHOW IMMINENT PERIL THEY
2 HAVEN'T PUT ANY FACTS TO SHOW THAT HE COULDN'T LEAVE OR
3 THAT HE WASN'T AT FAULT IN BRINGING ON THE ALTERCATION AND
4 I STAND ASIDE AND ANSWER ANY QUESTIONS YOU MIGHT HAVE FOR
5 ME

6 THE COURT MR WILSON, YOUR RESPONSE?

7 MR WILSON YES, MA'AM YOUR HONOR, FIRST OF
8 ALL I THINK THAT, THAT THE STANDARD AS I UNDERSTAND IT IS
9 IF THERE IS ANY EVIDENCE IN THE RECORD FROM WHICH IT COULD
10 REASONABLY BE INFERRED THAT THE DEFENDANT ACTED IN SELF
11 DEFENSE - THAT'S CITED IN SLATER AND LET ME SAY THIS FIRST
12 OF ALL SLATER IS VERY DIFFERENT THAN THIS CASE

13 IN FACT SLATER WAS OUT, BASICALLY AFTER SOME GAME
14 OR SOMETHING THAT THEY HAD HAD AT THE SCHOOL AND HE WAS
15 WALKING AROUND AND THEY WERE, HE HAD, HE WENT TO HIS CAR,
16 HE GOT A GUN CAUSE HE SAW A RUCKUS ON ONE SIDE OF THE
17 CAMPUS HE STARTED OVER THERE WITH THE GUN AND THEN HE
18 TURNS AROUND FROM THAT AND HE COMES BACK, HE DOESN'T FIRE
19 THE GUN BUT HE GOES BACK TO HIS CAR WITH HIS FRIENDS HE
20 SEE ANOTHER RUCKUS, TAKES THE GUN THEN AND HE GOES OVER TO
21 WHERE THE SECOND RUCKUS IS AND THEN HE ENGAGES IN THE
22 SHOOTING, VERY, VERY DIFFERENT THAN WHAT HAPPENED HERE

23 AND LET ME SAY THIS SO THAT IT'S CLEAR WITH THE
24 SOLICITOR ARGUMENT JUST DOESN'T HOLD WATER FIRST OF ALL
25 EVERY WITNESS THAT HE HAD TESTIFIED, AT LEAST, WELL ONE OF

CHARGE CONFERENCE

283

1 HIS WITNESSES TESTIFIED THAT INSIDE THE CLUB THAT THERE WAS
2 SOME DISAGREEMENT BETWEEN THE TWO INDIVIDUALS, THAT IS MR
3 MCCULLOUGH TESTIFIED TO THAT

4 MR , MR GILLINS TESTIFIED THERE WAS ABSOLUTELY
5 NO, NO ALTERCATION AT ALL, EVER, BEFORE THE SHOOTING
6 OCCURRED IF YOU BELIEVE MR MCCULLOUGH HE NEVER ASKED THE
7 DEFENDANT TO LEAVE, THE DEFENDANT LEFT ON HIS OWN,
8 VOLUNTARILY AFTER THE RUCKUS THAT OCCURRED THAT HE WALKS
9 AWAY, HE LEAVES HE GOES OUTSIDE MR MCCULLOUGH SAYS
10 YEAH, HE DID COME BACK INSIDE AND HE GOT, AND THIS, AND I'M
11 USING THESE FACTS WHICH ARE MOST FAVORABLE TO THE
12 DEFENDANT, TO THE STATE HERE, BUT HE, MR MCCULLOUGH SAYS
13 HE WENT OUTSIDE, HE CAME BACK IN AND HE GOT HIS JACKET HE
14 DIDN'T SEE A WEAPON, THAT HE NEVER SAW A WEAPON AT THAT
15 TIME AND THAT HE NEVER SAW THE WEAPON UNTIL THEY WERE
16 OUTSIDE

17 NOW WHAT HE ALSO TESTIFIES TO, WHICH IS I THINK
18 WHEN SELF DEFENSE STARTS BECAUSE EVEN IF YOU WANT TO
19 BELIEVE THAT HE'S AT FAULT INSIDE THE CLUB AND STARTED THE
20 ARGUMENT ---

21 THE COURT HE BEING YOUR CLIENT?

22 MR WILSON THE DEFENDANT, IF WE ASSUME THAT
23 THE DEFENDANT WAS AT FAULT AND CAUSING THE DIFFICULTY IN
24 THE CLUB HE LEAVES, NOBODY DISPUTES THAT, HE LEAVES THE
25 CLUB, HE GOES ON THE OUTSIDE EVERYBODY SAYS, WELL HE CAME

CHARGE CONFERENCE

284

1 BACK IN AT SOME POINT BUT EVEN WHEN HE COMES BACK IN NOBODY
2 SAYS THAT THERE'S ANY ALTERCATION BETWEEN HE AND THE VICTIM
3 AT THAT POINT HE LEAVES AGAIN, GOES OUTSIDE HE IS
4 OUTSIDE FOR SEVERAL MINUTES DEPENDING ON WHO YOU'RE
5 LISTENING TO BEFORE THE VICTIM COMES OUT TO CONFRONT HIM

6 THE VICTIM COMES OUT WITH A POOL STICK IN HIS
7 HAND ACCORDING TO, ACCORDING TO MR MCCULLOUGH, AND
8 CONFRONTS HIM THERE ARE SOME HEATED WORDS EXCHANGED
9 ACCORDING TO MR MCCULLOUGH

10 NOW ONE OF THE WITNESSES SAID HE NEVER SAW THE
11 POOL STICK MR MCCULLOUGH SAYS THAT HE HAD THE POOL STICK
12 AND THAT HE CAME OUT AND, AND-IN FACT MR MCCULLOUGH SAID
13 NOT ONLY DID HE COME OUT MR MCCULLOUGH WAS TRYING TO KEEP
14 HIM FROM COMING OUT AND HE PUSHES PAST MR MCCULLOUGH SO
15 THAT HE CAN COME OUT THAT'S THE TESTIMONY FROM MR
16 MCCULLOUGH CLEARLY THE INFERENCE THERE IS THAT HE'S
17 COMING OUT FOR WHAT PARTICULAR REASON

18 NOW MR , MR GILLINS TESTIFIED THAT HE CAME OUT
19 SO THAT HE COULD GET SOME FRESH AIR THAT WAS HIS
20 TESTIMONY AND I REMEMBER ASKING HIM THAT AND I REMEMBER
21 ASKING MR MCCULLOUGH WHY DID HE COME OUT AND I FORGET WHAT
22 HIS REASONS WERE BUT THERE'S NO QUESTION ABOUT THE FACT IN
23 THIS RECORD THAT ACCORDING TO MR MCCULLOUGH ANYWAY THAT
24 WHEN THE VICTIM CAME OUT HE CAME OUT WITH THE STICK IN HIS
25 HAND AND HE, AND WAS FACE TO FACE WITH MR , WITH THE

CHARGE CONFERENCE

285

1 DEFENDANT AT THAT POINT IN TIME WHICH IS WHEN THE SHOOTING
2 OCCURRED AND, AND, AND, AND, AND, YOUR HONOR, THERE'S ALSO
3 NO QUESTION IF YOU BELIEVE MR MCCULLOUGH AS THE STATE
4 WOULD HAVE YOU BELIEVE THAT THE DEFENDANT, THAT THE VICTIM
5 HAD THIS POOL STICK, NO QUESTION HE HAD IT

6 NOW WE CAN ARGUE ALL DAY ABOUT WHETHER HE HAD IT
7 THROWN BACK OR WHETHER HE HAD IT IN A THREATENING MANNER,
8 YOU KNOW, AND THAT'S VERY SUBJECTIVE BUT THE INFERENCE IS
9 THAT THAT HE CAME OUT OF THE CLUB IN AN ANGRY STATE BECAUSE
10 HE WAS UPSET, HE PUSHES PAST AND HE COMES OUT AND HE KNOWS
11 THAT THE DEFENDANT IS OUTSIDE AND HE COMES OUT AND HE
12 ACTUALLY FACES THE DEFENDANT, THAT'S WHEN THE SHOOTING
13 OCCURRED, AND I WOULD SUBMIT TO YOU AT THE POINT HE COMES
14 OUT WITH THE POOL STICK IT WOULD BE FOOLISH CAUSE THE
15 WITNESSES TESTIFIED THAT THEY WERE WITHIN THREE FEET OF
16 EACH OTHER WHEN THEY WERE HAVING THIS CONVERSATION HE
17 CAN'T RUN BECAUSE HE'S GOT A POOL STICK AND HE'S GOING TO
18 HIT HIM WITH IT, A POOL STICK IS PROBABLY FIVE FOOT LONG,
19 HE CAN'T GET AWAY BEFORE HE GETS HIT IN THE BACK OF THE
20 HEAD WITH THE POOL STICK THAT'S A REASONABLE INFERENCE
21 FROM THE EVIDENCE

22 NOW CAN I TELL YOU THAT'S WHAT HAPPENED, NO, I
23 CAN'T SAY THAT BUT WHAT YOU'RE LOOKING HERE FOR IS WHAT
24 OTHER REASONABLE INFERENCES FROM THE EVIDENCE THAT'S BEEN
25 PRODUCED IN THE TRIAL OF THIS CASE WHEN YOU ADD THAT TO

CHARGE CONFERENCE

286

1 THE FACT THAT DR PROCTOR SAID, OH, ABSOLUTELY COULD THIS
2 SHOOTING HAVE OCCURRED WHEN HE WAS IN THE ACT OF SWINGING
3 THIS STICK, ABSOLUTELY, IT COULD HAVE OCCURRED THAT WAY
4 HE SPECIFICALLY ADDRESSED THAT AND SAID THAT THAT IS
5 CONSISTENT WITH IT AND THAT THAT WOULD EXPLAIN IT

6 NOW COULD THERE BE OTHER WAYS THAT IT COULD HAVE
7 HAPPENED, OF COURSE IT COULD HAVE WE'RE NOT REQUIRED, THE
8 DEFENDANT IS NOT REQUIRED TO PROVE EVERY POSSIBLE WAY THAT
9 THIS SHOOTING COULD HAVE OCCURRED JUST THAT IT DIDN'T OCCUR
10 THE WAY THAT THE STATE HAS SAID THAT IT OCCURRED THE
11 STATE SPECIFICALLY HAD WITNESSES TESTIFY ABOUT HOW THIS
12 SHOOTING SUPPOSEDLY OCCURRED

13 ONE OF THEM HAD THE VICTIM DOWN ON THE GROUND ON
14 ALL FOURS CRAWLING THE SHOOTING COULD NOT HAVE OCCURRED
15 THAT WAY BECAUSE HE PLACES HIM ON THE RIGHT HAND SIDE OF
16 THE, OF THE, OF THE VICTIM AT THE TIME OF THE SHOOTING
17 THERE IS NO PHYSICAL WAY THAT THAT COULD HAVE OCCURRED
18 ACCORDING TO DR PROCTOR AND, AND I WOULD SUBMIT TO THE
19 COURT THAT WHEN YOU LOOK AT ALL OF THOSE THINGS COMBINED
20 AND THOUGH ONE OF THEM IN AND OF THEMSELVES I WOULD SUBMIT
21 TO THIS COURT IS IN AND OF ITSELF DISPOSITIVE BUT WHEN YOU
22 COMBINE ALL OF THOSE THINGS COLLECTIVELY THERE IS CERTAINLY
23 A REASONABLE INFERENCE THAT HE WAS ACTING IN SELF DEFENSE

24 THE COURT MR WILSON, HOW, EXPLAIN TO THE
25 COURT HOW TO MEET THE BURDEN, TO MEET, THE ELEMENTS MUST

CHARGE CONFERENCE

287

1 BE, ALL FOUR ELEMENTS MUST BE PRESENT WE AGREED ON THAT
2 BASED UPON SLATER AND DAY AND ACTUALLY ITS PROGENY TRACING
3 UP TO SLATER, EXPLAIN TO ME HOW YOUR CLIENT WAS NOT WITHOUT
4 FAULT IN BRINGING THIS DIFFICULTY BASED UPON THE EVIDENCE
5 AS PRESENTED?

6 MR WILSON BECAUSE, AND, AND, AND, AND I'VE
7 TRIED TO DO THAT EARLIER, WHAT HAPPENED BASED ON, AND AGAIN
8 JUST USING THE TESTIMONY OF THE WITNESSES WHO TESTIFIED,
9 ACCORDING TO, TO MR MCCULLOUGH THERE WAS AN ALTERCATION IN
10 THE CLUB AND THAT HE DIDN'T ASK MY CLIENT TO LEAVE, HE
11 DIDN'T ASK THE DEFENDANT TO LEAVE, BUT THE DEFENDANT LEFT

12 HE SAYS THAT THE DEFENDANT THEN CAME BACK IN TO
13 THE CLUB AND EVEN IF YOU WANT TO BELIEVE MR , MR GILLINS
14 WHO TESTIFIED HE SAID, YEAH, HE CAME BACK IN BUT I SAW A
15 GUN, BUT EVEN HE SAYS THAT I NEVER SAW THEM HAVE ANY
16 CONFRONTATION WITH THE GUN, I NEVER SAW HIM THREATEN "DO
17 DIRTY", I NEVER SAW HIM HAVE ANY CONFRONTATION WHATSOEVER
18 AND THAT HE THEN LEAVES AND I WOULD SUBMIT TO THE COURT
19 THAT ONCE HE LEAVES THEN THE, THEN IT'S OVER, IT'S OVER,
20 AND IT'S DONE WITH AND IT'S OVER AND DONE WITH UNTIL, UNTIL
21 THE NEXT ACT OCCURRED WHICH IS THAT OF, AND YOU KNOW THE
22 IMPORTANT THING IS NOT ONE OF THOSE WITNESSES, NOT A SINGLE
23 ONE OF THOSE WITNESSES SAY OR TESTIFIED THAT THIS DEFENDANT
24 SAID, COME ON OUT HERE AND LET'S FIGHT OR THAT HE BAITED
25 HIM OUT THERE OR TRICKED HIM OUT THERE OR ANYTHING ELSE AND

CHARGE CONFERENCE

288

1 MR MCCULLOUGH SAYS THAT HE IS STANDING THERE TELLING MR ,
2 MR , THE, THE, THE VICTIM DON'T GO OUT THERE, PUT AN END TO
3 THIS THING AND WHAT HAPPENS HE PUSHES PAST HIM AND HE COMES
4 OUT THERE WITH A POOL STICK IN HIS HAND TO CONFRONT THE
5 DEFENDANT

6 THE COURT WELL WHAT ABOUT YOUR CLIENT POINTING
7 THE GUN AND IT CLICKING AND THEN FIRING THREE MORE TIMES?

8 MR WILSON YOUR HONOR, IF, IF, IF AT THE
9 POINT THEY'RE FACING EACH OTHER AND IF THE VICTIM HAS THE
10 POOL STICK AS HAS BEEN INDICATED IN THIS PARTICULAR CASE
11 AND HE IS THREATENING TO HIT HIM, WHICH IS WHAT OUR
12 POSITION IS, THEN HE HAS A RIGHT TO CONTINUE TO SHOOT HIM
13 UNTIL THE THREAT IS EVADED

14 ONCE HE HAS THAT RIGHT, ONCE HAS THE RIGHT TO
15 FIRE THAT FIRST SHOT HE HAS THE RIGHT TO CONTINUE TO SHOOT
16 UNTIL THE THREAT IS ABATED HOW MANY EVER TIMES THAT MIGHT
17 BE AND WHETHER IT WAS ONE TIME OR THREE TIMES, AND, AND I'M
18 NOT TRYING TO BE, I DON'T KNOW WHAT THE WORD IS, BUT I, I
19 WANT, I'M JUST TRYING TO SAY THAT ONCE HE HAD THE RIGHT TO,
20 TO FIRE THAT FIRST SHOT HE HAD THE RIGHT TO CONTINUE TO
21 SHOOT UNTIL THE THREAT WAS ABATED AND WHETHER THAT WAS ONE
22 SHOT OR THREE SHOTS, YOU KNOW, BECAUSE THE, THE LAW DOESN'T
23 REQUIRE A, A DEFENDANT WHEN HE'S IN THE MIDST OF A HEATED
24 DISAGREEMENT TO, TO, TO MAKE A COOL CALCULATION ABOUT, WELL
25 HOW MANY SHOTS IS ENOUGH, IS ONE ENOUGH, IS TWO ENOUGH, IS

CHARGE CONFERENCE

289

1 THREE ENOUGH, AND, AND, AND, AND I LISTENED TO THE WITNESS
2 WHO TESTIFIED ABOUT HOW THE SHOTS OCCURRED AND WHAT HIS
3 TESTIMONY WAS THERE WAS ONE, TWO, THREE, AND IF THAT'S HOW
4 THOSE SHOTS OCCURRED THEN THAT'S WITHIN THREE, THREE
5 SECONDS OR FOUR SECONDS IN TOTAL FOR ALL THIS TO HAVE
6 OCCURRED AND, AND I WOULD SUBMIT, YOUR HONOR, THAT WHEN,
7 AGAIN WHEN, WHEN YOU LOOK AT THE TOTALITY OF THESE
8 CIRCUMSTANCES THE INFERENCE IS CLEARLY THERE

9 NOW THE JURY MIGHT NOT AGREE WITH THAT AND THEY
10 MIGHT, YOU KNOW, DISCARD IT AND SAY, LOOK, WE JUST DON'T
11 THINK THAT THIS WAS SELF DEFENSE AND WE DON'T FIND THAT
12 INFERENCE THAT, THAT YOU'RE SUGGESTING BUT I THINK THAT
13 THERE IS, THE QUESTION NOW IS NOT WHETHER OR NOT WE HAVE
14 PROVEN IT BEYOND A REASONABLE DOUBT OR EVEN THAT WE'VE
15 PROVEN IT BY A PREPONDERANCE OF THE EVIDENCE, I THINK ONCE
16 IT'S RAISED, ONCE THE ISSUE IS RAISED THEN THE STATE THEN
17 HAS THE BURDEN OF DISPROVING THIS, THIS WHOLE SELF DEFENSE
18 THEORY, THAT THEY HAVE TO DISPROVE IT IT'S A PART OF
19 PROVING THE CRIME OF MURDER BECAUSE IF THERE IS SELF
20 DEFENSE THEN THEY CAN'T PROVE THE CRIME OF MURDER

21 THE COURT WELL WHAT ABOUT THE FOURTH PRONG
22 THAT THE DEFENDANT HAD NO OTHER PROBABLE MEANS OF AVOIDING
23 THE DANGER?

24 MR WILSON YOUR HONOR, HE LEFT AS I SAID
25 EARLIER, HE LEFT THE STORE, THE CLUB, HE WALKED OUT, HE

CHARGE CONFERENCE

290

1 LEFT HE WAS OUT AT A PLACE WHERE HE HAD EVERY RIGHT TO BE
2 UNTIL THE VICTIM CAME OUT TO CONFRONT HIM ONCE THE
3 VICTIM CAME OUT TO CONFRONT HIM HE COULD NOT LEAVE BECAUSE
4 ALL OF THE WITNESSES HAVE TESTIFIED AT THAT POINT HE'S
5 WITHIN THREE FEET OF THE VICTIM

6 THE VICTIM IS STANDING THERE WITH A POOL STICK SO
7 NOW HE CAN TAKE HIS CHANCES AND SAY, OKAY, WELL, YEAH, HE'S
8 GOT A POOL STICK WHICH IS FIVE FEET LONG AND HE'S GOT THREE
9 ARM REACH SO HE CAN GET ME FROM EIGHT FEET SO IF I TURN AND
10 RUN THE FIRST FIVE FEET HE CAN GET ME WITH THIS POOL STICK
11 IN THE BACK OF MY HEAD WHAT DO I DO THEN, OR I CAN STAND
12 HERE AND TRY TO DEAL WITH THIS AS BEST I KNOW HOW AND, AND
13 I THINK THAT'S THE SITUATION THAT, YOU KNOW, THAT, THAT HE
14 FOUND HIMSELF IN ON THAT PARTICULAR NIGHT

15 THE COURT MR RICHARDSON, YOUR RESPONSE?

16 MR RICHARDSON YES, MA'AM, YOUR HONOR, TO THE
17 LAST THING EVERY PERSON OUT THERE, THE TWO THAT DID
18 TESTIFY, SAID THAT DAVID BENNETT NEVER MOVED ONE MAN SAID
19 HE WAS LEANING UP ON A POOL STICK AND NEVER MOVED UNTIL HE
20 WAS SHOT THE OTHER ONE SAID THERE WAS NO POOL STICK BUT
21 HE CLEARLY SAID HE NEVER MOVED, THEREFORE, THE ONLY WAY FOR
22 THEM TO HAVE GOTTEN WITHIN THREE FEET IS FOR THE DEFENDANT
23 TO HAVE APPROACHED HIM AND WHEN HE APPROACHED HIM THAT WAS
24 CLEAR BY EVERY BIT OF EVIDENCE THAT HE HAD A GUN WHEN HE
25 APPROACHED, SO YOU CAN'T SAY THAT HE WAS NOT AT FAULT IN

CHARGE CONFERENCE

291

1 BRINGING THIS THING ON AND I, I AGAIN I DON'T KNOW WHAT
2 HAPPENED

3 I DO KNOW THIS, WHAT THE RECORD SHOWS, AND THAT'S
4 ALL WE CAN GO OFF OF AT THIS POINT, IS THAT THE TESTIMONY
5 IS THAT DAVID BENNETT NEVER LEFT ONCE HE CAME TO REST AND
6 PUT HIS HANDS ON THAT POOL STICK HE NEVER PICKED THE POOL
7 STICK UP TO STRIKE THE VICTIM, EXCUSE ME, THE DEFENDANT
8 HE NEVER MADE ANY MOVES TOWARD HIM THAT WOULD HAVE GIVEN
9 RISE EVEN IF TYRONE JACOBS HAD COME UP THERE INNOCENTLY
10 WITH THIS GUN AND FINALLY, YOUR HONOR, TO ADDRESS WHAT MR
11 WILSON SAID THERE WAS TESTIMONY OF AN ARGUMENT WITHIN THE
12 CLUB BUT THE WITNESS THAT TALKED ABOUT THAT SAID THAT THEY
13 WERE CLEARLY AT BOTH ENDS OF THE CLUB BASICALLY SHOUTING
14 BACK AND FORTH TOWARD ONE ANOTHER

15 WORDS ALONE DO NOT CONSTITUTE A THREAT FOR SELF
16 DEFENSE CLEARLY THAT SET OF CIRCUMSTANCES WAS OVER MR
17 JACOBS LEFT, WHETHER HE WAS ASKED TO LEAVE OR HE LEFT ON
18 HIS OWN, HE WENT OUT, ARMED HIMSELF, AND CAME BACK AND THEN
19 SHOT HIM AT THE FRONT OF THAT ON THOSE STEPS

20 AGAIN I'M NOT CLAIMING TO KNOW EXACTLY WHAT
21 HAPPENED BUT I DO KNOW THAT THE EVIDENCE IN THE RECORD,
22 NOTHING IN THE RECORD BY THE PEOPLE THAT TALKED ABOUT WHAT
23 HAPPENED NOTHING SAYS THAT HE MADE ANY SORT OF MOVE TOWARD
24 THE DEFENDANT AND, THEREFORE, HE SHOULD NOT BE ALLOWED TO
25 USE SELF DEFENSE

CHARGE CONFERENCE

292

1 MR WILSON YOUR HONOR, I DON'T WANT TO
 2 BELABOR THIS, BUT LET ME SAY THIS, HE SAYS HE NEVER MADE
 3 ANY MOVE TOWARDS THE DEFENDANT AND THERE'S NOTHING FURTHER
 4 FROM THE TRUTH IN FACT THAT'S EXACTLY WHAT HE DID DO
 5 WHEN HE COMES OUT OF THE CLUB HE IS PUSHING PAST THE CLUB
 6 OWNER ---

7 THE COURT EXCUSE ME A MINUTE, MR , MAY I SEE
 8 THE DIAGRAM?

9 MR RICHARDSON OH, YES, MA'AM
 10 MADAM COURT REPORTER WE'VE PUT THE EXHIBITS
 11 UP; DO YOU WANT ME TO GO GET IT? ---

12 THE COURT DO YOU MIND?
 13 (WHEREUPON, A BREAK WAS TAKEN FOR THE COURT
 14 REPORTER TO GET THE EXHIBIT)

15 THE COURT MR WILSON, YOU HAVE SOMETHING?

16 MR WILSON YES, MA'AM, THREE THINGS, POINT
 17 ONE, YOUR HONOR, WHEN, WHEN, WHEN THE VICTIM COMES OUT OF
 18 THE, THE STORE, CLUB, WHATEVER, AND HE'S GOT A STICK IN HIS
 19 HAND THERE HAD ALREADY BEEN AN ALTERCATION EARLIER, THE
 20 DEFENDANT AT THAT POINT IS NOT REQUIRED TO WAIT UNTIL HE
 21 STRIKES HIM WITH IT BEFORE HE DEFENDS HIMSELF HE'S
 22 ENTITLED TO RELY ON THE APPEARANCE

23 THE APPEARANCE IS YOU HAVE A GUY WHO'S ANGRY, AT
 24 LEAST BY THE, BY MCCULLOUGH WHO SAYS HE PUSHES PAST HIM
 25 WITH A STICK AND HE COMES OUTSIDE THE ONLY POSSIBLE

CHARGE CONFERENCE

293

1 REASON FOR COMING OUTSIDE, THE ONLY REASONABLE INFERENCE IS
2 HE'S COMING OUT TO CONFRONT THE DEFENDANT,

3 AND THE SECOND THING IS, IS THAT THE SOLICITOR
4 SAYS THAT HE NEVER PICKED UP THE STICK TO HIT HIM, WELL NOW
5 THAT'S NOT WHAT HIS WITNESSES SAID AS I UNDERSTAND IT NOW
6 WHAT THEY WERE SAYING THOUGH IS THAT AFTER THE FIRST SHOT
7 WAS FIRED THAT HE PICKED UP THE STICK AND THAT HE WAS -
8 TRYING TO HIT HIM WITH THE STICK AT SOME POINT AFTER THE
9 FIRST SHOT BUT THAT HE DID TRY TO HIT HIM WITH THE FIRST
10 SHOT AND I THINK THE JURY CAN DECIDE WHETHER OR NOT HE
11 PICKED IT UP OR HE TRIED TO HIT HIM BEFORE THE FIRST SHOT
12 OR AFTER THE FIRST SHOT OR AFTER THE SECOND SHOT OR JUST
13 WHEN IT WAS BECAUSE I THINK THAT THAT'S A FACTUAL ISSUE,

14 AND, THIRDLY, HE SAYS THAT HE NEVER MADE ANY MOVE
15 TOWARDS THE DEFENDANT AND AGAIN HE, THERE CAN BE NO CLEARER
16 INDICATION OF MAKING A MOVE TOWARDS SOMEBODY THAN WHEN YOU
17 PUSH PAST THE OWNER OF THE CLUB AND PUSH HIM OUT THE WAY SO
18 THAT YOU CAN COME OUTSIDE ARMED WITH A STICK, FIVE FOOT
19 LONG POOL QUE STICK TO CONFRONT THE PERSON WHO'S OUTSIDE

20 I MEAN THERE IS NO GREATER CONFRONTATION THAN
21 THAT WHEN THEY HAD ALREADY HAD THE DISAGREEMENT THAT THEY
22 HAD HAD INSIDE AND IF YOU BELIEVE, IF YOU BELIEVE MR
23 MCCULLOUGH HE WAS SAYING THAT, THAT HE TOLD THE VICTIM,
24 TOLD HIM, LOOK STOP THIS, DON'T GO OUTSIDE, JUST DON'T DO
25 THIS ANYMORE, AND IN SPITE OF THAT HE COMES OUT

CHARGE CONFERENCE

294

1 THE COURT COUNSEL, I HAVE HEARD YOUR ARGUMENTS
2 AND THE BASIS TO, FOR THE COURT TO CHARGE THE DEFENSE AND
3 INCLUDE THE INSTRUCTION ON SELF DEFENSE IS WHETHER IT CAN
4 REASONABLY BE INFERRED THAT THE DEFENDANT ACTED IN SELF
5 DEFENSE

6 THE COURT MUST LOOK AT THE FOUR ELEMENTS THAT ARE
7 PRESENT AND BASED UPON THE FACTS THAT ARE IN EVIDENCE IT IS
8 THE COURT'S DETERMINATION THAT IT CAN BE REASONABLY
9 INFERRED FROM THE TESTIMONY AS PRESENTED, SPECIFICALLY BY
10 MR MCCULLOUGH AND MR GILLINS, THAT THERE WAS AN ARGUMENT,
11 TALKING LED TO ARGUMENT, THAT THE DEFENDANT 'DID HOLD' THE
12 POOL STICK MR MCCULLOUGH DID THINK THAT THE VICTIM WAS
13 GOING TO USE THIS STICK AS THE WEAPON AND STATED THAT HE
14 DID NOT BELIEVE THAT THE DEFENDANT WAS GOING TO SHOOT
15 THE, AFTER THE, WHEN THE DEFENDANT CAME IN TO GRAB HIS
16 HOODIE HE LEFT, HE WAS TRYING TO GET OUT THE DOOR AND THE
17 VICTIM DID IN FACT PASS, PUSH PAST THE WITNESS AND THAT WAS
18 BROUGHT UP ON MR WILSON'S CROSS OF MR MCCULLOUGH

19 THE EVIDENCE OR STATEMENTS PRESENTED BY MR
20 GILLINS CONTRADICTS SOMEWHAT OF THE STATEMENTS GIVEN BY MR
21 MCCULLOUGH SO THE COURT FEELS THAT IT IS A FACTUAL DECISION
22 FOR THE JURY TO DETERMINE IF THE FOUR ELEMENTS ARE PRESENT
23 BUT BASED UPON THE TESTIMONY AS PRESENTED THE COURT DOES
24 FIND THAT THERE IS EVIDENCE IN THE RECORD FROM WHICH A JURY
25 MAY REASONABLY INFER THAT THE DEFENDANT DID ACT IN SELF

CHARGE CONFERENCE

295

1 DEFENSE

2 I'LL NOTE YOUR OBJECTION, MR RICHARDSON

3 MR RICHARDSON THANK YOU, YOUR HONOR

4 THE COURT BASED UPON THAT RULING THE COURT HAS
5 PREPARED BASICALLY JUST VERY STANDARD CHARGES I AM NOT
6 INCLUDING, MR WILSON, YOUR, YOUR CHARGE THE COURT IS
7 JUST DOING A VERY STANDARD SELF DEFENSE CHARGE OUTLINING
8 THE ELEMENTS AS WE HAVE GONE OVER, THE FOUR ELEMENTS THAT
9 MUST BE PRESENT

10 MR WILSON JUDGE, COULD YOU GIVE US A COPY OF
11 YOUR CHARGES, PLEASE, MA'AM?

12 THE COURT YES, SIR

13 MR WILSON JUST SO WE'LL KNOW WHAT TO ARGUE,
14 IT HELPS ME WITH MY ARGUMENT

15 THE COURT YES, SIR, I'VE GOT A COPY FOR EACH
16 OF YOU WE CAN, IF YOU WANT TO BE BACK AT NINE AND WE CAN
17 GO OVER ANY ADDITIONS OR CORRECTIONS AT THAT POINT WE CAN
18 DO IT THAT WAY AND I'LL LET YOU HAVE A COPY IS THAT, ARE
19 YOU READY TO -- MY CLERK HAS INDICATED TO ME THAT WE HAD,
20 WE ARE SHARING A PRINTER SO I AM NOT PREPARED TO GIVE YOU A
21 COPY AT THIS POINT AND IT'S DUE ONLY TO TECHNOLOGY ISSUES

22 MR WILSON DO YOU WANT ME HERE?

23 THE COURT YES, WE'RE HERE 8 30 SO IF WE WANT
24 TO MEET AT 8 30 -- MS BRENDA, I DON'T NEED YOU UNTIL 9 IF
25 YOU'D BE HERE AT 9, THAT WILL GIVE YOU 30 MINUTES TO REVIEW

CHARGE CONFERENCE

296

1 THE CHARGES LIKE I SAID THEY'RE VERY STANDARD CHARGES,
2 OKAY

3 ANYTHING FURTHER, MR RICHARDSON?

4 MR RICHARDSON I WILL JUST ASK, YOU'RE GOING
5 TO CHARGE VOL -- I MEAN MANSLAUGHTER ALSO?

6 THE COURT - ARE YOU REQUESTING THAT I CHARGE THE
7 LESSER INCLUDED VOLUNTARY?

8 MR RICHARDSON MR WILSON REQUESTED IT

9 THE COURT DID? I DIDN'T GET THAT ONE, OKAY
10 AND YOUR POSITION ON THAT?

11 MR RICHARDSON -YOUR HONOR, I THINK THAT I
12 FELT PRETTY GOOD ABOUT SELF DEFENSE BECAUSE WE'D BEEN
13 UPHELD BUT IT SEEMS LIKE EVERY TIME THAT WE TRY TO GET AWAY
14 FROM THE MANSLAUGHTER WE GET STRUCK DOWN ON THAT SO I THINK
15 IN AN ABUNDANCE OF CAUTION I'M NOT GOING TO MAKE A MOTION
16 ABOUT NOT PUTTING FORTH THE LESSER INCLUDED CERTAINLY
17 I'LL ARGUE AGAINST IT BUT, TO THE JURY, BUT I BELIEVE THAT
18 THERE'S ENOUGH IN THERE WITH HEAT OF PASSION THAT HE SHOULD
19 GET THAT CHARGE IF HE REQUESTS IT AND WANTS IT

20 THE COURT ALL RIGHT, THE COURT WILL INCLUDE
21 THE LESSER INCLUDED BASED UPON ITS READING OF THE CURRENT
22 CASE LAW DECISIONS PASSED DOWN BY THE COURT OF APPEALS AND
23 SUPREME COURT ANY, ANYTHING FURTHER, MR WILSON?

24 MR WILSON NOTHING FURTHER, YOUR HONOR

25 THE COURT ANYTHING FURTHER, MR RICHARDSON?

CHARGE CONFERENCE

297

1 MR RICHARDSON I WILL JUST ASK YOU ABOUT, AND
2 I CAN LOOK OVER IT TOMORROW BUT I'M SURE THE STANDARD
3 CHARGE ABOUT MALICE CAN BE IMPLIED BY THE USE OF A DEADLY
4 WEAPON?

5 THE COURT YES, I HAPPEN TO HAVE, I CAN, I'LL
6 READ, "MALICE IS HATRED, ILL WILL OR HOSTILITY TOWARDS
7 ANOTHER PERSON IT'S THE INTENTIONAL DOING OF A WRONGFUL
8 ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO
9 INFLICT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL
10 INFER AN EVIL INTENT

11 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE
12 EXIST FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED
13 BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST
14 BEFORE AND AT THE TIME THE ACT IS COMMITTED, THEREFORE,
15 THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND
16 THE ACT

17 MALICE AFORETHOUGHT MAY BE EXPRESSED OR INFERRED
18 THESE TERMS EXPRESSED OR INFERRED DO NOT MEAN DIFFERENT
19 KINDS OF MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY
20 BE SHOWN TO EXIST, THAT IS EITHER BY DIRECT EVIDENCE OR BY
21 INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE
22 PROVED

23 EXPRESSED MALICE IS SHOWN WHEN A PERSON SPEAKS
24 WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OF WHEN
25 THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS

CHARGE CONFERENCE

298

1 LATER ACCOMPLISHED, FOR EXAMPLE, LYING IN WAIT FOR A PERSON
2 OR OTHER ACTS IN PREPARATION GOING TO SHOW THAT THE DEED
3 WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESSED MALICE

4 MALICE MAY BE INFERRED FROM CONDUCT SHOWING A
5 TOTAL DISREGARD FOR HUMAN LIFE

6 INFERRED MALICE MAY ALSO RISE WHEN THE DEED IS
7 DONE WITH A DEADLY WEAPON

8 A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT OR
9 SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY
10 HARM

11 WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY
12 WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE
13 AND IT DESCRIBES A GUN MAY BE A DEADLY WEAPON
14 EVEN IF IT'S NOT OPERATING AND LISTS EXAMPLES OF
15 INSTRUMENTS WHICH MAY BE DEADLY "

16 MR RICHARDSON THANK YOU, YOUR HONOR

17 THE COURT IS THAT THE SUITABLE MALICE CHARGE,
18 MR RICHARDSON?

19 MR RICHARDSON YES, MA'AM

20 THE COURT MR WILSON?

21 MR WILSON YES, MA'AM

22 THE COURT ALL RIGHT, ALL RIGHT, WE WILL BE IN
23 RECESS UNTIL, I HAVE THE JURY COME BACK AT 9 30, WE'LL BE
24 BACK AT 9 15 MY, THE CHARGES WILL BE READY FOR YOUR
25 REVIEW BY 8-30 IN THE MORNING

CHARGE CONFERENCE

299

1 MR WILSON THANK YOU, YOUR HONOR

2 THE COURT THANK YOU

3 MR RICHARDSON THANK YOU, YOUR HONOR

4 THE COURT HAVE A GOOD EVENING

5 MR RICHARDSON YOU, TOO

6 (WHEREUPON, COURT WAS ADJOURNED FOR THE EVENING)

7 (WHEREUPON, COURT RESUMES AT 9 15 A M ON MAY 21,
8 2008)

9 THE COURT MR RICHARDSON HAVE YOU HAD AMPLE
10 OPPORTUNITY TO REVIEW THE CHARGES THAT THE COURT WILL BE
11 GIVING?

12 MR RICHARDSON YES, MA'AM

13 THE COURT ANY OBJECTIONS, ADDITIONS OR
14 CORRECTIONS?

15 MR RICHARDSON I DID HAVE SOME PROPOSED
16 ADDITION

17 THE COURT IS IT THE REQUEST TO CHARGE STATE V
18 BRYANT?

19 MR RICHARDSON YES, MA'AM I GAVE, I GAVE MR
20 WILSON A COPY

21 THE COURT MR WILSON, YOUR RESPONSE?

22 MR WILSON I'M NOT REAL CERTAIN THAT THIS IS
23 ACTUALLY A CORRECT STATEMENT OF THE LAW IN ALL FACTUAL
24 SITUATIONS AND THE FACT I THINK THAT THERE IS LAW WHICH
25 ACTUALLY SAYS THAT THERE ARE TIMES WHEN THAT WOULD BE TRUE

CHARGE CONFERENCE

300

1 AND THERE ARE OTHER TIMES WHEN THAT MAY NOT NECESSARILY BE
2 TRUE, AND SO I DON'T THINK THAT THIS, THIS CHARGE IS
3 APPROPRIATE BECAUSE UNLESS YOU'RE GOING TO READ THE --
4 THERE IS ALSO CASE LAWS THAT SAYS, WHICH SAYS THAT THERE
5 ARE TIMES WHEN THIS IS TRUE, WHEN THIS WOULD BE THE CASE
6 BUT THERE IS ALSO LAW TO THE CONTRARY WHICH SAYS THAT THERE
7 ARE TIMES WHEN EVEN THOUGH THE PERSON MAY HAVE COMMITTED
8 SOME OFFENSE, AND I THINK IT'S EITHER SLATER OR WHICH
9 ACTUALLY SAYS THAT AND I'M TRYING TO FIND IT FOR YOU NOW --
10 AND, AND HERE I THINK IN SLATER ON PAGE TWO OF SLATER THE
11 SUPREME COURT SAYS THAT, OR AT LEAST THEY CITE THIS '1'
12 PARTICULAR LAW WHICH APPARENTLY HAD BEEN USED BEFORE, AND
13 THEY SAY THAT "WE DISCUSSED WHETHER A PERSON IN UNLAWFUL
14 POSSESSION OF A WEAPON MAY LAWFULLY ARM HIMSELF IN SELF
15 DEFENSE CLARIFYING AN AMBIGUITY IN THE COURT'S PRIOR CASE
16 LAW WE NOTED THAT WHERE THE DEFENDANT'S UNLAWFUL POSSESSION
17 OF A WEAPON IS MERELY INCIDENTAL TO THE DEFENDANT'S
18 UNLAWFUL ACT OF ARMING HIMSELF IN SELF DEFENSE THE UNLAWFUL
19 POSSESSION OF THE WEAPON WILL NOT PREVENT THE USE OF AN
20 ACCIDENT DEFENSE " AND THEN THEY GO ON TO SAY "WE FURTHER
21 EXPLAIN, HOWEVER, THAT THE UNLAWFUL POSSESSION OF A FIREARM
22 CAN UNDER SOME CIRCUMSTANCES CONSTITUTE AN UNLAWFUL
23 ACTIVITY SO AS TO PRECLUDE AN ACCIDENT IF THE WEAPON IS THE
24 PROXIMATE CAUSE OF THE KILLING "
25 SO I, I THINK THAT, AND EVEN THOUGH THEY'RE,

CHARGE CONFERENCE

301

1 THEY'RE LIKING IT TO AN ACCIDENT I THINK THE SAME THING
2 APPLIES WITH REGARDS TO SELF DEFENSE AND I THINK THAT THERE
3 ARE CIRCUMSTANCES UNDER WHICH THAT MIGHT BE APPROPRIATE I
4 DON'T THINK THAT THIS IS ONE OF THOSE CIRCUMSTANCES AND I
5 DON'T THINK THAT IT'S APPROPRIATE IN ALL CIRCUMSTANCES

6 THE COURT YOUR RESPONSE, MR RICHARDSON?

7 MR RICHARDSON YES, MA'AM, IN THE CASE THAT
8 MR WILSON CITED THE SLATER CASE THEY ACTUALLY CITE BRYANT
9 IN THAT CASE WITH THE PROPOSED JURY CHARGE THAT I PASSED
10 UP IN THE INSTANT CASE SLATER FAILS TO MEET THE FIRST
11 REQUIREMENT FOR SELF DEFENSE SPECIFICALLY SLATER WAS NOT
12 WITHOUT FAULT IN BRINGING ON THE DIFFICULTY AND THEN THEY
13 CITE ANY ACT OF THE ACCUSED IN VIOLATION OF THE LAW AND
14 REASONABLY CALCULATED TO PRODUCE THE OCCASION AMOUNTS TO
15 BRINGING ON THE DIFFICULTY AND BARS THE RIGHT TO ASSERT
16 SELF DEFENSE

17 THIS SLATER CASE THAT HE WAS TALKING ABOUT
18 ACTUALLY QUOTES BRYANT IN IT FOR THE REASON AND NOT TO, TO
19 ALLOW THE SELF DEFENSE CHARGE IN SLATER

20 NOW THE SELF DEFENSE CHARGE IS, IS IN THIS CASE
21 AND YOU'VE GOT A VARIATION OF WHAT WE'VE JUST TALKED ABOUT
22 IN YOUR CHARGE UNDER WITHOUT FAULT YOU'VE GOT IF THE
23 DEFENDANT'S CONDUCT WAS THE TYPE WHICH REASONABLY
24 CALCULATED TO AND DID PROVOKE A DEADLY ASSAULT THE
25 DEFENDANT WOULD BE AT FAULT WE'RE JUST ASKING YOU TO ADD

CHARGE CONFERENCE

302

1 TO THAT THE WELL CITED CASE OF BRYANT AND AGAIN SLATER
2 TALKING ABOUT BRYANT

3 I THINK WHAT MR WILSON IS TALKING ABOUT IS COULD
4 SIMPLY HAVING A PISTOL, UNLAWFUL POSSESSION OF A PISTOL
5 AMOUNT TO AN UNLAWFUL ACT THAT WOULD BAR HIM FROM USING
6 SELF DEFENSE

7 THIS IS, THIS CASE THAT'S BEFORE US TODAY IS SO
8 TOTALLY DIFFERENT BECAUSE SIMPLY CARRYING THE PISTOL
9 WITHOUT A CONCEALED WEAPONS PERMIT THAT'S NOT WHAT WE'RE
10 TALKING ABOUT IT'S THE FACT THAT HE DREW THE PISTOL OUT
11 AND HE POINTED IT AND PRESENTED THE PISTOL AT THIS VICTIM

12 THE COURT I'D BE HAPPY TO HEAR FROM YOU
13 REGARDING THAT, MR WILSON

14 MR WILSON YOUR HONOR, AND, AND THE LAST FULL
15 PARAGRAPH ON, ON SLATER, IN SLATER THE COURT SAYS SLATER'S
16 UNLAWFUL POSSESSION OF THE WEAPON WAS THE PROXIMATE CAUSE
17 OF THE HOMICIDE SLATER WAS NOT MERELY IN UNLAWFUL
18 POSSESSION OF A WEAPON HE CARRIED A COCKED WEAPON IN OPEN
19 VIEW INTO AN ALREADY VIOLENT ATTACK IN WHICH HE HAD NO
20 PRIOR INVOLVEMENT SLATER'S ACTIONS INCLUDING THE UNLAWFUL
21 POSSESSION OF A WEAPON PROXIMATELY CAUSED THE EXCHANGE OF
22 GUNFIRE AND ULTIMATELY THE DEATH OF THE VICTIM

23 THE FACTS IN, IN SLATER AND THE FACTS IN THIS
24 CASE ARE JUST TOTALLY DIFFERENT IN SLATER, GIVE YOU AN
25 EXAMPLE, IN SLATER, JUDGE, WHAT HAPPENED IS THIS GUY IS AT

CHARGE CONFERENCE

303

1 A FOOTBALL GAME OR SOME KIND OF A ---

2 THE COURT STEP SHOW

3 THE COURT AND HE'S OUT THERE AND, AND NOBODY
4 IS BOTHERING HIM HE IS NOT IN A FIGHT, HE IS NOT IN ANY
5 KIND OF ALTERCATION

6 HE SEES SOME FOLK OVER BY A TRUCK AND HE DON'T
7 EVEN KNOW WHAT THEY'RE DOING, HE JUST WALKS OVER THERE WITH
8 A GUN TO THEM THESE PEOPLE EITHER DISPERSE OR LEAVE, HE
9 THEN COMES BACK SAYS THAT HE INTENDS TO FIRE A SHOT WITH
10 THE GUN THAT HE'S HOLDING IN THE AIR HE SAYS TO START A
11 COMMOTION, I THINK WAS HIS WORDS THEN HE SEES SOME MORE
12 PEOPLE OVER ON THE OTHER SIDE OF THE PARKING LOT AND IT
13 LOOKS THEY'RE HAVING SOME KIND OF DIFFICULTY SO THEN HE
14 TAKES THE GUN AND GOES OVER TO THAT PLACE AND STARTS AN
15 ARGUMENT WITH THEM

16 THIS WAS A GUY WHO WAS OUT THERE WHO HAD NO
17 INVOLVEMENT IN ANYTHING WHO WAS LOOKING FOR A FIGHT WITH A
18 GUN BY HIS SIDE JUST WAITING FOR AN OPPORTUNITY TO USE IT
19 AND, AND THE COURT SAID, NO, WHEN, WHEN THAT KIND OF
20 SITUATION OCCURS THEN WE'RE NOT GOING TO LET YOU AVAIL
21 YOURSELF OF SELF DEFENSE THAT'S NOT WHAT YOU HAVE HERE
22 THAT IS NOT, THOSE ARE NOT THE FACTS HERE AND I THINK THAT
23 THIS SLATER IS JUST SO DIFFERENT THAN THE FACTS IN THIS
24 PARTICULAR CASE AND I THINK THIS CASE IS A TRADITIONAL USE
25 OF SELF DEFENSE IT IS VERY VERY DIFFERENT THAN SLATER

CHARGE CONFERENCE

304

1 AND I THINK SLATER IS REALLY THE EXCEPTION MORE THAN THE
2 RULE

3 THE COURT MR RICHARDSON, WHAT VIOLATION OF
4 THE LAW WAS INTRODUCED INTO TESTIMONY?

5 MR RICHARDSON POINTING AND PRESENTING THE,
6 BOTH VICTIMS SAID THAT MR JACOBS DID PULL THE GUN OUT, HE
7 POINTED IT AT THE VICTIM, HE CLICKED IT, IT DID NOT FIRE,
8 HE ROUNDED UP THE CHAMBER AND THEN HE FIRED EVERY WITNESS
9 THAT, EYEWITNESS THAT SAW THIS WERE CONSISTENT ON THAT,
10 THAT MR TYRONE JACOBS DID POINT AND PRESENT A FIREARM AT
11 THE VICTIM AND THAT, THAT WAS, THAT NOTHING TO DO WITH THE
12 UNLAWFUL CARRYING PART, THAT IS STRICTLY ON POINTING AND
13 PRESENTING A FIREARM

14 MR WILSON JUDGE, THAT DIDN'T OCCUR UNTIL THE
15 CONFRONTATION OUTSIDE WHICH IS WHEN HE WAS DEFENDING
16 HIMSELF

17 THE COURT BUT, BUT THAT'S THE ISSUE WHY WE'RE
18 IN FRONT OF THE JURY, MR WILSON, IS WHEN YOUR CLIENT
19 POINTED AND PRESENTED THE WEAPON MR RICHARDSON IS ASKING
20 FOR ME TO CLARIFY FOR THE JURY THAT IF HE BECAUSE THAT
21 WOULD BE A DEFENSE AND THAT IS MR RICHARDSON'S BURDEN TO
22 DISPROVE EVERY ELEMENT POINTING AND PRESENTING UNDER THE
23 BRYANT CASE WOULD PREVENT, WOULD SATISFY MR RICHARDSON'S
24 BURDEN ON THAT PRONG

25 MR WILSON WELL I UNDERSTAND THAT IT WOULD

CHARGE CONFERENCE

305

1 SATISFY HIS BURDEN IF, IF THAT WERE IN FACT THE CASE MY,
2 MY POINT, THOUGH, AND, AND MAYBE I'M MISSING THE POINT HERE
3 BUT MY POINT IS SIMPLY THIS IS, IS THAT WHAT HE'S, WHAT
4 HE'S ASKING THE COURT TO DO IN ESSENCE IS TO ---

5 THE COURT HE BEING MR , BEING THE STATE?

6 MR WILSON MR RICHARDSON, RIGHT, I

7 APOLOGIZE, YOUR HONOR I THINK WHAT THE SOLICITOR IS
8 ASKING THE COURT TO DO IS ACTUALLY GIVE HIM A RULING
9 TANTAMOUNT TO A DIRECTED VERDICT ON THAT PARTICULAR ISSUE
10 AND ---

11 MR RICHARDSON NO, MA'AM, I'M NOT

12 THE COURT WELL ---

13 MR WILSON AND --

14 MR RICHARDSON I JUST WANT THE JURY TO BE ABLE
15 TO CONSIDER THAT

16 THE COURT MR RICHARDSON, LET MR WILSON
17 FINISH AND THEN, THEN I'M GOING TO, TO MAKE A DECISION

18 MR WILSON AND MY, YOU KNOW, MY POSITION
19 AGAIN IS, IS THAT I DON'T THINK THAT THIS CHARGE IS
20 APPROPRIATE UNDER THESE CIRCUMSTANCES BECAUSE, BECAUSE,
21 YOUR HONOR, IF I'M READING THIS CORRECT IT SAYS ANY ACT OF
22 THE ACCUSED IN VIOLATION OF THE LAW AND REASONABLY
23 CALCULATED TO PRODUCE THE OCCASION AMOUNTS TO BRINGING ON
24 THE DIFFICULTY

25 NOW BRINGING ON, THIS OCCURRED AFTER THEY'RE

CHARGE CONFERENCE

306

1 OUTSIDE IT DOESN'T OCCUR BEFOREHAND AND WHICH IS, WHICH
2 IS WHEN THIS CHARGE I WOULD SUBMIT TO YOU WOULD BE
3 APPROPRIATE, NOT DURING A CASE LIKE WHERE HE'S STANDING
4 OUTSIDE WITH A STICK CONFRONTING THE VICTIM WHEN ELSE CAN
5 THE VICTIM POSSIBLY DRAW THE GUN THE ONLY TIME THAT HE
6 WOULD EVER USE THE GUN AND CLAIM SELF DEFENSE IS WHEN THE
7 OTHER PERSON HAD BROUGHT ON THE DIFFICULTY BY COMING OUT
8 FACING HIM AND THEN HE IS THEN PLACED IN DANGER SO HE HAS
9 THE RIGHT TO DEFEND HIMSELF AT THAT MOMENT

10 THERE IS NO INDICATION THAT THIS GUN WAS DRAWN ON
11 HIM PRIOR TO HIM COMING OUT AND THE ACTUAL SHOOTING,
12 OCCURRING, YOU KNOW, AND, AND, AND I WOULD SUBMIT TO THE
13 COURT THAT IF, IF, IF, IF THERE WAS, IF THE SOLICITOR WAS
14 ARGUING THAT THE VICTIM, THAT THE DEFENDANT BROUGHT ON THE
15 DIFFICULTY AT SOME POINT IN TIME PRIOR TO THE INSTANCE
16 WHERE THEY'RE OUTSIDE CONFRONTING EACH OTHER AND HE WAS
17 SAYING THAT HE DREW THIS GUN ON HIM I WOULD, I WOULD AGREE
18 WITH HIM BUT THAT IS NOT WHAT HE'S SAYING WHAT HE'S
19 SAYING IS HE'S WANTING THE COURT TO SAY THAT THE VERY FACT
20 THAT HE'S STANDING OUTSIDE AND EVEN THOUGH THAT THE VICTIM
21 MAY HAVE HAD A WEAPON AND WAS CONFRONTING HIM THAT BY THE
22 FACT THAT HE USED THE GUN OR THAT HE AT THAT POINT IN TIME
23 PULLED THE GUN OUT TO DEFEND HIMSELF THAT THAT IN AND OF
24 ITSELF IS A VIOLATION OF THE LAW AND I, I JUST THINK THAT
25 THAT'S NOT CORRECT

CHARGE CONFERENCE

307

1 (WHEREUPON, COURT'S EXHIBIT NUMBER 2 MARKED FOR
2 IDENTIFICATION)

3 THE COURT FOR THE RECORD THIS IS COURT'S
4 EXHIBIT NUMBER 2 THE COURT IS GOING TO MODIFY THE STATE'S
5 REQUEST TO CHARGE INSERTING IT ON UNDER SECTION NUMBER ONE
6 UNDER SELF DEFENSE WITHOUT FAULT

7 "FIRST THE DEFENDANT MUST BE WITHOUT FAULT IN
8 BRINGING ON THE DIFFICULTY IF THE DEFENDANT'S CONDUCT WAS
9 THE TYPE WHICH IS REASONABLY CALCULATED TO AND DID PROVOKE
10 A DEADLY ASSAULT AN ACT OF THE ACCUSED IN VIOLATION OF THE
11 LAW WHICH WAS REASONABLY CALCULATED TO PRODUCE THE OCCASION
12 AMOUNTS TO BRINGING ON THE DIFFICULTY AND MAY BAR HIS RIGHT
13 TO ASSERT SELF DEFENSE "

14 MR WILSON THANK YOU, YOUR HONOR

15 THE COURT THANK YOU

16 MR RICHARDSON THANK YOU, YOUR HONOR

17 THE COURT ANYTHING FURTHER?

18 MR RICHARDSON NO, MA'AM

19 THE COURT ANYTHING FURTHER, MR WILSON?

20 MR WILSON NO, MA'AM

21 THE COURT PLEASE BRING IN THE JURY

22 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
23 10 11 A M)

24 THE COURT I HOPE YOU HAD A RESTFUL EVENING,
25 PLEASE BE SEATED MR RICHARDSON?

CLOSING ARGUMENT BY STATE

308

CLOSING ARGUMENT

BY MR RICHARDSON

AT THE END OF IT JUDGE HARRINGTON IS GOING TO TALK WITH YOU ABOUT THE LAW ALSO BUT I'M GOING TO TALK WITH YOU ABOUT THAT I WANT YOU TO BEGIN BY REALIZING THIS, THIS ENTIRE CASE IS ABOUT MURDER IT'S NOT ABOUT SELF DEFENSE - IT'S NOT ABOUT VOLUNTARY MANSLAUGHTER - IT'S ABOUT MURDER AND I'LL GO THROUGH THE CHARGES AND THEN JUDGE HARRINGTON WILL GO THROUGH THOSE ALSO

WHAT'S GOING TO HAPPEN IS MR WILSON IS GOING TO HAVE YOU TRY TO JUSTIFY THIS KILLING - HE'S GOING TO HAVE YOU TO TRY TO EXCUSE THIS MURDER BY THE DEFENSE OF SELF DEFENSE THAT'S WHAT MR WILSON IS GOING TO ASK YOU TO DO AND THE JUDGE IS GOING TO TELL YOU ABOUT THE LAW OF SELF DEFENSE BUT THAT'S FOR YOU TO DECIDE AND WHEN YOU DECIDE THAT, EACH OF THESE, YOU NEED TO GIVE A LOT OF THOUGHT TO EACH ONE OF THESE CHARGES BECAUSE ONCE YOU DECIDE THAT IF YOU DECIDE THAT IT IS SELF DEFENSE HE'S INNOCENT, HE IS INNOCENT SO IT IS A COMPLETE DEFENSE, SO I'M GOING TO TELL YOU THAT THIS HAS NOTHING TO DO WITH SELF DEFENSE

ALREADY IN YOUR MIND YOU HAVE A UNDERSTANDING OF WHAT SELF DEFENSE IS CERTAINLY YOU KNOW IF I GO ABSOLUTELY FOOL RIGHT NOW AND JUMP ACROSS THIS BANNISTER THAT YOU'VE GOT A RIGHT TO DEFEND YOURSELF, THAT'S SELF DEFENSE, AND THE LAW IS SUPPOSED TO BE, WE MIGHT BELIEVE IT

CLOSING ARGUMENT BY STATE

309

1 SOMETIMES, BUT THE LAW IS SUPPOSED TO BE BASED ON COMMON
2 SENSE AND WHAT YOU'LL FIND IN THIS CASE IS THAT IT IS

3 I WANT TO GO THROUGH SELF DEFENSE WITH YOU FIRST
4 AND I WANT TO SHOW YOU SOMETHING THAT JUDGE HARRINGTON IS
5 GOING TO TALK WITH YOU ABOUT ALSO JUST SO THAT YOU CAN KEEP
6 THIS IN MIND SELF DEFENSE IS A FOUR PRONG TEST, RIGHT,

7 AND WHAT THE STATE, ONCE IT'S RAISED THE STATE HAS THE
8 BURDEN BEYOND A REASONABLE DOUBT OF DOING AWAY WITH SELF
9 DEFENSE

10 WHAT YOU HAVE TO DO IS NOT DISPROVE EVERY ONE OF
11 THESE YOU'VE GOT, OR THE STATE, HAS TO DISPROVE ONE AND
12 JUST LIKE THIS HARD BACK HERE HAS GOT FOUR LEGS, I DON'T
13 HAVE TO REMOVE EVERY LEG TO MAKE IT NOT HOLD WEIGHT I JUST
14 HAVE TO REMOVE ONE NOW I'M GOING TO GO AHEAD AND THROUGH
15 A FREEBIE OR SO FOR YOU BUT THE VERY FIRST DEFENSE HERE OF
16 SELF DEFENSE, AND JUDGE HARRINGTON IS GOING TO TELL YOU
17 ABOUT THESE, FOR THE DEFENDANT TO BE ABLE TO USE SELF
18 DEFENSE THE DEFENDANT MUST BE WITHOUT FAULT IN BRINGING ON
19 THE DIFFICULTY, WITHOUT FAULT

20 THE ACTUAL WORDS THAT WILL BE SAID TO YOU IS
21 FIRST THE DEFENDANT MUST BE WITHOUT FAULT IN BRINGING ON
22 THE DIFFICULTY IF THE DEFENDANT'S CONDUCT WAS OF THE TYPE
23 WHICH REASONABLY CALCULATED AND DID PROVOKE THE DEADLY
24 ASSAULT AND IF ANY ACT OF THE ACCUSED IN VIOLATION OF THE
25 LAW AND REASONABLY CALCULATED TO PRODUCE THE OCCASION

CLOSING ARGUMENT BY STATE

310

1 AMOUNTS TO BRINGING ON THE DIFFICULTY THAT BARS HIS RIGHT
2 TO ASSERT SELF DEFENSE OR THE JUSTIFICATION OR AN EXCUSE
3 FOR HOMICIDE

4 ALL RIGHT, SO IT'S AS SIMPLE AS THIS, IF YOU, IF
5 SOMEONE WITH COMPLETE CANDOR AND HONESTY CAN LOOK AT TYRONE
6 JACOBS AND TELL ME THAT HE IS WITHOUT FAULT, WITHOUT ANY
7 FAULT, FAULTLESS IN BRINGING ON THIS OCCASION - THEN YOU
8 CERTAINLY SHOULD GO BACK AND CONTINUE TO CONSIDER SELF
9 DEFENSE BUT HE MUST BE FAULTLESS ABOUT BRINGING ON THIS
10 CONFRONTATION

11 , , , NOW HOW IN THE WORLD CAN A YOUNG MAN WHOSE PRIDE
12 HAS JUST BEEN INJURED BY NO MORE THAN WORDS GO OUT
13 PRESUMEDLY TO HIS CAR, ARM HIMSELF WITH A .9MM, COME BACK TO
14 THE FRONT OF THAT STORE AND WAIT ON DAVID BENNETT TO COME
15 OUTSIDE AND NOT BE AT FAULT OR BE WITHOUT ANY FAULT HOW
16 IN THE WORLD DOES THAT HAPPEN, IT DOESN'T HAPPEN THERE'S
17 NO WAY FOR THAT TO HAPPEN HE WENT OUT AND HE ARMED
18 HIMSELF AND HE CAME BACK AND HE WAITED FOR HIM TO COME OUT

19 THE TESTIMONY THAT YOU HEARD FROM THAT STAND
20 EVERY WITNESS SAID THAT HE WALKED UP, HE POINTED THE GUN AT
21 HIM, THERE WAS A CLICK, THE GUN DIDN'T GO OFF, HE ROUNDED
22 IT, PUT A BULLET IN THE CHAMBER AND THEN FIRED THREE TIMES
23 INTO THE VICTIM AND DR PROCTOR TOLD YOU THAT TWO OF THOSE
24 THREE WOULD HAVE CAUSED HIS DEATH, ANY ONE OF THOSE TWO
25 IF THIS WAS SUPERFICIAL THE ONE THROUGH THE LEG WOULDN'T

CLOSING ARGUMENT BY STATE

311

1 HAVE KILLED HIM, BUT ANY ONE OF THOSE OTHER TWO THROUGH HIS
2 BODY CAUSED HIS DEATH DOES THAT SOUND IN ANY WAY LIKE HE
3 WAS WITHOUT FAULT

4 I JUST WANT YOU TO REALIZE WHAT A RIDICULOUS
5 CIRCUMSTANCE WE'RE IN HERE TODAY HAVING TO ARGUE ABOUT SELF
6 DEFENSE THE DEFENDANT WOULD HAVE HAD TO HAVE BEEN WITHOUT
7 FAULT ONCE YOU STRIKE THAT THIS WHOLE DEFENSE THOUGHT ONE
8 OF THEM BREAKS THE WHOLE DEFENSE DOWN

9 NOW I TOLD YOU I WOULD THROW IN A FREEBIE, THE
10 DEFENDANT HAD NO OTHER PROBABLE MEANS OF AVOIDING DANGER,
11 NUMBER FOUR WE'LL GO THROUGH ALL OF THEM BUT THESE ARE
12 THE EASIEST TWO, I MEAN YOU GOT TO SHOW FOR SELF DEFENSE HE
13 WOULD HAVE TO COMPLY WITH ALL OF THESE NO PROBABLE MEANS
14 OF AVOIDING DANGER AND, AND UNDER THAT UMBRELLA PART OF IT
15 THAT IS WHERE THIS UNDERSTANDING OF A DUTY TO RETREAT COMES
16 IN, THAT'S WHAT IT'S TALKING ABOUT AND, OF COURSE, YOU KNOW
17 ALREADY THAT YOU DON'T HAVE A DUTY TO RETREAT IF YOU'RE IN
18 YOUR HOUSE, RIGHT IF SOMEONE BREAKS IN ON YOU IN YOUR
19 HOUSE YOU DON'T HAVE TO LEAVE YOU CAN USE FORCE TO STOP
20 THAT THIS ISN'T ABOUT A HOUSE

21 HE HAD A DUTY TO RETREAT UNLESS THAT DUTY WAS
22 GOING TO PUT HIM IN WORST STEAD IN OTHER WORDS IF HE HAD
23 BEEN RUNNING OUT IN THE STREET AND DAVID BENNETT HAD HAD A
24 GUN AND WAS FIRING A GUN AT HIM, OF COURSE, HIM CONTINUING
25 TO RETREAT WITHOUT FIRING BACK IS GOING TO PUT HIM A WORST

CLOSING ARGUMENT BY STATE

312

1 STEAD IN THIS CASE THERE WAS NO OTHER GUN

2 AS A MATTER OF FACT WHEN WE GET TO THE DUTY TO
3 RETREAT IF YOU'LL REMEMBER HE WENT OUT TO HIS CAR HIS CAR
4 WAS PARKED, THAT BLACK PONTIAC, RIGHT OUTSIDE OF THE CLUB
5 HE COULD HAVE LEFT HE COULD HAVE LEFT HE COULD HAVE
6 LEFT AT ANY TIME HIS HOUSE WAS WITHIN AN EIGHTH OF A MILE
7 OF THAT CLUB HE COULD HAVE WALKED

8 HE WAS NOT, TYRONE JACOBS WAS NOT LOOKING TO
9 RETREAT HE WASN'T LOOKING FOR THAT HE WAS LOOKING FOR
10 REVENGE ABOUT BEING CALLED A PUNK AND THAT DIDN'T SIT WELL
11 WITH HIM IN FRONT OF HIS FRIENDS AND THEN HE HAD TO ,
12 WHATEVER IT TAKES THESE DAYS, I DON'T KNOW WHAT A PRICE OF
13 A LIFE IS ANYMORE, BUT BECAUSE YOU CALL SOMEBODY A PUNK
14 MEANS YOU SHOULD GET SHOT DOWN IN COLD BLOOD THAT DOESN'T
15 MAKE SENSE, THAT DOESN'T MAKE SENSE AT ALL

16 IS THERE ANY DOUBT IN THIS WORLD THAT HE COULD
17 NOT HAVE LEFT THIS ALTERCATION HE'S WITH THE CAR HE'S
18 WITHIN WALKING RANGE AND ALL THIS TIME BY EVERY PERSON
19 DAVID BENNETT IS STILL IN THE CLUB IT IS ONLY WHEN HE
20 RETRIEVES THE GUN AND COMES BACK TO THE CLUB THAT ANY SORT
21 OF CONTINUATION OF AN ARGUMENT ENSUES AND THAT APPARENTLY
22 WAS JUST CALLING HIM A PUNK TWO OR THREE MORE TIMES

23 YOU HEARD ROBERT MCCULLOUGH SAY THAT HE WAS
24 STANDING THERE WITH THE POOL STICK UNDER HIS CHIN LIKE
25 THAT, ROBERT MCCULLOUGH NOW ROBERT MCCULLOUGH TOLD YOU

CLOSING ARGUMENT BY STATE

313

1 THAT TYRONE JACOBS WAS HIS FRIEND, HAD NO AXE TO GRIND
2 WHATSOEVER AGAINST TYRONE JACOBS HE'S FRIENDLY WITH HIM
3 AND HIS FAMILY, NO REASON TO LIE, AND HE SAID AT NO TIME
4 DID DAVID BENNETT MAKE AN AGGRESSIVE MOVE TOWARD TYRONE
5 JACOBS

6 WELL YOU MIGHT SAY, WELL HE HAD A STICK, WELL HE
7 WAS AT A POOL HALL YEAH, HE WAS GOING TO HAVE A STICK AT
8 SOME POINT IF YOU'RE IN A RESTAURANT YOU'RE PROBABLY
9 GOING TO HAVE A FORK IT'S NOT LIKE HE WAS WALKING AROUND
10 THE STREETS OF CONWAY WITH A POOL STICK LOOKING TO BASH
11 SOMEBODY'S HEAD IN HE COULD HAVE LEFT AND, THEREFORE, HE
12 IS NOT ENTITLED TO THE DEFENSE OF SELF DEFENSE

13 THE MAIN THING I WANT YOU TO FOCUS ON IS HE'S GOT
14 TO BE FAULTLESS AND THERE'S NO WAY TO BE FAULTLESS IF YOU
15 WENT OUT, YOU'RE THE ONLY GUY WITH A GUN, YOU GO TO YOUR
16 CAR RETRIEVE THE GUN AND WALK BACK WAITING FOR A FIGHT

17 NOW I WOULD SUBMIT TO YOU WITH REGARD TO THESE
18 OTHER TWO THAT HE BELIEVED THAT HE'S IN ACTUAL IMMINENT
19 DANGER DOES HIS ACTIONS APPEAR THAT HE THOUGHT HE WAS IN
20 IMMINENT DANGER HE GOES OUT TO A CAR AND COMES BACK WITH
21 A GUN IF YOU'RE IN IMMINENT DANGER IT CERTAINLY FALLS
22 BACK HERE IF YOU'RE IN IMMINENT DANGER AND THE GUY IS
23 INSIDE THE CLUB LEAVE YOU DON'T GO BACK TO IT IF YOU FEEL
24 LIKE AT ANY MOMENT WHICH IS WHAT IMMINENT IS IT'S JUST
25 LIKE THAT, IT CAN HAPPEN AT ANY TIME, YOU DON'T GO BACK UP

CLOSING ARGUMENT BY STATE

314

1 THERE IF YOU THINK HE'S GOING TO HARM YOU

2 I TELL YOU HE WAS NOT LOOKING TO LEAVE HE WAS
3 NOT LOOKING TO BE WITHOUT FAULT HE WAS LOOKING TO ENACT
4 SOME SORT OF REVENGE AND THAT'S WHAT IT'S ALL ABOUT AND
5 THIS PART IS SIMPLY FOR IF A REASONABLE PERSON PLACED IN
6 THAT SITUATION WOULD BELIEVE THAT THEY WERE IN IMMINENT
7 DANGER

8 THE REASON FOR THAT PART OF THE LAW, THE THIRD
9 PRONG OF THE TEST IS BECAUSE SO MANY TIMES IT'S HARD TO GET
10 IN SOMEONE'S MIND SO WHAT WE DO AS A COURT OF LAW IS CREATE
11 -A-REASONABLE PERSON'S-STANDARD WHICH BASICALLY-SAYS WHAT
12 WOULD A REASONABLE PERSON HAVE DONE NEVER MIND WHAT HE
13 DID, WHAT WOULD A REASONABLE-PERSON HAVE DONE WOULD A
14 REASONABLE PERSON HAVE WENT AND ARMED THEMSELVES AND CAME
15 BACK TO THE FIGHT, AND I KEEP CALLING IT FIGHT, APPARENTLY
16 EVERY PERSON THAT TESTIFIED SAID THE CLOSEST THEY WERE WERE
17 ACROSS THE WAY AND THE WORST THING THAT WAS SAID TO HIM,
18 THERE WAS A LOT OF THINGS SAID BUT IT WAS THE WORST THING
19 WAS PUNK I THINK HE TOLD HIM, MIND YOUR OWN BUSINESS,
20 WHEN, WHEN JACOBS TOLD CHRIS NOT TO LET HIM USE THE PHONE
21 AND CALLED HIM A PUNK

22 THEY NEVER CAME CLOSE ENOUGH TO FIGHT AND WHEN
23 THEY WERE OUTSIDE YOU REMEMBER THE DIAGRAM OVER HERE WHICH
24 YOU WON'T BE ABLE TO TAKE BACK INTO EVIDENCE BUT YOU CAN
25 SEE THAT WITH 5 AND 6 HERE THAT'S THE BLOOD POOL THAT'S

CLOSING ARGUMENT BY STATE

315

1 WHERE EVERYBODY HAD SAID THAT DAVID WAS STANDING AND THAT'S
2 WHERE HE FELL THEY DIDN'T ARTIFICIALLY PLANT SUCH STUFF
3 AS THAT, THAT'S HIS BLOOD POOL RIGHT THERE AND EVERY PERSON
4 THAT TESTIFIED THAT SAW IT SAID THAT JACOBS WAS TWO OR
5 THREE FEET AWAY HOLDING HIM AT GUNPOINT AND I MEAN WHEN YOU
6 LOOK AT THAT AND THE FACT THAT THE GUY FELL RIGHT THERE
7 THIS SELF DEFENSE JUST DOESN'T HOLD WEIGHT AND I, AND I
8 WOULD HOPE THAT WHEN YOU GO BACK IN IF YOU'LL REMEMBER THAT
9 WE DON'T HAVE TO KNOCK DOWN ALL FOUR OF THESE BY A
10 REASONABLE DOUBT, JUST ONE

11 YOU CAN DO AWAY WITH ANY TALK OF SELF DEFENSE
12 FROM THAT POINT ON AND GET DOWN TO WHAT THIS CASE IS REALLY
13 AND TRULY ABOUT AND THAT IS MURDER THIS CASE IS NOT A WHO
14 DONE IT, RIGHT, I TOLD YA'LL THAT FROM THE BEGINNING THIS
15 ISN'T A SITUATION WHERE ANYBODY'S CONTESTING THAT ANOTHER
16 PERSON ON THIS WHOLE EARTH SHOT DAVID BENNETT NOBODY HAS
17 COME TO YOU AND SAID, THERE'S NOT ONE SCINTILLA OF EVIDENCE
18 THAT ANYBODY BUT TYRONE JACOBS SHOT HIM DOWN AND SHOT HIM
19 THREE TIMES THERE'S NOT A BIT OF EVIDENCE TO CONTRADICT
20 THAT AND ONE OF THOSE WERE IN THE BACK

21 NOW THIS CASE IS PURELY AND SIMPLY ABOUT MURDER
22 AND YOU MAY EXPECT A LONG DISSERTATION WITH REGARDS TO THE
23 LAW ON MURDER IT'S, IT'S NOT AND I WANT TO GO THROUGH THAT
24 WITH YOU SO THAT YOU, I MEAN JUDGE HARRINGTON IS GOING TO
25 GIVE YOU THESE SAME CHARGES WITH A LOT MORE DETAIL BUT WITH

CLOSING ARGUMENT BY STATE

316

1 REGARD TO MURDER WE'VE GOT TO PROVE THREE THINGS, RIGHT

2 WAS THERE A KILLING, OF COURSE, DR PROCTOR SAID
3 HE DIED AS A DIRECT RESULT OF TWO OF THOSE GUNSHOTS HE
4 WOULD BE ALIVE TODAY, WELL I CAN'T SAY THAT I MEAN A TRUCK
5 COULD HAVE HIT HIM, BUT HE MOST LIKELY WOULD HAVE BEEN
6 ALIVE TODAY BUT FOR BEING SHOT HE WAS KILLED

7 WAS THERE ANOTHER PERSON, THIS IS TO DO AWAY WITH
8 SUICIDE, IT'S CERTAINLY HOMICIDE BUT, YES, DAVID BENNETT
9 WAS A DIFFERENT PERSON FROM TYRONE JACOBS, EASY ENOUGH
10 WITH MALICE AFORETHOUGHT, NOW THIS IS THE ONE
11 THAT THE DEFENSE IS GOING TO ALSO ASK YOU TO SPLIT THE
12 BABY THEY'RE GOING TO SAY WELL FIRST OF ALL HE ACTED IN
13 SELF DEFENSE BUT IF HE DIDN'T ACT IN SELF DEFENSE AND YA'LL
14 DON'T BELIEVE THAT THEN HE ACTED BUT HE WAS UNABLE TO
15 CONTROL HIS URGES IN OTHER WORDS HE WAS UNABLE TO FORM
16 MALICE AFORETHOUGHT

17 LET ME EXPLAIN IT THIS WAY, WHEN YOU TALK ABOUT
18 MALICE, AND JUDGE HARRINGTON WILL TELL YOU THAT IT'S ILL
19 WILL IT'S A HEART FATALLY BENT ON MISCONDUCT IT'S
20 SOMEBODY THAT DOESN'T CARE WHAT THE RESULT OF WHAT HIS
21 ACTIONS ARE

22 YOU CAN TAKE HIS ACTIONS AND THEY CAN IMPLY THAT
23 HE MEANT TO KILL HIM, RIGHT, THAT'S IMPLIED, IF NOT ANOTHER
24 WORD WAS SAID WHEN YOU TAKE A 9MM PISTOL, AN AUTOMATIC,
25 AND YOU AIM IT AND, YOU KNOW, THE BIGGEST BREAK IN THIS

CLOSING ARGUMENT BY STATE

317

1 WHOLE THING IS THAT THE FIRST TIME HE PULLED THE TRIGGER IT
2 DIDN'T GO OFF YOU KNOW HE COULD HAVE LEFT, HE COULD HAVE
3 COOL REFLECTION AND SAID, YOU KNOW, I DON'T WANT TO KILL MY
4 COUSIN BUT HE DIDN'T, DID HE HE PULLED IT BACK, PUT A
5 BULLET IN THE CHAMBER, AND THEN FIRED THREE MORE SHOTS
6 THAT IS MALICE WHEN YOU STAND THERE AND GUN A MAN DOWN
7 EXPRESSED MALICE IS USUALLY BY WORDS WHEREAS YOU
8 HEARD ONE WITNESS, I THINK IT WAS MCCULLOUGH, SAID YOU
9 DON'T THINK I'LL FILL YOU FULL OF HOLES I BELIEVE
10 GILLINS, MR WILSON CROSS EXAMINED HIM ON A STATEMENT HE
11 SAID THAT THE STATEMENT BY TYRONE TO DAVID BENNETT WAS I'LL
12 SHOW YOU WHAT I CAN DO EITHER WAY IF YOU EXPRESS AN
13 INTENT I'M GOING TO KILL YOU OR I'M GOING TO SHOOT YOU OR
14 I'M GOING TO HARM YOU THAT'S EXPRESSED YOU DON'T EVEN
15 HAVE TO GET TO THAT POINT
16 BY THE VERY FACT THAT SOMEBODY TAKING A GUN I
17 MEAN CERTAINLY A GUN IS REASONABLY USED TO CAUSE DEATH,
18 RIGHT YOU COULD EXPECT THAT IF YOU GOT SHOT MAYBE YOU
19 WOULD LIVE BUT THE PROXIMATE RESULT OF THAT COULD CAUSE
20 DEATH AND GREAT BODILY INJURY THAT'S WHAT MALICE IS ABOUT
21 AND JUDGE HARRINGTON WILL GO THROUGH THAT LIST OF WHAT
22 MALICE IS
23 ONE OTHER THING WITH REGARD TO THAT IS THE MALICE
24 AFORETHOUGHT YOU NEVER THOUGHT YOU COULD GET SO MUCH OUT OF
25 ONE STATEMENT OF A SENTENCE BUT AFORETHOUGHT MEANS THAT YOU

CLOSING ARGUMENT BY STATE

318

1 HAD A PLAN IT COULD BE SHOWN BY LAYING IN WAIT LIKE GOING
2 HOME TODAY AND HAVING A SNIPER HIDING UP IN A TREE BY YOUR
3 HOUSE AND SHOOTING YOU, THAT COULD BE AFORETHOUGHT THAT
4 PERSON HAD PLANNED TO HARM YOU OR TO KILL YOU BUT THAT
5 AFORETHOUGHT DOESN'T HAVE TO ARISE A DAY IN ADVANCE IT
6 DOESN'T HAVE TO BE A BIG LONG DISSERTATION OR A REASON FOR
7 IT IT CAN COME, AND JUDGE HARRINGTON WILL TELL YOU IN A
8 SPLIT SECOND JUST LIKE THAT AS LONG AS YOU REALIZE WHAT
9 YOU WERE DOING THAT IS MALICE AFORETHOUGHT

10 IN OTHER WORDS WHEN HE CLOCKED THAT GUN BACK HE

11 REALIZED WHAT WAS GOING ON HE HAD MORE THAN A SPLIT
12 SECOND TO THINK ABOUT IT THAT IS MALICE AFORETHOUGHT

13 NOW AGAIN THEY'RE GOING TO TELL YOU FIRST OF ALL
14 TO CONSIDER SELF DEFENSE BUT THEY'RE GOING TO SAY IF YOU
15 DON'T CONSIDER SELF DEFENSE CONSIDER VOLUNTARY MANSLAUGHTER
16 AND EVEN THOUGH THIS LOOKS BIGGER THE ONLY DIFFERENCE
17 BETWEEN THIS AND THE MURDER ONE THAT I WAS TELLING YOU
18 ABOUT IS THIS HEAT OF PASSION AND SUFFICIENT LEGAL
19 PROVOCATION

20 THE HEAT OF PASSION IS MOST COMMONLY WHEN YOU USE
21 MANSLAUGHTER THE CLASSIC SCENARIO IS THIS, MAN COMES HOME
22 FINDS HIS WIFE IN THE BED, HE IS SO UPSET HE GRABS THE GUN
23 AND SHOTS BOTH OF THEM HE IS ACTING UNDER THAT HEAT OF
24 PASSION THAT HE CAN'T PUT ASIDE HE IS SO MAD AND SO ANGRY
25 THAT THE COURT'S, OUR SYSTEM HAS MADE A WAY TO NOT JUSTIFY

CLOSING ARGUMENT BY STATE

319

1 WHAT THEY'VE DONE, BUT TO EXCUSE A PART OF IT AND I'M
2 TELLING YOU THIS IS NOT THE CASE OF VOLUNTARY MANSLAUGHTER
3 I DOUBT VERY SERIOUSLY YOU'LL EVEN HEAR MUCH OF AN ARGUMENT
4 ON THAT BUT IT'S THE UNLAWFUL KILLING OF A HUMAN BEING
5 WITHOUT MALICE AFORETHOUGHT IS WHAT IT COMES DOWN TO

6 YOU'VE GOT TO ABLE TO DECIDE DID, DID GOING OUT
7 TO THE VEHICLE GETTING THE GUN, WALKING BACK UP, I BELIEVE
8 THEY SAID THE VEHICLE WAS PARKED OVER HERE, WALKING BACK UP
9 TO HERE, DOES THAT GIVE YOU A COOL DOWN PERIOD IF NOT
10 WHEN HE WALKS OUTSIDE AND YOU POINT THAT GUN AT HIM AND IT
11 DOESN'T GO OFF JUST TO PUT THAT BULLET IN THE CHAMBER DOES
12 THAT SOUND LIKE SOMEBODY THAT'S JUST UNDER THE HEAT OF SOME
13 SORT OF PASSION THAT THEY CAN'T PUT ASIDE THEIR THOUGHTS
14 AND FEELINGS

15 AGAIN, YOU KNOW, THIS IS NOT A CASE ABOUT
16 VOLUNTARY MANSLAUGHTER IT IS NOT A CASE ABOUT SELF
17 DEFENSE IT IS A COLD HARD MURDER AND IT IS A MURDER FOR
18 NO OTHER REASON BUT THAT HE GOT HIS FEELINGS HURT HE GOT
19 A BRUISED EGO INSIDE OF THAT CLUB AND HE HAD TO COME BACK
20 AND SHOW EVERYBODY WHAT KIND OF A MAN HE WAS AND ANYBODY
21 CAN BE A BIGGER MAN WHEN THEY'RE STANDING THERE WITH A 9MM
22 AND THE OTHER GUY IS UNARMED IT'S EASY TO BE A BIGGER MAN
23 AT THAT POINT BUT UNTIL THEN YOU DIDN'T HEAR ONE PERSON
24 TALK ABOUT DAVID BENNETT MAKING A MOVE TO TRY TO HARM HIM
25 YOU DIDN'T HEAR ANYTHING ABOUT ANY INJURIES EXCEPT THOSE TO

CLOSING ARGUMENT BY STATE

320

1 DAVID BENNETT

2 THIS SELF DEFENSE MESS AND THIS VOLUNTARY
3 MANSLAUGHTER THERE'S NOTHING TO THAT IT IS RABBIT HOLES,
4 IT IS TO GET YOU TO LOOK AT RED HERRING AND SOMETHING
5 DIFFERENT THAN WHAT THIS CASE IS REALLY ABOUT AND THAT IS
6 MURDER IT'S MURDER, MURDER, MURDER, AND THAT'S WHAT HE
7 DID ON NOVEMBER THE 10TH, 2006 HE TOOK THE LIFE OF THIS
8 YOUNG MAN FOR NO OTHER REASON THAN A BRUISED EGO THAT'S
9 WHAT IT WAS ABOUT HE WASN'T IN ANY FEAR OF HIS LIFE HE
10 WASN'T, LIKE MR WILSON SAID DRAWING BACK TO TRY TO HIT
11 ANYBODY

12 THE ONLY TIME YOU HEARD ABOUT DRAWING BACK IS
13 WHEN MCCULLOUGH WHO IS HIS FRIEND SAID AFTER HE WAS SHOT HE
14 DID DRAW THE STICK BACK AND I WANT YOU TO THINK ABOUT
15 SOMETHING AND DR PROCTOR SAID THERE WAS ONE THOUSAND
16 DIFFERENT WAYS FOR THOSE BULLETS TO GO IN AND IT WOULD BE
17 PURE SPECULATION TO TRY TO FIGURE OUT WHICH SHOT WENT
18 FIRST, WHICH SHOT WENT SECOND, AND WHICH SHOT WENT THIRD,
19 BUT MR WILSON SAID WHAT ABOUT IF HE EXPOSED HIS LEFT SIDE
20 AND DID THIS NUMBER, WELL THAT'S GOOD AND WELL BUT DR
21 PROCTOR SAID THAT THIS WOUND CAME AT THE SAME TIME THIS
22 WOUND DID WELL I GUESS HE COULD BE ONE HANDED WIELDING A
23 THING BUT HE WASN'T, HE WASN'T DRAWING BACK ON HIM AND THE
24 ONLY TIME YOU HEARD ANYTHING ABOUT HIM DRAWING BACK ON THAT
25 DEFENDANT IS AFTER HE HAD BEEN SHOT AND I'LL SUBMIT TO YOU,

CLOSING ARGUMENT BY STATE

321

1 LADIES AND GENTLEMEN, ONCE YOU GET SHOT WITH A 9MM IT'S
2 TIME TO DO SOMETHING THAT'S THE SELF DEFENSE THAT'S THE
3 TIME TO SAY, HEY, I NEED TO DO SOMETHING, I CAN'T RUN, THIS
4 GUY IS STANDING HERE ON TOP OF ME WITHIN THREE FEET, HE'S
5 ALREADY SHOT ME ONE TIME THERE'S NOT A LOT OF PLACES FOR
6 ME TO GO AND I WOULD BE TELLING YOU A STORY IF I STOOD HERE
7 AND TRIED TO TELL YOU THAT THE FIRST SHOT WENT HERE THERE
8 AND YONDER, I DON'T KNOW, BUT I DO KNOW THAT THERE'S VERY
9 MURDER CASES THAT YOU'RE GONNA EVER, MAY NOT EVER GET
10 INVOLVED, THIS MIGHT BE A ONCE IN A LIFETIME DEAL FOR
11 YA'LL, PROBABLY HOPE IT IS SO, BUT THERE'S VERY FEW MURDER
12 CASES WHERE YOU'VE GOT EYEWITNESSES THAT SAW WHAT WAS GOING
13 ON

14 WELL LET'S TALK ABOUT THEM FOR JUST A SECOND
15 BECAUSE THEIR STATEMENTS, I BELIEVE THAT MR GILLINS DIDN'T
16 EVEN SEE A POOL STICK MR MCCULLOUGH DID SAY THAT HE WAS
17 STANDING OUT THERE ON A POOL STICK THEIR STATEMENTS ARE
18 INCONSISTENT AS TO WHERE HE WAS AT WHEN HE WAS SHOT, HOW HE
19 WAS SHOT, WHICH SHOT WENT FIRST, SECOND, AND THIRD, BUT I
20 SUBMIT TO YOU IT DOES NOT MATTER

21 DR PROCTOR COULDN'T TELL YOU WHAT, AND I'M NOT
22 GOING TO TRY TO TELL YOU WHAT SHOT CAME IN FIRST, SECOND,
23 AND THIRD, IT DOESN'T MATTER IF YOU'RE SITTING THERE WITH
24 ENOUGH HOLES IN YOU THAT YOU CAN'T HOLD WATER IT DOESN'T
25 REALLY MATTER WHICH SHOT COME FIRST THE FACT THAT YOU'RE

CLOSING ARGUMENT BY STATE

322

1 SHOT AND THAT YOU'RE GOING TO DIE AND IT WAS WITHIN SECONDS
2 IT'S OVER FOR YOU

3 I BELIEVE THEY SAID THE SHOOTING WAS AT 6 45
4 DR PROCTOR SAID HE WAS PRONOUNCED DEAD AT 7 14 NOW I, I
5 BELIEVE THAT TO BE THE TIME FRAMES BUT THAT'S NOT AN AWFUL
6 LONG TIME TO LIVE THOSE WOUNDS, AND YOU'LL HAVE SOME
7 PHOTOGRAPHS OF THOSE, WE TRIED TO TAKE OUT ANY ONES THAT
8 MIGHT TURN YOUR STOMACH IN ALL FAIRNESS, BUT THOSE WOUNDS
9 ARE FATAL WOUNDS THOSE WOUND ARE FATAL WOUNDS IF YOU
10 DON'T BELIEVE IT THERE'S A MAN LAYING IN THE GRAVE TODAY
11 BECAUSE OF THOSE WOUNDS, UNPROVOKED, UNJUSTIFIED, AND NOT
12 ABLE TO BE EXCUSED

13 I'M JUST ASKING YOU TO DO WHAT'S RIGHT I'M NOT
14 ASKING YOU TO, TO HAVE ANY SORT OF AXE TO GRIND AGAINST
15 THIS DEFENDANT BUT WHAT ALL THIS GOES DOWN TO IS WHAT'S
16 RIGHT AND WHAT'S WRONG AND IF THIS YOUNG MAN DID PULL A GUN
17 AND HE DID FIRE THREE TIMES WHICH IS UNCONTROVERTED INTO
18 THIS VICTIM AND THAT VICTIM DIED AS A RESULT OF THAT YOU
19 DON'T NEED TO GO BACK AND EXCUSE THAT

20 PEOPLE, YOU DON'T JUST SAY IT'S FINE BECAUSE THE
21 OTHER GUY HAD A POOL STICK IF THAT YOUNG MAN HADN'T MADE
22 ANY MOTIONS TO HIM, AND AGAIN I SUBMIT TO YOU THERE'S NOT
23 ONE SCINTILLA, NOBODY SAID ANYTHING ABOUT DAVID BENNETT
24 GOING TO HARM TYRONE JACOBS

25 THERE WAS SOME INDICATION THAT NEITHER ONE OF

CLOSING ARGUMENT BY STATE

323

1 THEM APPARENTLY, APPARENTLY NEITHER BENNETT NOR ROBERT
2 MCCULLOUGH THOUGHT THAT HE WOULD GO THROUGH WITH IT I
3 MEAN HOW CRAZY IS IT THAT YOUR COUSIN BECAUSE OF YOU
4 CALLING HIM A PUNK WOULD ACTUALLY WALK UP AND SHOOT YOU
5 IT DOESN'T MAKE A BIT OF SENSE I'M JUST ASKING YOU AND,
6 AND, AND, AND JUST TRYING TO BE AS FORCEFUL AS I CAN WITH
7 THIS, YOU CAN'T EXCUSE THAT SORT OF ACTIVITY

8 I KNOW THAT YOU'RE GOING TO BE BOMBARDED WITH
9 TWIST ON THE FACT WHEN MR WILSON IS GOING TO TRY TO TELL
10 YOU IT'S SELF DEFENSE BUT KEEP IN MIND ALL FOUR PRONGS HAVE
11 GOT TO BE MET WHEN YOU USE THAT DEFENSE AND I SUBMIT TO YOU
12 THAT THEY CAN'T, THAT NOT A ONE OF THE PRONGS ARE ANY GOOD,
13 NOT ANY OF THEM, THAT HE COULD HAVE RUN, THAT HE WAS
14 FAULTLESS IN BRINGING THIS WHOLE THING ON, WITHOUT FAULT
15 I DON'T EVEN THINK THEY CAN FORM THEIR LIPS TO SAY THAT
16 TYRONE JACOBS WAS WITHOUT FAULT I'M, I'M INTERESTED TO
17 SIT BACK AND SEE HOW THAT GOES DOWN IN BRINGING THIS WHOLE
18 THING ON, HE MURDERED A GUY

19 PLEASE BEAR WITH ME, I'M ALMOST THROUGH I DON'T
20 WANT TO BELABOR THESE POINTS, BUT THE WITNESSES THAT DID
21 COME FORWARD WE DID, WE TRIED PARTICULARLY TO MAKE SURE AND
22 NOBODY GOT TOGETHER AND YOU SAW THAT THERE WERE
23 DIFFERENCES IN TESTIMONY THEY WERE SEQUESTERED SO THEY
24 COULDN'T WATCH THE OTHER GUY TESTIFY WE WENT THROUGH
25 EVERY PRECAUTION TO MAKE SURE THAT THEY DIDN'T COME

CLOSING ARGUMENT BY STATE

324

1 TOGETHER AND PUT THEIR STORIES TOGETHER AND COME UP WITH
2 SOME SORT OF, OF IDEA THAT WOULD BEST FIT THE SCENE

3 SOME OF THEM WERE DIFFERENT BETWEEN THE TWO
4 WITNESSES ABOUT WHERE HE WAS WHEN HE WAS SHOT WHETHER IT
5 WAS ON THE DIRT OR THAT HE WAS STANDING UP IT DOESN'T
6 REALLY MATTER AND I SUBMIT TO YOU AND I ASK YOU TO THINK
7 ABOUT IT YOU SHOULDN'T USE YOU FOR AN EXAMPLE BUT A
8 REASONABLE PERSON YOU MIGHT VERY, A REASONABLE PERSON MIGHT
9 VERY WELL SEE THE FIRST SHOT BUT I SUBMIT TO YOU THAT ONCE
10 THOSE SHOTS START RINGING OUT AND BULLETS START FLYING
11 EVERYWHERE YOU'RE NOT GOING TO PAY AS MUCH ATTENTION AS YOU
12 MAY THINK THAT YOU ARE AS TO WHERE THIS SHOT HIT AND WHERE
13 THAT SHOT HIT AND WHICH WENT FIRST AND WHICH WENT SECOND
14 IT'S PROBABLY TIME TO BREAK CAMP WHEN SHOTS START FLYING
15 AND I CAN'T EXPLAIN TO YOU HOW THE BULLET CASING GOT OVER
16 HERE YOU CAN CERTAINLY LOOK AT THAT AND THINK FOR
17 YOURSELF

18 YOU WON'T BE ABLE TO TAKE THAT BACK INTO
19 EVIDENCE, THE REST OF IT YOU WILL, BUT CERTAIN PIECES OF
20 THE EVIDENCE WERE MOVED BEFORE THE POLICE GOT THERE YOU
21 CAN CERTAINLY GATHER THAT THE POOL STICK, BY ALL
22 TESTIMONY ABOUT THE POOL STICK SHOULD HAVE BEEN HERE
23 BECAUSE ROBERT MCCULLOUGH SAID THAT HE WAS STANDING ON THE
24 POOL STICK LIKE THIS, HE GOT SHOT, HE PULLED THE POOL STICK
25 UP AND THEN HE SAID IT WAS ALMOST LIKE HE RAN OUT OF ENERGY

CLOSING ARGUMENT BY STATE

325

1 AND THE POOL STICK WENT DOWN IN THE DIRT AND THEN HE GOT
2 SHOT AGAIN AND HE FELL BACKWARDS AND THE POOL STICK BROKE
3 FROM HITTING THE DIRT

4 I DON'T KNOW, I MEAN AGAIN I DON'T KNOW IF MR
5 MCCULLOUGH SAW IT JUST AS IT TOOK PLACE LIKE THAT IT
6 MAKES SENSE, BUT WHAT MAKES EVEN MORE SENSE IS THE POOL
7 STICK SHOULD HAVE BEEN AROUND THOSE POOLS OF BLOOD WHICH
8 YOU CAN CERTAINLY INFER THAT IT WAS MOVED NOW IT WASN'T
9 HIDDEN, THEY COULD HAVE PUT IT IN THE TRASH CAN, IT WAS
10 STACKED UP SIDE THE WALL, CERTAINLY NOT THE WAY IT FELL,
11 BUT I JUST WANT TO REITERATE TO YOU THAT THE ACTIONS OF THE
12 DEFENDANT DON'T GO ALONG WITH SELF DEFENSE, DON'T GO ALONG
13 WITH VOLUNTARY MANSLAUGHTER

14 AT THE END OF THE DAY HERE'S WHERE YOU GOT, YOU
15 CERTAINLY HAVE SOME INCONSISTENCIES IN THE EYEWITNESSES,
16 GRANTED YOU'VE CERTAINLY GOT A MAN WHO WAS, HAD THREE
17 BODY, THREE GUNSHOT WOUNDS, ONE THAT REMAINED IN HIS RIGHT
18 SIDE, THE OTHER GUY A BRUISED EGO, THAT'S IT, NO OTHER
19 INJURY, KIND OF POPS THAT WHOLE SELF DEFENSE CASE AWAY

20 YOU'VE GOT A MAN THAT RAN YOU'VE GOT A MAN THAT
21 WITH THE HELP OF, YOU HEARD TESTIMONY THAT FROM THE
22 MARSHALL SERVICE AND THE NORTH CHARLESTON POLICE AND HORRY
23 COUNTY HAD TO GO AND ARREST HIM A MONTH LATER DOES THAT
24 SOUND LIKE SELF DEFENSE OR DOES THAT SOUND LIKE HEAT OF
25 PASSION, UH-UH YOU'VE GOT A MAN THAT RAN BUT YOU'VE ALSO

CLOSING ARGUMENT BY DEFENSE

326

1 GOT A MAN THAT WAS UNABLE TO RUN CAUSE HE HAD A HOLE
2 THROUGH HIS LEG AND WAS DEAD

3 IN THAT PERIOD OF TIME, THAT ONE MONTH PERIOD OF
4 TIME SEVERAL THINGS HAPPENED BENNETT WENT TO THE HOSPITAL
5 AND DIED, BENNETT WAS PLACED ON AN AUTOPSY TABLE AND DR
6 PROCTOR PULLED OUT AS MUCH EVIDENCE AS HE COULD FROM THAT
7 BODY AND HE WAS BURIED AND THAT'S IT AND YOU'RE GOING TO
8 HAVE DECIDE, AND I HOPE THAT YOU'LL DECIDE AGAINST THIS
9 SELF DEFENSE EARLY ON SO YOU CAN GET TO THE MEAT OF THIS
10 THING CAUSE AT THIS POINT THERE'S ONLY ONE TRUE VERDICT AND
11 THAT VERDICT IS GUILTY AND GUILTY OF MURDER, THAT'S IT

12 DON'T DO WHAT MR WILSON IS GOING TO ASK YOU TO
13 DO AND JUSTIFY THIS MURDER DON'T DO WHAT HE'S GOING TO
14 ASK YOU TO DO AND EXCUSE THIS MURDER IT IS WITHOUT EXCUSE
15 AND IT'S WITHOUT JUSTIFICATION IT IS A FLAT OUT MURDER

16 IF AT ANY TIME YOU NEED TO COME BACK AND LISTEN
17 TO TESTIMONY ALL THIS STUFF WILL BE IN THE BACK WITH YOU,
18 YOU CAN CERTAINLY GO THROUGH THAT I ASKED YOU AT THE
19 BEGINNING OF THIS THING TO, PLEASE, DO NOT MAKE UP YOUR
20 MIND EARLY, NOT COME TO ANY RASH DECISIONS, TOLD YOU IT
21 WOULD BE EASY TO DO SO, BUT IT'S GETTING READY TO BE THAT
22 TIME IT'S GETTING READY FOR YOU TO DECIDE

23 I TOLD YOU IT WAS GOING TO BE A QUICK TRIAL AND I
24 THOUGHT TWO DAYS, WELL WE'RE IN THE THIRD DAY BUT I WASN'T
25 FAR OFF ON THAT, BUT THIS A VERY IMPORTANT CASE REGARDLESS

CLOSING ARGUMENT BY DEFENSE

327

1 OF THAT IT IS TREMENDOUSLY IMPORTANT TO MR JOHN BENNETT
2 AND HIS WIFE AND SHE'S OUTSIDE IT IS TREMENDOUSLY
3 IMPORTANT TO THE DEFENDANT BUT THE ONLY THING THAT ANY OF
4 US ARE GOING TO ASK FROM YOU IS JUSTICE, THAT'S IT

5 WE'RE GOING ASK YOU TO RETURN A VERDICT THAT
6 SPEAKS THE TRUTH AND THAT'S ALL I CAN EXPECT AND THAT'S ALL
7 I'LL ASK FOR AND THAT'S ALL MR WILSON AND THE DEFENDANT
8 CAN EXPECT IS THAT YOU WILL GO BACK AND DO YOUR DUTY AND
9 RETURN A VERDICT THAT SPEAKS THE TRUTH AND THE ONLY TRUE
10 VERDICT I SUBMIT TO YOU IS GUILTY OF MURDER THANK YOU
11 AND, PLEASE, HEAR MR WILSON AND THANK YOU FOR YOUR
12 SERVICE

13 THE COURT THANK YOU, MR RICHARDSON MR
14 WILSON?

15 MR WILSON THANK YOU, YOUR HONOR

16 CLOSING ARGUMENT

17 BY MR WILSON

18 MR FOREMAN AND LADIES AND GENTLEMEN, FIRST LET
19 ME TAKE THIS OPPORTUNITY BECAUSE THIS IS THE LAST
20 OPPORTUNITY I'LL HAVE TO SPEAK WITH YOU AND LET ME THANK
21 YOU FOR YOUR WILLINGNESS TO SERVE AND YOU SAY, WELL YOU
22 KNOW REALLY NOT WILLINGNESS, WE HAD NO CHOICE, WE WERE
23 ORDERED TO BE HERE BUT LET ME ASSURE YOU COULD NOT BE AT
24 A MORE VALUABLE PLACE THAN WHERE YOU SIT TODAY BECAUSE OUR
25 SYSTEM OF JUSTICE ONLY WORKS BECAUSE OF THE JURY SYSTEM AND

CLOSING ARGUMENT BY DEFENSE

328

1 IT'S WHAT REALLY DISTINGUISHES US FROM MOST OTHER
2 COUNTRIES

3 A LOT OF TIMES YOU READ THE NEWSPAPERS ABOUT
4 THINGS HAPPENING IN OTHER COUNTRIES, NOW HOW IN THE WORLD
5 CAN THAT POSSIBLY HAPPEN BUT IN AMERICA WE'RE BLESSED IS
6 OUR SYSTEM PERFECT, NO, IT'S NOT BECAUSE WE'RE HUMAN AND AS
--7 HUMANS WE MAKE ERRORS IN JUDGMENT AND DECISION MAKING
8 SOMETIMES WE MAKE ERRORS FROM OUR HEART, SOMETIMES WE MAKE
9 ERRORS FROM OUR HEAD BUT WE ALL MAKE ERRORS BUT THERE IS NO
10 BETTER SYSTEM, THERE IS NO FAIRER SYSTEM

11 WHEN I WAS GROWING UP I USED TO BELIEVE THAT ALL
12 WE HAD TO DO WAS COME TO THE COURTHOUSE AND YOU KNOW THE
13 POLICE AND THE JUDGE AND YOU'RE JUST GOING TO GET, IT'S
14 GOING TO, JUSTICE IS GOING TO OCCUR BECAUSE THAT WAS THE
15 SYSTEM WELL AS I GOT OLDER AND AS I STARTED TO PRACTICE
16 LAW I LEARNED THAT THAT'S NOT TRUE

17 THE REAL JUSTICE, THE REAL FAIRNESS IF IT EXISTS
18 IS IN THE HEARTS AND THE MINDS OF THE PEOPLE, YOU, AND WHEN
19 YOU COME TO JURY SERVICE YOU BRING THAT WITH YOU, THOSE
20 HEARTS AND MINDS, AND WHEN YOU COME TO JURY SERVICE YOU
21 BRING WITH YOU THE GOOD COMMON SENSE THAT YOU'VE GAINED
22 OVER A LIFE TIME OF EXPERIENCES

23 I DON'T KNOW ABOUT YOU BUT I HAVE CHILDREN AND
24 ONE OF THE THINGS THAT I LEARNED WITH MY CHILDREN IS IS
25 THAT YOU CAN ALWAYS TELL WHEN THEY'RE NOT TELLING YOU THE

CLOSING ARGUMENT BY DEFENSE

329

1 TRUTH JUST BY LOOKING AT THEM ONE WILL SAY, DADDY, RACHEL
2 DID SUCH AND SUCH AND THE OTHER ONE WILL SAY, NO, DADDY,
3 HANNAH DID IT, BUT IT DOESN'T MATER BECAUSE WHEN I LOOK IN
4 THEIR EYES AND WHEN I HEAR THEM SPEAK I'LL KNOW AND THAT'S
5 THE SAME KIND OF DECISION MAKING, THE SAME KIND OF COMMON
6 SENSE JUDGMENT THAT YOU'RE EXPECTED TO BRING TO JURY
7 SERVICE BECAUSE YOU, LADIES AND GENTLEMEN, ARE THE JUDGES
8 OF THE FACTS IN THIS CASE
9 YOUR HONOR IS THE JUDGE OF THE LAW AND SHE WILL
10 TELL YOU WHAT THE LAW IS AND YOU UNDER YOUR OATH ARE
11 OBLIGATED TO ACCEPT THE LAW WHETHER YOU LIKE IT OR YOU
12 AGREE WITH IT DOESN'T REALLY MATTER YOU'RE OBLIGATED TO
13 ACCEPT THE LAW AS SHE GIVES IT TO YOU AND I TELL YOU RIGHT
14 NOW IF I SAY ANYTHING THAT'S INCONSISTENT WITH WHAT SHE
15 CHARGES YOU IS THE LAW YOU DISREGARD WHAT I SAY I'M A
16 LAWYER SOMETIMES I GET EXCITED ABOUT WHAT I'M THINKING
17 ABOUT OR WHAT I'M TALKING ABOUT AND I MAY SAY SOMETHING
18 THAT'S INCORRECT I WOULD CERTAINLY NOT INTENTIONALLY
19 MISLEAD YOU AND I'M SURE THE SOLICITOR WOULDN'T
20 INTENTIONALLY MISLEAD YOU BUT WE'RE ADVOCATES AND THAT'S
21 WHAT OUR DUTIES AND OUR RESPONSIBILITIES ARE HER HONOR IS
22 NOT AN ADVOCATE HER JOB IS SIMPLY TO GIVE YOU THE LAW AND
23 TO MAKE SURE THAT WE FOLLOW THE RULES ON OUR PRESENTATION
24 TO YOU
25 I WANT TO TALK ABOUT THIS CASE AND, YOU KNOW I

CLOSING ARGUMENT BY DEFENSE

330

1 SAT THERE AND I LISTENED TO THE SOLICITOR TALK ABOUT THE
2 CASE, WELL THE FIRST THING THAT YOU NEED TO KNOW, LADIES
3 AND GENTLEMEN, IS THAT THE DEFENDANT HAS NO BURDEN THE
4 DEFENDANT IS NOT REQUIRED TO PROVE ANYTHING INCLUDING SELF
5 DEFENSE THE STATE, THE SOLICITOR, ONCE THE STATE DECIDES
6 TO CHARGE AN INDIVIDUAL THEY ASSUME THE RESPONSIBILITY FOR
7 PROVING BEYOND A REASONABLE DOUBT EVERY ELEMENT OF THE
8 CRIME THAT THEY CHARGE AN INDIVIDUAL WITH THEY MUST PROVE
9 EVERY ELEMENT TO YOUR SATISFACTION BEYOND A REASONABLE
10 DOUBT AND THAT'S THE LAW THAT'S NOT WHAT I SAY AND THAT'S
11 NOT WHAT I MADE UP THAT'S NOT WHAT SOME OTHER DEFENSE
12 LAWYER MADE UP THAT'S NOT WHAT THE SOLICITOR MADE UP
13 THAT IS THE LAW OF THIS STATE AND EVERY STATE IN THIS UNION
14 SO FAR AS I KNOW
15 ONE OF THE THINGS THAT YOU'RE GOING TO HAVE TO DO
16 IN THIS CASE AS YOU DO IN MOST CASES, AS I SAID YOU'RE THE
17 JUDGES OF THE FACTS, THE FACTS COME FROM THE TESTIMONY OF
18 THE WITNESSES WHO TESTIFIED, FROM THE EXHIBITS THAT HAVE
19 BEEN INTRODUCED DURING THE COURSE OF THE TRIAL, BUT
20 SOMETIMES EQUALLY IMPORTANT IT COMES FROM THE ABSENCE OR
21 LACK OF TESTIMONY OR EVIDENCE THAT IS PRODUCED BECAUSE I
22 TELL YOU THAT SOMETIMES THE ABSENCE OR LACK OF EVIDENCE
23 THAT IS PRODUCED IS JUST AS IMPORTANT, MAYBE EVEN MORE SO
24 THAN WHAT IS PRODUCED AND WE'RE GOING TO TALK SOME MORE
25 ABOUT THAT AS WE GO INTO THIS PROCESS

CLOSING ARGUMENT BY DEFENSE

331

1 NOW LET ME START OUT BY SAYING REASONABLE DOUBT,
2 THAT'S THE STANDARD BY WHICH THE PROSECUTOR, THE STATE,
3 MUST CONVINCE YOU THAT THIS CRIME HAPPENED JUST AS HE SAID
4 IT HAPPENED IN HIS CHARGE WELL WE GOT A PROBLEM RIGHT
5 AWAY WE GOT A PROBLEM RIGHT AWAY BECAUSE YOU HAVE ONLY
6 TWO FACT WITNESSES WHO TESTIFIED, ROBERT MCCULLOUGH AND MR
7 SAMUEL GILLINS BOTH WHO TELL TOTALLY DIFFERENT STORIES
8 ABOUT WHAT THEY SAY HAPPENED, TOTALLY, TOTALLY DIFFERENT
9 THE QUESTION THEN BECOMES CAN YOU BELIEVE THEM
10 AND IF SO WHICH ONE DO YOU BELIEVE BECAUSE YOU CAN'T
11 BELIEVE THEM BOTH MY MAMA USED TO SAY IF TWO PEOPLE TELL
12 A CONFLICTING TALE ONE'S LYING, ONE'S TELLING THE TRUTH,
13 BOTH LYING AND CERTAINLY ALL CAN'T BE TELLING THE TRUTH AND
14 THAT IS TRUE THEY TELL DIFFERENT STORIES ABOUT WHAT THEY
15 SAY HAPPENED BUT THAT'S NOT THE END OF IT HE
16 THE MOST IMPORTANT PART IS THE STORIES THEY TELL
17 ARE INCONSISTENT WITH THE PHYSICAL EVIDENCE AND THAT'S
18 WHAT'S REALLY MORE IMPORTANT BECAUSE NEITHER I NOR THE
19 SOLICITOR CAN CHANGE THE PHYSICAL EVIDENCE
20 WE CAN, WITNESSES CAN SAY WHATEVER THEY WANT TO
21 SAY BUT WHAT DOESN'T CHANGE IS THE PHYSICAL EVIDENCE, THE
22 ANGLE OF THOSE SHOTS DON'T CHANGE WHERE THOSE BULLETS,
23 WHERE THOSE SHELL CASINGS LANDED DON'T CHANGE THOSE
24 THINGS DON'T CHANGE BECAUSE THOSE, THAT'S PHYSICAL
25 EVIDENCE THOSE BLOOD POOLS THAT WERE ON THAT GROUND DON'T

CLOSING ARGUMENT BY DEFENSE

332

1 CHANGE AND THEIR STORIES ARE INCONSISTENT WITH THE PHYSICAL
2 EVIDENCE THAT IS THE FIRST REASONABLE DOUBT IN THIS CASE
3 IT COULD NOT HAVE HAPPENED AS EITHER OF THEM SAID

4 LET'S START WITH GILLINS, HIS STORY, AND RIGHT
5 NOW I'M JUST GOING TO TALK ABOUT THE SHOOTING PART OF IT,
6 I'M GOING TO TALK ABOUT THE REST OF THE STORY IN A MINUTE,
7 BUT ACCORDING TO HIM AND IF YOU REMEMBER, DR PROCTOR
8 TESTIFIED PHYSICALLY IMPOSSIBLE IF THE SHOOTER IS TO HIS
9 RIGHT WHICH IS WHAT GILLINS WOULD HAVE HAD YOU TO BELIEVE
10 AND IF YOU REMEMBER, FOLKS, I HAD HIM COME DOWN OFF THE
11 WITNESS STAND AND SHOW ME BECAUSE IT WAS VITALLY IMPORTANT,
12 VITALLY IMPORTANT THAT WE KNOW HOW THIS CRIME OCCURRED,
13 THAT WE KNOW HOW THIS SHOOTING OCCURRED, SO I SAID, COME
14 DOWN SHOW ME EXACTLY WHERE YOU WERE, SHOW ME EXACTLY WHERE
15 THE VICTIM WAS OR WHERE THE DEFENDANT WAS AND WHERE THE
16 VICTIM WAS HE SAYS, OKAY, WELL, YEAH, YEAH, I MEAN HE WAS
17 STANDING LIKE RIGHT HERE AND THE VICTIM WAS OVER HERE AND
18 HE WAS CRAWLING BACK TO THE DOOR ON ALL FOURS AND HE JUST
19 SHOT HIM WHILE HE WAS ON THE GROUND, POW, POW COULDN'T
20 HAVE HAPPENED, COULD NOT HAVE HAPPENED, PHYSICALLY
21 IMPOSSIBLE TO HAVE OCCURRED NOT BECAUSE I SAY SO BUT
22 BECAUSE THE LAW OF PHYSICS WON'T ALLOW IT

23 IF HE IS ON HIS RIGHT SIDE AND HE'S SHOOTING HIM
24 HOW IN THE WORLD DOES HE SHOOT HIM IN THE LEFT SHOULDER AS
25 THE BULLET TRAVELS DOWN TO THE RIGHT SIDE, CAN'T HAPPEN,

CLOSING ARGUMENT BY DEFENSE

333

1 FOLKS, IMPOSSIBLE, SO WE KNOW HE'S NOT TELLING US THE
2 TRUTH DOESN'T TAKE A GENIUS TO FIGURE THAT OUT BUT YOU
3 SEE THE BURDEN IS NOT ON ME, ON THE DEFENDANT TO PROVE HOW
4 THIS HAPPENED, THE BURDEN IS ON THE STATE OF SOUTH
5 CAROLINA THEY CHOSE FOR WHATEVER THEIR REASONS WERE TO
6 BRING THOSE PARTICULAR WITNESSES IN HERE TO YOU
7 LET ME TELL YOU SOMETHING ELSE THAT'S A
8 REASONABLE DOUBT IN THIS CASE DON'T YOU THINK IT'S
9 VITALLY IMPORTANT WE TALK ABOUT THE LACK OR ABSENCE OF
10 EVIDENCE YOU REMEMBER THE TESTIMONY OF MR GILLINS ABOUT
11 THE FACT THAT THE BROTHERS OF THE DECEASED WERE IN THE
12 CLUB, DID YOU HEAR THEM TESTIFY, WHY, REASONABLE DOUBT
13 YOU THINK THAT THERE'S A REASON THEY DIDN'T GET ON THAT
14 WITNESS STAND AND TESTIFY

15 LET'S TALK ABOUT OLD MR I'LL TAKE THE FIFTH ON
16 THAT, REMEMBER THAT, ROBERT MCCULLOUGH, THE OWNER OF THIS
17 JUKE JOINT, CAUSE THAT'S WHAT IT IS, STORE, IT'S A JUKE
18 JOINT AGAIN I'M JUST TALKING ABOUT THE SHOOTING PORTION
19 NOW, I'M GOING TO COME BACK TO THE REST OF THEIR STORIES
20 AND POINT OUT THE PROBLEMS BUT RIGHT NOW LET'S JUST DEAL
21 WITH THAT HE SAYS THAT WHAT HAPPENS IS THAT HE WAS
22 TELLING THE VICTIM NOT TO COME OUT, STAY INSIDE, YOU KNOW
23 LEAVE THIS ALONE LET'S JUST STOP ALL THIS FOOLISHNESS

24 THE VICTIM ARMS HIMSELF AND, FOLKS, IF YOU DON'T
25 BELIEVE THAT A POOL QUE WILL KILL YOU, HE ARMS HIMSELF WITH

CLOSING ARGUMENT BY DEFENSE

334

1 THIS, YOU THINK THAT HE'S COMING OUTSIDE TO TALK ABOUT THE
2 WEATHER HE PUSHES PAST ROBERT MCCULLOUGH AND REMEMBER
3 ROBERT DIDN'T WANT TO SAY THAT HE SAID, WELL HE JUST KIND
4 OF NUDGED PAST ME AND I SAID, WELL DIDN'T YOU TELL IN YOUR
5 ORIGINAL STATEMENT THAT HE PUSHED PAST YOU, WELL, YEAH, NO,
6 I DON'T REMEMBER SAYING THAT, I DON'T REMEMBER SAYING THAT,
7 AND THEN WHEN I GOT THE STATEMENT AND ACTUALLY SHOWED IT TO
8 HIM AND HE READ IT OR HE SAID, WELL I CAN'T READ AND I
9 ENDED UP READING I THINK THE STATEMENT FOR HIM WHERE HE
10 SAYS, WELL, YEAH, HE DID, HE PUSHED PAST ME AND THEN HE
11 FINALLY ADMITTED IT THE REASON HE DIDN'T WANT TO ADMIT
12 THAT WAS BECAUSE HE DIDN'T WANT THE VICTIM TO LOOK LIKE HE
13 WAS TRYING TO START A FIGHT WITH TYRONE JACOBS SO HE WAS
14 TRYING TO CHANGE HIS STORY TO HELP AS MUCH AS HE COULD BUT
15 AIN'T NO QUESTION THAT HE PUSHED PAST HIM WITH THIS STICK
16 IN HIS HAND AND HE GETS OUTSIDE AND ONCE HE GETS OUTSIDE
17 FACE TO FACE WITH TYRONE JACOBS WHO'S OUTSIDE TENDING TO
18 HIS OWN BUSINESS BY EVERYBODY'S ACCOUNT NOT ONE SINGLE
19 PERSON SAYS THAT TYRONE JACOBS INVITED HIM OUT NOT ONE
20 PERSON TESTIFIED TO THAT, NOT ONE SINGLE PERSON SAID THAT
21 TYRONE THREATENED HIM IF YOU COME OUT HERE I'M GOING TO
22 KILL YOU, I'M GOING TO SHOOT YOU, NOT ONE SINGLE PERSON
23 SAID THAT IN FACT, IN FACT MR GILLINS SAID THERE WERE NO
24 WORDS, NOT A SINGLE WORD EVER BUT IF YOU BELIEVE HIM THERE
25 WAS NEVER AN ARGUMENT, NOTHING EVER HAPPENED IN THE POOL

CLOSING ARGUMENT BY DEFENSE

335

1 ROOM, I MEAN NOTHING

2 ROBERT MCCULLOUGH SAYS, AND YOU REMEMBER THIS
3 BECAUSE I REMEMBER ASKING HIM, WELL IF, HOW COULD YOU HAVE
4 SEEN THE SHOOTING IF YOU RAN BEHIND THE SIDE OF THE
5 BUILDING WHICH IS WHAT HIS STORY WAS AND REMEMBER I ASKED
6 HIM, WELL HOW COULD YOU HAVE SEEN EVERYTHING IF YOU RAN
7 BEHIND THE SIDE OF THE BUILDING WELL, YOU KNOW, I SAW IT,
8 YOU KNOW, YOU KNOW I SAW IT, BUT THEN ON THE SAME TIME HE
9 WANTS YOU TO BELIEVE, YEAH, HE RAN AND HID WELL HE CAN'T
10 HAVE IT BOTH WAYS HE EITHER STOOD THERE AND HE SAW IT OR
11 HE RAN AND HE HID AND HE DIDN'T SEE IT AGAIN IT'S NOT MY
12 BURDEN TO PROVE ANYTHING, THE SOLICITOR HAS THAT BURDEN
13 HE CHOSE THESE WITNESSES HE CHOSE THE TWO WITNESSES HE
14 WANTED TO BRING IN HERE AND HAVE THEM TESTIFY

15 ONE OF THE THINGS I ASK YOU ASK IN, IN A CASE
16 WHERE YOU, WHEN YOU'RE DEALING WITH CREDIBILITY AND
17 BELIEVABILITY OF A WITNESS I ASK MYSELF IF I HAD MY LIFE
18 SAVINGS, IF I HAD MY LIFE SAVINGS AND I WAS GOING TO INVEST
19 THAT LIFE SAVINGS I HAVE WORKED ALL MY LIFE, FORTY YEARS,
20 35 YEARS, WHATEVER IT IS THAT WE WORK NOW TILL WE RETIRE,
21 SOME OF US LIKE ME NEVER RETIRE BUT ALL THOSE YEARS I TAKE
22 EVERY DIME THAT I HAVE RAKED AND SCRAPPED AND BEGGED AND
23 BORROWED AND EARNED AND I'M GOING TO INVEST IT, THEN I GO
24 TO FIND ME AN INVESTMENT PERSON, SOMEBODY THAT I CAN TRUST
25 ALL OF MY MONEY WITH, WOULD I WANT TO DO THAT BASED ON THE

CLOSING ARGUMENT BY DEFENSE

336

1 KIND OF BACK AND FORTH THAT YOU'VE GOT FROM ROBERT
2 MCCULLOUGH AND FROM SAMUEL GILLINS BECAUSE THAT'S EXACTLY
3 WHAT THE SOLICITOR IS ASKING YOU TO DO

4 HE'S ASKING YOU TO BRING A MURDER VERDICT BACK ON
5 TYRONE JACOBS ON THE INCONSISTENT OUTRIGHT LIES OF THESE
6 TWO WITNESSES, THAT'S WHAT HE'S ASKING

7 LET'S TALK ABOUT SELF DEFENSE FOR A MINUTE

8 THERE ARE ESSENTIALLY THREE ELEMENTS, FOUR, THE THIRD ONE
9 IS REALLY A PART OF THE, THE FOURTH IS REALLY A PART OF THE
10 THIRD ONE BUT I'LL EXPLAIN THAT TO YOU EVERY PERSON, MAN,
11 WOMAN, BOY, CHILD, GIRL IS ENTITLED TO DEFEND THEMSELVES
12 THAT'S A RIGHT THAT THE LAW ALLOWS ALL OF US, EVERY ONE OF
13 US THERE'S SOME DESCRIPTIONS, ONE, YOU CANNOT BE AT FAULT
14 IN BRINGING ON THE DIFFICULTY, LET'S TALK ABOUT WHAT THAT
15 MEANS

16 THAT MEANS I CAN'T COME OVER AND SLAP YOU AND
17 THEN WHEN YOU SHOOT ME CLAIM SELF DEFENSE BECAUSE I WAS AT
18 FAULT I SLAPPED YOU FIRST, YOU HAVE A RIGHT TO DEFEND
19 YOURSELF, NOW I CAN'T COME BACK AND CLAIM SELF DEFENSE BUT
20 LET'S TALK ABOUT THAT FOR A MINUTE BECAUSE WHAT HAPPENS
21 HERE IS JUST THE OPPOSITE

22 LET'S TAKE THE STORIES OF ROBERT MCCULLOUGH AND
23 SAMUEL GILLINS IF YOU BELIEVE THEIR STORY, LET'S SAY FOR
24 WHATEVER REASON, WHICH IS UNIMAGINABLE, BUT FOR WHATEVER
25 UNIMAGINABLE REASON YOU WANT TO BELIEVE EITHER ONE OF THEM

CLOSING ARGUMENT BY DEFENSE

337

1 OR SOME PIECES OF WHAT BOTH OF THEM SAY AND YOU BELIEVE
2 THAT THE DEFENDANT CAME INTO THE, THAT HE WAS THERE
3 SHOOTING POOL, THAT THEY HAD SOME WORDS, THEY HAD AN
4 ARGUMENT, WHATEVER, AND THAT AFTER THAT ARGUMENT HE THEN
5 LEAVES AND IF YOU TAKE THE VERY WORST CASE SCENARIO, WHICH
6 IS WHAT GILLINS SAYS, BUT ROBERT SAYS IT NEVER HAPPENED AND
7 THAT'S THE OTHER THING GILLINS SAID THAT AFTER HE LEAVES
8 AND I ASKED ROBERT WHEN ROBERT WAS TESTIFYING FIRST, WHEN
9 HE LEFT THE CLUB ROBERT SAID, YEAH, HE CAME BACK, I NEVER
10 SAW A GUN I SAID, DID YOU EVER TELL HIM TO LEAVE THE
11 CLUB, NO, I NEVER TOLD HIM TO LEAVE, HE LEFT ON HIS OWN
12 GILLINS SAID, OH, WELL WHEN HE CAME BACK TO GET HIS JACKET
13 SEE I SAW THE GUN AND ROBERT TOLD HIM, YOU GET OUT OF HERE
14 WITH THAT GUN RIGHT NOW, DIDN'T HAPPEN, FOLKS IT DID NOT
15 HAPPEN

16 ROBERT SAYS, HE TOLD YOU FROM THE WITNESS STAND
17 AND THAT'S MY POINT YOU CAN'T HAVE IT BOTH WAYS, BOTH CAN'T
18 BE TRUE I SUBMIT TO YOU NEITHER IS TRUE BUT IF, ASSUMING
19 THAT YOU WON'T ACCEPT THAT, ASSUMING FOR WHATEVER YOUR
20 REASONS ARE IF THAT'S WHAT YOU ACCEPT THEN WHAT HAPPENS IT
21 THIS, HE COMES IN AND HE GETS HIS JACKET AND HE LEAVES,
22 EVERYBODY AGREES TO THAT DOESN'T THREATEN THE VICTIM,
23 DOESN'T HAVE AN ARGUMENT WITH HIM, DOESN'T HAVE WORDS WITH
24 HIM, HE'S NOT TOLD TO LEAVE BY ROBERT MCCULLOUGH
25 ACCORDING TO ROBERT MCCULLOUGH HE JUST LEAVES, GOES ABOUT

CLOSING ARGUMENT BY DEFENSE

338

1 HIS BUSINESS

2 HE'S OUTSIDE FOR SEVERAL MINUTES THEN GILLINS
3 SAYS HE COMES OUTSIDE ROBERT SAYS HE COMES OUTSIDE AT
4 SOME POINT AND HE HAS A CONVERSATION WITH HIM, NOT
5 BOTHERING ANYBODY HE IS TENDING TO HIS OWN BUSINESS AT A
6 PLACE THAT HE HAS A RIGHT TO BE JUST LIKE DAVID BENNETT HAD
7 A RIGHT TO BE THERE HE HAD EVERY RIGHT IN THE WORLD TO BE
8 THERE THERE'S NO LAW THAT SAYS HE HAD TO LEAVE THE CLUB,
9 NONE, BUT THEN WHAT HAPPENED

10 HE'S OUTSIDE, HE'S TENDING TO HIS OWN BUSINESS,
11 HAS A CONVERSATION WITH ROBERT MCCULLOUGH, GILLINS IS
12 THERE, BUT DAVID BENNETT HAS GOT JUST ENOUGH LIQUOR IN HIM,
13 JUST ENOUGH DRUGS IN HIS SYSTEM,, HE AIN'T LETTING IT GO, HE
14 AIN'T ABOUT TO LET IT GO HE'S GOT HIS BROTHERS THERE WITH
15 HIM HE'S GOT HIS BUDDIES THERE WITH HIM ISN'T IT
16 AMAZING THAT ALL OF THEM COME OUT OF THE DOOR WHEN DAVID
17 COMES OUT, EVERYBODY I ASKED GILLINS, SAID WHY DID YOU
18 COME OUT, SAID I JUST WANTED TO GET SOME FRESH AIR BUT THEY
19 ALL CAME OUT, UNDISPUTED THEY ALL CAME OUT

20 NOW DO YOU THINK FOR ONE SECOND THEY WERE ALL
21 COMING OUT TO, TO RAISE SOME PRAISE WITH OR HAVE A PRAYER
22 MEETING WITH TYRONE JACOBS WITH A STICK IN HIS HAND AND
23 WITH HELL IN HIS HEART, NO, NO, HE'S COMING OUT THERE FOR
24 ONE REASON TO BASH HIS HEAD IN WITH THAT STICK HOW DO YOU
25 THINK THAT STICK GOT BROKEN?

CLOSING ARGUMENT BY DEFENSE

339

1 YOU KNOW WHEN THE SOLICITOR SAYS, OH, YOU KNOW
2 WELL HE, HE, HE LEFT AND WE, WE DIDN'T ARREST HIM FOR A
3 MONTH WELL, FOLKS, IF ALL HIS BROTHERS ARE THERE AND ALL
4 OF HIS BUDDIES ARE THERE DO YOU THINK FOR ONE SECOND THAT
5 SOMETHING WASN'T GOING TO HAPPEN TO HIM, TALKING ABOUT A
6 REASONABLE INFERENCE FROM THE EVIDENCE

7 WAS HE IN IMMINENT DANGER? FOLKS, WHEN HE COMES
8 OUT OF THERE WITH THAT STICK IN HIS HAND DON'T YOU THINK
9 THAT BEING IN THIS CLUB THAT EVERYBODY'S AWARE THAT
10 EVERYBODY'S DRINKING AND I ASKED THEM ABOUT THE ALCOHOL AND
11 DR PROCTOR TOLD YOU THAT IN REGARDS TO MR BENNETT THAT
12 HIS ALCOHOL LEVEL WAS ABOVE THAT OF WHAT IS ALLOWED TO
13 DRIVE A CAR IN SOUTH CAROLINA 8 I THINK IS WHAT WE ALLOW
14 NOW AND HIS WAS 10 OR BETTER, COCAINE IN HIS SYSTEM

15 NOW HE SAYS WITH THE COCAINE I CAN'T TELL YOU FOR
16 CERTAIN HOW LONG IT'S BEEN THERE BUT I CAN TELL YOU THAT HE
17 HADN'T TAKEN IT IN THREE HOURS PRIOR TO HIS DEATH SO IF HE
18 HAD TAKEN IT 3 00 IN THE DAY, 4 00 IN THE DAY THAT'S VERY
19 POSSIBLE NOW I'M NO EXPERT ON COCAINE AND I DON'T KNOW
20 WHAT ALL THE AFFECTS ARE AND I DON'T KNOW HOW IT MAKES YOU
21 ACT PARTICULARLY AND DR PROCTOR TRIED TO EXPLAIN THAT TO
22 YOU, BUT NOW YOU IMAGINE FOR ONE SECOND, HERE IS A MAN WITH
23 COCAINE IN HIS SYSTEM, WITH ALCOHOL IN HIS SYSTEM AND A
24 STICK IN HIS HAND AND A FIGHT THAT HE HAD HAD A FEW MINUTES
25 EARLIER AND WHAT DO YOU THINK HIS INTENTS WERE HE WASN'T

CLOSING ARGUMENT BY DEFENSE

340

1 GOING TO CHURCH, HE WAS GOING TO DO BATTLE WITH THAT STICK
2 WITH THIS DEFENDANT AND THIS DEFENDANT HAD THE RIGHT TO
3 PROTECT HIMSELF

4 THE THIRD ONE, HE HAD NO OTHER WAY TO AVOID THE
5 DANGER, SEE THE DANGER DIDN'T OCCUR UNTIL, BECAUSE MR
6 RICHARDSON SAID, OH, WELL, YOU KNOW, HE COULD HAVE LEFT, HE
7 COULD HAVE GOT IN HIS CAR AND LEFT WELL THE VICTIM, COULD
8 HAVE LEFT, TOO THERE'S NO DUTY ON HIM TO LEAVE BECAUSE
9 THE DANGER HAD NOT OCCURRED AT THAT POINT THE DUTY ARISES
10 TO LEAVE IF YOU CAN LEAVE SAFELY WHEN THE DANGER OCCURS
11 THE DANGER DIDN'T OCCUR UNTIL WHEN, UNTIL, MR BENNETT CAME
12 OUT OF THE DOOR WITH THE STICK IN HIS HAND TO PLUMMET HIM
13 WITH, THAT'S WHEN THE DANGER OCCURRED, AND AT THAT POINT IS
14 WHEN IF HE COULD LEAVE SAFELY HE COULD RETREAT

15 WELL IF YOU'VE GOT A FIVE FOOT STICK AND YOU'VE
16 GOT A THREE FOOT, A THREE FOOT ARM REACH IF HE WALKS AWAY,
17 YOU HEARD THE TESTIMONY THEY WERE WITHIN THREE FEET OF EACH
18 OTHER ACCORDING TO THE WITNESSES, AIN'T NO WAY IF HE TURNED
19 TO LEAVE THAT HE WASN'T GOING TO GET HIT IN THE BACK OF
20 THAT HEAD WITH THAT STICK

21 THE OTHER THING THE LAW DOESN'T REQUIRE, THE LAW
22 DOES NOT REQUIRE YOU TO WAIT UNTIL THE PERSON ACTUALLY
23 STRIKES YOU YOU ARE PERMITTED AND ALLOWED TO ACT ON THE
24 APPEARANCE YOU DON'T HAVE TO WAIT UNTIL THEY GET THE DROP
25 ON YOU YOU DON'T HAVE TO WAIT UNTIL THEY STRUCK YOU IN

CLOSING ARGUMENT BY DEFENSE

341

1 ORDER TO STRIKE THE FIRST BLOW ONCE YOU BELIEVE THAT
2 YOU'RE IN DANGER YOU HAVE THE RIGHT TO DEFEND YOURSELF AND
3 EVEN IF IT MEANS TAKING THE LIFE OF THE OTHER PERSON AND
4 ONCE YOU'RE ENTITLED TO FIRE THAT FIRST SHOT YOU CAN FIRE
5 UNTIL THE DANGER ENDS WHETHER IT'S ONE SHOT OR TEN SHOTS,
6 THAT'S THE LAW

7 WHERE YOU SET NO ONE ENVIES YOUR POSITION BUT
8 THIS CASE WAS BROUGHT BY THE STATE OF SOUTH CAROLINA
9 BECAUSE THEY BROUGHT THIS CASE THEY ACCEPT THE
10 RESPONSIBILITY FOR PROVING BEYOND A REASONABLE DOUBT HOW IT
11 OCCURRED THEY'VE NOT PROVEN BEYOND A REASONABLE DOUBT HOW
12 THIS OCCURRED THEY'VE NOT DONE THAT IT IS YOUR
13 RESPONSIBILITY WHEN THEY FAIL TO DO THAT BASED ON THE OATH
14 YOU TOOK TO HOLD THEM TO THE BURDEN OF THE LAW IF THEY
15 FAIL TO DO IT THEN YOU MUST, MAY NOT WANT TO, MAY NOT LIKE
16 TO, BUT YOU MUST FIND THE DEFENDANT NOT GUILTY BECAUSE
17 THAT'S THE LAW

18 IT IS THEIR BURDEN NOT YOURS NOT MINE, THEIRS,
19 CAUSE THEY COULD HAVE CHOSEN TO WAIT, THEY'VE COULD HAVE
20 CHOSEN TO HAVE NO WITNESSES THEY COULD HAVE CHOSEN TO
21 BRINGING IT A DIFFERENT WAY AT A DIFFERENT TIME THEY
22 CHOSE BUT CHOOSING DOESN'T CHANGE THEIR RESPONSIBILITY TO
23 PROVE TO YOUR SATISFACTION AND BEYOND A REASONABLE DOUBT
24 THE DEFENDANT DOESN'T HAVE TO PROVE SELF DEFENSE
25 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT SELF

CLOSING ARGUMENT BY DEFENSE

342

1 DEFENSE DID NOT EXIST AND DOES NOT EXIST AND IF YOU HAVE A
2 REASONABLE DOUBT AS TO WHETHER OR NOT THEY HAVE PROVEN IT
3 OR NOT PROVEN IT THEN YOU STILL HAVE TO FIND THE DEFENDANT
4 NOT GUILTY

5 FOLKS, THERE, THIS CASE IS RIDDLED WITH
6 REASONABLE DOUBT ABOUT WHAT OCCURRED, ABOUT HOW THIS,
7 OCCURRED, ABOUT WHO'S TELLING THE TRUTH

8 DOING THE RIGHT THING IS NOT ALWAYS EASY, IT'S
9 NOT ALWAYS EASY IT'S HARD SOMETIMES TO DO THE RIGHT
10 THING IT IS HARD, BECAUSE IN YOUR HEART SOMETIMES YOU
11 JUST FEEL LIKE, WELL, YOU KNOW MY HEART SAYS THIS BUT I
12 KNOW IN MY HEAD THAT THIS IS THE RIGHT THING AND YOU GET IN
13 A TUSSELE WITH YOUR HEAD AND YOUR HEART BUT THE LAW IS THE
14 LAW AND THE ONLY REASON THE SYSTEM WORKS IS WHEN YOU MAKE
15 IT WORK

16 AS I TOLD YOU FROM THE VERY OUTSET THE ONLY
17 FAIRNESS, THE ONLY JUSTICE IS IF THAT FAIRNESS AND JUSTICE
18 IS IN YOUR HEARTS AND IN YOUR MINDS AS JURORS, OTHERWISE IT
19 DOESN'T EXIST

20 A COUPLE OF MINUTES AND I'M GOING TO BE THROUGH,
21 EVERY TIME WE COME TO THIS COURTROOM IT'S A TRAGEDY YOU
22 HAVE A FAMILY WHOSE LOST SOMEONE THEY LOVE YOU HAVE
23 ANOTHER MOTHER WHOSE SON IS ON TRIAL FOR HIS LIFE WHERE'S
24 THE GOOD NO MATTER WHAT HAPPENS HERE TODAY WHERE'S THE
25 GOOD

CLOSING ARGUMENT BY DEFENSE

343

1 IT'S ALWAYS A TRAGEDY BUT YOU HAVE NO FRIENDS TO
2 REWARD YOU HAVE NO ENEMIES TO PUNISH YOU HAVE BUT ONE
3 RESPONSIBILITY TO RENDER A VERDICT THAT SPEAKS THE TRUTH
4 HAS THE STATE PROVEN TO YOUR SATISFACTION BEYOND A
5 REASONABLE DOUBT THAT THIS MURDER OCCURRED AND HOW IT
6 OCCURRED AND IF THEY HAVEN'T YOU HAVE NO CHOICE

7 YOUR HONOR WILL INSTRUCT YOU AS TO THE LAW YOU
8 KNOW I WISH WE HAD MORE EVIDENCE MY WISHING THAT DOESN'T
9 MAKE IT SO I WISH THAT THE POLICE HAD SENT THE SHELL
10 CASINGS TO SLED AND THAT THEY HAD BEEN ABLE TO TEST IT I
11 WISH THEY HAD SENT THE POOL STICK TO SLED TO SEE IF THERE
12 WAS BLOOD ON IT OR TO SEE IF THERE WERE ANY FINGERPRINTS ON
13 IT OR SEE IF HOW IT GOT BROKEN AND NOBODY ASKED ME THE
14 DEFENDANT IS NOT RESPONSIBLE FOR THAT, THAT'S THE STATE'S
15 CHOOSING

16 I SIMPLY ASK YOU, LADIES AND GENTLEMEN, TO FIND
17 THAT THIS WAS SELF DEFENSE OR THAT THE STATE HAS FAILED TO
18 PROVE THAT IT WAS NOT SELF DEFENSE BECAUSE I THINK BOTH ARE
19 TRUE THINGS AND I CERTAINLY THINK THAT YOU HAVE
20 INSUFFICIENT EVIDENCE FROM WHICH TO BASE A MURDER VERDICT
21 ON THE TWO WITNESSES THAT TESTIFIED IN THIS TRIAL WHO ARE
22 CLEARLY ONE OR BOTH LYING

23 THIS IS THE DEFENDANT'S DAY IN COURT THIS IS
24 HIS ONLY DAY THERE'S NO TOMORROW THERE'S NO NEXT WEEK,
25 NO NEXT YEAR, AND I ASK YOU, I IMPLORE YOU, I URGE YOU

CLOSING ARGUMENT BY DEFENSE

344

1 NOW THE SOLICITOR SAID TO YOU, HE SAID, I DON'T
2 WANT YOU TO RUSH TO JUDGMENT CAUSE WHAT HE'S TALKING ABOUT
3 IS HE KNOWS THE THINGS THAT I AM GOING TO SAY TO YOU AND
4 THAT I WAS GOING TO SAY TO YOU BUT MORE THAN THAT I SUBMIT
5 THAT THEY'RE ALL TRUE

6 I WANT TO THANK YOU FOR BEING VERY ATTENTIVE I
7 WANT TO THANK YOU ON BEHALF OF THIS DEFENDANT FOR LISTENING
8 TO THE EVIDENCE AND TO THE WITNESSES WHO HAVE TESTIFIED IN
9 THIS CASE I WANT TO THANK YOU ON BEHALF OF THE STATE,
10 TOO, BECAUSE WITHOUT YOU THIS SYSTEM REALLY WOULD NOT WORK
11 YOU'RE THE ONLY THING THAT STANDS BETWEEN THE SYSTEM AND
12 THE ACCUSED AND IT'S YOUR RESPONSIBILITY TO HOLD THE SYSTEM
13 THE ITS DUTIES AND TO ITS RESPONSIBILITIES I ASK YOU TO DO
14 THAT I KNOW IT'S NOT EASY I KNOW THAT IT'S DIFFICULT
15 BUT IT'S STILL THE RIGHT THING TO DO, THANK YOU

16 JURY CHARGE

17 THE COURT LADIES AND GENTLEMEN OF THE JURY,
18 YOU HAVE HEARD THE CLOSING ARGUMENTS BY THE STATE AND THE
19 DEFENDANT YOU HAVE BEEN PRESENTED ALL OF THE EVIDENCE AND
20 FROM THE WITNESS STAND AND FROM THE EXHIBITS THAT HAVE BEEN
21 INTRODUCED IT IS NOW MY JOB TO INSTRUCT YOU ON THE LAW
22 WOULD YA'LL LIKE TO TAKE A QUICK COMFORT BREAK BEFORE I
23 GIVE YOU MY INSTRUCTIONS OR DO YOU WISH ME TO PROCEED?

24 TO PROCEED, ALL RIGHT

25 THE STATE OF SOUTH CAROLINA HAS CHARGED THE

CLOSING ARGUMENT BY DEFENSE

345

1 DEFENDANT WITH THE OFFENSE OF MURDER YOU WILL BE GIVEN A
2 COPY OF THE INDICTMENT TO GO BACK WITH YOU IN THE JURY
3 ROOM PLEASE PAY CLOSE ATTENTION TO MY INSTRUCTIONS
4 BECAUSE I'M OFTEN ASKED IF I WILL BE GIVING YOU A COPY OF
5 THESE INSTRUCTIONS FOR YOU TO TAKE BACK, I WILL NOT, SO
6 PLEASE PAY CLOSE ATTENTION

7 FOR THOSE OF YOU WHO HAVE BEEN TAKING NOTES
8 DURING THE TRIAL YOU MUST NOT TAKE YOUR NOTES BACK WITH YOU
9 TO THE JURY ROOM SO IF YOU HAVE THOSE NOTES WITH YOU,
10 PLEASE, GIVE THEM TO THE BAILIFF

11 IF YOU HAVE TAKEN NOTES YOU SHOULD REMEMBER THAT
12 YOUR NOTES WERE INTENDED TO HELP YOUR MEMORY FOR THOSE OF
13 YOU WHO DID NOT TAKE NOTES YOU MUST RELY UPON YOUR OWN
14 MEMORY AND NOT WHAT ONE OF THE NOTE TAKERS TELLS YOU THAT
15 WAS WRITTEN DOWN

16 THE INDICTMENT CHARGES THE DEFENDANT WITH MURDER
17 I REMIND YOU THAT THE FACT THAT THE DEFENDANT WAS ARRESTED,
18 CHARGED, AND INDICTED IN THIS CASE IS NOT EVIDENCE IN THIS
19 CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT
20 IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR
21 INFERENCE OF GUILT

22 THE DOCUMENT IS SIMPLY THE FORMAL WRITTEN
23 INSTRUMENT WHICH CONTAINS THE CHARGE MADE AGAINST THE
24 DEFENDANT IT IS THE FORMAL DOCUMENT BY WHICH THIS CASE IS
25 BROUGHT INTO THIS COURT

CLOSING ARGUMENT BY DEFENSE

346

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

6 I CHARGE YOU THAT IT'S AN IMPORTANT RULE OF THE
7 LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL NO MATTER WHAT
8 THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE
9 PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE
10 INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY
11 EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE
12 DOUBT

13 THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN
14 YOU BEGIN YOUR DELIBERATION BUT IT ACCOMPANIES THE
15 DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH YOUR VERDICT
16 OF GUILT BASED UPON EVIDENCE SATISFYING YOU OF THAT GUILT
17 BEYOND A REASONABLE DOUBT

18 THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF
19 RIGHTEOUSNESS PLACED AROUND THE SHOULDERS OF THE DEFENDANT
20 WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED
21 FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF THE
22 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT

23 THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL
24 THEORY IT IS NOT JUST A LEGAL PHRASE IT IS A
25 SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED

CLOSING ARGUMENT BY DEFENSE

347

1 UNLESS YOU THE JURY ARE SATISFIED FROM THE EVIDENCE OF THE
2 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT

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

11 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
12 LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT
13 THERE ARE FEW THINGS IN THIS WORLD THAT WE KNOW WITH
14 ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT
15 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT

16 IF, BASED UPON YOUR CONSIDERATION OF THE
17 EVIDENCE, YOU ARE FIRMLY CONVINCED THE DEFENDANT IS GUILTY
18 OF THE CRIME CHARGED, YOU MUST FIND THE DEFENDANT GUILTY

19 IF ON THE OTHER HAND, YOU THINK THERE IS A REAL
20 POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE
21 THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM NOT
22 GUILTY

23 I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I
24 HAVE HAD CERTAIN DUTIES TO PERFORM AS THE TRIAL JUDGE IT
25 IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THE CASE,

CLOSING ARGUMENT BY DEFENSE

348

1 AND I HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OR THE
2 EVIDENCE OFFERED DURING THE TRIAL YOU ARE TO CONSIDER
3 ONLY THE EVIDENCE BEFORE YOU

4 IF THERE WAS ANY TESTIMONY ORDERED STRICKEN, YOU
5 MUST DISREGARD THAT TESTIMONY YOU ARE ONLY TO CONSIDER
6 THE TESTIMONY PRESENTED FROM THE WITNESS STAND AND ANY
7 EXHIBITS WHICH HAVE BEEN MADE PART OF THE RECORD THOSE
8 EXHIBITS WILL BE TAKEN WITH YOU INTO THE JURY ROOM

9 I ALSO HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE
10 LAW APPLICABLE TO THIS CASE AS THE PRESIDING JUDGE, I AM
11 ~~THE SOLE JUDGE OF THE LAW IN THIS CASE~~, IT IS YOUR DUTY TO
12 ACCEPT AND APPLY THE LAW AS I GIVE IT TO YOU

13 IF YOU'VE ALREADY HAD ANY IDEA AS TO WHAT THE LAW
14 IS OR OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I'M ABOUT
15 TO TELL YOU, YOU MUST GIVE UP YOUR IDEAS BECAUSE YOU'RE
16 SWORN TO ACCEPT THE LAW AND APPLY THE LAW AS I STATE IT TO
17 YOU

18 IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY,
19 THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS
20 IN A CASE

21 A TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON,
22 OR MAKE ANY STATEMENT TO THE JURY ABOUT THE FACTS IN THE
23 CASE SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE FACTS
24 IN THIS CASE, YOU ARE NOT TO INFER FROM WHAT I'VE SAID
25 DURING THE PROGRESS OF THIS TRIAL OR IN RULING UPON THE

CLOSING ARGUMENT BY DEFENSE

349

1 ADMISSIBILITY OF EVIDENCE, OR ANYTHING THAT I SAY, THAT I
2 HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE

3 THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION
4 ABOUT THE FACTS IN THIS CASE THIS MATTER IS SOLELY FOR
5 YOU, THE JURY, TO DETERMINE

6 AS JURORS, IT IS YOUR DUTY TO DETERMINE THE
7 EFFECT, VALUE AND WEIGHT AND TRUTH OF THE EVIDENCE
8 PRESENTED DURING THIS TRIAL

9 THERE ARE TWO TYPES OF EVIDENCE WHICH ARE
10 GENERALLY PRESENTED DURING A TRIAL, DIRECT EVIDENCE AND
11 CIRCUMSTANTIAL EVIDENCE

12 DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO
13 CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN
14 EYEWITNESS IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISH THE
15 MAIN FACTS TO BE PROVED

16 CIRCUMSTANTIAL EVIDENCE IS A PROOF OF A CHAIN OF
17 FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT
18 IT IS EVIDENT WHICH IMMEDIATELY, EVIDENCE WHICH IMMEDIATELY
19 ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY
20 BE INFERRED

21 CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND
22 NOT ON PERSONAL KNOWLEDGE OF OBSERVATION

23 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN
24 THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR
25 CIRCUMSTANTIAL EVIDENCE NOR IS A GREATER DEGREE OF

CLOSING ARGUMENT BY DEFENSE

350

1 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF
2 DIRECT EVIDENCE YOU SHOULD WEIGH ALL OF THE EVIDENCE IN
3 THIS CASE AFTER WEIGHING ALL OF THE EVIDENCE IF YOU ARE
4 NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A
5 REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY
6 NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY
7 OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE
8 CREDIBILITY SIMPLY MEANS BELIEVABILITY IT
9 BECOMES YOUR DUTY AS JURORS TO ANALYZE AND EVALUATE THE
10 EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS
11 TRUTH
12 IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO
13 HAVE TESTIFIED, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL
14 WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS
15 YOU MAY BELIEVE PART OF A WITNESSES TESTIMONY AND
16 REJECT THE REMAINING PART OF THAT SAME WITNESS
17 YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS
18 ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS
19 ENTIRETY
20 YOU MAY CONSIDER WHETHER ANY WITNESS HAS
21 EXHIBITED TO YOU ANY INTEREST, BIAS, PREJUDICE OR OTHER
22 MOTIVE IN THIS CASE
23 YOU MAY ALSO CONSIDER THE APPEARANCE AND MANNER
24 OF A WITNESS WHILE ON THE WITNESS STAND
25 THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT

CLOSING ARGUMENT BY DEFENSE

351

1 WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS AN
2 EXCEPTION TO THIS RULE EXISTS FOR WITNESS WE ALL EXPERT
3 WITNESS A WITNESS WHO BY EDUCATION AND EXPERIENCE HAS
4 BECOME AN EXPERT IN SOME ART, SCIENCE, PROFESSION OR
5 CALLING MAY STATE AN OPINION AS TO RELEVANT OR MATERIAL
6 MATTER IN WHICH THE WITNESS CLAIMS TO BE AN EXPERT AND MAY
7 ALSO STATE THE REASONS FOR THAT OPINION

8 YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED
9 IN EVIDENCE IN THIS CASE AND LIKE ANY OTHER EVIDENCE GIVE
10 IT THE WEIGHT YOU THINK IT DESERVES IF YOU DECIDE THAT
11 THE OPINION OF AN EXPERT WITNESS IS NOT BASED UPON
12 SUFFICIENT EDUCATION EXPERIENCE OR IF YOU CONCLUDE THAT THE
13 REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND OR
14 THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE YOU MAY
15 DISREGARD THE OPINION ENTIRELY

16 AN EXPERT WITNESSES TESTIMONY IS TO BE GIVEN NO
17 GREATER WEIGHT THAN ANY OF THE OTHER WITNESS SIMPLY BECAUSE
18 THE WITNESS IS AN EXPERT

19 FURTHER YOU ARE NOT REQUIRED TO ACCEPT AN EXPERT
20 OPINION EVEN THOUGH IT IS NOT CONTRADICTED

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

CLOSING ARGUMENT BY DEFENSE

352

1 YOU IN ANY MANNER WHATSOEVER

2 A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO
3 REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT MUST NOT BE
4 CONSIDERED BY YOU IN YOUR DELIBERATIONS I REPEAT, UNDER
5 YOUR OATH, YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM
6 THE FACT THAT THE DEFENDANT DID NOT TESTIFY

7 THE FACT THAT THIS DEFENDANT DID NOT TESTIFY
8 SHOULD NOT EVEN BE DISCUSSED IN YOUR JURY ROOM THE BURDEN
9 OF PROOF, AS I'VE STATED TO YOU, IS UPON THE STATE THE
10 DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE THE
11 BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT BEYOND
12 A REASONABLE DOUBT

13 IN ORDER TO ESTABLISH CRIMINAL LIABILITY CRIMINAL
14 INTENT IS REQUIRED FOR EXAMPLE, THE MENTAL STATE REQUIRED
15 TO BE PROVEN BY THE STATE FOR A PARTICULAR CRIME MIGHT BE
16 PURPOSE, INTENT, KNOWLEDGE, RECKLESSNESS, OR CRIMINAL
17 NEGLIGENCE

18 CRIMINAL INTENT MUST BE PROVEN BY THE STATE
19 BEYOND A REASONABLE DOUBT

20 CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE
21 DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING
22 THE SITUATION

23 THERE IS NO WAY TO PROVE INTENT TO A MATHEMATICAL
24 CERTAINTY THERE IS NO WAY MEDICAL SCIENCE CAN DISSECT A
25 PERSONS BRAIN AND DETERMINE WHAT THE PERSON HAD IN MIND, SO

CLOSING ARGUMENT BY DEFENSE

353

1 THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM THE
2 CIRCUMSTANCES SHOWN TO HAVE EXISTED THIS IS HOW YOU WILL
3 MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT
4 REQUIRING INTENT WAS PRESENT

5 IT IS NOT NECESSARY TO ESTABLISH INTENT BY DIRECT
6 AND POSITIVE EVIDENCE, BUT INTENT MAY BE ESTABLISHED BY
7 INFERENCE IN THE SAME WAY AS ANY OTHER FACT BY TAKING INTO
8 CONSIDERATION THE ACTS OF THE PARTIES AND ALL THE FACTS AND
9 CIRCUMSTANCES OF THE CASE

10 CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS
11 WRONG DOING IT IS UP TO YOU TO DETERMINE WHAT THE
12 DEFENDANT INTENDED TO DO BASED UPON THE CIRCUMSTANCES SHOWN
13 TO HAVE EXISTED

14 CRIMINAL INTENT CAN ARISE FROM ACTION OR A
15 FAILURE TO ACT IT MAY ARISE FROM NEGLIGENCE,
16 RECKLESSNESS, OR AN INDIFFERENCE TO DUTY OR CONSEQUENCES
17 THAT IS CONSIDERED BY THE LAW TO BE THE EQUIVALENT OF
18 CRIMINAL INTENT

19 WHERE A PERSON INFLECTS A FATAL INJURY ON ANOTHER
20 PERSON AND THAT PERSON DIES AT A LATER TIME, YOU MUST BE
21 CONVINCED BEYOND A REASONABLE DOUBT THAT THE INFLECTION OF
22 THE FIRST INJURY WAS A PROXIMATE CAUSE OF THE VICTIM'S
23 DEATH

24 PROXIMATE CAUSE IS THE DIRECT CAUSE IT IS THE
25 IMMEDIATE CAUSE, IT IS THAT CAUSE WITHOUT WHICH THE DEATH

CLOSING ARGUMENT BY DEFENSE

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1 OF THE VICTIM WOULD NOT HAVE RESULTED

2 THERE MUST BE A CHAIN OF CAUSATION FROM THE TIME
3 OF INJURY INFLICTED UNTIL THE TIME OF THE VICTIM'S DEATH

4 PROXIMATE CAUSE DOES NOT NECESSARILY MEAN THAT IT
5 OCCURRED IMMEDIATELY PRIOR TO DEATH

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

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

14 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE
15 EXIST FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED,
16 BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST
17 BEFORE AND AT THE TIME THE ACT IS COMMITTED THEREFORE,
18 THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT IN
19 THE ACT

20 MALICE AFORETHOUGHT MAY BE EXPRESSED OR INFERRED
21 THESE TERMS "EXPRESSED" AND "INFERRED" DO NOT MEAN
22 DIFFERENT KINDS OF MALICE BUT MERELY THE MALICE, MERELY THE
23 MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST THAT IS
24 EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS
25 AND CIRCUMSTANCES WHICH ARE PROVED

CLOSING ARGUMENT BY DEFENSE

355

1 EXPRESSED MALICE IS SHOWN WHEN A PERSON SPEAKS
2 WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OR WHEN
3 THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS
4 LATER ACCOMPLISHED, FOR EXAMPLE LYING IN WAIT FOR A PERSON
5 OR OTHER ACTS FOR PREPARATION GOING TO SHOW THAT THE DEED
6 WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESSED MALICE

7 MALICE MAY BE INFERRED FROM CONDUCT SHOWING A
8 TOTAL DISREGARD FOR HUMAN LIFE

9 INFERRED MALICE MAY ALSO ARISE WHEN THE DEED IS
10 DONE WITH A DEADLY WEAPON

11 A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR
12 SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY
13 HARM

14 WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY
15 WEAPON DEPENDS UPON THE FACTS AND CIRCUMSTANCES OF EACH
16 CASE

17 THE FOLLOWING ARE EXAMPLES OF INSTRUMENTS WHICH
18 MAY BE DEADLY WEAPONS, PISTOL, SHOTGUN, RIFLE, DIRK,
19 DAGGER, SLINGSHOT, METAL KNUCKLES, RAZOR, GASOLINE, FIRE
20 BOMB OR A MOLOTOV COCKTAIL A GUN MAY BE A DEADLY WEAPON
21 EVEN IF IT IS NOT OPERATING

22 IF YOU FIND THAT THE STATE HAS FAILED TO PROVE
23 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED
24 MURDER, YOU MAY CONSIDER WHETHER THE STATE HAS PROVED
25 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED

CLOSING ARGUMENT BY DEFENSE

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1 VOLUNTARY MANSLAUGHTER

2 TO PROVE VOLUNTARY MANSLAUGHTER, THE STATE MUST
3 PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT TOOK THE
4 LIFE OF ANOTHER IN THE SUDDEN HEAT OF PASSION BASED UPON
5 SUFFICIENT LEGAL PROVOCATION

6 BOTH HEAT OF PASSION AND SUFFICIENT LEGAL
7 PROVOCATION MUST BE PRESENT AT THE TIME OF THE KILLING TO
8 CONSTITUTE VOLUNTARY MANSLAUGHTER

9 SUDDEN HEAT OF PASSION MAY, FOR A TIME, AFFECT A
10 PERSONS SELF CONTROL AND TEMPORARILY DISTURB A PERSONS
11 REASON. THIS SUDDEN HEAT OF PASSION MUST BE THE TYPE THAT
12 WOULD MAKE AN ORDINARY PERSON UNABLE TO COOLLY REFLECT ON
13 HIS ACTIONS AND WOULD PRODUCE AN UNCONTROLLABLE IMPULSE TO
14 DO VIOLENCE

15 SUFFICIENT LEGAL PROVOCATION MUST BE THE TYPE
16 THAT WOULD MAKE A PERSON OF ORDINARY REASON AND CAUTION
17 BECOME ENRAGED AND TO LOOSE CONTROL TEMPORARILY

18 THE PROVOCATION NEEDED FOR VOLUNTARY MANSLAUGHTER
19 MUST COME FROM SOME ACT OF OR RELATED TO THE VICTIM

20 WORDS ALONE, HOWEVER VULGAR AND INSULTING, ARE
21 NOT ENOUGH TO BE LEGAL PROVOCATION

22 WHERE DEATH IS CAUSED BY THE USE OF A DEADLY
23 WEAPON, THE WORDS MUST BE ACCOMPANIED BY SOME OVERT,
24 THREATENING ACT WHICH COULD HAVE PRODUCED THE HEAT OF
25 PASSION

CLOSING ARGUMENT BY DEFENSE

357

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

4 IF THE HEAT OF PASSION HAD COOLED, OR IF THERE
5 WAS ENOUGH TIME BETWEEN THE PROVOCATION, IF ANY, AND THE
6 KILLING FOR THE PASSION OF A REASONABLE PERSON TO COOL, THE
7 KILLING WOULD NOT BE VOLUNTARY MANSLAUGHTER

8 IN DECIDING WHETHER A REASONABLE PERSON WOULD
9 HAVE HAD ENOUGH TIME TO COOL OFF, YOU SHOULD CONSIDER ALL
10 THE CIRCUMSTANCE SURROUNDING THE KILLING YOU MAY CONSIDER
11 THE NATURE OF THE PROVOCATION, IF ANY, THE DEFENDANT'S
12 MENTAL AND PHYSICAL STATE, AND THE CIRCUMSTANCE AND
13 RELATIONSHIP BETWEEN THE PARTIES

14 THE DEFENDANT HAS RAISED THE DEFENSE OF SELF
15 DEFENSE SELF DEFENSE IS A COMPLETE DEFENSE, AND IF IT IS
16 ESTABLISHED, YOU MUST FIND THE DEFENDANT NOT GUILTY

17 THE DEFENDANT HAS NO BURDEN OF PROVING SELF
18 DEFENSE THE STATE HAS THE BURDEN OF DISPROVING SELF
19 DEFENSE BY PROOF BEYOND A REASONABLE DOUBT

20 IF YOU HAVE A REASONABLE DOUBT OF THE DEFENDANT'S
21 GUILT AFTER CONSIDERING ALL THE EVIDENCE, INCLUDING THE
22 EVIDENCE OF SELF DEFENSE, THEN YOU MUST FIND THE DEFENDANT
23 NOT GUILTY

24 ON THE OTHER HAND, IF YOU HAVE NO REASONABLE
25 DOUBT OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL THE

CLOSING ARGUMENT BY DEFENSE

358

1 EVIDENCE, INCLUDING THE EVIDENCE OF SELF DEFENSE, THEN YOU
2 MUST FIND THE DEFENDANT GUILTY

3 THE FOLLOWING ELEMENTS ARE REQUIRED TO ESTABLISH
4 SELF DEFENSE

5 THE DEFENDANT MUST BE WITHOUT FAULT IN BRINGING
6 ON THE DIFFICULTY IF THE DEFENDANT'S CONDUCT WAS AN ACT
7 IN VIOLATION OF THE LAW AND WAS REASONABLY CALCULATED TO
8 PRODUCE THE DIFFICULTY, THAT MAY BAR THE DEFENDANT'S RIGHT
9 TO ASSERT SELF DEFENSE

10 THE SECOND ELEMENT OF SELF DEFENSE IS THAT THE
11 DEFENDANT WAS ACTUALLY IN IMMINENT DANGER OF DEATH OR
12 SERIOUS BODILY INJURY OR THAT THE DEFENDANT ACTUALLY
13 BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS
14 BODILY INJURY

15 IF THE DEFENDANT WAS ACTUALLY IN IMMINENT DANGER,
16 IT MUST BE SHOWN THAT THE CIRCUMSTANCES WOULD HAVE
17 WARRANTED A PERSON OF ORDINARY FIRMNESS AND COURAGE TO
18 STRIKE THE FATAL BLOW TO PREVENT DEATH OR SERIOUS BODILY
19 INJURY

20 IF THE DEFENDANT BELIEVED HE WAS IN IMMINENT
21 DANGER OF DEATH OR SERIOUS BODILY INJURY, IT MUST BE SHOWN
22 THAT A REASONABLY AND PRUDENT PERSON OF ORDINARY FIRMNESS
23 AND COURAGE WOULD HAVE HAD THE SAME BELIEF

24 IN DECIDING WHETHER THE DEFENDANT ACTUALLY WAS OR
25 BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS

CLOSING ARGUMENT BY DEFENSE

359

1 BODILY INJURY, YOU SHOULD CONSIDER ALL THE FACTS AND
2 CIRCUMSTANCES SURROUNDING THE CRIME, INCLUDING THE PHYSICAL
3 CONDITION AND CHARACTERISTICS OF THE DEFENDANT AND OF THE
4 VICTIM

5 THE DEFENDANT DOES NOT HAVE TO SHOW THAT HE WAS
6 ACTUALLY IN DANGER IT IS ENOUGH IF THE DEFENDANT BELIEVED
7 HE WAS IN IMMINENT DANGER AND A REASONABLY AND PRUDENT
8 PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE
9 SAME BELIEF

10 THE DEFENDANT HAS THE RIGHT TO ACT ON APPEARANCES
11 EVEN THOUGH THE DEFENDANT'S BELIEF MAY HAVE BEEN MISTAKEN

12 IT IS FOR YOU TO DECIDE WHETHER THE DEFENDANT'S
13 FEAR OF IMMEDIATE DANGER OF DEATH OR SERIOUS BODILY INJURY
14 WAS REASONABLE AND WOULD HAVE BEEN FELT BY AN ORDINARY
15 PERSON IN THE SAME SITUATION

16 WORDS ACCOMPANIED BY HOSTILE ACTS MAY DEPENDING
17 ON THE CIRCUMSTANCES ESTABLISH SELF DEFENSE

18 EVIDENCE OF PRIOR DIFFICULTIES BETWEEN THE
19 DEFENDANT AND THE VICTIM MAY BE CONSIDERED IN DECIDING
20 WHETHER A THREAT EXISTED, WHETHER THE DEFENDANT HAD A
21 REASON TO BELIEVE A THREAT EXISTED, AND HOW SERIOUS THAT
22 THREAT WAS

23 THE INTOXICATION OF THE VICTIM MAY BE CONSIDERED
24 IN DECIDING WHETHER THE DEFENDANT'S FEAR OF DEATH OR BODILY
25 HARM WAS REASONABLE

CLOSING ARGUMENT BY DEFENSE

360

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

5 A PERSON CANNOT BE REQUIRED TO MAKE AN EXACT
6 CALCULATION AS TO THE DEGREE OR THE AMOUNT OF FORCE WHICH
7 MAY BE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM,
8 THEREFORE, IN SELF DEFENSE, THE DEFENDANT HAS THE RIGHT TO
9 USE THE FORCE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM

10 THE FORCE USED IN SELF DEFENSE DOES NOT HAVE TO
11 BE LIMITED TO THE DEGREE OR THE AMOUNT OF FORCE USED BY THE
12 VICTIM

13 THE DEFENDANT HAS THE RIGHT TO USE SO MUCH FORCE
14 AS APPEARED TO BE NECESSARY FOR COMPLETE SELF PROTECTION,
15 AND WHICH A PERSON OF ORDINARY REASON AND FIRMNESS WOULD
16 HAVE BELIEVED TO BE NEEDED TO PREVENT DEATH OR SERIOUS
17 BODILY HARM

18 IF THE DEFENDANT IS JUSTIFIED IN DEFENDING
19 HIMSELF AND IN FIRING THE FIRST SHOT, THEN THE DEFENDANT IS
20 ALSO JUSTIFIED IN CONTINUING TO SHOOT UNTIL IT IS APPARENT
21 THAT THE DANGER OF DEATH OR SERIOUS BODILY INJURY HAS
22 ENDED

23 MR HOBART, AS THE FOREMAN THIS IS YOUR PRIMARY
24 JOB, THIS IS THE VERDICT FORM YOUR VERDICT MUST BE
25 UNANIMOUS, ALL 12 OF YOU MUST AGREE

CLOSING ARGUMENT BY DEFENSE

361

1 THERE ARE, THE VERDICT SIMPLY LISTS STATE OF
2 SOUTH CAROLINA V TYRONE JACOBS, VERDICT FORM, WE THE JURY
3 FIND THE DEFENDANT NOT GUILTY OR WE THE JURY FIND THE
4 DEFENDANT GUILTY OF MURDER OR VOLUNTARY MANSLAUGHTER

5 MR HOBART, YOU WILL THEN SIGN CERTIFYING THAT
6 THE DECISION OF THE JURY WAS UNANIMOUS AND DATE IT ON
7 TODAY'S DATE

8 THERE IS NO PARTICULAR SIGNIFICANCE INTO THE
9 ORDER GIVEN, ONE SIMPLY HAS TO GO FIRST IT DOES NOT, THE
10 COURT HAS NOT INDICATED TO YOU BY PLACING ONE ABOVE THE
11 OTHER WHAT THE COURT IS INTIMATING TO YOU YOUR VERDICT
12 SHOULD BE

13 AS I STATED THERE ARE THREE POSSIBLE VERDICTS
14 WHICH YOU MAY FIND IN THIS CASE YOUR VERDICT MUST BE
15 UNANIMOUS, THAT MEANS ALL OF YOU MUST AGREE

16 WHEN YOU HAVE AGREED ON A VERDICT, MR HOBART, AS
17 FOREMAN, YOU WILL WRITE THE VERDICT ON THE VERDICT FORM,
18 YOU WILL KNOCK ON THE JURY DOOR AND MS GLORIA WILL ALERT
19 THE COURT THAT YOU HAVE REACHED A VERDICT AT THAT TIME,
20 WE WILL RECEIVE YOU BACK INTO THE COURTROOM AND YOUR
21 VERDICT WILL BE READ

22 YOU WILL BE GIVEN ALL OF THE EVIDENCE INTRODUCED
23 YOU HAVE BEEN GIVEN ALL AND HAVE HEARD ALL OF THE EVIDENCE
24 TO WHICH YOU CAN COME UP WITH YOUR VERDICT

25 I NOW MUST TAKE SOME MATTERS OUTSIDE OF YOUR

CLOSING ARGUMENT BY DEFENSE

362

1 PRESENCE TO GO OVER WITH BOTH THE ATTORNEYS FOR THE STATE
2 AND FOR THE DEFENDANT TO SEE IF THERE'S ANY OBJECTIONS TO
3 MY CHARGE

4 MS JOHNSON, AS THE ALTERNATE YOUR SERVICE HERE
5 IS DONE I ASK THAT YOU REMAIN OUTSIDE OF THE JURY ROOM
6 YOU ARE FREE TO LEAVE ONCE THE EXHIBITS HAVE GONE BACK WITH
7 THE JURY YOU ARE FREE TO LEAVE THE COURTHOUSE OR YOU ARE
8 FREE TO REMAIN I WILL LEAVE THAT DECISION TO YOU I
9 APPRECIATE YOUR SERVICE, MS JOHNSON

10 PLEASE, MR HOBART, IF YOU WILL ESCORT YOUR JURY,
11 MS GLORIA, IF YOU WILL ESCORT THE JURORS OUT

12 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT

13 11 29 A M)

14 THE COURT ANY MATTERS RELATED TO THE CHARGE
15 FROM THE STATE?

16 MR RICHARDSON NO, MA'AM

17 THE COURT ANY MATTERS PERTAINING TO THE CHARGE
18 FROM THE DEFENSE?

19 MR WILSON NO, MA'AM

20 THE COURT AND WE HAVE REVIEWED THE VERDICT
21 FORM AND ALL THE EXHIBITS AND YOU AGREE WITH WHAT'S BEING
22 SENT TO THE JURY ROOM, MR RICHARDSON?

23 MR RICHARDSON YES, MA'AM

24 THE COURT MR WILSON?

25 MR WILSON YES, MA'AM

CLOSING ARGUMENT BY DEFENSE

363

1 THE COURT JUST FOR THE RECORD WHAT, WE'VE GOT
2 THE VERDICT FORM, THE INDICTMENTS, AND WHICH EXHIBITS ARE
3 GOING BACK

4 MADAM COURT REPORTER DO YOU WANT ME TO CALL
5 THEM OUT?

6 THE COURT YES, PLEASE

7 MADAM COURT REPORTER STATE'S EXHIBIT 1, 2, 3,
8 4, 7, 8, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, AND
9 25

10 THE COURT THANK YOU, MS BABB MR
11 RICHARDSON, IS THAT YOUR UNDERSTANDING OF THE EXHIBITS THAT
12 WILL BE GOING BACK TO THE JURY ROOM?

13 MR RICHARDSON YES, MA'AM

14 THE COURT MR WILSON, IS THAT YOUR
15 UNDERSTANDING?

16 MR WILSON YES, MA'AM

17 THE COURT EITHER PARTIES HAVE ANY OBJECTIONS
18 TO THE EXHIBITS THAT ARE GOING BACK?

19 MR RICHARDSON NONE FROM THE STATE

20 MR WILSON NO, MA'AM

21 THE COURT ALL RIGHT

22 (WHEREUPON, THE VERDICT FORMS AND EXHIBITS WERE
23 DELIVERED TO THE JURY ROOM AND DELIBERATIONS BEGAN AT 11 32
24 A M)

25 THE COURT WE'LL BE EASE UNTIL THE JURY REACHES

CLOSING ARGUMENT BY DEFENSE

364

1 A VERDICT

2 (WHEREUPON, THE JURY KNOCKED WITH A VERDICT AT
3 1 58 P M)

4 THE COURT LADIES AND GENTLEMEN, I UNDERSTAND
5 THAT WE HAVE A VERDICT FOR THOSE OF YOU IN THE AUDIENCE I
6 UNDERSTAND THAT THIS IS A VERY EMOTIONAL TIME FOR BOTH THE
7 STATE AND THE DEFENDANT IF YOU DO NOT FEEL THAT YOU CAN,
8 WHEN THE JURY WILL BE READING THE VERDICT, YOU CANNOT
9 BEHAVE YOURSELF IN A MANNER BEFITTING THE DECORUM OF THE
10 COURT YOU NEED TO LEAVE NOW SO IF YOU CANNOT ACT LIKE
11 RESPECTFULLY, I WILL HAVE ONE OF THE DEPUTIES, THEY HAVE
12 INSTRUCTIONS TO ESCORT YOU THROUGH THAT DOOR SO I WILL GIVE
13 YOU THIS OPPORTUNITY IT'S VERY EMOTIONAL ON BOTH SIDES SO
14 IF YOU NEED TO LEAVE NOW YOU CAN LEAVE NOW

15 PLEASE BRING IN THE JURY

16 THE COURT ANYTHING FROM THE STATE BEFORE WE
17 BRING IN THE JURY?

18 MR RICHARDSON NO, MA'AM

19 THE COURT MR WILSON?

20 MR WILSON NO, MA'AM

21 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
22 2 07 P M TO DELIVER ITS VERDICT AS TO DEFENDANT TYRONE
23 JACOBS)

24 THE COURT MR FOREMAN -- PLEASE BE SEATED
25 MR FOREMAN, I UNDERSTAND WE HAVE A VERDICT?

VERDICT

365

1 MR FOREMAN YES, MA'AM

2 THE COURT MS LEWIS, IF YOU WILL TAKE THE
3 VERDICT FORM

4 I FIND THAT THE VERDICT FORM IS IN ORDER WILL
5 THE DEFENDANT, PLEASE, RISE?

6 VERDICT

7 MADAM CLERK INDICTMENT NUMBER 2007-GS-26-911

8 THE STATE V TYRONE JACOBS, WE THE JURY FIND THE DEFENDANT
9 GUILTY OF MURDER, SIGNED BY FOREPERSON CRAIG HOBART

10 LADIES AND GENTLEMEN OF THE JURY, IF THIS IS YOUR
11 VERDICT SO SIGNIFY BY RAISING YOUR RIGHT HAND?

12 (WHEREUPON, ALL JURORS RESPONDED AFFIRMATIVELY)

13 MADAM CLERK THANK YOU

14 THE COURT YOU MAY BE SEATED LADIES AND
15 GENTLEMEN OF THE JURY, AS I INDICATED AT THE BEGINNING OF
16 THE CASE IT WAS YOUR DUTY TO DECIDE THE FACTS OF THE CASE
17 AND APPLY THOSE FACTS TO THE LAW AS I INSTRUCTED YOU I AM
18 SATISFIED THAT YOU GAVE THE PARTIES IN THIS CASE YOUR
19 COMPLETE AND UTMOST ATTENTION NO ONE HAS ASKED YOU TO
20 COME TO COURT TO SERVE ON THIS PARTICULAR PANEL AND
21 CERTAINLY NO ONE ASKED FOR YOU BE HERE TO SERVE ON YOUR OWN
22 FREE WILL BUT HAVING BEEN CALLED UPON TO DO IT YOU HAVE MET
23 YOUR RESPONSIBILITY

24 THE CASE WAS VERY PROFESSIONALLY HANDLED BY THE
25 STATE AND THE DEFENSE ATTORNEY AND AT NO TIME DID I EVER

VERDICT

366

1 NOTICE YOUR ATTENTION TURN AWAY FROM THE MATTERS BEFORE
2 YOU

3 FOR HAVING RENDERED THIS SERVICE, Horry COUNTY
4 AND THE STATE OF SOUTH CAROLINA ARE FOREVER IN YOUR DEBT
5 YOU HAVE RENDERED YOUR VERDICT IN ACCORDANCE WITH YOUR OATH
6 AND IN ACCORDANCE WITH YOUR CONSCIOUS AND YOU HAVE NO ONE,
7 AND THAT MEANS NO ONE, TO ANSWER--TO' .

8 IF ANY PARTIES, YOU ARE FREE TO DISCUSS THIS CASE
9 AMONGST YOUR SIGNIFICANT OTHERS, FRIENDS, FAMILY MEMBERS,
10 OR WITH WHOMEVER THE ATTORNEYS MAY WANT TO DISCUSS YOUR
11 DECISION MAKING WITH YOU YOU DO NOT HAVE TO SPEAK WITH
12 ANYONE IF ANYONE APPROACHES YOU AND YOU TELL THEM THAT
13 YOU DO NOT WISH TO SPEAK AND THEY CONTINUE TO INQUIRE OF
14 YOU, PLEASE, LET EITHER MS LEWIS KNOW WITH THE CLERK'S
15 OFFICE, OR LET ME KNOW AND I WILL HANDLE THE MATTER
16 APPROPRIATELY

17 I APPRECIATE YOUR SERVICE YOU MAY BE EXCUSED
18 NOW OR IF YOU SO DESIRE I WILL BE SENTENCING THE DEFENDANT
19 YOU MAY STAY TO THE CONCLUSION OF THE TRIAL YOU MAY BE
20 EXCUSED AT THIS TIME THANK YOU AGAIN FOR YOUR SERVICE

21 (WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING
22 AT 2 00 P M)

23 THE COURT PLEASE BE SEATED ANYTHING FURTHER
24 FROM THE STATE BEFORE SENTENCING?

25 MR RICHARDSON NO, MA'AM

DEFENSE MOTION FOR ACQUITTAL NOTWITHSTANDING THE VERDICT367

1 THE COURT ANYTHING FURTHER FROM THE STATE,
2 FROM THE DEFENSE BEFORE SENTENCING?

3 MR WILSON YES, MA'AM YOUR HONOR, AT THIS
4 TIME I WOULD MOVE FOR A JUDGMENT OF ACQUITTAL
5 NOTWITHSTANDING THE VERDICT I THINK THAT THE EVIDENCE
6 THAT WAS PRODUCED DURING THE COURSE OF THE TRIAL AND THE
7 VERDICT ARE INCONSISTENT

8 THE JURY HAS FOUND THE DEFENDANT GUILTY OF THE
9 CRIME OF MURDER AND I THINK THAT WHEN YOU LOOK AT THE
10 EVIDENCE THAT WAS PRODUCED THERE WAS CLEARLY, CLEARLY
11 EVIDENCE INDICATING THAT THE, THAT THE TESTIMONY WAS
12 INCONSISTENT AND THAT IT WAS, AND, AND, AND, AND FRANKLY
13 WHETHER IT WAS EVEN BELIEVABLE BUT BE IT AS IT MAY, IN
14 SPITE OF THAT I THINK THAT THIS JURY FOR WHATEVER REASONS,
15 MAYBE THROUGH PREJUDICE OR CAPRICE OR PASSION HAS FOUND THE
16 DEFENDANT GUILTY OF THE CRIME OF MURDER AND FOR THAT REASON
17 I ASK THE COURT TO SET ASIDE THE, THE VERDICT AND GRANT THE
18 DEFENDANT A NEW TRIAL OR A JUDGMENT OF ACQUITTAL IN THE
19 ALTERNATIVE

20 THE COURT YOUR RESPONSE, MR RICHARDSON?

21 MR RICHARDSON YOUR HONOR, I BELIEVE WE'VE
22 CERTAINLY PUT FORTH ENOUGH EVIDENCE THROUGH TESTIMONY OF
23 SOME EYEWITNESSES TO AT LEAST GET PAST THAT THRESHOLD TO
24 LET THEM DECIDE THEY'VE BEEN OUT FOR APPROXIMATELY A
25 LITTLE BIT OVER TWO HOURS WHICH MAKES BE BELIEVE THAT THEY

SENTENCING

368

1 HAVE THOROUGHLY DISCUSSED THE ISSUES AND WE BELIEVE THERE'S
2 CERTAINLY ENOUGH IN THERE THAT THEY COULD HAVE FOUND THE
3 DEFENDANT GUILTY OF MURDER

4 THE COURT MR WILSON, I AGREE I BELIEVE THAT
5 AS I STATED IN MY CLOSING REMARKS TO THE JURY I FIND THAT
6 EACH JUROR LISTENED ATTENTIVELY TO THE EVIDENCE AND BASED
7 THEIR VERDICT UPON THE FACTS THAT WERE PRESENTED FROM THE
8 WITNESS STAND I DECLINE YOUR MOTION ---

9 MR WILSON THANK YOU, YOUR HONOR

10 THE COURT --- FOR A NEW TRIAL ANYTHING, DO
11 WE NEED A FEW MINUTES FOR SENTENCING OR ARE WE READY TO
12 PROCEED, MR WILSON?

13 MR WILSON I'M READY, YOUR HONOR

14 THE COURT THE STATE?

15 MR RICHARDSON WE'RE READY, YOUR HONOR

16 THE COURT ALL RIGHT, I'LL BE HAPPY TO HEAR
17 FROM YOU REGARDING THE SENTENCING?

18 MR RICHARDSON YOUR HONOR, OF COURSE I WON'T
19 BELABOR THE FACTS OF THIS CASE IT'S BEEN A COUPLE OF DAYS
20 AND YOU'VE LISTENED TO THEM I WOULD ASK FOR THE
21 OPPORTUNITY FOR MR JOHN BENNETT TO SPEAK IF HE SO CHOOSES
22 DO YOU WANT TO SAY ANYTHING?

23 THE COURT MR BENNETT, I'LL BE HAPPY TO HEAR
24 FROM YOU

25 MR RICHARDSON ALL RIGHT

SENTENCING

369

1 THE COURT DO YOU WANT TO DO THAT NOW?

2 MR RICHARDSON I WILL FINISH UP AND THEN, AND
3 THEN I'LL BE THROUGH I WOULD JUST STATE THAT REGARDLESS
4 OF WHAT SENTENCE MR JACOBS GETS PROBABLY EVERYBODY YOU SEE
5 IN THE COURTROOM ARE ALL NEIGHBORS, FAMILY, AND IT'S A
6 TRAGIC SITUATION, NOBODY REVELS IN IT YOU'RE JUST GOING
7 TO HAVE TO FIND A WAY TO LIVE TOGETHER ON BENNETT LOOP AND
8 REMAIN A CLOSE FAMILY IT'S JUST ONE OF THOSE THINGS I
9 HATE IT FOR THE BENNETT FAMILY, I HATE IT FOR MR JACOBS
10 BUT IT'S A VERY SMALL AREA AND EVERYBODY NEEDS TO TRY TO
11 GET ALONG AND PUT THIS BEHIND THEM

12 MR RICHARDSON MR JOHN?

13 THE COURT MR BENNETT, YOU MAY COME TO THE
14 PODIUM IF YOU WISH

15 MR RICHARDSON COME ON UP HERE, GIVE THEM YOUR
16 NAME FIRST, NAME

17 FAMILY MEMBER MY NAME IS JOHN, JOHN BENNETT
18 FROM BENNETT LOOP I'M A COUSIN AND NEPHEW OF ALL OF THEM
19 AND BORN AND RAISED IN HORRY COUNTY A LONG, LONG TIME AND
20 FIRST I'M A GOSPEL SINGING MAN, BEEN ALL OVER THE PLACE
21 AND I SAID I KNOW, I LOVE TYRONE I DON'T HATE TYRONE ONE
22 BIT, I LOVE HIM AND I LOVE ALL MY FAMILY I WASN'T THERE
23 THE NIGHT THEY DONE THE SHOOTING OR NOTHING LIKE THAT I
24 DON'T KNOW WHAT'S GOING ON BUT GOD THE ONLY ONE KNOW WHAT
25 GOING ON AND SO I DON'T KNOW HOW MANY TIME YA'LL GIVE HIM

SENTENCING

370

1 BUT I WANT YA'LL TO KIND OF HAVE MERCY ON HIM I LOVE MY
2 FAMILY, WE CLOSE TOGETHER I DON'T KNOW WHAT TAKE PLACE

3 MR RICHARDSON THAT'S ALL THE STATE HAS
4 THE COURT MR JACOBS PREVIOUS CRIMINAL
5 HISTORY?

6 MR RICHARDSON HE HAD A, I THINK A 2004
7 UNLAWFUL CARRYING OF A PISTOL AND THAT'S THE EXTENT OF HIS
8 RECORD HE DOES HAVE A DISTRIBUTION CHARGE, I BELIEVE, AND
9 I'M GOING TO DISMISS THAT

10 THE COURT AND THE STATE HAS NOTED THAT THIS IS
11 A VIOLENT AND A MOST SERIOUS, IS THAT CORRECT?

12 MR RICHARDSON YES, MA'AM, WHICH MEANS FOR MR
13 JACOBS THAT, OF COURSE HE CAN GET ANYWHERE FROM 30 YEARS TO
14 LIFE BUT IF HE GETS ANYTHING LESS THAN LIFE AND GETS OUT
15 THIS IS ONE STRIKE AND A MOST SERIOUS STRIKE SO ANOTHER
16 MOST SERIOUS WOULD BE A LIFE IMPRISONMENT WITHOUT
17 POSSIBILITY OF PAROLE, OR TWO SERIOUS STRIKES WOULD PUT HIM
18 IN THE SAME VAIN I THINK HE'S AWARE OF THAT

19 THE COURT ANYTHING FURTHER FROM THE STATE?

20 MR RICHARDSON NO, MA'AM

21 THE COURT THANK YOU MR WILSON, I'LL BE
22 HAPPY TO HEAR FROM YOU REGARDING SENTENCING

23 MR WILSON THANK YOU, YOUR HONOR YOUR
24 HONOR, LIKE THE SOLICITOR I'M NOT GOING TO BELABOR THIS
25 YOU'VE HEARD THREE DAYS, TWO AND A HALF, THREE DAYS OF THIS

SENTENCING

371

1 TESTIMONY YOU'VE HEARD WHAT THE WITNESSES TESTIFIED TO
2 AND YOU'VE SEEN THE EVIDENCE THAT'S BEEN PRODUCED DURING
3 THE COURSE OF THIS TRIAL THE ONLY THING THAT I WOULD SAY
4 TO YOU AT THIS TIME IS IS THAT THE ONLY RECORD THAT THIS
5 DEFENDANT HAS IS AS THE SOLICITOR'S INDICATED TO YOU IN
6 2004 HE HAD POSSESSION OF A PISTOL AND HE HAS NO OTHER
7 CRIMINAL RECORD HE HAS NO OTHER CONVICTIONS

8 HE, AGAIN, HAS LIVED IN THIS COMMUNITY ALL OF HIS
9 LIFE, ALL OF THESE PEOPLE ARE FAMILY THEY'VE KNOWN EACH
10 OTHER ALL THEIR LIVES THEY ALL LIVE WITHIN A FEW YARDS OF
11 EACH OTHER PRETTY MUCH AND I SAID THIS, YOU KNOW, AT THE
12 OUTSET WHEN WE WERE TALKING WITH THE JURY THAT THERE'S NO
13 GOOD HERE

14 YOU HAVE ONE YOUNG MAN WHO'S DEAD, YOU HAVE
15 ANOTHER YOUNG MAN WHO WAS ON TRIAL FOR HIS LIFE AND THE
16 JURY HAS FOUND HIM GUILTY OF A MOST SERIOUS OFFENSE AND NO
17 MATTER WHAT WE DO HERE TODAY, BOTH SIDES WILL LOOSE ONE
18 HAS LOST A SON, ONE WILL LOSE ANOTHER SON TO JAIL FOR MANY
19 MANY YEARS AND I, I SIMPLY ASK THE COURT TO, TO HAVE
20 MERCY, TAKE INTO CONSIDERATION THE FACT THAT HE HAS NO
21 SERIOUS PRIOR CRIMINAL RECORD, THAT HE HAS NOT, HE HAS NO
22 VIOLENT RECORD WHATSOEVER PRIOR TO THIS CONVICTION AND I
23 WOULD ASK THE COURT TO TAKE NOTICE OF THAT AND TAKE THAT
24 INTO CONSIDERATION IN THE COURT'S SENTENCE, AND WE'D SIMPLY
25 ASK THE COURT TO HAVE MERCY AT THIS TIME

SENTENCE

372

1 THE COURT MR JACOBS, ANYTHING YOU WISH TO
2 TELL THE COURT?

3 DEFENDANT JACOBS NO, MA'AM

4 THE COURT ANYTHING FURTHER?

5 MR WILSON NO, MA'AM

6 THE COURT REGARDING SENTENCING?

7 MR WILSON YOUR HONOR, JUST ONE SECOND MAY
8 YOU GIVE ME JUST ONE SECOND, PLEASE?

9 YOUR HONOR, THIS IS HIS MOTHER, MR JACOBS'
10 MOTHER, AND I JUST ASK YOU TO HEAR FROM HER IF YOU WOULD,
11 PLEASE? -

12 THE COURT YES, MA'AM

13 MS JACOBS I KNOW WE CAN'T CHANGE WHAT
14 HAPPENED

15 THE COURT IF YOU COULD ---

16 MR WILSON GIVE US YOUR NAME?

17 MS JACOBS MY NAME IS PATSY JACOBS

18 THE COURT IF YOU COULD COME FORWARD -- CAN YOU
19 HEAR HER, MS BABB -- IF YOU COULD COME FORWARD AND TAKE
20 THE PODIUM AND SPELL YOUR LAST NAME, PLEASE?

21 MS JACOBS MY NAME IS PATSY JACOBS, J-A-C-O-B-
22 S I KNOW WE CAN'T CHANGE WHAT HAPPENED BUT LIKE MR JOHN
23 SAID, WE ARE FAMILY AND WE FOREVER GOING TO BE FAMILY AFTER
24 TODAY IS CLOSING YOU KNOW WE LEAVE HERE TODAY WE GOING TO
25 STILL BE FAMILY WE GOES TO THE SAME CHURCH, YOU KNOW, WE

SENTENCE

373

1 LIVE IN THE SAME COMMUNITY AND I'M JUST ASKING THAT YA'LL
2 HAVE MERCY ON MY SON CAUSE HE DO HAVE GOOD IN HIM THANK
3 YOU

4 THE COURT THANK YOU, MS JACOBS

5 MR WILSON NOTHING FURTHER, YOUR HONOR

6 THE COURT NOTHING FURTHER MR JACOBS, IT'S

7 THE ORDER OF THE COURT THAT YOU BE COMMITTED TO THE STATE

8 DEPARTMENT OF CORRECTIONS FOR A TERM OF 30 YEARS GOOD

9 LUCK TO YOU, SIR

10 MR WILSON THANK YOU VERY MUCH, YOUR HONOR

11 MR RICHARDSON THANK YOU, YOUR HONOR

12 END OF REQUESTED TRANSCRIPT- - - -

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED BRENDA R BABB, OFFICIAL COURT REPORTER THE SOUTH CAROLINA COURT ADMINISTRATION, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR HORRY COUNTY, SOUTH CAROLINA

I DO FURTHER CERTIFY THAT I AM NEITHER KIN, COUNSEL NOR; INTEREST TO ANY PARTY HERETO - .

August 28, 2008
Brenda R. Babb
BRENDA R BABB, CVR

OFFICIAL REPORTER

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Horry)Tyrone Jacobs 328542
Full name and prison number if any of applicant.)

v)

State of South Carolina
Name of Respondent)APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - READ CAREFULLY

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

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

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

- 1 Place of detention LEE CORRECTIONAL INSTITUTION Chesterfield North 1131
940 WISKEY HIGHWAY, BISHOPVILLE, SC 29010
- 2 Name and location of Court which imposed sentence Horry County General
Sessions Conway, SC 29528
- 3 The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed
(a) 2007-GS-26-911 Murder
(b) _____
(c) _____
- 4 The date upon which sentence was imposed and the terms of the sentence
(a) MAY 21st 2007 - 30 years confinement for Murder
(b) _____
(c) _____

5 Check whether a finding of guilty was made

- (a) after a plea of guilty _____
- (b) after a plea of not guilty After a plea of not guilty
- (c) after a plea of nolo contendere _____

6 Did you appeal from the judgment of conviction or the imposition of sentence? Yes

7 If you answered "yes" to (6), list

(a) the name of each Court to which you appealed

I The South Carolina Court of Appeals

II _____

III _____

(b) the result in each such Court to which you appealed

I Affirm

II _____

III _____

(c) the date of each such result

I FEBRUARY 2, 2010

II _____

III _____

(d) if known, citations of any written opinion or orders entered pursuant to such results

I _____

II _____

III _____

8 If you answered "no" to (6), state your reasons for not so appealing

(a) N/A

(b) N/A

(c) N/A

9 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully

(a) Ineffective Assistance of Trial Counsel

(b) _____

(c) _____

10 State concisely and in the same order the facts which support each of the grounds set out in (9)
 (a) _____

(b) _____

(c) _____

11 Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

No

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No

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

No

12 If you answered "yes" to any part of (11), list with respect to each petition, motion or application

(a) the specific nature thereof

I N/A

II N/A

III N/A

IV N/A

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

I N/A

II N/A

III N/A

IV N/A

(c) the disposition thereof

I N/A

II N/A

III N/A

IV N/A

(d) the date of each such disposition

I N/A
 II N/A
 III N/A
 IV N/A

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

I N/A
 II N/A
 III N/A
 IV N/A

13 Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14 If you answered "yes" to (13), identify

(a) which grounds have been presented

I N/A
 II N/A
 III N/A

(b) the proceedings in which each ground was raised

I N/A
 II N/A
 III N/A

15 If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented

(a) Ineffective assistance of counsel

(b) _____

(c) _____

16 Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? NO

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

Yes

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? NO

17 If you answered "yes" to one or more parts of (16), list

(a) the name and address of each attorney who represented you

- i RALPH J. WILSON 1411 FIRST AVE. P.O. Box 1827 Conway, SC 29528
 ii JOSEPH L. SAVITZ, III 1336 LADY STREET, SUITE 401 Columbia, SC 29204-15
 iii _____

(b) the proceedings at which each such attorney represented you

- i Trial and Sentencing
 ii Direct Appeal
 iii _____

18 State clearly the relief you seek in filing this application

Vacate or set aside conviction and sentence; or grant
a new trial

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

No

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

VERIFICATION

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

Tyrone Jacobs

Sworn to and subscribed before me

This 2 day of Feb, 2011

S. Bracy Lewis L S

Notary Public for South Carolina

My Commission Expires 5-16-12

11

1414

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

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

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

Tyrone Jacobs
 Applicant

Sworn to and subscribed before me

This 2 day of Feb, 2011

S. Bracy Lewis

Notary Public for South Carolina

My Commission Expires 5-16-12

HORRY COUNTY
 11 FEB 15 AM 10 56
 CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Tyrone Jacobs, # 328542,	)	2011-CP-26-1414
	)	
Applicant,	)	
	)	
v	)	RETURN
	)	(Attorney Appointment Requested)
State of South Carolina,	)	
	)	
Respondent	)	
	)	

Respondent, making its Return to the Application for post-conviction relief filed February 15, 2011, by Tyrone Jacobs, would respectfully show this Court

I – Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. The Applicant was indicted in March 2007 for the murder of David Bennett (2007-GS-26-911). Ralph J. Wilson, Esquire, represented the Applicant. On May 19-21, 2008, the Applicant was tried and convicted pursuant to a jury trial before the Honorable Kristi Lee Harrington. Judge Harrington sentenced the Applicant to thirty (30) years. A notice of appeal was timely filed, and Joseph L. Savitz, III, Esquire, submitted a brief pursuant to Anders v. California on the Applicant's behalf. The South Carolina Court of Appeals affirmed the conviction on February 2, 2010 (2010-UP-081). The case was remitted to the circuit court on February 18, 2010.

Incorporated herein by reference are the records of the Horry County Clerk of Court regarding the conviction, the Applicant's records from the Department of Corrections, the trial transcript, and the direct appeal records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II – Allegations and Relief Sought

In his Application, Mr Jacobs alleges that his custody is unlawful for the following reason(s)

- (1) Ineffective assistance of trial counsel

The Applicant states he is seeking to have the conviction and sentence vacated or set aside, or to be granted a new trial

III

In a post-conviction relief action, the applicant bears the burden of proving his or her allegations by a preponderance of the evidence Stalk v State, 375 S C 289, 297, 652 S E 2d 402, 405 (Ct App 2007) (citations omitted), Rule 71 1(e), SCRCP “Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that ‘counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result ’” Dalton v State, 654 S E 2d 870, 873 (Ct App 2007) (citing Strickland v Washington, 466 U S 668, 669 (1984), Butler v State, 286 S C 441, 334 S E 2d 813 (1985)) The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases Id

A two-pronged test is used to evaluate allegations of ineffective assistance of counsel Dalton v State, 654 S E 2d 870, 873 (Ct App 2007) “In order to prove that counsel was ineffective, a PCR applicant must show that (1) counsel’s performance was deficient, and (2) there is a reasonable probability that, but for counsel’s errors, the result of the trial would have been different ” Smith v State, 375 S C 507, 515, 654 S E 2d 523, 527-28 (2007) (citations omitted) “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial ” Id (citations omitted) “Furthermore, when a defendant’s conviction is challenged, ‘the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt Id (citations omitted) “There is

a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case” Id (citations omitted)
 The applicant must overcome this strong presumption in order to obtain relief Stalk, supra (citation omitted)

Respondent submits that the Applicant will not be able to meet his burden of proof as to his claim of ineffective assistance of trial counsel. However, because the allegation may raise questions of fact that the record does not conclusively refute, Respondent requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S C 264, 305 S E 2d 247 (1983)

IV

Each and every allegation, claim, or statement contained within the Application not expressly admitted, qualified, or explained is DENIED

V

WHEREFORE, having made its Return, the Respondent requests that counsel be appointed and an evidentiary hearing held

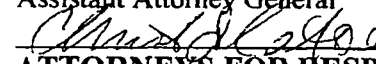
Respectfully submitted,

ALAN WILSON
 Attorney General

JOHN W. McINTOSH
 Chief Deputy Attorney General

SALLEY W. ELLIOTT
 Assistant Deputy Attorney General

CHRISTINA J. CATOE
 Assistant Attorney General


ATTORNEYS FOR RESPONDENT
 Office of the Attorney General
 Post Office Box 11549
 Columbia, South Carolina 29211
 (803) 734-3737

March 22, 2011

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2011-CP-26-01414

COUNTY OF HORRY

TYRONE JACOBS,

- vs -

STATE OF SOUTH CAROLINA,
Defendant

August 22, 2011

B E F O R E

HONORABLE STEVEN H JOHN

A P P E A R A N C E S

CHARLES T BROOKS, Esquire
Attorney for the Petitioner

KRISTINA J CATOE, Esquire
Attorney for the Defendant

Henry P Young
Court Reporter

I-N-D-E-X

WITNESS

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RALPH WILSON

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1 P-R-O-C-E-E-D-I-N-G-S

2 MR BROOKS Good morning, Judge

3 THE COURT Good morning, sir, how you doing?

4 MR BROOKS All right

5 THE COURT All right, as I understand it,
6 this is 2011-CP-26-1414, the application for post
7 conviction relief of the applicant Tyrone Jacobs
8 versus the State of South Carolina If you want
9 to, Madam Attorney General, if you want to give
10 just a short synopsis, we'll get started

11 MS CATOE May it please the Court, Your
12 Honor, the applicant was indicted in March, 2007,
13 for murder and he was represented by Ralph Wilson
14 He went to trial on May 19th through 21st of 2008
15 and was convicted of murder He was sentenced by
16 Judge Harrington to thirty years He did have a
17 direct appeal but the conviction was affirmed on
18 February 2nd, 2010 He filed a PCR application on
19 February 15th, 2011, and of course today he is
20 represented by Charles Brooks

21 THE COURT Very good

22 All right, Mr Brooks, as I understand it,
23 your applicant Mr Jacobs is pursuing the ground of
24 ineffective assistance of trial counsel Is that
25 correct?

1 MR BROOKS That's correct, Judge

2 THE COURT Any other ground that you are
3 aware of other than that?

4 MR BROOKS Before we begin, Judge, my
5 client has asked me to respectfully ask the Court
6 for a continuance in this matter

7 THE COURT All right And the grounds for
8 that, Mr Brooks, would be what?

9 MR BROOKS My client says he is not
10 prepared to go forward, he feels that I'm not
11 prepared to go forward

12 THE COURT All right Well, all right, if
13 you want to stand up for a second, Mr Jacobs,
14 please

15 Mr Jacobs, your attorney has indicated that
16 you want to request a continuance Is that
17 correct, sir?

18 MR JACOBS Yes, sir

19 THE COURT All right, sir Can you tell me
20 briefly why it is or what the reason is for a
21 continuance?

22 MR JACOBS Basically he hasn't done
23 anything about my case, he has only been on my case
24 like a month and a half and I feel like that is not
25 ample enough time to really go through my case

1 thoroughly because I'm pretty sure the errors have
2 been had on my case we could discuss I mean, we
3 have had a phone conversation about fifteen
4 minutes

5 THE COURT All right, sir

6 All right, Miss Catoe, what is the position
7 of the State of South Carolina?

8 MS CATOE Your Honor, the State is opposed
9 to a continuance at this time I have been
10 informed by the applicant's attorney he is prepared
11 to go forward, so we would object to the
12 continuance

13 THE COURT All right Has this matter ever
14 appeared on the post conviction relief docket
15 before?

16 MS CATOE No, Your Honor, I don't believe
17 it has

18 THE COURT Mr Jacobs, before I talk to your
19 attorney Mr Brooks again, you understand if I
20 continue your post conviction relief application,
21 then it will be some time before the post
22 conviction relief application can be heard Let me
23 look and see, I'm not sure, let me see, there might
24 be, it appears there might be one other term of
25 post conviction relief applications, time for that,

1 a week of court in November There is only one
2 other term of post conviction relief applications
3 scheduled in this circuit for the rest of this year
4 and it appears that is in November I don't know
5 the status of the docket and the Court doesn't set
6 the docket, the Attorney General's office sets the
7 docket and they may have already filled up that
8 docket, I don't know, but I'm just telling you for
9 the rest of this year I know there is only one
10 other term so you understand that

11 MR JACOBS Yes, sir

12 THE COURT All right So, at best, if I
13 continue it, the earliest it is going to get heard
14 is in November Do you understand that?

15 MR JACOBS Yes, sir

16 THE COURT Okay Understanding that, do you
17 still want me to consider your request for a
18 continuance?

19 MR JACOBS Yes, sir

20 THE COURT All right, very good

21 All right, Mr Brooks, understanding the
22 request of the applicant and your client Mr
23 Jacobs, do you believe it would be of benefit to
24 you and Mr Jacobs to discuss the case further or
25 for you all to sit down and work on the case

1 further before it's heard today? Would that be of
2 assistance or help to you, in your mind,
3 representing Mr Jacobs?

4 MR BROOKS Judge, as an experienced lawyer
5 who has handled probably more PCR's than anyone
6 around the State, I have had telephone conferences
7 with him I set up with the prison, I talked to his
8 mother, talked to Mr Wilson the defense counsel, I
9 read the transcript It is a fairly short
10 transcript, Judge, it is basically, with everything
11 in it, it is like 375 pages

12 THE COURT Right, I see that

13 MR BROOKS I don't know what, I mean,
14 personally I don't know what else a continuance
15 would do for me as an experienced PCR counsel

16 THE COURT Okay

17 MR BROOKS I just wanted to make the motion
18 on my client's behalf That is what he requested

19 THE COURT All right, and I appreciate that
20 In examining it, then, and in talking to Mr
21 Jacobs, you aren't aware of anything else that you
22 know that a delay would assist you or help you in
23 any way in presenting his case?

24 MR BROOKS That's correct, Judge, my
25 personal opinion

1 THE COURT I appreciate that but, you know,
2 it's your job, and I appreciate that

3 Mr Jacobs, based upon the statement of your
4 attorney Mr Brooks and the Court's personal
5 knowledge of his experience in dealing with post
6 conviction relief applications and his statement
7 that he is fully prepared to present your request
8 for post conviction relief application on the
9 ground of ineffective assistance of counsel, I'm
10 going to deny your request for a continuance

11 So, with that, Mr Brooks, if you would go
12 forward and proceed with the application, please,
13 sir

14 MR BROOKS At this time, Your Honor, we
15 would call Mr Jacobs

16 THE COURT All right, sir

17 Mr Jacobs, if you would come around, please,
18 sir, right up front around here, please, sir, and
19 be sworn

20 TYRONE JACOBS,
21 after being first duly sworn, testified as follows

22 MR BROOKS Ready, Judge?

23 THE COURT Yes, sir, you may proceed Thank
24 you very much

25 DIRECT EXAMINATION

1 BY MR BROOKS

2 Q Mr Jacobs, you brought this application for
3 PCR, is that correct?

4 A Uh-huh (Affirmative)

5 THE COURT Sir, you need to speak up so I
6 can hear you and the court reporter can take down
7 your answers

8 Thank you

9 A Yes, sir

10 Q It is your desire to have a new trial in this
11 case, is that correct?

12 A Yes, sir

13 Q You understand that the only remedy the Court
14 can give you is a new trial, the Court can't cut
15 your sentence, modify your time, anything like
16 that?

17 A Yes, sir

18 Q All right You had Mr Wilson as your
19 lawyer, is that correct?

20 A Yes, sir

21 Q Now, you brought this application alleging
22 ineffective assistance of counsel and one of the
23 things you had put in here was you said your lawyer
24 failed to investigate your case thoroughly Is
25 that correct?

- 1 A Yes, sir
- 2 Q Can you tell the Court what you mean by he
3 didn't do a good job investigating your case?
- 4 A I felt he could have like questioned the
5 witnesses a little better that was there at the
6 case, at the scene supposedly
- 7 Q Did he have a private investigator in your
8 case?
- 9 A No, he didn't
- 10 Q So it was just, as far as you know, it was
11 just him, is that correct?
- 12 A Yes, sir
- 13 Q You don't know whether or not he went out to
14 the scene of the crime and things like that, do
15 you?
- 16 A No, not really, I don't know
- 17 Q Were you in jail the entire time leading up
18 to trial?
- 19 A No, not the entire time
- 20 Q Were you out on bond?
- 21 A Yes, sir
- 22 Q And how much was your bond?
- 23 A A hundred thousand
- 24 Q Okay How long were you out?
- 25 A Six months

1 Q Prior to trial, six months, is that correct?

2 A Uh-huh?

3 Q Is that a yes?

4 A Yes, sir

5 Q Okay And one of the things you put down is

6 that Mr Wilson failed to duly investigate your

7 case?

8 A Yes, sir

9 Q Is there anything else you felt Mr Wilson

10 didn't do as part of the trial?

11 A Well, I feel that he could have objected more

12 in my case during the trial, during certain

13 questions and certain things that was presented,

14 like --

15 Q Okay Let me ask you this You didn't

16 testify in your trial, did you?

17 A No, sir

18 Q Why didn't you testify?

19 A I guess it wasn't up to me

20 Q Well, I mean, if you had it to do all over

21 again do you think it would have helped your case

22 if you testified?

23 A Yes, I do

24 Q What would you have said to the jury?

25 A What would I have said to the jury?

- 1 Q Right
- 2 A I would have told them exactly what happened
- 3 Q What happened?
- 4 A What happened?
- 5 Q Yes
- 6 A I mean, we got in a conversation, me and one
- 7 of my cousins and somebody's life got taken
- 8 Q If you were testifying in front of a jury,
- 9 because you didn't testify in your trial and you
- 10 feel that is critically important to your case, the
- 11 fact you didn't testify, isn't that correct?
- 12 A Correct
- 13 Q Let's tell the Court, you're asking for a new
- 14 trial, so tell the Court what you would have told
- 15 the jury
- 16 A What I would have told the jury?
- 17 Q Step by step
- 18 A Step by step, okay At first we got into a
- 19 conversation over a cell phone, it was me and my
- 20 cousin, you know, the cell phone belonged to
- 21 another one of our cousins He showed us his cell
- 22 phone, I spoke up and said he let me use his cell
- 23 phone, he started getting in a little conversation,
- 24 words were exchanged, this and that
- 25 Q Where were you all? Were you all at like a

1 pool hall?

2 A They said it was a store but it was a
3 neighborhood club, you know, consists of two pool
4 tables He was shooting pool on one of the tables,
5 I was shooting on the other

6 Q Okay

7 A And there is a question I went and left the
8 pool hall to go retrieve a weapon, that is not what
9 happened

10 Q Then this is your chance, tell me what
11 happened

12 A Okay On that night, November 6th, there was
13 an issue shooting pool, as I said before, we got in
14 a conversation over another cousin's cell phone,
15 there were some heated words exchanged, this and
16 that, I had a pistol on me

17 Q Let me ask you this When you were in the
18 pool hall did you have the pistol on you then?

19 A I had a pistol on me the whole time

20 Q Okay Did you leave the pool hall?

21 A When I was asked to leave

22 Q You were asked to leave by the management?

23 A Yes

24 Q You left the pool hall?

25 A Uh-huh (Affirmative)

1 Q And what happened after you left the pool
2 hall?

3 A When I left the pool hall I went outside, I
4 was confronted by the female I was with, you know,
5 we started talking, this and that, and I say about
6 five or ten minutes later my cousin came out and
7 then we squared off again and then we got in
8 another dispute, this and that

9 Q Okay, hold it right there You said your
10 cousin came out?

11 A Uh-huh (Affirmative)

12 Q And you all squared off Now, for those of
13 us who don't know, what does that mean?

14 A I mean, well, we got in each other's face,
15 like him in front of me, I'm in front of him, we
16 started arguing, basically

17 Q Okay After you started arguing what
18 happened then?

19 A Okay It was some heated words again
20 exchanged, this and that, you know -- let's back up
21 a moment He came out with a pool stick

22 Q He came out with a pool stick? So, he didn't
23 come out --

24 A He didn't come out empty handed

25 Q He came out with a pool stick?

1 A Exactly So I didn't really know what to
2 think but there was some heated words exchanged and
3 this and that, we confronted each other, some
4 heated words were exchanged, you know, and I, he
5 had his pool stick so I drew my weapon, I had my
6 weapon in my hand, this and that, some words were
7 exchanged, this and that again, and --

8 Q What happened next?

9 A He had some other guys were out there, he had
10 his brother, had the owner of the club, had his
11 nephew I mean, it was lots of people out there
12 We were arguing back and forth, back and forth,
13 back and forth So, I got my pistol in my hand, so
14 I point and presented it towards him, all right,
15 and I told him, "Man stop it, it ain't that
16 serious, you know, let it be, man, it ain't that
17 serious "

18 So, we kept going back and forth, back and
19 forth At this time it could have been prevented
20 but obviously it wasn't prevented, obviously he was
21 provoked to come outside behind me from the
22 beginning, somebody had to boost him up, give him
23 some kind of pool stick to come out there behind
24 me

25 Q Let me ask you this How old are you now?

- 1 A I'm 28 years old
- 2 Q When this happened how old were you then?
- 3 A I was 23
- 4 Q 23? And how old was your cousin?
- 5 A He was I think 37 at the time
- 6 Q Okay Had you all had anything to drink?
- 7 A It was a lot going on that day, I mean, it
- 8 was smoking, it was --
- 9 Q Smoking?
- 10 A Smoking, use of cocaine, everything
- 11 Q Had you smoked anything?
- 12 A I had somoked some marijuana, that is what I
- 13 do
- 14 Q All right Now, when you pulled the pistol
- 15 out --
- 16 A Uh-huh (Affirmative)
- 17 Q Take me back, tell me what happened after you
- 18 pulled the pistol out
- 19 A When I pulled the pistol out it was like I
- 20 guess he got more aggressive because I guess he
- 21 didn't think I was going to defend myself or
- 22 whatever the case may be I mean, he got more
- 23 louder, just talking more, you know, just talking
- 24 more names, just going on and on and on
- 25 Q Did he come toward you?

1 A I mean, it was like a gesture to come toward
2 me but when I drew the gun and like he gestured to
3 come toward me, when I drew the gun and it misfired
4 he backed off

5 Q He backed off after you tried to shoot but
6 misfired?

7 A Uh-huh (Affirmative)

8 Q Is that a yes

9 A Yes, sir

10 Q Okay Now, when it misfired, I'm sure you
11 reloaded the gun or got it straightened out, is
12 that correct?

13 A Yes, sir

14 Q And what happened after that?

15 A There again, the same thing, generally all
16 over, he started arguing, this and that, I said,
17 "I'm trying to leave, it ain't that serious," but
18 he just kept going on and on and on and on and I
19 took another step and then I just reacted

20 Q You shot him?

21 A I shot downward, I shot downward on his left
22 side but he said he was hit in his, I shot down on
23 his right side but he said he was hit in his left
24 side

25 Q Okay Did you shoot any more after that?

1 A Of course I did When I shot he came
2 charging so I back pedaled amd I was shooting more,
3 I was shooting downward, how he was running toward
4 me, he ran into my bullets, I mean, I had no
5 intention to take his life but I was trying to
6 defend myself

7 Q Okay Did you tell all this to Mr Wilson?

8 A Yes

9 Q Okay Now, Tyrone, before you got in this
10 trouble had you been in trouble before?

11 A I had a gun charge back in '04, just a
12 little, got caught in the wrong place at the wrong
13 time

14 Q Was that a conviction?

15 A No, sir I mean -- well, Mr Wilson
16 represented me in that, I got probation

17 Q So that was a conviction?

18 A Yes

19 Q Did you have any other convictions?

20 A No, sir, not besides misdemeanors, no, I
21 don't have none

22 Q So, you told him that -- did you tell him you
23 wanted to testify?

24 A At the point I wasn't too sure should I
25 testify or what I should do, you know, I wasn't

1 sure, I wasn't sure what to do, you know

2 Q Was there ever any deal offered to you?

3 A Was a deal?

4 Q Correct, instead of going to trial?

5 A They offered me twenty years

6 Q Okay And you rejected that, is that

7 correct?

8 A I rejected that

9 Q Is that because you felt this was self

10 defense?

11 A Yes, sir

12 Q Okay And is there anything else you want to

13 tell us about your case other than Mr Wilson's

14 failure to investigate and talk with some witnesses

15 and object and your not testifying?

16 A It was a witness he could have called in my

17 behalf but he is like, he stated, he is like, "We

18 shouldn't call him because he might sting you "

19 Q Who is that?

20 A Lorenzo Bennett

21 Q Okay Who was Lorenzo Bennett?

22 A He's a cousin of mine

23 Q Why did you want him called?

24 A Why did I want him called?

25 Q Correct

1 A Because he was there I mean, he seen what
2 happened I felt that his testimony could have,
3 you know, gave the jury a different outlook but Mr
4 Wilson said he doesn't think we should call him, we
5 shouldn't worry about that

6 Q Okay All right, is there anything else you
7 want to tell the Judge why you should get a new
8 trial, that we hadn't covered?

9 A I don't think personally that I was given a
10 fair chance because of the testimony from the State
11 witnesses but that is just my opinion

12 Q Okay Is there anything else?

13 A No

14 MR BROOKS All right Answer any questions
15 Miss Catoe has

16 THE COURT Ma'am

17 MS CATOE May it please the Court, Your
18 Honor, just a couple questions

19 CROSS EXAMINATION

20 BY MS CATOE

21 Q Good morning, Mr Jacobs Do you recall your
22 attorney making a closing argument in your case?

23 A A closing argument?

24 Q Right

25 A Yes, ma'am

1 Q Didn't he essentially argue your version of
2 the facts, what you just testified to, didn't he
3 essentially argue that to the jury?
4 A As far as what --
5 Q As far as it was self defense
6 A Yes, sir -- yes, ma'am
7 Q And do you recall that he got a jury charge
8 that the judge told the jury they could consider
9 self defense and also voluntary manslaughter?
10 A Yes, ma'am
11 MS CATOE That's all I have Thank you
12 THE COURT Any redirect, Mr Brooks?
13 MR BROOKS No, sir, Your Honor
14 THE COURT All right, very good
15 All right, Mr Jacobs, you may step down,
16 sir
17 (Witness excused)
18 MR BROOKS We call Ralph Wilson to the
19 stand
20 THE COURT All right, Mr Wilson, if you
21 will come forward, please, sir
22 RALPH WILSON,
23 after being first duly sworn, testified as follows
24 MR BROOKS Ready, Judge?
25 THE COURT Yes, sir, go ahead

1 DIRECT EXAMINATION

2 BY MR BROOKS

3 Q Mr Wilson, how are you today?

4 A I'm wonderful, thank you

5 Q You represented Mr Jacobs?

6 A I did, yes, sir

7 Q Okay And according to him you had
8 represented him before?

9 A I have

10 Q So you had a good working knowledge of him,
11 is that a fair assessment?

12 A Yes, sir

13 Q Now, how long had you been on his case prior
14 to going to trial?15 A Over a year As this thing unfolded, when he
16 was first charged he had left the county and gone
17 to Charleston, I think it was, and then he was
18 arrested in Charleston, I think in December,
19 because I think the event occurred in November, he
20 was arrested in December in Charleston, brought
21 back to Horry County He bonded out at that time,
22 I think in January or February He didn't actually
23 retain me, I think, until much, much later, maybe
24 like September of that year, of '07

25 Q Okay Now, did you hire an investigator to

1 assist you in preparation of this case?

2 A No, sir, we didn't have an investigator

3 Q Okay Now, Mr Jacobs didn't testify in his
4 trial?

5 A He did not

6 Q Okay There was an offer in this case of
7 twenty years?

8 A There was It was a twenty year offer that
9 Mr Richardson offered us kind of early on and
10 never went up or down, it just kind of stayed the
11 same right up until trial

12 Q Okay And can you basically just summarize
13 what the State's case was against Mr Jacobs?

14 A Well, the State's case was that it was murder
15 and the reason they believed it was murder was
16 because there were multiple gunshot wounds to the
17 victim, especially two shots in the back, and there
18 was a gunshot wound to I think it was his right
19 hand, a defensive wound to his right hand that the
20 pathologist indicated and just -- let me go back
21 and say this I went, which is what I normally do
22 in a murder case, I always try to go meet with the
23 pathologist, sit down and talk to him or her before
24 the trial The reason for that is generally, you
25 know, if there is any self defense you're going to

1 find out from the pathologist whether you've got a
2 case or whether you don't have a case for self
3 defense generally

4 And I remember going to meet with Dr Proctor
5 at his office over in Myrtle Beach maybe, this
6 would have been maybe six months before the trial
7 and we had a long discussion, you know, he told me
8 about the defensive wound on the hand, he also told
9 me about the two shots in the back and he said that
10 there is no way that he could have been standing
11 face to face at the time that those two wounds in
12 the back were inflicted and that the defendant,
13 that the victim had to have been in a defensive
14 posture like this in order for him to have gotten
15 the wound on his hand that he had, so those were
16 the problems that we had going into the trial
17 That is the problems we had with a self defense
18 claim

19 Now, the other problem to us was the
20 witnesses, and this is a juke joint kind of place,
21 okay, it is kind of in a remote area, the
22 neighborhood is filled with family, I mean, that
23 whole area is family and I think he brought up the
24 name Chris Bennett and Lorenzo Bennett I spoke to
25 both Chris and Lorenzo Neither one of them were

1 very cooperative Lorenzo was a little more
2 cooperative than Chris but Lorenzo claimed he
3 really didn't know anything other than he heard the
4 shots That was kind of his story

5 Chris, who was the other cousin, says he --
6 first he refused to talk to me at all and then he
7 said to me when he did call back the second time he
8 said, "Well, you don't really want me, I can tell
9 you that right now," and that is all he would
10 really say So that was pretty much it I did
11 tell him, I said, "Look, they are not going to be
12 very helpful to you if I put them on the stand,"
13 and I explained that to Tyrone, that these
14 witnesses were not going to help him

15 I spoke, I went out to the scene on two
16 separate occasions In fact the first occasion
17 that I went out his mother arranged it for me to go
18 out, I think with a relative, I don't remember if
19 it was a cousin or whoever, but they met me there
20 to show me where the place was and to take me
21 around They even pointed out some of the places

22 The second time I went I went on my own, I
23 talked to the bar owner, Robert McCullough, who was
24 also very uncooperative His position was he
25 didn't want either side of the family mad with him

1 so he wasn't going to talk to me at all

2 Now, Mr McCullough had had troubles of his
3 own in the past, too, so he was a lot more
4 cooperative with the State than he was with me and,
5 you know, that happens from time to time, too
6 But, you know, it was a case where it was going to
7 be difficult if not impossible to make out a self
8 defense

9 Q Did you relay all that to Mr Jacobs?

10 A Absolutely

11 Q According to the pathologist, how many shots
12 were there?

13 A There were multiple shots At least two to
14 the back, one in the ankle, in his ankle, which the
15 pathologist thinks was the first shot I don't
16 know if that is true or not and I don't know we
17 could ever prove that was the first shot, that was
18 in the ankle There was one bullet that was in the
19 ankle, there was two bullets in the back and there
20 was one bullet in the chest

21 Q So that is a total of four?

22 A Four at least There were more shots fired
23 than that but that is how many bullets were either
24 removed from the body or found in the body

25 Q Now, was there ever any type of ballistics

1 report given to you?

2 A Yes, sir

3 Q Were all of these bullets from the same gun?

4 A Yes, sir

5 Q And that would have been what the ballistics
6 experts testified to?

7 A I don't remember they actually testified
8 because there was no disagreement about the fact
9 that he fired those shots and that nobody else
10 fired any shots There was never any argument I'm
11 aware of that somebody else was there firing shots

12 Q Okay But that was not something you
13 necessarily looked into as far as getting a
14 ballistics expert?

15 A No, because of course there was never an
16 issue about it

17 Q What about -- did you advise Mr Jacobs to
18 take the stand?

19 A My philosophy is this I always tell the
20 defendant, "Look, it's your decision, these are the
21 things that are going to happen if you take the
22 stand If you take the stand you're going to be
23 subject to cross-examination If you've got a
24 criminal record obviously that criminal record is
25 going to come out " And the problem he had, and

1 again this is just my opinion, I assumed the reason
2 he didn't take the stand is that it was going to be
3 difficult to explain those shots in the back and I
4 told him that one of the things that would happen
5 if he took the stand and he testified, in all
6 likelihood the prosecutor is going to ask him to
7 demonstrate how it was that he shot him and there
8 is no way, the only way, with these shots being in
9 the back, that means that his back, that is the
10 victim's back, had to have been turned to him at
11 the time those shots were fired That was going to
12 be difficult, if not impossible, to explain

13 Q And did you explain that to him?

14 A Absolutely Which is, as I said, in my
15 opinion why he probably didn't take the stand I
16 did not tell him not to but I did tell him what I
17 just told you

18 Q Okay Did you advise him to perhaps
19 reconsider the plea, based on your assessment?

20 A Absolutely In fact the week leading up to
21 the trial Mr Richardson called me and I went out
22 and talked to him again, saying, "Look, this is as
23 good as it's going to get, he is not going to offer
24 you anything other than twenty years " Mr
25 Richardson's position was, "I'm getting ready for

1 trial now, if you don't take it now it isn't going
2 to get any better, I'm not going to offer you
3 anything else " And those of who know Jimmy, he is
4 really kind of fair and once he makes up his mind
5 that is kind of what he is going to do and that is
6 kind of what his position was

7 MR BROOKS Beg the Court's indulgence, Your
8 Honor

9 THE COURT Yes, sir

10 Q Mr Wilson --

11 A Yes, sir

12 Q -- did you ask the pathologist during the
13 trial or during your meeting with the pathologist
14 prior to trial whether or not those shots in the
15 back could have come from somebody taking a pool
16 stick and trying to swing it at the person?

17 A Yes, sir, absolutely, and I asked him at his
18 office first because obviously that was my concern,
19 and he told me, he said, "Look," he said, Dr
20 Proctor I'm speaking of now, told me, said, "Look,
21 the chances of that happening are slim and none "
22 At trial I think he was a little bit more less
23 committal, if you will, but the bottom line was he
24 said the bottom line is his back had to have been
25 exposed to him at the time those shots were fired

1 Q So --

2 A Meaning that the victim's back had to have
3 been exposed to Mr Jacobs at the time that the
4 shots were fired

5 Q And you are taking exposed to mean he had to
6 be turned all the way around where his back was
7 facing --

8 A Yes, sir, his back would have been to Mr
9 Jacobs at the time, the only way that the shots
10 could have been inflicted in the back, yes, sir

11 Q Are you saying Proctor pretty much said no
12 way it could come from a swing of a pool stick?

13 A Well, he didn't say there was no way What
14 he said was, and I'm trying to remember, I remember
15 the conversation I had with him at the office
16 because at the office he was a little bit more
17 emphatic than he was at trial At trial he was a
18 lot less, a little less committal in terms of
19 saying that it absolutely couldn't have happened
20 that way In his office he was saying, "Look, no "
21 His theory of the case was that, that is the
22 pathologist's theory of the case, at least what he
23 told me in his office was in his opinion the first
24 shot fired is the one that hit him in the ankle and
25 that he then went down to his ankles, which is, he

1 said would be a normal response and that is when
2 the other shots were fired which hit him in the
3 back That is kind of what his theory of the case
4 was, you know You know how those are, we all have
5 one

6 Q You communicated that?

7 A Absolutely, yes, sir

8 Q Prior to trial?

9 A Yes, sir

10 Q Did you advise him to perhaps take the plea?

11 A I didn't advise him to take it, I didn't
12 advise him not to take it I don't think that is
13 my place with a defendant, to tell him to take it
14 or not take it What I do is tell him, "Look, this
15 is what is going to happen to you if go to trial
16 You're going to have to get up there and there is a
17 good chance the jury is going to find you guilty,"
18 I did tell him that, and that we had a chance at
19 trial but it was not a good chance and, you know, I
20 tell all my defendants there are two things happen
21 at trial, one of them is bad, you know, and that is
22 just the way it is So, did I explain that to him,
23 absolutely Did I tell him to take the plea, no
24 Did I tell him not to take it, no I just
25 presented the facts to him and let him make his own

1 decision

2 Q All right

3 MR BROOKS Beg the Court's indulgence one
4 moment

5 THE COURT Yes, sir

6 MR BROOKS No other questions, Judge

7 THE COURT Very good

8 All right, cross-examination, Miss Catoe?

9 MS CATOE May it please the Court, Your
10 Honor, just a few questions

11 THE COURT Yes, ma'am

12 CROSS EXAMINATION

13 BY MS CATOE

14 Q Good morning, Mr Wilson

15 A Good morning

16 Q The first question, if you thought you needed
17 an investigator would you have obtained one?

18 A If I thought I would need one and we had the
19 resources to retain one I think that may have
20 been part of the problem, too, but I don't think it
21 would have made a difference, in my opinion, in
22 this particular case The problem was not the fact
23 that nobody attempted to talk to the witnesses
24 The problem was the witnesses didn't want to be
25 involved, they didn't want to participate or get

1 involved

2 Q All right And I believe you stated you
3 fully discussed the twenty year offer with the
4 applicant?

5 A I did, yes, ma'am

6 Q Did he have any reasons for rejecting it
7 specifically that he stated to you?

8 A Yes, ma'am His thinking was that he wasn't
9 guilty, that it was self defense

10 Q All right And based upon your
11 cross-examination of Dr Proctor, did you
12 essentially argue in your closing argument that the
13 shots to the back could have come from when the
14 victim was swinging the pool stick?

15 A I tried, yes, ma'am

16 MS CATOE All right, no further questions
17 Thank you, Mr Wilson

18 THE COURT Any redirect?

19 MR BROOKS No, sir, Your Honor

20 THE COURT Mr Wilson, you may step down

21 THE WITNESS Thank you Your Honor

22 THE COURT Thank you

23 (Witness excused)

24 MR BROOKS That's the applicant's case

25 THE COURT All right, very good All right,

1 Miss Catoe, any testimony or presentation of
2 witnesses on behalf of the State?

3 MS CATOE No, Your Honor the State has no
4 further evidence

5 THE COURT All right, Mr Brooks, any
6 argument you would like to make to the Court?

7 MR BROOKS Judge, basically we would ask
8 the Court to grant Mr Jacobs' post conviction
9 relief, grant him a new trial One of the things,
10 we feel that Mr Wilson didn't necessarily do a
11 thorough investigation in regards to ballistics and
12 examine whether or not these multiple shots could
13 have come from the same gun that was carried by Mr
14 Jacobs We feel that that in itself would pose a
15 problem and could have changed the outcome of the
16 case and for that reason we would ask the Court to
17 grant him a new trial

18 THE COURT All right, very good

19 All right, Miss Catoe

20 MS CATOE Your Honor, in this case, as Mr
21 Wilson stated, there was no question, he just
22 admitted the shots came from his gun, the
23 applicant There was no need for a ballistics
24 expert, and so that would be the State's response

25 THE COURT All right, very good

1 All right, regarding the claim of ineffective
2 assistance of counsel, when those allegations are
3 made the question is whether or not the counsel's
4 conduct so undermines the proper functioning of the
5 adversarial process that the trial cannot be relied
6 on as having produced a just result

7 The Court applies a two prong test when
8 considering the claim of ineffective assistance of
9 counsel That is, the applicant must show that his
10 counsel or his attorney's performance fell below an
11 objective standard of reasonableness, and secondly,
12 that but for the counsel or the attorney's error
13 there is a reasonable probability that the result
14 at trial would have been different

15 Now, reasonable probability is a probability
16 sufficient to undermine confidence in the outcome
17 of the trial Now, in looking at the record, of
18 course hearing the testimony today, first Mr
19 Jacobs and then Mr Wilson, and then reviewing the
20 record on appeal that is part of this particular
21 matter and the witnesses that testified, and I
22 think importantly the testimony of Dr Proctor, the
23 Court finds that the applicant has failed to carry
24 his burden of proof on these two standards

25 One, I don't think in any way that his

1 counsel's performance fell below an objective
2 standard of reasonableness It appears he did
3 everything that is expected of trial counsel on
4 their client's behalf, and I do not find that there
5 was any error So then of course there is, there
6 would be no reasonable probability that the outcome
7 would have been different

8 The Court has examined the evidence presented
9 in this matter I don't find anything that would
10 cause the Court any concern as to the issue of
11 whether or not Mr Jacobs should have testified
12 Certainly I don't know what his testimony would
13 have been at trial but in his testimony before the
14 Court he made a curious statement that I think the
15 jury, when faced with the evidence, if he had said
16 this in front of the jury, would have found
17 inconsistent with his versions of self defense and
18 he stated that the victim in this matter ran into
19 his bullets I just can't see how a jury would
20 find that to be persuasive in any way if he said
21 something like that to the jury and they take that
22 as part of his testimony and how he presented the
23 matters and then you look at what Dr Proctor said
24 at the trial, the angles that were all explored at
25 the trial, how it could have been self defense, and

1 again I don't see anything that, again, that the
2 attorney did that he shouldn't have done or
3 anything that he didn't do that he should have done
4 in this particular matter

5 Therefore the application for post conviction
6 relief by Mr Jacobs is denied

7 Miss Catoe, if you would please do an order
8 to that effect and forward it to the Court within
9 seven days of today's date Thank you very much

10 MR BROOKS Yes, Your Honor

11 (Hearing Concluded)

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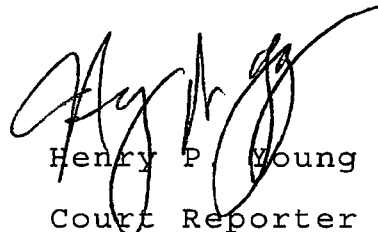
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4 I, the undersigned Henry P Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Horry County, South
11 Carolina, on the 22nd day of August, 2011

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

14 November 29, 2011

15
16
17
18 
19 Henry P. Young
20 Court Reporter
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Tyrone Jacobs # 328542

Applicant

v

State of South Carolina

Respondent

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2011-CP-26 1414

**ORDER DENYING
POST-CONVICTION RELIEF**

This matter came before the Court pursuant to an Application for post-conviction relief filed February 15 2011 by Tyrone Jacobs Respondent made a Return on March 22 2011. An evidentiary hearing was convened at the Horry County Courthouse on August 22 2011. The Applicant was present in court and represented by Charles T. Brooks III Esquire. The Respondent was represented by Christina J. Catoe Assistant Attorney General.

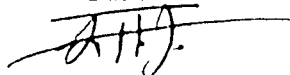
PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. The Applicant was indicted in March 2007 for the murder of David Bennett (2007-GS-26-911). Ralph J. Wilson Esquire represented the Applicant. On May 19-21 2008, the Applicant was tried and convicted pursuant to a jury trial before the Honorable Kristi Lee Harrington. Judge Harrington sentenced the Applicant to thirty years. A notice of appeal was timely filed and Joseph L. Savitz III Esquire submitted a brief pursuant to Anders v. California on the Applicant's behalf. The South Carolina Court of Appeals affirmed the conviction on February 2 2010 (2010-UP 081). The case was remitted to the circuit court on February 18, 2010.

STANDARD OF REVIEW

In a post conviction relief proceeding the applicant bears the burden of proving his or her allegations by a preponderance of the evidence. Ciprood v. State 338 S.C. 103 109-110 525 S.E.2d 514 517 (2000) Rule 71 1(c). Where ineffective assistance of counsel is alleged as a ground for relief the Applicant must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington 466 U.S. 668 (1984) Butler v. State 286 S.C. 441 334 S.E.2d 813 (1985). The correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler supra. There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case. Ciprood supra at 109 525 S.E.2d at 517 (citations omitted). The Applicant must overcome this presumption to receive relief. Cherry v. State 300 S.C. 115 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First the Applicant must prove that counsel's performance was deficient. Under this prong attorney performance is measured by its reasonableness under professional norms. Cherry 300 S.C. at 117 385 S.E.2d at 625 (citing Strickland). Second counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that but for counsel's unprofessional errors the result of the proceeding would have been different. Cherry 300 S.C. at 117 18 386 S.E.2d at 625. When a defendant challenges his conviction after a trial the proper consideration is whether there is a reasonable probability that absent the errors the fact finder would have had a reasonable doubt respecting guilt. Smith v. State 375 S.C. 507 515 654 S.E.2d 523 527 28 (2007) (citations omitted). In order to receive relief in



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applicant must prove both ineffective assistance and resulting prejudice See, e.g., Suber v. State
371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

ALLEGATIONS

In his PCR Application Mr. Jacobs alleged that his custody was unlawful for the following reason(s):

- (1) Ineffective assistance of trial counsel

The Applicant stated that he was seeking to have the conviction and sentence vacated or set aside or to be granted a new trial.

REVIEW OF THE PCR HEARING

At the outset of the hearing, the Applicant's PCR counsel made a motion for continuance. He stated that although he was prepared to go forward with the PCR hearing, the Applicant did not feel prepared and did not feel that his attorney had enough time to fully prepare. The Applicant's PCR counsel advised the court that he had handled numerous PCR cases throughout the state and did not believe that a delay in the hearing would assist him in representing the Applicant. The State opposed the continuance motion since the Applicant's PCR counsel stated that he was prepared to go forward. Based upon the statements of PCR counsel, this Court denied the motion for continuance, finding that the Applicant's PCR counsel was fully prepared for the hearing and that a continuance would not assist in the preparation of the Applicant's case.

Thereafter, the Applicant was called as the first witness. He testified that Ralph Wilson represented him on his murder charge. He stated that Mr. Wilson did not hire a private investigator and that he failed to sufficiently investigate the case. He stated that he was unsure of whether Mr. Wilson visited the crime scene or not. He stated that he felt that Mr. Wilson should have questioned the State's witnesses better and should have objected more at trial.

The Applicant stated that he did not testify at trial. He stated that if he had testified it would have helped his case. He stated that on the night of the incident he had a confrontation with his cousin (the victim) over his use of a cell phone. The Applicant stated that at that time he was age twenty three and his cousin was age thirty-seven. He and his cousin continued to exchange heated words that night at the neighborhood pool hall. The Applicant stated that after he was asked to leave he left and went outside. He stated that he did not leave to go get his weapon instead he already had his pistol on him. Outside he talked with a female acquaintance for a while. About ten to fifteen minutes later his cousin came outside. He stated that there were some other men that followed his cousin outside. He stated that a lot of people there that night including his cousin had been drinking smoking marijuana and/or using cocaine that night.

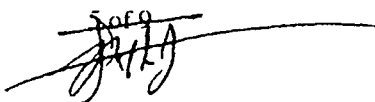
The Applicant stated that he and his cousin 'squared off' and were arguing face to face. He stated that his cousin had a pool stick so he drew his pistol. At one point his cousin became more aggressive and started calling the Applicant names. His cousin made a gesture to come towards him so the Applicant tried to fire his weapon. The gun misfired and his cousin backed off. The Applicant then re loaded the gun. His cousin then resumed the heated words and name calling, and when he took another step towards the Applicant the Applicant shot him in the leg. The Applicant continued to shoot as his cousin 'ran into' his bullets. The Applicant testified that he had no intent to take his cousin's life that night, but that he was just trying to defend himself. The Applicant acknowledged that he had a prior conviction for unlawful possession of a firearm.

The Applicant stated that he and his attorney discussed a 20 year plea offer but he rejected it because he was not guilty. They also discussed potential witnesses for trial. The

Applicant told his cousin about a potential witness named Lorenzo Bennett a cousin of the Applicant who was present on the night of the incident. However his attorney told him that this witness might 'sink him' and he recommended not calling him as a defense witness.

Ralph J. Wilson Esquire was called as the Applicant's second witness. He testified that he represented the Applicant on a previous charge and had a good working knowledge of him. At the time of trial Mr. Wilson had been on the Applicant's case for about a year. The incident occurred in November 2006 and the Applicant left the county and went to Charleston where he was later arrested. He later bonded out of jail and then retained Mr. Wilson. Mr. Wilson stated that he went to the crime scene two times and also met with potential witnesses. Two witnesses that the Applicant requested that counsel interview were Chris Bennett and Lorenzo Bennett. Mr. Wilson stated that Chris Bennett was uncooperative and told him 'you don't want me'. Lorenzo Bennett was more cooperative but he claimed that he heard the shots but did not see anything. The pool hall owner Mr. McCullough was also fairly uncooperative toward the defense. Therefore Mr. Wilson advised the Applicant that it would probably not help his case to call these people as defense witnesses.

Mr. Wilson explained to the Applicant that he had met with the forensic pathologist in the case Dr. Proctor and had a long discussion with him. It was Dr. Proctor's belief that the victim was first shot in the ankle which caused him to fall to the ground, and then he was shot two more times including a shot in the back. In addition there was what appeared to be a defensive graze wound on the victim's hand. Mr. Wilson asked Dr. Proctor about various possibilities regarding angles of the shots and Dr. Proctor explained that it was clear that the victim's back had to be exposed to the Applicant in order for that shot to have struck him there. Based upon the nature of the gunshot wounds in the victim and the fact that one of the shots was in the

5069


victim's back it appeared that the Applicant's story regarding being face to face with the victim at the time he was shot could not have been true. At trial Mr. Wilson did get Dr. Proctor to admit that it was possible that the victim's back was exposed as he turned to swing the pool stick at the Applicant. Mr. Wilson argued this version of events in his closing argument and argued that the Applicant had acted in self defense that night.

After conducting what he believed was a reasonable and thorough investigation into the case Mr. Wilson discussed his opinions with the Applicant. He told the Applicant that based upon his assessment of the evidence it would be difficult to establish self defense. He also told the Applicant that there was a strong possibility that the jury would find the Applicant guilty of murder. Mr. Wilson stated that he and the Applicant thoroughly discussed the 20-year plea offer made to the Applicant. Mr. Wilson believed this to be a fair offer and he advised the Applicant to consider it in light of the potential problems with his self-defense claim. Mr. Wilson also thoroughly discussed with the Applicant his right to testify or not testify at trial. He advised him about cross-examination and about the potential of his prior record coming in to impeach him. He also warned him that it was likely that the solicitor would ask him to demonstrate how the shooting occurred and advised him that this could be a big problem since he would have to somehow explain the shot to the victim's back. The Applicant was fully advised regarding all of these matters and made his own decision to decline the plea offer, proceed to trial and to not testify at trial.

Mr. Wilson acknowledged that he did not hire a private investigator in the case and did not hire a ballistics expert to determine whether all of the shots came from the same weapon. Mr. Wilson explained that he did not feel that a private investigator would have helped in this

particular case and that he did not believe a ballistics expert was necessary because there was no dispute that all of the shots came from the Applicant's gun

Set forth below are the relevant findings of fact and conclusions of law as required by S C Code Ann § 17-27-80 (2003)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In considering the Applicant's case this Court had before it the Applicant's PCR file including all pleadings filed the records of the Horry County Clerk of Court regarding the conviction the Applicant's records from the South Carolina Department of Corrections the trial transcript and the direct appeal records This Court carefully listened to all of the testimony presented at the hearing and weighed the same according to credibility This Court found the Applicant's testimony to be lacking in credibility with respect to his allegations of ineffective assistance of counsel This Court found the testimony of Ralph J Wilson Esquire to be highly credible in all respects

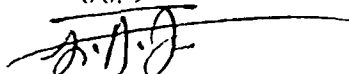
After careful consideration of the entire record in this matter this Court must find that the Applicant has failed to meet his burden of proof as to his claim of ineffective assistance of counsel This Court finds that Attorney Wilson conducted a reasonable investigation of the Applicant's case The Applicant failed to prove there was anything relevant that counsel failed to discover in preparation for trial See Jackson v State 329 S C 345 349 495 S E 2d 768 770 (1998) (a PCR applicant bears the burden to prove that further investigation would have resulted in a different outcome at trial) In that vein, the Applicant failed to prove that there were any helpful defense witnesses that counsel should have called as a part of the defense case and failed to prove that hiring a private investigator or ballistics expert would have aided in his defense See Dempsey v State 363 S C 365 370, 610 S E 2d 812 815 (2005) (prejudice is merely

speculative where a PCR applicant fails to present allegedly favorable witness testimony at the PCR hearing) Further this Court finds that Mr Wilson fully and properly advised Applicant regarding all pertinent matters in his case including the plea offer the problems with self defense and the right to testify or not testify at trial Counsel's advice to the Applicant regarding testifying versus not testifying was reasonable In fact since the Applicant's PCR testimony about what occurred on the day in question was inconsistent with the findings of the forensic pathologist it is likely that that Applicant's testimony would have only damaged his case This Court finds that the Applicant made his own decisions about how to proceed in his case after being fully and properly advised by his counsel Therefore this Court finds that the Applicant failed to prove any errors on the part of trial counsel that could have affected the outcome of the proceeding

CONCLUSION

In conclusion based upon the entire record this Court finds and concludes that the Applicant failed to meet his burden of proof as to his claims of ineffective assistance of counsel Therefore the Application for post-conviction relief must be denied and dismissed with prejudice for failure to meet the burden of proof under Strickland v Washington 466 U S 668 (1984) and Butler v State, 286 S C 441 334 S E 2d 813 (1985)

Counsel's attention is directed to Marlar v State 375 S C 407 653 S E 2d 266 (2007) and Rule 59(e) SCRCP regarding the filing of a Motion to Alter or Amend should counsel believe this Order fails to adequately address all issues raised as required by S C Code Ann § 17-27-80 (2003) This Court further advises that if Applicant desires to secure appellate review of this Order, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Order Applicant and counsel are directed to Rules 203 206 and 243 of the South

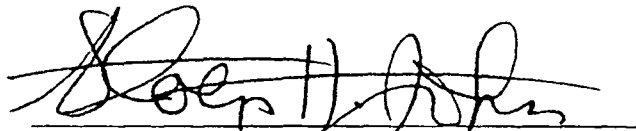


Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed

IT IS THEREFORE ORDERED THAT

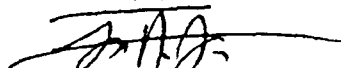
- 1 The Application for post conviction relief is **DENIED and DISMISSED with PREJUDICE**
- 2 The Applicant must remain in the custody of the State for completion of his sentence

AND, IT IS SO ORDERED this 30th day of August 2011



The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

Conwey South Carolina



WITNESSES

LIVINGSTON/HCPD• DOCKET NO 2007-GS-26-911

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY83911JAR

COURT OF GENERAL SESSIONS

MARCHTERM 2007

• THE STATE

VS

TYRONE JACOBS B/M

LORIS, SC

DOB

SSN

ARREST WARRANT NO _____

I-763831

CDR 0116 16-03-0010, 0020

CDR

DOA 12-11-06

ACTION OF GRAND JURY

TRUE BILL

 MAR 01 2007
 Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date

ATTORNEY MIKE SUGGS

INDICTMENT FOR

• **MURDER****ORIGINAL**J GREGORY HEMBREE, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

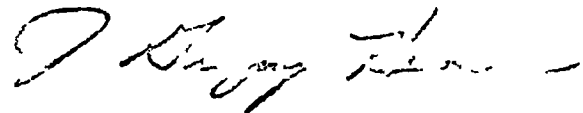
INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on March 1, 2007 the Grand Jurors of Horry County present upon their oath

MURDER
CDR 0116 16-13-0010, 0020

That TYRONE JACOBS did in Horry County on or about November 10, 2006, unlawfully kill the victim, David Bennett, with malice aforethought, either express or implied, by means of shooting the victim and that the victim died as a proximate result thereof, in violation of Section 16-3-10, S C Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided



SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VSTyrone Jacobs

AKA _____

Race B Sex M Age 25

DOB _____ SS# _____

Address _____

LORIS, SCDL# 999999999

SID# _____

IN THE 'RT OF GENERAL SESSIONS

INDICTMENT/CASE# 2007GS2600911A/W# I763831Date of Offense 11/10/2006S C Code § 16-03-0010 0020CDR Code # 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO Murder / Murderin violation of § 16-03-0010, 0020 of the S C Code of Laws bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is ☒ As Indicted, ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury (Defendant initial)The plea is ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST

Richardson, R. Jimmy A

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference☐ CONCURRENT or ☐ CONSECUTIVE to sentence on _____☐ The Defendant is to be given credit for time served pursuant to S C Code § 24-13-40 to be calculated and applied by the State Department of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S C Code §17-25-135

SPECIAL CONDITIONS

☐ RESTITUTION ☐ Deferred ☐ Def Waives Hearing ☐ Ordered PTUP _____

Total \$ _____ plus 20% fee \$ _____

Payment Terms _____

☐ set by SCDPPPS _____

Recipient _____

*Fine \$

§ 14-1-206 (Assessments 107 5 %)

§ 14-1-211(A)(1) (Conv Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35 13 (Public Def/Prob)

§ 73 3 1B TP (Law Enforce Funding)

§ 33 7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea

3% to County (if paid in installments)

TOTAL

\$ 100.00\$ 100.00\$ 12.00\$ 500.00\$ 25.00\$ 100.00\$ 50.00\$ 3.75\$ 128.75

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab or Job Corp _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd in equal, consecutive weekly/monthly pmts of \$ 25.00 beginning 01/20/08

\$ _____ paid to Public Defender Fund

Other _____

☐ Appointed PD or appointed other counsel. §35 13 TP Requires \$500 be paid to Clerk during probationPRESIDING JUDGE Kristi HugginsJudge Code 2171517Sentence Date 05/21/08

Clerk of Court/Deputy Clerk

Brenda Babb

47331