

VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County
Steven H. John, Circuit Court Judge

RECEIVED

JUL 05 2016

SC SUPREME COURT

DERRICK D. HARRIOTT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002610

APPENDIX

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	)	COURT OF GENERAL SESSIONS
County of Sumter	)	08-GS-43-257
	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
DERRICK DAMON HARRIOTT,	)	
	)	
DEFENDANT,	)	

November 10, 13 2008
Sumter, South Carolina

BEFORE:

THE HONORABLE GEORGE C. JAMES, JR., JUDGE; and a jury.

APPEARANCES:

HARRY CONNOR, ASSISTANT SOLICITOR
Attorney for the State

WILLIAM CETH LAND, ESQ.
Attorney for the Defendant

KAREN TRACY
Official Court Reporter

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1 THE COURT: I'll just put on the record before I
2 forget, the court reporter for the jury selection was
3 Ms. Winfield in case anybody is ever wondering where that
4 part of the transcript went to.

5 All right. Do you want to talk a few minutes?

6 (Pause).

7 All right. We'll be back on the record sometime
8 between 2:00 and 2:15, and that will give us plenty of
9 time to sort out that statement issue before the jury
10 comes back.

11 Okay. We'll be back at 2:00, 2:15. Let's just say
12 two o'clock for now, 2:00.

13 (WHEREUPON, a lunch break was taken.)

14 (WHEREUPON, State's Exhibits Nos. 1 - 47 were marked
15 for identification only.)

16 THE COURT: All right. Mr. Connor, we have some
17 issues to take before up, Mr. Land, before we start?

18 MR. CONNOR: Yes, Your Honor. We would have a
19 Jackson Denno hearing in regards to the voluntariness of
20 the statements given by the defendant to policemen who
21 arrived there at the time this thing happened.

22 THE COURT: All right. You can call your first
23 witness.

24 MR. CONNOR: I would call Heath Gardener, Your Honor.

25 THE CLERK: Place your left hand on the Bible, raise

1 your right hand, state your name.

2 THE WITNESS: Officer Heath Gardener.

3 HEATH GARDNER, after being duly sworn,
4 testified as follows:

5 THE COURT: All right. Mr. Connor, Mr. Land, would
6 you come forward please, sir.

7 (Whereupon, there was a bench conference.)

8 THE CLERK: State your full name, spell your last
9 name for the record.

10 THE WITNESS: Officer Heath Gardener,
11 G-A-R-D-E-N-E-R.

12 THE COURT: Okay.

13 DIRECT EXAMINATION:

14 BY MR. CONNOR

15 Q Officer Gardner, would you state your name for the
16 record, please?

17 A Officer Heath Gardener.

18 Q And tell us where you work.

19 A I work for the Sumter Police Department.

20 Q And what's your duties with the Sumter Police
21 Department?

22 A I am a patrolman, sir.

23 Q And when -- were you are working for the Sumter
24 Police Department back on March 16th, 2007?

25 A Say that one more time, sir.

1 Q Were you working for the Sumter Police Department on
2 March 16th, 2007?

3 A Yes, sir, I was.

4 Q And at that particular time, what were your duties?

5 A To patrol the areas given, assigned.

6 Q And you -- so you were driving a marked police car?

7 A Yes, sir.

8 Q Patrol car?

9 A Yes, sir.

10 Q And did you get a call in regards to a shooting at an
11 apartment complex known as Orchard Place?

12 A Yes, sir.

13 Q And did you immediately respond to that call?

14 A Yes, sir.

15 Q And about how long did it take you from the time you
16 heard the call on the radio to get to the apartment
17 complex?

18 A Approximately ten minutes, sir.

19 Q And when you got there, did -- did you see a person
20 who had been described to you as a suspect in a shooting
21 in the yard of the apartment complex in front of apartment
22 number ?

23 A Yes, sir.

24 Q And at -- at that time, what did you do?

25 A I immediately got out of my vehicle and then started

1 giving commands to lay down on the ground.

2 Q And did -- did the defendant at that point in time
3 lay down on the ground?

4 A He first took his shirt off and did a 360 and then
5 did comply with my commands to lay on the ground.

6 Q At that point in time, did some other officers join
7 you?

8 A Yes, sir. I remember Corporal Barnhill pulling up at
9 the same time I did, and we both approached at that time.

10 Q And what -- what did you do?

11 A After we -- after we -- he laid on the ground, we
12 approached him, and we placed him into custody.

13 Q And by placing him into custody, what did you do?

14 A We placed handcuffs, put his hands behind his back
15 and placed him in handcuffs.

16 Q And did you search him for weapons?

17 A Yes, sir.

18 Q And while you were searching him for weapon, did he
19 make some verbal response to you?

20 A Not while we were searching but immediately after he
21 did.

22 Q And did -- did you ask him any questions to get him
23 to respond, or did he just voluntarily make a statement to
24 you?

25 A Voluntarily, no questions were asked.

1 Q And what did he say to you?

2 A He stated, "I know what I did. I know I shot her."

3 He kept saying it over and over and over.

4 Q He said, "I know what I did." Say it again, please.

5 A "I know what I did. I know I shot her."

6 Q And he said it more than one time?

7 A Yes, sir.

8 Q And you didn't ask him any questions?

9 A No, sir.

10 Q All right. Did you put him in your automobile?

11 A Within a few minutes, yes, sir, we did.

12 Q You put him in a -- in a vehicle?

13 A Yes, sir, put him in the backseat of my patrol car.

14 MR. CONNOR: Answer any questions the defendant's
15 lawyer might have for you.

16 CROSS-EXAMINATION:

17 BY MR. LAND

18 Q Officer Gardner, there's no question he was in
19 custody when he made these statements?

20 A Yes, sir.

21 Q And you're familiar with Mirandizing a suspect,
22 aren't you?

23 A Yes, sir.

24 Q At any time, did you read him his Miranda rights?

25 A I did not.

1 MR. LAND: No further questions, Your Honor.

2 THE COURT: Mr. Connor?

3 REDIRECT EXAMINATION:

4 BY MR. CONNOR

5 Q In that regard afterwards, he made -- he made these
6 remarks to you, did some other officer give him his
7 Miranda rights?

8 A They did, Detective Lyons.

9 Q Detective Lyons did?

10 A Yes, sir.

11 MR. CONNOR: Okay. I have no further questions of
12 him, Your Honor.

13 THE COURT: Yes, sir.

14 RECROSS-EXAMINATION:

15 BY MR. LAND

16 Q Those statements were made after -- I mean, excuse
17 me, before he was Mirandized, correct, the ones that
18 you...

19 A Yes, sir.

20 MR. LAND: No further questions.

21 THE COURT: Thank you. You may step down.

22 MR. CONNOR: We call Detective Lyons, Your Honor.

23 THE CLERK: Place your left hand on the Bible, raise
24 your right.

25 WILLIAM LYONS, after being duly sworn,

1 testified as follows:

2 THE CLERK: Have a seat up here, please. Watch your
3 step.

4 State your full name. Spell your last name for the
5 record.

6 THE WITNESS: William Lyons, L-Y-O-N-S.

7 DIRECT EXAMINATION:

8 BY MR. CONNOR

9 Q Officer Lyons, what agency do you work for?

10 A The Sumter Police Department.

11 Q And how long have you worked for the Sumter Police
12 Department?

13 A Since 2004.

14 Q And were you working on March 16th, 2007?

15 A Yes, sir, I was.

16 Q And at that time, what were your duties?

17 A During that time I was assigned to a special
18 enforcement team known as the Neighborhood Enforcement
19 Team. Our duties including a variety of different things.
20 We assisted different divisions, investigations,
21 narcotics, did a lot of street jump outs, didn't really
22 have an assigned patrol area. We pretty much roamed the
23 entire city.

24 Q And did you respond to Orchard Place apartments in
25 regards to a shooting there some time between 5:15 and

1 5:30 on March 16, 2007?

2 A Yes, sir, I did.

3 Q And when you got there, who was there?

4 A When I got there, I remember Officer Heath Gardner,
5 Corporal Jarred Barnhill, and I believe there was another
6 patrol car there, but I'm not sure who was there at the
7 time. I do know that Corporal Barnhill and Officer
8 Gardener were there. In fact, I actually met Officer
9 Gardner on the outside of the residence.

10 Q And tell us about what happened there.

11 A Upon my arrival on the scene, Officer Gardener had
12 Mr. Harriott in custody. In other words, he was already
13 in a pair of handcuffs, and he was standing beside him.
14 At that time I learned that officer Barnhill and Officer
15 Brewer had gone into the residence to clear the residence,
16 see who was inside, see if we had any additional
17 defendants or check on the victim.

18 Mr. Gardener had Mr. Harriott handcuffed, and at that
19 time I told him we needed to escort him back to
20 Mr. Gardener's vehicle so we could secure him.

21 Q And did the defendant, Derrick Harriott, did he make
22 any statements?

23 A Yes, sir. As we were leading him back to the vehicle
24 to be secured, he stated voluntarily, "I know what I did.
25 I did what I had to do," over and over again. He just

1 kept -- he just kept repeating it, "I know what I did. I
2 did what I had to do."

3 Q And did -- had he been given his Miranda rights
4 before he volunteered this information?

5 A To my knowledge he had not, sir. I did not offer him
6 his Miranda rights. I did not give him his Miranda
7 rights. As I said, when I got there, he was already in
8 handcuffs. So to my knowledge, he had not been
9 Mirandized.

10 Q He -- he just volunteered that?

11 A Yes, sir.

12 MR. CONNOR: I have no further questions of him, Your
13 Honor.

14 THE COURT: Yes, sir, Mr. Land?

15 CROSS-EXAMINATION:

16 BY MR. LAND

17 Q Officer Lyons, no question he was in custody?

18 A Yes, sir. He was in custody.

19 Q So question he was a suspect in a criminal case?

20 A I would assume so. When I got there, he was in a
21 pair of handcuffs. It would be safe to say he was a
22 suspect in a case.

23 MR. LAND: No -- no further questions, Your Honor.

24 THE COURT: Anything else, Mr. Connor?

25 MR. CONNOR: I have nothing, Your Honor.

1 THE COURT: All right. Mr. Lyons, you may step down.

2 THE WITNESS: Thank you.

3 THE COURT: All right. Mr. Connor, any other
4 witnesses?

5 MR. CONNOR: There are no other witnesses in regards
6 to this matter.

7 THE COURT: Mr. Land, do you have any witnesses?

8 MR. LAND: No witnesses, Your Honor.

9 THE COURT: What's the defense's position on these?

10 MR. LAND: Your Honor, it's clear that he was a
11 suspect in the custody of the police at the time he made
12 these statements.

13 I think the testimony from the officers, they were --
14 they should have Mirandized him before he made these
15 voluntary statements.

16 I don't think the police are allowed to just let him
17 stand there until he says something when they testify that
18 he was a suspect in custody, I think. He must be
19 Mirandized at that point.

20 THE COURT: Mr. Connor?

21 MR. CONNOR: Your Honor, the statements were made
22 voluntarily and not as a result of any questions, and for
23 that reason, we would contend that they are admissible.

24 THE COURT: All right. All right. Mr. Land, the
25 threshold for the threshold requirement that triggers the

1 Miranda safeguards is interrogation.

2 In statements that are voluntary, not the product of
3 any interrogation are admissible. I will allow the
4 statements in provided, of course, that the trial
5 testimony lays the proper foundation similar to what's
6 here today.

7 Anything -- anything else we have to do before we get
8 started?

9 MR. CONNOR: I have nothing further at this time.

10 MR. LAND: Your Honor, I do have some suppression
11 motions as to some evidence. I don't know if you want to
12 do that now. I just don't want that evidence to be
13 brought up during opening.

14 THE COURT: What are those?

15 MR. LAND: There are several things. There are
16 photographs that have been premarked, specifically nine
17 through 13, which show the victim's body, the deceased's
18 body.

19 I don't think there's any purpose in carrying that to
20 the jury to incite their sympathy. There's no dispute
21 that the -- who the victim was, and that she was deceased,
22 but to show them bloody photographs of a deceased person
23 serves no purpose other than to play upon their sympathy.

24 THE COURT: All right. What else do you have?

25 MR. LAND: Your Honor, I've seen it. I don't know if

1 they're still -- yes, they're still over there.

2 They have the victim's clothing. I assume they're
3 going to offer that into evidence. One again, Your Honor,
4 these are bloody items. I see no purpose in having these
5 put into evidence either for them -- for the jury to view
6 in open court or, obviously, to take back as an item of
7 evidence. They can take it back with them to the jury
8 room.

9 Once again, Your Honor, there's no dispute as to what
10 happened to the victim. She is deceased. She was shot.
11 To show them bloody articles of clothing, once again,
12 would just be playing upon their sympathy.

13 THE COURT: Anything else?

14 MR. LAND: And finally, Your Honor, there are some
15 letters which I understand that the State is going to
16 present.

17 These are notes which are captioned "New Year's
18 resolutions." They are purportedly in the handwriting of
19 the victim. I don't know if there's any evidence to
20 support that or not, but that's what I've been told, that
21 they were written by the deceased.

22 They are resolutions pertaining to Ms. Cooper, the
23 deceased, but also resolutions, supposedly those of the
24 defendant, Derrick Harriott.

25 I would object to those on two grounds: One, the

1 statements of Derrick Harriott, those would be hearsay
2 because they're not his own writing. There is no evidence
3 that this is his writing.

4 The evidence is it's her writing, so it would be
5 essentially hearsay inside of hearsay. It would be
6 statements by him as recorded by the deceased victim.

7 I know of no hearsay exception that would allow that
8 in. Likewise as her statements, those would be hearsay.
9 I assume the State would want those to come under the
10 exceptions for declarant unavailable. I've looked at
11 those exceptions under 804. I do not see where they would
12 be admissible.

13 THE COURT: All right. So you have the photo. I
14 haven't seen the photos. Could I see those, and the
15 clothing, I suppose?

16 (Pause).

17 THE DEPUTY: This is the shirt.

18 THE COURT: Okay.

19 THE DEPUTY: Pants.

20 THE COURT: All right. Mr. Connor, what's your
21 position on the photographs which five, marked numbers
22 nine through 13?

23 MR. CONNOR: Your Honor, of course, you never know
24 exactly what's going to happen, but I think that
25 examination of the photographs enables -- there's no

1 other -- no other people in the apartment other than the
2 defendant and this woman.

3 I think examination of those photographs gives the
4 jury an opportunity to make an assessment as to what
5 happened there. It's obvious he shot her, and -- but I
6 think it -- it enables them to understand the case better.

7 THE COURT: All right. Mr. Land, anything else?

8 MR. LAND: Well, Your Honor, I don't think they need
9 to see bloody photographs of a deceased person to
10 understand what happened.

11 There are other photographs showing the area where
12 the shots were fired. There are photographs of bullet
13 holes. There are photographs of clothing on the ground
14 showing where my client was standing.

15 Showing those photographs of the bloody victim simply
16 play upon the sympathy of the jury and serve no other
17 purpose.

18 There will be a pathologist here to testify that she
19 passed away. The pathologist will testify how she died,
20 what she died of, how many times she was shot. That
21 evidence will be before the jury, so they'll have
22 sufficient information to understand what happened to
23 cause her death. The bloody photographs are not
24 necessary.

25 THE COURT: All right. At this time, my ruling is,

1 Mr. Land, that the probative value of the photographs is
2 not substantially outweighed by the danger of unfair
3 prejudice.

4 Of course, when they're presented during the trial,
5 renew your objection. If I determine that they're
6 cumulative, which is another component of 403 or that they
7 would be confusing or misleading in any way, I can limit
8 those at that time, but right now my in limine ruling is
9 that they would be admissible.

10 The clothing, is your objection the same?

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

12 THE COURT: One -- one of the things about the
13 photograph of the T-shirt -- excuse me, of -- of the lady
14 in the T-shirt is that it's markedly different from that
15 photograph.

16 Do you understand what I'm talking about?

17 MR. CONNOR: I think age and the mold or whatever.

18 It's --

19 THE COURT: Well, obviously, that's very yellowed,
20 and in the photographs the T-shirt is very white.

21 MR. CONNOR: We would just withdraw this item
22 showing --

23 THE COURT: I think that might have a tendency to be
24 confusing. At least that's my threshold impression of it.

25 I think, Mr. Land, the pants, I'll overrule your

1 objection on that, but the T-shirt, unless there's some
2 satisfactory explanation to the jury as to how the T-shirt
3 came to look that way, I don't think that would be an
4 indication.

5 I think probably the photographs, Mr. Connor, would
6 be better. Of course, I won't keep you from referencing
7 that there -- you do have the T-shirt, and it's just not
8 in any way near the shape it was in at the time the photos
9 were taken, but you do have it.

10 MR. CONNOR: And you say the pants will be okay?

11 THE COURT: Mr. Land, your objection is a 403
12 objection thereto?

13 MR. LAND: Yes, Your Honor.

14 THE COURT: All right. That objection is overruled.
15 Just make sure you renew it during the trial.

16 MR. LAND: Okay.

17 THE COURT: Okay?

18 MR. LAND: Well, just for clarification, if they'll
19 put that shirt then behind something so it's not there.

20 THE COURT: They already did.

21 MR. LAND: Okay. I didn't notice that.

22 THE COURT: Okay.

23 MR. CONNOR: We'll just go ahead and put a number on
24 this at this time, Your Honor.

25 THE COURT: All right.

1 (WHEREUPON, State's Exhibit No. 48 was marked for
2 identification only.)

3 THE COURT: All right. And then the New Year's
4 resolution?

5 MR. CONNOR: Your Honor, we ask that we not have a
6 decision on that until we have an opportunity to assess
7 the need to put it in.

8 THE COURT: Just don't mention it in your -- in your
9 opening on that later.

10 MR. CONNOR: I won't.

11 THE COURT: All right. Mr. Land, of course, I think
12 you tried a case or two with me. Don't -- I just want to
13 make sure that you renew your objections when the evidence
14 is offered and don't ever feel like you're -- what's the
15 best word for it, being impolite to me if you have to
16 object more than it might be necessary. Just make sure
17 you protect the record. The same goes for you,
18 Mr. Connor. Don't -- I won't -- I won't take issue with
19 your efforts to protect the record.

20 All right. Anything else?

21 MR. CONNOR: Nothing further from me.

22 MR. LAND: Nothing further from the defendant.

23 THE COURT: Okay. We can bring in the jury.

24 I don't want any eye contact. I don't want any
25 statements or comments. Everybody keep your eyes on what

1 we're doing in here and not on each other. Everybody
2 understand that?

3 SPECTATOR: Yes, we do.

4 THE COURT: Okay. I'll -- I'll resolve that issue,
5 if I have to.

6 (WHEREUPON, the jury came into open court at
7 approximately 2:48 p.m.)

8 THE CLERK: Your Honor, we have all the jurors and
9 alternates in the room.

10 THE COURT: All right. And where is Mr. Anderson?
11 (Indicating).

12 Ms. Davis and Mr. Anderson, you folks are the only
13 two in assigned seats right now. I'll appoint a
14 foreperson. Well, I'll go ahead and do it now.

15 Ms. Hill?

16 JUROR HILL: Yes, sir.

17 THE COURT: I'm going to appoint you the forelady of
18 this jury.

19 JUROR HILL: Okay.

20 THE COURT: You will be in that seat from now until
21 the end of the trial.

22 Mr. Anderson and Ms. Davis will occupy the other two
23 assigned seats.

24 I know this jury box is little bit smaller than most,
25 but I have noticed that jurors always like to go to the

1 seat they have been sitting in the whole trial, but when
2 we come back in the courtroom at any given time, you three
3 folks can come in last. The other -- the other 11 who
4 come in just go to the furthest seat away from you so that
5 we don't have people crawling all over each other to get
6 to the seat that they're used to.

7 Having said that, I will direct you during the course
8 of the trial. If you start identifying yourself with that
9 seat, you might disregard what I told you, but I'm
10 treating to make everybody as comfortable as possible.

11 The first order of business in this trial, ladies and
12 gentlemen, is for you to be sworn. Now, Mr. Bradley is
13 going to give you an oath, so if you would please stand.

14 THE CLERK: Please raise your right hand.

15 (Complies).

16 In the State of South Carolina, County of Sumter, in
17 the Court of General Sessions, 08-GS-43-257, the State of
18 South Carolina vs. Derrick Damon Harriott.

19 You shall well and truly try and true deliverance
20 make, between the State of South Carolina, and the
21 defendant, Derrick Damon Harriott, whom you shall have in
22 charge, and a true verdict give, according to the law and
23 the evidence, so help you God.

24 Please respond, "I will".

25 (All jurors responded affirmatively).

1 Thank you. You may be seated.

2 PRETRIAL CHARGE:

3 THE COURT: All right. Ladies and gentlemen, of
4 course, you have now been sworn as a jury in the trial of
5 the case of the State of South Carolina vs. Derrick Damon
6 Harriott.

7 During the jury qualification process a lot of
8 questions were asked, and of course, they were asked to
9 make sure that we impanel a jury that's completely fair
10 and impartial, and one that will base a verdict in this
11 case on the evidence and the law and nothing else.

12 Now, you do come into this courtroom armed with your
13 common sense. Now, you're going to be allowed to use
14 that, your collective view of the evidence, and the law as
15 I give it to you. That's how you'll end up making a
16 decision in this particular case.

17 Specifically, as you've heard, the defendant is
18 charged with murder and possession of a firearm during the
19 commission of a violent crime.

20 During the course of the trial, you will hear
21 references to certain things: Evidence, law, and things
22 of that nature. Just be rest assured that at the end of
23 this case I'm going to tell you what the law is, and
24 you'll have those instructions with you while you
25 deliberate.

1 You are the finders of the facts. You are the only
2 people in the world who will be deciding what the truth is
3 in this particular case.

4 The defendant, having been charged with these two
5 crimes, does not have the burden of proving anything as
6 far as whether or not he's guilty or not guilty. That
7 burden remains on the State to prove guilt beyond a
8 reasonable doubt, and that is a term that I will define
9 for you at the end of the case.

10 As fact finders, you will have to necessarily
11 evaluate the believability of the witnesses who will
12 testify because the evidence that you will see and hear
13 comes to you in basically two forms: One is testimony
14 from that chair, and the other is exhibits that are
15 introduced into evidence.

16 I will make the determination of what evidence is
17 admissible, and I will make -- that's from the standpoint
18 of testimony. I'll also make decisions as to what
19 exhibits are allowed to be introduced into evidence.

20 If something comes into evidence, you can consider
21 it. If during the course of the trial I instruct you to
22 disregard a question or disregard some testimony, then you
23 have to do that. That's part of your oath, to apply the
24 law as I give it to you because that is the law.

25 The witnesses who testify in this case will be

1 testifying to you. You will notice that rarely, if ever,
2 will they even look at me, and there's a reason for that.
3 It's because I don't have anything to do with the facts.
4 That's your -- that's your tax. You determine what the
5 truth is, and you determine what the evidence is. You
6 determine how to view the evidence that comes before you.

7 You will also notice that during your opening
8 statements the lawyers will be talking to you, not to me.
9 During their closing arguments, the lawyers will be
10 talking to you and not to me.

11 If during the course of the trial an exhibit is
12 published, which is a word that it means shown to you,
13 that exhibit will be given to you, not to me. I may look
14 at it to determine whether or not it's admissible, but
15 once it comes into evidence, it's yours to consider,
16 that's because you are the finders of facts.

17 By the same law that makes you the finders of the
18 facts makes me the judge of the law. So again, I'll
19 determine, as necessary, whether or not something is
20 admissible.

21 Now, during the course of the trial, it's likely that
22 from time to time one or both of the lawyers will stand up
23 and object. That's because we have the South Carolina
24 Rules of Evidence, and sometimes there's a good faith
25 difference of opinion as to whether or not something is

1 admissible.

2 If a lawyer objects to something, he's not trying to
3 hide something from you. If a lawyer tries to ask a
4 question or introduce something into evidence and that's
5 objected to, that does not mean the other lawyer is trying
6 to pull a fast one on you. Again, sometimes there are
7 differences of opinion as to whether or not something is
8 admissible.

9 It will likely be necessary, from time to time, for
10 me to send you out of the courtroom so I can discuss those
11 things fully with the lawyers.

12 Sometimes I will not know what the evidence is going
13 to be or what the question is going to be or the answer
14 that's being sought, so if I'm uncertain, I'll probably
15 send you out.

16 I may call the lawyers around here so they educate me
17 as to what -- where such and such might be headed. If I
18 allow it into evidence, you can consider it. If I
19 instruct you to disregard it, then you have to do that.
20 Again, that's because I am the judge of the law.

21 You must at all times pay very close attention to
22 everything that is said in the courtroom and all the
23 evidence that's introduced.

24 Now, what a lawyer says in the form of an opening
25 statement, which they're getting ready to do in a minute,

1 a closing argument, which will be at the end of the case,
2 or even what a lawyer says in the form of a question to a
3 witness is not evidence. That's because the lawyers
4 aren't witnesses.

5 So what the lawyers say is not evidence. Again, the
6 evidence comes to you, basically, in the form of
7 testimony, in the form of exhibits and sometimes in the
8 form of stipulations, which means agreements, between the
9 lawyers, and those agreements will be made known to you by
10 way of publication.

11 The testimony of the first witness is no less or no
12 more important than the testimony of the last. So it's
13 very important that you pay close attention.

14 It's three o'clock now. You all just had lunch.
15 You're probably going to want to be a little bit sleepy.
16 Usually, you don't have that problem so much in the
17 morning, but make sure that if you feel like your lids are
18 getting heavy, make sure that you understand, that you
19 have sworn an oath to give both sides a trial according to
20 the evidence and the law. To do that, you have to pay
21 very close attention.

22 Now, getting back to your role as fact finders, how
23 do you determine what to believe when a witness testifies?
24 Two words: Common sense.

25 You can use, among other things, things such as how

1 did the witness appear on the witness stand? We call that
2 demeanor. Was the witness hesitant or straightforward in
3 answering questions? Was the witness -- did the witness
4 have any reason to give testimony that would help or hurt
5 one side or the other? We call that bias or prejudice.

6 You can consider whether or not a particular
7 witness's testimony was strengthened or weakened by other
8 testimony in the record or was that witness's testimony
9 strengthened or weakened by a statement that a witness may
10 have made on a prior occasion. That would be up to you to
11 determine who to believe and what to believe.

12 You can believe every word of what a witness has to
13 say. You can believe none of what a witness has to say,
14 or you can believe parts and reject the rest. That will
15 be totally up to you.

16 Now, during the course of the trial, please make sure
17 you keep an open mind. Don't begin making up your mind
18 until I tell you that you can about any of the ultimate
19 issues in this case.

20 Necessarily, you'll have to evaluate credibility as
21 you go along. So don't begin forming any conclusions in
22 your mind about what your verdict will be until I tell you
23 that you -- you can begin doing that.

24 Now, this is -- this case is likely the only thing
25 the 14 of you have in common, but it's the only thing you

1 can't talk about during the course of the trial.

2 So when we take a break and you go back to your jury
3 room for any reason, you can't talk about what just
4 happened. You can't talk about what somebody just said.
5 You can't talk about anything that I said. The only thing
6 you can do is talk about things completely unrelated to
7 this case. I'll tell you that numerous times during the
8 course of the trial.

9 When you go home tonight, you can't talk about this
10 case to anybody. You can't read anything about it, listen
11 to anything about it. You can't get any information at
12 all about this case from any source other than in this
13 courtroom.

14 All right. Any objections to those comments from the
15 State?

16 MR. CONNOR: None from us, Your Honor.

17 THE COURT: Any from the defense?

18 MR. LAND: No, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, the
20 trial goes in certain steps: Opening statements will be
21 first. The State will give an opening statement, and then
22 the defendant, if he chooses, he doesn't have to, he can
23 give an opening statement through his attorney.

24 The State will present its case in chief by calling
25 the witnesses and presenting other evidence, and then the

1 defendant, if he so chooses, can call witnesses, as well.
2 He doesn't have to.

3 Then after that, if the rules permit, the State can
4 call rebuttal witnesses. After that will be the closing
5 arguments, and I'll give you the charge on the law, and
6 you will be free to deliberate. That will likely be a few
7 days from now.

8 We will not be working tomorrow. That's because it's
9 a State holiday. It's not a county holiday, and we have a
10 mixture of county employees involved in this case, and we
11 have a mixture of State employees. Don't ask me that.
12 The only thing I can tell you in this case is that we will
13 not be working tomorrow. So we will go this afternoon,
14 come back Wednesday and hopefully be through with this
15 case sometime on Thursday. That's just a good estimate on
16 my part.

17 All right? Mr. Connor.

18 OPENING STATEMENT:

19 MR. CONNOR: May it please the Court.

20 THE COURT: Yes, sir.

21 MR. CONNOR: Ladies and gentlemen of the jury, my
22 name is Harry Connor. As you know by now, I'm an
23 Assistant Solicitor in Sumter County.

24 The case we're about to try involves the murder of a
25 woman by the name of Quanna Cooper. She and the -- was a

1 friend of this defendant, Derrick Harriott.

2 They had had an ongoing relationship for some time.
3 This thing happened back in March of 2007 at her
4 apartment, which was located at what's called Orchard
5 Place apartments here in the City of Sumter.

6 It happened somewhere between 5:15 and 5:30 in the
7 afternoon. You're going to hear from the first officer
8 that arrived there at the scene, and he's going to say
9 that he got a call on the radio on the dispatch, and in
10 some two minutes he was there.

11 Fortunately, he arrived in time to place the
12 defendant under arrest right there at the scene, but what
13 started the activity was the neighbors. The neighbors
14 heard all these gunshots, and immediately they, you know,
15 run to the door, look out the window to see what's going
16 on.

17 You're going to hear from some of those neighbors
18 saying that they heard all of these gunshots. They -- at
19 least one of them called the police, and the police came
20 rapidly.

21 They didn't time how long it takes to get them all
22 back to the police, but the policeman says some two
23 minutes after he got the call, he was there on the scene.

24 The -- they're going to tell you that this defendant
25 came out of the apartment; that he had a rifle in his

1 hand, and you are going to see the rifle and pictures of
2 the rifle that he -- he used in killing this woman.

3 He came out, and he held a -- the rifle up in the air
4 and threw it on the ground, and he said, "Call the police.
5 I shot the bitch. She deserved to die."

6 The -- of course, by the time the first officer got
7 there, others were on the way, and within just a few
8 minutes, they had people in the apartment trying to --
9 hopefully, to save a life, if they could, but they were
10 too late. This woman was dead. She was shot some 14 to
11 15 times.

12 She was shot -- I believe the autopsy doctor will say
13 that she was shot 14 times. They found 15 casings. He
14 used a semiautomatic rifle to shoot her, and they found
15 these 15 casings that ejected from a semiautomatic gun out
16 onto the floor.

17 Another thing that's interesting is these officers
18 are going to say that she was the only one in there, and
19 she was dead, and she had been shot all of these times.

20 There's no gun -- they searched the whole apartment,
21 the area that she was in, as well as other areas of the
22 apartment. They find absolutely no gun, so I would submit
23 from that that you could conclude that she wasn't
24 threatening him with a weapon to cause him to respond in
25 this manner.

1 MR. LAND: Your Honor, let me object. These appear
2 to be more argument than opening statements.

3 THE COURT: All right. It's overruled at this point.
4 You can go ahead, Mr. Connor.

5 MR. CONNOR: There's no -- no knife on the stairway,
6 and I think you're going to see from the damage to the
7 stairway and the blood on the stairway that on the -- and
8 then the location of the body at the bottom of the
9 stairway, that on the stairway is where this killing
10 occurred.

11 There's no weapon there. She had nothing. She had
12 nothing, and he just slaughtered her.

13 (Mr. Land stands up).

14 THE COURT: That objection is sustained. You can
15 state what the State intends to -- intends to prove.

16 MR. CONNOR: The -- he's charged with murder, and the
17 judge is going to instruct you on the law at the end of
18 this case, and he'll be a lot more comprehensive in his
19 charge than I will, but a murder is the intentional
20 killing of another human being with what's called malice
21 aforethought.

22 Now, aforethought just means that he thought about it
23 in advance, and then he did it. You're going -- I believe
24 the instruction will also tell you that there's nothing
25 magic about the amount of time that he has to think about

1 it, just any aforethought, any amount of time, no matter
2 how short, is enough. In other words, if he intended his
3 act, he's thought about it, aforethought exists.

4 But the key word is malice. Let's talk just briefly
5 about what I submit that you'll be told, that malice
6 indicates an evil intent, an act that's done without just
7 cause, in other words, an unjust act.

8 It could be -- it could happen -- you could have
9 malice in two ways. You can have malice that's expressed.
10 In other words, somebody indicates that they're going to
11 do something illegal like what he said here, "I shot the
12 bitch. She deserved to die."

13 I submit to you there's plenty of malice in that
14 statement. The circumstances, you can also imply malice
15 or this evil intent, or this unjust act, based upon the
16 circumstances.

17 I think, I would submit to you, every time this
18 semiautomatic weapon, and you'll see the semiautomatic
19 weapon, and you'll hear from an expert on firearms
20 about -- saying that this is the firearm that fired the
21 shot that killed Quanna Cooper.

22 The S.L.E.D. expert will say that, and they'll tell
23 you how this weapon works. I think you'll be told this:
24 That every time that weapon fires, it takes a pulling of
25 the trigger. It's not like you just pull the trigger and

1 it goes bam, bam, bam, bam. You have to pull it and it
2 shoots. You pull it again and it shoots. You pull it
3 again, and the trigger was pulled at least 15 times
4 because that's the number of casings these policemen
5 picked up out of the apartment.

6 Ladies and gentlemen, all we ask for throughout this
7 case is your careful attention to the evidence as it's
8 developed.

9 THE COURT: Thank you, Mr. Connor.

10 Mr. Land?

11 MR. LAND: Thank you, Your Honor.

12 OPENING STATEMENT:

13 MR. LAND: I'm Ceth Land. I was introduced to you
14 earlier. That's Derrick Harriott right there in the blue
15 shirt. Seated behind him is his aunt in the dark blue,
16 and that's Joyce Witherspoon. It's his aunt, but she
17 raised him.

18 Seated to her left in the yellow shirt is Tyrone
19 Balls, his uncle. And finally, on the front row in the
20 blue shirt is his mother, Sheila Harriott. Seated
21 directly behind them in the striped shirt is Danny
22 Witherspoon.

23 On March 16th, 2007, Derrick Harriott had a gun, and
24 he pulled the trigger. As a result, Bonet Cooper --
25 that's what he called her. That's the nickname he had for

1 her, died.

2 You're not going to hear at any point during this
3 trial the defense argue that Derrick Harriott did not have
4 a gun, that Derrick Harriott did not cause the death of
5 Ms. Cooper.

6 What you're going to hear, and at the end I hope the
7 judge is going to give you instructions on the law about
8 this: When you kill someone, our law recognizes various
9 crimes of what that could be.

10 The State has charged him with murder, which is the
11 highest charge, and that is the killing of another person
12 with malice aforethought, which is kind of a fancy legal
13 term. The judge will instruct you on what malice is and
14 what aforethought is.

15 We're going to present evidence. That can come
16 through the State's witnesses, the questions that I have
17 of the State's witnesses.

18 The defendant has a right to call witnesses and has a
19 right to choose not to call witnesses. We may call
20 witnesses, we may not.

21 I believe the evidence that may come from the State's
22 witnesses and any witnesses we may choose to call will
23 show you that Derrick Harriott did not murder Ms. Cooper
24 on March 16, 2007.

25 We believe the evidence will show you that he is

1 guilty of what's called voluntary manslaughter. Voluntary
2 manslaughter is killing another in passion, in the heat of
3 the moment.

4 We believe the evidence is going to be that Derrick
5 Harriott and Ms. Cooper had been dating for three years.
6 You're going to hear that Derrick Harriott went through
7 the 12th grade, but he was in special education classes
8 all his life. He didn't get a high school diploma. He
9 got a certificate.

10 You're going to hear from Dr. Richard Frierson, a
11 psychiatrist from the Department of Mental Health, a
12 professor at the University of South Carolina School of
13 Medicine.

14 You're going to hear that Mr. Harriott was having
15 delusions that he believed that Ms. Cooper, his
16 girlfriend, was giving him drugs that caused him to pass
17 out, and then she would bring men in to rape him.

18 You're going to hear from Dr. Frierson that those
19 delusions that Mr. Harriott thought was happening to him,
20 that those affected his mental ability at that time.
21 Although he knew the difference between right and wrong,
22 he didn't have the ability to control his actions.

23 In the end, you can -- as the jury can find
24 Mr. Harriott not only guilty, but you can find him guilty
25 but mentally ill. That's something that a jury can find,

1 and it affects how -- how he is punished, not the time,
2 but where he serves his punishment.

3 What I asked you to do is listen carefully during
4 this trial. There's not going to be a lot of disputes as
5 to physically what happened that day.

6 The State wants to talk about bang, bang, bang, the
7 number of shots fired. There's not going to be a lot of
8 dispute about that.

9 It's a terrible thing that happened that day.
10 Ms. Cooper is gone. Her family sits there having lost a
11 loved one, nothing will bring her back.

12 I think the evidence is going to show to you that
13 what happened that day was a result of Mr. Harriott's
14 delusions of what he thought was being done to him, and
15 that they had an argument about it.

16 He's going to -- you're going to hear that -- what
17 things that were said between the two of them, things he
18 told the police, things that he thought was happening to
19 him.

20 Dr. Frierson will tell you that Mr. Harriott, the
21 only way he thought he could escape this perceived sexual
22 abuse, was to kill Ms. Cooper.

23 You're going to hear that he was trying to leave that
24 day; that he made it to the bottom of the stairs. The
25 officers are going to report to you that they were having

1 an argument and what was said, based on statements to them
2 by Mr. Harriott; that he was arguing about these things
3 that he believed that she was doing to him.

4 Now, I can tell you that there's no proof that she
5 was doing these things to him. That's what a delusion is.
6 A delusion is a thought that you have which is not based
7 in fact. Dr. Frierson will tell you about that.

8 Mr. Harriott was trying to leave that day. They were
9 having an argument. In the heat of the moment as he was
10 leaving with his clothes, you'll have photographs, the
11 State has photographs, a pile of clothes at the bottom of
12 the stairs. He was leaving with all the possessions he
13 had in that house, clothes and a gun.

14 They continued to argue, continued to argue, and that
15 he shot his gun, be it 14, 15 times, and it killed
16 Ms. Cooper.

17 I ask that you listen carefully to the evidence
18 that's presented. It's a terrible thing to happen, but
19 you have to make your decision based on the law, not based
20 on emotion.

21 I believe at the end of this trial, the evidence will
22 only have proven that Derrick Harriott committed the crime
23 of voluntary manslaughter, that is he killed someone in
24 the heat of passion, in the heat of the moment.

25 Now, he's also charged with possession of a firearm

1 during the commission of a crime. We don't dispute that.
2 The gun is here. There will be evidence that it's his
3 gun. There's evidence where he told the police he had the
4 gun. There's evidence of the people seeing him with a
5 gun.

6 We're not here to waste your time and say that it
7 wasn't his gun or he didn't have the gun. What we're here
8 about today is what crime he committed that day nearly two
9 years ago.

10 The State believes it's murder. I do not believe
11 that the State would be able to prove beyond a reasonable
12 doubt, and that's the standard they have to prove. We
13 don't have to prove that it was the heat of the moment.
14 They have to prove malice aforethought.

15 The burden is on the State the whole time. It never
16 shifts. We never have to prove heat of the moment. They
17 have to prove malice aforethought. If they fail to do
18 that, then you can look at what's called lesser-included
19 offenses. That, for example, is voluntary manslaughter.

20 So I ask you to pay careful attention. You will hear
21 from the State first. Oftentimes in life you hear one
22 side of the story and you make up your mind before you
23 hear the other side.

24 The judge has instructed you, and I ask you to please
25 remember his instruction that you please keep an open

1 mind, listen to all of the evidence, and in the end listen
2 to the instructions from the judge. You will decide if
3 the State has carried its burden as to the allegation of
4 murder.

5 Derrick Harriott thanks you in advance for listening
6 with an open mind.

7 THE COURT: Thank you, Mr. Land.

8 All right. Mr. Connor?

9 MR. CONNOR: Your Honor, at this time, I'd call
10 Geraldine Wesley.

11 THE CLERK: Place your left hand on the Bible, state
12 your full name, please.

13 THE WITNESS: Geraldine Wesley.

14 GERALDINE WESLEY, after being duly
15 sworn, testified as follows:

16 THE CLERK: Have a seat up here, please. Watch your
17 step. Please state your full name, spell your last name
18 for the record.

19 THE WITNESS: Geraldine Wesley, W-E-S-L-E-Y.

20 DIRECT EXAMINATION:

21 BY MR. CONNOR

22 Q Ms. Wesley, where were you living back on March 16th,
23 2007?

24 A At

25 Q And how long had you lived at ?

1 A About four years.

2 Q And where do you work?

3 A At Toumey Healthcare.

4 Q And what kind of work do you do for Toumey Health
5 Care?

6 A Cardiac technician.

7 Q And how long have you worked there?

8 A Eight years.

9 Q Now, were you home when this shooting occurred on
10 March 16, 2007?

11 A Yes, sir.

12 Q And had you been home long?

13 A No. We hadn't been, I hadn't been home long.

14 Q Just tell us in your own words what happened there.

15 A Okay. On that day I went to pick my husband up from
16 work, and we came in the house. I was telling him about
17 the back porch was leaking on our washer and dryer.

18 As we went to the back porch, as soon as we opened
19 the back door, we heard gunshots. Well, I thought I heard
20 a knock on the door at first, and then we heard the
21 gunshots.

22 We both came through the living room and opened the
23 door. There was Mr. Harriott coming out of apartment

24 . Me and my husband was looking, and he said
25 somebody killed -- "Call the police. I just shot this,"

1 and he called her a name.

2 Q What did he -- what did he say?

3 A He said, "Somebody call the police. I just shot this
4 bitch."

5 Q Okay. Did he say anything about why he shot?

6 A He said she just kept screwing around on him. You
7 know, I just shot her because she kept screwing around on
8 him.

9 Q Did he say anything about what she deserved?

10 A Yeah. He said she deserved to die because she kept
11 screwing around on him.

12 Q And did he have a weapon with him?

13 A Yes. When I -- when he opened the door, he was
14 looking at him. He had the weapon in his hand. After
15 that, he said, "Someone call the police. I just shot this
16 bitch." He went on the porch and threw the weapon down on
17 the ground.

18 My husband and I came back in the house, closed the
19 door, and called the police.

20 Q You called the police immediately?

21 A Yes, sir. We called the police immediately, and as
22 we were talking to the police on the phone giving them
23 direction as to where there were, we heard the sirens. In
24 probably less than five minutes, they were there.

25 Q And did you see them take him into custody?

1 A Yes, sir. As soon as they got there, they told him
2 to get on the ground, and he took his, took his shirt off.
3 He laid on the ground and put his hand behind his back,
4 and they handcuffed him.

5 Q So they handcuffed the very man you saw say, "I shot
6 the bitch"?

7 A Yes, sir.

8 Q That she deserved to die?

9 A Uh-huh.

10 Q Okay. And then where was your apartment in
11 relationship to -- to the one that Ms. Cooper lived in?

12 A Our doors face. It's like six to seven feet apart,
13 so as I opened my door, I can see that door. It faces
14 each other.

15 Q It -- your doors face each other?

16 A Yes.

17 Q And so you come out and actually go down the same
18 steps to the sidewalk?

19 A Yes, uh-huh.

20 Q I show you here these two photographs, State's
21 Exhibit Number 1 and State's Exhibit 2.

22 I assume all of these are in evidence at this time;
23 is that...

24 THE COURT: All right. And that's number one through
25 eight?

1 MR. CONNOR: This is one through 22.

2 THE COURT: Twenty-two. Any objection?

3 MR. LAND: Not to one and two.

4 THE COURT: All right. One and two are in evidence.

5 (WHEREUPON, State's Exhibits Nos. 1, 2 were admitted
6 into evidence.)

7 THE WITNESS: Yes, this is our apartment.

8 BY MR. CONNOR

9 Q So you come -- come out of one -- one entranceway
10 leads to both your apartment and their apartment?

11 A Uh-huh, yes.

12 Q Or Ms. Cooper's apartment?

13 A Uh-huh.

14 Q Did you know Quanna Cooper?

15 A No, sir, I didn't know her.

16 Q Had you seen her around?

17 A Yeah, I seen her a few times.

18 Q Did she, in fact, live there for a while in another
19 apartment?

20 A Yes. She lived in another building, and after
21 someone moved out of apartment , she moved in that
22 one, but she hadn't been there long.

23 Q She hadn't been in number ?

24 A Number , a long time, huh-uh.

25 Q Did you -- how about the defendant? Had you seen him

1 before?

2 A Before that time, no. I hadn't seen him before.

3 Q But those two photographs, number one and two there,
4 they show the entranceway into your apartment and to
5 Ms. Cooper's apartment?

6 A Yes.

7 MR. CONNOR: Your Honor, we'd like to publish these,
8 just pass them around to the jury.

9 THE COURT: Ladies and gentlemen, those exhibits are
10 being published. That means they're being shown to you.
11 Make sure that as you're looking at the photographs, or
12 for that matter, any evidence that's handed to you to pass
13 through the jury box that you continue to pay very close
14 attention to the witness who is testifying.

15 BY MR. CONNOR

16 Q Now, Ms. Wesley, when you came there to the door,
17 y'all saw him come out of the door --

18 A Uh-huh.

19 Q -- of the other apartment?

20 A Yes.

21 Q Is that right?

22 A Yes.

23 Q In other words, you came to the door of number ?

24 A Uh-huh.

25 Q And you looked him straight in the face and saw him

1 come out of number ?

2 A Yes.

3 Q And he had that gun in his hands?

4 A Gun in his hands, yes, sir.

5 Q And you had -- you could hear what he said?

6 A Yes.

7 Q In fact, he was talking to y'all when he said "call
8 the police"?

9 MR. LAND: Objection.

10 MR. CONNOR: Is that right?

11 THE COURT: Yes?

12 MR. LAND: Let me object. It's leading.

13 THE COURT: Mr. Connor?

14 BY MR. CONNOR

15 Q Was he talking to you?

16 A I don't know. He wasn't talking -- I'm not sure if
17 he was talking directly to us, but as he was coming in,
18 coming out, and we were looking, he said, you know,
19 "Somebody call the police. I just shot this bitch."

20 MR. CONNOR: Okay. Answer any questions the defense
21 lawyer might have for you.

22 CROSS-EXAMINATION:

23 BY MR. LAND

24 Q Ms. Wesley, did the police interview you that night?

25 A Yes.

1 Q How long after this happened did you talk with the
2 police?

3 A Oh, it was probably 30 to 45 minutes.

4 Q Okay. And that was March of 2007, correct?

5 A Uh-huh.

6 Q You might want to say yes or no.

7 A Oh yes, sir.

8 Q Okay. That's about 20 months ago. Does that sound
9 about right to you?

10 A Yes.

11 Q Okay. And you made a written statement to the
12 police, didn't you?

13 A I did.

14 Q Do you agree with me that something you wrote down
15 then might be more accurate than what you remember now 20
16 months later?

17 A No. What I wrote down is basically what I'm
18 testifying to today.

19 Q Okay. And did you actually write that yourself, or
20 did a policeman write it and you signed it?

21 A No. I wrote that myself.

22 Q Okay. And you wrote down all of the important things
23 that happened?

24 A Yes.

25 Q Did you leave anything out?

1 A No.

2 Q Okay. Let me show you something. Just take a moment
3 to read it. Don't read it aloud. Read it to yourself.
4 I'm going to ask you a question about it.

5 A Okay.

6 (Pause).

7 Yes.

8 Q Okay. You have had a chance to read that?

9 A Uh-huh.

10 Q You need to say yes or no.

11 A Yes, I'm sorry.

12 Q Do you recognize that document, first of all?

13 A Yes, I do.

14 Q And what is that document?

15 A This is my witness statement that I gave to the
16 police.

17 Q And that's the one you gave about 30 minutes after it
18 happened, you said?

19 A Yes.

20 Q In that, you had been using the word, I'm just going
21 to say the "B word". I -- I...

22 A Yeah.

23 MR. LAND: And Judge, I don't know if we have to use
24 that word in court, but I...

25 If you could instruct --

1 THE COURT: I'll let you control your questioning.

2 MR. LAND: Okay. Well, you don't --

3 THE COURT: As long as the witness indicates that she
4 knows what you're talking about.

5 BY MR. LAND

6 Q In that you never said anything about him saying the
7 B word, do you?

8 A No.

9 Q In fact, would you read to me what you indicate there
10 as is the statement he made?

11 A "At approximately 17:30 my husband and I heard a
12 gunshot coming from Orchard Place. We both opened
13 the front door, and a black male came out with a gun
14 saying that since she was sleeping around that she
15 deserved to die. He then threw the gun on the ground. My
16 husband closed the door and called 911."

17 Q And you never say anything about the B word in there,
18 do you?

19 A No.

20 MR. LAND: Okay. Your Honor, I'd like to offer this
21 into evidence.

22 THE COURT: Mr. Connor?

23 MR. CONNOR: I have no objections.

24 THE COURT: All right.

25 MR. LAND: Your Honor, unfortunately, this is a

1 highlighted version. I'll make a copy of that so that's
2 not shown to the jury.

3 THE COURT: Defendant's number one.

4 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
5 identification and received into evidence.)

6 MR. LAND: Your Honor, that's all the questions I
7 have.

8 THE COURT: Redirect?

9 MR. CONNOR: I have no further questions, Your Honor.
10 Thank you.

11 THE COURT: You may step down. Thank you.

12 MR. CONNOR: Next I would call Marquis Wesley.

13 THE CLERK: Place your left hand on the Bible. Raise
14 your right. State your full name for the record.

15 THE WITNESS: Marquis Wesley.

16 MARQUIS WESTLEY, after being duly
17 sworn, testified as follows:

18 THE WITNESS: Maurice Wesley.

19 DIRECT EXAMINATION:

20 BY MR. CONNOR

21 Q Marquis, were you living there at Orchard Place
22 back on March 16th, 2007?

23 A Yes.

24 Q And you live with Geraldine; is that correct?

25 A Yes.

1 Q You're her husband?

2 A Yes.

3 Q And how long have y'all lived there?

4 A About four years.

5 Q And tell us in your own words, Marquis, what happened
6 when you got home that day?

7 A Well, my wife, she was telling me about how the mason
8 man hadn't fixed the roof of the back porch shed. It was
9 still raining and leaking on our washer.

10 As soon as we got back there, we heard the shots. I
11 thought it was somebody hammering on the wall. So we went
12 to ask him to don't hammer so hard. As soon as we go up,
13 he opened up the door. He came out and said, "Somebody
14 call the police. I shot the b," and threw the gun on the
15 ground. I shut the door immediately and called 911.

16 Q So he said call -- that he had shot the bitch?

17 A Yes.

18 MR. LAND: Your Honor, I don't know if it's necessary
19 for everybody to use the actual cuss word. I object.
20 It's conservative. We can use the initial for it.

21 THE COURT: All right. Of course, if he elicits a
22 response like that, you can just object again on the basis
23 that it's been asked and answered.

24 You can go ahead, Mr. Connor. The objection is
25 overruled at this point.

1 BY MR. CONNOR

2 Q Okay. Did he say anything about what she deserved
3 and why she deserved it?

4 A He said she deserved to die. That's what I heard.

5 Q She deserved to die?

6 A Yes.

7 Q And did -- did he have anything in his hands when he
8 came out of his apartment?

9 A Yes. He had a gun in his hand. As he came out, he
10 had done folded it back up, and he threw it on the ground.

11 Q And I'm going to walk around here, and when I get as
12 close as he was to you when you saw him and heard him, I
13 want you to tell me to stop.

14 (indicating).

15 A Stop right there.

16 Q So you were about six feet from him?

17 A Yes.

18 Q And you -- when you heard this and saw his face?

19 A Yes.

20 Q And tell us about the police. Were they a long time
21 getting there, or did they get there pretty quick?

22 A They got there pretty quick. As soon as I hung up
23 the phone, we heard the sirens.

24 Q And they arrested the guy that had the gun; is that
25 correct?

1 A Yes because after he came out, he didn't go nowhere.
2 He stood right there and waited for them.

3 Q And did he do anything -- what did he do with the
4 gun?

5 A He threw it on our side of the apartment grass, and
6 it just laid there until the police got there.

7 Q And I show you these two pictures, State's Exhibit
8 Number three and number four. I ask you to examine them,
9 if you would. Is that the outside of your apartment there
10 at Orchard Place?

11 A Yes.

12 Q And does that look like something that's familiar to
13 you?

14 A Yes.

15 Q What is it?

16 A It's the gun that he came out of the apartment with.

17 Q And that's where he deposited it, on the -- on the --
18 on the ground there?

19 A Yes.

20 Q And did it stay there until the police took custody
21 of it?

22 A Yes.

23 Q Did you see the police go into the -- into the
24 apartment?

25 A Yes. They came on the porch. They look in to see if

1 anybody else was in. That's when they noticed her. And
2 that's when they called for more back up to get there.

3 Q So the police went right in and checked it out?

4 A Yes.

5 Q Now, you say that you thought somebody was knocking
6 on the wall. Are the walls -- tell us about the walls
7 between your apartment and this adjoining apartment where
8 Ms. Cooper was living.

9 A Well, they are thin walls. You can hear like
10 somebody's conversation through the walls because they're
11 like older apartments, maybe a foot between the
12 apartments.

13 Q So you can hear pretty good?

14 A Yes.

15 Q Well, maybe more than you want to hear, would you
16 say?

17 A Yes.

18 MR. CONNOR: Okay. Your Honor, we would like to
19 publish these photos, number three and four. I offer them
20 as exhibits at this time and publish them by circulating
21 them.

22 THE COURT: Mr. Land, three and four?

23 MR. LAND: No objection.

24 THE COURT: All right. Three and four are in.

25

1 (WHEREUPON, State's Exhibits Nos. 3, 4 were admitted
2 into evidence.)

3 MR. CONNOR: Answer any questions the defense lawyer
4 might have for you please, sir.

5 CROSS-EXAMINATION:

6 BY MR. LAND

7 Q Mr. Westley, how long after the gunshots do you think
8 you talked to the police?

9 A About 30 minutes.

10 Q And did you make a written statement to them?

11 A Yes.

12 Q Did they write this statement and you sign it, or did
13 you write the words that you choose to write?

14 A I wrote the words I chose to write.

15 Q Did you put all of the important information in that
16 statement?

17 A Yes.

18 Q Do you agree with me that your memory 30 minutes
19 after this happened would be better than it is 20 months
20 after it happened?

21 A Yes.

22 Q Let me get you to take a look at something. Let me
23 just get you to read it.

24 (Pause).

25 Have you had a chance to read it?

1 A Yes.

2 Q And is that the statement you gave to the police?

3 A Yes.

4 Q And that's your signature on the bottom?

5 A Yes.

6 Q Anywhere in that statement, did you use the B word
7 that's been used here today?

8 A No.

9 MR. LAND: Your Honor, I move that as Defense exhibit
10 number two.

11 THE COURT: Mr. Connor?

12 MR. CONNOR: I have no objection to it.

13 MR. LAND: Once against, Your Honor, we'll need to
14 copy it.

15 THE COURT: Number two is entered without objection.
16 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
17 identification and received into evidence.)

18 MR. LAND: Nothing further, Your Honor.

19 THE COURT: Redirect?

20 MR. CONNOR: I have no further questions of him, Your
21 Honor.

22 THE COURT: Thank you, Mr. Westley. You can step
23 down.

24 MR. CONNOR: Your Honor, I would ask at this time
25 that the Westley's be excused.

1 THE COURT: Mr. Land?

2 MR. LAND: No objection, Your Honor.

3 THE COURT: All right. Mr. and Mrs. Westley, you can
4 leave or stay, which ever you like.

5 MR. CONNOR: At this time, Your Honor, I'd call Susie
6 Bracey.

7 MR. LAND: Your Honor, while she is approaching, can
8 I approach with Mr. Connor?

9 THE COURT: Yes.

10 (WHEREUPON, a bench conference was held in the
11 presence, but not within the hearing, of the jury)

12 THE CLERK: Place your left hand on the Bible, raise
13 your right hand, please.

14 THE WITNESS: Susie Bracey.

15 SUSIE BRACEY, after being duly sworn,
16 testified as follows:

17 THE CLERK: Have a seat up here, please. Watch your
18 step.

19 THE COURT: Go ahead.

20 THE CLERK: Please State your full name, spell your
21 last name for the record.

22 THE WITNESS: Susie Bracey, B-R-A-C-E-Y.

23 DIRECT EXAMINATION:

24 BY MR. CONNOR

25 Q Now, Ms. Bracey, you were living at Orchard Place

1 back in March of 2007 also; is that correct?

2 A Yes, sir.

3 Q And how long had you lived there?

4 A I lived there for six -- for three years in
5 September, but I lived back there for 13 years altogether,
6 you know, two, three.

7 Q And you lived in number ?

8 A Yes, sir.

9 Q How close was that to number ?

10 A Well, it's next, , all of that
11 is one unit right together, right next door.

12 Q All in the same building?

13 A Yes, sir, same building, yes, sir.

14 Q So you lived in the same building they lived in?

15 A Yes, sir.

16 Q Now, did -- did you know the Cooper girl?

17 A No, sir, I didn't know her. I've seen her, but I
18 didn't know her.

19 Q You had seen her around?

20 A Yes, sir.

21 Q Well, did you ever have any conversation with her?

22 A No, sir, I haven't. I just spoke with her. That's
23 it.

24 Q Just said hi?

25 A Speak, "How are you doing?" Like that. She would

1 speak back.

2 Q How about the defendant here, Mr. Harriott?

3 A No, sir.

4 Q Now, had -- had Ms. Cooper been living there long in
5 number ?

6 A No, sir. She moved there. She just moved there
7 maybe a month or so, a little -- over a month. She was
8 living further down number before that.

9 Q So she had lived in the Orchard Place apartments.
10 She just hadn't lived in that particular unit?

11 A Yes, sir.

12 Q Until just about a month or so before this happened?

13 A Yes, sir.

14 Q Now, tell us what was happening on the day this --
15 this thing occurred?

16 A Well, my granddaughter was there, and so she was
17 getting ready to leave, her and her boyfriend. So she was
18 driving this truck and so on.

19 She went out to leave. The rest of them came up
20 after she did, but they was parked right behind her. They
21 was too close so I asked her, I said -- I asked Tony, that
22 was her boyfriend, to knock on number door and asked
23 them to back up a little bit so that you don't hit their
24 car.

25 So as she was knocking on the door, I heard the

1 sound, but I didn't know what it was. So -- then someone
2 came out. I heard someone talking. Then I saw someone --
3 I saw him throw a gun out in the yard, on the number
4 side.

5 I'm standing on the porch. I didn't -- he looked --
6 he was like, "Call the police." He said he killed this
7 bitch. I thought he was playing, and so I didn't do
8 anything. I just stood there.

9 So my granddaughter, during that time, she jumped out
10 of her truck, and she came running back on the porch. She
11 said, "He's not playing." She said she knows him..

12 She went in my apartment, got my phone, came out on
13 the porch and she called. So you know, he was standing
14 there. He didn't run. He was standing there. He didn't
15 run, and so the police, they came. They came right away,
16 so that's so -- you know...

17 Q The police came right away?

18 A Sir?

19 Q The police came right away?

20 A Yes, sir, they did.

21 Q And tell us exactly what you heard him say, now?

22 A He said, "Call the police. I killed the B."

23 Q He killed the B?

24 A Yes, sir.

25 Q And you took -- in other words, you're -- you don't

1 want to say the word?

2 A I don't want to say it, no, sir, because that's what
3 I told the police in the beginning. I don't think I wrote
4 it down, but I don't want to say the word, no, sir.

5 Q Okay. And he threw the gun down there in the yard?

6 A Yes, sir.

7 MR. CONNOR: Answer any questions the defense lawyer
8 might have for you.

9 CROSS-EXAMINATION:

10 BY MR. LAND

11 Q Ms. Bracey, how long after this noise did you talk to
12 the police?

13 A Well, as soon as they came and they, you know, he --
14 when they came or, you know, he turned around, you know,
15 pulled into Orchard Place. He was -- you know, then he
16 took his shirt off.

17 Immediately after that, they came, and I talked to
18 them because at that point I was getting ready to go my
19 sister's house. She just lost her husband, and all of
20 this was just, you know, too much.

21 Q And you made a written statement. You wrote down
22 to --

23 A Yes, sir, some. Yes, sir, wrote down something, yes,
24 sir.

25 Q And did you get to write down what you wanted to say

1 or did the police --

2 A I --

3 Q Let me finish any question.

4 A Okay.

5 Q Did you write down what you wanted to say, or did the
6 police write it down and ask you if that was right and
7 then you signed it?

8 A No, I wrote it down.

9 Q You wrote down whatever you wanted to write down?

10 A Uh-huh.

11 Q And you did that just a few minutes after this
12 happened or less than an hour?

13 A Maybe it was over an hour.

14 Q Over an hour?

15 A Yes, I think. Yeah, I'm not sure.

16 Q Okay.

17 A But I think -- but know it wrote it.

18 Q That same night that it happened?

19 A Yes, sir, that afternoon.

20 Q And will you agree with me it's been about 20 months
21 since this happened?

22 A Yes, sir.

23 Q Do you agree with me that what you remember less than
24 an hour or a little more than an hour after it happened is
25 a better memory than 20 months?

1 A A possibility.

2 Q Okay. Let me show you something, if you'll take a
3 minute to read it.

4 A Okay.

5 (Pause).

6 Yes, sir.

7 Q And that's what you wrote down that night, correct?

8 A I wrote that down that night, yes, sir.

9 Q And you didn't say anything in here about the B word,
10 did you?

11 A No. I didn't say anything about that. I sure
12 didn't. I didn't put it in writing. I sure didn't.

13 MR. LAND: Your Honor, we'd offer this as Defendant's
14 three.

15 THE COURT: Ms. Connor?

16 MR. CONNOR: You're admitting her statement?

17 MR. LAND: Uh-huh.

18 MR. CONNOR: Good.

19 MR. LAND: That's...

20 THE COURT: All right. No objection?

21 MR. CONNOR: No objection.

22 THE COURT: All right. Defendant's number three is
23 in without objection.

24 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
25 identification and received into evidence.)

1 MR. LAND: No further questions, Your Honor.

2 THE COURT: Redirect?

3 MR. CONNOR: I have nothing further, Your Honor. I'd
4 ask Ms. Bracey be excused, if she likes.

5 MR. LAND: Absolutely.

6 THE COURT: Ms. Bracey, you can leave or stay,
7 whenever you like.

8 THE WITNESS: Okay. Thank you.

9 THE COURT: All right. Ladies and gentlemen, we're
10 going to take a brief break at this time. When you come
11 back in the courtroom, you can bring whatever water or if
12 you need a soft drink, just let the bailiff know.

13 When we come back in the courtroom, you can bring
14 that with you. The carpet in here is not in terribly good
15 shape, but just try to keep it from getting spilled when
16 you come back in.

17 All right. Do not discuss the case. We'll have you
18 back out in just a few minutes.

19 You can keep your seats until the jury leaves.

20 (WHEREUPON, the jury left open court at approximately
21 3:42 p.m.)

22 THE COURT: All right. Mr. Connor, could you
23 identify for me not by name but who the folks are here
24 that will be testifying in the case to follow up on our
25 bench conference a few minutes ago?

1 MR. CONNOR: You said not by name?

2 THE COURT: Well, if anybody here is a witness, could
3 you ask them to stand up so I'll know who they are.

4 MR. CONNOR: Ms. Scott, Mr. Barnhill, Brewer, Heath
5 Gardener, and William Lyons.

6 THE COURT: Okay. And none of the folks on the front
7 row will be testifying?

8 MR. CONNOR: Possible that Mr. and Mrs. Cooper might
9 testify later in the case.

10 THE COURT: They're going to be allowed to stay. I'm
11 considering them the victim. How about the gentleman on
12 the -- in the back? There's three gentlemen back there.

13 MR. CONNOR: I think --

14 THE COURT: Are you all witnesses in this case?

15 (Indicating in the negative).

16 All right. If y'all three folks, if you wanted to
17 excuse yourselves, that's certainly fine right now.

18 All right. Mr. Land, you -- ladies and gentlemen,
19 have a seat.

20 You have a motion, Mr. Land.

21 MR. LAND: Your Honor, yes. I'd ask that the
22 witnesses be sequestered. I certainly do not want any of
23 the family members sequestered. I'm not asking that in
24 any way.

25 THE COURT: All right. Well, the investigating

1 officer can stay, and Mr. and Mrs. Cooper can stay.

2 Mr. Connor, what's your position as to the other
3 witnesses?

4 MR. CONNOR: Your Honor, I've got Truman Duggin and
5 Jim Allsbrook from the evidence group.

6 THE COURT: I'm going to allow them to stay for the
7 foundational issues.

8 MR. CONNOR: And Ms. Quan (phonetic), of course.
9 That's all we've got here right now.

10 THE COURT: Who do you think you'll be calling this
11 afternoon?

12 MR. CONNOR: I'm going to call Ms. Scott next, and
13 then I'm going to call these four patrolmen that went to
14 the home there. We've already heard from two of them.

15 THE COURT: All right.

16 MR. CONNOR: We talked to Mr. Gardener and Lyons.

17 THE COURT: So Ms. Scott is the lady -- okay. So
18 she'll be next, and then some officers. All right. Well,
19 I'll -- I'll grant Mr. Land's motion to sequester any
20 non-expert, non-investigative officer, non-victim
21 witnesses. That shouldn't -- I take it that the witnesses
22 this afternoon will be relatively short?

23 MR. CONNOR: They will be.

24 THE COURT: Okay. All right.

25 Any objection to that, Mr. Connor?

1 MR. CONNOR: So I got a question. That means I have
2 got to get rid of all these policemen except one of them
3 at a time?

4 THE COURT: They can just stay out in the hall. I
5 don't -- I don't -- it's within my discretion.

6 Mr. Land, these witnesses, they've already testified
7 once, at least two of them have. Do you still make the
8 same motion?

9 MR. LAND: Yes, sir, but I'm going to have different
10 cross-examination than I did during the evidentiary
11 hearing.

12 THE COURT: All right. I'll -- I'll grant that
13 motion. They can just have a seat right out in the hall.
14 If their testimony is relatively short, they shouldn't be
15 inconvenienced too much.

16 All right. We'll take a few minutes.

17 (WHEREUPON, a short break was taken.)

18 THE COURT: Are you ready for the jury?

19 MR. LAND: The defense is.

20 MR. CONNOR: We're ready.

21 THE COURT: All right. Bring them.

22 (WHEREUPON, the jury came into open court at
23 approximately four o'clock p.m.).

24 THE CLERK: Your Honor, we have all the jurors and
25 alternate present in the courtroom.

1 THE COURT: All right. Thank you, Mr. Bradley.

2 All right. Mr. Connor?

3 MR. CONNOR: I'd call Marla Scott, Your Honor.

4 MARLA SCOTT, after being duly sworn,
5 testified as follows:

6 THE CLERK: Please state your full name, spell your
7 last name for the record.

8 THE WITNESS: My name is Marla Hale Scott.

9 THE CLERK: Have a seat there, please. Spell your
10 last name.

11 THE WITNESS: S-C-O-T-T.

12 DIRECT EXAMINATION:

13 BY MR. CONNOR

14 Q Ms. Scott, where do you work?

15 A I work at C & A Carpet Flooring Company.

16 Q And where do you live?

17 A Orchard Place.

18 Q And how long have you lived at Orchard Place?

19 A I've been there for about four years.

20 Q So you were living there back on March 16, 2007 when
21 this shooting occurred?

22 A Yes, sir, uh-huh.

23 Q Tell us in your own words about what time of day it
24 was and what you were doing when it happened?

25 A Okay. I get off work about five o'clock. I don't

1 work far from where I live, so I get home about 5:15,
2 5:20.

3 I came in, shut the door, kicked my shoes off, and it
4 probably wasn't ten minutes that I just heard gunshots,
5 and I heard at least five to six gunshots.

6 I didn't realize she had been shot that many times,
7 but that's what I had heard. I knew it was gunshots, and
8 I knew it wasn't a pistol because it -- you know, that can
9 get kind of sidetracked as far as firecracker versus a
10 gun. I knew it was a high powered shotgun or rifle or how
11 ever.

12 So I had my two boys upstairs, and then I hollered to
13 them not to look out the window. And so -- because I --
14 you know, the world is crazy now. You never know.

15 So I kind of just peeked out the window just a little
16 bit and saw him standing -- well, actually come down the
17 two steps from .

18 He had the rifle in his hands like this (indicating),
19 kind of turned around, threw it on the ground. The law
20 was there just like that.

21 He pulled his shirt off. They told him to get on the
22 ground, get on the ground, and he cooperated. He got on
23 the ground.

24 I couldn't -- I could hear a little bit, you know,
25 just ranting and raving, but I couldn't understand or

1 really make out what he was saying.

2 Where I live, I could open my door, and he wouldn't
3 have been able to see me. But so, you know, I kind of
4 opened the door just a little bit and thought -- at first
5 when I first looked out the window, I thought he just shot
6 in the air to scare somebody. I had no idea that he had
7 actually had done what he had done.

8 Q But the man you saw walk down the steps with the gun
9 in his hand is Mr. Harriott?

10 A Yes.

11 Q And he's the one the police placed in custody when
12 they arrived?

13 A Yes.

14 Q Now, had you -- did you know Ms. Cooper?

15 A No. All of us kind of keep to ourselves out there.
16 We just pretty much waive to each other, and that's
17 basically it and not -- I --

18 Q You would have recognized her as a familiar face?

19 A Yes, uh-huh.

20 Q But you didn't have any personal contact with her?

21 A No, no, just, "Hey, how are you doing?"

22 Q Had you ever seen this defendant before?

23 A I've seen him one time before when they lived in the
24 building next door to me before she moved into the
25 townhouse.

1 Q And tell us why you remembered seeing him on this
2 previous occasion.

3 A Well, I was outside on the front porch talking on the
4 phone, and I don't know if they were actually living
5 together or what was going on, but when she lived on the
6 flat, the one -- the building beside me, I saw him come
7 back down the stairs.

8 It was a little cold outside. It was a little chilly
9 and get the gun out of his car or out of the S.U.V. that
10 belonged to her.

11 It had a strap on it. I can remember he put it over
12 his shoulder and went back upstairs. I just remember
13 telling my girlfriend, "That's one hell of a gun."
14 That's -- but I mean, nothing didn't ever happen. He
15 didn't -- he didn't do anything.

16 Q On this prior occasion?

17 A Right. I had just seen it prior to -- I mean, I
18 didn't think -- it just didn't dawn on me when she moved
19 that something like this would happen. People have access
20 to guns now --

21 MR. LAND: Your Honor.

22 THE COURT: Ma'am, you can't --

23 THE WITNESS: Okay, I'm sorry.

24 THE COURT: The objection is sustained.

25 THE WITNESS: All right.

1 MR. CONNOR: Answer any questions the defense lawyer
2 might have.

3 THE WITNESS: Okay.

4 MR. LAND: I don't have any questions of Ms. Scott.

5 THE COURT: Thank you, Ms. Scott. You can step down.

6 THE WITNESS: Thank you.

7 THE COURT: Can this witness be excused, Mr. Connor?

8 MR. CONNOR: She can, Your Honor.

9 THE COURT: Mr. Land?

10 MR. LAND: No objection.

11 THE COURT: Thank you, Ms. Scott. You can stay or
12 leave, whichever you like.

13 THE WITNESS: All right. Thank you.

14 THE COURT: All right. Mr. Connor?

15 MR. CONNOR: Your Honor, my next witness is Heath
16 Gardner who is sequestered.

17 How about ask him to come in?

18 THE CLERK: Place your right -- left hand on the
19 Bible, raise your right hand. State your full name,
20 please.

21 THE WITNESS: Officer Heath Gardner.

22 HEATH GARDNER, after being duly sworn,
23 testified as follows:

24 THE CLERK: Have a seat up here, please. Watch your
25 step. Please state your full name, spell your last name

1 for the record.

2 THE WITNESS: Heath Gardner, G-A-R-D-N-E-R.

3 DIRECT EXAMINATION:

4 BY MR. CONNOR

5 Q Officer Gardner, where do you work?

6 A Sumter Police Department.

7 Q And what's your duties with the Sumter Police
8 Department?

9 A Patrolman, patrol areas of the city.

10 Q And what -- what group or what part of the police
11 department were you working in back in March of 2007?

12 A I was working on patrol that day.

13 Q The same duties you have today?

14 A Yes, sir.

15 Q Do you drive a marked police car?

16 A Yes, sir.

17 Q Now, did you get a call in regards to a shooting at
18 an apartment complex known as Orchard Place somewhere
19 between 5:15 and 5:30?

20 A Yes, sir.

21 Q Tell us about it.

22 A We received a call, a shots fired call. That's how
23 it came out. While en route they changed it from a shots
24 fired call to a shooting incident. On my arrival, they
25 gave us suspect information, and the suspect was standing

1 outside of the apartment.

2 Q Let's back up a little bit. How did you get this
3 call?

4 A It was dispatched over the radio.

5 Q So it came on your police radio?

6 A Yes, sir.

7 Q And about how long after the call came in before you
8 arrived at the place?

9 A Approximately ten minutes.

10 Q Where were you when you got the call?

11 A I was on Liberty Street right there at Edwards.

12 Q And tell us about your route to Orchard Place?

13 A I shot up Liberty Street, went 38 (phonetic) and went
14 down to Haynesworth Street. At the four-way stop I made a
15 right-hand turn where I was able to get to the Orchard
16 Place entrance, and that's where I made a right turn in.

17 Q So it took about two minutes to get there?

18 A Yes, sir.

19 Q When you got there, who did you see?

20 A I saw the suspect standing right in front of
21 apartment

22 Q And did he have a gun with him?

23 A No, sir.

24 Q Where was the gun?

25 A Located behind him.

1 Q So the gun was on the ground when you arrived?

2 A Yes, sir.

3 Q And what did you do?

4 A I immediately got out of the car and started calling
5 him -- telling him to get on the ground trying to put him
6 in a prone position.

7 Q And what did he do?

8 A He immediately took off his shirt. Whenever I got
9 out of the car and started to tell him to go on the
10 ground, he took off his shirt, did a 360. I guess to let
11 me know he didn't have any weapons on him. He proned
12 himself out, as he was told to do.

13 Q So he did lay down after you told him to take his
14 shirt off?

15 A Yes, sir.

16 Q Okay. And what did you do at that point in time?

17 A I started to approach him as Corporal Barnhill
18 arrived on the scene so we could place him into custody,
19 place handcuffs on him.

20 Q Did you -- when -- tell us about cuffing.

21 A Myself, Corporal Barnhill both approached him and
22 pulled his arms behind his back, placed him -- put the
23 handcuffs on him while he was still proned out.

24 Q And did you check him for additional weapons?

25 A I did.

1 Q And while he -- tell us did he make any statements to
2 you?

3 A He did.

4 Q Did you ask him any questions, or did he just
5 volunteer the information?

6 A Volunteered the information.

7 Q What did he say?

8 A "I know what I did. I know I shot her," and he kept
9 saying it over and over.

10 Q "I know what I did, and I know I shot her"?

11 MR. LAND: Your Honor, let me object to restating
12 testimony.

13 THE COURT: Mr. Connor, the objection is sustained.
14 Go ahead.

15 MR. CONNOR: Okay.

16 BY MR. CONNOR

17 Q What did you do with him at that point in time?

18 A I waited for officer -- or Corporal Barnhill went
19 into the building. I waited on Detective Lyons to come
20 up, and as Detective Lyons came up, we picked him up, and
21 we placed him in the backseat of my patrol car.

22 Q And how many officers were there at that point in
23 time?

24 A I can only remember three, but I know the whole --
25 there was a lot of people, but I remember three.

- 1 Q How about Officer Brewer? Did he come up?
- 2 A Yes, sir.
- 3 Q So it was you --
- 4 A There was four, including myself.
- 5 Q Four including you?
- 6 A Yes, sir.
- 7 Q Barnhill, Brewer, you and Lyons?
- 8 A Yes, sir.
- 9 Q Did you write a statement about that -- about what
- 10 you had seen and heard?
- 11 A Yes, sir.
- 12 Q Did you write it that night? I mean, not that night
- 13 but that day right after it happened?
- 14 A Yes, sir.
- 15 Q Within how long would you estimate before you wrote
- 16 the statement?
- 17 A Thirty minutes, maybe.
- 18 Q So within 30 minutes you had put it on a piece of
- 19 paper?
- 20 A Yes, sir.
- 21 Q And the statement you repeated that you -- that you
- 22 repeated a while ago that you heard him say about what he
- 23 had done, did you write that in your statement?
- 24 A I did.
- 25 MR. CONNOR: I have no further questions of him.

1 THE COURT: Mr. Land?

2 CROSS-EXAMINATION:

3 BY MR. LAND

4 Q Mr. Harriott was cooperative with you the whole time?

5 A Yes, sir.

6 MR. LAND: No further questions, Your Honor.

7 THE COURT: All right. Thank you, sir. You can step
8 down.

9 Mr. Connor?

10 MR. CONNOR: Your Honor, next I'd call Officer Lyons.

11 THE CLERK: Place your left hand on the Bible, raise
12 your right hand. State your name, please.

13 THE WITNESS: William Lyons.

14 WILLIAM LYONS, after being duly sworn,
15 testified as follows:

16 THE CLERK: Have a seat up here please. Watch your
17 step. Please state your full name, spell your last name
18 for the record.

19 THE WITNESS: William Lyons, L-Y-O-N-S.

20 DIRECT EXAMINATION:

21 BY MR. CONNOR

22 Q Officer Lyons, where do you work?

23 A The Sumter Police Department.

24 Q And how long have you worked with the Sumter Police
25 Department?

1 A Since 2004.

2 Q And you were working for them back in 2006?

3 A Yes, sir.

4 Q In March of -- I beg your pardon, March of 2007, did
5 you work for them?

6 A Yes, sir.

7 Q And at that time what was your job?

8 A In 2007, I was assigned to a specialized unit called
9 the Neighborhood Enforcement Team. It was a specialized
10 team. I worked closely with the Investigations Division,
11 the Narcotic's Unit, Warrants Division.

12 We did not have assigned patrol areas. It was a team
13 of four, pretty much patrolled the entire city, responded
14 to high risk situations such as a situation that took
15 place that day.

16 Q And what do you do now? What's your job now?

17 A Detective assigned to the Investigations Division,
18 Violent Crimes.

19 Q And you -- on this -- back in March of 2007,
20 March 16th of 2007, did you get -- did you respond to the
21 call of a shooting at Orchard Place?

22 A Yes, I did.

23 Q And tell us about it.

24 A A call came out on the radio. As I was heading in
25 that day, we were just coming on to start working.

1 I responded to the scene. As I arrived on the scene,
2 I noticed officer Heath Gardner was already there.
3 Several other units were already there on the scene, as
4 well.

5 The defendant, Mr. Harriott, was already in custody.
6 In other words, he was already in a pair of handcuffs as I
7 arrived on the scene, helped Mr. Gardener get Mr. Harriott
8 up off the ground.

9 I began escorting him back to Patrolman Gardner's
10 patrol car to secure him because of the crowd that was
11 gathering.

12 While we were escorting Mr. Harriott back to the
13 patrol car, he began saying, "I did it. I know what I
14 did. I did what I had to do," voluntarily without any
15 questions being asked by us. He kept just repeating it.
16 He was then placed in the car and secured given the crowd
17 of people who was gathering.

18 MR. CONNOR: Okay. Answer any questions the defense
19 lawyer might have for you.

20 MR. LAND: I have no questions, Your Honor.

21 THE COURT: Thank you, sir. You can step down.

22 MR. CONNOR: Okay. How about send Barnhill in.

23 We would ask that this officer be excused.

24 MR. LAND: No objection.

25 THE COURT: All right.

1 MR. CONNOR: Send Barnhill in.

2 (Pause).

3 THE CLERK: Place your left hand on the Bible, raise
4 your right hand. State your name, please.

5 THE WITNESS: Robert Barnhill.

6 ROBERT BARNHILL, after being duly
7 sworn, testified as follows:

8 THE CLERK: Have a seat up here, please. Watch your
9 step. Please state your full name, spell your last name
10 for the record.

11 THE WITNESS: Robert Barnhill, B-A-R-N-H-I-L-L.

12 DIRECT EXAMINATION:

13 BY MR. CONNOR

14 Q Officer Barnhill, where do you work?

15 A The Sumter Police Department.

16 Q And how long have you been with the Sumter Police
17 Department?

18 A Since 2004.

19 Q And were you working back in March of 2007?

20 A Yes, I was.

21 Q And what was your job at that time?

22 A At the time I was a corporal, I believe, on patrol,
23 which is the marked division.

24 Q So you were driving a marked police car?

25 A Yes, sir.

1 Q And did -- did you get a -- did you respond to this
2 call of a shooting over at Orchard Place Apartments?

3 A I did.

4 Q And tell us about what you found when you got there.

5 A I arrived shortly after Patrolman Gardner, just a few
6 seconds, actually. I could see his patrol car pulling in.
7 As I pulled in behind his patrol car, he was already
8 standing up giving verbal commands to the defendant to lay
9 down on the ground.

10 He already had taken his shirt off, and the defendant
11 complied and laid down on the ground, at which time myself
12 and Patrolman Gardner approached him and detained him and
13 placed him in handcuffs shortly.

14 I mean, seconds after I arrived, Patrolman Brewer
15 arrived right behind me, and I left, and also Detective
16 Lyons, and I left Detective Lyons and Patrolman Gardner
17 with the defendant to go in the house to search for
18 victims and other defendants.

19 Q So you and Brewer went inside?

20 A Yes, sir.

21 Q And the purpose of that was to see if there was
22 anybody, anybody in there, and what defendants there might
23 be?

24 A And try to render aid, yes, sir. As we were
25 approaching the residence, we observed the assault rifle

1 on the ground just outside the door.

2 Q Okay. And I show you here these two photographs,
3 State's Exhibit Number one and two, and ask if you can
4 identify those?

5 A Yes, sir. This is the front of the residence, and
6 that's the assault rifle as it was when I was approaching
7 the scene.

8 Q So that's what you saw when you got there?

9 A Exactly.

10 Q Now, tell us what you saw when you went inside.

11 A As I -- well, we called out to the residence a few
12 times with no response. We entered the residence a few
13 seconds later. I found the victim, Ms. Cooper, lying at
14 the bottom of the stairs. She had several gunshot wounds
15 to her body, and I checked her vital, you know, any vital
16 signs for anything. She wasn't breathing and she had no
17 pulse, so I immediately called for rescue.

18 Q And I show you here these two photographs, State's
19 Exhibit Number eight, number nine and ask you to examine
20 them.

21 A Yes, sir. This is...

22 Q Okay.

23 A These definitely depict what I saw when I came in.

24 MR. LAND: Your Honor.

25 MR. CONNOR: Those are --

1 THE COURT: Yes, sir?

2 MR. LAND: Let me place an objection on the record as
3 to, I believe, photograph -- if I can see it. I believe
4 it's photograph number nine, if I can look at them.

5 THE WITNESS: Eight and nine.

6 THE COURT: All right.

7 MR. LAND: Actually to both of them, Your Honor,
8 eight and nine.

9 THE COURT: Objection is overruled.

10 BY MR. CONNOR

11 Q Okay. Do these two photographs accurately show what
12 you saw when you got there?

13 A Yes, sir.

14 MR. CONNOR: Your Honor, we'd ask to publish them
15 bypassing them around.

16 THE COURT: Let me get the numbers straight in my pad
17 please, sir.

18 (Pause).

19 All right. The objections will continue on through
20 these photographs and through 13; is that correct?

21 MR. LAND: That's correct, Your Honor.

22 THE COURT: All right.

23 BY MR. CONNOR

24 Q And I show you now State's Exhibit number ten, number
25 11, number 12 and number 13 and ask you to examine those,

1 if you would.

2 A Yes, sir. These photos are definitely of the
3 severity of the situation and shows the entry wounds near
4 the vaginal area where the gunshots are.

5 Q Do those pictures accurately show what you saw when
6 you got there?

7 A Completely, yes, sir.

8 MR. CONNOR: Your Honor, we'd -- we'd move these into
9 evidence at this time.

10 THE COURT: In over the defendant's observation.

11 MR. CONNOR: Can we ask permission to circulate them.

12 THE WITNESS:

13 THE COURT: Yes, sir.

14 THE COURT REPORTER: Can you give me the numbers
15 again, please?

16 MR. CONNOR: Ten, 11, 12, 13.

17 (WHEREUPON, State's Exhibits Nos. 10 - 13 were
18 admitted into evidence.)

19 THE COURT: You can publish those to the jury.

20 Ladies and gentlemen, you can look at the exhibits and
21 look at the photographs as they're passed through the box.

22 Okay. Mr. Connor.

23 BY MR. CONNOR

24 Q Now, Barnhill, after getting there and looking,
25 checking this woman, what else did you do?

1 A We cleared the residence to make sure there was
2 nobody else inside there possibly hiding in the closet or
3 something. After that was cleared, everybody, myself and
4 patrolman Brewer asked if we would step back outside and
5 secure the weapon that was on the ground just outside the
6 door. Then I maintained the door security.

7 In other words, anybody coming in and out of the
8 crime scene, my duty at that time, since I was the first
9 officer was to protect the crime scene from the people
10 just walking in and out, so we know exactly whose
11 footprints, fingerprints, et cetera would have been at the
12 scene after that.

13 Q Did anybody go in or out of the place other than
14 people that were part of your police agency or E.M.S.
15 personnel?

16 A No, sir.

17 Q And did this officer here Truman Duggin, did he come
18 to the scene?

19 A Yes, he did.

20 Q And you and Brewer maintained security on it until
21 they took over?

22 A Shane Lyons, Detective Lyons, is actually the person
23 who took my position at the door so that I could start
24 giving my statements and everything to the detectives.

25 Q And did you write a statement that day?

1 A Yes, sir.

2 MR. CONNOR: Okay. Answer any questions the defense
3 lawyer might have for you, please.

4 CROSS-EXAMINATION:

5 BY MR. LAND

6 Q Officer Lyons, you didn't hear anything that
7 Mr. Harriott, said, did you?

8 A Officer Barnhill.

9 Q Officer Barnhill, I'm sorry. You didn't hear
10 anything he said?

11 A No, sir.

12 MR. LAND: No further questions, Your Honor.

13 THE COURT: Any redirect?

14 MR. CONNOR: I have no further questions of him. I'd
15 ask that he be excused if he likes, Your Honor.

16 MR. LAND: No objection.

17 THE COURT: Thank you, sir. You can leave or stay,
18 whichever you like.

19 MR. CONNOR: Brewer.

20 (Pause).

21 THE CLERK: Place your left hand on the Bible, raise
22 your right hand. State your name, please.

23 THE WITNESS: Tommy Brewer.

24 THOMAS BREWER, after being duly sworn,
25 testified as follows:

1 THE CLERK: Watch your step. State your full name,
2 spell your last name for the record.

3 THE WITNESS: Tommy Brewer, B-R-E-W-E-R.

4 DIRECT EXAMINATION:

5 BY MR. CONNOR

6 Q Okay. Officer Brewer, where do you work?

7 A The Sumter Police Department.

8 Q And how long have you worked at the Sumter Police
9 Department?

10 A Approximately two years.

11 Q And were you working back on March 16th, 2007?

12 A Yes, I was.

13 Q And what were you doing on that day?

14 A I was operating a patrol vehicle, checking property,
15 responding to calls for service, normal day-to-day
16 activity duties for a police officer.

17 Q And do you still do that kind of work?

18 A Yes, sir, I do.

19 Q Did you get a call or respond to a call in regards to
20 a shooting at what's called Orchard Place apartments here
21 in Sumter?

22 A Yes, sir, I did. I responded to that call.

23 Q And tell us what you saw when you got there and what
24 you did.

25 A When I exited my vehicle, I observed Officer Gardner,

1 Corporal Barnhill. I observed a black male with his hands
2 up taking his shirt off turning around.

3 At that point in time, I approached with the other
4 two officers. We informed -- asked the subject, told him
5 to get on the ground. At that point in time handcuffs
6 were placed on the subject.

7 Q And who took custody of him out there?

8 A At that point in time, Officer Gardner stayed with
9 the suspect.

10 Q And what did you and Barnhill do?

11 A Officer Barnhill and myself went, walked up to the
12 apartment. We challenged it by voice. We asked, "Is
13 anybody else in here? It's the police department." We
14 identified ourselves several times. We then went inside
15 the residence to observe to see if there was any other
16 suspects, any other weapons, or anything that we might see
17 as a foreseeable danger to the community.

18 Q And what did you see when you got inside?

19 A When I walked in, I -- to my left is a staircase.
20 There was a black female who was there who was
21 unresponsive. She appeared to have been shot multiple
22 times. She was laying in a grotesque manner.

23 Q She was laying near the bottom of the steps?

24 A Yes, sir.

25 Q And what did you do at that point in time?

1 A At that point in time myself and officer -- after the
2 house was checked to be secure, Officer Barnhill and I
3 stepped back. Outside Officer Barnhill stayed at the
4 door.

5 I walk back to where there was a black rifle laying
6 on the ground just down from the -- just outside of the
7 apartment, and I stood over the weapon until it was
8 collected by our detectives.

9 Q Okay. Was there anybody else in the apartment other
10 than this woman who had been shot?

11 A No, sir, not that we found.

12 Q And y'all stayed there until the detectives came and
13 took over the scene?

14 A That's correct.

15 MR. CONNOR: And answer any questions the defendant's
16 lawyer might have for you.

17 MR. LAND: I don't have any questions for Officer
18 Brewer.

19 THE COURT: Thank you, sir. You may step down
20 Mr. Brewer.

21 All right. Any objection to him being excused?

22 MR. LAND: I don't.

23 MR. CONNOR: I don't have any objection.

24 THE COURT: Thank you, Mr. Brewer. You can leave or
25 stay.

1 MR. CONNOR: Your Honor, could we approach?

2 THE COURT: Yes, sir.

3 (WHEREUPON, a bench conference was held in the
4 presence, but not within the hearing, of the jury).

5 THE COURT: Mr. Connor, do you want to go ahead and
6 get started or wait until he comes in?

7 MR. CONNOR: Just one second, Your Honor.

8 (Pause).

9 I'd call Lieutenant Duggin, Your Honor.

10 THE COURT: Come on up. I'll swear you, Mr. Duggin.

11 Oh, here is Mr. Brannon.

12 THE CLERK: Place your left hand on the Bible, raise
13 your right hand. State your name, please.

14 THE WITNESS: Truman Hall Duggin.

15 TRUMAN DUGGIN, after being duly sworn,
16 testified as follows:

17 THE CLERK: Thank you, sir. Have a seat on the
18 stand. Watch your step. State your full name, spell your
19 last name for the record.

20 THE WITNESS: Truman Hall Duggin, D-U-G-G-I-N.

21 DIRECT EXAMINATION:

22 BY MR. CONNOR

23 Q Mr. Duggin, what do you do?

24 A I'm in the investigative services section, commander,
25 which is over the forensics, crime scene, polygraph,

1 fingerprint and evidence sections of the -- at the police
2 department working directly under the Investigative
3 Services Division commander of the detectives.

4 Q Okay. And how long have you worked for the Sumter
5 Police Department?

6 A I have five years as a reserve police officer,
7 retired from the air force for 20 years out here at Shaw.
8 My last five years was as a patrol officer with the
9 reserves, and I've been 15 years full-time. So a total of
10 about 20 years law enforcement experience.

11 Q And how long have you been doing this crime scene
12 investigation type work?

13 A In 1997, I was promoted to detective and immediately
14 started working crime scenes as a detective.

15 Q And what kind of training have you had in that
16 regard?

17 A I received my initial law enforcement training from
18 the South Carolina Law Enforcement academy, and I've --
19 since achieved a bachelor's degree in criminology.

20 I am a member of several professional organizations
21 that deal with forensics and crime scenes to include the
22 International Association of Identification. I am an
23 officer in the South Carolina division of the
24 International Association of Identification. Also, the
25 International Association of Property and Evidence as a

1 member, and then with the polygraph associations.

2 With this we have quarterly training and plus
3 training offered through our police academy, so all the
4 training that we get is accredited through the police
5 academy.

6 Q That's through S.L.E.D. in Columbia?

7 A It's through the South Carolina police academy,
8 Criminal Justice Academy.

9 Q Now, back on March 16, 2007, did you have an occasion
10 to go to Orchard Place in regards to a killing that had
11 occurred there?

12 A Yes, sir, I did. I was, as a matter of fact, on my
13 way home when I heard the call come out.

14 Q And about what time of day did you get there?

15 A I arrived at -- on the scene at 5:30.

16 Q Now, the -- did you -- tell us what you viewed when
17 you got there, what you saw at the scene.

18 A When I arrived at the scene, E.M.S. had done been
19 there. It was -- the area was already taped off with
20 police tape, you know, "do not cross, police line",
21 numerous police cars, and several of the detectives were
22 already starting to arrive. I arrived to receive my
23 briefing as to what was going on.

24 Q Now, did you observe a rifle in front of the
25 apartment complex?

1 A Yes, sir. As -- as I approached the scene, there was
2 a rifle laying in the grass, and then there were some
3 clothes laying on the steps, some other articles on the
4 sidewalk. Then we had -- we went up into the street, went
5 up into the apartment.

6 MR. CONNOR: Let me see that.

7 (The court reporter complied).

8 THE COURT: I'd like the lawyers to come around
9 before we get to that point.

10 (WHEREUPON, a bench conference was held in the
11 presence, but not within the hearing, of the jury).

12 THE COURT: All right. Ladies and gentlemen, there's
13 some reference at this point to a firearm. Please rest
14 assured that there will be some confirmation that the
15 weapon is not loaded, and it will not be pointed at anyone
16 in this courtroom, much less you.

17 All right. Go ahead, Mr. Connor.

18 MR. CONNOR: Okay.

19 THE COURT: If you could ask the witness that,
20 please.

21 BY MR. CONNOR

22 Q Be sure to keep it pointed at your feet.

23 A Yes.

24 Q I show you that, State's Exhibit Number 22 and ask if
25 you can identify it.

1 A This is the weapon that I found at the scene, and I'd
2 like to point out to His Honor and the jury and the Court
3 that the bolt on the weapon has been safed. There's no
4 ammunition inside the weapon, and I have it zip tied back
5 for the court purposes for safety.

6 Q Okay.

7 A It's a -- could I identify that I do have my initials
8 and the case number on the weapon?

9 Q That's the weapon you recovered outside of the
10 apartment?

11 A Yes, sir.

12 Q And now, the weapon, was it submitted to any agency
13 for examination to compare it to projectiles and casings
14 that were recovered?

15 A Yes, sir. We sent it to the State Law Enforcement
16 Division better known as S.L.E.D., to their Ballistics
17 Department for -- to have the projectiles found and
18 casings found to have them compared to this weapon.

19 Q This gentleman here, can you identify him for us?

20 A Yes, sir. That's Mr. Jim Allsbrook. He is our
21 evidence technician. He controls the evidence, and one of
22 his primary jobs is to transport evidence to S.L.E.D. and
23 bring it back from S.L.E.D. He maintains control over
24 that.

25 Q And did he take that weapon, Mr. Duggin?

1 A Yes, sir, he did.

2 Q The -- would you -- can you take that magazine off
3 and then verify that it has no ammunition in it?

4 A (Indicating).

5 It's empty.

6 THE COURT: All right.

7 MR. CONNOR: Your Honor, we'd offer the evidence, the
8 rifle, into evidence, State's Exhibit Number 22.

9 THE COURT: Mr. Land?

10 MR. LAND: No objection, Your Honor.

11 THE COURT: All right. Number 22 is in evidence
12 without objection.

13 (WHEREUPON, State's Exhibit No. 22 was admitted into
14 evidence.)

15 BY MR. CONNOR

16 Q The -- now, tell us what else you saw there, Truman,
17 in the way of items. I'm showing you here specifically
18 these two photographs, State's Exhibit Number one and two,
19 in that regard.

20 A Yes. In State's Exhibit Number one, it shows the
21 weapon as -- as I found it, and on the porch is a brown
22 shirt. This is the entrance way into the apartments.

23 State's Exhibit Number two is an angled shot of the
24 same area, but it's closer to the road. It shows a purple
25 shirt laying in the grass next to the sidewalk.

1 Q Now, did you see inside the body of Quanna Cooper?

2 A Yes, sir, I did.

3 Q And where was she lying?

4 A Lying on the stairwell and the steps with her head
5 towards the top of the steps and her torso, her feet,
6 towards the landing, towards the bottom.

7 Q Okay. Now, did you -- did you collect any items from
8 the scene?

9 A Yes. After the initial contact with the scene, I
10 photographed the scene and everything in its place. Then
11 we removed Ms. Cooper and started processing the crime
12 scene and collected, most noteworthy, were projectiles or
13 bullet fragments and shell casings, and then documenting
14 the crime scene with photography as far as the bullet
15 holes. There were numerous bullet holes in the -- in the
16 residence.

17 Q Okay. And did you take a series of photographs in
18 addition to the two I've just shown you?

19 A Yes. I took quite a few photographs.

20 Q And I show you here these photographs. I ask you to
21 examine them and -- okay. I show you here State's
22 Exhibit 1 through 19 and ask if you can identify these
23 and...

24 A State's Exhibit Number one is, as I previously said,
25 it's a photograph looking head on into the apartment

1 building with the gun laying off to the left side of the
2 sidewalk by the porch and the --

3 Q Lieutenant -- Lieutenant Duggin, let me interrupt
4 you. Can you identify those?

5 A Oh, excuse me. Yes, sir. I can identify these as
6 the photographs that I took.

7 Q They are the photographs you took?

8 A Yes, sir.

9 MR. CONNOR: Your Honor, we'd offer them into
10 evidence at this time. Some of them are already in
11 evidence, I think one, two, three, four, eight, nine, ten,
12 11, 12, 13 are in evidence. We'd offer the balance of
13 them at this point in time and ask permission to publish
14 them.

15 THE COURT: Five through seven are not in yet, and 14
16 through 19 are not in yet; is that right?

17 MR. CONNOR: That's correct.

18 THE COURT REPORTER: That's correct.

19 THE COURT: Do you want to see those, Mr. Land?

20 MR. LAND: If I could, Your Honor.

21 THE COURT: All right. If you'll let him see those
22 first.

23 (Pause).

24 MR. LAND: No objection.

25 THE COURT: All right. Five, six, and seven are in

1 without objection, 14 through 19.

2 (WHEREUPON, State's Exhibits Nos. 5 - 7, 14 - 19 were
3 admitted into evidence.)

4 THE COURT: You can publish those, Mr. Connor, but
5 not the ones that have already been published unless there
6 is some -- is there any reason to republish those, or are
7 you going to publish them by television screen?

8 MR. CONNOR: Well, we're going to put them on the
9 T.V. screen and just have him briefly tell us what they're
10 looking at.

11 THE COURT: Okay.

12 Yes, Mr. Land?

13 MR. LAND: Your Honor, I see them pulling the
14 television forward. I'm going to have to move where I can
15 see. I don't know how I'm going to fit over there. It's
16 kind of crowded.

17 THE COURT: Well, are you going to be using that
18 overhead?

19 MR. CONNOR: Part of it.

20 THE COURT: You're going to have to either pull the
21 television back so Mr. Land can see, or he'll have to be
22 able to sit at your table, Mr. Connor.

23 MR. CONNOR: Well, we'll save him this seat right
24 here.

25 (indicating).

1 THE COURT: All right. Ladies and gentlemen, make
2 sure that you can see those. Can everybody on the jury
3 see that screen? Maybe perhaps to my far right, you can
4 be close to it, likely be able to, so Mr. Connor, do you
5 need the lights on or off?

6 THE DEPUTY: I think we can leave them on, Judge.

7 THE COURT: All right. Mr. Connor, do you want to
8 discuss any of this with -- well, Mr. Land, you all come
9 up here real quick before you all put any pictures up
10 there.

11 (WHEREUPON, a bench conference was held in the
12 presence, but not within the hearing, of the jury).

13 THE COURT: All right. Mr. Connor, if you need any
14 activity with the lights, just let Mr. Bradley know.

15 All right. You can continue.

16 MR. CONNOR: Do we have a pointer, Mr. Bradley?

17 THE CLERK: Over there.

18 THE WITNESS: With your permission, Your Honor?

19 THE COURT: Yes, sir. You can step down.

20 BY MR. CONNOR

21 Q If you would, just briefly tell us what we're looking
22 at, and this is State's Exhibit Number one.

23 A State's Exhibit Number one is looking directly up in
24 front of the apartment; number would be as you go
25 into the steps into the right; number to the left.

1 Off to the left side in front of the steps next to
2 the sidewalk is the weapon you just viewed, and then
3 there's a brown shirt laying on the steps.

4 Q And I show you next State's Exhibit Number two.

5 A State's Exhibit Number two is a picture from a
6 different angle down by the road. You can see the
7 sidewalk. There's a -- a purple shirt lying in the -- in
8 the yard. Off to the left of the side -- of the -- to the
9 porch you can see the weapon where it's laying, and the
10 brown shirt on the -- on the porch.

11 Q And this is State's Exhibit Number three.

12 A State's Exhibit Number three is -- I am on the porch
13 looking away from the apartment building, just a different
14 angle of where the weapon is laying and the shirt is
15 laying.

16 Q And this is State's Exhibit Number four.

17 A This is a little closer view of the weapon as it was
18 laying as I found it. I'm just moving up a little bit
19 closer to it.

20 Q And this is State's Exhibit number five.

21 A This is the weapon, a view 90 degrees above it, and
22 as you can see on it, the bolt is like it is in the
23 condition it is now. It is to the locked back position.
24 It would be fired dry and locked back at the last one with
25 the magazine empty so it could be reloaded, if needed.

1 Q This is State's Exhibit Number six.

2 A It's a close up view of the -- of the breach assembly
3 showing the slide locked back.

4 Q This is State's Exhibit Number seven.

5 A State's Exhibit Number seven, I have entered the
6 apartment, and I've -- what you're looking at now is in
7 the living room area, and to the right there is the
8 stairwell going upstairs.

9 I'm standing in a small dining room area, and where
10 that wall is right here back over on this side would be
11 the kitchen, so I'm standing in the dining room area
12 taking a picture towards the front door.

13 Q And where is Ms. Cooper?

14 A There is -- there's been talk of clothes on the
15 floor. You could -- there's clothes here (indicating), on
16 the stairs going up, the little landing, and right here is
17 the body of Ms. Cooper (indicating).

18 Q And this is State's Exhibit Number eight.

19 A I am more at a 90-degree angle towards the stairwell.
20 I'm in the living room taking a picture of the stairwell
21 and the victim, and this is Ms. Cooper. This would be her
22 head here (indicating).

23 Q And this is State's Exhibit Number nine?

24 A This is a closer shot. I am standing right before
25 the landing at the bottom of the steps and the body of

1 Ms. Cooper. You could see they have placed -- E.M.S. has
2 placed the pads on her to be checked for life. Her shirt
3 as been pulled up, and you can see her -- on her pants,
4 she is laying on top of the clothes and the wet areas
5 around -- on her pants and her shirt where she had been
6 shot.

7 Q And this is State's Exhibit Number ten.

8 A This would be a picture of the victim, Ms. Cooper,
9 her bottom foot on the landing. The leg, just a better
10 shot of where she was shot at, and one leg right here has
11 been shot and dislocated, and it is in a very unnatural
12 position.

13 MR. LAND: Your Honor, let me object. He has not
14 been qualified as an expert to testify about the anatomy
15 of a person.

16 THE COURT: Mr. Connor, any response?

17 MR. CONNOR: He's just telling about the position of
18 where the leg is, Your Honor.

19 THE COURT: I'll overrule the objection at this time,
20 Mr. Land. The witness isn't an expert, but he can testify
21 as to what he observed in his -- based on his experience,
22 even though he's not an expert.

23 Go ahead.

24 BY MR. CONNOR

25 Q State's Exhibit Number 11.

1 A This is a closer view of the -- of the scene of the
2 victim and the wet areas and then gunshots to the upper,
3 upper leg area.

4 Q State's Exhibit Number 12.

5 A And this is a picture of the -- basically, the waist
6 up. Her shirt has been pulled up. You can see where
7 E.M.S. has placed the patches on her to check for signs of
8 life, and her left leg is bent up towards her head. You
9 can see another shot up in the chest area.

10 Q State's Exhibit Number 13.

11 A And this would be a -- one of the many shell casings
12 that were scattered throughout the scene.

13 Q And this is State's Exhibit Number 14.

14 A State's Exhibit 14, this is after we have removed
15 Ms. Cooper, and looking at just shell casings, damage to
16 the wall. It's just an overview of where all of the
17 activity took place.

18 Q And that's from the top of the steps there; is that
19 right?

20 A Yes, it is.

21 Q Looking down.

22 A This would be a landing right here going into the
23 master bedroom. I'm standing on the top landing with the
24 bathroom to my back.

25 Q And this is State's Exhibit Number 15.

1 A This would be looking up the stairs after we have
2 removed Ms. Cooper, and basically more of just the same
3 thing, just a different angle of the -- of blood, body
4 matter, and bullet holes all the way up through here to
5 the heating and cooling vents.

6 Q How about that hole in that vent on the left-hand
7 side there?

8 A There's -- all the way -- there's holes here, bullet
9 holes. Up here at the very top of the stairs on the
10 landing is the vents for the heating system, and there's
11 holes in that also.

12 Q I show you here in that regards State's Exhibit
13 Number 17.

14 A State's Exhibit Number 17, it's just a closer view of
15 the bullet holes in the metal ductwork at the head of the
16 stairs.

17 Q That would be at the top, right?

18 A At the top of the stairs, yes, top landing.

19 Q Now, this as State's Exhibit Number 16.

20 A Trying to make -- one of the things that I try to do
21 at a crime scene is make rhyme or reason out of where
22 people are located at specific times, and from what I
23 could tell, there was activity at the top of the steps.
24 This is coming down the steps.

25 MR. LAND: Your Honor.

1 THE COURT: Yes.

2 MR. LAND: I assume he's offering an opinion as to
3 where the -- Mr. Harriott was located at the time he's
4 firing the gun. Once again, he's not an expert, but he's
5 giving his opinion.

6 THE COURT: Mr. Connor?

7 MR. CONNOR: Your Honor, it's obvious that it was
8 a -- there's holes in the steps there, and that this
9 officer is a -- is an expert in this area and has been
10 doing it for 20-some years.

11 THE COURT: All right. Let's -- ladies and
12 gentlemen, if you would please step to your jury room for
13 just a minute. I'll have you out momentarily. Do not
14 discuss the case.

15 (WHEREUPON, the jury left open court at approximately
16 4:59 p.m.)

17 THE COURT: I apologize for cutting you off. I just
18 didn't want the jury to hear you until they heard me rule
19 on it.

20 Go ahead.

21 MR. CONNOR: Have you ever testified as an expert in
22 Sumter County in regards to gunshot, splatter, blood
23 splatter and -- or firearms questions?

24 THE WITNESS: I've -- I've been as an expert who
25 testified, twice as an expert, once in Family Court

1 concerning polygraph and one in general sessions court
2 concerning blood spatter.

3 MR. CONNOR: And that was here in Sumter?

4 THE WITNESS: That was here in Sumter, yes, sir.

5 MR. CONNOR: In General Sessions court?

6 THE WITNESS: Yes, sir.

7 MR. CONNOR: And have you had training in regards to
8 blood splatter and the crime scene investigations?

9 THE WITNESS: Yes, sir. I've had numerous classes in
10 blood spatter analysis and advanced blood standard
11 recognition.

12 MR. CONNOR: And where did you have those?

13 THE WITNESS: Through the academy, and through the
14 South Carolina International Association of
15 Identification.

16 THE COURT: How about in the area of crime scene
17 investigation, have you been qualified as an expert in
18 that field?

19 THE WITNESS: No, sir. I've not been qualified in
20 that, but I have had the classes, the active membership,
21 the active participation in the -- the associations and --

22 THE COURT: All right. Mr. Land, do you have any
23 objection to him being qualified as an expert in a
24 particular field or is it you object to that and him
25 giving opinions? If he's qualified as an expert, if he

1 is, he can give an opinion. Do you agree with that?

2 MR. LAND: Well, I haven't heard from the State what
3 area they're offering him as an expert.

4 THE COURT: I haven't either. What area would you
5 offer him as an expert in, Mr. Connor?

6 MR. CONNOR: Crime scene investigations.

7 THE COURT: All right. Is the photo that we're
8 talking about here, what does it show physically? Does it
9 show bullet holes?

10 THE WITNESS: Sir, it has bullet holes in it, the
11 steps with trajectory rods placed --

12 THE COURT: Yes, sir.

13 THE WITNESS: -- and basically, where I'm going with
14 what I was going to say is that they are at pretty much a
15 horizontal plane, not up and --

16 THE COURT: You don't have -- do you have a separate
17 ballistics expert in this case, Mr. Connor? I don't know?
18 Do you.

19 MR. CONNOR: We have an expert that's going to come
20 and say that some of the bullets that were recovered were
21 fired by this weapon.

22 THE COURT: Okay, but not any trajectory?

23 MR. CONNOR: No. We're not going to have anybody
24 testify in regards to trajectory.

25 THE COURT: All right. And you would offer him as an

1 expert in the field of crime scene investigation?

2 MR. CONNOR: I would.

3 THE COURT: Mr. Land, do you have any questions
4 and/or objections?

5 MR. LAND: Your Honor, I object. This qualification
6 as a crime scene investigator, I don't think that's
7 specific enough to be an expert. What he testified to is
8 he has twice testified regarding polygraphs. I hope
9 that's not an issue here, and also blood spatter.

10 The photograph that they're showing and asking him to
11 give his opinion about shows dowels or rods going through
12 various items. He's, I assume, going to testify as some
13 opinion as from what point they were fired from. That's a
14 very unique field where he would have to have a lot of
15 training as to bullet trajectory, how it travels, how it
16 can travel after it goes through a body and various
17 things, but he has offered no evidence as to his expertise
18 in that area.

19 THE COURT: All right.

20 MR. CONNOR: There's also a lot of blood splatter in
21 this picture.

22 THE COURT: Any objection to being qualified as an
23 expert blood spatter analysis?

24 MR. LAND: I do, Your Honor. His statement was,
25 "I've had numerous classes." I'd like to know what these

1 classes are. "Numerous" doesn't --

2 THE COURT: Mr. Duggin, have a seat.

3 Mr. Land, you can question him.

4 MR. LAND: If I can get where I can see him, Your
5 Honor.

6 THE COURT: Yes.

7 MR. LAND: Mr. Duggin, you stated you had numerous
8 classes in blood -- well, you tell me what your numerous
9 classes are. I don't want to misstate them.

10 THE WITNESS: Okay, sir. As a member of the
11 International Association and the South Carolina
12 International Association of Identification, we attend
13 annual and quarterly conferences and training seminars,
14 and then I have training through the academy.

15 One would be pathology of gunshot wounds, forensic
16 aspects of criminal investigation, blood stain pattern
17 analysis, forensic aspects of criminal investigation,
18 blood stain recognition and application, advanced blood
19 pattern analysis along with -- as the I.D. technician
20 course and detective level one courses offered through the
21 academy as part of their classes.

22 MR. LAND: Okay. Well, blood stain recognition, that
23 doesn't deal with blood spatter and where it came from,
24 does it?

25 THE WITNESS: Yes, sir, it does.

1 MR. LAND: That's not juts dealing with what blood is
2 and how the stains look?

3 THE WITNESS: How the stains got there, you know,
4 directionality of the stain.

5 MR. LAND: All right. When did you take the class
6 about directionality?

7 THE WITNESS: Well, that would be covered in all of
8 them that are -- in all of the classes that I took with
9 blood.

10 MR. LAND: Let me know when you --

11 THE WITNESS: The latest one being -- was a class in
12 November of 2007.

13 MR. LAND: And what was that class?

14 THE WITNESS: That was Advanced Blood Pattern
15 Analysis.

16 MR. LAND: Tell me what you learned in that class.

17 THE WITNESS: That's just the study of being able to
18 identify blood stains, the different types of blood
19 stains, how blood gets to -- from point A to point B.
20 There's a five-day course.

21 MR. LAND: In that class do they teak you to measure
22 blood stains and measure their size and direction and
23 things like that?

24 THE WITNESS: Yes, sir.

25 MR. LAND: Did you do any of that here?

1 THE WITNESS: No, sir.

2 MR. LAND: The dowels that are being shown in -- I'm
3 not sure what exhibit this is.

4 MR. CONNOR: Sixteen, state's Exhibit 16.

5 MR. LAND: Those aren't related in any way to blood.
6 Those are related to bullets, aren't they?

7 THE WITNESS: Correct. And my testimony on that
8 would be basically just showing the direction of where
9 they were going, not going back and putting a gun in that
10 particular place to check saying basically, they were
11 level shots, not whether he was standing from me to you or
12 at the desk to you, but just they were level shots and --
13 because there's going to be -- if he has them up there,
14 other pictures where they might be at an angle. He never
15 said that, that shot went straight through there versus it
16 was an upwards shot or a downwards shot.

17 MR. LAND: In your class about blood splatter
18 analysis --

19 THE WITNESS: Spatter.

20 MR. LAND: Spatter. Were you take to take
21 photographs of the spatter?

22 THE WITNESS: Yes, sir.

23 MR. LAND: Did you do any here?

24 THE WITNESS: I did on one particular blood -- blood
25 drop, yes.

1 MR. LAND: And that hasn't been offered into
2 evidence?

3 THE WITNESS: Not yet, no, sir.

4 MR. LAND: Now, a moment ago you said that you had
5 been qualified as an expert two times in the polygraph.

6 THE WITNESS: That was one time, sir.

7 MR. LAND: I'm sorry, one time. What was the other
8 time you were qualified as an expert?

9 THE WITNESS: In General Sessions court.

10 MR. LAND: What subject did you testify to, sir?

11 THE WITNESS: Blood spatter. It was having to do
12 with directionality of a blood stain.

13 MR. LAND: It had to do with a gunshot?

14 THE WITNESS: Yes, sir.

15 MR. LAND: And when was that?

16 THE WITNESS: April 25th, 2006.

17 MR. LAND: So in the two-and-a-half or more than that
18 years you haven't been qualified as an expert again?

19 THE WITNESS: No, sir.

20 MR. LAND: And at that time you had no testing or no
21 training in blood splatter?

22 THE WITNESS: No. I've had training in it -- I've
23 had additional training since then.

24 MR. LAND: Okay.

25 THE COURT: Mr. Connor, do you have any additional

1 questions on his qualifications?

2 MR. CONNOR: I have none.

3 THE COURT: Any objection to me asking a couple of
4 questions?

5 MR. CONNOR: No.

6 MR. LAND: No.

7 THE COURT: Mr. Duggin, have you ever been offered as
8 an expert in any field and rejected as an expert in any
9 field?

10 THE WITNESS: No, sir, I haven't.

11 THE COURT: All right. Would your testimony in this
12 case be on blood spatter or on the directionality or a
13 particular shot that was fired or both?

14 THE WITNESS: I --

15 THE COURT: I guess Mr. Connor might be better able
16 to answer that question. What is -- I'll recognize him as
17 an expert in the field of blood spatter analysis if that
18 has any relevance to his investigation of this scene.

19 I'm inclined to allow him to give opinions as to the
20 directionality of a projectile based on his training and
21 experience.

22 Mr. Land, you can cross-examine him, and that will be
23 for the jury to determine whether or not his education,
24 training and experience is sufficient to allow the jury to
25 accept or reject his opinions, but what is -- what are you

1 getting at with his testimony in this case? Is blood
2 spatter inconsequential?

3 MR. CONNOR: I think, obviously, there is blood
4 spatter in this picture.

5 THE COURT: Is it of any relevance to his --

6 MR. CONNOR: The reason we show this picture is to
7 show where the shooting occurred and what.

8 THE COURT: Where the bullet -- where the bullet --

9 MR. CONNOR: Where the bullet was going in.

10 THE COURT: No. He said it would be the direction
11 the bullet entered the stationary object, not necessarily
12 where it came from, even though that may be inferable. Is
13 that what you said, sir?

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. So you're going to -- is
16 there going to be blood spatter testimony you'll be
17 seeking to elicit from this witness?

18 MR. CONNOR: No, other than there's -- well, we've
19 got another picture that shows a drop of blood.

20 If somebody is shot with a gun, the splatter goes
21 everywhere. You see a lot of little specks of blood
22 about; whereas, if somebody is just bleeding and it drops
23 out and a drop of blood falls on the floor, it's not the
24 same pattern you would have if you...

25 THE COURT: No, sir. I'll allow the testimony as you

1 go along if it's relevant. You can make your necessary
2 objections, but I will qualify him as an expert in crime
3 scene investigations, specifically blood spatter analysis,
4 and the trajectory of a particular projectile.

5 All right. Do you need -- let -- we'll take just a
6 couple minutes, Mr. Duggin. You cannot discuss your
7 testimony with anybody.

8 THE WITNESS: Yes, sir.

9 THE COURT: Be right back. It won't be long at all.

10 (WHEREUPON, a short break was taken.)

11 THE COURT: All right. Mr. Land, are you ready for
12 the jury?

13 MR. LAND: Yes, sir.

14 THE COURT: Mr. Connor?

15 MR. CONNOR: We're ready.

16 THE COURT: If you want to go over his qualifications
17 when the jury is in here, you can take care of that and
18 I'll rule at that time.

19 Yes, sir.

20 (WHEREUPON, the jury came into open court at
21 approximately 5:12 p.m.)

22 THE COURT: We have everybody. You can continue,
23 Mr. Connor.

24 BY MR. CONNOR

25 Q Mr. Duggin, could you just --

1 THE COURT: Well, not quite yet, Mr. Connor.

2 Do you need to step down now or do you want to put --

3 BY MR. CONNOR

4 Q If he can step down.

5 You might -- if you could, tell us what we're looking
6 at.

7 A This would be the ceiling on the downstairs living
8 room area right here. These are the steps going upstairs,
9 and most noteworthy are the bullet holes that are seen
10 right here represented by the fiberglass trajectory rods.

11 What we're seeing is they're at pretty much a
12 horizontal level going into the steps, and they were
13 found, bits and pieces, on the other side of the steps,
14 but basically just showing the trajectory showing where
15 some of the bullet holes were and where the bullets were
16 traveling.

17 Q And who put the rods in there?

18 A I put the rods in there, too.

19 Q Now, the blood we see there, would you describe that
20 for us?

21 A The blood spatter that we have on this would be -- we
22 call it high velocity type blood spatter as -- from a
23 gunshot wound, would be very small blood droplets, less
24 than a millimeter, and they travel a very short distance.
25 You can see them, and there's also body matter in --

1 MR. LAND: Well, Your Honor, I mean, if he's being
2 offered as a witness, he needs to be qualified as a
3 witness.

4 THE COURT: Mr. Connor, if you want to -- I sustain
5 that objection.

6 He -- if he's qualified as an expert in those two
7 particular fields, he can give his opinions, but you need
8 to get him qualified first with his education, training
9 and experience.

10 BY MR. CONNOR

11 Q Have a seat there.

12 (Complies).

13 Okay. Tell us about how long have you been doing
14 these investigations?

15 A Since 1997 I started as an investigator, and I
16 started my training as a crime scene investigator.

17 Q Do you have any idea about how many murders you work
18 a year?

19 A I would say death scenes, anywhere from five to ten a
20 year, some being homicide, some being suicide, some
21 natural deaths.

22 Q And have you had any training regarding the
23 directionality of gunshots and the -- and blood splatter?

24 A I received training through the South Carolina
25 Criminal Justice Academy. One of the courses would have

1 been the I.D. technician course in 1998 and a detective
2 level one course in 2000.

3 I've also attended courses through the International
4 Association of Identification or the state chapter, which
5 are also certified through our academy, and I would have
6 introduction to death scene reconstruction, pathology of
7 gunshot wounds, forensic aspects of criminal
8 investigation.

9 Q These are different courses you have attended?

10 A These are different courses, seminars that I've
11 attended, formal training. I'm just picking out the ones
12 that basically relate to this, blood stain pattern
13 analysis; 2004, the Forensic Training Seminar; Forensic
14 Aspects of Criminal Investigation; Blood Stain Recognition
15 and Application, February of 2007; Advanced Blood Pattern
16 Analysis, 11/2007, and I've been --

17 Q Have you ever testified in General Sessions court
18 previously in regards to blood splatter?

19 A Yes, sir. In April of 2006, a homicide case
20 concerning blood spatter, specifically directionality of
21 the blood.

22 Q Okay. And were you recognized by the court at that
23 time as an expert at that time in that area?

24 A Yes, sir, I was.

25 MR. CONNOR: Your Honor, we would submit he's

1 qualified.

2 THE COURT: Any questions as to his qualifications at
3 this time, Mr. Land?

4 MR. LAND: Yes, sir.

5 In those classes you're taught to take measurements
6 of blood?

7 THE WITNESS: Yes, sir.

8 MR. LAND: You're taught to take up-close photographs
9 of blood?

10 THE WITNESS: Yes, sir.

11 MR. LAND: You're taught to take measurements of
12 bullet holes?

13 THE WITNESS: Yes, sir.

14 MR. LAND: You're taught to take measurements of
15 these trajectory rods, angle measurements?

16 THE WITNESS: You're taught that if that's what --
17 and you use what you need at each particular crime scene,
18 yes.

19 MR. LAND: But you're taught to do those things?

20 THE WITNESS: Yes, sir.

21 MR. LAND: No further questions, Your Honor. I don't
22 object to his qualifications, but I would ask to be
23 allowed to ask questions about his investigation.

24 THE COURT: Mr. Duggin, what is the part of your
25 training, where is it called when you talk about the

1 directionality of the trajectory? Is there a particular
2 name you would give it?

3 THE WITNESS: Ballistics.

4 THE COURT: All right. Ladies -- I'll -- I'll
5 qualify Mr. Duggin as an expert in the field of crime
6 scene investigation, specifically blood spatter analysis
7 and the trajectory of projectiles or the ballistics.

8 Ladies and gentlemen, in that regard, normally a
9 person who testifies in a case, such as an eyewitness
10 can't give an opinion. That person can only say, "I saw
11 this, heard this, touched this, smelled this." That's
12 what we call a lay witness. Those people can't give
13 opinions.

14 There's an exception in the law for people who
15 qualify as an expert in a particular field by virtue of
16 training, education or experience. Those witnesses can
17 give opinions; however, you are not bound by the opinion
18 given by a person qualified as an expert just because the
19 person is an expert.

20 You still have to weigh that evidence in your mind
21 and determine whether or not to accept it in part, reject
22 it in part, or accept parts and reject the rest.

23 I'll give you a clearer instruction later, but
24 suffice it to say that you are to evaluate this witness's
25 testimony just as you would any other witness, and you

1 give it the weight you think it deserves.

2 All right. Go ahead, Mr. Connor.

3 MR. CONNOR: Okay.

4 THE WITNESS: Your Honor, may I?

5 THE COURT: You need him to step down?

6 MR. CONNOR: Yes.

7 THE COURT: Okay.

8 (Complies).

9 THE WITNESS: And what we're seeing is just basically
10 the trajectory of the bullets where they would have come
11 in through here and go on out the other side. These rods
12 would have been held in place by the entrance and the
13 exit, so as you see them.

14 The blood spatter, high velocity blood spatter is
15 from gunshots or --- type wounds and is very small because
16 it is a very high velocity. A lot of emergency has been
17 expelled. It only goes a short ways. So for this, the
18 body was -- to here, would have been very close.

19 BY MR. CONNOR

20 Q So could we conclude then that at one point in time
21 the victim, Ms. Cooper, was at least that high up, and she
22 was shot at that point?

23 MR. LAND: Your Honor, let me object to leading.

24 THE COURT: Sustained.

25

1 BY MR. CONNOR

2 Q What would -- what could we conclude about her
3 location in regards to this blood splatter?

4 A That at some time during the assault, that she was in
5 this general area when she was shot.

6 Q Now, I show you next State's Exhibit Number 18 and
7 ask if you can identify that.

8 A State's Exhibit Number 18 is a shell casing that was
9 found in the upstairs bathroom. The weapon when it fires,
10 it disposes of a shell casing and reloads. At some time
11 or another, this one went into the bathroom at the top of
12 the stairs. This was the only shell casing located that
13 high.

14 Q And tell us about the ejection of the casing from the
15 gun.

16 A (There was no response).

17 Q This particular type of gun, does it eject a casing?

18 A It ejects casings, and they will go from up and off
19 to the right side. The distance at all, I can't testify
20 to how far it will throw them, but this type of weapon,
21 it's up and to the right.

22 Q And this bathroom, where was it in relationship to
23 the stairs and the body of Ms. Cooper?

24 A The body was laying -- at the bottom of the stairs,
25 the last five steps, and on the top of the landing, I

1 believe would have been the 13th step, is -- you would go
2 straight from the steps and keep walking and go straight
3 into a bathroom. So it was just a very short distance
4 from the top of the stairs into the bathroom.

5 Q So -- and this bathroom then is -- is at the top of
6 the stairs?

7 A Yes, sir, it is.

8 Q And I show you next State's Exhibit Number 19.

9 A And number 19, I have a little marker right here, and
10 this is just a short distance away from where the
11 projectile -- or excuse me, where the shell casing landed
12 is we have a projectile, a piece of the bullet fragment
13 that ended up in the bathroom.

14 Q And that's also in this same bathroom at the top of
15 the steps.

16 A Yes, sir, it is.

17 Q Thank you. Have a seat.

18 A Uh-huh.

19 MR. CONNOR: That's all the pictures, Your Honor.

20 THE COURT: All right. Are those five, six and
21 seven, are they in evidence?

22 MR. CONNOR: I --

23 THE COURT: Court Reporter, do you have that in?

24 THE COURT REPORTER: Yes, they are.

25 THE COURT: How about 14 through 19?

1 THE COURT REPORTER: They are.

2 THE COURT: All right.

3 BY MR. CONNOR

4 Q Now, these casings, how about just tell these ladies
5 and gentlemen, some of them might have an idea about it,
6 but about what a casing is in regards to a bullet.

7 A The casing is the container for the -- the primer
8 which starts the actual firing of the bullet, the powder
9 and the projectile, and it's -- these are made of a brass
10 or brass alloy.

11 In the end of it, you would have the bullet. When
12 it's fired, the bullet would leave the cartridge, go out
13 the barrel and downrange. As the bullets hit things, they
14 fragment. What I call them, you know, projectile
15 fragments.

16 Q And I show you here State's Exhibit Number 35 through
17 47, and there's one 68. I don't know where that is.

18 (Pause).

19 A That one is right here (indicating).

20 Q Could you identify these casings for us?

21 A These are the -- the shell casings that I found at
22 the crime scene. I packaged each one in a separate bag,
23 and on each bag I put a position where I found the shell
24 casing.

25 So we would have the casing in -- for instance,

1 State's Exhibit Number 35 is -- it's from step four from
2 under the clothes. It fell into the landing near the foot
3 where we moved -- moved the body, so some of these were
4 underneath her. They were in clothes.

5 The shell casings were just scattered, and so as we
6 moved things around, we discovered them under clothes and
7 different places.

8 Q Just run through them and read off where you found
9 them from.

10 A State's Exhibit 35 is at step four from under the
11 clothes; Exhibit number 36 is a casing from step three
12 under the left leg; exhibit number 37 is a casing from
13 step 11.

14 Q Now, let me ask you to stop just briefly, Lieutenant
15 Duggin. The -- which step is step number one, the one at
16 the bottom of the steps or one at the top of the steps?

17 A That would be at the bottom starting at the landing.

18 Q So one would be the bottom, and anything higher than
19 that is up the steps?

20 A Yes. Exhibit 38 is a casing from step number ten;
21 Exhibit 39 is step three under the right leg; Exhibit 40
22 is step two from under the clothes; Exhibit 41 is a casing
23 from step three; 42 is a casing near the ductwork; 43 is a
24 casing from the bathroom floor; 44 are three casings from
25 step 12; 45 is from under -- step three from under the

1 clothes; 46 is a casing from step number four, and 47 was
2 found in the clothes pile of the pants with these -- with
3 moving things.

4 MR. CONNOR: Your Honor, we'd offer these into
5 evidence at this time.

6 THE COURT: That's 35 through 47?

7 MR. CONNOR: That's correct.

8 THE COURT: Mr. Land?

9 MR. LAND: No objections.

10 THE COURT: All right. These are in without
11 objection.

12 (WHEREUPON, State's Exhibits Nos. 35 - 47 were
13 admitted into evidence.)

14 BY MR. CONNOR

15 Q And Lieutenant Duggin, were all of these items
16 submitted to S.L.E.D. for them to examine in comparison
17 with the rifle?

18 A Yes, sir, they were. As I said, I packaged each one
19 of these and sealed them with evidence tape. Then on each
20 one of the shell casings, there's going to be a mark, and
21 then there's going to be another tag applied to an
22 envelope inside. That's the S.L.E.D. identification
23 number.

24 Q So there's two numbers on there, the courtroom number
25 and the S.L.E.D. identification?

1 A Yes, sir.

2 Q Now, did you recover some projectiles from the area?

3 A Yes, sir. There was fragments, projectiles,
4 throughout the area, collected those.

5 Q Did you go to the -- to the autopsy with the body?

6 A Yes, sir, I did.

7 Q And at the autopsy, did the doctor remove bullets and
8 fragments from the body in your presence and give those to
9 you?

10 A Yes, sir, she did.

11 Q And I show you this item here marked State's Exhibit
12 Number 23 and ask you to examine that.

13 A Yes, sir. These are the projectile fragments from
14 the autopsy that I -- that I took from the autopsy and
15 brought back to our evidence room and logged it into
16 evidence so we can take them to S.L.E.D.

17 Q And those were all taken to S.L.E.D. by
18 Mr. Allsbrook?

19 A Yes, sir.

20 Q And that's State's Exhibit Number 23?

21 A State's Exhibit Number 23.

22 MR. CONNOR: We'd move that item into evidence at
23 this time, Your Honor.

24 MR. LAND: No objection, Your Honor.

25 THE COURT: In without objection.

1 (WHEREUPON, State's Exhibit No. 23 was admitted into
2 evidence.)

3 BY MR. CONNOR

4 Q Now, also at the autopsy, Truman, were there blood
5 samples and tissue samples from the body removed, turned
6 over to you which were also brought back here?

7 A Yes, sir, blood samples, clothing, all the personal
8 effects were brought back by me.

9 Q And the victim's clothing, too?

10 A Yes, sir.

11 Q And all of the samples from her body?

12 A And all the samples, they were turned in -- all items
13 were turned into evidence, and the samples were taken to
14 S.L.E.D. for analysis.

15 Q And Mr. Allsbrook took them; is that correct?

16 A Yes, sir.

17 Q Now, did you do what's called a gunshot residue kit
18 on the victim at the autopsy?

19 A Yes, sir, I did.

20 Q Tell these ladies and gentlemen what a gunshot
21 residue kit is.

22 A A gunshot residue kit is the -- a kit that is
23 approved by S.L.E.D., State Law Enforcement Division, for
24 us to use to obtain evidence off of someone's hands if
25 they have shot a weapon.

1 It is -- basically, there's little -- I call them
2 little sticky dollars. They're like tape, and you touch
3 the hands with those. You seal them. Then we take a
4 solution of nitric acid and rub the hands with Q-tips to
5 remove anything off of the hands. Then it's analyzed at
6 S.L.E.D. So it's how we collect gunshot residue evidence
7 from a person.

8 Q And did you actually swab Quanna Cooper's hands
9 yourself?

10 A Yes, sir. At the autopsy I performed a G.S.R. kit on
11 her.

12 Q And you brought that back here to the department?

13 A Yes, sir, and turned into evidence.

14 Q And then it was, in turn, taken to S.L.E.D. by
15 Mr. Allsbrook?

16 A Yes, sir.

17 Q Hold on one moment.

18 (Pause).

19 I show you next State's Exhibit Number 20 and ask if
20 you can identify that item.

21 A State's Exhibit Number 20 is the gunshot residue
22 evidence collection kit that was supplied by State Law
23 Enforcement Division for us to use. This is the kit that
24 I used on Ms. Cooper, and I filled out the front with her
25 name, case number, my name, and I sealed it. It's got the

1 evidence seal tape on the back where I sealed it.

2 MR. CONNOR: Okay. Do you need to see it, Mr. Land?

3 MR. LAND: I don't need to see it.

4 MR. CONNOR: We'd move State's Exhibit Number 20 into
5 evidence, Your Honor.

6 THE COURT: Any objection?

7 MR. LAND: No objection.

8 THE COURT: In without objection.

9 (WHEREUPON, State's Exhibit No. 20 was admitted into
10 evidence.)

11 BY MR. CONNOR

12 Q And next I show you State's Exhibit Number 21 and ask
13 if you can identify that item.

14 A This is the evidence -- gunshot residue evidence
15 collection kit that's State's Exhibit Number 21, and it is
16 from Derrick Harriott. The collecting officer's name is
17 Detective Dean Plute, the same as the one that I did plus
18 the evidence tape off the back.

19 MR. CONNOR: We'd move State's Exhibit Number 21 into
20 evidence at this time.

21 MR. LAND: No objection.

22 THE COURT: All right. That's in.

23 (WHEREUPON, State's Exhibit No. 21 was admitted into
24 evidence.)

25

1 BY MR. CONNOR

2 Q Okay. Lieutenant Duggin, I show you State's Exhibit
3 Number 24 through 34, these items, and ask you if you can
4 identify them.

5 A Yes, sir. These are the projectiles. The fragments
6 from the crime scene that I collected.

7 Q And did you -- are they labeled as to where they came
8 from in the house?

9 A Yes, sir. They are labeled similar to the way the
10 casings were. For example, State's Exhibit Number 24,
11 it's a fragment, step two, under the clothes, from the
12 clothes. It has the same type numbering system from
13 S.L.E.D. These were also sent to S.L.E.D.

14 Q So each one of them has the label on it?

15 A Yes, sir.

16 MR. CONNOR: We'd move those into evidence at this
17 time.

18 MR. LAND: No objection.

19 THE COURT: All right.

20 (WHEREUPON, State's Exhibits Nos. 24 - 34 were
21 admitted into evidence.)

22 BY MR. CONNOR

23 Q Now, Lieutenant Duggin, did you -- did you look all
24 up and down the steps?

25 A We looked up and down the steps. We found, I'd say,

1 the projectiles, the casings, all the way into the
2 bathroom.

3 Underneath the steps, there's an area that would be a
4 storage area, if you will. We found projectile fragments
5 there also, so it was all -- I would say concentrated in
6 the stairwell area and behind the stairwell or under the
7 stairwell up and down the stairs.

8 Q Did -- there was a pile of clothes around her; is
9 that right?

10 A Yes, sir, there was.

11 Q Did you find any weapon or any knife in the area
12 where she was located or where you -- these blood
13 splattered occurred or anything? Did you see any knife?

14 A There were no weapons, no knives in her area on the
15 steps, landing. There was no guns, no weapons, of any
16 kind.

17 Q Were there any guns in the apartment at all other
18 than the gun that he had?

19 A None that we found.

20 Q And nobody else went in there except policeman, did
21 they?

22 A That's correct.

23 Q Did you find any drugs in the place?

24 A No, sir, no sign of any type of drug activity.

25 Q Did you find any video camera equipment?

1 A No, sir, no video computer equipment or anything like
2 that.

3 Q No -- you didn't -- did you look for a computer?

4 A Not particularly looked for one but --

5 Q If it had been there, you would have --

6 A Yes, sir.

7 Q -- taken note of it?

8 A Yes, sir.

9 Q You found no computer?

10 A No, sir.

11 Q No video equipment?

12 A No, sir.

13 Q Did you find a little instant camera in there?

14 A There was a little 35-millimeter disposable instant
15 camera that was in her bedroom on the bedstand, and we
16 processed that and had the pictures developed.

17 Q Was there anything out of the ordinary about the
18 pictures?

19 A It showed the defendant, and it looked like they went
20 on a trip. You could see -- one or two of the pictures
21 you could actually see the gun leaning up in the bedroom.

22 Q The gun, you mean this rifle that --

23 A Yes, sir, the rifle.

24 Q But nothing out of the ordinary about the pictures
25 other than seeing the gun, is that...

1 A Correct, is that -- like they went on a little trip
2 or something --

3 Q Why did you think they had gone on a trip?

4 A Pardon me?

5 Q What about the pictures made you think maybe they had
6 gone on a trip?

7 MR. LAND: Your Honor, can I --

8 THE WITNESS: It was a different skyline.

9 MR. LAND: Your Honor, could I approach?

10 THE COURT: Yes.

11 (WHEREUPON, a bench conference was held in the
12 presence, but not within the hearing, of the jury).

13 THE COURT: All right. You can go ahead, Mr. Connor.
14 I'll overrule the objection at this point. You were
15 asking him something about a trip.

16 MR. CONNOR: Your Honor, I have nothing further at
17 this time. I would like to have overnight an opportunity
18 to review my notes and be sure that we haven't overlooked
19 something.

20 There's numerous items here, and we -- I felt a
21 little bit rushed. Lieutenant Duggin does a real good job
22 of keeping that kind of thing straight, but I want to be
23 sure that we've got it all shown here.

24 THE COURT: All right. We can either break from your
25 direct right now and take up the cross on Wednesday, or we

1 can do it either way.

2 MR. CONNOR: I have one further item here.

3 How about this item here? Can you identify that?

4 THE COURT: What number is that?

5 THE WITNESS: This is State's Exhibit Number 48.

6 THE COURT: Okay.

7 MR. LAND: Your Honor, do I need to put my objection
8 on the record or is that...

9 THE COURT: Your objection will continue as to this
10 exhibit.

11 MR. LAND: Thank you.

12 THE COURT: Go ahead, Mr. Connor.

13 BY MR. CONNOR

14 Q Thank you, Your Honor.

15 What is that?

16 A These are the pants that the victim was wearing when
17 she was assaulted. She wore these to the autopsy, and we
18 removed them at the autopsy.

19 Q And does it have holes in it?

20 A It has numerous holes.

21 MR. CONNOR: Your Honor, we'd move that item into
22 evidence.

23 THE COURT: All right. Number 48 is in over the
24 defendant's objection.

25

1 (WHEREUPON, State's Exhibit No. 48 was admitted into
2 evidence.)

3 MR. CONNOR: I believe that's it and if...

4 THE COURT: All right. Let's do this: Mr. Land,
5 would you like to cross-examine now or Wednesday?

6 MR. LAND: Judge, I don't want to do that to anybody,
7 keep them here any later. So if we can do it Wednesday
8 with an instruction for him not to discuss his testimony
9 with anyone.

10 THE COURT: Is that suitable, Mr. Connor?

11 MR. CONNOR: That's suitable with me.

12 THE COURT: All right. Ladies and gentlemen, we're
13 going to break for the day. I want to ask you to please
14 be back in your jury room on Wednesday at ten. That's a
15 little bit later than we would normally start.

16 I'll be meeting with the lawyers. We'll be here
17 tomorrow, I hope, part of tomorrow depending on what the
18 pleasure of my other State employees are. We have county
19 employees and State employees. It's like herding cats
20 sometimes.

21 So don't discuss the case tonight, tomorrow or any
22 time at all until I tell you that you can. Don't begin to
23 form any conclusions about this case either. Again, do
24 not tell anybody that you see what the case is about.

25 You can tell them that you're on a jury and that's

1 it, because if you go further, that will catch up with
2 you.

3 If you think you know where Orchard Place is, don't
4 go there. I had a case one time in Camden where I
5 instructed the jury not to go to the scene. Sure enough,
6 a lady did, went to the scene, walked around the scene,
7 investigated the scene. She was held to account for that
8 because it was in violation of my instructions, so please
9 follow those, if you don't mind, and we'll see you back
10 Wednesday morning at ten o'clock.

11 All right. Thank you very much. Mr. Bradley will
12 show you where you're supposed to go back on Wednesday.

13 (WHEREUPON, the jury left open court at approximately
14 5:46 p.m.)

15 THE COURT: All right. Before anybody believes, any
16 witnesses or so forth leave the courthouse, let's make
17 sure that we're pretty much assured that all the jury has
18 left the property.

19 Mr. Duggin, of course, you can't discuss your
20 testimony with anyone.

21 THE WITNESS: No, sir.

22 THE COURT: That carries through up to Wednesday at
23 ten, and we'll get back together Wednesday at about 9:15.
24 We'll be back on the record, if we need to go on the
25 record, at 9:30.

1 If -- Mr. Connor, are you going to be speaking with
2 any members of the family that are right behind you?

3 MR. CONNOR: I will have an opportunity.

4 THE COURT: Okay. I just want to make sure that if
5 there's any contentious feelings between the family of the
6 defendant and the family of the victim, that those folks
7 leave the courtroom at separate times. So you all can be
8 assured of that.

9 If one of the officers can make sure that the court
10 reporter gets to her car and the lady in the back gets to
11 her car, and any of you other ladies, I'm not so much
12 concerned about the men, any other ladies, with this dark,
13 if you need to be walked to your car, just let an officer
14 know. That will be done for you.

15 All right. Thank you.

16 (November 11th was a State holiday).

17 (Court reporter Keisha Reed transcribed November
18 12th.)

19 (The following was placed on the record November
20 13th.)

21 THE COURT: All right. Mr. Land, any additional
22 argument on the voluntary manslaughter?

23 MR. LAND: Yes, sir, Your Honor. I've handed you a
24 copy, and I think you have a copy of State vs. Locklear.

25 I specifically draw your attention to -- it would be

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	
	)	2008-GS-43-257
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Derrick Damon Harriott	)	)
DEFENDANT	)	

November 12, 2008
Sumter, South Carolina

B E F O R E:

THE HONORABLE GEORGE C. JAMES, JR.

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

W. HARRY CONNER, JR., ASSISTANT SOLICITOR
Attorney for the State

WILLIAM C. LAND, ESQ.
Attorney for the Defendant

KESHIA REED
Circuit Court Reporter

	<u>I N D E X</u>				
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	Truman Duggin				
4	Mr. Land		5		
5					
6	Toby Roberson				
7	Mr. Conner	19			
8					
9	Susan Croner				
10	Mr. Conner	21			
11	Mr. Land		33		
12					
13	Michael Moskal				
14	Mr. Conner	34			
15					
16	Trace McKinnon				
17	Mr. Conner	41			
18					
19	Janice Ross				
20	Mr. Conner	46			
21	Mr. Land		53		
22					
23	Eugene Finkdeiner				
24	Mr. Land	64		81	
25	Mr. Conner		77		83

1	<u>I N D E X</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Joyce Whitherspoon				
4	Mr. Land	85			
5	Mr. Conner		91		
6					
7	Richard Frierson				
8	Mr. Land	99		125	
9	Mr. Conner		119		127
10					
11	Certificate of Reporter	153			
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1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	S-49	Body Diagram		52
4				
5	D-4	Photo		11
6	D-5	Photo		17
7	D-6	Photo		6
8	D-7	Photo		6
9	D-8	Photo		14
10	D-9	Photo		13
11	D-10	Forensic Report	118	
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1 (REPORTER'S NOTE: This is only the testimony from
2 Wednesday, November 12, 2008.)

3 THE COURT: All right. Mr. Land, y'all ready?

4 MR. LAND: Yes, sir, Your Honor.

5 THE COURT: Mr. Conner?

6 MR. CONNER: We ready.

7 THE COURT: Mr. Duggin, you can come back up and have
8 a seat.

9 (WHEREUPON, the jury return to the courtroom.)

10 THE COURT: All right. Ladies and gentlemen, I hope
11 you had a nice day yesterday, I hope you didn't have to go
12 to work. We're ready to resume the trial of this case.
13 Mr. Duggin is still on the witness stand.

14 Mr. Conner, you can continue your questioning.

15 MR. CONNER: I have nothing, Your Honor.

16 THE COURT: Mr. Land.

17 MR. LAND: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. LAND:

20 Q Investigator Duggin, as part of your collection of
21 evidence, I think on Monday you testified that you placed
22 rods in some of the bullet holes?

23 A Yes, sir, I did.

24 Q Let me show you two photographs that have been marked
25 as Defendant's Exhibit 6 and 7 tell me if you can identify

1 those?

2 A Yes, sir, exhibit number six and number seven are
3 photos that I taken of the duct work at the top of the
4 steps of the stairwell. And it shows a yellow ruler and
5 projectory rods through bullet holes.

6 MR. LAND: Your Honor, we offer those as Defendant's
7 6 and 7.

8 MR. CONNER: I have no objection.

9 THE COURT: Six and seven in without objection.

10 (WHEREUPON, Defendant's Exhibit Nos. 6 and 7 was
11 admitted into evidence.)

12 THE COURT: They already been marked.

13 MR. LAND: Yes, sir.

14 BY MR. LAND:

15 Q Investigator Duggin, looking at these photographs and
16 based on your training and experience, did those rods
17 indicate a trajectory of those bullets either upward or
18 downward or level?

19 A Yes, sir, they show an upward angle. They enter at
20 low and they are going up trajectory. I believe it would
21 be very easy to see and understand the photographs as
22 looking at them.

23 Q And because it is upward trajectory would that
24 indicate that the person firing the weapon was lower down
25 on the staircase in this case?

1 A Yes, sir.

2 MR. LAND: Your Honor, permission to publish these to
3 the jury?

4 THE COURT: Ladies and gentlemen, same instruction
5 that I gave you Monday applies to that, make sure you pay
6 attention to the continuing testimony.

7 BY MR. LAND:

8 Q There was some testimony on Monday about a shell
9 casing found in the bathroom; is that right?

10 A Yes, sir.

11 Q Did you find any bullet holes in the bathroom that
12 would indicate that a shot was fired inside the bathroom?

13 A No, sir, I didn't.

14 Q Let me show you what's been marked as State's Exhibit
15 18 already in evidence found. Is that the shell casing
16 found in the bathroom?

17 A Yes, sir, it is.

18 Q Let me show you what's been marked as State's Exhibit
19 14. Are those three shell casings located on the steps?

20 A Yes, sir, they are.

21 Q And you know what step they were located on?

22 A One moment.

23 Q Well, if you can't answer that photograph. Let me
24 show you a photograph been marked as Defendant's Exhibit
25 Number 5. Tell me first of all if you can identify that?

1 A Exhibit five, yes, this is a photograph that shows
2 three shell casings. And there it would be the third step
3 down if you're counting the top landing as a step. As
4 you're going up, it would be one more step then you be on
5 the landing. It depends on how you look at it. It's
6 either the third step or the second step down, but it's
7 near the top of the stairs.

8 Q Did they appear to be the same shell casings as in
9 State's Exhibit 14?

10 A Yes, sir, they are the same shell casings.

11 Q On Monday, you told the jury about how the gun
12 involved ejects its shell casings; is that right?

13 A Yes, sir.

14 Q And how does -- remind us it's been two days now?

15 A Well, it's a semiautomatic, so it's going to be
16 ejecting them out of the chamber more up into the right,
17 that is shell placement though. The spint cartridge
18 placement though is a very to consider, I guess, a very
19 dynamic situation because we don't know how the weapon was
20 being held, at what angle the gun was. So if it's in one
21 angle, it's going to discharge the shell in one direction.
22 When the shell casing left the weapon, did it hit
23 something. So it's basically three shell casings is about
24 all I can say three shell casings there.

25 Q Looking again at State's Exhibit 14 is there a wall

1 on both sides of the stairway on one side all the way down
2 and part of the way on the other side?

3 A Yes, sir, there is.

4 Q Okay. And could a spint shell casing ricochet off of
5 those walls?

6 A Yes, very possible.

7 Q Is it possible that the shell casing found at the
8 bathroom that's in State's Exhibit 18 ricocheted into the
9 bathroom?

10 A That is highly possible.

11 Q You didn't find any evidence that the weapon was
12 fired from the top of the staircase downward?

13 A No, sir, I did not.

14 Q Let me get you to look at State's Exhibit 8 and 9 for
15 a moment. And then tell me what those photographs
16 display?

17 A Exhibit eight is a picture of the deceased on the
18 stairwell as I found her. And it's me taking a photograph
19 of her standing in the proximate center of the living room
20 and the exhibit nine is a photograph of the deceased
21 laying on the steps as I found her. And it shows her
22 prone and laying with some clothes around her feet, but it
23 shows the deceased at a different angle.

24 Q Let's talk about those clothes. Did you collect
25 those clothes and mark them as evidence?

1 A No, sir, I did not.

2 Q You know whatever happened to them?

3 A No, sir.

4 Q Did you examine those clothes close enough to
5 determine if they were men's clothes, women's clothes,
6 children's clothes?

7 A They mean men's clothes.

8 Q Do you recall approximately how many items of
9 clothing it was?

10 A No, sir, I don't because there was clothes there. I
11 believe some clothes in the middle of the floor.

12 Q Looking at State's Exhibit 9 is there also a plastic
13 bag located to the -- above the victim's head?

14 A Yes, sir, there's a white plastic bag.

15 Q Did you examine the contents of that bag?

16 A Yes, sir, I did.

17 Q Did you mark those as evidence?

18 A No, sir, I did not.

19 Q Do you recall what was in that plastic bag?

20 A No, sir, not that I can say for sure.

21 Q Let me show you a photograph that's been marked as
22 Defendant Exhibit 4. Do you recognize that photograph?

23 A Yes, Defendant's Exhibit 4 is a photograph that I
24 took and it is of -- I am standing in the dining room area
25 looking towards the front of the apartment. You can see

1 the front door where we were coming in and out on the
2 floor -- on the right side of the photo is some clothes
3 and you can see the brown shirt laying on the front porch
4 area.

5 MR. LAND: Your Honor, I ask that Defendant's Exhibit
6 4 be put into evidence.

7 THE COURT: Mr. Conner.

8 MR. CONNER: I have no objection.

9 (WHEREUPON, Defendant's Exhibit No. 4 was admitted
10 into evidence.)

11 BY MR. LAND:

12 Q Officer Duggin, using that photograph or any other
13 photographs you need, would you explain to the jury in
14 this apartment where the bedrooms were and how you would
15 leave the apartment, where would you have to travel to
16 leave from the bedroom?

17 A The bedrooms were at the upstairs level. If you go
18 up the stairs, if you continue straight if walking up the
19 stairs continue to cross the landing, you would come the
20 bathroom. If you turn to the right off the stairs and
21 walk straight, there was a bedroom. And then if you turn
22 right off the top as you came off the landing of the
23 stairs and proceeding back towards the front of the
24 apartment was the master bedroom.

25 Q To leave from the master bedroom, where would you

1 have to travel?

2 A You would come out the bathroom door and come out to
3 the landing and then go downstairs.

4 Q And then at the bottom of the stairs, there's another
5 landing; correct?

6 A Yes, sir, there's another landing.

7 Q And what would you have to do at that landing?

8 A At that landing, you would have to turn left to step
9 out of the living room.

10 Q And then from the living room where is the door
11 lead?

12 A It is to the right.

13 Q Does Defendant's Exhibit 4 show the door to leave?

14 A Yes, it shows the door to leave. And if you look
15 down at the very -- just a small portion you can see the
16 bottom step coming off of the landing from the stairwell.

17 MR. LAND: Your Honor, permission to publish
18 Defendant's Exhibit 4.

19 THE COURT: Yes, sir.

20 BY MR. LAND:

21 Q Did you go into the bedrooms, the master bedroom and
22 the other bedroom and examine their contents?

23 A Yes, sir, I did.

24 Q Let me show you a photograph been marked as
25 Defendant's Exhibit 9?

1 A Exhibit nine is a photograph of the bedroom closet in
2 the master bedroom.

3 MR. LAND: Your Honor, we move Defendant's Exhibit 9
4 into evidence.

5 MR. CONNER: I like to look at it please. I have no
6 objection.

7 THE COURT: It's number nine?

8 MR. LAND: Yes, sir, Your Honor.

9 THE COURT: Number nine is in.

10 (WHEREUPON, Defendant's Exhibit No. 9 was admitted
11 into evidence.)

12 BY MR. LAND:

13 Q Investigator Duggin, that's a closet in which
14 bedroom?

15 A I would call the master bedroom.

16 Q Was a portion of that -- was there a rod to hang
17 clothes on in there?

18 A Yes, sir, there was.

19 Q Is a portion of that empty of any clothing?

20 A According to the picture, it's got -- as you look
21 directly into the closet an empty space with clothes to
22 the right.

23 Q Did you catalog what type of clothing was hanging in
24 that closet?

25 A No, sir, I did not.

1 Q Do you know whether there men's or women's clothing
2 hanging in that closet?

3 A I do not know.

4 MR. LAND: Permission to publish Defendant's Exhibit
5 9?

6 THE COURT: All right.

7 BY MR. LAND:

8 Q Let me show you a photograph been marked as
9 Defendant's Exhibit 8 tell me if you can identify it?

10 A Exhibit eight is of the sidewalk in front of the
11 house of the apartment excuse me. And it shows a purple
12 shirt and some other items where I can see a lighter, some
13 car keys. And it might be lip balm, I'm not sure I have
14 to...

15 MR. LAND: Your Honor, we move Defendant's Exhibit 8
16 into evidence.

17 MR. CONNER: No objection.

18 THE COURT: All right.

19 (WHEREUPON, Defendant's Exhibit No. 8 was admitted
20 into evidence.)

21 BY MR. LAND:

22 Q Did you retain those keys or catalog those as
23 evidence?

24 A I believe so. I know I did collect the keys.

25 Q Did you try to determine what those keys went to,

1 what they unlocked, what vehicle they operated?

2 A No, sir, I did not.

3 Q Do you know if they were the defendant's keys to his
4 car which was there?

5 A May I check?

6 Q Certainly.

7 A No, sir, the only thing I have on my paperwork is the
8 key ring with two keys from the sidewalk at the scene.

9 Q But you don't know what vehicle they went to or
10 residence or anything like that?

11 A No, sir.

12 Q Do you know whether or not the defendant had those
13 keys?

14 A No, sir, I do not know.

15 Q The firearm that's been entered as State's Exhibit 22
16 you're familiar with that weapon, aren't you?

17 A Yes, sir, I am.

18 Q Were you able to determine whether or not that weapon
19 was unlawful to own?

20 A Excuse me. The only information that I have from the
21 A.T.F. files is dealer information that it -- the
22 manufacture from Norinco North China Industries imported
23 by K Sports Imports in California. It was recovered at
24 Seven (inaudible). The dealer information was out of
25 Cooper Sports out of Auburn, New York, that is the only

1 information that I have on it.

2 Q Okay. Based on that information is the weapon as it
3 was produced is it lawful to have it in the United States
4 and in South Carolina?

5 A From everything that I know of it, yes, sir.

6 Q Was it lawful for Derrick Harriott to own that
7 weapon?

8 A I do not know his background whether he has any
9 reason not to. As far as I know, he was authorized to
10 have it.

11 MR. LAND: Your Honor, that's all the questions I
12 have for Investigator Duggin.

13 THE COURT: Redirect?

14 MR. CONNER: I have, nothing else, Your Honor.

15 THE COURT: All right, thank you, sir.

16 MR. CONNER: Your Honor, just out of an abundance of
17 precaution, we have a list in here. We have a different
18 court reporter today. She has a listing of 48 items. And
19 I want to be sure that -- I kind of lost track when we
20 were putting it in.

21 THE COURT: Through this witness or all witnesses?

22 MR. CONNER: Well, mostly through this witness and I
23 want to be sure that we have all of that in some...

24 THE COURT: One through 19 are in according to my
25 information through this witness and another witness. I

1 think you just repeated that. And 35 through 47, 68, 20,
2 21, 24, through 34, 48, and that's my listing.

3 MR. CONNER: How about 22 and 23?

4 MR. LAND: I'm sorry. Twenty-two is in through
5 Mr. Brewer and 23 is through -- I'm sorry I skip that one
6 through this witness. So basically one through ---

7 MR. CONNER: Twenty and 21 are in?

8 THE COURT: Yes, sir. One through 34 -- actually,
9 one through 47 are in and 68. So that would be a total of
10 48.

11 MR. CONNER: Okay.

12 THE COURT: And the Defendant's at least through this
13 witness four, six, seven, eight and nine I believe. I
14 don't know about the other witnesses.

15 MR. LAND: Your Honor, it should have been all of the
16 defendant's exhibits. Exhibits should have come in would
17 have been ---

18 THE COURT: Through this witness?

19 MR. LAND: Yes, sir. If I can look at the
20 photographs I will tell you.

21 THE COURT: Three was in through Miss Brayson.

22 MR. LAND: Your Honor, if I did not, I move
23 Defendant's Exhibits four through nine in. I thought I
24 did through this witness, but if not, I would move those
25 in just for -- to be sure.

1 THE COURT: What are -- only one I don't have a
2 record is to five.

3 MR. LAND: Your Honor, can I ask him about this?

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION CONTINUED

6 BY MR. LAND:

7 Q Officer Duggin, could you look at Defendant's Exhibit
8 5 and tell me what you can identify what's in that
9 photograph?

10 A Exhibit five is three shell casings. And depending
11 on the way you count it, it can either be the second step
12 or the third step from the top of the landing.

13 MR. LAND: Your Honor, we move that into evidence.

14 THE COURT: Mr. Conner.

15 MR. CONNER: I have no objection, Your Honor.

16 (WHEREUPON, Defendant's Exhibit No. 5 was admitted
17 into evidence.)

18 THE COURT: All right. Mr. Conner, do you have any
19 additional questions?

20 MR. CONNER: I have no further questions, Your Honor.

21 THE COURT: Mr. Duggin, you can step down.

22 (WHEREUPON, the witness leaves the witness stand.)

23 THE COURT: Okay. Mr. Conner.

24 MR. CONNER: At this time, I call Toby Roberson.

25 THE CLERK: Place your left hand on the Bible and

1 raise your right hand. Do you swear to tell the truth,
2 the whole truth, and nothing but the truth so help you
3 God?

4 MR. ROBERTSON: I do.

5 WHEREUPON,

6 Toby Roberson,
7 after first having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. CONNER:

10 Q Please state your full name and spell your last name
11 for the record?

12 A Full name is Toby Roberson. Last name is
13 R-O-B-E-R-S-O-N.

14 Q What kind of work do you do?

15 A I'm a car installer for Circuit City.

16 Q And what do you install in cars?

17 A Car stereos, amplifiers, sub-woofers, alarm systems,
18 overhead videos stuff like that.

19 Q And how long have you been working for them?

20 A I been working for Circuit City for two years.

21 Q And in March of 2007 were you living at Archer Place
22 Apartments?

23 A Yes, sir.

24 Q And what unit did you live in?

25 A I lived in .

1 Q And the -- were you there when the shooting occurred?

2 A No, sir, I was not.

3 Q Okay. In regards to that, have you seen this
4 defendant around the apartment complex with his gun?

5 A Yes, sir, I sure have.

6 Q Tell us about the most recent time that you had seen
7 him just before the shooting occurred?

8 A The most recent time was one night I guess he came
9 home from the club or something like that and he had his
10 gun in the trunk of the car. He ran out there, he was
11 like I forgot my baby. I can't believe I forgot my baby.
12 I was thinking he might have left a kid out in the car,
13 but he pulls his gun out pressing the gun and everything
14 like that. And I had call the cops when I seen that and
15 no cops had responded to the call.

16 Q And how long was that before this happened?

17 A Either a week or two weeks prior to the incident --
18 before the incident.

19 Q Where were you located when you saw all of this?

20 A I was in my stairway going up to my apartment smoking
21 a cigarette.

22 Q And had you seen him with that gun in any other
23 occasion?

24 A Yes, sir, I seen it about maybe four times prior to
25 the incident I was talking about.

1 Q Okay. And he call his gun his baby?

2 A Yes, sir.

3 MR. CONNER: Answer any questions Mr. Land might have
4 for you.

5 MR. LAND: I don't have any questions. He can be
6 excused if the State would like to excuse him.

7 THE COURT: Mr. Roberson, you can step down. Thank
8 you.

9 MR. CONNER: I ask that he be excused if he likes to.

10 THE COURT: Thank you, sir.

11 You can leave whichever you like.

12 (WHEREUPON, the witness leaves the witness stand.)

13 MR. CONNER: Your Honor, at this time, I am gone call
14 Ann Brewer. I beg your pardon Susan Croner.

15 THE CLERK: Do you solemnly swear or affirm the
16 testimony you give the Court to be truth, the whole truth,
17 and nothing but the truth to help you God?

18 THE WITNESS: I do.

19 WHEREUPON,

20 Susan Croner,

21 after first having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. CONNER:

24 Q State your full name and spell your last name for the
25 record?

1 A My name is Susan Croner C-R-O-N-E-R.

2 Q Ms. Croner, where do you work?

3 A I'm employed by the South Carolina Law Enforcement
4 Division commonly referred to as SLED.

5 Q Where is your office?

6 A I'm in the firearm's department in forensics lab.

7 Q And tell us what you do in the firearms department?

8 A As a firearms examiner, we look at ammunition
9 components, bullets, cartridge casings, shotgun shells to
10 determine whether they were fired by or loaded into and
11 injected out of specific firearm.

12 Q And tell us something about yourself what kind of
13 education do you have?

14 A I received a bachelor's degree from Clemson
15 University. I've done some graduate work at the
16 University of South Carolina. I completed SLED's in-house
17 training program. It's a three to five year
18 apprenticeship where you study -- where I study under five
19 court qualified firearm examiners. We do a series of
20 written tests of oral examinations, sufficient exams and
21 competency examines. I'm also a member of the association
22 of firearm and tool mark examiners where I attended the
23 annual conference. This is an international organization
24 where we get together and discuss advances in our field.
25 I'm also a member of the South Carolina Chapter of the

1 International Association. I've attended numerous
2 seminars through them such as reconstruction of shooting
3 machines and pathology of gunshot wounds.

4 Q And I assume that you completed your training there
5 at SLED sometime in the past?

6 A Yes, sir, I have.

7 Q And when did you initially complete that training?

8 A I completed that training in 2003, 2004 I believe.

9 Q The -- have you ever testified in South Carolina
10 courts in regards to firearm matters?

11 A Yes, sir, I testified 21 times.

12 Q And have you been recognized as an expert by this
13 court.

14 A Yes, sir, I have.

15 MR. CONNER: Your Honor, we would submit she's
16 qualified as an expert in firearms examiner and firearms
17 expert.

18 MR. LAND: No objection to her qualifications, Your
19 Honor.

20 THE COURT: All right, ladies and gentlemen, this
21 witness will be allowed to give opinions in the areas of
22 firearms examination and firearms -- what else was it,
23 Mr. Conner?

24 MR. CONNER: As a firearms expert.

25 THE COURT: Firearms. She will be allowed to give an

1 opinion as to -- in her capacity as a firearms expert. As
2 I told you Monday, you can give the testimony of this
3 witness the weight you think it's entitled to.

4 All right, Mr. Conner.

5 BY MR. CONNER:

6 Q Now, show you this item that State's Exhibit Number
7 22 and ask if you can exam that please?

8 A Yes, sir, this item bears my lab number, my item
9 number and my initials.

10 Q Now, tell us about that riffle, how it fires and what
11 type of weapon it is?

12 A First, this is a Norinco, which is a Chinese made SKS
13 7.62x39 millimeter. It's semiautomatic riffle basically.

14 Q Tell us about a semiautomatic riffle? What's the
15 difference between a semiautomatic and a automatic?

16 A Semiautomatic means you pull the trigger one time, it
17 fires one time. An automatic where you pull trigger and
18 it will continue to fire until you release the trigger.

19 Q So for an automatic, you would only pull the trigger
20 one time to unload it?

21 A Or until you release the trigger.

22 Q On a semiautomatic of this type, if you fire it 14 or
23 15 times, you would have to pull the trigger 14 or 15
24 times?

25 A That is correct.

1 Q And what happens to the case once you pull the
2 trigger?

3 A Well, once you pull the trigger, the firing pin hits
4 the primmer starts the initial ignition process start
5 burning. The primmer is basically a little explosive and
6 sparks will go through the flash hole in the cartridge
7 case which ignites the gun powder. The gun powder burns
8 creating a massive amount of pressure, that pressure
9 will push the bullet down the barrel of the gun. But at
10 the same time, it's pushing backwards on the cartridge
11 case and this bolt here. So while it's pushing backwards,
12 it's got what's called an extractor, which is like a
13 little claw and it's hooked on the edge of that cartridge
14 case and it pulls the cartridge case back. Then it has an
15 ejector which hits the cartridge case and allows it to
16 come out the firearm. When the bolt hits most rearward
17 position, it's under spring tension, so it'll fly forward
18 then pushing another cartridge from the magazine back into
19 the chamber.

20 Q And did you fire this gun when you had it?

21 A Yes, sir, I did.

22 Q And tell us well -- well, let me ask you about this,
23 did you also see this item which are marked State's
24 Exhibit Number 23?

25 A First off, this is still in a seal container with my

1 item number or my initials sorry and the date and all of
2 these little containers inside are sealed with my -- also
3 my initials and the date. And then also have my item
4 numbers and my lab numbers on there.

5 Q So you did receive that?

6 A Yes, sir.

7 Q And does that -- what items in general does that
8 envelope contain?

9 A It contains approximately 13 bullets or pieces of
10 bullets, bullet fragments, jacket fragments, cord
11 fragments from autopsy.

12 Q And do you -- what kind of testing or evaluation do
13 you do of those items to determine whether it's fired by
14 the riffle that you have?

15 A When I receive items like this, first thing I do is I
16 visually inspect them see what I have. Since, these came
17 from autopsy, I clean them. I soak them on Clorox
18 solution. Then what I do is I weigh them, I measure them
19 and then I will look at them under comparison microscope.
20 A comparison microscope looks very similar to binoculars
21 at first. You look through the eye pieces and you're
22 allowed to look at two images compared to each other.
23 What I do is I compare these to my test fires that I
24 knowingly fire from this firearm and then I make my
25 conclusions from that.

1 Q So tell me about the test firing, how do you do that?

2 A When I establish what type of ammunition I have,
3 these were cooper-colored steel bullets. I try to find a
4 very similar ammunition and I will load that into my
5 suspect weapon and I will shoot them into what is called
6 our bullet recovery tank. Our department is on the second
7 floor of the lab and our tank is in essence it's two
8 stories. The bottom of the bullet tank goes all the way
9 downstairs and it's filled with water. And we shoot in
10 the water for two reasons basically cause it will slow
11 down the bullet. And secondly, cause when it does slow
12 down the bullet, it will not add to or take from any of
13 the markings that are put -- pull on the bullets by the
14 firearm. So when I receive those test fires, first thing
15 I do is I look at the test fires against each other on my
16 comparison microscope and see if there are any individual
17 markings that stand out, that I can use as a starting
18 point. The riffling in a bullet or in a gun barrel is put
19 there by the manufacturer to put rotary motion on the
20 bullet. If any of y'all are football fans, it's very
21 similar to a quarterback throwing a football. He puts it
22 in a tight spiral, so it will go more accurately to its
23 target, that's what the riffling in a gun barrel is design
24 to do put it into a spiral. That's what's inside of this
25 gun barrel. So what I do is in essence looking at those

1 riffling marks. Riffling is made up of lands and groves,
2 series of raised areas and depress areas. You can have
3 many numbers of lands and groves. We look at those
4 markings to determine if there's any individual or unique
5 characteristics. Once we find those, that's what we use
6 to compare our test fires with. Once we can determine
7 that are test fires were fired by the same firearm, then
8 we look at our test fires versus our evidence.

9 Q So when you line it up then on the microscope, you
10 have the test bullet that you fired with the gun and one
11 on one eye. And on the other eye, you have these items
12 that's been submitted from the autopsy?

13 A That's correct.

14 Q And you look for microscopic scratches so to speak?

15 A Yes, sir, that is what they do look like under the
16 microscope. They do look like scratches. We call them
17 scratations (sic).

18 Q Now, specifically is the items -- let's see in this
19 item number 23 there's a number of different items and I
20 would call your attention -- your numbers are different
21 from ours, but is the item number ten -- number nine,
22 number ten and number 17 that are contained in this
23 envelope 23?

24 A Is that my numbers item nine, ten, and 17.

25 Q Your items are nine, ten, and 17?

1 A Yes, sir. I did determine that items nine, ten, and
2 the larger portion of 17 as y'all can see some of these
3 are in multiple pieces item nine, item ten, and the larger
4 portion of item 17 were all fired by this firearm.

5 Q And you concluded that based on this microscopic
6 examination?

7 A Yes, sir, I did.

8 Q Now, item nine of that came from the autopsy. What
9 part of the body was that identifies being from?

10 A The left shoulder.

11 Q And item ten?

12 A The right abdomen.

13 Q And item 17?

14 A Mid back.

15 Q Now, the other part of particles or fragments or
16 bullets that were submitted to you, were you not able to
17 determine whether they were fired by number -- the riffle?

18 A Some of them unsuitable for identification meaning
19 either they were too damaged or it was a core fragment.
20 The core of the bullet is what's covered by the outer
21 jacket, so it never comes in contact with the riffling.
22 So those would be unsuitable for identification. There
23 was also some that were inconclusive. Inconclusive means
24 we cannot rule this firearm out, but we cannot confirm
25 that it came from this firearm.

1 Q As to -- I show you here what is labeled for this
2 court as item 24 through 34 and ask you if you can
3 identify those? These have been introduced through
4 Mr. Duggin as bullet fragments and bullets that he found
5 at the scene of the shooting.

6 A Yes, sir, all ---

7 Q Your 34 through 42 I believe?

8 A These are my items numbers 33 through appears to be
9 43 and again now contain my lab number, my item number and
10 my initial.

11 Q Now, did you find in any of those items were fired by
12 number 32 based upon the same type of analysis you did on
13 ones that came from the body?

14 A Let me check my -- item 34 which was found on step
15 five beneath head was fired by item 32. Item -- these are
16 my item numbers. My item number 35 which was from step
17 eight was fired by item 32. My item 36 which was found on
18 step nine was fired by item 32. My item 40 which was
19 found by the front door was fired by item 32 which was the
20 firearm. And item 42 was fired by item 32 which is the
21 Norinco.

22 Q Okay. And as to the others, I assume they are
23 inconclusive too?

24 A Inconclusive or unsuitable.

25 Q Now, did you also exam these items number 35 --

1 State's Exhibit Number 35 through 47 a series of cases
2 that were submitted by Officer Duggin?

3 A Yes, sir, I did. Again, these are all my item
4 number, my lab number and my initials.

5 Q And did you find that some of those cartridge casings
6 had been loaded into that riffle State's Exhibit Number
7 22?

8 A Yes, sir, I did. I found that they were out of these
9 15 cartridge cases I could link five of them to have been
10 loaded into and extracted from this Norinco SKS.

11 Q Now, those items, those cases they don't travel down
12 the barrel of this gun, so they not exposed to that
13 riffling inside of the gun. How do you make your
14 conclusion on these items?

15 A Cartridge cases are actually held into the chamber.
16 If I may?

17 Q Yes.

18 A Here's the chamber. They come in contact with this
19 bolt face or we call it the breach face of the firearm. I
20 explain before that that massive amount of pressure
21 that's blowing the bullet down the barrel also blowing
22 that cartridge casing backwards. So any imperfections
23 that are left on that bolt, can be imprinted into that
24 cartridge case. Also, we talked about the clothes, the
25 extractor that holds it and pulls it backwards that can

1 also leave markings. The ejector itself can leave
2 markings and also just from being what we call cycle
3 through, this a lot of metal in here. And it sometimes it
4 can scratch it up and leave markings that are unique to
5 this firearm. So when I did my test firing because some
6 of these had some unique cycling marks on it, I actually
7 just cycled some unfired rounds through this firearm. And
8 then I compared them to these cartridge cases. And then I
9 can deem it those five were loaded into an extractor from
10 this firearm.

11 Q And which were the five that you definitely
12 concluded were fired that had been loaded into that?

13 A These would be my item numbers. Item 46 which was
14 from step 11. Item 47 which was from step ten. Item 49
15 which was from under the clothes. Item 54 which was from
16 step 12 and item 57 which was from step four had all been
17 loaded into and extracted by this Norinco SKS.

18 Q And now, the other casings the fact that you did not
19 conclude anything about them what does that indicate?

20 A They were inconclusive meaning there just weren't
21 enough markings for me to say they were fired by or not
22 fired by this firearm. Sometimes, these firearms on the
23 cartridge case head don't leave a lot because of how
24 they're manufactured. So I just didn't have anything to
25 say that these were definitely fired by this firearm.

1 Q Now, the size of the casing and the -- in other
2 words, the type of ammunition and could it be fired by
3 that weapon?

4 A Yes, sir, these were all 7.62x39 millimeter which is
5 the proper caliber for this firearm.

6 MR. CONNER: I have nothing further of her.

7 CROSS-EXAMINATION

8 BY MR. LAND:

9 Q Ms. Croner, State's Exhibit 22 the gun that you have
10 with you?

11 A Yes, sir.

12 Q Is that a gun that is legal to own in the United
13 States and South Carolina?

14 A I believe so, but I'm not positive.

15 Q And did you discover anything about that gun that may
16 have been altered in anyway to make it unlawful?

17 A No, sir, I have not.

18 MR. LAND: No further questions, Your Honor.

19 MR. CONNER: You can come down.

20 (WHEREUPON, the witness leaves the witness stand.)

21 THE COURT: Any objection to her being excused?

22 MR. LAND: None, Your Honor.

23 THE COURT: Ms. Croner, you can leave or stay
24 whichever you like.

25 MR. CONNER: I call Michael Moskal, Your Honor.

1 THE CLERK: You solemnly swear or affirm the
2 testimony to the Court to be the truth, the whole truth,
3 and nothing but the truth so help you God?

4 THE WITNESS: I do.

5 THE CLERK: State your full name, spell your last
6 name for the record?

7 THE WITNESS: Michael Moskal M-O-S-K-A-L.

8 WHEREUPON,

9 Micheal Moskal,
10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. CONNOR:

13 Q Michael, where do you work?

14 A I'm employed by the South Carolina Law Enforcement
15 Division commonly known as SLED.

16 Q What do you do at SLED?

17 A I work in the trace evidence department.

18 Q And what do you do in -- what is trace evidence?

19 A Trace evidence analysis evidence that's typically too
20 small to see. We do gunshot residue analysis. We do
21 bullet hole or distance determination of the garment
22 that's been shot into. We analyze paint, fibers, glass
23 and accelerants as well.

24 Q And tell us something about yourself, what kind of
25 education do you have?

1 A I have a chemistry degree from the College of
2 Charleston and then I was trained in SLED for analysis of
3 gunshot residue distance determination and accelerants as
4 of right now.

5 Q And how long was your training program at SLED?

6 A Each one of those disciplines that I discussed has
7 about a six-month training period and so I trained for
8 gunshot residue and bullet hole determination for six
9 months in-house.

10 Q And are you supervised in doing that by some senior
11 agent?

12 A Yes, sir. I was working under five court qualified
13 gunshot residue and distance determination analyst. And
14 at the end of the period, we went through a mock court and
15 a mock trial and all of that was passed successfully.

16 Q And how long have you been doing this kind of work?

17 A I been at SLED for two years.

18 Q And did you back in March of 2007, did you receive
19 two gun shot residue kits in regards to this case?

20 A Yes, sir, I did.

21 Q Now, I show you these two items State's Exhibit
22 Number 20 and 21?

23 A Yes, sir, State's Exhibit 20 and 21 are two gunshot
24 residue kits that I received and analyzed. They bear my
25 initials and the date that I sealed them, but close the

1 evidence out.

2 Q And have you had an opportunity to testify in South
3 Carolina courts in regard to gunshot residue previously?

4 A Yes, sir, I have.

5 Q And have you been qualified as an expert?

6 A Yes, sir, I have.

7 MR. CONNER: Your Honor, we would submit he's
8 qualified as a trace evidence expert.

9 MR. LAND: No objection, Your Honor.

10 THE COURT: All right. He's so qualified and be
11 allowed to give an opinion. Ladies and gentlemen, again,
12 you can accept the opinion, reject it or give it otherwise
13 what weight you think it's entitled to.

14 BY MR. CONNER:

15 Q Now, tell us about the gunshot residue examination
16 of -- what's the purpose of that and how -- what does the
17 agent that's doing the test what's the purpose of the test
18 kit?

19 A The purpose of a test kit is to test for the
20 microscopic particles that would be on somebody's hands
21 whether they fired a weapon, handled a weapon or were in
22 the vicinity of the weapon when it was fired. There two
23 parts to it. One part is a cotton swab and other part is
24 a -- basically a double-sided sticky tape that you use to
25 dab your hands. The double-sided sticky tape is the part

1 that's used first. And what it's going to do is pick up
2 any materials that are on your hands, so that we can look
3 at the chemical structure of them as well as the morphology
4 (sic) or the shape of those materials. The second part
5 the cotton swabs will be soaked in a dilute acid and then
6 rubbed over your hands and that way it gets down into any
7 crevices that the actual double-sided sticky tape didn't
8 pick up. And we can use that to look at the amounts of
9 materials on somebody's hands.

10 Q And now, what kind of test do you do in the
11 laboratory when you receive these tapes and swabs?

12 A Okay. The swab portion is what we analyze first.
13 Again that's that part counts the actual amount of
14 materials on somebody's hands. And we basically put it into
15 a glorified bean counter. And what we're looking for are
16 three metals. Particularly, we're looking for lead,
17 barium and antimony. And we run this through -- it's
18 actually called a mass spectrometer. And it takes on
19 materials, puts them into a plasma so that it breaks down
20 like if you were looking at water, it would break it down
21 into hydrogen and oxygen. So we actually see exactly
22 which elements are in the materials on somebody's hands
23 and it tells us what the quantities are and so that's what
24 we do with the cotton swabs. With the second part of it,
25 it's a souped up microscope where we can see particles

1 that we can't see with our naked eyes and we're able to
2 see the shapes of these particles as well as which
3 elements make them up.

4 Q Okay. And now, when you see -- why are you looking
5 for is it barium, antimony and what?

6 A And lead.

7 Q And lead. Why are you looking for those three?

8 A Those three elements are three of the elements that
9 are in primmers for a cartridge case and the neat thing or
10 the unique thing about it is that is the only known place
11 that those three elements are found together either in
12 nature or man made and come out as a spherical shape.

13 Q And now, these items specifically let's start with
14 this item on Mr. Harriott State's Exhibit Number 21.
15 Could you tell us about the results of your examination on
16 that?

17 A Okay. When the kits come in, they actually are
18 collected on four parts of the hands. A sample is
19 collected from the right palm, the right back, the left
20 palm and the left back for both of those types of evidence
21 I was talking about the swabs as well as the particle
22 list. So we get four areas that we look at. And on the
23 GSR kit from Derrick Harriott, what I found was on the
24 right palm. It was found -- the report reads gunshot
25 residue was found. On the right back, left palm and left

1 back, the quantities of metals did not indicate the
2 presence of gunshot residue.

3 Q So on his right palm was gunshot residue?

4 A Yes, sir, it was. So I actually used the microscope
5 visualize the gram particle that contain those three
6 elements lead, barium, antimony.

7 Q Now, as to the other test kit the one done on the
8 victim, Quanna Cooper, Quanna Cooper that's -- what number
9 is that State's Exhibit Number ---

10 A Number 20.

11 Q What the results of what you saw in that particular
12 test?

13 A On the GSR kit from Quanna Renee Cooper again Quanna
14 Cooper looking at those four areas the right palm, the
15 right back, the left palm and the left back, I found round
16 lead particles and those are a component of gunshot
17 residue.

18 Q And you found that on both of her hands?

19 A Yes, sir, on the palms and backs of both hands.

20 Q And the fact that there was these components on her
21 hands is that -- indicate that her hands were close to the
22 barrel of the gun?

23 A Finding these components on there is either going to
24 indicate that she was -- either fired a weapon, handled a
25 weapon or in the vicinity of it when it was fired, that's

1 what I can say about what I found on her hands.

2 Q So she was in -- you would conclude she was in the
3 vicinity of the gun?

4 A Or handled or fired, yes, sir.

5 Q Okay. And the same thing for Mr. Harriott?

6 A And the same thing for Mr. Harriott.

7 MR. CONNER: Answer any questions that Mr. Land might
8 have for you.

9 MR. LAND: No questions, Your Honor, he can be
10 excused.

11 THE COURT: All right, thank you, sir, you may step
12 down.

13 (WHEREUPON, the witness leaves the witness stand.)

14 MR. CONNER: I call Trace McKinnon.

15 THE CLERK: Place your left hand on the Bible and
16 raise your right hand. You solemnly swear or affirm the
17 testimony you give to the Court to be the truth, the whole
18 truth, and nothing but the truth so help you God?

19 THE WITNESS: I do.

20 THE CLERK: State your full name, spell your last
21 name for the record.

22 THE WITNESS: Tracy McKinnon. Last name
23 M-C-K-I-N-N-O-N.

24 WHEREUPON,

25 Tracy McKinnon,

1 after first having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. CONNER:

4 Q Tracy, where do you work?

5 A I work for the South Carolina Law Enforcement
6 Division more commonly known as SLED.

7 Q And how long have you been employed at SLED?

8 A Roughly two and a half years.

9 Q What do you do there?

10 A I'm a forensic toxicologist in the toxicology lab.

11 Q What does a toxicologist do?

12 A A toxicologist test biological fluids such as blood,
13 urine or other tissues that may come from the body or the
14 presence or absence of drugs, alcohol, poisons. And then
15 we also interpret whatever our findings are in courts of
16 law for pathologist and coroners in the state.

17 Q And tell us something about your education?

18 A I've got a bachelor of science in chemistry degree
19 from the University North Carolina Charlotte and a master
20 of science in forensic science with a concentration in
21 forensic toxicology from Arcadia University in Glens High,
22 Pennsylvania.

23 Q And tell us something about your training while you
24 been at SLED?

25 A My training involved basically the analysis of

1 volatile compounds such as ethanol, that was the first
2 part of my training. I was passed off on that. And then
3 the second part of the training which is a little bit more
4 comprehensive involves the detection and analysis an
5 interpretation of drugs, drugs of abuse and then poisons.

6 Q And in doing this kind of work, do you use analytical
7 instruments that would be used in making chemical
8 analysis?

9 A Yes, sir, we use some very sensitive analytical
10 instruments basically to detect very small amounts of
11 drugs that would be present in bodies.

12 Q And have you testified in South Carolina courts in
13 regards to toxicology results?

14 A No, sir, this is my first time testifying.

15 Q This is your first time?

16 A Yes, sir.

17 MR. CONNER: Your Honor, we would submit that he's
18 qualified as an expert in toxicology.

19 THE COURT: Mr. Land?

20 MR. LAND: No questions and we have no objection to
21 his testimony.

22 THE COURT: All right, ladies and gentlemen, this
23 witness is qualified as an expert in the field of forensic
24 toxicology. In the earlier instructions I given you,
25 apply to this witness as well.

1 BY MR. CONNER:

2 Q Did you receive a sample of blood from the defendant,
3 Derrick Harriott?

4 A Yes, sir, I did the sample was labeled Harriott
5 Derrick and it was drawn at 8:30 p.m. on March 16, 2007.

6 Q And what substances did you analyze the blood for?

7 A Anytime that we get a -- basically, a violent crime
8 case in the death investigations of it, we do a basic
9 blood alcohol analysis and then a seven panel drugs of
10 abuse screen on that and that's -- those are the test that
11 I perform on this sample.

12 Q So alcohol was one of them or ethanol; is that
13 correct?

14 A Yes, sir.

15 Q And what are the other chemicals that you tested for?

16 A In the volatile analysis, we test for four specific
17 volatiles ethanol, methanol, acetone and isopropanol. And
18 for the drugs of abuse, it's what we call seven panel drug
19 screen. We test for amphetamine, benzodiazepines, which
20 is a class of drugs generally used for depression.
21 Methamphetamine, oxycodone, cannabinoids, which is the
22 primary components of marijuana and then also cocaine and
23 its metabolites. And then opiates is a class.

24 Q And did you find any of those drugs in his system?

25 A No, sir, he was negative for my volatiles analysis

1 and also the drug screen.

2 Q By negative, you mean you didn't find any?

3 A Correct. He was or well below our threshold level
4 for detection.

5 Q Now, any of these tests that you completed here were
6 any of them shown whether he had use a drug called
7 ecstasy?

8 A Yes, sir. The methamphetamine screen that we do
9 ecstasy is a drug called -- it's chemical term is
10 methylenedioxymethamphetamine mean or MDMA, so that would
11 cross act very well with our methamphetamine screen.

12 Q But he was negative for that also?

13 A Yes, sir, he was.

14 Q Now, in regards to that does -- if somebody took the
15 drug ecstasy, would it put them to sleep or make them more
16 a wake?

17 A No, sir, ecstasy is in a class of central nervous
18 system stimulate, so it would basically do like caffeine
19 do. It would -- except on a more profound basis. It
20 would raise your heart rate and get you really excited
21 making it very difficult to go to sleep.

22 Q Now, did you also receive a blood sample from Quanna
23 Cooper? I don't know whether they submitted blood or
24 urine. What was submitted?

25 A No, sir, I did not receive any blood. I received

1 urine, ocular fluid, which is the clear fluid that's found
2 inside your eye. Gastric contents and brain and liver.

3 Q And did you analyze for these various different
4 substances that you discussed on that?

5 A Yes, sir, just in the urine and ocular and these
6 results were negative as well.

7 Q So she had not used any alcohol, methanol, acetone,
8 or isopropanol?

9 A At the time of death -- because her urine was
10 negative, she had not used any ethanol at least at
11 sometime prior to the incident.

12 Q Okay. And how about the other substances
13 amphetamines, benzodiazepine, methamphetamine, oxycodone,
14 cannabinoids?

15 A Because the urine is more an indicator of the history
16 of drug use basically screening her urine is going to give
17 -- tell us what she had been doing in the past and that
18 those screens were also negative.

19 Q And cocaine and opiates?

20 A Correct. Those were negative as well.

21 MR. CONNER: Answer any question defense lawyer might
22 have for you.

23 MR. LAND: No questions.

24 THE COURT: All right. Thank you, sir. You may step
25 down.

1 MR. CONNER: Your Honor, we request these three SLED
2 agents be released at this time, they rode together.

3 THE COURT: All right. You all can leave or stay
4 whichever you like.

5 (WHEREUPON, the witness leaves the witness stand.)

6 THE COURT: Everybody okay? Anybody need to take a
7 break? Raise your hand don't be shy. Okay.

8 MR. CONNER: Proceed?

9 THE COURT: Yes, sir.

10 MR. CONNER: Dr. Ross.

11 THE CLERK: Place your left hand on the Bible and
12 raise your right hand please. Do you swear or affirm the
13 testimony you give to the court be the truth, the whole
14 truth, and nothing but the truth so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Please state your full name and spell
17 your last name for the record?

18 THE WITNESS: Janice Edwards Ross, R-O-S-S.

19 WHEREUPON,

20 Janice E. Ross,
21 after first having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. CONNOR:

24 Q Dr. Ross, what kind of work do you do?

25 A I'm a forensic pathologist, we do autopsies for the

1 various corners.

2 Q And do you also do some hospital work?

3 A Yes.

4 Q And what is -- tell us what a pathologist does,
5 what's the purpose of a pathologist?

6 A I received four-year degree from the University of
7 South Carolina and four years of medical school to
8 receive my MD. And then do four to five more years of
9 training in pathology. Pathologist -- pathology means the
10 study of disease. We learn how to look at tissue from you
11 that comes out of surgery under microscope and identify
12 whether you have cancer or an infection or whatnot. And
13 we use laboratory procedures blood work to analyze
14 different organs of the body. We also are trained how to
15 do an autopsy. The forensic pathologist is further
16 trained with more specified autopsy procedure to identify
17 patterns of injury and causes of death using our medical
18 knowledge in for legal matters such as for homicides and
19 suicides, rapes anything legal.

20 Q And how long have you been doing this kind of work?

21 A For 31 years.

22 Q And have you ever testified in South Carolina courts
23 before regarding forensic pathology matters?

24 A Yes, over 50 times.

25 MR. CONNER: Your Honor, we submit that she's a

1 qualified expert as a forensic pathologist.

2 MR. LAND: No questions and no objections.

3 THE COURT: All right. She's qualified as an expert
4 in that field and she can offer her opinions. Of course,
5 ladies and gentlemen, my earlier instruction applies to
6 your weighing this testimony as well.

7 Okay, Mr. Conner.

8 BY MR. CONNER:

9 Q May it please the Court, did -- Dr. Ross, did you
10 receive the body of Quanna Cooper on March 17, 2007, the
11 day after she had died on March the 16th?

12 A Yes, sir.

13 Q And where did you -- where is your office?

14 A We do the autopsies in the morgue of Newberry County
15 Memorial Hospital.

16 Q So you -- that's where you saw her?

17 A Yes.

18 Q And tell us about her condition when you saw her?

19 A We -- she was clothed in a body bag.

20 Q What kind of -- did you make any assessment of what
21 her size might be?

22 A Yes, we don't have a scale, but we were -- we
23 measured her height as 65 and a half inches estimated at
24 least 150 pounds.

25 Q So that would be about five foot five inches?

1 A Yes.

2 Q Now, tell us about the gunshot wounds?

3 A There were multiple gunshot wounds. One to the chest
4 area which went from front to back and lacerated the heart
5 and the aorta and caused a lot of bleeding out. There
6 were four wounds to the abdomen which lacerated multiple
7 organs including liver, stomach, intestines and part of it
8 also went up into laceration -- lacerating the left lung.
9 There was a wound through right wrist. There were four
10 gunshot wounds of the left leg and four gunshot wounds to
11 the right leg. A total of 14.

12 Q Now, when you do these autopsies, do you examine
13 other organs of the body to see if there any significance
14 to these that might have caused death?

15 A Yes.

16 Q And did you find anything other than these gunshot
17 wounds that would have caused her death?

18 A No, sir.

19 Q And what in your opinion caused her death?

20 A Bleeding out. It's called exsanguination, bleeding
21 out due to laceration of multiple organs due to gunshot
22 wounds.

23 Q And I believe you indicated in your report that some
24 of these would definitely been fatal and some of the
25 others potentially fatal; is that correct?

1 A Correct.

2 Q Which ones are you definite about?

3 A Definitely, the fatal one is the one in the chest
4 that went through the heart and the aorta. Potentially
5 fatal was the ones in the abdomen that caused a lot of
6 injury to the liver and stomach and abdominal organs. The
7 gunshot ones to the legs were potentially fatal also
8 because they lacerated a lot of large arteries.

9 Q Now, one thing in the description you use the word
10 distant gunshot wounds. Could you tell us why you use
11 that word?

12 A Yes, in looking at the entrance wounds and as much we
13 could from the holes in the clothing, you look for powder
14 residue and you look for soot. When a bullet comes out of
15 the end of the gun along with it comes some soot and some
16 powder, but that soot and powder only goes certain
17 distance. So if you don't have any on the -- around the
18 entrance wound, then you know that the gun was far enough
19 away that the powder didn't reach the body. How far it
20 depends on the gun, the caliber and lots of different
21 things. But we call a distant wound those that lack the
22 evidence of soot. So it can be several feet four or five
23 feet up to 50 feet or depending on the weapon.

24 Q So it wasn't up close to her?

25 A Correct.

1 Q Now, I show you here this diagram and ask if you can
2 identify it?

3 A Yes, this is a diagram made from the autopsy
4 findings.

5 Q And the -- there's markings on it. What do those
6 markings indicate?

7 A Well, the depiction of the front of the body they're
8 solid little circles that show entrance gunshot wounds.
9 There's a total of 15 holes, but there was one re-entry of
10 a wound. On the back of the diagram -- the diagram of the
11 back of the body, there are just circles and areas
12 depicting exit wounds.

13 Q And how do you tell the difference between an
14 entrance wound and an exit wound?

15 A Again, it will depend on the weapon and what it might
16 have gone through. Usually, the entrance wound is usually
17 round to oval and has an abrasion on the edge of it
18 because as the bullet goes through the skin, pushes the
19 skin in, it rubs the edge of the skin around the hole and
20 it's called an abrasion. The exit wounds don't have that
21 abrasion.

22 Q Is the exit wound usually a bigger hole?

23 A It can be. It will vary. This is high power riffle
24 wounds, so there's a lot of damage. There so much energy
25 in these bullets going through the body that the path of

1 the bullet really cruises a large canal if you would of
2 injury.

3 Q And the diagram itself all the entrance wounds are
4 on the front of the body?

5 A Yes.

6 Q And the other markings on the back are what you would
7 determine to be exit wounds?

8 A Yes.

9 MR. CONNER: Your Honor, we would offer this diagram
10 into evidence at this time.

11 THE COURT: What number?

12 MR. CONNER: State's Exhibit Number 49.

13 THE COURT: Mr. Land?

14 MR. LAND: No objection, Your Honor.

15 THE COURT: All right, number 49 is in.

16 (WHEREUPON, State's Exhibit No. 49 was admitted into
17 evidence.)

18 MR. CONNER: And we would ask permission just to pass
19 it around?

20 THE COURT: All right.

21 A Might I add that the exit wounds don't correlate with
22 specific entrance wounds because of the fragmentation of
23 this type of weaponry. It's very difficult to trace a
24 specific bullet to a specific exit.

25 MR. CONNER: Answer any questions the defense lawyer

1 may have.

2 MR. LAND: If I can see that exhibit, I only have one
3 question.

4 MR. CONNER: You can use this copy if you like.

5 CROSS-EXAMINATION

6 BY MR. LAND:

7 Q Dr. Ross, looking at this copy of State's Exhibit I
8 believe it was 49?

9 A Yes.

10 Q On the portion showing the frontal view, there four
11 rather large open circles. What are those indicating?

12 A Those were depicted were EKG leads.

13 Q They're not indicating bullet wounds entrance or
14 exit?

15 A No, sir.

16 Q And you testified all entrance wounds were on the
17 front of the body?

18 A Yes.

19 MR. LAND: No further questions.

20 THE COURT: Redirect?

21 MR. CONNER: I have nothing further of her, Your
22 Honor. I ask that she be excused.

23 THE COURT: Okay. You may step down, ma'am.

24 Mr. Land, do you have any objection?

25 MR. LAND: No objection.

1 THE COURT: You can leave or stay, Dr. Ross. Thank
2 you.

3 (WHEREUPON, the witness leaves the witness stand.)

4 MR. CONNER: Your Honor, could we take a brief break.

5 THE COURT: Ladies and gentlemen, we'll take our
6 morning break at this time. We'll have you back out
7 momentarily. If there's something that you would like to
8 have that's not in the jury room, just let the foreperson
9 know. And we'll resume very shortly. Do not discuss the
10 case.

11 (WHEREUPON, the jury retire to the jury room.)

12 THE COURT: Anything before we break, Mr. Conner?

13 MR. CONNER: No, I don't have anything. Your Honor,
14 I anticipate that I'm going to rest at this point.

15 THE COURT: All right. Mr. Land, what is your plan
16 as far as -- we'll have to take care of your motions if
17 any. I have to talk to your client about whether or not
18 he's going to testify. I'll do that before you start your
19 case and then I'll probably do it again. I don't know if
20 he's going to or not, but I typically do it at some point
21 before he would immediately testify or after you call what
22 you will say is your last witness if he's not going to
23 testify, that's probably clear as mud. Make sure during
24 the break, you talk to your client and tell him the
25 general questions. I'm going to ask him about his Fifth

1 Amendment rights whether or not he's going to testify
2 things of that nature. All right. I'll come back in a
3 few minutes.

4 Mr. Conner does tell me that he wants to rest, then
5 I'll go ahead and hear your motions at that time, so he
6 can either move forward or break for lunch. So y'all
7 discuss the scheduling for the rest of the day between the
8 two of you and we'll figure out what time we'll break for
9 lunch. Okay.

10 (WHEREUPON, a break was taken.)

11 THE COURT: All right. Mr. Conner, are you going to
12 have any additional witnesses?

13 MR. CONNER: Not at this time.

14 THE COURT: Mr. Land, will the defendant be
15 presenting a defense in this case?

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

17 THE COURT: All right. Are you going to have any
18 motions?

19 MR. LAND: Yes.

20 THE COURT: As far as scheduling is concerned, have
21 y'all talked about whether or not we break for lunch now
22 or go ahead and get started now and then break for lunch.

23 MR. LAND: Well, I can tell you, Your Honor, I have
24 his Aunt Joyce Witherspoon here that's available to
25 testify if you would like to do that. I don't after my

1 motions how much time will have passed. I also have
2 another gentleman on his way. He works in Sumter, he
3 should be here momentarily. If he gets here, I'll
4 probably like to do him first, so that we don't hold him
5 over the lunch hour.

6 THE COURT: All right. I'll be glad to hear your
7 motions then.

8 MR. LAND: Your Honor, we would move for a directed
9 verdict on the charge of murder. Of course, the State has
10 to prove essentially three elements: The unlawful killing
11 of a person with malice aforethought. We don't dispute
12 that Miss Cooper died. There's been offered no legal
13 justification for her death, so we don't dispute those two
14 issues. Of course, the third leg of that stool is malice.
15 Judge, just because someone dies does not in and of itself
16 prove malice. The State has to show in someway, how the
17 defendant, Mr. Derrick, had malice demonstrated he
18 expressed or implied malice. I don't think they done
19 that. They done a fine job of showing that she passed
20 away and that that was done through a firearm own by him,
21 but on the issue of malice, they offered absolutely no
22 evidence that malice existed aforethought before it
23 occurred. So we would ask for a directed verdict on the
24 charge of murder.

25 THE COURT: All right. How about the fact that

1 malice can be inferred from conduct showing total
2 disregard for human life and it can also be inferred when
3 the act is done with a deadly weapon?

4 MR. LAND: That's what the State has to prove. He
5 found they proven that, I don't think they have.

6 THE COURT: I think you said you don't dispute that
7 he pulled the trigger; correct?

8 MR. LAND: They have to show malice.

9 THE COURT: How about deadly weapon?

10 MR. LAND: It's a deadly weapon, there's no question
11 about it.

12 THE COURT: I will respectfully deny your motions at
13 this time. Have you -- any other motions that you have?

14 MR. LAND: None, Your Honor.

15 THE COURT: All right. Mr. Conner, do you have any
16 responses to his motions? I guess not since I denied
17 them.

18 MR. CONNER: I have none.

19 THE COURT: You talk to your client about whether or
20 not he's going to testify?

21 MR. LAND: Your Honor, we have discussed it if you
22 want to instruct him on his rights and make that decision
23 at a later time.

24 THE COURT: Come on up, Mr. Harriott.

25 THE CLERK: Place your left hand on the Bible and

1 raise your right hand. State your name?

2 THE DEFENDANT: Derrick Harriott.

3 THE CLERK: You solemnly swear or affirm the
4 testimony you give the Court to be the truth, the whole
5 truth, and nothing but the truth so help you God?

6 THE DEFENDANT: I do.

7 THE COURT: All right. Mr. Harriott, I'm going to
8 talk to you for a few minutes.

9 Mr. Land, do you have any concerns based on the
10 potential posture of your defense as to whether or not Mr.
11 Harriott would be capable of understanding my questions
12 and answering those appropriately?

13 MR. LAND: Your Honor, based on the evaluation by
14 Dr. Frierson, he's found to be competent to assist his
15 attorney and understand the legal process, so I think you
16 can ask him questions.

17 THE COURT: Mr. Harriott, I'm going to talk to you
18 about a few things over the next few minutes. If you do
19 not understand me at all, simply let me know. Do you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I'm not looking for a yes answer or no a
23 answer, I want a true answer. I'm just looking for a true
24 answer. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: We reach the stage of the trial during
2 which you may present your defense. Are you aware of
3 that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you been able to understand all of
6 the proceedings in this case so far since we began this
7 trial?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right, sir, speak up a little louder
10 for me.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: What I'm going to talk to you about right
13 now is your entitlement to claim the protections given to
14 you under the Fifth Amendment to the United States
15 Constitution. And that particular amendment states in
16 pertinent part that no person shall be compelled in any
17 criminal case to be a witness against themselves, that
18 generally means or that means that you have the right to
19 remain silent. And you have the right to remain silent
20 throughout this trial. You cannot be required to testify
21 in this case. Mr. Conner, the prosecutor, cannot make you
22 testify. I cannot make you testify. Nor can your own
23 attorney force you to testify. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: If you decide to testify that is a

1 decision that you will have to make with full knowledge of
2 your rights under the Fifth Amendment. And again, the
3 Fifth Amendment right that you have is a personal right.
4 Nobody can waive that right except for you. Do you
5 understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: If you decide to testify, you will be
8 subject to the same rules that govern the examination and
9 cross-examination of any other witness who testifies in
10 this case. If you have a criminal record, potentially
11 depending on the circumstances, that record or your record
12 of convictions, if any, can be introduced into evidence to
13 impact your credibility or believability. Do you
14 understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Does the defendant have a criminal
17 record, Mr. Conner? Mr. Conner.

18 MR. CONNER: I'm sorry, Your Honor.

19 THE COURT: Does the defendant have a criminal
20 record?

21 MR. CONNER: No, he has no record.

22 THE COURT: Do you agree with that, Mr. Land?

23 MR. LAND: Yes, sir, Your Honor.

24 THE COURT: All right. So in essence your testimony
25 if you decide to testify will be subject to the same rules

1 governing examination and cross-examination just as you
2 seen the other witnesses testify. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: If you decide to testify, that decision
5 on your part has to be made freely, voluntarily and
6 intelligently with full knowledge of your rights and the
7 protections given to you by the Fifth Amendment. If you
8 you decide not to testify, I will tell the jury at the end
9 of this case when I give them the charge on the law, that
10 they cannot use the fact that you not testify in anyway
11 against you and specifically tell the jury that a
12 defendant has the right to remain silent. And when a
13 person remains silent, that is a right that that person
14 has under the Fifth Amendment. And it can't be talked
15 about, can't be considered, can't be discussed, can't be
16 used in anyway against you. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And when I tell the jury that you did not
19 testify, I can't even use the word failure in describing
20 the fact that you didn't testify because that would
21 indicate some refusal on your part that was inappropriate,
22 so I wouldn't even use the word failure when I talk to the
23 jury about you not testifying. Again, the decision that
24 has to be made by you. Of course, you can consult with
25 your attorney. Your family members and anyone else that

1 you see fit to consult with, but in the end, the decision
2 has to be made by you. Do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Mr. Land, I take it from what
5 you said earlier that you and Mr. Harriott have not
6 discussed in its final form whether or not he will
7 testify?

8 MR. LAND: We discuss it, but I have not made a
9 decision.

10 THE COURT: Is that correct, Mr. Harriott?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Where the only thing left to do in your
13 case is to call you as your final witness, then I'll go
14 over these rights with you again. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Do you have any questions
17 about what we just talked about?

18 THE DEFENDANT: No, sir.

19 THE COURT: Thank you, sir. You can have a seat.

20 All right. Mr. Land, you ready to call your first
21 witness?

22 MR. LAND: Yes, sir, Your Honor.

23 THE COURT: All right. I will allow Mr. Conner to
24 rest in front of the jury. The motions have been made and
25 denied. I want repeat that for the record. I think the

1 record will stand on that. And you will be calling Ms.
2 Witherspoon?

3 MR. LAND: That's correct. My witness hadn't arrived
4 yet, so I'll call Ms. Witherspoon.

5 THE COURT: You can bring in the jury.

6 (WHEREUPON, the jury return to the courtroom.)

7 THE COURT: All right. Thank you, ladies and
8 gentlemen.

9 Mr. Conner, any other witnesses for the State?

10 MR. CONNER: Your Honor, the State would rest at this
11 time.

12 THE COURT: All right. Mr. Land, any evidence to be
13 presented by the defendant?

14 MR. LAND: Yes, Your Honor, we call our first witness
15 Eugene Finkdeiner.

16 THE CLERK: Place your left hand on the Bible and
17 raise your right hand. State your full name please?

18 THE WITNESS: Eugene Finkdeiner.

19 THE CLERK: You solemnly swear or affirm the
20 testimony you give to the court will be the truth, the
21 whole truth, and nothing but the truth so help you God?

22 MR. FINKDEINER: I do.

23 THE CLERK: Please state your full name and spell
24 your last name for the record.

25 MR. FINKDEINER: Eugene Walter Finkdeiner,

1 F-I-N-K-D-E-I-N-E-R.

2 WHEREUPON,

3 Eugene Finkdeiner,

4 after first having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LAND:

7 Q Where do you live?

8 A In Sumter.

9 Q How long have you lived in Sumter?

10 A Close to 35, 40 years.

11 Q Most of your life, most of your adult life?

12 A Most of my adult life.

13 Q Do you know Derrick Harriott?

14 A Yes, I do.

15 Q How do you know Derrick Harriott?

16 A He came to our plant and applied for a job there.

17 Q And tell me when you say your plant, tell me about
18 where you work and what the plant is?

19 A It is Monti Corporated. We're one of four plants two
20 in South Carolina. We fabricate insulation parts for
21 Eaton Corporation out of fiber glass.

22 Q How long have you worked there?

23 A February will be 20 years.

24 Q And you said Derrick came to you when?

25 A He came to me about four and a half, five years ago.

1 Q 2003, 2002 somewhere in there?

2 A I believe so, yes, sir.

3 Q And did you hire Derrick?

4 A Yes, I did. I hired him as a temp.

5 Q And did he become a full-time employee?

6 A A year later. I had to lay him off because work got
7 slow. And I told him he was such a fine worker that I
8 needed him if he wanted a full-time job and work picked
9 back up keep checking back with me. And he did for about
10 a year and work did pick up and we grew and so I hired him
11 on full-time.

12 Q What did he do for you there at the plant?

13 A He was a sheer operator.

14 Q And just so the jury know what is a sheer operator
15 do?

16 A He takes sheets of material and a big machine that
17 cuts it to different sizes and he was -- he coordinate the
18 jobs by sheering the material to certain sizes.

19 Q What kind of employee was he after he came back the
20 second time?

21 A Excellent. I wish I had all employees like him. He
22 never complained. He always done his job, always stayed
23 at his work area. I mean, he wasn't a bother at all.

24 Q In addition to knowing him as an employee over that
25 time, did you become somewhat of a friend of his?

1 A Yes, I did.

2 Q Tell me about your friendship with him?

3 A As time grew on, we got to talking break time and
4 lunchtime and after work, he hang around the plant. We
5 get to talking and he said ---

6 MR. CONNER: Your Honor, I object to what he might
7 say ---

8 THE COURT: Mr. Land.

9 MR. LAND: I think that is proper hearsay he is
10 clearly here and available to testify.

11 THE COURT: Y'all come around.

12 (WHEREUPON, a bench conference was held in the
13 presence of the jury, but out of the hearing of the
14 jury.)

15 THE COURT: All right. Ladies and gentlemen, please
16 step to your jury room for just a few moment. This will
17 not take an undue amount of time. Do not discuss the
18 case.

19 (WHEREUPON, the jury retire to the jury room.)

20 THE COURT: Okay, Mr. Land, you can continue.

21 MR. LAND: Thank you.

22 DIRECT EXAMINATION IN-CAMERA

23 BY MR. LAND:

24 Q Mr. Finkedeiner, I had asked you about what you and
25 Derrick had discussed in your personal relationship not

1 your work. What did you and he talk about?

2 A We talked about how he wanted to learn how to fish
3 and how he wanted to hunt and how he wanted to get his
4 life going and be like some many other people, you know,
5 have something in life to really strive to be something.

6 Q In addition, to that, did you discuss his
7 relationship with his girlfriend Quanna Cooper?

8 A At the first no. It wasn't until he came to me
9 sometime after and he was quite upset about a situation
10 there.

11 Q Of course, we're here today about a death that
12 occurred on March 16, 2007. In relation to that, do you
13 know how soon before that discussions were?

14 A It was a few weeks may be a month, that he had come
15 to me the first time.

16 Q And what did y'all discuss? What was the subject of
17 your conversation?

18 A His conversation to me was that he was hurting. He
19 didn't know what to do and needed to talk to somebody
20 speaking of things that were going on with the
21 relationship and it wasn't right. And he just didn't know
22 what to do and wanted to confide in me. I told him, you
23 know, best thing to do is just leave the girl alone, you
24 know, go on about life.

25 Q Y'all discussed his emotions and feelings?

1 A Yes.

2 Q Did he tell you of what he suspected her of doing to
3 him and how that was making him feel?

4 A Yes.

5 Q What did he tell you?

6 A It was obvious his work performance started dropping
7 and he wasn't himself. He was incoherent a lot of times,
8 but he was distraught. He was really upset and he came
9 into my office and he was crying. And I never had to deal
10 with a grown man crying in my office before, so, you know,
11 it was kind of awkward for me. And I asked him what was
12 wrong and he told me he just didn't know what to do. He
13 said, you know, she want leave me alone and she want go
14 away and I don't know what to do. And I said, Derrick,
15 you know, go to police or, you know, do something that --
16 just get away from her.

17 Q Did he discuss what he believe she was doing to him
18 physically?

19 A Yes.

20 Q What was that?

21 A I found -- I was told totally taken by, but he said
22 that -- he said I've lost my manhood. And I was really
23 puzzled this time. And I question him, I said what do you
24 mean you lost your manhood? And then that's when he
25 opened up and he said that he had believed that she was

1 drugging him and that at one point in time he had passed
2 out and he was raped by guys and I was totally shock. I
3 mean, he was distraught and trying to tell me and explain
4 to this to me. I said, Derrick, you know, you sure about
5 that? He says, yeah. He says, yeah, I know it's
6 happened. He said I feel different. And it was something
7 I've never heard of before.

8 Q Okay. And on another occasion, did you and he
9 discuss his ownership of a firearm?

10 A Yes, in our friendship, he wanted to go hunting. He
11 wanted to do what me and another friend of his at the
12 plant want to do, he wanted to enjoy life go out and hunt
13 and fish. And his thing was that he wanted to collect
14 guns. And he like that idea and he ask me because I have
15 a few of my own and he's been at my house and saw them.
16 And so he questioned me about one, yeah.

17 Q Okay. And did ultimately he buy a weapon from you?

18 A Yes.

19 Q And what happened with that weapon?

20 A I was kind of hesitate to start with because I just
21 don't sell guns, you know. I'm not that way, but I could
22 tell Derrick wanted to have something to show for his
23 work. And he had gotten other things started building his
24 life up. And so I said, well, you know I'll do it. I'm
25 gone teach you gun safety, teach you everything there is

1 to know because, you know, they're dangerous. It is not
2 something that I believe anybody should, you know, just
3 get one and go out and have fun with it. So he was at the
4 house, he came to the house and I showed him everything
5 about it. I showed him the safety aspects. We shot at a
6 few targets. He liked it. And so we proceeded to get it
7 from me.

8 MR. LAND: Your Honor, I think I've covered the
9 general areas of his testimony.

10 THE COURT: Mr. Conner, as far as the statements
11 about being drugged and so forth, wouldn't those and his
12 -- the witness' recount of the defendant being upset or
13 whatever words he described, wouldn't that all fall within
14 the exception as to state of mind? It's definitely
15 hearsay no question about it because it's an out of court
16 statement offered to prove at least the context of what
17 this witness is saying truth of the matter asserted or
18 Mr. Land my say it's not offered to prove that he was
19 being drugged and raped, but offered to prove his state of
20 mind. What's your position on that? Hadn't gotten to the
21 riffle part yet.

22 MR. CONNER: Well, I got no objection with the riffle
23 part. What I got objection to is the relationship with
24 this woman and him being drugged, that's the part that I
25 find objectionable.

1 THE COURT: And so why would it not fall 803(3) which
2 is -- if it's being offered to prove an existing state of
3 mind, emotion or those two things an existing state of
4 mind or emotional part of the defendant. What I don't
5 want to do, Mr. Land, is allow this witness' testimony to
6 infer other than that the drugging or the whatever. I
7 think you -- your earlier comments to me, Mr. Land, were
8 those things did not happen, but it was this defendant's
9 belief that they had; is that correct?

10 MR. LAND: And that is what 803(3) talks about then
11 existing ---

12 THE COURT: What I don't want to do slice it a
13 little bit is to allow this witness' testimony to infer or
14 allow the jury to infer which I think one statement might
15 is that she wouldn't leave him alone. I think it has to
16 be more definite than that.

17 MR. LAND: I can tell you it's not our argument that
18 he in fact was drugged or was in fact raped. The doctor
19 -- the psychiatrist gone say that that's the delusion that
20 he was having. I'm not offering Mr. Finkdeiner to prove
21 that he was raped and or drugged. I'm offering him to
22 show Mr. Harriott existing mental and, for that matter,
23 physical state because he believe he was showing physical
24 symptoms of it.

25 THE COURT: Mr. Conner.

1 MR. CONNER: Well, my concern really, Your Honor, is
2 somebody on the jury might give some credibility to this
3 wild story that she was doing something that she had no
4 business doing.

5 THE COURT: Mr. Land, would you consent to an
6 instruction on my part that there is no evidence and will
7 be no evidence that that in fact occurred?

8 MR. LAND: Not only do I consent, but that was my
9 opening argument was that we do not argue that those
10 things occurred. We argue that he believe they were
11 occurring.

12 THE COURT: Does that cure it, Mr. Conner?

13 MR. CONNER: Well, I hope it does.

14 THE COURT: I'll give that instruction. As far as
15 the riffle is concern, you don't object to that part is
16 that right, Mr. Conner? That he bought the riffle from
17 this witness?

18 MR. CONNER: I don't have any problem with that.

19 THE COURT: All right. Anything else before Mr.
20 Land, Mr. Conner, before we bring the jury in?

21 MR. LAND: Nothing from defense.

22 THE COURT: Okay. Mr. Conner, anything else?

23 MR. CONNER: Not at this time.

24 THE COURT: I'll allow that particular testimony.

25

1 (WHEREUPON, the jury return to the courtroom.)

2 THE COURT: All right, Mr. Land, you can continue.

3 MR. LAND: Thank you.

4 DIRECT EXAMINATION CONTINUED

5 BY MR. LAND:

6 Q Mr. Finkdeiner, I think we stopped off talking about
7 your personal relationship with Mr. Harriott. Did y'all
8 ever discuss his relationship with Quanna or Verna Cooper?

9 A Yes.

10 Q And what did y'all talk about? How long did y'all
11 talk about that relationship? Tell me what y'all
12 discussed?

13 A It was just a couple weeks before the incident, he
14 come into my office said he needed talk to me. He was
15 very distraught and upset.

16 Q Had you ever seen him distraught and upset like that
17 before?

18 A No, Derrick's rather easy-go-lucky fellow.

19 Q And what did he tell you? When you say upset, tell
20 the jury how he was showing being upset?

21 A He was crying. And as I said, I never had a man come
22 into my office crying, so it was kind of a surprise, a
23 shock to me that he would be coming into my office like he
24 did.

25 Q And what did he tell you?

1 A He told me that his girlfriend -- he believe that his
2 girlfriend been drugging him. And at one point, he was
3 raped under these drugs. I was beside myself about that
4 when he made that comment.

5 Q Did he tell you who he believe was raping him.

6 A He said some guys. He said Shorty I think that's
7 what he call the nickname was Shorty. He said Shorty had
8 some guys come in and rape me after she drug me.

9 THE COURT: All right, ladies and gentlemen, at this
10 point, I want to instruct you that this particular
11 testimony is not being offered in anyway to establish that
12 the drugging and raping actually occurred. I believe the
13 defense's position is that it did not occur, but that
14 was -- this evidence is being offered should you choose to
15 believe it as to what Mr. Harriott's state of mind was at
16 that time given time.

17 All right, Mr. Land.

18 MR. LAND: Thank you, Your Honor.

19 BY MR. LAND:

20 Q Did he discuss anything about videotapes?

21 A Yes, he did. He did make a comment when I ask him
22 about going to the police to get something done, you know,
23 to get away from her. He said he couldn't because she had
24 made a videotape. And I asked him I said where is it?
25 And he says I don't know she says she has one.

1 Q Tell me about during this time when he was telling
2 you these things, how he was acting around work, was he
3 working fine, was he doing his job, what was going on?

4 A He became very withdrawn and... Like I said, he was
5 always singing and happy. I mean, he was a happy-go-lucky
6 fellow. But after this started, he became withdrawn and
7 distant. It wasn't the Derrick that I knew. It wasn't my
8 buddy. I mean, he -- something was changing.

9 Q How long was that going on before March 16th 2007?

10 A I want to say I think it's three or four weeks. My
11 memory isn't that well, but I'm -- it was a little time
12 before because he was -- you can see his demeanor really.
13 I mean, his mind, his demeanor really going downhill. You
14 could see obviously something was bothering him really
15 really bad.

16 Q All right. You talk about your memory, did you meet
17 with the City of Sumter police about this case?

18 A Yes, I did.

19 Q Did you give them a written statement?

20 A Yes, I did.

21 Q Have you reviewed that statement for today?

22 A Yes, I have.

23 Q And do you know the date that you gave that
24 statement?

25 A No, I don't.

1 Q Do you have a copy of that statement or would you
2 like to look at it?

3 A It's on 3-22.

4 Q That document refresh your memory as to when you gave
5 that statement?

6 A Yes.

7 Q And you said March 22nd of what year?

8 A 2007.

9 Q Did you discuss with -- or did you ever have any
10 involvement with Mr. Harriott regarding guns?

11 A Yes.

12 Q And tell the jury what your involvement was with
13 that?

14 A He showed that he wanted to be like a few of us other
15 guys always hunting and going fish, which something he
16 never done before. And I taken him to my house quite a
17 few times and we socialized at my house and I showed him a
18 few guns that I had. And he was really interested and
19 wanted to know if we could shoot, so we shot a few times
20 and then he became inquisitive about a certain gun that I
21 had.

22 Q What kind of gun was that?

23 A It was an SKS.

24 Q Okay. I don't know if you can see it from that
25 distant. Does this look like the gun that you're

1 discussing?

2 A Yes.

3 Q Okay. Did you ultimately sell that gun to him?

4 A Yes.

5 Q After you sold it to him, what did you do with him?

6 A What did I do with him?

7 Q You sold him the gun. Did you do anything further
8 with him regarding the gun?

9 A Yes, I asked him and he had let me know that he
10 didn't own any guns and that he was -- like I said wanting
11 to do like I was doing collecting -- getting them to
12 collect them and so I showed him -- I showed him the
13 proper safety on it. I showed him gun safety. I went
14 through everything with him. I am very very adamant
15 about gun safety and so, you know, I made sure that he
16 knew everything about that particular riffle before I let
17 him go with it.

18 Q Were you satisfied with his training of that weapon?

19 A Oh, yes.

20 MR. LAND: No further questions.

21 THE COURT: Mr. Conner.

22 CROSS-EXAMINATION

23 BY MR. CONNER:

24 Q So you sold him this SKS riffle?

25 A Yes, sir.

1 Q And does that thing have to be cocked initially to
2 start firing or does it -- all you have to do is close the
3 bug and pull the trigger?

4 A You have to cock around into the chamber, yes, sir.

5 Q You have cock around?

6 A Yes, sir.

7 Q So he would have had -- if he had this gun in the
8 apartment there, he would have to cock around into the
9 chamber before he could fire at this woman; is that
10 correct?

11 A Yes, sir.

12 Q And it's a semiautomatic weapon; isn't it?

13 A Yes, sir.

14 Q Every time -- to shoot it one time, you have to pull
15 the trigger?

16 A Yes, sir.

17 Q And then if you gone shoot twice, you have to pull
18 the trigger a second time?

19 A Yes, sir.

20 Q And a third one, you have to pull the trigger every
21 time. It doesn't fire unless you pull the trigger?

22 A Correct.

23 Q And it throws out the casings -- the cartridge
24 casings it ejects them automatically?

25 A Yes, sir.

1 Q Where do they go?

2 A The fly anywhere.

3 Q All over?

4 A Yes, sir.

5 Q Okay. Now, you didn't fire him, did you?

6 A No, sir.

7 Q He worked up to the day he killed this woman and was

8 arrested; is that correct?

9 A Yes, sir.

10 Q And what kind of wages did he make with you?

11 A Sir, I have so many right now. I believe it was in

12 the neighborhood of 8:50, 8:75 an hour.

13 Q Will nine dollars shock you?

14 A No, sir, no.

15 Q So about \$18,000 a year?

16 A (No response).

17 Q He had bought some other items while he was working

18 there too, hadn't he?

19 A Yes, sir.

20 Q And he bought the gun, how much did he pay you for

21 the gun do you remember?

22 A I think it was \$400.

23 Q And he bought himself a four-wheeler?

24 A Yes, sir.

25 Q He bought himself a boat?

1 A Yes, sir.

2 Q He was pretty good at saving his money, wasn't he?

3 A Yes, sir.

4 Q He was mentally capable of doing the job you had him
5 to do; is that correct?

6 A Yes, sir.

7 Q He knew the difference between right and wrong,
8 didn't he?

9 A Yes, sir.

10 Q The day of the murder he actually help you move?

11 MR. LAND: Your Honor, let me object. The murder is
12 the decision for the jury to make.

13 THE COURT: All right, rephrase your question.

14 BY MR. CONNER:

15 Q He help you move a pool table; didn't he?

16 A Yes, sir.

17 Q Where did you move the pool table from where to
18 where?

19 A I had it sitting in my shop being stored until I had
20 it sold and that day I had it sold and had to deliver it
21 to a friend of mine's house.

22 Q By shop, is it a shop that your business or a shop

23 ---

24 A Our business I'm sorry, it's our business.

25 Q So you moved it from there to a friend's home?

1 A Yes, sir.

2 Q And he assisted you?

3 A Yes, sir.

4 Q And that day he didn't have any funny conversation
5 that you are talking about, did he?

6 A No, sir.

7 Q He didn't discuss being raped or anything, did he?

8 A No.

9 MR. CONNER: I have nothing further.

10 THE COURT: Mr. Land.

11 REDIRECT EXAMINATION

12 BY MR. LAND:

13 Q Mr. Finkdeiner, just so the jury understands about
14 cocking this weapon. Once you put a round into it, is it
15 ready to fire?

16 A Yes, sir.

17 Q And you have to like on some old timey pistols, you
18 have to pull the hamper back, right?

19 A Right.

20 Q You have to do anything like that with this weapon?

21 A On that one if it's empty and you fill the magazine,
22 it all depends on what stage it is. I mean, sometimes the
23 bolt is lock back when you put the magazine in it will
24 eject around into the chamber.

25 Q Once that round is in the chamber, is it ready to

1 fire?

2 A It is ready to fire.

3 Q On the day that this occurred when y'all are moving
4 that pool table, did anything else happen with
5 Mr. Harriott regarding a car?

6 A Yeah, he likes classic old cars. He had mentioned
7 seeing an old car, an old Chevy sitting in somebody's
8 yard. When we got done unloading the pool table, my
9 son-in-law was with me and he -- I was going on to the
10 house cause it was shorter and my son-in-law was going to
11 take Derrick back to the plant to his car. And he had ask
12 Jason, my son-in-law, if he could stop and ask and inquire
13 about the car.

14 Q This boat and four-wheeler how long before March of
15 2007, did he buy those things you know?

16 A It was quite sometime. I want to say six months or
17 so, I'm not really sure.

18 Q Was proud of those things?

19 A He was. And he -- what intrigued me was he got
20 people he knew his friends, who didn't have one and let
21 them ride it more so than he did. I made a comment to him
22 I said, Derrick, you know, you got to let these people
23 know that this a high dollar piece of machinery. You need
24 to calm them down a little bit because, you know, you
25 paying a lot money for that, but he was generous. I mean,

1 that's what intrigued me about him. He was so generous
2 about what he had you could have it, you could play on it,
3 drive whatever. He wasn't selfish, he wasn't
4 self-centered. He's not.

5 MR. LAND: No further questions, Your Honor.

6 THE COURT: Mr. Conner.

7 RECROSS-EXAMINATION

8 BY MR. CONNER:

9 Q When you sold him this gun, you gave him instruction
10 ---

11 MR. LAND: Your Honor, let me object. This is beyond
12 my redirect.

13 THE COURT: Overrule.

14 Q When you sold him this gun, you gave him instructions
15 on how to use it?

16 A I gave him how to use it and how to be safe with it.

17 Q Did you take him out and let him shoot a few times?

18 A Yes, sir, we shot it in my backyard.

19 Q Did you talk about gun safety?

20 A Oh, yes, sir, yes.

21 Q Did it have a safety on it?

22 A Yes, sir.

23 Q But just the general rules of safe practices with
24 guns you talked about that with him?

25 A Yes, sir.

1 Q So he had fired it before and had instruction on how
2 to use it?

3 MR. LAND: Your Honor, would the record reflect my
4 objection continuous.

5 THE COURT: Yes, you did ask him some questions about
6 the firing of the weapon, loading of the magazine things
7 of that nature.

8 Mr. Conner, I assume you are about to conclude with
9 that line?

10 MR. LAND: I have. Nothing further for this witness,
11 I ask that he be excused.

12 THE COURT: All right, sir, you may step down.

13 Mr. Conner, anything -- any additional need for this
14 witness?

15 MR. CONNER: I don't have any.

16 THE COURT: Mr. Finkdeiner, you can leave or stay
17 whatever you like.

18 (WHEREUPON, the witness leaves the witness stand.)

19 THE COURT: Okay, Mr. Land.

20 MR. LAND: Your Honor, we call Joyce Witherspoon.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right hand. State your name please?

23 MS. WITHERSPOON: Joyce Witherspoon.

24 THE CLERK: Do you solemnly swear or affirm the
25 testimony you give the Court to be the truth, the whole

1 truth and nothing but the truth so help you God?

2 MS. WITHERSPOON: I do.

3 THE CLERK: Please state your full name and spell
4 your last name for the record.

5 MS. WITHERSPOON: Joyce B. Witherspoon,

6 W-I-T-H-E-R-S-P-O-O-N.

7 WHEREUPON,

8 Joyce Witherspoon,

9 after first having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. LAND:

12 Q Ms. Witherspoon, where do you live?

13 A in Sumter.

14 Q How long have you lived in Sumter?

15 A All my life.

16 Q It's not polite to ask a lady, but approximately how
17 long would that be?

18 A Forty-seven year.

19 Q Okay. How are you related to Derrick Harriott.

20 A Derrick is my sister child and that's my nephew.

21 Q And is your sister in the courtroom?

22 A Yes, she is.

23 Q And who is she?

24 A The one sitting right there with the white and red
25 shirt on.

1 Q In addition to just being Derrick's aunt, did y'all
2 have a close relationship than that?

3 A Yes.

4 Q Tell me about that?

5 A I raise Derrick from eight or nine years old. I got
6 custody -- I believe it's guardianship over Derrick and he
7 been in my house from eight or nine until 27, until the
8 accident happen.

9 Q What was going on in his life when he was eight or
10 nine years old that brought about you not having ---

11 MR. CONNER: Your Honor, I object to that.

12 THE COURT: Mr. Land, is that relevant?

13 MR. LAND: Your Honor, I think it is relevant to
14 their relationship and how it started and she is to this
15 case.

16 THE COURT: All right. I'll allow you to describe --
17 I'll allow some questions on that, but make sure it's
18 relevant. And I may stop you under 403 at sometime.

19 BY MR. LAND:

20 Q Why did you come to have Derrick living at your
21 house?

22 A Derrick mom is an alcoholic and someone call DSS on
23 her, I think because she had beat him.

24 THE COURT: She can testify about the relationship
25 not about what she thinks.

1 BY MR. LAND:

2 Q But he came to live with you when he was nine years
3 old?

4 A Yes.

5 Q And you raise him up beyond that, right?

6 A Yes.

7 Q What school did he go to?

8 A He went to -- he graduated from Sumter High, but he
9 went to Willow Drive in elementary because Willow Drive
10 house special education children. And he went to Bee
11 school for middle school.

12 Q Was he in special education classes there?

13 A Yes, he was.

14 Q Was he in special education classes in high school?

15 A Yes, he was.

16 Q When he finished high school, did he actually get a
17 high school diploma or a certificate?

18 A He got a certificate.

19 Q How does Derrick do reading and writing?

20 A I would say on a first grade level, on a first grade
21 level.

22 Q Raising Derrick, you raise any other children?

23 A Yes, one.

24 Q Who is that?

25 A That my son Daniel Witherspoon, II.

1 Q Now, is he here today?

2 A He's in the black and white shirt.

3 Q Okay. Did he and Derrick act like cousins or like
4 brothers?

5 A They were brothers. They are brothers.

6 Q Raising Derrick, did he give you any problems that
7 you wouldn't expect from a regular boy?

8 A No.

9 Q What kind of person, what kind of heart does Derrick
10 have?

11 A Derrick got a good heart. Anything Derrick can do
12 for you, he would. He will go out of his way to do things
13 for you.

14 Q In 2007, did Derrick live with you?

15 A Yes.

16 Q Was dating anyone?

17 A Yes, he was dating Quanna.

18 Q And that is Miss Cooper so that everyone knows who
19 that is?

20 A Yeah, that Miss Cooper.

21 Q What kind of relationship or how long did they have a
22 relationship?

23 A About three years.

24 Q Was that a solid relationship where they dated the
25 whole time or how did it go?

1 A Off and on. They were on one minute, off the next
2 minute.

3 Q Now, you said Derrick lived with you?

4 A Yes.

5 Q During that time would he ever stay at Miss Cooper's
6 house?

7 A Yes, he would stay there.

8 Q How long would he stay there for?

9 A He had two or three days or he had stayed over for a
10 week. I never could tell exactly when, you know, but he
11 had clothes over there.

12 Q Toward March of 2007, did you see a change in Derrick
13 and Quanna's relationship?

14 A Yes.

15 Q What did you observe?

16 A Derrick sleeping a lot. He was telling me -- he told
17 me ---

18 MR. CONNER: Your Honor, object to what he told her.

19 THE COURT: Mr. Land.

20 MR. LAND: Your Honor, it's the same subject you
21 already ruled on.

22 THE COURT: All right, ladies and gentlemen, again
23 this testimony is not being offered to prove that these
24 things did occur, but instead to prove what the defendant
25 contends or the defense contends was his state of mind at

1 the time. And I believe the defendant, Mr. Land, agrees
2 that the events did not occur?

3 MR. LAND: That's correct.

4 THE COURT: He just thought they were.

5 BY MR. LAND:

6 Q Tell me what changed in their relationship?

7 A When Derrick would come home from work, Derrick would
8 do a lot of sleeping. And when him and Quanna was on the
9 break up, things would change about Derrick. Derrick
10 would do other things. But when him and Quanna was
11 together, it was just him and Quanna. And Derrick would
12 tell me that Quanna didn't want him to be with other
13 people and stuff. And but excuse me I'm sorry.

14 Q Take your time I'll go ahead and ask you another
15 question. What was your relationship like with
16 Miss Cooper?

17 A Quanna I can't say nothing bad about Quanna. When
18 Quanna came in the house, I was Aunt Joyce. You know, I
19 was Aunt Joyce. I hurt, I guess I hurt like a mama
20 because I can, but it hurts me a whole lot that this
21 happened.

22 Q Prior to March 16th 2007, had you ever seen Derrick
23 act violent toward Quanna?

24 A No, I never. No, I never saw Derrick act violent
25 toward Quanna not at all.

1 MR. LAND: No further questions, Your Honor.

2 THE COURT: Go ahead, Mr. Conner.

3 CROSS-EXAMINATION

4 BY MR. CONNER:

5 Q So Quanna called you Aunt Joyce?

6 A Yes, sir.

7 Q And she was respectful to you?

8 A Yes.

9 Q And you can't say anything bad about her?

10 A No, I can't say nothing bad about her.

11 Q Now, you were concerned about Derrick and this gun,
12 weren't you?

13 A What you mean concern about it?

14 Q You had mentioned to him that he needed to not be
15 taking that gun out to leave it?

16 A For safety, yes.

17 Q But every time he left your house, we would take the
18 gun with him, wouldn't he?

19 A I can't say every time, but he would take the gun.

20 Q Frequently?

21 A Yes.

22 Q He seldom left home without his gun?

23 A I can't say that. What I can say every time he go to
24 Quanna house he would have it. I can say that.

25 Q You told him to leave that gun at home; didn't you?

1 A When?

2 Q Before this happened, you -- when -- how long did he
3 have the gun?

4 A I can't honestly say how long, but it wasn't like
5 just purchase. But I can't honestly say how long that he
6 had the gun. I can't say that.

7 Q But you were concerned about the gun?

8 A Don't like guns. I don't like guns.

9 Q And you mentioned it to him that he needed to leave
10 that gun at home, didn't you?

11 A Yes.

12 Q You were afraid that he was gone get mad and
13 something bad was gone happen, weren't you?

14 A I was more concern about the gun being in the car and
15 the police stopping him and he's a black young man and
16 going with that, that what my concern was.

17 Q He does have a temper, doesn't he?

18 A Yes.

19 Q And you were also concern that something bad might
20 happen about that gun, weren't you?

21 A As I said, I'm not a gun person.

22 MR. LAND: She answered that three times.

23 THE COURT: Overruled.

24 BY MR. CONNER:

25 Q But his official residence was suppose to be at your

1 house?

2 A Yes, sir.

3 Q But he would go over and stay with her sometimes?

4 A Yes, sir.

5 MR. CONNER: I have nothing further.

6 MR. LAND: I have no further questions.

7 THE COURT: Thank you, ma'am. You may step down.

8 (WHEREUPON, the witness leave the witness stand.)

9 MR. LAND: Your Honor, for scheduling purposes, I
10 think I have a witness I can fit in.

11 THE COURT: Okay. All right. Ladies and gentlemen,
12 we gone break for lunch at this time. Mr. Land, witness
13 will be arriving about when?

14 MR. LAND: I told him 2:30. I can call his cell
15 phone and tell him to get here earlier you instruct me.

16 THE COURT: All right. Call him try to tell him to
17 get here a few minutes early. We'll be back -- ladies and
18 gentlemen, can you be back in your jury room at 2:15.
19 Hopefully, that witness will have arrived by that time,
20 that gives you a nice lunch time. Do not discuss the
21 case. Do not begin performing any conclusions in your own
22 mind about the issues in this case until I tell you that
23 you can. You have not heard everything, so try to
24 refrain or do refrain from doing that. I will see you
25 back at 2:15.

1 (WHEREUPON, the jury retire to the jury room.)

2 (WHEREUPON, the jury was excuse for a lunch break.)

3 THE COURT: All right. Mr. Land, you have one more
4 witness perhaps two?

5 MR. LAND: Possibly two, may be three, but it is
6 something I have to discuss with my client.

7 THE COURT: Okay. Let me make one observation,
8 Mr. Land, are you going to need to speak to any members of
9 the defendant's family during lunch.

10 MR. LAND: I may.

11 THE COURT: Okay. If you do, make sure -- the record
12 may not pick up on it, but I want to make sure that I'm
13 clear to everybody in the courtroom. The young man who
14 left earlier, I don't know who that is that had a very
15 short outburst in the hall, I understand he is a member of
16 Miss Cooper's family. I don't fault him for being
17 emotional, I want to make sure you understand that. But
18 if he's going to be emotional, it's going to have to be at
19 a place other than this courtroom and other than that
20 hall. So I want to make sure Mr. Conner if you know who
21 that gentleman was that that problem is addressed. I'm
22 not calling him on the carpet. I just want to make sure
23 that everybody understands, we're in a small courtroom and
24 close quarters for everybody may make the emotions that
25 run even higher. But I don't want this jury to be

1 affected by anything like that. I don't want the
2 courtroom security or the courthouse security to be
3 affected. The reason I asked that question, Mr. Land, is
4 if there's any animosity between one family and the other,
5 I don't want that to play out in the hall or on to the
6 steps or on to the grass onto sidewalk. So, Mr. Conner,
7 do you have any suggestions about how to handle that or
8 you want to leave that up to me?

9 MR. CONNER: Judge, that's ---

10 THE COURT: Leave it up to me?

11 MR. CONNER: I'll leave it up to you.

12 THE COURT: Are you going to be needing to speak to
13 any members of the victim's family when we break? If you
14 do, take them down to the grand jury room or straight down
15 to your office.

16 Mr. Land, if you do, let these, ladies and gentlemen,
17 stay with you in the courtroom for the foreseeable few
18 minutes and then you can move them to where you can talk.
19 All right. Thank you. See y'all back at let's say two
20 o'clock where we can figure out what our scheduling will
21 be this afternoon.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: All right. Mr. Conner, Mr. Land, the
24 young man who left the courtroom a while ago, I have
25 instructed the courthouse security folks not to allow him

1 back on the property during the rest of this trial. Does
2 the State want to be heard on that?

3 MR. CONNER: I have nothing to add, Your Honor.

4 THE COURT: Does the defense want to be heard on
5 that?

6 MR. LAND: If the State doesn't have a position, we
7 don't.

8 THE COURT: I don't know his name, but what he had
9 uttered in the hallway gives me some concern, so he's not
10 going to come back on the courthouse property the rest of
11 the trial. Mr. Land, before we bring in the jury, you
12 going to have any other witnesses in this case?

13 MR. LAND: Judge, we got a witness that suppose to be
14 here at 2:30. The reason I was outside I was looking down
15 the hall to make sure he hadn't gone in the other
16 courtroom. I didn't see him. We can wait a few more
17 minutes.

18 THE COURT: Should we wait until then for me to
19 discuss additional issues with your client?

20 MR. LAND: Why don't we do that, Your Honor, cause
21 after Dr. Frierson testifies, we can take a break you can
22 address that. We can make a decision up of any other
23 witnesses too that will be a good breaking point.

24 THE COURT: How long do you think Dr. Frierson's
25 testimony is going to take?

1 MR. LAND: I don't think 30 minutes. I would
2 estimate 30 minutes or so.

3 THE COURT: Do you have a copy of his report that I
4 -- Mr. Conner, have that?

5 MR. LAND: I have one the original that I marked all
6 over if you like to take it to your office and get it
7 copied.

8 THE COURT: Does, Mr. Conner, have one?

9 MR. CONNER: I might, I think have an extra one.

10 THE COURT: Well, it might help me a little bit.
11 Maybe, Mr. Bradly can take it in there and get Debbie to
12 copy it for me. If we start around 2:30 and he takes
13 until three or so, if you don't have any additional
14 witnesses, assuming I don't know if you, assuming Mr.
15 Conner doesn't have any rebuttal witnesses that will leave
16 us 3:15 or so. As to my question is what do we do the
17 rest of the day? We got to discuss the charge. I would
18 prefer not to have arguments and the charge and then send
19 the jury room home. But if we start early enough for
20 example if we start arguments and charges now, that will
21 be perfect time to give the jury sometime this evening to
22 deliberate, but I just continue to play that by ear.

23 MR. LAND: Yes, sir.

24 MR. CONNER: I got an extra copy. I have marked on
25 some of it.

1 THE COURT: Y'all can be at ease while I sit up here
2 and read this report. Does anybody that you know of out
3 there who knows who Dr. Frierson is?

4 MR. LAND: No, sir. I will go out there.

5 THE COURT: Is he from Sumter?

6 MR. LAND: He's from Columbia.

7 THE COURT: But is he from Sumter originally?

8 MR. CONNER: He is.

9 THE COURT: If he's the Richard Frierson that I think
10 he is, he at least will know where the courthouse is.

11 MR. LAND: And I told him we're in the little
12 courtroom. Here you go, Mr. Conner.

13 (WHEREUPON, a pause in the proceedings.)

14 THE COURT: Okay, you ready, Mr. Land?

15 MR. LAND: Yes, sir.

16 THE COURT: Okay. Bring in the jury.

17 (WHEREUPON, the jury return to the courtroom.)

18 THE COURT: All right. Ladies and gentlemen, we are
19 ready to continue with the trial.

20 Mr. Land, you can call your next witness.

21 MR. LAND: Your Honor, we call Dr. Richard Frierson.

22 THE CLERK: Place your left hand on the Bible and
23 raise your right hand. State your name please.

24 THE WITNESS: Richard Lasane Frierson.

25 THE CLERK: Do you solemnly swear or affirm the

1 testimony you give the Court to be the truth, the whole
2 truth, and nothing but the truth so help you God?

3 THE WITNESS: I so affirm.

4 THE CLERK: Please state your full name and spell
5 your last name for the record?

6 THE WITNESS: My name is Richard Lasane Frierson,
7 F-R-I-E-R-S-O-N.

8 WHEREUPON,

9 Richard Frierson,
10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. LAND:

13 Q And you are a doctor; correct?

14 A Yes.

15 Q Dr. Frierson, where do you live?

16 A Where do I live now?

17 Q Yes.

18 A In Columbia, South Carolina.

19 Q Where did you grow up?

20 A Here in Sumter.

21 Q What do you do for a living?

22 A I am a forensic psychiatrist and I teach on the
23 faculty at the medical school in Columbia.

24 Q Explain to the jury what a -- first of all, what a
25 psychiatrist does and then after that what a forensic

1 psychiatrist does?

2 A A psychiatrist is a medical doctor who specializes in
3 treatment of a person with mental illness schizophrenia,
4 depression, bipolar disorder. There's lots of mental
5 illness. The word forensic means that I'm in a
6 subspecialty of psychiatry that deals with interfaces
7 between mental illness in the legal system. Frequently,
8 might be the criminal trial offense where I'm asked to
9 provide an opinion on some matter related to a criminal
10 defendant. Frequently, it might be civil cases as well
11 such as looking to see if someone is competent to manage
12 their finances, looking to see if someone suffered mental
13 injury as a result of a car accident, malpractice cases
14 I'm involved with, so both criminal and civil things.
15 Whenever something related to mental illness also enters
16 the legal arena.

17 Q Tell me about your education?

18 A Well, after graduating Sumter High school here in
19 1980, I went to College -- University of South Carolina
20 Columbia. I received an under graduate degree bachelor of
21 music degree actually in 1984 from USC in Columbia. I
22 then went to medical school at USC and finished my medical
23 doctorate in 1988. I then completed four years of
24 residency training in psychiatry, so I could become a
25 psychiatrist in 1992. And then I completed a one-year

1 fellowship in forensic psychiatry. I believe Psychiatry
2 Institute in 1983.

3 Q And have you testified as an expert before in South
4 Carolina?

5 A Yes.

6 Q Approximately how many times?

7 A I been doing this full-time since 1993 somewhere over
8 200.

9 Q And you testified as an expert in psychiatry and
10 forensic psychiatry?

11 A Yes.

12 MR. LAND: Your Honor, we offer Dr. Frierson as an
13 expert in forensic psychiatry.

14 THE COURT: Mr. Conner?

15 MR. CONNER: I have no objection.

16 THE COURT: All right. The witness is qualified as
17 an expert in the field of forensic psychiatry. Ladies and
18 gentlemen, my earlier instructions to you along the lines
19 of how you evaluate call the testimony of expert witness
20 will apply to this witness as well. You can accept his
21 opinions, reject them or otherwise give his opinions the
22 weight that you think they're entitled to.

23 All right, Mr. Land.

24 BY MR. LAND:

25 Q Dr. Frierson, in your professional practice, did you

1 have an opportunity to evaluate Derrick Harriott?

2 A Yes.

3 Q How did he come to you to be evaluated? What brought
4 him to you?

5 A Well, it's part of my faculty position at the
6 University of South Carolina. We have a contract with the
7 South Carolina Department of Mental Health and so I am
8 assign to go to the defendant of mental health and work
9 several days a week. I work in the forensic evaluation
10 service which provides court evaluations for people from
11 all over the State of South Carolina. And so in this
12 case, the judge in Sumter County court of general sessions
13 this court issued an order that ordered the department of
14 mental health to evaluate Mr. Harriott. I was the one who
15 was appointed to give the evaluation by the department of
16 mental health.

17 Q Did Derrick Harriott or anyone in his family pay you
18 any money to evaluate him or come testify here today?

19 A No.

20 Q In your evaluation of Mr. Harriott, how do you start
21 your evaluation? What's the first thing you do when you
22 assigned a case to evaluate?

23 A Well, first thing I do is I review information that
24 is available about the alleged defense police reports,
25 autopsy reports, witness statements, anything really

1 pertaining to the charge that the defendant is facing. I
2 also review any medical records that we can find, any
3 past history of treatment for mental illness, sometimes
4 there is, sometimes there isn't. Medical records from
5 primary care doctors, family doctors if they treated for
6 anything. And then we talk to a family member of the
7 defendant to get what we call a social history or some
8 background information on the defendant.

9 Q In regards to specifically to Mr. Harriott, would you
10 list the items that you reviewed in your preparation to
11 evaluate him?

12 A The arrest warrant, the investigative report, the
13 incident report by the police. His prior arrest record,
14 the death certificate of the victim. A autopsy report on
15 the victim, some documents entitled New Year's resolutions
16 both by the victim and the defendant. Statements given by
17 many people Shaneka Haynesworth, Susie Bracey, Officer
18 Barnhill, Marla Scott, Marquis Westley, Geraldine Westley,
19 Shenae Haynesworth, Antonio Chapman, T. Brewer, W. Lyons
20 and Heath Gardner. Then I reviewed a SLED, South Carolina
21 Law Enforcement Division toxicology report on the
22 defendant and also on the victim, a SLED gunshot residue
23 test. A statement given by Eugene Finkdeiner. Also
24 provided some articles from the Sumter Daily Item. A
25 family -- Sumter County family court order that awarded

1 guardianship of Mr. Harriott to Danny and Joyce
2 Witherspoon back in 1991, school records from Sumter
3 School District 17. Psycho-educational report conducted
4 on the defendant back the school district.

5 Q Let me stop you there that's an awful big word. What
6 is a psycho-educational report?

7 A That just means that he was evaluated by a
8 psychologist when he was in school and received testing,
9 IQ testing and that kind of stuff.

10 Q You can go on?

11 A I reviewed a transcript from the Sumter Magistrate
12 court which was a hearing shortly after his arrest.
13 Medical records from the Sumter County Detention Center,
14 from Santee-Wateree Mental Health Center, from Sumter
15 Urological Associates, from Doctor's Care of Sumter. And
16 then as I mentioned the social history obtained from his
17 Aunt Joyce Witherspoon.

18 Q In addition to those documents or that conversation
19 with Witherspoon, did you have conversation with anyone in
20 addition Mr. Harriott?

21 A Yes, in this case, I felt that I needed to talk to
22 some people individually. So I called Eugene Finkdeiner,
23 which was Mr. Harriott's former boss, Investigator Dean
24 Plute, Joyce Witherspoon, and then Officer Heath Gardner.
25 There were two police interviews with Mr. Harriott that

1 were recorded, I requested those from the Solicitor's
2 office and I listen to those as well.

3 Q Okay. And did you also have an in-person interview
4 with Derrick Harriott?

5 A Yes, I did.

6 Q How long did that interview take?

7 A That was for two hours on January 16th of this year.

8 Q Based on those documents that you received, the
9 interviews you had with individuals and with Derrick
10 Harriott, were you able to evaluate him and come to an
11 opinion as to his mental state and determine who he is and
12 how he is things like that?

13 A Yes, it's related to his mental state at the time of
14 offense, which is what I was asked by the Court order to
15 look at.

16 Q And is there anything interesting of Mr. Harriott's
17 past in growing up that would affect his mental capacity
18 or mental abilities?

19 A There are probably lots of things. His school
20 performance was not good. He was -- I think he finished
21 in the bottom five numbers of people in his high school
22 class. Received a certificate rather than a diploma. So
23 if it's fair to say, there is evidence beginning at a
24 young age that he was not the brightest kid growing up
25 finished Sumter High 485 out of 490. And he had prior

1 I.Q. testing at age 13 in the school district which
2 revealed full scale I.Q. of 69.

3 Q Tell the jury first of all what a full scale means
4 and what 69 means?

5 A Well, just someone's I.Q., intelligence quotient.
6 And basically 69 is very low. It would fall in the range
7 of people that have mild mental retardation. I did not
8 make that diagnosis and I do not believe that Mr. Harriott
9 is actually retarded. He has held competitive employment,
10 has obtained his driver's license. His what we call -- in
11 order to diagnose someone mental retardation, you have to
12 have I.Q. less than 70 and they have to have significant
13 impairment and social occupational -- what we call
14 adaptive functioning. His functioning has been higher
15 than someone with mental retardation if you look at his
16 life. But this I.Q. score is probably not far off from
17 his cognitive abilities and I do think that his
18 cognitively and intellectually limited.

19 Q Okay. And you did not perform a new I.Q. test on
20 him?

21 A No.

22 Q And do you have an opinion as to what his mental
23 ability as you said?

24 A I would say he falls in the range of borderline
25 intellectual functioning, which is not retarded, but

1 certainly, well below what would be considered average.

2 Q Did you do any testing of his ability to read and
3 write, do arithmetic things like that?

4 A We did some. For example, we have an information
5 form that all of our defendants read, talks about what
6 we're going to be doing and talks about the limitations of
7 confidentiality, that kind of thing. But normally when
8 you go see a psychiatrist told the person confidential,
9 but because he was here under court order, it wasn't going
10 to be. We wanted to make sure that they understand that.
11 And so he could not read many of the words on that form.
12 He read some of them. But for example, larger words like
13 evaluation he couldn't read, happened he couldn't read.
14 Some of the easier words he did better with.

15 Q In your evaluating of Mr. Harriott, were you provided
16 information in regards to what event brought him to you?
17 What crime he was charged with?

18 A Yes, I was.

19 Q And what was that?

20 A He was charged with murder of -- I believe I'm saying
21 this right, but I apologize if I'm not Quanna Cooper.

22 Q Quanna Cooper.

23 A Quanna.

24 Q Did you review an investigative report of
25 Investigator Cooler?

1 A I didn't write down the name, but I did review the
2 investigative report that was provided.

3 Q Did that provide you with the context in which the
4 events occurred?

5 A Yes.

6 Q What is your understanding of what occurred?

7 A Well, that he shot Miss Cooper numerous times at her
8 residence at Southern Orchard Place. There was also some
9 quotations of statements that he made right at the time
10 that this happened right afterwards.

11 Q In your evaluating this case or reviewing evidence,
12 do you understand what was going on between Miss Cooper
13 Mr. Harriott just before the gun was fired?

14 A My recollection is that there had been some arguing
15 going on. The relationship had not been going well for
16 sometime, that he was planning on -- they essentially were
17 going to split up. There's also from his statements at
18 the time of his interviews some information that the
19 victim may have been making some disparaging comments
20 about him.

21 Q Tell me about that?

22 MR. CONNER: Your Honor, I object to anything further
23 than that.

24 MR. LAND: Your Honor, this falls under ---

25 MR. CONNER: It's all hearsay. It has nothing to do

1 with the state of this fellow's mind.

2 MR. LAND: Your Honor, I think it fall under two
3 categories one Rule 803(3) in regards to his mental state
4 at that time which is important time this case is about.
5 It always also falls under Rule 703 which is the basis for
6 an expert's opinion.

7 THE COURT: Come around here for just a minute.

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

11 THE COURT: Objection overruled, Mr. Conner.

12 You continue, Mr. Land.

13 BY MR. LAND:

14 Q Dr. Frierson, remember where we were I was asking the
15 context of what they were arguing about. Did your
16 investigation of preparing this report that you discuss
17 with Mr. Harriott or reviewed documents that informed you
18 as to what they were arguing about?

19 A Yes.

20 Q What were they arguing about?

21 A Allegedly, she was making disparaging comments about
22 his sexual performance. And also made a statement that
23 I'm going to make sure when you leave me that no one else
24 is going to want to be with you -- no other woman.

25 Q You used a lot of pronouns there make sure we

1 understand who was saying what?

2 A The allegation is that the victim was saying --
3 criticizing Mr. Harriott's sexual performance and also
4 stating that if you leave me -- if you Mr. Harriott, leave
5 me, Miss Cooper, I'm going to make sure that no one woman
6 is going to want to be with you.

7 Q Did Mr. Harriott discuss with you allegations of him
8 being raped or drugged and raped?

9 A Yes.

10 Q And what were those allegations?

11 A Well, those allegations are a large part what led to
12 my diagnoses, but the allegations were that Miss Cooper
13 was drugging him and allowing men to come into his room at
14 night and sexually assault him. And then was filming this
15 and placing this on the internet. And that possibly the
16 police were also involved with it being on the internet,
17 that people knew about it and were laughing at him. That
18 he could drive to North Carolina and people in North
19 Carolina would be pointing at him or laughing at him.
20 People on Broad Street in Sumter driving in their car
21 would be looking at him, laughing at him all because this
22 had occurred.

23 Q And moment ago you said that led you to a diagnosis.
24 What did you diagnose Derrick Harriott condition as?

25 A Yes, this type of -- Mr. Harriott clearly had at the

1 time of the allege offense a delusion. A delusion is a
2 word we use in psychiatry, it's a very common symptom of
3 severe mental illness. And a delusion is a fixed false
4 belief. Someone believes something that is not true not
5 based on reality. And when I say fixed, I mean it has the
6 presence of despite giving them evidence to the contrary
7 that this could not possibly be true. They still believe
8 it.

9 Q In your evaluation of Mr. Harriott, what evidence was
10 presented to him or what evidence exist that these beliefs
11 are not true?

12 A Well, I think several family members had told him
13 there's no way this is going on. He had had conversations
14 with this -- I talk to his boss. Weeks before the alleged
15 offense, he wanted to know if the company where he was
16 working would give him a drug test because he wanted to
17 prove that he was being drugged by Miss Cooper. Now, the
18 nature of a delusion even if he gotten a drug test and it
19 shown up negative, he's still going to believe it's going
20 on.

21 Q In fact, Mr. Harriott was tested following the
22 shooting?

23 A Right. SLED did a test because immediately after the
24 shooting as part of the investigation offense Mr. Harriott
25 told police about this.

1 Q And even if those came back negative, would he still
2 have that delusion?

3 A Yes, he still has them that this was going on.

4 Q And how about the police found no internet connection
5 or a computer in the home?

6 A No.

7 Q Would that make him stop believing this delusion?

8 A No.

9 Q How about that there were no video cameras available
10 would that make him stop his delusions?

11 A No. He would believe this, that's the nature of
12 mental illness. It doesn't always make sense as to what
13 someone who's not mentally ill would think.

14 Q In addition to a delusional disorder, did you further
15 describe that type of disorder a pre-persecutory type?

16 A Persecutory.

17 Q Tell me about that?

18 A The word persecution. There different types of
19 delusional disorders, but the type that I diagnose
20 Mr. Harriott with is called persecutory type. And it
21 involves primarily delusions of persecution. Someone's
22 harming me, out to harm me, trying to harm me doing
23 something bad to me. Frequently, will have patients say
24 that they are poisoning me or my wife's poisoning me or
25 something bad is happening to them by another person.

1 Because most of his delusions involve bad things happen to
2 him that someone's doing to him.

3 Q Doctor, do you have an opinion as to whether or not
4 Mr. Harriott mental capacity to falsify all these stories
5 in hope of persuading you to diagnose him with something?

6 A Well, you know, part of my job and training as a
7 forensic psychiatrist is to look to see if people are
8 faking. You know, if Mister -- first of all, I don't
9 think he's bright enough to fake in such a manner that is
10 classic as what we see as mental illness. Even if he
11 were, there was plenty evidence of these thoughts long
12 before the murder that he had told other people. So he
13 would have had to have done extensive planning that he was
14 going to make this up ahead of time and then, you know,
15 weeks and months before this happened. There was also --
16 I need to mention a big dose of reality that sort of fed
17 into his delusions.

18 Q Tell me about that?

19 A He did have an infection in his prostate gland what
20 you call prostatitis, which he been treated for at
21 Doctor's Care. And eventually, they sent him to Sumter
22 Neurological and that cause some pain in the rectal area
23 and it's an infection. And it requires treatment with
24 antibiotics for a very long time like three and four weeks
25 you have to take strong antibiotics. And he took that and

1 it came back like a few weeks later. So here you have
2 someone thinking that someone is messing with him sexually
3 and then he ends up with these infections and prostatitis
4 which probably had nothing to do with being raped and
5 drugged. But in his mind having these symptoms fed into
6 delusion of what was happening to him.

7 Q So it supported his delusions?

8 A Well, it just gave him another reason to believe,
9 yeah, this is what's going on.

10 Q As part of your evaluation, were you called upon to
11 determine whether or not Mr. Harriott was competent to
12 stand trial?

13 A Yes.

14 Q And what -- in determining that, what must you factor
15 in, what is the criteria for you to determine?

16 A Well, competency to stand trial which is the most
17 common evaluation, I would do in the criminal realm of
18 things involves whether an individual can understand what
19 goes on in court, can understand what the judge does, what
20 their lawyer does, what the solicitor does, what you guys
21 do as jurors, does he understand how he can plead, what
22 he's charged, what could happen if he's convicted, the
23 evidence in the case, does he understand what evidence is,
24 how evidence can be used and can he problem solve within
25 the legal system and assist an attorney with a defense.

1 Q And what was your conclusion after his competency to
2 stand trial?

3 A It was my opinion that Mr. Harriott was competent to
4 stand trial or is competent to stand trial.

5 Q In addition to that, did you come to any opinion as
6 to his ability to control his actions on March the 16th
7 2007?

8 A Are you talking about capacity to conform?

9 Q Correct.

10 A Yes.

11 Q Tell the jury what you mean by capacity to conform?

12 A The other two things we do, we do -- I was ask to do
13 criminal responsibility and capacity to conform. Criminal
14 responsibility has to do with the time of the offense did
15 the defendant have the capacity to distinguish right from
16 wrong legal and moral right from legal and moral wrong.
17 And if he did, was his ability to conform, to control his
18 behavior, to not engage in a criminal act impaired by
19 mental illness.

20 Q Break those two down? What was your ---

21 A My opinion criminal responsibility was that he was
22 criminally responsible, that he was capable of
23 distinguishing right from wrong. Immediately after it
24 happened, he said to the witnesses call the police. Well,
25 one doesn't say call the police unless they realize they

1 done something that could be viewed as legally and morally
2 wrong.

3 Q And the second part of the second issue ability to
4 conform his actions tell the jury about that?

5 A Yes, that is did he have a mental disease or defect
6 that prevented him from conforming his conduct to the
7 requirements of the law. And my opinion to that was, yes,
8 he did have a mental illness. And, yes, it did impair or
9 prevent him from being able to conform his conduct to the
10 requirements to the law.

11 Q So in layman's terms he knew it was wrong, but he
12 couldn't stop himself?

13 A Right, he couldn't resist doing it. He could not
14 stop from doing it. You know, I asked him lots of
15 questions about well if she was doing this to you, you
16 know, why didn't you go to the police, you know, why
17 didn't you do something else. And he believed that the
18 police may have been involved as part of putting it on the
19 internet. And, you know, delusions like I said are fixed
20 and false. And it's very likely that without treatment
21 which is the tragedy in this case, had he been treated,
22 had someone said you need to go see a psychiatrist to talk
23 about this because delusions can be successfully treated
24 many times. It is my opinion that his delusions amounted
25 to a compulsion that he could not resist.

1 Q How would his mental illness affect his ability to
2 deal with a heated argument?

3 A Well, I don't think the delusional disorder would
4 necessarily by and of itself impair someone's ability to
5 deal with their anger except if the subject matter that
6 was being argued about hit on his delusion.

7 Q So he and Miss Cooper were arguing about his sexual
8 performance or sexual issues?

9 A Sexual issues, yes, would certainly cause Mr.
10 Harriott to become much more angry than other issues or be
11 a particularly sensitive topic for him.

12 Q And just his mental ability in general, his low
13 functioning level, how does that affect his ability to
14 deal with a heated argument?

15 A Yes, people with lower IQ's, people with mental
16 retardation have a decreased ability to deal with what we
17 call frustration tolerance. They're more easily
18 frustrated by things when they don't go their way. They
19 have difficulty to less coping skills than people with
20 higher IQ's and they can have more difficulty controlling
21 their anger.

22 Q And, Dr. Frierson, did you make an recommendation as
23 to what treatment could help Mr. Harriott?

24 A I believe I did. My recommendation that he needed a
25 trial of anti-psychotic medication.

1 Q And anti-psychotic medication, what would that do for
2 him?

3 A That would have the potential of taking away his
4 delusions over time.

5 Q Dr. Frierson, let me show you a report. First of
6 all, tell me if you recognized it?

7 A This is a copy of the six page report that I submit
8 today the court after my evaluation.

9 Q Does that summarize your opinion?

10 A Yes.

11 MR. LAND: Your Honor, we offer that as defendant
12 next exhibit.

13 THE COURT: Mr. Conner.

14 MR. CONNER: Your Honor, I object to it.

15 THE COURT: We'll mark it for ID at this time. I'll
16 rule on its admissibility later.

17 MR. LAND: Thank you, Your Honor.

18 THE COURT: What number is that, Mr. Land?

19 MR. LAND: Ten.

20 THE COURT: Court reporter put ID notation on that
21 sticker.

22 (WHEREUPON, Defendant's Exhibit No. 10 was marked for
23 identification only.)

24 BY MR. LAND:

25 Q Dr. Frierson, the opinions that I've asked you today

1 that were summarized in that report of January the 16th of
2 2008, have you received any evidence or documents or were
3 told anything that would change your opinion that you set
4 forth in that or that you testified here today?

5 A No.

6 Q You believe that you have sufficient evidence at the
7 time that you made this report to come to an opinion based
8 on a reasonable degree of medical certainty?

9 A Yes, I mean, I rely on both the solicitor and your
10 office to provide me with documents to be reviewed. I
11 obviously always say I have no idea what documents are out
12 there that I haven't reviewed. I rely on them to give
13 them to me. So something exist that I haven't reviewed
14 and I haven't reviewed it, but to my knowledge, I've
15 reviewed what is available.

16 Q And that was sufficient to come to an opinion?

17 A Yes.

18 MR. LAND: Your Honor, that's all questions I have.

19 THE COURT: Mr. Conner.

20 CROSS-EXAMINATION

21 BY MR. CONNER:

22 Q Dr. Frierson, this defendant had no prior psychiatric
23 history to amount to anything prior to this incident, did
24 he?

25 A He had some psychiatric treatment as a child, but not

1 for delusional disorder.

2 Q It was just for misbehaving in school; is that
3 correct?

4 A Well, it's for what's called oppositional defiant
5 disorder which is characterized by disciplinary problems
6 in school.

7 Q And his medical history did you review the records
8 regarding this prostate problem that he had?

9 A Yes.

10 Q Both at Doctor's Care and Sumter Neurological?

11 A Yes.

12 Q And what would -- how would that have affected him?

13 A What symptoms? What are you asking?

14 Q Why would that affect him?

15 A Well, with prostatitis you can have pain in
16 urination. You also can have a discharge from your penis.
17 You can also have pain on bowel movement. And he
18 certainly reports experiencing some rectal pain which he
19 delusionally attributed to the sexual assault, but not the
20 prostatitis. But it just gives him a real symptom that he
21 can misinterpret and feed into his delusions in support of
22 them.

23 Q And you concluded that his real IQ was higher than
24 what the school reported is what you would say?

25 A No, I reported that his functioning, his ability to

1 hold competitive employment at two separate places for
2 several years, his ability to live independently, that is
3 higher than someone normally with a 69 IQ.

4 Q Now, when you first see somebody, do you do what's
5 called a mental status exam of them?

6 A Well, that's part of the overall two hours of
7 interview. I do something that we do on everybody called
8 a mental status examination.

9 Q And did you find him to be alert and oriented?

10 A Yes.

11 Q He had a good recall of past personal information?

12 A Yes, he was able to give me a history of his life.

13 Q And he had no significant memory impairment?

14 A No, sir, we ask people to remember three words over
15 five minute period. And as I recall, he was able to do
16 that without difficult. Well, actually, he did -- he
17 recall two of them spontaneously, I had to prompt him for
18 the third one. Like I typically use -- I can tell you
19 exactly what I used in this case baseball, card and shoe
20 were the three words. And he couldn't remember baseball.
21 He remembered card, shoe. And I said, well, the other one
22 is the name of a sport. And when I give him that clue, he
23 goes, oh, yeah, baseball.

24 Q And that was after five minutes?

25 A Yeah, five to ten minutes.

1 Q Now, about his capacity for abstract thinking?

2 A That was very good. Actually, that was surprisingly
3 good given his IQ.

4 Q Give as for example?

5 A Abstract thinking for example if I ask somebody
6 what's the same between an apple and orange. What does an
7 apple and an orange have in common? The abstract answer
8 is they are both fruit, pieces of fruit. If someone
9 doesn't have the ability to lump, categorize objects
10 abstractly, they would say an apple and an orange are
11 round or they taste good, that's a more concrete answer.
12 It's only something you can see or taste or sense not a
13 bigger way of thinking about them abstractly. Another
14 example, table and a chair what do they have in common the
15 abstract answer is they're pieces of furniture. A
16 concrete answer would be they're made of wood. An
17 abstraction requires a higher intellectual ability to
18 thinking concretely. The other way we do it is we use
19 proverbs interpretation. For example, what goes around
20 come around, what does that mean. Someone who's concrete
21 might say a wheel or something that actually rotates. So
22 he said karma, you do unto others the way you want them to
23 treat you. Then I say what does it mean to say you can't
24 judge a book by its cover. Someone who's concrete will
25 say you have to read it first. They want apply, you can't

1 judge a book by its cover to a person. And he said just
2 because this happened doesn't make me a bad person, so I
3 thought that those were all clear evidence that he was
4 able to think abstractly.

5 Q And did he have any ability to remember current
6 events?

7 A What do you mean by current events?

8 Q Like who might have been president?

9 A He was able to recall Bush, Clinton, Daddy Bush and
10 Reagan. This was, of course, before the recent elections.

11 Q And you found that he was competent to stand trial?

12 A Yes.

13 Q That he was aware of the charges against him. He
14 understand the potential sentences?

15 A Yes.

16 Q And then understood the role of his attorney and the
17 other attorneys and the judge and things of this sort?

18 A And the jury, yes.

19 Q And he was able to discuss the evidence against him?

20 A Yes, he was aware of potential evidence in this case.

21 Q And based on that, the kind of conversation you found
22 that he was competent?

23 A Yes, the only thing that really I was at all concern
24 about because sometimes you will get people who have
25 delusions that will insist that their attorney prove the

1 delusion as part of their defense. In other words, if
2 Mr. Harriott would have come to me and if he had taken the
3 stance, I want my attorney to prove that the victim was
4 drugging me and bringing people in to rape me and putting
5 it on the internet and that all these people were laughing
6 at me, everybody in Sumter knows about it. If he had
7 wanted his attorney and was adamant that his attorney
8 prove that, we would have had a problem with his
9 competency. But he was able to say he believes these
10 things, but he now realizes that not everybody else
11 believes them and that convincing them that it's true even
12 though he believes it's true might be too much or too
13 difficult for his attorney to be able to do.

14 Q Okay. And then you determine that he was criminally
15 responsible?

16 A Well, I offered an opinion on criminal
17 responsibility, I think that's actually a determination of
18 trier of fact. It was my opinion that he would have been
19 criminally responsible.

20 Q In other words, in your opinion he knows the
21 difference between right and wrong?

22 A In my opinion, he knew that shooting the alleged
23 victim was wrong.

24 Q In fact, when the police arrived, he said I know what
25 I did. I know I shot her, I shot the bitch?

1 A Yes.

2 Q That's why I have the opinion that I have quite
3 frankly or some of the statements that were made?

4 A Immediately afterwards at the time of the offense.

5 Q And this delusion doesn't keep him from knowing right
6 and wrong, it just impairs his ability to conform his
7 conduct to what society expects of that?

8 A Yes. For him, he knew it was wrong to kill somebody,
9 to kill the allege victim, but there was no way out of
10 what was happening to him. He couldn't go to the police.
11 He couldn't, you know, where ever he would go they would
12 follow him. There was no escape. He actually thought
13 that part of the drugging that she was doing made him
14 continuously come back to her. It was like a spell.

15 MR. CONNER: I have nothing further, Your Honor.

16 THE COURT: Redirect.

17 REDIRECT EXAMINATION

18 BY MR. LAND:

19 Q Dr. Frierson, his ability to render two out of three
20 things or remember a third one on prompting, does that
21 affect your opinion as to him having delusions?

22 A No, delusions you got to understand it's a specific
23 isolated symptom, that's the definition of delusions.
24 People with -- I don't want to confuse anybody. People
25 with schizophrenia which is the most severe of all mental

1 illnesses can also have delusions, but they also
2 frequently hear voices. Their thinking is disorganized
3 and they don't function. They don't hold competitive
4 employment very well. Their day-to-day functioning is
5 pretty poor. They're socially isolated. They don't seek
6 out necessarily relationships. This is what makes
7 delusional disorder different from schizophrenia. Yet,
8 they have this delusion, delusion is fixed, it's false.
9 It's always bigger, but their functioning outside of that
10 is pretty good. They're able to hold employment. They
11 are able to drive, function, live independently, manage
12 their finances and engage relationships with people. So
13 outside of the delusion, the rest of his function is
14 pretty good.

15 Q Remembering four presidents wouldn't change your
16 opinion either?

17 A No, delusion disorder has nothing to do in and of
18 itself with someone's ability intellectually to do things.

19 Q So you can be highly intelligent and have a delusion?

20 A Yes, I think that there was a movie recently about a
21 Nobel Prize winner who actually developed schizophrenia
22 and had delusions that the government wanted him to be --
23 his name is John Nash to be C.I.A. agent to help crack all
24 these numerical codes. He was a brilliant mathematician
25 who once won a Nobel Prize for his mathematics ability.

1 But he was, you know, we're talking brilliant and still
2 developed delusions.

3 Q The statements after the shooting that I shot her
4 does that change your opinion as to him being delusional?

5 A No.

6 MR. LAND: No further questions.

7 RECROSS-EXAMINATION

8 BY MR. CONNER:

9 Q The statement made to -- in the neighborhood there at
10 the time this thing occurred that she's screwing around on
11 me, she deserved to die, that's not consistent with any
12 rape story, is it?

13 A It's not inconsistent with a rape story. I did note
14 that, but the problem is that's also a type of paranoia
15 thought that your significant other or your spouse is
16 cheating on you. It's another way they're wronging you.
17 Not only is she bringing in people raping you and drugging
18 you at night and putting it on the internet, she's
19 screwing around on me as well. It all fits with that same
20 persecutory theme.

21 Q You are not saying this defendant is schizophrenic?

22 A No, I'm saying he has delusional disorder, which is
23 in the same family of illnesses as schizophrenia, but it
24 is not schizophrenia.

25 MR. CONNER: I have nothing further.

1 MR. LAND: I have no further questions. I ask that
2 he be excused.

3 THE COURT: Dr. Frierson, you can step down. Thank
4 you.

5 (WHEREUPON, the witness leave the witness stand.)

6 THE COURT: Mr. Conner, any objection?

7 MR. CONNER: I have no objection, Your Honor.

8 THE COURT: He can be excused if he like.

9 Mr. Land.

10 MR. LAND: Your Honor, can we take a break?

11 THE COURT: Yes, sir.

12 All right. Ladies and gentlemen, we take a break for
13 a few minutes. Do not discuss the case. We'll have you
14 back out very shortly. If you need something that's not
15 in the jury room, let your foreperson know and she'll let
16 the bailiff know.

17 (WHEREUPON, the jury retire to the jury room.)

18 THE COURT: All right, Mr. Land.

19 MR. LAND: Your Honor, I discussed his right to both
20 testify and not testify. It is his desire to express to
21 me that he not testify, but I would ask the Court to
22 inquire once again of him about that.

23 THE COURT: Come on up, Mr. Harriott.

24 Mr. Land, want you come on up too just in case he has
25 any questions of you.

1 All right, Mr. Harriott, do you recall the discussion
2 that you and I had before lunch?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I want to make sure again that you
5 understand that the constitution that we -- that our laws
6 are derived from specifically says that a person cannot be
7 forced to testify against himself in a criminal trial. Do
8 you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Mr. Land, do you think he
11 understands that?

12 MR. LAND: I think he does understand that.

13 THE COURT: No one in this world can make you sit in
14 that witness chair and undergo questioning. You're the
15 only person who can make that decision. You can consult
16 with Mr. Land, means you can talk with Mr. Land, you can
17 talk with your family and try to get some guidance in
18 making that decision, but the ultimate and final decision
19 is yours. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I told you before lunch if you do not
22 testify, I will tell the jury they cannot consider that at
23 all when they deliberate or decide whether or not you're
24 guilty or not guilty. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Also if you do testify, Mr. Land will be
2 able to ask you questions and then Mr. Conner will be able
3 to ask you questions just like you seen happen with the
4 other witnesses. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you recall exactly what you and I
7 talked about before lunch?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Have you had enough time to talk to your
10 lawyer and your family about it?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you want to testify?

13 THE DEFENDANT: No, sir, I do not want to testify.

14 THE COURT: Has anybody forced you to make that
15 decision?

16 THE DEFENDANT: No, sir.

17 THE COURT: Has anybody promised you anything in
18 exchange for you telling me that you don't want to
19 testify?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you have any questions at all about
22 what we discussed?

23 THE DEFENDANT: No, sir.

24 THE COURT: Are you making this decision based on
25 your own freewill?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Mr. Land, based on your
3 continued observations of Mr. Harriott throughout the
4 trial, do you think he's fully understanding my questions
5 and he's fully aware of his rights under the Fifth
6 Amendment?

7 MR. LAND: I believe he his, Your Honor.

8 THE COURT: Do you have any other questions that you
9 would like for me to ask him?

10 MR. LAND: No further questions. I would ask on the
11 record I did discuss this with the family members that are
12 here and they have given their input. And I've relayed
13 that and he's discussed it with his family members. It's
14 a decision we've all come to.

15 THE COURT: All right. Okay. Thank you, sir. You
16 can have a seat.

17 All right. I find that Mr. Harriott's decision not
18 to testify is based on -- had been made by him and is
19 based on his own freewill and that he fully understands
20 his rights under the Fifth Amendment.

21 All right. Will you have any other witnesses,
22 Mr. Land?

23 MR. LAND: No further witnesses, Your Honor.

24 THE COURT: Are you going to have any reply
25 witnesses, Mr. Conner?

1 (WHEREUPON, a pause in the proceedings.)

2 THE COURT: You need a couple minutes to decide?

3 MR. CONNER: Your Honor, the only thing that bothers
4 me in regards to reply witnesses and is this so-called
5 delusion that he has is somebody might believe it's not a
6 delusion and that we would have to defend the character of
7 this woman. As long as that can be made clear, I don't
8 have any other witnesses, but I'm...

9 THE COURT: Well, that can be done stipulation or
10 reply. I understand your concern.

11 Mr. Land, do you have any input on that?

12 MR. LAND: Your Honor, I'll stipulate that has been
13 my argument from the very beginning of the case that the
14 allegations of what she was doing is a delusion and is not
15 true.

16 THE COURT: Either by way of drugging him, allowing
17 men to come over and rape him and that she was screwing
18 around on him?

19 MR. LAND: That's correct.

20 THE COURT: All right. You're willing to publish to
21 the jury in language that Mr. Conner agrees to or I can do
22 it. Stipulations are usually done by the attorneys. So I
23 just want to make sure that when we start back that there
24 is no question about that. I understand exactly what you
25 are saying. I want to make sure that -- seems like you

1 would want that anyway since it would tend to focus on
2 your defense. If Mr. Conner's concerned about it, I would
3 be incline to allow him to put up reply testimony unless
4 the stipulation's crystal clear.

5 MR. LAND: Your Honor, we're willing to stipulate. I
6 think you placed it very clearly there, that's how you
7 want to put it to the jury fine and ask if we stipulate to
8 that that's fine.

9 THE COURT: All right. When the jury comes back
10 then, I will do that.

11 Mr. Conner, if I will tell the jury that the party's
12 have stipulated, which mean agrees, that Miss Cooper was
13 not in anyway participating drugging of Mr. Harriott or
14 allowing people to come over and rape him that she was not
15 participating in that. It did not occur. And that there
16 is no allegation or proof that she was in anyway and I'll
17 use the word been used in the trial screwing around on
18 him. Will that be suitable?

19 MR. CONNER: That's suitable.

20 THE COURT: It's 3:30. And we're going to have to
21 take a fairly solid amount of time to go over these
22 charges and the verdict form. I can proceed that if we
23 bring the jury back in, it probably want be until close to
24 four. What is the State's position on whether or not we
25 go forward today with the charge and argument or do it

1 tomorrow?

2 MR. CONNER: My preface would be in morning.

3 THE COURT: Mr. Land.

4 MR. LAND: Your Honor, I can do it this afternoon or
5 if you want to -- you say wait until in the morning, I can
6 wait 'til the morning. I'm ready to go whenever.

7 THE COURT: I know if we started the argument at
8 around four, I wouldn't argue this afternoon and then
9 charge in the morning. We started at that time we
10 probably would not finish until 5:30 easily. And then I
11 think at least one of the jurors has some child care
12 concerns. I think the best thing to do will be to start
13 in the morning at 9:30, that way we can be assured of
14 giving them a full day tomorrow to deliberate the case.
15 So we will do that. I will bring in the jury.

16 Mr. Land, I will allow you to rest.

17 And then, Mr. Conner, before you tell me that, you
18 don't want to call any reply witnesses, I will pronounce
19 that stipulation to the jury. Then I'll assume that after
20 that, you'll say you don't have any reply evidence.

21 MR. CONNER: That's correct.

22 THE COURT: You can bring in the jury.

23 (WHEREUPON, the jury return to the courtroom.)

24 THE COURT: Thank you. Mr. Land, any additional
25 witnesses?

1 MR. LAND: No further witnesses and the defense rest,
2 Your Honor.

3 THE COURT: All right. Ladies and gentlemen, I am
4 going to summarize for you a stipulation that the two
5 sides have agreed upon me pronouncing to you and a
6 stipulation is a legal term or a more artful term for the
7 word agreement. The parties have basically stipulated as
8 follows: With regard to commentary that you've heard
9 during the case, this may be somewhat of a repeat of what
10 I told you earlier and in some respects not. There has
11 been some commentary in this case about a belief held by
12 the defendant that she had been administering drugs to him
13 and then allow men to come over and rape him. That,
14 ladies and gentlemen, is not the case and was not the
15 case. And the parties have stipulated that that never
16 occurred. And by the same token, you have heard the
17 commentary or mentioning of a statement made by the
18 defendant that perhaps that the -- Miss Cooper was
19 screwing around on him. Likewise, the parties have agreed
20 and stipulated that had not occurred as well and that that
21 was a belief just held by the defendant, but was in fact
22 not correct. Is that correctly stated, Mr. Land?

23 MR. LAND: Yes, sir, Your Honor.

24 THE COURT: Mr. Conner?

25 MR. CONNER: Yes.

1 THE COURT: Ladies and gentlemen -- well, Mr. Conner,
2 any reply testimony?

3 MR. CONNER: No reply, Your Honor.

4 THE COURT: Ladies and gentlemen, as unfortunately,
5 happens from time to time, we are at 3:30. I want to
6 explain this in a context of how the trial progresses.
7 You heard all the evidence that you're going to hear in
8 this case. The next phase of the trial or what the rules
9 that we operate under require me to do is hold a
10 conference with the attorneys about what I will charge to
11 you as far as the law is concern. I've got parts of it
12 right here in my hand that necessarily takes sometime
13 because immediately after that conference that we have,
14 the attorneys are permitted under the law to give you
15 their closing arguments.

16 Well, part of their argument is to tell you what I am
17 going to charge you in the form of the law and it is their
18 opportunity to explain or argue to you what conclusions
19 they think you should reach based on the evidence and the
20 law. They can't do that fully without knowing exactly
21 what I'm going to charge. Since, we don't know that yet,
22 they couldn't effectively argue right now. When the
23 lawyers do argue and when I do charge you, that
24 necessarily takes additional time. When all is said and
25 done the conference, the arguments and the charge may take

1 as much as a total of two hours and that that will put us
2 right at 5:30. With you having heard all that and not
3 having adequate time this evening to deliberate, so what I
4 decided to do is stop for the day. Well, now I've decided
5 that after hearing there's not going to be any additional
6 evidence and to bring you back tomorrow morning at 9:30,
7 so that we can hear the argument of the attorneys and the
8 charge on the law and then you will be free to deliberate
9 this case.

10 Now, not until I tell you that you can begin
11 discussing this, can you begin discussing it. So when you
12 go home today wherever you might go, don't discuss the
13 case with each other or with anyone else and do not begin
14 forming any conclusions or final conclusions about what
15 you're decision will be in this case. You not heard
16 everything yet and I will tell you when you can begin
17 deliberating those things even in your own mind. And
18 you'll have plenty of time to decide this case, so you are
19 free to go for the day. I will see you back tomorrow
20 morning at 9:30 and I hope you have a nice evening.

21 (WHEREUPON, the jury was excused for the day.)

22 THE COURT: Mr. Land, do you want to restate your
23 motions.

24 MR. LAND: Yes, sir, the same argument as before. I
25 can restate them. You can recall what I said?

1 THE COURT: If they're the same as before, I will
2 respectfully deny those motions. I think this is a jury
3 issue.

4 Mr. Conner, do you have anything before we break?
5 What I want to do is this, I want to speak to you two
6 gentlemen in the back in my office about these charges and
7 then we can come out and hopefully use the rest of the
8 afternoon to create a record on any issues that you want
9 to put on the record about what I am and not going to
10 charge that's suitable to you?

11 MR. CONNER: That's suitable.

12 THE COURT: All right. We will take a few minutes
13 and then you can come on back.

14 Mr. Conner, do you have any charges in the meantime?

15 MR. CONNER: I do. I have some cases I like to hand
16 up.

17 THE COURT: One of the issues we will discuss when
18 you come back is the viability of the lesser included
19 offense in this case or charge on the lesser included
20 offense of voluntary manslaughter. We will discuss that
21 when we come back. I take that is probably what some of
22 your cases are? Is that correct right, Mr. Conner?

23 MR. CONNER: That's correct.

24 THE COURT: All right. Give Mr. Land a copy of
25 those. You got anything else for me?

1 MR. CONNER: This one.

2 THE COURT: Okay.

3 (WHEREUPON, a break was taken.)

4 THE COURT: Just so the record is clear, I have the
5 State's proposed charges which are three in number. The
6 defendant's which are nine, but the primary thing we
7 discussed in chambers was whether or not I was going to
8 give a charge on voluntary manslaughter as a lesser
9 included offense. Of course, the verdict form would first
10 address the question of murder. And the choices would be
11 not guilty, guilty but mentally ill and guilty. If the
12 jury found him guilty or guilty but mentally ill either of
13 the two, then our discussion of voluntary manslaughter is
14 a mute point. But if they find him not guilty of murder,
15 then they would be required to consider the lesser
16 included offense of voluntary manslaughter. From an
17 academic standpoint, there's no doubt that voluntary
18 manslaughter is a lesser included offense of murder, but
19 the charge that I give in the verdict form has to depend
20 upon the facts and not what the technicality of the law
21 is. Mr. Land, why is voluntary manslaughter something
22 that should be charged?

23 MR. LAND: Well, Your Honor, of course, I believe
24 that the facts support a charge of voluntary manslaughter
25 in that the killing occurred in the sudden heat of passion

1 of the moment. As we discussed in chambers, I believe
2 that -- in chambers, we had a long discussion about trying
3 to summarize it hopefully I don't run too long.

4 THE COURT: No, I just want you to go ahead and put
5 so your position can be clearly stated for purposes of the
6 record. I know what it is, but I want to make sure I
7 think you should go slowly as you need to, so don't feel
8 rushed.

9 MR. LAND: Of course, for there to be voluntary
10 manslaughter, it must be provocation that was subject to
11 our discussion. I believe you essentially have two items
12 of publication here. One is that there was heated
13 argument. I think the testimony of Dr. Frierson based on
14 the evidence that he received from the State and his
15 evaluation as that they were in an argument at the time
16 that the defendant fired the weapon. They were arguing
17 about as Dr. Frierson said and I have it stated to
18 understand who was saying what, the defendant reported
19 that the victim said that nobody is going to want you when
20 I'm finished with you.

21 THE COURT: No woman is going to want you.

22 MR. LAND: Correct correct. And the delusions of the
23 defendant is part of that. We had a long discussion about
24 well can his delusions be part of the provocation. I
25 believe they can because you have to look at the person

1 what they believe to be true. If you had a heated
2 argument about something that wasn't true, I still think
3 it is a heated argument. My wife would always say that
4 I'm always wrong when we're in an argument and so some
5 people think that every argument one person is right and
6 one person is wrong. And so to say that his delusions not
7 being true mean that it wasn't a heated argument or that
8 he did not perceive that to be an assault on him which is
9 another issue, that can be a provocation. He believes
10 that these assaults were ongoing, that he was being
11 molested, drugged, raped, whatever the words we want to
12 use. Then they had a heated argument about that. So I
13 believe the provocation is twofold: One that in his mind,
14 there was an assault of him going on. Now, Your Honor,
15 may say well it wasn't at that very moment, it wasn't
16 sudden. I believe that you can have prior events that
17 build to the point where it becomes a sudden moment of
18 passion and that's what it was here. They were having an
19 argument, he was at the bottom of the stairs. She had all
20 his clothes, photograph shows that there was pile of
21 clothes. They didn't collect them as evidence. I mean,
22 it's clear they are men's clothes and that during that
23 argument, he killed her.

24 Now, the State has handed up a case that says that
25 words alone are not enough. I believe that two things

1 here need to look at one is that I don't believe it was
2 words alone. In the defendant's mind, there was physical
3 assault going on. We stipulated, the evidence supports
4 it, that is not true. So I believe that there was
5 sufficient provocation for a charge of voluntary
6 manslaughter.

7 THE COURT: All right. The State has -- well, for
8 there to be voluntary manslaughter, there would have to be
9 situation where the defendant took the victim's life in
10 the sudden heat of passion based on a sufficient legal
11 provocation as you correctly stated. And both of those
12 heat of passion and sufficient legal provocation must be
13 present at the time of the killing. Within context how
14 you define those two things, you are right. But what I'm
15 questioning is the definition of sudden heat of passion is
16 something that must for a time affect a person's self-
17 control and temporarily disturb a person's reason. The
18 sudden heat of passion must be the type that would make an
19 ordinary, with the emphasises on ordinary, an ordinary
20 person or person of ordinary reason unable to coolly
21 reflect on his actions and would produce an uncontrollable
22 impulse to do violence. You want me to define that in the
23 context of his mental condition or his mental defect that
24 the doctor testified to contributed to the sudden heat of
25 passion existing, that's part of it; is that right?

1 MR. LAND: When you say his mental defect, I believe
2 that ---

3 THE COURT: The delusions.

4 MR. LAND: The delusions you have place the ordinary
5 person there with those thoughts.

6 THE COURT: But a person of ordinary reason would not
7 be having delusions and that's where our -- you and I
8 apparently diverge.

9 MR. LAND: I understand that.

10 THE COURT: You know what the elements of the crime
11 are, but the sudden heat of passion must be the type that
12 would make it such that a person with ordinary reason be
13 unable to control themselves.

14 MR. LAND: But, Judge, the ordinary person is you
15 have to place them there in a situation ---

16 THE COURT: But that person's not ordinary, he's
17 having delusions.

18 MR. LAND: Well, back to my two people having an
19 argument, just because you're wrong about in your position
20 about the argument doesn't mean that it's not a heated
21 argument.

22 THE COURT: All right. And then the sufficient legal
23 provocation. And I'm going to figure out what my decision
24 on the sudden heat of passion. The sufficient legal
25 provocation has to be the type that would make a person of

1 ordinary reason again become enraged and lose control
2 temporarily and the provocation must come from some act of
3 or related to the victim. In other words, the victim has
4 to be the source of the provocation. An example I gave
5 y'all in the office about the recent case where two people
6 in a group of several with regard were threatening the
7 defendant and he ran away and he heard gunshots being
8 fired at him from behind. He shoots a gun over his
9 shoulder and kills one of the people who was not
10 threatening him. Even though he might have been justified
11 in depending himself, the provocation did not come from
12 that victim who got shot, so he was not given a voluntary
13 manslaughter charge. Then if you move forward to words
14 alone however vulgar or offensive are not enough to be
15 legal provocation, is there any evidence in this case
16 aside from his mistaking or delusional belief that he was
17 being drugged and assaulted, is there any evidence in this
18 case that she was doing anything but uttering words? Like
19 once I get through with you, no woman is going to want you
20 or get out of here or you're crazy something like that.

21 MR. LAND: Well, Judge, if you can take that away,
22 the context of the argument is what Dr. Frierson said it
23 was.

24 THE COURT: I think we agreed that it comes back to
25 his perceptions.

1 MR. LAND: Correct.

2 THE COURT: And what he says she was saying in the
3 context he believes was going on.

4 MR. LAND: Correct.

5 THE COURT: And even though they might have been
6 delusions?

7 MR. LAND: Correct. And Judge, I handed up my charge
8 number six I think sets forth a different standard. I
9 offered that, it comes from jury instructions for criminal
10 cases Professor Hubbard did that.

11 THE COURT: Your charge number five but example six?

12 MR. LAND: No, sir. My charge number six talks about
13 the nature of the provocation, the defendant's physical
14 and mental condition, defendant's situation at the time of
15 the conflict, and defendant's educational background.

16 THE COURT: All right. And I have to rationalize
17 that with the other case law that says that basically
18 words in an argument are not a license to kill, sticks and
19 stones.

20 MR. LAND: Yes, sir.

21 THE COURT: Okay. All right. Interesting question.
22 All right. Mr. Conner, what's your position on the
23 voluntary manslaughter?

24 MR. CONNER: My position is voluntary manslaughter is
25 not appropriate, I would object to charging voluntary

1 manslaughter for most of the reasons you've already
2 voiced. And one thing I think it's also significant is
3 sudden heat and passion based on legal provocation and any
4 kind of assault of this person even in his deluded
5 thinking would have happened at some prior time and not
6 that day. He's not charging that this woman has assaulted
7 him, he's charging that some man -- in his delusion, he
8 claims that some men might have assaulted him and that
9 would have happened some other time because he had just
10 gotten home from work on this day when this happened as
11 testified by his boss. He work for him that day either
12 after regular work hours after moving a pool table.

13 THE COURT: All right. Mr. Land, how about the
14 suddenness?

15 MR. LAND: Your Honor, I hand you up the Conner case
16 and talks about argument earlier at a Christmas party. I
17 don't think the law is that it must be in one time
18 argument between the parties and they had a perfect
19 relationship before that. What that is talking about is
20 that the heat and the passion the argument must be going
21 on when you do it. You don't get in an argument drive off
22 and come back six hours later and then shoot somebody
23 based on -- and then claim voluntary manslaughter. The
24 heat and passion must be going on then and not that you
25 never had an argument before. I don't know any couple

1 that was dating for two or three years that never had an
2 argument before. If so, they much better than me. So I
3 don't think that's proper to argue that it must be a one
4 time event.

5 THE COURT: If a husband and wife or boyfriend and
6 girlfriend repeatedly argued over time over anything from
7 finances, to taking out the trash, to walking the dog, you
8 don't advance the notion that at some point that goes on
9 long enough, that the killing of one is justified or at
10 least -- there would be a voluntary manslaughter
11 situation?

12 MR. LAND: You have to look at the argument that was
13 happening right then.

14 THE COURT: You haven't taken out the trash six
15 straight weeks I been doing it every time.

16 MR. LAND: If it's that call of an argument, no.

17 THE COURT: What if we were screaming and yelling --
18 man and woman screaming and yelling at each other about it
19 and one of them pulled out a gun and shot the other,
20 you're saying that that is a situation where a voluntary
21 manslaughter charge would be appropriate as a lesser-
22 included offense?

23 MR. LAND: It would be especially if the woman said
24 to the man when I get finish with you, no woman will want
25 you.

1 THE COURT: No, okay. You think that would be
2 suitable words alone?

3 MR. LAND: Well, that's an issue we have to look at
4 as separate issue about words alone because you thrown in
5 the gun and there's some argument about that. Let's just
6 say for whatever reason there was a killing. I don't
7 think that the context of the argument being logical or
8 illogical because some of you might say that taking out
9 the trash never be something to argue about. But if
10 that's a root problem in your relationship and you argued
11 about it and argued about it, and it comes to a head and
12 you had a heated argument about it, then I think it can be
13 legal provocation for a jury to determine. I don't think
14 the judge gets to decide if arguing about the taking out
15 the trash is a legal provocation.

16 THE COURT: But I do get to decide whether or not as
17 a matter of law this amounts to nothing but words alone.

18 MR. LAND: Well, you get to decide whether you charge
19 that, yes, sir.

20 THE COURT: Okay. All right. Anything else on
21 voluntary manslaughter from the State, Mr. Conner?

22 MR. CONNER: Nothing from us, Your Honor.

23 THE COURT: All right. I given you copies of my
24 guilty but mentally ill charge, the murder charge and the
25 voluntary manslaughter charge if I charge it. The guilty,

1 but mentally ill charge does include the statement in
2 there that the State has to prove the elements of murder
3 beyond a reasonable doubt, but the defendant has to prove
4 by the greater weight of the evidence the mentally ill
5 part. Mr. Land, you agree with that?

6 MR. LAND: Yes, sir, Your Honor. There's something I
7 wanted to bring up with the Court. Dr. Frierson testified
8 that he met the standard for guilty but mentally ill. And
9 the State offered no evidence to refute that. They
10 offered no expert of that. During cross-examination, he
11 never indicated otherwise. I believe that, Your Honor,
12 can direct a verdict as to if he is found guilty that he
13 suffered from mental illness that affected his ability to
14 conform with the law.

15 THE COURT: There's also a point of law that says
16 that there not bound by expert's opinion even if there's
17 some contradiction you can.

18 MR. LAND: That's true too. I think only evidence is
19 that he had a mental illness affect his ability to conform
20 with the law.

21 THE COURT: Okay. But going back to my original
22 question, do you agree from the general sense, general
23 standpoint that the defendant has the burden of proving
24 that he is guilty, but mental ill by a greater weight of
25 the evidence?

1 MR. LAND: And I believe I even handed up a charge to
2 that effect, Your Honor. I do agree with that.

3 THE COURT: All right. So what my charge will
4 consistent of is that the indictment is not evidence,
5 presumption of innocence, reasonable doubt, direct and
6 circumstantial evidence, credibility charge and expert
7 witness charge, the fact that the defendant has not
8 testified is not to be considered at all. Of course, I
9 will expand on that, criminal intent charge, murder,
10 guilty but mentally ill, voluntary manslaughter, guilty
11 but mentally ill that two if I charge the manslaughter and
12 possession case of a weapon during the commission of a
13 violent crime and guilty but mental ill on that as well.
14 Anything else that either side wants other than what you
15 submitted to me in writing?

16 MR. CONNER: In regards to what's been submitted,
17 what's your intent in regard to his number five, six, and
18 seven?

19 THE COURT: If I charge voluntary manslaughter?
20 Talking about if I charge it or if I do charge it, will I
21 charge these things?

22 MR. CONNER: Will you charge these things.

23 THE COURT: If I charge voluntary manslaughter, I
24 likely will already the first paragraph of his number five
25 is in my general charge not word for word, but in general

1 sense. And by way for example, only by way of for
2 example, I likely will not give an example that fits facts
3 of this case. But I think that's a common fact, so if I
4 charge voluntary manslaughter, I'll allow you to argue
5 that, but I want give it as an example, which sub six
6 under your charge five the example is very emotional
7 arguments. I'm not gone comment on the facts. Number six
8 I'll have to read State vs. Martin to see whether the
9 second sentence is the law because the term ordinary
10 reason might include those things I don't know which
11 specifically are defendant's physical and mental
12 condition situation, the time of the conflict and his
13 education and background. Now, number seven I don't
14 understand what this is saying. The last sentence if you
15 have any doubt concerning whether the defendant acted in
16 the heat of passion upon adequate legal provocation, you
17 must find the defendant did not act with malice and
18 therefore he's not guilty of murder. I thought this was a
19 manslaughter charge. If I charge voluntary manslaughter,
20 I'm going to charge what I gave y'all. I guess that
21 answers that. I guess if you could be back at shortly
22 after nine in the morning, I'll let you know exactly what
23 I'm going to charge and not charge. And I guess Mr. Land
24 will both of you have to frame your possible arguments
25 both ways. Any comments on the verdict form or have y'all

1 had a chance to look at that yet?

2 MR. LAND: I don't have problem with it as presented,
3 Your Honor.

4 THE COURT: Mr. Conner, you do in regards to the
5 voluntary manslaughter?

6 MR. CONNER: It might be different tomorrow.

7 THE COURT: If I don't charge voluntary manslaughter,
8 I'll just take out number two and number three will slid
9 up to number two. Okay. Thank y'all. I will see you in
10 the morning. If you need me any more today, I'll be here
11 for a good while longer.

12 END OF REQUESTED TRANSCRIPT

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

I, Keshia Reed, Court Reporter and Notary Public in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed pages, numbered 1 through 153, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing.

In witness whereof, I have hereunto affixed my signature this 8th day of June, 2009.



Keshia Reed, Court Reporter
My Commission Expires: 6-5-2010

1 If -- Mr. Connor, are you going to be speaking with
2 any members of the family that are right behind you?

3 MR. CONNOR: I will have an opportunity.

4 THE COURT: Okay. I just want to make sure that if
5 there's any contentious feelings between the family of the
6 defendant and the family of the victim, that those folks
7 leave the courtroom at separate times. So you all can be
8 assured of that.

9 If one of the officers can make sure that the court
10 reporter gets to her car and the lady in the back gets to
11 her car, and any of you other ladies, I'm not so much
12 concerned about the men, any other ladies, with this dark,
13 if you need to be walked to your car, just let an officer
14 know. That will be done for you.

15 All right. Thank you.

16 (November 11th was a State holiday).

17 (Court reporter Keisha Reed transcribed November
18 12th.)

19 (The following was placed on the record November
20 13th.)

21 THE COURT: All right. Mr. Land, any additional
22 argument on the voluntary manslaughter?

23 MR. LAND: Yes, sir, Your Honor. I've handed you a
24 copy, and I think you have a copy of State vs. Locklear.

25 I specifically draw your attention to -- it would be

1 the -- page 424 of the opinion under the Southeastern
2 site.

3 Judge, I think the standard for charging voluntary
4 manslaughter is set forth by the Locklear case, and I
5 quote from it. It says, "It is proper for a trial judge
6 to refuse to charge voluntary manslaughter in a murder
7 case where it" -- and I think this is the important part,
8 very clearly appears there is no evidence whatsoever
9 tending to reduce the crime from murder to manslaughter.

10 Judge, I think that standard is the standard for
11 charging voluntary manslaughter. It is not a case where
12 Your Honor judges the weight of the evidence, but if there
13 is evidence presented.

14 Your Honor, we presented the evidence through
15 Dr. Frierson that they were in a heated argument; that she
16 stated to him that, "When I'm finished with you, no man
17 will want you or no woman will want you -- or no woman
18 will want you," or whatever the phrase was.

19 Judge, I think a jury can decide whether that is a
20 threat, whether that is a -- just a statement she made, if
21 it was part of the heated argument.

22 The court in Locklear did not charge voluntary
23 manslaughter. The court goes through very detailed
24 analysis of why they didn't charge that.

25 In that case, they even quote to the transcript where

1 it says that it was just a monotone argument. Once again,
2 that's -- that would be on page 425 of the opinion.

3 It also states that the victim and the defendant in
4 no way was threatening him. There was no fighting. There
5 was no threatening, so in that case they said it was
6 proper not to charge it, but I think it's very
7 distinguishable from the evidence here, Judge.

8 I think it's not a weight of the evidence test. It
9 is an evidence -- it's a test of if there is any evidence
10 to support the charge of voluntary manslaughter.

11 I think we have presented sufficient evidence that
12 there was some threat by the victim, and in that case, the
13 charge goes to the jury, and you should not reject my
14 request for the charge of voluntary manslaughter.

15 THE COURT: All right. That part you quoted goes on
16 to cite some other cases where it was proper to charge
17 voluntary manslaughter where the defendant and the victim
18 had been in a heated argument prior to the murder, cite
19 State vs. Wiggins where there was a heated argument and
20 the defendant feared for his life because of the victim
21 threatening him.

22 Then Lowery, heated argument and the victim was about
23 to initiate a physical encounter. Then it goes on to say
24 on page 425 that the provocation of the deceased, which I
25 think by the deceased, would be better.

1 It must be such as naturally and instantly produces
2 in the mind of a person ordinarily constituted, that means
3 an ordinary reasonable man, the highest degree of
4 exasperation, rage anger, sudden resentment or terror,
5 rendering the mind incapable of cool reflection.

6 In this case and in the other cases, I think that all
7 of -- all of the cases where words alone -- well, let me
8 back up.

9 The law is where a deadly weapon is used, words
10 alone, however vulgar or resentful or however bad, is not
11 sufficient legal provocation unless there was -- unless
12 those words were accompanied by some overt physical act.
13 All the cases say that.

14 In this case, what we have is the -- by your -- by
15 the any evidence standard, Mr. Harriott had gone to the
16 apartment. There was some argument that ensued.

17 He was collecting his clothes or she was collecting
18 them, throwing them down the stairs, whatever the jury
19 might want to believe, and he's on -- he has the assault
20 rifle with him because he's taking it with him, and
21 there's no other weapon in the house.

22 No weapon is found near her after the event, and he
23 is understood the delusional belief, according to the
24 psychiatrist at that time, that somebody -- she was
25 drugging him allowing men to come over and rape him.

1 So first of all, he's not a person who is ordinarily
2 constituted at that time. However, by your argument,
3 that's irrelevant.

4 Seen in the context of her words, "after I get
5 through with you, no man or no woman or no one is going to
6 want you," aside from those words, there is no evidence of
7 an overt physical threat in the form of her raising a
8 knife or advancing towards him or doing anything except
9 uttering those words.

10 Now, you -- where is the evidence of that other than
11 the jury speculating?

12 MR. LAND: Judge, I think the evidence is -- I'm not
13 going to argue there's any knife. There's no knife
14 involved.

15 The evidence is he collected his stuff from the
16 bedroom upstairs. He was leaving the apartment. He was
17 at the bottom of the stairs. She was coming towards him,
18 at best at worst --

19 THE COURT: Where is the evidence she was coming
20 towards him?

21 MR. LAND: Where is --

22 THE COURT: Where is that at?

23 MR. LAND: I was going to --

24 THE COURT: Where is that at?

25 MR. LAND: That's what I was going to get to, Judge.

1 At worst, she is facing him. She is not retreating from
2 him. All of the injuries, entrances, were to the front.

3 So there's no evidence that he was pursuing her, and
4 there's no evidence that she was retreating. I believe
5 that under the standard, she has made a threat to him, and
6 it is for a jury to decide whether or not that is
7 sufficient provocation under the law.

8 It is not a case where you can deny it based on the
9 law, but it must be a decision based on fact by the jury.

10 THE COURT: All right. And the last thing is in the
11 State vs. Plemmons, which is a 1985 case, the defendant
12 shot his grandmother in the heart and said although the
13 victim was seen shouting, cursing and pointing her finger
14 at the appellant, the defendant, that's not legal
15 provocation.

16 I just don't see how you get to the point where you
17 want to be based upon those words, "Once I get through
18 with you, no woman -- no other woman is going to want
19 you."

20 MR. LAND: And Judge, I don't -- I don't have that
21 case that you're referring to, but I don't know if the
22 Court cited what it was she was saying.

23 It sounds like from your -- from your quotation from
24 it, that they don't know what the actual statements were.
25 In this case, we know what the statement was, and I think

1 a jury can decide whether that is a threat, overt or
2 otherwise.

3 THE COURT: All right. Mr. Land, I think your
4 position is clearly stated, but I'm not going to charge
5 voluntary manslaughter. If you think you need to put
6 anything else on the record at this time, I certainly will
7 allow you to do that.

8 Anything else?

9 MR. LAND: Well, of course, just objecting to your
10 failure to charge to the requested charges I handed up as
11 they relate to voluntary manslaughter.

12 THE COURT: And the murder charge that you have got
13 is part of my general charge which includes the malice and
14 all the other murder charges.

15 I gave both of you the murder and the guilty but
16 mentally ill charge yesterday, so I'll -- I'll tell the
17 jury -- and the verdict form is currently -- well, the new
18 verdict form will have a choice for murder, not guilty,
19 guilty but mentally ill and guilty, and then possession of
20 a firearm during the commission of a violent crime.

21 I'm not going to hold either one of you to any time.
22 Mr. Connor, will you be opening in full on the law?

23 MR. CONNOR: Your Honor, I will not open. I'd waive
24 that.

25 THE COURT: Mr. Land, do you want him to open?

1 MR. LAND: I would, Your Honor.

2 THE COURT: All right. Mr. Connor, you can open on
3 the law, all right.

4 MR. LAND: Just for clarification, Your Honor. I
5 hate when I tell a jury something in the beginning and
6 then don't get to argue it in the end.

7 Of course, in my opening statement I discussed
8 voluntary manslaughter, and that's what I was going to
9 request them to do.

10 I'd like to -- somehow for jury to know that I
11 haven't forgotten about that or that I didn't -- I wasn't
12 lying to them. You know, I would ask that I be allowed to
13 say that that issue is not before you or something to that
14 effect.

15 THE COURT: You can say that issue isn't before you,
16 but you can't say I excluded it.

17 MR. LAND: I understand that.

18 THE COURT: Yeah, I think you can do that.

19 MR. LAND: Okay. That's what I wanted to know.

20 THE COURT: Any objection to that, Mr. Connor? I
21 just don't want anybody saying what I ruled outside of
22 their presence, just voluntary manslaughter is not an
23 issue because it's not. Thank you, sir.

24 MR. CONNOR: Well, I reluctantly agree.

25 THE COURT: All right. Just don't cross -- don't

1 cross over that little line, okay.

2 All right. You can bring in the jury.

3 (WHEREUPON, the jury came into open court at
4 approximately 10:50 a.m.)

5 THE BAILIFF: Your Honor, we have all the jurors and
6 alternates present in the courtroom.

7 THE COURT: Thank you, Mr. Bradley.

8 All right, ladies and gentlemen, I apologize for the
9 delay in keeping you in your jury room, but sometimes
10 those -- that's unavoidable. It was in this case. It's
11 not the -- not the lawyer's fault at all, not any of the
12 party's fault.

13 At this point, we've reached the stage of the trial
14 where the attorneys are allowed to argue or give their
15 closing arguments to you and make their positions known as
16 to what conclusions that they believe the evidence compels
17 you to reach in this case.

18 I remind you that what the lawyers say to you is not
19 evidence. If a lawyer, during the course of his argument,
20 recounts some evidence to you and that recounting by the
21 lawyer does not correspond with your collective memory of
22 the evidence, then you go with your memory, because again,
23 the lawyers certainly have a job to do and they do it
24 well, but what they say about the evidence is not
25 necessarily so.

1 Now, after the lawyers argue you, I will give you the
2 charge on the law. At some point shortly after that,
3 you'll be permitted to deliberate this case. The
4 arguments will be presented in the order of the State
5 going first on the opening on the law. Then the defendant
6 will go next, and then the State will have the right to
7 close. So you'll hear, likely, three sets of arguments.

8 Continue to listen very carefully to what the lawyers
9 have to say, and then we'll likely take a break some point
10 after the arguments, and then I'll give you the charge on
11 the law.

12 All right. Mr. Connor?

13 CLOSING STATEMENT:

14 MR. CONNOR: Yes, sir.

15 Ladies and gentlemen of the jury, I want to thank you
16 for your attention thus far and ask you to bear with us a
17 little while longer.

18 I know sometimes it's difficult to sit and listen,
19 and you get a little weary of that. In any event, your
20 attention is important.

21 At this time, I'm just going to briefly discuss the
22 law. Now, the Judge is going to instruct you on the law
23 when we are finished here.

24 He'll be a lot more comprehensive than I will, but as
25 you know by now, the charge is murder. I think the

1 verdict in this case is going to be three possibilities:
2 It's going to be not guilty, of course, is one
3 possibility. It's -- there's also guilty of murder or
4 guilty but mentally ill. So we'll talk briefly about
5 those.

6 Murder is the killing of another person with malice
7 aforethought, and the key word as I addressed you earlier
8 in this case is malice, malice aforethought. It doesn't
9 have to be any particular time. It's just for long enough
10 to decide that you're going to do what you did.

11 The -- malice means ill will, hatred toward another
12 person, the intentional doing of a -- of a wrongful act
13 without just cause.

14 Now, it can -- malice can be exhibited in more than
15 one way. Sometimes you have what you call expressed
16 malice. That's where somebody states what they're going
17 to do. I express it. I tell you, "I'm going to shoot
18 you" or "I'm going to kill you" or whatever.

19 In this case, I'm going to come back to talk with you
20 about why I submit malice exists, but that's what you're
21 looking for, some expression of malice.

22 Now, malice can also be inferred, and that's -- these
23 are not different types of malice. These are -- there's
24 -- malice is malice. In other words, it's ill will,
25 hatred, intent to do an unlawful act without just cause,

1 but it can be expressed.

2 Sometimes you don't know what the fellow -- what he
3 might have said. However, you know how he acted, and so
4 you can -- based upon the use of a deadly weapon, you can
5 infer malice based upon what he did.

6 In other words -- and I don't want to talk about what
7 he's done at this time. I just want to tell you what
8 we're looking for in order to find murder.

9 The -- one of the verdicts -- you're going to have a
10 choice as to guilty or guilty but mentally ill. In South
11 Carolina, the statute says that a defendant is guilty but
12 mentally ill if at the time of the commission of the act
13 constituting the offense, he had the capacity to
14 distinguish right from wrong or to recognize his act as
15 being wrong, but because of mental disease or defect, he
16 lacked sufficient capacity to conform his conduct to the
17 requirements of law.

18 So one thing is he has to know the difference between
19 right and wrong, and the doctor testified here that he did
20 know the difference between right and wrong, but his
21 ability, the doctor says, is impaired by mental disease.

22 In any event, ladies and gentlemen, as I have told
23 you earlier, the Judge will be a lot more comprehensive
24 than I have been, and I will come back and talk with you
25 more about how the facts of this case apply to these

1 rules.

2 Thank you.

3 THE COURT: Mr. Land?

4 CLOSING STATEMENT:

5 MR. LAND: March 16th, 2007 a tragedy occurred.

6 That's what Dr. Frierson said. Do you remember that? The
7 tragedy of this was that if Derrick Harriott had the
8 medication that he needed that he wouldn't have had these
9 delusions.

10 When we started this case, I told you we were going
11 to argue about voluntary manslaughter. That's not an
12 issue anymore. What you're asked to decide is did Derrick
13 Harriott murder Quanna Cooper on March 16, 2007.

14 No one in this courtroom is going to tell you that
15 Derrick Harriott didn't shoot a gun on March 16, 2007. No
16 one is going to argue that that gun didn't kill Quanna
17 Cooper.

18 There was a tragedy that day. You heard Joyce
19 Witherspoon, his aunt, really his mother, cry because she
20 was "Aunt Joy" to Quanna Cooper.

21 This is not a case where someone killed someone to
22 rob them for money. It's not a case where they killed
23 them, you know, just a random act. What you have to
24 decide is was there malice, was there malice aforethought.
25 It's a fancy legal term. You all have to decide that.

1 The Judge is going to charge you that each element of
2 murder must be proven. That is the unlawful killing of
3 another with malice aforethought.

4 You all will have to decide, but we're not arguing it
5 didn't occur. We're not occurring that Quanna Cooper did
6 not pass away. We're not arguing that Derrick Harriott
7 didn't shoot a gun that day to kill her.

8 The State still has to prove malice aforethought.
9 What have they proven to you about malice aforethought?
10 They offered a lot of pieces of evidence to you about what
11 happened that day in terms of physically what happened.

12 I don't think they've offered you any evidence of
13 malice, of a depraved heart. Let's look at what the
14 evidence shows starting with the photographs, first of
15 all.

16 Now, you're going to have a gun, a very, I think,
17 sinister-looking gun. However, that is a legal gun, legal
18 meaning it's lawful for him to have.

19 I asked all the experts that knew about guns about
20 that, and every one of them either said yes, it was legal
21 or I don't know if it was illegal, but no one said it was
22 illegal. So him having that gun alone, owning that gun,
23 there's nothing wrong with that. I don't think that
24 should affect your decision.

25 I don't think you should be swayed by notions that

1 that's a sinister-looking gun. A pistol could have done
2 the same thing.

3 That gun being paraded around and shown to you should
4 not affect your decision. It's not an illegal gun. It
5 just happened to be the gun what he owned.

6 Let's talk about what the evidence shows in terms of
7 what was going on that day. You're going to have pictures
8 of Ms. Cooper when she was shot, which is very -- they are
9 very disturbing photographs.

10 Once again, your emotions should not be how you
11 decide this case. We don't decide cases based on
12 emotions. We decide cases based on the law and the facts.

13 What the photographs show, however, is that -- and
14 I'm looking at State's Exhibit 7, the door to leave this
15 apartment is right at the bottom of the stairs.

16 There's clothes strewn at the bottom of the stairs as
17 you can see where Ms. Cooper is lying on top of them. The
18 State didn't collect that evidence. I asked them about
19 it. They didn't collect those, but nobody argued they
20 weren't his clothes. So the evidence is they were -- they
21 were Mr. Harriott's clothes. He was leaving.

22 You have got a picture of the closet. I think it's
23 clear that one side of the closet is empty. All the men's
24 clothes are gone.

25 I asked the detective about that. He said he didn't

1 see any men's clothes up in the closet. All the men's
2 clothes were down at the bottom of the stairs.

3 There was some discussion about a shell casing in the
4 bathroom as if something had happened in the bathroom.
5 Everyone that testified and knew about guns said that when
6 those shells are ejected, they can fly all over.

7 I think Investigator Duggin's statement was it was
8 very dynamic. There's no telling where they may end up.
9 There's so many variables. I don't know if the State is
10 going to argue that anything happened in the bathroom, but
11 there's no evidence to support that.

12 Furthermore, I asked the pathologist, the lady who
13 examined Ms. Cooper after she passed away, about where the
14 wounds were. They were on her front. The evidence is
15 that Mr. Harriott was at the bottom of the stairs. He was
16 trying to leave. He had all of his stuff.

17 The State has not shown malice. He was trying to
18 leave. He had all of his stuff. He was going out of the
19 door.

20 You have to find based on -- based -- without a
21 reasonable doubt. Now, the Judge will instruct you what a
22 reasonable doubt is. A reasonable doubt is one that would
23 cause someone to hesitate. It's not just something you
24 make up. It has to be based on facts.

25 There is a reasonable doubt here whether or not there

1 was malice. There's not a doubt that this was a sad day.
2 There's not a doubt that the Cooper family has suffered
3 terribly. I'm not arguing that.

4 Ms. Witherspoon certainly wasn't testifying that it
5 wasn't a sad day. Dr. Frierson told you about Derrick
6 Harriott, who he is, what was going on in his life, but
7 Dr. Frierson never said anything about malice. He never
8 said anything about hatred.

9 The State never offered any evidence about hatred.
10 Now, the State put up several witnesses to start with
11 about what he said when he got outside.

12 Those are fine people. They just happened to live
13 near where this happened. I wasn't trying to -- to argue
14 with them, but the State wanted them to say something that
15 they had never written down before.

16 They wanted them to say the B word, but I asked those
17 people, "Did you make a statement to police?" Yes. "Did
18 you write down everything that happened?" Yes. "Did you
19 write down all of the important stuff?" Yes. Then I
20 showed them their statements. In every one of the
21 statements, they never mentioned the B word, not a single
22 one of them.

23 Now, it has to be malice aforethought, so even if you
24 believe that they forgot, all three of them forgot to put
25 the B word in their statements, him coming outside and

1 saying that does not show malice because it's an
2 afterthought, it's afterwards. Malice has to be
3 aforethought. It has to be beforehand.

4 Now, I'm sure the State is going to argue he shot
5 this gun 14 or 15 times. Well, the malice has to be there
6 before he fires it the first time, and the way the State
7 has argued this case is that he rapidly fired the 14
8 shots, and they offered no evidence that malice was
9 created during the firing.

10 Now, the Judge will charge you that you can infer,
11 you can infer, malice from the use of a deadly weapon, but
12 that's a decision y'all have to make.

13 It does not mean the fact that there was a gun
14 involved, therefore period, end of sentence, there was
15 malice. Y'all have to decide that. You have to decide
16 this case unanimously. All of you have to agree that
17 there was malice aforethought.

18 It can't be that half of you think it is and half of
19 you think it isn't or two-thirds thinks it is or
20 two-thirds thinks it isn't. It has to be unanimous. All
21 of you have to believe the State has proven malice.

22 Now, you might be saying, "Well, Ms. Cooper is dead.
23 We've got to do something." That's not the standard.
24 That's not the standard at all. You don't get to say,
25 "Well, we feel like we have to do something. Ms. Cooper

1 is no longer with us. Mr. Harriott shot a gun that day to
2 kill her. We have to find him guilty of murder." That's
3 not the standard.

4 A jury's purpose is not to solve every possible
5 riddle of a case. It's whether or not the State has
6 proven all elements of a crime, and they must prove all of
7 them. It's not a majority rule. Just because they prove
8 that Ms. Cooper died that day and that Mr. Harriott shot
9 her that day, that doesn't mean well, that's two out of
10 three of the elements; therefore, we'll find him guilty.
11 You have to -- the State has to prove beyond a reasonable
12 doubt all of the elements of the crime.

13 Now, there's also a charge of possession of a weapon
14 during a violent crime. We're not going to spend a lot of
15 time on that because to get to that, you have to find him
16 guilty of murder.

17 If y'all find him guilty of murder, then you have to
18 determine whether or not he had a gun that day. I'm not
19 going to argue that he didn't. All the evidence is that
20 he did. He admitted to it. He came outside. He had the
21 gun.

22 I think you must look at the first step very
23 carefully in determining whether or not the State has
24 proven malice. It was a sad day. No one was arguing that
25 it wasn't a sad day, but the State still has to prove

1 malice aforethought.

2 If you do, however, find that the State has proven
3 the elements, then you have to decide between two possible
4 verdicts of guilty: Either guilty in and of itself or
5 guilty but mentally ill.

6 If you do determine that the State has proven all of
7 those elements, then I think you have the evidence to
8 support a finding of guilty but mentally ill.

9 Now, you may be thinking well, if you do find him
10 guilty but mentally ill, he's going to walk out of this
11 courtroom and everything is going to be done with. That's
12 not the case.

13 A person that's found guilty but mentally ill is
14 punished under the law. They just received the treatment
15 that Dr. Frierson said was the tragedy of this whole thing
16 that he didn't receive the treatment that he needed; that
17 medication may have prevented all of this.

18 Now, the State didn't offer any evidence to
19 contradict the testimony of Dr. Frierson. In fact,
20 Dr. Frierson is paid by the State of South Carolina, not
21 by the Solicitor's Office but paid by the State of South
22 Carolina.

23 Mr. Harriott and his family didn't pay for that. He
24 was evaluated. That was the decision of Dr. Frierson.
25 And it's -- no expert came up and testified otherwise.

1 Now, the Court will tell you that you can accept or
2 reject anyone's testimony. You can reject Dr. Frierson's
3 testimony if you don't believe it. There is no reasonable
4 doubt to that. There's no evidence to the contrary. No
5 one came in here. No other expert came in and said, "No,
6 that's not true."

7 Now, the State might argue to you that he could
8 remember four questions, and he couldn't remember a third
9 thing later on.

10 Those things don't prove malice. All those things
11 prove is that Derrick Harriott, despite having a very low
12 intelligence, has worked hard all his life and made the
13 best of what he has.

14 Dr. Frierson told you that he had a very low
15 intelligence level. That the mildly retardation
16 determination when he was 13, that might have been a
17 little low because of his ability to cope.

18 You heard from Mr. Finkbeiner, his employer, who was
19 just about as -- I thought about Joe the Plumber now. I
20 think he's kind of Joe the -- he's like a very nice normal
21 guy, had only good things to say about Derrick.

22 He never talk about the depraved heart. He never
23 said that he had any -- he ever observed any violent
24 streak to him or had any malice to him.

25 He talked about a guy that wanted to be like the

1 other fellows that had a four wheeler, which he had. He
2 wanted to have a gun because he wanted to hunt like them.

3 Now, they brought up this stuff. He talked about he
4 saw Derrick bring the gun in a couple of times and call it
5 his baby or whatever.

6 The best I heard, that was months before any of this
7 happened. It wasn't anything that happened that day. I
8 don't think it's any relevance to this case. He wasn't
9 pointing it at anyone. He wasn't threatening anyone. He
10 was taking a gun out of a car, which I think is a logical
11 thing to do.

12 You don't leave firearms in cars because they could
13 easily get stolen. So I don't think that's relevant here.
14 I think the issue before this jury is to determine whether
15 or not the State has proven malice, and I submit to you
16 they haven't.

17 When you're back in your jury room, you'll discuss
18 this. Other than the inference from the firearm, and
19 that's just it, an inference, I don't think the State has
20 proven any other malice.

21 They failed to prove that element. They failed to
22 prove it beyond a reasonable doubt, and therefore, under
23 our law, the only verdict you can return is not guilty.

24 Once again, it's not for you to be concerned about --
25 you know, well, you know, we want someone to be punished

1 for this. That's not for you to be concerned with. Your
2 concern is to determine whether or not the State of South
3 Carolina proved the elements of murder, and I don't think
4 they have.

5 Derrick Harriott has been waiting almost two years.
6 The family of Quanna Cooper, Lenay (phonetic) Cooper, has
7 been waiting almost two years to decide what happened that
8 day. That is your job.

9 Your job is not to punish someone. Your job is to
10 determine the facts of the case. Y'all are the fact
11 finders. Y'all have to find whether or not the facts
12 presented by the State have met the burden, and it's the
13 highest burden in a criminal case, and that burden is
14 beyond a reasonable doubt.

15 I don't think the State has proven that. As sad as
16 it may be what happened that day, the State has not proven
17 their case, and that's your job to decide whether or not
18 the past -- it's been four days. We really have only been
19 here three days, but in the past three days, two days of
20 testimony, has the State proven their case and they
21 haven't.

22 And as difficult it may be, I'm asking you to return
23 a verdict of not guilty. That's what the evidence
24 supports.

25 Whether you like the outcome or not, you as a jury,

1 have to put aside your emotions. You have to look at the
2 evidence. You have to make a decision based on the
3 evidence.

4 When you were sworn in, you were sworn to well and
5 truly try and a true verdict give based on the evidence,
6 not on emotions, not on what you think should happen but
7 what the evidence proves. That's your oath as a jury, not
8 because the State is going to hold up some gun that looks
9 sinister, not because the State may hold up some pants,
10 not because the State may point to a person that sadly has
11 passed away in a photograph. That's not what it's based
12 on. It's not based on emotions. It's based on the facts
13 of this case.

14 I ask all of you to very carefully consider this case
15 when the Judge sends you back to your jury room. Listen
16 to him carefully when he charges you on the law, to listen
17 to those thing which is you get to decide, those things
18 which may be inferences, but you still get to decide them.

19 Remember, it has to be unanimous. All of you have to
20 believe that the State has proven their case beyond a
21 reasonable doubt. I don't think that they have on the
22 element of malice.

23 I thank you for your time. I thank you on behalf of
24 Derrick Harriott. I thank you on behalf of the Cooper
25 family. It's a sad day. Today is a sad day, a

1 year-and-a-half, but this is where we decide whether or
2 not there was malice aforethought, and the State has not
3 proven that beyond a reasonable doubt.

4 THE COURT: Thank you, Mr. Land.

5 Mr. Connor?

6 CLOSING STATEMENT:

7 MR. CONNOR: Ladies and gentlemen, let's talk about
8 malice some more. As I told you a while ago, I was just
9 telling you what malice is, the ill will, the hostility
10 toward another person, hatred or whatever, however you
11 want to express it.

12 It's an intentional doing of a wrongful act without
13 just cause. I don't think this fellow had any cause to
14 kill this woman. The -- I submit that the evidence
15 doesn't indicate that, and let's talk about expressed
16 malice and inferred malice.

17 Expressed is when they say it, and what he said is,
18 "I shot the bitch. She deserved to die. She has been
19 screwing around on me." That's what these witnesses said
20 from the stand, and I submit to you there's no reason to
21 believe otherwise.

22 In fact, the statements have been admitted here,
23 these three little statements that the defense has been
24 given copies of and put them into evidence in this case.

25 What Mr. Land would ask you to believe is those

1 people are lying when they say that -- they say that
2 she -- that he said, "I shot the bitch," because they
3 didn't put that in these statements.

4 I tell you right now, they didn't put it in there,
5 but I'm going to read to you what they said. This is
6 Ms. Bracey: "I saw this young man. He told me to call
7 the police, said he shot someone," but now when she
8 testified, she said -- she didn't want to say the word.
9 She said, "He shot the B." She said that he had said
10 that, "He had shot the B."

11 When people write these statements, and they all
12 testified that they wrote the statements that day -- or
13 that night after it happened.

14 They want to put it in nice polite terms, the terms
15 that they would use if they were discussing something with
16 somebody. They don't want to be real blunt about it, but
17 let's read what the other two said, Ms. Geraldine Westley:
18 "And a black male came out with a gun saying that since
19 she was sleeping around, that she deserved to die. She
20 deserved to die", that's the way she put it.

21 Her husband, Mr. Westley. His exact words was, "She
22 is screwing around on me. She deserved to die," and he is
23 the executioner.

24 MR. LAND: Your Honor, let me object to the statement
25 of "executioner".

1 THE COURT: All right, overruled.

2 MR. CONNOR: Ladies and gentlemen, to me, the words
3 that he used imply hatred and ill will and an intent to do
4 something wrong that wasn't justified. I submit to most
5 people, it will.

6 The fact that he used this gun, this is a high
7 powered gun, and he shot this woman 14 times. Every time
8 he shoots it, he has to pull the trigger. So he didn't
9 just pull the trigger one time and that thing go bam, bam,
10 bam. He pulled it 14 times.

11 I tell you'll another thing that's interesting. He
12 really pulled it 15 times because the police picked up 15
13 casings. They're all in evidence here. Fifteen of those
14 cartridge casings that had been ejected out of the gun
15 onto the floor, but he -- he hit her 14 times which tells
16 me something, is he had to be aiming the gun with some
17 degree of accuracy or he wouldn't have hit her 14 times.

18 That's a high powered gun. It has a sizable kick.
19 It's -- it's not going to be easy to hit something, even
20 fairly close up 14 times, without paying attention to what
21 you're shooting at and aiming it, so to speak.

22 He deliberately put the bullets in her. To me, that
23 -- he just butchered this poor woman. You -- I don't want
24 to shock anybody, but you look at these pictures. There's
25 some in here, and they show her pants.

1 One thing I thought was interesting, there's one shot
2 up here in the chest, that's what the doctor said. We
3 have a diagram in evidence here showing that, but there's
4 a lot of shots in the lower part of -- part of her body.
5 In other words, "She is screwing around me."

6 If you look at some of these pictures, you see body
7 fluids running out of her in the vaginal area. He shot
8 her down there several times. It's just an uncalled for,
9 terrible killing.

10 One other thing I'd like for you to reflect on in
11 this case is the police work because the police work was
12 good. One thing that struck me right offhand is the
13 Westley's said that, "We were on the telephone calling the
14 dispatcher, and before we could hang up the phone, we
15 heard the siren."

16 Well, fortunately -- sometimes we have things happen
17 out in the county and it takes a good while to get to the
18 location, but fortunately, it happened close to the police
19 and somebody was able to get there. In fact, the officer
20 said he was there in two minutes. He must have been there
21 rapidly or the Westley's wouldn't have heard the siren on
22 the radio while they were on the telephone talking to the
23 radio operator.

24 That allowed them to get there to him to go into the
25 apartment rapidly, to determine that there's not other

1 people there; that he's the only one, to talk with the
2 witnesses before the witnesses spread out and get away.

3 It just makes for a whole lot better situation,
4 and -- and they -- they took just plenty of photos to give
5 you an understanding of where it happened and what
6 happened.

7 Quite frankly, you might have gotten a little bit
8 bored when Lieutenant Duggin was up there talking about
9 all these little pieces that he picked up, but they are
10 here in this bag, all of -- all of these casings, all the
11 little bullet fragments, but that kind of thing is
12 important because it's important to know what went on
13 there because there's no witness in there. There's nobody
14 standing there watching all of this go down.

15 We have to go by what we find, and he did an
16 excellent job of collecting all of that stuff. Some of it
17 was so small that that lady from S.L.E.D. said it was
18 deformed. She couldn't use it.

19 She couldn't really say that it was fired by this
20 gun, but it looked like it, you know, possibly could have
21 been fired. Some of the casings, she couldn't be sure of
22 those, but they're all the right size. They all fit this
23 gun, and several of them she said did fit or were fired by
24 that gun.

25 The statements of the witnesses, they didn't wait

1 several days to get statements of the witnesses. They got
2 statements from the policemen that were there, those four
3 patrolmen that went there. They got them that day.

4 They got the statements from these other folks that
5 were there, the neighborhoods, that were in the community,
6 and another thing that's important about the police work
7 in this case is what was not present.

8 They was no other -- they were in there just within a
9 couple of minutes or maybe three or four minutes, and the
10 neighbors were right there. They were watching the scene.
11 There was no other people in that apartment. There was --
12 they looked for a gun. Did this woman have a gun?

13 If she had a gun, then this matter might have been a
14 different situation. She didn't have any gun. They
15 looked up and down that steps. They looked underneath the
16 stairway. They looked everywhere, and they found no
17 knife. She had no weapon. She had nothing to really pose
18 a threat to this man.

19 There was no video equipment. You know, this
20 poppycock story that he talked about internet and video'd
21 him and the police might be on it, and they have got a
22 tape, but there's no video equipment in there; there's no
23 computer that -- it's -- it's just -- there's no drugs.
24 There's no drugs. He said that she had been drugging him.

25 Well, in fact, they followed up. They sent all of

1 this stuff to S.L.E.D. They got the body samples. They
2 got blood from him. They -- they did a gunshot residue
3 kit on his hands.

4 They did the gunshot residue test on her, but one
5 thing they -- what did they learn by doing this S.L.E.D.
6 testing?

7 You know, sometimes people confess to crimes they
8 didn't commit, but when they've got this gunshot residue
9 thing on his hands, I think it's unlikely that his
10 statements wouldn't have been accurate in this case
11 because the neighbors were right there watching him. They
12 saw it. They heard the gunshot. They saw him throw the
13 gun in the yard. They heard what he had to say.

14 He was the only one there, but they tested his -- his
15 hands for gunshot residue, and they found, I believe, it
16 was on his right hand, the agent said, there was gunshot
17 residue on his hands.

18 The toxicologist, the guy that does the tests for
19 poison and drugs, he said he tested his blood, no alcohol,
20 no ethanol, no methanol, no acetone, no isopropanol, no
21 amphetamine, no benzodiazepine, no methamphetamine, no
22 oxycodone, no cannabinoids, no cocaine metabolites, no
23 opiates.

24 He didn't have anything in his system that you
25 reflect back on his -- his wild story. He's not been

1 drugged. She had no drugs in her, and there were no drugs
2 in the apartment.

3 The firearms examination, three of these items that
4 came -- let's see. This little bag here, this is State's
5 Exhibit Number 23, contains a number of particles.

6 Here is one I'm looking at right here. It says,
7 "left shoulder of Quanna," that's one that the agent said
8 that was sent to her from the autopsy.

9 All these items came from -- I believe from the
10 autopsy. Yeah, buttocks, abdomen. There were some that
11 came off of the floor, but they're all labeled and inside
12 the bag, but right here on the back you can see this one
13 that came from the left shoulder. That's one of the ones
14 that that lady testified that she could -- that had enough
15 markings on it that she could tell that it was fired by
16 this gun.

17 And there were -- there were three of them in here
18 that she could definitely say were fired by that gun.
19 Some of them were deformed. You can look. You can --
20 you'll have them in the jury room with you. Some of them
21 are mangled so badly that you couldn't make any comparison
22 to them, but that's the gun that the witnesses saw him
23 throw down right there in the yard.

24 The policeman was there in two minutes, and he sees
25 the gun laying there. So that makes his admission --

1 there's plenty of evidence that confirms his admissions.

2 Now, another thing I thought was kind of -- a little
3 bit interesting, interesting I submit to you, would be of
4 interest, is he tells this wild story about being drugged
5 and raped and all of that. He tells the doctor that.

6 Ms. Bracey and the Westley's say that he said she was
7 sleeping around, she deserved to die. "She had been
8 screwing around on me," that's not the same as, "I've been
9 being drugged. I've been being raped," and that kind of
10 thing. It's a different, different story. I don't know.
11 I just mention it for what it's worth. To me, it's
12 different.

13 He knew the difference between right and wrong. The
14 doctor -- I -- I have a reasonable confidence in
15 Dr. Frierson. I'm not trying to throw any stones at him,
16 but he only interviews this man for two hours. That's
17 what he said when he testified, and he does look at other
18 records and other -- all the police information that's
19 given to him.

20 So he has other things that he can base his opinion
21 on, but he only talks with him two hours, and sometimes
22 people don't tell. People want things to come out a
23 certain way, and they don't always tell the story
24 accurately when they see the doctor.

25 One thing is his boss knows him pretty good. As far

1 as I know, his boss is a fine gentleman, too, but his boss
2 said that he knew the difference between right and wrong,
3 and he worked with him every day.

4 Even though he thought he had gone downhill some, he
5 was depressed and didn't seem to be acting exactly right.
6 Apparently, he was doing his job all right. He hadn't
7 fired him, in his boss' opinion, I asked him, because he
8 said he knew the difference between right and wrong.

9 So he had another thing, and I think Dr. Frierson
10 thought this in evaluating his knowledge between right and
11 wrong, was he was able to hold down a job.

12 One thing that he had mentioned is his school records
13 indicated a -- kind of a marginal I.Q., make a little bit
14 lower than -- he -- but he, the doctor, concluded that he
15 wasn't retarded because he had a driver's license. He was
16 able to drive, and he was able to pass the test to drive.

17 Also, he was -- he had done pretty good with his job.
18 He was able to keep a job and able to do a job. He
19 understood his job and what he had to do, so his
20 performance I.Q. was better than what the school had
21 measured.

22 The only previous psychiatric problem that had been
23 noted on him was a behavior problem when he was in school,
24 and I submit that there would be a lot of people that
25 might be deemed psychiatrically impaired if that was the

1 test. There are a lot of us that are not always on good
2 behavior at school, but...

3 Just one minute.

4 (Pause).

5 Some other kind of miscellaneous things that I'd like
6 to call your attention to, an aunt said there was nothing
7 bad about Quanna Cooper, nothing bad about Quanna Cooper.

8 I submit to you that this woman would have known it,
9 and she would have been telling you if there was something
10 bad about Quanna Cooper. Another thing is all of these
11 neighbors testified about how thin the walls were, how you
12 could hear things on the other side of the wall.

13 Nobody indicated that they heard anything prior to
14 this thing happening. All they heard was gunshots, and if
15 it had been anything serious going on there in the way of
16 real nasty talking or real loud yelling or anything like
17 that, I believe we would have been hearing some of that
18 because these people were talked to immediately that
19 night.

20 As we've already discussed, there were no -- no
21 weapons found. In fact, there was no gun in the apartment
22 other than the gun that he took there. Another thing I
23 find peculiar about it is his infatuation with the gun,
24 calling it his baby.

25 More than one neighbor, I believe Ms. Scott,

1 testified she had seen him out there getting that gun out
2 of the car. You don't need to take a gun to your
3 girlfriend's house, most people don't.

4 Ladies and gentlemen, I would submit to you that your
5 verdict should be guilty. I submit that there's abundant
6 evidence in this case that the defendant did kill Quanna
7 Cooper, that malice was present. He expressed malice,
8 hatred, ill will, doing a wrongful act without just cause.
9 She deserved to die.

10 He used a deadly weapon. You can infer malice from
11 the use of a deadly weapon, and that weapon is a
12 significantly deadly weapon. That was made to kill people
13 with. It wasn't even made to hunt.

14 He shot her just numbers of times, and almost 14 out
15 of 15 bullets that he shot at her hit her. So he was
16 taking aim.

17 He knew that -- and one thing that the doctor said
18 that these were distant gunshot wounds. He didn't have
19 that gun right up against her body when he was firing it.
20 He was back a few feet.

21 She describe it as being a distant gunshot wound.
22 She said if it had been up close enough, there would have
23 been gunpowder on her clothing.

24 He knew the difference between right and wrong.
25 There's no question about that. His boss man said, the

1 doctor says it, there's no evidence to the contrary.

2 I submit he should be found guilty. The question to
3 you is whether you find him guilty or guilty but mentally
4 ill, and I would suggest that you find him guilty but
5 mentally ill. That will give the Department of
6 Corrections an opportunity to provide him with mental
7 health treatment while he's in the facility.

8 I thank you.

9 THE COURT: Thank you, Mr. Connor.

10 All right, ladies and gentlemen, we're going to take
11 a recess at this point. One of the things we'll do during
12 the break is make sure all of the exhibits are in order to
13 be taken back to you.

14 When you come back out, I will give you the charge on
15 the law. If you would like anything in the jury room that
16 you don't have, let the bailiff know.

17 Do not discuss the case. Do not begin forming any
18 conclusions about your verdict in this case until I tell
19 you that you can.

20 We'll have you out in a few minutes.

21 (WHEREUPON, the jury left open court at approximately
22 10:41 a.m.)

23 THE COURT: All right. Mr. Duggin, would you and the
24 lawyers confirm for me, I take it that's a fair statement,
25 there are no live rounds in evidence; is that correct?

1 OFFICER DUGGIN: That's correct, SIR.

2 THE COURT: Is that right, Mr. Connor?

3 MR. CONNOR: That's right. I don't -- I don't --

4 THE COURT: I'm going to tell the jury when I
5 instruct them not to take anything out of a plastic bag.
6 What's the party's position on the presentation -- or the
7 presence of the gun in the deliberation room? The general
8 rule is that the weapon and live ammo is not supposed to
9 be in the room at the same time. One can be at the
10 exclusion of the other, but here since we have no live
11 ammunition, is there any objection to the gun being
12 present in the jury room?

13 MR. CONNOR: I have no objection to it.

14 THE COURT: Mr. Land?

15 MR. LAND: No objection, Your Honor.

16 THE COURT: All right. I will assure the jury that
17 the weapon is not loaded, and that it is rigged in such a
18 fashion that it can't be fired even if they wanted it to
19 fire. I'm going to tell them not to handle the trigger
20 mechanism anyway.

21 Yes, Mr. Duggin?

22 OFFICER DUGGIN: Your Honor, they would have to
23 remove the magazine, but I do have a lock that can be put
24 into place, but the magazine would not be part of the gun.
25 It would be two separate items. All I have is a plastic

1 tie.

2 THE COURT: All right. Mr. Connor, any --

3 MR. CONNOR: Quite frankly, I think it's safe as it
4 is.

5 THE COURT: Mr. Land?

6 MR. LAND: If Officer Duggin has something to make a
7 weapon safer, I don't see any reason why we wouldn't do
8 that.

9 THE COURT: All right. The plastic tie makes it
10 un-fireable, correct?

11 OFFICER DUGGIN: Could I show it to you, sir?

12 THE COURT: Go ahead. I've seen it. Go ahead. Come
13 on up and show it to me.

14 (Pause).

15 The only exhibit I've not ruled on still for I.D. is
16 the report. What's the basis for your objection on that,
17 Mr. Connor?

18 MR. CONNOR: It's hearsay.

19 THE COURT: Mr. Land?

20 MR. LAND: I do not think it's hearsay.

21 OFFICER DUGGIN: They'll have to cut this.

22 THE COURT: I'll -- we'll just leave the weapon like
23 it is.

24 Mr. Land?

25 MR. LAND: It's not hearsay. The declarant was here

1 testifying about the document, verified its authenticity,
2 testified to the subject matter of it. I don't think it's
3 hearsay at all.

4 THE COURT: Well, I'll consider that over the break.
5 If I could see the lawyers just for a second, just take
6 two minutes.

7 (WHEREUPON, a short break was taken.)

8 THE COURT: Mr. Connor, you have withdrawn your
9 objection to the report?

10 MR. CONNOR: I have, Your Honor.

11 THE COURT: Mr. Land, what number is that?

12 MR. LAND: Ten, Your Honor.

13 THE COURT: All right. So number 10 is in evidence.
14 I think yesterday it was marked for I.D.

15 Do you have that one, Karen?

16 THE COURT REPORTER: I wrote it down.

17 THE COURT: All right. Are you ready for the jury?

18 MR. LAND: We are, Your Honor.

19 MR. CONNOR: Yes, sir, Your Honor.

20 THE COURT: All right. Bring in the jury.

21 (WHEREUPON, the jury came into open court at
22 approximately 10:55 a.m.)

23 THE BAILLIF: Your Honor, all the jurors and
24 alternates are present in the courtroom.

25 JURY CHARGE:

1 THE COURT: All right. Thank you, Mr. Bradley.

2 Ladies and gentlemen, at this point, you have heard
3 all the evidence in the case. You've heard the arguments
4 of the attorneys. Now is the time where I give you the
5 charge on the law.

6 You're going to hear throughout this charge various
7 terms that you may have heard reference to in this trial
8 or in your daily lives over a period of years.

9 I want you to understand a few things, however. You
10 do not base your verdict in this case in any respect on
11 what you think the law is or what you think it ought to
12 be.

13 You have to listen very carefully to the law as I
14 give it to you and base your verdict on that. You cannot
15 substitute your judgment or view of what you think the law
16 is or it ought to be. Again, you have to object it as I
17 give it to you, even if you may disagree with it.

18 If I've made an error in charging you the law, there
19 is another time and another place for that error to be
20 corrected. It would not be for you to substitute your
21 judgment with what you think the law is or what it ought
22 to be.

23 Your deliberations, ladies and gentlemen, will
24 culminate in your completion of the verdict form in this
25 case. The foreperson will be the one who certifies by

1 signing the form that the verdict is unanimous. That
2 means all of you have to agree. This is not a majority
3 vote in any respect. Your verdicts in this case must be
4 unanimous.

5 Madam Forelady, you do not have any additional power
6 as the foreperson. You are responsible for making sure
7 that the deliberations are conducted in an orderly fashion
8 and that everyone who wants to speak is given the
9 opportunity to speak for as long as that person wants to
10 speak.

11 You do not have the right or the authority to cut off
12 the bait when you think there's enough time -- enough time
13 has been devoted to a particular line of discussion. In
14 other words, this is the jury's deliberation, not your
15 deliberation. It is your responsibility, however, to make
16 sure that the verdict is, in fact, unanimous.

17 Ladies and gentlemen, the word verdict comes from a
18 Latin word which means to speak the truth, and that's what
19 your verdict must do.

20 I'm not so concerned about what your verdict is going
21 to be as I am concerned that it be the product of a
22 complete and full discussion of the issues in this case as
23 they have been framed by the testimony and the law as I
24 give it to you.

25 I know you'll do that. I just want to make sure that

1 you understand that you have a solemn obligation still to
2 fulfill, and that is to make sure that your verdict speaks
3 the truth.

4 Now, ladies and gentlemen, you will have with you in
5 your jury room certain things. You'll have the exhibits
6 that have been introduced in this case. You'll have your
7 collective memory of the testimony and the facts as
8 presented to you, and you will have another thing in the
9 jury room with you, and that's your common sense and your
10 judgment. You take those things, along with my charge on
11 the law, and that's how you arrive at a verdict that does
12 speak the truth.

13 Speaking of the exhibits, you will have with you
14 certain items of evidence that are in plastic bags. You
15 may not, and you must not, remove anything from a bag. In
16 other words, don't break the bag open and take anything
17 out.

18 The evidence will be clearly visible to you if it's
19 in a plastic bag. So Madam Forelady, you're not
20 permitted, nor is anyone else permitted, to take anything
21 out of the bags.

22 As I've related to you, the firearm that's in
23 evidence is not loaded, but -- and it will be in the jury
24 room with you if you do handle it. Continue to handle it
25 with care even though it's not loaded at all, and it's not

1 a danger insofar as it being a firearm is concerned.

2 As you know, ladies and gentlemen, the defendant in
3 this case has been charged with murder and possession of a
4 firearm during a violent crime.

5 I'm going to talk to you now about the law as it
6 applies in this case. I'm going to use several terms. I
7 will define throughout the course of this charge murder,
8 things such as reasonable doubt and various other terms
9 that I will use and define.

10 You must again accept those definitions as I give
11 them to you. I remind you that the fact that a person has
12 been arrested, charged and indicted for any crime is not
13 evidence of anything.

14 The burden remains on the State to prove the
15 defendant's guilt beyond a reasonable doubt. I'll define
16 that term for you, as well.

17 The indictment is merely the vehicle by which this
18 case gets to this courtroom. It has to get to court
19 somehow, but the indictment is not in and of itself
20 evidence of anything.

21 During the course of this trial you and I have had
22 certain duties to perform. You are the sole fact finders
23 in this case, and I am the judge of the law.

24 Some call it you're the judge of the facts, and I'm
25 the judge of the law. I don't intrude on your province,

1 and again, you don't intrude on mine. That's why from
2 time to time we've had to send you out.

3 When you go back into your jury room to deliberate as
4 to the finders of the facts, no one goes with you. In
5 other words, we don't go back there with you. We don't
6 listen in. We don't have a recording, a reporter back
7 there to take your deliberations. The court reporter
8 doesn't go with you. The lawyers don't go with you. No
9 witnesses go with you, and I certainly don't go with you.
10 That's because when you talk about the facts, that's your
11 arena.

12 If I have said or done anything during the course of
13 this trial that makes you think that I have a particular
14 view of the facts or that makes you think that I favor one
15 side over the other, you can put that completely out of
16 your mind. I don't.

17 I respect your authority as the fact finders, and
18 that's your job and your job alone. If I have made a
19 ruling in this case that makes you think I favor one side
20 or the other, put that out of your mind, because my ruling
21 is based on the laws -- or the case law that interprets
22 the Rules of Evidence and things of that nature.

23 Again, I don't -- I do not have a view of the facts
24 at all. Don't base any decisions in this case on how many
25 times I sustained an objection for one side or the other.

1 I certainly don't keep count, and I doubt you have either.
2 It's your duty to determine the facts in this case and no
3 one else's in the world.

4 Now, during the course of this trial as fact finders,
5 you would necessarily have to evaluate the credibility or
6 the believability of witnesses.

7 I talked to you about that before we got started, and
8 that should be fairly clear to you now that when you
9 decide whether or not you believe someone, you can use
10 certain tools in your good common sense to determine who
11 to believe and what to believe.

12 When you listen and watch a witness testify, you can
13 base your decision as to whether or not to believe that
14 witness on how does the witness appear on the witness
15 stand? Was the witness hesitant or straightforward in
16 answering questions? Did the witness have a reason to
17 give testimony that would help or hurt one side over the
18 other? We call that bias or prejudice.

19 Was the witness's testimony strengthened or weakened
20 by other testimony that's in the record or other evidence
21 that's in the record. Was that witness's testimony
22 strengthened or weakened by something that very same
23 witness may have said on a prior occasion.

24 You can use other things that you think in the
25 exercise of your good common sense, correctly allow you to

1 evaluate the believability of a person. You can believe
2 every word of what a witness has to say. You can believe
3 not a word of what a witness has to say, or you can
4 believe parts and reject the rest. That's -- that's up to
5 you. We may do that every day when we determine whether
6 or not to believe somebody.

7 Now, as I told you during the course of this trial,
8 the Rules of Evidence ordinarily do not permit a witness
9 to give opinions.

10 There is an exception in the rules for people who
11 qualify as an expert in a particular field by reason of
12 education, training or experience.

13 Now, a witness who is qualified as an expert may
14 state an opinion as to relevant and material matters in
15 which the witness claims to be an expert, and that expert
16 may also give the reasons for the opinions given.

17 Now, as I told you, and I'll tell you more
18 specifically now, you should consider any expert opinion
19 received in evidence like any other evidence and give it
20 the weight you think it deserves.

21 If you decide that the opinion of an expert witness
22 is not based on sufficient education and experience or if
23 you conclude that the reasons given in support of the
24 opinion are not sound or sufficient or that the opinion is
25 outweighed by other evidence, you may disregard the

1 opinion entirely. An expert witness's testimony is to be
2 given no greater weight than that of other witnesses
3 simply because the witness is an expert. Further, you are
4 not required to accept an expert's opinion even though it
5 is not contradicted.

6 During the course of this charge, ladies and
7 gentlemen, I've used the word "evidence" probably 20 times
8 or more by now. I'm going to tell you right now, ladies
9 and gentlemen, that there are generally two types of
10 evidence that are presented during a trial. These are
11 called direct evidence and circumstantial evidence.

12 Direct evidence is the testimony of a person who
13 claims to have actual knowledge of a fact. An example of
14 that would be an eyewitness.

15 Direct evidence is evidence that immediately
16 establishes the main fact sought to be proved: "I saw
17 this. I heard this. I smelled this," that's direct
18 evidence.

19 Now, circumstantial evidence is proof of a chain of
20 facts and circumstances that indicate the existence of a
21 fact. It is evidence that immediately establishes
22 collateral facts from which the main fact may be inferred.

23 Circumstantial evidence is based on inference and not
24 on personal knowledge or direct observation. I'll give
25 you an example of that: Right now we're sitting in a room

1 that has no windows. Assume for a moment that this room
2 is also completely soundproof.

3 If we were in this room for six straight hours
4 without the benefit of windows or sight of any kind or
5 hearing anything, you would not have direct evidence of
6 what the weather was outside because you couldn't see it
7 or hear it. However, at the end of that six hours, if
8 someone came in this room shaking off a wet umbrella and
9 said, "I just came in from outside," you still have no
10 direct evidence from what you saw or heard, what the
11 weather was outside. However, there is circumstantial
12 evidence based on what you did see and what you did hear
13 that it's raining outside.

14 Now, the law makes absolutely no distinction between
15 the weight or value that you are to give to either direct
16 or circumstantial evidence, and there is not a greater
17 degree of certainty required of circumstantial evidence
18 than of direct evidence.

19 In other words, you weigh all of the evidence whether
20 direct or circumstantial, in the same fashion. You weigh
21 all the evidence in this case, and after weighing all the
22 evidence, if you are not convinced of the guilt of the
23 defendant beyond a reasonable doubt, then you must find
24 the defendant not guilty.

25 Now, ladies and gentlemen, with regard to the

1 defendant's position in this case, he is presumed innocent
2 of the crime for which he has been charged. That plea and
3 his plea of not guilty puts the burden of proof on the
4 State to prove his guilt beyond a reasonable doubt.

5 It's a very important rule of law that the
6 presumption of innocence applies to the defendant through
7 the course of your deliberations, and he enjoys the
8 presumption of innocence until you are convinced beyond a
9 reasonable doubt that the State has removed that
10 presumption of innocence by evidence that does, in fact,
11 convince you of guilt beyond a reasonable doubt.

12 The words "presumption of innocence" are not a mere
13 legal theory. It's not a catchphrase. It's a substantial
14 right that every defendant is entitled to, again until
15 you, the jury, are satisfied by evidence of his guilt
16 beyond a reasonable doubt.

17 I'm going to talk to you now, ladies and gentlemen,
18 about what reasonable doubt means, so listen very
19 carefully to this.

20 The State has the burden of proving the defendant
21 guilty beyond a reasonable doubt. There are two crimes
22 for which he's been charged: Murder and possession of a
23 weapon during the commission of a violent crime. Again,
24 the State has the burden of proving the elements of those
25 crimes beyond a reasonable doubt.

1 Now, some of you may be somewhat familiar with the
2 various burdens of proof that are applicable in any given
3 case. Right now I'm going to talk to you about reasonable
4 doubt. There's another one I'm going to talk to you about
5 in just a few minutes that are markedly different.

6 Now, what is reasonable doubt? Reasonable doubt is a
7 doubt that makes an honest, sincere, conscientious juror
8 in search of the truth hesitate to act. Proof beyond a
9 reasonable doubt is proof that leaves you firmly convinced
10 of a defendant's guilt.

11 Now, ladies and gentlemen, if you conclude that there
12 is only a real possibility that the defendant is guilty,
13 then the State has not proven guilt beyond a reasonable
14 doubt.

15 If you think there's a real possibility that the
16 defendant is not guilty, you must give the defendant the
17 benefit of the doubt and find him not guilty.

18 Now, in criminal cases, the law does not require
19 proof that overcomes every possible doubt. If, based on
20 your consideration of the evidence, you are firmly
21 convinced that the defendant is guilty of the crime
22 charged, then you must find him guilty.

23 Now, ladies and gentlemen, in this particular case, I
24 instruct you and emphasize to you that the fact that the
25 defendant did not testify is not a factor to be considered

1 by you in any way in your deliberation and in your
2 consideration of the question of the guilt or nonguilt of
3 the defendant.

4 The fact that the defendant did not testify cannot be
5 considered by you. You can't think about it. You can't
6 talk about it. It cannot enter your mind at all because a
7 defendant has the constitutional right to remain silent,
8 and the assertion of that right must not be considered by
9 you at all.

10 I repeat, under your oath, you are to draw no
11 conclusion whatsoever from the fact that the defendant in
12 this case did not testify.

13 Again, don't talk about it, don't think about it.
14 It's not to enter into your decision making at all, and
15 that's because the defendant is not required to prove his
16 innocence, and the burden of proof remains on the State to
17 prove guilt beyond a reasonable doubt.

18 Now, ladies and gentlemen, I'm going to talk to you
19 now about criminal intent. In order to establish criminal
20 liability, criminal intent is required to be proven by the
21 State, again, beyond a reasonable doubt.

22 Now, ladies and gentlemen, criminal intent is a
23 mental state of conscious wrongdoing. It's up to you,
24 therefore, to determine what the intent -- what the
25 defendant intended to do, if anything, based on the

1 circumstances shown to have existed.

2 It's easy to say that there's no way that medical
3 science can dissect a person's brain and look at it and
4 determine what, if anything, that person intended to do at
5 any given time.

6 Now, that's why it's up to you, as fact finders, to
7 determine based upon your view of the evidence in this
8 case -- it's up to you to determine what, if anything, the
9 defendant intended to do.

10 Now, criminal intent can arise from an action or a
11 failure to act. It may arise from negligence,
12 recklessness or an indifference to duty or to consequences
13 that are considered by the law to be the equivalent of
14 criminal intent.

15 Now, it's not necessary to establish intent by direct
16 and positive evidence, but intent may be established by
17 circumstantial evidence, as I previously charged you with
18 what those two types of evidence are.

19 All right. Specifically, ladies and gentlemen, in
20 this case the defendant is charged with murder. Now, I
21 want you to listen very carefully over the next few
22 minutes to this charge and also the charge on possession
23 of a weapon during the commission of a violent crime as
24 you have been paying attention very closely so far.

25 Now, again, the defendant is charged with murder.

1 The State must prove beyond a reasonable doubt that the
2 defendant killed another person with malice aforethought.

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

9 Malice signifies a general malignant recklessness for
10 the lives and safety of others or condition of the mind
11 showing a heart that is fatally bent on mischief.

12 Now, malice aforethought or proof of malice
13 aforethought does not require proof that malice existed
14 for any particular time before the act is committed, but
15 malice must exist in the mind of the defendant just before
16 and at the time the act was committed.

17 Therefore, there has to be a combination of the
18 previous evil intent and the act in order for the State to
19 have proven malice beyond a reasonable doubt.

20 Now, malice aforethought may be either expressed or
21 inferred. Now, these terms express and inferred do not
22 mean different kinds of malice, but merely the manner in
23 which malice may be shown or proven to exist.

24 Now, that is either by direct evidence or by
25 circumstantial evidence from the facts and circumstances

1 which are proved to you.

2 Expressed malice is shown when a person speaks words
3 which express hatred or ill will toward another or when
4 the person prepared beforehand to do the act that was
5 later accomplished.

6 Malice may be inferred from conduct showing a total
7 disregard for human life. Inferred malice may also arise
8 when the deed is done with a deadly weapon.

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

14 Now, ladies and gentlemen, I remind you that malice
15 aforethought as an element of the crime of murder must be
16 proven beyond a reasonable doubt.

17 All right. Ladies and gentlemen, the defendant
18 contends that if he is guilty of murder, he is guilty but
19 mentally ill.

20 Now, a defendant is guilty but mentally ill if at the
21 time of the crime the defendant was able to distinguish
22 moral or legal right from moral or legal wrong.

23 Now, let me back up and say that again. A defendant
24 is guilty but mentally ill if at the time of the crime the
25 defendant was able to distinguish moral or legal right

1 from moral or legal wrong or to recognize his act as being
2 morally or legally wrong but because of a mental disease
3 or defect, the defendant did not have sufficient ability
4 to follow the law. Therefore, the issue is not whether
5 the defendant knew right from wrong but whether because of
6 a mental defect the defendant did not have the sufficient
7 ability to follow the law.

8 The State still has the burden to prove beyond a
9 reasonable doubt that the defendant committed the crime,
10 that is killed another person with malice aforethought.
11 However, the defendant has the burden of proving that he
12 is guilty but mentally ill by the greater weight of the
13 evidence.

14 Now, that is a little -- that is different from
15 reasonable doubt. Let me back up. The State must prove
16 murder beyond -- guilt of murder beyond a reasonable
17 doubt.

18 The defendant with regard to the defense of guilty
19 but mentally ill has the burden of proving that he is
20 mentally ill by a preponderance of the evidence. Now,
21 what does preponderance or greater weight of the evidence
22 mean?

23 Proof beyond a reasonable doubt is proof that leaves
24 you firmly convinced of the defendant's guilt of murder.
25 Proof by the preponderance of the evidence is proof that

1 arises to the level of the greater weight of the evidence.

2 In other words, it is proof that establishes to you
3 that it is simply more likely than not, and the burden of
4 proof by the preponderance or greater weight of the
5 evidence is not nearly as high as the level of proof of
6 proof beyond a reasonable doubt.

7 Now, in this case, ladies and gentlemen, there are
8 three possible verdicts as to the charge of murder: One
9 is not guilty; the second is guilty but mentally ill, and
10 the third is guilty. Those are the three choices that
11 you'll have, and the choice you will have to make will be
12 between one of those three.

13 Again, if you are not firmly convinced of the
14 defendant's guilt of murder, then you must find the
15 defendant not guilty. If you are firmly convinced that
16 the defendant has committed the crime of murder but that
17 the defendant has established by the greater weight of the
18 evidence that he was guilty but mentally ill, then your
19 verdict would be guilty but mentally ill.

20 If you believe that the State has proven beyond a
21 reasonable doubt that the defendant is guilty of murder
22 and that the defendant has not satisfied his burden that
23 he was guilty but mentally ill, then your verdict would be
24 guilty.

25 Now, ladies and gentlemen, if you have any reasonable

1 doubt of the defendant's guilt after considering all of
2 the evidence, then you must find the defendant not guilty.

3 If you have no reasonable doubt that the defendant
4 committed the crime of murder but you find that the
5 defendant had the mental capacity to distinguish moral or
6 legal right from wrong or recognize the act as morally or
7 legally wrong but that it is more likely than not because
8 of a mental disease or defect the defendant could not
9 follow the law, then you must find him guilty but mentally
10 ill.

11 Now, ladies and gentlemen, the defendant is also
12 charged with possession of a weapon during the commission
13 of a violent crime.

14 In that regard, the State must prove beyond a
15 reasonable doubt that the defendant was in possession of a
16 weapon during the commission of a violent crime. I charge
17 you, ladies and gentlemen, that the crime of murder is a
18 violent crime.

19 A weapon is any firearm, knife or other similar tool
20 that is normally used as a deadly weapon, and a firearm is
21 a machine gun, automatic rifle, revolver, pistol or any
22 weapon which will, or is designed to or may be readily
23 converted to, expel a projectile.

24 In order to find the defendant guilty of possession
25 of a weapon during the commission of a violent crime, you

1 must first find the defendant guilty of either committing
2 a violent crime or attempting to commit the violent crime.

3 Now, ladies and gentlemen, your choices as to
4 possession of a firearm during the commission of a violent
5 crime will be the same as your choices for murder. Again,
6 these will be not guilty, guilty but mentally ill and
7 guilty.

8 Madam Forelady, your verdict in this case will
9 culminate with your completion of the verdict form, and
10 once you go through this verdict form, you will probably
11 see the light, so to speak, as to my instructions.
12 Because as to the first charge, it says, "As to the charge
13 of murder, we the jury, unanimously find the defendant,"
14 there's a space beside the words "not guilty", and there's
15 a space beside the words "guilty but mentally ill", and
16 there's a space beside the word "guilty". You simply
17 check the block or check the space that represents the
18 unanimous conclusion of the jury as to that particular
19 charge.

20 Now, if you find the defendant not guilty of murder,
21 you stop. Deliberate no further, sign the verdict form,
22 date it, tap on the door and let the bailiff know you have
23 reached a verdict.

24 If you find the defendant guilty but mentally ill of
25 murder or guilty of murder, then you go to question two

1 which deals with the charge of possession of a firearm
2 during the commission of a violent crime. Again, your
3 choices will be the same: Not guilty, guilty but mentally
4 ill, or guilty.

5 Once you pass upon -- or once you are sure of what
6 your unanimous conclusion is, you check the appropriate
7 block and you sign it, date it, and let the plaintiff know
8 that you have reached a verdict.

9 Now, ladies and gentlemen, if you conclude that the
10 defendant is guilty but mentally ill of murder, then your
11 verdict as to the possession of a firearm during the
12 commission of a violent crime must be the same.

13 If you conclude, again, that he is not guilty of
14 murder, then you do not deliberate any further.

15 Again, ladies and gentlemen, what you will have with
16 you in the jury room are all of the exhibits, your
17 collective memory of the evidence in this case, and your
18 good common sense.

19 If you have any questions, whether it be about the
20 charge or anything else, you simply write the questions
21 down on a notepad, Madam Forelady, that will be in the
22 jury room with you. You tap on the door, hand the note to
23 the bailiff, and he will give the note to me.

24 If I am permitted by law to answer the question, I
25 will. If I'm not permitted by law to answer the question,

1 I'll simply advise you of that.

2 If you need any clarifications of any instructions
3 that I've given in this case, I'll be happy to do that for
4 you.

5 You will not have a printed copy of the charge with
6 you in your jury room, and after your consideration, you
7 do have some questions, I'll be happy to answer those, if
8 the law permits.

9 Do not begin deliberating the case yet because the
10 rules that we operate under require me to confer with the
11 attorneys on the record to see if there's anything that I
12 left out or if there's anything that I charged
13 incorrectly.

14 Also, we want to -- I want to make sure that we
15 confirm on the record outside of your presence that all of
16 the exhibits are in order and ready to be sent back to
17 you.

18 The time is coming where you'll be able to
19 deliberate, but that time hasn't quite come yet. If the
20 bailiff comes to the door with the exhibits and the
21 verdict form, and he tells you to go ahead and deliberate,
22 you can do so. There is some chance that I may have to
23 bring you out to clarify it or recharge something that I
24 didn't charge.

25 All right. As far as lunch is concerned, it's 20

1 minutes after 11. You have all the time that you need to
2 deliberate this case. We'll call lunch in for you
3 probably around 12 or 12:30 so that it gets here at a
4 reasonable time.

5 Madam Forelady, if anybody leaves the deliberation
6 area to use the restroom or to use the phone, if that's
7 necessary, you have to stop your deliberations.

8 In other words, all of you have to be present when
9 you're talking about this case at all. So again, if
10 somebody excuses themselves or herself to use the restroom
11 or to use the phone, make sure you stop your
12 deliberations.

13 Also, ladies and gentlemen, I -- all the -- they
14 don't have cell phones, do they?

15 THE BAILIFF: No, sir.

16 THE COURT: All right. You shouldn't have a cell
17 phone. By some stretch if anybody does, make sure you do
18 not use it in that jury room.

19 Please go to your jury room at this time, ladies and
20 gentlemen. Hopefully, in just a few minutes you'll be
21 allowed to deliberate. If not, I'll bring you back out
22 and tie up any loose ends.

23 All right, Mr. Bradley.

24 (WHEREUPON, the jury left open court at approximately
25 11:27 a.m.)

1 THE COURT: Is that shut?

2 MR. LAND: No, sir. It's not.

3 (Pause).

4 THE COURT: All right. Mr. Connor, any exceptions or
5 additions?

6 MR. CONNOR: None from us, Your Honor.

7 THE COURT: Mr. Land?

8 MR. LAND: Your Honor, I would renew my request for
9 the charge of voluntary manslaughter either based on the
10 charge that you offered to us yesterday, your version, or
11 specifically my request to charge numbers four, five, six,
12 seven and my charge on guilty but mentally ill, number
13 eight and nine.

14 If I could have those marked.

15 THE COURT: Yes, sir. You can -- I'll hand the court
16 reporter mine.

17 MR. LAND: Okay.

18 THE COURT: What was -- what's your view of how my
19 charge on guilty but mentally ill was insufficient?

20 MR. LAND: I believe the charge that I've offered up
21 gives the jury a better understanding, specifically number
22 nine, so that the jury is aware that being found guilty
23 but mentally ill does not excuse the defendant from
24 punishment.

25 I think there's a high probability that a jury might,

1 based on their watching T.V. or something else, believe
2 that in some way if they found them guilty but mentally
3 ill, that he wouldn't be punished.

4 Now, I argued that in my closing, but I think it
5 means a whole lot more coming from Your Honor.

6 THE COURT: We'll hand these to the court reporter.
7 We'll make your one through nine as a Court's exhibit just
8 to keep it intact.

9 Anything else, Mr. Land?

10 MR. LAND: Other than that, nothing, Your Honor.

11 THE COURT: All right. I respectfully deny your
12 request to charge eight and nine, and I've already ruled
13 on your voluntary manslaughter. So I'll let my earlier
14 ruling stand on that.

15 (WHEREUPON, Court's Exhibit No. 1 was marked for
16 identification only.)

17 THE COURT: Have you all gotten together to make sure
18 all of the exhibits are in order?

19 MR. LAND: No, sir.

20 THE COURT: Do that real quick so we can confirm
21 that.

22 I've got the verdict form here, Mr. Bradley.

23 (Pause).

24 MR. LAND: I believe all of my exhibits are here.
25 I'll let Mr. Connor determine his.

1 MR. CONNOR: I think it's all here.

2 THE COURT: All the exhibits are in order,

3 Mr. Connor?

4 MR. CONNOR: I believe so.

5 THE COURT: Mr. Land?

6 MR. LAND: All the defense's are, Your Honor.

7 THE COURT: All right. If you all leave, just make
8 sure that you have a cell number or some way to contact
9 you. All right. Thank you.

10 (WHEREUPON, the jury began their deliberations at
11 11:14 a.m.)

12 (A break was taken).

13 (WHEREUPON, Court's Exhibit No. 2 was marked for
14 identification only.)

15 THE COURT: We have a question from the jury.
16 Mr. Land and Mr. Connor, you both have read the note; is
17 that right?

18 MR. CONNOR: Yes.

19 MR. LAND: Yes, sir, Your Honor.

20 THE COURT: Where did -- I don't -- all right.

21 (Pause).

22 All right. The question, which will be marked as a
23 Court's Exhibit says this: "If we find him guilty of
24 mental illness, will he get the same sentence as guilty?"

25 I can interpret that to mean as to the charge of

1 murder, if we find him guilty but mentally ill, will he
2 get the same sentence as guilty.

3 The legal response to that question is he'll be
4 sentenced in the same fashion. It's just a difference of
5 how he's treated once he is incarcerated. Do you agree
6 with that, Mr. Connor?

7 I'm not going to say that I'm going to say that to
8 the jury, but that's the answer.

9 MR. CONNOR: That's correct.

10 MR. LAND: That's what the law says..

11 THE COURT: And that's what you wanted me to charge
12 them anyway, right?

13 MR. LAND: That's correct, Your Honor.

14 THE COURT: All right. Mr. Connor, what's your
15 position on how I should respond to the question?

16 MR. CONNOR: That sentencing would be in your
17 discretion, but that he can get mental health treatment if
18 he -- while in the Department.

19 THE COURT: Mr. Land?

20 MR. LAND: Your Honor, I would suggest that you
21 inform the jury that a person found guilty but mentally
22 ill is sentenced under the law just the same as a person
23 found guilty.

24 THE COURT: Sentenced.

25 MR. LAND: Not serving his time the same way, but

1 he's sentenced under the law. I don't have a file
2 available, but there's a case that says that; that a
3 person found guilty but mentally ill is sentenced under
4 the law the same as a person found guilty.

5 THE COURT: Do you all agree that typically a jury is
6 not going to be concerned with matters of sentencing?

7 MR. LAND: Absolutely, I agree with that.

8 THE COURT: Except in some cases life means life.

9 All right. Mr. Connor, do you want me to tell the
10 jury that he's sentenced by me within the parameters
11 required by law, but that he receives the appropriate
12 mental health treatment while incarcerated?

13 MR. LAND: Correct.

14 THE COURT: Mr. Land, you want me to say it slightly
15 differently?

16 MR. LAND: Your Honor, I can hand up -- this is a
17 part of code section 17-24-20 and the citations following
18 it. It's the case of State vs. Hornsby. It states,
19 "Verdict of guilty but mentally ill does not absolve the
20 defendant of guilt, and a defendant found guilty but
21 mentally ill must be sentenced as provided by the law for
22 a defendant to be found guilty."

23 THE COURT: That's certainly correct, but the
24 question is whether or not you tell the jury that.

25 MR. LAND: And I requested a charge to that nature.

1 THE COURT: I know, and I turned you down.

2 MR. LAND: I understand that, but I think the jury
3 has a question about it, and they're either entitled for
4 you to answer it or not answer it. I suggest that you
5 answer it. I mean, that's my --

6 THE COURT: Do you object to me answering it in the
7 way Mr. Connor wants me to answer it.

8 MR. LAND: Obviously, if Mr. Connor could state that
9 again so I can --

10 THE COURT: That he would be sentenced within the
11 parameters allowed by law. Would you object to saying
12 "sentenced with the parameters allowed by law for a
13 conviction of murder, that he would receive appropriate
14 mental health treatment from the Department -- or through
15 the Department of Corrections"?

16 MR. CONNOR: That sounds --

17 THE COURT: Doesn't that accomplish your purpose,
18 Mr. Land?

19 MR. LAND: I believe it would, Your Honor.

20 THE COURT: All right. Any objection to that?

21 (There was no response.)

22 Okay. We will bring in the jury.

23 (WHEREUPON, the jury came into open court at
24 approximately 12:13 p.m.)

25 THE BAILIFF: Your Honor, we have all the jurors

1 present in the courtroom.

2 THE COURT: Thank you, Mr. Bradley.

3 All right. Ladies and gentlemen, I have a note
4 signed by the Forelady that says, "If we found him guilty
5 of mental illness, would he get the same sentence as
6 guilty?"

7 I take that to mean, "If we find him guilty of murder
8 but mentally ill, would he get the same sentence as
9 guilty?"

10 Ladies and gentlemen, what I can respond -- how I can
11 respond to that is as follows: If he is found guilty of
12 murder but mentally ill, he would be sentenced within the
13 parameters allowed by law for murder, but he would receive
14 appropriate treatment through the Department --
15 appropriate mental health treatment through the Department
16 of Corrections.

17 So again, the answer to that question is that he
18 would be sentenced within the parameters permitted by law
19 for murder but would receive appropriate mental health
20 treatment through the Department of Corrections. That is
21 the answer to that question.

22 You can return to your jury room and deliberate.
23 Madam Forelady, if you think it would be wise to order
24 lunch, you talk to your fellow jury members and let the
25 bailiff know what the consensus is. That doesn't have to

1 be a unanimous vote. Most of you decide if you want
2 lunch. You let the bailiff know, and it will be ordered
3 for you. All right. Thank you.

4 THE BAILIFF: Judge, I've already ordered lunch for
5 them.

6 THE COURT: All right. Well, it's taken care of.
7 All right. Thank you, ladies and gentlemen.

8 (WHEREUPON, the jury left open court at approximately
9 12:15 p.m.)

10 (There was a recess).

11 THE COURT: All right. Mr. Connor, is the State
12 ready to receive the verdict?

13 MR. CONNOR: I am, Your Honor.

14 THE COURT: Is the defendant ready?

15 MR. LAND: As soon as I have the defendant.

16 THE DEPUTY: We took him back to lockup.

17 THE COURT: All right. I'll wait until he arrives.

18 Mr. Connor and Mr. Land, you all might want to give
19 your folks a heads up on what I'm going to tell them when
20 the defendant arrives about no reaction to the verdict at
21 all.

22 (Pause).

23 (The defendant entered the courtroom).

24 THE COURT: All right. Mr. Connor, is the jury
25 ready -- I mean, excuse me. Is the State ready for the

1 verdict?

2 MR. CONNOR: We're ready, Your Honor.

3 THE COURT: Mr. Land?

4 MR. LAND: I'm sorry, we're ready; yes, sir.

5 THE COURT: Ladies and gentlemen who are in the
6 courtroom, obviously, this is an emotional circumstance
7 from beginning to the end.

8 The reception of the verdict will likewise be an
9 emotional thing. If there's anybody in the courtroom who
10 does not feel that they can handle the pronouncement of
11 the verdict either way, whether you agree with it or
12 disagree with it, if you don't think that you keep
13 yourself from making an audible or any visible response to
14 the verdict, then you can leave the courtroom now.
15 Except, of course, for the defendant.

16 (The defendant indicates in the negative).

17 THE COURT: If there is anyone who wants to leave the
18 courtroom now, if you do audibly or visibly respond, I'm
19 going to reserve the right to take appropriate action in
20 that regard.

21 So if there is anybody who is the least bit concerned
22 about that, you can depart the courtroom now.

23 (No one left the courtroom).

24 All right. You can bring in the jury.

25

1 (WHEREUPON, the jury returned to open court with the
2 verdict at 1:05 p.m.)

3 THE COURT: Is that everybody?

4 THE BAILIFF: Yes, sir.

5 THE COURT: All right. Madam Forelady, I understand
6 the jury has reached a verdict?

7 THE FORELADY: Yes, sir.

8 THE COURT: Is it unanimous?

9 THE FORELADY: Yes, sir.

10 THE COURT: All right. You may hand the form to the
11 bailiff.

12 (Complies).

13 All right. Mr. Harriott, would you please stand,
14 sir?

15 (Complies).

16 THE BAILIFF: State of South Carolina, County of
17 Sumter, in the Court of General Sessions, docket number
18 2008-GS-43-257, the State of South Carolina, Plaintiff,
19 vs. Derrick Damon Harriott, Defendant.

20 As to count one, as to the charge of murder, we the
21 jury unanimously find the defendant guilty but mentally
22 ill.

23 As to count two, as to the charge of possession of a
24 firearm during the commission of a violent crime, we the
25 jury unanimously find the defendant guilty but mentally

1 ill. Signed by the foreperson, Juliette Hill dated
2 November 13th, 2008.

3 Ladies and gentlemen, if this be your verdict, so say
4 you all by raising your right hand, please.

5 (All indicated in the affirmative).

6 Thank you.

7 THE COURT: All right. You can have a seat. Thank
8 you, sir.

9 Mr. Land, anything from the jury before the jury is
10 discharged?

11 MR. LAND: Not before they're excused, no, sir.

12 THE COURT: All right. Anything from the State
13 before the jury is discharged?

14 MR. CONNOR: Nothing from us, Your Honor.

15 THE COURT: All right. Ladies and gentlemen of the
16 jury, that conclude your service in this case, and it also
17 concludes your service as a juror this week because it's
18 Thursday afternoon. There would be little productive that
19 we could do jury wise between now and the end of the day
20 tomorrow, so your service is over.

21 As I told you before you began to deliberate this
22 case, I wasn't so much concerned about what your verdict
23 was going to be, but I wanted to make sure that it was the
24 product of you having paid very close attention throughout
25 the trial, and you devoted sufficient time and effort to

1 rendering a true verdict.

2 I think that no one can quarrel with the attention
3 that you paid and the work that you have done in this
4 case.

5 You are excused from your subpoena, and you are free
6 to go. If you would like to stay and watch the sentencing
7 phase of this trial, you can do so, but if you do that,
8 you can essentially give your badges back to the bailiff,
9 have a seat in the back of the courtroom.

10 You are exempted from jury service during 2009 and
11 2010 in the Circuit Court. That means that if you get
12 subpoenaed, you have to go, but you will be entitled to a
13 an exemption, an excuse from jury service for those two
14 years. That only applies to Circuit Court. It does not
15 apply to Magistrate's Court or Federal Court.

16 Please accept my thanks on behalf of the citizens of
17 Sumter County for the effort that you devoted to this
18 case. You are free to go at this time.

19 If you have anything in the jury room, you can go get
20 that. Turn your badges in to the bailiffs, and we'll have
21 you...

22 THE BAILIFF: We have work excuses.

23 THE COURT: Sir?

24 THE BAILIFF: We have work excuses, also.

25 THE COURT: And work excuses and anything else you

1 might need for your jury service, you can get that from
2 the bailiffs before you depart.

3 Thank you again for your time.

4 (WHEREUPON, the jury left open court at approximately
5 1:13 p.m.)

6 THE COURT: All right. Mr. Land, any motions from
7 the defense?

8 (Pause).

9 MR. LAND: Your Honor, I've discussed any post-trial
10 motions with my client. With his consent, we don't have
11 any. Of course, renewing all previous objections and
12 motions that I previously made.

13 THE COURT: You want to move for a new trial based on
14 the trial error of me not charging voluntary manslaughter?

15 MR. LAND: Certainly. That's what I mean by previous
16 objections, absolutely.

17 THE COURT: All right. All right. Okay. Is the
18 State ready to proceed to sentencing?

19 MR. CONNOR: We're ready, Your Honor.

20 THE COURT: All right. Ell, let's take -- we'll take
21 five minutes so that Mr. Land can discuss with his client
22 family, potential issues in that regard. The same for
23 you, Mr. Connor. I'll be back in just a few minutes.

24 (WHEREUPON, a short break was taken.)

25 THE COURT: All right. Mr. Land, just to make sure

1 the record is clear, do you have anything new for the
2 basis for the new trial motion, other than that?

3 MR. LAND: Your Honor, of course, I could make the
4 motion that the evidence does not support the finding of
5 the jury. I could continue to argue it. I don't know if
6 you need for me to continue to argue it, but I think the
7 State failed to prove malice, and therefore --

8 THE COURT: Of course, we went through quite some
9 time. I think you very eloquently stated your grounds for
10 the voluntary manslaughter charge which I refused to give.
11 That was the reason we started late this morning is
12 because I was rethinking my position on that based on what
13 you had argued.

14 That would certainly be some grounds, further grounds
15 for argument on appeal, but at least as far as today I
16 think I was correct in not charging that because of the
17 lack of evidence as to the sudden heat of passion based on
18 sufficient legal provocation, specifically that words
19 alone aren't sufficient when a deadly weapon is used.

20 I think -- I can't recall but I think the record is
21 relatively clear as to my trial rulings on evidence. Your
22 motion for a new trial is respectfully denied.

23 The State ready for sentencing?

24 MR. CONNOR: We're ready, Your Honor.

25 THE COURT: All right. Mr. Land?

1 MR. LAND: We're ready, Your Honor.

2 THE COURT: All right. Come on up, please,
3 Mr. Harriott, Mr. Land.

4 Mr. Connor, I want to make sure that if any member of
5 the family, either side, has any statement to make, that
6 the statement is made to me and not to the defendant and
7 no comments directed to the defendant.

8 The courtroom security, I want to make sure that
9 order is preserved, but I want to make sure that there
10 aren't any angry outbursts or comments made by any person
11 against, someone identified with, in my words, the other
12 side.

13 All right. Mr. Connor?

14 MR. CONNOR: This lady to my right, Your Honor, is
15 the sister of Quanna Cooper, Shaneka Cooper. She has
16 asked permission to make a brief statement.

17 THE COURT: Yes, ma'am. And your name again?

18 VICTIM'S SISTER: Shaneka Cooper.

19 THE COURT: Okay. Ms. Cooper, I'll be glad to hear
20 from you.

21 VICTIM'S SISTER: First, I want to start by saying
22 the young man that had the outburst the other day in the
23 courtroom, he asked me to apologize. That was my brother.
24 Also, he -- he said that he respected your decision to bar
25 him from the rest of this trial and in deciding what you

1 do to Derrick.

2 I just want to say that words can't describe how the
3 death of my sister affected my entire family. I mean,
4 down from my parents to kids to friends to people that
5 just didn't even know her, but honestly, Your Honor, I
6 just want to ask you, can I just tell Derrick that I don't
7 hate you for what you did to her.

8 You know, honestly, I do not hate you. You know, I'm
9 being a bigger person. I just don't believe that you did
10 it for the reasons you did, and I hope that you live a
11 long life. I really do. I hope you live life in jail,
12 because that's where you need to be.

13 I want to say to the judge, I know you're not -- you
14 didn't decide whether he got charged for involuntary
15 manslaughter or murder. I hope that you give him the
16 maximum sentence because he tore up a lot of lives, and he
17 didn't just tear up my family's lives. He tore up his
18 family's lives. They can't see him anymore.

19 He took himself away from them. He took my sister
20 away from me. It's like nothing that -- whatever happens
21 today in this courtroom, nothing is going to change that.
22 She is not coming back. He's not coming back. Nothing
23 will ever be the same again.

24 I just want to say that there -- like I said, no
25 matter what happens, it don't matter what happened today

1 or what sentence you get, because there's only one true
2 judge for you. On judgment day, you better be ready.
3 That's it.

4 THE COURT: Thank you, ma'am.

5 Mr. Connor?

6 MR. CONNOR: All right. Your Honor, he has no prior
7 General Sessions record. I noticed he has been -- had
8 five minor charges in Magistrate's Court, but apparently,
9 he paid a fine on them. That was all there was to it.

10 THE COURT: What's the defendant's age?

11 MR. LAND: He's 29 now, Your Honor.

12 THE COURT: All right. Anything else from the State,
13 Mr. Connor?

14 (There was no response).

15 Sentencing is according to 17-24-70 which
16 specifically states if a verdict is returned of guilty but
17 mentally ill, the defendant must be sentenced by the trial
18 judge as provided by law for a defendant found guilty.
19 Except if the sentence imposed includes incarceration, the
20 defendant must first be taken to a facility designated by
21 the Department of Corrections for treatment and retained
22 there until the opinion of the staff at that facility the
23 defendant may be safely moved to the general population of
24 the Department of Corrections to serve the remainder of
25 his sentence.

1 I take it that there's no dispute between the State
2 and the defendant as to that particular statute applying
3 to this case?

4 MR. LAND: Based on their verdict; that's correct.

5 THE COURT: All right. And I had some hesitation in
6 instructing the jury in that regard, but since both sides
7 consented, I went ahead and did that.

8 Mr. Connor, what's the State's position on the
9 sentencing?

10 MR. CONNOR: Your Honor, we'll abide by whatever
11 decision you see fit to make.

12 THE COURT: All right. Mr. Land?

13 MR. LAND: Thank you, Your Honor.

14 Of course, you been here throughout the trial.
15 Pardon me if I go over some grounds that's already been
16 plowed. I think it's important to refresh your memory.

17 As you just asked, he is 29 years old. As you heard
18 from his family members and from Dr. Frierson, he did
19 finish high school, but he was in special education
20 classes all his life and received a certificate as opposed
21 to a diploma.

22 Even as Dr. Frierson pointed out, he has done well
23 despite his mental limitations. He has had two good jobs,
24 one at Goldkist and one at Monty (phonetic), I think is
25 the more recent job with Mr. Finkbeiner.

1 I think Mr. Finkbeiner gave you a good picture of who
2 Derrick Harriott is every day of his life but March 16th,
3 2007.

4 As the State has indicated, he has no major criminal
5 record, some Magistrate Court level stuff. On that day,
6 something happened, Judge.

7 He will, for the rest of his life, have to live with
8 that in addition to whatever sentence you impose. The
9 family of Quanna Cooper has lost they one they love.

10 We never -- in the purposes of this trial, we never
11 -- our purpose is never to drag them in here and have them
12 suffer through a very emotional trial. That was never the
13 purpose.

14 Your Honor, I think through my arguments, understand
15 that our position was that he committed voluntary
16 manslaughter. I respect your ruling on that. I'm not
17 re-arguing that point. I want you to understand that was
18 our position.

19 He has never at any time, through this 20 months now,
20 ever denied what he did that day. He has never tried to
21 blame anyone else for killing her.

22 (The defendant indicates in the negative).

23 He came out, literally within seconds, admitting what
24 he had done. He has been open with police officers. He
25 gave a two-and-a-half hour confession. He has been open

1 with the doctor who evaluated him. The jury found that he
2 was guilty but mentally ill, which I take it to mean they
3 believe the allegations that were in his mind, the
4 delusions that were in his mind.

5 Now, everyone else in this courtroom may be sitting
6 here going, "Those things aren't true. Why wasn't" --
7 that should not be a factor.

8 I think it is a factor in the Court deciding what
9 kind of person he is. Mr. Finkbeiner, Ms. Witherspoon,
10 everyone that knew him and testified. Dr. Frierson, in
11 his meeting with him, said he was well groomed, well
12 spoken.

13 Throughout the process, he has shown a person that is
14 not the person on March 16th, 2007. He had a job that
15 paid \$9.25. He had been working there for a short period
16 of time. When they had a reduction in force,
17 Mr. Finkbeiner said, "Please keep in touch with us. When
18 we get some positions back open, I want you to come back."

19 Mr. Finkbeiner befriended him, took him under his
20 wing, invited him to his house. It's a sad thing that
21 unfortunately Mr. Harriott saw these guns that
22 Mr. Finkbeiner had and wanted to be like the other guys,
23 have a gun, have a four wheeler, hunt, fish and do those
24 things.

25 But that day, March 16th, 2007 is one day in his life

1 that changed his life, changed the family of Quanna
2 Cooper, changed his family.

3 It's not the day, I think, that epitomizes his life.
4 Up until that day, there was no testimony, no evidence of
5 him being a bad person. Quite the contrary, everything
6 was good about him.

7 He and Ms. Cooper had had a relationship for two and
8 three years. They had been on again and off again, but
9 there was no allegations of any C.D.V. There was no
10 allegations of him ever threatening anyone with this gun.

11 On that day I think the evidence presented shows that
12 he was there. He got his things. He was leaving. He was
13 at the bottom of the stairs. If we could all go back to
14 that day and someone could have said, "Derrick, take six
15 more steps. Go out the door and leave. Whatever
16 delusions you're having, leave."

17 Six steps, we wouldn't be here today, Judge. He
18 didn't take those six steps. For whatever reason,
19 whatever delusions he was having, he turned. She's on the
20 stairway, and he fired that weapon, something that changed
21 everyone's life.

22 Judge, the legislature gives you a wide, wide range
23 in sentencing for murder. I think they do that because
24 the cases are so different.

25 There are murders done for numerous reasons, and I

1 won't even try to list them. They give you a range of 30
2 years up to life. I understand the family's position. I
3 have stood with families before, and I have heard them say
4 the things that Ms. Cooper's family have said today.

5 I know they wholeheartedly believe that he should
6 spend the rest of his life in jail. I do not fault them
7 one bit for that.

8 If I were in their shoes personally, I would
9 certainly say that. If I were their attorney representing
10 them, I would certainly understand they are requesting
11 that, Judge.

12 I also appreciate Ms. Cooper's family saying they
13 forgive him, and we're -- we're glad they do that. I
14 think that's good of them to do. I think it helps their
15 healing process. I think it helps the family of
16 Mr. Harriott's healing process, but Judge, you get to
17 decide this sentence.

18 In this case, I believe that the low end of the
19 scale, the 30 years, is appropriate. This gentleman is 29
20 years old. Thirty years from now, he will be 59 years
21 old. Of course, I would ask that you give him credit for
22 the 20 months or so that he has been in jail, but that is
23 a long, long time.

24 When he gets out, he will be not an old man, but
25 certainly, he'll be eligible for a senior citizen's

1 discount. It's not where you're lightly punishing him.

2 He is a person, I believe, that even after a sentence
3 of that sort can come back and be productive. Let's hope
4 he can get out and be the person that everyone knew
5 Derrick Harriott to be but for that one day.

6 He can return to society as a person with the
7 treatment that he needs. Dr. Frierson, I think,
8 summarized it best when he said the tragedy of this whole
9 thing is that medication could have prevented us from
10 being here. A pill could have taught Mr. -- or allowed
11 Mr. Harriott to see through his delusions and not done
12 that thing on that day.

13 So, Judge, I understand and I respect the family's
14 position. I would ask, though, that you consider the
15 minimum sentence. I believe that would serve the purpose
16 under the law in punishing him. I think you should look
17 at the facts of case; that he was under a delusion when he
18 did this; that it was not the Derrick Harriott that
19 everyone else knew.

20 Of course, he's also been found guilty of possession
21 of a firearm. I would ask that whatever sentence you
22 impose on that be concurrent. I'll leave that to your
23 discretion, whatever amount that is.

24 Judge, Mr. Harriott would like to address you. He
25 understands your direction about addressing the family. I

1 will remind him to address you, but I think he may want to
2 say something to the family, but I'll ask him to direct
3 that to you and not look back at them.

4 Do you understand that, Derrick?

5 THE DEFENDANT: Yes.

6 MR. LAND: Would you like to address the Court?

7 THE COURT: Make sure you speak up for me,
8 Mr. Harriott.

9 THE DEFENDANT: Your Honor, here today, we lost
10 someone -- or they lost someone. My family lost someone.
11 She can't come back.

12 (Pause).

13 I...

14 (Pause).

15 (Crying).

16 MR. LAND: Your Honor, Joyce Witherspoon would like
17 to address you. Maybe if we'll take a moment and let her
18 address you. Would you mind if she came forward to do
19 that?

20 THE COURT: That would be fine.

21 MR. LAND: Ms. Witherspoon, come on up here.

22 THE DEFENDANT: Ain't no coming back now. I can say
23 I'm sorry. She can't come back from now. My family is
24 here. I'm here.

25 That day I went there to get my clothes. I never

1 hurt nobody. She pushed me because I was leaving.

2 DEFENDANT'S AUNT: Lordy.

3 THE DEFENDANT: I was going to get my clothes. She
4 can't come back from that, you know what I'm saying. All
5 I want to say is that I apologize to the family but a
6 killer, a murderer, I'm not.

7 SPECTATOR: Oh no.

8 THE DEFENDANT: I drink. I punch people, not a
9 murderer. I quit drinking. I never get in no trouble. I
10 don't bother nobody. I just go to work every morning.

11 DEFENDANT'S AUNT: Oh no.

12 THE DEFENDANT: I get on my four wheeler so I don't
13 have to bother people. I fish on my boat, don't bother
14 nobody. I don't cause no trouble.

15 You know, that day I went to get my clothes. She
16 pushed me. I didn't go there to kill her. My aunt worked
17 too hard and put too much in me. I came too far.

18 No, I can't read, but I get up and I go and look for
19 jobs. Take care of me, that's how she raised me. I never
20 hurt nobody, and I never went there to do nothing wrong to
21 her.

22 I always motivated her to do nice things. I never
23 hurt nobody, and I apologize that she's not here, and my
24 family can see me. I think about it every day that her
25 family cannot see her.

1 And I would like the Court and everybody in here, I
2 I'm sorry y'all had to see this. I'm sorry, but this is
3 something that happened, and this is something that we
4 have to deal with now.

5 If I could bring her back, I would, but a bad person
6 to outright kill somebody, no, sir. I always helped
7 Quanna and tell her what to do.

8 I was trying to leave. That's what happened that
9 day. We was at the top of the stairs. She was -- I was
10 at the third stair. She was at the top.

11 The reason why she got shot like that, because --

12 DEFENDANT'S AUNT: Oh.

13 THE DEFENDANT: -- by time we get from the top to the
14 bottom of the stairs, she was dead. When I realized what
15 happened, I called the police.

16 DEFENDANT'S AUNT: Oh.

17 THE DEFENDANT: That's what happened that day but
18 wasn't there to hurt her. I had my gun, my keys, my
19 clock. I had everything. All my items was in that bag
20 and was right there from the top of the stairs -- from the
21 top of the stairs to the bottom of the stairs.

22 By the time we get to the bottom of the stairs, we
23 started arguing and fighting. She was dead. The right
24 thing to do was to call the police, and that's what I did,
25 but that don't resolve nothing.

1 I apologize here for everybody. She is dead. I
2 loved her, like I say. I apologize to the family, and I
3 apologize to my family. I apologize for being in front of
4 y'all here today.

5 THE COURT: Ms. Witherspoon, is there anything you'd
6 like to say?

7 DEFENDANT'S AUNT: Just -- I just wish I could just
8 turn back to March 16th, 2007 when Quanna would still be
9 here. Derrick would be doing what he needed to be doing.
10 It's hurting me to know that medication -- I mean, I
11 feel like I failed as a mother for Derrick because the
12 doctor said medication would have -- he wouldn't have been
13 able to do that if he just had medication.

14 Oh God, I just -- I just ask you, Your Honor, to give
15 Derrick some lenience, because he didn't know what he was
16 doing. He did, he knew. I mean, he -- he knew but he
17 didn't knew (sic) with the -- with the idea of he thinking
18 (sic) things been being done to him.

19 I just ask for you to -- oh Lord, please, please just
20 consider to just not go easy because from day one, I never
21 thought he should just get off scott-free. Quanna is not
22 here.

23 THE DEFENDANT: I never denied --

24 DEFENDANT'S AUNT: She's --

25 THE DEFENDANT: I never denied the fact that she

1 was --

2 THE COURT: All right. One at a time.

3 DEFENDANT'S AUNT: I realize that, but after the
4 trial -- I mean after talking to the lawyers and the
5 doctors, I realized that Derrick, he knew, but I don't
6 think he was capable of not going through what he -- they
7 did, not to stop himself.

8 All I just beg for you is leniency on my child, me
9 and my sister's child.

10 THE COURT: Mr. Land, anything else?

11 MR. LAND: Your Honor, I think -- I think we put our
12 position on the record. Mr. Harriott is sorry about what
13 happened. I hope you didn't take anything he said to be
14 blaming Ms. Cooper.

15 THE DEFENDANT: No, no.

16 MR. LAND: I don't think he was offering that
17 evidence.

18 THE DEFENDANT: I was trying to --

19 MR. LAND: He was --

20 THE COURT: And I don't --

21 MR. LAND: He was trying to leave, Judge. Like I
22 said, six steps, six more steps, we would -- none of us
23 would be here today and Ms. Cooper would be with her
24 family. We would just ask that you consider the lower end
25 of the spectrum.

1 THE COURT: All right. Mr. Connor, anything in
2 response?

3 MR. CONNOR: Nothing further, Your Honor.

4 THE COURT: All right. Mr. Harriott, I've say this
5 before. I'll say it again, murder convictions right here
6 in this courtroom, it doesn't make it any easier for me to
7 pass sentence in a situation where the jury has clearly
8 spoken because you have a family, you have a life and
9 numerous lives were affected by what you did.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: It's a situation where the jury has found
12 you guilty but mentally ill. From my perspective, I think
13 that the verdict was in line with the facts.

14 The jury could have discounted the testimony and the
15 evidence about your mental status and the delusions but
16 they didn't.

17 As I interpret the statute, or the statutes, the
18 sentencing that I impose is to take into account the fact
19 that the jury found you guilty.

20 The portion of the statute that talks about the
21 mentally ill deals with how he is housed in the judgment
22 of the Department of Corrections.

23 What can't escape me in this particular case is the
24 fact that 14 wounds were incurred by Ms. Cooper. That was
25 very troubling, right smack dab in the middle of the city

1 of Sumter, right across from the old Sumter High School,
2 right across from Patriot Hall in a relatively quiet
3 neighborhood.

4 What I have to consider is, obviously, what the just
5 punishment is for what you did to somebody who in the eyes
6 in the law didn't deserve to be killed.

7 An argument, and I know you're not offering that as
8 an excuse or in any way blaming her, and I'm not taking it
9 that way at all --

10 THE DEFENDANT: No.

11 THE COURT: -- but someone who you're in an argument
12 with who might even push you, short of something that
13 would arise to self-defense, which didn't apply in this
14 case, doesn't -- doesn't deserve 14 gunshot wounds with a
15 semiautomatic rifle.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Legal or not.

18 THE DEFENDANT: Yeah.

19 THE COURT: And I -- the fact that the gun is -- as
20 Mr. Land, I think, put it is menacing looking doesn't
21 enter into my decision at all, the fact of what kind of
22 weapon was used.

23 Having been found guilty but mentally ill of murder,
24 in my judgment, the appropriate sentence is that you be
25 committed to the Department of Corrections for the balance

1 of your life without parole.

2 SPECTATOR: Oh Lord. Lord, God.

3 THE COURT: Mr. Land, you have -- obviously, you're
4 cognizant of the rules allowing you to make appropriate
5 motions in that regard, but that is the sentence of the
6 Court, and I send you on your way, Mr. Harriott. I don't
7 feel good about doing it. It doesn't make -- it doesn't
8 give me any pleasure at all.

9 THE DEFENDANT: No, she is dead. I understand.

10 THE COURT: And I don't -- I don't like how that
11 affects your family, but I think in this case under these
12 facts, that's what the correct sentence is.

13 SPECTATOR: Lord.

14 THE COURT: Mr. Land, Mr. Connor, I want to tell you
15 both that the way you handled yourselves and the way you
16 handled the case was in a fashion that I wish every other
17 lawyer would do.

18 SPECTATOR: Lord, why? Why?

19 THE COURT: I think both of you tried the case
20 extremely well. Mr. Land, I know that's a small
21 consolation.

22 SPECTATOR: Oh Lord.

23 SPECTATOR: Go outside.

24 THE COURT: I wish everybody could be represented in
25 the fashion you represented Mr. Harriott.

1 SPECTATOR: Why?

2 (There was a disturbance in the back of the
3 courtroom).

4 THE COURT: I thank you for your efforts, as well,
5 and to the Cooper family and the members of that family, I
6 wish you luck.

7 My sentence is not designed to make you feel any
8 better either. My sentence is designed to do some justice
9 in this case.

10 THE DEFENDANT: Save me, My Momma.

11 THE COURT: Thank you. I'll come back and talk to
12 you in just a second, okay.

13 THE SHERIFF: Thank you, Your Honor.

14 THE COURT: All right. We'll break until 3:15.

15 (Whereupon, the proceedings were concluded.)

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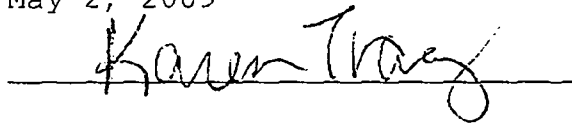
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

I, Karen Tracy, Official Court Reporter for the 5th
Judicial Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate and partial
Transcript of Record of the proceedings had and evidence
introduced in the trial of the captioned case, relative to
appeal, in the Court of General Sessions for Sumter
County, South Carolina, on the 10th and 13th days of
November, 2008.

May 2, 2009

A handwritten signature in cursive script, reading "Karen Tracy", is written over a horizontal line.

Karen Tracy, Court Reporter

My Commission Expires: 04/01/14

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DERRICK D. HARRIOTT,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error by failing to instruct the jury on the defense of insanity and that, "if the jury believed that the defendant was in such a state of mind on account of its derangement or impairment as to render him incapable of knowing the distinction between right and wrong at the time he committed this act, that ... he would not be responsible," as provided by *State v. Lloyd*, 85 S.C. 73, 67 S.E.2d 9, 11 (1910).

STATEMENT OF THE CASE

On November 10 through 13, 2008, Derrick Damon Harriott stood trial in Sumter County, before Judge George C. James, Jr. and a jury, on an indictment (08-GS-43-257) charging him with murdering his girlfriend, Quanna Cooper, by shooting her fourteen times in the residence they shared. Defense counsel conceded that Harriott had killed Cooper but asserted that he had done so because he was delusional at the time:

Mr. Harriott was having delusions that ... Ms. Cooper, his girlfriend, was giving him drugs that caused him to pass out, and then she would bring men in to rape him. ... [T]he only way he thought he could escape this perceived sexual abuse was to kill Ms. Cooper.

R. 58, ll. 14-17; R. 59, ll. 20-22. As a result, counsel continued, Harriott was guilty (but mentally ill) of voluntary manslaughter, not murder. R. 53, l. 25 – R. 58, l. 1; R. 58, ll. 23-25.

Unfortunately for Harriott, “[t]he law will not classify a killing as manslaughter on the basis of a mistaken and baseless idea in the mind of the kill.” *State v. Damon*, 285 S.C. 125, 328 S.E.2d 628, 630 (1985). So, when the trial judge refused to instruct the jury on voluntary manslaughter, (R. 167, ll. 3-5) and insanity was neither requested nor charged, counsel had effectively stipulated that Harriott was guilty of Cooper’s murder. (He also conceded that Harriott was guilty of a firearm during the commission of a violent crime. R. 60, l. 25 – R. 61, l. 7.) As a result, the jury’s only concern during their deliberations was: “If we find him guilty of mental illness, will he get the same sentence as guilty?” R. 225, ll. 15-24. Once they were assured that Harriott would not be released if found guilty but mentally ill, they found him guilty of murder and the judge sentenced him to life imprisonment without parole.

ARGUMENT

The trial judge committed reversible error by failing to instruct the jury on the defense of insanity and that, “if the jury believed that the defendant was in such a state of mind on account of its derangement or impairment as to render him incapable of knowing the distinction between right and wrong at the time he committed this act, that ... he would not be responsible.” as provided by *State v. Lloyd*, 85 S.C. 73, 67 S.E.2d 9, 11 (1910).

S. C. Code Section 17-24-10(A) states:

It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.

A criminal defendant who claims he was insane at the time of the offense must establish that defense by a preponderance of the evidence. *Id.*

The circumstances surrounding Quanna Cooper’s shooting death established ineluctably that Harriott was delusional at the time. For example, shortly before, he appeared in his employer’s office “very distraught and upset ... crying” and asserted that Cooper “had some guys come in and rape me after she drugged me” while she videotaped his degradation. R. 91, l. 6 – R. 94, l. 25. A defense psychiatrist testified:

[T]he allegations were that Ms. Cooper was drugging him and allowing men to come into his room at night and sexual assault him. And then was filming this and placing this on the internet. And that possibly the police were also involved with it being on the internet, that people knew about it and were laughing at him.

R. 128, ll. 7-22. “I need to mention a big dose of reality that sort-of fed into his delusions,” the witness continued: “He did have an infection in his prostate gland ... that

caused some pain in the rectal area ... Well, it just gave him another reason to believe, 'Yeah, this is what's going on'." R. 131, l. 3 – R. 132, l. 9. He believed that Harriott was capable of distinguishing right from wrong because:

Immediately after it happened, he said to the witnesses, "Call the police". Well, one doesn't say "call the police" unless they realize they have done something that could be viewed as legally and morally wrong.

R. 133, l. 5 – R. 134, l. 2. Nevertheless, the witness concluded, "It is my opinion that his delusions amounted to a compulsion that he could not resist. R. 134, ll. 3-25.

For him, he knew it was wrong to kill somebody to kill the alleged victim, but there was no way out of what was happening to him. He couldn't go to the police. ... There was no escape. He actually thought that part of the drugging that she was doing made him continuously come back to her. It was like a spell.

R. 143, ll. 5-14. Defense counsel neither requested a charge on the defense of insanity nor did he object to its omission. R. 223, ll. 4-13.

However:

A person may be legally sane ... and still yet, by reason of mental infirmity, have hallucinations or delusions that cause him to honestly believe to facts things which are not true or real. The guilt of a person suffering from such hallucinations or delusions is to be determined just as though the hallucinations or delusions were actual facts. If the act of the defendant would have been lawful had the hallucinations or delusions been the actual facts, the defendant is not guilty of the crime.

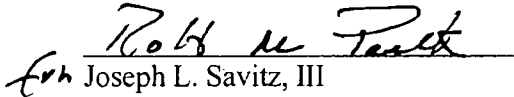
Wallace v. State, 767 So.2d 364, 268 Fla. (2000). In other words:

[I]f the jury believed that the defendant was in such a state of mind on account of its derangement or impairment as to render him incapable of knowing the distinction between right and wrong at the time he committed this act, ... then he would not be responsible.

State v. Lloyd, 85 S.C. 73, 67 S.E.2d 9, 11 (2010). Accordingly, a defendant's belief in the necessity of self-defense may itself support a verdict of not guilty by reason of insanity.

However, since defense counsel did not request an insanity instruction on this basis, the Court may require Harriott to pursue this issue at post conviction relief as an allegation of ineffective assistance of counsel. See, for example, *Jeter v. State*, 308 S.C. 230, 417 S.E.2d 594 (1992). If not, the Court should reverse Derrick Harriott's convictions and remand for a new trial.

Respectfully submitted,


for Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of February, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DERRICK D. HARRIOTT,

APPELLANT

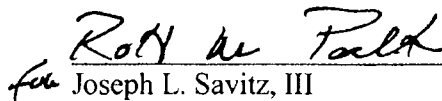
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Derrick D. Harriott states:

1. He is Senior Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge George C. James, Jr., which was held on November 13, 2008, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Derrick D. Harriott.

Respectfully submitted,

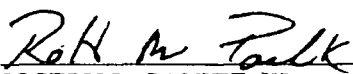

for Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of February, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

for 
JOSEPH L. SAVITZ, III
Senior Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DERRICK D. HARRIOTT,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201; and a copy of the Final Anders Brief and Record on Appeal on Derrick D. Harriott, #331760 at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 10th day of February, 2011.

for Robb M. Foubk
Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of February, 2011.

Gregory O. [Signature] (I.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017

State of South Carolina
In The Court of Appeals

5-9-11
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Appeal From Sumter County
George C. James Jr., Presiding Judge

DERRICK D. HARRIOTT

Appellant

vs.

The State

Respondent

Appellant's Brief**RECEIVED**
APR 21 2011

SC Court of Appeals

DERRICK D. HARRIOTT
331260 DAB-N-1116
LEE C.T. 990 Wisacky Hwy.
Bishopville, S.C. 29010

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STATEMENT OF CASE

The Appellant was tried in Sumter County for the charge of murder and possession of a deadly weapon. He went to trial presided over by The Honorable Judge George C. James where he was found guilty. The Appellant did file timely appeal. Appointed counsel submitted Brief. This Brief now follows.

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Statement of Issues

(1) Did the Trial Court err, and was the Appellant's 5th, 6th, 14th Amendment Rights of the U.S. Constitution violated, as well as Article IV § 2, and his Due Process Rights violated, by the Prosecuting body and Trial Court Judge charging the jury that malice can be inferred by use of a deadly weapon?

(2) Did the Trial Court err, and was the Appellant's 5th, 6th, 14th Amendment Rights of the U.S. Constitution violated, as well as Article IV § 2, and his Due Process Rights violated, by the Trial Court allowing testimony by various witnesses to be entered into court record, and/or allowing their statements related thereto to be entered into evidence in the case or trial, when there was no evidence adduced at trial that the witnesses were given a copy of the statements the time they made them, nor was there given to them a copy of a receipt for the taking thereof?

(3) Did the Trial Court err, and was the Appellant's 5th, 6th, 14th Amendment Rights of the U.S. Constitution violated, as well as

Article IV § 2, And his DUE PROCESS Rights violated,
due to THE COURT denying THE Appellant's
Motion for Direct Verdict, BECAUSE NO
RATIONAL TRIER of facts would find THE Appellant
guilty of EVERY fact and ELEMENT of THE OFFENSE(S)
CHARGED in THE indictment(S), ESPECIALLY
SINCE ALL THE STATEMENTS and TESTIMONY
ARE TAKEN in violation of THE STATUTES?

Arguments

(1) Did the Trial Court err, and was the Appellant's 5th, 6th, 14th Amendment Rights of the U.S. Constitution violated, as well as Article IV § 2, and his Due Process Rights violated, by the prosecuting body and trial judge charging the jury that malice can be inferred by use of a deadly weapon?

Judicial Notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, *Moss v. Aetna Life Ins. Co.*, 228 S.E.2d 108; *State v. Broad River Power Co.*, 177 S.C. 240, 181 S.E. 41; 31 C.J.S. EVIDENCE §§ 6 and 9; Federal Rules of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did

not object at the proceedings, (Black Law Dictionary 8th Edition).

The Appellant contends, his 5th, 6th, 14th, Amendment Rights of the U.S. Constitution, AS WELL AS ARTICLE IV § 2, AND his DUE PROCESS Rights WERE VIOLATED, BECAUSE THE PROSECUTOR AND TRIAL JUDGE CHARGED THAT MALICE MAY BE INFERRED FROM THE USE OF A DEADLY WEAPON WHERE EVIDENCE WAS PRESENTED BY TESTIMONY AND OR DOCUMENTATION THAT WOULD REDUCE, MITIGATE, EXCUSE, OR JUSTIFY THE HOMICIDE.

IN State v. Hopkins, 15 SC 153 (1881), HOPKINS WAS CONVICTED OF MURDER. HE PLED ACCIDENT, IN A SIMILAR MANNER WHERE THE APPELLANT PLED MENTAL ILLNESS, AND OBJECTED TO THE FOLLOWING "USE OF A DEADLY WEAPON IMPLIES MALICE" INSTRUCTION: IN EVERY CASE OF INTENTIONAL HOMICIDE THE PRESUMPTION OF MALICE ARISES, AND THE FACT OF KILLING INTENTIONALLY BY THE USE OF A DEADLY WEAPON BEING SHOWN IN ANY CASE, THE BURDEN OF PROOF IS THEREBY IMPOSED UPON THE DEFENDANT TO REBUT SUCH PRESUMPTION, UNLESS THE FACTS AND CIRCUMSTANCES SHOWN IN THE TESTIMONY ON BEHALF OF THE STATE INCIDENTALLY REBUT IT, Id AT 156. UNDER THESE CIRCUMSTANCES THE CHARGE WAS ERROR, AND

Hopkins was granted a new trial.

This presumption is not applicable when the facts and circumstances attending the homicide are disclosed in evidence so as to draw a conclusion of malice or want of malice as on fact, from the evidence. Presumptions of this class are intended as substitutes in the absence of direct proof, and are in their nature indirect and constructive. The best evidence of the state of mind attending act is what was said and done by the person whose motive is sought for. The motive that impels to the taking of human life is no exception to this rule, and the importance of the consequences that depend on the accurate ascertainment of its nature in such cases, affords the strongest grounds for limiting indirect and constructive proof to the narrow grounds within which they belong. It appears from the record sub-judice that the proofs embrace a statement of the origin of the difficulty between the two parties; their conducts towards each other down to the time where the shots were fired causing death; and, to some extent, the subsequent conduct of the prisoner. When the evidence is of such a character it must be presumed to be sufficient to enable the jury

To draw from it a conclusion of fact one way or the other. Under such circumstances there was no necessity, and, therefore, no propriety in resorting to any general presumption arising by operation of law. When the circumstances preceding and attending an act of this character are full, as in the present case, the appellant is entitled to the benefit of any doubt that may arise, and cannot be deprived of such benefit by any presumption of guilt arising by operation of law from the naked fact of homicide. A charge may be erroneous proposition of which it is composed may severally be conformable to recognized authority if in its scope and bearing in the case it was likely to lead to a misconception of the law, State v. Coleman, 6 SC. 185 (1875).

This is not a case where there was not a shadow of testimony tending to show mitigating circumstances, such as mental illness, nor is it one where there was not a shadow of testimony tending to show any excuse or provocation for firing the fatal shots that led to the death of the allege victim. There are indeed elements of mitigating circumstances such as mental illness and a confrontation by the allege victim tending to show provocation that developed.

Mitigating Circumstances and Evidence exist in the form of documentation and or testimony given by DR FRIERSON, the psychologist who examined the defendant. Provocation exist also through evidence presented through DR FRIERSON that they were in a heated argument developing into a threat, see TTP 144, INS. 14-19. The possession of a deadly weapon in this context by the Appellant, being subject to extreme delusions, can easily be seen only as a means of defense due to his reasoning being overwhelmingly distorted. At that moment, in the heat of passion, the Appellant also being extremely delusional, things got out of hand and went beyond his mental control. In this instance, to charge malice can be inferred by use of a deadly weapon was an error on the part of the trial court and extremely prejudiced the Appellant's trial proceedings. Had this not been done, the outcome of the proceedings may have been different as the attorney for the defendant was clearly arguing before the jury in his closing arguments, also see TTP 145, INS. 11-14; TTP 146, INS. 9-25; TTP 147, INS. 4-9; TTP 148, INS. 1-9 AND 20-25; TTP INS. 154 INS. 1-5 AND 9-17; TTP 155 INS. 5-9; TTP 160, INS. 10-12; TTP 162, INS. 13-25; TTP 163, INS. 14-17; TTP 164 INS. 17-20; TTP 178, INS. 10-15; TTP 179, INS. 1-7; TTP 197, INS. 6-13.

The error is that the attorney for the defendant, the prosecution, or the judge had no right to instruct the jury that they might infer malice from the mere fact of killing with a weapon calculated to do serious harm bodily, or to take a life, for the reason that this is a charge on the facts contrary to the Constitution. In that it undertakes to intimate to and instruct the jury what facts in the case are evidence of malice.

It was error, in that after all the evidence is out, the presumption of malice from the use of a deadly weapon fades from the case, and the jury must find malice, if at all, from the evidence, without any aid from the court as to what weight should be attached to killing with a deadly weapon, or what inference they may draw from such. The United States Supreme Court pronouncement is unequivocal there stating that the Due Process Clause of the Fourteenth Amendment is violated when a jury charge creates a mandatory presumption and impermissibly shifts the burden of proof to the defendant. The Due Process Clause forbids a state from placing the burden on the accused to prove his action is reduce the crime from

"MURDER TO MANSLAUGHTER". CONCLUSIVE PRESUMPTIONS DEPRIVE THE APPELLANT OF DUE PROCESS OF LAW, SANDSTROM V. MONTANA, 448 U.S. 510, 524 (1979); MULLANEY V. WILBUR, 421 U.S. 684, 703-04 (1975).

ONE APPELLATE COURT HAS DESCRIBED THIS JURY CHARGE AS A "half truth", GLENN V. STATE, 511 A2d 110, 1126 (Md. Ct. Spec. App. 1986). In discussing its meaning behind the observance, GLENN NOTES THAT MALICE INCLUDES THE ABSENCE OF JUSTIFICATION, EXCUSE AND MITIGATION, GLENN, 511 A2d AT 1122.

WHEN MALICE IS VIEWED IN LIGHT OF THESE COMPONENT PARTS, IT BECOMES CLEAR THAT INFERRING MALICE FROM THE USE OF A DEADLY WEAPON IS INDEED ONLY A "half truth". THE ABSENCE OF JUSTIFICATION, EXCUSE OR MITIGATION CANNOT BE INFERRED FROM THE USE OF A DEADLY WEAPON STANDING ALONE. OTHER FACTS AND EVIDENCE (OR THE ABSENCE OF OTHER FACTS AND EVIDENCE) ARE REQUIRED FOR THE FULFILLMENT OF THESE COMPONENT PARTS.

THE SC SUPREME COURT HAS HELD, THAT UNDER THE POLICY MAKING ROLE IN THE COMMON LAW, "WE HOLD THAT THE USE OF A DEADLY WEAPON IMPLIED MALICE INSTRUCTION HAS NO PLACE IN MURDER (OR ASSAULT AND BATTERY WITH INTENT TO KILL PROSECUTIONS) WHERE EVIDENCE IS PRODUCED BY TESTIMONY OR

otherwise, that would reduce, mitigate, excuse or justify the killing (or the alleged assault and battery with intent to kill)".

The use of the term "intentional" is instructive. Say for example, a homicide occurs by the use of a deadly weapon under circumstances warranting a self-defense instruction. The killing would be intentional, yet under this present given charge, the jury would be permitted to find malice merely because "if one intentionally kills another with a deadly weapon, the implication of malice may arise". That highlights the "half truth" nature of the charge, State v. Elmore, 279 S.C. at 401, 308 S.E.2d at 784.

Errors including erroneous jury instructions, are subject to the harmless error analysis. In many murder prosecutions, there will be overwhelming evidence of malice apart from the use of a deadly weapon. Here, however the error in charging that malice may be inferred by the use of a deadly weapon cannot be considered as harmless. Evidence of argument arising and heat of passion, as well as prior provocation and mitigating circumstances are present in the

form of the alleged victim's confrontation of the defendant, the threat that was asserted by the alleged victim and the extreme delusions experienced by the defendant due to mental illness, thereby highlighting the prejudice that resulted from the charge. It is truly inconceivable that the only evidence of malice was the appellant's use of a handgun as the prosecutor clearly pointed out. Therefore, we need go no further than saying the court in fundamental fairness, cannot conclude the error was harmless beyond a reasonable doubt, *State v. Belcher*, Opinion No. 26729, heard May 14, 2009 decided October 12, 2009.

The state and/or prosecuting body, acting unjustly under color of state law, has failed to adhere to their own state laws and/or common law, and/or misinterpreted their own common law, in violation of the appellant's substantial federal constitutional rights of due process, serving to deny the appellant the equal protection of the laws against unjust prosecution. The United States Supreme Court has held that acts of the state are automatically "under color of law" no matter what the source of the substantive rule, *Screws v. United States*, 325 U.S. 91 S.Ct. 1031

(1945); State v. Middleton, 207 SC 478, 36 S. E. 2d 742 (1946); Eslinger v. Thompson, 340 F. Supp 886 (D. S. C. 1972) aff'd 476 F. 2d 225 (4th Cir. 1973); McLaughlin v. Florida, 379 U.S. 184, 85 S. Ct. 283, 13 L. Ed. 2d 222 (1964); Dubinka v. Judges of Superior Court of the State of California, for the County of Los Angeles, 23 F. 3d 218; Jones v. State of Arkansas, 929 F. 2d 275; Hicks v. Oklahoma, 447 U.S. 343, 346, 100 S. Ct. 2227, 2229, 65 L. Ed. 2d 175 (1980); Dozier v. Loop College, City of Chicago, 776 F. 2d 752; Lugar v. Edmondson Oil Co., 457 U.S. 922, 928-30, 102 S. Ct. 2744, 2749-50, 73 L. Ed. 2d 482 (1982). Inasmuch, the Appellant motions that the judgment be REVERSED, VACATED, AND REMANDED FOR A NEW TRIAL.

(2) Did the Trial Court ERR, AND WAS the Appellant's 5th, 6th, 14th AMENDMENT Rights of the U.S. Constitution violated, AS WELL AS ARTICLE IV § 2, AND HIS DUE PROCESS RIGHTS violated, by the Trial Court allowing testimony by VARIOUS WITNESSES to be ENTERED into COURT RECORD, AND OR allowing their statements related thereto to be ENTERED into EVIDENCE in the CASE OR TRIAL, WHEN THERE WAS NO EVIDENCE adduced at trial that the WITNESSES WERE

given a copy of the statements the time they made them, nor was there given to them a copy of a receipt for the taking thereof?

Judicial Notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, MOSS V. AETNA LIFE INS. CO. SUPRA; STATE V. BROAD RIVER POWER CO. SUPRA; 31 C.J.S. EVIDENCE §§ 6 AND 9; FEDERAL RULES OF EVIDENCE, RULE 201(a).

This is also a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings, (Black Law Dictionary 8th Edition).

S.C. Code Ann. § 17-7-730 and S.C. Code Ann. § 17-13-150, require that the prosecuting body "shall" fulfill and see that all duties, requirements and Rules of Criminal Procedure

11021

RELATED TO DUE PROCESS AND THE STATE AND OR FEDERAL CONSTITUTION ARE ADHERED TO AND COMPLETED WITHIN THE COURTS.

So the Law is written "ITA LEX SCRIPTA EST", S.C Code ANN § 19-1-80 STATES VERBATIM:

"CONDITIONS ON EXAMINATIONS OF WITNESSES IN CRIMINAL PROCEEDINGS CONCERNING WRITTEN STATEMENTS made to public EMPLOYEES) — No WITNESS in any PRELIMINARY HEARING OR in any CRIMINAL JUDICIAL PROCEEDING of ANY KIND OR NATURE, shall be EXAMINED OR CROSS-EXAMINED by ANY EXAMINER, SOLICITOR, LAWYER OR PROSECUTING OFFICER CONCERNING A WRITTEN STATEMENT FORMERLY MADE OR GIVEN TO ANY PERSON EMPLOYED by this STATE, OR ANY COUNTY, CITY, OR MUNICIPALITY THEREOF, OR ANY PART of ANY such GOVERNMENT body, UNLESS it is first shown that at the time of the MAKING of the STATEMENT the WITNESS WAS GIVEN AN EXACT COPY, AND THAT BEFORE ANY EXAMINATION OR CROSS-EXAMINATION the WITNESS WAS GIVEN A COPY of the STATEMENT AND ALLOWED A REASONABLE time in which to READ it, AND the WITNESS SIGNED A RECEIPT TAKEN THEREFOR," STATE V. MOLES (SC 1975) 215 S.E. 2d 19; STATE V. STEADMAN,

120329

257 S.C. 528, 186 S.E.2d 712 (1972).

SC Code Ann § 19-1-90 STATE VERBATIM:

"Admissibility in criminal proceedings of written statements made to public employees-- Unless the provisions of SC Code Ann § 8-15-50 and SC Code Ann § 19-1-80 have been complied with, no statement such as referred to in those sections shall be admissible into evidence in any case, nor shall any reference be made to it in the trial of any case."

It is conspicuously clear, that Ms. Wesley gave a statement, was examined and gave testimony on said statement, thereupon said statement was entered into evidence, SEE TTPp 51, INS 11-25; TTPp 52, INS 1-25; TTPp 53, INS 1-25; TTPp, 54, INS 1-5.

The same holds true for Mr. Wesley, SEE TTPp 54, INS 21-25 through TTPp 60, INS 1-21.

The same holds true for Ms. Susie Bracey, SEE TTPp 61 INS 25 through TTPp 67, INS 1-25.

The same holds true for Mr. Finkdeiner,
130829

SEE Vol II TTPP 75.

THE SAME HOLDS TRUE FOR HEATHER GARDNER,
SEE Vol I TTPP 77 THROUGH TTPP 81 INS 1-25.

THERE WERE EVEN SOME STATEMENTS OF WITNESSES THAT SEEMLY WERE NOT REDUCED TO WRITING, BUT WERE ORAL. THE PROVISIONS OF SC CODE ANN §§ 19-1-80, 8-15-50 AND 19-1-90 ARE CLEAR. IT WAS THE DUTY OF THE INVESTIGATING OFFICERS INVOLVED TO FOLLOW THE PROVISIONS OF THE STATUTES WHEN IT COMES TO TAKING STATEMENTS FROM WITNESSES. THIS VIOLATES THE APPELLANT'S 6TH AMENDMENT RIGHTS TO A FAIR AND IMPARTIAL TRIAL. THE STATEMENTS THAT THE INVESTIGATING OFFICERS FAILED TO OBTAIN AND REDUCE TO WRITING WERE CRUCIAL AND NECESSARY FOR PURPOSES OF IMPEACHMENT TO SHOW ANY INCONSISTENCIES BETWEEN THE STATEMENTS AND THE WITNESSES TESTIMONY AT TRIAL. THIS DEFICIENCY ON THE PART OF THE STATE ACTORS EXTREMELY PREJUDICE THE APPELLANT VIOLATING HIS SUBSTANTIAL RIGHTS OF DUE PROCESS. ADDITIONALLY, NONE OF THE WITNESSES WHO REMAINED THAT DID REDUCE THEIR STATEMENTS IN WRITING WERE IN COMPLIANCE TO THE PROVISIONS OF THE STATUTES. IN ORDER FOR THE STATEMENTS MADE BY THE ALLEGE WITNESSES, OR ANY REFERENCE OR EXAMINATION, CROSS OR DIRECT, RELATED THERETO TO BE ADMISSIBLE INTO EVIDENCE

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At trial, an exact copy of those statements "must" be given to the specific witnesses at the time of their making such statements, and a receipt "must" be signed and given for the taking thereof. Such specifications, requirements and or acts "must" be adduced at trial and properly made a part of the court record. There was no evidence adduced at trial that would serve to indicate that the witnesses were given a copy of their statements the time they were made, nor is there any indication sub-judice that show any of the parties or witnesses signed a receipt for the taking therefor. It is perspicuous that testimony and evidence of the statements, and the incidentals contained therein, were indeed made a part of the court record as seen by the previous cited transcript page numbers.

The state and or county officials failed in their duty to reduce certain witnesses statements to writing for no other reason than derilection of duty in violation of my right to impeach these witnesses, and the others were not given copies of their statements the time they made them, nor did they sign a receipt for the taking therefor, which actions that stand in defiance to the applicable statutes

AND DUE PROCESS LAW. This issue is also based upon the principle that defendants are to be given a meaningful opportunity to present a complete defense. To protect this right the United States Supreme Court has developed, "what might loosely be called the area of constitutionally guaranteed access to evidence", United States v. Valenzuela-Bernal, 458 U.S. 858, 867, 103 S.Ct. 3440, 73 L.Ed.2d 1193, 1203 (1982).

In South Carolina, under Rule 608(C), of Rules of Crim. Pro. Evidence of Character, Conduct, and bias of witnesses state in *haec verba*:

"Evidence of bias, prejudice, or any motive to misrepresent may be shown to impeach the witness either by examination of the witnesses or by other evidence otherwise adduced".

In the case of United States v. Bagley, 105 S.Ct. 3375, the prosecution failed to disclose evidence that the defendant might have used to impeach the government's witnesses by showing bias, contradictions or perverted interest. The

Court stated that impeachment evidence as well as exculpatory evidence, falls within the Brady Rule. Such evidence is evidence favorable to the defense and or accused, so that if disclosed, and used effectively, it may make the difference between acquittal and conviction, but the matters are worse than this. You have state actors conspiring under color of state law unjustly not being in compliance to their own statutes and or state laws, to protect their state witnesses from evidence that would have been used to impeach them in violation of the appellants 6th Amendment rights to a fair and impartial trial, also serving to deny the appellant the Equal Protection of the laws against unjust prosecution, by their blatant failure to be in compliance to their own state laws. The United States Supreme Court has held that all acts of the state are automatically "under color of state law" no matter what the source of the substantive rule. Therefore, any questioning, examination, cross or direct, pertaining to these crucial statements, to include their failure to reduce such statements to writing purposely, maliciously done, thereafter such testimony being introduced into evidence, any reference made to them in any manner by and in the record sub-judice must be deemed

inadmissible and stricken from the court record in fundamental fairness to the appellant and his substantial rights of due process. The prosecution failed to adduce any proof that show they were in compliance to this strict mandate of due process law, Brady v. Maryland, 373 U.S. 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); United States v. August, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976); State v. Jackson, 396 S.E.2d 101 (SC 1990); Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972); Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177 (1959); Screws v. United States supra; State v. Middleton supra; Eslinger v. Thompson supra; McLaughlin v. Florida supra; Dubinka v. Judges of Superior Court of the State of California, For County of Los Angeles supra; Jones v. State of Arkansas supra; Hicks v. Oklahoma supra; Dozier v. Loop College, City of Chicago supra; Lugar v. Edmondson Oil Co. supra. Thus, the appellant motions for a mistrial and/or new trial to correct this egregious miscarriage of justice.

(3) Did the trial court err, and was the appellant's 5th, 6th, 14th Amendment rights of the U.S. Constitution violated, as well as Article IV § 2, and his due process rights violated, due to the court denying the appellant's motion for direct verdict, because no

RATIONAL TRIER OF FACTS WOULD FIND THE APPELLANT GUILTY OF EVERY FACT AND ELEMENT OF THE OFFENSE(S) CHARGED IN THE INDICTMENT(S), ESPECIALLY SINCE ALL THE STATEMENTS AND TESTIMONY ARE TAKEN IN VIOLATION OF THE STATUTES.

THE APPELLANT HUMBLY CONTENTS, THAT THE ISSUE ADDRESSING AND CONCERNING THE ADMISSIBILITY OF THE STATEMENTS IS PRESERVED FOR APPELLATE REVIEW PURSUANT TO THE IN CAMERA HEARING THAT WAS CONDUCTED BEFORE THE COMMENCEMENT OF THE TRIAL. EVEN THOUGH COUNSEL'S CONCERN WAS OVER MIRANDA, THE MIRANDA IS A PREREQUISITE TO THE OFFICIALS BEING REQUIRED TO FOLLOW THE PROVISIONS OF S.C CODE ANN §§ 8-15-50, 19-1-80 AND 19-1-90 MAKING THEM ATTACHED TO EACH OTHER IN THIS INSTANCE PRESERVING SUCH FOR APPELLANT REVIEW, AND IN FUNDAMENTAL FAIRNESS TO THE APPELLANT, SINCE THE ISSUE GOES TOWARD THE ADMISSIBILITY OF THE STATEMENTS, THE APPELLANT SHOULD BE PERMITTED TO ARGUE IT. THE ISSUE OF THEIR NOT PROVING ALL ELEMENTS IS ATTACHED TO THE ISSUE OF THE CHARGING THAT MALICE CAN BE PRESUMED BY THE USE OF A DEADLY WEAPON BECAUSE "MALICE" IS INDISPUTABLY A CRUCIAL ELEMENT OF THE OFFENSE AND SUCH ADDRESSING THIS CONCERN IS PRESERVED PURSUANT TO THE APPELLANT'S MOTION FOR DIRECT VERDICT ALLOWING THE S.C COURT OF APPEALS TO GIVE REVIEW IN LIGHT OF THESE FACTS, OF ALL ISSUES PRESENTED, SEE TTPP 7 THROUGH TTPP 17, INS 1-8; VOL IV TTPP 56.

190829

HENCE "STARE DECISIS" dictates that the trial judge during the direct verdict phase of the trial should only be concerned with the existence or non-existence of evidence not with its weight, State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000); State v. Burdette, 335 S.C. 34, 515 S.E.2d 525 (S.C. 1999).

A motion for Direct Verdict should be granted by the trial judge when the evidence merely raises a suspicion that the accused is guilty, and since the statements and testimony given, in fundamental fairness to the appellant, must be stricken from the court record and/or rendered inadmissible due to their existing in violation of the applicable statutes, the evidence serves to merely raise a suspicion, if that, of the appellant's guilt, In re Jeremiah H., 353 S.C. 90, 576 S.E.2d 185 (S.C. App. 2003); State v. Gotherow, 263 S.C. 275, 210 S.E.2d 228 (1974).

Likewise, when the evidence simply allows the jury to engage in "speculation" regarding the guilt of the accused, the trial court judge is required to grant the motion for Direct Verdict. With the statements and testimony given related thereto violating the statutes presented, thereby

deeming such statements and testimony inadmissible at trial, the jury is left in a position where they can only "speculate" as to the guilt of the accused, requiring the granting of the motion for a direct verdict, *State v. Walker*, 349 S.C. 49, 562 S.E.2d 313 (2002); *State v. Mitchell* supra.; *State v. Brown*, 267 S.C. 311, 227 S.E.2d 674 (1976) citing *State v. Montarazzo*, 262 S.C. 662, 207 S.E.2d 93 (1974).

Hence the prosecution has the burden of production on "every element" of the offense charged and since there exist evidence of both provocation and mitigating circumstances, they or the court cannot be permitted to charge that malice is presumed or inferred by the use of a deadly weapon. If the prosecution never brings facts into issue on the requisite elements of the offense, or they break due process law in bringing such facts into issue requiring such facts to be stricken from the record or rendered inadmissible, the motion for direct verdict should be granted, see *Lafane & Scott* Substantive Criminal Law § 1.8 (2d Ed. 1986); and *McCormick* Evidence §§ 336-337 (4th. Ed. 1992).

It is the duty of the trial court judge to submit the case to the jury if there is any

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SUBSTANTIAL EVIDENCE WHICH REASONABLY TENDS TO "PROVE" THE GUILT OF THE ACCUSED, OR FROM WHICH THE DEFENDANT'S GUILT MAY BE "FAIRLY", AND "LOGICALLY" DEDUCED, ON DIRECT EVIDENCE, OR ON CIRCUMSTANTIAL EVIDENCE. TO ALLOW THE STATEMENTS AND TESTIMONY RELATED THERETO INTO EVIDENCE WHEN THEY STAND IN DEFIANCE TO THE APPLICABLE STATUTES IS FAR FROM BEING REASONABLE. TO ALLOW THE COURT TO CHARGE IN THIS INSTANCE THAT MALICE CAN BE INFERRED BY THE USE OF A DEADLY WEAPON WHEN THERE ARE ISSUES OF PROVOCATION AND MITIGATING CIRCUMSTANCES IS NOT LOGICAL. SUCH WOULD PREVENT THE JURY FROM REASONABLY, FAIRLY AND LOGICALLY DEDUCING GUILT ON DIRECT EVIDENCE, OR ON CIRCUMSTANTIAL EVIDENCE, STATE V. MITCHELL, 332 S.C. 619, 506 S.E.2d 523 (S.C. App. 1998); STATE V. BURDETTE SUPRA.

IT IS BEYOND DEBATE, DISPUTE, OR QUESTION THAT A CONVICTION BASED UPON EVIDENCE CONSISTENT WITH BOTH GUILT AND INNOCENCE CANNOT STAND. UNITED STATES V. VAROZ, 740 F.2d 772 (10th Cir. 1984); UNITED STATES V. ORTIZ, 445 F.2d 1100 (10th Cir. 1971).

INASMUCH, WITH THIS LEGAL FRAMEWORK IN PLACE, THE COURT IS COMPELLED TO LOOK AT THE FACTS IN REGARD TO THIS CASE SUB-JUDICE BECAUSE THE LAW ARISES FROM FACTS (*EX FACTO ORITUR IUS*).

The appellant made motion for direct verdict on all charges. The trial court denied that motion. The appellant contends it was constitutional error for the trial court to deny the motion. The evidence is clear in this case for the court to apply the law.

The defendant is entitled to a direct verdict when the state fails to produce evidence that supports elements and allegations that are crucial to the offense(s), or in their producing of this evidence, such evidence is illegal, violating statutes in violation of Due Process law requiring that it be deemed inadmissible, State v. Honey, 344 SC 85, 544 S.E.2d 30 (2001). Suspicion no matter how strong do not suffice to sustain a conviction. Due to the statements non compliance to the statutes being inadmissible, all the court is left with is vague suspicion, State v. Huder, 131 S.E.2d 96, 242 S.C. 372 (1963). Suspicion implies belief or opinion as to guilt based upon facts or circumstances which do not amount to proof, State v. Powell, 202 SC 432, 25 S.E.2d 479 (1943).

In State v. Edwards, 298 SC 272, 379 S.E.2d 888 (1989) the court stated in Habeas Verba:

" EVERY CIRCUMSTANCE RELIED UPON BY THE STATE TO PROVE BEYOND A REASONABLE DOUBT; AND *** ALL OF THE CIRCUMSTANCES SO PROVEN BEING CONSISTENT WITH EACH OTHER AND TAKEN TOGETHER POINT CONCLUSIVELY TO THE GUILT OF THE ACCUSED TO THE EXCLUSION OF EVERY OTHER REASONABLE HYPOTHESIS. IT IS NOT SUFFICIENT THAT THEY CREATE A PROBABILITY, THOUGH A STRONG ONE, AND ASSUMING THEM TO BE TRUE THEY MAY BE ACCOUNTED FOR UPON A REASONABLE HYPOTHESIS WHICH DOES NOT INCLUDE THE GUILT OF THE ACCUSED, THAT PROOF HAS FAILED ".

IT IS PERSPICUOUS THE EVIDENCE BEING CONSISTENT WITH EACH OTHER AND TAKEN TOGETHER, DUE TO THE STATEMENTS AND TESTIMONY RELATED THERETO, VIOLATING THE PROVISIONS OF THE APPLICABLE STATUTES, A FAIR AND OR REASONABLE HYPOTHESIS IS THAT THE STATE FAILS IN PROVING THE ALLEGATIONS OF THE CASE, PERMITTING THE JURY TO ENGAGE IN SPECULATION OR SUSPICION WHICH WOULD REQUIRE THE GRANTING OF THE MOTION FOR DIRECT VERDICT, ESPECIALLY SINCE THEY INFER MALICE FROM USE OF WEAPON.

TO BOLSTER THE APPELLANT'S POSITION THAT HE WAS ENTITLED TO THE MOTION THAT WAS DENIED TO HIM, THE CIRCUIT COURT OF APPEALS LANGUAGE FOR THE 4TH CIRCUIT HAS HELD :

"The very existence of the 'Jackson Test' presupposes that juries accurately charged on the elements of the crime, and on the strict burden of persuasion to which they must hold the prosecution, nevertheless may occasionally convict even when it can be said that no rational trier of facts could find guilty beyond a reasonable doubt".

The test was adopted to provide an additional safeguard against possibility of such, and was to give added assurance that the finding of guilty should "NEVER" be found except upon a rationally supportable "STATE OF NEAR CERTITUDE". With this language in place, and the statements as well as testimony given related thereto, to include the state relying upon malice being inferred by the use of a deadly weapon when there were claims of provocation and/or mitigating circumstances in the form of mental illness, the statements and testimony being inadmissible due to they being in violation of the applicable statutes, there is no reason for this case to be submitted to the jury with the prosecution not being able to bring the facts in dispute. Therefore the motion for a direct verdict should have been granted, see *Evans Smith v. Taylor*, 19 F3d

889 (4th Cir 1994) citing Jackson v. Virginia, 443 U.S. at 315, 99 S.Ct. at 2786 (1979).

Conclusion:

Inasmuch, the issues argued must be deemed preserved for appellate review in the manner argued in the Direct Verdict Issue. Nevertheless, no procedural principle is more familiar to the Court than that a constitutional right may be forfeited in criminal as well as civil cases by failure to make a timely assertion of the right before a tribunal having jurisdiction to hear and determine it. The issues can be heard pursuant to judicial notice and manifest constitutional errors even though preserved by other means. Nonetheless, the court's ability and/or authority to correct forfeited errors is guaranteed by Federal Rules of Criminal Procedure, Rule 52(b), which is applicable even in Habeas Corpus, that provides that plain errors and/or defects affecting substantial rights may be noticed although they are not brought to the attention of the court, yet these are, see United States v. Olano, 507 U.S. 725, 731-32, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993) interpreting Rule 52(b); also

SEE United States v. Young, 470 U.S. 1, 15, 105 S.Ct. 1038, 84 LEd2d 1 (1985) (explaining that "[t]he plain error doctrine of Federal Rules of Criminal Procedure, Rule 52(b) tempers the blow of the rigid application of the contemporaneous-objection requirement" by authorizing correction to "particularly egregious" forfeited errors (international quotation marks omitted) (footnotes omitted)). As the court explained in Olano, in order to establish the court's ability and/or authority to notice the error, said to not be preserved for appellate review by timely objection, the appellant must demonstrate that the error occurred, that the error was "plain", and that the error affected his "substantial rights"; SEE Olano, 507 U.S. at 732, 113 S.Ct. 1770. Even if the issues are preserved in other forms, they seriously affect the "fairness, integrity and public reputation of our judicial proceedings", (ID second alteration in original) (quoting Young, 470 U.S. at 15, 105 S.Ct. 1038); Johnson v. United States, 520 U.S. 461, 466-67, 117 S.Ct. 1544, 137 LEd2d 718 (1997); United States v. Promise, 255 F3d 150 (4th Cir. 2001).

To not bring in account and correct the errors outlined in this Brief and/or document would be a deep dark stain on the fabric of

judicial proceedings calling into question their fairness and integrity, as well as produce a miscarriage of justice. Since the S.C. Supreme Court has just determined in the Belcher case decided October 2009, that inferring malice by the use of a deadly weapon when there's evidence of excuse, provocation, or mitigating circumstance, such as that which exist in the Appellant's case, is not a harmless error and applies to the Appellant's case pending on direct review. A true miscarriage of justice or defect calling into question the fairness, integrity or public reputation of our judiciary must not be allowed, United States v. Cedelle, 89 F3d 181, 185 (4th Cir. 1996).

Correcting a plain error does not depend on the Appellant's innocence, Olano, 507 U.S. at 736-37, 113 S.Ct. 1770; United States v. Floresca, 38 F3d 706, 713n 18 (4th Cir. 1994); United States v. Hano, 21 F3d 42, 49 (4th Cir. 1994); Robinson v. Aruonio, 27 F3d 877 rehearing denied cert. granted vacated 115 S.Ct. 1247, 513 U.S. 1186, 131 L.Ed2d 129; Vines v. United States, 28 F3d 1123 crim. law 116301, 116501.

Therefore, due to these presented egregious violations of the Appellant's Due Process

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Rights, and the extreme amount of prejudice experienced related therefrom, the appellant through the issues are preserved for appellate review by the means argued in the direct verdict issue, also motion that these issues be heard pursuant to the plain error doctrine and Rule 52(b), BAKER v. United States, CA. 11 1969, 407 F.2d 618; BAUGHMAN v. United States DC MINN 1969, 301 F.Supp. 509.

Respectfully Submitted
Derrick Harriott
Derrick Harriott

4/16/11
DATE

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Derrick D. Harriott,

Appellant.

Appeal From Sumter County
George C. James Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-427
Submitted May 1, 2012 – Filed July 18, 2012

APPEAL DISMISSED

Senior Appellate Defender Joseph L. Savitz III, of
Columbia, and Derrick D. Harriott, pro se, for
Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, and Senior
Assistant Deputy Attorney General Salley W. Elliott,

all of Columbia; and Solicitor Ernest A. Finney III, of Sumter, for Respondent.

PER CURIAM: Derrick D. Harriott appeals his convictions of murder and possession of a weapon during the commission of a violent crime, arguing the trial court erred in failing to instruct the jury on the defense of insanity. Harriott also filed a pro se brief. After a thorough review of the record and all briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

FEW, C.J., HUFF and SHORT, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



RECEIVED

443

AUG - 7 2012

ATTORNEY GENERALS
OFFICE

Deleka

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 03, 2012

The Honorable James C. Campbell
141 N Main St Rm 308
Sumter SC 29150-4965

REMITTITUR

Re: The State v. Harriott, Derrick D.
Lower Court Case No. 2008GS4300257
Appellate Case No. 2008-108606

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Joseph L. Savitz, III
Salley W. Elliott

ATTORNEY GENERAL'S OFFICE
RECEIVED 8-7-12
ADMINISTRATIVE INSTRUCTIONS
3817 FILE ☒ OPEN ☒ END
HAVE ☐ COPIES MADE
ROUTE TO ☐
ORDER: ☐ JUDGE
PEN RECORDS ☐ CLERK RECORDS
OTHER: ☐

FORM 5

RECORDED

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

2013 JAN 31 FINE COURT OF COMMON PLEAS

DERRICK D. HARRIOTT, #331760JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2013-CP-43-

148

Full name and prison number (if any) of Applicant.

CERTIFIED TRUE COPY
OF ORIGINAL FILE

v.

B. Ball APPLICATION FOR

State of South Carolina

DEPUTY CLERK OF COURT

POST-CONVICTION RELIEF

SOUTH CAROLINA

Respondent.**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lee Correctional Institution, Bishopville, SC.
2. Name and location of Court which imposed sentence General Sessions Court, Sumter County
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-43-257 Murder and Possession of a Firearm during
 - (b) Commission of a Violent Crime
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 11/13/2008 Life without Parole
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 18, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No: 2012 -UP-427
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) N/A
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) _____
SEE: Applicant's Attachment
 (b) _____
 (c) _____

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

- (a) _____
 (b) **SEE: Applicant's Attachment**
 (c) _____

12. 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 petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

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

- (a) the specific nature thereof:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. N/A
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

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

- (a) Appropriate for Initial State Collateral Review
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
- i. William Ceth Land, P.O. Box 138, Manning, South Carolina, 29102
- ii. Joseph L. Savitz, III Appellate Defense, P.O. Box 11589, Columbia, SC.
- iii. 29211-1589
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment, trial, and sentencing
- ii. Direct Review (Appeal)
- iii. _____

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

Vacate Conviction and Sentence

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

No

STATE OF SOUTH CAROLINA

RECORDED

County of

SUMTER

2013 JAN 30 PM 4:23

VERIFICATION

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

I, _____, 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.

Deborah D. Davis

SWORN to and subscribed before me this 30
day of Jan, 2013.

Deborah D. Davis (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

RECORDED
2013 JAN 31 PM 4:24

I, _____, 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 said proceeding or give security thereof.

Deborah D. Smith
Applicant

SWORN or affirmed to and subscribed before me this

30 day of Jan., 2013.

Deborah Jones
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
2013 JAN 31 PM 4:25
JAMES G. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

DERRICK D. HARRIOTT,
SCDC No: 331790,

Applicant,

- - vs - -

THE STATE OF SOUTH CAROLINA,
Respondent.

CIVIL ACTION NUMBER

2013-CP-43-148

FILED TRUE COPY
OF ORIGINAL FILE

(to be assigned by clerk)

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

APPLICANT'S ATTACHMENT

TO

POST-CONVICTION RELIEF

PAGE 2, QUESTION 10 (a):

10(a) Applicant was denied the right to effective assistance of counsel - as guaranteed by the SIXTH and FOURTEENTH Amendments to the United States Constitution and by ARTICLE I, §§§ 3; 11 and 14 of the South Carolina Constitution -- during and prior to applicant's criminal trial.

11(a) SUPPORTING FACTS: Trial Counsel's performance prior to and during applicant's criminal proceedings was both unreasonable and prejudicial to the defense, SEE: STRICKLAND -vs- WASHINGTON, 466 U.S. 668 (1984). Counsel's acts and omissions included, but were not limited to, the following particulars:

1.).... TRIAL COUNSEL was ineffective by failing to request a

charge on the defense of insanity; nor did counsel object to its omission, was prejudicial to the defense. SEE: STATE -vs- LLOYD, 85 S.C. 73, 67 S.E.2d 9, 11 (1910).

2.]. TRIAL COUNSEL was ineffective for failing to object to the court's VERDICT FORM, not including all four (4) forms of verdict, when presented to the jury, as required by statute. SC. Code Ann. §17-24-30, was prejudicial to the defense, especially when the affirmative defense of a mental defect was sufficiently raised by the defense. SEE: STATE -vs- CAMPEN, 321 S.C. 505, 469 S.E.2d 619 and STATE -vs- RIMERT, 446 S.E.2d 400.

3.]. TRIAL COUNSEL was ineffective at trial in that counsel failed to object to an improper instruction, that had the effect of shifting the burden of proof upon the applicant, by creating a rebuttable presumption of malice from the use of a deadly weapon. SEE: STATE -vs- BELCHER, Op. No: 26729, October 121, 2009 (SC.Sup.Ct.)

4.]. TRIAL COUNSEL was ineffective at trial for failing to petition the Court, prior to the petit jury being sworn, for a MOTION TO QUASH Indictment No: 2008-GS-43-257, as being defective, was prejudicial to the defense. SEE: STATE -vs- RECTOR, 155 S.E. 385 (1930); EX PARTA BAIB, 121 U.S. 1, 7 S.Ct. 781 (1887).

5.]..... Applicant asserts the CUMULATIVE ERROR DOCTRINE of two or more individually harmless errors has the potential to prejudice the defense to the same extent as a single reversible error. The purpose of the "Cumulative Error Doctrine" is to address that possibility. SEE: PAVEL -vs- HOLLINS, 261 F.3d 210 (2001)

Applicant further asserts, that DEFENSE COUNSEL in a criminal case should understand the elements of the offense(s) with which his client is charged and should display some appreciation of the recognized defenses thereto... Unless counsel brings these rudiments to the table, a defendant likely will be deprived of a fair "opportunity to meet the case of the prosecution." STRICKLAND, 466 U.S. at 685 and thus, will be placed at undue risk of having no effective advocate for his cause. Phrased another way, if an attorney does not grasp the basics of the charge and the potential defenses to them, an accused may well be stripped of the very means that are essential to subject the prosecution's case to adversarial testing.

In addition, Applicant reserve the right to amend his application, according to RULE 71.1 of the SCRCiv.P., and the Uniform Post-Conviction Relief Act, S.C. Code Ann § 17 - 27 - 10.

APPLICANT FOREVER PRAYS

Respectfully submitted,

Derrick D. Harriott

Derrick D. Harriott
 DOC No: 331760
 Lee Correctional Institution
 990 Wisacky Highway
 Bishopville, SC.

29010

APPLICANT, PRO SE.

DATE: 01-31-13

Bishopville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
	)	2013-CP-43-168
	)	
Derrick D. Harriott, #331760,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief filed January 31, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the February 2008 term of the Sumter Grand Jury for Murder and Possession of a Firearm During the Commission of a Violent Crime (2008-GS-43-257). William Land, Esquire represented Applicant. Applicant proceeded to a jury trial and was found guilty but mentally ill on November 13, 2008. The Honorable George C. James, Jr., sentenced Applicant to life imprisonment without parole.

A timely Notice of Appeal was filled. The South Carolina Court of Appeals affirmed lower court's decision. State v. Harriott, Op. No. 2012-UP-427 (S.C. Ct. App. filed July 18, 2012). The Remittitur was issued on August 3, 2012.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Trial Counsel's performance prior to and during applicant's criminal proceedings was both unreasonable and prejudicial to the defense. Counsel's acts and omissions included, but were not limited to, the following particulars:"
 - b. "Trial counsel was ineffective by failing to request a charge on the defense of insanity."
 - c. "Trial counsel was ineffective for failing to object to the court's verdict form."
 - d. "Trial counsel was ineffective at trial in that counsel failed to object to an improper instruction."
 - e. "Trial counsel was ineffective at trial for failing to petition the court, prior to the petit jury being sworn, for a motion to quash indictment No: 2008-GS-43-257, as being defective."
 - f. Applicant asserts the CUMULATIVE ERROR DOCTRINE."
 - g. Defense counsel did not understand the elements of the offenses.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

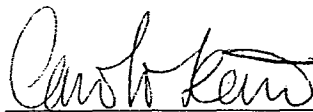
June 12, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2013-CP-43-168
	)	
DERRICK D. HARRIOTT, 331760,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Fulton Casey Dale Cornwell, Esquire
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, SC 29250

DATED this 12th day of June, 2013.



Caroline Kaiser, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
) COURT OF SOMMON PLEAS
 2 COUNTY OF SUMTER) No. 2013 CP 43 168
) 2014 CP 43 2334
 3
 4 DERRICK D. HARRIOTT)
))
 5 Petitioner)
))
 6 versus) TRANSCRIPT OF RECORD
))
 7))
))
 8 STATE OF SOUTH CAROLINA)
))
 9 Respondent)
 10 Sumter, South Carolina
 11 May 29, 2014
 12
 13 B E F O R E :
 14 HONORABLE R. FERRELL COTHRAN, JR., Judge
 15
 16 A P P E A R A N C E S :
 17 For the Petitioner: L. BOOZER, Esq.
 18
 19 For the Respondent: D. GOURLEY, Esq.
 Asst. Attorney General
 20
 21 Reporter Present: DAPHNE HELMS
 22
 HARRIET P. BENNETT
 23 Reporter, S. C. Court Administration
 46 Regency Oaks Drive
 24 Summerville, S.C. 29485
 25

I N D E X

1			
2		Direct-Redirect	Cross-Recross
3	Applicant		
4	By Mr. Boozer	12	
5	By Mr. Gourley		18
6	William Land		
7	By Mr. Boozer	20	
8	By Mr. Gourley		23
9	William Land Recalled		
10	By Mr. Gourley	27	
11	By Mr. Boozer		28
12			
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E X H I B I T S

2

3 NOTE: No objections were marked or proffered

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1 (The within matter came before the Court for hearing
2 on May 29, 2014)

3 THE COURT: All right.

4 MR. GOURLEY: Your Honor, this is 13 CP 43 168, Derrick D.
5 Harriott versus the State of South Carolina.

6 He is presently confined in the South Carolina Department
7 of Corrections. He was indicted in the February 2008 Term of
8 the Sumter County Grand Jury for murder and possession of a
9 firearm during the commission of a violent crime. Mr. Land
10 represented him.

11 He received a jury trial and was found guilty but mentally
12 ill on November 13, 2008. The Applicant was sentenced to life
13 imprisonment without parole.

14 An appeal was filed, and the Court of Appeals for South
15 Carolina affirmed the Lower Court's decision. That Order
16 was issued on August third of 2012.

17 He filed an application for post-conviction relief on
18 January thirty-first of 2013 for ineffective assistance of
19 counsel.

20 I'll turn it over to his counsel, Your Honor

21 THE COURT: Okay.

22 MR. BOOZER: May it please the Court, Your Honor,
23 we are prepared to go forward today with this matter, and,
24 Your Honor, we will be as brief as possible.

25 There are some issues that he would like me to go into

1 in regards to his PCR. Also, I have not been able to
2 get in contact with his family. He wanted his family to
3 be here with him in Court.

4 Based on all of these things, Your Honor, he wanted
5 me to ask the Court to allow him to have a continuance un-
6 til family could be contacted.

7 THE COURT: Well, his family would not testify and
8 he would only be able to have them here around him. I am
9 sure that would be meaningful for him but it would not
10 change the information that would come out in this hear-
11 ing.

12 APPLICANT: I would ask the Court to please grant me
13 a continuance. I am not prepared today and I have issues
14 that should be heard.

15 I will get in touch with my wife so that my wife can
16 be here in Court with me. Please grant me this continu-
17 ance.

18 THE COURT: How long have you known about this hear-
19 ing coming up today?

20 APPLICANT: Your Honor, I was trying to get in touch
21 with this attorney ever since he was -- I have evidence
22 right here where I was trying to get in touch with him.

23 He called me the other day and I told him I had been
24 trying to get in touch with him. He was made my attorney
25 on February 13th.

1 Sir, I wrote him but he never responded or contacted
2 me. I wrote the Clerk of Court trying to get in touch
3 with him.

4 I tried to get in touch with him and he responded
5 last Wednesday. I badly needed him and my family needed
6 him. My family called and tried to get in touch with
7 him. My family called two times.

8 I need my family here to stand by me in Court, and
9 he never got in touch with me or my family. I still need
10 my family. (Portion inaudible) I have tried my best and
11 I have issues I would like to have brought out here.

12 MR. BOOZER: May it please the Court, Your Honor?

13 THE COURT: Yes.

14 MR. BOOZER: Your Honor, I spoke to Mr. Harriott re-
15 cently, and he did not indicate he had any additional
16 issues that he wanted to raise until this morning when I
17 met with him, and he wouldn't tell me what those additional
18 issues were.

19 (Applicant speaking at the same time as Mr. Boozer
20 making a portion of both statements inaudible)

21 APPLICANT: I did tell him . .

22 THE COURT: This lady can only take one of you down
23 at a time. This Court Reporter has to take it all down.

24 MR. BOOZER: Without him telling me what the addi-
25 tional issues were, I cannot be prepared to take any of

1 it up properly with the Court.

2 THE COURT: Okay.

3 MR. BOOZER: I have already discussed matters pre-
4 viously with him that I thought were before the Court to-
5 day, Your Honor.

6 I would like to know what any additional issues are
7 and talk to him about them because when I did talk to him
8 before he didn't tell me of anything else.

9 APPLICANT: I would absolutely ask for a continuance,
10 Your Honor.

11 THE COURT: Tell me what your additional issues are
12 at this time.

13 APPLICANT: I have a question with regard to the
14 verdict form and the verdict. The Judge told the jury a
15 life sentence was a life sentence. Under 17 24 30 he
16 can't instruct the jury or tell them the consequences --
17 he can't tell them.

18 About ten days before the trial they let me know they
19 was seeking the death penalty. Nobody ever told me that.
20 Then the life without parole -- nobody ever told me that.

21 I've got a lot of issues about what happened but if
22 I had known they was seeking the death penalty . . .

23 THE COURT: I understand that. If you had gotten
24 in contact with him, what would you have asked him to do
25 additionally?

1 APPLICANT: I would have demanded that he get in
2 touch and have a conference with me. I would demand that
3 he come and listen to me.

4 THE COURT: I understand that but what I need to
5 know at this point is what additional information you
6 have for him. I want to put them on the record.

7 APPLICANT: I am not prepared on it right now.

8 THE COURT: I understand what you are saying right
9 now. I just need to know -- tell me what else you think
10 should come up that hasn't been covered?

11 If he had contacted you, what other issues did you
12 want him to bring that you all haven't discussed before
13 about the case?

14 APPLICANT: Just like I said, I am not prepared --
15 like I said, he's my attorney and he wouldn't even send me
16 a copy of the paperwork. He never did and he never came
17 . . .

18 MR. BOOZER: Your Honor, we have discussed his case
19 and what his contentions are. These additional things I
20 don't know about.

21 (Applicant and Mr. Boozer speaking at the same time
22 making a portion inaudible on the record)

23 APPLICANT: I need you to understand that I need a
24 continuance.

25 THE COURT: I understand that, but I can't grant

1 you a continuance until you tell me -- I mean, you've
2 had months and months to prepare for this, and now you're
3 telling me that you have additional issues that you want
4 your lawyer to address.

5 But he's telling me you won't tell him what those is-
6 sues are, and you won't tell me what they are.

7 APPLICANT: Your Honor, I would like to put it on the
8 record but I ask for a continuance.

9 THE COURT: What issues do you want to put on the re-
10 cord?

11 APPLICANT: I don't want to talk about it now. I
12 can't trust him to be my lawyer. He wouldn't even come to
13 see me.

14 I have some issues to bring out on my PCR that I . .

15 THE COURT: And if he had come to see you, what is-
16 sues would you have wanted to address?

17 MR. BOOZER: Your Honor, we discussed issues that were
18 already raised on his application. We discussed the is-
19 sues in the PCR application.

20 There was nothing discussed as to what His Honor
21 submitted until this morning. I had an opportunity to
22 talk to him before Court about the issues that had been
23 raised in the application.

24 APPLICANT: But I haven't talked to him enough to go
25 through all of it.

1 THE COURT: Well, you filed an application?

2 APPLICANT: Yes, Your Honor, but my application does
3 not raise everything.

4 THE COURT: Okay. We will go forward.

5 APPLICANT: I'm asking for more time to prepare.

6 THE COURT: I understand. Let's go forward with what
7 we need to address.

8 (Brief pause in the proceeding)

9 THE COURT: For me to grant you a continuance you need
10 to give me a reason other than you are not prepared. You
11 haven't given me or your lawyer what additional issues
12 you might have. I asked you for that but you haven't done
13 it.

14 APPLICANT: I told you that the Judge told the jury
15 about the consequences, as I said before, under 17 24 30.

16 THE COURT: Tell me in the record where he did that,
17 please. Point that out to me.

18 APPLICANT: Your Honor, I have no idea.

19 (Brief pause)

20 APPLICANT: On the mental health psychiatrist -- the
21 psychiatrist to testify and the Judge told the Court the
22 consequences under 17 24 30. It's right there, sir.

23 THE COURT: Do you want . .

24 APPLICANT: A mental health counselor testify -- I
25 want a psychiatrist, and they found me guilty.

1 THE COURT: The jury found you guilty. What does
2 a psychiatrist have to do with the PCR?

3 APPLICANT: I got an evaluation and he said there was
4 a problem in the evaluation. He testify and he said I had
5 never worked with him, and he said I couldn't comprehend
6 what was going on.

7 THE COURT: Okay. Would you agree with that?

8 APPLICANT: That would clarify the issues, Your
9 Honor, my issues. An issue that I have in this PCR that
10 is not in my application.

11 THE COURT: Okay.

12 APPLICANT: What I was saying is the jury found me
13 guilty but mentally ill.

14 THE COURT: That you did what you did but you at the
15 time couldn't conform your actions and conduct -- that is
16 what is in the record, I believe, when they found you
17 guilty but mentally ill. Right?

18 APPLICANT: Yes, sir.

19 THE COURT: So if a psychiatrist testified today in
20 this hearing, it would be the same thing. It's not that
21 your lawyer didn't do a good job.

22 (Reply by Applicant not audible)

23 THE COURT: Speak up.

24 APPLICANT: There would be evidence to show that my
25 lawyer wasn't effective for me.

1 THE COURT: That's what we are here today about, to
2 find that out, but how would the psychiatrist affect that?
3 I just need to know what evidence you have that your law-
4 yer wasn't effective in your case.

5 (Brief pause in proceeding)

6 APPLICANT: My lawyer wasn't effective, and I can go
7 into it.

8 THE COURT: Okay.

9 APPLICANT: I can tell you what my lawyer did and I
10 can go into it. I need more time to do that.

11 THE COURT: Well, I will hear any testimony you've
12 got, and if I think I need some additional testimony from
13 a psychiatrist I will continue it. Okay? If there is
14 something that needs additional testimony, I will continue
15 the hearing to get that.

16 At this point I need to know what your issues are. So
17 call your first witness.

18 MR. BOOZER: Your Honor, I would call Mr. Harriott to
19 the stand.

20 THE COURT: Come around then.

21 DERRICK D. HARRIOTT, being
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BOOZER:

25 Q. State your name for the record.

APPLICANT ON DIRECT

- 1 A. Derrick Harriott. H A R R I O T T.
- 2 Q. Mr. Harriott, how are you this morning?
- 3 A. I'm fine, sir.
- 4 Q. Mr. Harriott, if you have any problems you tell me.
- 5 A. Okay.
- 6 Q. Mr. Harriott, would you briefly -- I understand you
- 7 have some issues regarding your attorney's representation
- 8 at your trial?
- 9 A. Yes, I do.
- 10 Q. Do you see your attorney in the Courtroom today?
- 11 A. Yes, sir, I do.
- 12 Q. Would you point him out for us?
- 13 A. He's right there.
- 14 Q. And what's his name for the record?
- 15 A. Mr. Land.
- 16 Q. Do you remember what you were convicted of?
- 17 A. Murder.
- 18 Q. Do you remember what your sentence was? What sentence
- 19 you received?
- 20 A. Life without parole.
- 21 Q. Do you remember the nature of your sentence?
- 22 A. Guilty but mentally ill.
- 23 Q. Now, before you went to trial, you had an opportun-
- 24 ity to speak with your attorney?
- 25 A. Yes, sir.

APPLICANT ON DIRECT

1 Q. How many times do you think you met with him before
2 you went to trial?

3 A. Oh, I know for sure he came about two or three times
4 at the County Jail.

5 Q. At the County Jail where you were before you went
6 to trial?

7 A. Yes, sir.

8 Q. You had an opportunity to discuss your case with your
9 attorney?

10 A. Yes.

11 Q. And did you go over the evidence before you went to
12 trial to fully understand the charges against you?

13 A. Yeah, he let me know what it was. He told me.

14 Q. Did he go over discovery with you?

15 A. Well, he told me what I was facing. He came up and
16 told me how much time I could get for things.

17 Q. Did he go over the evidence against you?

18 A. No, he never went over no evidence. He just told me
19 what I was looking at and what he was going to try to do
20 ^{how} and he was gonna do it.

21 Q. Did he tell you what kind of evidence they had against
22 you?

23 A. Yes, he did.

24 Q. Okay. All right. Now, during your conversations did
25 you talk about strategy and how he would handle your case

APPLICANT ON DIRECT

1 at your trial?

2 A. No, he came to me and said they would take a plea to
3 thirty years, and he said that you are facing life if you
4 don't.

5 I told him I wanted to go for a mental evaluation,
6 and he told me I should cooperate; that it would be in
7 my best interest, because he said you don't -- he told
8 me you don't have to be cooperative with them but it would
9 be in your best interests to go for the evaluation.

10 Q. And did you have a mental evaluation?

11 A. Yes, I did.

12 Q. And what was the result of that evaluation?

13 A. The results that I said before, a mental disease or
14 mental defect.

15 Q. So the Department of Mental Health found some mental
16 defect?

17 A. Yes, sir.

18 Q. And did your lawyer raise an insanity defense or any-
19 thing of that nature at the trial?

20 A. Not for insanity. No, he didn't. He just -- he
21 went under 17 20 10.

22 Q. Guilty but mentally illl . .

23 A. Yeah.

24 Q. Okay, and that's what the jury found?

25 A. Yeah.

APPLICANT ON DIRECT

1 Q. Guilty but mentally ill?

2 A. Yes, sir.

3 Q. Okay, and that's what the jury found?

4 A. Yes, sir.

5 Q. Now, during the course of your trial -- at the end
6 of your trial, the jury was given a verdict form? Do you
7 remember that?

8 A. Yes, sir.

9 Q. And on that verdict form, do you remember what their
10 choices might be?

11 A. First of all, they had three choices.

12 Q. Four different choices they could have had as far as
13 the disposition of your case?

14 A. . .

15 Q. They could have found you guilty or not guilty.

16 Correct?

17 A. Yeah.

18 Q. And they could have found you guilty?

19 A. They could have found you guilty but mentally ill?

20 A. Yeah, and I got three. One says guilty, two was not
21 guilty and the third was guilty but mentally ill and
22 guilty.

23 Q. All right, and they found you guilty but mentally
24 ill?

25 A. Yes, sir.

APPLICANT ON DIRECT

1 Q. All right. Now, when those verdict forms came out,
2 did your lawyer object to anything there?

3 A. No, he didn't object.

4 Q. Did you say anything to him about the verdict forms?

5 A. No, he never told me about it anything.

6 Q. Do you recall if your attorney discussed with you
7 the consequences of having a guilty but mentally ill ver-
8 dict?

9 A. He said that I would -- that the difference between
10 guilty and guilty but mentally ill is that I would get
11 treated or treatment while I was in the Department of Cor-
12 rections.

13 He said the time and everything is the same but I
14 would get treatment.

15 Q. Beg the Court's indulgence.

16 (Brief pause)

17 BY MR. BOOZER:

18 Q. How many times were you evaluated before your trial?

19 A. I believe I was evaluated three times by the State
20 when I was younger.

21 Q. But in relation to this trial and before the trial,
22 how many times were you evaluated?

23 A. Twice.

24 Q. Twice?

25 A. Yes, sir.

APPLICANT ON DIRECT

1 Q. All right.

2 A. One by my private doctor and one by the State.

3 Q. And by a private doctor and State's doctor?

4 A. Yes, sir.

5 Q. No further questions, Your Honor, of the Applicant.

6 A. I would like to make on the record that -- let's see
7 how I want to put it on that.

8 It should have been four verdicts. In 17 20 430, in
9 a criminal prosecution, when the affirmative defense of in-
10 sanity is raised by the Defendant where there is suffici-
11 ent evidence of a mental disease or mental defect is admit-
12 ted into evidence by the trial, there should be four ver-
13 dicts.

14 I had three -- the record would show I had three, Your
15 Honor, and there should have been four.

16 (Brief pause)

17 THE COURT: Okay.

18 A. It was admitted that at that time there was a mental
19 defect, and he didn't object at my trial. If he would
20 have objected I would have had four verdict forms.

21 So that was really ineffective.

22 THE COURT: All right, thank you.

23 CROSS EXAMINATION

24 BY MR. GOURLEY:

25 Q. Mr. Harriott, you said you only met with your lawyer

APPLICANT ON CROSS

1 two or three times before your trial?

2 A. Yes, sir.

3 Q. And you don't recall him going over the evidence they
4 had against you?

5 A. No, he mainly discussed stuff with me about he would
6 try to get it dropped down to manslaughter, and he said
7 if I don't take the thirty years they had offered that I'd
8 probably get a life sentence.

9 Then he told me that I would probably get guilty but
10 mentally ill, and they put in guilty but mentally ill, and
11 the State put in a guilty verdict.

12 Q. Okay.

13 A. I want to be clear that the State put in one but not
14 the other, so he did discuss some things about the case
15 with me.

16 Q. Did he . . .

17 A. Not the other.

18 Q. Okay, and your plea of guilty for thirty years, you
19 decided to turn that down?

20 A. And he told me if I go to trial -- I said if I go to
21 trial I'd have to do thirty years day for day, and he said
22 yes.

23 Then I said can you get thirty years, eighty-five,
24 and he said no. He said you'll probably get a charge for
25 the gun too.

APPLICANT ON CROSS

1 He said it would be in your best interests -- that
2 is what he said. It would be in your best interests to
3 take the thirty that the Judge give you instead of getting
4 a life sentence.

5 Q. Okay, but you decided not to?

6 A. I decided to go to trial.

7 Q. Okay. Did you ever give your attorney the names of
8 witnesses to call in your behalf?

9 A. No, he -- I seen my doctor and the doctor came to
10 the County Jail, and that was it, you know. The doctor
11 came to the Jal.

12 Q. Dr. Hughes?

13 A. I don't know the name.

14 Q. All right. No further questions.

15 Thank you, Mr. Harriott.

16 THE COURT: Anything further?

17 MR. BOOZER: No, sir.

18 THE COURT: Thank you, sir. You may step down.

19 (Witness excused from trial)

20 (Pause in the proceeding)

21 MR. BOOZER: We would call Mr. Land.

22 WILLIAM LAND, being duly
23 sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. BOOZER:

MR. LAND ON DIRECT

1 Q. State your name and spell your last name.

2 A. William Land, L A N D.

3 Q. How long have you been practicing law?

4 A. Seventeen years.

5 Q. Were you appointed or retained in this case?

6 A. I was retained.

7 Q. And how many times did you meet with the Applicant be-
8 fore his trial?

9 A. He said two or three. I would imagine it would have
10 been more than that, but if he says two or three I don't
11 dispute that.

12 I also met with his family on many occasions.

13 Q. Did he cooperate with you prior to the trial?

14 A. He did.

15 Q. Did he follow what you discussed with him pretty
16 good?

17 A. Absolutely.

18 Q. And did you all review the material prior to trial?

19 A. We did, and it really wasn't a case about if the evi-
20 dence supported what happened.

21 Q. Right.

22 A. He admitted he had committed the crime. He had ad-
23 mitted committing the crime.

24 Q. All right. Did you talk about the State's evidence
25 with him?

MR. LAND ON DIRECT

1 A. I'm sure I did. After he shot the girl, he came out-
2 side and said, call the police. The police came. He used
3 an expletive.

4 He was there, had the gun, and there were many wit-
5 nesses. Of course, the forensic examination of the body
6 showed that she was killed, being shot fourteen times,
7 and it was never a case of did he do it or not.

8 Q. Right. What was your strategy going into the trial?

9 A. Well, our strategy was to try to get voluntary man-
10 slaughter. In the beginning, of course, we had him eval-
11 uated twice, trying to use an insanity defense, but the
12 State Mental Health Department evaluator, however, found
13 that he did have the ability to know the difference be-
14 tween right and wrong.

15 Q. And he wasn't evaluated further?

16 A. He was evaluated twice, and I couldn't see doing it a
17 third or fourth time. I imagined they would come to the
18 same result.

19 Q. Was it better in your mind to try to get voluntary
20 manslaughter?

21 A. That's correct.

22 Q. Did you raise that before the Judge?

23 A. Absolutely.

24 Q. What was the result of that?

25 A. The Judge did not charge it and it was not on the

MR. LAND ON DIRECT

1 verdict form.

2 Q. And he was found guilty but mentally ill?

3 A. That's correct.

4 Q. Beg the Court's indulgence.

5 (Brief pause)

6 BY MR. BOOZER:

7 Q. Did you have any reason to object to the verdict form
8 after that?

9 A. Well, of course, I objected that voluntary manslaughter
10 was not included.

11 Q. All right.

12 A. And in terms of his arguments about 17 24 30, we
13 could not object because that requires -- I'm looking at
14 the statute now. It says if sufficiently raised but we
15 couldn't raise it. We had no evidence to support it.
16 The evidence we had was for guilty but mentally ill.
17 I have no further questions. Thank you, Mr. Land.

18 THE COURT: Cross examine.

19 CROSS EXAMINATION

20 BY MR. GOURLEY:

21 Q. Mr. Land, how are you this morning?

22 A. Good.

23 Q. The guilty but mentally ill verdict -- did you have
24 an opportunity to fully explain to your client what that
25 verdict was or meant -- things of that nature?

MR. LAND ON CROSS

1 A. Absolutely, as he testified to. We discussed that,
2 and it is the same as guilty but just how you are housed
3 after your sentence.

4 Q. Right, and you testified that you explained that be-
5 fore going to trial?

6 A. That's correct.

7 Q. And at any time during the trial did you find insanity
8 was a possible defense?

9 A. I think I had explained to him that we had done all
10 we could do prior to trial to get the evidence in, in the
11 hope of having an insanity defense, but, like I say, the
12 State's evaluator came to a conclusion and the private eval-
13 uator came to the exact same conclusion, even after having
14 had the benefit of being able to evaluate by the State.

15 The State's evaluation was first and then her evalua-
16 tion, but once you get to the point where you don't have
17 any evidence you can't argue it.

18 Q. Right, and did your client understand that before the
19 trial?

20 A. Absolutely.

21 Q. All right, and with regard to what he said about the
22 verdict form, did he understand that that would not be on
23 the verdict form?

24 A. Yes, and he also was there when we articulated with
25 the Judge about the charge and the verdict form, and I was

MR. LAND ON CROSS

1 looking at the transcript yesterday.

2 The biggest arguments were about whether voluntary man-
3 slaughter would be on there.

4 Q. And that was a part of your trial strategy, to try
5 to get the voluntary manslaughter charge?

6 A. Absolutely. It was not a case about not guilty.

7 Q. Correct. Beg the Court's indulgence.

8 (Brief pause)

9 Q. No further questions.

10 MR. BOOZER: I have nothing further, Your Honor.

11 THE COURT: Thank you. Step down.

12 (Witness excused from stand)

13 MR. BOOZER: I have nothing further, Your Honor.

14 THE COURT: Okay. Do you have any additional issues
15 in your PCR that hasn't been covered today?

16 APPLICANT: Yes, sir.

17 THE COURT: All right. What are they?

18 APPLICANT: He did tell the jury the penalty, of
19 course, and I told the doctor that I couldn't control my
20 conduct. All right, that I couldn't stop myself.

21 If you would investigate the mental evaluation --
22 that testimony would have been with regard to insanity,
23 and he struck the jury on insanity. It was in there from
24 the start.

25 If you look at my evaluation and investigate that,

1 and investigate the experts, look at my testimony, all of
2 this.

3 THE COURT: Did your doctor testify at the trial?

4 APPLICANT: Yes, my doctor did testify.

5 THE COURT: All right.

6 APPLICANT: But he was ineffective because he didn't
7 object to my indictment, and he didn't object to tainted
8 material coming in to the trial.

9 THE COURT: What material?

10 APPLICANT: He did not -- he did not object to the
11 Judge's strict analysis charge so that -- well, first of
12 all, he did not object to that.

13 Another thing, he did not object when the prosecution
14 used malice by use of a deadly weapon.

15 THE COURT: Okay. Anything else?

16 APPLICANT: No, sir.

17 THE COURT: All right. I will look into those issues
18 and -- anything further?

19 MR. GOURLEY: No, sir.

20 MR. BOOZER: Nothing further.

21 MR. GOURLEY: I'm sorry, Your Honor. I'd recall Mr.
22 Land briefly.

23 THE COURT: All right.

24 WILLIAM LAND, having
25 been previously sworn, testified as follows:

26

MR. LAND RECALLED

1 DIRECT EXAMINATION

2 BY MR. GOURLEY:

3 Q. Mr. Land, in regard to the charge on the deadly wea-
4 pon, are you familiar with the Doughtry case?

5 A. Yes.

6 Q. And was the Applicant's case prior to that?

7 A. Yes.

8 Q. Okay. With regard to the material on the indictment,
9 did you feel you had any basis to object to that?

10 A. I didn't. The change was changing it from March 16th
11 as the Indictment read to March 17th.

12 All of the other evidence in the case indicated that.

13 It wasn't anything that changed the case in any way.

14 I discussed it with him and told him, okay, if we ob-
15 ject all that's going to happen is at the next term o
16 Court the Grand Jury will indict you and we will trying the
17 case in another month.

18 It wasn't going to change anything.

19 Q. And with regard to the mental portion, would you just
20 briefly elaborate as to what he was talking about in that
21 sense?

22 A. Yes. Based on the evaluation, he was claiming that
23 his girlfriend was ruining him and raping him and doing
24 all sorts of things to him and videotaping him, and, of
25 course, both doctors were aware of all of that.

27

MR. LAND RECALLED

1 That was in all the statements of Mr. Harriott so
2 that they knew about all of that, and the doctors -- es-
3 pecially in the report of Dr. Myers -- he discussed that at
4 length..

5 You know, those were his delusions he said but he
6 knew the difference between right and wrong. He just could
7 not conform his actions to that.

8 Q. Okay, thank you.

9 MR. GOURLEY: Thank you, Judge.

10 THE COURT: Any further questions?

11 CROSS EXAMINATION

12 BY MR. BOOZER:

13 Q. They did testify, the experts?

14 A. Yes.

15 Q. And did they testify to what was really guilty but
16 mentally ill, is that correct?

17 A. Yes. I mean, they testified to what the report said.
18 No one changed their mind on the stand.

19 Q. Thank you. No further questions.

20 THE COURT: Thank you.

21 (Witness excused from stand)

22 THE COURT: Okay, anything further?

23 MR. BOOZER: Nothing further.

24 MR. GOURLEY: No, sir.

25 THE COURT: All right, I will read the record and

1 let you know.

2 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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1 CERTIFICATE

2 I, HARRIET P. BENNETT, Court Reporter for South
3 Carolina Court Administration, hereby certify that the
4 foregoing transcript was prepared from the records of
5 Daphne Helms to the best of my ability, having been
6 heard in the Court of Common Pleas for Sumter County on
7 May 29, 2014.

8 FURTHER, I certify that I am neither of kin nor
9 counsel to any party to this action, nor do I have any
10 interest in the same.

11 January 28, 2016

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A timely Notice of Appeal was filed. The South Carolina Court of Appeals affirmed lower court's decision. State v. Harriott, Op. No. 2012-UP-427 (S.C. Ct. App. filed July 18, 2012). The Remittitur was issued on August 3, 2012.

ALLEGATIONS

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Trial Counsel's performance prior to and during applicant's criminal proceedings was both unreasonable and prejudicial to the defense. Counsel's acts and omissions included, but were not limited to, the following particulars:"
 - b. "Trial counsel was ineffective by failing to request a charge on the defense of insanity."
 - c. "Trial counsel was ineffective for failing to object to the court's verdict form."
 - d. "Trial counsel was ineffective at trial in that counsel failed to object to an improper instruction."
 - e. "Trial counsel was ineffective at trial for failing to petition the court, prior to the petit jury being sworn, for a motion to quash indictment No: 2008-GS-43-257, as being defective."
 - f. Applicant asserts the CUMULATIVE ERROR DOCTRINE."
 - g. Defense counsel did not understand the elements of the offenses.

During the evidentiary hearing, Applicant only proceeded on an allegation that Trial Counsel was ineffective for failing to request a charge on the defense of insanity, failing to object to the court's verdict form, and for failing to object to the proper instruction. During the course of the hearing Applicant further alleged that Trial Counsel was ineffective for failing to object to the jury instruction stating malice could be inferred from the use of a deadly weapon, failing to object to the date change in the indictment, and failing to present expert testimony on his mental problems.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on her own behalf. The State presented testimony from William Ceth Land (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Sumter County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant stated he met with Trial Counsel two or three times prior to trial. Applicant stated they discussed the case, but never physically went over the evidence. Applicant further explained that they discussed the evidence against him. Applicant stated that he did not give Trial Counsel any leads or witnesses. Applicant stated Trial Counsel attempted to argue for Voluntary Manslaughter. Applicant stated Trial Counsel explained the charges and the potential sentence he was facing. Applicant stated he had an initial plea offer of thirty years. Applicant stated Trial Counsel advised him to accept the plea offer and that it would be in his "best interest." However, Applicant stated that he chose to proceed to trial and rejected the offer.

Applicant stated that he was mentally evaluated by two separate doctors. Applicant clarified that he was examined by the State's doctor as well as a private retained doctor. Applicant stated that it was determined that he had a mental defect. Applicant stated he wanted his Trial Counsel to raise the defense of insanity. Applicant stated Trial Counsel should have objected to the verdict forms. Applicant clarified that he felt there should be an additional option for the jury to select that Applicant was insane.

Following Applicant's testimony, the State presented testimony from Trial Counsel. Trial Counsel stated that he has been practicing law for seventeen years. Trial Counsel stated he was retained and met with Applicant at least two or three times prior to trial. Trial Counsel

further stated that he met with Applicant's family on several occasions. Trial Counsel stated Applicant was very cooperative during the course of his representation. Trial Counsel stated that he filed for and reviewed all rule 5 and Brady material with Applicant. Trial Counsel stated Applicant was evaluated by two separate doctors and was found criminally responsible and competent to stand trial. Trial Counsel stated an insanity defense was not a possibility. Trial Counsel explained that Applicant was having delusions about his girlfriend drugging and raping him and filming the rape. Trial Counsel stated Applicant was actually suffering from rectal problems, which was tending to corroborate Applicant's delusions. However, Trial Counsel reiterated that Applicant was evaluated and found competent to stand trial and criminally responsible.

Trial Counsel stated that he argued for a charge of voluntary manslaughter, but was not successful. Trial Counsel stated that he was prepared for trial. Trial Counsel stated there was nothing to object to regarding the indictment and the amendment of the indictment, as this amendment was immaterial to the Applicant's charges. Trial Counsel stated that he fully explained the meaning of a guilty but mentally ill verdict. Trial Counsel explained that it is still a guilty verdict, but affects where Applicant is housed and the type treatment he receives. Trial Counsel further stated that the Belcher decision came after Applicant's trial and he would not have known to object to the jury instruction.

Trial Counsel characterized the State's evidence against Applicant as "overwhelming." Specifically, Trial Counsel stated Applicant shot his girlfriend fourteen times, exited the apartment, threw the gun down and waited on the police to arrive. Trial Counsel further stated Applicant admitted his guilt.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, 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. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). 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.

Trial Counsel was ineffective for failing to request a charge on the defense of insanity.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to request a charge on the defense of insanity to be without merit. South Carolina has adopted the M'Naghten test to determine insanity. A defendant is insane if, at the time of the commission of the act constituting the offense, as a result of mental disease or defect, he lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong. S.C.Code Ann. § 17-24-10(A) (Supp.1996). "[T]he key to insanity is 'the power of the defendant to distinguish right from wrong in the act itself-to recognize the act complained of is either morally or legally wrong'." State v. Wilson, 306 S.C. 498, 506, 413 S.E.2d 19, 23. "A requested charge on insanity is properly refused where there is no evidence tending to show the defendant was insane at the time of the crime charged." State v. Lewis, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997).

In the instant case, Trial Counsel explained that Applicant was having delusions about his girlfriend (hereinafter "Victim") drugging and raping him and filming the rape. Trial Counsel stated Applicant was actually suffering from rectal problems, which was tending to corroborate Applicant's delusions. Trial Counsel stated Applicant was evaluated by two separate doctors and was found criminally responsible and competent to stand trial. Based on the foregoing, this Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing

Strickland). Furthermore, this Court finds Applicant has failed to allege sufficient evidence to meet his burden of proving that he was prejudiced by Counsel's alleged ineffectiveness.

Trial Counsel was ineffective for failing to object to the court's verdict form and failing to object to the proper instruction.

This Court interprets the above mentioned allegation as a claim that Counsel was ineffective for failing to request the trial judge to charge the jury on the defense of insanity. South Carolina has adopted the M'Naghten test to determine insanity. A defendant is insane if, at the time of the commission of the act constituting the offense, as a result of mental disease or defect, he lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong. S.C.Code Ann. § 17-24-10(A) (Supp.1996). "[T]he key to insanity is 'the power of the defendant to distinguish right from wrong in the act itself-to recognize the act complained of is either morally or legally wrong'." State v. Wilson, 306 S.C. 498, 506, 413 S.E.2d 19, 23. "A requested charge on insanity is properly refused where there is no evidence tending to show the defendant was insane at the time of the crime charged." State v. Lewis, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997).

In the instant case, Trial Counsel explained that Applicant was having delusions about the Victim drugging and raping him and filming the rape. Trial Counsel stated Applicant was actually suffering from rectal problems, which was tending to corroborate Applicant's illusions. Trial Counsel stated Applicant was evaluated by two separate doctors and was found criminally responsible and competent to stand trial. Based on the foregoing, this Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, this Court finds Applicant has failed to allege sufficient evidence to meet his burden of proving that he was prejudiced by Counsel's alleged ineffectiveness.

Trial Counsel was ineffective for failing to object to the jury instruction stating malice could be inferred from the use of a deadly weapon.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to the jury instruction that malice could be inferred from the use of a deadly weapon to be without merit. This Court finds that the Applicant failed to meet his burden of proving trial counsel should have objected to the malice jury charge given at trial. This Court finds that the malice jury charge given at trial was not objectionable at the time given. This Court also finds that the Supreme Court's ruling in Belcher v. State¹, had no effect on the validity of the Applicant's conviction. In Belcher, the South Carolina Supreme Court held that "the 'use of a deadly weapon' implied malice instruction had no place in a murder (or assault and battery with intent to kill) prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing". Id. at 610, 685 S.E.2d at 809. The Court held further that "the permissive inference charge concerning the use of a deadly weapon remains a correct statement under the law where the only issue presented to the jury is whether the defendant has committed murder." Id. at 612, 685 S.E.2d at 810. The Court addressed the retroactivity of its ruling by concluding that the ruling was effective in "all cases which are pending on direct review or not yet final where the issue is preserved." Id. The Court held further that "our ruling, however, will not apply to convictions challenged on post-conviction relief." Id.

Belcher was decided on October 12, 2009, several months after the Applicant's trial. In this case, Belcher was not retroactive because the Applicant's case was not pending on direct review where the issue was preserved when the case was decided. Also, Belcher specifically

¹ 385 S.C. 597, 685 S.E.2d 802 (2009).

prohibits the Applicant from asserting this claim in a post-conviction relief action. Therefore, this Court finds that the Applicant has failed to carry his burden of proving that counsel provided ineffective assistance of counsel by failing to object to the malice charge given at trial.

Trial Counsel was ineffective for failing to object to the date change in the indictment.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to the date change in the indictment is without merit. Trial Counsel stated there nothing to object to regarding the indictment and the amendment was immaterial to the Applicant's charges. This Court notes the only change to the indictment was the date on which the crime was alleged to occur. Based on the foregoing, this Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, this Court finds Applicant has failed to allege sufficient evidence to meet his burden of proving that he was prejudiced by Counsel's alleged ineffectiveness.

Trial Counsel was ineffective for failing to present expert testimony on his mental problems.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to present expert testimony on his mental problems to be without merit. Trial Counsel explained that Applicant was having delusions about the Victim drugging and raping him and filming the rape. Trial Counsel stated Applicant was actually suffering from rectal problems, which was tending to corroborate Applicant's delusions. Trial Counsel stated Applicant was evaluated by two separate doctors and was found criminally responsible and competent to stand trial. Based on the foregoing, this Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at

625 (citing Strickland). Furthermore, this Court finds Applicant has failed to allege sufficient evidence to meet his burden of proving that he was prejudiced by Counsel's alleged ineffectiveness.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

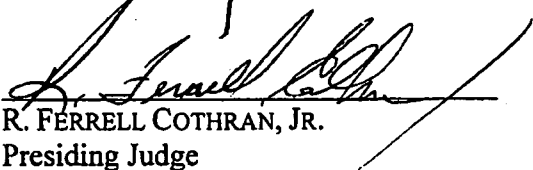
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7 day of July, 2014.


R. FERRELL COTHRAN, JR.
Presiding Judge
Third Judicial Circuit

Manning, South Carolina