

Volume I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

DeAndrea G. Benjamin, Circuit Court Judge

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S.C. Supreme Court

LEVON MINTZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212935

APPENDIX

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF ORANGEBURG

FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

CASE NO. 03-GS-38-887

versus

)
)
) TRANSCRIPT OF RECORD
)

LAVON GILBERT MINTZ,

)
) DATE:
)

DEFENDANT

)
) APRIL 19, 2005
)

BEFORE:

HONORABLE JAMES C. WILLIAMS, JR., PRESIDING JUDGE

AND A JURY.

APPEARANCES:

DAVID M. PASCOE, ESQUIRE

SOLICITOR

TOMMY SCOTT, ESQUIRE

ASSISTANT SOLICITOR

FOR THE STATE

GLENN WALTERS, ESQUIRE

ATTORNEY AT LAW

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1 DATE:
2 APRIL 19, 2005

3 THE COURT: ALRIGHT, SOLICITOR, CALL
4 YOUR CASE.

5 SOLICITOR PASCOE: YOUR HONOR, THE
6 STATE CALLS THE CASE OF THE STATE OF SOUTH CAROLINA
7 VERSUS LAVON GILBERT MINTZ, CHARGED WITH THE CRIME OF
8 MURDER IN INDICTMENT 03-GS-38-887.

9 THE COURT: ALRIGHT, LADIES AND
10 GENTLEMEN, AS YOU HAVE HEARD, THE STATE HAS CALLED FOR
11 TRIAL THE CHARGES AGAINST MR. LAVON GILBERT MINTZ. THE
12 STATE HAS PREPARED THIS INDICTMENT WHICH CHARGES MR.
13 MINTZ WITH THE CRIME OF MURDER. THIS INDICTMENT IS NOT
14 EVIDENCE, THIS INDICTMENT IS SIMPLY A DOCUMENT DRAWN UP
15 BY THE STATE TO ADVISE MR. MINTZ OF THE CHARGES THAT HE
16 IS FACING SO HE AND HIS ATTORNEY CAN PREPARE A PROPER
17 DEFENSE.

18 TO THE CHARGES CONTAINED IN THIS
19 INDICTMENT MR. MINTZ HAS PLED NOT GUILTY. THAT PLACES
20 THE BURDEN OF PROVING HIM GUILTY BEYOND A REASONABLE
21 DOUBT ON THE STATE. A DEFENDANT NEVER HAS TO PROVE
22 HIMSELF INNOCENT, HE IS ALWAYS PRESUMED INNOCENT, AS
23 I'LL TELL YOU LATER ON.

24 NOW, BOTH THE STATE AND THE
25 DEFENDANT, UNDER OUR SYSTEM OF LAWS, IS ENTITLED TO A

1 FAIR AND IMPARTIAL JURY. AND WHAT WE MEAN BY THAT IN
2 THE LAW IS, IS A JURY THAT CAN MAKE ITS DECISION IN THIS
3 CASE BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT
4 YOU HEAR IN THIS CASE IN THIS COURTROOM. AND THAT
5 YOU'LL NOT BE INFLUENCED BY ANYTHING THAT YOU'VE HEARD,
6 OR SEEN OR DONE, OR HAD DONE TO YOU OUTSIDE OF THE
7 COURTROOM OR ANY ACQUAINTANCE'S EXPERIENCE THAT THEY MAY
8 HAVE HAD. AND SO, THE QUESTIONS THAT I'M ASKING ARE
9 DESIGNED TO ELICIT INFORMATION FROM YOU. THERE IS NO
10 RIGHT OR WRONG ANSWER, WE JUST NEED THIS INFORMATION. IF
11 THE QUESTION APPLIES TO YOU, YOU ARE REQUIRED BY YOUR
12 OATH TO RESPOND. AGAIN, IF THE ANSWER WOULD BE OF A
13 PRIVATE NATURE OR YOU THINK WOULD BE EMBARRASSING TO YOU
14 I'LL BE GLAD FOR YOU TO APPROACH THE BENCH AND SPEAK TO
15 ME PRIVATELY ABOUT IT. BUT IF THE QUESTION DOES APPLY TO
16 YOU, THEN PLEASE RESPOND APPROPRIATELY.

17 FIRST, MR. MINTZ, WOULD YOU STAND
18 AND FACE THE JURY SO THEY CAN IDENTIFY YOU?

19 (Whereupon, defendant stands.)

20 THE COURT: THIS IS MR. LAVON
21 GILBERT MINTZ, HE'S ON MY RIGHT AND YOUR LEFT.

22 THANK YOU, SIR, YOU MAY BE SEATED.

23 STANDING NOW IS MR. GLEN WALTERS,
24 WHO IS HIS ATTORNEY. MR. WALTERS PRACTICES LAW HERE IN
25 ORANGEBURG WITH MS. SAMANTHA FARLOW. DO YOU HAVE

1 ANOTHER ASSOCIATE?

2 MR. WALTERS: VINCE KIRBY IS MY
3 PARTNER.

4 THE COURT: AND MR. KIRBY, VINCE
5 KIRBY, THEY PRACTICE RIGHT ACROSS THE SEAT.

6 THANK YOU, SIR, YOU MAY BE SEATED.

7 IS THERE ANY MEMBER OF THE JURY
8 PANEL IS RELATED BY BLOOD, CONNECTED BY MARRIAGE, CLOSE
9 PERSONAL FRIEND, OR HAVE ANY KNOWLEDGE WHATSOEVER WITH
10 MR. LAVON GILBERT MINTZ? IF YOU KNOW HIM OR HIS FAMILY
11 IN ANY CAPACITY WHATSOEVER WOULD YOU PLEASE STAND. AND
12 I KNOW WE HAVE AT LEAST ONE JUROR WITH THE NAME OF
13 MINTZ.

14 (Affirmative response from jury panel.)

15 THE COURT: YES, MA'AM, YOUR NAME?
16 I CAN'T SEE YOU, LEAN ONE WAY. YES, MA'AM?

17 JUROR TYLER: CRYSTAL TYLER.

18 THE COURT: MS. TYLER, YOU KNOW MR.
19 MINTZ?

20 JUROR TYLER: UH HUH.

21 THE COURT: AND HOW DO YOU KNOW HIM?

22 JUROR TYLER: WE WENT TO DAY CARE
23 TOGETHER.

24 THE COURT: ALRIGHT. AND WOULD THAT
25 FACT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL

1 JUROR FOR BOTH THE STATE AND THE DEFENSE IN THIS CASE?

2 JUROR TYLER: YES, SIR, BECAUSE I
3 KNOW BOTH PARTIES.

4 THE COURT: ALRIGHT, I'LL EXCUSE YOU
5 FROM SERVING ON THIS CASE, BUT YOU WILL NEED TO REMAIN
6 WITH US A FEW MINUTES, I CAN'T TELL YOU YET WHEN TO COME
7 BACK. JUST HAVE A SEAT, BUT I'LL EXCUSE YOU, YOU WON'T
8 HAVE TO RESPOND TO ANY OTHER QUESTIONS.

9 YES, MA'AM, YOUR NAME, PLEASE?

10 JUROR DOWNING: SHAWANNA DOWNING.

11 THE COURT: MS. DOWNING?

12 JUROR DOWNING: HE AND ATTENDED
13 MIDDLE SCHOOL TOGETHER.

14 THE COURT: ALRIGHT, AND WOULD THAT
15 FACT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL
16 JUROR IN THIS CASE?

17 JUROR DOWNING: NO, SIR.

18 THE COURT: THANK YOU, MA'AM.

19 THE CASE IS BEING PROSECUTED BY MR.
20 DAVID PASCOE AND MR. TOMMY SCOTT. MR. PASCOE WAS
21 ALREADY STANDING, MR. SCOTT IS SITTING TO HIS LEFT, TO
22 YOUR RIGHT, STANDING AT THIS TIME. THEY ARE MEMBERS OF
23 THE SOLICITOR'S OFFICE, IS THERE ANY MEMBER OF THE JURY
24 PANEL RELATED BY BLOOD, CONNECTED BY MARRIAGE, A CLOSE
25 PERSONAL FRIEND TO EITHER MR. PASCOE OR MR. SCOTT, OR TO

1 ANY OTHER MEMBERS OF THE SOLICITOR'S OFFICE? IF SO,
2 WOULD YOU PLEASE STAND.

3 (Negative response from jury panel.)

4 THE COURT: LADIES AND GENTLEMEN,
5 THE INDICTMENT READS AS FOLLOWS -- AND I'M READING THIS
6 INDICTMENT TO YOU, BUT REMEMBER, THE INDICTMENT IS NOT
7 EVIDENCE -- "THAT LAVON GILBERT MINTZ DID, IN ORANGEBURG
8 COUNTY, ON OR ABOUT DECEMBER THE NINTH, TWO THOUSAND AND
9 TWO, WITH MALICE AFORETHOUGHT, KILL ONE ALFREDO LEWIS BY
10 MEANS OF SHOOTING THE VICTIM SEVERAL TIMES, AND THE
11 VICTIM DIED AS A RESULT THEREOF HERE IN ORANGEBURG
12 COUNTY." LADIES AND GENTLEMEN, IS THERE ANY MEMBER OF
13 THE JURY PANEL WHO IS RELATED BY BLOOD, CONNECTED BY
14 MARRIAGE, OR WHO HAS ANY KNOWLEDGE OR ACQUAINTANCE WITH
15 THE VICTIM IN THIS CASE, MR. ALFREDO LEWIS? IF YOU KNEW
16 MR. LEWIS IN ANY CAPACITY WHATSOEVER WOULD YOU PLEASE
17 STAND.

18 (Negative response from jury panel.)

19 THE COURT: LADIES AND GENTLEMEN, IT
20 IS ALLEGED THAT THIS INCIDENT OCCURRED IN THE PARKING
21 LOT AT THE PUB, WHICH IS A NIGHT SPOT IN THE GROVE PARK
22 SHOPPING CENTER HERE IN ORANGEBURG, AT ABOUT TWO A.M. ON
23 MONDAY MORNING, DECEMBER THE NINTH, TWO THOUSAND AND
24 TWO. IF YOU HAVE ANY KNOWLEDGE WHATSOEVER ABOUT THAT
25 INCIDENT, IF YOU READ ANYTHING ABOUT IT IN THE PAPER,

1 HEARD ANYTHING ON THE NEWS OR RADIO, IF YOU HEARD
2 SOMEBODY TALKING ABOUT IT, OR YOU COULD HAVE BEEN
3 DRIVING BY THAT MORNING AND SEEN ALL THE EXCITEMENT AND
4 PULLED IN TO SEE WHAT WAS GOING ON. IF YOU HAVE ANY
5 KNOWLEDGE ABOUT THIS ALLEGED SHOOTING FROM ANY SOURCE
6 WHATSOEVER WOULD YOU PLEASE STAND.

7 (Affirmative response from jury panel.)

8 THE COURT: MR. RUSH?

9 JUROR RUSH: YES.

10 THE COURT: FROM WHENCE CAME YOUR
11 KNOWLEDGE?

12 JUROR RUSH: YOUR HONOR, WHEN I WAS
13 AT THE SOLICITOR'S OFFICE I WAS ACQUAINTED WITH THIS
14 CASE, I HAD ACCESS TO THE FILE.

15 THE COURT: ALRIGHT. AND I WILL
16 EXCUSE YOU JUST ON THAT BASIS. ANY OBJECTION TO THAT,
17 MR. WALTERS?

18 MR. WALTERS: NO, SIR, YOUR HONOR.

19 THE COURT: ALRIGHT. I'LL EXCUSE YOU
20 FROM SERVING ON THIS CASE. THANK YOU, SIR.

21 ANYONE ELSE HAVE ANY KNOWLEDGE ABOUT
22 THIS CASE? IF YOU'VE HEARD ANYBODY TALKING ABOUT IT OR
23 FORMED ANY OPINION ABOUT IT, OR LIKE I SAID, HAVE ANY
24 KNOWLEDGE FROM ANY SOURCE WHATSOEVER ABOUT THESE ALLEGED
25 ALLEGATIONS, IF YOU WILL PLEASE STAND.

1 (Negative response from jury panel.)

2 THE COURT: ALRIGHT, LADIES AND
3 GENTLEMEN, I FAILED TO ASK YOU, IS THERE ANY MEMBER OF
4 THE JURY PANEL WHO IS RELATED BY BLOOD, CONNECTED BY
5 MARRIAGE, A CLOSE PERSONAL FRIEND, OR A CLIENT OR FORMER
6 CLIENT OF MR. GLEN WALTERS? WOULD YOU PLEASE STAND.

7 (Affirmative response from jury panel.)

8 THE COURT: YES, MA'AM, YOUR NAME,
9 PLEASE?

10 JUROR THOMAS: BLANCHE THOMAS.

11 THE COURT: MS. THOMAS, YOU -- HOW
12 DO YOU KNOW HIM?

13 JUROR THOMAS: HE'S MY ATTORNEY.

14 THE COURT: ALRIGHT. SO, IS HE
15 CURRENTLY REPRESENTING YOU?

16 JUROR THOMAS: NO, HE'S NOT.

17 THE COURT: ALRIGHT, WOULD THAT FACT
18 HAVE ANY EFFECT ON YOUR ABILITY TO BE A FAIR AND
19 IMPARTIAL JUROR?

20 JUROR THOMAS: NO.

21 THE COURT: THANK YOU, MA'AM.
22 YES, MA'AM, YOUR NAME?

23 JUROR COTTRELL: GABRIELLE COTTRELL.

24 THE COURT: COTTRELL?

25 JUROR COTTRELL: YES, SIR.

1 THE COURT: ALRIGHT, AND HOW DO YOU
2 KNOW MR. WALTERS?

3 JUROR COTTRELL: I WAS A FORMER
4 CLIENT OF HIS..

5 THE COURT: ALRIGHT. AND WOULD THAT
6 FACT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL
7 JUROR IN THIS CASE?

8 JUROR COTTRELL: NO.

9 THE COURT: THANK YOU, MA'AM.
10 YES, SIR?

11 JUROR TRIPLETT: I WAS A FORMER
12 CLIENT AND I USED TO WORK WITH HIS WIFE.

13 THE COURT: AND YOUR NAME?

14 JUROR TRIPLETT: STEVE TRIPLETT.

15 THE COURT: ALRIGHT, SIR, AND WOULD
16 THAT FACT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL
17 JUROR IN THIS CASE?

18 JUROR TRIPLETT: NO, SIR.

19 THE COURT: THANK YOU, SIR.

20 YES, SIR, YOUR NAME, PLEASE, SIR?

21 JUROR KENNERLY: CARL D. KENNERLY.

22 THE COURT: YES, SIR, MR. KENNERLY?

23 JUROR KENNERLY: HE WAS MY ATTORNEY
24 IN A CAR ACCIDENT.

25 THE COURT: ALRIGHT, AND WOULD THAT

1 FACT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL
2 JUROR IN THIS CASE?

3 JUROR KENNERLY: IT WILL NOT.

4 THE COURT: THANK YOU, SIR. WHAT DID
5 YOU DO WITH THE SCHOOL SYSTEM? YOU SAID YOU WERE
6 RETIRED FROM THERE.

7 JUROR KENNERLY: I RETIRED,
8 PRINCIPAL, ELEMENTARY SCHOOL PRINCIPAL, ORANGEBURG
9 SCHOOL DISTRICT FIVE.

10 THE COURT: ALRIGHT, GOOD, THANK
11 YOU, SIR.

12 ANYONE ELSE?

13 CLERK: ONE MORE, YOUR HONOR.

14 THE COURT: YES, MA'AM?

15 JUROR : I DON'T KNOW, WAS MR.
16 LEWIS NICK NAMED PUEBLO.

17 THE COURT: WAS MR. LEWIS NICK NAMED
18 PUEBLO?

19 SOLICITOR PASCOE: WHAT ABOUT FREDO,
20 YOUR HONOR, ALFREDO -- FREDO LEWIS?

21 JUROR : WAS HIS NICK NAME PUEBLO?

22 THE COURT: HIS NICK NAME WAS FREDO.

23 JUROR : OH, OKAY.

24 THE COURT: DO YOU THINK YOU MIGHT
25 HAVE KNOWN HIM?

1 JUROR : I KNEW ABOUT AN INCIDENT,
2 AND IT WAS NEIGHBOR'S BEST FRIEND WHOSE NAME WAS PUEBLO,
3 AND I'M NOT SURE THAT HE'S THE SAME PERSON.

4 THE COURT: WELL, WHERE WAS MR.
5 ALFREDO LEWIS FROM, WHAT WAS -- DO YOU HAVE AN ADDRESS
6 FOR HIM, SOLICITOR?

7 SOLICITOR PASCOE: DETECTIVE RIVERS,
8 I THINK, HAS THAT.

9 THE COURT: ALRIGHT, WELL, WE
10 UNDERSTAND THAT IS NOT THE SAME INDIVIDUAL.

11 JUROR : OKAY, FINE.

12 THE COURT: ALRIGHT. THANK YOU,
13 MA'AM.

14 ANYTHING ELSE?
15 (Negative response from jury panel.)

16 THE COURT: LADIES AND GENTLEMEN, IS
17 ANY MEMBER OF THE JURY PANEL, OR A CLOSE MEMBER OF YOUR
18 FAMILY EVER BEEN THE VICTIM OF A VIOLENT CRIME OF ANY
19 NATURE? IF SO, WOULD YOU PLEASE STAND.

20 (Affirmative response from jury panel.)

21 THE COURT: YES, MA'AM, YOUR NAME?

22 JUROR COMMINS: PAMELA COMMINS.

23 THE COURT: WAS IT YOU OR SOMEONE
24 ELSE?

25 JUROR COMMINS: IT WAS A RELATIVE.

17

1 THE COURT: AND IS THAT MATTER STILL
2 PENDING?

3 JUROR COMMINS: NO, SIR.

4 THE COURT: WOULD THAT MATTER HAVE
5 ANY EFFECT ON YOUR ABILITY TO BE A FAIR AND IMPARTIAL
6 JUROR IN THIS CASE?

7 JUROR COMMINS: NO, SIR.

8 THE COURT: THANK YOU, MA'AM.
9 YES, MA'AM, YOUR NAME?

10 JUROR HANKS: BEVERLY HANKS.

11 THE COURT: AND WAS IT YOU OR
12 SOMEONE ELSE?

13 JUROR HANKS: SOMEONE ELSE.

14 THE COURT: IS THAT MATTER STILL
15 PENDING?

16 JUROR HANKS: YES, IT IS.

17 THE COURT: AND IS IT PENDING IN
18 THIS CIRCUIT?

19 JUROR HANKS: NO, SIR.

20 THE COURT: IT'S OUT OF THIS COUNTY?

21 JUROR HANKS: YES, IT IS.

22 THE COURT: IS IT IN THIS STATE?

23 JUROR HANKS: HAWAII.

24 THE COURT: OKAY. WOULD THAT FACT
25 HAVE ANY EFFECT ON YOUR ABILITY TO BE A FAIR AND

1 IMPARTIAL JUROR IN THIS CASE?

2 JUROR HANKS: NO, SIR.

3 THE COURT: THANK YOU, MA'AM.

4 LADIES AND GENTLEMEN, IS THERE ANY
5 MEMBER OF THE JURY PANEL OR A CLOSE MEMBER OF YOUR
6 FAMILY OR A PERSONAL FRIEND EVER BEEN ACCUSED OF
7 COMMITTING A VIOLENT CRIME? IF SO, WOULD YOU PLEASE
8 STAND. AND I'M NOT GOING TO ASK YOU ANY DETAILS EXCEPT
9 WOULD IT AFFECT YOUR DECISION IN THIS CASE. IF SO,
10 PLEASE STAND. .

11 (Affirmative response from jury panel.)

12 THE COURT: YES, MA'AM, YOUR NAME,
13 PLEASE?

14 JUROR COMMINS: PAMELA COMMINS.

15 THE COURT: ALRIGHT. IT WAS YOU OR
16 SOMEONE ELSE?

17 JUROR COMMINS: A RELATIVE.

18 THE COURT: ALRIGHT, AND WOULD THAT
19 FACT AFFECT YOU IN -- YOUR DECISION IN THIS CASE?

20 JUROR COMMINS: NO.

21 THE COURT: THANK YOU, MA'AM.
22 ANYONE ELSE?

23 (Affirmative response from jury panel.)

24 THE COURT: YES, MA'AM.

25 JUROR SMITH: A RELATIVE.

1 THE COURT: YOUR NAME, PLEASE?

2 JUROR SMITH: CYNTHIA SMITH.

3 THE COURT: MS. SMITH. AND IT WAS
4 A RELATIVE WHO WAS ACCUSED?

5 JUROR SMITH: YES.

6 THE COURT: IS THAT MATTER STILL
7 PENDING?

8 JUROR SMITH: NO..

9 THE COURT: WOULD THAT FACT AFFECT
10 YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS
11 CASE?

12 JUROR SMITH: NO.

13 THE COURT: THANK YOU, MA'AM.

14 LADIES AND GENTLEMEN, IF ANY MEMBER
15 OF THE JURY PANEL KNOWS OF ANY REASON WHATSOEVER THAT
16 YOU THINK YOU MIGHT BE ABLE TO GIVE BOTH THE STATE AND
17 THE DEFENSE IN THIS CASE A FAIR AND IMPARTIAL TRIAL,
18 WHETHER IT'S SOMETHING I HAVE MENTIONED, OR SOMETHING
19 THAT I HAVE NOT MENTIONED, BUT IF YOU KNOW ANYTHING
20 WHATSOEVER, WOULD YOU PLEASE STAND, AND IF NECESSARY
21 COME FORWARD AND SHARE THAT WITH ME PRIVATELY.

22 (Negative response from jury panel.)

23 THE COURT: THANK YOU.

24 ANYTHING ELSE FROM THE DEFENSE?

25 MR. WALTERS: NO, SIR, YOUR HONOR.

1 THE COURT: FROM THE STATE?

2 SOLICITOR PASCOE: I BEG THE COURT'S
3 INDULGENCE JUST ONE SECOND, I'M SORRY.

4 THE COURT: ALRIGHT.

5 SOLICITOR PASCOE: NO, YOUR HONOR,
6 THANK YOU.

7 THE COURT: ALRIGHT. LADIES AND
8 GENTLEMEN, UNDER OUR SYSTEM BOTH THE STATE AND THE
9 DEFENSE HAS A RIGHT TO EXCUSE A CERTAIN NUMBER OF
10 PERSONS FROM SERVING ON OUR JURY. AND THEY CAN DO THIS
11 FOR ANY REASON WHATSOEVER, THEY DO NOT HAVE TO GIVE A
12 REASON. SO, WHAT WE DO IS, THE CLERK OVER HERE WILL
13 DRAW THE NAMES, SHE'S GOT THEM IN LITTLE CAPSULES, IN
14 THIS WHITE DRUM OVER HERE, AND SHE WILL DRAW THE NAMES
15 OUT ONE AT A TIME. IF SHE CALLS YOUR NAME I WOULD ASK
16 YOU TO COME FORWARD, COME ALL THE WAY UP TO THE FRONT,
17 AND TURN AROUND AND LOOK AT THE BACK. THE LAWYERS NEED
18 TO GET ONE MORE LOOK AT YOU, AND THEY'LL MAKE THAT
19 DECISION. YOU'LL EITHER BE SEATED ON THE JURY OR YOU'LL
20 BE EXCUSED TO GO BACK TO YOUR SEAT. SO, IF YOU HAVE A
21 HAT OR AN UMBRELLA OR A PURSE OR SOMETHING, BRING THAT
22 WITH YOU WHEN YOU COME. PLEASE DON'T BE OFFENDED IF
23 YOU'RE EXCUSED FROM THIS CASE. LIKE I SAY, THE LAWYERS
24 DON'T HAVE TO GIVE ANY REASON WHATSOEVER, BUT THAT'S THE
25 WAY OUR SYSTEM WORKS.

21

1 CLERK: HOW MANY STRIKES, YOUR
2 HONOR?

3 THE COURT: TEN AND FIVE?

4 MR. WALTERS: YES, SIR.

5 SOLICITOR PASCOE: THAT IS CORRECT.

6 THE COURT: ALRIGHT. IS THE CLERK
7 READY?

8 CLERK: YES, SIR, YOUR HONOR.

9 THE COURT: IS THE STATE READY?

10 SOLICITOR PASCOE: YES, YOUR HONOR.

11 THE COURT: IS DEFENSE READY?

12 MR. WALTERS: YES, SIR, YOUR HONOR.

13 THE COURT: ALRIGHT, MADAM CLERK,

14 YOU MAY PROCEED.

15 CLERK: THANK YOU, YOUR HONOR.

16 OUR FIRST MEMBER OF THE JURY, NUMBER
17 FIFTY-TWO RODNEY GADSON, IF YOU WOULD COME FORWARD.
18 COME ON UP AND TWIRL AROUND.

19 THE COURT: YOU'LL BE OUR FIRST,
20 YOU'LL BE OUR GUINEA PIG.

21 ALRIGHT, SIR.

22 CLERK: AS TO MR. GADSON, WHAT SAYS
23 THE STATE?

24 SOLICITOR PASCOE: PLEASE EXCUSE MR.
25 GADSON.

1 CLERK: YOU CAN HAVE A SEAT BACK
2 WITH THE REST OF THE JURY, MR. GADSON.

3 THE COURT: THANK YOU, SIR.

4 CLERK: JUROR NUMBER ONE TWELVE,
5 DONALD SHULER. IF YOU'D PLEASE COME FORWARD. AS TO
6 JUROR ONE TWELVE, DONALD SHULER, WHAT SAYS THE STATE?

7 SOLICITOR PASCOE: PLEASE PRESENT
8 MR. SHULER.

9 CLERK: MR. WALTERS, WHEN YOU'RE
10 READY.

11 MR. WALTERS: SEAT THE JURY.

12 CLERK: HAVE A SEAT IN THE JURY BOX,
13 PLEASE, SIR, THANK YOU.

14 JUROR NUMBER TWENTY-THREE, PAMELA
15 COMMINS HARRIS, IF YOU'D COME FORWARD. AS TO THIS
16 JUROR, WHAT SAYS THE STATE?

17 SOLICITOR PASCOE: PLEASE PRESENT
18 MS. COMMINS HARRIS.

19 CLERK: AND MR. WALTERS?

20 MR. WALTERS: PLEASE EXCUSE THE
21 JUROR.

22 CLERK: YOU CAN HAVE A SEAT, MS.
23 HARRIS, BACK IN THE JURY VENIRE.

24 JUROR NUMBER ONE THIRTY-FOUR,
25 KAMARSH WHITE.

1 MR. WALTERS: WHAT NUMBER WAS THAT?

2 CLERK: ONE THIRTY-FOUR, MR.

3 WALTERS.

4 AS TO JUROR NUMBER ONE THIRTY-FOUR,

5 WHAT SAYS THE STATE?

6 SOLICITOR PASCOE: PLEASE PRESENT

7 MR. WHITE.

8 CLERK: AND MR. WALTERS?

9 MR. WALTERS: SEAT THE JUROR.

10 CLERK: IF YOU'D HAVE A SEAT IN THE

11 JURY BOX, MR. WHITE.

12 THE COURT: MR. WHITE, DO YOU HAVE

13 THAT PHONE TURNED OFF?

14 JUROR WHITE: YEAH.

15 THE COURT: ALRIGHT, THANK YOU.

16 CLERK: JUROR NUMBER ONE THIRTY-

17 EIGHT, QUASHEMA WILLIAMS, IF YOU'D COME FORWARD. AS TO

18 JUROR ONE THIRTY-EIGHT, WHAT SAYS THE STATE?

19 SOLICITOR PASCOE: PLEASE PRESENT

20 MS. WILLIAMS.

21 CLERK: MR. WALTERS?

22 MR. WALTERS: SEAT THE JUROR.

23 THE COURT: HAVE A SEAT IN THE JURY

24 BOX. THANK YOU, MS. WILLIAMS.

25 JUROR NUMBER ONE O NINE, JENNIFER

1 SALLEY. AS TO JUROR ONE O NINE, WHAT SAYS THE STATE?

2 SOLICITOR PASCOE: PLEASE PRESENT

3 MS. SALLEY.

4 CLERK: AND MR. WALTERS?

5 MR. WALTERS: SEAT THE JUROR.

6 CLERK: HAVE A SEAT IN THE JURY BOX,

7 PLEASE, MA'AM.

8 JUROR NUMBER ONE TEN, ROBERT SALLEY.

9 IF YOU'D PLEASE COME FORWARD. AS TO JUROR ONE TEN, MR.
10 ROBERT SALLEY, WHAT SAYS THE STATE?

11 SOLICITOR PASCOE: PLEASE EXCUSE MR.

12 SALLEY.

13 CLERK: THANK YOU, MR. SALLEY, YOU
14 CAN HAVE A SEAT BACK OUT FRONT.

15 JUROR NUMBER ONE FOURTEEN, CYNTHIA
16 SMITH. IF YOU'D PLEASE COME FORWARD. AS TO JUROR ONE
17 FOURTEEN, WHAT SAYS THE STATE?

18 SOLICITOR PASCOE: PLEASE PRESENT

19 MS. SMITH.

20 CLERK: AND MR. WALTERS -- HANG ON

21 A SECOND.

22 MR. WALTERS: SEAT THE JUROR.

23 CLERK: NOW YOU CAN HAVE A SEAT.

24 JUROR NUMBER ONE FORTY-EIGHT,

25 REBECCA JONES. AS TO JUROR ONE FORTY-EIGHT, WHAT SAYS

1 THE STATE?

2 SOLICITOR PASCOE: PLEASE PRESENT

3 MS. JONES.

4 CLERK: MR. WALTERS?

5 MR. WALTERS: PLEASE EXCUSE THE

6 JUROR.

7 CLERK: YOU MAY HAVE A SEAT BACK OUT

8 FRONT.

9 JUROR NUMBER FIFTY-THREE, GLENDELL

10 GAVIN. AS TO JUROR FIFTY-THREE, MS. GAVIN, WHAT SAYS

11 THE STATE?

12 SOLICITOR PASCOE: PLEASE PRESENT

13 MS. GAVIN.

14 CLERK: MR. WALTERS?

15 MR. WALTERS: SEAT THE JUROR.

16 CLERK: HAVE A SEAT IN THE JURY BOX,

17 PLEASE, MA'AM.

18 JUROR NUMBER EIGHTY-THREE, GRACIE

19 MCKOY. AS TO JUROR EIGHTY-THREE, WHAT SAYS THE STATE?

20 SOLICITOR PASCOE: PLEASE PRESENT

21 MS. MCKOY.

22 CLERK: MR. WALTERS? HANG ON, MS.

23 MCKOY, NOT YET.

24 MR. WALTERS: SEAT THE JUROR.

25 CLERK: NOW YOU CAN GO. HAVE A SEAT

1 IN THE JURY BOX. Y'ALL MUST BE PSYCHIC, Y'ALL KNOW WHEN
2 THEY'RE GOING TO PICK YOU.

3 JUROR NUMBER SIX, HENRY BEHNKE. AS
4 TO JUROR SIX, WHAT SAYS THE STATE?

5 SOLICITOR PASCOE: PLEASE PRESENT
6 MR. BEHNKE.

7 CLERK: MR. WALTERS?

8 MR. WALTERS: PLEASE EXCUSE MR.
9 BEHNKE.

10 CLERK: HAVE A SEAT BACK OUT THERE,
11 MR. BEHNKE, THANK YOU.

12 JUROR NUMBER ONE THIRTY-FIVE, LISA
13 WHITE, IF YOU'D COME UP. AS TO MS. WHITE, WHAT SAYS THE
14 STATE?

15 SOLICITOR PASCOE: PLEASE PRESENT
16 MS. WHITE.

17 CLERK: MR. WALTERS?

18 MR. WALTERS: SEAT THE JUROR.

19 CLERK: HAVE A SEAT IN THE JURY BOX,
20 PLEASE, MA'AM.

21 JUROR NUMBER ONE O FOUR, GRACE
22 KNIGHT. AS TO MS. KNIGHT, WHAT SAYS THE STATE?

23 SOLICITOR PASCOE: PLEASE PRESENT
24 MS. KNIGHT.

25 CLERK: MR. WALTERS?

27

1 MR. WALTERS: EXCUSE MS. KNIGHT.

2 CLERK: THANK YOU. YOU CAN HAVE A
3 SEAT BACK OUT FRONT. THANK YOU, MA'AM.

4 ONE TWENTY-TWO, KIMBERLY TASTE. AS
5 TO JUROR NUMBER ONE TWENTY-TWO, MS. TASTE, WHAT SAYS THE
6 STATE?

7 SOLICITOR PASCOE: PLEASE PRESENT
8 MS. TASTE.

9 CLERK: AND MR. WALTERS?

10 MR. WALTERS: SEAT THE JUROR.

11 CLERK: THANK YOU, MA'AM, YOU CAN
12 HAVE A SEAT IN THE JURY BOX.

13 JUROR NUMBER SEVENTY-FOUR, CARL
14 KENNERLY. AS TO JUROR SEVENTY-FOUR, WHAT SAYS THE
15 STATE?

16 SOLICITOR PASCOE: PLEASE PRESENT
17 MR. KENNERLY.

18 CLERK: AND DEFENSE?

19 MR. WALTERS: SEAT THE JUROR.

20 CLERK: YOU CAN HAVE A SEAT IN THE
21 JURY BOX, PLEASE, SIR.

22 JUROR NUMBER ONE TWENTY-FIVE,
23 DEBORAH, IS IT STENSON?

24 JUROR SWENSSON: SWENSSON.

25 CLERK: SWENSSON, OKAY. IF YOU'D

1 COME FORWARD. AS TO THIS JUROR WHAT SAYS THE STATE?

2 SOLICITOR PASCOE: PLEASE PRESENT

3 MS. SWENSSON.

4 CLERK: AND MR. WALTERS?

5 MR. WALTERS: PLEASE EXCUSE THE

6 JUROR.

7 CLERK: YOU CAN HAVE A SEAT BACK IN

8 THE JURY BOX, PLEASE, MA'AM.

9 JUROR NUMBER ELEVEN, FRANK

10 BLACKWOOD. AS TO JUROR ELEVEN, MR. BLACKWOOD, WHAT SAYS

11 THE STATE?

12 SOLICITOR PASCOE: PLEASE PRESENT

13 MR. BLACKWOOD.

14 CLERK: AND MR. WALTERS?

15 MR. WALTERS: SEAT THE JUROR.

16 CLERK: THANK YOU, MR. BLACKWOOD,

17 YOU CAN HAVE A SEAT IN THE JURY BOX.

18 NUMBER ONE TWENTY-SIX, STEVE

19 TRIPLETT. AS TO JUROR ONE TWENTY-SIX, MR. TRIPLETT,

20 WHAT SAYS THE STATE?

21 SOLICITOR PASCOE: PLEASE EXCUSE MR.

22 TRIPLETT.

23 CLERK: THANK YOU. YOU CAN HAVE A

24 SEAT BACK WITH THE JURY PANEL, MR. TRIPLETT.

25 JUROR NUMBER FOUR, KIM BARNES, IF

29

1 YOU'D COME FORWARD. AS TO JUROR FOUR, MS. BARNES, WHAT
2 SAYS THE STATE?

3 SOLICITOR PASCOE: PLEASE PRESENT
4 MS. BARNES.

5 CLERK: THANK YOU. AND MR. WALTERS?

6 MR. WALTERS: SEAT THE JUROR.

7 CLERK: HAVE A SEAT IN THE JURY BOX.

8 THANK YOU, MA'AM.

9 THE COURT: ALRIGHT, JUST GIVE US
10 TWO ALTERNATES. AND THE STRIKES WILL BE ONE AND TWO AS
11 TO EACH.

12 CLERK: OKAY. JUROR NUMBER THIRTY-
13 THREE, TONYA DAWSON, IF YOU'D COME FORWARD. AS TO MS.
14 DAWSON, NUMBER THIRTY-THREE, WHAT SAYS THE STATE?

15 SOLICITOR PASCOE: PLEASE PRESENT
16 MS. DAWSON.

17 CLERK: AND MR. WALTERS?

18 MR. WALTERS: PRESENT MS. DAWSON.

19 CLERK: YOU CAN HAVE A SEAT -- OH,
20 IT'S ON THE BACK ROW, MS. DAWSON. THANK YOU.

21 JUROR NUMBER TWELVE, RUSTON BOLAND.
22 AS TO JUROR TWELVE, WHAT SAYS THE STATE?

23 SOLICITOR PASCOE: PLEASE PRESENT
24 MR. BOLAND.

25 CLERK: THANK YOU. AND MR. WALTERS?

1 MR. WALTERS: EXCUSE THE JUROR,
2 PLEASE.

3 CLERK: YOU CAN HAVE A SEAT BACK OUT
4 FRONT. THANK YOU, SIR.

5 JUROR NUMBER NINETY-ONE, HARMON
6 MYERS. AS TO JUROR NINETY-ONE, WHAT SAYS THE STATE?

7 SOLICITOR PASCOE: PLEASE PRESENT
8 MR. MYERS.

9 CLERK: MR. WALTERS?

10 MR. WALTERS: EXCUSE THE JUROR.

11 CLERK: THANK YOU, MR. MYERS.

12 NUMBER NINETY-NINE, DONALD POUND.

13 AS TO JUROR NINETY-NINE, WHAT SAYS THE STATE?

14 SOLICITOR PASCOE: PLEASE PRESENT

15 MR. POUND.

16 CLERK: AND MR. WALTERS?

17 MR. WALTERS: SEAT THE JUROR.

18 CLERK: HAVE A SEAT ON THAT BACK
19 ROW, MR. POUND.

20 WE HAVE A JURY, YOUR HONOR.

21 THE COURT: ALRIGHT. ANY MATTERS
22 REGARDING JURY SELECTION FROM THE STATE?

23 SOLICITOR PASCOE: NO, YOUR HONOR.

24 THE COURT: FROM THE DEFENSE?

25 MR. WALTERS: NO, SIR, YOUR HONOR.

1 THE COURT: ALRIGHT. DO Y'ALL NEED
2 A FEW MINUTES BEFORE WE GET STARTED?

3 MR. WALTERS: YES, SIR.

4 THE COURT: ALRIGHT, LADIES AND
5 GENTLEMEN, WE'RE GOING TO TAKE JUST A FEW MINUTES BEFORE
6 WE GET STARTED. NOW, I'M GOING TO ASK YOU TO RETIRE TO
7 YOUR JURY ROOM, BUT DO NOT TALK ABOUT THIS CASE. AS I
8 TOLD YOU EARLIER, YOU MUST CONSIDER IN THIS CASE ONLY
9 THE TESTIMONY AND THE EVIDENCE THAT YOU HEAR IN THIS
10 CASE, AND MY INSTRUCTIONS TO YOU ON THE LAW. THE LAW
11 SAYS ALSO THAT YOU MUST CONSIDER ALL OF THE EVIDENCE IN
12 THIS CASE, EVERY WITNESS, THE FIRST AND THE LAST, AND
13 YOU MUST HAVE MY INSTRUCTIONS TO YOU ON THE LAW BEFORE
14 YOU CAN BEGIN TO MAKE UP YOUR MIND ABOUT THIS CASE.
15 IT'S JUST LIKE BAKING A CAKE, UNTIL YOU HAVE THE LAST
16 INGREDIENT IN THERE YOU CAN'T PUT IT IN THE OVEN OR IT
17 WILL BE A FLOP. AND SO, IN THIS CASE, UNTIL YOU'VE
18 HEARD ALL OF THE EVIDENCE, THE CLOSING ARGUMENTS OF THE
19 ATTORNEYS, AND MY INSTRUCTIONS TO YOU ON THE LAW THEN
20 YOU DON'T HAVE EVERYTHING YOU NEED TO START MAKING UP
21 YOUR MIND ABOUT THE CASE. AND IF YOU START TALKING
22 ABOUT THE CASE NOW, BEFORE YOU HAVE ALL THAT
23 INFORMATION, YOU'LL START MAKING UP YOUR MIND. AND
24 SOMETIME YOU'LL MAKE IT UP PRETTY FIRMLY AND YOU WON'T
25 BE LISTENING AS CAREFULLY TO THE LATER WITNESSES. SO,

1 THAT'S THE REASON IT'S VERY IMPORTANT THAT YOU NOT TALK
2 ABOUT THIS CASE AT ALL, AMONG YOURSELVES OR WITH ANYONE
3 ELSE. IF YOU GO TO LUNCH, YOU DON'T TALK ABOUT IT WITH
4 ANYBODY THERE. IF YOU GO HOME TONIGHT AND YOUR SPOUSE
5 OR SOME OTHER PERSON SAYS, WHAT ARE YOU DOING? YOU'LL
6 SAY, I'M A JUROR ON A CASE, I CANNOT TALK ABOUT IT, I'LL
7 TELL YOU ABOUT IT WHEN IT'S OVER. SO THAT'S VERY
8 IMPORTANT THAT YOU NOT TALK ABOUT THE CASE.

9 SO, PLEASE RETIRE TO THE JURY ROOM,
10 WE'RE NOT GOING TO BE OVER TEN MINUTES OR SO, AND WE'LL
11 BE GETTING STARTED. FOLLOW THE BAILIFF AND SHE'LL SHOW
12 YOU THE JURY ROOM.

13 (Whereupon, the jury retires
14 to the jury room.)

15 (Recess)
16 (Whereupon, following takes place
17 out of the presence of the jury.)

18 THE COURT: LET'S WAIT FOR MR.
19 WALTERS A MINUTE, I THOUGHT HE WAS BACK.

20 (Whereupon, Mr. Walters
21 enters the courtroom.)

22 THE COURT: I LEFT A LITTLE NOTE IN
23 THE BACK, I'VE GOT TO GET THE NOTE.

24 ALRIGHT, WHO GAVE ME THIS NOTE?

25 BAILIFF: I DID.

1 THE COURT: WHO GAVE IT TO YOU? --
2 WE'RE ON THE RECORD.

3 COURT REPORTER: YES, SIR.

4 BAILIFF: MS. FAULLING.

5 THE COURT: OKAY, MS. FAULLING, MS.
6 SMITH GAVE IT TO YOU? I MEAN, -- ALRIGHT, I WANT YOU TO
7 -- THE NOTE SAYS, "JUDGE, I THOUGHT I RECOGNIZED THE MAN
8 IN THE HALL AS THE DEFENDANT'S FATHER. SIGNED, CYNTHIA
9 SMITH." SO, I'M GOING TO BRING HER OUT AND QUESTION
10 HER.

11 PLEASE, JUST ASK MS. CYNTHIA SMITH
12 TO COME OUT.

13 (Whereupon, Juror Smith
14 enters the courtroom.)

15 THE COURT: MS. SMITH, I GOT YOUR
16 NOTE. IT SAYS, "I THOUGHT I RECOGNIZED THE MAN IN THE
17 HALL AS THE DEFENDANT'S FATHER."

18 JUROR SMITH: YES.

19 THE COURT: TELL ME KIND OF WHAT YOU
20 MEAN?

21 JUROR SMITH: I THINK I KNEW HIS
22 FATHER. I'M NOT SURE IF THEY'RE RELATED, THEY LOOK LIKE
23 THEY'RE RELATED. I GUESS, IF HE IS HIS FATHER, THEN I
24 KNOW HIS GRAND FATHER REAL WELL, HE IS OUR DISTRICT
25 OVERSEER.

1 THE COURT: DO YOU KNOW THE
2 DEFENDANT?

3 JUROR SMITH: NO, SIR.

4 THE COURT: BUT YOU SAW SOMEBODY IN
5 THE HALL THAT YOU THINK MIGHT BE HIS FATHER?

6 JUROR SMITH: RIGHT.

7 THE COURT: AND - WELL, WHY DIDN'T
8 YOU TELL ME THAT EARLIER?

9 JUROR SMITH: WELL, I DIDN'T SEE IT
10 UNTIL THEY CALLED MY NUMBER, AND I LOOKED, AND I SPOTTED
11 HIM THROUGH THE WINDOW. AND THEN, WHEN YOU TOLD ME TO
12 SIT DOWN, I ASKED THE OTHER LADY COULD I SPEAK TO
13 SOMEONE ABOUT IT.

14 THE COURT: OKAY. I UNDERSTAND,
15 THAT'S FINE. YOU DID EXACTLY THE RIGHT THING.

16 IS THE DEFENDANT'S FATHER IN THE
17 COURTROOM?

18 MR. WALTERS: YES.

19 THE COURT: IS THAT HIM?

20 JUROR SMITH: YES, SIR.

21 THE COURT: SO, YOU KNOW THE
22 DEFENDANT'S FATHER, AND YOU KNOW THE DEFENDANT'S
23 GRANDFATHER?

24 JUROR SMITH: YES.

25 THE COURT: AND YOU SAID YOU KNOW

1 THE GRANDFATHER WELL?

2 JUROR SMITH: YES.

3 THE COURT: DO YOU THINK THAT WOULD
4 AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR?

5 JUROR SMITH: YES, I THINK SO.

6 THE COURT: I UNDERSTAND THAT.
7 ALRIGHT, ANY OBJECTION TO EXCUSING MS. SMITH, FROM THE
8 STATE?

9 SOLICITOR PASCOE: NO, YOUR HONOR.

10 THE COURT: FROM THE DEFENSE?

11 MR. WALTERS: NO, YOUR HONOR.

12 THE COURT: ALRIGHT, MS. SMITH, I'M
13 GOING TO EXCUSE YOU. DON'T WORRY ABOUT IT. DID YOU SAY
14 ANYTHING TO THE OTHER JURORS ABOUT THIS?

15 JUROR SMITH: NO, SIR.

16 THE COURT: ALRIGHT, THANK YOU,
17 MA'AM. YOU DID EXACTLY THE RIGHT THING, SO THANK YOU
18 VERY MUCH.

19 JUROR SMITH: THANK YOU.

20 THE COURT: BUT YOU MAY BE EXCUSED.
21 YOU NEED TO CALL BACK THAT NUMBER AFTER SIX O'CLOCK. DO
22 YOU HAVE THAT PAPER WITH THE CALL IN NUMBER? IF YOU
23 WOULD CALL BACK AFTER SIX, PLEASE, MA'AM.

24 JUROR SMITH: OKAY, THANK YOU.

25 THE COURT: ALRIGHT. IT APPEARS, OF

1 COURSE, THAT I FORGOT TO CALL THE NAMES OF THE
2 WITNESSES, AND TO SEE IF ANY MEMBERS OF THE JURY PANEL
3 WERE ACQUAINTED WITH ANY OF THE WITNESSES WHO WILL
4 TESTIFY IN THIS CASE. THE ONLY WAY I KNOW TO CORRECT
5 THAT BLUNDER ON MY PART IS TO BRING THIS JURY BACK OUT
6 AND TO CALL THE WITNESS LIST AND SEE IF THEY KNOW ANY OF
7 THESE WITNESSES.

8 ANY OBJECTION TO THAT FROM THE
9 STATE?

10 SOLICITOR PASCOE: NO, YOUR HONOR.

11 THE COURT: FROM THE DEFENSE?

12 MR. WALTERS: NO, SIR, YOUR HONOR,
13 BUT THERE IS ONE WITNESS THAT I BELIEVE NEEDS TO BE
14 ADDED AND THAT WOULD BE ---

15 THE COURT: ALRIGHT.

16 MR. WALTERS: --- DETECTIVE CINDY
17 SMOAK.

18 THE COURT: THAT'S THE OFFICER?

19 MR. WALTERS: YES.

20 THE COURT: ALRIGHT, HAVE WE
21 IDENTIFIED ALL OTHER LAW ENFORCEMENT OFFICERS ON THIS
22 WITNESS LIST?

23 SOLICITOR PASCOE: YES, SIR.

24 THE COURT: OKAY. ALRIGHT, BRING
25 THE JURY OUT, PLEASE.

1 MADAM COURT REPORTER, PLEASE MAKE
2 THIS NOTE COURT'S EXHIBIT ONE.

3 COURT REPORTER: YES, SIR.

4 (Court's Exhibit one
5 marked and filed.)
6 (Whereupon, the following
7 takes place in the
8 presence of the jury.)

9 BAILIFF: YOUR HONOR, ALL THE JURORS
10 ARE IN THE COURTROOM.

11 THE COURT: THANK YOU, MA'AM.

12 LADIES AND GENTLEMEN, I FORGOT TO
13 ASK YOU SOME VERY IMPORTANT QUESTIONS THAT I SHOULD HAVE
14 ASKED YOU EARLIER, SO I'M GOING TO ASK YOU THESE
15 QUESTIONS NOW, AND YOU JUST RESPOND APPROPRIATE, PLEASE.
16 I WANT TO READ THE NAMES OF THE WITNESSES WHO MAY
17 TESTIFY IN THIS CASE. THESE PEOPLE MAY OR MAY NOT
18 TESTIFY, BUT OBVIOUSLY, THEY KNOW SOMETHING ABOUT THIS
19 CASE OR THEY WOULD NOT BE ON THIS LIST THAT I HAVE, AND
20 I NEED TO KNOW IF YOU KNOW ANY OF THESE INDIVIDUALS.
21 SO, WHEN I CALL THEIR NAMES, IF YOU RECOGNIZE THAT NAME,
22 THEN YOU NEED TO STAND. IF THE INDIVIDUAL WITNESS IS IN
23 THE COURTROOM, WHEN I CALL THAT WITNESS'S NAME, I WOULD
24 ASK THAT THE WITNESS WOULD STAND AT THAT TIME ALSO.

25 FIRST, OFFICER PAM BRADLEY -- THESE

1 FIRST FIVE OR SIX ARE MEMBERS OF THE ORANGEBURG
2 DEPARTMENT OF PUBLIC SAFETY. OFFICER PAM BRADLEY.
3 SHE'S NOT IN THE COURTROOM, BUT IF ANYBODY KNOWS HER,
4 PLEASE STAND. DETECTIVE BOBBY RIVERS. AND HE'S STANDING
5 BEFORE YOU NOW. THANK YOU, SIR. DETECTIVE DENNIS
6 ROMANSTINE. HE IS NOT PRESENT IN THE COURTROOM.
7 SERGEANT MURDAUGH, AGAIN, FROM THE DEPARTMENT OF PUBLIC
8 SERVICES, AND HE'S NOT PRESENT. DETECTIVE VICTOR
9 CORDON. AND DETECTIVE CINDY SMOAK. THEY ARE ALL
10 OFFICERS OF THE DEPARTMENT OF PUBLIC SAFETY.

11 (Affirmative response from jury.)

12 THE COURT: YES, MA'AM, PLEASE STAND
13 IF YOU KNOW ANYBODY.

14 JUROR SALLEY: I KNOW THEM BUT I
15 DON'T KNOW THEM GOOD. I USED TO WORK AT THE JAIL.

16 THE COURT: SO, YOU'VE HEARD OF AT
17 LEAST SOME OF THESE?

18 JUROR SALLEY: UH HUH, AND I'VE
19 TALKED TO PAM BEFORE.

20 THE COURT: ALRIGHT.

21 JUROR SALLEY: BUT I'M NOT, LIKE,
22 GOOD FRIENDS WITH ANY OF THEM.

23 THE COURT: AND YOUR NAME, PLEASE?

24 JUROR SALLEY: JENNIFER SALLEY.

25 THE COURT: ALRIGHT, MS. SALLEY, THE

1 FACT THAT YOU HAVE TALKED WITH SOME OF THESE PEOPLE ON
2 OCCASIONS, THROUGH YOUR WORK AT THE JAIL, WOULD THAT
3 HAVE ANY EFFECT ON YOUR ABILITY TO BE A FAIR AND
4 IMPARTIAL JUROR IN THIS CASE?

5 JUROR SALLEY: NO, SIR.

6 THE COURT: THANK YOU, MA'AM, YOU
7 ARE QUALIFIED TO SERVE.

8 DR. JANICE ROSS, SHE'S A DOCTOR FROM
9 NEWBERRY. RICHARD TERRELL PARKER -- THAT'S MR. PARKER
10 STANDING BEFORE YOU AT THIS TIME. THANK YOU, SIR. DREW
11 MAURICE PEARSON. AND LIKE I SAY, IF YOU ARE PRESENT IN
12 THE COURTROOM PLEASE STAND. ROBERT DONNELL WASHINGTON.
13 JOHNNY TROY MIDDLETON. CURTIS LAMONT BAKER. QUINCY
14 GREEN.

15 (Affirmative response from jury panel.)

16 THE COURT: ALRIGHT, YOUR NAME,
17 PLEASE?

18 JUROR WILLIAMS: I'M QUASHEMA
19 WILLIAMS.

20 THE COURT: MS. WILLIAMS, YOU KNOW
21 MR. GREEN?

22 JUROR WILLIAMS: YES, SIR, HE'S THE
23 FATHER OF MY BABY'S COUSIN.

24 THE COURT: HE'S WHO?

25 JUROR WILLIAMS: THE FATHER OF MY

1 BABY, WHO IS DERRICK GREEN, AND THAT IS HIS COUSIN.

2 COURT REPORTER: I'M SORRY?

3 JUROR WILLIAMS: THE FATHER OF MY
4 BABY'S NAME IS DERRICK GREEN, AND QUINCY GREEN IS HIS
5 COUSIN.

6 THE COURT: ALRIGHT, THANK YOU,
7 MA'AM. WOULD THAT FACT HAVE ANY EFFECT ON YOUR ABILITY
8 TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

9 JUROR WILLIAMS: NO, SIR.

10 THE COURT: THANK YOU, MA'AM.

11 VALERIE DAVIS -- MS. DAVIS IS
12 STANDING. THANK YOU, MS. DAVIS. COTINA BROOKS. LEONARD
13 GUINYARD. OVAN JONES. DERRICK SMALLS. ROBERT JACKSON.
14 MARSHA HAYNES. ANDRE GOODEN. ICHELLE BRIGGMAN.
15 RICHARD BRIGGMAN. ANDRE GOODWIN. TERRANCE DAVIS.
16 (Negative response from jury panel.)

17 THE COURT: ALRIGHT. YOU GENTLEMEN,
18 APPROACH THE BENCH.

19 (Whereupon, a bench conference
20 is held out of the hearing of
21 the jury and the court reporter.)

22 THE COURT: ALRIGHT, WHO IS MS.
23 DAWSON? AND MR. POUND? OKAY. AND MS. DAWSON, YOU ARE
24 NO LONGER AN ALTERNATE, YOU ARE ON THE JURY PANEL. AND
25 YOU DON'T HAVE TO MOVE RIGHT NOW, BUT IN THE FUTURE, MR.

1 POUND, YOU HAVE THAT WHOLE BACK ROW. YOU CAN SIT
2 ANYWHERE BACK THERE YOU WANT TO. AND -- BECAUSE YOU ARE
3 THE ALTERNATE. AND THE OTHER TWELVE, WHEN YOU COME IN
4 YOU JUST FILE ALL THE WAY DOWN AND FILL UP THE FRONT TWO
5 ROWS. OKAY?. BUT DON'T WORRY ABOUT THAT NOW, THAT'S NOT
6 A PROBLEM AT ALL.

7 ALRIGHT, WE ARE READY TO GET --
8 ALRIGHT, ANYTHING FROM THE STATE?

9 SOLICITOR PASCOE: NO, YOUR HONOR.

10 THE COURT: ANYTHING FROM THE
11 DEFENSE?

12 MR. WALTERS: NO, SIR, YOUR HONOR,
13 JUST SOME PRELIMINARY MOTIONS.

14 THE COURT: YES, SIR. ALRIGHT.
15 ALRIGHT, LADIES AND GENTLEMEN, WE STILL NEED TO TAKE UP
16 A COUPLE OF OTHER MATTERS, BUT I NEEDED TO GET THIS
17 WITNESS QUESTION STRAIGHT FIRST. SO, IF YOU WOULD
18 RETIRE TO THE JURY ROOM, WE'RE GOING TO BE ABOUT TEN
19 MORE MINUTES BEFORE WE GET STARTED, BUT IT WON'T BE MUCH
20 LONGER THAN THAT. SO, PLEASE RETIRE TO THE JURY ROOM,
21 AND PLEASE DO NOT TALK ABOUT THE CASE. THANK YOU VERY
22 MUCH.

23 (Whereupon, the following
24 takes place out of the
25 presence of the jury.)

1 CLIFF: YOUR HONOR, ALL OF THE

2 JURORS AND ALTERNATE ARE OUT OF THE COURTROOM.

3 THE COURT: ALRIGHT. ANY
4 PRELIMINARY MATTERS FROM THE STATE?

5 SOLICITOR PASCOE: NOTHING FROM THE
6 STATE, YOUR HONOR.

7 THE COURT: FROM THE DEFENSE?

8 MR. WALTERS: NO, SIR, YOUR HONOR.

9 THE COURT: WHAT ABOUT THE NEAL V.
10 BIGGERS?

11 SOLICITOR PASCOE: WELL, I THOUGHT
12 THAT WAS HIS MOTION.

13 MR. WALTERS: YOUR HONOR, I'M SORRY.
14 I'M READY TO PROCEED FORWARD ON NEAL V. BIGGERS. IN
15 ADDITION TO THAT, WE'D MAKE A MOTION TO SEQUESTER ALL
16 THE WITNESSES BEFORE THE COURT STARTS THE TRIAL.

17 THE COURT: WELL, CERTAINLY, I WOULD
18 SEQUESTER ANY OF THE FACT WITNESSES. IF THE TWO OF Y'ALL
19 CAN AGREE ON WHO WE NEED TO SEQUESTER, THAT'S FINE. IF
20 NOT I'LL -- AND I DON'T GENERALLY SEQUESTER -- I'LL
21 SEQUESTER ANY FACT WITNESSES -- I'LL SEQUESTER THEM ALL
22 IF YOU DON'T OBJECT, EXCEPT YOUR ---

23 SOLICITOR PASCOE: I THINK, IS IT
24 OKAY WITH JUST THE FACT WITNESSES? THERE'S NO REASON TO
25 HAVE DETECTIVE RIVERS -- WELL, HE'S MY LEAD INVESTIGATOR

1 ANYWAY, BUT ---

2 MR. WALTERS: I THINK RIVERS HAS THE
3 RIGHT TO BE PRESENT, BUT ANY OTHER LAW ENFORCEMENT
4 OFFICER DOESN'T.

5 THE COURT: DO YOU AGREE TO THAT?

6 SOLICITOR PASCOE: THAT'S FINE, I
7 JUST ASK THAT IT BE MUTUAL. WE CAN GO AHEAD AND
8 SEQUESTER ALL THE WITNESSES, BUT I'D ASK THAT HIS
9 WITNESSES BE SEQUESTERED AS WELL.

10 THE COURT: ALRIGHT. IF I CALLED
11 YOUR NAME OUT AS A WITNESS, THEN YOU NEED TO WAIT
12 OUTSIDE IN THE HALLWAY, YOU CANNOT COME INTO THE
13 COURTROOM AT ANYTIME UNTIL YOU ARE CALLED AS A WITNESS.
14 PLEASE UNDERSTAND THAT. YOU CANNOT STAND AROUND THE
15 DOOR LISTENING, OR YOU CANNOT ASK ANYBODY WHO COMES OUT
16 OF THE COURTROOM WHAT'S BEEN GOING ON. THE PURPOSE OF
17 SEQUESTERING WITNESSES IS JUST THAT, SO THAT YOU DON'T
18 KNOW WHAT'S GOING ON IN THE COURT. SO, IF I CALLED YOUR
19 NAME, WOULD YOU PLEASE STEP OUTSIDE THE COURTROOM AT
20 THIS TIME. DOESN'T THAT INCLUDE THE FELLOW WITH THE
21 YELLOW SHIRT?

22 (Whereupon, all witnesses
23 leave the courtroom.)

24 SOLICITOR PASCOE: HE'S GOING TO BE
25 THE WITNESS IN THE BIGGERS.

1 THE COURT: OH, HE'S THE WITNESS IN
2 THAT?

3 SOLICITOR PASCOE: YES, SIR. I ASKED
4 HIM TO STAY.

5 THE COURT: ALRIGHT. MR. WALTERS,
6 WHAT'S NEXT?

7 MR. WALTERS: YOUR HONOR, MAY IT
8 PLEASE THE COURT, PURSUANT TO NEAL V. BIGGERS FOUR O
9 NINE, U.S., ONE EIGHTY-EIGHT, THE QUESTION OF THE
10 IDENTIFICATION THAT WAS MADE BY, I BELIEVE, MR. RICHARD
11 TERRELL PARKER, WE WANT TO DETERMINE THE PROCESS,
12 ITSELF, AND WHETHER THERE WAS ANY SUGGESTIVE INFORMATION
13 PROVIDED BY LAW ENFORCEMENT. IT'S MY UNDERSTANDING THAT
14 HE GAVE A STATEMENT, HE DID NOT IDENTIFY THE DEFENDANT
15 WITHIN THAT STATEMENT. AND THEN, OF COURSE, THERE WAS
16 AN IDENTIFICATION PROCESS THAT WAS CARRIED ON AT THE
17 POLICE DEPARTMENT. SO, AT THIS TIME, PURSUANT TO NEAL
18 V. BIGGERS FOUR O NINE, U.S., ONE EIGHTY-EIGHT, WE WOULD
19 CHALLENGE THE IDENTIFICATION BY MR. RICHARD TERRELL
20 PARKER..

21 THE COURT: ALRIGHT. AND HE WAS
22 SHOWN A PHOTO LINEUP?

23 MR. WALTERS: YES, SIR.

24 THE COURT: ALRIGHT. SOLICITOR.

25 SOLICITOR PASCOE: THANK YOU, YOUR

1 HONOR, THE STATE CALLS TERRELL PARKER.

2 THE COURT: I'LL SWEAR HIM, OR IT
3 DOESN'T MATTER. YOU WANT TO DO IT? PUT YOUR LEFT HAND
4 ON THE BIBLE THERE AND RAISE YOUR RIGHT, PLEASE.

5 (Whereupon, the witness,

6 RICHARD TERRELL PARKER,

7 is duly sworn.)

8 CLERK: YOU MAY BE SEATED, AND STATE
9 YOUR FULL NAME.

10 WITNESS: RICHARD TERRELL PARKER.

11 COURT REPORTER: EXCUSE ME, WHAT?

12 WITNESS: RICHARD TERRELL PARKER.

13 (NOTE: Blank lines on this page do not indicate any
14 part of record has been omitted. Headers on testimony
15 pages and hard page breaks between testimony are now
16 required by the Court. See next ensuing page for
17 sequential continuation of record.)

DIRECT, IN CAMERA, RICHARD TERRELL PARKER
BY SOLICITOR PASCOE

46

1 DIRECT EXAMINATION, IN CAMERA, OF RICHARD TERRELL
2 PARKER BY SOLICITOR PASCOE:

3 Q. GOOD AFTERNOON, TERRELL. WERE YOU PRESENT WHEN
4 YOUR FRIEND, ALFREDO LEWIS, WAS SHOT AND KILLED AT
5 THE PUB ON DECEMBER NINTH, TWO THOUSAND AND TWO?

6 A. YES.

7 Q. DURING THE EARLY MORNING HOURS?

8 A. YES.

9 Q. AND DID YOU SEE WHO DID IT?

10 A. YES.

11 Q. OKAY. LET ME TAKE YOU BACK NOW. DID YOU KNOW THE
12 DEFENDANT, LAVON MINTZ, BEFORE DECEMBER NINTH, TWO
13 THOUSAND AND TWO?

14 A. YES.

15 Q. OKAY. YOU HAD SEEN HIM BEFORE?

16 A. YES.

17 Q. OUT AT OTHER CLUBS AND OUT IN THE NEIGHBORHOOD?

18 A. YES.

19 MR. WALTERS: YOUR HONOR, I'M GOING
20 TO OBJECT, HE'S LEADING THE WITNESS.

21 THE COURT: YEAH, YOU ARE LEADING.

22 SOLICITOR PASCOE: OKAY, WELL, I'LL
23 STOP.

24 Q. DID YOU HAVE AN OPPORTUNITY TO SEE THE DEFENDANT
25 AT THE PUB ON DECEMBER NINTH?

DIRECT, IN CAMERA, RICHARD TERRELL PARKER
BY SOLICITOR PASCOE

47

1 A. YES.

2 Q. OKAY. AND DID YOU EVER HAVE A CONVERSATION WITH
3 HIM?

4 A. NO.

5 Q. OKAY. DID YOU EVER TALK TO THE DEFENDANT, LAVON
6 MINTZ?

7 A. YES.

8 Q. OKAY. AND HOW CLOSE DID HE GET TO YOU WHEN YOU
9 TALKED TO HIM INSIDE THE PUB THAT MORNING?

10 A. WE WAS FACE TO FACE.

11 Q. OKAY. CLOSER THAN I AM TO YOU RIGHT NOW?

12 A. YES.

13 Q. OKAY. SO, WITHIN TWO FEET?

14 A. YES.

15 Q. AND THAT WAS INSIDE THE PUB, BEFORE THE SHOOTING?

16 A. YES.

17 Q. OKAY. NOW, LET ME TAKE YOU TO THE SHOOTING.
18 WHERE DID THE SHOOTING TAKE PLACE?

19 A. IN THE PUB PARKING LOT.

20 Q. OKAY. WHAT WAS THE LIGHTING LIKE IN THE PARKING
21 LOT?

22 A. THEY HAD PLENTY OF LIGHT.

23 Q. AND WHO SHOT ALFREDO LEWIS?

24 A. LAVON MINTZ.

25 Q. OKAY. AND HOW CLOSE WERE YOU TO THE SHOOTING?

DIRECT, IN CAMERA, RICHARD TERRELL PARKER
BY SOLICITOR PASCOE

48

1 A. .LIKE, THREE OR FOUR FEET.

2 Q. OKAY. AND IN USING ME AS A GAUGE, HOW CLOSE WERE
3 YOU TO LAVON MINTZ WHEN HE SHOT ALFREDO?

4 A. FARTHER THAN THAT, LIKE, TO THE BEGINNING OF THE
5 TABLE.

6 Q. RIGHT HERE?

7 A. UH HUH.

8 Q. DID MR. MINTZ AT ANYTIME HAVE ANYTHING COVERING
9 HIS FACE ---

10 A. NO.

11 Q. --- WHEN HE SHOT THE VICTIM? WAS HE EVER TRYING
12 TO HIDE HIS IDENTITY?

13 A. NO.

14 Q. DID YOU HAVE ANY PROBLEM SEEING HIS FACE?

15 A. NO.

16 Q. AND YOU'VE TESTIFIED YOU HAD EVEN SEEN HIM PRIOR
17 TO DECEMBER NINTH, ON OTHER OCCASIONS?

18 A. YES.

19 Q. THE LIGHTING WAS FINE OUTSIDE?

20 A. YES.

21 Q. DID YOU ACTUALLY SEE MR. MINTZ SHOOT ALFREDO?

22 A. YES.

23 Q. TELL THE JUDGE JUST BRIEFLY WHAT HAPPENED?

24 A. WE WAS LEAVING THE PUB, AND ---

25 THE COURT: DOES THIS GO TO THE NEAL

DIRECT, IN CAMERA, RICHARD TERRELL PARKER
BY SOLICITOR PASCOE

49

- 1 V. BIGGERS ISSUE?
- 2 SOLICITOR PASCOE: WELL, NO, IT'S
- 3 JUST BRIEFLY WHAT HAPPENED WITH THE SHOOTING.
- 4 Q. JUST TELL US, WHAT DID THE DEFENDANT DO RIGHT
- 5 THERE AT THE SHOOTING?
- 6 A. OH, WHEN I -- WHEN ALFREDO JUMPED OUT THE CAR, I
- 7 JUMPED OUT BEHIND HIM. I GOT, LIKE, TO THE END OF
- 8 THE TRUNK. AND HE WAS WALKING OVER TO ME, AND HE
- 9 HOLD UP A GUN, HE HOLD UP HIS SHIRT. HE SAID,
- 10 SURPRISE, NIGGER? SO, I DID, I RUN BACK INTO THE
- 11 PASSENGER SIDE. WHEN I WAS GETTING IN THE CAR I
- 12 SAW HIM HOLDING UP THE GUN, LIKE THIS.
- 13 Q. WHO DID YOU SEE HOLDING UP THE GUN?
- 14 A. LAVON MINTZ.
- 15 Q. DID YOU HAVE ANY PROBLEM SEEING HIM HOLDING UP
- 16 THAT GUN?
- 17 A. NO.
- 18 Q. YOU GOT A GOOD LOOK AT HIS FACE?
- 19 A. YES.
- 20 Q. OKAY.
- 21 A. AND HE SHOT TWO TIMES. BEFORE I COULD SAY, FREDO,
- 22 GET IN THE CAR, HE'S GOT A GUN, HE HAD DONE SHOT.
- 23 Q. OKAY. AND DID YOU TAKE FREDO TO THE HOSPITAL?
- 24 A. YES.
- 25 Q. AND WHILE AT THE HOSPITAL DID YOU TALK TO ANYONE

DIRECT, IN CAMERA, RICHARD TERRELL PARKER
BY SOLICITOR PASCOE

50

1 THAT MORNING, JUST MINUTES ---

2 A. YES.

3 Q. --- AFTER THE SHOOTING?

4 A. YES.

5 Q. WHO DID YOU TALK TO?

6 A. A FEMALE OFFICER.

7 Q. OKAY. FROM THE ORANGEBURG POLICE DEPARTMENT?

8 A. UH HUH.

9 Q. AND DID YOU TELL HER THE NAME OF THE PERSON THAT
10 SHOT YOUR FRIEND, ALFREDO?

11 A. YES.

12 Q. WHAT NAME DID YOU TELL HER?

13 A. LE LE.

14 Q. AND WHAT ---

15 COURT REPORTER: WAIT, EXCUSE ME. LE

16 LE?

17 A. LE LE.

18 SOLICITOR PASCOE: LE LE, L-E L-E.

19 COURT REPORTER: OKAY.

20 Q. AND WHAT NAME DID THE DEFENDANT GO BY BACK IN
21 DECEMBER OF TWO THOUSAND TWO?

22 A. LE LE.

23 Q. OKAY. DID YOU AGAIN THAT SAME MORNING, ON
24 DECEMBER NINTH, HAVE AN OPPORTUNITY TO MEET WITH
25 DETECTIVE BOBBY RIVERS?

DIRECT, IN CAMERA, RICHARD TERRELL PARKER
BY SOLICITOR PASCOE

51

1 A. .YES.

2 Q. AND DID YOU TELL HIM WHO SHOT YOUR FRIEND?

3 A. YES.

4 Q. AND WHO DID YOU TELL HIM SHOT YOUR FRIEND?

5 A. -LE LE.

6 Q. OKAY. AND DID YOU MEET WITH HIM AT APPROXIMATELY
7 EIGHT:FIFTY-FIVE THAT MORNING?

8 A. YES.

9 Q. DID HE SHOW YOU ANY PHOTOGRAPHS?

10 A. YES.

11 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S
12 EXHIBIT ONE. DO YOU RECOGNIZE STATE'S EXHIBIT ONE?

13 A. YES.

14 Q. WHAT DO YOU RECOGNIZE THAT TO BE?

15 A. OH, NO, I DON'T.

16 Q. DO YOU RECOGNIZE -- WELL, WITH STATE'S EXHIBIT
17 TWO, DO YOU RECOGNIZE STATE'S EXHIBIT ONE, IS THAT
18 THE PHOTO LINEUP THAT DETECTIVE ---

19 MR. WALTERS: YOUR HONOR, I'M GOING
20 TO OBJECT, HE'S LEADING THE WITNESS.

21 Q. DO YOU RECOGNIZE STATE'S EXHIBIT ONE, THIS
22 EXHIBIT?

23 A. YES.

24 Q. OKAY. IS THIS THE -- WHAT IS STATE'S EXHIBIT ONE?

25 A. IT'S A PHOTO SPREAD.

DIRECT, IN CAMERA, RICHARD TERRELL PARKER
BY SOLICITOR PASCOE

52

1 Q. .OKAY. THAT WHO SHOWED YOU?

2 A. BOBBY RIVERS.

3 Q. OKAY. DID HE TELL YOU THAT LE LE WAS IN THE
4 LINEUP?

5 A. NO.

6 Q. DID HE AT ANY POINT IN TIME SUGGEST TO YOU, OR
7 HINT TO YOU WHO TO PICK OUT?

8 A. NO.

9 Q. WHAT DID HE ASK YOU TO DO WITH STATE'S EXHIBIT
10 ONE?

11 A. TO SEE IF I RECOGNIZE HIM ON THE PHOTO SPREAD.

12 Q. OKAY. AND DID YOU RECOGNIZE ANYONE IN THE PHOTO
13 SPREAD?

14 A. YES.

15 Q. WHO DID YOU RECOGNIZE?

16 A. NUMBER FIVE.

17 Q. NUMBER FIVE. WHO DID YOU RECOGNIZE NUMBER FIVE TO
18 BE?

19 A. LE LE.

20 Q. OKAY. WAS THERE ANY DOUBT IN YOUR MIND WHEN YOU
21 PICKED OUT NUMBER FIVE THAT THAT WAS LE LE?

22 A. NO.

23 Q. THE PERSON THAT SHOT YOUR FRIEND?

24 A. NO.

25 Q. AND THEN, AFTER YOU PICKED HIM OUT OF THIS, DID HE

DIRECT, IN CAMERA, RICHARD TERRELL PARKER
BY SOLICITOR PASCOE

53

- 1 GIVE YOU A COPY OF THE LINEUP, STATE'S EXHIBIT
2 TWO?
3 A. YES.
4 Q. AND WHO'S INITIALS ARE THAT RIGHT NEXT TO STATE'S
5 -- TO ---
6 A. THOSE ARE MINE.
7 Q. --- TO PICTURE NUMBER FIVE?
8 A. THAT'S MINE.
9 Q. AND DOES IT HAVE THE TIME THAT YOU PICKED IT OUT?
10 A. YES.
11 Q. WHAT TIME IS THAT, EIGHT:FIFTY-FIVE A.M.?
12 A. EIGHT:FIFTY-FIVE A.M.
13 Q. ON DECEMBER NINTH, TWO THOUSAND TWO?
14 COURT REPORTER: WHAT'S YOUR ANSWER.
15 A. YES.
16 Q. OKAY. DID YOU HAVE ANY PROBLEMS PICKING OUT THE
17 PERSON THAT SHOT YOUR FRIEND THAT MORNING?
18 A. NO.
19 Q. AND LET ME ASK YOU THIS, THE PERSON THAT YOU SAW
20 SHOOT YOUR FRIEND, ALFREDO, THAT MORNING, ON
21 DECEMBER THE NINTH AT APPROXIMATELY TWO O'CLOCK,
22 DO YOU SEE HIM IN THE COURTROOM TODAY?
23 A. YES.
24 Q. IS IT THE PERSON SITTING NEXT TO MR. GLEN WALTERS?
25 A. THAT'S HIM RIGHT THERE.

DIRECT, IN CAMERA, RICHARD TERRELL PARKER
BY SOLICITOR PASCOE

54

1 Q. .OKAY.

2 SOLICITOR PASCOE: THAT'S ALL I
3 HAVE, YOUR HONOR.

4 THE COURT: CROSS-EXAMINATION.

5 MR. WALTERS: MAY IT PLEASE THE
6 COURT.

7 (NOTE: Blank lines on this page do not indicate any
8 part of record has been omitted. Headers on testimony
9 pages and hard page breaks between testimony are now
10 required by the Court. See next ensuing page for
11 sequential continuation of record.)

CROSS, IN CAMERA - RICHARD TERRELL PARKER BY
GLEN WALTERS

55

- 1 CROSS-EXAMINATION, IN CAMERA, OF RICHARD TERRELL
2 PARKER BY MR. WALTERS:
3 Q. MR. PARKER, YOU STATED THAT YOU KNOW MR. MINTZ
4 FROM HIGH SCHOOL?
5 A. NO.
6 Q. HOW DO YO KNOW MR. MINTZ?
7 A. I'VE SEEN HIM AROUND.
8 Q. YOU'VE SEEN HIM AROUND? YOU DIDN'T GO TO SCHOOL
9 WITH HIM, DID YOU?
10 A. NO.
11 Q. OKAY. AND YOU ALSO STATED THAT THIS IS THE
12 INDIVIDUAL THAT YOU IDENTIFIED AS COMMITTING THIS
13 SHOOTING ON THIS PARTICULAR DAY?
14 A. YES.
15 Q. ALRIGHT. AND I BELIEVE YOU ALSO STATED THAT IN
16 THE LINEUP YOU PICKED HIM OUT?
17 A. YES.
18 Q. ALRIGHT. AND YOU WERE CLEAR ON WHO THIS PERSON
19 WAS?
20 A. YES.
21 Q. ALRIGHT. YOU ALSO TESTIFIED THAT WHEN YOU WERE
22 PRESENT WHEN THE SHOOTING OCCURRED, YOU SAID HE
23 RAISED HIS SHIRT AND YOU SAW A GUN?
24 A. YES.
25 Q. IS THAT RIGHT?

CROSS, IN CAMERA - RICHARD TERRELL PARKER BY
GLEN WALTERS

56

1 Q. YES.

2 Q. ALRIGHT. AND IN ADDITION TO THAT, YOU SAW HIM
3 AROUND THE CLUB WHILE YOU WERE THERE?

4 A. YES.

5 Q. ALRIGHT. WHEN YOU ARRIVED AT THE CLUB, WHO DID
6 YOU ARRIVE WITH, OR WHO DID YOU DRIVE IN WITH?

7 A. TROY BENJAMIN.

8 Q. TROY BENJAMIN. ALRIGHT, AND YOU KNEW WHO LE LE
9 WAS WHEN YOU ARRIVED THERE AND YOU SAW HIM?

10 A. NO.

11 Q. ALRIGHT. BUT YOU HAD SEEN HIM AROUND?

12 A. I'D SEEN HIM AROUND.

13 Q. ALRIGHT. BUT YOU COULD CLEARLY IDENTIFY WHO THIS
14 INDIVIDUAL IS?

15 A. YES.

16 MR. WALTERS: ALRIGHT. YOUR HONOR,
17 I HAVE NO FURTHER QUESTIONS.

18 THE COURT: ANYTHING ELSE FROM THE
19 STATE?

20 SOLICITOR PASCOE: NO, YOUR HONOR.

21 THE COURT: YOU MAY BE SEATED.
22 THANK YOU, SIR. I'M AFRAID YOU'LL HAVE TO WAIT OUTSIDE
23 ALSO.

24 SOLICITOR PASCOE: BECAUSE --YES,
25 SIR. HE CAN ACTUALLY -- YEAH, YOU NEED TO WAIT OUTSIDE.

1 THANK YOU.

2 THE COURT: ANYTHING ELSE FROM THE
3 STATE?

4 SOLICITOR PASCOE: IF YOU WANT ME TO
5 CALL THE DETECTIVE, THAT WILL BE THE LAST WITNESS FOR
6 THIS LINEUP.

7 MR. WALTERS: IS THIS WITNESS UNDER
8 SUBPOENA, YOUR HONOR?

9 SOLICITOR PASCOE: YES.

10 MR. WALTERS: OKAY.

11 THE COURT: THAT'S UP TO YOU,
12 SOLICITOR.

13 MR. WALTERS: AND I BELIEVE WE
14 SERVED HIM, TOO.

15 SOLICITOR PASCOE: I CALL DETECTIVE
16 RIVERS.

17 THE COURT: WELL, ALRIGHT, PUT HIM
18 UP THERE. I MEAN, I DON'T THINK NEAL V. BIGGERS APPLIES
19 TO THIS SITUATION.

20 SOLICITOR PASCOE: I DON'T EITHER,
21 BUT A LOT OF JUDGES MAKE ME DO IT. THAT'S WHY I THINK --

22 -

23 THE COURT: PUT HIM UP AND, MR.
24 WALTERS, I'LL BE GLAD TO LET YOU CROSS-EXAMINE HIM, BUT
25 I REALLY DON'T THINK THE NEAL V. BIGGERS PROCEDURE

1 APPLIES, WHEN HE SAYS THAT HE KNEW THE DEFENDANT PRIOR.
2 TO THIS INCIDENT. SO, BUT DO YOU WANT TO CROSS-EXAMINE
3 THE DETECTIVE?

4 MR. WALTERS: I'D LOVE TO CROSS-
5 EXAMINE THE DETECTIVE, AND AS THE CASE EVOLVES, OF
6 COURSE, I BELIEVE YOUR HONOR WILL SEE HOW NEAL V.
7 BIGGERS WAS APPLICABLE HERE.

8 THE COURT: ALRIGHT, THAT'S FINE.
9 YOU CAN EXAMINE HIM IF YOU'D LIKE.
10 (Whereupon, the witness,
11 BOBBY RIVERS,
12 is duly sworn.)

13 CLERK: YOU MAY BE SEATED, AND
14 PLEASE STATE YOUR FULL NAME.

15 WITNESS: DETECTIVE BOBBY RIVERS.
16 (NOTE: Blank lines on this page do not indicate any
17 part of record has been omitted. Headers on testimony
18 pages and hard page breaks between testimony are now
19 required by the Court. See next ensuing page for
20 sequential continuation of record.)

DIRECT, IN CAMERA-BOBBY RIVERS BY MR. WALTERS

59

1 DIRECT EXAMINATION, IN CAMERA, OF BOBBY RIVERS

2 BY MR. WALTERS:

3 Q. DETECTIVE RIVERS, WHEN DID YOU FIRST BECOME
4 INVOLVED IN THIS CASE?

5 A. BACK IN DECEMBER -- BACK IN TWO THOUSAND AND TWO.

6 Q. YES, SIR, I BELIEVE DECEMBER NINTH ON THAT
7 PARTICULAR NIGHT YOU WERE INVOLVED IN THAT CASE?

8 A. CORRECT.

9 Q. ALRIGHT. AND DID YOU HAVE AN OPPORTUNITY TO TALK
10 TO RICHARD TERRELL PARKER?

11 A. CORRECT.

12 Q. ALRIGHT, AND WHAT DID MR. PARKER TELL YOU?

13 A. HE TOLD ME THAT A GUY BY THE NAME OF LE LE SHOT
14 HIS FRIEND, ALFREDO.

15 Q. OKAY. AND THAT'S WHEN YOU PREPARED THE PHOTO ID
16 LINEUP?

17 A. CORRECT.

18 Q. OKAY. AND WAS THAT DONE AT THE POLICE DEPARTMENT?

19 A. CORRECT.

20 Q. ALRIGHT. AND HE CLEARLY PICKED OUT LE LE?

21 A. CORRECT.

22 MR. WALTERS: ALRIGHT. YOUR HONOR,
23 I HAVE NO FURTHER QUESTIONS.

24 THE COURT: THANK YOU, SIR, YOU MAY
25 STEP DOWN.

1 ANYTHING ELSE FROM THE STATE?

2 SOLICITOR PASCOE: THAT'S ALL I
3 HAVE, YOUR HONOR.

4 THE COURT: ALRIGHT, ANY TESTIMONY
5 OR EVIDENCE?

6 MR. WALTERS: NO, SIR, YOUR HONOR.

7 THE COURT: I'LL BE GLAD TO HEAR
8 YOUR ARGUMENT.

9 MR. WALTERS: MAY IT PLEASE THE
10 COURT.

11 THE COURT: YES, SIR.

12 MR. WALTERS: YOUR HONOR, IN THIS
13 PARTICULAR CASE, NEAL V. BIGGERS, I BELIEVE THAT THE
14 TESTIMONY THAT'S BEEN GIVEN BY RICHARD TERRELL PARKER,
15 OF COURSE, IS NOT, DOES NOT COINCIDE WITH HIS STATEMENT
16 THAT WE RECEIVED. WE WERE NOT AWARE OF THE FACT THAT HE
17 WAS GOING TO TESTIFY THAT HE HAD SEEN HIM BEFORE OR
18 AROUND SOMEWHERE. THE STATEMENT THAT WE RECEIVED SIMPLY
19 SAID, A MAN SHOT SOMEONE. AND IN THIS PARTICULAR CASE,
20 THE NEAL V. BIGGERS HEARING WAS APPROPRIATE UNDER THOSE
21 CIRCUMSTANCES, HAVING JUST THAT STATEMENT.

22 THE COURT: ALRIGHT. AND YOUR
23 MOTION IS TO SUPPRESS HIS IDENTIFICATION TESTIMONY?

24 MR. WALTERS: YES, SIR.

25 THE COURT: DO YOU WANT TO BE HEARD

1 FURTHER ON THAT?

2 MR. WALTERS: NO, SIR, YOUR HONOR.

3 THE COURT: ALRIGHT, THAT MOTION IS
4 DENIED. I DON'T SEE ANY EVIDENCE THAT THERE WAS
5 ANYTHING SUGGESTIVE AT ALL, MUCH LESS, UNNECESSARILY
6 SUGGESTIVE. I DON'T SEE ANY EVIDENCE THAT THERE WAS --
7 BASED ON HIS TESTIMONY THAT HE KNEW HIM, HAD SPOKEN WITH
8 HIM PRIOR TO THIS INCIDENT, AND HAD RECOGNIZED HIM
9 IMMEDIATELY, EVEN BEFORE THE INCIDENT. I DON'T THINK
10 THERE'S ANYTHING THAT COULD GIVE RISE TO ANY
11 MISIDENTIFICATION, BASED ON THE TESTIMONY THAT I'VE
12 HEARD. SO, IN REGARDS TO THIS WITNESS, THAT MOTION IS
13 DENIED.

14 MR. WALTERS: THANK YOU, YOUR HONOR.

15 THE COURT: IS THERE A SECOND
16 WITNESS?

17 SOLICITOR PASCOE: THERE IS, YOUR
18 HONOR, BUT I'M NOT GOING TO CALL HIM UNTIL MAYBE AFTER
19 LUNCH. AND HE'S DOWNSTAIRS, WE CAN START WITHOUT HIM,
20 I WON'T MENTION HIM.

21 THE COURT: ALRIGHT, LET'S DO THAT,
22 THEN. BRING THE JURY -- ANYTHING ELSE BEFORE WE BRING
23 OUT THE JURY?

24 SOLICITOR PASCOE: CAN I HAVE JUST
25 SIXTY SECONDS, I JUST WANT TO ---

1 THE COURT: ALRIGHT. FROM THE
2 DEFENSE?

3 MR. WALTERS: NO, SIR, YOUR HONOR.

4 SOLICITOR PASCOE: ARE WE GOING TO
5 GO RIGHT INTO OPENINGS AND CALL THE FIRST WITNESS?

6 THE COURT: YES, SIR.

7 SOLICITOR PASCOE: I CAN GO AHEAD
8 AND GET SOME STUFF MARKED DOWN, TO GET THAT OUT OF THE
9 WAY, TOO, IF YOU WANT TO.

10 THE COURT: ALRIGHT, THAT WILL BE
11 GOOD. GET IT MARKED. LET MR. WALTERS SEE IT, AND IF HE
12 CAN AGREE TO ADMISSION OF IT, FINE. IF NOT, WE'LL JUST
13 MARK IT FOR IDENTIFICATION. JUST DO WHAT YOU'RE GOING
14 TO DO BEFORE LUNCH, PLEASE, AND THEN THE OTHERS YOU CAN
15 DO WHEN WE BREAK FOR LUNCH.

16 SOLICITOR PASCOE: WHAT TIME DO YOU
17 THINK WE'LL BREAK, YOUR HONOR?

18 THE COURT: ONE O'CLOCK, OR CLOSE TO
19 ONE O'CLOCK.

20 SOLICITOR PASCOE: YES, SIR.

21 (State's Exhibits One and Two,
22 Photo lineups, marked for identification.
23 State's Exhibits Three through Seven,
24 Photos, marked for identification.)

25 (Recess)

1 THE COURT: IS THE STATE READY?

2 SOLICITOR PASCOE: THE STATE'S
3 READY.

4 THE COURT: IS DEFENSE READY?

5 MR. WALTERS: YES, YOUR HONOR.

6 THE COURT: ALRIGHT, BRING IN THE
7 JURY, PLEASE.

8 (Whereupon, the following
9 takes place in the
10 presence of the jury.)

11 BAILIFF: . YOUR HONOR, ALL OF THE
12 JURORS AND THE ALTERNATE ARE SEATED IN THE JURY BOX.

13 THE COURT: THANK YOU, MA'AM.

14 LADIES AND GENTLEMEN, IF YOU WOULD
15 STAND, PLEASE, THE CLERK WILL ADMINISTER TO YOU THE
16 JUROR'S OATH AT THIS TIME.

17 CLERK: RAISE YOUR RIGHT HAND.
18 (Whereupon, the jurors are duly
19 sworn and impaneled.)

20 CLERK: YOU MAY BE SEATED.

21 THE COURT: THANK YOU VERY MUCH.

22 I DON'T KNOW HOW MANY OF Y'ALL MIGHT
23 HAVE SERVED ON A JURY. I'M GOING TO GIVE YOU A KIND OF
24 A BRIEF OUTLINE OF HOW WE WILL PROCEED IN THIS TRIAL.

25 AS I TOLD YOU EARLIER, THE STATE

1 BROUGHT THESE CHARGES, THE STATE HAS THE BURDEN OF
2 PROOF, OF PROVING THESE CHARGES BY WHAT WE CALL BEYOND
3 A REASONABLE DOUBT. THE DEFENDANT DOES NOT HAVE TO
4 PROVE ANYTHING. SO, HAVING THE BURDEN, THE STATE GOES
5 FIRST. WHAT WE'LL HAVE FIRST IS THE OPENING STATEMENTS
6 OF THE ATTORNEYS. EACH ONE WILL GIVE YOU A BRIEF
7 OUTLINE OF WHAT THEY THINK THE EVIDENCE IS GOING TO SHOW
8 IN THIS CASE, KIND OF SO YOU'LL KNOW WHAT TO EXPECT IN
9 THE CASE. THEN THE STATE WILL PUT UP ITS CASE. THEY
10 WILL CALL WITNESSES, I'M SURE THEY WILL PROBABLY HAVE
11 SOME EXHIBITS TO INTRODUCE. ONCE THE STATE FINISHES
12 PUTTING UP ALL OF ITS EVIDENCE, THEN THE DEFENDANT HAS
13 AN OPPORTUNITY TO DO SO, BUT AS I TOLD YOU, HE DOES NOT
14 HAVE TO TESTIFY, HE DOES NOT HAVE TO OFFER ANY EVIDENCE,
15 BUT IF HE CHOOSES TO DO SO, HE WOULD DO THAT WHEN THE
16 STATE FINISHES PUTTING UP THEIR CASE. THEN AFTER YOU'VE
17 HEARD ALL OF THE TESTIMONY AND THE EVIDENCE IN THE CASE
18 THE ATTORNEYS WILL COME BACK TO YOU AND THEY WILL MAKE
19 THEIR CLOSING ARGUMENTS IN THE CASE. THEY WILL TRY TO
20 PERSUADE YOU TO SEE THE FACTS IN THIS CASE IN FAVOR OF
21 THEIR RESPECTIVE POSITIONS.

22 YOU ARE THE JUDGES OF THE FACTS,
23 WHICH MEANS YOU DETERMINE THE TRUTH, YOU DETERMINE WHAT
24 ACTUALLY HAPPENED UNDER THESE CIRCUMSTANCES THAT YOU'RE
25 GOING TO HEAR ABOUT. I'M THE JUDGE OF THE LAW, I

1 PRESIDE, I RULE ON EVIDENTIARY MATTERS OR OTHER LEGAL
2 MATTERS THAT MIGHT COME UP, AND ONCE YOU'VE HEARD ALL OF
3 THE TESTIMONY AND EVIDENCE THAT'S BEEN INTRODUCED, AND
4 YOU'VE HEARD THE ATTORNEYS' CLOSING ARGUMENTS, THEN I
5 WILL CHARGE YOU ON THE LAW. I WILL TELL YOU WHAT THE LAW
6 IS IN SOUTH CAROLINA THAT MIGHT APPLY TO THE FACTS IN
7 THIS CASE. AND WHETHER OR NOT IT APPLIES, OF COURSE,
8 DEPENDS UPON WHAT YOU DETERMINE THE FACTS TO BE, BECAUSE
9 AS I SAID, YOU ARE THE JUDGES OF THE FACTS.

10 THEN AFTER I HAVE CHARGED YOU ON THE
11 LAW, YOU WILL BEGIN YOUR DELIBERATIONS, BUT NOT UNTIL
12 THAT TIME. SO, REMEMBER WHAT I TOLD YOU. YOU NEED ALL
13 OF THIS INFORMATION BEFORE YOU CAN BEGIN TALKING ABOUT
14 THE CASE.

15 BUT PLEASE GIVE THE ATTORNEYS YOUR
16 ATTENTION NOW AS THEY ADDRESS YOU, AND THEN WE'LL BEGIN
17 OUR TESTIMONY. FIRST MR. PASCOE AND THEN MR. WALTERS.

18 MR. PASCOE.

19 SOLICITOR PASCOE: THANK YOU, YOUR
20 HONOR, MAY IT PLEASE THE COURT.

21 OPENING STATEMENT BY SOLICITOR PASCOE

22 MALICE, A COLD, EVIL, MALIGNANT
23 HEART, A PERSON VOID OF SOCIAL RESPONSIBILITY. THESE
24 ARE THE ELEMENTS NECESSARY TO COMMIT MURDER. AND DURING
25 THE EARLY MORNING HOURS OF DECEMBER THE NINTH, TWO

1 THOUSAND AND TWO, THIS WAS THE DEFINITION OF THAT MAN
2 RIGHT THERE, THE DEFENDANT, LAVON MINTZ. AS YOU'LL SEE
3 AND HEAR FROM THE EVIDENCE, THAT WAS THE DEFINITION OF
4 THAT MAN WHEN HE WALKED UP TO ALFREDO LEWIS OUTSIDE OF
5 A NIGHTCLUB CALLED THE PUB, HE WALKED UP TO HIM THAT
6 MORNING, PULLED OUT A GUN, AND SHOT HIM TWO TIMES, ONCE
7 IN THE HIP AND ONCE THROUGH THE CHEST -- AN ABSOLUTELY
8 SENSELESS ACT OF VIOLENCE HERE IN THE CITY OF
9 ORANGEBURG. AND I SUBMIT, WHEN THE DEFENDANT KILLED
10 ALFREDO LEWIS ON DECEMBER THE NINTH, HE THOUGHT NO ONE
11 WOULD CARE. WELL, HE WAS WRONG. AND ALL I'M ASKING OF
12 YOU THIS WEEKEND -- THIS WEEK, LADIES AND GENTLEMEN, IS
13 THAT YOU CARE, AND THAT YOU HOLD THAT MAN ACCOUNTABLE
14 FOR WHAT HE DID.

15 LADIES AND GENTLEMEN, AGAIN, MY NAME
16 IS DAVID PASCOE, AND I'M THE SOLICITOR HERE IN
17 ORANGEBURG COUNTY. AND IT IS AN ABSOLUTELY PRIVILEGE TO
18 BE UP HERE IN FRONT OF YOU THIS WEEK.

19 ALSO SEATED AT THE STATE'S TABLE AND
20 TRYING THIS CASE WITH ME ARE MY ASSISTANT, TOMMY SCOTT,
21 AND DETECTIVE BOBBY RIVERS. DETECTIVE RIVERS IS THE
22 LEAD INVESTIGATOR ON THIS CASE, HE WORKS WITH THE
23 ORANGEBURG POLICE DEPARTMENT. AND SEATED BEHIND THE
24 STATE'S TABLE ARE MANY OF THE FAMILY MEMBERS OF ALFREDO
25 LEWIS.

1 MOST IMPORTANTLY, IN YELLOW, MS.
2 BARBARA SINGLETON, ALFREDO'S MOTHER. AND ON BEHALF OF
3 MS. SINGLETON AND THE STATE OF SOUTH CAROLINA, I WANT TO
4 THANK EACH AND EVERY ONE OF YOU FOR YOUR SERVICE. IT'S
5 OFTEN SAID THAT JURY DUTY IS THE MOST IMPORTANT DUTY YOU
6 CAN PERFORM FOR YOUR COUNTRY, AND I'D CERTAINLY CONCUR
7 WITH THAT.

8 AND AS JUDGE WILLIAMS TOLD YOU, THE
9 DEFENDANT IS CHARGED WITH ONE COUNT OF MURDER. AND
10 BEFORE I GO FURTHER INTO WHAT SOME MORE OF THE FACTS ARE
11 GOING TO BE IN THIS CASE, I WANT TO VERY BRIEFLY GO OVER
12 SOME OF THE LAW. I PROMISE TO BE BRIEF BECAUSE YOU'RE
13 GOING TO HAVE A NUMBER OF OPPORTUNITIES TO HEAR ABOUT
14 THE LAW, THE MOST IMPORTANT TIME COMING WHEN JUDGE
15 WILLIAMS CHARGES YOU ON THE LAW BEFORE YOU HAVE TO
16 RENDER YOUR VERDICT.

17 BUT MURDER, WHILE IT'S ONE OF THE
18 MOST HEINOUS CRIMES A PERSON CAN COMMIT, IT HAS THE
19 SHORTEST AND SIMPLEST DEFINITION OF ANY CRIME IN OUR
20 BOOKS. MURDER IS DEFINED AS THE UNLAWFUL KILLING OF
21 ANOTHER WITH MALICE AFORETHOUGHT, EITHER EXPRESSED OR
22 IMPLIED. THAT'S IT. THE UNLAWFUL KILLING OF ANOTHER
23 WITH MALICE AFORETHOUGHT.

24 THUS, TO PROVE MURDER ALL YOU HAVE
25 TO ESTABLISH IS MALICE. AND MALICE HAS A NUMBER OF

1 DEFINITIONS. IT'S A PERSON VOID OF SOCIAL
2 RESPONSIBILITY. IT'S RECKLESS DISREGARD FOR THE WELFARE
3 OF ANOTHER. IT'S AN INTENTIONAL ACT OF VIOLENCE. IF YOU
4 TAKE A GUN AND YOU SHOOT SOMEONE, IT'S MALICE. AND IF
5 THAT PERSON DIES IT'S MURDER. IT'S AS SIMPLE AS THAT,
6 THE UNLAWFUL KILLING OF ANOTHER WITH MALICE
7 AFORETHOUGHT.

8 AND THE STANDARD OF PROOF OF WHICH
9 THE STATE MUST PROVE THE DEFENDANT'S GUILT IS JUST PROOF
10 BEYOND A REASONABLE DOUBT. THIS PHRASE MEANS EXACTLY AS
11 IT SOUNDS. IT'S NOT PROOF BEYOND ANY DOUBT, IT'S NOT
12 PROOF BEYOND ANY POSSIBLE DOUBT, IT'S PROOF BEYOND A
13 REASONABLE DOUBT. THE SIMPLE FACT OF THE MATTER IS, WE
14 HAVE DOUBTS ABOUT EVERYTHING IN THIS WORLD. SOME MAY
15 DOUBT WHETHER THE EARTH REVOLVES AROUND THE SUN, BUT YOU
16 HAVE TO ASK YOURSELF, IS IT REASONABLE? AND IN ESSENCE,
17 WHAT PROOF BEYOND A REASONABLE DOUBT MEANS IS, AFTER
18 YOU'VE LOOKED AT ALL OF THE EVIDENCE, NOT JUST A PART OF
19 THE EVIDENCE, OR A PIECE OF THE EVIDENCE, AFTER YOU'VE
20 LOOKED AT ALL OF IT, IF YOU'RE FIRMLY CONVINCED, JUST
21 FIRMLY CONVINCED OF THE DEFENDANT'S GUILT YOU MUST FIND
22 HIM GUILTY. AND I SUBMIT THE EVIDENCE WILL LEAVE YOU
23 MUCH, MUCH MORE THAN FIRMLY CONVINCED.

24 THE EVIDENCE WILL BE THAT DURING THE
25 EARLY MORNING HOURS OF MONDAY, DECEMBER NINTH, TWO

1 THOUSAND AND TWO, ALFREDO LEWIS WAS AT THE PUB. IT'S A
2 NIGHT CLUB IN GROVE PARK, RIGHT BEHIND THE BLOCK BUSTERS
3 IN ORANGEBURG. HE WAS THERE, HE WAS HAVING A GOOD TIME.
4 HE WAS WITH HIS FRIENDS. HE WAS DANCING. AND YOU'RE
5 GOING TO HEAR THAT THE DEFENDANT, LAVON MINTZ, WHO WENT
6 BY LE LE, WAS ALSO THERE WITH HIS FRIENDS. THAT AT ONE
7 POINT IN THE NIGHT, INSIDE THE PUB, ALFREDO GOT INTO A
8 VERBAL ARGUMENT WITH SOMEONE BY THE NAME OF ANDRE
9 GOODEN. ANDRE GOODEN IS A FRIEND OF THE DEFENDANT'S.
10 IT WAS NOTHING PHYSICAL, THEY WEREN'T THROWING FISTS OR
11 ANYTHING, BUT ANDREW GOODEN AND THE VICTIM GOT INTO A
12 VERBAL ALTERCATION. YOU'RE GOING TO HEAR HOW THE
13 DEFENDANT GOT INVOLVED IN THAT ALTERCATION INSIDE THE
14 BAR. THEY CLOSED THE NIGHT CLUB AROUND TWO O'CLOCK THAT
15 MORNING, EVERYBODY WAS TOLD TO GO OUTSIDE. YOU'RE GOING
16 TO HEAR HOW ALFREDO AND ANDRE GOODEN AGAIN GOT INTO JUST
17 A VERBAL ALTERCATION. BUT THIS TIME THE DEFENDANT
18 WALKED UP TO ALFREDO LEWIS, PULLED OUT A GUN, HELD IT
19 UP, SAID SOME COMMENTS THAT YOU'RE GOING TO HEAR ABOUT,
20 AND SHOT HIM TWO TIMES, AGAIN, ONCE IN THE HIP AND ONCE
21 THROUGH THE CHEST.

22 AFTER THOSE SHOTS WERE FIRED
23 EVERYONE TOOK OFF. THEY TOOK OFF RUNNING, I SUBMIT JUST
24 LIKE THE DEFENDANT HAD HOPED, HOPING THERE WOULD BE NO
25 WITNESSES. WELL, HE WAS WRONG. YOU'RE GOING TO HEAR

1 THAT THERE WAS SOMEBODY THERE FOR ALFREDO LEWIS ON
2 DECEMBER NINTH, AND IT'S THE SAME PERSON WHO'S HERE FOR
3 ALFREDO THIS WEEK, HIS BEST FRIEND, TERRELL PARKER. AND
4 TERRELL IS GOING TO TELL YOU WHAT HE SAW. TERRELL
5 IMMEDIATELY RUSHED ALFREDO TO THE HOSPITAL. HE DIDN'T
6 KNOW IT, BUT IT WAS ALREADY TOO LATE BECAUSE OF THE
7 INJURIES ALFREDO HAD. HE TOOK HIM TO THE HOSPITAL, AND
8 HE DIDN'T JUST DROP HIM OFF, HE STAYED AT THE HOSPITAL
9 TO SEE HOW HIS FRIEND WAS GOING TO DO. AND HE TALKED TO
10 THE POLICE, EVEN BEFORE HE LEARNED AROUND FIVE O'CLOCK
11 THAT MORNING THAT ALFREDO HAD DIED. AND HE TOLD THE
12 POLICE THAT THE PERSON WHO KILLED HIS FRIEND WAS LE LE.

13 NOW, THIS IS JUST SOME, SOME OF THE
14 EVIDENCE THAT YOU'RE GOING TO HEAR ABOUT IN THIS CASE.

15 IN CLOSING, I WANT TO THANK YOU,
16 EACH AND EVERY ONE OF YOU AGAIN FOR YOUR SERVICE. AND
17 IF I COULD, I WANT TO THROW ONE THING OUT AT YOU, WHICH
18 IS THAT WHILE THERE ARE NO CLASSES ON HOW TO BE A GOOD
19 JUROR, I SUBMIT, EACH AND EVERY ONE OF YOU HAVE BEEN
20 TRAINING FOR THIS JOB YOUR WHOLE LIFE, SOME OF YOU IN
21 EDUCATION, SOME OF YOU AS CUSTODIANS, AS PARENTS, AND
22 IT'S THIS DIVERSITY OF EXPERIENCE THAT YOU'RE ASKED TO
23 BRING TOGETHER, AND USE YOUR COMMON SENSE, AND RENDER A
24 VERDICT.

25 VERDICT COMES FROM A LATIN WORD,

1 VEREDICTO, IT MEANS TO SPEAK THE TRUTH. ALL I'M ASKING
2 YOU THIS WEEK IS THAT YOU TELL 'US WHAT THE TRUTH IS
3 ABOUT DECEMBER THE NINTH, TWO THOUSAND AND TWO. AND I
4 SUBMIT, IF YOU DO THAT, THE ONLY TRUTHFUL VERDICT YOU
5 CAN RENDER IS THAT THE DEFENDANT IS GUILTY.

6 THANK YOU.

7 THE COURT: THANK YOU, SIR.

8 MR. WALTERS.

9 MR. WALTERS: MAY IT PLEASE THE
10 COURT.

11 THE COURT: YES, SIR.

12 MR. WALTERS: SOLICITOR PASCOE.

13 OPENING STATEMENT BY MR. WALTERS

14 HIS HONOR, WHEN HE WAS QUALIFYING
15 THE JURY, HE ATTEMPTED TO ASK QUESTIONS ABOUT WHETHER
16 YOU KNEW THE MEMBERS OF THE PROSECUTION OR THE DEFENSE.
17 HE QUESTIONED AS TO WHETHER YOU KNEW SOMETHING ABOUT THE
18 CASE, AND ANY OF THE WITNESSES IN THE CASE. AND MOST
19 IMPORTANTLY, WHAT HE WANTED YOU TO DO WAS EVALUATE THE
20 FACTS AND THE EVIDENCE THAT WILL BE PRESENTED BEFORE
21 YOU. AND MOST IMPORTANTLY, WHEN YOU TOOK YOUR OATH TO
22 SERVE AS JURORS, THAT YOU WOULD HOLD THE STATE TO THEIR
23 BURDEN OF PROVING THEIR CASE BEYOND A REASONABLE DOUBT.

24 NOW, IN THIS PARTICULAR CASE LET'S
25 CAREFULLY EVALUATE THE EVIDENCE. WE WILL SHOW, AND WE

1 WILL PROVE TO YOU THE EVIDENCE THAT WAS SUBMITTED BY THE
2 DEPARTMENT OF PUBLIC SAFETY IN THIS PARTICULAR CASE IS
3 QUESTIONABLE. MOST IMPORTANTLY, LET'S START FROM THE
4 BEGINNING.

5 THE EVIDENCE WILL SHOW THAT THIS
6 FIRST WITNESS THAT THEY REFER TO, MR. RICHARD TERRELL
7 PARKER, THIS INDIVIDUAL THAT THEY REFER TO AS SOMEONE
8 THAT WAS THERE, THAT SAW THIS CRIME WHEN IT WAS
9 COMMITTED, ON THAT PARTICULAR NIGHT DETECTIVE BOBBY
10 RIVERS TOOK HIM ASIDE, TOOK HIM DOWN TO THE POLICE
11 DEPARTMENT, AND SAID, GIVE ME A STATEMENT. AND MR.
12 RICHARD TERRELL PARKER, WHO'S STANDING RIGHT OUTSIDE
13 THOSE DOORS, HE GAVE A STATEMENT, BUT HE NEVER NAMED
14 LAVON MINTZ AS THE SHOOTER IN THIS PARTICULAR CASE. THE
15 EVIDENCE WILL SHOW THAT IN THIS PARTICULAR CASE HE NEVER
16 NAMED ANY INDIVIDUAL AS THE SHOOTER IN THIS PARTICULAR
17 CASE. THE EVIDENCE WILL SHOW THAT DETECTIVE BOBBY
18 RIVERS, AFTER HE DETERMINED THAT THIS STATEMENT, AND YOU
19 WILL SEE THIS STATEMENT GIVEN BY RICHARD TERRELL PARKER,
20 WHERE HE NAMES NO INDIVIDUAL AS THE SHOOTER, DETECTIVE
21 RIVERS, HE FIGURED THAT WASN'T GOOD ENOUGH. SO, THEY
22 WENT BACK AND THEY TALKED TO RICHARD TERRELL PARKER
23 AGAIN, THE EVIDENCE WILL SHOW, AND WE WILL PROVE TO YOU.
24 AND THIS TIME INSTEAD OF RICHARD TERRELL PARKER, A MAN
25 THAT CAN READ AND CAN WRITE, AND MADE IT CLEAR THAT HE

1 CAN READ AND WRITE, THEY WENT AHEAD, AND THEY SAID,
2 LET'S WRITE THE STATEMENT FOR YOU. AND DETECTIVE RIVERS
3 SAT DOWN WITH DETECTIVE SMOAK, AND THEY DECIDED, WE'RE
4 GOING TO WRITE ANOTHER STATEMENT FOR RICHARD TERRELL
5 PARKER. AND YOU'RE GOING TO SEE THE SECOND STATEMENT
6 THAT THEY PUT TOGETHER. BUT IN THE SECOND STATEMENT,
7 THE EVIDENCE WILL SHOW, AND WE WILL PROVE TO YOU, THIS
8 TIME DETECTIVE RIVERS AND DETECTIVE SMOAK, THEY DECIDED
9 TO NAME AN INDIVIDUAL AS THE SHOOTER IN THIS PARTICULAR
10 CASE. THEY DECIDED TO NAME MR. LAVON MINTZ. IN THIS
11 PARTICULAR CASE THE EVIDENCE WILL SHOW, AND WE WILL
12 PROVE TO YOU THAT THE ORIGINAL STATEMENT GIVEN BY
13 RICHARD TERRELL PARKER IN THIS CASE, IT TALKED OF NO
14 CONFRONTATION IN THE CLUB, BUT THE STATEMENT THAT WAS
15 WRITTEN BY DETECTIVE RIVERS, IT TALKS ABOUT A
16 CONFRONTATION. THE STATEMENT THAT WAS GIVEN BY RICHARD
17 TERRELL PARKER, IT DOESN'T NAME LAVON MINTZ AS THE
18 SHOOTER IN THIS PARTICULAR CASE, BUT THE STATEMENT THAT
19 WAS REWRITTEN BY DETECTIVE RIVERS, IT DOES NAME LAVON
20 MINTZ. THE EVIDENCE WILL SHOW THAT THE ORANGEBURG
21 DEPARTMENT OF PUBLIC SAFETY, THEY DIDN'T FEEL THAT WAS
22 GOOD ENOUGH, SO YOU KNOW WHAT THEY DID? THEY TURNED
23 AROUND AND THEY DECIDED, WE'LL WRITE A THIRD STATEMENT
24 FOR RICHARD TERRELL PARKER, WHO'S GOING TO APPEAR BEFORE
25 YOU TODAY. AND YOU'LL SEE THAT THIRD STATEMENT, WHERE

1 AGAIN, THEY DECIDED TO NAME A DEFENDANT, WHERE THEY
2 ATTEMPTED TO TALK ABOUT A CONFRONTATION WITHIN THE CLUB,
3 WHERE THEY TALKED ABOUT ONGOING ACRIMONIOUS EXCHANGES
4 BETWEEN PEOPLE IN THE CLUB. RICHARD TERRELL PARKER CAN
5 READ AND WRITE, AND RICHARD TERRELL PARKER IS THEIR
6 FIRST WITNESS. AND HE GAVE A STATEMENT. THAT STATEMENT
7 NAMED NO DEFENDANT, IT NAMED NO ONE, NOT LAVON MINTZ OR
8 ANYONE ELSE AS THE SHOOTER IN THIS PARTICULAR CASE.
9 DETECTIVE RIVERS, AFTER HE GOT THIS INFORMATION, AND
10 THEY MANUFACTURED THIS SECOND STATEMENT, AND THAT WASN'T
11 GOOD ENOUGH, AND THEN THEY MANUFACTURED THEIR THIRD
12 STATEMENT, AND THAT WASN'T GOOD ENOUGH, THEN HE DECIDED
13 TO RUN TO A MAGISTRATE'S OFFICE WITH THOSE THREE
14 STATEMENTS, AND HE WENT UNDER OATH AND SAID, I WANT A
15 WARRANT BECAUSE I WANT TO ARREST LAVON MINTZ.

16 THIS SHOOTING OCCURRED ON DECEMBER
17 NINTH, OF TWO THOUSAND TWO. IT IS NOW APRIL OF TWO
18 THOUSAND FIVE. WE FILED A MOTION, THE EVIDENCE WILL
19 SHOW, AND WE WILL PROVE TO YOU, FOR A SPEEDY TRIAL.
20 BECAUSE THE INCONSISTENCIES AND THE CONTRADICTIONS OVER
21 AND OVER AND OVER AGAIN IN THIS PARTICULAR CASE, THEY
22 JUST COULDN'T GET IT TOGETHER. ONE STATEMENT THAT
23 DOESN'T NAME ANYONE, A STATEMENT WRITTEN BY A POLICE
24 OFFICER, AND SOMEHOW HE BELIEVES THAT THIS SHOULD BE
25 MANUFACTURED AND PUT FORTH BEFORE A MAGISTRATE, YOU'LL

1 HAVE TO QUESTION THIS. IN ADDITION TO THAT, THEY WENT
2 OUT AND THEY BEGAN TO LOOK FOR LAVON MINTZ. THEY
3 BROUGHT LAVON MINTZ IN. HE'S BEEN SITTING IN THE JAIL
4 FOR THE LAST ALMOST THREE YEARS. AND THIS PARTICULAR
5 CASE THE EVIDENCE WILL SHOW, AND WE WILL PROVE TO YOU
6 THAT THEIR NEXT WITNESS, MR. RICHARD TERRELL PARKER,
7 HE'S GOING TO COME IN THIS COURTROOM NOW, AND HE'S GOING
8 TO TESTIFY. I ASK THAT YOU COMPARE HIS STATEMENT THAT
9 HE GAVE TO DETECTIVE RIVERS AND THE TESTIMONY HE'S GOING
10 TO GIVE YOU TODAY.

11 IN ADDITION TO THAT THERE WILL BE
12 OTHER WITNESSES THAT THEY REFER TO, THAT TALK ABOUT BOYS
13 GOING OFF ON EACH OTHER, SAYING THINGS TO EACH OTHER
14 WITHIN THAT CLUB, WHAT THEY SAID TO EACH OTHER.

15 IN THIS PARTICULAR CASE THE
16 DEPARTMENT OF PUBLIC SAFETY, THEY HAVE NO GUN, THEY HAVE
17 NO EMPIRICAL DATA, THEY HAVE NO EVIDENCE TO PUT BEFORE
18 YOU TO SUBSTANTIATE THAT LAVON MINTZ COMMITTED ANY TYPE
19 OF MURDER. WHAT THEY HAVE IS A MANUFACTURED STATEMENT
20 BY DETECTIVE RIVERS AND A THIRD STATEMENT BY DETECTIVE
21 RIVERS AND DETECTIVE SMOAK WITH REGARDS TO THIS CASE.

22 THE EVIDENCE WILL SHOW THAT THEY
23 PLAN TO BRING A PATHOLOGIST HERE, AND THAT PATHOLOGIST
24 WILL TELL YOU SOMEONE DIED. WE WILL STIPULATE TO THE
25 FACT THAT SOMEONE DIED. BUT IN THIS PARTICULAR CASE,

1 AFTER DETECTIVE RIVERS WAS BROUGHT INTO QUESTION ABOUT
2 OCCURRED HERE, HE WENT OUT AND GOT A WARRANT BASED ON
3 TWO STATEMENTS THAT WERE DRAFTED BY HIM AND ANOTHER
4 POLICE OFFICER THAT WAS CONTRARY TO THE STATEMENT OF
5 RICHARD TERRELL PARKER. THEY THEN WENT OUT AND BEGAN TO
6 SEARCH. ALMOST FORTY-NINE DAYS LATER, THEY SAID, WELL,
7 WE'VE GOT SOMEONE, WE'VE GOT SOMEONE. WE FILED A MOTION
8 FOR A SPEEDY TRIAL. WE'VE GOT SOMEONE THAT CAN SAY
9 SOMETHING HAPPENED THERE.

10 YOU HAVE TO QUESTION THE
11 INCONSISTENCIES AND THE CONTRADICTIONS OVER AND OVER AND
12 OVER AGAIN. OVER TWO HUNDRED PEOPLE WERE PRESENT WHEN
13 THIS SHOOTING OCCURRED, AND THE ONE INDIVIDUAL THEY'RE
14 GOING TO WALK IN HERE IN FRONT OF YOU THAT GAVE A
15 STATEMENT NAMED NO INDIVIDUAL AS THE SHOOTER. IN FACT,
16 THE INCIDENT REPORT THEY SUBMITTED, THE EVIDENCE WILL
17 SHOW, AND WE WILL PROVE TO YOU, IT NAMED FOUR
18 INDIVIDUALS. FOUR INDIVIDUALS. THREE OF THEM STATED, I
19 REALLY DON'T KNOW, THERE WERE PEOPLE RUNNING EVERYWHERE.
20 AND ONE INDIVIDUAL SIMPLY STATED, I'LL GIVE YOU A
21 WRITTEN STATEMENT, I CAN READ AND WRITE, BUT HE NAMED NO
22 ONE AS THE SHOOTER. ONLY AFTER DETECTIVE RIVERS DECIDED
23 TO WRITE THE STATEMENT, DESPITE THE FACT THAT THIS MAN
24 COULD READ AND WRITE, ONLY AFTER DETECTIVE SMOAK DECIDED
25 TO WRITE THE STATEMENT AGAIN, DID NAMES APPEAR, A

1 CONFRONTATION APPEAR. SO, YOU MUST QUESTION THESE
2 INCONSISTENCIES OVER AND OVER AGAIN.

3 THE EVIDENCE WILL SHOW, AND WE WILL
4 PROVE TO YOU IN THIS PARTICULAR CASE THAT THE ORANGEBURG
5 DEPARTMENT OF PUBLIC SAFETY DOES NOT HAVE THEIR ACT
6 TOGETHER. AND YOU MUST QUESTION WHAT THEY HAVE DONE IN
7 THIS PARTICULAR CASE. IT IS NOW APRIL OF TWO THOUSAND
8 FIVE, AND THE EVIDENCE WILL SHOW THAT THEY HAVE NOT MET
9 THEIR BURDEN.

10 I ASK THAT YOU CAREFULLY EVALUATE
11 THE EVIDENCE, THE TESTIMONY AND THE WITNESSES THAT THEY
12 WILL MARCH IN HERE OVER AND OVER AGAIN, THAT SOMEHOW
13 WILL SOLVE THIS PROBLEM. I ASK THAT YOU CAREFULLY
14 EVALUATE THE TESTIMONY THAT WAS GIVEN, THE STATEMENTS
15 THAT WERE GIVEN ON THE NIGHT OF THIS PARTICULAR
16 INCIDENT. I'M CONFIDENT, AFTER YOU REVIEW THE
17 INFORMATION, AND THE POLICE PROCEDURES THAT WERE
18 EXERCISED UNDER THESE CIRCUMSTANCES, AND YOU CAREFULLY
19 EVALUATE ALL THE TESTIMONY OF EACH OF THESE INDIVIDUALS,
20 AND THEIR FAILURE TO PRODUCE A GUN, THEIR FAILURE TO
21 PRODUCE ANY TYPE OF EMPIRICAL DATA, THEIR FAILURE TO
22 PRODUCE ANY TYPE OR SEMBLANCE OF EVIDENCE THAT CAN
23 SOMEHOW SUBSTANTIATE WHAT OCCURRED HERE, AND WHAT IS
24 OCCURRING IN THIS COURTROOM TODAY -- WE WOULD NOT BE
25 HERE TODAY UNLESS WE FILED A MOTION FOR A SPEEDY TRIAL.

1 SO, I ASK THAT YOU CAREFULLY EVALUATE ALL OF THE
2 EVIDENCE IN THIS PARTICULAR CASE.

3 THANK YOU

4 THE COURT: THANK YOU, SIR. YOU MAY
5 CALL YOU FIRST WITNESS.

6 SOLICITOR PASCOE: THANK YOU, YOUR
7 HONOR, THE STATE CALLS TERRELL PARKER.

8 THE COURT: MR. PARKER, PLEASE.
9 (Whereupon, the witness
10 enters the courtroom.)

11 CLERK: MR. PARKER, IF YOU'LL COME
12 DOWN TO THE FRONT AND TO YOUR RIGHT, AND PLACE YOUR LEFT
13 HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND, PLEASE,
14 SIR.

15 (Whereupon, the witness,
16 RICHARD TERRELL PARKER,
17 is duly sworn.)

18 CLERK: YOU MAY BE SEATED AND STATE
19 YOUR FULL NAME FOR THE COURT RECORD.

20 WITNESS: RICHARD TERRELL PARKER.

21 (NOTE: Blank lines on this page do not indicate any
22 part of record has been omitted. Headers on testimony
23 pages and hard page breaks between testimony are now
24 required by the Court.)

DIRECT - RICHARD TERRELL PARKER BY SOL. PASCOE

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1 DIRECT EXAMINATION OF RICHARD TERRELL PARKER

2 BY SOLICITOR PASCOE:

3 Q. GOOD AFTERNOON, MR. PARKER.

4 A. GOOD AFTERNOON.

5 Q. AND DO YOU GO BY RICHARD OR TERRELL?

6 A. TERRELL.

7 Q. OKAY. SPEAK UP AS BEST YOU CAN BECAUSE THE JURY

8 AND THE JUDGE AND THE COURT REPORTER, MS. HARRY

9 DOT, THEY ALL HAVE TO HEAR YOU. OKAY? YOU HAVE TO

10 SAY YES OR NOT.

11 A. YES.

12 Q. OKAY. HOW OLD ARE YOU, TERRELL?

13 A. TWENTY-FOUR.

14 Q. AND WHERE ARE YOU FROM?

15 A. CORDOVA, SOUTH CAROLINA.

16 Q. OKAY. THAT'S ORANGEBURG COUNTY?

17 A. UH HUH, YES.

18 Q. AND HAVE YOU LIVED IN ORANGEBURG YOUR WHOLE LIFE?

19 A. YES.

20 Q. DO YOU WORK?

21 A. YES.

22 Q. WHERE DO YOU WORK?

23 A. KOYO BEARINGS.

24 Q. AND WHAT TYPE OF WORK DO YOU DO THERE?

25 A. MACHINE OPERATOR.

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1 Q. HOW LONG HAVE YOU BEEN THERE?

2 A. A YEAR.

3 Q. DID YOU KNOW THE VICTIM, ALFREDO LEWIS?

4 A. YES.

5 Q. AND WHAT DID YOU KNOW ALFREDO LEWIS AS?

6 A. FREDO.

7 Q. OKAY. AND HOW LONG HAD YOU KNOWN FREDO?

8 A. SINCE THE SIXTH GRADE.

9 Q. SO, THAT WOULD BE WELL OVER TEN YEARS?

10 A. YEAH.

11 Q. AND HOW CLOSE WERE YOU AND FREDO?

12 A. THAT WAS MY BEST FRIEND.

13 Q. LET ME ASK YOU THIS, HAD YOU EVER SEEN -- DO YOU
14 KNOW THE DEFENDANT, LAVON MINTZ, DID YOU KNOW HIM
15 BY FACE?

16 A. I'D SEEN HIM AROUND.

17 Q. OKAY. HAD YOU SEEN HIM BEFORE EVEN DECEMBER, TWO
18 THOUSAND TWO?

19 A. YES.

20 Q. OKAY. AND DID YOU KNOW WHAT NAME HE WENT BY ON
21 DECEMBER OF TWO THOUSAND TO?

22 A. LE LE.

23 Q. NOW, I WANT TO TAKE YOU TO THE NIGHT OF DECEMBER
24 THE EIGHTH, TWO THOUSAND AND TWO, OKAY, AND INTO
25 THE EARLY MORNING HOURS OF MONDAY, DECEMBER THE

DIRECT - RICHARD TERRELL PARKER BY SOL. PASCOE

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1 NINTH, ALRIGHT, WHERE DID YOU END UP GOING THAT
2 NIGHT?

3 A. TO THE PUB.

4 Q. OKAY. AND WHERE IS THE PUB?

5 A. GROVE PARK, BEHIND BLOCK BUSTERS.

6 Q. RIGHT HERE IN THE TOWN OF ORANGEBURG, IN
7 ORANGEBURG COUNTY?

8 A. YES.

9 Q. AND IS THAT A NIGHT CLUB, THE PUB?

10 A. YES.

11 Q. DID YOU GO WITH ANYONE TO THE PUB THAT NIGHT?

12 A. YES.

13 Q. WHO DID YOU GO WITH?

14 A. TROY BENJAMIN.

15 Q. TROY BENJAMIN?

16 A. UH HUH.

17 Q. OKAY. AND WHO DROVE?

18 A. TROY.

19 Q. OKAY. AND APPROXIMATELY WHAT TIME DID YOU GET TO
20 THE PUB THAT NIGHT, JUST APPROXIMATELY?

21 A. AROUND TEN OR ELEVEN.

22 Q. OKAY. AND THAT WOULD BE, AGAIN, SUNDAY, DECEMBER
23 THE EIGHTH?

24 A. YES.

25 Q. OKAY. AND WAS FREDO AT THE CLUB?

DIRECT - RICHARD TERRELL PARKER BY SOL. PASCOE

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1 A. YES.

2 Q. AND WHERE DID YOU -- WHERE DID YOU SEE FREDO AT
3 THE CLUB?

4 A. HE WAS ON THE DANCE FLOOR.

5 Q. OKAY. I MEAN, HOW WAS HE ACTING, WHAT WAS HIS
6 DEMEANOR LIKE WHEN YOU FIRST SAW HIM?

7 A. HE WAS HAPPY.

8 Q. AND DID YOU AND FREDO END UP HANGING OUT TOGETHER
9 IN THE PUB?

10 A. YES.

11 Q. OKAY. NOW, DID YOU EVER SEE THE DEFENDANT, LAVON
12 MINTZ, INSIDE THE CLUB, LE LE?

13 A. YES.

14 Q. OKAY. DID YOU KNOW WHO HE WAS HANGING OUT WITH
15 THAT NIGHT, OR COULD YOU SEE WHO HE WAS HANGING
16 OUT WITH?

17 A. NOT AT THE TIME.

18 Q. OKAY. DID YOU EVER SEE WHO HE WAS HANGING OUT
19 WITH INSIDE THE CLUB?

20 A. YES.

21 Q. AND WHO WAS HE HANGING OUT WITH?

22 A. HE WAS HANGING OUT WITH ANDRE.

23 COURT REPORTER: WITH WHO?

24 A. ANDRE.

25 COURT REPORTER: ANDRE?

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- 1 Q. DID YOU KNOW ANDRE'S LAST NAME?
- 2 A. NO.
- 3 Q. DID YOU KNOW ANY OF THE OTHER PEOPLE THAT HE WAS
- 4 HANGING OUT WITH THAT NIGHT?
- 5 A. NO.
- 6 Q. WELL, LET ME ASK YOU THIS, DID YOU OR FREDO EVER
- 7 HAVE ANY CONTACT WITH EITHER LAVON MINTZ OR ANY OF
- 8 THE PEOPLE HE WAS HANGING OUT WITH THAT NIGHT
- 9 INSIDE THE PUB?
- 10 A. YES.
- 11 Q. OKAY. AND WHERE DID THAT CONTACT TAKE PLACE?
- 12 A. IN THE BATHROOM.
- 13 Q. OKAY. WHO WAS THAT WITH?
- 14 A. ANDRE.
- 15 Q. OKAY. AND WAS LAVON MINTZ THERE, AS WELL, FOR
- 16 THAT?
- 17 A. YES.
- 18 Q. AND TELL THE JURY WHAT HAPPENED DURING THAT
- 19 CONTACT?
- 20 A. HIM AND -- ANDRE AND GUINYARD WAS ARGUING ABOUT
- 21 SOMETHING.
- 22 Q. NOW, GUINYARD IS SOMEBODY TOTALLY ELSE, I MEAN,
- 23 THAT'S ANOTHER PERSON THAT WAS THERE?
- 24 A. YEAH.
- 25 Q. OKAY. GO AHEAD.

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1 A. AND THEY WAS ARGUING ABOUT SOMETHING. AND WE WAS
2 LEAVING OUT THE BATHROOM, AND ANDRE POINTED AT
3 FREDO AND SAID, AND YOU, NIGGER.

4 Q. OKAY. AND WAS LAVON MINTZ WITH ANDRE WHEN HE DID
5 THAT?

6 A. YES.

7 Q. DID YOU HAVE ANY IDEA WHAT HE WAS TALKING ABOUT?

8 A. NO.

9 Q. WAS ANYTHING ELSE SAID AT THAT TIME?

10 A. NO. WE WALKED OUT.

11 Q. AND WHERE DID YOU GO AFTER Y'ALL WALKED OUT OF THE
12 BATHROOM?

13 A. WE WENT ON THE DANCE FLOOR.

14 Q. AND WHAT HAPPENED, TELL THE JURY WHAT HAPPENED AS
15 Y'ALL WERE OUT ON THE DANCE FLOOR?

16 A. AS WE WAS ON THE DANCE FLOOR I STARTED SEEING
17 PEOPLE LOOKING AT US FROM ALL AROUND THE ROOM.
18 AND THEN THE SECURITY GUARDS WALKING UP TO US AND
19 SURROUNDED US. AND THAT'S WHEN I SAID, LET'S GO.

20 Q. OKAY. NOW, LET ME ASK YOU THIS, HAD YOU OR FREDO
21 PICKED ANY FIGHTS?

22 A. NO.

23 Q. WERE YOU GETTING VIOLENT AT ALL?

24 A. NO.

25 MR. WALTERS: YOUR HONOR, I'M GOING

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1 TO OBJECT, HE'S LEADING THE WITNESS.

2 THE COURT: SUSTAINED.

3 Q. HOW WERE Y'ALL ACTING OUT ON THE DANCE FLOOR?

4 A. WE WAS JUST HAPPY, DANCING.

5 Q. OKAY. CAUSING ANY TROUBLE AT ALL?

6 A. NO.

7 MR. WALTERS: I WOULD OBJECT, YOUR
8 HONOR, HE'S LEADING THE WITNESS.

9 SOLICITOR PASCOE: THAT'S JUST A
10 PRELIMINARY QUESTION. HOW ---

11 THE COURT: THAT'S LEADING THE
12 WITNESS.

13 SOLICITOR PASCOE: OKAY.

14 Q. WAS ANYONE ELSE ACTING UP INSIDE THE BAR?

15 A. WELL, YEAH. ANDRE AND GUINYARD WAS ARGUING.

16 Q. UH HUH. NOW, YOU TOLD THE JURY YOU FELT
17 UNCOMFORTABLE. WHY DID YOU FEEL UNCOMFORTABLE?

18 A. BECAUSE THE SECURITY GUARDS STARTED SURROUNDING
19 US.

20 Q. OKAY. AND WHAT DID THEY DO WITH Y'ALL?

21 A. THEY JUST STAND THERE RIGHT BY US.

22 Q. OKAY. WHERE DID Y'ALL END UP GOING?

23 A. TO THE CAR.

24 Q. OKAY. SO, OUTSIDE THE PUB?

25 A. YEAH.

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1 Q. TELL THE JURY WHAT HAPPENED AS Y'ALL WENT OUT TO
2 THE CAR?

3 A. WE WENT TO THE CAR, I SAID, LET ME DRIVE, BECAUSE
4 HE HAD BEEN DRINKING. SO, I GOT -- WE GOT IN THE
5 CAR, AND WE WAS ABOUT TO LEAVE THE PUB BUT WE
6 NEVER LEFT THE PARKING LOT.

7 Q. AND JUST TO GET CLEAR, NOW, WHO, WHO WAS WITH YOU
8 LEAVING THE PUB?

9 A. ME AND FREDO.

10 Q. OKAY. AND WHOSE CAR WERE YOU DRIVING THEN?

11 A. FREDO'S CAR.

12 Q. AND YOU WERE GOING TO DRIVE, YOU TESTIFIED?

13 A. YEAH.

14 Q. HOW MUCH HAD YOU HAD TO DRINK THAT NIGHT?

15 A. I HAD, LIKE, THREE CUPS OF GIN AND JUICE.

16 Q. OKAY. AND THAT'S DURING THE WHOLE COURSE OF THE
17 NIGHT?

18 A. YES.

19 Q. AND APPROXIMATELY, DO YOU KNOW APPROXIMATELY WHAT
20 TIME IT WAS WHEN Y'ALL WERE LEAVING?

21 A. AROUND TWO O'CLOCK.

22 Q. OKAY. AND TELL THE JURY WHAT HAPPENED AS YOU WERE
23 LEAVING AT APPROXIMATELY TWO O'CLOCK?

24 A. AND WE FORGOT THAT WE LEFT OUR FRIEND. SO, WE WENT
25 BACK, CIRCLED BACK AROUND, BUT WE NEVER LEFT THE

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1 PARKING LOT. SO, ANDRE WAS COMING UP FROM BEHIND
2 THE CAR.

3 Q. ANDRE IS THE PERSON YOU TESTIFIED ABOUT EARLIER --

4 -

5 A. YES.

6 Q. --- IN THE BATHROOM? GO AHEAD.

7 A. SO, FREDO WAS, LIKE TIGHT -- HE GOT OUT THE CAR
8 AND THEY STARTED ARGUING. WHEN THEY STARTED
9 ARGUING I JUMPED OUT THE CAR, I WAS GOING TO TRY
10 TO PUT FREDO BACK IN THE CAR. I GOT, LIKE, HALF
11 WAY TO THE TRUNK AND THAT'S WHEN LE LE WALKED UP
12 AND HOLD UP HIS SHIRT, AND SAY, IT THIS A PROBLEM,
13 NIGGER?

14 Q. DID HE HAVE ANYTHING WHEN HE HELD UP HIS SHIRT?

15 A. HE HAD A PISTOL, A REVOLVER.

16 Q. OKAY. AND WHAT HAPPENED NEXT?

17 A. AND SO, I WENT BACK TO THE PASSENGER -- I MEAN,
18 THE DRIVER'S SIDE. I WENT BACK TO THE DRIVER'S
19 SIDE. WHEN I WAS, LIKE, GETTING INTO THE CAR I
20 SEEN HIM HOLD UP THE GUN, LIKE THIS. AND SO,
21 BEFORE I COULD SAY, FREDO, HE'S GOT A GUN, I
22 HEARD, POP, POP, AND HE HAD DONE SHOT HIM TWICE.

23 Q. OKAY. WHO SHOT HIM TWICE?

24 A. LE LE SHOT HIM TWICE.

25 Q. OKAY. HOW FAR WERE YOU, USING ME AS A GAUGE, HOW

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1 FAR WERE YOU FROM LE LE WHEN HE SHOT YOUR FRIEND,
2 FREDO?

3 A. FROM -- BACK UP A LITTLE BIT. ABOUT FROM ---

4 Q. KEEP GOING OR WHAT?

5 A. YEAH, KEEP GOING.

6 Q. OKAY.

7 A. FROM ABOUT RIGHT THERE.

8 Q. OKAY. SO, LESS THAN TEN FEET?

9 A. YES.

10 Q. DID YOU HAVE ANY PROBLEM SEEING HIM THAT NIGHT
11 HOLD THAT GUN?

12 A. NO.

13 Q. WHAT WAS THE LIGHTING LIKE IN THE PARKING LOT?

14 A. IT WAS PLENTY OF LIGHT.

15 Q. OKAY. WAS HE TRYING TO HIDE HIS FACE AT ALL?

16 A. NO.

17 MR. WALTERS: YOUR HONOR, I OBJECT,
18 HE'S LEADING THE WITNESS.

19 THE COURT: THAT'S LEADING THE
20 WITNESS.

21 Q. WHAT WAS HE DOING WITH HIS FACE THAT NIGHT, WHAT
22 WAS HE DOING?

23 A. NOTHING, HE AIN'T HAD NOTHING ON HIS FACE.

24 Q. OKAY. DID HE HAVE A MASK ON?

25 A. NO.

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1 MR. WALTERS: YOUR HONOR, I'M GOING
2 TO OBJECT, HE'S LEADING THE WITNESS.

3 SOLICITOR PASCOE: JUDGE, COULD WE
4 APPROACH? IF HE'S GOING TO OBJECT EVERY TIME, A
5 PRELIMINARY QUESTION?

6 (Whereupon, a bench conference
7 is held out of the hearing of
8 the jury and the court reporter.)

9 MR. WALTERS: LET ME STATE THIS FOR
10 THE RECORD, YOUR HONOR, THE QUESTION THAT SHOULD BE
11 SOLICITED SHOULD HAVE A RESPONSE WHICH IS AN ANSWER, AS
12 OPPOSED TO YES AND NO. IF IT'S YES AND NO THEN, OF
13 COURSE, IT'S LEADING.

14 Q. TELL THE JURY WHETHER OR NOT HE WAS DOING ANYTHING
15 TO HIDE HIS IDENTITY?

16 THE COURT: WHO, WHAT, WHERE, WHY,
17 WHEN AND HOW.

18 SOLICITOR PASCOE: AND THAT'S WHAT
19 I JUST ASKED.

20 THE COURT: OKAY.

21 A. NO.

22 Q. THANK YOU. NOW, I WANT YOU TO -- DID HE SAY --
23 WHAT, IF ANYTHING, WAS SAID AFTER HE PULLED THE
24 GUN, DID YOU HEAR ANYTHING?

25 A. NO.

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1 Q. OKAY. DID YOU SEE ANYONE ELSE WITH A GUN THAT
2 NIGHT?

3 A. NO.

4 Q. DO YOU HAVE ANY DOUBTS IN YOUR MIND WHATSOEVER AS
5 TO WHO YOU SAW SHOOT THE VICTIM, FREDO?

6 A. NO.

7 Q. OKAY. DID YOU SEE WHERE THE DEFENDANT WENT AFTER
8 HE SHOT FREDO?

9 A. NO.

10 Q. OKAY. TELL THE JURY WHAT YOU DID AFTER HE SHOT
11 FREDO?

12 A. FREDO LIMPED INTO THE CAR, HE FELL INTO THE
13 PASSENGER SIDE. SO, I HOLD HIM, AND I RODE TO THE
14 OLD ST. MATTHEWS ROAD WHERE SOME GUYS HELPED ME.
15 PUT HIM IN, FINISH PUTTING HIM IN THE CAR, AND I
16 TOOK HIM TO THE EMERGENCY ROOM.

17 Q. WERE YOU ABLE TO FREDO AT ALL AS YOU WERE GOING TO
18 THE HOSPITAL?

19 A. HE WOULD ONLY SAY, UM ---

20 MR. WALTERS: I'M GOING TO OBJECT,
21 YOUR HONOR. HE ASKED HIM WHAT FREDO SAID.

22 SOLICITOR PASCOE: HE WOULD ONLY
23 SAY, UM -- ARE YOU GOING TO OBJECT TO THAT?

24 MR. WALTERS: YEAH, ANY RESPONSE
25 THAT FREDO GAVE. IT'S NOT ADMISSIBLE, IT'S HEARSAY.

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1 SOLICITOR PASCOE: NO, IT WOULDN'T
2 BE.

3 THE COURT: NOT NECESSARILY. I DON'T
4 KNOW WHAT THE RESPONSE WAS, BUT IT'S NOT NECESSARILY
5 INADMISSIBLE HEARSAY. DO YOU WANT TO EXCUSE THE JURY
6 AND LET HIM ANSWER THE QUESTION?

7 SOLICITOR PASCOE: THAT'S OKAY. WE
8 DON'T NEED TO DO THAT, YOUR HONOR, HE JUST SAID, UM.

9 THE COURT: ALRIGHT.

10 Q. DID YOU SAY ANYTHING TO FREDO?

11 A. YES.

12 Q. WHAT WERE YOU SAYING?

13 A. I TOLD HIM, DON'T DIE, I LOVE YOU, MAN.

14 Q. AND DID YOU GET FREDO TO THE ORANGEBURG REGIONAL
15 MEDICAL CENTER?

16 A. YES.

17 Q. AFTER FREDO -- AFTER YOU GOT FREDO TO THE HOSPITAL
18 WHAT DID YOU DO?

19 A. I STAYED AROUND.

20 Q. OKAY. AND WHY DID YOU STAY?

21 A. BECAUSE THAT WAS MY BEST FRIEND.

22 Q. WHEN DID YOU LEARN THAT FREDO HAD DIED?

23 A. AROUND TWO OR THREE HOURS LATER.

24 Q. OKAY. YOU WERE STILL AT THE HOSPITAL?

25 A. YES.

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1 Q. DID THE POLICE SHOW UP AT THE HOSPITAL?

2 A. YES.

3 Q. AND DID YOU TALK TO THE POLICE?

4 A. YES.

5 Q. DID YOU COOPERATE WITH THE POLICE AT THE HOSPITAL?

6 A. YES.

7 Q. DO YOU REMEMBER WHO THE FIRST OFFICER YOU SPOKE TO
8 WAS BEFORE FREDO EVEN DIED?

9 A. SHE WAS A FEMALE.

10 Q. OKAY. AND DID YOU TELL HER WHO SHOT FREDO?

11 A. YES.

12 Q. AND WHAT NAME DID YOU TELL HER AS THE PERSON THAT
13 SHOT FREDO?

14 A. LE LE.

15 Q. THAT WAS THAT MORNING AT THE HOSPITAL?

16 A. YES.

17 Q. DID YOU TELL HER WHAT HE WAS WEARING?

18 A. HE HAD DARK CLOTHING.

19 Q. HOW LONG -- YOU TESTIFIED IT WAS ABOUT TWO OR
20 THREE HOURS LATER THAT YOU LEARNED THAT FREDO WAS
21 DEAD AND YOU WERE AT THE HOSPITAL. HOW LONG DID
22 YOU END UP STAYING AT THE HOSPITAL, EVEN AFTER
23 THAT?

24 A. UNTIL EVERYBODY LEFT.

25 Q. OKAY. WAS FREDO'S MOTHER AT THE HOSPITAL?

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1 A. YES.

2 Q. OKAY. DID YOU CONTINUE TO MEET WITH AND TALK TO
3 THE POLICE THAT MORNING?

4 A. YES.

5 Q. OKAY. AND WHY IS THAT?

6 A. BECAUSE I WANTED THE THEM TO CATCH THE GUY WHO
7 SHOT MY FRIEND.

8 Q. AND DO YOU REMEMBER MEETING WITH DETECTIVE RIVES
9 ON THE MORNING OF DECEMBER NINTH?

10 A. YES.

11 Q. AND DID YOU PROVIDE AT LEAST TWO WRITTEN
12 STATEMENTS TO DETECTIVE RIVERS?

13 A. YES.

14 Q. TELLING HIM WHAT HAPPENED?

15 A. YES.

16 Q. AND BEFORE I FORGET, IN BOTH STATEMENTS, BOTH
17 STATEMENTS DID YOU TELL THE POLICE WHO SHOT YOUR
18 FRIEND?

19 A. YES.

20 Q. WHO DID YOU TELL THE POLICE IN BOTH STATEMENTS
21 SHOT YOUR FRIEND?

22 A. LE LE.

23 Q. AND YOU USED THE NAME, LE LE?

24 A. YES.

25 Q. AS THE GUNMAN?

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1 A. YES.

2 Q. AND THE PERSON YOU KNOW AS LE LE IS WHO?

3 A. HIM RIGHT THERE.

4 Q. THE DEFENDANT, LAVON MINTZ?

5 A. YES.

6 Q. AND THAT'S IN YOUR STATEMENTS, CORRECT?

7 A. YES.

8 SOLICITOR PASCOE: I LOST MY PLACE.

9 Q. NOW, AND YOU'VE ALREADY TESTIFIED THAT FREDO WAS
10 ARGUING WITH A PERSON NAMED ANDRE WHEN LE LE SHOT
11 HIM. DID YOU KNOW ANDRE'S NAME BACK ON DECEMBER
12 THE NINTH, TWO THOUSAND AND TWO?

13 A. NO.

14 Q. OTHER THAN ANDRE?

15 A. YEAH.

16 Q. OKAY. NOW, DID DETECTIVE RIVERS SHOW YOU ANY
17 PHOTOS ON DECEMBER THE NINTH?

18 A. YES.

19 Q. AND THIS AGAIN, DECEMBER NINTH IS STILL THE
20 MORNING THAT YOUR FRIEND WAS MURDERED?

21 A. YES.

22 Q. DO YOU RECOGNIZE STATE'S EXHIBIT ONE, HAVE YOU
23 SEEN THAT BEFORE?

24 A. ARE YOU REFERRING TO THE PICTURES?

25 Q. YEAH, THE PHOTO LINEUP, YES.

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1 A. YES.

2 Q. AND WHAT DO YOU -- IS THIS WHAT -- WHAT DO YOU
3 RECOGNIZE STATE'S EXHIBIT ONE AS, WHO SHOWED THIS
4 TO YOU?

5 A. DETECTIVE RIVERS.

6 Q. OKAY. AND DID DETECTIVE RIVERS TELL YOU THAT LE
7 LE WAS IN THE LINEUP?

8 A. NO.

9 Q. DID HE TELL YOU THAT THE GUNMAN WAS IN THE LINEUP?

10 A. NO.

11 Q. DID HE HINT TO YOU, OR SUGGEST TO YOU IN ANY WAY
12 ON WHO TO PICK OUT IN THIS LINEUP?

13 MR. WALTERS: YOUR HONOR, I'M GOING
14 TO OBJECT, HE'S LEADING THE WITNESS AGAIN. OVER AND
15 OVER AGAIN.

16 Q. WHAT DID DETECTIVE RIVERS ASK YOU TO DO WITH THIS
17 LINEUP?

18 MR. WALTERS: YOUR HONOR, IS THE
19 COURT GOING TO RULE ON MY OBJECTION?

20 THE COURT: I SUSTAINED THE
21 OBJECTION, AND HE REPHRASED THE QUESTION IN THE PROPER
22 MANNER.

23 MR. WALTERS: THANK YOU.

24 Q. WHAT DID HE ASK YOU TO DO WITH THIS LINEUP?

25 A. DO I RECOGNIZE ANYONE FROM THE LINEUP.

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1 Q. OKAY. AND DID YOU RECOGNIZE ANYONE IN THIS
2 LINEUP?

3 A. YES.

4 Q. WHICH ONE DID YOU RECOGNIZE?

5 A. NUMBER FIVE.

6 Q. AND WHO DID YOU RECOGNIZE NUMBER FIVE TO BE?

7 A. THE GUNMAN.

8 Q. AND WHEN YOU SAY, THE GUNMAN, WHAT DID THE GUNMAN
9 DO?

10 A. HE SHOT MY FRIEND.

11 Q. AND AFTER YOU PICKED OUT NUMBER FIVE -- DID IT
12 TAKE YOU ANY TIME AT ALL TO PICK OUT NUMBER FIVE?

13 A. NO.

14 Q. DID HE THEN SHOW YOU A COPY, STATE'S EXHIBIT TWO?

15 A. YES.

16 Q. AND WHAT DID HE ASK YOU TO DO WITH IT?

17 A. SIGN IT, SIGN BY THE ONE WHO I RECOGNIZED.

18 Q. AND DID YOU -- WHOSE INITIALS ARE THAT NEXT TO
19 NUMBER FIVE?

20 A. THAT'S MINE.

21 Q. AND -- THIS IS STATE'S EXHIBIT TWO, BY THE WAY, IF
22 I DIDN'T REFER TO IT. DOES IT HAVE THE TIME THAT
23 YOU PICKED OUT ---

24 A. YES.

25 Q. --- THE DEFENDANT'S PICTURE? WHAT TIME IS THAT?

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1 A. EIGHT:FIFTY-FIVE A.M.

2 MR. WALTERS: YOUR HONOR, I'M GOING
3 TO OBJECT. HE'S LEADING THE WITNESS AGAIN.

4 Q. WHAT TIME IS THAT?

5 A. EIGHT:FIFTY-FIVE A.M.

6 THE COURT: I SUSTAINED THE
7 OBJECTION, AND HE REPHRASED THE QUESTION.

8 MR. WALTERS: YOUR HONOR, HE'S
9 CONTINUED THROUGH THE WHOLE LINE OF QUESTIONING, IT'S
10 INAPPROPRIATE.

11 THE COURT: AND YOU JUST HAVE TO
12 CONTINUE TO OBJECT. THAT'S ALL I CAN DO.

13 MR. WALTERS: THANK YOU.

14 MR. WALTERS: YOUR HONOR, LET ME
15 STATE MY OBJECTION ON THE RECORD. I'VE STATED MY
16 OBJECTION AT LEAST FOUR OR FIVE TIMES. IT'S
17 INAPPROPRIATE TO TESTIFY AND ASK THE WITNESS TO SAY YES
18 OR NO.

19 THE COURT: I'VE SUS ---

20 MR. WALTERS: I'M ASKING THAT THE
21 COURT ---

22 THE COURT: I'VE SUSTAINED THE
23 OBJECTION. HAVE A SEAT.

24 Q. WHAT TIME IS THAT?

25 A. EIGHT:FIFTY-FIVE A.M.

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1 Q. AND WHAT DATE IS THAT?

2 A. TWELVE-NINE-O-TWO.

3 Q. OKAY. AND WHO WAS MURDERED THAT MORNING, ON
4 DECEMBER NINTH, TWO THOUSAND AND TWO? IS THAT A
5 GOOD QUESTION? WHO WAS MURDERED THAT DAY?

6 A. ALFREDO.

7 Q. BY WHO?

8 A. LAVON MINTZ.

9 Q. AND BY WHO IN THIS LINEUP?

10 A. EXHIBIT NUMBER FIVE.

11 Q. DID YOU HAVE ANY DOUBT IN YOUR MIND ON THAT DAY
12 THAT THAT WAS THE PERSON THAT KILLED YOUR FRIEND?

13 A. NO.

14 Q. WERE YOU SHOWN ANY OTHER ---

15 SOLICITOR PASCOE: DO YOU HAVE THAT
16 LINEUP?

17 A. --- LINEUPS THAT DAY, ---

18 A. YES.

19 Q. --- THAT MORNING?

20 SOLICITOR PASCOE: I'M SORRY, MS.
21 HARRY DOT, I FORGOT TO GET THIS MARKED. IT'S A LINEUP OF
22 ANDRE GOODEN.

23 COURT REPORTER: ID?

24 SOLICITOR PASCOE: YES, MA'AM.

25 THAT'S JUST -- THAT'S THE COPY OF STATE'S EXHIBIT.

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1 COURT REPORTER: OKAY. STATE'S EIGHT
2 AND NINE FOR ID.

3 SOLICITOR PASCOE: STATE'S EIGHT AND
4 NINE.

5 (State's Exhibits Eight and Nine,
6 Photo lineup and copy of Photo lineup,
7 marked for identification.)

8 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS BOTH
9 STATE'S EXHIBITS FOR ID, EIGHT AND NINE, OKAY, TO
10 REFRESH YOUR MEMORY. DO YOU RECOGNIZE THAT
11 LINEUP?

12 A. YES.

13 Q. WHAT DO YOU RECOGNIZE THIS TO BE?

14 A. A PHOTO SPREAD.

15 Q. OKAY. AND WHO SHOWED IT TO YOU?

16 A. DETECTIVE RIVERS.

17 Q. OKAY. WHAT DID HE ASK YOU TO DO WITH STATE'S
18 EXHIBIT EIGHT?

19 A. DO I RECOGNIZE ANYONE FROM THE LINEUP?

20 Q. OKAY. DID HE ASK ANYTHING ELSE OF YOU?

21 A. NO.

22 Q. DID YOU RECOGNIZE ANYONE IN STATE'S EXHIBIT EIGHT?

23 A. YES.

24 Q. WHICH ONE DID YOU RECOGNIZE?

25 A. NUMBER TWO.

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1 Q. OKAY.. WHO DID YOU RECOGNIZE NUMBER TWO TO BE?

2 A. ANDRE.

3 Q. ANY DOUBT IN YOUR MIND THAT THAT WAS THE PERSON
4 YOU KNEW AS ANDRE?

5 A. NO.

6 Q. AND AFTER YOU PICKED OUT STATE'S EXHIBIT NUMBER
7 TWO, I MEAN, PHOTO NUMBER TWO IN STATE'S EXHIBIT
8 NUMBER EIGHT, WHAT DID YOU DO?

9 A. I SIGNED IT, INITIALED IT.

10 Q. AND WHOSE INITIALS ARE THOSE?

11 A. MINE.

12 Q. DOES IT -- AND WHAT IS THE TIME THAT YOU INITIALED
13 IT?

14 A. TEN:TEN A.M.

15 Q. AND WHAT DAY?

16 A. TWELVE-NINE-O TWO.

17 Q. AND WHO IS THE PERSON IN PHOTOGRAPH NUMBER TWO IN
18 STATE'S EXHIBIT EIGHT?

19 A. ANDRE.

20 Q. AND WHO WAS WITH THE DEFENDANT, LAVON MINTZ, THAT
21 NIGHT?

22 A. ANDRE.

23 Q. JUST A FEW MORE QUESTIONS, OKAY TERRELL? LET ME
24 SHOW YOU STATE'S EXHIBITS THREE THROUGH SEVEN FOR
25 IDENTIFICATION, I WANT YOU TO LOOK THROUGH ALL OF

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1 THEM, OKAY? JUST TAKE A LOOK AT ALL OF THEM. DO

2 YOU RECOGNIZE WHAT'S IN THOSE PHOTOGRAPHS?

3 A. YES.

4 Q. WHAT DO YOU RECOGNIZE THOSE PHOTOGRAPHS TO BE?

5 A. THE PUB AND THE PARKING LOT.

6 Q. THE ESTABLISHMENT, OF COURSE, THAT YOU WERE AT
7 THAT NIGHT?

8 A. YES.

9 Q. DOES IT ACCURATELY DEPICT THE PARKING LOT AND
10 WHERE THE ESTABLISHMENT IT?

11 A. EXCUSE ME?

12 Q. DOES IT EXACTLY DEPICT THAT AREA?

13 A. NO.

14 Q. DOES THIS ACCURATELY DEPICT THE AREA WHERE THE PUB
15 IS?

16 A. OH, YES.

17 Q. OKAY.

18 SOLICITOR PASCOE: I'D ASK THAT
19 STATE'S EXHIBITS THREE THROUGH SEVEN BE ADMITTED INTO
20 EVIDENCE, YOUR HONOR.

21 THE COURT: ANY OBJECTION?

22 MR. WALTERS: A PROPER FOUNDATION IS
23 LAID, YOUR HONOR, NO OBJECTION.

24 THE COURT: ADMITTED WITHOUT
25 OBJECTION.

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1 SOLICITOR PASCOE: THANK YOU. YOU
2 WANT TO MARK THEM NOW OR LATER?

3 COURT REPORTER: I WANT TO TAKE THE
4 ID OFF.

5 SOLICITOR PASCOE: OKAY. THANK YOU.
6 (State's Exhibits Three through Seven
7 marked and filed.)

8 Q. AND SPECIFICALLY, STATE'S EXHIBIT THREE, WHAT IS
9 THAT RIGHT THERE?

10 A. THAT'S THE PUB ENTRANCE.

11 Q. OKAY.

12 SOLICITOR PASCOE: MAY I PUBLISH
13 THAT TO THE JURY, YOUR HONOR?

14 THE COURT: YOU MAY.

15 SOLICITOR PASCOE: THANK YOU.

16 (Whereupon, State's Exhibit Three
17 is published to the jury.)

18 Q. I DON'T HAVE TO DO THEM ALL, JUST A FEW. STATE'S
19 EXHIBIT FOUR?

20 A. THAT'S IN FRONT OF THE PUB.

21 Q. OKAY. AGAIN, WITH THE ENTRANCE?

22 A. UH HUH.

23 Q. AND WHAT AREA IS DEPICTED IN STATE'S EXHIBIT SIX?

24 A. OVER HERE IS WHERE IT HAPPENED AT.

25 Q. OKAY.

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1 SOLICITOR PASCOE: CAN I HAVE THE
2 JUROR STEP DOWN FOR JUST A SECOND, YOUR HONOR?

3 THE COURT: YES, SIR.

4 SOLICITOR PASCOE: THANK YOU.

5 Q. WOULD YOU STEP DOWN RIGHT HERE, AND I'LL LET YOU
6 FACE THE COURT REPORTER.

7 SOLICITOR PASCOE: GLEN, DO YOU WANT
8 TO GET RIGHT HERE AND SEE IF YOU CAN SEE IT?

9 MR. WALTERS: YES.

10 Q. IF YOU COULD, JUST POINT FOR THE JURY WHERE THE
11 SHOOTING TOOK PLACE?

12 A. HERE.

13 Q. OKAY. WHAT PART OF THE CAR IS THERE?

14 A. THE BACK END, AND IT'S STRAIGHT.

15 Q. RIGHT THERE?

16 A. UH HUH.

17 Q. OKAY. NOW, AS BEST YOU CAN, WHERE WERE YOU
18 STANDING -- AND I'M GOING TO KEEP MY FINGER WHERE
19 THE CAR -- THE BACK OF THE CAR WAS. WHERE WERE
20 YOU STANDING WHEN THE SHOOTING TOOK PLACE?

21 A. OVER HERE.

22 Q. OKAY. AND WHERE DID THE SHOOTING TAKE PLACE?

23 A. RIGHT HERE, ON THE PASSENGER SIDE OF THE CAR.

24 Q. OKAY. DID YOU HAVE ANY PROBLEM SEEING THE
25 SHOOTING AT ALL?

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1 A. NO.

2 Q. YOU CAN SIT BACK DOWN. AND FINALLY, TERRELL, THE
3 PERSON THAT YOU SAW PULL A GUN AND KILL YOUR
4 FRIEND, FREDO, THE PERSON YOU KNEW AS LE LE, ---

5 A. YES.

6 Q. --- DO YOU SEE HIM IN THE COURTROOM TODAY?

7 A. RIGHT THERE.

8 Q. POINT HIM OUT FOR THE JURY? IS HE SITTING NEXT TO
9 HIS ATTORNEY, GLEN WALTERS?

10 A. YES.

11 Q. ANY DOUBT IN YOUR MIND, THAT'S THE PERSON?

12 A. NO.

13 SOLICITOR PASCOE: THANK YOU.

14 ANSWER ANY QUESTIONS MR. WALTERS HAS FOR YOU.

15 THE COURT: MR. WALTERS.

16 MR. WALTERS: MAY IT PLEASE THE

17 COURT. SOLICITOR PASCOE.

18 (NOTE: Blank lines on this page do not indicate any
19 part of record has been omitted. Headers on testimony
20 pages and hard page breaks between testimony are now
21 required by the Court. See next ensuing page for
22 sequential continuation of record.)

CROSS - RICHARD TERRELL PARKER BY MR. WALTERS

105

1 CROSS-EXAMINATION OF RICHARD TERRELL PARKER

2 BY MR. WALTERS:

3 Q. MR. PARKER, COULD YOU IDENTIFY THIS DOCUMENT --

4 WOULD YOU TAKE A LOOK AT IT? . .

5 A. YES.

6 Q. IS THAT YOUR HANDWRITING?

7 A. YES.

8 Q. THAT'S A STATEMENT THAT YOU'VE GIVEN TO THE POLICE

9 IS THAT CORRECT?

10 A. YES.

11 Q. ALRIGHT. AND I BELIEVE IT'S DATED ON THE NINTH OF

12 DECEMBER, IS THAT RIGHT?

13 A. YES.

14 Q. AND, OF COURSE, THAT WAS RIGHT AFTER THE SHOOTING,

15 IS THAT RIGHT?

16 A. YES.

17 Q. ALRIGHT. I WANT YOU TO SHOW ME ON HERE WHERE YOU

18 STATED THAT LE LE SHOT SOMEONE, SHOW IT TO ME? . .

19 A. IT'S NOT ON THERE.

20 Q. THAT'S RIGHT, IT'S NOT ON THERE. YOU JUST

21 TESTIFIED THAT YOU HAD GIVEN A STATEMENT WHERE YOU

22 STATED THAT LE LE SHOT SOMEONE. COME UP HERE IN

23 FRONT OF THIS JURY. STAND RIGHT HERE. THIS IS

24 YOUR STATEMENT THAT YOU GAVE THE POLICE, RIGHT?

25 A. YES.

CROSS - RICHARD TERRELL PARKER BY MR. WALTERS

110

1 Q. YOU'RE NOT GOING TO HAVE YOUR BEST FRIEND'S FAMILY
2 MAD WITH YOU, YOU'RE NOT GOING TO SAY ANYTHING
3 TODAY THAT CAN HURT THIS CASE, ARE YOU?

4 A. I ONLY CAME IN TO TELL THE TRUTH.

5 Q. OKAY. ALRIGHT, WELL, LET'S TALK ABOUT THE TRUTH.
6 YOU THEN ON THAT PARTICULAR NIGHT, I BELIEVE ON
7 DECEMBER NINTH, YOU GAVE A SECOND STATEMENT, ISN'T
8 THAT RIGHT?

9 A. YES.

10 Q. ALRIGHT. I WANT YOU TO IDENTIFY THIS ---

11 MR. WALTERS: AND I'LL MARK IT AS
12 DEFENDANT'S EXHIBIT, JUST FOR IDENTIFICATION, NUMBER
13 TWO.

14 COURT REPORTER: THAT'S A STATEMENT?

15 MR. WALTERS: YES, MA'AM.

16 COURT REPORTER: ID?

17 MR. WALTERS: YES, MA'AM.

18 COURT REPORTER: DO YOU WANT THESE
19 CLIPPED TOGETHER?

20 MR. WALTERS: YES, MA'AM, THAT WILL
21 BE FINE.

22 COURT REPORTER: DEFENDANT'S TWO FOR
23 ID.

24 (Defendant's Exhibit Two,
25 Statement of Richard Terrell Parker,

CROSS - RICHARD TERRELL PARKER BY MR. WALTERS

111

1 marked for identification.)

2 Q. I SHOW YOU WHAT'S BEEN MARKED AS DEFENDANT'S
3 EXHIBIT NUMBER TWO. DO YOU RECOGNIZE THAT
4 DOCUMENT?

5 A. YES.

6 Q. ALRIGHT. FIRST OF ALL, LET ME ASK YOU A QUESTION,
7 IF YOU CAN READ AND YOU CAN WRITE, WHY DID YOU
8 ALLOW THE POLICE TO TURN AROUND AND ATTEMPT TO
9 WRITE A STATEMENT FOR YOU?

10 A. I DON'T KNOW, I DON'T KNOW.

11 Q. DID YOU GRADUATE FROM HIGH SCHOOL?

12 A. NO.

13 Q. OKAY. WHAT GRADE DID YOU GO TO, SIR?

14 A. ELEVENTH.

15 Q. ALRIGHT. YOU HAVE AN ELEVENTH GRADE EDUCATION,
16 YOU CAN READ AND WRITE, CAN'T YOU?

17 A. YES, I CAN.

18 Q. AND WHY DID YOU TURN AROUND, AND WHY DID DETECTIVE
19 RIVERS TAKE IT UPON HIMSELF TO WRITE A STATEMENT?

20 A. YOU'VE GOT TO ASK HIM THAT, SIR.

21 Q. ALRIGHT. LET ME ASK YOU SOMETHING ABOUT THIS
22 STATEMENT. I HAND YOU BACK DEFENDANT'S EXHIBIT
23 NUMBER ONE. OKAY. WHERE DOES IT STATE WITHIN
24 YOUR STATEMENT, YOUR RECOLLECTION, AND YOUR WRITING
25 OF THE EVENTS, AND YOUR RECORDING OF THE EVENTS,

CROSS - RICHARD TERRELL PARKER BY MR. WALTERS

112

1 WHAT OCCURRED ON THAT PARTICULAR DAY, WHERE DOES
2 IT STATE THAT YOU SAW A SILVER THIRTY-EIGHT
3 SPECIAL?

4 A. NOWHERE.

5 Q. THAT'S RIGHT. HOW DID THAT GUN POP UP, HOW DID
6 THIS THIRTY-EIGHT SPECIAL POP UP? THAT'S NOT IN
7 YOUR STATEMENT, BUT IT'S IN DETECTIVE RIVERS'
8 STATEMENT.

9 A. MY FRIEND JUST GOT SHOT.

10 Q. ALRIGHT, BUT HOW DID YOU ---

11 A. I WAS EMOTIONAL.

12 Q. --- RECOGNIZE A THIRTY-EIGHT SPECIAL?

13 A. BECAUSE I SEEN IT. I KNOW, I KNOW A, IT WAS A
14 REVOLVER, I KNOW IT WAS.

15 Q. WHERE IS THAT IN YOUR STATEMENT?

16 A. IT'S NOT IN THERE.

17 Q. YOU WERE TOLD BY THE POLICE THAT WHEN YOU GIVE A
18 STATEMENT TO THE POLICE YOU NEED TO TELL THE
19 TRUTH, ISN'T THAT RIGHT?

20 A. YES.

21 Q. AND YOU SWORE TODAY TO TELL THE TRUTH, THE WHOLE
22 TRUTH, AND NOTHING BUT THE TRUTH.

23 A. AND THAT'S WHAT I DID.

24 Q. ALRIGHT. AND YOU JUST TESTIFIED WHEN THE
25 SOLICITOR HAD YOU ON DIRECT THAT YOU STATED THAT

CROSS - RICHARD TERRELL PARKER BY MR. WALTERS

113

1 LE LE SHOT SOMEONE IN YOUR STATEMENT. WHERE IS
2 IT?

3 A. IT'S NOT ON THIS STATEMENT.

4 Q. THAT'S YOUR STATEMENT, YOU WROTE IT.

5 A. YES, IT IS.

6 Q. WELL, LET'S MOVE ON. LET'S TALK ABOUT DETECTIVE
7 RIVERS' STATEMENT THAT HE PUT TOGETHER. WHERE
8 DOES IT STATE THAT SOMEONE WENT OFF ON SOMEONE IN
9 THE BATHROOM AND INSULTED SOMEONE. WHERE IS THAT
10 IN YOUR STATEMENT?

11 A. IT'S NOT IN THE STATEMENT.

12 Q. ALRIGHT. WHERE DOES IT STATE IN YOUR STATEMENT
13 THAT YOU DIDN'T WANT SOMEONE TO DIE, AND YOU WERE
14 GOING TO TAKE THEM TO THE HOSPITAL?

15 A. IT'S NOT IN THE STATEMENT.

16 Q. SO, THE SECOND STATEMENT THAT WE HAVE HERE, I NEED
17 TO ASK YOU A QUESTION, IS THAT STATEMENT THE
18 TRUTH, OR IS THIS ONE THE TRUTH, OR IS YOUR
19 TESTIMONY TODAY, WHICH VERSION IS THE TRUTH?

20 A. IT'S ALL THE TRUTH.

21 Q. OH, SO ALL OF THEM ARE THE TRUTH?

22 A. YES.

23 Q. OKAY. ALRIGHT.

24 MR. WALTERS: I WANT TO MARK THIS AS
25 DEFENDANT'S EXHIBIT NUMBER THREE.

CROSS - RICHARD TERRELL PARKER BY MR. WALTERS

114

1 SOLICITOR PASCOE: I HAVE NO
2 OBJECTIONS IF HE'S GOING TO PUT THEM INTO THE EVIDENCE
3 SO THE JURY CAN SEE ALL THREE STATEMENTS, YOUR HONOR,
4 INSTEAD OF NIT PICKING.

5 MR. WALTERS: YOUR HONOR, ---

6 SOLICITOR PASCOE: I HAVE NO
7 OBJECTIONS IF HE WANTS TO PUT THEM INTO EVIDENCE.

8 THE COURT: THAT'S UP TO HIM..

9 MR. WALTERS: YOUR HONOR, I'M NOT
10 GOING TO ALLOW THE SOLICITOR TO TRY MY CASE.

11 THE COURT: I SAID THAT WAS UP TO
12 YOU. I DON'T NEED YOUR COMMENTS, FROM EITHER ONE OF
13 YOU.

14 MR. WALTERS: YES, SIR.

15 THE COURT: IF YOU'VE GOT AN
16 OBJECTION TO MAKE, MAKE IT.

17 COURT REPORTER: IS THERE A DATE ON
18 THIS?

19 MR. WALTERS: DECEMBER NINTH, TWO
20 THOUSAND TWO.

21 COURT REPORTER: SAME ONE? THAT'S
22 THE THIRD?

23 MR. WALTERS: YES, MA'AM.

24 COURT REPORTER: ID?

25 MR. WALTERS: YES, MA'AM.

CROSS - RICHARD TERRELL PARKER BY MR. WALTERS

115

1 COURT REPORTER: DEFENDANT'S THREE
2 FOR ID.

3 MR. WALTERS: THANK YOU.

4 (Defendant's Exhibit Three,
5 Statement of Richard Terrell Parker,
6 marked for identification.)

7 Q. I SHOW YOU WHAT'S BEEN MARKED AS DEFENDANT'S
8 EXHIBIT NUMBER THREE. DO YOU RECOGNIZE THAT
9 DOCUMENT?

10 A. YES.

11 Q. ALRIGHT. IS THAT ANOTHER STATEMENT THAT YOU HAVE
12 GIVEN?

13 A. IS IT THE ONE DETECTIVE RIVERS WROTE?

14 COURT REPORTER: I'M SORRY?

15 A. DETECTIVE RIVERS?

16 COURT REPORTER: I CAN'T HEAR. SIR?

17 A. EXCUSE ME?

18 COURT REPORTER: I DID NOT HEAR YOU.

19 A. THIS IS THE ONE I GAVE TO DETECTIVE RIVERS.

20 Q. IS THAT YOUR NAME AT THE BOTTOM?

21 A. YES.

22 Q. ALRIGHT. AND YOU SIGNED THE DOCUMENT?

23 A. YES.

24 Q. ALRIGHT. AND LOOK AT THE SECOND PAGE, DID YOU
25 SIGN IT ALSO?

1 A. YES.

2 Q. ALRIGHT. NOW, I BELIEVE AT THE END OF EACH OF
3 THESE DOCUMENTS THERE WAS A STATEMENT THAT SAID, I
4 CAN READ AND WRITE, BUT I GIVE DETECTIVE SMOAK AND
5 DETECTIVE RIVERS PERMISSION TO WRITE THIS
6 STATEMENT, IS THAT CORRECT?

7 A. NO.

8 Q. LET ME SHOW YOU DEFENDANT'S EXHIBIT NUMBER THREE,
9 AND I ASK THAT YOU READ THE LAST SENTENCE, SIR.

10 A. "THIS IS THE TRUTH, SO HELP ME, GOD."

11 Q. NO, SIR. IT SAYS, "I WRITE." DO YOU WANT ME TO
12 HELP YOU?

13 A. YEAH.

14 Q. I'LL SHOW YOU RIGHT HERE. WHAT IT SAYS HERE, "I
15 CAN WRITE THIS STATEMENT," WOULD YOU READ THAT,
16 PLEASE?

17 A. "I CAN WRITE THIS STATEMENT BUT I ASKED DETECTIVE
18 RIVERS TO WRITE THIS STATEMENT," I MEAN, "TO WRITE
19 THIS, AND THIS IS THE TRUTH, SO HELP ME, GOD."

20 Q. SO, WHY ATTEMPT TO WRITE A STATEMENT AND TELL THE
21 TRUTH, AND THEN TURN AROUND AND TELL THE POLICE,
22 WHY DON'T YOU WRITE IF FOR ME?

23 A. I DIDN'T -- I CAN READ AND WRITE, MAN.

24 Q. SO, THE BEST DEPICTION OF WHAT YOU BELIEVE
25 HAPPENED THAT NIGHT IS RIGHT THERE IN YOUR OWN

CROSS - RICHARD TERRELL PARKER BY MR. WALTERS

117

1 STATEMENT, BECAUSE YOU CAN READ AND WRITE, ISN'T
2 THAT CORRECT?

3 A. YES, I WAS UPSET, MY FRIEND, BEST FRIEND JUST HAD
4 GOT SHOT, AND I SEEN IT, AND I WASN'T INTERESTED
5 IN WRITING NO STATEMENT. MY CONCERN WAS ON HIM.

6 MR. WALTERS: YOUR HONOR, I HAVE NO
7 FURTHER QUESTIONS.

8 THE COURT: ANY REDIRECT?

9 SOLICITOR PASCOE: I DO, YOUR HONOR.

10 THE COURT: GO AHEAD.

11 SOLICITOR PASCOE: OKAY, THANK YOU.

12 COULD I SEE THOSE EXHIBITS?

13 COURT REPORTER: LEAVE THOSE ON THE
14 TABLE.

15 MR. WALTERS: SURE. ONE, TWO,
16 THREE.

17 (NOTE: Blank lines on this page do not indicate any
18 part of record has been omitted. Headers on testimony
19 pages and hard page breaks between testimony are now
20 required by the Court. See next ensuing page for
21 sequential continuation of record.)

REDIRECT - RICHARD TERRELL PARKER BY SOL. PASCOE

118

1 REDIRECT EXAMINATION OF RICHARD TERRELL PARKER

2 BY SOLICITOR PASCOE:

3 Q. AS MR. WALTERS POINTED OUT, YOU GAVE THREE
4 STATEMENTS TO THE POLICE, RIGHT?

5 A. YES.

6 Q. AND ALL OF THEM THE BEST YOU COULD DO?

7 A. YES.

8 Q. OKAY. NOW, LET'S FIRST ANSWER THE QUESTION OF WHY
9 YOU DIDN'T WANT TO USE YOUR OWN HANDWRITING FOR
10 THESE TWO STATEMENTS. WHOSE HANDWRITING IS ON
11 DEFENSE EXHIBIT ONE?

12 A. IT'S MINE.

13 Q. AND HOW WOULD YOU CATEGORIZE THAT HANDWRITING?

14 A. BAD.

15 Q. OKAY. AND YOU GAVE -- YOU DIDN'T GIVE THE
16 STATEMENT TO DETECTIVE RIVERS, DIDN'T YOU TESTIFY
17 TO THAT, IT WAS OFFICER BRADLEY?

18 A. YES.

19 Q. OKAY. BUT JUST TO BE CLEAR ON DEFENSE EXHIBIT
20 ONE, DID YOU GIVE SOME NAMES TO OFFICER BRADLEY?

21 A. YES, LE LE, ANDRE, I DON'T KNOW REALLY.

22 Q. AND THAT'S IN DEFENSE EXHIBIT ONE?

23 A. YES.

24 Q. LE LE'S NAME?

25 A. YES.

REDIRECT - RICHARD TERRELL PARKER BY SOL. PASCOE

119

1 Q. AS DEFENSE COUNSEL POINTED OUT, YOU GAVE MORE
2 STATEMENTS THAT MORNING, ON DECEMBER THE NINTH?

3 A. YES.

4 Q. NOW, GOING JUST TO DEFENSE EXHIBIT TWO, TELL THE
5 JURY WHAT YOU TOLD DETECTIVE RIVERS, AS FAR AS WHO
6 SHOT AND KILLED YOUR FRIEND, EVEN THOUGH YOU'VE
7 TESTIFIED YOU WERE UPSET, YOU STILL GAVE
8 STATEMENTS TO THE POLICE, WHO SHOT AND KILLED YOUR
9 FRIEND THAT MORNING?

10 A. "I SAW LE LE PULL OUT THE GUN, A SILVER THIRTY-
11 EIGHT SPECIAL, AND FIRED TWO TIMES AT ALFREDO
12 LEWIS."

13 Q. THAT IS IN YOUR STATEMENT TO THE POLICE ON
14 DECEMBER THE NINTH, TWO THOUSAND AND TWO, RIGHT?

15 A. YES.

16 Q. WERE YOU STILL UPSET THAT MORNING, EVEN WHEN YOU
17 WERE MEETING WITH THE POLICE?

18 A. YES.

19 Q. BUT YOU STILL GAVE THEM STATEMENTS?

20 A. YOUR THIRD STATEMENT, WHICH IS DEFENSE EXHIBIT
21 THREE, TELL THIS JURY WHAT YOU TOLD THE POLICE ON
22 DECEMBER THE NINTH, TWO THOUSAND AND TWO, THAT
23 MORNING, JUST HOURS AFTER YOUR FRIEND HAD BEEN
24 KILLED BY THAT MAN, TELL THE JURY WHO YOU TOLD THE
25 POLICE KILLED YOUR FRIEND?

REDIRECT - RICHARD TERRELL PARKER BY SOL. PASCOE

120

1 MR. WALTERS: I'M GOING TO OBJECT,
2 YOUR HONOR, THE QUESTION'S A NARRATIVE, IT'S NOT ASKING
3 A QUESTION. WHEN HE SAYS, TELL THEM WHAT HAPPENED ON
4 THIS PARTICULAR MORNING.

5 THE COURT: IT'S A PROPER QUESTION.
6 OVERRULED.

7 SOLICITOR PASCOE: THANK YOU, YOUR
8 HONOR, THANK YOU.

9 A. "I NOTICED LE LE AND ANDRE COMING FROM BEHIND THE
10 CAR. LE LE PULLED OUT, UP HIS SHIRT AND SHOWED ME
11 A SILVER THIRTY-EIGHT SPECIAL THAT WAS TUCKED
12 UNDER THE FRONT OF HIS PANTS. FREDO WAS OUTSIDE
13 THE CAR ARGUING WITH ANDRE."

14 Q. AND WHAT DOES IT SAY RIGHT THERE?

15 A. "LE LE HAD THE GUN OUT AND POINTED AT FREDO, AND
16 POP, POP, HE SHOT HIM TWICE."

17 Q. THAT'S WHAT YOU TOLD THE POLICE IN YOUR STATEMENT
18 ON DECEMBER NINTH, TWO THOUSAND AND TWO?

19 A. YES.

20 Q. YOUR SWORN STATEMENT, ISN'T THAT CORRECT? THIS
21 WAS A SWORN STATEMENT?

22 A. YES.

23 SOLICITOR PASCOE: THAT MAY BE ALL
24 I HAVE, JUST ONE MORE MINUTE. IS THERE ANY OBJECTION IF
25 I PUT IN HIS THIRD STATEMENT, SINCE IT IS A SWORN

REDIRECT - RICHARD TERRELL PARKER BY SOL. PASCOE

121

1 STATEMENT, NOTARIZED? THAT WOULD BE DEFENSE EXHIBIT
2 THREE, I'D MAKE IT A STATE'S EXHIBIT.

3 THE COURT: THE DEFENSE EXHIBITS ARE
4 NOT ADMITTED.

5 SOLICITOR PASCOE: NO, I KNOW, I'M
6 ASKING IF I CAN HAVE IT ADMITTED?.

7 THE COURT: ARE YOU OFFERING IT AS
8 A STATE'S EXHIBIT?

9 SOLICITOR PASCOE: YES, SIR.

10 THE COURT: IS THERE ANY OBJECTION?

11 MR. WALTERS: NO OBJECTION, YOUR
12 HONOR.

13 THE COURT: IT'S ADMITTED WITHOUT
14 OBJECTION. PLEASE MARK IT.

15 COURT REPORTER: STATE'S TEN.

16 (State's Exhibit Ten
17 marked and filed.)

18 SOLICITOR PASCOE: THANK YOU.
19 STATE'S TEN IN EVIDENCE, YOUR HONOR.

20 THANK YOU, THAT'S ALL I HAVE.

21 THE COURT: RECROSS?

22 MR. WALTERS: MAY IT PLEASE THE
23 COURT.

24 (NOTE: Blank lines on this page do not indicate any
25 part of record has been omitted.)

RECROSS - RICHARD TERRELL PARKER BY MR. WALTERS

122

1 RECROSS-EXAMINATION OF RICHARD TERRELL PARKER

2 BY MR. WALTERS:

3 Q. MR. PARKER, YOU ADMIT THAT YOU GAVE ALL THREE OF
4 THESE STATEMENTS, IS THAT CORRECT?

5 A. YES.

6 Q. ALRIGHT. THE FIRST ONE YOU WROTE YOURSELF. AND
7 THIS IS A DEPICTION OF WHAT YOU BELIEVED HAPPENED,
8 IS THAT CORRECT?

9 A. YES.

10 Q. ALRIGHT. AND THEN, OF COURSE, YOU HAVE THE
11 STATEMENTS THAT YOU GAVE TO DETECTIVE SMOAK AND
12 DETECTIVE RIVERS, IS THAT RIGHT?

13 A. YES.

14 MR. WALTERS: OKAY. YOUR HONOR, I'D
15 GO AHEAD AND MOVE THAT THE OTHER TWO STATEMENTS BE PUT
16 INTO EVIDENCE ALSO.

17 THE COURT: THAT'S DEFENDANT'S ONE
18 AND TWO, IS THAT RIGHT?

19 COURT REPORTER: HAND THEM TO ME.

20 MR. WALTERS: YES, MA'AM. I'M
21 SORRY.

22 SOLICITOR PASCOE: NO OBJECTION,
23 ABSOLUTELY.

24 THE COURT: ALRIGHT, DEFENDANT'S ONE
25 AND TWO ADMITTED WITHOUT OBJECTION.

RECROSS - RICHARD TERRELL PARKER BY MR. WALTERS

123

1 COURT REPORTER: DEFENDANT'S ONE AND
2 TWO.

3 (Defendant's Exhibits One and Two
4 marked and filed.)

5 MR. WALTERS: THAT'S ALL I HAVE.

6 THE COURT: ALRIGHT, SIR, YOU CAN
7 STEP DOWN. THANK YOU, SIR.

8 LADIES AND GENTLEMEN, WE'RE GOING TO
9 TAKE OUR LUNCH BREAK RIGHT NOW. WE'LL TRY TO START BACK
10 AT TWO:THIRTY. SO, PLEASE BE BACK IN THE JURY ROOM AT
11 TWO:THIRTY. PLEASE DO NOT TALK WITH ANYONE ABOUT THIS
12 CASE. THE BAILIFF WILL TAKE YOU OUT OF THE BACK DOOR,
13 AND WHEN YOU COME BACK, YOU COME IN THAT BACK DOOR, AND
14 SHE WILL SHOW YOU HOW TO COME INTO THE JURY ROOM. WHEN
15 YOU COME BACK TO THIS COURT HOUSE AREA PLEASE DO NOT
16 HANG AROUND IN THE HALL, DO NOT COME INTO THIS
17 COURTROOM, BUT GO STRAIGHT TO YOUR JURY ROOM. THERE
18 MIGHT BE SOMEBODY OUT THERE TALKING ABOUT THIS CASE, OR
19 YOU MIGHT THINK THEY'RE TALKING ABOUT THE CASE AND THEY
20 MIGHT BE TALKING ABOUT ANOTHER ONE. SO, JUST DON'T HANG
21 AROUND, JUST COME IN THE BUILDING, COME STRAIGHT
22 UPSTAIRS, AND GO IN YOUR JURY ROOM. WE'LL TRY TO BE
23 READY TO START AT TWO:THIRTY.

24 THANK YOU VERY MUCH, YOU ARE EXCUSED
25 AT THIS TIME.

1 EVERYBODY ELSE REMAIN SEATED UNTIL
2 THE JURY LEAVES.

3 (Whereupon, the jury
4 leaves the courtroom.)

5 BAILIFF: YOUR HONOR, ALL OF THE
6 JURORS AND THE ALTERNATE ARE OUT OF THE COURTROOM.

7 THE COURT: THANK YOU, MA'AM.
8 ANYTHING FROM THE STATE BEFORE WE
9 RECESS?

10 SOLICITOR PASCOE: NO, YOUR HONOR.

11 THE COURT: FROM THE DEFENSE?

12 MR. WALTERS: NO, SIR, YOUR HONOR.

13 THE COURT: ALRIGHT. MA'AM, ON THE
14 -- YOU, WITH THE WHITE SHIRT, I'LL HAVE TO ASK YOU NOT
15 TO WEAR THAT SHIRT BACK THIS AFTERNOON. I UNDERSTAND,
16 BUT THERE'S NOT A PLACE FOR THAT IN THE COURTROOM DURING
17 THIS TRIAL. SO, YOU CAN PUT SOMETHING ELSE ON OVER IT,
18 OR WEAR SOMETHING ELSE, PLEASE, MA'AM. THE SHIRT HAS --
19 I CAN'T READ IT ALL, BUT IT SAYS SOMETHING ABOUT, IN THE
20 MEMORY OF ALFREDO LEWIS. SO, THAT WOULD NOT BE PROPER
21 DURING THIS TRIAL IN THE COURTROOM.

22 ALRIGHT, WE'LL BE IN RECESS UNTIL
23 TWO:THIRTY.

24 COURT REPORTER: PLEASE LEAVE YOUR
25 EXHIBITS WITH ME.

1 (Recess)

2 THE COURT: ALRIGHT, IS THE STATE

3 READY TO PROCEED?

4 SOLICITOR PASCOE: YES, YOUR HONOR.

5 THE COURT: IS THE DEFENSE READY?

6 MR. WALTERS: YES, SIR, YOUR HONOR.

7 THE COURT: BRING IN THE JURY,

8 PLEASE, MA'AM.

9 (Whereupon, the following

10 takes place in the

11 presence of the jury.)

12 BAILIFF: YOUR HONOR, ALL OF THE

13 JURORS AND THE ALTERNATE ARE SEATED IN THE JURY BOX.

14 THE COURT: THANK YOU, MA'AM.

15 ALRIGHT, LADIES AND GENTLEMEN, GOOD

16 AFTERNOON, WE'RE READY TO GET STARTED.

17 SOLICITOR, YOU MAY CALL YOUR NEXT

18 WITNESS.

19 SOLICITOR PASCOE: THANK YOU, YOUR

20 HONOR, THE STATE CALLS OFFICER PAM BRADLEY.

21 THE COURT: COME AROUND, PLEASE,

22 MA'AM.

23 CLERK: PLACE YOUR LEFT HAND ON THE

24 BIBLE AND RAISE YOUR RIGHT HAND, PLEASE, MA'AM.

25 (Whereupon, the witness,

1 PAMELA BRADLEY,
2 is duly sworn.)

3 CLERK: THANK YOU, YOU MAY BE
4 SEATED, AND STATE YOUR FULL NAME FOR THE COURT RECORD.

5 WITNESS: PAMELA PATRICE BRADLEY.

6 THE COURT: ALRIGHT, PLEASE TALK A
7 LITTLE BIT LOUDER.

8 WITNESS: OKAY.

9 THE COURT: THANK YOU, MA'AM.

10 ALRIGHT, COUNSELLOR.

11 (NOTE: Blank lines on this page do not indicate any
12 part of record has been omitted. Headers on testimony
13 pages and hard page breaks between testimony are now
14 required by the Court. See next ensuing page for
15 sequential continuation of record.)

DIRECT - PAMELA P. BRADLEY BY SOL. PASCOE

127

1 DIRECT EXAMINATION OF PAMELA P. BRADLEY

2 BY SOLICITOR PASCOE:

3 Q. GOOD AFTERNOON, OFFICER BRADLEY.

4 A. GOOD AFTERNOON.

5 Q. WHERE DO YOU WORK, MA'AM?

6 A. ORANGEBURG DEPARTMENT OF PUBLIC SAFETY.

7 Q. AND HOW LONG HAVE YOU WORKED THERE?

8 A. APPROXIMATELY THREE YEARS.

9 Q. HOW LONG HAVE YOU WORKED IN LAW ENFORCEMENT
10 ALTOGETHER?

11 A. SEVEN.

12 Q. AND WHAT ARE YOUR DUTIES WITH THE ORANGEBURG
13 POLICE DEPARTMENT?

14 A. PATROL, AND RESPONDING TO NINE ONE ONE CALLS.

15 Q. OKAY. WERE THESE YOUR DUTIES BACK IN DECEMBER OF
16 TWO THOUSAND AND TWO?

17 A. YES, SIR.

18 Q. OKAY. WERE YOU WORKING DURING THE EARLY MORNING
19 HOURS OF MONDAY, DECEMBER NINTH, TWO THOUSAND AND
20 TWO?

21 A. YES, SIR.

22 Q. WHAT SHIFT WERE YOU WORKING?

23 A. DELTA.

24 Q. WHAT HOURS IS DELTA SHIFT?

25 A. EIGHT P.M. TO EIGHT A.M.

DIRECT - PAMELA P. BRADLEY BY SOL. PASCOE

128

1 Q. SO, THAT WOULD ACTUALLY BE, WHAT, EIGHT P.M.
2 SUNDAY, DECEMBER EIGHTH, TO EIGHT A.M. MONDAY,
3 DECEMBER NINTH?

4 A. YES, SIR.

5 Q. AND WHAT AREA WERE YOU PATROLLING AT APPROXIMATELY
6 TWO O'CLOCK THAT MORNING?

7 A. SECTOR ONE.

8 Q. WHERE IS SECTOR ONE?

9 A. IT COVERS CHESTNUT STREET, ST. MATTHEWS ROAD, ALL
10 THE WAY DOWN TO PRINCE OF ORANGE MALL.

11 Q. AND BEFORE I FORGET IT, ARE YOU USING YOUR
12 INCIDENT REPORT TO HELP YOU REFRESH YOUR MEMORY
13 TODAY?

14 A. YES, SIR.

15 Q. OKAY. DID YOU RECEIVE A DISPATCH AT TWO:THIRTEEN
16 THAT MORNING?

17 A. YES, SIR.

18 Q. AND WHERE WERE YOU CALLED TO GO?

19 A. I WAS CALLED TO GO TO THE PUB.

20 Q. AND ---

21 A. AT THIRTEEN FIFTY-NINE ---

22 Q. GROVE PARK?

23 A. GROVE PARK.

24 Q. WHAT COUNTY IS THAT IN?

25 A. ORANGEBURG.

DIRECT - PAMELA P. BRADLEY BY SOL. PASCOE

129

1 Q. OKAY. AND THAT'S, OF COURSE, ACTUALLY IN THE CITY
2 LIMITS, WITH YOU BEING INVOLVED?

3 A. YES, SIR.

4 Q. WHY WERE YOU CALLED TO GO TO THE PUB AT GROVE
5 PARK?

6 A. IT WAS IN REFERENCE TO AN ASSAULT POSSIBLY WITH A
7 GUN.

8 Q. AND TELL THE JURY, AS YOU RESPONDED TO THE PUB
9 WHAT HAPPENED?

10 A. WHEN I ARRIVED TO THE INTERSECTION OF THE LAST
11 DRIVEWAY OF GROVE PARK AND ST. MATTHEWS ROAD I SAW
12 A GRAY CROWN VICTORIA WITH ONE SUBJECT LEANING IN
13 THE PASSENGER SIDE DOOR SEAT, WITH SEVERAL
14 SUBJECTS AROUND IT, TRYING TO PUT THE VICTIM BACK
15 IN THE CAR.

16 Q. OKAY. AND DID YOU EVEN KNOW WHAT HAD HAPPENED
17 YET, REALLY, AT THE PUB?

18 A. NO, SIR.

19 Q. AND YOU HADN'T EVEN GOTTEN TO THE PUB?

20 A. CORRECT.

21 Q. ALRIGHT. WHAT DID YOU DO WHEN YOU SAW THAT TAKE
22 PLACE?

23 A. BASICALLY, JUST TRIED TO GET INFORMATION OF WHAT'S
24 GOING ON. ONCE I STEPPED OUT AND TALKED WITH
25 SEVERAL WITNESSES THEY HAD TOLD ME THAT THEY WERE

DIRECT - PAMELA P. BRADLEY BY SOL. PASCOE

130

1 TRYING TO GET THE SUBJECT, OR GET THE VICTIM IN
2 THE CAR AND GET HIM TO THE HOSPITAL.

3 Q. OKAY. WHERE DID YOU TALK TO THOSE PEOPLE?

4 A. I FOLLOWED, FOLLOWED THEM, AFTER I HAD INITIATED
5 BLUE LIGHTS, TO THE HORIZON ON ST. MATTHEWS ROAD.

6 Q. OKAY. HOW MANY PEOPLE DO YOU THINK WERE AROUND
7 THAT YOU TRIED TO SPEAK TO AT THE HORIZON ON ST.
8 MATTHEWS ROAD?

9 A. ABOUT FIFTEEN.

10 Q. AND DID THEY ALL COOPERATE?

11 A. NO.

12 Q. OKAY. DID -- HOW MANY COOPERATED AT ALL?

13 A. FOUR.

14 Q. OKAY. AND DID YOU GET THEIR INFORMATION AND PUT
15 IT IN YOUR INCIDENT REPORT?

16 A. CORRECT.

17 Q. DID ANYBODY HAVE ANY INFORMATION ABOUT THE
18 SHOOTING, THOUGH?

19 A. NO.

20 Q. OKAY. NOW, WHAT DID YOU DO -- HOW LONG DID YOU
21 STAY AT THE HORIZON?

22 A. I CAN'T RECALL HOW LONG, APPROXIMATELY ---

23 Q. APPROXIMATELY, WHAT DO YOU THINK?

24 A. ABOUT TWENTY MINUTES.

25 Q. OKAY. AND WHERE DID YOU GO NEXT, AFTER THAT?

DIRECT - PAMELA P. BRADLEY BY SOL. PASCOE

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- 1 A. I WENT BACK TO THE PUB.
- 2 Q. WAS ANYONE ALREADY AT THE PUB WHEN YOU WERE THERE?
- 3 A. CORRECT. I HAD, I HAD ONE OF THE SERGEANTS ON
- 4 SHIFT AND SOME OTHER GUYS GO AND ESTABLISH A
- 5 PERIMETER AT THE PUB.
- 6 Q. WHEN YOU SAY, SERGEANT ON SHIFT AND OTHER GUYS,
- 7 THEY WORK FOR THE ORANGEBURG POLICE DEPARTMENT?
- 8 A. CORRECT.
- 9 Q. OKAY. WERE THERE ANY WITNESSES THERE OUTSIDE THE
- 10 PUB ---
- 11 A. NO, SIR.
- 12 Q. --- THAT YOU COULD TALK TO? OKAY. AND HOW
- 13 APPROXIMATELY HOW LONG DO YOU THINK YOU STAYED AT
- 14 THE PUB WITH THE SERGEANT AND THE OTHER OFFICERS?
- 15 A. ALMOST FOUR O'CLOCK IN THE MORNING.
- 16 Q. OKAY. WHERE DID YOU GO NEXT, AT APPROXIMATELY
- 17 FOUR O'CLOCK IN THE MORNING?
- 18 A. STRAIGHT TO TRMC TO CHECK ON THE VICTIM.
- 19 Q. AND, OF COURSE, THAT'S THE HOSPITAL IN ORANGEBURG?
- 20 A. CORRECT.
- 21 Q. ON SIX O ONE?
- 22 A. YES, SIR.
- 23 Q. OKAY. AND DID YOU CHECK ON THE VICTIM?
- 24 A. YES, SIR, I DID.
- 25 Q. DID YOU LEARN WHO THE VICTIM WAS?

DIRECT - PAMELA P. BRADLEY BY SOL. PASCOE

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1 A. YES, SIR, THE VICTIM WAS ALFREDO LEWIS.

2 Q. OKAY. AND DID YOU CITE HIS AGE IN THE INCIDENT
3 REPORT?

4 A. YES, SIR, HE WAS TWENTY-TWO.

5 Q. AND WERE THERE ANY EYE WITNESSES TO THE SHOOTING
6 THAT YOU WERE ABLE TO INTERVIEW AT THE HOSPITAL AT
7 APPROXIMATELY FOUR O'CLOCK THAT MORNING?

8 A. YES, SIR, ONE IN PARTICULAR, THE VICTIM'S GOOD
9 FRIEND. HIS NAME IS RICHARD TERRELL PARKER.

10 Q. AND DID YOU PUT DOWN HIS INFORMATION IN YOUR
11 INCIDENT REPORT?

12 A. VERBALLY, I TOOK THE INFORMATION, AS FAR AS THE
13 SUSPECT, AND THEN I TOOK HIS INFORMATION FOR A
14 STATEMENT.

15 Q. OKAY. AND DID YOU GET A DESCRIPTION OF THE GUNMAN
16 FROM MR. PARKER?

17 A. YES, SIR, I DID. I ---

18 Q. AND WHAT WAS -- GO AHEAD.

19 A. THE MAIN THING, HE TOLD ME HIS NICK NAME WAS LE
20 LE. THAT WAS THE MAIN THING. THIS LE LE SUSPECT
21 AT THE TIME ---

22 MR. WALTERS: YOUR HONOR, I'M GOING
23 TO OBJECT, THIS IS HEARSAY.

24 SOLICITOR PASCOE: IT GOES TO
25 IDENTIFICATION, YOUR HONOR, DESCRIPTION. SHE'S GOING

DIRECT - PAMELA P. BRADLEY BY SOL. PASCOE

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1 OVER WHAT HIS DESCRIPTION IS, NOT THE ---

2 THE COURT: WELL, SHE GAVE HIS NAME,
3 THAT'S HEARSAY.

4 SOLICITOR PASCOE: THAT GOES TO THE
5 DESCRIPTION, THOUGH, OF WHO ---

6 Q. WELL, LET ME ASK YOU THIS, I'LL ASK YOU, WHO WERE
7 YOU LOOKING FOR AS OF FOUR O'CLOCK IN THE MORNING
8 ON DECEMBER THE NINTH, TWO THOUSAND AND TWO?

9 MR. WALTERS: MAY IT PLEASE THE
10 COURT?

11 THE COURT: YES, SIR.

12 MR. WALTERS: YOUR HONOR, I BELIEVE
13 THE TESTIMONY THAT'S BEING GIVEN IS HEARSAY. SHE DOES
14 NOT HAVE PERSONAL KNOWLEDGE. I BELIEVE RULE SIX O ONE
15 AND SIX O TWO REQUIRES THAT SHE HAVE PERSONAL KNOWLEDGE
16 OF WHAT SHE TESTIFIES ABOUT. SHE'S STATING IN FRONT OF
17 THE JURY SOMETHING SHE HEARD FROM SOMEONE ELSE.

18 THE COURT: I UNDERSTAND THAT, AND
19 I SUSTAINED THAT OBJECTION.

20 SOLICITOR PASCOE: NOT ONLY,
21 HOWEVER, DOES IT GO TO THE DESCRIPTION, BUT HE TRIED TO
22 IMPEACH THE LAST WITNESS BY SAYING HE DIDN'T TELL THE
23 POLICE WHO DID THIS. THAT'S WHY IT SHOULD ALSO COME IN,
24 TO REBUT HIS TESTIMONY -- NOT REBUT, BUT TO ---

25 MR. WALTERS: MAY IT PLEASE THE

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1 COURT.

2 THE COURT: YES, SIR.

3 MR. WALTERS: YOUR HONOR, ---

4 THE COURT: LADIES AND GENTLEMEN,
5 HOW ABOUT STEP OUT TO THE JURY ROOM A MINUTE, I NEED TO
6 TAKE UP A MATTER OF LAW. PLEASE DON'T TALK ABOUT THE
7 CASE.

8 (Whereupon, the following
9 takes place out of the
10 presence of the jury.)

11 BAILIFF: YOUR HONOR, ALL OF THE
12 JURORS AN THE ALTERNATE ARE OUT OF THE COURTROOM.

13 THE COURT: ALRIGHT. HE SAYS THAT
14 IT'S COMING IN TO COMBAT EVIDENCE OF A RECENT
15 FABRICATION WAS THE LAST OBJECTION THAT HE MADE. WHAT
16 ABOUT THAT?

17 MR. WALTERS: MAY IT PLEASE THE
18 COURT.

19 THE COURT: YOU DID ARGUE PRETTY
20 STRONGLY THAT HE DIDN'T TELL THE POLICE WHO IT WAS THAT
21 SHOT THE VICTIM.

22 MR. WALTERS: YOUR HONOR, WHAT THE
23 SOLICITOR IS REFERRING TO SHOULD HAVE BEEN ADDRESSED IN
24 HIS REDIRECT. MAY IT PLEASE THE COURT, YOUR HONOR, IN
25 ORDER FOR THIS WITNESS TO TESTIFY SHE MUST HAVE PERSONAL

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1 KNOWLEDGE, SHE MUST UNDERSTAND THE OATH, AND IN THIS
2 PARTICULAR CASE SHE DOES NOT HAVE PERSONAL KNOWLEDGE OF
3 WHAT SHE'S TESTIFYING TO. SHE'S REFERRING TO AN
4 INCIDENT REPORT THAT HAS BEEN GATHERED FROM VARIOUS
5 INDIVIDUALS THAT SHE TALKED TO, AND SHE'S ATTEMPTING TO
6 PUT THAT IN FRONT OF THIS JURY. IT'S A VIOLATION OF THE
7 RULES OF EVIDENCE IF THIS WITNESS IS ALLOWED TO TESTIFY
8 ABOUT SOMETHING THAT SHE HAS NO PERSONAL KNOWLEDGE
9 ABOUT.

10 THE COURT: NOT NECESSARILY.

11 MR. WALTERS: WELL, NOT ONLY THAT --

12

13 THE COURT: ORDINARILY YOU ARE
14 RIGHT, BUT NOT NECESSARILY. THERE ARE MANY, MANY THINGS
15 THAT ARE NOT HEARSAY, AND THERE ARE MANY EXCEPTIONS TO
16 THE HEARSAY RULE. NOW, LET ME HEAR YOU ON HIS
17 STATEMENT, I FORGOT WHICH ONE IS WRITTEN, IT'S A PRIOR
18 STATEMENT AND IT'S USED TO -- IT'S B, CONSISTENT WITH
19 THE CLARENCE TESTIMONY, AND IT'S OFFERED TO REBUT AN
20 EXPRESS OR IMPLIED CHARGE AGAINST A DECLARANT OF RECENT
21 FABRICATION OR IMPROPER INFLUENCE OR MOTIVE.

22 MR. WALTERS: YOUR HONOR, I BELIEVE
23 THE ARGUMENT WAS, WAS THAT HE DID NOT STATE THE NAME, LE
24 LE WITHIN THE REPORTS THAT WERE DRAFTED BY DETECTIVE
25 RIVERS AND DETECTIVE SMOAK AND HIS OWN PERSONAL

DIRECT - PAMELA P. BRADLEY BY SOL. PASCOE

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1 STATEMENT. THAT INCIDENT REPORT WAS NEVER BROUGHT IN
2 WITH REGARDS TO THE CROSS-EXAMINATION OF THAT PARTICULAR
3 WITNESS. IN FACT, THAT INCIDENT REPORT, THIS IS THE
4 FIRST TIME THAT'S BEEN BROUGHT UP WITHIN THIS COURTROOM.

5 THE COURT: BUT SHE TESTIFIED THAT
6 HE TOLD HER IT WAS LE LE.

7 MR. WALTERS: I BELIEVE SHE REFERRED
8 TO HER REPORT, AND SHE STATED THAT SHE TOOK INFORMATION
9 FROM FOUR INDIVIDUALS, AND IT WAS ONE INDIVIDUAL, AND
10 SHE STARTED TO READ THAT INFORMATION. THAT DOCUMENT HAS
11 NEVER BEEN CHALLENGED.

12 SOLICITOR PASCOE: NO, YOUR HONOR.

13 A. THAT'S NOT CORRECT.

14 MR. WALTERS: SHE TESTIFIED ---

15 THE COURT: WAIT A MINUTE. WHAT WAS
16 YOUR TESTIMONY IN REGARD TO LE LE?

17 A. HE TOLD ME, OR THE -- WITNESS ONE TOLD ME THAT IT
18 WAS LE LE WHO SHOT THE VICTIM.

19 THE COURT: THEN -- YOU KNOW, THAT'S
20 WHAT I THOUGHT SHE SAID.

21 MR. WALTERS: OF COURSE, YOUR HONOR,
22 WHICH I OBJECTED TO AND SAID, IT'S HEARSAY. SHE'S
23 STATING BEFORE THIS COURT INFORMATION THAT SHE HAS NO
24 PERSONAL KNOWLEDGE OF. IF THAT INFORMATION WAS TO BE
25 BROUGHT OUT, IT SHOULD HAVE BEEN BROUGHT OUT THROUGH

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1 THAT PARTICULAR WITNESS. AND, OF COURSE, THE SOLICITOR,
2 HE DID A GREAT JOB OF DOING THAT. HE ADDRESSED THAT
3 ISSUE. THERE'S NOTHING TO REBUT HERE. IN FACT, HE WENT
4 THROUGH THE THREE STATEMENTS, AND HE MADE IT CLEAR THAT
5 THAT PARTICULAR WITNESS STATED THAT PARTICULAR
6 INFORMATION. THIS PARTICULAR WITNESS IS NOT REBUTTING
7 ANY INFORMATION. WHAT THEY'RE ATTEMPTING TO DO IS GO
8 THROUGH AN INCIDENT REPORT AND SOMEHOW GET THAT HEARSAY
9 IN AGAIN.

10 THE COURT: MR. PASCOE.

11 SOLICITOR PASCOE: YOUR HONOR, ---

12 THE COURT: LET ME HEAR YOU ON THIS
13 ARGUMENT, AND I FORGOT WHAT THE REASON WAS THAT YOU
14 FIRST ASKED THAT IT BE ADMITTED. I DON'T THINK IT COMES
15 IN FOR IDENTIFICATION. A STATEMENT MADE FOR
16 IDENTIFICATION IS MADE WHILE THE DECLARANT IS SEEING
17 THAT PERSON, LIKE, THAT'S JOHN. THEN THAT COMES IN
18 UNDER THAT EXCEPTION.

19 MR. WALTERS: I THINK IT WOULD ---

20 THE COURT: WHICH ONE, WHAT NUMBER
21 ARE YOU REFERRING TO?

22 SOLICITOR PASCOE: THAT WAS ONE
23 EXCEPTION THAT I WAS GOING TO TRY TO ---

24 THE COURT: ALRIGHT.

25 SOLICITOR PASCOE: --- THAT I THINK

DIRECT - PAMELA P. BRADLEY BY SOL. PASCOE

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1 IT SHOULD COME IN UNDER. BUT THE MAIN EXCEPTION IS
2 EIGHT O ONE, D, ONE, AND I THINK IT'S, B.

3 THE COURT: THAT'S CONSISTENT WITH
4 DECLARANT'S TESTIMONY, IT IS OFFERED TO REBUT AN EXPRESS
5 OR IMPLIED CHARGE AGAINST THE DECLARANT. AND IN THIS
6 CASE THE DECLARANT IS THE WITNESS WHO TESTIFIED EARLIER,
7 MR. TERRELL -- WHAT WAS HIS NAME?

8 A. RICHARD TERRELL PARKER.

9 THE COURT: PARKER.

10 SOLICITOR PASCOE: THAT HE NEVER
11 TOLD THE POLICE THAT LE LE DID IT. AND HE, -- IN FACT,
12 HE TESTIFIED BOTH IN -- I KNOW ON REDIRECT THAT HE TOLD
13 A FEMALE DEPUTY THAT LE LE DID IT. AND THEN, OF COURSE,
14 HE TESTIFIED ABOUT HOW HE TOLD THE OFFICERS LATER THAT
15 LE LE DID IT. THERE HAS NOT ONLY BEEN AN IMPLIED
16 ACCUSATION THAT HE'S NOT TELLING THE TRUTH, BUT I THINK
17 IT'S BEEN EXPRESSED. AND SO, IT CERTAINLY SHOULD COME
18 IN UNDER ---

19 THE COURT: ALRIGHT. ANYTHING ELSE?

20 MR. WALTERS: YOUR HONOR, AGAIN, I
21 WOULD SIMPLY MAKE THIS STATEMENT, THAT IN THIS
22 PARTICULAR CASE, ON REDIRECT THE SOLICITOR ADDRESSED
23 THAT ISSUE WITH RICHARD TERRELL PARKER, THE DECLARANT OF
24 THAT STATEMENT. AND IN THIS PARTICULAR CASE THIS
25 OFFICER IS DRAWING FROM FOUR INDIVIDUALS. SHE SAID

DIRECT - PAMELA P. BRADLEY BY SOL. PASCOE

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1 THERE WERE FIFTEEN THERE, ONLY FOUR COOPERATED, AND
2 SHE'S ATTEMPTING TO TESTIFY AND GIVE PERSONAL KNOWLEDGE
3 ABOUT AN EVENT THAT SHE HAS NO KNOWLEDGE OF.

4 THE COURT: ALRIGHT. I OVERRULE YOUR
5 OBJECTION TO WHAT TESTIMONY THAT SHE'S GIVEN THUS FAR,
6 I THINK IT'S ADMISSIBLE. I'M NOT GOING TO ALLOW HER TO
7 TESTIFY AS TO THE RESULTS OF HER GENERAL INVESTIGATION
8 OF THIS MATTER, MR. PASCOE. BUT THE STATEMENT SHE MADE
9 ABOUT LE LE, SAYING THAT HE DID IT, OF COURSE, I DON'T
10 THINK YOU EVEN OBJECTED AS SOON AS SHE SAID IT. BUT
11 ANYHOW, I OVERRULE YOUR OBJECTION TO THAT STATEMENT.

12 NOW, YOU NEED TO LEAVE THAT SUBJECT
13 AND MOVE ON.

14 SOLICITOR PASCOE: YES, SIR.

15 THE COURT: ALRIGHT.

16 SOLICITOR PASCOE: I CAN ASK HER THE
17 QUESTION, THOUGH, NOW, OR DO YOU MEAN JUST LEAVE IT
18 ALONE, SINCE SHE SAID, LE LE?

19 THE COURT: YOU'VE ALREADY ASKED HER
20 AND SHE'S ALREADY ANSWERED IT.

21 SOLICITOR PASCOE: SO, I JUST LEAVE
22 IT ALONE, YOU MEAN JUST ---

23 THE COURT: YES, SIR.

24 SOLICITOR PASCOE: I'M GOING TO ASK
25 HER WHAT SHE DID WITH THAT INFORMATION DID SHE PASS IT

DIRECT - PAMELA P. BRADLEY BY SOL. PASCOE

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1 ON TO THE INVESTIGATOR.

2 THE COURT: ASK HER WHAT SHE DID IN
3 HER INVESTIGATION, YOU CAN CERTAINLY ASK HER THAT.

4 SOLICITOR PASCOE: YES, SIR.

5 THE COURT: YES, MA'AM, BRING IN THE
6 JURY.

7 SOLICITOR PASCOE: THANK YOU, JUDGE
8 WILLIAMS.

9 (Whereupon, the following
10 takes place in the
11 presence of the jury.)

12 BAILIFF: YOUR HONOR, ALL OF THE
13 JURORS AND THE ALTERNATE ARE IN THE COURTROOM.

14 THE COURT: THANK YOU, MA'AM.

15 YOU MAY CONTINUE, MR. PASCOE.

16 SOLICITOR PASCOE: THANK YOU, JUDGE
17 WILLIAMS.

18 Q. OFFICER BRADLEY, THE INFORMATION THAT TERRELL
19 PARKER GAVE YOU CONCERNING LE LE DOING THE
20 SHOOTING, WHAT DID YOU DO WITH THAT INFORMATION?

21 A. I TURNED THAT INFORMATION OVER TO DETECTIVE
22 RIVERS.

23 Q. OKAY. AND WHAT YOU TOLD THE JURY ABOUT, IS THAT
24 ALL IN YOUR INCIDENT REPORT?

25 A. CORRECT.

DIRECT - PAMELA P. BRADLEY BY SOL. PASCOE

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1 Q. DID YOU EVER GET AN UPDATE AT THE HOSPITAL
2 CONCERNING ALFREDO LEWIS'S CONDITION?

3 A. YES, SIR, I DID.

4 Q. AND WHEN DID YOU GET THAT UPDATE?

5 A. APPROXIMATELY FIVE IN THE MORNING.

6 Q. OKAY. AND WHAT WAS THE UPDATE WITH REGARDS TO THE
7 VICTIM'S CONDITION?

8 A. THAT HE HAD PASSED, HE HAD DIED.

9 Q. OKAY. AND WHO WERE YOU WITH WHEN YOU HEARD THAT?

10 A. THE MOTHER, THE VICTIM'S MOTHER.

11 Q. HOW LONG DID YOU END UP STAYING AT THE HOSPITAL,
12 OFFICER?

13 A. BETWEEN FIVE AND SIX IN THE MORNING,
14 APPROXIMATELY.

15 Q. AND AFTER YOU LEFT AT FIVE OR SIX IN THE MORNING,
16 WAS THAT THE EXTENT OF YOUR INVOLVEMENT?

17 A. CORRECT.

18 Q. OKAY. AS A DEPUTY -- OR WHOSE JOB IS IT TO TAKE
19 DETAILED WRITTEN STATEMENTS FROM WITNESSES?

20 A. THAT'S THE DETECTIVE'S JOB.

21 Q. OKAY. WOULD THAT BE YOUR JOB GENERALLY AS A
22 DEPUTY OR AN OFFICER?

23 A. NO, SIR, THAT'S HIS JOB.

24 Q. AND YOU PASSED YOUR INFORMATION OFF TO DETECTIVE
25 RIVERS?

DIRECT - PAMELA P. BRADLEY BY SOL. PASCOE

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1 A. CORRECT.

2 SOLICITOR PASCOE: THAT'S ALL I'D
3 HAVE. ANSWER ANY QUESTIONS THAT MR. WALTERS HAS FOR
4 YOU.

5 THE COURT: CROSS-EXAMINATION.

6 MR. WALTERS: MAY IT PLEASE THE
7 COURT.

8 SOLICITOR PASCOE.

9 (NOTE: Blank lines on this page do not indicate any
10 part of record has been omitted. Headers on testimony
11 pages and hard page breaks between testimony are now
12 required by the Court. See next ensuing page for
13 sequential continuation of record.)

CROSS - PAMELA P. BRADLEY BY MR. WALTERS

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1 CROSS-EXAMINATION OF PAMELA P. BRADLEY

2 BY MR. WALTERS:

3 Q. OFFICER, YOU HAVE NO PERSONAL KNOWLEDGE OF THE
4 SHOOTING, DO YOU, MA'AM?

5 A. PERSONAL KNOWLEDGE?

6 Q. YOU WERE NOT THERE?

7 A. NO, I WAS NOT AT THE SHOOTING WHEN THE SHOOTING
8 OCCURRED, NO, I WAS NOT THERE.

9 Q. SO, YOU HAVE NO PERSONAL KNOWLEDGE OR INFORMATION
10 TO CONVEY TO THIS JURY BECAUSE YOU WERE NOT
11 ACTUALLY, YOU DON'T KNOW PERSONALLY, OF YOUR OWN
12 KNOWLEDGE, WHO SHOT ALFREDO LEWIS?

13 A. PERSONALLY, I WAS NOT AT THE TIME, THERE AT THE
14 TIME OF THE SHOOTING, BUT AS AN OFFICER RESPONDING
15 TO A NINE ONE ONE CALL, THAT WAS MY JOB TO, YOU
16 KNOW, FIND OUT THE DETAILS OF THE FACTS.

17 Q. JUST ANSWER MY QUESTION.

18 A. I DID.

19 Q. YOU DON'T HAVE ANY PERSONAL KNOWLEDGE?

20 A. I WAS NOT THERE AT THE TIME OF THE SHOOTING. I
21 SAID THAT.

22 MR. WALTERS: ALRIGHT. YOUR HONOR,
23 WE HAVE NO FURTHER QUESTIONS.

24 THE COURT: ANY REDIRECT?

25 SOLICITOR PASCOE: NO, SIR, THANK

1 YOU.

2 THE COURT: THANK YOU, MA'AM.

3 WITNESS: THANK YOU.

4 THE COURT: THANK YOU FOR COMING,
5 YOU CAN BE EXCUSED IF YOU'D LIKE.

6 WITNESS: THANK YOU, SIR.

7 THE COURT: THANK YOU VERY MUCH.

8 NEXT WITNESS, PLEASE.

9 SOLICITOR PASCOE: JOVAN JONES, YOUR
10 HONOR.

11 THE COURT: JOVAN JONES.

12 (Whereupon, the witness
13 enters the courtroom.)

14 CLERK: MR. JONES, IF YOU'D COME
15 DOWN TO THE FRONT AND TO YOUR RIGHT AND STAND THERE
16 WHERE THE BIBLE IS, AND PUT YOUR LEFT HAND ON THE BIBLE
17 AND RAISE YOUR RIGHT HAND.

18 (Whereupon, the witness,
19 JOVAN JONES,
20 is duly sworn.)

21 CLERK: THANK YOU, YOU MAY BE SEATED
22 AND STATE YOUR FULL NAME FOR THE COURT RECORD.

23 WITNESS: JOVAN JONES.

24 COURT REPORTER: SPELL YOUR FIRST
25 NAME.

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1 WITNESS: J-O-V-A-N.
2 COURT REPORTER: THANK YOU.

3 (NOTE: Blank lines on this page do not indicate any
4 part of record has been omitted. Headers on testimony
5 pages and hard page breaks between testimony are now
6 required by the Court. See next ensuing page for
7 sequential continuation of record.)

DIRECT - JOVAN JONES BY SOL. PASCOE

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1 DIRECT EXAMINATION OF JOVAN JONES2 BY SOLICITOR PASCOE:

3 Q. GOOD AFTERNOON, JOVAN. NOW, YOU'VE GOT TO SPEAK
4 UP AS LOUD AS YOU CAN, OKAY, SO EVERYBODY, THE
5 COURT REPORTER, THE JUDGE, EVERYBODY CAN HEAR YOU,
6 ESPECIALLY THE JURY. OKAY?

7 A. OKAY.

8 Q. ARE YOU A LITTLE NERVOUS?

9 A. I'M ALRIGHT.

10 Q. OKAY. DO YOU NEED A CIGARETTE OR ANYTHING BEFORE
11 WE GET STARTED?

12 A. NO.

13 Q. SPEAK UP, THOUGH, OKAY?

14 A. ALRIGHT.

15 Q. OKAY. ARE YOU FROM ORANGEBURG, JOVAN?

16 A. YES.

17 Q. OKAY. YOU LIVED HERE YOUR WHOLE LIFE?

18 A. YES.

19 Q. HOW OLD ARE YOU?

20 A. TWENTY-FIVE.

21 Q. SPEAK UP.

22 A. TWENTY-FIVE.

23 Q. OKAY. DID YOU KNOW THE VICTIM, FREDO LEWIS, PRIOR
24 TO DECEMBER OF TWO THOUSAND AND TWO?

25 A. NO, I DIDN'T.

DIRECT - JOVAN JONES BY SOL. PASCOE

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1 Q. OKAY. DO YOU KNOW ANYBODY BY THE NAME OF LAVON
2 MINTZ?

3 A. YES, I DO.

4 Q. OKAY. AND HOW LONG HAVE YOU KNOWN LAVON MINTZ,
5 THE DEFENDANT?

6 A. FOR ABOUT, I'D SAY ABOUT EIGHT YEAR.

7 Q. SPEAK UP.

8 A. ABOUT EIGHT YEARS.

9 Q. OKAY. HOW DO YOU KNOW LAVON MINTZ?

10 A. THROUGH SCHOOL, I REALLY DIDN'T GO TO SCHOOL WITH
11 HIM, BUT HANGING OUT AT SCHOOL.

12 Q. OKAY. AND WHAT NAME DID YOU -- WHAT NAME DID YOU
13 KNOW LAVON MINTZ BY?

14 A. LE LE.

15 THE COURT: SIR, YOU NEED TO EITHER
16 SIT CLOSER TO THE MIKE OR PULL IT AROUND CLOSER TO YOU,
17 BECAUSE YOU'RE TALKING VERY QUIET.

18 A. OH. LE LE.

19 THE COURT: THAT'S A LITTLE BETTER.
20 JUST SPEAK A LITTLE LOUDER, PLEASE, BECAUSE THAT LAST
21 LADY BACK THERE IN THAT LAST ROW HAS GOT TO HEAR YOU.

22 A. ALRIGHT.

23 Q. NOW, JOVAN, YOU'RE A SECURITY GUARD, RIGHT, A
24 BOUNCER?

25 A. YES.

DIRECT - JOVAN JONES BY SOL. PASCOE

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1 Q. I KNOW YOU CAN SPEAK UP LOUDER THAN THAT, OKAY?

2 A. YES.

3 Q. ALRIGHT. YOU KNEW HIM AS LE LE, IS THAT RIGHT?

4 A. YES.

5 Q. DID YOU ALSO KNOW HIS REAL NAME, LAVON MINTZ?

6 A. YES.

7 Q. OKAY. WHAT DID PEOPLE CALL LAVON MINTZ, BACK IN
8 TWO THOUSAND AND TWO AND BEFORE?

9 A. LE LE.

10 Q. OKAY. NOW, LET ME ASK YOU THIS, WHERE WERE YOU
11 WORKING BACK IN DECEMBER OF TWO THOUSAND AND TWO?

12 A. AT THE PUB.

13 Q. OKAY. AND WHAT TYPE OF WORK WERE YOU DOING AT THE
14 PUB?

15 A. BOUNCER.

16 Q. OKAY. AND SPECIFICALLY, WERE YOU WORKING ON THE
17 NIGHT OF SUNDAY, DECEMBER EIGHTH, TWO THOUSAND
18 TWO, ---

19 A. YES.

20 Q. --- IN THE EARLY MORNING OF DECEMBER NINTH, TWO
21 THOUSAND TWO?

22 A. YES, I WAS.

23 Q. OKAY. AND WHERE WERE YOU WORKING?

24 A. INSIDE THE PUB.

25 Q. OKAY. IS THAT LOCATED ON GROVE PARK IN ORANGEBURG?

DIRECT - JOVAN JONES BY SOL. PASCOE

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- 1 A. YES, IT IS.
- 2 Q. AND WHY TYPE OF WORK DO YOU DO IN THERE?
- 3 A. BOUNCER.
- 4 Q. OKAY. DO THEY SERVE ALCOHOL AT THE PUB?
- 5 A. YES.
- 6 Q. DID YOU HAVE ANYTHING TO DRINK THAT NIGHT?
- 7 A. NOT ON THAT PARTICULAR NIGHT.
- 8 Q. OKAY. WHY IS THAT?
- 9 A. I WAS WORKING.
- 10 Q. DID YOU EVER SEE THE DEFENDANT, LAVON MINTZ, AT
- 11 THE PUB DURING THE EARLY MORNING HOURS OF MONDAY,
- 12 DECEMBER NINTH?
- 13 A. YES.
- 14 Q. OKAY. AND DO YOU ANYBODY THAT HE WAS WITH, DO YOU
- 15 KNOW ANY OF THE PEOPLE HE WAS WITH?
- 16 A. JUST A FEW.
- 17 Q. OKAY. DO YOU KNOW ANY OF THEM BY NAME?
- 18 A. JUST, GAMIEL MAYES, AND I LEARNED ANDRE'S NAME
- 19 THAT NIGHT, AND ---
- 20 Q. SPEAK UP, NOW.
- 21 A. I LEARNED ANDRE'S NAME THAT NIGHT.
- 22 Q. SO, THE ONLY TWO PEOPLE YOU KNOW BY NAME WOULD BE
- 23 GAMIEL MAYES AND SOMEONE NAMED ANDRE?
- 24 A. YEAH.
- 25 Q. OKAY. DO YOU KNOW WHAT AREA THOSE PEOPLE,

DIRECT - JOVAN JONES BY SOL. PASCOE

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1 INCLUDING THE DEFENDANT, USED TO HANG OUT AT
2 TOGETHER, WHAT AREA OF TOWN?

3 A. WELL, FROM WHAT I UNDERSTOOD, SPRINKLE.

4 Q. OKAY. AND SPECIFICALLY, WAS THE DEFENDANT AT THE
5 PUB UNTIL IT CLOSED THAT NIGHT?

6 A. YES.

7 MR. WALTERS: YOUR HONOR, I'M GOING
8 TO OBJECT, HE'S LEADING THE WITNESS.

9 Q. HOW LONG HAD THE DEFENDANT ---

10 THE COURT: PLEASE ASK DIRECT
11 QUESTIONS.

12 Q. HOW LONG DID THE DEFENDANT STAY AT THE PUB THAT
13 NIGHT?

14 A. UNTIL IT CLOSED.

15 Q. OKAY. AND WHAT TIME APPROXIMATELY DID YOU CLOSE?

16 A. ABOUT TWO O'CLOCK A.M.

17 Q. WHAT TIME WERE YOU SUPPOSED TO CLOSE?

18 A. AT THREE O'CLOCK A.M.

19 Q. TELL THE JURY WHY YOU CLOSED EARLY THAT MORNING?

20 A. BECAUSE THE GUY THAT WAS AT THE DOOR RECOGNIZED
21 SOMETHING ON THE CAMERA THAT DIDN'T LOOK GOOD, AND
22 WE HAD TO GO BACK IN RESPONSE TO THE COMMOTION
23 THAT WAS GOING ON AT THE BATH ROOM AREA.

24 Q. I WAS GOING TO ASK, SO, WHERE DID YOU HAVE TO GO
25 RESPOND TO?

DIRECT - JOVAN JONES BY SOL. PASCOE

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1 A. NEAR THE REST ROOM AREA.

2 Q. OKAY. AND WHAT HAPPENED WITH THAT INCIDENT?

3 A. WELL, I MEAN, IT WASN'T ANY -- ANYTHING SERIOUS,
4 JUST WORDS EXCHANGED.

5 Q. WAS IT BROKEN UP?

6 A. YES, IT DIDN'T LOOK LIKE ANYTHING WAS REALLY GOING
7 ON AT THE TIME.

8 Q. OKAY, AND ---

9 A. JUST A LOT OF WORDS FLYING BACK AND FORTH.

10 Q. AND YOU TESTIFIED THAT WAS IN THE BATHROOM?

11 A. YES, RIGHT NEAR THE BACK WHERE THE BATHROOM IS.

12 Q. LET ME ASK YOU THIS, UP UNTIL ABOUT ONE:THIRTY
13 THAT MORNING WHAT WAS THE ATMOSPHERE INSIDE THE
14 NIGHTCLUB?

15 A. IT WAS FINE. EVERYTHING WAS ALRIGHT.

16 Q. DID ANYTHING HAPPEN AFTER THAT, AFTER ABOUT
17 ONE:THIRTY AND AFTER THE BATHROOM INCIDENT INSIDE
18 THE CLUB?

19 A. WELL, LAVON AND HIS FRIENDS BEGAN TO MOTION ---

20 COURT REPORTER: I'M SORRY.

21 Q. SPEAK UP.

22 THE COURT: SHE HAS TO WRITE THIS
23 DOWN.

24 A. WELL, LAVON AND HIS FRIENDS BEGAN TO MOTION TO THE
25 BAR.

DIRECT - JOVAN JONES BY SOL. PASCOE

152

1 Q. OKAY. AND LAVON IS KNOWN AS?

2 A. LE LE.

3 Q. AND TELL THE JURY WHAT LE LE, OR THE PERSON YOU
4 KNOW AS LAVON MINTZ, LE LE, WAS HE -- HOW WAS HE
5 ACTING AT THE BAR?

6 A. YOU KNOW, KIND OF WILD, ROWDY, YOU KNOW, YELLING,
7 THROWING HIS HANDS UP, YOU KNOW.

8 Q. HOW WAS HE THROWING HIS HANDS UP, DID HE DO
9 ANYTHING SPECIFIC THAT YOU CAN SEE?

10 A. WELL, BASICALLY, MAKING AIM AT THE FLOOR. IT WAS,
11 LIKE, A DANCE FLOOR, LIKE, PEOPLE WAS ON THE DANCE
12 FLOOR, FORMING HIS HAND LIKE A GUN AND SHOOTING AT
13 THE DANCE FLOOR, YOU KNOW.

14 Q. I WANT YOU TO SHOW THE JURY SPECIFICALLY -- THIS
15 IS THE DANCE FLOOR AREA --- EXACTLY, SHOW THE JURY
16 WHAT YOU SAW THE DEFENDANT DOING TOWARDS THE DANCE
17 FLOOR?

18 A. LIKE THAT, YOU KNOW.

19 Q. AND YOU TESTIFIED, ACTING LIKE A GUN?

20 A. YES.

21 Q. AND THAT'S HOW HE DID IT?

22 A. YES.

23 Q. WAS ANYBODY ELSE DOING THAT?

24 A. NO.

25 Q. LET ME ASK YOU THIS, DID YOU SEE ANYONE ELSE

DIRECT - JOVAN JONES BY SOL. PASCOE

153

1 ACTING THAT CRAZY OR VIOLENT INSIDE THE PUB THAT
2 NIGHT?

3 A. WELL, ACTING AS WILD HE WAS, NO.

4 Q. AND AS A RESULT OF HIS CONDUCT INSIDE THE PUB WHAT
5 DID YOU END UP HAVING TO DO?

6 A. WE HAD TO CLOSE EARLY.

7 Q. AND HOW DID YOU GO ABOUT CLOSING THE PUB THAT
8 MORNING?

9 A. WELL, I HAD THE BARTENDERS CUT ON THE LIGHTS, AND
10 I WAS GETTING THE DJ TO KILL THE MUSIC SO WE CAN
11 GET EVERYONE TO LEAVE.

12 Q. OKAY. AND YOU TESTIFIED EARLIER, THIS WAS
13 APPROXIMATE WHAT TIME?

14 A. CLOSING?

15 Q. UH HUH, THAT YOU HAD TO CLOSE THAT NIGHT?

16 A. ABOUT TWO O'CLOCK.

17 Q. AND HOW DID YOU GO ABOUT HAVING PEOPLE EXIT THE
18 PUB?

19 A. WELL, WITHOUT ME HAVING TO SAY ANYTHING, FREDO AND
20 HIS FRIENDS LEFT FIRST. THEY WENT OUT, AND I HAD A
21 GUY FOLLOW THEM OUT TO THE DOOR.

22 Q. OKAY. DID ANYONE EXIT SOMETIME AFTER FREDO
23 EXITED?

24 A. THE REMAINING GROUP OF PEOPLE THAT WAS IN THE
25 CLUB, EVERYBODY, INCLUDING THE OTHER GROUP THAT

DIRECT - JOVAN JONES BY SOL. PASCOE

154

1 WAS INVOLVED.

2 Q. AND WHO WAS THE OTHER GROUP?

3 A. IT WAS LE LE AND HIS FRIENDS, THEY ALL LEFT OUT,
4 YOU KNOW, AND THE REST OF THE PEOPLE THAT WAS IN
5 THERE.

6 Q. DID YOU ACTUALLY SEE THE DEFENDANT, LE LE, EXITING
7 OUT OF THE PUB?

8 A. YEAH, I SAW EVERYBODY LEFT.

9 Q. DID YOU EVER SEE THE DEFENDANT AGAIN AFTER THAT
10 NIGHT, HAVE YOU EVER SEEN HIM AGAIN?

11 A. NO, I DIDN'T.

12 Q. OKAY. TELL THE JURY WHAT HAPPENED SOMETIME AFTER
13 EVERYONE HAD EXITED THE PUB, WHERE WERE YOU?

14 A. I WAS STANDING AT THE KITCHEN, NEAR THE FRONT
15 DOOR, AND SHORTLY AFTER THAT WE HEARD GUN FIRE.

16 Q. WHAT DID YOU DO AT THAT TIME?

17 A. I LOCKED THE FRONT DOOR.

18 Q. DO YOU KNOW WHETHER OR NOT THE POLICE WERE EVER
19 CALLED?

20 A. FROM MY KNOWLEDGE, YES.

21 Q. OKAY. DID THE POLICE ARRIVE AT THE SCENE THAT
22 MORNING?

23 A. YES.

24 Q. AND DID YOU TALK TO THEM THAT MORNING?

25 A. YES.

DIRECT - JOVAN JONES BY SOL. PASCOE

155

1 Q. DID YOU GIVE THEM A STATEMENT?

2 A. NO, I GAVE THEM INFORMATION ON HOW TO CONTACT ME
3 THE NEXT MORNING.

4 Q. AND DID THEY CONTACT YOU AND GET ANOTHER
5 STATEMENT?

6 A. YES.

7 Q. DID THEY SHOW YOU ANYTHING THAT MORNING?

8 A. YES, THEY DID.

9 SOLICITOR PASCOE: MARK THIS FOR ID.

10 COURT REPORTER: STATE'S TWELVE, ID.

11 (State's Exhibit Twelve,
12 Photo lineup,
13 marked for identification.)

14 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED, JUST
15 FOR PURPOSES OF IDENTIFICATION, STATE'S EXHIBIT
16 TWELVE, DO YOU RECOGNIZE THAT?

17 A. YES.

18 Q. WHAT DO YOU RECOGNIZE THAT TO BE?

19 A. IT'S A POLICE LINEUP.

20 Q. OKAY. IS THAT THE LINEUP THEY SHOWED YOU ON
21 DECEMBER NINTH?

22 A. YES.

23 Q. OKAY. DID, DID YOU RECOGNIZE ANYBODY FROM THAT
24 LINEUP?

25 A. YES, I DO.

DIRECT - JOVAN JONES BY SOL. PASCOE

156

1 Q. AND WHO DID YOU RECOGNIZE?

2 A. LAVON MINTZ.

3 Q. COULD YOU POINT HIM OUT, WHICH NUMBER?

4 A. THERE, NUMBER FIVE.

5 Q. NUMBER FIVE. AND THOSE ARE YOUR INITIALS AFTER

6 YOU PICKED OUT LAVON MINTZ?

7 A. YES.

8 Q. AND THE DATE ON WHICH YOU DATE?

9 A. YES.

10 SOLICITOR PASCOE: IS THERE ANY

11 OBJECTION TO STATE'S EXHIBIT TWELVE BEING ADMITTED INTO

12 EVIDENCE? GLEN, DO YOU HAVE ANY OBJECTIONS TO STATE'S

13 TWELVE?

14 MR. WALTERS: NO OBJECTION.

15 THE COURT: ADMITTED WITHOUT

16 OBJECTION.

17 COURT REPORTER: HAND IT TO ME.

18 STATE'S TWELVE.

19 (State's Exhibit Twelve

20 marked and filed.)

21 Q. AND AS YOU TESTIFIED TO, THAT'S THE PERSON YOU

22 KNOW AS LE LE, LAVON MINTZ?

23 A. YES.

24 Q. THE ONE THAT WAS ACTING UP INSIDE THE PUB?

25 A. YES.

DIRECT - JOVAN JONES BY SOL. PASCOE

157

1 SOLICITOR PASCOE: MARK THIS FOR ID.

2 COURT REPORTER: State's Eleven, ID.

3 (State's Exhibit Eleven,

4 Photo lineup,

5 marked for identification.)

6 Q. AND DID THEY SHOW YOU ANOTHER PHOTOGRAPHIC LINEUP?

7 A. YES.

8 Q. DO YOU RECOGNIZE STATE'S EXHIBIT ELEVEN?

9 A. YES.

10 Q. DID YOU RECOGNIZE ANYBODY FROM STATE'S EXHIBIT

11 ELEVEN?

12 A. YES, I DO.

13 Q. WHICH ONE DID YOU RECOGNIZE?

14 A. NUMBER TWO.

15 Q. OKAY. AND WHO DID YOU RECOGNIZE NUMBER TWO TO BE?

16 A. ANDRE.

17 Q. OKAY. SPEAK UP, NOW.

18 A. ANDRE.

19 Q. ALRIGHT. AND AFTER YOU PICKED OUT NUMBER TWO, DID

20 YOU PUT YOUR INITIALS AND DATE IT?

21 A. YES, I DID.

22 SOLICITOR PASCOE: ANY OBJECTION TO

23 STATE'S EXHIBIT ELEVEN BEING ADMITTED INTO EVIDENCE?

24 MR. WALTERS: NO OBJECTION, YOUR

25 HONOR.

DIRECT - JOVAN JONES BY SOL. PASCOE

158

1 THE COURT: ADMITTED WITHOUT
2 OBJECTION.

3 COURT REPORTER: STATE'S ELEVEN.
4 (State's Exhibit Eleven
5 marked and filed.)

6 Q. AND WHO WAS ANDRE HANGING OUT WITH THAT NIGHT?

7 A. LAVON.

8 Q. SPEAK UP, NOW.

9 A. LAVON MINTZ.

10 Q. AND FINALLY, JOVAN, THE PERSON THAT YOU KNOW AS LE
11 LE, LAVON MINTZ, AND THAT YOU SAW POINTING INTO
12 THE DANCE FLOOR LIKE HE HAD A GUN, DO YOU SEE HIM
13 IN THE COURTROOM TODAY?

14 A. YES, I DO.

15 Q. AND IF YOU COULD, POINT HIM OUT FOR THE JURY?

16 A. (Points toward defendant's table.)

17 Q. IS HE SITTING NEXT TO MR. WALTERS?

18 A. NEXT TO -- YES, HE IS.

19 SOLICITOR PASCOE: OKAY. ANSWER ANY
20 QUESTIONS THAT MR. WALTERS HAS FOR YOU, OKAY?

21 THE COURT: CROSS-EXAMINATION.

22 MR. WALTERS: MAY IT PLEASE THE
23 COURT.

24 THE COURT: YES, SIR.

25 MR. WALTERS: SOLICITOR PASCOE.

CROSS - JOVAN JONES BY MR. WALTERS

159

1 CROSS-EXAMINATION OF JOVAN JONES

2 BY MR. WALTERS:

3 Q. MR. JONES, STAND UP AND COME IN FRONT OF THE JURY
4 HERE. YOU MADE A GESTURE THAT YOU SAID THAT MR.
5 MINTZ WAS MAKING THAT NIGHT WHILE AT THE CLUB.
6 SHOW ME EXACTLY WHAT YOU SAID HE WAS DOING WITH
7 HIS HAND?

8 A. IT WAS LIKE THIS.

9 Q. OKAY. HOW MANY TIMES DID HE DO IT?

10 A. I SAW IT ONCE.

11 Q. OKAY. ALRIGHT, YOU REMEMBER YOU GAVE A STATEMENT
12 TO THE POLICE, DON'T YOU?

13 A. YES, I DID.

14 Q. THAT WAS BACK ON DECEMBER NINTH OF TWO THOUSAND
15 AND TWO, ISN'T THAT RIGHT?

16 A. YES.

17 Q. ALRIGHT. I WANT YOU TO LOOK AT THIS DOCUMENT AND
18 TELL ME IF THAT'S YOUR STATEMENT? LOOK AT IT
19 CAREFULLY, DID YOU WRITE THAT STATEMENT?

20 A. YES.

21 Q. ALRIGHT. AND YOU SIGNED YOUR NAME AT THE BOTTOM
22 OF IT, DIDN'T YOU?

23 A. YES, I DID.

24 Q. ALRIGHT. I'D LIKE YOU TO TAKE THE STATEMENT HERE,
25 IF I CAN ---

CROSS - JOVAN JONES BY MR. WALTERS

160

1 A. UH HUH.

2 Q. --- AND CAREFULLY LOOK THROUGH IT. SHOW ME IN THE
3 STATEMENT WHERE YOU PUT IN THERE THAT YOU SAW MR.
4 MINTZ POINTING AS IF HE WERE SHOOTING A GUN AT THE
5 DANCE FLOOR. SHOW IT TO ME.

6 A. IT'S NOT IN THERE.

7 Q. YOU DIDN'T THINK THAT WAS AN IMPORTANT FACT WHEN A
8 MURDER HAD OCCURRED AT THE PUB?

9 A. I WASN'T ASKED THAT AT THE TIME.

10 Q. IN FACT, LET'S GO THROUGH YOUR STATEMENT, AND
11 LET'S TALK ABOUT WHAT ELSE IS NOT IN THERE.
12 ALRIGHT, FIRST OF ALL, YOU SAID THAT INSIDE THE
13 PUB THEY HAD COME TO A BAR AND SOMEHOW HE WAS
14 THROWING HIS HANDS IN THE AIR, HE WAS WAVING HIS
15 HANDS IN THE AIR, IS THAT CORRECT -- SHOW ME IN
16 THE STATEMENT WHERE IT SAYS THAT?

17 A. I DON'T HAVE ANY OF THAT, EITHER.

18 Q. ALRIGHT. SO, THIS IS YOUR SECOND VERSION -- THIS
19 IS YOUR FIRST VERSION OF WHAT HAPPENED?

20 A. UH HUH.

21 Q. ALRIGHT. AND YOU DON'T HAVE IN THERE WHERE HE HAD
22 HIS HAND AND WAS SOMEHOW SHOOTING AT THE GROUND,
23 OR SHOOTING AT THE FLOOR, AND YOU DON'T HAVE IN
24 HERE WHERE HE WAS THROWING HIS HANDS UP IN THE AIR
25 AND HE WAS ANGRY, DO YOU?

CROSS - JOVAN JONES BY MR. WALTERS

161

1 A. NO, I DON'T.

2 Q. ALRIGHT. CAN YOU EXPLAIN TO THE JURY WHY YOU
3 DIDN'T PUT THAT INFORMATION IN HERE?

4 A. MAINLY, BECAUSE I WASN'T ASKED. AND AT THE TIME I
5 REALLY GAVE WHAT I COULD REMEMBER AT THE TIME. IT
6 WAS LATE AT NIGHT WHEN THAT HAPPENED.

7 Q. WELL, LET'S TALK ABOUT THE TIME. THIS OCCURRED ON
8 THAT NIGHT, ON DECEMBER NINTH OF TWO THOUSAND AND
9 TWO. IT'S NOW APRIL OF TWO THOUSAND FIVE, ---

10 A. UH HUH.

11 Q. --- WHAT DO YOU THINK WOULD BE A BETTER
12 RECOLLECTION OF THE EVENTS, WHAT YOU REMEMBERED
13 THAT NIGHT, OR WHAT YOU REMEMBER THREE YEARS DOWN
14 THE ROAD?

15 A. BASICALLY, WHAT I PUT ON THERE. LIKE I SAID, I
16 WASN'T ASKED THAT, SO I WOULD GO WITH WHAT I PUT
17 ON THERE.

18 Q. IT'S NOT YOUR FIRST TIME IN THIS COURTROOM, IS IT,
19 MR. JONES?

20 A. IT'S NOT MY FIRST TIME IN WHERE, IN THIS
21 COURTROOM?

22 Q. MR. JONES, ---

23 A. YES, THIS IS MY FIRST TIME IN THIS COURTROOM.

24 Q. MR. JONES, ---

25 A. THIS IS MY FIRST TIME IN THIS COURTROOM.

CROSS - JOVAN JONES BY MR. WALTERS

162

1 Q. HAVE YOU EVER BEEN IN TROUBLE, MR. JONES?

2 A. YES, I HAVE.

3 Q. OKAY.

4 A. MISDEMEANORS.

5 Q. MR. JONES, WEREN'T YOU THE SAME MR. JONES THAT WAS
6 PICKED UP FOR SHOPLIFTING?

7 A. YES.

8 Q. ALRIGHT. MR. JONES, LET'S GO OVER YOUR STATEMENT
9 HERE. I BELIEVE YOU ALSO WENT ON AND STATED THAT
10 SOMEHOW YOU WERE STANDING AND YOU HEARD SHOTS
11 WHILE YOU WERE INSIDE, IS THAT CORRECT?

12 A. UH HUH.

13 Q. OKAY. ALRIGHT, YOU STATED THERE WAS AN
14 ALTERCATION IN THE BATHROOM, IS THAT RIGHT?

15 A. YES.

16 Q. ALRIGHT. I WANT YOU TO SHOW ME IN YOUR STATEMENT
17 WHERE YOU STATE THAT? MR. JONES, ---

18 A. EXCUSE ME?

19 Q. CAN YOU READ AND WRITE?

20 A. I WROTE A STATEMENT, I MUST BE ABLE TO READ AND
21 WRITE.

22 Q. ALRIGHT. YOU SHOW ME IN THERE WHERE YOU HAD
23 SOMEBODY SHOOTING AT THE FLOOR, SHOW ME, WHERE YOU
24 HAD SOMEBODY THROWING THEIR HANDS ---

25 A. LIKE I SAID, I WASN'T ASKED THAT THAT NIGHT, SO --

CROSS - JOVAN JONES BY MR. WALTERS

163

1

2 Q. SHOW ME THE CONFRONTATION IN THE ---

3 A. --- I DIDN'T PUT IT IN THERE.

4 Q. --- IN THE BATH ROOM?

5 A. IT WASN'T REALLY IN THE BATH ROOM, IT WAS NEAR THE
6 BATH ROOM. OKAY.

7 Q. NOW, MR. JONES, WHICH VERSION OF YOUR STORY DO YOU
8 WANT THE JURY TO BELIEVE, THE ONE YOU'RE GIVING
9 TODAY OR THE ONE THAT YOU GAVE BACK ON DECEMBER
10 NINTH OF TWO THOUSAND AND TWO?

11 A. BOTH.

12 MR. WALTERS: YOUR HONOR, I HAVE NO
13 FURTHER QUESTIONS.

14 THE COURT: REDIRECT?

15 (NOTE: Blank lines on this page do not indicate any
16 part of record has been omitted. Headers on testimony
17 pages and hard page breaks between testimony are now
18 required by the Court. See next ensuing page for
19 sequential continuation of record.)

REDIRECT - JOVAN JONES BY SOL. PASCOE

164

1 REDIRECT EXAMINATION OF JOVAN JONES

2 BY SOLICITOR PASCOE:

3 Q. WAS YOUR STATEMENT TO THE POLICE ON DECEMBER NINTH
4 THE TRUTH?

5 A. YES.

6 Q. IS YOUR STATEMENT, YOUR SWORN TESTIMONY IN FRONT
7 OF THIS JURY TODAY THE TRUTH, SO HELP YOU, GOD?

8 A. YES.

9 Q. AND LET ME ASK YOU THIS, DESPITE HAVING THE
10 HORRENDOUS CRIME OF SHOPLIFTING, DID YOU STILL
11 STAY AND COOPERATE WITH THE POLICE ON DECEMBER THE
12 NINTH?

13 A. OF COURSE.

14 Q. OKAY. AND FINALLY, THIS STATEMENT THAT YOU GAVE
15 TO THE POLICE, JUST FOR CLARIFICATION, IS THAT IN
16 YOUR HANDWRITING OR THE DETECTIVE'S HANDWRITING?

17 A. WHICH ONE IS THAT ONE?

18 Q. THE ONE THAT MR. WALTERS WAS SHOWING YOU.

19 A. I THINK THAT WAS ONE IN MY HANDWRITING.

20 Q. LET ME SHOW IT TO YOU, THAT STATEMENT.

21 A. YEAH -- NO, THIS ---

22 Q. IS THAT YOUR HANDWRITING OR THE DETECTIVE'S?

23 A. THAT'S NOT MY HANDWRITING RIGHT HERE.

24 Q. OKAY.

25 SOLICITOR PASCOE: THAT'S ALL I

REDIRECT - JOVAN JONES BY SOL. PASCOE

165

1 HAVE. THANK YOU, YOUR HONOR.

2 THE COURT: RECROSS?

3 (NOTE: Blank lines on this page do not indicate any
4 part of record has been omitted. Headers on testimony
5 pages and hard page breaks between testimony are now
6 required by the Court. See next ensuing page for
7 sequential continuation of record.)

RE CROSS - JOVAN JONES BY MR. WALTERS

166

1 RE CROSS-EXAMINATION OF JOVAN JONES

2 BY MR. WALTERS:

3 Q. YOU REFERRED TO AN INDIVIDUAL NAMED AS GAMIELLE,
4 IS THAT CORRECT, WHAT'S HIS NAME?

5 A. YES.

6 Q. YOU STATED IT WAS GAMIEL MAYES, ISN'T THAT RIGHT?

7 A. YES.

8 Q. ON DECEMBER NINTH YOU DIDN'T EVEN KNOW HIS LAST
9 NAME, DID YOU?

10 A. NO.

11 Q. WHO TOLD YOU HIS LAST NAME?

12 A. HIGH SCHOOL PHOTO BOOKS, YEAR BOOKS.

13 Q. WHO TOLD YOU HOW TO TESTIFY TODAY?

14 A. NO ONE.

15 MR. WALTERS: I HAVE NO QUESTIONS,
16 YOUR HONOR.

17 SOLICITOR PASCOE: I HAVE ONE
18 QUESTION TO ADDRESS THAT, YOUR HONOR.

19 THE COURT: ONE QUESTION.

20 (NOTE: Blank lines on this page do not indicate any
21 part of record has been omitted. Headers on testimony
22 pages and hard page breaks between testimony are now
23 required by the Court. See next ensuing page for
24 sequential continuation of record.)

REDIRECT - JOVAN JONES BY SOL. PASCOE

167

1 REDIRECT EXAMINATION OF JOVAN JONES

2 BY SOLICITOR PASCOE:

3 Q. WHO HAS APPROACHED YOU IN THE LAST MONTH
4 CONCERNING YOUR TESTIMONY?

5 A. WELL, GAMIEL MAYES.

6 SOLICITOR PASCOE: THANK YOU, THAT'S
7 ALL I HAVE.

8 THE COURT: ONE QUESTION?

9 MR. WALTERS: NO QUESTIONS, YOUR
10 HONOR.

11 THE COURT: ALRIGHT. THANK YOU,
12 SIR, YOU MAY STEP DOWN.

13 COURT REPORTER: HOW DO YOU SPELL
14 THAT GAMIEL?

15 THE COURT: YOU MAY BE EXCUSED IF
16 YOU'D LIKE. THANK YOU FOR COMING.

17 SOLICITOR PASCOE: G-A-M-I-E-L.

18 THANK YOU, MR. JONES, THANK YOU.

19 THE COURT: ALRIGHT, CALL YOUR NEXT
20 WITNESS, PLEASE.

21 SOLICITOR PASCOE: COTINA BROOKS,
22 YOUR HONOR.

23 THE COURT: COTINA BROOKS.

24 (Whereupon, the witness
25 enters the courtroom.)

1 CLERK: MS. BROOKS, PLEASE COME DOWN
2 TO THE FRONT AND TO YOUR RIGHT, AND PLACE YOUR LEFT HAND
3 ON THE BIBLE AND RAISE YOUR RIGHT HAND.

4 (Whereupon, the witness,
5 COTINA NICOLE BROOKS,
6 is duly sworn.)

7 CLERK: YOU MAY BE SEATED, AND STATE
8 YOUR FULL NAME FOR THE COURT RECORD.

9 WITNESS: COTINA NICOLE BROOKS.

10 COURT REPORTER: SPELL IT, PLEASE.

11 WITNESS: C-O-T-I-N-A.

12 THE COURT: THANK YOU, MA'AM.

13 ALRIGHT COUNSELLOR.

14 (NOTE: Blank lines on this page do not indicate any
15 part of record has been omitted. Headers on testimony
16 pages and hard page breaks between testimony are now
17 required by the Court. See next ensuing page for
18 sequential continuation of record.)

DIRECT - COTINA NICOLE BROOKS BY SOL. PASCOE

169

1 DIRECT EXAMINATION OF COTINA NICOLE BROOKS

2 BY SOLICITOR PASCOE:

3 Q. GOOD AFTERNOON, MS. BROOKS.

4 A. GOOD AFTERNOON.

5 Q. SPEAK UP AS LOUD AS YOU CAN, COTINA, OKAY?

6 A. OKAY.

7 Q. WHERE ARE YOU FROM, COTINA?

8 A. ORANGEBURG, SOUTH CAROLINA.

9 Q. AS LOUD AS YOU CAN.

10 A. ORANGEBURG, SOUTH CAROLINA.

11 Q. I KNOW YOU CAN YELL LOUDER THAN THAT. OKAY?

12 THE COURT: RAISE THE MICROPHONE UP.

13 DON'T PICK IT UP, JUST RAISE IT. IT WON'T GO HIGHER UP,

14 IT WON'T? WELL, THIS LADY HAS TO WRITE DOWN EVERYTHING,

15 AND EVERYBODY ON THAT JURY HAS TO HEAR YOU, SO PLEASE

16 SPEAK LOUD ENOUGH SO THAT THEY CAN HEAR YOU, PLEASE,

17 MA'AM.

18 A. OKAY.

19 THE COURT: ALRIGHT, COUNSELLOR.

20 SOLICITOR PASCOE: THANK YOU.

21 Q. HOW OLD ARE YOU, COTINA?

22 A. THIRTY-TWO.

23 Q. PERFECT. HAVE YOU LIVED IN ORANGEBURG YOUR WHOLE
24 LIFE?

25 A. YES.

DIRECT - COTINA NICOLE BROOKS BY SOL. PASCOE

170

1 Q. ALRIGHT. DID YOU KNOW THE VICTIM, ALFREDO LEWIS?

2 A. YES.

3 Q. HOW WELL DID YOU KNOW ALFREDO?

4 A. PRETTY GOOD.

5 Q. HOW LONG HAD YOU KNOWN HIM?

6 A. EIGHT OR NINE YEARS.

7 Q. WAS HE A FRIEND OF YOURS?

8 A. YES.

9 Q. DID YOU KNOW ANYBODY BY THE NAME OF TERRELL
10 PARKER?

11 A. YES.

12 Q. AND HOW WELL DID YOU KNOW HIM?

13 A. JUST KNOW OF HIM, NOT REALLY KNOW HIM.

14 Q. DID YOU KNOW HIM NEARLY AS WELL AS YOU KNEW
15 ALFREDO?

16 A. NO.

17 Q. AND BACK IN DECEMBER OF TWO THOUSAND AND TWO, DID
18 YOU KNOW THE DEFENDANT, LAVON MINTZ?

19 A. YES.

20 Q. OKAY. AND WHAT DID YOU KNOW THE DEFENDANT BY?

21 A. LE LE.

22 Q. HOW LONG HAD YOU KNOWN THE DEFENDANT?

23 A. ABOUT EIGHT OR NINE YEARS ALSO.

24 Q. I WANT TO ASK YOU, WAS LE LE A FRIEND OF YOURS?

25 A. NO.

DIRECT - COTINA NICOLE BROOKS BY SOL. PASCOE

171

1 Q. DID YOU KNOW ANYBODY BACK THEN BY THE NAME OF
2 ANDRE GOODEN?

3 A. YES.

4 Q. OKAY. AND HOW LONG HAD YOU KNOWN MR. ANDRE GOODEN?

5 A. ABOUT FOUR OR FIVE YEARS.

6 Q. NOW, I WANT TO DIRECT YOUR ATTENTION TO THE NIGHT
7 OF SUNDAY, DECEMBER THE EIGHTH, AND THE EARLY
8 MORNING HOURS OF DECEMBER NINTH, OKAY, THAT
9 MONDAY. ALRIGHT, WHERE DID YOU GO THAT NIGHT?

10 A. TO THE PUB.

11 Q. OKAY. DID YOU GO WITH ANYBODY?

12 A. YES.

13 Q. WHO WAS THAT?

14 A. MY SISTER-IN-LAW, MARSHA HAYNES.

15 Q. OKAY. APPROXIMATELY WHAT TIME DID YOU AND MARSHA
16 GET TO THE PUB THAT NIGHT OR EARLY MORNING?

17 A. BETWEEN ELEVEN AND ELEVEN:THIRTY.

18 Q. OKAY. DID YOU HAVE ANYTHING TO DRINK THAT NIGHT?

19 A. NO.

20 Q. AND WHY IS THAT?

21 A. I DON'T DRINK.

22 Q. OKAY. NOW, SOMETIME THAT LATE NIGHT OR EARLY
23 MORNING DID YOU EVER HAVE CONTACT WITH ALFREDO?

24 A. YES.

25 Q. OKAY. HOW WAS HE ACTING AROUND YOU AT THE PUB?

DIRECT - COTINA NICOLE BROOKS BY SOL. PASCOE

172

1 A. JUST THE USUAL, YOU KNOW, DRINKING, HAVING A NICE
2 TIME, AS USUAL.

3 Q. WAS HE ACTING VIOLENT AT ALL?

4 A. NO.

5 Q. OKAY. DID YOU HAVE ANY CONTACT WITH TERRELL
6 PARKER THAT NIGHT?

7 A. NO.

8 Q. DID -- WAS ALFREDO OR ANYONE -- WAS ALFREDO AT ALL
9 ACTING VIOLENT?

10 A. NO.

11 Q. AND YOU TESTIFIED EVERYBODY WAS HAVING A GOOD
12 TIME. DID ANYTHING PUT AN END TO EVERYBODY HAVING
13 A GOOD TIME?

14 A. YES, WHEN ANDRE AND ALFREDO, YOU KNOW, STARTED
15 EXCHANGING WORDS.

16 Q. OKAY. AND WHERE DID THEY FIRST START EXCHANGING
17 WORDS?

18 A. OVER BY THE HALLWAY COMING FROM THE REST ROOMS.

19 Q. OKAY. ACTUALLY, INSIDE THE PUB?

20 A. YES.

21 Q. COULD YOU HEAR WHAT WAS BEING SAID?

22 A. NO.

23 Q. DO YOU EVEN KNOW WHAT THEY WERE TALKING ABOUT?

24 A. NO.

25 Q. WHAT HAPPENED NEXT, DID THAT ARGUMENT EVER END?

DIRECT - COTINA NICOLE BROOKS BY SOL. PASCOE

173

1 A. YES, WHEN THE BOUNCERS CAME -- EXCUSE ME, BEFORE
2 THE BOUNCERS CAME ALFREDO WALKED OFF, HIM AND --
3 TERRELL CAME AND GOT HIM, AND THEY, YOU KNOW, LEFT
4 FROM BY ANDRE, AND THEY WENT ON THE DANCE FLOOR,
5 AND THEN THE LIGHTS -- I GUESS THEY GOT INTO IT
6 AGAIN. THE LIGHTS CAME ON, AND I SEEN THE
7 BOUNCERS ESCORTING ALFREDO OUTSIDE OF THE CLUB
8 ALONG WITH HIS OTHER FRIENDS.

9 Q. AND EVEN BEFORE THERE WERE PEOPLE BEING ESCORTED
10 OUT OF THE CLUB, DID YOU SEE HOW SPECIFICALLY THE
11 DEFENDANT AND ANDRE WERE ACTING?

12 A. YES.

13 Q. AND HOW WAS THE DEFENDANT ACTING BEFORE THE PUB
14 CLOSED?

15 A. LIKE HE WAS HIGH ON SOMETHING.

16 Q. WHAT WAS HE DOING?

17 A. LIKE, YOU KNOW, CURSING, AND WANTED TO FIGHT,
18 PASSING WORDS BACK, YOU KNOW, TO FREDO.

19 Q. AND THIS WAS THE DEFENDANT, LAVON MINTZ?

20 A. YES.

21 Q. DID YOU EVER SEE HIM -- DO YOU KNOW WHETHER OR NOT
22 AT THAT TIME, INSIDE THE PUB, WHETHER OR NOT HE
23 WAS ARMED?

24 A. YES.

25 Q. OKAY. TELL THE JURY ABOUT THAT.

DIRECT - COTINA NICOLE BROOKS BY SOL. PASCOE

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1 A. WHEN HIM AND ALFREDO -- EXCUSE ME, LAVON AND
2 ALFREDO WAS PASSING WORDS, I SEEN LAVON PULL OUT
3 SOMETHING BLACK WHICH WAS A GUN. HE NEVER PULLED
4 IT ALL THE WAY OUT, HE, LIKE, LIFTED UP HIS SHIRT,
5 AND HAD IT RIGHT HERE.

6 Q. SO, YOU WOULD JUST SEE THE HANDLE, THE BLACK
7 HANDLE?

8 A. YES.

9 Q. AND, NOW, YOU'VE ALREADY TESTIFIED, HOW MUCH LATER
10 WAS IT FROM THEN, AND THOSE WORDS BEING EXCHANGED
11 THAT ALFREDO AND TERRELL WERE ESCORTED OUT OF THE
12 BAR?

13 A. ABOUT FIFTEEN, TWENTY MINUTES.

14 Q. OKAY. TELL THE JURY WHAT HAPPENED AFTER EVERYBODY
15 WAS ESCORTED -- AFTER EVERYBODY HAD LEFT THE BAR,
16 WHAT HAPPENED OUTSIDE?

17 A. OKAY, WHEN THEY ESCORTED ALFREDO OUTSIDE OF THE
18 CLUB, ME AND MY SISTER-IN-LAW, MARSHA HAYNES, WE
19 WENT BEHIND ALFREDO, NOT RIGHT BEHIND HIM, BUT WE
20 WAITED A FEW MINUTES AND WE WALKED BEHIND. LE LE -
21 - EXCUSED ME, LAVON AND ANDRE CAME OUTSIDE. ANDRE
22 AND ALFREDO STARTED PASSING WORDS, YOU KNOW. LE
23 LE CAME UP, AND HE WAS, LIKE, YQU KNOW, WHAT'S
24 GOING ON, ANDRE, YOU KNOW, BLAZA, BLAZA, FUCK THAT
25 SHIT, AND PULLED OUT A GUN AND FIRED. WHEN HE

DIRECT - COTINA NICOLE BROOKS BY SOL. PASCOE

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1 FIRED I TURNED MY HEAD AND WENT RUNNING.

2 Q. OKAY, LET ME TAKE YOU BACK. WHO SAID, FUCK THAT
3 SHIT?

4 A. LE LE, LAVON.

5 Q. OKAY. AND WHAT DID HE DO IMMEDIATELY AFTER SAYING
6 THAT?

7 A. PULLED OUT A GUN.

8 Q. OKAY. AND YOU KNOW IT WAS A GUN?

9 A. YES.

10 Q. OKAY. WHAT DID YOU DO WHEN YOU SAW HIM PULLING OUT
11 A GUN?

12 A. DUCKED DOWN BEHIND THE CAR.

13 Q. OKAY. AND WHAT DID YOU HEAR OR SEE NEXT, AFTER
14 THE GUN WENT OFF?

15 A. I HEARD TWO GUN SHOTS.

16 Q. AND HOW MUCH TIME WENT BY FROM THE TIME YOU DUCKED
17 UNTIL WHEN YOU HEARD THOSE TWO GUN SHOTS?

18 A. A COUPLE OF SECONDS.

19 Q. OKAY. WHAT HAPPENED NEXT, WHAT DID YOU DO NEXT?

20 A. WHEN I HEARD THE GUN SHOTS I DUCKED DOWN BY THE
21 CAR, AND I WENT BACK TO LOOK FOR MY SISTER-IN-LAW,
22 MARSHA HAYNES, WHICH WAS COMING OUT OF THE DOORWAY
23 OF THE PUB.

24 Q. OKAY. AND WHERE DID Y'ALL GO?

25 A. TO THE HOSPITAL.

DIRECT - COTINA NICOLE BROOKS BY SOL. PASCOE

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1 Q. OKAY. LET ME ASK YOU THIS BEFORE I FORGET. WHEN
2 THE -- YOU SAW THE DEFENDANT PULLING THE GUN?

3 A. UH HUH, YES.

4 Q. AND YOU HEARD THE SHOTS?

5 A. YES.

6 Q. HOW FAR WERE YOU FROM HIM WHEN HE PULLED THAT GUN?

7 A. ABOUT TEN OR FIFTEEN FEET.

8 Q. AND USING ME AS A GAUGE, HOW FAR?

9 A. STEP BACK A FEW.

10 Q. OKAY.

11 A. A LITTLE BACK. ABOUT RIGHT THERE.

12 Q. OKAY. DID YOU HAVE ANY PROBLEM SEEING HIM PULLING
13 THAT GUN OUT?

14 A. NO.

15 Q. WAS HIS FACE HIDDEN AT ALL?

16 A. NO.

17 Q. OKAY. WAS THERE ANY DOUBT IN YOUR MIND WHO PULLED
18 THAT GUN OUT?

19 A. NO.

20 Q. WHO PULLED THE GUN OUT?

21 A. LAVON MINTZ.

22 Q. AND WHO WAS IN FRONT OF HIM TO POINT THE GUN AT
23 AND SHOOT?

24 A. ALFREDO.

25 Q. AND AFTER YOU GOT MARSHA WHERE DID YOU GO?

DIRECT - COTINA NICOLE BROOKS BY SOL. PASCOE

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- 1 A. TO THE HOSPITAL.
- 2 Q. OKAY. WHY DID YOU WANT TO GO TO THE HOSPITAL?
- 3 A. TO CHECK ON ALFREDO, TO SEE WHETHER HE WAS OKAY.
- 4 Q. WERE YOU UPSET THAT NIGHT?
- 5 A. KIND OF, YES, BECAUSE HE WAS A FRIEND, AND HE
- 6 WASN'T BOTHERING ANYBODY.
- 7 Q. OKAY. JUST A FEW MORE QUESTIONS, ALRIGHT?
- 8 A. OKAY.
- 9 Q. HOW DID YOU COME ABOUT, HOW DID YOU COME FORWARD
- 10 TO LAW ENFORCEMENT, EXPLAIN THAT TO THE JURY, WHO
- 11 DID YOU APPROACH?
- 12 A. MR. RIVERS.
- 13 Q. OKAY.
- 14 A. BOBBY RIVERS.
- 15 Q. DETECTIVE RIVERS?
- 16 A. UH HUH.
- 17 Q. AND DID YOU ACTUALLY APPROACH HIM?
- 18 A. YES.
- 19 Q. OKAY. WHERE WAS THAT, DO YOU REMEMBER?
- 20 A. NO.
- 21 Q. WAS IT OUT ON THE STREET?
- 22 A. YES, OUT ON THE STREET.
- 23 Q. OKAY. AND WHY DID YOU COME FORWARD TO
- 24 INVESTIGATOR RIVERS?
- 25 A. BECAUSE FREDO WAS A FRIEND OF MINE.

DIRECT - COTINA NICOLE BROOKS BY SOL. PASCOE

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1 Q. OKAY. AND, IN FACT, DID YOU GIVE THEM A WRITTEN
2 STATEMENT LATER ---

3 A. YES.

4 Q. --- A TYPED STATEMENT? AND FINALLY, COTINA, THE
5 PERSON THAT YOU KNOW AS LAVON MINTZ THAT YOU SAW
6 PULL THE GUN OUT IN FRONT OF FREDO, DO YOU SEE HIM
7 IN THE COURTROOM TODAY?

8 A. YES.

9 Q. IF YOU COULD, POINT HIM OUT TO THE JURY.

10 A. (Points toward the defense table.)

11 Q. IS THE ONE IN THE COAT AND TIE NEXT TO MR.
12 WALTERS, HIS LAWYER?

13 A. YES.

14 Q. ANY DOUBT IN YOUR MIND THAT'S THE MAN?

15 A. NO.

16 SOLICITOR PASCOE: OKAY. ANSWER ANY
17 QUESTIONS MR. WALTERS HAS FOR YOU.

18 A. OKAY.

19 THE COURT: CROSS-EXAMINATION.

20 MR. WALTERS: MAY IT PLEASE THE
21 COURT.

22 THE COURT: YES, SIR.

23 MR. WALTERS: SOLICITOR PASCOE.

24 (NOTE: Blank lines on this page do not indicate any
25 part of record has been omitted.)

CROSS - COTINA NICOLE BROOKS BY MR. WALTERS

179

1 CROSS-EXAMINATION OF COTINA NICOLE BROOKS

2 BY MR. WALTERS:

3 Q. MS. BROOKS, YOU JUST TESTIFIED THAT YOU HAD GIVEN
4 A STATEMENT TO DETECTIVE RIVERS, IS THAT CORRECT?

5 A. YES.

6 Q. YOU TESTIFIED THAT YOU WERE INSIDE THE CLUB, AND
7 YOU SAW LE LE, OR LAVON MINTZ, AS YOU REFERRED TO
8 HIM, PULL SOMETHING OUT WITH A BLACK HANDLE, IS
9 THAT RIGHT?

10 A. YES.

11 Q. SHOW ME INSIDE YOUR STATEMENT HERE WHERE YOU TOLD
12 HIM THAT. LOOK THROUGH IT CAREFULLY.

13 A. IT'S NOT IN HERE.

14 Q. THAT'S RIGHT, MS. BROOKS. YOUR TESTIMONY THAT YOU
15 SAW LAVON MINTZ INSIDE OF THE CLUB PULL UP HIS
16 CLOTHES AND SHOW YOU A BLACK HANDLE GUN, YOU NEVER
17 TOLD THE POLICE THAT. THIS IS THE FIRST TIME
18 YOU'VE EVER TOLD ANYONE THAT, TODAY, ISN'T THAT
19 RIGHT?

20 A. NO, NO.

21 Q. ALRIGHT. AND YOU STATED THAT ALFREDO LEWIS WAS A
22 FRIEND, AND YOU WERE CONCERNED ABOUT HIM, ISN'T
23 THAT CORRECT?

24 A. YES.

25 Q. ALRIGHT. BUT IT TOOK YOU FORTY-NINE DAYS TO COME

CROSS - COTINA NICOLE BROOKS BY MR. WALTERS

180

1 FORWARD WITH SUCH DEEP CONCERN. THIS STATEMENT
2 WAS GIVEN ON JANUARY TWENTY-SEVENTH OF TWO
3 THOUSAND AND THREE, ISN'T THAT RIGHT?

4 A. RIGHT.

5 Q. ALRIGHT. SO, YOU WERE THERE THAT NIGHT, AND YOU
6 WENT TO THE HOSPITAL YOU CLAIMED, AND YOU WERE SO
7 CONCERNED, WHY DID IT TAKE YOU FORTY-NINE DAYS TO
8 COME FORWARD AND CONFESS AND TELL DETECTIVE RIVERS
9 WHAT WAS GOING ON?

10 A. I SPOKE TO HIS MOTHER BEFORE THAT.

11 Q. ALRIGHT. IN ADDITION TO THAT YOU -- LET ME GO
12 THROUGH THE REST OF YOUR TESTIMONY HERE, AND THIS
13 IS BACK FROM JANUARY TWENTY-SEVENTH OF TWO
14 THOUSAND AND THREE, AND I BELIEVE YOU ALSO STATED
15 THAT YOU DUCKED BEHIND A CAR, THAT'S YOUR
16 TESTIMONY, ISN'T THAT CORRECT?

17 A. YES.

18 Q. SHOW ME IN HERE WHERE YOU DUCKED BEHIND A CAR AND
19 YOU HEARD TWO SHOTS?

20 A. I DON'T HAVE THE PART ABOUT THE CAR.

21 Q. IN FACT, YOU NEVER SAW ANYONE SHOOT ANYONE?

22 A. YES, YES, I DID.

23 Q. LET ME HAVE YOUR STATEMENT AGAIN. YOU STATED IN
24 YOUR TESTIMONY IN THIS COURTROOM TODAY -- IT'S
25 APRIL, APRIL, TWO THOUSAND AND FIVE. THIS OCCURRED

CROSS - COTINA NICOLE BROOKS BY MR. WALTERS

181

1 BACK IN DECEMBER OF TWO THOUSAND TWO. WHICH
2 VERSION OF YOUR STORY DO YOU WANT THE JURY TO
3 BELIEVE, THIS VERSION, OR THE VERSION YOU JUST
4 TOLD US TODAY?

5 A. THE TRUTH.

6 Q. EXCUSE ME?

7 A. THE TRUTH.

8 Q. WHICH VERSION, THE FIRST ONE OR THE SECOND ONE
9 YOU'RE GIVING US TODAY, ONE OR TWO, DOOR NUMBER
10 ONE OR DOOR NUMBER TWO? DO YOU WANT ME TO REPEAT
11 THE QUESTION?

12 A. YES.

13 Q. WHICH VERSION OF YOUR STORY DO YOU WANT THIS JURY
14 TO BELIEVE, THE VERSION YOU GAVE BACK ON JANUARY
15 TWENTY-SEVENTH OF TWO THOUSAND AND THREE, OR THE
16 VERSION THAT YOU'RE GIVING US TODAY, APRIL
17 NINETEENTH OF TWO THOUSAND AND FIVE, WHICH ONE DO
18 YOU WANT THEM TO BELIEVE, OR DO YOU WANT THEM TO
19 GUESS?

20 A. THE ONE I GAVE BACK IN JANUARY. I JUST LEFT THAT
21 OUT, BUT HE DID SHOT ALFREDO.

22 Q. SO, WHAT YOU SAID TODAY IS UNTRUE, IS THAT WHAT
23 YOU'RE SAYING?

24 A. I JUST LEFT THAT PART OUT ABOUT THE CAR.

25 Q. YOU LEFT THAT PART OUT ABOUT DUCKING BEHIND A CAR

CROSS - COTINA NICOLE BROOKS BY MR. WALTERS

182

1 AND HEARING TWO SHOTS. YOU LEFT OUT A PART WHERE
2 YOU SAID AN INDIVIDUAL SHOWED YOU A GUN INSIDE OF
3 A CLUB, ---

4 A. NO, HE DIDN'T SHOW IT ---

5 Q. --- A MURDER OCCURRED THAT NIGHT.

6 A. --- TO ME, HE PULLED IT OUT.

7 Q. I KNOW YOU'RE DEEPLY CONCERNED, YOU CAME FORWARD
8 FORTY-NINE DAYS LATER, BUT WHICH VERSION DO YOU
9 WANT THEM TO BELIEVE?

10 A. THE STATEMENT THAT I GAVE.

11 MR. WALTERS: YOUR HONOR, WE HAVE NO
12 FURTHER QUESTIONS.

13 THE COURT: REDIRECT.

14 SOLICITOR PASCOE: THANK YOU.

15 (NOTE: Blank lines on this page do not indicate any
16 part of record has been omitted. Headers on testimony
17 pages and hard page breaks between testimony are now
18 required by the Court. See next ensuing page for
19 sequential continuation of record.)

REDIRECT - COTINA NICOLE BROOKS BY SOL. PASCOE

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1 REDIRECT EXAMINATION OF COTINA NICOLE BROOKS

2 BY SOLICITOR PASCOE:

3 Q. COTINA, DID YOU TELL -- NO, I'VE GOT A COUPLE OF
4 QUESTIONS.

5 A. OKAY.

6 Q. DID YOU TELL THE POLICE THE TRUTH ON DECEMBER THE
7 NINTH, ---

8 A. YES.

9 Q. --- I MEAN, ABOUT DECEMBER THE NINTH IN YOUR
10 WRITTEN STATEMENT?

11 A. YES.

12 Q. DID YOU TELL THIS JURY THE TRUTH IN YOUR SWORN
13 TESTIMONY TODAY?

14 A. YES.

15 Q. AND JUST FOR CLARIFICATION, LET'S TALK ABOUT THE
16 IMPORTANT STUFF THAT HAPPENED ON DECEMBER THE
17 NINTH. YOU TOLD THE POLICE THAT LE LE HAD A GUN,
18 DIDN'T YOU?

19 A. YES.

20 Q. WHAT DID ---

21 MR. WALTERS: OBJECT, YOUR HONOR,
22 HE'S LEADING THE WITNESS.

23 SOLICITOR PASCOE: I'M SORRY, I'LL
24 GO ON.

25 Q. TELL THE JURY WHAT YOU TOLD THE POLICE BACK IN

REDIRECT - COTINA NICOLE BROOKS BY SOL. PASCOE

184

1 JANUARY OF TWO THOUSAND TWO ABOUT LE LE AND THE
2 GUN, STARTING RIGHT THERE?

3 A. "LE LE WALKED UP, WALKED UP, YOU KNOW, FUCK THAT
4 SHIT."

5 Q. AND ABOUT THE GUN?

6 A. "LE LE WALKED UP, FUCK THAT SHIT. I HEARD TWO GUN
7 SHOTS AND SEEN WHEN LE LE PULLED OUT THE GUN AND
8 POINTED IT AT ALFREDO."

9 Q. YOU TOLD THE POLICE THAT BACK IN JANUARY, JUST
10 LIKE YOU'RE TELLING THE JURY TODAY, RIGHT?

11 A. YES.

12 Q. AND IT'S THE TRUTH?

13 A. YES.

14 Q. SO HELP YOU, GOD?

15 A. SO HELP ME, GOD.

16 SOLICITOR PASCOE: THAT'S ALL I
17 HAVE.

18 THE COURT: RECROSS.

19 (NOTE: Blank lines on this page do not indicate any
20 part of record has been omitted. Headers on testimony
21 pages and hard page breaks between testimony are now
22 required by the Court. See next ensuing page for
23 sequential continuation of record.)

RECROSS - COTINA NICOLE BROOKS BY MR. WALTERS

185

1 RECROSS-EXAMINATION OF COTINA NICOLE BROOKS

2 BY MR. WALTERS:

3 Q. MS. BROOKS, YOUR TESTIMONY WAS YOU SAW A BLACK
4 GUN, IS THAT RIGHT?

5 A. YES. IT WAS A BLACK GUN.

6 Q. ARE YOU SURE YOU DIDN'T SEE A SILVER THIRTY-EIGHT
7 SPECIAL?

8 THE COURT: WAIT A MINUTE, YOU'VE
9 GOT TO LET HER FINISH, NOW. THE COURT REPORTER CAN'T
10 WRITE IT DOWN IF BOTH OF YOU ARE TALKING.

11 A. I SAW A BLACK HANDLE.

12 Q. AND MY QUESTION WAS, YOU DIDN'T SEE A SILVER
13 THIRTY-EIGHT SPECIAL?

14 A. NO, I JUST SAW SOMETHING BLACK.

15 Q. ANOTHER QUESTION FOR YOU. THE SOLICITOR JUST HAD
16 YOU READ THAT STATEMENT. YOU DIDN'T TYPE THAT
17 STATEMENT, DID YOU?

18 A. NO, I DIDN'T TYPE IT.

19 Q. YOU NEVER TYPED ANY STATEMENTS WITH REGARDS TO
20 DETECTIVE RIVERS?

21 A. TYPE IT, NO, I WROTE IT.

22 Q. HE TYPED THOSE STATEMENTS, ISN'T THAT CORRECT?

23 A. I DON'T KNOW WHO TYPED IT.

24 Q. YOU WROTE A STATEMENT?

25 A. YES.

RE CROSS - COTINA NICOLE BROOKS BY MR. WALTERS

186

1 Q. WHERE IS YOUR WRITTEN STATEMENT? YOU GAVE A
2 WRITTEN STATEMENT TO THE POLICE? WHO DID YOU GIVE
3 IT TO?

4 A. DETECTIVE RIVERS.

5 MR. WALTERS: MAY IT PLEASE THE
6 COURT. YOUR HONOR, MAY WE APPROACH?

7 THE COURT: YES, SIR.

8 (Whereupon, a bench conference
9 is held out of the hearing of
10 the jury and the court reporter.)

11 Q. YOU WROTE A STATEMENT AND YOU GAVE IT TO DETECTIVE
12 RIVERS, IS THAT RIGHT?

13 A. YES.

14 Q. ALRIGHT. AND WHEN DID YOU GIVE HIM THAT WRITTEN
15 STATEMENT?

16 A. I DON'T REMEMBER THE DATE.

17 Q. WELL, IT -- WAS IT JANUARY TWENTY-SEVENTH THAT YOU
18 CAME FORWARD, OF TWO THOUSAND THREE, WHEN YOU HAD
19 THIS CONVERSATION, WAS IT BEFORE THEN? THE MURDER
20 OCCURRED ON DECEMBER NINTH. YOU WERE DISTRAUGHT,
21 YOU WERE UPSET, YOUR FRIEND WAS KILLED. WHEN DID
22 YOU WRITE THIS STATEMENT?

23 A. AGAIN, I DON'T KNOW, I CAN'T REMEMBER THE EXACT
24 DATE.

25 Q. BUT YOU KNOW YOU GAVE A STATEMENT TO DETECTIVE

RECROSS - COTINA NICOLE BROOKS BY MR. WALTERS

187

1 RIVERS, A WRITTEN STATEMENT?

2 A. YES.

3 Q. ALRIGHT. DO YOU HAPPEN TO HAVE A COPY OF THAT
4 STATEMENT?

5 A. NO.

6 Q. SO, YOU GAVE DETECTIVE RIVERS A -- THE ONLY COPY
7 OF IT?

8 A. EXCUSE ME, I DO HAVE IT, BUT NOT WITH ME.

9 Q. EXCUSE ME?

10 A. I HAVE ONE, BUT NOT WITH ME.

11 Q. WHERE DO YOU HAVE IT, IS IT AT HOME?

12 A. YES.

13 Q. YOU CAN PUT YOUR HANDS ON IT?

14 A. I'D HAVE TO LOOK FOR IT, I CAN'T PUT MY HANDS ON
15 IT.

16 Q. I JUST WANT TO BE CLEAR, BECAUSE WE'VE GOT ONE
17 VERSION OF WHAT HAPPENED THAT YOU'RE STATING IN
18 THIS COURTROOM TODAY, AND WE'VE GOT ANOTHER
19 VERSION ON JANUARY TWENTY-SEVENTH OF TWO THOUSAND
20 AND THREE, AND YOU'RE ALSO TELLING ME THAT YOU'VE
21 WRITTEN A STATEMENT, A STATEMENT THAT WE'VE NEVER
22 SEEN, THAT YOU SAY YOU GAVE TO DETECTIVE
23 RIVERS, AND YOU'VE GOT A COPY. AND YOU CAN PUT
24 YOUR HANDS ON IT, YES OR NO?

25 A. AGAIN, NO.

1 Q. IS IT AT HOME? WHERE DID YOU KEEP IT? DID YOU
2 SAVE IT?

3 A. HOW LONG WAS IT AGO, I'VE MOVED SEVERAL TIMES.

4 Q. YES, MA'AM, YOU HAVE MOVED, HAVEN'T YOU? HOW MANY
5 ADDRESSES HAVE YOU HAD IN THE LAST YEAR?

6 A. FOUR.

7 Q. YOU CAN'T PUT YOUR HANDS ON THAT STATEMENT NOW?

8 A. NO.

9 Q. AND YOU DIDN'T THINK IT WAS IMPORTANT FOR YOUR
10 FRIEND THAT WAS MURDERED, THAT YOU WERE CONCERNED
11 ABOUT? SO, THERE'S ANOTHER VERSION OF WHAT
12 HAPPENED ON THAT PARTICULAR NIGHT THAT'S OUT
13 THERE, BUT YOU LOST IT BECAUSE YOU WERE MOVING?

14 A. I DIDN'T KNOW I WAS GOING TO NEED IT.

15 Q. SO, NOW, THE STATEMENT DOESN'T EXIST, YOU CAN'T
16 PUT YOUR HANDS ON IT?

17 A. NO.

18 Q. BUT YOU GAVE DETECTIVE RIVERS A COPY OF IT?

19 A. YES.

20 Q. ALRIGHT. WHEN DID YOU GIVE IT TO HIM?

21 A. THE DAY HE CAME TO INTERVIEW ME, I DON'T KNOW THAT
22 DATE.

23 Q. AND WHAT DID HE DO WITH THE STATEMENT WHEN YOU
24 GAVE IT TO HIM?

25 A. I DON'T KNOW WHAT HE DID WITH IT.

RECROSS - COTINA NICOLE BROOKS BY MR. WALTERS

189

1 MR. WALTERS: YOUR HONOR, I HAVE NO
2 FURTHER QUESTIONS.

3 THE COURT: THANK YOU, MA'AM, YOU
4 MAY STEP DOWN. AND BE CAREFUL.

5 SOLICITOR PASCOE: THANK YOU,
6 COTINA.

7 THE COURT: YOU MAY CALL YOUR NEXT
8 WITNESS.

9 SOLICITOR SCOTT: THE STATE CALLS
10 VICTOR CORDON.

11 THE COURT: MR. CORDON.

12 (Whereupon, the witness
13 enters the courtroom.)

14 CLERK: MR. CORDON, IF YOU'LL COME
15 DOWN TO THE FRONT AND TO YOUR RIGHT, AND PLACE YOUR LEFT
16 HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND.

17 (Whereupon, the witness,
18 VICTOR LOPEZ CORDON,
19 is duly sworn.)

20 CLERK: YOU MAY BE SEATED, AND STATE
21 YOUR FULL NAME FOR THE COURT RECORD.

22 MR. WALTERS: MAY IT PLEASE THE
23 COURT, JUST ONE MOMENT, YOUR HONOR.

24 THE COURT: YES, SIR.

25 MR. WALTERS: I APOLOGIZE, YOUR

1 HONOR.

2 THE COURT: ALRIGHT.

3 YES, SIR.

4 CLERK: WOULD YOU STATE YOUR NAME
5 FOR THE RECORD?

6 WITNESS: VICTOR LOPEZ CORDON.

7 (NOTE: Blank lines on this page do not indicate any
8 part of record has been omitted. Headers on testimony
9 pages and hard page breaks between testimony are now
10 required by the Court. See next ensuing page for
11 sequential continuation of record.)

DIRECT - VICTOR LOPEZ CORDON BY SOL. SCOTT

191

1 DIRECT EXAMINATION OF VICTOR LOPEZ CORDON

2 BY SOLICITOR SCOTT:

3 Q. DETECTIVE CORDON, WHERE ARE YOU EMPLOYED?

4 A. ORANGEBURG DEPARTMENT OF PUBLIC SAFETY.

5 A. AND HOW LONG HAVE YOU WORKED AT THE DEPARTMENT OF
6 PUBLIC SAFETY?

7 A. SIX AND A HALF YEARS.

8 Q. ARE THOSE SIX AND A HALF YEARS OF PUBLIC SAFETY,
9 IS THAT THE EXTENT OF YOUR LAW ENFORCEMENT CAREER?

10 A. NO, IT ISN'T.

11 Q. TELL THE JURY THE EXTENT OF YOUR LAW ENFORCEMENT
12 CAREER?

13 A. I HAVE APPROXIMATELY TWENTY-TWO YEARS CIVILIAN AND
14 MILITARY, CURRENTLY ASSIGNED IN THE MILITARY ARMY
15 RESERVE AS A MILITARY POLICEMAN.

16 Q. WHAT IS YOUR CURRENT POSITION WITH THE ORANGEBURG
17 DEPARTMENT OF PUBLIC SAFETY?

18 A. DETECTIVE.

19 Q. DO YOU RECALL WHAT YOUR POSITION WAS AT PUBLIC
20 SAFETY BACK ON DECEMBER THE TENTH OF TWO THOUSAND
21 AND TWO?

22 A. I WAS A TRAINING OFFICER.

23 Q. AND WHAT IS A TRAINING OFFICER?

24 A. A TRAINING OFFICER COORDINATES AND CONDUCTS
25 TRAINING THROUGHOUT THE DEPARTMENT, ALSO KEEPS THE

DIRECT - VICTOR LOPEZ CORDON BY SOL. SCOTT

192

1 TRAINING RECORDS OF ALL OFFICERS.

2 Q. LET ME TURN YOUR ATTENTION TO DECEMBER THE TENTH
3 OF TWO THOUSAND AND TWO, WERE YOU WORKING THAT
4 DAY?

5 A. YES, I WAS.

6 Q. TELL THE JURY HOW YOU BECAME INVOLVED IN THIS CASE
7 AGAINST LAVON MINTZ?

8 A. WHILE IN THE TRAINING OFFICE, CAPTAIN ADAMS
9 ENTERED THE TRAINING OFFICE AND INFORMED ME THAT
10 WE WERE GOING TO GET LE LE, TO GRAB MY STUFF AND
11 LET'S GO.

12 Q. OKAY. DID YOU RIDE WITH CAPTAIN ADAMS?

13 A. YES, I DID.

14 Q. OKAY. DID Y'ALL HAVE ANY IDEA AS TO WHERE TO LOOK
15 FOR LE LE?

16 A. WE HAD RECEIVED A TIP, OR THE DEPARTMENT HAD
17 RECEIVED A TIP THAT HE WAS DRIVING A DARK COLORED
18 BUICK WITH A BOB'S AUTO PAPER TAG SOMEWHERE IN THE
19 SPRINKLE AREA OF ORANGEBURG COUNTY.

20 Q. OKAY. SO, WHERE DID YOU AND CAPTAIN ADAMS BEGIN
21 YOUR SEARCH?

22 A. OFF OF SPRINKLE AVENUE.

23 Q. OKAY. TELL THE JURY WHAT HAPPENED AFTER YOU AND
24 CAPTAIN ADAMS GOT INTO THE SPRINKLE AVENUE AREA?

25 A. UPON RIDING AROUND THE SPRINKLE AVENUE AREA WE

DIRECT - VICTOR LOPEZ CORDON BY SOL. SCOTT

193

1 OBSERVED A DARK COLORED BUICK TRAVELING TOWARDS
2 US, COMING IN OUR DIRECTION, AT WHICH TIME LE LE
3 WAS DRIVING THE VEHICLE. WE TURNED AROUND ON THE
4 VEHICLE. AS WE WAS TURNING AROUND I TURNED AND
5 INSURED THAT IT HAD A BOB'S AUTO PAPER TAG, WHICH
6 IT DID, AND ALSO MAINTAIN EYE, OR VISUAL AS TO
7 WHICH WAY THE VEHICLE WAS TRAVELING.

8 Q. WERE THERE ANY OTHER PASSENGERS IN THE VEHICLE,
9 OTHER THAN LE LE?

10 A. YES, IT WAS.

11 Q. HOW MANY?

12 A. THERE WAS ONE OTHER PASS -- THERE WAS OTHER PERSON
13 IN THE VEHICLE, WHO WAS IN THE PASSENGER SEAT.

14 Q. OKAY. WHAT DID YOU AND CAPTAIN ADAMS DO AFTER
15 SPOTTING LE LE IN THIS VEHICLE?

16 A. AFTER GETTING TURNED AROUND ON THE VEHICLE CAPTAIN
17 ADAMS ACTIVATED HIS BLUE LIGHT. THE VEHICLE
18 STOPPED ON A SIDE STREET MOMENTARILY, AND THEN
19 TOOK OFF. AND AFTER A BRIEF CHASE THE SUBJECT
20 VEHICLE WENT ACROSS BLEAKLEY, THROUGH A PATH
21 BETWEEN A CHURCH AND A DUPLEX, AT WHICH TIME THEY
22 GOT OUT OF THE VEHICLE AND RAN ON FOOT.

23 Q. OKAY. WHEN YOU DESCRIBED THIS PATH, IS IT A PATH
24 FOR CARS?

25 A. NO, IT ISN'T. IT JUST AN AREA BETWEEN THE CHURCH,

DIRECT - VICTOR LOPEZ CORDON BY SOL. SCOTT

194

1 IT'S LIKE A YARD AREA BETWEEN THE CHURCH AND A
2 DUPLEX. THE VEHICLE WENT THROUGH THERE. THEY
3 NEVER ---

4 Q. WHAT IS LOCATED BEHIND THIS CHURCH?

5 A. AN OPEN FIELD.

6 Q. OKAY. SO, AFTER THIS VEHICLE GOES OFF THE ROAD
7 BEHIND THIS CHURCH AND INTO THIS FIELD, WHAT DID
8 YOU AND CAPTAIN ADAMS DO?

9 A. CAPTAIN ADAMS PURSUED THE DRIVER OF THE VEHICLE, I
10 PURSUED THE PASSENGER OF THE VEHICLE.

11 Q. OKAY. WERE Y'ALL ABLE TO APPREHEND EITHER SUSPECT
12 IN THIS?

13 A. NO, SIR.

14 Q. DO YOU KNOW WHAT STREET THIS CHURCH IS ON?

15 A. THE STREET IS -- THE CHURCH IS LOCATED ON BLEAKLEY
16 STREET.

17 Q. I'M SORRY, DO YOU KNOW WHAT CHURCH THIS STREET IS
18 ON?

19 A. YES, SIR, IT'S ON BLEAKLEY STREET, SIR.

20 Q. OKAY. LET ME ASK YOU, ARE YOU ALSO A MEMBER OF
21 THE ORANGEBURG DEPARTMENT OF PUBLIC SAFETY SWAT
22 TEAM?

23 A. YES, SIR.

24 Q. OKAY. AND WERE YOU ACTUALLY INVOLVED IN THE
25 DEFENDANT'S ARREST THE FOLLOWING DAY?

DIRECT - VICTOR LOPEZ CORDON BY SOL. SCOTT

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1 A. YES, SIR.

2 Q. OKAY. AND WHERE DID THAT ARREST TAKE PLACE?

3 A. ON ALETHA STREET.

4 Q. OKAY. HOW FAR FROM WHERE THE DEFENDANT WAS
5 ARRESTED ON ALETHA STREET TO THIS CHURCH ON
6 BLEAKLEY, HOW GREAT OF A DISTANCE IS THAT?

7 A. APPROXIMATELY SIX BLOCKS.

8 Q. OKAY. SO, HE WAS ARRESTED, APPROXIMATELY SIX
9 BLOCKS FROM WHERE YOU SAW HIM FLEEING FROM THE
10 POLICE, THE FOLLOWING DAY?

11 A. YES, SIR.

12 Q. OKAY.

13 SOLICITOR SCOTT: NOTHING ELSE.

14 THE COURT: CROSS-EXAMINATION.

15 (NOTE: Blank lines on this page do not indicate any
16 part of record has been omitted. Headers on testimony
17 pages and hard page breaks between testimony are now
18 required by the Court. See next ensuing page for
19 sequential continuation of record.)

CROSS - VICTOR LOPEZ CORDON BY MR. WALTERS

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1 CROSS-EXAMINATION OF VICTOR LOPEZ CORDON

2 BY MR. WALTERS:

3 Q. OFFICER CORDON, YOU HAVE NO PERSONAL KNOWLEDGE AS
4 TO A SHOOTING THAT OCCURRED AT THE PUB, YOU WERE
5 NOT PRESENT WHEN THAT SHOOTING OCCURRED?

6 A. NO, I WASN'T.

7 Q. ALRIGHT. SO, YOU HAVE NO IDEA AS TO WHAT WENT ON
8 AND WHAT INDIVIDUAL SHOT WHOM, YOU HAVE NO
9 PERSONAL KNOWLEDGE?

10 A. NO, I DON'T.

11 MR. WALTERS: I HAVE NO FURTHER
12 QUESTIONS, YOUR HONOR.

13 THE COURT: THANK YOU, SIR, YOU MAY
14 STEP DOWN.

15 CALL YOUR NEXT WITNESS, PLEASE.

16 SOLICITOR PASCOE: MICHELLE
17 BRIGGMAN.

18 THE COURT: MS. BRIGGMAN, PLEASE.

19 (Whereupon, the witness
20 enters the courtroom.)

21 CLERK: MS. BRIGGMAN, COME DOWN TO
22 THE FRONT AND TO YOUR RIGHT, PLACE YOUR LEFT HAND ON THE
23 BIBLE AND RAISE YOUR RIGHT HAND.

24 (Whereupon, the witness,

25 MICHELLE BRIGGMAN,

CROSS - VICTOR LOPEZ CORDON BY MR. WALTERS

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1 is duly sworn.)

2 CLERK: YOU MAY BE SEATED AND STATE
3 YOUR FULL NAME FOR THE COURT RECORD.

4 WITNESS: MICHELLE BRIGGMAN.

5 (NOTE: Blank lines on this page do not indicate any
6 part of record has been omitted. Headers on testimony
7 pages and hard page breaks between testimony are now
8 required by the Court. See next ensuing page for
9 sequential continuation of record.)

DIRECT - MICHELLE BRIGGMAN BY SOL. PASCOE

198

1 DIRECT EXAMINATION OF MICHELLE BRIGGMAN

2 BY SOLICITOR PASCOE:

3 Q. GOOD AFTERNOON, MS. BRIGGMAN.

4 A. HI.

5 Q. THANK YOU FOR COMING THIS AFTERNOON. I NEED YOU
6 TO SPEAK UP LIKE YOU HAVE BEEN, OKAY?

7 A. OKAY.

8 Q. YOU HAVE A CHILD, DON'T YOU?

9 A. YES.

10 Q. I KNOW YOU CAN YELL. OKAY?

11 A. YES.

12 Q. ARE YOU FROM ORANGEBURG, MS. BRIGGMAN?

13 A. I LIVE HERE NOW, BUT I'M ORIGINALLY FROM NEW YORK
14 CITY.

15 Q. OKAY. HOW LONG HAVE YOU LIVED IN ORANGEBURG?

16 A. ALMOST TEN YEARS.

17 Q. ARE YOU MARRIED?

18 A. YES.

19 Q. AND WHERE WERE YOU AND YOUR HUSBAND LIVING BACK ON
20 DECEMBER THE TENTH, TWO THOUSAND AND TWO?

21 A. SEVEN FIFTY-SIX ALETHA STREET.

22 Q. AND ACTUALLY, HOW LONG HAVE YOU LIVED AT THAT
23 ADDRESS ON ALETHA STREET?

24 A. FIVE YEARS.

25 Q. DID YOU KNOW THE DEFENDANT, LAVON MINTZ, IN THE

DIRECT - MICHELLE BRIGGMAN BY SOL. PASCOE

199

1 COURTROOM TODAY, DID YOU KNOW HIM BACK IN DECEMBER
2 OF TWO THOUSAND AND TWO?

3 A. YES.

4 Q. AND HOW LONG HAD YOU KNOWN HIM?

5 A. I'D SAY ABOUT THREE YEARS.

6 Q. WERE YOU FRIENDS WITH HIM PERSONALLY, THOUGH?

7 A. NO.

8 Q. WHO WAS FRIENDS WITH HIM?

9 A. MY HUSBAND.

10 Q. OKAY. HOW OFTEN BEFORE, SAY, DECEMBER THE TENTH,
11 TWO THOUSAND TWO, HOW OFTEN WOULD THE DEFENDANT
12 COME TO YOUR HOUSE?

13 MR. WALTERS: YOUR HONOR, I'M GOING
14 OBJECT, HOW IS THIS RELEVANT IN REGARDS TO THIS CASE?

15 SOLICITOR PASCOE: BECAUSE HE'S
16 HANGING OUT AT HER HOUSE WHERE THE POLICE WERE LOOKING
17 FOR HIM.

18 THE COURT: I OVERRULE YOUR
19 OBJECTION. GO AHEAD.

20 Q. HOW OFTEN WOULD THE DEFENDANT COME TO YOUR HOUSE
21 BEFORE DECEMBER OF TWO THOUSAND AND TWO?

22 A. MAYBE ONCE OR TWICE A YEAR IF WE WAS TO HAVE
23 COOKOUTS OR SOMETHING.

24 Q. OKAY. AND OTHER PEOPLE WOULD BE THERE?

25 A. YES.

DIRECT - MICHELLE BRIGGMAN BY SOL. PASCOE

200

1 Q. BEFORE DECEMBER OF TWO THOUSAND AND TWO, DID HE
2 EVER SPEND THE NIGHT?

3 A. NO.

4 Q. NOW, LET ME TAKE YOU TO TUESDAY, DECEMBER THE
5 TENTH, ALRIGHT, TUESDAY, DECEMBER THE TENTH, TWO
6 THOUSAND AND TWO, THAT NIGHT, WHAT HAPPENED THAT
7 NIGHT -- WHAT TIME DID YOU GO TO BED, LET ME ASK
8 YOU THAT?

9 A. I WOULD SAY AROUND EIGHT O'CLOCK.

10 Q. AND WHAT HAPPENED WHEN YOU WENT TO BED AROUND
11 EIGHT O'CLOCK THAT NIGHT?

12 A. THERE WAS A KNOCK AT THE DOOR, AND I TOLD MY
13 HUSBAND TO GET UP AND GO ANSWER THE DOOR, AND HE
14 DID.

15 Q. OKAY. AND HE EVENTUALLY JUST, DID HE COME BACK IN
16 THE BEDROOM?

17 A. YES.

18 Q. OKAY. DID YOU WAKE UP THAT NEXT MORNING?

19 A. YES.

20 Q. APPROXIMATELY WHAT TIME DID YOU WAKE UP ON
21 DECEMBER THE ELEVENTH, THAT WOULD BE WEDNESDAY,
22 DECEMBER THE ELEVENTH?

23 A. IT WAS EARLY IN THE MORNING, I WOULD SAY AROUND
24 SEVEN O'CLOCK.

25 Q. AND WAS ANYBODY IN YOUR HOUSE ---

DIRECT - MICHELLE BRIGGMAN BY SOL. PASCOE

201

1 A. YES.

2 Q. --- AT THAT TIME?

3 A. YES.

4 Q. AND WHO WAS THAT?

5 A. HIM. HE WAS ASLEEP ON THE COUCH. AND WHEN I SAW
6 HIM ON THE COUCH I WENT BACK TO THE BED ROOM AND
7 WOKE MY HUSBAND UP AND TOLD MY HUSBAND TO GO TELL
8 HIS FRIEND THAT HE HAD TO LEAVE, BECAUSE I DIDN'T
9 WANT HIM THERE.

10 Q. OKAY. AND WHERE DID YOU END UP GOING THAT
11 MORNING?

12 A. I HAD AN APPOINTMENT TO THE SSI OFFICE FOR MY SON.

13 Q. OKAY.

14 A. SO, I WENT TO THE APPOINTMENT. WHEN I CAME BACK
15 MY HOUSE WAS SURROUNDED WITH POLICE. AND MY MAIN
16 CONCERN AT THE TIME WAS MY SON, BECAUSE A POLICE
17 OFFICER HAD MY SON. AND I WENT TO MY SON, AND THEY
18 TOLD ME I COULDN'T GET HIM.

19 Q. DID YOU GET YOUR SON BACK ---

20 A. YES.

21 Q. --- THAT AFTERNOON?

22 A. YES.

23 Q. AFTER YOU TALKED TO THE POLICE?

24 A. YES.

25 Q. AND THE DEFENDANT WAS ARRESTED AT YOUR HOUSE?

DIRECT - MICHELLE BRIGGMAN BY SOL. PASCOE

202

1 A. YES.

2 Q. AND DID YOU WANT HIM TO SPEND THE NIGHT AT YOUR
3 HOME?

4 A. NO, BECAUSE ---

5 Q. WELL, THAT'S ALRIGHT, YOU DON'T HAVE TO SAY.

6 SOLICITOR PASCOE: I BEG THE COURT'S
7 INDULGENCE.

8 THE COURT: ALRIGHT, SIR.

9 SOLICITOR PASCOE: THANK YOU, MS.
10 BRIGGMAN, ANSWER ANY QUESTIONS MR. WALTERS HAS.

11 A. OKAY.

12 THE COURT: CROSS-EXAMINATION.

13 MR. WALTERS: NONE, YOUR HONOR.

14 THE COURT: NO QUESTIONS. THANK
15 YOU, MA'AM, YOU MAY STEP DOWN. THANK YOU FOR COMING.
16 YOU MAY BE EXCUSED IF YOU'D LIKE.

17 WITNESS: THANK YOU.

18 THE COURT: CALL YOUR NEXT WITNESS.

19 SOLICITOR PASCOE: MAY WE APPROACH?

20 THE COURT: YES, SIR.

21 (Whereupon, a bench conference
22 is held out of the hearing of
23 the jury and the court reporter.)

24 THE COURT: LADIES AND GENTLEMEN,
25 WE'RE GOING TO TAKE A BREAK AT THIS TIME, IT WILL

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1 PROBABLY BE ABOUT TEN OR FIFTEEN MINUTES. SO, JUST
2 RELAX, PLEASE DON'T TALK ABOUT THE CASE. THANK YOU VERY
3 MUCH, PLEASE FOLLOW THE BAILIFF TO THE JURY ROOM.

4 (Whereupon, the following
5 takes place out of the
6 presence of the jury.)

7 BAILIFF: YOUR HONOR, ALL OF THE
8 JURORS AND THE ALTERNATE ARE OUT OF THE COURTROOM.

9 THE COURT: THANK YOU, MA'AM.

10 WHEN MR. WALTERS GETS A MINUTE YOU
11 BRING HIM IN THE BACK AND LET'S TALK ABOUT THAT.

12 (Recess)

13 THE COURT: THE ATTORNEYS HAVE
14 AGREED TO CONTENT, BUT NOT THE DOCUMENT, BUT BASICALLY,
15 THE CONTENT, AS WE DISCUSSED IT IN CHAMBERS, OF THE
16 REPORT FROM THE PATHOLOGIST, DR. ROSS. THIS IS A
17 STIPULATION, IS THAT RIGHT, MR. PASCOE?

18 SOLICITOR PASCOE: YES, SIR.

19 THE COURT: MR. WALTERS?

20 MR. WALTERS: THAT'S CORRECT.

21 THE COURT: ALRIGHT, I'LL DO THAT
22 RIGHT NOW, AND THEN YOU CAN CALL YOUR NEXT WITNESS.

23 BRING IN THE JURY, PLEASE.

24 (Whereupon, the following
25 takes place in the

1 presence of the jury.)

2 BAILIFF: YOUR HONOR, ALL OF THE
3 JURORS AND THE ALTERNATE ARE SEATED IN THE JURY BOX.

4 THE COURT: THANK YOU, MA'AM.

5 LADIES AND GENTLEMEN, ORDINARILY AT
6 THIS TIME THE STATE WOULD CALL THE PATHOLOGIST WHO HAD
7 PERFORMED THE AUTOPSY ON THE BODY OF MR. LEWIS AS A
8 WITNESS AT THIS TIME. THE PURPOSE OF THE AUTOPSY, OF
9 COURSE, IS TO DETERMINE THE CAUSE OF DEATH, AND THE
10 MANNER OF DEATH. THE MANNER OF DEATH IS WHETHER IT'S
11 ACCIDENTAL, SELF-INFLECTED, HOMICIDE, OR WHATEVER. IN
12 THIS CASE, RATHER THAN BRING THE DOCTOR DOWN HERE FROM
13 UP IN NEWBERRY COUNTY AND HAVE HER TESTIFY TO THOSE
14 THINGS, THE PARTIES HAVE STIPULATED TO THE CONTENT OF
15 HER REPORT. THE AUTOPSY WAS PERFORMED BY DR. JANICE
16 ROSS ON DECEMBER THE NINTH, TWO THOUSAND AND TWO, IN THE
17 AFTERNOON, AND THE PARTIES HAVE AGREED TO STIPULATE TO
18 HER, THE CONTENT OF HER REPORT, WHICH YOU WILL ACCEPT AS
19 EVIDENCE JUST AS IF SHE HAD COME DOWN TODAY AND
20 TESTIFIED TO YOU. AND THE SIGNIFICANT PARTS OF HER
21 REPORT ARE: NUMBER ONE, -- THESE ARE HER ANATOMIC
22 DIAGNOSES -- NUMBER ONE, A FATAL MEDIUM CALIBRE GUN SHOT
23 WOUND GRAZING THE FRONT OF THE LEFT ARM, THEN
24 PENETRATING THE LEFT CHEST WITH RESULTANT BLEEDING DUE
25 TO PERFORATION OF THE HEART AND LIVER. BULLET LODGED IN

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1 THE RIGHT SIDE OF THE CHEST. AND NUMBER TWO, A NON-
2 FATAL, MEDIUM CALIBRE PENETRATING GUN SHOT WOUND TO THE
3 LEFT HIP. AND SHE REPORTS THAT THE CAUSE OF DEATH WAS
4 EXSANGUINATION, WHICH IS LOSS OF BLOOD, DUE TO
5 PERFORATION OF THE HEART AND LIVER, DUE TO A GUN SHOT
6 WOUND TO THE CHEST. AND HER CONCLUSIONS IS THAT THE
7 MANNER OF DEATH WAS A HOMICIDE. SO, BASICALLY, IF SHE
8 WERE HERE SHE WOULD TESTIFY THAT BASED ON HER
9 EXAMINATION OF MR. LEWIS'S BODY, HE DIED AS A RESULT OF
10 TWO GUN SHOT WOUNDS THAT HE HAD RECEIVED EARLIER ON THE
11 DAY OF DECEMBER THE NINTH, TWO THOUSAND TWO. SO, YOU
12 ACCEPT THAT STIPULATION JUST AS IF SHE HAD COME DOWN
13 HERSELF AND TESTIFIED TO THAT FACT.

14 ANY OBJECTIONS FROM THE STATE?

15 SOLICITOR PASCOE: NONE, YOUR HONOR.

16 THE COURT: FROM THE DEFENSE?

17 MR. WALTERS: NO, SIR, YOUR HONOR.

18 THE COURT: ALRIGHT, YOU MAY CALL
19 YOUR NEXT WITNESS.

20 SOLICITOR PASCOE: DETECTIVE RIVERS,
21 YOUR HONOR.

22 THE COURT: COME AROUND, PLEASE,
23 SIR.

24 CLERK: PLACE YOUR LEFT HAND ON THE
25 BIBLE AND RAISE YOUR RIGHT HAND.

1 (Whereupon, the witness,
2 BOBBY RIVERS,
3 is duly sworn.)

4 CLERK: BE SEATED AND PLEASE STATE
5 YOUR FULL NAME FOR THE COURT RECORD.

6 (NOTE: Blank lines on this page do not indicate any
7 part of record has been omitted. Headers on testimony
8 pages and hard page breaks between testimony are now
9 required by the Court. See next ensuing page for
10 sequential continuation of record.)

DIRECT - BOBBY RIVERS BY SOL. PASCOE

207

1 DIRECT EXAMINATION OF BOBBY RIVERS

2 BY SOLICITOR PASCOE:

3 Q. PLEASE STATE YOUR FULL NAME.

4 A. BOBBY RIVERS.

5 Q. GOOD AFTERNOON, DETECTIVE.

6 A. GOOD AFTERNOON.

7 Q. WHERE DO YOU WORK, SIR?

8 A. ORANGEBURG DEPARTMENT OF PUBLIC SAFETY.

9 Q. AND HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT
10 ALTOGETHER?

11 A. SIXTEEN YEARS.

12 Q. AND ALL THOSE YEARS WITH THE ORANGEBURG POLICE
13 DEPARTMENT?

14 A. FOURTEEN OF THEM WITH PUBLIC SAFETY.

15 Q. AND IN WHAT CAPACITY ARE YOU EMPLOYED WITH THE
16 ORANGEBURG DEPARTMENT OF PUBLIC SAFETY?

17 A. CRIMINAL INVESTIGATOR.

18 Q. AND WHAT ALL DOES BEING AN INVESTIGATOR ENTAIL?

19 A. INVESTIGATING MAJOR CRIMES, AND ALSO TAKING
20 DETAILED STATEMENTS FROM VICTIMS AND WITNESSES.

21 Q. HOW LONG HAVE YOU BEEN A DETECTIVE, OR AN
22 INVESTIGATOR?

23 A. SEVEN YEARS.

24 Q. WERE YOU CALLED TO DUTY DURING THE EARLY MORNING
25 HOURS OF MONDAY, DECEMBER NINTH, TWO THOUSAND AND

DIRECT - BOBBY RIVERS BY SOL. PASCOE

208

1 TWO?

2 A. YES.

3 Q. OKAY. AND DO YOU HAVE SOME NOTES FROM THAT DAY?

4 A. YES, I DO.

5 Q. I'LL COME AND GIVE THEM TO YOU JUST IN CASE YOU
6 NEED TO REFER TO THEM, OKAY?

7 A. THANK YOU.

8 Q. COULD YOU -- ARE YOU THE LEAD INVESTIGATOR ON THIS
9 CASE?

10 A. YES, I AM.

11 Q. WHEN AND HOW DID YOU GET DISPATCHED THAT MORNING?

12 A. I WAS THE INVESTIGATOR ON CALL THAT MORNING, AND I
13 RECEIVED A CALL APPROXIMATELY TWO O'CLOCK, OR A
14 LITTLE AFTER TWO A.M. THAT MORNING FROM MY
15 DISPATCHER STATING THAT THE SUPERVISOR THAT WAS ON
16 CALL WANTED ME TO COME OUT AND ASSIST WITH A
17 SHOOTING CALL THAT THEY HAD AT THE PUB.

18 A. AND WHERE IS THE PUB LOCATED?

19 A. GROVE PARK, RIGHT HERE IN THE CITY OF ORANGEBURG.

20 Q. AND WHERE DID YOU END UP GOING?

21 A. GROVE PARK, THE PUB.

22 Q. OKAY. ANY WITNESSES AT THE SCENE THAT YOU COULD
23 GET INFORMATION FROM, OTHER THAN THE OFFICERS?

24 A. NO, THERE WAS NOT.

25 Q. OKAY. SO, HOW LONG DID YOU STAY AT -- WHAT TIME

DIRECT - BOBBY RIVERS BY SOL. PASCOE

209

1 APPROXIMATELY DO YOU THINK YOU GOT TO THE PUB?

2 A. APPROXIMATELY, MAYBE TWO:THIRTY-FIVE, TWO:FORTY,
3 SOMEWHERE AROUND THERE.

4 Q. OKAY. HOW LONG DO YOU THINK YOU STAYED THERE?

5 A. FORTY-FIVE MINUTES TO AN HOUR.

6 Q. WHERE DID YOU GO NEXT?

7 A. TO TRMC, WHICH IS THE REGIONAL MEDICAL CENTER HERE
8 IN ORANGEBURG.

9 Q. SO, APPROXIMATELY WHAT TIME WOULD YOU HAVE GOTTEN
10 TO THE HOSPITAL?

11 A. APPROXIMATELY MAYBE THREE:THIRTY, SOMEWHERE AROUND
12 THERE.

13 Q. OKAY. AND WHEN YOU WENT TO THE HOSPITAL DID YOU
14 SPEAK TO ANY OF THE OTHER OFFICERS THERE?

15 A. WHEN I GOT THERE I WAS APPROACHED BY OFFICER PAM
16 BRADLEY, WHICH WAS ALREADY THERE.

17 Q. OKAY. AND SHE TESTIFIED EARLIER TODAY?

18 A. YES, SHE DID.

19 Q. OKAY. DID YOU TALK TO ANY OF THE WITNESSES AT THE
20 HOSPITAL?

21 A. YES, I DID. AFTER TALKING WITH OFFICER BRADLEY, I
22 THEN WAS MET BY A WITNESS.

23 Q. OKAY. AND WHAT WAS HIS NAME?

24 A. MR. PARKER.

25 Q. OKAY

DIRECT - BOBBY RIVERS BY SOL. PASCOE

210

1 A. RICHARD PARKER.

2 Q. AND WHAT WAS RICHARD TERRELL PARKER'S DEMEANOR
3 LIKE WHEN YOU FIRST MET WITH HIM THAT MORNING?

4 A. HE WAS A LITTLE UPSET.

5 Q. OKAY. DID HE COOPERATE WITH YOU?

6 A. YES, HE DID.

7 Q. OKAY. LET ME ASK YOU -- AND JUST YES OR NO, DID
8 YOU TAKE A VERBAL AND ALSO WRITTEN STATEMENTS FROM
9 TERRELL PARKER?

10 A. YES.

11 Q. AND, IN FACT, -- LET'S SEE, STATE'S EXHIBIT TEN,
12 WHICH IS IN EVIDENCE, AND DEFENSE EXHIBIT THREE,
13 ARE THOSE THE STATEMENTS THAT YOU TOOK FROM
14 TERRELL?

15 A. YES.

16 Q. THAT MORNING ON DECEMBER NINTH?

17 A. YES.

18 Q. AND DID HE TELL YOU WHO THE GUNMAN WAS ON DECEMBER
19 NINTH?

20 A. YES, HE DID.

21 Q. AND DID YOU KNOW ANYONE BY THE NAME OF LE LE BACK
22 ON DECEMBER NINTH, TWO THOUSAND AND THREE?

23 A. YES, I DID.

24 Q. AND WHO DID YOU KNOW AS LE LE?

25 A. LAVON MINTZ.

DIRECT - BOBBY RIVERS BY SOL. PASCOE

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1 Q. AND AFTER GETTING HIS NAME OF LE LE FROM TERRELL,
2 WHAT DID YOU GO ABOUT DOING?

3 A. I WENT ABOUT PUTTING TOGETHER A SIX PHOTO LINEUP.

4 Q. OKAY. . AND DID YOU SHOW A PHOTOGRAPHIC LINEUP TO
5 TERRELL PARKER?

6 A. YES, I DID.

7 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED AS
8 STATE'S EXHIBIT ONE, DO YOU RECOGNIZE THAT?

9 A... YES, I DO.

10 Q. WHAT DO YOU RECOGNIZE THAT TO BE?

11 A. A SIX PHOTO LINEUP THAT I PUT TOGETHER.

12 Q. IS IT IN THE SAME CONDITION AS WHEN YOU SHOWED IT
13 TO TERRELL PARKER ON DECEMBER THE NINTH, TWO
14 THOUSAND AND TWO?

15 A. YES, IT IS.

16 Q. OKAY. IT HASN'T BEEN ALTERED IN ANY WAY?

17 A. NO.

18 SOLICITOR PASCOE: YOUR HONOR, I'D
19 ASK THAT STATE'S EXHIBIT ONE BE ADMITTED INTO EVIDENCE.

20 THE COURT: ANY OBJECTION?

21 MR. WALTERS: NO OBJECTION, YOUR
22 HONOR.

23 THE COURT: ADMITTED WITHOUT
24 OBJECTION.

25 COURT REPORTER: STATE'S ONE.

DIRECT - BOBBY RIVERS BY SOL. PASCOE

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1 (State's Exhibit One
2 marked and filed.)

3 SOLICITOR PASCOE: THANK YOU.

4 Q. MAYBE, YOU NEED TO JUST REFRESH YOUR MEMORY, BUT
5 APPROXIMATELY WHAT TIME DID YOU SHOW THAT LINEUP
6 TO TERRELL?

7 A. APPROXIMATELY EIGHT FIFTY-FIVE A.M., ON TWELVE-
8 NINE.

9 Q. TWELVE-NINE WOULD BE DECEMBER THE NINTH?

10 A. DECEMBER THE NINTH, YES.

11 Q. SO, JUST APPROXIMATELY, LESS THAN SEVEN HOURS
12 AFTER THE SHOOTING?

13 A. YES.

14 Q. OKAY. WHAT DID YOU ASK TERRELL PARKER TO DO WITH
15 STATE'S EXHIBIT ONE?

16 A. I INFORMED MR. PARKER THAT I WAS GOING TO SHOW HIM
17 A SIX PHOTO LINEUP, AND I ASKED HIM TO, IF HE
18 NOTICED ANYBODY, OR IF SOMEBODY WAS FAMILIAR IN
19 THIS LINEUP.

20 Q. OKAY. DID YOU TELL HIM THAT LE LE WAS IN THE
21 LINEUP?

22 A. NO, I DID NOT.

23 Q. DID YOU TELL HIM THE GUNMAN WAS IN THE LINEUP?

24 MR. WALTERS: YOUR HONOR, I'M GOING
25 TO OBJECT, HE'S LEADING THE WITNESS.

DIRECT - BOBBY RIVERS BY SOL. PASCOE

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1 THE COURT: I DON'T THINK SO UNDER
2 THESE CIRCUMSTANCES. GO AHEAD.

3 A. NO, I DID NOT.

4 Q. DID YOU IN ANY WAY HINT TO HIM OR SUGGEST TO HIM
5 WHO TO PICK OUT?

6 A. NO.

7 Q. DID TERRELL PARKER PICK ANYONE OUT OF STATE'S
8 EXHIBIT ONE?

9 A. YES, HE DID.

10 Q. AND WHICH ONE DID HE PICK OUT OF STATE'S EXHIBIT
11 ONE?

12 A. PICTURE NUMBER FIVE.

13 Q. AND TELL THIS JURY WHO IS IN PICTURE NUMBER FIVE?

14 A. LAVON MINTZ.

15 Q. DID HE SHOW ANY HESITATION OR DOUBT WHEN HE PICKED
16 OUT NUMBER FIVE?

17 A. NO, HE DIDN'T.

18 Q. AND AFTER HE PICKED OUT NUMBER FIVE -- WHO DID HE
19 PICK NUMBER FIVE OUT TO BE?

20 A. LAVON MINTZ.

21 Q. OKAY. AND WHAT DID HE SAY LAVON MINTZ DID?

22 A. HE WAS THE ONE WHO SHOT HIS FRIEND.

23 Q. AND AFTER HE PICKED OUT NUMBER FIVE, LET ME SHOW
24 YOU STATE'S EXHIBIT TWO, DO YOU RECOGNIZE THAT?

25 A. YES, I DO.

DIRECT - BOBBY RIVERS BY SOL. PASCOE

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1 Q. AND WHAT IS STATE'S EXHIBIT -- IS IT TWO? AND
2 WHAT IS STATE'S EXHIBIT TWO?

3 A. STATE'S EXHIBIT TWO IS THE SAME PHOTO LINEUP OF
4 THE ORIGINAL ONE THAT I SHOWED MR. PARKER THAT
5 MORNING.

6 Q. OKAY. AND WHO DID YOU GIVE STATE'S EXHIBIT TWO
7 TO? WHO DID YOU GIVE IT TO?

8 A. MR. PARKER.

9 Q. OKAY. AND WHY DID YOU GIVE IT TO MR. PARKER?

10 A. BECAUSE I WANTED HIM TO PUT HIS INITIALS AND THE
11 DATE AND TIME THAT I SHOWED HIM THE LINEUP, AND
12 THE TIME THAT HE PICKED MR. MINTZ OUT.

13 Q. AND HE PUT HIS NAME, INITIAL AND TIME NEXT TO THE
14 ONE HE PICKED OUT?

15 A. YES, HE DID.

16 Q. AND OTHER THAN THE FACT THAT HE PUT HIS NAME AND
17 INITIALS ON THERE, IS THIS IN THE SAME CONDITION
18 AS IT WAS IN BACK ON DECEMBER NINTH, WHEN YOU GAVE
19 IT TO HIM?

20 A. YES, IT IS.

21 SOLICITOR PASCOE: I'D ASK THAT
22 STATE'S EXHIBIT TWO BE ADMITTED INTO EVIDENCE, YOUR
23 HONOR.

24 THE COURT: ANY OBJECTION?

25 MR. WALTERS: NO OBJECTION, YOUR

DIRECT - BOBBY RIVERS BY SOL. PASCOE

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1 HONOR.

2 THE COURT: ADMITTED WITHOUT
3 OBJECTION.

4 COURT REPORTER: STATE'S TWO.

5 (State's Exhibit Two
6 marked and filed.)

7 SOLICITOR PASCOE: THANK YOU.

8 Q. SO, BY NINE O'CLOCK THAT MONDAY MORNING, WITHOUT A
9 DOUBT, WHO WERE YOU LOOKING FOR FOR THE DEATH OF
10 ALFREDO LEWIS?

11 A. LAVON MINTZ.

12 Q. AND AS PART OF YOUR INVESTIGATION DID YOU GET
13 INFORMATION ABOUT HIM BEING WITH SOMEONE NAMED
14 ANDRE?

15 A. YES, I DID.

16 Q. OKAY. AND DID YOU PUT ANOTHER PHOTO LINEUP
17 TOGETHER?

18 A. YES, I DID.

19 Q. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT
20 EIGHT AND SEE IF YOU RECOGNIZE THAT?

21 A. YES, I DO.

22 Q. AND WHAT DO YOU RECOGNIZE THAT TO BE?

23 A. I RECOGNIZE IT TO BE ANOTHER SIX PHOTO LINEUP THAT
24 I PUT TOGETHER WITH A SUBJECT BY THE NAME OF
25 ANDRE.

DIRECT - BOBBY RIVERS BY SOL. PASCOE

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1 Q. OKAY. AND SPECIFICALLY, WHOSE PHOTO DID YOU USE
2 IN THAT STATE'S EXHIBIT?

3 A. SPECIFICALLY, I USED THIS SIX PHOTO LINEUP WITH
4 ANDRE IN IT.

5 Q. ANDRE WHO?

6 A. GOODEN.

7 Q. OKAY. AND IS THAT PHOTO LINEUP IN THE SAME
8 CONDITION THAT IT WAS IN BACK ON DECEMBER THE
9 NINTH, TWO THOUSAND AND TWO?

10 A. YES, IT IS.

11 Q. AND WHO DID YOU SHOW THAT LINEUP TO?

12 A. RICHARD PARKER.

13 SOLICITOR PASCOE: YOUR HONOR, I'D
14 ASK THAT STATE'S EXHIBIT EIGHT BE ADMITTED INTO
15 EVIDENCE.

16 THE COURT: ANY OBJECTION?

17 MR. WALTERS: NO OBJECTION, YOUR
18 HONOR.

19 THE COURT: ADMITTED WITHOUT
20 OBJECTION.

21 COURT REPORTER: STATE'S EIGHT.

22 (State's Exhibit Eight
23 marked and filed.).

24 Q. AND APPROXIMATELY WHAT TIME DID YOU SHOW MR.
25 PARKER STATE'S EXHIBIT EIGHT?

DIRECT - BOBBY RIVERS BY SOL. PASCOE

217

1 A. ABOUT TEN, TEN A.M. THAT MORNING.

2 Q. AND WHAT DID YOU ASK MR. PARKER TO DO WITH THAT?

3 A. I ASKED HIM TO LOOK AT THAT SIX PHOTO LINEUP THAT
4 I PUT TOGETHER AND SEE IF HE RECOGNIZED ANYBODY IN
5 IT.

6 Q. DID YOU TELL HIM THAT ANDRE WAS IN THE LINEUP?

7 A. NO, I DID NOT.

8 Q. DID YOU OR ANYONE TELL HIM WHO TO PICK OUT?

9 MR. WALTERS: YOUR HONOR, I'M GOING
10 TO OBJECT, HE'S LEADING THE WITNESS.

11 SOLICITOR PASCOE: SAME QUESTIONS
12 THAT ---

13 THE COURT: HE -- ASK HIM ABOUT THE
14 INSTRUCTIONS THAT HE GAVE THE WITNESS, AND I DON'T THINK
15 THAT'S AN OBJECTIONABLE LEADING QUESTION. SO, GO AHEAD.

16 SOLICITOR PASCOE: THANK YOU, YOUR
17 HONOR.

18 Q. DID YOU TELL HIM WHO TO PICK OUT OF THAT LINEUP?

19 A. NO, I DID NOT.

20 Q. HINT TO HIM WHO TO PICK OUT OF THAT LINEUP?

21 A. NO, I DID NOT.

22 Q. DID HE PICK ANYONE OUT OF THAT LINEUP?

23 A. YES, HE DID.

24 Q. AND WHICH ONE DID HE PICK OUT?

25 A. HE PICKED OUT PICTURE NUMBER TWO.

DIRECT - BOBBY RIVERS BY SOL. PASCOE

218

1 Q. AND WHO IS PHOTOGRAPH NUMBER TWO?

2 A. ANDRE GOODEN.

3 Q. OKAY. AND AFTER HE PICKED THAT OUT, PHOTOGRAPH
4 NUMBER TWO, DO YOU RECOGNIZE STATE'S EXHIBIT
5 NUMBER NINE?

6 A. YES, I DO.

7 Q. WHAT DO YOU RECOGNIZE THAT TO BE?

8 A. I RECOGNIZE THAT TO BE A PHOTOCOPY OF THE ORIGINAL
9 LINEUP THAT I SHOWED MR. PARKER.

10 Q. THE ONE WITH ANDRE GOODEN IN IT?

11 A. CORRECT.

12 Q. AND WHAT DID YOU ASK HIM TO DO WITH THAT LINEUP?

13 A. I ASKED HIM TO PUT THE DATE AND TIME AND INITIAL
14 THAT HE PICKED MR. GOODEN OUT ON THIS ONE.

15 Q. OKAY. AND HE PUT IT DOWN NEXT TO THE ONE HE
16 PICKED OUT?

17 A. YES.

18 Q. AND OTHER THAN THE FACT THAT YOU'VE HAD HIM
19 INITIAL THAT, IS STATE'S EXHIBIT NINE IN THE SAME
20 CONDITION AS IT WAS IN WHEN YOU SHOWED IT TO HIM
21 BACK THEN, ON DECEMBER NINTH?

22 A. YES, IT IS.

23 SOLICITOR PASCOE: I'D ASK THAT
24 STATE'S EXHIBIT NINE BE ADMITTED INTO EVIDENCE, YOUR
25 HONOR.

DIRECT - BOBBY RIVERS BY SOL. PASCOE

219

1 THE COURT: ANY OBJECTION?

2 MR. WALTERS: NO OBJECTION, YOUR
3 HONOR.

4 THE COURT: ADMITTED WITHOUT
5 OBJECTION.

6 COURT REPORTER: STATE'S NINE.

7 (State's Exhibit Nine
8 marked and filed.)

9 Q. AND IT ACTUALLY HAS THE TIME AND DATE OF WHEN HE
10 PICKED IT OUT?

11 A. YES, SIR.

12 Q. AND WHAT TIME DID HE PICK IT OUT?

13 A. TEN:TEN A.M.

14 Q. AND ON WHAT DAY?

15 A. TWELVE-NINE-TWO THOUSAND AND TWO.

16 Q. THE SAME DATE AS THE MURDER?

17 A. YES.

18 Q. NOW, WHAT DID YOU -- THAT MORNING OF DECEMBER
19 NINTH, THE MORNING OF THE MURDER, WHAT DID YOU DO
20 ABOUT GOING ABOUT LOOKING FOR THE DEFENDANT,
21 SPECIFICALLY, LAVON MINTZ, AND ANDRE GOODEN, WHAT
22 DID YOU DO?

23 A. AT THE OFFICE I PASSED THE INFORMATION ON TO SOME
24 OF THE INVESTIGATORS BACK THERE, ALONG WITH SOME
25 OFFICERS THAT WAS WORKING THAT DAY. I GAVE THEM A

DIRECT - BOBBY RIVERS BY SOL. PASCOE

220

1 PHOTO LINEUP, A COPY OF THE INDIVIDUAL THAT WE
2 WERE LOOKING FOR. AND CAPTAIN ADAMS, WHICH IS MY
3 SUPERVISOR, HE GOT THE TEAM TOGETHER AND THEY WENT
4 OUT LOOKING FOR MR. MINTZ ALONG WITH MR. GOODEN.

5 Q. AND DID YOU ACTUALLY GO OUT LOOKING FOR HIM ON
6 DECEMBER THE NINTH?

7 A. YES, I DID.

8 Q. AND DID YOU PARTICIPATE IN LOOKING FOR HIM ON
9 DECEMBER THE TENTH?

10 A. YES, I DID.

11 Q. OKAY. IN FACT, WHERE WERE YOU WHEN CAPTAIN ADAMS
12 AND INVESTIGATOR CORDON HAD SPOTTED THE DEFENDANT
13 AT THREE P.M. ON DECEMBER THE TENTH?

14 A. I WAS ABOUT TWO BLOCKS AWAY AT THE TIME WHEN THEY
15 PHONED EVERYBODY THAT WAS OUT LOOKING THAT THEY
16 SPOTTED THE VEHICLE ALONG WITH THE SUBJECT IN IT.

17 Q. DO YOU KNOW, SIR, A PERSON BY THE NAME OF TERRELL
18 DAVIS, OR IS IT TERRANCE -- TERRANCE DAVIS? I'M
19 SORRY.

20 A. TERRANCE DAVIS, YES, I DO.

21 Q. AND WHAT DOES HE GO BY?

22 A. TE FO.

23 Q. AND DO YOU KNOW WHETHER OR NOT HE HANGS OUT WITH
24 THE DEFENDANT?

25 A. NO, I DON'T.

DIRECT - BOBBY RIVERS BY SOL. PASCOE

221

1 Q. DID YOU, YOU TESTIFIED YOU WERE MADE AWARE ABOUT
2 THE DECEMBER, WHAT HAPPENED AT THREE O'CLOCK ON
3 DECEMBER THE TENTH, ABOUT THE CHASE. DID YOU
4 PERSONALLY LOOK INTO THE VEHICLE THAT WAS
5 ABANDONED DURING THE CHASE?

6 A. YES, I DID.

7 Q. AND WHO DID THAT VEHICLE BELONG TO?

8 A. EXCUSE ME WHILE I LOOK INTO MY NOTES.

9 Q. ARE THESE COPIES OF YOUR NOTES?

10 A. YES, THEY ARE.

11 Q. OKAY. IS THAT, ARE THOSE TWO PEOPLE LOOK FAMILIAR
12 TO YOU?

13 A. YES, THEY DO, VALERIE DAVIS.

14 Q. AND SHE WAS RENTING THAT VEHICLE?

15 A. YES.

16 MR. WALTERS: I'M GOING TO OBJECT:
17 HE'S LEADING THE WITNESS.

18 THE COURT: THAT IS LEADING, I
19 SUSTAIN THE OBJECTION.

20 SOLICITOR PASCOE: IT'S A RENTAL
21 FORM.

22 Q. WHAT WAS SHE DOING WITH THE VEHICLE?

23 MR. WALTERS: YOUR HONOR, MY
24 OBJECTION IS, THE WITNESS HAS ---

25 THE COURT: I SUSTAIN THE OBJECTION.

DIRECT - BOBBY RIVERS BY SOL. PASCOE

222

1 Q. WHAT WAS SHE DOING WITH THE VEHICLE?

2 A. SHE WAS LETTING MR. MINTZ BORROW THE VEHICLE.

3 Q. OKAY. AND WHAT TYPE OF VEHICLE WAS IT?

4 A. A NINETEEN NINETY-SIX BUICK LESABRE.

5 Q. AND HOW DID SHE GET THE VEHICLE?

6 A. SHE WAS RENTING IT FROM BOB'S AUTO SALES.

7 Q. OKAY, THANK YOU. NOW, LET ME ASK YOU THIS, HOW
8 AND WHEN WERE YOU FINALLY ABLE TO LOCATE THE
9 DEFENDANT, LAVON MINTZ?

10 A. WE RECEIVED A TIP ABOUT WHERE HIS WHEREABOUTS WAS
11 ON THE DAY, THE TENTH.

12 Q. THAT WAS ON DECEMBER THE ELEVENTH?

13 A. THE ELEVENTH, CORRECT.

14 Q. OKAY. AND WHERE WAS THE TIP THAT HE WAS STAYING
15 AT? AND I'LL TAKE THAT BACK.

16 A. IT WAS AT A TRAILER, I DON'T KNOW THE EXACT
17 ADDRESS, BUT IT WAS A, GIVE THE DESCRIPTION OF A
18 BROWN AND WHITE TRAILER LOCATED ON ALETHA STREET.

19 Q. OKAY. AND WHAT DID YOU DO AFTER YOU GOT THAT
20 INFORMATION?

21 A. WE, WE GATHERED SOME OFFICERS AND WE WENT AND
22 APPROACHED THE TRAILER.

23 Q. OKAY. AND WHO WAS AT THE TRAILER WHEN YOU
24 APPROACHED IT?

25 A. LAVON MINTZ.

DIRECT - BOBBY RIVERS BY SOL. PASCOE

223

1 Q. OKAY. AND DID YOU PLACE HIM UNDER ARREST AT THAT
2 TIME?

3 A. YES, WE DID.

4 Q. OKAY. AND LET ME ASK YOU THIS, DID YOU EVER
5 LOCATE MR. ANDRE GOODEN?

6 A. YES, WE DID.

7 Q. AND HOW WAS HE LOCATED?

8 A. HE TURNED HIMSELF IN, HE CAME TO THE COMPLEX ALONG
9 WITH HIS ATTORNEY.

10 Q. WAS THAT THE NEXT DAY, ON DECEMBER THE TWELFTH?

11 A. CORRECT.

12 Q. OKAY. AND FINALLY, DETECTIVE, THE PERSON YOU KNOW
13 AS LE LE, LAVON MINTZ, THE PERSON THAT WAS PICKED
14 OUT OF THE PHOTOGRAPHIC LINEUP BY TERRELL, DO YOU
15 SEE HIM IN THE COURTROOM TODAY?

16 A. YES, I DO.

17 Q. IF YOU COULD, POINT HIM OUT FOR THE JURY.

18 A. THE GENTLEMAN SITTING OVER THERE IN THE BLACK SUIT
19 NEXT TO MR. WALTERS.

20 SOLICITOR PASCOE: ANSWER ANY
21 QUESTIONS MR. WALTERS HAS FOR YOU. THANK YOU.

22 THE COURT: CROSS-EXAMINATION.

23 MR. WALTERS: MAY IT PLEASE THE
24 COURT.

25 THE COURT: YES, SIR.

1 MR. WALTERS: SOLICITOR PASCOE.
2 (NOTE: Blank lines on this page do not indicate any
3 part of record has been omitted. Headers on testimony
4 pages and hard page breaks between testimony are now
5 required by the Court. See next ensuing page for
6 sequential continuation of record.)

CROSS - BOBBY RIVERS BY MR. WALTERS:

225

1 CROSS-EXAMINATION OF BOBBY RIVERS

2 BY MR. WALTERS:

3 Q. DETECTIVE RIVERS, THE TWO INDIVIDUALS THAT HAVE
4 APPEARED BEFORE THIS COURT, RICHARD TERRELL PARKER
5 AND COTINA BROOKS, BOTH CLAIMED TO BE WITNESSES OF
6 THE SHOOTING, IS THAT CORRECT?

7 A. YES.

8 Q. ALRIGHT. AND LET'S FIRST START WITH COTINA
9 BROOKS. SHE INDICATED SHE GAVE YOU A STATEMENT.
10 HAVE YOU GOT A COPY OF THAT STATEMENT INSIDE THAT
11 FILE?

12 A. NO, I DON'T.

13 Q. WHAT HAPPENED, YOU LOST IT?

14 A. I NEVER HAD A STATEMENT FROM HER.

15 Q. DO YOU UNDERSTAND, WHEN WE SERVE A RULE FIVE, AND
16 I BELIEVE YOUR TESTIMONY WAS THAT YOU'VE BEEN WITH
17 DPS FOR SIXTEEN YEARS, FOURTEEN YEARS WITH PUBLIC
18 SAFETY, I'M SORRY, SIXTEEN YEARS AS AN OFFICER, A
19 CRIMINAL INVESTIGATOR, AND YOU WERE TRAINED TO
20 GIVE DETAILED STATEMENTS, AND SEVEN YEARS AS A
21 DETECTIVE, IS THAT CORRECT?

22 A. YES, IT IS.

23 Q. AND YOU'VE PROBABLY BEEN SERVED THOUSANDS OF TIMES
24 WITH A RULE FIVE FROM A LAWYER, THAT SAYS, GIVE ME
25 A COPY OF EVERYTHING THAT YOU INTEND TO INTRODUCE

CROSS - BOBBY RIVERS BY MR. WALTERS:

226

1 TO THIS COURT, IS THAT RIGHT?

2 A. YES, IT IS.

3 Q. ALRIGHT. ANY EVIDENCE THAT MAY BE EXCULPATING,
4 THAT MAY BE BROUGHT UP WITH REGARDS TO THIS CASE,
5 ISN'T THAT RIGHT?

6 A. YES.

7 Q. AND YOU'RE TELLING THIS JURY THAT YOU RECEIVED A
8 STATEMENT FROM A WITNESS THAT TESTIFIED IN THIS
9 CASE, WHO'S GIVEN TWO OR THREE CONTRARY
10 STATEMENTS, AND YOU'VE LOST THE STATEMENT?

11 A. NO, I DIDN'T LOSE THE STATEMENT.

12 Q. WHAT ARE YOU SAYING, THAT MS. BROOKS IS LYING,
13 YES, OR NO?

14 A. I CAN'T ANSWER THAT, I CAN ONLY ANSWER FOR WHAT
15 YOU ASKED ME. I DIDN'T LOSE THE STATEMENT.

16 Q. MY QUESTION IS REAL SIMPLE. SHE SAID SHE GAVE YOU
17 A STATEMENT. DID SHE GIVE YOU A STATEMENT?

18 A. YES, SHE GAVE ME A STATEMENT.

19 Q. WHAT DID YOU DO WITH THE STATEMENT, WHERE IS IT?

20 A. IT'S RIGHT THERE ON THE TABLE.

21 Q. NO, SIR, I ASKED YOU, WHERE IS THE WRITTEN
22 STATEMENT SHE SAID THAT SHE LOST. SHE'S MOVED
23 THREE OR FOUR TIMES THIS YEAR. SHE SAID SHE GAVE
24 YOU A COPY OF THAT STATEMENT. WHERE IS THAT
25 STATEMENT?

CROSS - BOBBY RIVERS BY MR. WALTERS:

227

1 A. I NEVER RECEIVED A WRITTEN STATEMENT FROM MS.
2 BROOKS.

3 Q. SO, MS. BROOKS IS LYING, IS THAT CORRECT, YOUR OWN
4 WITNESS IS LYING?

5 SOLICITOR PASCOE: OBJECT, YOUR
6 HONOR, TO PITTING, HE'S PITTING.

7 THE COURT: I SUSTAIN THE OBJECTION.

8 SOLICITOR PASCOE: THANK YOU.

9 Q. LET'S MOVE TO YOUR NEXT WITNESS THAT WITNESSED
10 THIS SO CALLED SHOOTING THAT OCCURRED, IS THAT
11 CORRECT? IT'S MR. RICHARD PARKER, IS THAT RIGHT?
12 YOU ONLY HAVE TWO WITNESSES, COTINA BROOKS AND
13 RICHARD PARKER, IS THAT RIGHT? YES OR NO?

14 A. THAT CAME UP BEFORE YOU, YES.

15 Q. RICHARD PARKER, YOU STATED THAT YOU TOOK A
16 STATEMENT FROM HIM, IS THAT CORRECT?

17 A. YES, I DID.

18 Q. ALRIGHT. LET'S TALK DECEMBER NINTH, TWO THOUSAND
19 AND TWO, AND YOU SAID YOU RELIED ON THAT FILE IN
20 ORDER TO COME BEFORE THIS COURT AND TESTIFY, AND
21 THE SOLICITOR PICKED UP THE WHOLE PACK AND HE
22 BROUGHT IT ALL OVER HERE TO YOU. NOW, START WITH
23 THE FIRST STATEMENT HERE, YOU'RE AWARE OF THE FACT
24 THAT RICHARD PARKER GAVE A STATEMENT IN THIS CASE,
25 AREN'T YOU?

CROSS - BOBBY RIVERS BY MR. WALTERS:

228

1 A. YES, I AM.

2 Q. LOOK AT IT. DECEMBER NINTH, TWO THOUSAND TWO.
3 NOW, TELL ME SOMETHING, YOU SAID YOU HAD TAKEN
4 THESE TWO STATEMENTS FROM RICHARD PARKER, IS THAT
5 CORRECT?

6 A. YES.

7 Q. THAT'S NOT YOUR WRITING. WHO WROTE THIS
8 STATEMENT?

9 A. I DID.

10 Q. WHO WROTE THIS STATEMENT? IT'S NOT THE SAME
11 HANDWRITING, IS IT? GET UP HERE IN FRONT OF THE
12 JURY AND SHOW IT TO THEM, COME OVER HERE. YOU JUST
13 TOLD THIS JURY THAT YOU WROTE BOTH OF THESE
14 STATEMENT, I WANT THE JURY TO SEE THIS HANDWRITING
15 HERE.

16 SOLICITOR PASCOE: OBJECT, HE DIDN'T
17 SAY THAT, YOUR HONOR, OBJECTION, HE DIDN'T SAY THAT.

18 THE COURT: DON'T MISQUOTE THE
19 WITNESS, BUT YOU CAN ASK HIM THE QUESTION.

20 SOLICITOR PASCOE: THANK YOU, YOUR
21 HONOR, HE DIDN'T SAY THAT.

22 Q. YOUR TESTIMONY WAS, YOU TOOK TWO STATEMENTS, IS
23 THAT RIGHT?

24 A. CORRECT.

25 Q. WHICH ONE OF THESE STATEMENTS DID YOU WRITE?

CROSS - BOBBY RIVERS BY MR. WALTERS:

229

- 1 A. THE ONE IN YOUR RIGHT HAND.
- 2 Q. ALRIGHT. AND WHO WROTE THE ONE IN MY LEFT HAND?
- 3 A. DETECTIVE SMOAK.
- 4 Q. WHERE IS SHE, IS SHE HERE TODAY?
- 5 A. I DON'T SEE HER.
- 6 Q. OKAY. HAVE A SEAT. LET'S GO OVER THE ONE THAT
- 7 YOU WROTE, OKAY? LET'S START WITH THE STATEMENT
- 8 OF RICHARD TERRELL PARKER. I WANT YOU TO READ THE
- 9 FIRST SENTENCE OF WHAT HE SAID.
- 10 A. "WE WENT TO THE CAR, ROLLED TO THE SECOND PARKING
- 11 LOT."
- 12 Q. ALRIGHT. LET ME READ WHAT YOU WROTE. "MY FRIEND,
- 13 ALFREDO LEWIS, AND I WAS INSIDE THE PUB AND SOME
- 14 GUYS WANTED TO FIGHT US. WE LEFT OUT OF THE PUB
- 15 AND WENT TO THE CAR. I WAS GOING TO DRIVE BECAUSE
- 16 I KNOW WHAT WAS GOING ON." IS THAT STATED WITHIN
- 17 THAT STATEMENT?
- 18 A. NO, IT'S NOT.
- 19 Q. ALRIGHT. IN FACT, IN YOUR STATEMENT YOU'VE GONE TO
- 20 ALLUDE TO A FIGHT IN THE BATH ROOM OR AN ARGUMENT
- 21 IN THE BATH ROOM, ISN'T THAT CORRECT?
- 22 A. CORRECT.
- 23 Q. IS IT IN THAT STATEMENT?
- 24 A. NO, IT'S NOT.
- 25 Q. ALRIGHT. IN FACT, IS THE NAME, LE LE, OR LAVON

CROSS - BOBBY RIVERS BY MR. WALTERS:

230

1 MINTZ, IN THAT STATEMENT?

2 A. WHICH ONE?

3 Q. THE STATEMENT RIGHT IN FRONT OF YOU THERE,
4 DEFENDANT'S EXHIBIT NUMBER ONE.

5 A. I DON'T SEE THE NAME LE LE IN THIS ONE.

6 Q. YEAH, BUT YOU FELT AT LIBERTY TO PUT IT IN YOUR
7 STATEMENT, DIDN'T YOU? "BUT BEFORE WE TRIED TO
8 LEAVE I WENT TO THE BATH ROOM AND LE LE WAS IN
9 THERE ALSO." HOW DID LE LE GET INTO THE BATH
10 ROOM, WHEN IT'S NOT EVEN IN THAT STATEMENT?

11 A. BECAUSE THAT'S MY JOB. MY JOB IS TO GET A
12 DETAILED STATEMENT FROM WITNESS AND VICTIM. SO,
13 THAT'S MY STATEMENT, THAT IS A DETAILED STATEMENT.

14 Q. THEN WHY ALLOW THE WITNESS TO WRITE HIS OWN
15 STATEMENT IN THE FIRST PLACE?

16 A. LIKE I STATED EARLIER, THAT NIGHT I APPROACHED
17 TRMC, WHICH IS THE HOSPITAL. I MET WITH OFFICER
18 BRADLEY. OFFICER BRADLEY HAD ALREADY GOTTEN A
19 STATEMENT FROM MR. PARKER. ONCE SHE INFORMED ME
20 WHAT MR. PARKER HAD TOLD HER, THEN IT WAS MY JOB
21 TO GO AND INTERVIEW MR. PARKER AND GET A DETAILED
22 STATEMENT FROM HIM.

23 Q. NOW, YOU ALSO REFERRED TO DETECTIVE SMOAK, IS THAT
24 CORRECT?

25 A. YES, IT IS.

CROSS - BOBBY RIVERS BY MR. WALTERS:

231

- 1 Q. AND YOU RELIED ON HER VERSION TO PREPARE FOR
2 TESTIMONY TODAY, IS THAT RIGHT?
- 3 A. YES.
- 4 Q. HAD YOU READ HER STATEMENT?
- 5 A. YES, I HAVE.
- 6 Q. SHE STARTS OFF, "SOMETIME AFTER P.M. SUNDAY NIGHT,
7 ME AND MY HOME BOY, TROY, WENT TO THE PUB." ISN'T
8 THAT RIGHT?
- 9 A. YES, IT IS.
- 10 Q. ALRIGHT. WELL, IT REFERS TO TROY HERE, YOU DON'T
11 KNOW TROY'S NAME, DO YOU?
- 12 A. NO, I DON'T.
- 13 Q. IF TROY IS HIS HOME BOY, AND THAT'S A SLANG THAT'S
14 USED HERE, IF YOU'RE MY HOME BOY, I PROBABLY KNOW
15 YOUR NAME, DON'T I?
- 16 A. IT JUST ALL DEPENDS, IT'S POSSIBLE.
- 17 Q. THEY DROVE IN THE SAME CAR THERE, HE SHOULD KNOW
18 WHO HE RODE WITH. IF YOU RIDE IN MY CAR, I
19 GUARANTEE YOU I'LL KNOW WHO YOU ARE.
- 20 A. WHICH STATEMENT ARE YOU REFERRING TO?
- 21 Q. NUMBER ONE IS RICHARD TERRELL PARKER'S. NUMBER
22 ONE IS YOUR VERSION OF THE STORY. NUMBER THREE IS
23 DETECTIVE SMOAK'S VERSION OF THE STORY. FIRST OF
24 ALL, LET ME ASK YOU A QUESTION, WHY THREE
25 DIFFERENT VERSIONS? YOU'RE REQUIRED TO WRITE A

CROSS - BOBBY RIVERS BY MR. WALTERS:

232

1 DETAILED REPORT. WHY DID DETECTIVE SMOAK HAVE TO
2 COME IN BEHIND YOU, WITH SEVEN YEARS OF
3 EXPERIENCE, SIXTEEN YEARS ON THE JOB, WHY DID SHE
4 HAVE TO WRITE A REPORT AFTER YOU WROTE A REPORT?

5 A. THE FIRST REPORT WAS TAKEN, LIKE I STATED, WHEN
6 OFFICER BRADLEY APPROACHED THE HOSPITAL, SHE WAS
7 MET BY MR. PARKER.

8 Q. I DIDN'T ASK YOU ABOUT OFFICER BRADLEY.

9 A. THAT'S THE FIRST ---

10 Q. I ASKED YOU ABOUT DETECTIVE SMOAK. WHY DID SHE
11 HAVE TO WRITE AN ADDITIONAL REPORT AFTER YOU HAD
12 WRITTEN A REPORT, WITH YOUR SIXTEEN YEARS OF
13 EXPERIENCE?

14 A. BECAUSE CAPTAIN ADAMS, WHICH IS MY SUPERVISOR,
15 ASSIGNED DETECTIVE SMOAK TO ASSIST ME. THEREFORE,
16 DETECTIVE SMOAK WANTED TO GET A STATEMENT FROM HIM
17 ALSO, WITH MY PRESENCE THERE.

18 Q. OKAY. SO, DETECTIVE ADAMS, OR CAPTAIN ADAMS, HE
19 CAME UP WITH THIS IDEA. DETECTIVE RIVERS, WITH
20 SIXTEEN YEARS OF EXPERIENCE, YOU SIT DOWN AND TAKE
21 A STATEMENT, BUT THAT'S NOT GOOD ENOUGH. WE'LL
22 SEND DETECTIVE SMOAK BEHIND YOU TO TAKE ANOTHER
23 STATEMENT. IS THAT RIGHT?

24 A. NO, THAT'S NOT RIGHT.

25 Q. ALRIGHT. BUT THESE STATEMENTS THAT YOU HAVE HERE,

CROSS - BOBBY RIVERS BY MR. WALTERS:

233

1 THIS FIRST STATEMENT THAT DOES NOT IDENTIFY
2 ANYONE, THAT DOES NOT IDENTIFY LAVON MINTZ, YOU
3 TOOK IT UPON YOURSELF AFTER YOU GOT THAT
4 STATEMENT, AND WHAT DID YOU DO? YOU TOOK THAT
5 STATEMENT, AFTER YOU HAD PRODUCED YOUR OWN, AND
6 CINDY HAD PRODUCED HER OWN, DETECTIVE SMOAK, AND
7 THEN YOU RAN DOWN TO A MAGISTRATE'S OFFICE, DIDN'T
8 YOU? DID YOU BELIEVE THAT YOU HAD VALID GROUNDS
9 TO EVEN GET A WARRANT, AFTER YOU HAD CHANGED THE
10 STATEMENT TWICE?

11 A. THE STATEMENTS ARE PROBABLY ABOUT THIRTY MINUTES
12 APART FROM THE FIRST STATEMENT. LIKE I STATED,
13 ONCE I GOT THERE IT WAS MY JOB TO GET A DETAILED
14 STATEMENT. SO ---

15 Q. SO, -- FINISH, I'M SORRY.

16 A. THANK YOU.

17 A. EXCUSE ME, I DO NOT MEAN TO INTERRUPT YOU. GO
18 AHEAD.

19 A. ONCE I RECEIVED MY DETAILED STATEMENT WHICH MR.
20 PARKER STATED THAT IT WAS LE LE, I'M FAMILIAR WITH
21 LE LE, SO THEREFORE, I KNOW IT WAS LAVON MINTZ.
22 SO, AFTER I RECEIVED THE STATEMENT, THEN THAT'S
23 WHEN I WENT AND GOT MY WARRANT..

24 Q. YOU STATED THAT HE STATED THAT LAVON MINTZ WAS THE
25 PERSON THAT COMMITTED THIS SHOOTING. SHOW ME IN

CROSS - BOBBY RIVERS BY MR. WALTERS:

234

1 HIS STATEMENT WHERE HE SAYS THAT?

2 A. ONCE I GOT THERE AND I SPOKE WITH MR. PARKER, HE
3 OBVIOUSLY WAS A LITTLE UPSET AT THE TIME. I LATER
4 CALMED HIM DOWN AND I ASKED HIM THAT I NEEDED TO
5 TAKE A DETAILED STATEMENT FROM HIM. AND AT THAT
6 TIME I WROTE IN THE STATEMENT OF WHAT HE PRESENTED
7 TO ME.

8 Q. IS IT COMMON POLICE PRACTICE FOR ONE DETECTIVE TO
9 GO IN AND TAKE A STATEMENT, AND THEN BECAUSE, YOU
10 KNOW, CAPTAIN ADAMS IS NOT TOO SURE ABOUT YOU, HE
11 SENDS ANOTHER DETECTIVE IN BEHIND YOU TO MAKE A
12 STATEMENT?

13 SOLICITOR PASCOE: OBJECTION TO THE
14 CAPTAIN ADAMS, AND CAPTAIN ADAMS NOT BEING TOO SURE OF
15 HIM. WHERE DOES HE GET THAT?

16 Q. LET ME ASK YOU A QUESTION, ---

17 SOLICITOR PASCOE: OBJECT TO THE
18 FORM OF THE QUESTION.

19 THE COURT: LET HIM ANSWER THE
20 QUESTIONS IF HE WANTS TO ANSWER IT.

21 Q. LET ME ASK YOU A QUESTION, THE HIERARCHY THERE,
22 ARE YOU AND DETECTIVE SMOAK ON THE SAME LEVEL, OR
23 ARE YOU ABOVE HER?

24 A. WE BOTH ARE DETECTIVE SERGEANTS.

25 Q. OKAY. SO, YOU'RE BOTH DETECTIVE SERGEANTS, AND

CROSS - BOBBY RIVERS BY MR. WALTERS:

235

1 THE ASSUMPTION IS, IS THAT BOTH OF YOU HAVE THE
2 SAME KNOWLEDGE AND THE SAME EXPERIENCE AND THE
3 SAME ABILITIES, IS THAT CORRECT?

4 A. YES, IT IS.

5 Q. ALRIGHT. YOU STILL HAVEN'T ANSWERED BY QUESTION.
6 YOU RAN OVER TO A MAGISTRATE'S OFFICE AND YOU PUT
7 YOUR HAND ON A BIBLE, UNDER OATH, AND SAID, LAVON
8 MINTZ COMMITTED THIS CRIME. BUT THE TRUTH IS, IS
9 THAT YOU DIDN'T HAVE ONE STATEMENT FROM ONE
10 INDIVIDUAL SUBSTANTIATING THAT LAVON MINTZ HAD
11 COMMITTED ANY CRIME.

12 A. YES, I DID.

13 Q. LET'S TALK ABOUT COTINA BROOKS. YOU RAN OUT AND
14 FOUND HER FORTY-NINE DAYS LATER. ISN'T THAT
15 RIGHT?

16 A. NEGATIVE. SHE APPROACHED ME.

17 Q. ALRIGHT. I UNDERSTAND. AND IN THIS PARTICULAR
18 CASE I BELIEVE THIS MURDER OCCURRED ON DECEMBER
19 NINTH OF TWO THOUSAND TWO, ISN'T THAT RIGHT?

20 A. CORRECT.

21 Q. AND IT'S NOW APRIL OF TWO THOUSAND FIVE. ISN'T
22 THAT RIGHT?

23 A. YES.

24 Q. AND YOU'VE SEEN THE MOTIONS WE'VE FILED WITH THE
25 COURT, GET US IN THIS COURTROOM, LET'S TRY THIS

CROSS - BOBBY RIVERS BY MR. WALTERS:

236

1 CASE, LET'S GO, LET'S GO, LET'S GO, LET'S GO. AND
2 YOU RECEIVED OUR RULE FIVE, DIDN'T YOU?

3 A. YES, I DID.

4 Q. WHERE IS THAT STATEMENT FROM COTINA BROOKS THAT
5 SHE HAS WRITTEN?

6 A. THE DAY THAT I INTERVIEWED MS. BROOKS, IT WAS AT
7 HER JOB. I ASKED HER THAT I NEEDED A DETAILED
8 STATEMENT. SHE TOLD ME THAT SHE WOULD BE, FEEL
9 MORE FREELY IF I WAS TO WRITE THE STATEMENT. SO,
10 I WROTE THE STATEMENT, AND THAT'S THE ONE THAT WE
11 HAVE IN FRONT OF US.

12 Q. YOU WROTE A STATEMENT FOR COTINA BROOKS? SHOW ME
13 THE STATEMENT, SHOW ME THE STATEMENT THAT YOU
14 WROTE FOR COTINA BROOKS, PULL IT OUT YOUR FILE
15 RIGHT NOW, PULL IT OUT. OPEN YOUR FILE, THAT'S
16 WHAT YOU'RE RELYING ON, SHOW ME THE STATEMENT YOU
17 WROTE TO COTINA BROOKS.

18 SOLICITOR PASCOE: LET HIM ANSWER
19 THE QUESTION, YOUR HONOR, OBJECTION.

20 Q. SHOW ME THE STATEMENT. SHOW ME THE STATEMENT YOU
21 WROTE FOR HER, SHOW IT TO ME RIGHT NOW. YOU CLAIM
22 YOU WROTE IT FOR HER, LET'S SEE IT, PULL IT OUT
23 THAT FILE.

24 SOLICITOR PASCOE: WELL, LET HIM
25 SHOW IT TO YOU.

CROSS - BOBBY RIVERS BY MR. WALTERS:

237

1 Q. GO AHEAD, IT'S RIGHT IN FRONT OF YOU.

2 THE COURT: ALRIGHT, MR. WALTERS,
3 LET HIM ANSWER THE QUESTION.

4 SOLICITOR PASCOE: HERE, DO YOU WANT
5 TO GIVE HIM, MY COPY?

6 A. YEAH, THAT'S MORE QUICKER, LET ME USE HIS COPY.

7 SOLICITOR PASCOE: YEAH.

8 MR. WALTERS: YOUR HONOR, I OBJECT
9 TO THE SOLICITOR ATTEMPTING TO ANSWER FOR THIS WITNESS.
10 HE'S ON THE STAND, AND I ASKED HIM A QUESTION, HE'S
11 SUPPOSED TO RESPOND TO IT.

12 SOLICITOR PASCOE: I OBJECT TO ---

13 MR. WALTERS: I ASK THAT THE COURT

14 ---

15 THE COURT: ALRIGHT, BOTH OF YOU
16 SHUT UP, AND SIT DOWN, BOTH OF YOU. THIS IS RIDICULOUS.

17 OFFICER, LOOK WHEREVER YOU NEED TO
18 LOOK, IN YOUR FILE OR THE SOLICITOR'S FILE, THE QUICKEST
19 PLACE YOU CAN FIND THE STATEMENT TO WHICH YOU ARE
20 REFERRING.

21 A. MY FILE OR THE SOLICITOR'S FILE?

22 THE COURT: YES, SIR.

23 A. WE HAVE IT, SIR.

24 THE COURT: ALRIGHT. NOW, MR.
25 WALTERS.

CROSS - BOBBY RIVERS BY MR. WALTERS:

238

1 Q. SHOW ME THE STATEMENT THAT YOU WROTE. IS THAT THE
2 STATEMENT?

3 A. YES, IT IS.

4 Q. THIS IS A TYPED STATEMENT. WHERE IS THE STATEMENT
5 YOU WROTE? THAT'S WHAT I'M ASKING FOR, YOU SAID
6 YOU WROTE A STATEMENT, YOU WERE ON HER JOB, SHOW
7 ME THE WRITTEN STATEMENT.

8 A. IF I CAN REMEMBER AND RECALL CORRECTLY ON THAT
9 DATE, WHAT WE DID, WE, WE TAPED HER WHEN WE
10 INTERVIEWED HER, AND I WENT BACK TO THE OFFICE
11 ALONG WITH ONE OF MY CO-WORKERS, AND WE LISTENED
12 TO THE TAPE, AND WE TRANSCRIBED IT, TYPED IT, SIR.

13 Q. DO YOU, OR DON'T YOU HAVE THE WRITTEN STATEMENT?

14 A. THERE NEVER WAS A WRITTEN STATEMENT.

15 Q. SO, NOW YOU DON'T HAVE A WRITTEN STATEMENT?

16 A. THERE NEVER WAS A WRITTEN STATEMENT, WE
17 INTERVIEWED HER AND WE TAPED IT.

18 Q. WHICH VERSION OF YOUR STORY DO YOU WANT ME TO
19 BELIEVE? YOU JUST TOLD ME YOU INTERVIEWED HER AT
20 WORK AND YOU HAD WRITTEN DOWN HER STATEMENT. I
21 ASKED YOU FOR A COPY OF THE WRITTEN STATEMENT. IS
22 YOUR TESTIMONY NOW THAT IT NEVER WAS A WRITTEN
23 STATEMENT, AND THAT YOU TAPED HER? WHICH ONE IS
24 TRUE, WHICH ONE IS CORRECT?

25 A. FOR THE THIRD TIME, SIR, THERE NEVER WAS A WRITTEN

CROSS - BOBBY RIVERS BY MR. WALTERS:

239

1 STATEMENT, WE TAPED HER.

2 Q. OKAY.

3 MR. WALTERS: I BEG THE COURT'S
4 INDULGENCE, YOUR HONOR.

5 THE COURT: YES, SIR.

6 MR. WALTERS: YOUR HONOR, WE HAVE NO
7 FURTHER QUESTIONS FOR THIS WITNESS.

8 THE COURT: ANY REDIRECT?

9 SOLICITOR PASCOE: YES, SIR.

10 (NOTE: Blank lines on this page do not indicate any
11 part of record has been omitted. Headers on testimony
12 pages and hard page breaks between testimony are now
13 required by the Court. See next ensuing page for
14 sequential continuation of record.)

REDIRECT - BOBBY RIVERS BY SOL. PASCOE

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1 REDIRECT EXAMINATION OF BOBBY RIVERS

2 BY SOLICITOR PASCOE:

3 Q. MR. WALTERS ASKED YOU ABOUT RULE FIVE AND
4 DISCOVERY, DO YOU REMEMBER THAT?

5 A. YES.

6 Q. ARE YOU AWARE THAT THE TAPED STATEMENT HAS BEEN
7 GIVEN TO THE DEFENSE, CORRECT?

8 A. YES, IT HAS.

9 Q. HE HAS IT. WITH REGARDS TO WHETHER YOU TOOK
10 CERTAIN STATEMENTS FROM TERRELL OR NOT,
11 SPECIFICALLY ---

12 SOLICITOR PASCOE: I HAVE STATE'S
13 EXHIBIT TEN, WHERE'S THE OTHER STATE'S EXHIBIT?

14 Q. WHOSE NAME IS ON HERE AS TAKING THIS STATEMENT, ON
15 STATE'S EXHIBIT TEN?

16 A. DETECTIVE BOBBY RIVERS AND DETECTIVE CINDY SMOAK.

17 Q. SO, YOU TOOK THIS STATEMENT, AS WELL?

18 A. YES, I DID.

19 Q. SHOW ME ANYWHERE IN TERRELL'S STATEMENT WHERE HE
20 SAYS THAT LE LE DID NOT SHOOT FREDO? IS IT
21 ANYWHERE?

22 A. NO.

23 Q. SHOW ME ANYWHERE -- AND I DON'T HAVE THE EXHIBIT,
24 BUT I'VE GOT THE OTHER STATEMENT -- IN THE OTHER
25 STATEMENT THAT TERRELL GAVE YOU, WHERE HE SAYS

REDIRECT - BOBBY RIVERS BY SOL. PASCOE

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1 THAT LE LE DIDN'T SHOOT FREDO?

2 A. I CAN'T SHOW YOU THAT NEITHER, SIR.

3 Q. AND WITH REGARDS TO STATE'S EXHIBIT -- DEFENSE
4 EXHIBIT ONE, DID YOU TAKE THAT STATEMENT?

5 A. NO, I DID NOT.

6 Q. WHO TOOK IT?

7 A. OFFICER BRADLEY.

8 Q. AND WHO DID OFFICER BRADLEY TELL YOU TERRELL TOLD
9 HER KILLED FREDO?

10 A. LE LE.

11 Q. SHE TOLD YOU THAT THAT MORNING?

12 A. YES, SHE DID.

13 Q. AND WHOSE NAME DID THEY MAKE SURE TO WRITE ON
14 DEFENSE EXHIBIT ONE?

15 A. LE LE.

16 Q. AND WITH REGARDS TO COTINA, WAS THERE A WRITTEN
17 STATEMENT?

18 A. NO, IT WASN'T.

19 Q. HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT,
20 SIXTEEN, SEVENTEEN YEARS?

21 A. SIXTEEN YEARS.

22 Q. HOW MANY WITNESSES DO YOU THINK YOU'VE SEEN
23 TESTIFY IN THOSE SIXTEEN YEARS?

24 A. MANY.

25 Q. DO WITNESSES GET NERVOUS?

REDIRECT - BOBBY RIVERS BY SOL. PASCOE

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1 A. YES, THEY DO.

2 SOLICITOR PASCOE: THAT'S ALL I

3 HAVE, YOUR HONOR, THANK YOU.

4 THE COURT: RECROSS?

5 (NOTE: Blank lines on this page do not indicate any
6 part of record has been omitted. Headers on testimony
7 pages and hard page breaks between testimony are now
8 required by the Court. See next ensuing page for
9 sequential continuation of record.)

RECROSS - BOBBY RIVERS BY MR. WALTERS

243

1 RECROSS-EXAMINATION OF BOBBY RIVERS

2 BY MR. WALTERS:

3 Q. YOU KNEW THIS TRIAL WAS TODAY, DIDN'T YOU?

4 A. EXCUSE ME?

5 Q. YOU KNEW THIS TRIAL WAS TODAY, FEBRUARY NINETEEN
6 OF TWO THOUSAND FIVE?

7 A. YES, I DID.

8 Q. AND YOU HAD PLENTY OF TIME TO PREPARE YOU OR ANY
9 WITNESS, ISN'T THAT RIGHT?

10 A. YES.

11 Q. THE MURDER HAPPENED DECEMBER NINTH OF TWO THOUSAND
12 TWO, ISN'T THAT RIGHT?

13 A. YES, IT DID.

14 MR. WALTERS: I HAVE NO FURTHER
15 QUESTIONS, YOUR HONOR.

16 SOLICITOR PASCOE: COULD I ADDRESS
17 THAT NOW ---

18 THE COURT: YES, SIR.

19 SOLICITOR PASCOE: --- SINCE HE WENT
20 BEYOND THE SCOPE?

21 (NOTE: Blank lines on this page do not indicate any
22 part of record has been omitted. Headers on testimony
23 pages and hard page breaks between testimony are now
24 required by the Court. See next ensuing page for
25 sequential continuation of record.)

REDIRECT - BOBBY RIVERS BY SOL. PASCOE

244

1 REDIRECT EXAMINATION OF BOBBY RIVERS

2 BY SOLICITOR:

3 Q. SINCE WE'RE MAKING A BIG DEAL ABOUT HOW OLD THIS
4 CASE IS, HOW LONG HAVE I BEEN SOLICITOR?

5 A. ABOUT THREE MONTHS.

6 SOLICITOR PASCOE: THAT'S ALL I
7 HAVE.

8 THE COURT: THANK YOU, SIR, YOU MAY
9 BE SEATED.

10 CALL YOUR NEXT WITNESS.

11 SOLICITOR PASCOE: I THINK I'M GOING
12 TO REST, YOUR HONOR, CAN I JUST CHECK WITH MS. HARRY DOT
13 AND MAKE SURE ---

14 THE COURT: YES, SIR.

15 SOLICITOR PASCOE: MAY IT PLEASE THE
16 COURT.

17 THE COURT: YES, SIR.

18 SOLICITOR PASCOE: AT THIS TIME THE
19 STATE RESTS.

20 THE COURT: ALRIGHT, LADIES AND
21 GENTLEMEN, THE STATE HAS RESTED. THAT MEANS THAT'S ALL
22 THE TESTIMONY AND EVIDENCE THEY'RE GOING TO OFFER YOU AT
23 THIS TIME. SO, WE'RE GOING TO TAKE OUR RECESS FOR THE
24 NIGHT AND WE'LL START BACK AT NINE:THIRTY IN THE
25 MORNING.

245

1 I KNOW WE HAVE HAD A NEWSPAPER
2 REPORTER FROM THE TIMES AND DEMOCRAT IN HERE TODAY, SO
3 IF FEEL CERTAIN THERE WILL BE SOME ARTICLE ABOUT THIS
4 CASE IN THE PAPER TOMORROW. DO NOT READ THAT ARTICLE.
5 IF YOU SUBSCRIBE TO THE DEMOCRAT TELL SOME FRIEND OF
6 YOURS, OR YOU PUT IT ASIDE, AND WAIT UNTIL THIS CASE
7 OVER TO READ ANYTHING IN THE PAPER ABOUT THIS CASE.

8 DO NOT DISCUSS THE CASE WITH
9 ANYBODY, EVEN, LIKE I SAY, IF IT'S SPOUSE AT HOME OR
10 SOME OTHER PERSON, DO NOT DISCUSS THIS CASE. IF THEY
11 WANT TO TALK WITH YOU ABOUT IT YOU TELL THEM YOU'RE ON
12 THE JURY, THE FIRST THING THEY'RE GOING TO ASK YOU IS,
13 WHAT KIND OF CASE IS IT? TELL THEM, I CAN'T TALK ABOUT
14 IT, THE JUDGE SAID FOR ME NOT TO TALK ABOUT IT UNTIL THE
15 CASE IS OVER.

16 PLEASE BE BACK IN THE JURY ROOM AT
17 NINE:THIRTY IN THE MORNING. THANK YOU VERY MUCH. YOU
18 ARE EXCUSED.

19 EVERYBODY ELSE REMAIN IN THE
20 COURTROOM UNTIL THE JURY LEAVES.

21 (Whereupon, the jury leaves
22 the courtroom for the day,
23 and the following takes
24 place out of the presence
25 of the jury.)

1 BAILIFF: YOUR HONOR, ALL OF THE
2 JURORS AND THE ALTERNATE ARE OUT OF THE COURTROOM.

3 THE COURT: THANK YOU, MA'AM.

4 MR. MINTZ, WOULD YOU PLEASE STAND.

5 (NOTE: Blank lines on this page do not indicate any
6 part of record has been omitted. Headers on testimony
7 pages and hard page breaks between testimony are now
8 required by the Court. See next ensuing page for
9 sequential continuation of record.)

EXAM, IN CAMERA - LAVON GILBERT MINTZ BY THE COURT

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1 EXAMINATION, IN CAMERA, OF LAVON GILBERT MINTZ

2 BY THE COURT:

3 Q. MR. MINTZ, THE STATE HAS RESTED. THAT MEANS
4 THEY'VE PUT UP ALL THE TESTIMONY AND THE EVIDENCE
5 THEY'RE GOING TO OFFER AT THIS TIME. YOU HAVE THE
6 RIGHT TO TESTIFY.

7 THE COURT: DOES HE HAVE ANY
8 CRIMINAL CONVICTIONS WHICH YOU THINK WOULD BE
9 ADMISSIBLE?

10 SOLICITOR PASCOE: YES, YOUR HONOR,
11 HE'S GOT, I THINK IT'S FROM TWO THOUSAND AND FOUR, LET
12 ME GET THE RAP -- A THROWING BODILY FLUIDS ON A
13 CORRECTIONAL OFFICER. HE'S GOT, I THINK, SOME OTHER
14 CONVICTIONS, BUT NONE OF THOSE WOULD BE IMPEACHABLE ---

15 THE COURT: WHAT'S YOUR POSITION ON
16 THAT ONE?

17 MR. WALTERS: YOUR HONOR, I'VE HAD
18 A CHANCE TO REVIEW THE RAP SHEET, AND I BELIEVE THERE
19 WAS A CONVICTION WITHIN THE LAST TEN YEARS, AND IT IS A
20 FELONY. OUTSIDE OF THAT, YOUR HONOR, I WOULD LIKE TO
21 MAKE MY MOTIONS, BUT I CAN MAKE IT IN THE MORNING, YOUR
22 HONOR.

23 THE COURT: NO, YOU CAN MAKE THEM IN
24 JUST A MINUTE, BUT LET ME FINISH.

25 MR. WALTERS: YES, SIR.

EXAM, IN CAMERA - LAVON GILBERT MINTZ BY THE COURT

248

1 THE COURT: I WOULD FIND THAT THAT
2 WOULD BE ADMISSIBLE.

3 Q. SO, MR. MINTZ, IF YOU TESTIFY THEY CAN BRING UP
4 THE FACT THAT YOU WERE CONVICTED OR PLED GUILTY TO
5 THROWING BODILY FLUIDS ON A CORRECTIONAL OFFICER.
6 AND, OF COURSE, YOU WOULD BE CROSS-EXAMINED JUST
7 LIKE ANY OTHER WITNESS WOULD BE CROSS-EXAMINED.
8 YOU ALSO HAVE A RIGHT NOT TO TESTIFY. THAT IS
9 YOUR CONSTITUTIONAL RIGHT NOT TO TESTIFY. IF YOU
10 CHOOSE NOT TO TESTIFY I WILL TELL THE JURY THAT
11 THEY CANNOT CONSIDER THAT AGAINST YOU IN ANY
12 MANNER WHATSOEVER. I WILL REQUEST THAT THEY NOT
13 EVEN DISCUSS THAT BACK THERE WHEN THEY BEGIN THEIR
14 DELIBERATIONS IN THIS CASE.

15 DO YOU UNDERSTAND YOUR RIGHT TO TESTIFY?

16 A. YES, SIR.

17 Q. DO YOU UNDERSTAND YOUR RIGHT NOT TO TESTIFY?

18 A. YES, SIR.

19 Q. YOU SHOULD DISCUSS THAT WITH YOUR ATTORNEY, I'M
20 SURE YOU ALREADY HAVE, BUT YOU SHOULD DISCUSS THAT
21 WITH YOUR ATTORNEY TONIGHT AND DECIDE WHETHER OR
22 NOT YOU WANT TO TESTIFY.

23 NOW, ALTHOUGH YOU SHOULD DISCUSS IT WITH HIM AND
24 LISTEN TO HIS ADVICE, WHAT HE HAS TO SAY, YOU
25 DON'T HAVE TO TAKE HIS ADVICE, THAT'S UP TO YOU.

EXAM, IN CAMERA - LAVON GILBERT MINTZ BY THE COURT

249

1 I'M NOT TELLING YOU NOT TO TAKE IT, I'M JUST
2 SAYING THAT THE DECISION OF WHETHER OR NOT TO
3 TESTIFY SHOULD BE YOUR DECISION AND NOT YOUR
4 ATTORNEY'S DECISION OR ANYBODY ELSE'S. DO YOU
5 UNDERSTAND THAT?

6 A. YES, SIR.

7 THE COURT: ALRIGHT, SIR, HAVE A
8 SEAT, PLEASE, SIR.

9 YES, SIR, MR. WALTERS.

10 MR. WALTERS: YOUR HONOR, AT THIS
11 TIME WE WOULD MAKE A MOTION FOR A DIRECTED VERDICT. I
12 BELIEVE THE STANDARD THAT'S REQUIRED UNDER THE LAWS OF
13 THE STATE OF SOUTH CAROLINA IS THAT THE STATE MUST PROVE
14 EACH AND EVERY ELEMENT OF THE OFFENSE. IN ADDITION TO
15 THAT, REASONABLE MINDS SHOULD NOT BE ABLE TO DIFFER WITH
16 REGARDS TO THE ESTABLISHMENT OF THOSE PARTICULAR
17 ELEMENTS. IN THIS PARTICULAR CASE MY CLIENT HAS BEEN
18 CHARGED WITH MURDER, WHICH REQUIRES MALICE AFORETHOUGHT
19 IN THE UNLAWFUL TAKING OF A LIFE. IN THIS PARTICULAR
20 CASE THEY HAVE NOT ESTABLISHED THAT THERE WAS MALICE, A
21 WICKED HEART IN THIS PARTICULAR CASE. MOREOVER, THEY
22 HAVE FAILED TO ESTABLISH IN THIS PARTICULAR CASE THE
23 AFORETHOUGHT, SIMPLY THE PLANNING OF THE MURDER IN THIS
24 PARTICULAR CASE. AND THEY HAVE FAILED WITH REGARDS TO
25 TWO ELEMENTS, THE FIRST WITNESS THAT TESTIFIED IN THIS

1 PARTICULAR CASE, OF COURSE, WAS RICHARD TERRELL PARKER.
2 HE STATED THAT THERE WAS SOME ANIMOSITY BETWEEN ANDRE
3 AND THE DECEDENT IN THIS PARTICULAR CASE, ANDRE GOODEN.
4 AND, OF COURSE, THEY HAD WORDS BACK AND FORTH WITH EACH
5 OTHER. THE SECOND WITNESS THAT TESTIFIED, OF COURSE,
6 WAS OFFICER BRADLEY, WHO HAD NO PERSONAL KNOWLEDGE. AND
7 THEN WE MOVED TO COTINA BROOKS, AND MS. BROOKS IN THIS
8 CASE, HER TESTIMONY WAS, IS THAT THERE WERE WORDS
9 EXCHANGED BETWEEN THE PARTIES AND, OF COURSE, OTHER THAN
10 THAT SHE TESTIFIED ABOUT WHAT SHE BELIEVED HAPPENED WITH
11 REGARDS TO THE INCIDENT IN THE PARKING LOT. OTHER THAN
12 THAT THEY HAVE NOT ESTABLISHED THE MALICE THAT'S
13 REQUIRED, WHICH IS A WICKEDNESS OF SOMEONE'S HEART.
14 MOREOVER, THEY HAVE NOT ESTABLISHED THE AFORETHOUGHT,
15 THE PLANNING TO PUT INTO OPERATION A MURDER, AND WE HAVE
16 STIPULATED THAT SOMEONE IS DEAD, AND THAT'S OBVIOUS.
17 SO, I BELIEVE THEY'VE ONLY PROVEN ONE ELEMENT OF THIS
18 OFFENSE. I THINK THEY HAVE FAILED WITH REGARDS TO
19 ESTABLISHING A CHARGE OF MURDER.

20 THE COURT: ALRIGHT, SIR, WELL, OF
21 COURSE, MALICE CAN BE INFERRED SIMPLY BY THE USE OF A
22 DEADLY WEAPON. TESTIMONY FROM SEVERAL EYE WITNESSES ARE
23 THAT HE HAD A DEADLY WEAPON THAT NIGHT, AND BY AT LEAST
24 TWO EYE WITNESSES THAT THEY SAW THE DEADLY WEAPON USED
25 TO SHOOT THE VICTIM IN THE CASE. IN ADDITION, THE

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1 SECOND SHOT COULD BE AN INFERENCE OF MALICE. SO, I
2 THINK THERE'S SUFFICIENT EVIDENCE ON THAT QUESTION.

3 AS FAR AS AFORETHOUGHT, IT DOESN'T
4 HAVE TO BE ANY PLANNING, ANY LONG RANGE PLANNING, IT
5 SIMPLY -- THE JURY CAN INFER FROM THE CIRCUMSTANCES
6 WHICH EXISTED, BUT THE JURY CERTAINLY COULD INFER THAT
7 JUST FROM HIM HAVING A WEAPON WITH HIM THAT HE HAD
8 PLANNED TO TAKE THIS ACTION WITH HIM.

9 SO, I THINK THAT AT THIS STAGE I
10 MUST TAKE IT IN THE LIGHT MOST FAVORABLE TO THE STATE,
11 OF COURSE, AND THERE IS SUFFICIENT EVIDENCE ON BOTH OF
12 THOSE ELEMENTS TO MAKE IT A JURY QUESTION. SO, I WOULD
13 DENY YOUR MOTION.

14 MR. WALTERS: THANK YOU, YOUR HONOR.

15 THE COURT: ANYTHING ELSE FROM THE
16 DEFENSE?

17 MR. WALTERS: NO, SIR, YOUR HONOR.

18 THE COURT: ANYTHING FROM THE STATE
19 BEFORE WE RECESS?

20 SOLICITOR PASCOE: NO, SIR, YOUR
21 HONOR.

22 THE COURT: ALRIGHT, WE'LL BE IN
23 RECESS UNTIL NINE:THIRTY IN THE MORNING.

24 THE COURT: I WANT THE LAWYERS TO
25 COUNT THESE EXHIBITS BEFORE YOU LEAVE, PLEASE.

1 (Recess for the day.)

2 DATE:

3 APRIL 20, 2005

4 THE COURT: MR. MINTZ, WOULD YOU
5 STAND, PLEASE.

6 (NOTE: Blank lines on this page do not indicate any
7 part of record has been omitted. Headers on testimony
8 pages and hard page breaks between testimony are now
9 required by the Court. See next ensuing page for
10 sequential continuation of record.)

EXAM, IN CAMERA- LAVON GILBERT MINTZ BY THE COURT

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1 EXAMINATION, IN CAMERA, OF LAVON GILBERT MINTZ

2 BY THE COURT:

3 Q. MR. MINTZ, HAVE YOU HAD AN OPPORTUNITY TO DISCUSS
4 WITH YOUR ATTORNEY WHETHER OR NOT YOU WILL
5 TESTIFY?

6 A. YES, SIR.

7 Q. DO YOU UNDERSTAND BOTH YOUR RIGHT TO TESTIFY AND
8 YOUR RIGHT NOT TO TESTIFY?

9 A. YES, SIR?

10 Q. DO YOU HAVE ANY QUESTIONS ABOUT EITHER ONE OF
11 THOSE RIGHTS?

12 A. NO, SIR.

13 Q. DO YOU UNDERSTAND THAT THE FINAL DECISION SHOULD
14 BE YOURS, AFTER CONSULTING WITH YOUR ATTORNEY?

15 A. YES, SIR.

16 Q. HAVE YOU REACHED A DECISION?

17 A. YES, SIR.

18 Q. AND WHAT'S YOUR DECISION?

19 A. NO.

20 Q. YOU DON'T WANT TO TESTIFY?

21 A. NO, SIR.

22 Q. AND IS THIS -- HAS ANYBODY PRESSURED YOU OR FORCED
23 YOU TO MAKE THAT DECISION AGAINST YOUR WILL?

24 A. NO, SIR.

25 THE COURT: ALRIGHT, I FIND THAT

1 HE'S FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY
2 WAIVED HIS RIGHT TO TESTIFY, AND I WILL INSTRUCT THE
3 JURY ACCORDINGLY.

4 ALRIGHT, DO YOU HAVE OTHER WITNESSES
5 TO OFFER?

6 MR. WALTERS: NO, SIR, YOUR HONOR.

7 SOLICITOR PASCOE: AND IF IT'S OKAY,
8 I JUST NEED A COUPLE OF MINUTES TO SET UP NOW, IF WE'RE
9 GOING TO GO INTO CLOSINGS, IS THAT OKAY?

10 THE COURT: YEAH, BUT WE NEED TO
11 TALK ABOUT THE CHARGE.

12 SOLICITOR PASCOE: YEAH.

13 THE COURT: I GUESS, THERE'S NOT A
14 WHOLE LOT TO TALK ABOUT.

15 DO YOU HAVE ANY PARTICULAR REQUESTS,
16 MR. WALTERS?

17 MR. WALTERS: YES, SIR, THE LESSER
18 INCLUDED OFFENSE OF MANSLAUGHTER.

19 THE COURT: LIKE WHAT?

20 MR. WALTERS: VOLUNTARY.

21 THE COURT: WELL, TELL ME WHAT
22 EVIDENCE THERE IS.

23 MR. WALTERS: YOUR HONOR, IN THIS
24 PARTICULAR CASE, AS I'VE STATED ON THE DIRECTED VERDICT
25 MOTION, THE ESSENTIAL ELEMENTS OF THE OFFENSE OF MURDER

255

1 WE DON'T BELIEVE HAS BEEN PROVEN IN THIS CASE. WE
2 BELIEVE REASONABLE MINDS COULD DIFFER WITH REGARDS TO
3 THE PROSECUTION ESTABLISHING EACH AND EVERY ELEMENT. A
4 JURY COULD INFER FROM THIS THAT THERE WAS AN ACTION OF
5 MANSLAUGHTER. THEY STATED THERE WAS A HEATED ARGUMENT,
6 THEY ARRIVED AT THE CLUB, THAT'S WHEN THE ARGUMENT BEGAN
7 IN THE BATH ROOM, AND THEN SPILLED OVER INTO THE PARKING
8 LOT. BUT THERE'S BEEN NO EVIDENCE OF ANY MALICE. AND,
9 OF COURSE, WE BELIEVE THE EVIDENCE DOESN'T SHOW MALICE
10 AFORETHOUGHT IN THIS PARTICULAR CASE. WE THINK THEY'VE
11 ONLY ESTABLISHED THAT THERE WAS AN UNLAWFUL TAKING OF A
12 LIFE.

13 THE COURT: WELL, VOLUNTARY
14 MANSLAUGHTER IS THE KILLING IN THE HEAT OF PASSION, ---

15 MR. WALTERS: YES, SIR.

16 THE COURT: --- AFTER ADEQUATE LEGAL
17 PROVOCATION. SO, SOLICITOR, WHAT HAVE YOU GOT TO SAY
18 ABOUT IT?

19 SOLICITOR PASCOE: THAT'S THE
20 PROBLEM, THERE IS ABSOLUTELY NO EVIDENCE THAT THIS IS A
21 VOLUNTARY MANSLAUGHTER, NONE WHATSOEVER. THERE'S NO
22 LEGAL PROVOCATION IN THE FIRST SHOT, AND NO LEGAL
23 PROVOCATION IN THE SECOND SHOT. EITHER HE DELIBERATELY
24 TOOK A GUN, PUT IT UP TO ALFREDO AND KILLED HIM,
25 MURDERED HIM, OR HE DIDN'T. AND THOSE ARE THE TWO

1 OPTIONS WITH THE JURY. AND THE SUPREME COURT, I CAN'T
2 REMEMBER THE CASES, THEY MADE IT PRETTY CLEAR ON WHAT
3 VOLUNTARY MANSLAUGHTER WAS THIS YEAR. AND WHAT WOULD
4 CONCERN ME IS GIVING HIM A VOLUNTARY MANSLAUGHTER CHARGE
5 WHEN THERE'S NO EVIDENCE OF VOLUNTARY MANSLAUGHTER.

6 THE COURT: MR. WALTERS.

7 MR. WALTERS: YOUR HONOR, I BELIEVE
8 THAT THE JURY CAN INFER, FROM WHAT WENT ON IN THAT CLUB,
9 IT'S CLEAR THAT THE PARTIES ARRIVED, THERE WAS NO
10 CONFRONTATION BETWEEN THE TWO. IT'S CLEAR FROM THE
11 TESTIMONY OF THEIR WITNESS, MS. COTINA BROOKS, THAT
12 THERE WAS SOME TYPE OF CONFRONTATION THAT ENSUED AFTER
13 SOMEONE CAME OUT OF A BATH ROOM.

14 THE COURT: I DON'T THINK IT WOULD
15 BE AN INFERENCE, I THINK IT WOULD BE PURE SPECULATION ON
16 THE PART OF THE JURY TO FIND HIM GUILTY, OR ANYBODY
17 GUILTY OF VOLUNTARY MANSLAUGHTER UNDER THE
18 CIRCUMSTANCES. I JUST DON'T SEE ANY EVIDENCE IN THE
19 RECORD THAT WOULD SUPPORT THAT CHARGE. SO, THAT REQUEST
20 IS DENIED.

21 MR. WALTERS: THANK YOU, YOUR HONOR.

22 THE COURT: ALRIGHT, ARE THERE ANY
23 OTHER SPECIFIC REQUESTS?

24 MR. WALTERS: NO, SIR, YOUR HONOR.

25 THE COURT: DO EITHER OF YOU REQUEST

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1 CIRCUMSTANTIAL EVIDENCE? I ALWAYS CHARGE IT IF I'M
2 REQUESTED, I NEVER CHARGE IT IF I'M NOT.

3 SOLICITOR PASCOE: I THINK ---

4 THE COURT: AND I USE GRIFFON IF I
5 CHARGE IT.

6 SOLICITOR PASCOE: I'LL DEFER TO THE
7 DEFENSE, I THINK THERE IS, THERE CERTAINLY IS SOME
8 CIRCUMSTANTIAL EVIDENCE IN THIS CASE, BUT ---

9 THE COURT: WELL, I'LL BE GLAD TO
10 CHARGE IT IF EITHER ONE OF YOU WANT ME TO CHARGE IT. IT
11 DOESN'T MATTER TO ME.

12 MR. WALTERS, DO YOU HAVE A REQUEST?

13 MR. WALTERS: YOUR HONOR, AS FAR AS
14 THE CIRCUMSTANTIAL EVIDENCE, THEY PRESENTED NO GUN, THEY
15 HAVE NO FINGER PRINTS, WE STIPULATED TO A PATHOLOGIST
16 STATING THAT SOMEONE DIED THAT NIGHT. BUT OTHER THAN
17 THAT, ALL THEY HAVE IS TWO WITNESSES THAT HAVE BEEN
18 ATTACKED ON CROSS-EXAMINATION, AND WE BELIEVE WE'VE
19 SHOWN THEY'RE NOT CREDIBLE. OTHER THAN THAT THEY HAVE NO
20 EVIDENCE THAT THEY'VE PRESENTED BEFORE THIS COURT THAT
21 IT'S CIRCUMSTANTIAL.

22 THE COURT: SO, YOU DON'T WANT ME TO
23 CHARGE IT?

24 MR. WALTERS: NO, SIR, YOUR HONOR.

25 THE COURT: ALRIGHT, I WILL NOT

1 CHARGE IT.

2 SOLICITOR PASCOE: AND AS I SAID,
3 THAT'S CERTAINLY FINE WITH THE STATE, BUT I'M GOING TO
4 ARGUE DIFFERENTLY. I MEAN, THERE'S ---

5 THE COURT: ALRIGHT, WELL, I MEAN,
6 I'LL CHARGE IT IF YOU WANT ME TO CHARGE IT.

7 SOLICITOR PASCOE: NO, SIR.

8 THE COURT: THERE'S NO STATEMENT, SO
9 THERE'S NO VOLUNTARY -- THERE'S NOTHING ELSE TO CHARGE,
10 JUST THE ELEMENTS OF MURDER.

11 SOLICITOR PASCOE: WELL, ACTUALLY,
12 I THINK IT WOULD BE GOOD IDEA FOR YOU TO CHARGE IT, I'M
13 SORRY. BECAUSE THERE IS CIRCUMSTANTIAL EVIDENCE IN THIS
14 CASE. JUST THE MERE FACT THAT HE ---

15 THE COURT: ALRIGHT, IF YOU WANT ME
16 TO CHARGE IT, I'M GOING TO CHARGE IT. IT'S JUST THAT
17 SIMPLE. I ALWAYS CHARGE IT IF EITHER LAWYER WANTS ME TO
18 CHARGE IT, AND I NEVER CHARGE IT UNLESS YOU WANT ME TO
19 CHARGE IT, ---

20 SOLICITOR PASCOE: THANK YOU.

21 THE COURT: --- SO, THAT'S DONE.
22 THAT'S ONE HARD AND FAST RULE I HAVE, ABOUT THE ONLY
23 ONE, I GUESS.

24 I'M JUST THINKING, I DON'T THINK
25 THERE'S ANYTHING ELSE, I'LL CERTAINLY CHARGE HIS RIGHT

1 TO REMAIN SILENT.

2 ALRIGHT, SOLICITOR, HOW LONG -- I
3 MEAN, ARE YOU ABOUT READY?

4 SOLICITOR PASCOE: YES, SIR. JUST
5 MAYBE ANOTHER MINUTE. CAN I TALK TO MR. WALTERS ABOUT
6 ONE THING?

7 THE COURT: SURE.

8 MR. WALTERS, DO YOU WANT TO RENEW
9 YOUR MOTIONS AT THE END OF ALL OF THE EVIDENCE?

10 MR. WALTERS: YES, SIR, YOUR HONOR.

11 THE COURT: ALRIGHT, WELL, IT WILL
12 BE THE SAME MOTION THAT EARLIER, ---

13 MR. WALTERS: YES, SIR.

14 THE COURT: --- AND I WOULD DENY IT
15 FOR THE SAME REASONS THAT I DENIED IT EARLIER.

16 SOLICITOR, DO YOU WAIVE OPENING, OR
17 DO YOU WANT TO OPEN AND CLOSE?

18 SOLICITOR PASCOE: I WANT TO OPEN ON
19 THE LAW, AND IT WILL TAKE ABOUT SIX OR SEVEN MINUTES,
20 YOUR HONOR, AND THEN CLOSE.

21 THE COURT: ALRIGHT. ANYTHING ELSE
22 BEFORE I BRING IN THE JURY?

23 MR. WALTERS: NO, SIR, YOUR HONOR.

24 SOLICITOR PASCOE: JUST ONE SECOND,
25 YOUR HONOR.

1 THE COURT: MR. WALTERS, WHEN I
2 BRING IN THE JURY I WILL RECOGNIZE YOU, AND YOU JUST
3 STAND AND SAY, THE DEFENSE RESTS, IF YOU WOULD.

4 MR. WALTERS: YES, SIR.

5 THE COURT: BUT IF YOU CHANGE YOUR
6 MIND IN THE MEANTIME, JUST CALL YOUR WITNESS.

7 MR. WALTERS: YES, SIR.

8 THE COURT: ALRIGHT, BRING IN THE
9 JURY, PLEASE.

10 (Whereupon, the following
11 takes place in the
12 presence of the jury.)

13 BAILIFF: YOUR HONOR, ALL OF THE
14 JURORS AND THE ALTERNATE ARE SEATED IN THE JURY BOX.

15 THE COURT: THANK YOU, MA'AM.

16 GOOD MORNING, LADIES AND GENTLEMEN,
17 SORRY WE'RE RUNNING A FEW MINUTES LATE THIS MORNING, BUT
18 WE HAD SOME WORK WE NEED TO DO AD WE JUST GOT THAT DONE.

19 ALRIGHT, AT THIS TIME WE WILL HEAR
20 FROM MR. WALTERS.

21 MR. WALTERS.

22 MR. WALTERS: MAY IT PLEASE THE
23 COURT.

24 THE COURT: YES, SIR.

25 MR. WALTERS: YOUR HONOR, AT THIS

1 TIME WE WOULD REST.

2 THE COURT: ALRIGHT, THANK YOU, SIR,
3 YOU MAY BE SEATED.

4 LADIES AND GENTLEMEN, MR. WALTERS
5 HAS RESTED ON BEHALF OF THE DEFENSE, WHICH MEANS YOU
6 HAVE HEARD ALL OF THE TESTIMONY AND EVIDENCE THAT YOU
7 ARE GOING TO HEAR IN THIS CASE. IT REMAINS NOW FOR THE
8 ATTORNEYS TO MAKE THEIR CLOSING ARGUMENTS TO YOU, AND
9 THEN I'LL CHARGE YOU ON THE LAW, AND YOU WILL BEGIN YOUR
10 DELIBERATIONS.

11 UNDER OUR SYSTEM THE SOLICITOR GOES
12 FIRST, AND FOLLOWED BY MR. WALTERS, AND THEN THE
13 SOLICITOR HAS AN OPPORTUNITY TO RESPOND TO MR. WALTERS'
14 ARGUMENT. SO, PLEASE GIVE THE ATTORNEYS THEIR
15 ATTENTION. WHAT THEY TELL YOU IS VERY IMPORTANT. IT'S
16 NOT EVIDENCE, THE EVIDENCE THAT YOU WILL CONSIDER IS
17 SWORN TESTIMONY THAT CAME FROM THOSE WITNESSES, AND THE
18 EXHIBITS AND THE STIPULATION THAT YOU HAVE. THE
19 QUESTIONS THE ATTORNEYS ASKED AND THEIR ARGUMENT IS NOT
20 EVIDENCE, BUT IT IS IMPORTANT. SO, YOU GIVE THEM YOUR
21 ATTENTION AS THEY ADDRESS YOU AT THIS TIME.

22 MR. PASCOE.

23 SOLICITOR PASCOE: MAY IT PLEASE THE
24 COURT.

25 THE COURT: YES, SIR.

CLOSING ARGUMENT BY SOLICITOR PASCOE

1 LADIES AND GENTLEMEN OF THE JURY,
2
3 GOOD MORNING. I WANT TO AGAIN THANK EACH AND EVERY ONE
4 OF YOU FOR YOUR SERVICE, BECAUSE YOUR SERVE WAS
5 IMPORTANT. IT WAS IMPORTANT NOT JUST TO THE DEFENDANT OR
6 TO THE STATE OF SOUTH CAROLINA, IT WAS IMPORTANT TO
7 ALFREDO'S FAMILY, IT WAS IMPORTANT TO EVERY WITNESS THAT
8 TOOK THAT WITNESS STAND. SO, THANK YOU.

9 AND LET ME ASK YOU, AND TELL YOU
10 THIS, IF I DID ANYTHING AT ALL YESTERDAY TO OFFEND, I'M
11 SORRY. BUT THE FACT OF THE MATTER IS, TRIALS CAN GET A
12 LITTLE HEATED SOMETIMES, ESPECIALLY WHEN MR. WALTERS AND
13 I GET IN THE COURTROOM. BUT WE ALL HAVE OUR JOBS TO DO.
14 IT'S THE STATE'S JOB AND THE CODE OF ETHICS TO MINISTERS
15 OF JUSTICE. IT'S THE DEFENSE COUNSEL'S JOB TO REPRESENT
16 HIS CLIENT ZEALOUSLY. IT'S THE JUDGE'S JOB TO
17 ADMINISTER THE LAW. AND IT'S YOUR JOB, MOST IMPORTANT
18 OF ALL, TO RENDER A VERDICT. WHETHER YOUR VERDICT IS
19 GUILTY OR NOT GUILTY, AS LONG AS IT SPEAKS THE TRUTH, NO
20 ONE WILL BE ABLE TO QUESTION IT. IN FACT, IF YOU RECALL
21 THE MOST IMPORTANT THING YOU'VE DONE UP TO NOW IS, YOU
22 TOOK AN OATH. YOU TOOK AN OATH THAT YOU WOULD PUT ASIDE
23 ANY BIAS OR PREJUDICE THAT YOU MAY HAVE EITHER AGAINST
24 THE STATE OF SOUTH CAROLINA OR THE DEFENDANT, AND BASE
25 YOUR VERDICT, YOUR TRUTHFUL VERDICT ON JUST TWO THINGS,

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1 THE EVIDENCE AND THE LAW -- NOT ON ASSERTIONS, NOT ON
2 FICTION, NOT ON WHO YOU KNOW, BUT ON THE EVIDENCE AND
3 THE LAW. AND WHAT I'M GOING TO DO IS, I'M GOING TO TAKE
4 NO MORE THAN SIX OR SEVEN MORE MINUTES OF YOUR TIME AND
5 I'M GOING TO TALK TO YOU ABOUT THE LAW IN THIS CASE.
6 AND THEN I'M GOING TO SIT DOWN AND MR. WALTERS IS GOING
7 TO PRESENT HIS CLOSING ARGUMENT, AND I'M GOING TO GET
8 ONE MORE OPPORTUNITY TO COME UP HERE AND TALK TO YOU
9 ABOUT THE FACTS.

10 AND AS I GO OVER THE LAW WITH YOU
11 LET ME GIVE YOU ONE CAVEAT, WHICH IS, IF I EVER SAY
12 ANYTHING THAT CONTRADICTS THE LAW THAT JUDGE WILLIAMS
13 TELLS YOU, YOU TAKE THE LAW ACCORDING TO JUDGE WILLIAMS.
14 BECAUSE JUST LIKE YOU'RE THE SOLE TRIERS OF THE FACTS IN
15 THIS CASE, HE'S THE SOLE TRIER OF THE LAW.

16 NOW, AS WE ALL KNOW, THE DEFENDANT
17 IS CHARGED WITH ONE COUNT OF MURDER. AND AS I TOLD YOU
18 IN MY OPENING, MURDER IS DEFINED -- CAN EVERY ONE THERE
19 SEE IT OKAY? MURDER IS DEFINED AS ~~THE~~ UNLAWFUL KILLING
20 OF ANOTHER WITH MALICE AFORETHOUGHT, EITHER EXPRESSED OR
21 IMPLIED, THAT'S IT. THE UNLAWFUL KILLING OF ANOTHER
22 WITH MALICE AFORETHOUGHT. JUST TO PROVE MURDER, ALL YOU
23 HAVE TO HAVE IS MALICE AFORETHOUGHT.

24 AND MALICE, AS I TOLD YOU IN MY
25 OPENING, HAS A NUMBER OF DEFINITIONS. IT'S AN

1 INTENTIONAL ACT OF VIOLENCE. IT'S RECKLESS DISREGARD FOR
2 THE WELFARE OF ANOTHER. I MEAN, HOW MUCH MORE RECKLESS
3 CAN YOU GET THAN POINTING A GUN AT SOMEONE, MUCH LESS,
4 FIRING IT. IT'S CONDUCT THAT SIGNIFIES A CONSCIOUS
5 EFFORT OF CREATING A HIGH RISK OF SERIOUS BODILY INJURY
6 TO ANOTHER. MALICE HAS NO TIME LIMIT, IT CAN ATTACH AT
7 THE VERY MOMENT THE FATAL BLOW IS DELIVERED.

8 AND AS I SAID, MALICE CAN BE EITHER
9 EXPRESSED OR IMPLIED. AN EXAMPLE OF EXPRESSED MALICE
10 WOULD BE SAYING, "F" THAT, AND SHOOTING SOMEBODY. AN
11 EXAMPLE OF IMPLIED MALICE WOULD BE JUST THE MERE USE OF
12 A DEADLY WEAPON SUCH AS A GUN.

13 AND I'M GOING TO TELL YOU, THERE IS
14 ABSOLUTELY NO DOUBT WHATSOEVER, NONE, THAT ALFREDO LEWIS
15 WAS MURDERED. THE ISSUE FOR YOU IS VERY SIMPLE, DID THE
16 DEFENDANT DO IT? AND WHEN YOU MAKE THAT DETERMINATION
17 YOU LOOK AT THE EVIDENCE.

18 AND THERE ARE ONLY TWO TYPES OF
19 EVIDENCE THAT YOU CAN HAVE IN ANY CRIMINAL CASE, ONLY
20 TWO TYPES, AND BOTH OF WHICH EXIST IN THIS CASE, AND
21 BOTH ARE EQUAL UNDER THE LAW, DIRECT EVIDENCE AND
22 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS EVIDENCE
23 THE WITNESS ACTUALLY SEES, HEARS, TOUCHES, SMELLS. AN
24 EXAMPLE OF THIS WOULD BE TERRELL'S TESTIMONY, I SAW THE
25 DEFENDANT PULL THE GUN AND SHOOT MY FRIEND. THAT'S

1 SOMETHING HE SAW. COTINA'S TESTIMONY, I SAW THE
2 DEFENDANT PULL THE GUN, I HEARD SHOTS, IT'S SOMETHING
3 SHE HEARD. THAT'S DIRECT EVIDENCE.

4 CIRCUMSTANTIAL EVIDENCE IS EVIDENCE
5 WHERE YOU INFER SOMETHING FROM THE CIRCUMSTANCES. IT'S
6 A CHAIN OF EVENTS THAT PROVE THE EXISTENCE OF A FACT.
7 EXAMPLES OF CIRCUMSTANTIAL IN THIS -- EVIDENCE IN THIS
8 CASE WOULD BE THE FACT THAT THE DEFENDANT IS RUNNING
9 FROM THE POLICE THE NEXT DAY, HE'S STAYING AT SOMEONE'S
10 HOUSE THAT HE'S NEVER STAYED AT BEFORE, WHERE HE'S
11 UNWELCOME. THOSE ARE EXAMPLES OF CIRCUMSTANTIAL
12 EVIDENCE.

13 NOW, THE JUDGE IS GOING TO TELL YOU
14 THAT YOU, AND YOU ALONE, ASSESS THE CREDIBILITY OF THE
15 WITNESSES. AND WHEN YOU ASSESS THE CREDIBILITY OF THE
16 WITNESSES, THERE ARE A NUMBER OF FACTORS THAT YOU CAN
17 CONSIDER. WHAT WAS THE DEMEANOR OF THE WITNESS ON THE
18 WITNESS STAND? WAS THE WITNESS FORTHRIGHT OR HESITANT?
19 DID THEY COME FORWARD TO THE POLICE? WAS THE TESTIMONY
20 OF THE WITNESS CONSISTENT ON THE MATERIAL ELEMENTS OF
21 THIS CASE? WAS THE TESTIMONY OF THE WITNESS
22 CORROBORATED, WAS IT CORROBORATED BY OTHER FACTS, BY
23 OTHER WITNESSES? AND FINALLY, DID THE WITNESS HAVE A
24 REASON TO BE BIASED OR PREJUDICED? IN OTHER WORDS, WHAT
25 REASONS WOULD A WITNESS HAVE TO LIE IN THIS CASE?

1 THE JUDGE IS ALSO GOING TO TELL YOU
2 THAT YOU, AND YOU ALONE ASSESS THE CREDIBILITY OF EYE
3 WITNESS IDENTIFICATION. AND THERE ARE A NUMBER OF
4 FACTORS YOU CAN CONSIDER IN THAT, SUCH AS, WHAT WAS THE
5 OPPORTUNITY OF THE WITNESS TO VIEW THE DEFENDANT AT THAT
6 TIME OF THE CRIME? DID THE WITNESS ONLY SEE THE
7 DEFENDANT FOR THAT ONE TIME, THE FIRST TIME EVER, OR HAD
8 HE OR SHE SEEN HIM BEFORE IN THE PAST? DID THEY HAVE
9 OPPORTUNITIES TO OBSERVE HIM IN THE BAR AND OUTSIDE OF
10 THE BAR? WHAT WAS THE WITNESS'S DEGREE OF ATTENTION, IN
11 OTHER WORDS, DID THE WITNESS HAVE A REASON TO PAY
12 ATTENTION WHEN HE SAW SOMEBODY PULLING A GUN? WHAT WAS
13 THE ACCURACY OF THE WITNESS'S PRIOR DESCRIPTION OF THE
14 DEFENDANT? ASK YOURSELF THIS, HOW MUCH MORE ACCURATE
15 CAN YOU GET THAN NAMING THE DEFENDANT? WHAT WAS THE
16 WITNESS'S LEVEL OF CERTAINTY, ARE THEY ONLY FIFTY PER
17 CENT SURE, OR ARE THEY ONE HUNDRED SURE AS TO WHO
18 MURDERED ALFREDO? IS THE WITNESS'S TESTIMONY
19 CORROBORATED?

20 AND A FINAL THING I THINK THE JUDGE
21 WILL TELL YOU THAT I FORGOT TO PUT ON THIS CHART IS, YOU
22 CAN ALSO CONSIDER THE LENGTH OF TIME FROM THE TIME OF
23 THE CRIME TO WHEN THE LINEUP WAS DONE. DID IT TAKE DAYS
24 TO BE PICKED OUT OF A PHOTO LINEUP, WEEKS, MONTHS, OR
25 WAS IT JUST SIX AND A HALF HOURS AFTER THIS MURDER?

1 THE LAST LEGAL PHRASE I'M GOING TO
2 TALK TO YOU ABOUT IS PROOF BEYOND A REASONABLE DOUBT.
3 I WANT TO TELL YOU, I ABSOLUTELY RELISHED THE
4 OPPORTUNITY TO COME INTO THIS COURTROOM -- AS I SAID, IT
5 WAS AN HONOR TO STAND BEFORE HERE, HERE IN MY FIRST
6 TRIAL IN ORANGEBURG COUNTY, IT WAS AN HONOR, AND I
7 RELISH THE OPPORTUNITY TO COME INTO THIS COURTROOM AND
8 PROVE THAT MAN'S GUILT BEYOND A REASONABLE DOUBT.
9 BECAUSE THIS PHRASE MEANS EXACTLY AS IT SOUNDS. IT'S
10 NOT PROOF BEYOND ANY DOUBT, IT'S NOT PROOF BEYOND ANY
11 POSSIBLE DOUBT, IT'S PROOF BEYOND A REASONABLE DOUBT.
12 THE JUDGE IS GOING TO TELL YOU, THERE ARE VERY FEW
13 THINGS WE KNOW IN THIS WORLD WITHOUT ABSOLUTE CERTAINTY.
14 AND IN CRIMINAL CASES THE STATE DOES NOT HAVE TO PROVE
15 THE DEFENDANT'S GUILT BEYOND ANY AND ALL CERTAINTY,
16 INSTEAD, AFTER YOU'VE LOOKED AT ALL THE EVIDENCE, NOT
17 JUST A PIECE OF IT, BUT AFTER YOU'VE LOOKED AT IT
18 COLLECTIVELY, IF YOU'RE JUST FIRMLY CONVINCED, FIRMLY
19 CONVINCED OF THE DEFENDANT'S GUILTY YOU MUST FIND HIM
20 GUILTY.

21 I WANT TO THANK YOU FOR YOUR
22 ATTENTION. I'M SURE YOU'RE GOING TO GIVE MR. WALTERS THE
23 SAME DEGREE OF ATTENTION YOU'VE GIVEN ME. ALL I ASK
24 THAT YOU DO DURING HIS CLOSING ARGUMENT, ALL I ASK IS
25 THAT YOU DO ONE THING, KEEP AN OPEN MIND, AND GIVE ME

1 ONE MORE OPPORTUNITY TO GET UP HERE AND TALK TO YOU
2 ABOUT THE FACTS OF THIS CASE.

3 THANK YOU.

4 THE COURT: THANK YOU, SIR.

5 MR. WALTERS.

6 MR. WALTERS: MAY IT PLEASE THE
7 COURT.

8 THE COURT: YES, SIR.

9 MR. WALTERS: SOLICITOR PASCOE.

10 CLOSING ARGUMENT BY MR. WALTERS

11 HIS HONOR, WHEN HE QUALIFIED YOU AS
12 JURORS IN THIS PARTICULAR CASE, HE INQUIRED AS TO
13 WHETHER YOU KNEW ANY OF THE WITNESSES ON THE LIST THAT
14 WAS SUBMITTED BY THE PROSECUTION AND THE DEFENSE. MORE
15 IMPORTANTLY, HE ASKED DID YOU KNOW ANYONE FROM THE
16 SOLICITOR'S OFFICE, DID YOU KNOW ME, HAD BEEN
17 REPRESENTED BY ME? WHAT WE WANTED WAS A JURY THAT WILL
18 BE FAIR, THAT WOULD CAREFULLY EVALUATE THE FACTS AND THE
19 EVIDENCE THAT'S BEING PRESENTED TODAY. AND MOST
20 IMPORTANTLY, HOLD THE STATE TO THEIR BURDEN OF PROVING
21 THEIR CASE BEYOND A REASONABLE DOUBT. AND IF WE
22 CAREFULLY LOOK AT THE EVIDENCE, THE TESTIMONY AND WHAT
23 HAS BEEN PRESENTED TO YOU OVER AND OVER AGAIN ON
24 YESTERDAY, WE CAN ONLY REACH ONE CONCLUSION, THE STATE
25 HAS FAILED MISERABLY TO PROVE THEIR CASE BEYOND A

1 REASONABLE DOUBT.

2 REASONABLE DOUBT, LET'S TALK ABOUT
3 IT. THE FIRST WITNESS THAT APPEARED BEFORE YOU WAS
4 RICHARD TERRELL PARKER. MR. PARKER APPEARED BEFORE YOU,
5 AND OF COURSE, HE GAVE A STATEMENT AND HE ALSO TESTIFIED
6 IN THIS CASE. AND MR. PARKER, HE GAVE A RECOLLECTION OF
7 WHAT HAPPENED ON THAT PARTICULAR NIGHT, AND WHAT
8 OCCURRED. AND IF YOU CAREFULLY LOOK AT THE STATEMENT,
9 I INQUIRED OF MR. PARKER, WHO SHOT MR. ALFREDO LEWIS, IS
10 IT IN YOUR STATEMENT? HE SAID, A GUY CAME OVER TO THE
11 CAR WITH A GUN. THAT'S WHAT IT SAYS IN HIS STATEMENT,
12 ON THE NIGHT, MAYBE FIVE OR SIX HOURS AFTER IT OCCURRED.
13 AND I USE THE WORDS OF THE SOLICITOR IN DEFINING WHAT
14 I'M SAYING, YOU HAVE TO LOOK AT HIS DEMEANOR. WAS HE
15 FORTHRIGHT WHEN HE GAVE THIS STATEMENT? IS IT
16 CONSISTENT WITH WHAT HAPPENED ON THAT PARTICULAR DAY?
17 COULD HE BE BIASED? HE SAID, THIS WAS MY BUDDY FROM THE
18 SIXTH GRADE, I'VE KNOWN HIM ALL MY LIFE, HE'S MY BEST
19 FRIEND. OF COURSE, HE'S BIASED IN THIS PARTICULAR CASE,
20 AND HE'S NOT GOING TO SAY ANYTHING TO UPSET THIS FAMILY.
21 IT'S SAD THAT SOMEONE HAS DIED, IT'S SAD THAT SOMEONE
22 WAS MURDERED IN ORANGEBURG COUNTY, BUT THAT DOES NOT
23 ABSOLVE THE POLICE DEPARTMENT FROM DOING THEIR JOB, AND
24 THAT'S SIMPLY GO OUT AND SOLVE CRIMES. THIS STATEMENT
25 SIMPLY SAYS, A MAN SHOT SOMEONE. AND IN THIS PARTICULAR

1 CASE WE INQUIRED, WE SAID, WELL, WHY DIDN'T YOU SAY IT
2 WAS LE LE, WHY DIDN'T YOU SAY IT WAS THIS PARTICULAR
3 PERSON? HIS TESTIMONY WAS, IS THAT HE KNEW WHO THIS
4 PERSON WAS, HE KNEW LE LE. HE STATED THAT, I KNEW LE LE
5 FROM BEFORE. I SAID, WELL, WHY DIDN'T YOU WRITE IT IN
6 YOUR STATEMENT? YOU SAID, A MAN PULLED A GUN. YOUR BEST
7 RECOLLECTION OF WHAT HAPPENS IS SIMPLY TO STATE THE
8 PERSON'S NAME.

9 HE ALSO, WHEN HE WAS ON THE STAND,
10 WE INQUIRED AS TO THIS PERSON THAT HE CAME WITH NAMED
11 TROY. HE STATED HE DIDN'T KNOW TROY'S LAST NAME BUT HE
12 SAID, TROY WAS MY HOME BOY WHEN I CAME THERE. WELL, I
13 ASSUME THAT WHEN SOMEONE SAYS, HOME BOY, IT'S SORT OF A
14 COLLOQUIAL TERM, THAT'S SOMEONE FROM YOUR HOME TOWN THAT
15 YOU'RE AWARE OF AND YOU KNOW THEIR NAME.

16 BUT THE MOST EGREGIOUS EVIDENCE
17 THAT'S BEEN PUT BEFORE YOU IS THE BEHAVIOR OF DETECTIVE
18 BOBBY RIVERS. THEY TOOK ONE STATEMENT FROM MR. PARKER
19 WHERE HE DIDN'T IDENTIFY ANYONE SHOOTING THIS PARTICULAR
20 PERSON. AND MR. RIVERS TOOK IT UPON HIMSELF TO GO AND
21 WRITE ANOTHER STATEMENT. AND WHEN HE WROTE THAT
22 STATEMENT, WHAT DID HE DO? HE EMBELLISHED. HE ADDED
23 SOMEONE'S NAME. HE STATED THERE WAS A CONFRONTATION IN
24 THE BATH ROOM. HE WENT ON TO STATE THERE WAS A
25 CONFRONTATION INSIDE OF THE CLUB. HE WAS NEVER THERE.

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1 THE PERSON THAT WAS THERE WAS RICHARD TERRELL PARKER,
2 AND RICHARD TERRELL PARKER NEVER NAMED THE DEFENDANT
3 BEFORE YOU, NEVER NAMED MR. MINTZ, NEVER STATED THAT MR.
4 MINTZ COMMITTED THIS CRIME.. BUT DETECTIVE RIVERS, WHEN
5 HE GOT ON THE STAND, WE INQUIRED, IS IT NORMAL POLICE
6 PROCEDURE FOR YOU TO SIMPLY SIT DOWN AND REWRITE
7 SOMEONE'S STATEMENT? HE SAID, YES, SIR, IN MY SIXTEEN
8 YEAR OF BEING IN LAW ENFORCEMENT, I WRITE DETAILED
9 STATEMENTS. WELL, I SAID, WELL, WHY DID ANOTHER
10 DETECTIVE HAVE TO GO BEHIND YOU AND WRITE ANOTHER
11 STATEMENT, AND EMBELLISH ON WHAT HAPPENED INSIDE OF THE
12 CLUB?

13 THE INCONSISTENCIES AND THE
14 CONTRADICTIONS OVER AND OVER AGAIN, AND THEY'VE NEVER
15 BROUGHT DETECTIVE CINDY SMOAK BEFORE THIS COURT. AND IN
16 THIS PARTICULAR CASE INQUIRED OF DETECTIVE RIVERS, WE
17 SAID, WELL, WHAT ABOUT THESE STATEMENTS? HE EVEN GOT ON
18 THE STAND, AND HE SAID, I LOST THE STATEMENT, HE DIDN'T
19 HAVE IT. DO YOU REMEMBER WHAT HE SAID? THERE WAS A
20 WRITTEN STATEMENT THAT HE HAD TAKEN FROM COTINA BROOKS.
21 AND WE SAID, WELL, SIMPLY PRODUCE IT. AND WHAT DID HE
22 DO? HE TURNED AROUND AND HE LOOKED THROUGH HIS FILE.
23 THE SOLICITOR GOT UP AND SAID, WELL, HERE'S SOMETHING,
24 HERE'S SOMETHING. IT'S NOT YOUR JOB TO SOLVE CRIMES IN
25 ORANGEBURG COUNTY, IT'S THE POLICE DEPARTMENT'S JOB.

1 YOU'RE NOT HERE TO SOLVE ALL THE PROBLEMS OF THE WORLD
2 IN ORANGEBURG COUNTY, YOUR ROLE AS JURORS IS SIMPLY TO
3 DETERMINE, BASED UPON THE FACTS, HAS THE STATE PROVEN
4 THEIR CASE BEYOND A REASONABLE DOUBT? AND THESE
5 STATEMENTS ARE INTO EVIDENCE NOW, YOU CAN SIT DOWN AND
6 READ THESE STATEMENTS. TAKE THE STATEMENT OF RICHARD
7 TERRY PARKER, SEE IF HE NAMES LE LE AS A SHOOTER. SEE IF
8 HE SAYS THAT LAVON MINTZ SHOT SOMEONE. THIS IS THE BEST
9 RECOLLECTION OF WHAT HAPPENED ON THAT PARTICULAR NIGHT.
10 LOOK AT THE STATEMENT OF DETECTIVE RIVERS, WHO WENT BACK
11 AND REWROTE THE STATEMENT, WHERE HE TALKS ABOUT, THEY
12 ARRIVED AT THE CLUB, THERE WAS A CONFRONTATION IN THE
13 BATH ROOM, THERE WAS A CONFRONTATION ON THE DANCE FLOOR,
14 IT THEN SPILLED OVER OUT INTO THE PARKING LOT. IT TALKS
15 ABOUT THE CONFRONTATION WITHIN THE PARKING LOT BETWEEN
16 MR. GOODEN AND MR. LEWIS. IT TALKS ABOUT THE
17 CONFRONTATION BETWEEN MR. GUINYARD AND MR. LEWIS. IN
18 THIS PARTICULAR CASE THE ONLY WAY THAT LAVON MINTZ'S
19 NAME CAME INTO THIS EQUATION WAS BECAUSE OF ONE
20 DETECTIVE. AND AFTER HIS SIXTEEN YEARS OF EXPERIENCE,
21 ANOTHER DETECTIVE WENT BEHIND HIM AND WROTE ANOTHER
22 STATEMENT FOR THE SAME MAN. YOU HAVE TO ASK YOURSELVES,
23 IF YOU GO TO THE POLICE DEPARTMENT AND YOU GIVE ONE
24 STATEMENT, AND YOU WRITE IT OUT -- HE SAID HE COULD READ
25 AND WRITE -- AND A DETECTIVE COMES IN AND REWRITES YOUR

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1 STATEMENT, AND SAYS, WHY DON'T YOU SIGN THIS, AND YOU
2 SIGN IT. AND THEN, ANOTHER DETECTIVE COMES BEHIND THAT
3 DETECTIVE AND REWRITES THE STATEMENT AND SAYS, SIGN
4 THIS.

5 THERE ARE TOO MANY INCONSISTENCIES
6 AND CONTRADICTIONS OVER AND OVER AND OVER AGAIN. AND
7 BASED ON THESE INCONSISTENCIES, DETECTIVE RIVERS RAN
8 BEFORE A MAGISTRATE, PUT HIS HAND ON A BIBLE, UNDER
9 OATH, AND SAID, I WANT A WARRANT TO ARREST MR. MINTZ.
10 YOU HAVE TO ASK YOURSELF, UNDER THESE CIRCUMSTANCES, IS
11 THIS PROPER POLICE PROCEDURE? THE CREDIBILITY OF THIS
12 WITNESS IS AT STAKE. AND I WILL USE THE WORDS OF THE
13 SOLICITOR, HIS DEMEANOR, WAS HE FORTHRIGHT? WAS HE
14 CONSISTENT WITH THE ELEMENTS? ASK YOURSELF IF THERE IS
15 ANY CONSISTENCY HERE WITH REGARDS TO THESE STATEMENTS.
16 AND YOU CAN SIMPLY ONLY REACH ONE CONCLUSION, THEY HAVE
17 FAILED MISERABLY TO PLACE A WITNESS BEFORE US THAT CAN
18 SUBSTANTIATE WHAT HAPPENED THAT NIGHT.

19 RICHARD TERRELL PARKER IS SAD
20 BECAUSE A MAN HAS DIED. WE ARE ALL SAD BECAUSE A MAN
21 DIED. BUT HAS THE STATE PROVEN BEYOND A REASONABLE
22 DOUBT THE CREDIBILITY OF THIS WITNESS? HAVE THEY PROVEN
23 THEIR CASE?

24 LET'S MOVE TO THEIR SECOND WITNESS.
25 THEY THEN BROUGHT IN OFFICER BRADLEY. OFFICER BRADLEY

1 CAME IN AND STATED, I ARRIVED AT THE HOSPITAL, AND I WAS
2 SIMPLY TOLD SOME INFORMATION BY RICHARD TERRELL PARKER.

3 WELL, TO SPICE IT UP SOME MORE, THEN
4 THEY BROUGHT IN JOVAN JONES. AND HE HAS A VERY
5 INTERESTING STATEMENT. MR. JONES; HE'S SUPPOSED TO BE
6 A BOUNCER AT THE CLUB. YOU KNOW, HE STATED HE HAD BEEN
7 IN TROUBLE BEFORE FOR SHOPLIFTING, HAD SOME PROBLEMS
8 BEFORE. AND IN THIS PARTICULAR CASE MR. JONES TESTIFIED
9 ABOUT WHAT OCCURRED INSIDE OF THE CLUB. AND WHAT DID HE
10 SAY? HE SAID, YES, I SAW LAVON MINTZ WITH HIS HAND OUT,
11 AND IT WAS SHAPED LIKE A GUN, AND HE WAS POINTING AT THE
12 FLOOR. YOU'VE GOT TO ASK YOURSELF, IS THAT AN IMPORTANT
13 FACT? IS THAT A FACT THAT YOU SHOULD PUT INSIDE OF YOUR
14 STATEMENT THAT'S VERY IMPORTANT BECAUSE A MURDER HAS
15 OCCURRED? WE GRABBED HIS STATEMENT, AND WE SAID, MR.
16 JONES, SHOW US IN YOUR STATEMENT WHERE YOU STATED THAT
17 LAVON MINTZ POINTED HIS HAND LIKE A GUN AND WAS SHOOTING
18 AT THE FLOOR. HE SAID, WELL, IT'S NOT THERE, IT'S NOT
19 IN THERE. I SAID, WELL, DID DETECTIVE RIVERS WRITE A
20 STATEMENT FOR YOU? HE SAID, NO. I SAID, DID DETECTIVE
21 SMOAK WRITE A STATEMENT FOR YOU? HE SAID, NO.

22 THERE ARE INCONSISTENCIES AND
23 CONTRADICTIONS OVER AND OVER AGAIN. THIS MURDER
24 OCCURRED ON DECEMBER NINTH, OF TWO THOUSAND TWO. THEY
25 HAVE NOW, FINALLY GOT INTO THIS COURTROOM, AND THEY'VE

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1 WALKED IN HERE. AND ALL OF THESE WITNESSES HAVE THESE
2 WONDERFUL STORIES THAT ARE INCONSISTENT WITH WHAT THEY
3 HAVE WRITTEN, THEIR RECOLLECTION OF WHAT OCCURRED ON
4 THAT PARTICULAR NIGHT. JOVAN JONES, IN HIS OWN
5 STATEMENT, ADMITTED, I DIDN'T WRITE THAT IN THE
6 STATEMENT. EVIDENTLY, IT DIDN'T HAPPEN THAT NIGHT.

7 BUT LET'S MOVE ON FURTHER. WE THEN
8 GET TO THE CROWNING GLORY, BECAUSE THEY TURNED AROUND,
9 AND WHAT THEY DID WAS, THEY SAID, WELL, WE'VE GOT
10 ANOTHER WITNESS FOR YOU. WE'VE GOT SOMEBODY THAT CAN
11 SUBSTANTIATE THAT THE SHOOTING OCCURRED, A WITNESS THAT
12 DETECTIVE RIVERS FOUND FORTY-NINE DAYS LATER, THE SAME
13 LADY THAT WALKED IN HERE AND SAID, OH, I WAS SO
14 CONCERNED ABOUT HIM. HE WAS MY FRIEND, I FELT BAD ABOUT
15 IT. I SAID, YEAH, IT TOOK YOU FORTY-NINE DAYS TO FIND
16 THE POLICE DEPARTMENT? IT TOOK YOU FORTY-NINE DAYS TO
17 COME IN AND STATE WHAT HAPPENED IN THAT CLUB? SHE SAID,
18 WELL, I'VE BEEN MOVING AROUND, I'VE MOVED FOUR DIFFERENT
19 PLACES. THE POLICE DEPARTMENT HAS NEVER MOVED, IT
20 HASN'T GONE ANYWHERE, IT'S OPEN TWENTY-FOUR HOURS A DAY.
21 THE POLICE DEPARTMENT NEVER CLOSES. BUT NEVERTHELESS,
22 WHAT HAPPENED WAS, MS. BROOKS WALKED IN HERE, AND WHAT
23 DID SHE STATE? SHE STATED, I CAN'T SHOW YOU IN MY
24 STATEMENT WHERE I SAID I SAW HIM PULL A GUN AND SHOOT
25 SOMEONE. I SAID, WAIT A MINUTE, NOW, LET'S BACK UP AND

1 LOOK AT YOUR STATEMENT. YOU JUST TESTIFIED THAT YOU SAW
2 HIM INSIDE OF THE CLUB, AND HE PULLED UP HIS CLOTHES AND
3 YOU SAW A BLACK GUN, A HAND GUN. I SAID, SHOW ME THAT
4 IN YOUR STATEMENT. AND WHAT DID SHE STATE? WELL, IT'S
5 NOT IN THERE, I DIDN'T SEE IT. YOU DON'T THINK THAT'S
6 AN IMPORTANT FACT THAT SHOULD BE PUT IN A STATEMENT IF
7 SOMEONE HAS COMMITTED MURDER? AND IN THIS PARTICULAR
8 CASE, MS. BROOKS, WHAT DID SHE DO? SHE TURNED AROUND
9 AND SAID, WELL, I WROTE ANOTHER STATEMENT. I SAID, WELL,
10 WHERE IS THE STATEMENT? WE'VE NEVER SEEN IT. SHE SAID
11 AGAIN, I GAVE IT TO DETECTIVE RIVERS, DETECTIVE BOBBY
12 RIVERS. AND I SAID, WELL, DO YOU HAVE A COPY OF THE
13 STATEMENT? SHE SAID, NO, I LOST IT. INCONSISTENCIES
14 AND CONTRADICTIONS OVER AND OVER AND OVER AGAIN. THEY
15 HAVE THROWN THIS CASE TOGETHER AND THEY WANT YOU TO BUY
16 INTO IT. IT'S A BUNCH OF SWISS CHEESE AND THEY'RE
17 SAYING, WE WANT THE JURY TO FILL IN THE HOLES. THAT'S
18 NOT YOUR ROLE. YOU TOOK AN OATH TO LOOK AT THE FACTS,
19 CAREFULLY EVALUATE THE FACTS, AND MAKE A DECISION AS TO
20 WHETHER THE STATE HAS MET THEIR BURDEN OF PROVING THEIR
21 CASE BEYOND A REASONABLE DOUBT.

22 NOW, MS. BROOKS WENT ON, AND SHE
23 TESTIFIED THAT, WELL, I SAW SOMEONE PULL THE GUN, AND
24 SHE STATED THAT ON THE STAND. I SAID, WHERE IS THAT IN
25 YOUR STATEMENT? SHE SAID, IT'S NOT IN THERE. I SAID,

1 DON'T YOU THINK THAT'S VERY IMPORTANT? I SAID, ARE YOU
2 LYING? WHICH VERSION DO YOU WANT US TO BELIEVE, VERSION
3 NUMBER ONE, VERSION NUMBER TWO, VERSION NUMBER THREE?
4 AND THEN SHE FINALLY SAID, WELL, I HID BEHIND THE CAR
5 AND I HEARD TWO SHOTS. DRAW UPON YOUR OWN COMMON SENSE,
6 YOUR OWN LIFE EXPERIENCES. IF YOU ARE HIDING BEHIND A
7 CAR AND YOU HEAR TWO SHOTS, CAN YOU ACCURATELY SIT DOWN
8 AND SAY WHO FIRED THE GUN, OR WHO SHOT THE GUN?

9 BUT LET'S GO BACK TO DETECTIVE
10 RIVERS AGAIN, BECAUSE, YOU KNOW, I HATE TO KEEP HARPING
11 ON DETECTIVE RIVERS, BUT WE HAVE TO DRAW OUT THE
12 INCONSISTENCIES. HE WENT BACK AND REWROTE THE STATEMENT
13 OF RICHARD TERRELL PARKER, AND WHAT DID HE INDICATE IN
14 THAT STATEMENT? HE SAID, THERE WAS A SILVER THIRTY-
15 EIGHT SPECIAL. THAT'S WHAT HE WROTE IN THE STATEMENT.
16 HIS OWN WITNESS, THE PROSECUTION'S OWN WITNESS, MS.
17 BROOKS, SHE STATED, IT WAS A BLACK GUN I SAW INSIDE THE
18 CLUB. BUT SHE DID NOT PUT IT INSIDE OF HER STATEMENT.

19 JOVAN JONES CLAIMS THAT SOMEONE WAS
20 FIRING AT THE GROUND, INSIDE OF THE CLUB. HE ALSO
21 STATES, THEY THREW UP THEIR HANDS. I SAID, WHERE IS THAT
22 INSIDE OF YOUR STATEMENT? SHOW ME WHERE THIS IS
23 ANIMOSITY. BECAUSE YOU SAW THE SOLICITOR WHEN HE CAME
24 BEFORE YOU, HE SAID, I'VE GOT TO PROVE THE ELEMENTS OF
25 MURDER. MALICE AFORETHOUGHT, THE UNLAWFUL TAKING OF A

1 LIFE. I SAID, WHERE IS IT IN YOUR STATEMENT THAT IT
2 SHOWS THAT HE WAS ANGRY AND THROWING UP HIS HANDS IN THE
3 CLUB? YOU'RE THE BOUNCER. YOU HAVE TO ASK YOURSELF,
4 CAN YOU BELIEVE THIS MAN? IS HE CREDIBLE? IS HE
5 DRAWING UPON WHAT HAPPENED THAT NIGHT? OR IS THIS
6 SIMPLY CONCOCTED AND PUT TOGETHER?

7 WE LIVE IN A COUNTRY, AND THE GREAT
8 THING ABOUT BEING AN AMERICAN IS, IS THAT WE HAVE
9 RIGHTS. AND YOU CAN'T SIMPLY FRAME SOMEONE AND THROW
10 THEM IN A BOX, AND SAY, WE'VE GOT YOU. AND WHAT THEY'VE
11 DONE HERE IS, THEY -- HIS HONOR, BEFORE THIS TRIAL
12 STARTED, WHAT DID HE DO? HE PULLED OUT A SHEET OF PAPER
13 AND HE SAID, DO YOU KNOW ANY OF THESE PEOPLE? AND IT
14 WAS JUST WITNESS, ON TOP OF WITNESS, ON TOP OF WITNESS,
15 ON TOP OF WITNESS, ON TOP OF WITNESS, ON TOP OF WITNESS,
16 ON TOP OF WITNESS. AND WHAT HAPPENED? THE CASE STARTED
17 BREAKING DOWN. THEY CALLED FOUR WITNESSES AND, BOOM,
18 THAT'S IT, WE'RE OUT OF HERE. WHO DID THEY CALL?
19 RICHARD TERRELL PARKER, OFFICER BRADLEY, JOVAN JONES,
20 COTINA BROOKS, DETECTIVE RIVERS, THAT'S IT. WE REST,
21 WE'RE OUT OF HERE.

22 LET'S MOVE ON, LET'S TALK ABOUT THE
23 NEXT WITNESS THAT THEY HAD. DETECTIVE RIVERS FINALLY
24 GOT ON THE STAND. AND DETECTIVE RIVERS, YOU SAW THE
25 EXCHANGE YESTERDAY. WE SAID, IF YOU'VE GOT STATEMENTS

1 THAT SOMEONE HAS WRITTEN WE NEED TO SEE IT. THE
2 SOLICITOR SAID BEFORE THIS TRIAL STARTED, VEREDICTO, YOU
3 MUST RETURN A VERDICT, TO SPEAK THE TRUTH, VEREDICTO.
4 AND IN THIS PARTICULAR CASE HAVE THEY SPOKEN THE TRUTH,
5 OR HAS IT BEEN CONSISTENTLY, OVER AND OVER AGAIN, I
6 FORGOT THAT, OH, I DIDN'T FIND THAT, I LOST THAT, I
7 DON'T KNOW WHERE IT IS, IT COULD HAVE BEEN, I THINK IT
8 WAS, YES, I WROTE THAT STATEMENT, I KNOW HOW TO READ AND
9 WRITE, BUT I JUST DIDN'T WRITE IT DOWN, OR I HAD SOMEONE
10 ELSE REWRITE IT FOR ME.

11 WE LIVE IN AMERICA. THE GREAT THING
12 ABOUT BEING AN AMERICAN IS, IS THAT YOU HAVE TO PROVE US
13 GUILTY BEYOND A REASONABLE DOUBT. HE SITS THERE WITH A
14 SHROUD OF PROTECTION IN AMERICA. AS A DEFENSE LAWYER,
15 THE GREATEST THING IS, YOU WALK IN A COURTROOM, AND IF
16 THERE IS AN ACCUSATION THAT'S MADE THE STATE MUST MEET
17 THEIR BURDEN, AND THEY MUST PROVE THEIR CASE NOT BEYOND
18 -- IN THIS PARTICULAR CASE THEY'RE SAYING, MAYBE IT
19 HAPPENED, IT COULD HAVE HAPPENED, WE FIGURED IT
20 HAPPENED. YOU HAVE TO PROVE YOUR CASE BEYOND A
21 REASONABLE DOUBT. AND YOU HAVE TO ASK YOURSELF, ARE THE
22 INCONSISTENCIES AND THE CONTRADICTIONS OVER AND OVER
23 AGAIN WITHIN THE EVIDENCE, WITNESSES THAT RECENT THEIR
24 STATEMENTS, WITNESSES THAT CLAIM THAT STATEMENTS HAVE
25 BEEN MADE THAT CAN'T BE FOUND, DETECTIVES SAYING, WE, WE

1 JUST SIMPLY WRITE DETAILED STATEMENTS, BUT THEN ANOTHER
2 DETECTIVE HAS TO COME BEHIND THAT DETECTIVE AND WRITE
3 ANOTHER STATEMENT. WHAT IS GOING ON IN OUR POLICE
4 DEPARTMENT?

5 THEY TALK ABOUT THE EYE WITNESS
6 TESTIMONY, THE ACCURACY PRIOR TO THE DESCRIPTION, THE
7 LEVEL OF CERTAINTY THAT WAS EXERCISED UNDER THESE
8 CIRCUMSTANCES. ANY ACTIONS TAKEN BY THIS POLICE
9 DEPARTMENT IN THIS PARTICULAR CASE ARE IN QUESTION.
10 THEY CLAIM THEY HAVE STATEMENTS WHICH THEY DON'T HAVE.
11 THEY CLAIM THEY HAVE DOCUMENTS WHICH THEY DON'T HAVE.
12 THEY HAVE WITNESSES THAT SAY THEY HAD THESE DOCUMENTS
13 WHICH THEY DON'T HAVE. WE HAVE WITNESSES THAT CLAIM
14 THEY HAVE DOCUMENTS BUT THEY'VE MOVED AND THEY JUST
15 CAN'T FIND THEM. WE HAVE WITNESSES THAT HAVE COME
16 BEFORE YOU AND THEY HAVE ALLEGED THINGS, EGREGIOUS
17 THINGS. IT HURTS WHEN SOMEBODY WALKS IN AND SAYS, I SAW
18 YOU SHOOTING AT THE FLOOR OF THE CLUB, AND THEN YOU WENT
19 OUTSIDE AND YOU SHOT SOMEONE. I SAID, WELL, WHERE IS IT
20 IN YOUR STATEMENT? YOU GAVE A STATEMENT THAT NIGHT.
21 IT'S NOT THERE. CAREFULLY READ EACH AND EVERY ONE OF
22 THE STATEMENTS THAT THEY HAVE SUBMITTED INTO EVIDENCE.
23 GO THROUGH THEM CAREFULLY, DRAW UPON THE INCONCLUSIVE
24 EVIDENCE THEY HAVE HERE.

25 YOU HEARD THE JUDGE SAY, WE'RE GOING

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1 TO STIPULATE THAT A FORENSIC EXPERT WILL APPEAR BEFORE
2 YOU. AND WE AGREED. WE AGREE THAT SOMEONE HAS DIED.
3 IT'S A SAD EVENT, IT IS A TERRIBLE EVENT IN ORANGEBURG
4 COUNTY. THIS FAMILY IS SUFFERING BECAUSE SOMEONE HAS
5 DIED. BUT OUR POLICE DEPARTMENT HAS AN OBLIGATION TO
6 SOLVE CRIMES. THEY CAN'T SIMPLY THROW TOGETHER THINGS
7 IN A BASKET AND THROW IT AT A JURY, AND SAY, YOU GUYS
8 FIGURE IT OUT. THEY WANT YOU TO PUT ON THE HAND, THEY
9 WANT YOU TO PUT ON THE BADGE, THEY WANT YOU TO PUT ON
10 THE GUN, AND THEY WANT YOU TO GO OUT AND SOLVE THIS
11 CRIME, BECAUSE THEY HAVEN'T PUT IT TOGETHER.

12 THE SOLICITOR'S ONLY BEEN IN OFFICE
13 THREE MONTHS. BUT THERE'S BEEN A SOLICITOR HERE LONG
14 BEFORE THEN. THIS CASE, DECEMBER NINTH OF TWO THOUSAND
15 TWO. IT'S NOW APRIL OF TWO THOUSAND FIVE. OVER TWENTY-
16 SOMETHING WITNESSES THEY READ TO YOU, AND THEY COULD
17 ONLY PRESENT FIVE. BOOM, STOP OUR CASE, THAT'S IT,
18 LET'S GET OUT OF HERE.

19 DRAW UPON YOUR OWN LIFE EXPERIENCES.
20 CAREFULLY EVALUATE THE EVIDENCE AND THE TESTIMONY OF
21 RICHARD TERRELL PARKER, AND LOOK AT HIS STATEMENT. LOOK
22 AT THE TESTIMONY OF COTINA BROOKS. CAREFULLY EVALUATE
23 IT, AND THE EVIDENCE THAT SHE SAID SHE GAVE DETECTIVE
24 RIVERS. JOVAN JONES AND HIS CLAIMS OF ALL THESE THINGS
25 THAT HAPPENED INSIDE OF THE CLUB AND IT WAS NOT IN HIS

1 STATEMENT. CAREFULLY EVALUATE THE BEHAVIOR OF DETECTIVE
2 RIVERS UNDER THESE CIRCUMSTANCES AND WHAT HE DID.

3 I'M CONFIDENT AFTER YOU EVALUATE THE
4 EVIDENCE AND THE TESTIMONY, THE DIRECT TESTIMONY THAT'S
5 BEEN GIVEN, AND THE CIRCUMSTANTIAL EVIDENCE, BECAUSE
6 THEY'VE NEVER PRODUCED A THIRTY-EIGHT SPECIAL, THEY'VE
7 NEVER PRODUCED A BLACK GUN, THEY'VE NEVER PRODUCED ANY
8 FINGER PRINTS, THEY'VE NEVER PRODUCED ANY TYPE OF
9 EMPIRICAL DATA THAT THEY COULD PUT BEFORE YOU TO SAY,
10 MR. MINTZ COMMITTED THIS CRIME. THEIR ENTIRE CASE RESTS
11 ON WHAT? WE THINK, WE BELIEVE, WE DON'T KNOW, WE LOST
12 IT, WE MIGHT HAVE FOUND IT, IT MIGHT POP UP, I DON'T
13 KNOW WHERE IT IS, BUT I'M COUNTING ON YOU TO SOLVE A
14 CRIME FOR ORANGEBURG COUNTY. AND THAT'S NOT YOUR ROLE,
15 YOUR ROLE IS SIMPLY TO EVALUATE THE FACTS AND MADE A
16 DECISION.

17 FIVE WITNESSES, AND THEY PULL THEIR
18 TENT UP AND SAY, WE'RE OUT OF HERE. WE DIDN'T HEAR FROM
19 ANYBODY ELSE.

20 WHEN YOU GO BACK IN THAT JURY ROOM,
21 AS YOU GOT UP THIS MORNING AND YOU COMBED YOUR HAIR OR
22 YOU SHAVED YOUR FACE, YOU WANT TO BE ABLE TO SAY ONE
23 THING WHEN YOU GO BACK HOME, DID I DO RIGHT BY MY
24 NEIGHBOR? DID I DO WHAT WAS FAIR UNDER THE
25 CIRCUMSTANCES? DID I CAREFULLY EVALUATE ALL OF THE

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1 EVIDENCE AND MAKE A SOUND DECISION? AND DID I LIVE UP
2 TO MY OATH? AND THAT OATH WAS TO HOLD THE STATE TO
3 THEIR BURDEN OF PROVING THEIR CASE BEYOND A REASONABLE
4 DOUBT. BECAUSE YOUR DECISION TODAY HAS FINALITY. THE
5 RESPONSIBILITY PLACED ON YOU CANNOT BE DIMINISHED. BUT
6 THE STATE MUST MEET THEIR BURDEN OF PROVING THEIR CASE
7 BEYOND A REASONABLE DOUBT. AND IF YOU CAREFULLY
8 EVALUATE THE EVIDENCE AND THE TESTIMONY, AND THE
9 DOCUMENTATION THAT'S BEEN SUBMITTED BEFORE YOU -- IT'S
10 SAD THIS FAMILY HAS LOST A CHILD, BUT THE STATE HAS TO
11 MEET THEIR BURDEN, AND THE POLICE DEPARTMENT MUST DO
12 THEIR JOB -- YOU CAN ONLY REACH ONE CONCLUSION, AND
13 THAT'S A CONCLUSION OF NOT GUILTY, NOT GUILTY, NOT
14 GUILTY.

15 THE COURT: THANK YOU, SIR.

16 MR. PASCOE.

17 SOLICITOR PASCOE: MAY IT PLEASE THE
18 COURT.

19 THE COURT: YES, SIR.

20 FINAL CLOSING ARGUMENT BY SOLICITOR PASCOE

21 COURAGE AND COWARDICE -- IN THE SAME
22 TRIAL YOU GOT TO WITNESS ACTS OF COURAGE, AND YOU GOT TO
23 HEAR ABOUT THE ACTIONS OF A COWARD -- THE COURAGE BEING
24 WHEN JOVAN JONES, COTINA BROOKS, TERRELL PARKER GOT ON
25 THAT WITNESS STAND, TOOK AN OATH, AND TOLD YOU WHAT THAT

1 MAN HAD DONE. SPECIFICALLY, WHEN COTINA AND TERRELL
2 LOOKED THAT MAN IN THE EYE RIGHT THERE, AND SAID, HE'S
3 A MURDERED, HE KILLED MY FRIEND AND HE'S NOT GETTING
4 AWAY WITH IT. YOU DON'T THINK THAT'S COURAGE, THAT
5 THAT'S GUTS, GETTING ON THAT WITNESS STAND AND BEING
6 YELLED AT, LOUDER THAN I'M YELLING AT YOU NOW? THAT'S
7 COURAGE.

8 BUT YOU ALSO GOT TO HEAR ABOUT THE
9 ACTS OF A COWARD, SOMEONE WHO GUNS DOWN AN UNARMED MAN,
10 A WOMAN'S SON, AND LEAVES HIM THERE TO DIE IN A PARKING
11 LOT, A MAN WHO RUNS FROM THE POLICE LIKE A COWARD, A MAN
12 WHO STAYS AT ANOTHER PERSON'S HOME WHEN HE'S NOT EVEN
13 WELCOME THERE BECAUSE HE'S HIDING FROM THE POLICE.
14 THAT'S NOT A MAN, THAT'S A COWARD, BUT A DANGEROUS ONE.

15 ON DECEMBER THE NINTH OF TWO
16 THOUSAND AND TWO, ALFREDO DIDN'T STAND A CHANCE, BECAUSE
17 THAT MAN DOESN'T CARE ABOUT HUMAN LIFE. HE SHOT AND
18 KILLED HIM BEFORE HE COULD BAT AN EYE. HE COULD CARE
19 LESS ABOUT HUMAN LIFE. BECAUSE HOW IS THERE ANY DOUBT,
20 MUCH LESS, A REASONABLE DOUBT THAT THE DEFENDANT IS
21 GUILTY? HOW IS THERE ANY DOUBT, MUCH LESS A REASONABLE
22 DOUBT? THAT IS THE ONLY EVIDENCE IN THIS CASE, IS THAT
23 HE'S GUILTY. MR. WALTERS WANTS TO TALK ABOUT, OH, FIVE
24 WITNESSES -- THAT IS THE ONLY EVIDENCE IN THIS CASE, IS
25 THAT HE IS GUILTY OF MURDER. AND IF I'M WRONG, FIND HIM

1 NOT GUILTY, LET HIM GO.

2 MR. WALTERS TALKS ABOUT THAT GUN
3 THAT THE DEFENDANT DIDN'T HAVE TWO AND A HALF DAYS
4 LATER, WHILE HE'S RUNNING FROM THE POLICE. THE
5 DEFENDANT KNOWS WHERE IT IS, HE KNOWS WHERE IT IS
6 BECAUSE HE MURDERED ALFREDO. FIND HIM NOT GUILTY, LET
7 HIM GO BACK TO IT. BUT TO DO THAT YOU WOULD HAVE TO
8 DISREGARD EVERY PIECE OF EVIDENCE IN THIS CASE. AND TO
9 DO THAT, I SUBMIT YOU WOULD HAVE TO DISREGARD YOUR OATH,
10 BECAUSE THE EVIDENCE IN THIS CASE DOESN'T PROVE GUILT
11 JUST BEYOND A REASONABLE DOUBT, BUT IT PROVES IT BEYOND
12 ANY DOUBT WHATSOEVER. THERE'S AN OLD EXPRESSION, FACTS
13 ARE STUBBORN THINGS. FACTS ARE STUBBORN THINGS. AND
14 I'M GOING TO TALK TO YOU ABOUT THE STUBBORN FACTS THAT
15 DICTATE THE DEFENDANT'S GUILT IN THIS CASE, BUT FIRST,
16 I'M GOING TO PUT A BUNCH OF STUFF TO REST RIGHT NOW AND
17 HERE, WHICH IS WHY THE STATE OF SOUTH CAROLINA, WE HAVE
18 THE SOLE BURDEN OF PROOF IN THIS CASE. THE DEFENDANT
19 DIDN'T HAVE TO SAY A WORD, THEY DIDN'T EVEN HAVE TO ASK
20 A QUESTION. BUT ONCE THEY DO START TALKING, ONCE THEY
21 DO THROW UP ASSERTIONS, THEY'RE SUBJECT TO SCRUTINY JUST
22 LIKE EVERY -- ANYTHING ELSE. AND FIRST AND FOREMOST,
23 ASSERTIONS, THINGS WE SAY AS ATTORNEYS ARE NOT EVIDENCE.
24 THEY ARE NOT EVIDENCE. THE ONLY THING YOU CAN CONSIDER
25 FOR YOUR VERDICT IS WHAT CAME FROM THAT WITNESS STAND,

1 AND WHAT YOU GET TO TAKE BACK WITH YOU. BUT THE DEFENSE
2 DOESN'T WANT YOU TO BASE YOUR VERDICT ON THE EVIDENCE,
3 THEY WANT YOU TO BASE IT ON ASSERTIONS, AND I'M GOING TO
4 TALK ABOUT SOME OF THOSE ASSERTIONS, SUCH AS NO GUN.

5 MR. WALTERS SAID IN HIS OPENING
6 ARGUMENT AND AGAIN IN HIS CLOSING, NO GUN, REASONABLE
7 DOUBT. YOU'VE GOT TO BE KIDDING ME. THAT'S NOT A
8 REASONABLE DOUBT. WE DON'T REWARD DEFENDANTS FOR
9 GETTING RID OF THE EVIDENCE AFTER THEY KNOW THEY'RE
10 BEING CHASED BY THE POLICE FOR TWO AND A HALF DAYS. AND
11 LADIES AND GENTLEMEN, NOT HAVING SOMETHING IS NOT A
12 REASONABLE DOUBT. YOUR JOB IS JUST TO LOOK AT WHAT YOU
13 HAVE AND ASK YOURSELF ONE QUESTION, AM I FIRMLY
14 CONVINCED, JUST FIRMLY CONVINCED THAT THE DEFENDANT IS
15 GUILTY?

16 ANOTHER ASSERTION, THIS CASE IS TWO
17 AND A HALF, ALMOST THREE YEARS OLD, SO IT MUSTN'T BE A
18 GOOD CASE. THAT IS THE MOST RIDICULOUS THING YOU COULD
19 SAY. THAT'S ALMOST AS RIDICULOUS AS ME SAYING, HEY,
20 I'VE ONLY BEEN IN OFFICE FOR THREE MONTHS. IT'S THE
21 FIRST CASE I'VE CALLED FOR TRIAL, SO IT MUST BE A GREAT
22 CASE. THAT'S JUST ANOTHER ASSERTION, IT'S NOT EVIDENCE.

23 HE GOT UP HERE IN HIS OPENING
24 STATEMENT, VEREDICTO, I DON'T PRONOUNCE IT QUITE AS GOOD
25 AS MR. WALTERS, BUT VEREDICTO, TO SPEAK THE TRUTH. WELL,

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1 THEN, SPEAK THE TRUTH, HOLD MR. WALTERS TO WHAT HE TOLD
2 YOU IN HIS OPENING AND WHAT HE SAID IN HIS CLOSING. HE
3 TOLD YOU THAT NOWHERE IN TERRELL'S THREE STATEMENTS DOES
4 HE MENTION WHO THE GUNMAN IS. HE SAID THAT IN ALL THREE
5 STATEMENTS YOU'LL NEVER SEE HIM MENTION THE GUNMAN. HE
6 DOES MENTION THE GUNMAN. HE MENTIONS THAT IT'S LE LE IN
7 THOSE STATEMENTS, ESPECIALLY THE LAST TWO STATEMENTS,
8 ESPECIALLY THE LAST STATEMENT WHICH IS A SWORN
9 STATEMENT.

10 AND THE OTHER THING, YOU'VE HEARD
11 THE TESTIMONY OF OFFICER BRADLEY. SHE TOLD YOU ON THE
12 WITNESS STAND, FOUR O'CLOCK IN THE MORNING, I'M
13 INTERVIEWING TERRELL, HIS FRIEND'S NOT EVEN DEAD YET,
14 AND HE TOLD ME WHO DID IT, LE LE. AND WHERE DID SHE PUT
15 IT? IN HER INCIDENT REPORT, AND SHE HAD IT ON THE
16 WITNESS STAND. AS SHE TOLD YOU, SHE DOCUMENTS WHAT
17 PEOPLE TELL HER IN HER INCIDENT REPORT. IT'S NOT HER JOB
18 TO TAKE DETAILED WRITTEN STATEMENTS, IT'S THE
19 DETECTIVE'S, SHE TOLD YOU THAT. SHE KNEW AT FOUR
20 O'CLOCK IN THE MORNING THE PERSON THEY HAD TO LOOK FOR
21 WAS LE LE.

22 AND BEFORE I GET ON, I WANT TO
23 EXPLAIN ONE MORE THING, WHICH IS, YOU SAW HOW THICK THE
24 FILE WAS IN THIS CASE WHEN DETECTIVE RIVERS TESTIFIED.
25 WELL, UNFORTUNATELY, YOU DON'T GET TO TAKE THAT BACK

1 THERE WITH YOU, YOU DON'T GET TO TAKE THE INCIDENT
2 REPORTS. IT'S NOT MR. WALTERS' FAULT, IT'S NOT MY
3 FAULT, IT'S NOT THE JUDGE'S FAULT. THOSE ARE JUST THE
4 RULES. BUT I TELL YOU THAT BECAUSE I DON'T WANT YOU
5 WONDERING WHY YOU DON'T GET IT. BUT THE REASON YOU
6 DON'T GET TO TAKE IT BACK THERE IS BECAUSE OFFICER
7 BRADLEY TESTIFIED ABOUT IT. SHE SAID IT WAS IN HER
8 INCIDENT REPORT, SHE SAID SHE PUT IT IN THERE AT FOUR
9 O'CLOCK IN THE MORNING. THAT'S WHY.

10 HE GOES ON ABOUT ASSERTIONS ABOUT
11 INCONSISTENT STATEMENTS. YES, GOOD, I'M GLAD THERE ARE
12 INCONSISTENCIES. USE YOUR EVERY DAY LIFE EXPERIENCE,
13 WHEN PEOPLE ARE TELLING EVENTS OR EXPLAINING EVENTS,
14 THEY'RE ALL GOING TO GIVE DIFFERENT FACTS OF WHAT THEY
15 SAW. THAT'S HOW YOU KNOW THEY'RE CREDIBLE. IT'S WHEN
16 THEY TELL THE SAME STORY, THAT'S WHEN YOU HAVE TO WORRY.
17 IF DETECTIVE RIVERS IS GOING TO FRAME THE DEFENDANT, HE
18 WOULD HAVE HAD THEM ALL SAY THE SAME STORY. THE FACT
19 THAT THERE ARE INCONSISTENCIES MAKES THIS CASE CREDIBLE.
20 BUT THE ONE FACT THAT IS ALWAYS CONSISTENT IS THE MOST
21 IMPORTANT, THAT THAT MAN KILLED HER SON, AND HE HAS TO
22 PAY.

23 COTINA BROOKS. HE ATTACKED COTINA
24 BROOKS FOR ABSOLUTELY NOTHING. WHEN YOU DON'T LIKE THE
25 FACTS YOU YELL AT A WITNESS. WHEN YOU DON'T LIKE THE

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1 TRUTH YOU ATTACK THE POLICE. THAT'S NOT EVIDENCE. YOU
2 SAW COTINA, SHE WAS NERVOUS. YOU HEARD DETECTIVE RIVERS,
3 HE'S SEEN HUNDREDS OF WITNESSES. THEY ARE NERVOUS, THEY
4 GET NERVOUS. SHE DIDN'T GIVE A WRITTEN STATEMENT, SHE
5 GAVE A TYPED STATEMENT. BUT DO YOU REMEMBER WHAT ELSE
6 YOU GOT TO LEARN, ONLY ON REDIRECT? REMEMBER ON CROSS-
7 EXAMINATION MR. WALTERS HAMMERED HER ABOUT DISCOVERY,
8 AND NOT GETTING THIS, AND NOT GETTING A STATEMENT. THEN
9 YOU FIND OUT, ON REDIRECT, HER STATEMENT IS ON TAPE.
10 AND GUESS WHO HAD THAT TAPE ALL ALONG? THE DEFENSE HAS
11 IT. THEY DIDN'T WANT YOU TO KNOW THAT. IT'S ON TAPE.

12 MR. WALTERS: YOUR HONOR, I'M GOING
13 TO OBJECT.

14 SOLICITOR PASCOE: THAT CAME OUT AT
15 TRIAL, YOUR HONOR.

16 LADIES AND ---

17 THE COURT: WAIT A MINUTE. Y'ALL
18 APPROACH THE BENCH.

19 (Whereupon, a bench conference
20 is held out of the hearing of
21 the jury and the court reporter.)

22 SOLICITOR PASCOE: ALL THESE
23 ASSERTIONS, ALL THESE UNTRUTHS AND MISINFORMATION, ALL
24 THIS MISINFORMATION, NOTHING MORE THAN ATTEMPTS TO
25 DIVERT YOUR ATTENTION AWAY FROM THE FACTS OF THIS CASE.

1 DON'T LET THEM GET AWAY WITH IT. DON'T LET THEM GET AWAY
2 WITH IT. BECAUSE THE FACTS IN THIS CASE IS THAT THE
3 DEFENDANT IS GUILTY. AS I SAID, THE JUDGE IS GOING TO
4 TELL YOU, THERE ARE VERY FEW THINGS IN THIS WORLD WE
5 KNOW WITH ABSOLUTE CERTAINTY, AND WE DON'T HAVE TO PROVE
6 THE DEFENDANT'S GUILT BEYOND ANY AND ALL CERTAINTY. BUT
7 IF THERE'S EVER A CASE, EVER A CASE WHERE THAT'S DONE,
8 IT'S THIS ONE. IT'S THIS ONE. AND NOW, I WANT TO TALK
9 ABOUT THOSE STUBBORN FACTS OF GUILT VERY BRIEFLY.

10 LET'S TALK ABOUT THE FACTS. THE
11 FIRST WITNESS YOU HEARD FROM WAS TERRELL PARKER.
12 TERRELL PARKER PUT HIS HAND ON THAT BIBLE AND HE TOLD
13 YOU THAT, THAT MAN SHOT MY FRIEND. HE TOLD YOU, I'M
14 TESTIFYING BECAUSE I DON'T WANT HIM TO GET AWAY WITH IT.
15 HE TOLD YOU THAT. AND HE TOLD YOU, THERE IS NO DOUBT
16 ABOUT IT IN MY MIND, HE KILLED MY FRIEND. THAT'S THE
17 ONLY WITNESS YOU NEEDED TO HEAR FROM, LADIES AND
18 GENTLEMEN, BECAUSE TERRELL PARKER'S TESTIMONY, BY
19 ITSELF, IS PROOF BEYOND A REASONABLE DOUBT. HE HAD THE
20 COURAGE TO GET ON THAT WITNESS STAND AND FACE THE MAN
21 THAT KILLED HIS FRIEND AND TELL YOU WHAT HE DID. THAT'S
22 THE ONLY WITNESS YOU NEEDED TO HEAR FROM. HIS TESTIMONY
23 BY ITSELF CONVICTED THE DEFENDANT.

24 BUT WHAT MAKES THIS CASE INCREDIBLE,
25 WHAT MAKES IT MORE THAN JUST PROOF BEYOND A REASONABLE

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1 DOUBT, IS THE UNBELIEVABLE AMOUNT OF CORROBORATION
2 THAT'S IN THIS CASE. FIRST, IT'S THE STATEMENTS THAT
3 TERRELL, WHO'S HERE TODAY BECAUSE HE WANTS TO SEE WHAT
4 HAPPENS TO THAT MAN WHO KILLED HIS FRIEND, IT'S THE
5 STATEMENTS THAT HE GAVE TO THE POLICE ON DECEMBER NINTH.
6 HE TOLD OFFICER BRADLEY, SHE TOLD YOU THAT, AT FOUR
7 O'CLOCK IN THE MORNING, HE SAID, LE LE DID IT. HE
8 GIVES TWO MORE DETAILED STATEMENTS, ESPECIALLY THE LAST
9 SWORN STATEMENT TO DETECTIVE RIVERS, LE LE DID IT. I SAW
10 HIM DO IT. THAT CORROBORATES HIS TESTIMONY.

11 THE PHOTO LINEUPS THAT THE DEFENSE
12 DIDN'T EVEN WANT TO TALK ABOUT IN THEIR CLOSING
13 ARGUMENT, DIDN'T EVEN WANT TO TALK ABOUT IT. DO YOU
14 KNOW WHY? BECAUSE AT EIGHT:FIFTY-FIVE IN THE MORNING
15 THEY SHOW TERRELL, STATE'S EXHIBIT ONE, THEY DON'T EVEN
16 TELL HIM THAT LE LE'S PICTURE IS IN STATE'S EXHIBIT ONE.
17 THEY ASKED HIM IF HE RECOGNIZES ANYBODY. AND WHO DOES HE
18 RECOGNIZE RIGHT AWAY, NO HESITATION, NO DOUBT, IF THAT'S
19 THE ONLY EVIDENCE IN THIS CASE, NUMBER FIVE. AND WHO IS
20 NUMBER FIVE? LAVON MINTZ. AND WHO DOES HE SAY NUMBER
21 FIVE IS? THE MAN THAT KILLED MY FRIEND, AT EIGHT:FIFTY-
22 FIVE IN THE MORNING, SIX AND A HALF HOURS AFTER HIS
23 FRIEND HAS BEEN SLAIN BY NUMBER FIVE, LAVON MINTZ. A
24 ONE IN SIX CHANCE OF PICKING OUT THE DEFENDANT'S
25 PICTURE, LESS THAN TWENTY PER CENT CHANCE, AND HE JUST

1 HAPPENS TO PICK OUT LAVON MINTZ. WHAT ARE THE ODDS? NO
2 HESITATION, NO DOUBT. WE DON'T EVEN WANT TO TALK ABOUT
3 THIS, DO WE. WHAT ARE THE ODDS, UNLESS HE DID IT?

4 BUT THERE'S MORE CORROBORATION WITH
5 THE LINEUPS, BECAUSE REMEMBER, TERRELL TOLD THE POLICE,
6 AND JOVAN TOLD THE POLICE THAT DAY THAT ANDRE WAS THERE.
7 TERRELL DIDN'T EVEN KNOW ANDRE'S LAST NAME, JUST THAT
8 HIS NAME WAS ANDRE. SO, THEY PUT A LINEUP TOGETHER
9 AROUND TEN:FIFTY-FIVE, SOMETIME AFTER TEN O'CLOCK, WITH
10 A PICTURE OF SOMEONE THEY KNOW AS THE DEFENDANT'S
11 FRIEND, ANDRE GOODEN, SOMEONE WHO WAS HANGING OUT WITH
12 THE DEFENDANT THAT NIGHT. AND THEY SHOW HIM STATE'S
13 EXHIBIT EIGHT, AND THEY ASKED HIM, SEE IF YOU RECOGNIZE
14 ANYBODY? AND HE SAYS, NUMBER TWO. NUMBER TWO, ANDRE
15 GOODEN. WHAT ARE THE ODDS, UNLESS HE'S THE MAN THAT WAS
16 THERE WITH THE DEFENDANT? ONE IN SIX CHANCE. PROOF
17 BEYOND A REASONABLE DOUBT? HOW ABOUT PROOF BEYOND ANY
18 DOUBT?

19 BUT THERE'S MORE, MORE
20 CORROBORATION. YOU HAVE THE TESTIMONY OF OFFICER PAM
21 BRADLEY. SHE TOLD YOU, AT FOUR O'CLOCK IN THE MORNING,
22 AS SOON AS I GOT TO THE HOSPITAL, AND INTERVIEWED
23 TERRELL, WE'RE LOOKING FOR LE LE, AND I PASSED THAT
24 INFORMATION TO DETECTIVE RIVERS.

25 BUT THERE'S MORE CORROBORATION. WE

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1 HAVE JOVAN JONES. HE GOT ON THAT STAND, TOOK AN OATH --
2 AND YOU COULD TELL HE WAS NERVOUS, THAT HE DIDN'T WANT
3 TO TESTIFY, YOU COULD TELL -- HE TOLD YOU WHAT HAPPENED
4 THAT NIGHT INSIDE THE PUB. HE TOLD YOU THAT THE
5 DEFENDANT WAS ACTING CRAZY AND VIOLENT. HE TOLD YOU THAT
6 THE REASON THEY HAD TO SHUT DOWN THE CLUB EARLY, AN HOUR
7 EARLY WAS BECAUSE OF THAT MAN'S BEHAVIOR. WHAT ELSE DID
8 HE TELL YOU, ON REDIRECT? WHO HAS HE BEEN APPROACHED
9 BY? THAT MAN'S FRIENDS. YOU DON'T THINK THAT TOOK
10 COURAGE FOR JOVAN JONES TO GET UP ON THAT WITNESS STAND
11 AFTER HIS FRIENDS HAVE APPROACHED HIM? THAT TOOK GUTS.

12 AND ASK YOURSELF THIS, WHAT KIND OF
13 HUMAN BEING WOULD IT TAKE TO JUST PULL A GUN OUT WITH
14 ABSOLUTELY NO RESPECT FOR HUMAN LIFE, AND KILL ANOTHER
15 HUMAN BEING. I'LL TELL YOU THE TYPE OF PERSON IT WOULD
16 TAKE, THE SAME KIND OF PERSON WHO WOULD STAND IN FRONT
17 OF A DANCE FLOOR AND JUST POINT AND SHOOT, LIKE HE'S GOT
18 A GUN. AND GUESS WHO WAS OUT ON THE DANCE FLOOR,
19 ACCORDING TO THE TESTIMONY, THAT NIGHT? ALFREDO LEWIS.
20 PROOF BEYOND A REASONABLE DOUBT? HOW ABOUT PROOF BEYOND
21 ANY DOUBT.

22 THERE'S MORE. COTINA BROOKS, SHE
23 DID THE RIGHT THING. SHE CAME FORWARD. SHE SAW
24 DETECTIVE RIVERS, SHE TOLD YOU, OUT ON THE STREETS, AND
25 SAID, I WAS THERE THE NIGHT MY FRIEND WAS KILLED. I WAS

1 THERE, AND LE LE DID IT, AND I WANT TO TELL YOU ABOUT
2 IT. SHE DOES THE RIGHT THING, AND SHE COMES FORWARD,
3 AND SHE GETS ATTACKED FOR IT. SHE DID THE RIGHT THING,
4 BECAUSE HE KILLED HER FRIEND. THANK YOU. SHE TOLD YOU
5 SHE SAW THE DEFENDANT ACTING CRAZY INSIDE THE PUB. AND
6 YOU WANT TO TALK ABOUT VEREDICTO, LET'S TALK ABOUT THE
7 TRUTH, DON'T GET UP HERE AND SAY SHE SAW A BLACK GUN.
8 SHE DIDN'T TESTIFY TO THAT, SHE SAID SHE SAW THE BLACK
9 HANDLE OF A GUN. REMEMBER? THAT'S THE TRUTH. SHE GOT
10 ON THAT WITNESS STAND AND TOLD THE TRUTH, AND SHE GETS
11 ATTACKED FOR IT.

12 BUT THERE'S MORE. BECAUSE WHAT DOES
13 MR. REASONABLE DOUBT DO? WHAT DOES MR. REASONABLE DOUBT
14 DO THE NEXT DAY AT THREE O'CLOCK IN THE AFTERNOON? HE
15 RUNS FROM THE POLICE. HE RUNS FROM THE POLICE. WHY IS
16 HE RUNNING FROM THE POLICE IF HE DIDN'T JUST COMMIT A
17 MURDER THE DAY BEFORE? WELL, THE GREAT JOE LEWIS ONCE
18 SAID, YOU CAN RUN BUT YOU CAN'T HIDE, BECAUSE THE VERY
19 NEXT DAY, ON DECEMBER THE ELEVENTH OF TWO THOUSAND AND
20 TWO, HE'S AT MICHELLE BRIGGMANN'S HOME, JUST SIX BLOCKS
21 AWAY FROM WHERE HE RAN FROM THE POLICE. REMEMBER THE
22 FACTS OF THAT? HE GOT THERE THE DAY HE RAN FROM THE
23 POLICE, ON DECEMBER THE TENTH. SHE DIDN'T EVEN WANT HIM
24 IN HER HOUSE. WHO CAN BLAME HER? AND SHE TOLD HER
25 HUSBAND, GET THAT MAN OUT OF HERE, THE NEXT DAY, ON

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1 DECEMBER THE ELEVENTH. IT'S IRONIC, SHE HAPPENS TO
2 LEAVE, AND THAT'S WHEN THE POLICE GET A TIP THAT THE
3 DEFENDANT IS THERE, AND THEY FINALLY ARREST HIM.

4 LADIES AND GENTLEMEN, ON DECEMBER
5 THE NINTH OF TWO THOUSAND AND TWO, WHEN THAT MAN, LAVON
6 MINTZ, MURDERED HER SON IN COLD BLOOD, HE THOUGHT HE GOT
7 AWAY WITH MURDER. YOU PROVE HIM WRONG. MARTIN LUTHER
8 KING ONCE SAID, IF YOU DON'T STAND UP FOR SOMETHING
9 YOU'LL FALL FOR ANYTHING. WELL, COTINA, TERRELL, JOVAN,
10 DETECTIVE RIVERS, DETECTIVE CORDON, OFFICER BRADLEY,
11 EVERY WITNESS THAT GOT ON THAT WITNESS STAND, THEY STOOD
12 UP FOR SOMETHING, AND THEY STOOD UP TO THAT MAN AND THEY
13 TOLD YOU WHAT HE DID. NOW, I'M ASKING YOU TO STAND UP
14 FOR SOMETHING, I'M ASKING YOU TO STAND UP FOR THE TRUTH.
15 AND I RESPECTFULLY ASK THAT YOU FIND THE DEFENDANT,
16 LAVON MINTZ, GUILTY OF MURDER.

17 THE COURT: THANK YOU, SIR.

18 CHARGE OF THE COURT

19 LADIES AND GENTLEMEN, THIS HAS BEEN
20 A RELATIVELY SHORT TRIAL, BUT THIS IS THE REAL THING,
21 THIS IS A VERY IMPORTANT TRIAL FOR ALL THE PARTIES IN
22 THIS CASE, THIS IS NOT PERRY MASON, OR MATLOCK, OR CSI,
23 THOSE THINGS ARE ABOUT NINETY PER CENT FICTION. BUT
24 EVEN THOUGH IT'S BEEN A SHORT TRIAL, IT'S A VERY
25 IMPORTANT MATTER FOR ALL OF THE PARTIES INVOLVED IN THIS

1 CASE.

2 NOW, YOU KNOW THAT THE STAGE HAS
3 CHARGED, IN THIS INDICTMENT, MR. LAVON GILBERT MINTZ,
4 WITH THE MURDER OF ALFREDO LEWIS. YOU WILL HAVE THIS
5 INDICTMENT WITH YOU IN THE JURY ROOM, BUT AS I TOLD YOU
6 EARLIER, THIS INDICTMENT IS NOT EVIDENCE, IT'S SIMPLY A
7 DOCUMENT DRAWN UP BY THE STATE TO ADVISE MR. MINTZ OF
8 THE CHARGES HE IS FACING SO HE CAN PREPARE A PROPER
9 DEFENSE.

10 TO THE CHARGES CONTAINED IN THIS
11 INDICTMENT HE HAS PLED NOT GUILTY. THAT PLACES ON THE
12 STATE OF SOUTH CAROLINA, LADIES AND GENTLEMEN, THE
13 BURDEN OF PROVING HIM GUILTY BEYOND A REASONABLE DOUBT.
14 A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN
15 SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF
16 INNOCENT. IT IS A VITAL, IMPORTANT RULE OF LAW THAT THE
17 DEFENDANT IN A CRIMINAL TRIAL, NO MATTER HOW GREAT OR
18 SERIOUS MAY BE THE CHARGES WITH WHICH HE IS FACED, MUST
19 ALWAYS BE PRESUMED INNOCENT UNTIL HIS GUILT HAS BEEN
20 PROVEN BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF
21 INNOCENCE REMAINS WITH THE DEFENDANT AT ALL TIMES, FROM
22 THE MOMENT OF HIS APPEARANCE IN THIS COURT, THROUGHOUT
23 THIS TRIAL, AND UNTIL YOU, THE JURY, HAVE, UPON THE
24 EVIDENCE AND TESTIMONY PRESENTED IN THIS CASE, REACHED
25 A VERDICT OF GUILTY BEYOND A REASONABLE DOUBT. BECAUSE

1 IT'S YOUR DUTY, LADIES AND GENTLEMEN, IF YOU ARE NOT SO
2 CONVINCED, TO FIND HIM NOT GUILTY. BUT BY THE SAME
3 TOKEN, IT IS YOUR DUTY, IF YOU ARE SO CONVINCED, THEN TO
4 FIND HIM GUILTY.

5 SO, IF THE BURDEN OF PROOF ON THE
6 STATE IS TO ESTABLISH GUILT BEYOND A REASONABLE DOUBT,
7 WHAT DO WE MEAN BY BEYOND A REASONABLE DOUBT? WELL,
8 SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL TRIALS,
9 AND YOU WOULD HAVE BEEN TOLD THAT IT IS ONLY NECESSARY
10 TO PROVE THAT A FACT IS MORE LIKELY THAN NOT TRUE.
11 THAT'S WHAT WE CALL THE PREPONDERANCE OF THE EVIDENCE.
12 WELL, IN CRIMINAL CASES THE STATE'S PROOF MUST BE MORE
13 POWERFUL THAN THAT. PROOF BEYOND A REASONABLE DOUBT IS
14 PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE
15 DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS
16 WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN
17 CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT
18 OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR
19 CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED
20 THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU
21 MUST FIND HIM GUILTY. IF, ON THE OTHER HAND, YOU THINK
22 THERE IS A REAL POSSIBILITY THAT HE IS NOT GUILTY, YOU
23 MUST GIVE HIM THE BENEFIT OF THAT REASONABLE DOUBT AND
24 FIND HIM NOT GUILTY.

25 NOW, LADIES AND GENTLEMEN, THERE ARE

1 TWO TYPES OF EVIDENCE FROM WHICH YOU, AS THE JURY, CAN
2 PROPERLY FIND THE TRUTH AS TO THE FACTS IN THIS CASE.
3 ONE IS BY DIRECT EVIDENCE, AND THE OTHER IS BY INDIRECT,
4 OR WHAT WE CALL CIRCUMSTANTIAL EVIDENCE. BY THE TERM,
5 DIRECT EVIDENCE, THE LAW MEANS TESTIMONY OF PERSONS WHO
6 HAVE PERCEIVED ITS EXISTENCE BY MEANS OF THEIR SENSES,
7 AS IN THE INSTANCE WHERE A PERSON SEES A CRIME
8 COMMITTED, OR HEARS A NOISE AND COMES INTO THE COURT TO
9 TESTIFY TO WHAT HE OR SHE SAW OR HEARD. IT COMES -- IN
10 OTHER WORDS, IT COMES FROM A PERSON WHO BY HIS OR HER
11 OWN SENSES HAD ACTUAL PERSONAL KNOWLEDGE THAT AN EVENT
12 HAS OCCURRED OR NOT OCCURRED, OR A FACT DOES OR DOES NOT
13 EXIST. AND IT CAN ARISE FROM THE USE FROM ANY OF OUR
14 SENSES, SIGHT, SMELL, TASTE, SOUND OR FEELING, WITHOUT
15 THE AID OF ANY INFERENCES.

16 NOW, CIRCUMSTANTIAL EVIDENCE, LADIES
17 AND GENTLEMEN, INVOLVES TESTIMONY OR EVIDENCE OF
18 SURROUNDING FACTS FROM WHICH ONE MAY, OR MAY NOT INFER
19 THAT AN EVENT HAS OCCURRED OR A FACT HAS BEEN
20 ESTABLISHED. CIRCUMSTANTIAL EVIDENCE CAN EXIST WHERE
21 CERTAIN FACTS ARE KNOWN, THROUGH ONE OR MORE OF THE FIVE
22 SENSES, AND THESE FACTS GIVE RISE TO A LOGICAL INFERENCE
23 THAT OTHER FACTS DO, IN FACT, EXIST WITHOUT DIRECTLY
24 PROVING THOSE FACTS. IF YOU GO BACK INTO YOUR JURY ROOM
25 IN A FEW MINUTES AND YOU LOOK OUT THE WINDOW, AND THE

1 SUN IS SHINING, BUT YOU SEE WATER RUNNING DOWN THE
2 STREET, AND YOU SEE WATER ON THE TREES AND THE GRASS,
3 AND IN THE PARKING LOT AND ON THE CARS, THAT'S
4 CIRCUMSTANTIAL EVIDENCE FROM WHICH YOU MIGHT CONCLUDE
5 THAT IT HAD RAINED WHILE YOU WERE IN HERE. THAT'S
6 SIMPLY WHAT WE MEAN BY CIRCUMSTANTIAL EVIDENCE. IF YOU
7 SEE THE RAIN, IF YOU HEAR THE RAIN, IF YOU FEEL THE
8 RAIN, THAT'S DIRECT EVIDENCE THAT IT'S RAINED.

9 ON A CONTESTED FACTUAL ISSUE YOU MAY
10 HAVE SOME DIRECT EVIDENCE AND SOME CIRCUMSTANTIAL
11 EVIDENCE, THAT IS, A COMBINATION OF THE TWO TYPES OF
12 EVIDENCE ON THAT DISPUTED MATTER. BUT WITH REGARD TO
13 BOTH DIRECT AND CIRCUMSTANTIAL EVIDENCE, IT MUST BE SUCH
14 AS TO PROVE THE GUILT OF THE DEFENDANT BEYOND A
15 REASONABLE DOUBT. THE LAW MAKES ABSOLUTELY NO
16 DISTINCTION BETWEEN THE WEIGHT OR THE VALUE TO BE GIVEN
17 TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR IS A
18 GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL
19 EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL
20 OF THE EVIDENCE IN THE CASE, AND AFTER WEIGHING ALL OF
21 THE EVIDENCE IN THE CASE, IF YOU ARE NOT CONVINCED OF
22 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT YOU
23 MUST FIND THE DEFENDANT GUILTY. CONVERSELY, IF YOU ARE
24 CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A
25 REASONABLE DOUBT THEN YOU MUST FIND HIM GUILTY.

1 NOW, LADIES AND GENTLEMEN, AS I TOLD
2 YOU EARLIER, YOU ARE THE JUDGES OF THE FACTS IN THE
3 CASE, AND YOU ARE THE SOLE JUDGES OF THE FACTS IN THE
4 CASE. YOU ALONE DETERMINE THE TRUTH ABOUT THE MATTERS
5 OF WHICH YOU HAVE HEARD. I DON'T HAVE A RIGHT TO PASS
6 UPON THE FACTS OR EXPRESS ANY OPINION I MIGHT HAVE ABOUT
7 THE FACTS OF THIS CASE.

8 YOU ARE ALSO THE JUDGES, AND THE
9 SOLE JUDGES OF THE CREDIBILITY, OR THE BELIEVABILITY OF
10 THE WITNESSES WHO HAVE TESTIFIED IN THIS CASE. AND IN
11 PASSING UPON THEIR CREDIBILITY YOU MAY TAKE INTO
12 CONSIDERATION MANY THINGS, SUCH AS THE Demeanor, OR THE
13 MANNER OF TESTIFYING. WAS THE WITNESS FORTHRIGHT OR WAS
14 THE WITNESS HESITANT IN THEIR TESTIMONY? DID THE
15 WITNESS HAVE REASON TO BE BIASED OR PREJUDICED IN THEIR
16 TESTIMONY? WAS THE WITNESS'S TESTIMONY CONTRADICTED, ON
17 ONE HAND, OR SUPPORTED AND CORROBORATED, ON THE OTHER?
18 WHAT WAS THE WITNESS'S OPPORTUNITY FOR OBSERVATION AND
19 KNOWLEDGE OF THE MATTERS ABOUT WHICH THEY'VE TESTIFIED?
20 HOW REASONABLE WAS THE WITNESS'S TESTIMONY WHEN
21 CONSIDERED IN THE LIGHT OF THE OTHER EVIDENCE WHICH YOU
22 BELIEVE?

23 YOU CERTAINLY DO NOT DETERMINE THE
24 CREDIBILITY, OR THE BELIEVABILITY BY COUNTING THE NUMBER
25 OF WITNESSES FOR EITHER SIDE. YOU CAN BELIEVE A SMALL

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1 PORTION OF A WITNESS'S TESTIMONY AND DISREGARD THE
2 LARGER PORTION, OR VICE VERSA. YOU CAN BELIEVE ONE
3 WITNESS AGAINST MANY, OR MANY AGAINST ONE. BUT ALL OF
4 THESE THINGS YOU WILL CONSIDER USING YOUR GOOD COMMON
5 SENSE, AND BEARING IN MIND THAT YOU SHOULD GIVE THE
6 DEFENDANT THE BENEFIT OF ANY REASONABLE DOUBT.

7 NOW, LADIES AND GENTLEMEN, THE SAME
8 CONSTITUTION AND LAWS THAT WE HAVE IN THE STATE THAT
9 MAKE YOU THE FINDERS OF THE FACTS, OR THE JUDGES OF THE
10 FACTS, MAKE ME THE JUDGE OF THE LAW IN THE CASE. AND I'M
11 THE ONLY JUDGE OF THE LAW IN THE CASE, JUST LIKE YOU
12 ARE THE ONLY JUDGES OF THE FACTS IN THE CASE. AND IF
13 YOU FIND THAT WHATEVER I TELL YOU THE LAW IS DOESN'T
14 AGREE WITH WHAT YOU THOUGHT THE LAW WAS, OR EVEN IF IT
15 DOES NOT AGREE WITH WHAT YOU THINK THE LAW OUGHT TO BE,
16 YOU MUST PUT ASIDE YOUR POSITION, OR YOUR OPINION ON THE
17 LAW, ACCEPT THE LAW AS I GIVE IT TO YOU, AND APPLY THAT
18 TO THE FACTS AS YOU FIND THEM IN ORDER TO REACH YOUR
19 VERDICT IN THIS CASE. THAT'S WHAT YOUR OATH REQUIRES
20 YOU TO DO.

21 NOW, THE DEFENDANT IS CHARGED BY THE
22 STATE WITH THE CRIME OF MURDER. I WANT TO DEFINE FOR YOU
23 MURDER. MURDER MAY BE DEFINED AS THE WILLFUL, FELONIOUS
24 KILLING OF A HUMAN BEING BY A HUMAN BEING WITH MALICE
25 AFORETHOUGHT, THAT MALICE BEING EITHER EXPRESS MALICE OR



1 IMPLIED MALICE. I WANT TO DEFINE SOME OF THE WORDS:

2 - WILLFUL, WHICH MEANS INTENTIONAL OR VOLUNTARY, OR
3 CONSCIOUS, OR KNOWING, AS OPPOSED TO ACCIDENTAL OR
4 INVOLUNTARY, OR INADVERTENT.

5 - FELONIOUS MEANS UNLAWFUL, IT MEANS WITHOUT
6 JUSTIFICATION OR EXCUSE.

7 - MALICE AFORETHOUGHT. MALICE IS AN ESSENTIAL
8 ELEMENT OF THE CRIME OF MURDER. MALICE IS A TERM
9 OF ART, A TECHNICAL TERM IMPORTING WICKEDNESS AND
10 EXCLUDE JUST CAUSE OR LEGAL EXCUSE. MALICE IN ANY
11 FORM, WHETHER IT ARISES FROM HATRED, ILL WILL, OR
12 OTHERWISE, IS STILL MALICE. MALICE SPRINGS FROM
13 DEPRAVITY, FROM A HEART DEVOID OF SOCIAL DUTY, AND
14 FATALLY BENT ON MISCHIEF.

15 MALICE MUST BE AFORETHOUGHT. THE
16 LAW DOES NOT REQUIRE THAT MALICE SHOULD EXIST FOR ANY
17 PARTICULAR TIME BEFORE THE COMMISSION OF THE ACT, BUT
18 MALICE MUST EXIST IN THE MIND OF THE ACCUSED JUST
19 BEFORE, AND AT THE TIME OF THE COMMISSION OF THE ACT.
20 THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT
21 AND THE ACT PRODUCING THE RESULT. MALICE AFORETHOUGHT
22 MAY BE EXPRESSED OR INFERRED. NOW, THESE WORDS DO NOT
23 MEAN DIFFERENT KINDS OF MALICE, BUT MERELY THE MANNER IN
24 WHICH THE ONLY KIND OF MALICE KNOWN TO THE LAW MAY BE
25 SHOWN TO EXIST, THAT IS EITHER BY DIRECT EVIDENCE OR BY

1 NECESSARY INFERENCE FROM THE FACTS AND CIRCUMSTANCES
2 WHICH ARE PROVED.

3 - EXPRESSED MALICE IS SHOWN WHEN ONE, BY WORD OF
4 MOUTH EXPRESSES HIS HATRED OR ILL WILL FOR
5 ANOTHER, OR WHERE THE STATE SHOWS THAT HE MADE
6 PREPARATION BEFOREHAND TO DO THE DEED WHICH WAS
7 LATER ACCOMPLISHED. LYING IN WAIT FOR A PERSON,
8 OR ANY ACTS OF PREPARATION GOING TO SHOW THAT THE
9 DEED WAS WITHIN THE MIND WOULD BE EXPRESS MALICE.
10 - NOW, WHAT IS INFERRED MALICE? EVEN THOUGH NO
11 EXPRESSED INTENT TO KILL IS PROVED BY DIRECT
12 EVIDENCE, IT MAY BE INFERRED FROM THE FACTS AND
13 CIRCUMSTANCES WHICH ARE PROVED. MALICE MAY BE
14 INFERRED FROM THE WILLFUL, DELIBERATE AND
15 INTENTIONAL DOING OF AN UNLAWFUL ACT WITHOUT JUST
16 CAUSE OR LEGAL EXCUSE. IN OTHER WORDS, IN ITS
17 GENERAL SIGNIFICATION, MALICE MEANS THE DOING OF A
18 WRONGFUL ACT, INTENTIONALLY, WITHOUT JUSTIFICATION
19 OR LEGAL EXCUSE. MALICE MAY BE INFERRED FROM
20 CONDUCT SHOWING A TOTAL DISREGARD FOR HUMAN LIFE.
21 THE INFERENCE OF MALICE MAY ARISE WHEN THE DEED IS
22 DONE WITH A DEADLY WEAPON. A DEADLY WEAPON IS ANY
23 ARTICLE, INSTRUMENT OR SUBSTANCE WHICH IS LIKELY
24 TO CAUSE DEATH OR GREAT BODILY HARM. SOME
25 EXAMPLES ARE A PISTOL, SHOT GUN, RIFLE, DIRK,

1 DAGGER, KNIFE, SLING SHOT, METAL KNUCKLES, RAZOR,
2 GASOLINE, OR A FIRE BOMB.

3 MALICE DOES NOT NECESSARILY IMPART ILL WILL TOWARD THE
4 INDIVIDUAL INJURED, BUT SIGNIFIES, RATHER, A GENERAL
5 MALIGNANT RECKLESSNESS OF THE LIVES AND SAFETY OF
6 OTHERS, OR A CONDITION OF MIND WHICH SHOWS A HEART
7 DEVOID OF SOCIAL DUTY AND FATALLY BENT ON MISCHIEF. IT
8 IS THE WRONGFUL INTENT TO INJURY ANOTHER, AND INDICATES
9 A WICKED OR DEPRAVED SPIRIT INTENT ON DOING WRONG.

10 SO, IF FACTS ARE PROVEN BEYOND A
11 REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF
12 MALICE TO YOUR SATISFACTION, THIS INFERENCE WOULD BE
13 SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO
14 CONSIDERATION BY YOU, THE JURY, ALONG WITH THE OTHER
15 EVIDENCE IN THE CASE, AND YOU MAY GIVE IT SUCH WEIGHT AS
16 YOU DETERMINE IT SHOULD RECEIVE.

17 SO, WHAT IS MURDER? MURDER IS THE
18 WILLFUL FELONIOUS KILLING OF A HUMAN BEING BY A HUMAN
19 BEING WITH MALICE AFORETHOUGHT, THAT MALICE BEING EITHER
20 EXPRESSED MALICE OR IMPLIED MALICE.

21 NOW, LADIES AND GENTLEMEN, NOTHING
22 THAT I'VE SAID OR DONE DURING THE COURSE OF THIS TRIAL
23 HAS BEEN IN ANY WAY INTENDED TO EXPRESS OR SUGGEST A
24 VIEW OF THIS CASE OR AN OPINION ABOUT THE FACTS OF THE
25 CASE OR THE WEIGHT OF THE EVIDENCE OR THE CREDIBILITY OF

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1 THE WITNESSES, OR WHAT YOUR VERDICT SHOULD BE. AND IF
2 ANYTHING THAT I HAVE SAID OR DONE WOULD SEEM TO YOU TO
3 INDICATE THAT I HAVE SUCH AN OPINION, PLEASE DISREGARD
4 THAT AND FORM YOUR OWN OPINION TO EACH OF THOSE MATTERS.

5 YOU'VE BEEN SELECTED AS FAIR AND
6 IMPARTIAL JURORS. YOU HAVE SWORN TO IMPARTIALLY TRY AND
7 DETERMINE THE FACTS OF THIS CASE. AND WHEN YOU COMPLY
8 WITH YOUR OATH TO DO SO, THEN NO ONE WILL HAVE A RIGHT
9 TO CRITICIZE YOUR VERDICT, AND YOU WILL HAVE FULLY
10 DISCHARGED YOUR DUTY.

11 AS JURORS YOUR ARE TO DECIDE THIS
12 CASE ACCORDING TO THE TESTIMONY THAT YOU'VE HEARD FROM
13 THE LIPS OF THE SWORN WITNESSES, ALONG WITH THE OTHER
14 EVIDENCE, WHICH ARE THE EXHIBITS AND THE STIPULATION
15 THAT WAS ENTERED INTO THE RECORD. YOU MUST DECIDE THE
16 ISSUES IN THIS CASE WITHOUT BIAS AND WITHOUT PREJUDICE
17 TO ANY PARTY. YOU CANNOT ALLOW YOURSELF TO BE GOVERNED
18 BY SYMPATHY, BY PREJUDICE, BY PASSION, BY PUBLIC
19 OPINION, OR ANY OTHER ARBITRARY FACTOR. BOTH THE STATE
20 AND THE DEFENDANT IN THIS CASE HAS THE RIGHT TO EXPECT
21 THAT YOU WILL CAREFULLY AND IMPARTIALLY CONSIDER ALL OF
22 THE EVIDENCE WHICH YOU HAVE HEARD IN THIS CASE, AND THAT
23 YOU WILL FOLLOW MY INSTRUCTIONS TO YOU ON THE LAW IN
24 REACHING YOUR VERDICT ON THIS CASE.

25 BECAUSE, LADIES AND GENTLEMEN, THE

1 DEFENDANT IN A CRIMINAL TRIAL IS PRESUMED INNOCENT, THE
2 LAW NEVER IMPOSES UPON THE DEFENDANT THE BURDEN OR THE
3 DUTY OF TESTIFYING, OF CALLING ANY WITNESSES, OR
4 PRODUCING ANY EVIDENCE. THE DEFENDANT IN A CRIMINAL
5 TRIAL HAS THE ABSOLUTE RIGHT UNDER THE CONSTITUTION OF
6 THE UNITED STATES AND OF SOUTH CAROLINA NOT TO TAKE THE
7 WITNESS STAND AND TESTIFY. THE EXERCISE BY THE
8 DEFENDANT OF THIS RIGHT NOT TO TAKE THE WITNESS STAND OR
9 TO PRESENT ANY OTHER EVIDENCE MUST NOT BE CONSIDERED BY
10 YOU IN ANY WAY AGAINST THE DEFENDANT, AND SHOULD PLAY
11 ANY ROLE WHATSOEVER IN YOUR DISCUSSIONS OR
12 DELIBERATIONS. NO INFERENCE OF ANY KIND MAY BE DRAWN
13 FROM THE DEFENDANT'S EXERCISE OF THIS CONSTITUTIONAL
14 RIGHT. PLEASE DO NOT EVEN DISCUSS THAT FACT WHEN YOU
15 BEGIN YOUR DELIBERATIONS IN THIS CASE.

16 NOW, MR. KENNERLY, SINCE YOU ARE A
17 SCHOOL MAN I'M GOING TO ASK IF YOU WOULD SERVE AS
18 FOREPERSON OF THIS JURY. AND THAT SIMPLY MEANS THAT YOU
19 WOULD PRESIDE WHEN THE JURY BEGINS ITS DELIBERATIONS.
20 YOU WILL SEE THAT EVERYONE WHO WISHES TO BE HEARD IN
21 THIS MATTER HAS AN OPPORTUNITY TO BE HEARD WITHOUT
22 EVERYBODY SPEAKING ALL AT ONE TIME. I'M SURE YOU HAVE
23 A LOT OF EXPERIENCE DOING THAT KIND OF THING IN YOUR
24 WORK IN SCHOOL.

25 IT WILL ALSO BE YOUR DUTY TO REPORT

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1 THE VERDICT OF THE JURY ONCE THE VERDICT HAS BEEN
2 REACHED UNANIMOUSLY. ANY VERDICT OF THIS JURY MUST BE
3 UNANIMOUS, ALL TWELVE OF YOU MUST AGREE BEFORE ANY
4 VERDICT CAN BE REPORTED AS THE VERDICT OF THIS JURY.

5 NOW, IN THIS CASE THERE ARE ONLY TWO
6 POSSIBLE VERDICTS, AND THERE IS NO SIGNIFICANCE IN THE
7 ORDER IN WHICH EXPLAIN THEM TO YOU, I SIMPLY HAVE TO
8 STATE ONE BEFORE THE OTHER. IF YOU FIND THAT THE STATE
9 HAS PROVEN THE ELEMENTS OF MURDER AS I HAVE OUTLINED
10 THEM TO YOU IN MY CHARGE BEYOND A REASONABLE DOUBT, THEN
11 YOUR VERDICT WOULD BE GUILTY. IF YOU FIND THAT THE STATE
12 HAS FAILED TO PROVE ANY ONE OF THOSE ELEMENTS IN THE
13 CRIME OF MURDER THAT I HAVE CHARGED YOU, BEYOND A
14 REASONABLE DOUBT, THEN YOUR VERDICT WOULD BE NOT GUILTY.

15 NOW, YOU WILL HAVE WITH YOU IN THE
16 JURY ROOM THIS INDICTMENT. ON ONE SIDE IT EXPLAINS THE
17 CHARGES, ON THE OTHER SIDE, IT'S THE TITLE SIDE, I
18 GUESS, AND DOWN IN THIS BOTTOM CORNER THERE'S A LITTLE
19 BLOCK THAT SAYS, VERDICT. AND I DON'T KNOW WHY THEY
20 PUT FOUR LINES IN THERE BECAUSE YOU DON'T NEED FOUR
21 LINES, BUT THERE ARE FOUR LINES THERE. WHEN THE JURY
22 HAS REACH A UNANIMOUS VERDICT, YOU EITHER WRITE THE
23 WORD, GUILTY, OR YOU WRITE THE WORDS, NOT GUILTY. AND
24 THEN YOU PUT TODAY'S DATE, WHICH IS APRIL THE TWENTIETH,
25 TWO THOUSAND AND FIVE, YOU SIGN YOUR NAME AS FOREPERSON,

1 INDICATING THAT THIS IS THE UNANIMOUS VERDICT OF THE
2 ENTIRE JURY.

3 NOW, IF YOU HAVE ANY QUESTIONS
4 DURING YOUR DELIBERATIONS, PLEASE WRITE THOSE DOWN ON A
5 SHEET OF PAPER. THE BAILIFF WILL MAKE AVAILABLE TO YOU
6 A PAD AND A PENCIL, AND WRITE THAT DOWN, GIVE IT TO THE
7 BAILIFF, AND THE BAILIFF WILL BRING IT TO ME AND I WILL
8 TAKE WHATEVER ACTION I NEED TO DO TO DEAL WITH ANY
9 QUESTION OR PROBLEM YOU MIGHT HAVE.

10 IF WE HAVE ANY SMOKERS AND THE
11 SMOKERS NEED TO BE RELIEVED FOR SMOKING, THEN KNOCK ON
12 THE DOOR, TELL THE BAILIFF THE SMOKERS NEED A BREAK. IF
13 THE SMOKES LEAVE, AND THEY WILL HAVE TO BE TAKEN OUTSIDE
14 THE COURT HOUSE TO SMOKE, THEN THE REST OF YOU MUST STOP
15 YOUR DELIBERATIONS, YOU CANNOT DELIBERATE WITHOUT ALL
16 TWELVE OF YOU BEING THERE.

17 WHEN YOU HAVE REACHED A VERDICT YOU
18 SIMPLY KNOCK ON THE DOOR AND YOU TELL THE BAILIFF YOU
19 HAVE REACHED A VERDICT. YOU DO NOT TELL THE BAILIFF THE
20 VERDICT, YOU DO NOT GIVE THE BAILIFF THE VERDICT FORM,
21 BUT YOU TELL THE BAILIFF THAT YOU HAVE REACHED A
22 VERDICT, AND WE WILL BRING YOU BACK IN THE COURTROOM AND
23 YOU WILL PASS UP THE VERDICT FORM, OR THE INDICTMENT IN
24 THE COURTROOM.

25 SO, WITH THAT, IN JUST A SECOND I'M

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1 GOING TO ASK YOU TO RETIRE TO YOUR JURY ROOM, BUT I'M
2 GOING TO ASK YOU FOR THE LAST TIME NOT TO TALK ABOUT THE
3 CASE. I MUST DISCUSS MY CHARGE TO YOU WITH THE
4 ATTORNEYS. SOMETIME I DON'T TELL YOU EVERYTHING I NEED
5 TO TELL YOU, SOMETIME I MAKE A MIS-STATEMENT. AND SO,
6 IF I'VE MADE SOME ERROR IN MY CHARGE TO YOU THESE
7 ATTORNEYS WILL POINT IT OUT TO ME VERY QUICKLY AND I'LL
8 BRING YOU BACK, AND I'LL CORRECT WHATEVER ERROR THAT I
9 HAVE MADE. IF I DO NOT NEED TO BRING YOU BACK I WILL
10 SEND IN TO YOU THE INDICTMENT AND ALL OF THE EXHIBITS.
11 ONCE YOU RECEIVE THE INDICTMENT AND ALL OF THE EXHIBITS
12 YOU WILL BEGIN YOUR DELIBERATIONS, BUT NOT UNTIL THAT
13 TIME.

14 SO, THANK YOU VERY MUCH, PLEASE
15 RETIRE TO YOUR JURY ROOM, BUT DO NOT BEGIN YOUR
16 DELIBERATIONS UNTIL YOU RECEIVE INSTRUCTIONS TO DO SO.
17 THANK YOU, SIR.

18 MR. ALTERNATE, YOU JUST WAIT RIGHT
19 THERE A MINUTE, PLEASE, SIR.
20 (Whereupon, the jury
21 retires to the jury room.)

22 THE COURT: MR. ALTERNATE, I WILL
23 ASK YOU TO REMAIN WITH US. I CAN'T LET YOU DELIBERATE
24 WITH THIS JURY, BUT I'M GOING TO ASK YOU TO REMAIN WITH
25 US. THEY WILL PUT YOU IN A SEPARATE JURY ROOM, YOU WILL

1 BE IN THERE BY YOURSELF. IF YOU NEED ANYTHING THE
2 BAILIFF WILL BE RIGHT OUTSIDE THAT DOOR, JUST LET HER
3 KNOW IF YOU NEED A COKE OR SOME CRACKERS OR POUND CAKE
4 OR SOMETHING, YOU KNOW, I DON'T KNOW WHAT THEY HAVE BACK
5 THERE, THEY DON'T PROVIDE VERY MUCH FOR ME, I THINK THEY
6 TAKE BETTER CARE OF THEIR JURORS. BUT JUST, IF YOU
7 WOULD, PLEASE, JUST EXIT THE COURTROOM AT THIS TIME AND
8 SHE WILL SHOW YOU WHERE TO REMAIN UNTIL YOU HEAR FROM
9 US. THANK YOU, SIR.

10 (Whereupon, the alternate
11 leaves the courtroom.)

12 THE COURT: ANY EXCEPTIONS FROM THE
13 STATE?

14 SOLICITOR PASCOE: NOTHING ON THE
15 CHARGES, YOUR HONOR.

16 THE COURT: FROM THE DEFENSE?

17 MR. WALTERS: NO, SIR, YOUR HONOR.

18 THE COURT: ALRIGHT, MADAM COURT
19 REPORTER, HOW MANY EXHIBITS DO WE HAVE? I KNOW THERE ARE
20 TWO FOR THE DEFENSE.

21 COURT REPORTER: YES, SIR. AND THE
22 PLAINTIFF HAS TWELVE, SO WE NEED TO COUNT THOSE.

23 THE COURT: ALRIGHT, YOU LAWYERS
24 COUNT THE EXHIBITS AND GET THEM TOGETHER FOR THE JURY.

25 SOLICITOR PASCOE: I'D LIKE TO

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1 INQUIRE ABOUT ONE OF THE JURORS, YOUR HONOR, I DON'T
2 KNOW IF YOU NOTICED IT, BUT SHE SLEPT THROUGH AT LEAST
3 HALF OF YOUR JURY CHARGE. I ACTUALLY HAD TO MOTION TO
4 ONE OF THE BAILIFFS TO WAKE HER UP. I KNOW SHE SLEPT
5 THROUGH BOTH CLOSING ARGUMENTS. IT DIDN'T INSULT ME
6 THAT SHE SLEPT THROUGH MINE, BECAUSE I SAW SHE SLEPT
7 THROUGH MR. WALTERS', TOO, BUT WHEN SHE WAS SLEEPING
8 THROUGH THE JURY CHARGES I HAD A LOT OF CONCERN FOR
9 THAT. AND YOU COULD ALWAYS TELL WHEN SHE WOULD WAKE UP,
10 WHEN THE BAILIFF WOULD WAKE HER UP SHE WOULD SNAP TO.
11 I'VE GOT SOME CONCERNS ABOUT HER BEING ON THIS JURY.

12 MR. WALTERS: YOUR HONOR, I NOTICED
13 THE LADY ALSO, BUT I DON'T BELIEVE SHE SLEPT DURING MY
14 CLOSING OR YOUR CLOSING. HER GLASSES, I KEPT LOOKING
15 FOR HER EYES, AND WHAT SHE WOULD DO IS BLINK EVERY NOW
16 AND THEN, BUT HER GLASSES MAKE HER SEEM AS IF SHE'S SORT
17 OF MUFFLED, BUT SHE WAS PAYING ATTENTION.

18 SOLICITOR PASCOE: SHE WAS SNORING.
19 I MEAN, AND THE JUROR NEXT TO HER EVEN HAD TO WAKE HER
20 UP. AND THEN, AS I SAID, I MOTIONED TO THE BAILIFF
21 DURING YOUR JURY CHARGES, AND SHE HAD TO GO OVER AND
22 WAKE HER UP -- YOU CAN INQUIRE WITH THE BAILIFF IF YOU'D
23 LIKE, BUT ---

24 THE COURT: SHE APPEARED TO ME THAT
25 SHE WAS PROBABLY ASLEEP, BUT I DON'T KNOW, BECAUSE

1 SOMETIME PEOPLE CAN PUT THEIR HEAD DOWN AND YOU CAN'T
2 TELL.

3 MADAM BAILIFF, DO YOU THINK SHE WAS
4 ACTUALLY ASLEEP?

5 BAILIFF: I THINK SHE WAS ASLEEP WHEN
6 I TOUCHED HER.

7 SOLICITOR PASCOE: THERE'S NO
8 QUESTION, SHE JUMPED ABOUT THREE -- ALMOST THREE FEET
9 WHEN SHE TOUCHED HER.

10 MR. WALTERS: YOUR HONOR, EACH ONE
11 OF THOSE JURORS NODDED OFF A LITTLE BIT DURING OUR
12 CLOSINGS.

13 SOLICITOR PASCOE: THAT WAS AN
14 EXTREMELY ATTENTIVE JURY. THAT'S ONE THING I PAID --
15 AND ESPECIALLY DURING YOUR CHARGES, NONE OF THEM NODDED
16 OFF THAT I SAW, BUT THAT ONE WASN'T NODDING OFF, SHE WAS
17 ASLEEP.

18 THE COURT: WELL, DO YOU HAVE A
19 MOTION?

20 SOLICITOR PASCOE: I'D ASK THAT SHE
21 BE TAKEN OFF THIS JURY BECAUSE SHE SLEPT, NOT JUST IN
22 SOME OF THE CLOSINGS, BUT MOST IMPORTANTLY, IN YOUR JURY
23 CHARGE, WE ACTUALLY HAD TO GET A BAILIFF TO WAKE HER UP.
24 AND WE DO HAVE ONE ALTERNATE, AND I'D ASK THAT -- THAT
25 WAS SELECTED BY BOTH THE STATE AND THE DEFENSE. I'D ASK

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1 THAT SHE BE REPLACED BY THE ALTERNATE.

2 MR. WALTERS: MAY IT PLEASE THE
3 COURT.

4 THE COURT: YES, SIR.

5 MR. WALTERS: YOUR HONOR, EACH ONE
6 OF THOSE JURORS UP THERE NODDED OFF DURING OUR CLOSINGS.
7 AND OF COURSE, WE WERE LONG WINDED, AND WE MAKE
8 ARGUMENTS, AND IT'S OBVIOUS THAT PEOPLE WERE DRIFTING
9 OFF DURING OUR CLOSINGS. THIS LADY, SHE'S JUST THE SAME
10 AS ANYONE ELSE UP THERE, THE ONLY PROBLEM WAS, THERE
11 WASN'T A BAILIFF TO NUDGE SOMEONE AT THE BACK, OR
12 SOMEONE OVER THERE. EACH ONE OF THOSE INDIVIDUALS --
13 AND EVEN DURING YOUR CHARGE THERE WERE INDIVIDUALS THAT
14 WERE SIMPLY DOING THIS OVER AND OVER AGAIN. IT'S A
15 TEDIOUS PROCESS SERVING ON A JURY.

16 THE COURT: WELL, I DIDN'T NOTICE
17 ANOTHER ONE, I MEAN, I LOOK AT THAT JURY WHEN I CHARGE,
18 I LOOK AT ALL THIRTEEN OF THEM. AND I -- I MEAN, I
19 SCANNED THAT JURY, AND HONESTLY, I DID NOT NOTICE
20 ANOTHER JURY NOD, DID YOU?

21 SOLICITOR PASCOE: AND NEITHER DID
22 I. I WAS LOOKING AT ALL OF THEM, TOO, TO MAKE SURE.
23 AND SHE ---

24 THE COURT: I AM VERY RELUCTANT TO
25 REMOVE A JUROR, BUT THIS LADY WAS SOUND ASLEEP.

1 MR. WALTERS: COULD WE VOIR DIRE THE
2 WITNESS, I MEAN, THE JUROR?

3 SOLICITOR PASCOE: I DON'T THINK
4 THAT'S APPROPRIATE.

5 MR. WALTERS: YOUR HONOR, ---

6 THE COURT: I DON'T THINK I NEED TO
7 VOIR DIRE HER. IF SHE DIDN'T HEAR WHAT WAS SAID HOW CAN
8 SHE FOLLOW MY INSTRUCTIONS?

9 MR. WALTERS: YOUR HONOR, I BELIEVE
10 BECAUSE OF HER GLASSES THAT WERE EXTREMELY THICK, AND
11 SHE WAS BENT OVER, I LOOKED AT HER, EVERY NOW AND THEN
12 SHE WAS BLINKING, I SAID, WELL, YOU KNOW, EVIDENTLY,
13 BECAUSE SHE NODDED HER HEAD OVER THAT WAY, THE GLARE,
14 ITSELF, CAUSED THAT. IT GIVES THE APPEARANCE OF SOMEONE
15 ---

16 THE COURT: WELL, THE BAILIFF WAS
17 SITTING FIVE FEET FROM HER, LOOKING STRAIGHT AT HER, I
18 MEAN, FACING HER, AND THE BAILIFF IS CONVINCED THAT SHE
19 WAS ASLEEP WHEN SHE WENT OVER THERE AND TOUCHED HER. AND
20 I DID NOTICE THAT SHE FLINCHED WHEN THE BAILIFF TOUCHED
21 HER. SO, I'M GOING TO -- I'M GOING TO GRANT THE MOTION.
22 I THINK THAT SHE DID NOT LISTEN, SHE WAS SOUND ASLEEP,
23 SHE COULD NOT HAVE HEARD MY INSTRUCTIONS, OR A GOOD
24 PORTION OF MY INSTRUCTIONS. AND OVER YOUR OBJECTIONS,
25 MR. WALTERS, I'M GOING TO GRANT THE MOTION, AND I'M

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1 GOING TO SEAT THE ALTERNATE IN THIS CASE.

2 SO, I DON'T KNOW HER NAME -- CAN
3 SOMEBODY TELL ME HER NAME?

4 SOLICITOR SCOTT: I BELIEVE IT'S
5 GRACIE MCKOY, NUMBER EIGHTY-THREE. SHE WAS BORN IN
6 NINETEEN THIRTY-ONE, SHE APPEARED TO BE THE OLDEST.

7 THE COURT: YOU WILL RECOGNIZE HER,
8 MADAM BAILIFF?

9 BAILIFF: UH HUH.

10 THE COURT: ASK HER TO STEP OUT HERE
11 JUST A MINUTE, PLEASE.

12 BAILIFF: OKAY.

13 SOLICITOR SCOTT: SHE'S THE ONLY ONE
14 WITH GLASSES, A BLACK FEMALE WITH GLASSES.
15 (Whereupon, Juror McKoy
16 enters the courtroom.)

17 THE COURT: MA'AM, DURING THE
18 CLOSING ARGUMENTS AND MY CHARGE ON THE LAW I NOTICE YOU
19 WERE HAVING A HARD TIME STAYING AWAKE. AND I KNOW THAT
20 HAPPENS TO ALL OF US SOMETIME.

21 JUROR MCKOY: YEAH.

22 THE COURT: AND SO, I'M GOING TO
23 EXCUSE YOU FROM SERVING ON THIS JURY.

24 JUROR MCKOY: OKAY.

25 THE COURT: I DON'T MEAN ANY OFFENSE

1 AT ALL, AND LIKE I SAY, I KNOW WE ALL HAVE PROBLEMS AND
2 DIFFICULTIES ---

3 JUROR MCKOY: WELL, WHEN YOU'RE
4 SLEEPY YOU CAN'T HEAR WHAT'S SAID, I CAN UNDERSTAND
5 THAT. BUT WILL HE BE TAKING ME BACK HOME, RIGHT?

6 THE COURT: DID SOMEONE BRING YOU?

7 JUROR MCKOY: YEAH, THE SHERIFF
8 BROUGHT ME.

9 THE COURT: YES, MA'AM. BUT I DON'T
10 WANT YOU TO GO BACK IN THAT JURY ROOM.

11 JUROR MCKOY: OKAY.

12 THE COURT: YOU DON'T HAVE A HAT OR
13 SOMETHING BACK THERE, DO YOU?

14 JUROR MCKOY: YEAH.

15 BAILIFF: I'VE GOT HER THINGS RIGHT
16 THERE AT THE END.

17 JUROR MCKOY: AND MY POCKETBOOK.
18 WHEN THEY FINISH, I'M TALKING ABOUT WHEN I GO BACK HOME,
19 AFTER THIS, WHEN I GO HOME, WILL THE SAME GUY BE TAKING
20 US HOME?

21 THE COURT: I DON'T KNOW.

22 DEPUTY STROMAN: YES, SIR.

23 THE COURT: YES, SERGEANT STROMAN
24 SAYS, YES, THE SAME MAN, HE'LL BE TAKING YOU BACK HOME.

25 JUROR MCKOY: OKAY. ABOUT WHAT TIME

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1 WILL THEY BE LEAVING HERE, THEN?

2 THE COURT: WELL, WHEN CAN YOU TAKE
3 HER? HOW SOON CAN YOU TAKE HER?

4 DEPUTY STROMAN: AS SOON AS WE GET
5 THROUGH.

6 THE COURT: AS SOON AS WE GET
7 THROUGH WITH THE TRIAL?

8 DEPUTY STROMAN: NO, SIR, AS SOON AS
9 WE GET THROUGH HERE.

10 THE COURT: SO, SHE CAN -- YOU'LL BE
11 TAKING HER VERY SHORTLY?

12 DEPUTY STROMAN: YES, SIR.

13 THE COURT: HE'LL BE TAKING YOU VERY
14 QUICK.

15 JUROR MCKOY: SO, OKAY, I CAN WAIT
16 ACROSS THE STREET TO THE COURT HOUSE, INSTEAD OF WAITING
17 OUTSIDE, OR CAN I WAIT OUTSIDE?

18 BAILIFF: SHE WAIT OUT THERE, CAN'T
19 SHE?

20 THE COURT: ALRIGHT, DO YOU SEE MR.
21 STROMAN BACK THERE?

22 JUROR MCKOY: UH HUH.

23 THE COURT: YOU GO BACK THAT WAY.
24 LET HER GET YOUR PURSE FOR YOU.

25 JUROR MCKOY: OKAY.

1 THE COURT: AND JUST STAY RIGHT
2 THERE UNTIL SHE GETS IT, AND BE SURE THAT -- MADAM
3 JUROR, MS. MCKOY, JUST WAIT RIGHT OUT HERE AND LET HER
4 GET THEM. IF SHE DOESN'T GET THEM WE'LL MAKE
5 ARRANGEMENTS. NOW, YOU NEED TO CALL THAT CALL IN NUMBER
6 AFTER SIX O'CLOCK. I DON'T KNOW IF YOU'LL HAVE TO COME
7 BACK TOMORROW OR NOT.

8 JUROR MCKOY: OKAY.

9 THE COURT: ALRIGHT, THANK YOU,
10 MA'AM.

11 SERGEANT STROMAN, IF YOU WILL TAKE
12 CARE OF HER, PLEASE.

13 ALRIGHT, I NEED YOU TO BRING THE --
14 I THINK I NEED TO BRING THE WHOLE JURY, BUT I NEED TO --
15 WELL, BRING THE ALTERNATE AND THE FOREPERSON.
16 (Whereupon, the alternate
17 and the foreperson enter
18 the courtroom.)

19 THE COURT: MR. POUND, I'M GOING TO
20 SEAT YOU ON THIS JURY, AND SO YOU ARE NO LONGER THE
21 ALTERNATE.

22 JUROR POUND: OKAY.

23 THE COURT: AND I WANTED TO TELL YOU
24 THAT, MR. KENNERLY. I EXCUSED MS. MCKOY. YOU DON'T
25 NEED TO WORRY ABOUT THAT AT ALL, THAT'S MY BUSINESS.

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1 DON'T EVEN TALK ABOUT THAT BACK THERE. BUT I'M SEATING
2 MR. POUND, SO HE IS ON THE JURY NOW.

3 JUROR KENNERLY: THANK YOU, SIR.

4 THE COURT: AND THEY ARE FIXING TO
5 BRING IN THE EXHIBITS RIGHT AWAY, AND THE INDICTMENT.
6 AS SOON AS THEY DO THAT, THEN YOU CAN BEGIN YOUR
7 DELIBERATIONS.

8 JUROR KENNERLY: THANK YOU, JUDGE.

9 THE COURT: THANK YOU, SIR.

10 (Whereupon, the Foreperson
11 and Juror Pound retire to
12 the jury room)

13 THE COURT: ALRIGHT, MR. WALTERS, I
14 NOTE YOUR EXCEPTION TO ME EXCUSING MS. MCKOY AND
15 SUBSTITUTING THE ALTERNATE, AND YOU ARE PROTECTED ON THE
16 RECORD IN THAT REGARD.

17 MR. WALTERS: THANK YOU, YOUR HONOR.

18 THE COURT: NOW, I NEED, WE NEED TO
19 PUT ON THE RECORD YOUR OBJECTION THAT WAS MADE DURING
20 THE CLOSING ARGUMENT. COUNSEL MADE SOME REFERENCE TO A
21 TAPE.

22 MR. WALTERS: IT'S A VIOLATION OF MY
23 CLIENT'S FIFTH AMENDMENT RIGHT AND SIXTH AMENDMENT RIGHT
24 TO INFER THAT WE AGREED TO SOMETHING THAT WAS SAID
25 WITHIN THIS TRIAL. AND THERE'S A DISAGREEMENT ABOUT

1 WHAT THE TESTIMONY WAS. THE POINT IS THAT MY CLIENT
2 DOESN'T HAVE TO AGREE OR DENY ANYTHING. UNDER THE FIFTH
3 AMENDMENT HE HAS THE RIGHT TO SIMPLY SAY NOTHING. AND
4 THAT WAS WHAT WAS DONE IN THE CLOSING ARGUMENT. THEY
5 HAD TO TAPE, THEY AGREED TO GIVE -- THEY HAD THE TAPE,
6 THEY WERE AWARE THEY HAD THE TAPE. ANY INFERENCE, ANY
7 FACT THAT'S PUT BEFORE THIS COURT IS IN DISPUTE AND WE
8 DO NOT HAVE TO COME FORWARD AND REFUTE ANYTHING.

9 THE COURT: I UNDERSTAND THAT. TELL
10 ME WHAT IT IS PRECISELY THAT YOU THINK HE SAID THAT WAS
11 A VIOLATION OF YOUR CLIENT'S RIGHTS. NOW, I REMEMBER
12 THE TESTIMONY ABOUT THERE BEING A TAPE.

13 MR. WALTERS: THE TESTIMONY WAS
14 THERE WAS A TAPE.

15 THE COURT: AND I ALSO REMEMBER THAT
16 THE SOLICITOR ASKED HIM IF YOU KNEW IT, OR IF YOU HAD A
17 COPY. NOW, AM I WRONG ABOUT THAT?

18 MR. WALTERS: NO. THE ACCUSATION
19 WAS THAT WE AGREED THAT WE HAD THIS TAPE, WE HAD IT ALL
20 ALONG. RIVERS WAS ON THE STAND AND WE INQUIRED AS TO
21 THIS TAPE, AND OF COURSE, THE SOLICITOR ASSERTED THAT
22 THIS COPY OF THE TAPE, DID YOU GIVE IT TO THEM?

23 THE COURT: AND DIDN'T HE SAY, YES.?

24 MR. WALTERS: I'M NOT SURE WHAT
25 DETECTIVE RIVERS SAID. DETECTIVE RIVERS ---

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1 THE COURT: MY RECOLLECTION IS THAT
2 HE SAID, YES. AND I THINK THAT -- I DON'T SEE HOW HIS
3 COMMENTS DURING THE CLOSING WOULD AFFECT HIS RIGHT TO
4 REMAIN SILENT, OR AFFECT THE BURDEN OF THE STATE, I JUST
5 CAN'T MAKE THAT CONNECTION. I MEAN, HE DIDN'T SAY
6 ANYTHING OTHER THAN THAT THERE WAS A TAPE. AND THERE
7 WAS, OF COURSE, AN AWFUL LOT TO DO MADE ABOUT WHAT KIND
8 OF STATEMENT THAT SHE MADE AND UNDER WHAT CIRCUMSTANCES
9 SHE MADE THAT TAPE. AND SO, I THINK THAT'S THE REASON
10 THE QUESTION WAS ASKED. I THINK IT WAS A PROPER
11 QUESTION, IT WAS NOT OBJECTED TO, AT ANY RATE, AND THE
12 REFERENCE THAT HE MADE TO THAT, I DON'T FIND TO BE
13 IMPROPER. SO, I NOTE YOUR EXCEPTION ON THAT ISSUE, BUT
14 I OVERRULE THAT ALSO.

15 MR. WALTERS: THANK YOU, YOUR HONOR.

16 THE COURT: ANYTHING ELSE FROM THE
17 STATE?

18 SOLICITOR PASCOE: NO, YOUR HONOR.

19 THE COURT: OR FROM THE DEFENSE?

20 MR. WALTERS: NO, SIR, YOUR HONOR.

21 THE COURT: ALRIGHT, PLEASE GATHER
22 UP THE EXHIBITS AND DELIVER THEM TO THE JURY AND TELL
23 THEM TO BEGIN THEIR DELIBERATIONS, PLEASE.

24 WE'LL BE AT EASE IN THIS CASE UNTIL
25 WE HEAR FROM THE JURY.

1 (Whereupon, the jury begins
2 their deliberations
3 at 11:20 a.m.)

4 (Recess)

5 (Whereupon, the jury sends in a
6 question at 12:30 p.m., which
7 the Court discussed off the record
8 with attorneys, and wrote the Court's
9 answer to the the jury's question,
10 and returned question and answer
11 to the jury.)

12 (Court's Exhibit -inadvertently
13 marked as One - marked and filed.)

14 (Recess)

15 THE COURT: IS THE STATE READY?

16 SOLICITOR PASCOE: YES, YOUR HONOR.

17 THE COURT: IS THE DEFENSE READY?

18 MR. WALTERS: YES, SIR, YOUR HONOR.

19 THE COURT: NOW, LADIES AND
20 GENTLEMEN, I KNOW THIS IS A DIFFICULT CASE FOR BOTH
21 FAMILIES INVOLVED, AND ALL THE FRIENDS OF BOTH THE
22 VICTIM AND THE DEFENDANT IN THIS CASE, BUT WHEN THIS
23 VERDICT IS ANNOUNCED WE'RE NOT GOING TO HAVE ANY SHOWING
24 OF EMOTION IN THIS COURTROOM. IF WE DO, SOMEBODY IS
25 GOING TO SPEND THE NIGHT IN JAIL, THAT'S A PROMISE,

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1 THAT'S NOT A THREAT. WE JUST DON'T ALLOW THAT TYPE OF
2 EMOTIONAL DEMONSTRATION IN THIS COURTROOM UPON THE JURY
3 RETURNING THEIR VERDICT. NOW, IF YOU THINK YOU WILL NOT
4 BE ABLE TO CONTROL YOURSELF WHEN THE VERDICT IS
5 ANNOUNCED I WOULD ASK YOU TO STEP OUTSIDE IN THE HALL.
6 IT WILL ONLY BE ABOUT THIRTY SECONDS DELAY IN YOU
7 HEARING WHAT THE VERDICT IS IF YOU'RE IN THE HALL THAN
8 IF YOU'RE IN THE COURTROOM. SO, A WORD TO THE WISE,
9 PLEASE REMEMBER THAT.

10 ALRIGHT, BRING THE JURY IN, PLEASE.
11 (Whereupon, the jury returns
12 with a verdict at 2:35 p.m.)

13 THE COURT: MR. CLERK.

14 CLERK: HAVE YOU REACHED A VERDICT?

15 JURY FOREMAN: WE HAVE.

16 CLERK: WOULD YOU PASS IT TO THE
17 BAILIFF WITHOUT PUBLISHING IT.

18 THE COURT: THANK YOU, MA'AM.

19 (Whereupon, the Court
20 examines the verdict.)

21 THE COURT: ALRIGHT, MR. CLERK, YOU
22 MAY PUBLISH THE VERDICT.

23 VERDICT OF THE JURY

24 CLERK: I CALL THE COURT'S ATTENTION
25 TO INDICTMENT 2003-GS-38-0887, THE STATE OF SOUTH

1 CAROLINA VERSUS LAVON GILBERT MINTZ, THE VERDICT OF THE
2 JURY IS GUILTY. IT'S SIGNED THIS DAY BY CARL KENNERLY,
3 FOUR-TWENTY-TWO THOUSAND AND FIVE.

4 THE COURT: MR. FOREMAN, IS THAT THE
5 VERDICT OF THE YOU AND THE ENTIRE JURY?

6 JURY FOREMAN: IT IS, YOUR HONOR.

7 THE COURT: THANK YOU VERY MUCH.
8 IS THERE ANY REQUEST TO POLL THE
9 JURY?

10 MR. WALTERS: NO, SIR, YOUR HONOR.

11 THE COURT: ALRIGHT, LADIES AND
12 GENTLEMEN, THAT CONCLUDES YOUR SERVICE IN THIS CASE.
13 NOW YOU CAN TALK ABOUT IT ALL YOU WANT TO, BUT YOU DON'T
14 HAVE TO TALK ABOUT IT, AND IF SOMEONE INSISTS ON TRYING
15 TO GET YOU TO TALK ABOUT IT AFTER YOU MAKE IT CLEAR TO
16 THEM THAT YOU DON'T WANT TO DISCUSS IT, PLEASE REPORT
17 THAT INDIVIDUAL'S NAME BACK TO THE CLERK OF COURT AND WE
18 WILL DEAL WITH THAT PERSON. YOU ARE NOT SUBJECT TO ANY
19 CRITICISM, HAVING REACHED A VERDICT IN A CASE SUCH AS
20 THIS.

21 DO WE NEED THEM BACK IN THE MORNING,
22 OR WILL THEY NEED TO CALL BACK AFTER SIX?

23 CLERK: YES, SIR.

24 THE COURT: ALRIGHT. MOTIONS?

25 MR. WALTERS: YOUR HONOR, WE WOULD

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1 MAKE A MOTION IN ARREST OF THE JUDGEMENT. OF COURSE, IN
2 THIS PARTICULAR CASE WE BELIEVE THE GREATER WEIGHT OF
3 THE EVIDENCE IS CONTRARY TO THE VERDICT.

4 THE COURT: WELL, I THINK IT WAS A
5 JURY QUESTION, I MEAN, WE HAD TWO EYE WITNESSES THAT
6 TESTIFIED THEY SAW THE DEFENDANT SHOOT THE PLAINTIFF.
7 EACH OF THOSE WITNESSES SAID THERE WAS NO QUESTION OF
8 IDENTIFICATION, THAT THEY KNEW THE DEFENDANT PRIOR TO
9 THIS OCCASION. SO, I THINK IT WAS A JURY QUESTION, AND
10 I WOULD DENY YOUR MOTION.

11 MR. WALTERS: THANK YOU, YOUR HONOR.

12 THE COURT: ANYTHING ELSE FROM THE
13 DEFENSE?

14 MR. WALTERS: NO, SIR, YOUR HONOR.

15 THE COURT: ALRIGHT, SOLICITOR,
16 ANYTHING ELSE FROM THE STATE?

17 SOLICITOR PASCOE: NOTHING, YOUR
18 HONOR. WE'RE READY FOR SENTENCING.

19 THE COURT: ALRIGHT. DO YOU WANT TO
20 BE HEARD?

21 SOLICITOR PASCOE: CAN I ASK THE
22 VICTIM IF THEY WANT TO ---

23 THE COURT: YES, SIR.

24 SOLICITOR PASCOE: THANK YOU, I'M
25 SORRY.

1 THE COURT: I'LL BE GLAD TO HEAR
2 FROM ANYBODY.

3 SOLICITOR PASCOE: MAY IT PLEASE THE
4 COURT.

5 THE COURT: YES, SIR.

6 SOLICITOR PASCOE: I'VE TALKED TO
7 MS. SINGLETON. SHE JUST WANTED ME TO -- SHE'S WAY TOO
8 EMOTIONAL, AS YOU SAW, SHE HAD TO LEAVE THE COURTROOM
9 BEFORE THE VERDICT. SHE'S BEEN EMOTIONAL THE ENTIRE
10 TRIAL, SO SHE CAN'T SPEAK. BUT SHE JUST WANTED ME TO
11 RELAY TO YOU, OBVIOUSLY, HOW MUCH SHE LOVED HER SON. IT
12 WAS HER OLDEST SON. SHE'S HAD A HARD TIME LIVING WITH
13 THIS. THE DAY I TOOK OFFICE SHE WAS IN CONTACT WITH MY
14 OFFICE BEGGING ME TO CALL THIS CASE FOR TRIAL, AND
15 ASKING -- FOR TWO AND A HALF YEARS SHE'S BEEN ASKING FOR
16 SOME CLOSURE AND TO HAVE THIS CASE CALLED. SHE DID ALSO
17 ASK ME TO THANK THIS COURT FOR TAKING THE TIME TO TRY
18 THIS CASE, AND FOR YOUR PATIENCE.

19 AND SHE DID ASK ME TO, IF YOU COULD,
20 --- I'VE NEVER ASKED THIS COURT, AND I JUST TOLD HER
21 THAT, SHE ASKED ME TO ASK FOR A SPECIFIC SENTENCE. I
22 DON'T EVER ASK YOUR HONOR FOR A SPECIFIC SENTENCE, BUT
23 I WOULD ASK THAT YOU MAKE AN EXAMPLE OUT OF HIM. THIS
24 IS SOMEONE WHO'S BEEN GETTING AWAY WITH CRIME SINCE THE
25 DAY HE BECAME SEVENTEEN YEARS OLD. HE'S ONE OF THE

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1 BIGGEST MENACES THAT THIS COUNTY HAS EVER HAD. AND I'VE
2 GOT HIS RAP SHEET HERE, ALL NINE CONVICTIONS AND NOL
3 PROSES WERE HEINOUS, VIOLENT CRIMES SINCE TWO THOUSAND
4 AND ONE, WHEN HE WAS SEVENTEEN. HIS ONLY CONVICTIONS,
5 YOUR HONOR, ARE A SIMPLE ASSAULT FROM TWO THOUSAND, AND
6 OF COURSE, THE THROWING BODILY FLUIDS ON A CORRECTIONAL
7 EMPLOYEE IN TWO THOUSAND AND FOUR WHILE HE WAS IN JAIL.
8 AND THERE WAS A BIG DEAL MADE IN TRIAL ABOUT WHY HE'S
9 BEEN IN JAIL SO LONG. IT WASN'T JUST FOR THIS MURDER
10 CHARGE. JUST WITHIN A WEEK OF THIS MURDER HE'S ALLEGED
11 TO HAVE SHOT ANOTHER INDIVIDUAL AT ANOTHER NIGHT CLUB,
12 AND BEAT ANOTHER MAN ALMOST TO DEATH WITH HIS FEET. SO,
13 I'D ASK THAT YOU MAKE AN EXAMPLE OUT OF HIM.

14 THANK YOU.

15 THE COURT: ALRIGHT, SIR.

16 MR. WALTERS, I'LL BE GLAD TO HEAR
17 FROM YOU AND ANYBODY WHO WANTS TO SPEAK ON BEHALF OF THE
18 DEFENDANT.

19 I NEED A SENTENCE SHEET, TOO,
20 SOLICITOR.

21 SOLICITOR PASCOE: I CAN PASS THIS
22 UP TO YOU.

23 THE COURT: YES, SIR.

24 MR. WALTERS: MAY IT PLEASE THE
25 COURT.

1 THE COURT: LET ME TELL YOU, MR.
2 WALTERS, I THINK YOU DID A REAL GOOD JOB IN DEFENSE OF
3 YOUR CLIENT IN THIS CASE. UNFORTUNATELY, YOU DID NOT
4 HAVE A LOT TO WORK WITH. BUT I THINK YOU TOOK WHAT
5 LITTLE BIT YOU HAD AND YOU MADE AS MUCH WITH IT AS YOU
6 POSSIBLY COULD HAVE. I CANNOT CONCEIVE OF HOW ANY
7 DEFENSE LAWYER COULD HAVE DONE ANYMORE FOR YOUR CLIENT
8 THAN YOU ATTEMPTED TO DO. UNFORTUNATELY, THE EVIDENCE
9 AGAINST HIM WAS JUST ABSOLUTELY OVERWHELMING. I MEAN,
10 WHEN YOU HAVE TWO PEOPLE WHO KNEW THE DEFENDANT, I MEAN,
11 IN ALMOST -- IN A GREAT MAJORITY OF THE CASES THERE'S A
12 QUESTION OF IDENTIFICATION. IN THIS CASE THERE WAS NO
13 QUESTION OF IDENTIFICATION, THE TWO WITNESSES KNEW HIM
14 BEFORE IT HAPPENED. AND WHEN YOU HAVE TWO EYE WITNESSES
15 WHO WERE APPARENTLY FRIENDS OF BOTH, EVEN THOUGH CLOSER
16 FRIENDS TO THE VICTIM, STAND UP IN COURT AND TESTIFY, I
17 SAW THE DEFENDANT SHOOT HIM, THAT'S PRETTY HARD TO
18 OVERCOME. BUT I WANT TO COMMEND YOU, I THINK YOU DID AN
19 EXCELLENT JOB IN DEFENSE OF YOUR CLIENT.

20 NOW, I'LL BE GLAD TO HEAR FROM YOU
21 AND ANYONE ELSE WHO WANTS TO BE HEARD.

22 MR. WALTERS: MAY IT PLEASE THE
23 COURT, YOUR HONOR, MY CLIENT IS TWENTY-TWO YEARS OLD. HE
24 ATTENDED SCHOOL UP UNTIL THE TWELFTH GRADE. HE'S A
25 MEMBER OF REFUGE BAPTIST CHURCH. THE PRIOR RECORD AS

1 STATED BY THE SOLICITOR WITH REGARDS TO THROWING BODILY
2 FLUIDS IS CORRECT.

3 YOUR HONOR, THIS IS AN UNFORTUNATE
4 EVENT. HE'S A VERY YOUNG MAN. I BELIEVE THERE IS STILL
5 SOME GOOD IN LAVON MINTZ. AND IN THIS PARTICULAR CASE,
6 HE'S TWENTY-TWO YEARS OLD, HE'S AT THE STARTING GATE OF
7 BECOMING A MAN AND GOING INTO LIFE. AND IN THIS
8 PARTICULAR CASE AN UNFORTUNATE EVENT HAS OCCURRED.

9 YOUR HONOR, WE WOULD ASK THAT THE
10 COURT CONSIDER A REASONABLE SENTENCE UNDER THE
11 CIRCUMSTANCES. THE SOLICITOR HAS ALLUDED TO MANY
12 ALLEGATIONS THAT HAVE BEEN MADE AGAINST MY CLIENT.
13 HOWEVER, MY CLIENT, HIS PRIOR RECORD SHOWS THAT HE WAS
14 CONVICTED OF THROWING BODILY FLUIDS. WHAT HAPPENED WAS,
15 HE'S BEEN IN JAIL FOR THREE YEARS, A GUARD PUSHED HIM,
16 AND HE SPIT ON THE GUARD. OTHER THAN THAT, YOUR HONOR,
17 THERE'S SOME ALLEGATIONS BEFORE THE COURT; HOWEVER, WE
18 DO HAVE A PROBLEM WITH THE EVENT THAT YOUR HONOR HAS TO
19 SENTENCE MY CLIENT ON AT THIS TIME.

20 I WOULD ALSO PUT ON THE RECORD THAT
21 THERE WAS AN OFFER MADE BY THE SOLICITOR WITH REGARDS TO
22 THIS CASE THAT MY CLIENT DECLINED TO ACCEPT. AND I
23 BELIEVE WE CAN GO INTO THE SPECIFICS OF THAT, THERE WAS
24 AN OFFER OF TWENTY, AND OF COURSE, THAT WAS CONTINGENT
25 UPON THE SOLICITOR TALKING TO THE FAMILY, SO HE DID NOT

1 -- I DO NOT WANT TO REPRESENT TO THIS COURT THAT HE MADE
2 THAT REPRESENTATION TO ME AND IT WAS SOLID, HE SAID HE
3 HAD TO TALK TO THE FAMILY, AND OF COURSE, I HAD TO TALK
4 TO MY CLIENT. MY CLIENT DECLINED TO ENTERTAIN THAT TYPE
5 OF NEGOTIATION, SO WE ENDED THAT CONVERSATION. BUT
6 WE'RE BEFORE THE COURT NOW, AND OF COURSE, YOU HAVE AN
7 OBLIGATION TO EVALUATE WHAT WOULD BE APPROPRIATE UNDER
8 THE CIRCUMSTANCES.

9 THERE'S STILL SOME GOOD IN LAVON
10 MINTZ, AND YOUR HONOR, UNDER THE CIRCUMSTANCES, I'M SURE
11 A SHREW APPELLATE LAWYER WILL GO THROUGH THIS CASE, AND
12 IF HE FINDS A MISTAKE THAT I MADE HE'LL FILE A PCR.
13 THERE'S STILL HOPE FOR HIM WITH REGARDS TO THIS MATTER.
14 IF THE JURY OR, OF COURSE, THERE WAS A MISTAKE MADE BY
15 ME WITH REGARDS TO AN ERROR OF LAW OR SOMETHING THAT
16 I'VE DONE, HE HAS THAT OPTION ALSO. HOWEVER, IF THOSE
17 OPTIONS DON'T PROVE FRUITFUL, OF COURSE, HE'S LEFT WITH
18 THE SENTENCE THAT YOUR HONOR WOULD RENDER AT THIS TIME.

19 HIS PARENTS ARE BEFORE THE COURT,
20 MR. AND MRS. MINTZ. HIS MOTHER IS A SCHOOL TEACHER HERE
21 IN THE COUNTY, HIS FATHER OWNS HIS OWN BUSINESS, HE'S
22 SELF-EMPLOYED AS AN ELECTRICIAN. I THINK THEY'D LIKE TO
23 ADDRESS THE COURT ALSO.

24 THE COURT: I'LL BE GLAD TO HEAR
25 FROM YOU, YES, MA'AM, YOU NAME?

1 MARY MINTZ: MARY MINTZ.

2 THE COURT: ALRIGHT.

3 MARY MINTZ: YES, I'D JUST ASK THAT
4 YOU HAVE MERCY ON MY SON.

5 THE COURT: THANK YOU, MA'AM. I KNOW
6 THIS IS DIFFICULT FOR YOUR FAMILY, TOO.

7 MARY MINTZ: YES.

8 THE COURT: YES, SIR?

9 LAVON MINTZ, SENIOR: LAVON MINTZ,
10 SENIOR. WE JUST WANT YOU TO JUST HAVE AS MUCH MERCY ON
11 HIM AS YOU CAN. I THINK YOU DO KNOW THAT, YOU KNOW, YOU
12 EXPECT THAT. THERE HAVE BEEN SOME THINGS THAT HAVE
13 HAPPENED TO HIM EVEN WITH THE COURT SYSTEMS, OR WITH THE
14 LAW, AND NOTHING HAS BEEN DEALT WITH, AND IT HASN'T BEEN
15 DEALT WITH YET, AS FAR AS HIM BEING THE VICTIM, HIMSELF.
16 WE TALKED TO LAWYERS AND TALKED -- NOT LAWYER, WE TALKED
17 TO LAW ENFORCEMENT OFFICERS AND THEY TOLD US, WELL,
18 WE'RE WAITING ON THE DEFENDANT TO DO SOMETHING, TO
19 COMMIT A BIGGER CRIME BEFORE THEY DO ANYTHING ABOUT IT.
20 AND THEN, I GUESS THIS THING JUST KEPT ESCALATING. AND
21. EVEN WITH THIS CASE, IT HAD NEVER BEEN STATED THAT HE
22 WANTED IT TO BE ON RECORD THAT HE DID NOT DO IT, HE WAS
23 PICKED UP WRONGFULLY, AND IT WAS NEVER STATED THAT, YOU
24 KNOW. AND WE HAVE SOME, SOME -- WELL, I'M NOT A JUDGE
25 AND I'M NOT A LAWYER, BUT THERE HAS BEEN SOME EVIDENCE

1 THAT HAS BEEN BROUGHT INTO OUR HEARING WITHIN THESE
2 THREE YEARS THAT FOLKS KNEW WHO DID IT, AND THAT HE DID
3 NOT DO IT, AND KNOW FOR A FACT THAT HE DIDN'T DO IT, AND
4 IT HAS NOT BEEN INVESTIGATED, NO ONE DID THE CRIME
5 INVESTIGATION TO KNEW THAT, YOU KNOW. BUT THEN, WE
6 STILL CAME TO COURT WITH THIS, AND THE JURY, THEY HAVE
7 MADE THEIR DECISION, AND WE WON'T FIGHT THAT. WE WON'T
8 -- WE'RE NOT MAD WITH THE JURY, WE'RE NOT MAD WITH THE
9 STATE, AND WE'RE DEFINITELY NOT MAD WITH THE FAMILY,
10 MOST CERTAINLY NOT. AND I STILL SAY THAT, LIKE OUR
11 LAWYER HAS SAID, WE STILL HAVE AN OPPORTUNITY WITH THIS
12 CASE TO TURN IT AROUND. AND I THINK IT WILL BE TURNED
13 AROUND, YOU KNOW. AND I WANT THE RIGHT KILLER TO BE
14 CAUGHT FOR THE FAMILY. THEY HAVE BEEN STATING THAT
15 LAVON DID IT, BUT WE KNOW THAT HE DIDN'T DO IT, BUT HE
16 WAS PICKED UP. SO, WE WANT THE, WE WANT THE RIGHT MAN,
17 THE MAN WHO ACTUALLY DID IT TO COME BEFORE THIS COURT
18 AND BE CHARGED FOR THE THING, THE CRIME THAT HE HAS
19 DONE. I KNOW IT MAY TAKE SOME TIME BUT WE'RE GOING TO
20 PURSUE THAT. WE'RE NOT MAD WITH THE FAMILY BECAUSE MY
21 SON WAS BLAMED FOR IT, WE'RE DEFINITELY NOT MAD WITH THE
22 FAMILY, BUT I'M NOT REALLY PLEASED WITH THE VERDICT. I
23 WANT THE RIGHT PERSON TO BE CAUGHT, YOU KNOW. AND WE'RE
24 GOING TO DO WHATEVER WE CAN, WHATEVER WE HAVE TO DO TO
25 MAKE SURE THE RIGHT PERSON COMES BEFORE THIS COURT.

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1 THE COURT: WELL, THE EVIDENCE WAS
2 PRETTY STRONG AGAINST YOUR SON, ---

3 LAVON MINTZ, SENIOR: IT WAS, IT
4 WAS.

5 THE COURT: --- AND I'M SURE YOU
6 SHARED WITH LAW ENFORCEMENT EVERY -- ALL THE INFORMATION
7 YOU HAVE, AND WITH YOUR ATTORNEY AND THE SOLICITOR'S
8 OFFICE IN REGARDS TO SOMEBODY ELSE'S INVOLVEMENT, I'M
9 SURE.

10 LAVON MINTZ, SENIOR: NO, I DID NOT,
11 I DID NOT.

12 THE COURT: WELL, YOU'VE HAD SINCE
13 DECEMBER OF TWO THOUSAND AND TWO, YOUR SON WAS ON TRIAL,
14 YOU KNOW HE'S LOOKING AT A SENTENCE NO LESS THAN THIRTY
15 YEARS, AND UP TO LIFE IN PRISON AND YOU DIDN'T BOTHER TO
16 SHARE THAT INFORMATION WITH LAW ENFORCEMENT.

17 LAVON MINTZ, SENIOR: RIGHT. WE
18 WILL, THOUGH.

19 THE COURT: WELL, YOU WAITED A LONG
20 TIME TO DO THAT, IF YOU THOUGHT ANY CREDIBILITY ABOUT
21 THE INFORMATION AT ALL, I THINK YOU WOULD HAVE DONE IT
22 A LONG TIME BEFORE NOW.

23 LAVON MINTZ, SENIOR: WELL, DEALING
24 WITH THE LAW AND GOING TO THEM, IT'S A TOTALLY DIFFERENT
25 THING WHEN YOU'RE A PART OF THE LAW THAN YOU'RE JUST

1 BEING A CIVILIAN, THAT I FOUND OUT.

2 THE COURT: ANYTHING ELSE, MR.
3 WALTERS?

4 MR. WALTERS: NO, SIR, YOUR HONOR.

5 THE COURT: WELL, THERE'S NEVER ANY
6 JUSTIFICATION FOR MURDER, BUT OCCASIONALLY YOU SEE CASES
7 WHERE YOU CAN KIND OF UNDERSTAND WHAT HAPPENED. AND
8 SOMETIMES, YOU KNOW, THERE ARE CASES WHERE THERE'S AN
9 ALTERCATION AND SOMEBODY SHOT AND THEY SAY, SELF-
10 DEFENSE, AND THE JURY HAS TO MAKE THAT DETERMINATION,
11 WAS IT SELF-DEFENSE OR WAS IT NOT? THE LAW HAS SAID
12 THAT EVEN IN THAT CASE, IF THE JURY DECIDES IT WASN'T
13 SELF-DEFENSE, THE MINIMUM SENTENCE YOU CAN GET IS THIRTY
14 YEARS IN JAIL. AND THAT'S GOT TO BE SERVED DAY FOR DAY,
15 THERE'S NO PAROLE FOR THAT. BUT IN THIS CASE THERE'S
16 NOTHING TO JUSTIFY THIS. THIS MAN WAS GETTING IN HIS
17 CAR TO DRIVE AWAY, AND YOU SHOT HIM TWICE. I MEAN,
18 THAT'S JUST, THAT'S WHAT MAKES ORANGEBURG COUNTY STAND
19 OUT IN THE STATE OF SOUTH CAROLINA. I TRAVEL ALL OVER
20 THIS STATE, I'VE HAD COURT IN TWENTY-EIGHT OR TWENTY-
21 NINE COUNTIES, AND EVERYWHERE I GO, OH, YOU'RE FROM
22 ORANGEBURG, THAT'S THAT BAD COUNTY, THAT'S WHERE YOU
23 HAVE ALL THESE MURDERS AND ALL THESE ARMED ROBBERIES,
24 AND ALL THESE DRUGS CHARGES. AND THIS IS THE REASON,
25 THIS IS THE REASON, CASES LIKE THIS, A SENSELESS

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1 KILLING, FOR NOT REASON, NOTHING TO JUSTIFY THIS. THE
2 MAN WAS GETTING IN HIS CAR TO DRIVE OFF, HE COULDN'T
3 HAVE POSSIBLY BEEN ANY THREAT TO YOU.

4 SENTENCE OF THE COURT

5 INDICTMENT NUMBER 2003-38-887, THE
6 STATE OF SOUTH CAROLINA VERSUS LAVON GILBERT MINTZ, THE
7 CHARGE IS MURDER. THE VERDICT OF THE JURY HAS BEEN
8 GUILTY, A VERDICT WITH WHICH I CONCUR COMPLETELY.

9 THE SENTENCE OF THE COURT IS THAT
10 YOU BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS
11 FOR A PERIOD OF FIFTY YEARS.

12 GOOD LUCK TO YOU, SIR.

13 SOLICITOR PASCOE: THANK YOU, YOUR
14 HONOR.

15 MR. WALTERS: THANK YOU, YOUR HONOR.

1 CERTIFICATE

2 I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF
3 ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR
4 THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH
5 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
6 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL
7 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
8 CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF
9 GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA,
10 ON THE NINETEENTH AND TWENTIETH DAY OF APRIL, 2005.

11 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
12 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

13

14

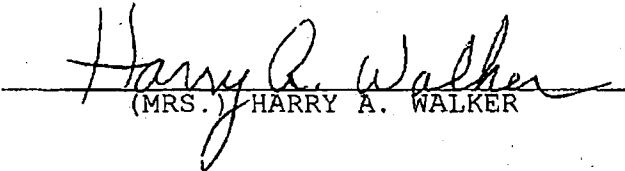
DATE: MARCH 6, 2006

15

16

17

18


(MRS.) HARRY A. WALKER

1 COUNTY: ORNAGEBURG DATE: APRIL 19, 2005
 2 Case No.: 03-GS-38-887
 3 VOIR DIRE
 4
 5 Judge: JAMES C. WILLIAMS, JR.
 6
 7 Pl./State: State/Pl's.Atty:
 8 STATE OF SOUTH CAROLINA DAVID PASCOE
 9 TOMMY SCOTT
 10
 11 Defendant: Defense Atty:
 12 LAVON GILBERT MINTZ GLEN WALTERS
 13
 14 Court Reporter: (Mrs.) Harry A. Walker
 15
 16 Juror Strikes:
 17 No. Name Sex Race Pl. Def. Accept
 18
 19 52 RODNEY GADSON M B X
 20
 21 112 DONALD SHULER M B X
 22
 23 23 PAMELA COMMINS HARRIS F W X
 24
 25 134 KAMARSH WHITE M B X
 26
 27 138 QUASHEMA WILLIAMS F B X
 28
 29 109 JENNIFER SALLEY F W X
 30
 31 110 ROBERT SALLEY M B X
 32
 33 114 CYNTHIA SMITH F B X
 34
 35 148 REBECCA JONES F W X
 36
 37 53 GLENDELL GAVIN F B X
 38
 39 83 GRACIE MCKOY F B X
 40
 41 6 HENRY BEHNKE M W X
 42
 43 135 LISA WHITE F B X
 44
 45 104 GRACE KNIGHT F U X
 46
 47 122 KIMBERLY TASTE F B X

1 COUNTY: ORNAGEBURG
 2 Case No.: 03-GS-38-887

DATE: APRIL 19, 2005

3 VOIR DIRE

4
 5 Judge: JAMES C. WILLIAMS, JR.

6
 7 Pl./State:
 8 STATE OF SOUTH CAROLINA

State/Pl's.Atty:
DAVID PASCOE
TOMMY SCOTT

10
 11 Defendant:
 12 LAVON GILBERT MINTZ

Defense Atty:
GLEN WALTERS

13
 14 Court Reporter: (Mrs.) Harry A. Walker

Terror		Strikes:				
No.	Name	Sex	Race	Pl.	Def.	Accept
19	74 CARL KENNERLY	M	B			X
21	121 DEBORAH SWENSSON	F	W		X	
23	11 FRANK BLACKWOOD	M	W			X
25	126 STEVE TRIPLETT	M	B	X		
27	4 KIM BARNES	F	B			X
29 ALTERNATE NO. 1						
31	33 TONYA DAWSON	F	W			X
33 ALTERNATE NO. 2						
35	12 RUSTON BOLAND	M	W		X	
37	91 HARMON MYERS	M	B		X	
39	99 DONALD POUND	M	W			X

FORM 5

STATE OF SOUTH CAROLINA)

County of ORANGEBURG)LAVON MINTZ #303362)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

05-CP 38-1023

APPLICATION FOR

POST-CONVICTION RELIEF

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 the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LIEBER CORRECTIONAL INSTITUTION, P.O. BOX 205 WC-259,
RIDGEVILLE, SOUTH CAROLINA, 29472
2. Name and location of Court which imposed sentence ORANGEBURG COUNTY/GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) AUNDREE GOODING
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2003-GS-38-0887 (murder)
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) APRIL 20, 2005 (50) Fifty-Years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty JURY TRIAL
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) COUNSEL DID NOT FILE AN APPEAL
- (b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL/DENIAL OF 6th Amendment

(b) 14th Amendment violation of Due-Process of Law

(c) UnConstitutional sentence structure

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) SEE MEMORANDUM OF LAW (attached)

(b) TRIAL COUNSEL FAILED TO FILE AN APPEAL

(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)? N/A

(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. _____

(e) 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) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (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? NO
 (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. GLEN WALTERS, ESQUIRE/Orangeburg County Bar
P.O. Box 1091, Orangeburg, SC. 29115
 ii. SAME AS ABOVE

iii. _____

- (b) the proceedings at which each such attorney represented you:

i. TRIAL

 ii. SENTENCING

 iii. _____

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG

INDICTMENT NO: 2003-GS-38-0887

LAVON MINTZ #303362.....PETITIONER

-VS-

STATE OF SOUTH CAROLINA; and

ATTORNEY GENERAL, HENRY McMASTER.....RESPONDENT

MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR POST CONVICTION RELIEF

BROUGHT PURSUANT TO:

S.C.CODE ANN: §17-27-20 THROUGH §17-27-160

RESPECTFULLY SUBMITTED,

/s/ Lavon S. Mintz Jr.

LAVON MINTZ #303362

SUBMITTED THIS 26 DAY OF 9, 2005

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ISSUES PRESENTED

ISSUE (A) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE DEFECTIVE MURDER INDICTMENT AS MANDATED BY S.C. CODE ANN. §17-19-90; THAT THE AFORESAID INDICTMENT FAILED TO ALLEGE THAT THE KILLING WAS FELONIOUSLY (unlawfully); WHICH DENIED PETITIONER DUE-PROCESS OF LAW?

ISSUE (B) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE SENTENCE THAT WAS HANDED DOWN BY THE COURT THAT WAS CONTRARY TO LEGISLATIVE INTENT: THUS RENDERING PETITIONER'S SENTENCE UNCONSTITUTIONAL AND ILLEGAL?

STATEMENT OF CASE

Lavon Mintz (petitioner) was indicted by the Orangeburg County Grand Jury on the charge of murder. A Jury trial was convened on April 18-20, 2005. At trial Lavon Mintz (petitioner) was represented by Court Appointed Counsel; Glen Walters, Esquire, for the Orangeburg County Bar. The Jury ultimately found Mintz guilty and the Trial Judge sentenced him to (50) fifty-years. Trial Counsel did not file a timely Notice of Intent to Appeal.

This Post Conviction Relief Application is as follows:

IN THE STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

LAVON MINTZ #303362

PETITIONER

-v-

STATE OF SOUTH CAROLINA; and

ATTORNEY GENERAL, HENRY McMASTER

RESPONDENT

INDICTMENT NO: 2003-GS-38-0887

MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR POST CONVICTION
RELIEF BROUGHT PURSUANT TO: S.C.
CODE ANN. §17-27-20 THROUGH
§17-27-160

NOW COMES, Lavon Mintz, pro-se, seeking relief in this Honorable Court, claiming that his Constitutional rights were violated at trial in a number of ways, included; but not limited to his Sixth Amendment right to the effective assistance of trial counsel, as well as his rights to a fair trial, that are protected under the Fourteenth Amendment Due-Process Clause of the United States Constitution.

Petitioner presents this Application and Memorandum of Law in Support, pursuant to S.C. Code Ann. §17-27-20 through §17-27-160.

The issues included herein along with Petitioner's statement of facts will show this Court that Petitioner is entitled to the requested relief stated herein.

Respectfully Submitted,

/s/ Lavon S. Mintz

Lavon Mintz #303362

Submitted this 26 day of 9, 2005

ISSUE (A) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE DEFECTIVE MURDER INDICTMENT AS MANDATED BY S.C. CODE ANN. §17-19-90; THAT THE AFORESAID INDICTMENT FAILED TO ALLEGE THAT THE KILLING WAS FELONIOUSLY (unlawfully); WHICH DENIED PETITIONER DUE-PROCESS OF LAW?

FACTS

The indictment in the instant case that purports to charge Petitioner is as follows:

That Lavon Gilbert Mintz, did in Orangeburg County, on or about December 9, 2002, with malice aforethought, kill one Alfredo Lewis, by means of shooting the victim multiple times, and the said victim did die as a proximate result thereof. This offense being in violation of the Common Law of South Carolina, and Section 16-3-10 of the Code of Laws of South Carolina, as amended.

Petitioner contends that he was denied the effective assistance of Trial Counsel when Counsel failed to object to the defective indictment prior to trial pursuant to S.C. Code Ann. §17-19-90. For the indictment failed to charge the offense of murder, as it failed to allege that the killing was feloniously (unlawfully) committed; which is a critical "element" of murder.

A Common Law element of the crime of murder, still viable in this State, is that the victim's death was caused by an "unlawful or felonious act". The South Carolina Supreme Court has recognized that an essential element of murder, manslaughter, and involuntary manslaughter is that the killing was

wrongful.; STATE-v-GASKINS, 284 S.C. 105, 120-21, 326 S.E.2d 132, 141-42 (1985); overruled on other grounds by STATE-v-TORRENCE, 305 S.C. 45, 406 S.E.2d 315 (1991). Only after the wrongfulness of the homicide is established does malice aforethought become relevant to distinguish murder from manslaughter. Id. The Court subsequently explicitly observed that "[m]urder is the **unlawful** killing of another with malice aforethought, express or implied." STATE-v-JOHNSON, 291 S.C. 127, 128, 352 S.E.2d 480, 481 (1987) (emphasis added).

Therefore, in the instant case there was "no reason to consider malice" because there was no allegation in the indictment that the killing was an "unlawful, felonious act".



In GRIFFIN-v-MARTIN, 785 F.2d 1171 (4th Cir. 1986), the Court explained that in South Carolina the absences of "unlawfulness" from the statutory definition of murder is only an apparent omission, not a 'real one. First, the dropping of **unlawfulness** from the definition was in the interest of statutory streamlining. It did not have the purpose of achieving change of substance. Second, for an indictment for murder to be sufficient, it "must" include the word "FELONIOUSLY". SEE S.C. Code Ann. §17-19-30 (1985). The Court went on to explain that without one's becoming involved in a contorted lexicographical tangle, it seems that all felonies are **unlawful**, while in the reverse is not necessarily the case, for some things which are **unlawful** are misdemeanors. E.g. PEOPLE-v-ST. CLAIR, 244 111. 444, 446, 91 N.E. 573 (1910) ("Felonious was a word of more force and more comprehensive meaning than the word **unlawful**....an act cannot be **feloniously** done and not be **unlawful**".).

South Carolina Code Ann. §17-19-30 (1985), was enacted to simplify murder indictments and to instruct that useless verbiage is not required to state the offense of murder. The provision establishes that "[e]very.....

indictment for murder shall be deemed good and adjudged sufficient and good in law which, in addition to setting forth time and place, together with a plain statement...of the manner in which the death of the deceased was caused, charges that the defendant "did feloniously, willfully and of his malice aforethought kill and murder the deceased." (emphasis added). AND THIS STATUTE MAKES IT CLEAR: "IT REMAINS A REQUIREMENT THAT THE INDICTMENT ALLEGE THAT THE KILLING WAS A FELONIOUS (unlawful) act."

The GRIFFIN Court went on to explain that the statutory definition has not altered in any way the ingredients which at Common Law deemed essential elements of the crime of murder. The definition now located in S.C. Code §16-03-10, in no way affects ingredients which are necessary to constitute murder, but leaves them exactly and in every particular as they stood at Common Law. STATE-v-JUDGE 208 S.C. 497, 505, 38 S.E.2d 715, 719 (1946).

The Court explained further that unlawfulness was beyond a doubt an essential element of murder at Common Law. CHASE'S BLACKSTONE COMMENTARIES 4th, ed., 1914, pp. 941-2:

"Murder is therefore now thus defined or rather described by Sir Edward Coke: "When a person of sound memory and discretion unlawfully killeth any reasonable creature in being, and under the King's peace with malice aforethought, either expressed or implied."...The unlawfulness arises from the killing without warrant or excuse..."

The necessary character of unlawfulness as an essential element of murder is not something which South Carolina has been submerged in the midst of time. The Trial Judge in the GRIFFIN case explicitly recognized it's importance when he charged that murder constituted "the unlawful or felonious killing...with malice aforethought". A malicious killing involves the doing of a wrongful,

i.e. an unlawful act. Malice aforethought is explicitly set forth in the statute, §16-03-10, as an element of murder. Self-defense is justification so there can be no malice, and hence no murder where the killing does not comport with the requirements that it be done without legal justification (**feloniously**, or excuse before it becomes malicious... "[A] malicious killing...is done without legal justification or excuse". STATE-v-JUDGE (*supra*). In the instant case there was no allegation in the indictment that the killing was done without legal justification or excuse. Therefore the indictment was insufficient to charge the crime of murder.

A killing without the allegation that it was a felonious (unlawful) act does not constitute murder in any form or fashion. Without the allegation that the killing was **feloniously** committed, the killing would be justifiable homicide or self-defense. Therefore, the indictment in the instant case was defective and Counsel should have objected prior to trial as mandated by S.C. Code Ann. §17-19-90. The necessary elements of the crime of murder are not reflected in the indictment so the instrument is necessarily defective. BROWNING-v-STATE 320 S.C. 366, 368, 465 S.E.2d 358, 359 (1995).

Moreover, the indictment in the instant case cannot be held to be substantially correct, and Petitioner's argument cannot be construed as requesting additional language not necessary to the charge, because **feloniously** is necessary and essential and wholly omitted. SEE S.C. Code ANN. §17-19-30 (1985). Petitioner contends that he was denied the effective assistance of trial counsel as guaranteed by the Sixth Amendment of the Constitution as for Counsel's "failure" to object to the defective indictment, Petitioner was also denied his Fourteenth Amendment right to a fair trial. S.C. Const. Art.1, §11. For the afore mentioned violations Petitioner will forever pray that this Court will grant the requested relief of a new trial.

ISSUE (B) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE SENTENCE THAT WAS HANDED DOWN BY THE COURT THAT WAS CONTRARY TO LEGISLATIVE INTENT; THUS RENDERING PETITIONER'S SENTENCE UNCONSTITUTIONAL AND ILLEGAL?

FACTS

Petitioner contends that the sentence handed down by the Court was (20) twenty-years in excess of what the law allows for the punishment for the crime Petitioner was convicted of. Petitioner contends that Counsel was ineffective for failing to object; and for Counsel's failure Petitioner was denied the effective assistance of trial Counsel as guaranteed by the Sixth Amendment of the United States Constitution. Furthermore for Counsel's failure to object, Petitioner was denied his Fourteenth Amendment right to Due-Process of law.

It is not contested that Petitioner was found guilty of the crime of murder, but Petitioner's contention's are that Counsel surely should have objected when the Trial Court handed down a (50) fifty-year sentence.

South Carolina Code Ann. §16-03-10 is the statute governing the crime of murder; furthermore, S.C. Code Ann. §16-03-20 is the punishments for murder. SEE §16-03-20 (A)(Punishment for murder); A person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty-years. A mandatory sentence is actually a "fixed sentence", SEE Blacks Law Sixth Ed. at 1363 (fixed sentencing statute specifies the exact penalty that will follow conviction for each offense). And a minimum sentence, (the minimum time in which an offender must spend in prison before.....release). SEE, Blacks Law Dictionary Sixth Ed. at 1363.

In FAY-v-NOIA 372 U.S. 391, 83 S.Ct. 822 (1963) As to this Court's power, the life principles advanced in Ex parte Watkins 3 Pet. 193, 7 L.Ed. 650; and Ex parte Lange, 18 WALL. 163, 21 L.Ed. 872, was relatively brief. The trial Judge after initially imposing upon the defendant a sentence in excess of the legal maximum, had attempted to correct the error by resentencing the defendant.

The Court held: this "double" sentencing procedure was unconstitutional, on the grounds of double jeopardy, because the Court had no jurisdiction to render a patently lawless judgement. Quoting from Ex parte Lange (supra), This principle was clearly stated years ago after the LANGE decision by Mr. Justice Bradley, writing for the Court in Ex parte Sieold 100 U.S. 371, 376-77, 25 L.Ed. 2d 717.

It should be noted that Petitioner has not found any caselaw where this Court has dealt with this issue in the past, therefore Petitioner is left only to rely on USSC precedent. The South Carolina Supreme Court stated in AUSTIN-v-STATE 409 S.E.2d 811 (S.C.App.1991), (Whether we agree with the decisions of the United States Supreme Court is of no moment.....We are obligated to follow Supreme Court precedent when interpreting or applying cases under the constitution)...Also SEE STATE-v-EASTLER, 489 S.E.2d 617 (1997); PENNEKEMP-v-FLORIDA 328 U.S. 331, 66 S.Ct. 1029, 90 L.Ed 1295 (1946).

The Constitution of the United States "shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding." The Due-Process clause of the Fourteenth Amendment to the Constitution of the United States protects citizens against state action. When the United States Supreme Court enunciates a rule based upon the Fourteenth Amendment, that rule is binding upon state courts through the Supremacy Clause. (quoting,

KEELER-v-MAUNEY 500 S.E.2d at 125 (S.C.App.1998); thus the rule of "double jeopardy" would attach in the event that this Court should try to resentence Petitioner.

A Court cannot rewrite a statute and inject matters into it which are not in the legislatures language. TIMMONS-v-S.C.TRICENTENNIAL COMM'N 254 S.C. 378, 175 S.E.2d 805 (1970). This marked a return to the Common Law principles that restraints contrary to fundamental law, by whatever authority is illegal and will cause the writ of habeas corpus to lie. Ex parte Walls, 18, 307, 15 L.Ed 421.

Petitioner believes that through the authorities relied on that he is right as a matter of law and this Court does not have the Judicial authority to resentence Petitioner, therefore the only legal remedy available is for this Court to vacate Petitioner's sentence and conviction and remand for a new trial in the interest of justice.

For the requested relief sought this Petitioner will forever pray.

CONCLUSION

Petitioner prays that from the issues presented, the citation of authorities in support; that this Court will find that he (petitioner) was denied the effective assistance of trial counsel during trial; and that this Court will grant the requested relief of a New Trial.

For the requested relief, Petitioner will forever pray.

Respectfully Submitted,

/s/

Lavon L. Mintz

Lavon Mintz #303362

Lieber Corr. Inst.

P.O. Box 205 WC-259

Ridgeville, SC. 29472

Submitted this 26 day of 9, 2005

CERTIFICATE OF SERVICE

I, Lavon Mintz, do hereby swear under the penalty of perjury that I have mailed the Original and (1) one copy of this Post Conviction Application and Memorandum of Law in Support to the Clerk of Court for Orangeburg County, Lisa W. Mizell, P.O. Box 9000, Orangeburg, SC. 29116-9000.

Respectfully Submitted,

/s/ Lavon S. Mintz

Lavon Mintz #303362

Lieber Corr. Inst.

P.O. Box 205 WC-259

Ridgeville, S.C. 29472

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 26 DAY OF Sept, 2005

[Signature]
NOTARY PUBLIC

12/05/05
MY COMMISSION EXPIRES 12/05/05

IN THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG)

LAVON MINTZ #303362) INDICTMENT NO: 2003-GS-38-0887
PETITIONER)
-v-) MOTION TO ADDRESS ALL ISSUES
STATE OF SOUTH CAROLINA; and) PRESENTED, BROUGHT PURSUANT TO:
ATTORNEY GENERAL, HENRY McMASTER) S.C. CODE ANN. §17-27-80
RESPONDENT)

NOW COMES, Petitioner, Lavon Mintz, asking that this Honorable Court to direct the Attorney General's Office to address all issues presented, pursuant to S.C. Code Ann. §17-27-80, as decided by the South Carolina Supreme Court in PRUITT-v-STATE, 423 S.E.2d 127, that each and every issue presented be addressed at any PCR hearing that is held according to BRYSON-v-STATE, 493 S.E.2d 500 (1997).

Petitioner further asks that each and every issue raised herein be addressed by the Court; at any hearing that is held, and that this Court will direct that all issues be addressed in any Order issued by this Court.

For the requested relief Petitioner will forever pray.

Respectfully Submitted;

/s/ Leon S. Mifflin

Lavon Mintz #303362

Lieber Corr. Inst.

P.O. Box 205 WC-259

Ridgeville, S.C. 29472

Submitted this 26 day of 9, 2005

19. State clearly the relief you seek in filing this application:

VACATE SENTENCE AND CONVICTION OR IN THE ALTERNATIVE REVERSE

AND REMAND FOR A NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of DORCHESTER)

VERIFICATION

I, LAVON. MINTZ #303362, 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.

Lava Q. Mintz

SWORN to and subscribed before me this 26
day of Sept 2005

[Signature]
Notary Public

(L.S.)

My Commission Expires: 12/05/05

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, LAVON MINTZ #303362, 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.

Lavon Mintz
Applicant

SWORN or affirmed to and subscribed before me this

26 day of Sept, 2005.

[Signature]
Notary Public

My Commission Expires: 12/15/06

STATE OF SOUTH CAROLINA

COUNTY OF

OrangeburgIN THE Court of Common Pleas

CASE NO.

Levin Murtz # 203362☒ Plaintiff2005 - CP - 38 - 1023MOTION AND ORDER INFORMATION
FORM AND COVER SHEETState☐ Defendant.

Plaintiff's Attorney:

Thomas Simms, Bar No. _____Address: P.O. Box 2016, Orangeburg S.C.29116

phone: _____

fax: _____

e-mail: _____

her: _____

Defendant's Attorney:

Attorney General's Office, Bar No. _____Address: P.O. Box 11549Columbia S.C. 29211

phone: _____

fax: _____

e-mail: _____

her: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Amendment to P.C.R. Application

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
- ☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Date submitted _____

SECTION III: Motion Fee

☐ PAID - AMOUNT: _____

- ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
- (check reason) ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE: _____

CODE: _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

☐ MOTION FEE COLLECTED: _____☐ CONTESTED - AMOUNT DUE: _____

ATTEST: TRUE COPY

[Signature]

CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

4. Counsel was ineffective for failing to provide an adequate defense by failing to properly cross-examine the states witnesses, investigate and call other witnesses to rebutt of refute the States testimonial evidence presented as an admission of guilt, depriving Applicant of his Sixth Amendment Right to effective assistance of counsel and his Fourteenth Amendment right to a fair trial.

CONCLUSION

Based on the foregoing, I request hearing on each and every claim asserted in the original PCR application and this amendment.

2006

x Levon S. Mizell

Certificate of Service

I certify, that I, the undersigned caused to be mailed, the foregoing amendment to the P C R application to: Lisa Mizell, Clerk of Court, for the filing addressed at PO Drawer 9000, Orangeburg, SC 29116 and all counsel of the record this _____ day _____ 2006.

x Levon S. Mizell

ATTEST TRUE COPY

Lisa Mizell
CLERK OF COURT
ORANGEBURG COUNTY SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
		05-CP-38-1023
Lavon Mintz, #303362	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for Post-Conviction Relief filed September 30, 2005, 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 Clerk of Court for Orangeburg County. The Applicant was indicted at the May 2003 term of the Orangeburg County Grand Jury for Murder (03-GS-38-0887). He was represented by Glen Walters, Esquire. On May April 20, 2005, the Applicant underwent trial by jury pursuant to which he was found guilty as charged. He was sentenced by the Honorable James C. Williams to confinement for a period of fifty (50) years. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Orangeburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript

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) "Failing to object to defective murder indictment."
 - b) "Failing to object to sentence that was handed down."
2. Trial counsel failed to file an appeal; and
3. Denial of Due Process.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Butler, Id. 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

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, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used 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, 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 cannot be conclusively refuted by the record. 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.

Applicant claims that he was denied effective assistance of counsel because his trial attorney did not appeal his conviction. Respondent submits that trial counsel for the Applicant was diligent in his representation of Applicant and that he performed within the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). In Strickland, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second,

that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Respondent submits that trial counsel's performance was not deficient nor was the Applicant prejudiced in any way by such performance. The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds that the Applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Respondent submits that this allegation is totally frivolous and demands strict proof thereof. Nevertheless, the allegation raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

V.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an

application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VIII.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

PAULA S. MAGARGLE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 17, 2006.

1 STATE OF SOUTH CAROLINA

2 COUNTY OF ORANGEBURG

CIRCUIT COURT
2005-CP-38-1023

3
4
5 LAVON MINTZ,
6 Applicant,

7 -vs-

TRANSCRIPT OF RECORD

8 STATE OF SOUTH CAROLINA,
9 Respondent.

10 Post Conviction Relief Hearing

11 Heard on Wednesday, August 6, 2008

12 Orangeburg, South Carolina

13 BEFORE:

14 THE HONORABLE PERRY M. BUCKNER

15 APPEARANCES:

16 Counsel on Behalf of the Applicant:
17 Robert E. Hood, Esq.

18 Counsel on Behalf of the Respondent, State of SC:
19 Daniel E. Grigg, Esq.

20
21
22
23 Cheri L. Young, RPR
24 Circuit Court Reporter
25 P O Box 1154
Aiken, SC 29802-1154

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GLENN WALTERS

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Applicant's:

MAR / ADM

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1 ON WEDNESDAY, AUGUST 6, 2008 AT 11:01 A.M.:

2 THE COURT: Call your next case.

3 MR. GRIGG: Thank you, Your Honor. Your Honor,
4 the State would call Lavon Mintz, Your Honor.

5 (Off-the-record discussion.)

6 THE COURT: Is this a hearing, Mr. Hood?

7 MR. HOOD: Yes, sir. It's got a bit of a quirk
8 in it, too.

9 THE COURT: All right. You give me a minute.
10 Let me take a look at it. I'm going to read the
11 application and return. I realize that this is a trial.

12 (Pause.)

13 THE COURT: Are you ready?

14 MR. HOOD: Yes, sir.

15 THE COURT: Are you ready?

16 MR. GRIGG: Yes, sir, Your Honor.

17 THE COURT: Let the record reflect, before I ask
18 the State to call the case, that I've been handed a
19 packet. In that packet is the application for post
20 conviction relief which I've reviewed, the return of the
21 State, the sentencing sheet and the indictment and a
22 notice of appeal that was dated April 26, 2005, and also
23 the criminal history of the Applicant. I have reviewed
24 all of those and I understand from Mr. Hood that you have
25 copies of all of that including the transcript of the

1 trial?

2 MR. HOOD: Yes, sir, Your Honor.

3 THE COURT: Very well. Call your case, please,
4 Mr. Grigg.

5 MR. GRIGG: Your Honor, if I may on that before I
6 call the case, I do understand that I believe the
7 Applicant may have filed an amendment.

8 MR. HOOD: He did file an amendment.

9 THE COURT: An amended application?

10 MR. HOOD: Yes, sir.

11 THE COURT: I have not seen it.

12 MR. GRIGG: I've looked through my file and do
13 not have it, Your Honor. I'm not saying it wasn't sent to
14 us. I'm saying I don't have it.

15 MR. HOOD: Yeah. It was filed with the
16 Orangeburg Clerk of Court, Judge, on July the 7th of 2008.

17 THE COURT: You don't have a copy?

18 MR. GRIGG: I do not have a copy, Your Honor.
19 I've been told what it contains.

20 THE COURT: You have no objection to the
21 amendment?

22 MR. GRIGG: No.

23 THE COURT: All right. Robert, how about making
24 two copies, one for me and one for the Attorney General.
25 Give me a chance to review that and let him have a copy.

1 MR. HOOD: Judge, I wanted you to know that
2 Mr. Boozer, who I usually, normally deal with down here in
3 Orangeburg, and when I talked to him when this was
4 scheduled he said, I'm not going to be here, Mr. Grigg
5 is. And he's in court this week and I think he maybe took
6 a little vacation. So I called him and the girls at the
7 A.G.'s office said the voice mail is all messed up.

8 So I didn't get to actually talk to him until
9 yesterday. I didn't want to surprise him with the
10 amendment.

11 THE COURT: Mr. Hood, we try to be very lenient
12 about amendments. I do in post conviction matters. What
13 I don't like is I don't like to start a hearing unless
14 I've read what your client is alleging.

15 MR. HOOD: Yes, sir. And, Judge, I don't know
16 your policy or the officer's policy, but Mr. Mintz would
17 like me to request the Court if they could undo his hands
18 so he could write and take notes. He has a lot of
19 paperwork in his hands.

20 THE COURT: Is there any reason that he can't be
21 uncuffed so that he can write during the hearing so far as
22 security is concerned?

23 THE OFFICER: No, sir.

24 THE COURT: Uncuff him.

25 MR. HOOD: Thank you, Judge. I know every Judge

1 has a different policy, and I wanted to respectfully
2 request that.

3 (Defendant uncuffed.)

4 THE COURT: All right. Mr. Grigg, have you had a
5 chance to review the amended application?

6 MR. GRIGG: I have, Your Honor.

7 THE COURT: Are you ready to proceed?

8 MR. GRIGG: Yes, Your Honor.

9 THE COURT: Mr. Hood, is the Applicant ready to
10 proceed?

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

12 THE COURT: Let the record reflect that I have
13 now reviewed the amended application for post conviction
14 relief.

15 Mr. Grigg, if you'd call the case, please, sir.

16 MR. GRIGG: Thank you, Your Honor.

17 Your Honor, this is the matter of Lavon Mintz
18 versus the State of South Carolina. 05-CP-38-1023 is the
19 case number.

20 Your Honor, this matter arises from an indictment
21 of, from May 2003 in which the Applicant was indicted for
22 murder. He was represented by Mr. Walters who's seated to
23 my right. He proceeded to trial on April 20. I'm sorry.
24 I think the transcript is dated April 19th, 2005. He was
25 found guilty as charged and sentenced by Judge Williams to

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1 50 years.

2 Your Honor will note and -- I'm sorry. The
3 application itself was filed September 30th, 2005.

4 Your Honor will note in the first full paragraph
5 of the State's return it states, the Applicant did not
6 appeal his conviction and sentence. As Your Honor has
7 previously stated, the packet contains the notice of
8 appeal. I believe that is one of the issues in
9 contention.

10 THE COURT: That's why I stated that it was in
11 the packet.

12 MR. GRIGG: I believe that is one of the issues
13 that will be discussed, Your Honor. And with that, I will
14 turn it over to opposing counsel.

15 MR. HOOD: May it please the Court, Your Honor.

16 THE COURT: Happily, Mr. Hood. You may call your
17 first witness.

18 MR. HOOD: Thank you, Your Honor. We call Lavon
19 Mintz.

20 LAVON MINTZ, having been duly sworn, was examined
21 and testified as follows:

22 THE COURT: Have a seat on the witness stand.
23 He's going to hand you your things back. He's going to
24 turn that microphone, after you sit down, over so that it
25 will amplify your voice.

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1 I want you to begin by stating your full name and
2 spelling your last name for the court reporter.

3 THE APPLICANT: Lavon Gilbert Mintz. M. I. N. T.
4 Z.

5 THE COURT: You've got speak up, Mr. Mintz.
6 You've got a meek voice. Speak a little louder.

7 THE APPLICANT: Lavon Gilbert Mintz, M. I. N. T.
8 Z.

9 THE COURT: Your witness, counsel.

10 MR. HOOD: Thank you, Your Honor. May it please
11 the Court.

12 DIRECT EXAMINATION

13 BY MR. HOOD:

14 Q. Lavon, when you talk, make sure you talk right into
15 that microphone. I know you have paperwork and
16 everything, but it's important that everybody all the way
17 to the back of the courtroom can be able to hear you and
18 so that this young lady can take down everything that you
19 say.

20 A. Yes, sir.

21 Q. Okay?

22 A. Yes, sir.

23 Q. And any time that, when I'm questioning you or
24 Mr. Grigg is questioning you, don't shake your head or
25 nod. Say yes or no, and you'll have the chance to fully

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1 explain yourself but don't shake your head or nod through
2 your testimony.

3 A. Yes, sir. Yes, sir.

4 Q. Okay?

5 A. Yes, sir.

6 Q. Speak right into that microphone. Are you currently
7 incarcerated, Lavon?

8 A. Yes, sir.

9 Q. Where are you are currently incarcerated?

10 A. Lieber Correctional Institution.

11 Q. How long have you been there?

12 A. Three years.

13 Q. Why are you in Lieber Correctional Institute?

14 A. Murder.

15 Q. Were you originally charged here in Orangeburg County?

16 A. Yes, sir.

17 Q. And did you proceed to trial?

18 A. Yes, sir.

19 Q. And who was your counsel at that time?

20 A. Glenn Walters, sir.

21 Q. And is Mr. Walters present in the courtroom?

22 A. Yes, sir.

23 Q. And during your -- prior to your trial, were you
24 incarcerated?

25 A. Yes, sir.

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1 Q. Were you held at the Orangeburg County Regional
2 Detention Center?

3 A. Yes, sir.

4 Q. And how long were you there before your trial took
5 place?

6 A. Two years, two and a half years.

7 Q. So you were in the county jail approximately two, two
8 and a half years before your trial actually happened?

9 A. Yes, sir.

10 Q. And during that time, was Mr. Walters retained or
11 appointed?

12 A. He was retain--- appointed.

13 Q. Did he come and meet with you at the jail?

14 A. Yes, sir.

15 Q. Approximately how many times did he come and meet with
16 you?

17 A. I can remember, I think, three times.

18 Q. And approximately how long did he spend with you over
19 those three times?

20 A. It varied from, like, say 20, 15 to 20 minutes.

21 THE COURT: You got to speak up a little bit now,
22 Mr. Mintz.

23 BY MR. HOOD:

24 Q. Lean in a little bit more.

25 A. I think it varied from, like, the first couple of

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1 times it was 15 to 20 minutes and the last time, I think
2 he stayed a little -- about two hours, hour and a half to
3 two hours.

4 Q. Did you all prepare for your trial?

5 A. Yes, sir.

6 Q. Did he explain to you what you were charged with and
7 the nature and circumstances surrounding your case?

8 A. Yes, sir.

9 Q. Did you understand that you were being prosecuted for
10 murder?

11 A. Yes, sir.

12 Q. Did you understand that carried potentially life
13 without parole?

14 A. Yes, sir.

15 Q. And was it your intention to proceed to trial in that
16 case?

17 A. Yes, sir.

18 Q. And did you in fact proceed to trial --

19 A. Yes, sir.

20 Q. -- with Mr. Walters as your counsel?

21 A. Yes, I did.

22 Q. Was Judge Williams your Judge?

23 A. Yes, he was.

24 Q. Have you filed what is known as a post conviction
25 relief application?

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1 A. Yes, I have.

2 Q. Did you file that document yourself?

3 A. Yes, sir.

4 Q. Have you filed an amendment to your post conviction
5 relief application?

6 A. Yes, sir.

7 Q. Have I been down to Lieber Correctional Institute
8 twice and met with you to discuss your PCR?

9 A. Yes, you have.

10 Q. Have we been over the issues in your case?

11 A. Yes, sir.

12 Q. Have we been able to have frank conversations about
13 the issues in your case and what you believe your issues
14 are?

15 A. Yes, sir.

16 Q. Did you relay to me that you wanted to -- you
17 understand your issues --

18 A. Yes, sir.

19 Q. -- in your case; is that right?

20 A. Yes, sir.

21 Q. And you want to be able to present your case to the
22 Judge --

23 A. Yes, sir.

24 Q. -- about what you feel happened in your case?

25 A. Yes, sir.

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1 Q. All right. Let me give you one thing before we go
2 on. If we talk at the same time, then this young lady
3 doesn't know what to do because it's hard to hear two
4 people at one time. So let me finish or let Mr. Grigg
5 finish or whoever is questioning you and then give your
6 answer.

7 A. Yes, sir.

8 Q. Fair enough?

9 A. Yes, sir.

10 Q. Okay. Let's start with what you believe is your first
11 issue, Lavon. Walk the Judge through what happened in
12 your case concerning the pathology report and the
13 pathologist.

14 A. Well, I contend that counsel was ineffective for
15 agreeing to the stipulation allowing, to allow the Trial
16 Judge to read the contents of the pathologist report
17 because it's unconstitutional and it denied me a right to
18 a fair trial and due process.

19 Q. Let's slow down just a minute. You were charged with
20 murder?

21 A. Yes, sir.

22 Q. And the victim's name was Alphonzo James; is that
23 correct?

24 A. No, sir.

25 Q. What was his name?

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1 A. Alfredo Lewis.

2 Q. Alfredo Lewis. I apologize. My mistake. Alfredo
3 Lewis. And during the trial, was a stipulation entered at
4 some time?

5 A. Yes, it was.

6 Q. And what was -- have you read your trial transcript?

7 A. Yes, I have.

8 Q. And, were you present for your trial?

9 A. Yes, I was.

10 Q. And, at some point during your trial did Judge
11 Williams come out from back here in the office and say,
12 there's a stipulation by the parties and I'm going to read
13 a portion of the pathology report to the jury?

14 A. Yes, he put it in, in the form of what the clients
15 have -- attorneys have agreed to the contents of the
16 pathologist report, but not the document itself.

17 Q. And then did Judge Williams proceed to read into the
18 record in front of the jury, in front of you, basically
19 that -- what the pathologist said, that the victim died as
20 a result of gunshot wounds?

21 A. Yes. He read the pathologist report.

22 Q. Did you give Mr. Walters permission to enter into that
23 stipulation?

24 A. No, I did not.

25 Q. And why does that stick out in your mind?

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1 A. Because I clearly asked that the portion of the
2 pathologist report that the victim was on drugs and
3 alcohol, I asked that they be introduced into evidence and
4 presented to the jury. I wanted the jury to hear that.

5 Q. And did you tell Mr. Walters that?

6 A. Yes, I did.

7 Q. Let's slow down just a minute. Back to what you just
8 said, had you seen the pathologist's report in the course
9 of discovery in your case?

10 A. Yes, I had.

11 Q. Did you know that the pathologist's report contains
12 evidence that the victim had alcohol and cocaine in his
13 system?

14 A. Yes, he did.

15 Q. And so what I'm trying to do is, I know you know all
16 of this but just to make sure everybody understands. Your
17 case involved a shooting at a night club?

18 A. Yes, sir. It was.

19 Q. Is that right?

20 A. Yes, sir.

21 Q. There were eyewitnesses in your case that came to
22 court and testified that Mr. Lewis was shot at the night
23 club. Is that correct?

24 A. Yes, sir.

25 Q. And did you know that in the toxicology report it

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1 stated that Mr. Lewis was under the influence of alcohol
2 and drugs?

3 A. Yes, I did.

4 Q. Did you want the jury to know that?

5 A. Yes. In fact, I wrote a list of questions and
6 presented it to Mr. Walters and at the bottom of each one
7 of those lists, one is -- I think there's two lists. One
8 Richard Parker and one Quincy Green, but Quincy Green was
9 on the witness list but he did not testify. But if you
10 look at the bottom it states, one of the questions on each
11 list was, was him or the victim doing drugs or alcohol at
12 the time.

13 Q. Okay. Let's slow down just a little bit. There was a
14 witness named Richard Parker?

15 A. Yes.

16 Q. And Mr. Parker actually testified at your trial?

17 A. Yes.

18 Q. And had you submitted a list of questions to
19 Mr. Walters that you wanted asked to Richard Parker?

20 A. Yes.

21 Q. Does that list of questions contain a question about
22 whether or not the victim was doing any alcohol or drugs?

23 A. Yes.

24 Q. And there was also a witness that was on your witness
25 list provided by the State named Quincy Green.

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1 A. Yes.

2 Q. Is that right?

3 A. Yes, sir.

4 Q. Did Mr. Green actually testify in your case?

5 A. No, he didn't testify.

6 Q. Did you submit questions to Mr. Walters that you
7 wanted Mr. Green to ask (sic) if he was called as a
8 witness?

9 A. Yes.

10 Q. And again, the only thing you know is what the State
11 had said who they're going to call, you don't actually
12 know who's going to be physically present?

13 A. Exactly.

14 Q. So you had done these two lists which you provided to
15 me this morning, and at the bottom of them are the
16 questions that you say, that your testimony is that you
17 gave to Mr. Walters that you wanted those people to be
18 asked?

19 A. Yes, sir.

20 MR. HOOD: Your Honor, could I have these
21 marked?

22 THE COURT: Any objection, counsel?

23 MR. GRIGG: No, Your Honor.

24 THE COURT: One exhibit, Robert, or two?

25 MR. HOOD: I would say one, Judge.

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1 THE COURT: Applicant's Exhibit One without
2 objection.

3 (Thereupon, list of questions was marked as
4 Applicant's Exhibit No. 1 and introduced into evidence.)

5 BY MR. HOOD:

6 Q. And, Lavon, you said to me this morning why it was
7 important to you that these two documents come into
8 evidence. Tell me why in relation to the pathology report
9 and the stipulation that Mr. Walters entered into with
10 Mr. Pascoe, why these two documents are important to you.

11 A. Because it proved that I would never have agreed to
12 that evidence. I wanted it -- I would never have agreed
13 to that stipulation. I wanted that evidence of him being
14 on drugs and alcohol being heard to the jury to prove that
15 he could have been the attacker in the situation, not the
16 calm victim that the witnesses were writing statements
17 about and were going to testify about.

18 Q. So the part of the pathology report that Judge
19 Williams read into the record, did it have anything to do
20 with the victim having alcohol or cocaine in his system?

21 A. No, sir.

22 Q. It just had to do with the fact that Mr. Lewis was
23 deceased?

24 A. Yes, sir.

25 Q. And that he apparently died from gunshot wounds?

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1 A. Yes, sir.

2 Q. Let me back up a little bit. I'm hearing myself in
3 the room. Now, have you seen the toxicology report?

4 A. Yes, sir.

5 Q. And I'm going to show you a copy of it. Is this a
6 copy of the toxicology report that you received in your
7 case?

8 A. Yes, sir.

9 Q. Let me show it to the State.

10 THE COURT: Are you going to offer it, Robert?

11 MR. HOOD: Yes, sir.

12 THE COURT: Any objection, Mr. Grigg?

13 MR. GRIGG: No, sir.

14 THE COURT: Applicant's Exhibit Number Two will
15 be admitted without objection.

16 (Thereupon, a toxicology report was marked as
17 Applicant's Exhibit No. 2 and received into evidence.)

18 BY MR. HOOD:

19 Q. In that toxicology report we just entered into
20 evidence as Applicant's Exhibit Number Two, does it in
21 fact state that Mr. Lewis was under the influence of
22 cocaine and alcohol?

23 A. Yes, it does.

24 Q. Or he had cocaine and alcohol in his system when the
25 pathology -- the examination was done?

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1 A. Yes, it does.

2 Q. And did you get an opportunity to cross-examine the
3 pathologist or the toxicologist?

4 A. No, I didn't.

5 Q. Did you want to cross-examine the pathologist or the
6 toxicologist?

7 A. Yes, I did.

8 Q. Why did you want to do that?

9 A. To prove, so the question could be asked whether the
10 victim -- like I stated before, was the victim -- could
11 this be the calm victim the witnesses testified about or
12 was he actually the attacker. It would have been more
13 just a mere speculation of manslaughter but an inference
14 that the jury could have drawn from the evidence.

15 Q. Did you give Mr. Walters permission to enter into the
16 stipulation?

17 A. No, I did not.

18 Q. And did you and him discuss entering into this
19 stipulation?

20 A. No, we did not.

21 Q. Did you tell him that it was okay to enter into the
22 stipulation?

23 A. No, I did not.

24 Q. Did you in fact want to actually cross-examine someone
25 about the other substances that were found in the victim's

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1 body?

2 A. Yes, I did.

3 Q. Let me take you to the conclusion of your trial when
4 it came time for a jury charge. Are you familiar with
5 what the term jury charge means?

6 A. Yes, I am.

7 Q. Do you remember Mr. Walters asking Judge Williams to
8 charge voluntary manslaughter in your case?

9 A. Yes, I do.

10 Q. And did Judge Williams charge the jury on the crime of
11 murder and voluntary manslaughter?

12 A. No, he did not.

13 Q. And do you remember Judge Williams basically, not
14 directly, obviously, but Judge Williams' basis for not
15 charging manslaughter?

16 A. He said there was not enough evidence. It would have
17 just -- the evidence that was presented now, it would just
18 be a mere speculation of manslaughter.

19 Q. And what affect do you think that the victim having
20 alcohol and cocaine in his system could have had on you
21 getting a voluntary manslaughter charge along with a
22 murder charge?

23 A. Like I said, the jury could have drawn inference from
24 it. It would not have been a speculation of manslaughter,
25 but evidence that the jury could have drawn the inference

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1 from, because all the witnesses testified that he was
2 calm, he was just in the club chilling. But being that he
3 was under the influence of drugs and alcohol, he could
4 have actually been the attacker.

5 Q. Do you believe that if that information had gone to
6 the jury that Judge Williams could have potentially
7 charged the jury with voluntary manslaughter?

8 A. Yes, I do. They should have been given the charge.

9 Q. Is there anything else you want to argue to the Judge
10 about the pathology report?

11 A. Yes, it is.

12 Q. Okay.

13 A. Basically that I think the Court Rule 702 about
14 sympathetic evidence, the Judge is not qualified in the
15 field of pathology and it can never be stipulated that, I
16 think -- I never found a case law where it stays it can be
17 stipulated to that, a non-expert can read a pathologist
18 report, even if it is the Judge. He cannot qualify
19 himself as an expert. So according to the rules, this
20 stipulation is not valid.

21 Also, you know, the Judge -- if you look, I think it's
22 in, I think it's page 203 or 205.

23 Q. Of your trial transcript?

24 A. Yes, sir. He told the jury to accept the stipulation
25 just as if he had come down himself and testified to those

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1 facts.

2 Q. Meaning the pathologist?

3 A. Yes. Just as if he himself had come and testified to
4 those facts. And I think according to the constitution
5 the Judge cannot charge jurors in respect to matters of
6 fact but he declare the law. Now, what he's doing now is
7 he's telling these are facts and he's relieving them of
8 their duty as triers of the fact to give as much weight as
9 they -- give the pathology report as much weight as they
10 desire.

11 You know, we all know that they do not have to believe
12 none of what the expert says. After the Judge tells them
13 these are facts, they're going to accept that as good as
14 gold. They don't even have to review that anymore.

15 Q. Anything else about the pathology report?

16 A. That's about it.

17 Q. Let's move onto your next issue, Lavon, we we may, if
18 you feel that you have put everything that you want to on
19 the record concerning the pathology report.

20 A. Yes, sir.

21 Q. The next issue deals with cross-examination of
22 witnesses; is that correct?

23 A. Yes, sir.

24 Q. Walk the Judge through your issues you have with
25 Mr. Walters' cross-examination of certain State

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1 witnesses.

2 A. Well, in the course of the trial Victor, Detective
3 Victor Cordone (phonetically) testified that he observed
4 me jumping out of a car. I flee from the -- they was
5 trying -- attempting to apprehend me and I jumped out.
6 And Detective Rivers again testified that he investigated
7 the chase and it was said by Valerie Davis that she was
8 allowing me to borrow the car, even though there was a
9 statement by Valerie Davis stating that she was allowing
10 her brother to borrow the car.

11 Q. Okay. Let's slow down just a minute. This is the day
12 after Mr. Lewis is deceased and Detective Rivers and
13 Detective Cordone, who are investigators here in
14 Orangeburg County; is that right?

15 A. Yes.

16 Q. They were two of the police officers on your case?

17 A. Yes, sir.

18 Q. And Valerie Davis was somebody in your case that you
19 had a voluntary statement from in your discovery, but she
20 never physically came into the courtroom and testified; is
21 that right?

22 A. No, she hadn't.

23 Q. And basically Detective Cordone sees you driving a
24 vehicle and says that you fled?

25 A. Yes, he did.

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1 Q. You saw him and you fled; is that correct?

2 A. That was his testimony.

3 Q. And Detective Rivers, the lead investigator on the
4 case, comes to court and says that Valerie Davis says that
5 she lent her car to you?

6 A. Yes.

7 Q. And there is a statement -- is there a statement in
8 your discovery that you were provided by Valerie Davis
9 where she says she lent her car to her brother?

10 A. Yes, it is.

11 Q. And did Mr. Walters cross-examine Detective Rivers on
12 the contradictory statement that Valerie Davis had given?

13 A. No, he did not.

14 Q. Did he object to Detective Rivers being able to say
15 that Valerie Davis -- that Detective Rivers can say that
16 Valerie Davis says that she lent you the car?

17 A. No, he did not.

18 Q. So, and the cross-examination, it's more of -- it's a
19 hearsay issue and an issue of the fact that there was a
20 contradictory statement from Valerie Davis that you had in
21 your possession as part of your discovery materials?

22 A. Yes, it is.

23 Q. Okay. And do you know if Mr. Walters interviewed
24 Valerie Davis?

25 A. No, he did not.

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1 Q. How do you know that?

2 A. He told me he couldn't get to her.

3 Q. Okay. And did -- was Valerie Davis called at your
4 trial?

5 A. No, sir. She was on the witness list but she was
6 never called.

7 Q. Was she on State's witness list?

8 A. I can't recall that.

9 Q. Was she called in your defense?

10 A. No, she wasn't.

11 Q. And the other issues that you have with cross-
12 examination, would you like to explain those to the
13 Judge?

14 A. Excuse me? The other issues?

15 Q. Yes, sir. You have other issues in regards to cross-
16 examination by Mr. Walters of witnesses?

17 A. No. Just, just the ones right here. Cross-
18 examination and the hearsay that he allowed Detective
19 Rivers to testify in court as to what detective -- what
20 Valerie Davis told him out of court. In order to prove
21 the truth of the matter asserted, I think this transcript,
22 page 265, State's charging the jury, when the State gave
23 closing argument, on page 265 lines, I think, four through
24 12, he's telling them the circumstantial evidence in this
25 case is the fact that I'm -- the Defendant is running from

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1 the police the day, the next day after he become a suspect
2 for murder.

3 Q. Let me go back to where you are. What you're saying
4 is the way you were prejudiced by this testimony coming in
5 is the State was allowed to say in its closing argument
6 Lavon Mintz must be guilty, he's the one running from the
7 cops?

8 A. Yes, he did.

9 Q. And explain to the Judge how you believe that
10 prejudiced you in your case.

11 A. Well, in this case, Your Honor, the jury is here to
12 decide whether I'm a murderer. That's basically what
13 they're here to decide. And by -- them being able to say
14 that I am -- excuse me, Your Honor. I'm kind of nervous
15 right now.

16 THE COURT: Take your time.

17 BY MR. HOOD:

18 Q. You're doing fine, Lavon.

19 A. You know, under the testimony Detective Rivers that
20 Valerie Davis let me borrow the car that was used to elude
21 the police after I became a suspect for murder, may very
22 well have influenced the jury that I am a murderer,
23 meaning that if I did run, why I did admit why -- if I
24 didn't do it, then why did I run. And the State kept
25 emphasizing that point in its closing argument.

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1 But, again, if there was a statement by Valerie Davis
2 that she allowed her brother to borrow the car, that could
3 have went ahead and diluted that all together. And being
4 that Detective Rivers -- Valerie Davis never testified.
5 He's testifying to hearsay anyway.

6 THE COURT: Very well.

7 BY MR. HOOD:

8 Q. All right. Are you ready to move on to your next
9 issue?

10 A. Yes, sir.

11 Q. Again, is there anything else you want to address on
12 that issue, Lavon?

13 A. No, sir.

14 Q. Issue number three, I call it the issue of your
15 sentence. You were eventually convicted by a jury; is
16 that correct?

17 A. Yes, sir.

18 Q. And you went before Judge Williams for sentencing?

19 A. Yes, sir.

20 Q. And what sentence did you receive?

21 A. Fifty years.

22 Q. And tell the Judge why you believe that is an improper
23 sentence.

24 A. Because according to 16-3-20 it states that death --
25 the punishment for murder be it death, life or mandatory

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1 minimum term of 30 years. They left no room for a 50-year
2 sentence.

3 Q. Did your lawyer object to that sentence when Judge
4 Williams entered that sentence on you?

5 A. No, sir.

6 Q. And do you believe that that is an improper sentence?

7 A. Yes, I do.

8 Q. Do you have anything else you want to tell the Judge
9 about the sentence he imposed?

10 A. No, sir.

11 Q. Okay. And the last issue, and I don't want to --
12 don't quote me on that, but the next issue in the line is
13 the issue of your appeal.

14 A. Yes, sir.

15 Q. Is that correct?

16 A. Yes, sir.

17 Q. Tell the Judge -- let me go back just a second. Did
18 you tell Mr. Walters you wanted to appeal your case?

19 A. Yes, I did.

20 Q. Did you make it very clear to him that if you were
21 convicted you wanted to appeal?

22 A. Yes, I did.

23 Q. You had just been convicted of murder, you received a
24 50-year sentence. How old were you back then?

25 A. I think I was 22.

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1 Q. So you're potentially looking at spending the rest of
2 the best of your life in prison?

3 A. Yes, sir.

4 Q. So did you make it very clear to Mr. Walters that you
5 wanted to appeal?

6 A. Yes, I did. He attempted to appeal but he didn't file
7 it properly.

8 Q. Tell the Judge what you mean by that.

9 A. He filed it with the Court of General Session and
10 stopped there.

11 Q. I have a copy of where it was filed with the Court of
12 General Sessions. And have you seen this --

13 A. Yes, I have.

14 Q. -- document?

15 A. Yes, I have.

16 Q. Did you ever have an appeal?

17 A. No, I did not.

18 Q. And did you ever get an appellate lawyer appointed to
19 represent you?

20 A. No, I did not.

21 Q. Did you have issues on appeal that you believed you
22 wanted to raise on appeal?

23 A. Yes, I did.

24 Q. Legal issues that arose during your case --

25 A. Yes, sir.

LAVON MINTZ - DIRECT

1 Q. -- that you wanted to appeal and challenge before a
2 higher court to see whether or not any errors of law were
3 made?

4 A. Yes, sir.

5 Q. Did you ever receive an appeal?

6 A. No, I did not.

7 Q. Why do you believe it is that you did not receive a
8 appeal?

9 A. Because Mr. Walters failed to perfect the appeal.

10 Q. By perfecting it, you mean filing it in the higher
11 court?

12 A. Higher court.

13 Q. Pursuant to South Carolina Appellate Court Rule 203
14 which requires service in both the Court of General
15 Sessions and the Appellate Court?

16 A. Yes, sir.

17 MR. HOOD: Beg the Court's indulgence, Your
18 Honor.

19 THE COURT: Yes, sir.

20 (Pause.)

21 BY MR. HOOD:

22 Q. Let me go back to one thing. Anything else you want
23 to tell the Judge about your appeal?

24 A. No, sir.

25 Q. And during your case, the first witness that was

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1 called in your case, was that Mr. Parker? Mr. Pruitt?

2 A. Mr. Parker.

3 Q. Mr. Parker. He was the one that was really good
4 friends with the victim; is that right?

5 A. Yes, sir.

6 Q. And he had given multiple statements to the police.
7 Do you remember that?

8 A. Yes, sir.

9 Q. And Mr. Walters was up there cross-examining him
10 saying, well, which version is the truth?

11 A. Yes, sir.

12 Q. Because he had said one thing and then he said another
13 and then he said another. Do you remember that?

14 A. Yes, sir.

15 Q. And Mr. Walters was up there, he was fighting for you
16 to try to show that this witness, the very first witness
17 out of the box wasn't telling the truth. Is that right?

18 A. Yes, sir.

19 Q. Does he end up introducing two of the statements that
20 this witness gave into evidence?

21 A. Yes, sir.

22 Q. Okay. And do you understand what the legal
23 ramifications of that are, based on your ability for

24 Mr. Walters to have last argument and closing arguments?

25 A. We lose the last argument, closing arguments.

LAVON MINTZ - DIRECT

1 Q. Do you understand the law that if you introduce any
2 evidence you lose last argument?

3 A. Yes, sir.

4 Q. So basically the solicitor got to get two closing
5 arguments in your case and the solicitor got to go last?

6 A. Yes, sir.

7 Q. And do you understand why the solicitor got to go last
8 in closing arguments?

9 A. Yes, sir.

10 Q. And tell us why.

11 A. Because he introduced those two statements.

12 Q. Okay. And did you take the witness stand?

13 A. No, I did not.

14 Q. Did Mr. Walters call any other witnesses on your
15 behalf?

16 A. No, sir.

17 Q. So you basically presented the defense that you just
18 rested, you didn't present any evidence in your own
19 defense?

20 A. No, we did not.

21 Q. So because those two statements were introduced you
22 lost last argument?

23 A. Yes, sir.

24 Q. Lavon, is there any other issues that you would like
25 to address with the Judge before Mr. Grigg has the

LAVON MINTZ - DIRECT

1 opportunity to question you?

2 A. No, there's not.

3 Q. And do you want to check through your files to make
4 sure? This is your opportunity to tell the Judge. Me and
5 you have had a lot of long conversations about your case
6 and I know you understand your issues completely.

7 But if there's anything else that you want to say
8 about Mr. Walters' representation of you during the course
9 of this, you know, very tragic case that has impacted both
10 lives for a very long time, now is your opportunity to say
11 it.

12 A. Just going back to the pathologist report. I forgot
13 to state, had he not entered into that stipulation the
14 jury would not have been able to find me guilty because
15 all the elements of the crime of murder would not have
16 been met. The pathologist report proved the manner of
17 death, the cause of death in the death of the victim.

18 All of those are elements needed for a conviction of
19 murder. Being that the pathologist was not there or any
20 other expert was not there to testify, those elements
21 would not have been met.

22 Q. Basically what you're saying is because the
23 pathologist wasn't there and prepared to testify, the
24 State would not have been able to meet the element that
25 Mr. James was actually deceased?

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1 A. Exactly. Could not prove their case in chief.

2 Q. Anything else you'd like to address with Judge Buckner
3 at this time?

4 A. That's it.

5 MR. HOOD: Thank you, Your Honor. Thank you for
6 your indulgence.

7 THE COURT: Cross-examination.

8 MR. GRIGG: No, Your Honor.

9 THE COURT: You may step down. Call your next
10 witness.

11 MR. HOOD: Your Honor, the Applicant, Mr. Mintz,
12 has no further witnesses at this time and we do rest.

13 THE COURT: Is the State going to call
14 witnesses?

15 MR. GRIGG: Yes, Your Honor. The State would
16 call Mr. Glenn Walters.

17 THE COURT: Mr. Walters, come around and be
18 sworn.

19 GLENN WALTERS, having been duly sworn, was
20 examined and testified as follows:

21 THE COURT: Have a seat on the witness stand.
22 State your full name, spell your last name for the court
23 reporter. Pull the microphone over, please.

24 THE DEFENDANT: My name is Glenn Walters, Last
25 name is W. A. L. T. E. R. S.

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1 THE COURT: Your witness, counsel.

2 MR. GRIGG: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. GRIGG:

5 Q. Mr. Walters, do you recall your representation of
6 Mr. Lavon Mintz?

7 A. Yes.

8 Q. And I believe that representation culminated in a
9 trial beginning April 19, 2005. Is that your
10 recollection?

11 A. Yes.

12 Q. Do you recall approximately how long prior to the
13 April 19, 2005 trial date that you began representing your
14 client?

15 A. There had been numerous trips to the jail to meet with
16 him. He was in jail close to almost a little over two
17 years. It might have been -- I don't think it went into
18 three years, but the murder occurred back in 2002, and I
19 think he went to trial in 2005.

20 Q. And how many times would you say, Mr. Walters, during
21 that time did you meet with your client?

22 A. Anywhere from three to four, five times.

23 Q. And do you recall during those meetings what all y'all
24 discussed?

25 A. The biggest issue in Mr. Mintz's case was there was

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1 several eyewitnesses that saw the shooting. And that was
2 the biggest problem.

3 I believe Terrell Parker was one of the witnesses.
4 And he knew, they referred to him as Lee Lee. I think
5 most of the people at the club knew who Lee Lee was. And
6 these eyewitnesses were a problem because they, they
7 stated that Mr. Mintz had shot Mr. Lewis.

8 Q. And did you have an opportunity to discuss that with
9 Mr. Mintz?

10 A. Sure. Richard Terrell Parker gave several statements
11 to Detective Rivers, and of course the biggest problem was
12 was that Lewis had gotten into a confrontation with
13 Gooden. They had a verbal confrontation, and it might
14 have gone physical.

15 Mr. Mintz was not part of that confrontation. It went
16 outside the club and when it went outside the club the
17 victim, I believe, was standing near his car, going to get
18 in his car. And it was alleged that Mr. Mintz came out of
19 nowhere with a gun and then shot him.

20 So there was no confrontation going on between
21 Mr. Mintz and Mr. Lewis. Mr. Lewis ended up being shot.

22 Q. In your opinion, did Mr. Mintz understand that these
23 eyewitnesses were going to be a problem?

24 A. Sure. The biggest problem was was that he said, well,
25 in the statements they don't actually name me. But they

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1 were going to testify they knew who Lee Lee was. They
2 knew who Mr. Mintz was, and they saw the confrontation. I
3 think the biggest problem he had was that he was not
4 involved in the confrontation. It was a heated exchange
5 between the Defendant and the victim. It looked as if
6 Gooden and Lewis had gotten into a confrontation and Mintz
7 appeared out of nowhere and there was a shooting.

8 Q. Mr. Walters, what all did you do by way of
9 investigation in this matter?

10 A. Well, it's a pub. It's over there on Chestnut, right
11 off Chestnut, behind Block Buster. It was a club
12 frequented by the young kids at the time.

13 First, we went out to the scene and then we served a
14 Rule Five to get a copy of the file. We reviewed the
15 file. I informed Mr. Mintz that the biggest problem we
16 had is that there are individuals and witnesses that will
17 testify about your behavior that night and it appears that
18 they have some association with you or they know who you
19 are. So there was no mistaking his identity because they
20 had seen him before.

21 The crucial point I'm making here is that we've got
22 individuals that will actually say, you're the one that
23 shot Lewis. We have a problem because we've got actual
24 witnesses that will testify that they saw you pull a gun
25 and actually shoot someone.

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1 And if memory serves me correct, there was one
2 security guard or someone there that said that Mr. Mintz
3 had made some type of signal or something like he was
4 going to do something.

5 So there was some problems in the case.

6 Q. Now I believe you just testified you filed a Rule Five
7 motion; is that correct?

8 A. Required Rule Five to get a copy of the file and all
9 the information, give the client a copy of all the
10 information, and sit down and review it and go through it
11 with him.

12 And, of course, Mr. Mintz objected to some of the
13 statements inside the file that implicated him in the
14 shooting.

15 Q. In your opinion, did you receive everything from the
16 solicitor that they're required to turn over as a result
17 of your motion?

18 A. Yes. The solicitor's office always provided Rule Five
19 information. I think their position was is that we got a
20 great viable case here because we had these witnesses that
21 will testify to the shooting.

22 Q. And am I understanding your testimony correctly, you
23 had an opportunity to go over that information, what was
24 produced as a result of the Rule Five motion, with your
25 client?

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1 A. Yes. Uh-Huh. Mr. Mintz is -- he's not shy. I mean,
2 he'll go through paperwork and he'll tell you where he
3 stands and how he feels about it and what he has to say.
4 He's not timid at all.

5 Q. Were there ever any discussions about pleading guilty
6 versus going to trial?

7 A. Sure. We always discuss that with the client and in
8 this particular case Mr. Mintz's position was that he
9 wanted to go to trial.

10 Q. And with that being the case, is it fair to say that
11 you two began preparing for that end at that point?

12 A. Sure. Uh-huh.

13 Q. What, if any, trial strategy were the two of you able
14 to develop in your preparation?

15 A. We were going to have to cross-examine Parker because
16 Parker was going to say that Mintz, you know, shot Lewis.
17 And that was a problem. And Lewis was unarmed, standing
18 near the vehicle. I think he was hit in the hip and then
19 he was hit in the chest. Of course, he identified Lee Lee
20 or Mr. Mintz as the person who committed the shooting.

21 That was a big problem, in addition to the security
22 guard referring to the ruckus that occurred and how it
23 went outside. And, of course, Mr. Parker, after Mr. Lewis
24 was shot, I think he tried to put him in a car and tried
25 to take him to the hospital but he was already, he was

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1 dead when they were putting him in the car, probably.

2 Q. When you say Mr. Parker, are you speaking of Richard
3 Terrell Parker?

4 A. Yes.

5 Q. And did you in fact have the opportunity to cross-
6 examine him?

7 A. Yes.

8 Q. And are you able to recall the nature of that cross-
9 examination?

10 A. Well, the way we attacked it was Detective Bobby
11 Rivers had taken several statements. Within this
12 community, there was this heated rush to convict
13 Mr. Mintz. The rumor was he was involved in things and
14 Bobby Rivers was the detective that wanted to go after
15 him.

16 And when he took a statement from Richard Terrell
17 Parker, my problem was is that Bobby had rewritten the
18 statements that Mr. Parker had given. And of course it
19 showed inconsistencies and contradictions.

20 And one of the big issues was is that he said, I know
21 the person that shot Mr. Lewis but he did not name
22 Mr. Mintz. And of course, that was an issue that we
23 wanted to go after because, I believe, Richard Terrell
24 Parker, if memory serves me correct, said he knew who Lee
25 Lee was and he knew who Lavon Mintz is and of course in

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1 the statement he didn't name him.

2 And of course my position was if you -- if you know
3 him, you name him. You just don't say a man shot
4 someone. And that of course was the substance of the
5 cross-examination.

6 Detective Rivers' participation in obtaining the
7 statements, why wasn't Lavon Mintz named within the
8 statements and why the inconsistencies and contradictions
9 because Parker was going to walk in that courtroom and
10 say, that's the man that committed the shooting.

11 Q. Let me turn your attention -- you've heard Mr. Mintz
12 testify regarding the stipulation that occurred at the
13 trial. Do you recall -- one, do you recall his testimony?

14 A. I don't recall his testimony. I went back and looked
15 at the transcript and evidently there was a stipulation in
16 regard to the pathological report.

17 Q. And to refresh your memory, your recollection, what
18 are you able to tell the Court regarding that stipulation?

19 A. I can't remember. I read the transcript.

20 Q. Do you recall what the stipulation was about?

21 A. It was with regards to the actual shooting of the
22 victim. That he was shot, I believe that was it.

23 Q. Do you have any reason to disagree with, I believe
24 Mr. Mintz's testimony was that ultimately Judge Williams
25 came out and read a portion of a pathology report on the

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1 record. Do you recall that being the testimony?

2 A. If the transcript reflects that, that's what
3 happened. That was three years ago.

4 Q. Do you recall having any conversation with Mr. Mintz
5 regarding whether or not to stipulate to such a report?

6 A. I don't remember my conversations with Mr. Mintz.
7 Mr. Mintz -- if he said something with regards to any
8 issue in the trial. Mr. Mintz commented with regards to
9 every issue in the trial. He's not a very timid man. If
10 he took a position on the issue or he had something to
11 say, he certainly voiced his concerns.

12 To sit here today and say I remember everything he
13 told me, I can't do that.

14 Q. Fair enough. As far as your representation during the
15 trial, what sort of defense did you put up at the trial?

16 A. Well, one, we wanted to go after Terrell Parker for
17 the inconsistencies in his statement because he didn't
18 name Lee Lee as the person that committed the crime.

19 Other than that, we had a big problem because there
20 were other individuals that talked about the
21 confrontation. I believe that someone named Pam, saw in
22 the transcript. There was also Javaun (phonetically) who
23 was, I believe, a security guard.

24 But the bottom line was is that we had someone that
25 said, this is the person that committed the shooting.

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1 And, you know, I advised Mr. Mintz, we're rolling the dice
2 here. If they believe him and you don't take him down,
3 the inconsistencies in the statement, then we've got a
4 major problem.

5 Q. Did you call any witnesses on direct examination?

6 A. I don't believe so. I remember that with Mr. Mintz,
7 if he went on the stand, you know, I advised him that we
8 were going to have a big problem because you're going to
9 have to deal with, you know, what's been said by
10 Mr. Parker and deny that.

11 In addition to that, you know, he was there that
12 night. And of course the security guard and the rest of
13 the people in the club identified him as being there. And
14 of course you had one person that said, I saw him shoot
15 Mr. Lewis which would be a bigger problem.

16 We were going to open up a can of worms that I do not
17 believe Mr. Mintz could actually deal with. Mr. Mintz,
18 he's articulate, he's bright. There's only one problem.
19 He has a very forceful position and it could be
20 frightening when you're talking about murder. Whenever
21 you're trying a murder case, the jury feels compelled to
22 try to solve the problem or right the wrong.

23 And I didn't want to take a chance on having him in
24 front of a jury where he may seem like an aggressor, and
25 where someone has already said, he's the person that shot

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1 the weapon.

2 Q. And in your opinion, did Mr. Mintz understand that?

3 A. Sure. I mean, he's -- he's very bright. Grew up in a
4 rough lifestyle and things of that nature, but he is a
5 smart person and very intelligent. It's just that he got
6 into a situation here and it seems to be some ongoing
7 confrontation with the police department where they were
8 going to get -- I didn't know his name, but I always heard
9 the word Lee Lee and there was always this euphoria from
10 the prosecution that we, you know, we finally got
11 something on Lee Lee. He's an intelligent guy. He's well
12 read. He's very smart. It's just that in this particular
13 case they had an eyewitness.

14 Q. Ultimately, Mr. Walters, whose decision was it for
15 Mr. Mintz not to take the stand?

16 A. Well, ultimately the client makes the decision but my
17 position was is that if you do this they're going to pick
18 you apart. Very smart, very aggressive. And normally if
19 you put a client on the stand as a trial lawyer you got to
20 get a read on them real fast to see if a jury will like
21 them, if a jury will listen to them, if they'll take to a
22 jury, and the impression I got from Mr. Mintz was
23 aggressive, sort of cold, very direct.

24 Even in answering questions from Mr. Hood, yes, sir,
25 no, sir. In order to walk in this type of trial in a

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1 murder trial, we don't need a militaristic type of
2 approach, a very sound discipline approach. These were
3 kids at a party.

4 So he gave an impression that if you said, did he kill
5 someone, is there a possibility that they could probably
6 reach a conclusion and say yes, based on his demeanor.
7 And some people have that type of demeanor. Some guys are
8 like that. Other guys are very smooth, very calm, very
9 level.

10 If you ask if Mr. Mintz could get into a confrontation
11 and become heated very fast, you'd probably say yes, based
12 on his conversation.

13 MR. GRIGG: Your Honor, may I approach the
14 witness?

15 THE COURT: You may.

16 BY MR. GRIGG:

17 Q. I'm going to show you, Mr. Walters, what's been marked
18 as Applicant's Exhibit One and ask if you'd take a look at
19 that for a moment. And tell me after you've had a chance
20 to review it.

21 A. Mr. Mintz wrote just about everything down. He always
22 produced documentation. He always had questions with
23 regards to each of the particular participants in the
24 trial. It says here, what was Alfredo doing on the dance
25 floor at the time, where was Terrell during the argument.

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1 Of course, this all goes to the substance of the
2 cross-examination of Terrell Parker which we pursued, you
3 know, you know, did you see the gun, did he pull the gun.
4 These are all relevant questions with regards to the
5 cross-examination of Terrell Parker. And these issues
6 were argued in the opening. They were argued in the
7 closing.

8 And, you know, my opinion, we put up a good fight.
9 Only had one problem. We had someone say, look, he's the
10 guy with gun, and he shot a man that didn't have a weapon
11 in the hip and in the chest.

12 Q. Did Mr. Mintz provide you with a list of, or tell you
13 names of witnesses he wanted you to contact?

14 A. Yes. I mean, he provided me information about -- he
15 was very thorough. He provided information with regards
16 to anyone that could possibly help him in the trial.

17 But the only problem was is that you could add a
18 thousand people to that list, how do we get rid of Richard
19 Terrell Parker who says he saw you shoot a man.

20 Q. Do you recall a potential witness by the name of
21 Valerie Davis?

22 A. He brought that up. He said that one of the
23 detectives said that he was fleeing in a car when they
24 were looking for him and that Valerie would say that she
25 loaned him the car. And the problem we found with most of

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1 the people that we talked to, when the Defendant starts
2 naming individuals and stating that these individuals are
3 going to say these things, the first thing that we advise
4 them, and I don't remember talking to Ms. Davis, but the
5 first thing we advise anyone that's going to testify for
6 the Defendant, tell the truth, the whole truth.

7 If you embellish or you lie or you say anything that's
8 inappropriate that somehow can be construed as being false
9 or fraudulent, you can possibly go to jail. If you didn't
10 testify, I don't remember why but certainly that's the
11 advice we give someone up front before they testify.

12 In addition to that, we ask them to write it down and
13 I want it notarized and then of course at the bottom of
14 the notary document it says, if you give a false statement
15 there's a possibility you can be prosecuted.

16 But, again, how do we address the issue of this
17 witness that says, I saw pull a gun and shoot someone.

18 MR. GRIGG: Beg the Court's indulgence, Your
19 Honor.

20 (Pause.)

21 BY MR. GRIGG:

22 Q. Mr. Walters, let me ask you a few more questions in
23 response to the allegations and testimony here today. One
24 thing that was raised was an issue with the sentence of 50
25 years that was received.

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1 A. Yes, sir.

2 Q. I believe you were seated here during Mr. Mintz's
3 testimony and recall him testifying about the statute --

4 A. Uh-huh.

5 Q. -- and that it doesn't allow for 50 years. Was that
6 an issue that he raised with you once the sentence came
7 down?

8 A. No. He was informed there's a mandatory minimum.

9 Q. That's your understanding of what the statute is?

10 A. Yeah. That's what it is for murder, it's a mandatory
11 minimum of 30 years.

12 Q. Is it your testimony as you sit here today that he was
13 informed of that?

14 A. Oh, yeah. Mr. Mintz has known all along what he was
15 facing in the amount of time. As I said, he's
16 intelligent.

17 Q. And did Mr. Mintz ever ask you to file any motions
18 that would have the Court reconsider that sentence?

19 A. I don't remember that, any motion to alter the
20 sentence or anything of that nature. As I said, I can't
21 remember conversations from three years ago. And
22 certainly I'm not going to sit here and say that he's not
23 telling the truth.

24 I don't remember what was said. His life's on the
25 line and if he said something, I can't sit out here and

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1 refute it or say he didn't say something like that.

2 Q. Well, let me ask you if you need a copy of the
3 transcript. I'll be glad to provide it. But turning to
4 another issue regarding the solicitor's closing statement,
5 I believe it was testified to that he made reference to
6 the fact that Mr. Mintz was seen running from the police.

7 A. Uh-huh.

8 Q. I believe the testimony was in essence that that means
9 he must be guilty, is what the solicitor said,
10 approximately page 265, I believe.

11 A. That's the inference that can be drawn if someone
12 flees.

13 Q. Do you have any recollection of the solicitor's
14 closing argument and of that statement in particular?

15 A. I read it again, in the transcript, what Mr. Pascoe
16 said. That refreshed my memory.

17 Q. Do you recall whether you made an objection at that
18 time?

19 A. I don't believe I did.

20 Q. Do you recall why you did not make an objection?

21 A. No.

22 Q. Do you feel that an objection would have changed the
23 outcome of his trial?

24 A. The only thing that would have change the outcome of
25 this trial is if Richard Terrell Parker did not show up in

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1 this courtroom and identify him as the shooter. And as
2 far as the issue of, you know, whether this person was
3 dead, I believe Richard Terrell Parker is the one that
4 tried to put him in the car and carry him to the hospital,
5 but it was too late.

6 Q. Let me ask you about another issue. And that's the
7 issue of the appeal that --

8 A. Uh-huh.

9 Q. -- was filed or not filed. And not to testify, Your
10 Honor, but there's been conversation with opposing counsel
11 about the State's position on this, and at the appropriate
12 time I'll make the Court aware, but to get Mr. Walters'
13 testimony on the record, let me just ask: What is your
14 recollection?

15 A. I have no recollection of an appeal that's filed three
16 years ago. Mr. Hood contacted me and I said, well,
17 whatever the record shows, that's what we did. If we
18 didn't perfect the appeal, certainly he's entitled to an
19 appeal.

20 If we perfected the appeal, he did take advantage of
21 it. But if my staff went over and filed something in the
22 wrong place, the first thing I have to say to the
23 Defendant is I apologize. And, second of all, I say to
24 the Court, no excuse, sir. We have to accept
25 responsibility for what we do.

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1 And if we did file something in the wrong place and
2 he's entitled to an appeal, I think he should have one but
3 if the record reflects that we filed something and it
4 wasn't perfected, then I have to accept responsibility for
5 that and I'm not going to contest it.

6 MR. GRIGG: Beg the Court's indulgence just
7 briefly again, Your Honor.

8 (Pause.)

9 BY MR. GRIGG:

10 Q. Mr. Walters, is there anything that jumped out at you
11 today that I'm failing to recall that you would like to
12 bring to the Court's attention regarding your
13 representation?

14 A. No. As you can see from the transcript, David and I
15 had a heated exchange. It was a rough trial, and I wish
16 Mr. Mintz the best. If there's something I've done wrong,
17 I accept responsibility for it. And I'd honor the Court's
18 ruling with regards to this case.

19 Q. I did remember one more thing. I apologize. Again,
20 there was an issue made of the fact that you did not get
21 last closing argument. Do you recall that being an issue
22 here today?

23 A. Well, my position was is that the solicitor has to
24 open in full and open on the law. And, of course, in
25 arguing my cases and in this particular case, my position

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1 was first, last, it didn't matter. Let's go. Let's get
2 it over with.

3 MR. GRIGG: No further questions, your Honor.

4 THE COURT: Cross-examination?

5 MR. HOOD: May it please the Court, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. HOOD:

8 Q. Good afternoon, Mr. Walters.

9 A. Good afternoon.

10 Q. It's about 40 seconds after.

11 A. Right.

12 Q. Were you appointed or retained in this case?

13 A. I believe I was appointed.

14 Q. And did Mr. Mintz have any other charges other than
15 murder?

16 A. I don't believe so.

17 Q. Okay. And your understanding of the murder statute is
18 that he is potentially facing life without parole?

19 A. Yes.

20 Q. And was he in jail from the beginning of his
21 incarceration or since he was arrested?

22 A. I believe he was because when I went to see him he had
23 been in there probably a year, close to a year.

24 Q. Can you tell me from the best of your recollection how
25 many people you actually interviewed in regards to this

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1 case?

2 A. If I had to remember now, I know Richard Terrell
3 Parker didn't want to talk to us.

4 Q. Okay.

5 A. And Richard Terrell Parker is what the case turned
6 on. If you look at the transcript, the only other person
7 we had was a security guard that said there was a
8 confrontation. He followed it outside.

9 So normally what I do when I've got a witness that is
10 crucial to the case, I don't go talk to them. I may ask
11 an investigator to go talk to them and ask them if they
12 want to talk to me.

13 Detective Bobby Rivers had made it clear, you're not
14 the State's witness, you're just a witness. But it was
15 clear that he was also frightened of Lee Lee. And I said,
16 well, we don't want to be on record trying to tamper with
17 this guy or influence his testimony. Let's back up.

18 And, you know, I informed Mr. Mintz that if we're
19 going to win this case, we got to take this guy out. And
20 we were unsuccessful.

21 Q. So you did attempt to talk to Parker but he wouldn't
22 speak with you?

23 A. I did not attempt to call him. I probably had one of
24 my investigators call him. I don't directly contact
25 witnesses because I don't want them to say, Glenn Walters

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1 called here and tried to tell me to do something.

2 Q. Do you have any recollection of trying to get in touch
3 with Valerie Davis?

4 A. I just know what we normally do. If we go to someone
5 that's in favor of the Defendant, we normally tell them,
6 if you testify, you know, and you lie, this is what could
7 happen to you.

8 Q. I think your testimony, and I think you said it a
9 number of times, is that this is an eyewitness case?

10 A. Richard Terrell Parker, he's the one.

11 Q. There's no DNA, there's no gun, there's no
12 fingerprints, there's no nothing other than eyewitness
13 testimony in this case.

14 A. Right.

15 Q. Wasn't like you had a forensic expert that came in and
16 processed the crime scene and there was a footprint or
17 there was blood or anything like that?

18 A. Right.

19 Q. Is that a fair statement?

20 A. That's correct.

21 Q. And so the eyewitness testimony along with the flight
22 testimony, really, were two of the biggest factors that
23 you had to overcome in dealing with it because you have an
24 eyewitness that says, I knew him before the incident
25 happened and I saw him do it and then --

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1 A. Right.

2 Q. -- you have your client running from the police the
3 next day?

4 A. And there was a large crowd at the pub. We would get
5 numerous cases from the pub and the pub always had a large
6 amount of kids, not kids but young adults. And if they
7 didn't see the shooting, they saw the confrontation, a
8 heated confrontation between them.

9 Q. Did you request permission from the Court to hire an
10 eyewitness expert?

11 A. No.

12 Q. Did you consider that at all?

13 A. No. When, I believe, Parker, if memory serves me
14 correct, he knew Lee Lee before the incident at the club.
15 And most of these young guys knew each other from
16 nicknames and things of that nature, so it wasn't a matter
17 of flew in the airport and saw someone for a second. This
18 is someone that -- they frequented the pub. This isn't
19 the first time they ever saw each other in the pub.

20 Q. And the two documents you introduced, you knew that
21 based on doing that you would lose closing argument?

22 A. Sure. Uh-huh.

23 Q. In a case like this, you know, where you're really
24 relying on the eyewitness testimony, how important do you
25 think having the last argument is?

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1 A. It's not that important. The point is what you got to
2 do on cross is you got to take Richard Terrell Parker
3 out. If you don't take him out on cross and he's
4 believable, if the jury believes him, then the only thing
5 you can do is go on to the closing and attempt to argue
6 your case.

7 The crux of that case turned on one thing; was Parker
8 going to deliver or were we going to be able to discredit
9 him.

10 Q. And you don't think that you standing up in the last
11 argument with the last thing the jury hearing is Richard
12 Parker is a liar and he doesn't know what the truth is and
13 he's given three statements and Bobby Rivers is making up
14 stuff and he's making up statements and everybody's out to
15 get Lee Lee, isn't important for the jury to hear as
16 opposed to Solicitor Pascoe and all his excitement that he
17 normally has, banging his fist and stomping his foot and
18 pointing at this table saying, that man's a killer, let
19 him go in Orangeburg County because you want killers with
20 you?

21 A. Right. Bottom line is David and I, we both had heated
22 exchanges. I think this is the trial where they had in
23 the paper that we had a little confrontation in the
24 courtroom. I think every case we've ever tried we've
25 always had a heated exchange. And that's all part of the

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1 business of practicing law, and his business of
2 prosecuting people. It was never personal.

3 So my position was is it doesn't matter who goes
4 last. We're going to both go in here and we're going to
5 put forward our best argument.

6 Q. Let's go to the pathology report. Do you remember
7 receiving the full report, the toxicology and everything?

8 A. They sent me everything. I can't sit here and say I
9 didn't receive something.

10 Q. Well, how did the stipulation to the pathology report
11 come about?

12 A. I don't remember.

13 Q. So you don't remember one way or the other having a
14 conversation with Lavon about let's just stipulate to
15 this, it doesn't matter?

16 A. It was important to Mr. Mintz that, I believe -- I
17 believe the victim had taken some drugs or something of
18 that nature. And, of course, in our discussions I said,
19 well, we got a guy here who's unarmed standing by a car.
20 He didn't pull a weapon. He didn't have a heated
21 confrontation with -- Lewis had a confrontation with
22 Gooden. It appears as if Gooden ran back over to you and
23 said, you know, Lewis has given me a rough time and
24 evidently you said, I'll take care of it and you'll pop
25 out of nowhere and you got a weapon.

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1 I said, look, as far as the drugs that were within his
2 system, we can have a pathologist come in here and
3 highlight how the guy was shot. The tragedy is that he
4 was hit in the hip and hit in the chest, but the bottom
5 line was is that Parker had already said they got him in
6 the car and he was dead or he didn't get him to the
7 hospital in time and he died. He was dead in the car,
8 really, I think.

9 But the problem we had was is that the pathology
10 report showed that he may have been consuming alcohol or
11 drugs but still he was standing next to a car and he
12 didn't have a weapon. And the testimony from Parker was,
13 you appeared out of nowhere, bam, you hit him in the hip,
14 bam, you hit him in the chest.

15 Q. There was clearly a confrontation between the victim
16 and somebody named Gooden?

17 A. Gooden and Lewis got into it inside the bathroom and
18 when they came out onto the dance floor and they got into
19 it. And then when Gooden and Lewis went out of the club,
20 there were other young guys there and it carried over with
21 people saying things to each other.

22 That's why when Mr. Mintz was saying they should have
23 charged him with manslaughter, there was no evidence
24 offered that he had gotten into any heated confrontation
25 with anyone. He just appeared out of nowhere with a gun.

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1 Q. There was evidence offered that Lewis had been in a
2 confrontation with somebody?

3 A. Sure.

4 Q. Just like you, I've done these cases. You're fighting
5 for somebody's life?

6 A. Right.

7 Q. I mean, in the courtroom you really are fighting for
8 somebody's life. Why doesn't the fact that the victim has
9 cocaine and alcohol in his system, why don't you highlight
10 that?

11 A. Well --

12 Q. In your opinion -- I mean, let me ask it this way:
13 Don't you think that that is going to have some kind of
14 affect on the jury?

15 A. Well, let's explore that. If you're high on cocaine
16 and you consume alcohol, suppose you're out of your mind
17 and you never have a confrontation with Mr. Mintz, you
18 never said anything to Mr. Mintz, suppose you're
19 plastered, and you're standing next to that car.

20 How is that issue relevant to the fact that you walked
21 over and shot a man that was unarmed?

22 Q. Well, from -- you're fighting for his life.

23 A. Yes.

24 Q. I mean, it's out all.

25 A. Yes.

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1 Q. This guy never said, go get me a deal for 20 and he
2 didn't take it?

3 A. Right.

4 Q. I mean, this was; I'm going to trial, I didn't do
5 this.

6 A. Right.

7 Q. And Richard Terrell Parker is a liar.

8 A. Right.

9 Q. And how do you not want the jury to hear that the
10 victim's not a choir boy?

11 A. Well, that's true. But, being on drugs, does that
12 justify dying in a club?

13 Q. Could it have given rise to the provocation that you
14 needed to get the manslaughter charge?

15 A. No.

16 Q. You don't think you could have argued to Judge
17 Williams, Judge, we had the victim inside. I mean, he's
18 arguing with my client's cohorts. You know, he goes from
19 the bathroom to the dance floor to outside. And now we
20 learn that the victim's on alcohol and he's on cocaine,
21 you know. We need a manslaughter charge.

22 A. What I'm looking for is if someone will say that
23 Mr. Mintz was involved in the confrontation in the
24 bathroom, he was involved in the confrontation on the
25 dance floor, and he was involved in the confrontation in

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1 the parking lot.

2 Q. My question is: If it was -- if the jury knew, the
3 pathologist shows up, testifies this is how he died, he
4 died of a gunshot wound. The toxicology was done. He has
5 alcohol and cocaine in his system.

6 Would you have argued to Judge Williams during the
7 charge part of the jury, Judge, the fact that he had
8 alcohol and cocaine in his system could give rise that we
9 deserve a manslaughter charge?

10 A. Sure. You could have argued that.

11 Q. I'm not saying you're going to win.

12 A. Right. The argument could have been made, but knowing
13 the Honorable James Williams, he would have probably said,
14 well, show me where he had the confrontation while he was
15 on drugs and alcohol with Mr. Mintz.

16 Q. We've previously talked about how the eyewitness and
17 the flight are, you know, two of the keys, two of the keys
18 in this case that went to trial. And often flight can be
19 fairly damaging evidence?

20 A. Yes.

21 Q. And defense attorneys just hate it?

22 A. Right.

23 Q. They wish it wasn't even admissible. When Bobby
24 Rivers gets on the stand and says, Valerie Davis told me
25 she loaned the car to Lavon Mintz, why wasn't there an

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1 objection?

2 A. Missed it.

3 Q. And did you have Valerie Davis's statement in your
4 file?

5 A. I believe I had Valerie's statement.

6 Q. So if she were to say that --

7 (Interruption from holding cell.)

8 THE COURT: Proceed.

9 MR. HOOD: Yes, sir. Thank you.

10 BY MR. HOOD:

11 Q. So if she would have testified or given a statement
12 different from what Bobby Rivers said, it would have been
13 prudent to ask Detective Rivers, isn't it true that
14 Valerie Davis told the police that she loaned it to her
15 brother and not to Lavon?

16 A. Dead on.

17 Q. And on the 50-year sentence, you didn't object to
18 Judge Williams giving the 50-year sentence?

19 A. Not -- normally you don't. After there's the
20 conviction, the Judge says, bring him forward and sentence
21 was imposed.

22 Q. All right. I have a couple more questions. I'm
23 almost done, Judge.

24 And Mr. Mintz requested that I ask you: Do you know
25 beforehand that a Judge cannot give testimony, can never

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1 be stipulated that a Trial Judge can read testimony to the
2 jury and tell them that these are the facts of the case?

3 A. No.

4 Q. Okay. And why wasn't Mr. Parker asked the questions
5 about whether or not the victim was on alcohol or drugs?

6 A. I just believe that the cross with regards to
7 Mr. Parker should have centered on one issue; why didn't
8 you name Lee Lee or Lavon Mintz in the statement. Whether
9 the victim was on drugs or not, the crucial issue with
10 regards to Mr. Parker was if, you've known Lee Lee, you
11 grew up with Lee Lee, you're associated with Lee Lee, why
12 when the statement was written you didn't name Lee Lee?
13 Why you didn't say, this is the guy I've known in my
14 community for years. I've known you for years but I'd
15 never say the lawyer, I wouldn't say the Strom Firm. I'd
16 say Attorney Hood.

17 Q. Right. He did it. Just one brief moment, Your
18 Honor. Let me go back through my notes one more time.

19 (Pause.)

20 BY MR. HOOD:

21 Q. And do you have any recollection of what happened on
22 the appeal?

23 A. No.

24 Q. Obviously something was filed in the Clerk of General
25 Sessions Court?

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1 A. Right.

2 Q. So obviously Mr. Mintz said I want to appeal?

3 A. Right. And of course, if he wants an appeal he
4 deserves an appeal.

5 Q. But it's not a situation of you sat down and had a
6 conversation with him and he knowingly and intelligently
7 and willfully waived his right to an appeal?

8 A. No. Once a defendant is convicted, my assumption is
9 and the belief I operate from is is that he's definitely
10 going to do an appeal, and he's definitely going to do a
11 PCR.

12 Q. In your mind, there's no issue that you talked to
13 Lavon Mintz and he said, do not appeal. He clearly wanted
14 to appeal this case?

15 A. Oh, yes. He clearly wanted to appeal this case. I
16 don't remember a conversation but if my folks and all sent
17 it over and filed something, it's because somebody said
18 something to me. And as an officer of the court, I can't
19 remember what was said but if the document was filed, it
20 wasn't perfected. It is what it is.

21 MR. HOOD: And you -- beg the Court's
22 indulgence. One moment, Your Honor.

23 (Pause.)

24 MR. HOOD: Thank you, Your Honor. No further
25 questions. Thank you, Mr. Walters.

1 THE COURT: Redirect?

2 MR. GRIGG: No, Your Honor..

3 THE COURT: Mr. Walters, just one question.

4 Would you enter into a stipulation on behalf of your
5 client in a criminal trial without the authority of your
6 client?

7 THE WITNESS: No. If he objected to it.

8 THE COURT: Your testimony to this Court is you
9 don't recall it. But I'm asking: Is it your practice to
10 ever enter into a stipulation without authority from your
11 client?

12 THE WITNESS: No. I talk to the client about
13 everything that I do.

14 THE COURT: Including the stipulation concerning
15 the pathology report?

16 THE WITNESS: Yes, sir.

17 THE COURT: Do you recall then, you're telling me
18 for my question: Do you recall having authority from your
19 client in this case?

20 THE WITNESS: I can't remember what happened.

21 THE COURT: You just don't have a recollection?

22 THE WITNESS: Uh-huh.

23 THE COURT: Very well. Thank you very much.

24 THE WITNESS: Yes, sir.

25 THE COURT: Any additional questions from the

1 State in light of the Court's questions?

2 MR. GRIGG: No, Your Honor.

3 THE COURT: From the Applicant?

4 MR. HOOD: No, Your Honor.

5 THE COURT: You may step down. Any additional
6 witnesses?

7 MR. GRIGG: No, Your Honor.

8 THE COURT: I'll hear you both briefly in
9 closing, from the State first.

10 MR. GRIGG: Your Honor, briefly and first things
11 first. With regard to the issue of his right to appeal.

12 THE COURT: White versus State.

13 MR. GRIGG: Yes.

14 THE COURT: I think I know it. Counsel, you are
15 forgetting that once upon a time that I was an Assistant
16 Attorney General but I realize that was before you were
17 born.

18 MR. GRIGG: Well, I don't know about that but we
19 do concede on that point which --

20 THE COURT: Well, it was 1975, counsel. How old
21 are you now?

22 MR. GRIGG: I was born in '75.

23 THE COURT: There you go. You made it into the
24 world.

25 MR. GRIGG: All right. Very well then, Your

1 Honor.

2 The only thing I would say with regard to the
3 other --

4 THE COURT: Mr. Mintz, so you'll know, I've also
5 been counsel for probably, I can't even tell you how many
6 applicants in post conviction relief. So I've done both
7 sides, but I wanted to remind Mr. Grigg --

8 THE DEFENDANT: Yes, sir.

9 THE COURT: -- that I'm somewhat familiar with
10 cases. I know what case the Attorney General is going to
11 cite in post conviction matters before they cite it.

12 What do you want to tell me, Mr. Grigg, about
13 White versus State? You can have an appeal from the post
14 conviction in which the issues are considered; is that
15 what you're going to tell me?

16 MR. GRIGG: Right. All I was going to do is,
17 honestly, I had already informed opposing counsel that we
18 would agree that he is entitled to that right in this
19 particular matter.

20 THE COURT: I agree he's entitled to it, which
21 would give him the opportunity to have the Court decide
22 issues on direct appeal such as the allegation concerning
23 the sentence in a murder case. Would you not agree?

24 MR. GRIGG: I think that's correct.

25 THE COURT: Very well. What else do you want to

1 tell me, Mr. Grigg?

2 MR. GRIGG: I don't think there's anything I can
3 tell you you don't already know, Judge.

4 THE COURT: I can promise you, that's not true.

5 MR. GRIGG: I don't think I could educate you on
6 anything. Let me say that.

7 But just with regard to the other allegations of
8 ineffectiveness of counsel, Your Honor, I would simply say
9 that I think the testimony -- I think the transcript of
10 record in evidence before the Court shows, and as Your
11 Honor knows, Mr. Walters by no means is expected to be
12 perfect in his representation but only that he meet the
13 reasonable standards of the State of South Carolina for
14 defense attorneys.

15 And I believe his testimony shows that he did
16 that. He did investigate the case. He did meet with his
17 client officially and kept him informed of the charges,
18 the potential sentence, the problems with going to trial.
19 And, as he stated over and over, Mr. Parker was the main
20 problem. That it was an eyewitness issue and attacking
21 his credibility was basically their defensive strategy,
22 what they had to hang their hat on.

23 And I would submit, Your Honor, that all of that
24 is sufficient within the standards of this state.

25 The only other thing I'd point out is I believe

1 in review of everything here today, Your Honor, would show
2 that there's been no showing that the outcome of this
3 trial would have been different but for anything that
4 occurred in the trial or anything that Mr. Walters did
5 within his representation of Mr. Mintz.

6 And based on that, and Your Honor's obviously
7 well versed in the law, I would just ask that you deny his
8 application.

9 THE COURT: Thank you, Mr. Grigg. Mr. Hood, I'm
10 happy to hear from you on behalf of the Applicant.

11 MR. HOOD: May it please the Court, Your Honor.

12 THE COURT: Yes, sir.

13 MR. HOOD: Thank you, Judge. First off, I'm not
14 going -- I think we're all on the same page on the appeal
15 issue so I'm going to skip over that.

16 THE COURT: I don't think you need to tell me
17 about the appeal issue. I think he's entitled to have
18 Appellate Court review issues from the transcript of this
19 hearing.

20 MR. HOOD: Yes, sir. Thank you, Judge.

21 Judge, to start with, Lavon's first main issue
22 was the pathology report. I think we're dealing with, you
23 know, we have the testimony of Lavon that says, I did not
24 enter into the stipulation. I did not want the
25 stipulation. In fact, I told my lawyer to ask these

1 witnesses about whether or not the victim was on any
2 alcohol or drugs.

3 I think we have a Proffer versus Washington,
4 United States Supreme Court, 2004 issue because he was
5 denied the effective ability to cross-examine the
6 witnesses that would testify against him. And via his
7 counsel entering into the stipulation which I believe the
8 only testimony in the record is at this point is
9 Mr. Walters has no recollection, he normally doesn't do
10 that, that would not be his practice, but Mr. Mintz's
11 testimony was this was important to him. He had given his
12 lawyer documents and he wanted the victim asked -- he
13 wanted the witnesses asked about whether or not the victim
14 was under the influence of alcohol or drugs and the
15 toxicology report obviously went to prove that.

16 It could also go to refute the witnesses if the
17 witnesses were to have testified that Mr. James or the
18 victim in this case was not consuming alcohol and/or
19 drugs.

20 Credibility being a key issue in this case, I
21 think, is something we can all agree on. This case hinged
22 on Mr. Parker and the flight evidence. And the
23 credibility of these witnesses could have been attacked
24 were they to have testified that the victim in the case
25 was not consuming alcohol and/or drugs.

1 This being a circumstantial evidence case and it
2 being an eyewitness case, I think that the credibility and
3 the fact that the victim had alcohol and drugs in his
4 system was an important issue that should not have been
5 stipulated to by Mr. Walters. Mr. Mintz did not consent
6 to that stipulation.

7 And respectfully, Judge, I believe that's
8 ineffective and it could have caused a different outcome
9 at the end of the trial based on the credibility of the
10 witnesses and the credibility of the victim in this
11 situation that we're dealing with.

12 The second issue that Mr. Mintz raised, Judge, on
13 the cross-examination of Valerie Davis, I believe
14 Mr. Walters' testimony is that he doesn't remember if he
15 talked to her or not. And I think Mr. Walters' testimony
16 was crucial in this. I mean, he stated out of his own
17 mouth, you know, the word on the street was that the
18 police were out to get Lee Lee.

19 And he had Detective Rivers on the stand who has
20 written this statement for the State's key witness who's
21 changed it. It's the third statement he's given. And
22 Detective Rivers gets on the stand, testifies to hearsay
23 about what Valerie Davis said. And we have a statement in
24 the file that says Valerie Davis says something else
25 happened.

1 There's no objection to the hearsay. And there's
2 no cross-examination of Mr. Rivers or Detective Rivers,
3 excuse me, about the contradictory statements of
4 Ms. Davis. And Ms. Davis isn't called as a witness. And
5 he's already introduced evidence at this point in the
6 trial so it's not an issue of getting last argument. He
7 could have clearly attempted to subpoena Ms. Davis to the
8 courtroom and ask her about the statement she had given
9 the police.

10 As to the next issue, Judge, the 50-year
11 sentence, he obviously didn't object to it. And I
12 understand that. Mr. Mintz obviously didn't ask him to
13 reconsider it and I do believe that is an issue that could
14 be dealt with at Appellate Court. Frankly, Judge, I felt
15 that the Appellant Courts had already ruled on that issue
16 and I --

17 THE COURT: No, sir. There's never been a
18 decision. I can assure you of that.

19 MR. HOOD: I spent the past two days searching
20 West Law and I remember telling Mr. Mintz at Lieber, I
21 said, Lavon, this case has already been decided. There's
22 an issue on this, and I literally spent the past two days
23 trying to find it. Could not find it.

24 So I believe that's an issue that needs to be
25 resolved by a higher court as to whether or not that is an

1 appropriate sentence. I believe Mr. Mintz's argument can
2 be dealt with in that appeal process as to the 50-year
3 sentence.

4 Judge, Mr. Mintz would love to briefly address
5 you with the Court's permission.

6 THE COURT: No, sir. You speak through your
7 attorney, Mr. Mintz.

8 MR. HOOD: May I ask him if there's anything
9 else?

10 THE COURT: I'll give you a moment to talk to
11 him, but I don't give two arguments on each side.

12 MR. HOOD: Yes, sir. One moment please, Judge.

13 (Pause.)

14 MR. HOOD: Judge.

15 THE COURT: Yes, sir, Mr. Hood.

16 MR. HOOD: The last thing we would like to point
17 out is Mr. Mintz or that we submit to the Court that a
18 proper review of the transcript will show that there was
19 some type of issue between Mr. Mintz and the victim inside
20 the club which could have caused provocation which, going
21 back to the earlier argument of the alcohol and the
22 cocaine in the system, could have caused Judge Williams to
23 give a voluntary manslaughter charge.

24 THE COURT: Very well.

25 MR. HOOD: Thank you, Your Honor.

1 THE COURT: Thank you. Thank you for being well
2 prepared.

3 Let me first begin by telling you both that I
4 don't believe that Mr. Mintz has ever, I don't think
5 there's any testimony here to the contrary and I don't
6 believe Mr. Mintz has ever voluntarily or intelligently
7 waived his right to appeal in this case.

8 I cannot grant you an appeal in a post conviction
9 matter. I don't have that power. However, the Supreme
10 Court has said that where you establish in a post
11 conviction hearing that you were deprived of your
12 statutory right to appeal, the South Carolina Supreme
13 Court upon an appeal of the post conviction relief
14 decision will review the trial record and pass upon the
15 issues as if a direct appeal had been perfected.

16 So I want you to understand that because I want
17 both -- I'm going to ask both of you to submit proposed
18 orders to me. I want them within ten days of today. I
19 want them submitted to me at P. O. Drawer 470, Walterboro
20 29488. Drawer 470, Walterboro 29488. Copy opposing
21 counsel on your transmittal to the Court. Include a self-
22 addressed, stamped envelope with sufficient postage
23 affixed thereto for the return of your proposed order.

24 Please include -- I'd rather have them in Word
25 rather than Word Perfect, and please include a disk if you

1 have it so that I can make any editorial changes. But
2 both your orders have to say that there's been no
3 voluntary and intelligent abandonment of appeal. As far
4 as I'm concerned, I'm making that decision today. I'll
5 consider both of your orders upon receipt.

6 Please understand, as you do, Mr. Hood, that the
7 burden is on the Applicant. Please understand, as you do,
8 Mr. Hood, that I listened carefully to this testimony.
9 And that a lawyer, whether it be Mr. Walters or any other
10 lawyer, as you well know from trying criminal cases, has
11 to make trial strategy decisions.

12 When those decisions turn out not to be favorable
13 later on because we're here shutting the barn door after
14 the horse is out, it is easy to go back and say that the
15 lawyer's decision after the fact resulted in a conviction.

16 But the burden under Strickland versus Washington
17 remains the same. I'll expect you to address that in your
18 order.

19 MR. HOOD: Yes, sir.

20 THE COURT: Thank you both for being prepared. I
21 am putting the amended application for post conviction
22 relief in his packet and the Attorney General's Office has
23 a copy of that which I've made for them in court today.

24 Thank you very much. I know I've got one more
25 hearing and we're going to finish, but I'm going to give

1 my court reporter a five-minute break, and Barbara and
2 everybody in this court before we start back. Thank you.

3 MR. GRIGG: Thank you, Your Honor.

4 END OF PROCEEDINGS: 12:31 P.M.

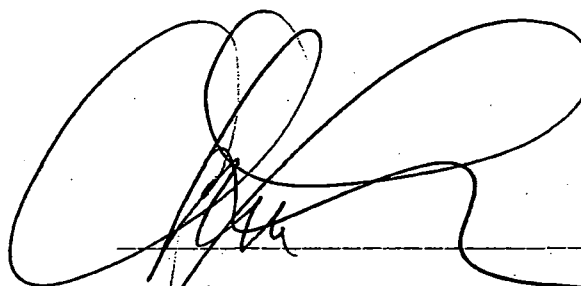
5 CERTIFICATE OF REPORTER

6 I, Cheri L. Young, Registered Professional Reporter,
7 and Official Court Reporter for the State of South
8 Carolina, do hereby certify that the foregoing transcript
9 of proceedings heard on Wednesday, August 6, 2008, in
10 Orangeburg, South Carolina, was reported by me using
11 machine shorthand and realtime computer-aided translation
12 and is a true, accurate and complete transcript of the
13 proceedings had and evidence introduced in the hearing of
14 the matter.

15 I do further certify that I am neither of kin, counsel
16 nor interest to any party hereto.

17 I have hereunto set my hand this Saturday, the 13th
18 day of December, 2008.

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Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

)
) IN THE COURT OF COMMON PLEAS
)

2005-CP-38-1023

Lavon Mintz, # 303362,
Applicant,

v.

State of South Carolina,
Respondent.

**ORDER OF DISMISSAL
WITH FINDINGS
PURSUANT TO WHITE
v. STATE**

10:15 AM 10/24

PROCEDURAL HISTORY

#1
Pmb
This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 30, 2005, and amended July 7, 2006. Respondent made its Return on May 17, 2006. An evidentiary hearing into the matter was convened on August 6, 2008, at the Orangeburg County Courthouse. Applicant was present at the hearing and was represented by Robert E. Hood, Esquire. Respondent was represented by Daniel E. Grigg of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Glenn Walters, Esquire (Mr. Walters), testified at the hearing as well. This Court also had before it the records of the Orangeburg County Clerk of Court, the transcript of the proceedings against Applicant, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was indicted at the May 2003 term of the Orangeburg County Grand Jury for Murder (03-GS-38-0887). Mr. Walters represented him. On May April 20, 2005, Applicant underwent trial by jury pursuant to which he was found guilty as charged. He was sentenced by the

ALLIES: TRUE COPY
[Signature]
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

Honorable James C. Williams to confinement for a period of fifty (50) years. Applicant did not appeal his conviction or sentence.

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
 - a) Failing to object to defective murder indictment.
 - b) Failing to object to sentence that was handed down.
2. Trial counsel failed to file an appeal; and
3. Denial of Due Process.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

#2
P.B.
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. 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).

Applicant testified that he was convicted of murder. He testified that Mr. Walters represented him at trial. Applicant testified that he is currently housed at Lieber Correctional Facility. Applicant testified that Mr. Walters was appointed. Applicant testified that he was held at the Orangeburg County Jail for approximately two and a half years before he went to trial. Applicant testified that Mr. Walters met with him three times. He stated that they only met for approximately fifteen to twenty minutes the first two times and approximately two hours the third time. Applicant testified that he and counsel did prepare for trial. He stated that Mr. Walters explained the elements of the charge against him, the possible sentences, life without parole, and his constitutional rights to him.

Applicant testified that Mr. Walters was ineffective for agreeing to a stipulation, which allowed the trial judge to read a prejudicial portion of a pathology report to the jury. Applicant testified that he never authorized Mr. Walters to agree to such a stipulation. Applicant testified that he wanted part of the report presented to the jury that mentioned that the victim was under the influence of drugs and alcohol at the time of the incident. Applicant testified that Mr. Walters did not present that information to the jury. Rather, Applicant testified that the portion of the report that was put on the record prejudiced him. Applicant further testified that the judge was not allowed to read that portion of the report on the record because he was not a pathologist. Applicant stated that by having the judge read these things and then stating to the jury that they should accept its contents as fact, the judge was in essence testifying and unduly influenced the jury.

#3
PnB
Applicant testified that he submitted a list of questions to Mr. Walters for him to use during the trial. Applicant testified that Mr. Walters largely ignored them. Applicant testified that one of the questions he wrote for Mr. Walters to ask concerned the victim's drug use. He testified that this showed that he would have never agreed to the stipulation regarding the pathology report. Applicant further testified that a toxicology report showed that the victim had alcohol and cocaine in his system. Applicant testified that Mr. Walters did not contact a pathologist or toxicologist to look into his case and testify on his behalf.

Applicant testified that Mr. Walters requested that the judge give the jury a voluntary manslaughter charge. He testified that the judge denied the request. Applicant testified that if Mr. Walters had introduced the information regarding the victim's drug use he would have gotten the voluntary manslaughter charge.

Applicant further testified that one of the investigating police officers testified that he saw Applicant jumping out of a car in an effort to escape the police. He testified that the solicitor then

improperly used this testimony in closing to suggest to the jury that since Applicant had run from the police he must be guilty. Applicant testified that Mr. Walters was ineffective for not objecting to the testimony or the solicitor's improper comment. Applicant testified that another officer testified that Valerie Davis (Ms. Davis) told him that she let Applicant borrow her car, which turned out to be the car involved in the police chase. Applicant testified that Ms. Davis had actually stated that she let her brother borrow the car, not Applicant. Applicant testified that the officer's testimony was untrue and that Mr. Walters was ineffective for failing to object.

#4
PWB
Applicant testified that he provided a list of potential witnesses to Mr. Walters, including Ms. Davis' name. He stated that Mr. Walters did not contact the witnesses. He further stated that Mr. Walters did not speak with Ms. Davis. Applicant testified that Mr. Walters told him that Ms. Davis was unavailable and he would not be able to call her at trial.

Applicant further testified that his fifty-year sentence was unconstitutional. He testified that the statute for murder only allows for thirty years, life without parole, or death. He stated that he wanted Mr. Walters to object to the sentence imposed, but he did not do it. Applicant testified that he also wanted Mr. Walters to file an appeal. He testified that Mr. Walters filed a notice of appeal incorrectly in circuit court and not in the proper appellate court. He testified that as a result he was denied his constitutional right to appeal his case.

Applicant testified that Mr. Walters improperly gave up last closing argument while attacking the credibility of one of the state's witnesses in which he inadvertently introduced certain statements that had been given to police. Applicant testified that he did not testify and that Mr. Walters failed to put up a defense by not calling any witnesses on his behalf.

Mr. Walters testified that he met with his client approximately three to five times. Mr. Walters testified that he went over with Applicant the charge against him, his constitutional rights,

and the possible sentences he could receive. Mr. Walters testified that he filed a Rule 5 motion and that he received the entire discovery from the solicitor. Mr. Walters testified that he went over this discovery with his client. Mr. Walters testified that he investigated the case, went to the crime scene, had an investigator to assist him with the investigation, and kept his client fully informed every step of the way. Mr. Walters testified that the case involved a shooting at a nightclub. He testified that the victim got into a confrontation with someone at the club and that Applicant was not involved. He testified that there were numerous eye- witnesses that knew Applicant that were willing to testify that he came out of nowhere with a gun and shot the victim who was unarmed and standing by a car.

#5
PAB
Mr. Walters testified that the problem with the case was the eye- witness testimony. They could not get around that. He stated that his trial strategy was to attack the credibility of the witnesses because that was the only chance his client had. Mr. Walters testified that the key to the case was the testimony of Richard Terrell Parker (Mr. Parker) who was an eye- witness to the shooting. He stated that he informed the client that his only chance at trial was to attack Mr. Parker's testimony and hope he could convince the jury that Mr. Parker was not credible as a witness. Mr. Walters testified that he felt he did as good a job as possible under the circumstances but, unfortunately, it did not work out for his client. Mr. Walters testified that part of his argument centered on the fact that the police officer that took Mr. Parker's statement re- wrote it and changed some of the facts. He stated that the statement did not identify Applicant and he made a point of this to the jury since it was clear that the witness knew Applicant.

Mr. Walters testified that he does not usually call witnesses. He stated he normally has an investigator do that. He stated that he did not want to ever give the appearance that he had influenced a potential witness. Mr. Walters testified that he would send letters to potential witnesses that stated

he expected them to tell the truth. Mr. Walters testified that he addressed all the questions that Applicant had written out for him during his cross-examination of the State's witnesses.

46
MB
Mr. Walters testified that he agreed that the record showed he did not properly file a notice of appeal and that he agreed that Applicant deserved to have one. Mr. Walters testified that he meant to introduce the statements during cross-examination. He testified that he did not think it mattered in this case whether he had first or last closing argument. Mr. Walters testified that he did not believe objecting to the solicitor's closing argument or anything else for that matter would have made a difference in this case. Mr. Walters testified that the only thing that would have made a difference in this case would have been if Mr. Parker decided not to show up and testify. Mr. Walters testified that his investigator tried to contact Mr. Parker to interview him prior to trial. He stated that Mr. Parker did not want to talk to them.

Mr. Walters testified that he did not consider hiring an eye-witness expert to testify on Applicant's behalf. Again, he testified that he did not think doing so would have benefited his client. Mr. Walters testified that the victim's drug use had no relevance to the murder charge his client was facing. He testified that he discussed this at length with his client. He stated that the victim's drug use did not change anything because Applicant shot the victim, who was unarmed, and with whom he had no prior confrontation. Mr. Walters stated that self-defense was not going to fly in this case. Mr. Walters testified that another witness was willing to testify that Applicant made a threatening gesture towards the victim and stated that he would take care of the victim.

In a post-conviction relief action, Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; 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, 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, Id.

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, Id. Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

?
PAB
Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, 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 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. As discussed above, Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

This Court finds that Applicant's testimony is not credible. This Court does find Mr. Walters' testimony to be credible. There is absolutely no evidence that Mr. Walters' representation fell below the applicable standards for defense attorneys set forth in this state. Additionally, this Court finds that even if a deficiency could be found in this case, Applicant has failed to carry his burden to show that he was prejudiced by such a deficiency. There is no indication that "but for" an error on Mr. Walters' part the result of Applicant's trial would have been different.

Specifically, this Court finds that Mr. Walters thoroughly investigated Applicant's case. Mr.

Walters hired an investigator. Between the two of them they contacted witnesses, went to the crime scene, obtained discovery, reviewed the discovery and discussed the case fully with their client. Mr. Walters visited his client numerous times. It is clear from the testimony presented that during those meetings Mr. Walters went over the facts of the case against Applicant, his constitutional rights, and the possible sentences he was facing. Additionally, Mr. Walters discussed the benefits of a plea versus going to trial. It is also clear that Applicant made a voluntary and knowing decision to go to trial. To that end, it is also apparent that Applicant and counsel worked together to prepare a defense.

H8
PMB
This Court further finds that Mr. Walters, as the lawyer in this case, has the final say in the trial strategy employed. In this case, Mr. Walters has provided sufficient explanation as to the strategy he employed and why. He testified that his focus was on discrediting Mr. Parker's testimony. This Court finds that based on the fact that this was an eye-witness case, Mr. Walters' strategy was reasonable under the circumstances.

This Court does not find that Mr. Walters was ineffective for introducing several statements, thus giving up last closing argument. Mr. Walters testified that he did this as part of his trial strategy. He further stated that he did not think it mattered whether he closed first or last.

This Court does not find Mr. Walters ineffective for stipulating to having the trial judge read the pathology report on the record. Additionally, this Court does not find that the outcome of Applicant's trial would have changed had the report not been read on the record. Likewise, this Court fails to see that the victim's drug use would have significantly affected the outcome of this trial. Clearly, as Mr. Walters' stated, this was an eye-witness and credibility issue. This Court further finds that it was not error for the trial judge to read the report onto the record. The judge was

not testifying and was not offering any portion of the report for the truth of the matter asserted. Simply, he was stating that the jury should consider the report as if the pathologist was present in the courtroom and testifying to those results. This Court further does not find err in the fact that Mr. Walters did not employ a pathologist or toxicologist to testify on his client's behalf. This Court fails to see how the victim's drug use would have been relevant given the facts of this case.

#9
P.B.
This Court further finds that Mr. Walters did request a voluntary manslaughter jury charge and the decision to do so or not is solely the judge's. This Court further finds that Mr. Walters was not ineffective for failing to object to the solicitor's comments regarding Applicant fleeing from police. Likewise, this Court finds no error in the fact that Mr. Walters did not object to the testimony regarding Ms. Davis loaning her car to Applicant. Again, Applicant has failed to carry his burden in showing that the outcome of his trial would have been different had these objections been made.

This Court further finds that Applicant's sentence is not unconstitutional. Moreover, this Court finds that this issue would be more appropriately raised on appeal. A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). This Court does not believe that this allegation is appropriate for PCR. With that in mind, this Court finds that Applicant is entitled to a belated direct appeal. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California.¹ Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant

¹386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 2d 493 (1967).

to White v. State. See Rule 227(g)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).²

CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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 advises Applicant that he must file and serve a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice;
2. That Applicant be allowed to pursue a belated direct appeal pursuant to White v. State; and
3. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 3rd day of September, 2008.



Perry M. Buckner
Presiding Judge
First Judicial Circuit

Walterboro, South Carolina.
September 2008

²"Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review." [Emphasis added]. Davis, 288 S.C. at 291, n. 1, 342 S.E.2d at 60.

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

) IN THE COURT OF COMMON PLEAS

2005-CP-38-1023

Lavon Mintz, # 303362,)

) Applicant,)

) v.)

State of South Carolina,)

) Respondent.)

MOTION TO ALTER OR AMEND
UNDER RULE 59(e)

FILED FOR RECORD
LISA W. HIZELL
CLERK OF COURT
ORANGEBURG, SC
2008 SEP 24 P 4:18

Now comes the defendant, by and through his undersigned counsel making a Motion to Alter or Amend the Order Dismissing Mintz's PCR Application and granting a State v. White appeal.

Applicant's counsel received the signed Order of the Court from the Attorney General's Office on September 8, 2008. Counsel has never received the "clocked-in" copy of the Order from the Orangeburg County Clerk of Court's office, however, Counsel has received a fax copy of the Order which was clocked on September 15, 2008 (which is not proper service under South Carolina rules).

Applicant respectfully requests that the Order entered by this Court be altered or amended in the following manner.

First, Applicant requests that the Order be amended to state that the Circuit Court Judge that presided over the trial was not an expert in the field of pathology and could not testify as an expert. Also, Applicant requests that the Order be amended to state that the fact that the trial judge read part of the pathology report to the jury was highly prejudicial and an error.

ATTEST: TRUE COPY
[Signature]
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

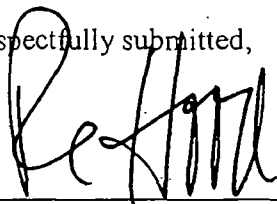
Also, Applicant requests that the Order reflect that the trial judge should not have handled matters of fact during the trial.

Second, Applicant requests that the Order be amended to state that the issue concerning flight was not whether the Solicitor's comments in closing argument were improper, but that trial counsel was ineffective for failing to properly cross-examine both detectives on the issue concerning Valerie Davis and trial counsel's failure to object to the obvious hearsay testimony.

Finally, Applicant requests that the Order be amended to state that concerning the sentencing issue, the sentence handed down by the trial judge was unconstitutional and went against legislative intent. Further, this sentencing issue was not objected to by trial counsel at the original sentencing, so the only proper venue for this argument is a post-conviction relief application.

I SO MOVE.

Respectfully submitted,



Robert E. Hood
Strom Law Firm, LLC
2110 N. Beltline Blvd.
Columbia, South Carolina 29204
803-252-4800 (o)
803-252-4801 (f)
Counsel for Applicant

This 24 day of September, 2008
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2005-CP-38-1023

LEVON MINTZ, #303362

Plaintiff,

vs.

THE STATE OF SOUTH
 CAROLINA,

Defendant.

CERTIFICATE OF SERVICE

FILED FOR RECORD
 LISA W. HIZELL
 CLERK OF COURT
 ORANGEBURG, SC
 2008 SEP 24 P 4:18

I, Betty P. Cosby, an employee of the Strom Law Firm, L.L.C., do hereby certify that I have this 24TH day of September, 2008, served a copy of my Motion to Alter or Amend on the following by placing in the U.S. Mail, proper postage affixed.

Dean Grigg, Esquire
 S. C. Attorney General's Office
 P. O. Box 11549
 Columbia, South Carolina 29211

Betty P. Cosby
 Betty P. Cosby

Columbia, South Carolina

September 24, 2008

ATTEST: TRUE COPY
Lisa W. Hizell
 CLERK OF COURT
 ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

2005-CP-38-1023

Lavon Mintz, # 303362,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

RETURN TO MOTION
 FOR RECONSIDERATION

This matter comes before the Court by way of Applicant's Motion pursuant to Rule 59, SCRCP, in which he asks the Court to alter or amend its Order dismissing his Application for post-conviction relief (PCR). Respondent (the State) would submit the following:

I.

The Order of Dismissal of the Honorable Perry M. Buckner, dated August 18, 2008, contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRCP. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

II.

The State therefore requests that the relief requested by Applicant be denied and that his Motion be dismissed.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that the Motion be dismissed.

Respectfully submitted,

HENRY D. MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DANIEL E. GRIGG
Assistant Attorney General

BY:



(ATTORNEYS FOR RESPONDENT)
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

October 3, 2008.

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

2005-CP-38-1023

Lavon Mintz, # 303362,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL
APPLICANT'S RULE 59(E)
MOTION

FILED FOR RECORD
LISA W. MIZE
CLERK OF COURT
ORANGEBURG, SC
2008 OCT 15 P 12:49

This matter comes before the Court by way of Applicant's Motion to reconsider pursuant to Rule 59, SCRCP. Respondent made its Return to this motion on October 3, 2008. I signed the Final Order of Dismissal in this matter on August 18, 2008.

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion and proposed order, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. The previous order fully comports with the requirements of Rule 52(a) SCRCP.

IT IS THEREFORE ORDERED:

1. That Applicant's motion is denied and dismissed.

AND IT IS SO ORDERED this 6th day of October, 2008.

Walters, S.C.

Perry M. Buckner
Perry M. Buckner
Presiding Judge
First Judicial Circuit

ATTEST: TRUE COPY

Lisa W. Mize
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

RECD 10/29/08
@ 06:06 CTY CHIEF
FROM CLERK'S OFFICE
IN PERSON
REH.
NEVER RECD BY MAIL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

2005-CP-38-01023

Lavon Mintz, #303362,

Applicant,

vs

State of South Carolina,

Respondent.

PROOF OF SERVICE BY MAIL

2008 OCT 15 P 12:49
 FILED FOR RECORD
 LISA W. NIZELL
 CLERK OF COURT
 ORANGEBURG, SC

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND

Personally appeared before me, Lisa A. Suber, who being first duly sworn, states:

1. That I am an employee of the Office of the Attorney General.
2. That regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance of service by mail.
3. That I have this day served a copy of the signed Order denying Motion for Reconsideration in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

J. P. Strom, Jr., Esquire
 2110 Beltline Boulevard, Suite A
 Columbia, South Carolina 29204

DATED this 13th day of October, 2008

Lisa A. Suber
 LISA A. SUBER

SWORN to before me
 this 13th day of October, 2008

[Signature] (L.S.)
 Notary Public for South Carolina

My Commission Expires: January 30, 2013

ATTEST: TRUE COPY
[Signature]
 CLERK OF COURT
 ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

Perry M. Buckner, Circuit Court Judge

LAVON MINTZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

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ISSUES PRESENTED

1. Did the PCR judge correctly find that petitioner was entitled to seek a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974)?

2. Did the PCR judge err in refusing to find counsel ineffective in stipulating to portions of the pathologist's report as it related to cause of death but failing to include in the stipulation evidence that the decedent was under the influence of cocaine and alcohol?

STATEMENT

In May of 2003, the Orangeburg County Grand Jury indicted Mintz for murder, indictment #2003-GS-38-0887. On April 19, 2005, Mintz proceeded to jury trial before the Honorable James C. Williams, Jr. The jury returned a verdict of guilty and Judge Williams sentenced Mintz to fifty (50) years. Trial counsel failed to properly perfect the direct appeal.

On September 30, 2005, Mintz filed an application for post conviction relief. The application was amended on July 7, 2006. The State filed a return on May 17, 2006. On August 6, 2008, an evidentiary hearing was held before the Honorable Perry M. Buckner. In a written order signed September 3, 2008, Judge Buckner found that Mintz was entitled to seek a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Judge Buckner denied all other relief and dismissed the application. A timely notice of intent to appeal was filed on November 5, 2008. This petition for writ of certiorari and a separately filed brief follow.

ARGUMENT

1. The PCR judge correctly found that petitioner was entitled to seek a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

In the order the PCR judge wrote, "Mr. Walters [trial counsel] testified that he agreed that the record showed he did not properly file a notice of intent to appeal and that he agreed that Applicant deserved to have one." (App. p. 456). Petitioner testified at the PCR hearing that he informed trial counsel that he wished to appeal. (App. p. 402, lines 17 – p. 403, lines 1-23). Petitioner testified that trial counsel filed the notice of intent to appeal with the lower court but failed to file with the appellate court. (App. p. 404, lines 5-16). Petitioner did not knowingly and intelligently waive his right to direct appeal. The PCR judge correctly found that petitioner was entitled to seek a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

2. The PCR judge erred in refusing to find counsel ineffective for stipulating to portions of the pathologist's report as it related to cause of death but failing to include in the stipulation evidence that the decedent was under the influence of cocaine and alcohol.

At trial, counsel for petitioner agreed, by stipulation, to allow the judge to read a portion of the pathologist's report into the record. (App. p. 203, lines 13 – p. 204, 205, lines 1-13). During the PCR hearing petitioner introduced in evidence a copy of the toxicology report from the pathologist indicating that the decedent was under the influence of cocaine and alcohol. (App. p. 391, lines 6 – p. 392, 393, 394, lines 1-2). This evidence was not presented to the jury at trial as part of the stipulation. In the order of dismissal the PCR judge wrote, "Likewise, this Court fails to see that the victim's drug use would have significantly affected the outcome of this trial. Clearly, as

Mr. Walters stated, this was an eye-witness and credibility issue.” (App. p. 458). The PCR judge erred.

Counsel was ineffective in failing to include, as part of the pathology report stipulation read to the jury, evidence that the decedent was under the influence of cocaine and alcohol. This case involved an altercation and shooting outside of a night club. The trial judge refused to instruct the jury on voluntary manslaughter. This issue is raised in petitioner’s belated appeal. In terms of the ineffective assistance claim, evidence of the decedent’s drug use could have been used as an additional ground to argue that a charge on the lesser included offense of voluntary manslaughter was appropriate.

In State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978), the Court found that prior bad blood, intoxication and prior threats by the deceased relevant to defendant’s reasonable apprehension of bodily harm. Analogously, the deceased’s drug and alcohol use in the present case was relevant to establish sufficient legal provocation warranting a manslaughter charge. Counsel was deficient in failing to present evidence of the decedent’s drug and alcohol use to the jury and petitioner was prejudiced by the deficient performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

CONCLUSION

Based on the above argument, the petition for writ of certiorari should be granted to allow further briefing on the issue.

Respectfully submitted,

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 1st day of July, 2009.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

Perry M. Buckner, Circuit Court Judge

LAVON MINTZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Mary S. Williams, Esquire this 1st day of July, 2009.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 1st day
of July, 2009.

_____(L.S.)
Notary Public for South Carolina

My Commission Expires: _.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

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Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

July 1, 2009

Mary S. Williams, Esquire
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: Lavon Mintz v. State of South Carolina

Dear Mary:

Enclosed are two copies of the petition for writ of certiorari and the appendix in the above case that I filed today with the S.C. Supreme Court.

If you have any questions concerning this matter, please contact me.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/khh

Enclosures

**SCCID**

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Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

July 1, 2009

Mr. Lavon Mintz #303362
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472

Re: Your appeal

Dear Mr. Mintz:

Enclosed please find a copy of the petition for writ of certiorari and a copy of the appendix in your case that I filed today with the South Carolina Supreme Court on your behalf.

Should you have any questions concerning this matter, please contact me.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/khh

Enclosures

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

James C. Williams, Jr., Circuit Court Judge

LAVON MINTZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

ANDERS BRIEF OF PETITIONER PURSUANT TO WHITE V. STATE

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR PETITIONER.

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ISSUE PRESENTED

Did the judge err in refusing to charge the jury on the lesser included offense of voluntary manslaughter?

STATEMENT

In May of 2003, the Orangeburg County Grand Jury indicted Mintz for murder, indictment #2003-GS-38-0887. On April 19, 2005, Mintz proceeded to jury trial before the Honorable James C. Williams, Jr. The jury returned a verdict of guilty and Judge Williams sentenced Mintz to fifty (50) years. Trial counsel failed to properly perfect the direct appeal.

On September 30, 2005, Mintz filed an application for post conviction relief. The application was amended on July 7, 2006. The State filed a return on May 17, 2006. On August 6, 2008, an evidentiary hearing was held before the Honorable Perry M. Buckner. In a written order signed September 3, 2008, Judge Buckner found that Mintz was entitled to seek a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Judge Buckner denied all other relief and dismissed the application. A timely notice of intent to appeal was filed on November 5, 2008. This brief of petitioner and a separately filed petition for writ of certiorari follow.

ARGUMENT

The judge erred in refusing to charge the jury on the lesser included offense of voluntary manslaughter.

The jury convicted Mintz of shooting Alfredo Lewis outside of a club. There had been a verbal altercation inside the club earlier. During the charge conference Mintz requested a charge on voluntary manslaughter. (App. p. 254, lines 10 – p. 255, 256, lines 1-13). The judge refused stating, “I just don’t see any evidence in the record that would support that charge [voluntary manslaughter]. So, that request is denied.” (App. p. 256, lines 18-20). The judge erred.

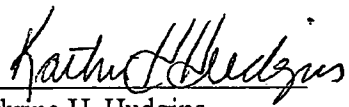
“To warrant refusal of a request to charge voluntary manslaughter, there must be no evidence whatsoever tending to reduce the crime of murder to voluntary manslaughter. State v. Lowry, 315 S.C. 396, 434 S.E.2d 272 (1993); State v. Damon, 285 S.C. 125, 328 S.E.2d 628 (1985), *cert. denied* 474 U.S. 865, 106 S.Ct. 187, 88 L.Ed.2d 156, *overruled in part on other grounds*, State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Although words alone may not constitute sufficient legal provocation, words accompanied by some overt, threatening act may be sufficient.” State v. Johnson, 324 S.C. 38, 42, 476 S.E.2d 681, 683 (1996) (Justice Waller dissenting).

In Johnson the Court found no evidence of an overt act in order to constitute sufficient legal provocation for voluntary manslaughter. In the present case, a witness, Richard Terrell Parker, testified that the decedent, upon seeing Mintz and his friend Andre, individuals with whom he had been involved in an earlier altercation inside the club, got out of his car and approached just prior to the shooting. (App. p. 86, lines 22 – p. 87, lines 1-24). The decedent’s act of getting out of his vehicle and approaching Mintz constitutes evidence of an overt act sufficient for legal provocation. The judge erred in refusing to charge voluntary manslaughter.

CONCLUSION

Based on the above argument, Mintz's sentence and conviction should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER.

This 1st day of July, 2009

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg CountyJames C. Williams, Jr., Circuit Court Judge

LAVON MINTZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

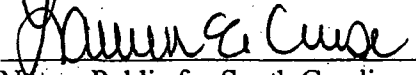
CERTIFICATE OF SERVICE

I certify that a true copy of the brief of appellant pursuant to White v. State, in this case has been served on Mary S. Williams, Esquire, this 1st day of July, 2009.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 1st day
of July, 2009.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

2010-CP-38-1698

Lavon Mintz,

Plaintiff,

v.

State of South Carolina,

Defendant.

)
)
)
) Transcript of Record
)
)
)
)
)
)

May 21, 2012
Orangeburg, South Carolina

B E F O R E:

The Honorable Deandrea G. Benjamin, Judge

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

David Spencer, Esquire
Attorney for the State

Jeremy Thompson, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

Mintz v. South Carolina

5/21/12

2

I N D E XWITNESS/DESCRIPTIONPAGE NO.

PCR/Hearing

EXHIBITS:

No exhibits were marked to this proceeding.

Certificate of Court Reporter 48

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1 THE COURT: You may be seated.

2 MR. SPENCER: Good morning, Judge Benjamin.

3 The first case I would call this morning, if you're
4 ready. Oh, excuse me -- let me bring -- I have, first of
5 all, the appendix from his prior PCR. Your Honor, I'm
6 noting I don't have a judges packet, for some reason. I
7 should have realized that before, but I can bring you up
8 some things. If I can just give you a background on the
9 case, a procedural background.

10 THE COURT: All right.

11 MR. SPENCER: This is a PCR application. It was filed
12 November 24, 2010. First case is Levon Mintz, M-i-n-t-z
13 verses South Carolina. It's 2010-CP-38-1698. He is
14 presently confined with the Department of Corrections. He
15 was indicted in May 2003 for murder. He was represented by
16 Glenn Walters and went to trial and was convicted by a jury
17 and sentenced by Judge Williams to 50 years imprisonment on
18 April 5, 2005. He did not appeal his conviction or sentence
19 but he did file a PCR application September 2005. He had an
20 evidentiary hearing at that first PCR, and relief was denied
21 except there was a finding that he did not freely and
22 voluntarily waive his right to direct appeal and he got what
23 is known as a White appeal from that, which is a finding
24 that -- well, finding that he didn't freely and voluntarily
25 waive his right to a direct appeal. The Supreme Court

1 granted certiorari to hear the appeal and dismissed the
2 appeal pursuant to Anders verses -- excuse me -- pursuant to
3 Anders procedure. He was represented that appeal by Ms.
4 Katherine Hudgins, who is here today. It was that appeal
5 that is the subject of this PCR. He is represented here
6 today by Jeremy Thompson.

7 The State does have a Motion to Dismiss this case on
8 the grounds of successiveness and statute of limitations and
9 in particular the contention that you could raise a claim of
10 ineffective assistance of appellate PCR counsel even in a
11 White setting. A White v. State setting is where somebody
12 who hasn't had a direct appeal is found it hasn't been
13 freely and voluntarily waived and the Supreme Court has
14 created this procedure in which to hear a belated direct
15 appeal, however, it's the State's contention that there is
16 no right to ineffective assistance of counsel in a White
17 appeal and so that is the nature of our Motion to Dismiss.

18 As far as today we do have Catherine Hudgins here today
19 prepared to testify should the Court deny our motion.

20 At this time, I guess I guess I would leave it to Mr.
21 Thompson to set out any allegations he has on the record.

22 THE COURT: All right, give me one second. MR.

23 SPENCER: Let me --

24 (Pause.)

25 MR. SPENCER: Your Honor, whenever you are prepared for

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1 me to bring the other materials up to you.

2 THE COURT: Okay, you can bring them up.

3 (Documents passed up to the court.)

4 THE COURT: All right. Yes, sir, Mr. Thompson.

5 MR. THOMPSON: Please the Court, Your Honor.

6 THE COURT: Yes, sir.

7 MR. THOMPSON: I guess I will start by, I guess,
8 explaining, clarifying, our position here today and kind of
9 adding a couple things to the procedural history that I
10 don't know if Mr. Spencer was aware.

11 There was a conditional order of dismissal filed in
12 this case. We had, I believe, it was Mr. Corning with the
13 Attorney General's Office, we had a status conference over
14 the phone Judge Dickson. He didn't make any specific
15 findings with regards to any of the issues, he just
16 requested that the Attorney General's Office have a hearing
17 on it, which is why we're here today, obviously.

18 In terms of what we're here for today, Mr. Mintz had
19 initially filed this PCR and alleged ineffective assistance
20 of PCR counsel. He was represented by Robert Hood on his
21 original PCR and belated appeal counsel, belated direct
22 appeal counsel. We are not going forward with any of the
23 allegations dealing with ineffective assistance of PCR
24 counsel. We were planning on pursuing that in the event
25 that the United States Supreme Court held that there was a

1 constitutional right to counsel in a collateral proceeding.
2 They did not expressly not to do so in a recent decision
3 called Martinez versus Ryan, but they didn't hold it either.
4 So since our Supreme Court says you can't do it, we're not
5 going to go forward with that here today.

6 However, our position with regard to belated appeal
7 counsel is that, and to be quite honest, I don't know, and
8 I've done a pretty good amount of research on it, I don't
9 know of any decision in any court dealing one way or the
10 other of answering the question of whether or not you have
11 the right to counsel during and -- you want to call it
12 belated direct appeal, out of time direct appeal, however
13 you want to phrase it, proceeding. It's our position that
14 there is. What you are recreating is the direct appeal.
15 You have, you follow basically all the procedures you would
16 normally follow in a direct appeal. You have briefs
17 written, you know, it's not discretionary or anything like
18 that, counsel is appointed, and you can -- you can raise
19 direct appeal issues during this out of time direct appeal
20 process. So since what you clearly have, a constitutional
21 right to counsel during a direct appeal. If you have just
22 filed the notice of appeal you would have a right to counsel
23 during that proceeding. You would also have the right to
24 effective assistance of counsel during the proceeding.
25 Since which what you are doing is basically creating a

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1 makeup, you know, you're giving -- the Supreme Court gave
2 Mr. Mintz his direct appeal over again, he just did it
3 later. I think the right to counsel is the same in both
4 proceedings, the right to the effective assistance of
5 counsel is the same in both proceedings. And there's a
6 clear distinction between what is the collateral appeal
7 during the procedures on a PCR appeal and what you have to
8 raise on a belated direct appeal. So for all those
9 reasons, we would allege there is a constitutional right to
10 the effective assistance of counsel on an out of time direct
11 appeal that is granted by Supreme Court. And so that is our
12 position with regard to that argument.

13 Mr. Spencer looks like he wants to say something.

14 MR. SPENCER: Oh, I was just going to have a very brief
15 reply to that. I didn't mean to interrupt Mr. Thompson. I
16 was just going to say it's the belated appeal process is
17 still a collateral process rather than a direct process and
18 there's no right to effective assistance of counsel.
19 Martinez even supports that, that there's no constitutional
20 right to effective assistance in a collateral proceeding,
21 which is what we would have in a belated appeal that we're
22 discussing today, and just to be clear, too, there was a COD
23 that has kind of informally set aside and we're re-raising
24 that issue today just so it's out there for the record, if
25 necessary, but that -- that was the point I wanted to make.

1 I hope I didn't cut Mr. Thompson's argument short.

2 MR. THOMPSON: And I don't dispute that there's no
3 right to counsel on a collateral appeal. We don't have -- I
4 mean, that's the United State's Supreme Court -- obviously,
5 we don't have any dispute with that. The debate is whether
6 or not a belated direct appeal is in fact a collateral
7 appeal or it actually a direct appeal and you have the
8 constitutional rights attendant with a direct appeal as
9 opposed to a collateral appeal, and it's our position that
10 it is a direct appeal it's just done later than it would
11 normally have been due to Mr. Mintz's ineffective assistance
12 of counsel at trial.

13 And Mr. Spencer, are you actually proceeding with
14 statute of limitations or successiveness defenses?

15 MR. SPENCER: We would go -- we would contend it should
16 be dismissed as successive. The statute of limitation would
17 apply also just because it is late in the process, but
18 primarily successive, I think, would be at play in this one.

19 MR. THOMPSON: We would argue, obviously, that we
20 couldn't have possibly raised this issue at the first PCR
21 issue, because there was no belated direct appeal at that
22 time.

23 MR. SPENCER: And it would also go under Ace verses
24 State, which says there's no right to effective assistance
25 to PCR counsel, which also there wouldn't be a right to PCR

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1 appellate counsel. And even Martinez distinguishes between
2 first day and second day counsel is more or less the way
3 Martinez break down. Martinez says, talks about procedural
4 issues with your first PCR attorney at your evidentiary
5 hearing, but goes on to say that it's not going to apply
6 it's limited role which is talking about federal habeas
7 review not state review, but it doesn't apply to second day
8 proceeding, which is referring to where you have appellate
9 counsel, PCR appellate counsel. So Martinez even supports
10 that there's no right to counsel in a PCR appeal, even if it
11 includes a belated direct review, and the last point I do
12 want to make. I appreciate Mr. Thompson's courtesies on
13 this. The last point I want to make is the White proceeding
14 itself, that's not federal law that's state created remedy
15 or situation to deal with how to review a direct appeal that
16 never happened and so that would not be subject to Martinez
17 federal law and there would be no constitutional right of
18 counsel in that carved out proceeding. I think that's
19 really all I have on that argument.

20 THE COURT: All right. So is it your position that the
21 attorney on the PCR appeal?

22 MR. SPENCER: Right. She would be PCR appellate counsel,
23 and, in fact, in this particular case, she raised in a
24 petition for certiorari, because even when there's findings
25 you didn't freely and voluntarily waive your right to appeal

1 at the PCR hearing the process is for the applicant to
2 petition for cert to get review of that since only the
3 Supreme Court can decide whether or not they have
4 jurisdiction. You petition for cert on the belated -- on
5 whether you freely and voluntarily waived your right to
6 appeal and then at the same time you would raise any other
7 issues from the PCR hearing that you didn't raise the second
8 issue on whether PCR hearing should have been denied which
9 the Supreme Court denied certiorari on that issue. They
10 granted it on the first issue, the freely and voluntarily
11 waived appeal and then heard the direct appeal as I
12 mentioned before.

13 Your Honor, and I have this -- Mr. Thompson and I have
14 another case I think we're going to be talking about
15 Martinez, but I have a copy of Martinez for you, Your Honor.

16 THE COURT: Oh, okay.

17 Anything else, Mr. Thompson?

18 MR. THOMPSON: Other than to say that, you know, again,
19 just to reiterate what we're talking about is a belated
20 direct appeal. It is a direct appeal. It just -- it's got
21 the word belated in front of it, but it's still a direct
22 appeal. And that even though it comes at a point in time
23 where you're in collateral proceedings, you're getting your
24 direct appeal. I mean, the federal courts can grant belated
25 appeals. If Mr. Mintz had lost on that issue in state court

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1 as to whether or not he had had it, his rights had been
2 violated in that regard, the federal courts could have
3 granted habeas relief and given him a belated direct appeal
4 and if that's what you're granting, you're granting a
5 constitutionally guaranteed direct appeal. That's what he
6 got, then I believe that the rest of the rights that go
7 alone with the direct appeal have to be satisfied. That's
8 why Anders briefs are filed on belated direct appeals. You
9 wouldn't have to file a Anders brief, you would have to file
10 a brief at all, you know, it would just be up to Mr. Mintz
11 to do it. So that is our position with regard to whether or
12 not this case should be allowed to go forward just on terms
13 of whether or not it cognizable in PCR, what we are alleging
14 here today. I do have further presentation as to what we
15 would present if Your Honor were to allow us to go forward.

16 THE COURT: All right. I'm going to deny the motion to
17 dismiss the application based on, I guess, the finding that
18 the White appeal, although belated was a direct appeal.
19 Then we will proceed with the PCR as to the appellate -- Mr.
20 Thompson.

21 MR. THOMPSON: Thank you, Your Honor.

22 Just very briefly, Your Honor. We have basically two
23 allegations of ineffective assistance of appellate counsel.
24 Ms. Hudgins raised one issue on her -- she did file an
25 Anders brief. She raised one issue as to whether or not

1 voluntary manslaughter should have been charged at trial and
2 then Mr. Mintz raised an issue in a pro se brief that the
3 prosecutor violated his constitutional rights by making an
4 impermissible comment on his right to remain silent, not to
5 present a defense during the closing argument. Basically,
6 that's our allegations that Ms. Hudgins was ineffective in
7 failing to file a merits brief on both arguments and that
8 had a merits brief been filed the Supreme Court would have
9 granted relief. So with that fact in mind, Your Honor, we
10 would call Katherine Hudgins to the stand.

11 THE CLERK: Please state your name for the record,
12 please?

13 MS. HUDGINS: Katherine Hudgins. H-u-d-g-i-n-s.
14 Katherine with a K.

15 (WHEREUPON, Katherine Hudgins was
16 sworn to tell the truth.)

17 THE CLERK: Thank you. You may be seated.

18 KATHERINE HUDGINS - DIRECT EXAMINATION

19 BY MR. THOMPSON:

20 Q. Good morning.

21 A. Good morning.

22 Q. In the interest of full disclosure, I did take a class
23 from you at the University of South Carolina, so if I call
24 you professor, I apologize.

25 Ms. Hudgins, do you remember representing Mr. Mintz?

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1 A I do, after reviewing the brief.

2 Q And where were you working when you represented Mr.
3 Mintz?

4 A I was working at Appellate Defense.

5 Q And in what capacity were you representing Mr. Mintz
6 on, what were you handling?

7 A I represented him on both the belated appeal, the
8 belated direct appeal, as well as, the cert petition on the
9 appeal from the PCR. The denial of it.

10 Q And in the process of representing him on the belated
11 direct appeal, what did you file on his behalf with the
12 court?

13 A And Anders brief.

14 Q And what are you arguing in an Anders brief, what is
15 the Anders procedure?

16 A The Anders procedure is basically stating to the Court
17 that there was not a meritorious issue upon which to raise a
18 direct appeal, but this was an issue that I found, this was
19 the only issue that could be considered by the Court.

20 Q And you're constitutionally required to do that?

21 A Yes.

22 Q Do you recall what the issue was that you presented in
23 the Anders brief?

24 A I have it in front of me. And it looks like I raised
25 the issue of failure to charge voluntary manslaughter.

1 Q And what were the ground that you argued, in the appeal
2 that you arguing voluntary manslaughter?

3 A And I don't remember directly, but reading from my
4 brief, it appears that the decedents act -- and I'm just
5 going to read from the brief because that's my only memory.
6 The decedent's act of getting out of his vehicle and
7 approaching Mintz constitutes evidence of an overt act
8 sufficient for legal provocation. The Judge erred in
9 refusing to charge voluntary manslaughter.

10 Q So it was your contention through this Anders brief
11 that Mr. Mintz, that he should have had voluntary
12 manslaughter charged in the trial?

13 A That was the issue I raised in the brief.

14 Q And if that issue had been granted. Let's say the
15 Supreme Court had found that he should -- that voluntary
16 manslaughter should have been charged, what would the remedy
17 have been?

18 A He would have received a new trial.

19 Q Now, why did you file that issue as an Anders brief?

20 A I'm concerned about that. I've reviewed my notes from
21 preparation of the brief, and it's in different pen writing,
22 but it is starred writing in my notes, and it says trial
23 attorney, Mr. Walters, failed to renew the objection at the
24 close of the charge. And frankly if that's the reason I
25 submitted this as an Anders brief, that's wrong.

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1 Q And why would that be wrong?

2 A Because based on the case law once the objection is
3 made or a request is made to a jury charge is made on the
4 record there is no need to renew that request at the close
5 of the charge.

6 MR. THOMPSON: And for the record, Your Honor, for that
7 proposition I would cite State verses Johnson, 333 SC 62 508
8 SE2d 29. I have a copy to hand up.

9 THE COURT: Okay.

10 BY MR. THOMPSON:

11 Q And we were talking about that before the hearing
12 today; correct?

13 A We were.

14 Q So if that was -- to the best of your recollection you
15 did not raise this issue as a merits issue, you did not file
16 a merits brief because you thought that the issue was not
17 preserved?

18 A And it very well may be that I didn't think that issue
19 was preserved. I don't have that written in my notes, but I
20 do have this side note over here noting that trial attorney
21 did fail to object to the close, which gives me some
22 concern.

23 Q If you had realized that the issue was preserved for
24 review would you have filed a merit?

25 A Yes.

1 Q And obviously if you'd filed -- I don't want to belabor
2 the point, but if you'd filed a merit's brief that would
3 have meant that you thought it had merit, that it was worthy
4 of granting review and reversing his conviction?

5 A That is correct. In reviewing the facts, and I don't
6 specifically recall, obviously, when I was writing the brief
7 it was certainly very, very, fresh and I was very familiar
8 with all the facts. It was not one of those cases that just
9 jumped out at me that this was a blatant, blatant error, but
10 it's one of those things that, you know, quite frankly, if
11 there's any evidence that should be charged and should be a
12 jury determination.

13 Q Now, are you familiar with the -- oh, let me back up.
14 In an Anders procedure does your client get an opportunity
15 to file a brief himself?

16 A That's correct.

17 Q And did Mr. Mintz do so in this case?

18 A I believe that he did.

19 MR. THOMPSON: And Your Honor, I believe I only have one
20 copy of this brief so I would hand it up to the Court.

21 MR. SPENCER: I have no objection.

22 BY MR. THOMPSON:

23 Q And when we were -- we talked about the issue that Mr.
24 Mintz raised as well?

25 A Correct.

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1 Q Let me put -- I guess, let me put it this way, would
2 you knowingly not raised a meritorious issue?

3 A No, and if I failed to raise a meritorious issue that
4 would prevail on direct appeal then certainly then Mr. Mintz
5 would be entitled to relief.

6 Q Now, do you have any recollection in reviewing the
7 transcript as to I guess -- let me rephrase that. Do you
8 have any recollection of what Mr. Mintz alleged in his pro
9 se brief?

10 A Based on the discussions that we had this time, and I
11 think we had another hearing in Dorchester, there was a
12 reference in closing arguments. There was an objection made
13 that something that the solicitor made in closing argument
14 was a comment on his right to remain silent.

15 Q And obviously you filed an Anders brief, so you did not
16 believe at that point in time when you filed a brief that
17 that issue was worthy of raising on appeal?

18 A No. I went back and reviewed my notes. I got Page 19
19 of the transcript noted. There was an objection made to a
20 tape and then, I think, the objection was later discussed at
21 the close of closing arguments and I don't have any further
22 notes after that.

23 Q But you didn't present that issue, obviously, in your
24 --

25 A No. I did not.

1 MR. THOMPSON: Beg the Court's indulgence.

2 No further questions of this witness, Your Honor.

3 THE COURT: All right. Please answer any questions Mr.
4 Spencer has.

5 KATHERINE HUDGINS - CROSS EXAMINATION

6 BY MR. SPENCER:

7 Q Ms. Hudgins, I wanted to first go into your experience.
8 How long have you been with appellate defense now?

9 A Seven years. Seven years with Appellate Defense.

10 Q Okay. Before that what was your experience?

11 A Before that I was in private practice. I had my own
12 law firm. Prior to that I was working as an associate with
13 John Delgado; prior to that I was with the Richland County
14 Public Defender's Office; prior to that I was with the
15 Second Circuit Solicitor's Office.

16 Q Okay. Is it fair to say that pretty much all your --
17 during the course of your practice over the years it's
18 primarily been concerned with criminal defense?

19 A Yes.

20 Q And in terms of appellate practice did part of your
21 practice concern appellate practice prior to --

22 A Yes. I handled appellate work with John Delgado as
23 well as in my private practice.

24 Q Okay. What would be a ballpark estimate of how many
25 cases you've probably briefed?