

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Brian M. Gibbons, Circuit Court Judge

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SC SUPREME COURT

JOHNNIE FRAZIER

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000387

APPENDIX

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1 MURDER. FINALLY THIS WEEK THERE IS SOMEBODY THAT GOT TO
2 PUSH THAT PAST AND IT IS YOU, THE JURY. LAW ENFORCEMENT
3 AND THE STATE, THEY CAN ACCUSE YOU OF A CRIME, THEY CAN
4 ARREST YOU FOR THAT CRIME, THEY CAN TAKE YOU TO JAIL FOR
5 THAT CRIME, THEY CAN PROSECUTE YOU IN THE COURT FOR THAT
6 CRIME BUT THEY CANNOT CONVICT YOU FOR THAT CRIME UNLESS
7 THEY CAN CONVINCE TWELVE MEMBERS OF THE COMMUNITY
8 UNANIMOUSLY THAT THAT EVIDENCE PROVES YOUR GUILT BEYOND A
9 REASONABLE DOUBT. NOW, WHAT DID THEY PUT UP HERE TO TRY
10 TO CONVINCE YOU, LET'S TALK ABOUT SOME OF THAT. AUGUST
11 THE 14TH OF '03, I HAVE GOT CH'S THERE, I HAVE GOT CAROL
12 HURSEY, BECAUSE WHAT I AM GOING TO SHOW HERE IS THE
13 EVIDENCE YOU HEARD ABOUT THE LAST DAY OF HER LIFE. NOW,
14 WHAT DID THE STATE TELL YOU. I WILL BE PUTTING THINGS ON
15 HERE, I AM GOING TO SHOW YOU ABOUT THE EVIDENCE IN THE
16 CASE, IF I SAY SOMETHING DIFFERENT THAN YOUR MEMORY OF IT
17 YOU GO BY YOUR MEMORY OF IT BECAUSE YOU ARE THE JUDGES OF
18 THE FACTS. AND WE LAWYERS, WE HEAR THINGS BUT WE ARE ALSO
19 CONCENTRATING ON OTHER THINGS AT THE SAME TIME AND WE MAY
20 MISSPEAK ON THESE THINGS, YOU GO BY YOUR MEMORY OF IT, YOU
21 ARE THE JUDGES OF THE FACTS. I HAVE WRITTEN IN PINK OR
22 WHATEVER THIS IS, A DIFFERENT COLOR, BECAUSE THIS STUFF IS
23 GOING TO REPRESENT TO YOU THE EVIDENCE GIVEN TO YOU BY THE
24 STATE. 6:00 O'CLOCK, BUTCH HURSEY LEAVES HOME. BETWEEN
25 2:15 AND 2:30 SHERRI QUARLES TESTIFIES THAT SHE SEES

1 JOHNNIE LEAVE IN CAROL'S CAR. AND I AM GOING TO TALK A
2 LITTLE BIT ABOUT SHERRI QUARLES. WHAT IS THE NEXT ONE
3 THEY GAVE YOU. 2:30, 3:00 O'CLOCK, BUTCH HURSEY COMES
4 HOME AND FINDS CAROL DEAD. THAT IS WHAT THE STATE GAVE
5 YOU, OKAY. NOW, LET'S LOOK AT THE GAPS THAT WERE FILLED
6 IN BY THE DEFENDANT. 7:00 O'CLOCK, MARY FRANCIS COOPER,
7 SHE GOES BY TO DROP ROBERT'S FOOTBALL OFF AND THE CAR IS
8 IN THE DRIVEWAY. MARK MAYER DRIVES BY ON THE WAY TO
9 TRAFFIC COURT IN THE 10:00 O'CLOCK RANGE, THE CAR WAS IN
10 THE YARD. SOME TIME AROUND 10:00 OR 11:00 O'CLOCK, TINA
11 DAVIS, AT THE REQUEST OF BURCH HURSEY, THAT IS THE STATE'S
12 WITNESS, WE BROUGHT IT OUT AT CROSS BUT THEY DIDN'T CLEAN
13 IT UP AT DIRECT EXAMINATION, DID THEY. HE CALLS TINA
14 DAVIS TO CHECK, I CAN'T GET IN TOUCH WITH CAROL. SHE GOES
15 OVER THERE, THE CAR IS GONE. I DON'T RECALL THE TIME SO I
16 AM GOING TO PUT 8:00 O'CLOCK, 9:00 O'CLOCK, CHASITY DAVIS
17 AND ROBERT HURSEY ON THE WAY TO SCHOOL, REMEMBER THAT ONE.
18 12:00 O'CLOCK, ROBERT HURSEY COMES HOME FROM SCHOOL, GRABS
19 HIS SHORTS TO GO TO FOOTBALL PRACTICE, THE CAR IS GONE.
20 NOW, LOOK AT THAT. WHAT DOES THAT TELL YOU. IT TELLS YOU
21 THAT THE STATE WAS TRYING TO HIDE THINGS FROM YOU BECAUSE
22 THOSE THINGS THAT DIDN'T FIT IN WITH THEIR THEORY OF THE
23 CASE THAT JOHNNIE FRAZIER DID IT, THEY HOPE YOU NEVER HEAR
24 THOSE THINGS BECAUSE THEY JUMP FROM 6:00 O'CLOCK WHEN
25 BUTCH HURSEY LEAVES TO 2:15 TO 2:30 BECAUSE THAT WAY IF

1 YOU BELIEVE WHAT THEY SAY SHERRI QUARLES, SHE CAN PUT
2 JOHNNIE FRAZIER THERE WITH CAROL HURSEY'S CAR. BUT WE
3 KNOW THAT COULD NOT HAVE HAPPENED, WE KNOW IT COULDN'T OF
4 HAPPENED BECAUSE THE CAR HAD ALREADY LEFT, THE CAR WAS
5 GONE FROM 10:00 O'CLOCK TO 11:00 O'CLOCK THAT MORNING.
6 THEY DIDN'T WANT YOU TO KNOW THAT, THEY DIDN'T WANT YOU TO
7 THINK ABOUT THAT BECAUSE THAT WAY SHERRI QUARLES, THEY PUT
8 JOHNNIE FRAZIER THERE. SOMETIMES I WANT TO THINK THAT DID
9 YA'LL PICK UP ON THAT, ARE YOU GOING TO BELIEVE SHERRI
10 QUARLES AND LET'S TALK ABOUT SHERRI QUARLES FOR A MINUTE.
11 WHAT DID YOU HEAR FROM HER, WELL, SHE CHANGED HER STORY
12 ABOUT THREE OR FOUR TIMES. SHE ADMITTED SHE LIED, SHE
13 EVEN CHANGED IT ONE TIME BECAUSE THE DEPUTES CAME, THEY
14 DIDN'T LIKE HER TIME AT 2:30 BECAUSE THEY KNEW IT DIDN'T
15 FIT IN. THEY DIDN'T WANT YA'LL TO KNOW BECAUSE THEY
16 DIDN'T TELL YOU, BUT YET THEY HAD ALL OF THESE WITNESSES
17 THAT THE CAR WAS ALREADY GONE BEFORE 2:00, 2:30. BUT THEY
18 STILL BROUGHT HER UP HERE AND PUT HER UP HERE BECAUSE SHE
19 WANTED YOU TO THINK THAT JOHNNIE FRAZIER AND WHAT THEY
20 WANT IS A CONVICTION ON JOHNNIE FRAZIER AND WHAT WE OUGHT
21 TO BE AFTER IS THE PROOF. NOW, SHERRI QUARLES, ALL THIS
22 STUFF WE HEARD, I WAS DRIVING MY CAR AND I AM AFRAID.
23 WHEN YOU ARE MAKING SOMETHING UP IT IS HARD TO TELL THE
24 TRUTH. WHAT DID SHE SAY, ABOUT GOING TO SCHOOL, SHE SAID
25 SHE HAD A PURPLE CAR BUT THEN SHE SAYS SHE WAS DRIVING A

1 WORK TRUCK. IT WAS BEFORE 2:30, IT WAS ABOUT 2:00 OR 2:15
2 BECAUSE I WAS DRIVING THE WORK TRUCK. DO YOU REMEMBER
3 THAT. SHE WAS DRIVING A WORK TRUCK. LET'S TALK ABOUT
4 ANOTHER. AUGUST THE 14TH OF '03, JOHNNIE FRAZIER, WHAT DO
5 WE KNOW. WELL, I MEAN A LOT OF PEOPLE TESTIFIED HERE, A
6 LOT OF DIFFERENT TIES BUT HERE IS WHAT WAS CONSISTENT.
7 THE NIGHT BEFORE THE DEATH OF CAROL HURSEY SEVERAL PEOPLE
8 KNEW JOHNNIE FRAZIER SPENT OR AT LEAST SOME PORTION OF
9 THAT EVENING OVER AT BOO'S HOUSE, THE CRACK HOUSE. NOW, I
10 BELIEVE THERE MIGHT OF BEEN SOME TESTIMONY THAT HE LEFT
11 THAT NIGHT AROUND 11:00 O'CLOCK, I BELIEVE THERE WAS SOME
12 TESTIMONY THAT HE DIDN'T LEAVE UNTIL DAYBREAK THAT
13 MORNING. OKAY. NOW, THE DIFFERENCE BETWEEN THOSE THINGS
14 IS NOT SIGNIFICANT BECAUSE WE KNOW THAT BUTCH HURSEY LEFT
15 THE HOUSE ABOUT 6:30. WHAT WE DO KNOW THAT HE ENDS UP
16 RIDING ON A BICYCLE, AT DOROTHY DRAWDY'S HOUSE AT 6:45
17 THAT MORNING. HE LEFT IN HIS TRUCK ABOUT 7:00 O'CLOCK AND
18 WE GO A FEW MILES FROM THERE AND HE WAS SEEN BY TERRY
19 BOLTIN GETTING OUT OF THE TRUCK OVER THERE NEXT TO THE
20 STORE AND HE GETS INTO TERRY BOLTIN'S VEHICLE. NOW, HE
21 WASN'T GOOD ON TIME BUT IT WAS THAT MORNING. FROM THERE
22 THEY GO TO BOO BOLTON'S PLACE. WE KNOW FROM THE WITNESSES
23 THAT HE STAYED THERE UNTIL THE MIDDLE OF THE AFTERNOON,
24 3:00, 4:00, 5:00 O'CLOCK AT WHICH TIME TERRY BOLTIN TOOK
25 HIM OVER TO HAPPY TOWN. THOSE ARE THE TIMELINES. WHAT DO

1 THEY TELL YOU. IT COULD BE JOHNNIE FRAZIER. MR. FRAZIER
2 RIDES A BICYCLE FOR TRANSPORTATION. NOW, WE KNOW, LET'S
3 TALK ABOUT TIME AGAIN. YOU SEE, THE STATE BROUGHT OUT THE
4 TIME OF DEATH AT 8:00 O'CLOCK IN THE MORNING. BUT YOU
5 SEE, THAT GAVE US PROBLEMS BECAUSE THEY HAD TO FIT IN THE
6 TIME OF DEATH WITH SHERRI QUARLES BECAUSE, YOU SEE, SHERRI
7 QUARLES IS THE ONLY PERSON WHO CAN SAY, YES, IT WAS
8 JOHNNIE FRAZIER, I SAW HIM DRIVING AWAY IN CAROL'S CAR.
9 SO, THEY HAD TO BACKTRACK ON THAT AND THEY START TALKING
10 ABOUT THINGS, WELL, YOU KNOW IF YOU HAVE A SEIZURE MAYBE
11 THE RIGAMORTUS WOULD BE IMMEDIATE. YOU KNOW, AND SO, YES,
12 IT COULD HAPPEN AROUND 2:00 O'CLOCK. WELL, OF COURSE THEY
13 HAD TO ADMIT, THERE WASN'T ANY EVIDENCE OF SEIZURE, NO
14 BITING THE TONGUE, NO MOVEMENT INTO THE BLOOD AND SO
15 FORTH, NO EVIDENCE ON THAT. BUT YOU KNOW SOME TIME WHEN
16 SOLDIERS ARE FIGHTING AND THEY HAVE BEEN IN COMBAT A LONG
17 TIME AND THEY ARE VERY FATIGUED AND THEY GET SHOT THEY CAN
18 GO INTO IMMEDIATE RIGAMORTUS. OF COURSE, THEY DIDN'T HAVE
19 ANY EVIDENCE OF THAT IN THIS CASE. AND OF COURSE, THEY
20 ARE STILL TRYING TO IGNORE, THEY ARE STILL TRYING TO
21 OVERLOOK THE FACT THAT WE KNOW THAT THE TIME OF DEATH
22 WOULD OF BEEN THAT MORNING BECAUSE THE CAR WAS ALREADY
23 GONE. NOW, REMEMBER WHEN YOU GO BACK THERE I WANT YOU TO
24 THINK ABOUT THESE TIMEFRAMES. I SUBMIT TO YOU THAT IN
25 ITSELF SHOULD GIVE YOU REASONABLE DOUBT. LET'S TALK ABOUT

1 SOME OF THE OTHER PIECES OF EVIDENCE. THERE IS A BUNCH OF
2 TALK ABOUT THE BOOK BAG AND I AM NOT GOING TO STAND UP
3 HERE AND ARGUE TO YOU THAT IS NOT JOHNNIE FRAZIER'S. YOU
4 HEARD THEM, HE ALWAYS CARRIED THAT BOOK BAG WITH HIM, I AM
5 NOT GOING TO STAND UP AND TRY TO ARGUE WITH YOU ON THE
6 SPECK OF CAROL HURSEY'S BLOOD ON THAT BOOK BAG, YOU HEARD
7 THEM, THEY SAID IT WAS. THE QUESTION IS, WHEN WAS IT
8 PLACED THERE. BECAUSE YOU SEE, JOHNNIE HAD BEEN WORKING
9 ALONG WITH CAROL HURSEY FOR MONTHS. DON'T YOU THINK THAT
10 AT SOME POINT AND TIME THAT SHE COULD OF TOUCHED HIS BOOK
11 BAG WITH HER FINGER BEING CUT OR SOMETHING, IT WAS ONLY A
12 REALLY SMALL PIECE OF BLOOD THAT WAS ALL USED UP IN THE
13 TEST. THIS WASN'T LIKE, IT IS FULL OF BLOOD SO WHEN HE
14 SHOT HER IT SPRAYED ALL OVER THIS BOOK BAG, IT WASN'T LIKE
15 THAT AT ALL. A LITTLE TINY SPECK, COULD OF BEEN THERE ANY
16 TIME, COULD OF BEEN THERE FOR MONTHS. THEY CAN'T TELL
17 YOU. AS FAR AS THAT GOES THIS BOOK BAG WAS IN THAT CRACK
18 HOUSE ALL NIGHT, THE NIGHT AFTER THAT MURDER, 30 OR 40
19 PEOPLE CAME THROUGH THERE. WHERE WAS THE BOOK BAG, NOBODY
20 EVEN SAW IT, SOMEWHERE IN THE HOUSE. LET'S TALK ABOUT THE
21 BOOK BAG AS IT RELATES TO CAROL HURSEY. THEY GOT THE BOOK
22 BAG THE NEXT DAY. IF THIS BOOK BAG CONTAINED EVIDENCE OF
23 CAROL HURSEY'S MURDER AND NOT JUST SOME CASUAL SPOT OF
24 BLOOD THAT COULD OF GOT ON THERE ANY TIME WHY DIDN'T THEY
25 CONTAIN THE EVIDENCE. WHAT DO WE KNOW, CONTAINED SOME

1 GLOVES, DID THEY TEST THE GLOVES. NOW, THEY DIDN'T PUT
2 SOME OF THOSE THINGS IN THERE IN EVIDENCE BUT I BELIEVE
3 THERE WAS SOME TESTIMONY THERE WAS SOME SOCKS, SOME WIRES.
4 BUT ALL OF IT WAS FORENSIC EVIDENCE AND NONE OF IT
5 CONTAINED ANY EVIDENCE OF JOHNNIE FRAZIER, NONE OF IT
6 CONTAINED OF CAROL HURSEY RELATING TO JOHNNIE FRAZIER.
7 NOW, WHAT ELSE DID WE FIND OUT. WE HEARD ABOUT THE CAR
8 BEING FOUND, WHAT WAS IT, A WEEK OR SO LATER. IT WASN'T
9 REALLY RECOVERED UNTIL SEVERAL MONTHS LATER, THERE WAS
10 SOME TESTIMONY THAT SOMEBODY SAW IT BURNING AND LOCATED IT
11 A WEEK LATER. THEY DO A SCENE AND THEY RECOVER NINE,
12 TEN--

13 MR. RIDDLE: YOUR HONOR, EXCUSE ME, I HATE TO OBJECT
14 BUT HE IS ARGUING THINGS THAT ARE NOT IN EVIDENCE.

15 MR. FLOYD: I BELIEVE IT WAS EVIDENCE THAT THEY WERE
16 TAKEN TO SLED, YOUR HONOR.

17 MR. RIDDLE: CAN WE APPROACH.

18 THE COURT: COME UP.

19 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
20 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
21 JURY.)

22 THE COURT: OBJECTION IS SUSTAINED.

23 MR. FLOYD: LADIES AND GENTLEMEN, DOESN'T IT MAKE IT
24 SUSPICIOUS THE WAY THAT THEY DON'T WANT YOU TO HEAR
25 ANYTHING.

1 MR. RIDDLE: OBJECTION TO THAT, YOUR HONOR.

2 THE COURT: SUSTAINED.

3 MR. FLOYD: YOUR HONOR, I AM TALKING ABOUT MY
4 TIMELINE.

5 THE COURT: I SUSTAIN THE OBJECTION THE WAY THAT LAST
6 ARGUMENT WAS MADE, IT IS IMPROPER. YOU CAN TALK ABOUT
7 YOUR TIMELINE BUT JUST NOT THE WAY YOU WORDED IT.

8 MR. FLOYD: REMEMBER HOW THEY TRIED TO KEEP THIS
9 EVIDENCE POINTED TO JOHNNIE FRAZIER AND TO EXONERATE
10 JOHNNIE FRAZIER. LET'S TALK ABOUT SOME OF THE OTHER
11 EVIDENCE. I BELIEVE IT WAS EIGHT FINGERPRINTS THAT WERE
12 FOUND THAT DID NOT MATCH. YOU REMEMBER THE REPORT,
13 REMEMBER HOW WE WENT THROUGH THAT, REMEMBER HOW MS. GRIMES
14 WAS UP THERE ON THE STAND AND SHE KEPT SAYING I CAN'T FIND
15 THE REPORT, I DON'T REMEMBER, I AM NOT SURE, BLA, BLA.
16 THEY FINALLY GO GET THE REPORT AND SHOW IT TO HER AND WHAT
17 DID SHE HAVE TO ADMIT. YES, THERE WERE EIGHT FINGERPRINTS
18 AND THEY WEREN'T JOHNNIE FRAZIER'S, THEY WEREN'T JOHNNIE
19 FRAZIER'S AND WE DON'T KNOW WHOSE THEY WERE. DO YOU
20 REMEMBER THAT, THEY TRIED TO HIDE THAT FROM YOU TOO. THEN
21 FOOT, SHOE IMPRESSIONS, REMEMBER THOSE. THEY DIDN'T WANT
22 YOU TO HEAR ABOUT THOSE EITHER, DID THEY, THERE WAS SEVEN
23 OF THOSE, THEY DIDN'T MATCH ANY OF THE PEOPLE THERE ON THE
24 SCENE AND DID NOT MATCH JOHNNIE FRAZIER'S FOOTWEAR. THEY
25 WEREN'T GOING TO TELL YOU ABOUT THAT, WERE THEY. YOU

1 KNOW, WHAT OTHER KIND OF EVIDENCE HAVE THEY GIVEN YOU.
2 THE BRING YOU A JAIL HOUSE SNITCH, MURDER IS A BIG THING
3 IN THIS COUNTY. WHAT DID THEY SAY, SEVEN OR EIGHT A YEAR.
4 IMAGINE SENDING JOHNNIE FRAZIER IN THERE AND WITH THIS
5 MAN, THERE ARE PEOPLE IN THERE TRYING TO USE THAT TO
6 IMPROVE THEIR SENTENCE. SO, WHAT DID THEY DO. THEY TRY
7 TO HIDE FROM YOU THE TIMELINE. THEY TRY TO PUSH PAST YOU
8 SHERRI QUARLES WHEN THEY KNOW SHE IS LIEING. ARE THEY
9 AFTER THE TRUTH OR ARE THEY AFTER THE VICTORY. AND WHAT
10 THEY BROUGHT TO YOU IS LIEING TESTIMONY, JAIL HOUSE
11 SNITCH. AND THEN THEY TRY TO HIDE FROM YOU THE FORENSIC
12 EVIDENCE THAT SHOWED NO JOHNNIE FRAZIER, ALL OF THE
13 FORENSIC EVIDENCE ON THE SCENE, WHERE THE CAR WAS, NONE OF
14 IT POINTS TO JOHNNIE FRAZIER, NONE OF IT. NONE OF THE
15 EVIDENCE IN THIS BOOK BAG, THE FORENSICS, NONE OF IT
16 POINTS TO JOHNNIE FRAZIER. LADIES AND GENTLEMEN, I HAVE
17 BEEN TALKING A LONG TIME, PROBABLY NOT LONGER THAN YOU
18 THINK I SHOULD HAVE. BUT YOU SEE, ONCE I SHUT UP AND SIT
19 DOWN I DON'T GET TO SAY ANYTHING ELSE TO YOU. MR. RIDDLE
20 WILL GET TO TALK TO YOU ABOUT THIS EVIDENCE THE WAY HE
21 WANTS TO TALK TO YOU. I WON'T GET AN OPPORTUNITY TO GET
22 UP BEHIND HIM AND SAY, WAIT A MINUTE LADIES AND GENTLEMEN
23 OF THE JURY, WHAT ABOUT THIS, WHAT ABOUT THAT. HE GETS TO
24 GO LAST WHICH IS AN ADVANTAGE. THE STATE HAS THE BURDEN
25 OF PROOF, THE STATE MUST PROVE THE GUILT OF JOHNNIE

1 FRAZIER BEYOND A REASONABLE DOUBT. WHEN YOU GO BACK IN
2 YOUR JURY ROOM, BRING UP SOMETHING AND TALK ABOUT
3 EVERYTHING AND ALL WE CAN ASK YOU IS TO GO OVER WHAT WE
4 SAID TO YOU. AND YOU WILL BE THINKING, SHOULD I HESITATE,
5 IS THERE SOMETHING THAT MADE ME HESITATE IN THIS CASE,
6 THINK ABOUT SOME OF THESE THINGS. THINK ABOUT THE
7 FINGERPRINTS THAT DID NOT BELONG TO JOHNNIE FRAZIER, THINK
8 ABOUT THE FOOTPRINTS THAT DID NOT BELONG TO JOHNNIE
9 FRAZIER, THINK ABOUT THE LACK OF ANY FORENSIC EVIDENCE TO
10 TIE JOHNNIE FRAZIER. OH, I WANT YOU TO THINK ABOUT
11 SOMETHING ELSE. I ALMOST FORGOT, 6:00, 7:00 O'CLOCK AT
12 NIGHT. MINNIE LENEVE, SHE KNOWS THE HOUSE, SHE WORKS WITH
13 CAROL, KNOWS THE FAMILY WELL, KNOWS CAROL'S CAR, BEEN IN
14 CAROL'S CAR, SEES CAROL'S CAR, SEES A BLACK MALE DRIVING
15 IT, AND THEN NOTICES DAMAGE TO THE SIDE OF THE CAR BUT IT
16 MUST NOT BE CAROL'S. ANOTHER REASON TO MAKE YOU HESITATE.
17 ANOTHER THING, JOHNNIE FRAZIER HAD JEWELRY, THERE WASN'T
18 ANY JEWELRY IN JOHNNIE FRAZIER'S BAG. YOU SEE, WHEN THERE
19 IS A VERDICT, AND IF THAT VERDICT, THAT VERDICT SPEAKS OF
20 THE EVIDENCE THAT YOU HEARD. BUT THE QUALITY OF THE
21 EVIDENCE THAT YOU HEARD AND I SUGGEST TO YOU THAT AS A
22 JURY THAT YOU HAVE AN OBLIGATION TO UPHOLD THE STATE TO A
23 STANDARD WHERE WE SEEK JUSTICE AND TRUTH, NOT JUST TRYING
24 TO CONVICT BECAUSE THAT IS WHAT WE HAVE HERE. HOW CAN YOU
25 NOT HELP BUT TO HESITATE WHEN THEY CAN PARADE WITNESSES IN

1 FRONT OF YOU THAT HAS GOT TO BE LIEING. HOW CAN YOU VOTE
2 TO FIND SOMEONE GUILTY WHEN THE STATE TRIES TO OVERLOOK,
3 TRIED TO IGNORE, TRIED TO KEEP AWAY FROM YOU EVIDENCE THAT
4 REALLY CANNOT BE QUESTIONED BUT WHICH CLEARLY SHOWS THAT
5 THE OTHER EVIDENCE THEY ARE TRYING TO PUT IN FRONT OF YOU
6 TO TRY TO IMPLICATE JOHNNIE FRAZIER HAS TO BE FOUGHT
7 BECAUSE IT CAN'T BE TRUE WITH THIS OTHER EVIDENCE WHICH
8 THEY ARE TRYING TO HIDE FROM YOU. LADIES AND GENTLEMEN, I
9 AM GOING TO SIT DOWN THIS TIME. I WANT TO THANK YOU FOR
10 YOUR ATTENTION, IT HAS BEEN A LONG TRIAL AND WE APPRECIATE
11 IT. THEY CAN CHARGE JOHNNIE FRAZIER, THE STATE CAN ARREST
12 JOHNNIE FRAZIER, THE STATE CAN BRING HIM TO TRIAL BUT THEY
13 CAN'T MAKE THE DECISION THAT YOU CAN. CAN THE EVIDENCE
14 PROVE THAT HE IS GUILTY BEYOND A REASONABLE DOUBT. THANK
15 YOU.

16 THE COURT: ALL RIGHT, MR. FOREMAN AND LADIES AND
17 GENTLEMEN, WE WILL TAKE A BREAK AT THIS TIME. DON'T
18 DISCUSS THE CASE, YOU ARE EXCUSED AND EVERYONE ELSE STAY
19 SEATED, PLEASE.

20 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

21 THE COURT: LET ME GET ON THE RECORD BEFORE WE BREAK
22 THAT DURING THE ARGUMENT AN OBJECTION WAS MADE BY THE
23 STATE TO A CERTAIN PORTION OF THE ARGUMENT BASED ON THE
24 GROUNDS THAT COUNSEL WAS ARGUING FACTS NOT IN EVIDENCE AND
25 MR. FLOYD INDICATED, FELT LIKE IT WAS IN EVIDENCE

1 CONCERNING SOME CIGARETTE BUTTS ALLEGEDLY FOUND IN THE
2 LOCATION OF THE CAR THAT WERE TESTED. I HAVE GONE BACK
3 THROUGH MY NOTES AND I HAVE FOUND NO RECORDS TO THAT AT
4 ALL. I SUSTAINED THE OBJECTION AND TOLD YOU I WOULD LOOK
5 AT MY NOTES AND I DID NOT FIND ANYTHING IN MY NOTES, ANY
6 MENTION OF THAT WAS MADE. MY RULING DURING THE ARGUMENT
7 WILL STAND.

8 MR. FLOYD: THANK YOU, YOUR HONOR, PLEASE NOTE MY
9 OBJECTION.

10 THE COURT: THAT IS FINE.

11 MR. RIDDLE: YOUR HONOR, IN THAT LINE, DESPITE THE
12 COURT'S INSTRUCTIONS HE ARGUED IT ANYWAY AT A LATER POINT
13 IN THE ARGUMENT.

14 THE COURT: I CAN'T HEAR WHAT EITHER ONE OF YOU ARE
15 ARGUING, SO WHEN YOU MAKE AN OBJECTION YOU ARE GOING TO
16 HAVE TO TELL ME WHAT IS GOING ON.

17 MR. RIDDLE: YES, SIR.

18 MR. FLOYD: LET ME PUT SOMETHING ON THE RECORD. THE
19 STATE KNOWS THAT THOSE CIGARETTE BUTTS WERE ANALYZED BY
20 SLED AND THAT ONE OF THOSE CIGARETTE BUTTS WAS POSITIVE
21 FOR AN UNKNOWN MAN THAT WAS NOT JOHNNIE FRAZIER. NOW,
22 THEY CHOSE NOT TO PUT THAT INTO EVIDENCE, OF COURSE,
23 BECAUSE THEY, THAT IS THE WAY THEY TRIED THIS CASE. AND
24 THEIR EVIDENCE TO KEEP IT AWAY FROM THE JURY TO MY WAY OF
25 THINKING IS PROSECUTORIAL MISCONDUCT BECAUSE THEY ARE

1 TRYING TO HIDE FROM THE JURY EVIDENCE THAT WOULD EXONERATE
2 MY CLIENT.

3 THE COURT: YOU HAVE MADE YOUR STATEMENT, THAT IS ALL
4 IN THE RECORD NOW. THERE WAS NO EVIDENCE IN THE RECORD OF
5 WHAT WAS FOUND AT THE LOCATION OF THE CAR, FROM WHAT I
6 HAVE SEEN BUT YOU ARE PROTECTED ON THE RECORD. WE WILL
7 TAKE ABOUT FIVE MINUTES.

8 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

9 THE COURT: IS THE STATE READY?

10 MR. RIDDLE: YES, YOUR HONOR.

11 THE COURT: THE DEFENSE?

12 MR. FLOYD: YES, YOUR HONOR.

13 THE COURT: BRING THE JURY, IN.

14 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
15 APPROXIMATELY 3:00 P.M.)

16 THE COURT: ALL RIGHT, MR. RIDDLE.

17 MR. RIDDLE: LADIES AND GENTLEMEN, CAROL HURSEY WAS A
18 GOOD WIFE, A GOOD STEP-MOM, COOKED FOR HIM, TOOK CARE OF
19 HIM, SHE DIDN'T DESERVE THIS. SHE DIDN'T DESERVE THIS.
20 LET'S GO OVER, THE MONEY THAT SHE WORKED FOR THAT WAS
21 STOLEN OUT OF HER BACK PACK, OUT OF HER BRIEF CASE,
22 SITTING OPEN ON HER BED. IS IT REASONABLE, IS IT REASON
23 ENOUGH. MAYBE I MISUNDERSTOOD MR. FLOYD'S ARGUMENT, I AM
24 PRETTY SURE THAT HE ACCUSED THE STATE OF TRYING TO MISLEAD
25 THE TWELVE OF YA'LL. BUT I WILL TELL YOU THIS, LADIES AND

1 GENTLEMEN, I DON'T BELIEVE SUICIDE WAS IN THIS CASE. I
2 DON'T THINK THAT CAROL HURSEY WAS CAPABLE OF SHOOTING
3 HERSELF IN THE HEAD, DISPOSING OF THE GUN, TAKING HER CAR
4 DOWN TO HAPPY TOWN ROAD, BURNING, COME BACK DOWN AND LIE
5 ON HER BEDROOM FLOOR AND DIE IN A POOL OF BLOOD AFTER SHE
6 HAD SHOT HERSELF. WHAT DID WE LISTEN TO ABOUT SUICIDE.
7 WE HEARD THAT OVER AND OVER. I DON'T BELIEVE THE STATE
8 PRESENTED ANY EVIDENCE THAT BUTCH HURSEY KILLED HIS WIFE
9 FOR SOME INSURANCE MONEY, \$100,000.00 DOLLARS. THE MAN
10 STILL LIVED IN THE SAME HOUSE DOING THE EXACT SAME THING
11 THAT HE DID BEFORE HIS WIFE DIED. HIS LIFE CERTAINLY WAS
12 NO BETTER, LOOK AT HIM, HE IS A BROKEN MAN. YOU DIDN'T
13 HEAR THE STATE TRY TO TELL YOU ANYTHING ABOUT THAT. THE
14 BLOOD IN THAT BLACK TRANS AM, THE LADY THAT JUST SHOWED
15 OUT OF THE BLUE BECAUSE FIVE MILES OR THREE MILES OR
16 HOWEVER FAR AWAY SHE WAS SHE FOUND A LITTLE BIT OF BLOOD
17 IN HER CAR AND THOUGHT, WELL, MAYBE I WILL GET THE COPS TO
18 CHECK ON IT. AND TO IMPLY THAT DOESN'T MATCH JOHNNIE
19 FRAZIER AND IT DOESN'T HAVE A THING IN THE WORLD TO DO
20 WITH THE CRIME SCENE. NOT A THING IN THE WORLD TO DO WITH
21 THE CRIME SCENE. FOLKS, THE BIGGEST RULE IN BASEBALL OR
22 SOFTBALL AND YOU ARE TRYING TO DO IS KEEP YOUR EYE ON THE
23 BALL. KEEP YOUR EYE ON THE BALL, WHAT IS THE BALL IN THIS
24 CASE. THE BALL IN THIS CASE IS DID JOHNNIE FRAZIER KILL
25 CAROL HURSEY, THE BALL AIN'T SUICIDE, THE BALL AIN'T

1 BUTCH, THE BALL IS NOT A BLACK TRANS AM FROM THREE MILES
2 AWAY, THE BALL IN THIS CASE IS THE DEFENDANT AND THAT IS
3 THE LAST PLACE THEY WANT YA'LL TO LOOK. THEY WANT YA'LL
4 TO LOOK AT EVERYTHING. WHO HAD A MOTIVE, WHO HAD A
5 MOTIVE. BUTCH AND CAROL LIVED ON BUSBEE ROAD AND WHEN
6 YA'LL GET THIS IN THE JURY ROOM YOU WILL BE ABLE TO SEE IT
7 BETTER, YOU WILL SEE A LITTLE HOUSE IN THAT CIRCLE AND
8 THEN A BIG BARN LOOKING STRUCTURE, THAT IS WHERE THE
9 AUCTION WAS RUN AND IT IS RIGHT INSIDE THAT CIRCLE. AND
10 THE RENTAL PROPERTY DOWN HERE ON WAYNE STREET, THAT IS
11 WHERE JOHNNIE FRAZIER LIVED, WHERE CAROL AND BUTCH LET
12 JOHNNIE FRAZIER AND STARR MOVE IN FOR FREE, NO DEPOSIT, NO
13 RENT, NO NOTHING, MOVED IN. AND THEY WERE THERE FOR TWO
14 MONTHS AND JOHNNIE FRAZIER WAS SUPPOSE TO WORK, HE DON'T
15 LIKE THAT, HE DON'T LIKE THAT, HE DON'T WANT TO WORK FOR A
16 LIVING. THAT WILL INTERFERE WITH WHAT JOHNNIE FRAZIER
17 WANTS TO DO SO HE DOESN'T, HE DOESN'T. AND CAROL ASKED
18 HIM TO LEAVE, YOU HAVE GOT TO GO, YOU ARE NOT DOING WHAT
19 YOU SAID, YOU ARE NOT DOING LIKE WE AGREED, YOU ARE NOT
20 PAYING THE RENT, YOU CAN'T STAY HERE ANY MORE. AND EVEN
21 THEN SHE DOESN'T JUST BOOT HIM OUT ON THE STREET, SHE SAID
22 YOU CAN HAVE SOME TIME TO FIND YOU A PLACE BUT THAT
23 DOESN'T MAKE JOHNNIE HAPPY. NO, WHEN HE COMES BACK IN THE
24 HOUSE AND HE TELLS STARR, THAT BITCH IS GOING TO GET WHAT
25 SHE IS ASKING FOR. HE AIN'T HAPPY, HE IS MAD. . AND THEN

1 THEY MOVE, THEY MOVE, THEY AIN'T BEEN PAYING THE RENT,
2 JOHNNIE IS TELLING, HE KNOWS, I WORK FOR CAROL, I WORK FOR
3 BUTCH, THEY HAVE GOT THOUSANDS OF DOLLARS IN THAT HOUSE,
4 IN THAT BRIEF CASE, THOUSANDS OF DOLLARS AND HE IS GOING
5 TO GET IT BECAUSE HE IS GOING TO GET SCOTTIE CARSON. DOES
6 IT MAKE A GREAT WITNESS, NO IT DOESN'T, IT WOULD BE MUCH
7 BETTER IF HE HAD ALL OF HIS FACULTIES BUT HE DOESN'T. THE
8 ISSUE ISN'T WHETHER HE IS BRAIN DAMAGED, THE ISSUE IS
9 WHETHER HE IS LIEING. HE ASKED SCOTTIE, GET A CLEAN GUN,
10 AN UNREGISTERED GUN, A GUN THAT I CAN GET RID OF. MR.
11 ECKHART, THE JAIL HOUSE SNITCH, THE ONE YOU CAN'T RELY ON.
12 I HAVE DONE THINGS WRONG BUT I AM RIGHT ABOUT THIS, THE
13 GUY THAT SPENT ANOTHER TEN MONTHS IN JAIL. I HAVE BEEN ON
14 A CRACK BINGE, HE HAD BEEN ON A CRACK BINGE ON HIS
15 INSURANCE SETTLEMENT. REMEMBER WHEN HE SHOWED UP AT HIS
16 SISTER'S HOUSE, 6:45 IN THE MORNING, LATE, AFTER HE SPENT
17 ALL NIGHT AT THE CRACK HOUSE. HE CAME AND HE OPENED UP A
18 BEER AND THE FIRST THING WAS TO ASK HIS BROTHER-N-LAW FOR
19 MONEY, HE DIDN'T HAVE ANY, HE DIDN'T HAVE ANY. AND TERRY
20 BOLTIN AT WHATEVER TIME HE PICKED HIM UP BECAUSE TIME
21 MEANS NOTHING TO HIM. AND JOHNNIE HAS MONEY, AND NOT ONLY
22 DOES HE HAVE MONEY, HE HAS GOT ENOUGH MONEY TO GO BACK TO
23 BOO'S HOUSE, THAT CRACK HOUSE AND HE HAS GOT TWO MATCH
24 BOXES FULL OF CRACK. WELL, HE DIDN'T GET THAT FROM THE
25 \$20.00 DOLLARS OR SO THAT MR. DRAWDY MAY OF GIVEN HIM, HE

1 HAS GOT MORE MONEY TO BUY MORE CRACK, HE DIDN'T GET THAT
2 FROM THE \$20.00 DOLLARS THAT MR. DRAWDY MAY OF GIVEN HIM.
3 MR. FLOYD, HE SAID THAT TERRY BOLTIN SAID HE WAS WITH HIM
4 UNTIL 5:00 O'CLOCK IN THE AFTERNOON AND THAT AT 5:00
5 O'CLOCK HE WAS DROPPING HIM OFF DOWN AT HAPPY TOWN. DO
6 YA'LL REMEMBER WHAT MATT RICHBOURG AND TAMMI SAID, SHE GOT
7 OFF OF WORK AT 3:30 AND WENT AND PICKED UP MATT AND CAME
8 UP TO THE CRACK HOUSE AND JOHNNIE WAS ALREADY THERE THAT
9 AFTERNOON. WELL, ACCORDING TO MR. BOLTIN THAT IS THE
10 EXACT TIME HE WAS DRIVING HIM OFF DOWN TO HAPPY TOWN. WHO
11 IS MORE BELIEVABLE, TERRY BOLTIN--

12 MR. FLOYD: YOUR HONOR, I OBJECT TO
13 MISCHARACTERIZATION, HE IS TALKING ABOUT TWO DIFFERENT
14 DAYS.

15 THE COURT: I CAN'T COMMENT ON THE FACTS AND AS I
16 HAVE INSTRUCTED THE JURY, THEY ARE THE JUDGES OF THE
17 FACTS, IF THEIR MEMORY DIFFERS THEY WILL HAVE TO RELY ON
18 THEIR MEMORY. COUNSEL, YOU MAY PROCEED.

19 MR. RIDDLE: MY MEMORY IS THIS AND IF IT DIFFERS FROM
20 YOURS DISREGARD IT. MY MEMORY IS THAT THE DAY OF THE
21 MURDER, THURSDAY THE 14TH OF AUGUST, MY MEMORY IS THAT
22 TAMMI INABINET TESTIFIED THAT SHE GOT PAID ON THURSDAY,
23 THE 14TH AND SHE HAD THE WORK VAN THAT DAY, IF THAT IS
24 WRONG YA'LL DISREGARD IT. AND THAT IS WHEN THEY GOT TO
25 THE CRACK HOUSE. IS THE INSURANCE MONEY GONE, IT IS GONE.

1 AND AT 6:45, AFTER ALL NIGHT AT THE CRACK HOUSE HE NEEDS
2 TWO THINGS, A COLD BEER AND MORE MONEY. AND BY THE TIME
3 HE ENDS UP WITH TERRY BOLTIN HE HAS GOT MORE MONEY,
4 WHATEVER TIME THAT IS AND THURSDAY NIGHT AT THE CRACK
5 HOUSE WHILE HE IS THERE WITH MATT AND TAMMI HE HAS GOT TWO
6 MATCH BOXES JUST LIKE STANLEY GLEATON TOLD YOU. AND HE IS
7 SHARING THAT CRACK WITH OTHER PEOPLE, HE IS SPREADING IT
8 AROUND AND BUYING MORE, BUYING MORE. HE IS HOME AT HIS
9 SISTER AND BROTHER-N-LAW'S HOUSE AT 7:00 O'CLOCK IN THE
10 MORNING BUT HE NEVER GOES HOME AGAIN, HE NEVER GOES HOME
11 AGAIN. HE HAD ALL THE KNOWLEDGE, HE HAD WORKED FOR THEM,
12 HE KNEW ABOUT THE BRIEF CASE, HE KNEW WHERE IT WAS KEPT IN
13 THE BEDROOM, HE KNEW ABOUT THE NICE LITTLE LICK THAT LEFT
14 A MAN WITHOUT HIS WIFE. MR. FLOYD TOLD YA'LL, CAROL WOULD
15 NOT HAVE OPENED THE DOOR, SHE WOULD NOT HAVE LET SOMEBODY
16 IN, SURE SHE WOULDN'T OF LET SOMEBODY IN NOT DRESSED LIKE
17 THAT. BUT IF SHE SAW SOMEBODY LIKE JOHNNIE, SOMEBODY SHE
18 TRUSTED, SOMEBODY SHE KNEW THEN SHE MIGHT OF CRACKED THAT
19 DOOR, OH IT IS JOHNNIE. I WASN'T PLANNING ON LETTING HIM
20 IN BUT I WILL CRACK THE DOOR AND SEE WHAT HE HAS GOT TO
21 SAY. YOU WILL LET ME IN, I AM COMING IN, I AM GETTING MY
22 BRIEF CASE, YOUR BRIEF CASE, YOUR MONEY WHICH IS NOW MY
23 MONEY BECAUSE IT IS ALL ABOUT JOHNNIE FRAZIER, IT IS ALL
24 ABOUT JOHNNIE FRAZIER. NO FOOTPRINTS AT THE SCENE, IT
25 WOULD OF BEEN GREAT IF WE HAD ONE. BUT THEY DIDN'T HAVE

1 ANY FOOTPRINTS THAT MATCHED THE SHOES THAT JOHNNIE WAS
2 WEARING SOME MONTHS LATER WHEN HE WAS ARRESTED. GO
3 FIGURE. HE HAD A DIFFERENT PAIR OF SHOES ON SOME MONTHS
4 LATER, IS THAT SO HARD TO BELIEVE.

5 MR. FLOYD: OBJECTION, YOUR HONOR, THERE IS NO
6 EVIDENCE ON THAT.

7 THE COURT: OVERRULED, GO AHEAD.

8 MR. RIDDLE: THEY DIDN'T HAVE ANY FINGERPRINTS THAT
9 MATCHED JOHNNIE. WHAT IN THE WORLD DO YOU CARRY AROUND
10 PLASTIC GLOVES IN YOUR BOOK BAG FOR, RUBBER GLOVES, DISH
11 WASHING GLOVES IF YOU DON'T WANT TO LEAVE FINGERPRINTS.
12 THEY TURN THESE INSIDE OUT TO LOOK AT THE INSIDE BUT YOU
13 CAN SEE WHAT COLOR THEY ARE, WHAT THEY ARE MADE OF ON THE
14 OUTSIDE, IF YOU WANT TO YOU CAN OPEN THEM UP AND TURN THEM
15 INSIDE OUT AGAIN, IT DOESN'T MATTER, YA'LL WILL HAVE THAT,
16 YA'LL CAN LOOK AT IT. WHAT ARE THOSE GLOVES FOR, WHAT ARE
17 THEY FOR. THERE ARE A LOT OF WITNESSES IN THIS CASE WERE
18 NOT, FOR A LACK OF A BETTER WAY TO PUT IT UPSTANDING
19 CITIZENS. IT WOULD BE GREAT IF WE HAD SOME PREACHERS OR
20 SOME SCHOOL TEACHERS, SOME BANKERS OR ACCOUNTANTS OR
21 WHATEVER BUT THAT AIN'T WHO JOHNNIE FRAZIER HANGS OUT WITH
22 BECAUSE THE COMMON DENOMINATOR, THE LINK BETWEEN EVERY
23 WITNESS IN THIS CASE ON THAT WITNESS STAND IS JOHNNIE
24 FRAZIER. IT IS JOHNNIE'S GIRLFRIEND, IT IS JOHNNIE'S
25 GIRLFRIEND'S SON, IT IS A LADY THAT JOHNNIE WAS SMOKING

1 CRACK WITH, IT IS THE GUY THAT HE WAS SMOKING CRACK WITH,
2 IT IS HIS CRACK DEALER, THERE WAS A COUPLE OF MORE GUYS HE
3 WAS SMOKING CRACK WITH, THERE IS PEOPLE THAT HE WAS
4 SHARING CRACK WITH, THAT IS WHO JOHNNIE WAS HANGING OUT
5 WITH. MR. FLOYD SAID THAT THEY NEVER DISPUTED THAT THIS
6 WAS JOHNNIE FRAZIER'S BOOK BAG, I DON'T KNOW, IT DIDN'T
7 COME ACROSS THAT WAY TO ME, IF YOUR MEMORY IS DIFFERENT
8 DISREGARD WHAT I SAY BUT WHEN STANLEY GLEATON WAS ON THE
9 STAND I COULD OF SWORN I HEARD THEM QUESTIONING WHETHER
10 THIS WAS THE BAG OR NOT BECAUSE IT MIGHT OF HAD RED
11 STRIPES AND STANLEY HAD ONLY SEEN IT IN THE DARK. BUT
12 THEY NEVER QUESTIONED THAT THIS WAS JOHNNIE'S BAG. THEY
13 NEVER QUESTIONED THAT, IS WHAT THEY WANT YOU TO BELIEVE.
14 I SUBMIT THAT JOHNNIE FRAZIER TRIED TO DISSOCIATE HIMSELF
15 FROM THAT BAG UNTIL IT BECAME APPARENT THAT HE COULD NOT,
16 UNTIL THE STATE PROVED TO YOU BEYOND A REASONABLE DOUBT
17 THAT THAT WAS JOHNNIE'S BOOK BAG. SO, WHAT ARE WE GOING
18 TO DO NOW, WE ARE GOING TO DISSOCIATE OURSELVES FROM WHEN
19 THE BLOOD GOT ON THERE. BECAUSE ISN'T IT REASONABLE THAT
20 WHEN JOHNNIE CARRIED THIS BOOK BAG EVERYWHERE THAT IT
21 COULD OF BEEN AROUND CAROL AND SHE COULD OF CUT HER FINGER
22 AND BLED ON IT AT SOME UNKNOWN TIME. IF THERE WAS ANY
23 EVIDENCE OF THAT I SUBMIT TO YOU, THERE WASN'T ANY
24 EVIDENCE THAT CAROL COULD OF BLED ON THIS BOOK BAG OUT ON
25 THE JOB SITE AT ONE OF THE PROPERTIES, AT ONE OF THE BINS,

1 IN THE AUCTION BUSINESS, ANYWHERE ELSE THAT SHE MIGHT OF
2 BEEN AROUND JOHNNIE FRAZIER AND SHE HAD BLED ON THAT BOOK
3 BAG. THERE IS ONLY ONE TIME THAT WE KNOW, ONLY ONE TIME
4 THAT WE KNOW OF THAT CAROL HURSEY WAS BLEEDING AND THAT IS
5 WHEN SHE HAD A BULLET THROUGH HER BRAIN. AND THAT IS WHEN
6 THE BLOOD GOT ON THAT BAG. HE CARRIED THAT BAG DOWN TO
7 THE CRACK HOUSE THE NIGHT BEFORE THE MURDER OR MAYBE TWO
8 NIGHTS, I THINK IT WAS THE TESTIMONY, MAYBE THE NIGHT
9 BEFORE OR TWO NIGHTS BEFORE AND EITHER TRADED A GUN FOR
10 CRACK OR TRIED TO TRADE A GUN FOR CRACK THAT HE HAD IN
11 HERE, A LITTLE SMALL CALIBER GUN. NOT THE SAME GUN THAT
12 WAS USED TO KILL CAROL BECAUSE THAT WAS A MEDIUM CALIBER
13 GUN, YOU HEARD DR. SEXTON'S TESTIMONY. HE SAID IT WAS A
14 MEDIUM CALIBER AND IT WAS AN EXECUTION. BUT WHY WOULD
15 SOMEBODY EXECUTE. WE SEE CONVENIENT STORE ARMED ROBBERIES
16 ALL THE TIME WHERE THEY DON'T EXECUTE THE VICTIM, THEY PUT
17 ON THE MASK AND THEY GO IN AND ROB THEM AND THEN THEY RUN.
18 WHEN YOU KNOW THE VICTIM, IF THIS IS NOT A HOME INVASION
19 BY SOMEONE WHO YOU KNOW AND TRUST. WHAT DID JOHNNIE DO
20 WITH THE JEWELRY, I DON'T KNOW. JOHNNIE FRAZIER, YOU HAVE
21 TO BELIEVE, THEY CALL IT A CRACK HOUSE, SPEND INSURANCE
22 SETTLEMENT ON CRACK, I KNOW EVERYBODY MAKES A CHOICE BUT
23 IF YOU ARE GOING TO SPEND THAT KIND OF MONEY IN A COUPLE
24 OF DAYS ON CRACK AND THEN BE BROKE WHEN YOU SHOW UP AT
25 YOUR SISTER'S HOUSE, YOU NEED SOME MORE, YOU NEED AND BOY

1 DID HE GET IT. BY THAT NIGHT, HE HAS GOT THE MATCH BOXES,
2 HE HAS GOT THE MONEY FOR MORE, HE IS READY TO GO, HE IS
3 READY TO GO AND HE NEVER GOES HOME AGAIN, NOT JOHNNIE
4 FRAZIER. MR. FLOYD WANTS TO MAKE A BIG ARGUMENT ABOUT THE
5 TIME OF DEATH AND RIGAMORTUS, I DON'T KNOW, HE STARTED
6 TALKING ABOUT THEY BROUGHT THE CORONER, IF THE CORONER
7 EXPLAINS IT BETTER THAN DR. SEXTON, I DON'T KNOW, DR.
8 SEXTON SAID YOU COULD DIE STANDING UP IN COMBAT. I ASSUME
9 THAT IS FROM TRAUMA AND STRESS OF BEING IN THAT SITUATION.
10 I DON'T KNOW HOW LONG IT LASTED. BUT I WILL TELL YOU
11 THIS, IF YOU ARE STANDING IN YOUR OWN HOUSE AND SOMEBODY
12 COMES IN WITH A GUN AND SAYS, I AM TAKING YOUR MONEY AND
13 YOU KNOW IT IS SOMEBODY THAT YOU KNOW, YOU KNOW IT IS
14 SOMEBODY YOU KNOW WHAT DO YOU THINK SHE WOULD FEEL LIKE.
15 DON'T YOU THINK EVERY MUSCLE IN HER BODY GOT RIGID LIKE
16 THIS BEFORE SHE GOT KILLED, THAT SHE WAS EXHAUSTED IN
17 THOSE FEW MINUTES IT TOOK FROM THE TIME THEY CAME IN AND
18 THE TIME THAT BULLET WAS THROUGH HER BRAIN, YOU BE THE
19 JUDGE OF THAT. SHERRI QUARLES, YA'LL SAW WHERE SHE LIVED,
20 I WILL SHOW YOU AGAIN REAL QUICK, RIGHT DOWN THE STREET
21 FROM BUTCH AND CAROL'S IN THIS TRAILER RIGHT HERE, YOU CAN
22 SEE ON THIS MAP THIS LITTLE DRIVEWAY THAT COMES DOWN RIGHT
23 THERE, RIGHT ON BUSBEE ROAD, RIGHT WHERE SHE SAW MR.
24 FRAZIER DRIVING THE CAR. MR. FLOYD SAYS SHE IS LIEING,
25 SHE IS LIEING, SHE IS LIEING. I WILL TELL YOU ONE THING,

1 SHE ALWAYS SAID IT WAS JOHNNIE FRAZIER DRIVING THAT CAR,
2 NOT ONE TIME DID SHE WAIVER ON THAT. NOT ONE TIME DID SHE
3 WAIVER ON. HE WAS DRIVING THAT CAR, NOT ONE TIME DID SHE
4 WAIVER ON ANYTHING BUT TIME. NOW, SHE TOLD YOU SHE LIED
5 ABOUT THE TIME, SHE TOLD YOU THAT SHE LIED ABOUT THE TIME
6 AND SHE TOLD YOU WHY. IS THE TIME RIGHT, IS THE TIME
7 WRONG, DOES IT REALLY MATTER, DOES IT REALLY MATTER
8 WHETHER CAROL DIED AT 10:00 A.M. OR 2:00 P.M. I SUBMIT TO
9 YOU THE ONLY REASON IT WOULD MATTER WAS FOR THAT POOR
10 CHILD THAT CAME IN THE HOUSE AND THEY HAVE TO LIVE WITH
11 THE FACT THAT HE WALKED THROUGH THERE AND HIS MOTHER WAS
12 LAYING THERE DEAD ON THE FLOOR. BUT OTHER THAN THAT DOES
13 IT MATTER WHAT TIME OF DAY IT WAS. JOHNNIE FRAZIER'S BOOK
14 BAG HAS HIS WALLET IN IT, HIS WALLET WITH A BUNCH OF
15 PAPERS IN IT, IT HAS GOT A PICTURE OF HIS SON, IT HAS GOT
16 AN ID, IT HAS GOT A CIGARETTE BUTT, I DON'T KNOW WHY BUT
17 IT HAS GOT GLOVES IN THERE, WHAT IS THE POINT OF THAT.
18 GOT THESE WIRE TIES IN THERE, ZIP TIES, WHATEVER THEY CALL
19 THEM, I DON'T KNOW, IT HAS GOT CIGARETTES IN THERE. AND
20 HE IS UPSET WHEN HE LEAVES THAT THING IN THE VAN, HE IS
21 UPSET ABOUT THAT. THERE IS ONLY ONE JOHNNIE FRAZIER AND
22 THERE IS ONLY ONE CAROL HURSEY. THERE IS 216,014 PEOPLE
23 IN LEXINGTON COUNTY AS OF THE LAST CENSUS. THAT IS A
24 MILLION, I JUST PUT THE MILLION ON THERE TO SHOW THE ZERO,
25 OKAY. THAT IS 300 MILLION, THAT IS ROUGHLY HOW MANY

1 PEOPLE LIVE IN THE UNITED STATES, GIVE OR TAKE, A COUPLE
2 OF MONTHS AGO I SAW IT ON THE NEWS. THAT IS A BIG, PUT
3 THAT ON THERE TO SHOW YOU THE ZEROS AGAIN BECAUSE THE
4 NUMBERS ARE FIXING TO GET SO BIG I NEVER SEEN THEM BEFORE.
5 THAT IS WHAT AGENT MCCLURE TOLD YOU WAS THE POPULATION OF
6 THE WORLD, A LITTLE OVER SIX AND A HALF BILLION PEOPLE.
7 THAT IS A LOT OF FOLKS IN THE WHOLE WORLD. THAT IS REALLY
8 AMAZING, WE HAVE GOT 300 MILLION IN THE UNITED STATES AND
9 THERE IS 6 BILLION, 300 MILLION THAT DON'T LIVE HERE, THAT
10 IS AN AMAZING NUMBER IN AND OF ITSELF. THAT IS A
11 TRILLION, ONE WITH TWELVE ZEROS BEHIND IT. 1 IN 910
12 TRILLION, THOSE ARE THE CHANCES THAT A RANDOM INDIVIDUAL,
13 NOT CAROL HURSEY, COULD OF CONTRIBUTED THE DNA THAT WAS
14 FOUND IN THE BLOOD ON THIS BOOK BAG, 1 IN 910 TRILLION
15 PEOPLE AND WE HAVE GOT 216 THOUSAND IN THIS COUNTY. THAT
16 IS A QUADRILLION, THAT IS A NUMBER THAT I HAVE NEVER HEARD
17 OF, WE HAVE GOT 6.6 BILLION PEOPLE IN THE WORLD, I CAN'T
18 EVEN DO THE MATH BUT THAT HAS GOT TO BE LIKE FIVE THOUSAND
19 TIMES THE NUMBER OF PEOPLE IN THE WORLD. AND THE CHANCES
20 THAT THE SALIVA ON THAT CIGARETTE THAT WAS FOUND ON THAT
21 BOOK BAG IS NOT THE DEFENDANT'S, 1 AND 1.2 QUADRILLION
22 PEOPLE. MR. STUMBO TOLD YOU IN THE OPENING, HE TOLD YOU
23 TWO THINGS, HE SAID THERE WAS A KNOCK ON THE DOOR AND
24 THERE WAS. CAROL HURSEY DIED AS A RESULT OF THAT, SHE
25 WOKE UP FOR THE LAST TIME THAT DAY, NOT KNOWING, NOT

1 KNOWING. AND HE TOLD YOU IN HIS OPENING THAT THERE WAS A
2 PIECE OF EVIDENCE IN THIS CASE, THIS BOOK BAG, GLOVES,
3 CIGARETTE BUTT, WALLET, PICTURE, ID, THAT WOULD LINK MR.
4 FRAZIER TO THIS HOMICIDE. 1 AND 1.2 QUADRILLION, 1 IN 900
5 TRILLION PEOPLE. YOU WANT TO TALK ABOUT REASONABLE DOUBT
6 OR THE LACK THEREOF, LOOK AT THOSE NUMBERS, LOOK AT THOSE.
7 MR. FLOYD WANTS TO TELL YOU THAT TERRY BOLTIN ALIBIES MR.
8 FRAZIER, THE MAN THAT SET ON THE STAND AT LEAST OR MAYBE
9 MORE TIMES SAID I THINK SOMETHING ALONG THE LINES THAT
10 WHEN YOU ARE SMOKING CRACK, TIME, HOW DOES HE KNOW. IF
11 THIS CASE WAS ABOUT TIME, ABOUT THE EXACT TIME OF DEATH
12 THE STATE WOULD BE SUNK IN THE WATER. BUT THERE IS REALLY
13 ONLY TWO TIMES THAT WE KNOW FOR SURE, THERE ARE REALLY
14 ONLY TWO. NUMBER ONE, SHE WAS ALIVE AT 6:00 A.M. WHEN
15 BUTCH LEFT, SHE WAS DEAD AT 3:00 P.M. YA'LL GO BACK IN
16 THAT JURY ROOM, YA'LL TALK ABOUT THIS CASE, ABOUT THESE
17 WITNESSES, ABOUT THE PROBLEMS THAT THOSE WITNESSES HAD,
18 ABOUT WHAT IS BELIEVABLE AND WHAT IS NOT. I SUBMIT IT IS
19 MORE BELIEVABLE THAT THEY KNOW WHETHER THAT IS JOHNNIE
20 FRAZIER'S BOOK BAG THAN IT IS THAT THEY PICKED HIM UP AT
21 8:00 IN THE MORNING OR 9:00 IN THE MORNING OR 10:00 IN THE
22 MORNING. NOT WITHOUT SOME OUTSIDE POINT REFERENCE WHICH I
23 SUBMIT TO YOU THAT MATT RICHBOURG HAD, THAT TAMMI INABINET
24 HAD BECAUSE SHE KNOWS WHAT TIME SHE GOT OFF OF WORK AND
25 YOU CAN PRETTY MUCH MAKE AN ESTIMATE BY GETTING FROM THE

1 MAYFLOWER PLACE, DOWN TO HER HOUSE TO PICK UP MATT AND
2 THEN BACK UP TO BOO'S CRACK HOUSE THAT HE WAS RENOVATING
3 FOR HIS FAMILY. EVERYBODY IN THIS CASE IS TIED TOGETHER
4 BY JOHNNIE FRAZIER. UNFORTUNATELY FOR BUTCH AND FOR
5 ROBERT HURSEY, THEY ARE TIED INTO IT TOO. GO BACK AND
6 TALK ABOUT IT, THE TRUTH, SQUEEZE THE SPONGE, APPLY THE
7 FACTS AND SPEAK THE TRUTH AND FIND JOHNNIE FRAZIER GUILTY.
8 THANK YOU.

9 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN, AT
10 THIS TIME IT DOES BECOME THE DUTY OF THE COURT UNDER THE
11 CONSTITUTION OF THIS STATE TO CHARGE YOU, THAT SIMPLY
12 MEANS TO INSTRUCT YOU IN THE LAW THAT DOES APPLY IN THIS
13 CASE. IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW
14 AS THE COURT IS NOW GOING TO EXPLAIN IT TO YOU. AND AS
15 JURORS IT IS YOUR EXCLUSIVE DUTY TO DECIDE ALL OF THE
16 ISSUES OF FACT IN THIS CASE. AND FOR THAT PURPOSE TO
17 DETERMINE THE EFFECT, THE VALUE, THE WEIGHT AND THE TRUTH
18 OF THE EVIDENCE THAT HAS BEEN PRESENTED DURING THE TRIAL
19 FOR BOTH THE STATE OF SOUTH CAROLINA AND THE DEFENDANT,
20 MR. FRAZIER, HAVE A RIGHT TO EXPECT THAT YOU WILL
21 INDIVIDUALLY AND COLLECTIVELY, CONSCIENTIOUSLY CONSIDER
22 AND EVALUATE THE EVIDENCE IN THIS CASE AND APPLY THE LAW
23 OF THE CASE TO THAT EVIDENCE TO THE END THAT BOTH THE
24 STATE OF SOUTH CAROLINA AND THE DEFENDANT WILL RECEIVE AND
25 OBTAIN A FAIR AND IMPARTIAL TRIAL IN THIS CASE.

1 I AM GOING TO GO OVER BRIEFLY WITH YOU AT THIS TIME
2 THE CHARGES THAT ARE MADE IN THE INDICTMENTS IN THIS CASE.
3 AGAIN, YOU NEED TO UNDERSTAND THAT THE INDICTMENTS ARE THE
4 CHARGING DOCUMENTS, THEY CONTAIN THE ALLEGATIONS IN THIS
5 CASE BUT THEY ARE NOT EVIDENCE OF THE CHARGES THAT THEY
6 CONTAIN AND THEY CANNOT BE CONSIDERED BY THE JURY AS
7 EVIDENCE OF THE CHARGES THAT THEY CONTAIN. AGAIN, IN THIS
8 CASE THERE ARE FOUR SEPARATE CHARGES. I WILL GO OVER THEM
9 WITH YOU IN THIS ORDER. 06-668, IS ENTITLED THE STATE
10 VERSUS JOHNNIE RANDOLPH FRAZIER, JR. THE CHARGE THAT IS
11 MADE IN THIS INDICTMENT IS MURDER. IT IS ALLEGED IN THIS
12 INDICTMENT THAT JOHNNIE RANDOLPH FRAZIER, JR. DID IN
13 LEXINGTON COUNTY ON OR ABOUT AUGUST THE 14TH OF 2003
14 WILLFULLY AND FELONIOUSLY AND WITH MALICE AFORETHOUGHT
15 KILL ONE CAROL HURSEY BY MEANS OF A GUNSHOT WOUND WITH A
16 FIREARM AND THAT CAROL HURSEY DIED IN LEXINGTON COUNTY ON
17 OR ABOUT AUGUST THE 14TH OF 2003 AS A RESULT OF A GUNSHOT
18 WOUND TO HER HEAD. THAT IS THE ALLEGATION MADE IN THAT
19 INDICTMENT.

20 THE NEXT ONE IS 06-670, THE STATE VERSUS JOHNNIE
21 RANDOLPH FRAZIER, JR. IT IS ALLEGED IN THIS INDICTMENT
22 THAT THE DEFENDANT, JOHNNIE RANDOLPH FRAZIER, JR. DID IN
23 LEXINGTON COUNTY ON OR ABOUT AUGUST THE 14TH OF 2003
24 KNOWINGLY AND WILLFULLY WHILE ARMED WITH A DEADLY WEAPON
25 TO WIT, A FIREARM, DID FELONIOUSLY TAKE FROM THE PERSON OR

1 PRESENCE OF CAROL HURSEY AND/OR BUTCH HURSEY BY MEANS OF
2 FORCE, THREATS OR INTIMIDATION GOODS OR MONIES BEING
3 DESCRIBED AS FOLLOWS: 2002 MAZDA MILLENIUM WITH INTENT TO
4 DEPRIVE THE OWNER OF SUCH PROPERTY IN VIOLATION OF SECTION
5 16-11-330(A) OF THE SOUTH CAROLINA CODE OF LAWS. THAT IS
6 THE ALLEGATION THAT IS MADE IN THAT INDICTMENT.

7 INDICTMENT NUMBER 06-671, THE STATE VERSUS JOHNNIE
8 RANDOLPH FRAZIER, JR., THE CHARGE IN THIS INDICTMENT IS
9 BURGLARY IN THE FIRST DEGREE. IT IS ALLEGED IN THIS
10 INDICTMENT THAT JOHNNIE RANDOLPH FRAZIER, JR., DID IN
11 LEXINGTON COUNTY ON OR ABOUT AUGUST THE 14TH OF 2003
12 KNOWINGLY AND WILLFULLY ENTERED A DWELLING TO WIT: 1509
13 BUSBEE ROAD, GASTON, SOUTH CAROLINA BEING THE DWELLING OF
14 BUTCH HURSEY WITHOUT CONSENT AND WITH THE INTENT TO COMMIT
15 A CRIME THEREIN AND WAS ARMED WITH A DEADLY WEAPON IN
16 VIOLATION OF SECTION 16-11-311 OF THE SOUTH CAROLINA CODE
17 OF LAWS.

18 THE FINAL CHARGE IS INDICTMENT 06-667, IS THE CHARGE
19 OF POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION
20 OF A VIOLENT CRIME. IT IS ALLEGED IN THIS INDICTMENT THAT
21 THE DEFENDANT, MR. FRAZIER, DID IN LEXINGTON COUNTY ON OR
22 ABOUT AUGUST THE 14TH OF 2003 KNOWINGLY AND WILLFULLY
23 POSSESS A FIREARM OR VISIBLY DISPLAYED WHAT APPEARED TO BE
24 A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME TO WIT:
25 MURDER AND/OR ARMED ROBBERY AND/OR BURGLARY IN VIOLATION

1 OF SECTION 16-23-490 OF THE SOUTH CAROLINA CODE OF LAWS AS
2 AMENDED. THAT IS THE ALLEGATION OR THE CHARGE THAT IS
3 MADE IN THAT INDICTMENT.

4 OF COURSE, THROUGHOUT THESE INSTRUCTIONS WHEN I USE
5 THE WORD, DEFENDANT, I AM REFERRING TO MR. FRAZIER AND TO
6 THESE CHARGES THAT HAVE BEEN MADE IN THESE INDICTMENTS THE
7 DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY. THIS PLEA OF
8 NOT GUILTY BY THE DEFENDANT PLACES THE BURDEN OF PROOF ON
9 THE STATE TO PROVE THE GUILT OF THE DEFENDANT BEYOND A
10 REASONABLE DOUBT BEFORE YOU, THE JURY, CAN FIND THE
11 DEFENDANT GUILTY.

12 THE DEFENDANT IS PRESUMED UNDER THE LAW INNOCENT OF
13 THE CHARGES THAT ARE MADE IN THESE INDICTMENTS. IT IS A
14 CARDINAL AND A FUNDAMENTAL RULE OF THE LAW OF EVIDENCE IN
15 THIS STATE THAT A DEFENDANT REGARDLESS OF THE CHARGE OR
16 CHARGES AGAINST HIM WILL ALWAYS BE PRESUMED INNOCENT OF
17 THE CRIMES FOR WHICH HE HAS BEEN INDICTED UNLESS AND UNTIL
18 THE GUILT OF THE DEFENDANT HAS BEEN PROVEN BY EVIDENCE
19 THAT SATISFIES YOU, THE JURY, OF HIS GUILT BEYOND A
20 REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE IS NOT A
21 MERE LEGAL THEORY, IT IS NOT A MERE LEGAL PHRASE BUT THE
22 PRESUMPTION OF INNOCENCE IS A SUBSTANTIAL RIGHT TO WHICH
23 EVERY DEFENDANT INCLUDING MR. FRAZIER IS ENTITLED. THE
24 SUPREME COURT OF THIS STATE HAS DECLARED THAT THE
25 PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS

1 PLACED ABOUT THE SHOULDERS OF THE DEFENDANT. AND IT
2 REMAINS WITH THE DEFENDANT AND ASSIGNS TO THE DEFENDANT
3 THAT CLASS, THE INNOCENT, UNTIL THE PRESUMPTIVE ROBE OF
4 RIGHTEOUSNESS HAS BEEN STRIPPED FROM THE DEFENDANTS PERSON
5 BY EVIDENCE SATISFYING YOU, THE JURY, OF THE GUILT OF THE
6 DEFENDANT BEYOND A REASONABLE DOUBT. THE PRESUMPTION OF
7 INNOCENCE ACCOMPANIES THE DEFENDANT FROM THE TIME OF HIS
8 ARRAIGNMENT, FROM THE TIME OF HIS APPEARANCE IN THIS COURT
9 AND THROUGHOUT EVERY STAGE OF THE TRIAL AND CONTINUES WITH
10 THE DEFENDANT EVEN AFTER YOU HAVE RETIRED INTO THE JURY
11 ROOM TO CONSIDER YOUR VERDICT IN THE CASE. THE
12 PRESUMPTION OF INNOCENCE CONTINUES TO EXIST TO THE BENEFIT
13 OF THE DEFENDANT UNTIL YOU, THE JURY, REACH THE CONCLUSION
14 THAT THE STATE HAS PROVEN THE GUILT OF THE DEFENDANT
15 BEYOND A REASONABLE DOUBT.

16 I WOULD INSTRUCT YOU, MR. FOREMAN AND LADIES AND
17 GENTLEMEN, THAT THE FACT THAT A DEFENDANT IN THE TRIAL OF
18 A CRIMINAL CASE DOES NOT TESTIFY IN HIS OWN BEHALF IS NOT
19 A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR
20 DELIBERATION AND IN YOUR CONSIDERATION ON THE QUESTION OF
21 THE GUILT OR THE INNOCENCE OF THE ACCUSED. IT MUST NOT BE
22 CONSIDERED BY YOU IN ANY MANNER AGAINST THE DEFENDANT OR
23 MITIGATE AGAINST HIM IN ANY RESPECT. A DEFENDANT HAS THE
24 CONSTITUTIONAL RIGHT TO REMAIN SILENT AND THE ASSERTION OF
25 THAT CONSTITUTIONAL RIGHT CANNOT AND MUST NOT BE

1 CONSIDERED BY YOU IN YOUR DELIBERATIONS. UNDER YOUR OATH
2 YOU ARE TO REACH NO INFERENCE AND DRAW NO CONCLUSION FROM
3 THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY
4 HIMSELF. THE FACT THAT THE DEFENDANT DOES NOT TESTIFY
5 SHOULD NOT BE EVEN DISCUSSED IN THE JURY ROOM. THE BURDEN
6 OF PROOF, AS I STATED TO YOU IS UPON THE STATE. IT IS NOT
7 INCUMBENT UPON THE ACCUSED TO PROVE HIS INNOCENCE. THE
8 BURDEN OF PROOF REMAINS UPON THE STATE TO PROVE GUILT
9 BEYOND A REASONABLE DOUBT. AND THE FACT THAT A DEFENDANT
10 DOES NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU
11 IN DETERMINING THE GUILT OR THE INNOCENCE OF THE
12 DEFENDANT.

13 THE STATE IS NOT REQUIRED TO PROVE THE GUILT OF THE
14 DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY DOUBT BUT
15 BEYOND A REASONABLE DOUBT. WHEN WE SAY THAT PROOF MUST BE
16 ESTABLISHED BEYOND A REASONABLE DOUBT THOSE WORDS SHOULD
17 BE GIVEN THEIR PLAIN AND ORDINARY MEANING. A REASONABLE
18 DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE
19 PERSON TO HESITATE TO ACT. A REASONABLE DOUBT CAN ARISE
20 FROM THE EVIDENCE PRESENTED IN THE CASE OR THE LACK OF
21 EVIDENCE IN THE CASE. TO THINK THAT A DEFENDANT IS
22 PROBABLY GUILTY OR THAT THE CIRCUMSTANCES ARE SUSPICIOUS
23 IS NOT ENOUGH. PROOF BEYOND A REASONABLE DOUBT IS PROOF
24 THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANTS GUILT.
25 THERE ARE FEW THINGS IN THIS WORLD THAT WE KNOW WITH

1 ABSOLUTE CERTAINTY AND IN CRIMINAL CASES THE LAW DOES NOT
2 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF
3 BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY
4 CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME OR
5 CRIMES CHARGED YOU MUST FIND HIM GUILTY. IF ON THE OTHER
6 HAND YOU THINK THAT THERE IS A REAL POSSIBILITY THAT HE IS
7 NOT GUILTY YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND
8 FIND HIM NOT GUILTY. YOU ALONE MUST MAKE THE
9 DETERMINATION OF WHETHER OR NOT REASONABLE DOUBT EXIST AS
10 TO THE GUILT OF THIS DEFENDANT. I WILL INSTRUCT YOU THAT
11 THE DEFENDANT IS ENTITLED TO EVERY REASONABLE DOUBT
12 ARISING IN THE WHOLE CASE. SO UPON ANY ISSUE OF FACT THAT
13 IS ESSENTIAL TO A CONVICTION AND A VERDICT OF GUILTY, IF
14 YOU HAVE A REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD BE
15 RESOLVED IT WOULD BE YOUR DUTY TO RESOLVE THAT REASONABLE
16 DOUBT IN FAVOR OF THE DEFENDANT. THE DEFENDANT, MR.
17 FOREMAN AND LADIES AND GENTLEMEN, IS NOT REQUIRED TO PROVE
18 HIS INNOCENCE BUT THE STATE IS REQUIRED UNDER THE LAW TO
19 PROVE EVERY ESSENTIAL ELEMENT OF THE OFFENSES CHARGED
20 AGAINST HIM BY EVIDENCE THAT SATISFIES YOU, THE JURY, OF
21 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT
22 BEFORE YOU CAN CONVICT THE DEFENDANT AND FIND HIM GUILTY.
23 IF THEN UPON THE WHOLE CASE YOU HAVE A REASONABLE DOUBT AS
24 TO THE GUILT OR THE INNOCENCE OF THIS DEFENDANT HE IS
25 ENTITLED TO THAT REASONABLE DOUBT AND WOULD BE ENTITLED TO

1 AN ACQUITTAL AND A VERDICT OF NOT GUILTY. ON THE OTHER
2 HAND, IF UPON THE WHOLE CASE YOU FIND THAT THE STATE HAS
3 PROVEN BY EVIDENCE THAT SATISFIES YOU OF THE GUILT OF THIS
4 DEFENDANT BEYOND A REASONABLE DOUBT THEN IN THAT
5 CIRCUMSTANCE IT WOULD EQUALLY BE YOUR DUTY TO CONVICT THE
6 DEFENDANT AND FIND HIM GUILTY.

7 I WOULD AGAIN INSTRUCT YOU THAT THE INDICTMENTS IN
8 THIS CASE IS NOT EVIDENCE IN THE CASE AND CANNOT BE
9 CONSIDERED BY YOU AS EVIDENCE OF THIS CASE. AGAIN, THE
10 INDICTMENTS ARE SIMPLY THE FORMAL WRITTEN INSTRUMENTS THAT
11 CONTAINS THE CHARGE OR CHARGES MADE AGAINST A DEFENDANT
12 AND THEY SERVE AS THE FORMAL DOCUMENTS BY WHICH THE CASE
13 HAS BEEN PROCESSED OR BROUGHT INTO THE COURT.

14 NOW, DURING THE TRIAL, MR. FOREMAN AND LADIES AND
15 GENTLEMEN, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS A
16 TRIAL JUDGE IT IS MY RESPONSIBILITY TO PRESIDE OVER THE
17 TRIAL OF THE CASE, I ALSO HAVE THE DUTY TO RULE UPON OR
18 PASS UPON THE ADMISSIBILITY OF THE EVIDENCE THAT WAS
19 OFFERED DURING THE TRIAL. YOU ARE TO CONSIDER ONLY THE
20 COMPETENT EVIDENCE BEFORE YOU AND YOU ARE TO DISREGARD AND
21 DISABUSE FROM YOUR MIND ANY TESTIMONY ORDERED STRICKEN
22 FROM THE RECORD. AND YOU ARE TO CONSIDER ONLY THE
23 TESTIMONY THAT HAS BEEN PRESENTED FROM THE WITNESS STAND
24 ALONG WITH ANY EXHIBITS THAT HAVE BEEN MADE A PART OF THE
25 RECORD IN THIS CASE AS WELL AS ANY STIPULATIONS OF COUNSEL

1 THAT WERE MADE INTO THE RECORD. I DO HAVE THE ADDITIONAL
2 DUTY TO CHARGE YOU THE LAW THAT APPLIES IN THIS CASE. AND
3 AS A PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF
4 THE CASE. IT IS YOUR DUTY UNDER THE OATH THAT YOU TOOK
5 WHEN THIS CASE BEGIN TO ACCEPT AND APPLY THE LAW AS IT IS
6 NOW STATED TO YOU. IF YOU HAD A PRECONCEIVED IDEA AS TO
7 WHAT THE LAW IS OR WHAT YOU THOUGHT THE LAW OUGHT TO BE
8 AND THAT DOES NOT AGREE WITH WHAT I AM NOW EXPLAINING TO
9 YOU YOU ARE OBLIGATED UNDER YOUR OATH TO ABANDON THAT
10 PRECONCEPTION BECAUSE YOU HAVE SWORN TO ACCEPT AND APPLY
11 THE LAW AS THE COURT EXPLAINS TO YOU.

12 IN EVERY CASE THAT IS TRIED IN THIS COURT BEFORE A
13 JURY, THE JURY BECOMES THE SOLE AND THE EXCLUSIVE JUDGE OF
14 THE FACTS IN A CASE AND YOU, THE JURY, ARE THE JUDGE OF
15 THE FACTS OF THIS CASE. THE COURT IS THE JUDGE OF THE LAW
16 OF THE CASE. THE CONSTITUTION OF THIS STATE DECLARES THAT
17 A TRIAL JUDGE SHALL NOT INTIMATE, STATE, COMMENT UPON OR
18 MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A
19 CASE. AND SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE
20 FACTS OF THIS CASE YOU ARE NOT TO INFER FROM ANYTHING THAT
21 I HAVE SAID DURING THE PROGRESS OF THE TRIAL AND RULING
22 UPON THE ADMISSIBILITY OF EVIDENCE OR OTHERWISE OR
23 ANYTHING THAT I SAY NOW DURING THESE INSTRUCTIONS TO YOU
24 THAT I HAVE ANY OPINION ABOUT THE FACTS OF THIS CASE. THE
25 LAW DOES NOT PERMIT ME TO HAVE AN OPINION ABOUT THE FACTS

1 OF THE CASE. THIS IS A MATTER SOLELY FOR YOU, THE JURY,
2 TO DETERMINE. AS JURORS THEN IT IS YOUR DUTY AS I HAVE
3 INSTRUCTED YOU TO DETERMINE THE EFFECT, THE VALUE, THE
4 WEIGHT AND THE TRUTH OF THE EVIDENCE PRESENTED DURING THE
5 TRIAL.

6 BY NECESSITY YOU MUST ASSESS THE CREDIBILITY OF THE
7 WITNESSES WHO HAVE TESTIFIED IN THE CASE. CREDIBILITY IS
8 SIMPLY A LEGALISTIC TERM THAT MEANS BELIEVABILITY. IT
9 BECOMES YOUR DUTY AS JURORS TO ANALYZE AND EVALUATE THE
10 EVIDENCE AND DETERMINE THAT EVIDENCE WHICH CONVINCES YOU
11 OF ITS TRUTH. I WOULD INSTRUCT YOU THAT IN DETERMINING
12 THE QUESTION OF THE CREDIBILITY OR BELIEVABILITY OF
13 WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE
14 ONE WITNESS AS AGAINST SEVERAL OR SEVERAL WITNESSES AS
15 AGAINST ONE. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A
16 WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF
17 THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A
18 WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A
19 WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER ANY
20 WITNESS HAS EXHIBITED TO YOU ANY INTEREST, ANY MOTIVE, ANY
21 BIASED, ANY PREJUDICE IN THE CASE. YOU MAY CONSIDER THE
22 DEMEANOR OF A WITNESS, THAT IS THE APPEARANCE OF A WITNESS
23 FROM THE WITNESS STAND. AND YOU MAY OF COURSE CONSIDER
24 THE OPPORTUNITY FOR KNOWLEDGE CONCERNING THOSE THINGS
25 ABOUT WHICH A WITNESS HAS TESTIFIED. YOUR OBJECTIVE, MR.

1 FOREMAN AND LADIES AND GENTLEMEN, IS TO SEEK THE TRUTH
2 REGARDLESS OF ITS SOURCE AND IN DOING SO AND EXERCISING
3 YOUR MENTAL PROCESSES AND DETERMINING WHAT YOU CONSIDER TO
4 BE TRUE THE LAW SIMPLY REQUIRES THAT YOU EXERCISE YOUR
5 GOOD JUDGMENT AND YOUR COMMON SENSE, YOUR SENSE OF LOGIC
6 AND REASON AND YOUR EXPERIENCES IN LIFE. AND YOU THEN
7 APPLY THESE ATTRIBUTES OF ABILITY TO THE EVIDENCE AND
8 DETERMINE WHAT YOU, THE JURY, CONSIDER TO BE TRUTHFUL
9 EVIDENCE. AND TO THIS STATE OF FACTS AS DETERMINED BY
10 YOU, THE JURY, YOU THEN TAKE AND APPLY THE LAW AS I NOW
11 STATE IT TO YOU AND THUS ARRIVE AT A TRUE VERDICT IN THE
12 CASE.

13 THERE ARE TWO TYPES OF EVIDENCE THAT ARE GENERALLY
14 PRESENTED DURING A TRIAL. DIRECT EVIDENCE AND
15 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY
16 OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE
17 OF THE FACTS SUCH AS AN EYEWITNESS. CIRCUMSTANTIAL
18 EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES
19 INDICATING THE EXISTENCE OF A FACT. THE LAW MAKES
20 ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR THE VALUE
21 TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE
22 NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF
23 CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU
24 SHOULD WEIGH ALL THE EVIDENCE IN THE CASE, AFTER WEIGHING
25 ALL OF THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT

1 OF THE DEFENDANT BEYOND A REASONABLE DOUBT THEN YOU MUST
2 FIND THE DEFENDANT NOT GUILTY.

3 MR. FOREMAN AND LADIES AND GENTLEMEN, DURING THE
4 COURSE OF THIS TRIAL WE HAVE HAD WHAT WE CALL EXPERT
5 TESTIMONY. IN CONNECTION WITH EXPERT TESTIMONY I WILL
6 TELL YOU THAT ORDINARILY WITNESSES CAN NOT TESTIFY AS TO
7 THEIR OPINION OF A PARTICULAR MATTER. AN EXCEPTION TO
8 THIS RULE IS WHEN A WITNESS QUALIFIES AS AN EXPERT. IN
9 THAT EVENT THAT WITNESS IS ALLOWED TO GIVE HIS OR HER
10 OPINION. NOW, AS FAR AS OPINION EVIDENCE IS CONCERNED,
11 THAT IS TO SAY, THE EFFECT OF ANY EXPERT THAT IS A MATTER
12 OF OPINION, YOU ARE NOT TO PLACE ANY OPINIONS ABOVE THE
13 IDEA OF YOUR OWN OPINIONS ON THE SUBJECT. YOU ARE TO
14 CONSIDER THE OPINIONS ALONG WITH ALL THE OTHER EVIDENCE IN
15 THE CASE IN FORMING YOUR OWN CONCLUSIONS.

16 I WILL FURTHER CHARGE YOU THAT THERE WAS ADMITTED IN
17 THE RECORD OF THIS CASE EVIDENCE OF AN ALLEGED PRIOR
18 RECORD OF A WITNESS OR WITNESSES. THIS EVIDENCE WAS
19 ADMITTED FOR A LIMITED PURPOSE, THIS EVIDENCE WAS ADMITTED
20 AND MAY BE CONSIDERED BY YOU, THE JURY, IF YOU CONCLUDE IT
21 TRUE ONLY FOR THE PURPOSE OF EVALUATING THE CREDIBILITY OR
22 BELIEVABILITY OF THAT WITNESS. YOU MAY GIVE TO THIS
23 EVIDENCE SUCH WEIGHT AND SUCH VALUE, IF ANY, TO WHICH YOU
24 FIND IT IS ENTITLED ON THE SOLE ISSUE OF THE CREDIBILITY
25 OR THE BELIEVABILITY OF THE TESTIMONY OFFERED BY THAT

1 WITNESS, HIMSELF OR HERSELF.

2 I HAVE ALREADY EXPLAINED TO YOU THERE ARE FOUR
3 SEPARATE INDICTMENTS, EACH INDICTMENT CONTAINS A SEPARATE
4 CHARGE. AGAIN, THE INDICTMENTS ALLEGE SEVERAL DIFFERENT
5 OFFENSES AGAINST THE DEFENDANT. EACH INDICTMENT CONTAINS
6 A SEPARATE AND DISTINCT OFFENSE. YOU MUST DECIDE THE
7 CHARGE IN EACH INDICTMENT SEPARATELY ON THE EVIDENCE AND
8 THE LAW THAT APPLIES TO THAT CHARGE UNINFLUENCED BY YOUR
9 DECISION AS TO ANY OTHER INDICTMENT. THE DEFENDANT MAY BE
10 CONVICTED OR ACQUITTED ON ANY OR ALL OF THE OFFENSES
11 CHARGED. YOU WILL BE ASKED TO WRITE A SEPARATE VERDICT OF
12 GUILTY OR NOT GUILTY FOR EACH CHARGE IN THE INDICTMENT.

13 CRIMINAL INTENT IS A NECESSARY ELEMENT OF EACH CRIME
14 THAT MUST BE PROVEN BY THE STATE BEYOND A REASONABLE
15 DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE
16 DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING
17 THE SITUATION. THERE IS NO WAY TO PROVE INTENT TO A
18 MATHEMATICAL CERTAINTY, THERE IS NO WAY THAT MEDICAL
19 SCIENCE CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT
20 THAT PERSON HAD IN MIND. SO THE LAW SAYS THAT CRIMINAL
21 INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES THAT ARE
22 SHOWN TO HAVE EXISTED AT THAT TIME. AND THIS IS HOW THE
23 JURY MAKES THE DETERMINATION OF WHETHER OR NOT THE ELEMENT
24 REQUIRING INTENT WAS PRESENT. CRIMINAL INTENT IS A STATE
25 OF MIND WHICH OPERATES JOINTLY WITH AN ACT IN THE

1 COMMISSION OF A CRIME. CRIMINAL INTENT IS A MENTAL STATE,
2 A CONSCIOUS WRONGDOING, SO IT IS UP TO YOU, THE JURY, TO
3 DECIDE WHAT THE DEFENDANT INTENDED TO DO BASED ON THE
4 CIRCUMSTANCES THAT ARE SHOWN TO HAVE EXISTED. I WILL TELL
5 YOU THAT THE STATE MUST PROVE CRIMINAL INTENT BEYOND A
6 REASONABLE DOUBT JUST AS THE STATE MUST PROVE EVERY
7 ELEMENT BEYOND A REASONABLE DOUBT AS I HAVE PREVIOUSLY
8 EXPLAINED THAT TO YOU.

9 NOW, I AM GOING TO GO OVER THE FOUR CHARGES THAT ARE
10 MADE IN THE INDICTMENTS. THE FIRST CHARGE THAT I WILL
11 EXPLAIN TO YOU IS THE CHARGE OF MURDER THAT IS FOUND IN
12 SECTION 16-3-10 OF THE SOUTH CAROLINA CODE OF LAWS.
13 MURDER IS THE KILLING OF ANY PERSON WITH MALICE
14 AFORETHOUGHT EITHER EXPRESSED OR INFERRED. THE DEFENDANT
15 IS CHARGED IN THIS INDICTMENT OF MURDER, THE STATE MUST
16 PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT KILLED
17 ANOTHER PERSON WITH MALICE AFORETHOUGHT. MALICE IS
18 DEFINED AS HATRED, ILL WILL OR HOSTILITY TOWARDS ANOTHER
19 PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT
20 WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO INFLICT
21 AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER
22 AN EVIL INTENT. MALICE AFORETHOUGHT DOES NOT REQUIRE THAT
23 MALICE EXIST FOR ANY PARTICULAR TIME BEFORE THE ACT WAS
24 COMMITTED. BUT THE MALICE MUST EXIST IN THE MIND OF THE
25 DEFENDANT JUST BEFORE AND AT THE TIME THAT THE ACT IS

1 COMMITTED. THEREFORE THERE MUST BE A COMBINATION OF A
2 PREVIOUS EVIL INTENT AND THE ACT. MALICE AFORETHOUGHT MAY
3 BE EXPRESSED OR INFERRED. THESE TERMS EXPRESSED OR
4 INFERRED, DOES NOT MEAN DIFFERENT KINDS OF MALICE BUT
5 MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST.
6 THAT IS EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE
7 FACTS AND CIRCUMSTANCES THAT ARE PROVEN. EXPRESSED MALICE
8 IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED
9 OR ILL WILL FOR ANOTHER OR WHEN THE PERSON PREPARED
10 BEFOREHAND TO DO THE ACT WHICH IS LATER ACCOMPLISHED.
11 MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL
12 DISREGARD TO HUMAN LIFE. INFERRED MALICE MAY ALSO ARISE
13 WHEN THE DEED IS DONE WITH A DEADLY WEAPON.
14 A DEADLY WEAPON IS DEFINED AS ANY ARTICLE, INSTRUMENT OR
15 SUBSTANCE THAT IS LIKELY TO CAUSE DEATH OR GREAT BODILY
16 HARM. MALICE MAY ALSO BE INFERRED WHEN ONE INTENTIONALLY
17 KILLS ANOTHER DURING THE COMMISSION OF A FELONY. I WILL
18 CHARGE THAT BURGLARY IN THE FIRST DEGREE AND ARMED ROBBERY
19 ARE FELONIES IN THIS STATE. SO, AGAIN IT MUST BE THE
20 KILLING OF ANOTHER INDIVIDUAL WITH MALICE AFORETHOUGHT.
21 EACH OF THOSE ELEMENTS MUST BE PROVEN BY THE STATE BEYOND
22 A REASONABLE DOUBT BEFORE THE DEFENDANT COULD BE CONVICTED
23 OF THE CHARGE OF MURDER.

24 THE NEXT INDICTMENT CHARGES THE OFFENSE OF ARMED
25 ROBBERY, THAT OFFENSE IS FOUND IN SECTION 16-11-330 OF THE

1 SOUTH CAROLINA CODE OF LAWS WHICH READS IN PART AS
2 FOLLOWS: A PERSON WHO COMMITS ROBBERY WHILE ARMED WITH A
3 PISTOL, DIRK, SLINGSHOT, METAL KNUCKLES, RAZOR OR OTHER
4 DEADLY WEAPON IS GUILTY OF THIS OFFENSE. THE DEFENDANT IN
5 THIS INDICTMENT IS CHARGED WITH ARMED ROBBERY. IN ORDER
6 TO PROVE THIS OFFENSE THE STATE MUST PROVE BEYOND A
7 REASONABLE DOUBT THAT THE DEFENDANT TOOK PERSONAL PROPERTY
8 FROM THE PERSON OR THE PRESENCE OF ANOTHER PERSON.
9 PROPERTY IS IN THE PRESENCE OF A PERSON IF IT IS WITHIN
10 THE PERSON'S REACH, INSPECTION, OBSERVATION OR CONTROL SO
11 THAT THE PERSON COULD IF NOT OVERCOME THE VIOLENCE OR
12 PRESENTED BY FEAR TO KEEP POSSESSION OF THAT PROPERTY.
13 THE STATE MUST ALSO PROVE BEYOND A REASONABLE DOUBT THAT
14 THE DEFENDANT CARRIED THE PROPERTY AWAY INTENDING TO
15 PERMANENTLY DEPRIVE THE OWNER OF THE PROPERTY AND TO KEEP
16 THE PROPERTY FROM THE DEFENDANT'S OWN USE. THE SLIGHTEST
17 REMOVAL OF THE PROPERTY OR THE COMPLETE POSSESSION OF THE
18 PROPERTY EVEN BY THE DEFENDANT IS SUFFICIENT TO SHOW A
19 TAKING AND CARRYING AWAY OF THE PROPERTY. THE TAKING AND
20 THE CARRYING AWAY OF THE PROPERTY MUST HAVE BEEN DONE WITH
21 VIOLENCE OR PUTTING THE OWNER OF THE PROPERTY IN FEAR OR
22 VIOLENCE. FINALLY THE STATE MUST PROVE BEYOND A
23 REASONABLE DOUBT THAT THE DEFENDANT WAS ARMED WITH A
24 DEADLY WEAPON DURING THE ROBBERY. AGAIN, A DEADLY WEAPON
25 IS DEFINED AS ANY ARTICLE, INSTRUMENT OR SUBSTANCE WHICH

1 IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. EACH OF
2 THOSE ELEMENTS OF THE OFFENSE OF ARMED ROBBERY MUST BE
3 PROVEN BY THE STATE BEYOND A REASONABLE DOUBT BEFORE THE
4 DEFENDANT COULD BE CONVICTED OF THE OFFENSE OF ARMED
5 ROBBERY.

6 THE NEXT INDICTMENT IS THE CHARGE OF FIRST DEGREE
7 BURGLARY. THIS IS FOUND IN SECTION 16-11-311 OF THE SOUTH
8 CAROLINA CODE OF LAWS, IN PART THAT SECTION READS AS
9 FOLLOWS: A PERSON IS GUILTY OF BURGLARY IN THE FIRST
10 DEGREE IF THE PERSON ENTERS A DWELLING WITHOUT CONSENT AND
11 WITH THE INTENT TO COMMIT A CRIME IN THE DWELLING AND IS
12 ARMED WITH A DEADLY WEAPON OR EXPLOSIVE OR CAUSES PHYSICAL
13 INJURY TO A PERSON WHO IS NOT A PARTICIPANT IN THE CRIME
14 OR USES OR THREATENS TO USE A DANGEROUS INSTRUMENT OR
15 DISPLAYS WHAT IS OR APPEARS TO BE A KNIFE, PISTOL,
16 REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR A FIREARM. THE
17 DEFENDANT IN THIS INDICTMENT IS CHARGED WITH FIRST DEGREE
18 BURGLARY AND THE STATE MUST PROVE BEYOND A REASONABLE
19 DOUBT THAT THE DEFENDANT ENTERED THE DWELLING WITHOUT
20 CONSENT. A DWELLING IS DEFINED AS ANY BUILDING OR PORTION
21 OF A BUILDING IN WHICH A PERSON ORDINARILY SLEEPS. IN
22 ORDER TO PROVE THAT THE DEFENDANT ENTERED THE BUILDING THE
23 STATE DOES NOT HAVE TO SHOW THAT THE DEFENDANT'S ENTIRE
24 BODY ENTERED THE DWELLING, THE SMALLEST ENTRY IS
25 SUFFICIENT AND MAYBE A PART OF THE BODY SUCH AS A HAND OR

1 A FOOT OR EVEN AN INSTRUMENT. IN ADDITION, THE STATE IS
2 NOT REQUIRED TO PROVE THAT FORCE WAS USED TO GAIN ENTRY.
3 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE
4 DEFENDANT INTENDED TO COMMIT A CRIME, EITHER A FELONY OR A
5 MISDEMEANOR AT THE TIME OF THE ENTRY. THE MERE ENTRY INTO
6 A DWELLING WITHOUT CONSENT IS NOT A BURGLARY IF THE INTENT
7 TO COMMIT A CRIME IS FORMED AFTER THE ENTRY, IT IS NOT
8 BURGLARY. ON THE OTHER HAND, IF THE DEFENDANT INTENDED TO
9 COMMIT A CRIME AT THE TIME OF THE ENTRY IT IS A BURGLARY
10 EVEN IF THE INTENT WAS ABANDONED AFTER THE ENTRY, IT DOES
11 NOT MATTER THAT THE INTENDED CRIME WAS NOT COMPLETED.
12 INTENT MAY BE SHOWN BY ACTS AND CONDUCTS OF THE DEFENDANT
13 AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND
14 REASONABLY INTER INTENT. AND FINALLY THE STATE MUST PROVE
15 BEYOND A REASONABLE DOUBT THAT WHEN ENTRY OR WHILE IN THE
16 DWELLING THE DEFENDANT WAS ARMED WITH A DEADLY
17 WEAPON. A DEADLY WEAPON IS DEFINED AS ANY ARTICLE,
18 INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO PRODUCE DEATH
19 OR GREAT BODILY HARM. EACH OF THOSE ELEMENTS MUST BE
20 PROVEN BY THE STATE BEYOND A REASONABLE DOUBT BEFORE THE
21 DEFENDANT COULD BE CONVICTED OF THE CRIME OF BURGLARY IN
22 THE FIRST DEGREE.

23 THE FINAL CHARGE IS MADE IN THE FORTH INDICTMENT IN
24 THIS CASE IS THE CHARGE OF POSSESSION OF A FIREARM OR A
25 KNIFE DURING THE COMMISSION OF A VIOLENT CRIME. THIS

1 OFFENSE IS FOUND IN SECTION 16-23-490 OF THE SOUTH
2 CAROLINA CODE OF LAWS. AND THAT SECTION READS IN PART AS
3 FOLLOW: IF A PERSON IS IN POSSESSION OF A FIREARM OR
4 VISIBLY DISPLAYED WHAT APPEARS TO BE A FIREARM OR A KNIFE
5 DURING THE COMMISSION OF A VIOLENT CRIME AND IS CONVICTED
6 OF COMMITTING OR ATTEMPTING COMMITTING A VIOLENT CRIME HE
7 IS GUILTY OF THIS CHARGE. AGAIN, IN THIS INDICTMENT THE
8 DEFENDANT IS CHARGED WITH POSSESSION OF A WEAPON DURING
9 THE COMMISSION OF A VIOLENT CRIME, THE STATE MUST PROVE
10 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS IN
11 POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT
12 CRIME. UNDER THIS CODE SECTION FIREARM MEANS ANY MACHINE
13 GUN, AUTOMATIC RIFLE, REVOLVER, PISTOL, ANY WEAPON WHICH
14 WILL, IS DESIGNED TO OR MAY BE READILY CONVERTED TO EXPEL
15 A PROJECTILE. IN ORDER TO FIND THE DEFENDANT GUILTY OF
16 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
17 CRIME YOU MUST FIRST FIND THE DEFENDANT GUILTY OF
18 COMMITTING A VIOLENT CRIME. I WILL FURTHER CHARGE YOU
19 THAT MURDER, ARMED ROBBERY AND BURGLARY IN THE FIRST
20 DEGREE ARE DEFINED AS VIOLENT CRIMES IN THE STATE OF SOUTH
21 CAROLINA. AGAIN, EACH OF THOSE ELEMENTS MUST BE PROVEN BY
22 THE STATE BEYOND A REASONABLE DOUBT BEFORE THE DEFENDANT
23 COULD BE CONVICTED OF THIS CHARGE.

24 MR. FOREMAN AND LADIES AND GENTLEMEN, IN THIS CASE
25 YOU ARE GOING TO BE ASKED TO WRITE A VERDICT ON EACH

1 CHARGE. WHATEVER YOUR VERDICT IS IT MUST BE UNANIMOUS
2 MEANING ALL TWELVE JURORS MUST AGREE ON THE VERDICT. IT
3 CANNOT BE 10 TO 2 OR 11 TO 1 OR 7 TO 5, IT MUST BE A
4 UNANIMOUS VERDICT. I HAVE HAD PREPARED FOR YOUR USE A
5 VERDICT FORM FOR EACH INDICTMENT, ONE FOR EACH CHARGE. ON
6 EACH OF THESE CHARGERS THERE ARE TWO POSSIBLE VERDICTS,
7 DON'T ATTACH ANY SIGNIFICANCE TO THE ORDER THAT I AM GOING
8 TO GIVE YOU THE POSSIBLE VERDICTS. I HAVE TO GIVE THEM TO
9 YOU IN SOME ORDER. ONE POSSIBLE VERDICT IS WE, THE JURY,
10 FIND THE DEFENDANT GUILTY, THE OTHER POSSIBLE VERDICT IS
11 WE, THE JURY, FIND THE DEFENDANT NOT GUILTY. UNDER EACH
12 ONE OF THOSE VERDICTS, MR. FOREMAN, THERE IS A PLACE TO
13 SIGN YOUR NAME AFTER THE JURY HAS DELIBERATED AND REACHED
14 A UNANIMOUS VERDICT THEN YOU WOULD SIMPLY SIGN YOUR NAME
15 UNDER WHATEVER THE VERDICT IS AND THERE IS A PLACE FOR YOU
16 TO DATE THE VERDICT FORM. AGAIN, THE VERDICT MUST BE
17 UNANIMOUS. IN JUST A MINUTE I AM GOING TO SEND YOU BACK
18 TO YOUR JURY ROOM, I AM GOING TO ASK YOU NOT TO BEGIN YOUR
19 DELIBERATIONS UNTIL THE VERDICT FORMS AND THE EXHIBITS ARE
20 BROUGHT TO YOU, THAT IS YOUR SIGNAL TO BEGIN YOUR
21 DELIBERATIONS. AFTER YOU GO BACK I WILL DISCUSS WITH THE
22 ATTORNEYS THE INSTRUCTIONS THAT I HAVE GIVEN YOU AND IF I
23 HAVE OMITTED ANYTHING OR NEED TO EXPLAIN SOMETHING IN MORE
24 DETAIL I WILL BRING YOU BACK IN HERE AND DO THAT
25 IMMEDIATELY. IF THAT IS NOT NECESSARY THEN WHEN THE CLERK

1 OR THE BAILIFF BRING YOU THE EXHIBITS AND THE VERDICT FORM
2 GO AHEAD AND BEGIN YOUR DELIBERATIONS. I NEED TO ADD ONE
3 OTHER THING, MANY TIMES JURYS DON'T HAVE QUESTIONS ONCE
4 THEY BEGIN THEIR DELIBERATIONS. BUT EVERY NOW AND THEN
5 THE JURY WILL HAVE A QUESTION. KEEP IN MIND THAT I CANNOT
6 RESPOND TO ANY QUESTION ABOUT THE FACTS, IF YOU HAVE A
7 QUESTION ABOUT THE LAW I MAY OR MAY NOT BE ABLE TO RESPOND
8 AND IN SOME INSTANCES I MAY BE ABLE TO RESPOND IN WRITING.
9 AND IN SOME INSTANCES I WILL BRING YOU BACK IN THE JURY
10 ROOM AND RESPOND HERE IN THE COURTROOM. IF YOU DO HAVE A
11 QUESTION, MR. FOREMAN, SIMPLY WRITE IT DOWN ON A PIECE OF
12 PAPER, HAND IT OUT TO THE BAILIFF AND THEN HE WILL BRING
13 IT TO ME AND I WILL DECIDE IF I CAN RESPOND. WITH THOSE
14 INSTRUCTIONS, AGAIN DON'T BEGIN YOUR DELIBERATIONS UNTIL
15 THE EXHIBITS AND THE VERDICT FORMS ARE BROUGHT TO YOU.
16 THANK YOU AND YOU ARE EXCUSED TO YOUR JURY ROOM. EVERYONE
17 ELSE STAY SEATED. THE TWO ALTERNATES, IF YOU CAN STAY
18 HERE IN THE COURTROOM, PLEASE.

19 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

20 THE COURT: QUITE HONESTLY, WITH A FOUR DAY TRIAL IT
21 IS A LITTLE UNUSUAL THAT ALL TWELVE ORIGINAL JURORS ARE
22 STILL HERE, WE USUALLY HAVE SOME SORT OF AN EMERGENCY OR
23 SOMETHING TO COME UP AND ONE OF YOU ALTERNATES WOULD HAVE
24 BEEN SEATED. BUT SINCE THE ORIGINAL TWELVE ARE STILL HERE
25 YOU ARE NOT GOING TO GO BACK WITH THEM AND HELP THEM MAKE

1 A DECISION IN THIS CASE. I CAN EXCUSE YOU FOLKS. IF YOU
2 WANT TO STAY HERE YOU ARE WELCOME TO STAY HERE AND
3 CERTAINLY ARE NOT REQUIRED TO STAY HERE. THANK YOU, VERY
4 MUCH. YOU ARE EXCUSED.

5 (WHEREUPON, THE ALTERNATE JURORS ARE EXCUSED FROM THE
6 TRIAL OF THIS CASE.)

7 THE COURT: ANY ADDITIONS OR EXCEPTIONS FROM THE
8 STATE?

9 MR. RIDDLE: NO, SIR.

10 THE COURT: MR. FLOYD?

11 MR. FLOYD: NO, YOUR HONOR.

12 THE COURT: TAKE A LOOK AT THE VERDICT FORMS AND THE
13 EXHIBITS AND WE WILL STAND IN RECESS UNTIL WE HEAR FROM
14 THE JURY.

15 (WHEREUPON, THE JURY STARTED DELIBERATIONS AT
16 APPROXIMATELY 4:15 P.M.)

17 THE COURT: I HAVE RECEIVED A NOTE FROM THE JURY WITH
18 TWO QUESTIONS. THE FIRST THEY REQUEST THE DEFENSE
19 ATTORNEYS TIMELINES. OF COURSE THOSE ARE NOT IN EVIDENCE
20 SO I AM NOT GOING TO PERMIT THOSE TO GO BACK. AND THEN
21 THEY SAY, CAN WE HAVE THE WITNESSES TRANSCRIPTS, ALL OF
22 THEM. AND I WILL BRING THEM OUT AND WILL EXPLAIN TO THEM
23 THAT THAT TESTIMONY IS PRESERVED AND WE WILL HANDLE ANY
24 REQUEST TO HAVE THAT PLAYED BACK. BRING THE JURY IN,
25 PLEASE.

1 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
2 APPROXIMATELY 4:25 P.M.)

3 (WHEREUPON, COURT'S EXHIBIT NO. 7 WAS MARKED FOR
4 IDENTIFICATION ONLY.)

5 THE COURT: LADIES AND GENTLEMEN, I RECEIVED YOUR
6 NOTE WITH TWO REQUEST ON THERE. RATHER THAN JUST WRITE
7 SOMETHING OUT I THOUGHT I BETTER BRING YOU INTO THE
8 COURTROOM AND EXPLAIN TO YOU, THE FIRST REQUEST IS AGAIN,
9 THE DEFENSE ATTORNEYS TIMELINES. THE ANSWER TO THAT
10 QUESTION IS, NO. THOSE ARE NOT EXHIBITS, THEY ARE NOT
11 EVIDENCE, THEY WERE DEMONSTRATIVE AIDS USED BY COUNSEL IN
12 MAKING ARGUMENTS. THEY DO NOT GO BACK TO THE JURY ROOM.
13 SO, YOU CANNOT HAVE THOSE. AND NUMBER TWO, CAN WE HAVE
14 THE WITNESSES TRANSCRIPTS, ALL. AND JURYS SOMETIMES ASK
15 FOR TRANSCRIPTS AND IF WE LIVE IN AN IDEAL WORLD I WOULD
16 BE GLAD TO GIVE THEM TO YOU BUT WE DON'T. THE COURT
17 REPORTER HAS TAKEN DOWN AND PRESERVED EVERY WORD OF
18 TESTIMONY BUT WE DON'T HAVE A BUTTON WE CAN PUSH AND PRINT
19 OUT THE TESTIMONY. THE ONLY WAY FOR THE PRINTABLE FORM IS
20 FOR THE COURT REPORTER TO TYPE IT UP AND IT WILL TAKE
21 WEEKS TO TYPE UP ALL OF THIS TESTIMONY. SHE HAS PRESERVED
22 THE TESTIMONY. IF YOU WANT TO HEAR A PARTICULAR WITNESS
23 OR A PORTION OF A WITNESS OR SEVERAL WITNESSES TESTIMONY
24 AND I WILL ASK YOU TO IDENTIFY THAT PERSON, BE AS SPECIFIC
25 AS YOU CAN. WE WILL LOCATE THAT TESTIMONY ON THE TAPE,

1 YOU WILL BE BROUGHT BACK INTO THE COURTROOM AND THE
2 TESTIMONY WILL BE PLAYED TO YOU. AND YOU NEED TO MAKE
3 THAT REQUEST IN WRITING IF THAT IS WHAT YOU DECIDE TO DO.
4 THAT IS HOW WE WOULD HANDLE THAT SITUATION. IF YOU WILL
5 GO BACK TO YOUR JURY ROOM AND DELIBERATE, PLEASE.
6 EVERYONE ELSE STAY SEATED.

7 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
8 APPROXIMATELY 4:29 P.M.)

9 THE COURT: ANY OBJECTIONS TO THE COURT'S RESPONSE TO
10 THE REQUEST FROM THE STATE?

11 MR. RIDDLE: NO, SIR.

12 THE COURT: FROM THE DEFENSE?

13 MR. FLOYD: NO, YOUR HONOR.

14 THE COURT: WE WILL STAND IN RECESS.

15 (WHEREUPON, THE JURY CONTINUES DELIBERATIONS.)

16 THE COURT: I HAVE RECEIVED A NOTE FROM THE JURY
17 ASKING FOR A COPY OF THE LEGAL EXPLANATION OF THE CHARGES,
18 I AM INTERPRETING THAT TO MEAN THAT THEY WANT TO GET A
19 COPY OF THE COURT'S CHARGE. MY CHARGE IS NOT IN ANY
20 CONDITION THAT I CAN GIVE THEM A COPY OF IT AND I AM GOING
21 TO TELL THEM, NO, BUT I WILL BE GLAD TO GO BACK OVER
22 ANYTHING THEY WOULD LIKE TO HEAR, WHETHER IT IS ALL OF IT.
23 OR PARTS OF IT. AND THE SECOND IS A REQUEST FOR TESTIMONY
24 OF THREE WITNESSES. ACCORDING TO THE COURT REPORTER, THAT
25 WILL TAKE ABOUT AN HOUR. WITH THE CONSENT OF THE STATE

1 AND THE DEFENSE, WE ARE GOING TO GET THAT READY AND PLAY
2 IT FIRST THING IN THE MORNING, SEND THE JURY HOME WITH
3 STRICT INSTRUCTIONS NOT TO DISCUSS THE CASE. AND AS I
4 UNDERSTAND THE STATE AND THE DEFENSE HAS NO OBJECTION TO
5 THAT PROCEDURE. IS THAT CORRECT, SOLICITOR?

6 MR. RIDDLE: YES, SIR. THAT IS CORRECT, IT JUST WENT
7 TO MY HEAD THAT WHAT IF ONE OF THEM GETS SICK OVER NIGHT.

8 THE COURT: WE WILL DEAL WITH THAT IF WE HAVE TO.

9 MR. RIDDLE: WE WILL GO WITH 11.

10 THE COURT: AND WE ARE NOT GOING TO CROSS THAT ROAD
11 RIGHT NOW.

12 MR. RIDDLE: OKAY.

13 THE COURT: MR. FLOYD.

14 MR. FLOYD: WE HAVE NO OBJECTION.

15 THE COURT: GET THE JURY IN, PLEASE.

16 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
17 APPROXIMATELY 6:00 P.M.)

18 (WHEREUPON, COURT'S EXHIBIT NO. 8 WAS MARKED FOR
19 IDENTIFICATION ONLY.)

20 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN, I
21 HAVE RECEIVED YOUR SECOND NOTE, ONE, ASKING FOR A COPY OF
22 THE INSTRUCTIONS THAT I HAVE YOU. MY CHARGE WHICH IS HERE
23 IS NOT IN ANY SHAPE THAT I CAN GO AND BACK AND COPY IT AND
24 GIVE IT TO YOU. IN ABOUT 16 YEARS I HAVE DIFFERENT
25 RESOURCES THAT I PULL MY CHARGE FROM. I MAY READ HALF OF

1 A PAGE FROM ONE RESOURCE AND JUMP TO ANOTHER RESOURCE AND
2 READ THE SECOND HALF PARAGRAPH FROM THAT RESOURCE. I WILL
3 BE GLAD TO REEXPLAIN OR RECHARGE IN FULL OR ANY SPECIFIC
4 AREA THAT THE JURY WOULD LIKE TO HEAR. AS FAR AS MAKING A
5 COPY OF SOMETHING AND GIVING IT TO YOU I AM NOT ABLE TO DO
6 THAT. I WILL GO OVER WITH YOU, WHAT WE WILL DO ABOUT
7 THAT, IF YOU HAVE A REQUEST TO HEAR TESTIMONY OF THREE
8 WITNESSES. THAT IS AVAILABLE AND THE TOTAL OF THOSE THREE
9 WITNESSES TESTIMONY IS BETWEEN 45 MINUTES AND AN HOUR. I
10 HAVE TALKED TO THE ATTORNEYS ABOUT THAT, WE ALL HAVE HAD A
11 LONG DAY SO WHAT EVERYONE HAS AGREED TO IS THAT WE ARE
12 GOING TO BREAK AND SO THAT WE CAN GET EVERYTHING CUED UP
13 AND WHEN YOU GET HERE IN THE MORNING, PLAY THAT TESTIMONY
14 AND I WILL RESPOND TO ANY REQUEST FOR THE CHARGES AND THEN
15 YOU CAN CONTINUE YOUR DELIBERATIONS. SO, I AM GOING TO
16 BREAK AT THIS POINT, SEND YOU HOME. LET ME POINT OUT TO
17 YOU NOT TO DISCUSS THE CASE. BUT WE ARE AT A VERY
18 SENSITIVE TIME THAT THE JURY IS IN THE MIDDLE OF ITS
19 DELIBERATIONS AND IT IS MORE IMPORTANT, IT IS ALWAYS
20 IMPORTANT THAT YOU COMPLY WITH THE COURT'S INSTRUCTIONS,
21 DO NOT DISCUSS ANYTHING ABOUT THE CASE OR YOUR
22 DELIBERATIONS WITH FRIENDS, FAMILY, ANYBODY ELSE OR WITH
23 ANY OTHER MEMBER OF THE JURY. WHEN YOU GET BACK IN THE
24 MORNING DON'T DISCUSS THE CASE WITH YOUR FELLOW JURORS
25 UNTIL I HAVE BROUGHT YOU IN THE COURTROOM AND WE HAVE

1 RESPONDED TO THESE REQUESTS AND THEN YOU ARE SENT BACK TO
2 DELIBERATE. I WILL ASK YOU TO BE BACK IN THE JURY ROOM AT
3 9:30 IN THE MORNING. IF THERE IS ANY SPECIFIC AREA OF THE
4 LAW OR IF YOU WOULD LIKE TO HEAR THE CHARGE THAT I GAVE
5 YOU AGAIN I WILL DO THAT. I WOULD SIMPLY ASK YOU TO WRITE
6 THAT REQUEST OUT SO THAT WE CAN TAKE CARE OF THAT WHILE
7 YOU ARE IN THE COURTROOM ALSO. HAVE A GOOD EVENING, YOU
8 ARE EXCUSED, EVERYONE ELSE STAY SEATED.

9 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
10 THE DAY.

11 THE COURT: WE WILL RECESS UNTIL 9:30 TOMORROW. I
12 KNOW THAT DURING ONE OF THESE TESTIMONIES THERE WAS A
13 BENCH CONFERENCE AND THE JURY MAY OF BEEN SENT OUT. THAT
14 IS THE WITNESS WE WILL START WITH, MADAM COURT REPORTER,
15 IF YOU CAN TAKE CARE OF THAT AND WE CAN GET THROUGH THAT.
16 THE LIST IS GATOR, TIGER AND TAMMI INABINET, THAT IS WHO
17 THE JURY HAS REQUESTED. AND IF THEY REQUEST ADDITIONAL
18 CHARGES I WILL BE GLAD TO DO THAT.

19 (WHEREUPON, THE TRIAL WILL RESUME THE NEXT MORNING AT
20 9:30 A.M.)

21 THE COURT: ANYTHING WE NEED TO GO OVER BEFORE THE
22 JURY IS BROUGHT BACK TO HEAR TESTIMONY FROM THE STATE?

23 MR. RIDDLE: NO, YOUR HONOR.

24 THE COURT: THE DEFENSE?

25 MR. FLOYD: NO, YOUR HONOR.

1 THE COURT: BRING THE JURY IN, PLEASE. ARE YOU
2 READY, MADAM COURT REPORTER?

3 COURT REPORTER: YES, SIR.

4 THE COURT: WHO IS FIRST?

5 COURT REPORTER: GLEATON, BURKE AND INABINET.

6 BAILIFF: THE JURY WANTS FIVE MORE MINUTES.

7 THE COURT: WE WILL GIVE THEM FIVE MINUTES AND SEE
8 WHAT HAPPENS.

9 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

10 BAILIFF: THE JURY IS READY.

11 THE COURT: BRING THE JURY IN, PLEASE.

12 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
13 APPROXIMATELY 9:40.)

14 THE COURT: LADIES AND GENTLEMEN, WE HAVE GOT THE
15 MACHINERY READY TO PLAY BACK THE TESTIMONY. WE WILL FIRST
16 HEAR THE TESTIMONY OF STANLEY GLEATON AND THEN MS. BURKE
17 AND THEN MS. INABINET. MADAM COURT REPORTER.

18 (WHEREUPON, THE TESTIMONY OF STANLEY GLEATON,
19 JACQUELINE BURKE AND TAMMI INABINET WAS PLAYED TO THE
20 JURY STARTING AT 9:45 A.M.)

21 THE COURT: WE WILL TAKE A BREAK AT THIS TIME.

22 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

23 THE COURT: BRING THE JURY IN.

24 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
25 APPROXIMATELY 10:52 A.M.)

1 (WHEREUPON, THE TESTIMONY OF THE THREE WITNESSES
2 CONTINUED TO BE PLAYED TO THE JURY.)

3 THE COURT: ALL RIGHT, MR. FOREMAN AND LADIES AND
4 GENTLEMEN OF THE JURY, YOU CAN CONTINUE TO DELIBERATE.
5 THANK YOU, YOU ARE EXCUSED AND EVERYONE ELSE STAY SEATED,
6 PLEASE.

7 (WHEREUPON, THE JURY CONTINUED DELIBERATIONS AT
8 APPROXIMATELY 11:10 A.M.)

9 THE COURT: THE JURY HAS SENT A NOTE AND I WILL READ
10 IT INTO THE RECORD AND EXPLAIN TO THEM THAT I TRIED TO
11 RESPOND TO THIS. WE ARE INTERESTED IN THE EXPLANATION
12 THAT YOU READ TO US AFTER THE LAWYERS SUMMARIES. WHAT
13 CONSTITUTES MURDER, PARTICULARLY REASONABLE DOUBT AND
14 REASONABLE CERTAINTY. WE WANT TO HEAR THE JUDGE'S CHARGE
15 WITH RESPECT TO MURDER. I AM GOING TO GO OVER MY
16 REASONABLE DOUBT CHARGE, I AM GOING TO GO BACK OVER THE
17 MURDER CHARGE AND THEN TELL THEM IF THEY WOULD LIKE TO
18 HEAR ANY OTHER PART OF THE CHARGE I WILL BE GLAD TO
19 EXPLAIN THAT TO THEM. BRING THE JURY IN, PLEASE.

20 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
21 APPROXIMATELY 11:15 A.M.)

22 (WHEREUPON, COURT'S EXHIBIT NO. 9 WAS MARKED FOR
23 IDENTIFICATION ONLY.)

24 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN, I
25 HAVE RECEIVED YOUR REQUEST. I SHOULD OF TOLD YOU THIS

1 EARLIER, WHEN I GET A REQUEST FROM THE JURY, UNFORTUNATELY
2 IN OUR STATE WE DON'T HAVE A PROCESS WHERE WE CAN JUST
3 HAVE A QUESTION AND ANSWER SESSION BETWEEN THE JURY AND
4 THE JUDGE. THE REQUEST HAVE TO BE PUT IN WRITING AND PUT
5 ON THE RECORD. I HAVE TO RESPOND SPECIFICALLY TO WHAT YOU
6 HAVE ASKED FOR. I WILL RESPOND TO IT AND THEN WE WILL GO
7 FROM THERE. THE NOTES SAYS WE ARE INTERESTED IN THE
8 EXPLANATION THAT YOU READ TO US AFTER THE LAWYERS
9 SUMMARIES. WE WILL STOP THERE, THAT IS THE ENTIRE CHARGE
10 THAT YOU GAVE YOU AFTER THE LAWYERS MADE THEIR ARGUMENTS.
11 YOU THEN WENT ON TO SAY, WHAT CONSTITUTES MURDER
12 PARTICULARLY REASONABLE DOUBT AND REASONABLE CERTAINTY.
13 WE WANT TO HEAR THE JUDGES CHARGE WITH RESPECT TO MURDER.
14 YOU NEED TO UNDERSTAND IN RESPONDING TO YOUR REQUEST I AM
15 NOT IN ANY WAY EMPHASIZING THE CHARGES THAT I AM ABOUT TO
16 GO BACK OVER WITH YOU IN CONJUNCTION WITH THE ENTIRE
17 CHARGE THAT I GAVE YOU YESTERDAY. BUT I WILL GO BACK OVER
18 MY CHARGE, MY EXPLANATION OF WHAT REASONABLE DOUBT IS AND
19 THEN I WILL GO BACK OVER THE CHARGE THAT I MADE WITH
20 RESPECT OF THE CHARGE OF MURDER. I AM TRYING TO RESPOND
21 TO WHAT I SEE ON THE NOTE, THAT IS HOW I AM GOING TO
22 RESPOND. FIRST OF ALL WITH RESPECT TO REASONABLE DOUBT.

23 THE STATE IS REQUIRED TO PROVE EACH OF THE ESSENTIAL
24 ELEMENTS OF EACH OFFENSE TO WHICH THE DEFENDANT HAS BEEN
25 CHARGED BEYOND A REASONABLE DOUBT. THE STATE IS NOT

1 REQUIRED TO PROVE THE GUILT OF THE DEFENDANT BEYOND ALL
2 DOUBT OR BEYOND EVERY DOUBT BUT BEYOND A REASONABLE DOUBT.
3 WHEN WE SAY THAT PROOF MUST BE ESTABLISHED BEYOND A
4 REASONABLE DOUBT THOSE WORDS SHOULD BE GIVEN THEIR PLAIN
5 AND ORDINARY MEANING. A REASONABLE DOUBT IS THE KIND OF
6 DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO
7 ACT. A REASONABLE DOUBT CAN ARISE FROM THE EVIDENCE
8 PRESENTED IN THE CASE OR THE LACK OF EVIDENCE IN THE CASE.
9 TO THINK THAT A DEFENDANT IS PROBABLY GUILTY OR THAT THE
10 CIRCUMSTANCES ARE SUSPICIOUS IS NOT ENOUGH. PROOF BEYOND
11 A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY
12 CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE FEW THINGS
13 IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY AND IN
14 CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT
15 OVERCOMES EVERY POSSIBLE DOUBT. IF BASED ON YOUR
16 CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED
17 THAT THE DEFENDANT IS GUILTY OF THE CRIME OR CRIMES
18 CHARGED YOU MUST FIND HIM GUILTY. IF ON THE OTHER HAND
19 YOU THINK THAT THERE IS A REAL POSSIBILITY THAT HE IS NOT
20 GUILTY YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND
21 HIM NOT GUILTY. YOU ALONE MUST MAKE THE DETERMINATION OF
22 WHETHER OR NOT REASONABLE DOUBT EXIST AS TO THE GUILT OF
23 THIS DEFENDANT. I HAVE GONE BACK OVER WITH YOU WHAT I
24 CHARGED YESTERDAY OF WHAT A REASONABLE DOUBT IS. THAT IS
25 THE COURT'S EXPLANATION OF REASONABLE DOUBT.

1 AND THEN YOU HAVE REQUESTED TO BE RECHARGED ON ONE OF
2 THE CHARGES AND THAT CHARGE IS MURDER. MURDER IS FOUND IN
3 SECTION 16-3-10 OF THE SOUTH CAROLINA CODE OF LAWS AND
4 READS IN PART AS FOLLOW: MURDER IS THE KILLING OF ANY
5 PERSON WITH MALICE AFORETHOUGHT EITHER EXPRESSED OR
6 INFERRED. THE DEFENDANT IS CHARGED WITH MURDER, THE STATE
7 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
8 KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT. MALICE IS
9 HATRED, ILL WILL OR HOSTILITY TOWARDS ANOTHER PERSON. IT
10 IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST
11 CAUSE OR EXCUSE AND WITH AN INTENT TO INFLECT AN INJURY OR
12 UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL
13 INTENT. MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE
14 EXIST FOR ANY PARTICULAR TIME BEFORE THE ACT WAS
15 COMMITTED. BUT THE MALICE MUST EXIST IN THE MIND OF THE
16 DEFENDANT JUST BEFORE AND AT THE TIME THAT THE ACT IS
17 COMMITTED. THEREFORE THERE MUST BE A COMBINATION OF A
18 PREVIOUS EVIL INTENT AND THE ACT. MALICE AFORETHOUGHT MAY
19 BE EXPRESSED OR INFERRED. THESE TERMS EXPRESSED AND
20 INFERRED, DOES NOT MEAN DIFFERENT KINDS OF MALICE BUT
21 MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST.
22 THAT IS EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE
23 FACTS AND CIRCUMSTANCES THAT ARE PROVEN. EXPRESSED MALICE
24 IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED
25 OR ILL WILL FOR ANOTHER OR WHEN THE PERSON PREPARED

1 BEFOREHAND TO DO THE ACT WHICH IS LATER ACCOMPLISHED.
2 MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL
3 DISREGARD TO HUMAN LIFE. INFERRED MALICE MAY ALSO ARISE
4 WHEN THE DEED IS DONE WITH A DEADLY WEAPON.
5 A DEADLY WEAPON IS DEFINED AS ANY ARTICLE, INSTRUMENT OR
6 SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY
7 HARM. MALICE MAY ALSO BE INFERRED WHEN ONE INTENTIONALLY
8 KILLS ANOTHER DURING THE COMMISSION OF A FELONY. I WILL
9 CHARGE THAT BURGLARY IN THE FIRST DEGREE AND ARMED ROBBERY
10 ARE FELONIES UNDER THE LAWS OF THE STATE OF SOUTH
11 CAROLINA. EACH OF THESE ELEMENTS MUST BE PROVEN BY THE
12 STATE BEYOND A REASONABLE DOUBT BEFORE THE DEFENDANT COULD
13 BE CONVICTED OF THE CHARGE OF MURDER. THAT IS THE
14 DEFINITION OF THE CHARGE THAT THE COURT HAS GIVEN IN
15 RESPECT TO THAT PARTICULAR CHARGE. AND AT THIS TIME I
16 WILL SEND YOU BACK AND ASK YOU TO CONTINUE DELIBERATING.
17 IF YOU HAVE ADDITIONAL REQUEST IF YOU WILL SEND THOSE OUT.
18 THE JURY IS EXCUSED AND EVERYONE ELSE STAY SEATED.

19 (WHEREUPON, THE JURY CONTINUES TO DELIBERATE AT
20 APPROXIMATELY 11:30 A.M.)

21 THE COURT: ANY EXCEPTIONS OR ADDITIONS TO THE
22 RECHARGE. ANYTHING FROM THE STATE?

23 MR. RIDDLE: NONE, YOUR HONOR.

24 THE COURT: MR. FLOYD?

25 MR. FLOYD: NO, YOUR HONOR.

1 THE COURT: WE WILL STAND IN RECESS UNTIL WE HEAR
2 FROM THE JURY.

3 (WHEREUPON, A RECESS IS TAKEN UNTIL WE HEAR FROM THE
4 JURY.)

5 (WHEREUPON, A JURY NOTE WAS SENT OUT REQUESTING A
6 LUNCH BREAK. THE COURT HAS ORDERED LUNCH FOR THE
7 JURY.)

8 (WHEREUPON, COURT'S EXHIBIT NO. 10 WAS MARKED FOR
9 IDENTIFICATION ONLY.)

10 (WHEREUPON, A JURY NOTE WAS SENT OUT REQUESTING A
11 BREAK TO GO OUTSIDE FOR TEN MINUTES FOR FRESH AIR.)

12 (WHEREUPON, COURT'S EXHIBIT NO. 11 WAS MARKED FOR
13 IDENTIFICATION ONLY.)

14 THE COURT: THE JURY AS SENT OUT A NOTE WANTING TO
15 HEAR THE TESTIMONY OF ELBERT BOO BOLTON, MINNIE LENEVE AND
16 TERRY BOLTIN. BRING THE JURY IN, PLEASE.

17 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
18 APPROXIMATELY 3:50 P.M.)

19 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN, YOU
20 HAVE ASKED TO HEAR THE TESTIMONY OF ELBERT BOO BOLTON,
21 TERRY BOLTIN AND MINNIE LENEVE. THAT WILL BE PLAYED BACK
22 TO YOU, YOU WILL HEAR MINNIE LENEVE'S TESTIMONY FIRST AND
23 THEN ELBERT BOO BOLTON AND THEN TERRY BOLTIN.

24 (WHEREUPON, THE TESTIMONY OF MINNIE LENEVE, ELBERT
25 BOO BOLTON AND TERRY BOLTIN WAS PLAYED FOR THE JURY.)

1 THE COURT: THE JURY CAN RETIRE TO THE JURY ROOM TO
2 CONTINUE DELIBERATING.

3 (WHEREUPON, THE JURY CONTINUED DELIBERATIONS AT
4 APPROXIMATELY 4:30 P.M.)

5 (WHEREUPON, COURT'S EXHIBIT NO. 14 WAS MARKED FOR
6 IDENTIFICATION ONLY.)

7 THE COURT: LET ME PUT ON THE RECORD, ABOUT 5:30 THIS
8 AFTERNOON, IT IS NOW ABOUT 10 TO 8:00. IN TALKING TO
9 COUNSEL I SENT THE JURY A NOTE THAT READS AS FOLLOWS,
10 WOULD THE JURY PREFER TO CONTINUE TO DELIBERATE THIS
11 AFTERNOON OR COME BACK MONDAY MORNING TO CONTINUE
12 DELIBERATING. AND I RECEIVED A WRITTEN RESPONSE FROM THE
13 FOREMAN THAT THEY CHOOSE TO STAY FOR A WHILE LONGER AT
14 THIS TIME. THAT WAS WITH THE CONSENT OF COUNSEL. AND OF
15 COURSE, THE JURY CONTINUED TO DELIBERATE. THAT IS COURT'S
16 EXHIBIT NUMBER 12. I WANTED TO PUT THAT ON THE RECORD.
17 AND I NOTIFIED COUNSEL THAT WE RECEIVED FROM THE JURY THAT
18 THEY HAVE MADE A DECISION ON THREE OF THE FOUR CHARGES BUT
19 THEY HAVE NOT BEEN ABLE TO REACH A UNANIMOUS DECISION ON
20 THE FORTH. AND I HAVE ADVISED COUNSEL THAT I AM GOING TO
21 BRING THE JURY IN, I WOULD INSTRUCT THE BAILIFF TO BRING
22 IN ONLY THE VERDICTS ON THE THREE CHARGES THAT THEY HAVE
23 AGREED ON. I WILL DEAL WITH THOSE THREE CHARGES AND THEN
24 I WILL TALK TO THE JURY CONCERNING WHETHER THEY FEEL LIKE
25 THEY WILL BE ABLE TO REACH A UNANIMOUS DECISION ON THE

1 FORTH CHARGE. BRING THE JURY IN, PLEASE.

2 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
3 APPROXIMATELY 7:55 P.M.)

4 (WHEREUPON, COURT'S EXHIBIT NOS. 12 AND 15 WERE
5 MARKED FOR IDENTIFICATION.)

6 (WHEREUPON, COURT'S EXHIBIT NO. 13 WAS MARKED FOR
7 IDENTIFICATION. THIS NOTE WAS THE JURY REQUESTING A
8 BREAK OUTSIDE.)

9 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN, I
10 HAVE RECEIVED YOUR LATEST NOTE INDICATING THAT YOU HAVE
11 REACHED A UNANIMOUS DECISION ON THREE OF THE CHARGES BUT
12 NOT ON THE FORTH. AND THE QUESTIONS IS, WHAT DO YOU WANT
13 US TO DO. MR. FOREMAN, BASED ON WHAT YOU ADVISE THE
14 COURT, THE JURY HAS REACHED A UNANIMOUS DECISION ON THREE
15 OF THE CHARGES, IS THAT CORRECT?

16 MR. FOREMAN: YES, SIR.

17 THE COURT: AND I HAVE INSTRUCTED THE BAILIFF FOR YOU
18 TO BRING THOSE THREE VERDICT FORMS IN AND YOU HAVE DONE
19 THAT, IS THAT RIGHT?

20 MR. FOREMAN: YES, SIR.

21 THE COURT: YOU CAN HAND THOSE UP, PLEASE. MADAM
22 CLERK, IF YOU WILL PUBLISH THE VERDICT ON THOSE THREE
23 CHARGES, PLEASE.

24 MADAM CLERK: INDICTMENT 2006-GS-32-0667, THE STATE
25 VERSUS JOHNNIE RANDOLPH FRAZIER, JR. THE CHARGE,

1 POSSESSION OF A FIREARM OR A KNIFE DURING THE COMMISSION
2 OF A VIOLENT CRIME. WE THE JURY FIND THE DEFENDANT
3 GUILTY.

4 INDICTMENT 2006-GS-32-0671, THE STATE VERSUS JOHNNIE
5 RANDOLPH FRAZIER, JR. THE CHARGE, BURGLARY IN THE FIRST
6 DEGREE. WE THE JURY FIND THE DEFENDANT GUILTY.

7 INDICTMENT 2006-GS-32-0670. THE STATE VERSUS JOHNNIE
8 RANDOLPH FRAZIER, JR. THE CHARGE OF ARMED ROBBERY. WE
9 THE JURY FIND THE DEFENDANT GUILTY AND THEY ARE ALL SO
10 SIGNED BY THE FOREMAN. MR. FOREMAN AND LADIES AND
11 GENTLEMEN OF THE JURY, IF THIS IS YOUR VERDICTS PLEASE
12 INDICATE EACH OF YOU BY RAISING YOUR RIGHT HAND.

13 (WHEREUPON, ALL JURORS RAISED THEIR HAND.)

14 THE COURT: MR. FLOYD, YOU WANT THE JURY POLLED ON
15 THESE CHARGES?

16 MR. FLOYD: YES, YOUR HONOR.

17 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN, A
18 REQUEST HAS BEEN MADE FOR THE JURY TO BE POLLED. THAT
19 SIMPLY MEANS THAT THE CLERK WILL ASK YOU INDIVIDUALLY THE
20 QUESTION, WHETHER WAS THIS YOUR VERDICT, MEANING WAS IT
21 YOUR VERDICT IN THE JURY ROOM AND WHETHER IT IS STILL YOUR
22 VERDICT ON THESE CHARGES. AND AS SHE CALLS THE ROLL IF
23 YOU WILL RAISE YOUR HANDS SO THAT WE CAN SEE WHO HAS
24 RESPONDED AND JUST ANSWER THAT QUESTION.

25 THE CLERK: TROY JOHNSON, WAS THIS YOUR VERDICT?

1 JUROR: YES.

2 THE CLERK: IS IT STILL YOUR VERDICT?

3 JUROR: YES.

4 THE CLERK: RUBEN CARO, WAS THIS YOUR VERDICT?

5 JUROR: YES.

6 THE CLERK: IS IT STILL YOUR VERDICT?

7 JUROR: YES.

8 THE CLERK: ELIZABETH JONES, WAS THIS YOUR VERDICT?

9 JUROR: YES.

10 THE CLERK: IS IT STILL YOUR VERDICT?

11 JUROR: YES.

12 THE CLERK: SCOTTY WILLING, WAS THIS YOUR VERDICT?

13 JUROR: YES.

14 THE CLERK: IS IT STILL YOUR VERDICT?

15 JUROR: YES.

16 THE CLERK: BRANDIE SMITH, WAS THIS YOUR VERDICT?

17 JUROR: YES.

18 THE CLERK: IS IT STILL YOUR VERDICT?

19 JUROR: YES.

20 THE CLERK: LISA PETERSON, WAS THIS YOUR VERDICT?

21 JUROR: YES.

22 THE CLERK: IS IT STILL YOUR VERDICT?

23 JUROR: YES.

24 THE CLERK: SUMMER FRALEY, WAS THIS YOUR VERDICT?

25 JUROR: YES.

1 THE CLERK: IS IT STILL YOUR VERDICT?

2 JUROR: YES.

3 THE CLERK: ROXANNE POOLE, WAS THIS YOUR VERDICT?

4 JUROR: YES.

5 THE CLERK: IS IT STILL YOUR VERDICT?

6 JUROR: YES.

7 THE CLERK: LAWANDA CHISOLM, WAS THIS YOUR VERDICT?

8 JUROR: YES.

9 THE CLERK: IS IT STILL YOUR VERDICT?

10 JUROR: YES.

11 THE CLERK: CHRISTIAN TEBEAU, WAS THIS YOUR VERDICT?

12 JUROR: YES.

13 THE CLERK: IS IT STILL YOUR VERDICT?

14 JUROR: YES.

15 THE CLERK: SHARON GOLLWITZER, WAS THIS YOUR VERDICT?

16 JUROR: YES.

17 THE CLERK: IS IT STILL YOUR VERDICT?

18 JUROR: YES.

19 THE CLERK: CURTIS LIVINGSTON, WAS THIS YOUR VERDICT?

20 JUROR: YES.

21 THE CLERK: IS IT STILL YOUR VERDICT?

22 JUROR: YES.

23 THE CLERK: THE JURY HAS BEEN POLLED, YOUR HONOR.

24 THE COURT: THE JURY HAS BEEN POLLED ON THESE

25 CHARGES. NOW, MR. FOREMAN AND LADIES AND GENTLEMEN, AGAIN

1 AS I HAVE INDICATED EARLIER AS WE HAVE HAD DISCUSSIONS,
2 THE LAW DOES NOT PERMIT ME TO CARRY ON A CONVERSATION BACK
3 AND FORTH WITH YOU. BUT I AM PERMITTED TO ASK A QUESTION
4 WHEN A JURY IS NOT ABLE TO REACH A DECISION AND I CAN ONLY
5 ADDRESS THE QUESTION TO THE FOREMAN. AND, MR. FOREMAN, I
6 NEED EITHER A YES OR A NO, WE CAN'T ENGAGE IN ANY
7 DISCUSSION. BUT I NEED AN HONEST ANSWER FROM YOU, I KNOW
8 IT HAS BEEN A LONG DAY BUT DO YOU FEEL WITH ADDITIONAL
9 TIME THAT THIS JURY WILL EVER BE ABLE TO REACH A UNANIMOUS
10 VERDICT ON THE ONE CHARGE THAT YOU DID NOT AGREE UPON AT
11 THIS TIME.

12 MR. FOREMAN: CAN I ASK FOR A RECESS TO TALK ABOUT
13 THAT QUESTION?

14 THE COURT: I NEVER HAVE HAD THAT RESPONSE TO A
15 QUESTION. I WILL SEND THE JURY BACK TO DISCUSS THAT AND
16 THEN I WILL TAKE THE RESPONSE TO THAT QUESTION. SO, AT
17 THIS TIME I WILL SEND YOU BACK TO YOUR JURY ROOM AND
18 NOTIFY THE BAILIFF WHEN YOU ARE READY TO COME BACK IN THE
19 COURTROOM.

20 (WHEREUPON, THE JURY IS EXCUSED FROM OPEN COURT.)

21 THE COURT: WHILE THE JURY IS OUT AND THE JURY HAS
22 BEEN POLLED THE COURT WILL ACCEPT THE VERDICTS ON THE
23 THREE CHARGES THAT THEY HAVE AGREED UPON. I HAVE NO IDEA
24 WHAT THE JURY IS GOING TO ADVISE THE COURT WHEN THEY COME
25 BACK. COUNSEL, YA'LL STEP UP.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

2 BAILIFF: THEY ARE READY TO COME IN.

3 THE COURT: BRING THE JURY IN, PLEASE.

4 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
5 APPROXIMATELY 8:02 P.M.)

6 THE COURT: MR. FOREMAN, I ASK YOU TO RESPOND TO THE
7 QUESTION, PLEASE.

8 MR. FOREMAN: SIR, IT IS MY OPINION THAT THERE WILL
9 NOT BE A ONE-HUNDRED PERCENT AGREEMENT.

10 THE COURT: BASED ON THAT RESPONSE FROM THE FOREMAN
11 OF THE JURY THE COURT WILL DECLARE A MISSTRIAL ON THE
12 CHARGE OF MURDER. AND MR. FOREMAN AND LADIES AND
13 GENTLEMEN, THAT WILL CONCLUDE YOUR SERVICE IN THIS CASE
14 AND I KNOW YOU HAVE BEEN WORKING HARD FOR A DAY AND A HALF
15 NOW. I APPRECIATE YOUR TIME HERE, YOU HAVE BEEN HERE WHEN
16 I HAVE ASKED YOU TO. THERE WILL BE SOME OTHER PROCEEDINGS
17 AND SOME MOTIONS FOR SENTENCING PROCEEDINGS. WE ARE GOING
18 TO DELAY THAT UNTIL NEXT WEEK, I WILL TAKE UP ANY MOTIONS
19 THAT MIGHT BE MADE, YOU ARE NOT REQUIRED TO BE HERE FOR
20 THAT. WE APPRECIATE YOU BEING HERE, YOU ARE DISQUALIFIED
21 FROM CIRCUIT COURT FOR ONE YEAR. THANK YOU AND YOU ARE
22 EXCUSED.

23 (WHEREUPON, THE JURY IS EXCUSED FROM THE COURTROOM AT
24 8:05 P.M.)

25 THE COURT: AS I HAVE INDICATED TO COUNSEL, I WILL

1 GIVE YOU THE WEEKEND TO THINK ABOUT ANY MOTIONS THAT YOU
2 MIGHT WANT TO MAKE AND LET ME HEAR FROM YOU ON MONDAY, THE
3 SENTENCING AND MOTIONS. THANK YOU.

4 MR. RIDDLE: I WOULD ASK THAT THE DEPUTIES THAT ARE
5 HERE TO NOTIFY THE JAIL PEOPLE BECAUSE HE IS ACTUALLY IN
6 SCDC AND I HATE FOR HIM TO BE SENT BACK TO SCDC.

7 THE COURT: THE TRIAL IS NOT CONCLUDED UNTIL HE IS
8 SENTENCED SO HE STAYS HERE UNTIL THE TRIAL IS FINISHED.
9 THANK YOU.

10 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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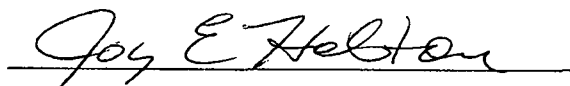
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

I, JOY E. HOLSTON, OFFICIAL COURT REPORTER FOR THE
EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
LEXINGTON COUNTY, SOUTH CAROLINA, ON THE 31ST DAY OF
MARCH, 2008.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

JANUARY 22, 2009



JOY E. HOLSTON, COURT REPORTER

MY COMMISSION EXPIRES: MARCH 13, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT
 06-GS-32-0667, 0670-71

THE STATE,)
)
 PLAINTIFF,)
)
 VS.)
)
 JOHNNIE R. FRAZIER,)
)
 DEFENDANT.)

TRANSCRIPT OF RECORD

April 11, 2008
 Lexington, South Carolina

B E F O R E:

THE HONORABLE JAMES W. JOHNSON, JR., Judge

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

DAYTON RIDDLE, 11th Circuit Deputy Solicitor
 DAVID STUMBO, Assistant Solicitor
 Attorneys for the State

WAYNE FLOYD, Esquire
 Attorney for the Defendant

Tina F. Behles, ACR, CVR
 Circuit Court Reporter

I N D E X

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E X H I B I T S

NO.	DESCRIPTION	I.D.	EV.
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NO EXHIBITS INTRODUCED

1 PROCEEDINGS

2 THE COURT: All right. For the record, three
3 indictments in the case -- This is a case that was tried
4 last week on three -- well, it was tried on four
5 indictments: 06-671 The State versus Johnnie Randolph
6 Frazier, Jr., burglary in the first degree; indictment
7 06-670 The State versus Johnnie Randolph Frazier, Jr.,
8 indictment for armed robbery; and 06-667 -- full docket
9 number on these is 06-GS-32-whatever number -- 667 charge
10 of possession of a firearm or a knife during the
11 commission of a violent crime. After a full day plus
12 some of deliberation, the jury convicted the Defendant on
13 those three charges. The jury was unable to reach a
14 verdict on the remaining charge on the other indictment,
15 which was a murder charge. A mistrial was declared.
16 Upon conclusion, the Court continued the matter until
17 today for purposes of any motions and sentencing.

18 All right. Mr. Floyd, any motions at this time?

19 MR. FLOYD: Yes, your honor. Your honor, at this
20 time, the Defendant would move for a new trial. The
21 basis for our motion -- in connection with this motion,
22 we of course renew all objections made during the trial.
23 We take exception to rulings contrary to the Defendant's
24 position. But we renew our motion that the Court should
25 have directed a verdict in this case. It is our position

1 that the evidence just failed to establish that, by any
2 standard, whether you call it for the greater weight of
3 the evidence or proof beyond a reasonable doubt, that the
4 Defendant was in fact guilty of these crimes for which he
5 was charged. There is absolutely no evidence to place
6 him in the home at the time of the murder. There is
7 absolutely no evidence to place him in possession or
8 control of any of the items that were taken from the
9 home, nor any evidence to connect him with any murder
10 weapon or the murder itself -- the victim in this case.

11 THE COURT: Your voice is getting lower, and I'm
12 having more trouble hearing you, Mr. Floyd.

13 MR. FLOYD: Okay. Sorry about that, your honor.
14 For those reasons, we move that the Court grant him a new
15 trial as there was just simply not enough evidence in the
16 record to support the verdict of the jury in this matter.
17 I -- in connection with the verdict of the jury, we would
18 move for a new trial because it's obviously a compromised
19 verdict because of the inconsistent nature of the
20 findings of the jury. There simply is no reason for the
21 Defendant to be found guilty of the three charges for
22 which he was found guilty, yet the jury not be able to
23 come to a verdict on the murder charge since everything
24 would've had to have happened at the same time and at the
25 same place.

1 So, and a verdict like that, as inconsistent as that
2 verdict is, it's obviously a result of compromise where
3 some of the jurors gave up their strong belief that he
4 was innocent of all charges as a compromise to some of
5 the jurors who wanted guilty of all the charges. And
6 therefore, the verdict is not the result of the fair
7 deliberation of all the jurors, particularly when one
8 considers the length of the deliberation. I believe it
9 was at least a ten hours or so deliberation. One hour or
10 so Thursday afternoon, then of course from 9:30 till
11 about 8:15 on Friday.

12 We also renew our objection to the Court's
13 restriction of our closing argument in connection with
14 the DNA results of a cigarette butt at the auto scene.
15 And also renew our objection to the Court's failure to
16 suppress the search of the van and bookbag that -- that
17 was made in the case. Your honor, for all these reasons,
18 we move that the verdict be set aside and that the
19 Defendant be granted a new trial.

20 THE COURT: All right. Mr. Riddle?

21 MR. RIDDLE: Your honor, if it please the Court, I
22 think there was ample evidence for the jury to decide
23 what they did in this particular case. I don't intend to
24 go into the deliberations of the jury, but I think they
25 clearly were -- there was clearly enough evidence for the

1 jury to find Mr. Frazier guilty of burglary, guilty of
2 the gun charge, and guilty of the armed robbery. So we
3 would respectfully request that the Court uphold its
4 rulings on that. As regards to inconsistent verdicts,
5 your honor, the -- the law is clearly against Mr.
6 Frazier's position. In that case, I would cite to the
7 Court cases of State versus Alexander, which is 303 South
8 Carolina 377. It's a 1991 case. And also State versus
9 Artimus Nichols, which is 325 South Carolina 111. It is
10 a 1997 case. Both of those cases were decided by the
11 Supreme Court, your honor. Both of those cases clearly
12 state that there is no rule against inconsistent verdicts
13 in South Carolina. The rule was announced in the
14 Alexander case and upheld in the -- in the Nichols case,
15 your honor.

16 Your honor, as far as the other evidentiary rulings
17 which the Court made during the course of this particular
18 trial, the State would contend that the rulings were
19 correct. The bookbag, Mr. Frazier had no standing in the
20 van that was searched. He had no expectation of privacy.
21 In addition, your honor, he had abandoned that property
22 there when -- when he left the bookbag in the van, Mr.
23 Richburg and Ms. Inabinet both testified that they gave
24 him the opportunity to exit the vehicle that he was in,
25 go back and retrieve his bookbag if he wanted it, but

1 they weren't going back to that particular location.
2 That property was abandoned. Certainly he had absolutely
3 no expectation of privacy in a van that he was a
4 passenger in that he got out of that did not belong to
5 the driver of the vehicle in the first place. So we
6 think that the evidentiary rulings made by your honor and
7 those grounds are correct.

8 As far as the cigarette butt from the crime scene,
9 it would be our position that that was not in evidence
10 before this jury. Mr. Floyd attempted to argue it. We
11 objected. But I believe that the record would
12 substantiate Mr. Floyd did in fact make that argument to
13 the jury. So for all of those reasons, your honor, we
14 would submit that the verdict should be upheld. There's
15 no question in this case that the jury reached those
16 verdicts and were individually polled after the verdicts
17 were received. Each of the 12 jurors indicated that that
18 was their verdict at the time they reached it and was
19 still their verdict as they sat in the courtroom and
20 verdicts were accepted. They affirmed to your honor
21 through the clerk of court that they were unanimous in
22 those decisions, and we believe that they should be
23 upheld.

24 THE COURT: All right. Anything in response, Mr.
25 Floyd?

1 MR. FLOYD: Nothing further, your honor.

2 THE COURT: All right. As far as your evidentiary
3 rulings are concerned, I'm not going to change those. I
4 tried and hopefully applied the correct law to those
5 rulings, and those rulings would stand. As far as the
6 motion for new trial on the grounds argued by the
7 Defendant, those motions are denied. I think there is
8 sufficient evidence in the record that supports the
9 verdict of the jury on each of the three charges that the
10 jury did convict the Defendant of. And as far as
11 inconsistent verdicts, I think the case law is clear
12 particularly when you have different charges with
13 different elements of the offenses that -- what the jury
14 here did, we may not understand it. I don't think it's
15 inconsistent to the point of requiring a new trial.
16 Motion would be denied.

17 All right, prepared to go forward with sentencing?
18 State ready?

19 MR. RIDDLE: State's ready.

20 THE COURT: Defense ready, Mr. Floyd?

21 MR. FLOYD: Defense is ready, your honor.

22 THE COURT: All right.

23 MR. RIDDLE: Your honor, at this time, we have some
24 victim impact evidence that we'd like to perfect to your
25 honor.

1 THE COURT: All right, as long as it's not
2 cumulative, it'll be fine.

3 MR. RIDDLE: Yes, sir. Your honor, the first speaker
4 would be Ms. Connie Salyer, S-A-L-Y-E-R. She did not
5 testify at the trial. She is Carol Hursey's sister, and
6 she ---

7 THE COURT: All right.

8 MR. RIDDLE: --- would like to briefly address your
9 honor.

10 THE COURT: Ma'am, if you'll come to this microphone.
11 I just have a hard time hearing in this big room, and I
12 need to be able to understand what you'd like to say. If
13 you'll state your name first, please.

14 WITNESS: Connie Salyer. I was Carol's sister. We
15 were only 14 months apart. And I was the oldest. And
16 I've always felt like I was responsible for her for some
17 reason, I think because maybe I felt like part of me was
18 part of her and part of her was part of me. And she is
19 dearly missed. I miss her very, very much. I feel like
20 part of me is gone. But I don't know what to say. It's
21 been a hard thing for me and my mother. It only left me
22 and my mother. My dad had died a good many years ago. I
23 have two children, so I have a life -- Carol never --
24 Carol never ended up having any children down through the
25 years. But she did pretty much take Butch's children in

11

1 and tried to be role model and tried to teach them, you
2 know, the importance of education and the importance of
3 keeping things straight in their life. She also was very
4 taken -- she was very into Butch's family. She loved all
5 his family. And us. But, as I say, she's just very,
6 very muchly missed. And wish we could have her back,
7 but. She did nothing in her entire life to deserve what
8 she got. Nothing.

9 THE COURT: Thank you, Ms. Salyer.

10 MR. RIDDLE: Your honor, the second speaker would be
11 Mr. Sidney Hursey known as Butch.

12 THE COURT: All right. Mr. Hursey?

13 WITNESS: Judge, I don't really know how to say all I
14 want to say. I can't say what I want to say. Connie
15 took a lot of it away. There is nothing that can be done
16 here today to bring Carol back to my life, my children,
17 my mother, her -- her -- her first little grand-baby came
18 just about six months before she was killed. And she was
19 all taken with this grand-baby. My whole life was -- had
20 been changed since Carol died. Both my boys has dropped
21 out of school. Really affected their life drastically,
22 and I'm doing the best I can to straighten that out. But
23 Carol can never be replaced in my life. I could talk all
24 day and not say much more. My mother wanted to say
25 something, but she couldn't come today. What she told me

1 was she just couldn't stand to be in the same courtroom
2 with -- she said she felt like she lost a daughter. We
3 have a sister -- she -- Carol was as more like a daughter
4 than my sister was to her. And that if -- my mother's a
5 big Christian. She said that Carol's waiting for her up
6 there, and she'll see her shortly. Thank you, sir.

7 THE COURT: All right. Thank you, Mr. Hursey.

8 MR. RIDDLE: Your honor, Detective Pritchard and
9 Detective Marshall from the sheriff's department are
10 here. They did not wish to address the Court any further
11 unless your honor had some specific questions that you
12 wanted to ask them, but they are available. As far as
13 Mr. Frazier's prior record is concerned, your honor, in
14 1990, Mr. Frazier had a larceny conviction, grand
15 larceny, for which he received three years suspended on
16 two years probation. In 1995, he was convicted of two
17 counts assault and battery of high -- a high and
18 aggravated nature. In 19 --

19 THE COURT: Do you have the sentencing -- the
20 sentences on the ---

21 MR. RIDDLE: Oh, yes, sir, your honor. It looks like
22 he received five years suspended on five years' probation
23 and -- well, ten years suspended on five years'
24 probation. Five and five consecutive suspended on
25 probation. He also, around the same time period, your

1 honor, the -- he was convicted of receiving stolen goods.
2 He actually got a time served sentence on that. That
3 receiving stolen goods occurred while he was out on bond
4 on the ABHAN charges because the court date on that one -
5 - the arrest date is after the ABHAN arrest date. The
6 court date is before the -- the disposition date on the
7 ABHANS. In 1995 as well, your honor, he had a petty
8 larceny conviction. In 1995, it appears approximately
9 two months after he received the probationary sentence,
10 he got revoked on some of that. That was on the larceny,
11 the original larceny, his probation got revoked. He
12 served that sentence and was released. Then in 1996,
13 your honor, he -- his parole was revoked. In '98, he had
14 an open container and driving without a license. '99, he
15 had a burglary third degree conviction and a petty
16 larceny conviction. On that charge, your honor, the
17 burglary third, he got five years suspended on two years
18 and three years probation. In 2001, your honor, he was
19 convicted of resisting arrest. 2003, he was convicted of
20 use of vehicle without permission. He received a three-
21 year sentence on that. 2004, he had a second burglary
22 third conviction. He received a five-year sentence on
23 that. He had a criminal conspiracy at the same time that
24 he received a concurrent five on. He had a second
25 burglary third at that time for a total of three

1 burglaries that he received five concurrent on. A
2 criminal conspiracy at that same time that he received a
3 five-year sentence on. And also, your honor, at that
4 same time, he had possession of a firearm by a person
5 convicted of -- of a felony that he received a concurrent
6 five-year sentence on at that time. And that would be
7 the extent of his prior record.

8 Your honor, the five-year sentence that he received
9 in March of -- or excuse me, May of 2004, the last one,
10 the two burglaries, the two conspiracies, and the
11 possession of a firearm charge, that is what Mr. Frazier
12 is currently serving a sentence for at this particular
13 time. And he's been in since the disposition date of May
14 of 2004 on those charges. And, your honor, I did
15 misstate. I'm sorry. He's not in on a five-year
16 sentence. The two burglaries, the two conspiracies ran
17 concurrent. The firearm charge ran consecutively. So
18 he's in on a ten-year sentence from '04 that he is
19 serving time on now.

20 THE COURT: He was sentenced on those charges after
21 the offenses at this -- in the case before this Court?

22 MR. RIDDLE: Correct.

23 THE COURT: Do you have the date of those offenses,
24 the date of occurrence? In other words, was he out on
25 bond? I would assume he has not been out on bond in a

1 murder charge, but ---

2 MR. RIDDLE: No. No, sir. He was not out on bond.
3 He was arrested on those charges ---

4 THE COURT: But they -- they pre-date these charges?

5 MR. RIDDLE: Yes, sir. Yes, sir.

6 THE COURT: Okay.

7 MR. RIDDLE: The murder occurred -- he was arrested
8 on the burglaries on 11/19/2003 and was sentenced in May
9 of 2004 to ten years. And that's the sentence that he is
10 currently serving.

11 THE COURT: All right. All right, thank you.

12 MR. RIDDLE: Your honor, looking at the facts of this
13 case and looking at Mr. Frazier's prior record, I'm going
14 to ask the Court to sentence Mr. Frazier based on his
15 prior record and based on the crimes that he has been
16 convicted of and the harm that he has done. I know Mr.
17 Frazier was not convicted of executing Ms. Hursey. And I
18 would ask the Court to disregard that, but to consider
19 this case in light of an armed robbery and a burglary
20 where no fatal blow was struck but the victim died of a
21 heart attack or of pure fright. I think that, based on
22 the harm done, based on the convictions that he has been
23 found guilty of by 12 peers, and based on the prior
24 record including firearms violations, three prior
25 burglaries, and at least one resisting arrest charge, we

1 would submit to your honor that Mr. Frazier's record, his
2 past, his conduct, the harm that he caused in this
3 particular case would warrant him receiving a life
4 sentence on this burglary charge. And we would so
5 request that, your honor.

6 THE COURT: All right. Mr. Floyd?

7 MR. FLOYD: Your honor, Mr. Frazier's 37 years of
8 age. He has a ninth grade education. He has one 11-
9 year-old child. He has had a serious drug problem for
10 about ten years. And though there are numerous things on
11 his record, most of them are attributed, if not all, to
12 that addiction. We ask your honor to respect the verdict
13 of the jury because they did not find him guilty of
14 murder, and to give him a sentence that would be
15 measurable in years as all he has been convicted of is
16 the burglary and the armed robbery and the possession of
17 the firearm. Mr. Frazier would like to briefly address
18 the Court. And what he tells me, in case he's unable to
19 get it out, is he has no hard feelings toward the
20 Hurseys. He never has harmed Carol Hursey, nor ever
21 intended to harm her. And that he's very sorry for
22 what's happened to their family because they were good to
23 him when he was there. I think he wants to speak to you.

24 THE COURT: All right, sir?

25 DEFENDANT, MR. FRAZIER: Yes, sir, your honor, I'm

1 very sorry for what happened. And if I could change
2 things away, your honor, I would. I hope you find it in
3 your heart to see -- to see -- to do the right thing for
4 me. Thank you, your honor.

5 THE COURT: All right, sir. Anything further, Mr.
6 Floyd?

7 MR. FLOYD: Nothing further, your honor.

8 THE COURT: All right, I have taken all of the
9 factors into consideration including Mr. Frazier's prior
10 history. And looking back over that, I hurriedly made a
11 calculation of the exposure that he has faced during his
12 life to the charges that he has -- he had been convicted
13 of or pled guilty of. I understand he didn't -- wasn't
14 sentenced to anything like this, but apparently the
15 exposure totaled around 79 or 80 years. I am completely
16 disregarding the fact that the jury -- the murder charge
17 in this case because the jury did not reach a decision on
18 that -- on that charge. Dealing with the charges that
19 they did convict the Defendant and taking all of the
20 factors into consideration, on the armed robbery charge,
21 the sentence of the Court is Mr. Frazier be confined to
22 Department of Corrections for a period of 30 years; the
23 possession of a firearm during the commission of a
24 violent crime, the sentence is that he be confined to
25 Department of Corrections for five years to run

1 concurrent. On the burglary first, the sentence of the
2 Court is that Mr. Frazier be confined to the Department
3 of Corrections for the rest of his life. He receives a
4 life sentence. He gets credit for time served. Those
5 will run concurrent. All right, we'll adjourn in this
6 case.

7 --- END OF TRANSCRIPT OF RECORD ---
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CERTIFICATE

I, the undersigned Tina F. Behles, certified verbatim official court reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the trial of the above captioned case in the Circuit Court for Lexington County, South Carolina, this the 11th day of April 2008.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

May 23, 2008



Tina F. Behles, CVR
Circuit Court Reporter

Lexington, South Carolina
My commission expires January 4, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

James W. Johnson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHNNIE R. FRAZIER,

APPELLANT

FINALANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief 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 APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The lower court erred in denying appellant's motion to suppress the book bag and its contents as evidence in the case because these items were obtained pursuant to an illegal search and seizure in the case.

STATEMENT OF THE CASE

Appellant Johnnie R. Frazier was convicted per jury trial of first degree burglary, armed robbery, and possession of a weapon during the commission of a violent crime during the March 2009 term of the Lexington County General Sessions Court before the Honorable James W. Johnson, Jr., Judge. Appellant was sentenced to life imprisonment. A mistrial was declared on the murder.

Appellant appealed. This brief follows.

QUESTION I

The lower court erred in denying appellant's motion to suppress the book bag and its contents as evidence in the case because these items were obtained pursuant to an illegal search and seizure in the case.

At trial, Sidney Hursey testified that he came home around lunch time on August 14, 2003, and found his wife Carol Hursey in the back bedroom lying dead on the floor. Carol Hursey died from a gunshot wound to the left side of her head. Also, Carol Hursey's 2002 maroon Mazda was missing from the home as well. Sidney Hursey stated that he found money missing from the brief case where they kept the money (thousands of dollars) from their auction business. R. 39, line 3 – p. 56, line 25.

Appellant was arrested and charged in connection with Carol Hursey's death. There were no eyewitnesses in the case and appellant did not testify at trial. The state presented motive and circumstantial evidence and forensic evidence emanating from a book bag alleged to have belonged to appellant. Blood found on the book bag matched the victim's blood and the DNA obtained from a cigarette butt matched appellant's DNA. However, appellant moved to suppress the forensic evidence emanating from the book bag. Had this evidence been suppressed there was no proof beyond a reasonable doubt of appellant's guilt in the case.

The state's case regarding motive and circumstantial evidence

Sidney Hursey testified that he ran an auction business and was a landlord for multiple rental properties. Hursey stated that appellant worked in the auction business making furniture. Hursey stated that appellant knew that the money received from the business was kept in a brief case in their house. Hursey testified that appellant rented one of

his properties, but he was evicted because he was not paying the rent. Hursey stated that he made his wife Carol tell appellant that he would be evicted and that appellant reacted in an "unpleasant" manner after hearing the news.

Ashley Starr Congar stated that she was living with appellant when Carol Hursey told him of the eviction and that appellant was upset with the Hursey's decision to evict him because they wanted him to work too much for the money they offered. Congar added that appellant worked the Hursey's auction business and knew that the money received from the business was kept in the house. R. p. 171, line 13 – p. 183, line 25.

Scottie Carson, Ashley Starr Congar's son, testified that at some point during that time frame appellant asked him to deliver a gun (that was clean). Also, Carson testified that Carol Hursey had a lot of cash. R. p. 191, line 5 – p. 197, line 15. Jackie Burke was at Elbert Bolton's house on the night before the murder and saw appellant there with a bag. Stanley Gleaton testified he was at Elbert Bolton's house on the night before the murder and saw appellant there. Gleaton stated that appellant had a bookbag and a .22 automatic pistol and talked about a nice lick (to commit a robbery). Gleaton added that on the next day appellant had cash. R. p. 241; R. p. 339, line 13 – p. 342, line 25.

Investigation that led to Black Back Pack Bag

Police Officer David Pritchard testified that after speaking with Tammi Inabinet and Matt Richburg, who were associates of appellant, he obtained a search warrant for a storage van which Tammi Inabinet had been driving. Apparently, Tammi Inabinet and Matt Richburg were at Elbert Bolton's house on the night prior to Hursey's death and saw appellant there on the night also. Appellant was said to have been in possession of black back pack (bookbag) on that night.

Bolton sold cocaine and crack from his house. Tammi Inabinet testified that she would get her crack cocaine from Bolton, and that on the night of Hursey's death she drove her employment van to Bolton's residence. Inabinet stated that Matt Richburg rode with her in the van to Bolton's residence on that afternoon. She stated they all stayed there overnight and smoked crack, and then on 10:00 a.m. on August 15, 2003, (the next day) she and Richburg and appellant all rode off. Inabinet stated that appellant was in possession of a black backbag at the time. Then, Inabinet parked the van in front of her ex mother-in-law's house and they all transferred to Richburg's vehicle. Inabinet stated that at some point, appellant realized that he had left his book bag in the van. R. p. 289, line 4 – p. 303, line 4. Matt Richburg testified verifying Inabinet's testimony regarding these events. R. p. 305, line 19 – p. 315, line 13.

The back pack (bag) was processed per a search warrant issued on August 18, 2003. A wallet was found in the back pack and there was a small amount of blood found on the back pack (book bag). Also, a cigarette butt was found inside. The wallet contained identification evidence bearing appellant's name and information. Forensic analyst David McClure testified that an analysis of the DNA's sample from the cigarette butt matched appellant's DNA, and that the DNA from the blood sample found on the book bag matched Hursey's blood. Per the blood/DNA evidence, appellant was charged in connection with murder. R. p. 330, line 15 – p. 390, line 22.

Defense counsel objected to the search and seizure of the book bag in the case because it was processed without a warrant. R. p. 326, line 17 – p. 327, line 14. The court incorporated this objection and ruling from the prior trial which ended in a mistrial. During the prior trial, the testimony was that police seized the van via towing on August 17, 2003.

The van was impounded. Then, on August 18, 2003, police obtained a search warrant to take the book bag out of the van in order to search the book bag. On August 18, 2003, a search on the book bag was conducted. The search yielded the incriminating blood on the book bag, which matched Hursey's DNA. Defense counsel argued that since the van seized sans a warrant and prior to a warrant being obtained (warrant obtained on day after), the search of the van and book bag were unlawful in violation of the Fourth Amendment, especially since appellant had a legitimate expectation of privacy in his book bag. R. p. 317, line 6 – p. 353, line 25.

The Fourth Amendment guarantees individuals the right to be free from unreasonable searches and seizures. Inherent in this concept is the reasonable expectation of one's privacy in the place searched. The expectation of privacy is one that society recognizes as reasonable. State v. Missouri, 361 S.C. 107, 603 S.E.2d 594 (2004), citing to Katz v. United States, 389 U.S. 347 (1967). In Missouri, the court held that an overnight house guest had a reasonable expectation of privacy while at the home of another because there was a previous connection between the house guest and the owners of the home, and that this was consistent with the privacy expectation that is "recognized and permitted by society."

In the case at bar, the same analysis applied. Appellant was not a house guest; however, he was a guest in a vehicle. Also, appellant was apparently a guest who had close ties (friendships) with the driver and her fiancée. Driver Tammi Inabinet knew appellant because he was her ex-husband's cousin. And the other passenger, (Matt Richburg), was her fiancée of fifteen years. Also, all three were at Elbert's house smoking crack before they left. In other words, appellant was not a stranger type of passenger (as in a taxi-cab

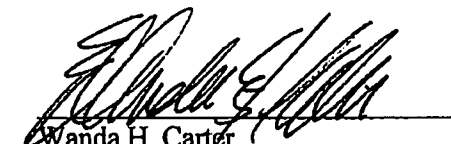
situation) in the vehicle Inabinet drove. Considering the circumstances, appellant had a reasonable expectation of privacy in the vehicle he was riding in with friends, which meant appellant had a reasonable expectation of privacy in the book bag he possessed while riding in the van with his friends. R. p. 289, line 4 – p. 292, line 6. Thus, appellant who had an expectation of privacy in his bag, could legally challenge the unconstitutionality of the warrantless seizure and ensuing search of the vehicle and his book bag.

The van and book bag (inside the van) were seized on the day before the police obtained a search warrant. The warrantless seizure was unnecessary because exigent circumstances exist did not exist. Coolidge v. New Hampshire, 403 U.S. 443 (1971). The van was no longer in Inabinet's possession at the time it was seen, so it would not have been moved or destroyed. Appellant was prejudiced as a result of the search due to the incriminating blood/DNA evidence lifted from the bag because sans the forensic evidence, the state's case was circumstantial and not overwhelming. Note that appellant received a hung jury on the murder charge. This Fourth Amendment error was not harmless because but for the DNA evidence, there is likelihood the jury would not have found appellant guilty on the state's remaining charges. The lower court erred in denying appellant's motion to suppress the book bag and its contents as evidence in the case because they were obtained pursuant to an illegal search and seizure in the case in violation of the Fourth and Fourteenth Amendments to the United States Constitution and article 1§ 10 of the South Carolina State Constitution.

CONCLUSION

Based on the argument above, appellant's conviction and sentences should be reversed and the case remanded for a new trial.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

August 11, 2009

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

James W. Johnson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHNNIE R. FRAZIER,

APPELLANT

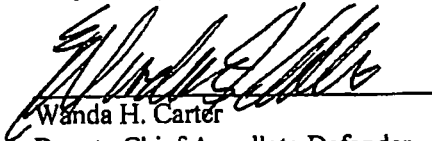
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Johnnie R. Frazier states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge James W. Johnson, Jr., which was held on 4-11-08, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Johnnie R. Frazier.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

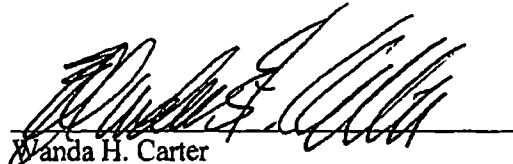
ATTORNEY FOR APPELLANT

August 11, 2009

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 11, 2009


Wanda H. Carter
Deputy Chief 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 Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

James W. Johnson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

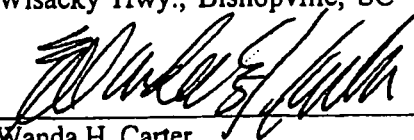
V.

JOHNNIE R. FRAZIER,

APPELLANT

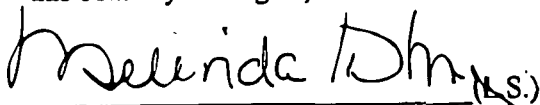
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201; and the Final Anders Brief of Appellant and Record on Appeal have been served on Johnnie R. Frazier, #265586 at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 11th day of August, 2009.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of August, 2009.


Notary Public for South Carolina

My Commission Expires: October 30, 2018

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Johnnie R. Frazier,

Appellant.

Appeal From Lexington County
James W. Johnson, Jr., Circuit Court Judge

Unpublished Opinion No. 2010-UP-391
Submitted August 2, 2010 – Filed August 25, 2010

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh, and
Assistant Deputy Attorney General Salley W. Elliott,

all of Columbia; and Solicitor Donald V. Myers, of Lexington, for Respondent.

PER CURIAM: Johnnie R. Frazier appeals his convictions for first-degree burglary, armed robbery, and possession of a weapon during the commission of a violent crime. On appeal, Frazier argues the trial court erred in denying his motion to suppress a book bag and its contents because the search and seizure were illegal. After a thorough review of the record, counsel's brief, and Frazier's pro se brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

FEW, C.J., KONDUROS and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas **FILED**County of Lexington SC)

2011 JUL 29 2:28

Johanne Frazier 265546)

Full name and prison number, if any, of applicant.)

APPLICATION FOR

v.)

POST-CONVICTION RELIEF

THE STATE / S.C.)

Name of Respondent)

2011CP3202879INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention BROAD RIVER CORRECTIONAL FACILITY
LEE COUNTY CORRECTIONAL INST
2. Name and location of Court which imposed sentence 11TH CIRCUIT LEXINGTON
COUNTY
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2006-GS-32-671
 - (b) 2006-GS-32-670
 - (c) 2006-GS-32-667
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4-11-08 5 YEARS
 - (b) 4-11-08 30 YEARS
 - (c) 4-11-08 LIFE SENTENCE

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P. O.S.

2011CP3202879

5. Check whether a finding of guilty was made

(a) after a plea of guilty

☒ after a plea of not guilty

(c) after a plea of nolo contendere

6. Did you appeal from the judgment of conviction or the imposition of sentence?

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i.

ii.

iii.

(b) the result in each such Court to which you appealed:

i.

ii.

iii.

(c) the date of each such result:

i.

ii.

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i.

ii.

iii.

8. If you answered "no" to (6), state your reasons for not so appealing:

(a)

(b)

(c)

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a)

(b)

(c)

2011CP3202879

10. State concisely and in the same order the facts which support each of the grounds set out in (9)
- (a) THER IS NO EVIDENCE TO PUT ME AT SCEN OF CR'S IN

(b) THER IS NO EVIDENCE TO SAY I Armed Robed
THE VICTIM

(c) THERE IS NO GUN TO BE BROUGHT IN
COURT ROOM

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

petition of retesting on appeal

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any,
already specified in (7) I WAS ON LOCK UP AND NOT GIVEN LAWYER

(d) any other petitions, motions or applications in this or any other Court?

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. EXONERATIVE EVIDENCE NOT ALLOWED IN COURT.

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. SC. COURT OF APPEALS

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Dismissed

ii. Dismissed

iii. _____

iv. _____

2011 JUL 29 P 2 28

FILED

(d) the date of each such disposition:

2011CP3202879

- i. Not Known
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Not Known
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? ~~NO~~ YES

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. Evidence Not Allowed or presented
- ii. ON THE RECORD.
- iii. _____

(b) the proceedings in which each ground was raised:

- i. Direct Appeal
- ii. Request Rehearing
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
WANDA CARTER
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? REQUEST FOR REHEARING

FILED
JUL 29 2 28

2011CP3202879

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. WAINE FLOID 20 Box 3972-1611 AGUSTA rd
- ii. WANDA H CARTER - SCCID
- iii. _____

West
Columb
29117

(b) the proceedings at which each such attorney represented you:

- i. TRIAL WAIN FLOID
- ii. APPEAL WANDA H CARTER
- iii. _____

18. State clearly the relief you seek in filing this application.

A NEW TRIAL

19. Are you now under sentence from any other court that you have not challenged?

NO

2011 JUL 29 2:28

FILED

STATE OF SOUTH CAROLINA)
 COUNTY OF Lexington)

VERIFICATION **FILED**

I, Johannie Frazier 2011 JUL 29 > 2:30, 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.

Johannie Frazier

Sworn to and subscribed before me

This 27 day of July, 2011.

Debra Sims L.S.

Notary Public for South Carolina

My Commission Expires 11-4-2015

2011CP3202879

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEREOF**

I, Johannie Frazier, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Johannie Frazier
 Applicant

Sworn to and subscribed before me

This 27 day of July, 2011.

Debra Sims L.S.

Notary Public for South Carolina

My Commission Expires: 11-4-2015

FILED
 2011 JUL 29 > 2:28
 SOUTH CAROLINA
 CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	Case No: 2011-CP-32-2879
	)	
Johnnie Frazier, #264488,	)	
	)	
Applicant,	)	RETURN AND MOTION TO DISMISS
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return and Motion to Dismiss to the application for post-conviction relief (PCR) filed July 29, 2011, 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 Lexington County Clerk of Court. The Applicant was indicted at the March 2006 term of the Lexington County Grand Jury for Possession of Firearm during Commission of Violent Crime (2006-GS-32-667), Armed Robbery (2006-GS-32-670), and Burglary 1st Degree (2006-GS-32-671). Applicant was represented by Wayne Floyd, Esquire. On November 26-28, 2007, the Applicant underwent trial pursuant to which he was found guilty as charged. On April 11, 2008, the Honorable James W. Johnson sentenced the Applicant to confinement for a period of five (5) years for Possession of Firearm, thirty (30) years for Armed Robbery, and Life for Burglary 1st Degree, all sentences concurrent.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Wanda H. Carter, Esquire, represented the Applicant on appeal. The South Carolina Court of

Appeals dismissed Applicant's appeal. State v. Frazier, Op. No. 2010-UP-391 (S.C. Ct. App. filed August 25, 2010). The Remittitur was issued on May 5, 2011.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the records from Applicant's prior appeal proceedings. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "There is no reason for me to be found guilty for everything but the murder when I was the only suspect."
2. "There is no evidence to put me at scene of crime."
3. "There is no evidence to say I Armed Robbed the victim."
4. "There is no gun to be brought in courtroom."

III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

[Emphasis supplied.] S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Sufficiency of evidence may not be challenged through collateral review. Additionally, the allegations presented by Applicant raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). 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). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, the Court should summarily dismiss this application for post-conviction relief.

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained

V.

WHEREFORE, Respondent moves to summarily dismiss the application because it fails to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003).

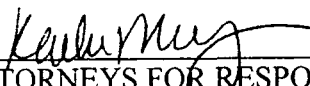
Respectfully submitted,

ALAN WILSON
Attorney General

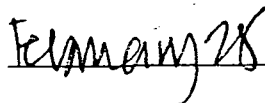
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

 , 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2011-CP-32-2879
	)	
JOHNNIE FRAZIER, #264488,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

John E. Duncan, Esquire
137 E. Butler St., Ste. 3
Lexington, SC 29072

DATED this 28th day of February, 2012.



Lena Pelishenko, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA,)
COUNTY OF LEXINGTON)
)
JOHNNIE FRAZIER)
SCDC # 265588,)
)
Applicant)
)
vs.)
)
)
STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FILED
2011 CP-32-02879
2013 APR 24 P 1:10
BETH A. CHAMBERLAIN
CLERK OF COURT
LEXINGTON, SC
AMENDED APPLICATION
FOR POST CONVICTION RELIEF

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Ineffective assistance of trial counsel – failure to request an Alibi charge in jury instructions;

(b) Ineffective assistance of trial counsel – failure to introduce exculpatory evidence including, but not limited to, forensic evidence obtained from cigarette butts in car;

(c) Ineffective assistance of counsel – failure to object when Solicitor requested that Judge sentence Applicant as if he caused the death of the victim;

(d) Ineffective assistance of trial counsel – failure to argue that the State did not present sufficient evidence regarding the Indictment for Armed Robbery, as there was no evidence presented that the victim's car was taken from her presence by force, threats or intimidation;

(e) Ineffective assistance of trial counsel – failure to argue that the State did not present sufficient evidence regarding the Indictment for Burglary 1st, as there was no

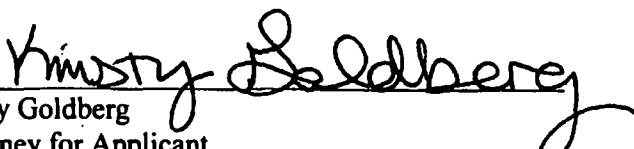
evidence presented regarding the circumstances under which the Applicant allegedly entered the dwelling and whether it was consensual or not;

(f) Ineffective assistance of trial counsel – failure to call witness regarding third party guilt;

(g) Ineffective assistance of trial counsel – failure to object and move to strike when Ashley Cougar submitted testimony of a prior bad act by Applicant and alleged that he stole her car;

(g) Ineffective assistance of trial counsel – failure to effectively communicate to Applicant his right to testify and failure to have the Court instruct the Defendant as to his right to testify or remain silent.

FILED
2013 APR 24 P 1:10
REG. CLERK OF COURT
LEXINGTON, SC


Kristy Goldberg
Attorney for Applicant

Kristy Goldberg
Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
Columbia, SC 29201
803-252-2299
803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 23rd day of April, 2013

SOUTH CAROLINA
COUNTY OF LEXINGTON

JOHNNIE FRAZIER
SCDC # 265588,

Applicant,

vs.

STATE OF SOUTH CAROLINA,
Defendant.

IN THE COURT OF COMMON PLEAS
FILED 2013 CP 32-02879

2013 APR 24 P 1:10

CLERK OF COURT
LEXINGTON, SC

AMENDED APPLICATION
FOR POST CONVICTION RELIEF

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.



Kristy Goldberg
Attorney for Defendant

Kristy Goldberg
Law Office of Kristy Goldberg, LLC.
1720 Main Street, Suite 301
Columbia, SC 29201
803-252-2299
803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 23rd day of April, 2013

LAW OFFICE OF

Kristy Grafton Goldberg, LLC

ATTORNEY AT LAW

FILED

2013 APR 24 P 1:10

April 23, 2013

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

The Honorable Beth Carrigg
Clerk of Court
205 East Main Street
Lexington, South Carolina 29072

RE: Frazier v. State, Case No. 2011-CP-32-02879

Ms. Carrigg,

Please find enclosed two copies of an Amended Application for Post-Conviction Relief on behalf of Johnnie Frazier, SCDC # 265586 along with a Certificate of Service. Please file the Amended Application, stamp the copy, and return the copy to me in the enclosed, self-addressed stamped envelope.

If you have any questions or concerns, please do not hesitate to contact me.

Thank you very much,



Kristy Goldberg

cc: Walt Whitmire
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Johnnie Frazier, SCDC # 265586
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina 29010

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
2011-CP-32-02879

JOHNNIE FRAZIER
SCDC # 265588,

Applicant,

vs.

STATE OF SOUTH CAROLINA,
Defendant.

SECOND AMENDED APPLICATION
FOR POST CONVICTION RELIEF

ORIGINAL

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Ineffective assistance of trial counsel – failure to request an Alibi charge in jury instructions;

(b) Ineffective assistance of trial counsel – failure to introduce exculpatory evidence related to forensic evidence obtained from cigarette butts in car;

(c) Ineffective assistance of counsel – failure to object when Solicitor requested that Judge sentence Applicant as if he caused the death of the victim;

(d) Ineffective assistance of trial counsel – failure to argue that the State did not present sufficient evidence regarding the Indictment for Armed Robbery, as there was no evidence presented that the victim's car was taken from her presence by force, threats or intimidation;

(e) Ineffective assistance of trial counsel – failure to argue that the State did not present sufficient evidence regarding the Indictment for Burglary 1st, as there was no

evidence presented regarding the circumstances under which the Applicant allegedly entered the dwelling and whether it was consensual or not;

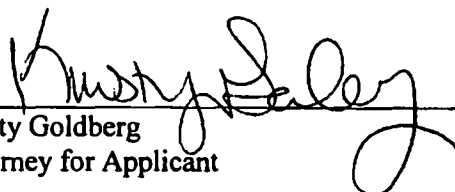
(f) Ineffective assistance of trial counsel – failure to call witness with evidence of third party guilt;

(g) Ineffective assistance of trial counsel – failure to object and move to strike when Ashley Cougar submitted testimony of a prior bad act by Applicant and alleged that he stole her car;

(g) Ineffective assistance of trial counsel – failure to effectively communicate to Applicant his right to testify and failure to have the Court instruct the Defendant as to his right to testify or remain silent;

(h) Ineffective assistance of trial counsel – failure to object to “Golden Rule” argument in State’s closing argument;

(i) Ineffective assistance of trial counsel – failure to argue that preferred testimony by Robert Hursey regarding Ashley Cougar should have been admitted as impeachment evidence;


 Kristy Goldberg
 Attorney for Applicant

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 kristy@kristygoldberglaw.com

CLERK OF COURT
 LEXINGTON, SC
 10/22/2019
 10/22/2019
 10/22/2019

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF LEXINGTON) COURT OF COMMON PLEAS
) No. 2011 CP 32 02879

3

4 JOHNNIE FRAZIER)
5 Applicant)
6 versus) TRANSCRIPT OF RECORD
)
7)
8 STATE OF SOUTH CAROLINA)

9

Lexington, South Carolina

10

January 22, 2014

11

12 B E F O R E :

13 HONORABLE BRIAN M. GIBBONS, Judge

14

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

15

For the Applicant: KRISTY GOLDBERG, Esq.

16

17

For the State: WALT WHITMIRE, Esq.
 DAVID SPENCER, Esq.
 Assistant Attorney General

18

19

Reporter Present: CAROL M. THUEME

20

21

22

HARRIET P. BENNETT
Reporter, S.C. Court Administration
46 Regency Oaks Drive
Summerville, S.C. 29485

23

24

25

I N D E X

	Direct-Redirect	Cross-Recross
Applicant		
By Ms. Goldberg	6	
By Mr. Whitmire		8
WAYNE FLOYD		
By Ms. Goldberg	12-34	
By Mr. Whitmire		21
Closing Statement:		
Ms. Goldberg p. 39, 47, 51, 53, 57, 58		
Mr. Whitmire p. 42, 53, 55, 57, 59		

EXHIBITS

1

2

3 Ap. Exhibit 1 -- Jury notes p.38

4

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1 (The within matter came before the Court for hearing
2 January 22, 2014)

3 MR. WHITMIRE: May it please the Court, Your Honor?

4 THE COURT: Yes, sir.

5 MR. WHITMIRE: The last case before you this term of
6 Court is Johnnie Frazier versus South Carolina, Case Number
7 2011 CP 32 2879.

8 Mr. Frazier was indicted for possession of a firearm
9 during the commission of a violent offense, armed robbery,
10 burglary in the first degree, and murder.

11 The State brought the case for trial. He was repre-
12 sented by Wayne Floyd. The first trial resulted in mistrial.
13 The second trial resulted in a conviction for armed robbery
14 and burglary, first degree.

15 Judge Johnson sentenced the Applicant to life. He
16 got an active term of life in prison on those charges.

17 The jury came back hung on murder.

18 An appeal was filed on Mr. Frazier's behalf pursuant to
19 Anders. The Court of Appeals confirmed Mr. Frazier's convic-
20 tion and sentence in an unpublished Opinion.

21 He has filed a timely application for Post-Conviction
22 Relief, and his attorney at this point, Ms. Goldberg, has
23 filed two amendments. Your Honor has those amendments in
24 front of him at this time, or the latest amendment.

25 Starting with the matter of introduction into evidence

1 of cigarette butts, failure to object, when the Solicitor
2 requested, along with five or six other allegations, I would
3 ask that Ms. Goldberg announce any allegations she intends
4 to abandon.

5 THE COURT: All right. Ms. Goldberg?

6 MS. GOLDBERG: Your Honor, as I did before but not on
7 the record, my intention was to speak with Mr. Frazier, as I
8 did before the trial in order to be fully ready at Lee Cor-
9 rectional and then on quarantine lock-down with flu. I was
10 unable to get in and I even tried to get in yesterday to
11 meet with people I needed to see.

12 I have spoken to Mr. Frazier, and we are prepared to
13 go on all things except for G.

14 Your Honor, as far as item G goes, I would like to go
15 ahead and present the case in full now and then during the
16 lunch break continue to talk with Mr. Frazier about only
17 that one claim, and then we can proceed after that.

18 And so we . .

19 THE COURT: So you want to talk to him and to recall
20 him after that?

21 MS. GOLDBERG: Yes, Your Honor. I think that would be
22 more expeditious for everybody.

23 THE COURT: Do you have any problem with that, Mr.
24 Whitmire?

25 MR. WHITMIRE: Your Honor, we would just ask that the

1 case be closed at the end of the day and not held open.

2 MS. GOLDBERG: I don't see any problem with that.

3 THE COURT: All right. Sounds good. We'll do that.

4 We'll let you call him out of order if he wishes to go forward with item G.

6 You're looking at your second amended application?

7 MS. GOLDBERG: Yes, Your Honor.

8 THE COURT: Are you ready to proceed?

9 MS. GOLDBERG: I am, Your Honor. The majority of my
10 case is going to be argument-based and things I will discuss
11 with Mr. Floyd on Cross-Examination.

12 I would like to call Mr. Frazier for a few brief questions.
13

14 THE COURT: All right, thank you. Any Motions before
15 we start, Mr. Whitmore?

16 MR. WHITMORE: None, Your Honor.

17 THE COURT: Thank you. Call your witness.

18 MS. GOLDBERG: I would call the Applicant, Johnnie
19 Frazier.

20 THE COURT: Come on around.

21 JOHNIE FRAZIER, being duly
22 sworn, testified as follows:

23 CLERK: Have a seat and state your name for the record.

24 WITNESS: Mr. Johnnie Frazier, Junior.

25 DIRECT EXAMINATION

APPLICANT ON DIRECT

1 BY MS. GOLDBERG:

2 Q. Good morning, Mr. Frazier. Where you housed currently?

3 A. Lee Correctional Institute.

4 Q. And what sentence are you serving?

5 A. I'm serving a sentence for first degree burglary, for
6 armed robbery and for possession of a pistol during a vio-
7 lent crime.

8 Q. What is the actual sentence?

9 A. Life plus thirty to run concurrent and five to run con-
10 current with that.

11 Q. What happened to the murder charge?

12 A. It was a mistrial. It got a mistrial.

13 Q. Do you understand what a post-conviction relief hearing
14 is?

15 A. Some.

16 Q. Do you understand that if you are successful in this
17 hearing that your charges won't be dismissed?

18 A. Yes, maam.

19 Q. Do you understand that you will have to go through the
20 options of plea or a trial?

21 A. I can only hope for that.

22 Q. Thank you, sir. When you went to trial, was it -- did
23 you have an alibi defense?

24 A. Yes, maam.

25 Q. Was that a large part of your defense?

APPLICANT ON DIRECT

1 A. It was all of my defense. As a matter of fact, . .

2 MR. WHITMIRE: Objection, Your Honor. Relevance. The
3 witness is not an attorney.

4 BY MS. GOLDBERG:

5 Q. Did you . .

6 THE COURT: Overruled.

7 Q. Did you and your attorney ever discuss an alibi charge?

8 A. No, maam.

9 Q. Did you know what jury charges were?

10 A. No, maam.

11 Q. So you all didn't talk about that at all?

12 A. No, maam.

13 Q. Did you ask your lawyer to have David Thoreau testify
14 at your trial?

15 A. I sure did.

16 MS. GOLDBERG: That's all I would have for the witness
17 at this time, Your Honor. We may recall him later.

18 THE COURT: Okay.

19 CROSS EXAMINATION

20 BY MR. WHITMIRE:

21 MR. WHITMIRE: May it please the Court?

22 THE COURT: Yes, sir.

23 Q. Good afternoon, Mr. Frazier.

24 Do you recall how many times you met with your attorney
25 while waiting on the trial?

APPLICANT ON CROSS

1 A. Are you talking about Mr. Floyd?

2 Q. Yes.

3 A. I think he came to see me at the Lexington County Deten-
4 tion Center like one time.

5 Q. That's it?

6 A. Yes.

7 Q. And did you go over your version of the facts that led
8 to your arrest?

9 A. We slightly discussed the case but not to any extent.

10 Q. And what was your version of the facts and your alibi?

11 A. Well, my version of the facts and alibi was that there
12 was no way that I could be in two places at one time.

13 Q. Did you give Mr. Floyd a rundown of everywhere you were
14 that day?

15 A. Well, we discussed where I was and people I were around,
16 and -- yes, sir, we did.

17 Q. You don't have a driver's license, do you?

18 A. Never had one.

19 Q. So you were getting rides from people back then?

20 A. Getting rides from people sometimes.

21 Q. Were you riding a bike?

22 A. I walked many times, sir.

23 Q. And did you give Mr. Floyd all the information you knew
24 regarding the victim and the group of people who testified
25 at trial?

APPLICANT ON CROSS

1 A. Well, I didn't know exactly who was going to testify
2 at the time but we slightly discussed some of the witnesses,
3 slightly.

4 Q. Now, didn't David Burns show up at your trial and tes-
5 tify?

6 A. Well, I had never seen him personally. Never talked to
7 him in my life.

8 MR. WHITMIRE: Beg the Court's indulgence.

9 THE COURT: Okay.

10 (Short pause in proceeding)

11 MR. WHITMIRE: Your Honor, I have no other questions,
12 but I would request the right to recall Mr. Frazier.

13 THE COURT: Okay. Anything further?

14 MS. GOLDBERG: No, Your Honor.

15 THE COURT: Thank you.

16 (Witness excused from stand)

17 THE COURT: Call your next witness.

18 MS. GOLDBERG: Your Honor, at this time I would not
19 have any other witnesses.

20 Let me put on the record as to Subsection D -- as to
21 Subsection F, there is a witness, David Burns, that the Ap-
22 plicant attempted to locate. I did that personally and had
23 the investigator speak with him personally.

24 A subpoena was attempted, and he did dodge that. It
25 is our belief at this time that he is not going to be in

1 Court, and we have not seen him. He is not going to be
2 here to testify.

3 For the record, the witness did tell me -- did confirm
4 certain parts of the conversation which certain parts of the
5 evidence could have been presented, which I will get into,
6 but he also said he would not come here to testify and he
7 would not be cooperative -- would not be willing to testify
8 and would not be truthful in Court.

9 So a witness I do not believe we will be presenting.
10 I have an investigator but she would only be able to speak
11 to our attempts to contact him.

12 I do not believe there are any other witnesses we'd
13 have today except for possibly recalling Mr. Frazier.

14 THE COURT: And that is item G of your Petition?

15 MS. GOLDBERG: Right. Yes, and no other witnesses,
16 period.

17 On the remaining allegations, it would be mostly our
18 arguments and questions of Mr. Floyd. At this time, I will
19 be happy to discuss each one in turn, or if the Attorney
20 General would prefer he can go on to . .

21 THE COURT: Are you calling Mr. Floyd as a witness, or
22 is the State going to proceed in calling him? They may
23 not have to prove a negative. I don't know.

24 MR. WHITMIRE: We would call Mr. Floyd in the alterna-
25 tive to . .

1 MS. GOLDBERG: I will go ahead and call him. It may
2 be easier.

3 THE COURT: That's fine, and you can lead him too.

4 MS. GOLDBERG: Thank you. Mr. Floyd.

5 WAYNE FLOYD, being duly sworn,
6 testified as follows:

7 CLERK: Have a seat and state your full name.

8 WITNESS: Wayne Floyd.

9 DIRECT EXAMINATION

10 BY MS. GOLDBERG:

11 Q. Good morning, Mr. Floyd.

12 A. Good morning.

13 Q. Mr. Floyd, I am going to -- I know the Attorney General
14 is going to probably go over a lot of things with you, but,
15 just to make things clear, I will go down my allegations
16 one by one and discuss each one with you, if that's okay.

17 A. Okay.

18 Q. Mr. Floyd, did you receive a copy of the trial tran-
19 script in this case?

20 A. Yes, I have.

21 Q. Have you been able to look at it or do you need to go
22 back briefly and look at it?

23 A. I haven't read it in its entirety.

24 Q. Mr. Floyd, in the transcript it appears there was no
25 alibi defense charge given.

MR. FLOYD ON DIRECT

1 Do you have any recollection as to the jury charge
2 conference or what took place during the trial concerning
3 alibi?

4 A. Only that it does reflect that it was not given or re-
5 quested.

6 Q. I believe the transcript states that a jury charge con-
7 ference was held off the record. Do you recall that or of
8 . . .

9 A. I don't have any specific recollection of it. I do
10 know there is nothing in the record that I made any type of
11 comment about the conference.

12 Q. Do you have any specific recollection of requesting an
13 alibi charge?

14 A. No, I don't.

15 Q. So you would not remember if the Judge actually denied
16 a request?

17 A. No, I don't remember either way.

18 Q. Do you recall having any strategic reason for not re-
19 questing an alibi charge?

20 A. No.

21 Q. Looking back at the case and the transcript, does an
22 alibi charge appear appropriate?

23 A. Yes, we put up a lot of testimony concerning that is-
24 sue.

25 Q. You put up several witnesses in the case? Correct?

MR. FLOYD ON DIRECT

1 A. That's correct.

2 Q. Several defense witnesses?

3 A. Uh huh.

4 Q. And a large part of those witnesses actually went to
5 alibi. Correct?

6 A. Yes, we tried to present a time-line to the jury of the
7 night before, the day of, the night of the murder in the
8 case.

9 Q. In reading the transcript, it sounds as if you were
10 giving out a time-line as you were talking to the jury in
11 closing arguments. Do you remember if that's what you did,
12 generally?

13 A. Yes, I did that. I don't remember whether it was the
14 white board or they had pads, but I did give one out as I
15 spoke to the jury, gave a time-line.

16 Q. Do you recall whether the jury requested to see a copy
17 of your time-line in deliberations?

18 A. Yes, I saw that.

19 Q. Do you recall the jury asking to re-hear testimony of
20 three of the alibi witnesses?

21 A. Yes.

22 Q. Do you recall them actually sitting there listening to
23 that back?

24 A. Yes.

25 Q. As to the cigarette butt that was found in the car,

MR. FLOYD ON DIRECT

1 what do you recall the evidence being about that?

2 A. Well, my recollection is that one was discovered several
3 months later and it was burned -- the car was discovered
4 several months later. It was burned, and in an area that
5 is kind of open to the public, kind of a rural area.

6 There was a cigarette butt found, and I think there
7 was DNA analysis done that did not come back to Johnnie
8 Frazier.

9 Q. You mentioned this evidence in your closing argument,
10 is that correct?

11 A. Yes, I tried to get into it.

12 Q. And what happened?

13 A. I was denied because it was not brought out at the
14 trial.

15 Q. Do you have any -- going back and looking at the tran-
16 script, do you have any -- do you contest in any way that
17 it was actually brought out in trial?

18 Are you clear now whether it was actually mentioned in
19 the trial?

20 A. Well, I didn't go back through the entire transcript
21 but I assume -- the Judge didn't have it in his notes.

22 Q. If it was not brought out in evidence, why did you at-
23 tempt to mention it in your closing argument?

24 A. I thought it was significant, and I thought it had
25 come in through the forensics.

MR. FLOYD ON DIRECT

1 Q. There was a previous trial in this same case. Correct?

2 A. Correct.

3 Q. And there was a mistrial there, and at that trial do
4 you remember if the cigarette butt came into evidence?

5 A. I did not review that transcript, so whatever it would
6 say . .

7 Q. But during your closing argument you believed the cigar-
8 ette butt was mentioned in the case, and you apparently did
9 overlook that issue?

10 A. Yes.

11 Q. You would agree with that?

12 A. I'd agree with that.

13 Q. If you had noticed that the cigarette butt wasn't in-
14 troduced in evidence in the State's case while you were put-
15 ting up your defense, would you have introduced that evi-
16 dence?

17 A. Yes, it was significant.

18 Q. Would you say you overlooked that issue, or would you
19 say there was no strategic reason that you did not introduce
20 it?

21 A. There was no strategic reason that I did not introduce
22 it.

23 Q. And that was significant, that the cigarette butt in
24 the car did not -- the DNA from that did not match Johnnie
25 Frazier?

MR. FLOYD ON DIRECT

1 A. Right.

2 Q. And you would have introduced it?

3 A. I would have introduced it.

4 Q. The jury was out a long time. Correct?

5 A. Yes. I don't recall the exact time but it was more
6 than one day.

7 Q. What was the verdict?

8 A. Guilty on burglary, guilty on armed robbery, guilty on
9 possession of a firearm; a hung jury on the murder.

10 Q. Would you say that is an inconsistent verdict?

11 A. I felt it was.

12 Q. Do you have any -- is there any way the jury could have
13 found him guilty on the burglary and the armed robbery and
14 not the murder on the State's theory of the case?

15 A. I couldn't think of a reason or even if there was some
16 other shooter, assuming the hand of one.

17 Q. What was the bulk of your defense in the case? What
18 did you argue as your defense in the case?

19 A. That it couldn't have been Johnnie Frazier because he
20 wasn't -- we took care of all of his time. There was a
21 pretty wide window because they had trouble with the time of
22 day, but I felt we covered the entire time frame pretty
23 solidly with our witnesses.

24 Q. And in general they attacked credibility and things
25 like that?

MR. FLOYD ON DIRECT

1 A. Oh, yeah. They had some problems with their witnesses
2 also, some issues.

3 Q. Do you recall pointing out to the jury that the State
4 did not have any evidence that the car was taken from the
5 victim's presence?

6 A. I don't recall that issue. I don't recall that.

7 Q. Do you recall pointing out to the jury that the State
8 didn't present any evidence the Defendant entered the dwell-
9 ing?

10 A. I would imagine it came out sometime, but I can't say
11 specifically off the top of my head when.

12 Q. Did you speak with David Burns in preparation for the
13 trial?

14 A. We actually had him transported to Court.

15 Q. Did you plan on having him testify?

16 A. Yes.

17 Q. Why didn't you call him?

18 A. After talking with Mr. Burns, I made a decision that he
19 would not be helpful to our case.

20 Q. That was a strategic decision on your part?

21 A. Yes.

22 Q. Do you recall exactly why you determined that?

23 A. I can't recall exactly why, but I had dealt with him
24 once before on a case, and in talking about what he was going
25 to say it would have been more harmful to our case, and he

MR. FLOYD ON DIRECT

1 was very uncooperative also and did not want to testify,
2 which bothered me.

3 Q. In trial, do you recall a witness for the State named
4 Ashley Cooper?

5 A. Yes.

6 Q. She testified at trial that Mr. Frazier had recently
7 stolen (inaudible).

8 A. Vaguely.

9 Q. The transcript does not reflect any objection made
10 based on prejudice or based on improper prior bad act, or
11 any objection at all.

12 Do you have any recollection as to why you wouldn't
13 have objected?

14 A. There would not be any strategic reason not to.

15 Q. In closing arguments, the Solicitor states -- I want
16 to go ahead and quote this. It's on page (inaudible).

17 If you are seated in your own house and somebody comes
18 in with a gun and says I'm taking your money, and know it's
19 someone that would do that; you know it's somebody you know,
20 what do you think you would feel like?

21 There wasn't an objection made to that?

22 A. Yeah, I should have made an objection.

23 Q. And that was made during closing argument?

24 A. Yes.

25 Q. Do you think that would fall under the Golden Rule
prohibition?

MR. FLOYD ON DIRECT

1 A. Yeah, I think you could argue that.

2 Q. Was there a strategic reason why no objection was
3 made?

4 A. No.

5 Q. And, finally, Robert (inaudible) testified in your case
6 in chief. Right?

7 A. . .

8 Q. Butch's son?

9 A. Oh, okay.

10 Q. You know who I'm talking about?

11 A. Uh hm.

12 Q. He proffered testimony out of the presence of the jury
13 regarding Ashley Peters and about the victim. Do you recall
14 that?

15 A. Yes.

16 Q. The Judge did not allow that to be heard before the
17 jury because the Judge felt it would be improper for the jury
18 to hear that.

19 Were any attempts made by you to have it submitted as
20 impeachment evidence, testimony regarding that?

21 A. No, I think I just went on with third party guilt.

22 Q. Do you think it could have been offered as impeachment
23 evidence?

24 A. Yes.

25 MS. GOLDBERG: No further questions, Your Honor.

1 I would reserve the right to come back to this testimony is-
2 sue if Mr. Frazier has more on that.

3 THE COURT: Okay. Mr. Whitmore?

4 MR. WHITMIRE: Beg the Court's indulgence.

5 Brief pause in the proceeding)

6 CROSS EXAMINATION

7 BY MR. WHITMORE:

8 Q. Good afternoon, Mr. Floyd.

9 A. Good afternoon.

10 Q. Do you recall when you were retained to represent Mr.
11 Frazier in this matter?

12 A. I wasn't retained. I was appointed. Mr. Frazier re-
13 quested my appointment and the Judge granted the request.

14 Q. Do you recall how many times you met with Mr. Frazier
15 in preparation for trial?

16 A. Not off the top of my head. I went out first when he
17 was incarcerated in, I believe, Bishopville. That was the
18 first time I went out and met with him on the case. He was
19 later transported to Lexington, and I couldn't say how many
20 times I met with him.

21 I thought I met with him sufficient times to get the
22 story and be able to put together the case.

23 Q. But more than one time?

24 A. Yes, I think so.

25 Q. Do you know how many witnesses you called on his behalf?

MR. FLOYD ON CROSS

- 1 A. . .
- 2 Q. How many you called in your case in chief at trial?
- 3 A. Not off the top of my head. Ten or fifteen, just off
- 4 the top of my head which would be a guess.
- 5 Q. Did you have an investigator to help you in this case?
- 6 A. Yes. There had been a previous attorney on the case,
- 7 and they had an investigator, and we pretty much used what
- 8 she had done.
- 9 Q. Mr. Frazier testified today his first defense was alibi.
- 10 Did he help you in getting that ready for trial?
- 11 A. Yes, I was able to put together a witness list.
- 12 Q. Was his version of events consistent throughout your
- 13 representation?
- 14 A. Yes.
- 15 Q. I'm going in order with the Applicant's Direct Examina-
- 16 tion. On the alibi charge, do you recall attacking the
- 17 pathologist's testimony on Cross?
- 18 A. Yes.
- 19 Q. Do you recall questioning the pathologist on the inabil-
- 20 ity of the State to determine time of death?
- 21 A. Yeah, I thought they were very weak on that point, and
- 22 there was vacillation going back and forth on when the po-
- 23 tential time of death was.
- 24 Q. A conservative estimate of time of death would have
- 25 been between six A.M. and three P.M.?

MS. FLOYD ON CROSS

1 A. Yeah, and if my memory is correct the husband left the
2 home around six in the morning and came back around two or
3 two thirty in the afternoon, and the body was there at that
4 time.

5 Q. And that is taking his testimony . .

6 A. Taking his testimony at face value.

7 Q. You cross-examined him on his credibility, is that cor-
8 rect?

9 A. Yeah. There were some big issues there also.

10 Q. And was the inability to nail down the time of death a
11 key part of your defense?

12 A. Yes.

13 Q. I believe you argued this in closing. Is that correct?

14 A. Correct, because it didn't fit in with some of their
15 witnesses' versions.

16 Q. And it's your testimony today you don't recall the
17 charge conference?

18 A. No, I don't recall it.

19 Q. So you wouldn't recall having any discussion on having
20 a complete alibi for the potential time range in question?

21 A. I don't recall the conference and my trial notes are
22 not there now. There has been a lot of attorneys in the
23 file and something happened to my trial notes. I don't have
24 my trial notes.

25 Q. When is the last time you had your trial notes?

MR. FLOYD ON CROSS

1 A. The last I remember seeing them was shortly after the
2 trial when they were back in the files. Of course, there
3 has been staff going in the file to send Mr. Frazier informa-
4 tion.

5 Several lawyers have been in the file.

6 Q. Do you recall this being a highly publicized trial?

7 A. It received a good bit of publicity because of the na-
8 ture of the crime.

9 Q. In addressing Applicant's second issue before the Court
10 today, the cigarette butt wasn't found in the car, was it?

11 A. I think it was outside the car, or next to it.

12 Q. There was testimony that it was in a rural area?

13 A. That's correct.

14 Q. Do you recall when a care-taker reported a suspicious
15 burned car to the police?

16 A. No, I don't recall that -- when that was exactly.

17 Q. Does the end of August, a few weeks after the murder,
18 sound right at all?

19 A. Yeah. I mean, it wasn't like a week or so. No.

20 Q. Do you recall when the vehicle was ultimately discov-
21 ered by police?

22 A. No, I don't remember that date either. It was -- I
23 thought several months but . .

24 Q. Did you receive testing on the DNA from the cigarette
25 butts?

MR. FLOYD ON CROSS

1 A. Yes.

2 Q. Do you recall the results received?

3 A. An unidentified male, I believe, is the way it was . .

4 Q. That's according to their general protocol of their
5 findings, correct?

6 A. . .

7 Q. And that area was open for anyone to walk in for the
8 three months or so?

9 A. Yeah, whatever the space of time was.

10 Q. The care-taker would not go over for weeks at a time,
11 correct?

12 A. Right.

13 Q. If you thought those cigarette butts were significant
14 pieces of evidence, would you have further investigated at
15 the time?

16 A. Well, I thought it was investigation to do. Once they
17 said unidentified male plus the time frame -- I didn't in-
18 tend to put that before the jury.

19 Q. But you ultimately got it out?

20 A. Well, see, I argued it to the jury.

21 Q. Going back, and I apologize, Your Honor -- did you ex-
22 plain to the Applicant the State's circumstantial evidence?

23 A. We discussed the case, yeah. We discussed it.

24 Q. Any reason to doubt the DNA sample of the blood found
25 on the Applicant's bag matched the victim?

1 A. Well, that was a piece of evidence that we had to con-
2 tend with, yes.

3 Q. Did you review possible ways the blood could have got-
4 ten on his bookbag?

5 A. Well, we talked about it and Johnnie, of course, had
6 some previous relationship with the family as a care-taker
7 kind of a thing, and so he would have had opportunities to
8 have contact with her beside this particular day.

9 Q. And there had been a falling out with the victim a few
10 weeks in advance?

11 A. I believe so.

12 Q. Did you discuss with him the State's theory of motive
13 in the case?

14 A. Yeah. I think Johnnie had a good understanding of the
15 case, and he was very helpful to me.

16 Q. So he had no reason -- no way to explain how the blood
17 got on that bookbag?

18 A. Well, we had a specific incidence that we could point
19 to.

20 Q. Did he ever given you a time when he noticed that drop-
21 let of blood prior to the death?

22 A. No. It wouldn't have been something that would be neces-
23 sarily noticeable. It was such a small drop.

24 Q. Going back to alibi, do you recall if the State ever
25 suggested that the Applicant acted alone during this execution-

MR. FLOYD ON CROSS

1 style murder?

2 A. Well, I think that was their theory, that he was acting
3 alone.

4 MR. WHITMIRE: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 BY MR. WHITMIRE:

7 Q. Do you recall your efforts in presenting potential third
8 party guilt evidence on behalf of the Applicant during the
9 trial?

10 A. Yes, I did bring it out several times, and the Judge
11 never would accept the theory.

12 Q. I believe you testified you reviewed the transcript
13 prior to today's testimony. Do you roughly recall how many
14 times during the course of the trial that you really tried
15 to get it in?

16 A. Well, I never read the entire transcript. I would say
17 three or four times with different witnesses.

18 Q. And you preserved that issue for appeal?

19 A. Yes.

20 Q. I believe there is a little bit of mention of David
21 Burns. Do you recall this David Burns from your previous
22 cases?

23 A. Yes, he had been a witness in a PCR case that I had.

24 Q. I believe that case was Gene (inaudible) Cooper?

25 A. Yes. I think he was Mr. Cooper's stepson -- some

MR. FLOYD ON CROSS

1 relation.

2 Q. You had a good deal of information before you regarding
3 Mr. Burns at your disposal?

4 A. Yes. We had him transported over in hopes we could
5 use him, and after discussing the witness' postential testi-
6 mony and his reluctance to get on the stand it was deter-
7 mined not to use him.

8 Q. What was your prime theory of your defense going into
9 this trial?

10 A. Well, we always had the defense that Johnnie didn't do
11 it, and we tried to show through the witnesses a lack of op-
12 portunity to do it.

13 Q. Did you explain to Mr. Frazier the potential credibil-
14 ity issues you may have in presenting four or five crack
15 users or dealers at that time?

16 A. Well, we always had that problem because the night be-
17 fore was spent at a crack house. Several of the witnesses
18 were crack users.

19 The next day or part of the day was at a crack house
20 with some of those potential witnesses also.

21 Q. Did you explain to Mr. Frazier issues you may have as
22 to reliability due to intoxication at the time all of this
23 is occurring?

24 A. Yeah, we discussed the case in detail. I've known
25 Johnnie a long time. I've represented Johnnie in the past

MR. FLOYD ON CROSS

1 on some other matters.

2 Q. And he asked for your representation in particular?

3 A. That's correct.

4 Q. Do you recall motions that you made at the end of the
5 State's case?

6 A. I didn't review those in detail but I'm sure I made the
7 standard motion to dismiss.

8 Q. A directed verdict motion?

9 A. Yes.

10 Q. Do you have any reason to doubt your directed verdict
11 motion was only related to one charge at that time?

12 A. I assume I made it as to all charges.

13 Q. Is it your recollection that Judge Johnson was clear in
14 his ruling on that directed verdict motion that was brought
15 before the Court?

16 A. He denied them, yes. He was clear on that.

17 Q. Did you ever move prior to trial to have the burglary
18 or armed robbery Indictments dismissed?

19 A. No, I don't recall doing that unless you consider the
20 first trial that ended in a mistrial. Motions were made
21 also.

22 Q. Do you believe all these issues were preserved for the
23 appeal?

24 A. Yes. I guess the alibi motion was not.

25 Q. Okay.

MR. FLOYD ON CROSS

1 MR. WHITMIRE: Beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 (Brief pause in proceeding)

4 BY MR. WHITMIRE:

5 Q. I believe the Applicant is also alleging you were defi-
6 cient in not objecting to Star's testimony regarding (inaud-
7 ible). Is that correct?

8 A. Yes.

9 Q. Was there any positive reason at that juncture to not
10 object to her testimony to this theft?

11 A. Well, if I had objected and the Judge had ruled with
12 me, I guess the testimony would have been stricken. We, of
13 course, also tried to attack her credibility. I felt we did
14 a pretty good job of that.

15 But, you know, in hindsight, I should have moved to
16 strike that testimony.

17 Q. The State's theory of that is that Mr. Frazier needed
18 money for his crack binge. Is that correct?

19 A. Yeah, I think that was part of the case. Yeah.

20 Q. And Star had testified he recently had stolen her ve-
21 hicle?

22 A. I don't recall her specific testimony.

23 Q. Do you recall cross-examining her on Mr. Frazier poten-
24 tially getting Ten Thousand Dollars worth of cash on that
25 vehicle?

MR. FLOYD ON CROSS

- 1 A. Yes. We were able to get some stuff out of that, yeah.
- 2 Q. Do you recall using that in argument?
- 3 A. . .
- 4 Q. Bringing out that he had already gotten money?
- 5 A. Yes.
- 6 Q. So by getting that testimony in, that was a positive
- 7 for your case?
- 8 A. Yes.
- 9 Q. I believe you've testified in a prior proceeding that
- 10 you have been practicing law for thirty-eight years?
- 11 A. Thirty-nine.
- 12 Q. And the trial preparation was meticulous?
- 13 A. Yeah, I thought we were prepared for the trial.
- 14 Q. And you presented the trial in the best possible way
- 15 you could for Mr. Frazier?
- 16 A. Yes, I did, but I'm not perfect.
- 17 Q. And you are death-penalty certified?
- 18 A. Yes.
- 19 Q. Have done numerous death penalty cases?
- 20 A. Yes.
- 21 Q. Just a few more questions. Have you had an opportunity
- 22 to look at the closing arguments made by Solicitor and you
- 23 in the transcript?
- 24 A. Yes, I didn't fully read the Solicitor's but I have
- 25 reviewed mine.

MR. FLOYD ON CROSS

1 Q. You objected during the closing arguments?

2 A. Yes.

3 Q. Did you believe the Solicitor made an egregious/^{golden}rule
4 violation when you objected at that time?

5 A. Yeah, that's the reason I picked up on it.

6 Q. You picked up on several other incidents, I believe,
7 when you made objections?

8 A. Yes, I did make several objections to the argument.

9 Q. Do you have any reason to believe the Solicitor's use
10 of the word you had any connotations in the prevalent sense
11 in determining the time of death?

12 A. I'm not sure I understood that question.

13 Q. The Solicitor in his closing argument addressed the jury
14 as you regarding when Ms. Hursey would have died. Did you
15 have any reason to believe that had an emotional and unfair
16 impact on the trial?

17 A. Well, obviously I didn't pick it up at the time. Read-
18 ing it later, I see the Applicant's position that perhaps I
19 should have made an objection at that point.

20 Q. That's the last question on that point, but it was only
21 pertaining to the difficulty in determining the time of her
22 death.

23 The last of Applicant's issues before the Court, you
24 proffered third party guilt testimony from Robert?

25 A. Yes.

MR. FLOYD ON CROSS

1 Q. Do you recall also going after his credibility during
2 the same . . .

3 A. Yes.

4 Q. Brain damage?

5 A. Brain damage was discussed.

6 Q. And I realize the case was some ten years ago, but if
7 you had to pick one defense, what was your defense as pre-
8 sented at trial?

9 A. Well, overall I would say the -- what you could char-
10 acterize as alibi or lack of opportunity of Mr. Frazier to
11 commit the crime, plus the inability of the State to pinpoint
12 the time of death. That was also a key defense.

13 Q. So you presented the best testimony you could for alibi?

14 A. Yes, and I thought we covered it pretty good on that
15 point. Certainly some of our witnesses maybe had credibil-
16 ity problems. The time-line itself was covered.

17 Q. Your testimony today is, as I understand it, that you
18 just don't recall the charging conference with Judge
19 Johnson?

20 A. No, I don't. Usually those are on the record. I don't
21 know why this one was not on the record, but obviously had
22 I had some issues I would have put it on the record at the
23 conclusion of the conference or conclusion of the charge.

24 Q. And that is based on your experience and that alibi was
25 your key defense, so you would have aggressively asked the

MR. FLOYD ON CROSS

1 Judge for that charge?

2 A. Well, I would hope so but I didn't put it on the record
3 so I can't say that I did.

4 MR. WHITMIRE: Beg the Court's indulgence.

5 THE COURT: Okay.

6 (Brief pause in proceeding)

7 MR. WHITMIRE: No further questions, Your Honor.

8 Thank you, Mr. Floyd.

9 MS. GOLDBERG: Just briefly . .

10 THE COURT: Yes, maam.

11 REDIRECT EXAMINATION

12 BY MS. GOLDBERG:

13 Q. Mr. Floyd, do you believe you put on a complete alibi
14 case?

15 A. As complete as we could.

16 Q. And based on your recollection of what was presented,
17 do you know of any reason the Judge would have denied an
18 alibi charge if you had asked for it?

19 A. No, I thought we had the whole time covered.

20 Q. You do believe the cigarette butt was relevant and
21 should have been introduced into evidence. Is that right?

22 A. Yeah. I can kind of see where the time frame would
23 make it a little weak, but I would have put it in.

24 Q. No further questions.

25 RECROSS EXAMINATION

MR. FLOYD ON RECROSS

1 BY MR. WHITMIRE:

2 MR. WHITMIRE: Two brief follow-ups, Your Honor. Ask
3 the Court's indulgence for a brief moment.

4 THE COURT: Okay.

5 (Brief pause in proceeding)

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

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

8 (Witness excused from stand)

9 MR. FLOYD: Judge, am I excused, or do I need to
10 stick around?

11 THE COURT: Any problem with him leaving?

12 MR. WHITMIRE: Your Honor, absolutely none.

13 MS. GOLDBERG: I do need to review the one issue with
14 Mr. Frazier. I don't -- I may need to recall him after I
15 discuss the matter with Mr. Frazier; maybe some testimony
16 about his decision to testify or not.

17 THE COURT: All right.

18 MS. GOLDBERG: The State may want to call Mr. Floyd in
19 rebuttal actually after Mr. Frazier testifies.

20 MR. WHITMIRE: Judge, I don't recall any testimony
21 regarding his desire to testify or not testify. She did not
22 question Mr. Floyd on it so I don't see anything to be pre-
23 sented by us on rebuttal.

24 I could call Mr. Floyd right now and ask him about it.

25 MS. GOLDBERG: If Mr. Frazier wishes or if he says he

1 didn't have a meaningful conversation with Mr. Floyd about
2 it , whether he wished to testify or not.

3 My understanding is that in order to prove prejudice
4 that Mr. Floyd would have to testify.

5 To be fair, if that was different from conversations
6 with Mr. Floyd, the Attorney General is entitled to recall
7 Mr. Floyd at that point.

8 THE COURT: Here's the thing. We're going to break for
9 lunch anyway, so just be back at two. Okay? Then we will
10 knock this case out as far as the rest of this before we
11 proceed on Mr. Wise's case.

12 MR. WHITMIRE: Your Honor, also for the record, the De-
13 puty Solicitor is here who prosecuted the case.

14 THE COURT: Do you have any other witnesses?

15 MS. GOLDBERG: No other witnesses.

16 THE COURT: Do you have anything else?

17 MR. WHITMIRE: None, Your Honor, but we would reserve
18 brief arguments and to brief any issues that we ..

19 THE COURT: Well, we are not going to argue until after
20 lunch when she talks with Mr. Frazier and decides where to
21 go from here.

22 We will recess on this case then until two P.M.

23 (Whereupon, the Court stood in recess as to this case
24 for the lunch period, after which it was resumed)

25 THE COURT: All right, what are we doing next?

1 MS. GOLDBERG: Your Honor, I have spoken to Mr. Frazier
2 for this entire period. We have fully discussed -- I think
3 it was G, position G, regarding his right to testify.

4 For the record, in this Transcript the Judge does not
5 advise him on the record of his right to testify. It was
6 overlooked by the Presiding Judge, and we could back that
7 up with his testimony regarding his conversation with his
8 lawyer and how he would have testified at trial.

9 My client has just decided that he would like to forego
10 that . . .

11 THE COURT: Okay.

12 MS. GOLDBERG: . . so we will not be presenting testi-
13 mony or argument as to that.

14 THE COURT: So the second G on your amendment . .

15 MS. GOLDBERG: Correct.

16 THE COURT: The first G dealt with (inaudible).

17 MS. GOLDBERG: You are correct, Your Honor.

18 THE COURT: Okay, so you are withdrawing Item G but,
19 of course, you still have all your other ones.

20 MS. GOLDBERG: Yes, Your Honor, and we haven't addressed
21 -- we haven't rested, Judge, and I would like to mention one
22 thing, with the Attorney General's consent.

23 THE COURT: All right. Is that correct?

24 MR. WHITMIRE: Yes, sir. I understand they are the
25 Court Exhibits.

1 THE COURT: All right, if you'd hand those up then?

2 MS. GOLDBERG: Three pieces of paper, and all they are
3 are the notes from the jury.

4 THE COURT: Okay. That will be Applicant's -- whatever
5 it is.

6 That's the only Exhibit on this, marked as 1.

7 (Court Exhibit 1 admitted, being jury notes)

8 THE COURT: Madam Court Reporter, while we are talking
9 about it, the Exhibit will be placed in the file.

10 (Speaking with Reporter about exhibits for other cases
11 having been heard)

12 MS. GOLDBERG: Judge, do you need me to submit copies
13 of those?

14 THE COURT: I will get it when we complete the trial.

15 (Discussion off the record between Reporter and the
16 Court)

17 THE COURT: All right. Sorry about that, Ms. Goldberg.

18 MS. GOLDBERG: That being said, the Applicant would
19 rest.

20 THE COURT: Mr. Whitmire?

21 MR. WHITMIRE: Your Honor, the Respondent rests.

22 THE COURT: All right, the Respondent rests. I will
23 hear arguments.

24 MS. GOLDBERG: Thank you, Your Honor. May it please
25 the Court?

1 THE COURT: Yes, maam.

2 MS. GOLDBERG: I will take these in turn as I have done.
3 The first issue here would be Section A, the alibi charge.

4 THE COURT: What I would like to be done is for you to
5 present your argument, and then I will let him respond in-
6 dividually rather than all at once. Okay?

7 MR. WHITMIRE: Yes, sir.

8 THE COURT: Go ahead.

9 MS. GOLDBERG: Thank you, Your Honor. From the record
10 or the manuscript itself, as we have stated previously, there
11 was reference to a charge conference outside of the record
12 or in the Judge's Chambers.

13 There is no statement whatsoever in the record as to
14 any requests that were made or what ones were not made.

15 Attorney Floyd stated that he did not recall that at
16 all; that he believes the alibi charge would have been ap-
17 propriate.

18 It is essentially black letter law in this State, and
19 I have mentioned the cite, that failure to request an alibi
20 charge when one is presented is ineffective assistance of
21 counsel.

22 The only question for the Court is whether it would
23 be prejudicial or not. There is some case law where they
24 said it wasn't prejudicial or wouldn't have made a differ-
25 ence.

1 Your Honor, my biggest concern is that the general al-
2 ibi charge as I know it, and I would refer the Court to your
3 bench book or whatever contains your charge, but as I know
4 it the alibi charge specifically states that there is no
5 burden on the Defendant to prove alibi. The burden is on the
6 State to prove beyond a reasonable doubt the Defendant was
7 actually present and actually participated and was not some-
8 where else.

9 In other words, the State has the burden of disproving
10 the alibi defense. It is extremely clear that even though
11 the Defendant is offering that alibi that it is not an af-
12 firmative defense; not something he has to prove. When they
13 put it up, the State has to disprove it.

14 That is my understanding of the law. The reason it is
15 prejudicial in this case, Your Honor, is I believe there was
16 testimony before the jury about more than one day. The case
17 was entirely circumstantial. The only evidence were from
18 witnesses before and after the incident, and the small drop
19 of blood that was found on a backpack that was generally in
20 possession of the Defendant.

21 The Defendant through his attorney put up fifteen wit-
22 nesses in his case in chief. Nine of those witnesses were
23 related to the alibi defense.

24 Mr. Floyd drafted a time line of events for use in his
25 closing statement. I believe they were on a white board so

1 we can't look at what Mr. Floyd actually wrote on the time
2 line.

3 THE COURT: Let me interrupt. Did the Court of Appeals
4 address the issue of the failure of the Judge to instruct
5 alibi?

6 MS. GOLDBERG: It wasn't brought up on the appeal. I
7 don't think it was ever addressed.

8 THE COURT: Okay.

9 MR. WHITMIRE: I believe there was issued an Anders
10 Brief.

11 THE COURT: Okay. Go ahead.

12 MS. GOLDBERG: As I was saying, counsel drafted a time-
13 line in closing argument. One of the jury notes that has
14 been presented was the jury asking to hear that time-line
15 back in the jury deliberations so they could actually see it
16 more.

17 The Judge said it wasn't evidence, and the jury then
18 asked to re-hear the testimony of Elder Boland, Terry Boland
19 and Nicki Lindsey, three alibi witnesses. Those were the
20 three main alibi witnesses.

21 So it is clear the jury was actively contemplating the
22 alibi, whether it was credible or not, whether to believe
23 it or not.

24 Although the jury came back with an inconsistent ver-
25 dict, the State made it clear in their case in chief that

1 they believed Johnnie Frazier to have been acting alone to
2 commit the murder, the burglary and armed robbery as a part
3 of one incident.

4 There is no reason the jury would have found not guilty
5 on the murder and not as to the other two charges. I think
6 it is extremely clear that the jury tried very hard in the
7 case, deliberated very hard and considered everything the
8 State presented in their case and was actively considering
9 the alibi defense that was offered.

10 For that reason, I think the fact that the jury charge
11 did not have in it an explanation that the State had to dis-
12 prove the alibi -- I think the jury should have known that;
13 that it should have been made clear to them and that it was
14 very prejudicial.

15 THE COURT: There is no burden on the Defendant to
16 prove an alibi. The burden is on the State to prove beyond
17 a reasonable doubt that the Defendant was actually present
18 at the scene of the crime, actually participated in it, and
19 was not somewhere else.

20 In other words, the State has the burden to disprove the
21 Defendant's alibi defense. Roseborough versus State -- that
22 is the charge.

23 MS. GOLDBERG: That was the message of the charge.

24 THE COURT: All right, Mr. Whitmire.

25 MR. WHITMIRE: With regard to the first allegation, Ms.

1 Goldberg is (inaudible) between the trials.

2 What an accurate reading of the transcript will show
3 is that Applicant did not meet the burden of proving a com-
4 plete alibi, citing in particular State v. Roberts, 375 SC
5 373. For it to be successful, an alibi must cover the en-
6 tire time when his presence was required for accomplishment
7 of the crime.

8 In an alibi defense, the accused must show that he was
9 another specified place at the time the crime was commit-
10 ted and could not have been present at the scene of the
11 crime.

12 If Mr. Frazier didn't testify, once you break down the
13 numerous State's witnesses there is a time in particular
14 between six forty-five or seven in the morning on the day
15 of the crime, in which his sister sees him leave -- there is
16 very specific testimony as to why she looked at the time --
17 and then we don't have him anywhere until around ten o'clock
18 in the morning for certain, back at where Terry picks him up,
19 Terry Boland picks him up, and various times.

20 There is that time in which he did not make a prima
21 facie showing that he was entitled to an instruction, an
22 hour and a half or more of time. Counsel did not cover that
23 time, and him failing to request something that he was not
24 entitled to -- the case law itself is undisputed, and when
25 you look at the fact, every witness who testified in the

1 time-line, the . .

2 THE COURT: So what you are saying is that even if he
3 had requested it the Judge probably wouldn't charge it be-
4 cause he didn't establish it?

5 MR. WHITMIRE: And he did not request it and did not
6 preserve it, so that would be a deficiency because there
7 is no record of preserving it. No record of preserving
8 an objection, and I think we are in agreement on that.

9 I think where we disagree in particular in the analy-
10 sis to determine if the alibi charge is merited or if the
11 Judge would have in fact given the charge, based on the
12 facts that were before the Judge at trial -- Mr. Floyd
13 in his testimony earlier said he did his absolute best to
14 present evidence that he had investigated and found to the
15 jury as to the alibi, in order to warrant that instruction
16 in the first place.

17 Your Honor, if you would at any point have any ques-
18 tions for the Assistant Solicitor who prosecuted the case
19 regarding the alibi or the facts . .

20 THE COURT: As you called it, Ms. Goldberg, I'm look-
21 ing at my bench book right now, and three cases are cited
22 there which are Aster versus State, Glover versus State,
23 Underwood versus State, which stand for the proposition
24 that failure to present testimony in a PCR hearing of a
25 live witness or at least present evidence of that testimony

1 of the alibi witness in some other fashions means the
2 claim must fail.

3 Tell me where you believe your client has shown me
4 that it doesn't fail?

5 MS. GOLDBERG: Your Honor, I think the cases you are
6 citing stand for the proposition that if somebody is assert-
7 ing an alibi at PCR for the first time initially and the
8 witness doesn't testify the claim fails.

9 THE COURT: Yes, they do.

10 MB. GOLDBERG: We are basing the claim on the orig-
11 inal testimony asserted at trial. The State is saying if
12 there as an alibi defense that it wasn't fully presented
13 so the charge shouldn't have been given based on what was
14 presented.

15 Mr. Floyd -- I asked him point blank if he believed
16 the alibi was complete, and he said yes.

17 I asked him if he thought the Judge would have denied
18 his request, and he said, no, that he thought he put up
19 a pretty good case.

20 You know, obviously the State is going to look at
21 credibility and at slight variations in times, but I think
22 a prima facie case was shown at least sufficient for
23 the charge to be given.

24 THE COURT: Okay.

25 MR. WHITMIRE: Your Honor, when I say that the time

1 period is specifically between six forty-five or seven in
2 the morning until ten, I am saying there is no testimony
3 from single witness -- nothing regarding that particular
4 time span at the trial.

5 I mean, there is on information as to where he was
6 during that time, while I agree with Ms. Goldberg that for
7 the four corners Your Honor's analysis will be the trial
8 transcript regarding the issue.

9 Furthermore, one of the issues or what is very effec-
10 tive in showing that -- looking at the pathologist, he
11 identified rigor and stated time of death occurred be-
12 tween six A.M. and three P.M.

13 Then we have another State's witness saying he left
14 the house around seven A.M. and she was fine.

15 So there is that time period that is in play speci-
16 fically from these witnesses. Now, it seems a pretty
17 straight factual analysis just regarding whether the
18 charge was merited. It is the Respondent's position that
19 the charge really was not warranted.

20 The Respondent would rely on the trial record which
21 clearly shows third party guilt was his main defense he
22 was going after. There are points in the record where he
23 pressed the issue.

24 The defense of alibi does not seem to be the main
25 defense Mr. Floyd was trying to prove, despite Mr. Floyd's

1 testimony and memory of it some years later.

2 THE COURT: All right, Ms. Goldberg, the next one.

3 MS. GOLDBERG: All right, Your Honor. As to allega-
4 tion B, and based on testimony here today, I would direct
5 Your Honor to page 505 of the transcript.

6 THE COURT: Volume one or two? I don't have that.
7 I have one that goes up to 383 and this is what I have.

8 MR. WHITMIRE: Let me check. I believe you have the
9 mistrial and the trial itself.

10 (Brief pause in proceeding)

11 THE COURT: Thank you. What page are you on?

12 MS. GOLDBERG: Page 505.

13 THE COURT: So you are actually on the record of March
14 31 of 2008.

15 MS. GOLDBERG: Yes, sir. If you will look at the end
16 of line eight. (Counsel quoting Mr. Floyd which was not
17 audible, from page of transcript)

18 He was talking about the cigarette butts, and the
19 Solicitor objects rightfully since it was not offered
20 into evidence. The Judge did not allow it.

21 Mr. Floyd testified today that that was an oversight
22 on his part, as he felt that it had been offered into evi-
23 dence. He said he would have offered it if he had rea-
24 lized it was not offered, that DNA was found on a cigarette
25 butt that was stated to come from another individual.

1 So we would point out what he acknowledged as an over-
2 sight on his part and it should have been offered in evi-
3 dence.

4 Because of what he said was an oversight and what he
5 felt would have been important, we would rely on that as
6 to that issue.

7 MR. WHITMIRE: Your Honor, if it please the Court, in
8 the records and what is reflected, we take a position we
9 would have to go through the entire transcript.

10 What Mr. Floyd testified to today is that the car was
11 not recovered until some months afterward, and he did
12 testify it was found in an area that was accessible to
13 everybody.

14 Although Ms. Goldberg said the cigarette butts were
15 found in the car, they were not found in the car but were
16 outside of the car. You can see from the photographs that
17 came in in the trial transcript that it was nothing more
18 than a rusted car at the time it was recovered.

19 There were no cigarette butts in that car, and they
20 were only gathered from around the scene by the officers who
21 were out there after the car was found. Officers of the
22 Sheriff's Department tried to recover what was out there.

23 Mr. Floyd testified today that the area was access-
24 ible to everybody and that the car apparently had been
25 there for a considerable period of time.

1 The record will reflect also that even though I did
2 not stop him from talking about it at that time, later on
3 in the argument he goes into that and argues the points
4 on the cigarette butts to the jury.

5 But those cigarette butts are really immaterial, to
6 anything that was going on in this case, because they were
7 found in an accessible area according to Mr. Floyd some
8 months after the incident.

9 They were not found in the car as they have been char-
10 acterized. They were found in the general surrounding
11 area near where the car was found. They were not found in
12 the vehicle.

13 That is what the record reflects, that the cigarette
14 butts were not found in the car. No DNA was developed -- I
15 believe there were ten, and nothing was developed on nine
16 of them. One they found partial DNA that did not match
17 anybody involved in the case.

18 THE COURT: All right, Ms. Goldberg.

19 MS. GOLDBERG: Your Honor, just for completion, it was
20 clear that Mr. Floyd intended all along to talk about it
21 in closing argument. He said he thought it had been moved
22 into evidence. He testified today if he had realized it
23 was not, he would have offered it in his case in chief
24 even.

25 So we are relying on Mr. Floyd's testimony about it.

1 THE COURT: All right, I see where the Court sent the
2 jury out and Mr. Floyd wanted to put it on the record, but
3 it was not allowed before the jury. Mr. Floyd noted an
4 objection to the Court. He was not allowed to talk about
5 facts not in evidence.

6 (Brief pause)

7 Mr. Floyd asked to put something on the record, and
8 that is what you're talking about, Ms. Goldberg?

9 MS. GOLDBERG: Yes, Your Honor. You are aware of his
10 comments.

11 THE COURT: All right, let's move on to the next one
12 then.

13 MS. GOLDBERG: I didn't broach this with Mr. Floyd
14 but I want to point it out for the record. I believe that
15 Mr. Floyd -- does Your Honor have the record from April
16 11th in front of you? That was a hearing . . .

17 THE COURT: Is that separate . .

18 MS. GOLDBERG: It's separate from the trial.

19 (Brief pause in proceeding)

20 MS. GOLDBERG: The front page says April 11, and . .

21 THE COURT: Would it be in the record on appeal?

22 MR. WHITMIRE: May I approach?

23 THE COURT: Yes. Why was it held on a separate day?

24 MR. WHITMIRE: To answer your question, it was a week
25 long trial and the jury came back about eight o'clock on

1 Friday evening. The Judge held this over because of that.

2 THE COURT: All right.

3 MS. GOLDBERG: I just want to make this argument for
4 the record. On page 15 of that transcript, . .

5 THE COURT: Which is 399?

6 MS. GOLDBERG: Yes, sir. Beginning on line 12, the
7 Solicitor said, Your Honor, looking at the facts of this
8 case and Mr. Frazier's prior record -- based on his prior
9 record, based on the crimes he's been convicted of, (read-
10 ing rapidly from record which was not audible)

11 Your Honor, our argument would just be that to ask
12 the Judge to sentence the Defendant when he has not been
13 found in any way responsible for her death is inappropri-
14 ate on his part.

15 THE COURT: If you continue reading that, the Judge
16 said he would disregard that, and there is absolutely no
17 prejudice shown by that.

18 I still think that the Judge is entitled to consider
19 the harm done, and I don't know that it is inappropriate,
20 but Judge Johnson did not consider that, which is there
21 reflected in that sentencing hearing.

22 Ms. Goldberg, I would deny that claim.

23 MS. GOLDBERG: Thank you.

24 THE COURT: Go to the next one.

25 MS. GOLDBERG: As to D and E, I will essentially

1 argue them together. Armed robbery and burglary first
2 that Mr. Frazier was convicted of, and obviously in the
3 jury charges the Judge did point out to the jury the ele-
4 ments of those crimes.

5 My argument is only that the Defense Counsel, Mr.
6 Floyd -- I think he said he did not actually recall it
7 but he never pointed out to the jury that in the armed
8 robbery there would have to be some evidence of force or
9 intimidation in the taking of the victim's car, and I
10 don't believe there is evidence of that whatsoever.

11 As well, the car could have been taken at any point
12 in time, including afterward.

13 As to the burglary, first, the State would have the
14 burden of proving that there was a non-consequential entry
15 into her dwelling or even evidence of entrance by trick-
16 ery.

17 Mr. Floyd never pointed that out to the jury and he
18 never emphasized that.

19 There were actually no witnesses present to testify
20 as to how Mr. Frazier or anyone else -- no evidence as
21 to the circumstances under which the house was entered.

22 There was no evidence as to at what point and under
23 what circumstances of entry and no evidence as to the cir-
24 cumstances of the car being stolen.

25 So we would argue that Mr. Floyd was ineffective in

1 those regards.

2 MR. WHITMIRE: Again, Your Honor, I will address them
3 in parts, the first being the inappropriateness of this
4 claim on PCR.

5 Mr. Floyd objected and preserved objection at the
6 point of directed verdict. There was an Anders Brief.
7 The evidence could have been argued on direct appeal.

8 Second of all, addressing the facts that were pre-
9 sented of Mr. Frazier's guilt as to each separate offense,
10 just to get that out of the way, Mr. Frazier's bookbag was
11 obtained by the State on which the victim's blood was lo-
12 cated.

13 There was testimony at trial that Mr. Frazier was aware of
14 a substantial amount of money that was kept in that house.

15 THE COURT: Does the transcript show where Mr. Floyd made
16 a motion during the trial to dismiss or a motion for a di-
17 rected verdict on those things?

18 MS. GOLDBERG: He made a motion in general but it was
19 not specific as to those terms.

20 MR. WHITMIRE: But the State's position is that
21 Judge Johnson was denying it on all charges.

22 THE COURT: You know, Judge Johnson would have denied
23 that. So that takes us to F.

24 MS. GOLDBERG: Yes, Your Honor. As was stated earl-
25 ier, there is the requirement for PCR is that a witness who

1 testified in the original trial or testified in PCR or the
2 claim would be denied.

3 In addition, Mr. Floyd testified that there was a wit-
4 ness that he decided not to call in thought-out strategy,
5 Mr. Burns, which is the witness that was brought over but
6 did not testify. I don't think I have an argument in that
7 regard.

8 THE COURT: You were reading my mind on that. In
9 light of speaking with the witness before-hand, he made
10 the decision not to call him, so I will deny that based
11 on the fact that you're not pursuing that.

12 All right, getting to G.

13 MS. GOLDBERG: Getting to the first letter G, Your
14 Honor, this gets into -- let me find the page number --
15 on page 223 of the trial transcript . .

16 THE COURT: Okay.

17 MS. GOLDBERG: All right, starting on line 14, how
18 long was Mr. Frazier with you (counsel reading rapidly
19 from transcript which was not audible).

20 Line 19, he stole my car.

21 Did you provide this information to law enforcement?

22 Yes, I did.

23 Your Honor, the evidence here is basically alleging
24 a prior bad act or allegations that Mr. Frazier had pre-
25 viously stolen the witness' car.

1 This particular incident we are here in Court on
2 today involved the theft of a car as well, and also they
3 were close in time. I think that is clear evidence of a
4 prior bad act.

5 I'm not going to make any allegation about the
6 State's position there, but I think it is extremely
7 clear that Defense Counsel should have objected and it
8 should have been kept out, the mention of a prior theft.

9 Mr. Floyd did not indicate he was aware of that alle-
10 gation ahead of time as he should have been, but even if
11 he was there should have been an objection, a motion to
12 strike, as Mr. Floyd agreed, and there wasn't.

13 That was certainly prejudicial to Mr. Frazier.

14 THE COURT: Mr. Whitmire.

15 MR. WHITMIRE: The record shows that when this wit-
16 ness gave an unresponsive answer that Mr. Floyd made
17 mention of reaching a decision too late, and as a result
18 the State was able to show that and that Mr. Frazier was
19 in need of money at the time. That is because according
20 to the witness he had just robbed him so why would he
21 need money shortly thereafter.

22 Second of all, it goes to show bias of this particu-
23 lar witness because of the animosity that had developed
24 between her and Mr. Frazier about a week or week and a
25 half prior to this.

1 I would submit in Mr. Floyd's cross examination he
2 was very particular or very meticulous to show just how
3 much money was inside the vehicle that the witness claims
4 was hers and the condition she got the car back in.

5 There might have been a prejudicial effect of a prior
6 bad act, a casual prejudicial effect, but it was the
7 State's clear method to tie him in with the need for the
8 money.

9 In Mr. Floyd's case he argues vigorously and in his
10 closing argument, but he can't have it both ways.

11 Your Honor, citing Stokes versus State at 308 SC 546,
12 counsel's decision in this matter was reasonable. The
13 prejudicial impact on the State's case far outweighs the
14 prejudicial impact of this one statement. The witness
15 was hostile to Mr. Frazier.

16 THE COURT: Anything else on that?

17 MS. GOLDBERG: Mr. Floyd was interested in arguing
18 that Mr. Frazier was in possession of a worker's compen-
19 sation settlement.

20 He was asked today if there was a strategic reason
21 for not objecting, and he said no. The Attorney General
22 asked him if he should have objected, and he said he
23 probably could have objected and moved to strike.

24 I don't think that -- I think it is entirely more
25 prejudicial than it is helpful, and I think Mr. Floyd

1 said so. It goes to the heart of this case.

2 THE COURT: Okay.

3 MR. WHITMIRE: Your Honor, despite the hindsight that
4 arises in this particular PCR, Mr. Floyd certainly utilized
5 it in closing and did not ask for jury instruction.

6 THE COURT: All right. The next G was abandoned so
7 we will go to H.

8 MS. GOLDBERG: Yes, Your Honor.

9 THE COURT: Go to that.

10 MS. GOLDBERG: Page 521, lines 11 through 14.

11 THE COURT: Okay. Lines 11 though 14, but I will tell
12 you this . .

13 MS. GOLDBERG: Yes, sir.

14 THE COURT: All right.

15 MS. GOLDBERG: Our argument is that at any time the
16 State says something putting the jury on issues in place
17 of the victim or relates them to the jury for any reason --
18 it doesn't matter the reason -- and if they are asking the
19 jury to relate to how the victim felt at a particular moment
20 in time, that is improper.

21 MR. WHITMIRE: Your Honor, just to give you a little
22 bit on this first cite of Dillon v. State, a closing argu-
23 ment by the Solicitor must be carefully tailored not to ap-
24 peal to the personal bias of the jury.

25 Furthermore, it cannot be calculated to arouse the

1 jury's passion or prejudice. (Portion inaudible)

2 It was used to make a point about an objective person
3 and establishing rigor at the time of death, physical con-
4 dition.

5 Mr. Floyd's position was that the State could not
6 nail down the time of death. Furthermore, the record shows
7 that Mr. Floyd objected at least three times where he
8 noted, or it appeared to him, that there had been an in-
9 ference that might not have been how he saw things, and
10 the situation clearly shows it did not cross the line.

11 It is not in the classic sense trying to butter the
12 jury up or arouse their passions or prejudice such as would
13 necessitate a mistrial.

14 THE COURT: I will take that under advisement. Give
15 me the next one.

16 MS. GOLDBERG: All right, Your Honor. The last and
17 final one. I think we agree on what it said.

18 There was a witness in the State's case in chief who
19 claimed that she overheard Mr. Frazier make a threat to
20 the victim previously.

21 There was testimony proffered that that same indi-
22 vidual actually made a threat against the victim.

23 He asked that that be kept out of the jury's province
24 as being inadmissible third party guilt, and Mr. Floyd said
25 it could be used for impeachment purposes.

1 THE COURT: All right.

2 MR. WHITMIRE: Beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 (Brief pause in proceeding)

5 THE COURT: It starts on 180 and goes to 181, and --
6 is that what you're talking about?

7 MS. GOLDBERG: Yes.

8 THE COURT: Okay.

9 MR. WHITMIRE: The record really shows he is going for
10 anything that shows third party guilt, and he made the
11 decision to use it for impeachment evidence.

12 The State called the same witness in its case in chief.
13 At that time, the attorney made the decision to in his case
14 to get this in as possible evidence of third party guilt.

15 At that time he doesn't know how the case is possibly
16 going to further develop and what he is going to be able
17 to get in. I'm referring to pages 428 to 432, in Mr.
18 Floyd's direct examination of this person.

19 THE COURT: Page 438 . .

20 MR. WHITMIRE: Page 428.

21 THE COURT: Okay, and what line does it start?

22 MR. WHITMIRE: I'm sorry, Your Honor. Page 431 where
23 the jury is sent out and the testimony is proffered
24 then.

25 THE COURT: Bench conference in the presence of the

1 jury but out of their hearing. The objection of the State was
2 sustained.

3 MS. GOLDBERG: I think we're referring to page 435 at
4 the top.

5 THE COURT: Okay. Question, did you hear anything
6 else -- that's where you're talking about?

7 MS. GOLDBERG: Yes, Your Honor.

8 THE COURT: Okay.

9 MS. GOLDBERG: She claimed Mr. Frazier had threatened
10 the victim, and there was testimony showing she actually
11 threatened the victim. That would be inadmissible on third
12 party guilt.

13 MR. WHITMIRE: This witness showed her anger with Mr.
14 Frazier during the State's case. Her bias was noted, and a
15 strategic decision was made right then and there. It was
16 not hindsight.

17 THE COURT: All right. Anything else? Obviously I
18 have got some homework to do. I've heard the arguments,
19 and particularly on A, B and H I would take under advise-
20 ment.

21 I will render a decision on that by being in touch
22 with one of you concerning my decision. Then you all
23 can draft the Order. All other items were denied.

24 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

25

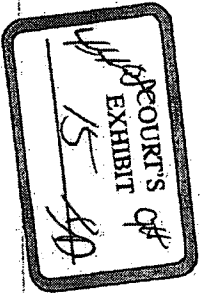
CERTIFICATE

I, HARRIET P. BENNETT, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Carol M. Thueme to the best of my ability, having been heard in the Court of Common Pleas, Non Jury, on January 22, 2014.

FURTHER, I certify that I am neither of kin nor of counsel to any party to this action, nor do I have any interest in the same.

May 4, 2015





We are 100%

unanimous on

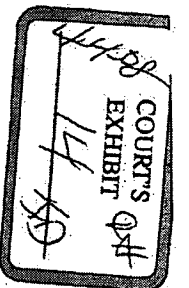
3 charges. Not

100% about 1.

What do you want us to

do?

Kennell



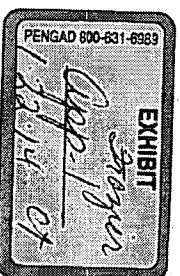
We would like to hear the

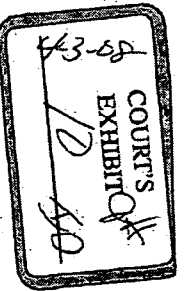
testimony of Elbert (Boo)

Bolton, Terry Bolton, and

Minnie Levene

Kennell





Will you order

lunch for us on

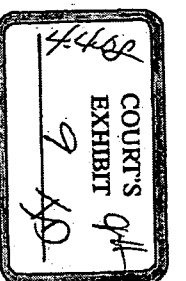
do you want us

to leave and come

back? It is going

to be a while!

Kenneth

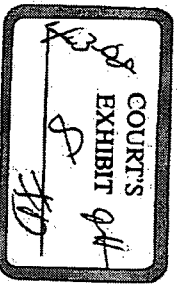


We are interested in the explanation that you need to us after the lawyer's

summaries. What constitutes "Murder"? Particularly "Reasonable Doubt" and "Reasonable Certainty"?

We want to hear the judges' charge with respect to murder.

Kenneth

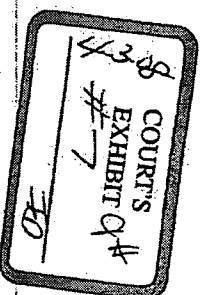


Can you supply a
copy of the legal
explanation of the
charges you read to us?

~~Editor~~

Can we have a trans-
cript of the testimony
for both Gordon &
Tiger? and Tommy Indrade?

Kennell



Can we have
the defense
attorney's time
lines?

Can we have witnesses
transcripts (all)?

Kennell

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) **FILED** FOR THE ELEVENTH JUDICIAL CIRCUIT

Johnnie Frazier,
 S.C.D.C. No. 265586,

2016 JAN 11 A 11:41 C.A. No. 2011-CP-32-2879

Applicant BETH A. CANNIGG
 CLERK OF COURT
 LEXINGTON, SC

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed July 29, 2011. Respondent made its Return and Motion to Dismiss requesting the matter be summarily dismissed on or about February 28, 2012. Amended applications were filed on October 1, 2012, and April 24, 2013. An evidentiary hearing into the matter was convened on January 22, 2014, at the Lexington County Courthouse. Applicant was present and was represented by Kristy Goldberg, Esquire. Respondent was represented by Walt Whitmire, Esquire, of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Wayne Floyd, Esquire, also testified. This Court had before it a copy of Applicant's trial transcript, the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, appellate records, and the pleadings. The Court finds as follows:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the



March 2006 term of the Lexington County Grand Jury for possession of a firearm during the commission of a violent crime (2009-GS-32-0667); armed robbery (2006-GS-32-0670); and burglary – first degree (2006-GS-32-0671).¹ He was represented by Wayne Floyd, Esquire. From November 26-28, Applicant proceeded to trial by jury before the Honorable James W. Johnson, after which he was convicted as indicted on each of the three charges. Judge Johnson sentenced him to confinement for a period of five (5) years for violating the firearms provision; thirty (30) years for armed robbery; and life for burglary. Each sentence was set to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Wanda H. Carter, Esquire, represented Applicant on appeal. The South Carolina Court of Appeals dismissed Applicant's appeal in a written Order. State v. Frazier, Op. No. 2010-UP-391 (S.C. Ct. App. filed August 25, 2010). The Remittitur was issued on May 5, 2011.

Allegations

In his application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. "There is no reason for me to be found guilty for everything but murder when I was the only suspect."
2. "There is no evidence to put me at the scene of crime."
3. "There is no evidence to say I Armed Robbed [sic] the victim."
4. There is no gun to be brought in courtroom."

Applicant was subsequently appointed attorney Jack Duncan as counsel, who filed an amended application was filed on October 1, 2012, raising the following issues:

¹ Applicant was also indicted for murder (2006-GS-32-0668). Applicant proceeded to trial on this indictment at the same time as his burglary, armed robbery, and weapon possession indictments. However, the jury was unable to reach a verdict as to murder and a mistrial was declared on that offense only.

1. Ineffective assistance of counsel in that trial counsel failed to call essential witnesses; did not properly advise applicant of his right to testify; and did not seek appropriate charges on the law by the court, nor object to the court's failure to charge the law of alibi.

In November 2012 Attorney Duncan was relieved as counsel due to a conflict and Kristy Goldberg was appointed. Attorney Goldberg filed an amended application on April 24, 2013, and then a Second Amended Application on January 22, 2014, ultimately raising the following allegations:

1. Ineffective assistance of counsel, specifically:
 - a. Failure to request an alibi charge in jury instructions.
 - b. Failure to introduce exculpatory evidence including, but not limited to, forensic evidence obtained from cigarette butts in car.
 - c. Failure to object when Solicitor requested that Judge sentence Applicant as if he caused the death of the victim.
 - d. Failure to argue that the State did not present sufficient evidence regarding the Indictment for Armed Robbery, as there was no evidence presented that the victim's car was taken from her presence by force, threats, or intimidation.
 - e. Failure to argue that the State did not present sufficient evidence regarding the Indictment for Burglary 1st, as there was no evidence presented regarding the circumstances under which the Applicant allegedly entered the dwelling and whether it was consensual or not;.
 - f. Failure to call witness regarding third party guilt.
 - g. Failure to object and move to strike when Ashley Cougar submitted testimony of a prior bad act by Applicant and alleged that he stole her car.
 - g. Failure to effectively communicate to Applicant his right to testify and failure to have the Court instruct the Defendant as to his right to testify or remain silent.²
 - h. Failure to object to "Golden Rule" argument in State's closing argument.
 - i. Failure to argue that proffered testimony by Robert Hursey regarding Ashley Cougar should have been admitted as impeaching evidence.

At the evidentiary hearing, Applicant further alleged counsel was ineffective in failing to object to a purported "Golden Rule" violation by the State during closing arguments.

² Due to a type in the amendment, there were two allegations labeled "g."



FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, appellate records, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the post-conviction relief transcript, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Request Alibi Charge

This Court finds that Applicant's allegation that counsel was ineffective for failing to request an alibi charge on the record is without merit. The Supreme Court has held that trial counsel's failure to request an alibi charge is deficient representation where there is evidence presented that the defendant was in another place at the time the crime was committed. Ford v. State, 314 S.C. 245, 42 S.E.2d 604 (1994). However, "[a] charge on the defense of alibi is not required when an accused person merely denies committing the criminal act; alibi means elsewhere, and the charge should be given when the accused submits that he could not have performed the criminal acts because he was in another place at the time of its commission." State v. Robbins, 275 S.C. 373, 271 S.E.2d 319, 320 (1980). Moreover, "since an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." Id.

Sidney Hursey discovered his wife's body between 2 and 3 p.m. that day. (Trial Tr. p.50). Detective Grimes testified that the victim's body appeared to be in a state of full rigor mortis when law enforcement removed her from the scene that night at 10 p.m. (Trial Tr. p.100). She

noted that the body of a recently deceased person typically takes twelve hours to reach a state of full rigor mortis. (Trial Tr. p.104). Thus, based upon all the relevant information, Dr. Sexton testified that to a reasonable degree of medical certainty, the victim died approximately between 4 a.m. and early evening on August 14, 2003. (Trial Tr. p.139). Importantly, Sidney Hursey testified he went to work at 6 a.m. and returned home around 3 p.m. and discovered the crime scene. (Trial Tr. pp.50-52). No other witness entered the bedroom during this time frame.³

Our Courts have held that the propriety of an alibi charge is contingent upon evidence of a complete alibi. State v. Baker, 411 S.C. 583, 591, 769 S.E.2d 860, 865 (2015) (*quoting Robins* at 375, 271 S.E.2d at 320). The South Carolina Supreme Court has unequivocally held that any gap in the relevant timeframe precludes the trial judge from issuing an alibi charge. Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995). The record clearly shows that an alibi charge was not warranted at Applicant's trial because there was no evidence or testimony in the record that definitively accounted for Applicant's whereabouts between 7 a.m. and 10 a.m. on the morning of the home invasion and murder. Thus, counsel's performance was not deficient in failing to request an inappropriate jury charge that the trial judge would have correctly denied.

The following is a chronological account of the relevant witness testimony at trial concerning Applicant's whereabouts on August 13 -- August 14, 2003: Terry Bolton testified he was with Applicant at Melton's home on August 13, 2003. (Trial Tr. p.462). Terry Bolton recalled doing drugs with Applicant but was unable to remember what time Applicant left Elbert Bolton's residence. (Trial Tr. p.462). Terry Bolton spent the night at Elbert's residence. (Trial Tr. p.462). Elbert Bolton also testified Applicant left his residence late on August 13, 2003. (Trial Tr. p.453).

³ Because Applicant was convicted of burglary, first-degree, this time frame for determining whether Applicant presented a complete alibi, necessary for the jury charge, is more important than the victim's time of death.

Stanley Gleaton testified he abused crack cocaine with Applicant at Elbert Bolton's residence on August 13, 2003. (Trial Tr. p.249). Gleaton alternatively testified he stayed up until daybreak with Applicant. (Trial Tr. p.250). Gleaton testified he believed daybreak to be around 7 a.m. on August 14, 2003. (Trial Tr. p.260). When Gleaton awoke somewhere between 10 a.m. and 12 p.m., he testified that Applicant was gone from Elbert Bolton's residence. (Trial Tr. p.250).

Dorothy Drawdy, Applicant's sister, testified that Applicant was in her Gaston home at 6:45 a.m. on August 14, 2003. (Trial Tr. p.481). Drawdy testified Applicant arrived on bicycle to catch a ride with her husband to work. (Trial Tr. p.479). Drawdy left her home at 7:00 a.m. in her husband's vehicle. (Trial Tr. p.480). Applicant did not make it all the way to the worksite after he had an argument with her husband (Trial Tr. p.481).

Terry Bolton testified he saw Applicant walking down the side of the road at some point between 8:30 and 10:00 am and offered him a ride. (Trial Tr. p.464). Terry Bolton testified that he drove Applicant to Elbert Bolton's residence. A few hours later, he testified he drove Applicant to his father's or mother's home. (Trial Tr. p.462). Terry Bolton had been smoking crack and marijuana along with consuming liquor on the day in question. (Trial Tr. p.466).

Jacqueline Burke testified to her interactions with Applicant. Counsel questioned Burke on whether she gave a statement to police that she saw Applicant walking on Old Wire Road at 10:30 a.m. on August 14, 2003. (Trial Tr. p.277). Burke did not recall the statement or acknowledge its validity. (Trial Tr. p.277).

Elbert Bolton testified Applicant was at his residence at 10 a.m. on August 14. (Trial Tr. p. 454). Elbert Bolton also testified Applicant left his residence around 2 or 3 p.m. that



afternoon. (Trial Tr. p.454). Stanley Gleaton testified Applicant returned to Elbert Bolton's residence on a bicycle at night on August 14, 2003. (Trial Tr. p.258).

Thus, Respondent submits that because no witness testified with any certainty to Applicant's whereabouts between 7:00 a.m. and 10:00 a.m. on August 14, 2003, Applicant has not met his burden to make a prima facie showing of a complete alibi during the relevant time frame.⁴ The victim's husband, Hursey, established that the robbery occurred between 6 a.m. and 3 p.m. on August 14, 2004. Dr. Sexton gave his expert opinion that the victim died between 4 a.m. and the early evening of August 14, 2004. Counsel did not present witnesses or evidence to dispute either time frame. It is of note that counsel testified he exhausted his alibi investigation in anticipation of trial. Furthermore, Applicant presented no new evidence at the PCR hearing on the matter. Accordingly, Applicant failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms.

Similarly, Applicant failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance. As a result, this allegation is denied and dismissed.

Failure to Introduce Cigarette Butt as Exculpatory Evidence

Applicant has also failed to meet his burden to show that counsel's performance in failing to introduce cigarettes found in the vicinity of the victim's abandoned vehicle almost three months after the offense would have changed the outcome of the trial. "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." Nance v. Ozmint, 367 S.C. 547, 557 n. 8, 626 S.E.2d 878, 883 n. 8 (2006). "Failure to conduct an independent investigation does not constitute ineffective

⁴Terry Bolton was only certain that he picked up Applicant by 10 a.m, admitting he was unsure of when, exactly, "because at that time, [he] didn't have a value of time." (Trial Tr. p. 462). Mr. Bolton

assistance of counsel when the allegation is supported only by mere speculation as to the result.” Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Failure to investigate allegedly beneficial evidence does not constitute ineffective assistance of counsel when the evidence does not exculpate an applicant’s guilt. See Taylor v. State, 404 S.C. 350, 358, 745 S.E.2d 97, 101 (2013).

In the present case, the evidence at issue simply was not exculpatory. Crucially, the property where the discarded cigarette butts were discovered was often used by the general public, and there was a significant duration between its abandonment and subsequent discovery by police. At trial, Wayne Birchmore testified he was the caretaker for 217 acres of property off Cassidy Road. (Trial Tr. p.222). The owner hired him to perform minimal duties to care for the property in 1984. He testified that he investigated a charred vehicle on August 23, 2003 in a heavily wooded area on the property. (Trial Tr. p.225). The vehicle had been burned down to its chassis. He explained that trespassers had frequently misused this area on the property as a dumping ground for years. (Trial Tr. p.228). On October 31, 2003, the police investigated the scene and determined the vehicle belonged to the victim. Cigarette butts were located **near** the vicinity of the vehicle. Id. (emphasis added). The evidence was processed and D.N.A. samples were retrieved. Police ran a C.O.D.I.S. search that failed to match the D.N.A. to any known offenders in the system. Counsel did not move the cigarette butts into evidence.

Respondent submits the evidence in question was too insignificant to call into question Applicant’s conviction. First, and most importantly, the victim’s charred vehicle was discovered in an area frequently traversed by the general public. Even if the charred vehicle appeared suspicious, it is certainly illogical to surmise that a trespasser having a smoke near the vehicle would have reported it and implicated himself for minor criminal behavior. The trial judge took

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judicial notice that over 216,000 people resided in Lexington County. Birchmore traveled frequently during the time period in question and was rarely at the property. Second, the charred vehicle and nearby cigarettes butts were not investigated by police until months after the offense. Notably, Birchmore did not testify he noticed any cigarette butts near the vehicle on August 23, 2003. These three facts alone negated any exculpatory weight of the evidence. Last, the record shows that the persons investigated or implicated in the offense mostly had criminal records. (Trial Tr. p.241; p.264; p.459). Therefore, the lack of a C.O.D.I.S. match suggests that the cigarette butts were discarded by an irrelevant trespasser. The only significant evidentiary weight of the discovery of the victim's charred vehicle on the property was its proximity to the home of Applicant's father. Applicant testified at the PCR hearing that he had no alternative explanation of how the victim's blood got on his book bag to call into question the strength of the State's evidence of his guilt. Thus, Petitioner also failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance. This allegation is therefore denied and dismissed.

Failure to Object to Solicitor's Statement During Sentencing

Concerning Applicant's claim that counsel was ineffective in failing to object when the Solicitor "requested the Judge sentence Applicant as if he caused the death of the victim," this Court finds he has failed to meet his burden. A trial judge generally has wide discretion in determining what sentence to impose, and "may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider to the source from which it may come." State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976); see also State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (S.C. Ct. App. 2008) ("A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear

on the proper sentence for the particular defendant, given the crime committed.”). This Court first note’s the solicitor requested the judge base his sentencing “on [Applicant’s] prior record and the harm that he ha[d] done.” (Sentencing Tr. p. 15). Applicant has failed to present any reason why it would have been inappropriate for the sentencing judge to have considered any harm resulting from the crime he was convicted of. Accordingly, there was no basis for an objection, and counsel’s performance was not deficient.

Applicant has also failed to show that any prejudice resulted from counsel’s purported deficiency. The trial court stated on the record that he was “completely disregarding” the murder charge. (Sentencing Tr. p. 17). Instead, the court took all factors into account⁵ and issued its sentence based on the circumstances. This Court therefore finds Applicant has failed to meet his burden with respect to this allegation. As such, it is denied and dismissed.

Sufficiency of the Evidence Argument

Applicant further argues counsel was ineffective for failure to argue that the State did not present sufficient evidence regarding indictments for armed robbery and burglary, first degree. This allegation is also without merit. This Court first finds counsel was not ineffective because these issues were raised and preserved for appeal. Counsel challenged the sufficiency of the State’s evidence against Applicant when he moved for directed verdict, (Trial Tr. p. 399), and then renewed that motion twice. (Trial Tr. p. 488; Sentencing Tr. p. 4-5). Counsel argued that there was “absolutely no evidence to place [Applicant] in the home at the time of the murder,” and that there was “absolutely no evidence to place [Applicant] in possession or control of any of the items that were taken from the home, nor any evidence to connect him with any murder weapon . . .” (Sentencing Tr. p. 5). The trial court ruled that there was “sufficient evidence in

⁵ The trial judge seemed particularly concerned by Applicant’s prior criminal history, noting that he had faced approximately eighty (80) years of exposure based on prior offenses he had been convicted of or pled guilty to. (Sentencing Transcript, p. 17).

the record that support[ed] the verdict of the jury” for each offense. (Sentencing Tr. p. 9). Accordingly, Applicant has failed to raise any deficiency for which this Court can grant relief.

In addition, Applicant has failed to show any prejudice resulting from this purported deficiency. In order to show prejudice stemming from a failure to move for directed verdict, an applicant must show that such a motion would have changed the outcome of the trial.⁶ Sellers v. State, 362 S.C. 182, 189, 607 S.E.2d 82, 85 (2005). When ruling on a criminal defendant’s motion for directed verdict, a trial court is concerned with the existence of evidence, not its weight. State v. Wiggins, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998). If there is any direct or substantial evidence tending to prove the guilt of the accused, or from which guilt may be fairly and logically deduced, the case should be submitted to the jury. State v. Johnson, 334 S.C. 78, 84, 512 S.E.2d 795, 798 (1999).

This Court finds sufficient evidence was presented to submit the charges of armed robbery and burglary, first degree, to the jury. Testimony and evidence were presented at trial from which a jury could reasonably conclude Applicant was guilty of armed robbery and burglary. Scottie Carson testified that Applicant had approached him on one or more occasions inquiring about getting a “clean” gun, and informing him that the victim kept a large amount of money in her house. (Trial Tr. p. 194-95). Another witness testified Applicant told her, referring to the victim, that “one day that bitch is going to get what she is asking for.” (Trial Tr. p. 181). The day the victim was murdered, her car and a large amount of money and jewelry were stolen from her house. (Trial Tr. p. 55-56; 65). A witness testified that she saw Applicant coming from the victim’s driveway *in the victim’s* car the day she was murdered. (Trial Tr. p. 208-09; p. 212;

⁶ While Applicant’s argument appears to be that counsel’s argument in support of his motion for directed verdict was improperly argued, this Court finds the same prejudice analysis argument applies. See Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (“To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving . . . but for counsel’s errors, there is a reasonable probability the result at trial would have been different.”).

p. 218). The victim's abandoned and destroyed vehicle was discovered near Applicant's father's residence. (Trial Tr. p. 159). Applicant was seen with a book bag matching its description the night before and after the victim was robbed and murdered. (Trial Tr. p. 251-52; p. 268; p. 298). That bag was subsequently recovered by police, and contained both the victim's blood, as well as DNA evidence linking it to Applicant. (Trial Tr. p. 388-394). This Court finds that the jury could have fairly and logically deduced from this evidence that Applicant was guilty of armed robbery and first degree burglary.

Failure to Object to Introduction of Prior Bad Acts

Applicant's allegation that counsel was ineffective in failing to object to testimony of a prior crime is similarly without merit. As a general rule, "[e]vidence of crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Rule 404, SCRE (2015). However, where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992); see also Rhodes v. State, 349 S.C. 25, 32-33, 561 S.E.2d 606, 610 (2002) (failure to object to introduction of improper character evidence not ineffective assistance where supported by valid, strategic decisions). In evaluating such strategic decisions, it is crucial to "eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Edwards v. State, 392 S.C. 449, 456-58, 710 S.E.2d 60, 64-65 (2011) (citing Strickland 446 U.S. at 689, 104 S.Ct. 2052).

This Court acknowledges that counsel stated, on direct examination, that there would have been "no strategic reason" not to object to Ms. Cougar's testimony that Applicant stole her car. (PCR Tr. p. 19). Such a retrospective admission, however, is not dispositive of ineffective assistance. See Edwards at 458, 710 S.E.2d at 65 (Disregarding counsel's hindsight-based

testimony that he would now reconsider action taken at trial). Counsel's decisions must be evaluated "at the time they were made," and without "the distorting effects of hindsight."⁷ Id.

This Court finds that counsel articulated, albeit tepidly, sufficiently valid reasons to preclude a deficiency finding. By allowing the prior bad act testimony to come in, counsel acknowledged he was able to elicit testimony from Ms. Cougar to the effect that Applicant had roughly ten thousand (10,000) dollars in cash prior to robbing the victim in this case. (PCR Tr. p. 30-31). He further agreed that getting this testimony had been a positive for Applicant's case. Id.⁸ This Court finds such a strategy was reasonable. First, it presented serious questions about the State's characterization of Applicant's motive to rob and murder the victim. Additionally, it brought to the jury's attention Ms. Cougar's bias against Applicant, potentially raising doubts as to her credibility. This Court therefore finds no deficiency in regard to this allegation.

Applicant has also failed to meet his burden to show any resulting prejudice from counsel's supposed deficiency. Applicant has presented no evidence that but for this purported deficiency, the outcome of the trial would have been different. Moreover, this Court finds persuasive counsel's admission that getting the testimony in concerning the cash in the car constituted a "positive" for Applicant's case. (PCR Tr. p. 31). Accordingly, this allegation is denied and dismissed.

Failure to Object to Alleged Golden Rule Violation

Applicant also alleges that counsel was ineffective in failing to object to a purported "Golden Rule" violation. This Court finds that the solicitor's closing argument did not warrant an objection. "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744

⁷ Indeed, counsel admits on cross-examination that his current belief that he should have objected and moved to strike Ms. Cougar's testimony is a result of hindsight. (PCR Tr. p. 30).

⁸ Despite counsel's testimony to the contrary, it does not appear that he referenced this in his closing argument.

(2004). “The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom.” Id. at 609–10, 602 S.E.2d at 744. “‘While the solicitor should prosecute vigorously, his duty is not to convict a defendant but to see justice done.’” State v. Northcutt, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007) (quoting State v. Linder, 276 S.C. 304, 312, 278 S.E.2d 335, 339 (1981)). “ ‘The solicitor's closing argument must, of course, be based on this principle.’ ” Id. “A Golden Rule argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice.” State v. Reese, 370 S.C. 31, 38, 633 S.E.2d 898, 901 (2006). “Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument.” Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). “The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Id.; see State v. Hornsby, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997) (“A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice.”).

The alleged impermissible argument at issue was nothing more than a rebuttal comment on counsel's defense theory that the State's inability to determine the victim's time of death constituted a glaring weakness in the State's case.

[Counsel] wants to make a big argument about the time of death and rigamortus [sic], I don't know, he started talking about they brought the coroner, if the coroner explains it better than Dr. Sexton, I don't know, Dr. Sexton said you could die standing up in combat. I assume that is from trauma and stress of being in that situation. I don't know how long it lasted. But I will tell you this, if you are standing your own house and somebody comes in with a gun and says, I am taking your money and you know it is

somebody that you know, you know it is somebody you know what do you think she would feel like. Don't you think every muscle in her body got rigid like this before she got killed, that she was exhausted in those few minutes it took from the time they came in and the time that bullet was through her brain, you be the judge of that.

(Trial Tr. p.520, lines 8-19). While counsel did not make an objection to these statements, such an abstention did not constitute ineffective assistance in this case. The comment did not have the effect of arousing the jury's fears and prejudices. It was not accusatory and noticeably did not even mention Applicant by name. The syntax at issue was presented in the general sense. The comments addressed the possibility in variance of the victim's time of death in this case. Furthermore, the comment was in rebuttal to counsel's cross-examination questions of Dr. Sexton. Counsel posed questions intended to elicit testimony that the victim was an average person where there was an absence of factors that would have accelerated the rigor mortis. (Trial Tr. pp.134-44). The comment was a permissible inference from the record where counsel had opened the door to the matter. See State v. Locklair, 341 S.C. 352, 535 S.E.2d 420 (2000). For instance, counsel posed such questions as "Now, another thing that might speed up rigamortus [sic] you say is like a combat situation?" and "[a]ssuming there was no seizure, assuming normal around 70 degrees, room temperature, when in your opinion would rigamortus [sic] begin?" (Trial Tr. p.134, lines 15-16; p.136, lines 11-13).

Brown v. State, 383 S.C. 506, 680 S.E.2d 909 (2009), is instructive to the present case. The Brown Court identified a clear golden rule violation but reversed the PCR Judge in finding counsel's failure to object constituted harmless error. The Brown Court held, "trial counsel was deficient in failing to object to the challenged portion of the solicitor's closing argument because it constituted a Golden Rule argument which impermissibly appealed to the passion of the jurors

by asking them to speak up for the child victim.” Id. (internal quotations omitted). The Brown solicitor made the following improper argument:

I embrace my burden because I represent the State of South Carolina. And I think someone said at the beginning of this trial this is trying to protect the rights of people. Well, I tell you what. I'm here to protect the innocent. I'm here to protect [child victim] a four-year-old child now. Three-year-old little child at that time. And I am the last person that you're going to hear speak up for her.

So, I ask you, when you go back in that jury room, you speak up for [child victim]. We can never put her back to where she was before this abuse occurred. But we can make sure that the perpetrator is punished. So when you go back in that jury room to deliberate, ladies and gentlemen, speak up for [child victim].

Id., at 511-12, 680 S.E.2d at 912. The Brown Court found that the Petitioner did not satisfy his requisite burden of proving that there was a reasonable probability that but for counsel's deficient performance the result of his trial would have been different. It held that the limited duration and improper use of personal pronouns was limited. Id.

Even incorrectly presuming the extracted portion of the solicitor's argument here constituted an impermissible “Golden Rule” argument, it was significantly less concerning than closing argument at issue in Brown. Accordingly, Petitioner failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. Similarly, Petitioner also failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance. Therefore, this allegation is denied and dismissed.

Failure to Introduce Rodney Hursey's Proffered Testimony to Impeach Ms. Cougar

Applicant also alleges counsel was ineffective in failing to argue Rodney Hursey's proffered testimony should have been admitted for impeachment purposes. This allegation is similarly without merit.

First, Applicant has failed to provide any basis for which the statement was admissible for impeachment purposes. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility may, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness concerning the witness' character for truthfulness or untruthfulness. Rule 608(b)(1), SCRE (2015). In addition, "[b]ias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." Rule 608(c), SCRE. Applicant has failed to show Ms. Cougar's statement indicates character for truthfulness or untruthfulness; nor has he presented any evidence of bias. Accordingly, because the proffered testimony was not proper impeachment evidence, this Court finds counsel was not ineffective in failing to make that argument.

Applicant has also failed to meet his burden to show prejudice. This Court would first point out that Ms. Cougar's testimony – that one day the victim would "get what's coming to her" – was most probative with respect to the murder charge, which was ruled a mistrial. In any event, the proffered testimony by Mr. Hursey does not appear to be of the weight or nature that it would have cast any more doubt on Ms. Cougar's credibility than counsel's effective cross-examination of her. In fact, as discussed previously, the jury was already aware that she was angry with Applicant for stealing her car. (Trial Tr. p. 189). Accordingly, Applicant has failed to prove counsel ineffective in failing to argue Mr. Hursey's proffered testimony should have been introduced for impeachment purposes. This allegation is therefore denied and dismissed.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present

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any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

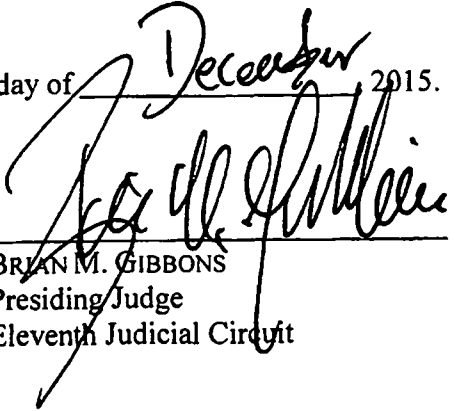
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

FILED

2016 JAN 11 A 11:14

BETH A. CANNIGG
CLERK OF COURT
LEXINGTON, SC

AND IT IS SO ORDERED this 2 day of December 2015.


BRIAN M. GIBBONS
Presiding Judge
Eleventh Judicial Circuit


_____, South Carolina

FILED
 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) A ELEVENTH JUDICIAL CIRCUIT
 2016 JAN 11)

Johnnie Frazier,
 SCDC # 265586

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

2011-CP-32-02879

Applicant,

vs.

MOTION TO ALTER/AMEND

The State of South Carolina,

Respondent.

FILED
 2016 JAN 11 A 11:22
 BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

Counsel for the Applicant has received the order of the Court dismissing the Applicant's claims for Post-Conviction Relief. Pursuant to South Carolina Rule of Civil Procedure Rule 59(e) the Applicant hereby request this Court consider to Alter or Amend the current Judgement based upon the following arguments:

Failure to Request an Alibi Charge in Jury Instructions

(1) Deficient Representation

South Carolina courts have consistently held that "counsel's failure to request an alibi charge is deficient representation where there is evidence presented the defendant was in another place at the time the crime was committed." Roseboro v. State, 317 S.C. 292 (1995), Ford v. State, 314 S.C. 245, 248 (1994), 308 S.C. 361, 363 (1992). It is clear that an alibi charge was not included in the jury instructions at the conclusion of the trial. See, Transcript pages 524-545. The transcript does not include a discussion of requested jury charges that were denied. See, transcript generally. No additions or exceptions to the instructions were requested by defense counsel after the jury was charged. See, Transcript page 545.

During the evidentiary hearing Applicant Johnnie Frazier testified that he believed he

presented an alibi defense. Similarly, Attorney Wayne Floyd agreed that he presented several defense witnesses that testified solely regarding the Applicant's alibi and he argued alibi as a substantial part of the defense to the jury. Floyd also recalled that he drafted a timeline for the jury during his closing argument to clarify and explain the alibi defense. Floyd testified that he should have requested an alibi charge to be included in the jury charges and he had no strategic basis for not requesting it. Floyd testified that he did not recall an "off the record" charge conference with the Judge whereupon he specifically requested the alibi charge and the Judge denied his request. The Respondent did not present any contrary evidence from the Solicitor or any other witness regarding whether or not Floyd made the request. Accordingly, this Court should find that there exists credible evidence that Floyd failed to request the charge. Failure to request an alibi charge "is deficient representation where there is evidence presented that the defendant was in another place at the time the crime was committed." Roseboro v. State, 317 S.C. 292 (1995).

(2) Prejudice

In order to establish prejudice the Applicant must show that the alibi charge was appropriate and should have been charged and presented to the jury for consideration in this case. An alibi charge "is not required when an accused person merely denies committing the criminal act, alibi means elsewhere, and the charge should be given when the accused submits that he could not have performed the criminal acts because he was in another place at the time of its commission." State v. Robbins, 275 S.C. 373, 271 S.E.2d 319, 320 (S.C.1980). Moreover, "since an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." Id.

A review of the transcript shows that trial counsel called fifteen witnesses during presentation of his defense, nine of which were related to establishing the timeline and/or alibi defense (Chasity Davis, Tina Davis, Robert Hursey, Francis Cooper, Mark Mayers, Tommy Jaco, Elbert Bolton, Terry Bolton, Dorothy Drawdy). The most substantial portion of the alibi defense came from witnesses Elbert Bolton, Terry Bolton, and Dorothy Drawdy.

The State presented evidence that the time of death may have been around 8:00 a.m. but it could not be established with certainty. See, Transcript page 132. Accordingly, the State was only able to establish that the death occurred sometime between when the victim was last seen at 6:00 a.m. and when her body was discovered at 2:30 p.m. or 3:00 p.m. See, transcript generally. Dorothy Drawdy testified that she saw the Applicant at her house on Highway 6¹ in Swansea around 6:45 a.m. and he left with her husband, James², in James' truck at 7:00 a.m. See, Transcript page 479-480. Terry Boltin testified that he saw Frazier walking down Sharon Church Road³ and picked him up sometime between 8:30 and 10:00 a.m. that morning and stayed with him until between 1:00 and 3:00 that afternoon. See, Transcript page 462-463. Elbert Boltin testified that Frazier came to his house with Terry Boltin around 10:00 a.m. that morning and stayed until 2:00 or 3:00 in the afternoon. See, Transcript page 452-453.

It is indisputable that testimony presented covers a substantial portion of the window of time in which the State claimed the murder/home invasion occurred. The only portion of the timeline where there was no direct testimony as to the Applicant's whereabouts was the period between 7:00 a.m. and 8:30 a.m. when the Applicant was alone with James Drawdy, now deceased. The testimony also reflected that the Applicant was alone on foot 10 miles away from

¹ Dorothy Drawdy lived approximately 14 or 15 miles from the incident location. See, transcript page 167.

² James was not called as a witness because he died prior to trial. See, Transcript page 479.

³ Sharon Church Road near Avon Court is approximately 10 miles away from the incident location. See, transcript page 167.

the incident location during a portion of this time. See, transcript page 167.

It is clear that the jury specifically considered the Applicant's alibi evidence during their deliberations. The jurors submitted a note to the Judge requesting to have the defense attorney's timeline in the jury room. See, Transcript page 545. They also requested to re-hear the testimony of alibi witnesses Elbert Boltin and Terry Boltin. See, Transcript page 557.

The State argues the evidence submitted by the Defense was insufficient to justify an alibi charge because every minute of the 8 ½ hour window during in which this incident happened was not accounted for with evidence from the defense. The State asserts that even if Attorney Floyd had requested this charge the request would have been denied by Judge Johnson. Such argument is speculative as it appears the request was never made. Nonetheless, the State is wrong. The State takes the position that a complete alibi is required, and an "alibi defense must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime." Walker v. State, 397 S.C. 226, 237 (Ct. App. 2013), citing Glover v. State, 318 S.C. 496, 498 (1995). However, Walker and Glover are factually distinguishable from the case at bar. Walker and Glover, both PCR cases, involved claims that the attorney was deficient by not investigating and presenting witnesses at trial to testify regarding an alibi defense. In Walker, the witness could not even testify as to the specific day she was with the defendant, and in Glover, the witness only provided testimony as to the defendant's whereabouts 11 hours prior to the incident occurring.

The alibi evidence presented in Frazier's case was reasonably sufficient to have justified an alibi charge. First of all, the State was not able to provide the defense with anything more specific than an 8 ½ hour window during which time the incident could have occurred at any time. The Applicant offered a firm and true alibi for the majority of that window. If the jury had

made the factual determination that the murder/home invasion occurred before 7:00 a.m. or after 8:30 a.m., then the jury could have also fairly determined that the Applicant had a complete alibi when the crime was committed.

Secondly, given the substantial testimony offered to account for the Applicant's whereabouts during the State's 8 ½ hour window, the jury was entitled to be instructed that the Defendant did not have the burden to prove alibi, but rather the State had the burden to disprove the alibi. What sense does it make that a jury would only be advised of this important legal principle if the Applicant presents evidence of his whereabouts during the entire 8 ½ hour period, but the jury is not instructed about the proper burden for each side when the defendant presents evidence of his whereabouts during only 7 hours?

It is also important to note that the Solicitor acknowledged and attacked the alibi defense during trial. In closing argument he said: "Mr. Floyd wants to tell you that Terry Boltin alibies Mr. Frazier....". See, Transcript, page 523. He then proceeded to attack the credibility of the alibi witnesses by saying: "I submit it is more believable that they know whether that is Johnnie Frazier's book bag than it is that they picked him up at 8:00 in the morning or 9:00 in the morning or 10:00 in the morning." Id. The Solicitor is entitled to challenge the credibility of defense witnesses. However, in making this argument the Solicitor is telling the jury that the witnesses are not credible and the Defendant has not met his burden at proving alibi. This is precisely why the Defendant is and should be entitled to the alibi instruction when actual alibi evidence is presented. "An alibi charge places no burden on the defendant, but emphasizes that it is the State's burden to prove the defendant was present at and participated in the crime." Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1994). Further, "[a]n alibi charge is

considered especially crucial when the evidence is entirely circumstantial⁴ and when the Solicitor disparages the alibi defense. *Id.*

Failure to Introduce Exculpatory Evidence related to Forensic Evidence Obtained from Cigarette Butts in Car

The State has argued that the cigarette butt evidence was not exculpatory and too insignificant to call into question the Applicant's conviction. During trial the State's case alleged that Frazier stole the victim's car and disposed of it near his father's house in a wooded area. *See*, Transcript pages 154-159. A State's witness testified that *after* the car was found in this location the primary suspect became Johnnie Frazier. *Id.* at page 159 (emphasis added). Therefore, the Applicant became a suspect based on the specific location of the car which they believed was incriminating. The State is now taking a contradictory position by arguing that the location of the cigarettes (near the car) were insignificant because they were found in an area frequently traversed by the general public. This reasoning is inconsistent with the evidence offered at trial.

The State completely misses the fact that trial counsel attempted to argue the significance of the cigarette butts during his closing argument but was prevented from making this argument because the butts were not offered into evidence. *See*, Transcript, page 505 and 509. When asked at the evidentiary hearing, trial counsel testified that he was attempting to explain to the jury that cigarette butts were found near the victim's car when it was discovered abandoned and burned and one of the cigarettes had DNA present that did not match Frazier. Trial counsel

⁴ No direct witness or direct forensic evidence was offered by the State to incriminate the Applicant at trial. The State's theory was that Frazier committed this act alone. In proving their case they relied on evidence of the Applicant's behavior around the time of the incident, the Applicant's alleged motive for committing the crime, the fact that the victim's car was found near the Appellant's father's house and evidence of a drop of the victim's blood found on a backpack allegedly belonging to the Defendant. While the State may argue that the drop of the victim's blood on the backpack constitutes direct evidence, the bag was not found at the scene or in the presence of the Defendant. Additionally, no testimony was presented as to exactly how or when the blood got onto the bag. Further, the defendant was not convicted of the murder. Therefore, this blood evidence would be circumstantial evidence of the Defendant's alleged involvement in any home invasion.

testified that he mistakenly thought that the State had introduced this evidence at trial and he admittedly overlooked the fact that the State did not offer the evidence. Trial counsel testified that he believed this evidence was important to Frazier's defense, and had he realized at the time that the State had failed to present this evidence he would have presented this evidence himself. Trial counsel testified that he fully intended for the jury to be aware of this evidence. Trial counsel's testimony is supported by the transcript which shows that he was of the mistaken belief that the evidence had been presented to the jury. See, Transcript pages 505 and 509. Trial counsel testified that he did not have a strategic reason for not introducing the evidence in his defense. Counsel was admittedly deficient in his representation of Frazier by not introducing this evidence in trial.

The State used the location where the car was found as incriminating evidence against Frazier but neglected to introduce evidence of DNA found at that same location which did not belong to Frazier. At this point, it became the responsibility of trial counsel to pay attention and ensure that the exculpatory DNA evidence was brought to the jury's attention. Trial counsel mistakenly overlooked the fact that the evidence wasn't brought forth by the State and failed to introduce it himself. The evidence of the unknown DNA on the cigarette butt could have been used by Defense counsel to show that another individual may have disposed of the vehicle, to counter the State's allegation that the car's location itself was incriminating, or simply in arguing that law enforcement improperly focused on Frazier as a suspect in this matter. Regardless of which argument trial counsel would have made, it is clear that he intended to argue these facts and was prevented from doing so due to his own negligence in not realizing that the evidence had not been offered.

Failure to Object to "Golden Rule" Violation in State's Closing Argument

During closing arguments, the Solicitor stated as follows:

"If you are standing in your own house and somebody comes in with a gun and says, I am taking your money and you know it is somebody that you know, you know it is somebody you know what do you think she would feel like. Don't you think every muscle in her body got rigid like this before she got killed, that she was exhausted in those few minutes it took from the time they came in and the time that bullet was through her brain, you be the judge of that."

See, Transcript page 520. Defense counsel failed to object contemporaneously or after the completion of the State's closing argument. During the evidentiary hearing for this post-conviction relief matter trial counsel stated that he did not have a strategic reason for not objecting to this statement.

The State correctly cites the law related to this issue. However, it should be noted that the intent of this argument in the Applicant's case was specifically to have the jurors imagine and relate to fear from the victim's standpoint at the exact time of the murder. The Solicitor attempted to make this statement to explain why the time of death could not be more exact, citing to the testimony offered by the pathologist that trauma or stress of combat situations can cause rigamortus to set in sooner than it would in a normal death. In making this argument, the Solicitor asked the jurors to imagine, from the victim's point of view, the type of fear involved with having a home invader point a gun at them and rob them. The Solicitor used this strategy to argue that this victim found herself in a highly stressful situation (similar to combat) which could have affected when rigamortis set in.

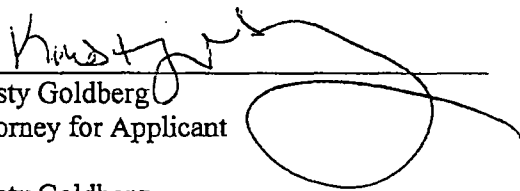
The prejudicial statement made by the Solicitor was not only made to arouse the passions of the jury and have them relate to the victim during the incident, but was also made in an attempt to explain the State's evidence and lack of an exact time of death. The State's argument

that the time of death could not be certain allowed them to create an eight hour window during which they argued the incident took place. The larger the State could make their window, the more challenging it made the Defense's job in proving alibi. The argument, therefore, was also indirectly intended to combat the Defendant's alibi defense.

The statement made by the Solicitor was extremely prejudicial. Further, it was used to attack the defense asserted by trial counsel. For these reasons, it is very reasonable to believe that this statement affected the outcome of the jury's decisions.

CONCLUSION

As to the Applicant's other claims not addressed in this Motion, Applicant does not waive any arguments previously made and hereby asserts that all allegations offered in his Post-Conviction Relief application and during the hearing were valid claims for Post-Conviction Relief that were sufficiently addressed in the record. Applicant simply does not have any additional argument to present on those claims and counsel intends to file a Notice of Appeal regarding the Court's decision on those grounds upon the final conclusion of this case after a ruling on this Motion to Alter/Amend Judgment is received.


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Columbia, South Carolina

This 8th day of January, 2016

FILED
 2016 JAN 11 A 11:30
 BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

STATE OF SOUTH CAROLINA **FILED** IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) **EB-2 P 4:20**
 ELEVENTH JUDICIAL CIRCUIT

C.A. #: 2011-CP-32-02879

Johnnie Frazier,
 SCDC # 265586

) J. A. CARRIGG
) CLERK OF COURT
) LEXINGTON SC

Applicant,

vs.

**ORDER DENYING APPLICANT'S
 MOTION TO ALTER OR AMEND**

The State of South Carolina,

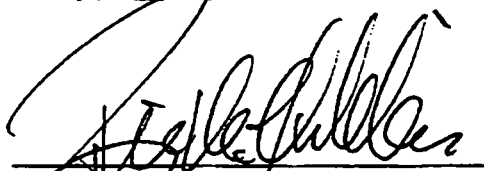
Respondent.

After having thoughtfully considered Applicant's motion referenced above,
 and after reviewing the Court's notes and considering the applicable statutory law,
 case law and evidence presented, I respectfully deny Applicant's motion.

AND IT IS SO ORDERED.

Chester, SC

January 27, 2016


 Brian M. Gibbons
 Circuit Court Judge

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF LEXINGTON) Possession of Firearm or Knife during Commission of
) Violent Crime

§16-23-490

At a Court of General Sessions, convened on MARCH, 2006, the Grand Jurors of Lexington County present upon their oath:

That Johnny Randolph Frazier, Jr. did in Lexington County on or about August 14, 2003, knowingly and willfully possess a firearm, or visibly display what appeared to be a firearm, or visibly display a knife during the commission of a violent crime, to wit: Murder and/or Kidnapping and/or Armed Robbery and/or Burglary 1st, in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY


Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

WITNESSES

LCSD
Pritchard, D.L.

DOCKET NO. 2006-GS-32-667
The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2006

THE STATE

vs.

Johnny Randolph Frazier, Jr.

A-2004-32-00512 2/10/2006 9:43 AM

ARREST WARRANT NUMBER

H498895

TRUE BILL

ACTION OF GRAND JURY

CDR# 0549

Indictment for

Possession of Firearm or Knife during
Commission of Violent Crime

§16-23-490

DONALD V. MYERS, SOLICITOR

VERDICT

Guilty

4-4-08

Date:

Foreperson of Petit Jury

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Armed Robbery

§16-11-330(A)

At a Court of General Sessions, convened on MARCH, 2006, the Grand Jurors of Lexington County present upon their oath:

That Johnny Randolph Frazier, Jr. did in Lexington County on or about August 14, 2003, knowingly and willfully while armed with a deadly weapon, to wit: firearm, did feloniously take from the person or presence of Carol Hursey and/or Butch Hursey, by means of force, threats or intimidation goods or monies being described as follows: 2002 Mazda Millennia, with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended.

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
DEPUTY SOLICITOR

WITNESSES

LCSD
Pritchard, D.L.

DOCKET NO. 2006-GS-32-670
The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2006

THE STATE

vs.

Johnny Randolph Frazier, Jr.

A-2004-32-00512 2/10/2006 9:35 AM

ARREST WARRANT NUMBER

H498893

TRUE BILL

ACTION OF GRAND JURY

Barry A. Lucas

Foreperson of Grand Jury
Date: 13 March 06

VERDICT

Guilty

CDR# 0139

Indictment for

Armed Robbery

§16-11-330(A)

DONALD V. MYERS, SOLICITOR

4-4-08

Date:

Foreperson of Petit Jury

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Burglary in the First Degree

§16-11-311

At a Court of General Sessions, convened on MARCH, 2006, the Grand Jurors of Lexington County present upon their oath:

That Johnny Randolph Frazier, Jr., did in Lexington County on or about August 14, 2003, knowingly and willfully enter a dwelling, to wit: 1509 Busbee Road, Gaston, SC, being the dwelling of butch Hursey, without consent and with the intent to commit a crime therein and was armed with a deadly weapon, in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY
[Signature]
Lex. Co. C.C.C.F., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
DEPUTY SOLICITOR

DOCKET NO. 2006-GS-32-671

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2006

THE STATE

vs.

Johnny Randolph Frazier, Jr.

WITNESSES

LCSD
Pritchard, D.L.

A-2004-32-00512 2/10/2006 9:39 AM

ARREST WARRANT NUMBER

H498894

TRUE BILL

ACTION OF GRAND JURY

Greg A. Lewis

Foreperson of Grand Jury
Date: 13 March 06

VERDICT

Guilty

[Signature]

Foreperson of Petit Jury Date: 4-4-08

CDR# 0079

Indictment for

Burglary in the First Degree

§16-11-311

DONALD V. MYERS, SOLICITOR