

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
Edgar W. Dickson, Circuit Court Judge

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S.C. Supreme Court

RICHARD BUTLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-208628

APPENDIX

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1 STATE OF SOUTH CAROLINA,)
2 COUNTY OF ORANGEBURG.) IN THE COURT OF GENERAL SESSIONS
3 89-GS-38-224

4 THE STATE)

5 VERSUS)

TRANSCRIPT OF RECORD

6 RICHARD BUTLER,)
7 Defendant.)

Orangeburg, South Carolina
August 30, 1989

9 B E F O R E:

10 THE HONORABLE C. ANTHONY HARRIS, PRESIDING JUDGE,
11 AND A JURY

12
13 A P P E A R A N C E S:

14 JAMES B. JACKSON, JR., ESQUIRE
15 ASSISTANT SOLICITOR
16 FIRST JUDICIAL CIRCUIT
ORANGEBURG, SOUTH CAROLINA
ATTORNEY FOR THE STATE

17 REDDICK A. BOWMAN, JR., ESQUIRE
18 PUBLIC DEFENDER
ORANGEBURG, SOUTH CAROLINA
19 ATTORNEY FOR THE DEFENDANT

20
21
22
23
24 Harry A. Walker, Mrs.
Court Reporter First Judicial
25 Circuit
Rowesville, South Carolina

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2	SGT. HENRY KING				
3	Sol. Jackson	11			
4	Mr. Bowman		15		
5	JAMES ADCOCK				
6	Sol. Jackson	16			
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1 SOLICITOR JACKSON: . The next case for trial would be
2 Indictment No. 89-224, The State versus Richard Butler,
3 indictment for murder, your Honor. He is represented by
4 Mr. Bowman. It's my understanding that is for trial.

5 THE COURT: All right, sir. Members of the jury panel,
6 let me have your attention. We're going to try a case this
7 morning entitled the State of South Carolina versus Richard
8 Butler. He's indicted for murder. He's represented by the
9 Public Defender. We will proceed with selection of the jury.

10 He has entered a plea of not guilty to the charge of
11 murder. That will be the task of the jury which is selected
12 to resolve that factual dispute. Any member of the jury
13 panel related by blood or connected by marriage with Trevin
14 Felder or Richard Butler? I say Trevin Felder, the late
15 Trevin Felder. He is the one who was killed. Any member of
16 the jury panel know anything about this case?

17 JUROR: I used to work with Richard Butler.

18 THE COURT: Sir?

19 JUROR: I used to work with him, Richard Butler.

20 THE COURT: Are you a friend of his?

21 JUROR: Yes, sir.

22 THE COURT: All right. Your name is?

23 JUROR: Tommie Johnson.

24 THE COURT: Johnson?

25 JUROR JOHNSON: Yes, sir.

1 THE COURT: All right. Have a seat. Stand him aside
2 if he comes in. Anybody else? Anyone know any reason why
3 you could not serve as a juror and give a fair trial in this
4 matter? Anything else, Solicitor?

5 SOL. JACKSON: Nothing from the State.

6 THE COURT: Public Defender?

7 MR. BOWMAN: May I approach the bench, your Honor?

8 THE COURT: Yes, sir.

9 (WHEREUPON COUNSEL APPROACH THE BENCH.)

10 THE COURT: Any member of the jury panel, I asked you
11 on yesterday, I will repeat it for the benefit of the Public
12 Defender, who was not involved in the case on yesterday.
13 Any member of the jury panel have any connection with law
14 enforcement through your employment or the employment of any
15 member of your immediate family? That means the people that
16 live with you, spouses or grown children, or anything like
17 that?

18 JUROR: I have a son work at the CCI in Columbia.

19 THE COURT: All right. Your name is?

20 JUROR: Roderick Bowman, Jr.

21 THE COURT: All right, sir. Anyone else? All right.

22 Any member of the jury panel have any connection with anybody
23 who works with the Solicitor? Any of your family employed
24 by the Solicitor or kin to the Solicitor or any of his
25 assistants? All right. Anything else?

1 SOL. JACKSON: Nothing from the State, your Honor.

2 MR. BOWMAN: Nothing from the defense, your Honor.

3 THE COURT: All right, as your names are called, come
4 around to the front as we did on yesterday. Stand with your
5 back to this rail up here, and we'll impanel the jury.

6 THE CLERK: Does the State waive the presence of a
7 jury boy and allow the Clerk to draw?

8 SOL. JACKSON: The State waives.

9 CLERK: Defense?

10 MR. BOWMAN: Defense waives.

11 (WHEREUPON A JURY OF TWELVE AND ONE ALTERNATE WAS

12 DRAWN.

13 (SEE PAGES 221 AND 222 OF THIS TRANSCRIPT FOR VOIR

14 DIRE.) *During Voir Dire Mr. Bowman asked that Juror
15 69 be excused for cause. See Lines 15 thru 25, this page.

16 CLERK: Juror No. 69, Henry Rutland. Mr. Rutland,

17 come around, please. What says the State?

18 SOL. JACKSON: Present the juror.

19 CLERK: Defense?

20 MR. BOWMAN: Your Honor, at this time the defense
21 would ask that this man be set aside for cause. He works
22 for the Department of Public Utilities, which is a part of
23 the City of the Orangeburg, and this is a City of Orangeburg
24 police case.

25 THE COURT: I overrule that request.

26 MR. BOWMAN: We take exception to your ruling, Your
Honor.

1 THE COURT: Note the exception.MR. BOWMAN: Excuse the
2 juror THE COURT: All right. Other members of the jury
3 panel, I'll excuse you until two o'clock. You're welcome
4 to stay if you would like to, but you may be excused until
5 two o'clock. All right, you members of this jury panel,
6 I'm going to ask you, those of you clear out the front two
7 rows of this jury area here. I want y'all to return and
8 be seated right here. We're going to start this case as
9 soon as we conclude the one that we're working on. So just
10 have a seat right there.

11 (RECESS)

12 THE COURT: All right, members of the jury in the next
13 case, I'll ask you if you would to take your places in the
14 jury box. Mr. Mitchell, I want you to serve as foreman,
15 please, sir. Carry on, Mr. Clerk.

16 (WHEREUPON THE JURY OF TWELVE AND ONE ALTERNATE IS
17 DULY SWORN.)

18 THE COURT: All right, gentlemen. Mr. Foreman, I want
19 you to always occupy that seat, and the young man as alter-
20 nate you always occupy one of the seats there on the last
21 row. Other members sit wherever you want to. There's no
22 requirement that you come back to those particular seats,
23 stepping on each other's feet as you get back to those same
24 seats. Just sit wherever you happen to pile in. Do not
25 deliberate about a verdict in the case until all the evidence

1 has been presented. Do not talk with anybody about the case
2 during the course of the trial. Do not allow anyone to talk
3 with you.

4 Gentlemen, I'm going to give you extremely limited
5 opening statements. Tell the jury about your case. Don't
6 discuss the law with them. I'm going to tell them what the
7 law is. You tell them about the facts. Solicitor.

8 OPENING STATEMENT BY SOLICITOR JACKSON.

9 SOL. JACKSON: Thank you, your Honor. May it please
10 the Court. Mr. Foreman, ladies and gentlemen of the jury,
11 let me first of all take the opportunity to tell you who I
12 am. My name is Jay Jackson. I'm an attorney here in Orange-
13 burg. I was formerly in private practice. I'm now employed
14 full time as Assistant Solicitor for Solicitor Joe Mizzell
15 of the First Judicial Circuit. As you probably already know,
16 the First Judicial Circuit is three counties, Orangeburg,
17 Dorchester, and Calhoun Counties. And it's the job of the
18 Solicitor's Office to bring into Court all of the criminal
19 cases that arise in those three counties. Of course, we're
20 here in Orangeburg this week bringing before jurors such as
21 yourself certain cases in which there are matters in dispute
22 as to whether or not people have committed criminal offenses,
23 and we're bringing those before you this week.

24 Now, this particular case is the case of The State versus
25 Richard Butler. Mr. Butler is seated over at the counsel

1 table with his attorney, Mr. Bowman, and Mr. Butler is
2 charged with the offense of murder. As I'm sure you know,
3 the burden of proof is on the State of South Carolina to
4 prove that he is guilty of murder beyond a reasonable doubt.
5 That is the burden that rests at this table through me as a
6 representative of the State or of the government in this
7 particular case.

8 I intend to present to you a number of witnesses in this
9 case. Some of those witnesses are actual witnesses to what
10 occurred back on December 22 of 1988. This matter occurred
11 at St. Paul Williams Chapel Apartments, which are housing,
12 apartment housing, here in the City of Orangeburg, in which
13 Mr. Butler and a young man named Trevin Felder, who is now
14 deceased, were present at St. Paul Williams Chapel Apartment,
15 and I think you're going to hear evidence that they had had
16 an argument or a fight of some kind earlier in the day at a
17 different place at the Bi-Lo Shopping Center. But later on
18 they met up again in the common area of St. Paul Williams
19 Chapel Apartments, and you can hear witnesses who were there
20 who saw that and what they observed.

21 They observed Mr. Butler and Mr. Felder talking, having
22 some kind of conversation. I don't believe any of the wit-
23 nesses actually heard the gist of that conversation, but then
24 all of a sudden Mr. Butler made a motion toward Mr. Felder.
25 He had a knife in his hand. Mr. Felder was stabbed by that

10

1 knife. Mr. Felder ran to a friend of his, and that friend
2 is going to be here to tell you what he saw and what
3 happened. Mr. Felder then ran some further distance, not a
4 great deal of distance, where he fell to the ground as a
5 result of his stab wound.

6 You're going to hear from police officers who came in
7 on the scene. They're going to tell you what they saw, what
8 they observed out on the scene. From an EMS driver who was
9 there on the scene and from the pathologist who performed the
10 autopsy on Mr. Trevin Felder. You're going to hear from a
11 number of witnesses who were there at the scene and who will
12 testify as to what they saw.

13 I believe the evidence is going to show you clearly that
14 Richard Butler is guilty of the murder of Trevin Felder. I
15 ask you to listen not to me or to Mr. Bowman or to anything
16 we say, because we're just the lawyers in the case. The facts
17 are going to come from this witness stand. I ask you to
18 listen closely to these witnesses. All these witnesses are
19 going to be relatively young people, who are hanging out, of
20 sorts. Some of these young people have been in trouble
21 before, and you're going to hear about that. They're going
22 to tell you, however, what they saw on that particular day or
23 evening. I ask you to listen closely to their testimony.

24 This is an important day for the State of South Carolina,
25 as well as for Richard Butler. It's Mr. Butler's day in

1 court. It's also the State's day in court in regard to this
2 particular case. I'm going to ask you to listen closely and
3 pay the attention that I know you're going to pay because it
4 is an important case to all concerned in this matter.

5 I'm going to ask you at the end of the case after you
6 hear all the testimony and the Judge's charge on the law, to
7 deliberate in this matter and to return a verdict that does
8 the right thing. If you're convinced that Mr. Butler is not
9 guilty, that the State has failed to meet its burden of
10 proof, then, of course, the right thing would be to return a
11 verdict of not guilty. On the other hand, if you're con-
12 vinced that the State has met its burden of proof, that Mr.
13 Butler is guilty of murder, the murder of Trevin Felder on
14 this particular occasion, the right thing is to return a
15 verdict of guilty.

16 I'm simply going to ask you to listen to all the things
17 that you've heard and return a verdict that does the right
18 thing. Thank you.

19 (OPENING STATEMENT BY MR. BOWMAN, NOT REQUESTED TO BE
20 TRANSCRIBED.)

21 SOL. JACKSON: I call Patrolman Henry King.

22 SGT. HENRY HARRIS KING, FIRST
23 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY SOLICITOR JACKSON:

25 Q Sgt. King, state your name again for the benefit of the

1 jury that may not have heard you.

2 A Henry Harris King.

3 Q And you're obviously a sergeant with the Orangeburg
4 Police Department.

5 A I am.

6 Q How long have you been with the Police Department
7 or the Department of Public Safety?

8 A Five years and eight months.

9 Q And were you with the Department back on December 22 of
10 1988?

11 A Yes, sir.

12 Q And around seven o'clock in the evening did you have
13 the opportunity to go to St. Paul Williams Chapel Apartments?

14 A I did, sir.

15 Q And where are those apartments located?

16 A They are located off of Fletcher Street in Orangeburg,
17 and the access to those apartments can be obtained off of
18 several streets, Enterprise, Salley.

19 Q And they are located within the City of Orangeburg?

20 A Yes, sir.

21 Q And what county?

22 A Orangeburg County.

23 Q And do you remember about what time it was you arrived?

24 A Yes, sir. It was approximately 7:14, 7:15 when I arrived.

25 Q And what did you find when you arrived?

1 A When I arrived, first I found the EMS, Emergency Medi-
2 cal Service, already there, because we were called by them.
3 And after briefly, you know, talking to them, I observed a
4 young black male lying on the ground on his back, face up,
5 in front of Apartment which I later determined and
6 found out to be Mr. Trevin Felder.

7 Q And what did you observe about Trevin Felder at that
8 time?

9 A I observed also that there was a wound in the upper
10 left cavity of his chest, the lower left cavity of his chest,
11 but there was not a large amount of blood.

12 Q I believe you said the EMS person was already there?

13 A Yes, sir, and the reason I talked to them, they stated
14 to me just before I went to the subject, the victim lying
15 on the ground, said that they couldn't get a pulse.

16 Q Now, what did you do then at that point?

17 A At that point I called for the Coroner. I had my -- I
18 called the dispatcher to have her call the Coroner to the
19 scene, and immediately after that I called -- I also told her
20 to call the detective on call, which was Detective James
21 Williams.

22 Q And what did you do after you made those calls?

23 A After that I started preserving the scene. There were
24 a couple of other officers there, and we kept people from,
25 you know, just going in and messing up evidence.

1 Q Did you talk to any witnesses or do any -- take any
2 names?

3 A Yes, sir, I did. While I was -- after we got the
4 situation under control and Detective James Williams was there and
5 there was more help, I started questioning people around
6 about who did this. And during my questioning no one would
7 answer at first, but I did talk ---

8 Q Don't get into what people said. Now, I believe you
9 said Detective Williams arrived ---

10 A Yes, sir.

11 Q --- before you left?

12 A Yes, sir, before I started questioning.

13 Q And was there any change about the scene prior to his
14 arrival?

15 A No, sir.

16 COURT REPORTER: What was the question?

17 Q Was there any change about the scene, anything moved or
18 anything like that prior to Detective Williams arriving?

19 A Any what now, moves, you say?

20 Q Was anything moved?

21 A No, sir, nothing moved at the scene.

22 Q Were you there when the Coroner arrived?

23 A Yes, sir.

24 Q How many people were out there when you arrived?

25 A When I arrived, there was approximately twenty-five or

1 thirty people.

2 Q And this is a fairly large apartment complex?

3 A Yes, sir.

4 SOL. JACKSON: Please answer any questions Mr. Bowman
5 may have.

6 CROSS-EXAMINATION BY MR. BOWMAN:

7 Q Sgt. King, had you answered any calls of any kind in
8 this vicinity a little bit earlier?

9 A No, sir.

10 Q Had you been on patrol with Officer Lisa Boltin?

11 A Yes, sir.

12 Q You had? And you had not responded to a disturbance
13 earlier in that area of town?

14 A No, sir.

15 Q Nothing involving ---

16 A In that a -- no, sir, I didn't.

17 Q Well, did you respond to a disturbance or fight in that
18 area?

19 A No, sir.

20 Q Edisto Village?

21 A No, sir.

22 Q Glover Street area?

23 A No, sir.

24 Q Nowhere? How long were you with Officer Boltin?

25 A How long what?

1 Q How long were you with Officer Boltin that afternoon
2 or that evening?

3 A We started shift the same time, sir.

4 Q Were y'all patrolling together?

5 A Yes, sir.

6 Q In the same vehicle?

7 A Yes, sir.

8 MR. BOWMAN: No further questions.

9 A You say in the same vehicle, no, sir, no, sir. We
10 were riding in separate vehicles.

11 MR. BOWMAN: Thank you.

12 THE COURT: All right, sir. Thank you.

13 SOL. JACKSON: We would next call ---

14 THE COURT: You can step down, sir.

15 SOL. JACKSON:--Thomas Jones. We would call James
16 Adcock.

17 JAMES ADCOCK, BEING FIRST

18 DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY SOL. JACKSON:

20 Q Mr. Adcock, where are you employed, sir?

21 A As the Deputy Coroner, Orangeburg County.

22 Q Is that a full time position or part time?

23 A Part time.

24 Q How long have you been Deputy Coroner for Orangeburg
25 County?

1 A Approximately six years.

2 Q And did you have an opportunity in that position to be
3 called to the St. Paul Williams Chapel Apartments on
4 December 22, 1988?

5 A Yes, sir. I was notified by the City Dispatcher that
6 there had been a stabbing at that location.

7 Q Do you know about what time you arrived?

8 A Probably about between 7:15 and 7:20, something like
9 that.

10 Q What did you find when you arrived there?

11 A Upon my arrival I was met by the EMS, and they directed
12 me to a body inside the apartment area. He was later
13 identified as Trevin Felder.

14 Q And what did you observe at that time about Trevin
15 Felder?

16 A That he had one stab wound to the left side of his
17 chest, and after that we just waited on the detectives to
18 come.

19 Q Did you observe anything else unusual about him?

20 A No, I did not.

21 Q Any marks on his hands or arms or anywhere else?

22 A No.

23 Q Had EMS been working on it?

24 A The EMS was there when I arrived. As far as what they
25 did before I got there, I really don't know.

18

1 Q Did you make any determinations or pronouncements?

2 A Yes, that he had stab wounds, and he was dead.

3 Q You pronounced him dead at the scene?

4 A Yes, sir, at the scene.

5 Q And later did you ask that an autopsy be performed?

6 A Yes, sir. I asked that the body be sent to Dr. Sexton
7 in Newberry.

8 Q And for the purpose of performing an autopsy?

9 A Yes, sir.

10 SOL. JACKSON: Please answer any questions Mr. Bowman
11 may have.

12 MR. BOWMAN: No questions of this witness.

13 THE COURT: Thank you sir.

14 SOL. JACKSON: We would next call Thomas Jones.

15 THOMAS G. JONES, BEING FIRST
16 DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY SOL. JACKSON:

18 Q Mr. Jones, where are you employed?

19 A Orangeburg County Emergency Services.

20 Q What is your position there?

21 A Paramedic.

22 Q How long have you been employed with the Emergency
23 Services?

24 A With Orangeburg County three years.

25 Q Did you have experience prior to that?

1 A Yes, sir, fourteen years in EMS total.

2 Q Now, were you on duty back on December 22 of 1988?

3 A Yes, sir, I was.

4 Q Did you have an opportunity to receive a call to go to
5 the St. Paul Williams Chapel Apartments?

6 A Yes, sir.

7 Q And do you know what time you received that call?

8 A According to my Vehic-Run Report we received
9 the call at 1911, which is 7:11 p.m.

10 Q What time did you arrive?

11 A We arrived at the scene at 1915, which would be 7:15 p.m.

12 Q And what did you find when you arrived?

13 A We found an approximately seventeen year old black male
14 laying supine on the ground. He was apneac, which meant
15 he wasn't breathing, and his pulse was ---

16 Q When you say he was lying supine on the ground, what
17 does that mean?

18 A He was flat on his back.

19 Q Flat on his back?

20 A Yes, sir.

21 Q You said he was not breathing?

22 A No, sir.

23 Q What about his pulse?

24 A He had no pulse.

25 Q Did you do anything at that time?

1 A Well, you know, I checked for vital signs, his pulse,
2 respiration. I checked his pupils, and all of it was
3 negative.

4 Q Did you as a result of that make any determination?

5 A Well, I put him on a light pack five monitor, which
6 is a heart monitor, to determine the rhythm, and it showed
7 the systole which was a flat line.

8 COURT REPORTER: Showed what?

9 A Systole.

10 Q Does that mean that his heart was working or not?

11 A No activity at all.

12 Q No heart activity at all? And what did you do then?

13 A Called the Coroner.

14 COURT REPORTER: Called who?

15 A The Coroner.

16 Q Was he alive or dead at that time?

17 A He isn't pronounced dead until the Coroner pronounces
18 him dead, but technically he was mortally wounded from the
19 wound.

20 Q What wounds did you notice on him?

21 A I noticed approximately a two and a half to three
22 centimeter laceration about there on the lower left chest.

23 Q And were you able to make any determinations about what
24 caused that or anything of that nature?

25 A It appeared to be a large knife wound.

1 Q And did you observe any other wounds on him?

2 A No, sir.

3 Q Did you observe any other marks or bruises or anything
4 like that?

5 A No, sir.

6 SOL. JACKSON: Thank you, sir. Please answer any
7 questions Mr. Bowman may have.

8 CROSS-EXAMINATION BY MR. BOWMAN:

9 Q Mr. Thomas, did it appear to you that there would --
10 that this man's condition was brought about by a single stab
11 wound?

12 A It appeared to me to be so.

13 MR. BOWMAN: Thank you.

14 THE COURT: Thank you. You can step down. Madame
15 Foreman, excuse me, Mr. Foreman, I want y'all to go to your
16 jury room for a few minutes. I need to talk with some other
17 people.

18 (RECESS)

19 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
20 JURY.)

21 THE COURT: All right, Mr. Foreman and members of the
22 jury panel, we had a jury which had been deliberating on
23 another case, which wanted to come out and announce its
24 verdict, so that was the reason for asking you to leave for
25 a short while. Now we're back, and the Solicitor is ready.

1 SOL. JACKSON: We call Detective James Williams to the
2 stand.

3 DETECTIVE JAMES ALLEN WILLIAMS,
4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION BY SOL. JACKSON:

6 Q Detective Williams, state your name again, please, for
7 the benefit of the jury.

8 A James Allen Williams.

9 Q And where are you employed?

10 A Orangeburg Department of Public Safety.

11 Q And how long have you been employed there?

12 A Approximately five and a half years.

13 Q I believe you're a detective there now. Is that correct?

14 A Yes, sir.

15 Q How long have you been a detective?

16 A Almost two years and several months.

17 Q And were you a detective, in fact the detective on call,
18 back on December 22 of 1988?

19 A Yes, sir, I was.

20 Q And did you receive a call to go to St. Paul Williams
21 Chapel Apartments?

22 A Yes, sir.

23 Q Do you know about what time you arrived that evening?

24 A I arrived at approximately 7:35, somewhere in that
25 neighborhood, 7:40, somewhere, give or take ten or fifteen
minutes.

1 Q And back in December would it have been dark when you
2 arrived?

3 A Yes, sir.

4 Q And would it have been dark for some time prior to your
5 arrival?

6 A Yes, sir.

7 Q And what all did you do when you arrived there?

8 A Okay. I went by the Fire Station No. 1 after I received
9 the call and got some equipment, the necessary equipment that
10 I needed for the scene. When I arrived at the scene, it was
11 a whole bunch of people around in the first section off of
12 Fletcher Street in the St. Paul Apartment area. When I
13 arrived at the scene, I met with Officer King and Lt. Norman
14 Ruple; and Officer King explained to me what he had and what
15 had happened, and at the time EMS was there. The Coroner
16 was already there.

17 After receiving instructions to what had happened at
18 the scene, I immediately was assisted by Major Carter, who
19 arrived at the scene, and we started asking, questioning
20 different people in the immediate area. I then got the
21 camera and measuring tape and measuring device.

22 After talking with EMS and the Coroner, they instructed
23 me what they had did and what had happened. I immediately
24 secured the scene, which was already secured at the time;
25 but, you know, I secured the scene further and gave the

1 officers further instructions to go out and talk with the
2 people who might have saw something pertaining to the
3 incident. And at that time I started taking photographs of
4 the scene and processing the whole crime scene by measure-
5 ments and looking around for any type evidence or physical
6 evidence.

7 Q Let me ask you this. Did you observe a body there at
8 the scene?

9 A Yes, I did.

10 Q Did you determine who that was?

11 A Yes, I did. I spoke with one of the officers who spoke
12 with someone to identify the victim, who was laying on the
13 ground at the time.

14 Q Was it Trevin Felder?

15 A Yes, it was.

16 Q And was the body still there when you arrived?

17 A Yes, sir.

18 Q And when you took these measurements and all, the body
19 had not yet been moved, is that correct?

20 A The body, no, the the body was -- it was my understanding
21 that the ambulance attendants tried to revive the victim
22 before I had got there. They didn't shove the body,
23 move him out of, you know, place or anything.

24 Q And at my request did you make this diagram to show
25 your measurements and things you took?

1 A Yes, I did a little sketch not drawn to scale to
2 reconstruct the scene that I investigated that night.

3 MR. BOWMAN: Your Honor, I would object to the use of
4 that. It even has ,stated, on the face of it it's not drawn to
5 scale. It looks like it's very cumulative to the testimony
6 he's given.

7 THE COURT: I overrule it on that ground; if that's your ground.

8 Q Detective Williams, could you come down here and just
9 show the jury. What does that drawing depict?

10 A Okay. This is one section of -- this is one section of
11 St. Paul Apartments, which is what we call the upper section
12 off of Fletcher Street. This whole area right here is a
13 parking lot area. This is an apartment complex, which is
14 single lower dwellings, a string of apartments that went
15 along the area. Apartment No. was right here, and the
16 window of Apartment No. was right here. The next door
17 apartment, which was was right next door.

18 This area right here, where you see Section D, was
19 sidewalk area in front of the apartment. This area right
20 here was sort of like a dirt with patches of grass that was
21 located in front of the apartment. Section C was a little
22 grass island that runs in the middle of the parking lot area
23 of the section of the apartments, and next door was another
24 apartment over in that area.

25 When I arrived, there was a whole bunch of people in

26

1 that area standing around. The victim's body was laying in
2 front of Apartment No. I met with the officers in
3 that area, and I immediately then started doing my investi-
4 gation and processing the crime scene, as I testified to
5 doing so.

6 Q What measurements did you take, and what were the
7 results of that?

8 A Okay, I -- what I did was a 'triangularization' type of
9 measurement, which is used, one of the forms used in the
10 investigation. I try to reconstruct the scene again and
11 place the body approximately back into place. I measured
12 from the front door to the head of the body.

13 MR. BOWMAN: Your Honor, I object. I don't see how this
14 is relevant to anything. The detective has testified, other
15 witnesses testified, they found a dead body. What difference
16 does it matter what apartment it was in front of or where
17 the distances are?

18 THE COURT: Well, it might at some time, Public Defender.

19 SOL. JACKSON: Your Honor, I'm just trying to give the
20 jury an idea of what this area looks like we're talking about.

21 THE COURT: Go ahead.

22 Q Just briefly, Detective Williams, what measurements did
23 you take, and what were they?

24 A Okay. I measured from the front door of the apartment
25 on to the head of the victim also from the sidewalk to

1 the head of the victim.

2 Q What were the measurements there?

3 A Okay, the measurements was approximately eleven feet
4 from the front door of Apartment No. and approximately
5 three feet, nine inches, from the sidewalk area. This long
6 measurement here was from the statements of the witnesses
7 and the people who were around the area where the alterca-
8 tion took place as far as the stabbing was in this area
9 right in here, right in here.

10 Q What was the distance from that to where the body was
11 found?

12 A Approximately sixty-eight feet, four inches, where the
13 victim ran away from the altercation scene and fell into the
14 front yard ---

15 MR. BOWMAN: Objection, your Honor.

16 THE COURT: I sustain the objection.

17 Q You can have a seat, please. Other than taking state-
18 ments from witnesses, did you have any other involvement with
19 this case?

20 A No. We talked with a few people several days later in
21 the community.

22 Q And you took statements?

23 A We took statements.

24 SOL. JACKSON: Please answer any questions Mr. Bowman
25 may have. One other thing. Did you go with the body to the

1 autopsy?

2 A Yes, I did.

3 Q And that was in Newberry?

4 A Yes, it is.

5 Q Okay, and the body that the autopsy was performed on
6 was the same one that was at the scene?

7 A Correct.

8 Q That was Trevin Felder?

9 A Yes, sir.

10 SOL. JACKSON: Please answer any questions Mr. Bowman
11 has.

12 CROSS-EXAMINATION BY MR. BOWMAN:

13 Q Detective Williams, you in answer to a question,
14 motioned down in this area right here on this chart. I
15 reserve my objection to this chart, your Honor. This C,
16 how big is C? What is that?

17 A It's a grass island that is in the middle of the parking
18 lot area.

19 Q Well, how big is it?

20 A I didn't measure C.

21 Q You don't know how big it is, do you?

22 A No, sir.

23 Q And you weren't there whenever Trevin Felder met his
24 death, were you?

25 A No, sir, I arrived after.

1 Q And you weren't there before he met his death, were you?

2 A No, sir.

3 Q You didn't see Trevin Felder run anywhere, did you?

4 A Indications from the witnesses that were at the scene
5 indicated ---

6 THE COURT: No, sir. He asked you if you saw it.

7 A No, sir.

8 THE COURT: Okay.

9 Q And this, is this Area C, the grassy area, you don't
10 know where in that area he was, do you?

11 A No, sir. That's why I just put a proximity of the
12 location.

13 Q And you don't know how big this location is?

14 A No, sir.

15 Q And this little part of a circle here doesn't indicate
16 anything as far as what's in real life out there at St. Paul
17 Apartments, does it?

18 A Well, the -- the sketch is really not drawn to scale as
19 far as what was actually measured :: all the way out there.

20 Q And when you say not really, it's not drawn to scale
21 at all, is it?

22 A No, sir.

23 Q As part of your investigation did you find out where
24 Trevin Felder lived?

25 A Yes, I did.

1 Q Where did he live?

2 A Over on Henley Street.

3 Q He don't live anywhere near Apartment does he?

4 A No.

5 Q He don't live anywhere near Apartment does he?

6 A No.

7 Q He doesn't even live in that apartment complex, does
8 he?

9 A No.

10 Q Did you look at the body?

11 A Yes, I did.

12 Q And did you remember what he had on?

13 A Not exactly to the exact colors. I know he had on sort
14 of like a faded jean type pants, which was -- I don't know,
15 the acqua blue or green, whatever, white, and he had a
16 baseball pants underneath those clothing and sort of like a
17 white color type T-shirt.

18 Q And in response to a question from the Assistant Soli-
19 citor you said that you had transferred the body or gone with
20 the body to the pathologist, Dr. Sexton?

21 A Yes, I did.

22 Q And did you not receive from Dr. Sexton some articles of
23 personal property of the deceased?

24 A Yes, I did.

25 Q Did you receive a dark blue hat?

1 A Yes, sir.

2 Q And whose hat was that?

3 A We were undetermined whose hat that was because it was
4 lying near the body, but we picked it up anyway.

5 Q You mean you took a hat to Dr. Sexton, the owner of
6 whom you didn't know?

7 A Well, any physical evidence that was laying on the
8 ground like that, usually an investigator would pick it up.

9 Q But you don't know whose that hat was that you got back,
10 that you picked up near the body, took to Dr. Sexton, and got
11 back from Dr. Sexton?

12 A No, sir.

13 Q How about a pair of bleached acqua pants, blue pants?

14 A Yes, sir.

15 Q And those were returned to you by Dr. Sexton as a part
16 of your continuing investigation into this case?

17 A Yes, sir.

18 Q Did you have any part in communicating with anybody in
19 the St. Paul-Williams Chapel Apartments about the whereabouts
20 of Richard Butler?

21 A I spoke with a few of the people. They wouldn't indi-
22 cate anything about the whereabouts. Captain Wolfe and a few
23 other officers went down there, and we tried to locate the
24 whereabouts of Richard Butler.

25 Q Did you talk to anybody in his family about where he was?

1 A I didn't get to talk with anybody in his family, But
2 Captain Wolfe did.

3 Q Is it a part of your investigation to know how he came
4 to be in custody?

5 A Yes, sir.

6 Q How did he get to be in custody?

7 A Captain Wolfe finished the investigation on that while
8 I was in Newberry. I can't testify to that.

9 Q Okay, so you don't guess, or you don't know?

10 A I know, but, you know. Captain Wolfe would testify to
11 that, because while I was in Newberry along with the patho-
12 logist, Captain Wolfe finished the investigation or assisted
13 me on the investigation.

14 MR. BOWMAN: Just one minute, please. Thank you, your
15 Honor.

16 THE COURT: All right.

17 MR. BOWMAN: No further questions.

18 THE COURT: Thank you, sir.

19 SOL. JACKSON: Your Honor, just one other thing. I
20 would move to introduce this drawing into evidence at this
21 time, your Honor.

22 THE COURT: All right.

23 MR. BOWMAN: I would object again, your Honor, based on
24 the fact that my previous, my previous basis, the fact
25 that it was prepared outside of the Courtroom. It's not

1 indicative of this man's testimony as he can produce from
2 his memory.

3 THE COURT: Those are not valid objections. He can use
4 it to illustrate, and after your examination, he said it
5 wasn't to scale, but it does show certain landmarks and some
6 measurements. I overrule the objection.

7 (STATE'S EXHIBIT NO. 1 MARKED AND FILED.)

8 SOL. JACKSON: Your Honor, can he stay in here at
9 this time?

10 THE COURT: Oh, yes.

11 SOL. JACKSON: WALTER LEE RILEY.

12 WALTER LEE RILEY, BEING FIRST
13 DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY SOL. JACKSON:

15 Q I want you to sit up, Walter, and talk into that
16 microphone now, if you would. Your name is Walter Lee Riley,
17 is that correct?

18 A Yes, sir.

19 Q Do you have a nickname that you go by?

20 A Packer.

21 Q Packer?

22 A Yes.

23 Q And if other people talk about Packer, that would be
24 you?

25 A Yes, sir.

1 Q How old are you, Walter?

2 A Sixteen.

3 Q You're sixteen? And where do you live?

4 A

5 Q And are you currently in school?

6 A Yes, sir.

7 Q What grade are you in?

8 A Eleventh.

9 Q Now, have you ever been in any trouble before, Walter?

10 A Once.

11 Q I believe you were convicted in Juvenile Court of
12 possession of burglary tools, is that right?

13 A Yes, sir.

14 Q And you got probation for that, is that correct?

15 A Yes, sir.

16 Q Now, did you know Trevin Felder?

17 A Yes.

18 Q Do you know Richard Butler?

19 A Yes.

20 Q Do you see him in the Courtroom?

21 A Yes.

22 Q Would you point him out, please?

23 A Right there.

24 Q Back on December 22, 1988, did you have an opportunity
25 to be with Trevin Felder?

- 1 A Yes.
- 2 Q What time did y'all get together that day?
- 3 A Early that morning.
- 4 Q Early that morning?
- 5 A Yes, sir.
- 6 Q And do you remember about what time?
- 7 A No, sir.
- 8 Q Do you remember what day of the week this was?
- 9 A Thursday.
- 10 Q Thursday? Were y'all out of school at that time or in
- 11 school?
- 12 A No, we was out of school. It was, you know, Christmas
- 13 break.
- 14 Q It was Christmas break?
- 15 A Yes.
- 16 Q And I believe that that afternoon y'all were at the
- 17 Bi-Lo Shopping Center, is that right?
- 18 A Yes, sir.
- 19 Q Where did you go there?
- 20 A Went to Bi-Lo.
- 21 Q And what happened when you came out of Bi-Lo?
- 22 A Richard, he started grabbing on Trevin. I ain't went
- 23 in Bi-Lo.
- 24 Q You didn't?
- 25 A No.

1 Q Did you see Richard?

2 A Yes.

3 Q What did you see him do?

4 A See, he -- we was standing -- me and him and another
5 fellow was standing on the outside of the store, and Trevin
6 and Rock came out. He grabbed Trevin.

7 COURT REPORTER: Trevin and Rock?

8 Q Who is Rock?

9 A John Riley.

10 Q John Riley?

11 A Yes.

12 Q And who grabbed Trevin?

13 A Richard.

14 Q Richard Butler?

15 A Yes.

16 Q That's this Richard Butler over here?

17 A Yes.

18 Q All right, and what happened next?

19 A He throwed him up against the wall and started checking
20 him and saying, "What you got?"

21 Q What do you mean, checking him?

22 A Feeling all on his pants and stuff.

23 Q What happened then?

24 A Then Trevin started choking him and trying to get him
25 off. He said, "Get off me, man." He wouldn't let him off.

1 Q And how big was Trevin?

2 A He wasn't but seventeen.

3 Q Seventeen? How big was he?

4 A How big?

5 Q Well, let me ask you. In relation to Mr. Butler, was
6 he as big as Mr. Butler?

7 MR. BOWMAN: Objection. I don't think he's qualified
8 to make comparisons.

9 THE COURT: Overrule the objection. He's cross-examin-
10 ing him about the basis of it. Anybody can say how big he
11 thinks somebody is. Go ahead.

12 A No, he was not big as -- big as Richard.

13 Q Not as big as Mr. Butler?

14 A No.

15 Q All right. Now, after Mr. Butler started this, what
16 happened?

17 MR. BOWMAN: Objection, your Honor.

18 THE COURT: On what grounds?

19 MR. BOWMAN: That's an improper question. He said,
20 "After Mr. Butler started this."

21 THE COURT: Well, he had just testified to some set of
22 facts that he thinks warrants that. Go ahead.

23 Q What happened next, Walter?

24 A Then I -- he -- he next -- me and Rob, we grabbed
25 Richard and tried to get him from holding Trevin up against

1 the wall.

2 Q And how was Richard holding Trevin up against the wall?

3 A Had him up like up in here.

4 Q Up against the wall?

5 A Yes.

6 Q All right. And when you tried to get Mr. Butler off,
7 what happened then?

8 A We got him off, and then Trevin got loose, and there
9 was this pipe I had in my hand, and then Trevin got that.

10 Q Okay. What kind of pipe?

11 A It was a white plastic pipe.

12 Q What did Trevin do with the pipe?

13 A Swung it and hit Richard.

14 Q And what happened then?

15 A The pipe, he hit him two times, and the pipe broke.
16 Then he throw that down, and Rob -- Richard was coming back
17 at him, and Rob pushed Richard, and he hit this parked
18 car, and his shoe came off. Then Robert left and went back
19 up, went up to the -- by the nursing home up the street, on
20 Glover Street..

21 Q When you left, who left with you?

22 A Me, Trevin, Rock, and Rob.

23 Q So Trevin was with you. Is that correct?

24 A Yes.

25 Q Was Mr. Butler with you at that time?

- 1 A No, he was behind us.
- 2 Q And this was that afternoon?
- 3 A Yes.
- 4 Q Do you remember what time?
- 5 A It was about six or, six, something like that.
- 6 Q Six? Now, where did y'all go when you left?
- 7 A We went up, we was going back to the project, but we
- 8 stopped by that nursing home.
- 9 Q All right. When you say the project, what do you mean?
- 10 A St. Paul Apartments.
- 11 Q You refer to that as the project?
- 12 A Yes, sir.
- 13 Q But you went to the nursing home first? Is that right?
- 14 A We stopped right there, yes, sir.
- 15 Q All right. What happened then?
- 16 A Then Trevin, he found this iron pipe, and Richard was
- 17 still coming, and he started swinging at him.
- 18 Q Richard was still coming, what do you mean by that?
- 19 A He was still coming at us. He was still coming toward
- 20 us.
- 21 Q Okay. What happened then?
- 22 A Then he -- then the two cops came. Two cops came by,
- 23 and he dropped the pipe, and we went walking on across the
- 24 street.
- 25 Q Who went walking across the street?

1 A Me, Trevin, Rock, and Rob.

2 Q After the police came, that broke things up, is that
3 right?

4 A Yes.

5 Q You, Trevin, and who else?

6 A Rock and Robert.

7 Q Went across the street?

8 A We went on, yeah, up there by Rome Street.

9 Q Rome Street?

10 A Yes.

11 Q Where did you go after that?

12 A We went in this alley on Rome Street and stopped right
13 there, and then Rob, Rob went home; and me, Trevin, and Rock
14 went back down in the project.

15 Q Back to the project?

16 A Yes, sir.

17 Q And what time did you arrive in the project? How much
18 later after you last ^{saw} Richard Butler did you arrive in the
19 project?

20 A As soon as we got down there, we saw him again.

21 Q How much -- how much time did y'all spend in the
22 interim?

23 A About ten minutes.

24 Q Ten minutes? All right, and what happened when you got
25 to the project?

1 A Trevin, he had -- all of us got around there. Trevin
2 start, they start shaking hands. They was saying that they
3 was all right and all that.

4 Q Who shook hands?

5 A Richard and Kevin.

6 Q You saw them shake hands?

7 A Yes.

8 Q Where were they standing when they shook hands?

9 A Over on this little -- like a little piece of a island.
10 There was a big tree and a bench right there.

11 Q Let me show you this drawing over here, Walter. These
12 are the apartments up here, and this is the parking lot.
13 This island that's over there ---

14 MR. BOWMAN: Objection. He's leading the witness. If
15 he wants to let him go up there and try to -- try to answer
16 the questions on his own.

17 THE COURT: I overrule the objection. Go ahead and
18 get your situation set, and then ask him what question you
19 want to.

20 Q Where is the island that you were talking about?

21 A You were saying that the apartments right there, right?

22 Q The apartments are here. This is where Trevin was
23 found?

24 A Yeah.

25 Q Where was that island?

1 A Right, where he was found at, right up -- right 'cross
2 the -- It's a little street right there.

3 Q Across the parking lot?

4 A Yeah, right 'cross the parking lot.

5 Q This island's in the -- Is it in the middle of the
6 parking lot or at one end of the parking lot?

7 A Yeah. You go around that. You can go around that.

8 Q You say they shook hands there?

9 A Yes.

10 Q And what happened then?

11 A Then Richard was saying that, "Man, we was just, you
12 know, we was just joking and all that, but your Cousin Rob,
13 he took it too serious." And he say, he was saying that he
14 wanted Rob, and Trevin said he wasn't going to let that
15 happen.

16 Q Who said he wanted Rob?

17 A Richard.

18 Q And that was this same Richard Butler over here?

19 A Yes.

20 Q All right. And what happened after that?

21 A Then Trevin, he had this cigarette in his hand, and he
22 throw it down. It bounce off of Rob and hit Richard on the
23 foot. He was saying, "Look, man, don't try that no more."
24 Trevin say, "Yo, man, the thing bounced off the ground and
25 hit you." And he picked -- Trevin picked the cigarette back

1 up and throw it down to show him that it bounced off the
2 ground, and it hit him again.

3 Q What happened then?

4 A Then he was saying that all about what he was going to
5 do to Rob and all that, and ---

6 Q What was the next thing that happened?

7 A That, uh ---

8 Q Do you remember what the next thing that happened was?
9 You need to answer my question now, Walter.

10 THE COURT: Do you hear him talking to you?

11 A Yes.

12 THE COURT: All right, sir. Well, answer his question.
13 Go ahead, Solicitor.

14 Q What happened next between Richard and Trevin?

15 A We -- it was me, Rob, and Kevin. We went and got in
16 Corey's car.

17 COURT REPORTER: We went -- you did what?

18 A We went and set in this other man, Corey's car.

19 COURT REPORTER: Whose car?

20 Q Corey. All right. You, yourself, went to Corey's car?

21 A Yes.

22 Q All right. Did you then observe anything occur between
23 Trevin and Richard?

24 A No, no, sir.

25 Q What was the next thing you saw Trevin do?

1 A Him and Yogi, they started walking to the car.

2 COURT REPORTER: He and who?

3 A Him and Yogi.

4 Q What happened then?

5 A Then when I looked back out the back of the car, there
6 was Richard right there by them again. . . .

7 COURT REPORTER: Richard right there what?

8 A Right there by them again, following them, following
9 those two.

10 Q What happened then?

11 A Then when I looked back, I got out the car to see
12 what -- There they go again at that same thing again. When
13 I got over that way, he was walking off, feeling down,
14 putting something in his pants.

15 Q Did you see what he was putting in his pants?

16 A It was a knife.

17 Q A knife? Who was that that was putting a knife in
18 his pants?

19 A Richard.

20 Q What was Trevin doing?

21 A Trevin, he turn around and fall on Yogi, and Yogi, he
22 ain't know what was wrong with him, so he let him go, and
23 Trevin stand up and went walking across the street and fall
24 down in the yard.

25 Q Did you go see about Trevin?

1 A Yes.

2 Q What did you find when you got there?

3 A I thought -- I didn't know what it was. I thought it
4 was a little cut, and I saw all this blood.

5 Q Had you seen any blood on Trevin prior to your going to
6 Corey's car?

7 A No.

8 Q Did you see anything occur between Richard and Trevin?
9 Did you see Richard do anything?

10 A Do anything?

11 COURT REPORTER: Sir?

12 A Do anything like -- like what?

13 Q Anything other than what you have described? What
14 happened just prior, if anything, to when Trevin turned and
15 fell on Yogi?

16 A Oh, he -- he started walking off and said, "I told this
17 little young boy about messing with me," and all that.

18 Q And what else -- was he doing anything else at that
19 time when he was saying that?

20 A Taking -- putting a knife down in his pants.

21 Q Putting a knife in his pants? And who -- who said that?

22 A Richard.

23 Q And the person who put the knife in his pants and said
24 that is this same Richard Butler over here? Is that right?

25 A Yes, sir.

1 Q Had you been drinking any that day?

2 A Yes, a little.

3 Q Had Trevin been drinking?

4 A A little.

5 Q Anybody else been drinking?

6 A Richard, all of us.

7 Q Everybody had been drinking?

8 A Yes, sir.

9 SOL. JACKSON: Please answer any questions Mr. Bowman
10 may have.

11 CROSS-EXAMINATION BY MR. BOWMAN:

12 Q You are Walter Lee Riley?

13 A Yes, sir.

14 Q And you say you were down in the Edisto Village Shopping
15 Center ---

16 A Yes, sir.

17 Q --- earlier that day?

18 A Yes, sir.

19 Q And your testimony is that Trevin started choking
20 Richard Butler in order to get him off of him?

21 A Yes, sir, when he had ---

22 Q How did he ---

23 A --- when he had him up against the wall.

24 Q Well, how did he try to choke him?

25 A Like this.

1 Q From behind?

2 A No, he was in front. He had him up like this, face to
3 face.

4 Q So your testimony is that while they were face to face,
5 instead of hitting Richard with his fist, he grabbed him
6 around the throat and tried to choke him?

7 A Yes, sir.

8 Q Now, who is it that had the plastic pipe?

9 A I had it.

10 Q And what were you doing while Richard and Trevin were
11 tusseling?

12 A I wasn't doing nothing.

13 Q You didn't hit Richard with the pipe?

14 A No, no.

15 Q You just stood there and watched?

16 A I tried to get him off.

17 Q Tried to get who off?

18 A Richard.

19 Q How'd you do it?

20 A I just tried to hold him with one arm.

21 Q What did you do with the pipe while you were trying to
22 hold him with one arm?

23 A I still had that in my hand.

24 Q Well, how did Trevin get free?

25 A Me -- me and Rob was getting him off.

1 Q So there was three of you fighting Richard Butler;
2 you, Rob, and Trevin Felder?

3 A Me and Rob did not fight. We tried to get him off
4 Trevin.

5 Q And at some point Trevin got free?

6 A Yes.

7 Q And then what did he do, come to you and got the pipe?
8 Did you hand it to him?

9 A No.

10 Q How did he get it?

11 A I was holding him with one arm, and I had the pipe in
12 one arm. He had two arms loose.

13 Q So what did he do?

14 A Got the pipe out of my hand.

15 Q And then he started hitting Richard with it?

16 A (No response.)

17 Q How many times did he hit Richard with that piece of
18 pipe?

19 A Two.

20 Q Two? How long is it? How long was the pipe?

21 A About like that. (Gestures with hands.)

22 Q And it broke?

23 A Yes.

24 Q Where did he hit Richard with the pipe?

25 A On the back.

1 Q On the back? On the shoulders or upper part up here?

2 A Right up here.

3 Q So Trevin broke the pipe over Richard's back. Is that
4 right?

5 A Yes.

6 COURT REPORTER: What's your answer?

7 A Yes.

8 Q Now, where in relation to St. Paul's Apartments is the
9 Edisto Village Shopping Center? You can look at this chart
10 if you want to.

11 A (No response.)

12 Q You don't know?

13 A Relation?

14 Q Well, let me ask you this. Is St. Paul's Apartment up
15 the hill ---

16 A Up the hill.

17 Q --- across Glover Street ---

18 A Up the hill.

19 Q Up the hill?

20 A Yes, right in front of the nursing home.

21 Q And you've got to go across Glover Street, and you've
22 got to go past the nursing home to get to the property, don't
23 you?

24 A You go -- yeah, past the nursing home.

25 Q At that time the nursing home wasn't finished, was it?

- 1 A No.
- 2 Q It was under construction, wasn't it?
- 3 A Yes, sir.
- 4 Q And your testimony is that Trevin Felder went, after he
- 5 broke the pipe on Richard Butler's back, he went and got a
- 6 lead pipe, a metal pipe?
- 7 A Yes, sir.
- 8 Q And where were you at this time?
- 9 A I was up there with him.
- 10 Q You went up there with Trevin when he got the pipe?
- 11 A I was up there, yes, sir.
- 12 Q Is that right? And where was Rob?
- 13 A All of us was up there.
- 14 Q Where was Richard?
- 15 A He was coming behind us.
- 16 Q Do you know where Richard lives?
- 17 A Yes.
- 18 Q Where does he live?
- 19 A He was staying down there in the project, too.
- 20 Q St. Paul's Apartments?
- 21 A Yes.
- 22 Q So if he was walking in the direction he was coming,
- 23 and he had been in Edisto Village Shopping Center, he was
- 24 walking toward the projects, wasn't he?
- 25 A Yes.

1 Q He was walking toward home, wasn't he?

2 A Yes.

3 Q You've talked to the police about this before, haven't
4 you?

5 A Yes, sir.

6 Q And you gave them a statement, didn't you, Mr. Riley?

7 A Yes, sir.

8 Q And in that statement you said that Trevin found a
9 piece of iron pipe and that he came back to Richard. Isn't
10 that what you told the police?

11 A Yes, he was ---

12 Q And today in this Courtroom you're saying that Richard
13 followed y'all up there.

14 A He was following us.

15 Q But that was on the way home, wasn't it?

16 A That was his way to get home.

17 Q And when Trevin got that pipe, he came back to meet
18 Richard with it, didn't he?

19 A Yeah, he -- yes.

20 Q Did you come back with Trevin when he had that pipe?

21 A No, sir.

22 Q Where did Rob go?

23 A We -- all of us was standing there.

24 Q You just let Trevin go off with the pipe by himself
25 with the pipe toward Richard?

1 A . Yes, sir..

2 Q Well, what did you tell the police about what -- about
3 the iron pipe after that?

4 A What did I tell them?

5 Q What did you tell the police?

6 THE COURT: If you want to ask him about a prior
7 inconsistent statement, tell him what you claim he said, and
8 ask him if he did that.

9 Q Did you tell the police that after Trevin got the pipe
10 and went back toward Richard, that he also got a bottle?

11 A Yes, sir.

12 Q You did, didn't you?

13 A He didn't pick the bottle up the same spot he got the
14 pipe from.

15 Q But he got a bottle off the ground, didn't he?

16 A He didn't do nothing with it.

17 Q But he wanted to use it on Richard, didn't he?

18 SOL. JACKSON: I object to that.

19 THE COURT: I sustain the objection.

20 Q Was it after this that y'all saw the police?

21 A After he got the pipe?

22 Q And the bottle.

23 A Yeah, they came up. The police came up.

24 Q And what did y'all do then?

25 A We walk off.

- 1 Q What did Trevin do with the bottle?
- 2 A He dropped it.
- 3 Q And what were these police officers like?
- 4 A One -- a man and a lady.
- 5 Q What did the lady look like?
- 6 A She was a white lady.
- 7 Q Do you remember what color hair she had?
- 8 A Blonde hair.
- 9 Q And what did y'all do -- what did you do when the
10 officer was coming up toward you?
- 11 A We just walked off.
- 12 Q Did she keep walking toward you, toward Trevin?
- 13 A She turned back -- she turned back around, because the
14 man cop said, "Just go ahead and let them go."
- 15 Q And you know the man cop, right?
- 16 A Yes.
- 17 Q What do you call him?
- 18 A Clay.
- 19 Q And you've already told us that when the police got
20 there, these two police officers, that Trevin dropped the
21 bottle. What did he do with the iron pipe?
- 22 A He was already drop -- he was already dropped that.
- 23 Q And you say that you and Rob and Trevin went to Rome
24 Street?
- 25 A Rome Street.

1 Q Is that near where Trevin lived?

2 A Yes.

3 Q And you and Trevin know that Richard Butler lives in
4 St. Paul's-Williams Chapel Apartments, don't you?

5 A Yes.

6 Q But you and Trevin went back down there that night,
7 didn't you?

8 A Yes, 'cause he had a girl friend stayed down that way,
9 too.

10 Q Isn't a fact that he went back down there to find
11 Richard to do some more fighting?

12 A No, he did not.

13 Q Who was with Trevin when he went back down there?

14 A Me, him, and Rock.

15 Q And Rock? Did you have anything -- any of the three of
16 y'all have anything with you then?

17 A No.

18 Q No pipe?

19 A No.

20 Q And then I believe your testimony is that while you
21 were back down there, they shook hands?

22 A Yes.

23 Q And there was an incident with the throwing the cigar-
24 ette down, and then you went off and got in the car, didn't
25 you?

1 A Yes.

2 Q And then the next thing you know, you see them walking
3 around. You see Trevin walking one way and Richard walking
4 another way. You didn't see Richard Butler stab Trevin, did
5 you?

6 A I seen Richard Butler -- Richard Butler walking up
7 behind him, and then he ---

8 Q But you didn't see him stab him, did you?

9 A --- when he turned around, and he, Richard, started
10 like walking off. I see him when he put the knife in his
11 pants.

12 Q But you didn't see what was going on between Trevin
13 Felder and Richard Butler before that, did you; because you
14 were in the car, weren't you?

15 A Yes.

16 Q So you don't know whether Trevin Felder struck Richard
17 Butler some more with his fists, do you?

18 A No.

19 Q Trevin Felder was a member of a gang, wasn't he?

20 A It was already -- that gang was over with.

21 Q What was the name of the gang, Mr. Riley?

22 A We called it Blue Ice.

23 Q And the gang wore colors, didn't it?

24 A Blue and white.

25 Q Blue what? Blue shirts?

1 A Blue shirts with white letters.

2 Q With what?

3 A White letters.

4 Q And blue hats?

5 A No, we didn't wore no hats.

6 Q Were you a member of the Blue Ice Gang, Mr. Riley?

7 A Yes.

8 Q And Trevin Felder was a member of the Blue Ice Gang?

9 A Yes.

10 Q And the gang had a habit of going into stores and
11 stealing stuff, didn't they?

12 SOL. JACKSON: Your Honor, I'm going to object to that.

13 THE COURT: I sustain the objection.

14 MR. BOWMAN: May we approach the bench, your Honor?

15 THE COURT: Yes.

16 (WHEREUPON COUNSEL APPROACH THE BENCH.)

17 Q Mr. Riley, did you ever know where Richard Butler
18 worked?

19 A No, sir.

20 Q You never knew that?

21 A No, sir.

22 Q Had you ever been with them, with the gang, whenever
23 they were doing anything else to Richard Butler, like
24 throwing rocks at him?

25 A No, sir.

1 Q But you are the Walter Riley that was convicted of
2 possession of burglary tools in February of 1988?

3 A Yes, sir.

4 MR. BOWMAN: No further questions, your Honor.

5 THE COURT: Okay.

6 REDIRECT EXAMINATION BY SOL. JACKSON:

7 Q Walter, when you and Trevin got to St. Paul Chapel, did
8 Trevin have any weapons on him?

9 A No, sir.

10 Q Any weapons at all?

11 A No, sir.

12 Q Did you have a weapon?

13 A No, sir.

14 Q And when he and Richard Butler were shaking hands, did
15 Trevin have a weapon on him?

16 A No, sir.

17 Q And after they finished shaking hands, you left, is
18 that right?

19 A Yes, sir.

20 Q And the next thing you saw was Richard Butler going
21 behind to catch up with Trevin?

22 A Yes, sir.

23 Q And the next thing you saw was Richard going away,
24 putting the knife in his pants, is that right?

25 A Yes, sir.

1 Q Did you see them get in any -- Did you hear what they
2 said, other than what you testified to, at St. Paul Chapel
3 Apartments?

4 A No.

5 Q Did you hear them yell at each other, any loud noises
6 between Trevin and Richard?

7 A No, sir.

8 Q Did you see either one of them hit each other?

9 A No, sir.

10 Q Get in any fights?

11 A No, sir.

12 SOL. JACKSON: Thank you. That's all I have.

13 RE-CROSS-EXAMINATION BY MR. BOWMAN:

14 Q Mr. Riley, your testimony is that Trevin Felder didn't
15 have a weapon, but Trevin Felder left the Rome Street area
16 he went to and went back to the St. Paul Apartments, didn't
17 he?

18 A Yes, sir.

19 Q And he had how many people with him?

20 A Two.

21 Q Who were they?

22 A Me and Rock.

23 Q Did you and Rock have a weapon?

24 A No, sir..

25 Q Neither one of you had a gun?

1 A No, sir.

2 MR. BOWMAN: No further questions.

3 SOL. JACKSON: That's all I have, your Honor.

4 THE COURT: All right, sir.

5 SOL. JACKSON: Call John Riley.

6 JOHN RILEY, BEING FIRST DULY SWORN,

7 TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION BY SOL. JACKSON:

9 Q You are John Riley, is that right?

10 A Yes, sir.

11 Q How old are you?

12 A Seventeen.

13 Q And are you related to Walter Lee Riley, who was in
14 here earlier?

15 A Yes, sir.

16 Q And what's your relation to Walter Lee?

17 A Cousin.

18 Q I want you to sit up now and talk in that microphone
19 now so everybody can hear you.

20 A All right, sir.

21 Q Do you have a nickname?

22 A Yes, sir..

23 Q What's your nickname?

24 A Rock.

25 Q Rock?

60

1 A Yes, sir..

2 Q R-O-C-K?

3 A Yes, sir.

4 Q John, did you have an opportunity back on December 22
5 of 1988 to be with Trevin Felder?

6 A Yes, sir.

7 Q Did you know Trevin Felder?

8 A Yes, sir.

9 Q And do you know Richard Butler?

10 A I know him as a name.

11 COURT REPORTER: I know him what?

12 A As a name. As a name.

13 Q Did you know him before that?

14 A No, sir.

15 Q And did you and Trevin have an opportunity to go to the
16 Bi-Lo Shopping Center that afternoon?

17 A Yes, sir.

18 Q And what happened there?

19 A We was coming out of Bi-Lo Shopping ---

20 COURT REPORTER: Talk louder, please.

21 A We was coming out of Bi-Lo Shopping Center, and as he
22 come out, Richard Butler asked him, grabbed him like this,
23 and say, "Let me get a cigarette."

24 Q The Richard Butler who did that, do you see him in
25 the Courtroom?

1 A Yes, sir.

2 Q Would you point him out, please.

3 A Right there.

4 Q What happened then?

5 A And then he grabbed him and started choking him, and
6 then after he grabbed him, he had a little white pipe and
7 hit Richard on the arm with it, and then we walk on up the
8 street.

9 Q And who had the white pipe?

10 A Walter had the white pipe.

11 COURT REPORTER: Who?

12 Q Walter had the white pipe?

13 A Yes.

14 Q And then who had it?

15 A Then Trevin snatched it from Walter.

16 Q And who did he hit with it?

17 A Richard on the arm.

18 Q All right, and after that what happened?

19 A We walk on up there by the old folks home, and
20 Richard followed us, and we went on walking, and then he
21 pick up another pipe and swing it at Richard.

22 Q Who picked up that pipe?

23 A Trevin.

24 Q All right, and he swung at Richard?

25 A Yes, sir.

1 Q Did he hit him?

2 A No, sir.

3 Q Okay. What happened then?

4 A We went on round by Mr. Boyd store, and when we came
5 back from Mr. Boyd store, we went down by the project.

6 COURT REPORTER: What store?

7 Q Whose store?

8 A Mr. Boyd.

9 Q Boyd?

10 A Boyd. We went on round by the project, and Trevin came
11 down there smoking, and when he throw the cigarette down, it
12 went by his foot, and he said, "Watch that, boy."

13 Q Let me back you up a minute.

14 A All right.

15 Q You went to Mr. Boyd's store, is that right?

16 A Yes, sir.

17 Q Who all went there?

18 A Me and Walter, Trevin, and Rob.

19 Q Okay, and what had Trevin done with the pipe that he
20 had picked up?

21 A He throw it down because ---

22 Q Okay. All right. When y'all went up to the project,
23 did Trevin have any weapons on him?

24 A No, sir.

25 Q Did you have any weapons on you?

- 1 A No, sir.
- 2 Q And who was there when y'all got to the project?
- 3 A Richard and Wayne, I don't know if Wayne Phillips was
4 along ---
- 5 COURT REPORTER: Wayne Phillips?
- 6 A Yeah, Phillips.
- 7 Q Richard Butler over here was already there?
- 8 A Yes, sir.
- 9 Q All right, and what happened between Richard and Trevin.
- 10 A Richard had shake Trevin hand and say him and Trevin was
11 alright, and then they walk off together, and that
12 was it, and then he cut Trevin.
- 13 Q All right. You said something about a cigarette.
- 14 A Yeah, he throw the cigarette down by his foot.
- 15 Q Who threw the cigarette?
- 16 A Trevin.
- 17 Q Trevin did?
- 18 A Uh-huh.
- 19 Q Whose foot did it hit?
- 20 A It ain't hit nobody's foot. It throw -- it was over by
21 his foot.
- 22 Q By whose foot?
- 23 A Richard.
- 24 Q What happened as a result of that?
- 25 A Well, he say, "Watch it, boy."

1 Q And what happened after that?

2 A Then they walk off together, walk about a house and a
3 half up towards ---

4 COURT REPORTER: Walk by what?

5 A About a house and a half ---

6 Q A house and a half.

7 A --- and then he ---

8 Q Where did you go?

9 A I was talking by Corey Felder car.

10 Q Corey Felder's car? Well, what did you see Richard do?

11 A He just take out his knife and stab him and then start
12 running.

13 Q All right. Prior to him taking out the knife and
14 stabbing Trevin ---

15 A Yes, sir.

16 Q --- what did you observe about them?

17 A What did I observe about them?

18 Q About Trevin and Richard.

19 A Then Trevin, he just was holding his stomach.

20 Q Prior to that could you hear what they said to each
21 other?

22 A No, sir.

23 Q Were they loud?

24 A Yes, sir.

25 Q They were loud?

1 A Yes, sir.

2 Q But you couldn't hear what it was?

3 A Yes, sir.

4 Q Did you see anybody hit anybody or anything like that?

5 A No, sir.

6 Q But you saw Richard take out a knife and stab Trevin?

7 A Yes, sir.

8 Q What did Trevin do?

9 A He just grabbed his stomach.

10 Q What did Richard do?

11 A Richard take off running.

12 Q Did you see the knife?

13 A No, sir.

14 Q Do you know what he did with the knife? Did you see
15 what he did with the knife?

16 A No, sir.

17 Q And where did Richard run to?

18 A He ran towards out the project by the old folks home.

19 Q And what did Trevin do?

20 A Nothing. He just fall down.

21 Q He fell down?

22 A Yes, sir.

23 SOL. JACKSON: Please answer any questions Mr. Bowman
24 might have.

25 CROSS-EXAMINATION BY MR. BOWMAN:

- 1 Q Mr.. Riley, did you go in the Bi-Lo with Trevin Felder?
- 2 A Yes, sir..
- 3 Q What did y'all do while you were in there?
- 4 A We went in there and buy a pack of cigarettes.
- 5 Q Did he buy them?
- 6 A Yes, sir.
- 7 Q And your testimony is that Trevin got the pipe from
- 8 Walter Lee Riley and hit him?
- 9 A Yes, sir.
- 10 Q And your testimony is that he hit Richard on the arm,
- 11 right?
- 12 A Yes, sir.
- 13 Q How many times did he hit Richard?
- 14 A One.
- 15 Q One time. On the arm?
- 16 A Yes, sir.
- 17 Q Anything happen to the pipe?
- 18 A It broke.
- 19 Q So he must have hit him pretty hard to break the pipe
- 20 with one blow..
- 21 A No, it was a plastic pipe, white plumbing plastic pipe.
- 22 Q What kind -- plumbing pipe?
- 23 A Yeah.
- 24 Q That's the tough kind, isn't it?
- 25 A Uh-huh.

1 Q That's the kind that's got markings on it of PVC pipe?

2 A Uh-huh.

3 Q It's plumbing pipe like they have over there at the
4 construction project where they -- right?

5 A Yes.

6 Q And who was involved in that altercation down there
7 with Richard and Trevin, you?

8 A No, sir.

9 Q You didn't touch Richard?

10 A No, sir.

11 Q Did Walter Lee Riley?

12 A No, sir.

13 Q He never touched him?

14 A No, sir.

15 Q Well, Richard Butler got thrown on the ground by
16 somebody, didn't he?

17 A No, he got thrown on the ground by Wayne Phillips, and
18 he push him back and ---

19 COURT REPORTER: Who? I didn't get that name, William?

20 A Wayne Phillips.

21 Q And then y'all left and went on back up toward the
22 construction site?

23 A Yes, sir.

24 Q Where they're building the convalescent home?

25 A Yes, sir.

1 Q That's where Trevin got the metal pipe, isn't it?

2 A Yes, sir.

3 Q And he went on back toward Richard?

4 A No, sir.

5 Q And your testimony is that Richard was following y'all,
6 isn't it?

7 A Yes.

8 Q Do you know where Richard lived?

9 A No, sir.

10 Q You don't know where he lived?

11 A No, sir.

12 Q Would you be surprised to know that he lived up the
13 hill across Glover, up there towards ---

14 THE COURT: Let's move along, Public Defender. That
15 would have no bearing on this.

16 Q Did Trevin pick up anything else after he picked up
17 the metal pipe?

18 A No, sir.

19 Q He didn't pick up a bottle?

20 A No, sir.

21 Q Were you there when the police arrived?

22 A Yes, sir.

23 Q What did y'all do?

24 A He tell us to go on home, tell us to separate and go
25 home.

1 Q And what did y'all do?

2 A We went on towards our house, and then we stop by Mr.
3 Boyd store.

4 Q Where -- when you say go on up by your house, where is
5 that?

6 A By the 4-H Club.

7 Q Can you tell me what street that is?

8 A No, sir..

9 Q But y'all -- y'all didn't go home and stay, did you?

10 A No, sir.

11 Q Y'all went back down to St. Paul Apartments, didn't
12 you?

13 A Yes, sir.

14 Q And you saw Richard Butler there?

15 A Yes, sir.

16 Q And after you saw this incident of throwing the cigar-
17 ette down, and your testimony is that the cigarette didn't
18 touch Richard, isn't it?

19 A Yes, sir..

20 Q After you saw that, then you went off to Corey's car?

21 A Yes, sir.. Corey car was right behind.

22 Q Right behind what?

23 A Behind the tree by Richard, where Richard Butler was
24 sitting down on the chair.

25 Q And you heard the loud exchange of words between

1 Trevin and Richard, didn't you?

2 A Yes.

3 Q And your testimony is that after Trevin got stabbed,
4 he just fell down?

5 A No. He hold his chest like this here, and then fall.

6 Q And how far did he move before he fell?

7 A He take about four steps.

8 Q Four steps?

9 A Yes, sir.

10 Q And just fell down in that little green area there?

11 A Yes, sir.

12 Q Right where the tree is?

13 A Yes, sir.

14 Q And that's where he died?

15 A Yes, sir.

16 Q Are you a member of the Blue Ice Gang?

17 A I was.

18 Q You were?

19 A Yes, sir.

20 Q Trevin Felder was a close friend of yours, wasn't he?

21 A Yes, sir.

22 Q And you are real sorry he's dead, aren't you?

23 A Yes, sir.

24 MR. BOWMAN: No further questions.

25 THE COURT: Thank you, sir.

1 SOL. JACKSON: Call Tracy Haynes.

2 TRACY HAYNES, BEING FIRST DULY
3 SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY SOL. JACKSON:

5 Q You are Tracy Haynes, is that correct?

6 A Yes, sir.

7 Q Do you have a nickname?

8 A Yes, sir, Yogi.

9 Q Yogi?

10 A Yes, sir.

11 Q And how old are you?

12 A Nineteen.

13 Q And are you in school now or out of school?

14 A Out of school.

15 Q I believe that you have been in some trouble before
16 yourself, is that right?

17 A Yes, sir.

18 Q I believe you were convicted of burglary, second
19 degree, back in 1987, is that right?

20 A Yes, sir.

21 Q Did you know Trevin Felder?

22 A Yes, sir.

23 Q How long had you known him?

24 A I know him at least about ten years.

25 Q And do you know Richard Butler?

- 1 A I know him as I see him, but I don't know him.
- 2 Q Do you see him in the Courtroom today?
- 3 A Yes, sir.
- 4 Q Would you point him out, please.
- 5 A That's him right there. (Witness points to defendant.)
- 6 Q And back on December 22 of 1988 did you have an
- 7 opportunity to be at St. Paul's Chapel Apartments?
- 8 A Yes, sir.
- 9 Q Did you see Trevin up there?
- 10 A Yes, sir. I occasionally -- I -- he wasn't down there.
- 11 I went down there first. He met me down there.
- 12 Q So you were there first?
- 13 A Yes, sir.
- 14 Q And Trevin came later?
- 15 A Yes, sir.
- 16 Q What happened when Trevin came?
- 17 A Well, when Trevin came, everybody, you know, was
- 18 standing around talking, everything like that, you know.
- 19 They told me, you know, what had went on. They told me that
- 20 Richard and Trevin was playing, right? So I didn't follow
- 21 it up. So Trevin came out and, you know, everybody was
- 22 talking. Me and him was talking. Trevin had, you know, had
- 23 a cigarette, and he was, flipped it, right?
- 24 Q Did Richard Butler come up there?
- 25 A Yeah, he was already down there.

1 Q He was already there?

2 A Yeah, he shook Trevin hand.

3 Q All right.

4 A And said everything was all right, and so ---

5 Q But Richard and Trevin shook hands?

6 A Yes, sir.

7 Q What did Richard say?

8 A He say everything was all right.

9 Q And what happened then?

10 A And then I was talking to Trevin, you know. I was
11 telling him, you know, that I was going on a trip to New
12 York, right? So me and him walked off together. So we
13 got -- I was on my way, you know, I was about to leave,
14 right? And so when I turned around, right, that's when,
15 you know, when I seen, you know, something, you know,
16 Richard flashed. I was in shock, and Kevin ---

17 Q You saw a flash?

18 A Yeah, like that, you know, like he came into Trevin.

19 COURT REPORTER: Like he did what?

20 A Came into him.

21 Q Came into Trevin?

22 A Yes, face to face.

23 Q What kind of motions did you see Richard Butler make?

24 A Well, he was, you know, just like this, you know.

25 Q Like this?

1 A Yes.

2 Q Did he have anything in his hand?

3 A Yes, sir.

4 Q What was it?

5 A I couldn't really identify it right then, you know.
6 I know it was a object, though.

7 Q All right. And what did he do with that object?

8 A He must have, you know, I was in shock. He must to
9 have used it, you know.

10 Q What happened to Trevin?

11 A Trevin, he walked off. He walked off normally, you
12 know, like nothing wasn't going on, you know. And I said,
13 "Trevin, stop playing," you know. He usually play all the
14 time. I say, "Stop playing, man." He say, "Help me." I
15 say, "Stop playing, man." Then after while he walked off
16 from me. He walked off like nothing went wrong, and then I
17 looked down, and I seen all the blood on me, you know, and
18 he walked off.

19 Q You had blood on you?

20 A Yeah, it was all over my clothes.

21 Q Where was the blood coming from?

22 A It was coming from, you know, from the part of his
23 body where he was stabbed at.

24 Q He wasn't stabbed before that, was he?

25 A No, huh-uh.

"I

1 Q He wasn't stabbed before you saw Richard Butler make
2 that move?

3 A No, sir.

4 Q All right. What happened then after he grabbed you
5 and said, "Help me"?

6 A He walked off, you know. He was walking off, and then
7 all of a sudden he fell. He fell down.

8 Q What did Richard Butler do?

9 A Oh, I turned around. He was gone. He disappeared. I
10 don't know how he left so quick, but he disappeared.

11 Q You didn't see him any more that night?

12 A No, sir.

13 Q Did you see what he did after he made that movement?

14 A No, no, sir. I was in shock, you know. I didn't see
15 him.

16 SOL. JACKSON: Please answer any questions Mr. Bowman
17 may have.

18 CROSS-EXAMINATION BY MR. BOWMAN:

19 Q Mr. Haynes, had you been with Trevin Felder earlier
20 that day?

21 A No, sir. I met up with him after, thatearly part
22 of that day.

23 Q You met up with him after the earlier part?

24 A No, the first part of the day I met up with him.

25 Q What time was that?

1 A That was in -- it been so long, you know, I don't know
2 what time it was, but I know I met him. That was by the
3 park when all of us together.

4 Q But later on you were down in the courtyard of St.
5 Paul Apartments, weren't you?

6 A Uh-huh, later that day.

7 Q And how much earlier had it been that you were at the
8 park with him?

9 A I was at the park -- It was way before anything
10 happened, before anything happened.

11 Q Was it before that Trevin had been down to the Bi-Lo
12 Shopping Center?

13 A Yes, sir, it was before that.

14 Q You weren't down at the shopping center with him?

15 A No, sir.

16 Q Did you walk with Trevin as he walked back down to St.
17 Paul Apartments?

18 A No, sir.

19 Q You did not walk with him?

20 A No, sir.

21 Q Where were you when you first saw him back down at St.
22 Paul Apartments?

23 A I was down there under the tree where they was.

24 Q And when you say you saw this movement by -- that you
25 call a flash, by Richard Butler ---

1 A Uh-huh..

2 Q --- you had already moved off from there?

3 A Yeah. I was far off from Trevin. I was way off.

4 Q How far were you?

5 A I was about at least from right here to about -- to
6 about that door.

7 Q How long -- how long had it been that you had walked
8 away ---

9 A I don't know. About ---

10 Q --- before you saw the flash?

11 A About ten or fi -- about ten minutes.

12 Q Ten minutes?

13 A Yeah.

14 Q So you don't know what was going on between Trevin and
15 Richard while you walked away during those ten or fifteen
16 minutes, do you?

17 A Yeah, until I turned around.

18 Q Till you turned around and saw the flash, you don't
19 know what was going on between them, do you?

20 A No, no, sir.

21 Q And after you saw the blood, you saw Trevin walking
22 around?

23 A No, he wasn't walking around. He was walking towards
24 me.

25 Q Yeah, and then what did he do when he got to you?

1 A He grabbed me, and he said, "Help me," and I say,
2 "Stop playing," 'cause he always play a lot.

3 Q So he walked from wherever he was -- he was with
4 Richard over to where you were?

5 A Yes. Yes.

6 Q There were other people around there, weren't there?

7 A No, no, sir, not till Trevin walked off, no, sir.

8 Q Well, after he got to you, and you say he touched you?

9 A Yes, sir, he grabbed me.

10 Q Did he walk some more after that?

11 A Yes, sir, he walked till he fell down.

12 Q How far did he walk?

13 A He walked about -- He didn't walk too far, about a
14 little distance from where I was.

15 Q He had some people around him, didn't he?

16 A Yeah, after he had fell down.

17 Q He had -- it was kind of a little crowd around him,
18 wasn't it?

19 A Yes.

20 Q Have you been -- were you a member of the Blue Ice
21 Gang, Mr. Haynes?

22 A Yes, I was, sir.

23 Q Do you know where Richard Butler worked?

24 A No, sir.

25 Q You never did?

1 A No, sir.

2 Q Trevin Felder was a close friend of yours, wasn't he?

3 A Yes, sir.

4 Q He was in the gang, wasn't he, with you?

5 A Yes, sir.

6 Q Yes?

7 A Yes, sir.

8 Q And you are the same Tracy Haynes that was convicted
9 of burglary in October, 1987?

10 A Yes, sir.

11 MR. BOWMAN: No further questions.

12 SOL. JACKSON: I don't have anything further from this
13 witness, your Honor.

14 THE COURT: All right. Mr. Foreman, members of the
15 jury panel, I'm going to let y'all go to lunch, and I want
16 you to come back to your jury room, not out here to this
17 jury box; but to the jury room at two o'clock. While you're
18 gone, don't talk to anybody. Don't let anybody talk to you.
19 Don't be making up your mind about a verdict. Wait until
20 you've heard all the evidence that both sides want to
21 present to you. Have a nice lunch. Two o'clock. You may
22 be excused.

23 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
24 THE JURY.)

25 THE COURT: Is there anything else, gentlemen?

1 SOL. JACKSON: Not at this time, your Honor.

2 MR. BOWMAN: Nothing from the defendant.

3 THE COURT: All right. Have a nice lunch. Two o'clock.

4 (RECESS)

5 SOL. JACKSON: The last witness I would propose would
6 be Dr. Sexton, the pathologist. He's supposed to be here.
7 He should be here in just a few minutes, but I don't believe
8 he's here yet.

9 THE COURT: All right. We're not going to wait any
10 longer for him. Public Defender, we'll proceed with your
11 presentation and simply put the doctor in the middle when
12 he gets here.

13 You will preserve all rights to any motions at any
14 stage of the proceedings. You would not be foreclosed from
15 making any appropriate motions at that time.

16 MR. BOWMAN: Thank you, your Honor, I understand.

17 THE COURT: All right. Bring our jury.

18 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
19 JURY.)

20 THE COURT: You had a nice lunch? I'm glad. All right,
21 now, I don't want anybody to doze off this afternoon with
22 those nice lunches. We'll try to take a break every now and
23 then, stretch a little bit. All right, the Solicitor's
24 final witness has not arrived in Orangeburg as yet, so in
25 order to keep from continuing to transgress on your time by

1 waiting. The Public Defender has agreed to proceed to
2 present the defense, and when the Solicitor's witness gets
3 here, we'll simply put him kind of out of order and let you
4 hear what he had to say. All right.

5 MR. BOWMAN: Thank you, your Honor. May it please
6 the Court, I would call at this time Louise Brown.

7 LOUISE BROWN, BEING FIRST
8 DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION BY MR. BOWMAN:

10 Q Mrs. Brown, is your whole name Louise Brown?

11 A Yes, sir.

12 Q And where do you live?

13 A I live at Apartments.

14 Q And that's in Orangeburg?

15 A Yes, sir.

16 Q And do you have a job outside the home?

17 A Yes, sir.

18 Q Where do you work?

19 A Fashion Fabrics. I'm a security officer.

20 Q Fashion what?

21 A Fabrics.

22 Q Fashion Fabrics, and you're a security guard?

23 A Yes, sir.

24 Q Do you -- where is Fashion Fabrics?

25 A It's on the Rowesville Highway.

1 Q You have occasion to be in the Edisto Village Shopping
2 Center sometime, do you not?

3 A Yes, sir.

4 Q And do you remember being there on December 22 of 1988?

5 A Yes, sir.

6 Q And let me ask you, do you know Richard Butler?

7 A Yes, sir.

8 Q Do you remember seeing him there that afternoon or
9 evening?

10 A Yes, sir.

11 Q Could you tell the jury what you saw that involved
12 Richard Butler?

13 A Well, Richard Butler and another fellow, they was kind
14 of in a tussle; and Richard Butler and the fellow was against
15 the wall, and another fellow came up, so Richard Butler was
16 in the middle. One fellow was on this side, and the other
17 one was on the opposite side. So they swing in the street.
18 I didn't know what was happening.

19 Q And you say that there was another one coming up?

20 A Right.

21 Q What did -- Did you see what the other one did when he
22 came up?

23 A He was about to attack Richard Butler. All three of
24 them was swinging in the street. Richard Butler was in the
25 middle. One was on either side of Richard Butler.

1 Q And what did you see after that?

2 A I went in Family Dollar. I didn't saw anything after
3 that.

4 Q Did you see anybody with any kind of object?

5 A No, sir.

6 Q But you did see somebody coming up?

7 A Right.

8 Q From your observation was that person going to help
9 Richard Butler in any way?

10 A The way he came up ---

11 SOL. JACKSON: I object to that. That's a conclusion

12 THE COURT: I sustain the objection.

13 MR. BOWMAN: No further questions.

14 CROSS-EXAMINATION BY SOL. JACKSON:

15 Q Mrs. Brown, were you working on this day?

16 A No, sir, I was off.

17 Q You just happened to be in the parking lot to go
18 shopping?

19 A Yes, sir.

20 Q You weren't with Mr. Butler, were you?

21 A No, sir.

22 Q How far away were you when you saw this activity?

23 A A crowd was on the walkway walking. Everybody was
24 walking.

25 Q No, ma'am, I asked you how far were you from where

- 1 Richard Butler was. Do you know?
- 2 A Close distance.
- 3 Q Close as you and I or further than you and I?
- 4 A A little closer.
- 5 Q A little closer?
- 6 A Yes.
- 7 Q And you saw Richard Butler tussling with another
- 8 fellow?
- 9 A Yes, sir.
- 10 Q And then you saw a third fellow come up, and that's
- 11 when you went on inside, is that right?
- 12 A After the three of them swung into the street.
- 13 Q Swung in the street?
- 14 A Right.
- 15 Q They basically went on out in the street?
- 16 A Right.
- 17 Q You didn't see anybody hit anybody?
- 18 A No, sir.
- 19 Q And you didn't see any weapons or anything like that?
- 20 A No, sir.
- 21 SOL. JACKSON: Thank you, ma'am. That's all I have.
- 22 REDIRECT EXAMINATION BY MR. BOWMAN:
- 23 Q Mrs. Brown, your testimony is that you saw another
- 24 person coming up to where Richard Butler and the other
- 25 person were?

1 A Yes, sir.

2 Q Were you able to decide, to see which -- which side of
3 the fight that person was going to be on?

4 SOL. JACKSON: Your Honor, again I object.

5 THE COURT: I sustain the objection. You can ask her
6 what he did, not -- what action did he take.

7 Q What action did he take?

8 A The other fellow, to me it looked as though he ---

9 THE COURT: No, not what it looked as though.. What
10 did he do?

11 A He was attacking Richard.

12 Q Tackling Richard?

13 A He was going to help this other fellow ---

14 THE COURT: No, not what he was going to do. What did
15 he do?

16 A He grabbed Richard.

17 THE COURT: Okay.

18 A Right.

19 MR. BOWMAN: Thank you, your Honor.

20 THE COURT: Okay. Anything else?

21 MR. BOWMAN: No further.

22 THE COURT: All right. Thank you, ma'am.

23 MR. BOWMAN: At this time the defense would call Jacob
24 Brown.

25 JACOB BROWN, FIRST BEING DULY

1 SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION BY MR. BOWMAN:

3 Q Mr. Brown, I'm going to ask you, if you would, to sit
4 up straight in the chair and speak clearly in the microphone
5 so everybody could hear your answer. How old are you, Mr.
6 Brown?

7 A Twenty-four.

8 Q And where do you live?

9 A St. Paul Apartments.

10 Q And that is in the City of Orangeburg?

11 A Yes.

12 Q Which apartment do you live in?

13 A.

14 Q How long have you lived down in St. Paul Apartments?

15 A A good while. All my life.

16 Q All your life? Now, do you know Richard Butler?

17 A Yes.

18 Q You see him in the Courtroom today?

19 A Yes.

20 Q And is this the man?

21 A Yes.

22 Q And do you remember the day that Trevin Felder died?

23 A Yes.

24 Q Where were you that day?

25 A Up on the top of the hill.

1 Q Top of the hill?

2 A Out of the project.

3 Q Out of the project?

4 A Yes.

5 Q And what -- was that up a street?

6 A Yes.

7 Q What street were you up?

8 A I think it's Fletcher.

9 Q Fletcher Street?

10 A Yes.

11 Q Did you know Trevin Felder?

12 A Yes.

13 Q Did you happen to see Trevin Felder that evening?

14 A Yes.

15 Q Now, what -- who -- was anybody with him?

16 A Well, it was Trevin and Yogi and D. Mack.

17 COURT REPORTER: D. Mack?

18 A The dude that's sitting behind the dude here.

19 Q Do you see Yogi in the Courtroom?

20 A Yeah.

21 Q Would you point him out.

22 A Right there.

23 Q Is he the one with the peroxide in his hair?

24 A Yes.

25 Q And who else did you see with Trevin Felder?

1 A It was Jayro.

2 COURT REPORTER: Who?

3 A Jayro.

4 Q Jayro?

5 A Yes.

6 Q And who else?

7 A This what I had saw. When Trevin and Jayro was coming
8 out the project, Jayro was coming down in the project.

9 COURT REPORTER: Who was?

10 A Jayro. They was coming in the project. So they turned
11 around, and Trevin bumped Yogi. Yogi or one of them say
12 that they had a gun, say coming up, gonna take that Nigger
13 out. Then they turned around and went back in the
14 project.

15 COURT REPORTER: Wait a minute.

16 Q Wait a minute, now.

17 COURT REPORTER: I can't understand him.

18 Q Who is it that you saw come out of the project?

19 A It was Trevin and Jayro and Packer, I think.

20 Q And Pack?

21 A Packer?

22 Q You know who that is?

23 A Yeah.

24 Q Is that Walter Lee Riley?

25 A Yeah.

1 Q Do you see him in the Courtroom?

2 A Yeah, behind the lady.

3 Q And what did they say?

4 A When they got there, Trevin, you know, Trevin and them
5 got to Yogi, I hear them say, "I got the gun. Let's go up
6 there and take the Nigger out."

7 COURT REPORTER: I cannot understand him.

8 Q Would you say that again slow enough for this lady to
9 get it down.

10 A They said, "I had the gun." One of them say, "I had
11 the gun. Come on, let's go take him out."

12 Q "I had the gun. Let's go take him out."

13 A Yes.

14 Q And Trevin Felder was in that group?

15 A Yeah, they turned around and went back in the project.

16 Q Did Trevin Felder go with them?

17 A Yeah.

18 Q And what day was this?

19 A I forgot the date.

20 Q Is this the day that Trevin Felder died?

21 A Yes.

22 Q You remember about what time it was?

23 A No. It was late.

24 Q Well, where was this group at the time you heard this
25 statement being made?

1 A Right behind the project on top of the hill.

2 Q Up on Fletcher Street?

3 A Yeah.

4 Q Top of the hill? And do you know Trevin Felder when
5 you see him?

6 A Yes.

7 MR. BOWMAN: No further questions at this time.

8 CROSS-EXAMINATION BY SOL. JACKSON:

9 Q Mr. Brown, where do you work?

10 A Orangeburg Metal Company.

11 Q How long have you worked there?

12 A A month now.

13 Q You live by yourself there at St. Paul Apartments?

14 A No, I live with my mother.

15 Q Your mother?

16 A Yes.

17 Q And you weren't with Richard Butler back on that day
18 when Trevin Felder died, were you?

19 A Yes.

20 Q Had you seen Richard Butler that day?

21 A Yes.

22 Q You had?

23 A Yes.

24 Q What had you and he been doing?

25 A We was drinking.

- 1 Q Y'all were drinking?
- 2 A Yes.
- 3 Q How much had you had to drink?
- 4 A I don't know.
- 5 Q What were you drinking?
- 6 A Beer, liquor.
- 7 Q Beer and liquor?
- 8 A Yeah.
- 9 Q What kind of liquor were you drinking?
- 10 A N and J.
- 11 Q N. J.?
- 12 A Yes.
- 13 Q What kind is that?
- 14 A Liquor.
- 15 Q Just N and J?
- 16 A Yeah.
- 17 Q He was having some, and you were having some, is that
- 18 right?
- 19 A Yeah.
- 20 Q Did y'all have a pint bottle?
- 21 A We had a big bottle.
- 22 Q Big bottle. Quart bottle?
- 23 A Yes.
- 24 Q Did you finish that off?
- 25 A I don't know. I leave.

- 1 Q You left?
- 2 A Yeah.
- 3 Q There was some in it when you left?
- 4 A Uh-huh.
- 5 Q But y'all had drunk a pretty good chunk out of it,
- 6 hadn't you?
- 7 A Yeah.
- 8 Q And you had drunk some beer on top of that, is that
- 9 right?
- 10 A Uh-huh.
- 11 Q How much beer had you had? Do you know?
- 12 A I don't know.
- 13 Q What time did you leave?
- 14 A I left from down there about nine.
- 15 Q Nine? It was in the morning or at night?
- 16 A That night.
- 17 Q At night? Had anything happened up until then?
- 18 A No.
- 19 Q How long had you and Richard been there?
- 20 A We been down there about all day.
- 21 Q All day?
- 22 A Yes.
- 23 Q When did you see Trevin?
- 24 A Trevin down there earlier, too. They left. They went
- 25 to the store.

1 Q I thought you were drinking with Mr. Butler all day.

2 A I was. All of us was still in the project drinking.

3 Q All right.

4 A Trevin give me a pair of gloves. He said he was going
5 to the store.

6 Q Who gave you a pair of gloves?

7 A Trevin.

8 Q He gave you a pair of gloves?

9 A Yes.

10 Q Why did he do that?

11 A Huh?

12 Q Why did he give you a pair of gloves?

13 A For me to hold his gloves till he went to the store.

14 Q All right. And you were sitting there drinking with
15 Mr. Butler at that time?

16 A Yes.

17 Q They didn't have any problems, did they?

18 A No.

19 Q No arguments?

20 A No.

21 Q Altercations?

22 A No.

23 Q Trevin went to the store and came back?

24 A Yeah, Trevin, Richard, and -- it was Trevin and Richard,
25 Raymond, and Wayne went to the store.

1 Q And they came back?

2 A Yeah, they came back in the project.

3 Q And Mr. Butler stayed with you the whole time, isn't
4 that right?

5 A No. They had went to the store. I was in the project.

6 Q Well, what about Mr. Butler? He didn't go to the
7 store, did he?

8 A He went to the store.

9 Q He did?

10 A Yeah.

11 Q With them?

12 A Yes.

13 Q They all went together?

14 A Yes.

15 Q Did they all come back together?

16 A Yes.

17 Q There weren't any problems when they came back?

18 A No.

19 Q Everybody was all right, weren't they?

20 A Yes.

21 Q After that how long did you and Mr. Butler stay there
22 drinking together?

23 A As soon as they got back I had went on back
24 in the project to get something for my cousin.

25 Q Is that when you saw Trevin?

1 A When I came back on the top, Trevin was laying in the
2 yard, bleeding.

3 Q He was leaving?

4 A He was bleeding. Trevin was laying in the yard,
5 bleeding.

6 Q Okay. So he was bleeding and dying, basically, at
7 that time, is that right?

8 A Yes.

9 Q Did you see what happened to him?

10 A No. I wasn't down there when ---

11 Q You weren't down there when that happened?

12 A --- when the stabbing done, no.

13 Q What time was that when you saw Trevin bleeding?

14 A I don't know. I ain't had on no watch.

15 SOL. JACKSON: That's all I have.

16 REDIRECT EXAMINATION BY MR. BOWMAN:

17 Q In response to a question from the Assistant Solicitor,
18 you said you had been drinking?

19 A Yes.

20 Q Do you have any doubt about what you heard Trevin and
21 that bunch, Yogi, Pack, and all those, say about having a
22 gun and gonna take a Nigger out?

23 A No, I know I heard it.

24 Q You know you heard it?

25 A Yes, I wasn't that drunk.

1 Q Huh?

2 A I wasn't that drunk.

3 Q And you know they called him a racial name?

4 A Yes.

5 MR. BOWMAN: No further questions of this witness.

6 RECROSS-EXAMINATION BY SOL. JACKSON:

7 Q Mr. Brown, I still don't know what time that happened.
8 Can you tell me what time that happened?

9 A I ain't had no watch...

10 Q Was it daylight or dark when that happened?

11 A It was dark.

12 Q It was dark when that happened?

13 A Yes.

14 Q And how close were you to them?

15 A I was sitting on the porch.

16 Q They were out in the street, weren't they?

17 A Yes.

18 SOL. JACKSON: Okay. That's all I have.

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

20 SOL. JACKSON: We have the State's witness. I under-
21 stand he is here.

22 THE COURT: Okay.

23 SOL. JACKSON: Call Dr. Sexton.

24 THE COURT: His last witness has appeared now, and
25 we'll hear from the Solicitor's witness, and then we'll

1 switch back.

2 DR. JOEL S. SEXTON, BEING
3 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY SOLICITOR JACKSON:

5 Q Dr. Sexton, where are you employed, sir?

6 A At the Newberry County Memorial Hospital in Newberry,
7 South Carolina.

8 Q I believe you are a medical doctor, is that correct?

9 A That's correct.

10 Q What kind of medicine do you practice?

11 A I'm a pathologist.

12 Q And do you have any specialties within the field of
13 pathology?

14 A I'm Nationally Board Certified in Anatomical Pathology,
15 Clinical Pathology, and Forensic Pathology.

16 SOL. JACKSON: Your Honor, I would ask counsel to
17 stipulate to his expertise

18 MR. BOWMAN: He's an expert.

19 THE COURT: All right.

20 Q Dr. Sexton, tell the jury, if you would, what the field
21 of pathology is and then what the field of forensic
22 pathology is.

23 A Pathology is basically the study of disease, and a
24 pathologist is a physician who has studied after medical
25 training or medical school in the areas of anatomic

1 pathology, where we do examinations of various tissue
2 specimens removed at surgery to determine if a patient has
3 a type of cancer, after it has been completely removed, or
4 if it requires further surgery or some other type of
5 treatment such as radiation or chemotherapy.

6 The pathologist supervises the laboratory, which is
7 the clinical pathology area, to help make sure that the
8 tests are run properly on various fluids that are given to
9 the lab to help your physician determine if you've got a
10 disease or illness and if you're getting better or worse as
11 the treatment is given for that particular condition.

12 The area of pathology also includes autopsies to
13 determine in the case of someone dying in the hospital why
14 they didn't live a little longer under the treatment they
15 were given or in a little less pain if they were subjected
16 to some type of painful disease or illness.

17 The area of forensic pathology also deals with toxic-
18 cology, which is the effect of various chemicals or drugs on
19 the body, and trauma pathology, dealing with various types
20 of injuries; what might have caused those injuries, when
21 were they sustained, and whether they would have been lethal
22 or in some way incapacitating.

23 The forensic pathologist is also involved in the
24 examination of scenes to determine various facts about the
25 death. They help determine what the circumstances were on

1 or about the time of that death.

2 Q Now, in the performance of your duties, are you called
3 on to perform certain autopsies?

4 A That's correct.

5 Q The Coroners of the county would ask you to perform
6 an autopsy for them?

7 A The Coroners are authorized to order the autopsy, and
8 they send them to me as a consultant.

9 Q And as such did you have an opportunity to perform an
10 autopsy on Trevin Felder?

11 A Yes, I did.

12 Q And when did you perform that autopsy?

13 A That was on the 23rd of December, 1988.

14 Q And in performing that autopsy what were your findings?

15 A First, as I mentioned, we like to have the bodies come
16 as they are. We -- there are only a few of us. Only about
17 three hundred and something out of fourteen thousand patho-
18 logists in the country have training in forensic pathology.
19 There are not enough of us to really go to the scenes, but we
20 do try to have the body sent just as it's found so that we
21 might find evidence. If there is any on the external surface
22 of the body. So this body was sent just as he was found.

23 He was still clothed. He had on two layers of clothing,
24 a tank top and a tee shirt, a pair of baseball pants under a
25 pair of jeans, two pair of socks, and a pair of tennis shoes.

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1 He had blood on the upper part of the clothing, particularly
2 on the front of the chest; and in examining the body, the
3 only injury that was found, and we carefully looked at the
4 hands and inside the mouth, etc., to see if there were any
5 injuries that might suggest the person was involved in an
6 altercation. The only injury that was found was a stab
7 wound.

8 The stab wound entered the front of the chest just to
9 the left of the middle of the chest and passed upward to the
10 rear and to the right, right into the heart, into the right
11 side of the heart, which caused bleeding into both chest
12 cavities. The lungs fill up the chest when you breathe in
13 deeply, but when you exhale, they actually contract and
14 leave a cavity, and that cavity can fill with blood; and
15 there was a quart and a half of blood on one side, and there
16 was three quarts, a little over three quarts on -- I'm
17 sorry -- a quart and a half on one side and nearly a quart
18 on the other side. So he had bled easily sufficiently to
19 cause death into the chest cavities.

20 Q Dr. Sexton, if you would step down and just point out
21 on me where this stab wound was located on the body of
22 Trevin Felder.

23 A The stab wound entered right where I'm pointing here,
24 which is just to the left of the middle of the chest in the lower
25 portion of the chest, almost low enough to be into the

1 abdomen, which is that region below the ribs, and it passed
2 upward to the rear and to the right, entering the right
3 heart, which is located right in the middle of the chest at
4 that location.

5 Q What was the width of the wound at the point of entry?

6 A The width, when you refer to the width, that means the
7 actual length of the cut on the skin and the width of the cut
8 on the skin. The width was almost a tenth of an inch. It
9 was closer to 7/100 of an inch. The length was a little
10 over an inch, an inch and a tenth. The length of the wound
11 would correspond to agree with the width of a blade. The
12 width of the wound would correspond with the thickness of
13 a blade.

14 Q Could you also tell how deep the wound went?

15 A Yes, sir. It entered the body for a depth of approxi-
16 mately six inches. When a person is stabbed, the force of
17 the stab wound can sometimes compress the chest. That's
18 the principle whereby we massage the heart. When a person's
19 heart stops, you actually can press on the chest hard enough,
20 pushing on it, to squeeze the heart between the ribs and the
21 spine to cause it to beat. So depending upon the force, a
22 five inch knife can make a six inch hole or a hole that's
23 six inches deep, depending on how much force is involved,
24 because the chest is compressible to a degree.

25 Q And were you able to determine, then, what caused

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1 Trevin Folders' death?

2 A Yes.

3 Q What was that?

4 A In my opinion the loss of blood, which we refer to as
5 exsanguination, due to the stab wound in the chest.

6 Q I believe you said you looked for other wounds on the
7 body?

8 A That's correct.

9 Q Did you find any?

10 A I found no other injuries.

11 Q And did you take certain blood samples and urine
12 samples from the victim?

13 A Yes, I did.

14 Q Do you have the report of the results of those tests?

15 A Yes.

16 SOL. JACKSON: We have stipulated to allow him to
17 testify.

18 THE COURT: All right, sir.

19 A The decedent had -- the blood that was analyzed
20 indicated the decedent had no drugs in his blood stream, but
21 he did have alcohol to the level of 0.141 or 141 milligrams
22 per cent.

23 SOL. JACKSON: Please answer any questions Mr. Bowman
24 may have.

25 CROSS-EXAMINATION BY MR. BOWMAN:

1 Q Dr. Sexton, you mentioned the results of the SLED
2 analysis of the amount of alcohol in the decedent's blood?

3 A Yes.

4 Q And you said that was .141 ---

5 A Per cent.

6 Q --- per cent.

7 A 141 milligrams per cent.

8 Q Would you tell the jury what that means.

9 A Basically when tests were performed years ago to
10 determine at what level a person's alcohol could be in their
11 blood, and they could safely handle a car without being
12 dangerous on the highways it was determined that people who
13 had levels of .1 and above tended to have less coordination,
14 less ability to make proper decisions as to whether or not
15 they were going too fast, whether or they should swerve or
16 not to avoid an injury; so that level is considered to be
17 legal intoxication on the highway, and this level is above
18 that. The legal intoxication level is .1. This is .14,
19 which is half again above the level of legal intoxication,
20 which means that a person would have been at that time less
21 inhibited, perhaps a little drowsy, perhaps agitated. Some
22 people are affected differently by the levels of alcohol and
23 less coordinated than normal.

24 Q So your testimony is that Mr. Felder's blood alcohol
25 level was almost one and a half times again what it would be

1 to qualify under South Carolina law to be considered driving
2 under the influence, for instance?

3 A That is correct.

4 Q Is it not a part of your work that you take certain
5 measurements of the body?

6 A Yes, I do.

7 Q Did you make a measurement of the height and weight
8 of this person?

9 A Yes. What we do is we measure the length of the body.
10 It would correspond very closely with the height, recogniz-
11 ing that after death all the muscles are relaxed for a period
12 of time. Then they go into a state of contraction we call
13 rigor mortis, which actually just solidifies the musculature.
14 And so a person who is lying dead on the table may not be
15 exactly the same length as the person who is standing up
16 during life, but he measured five feet, ten inches, in
17 length, and we estimated his weight as 170 pounds.

18 Q And you opened the body, did you not?

19 A That's right.

20 Q And you examined the various organs?

21 A That's right.

22 Q From your examination can you make a conclusion as to
23 the state of health of this young man?

24 A He would have been healthy as far as the physical
25 exam, both externally and internally. There was no evidence

1 of any disease or illness internally.

2 Q And did you not after -- well, was the body, when the
3 time you received it, was it fully clothed?

4 A Yes, it was.

5 Q And you removed those clothes, did you not?

6 A Yes.

7 Q And you transferred those to a detective with the
8 Orangeburg Police Department?

9 A Yes, that's correct, James Williams.

10 Q And included in those clothes were a pair of aqua
11 pants?

12 A That's correct.

13 Q And did you describe them as a pair of baseball pants?

14 A No, he was wearing a pair of -- the aqua pants were a
15 pair of bleached type of jeans. They were external.
16 Underneath that he had a pair ---

17 THE COURT: Gentlemen, are we going to find out what
18 the pants have got to do with this case?

19 MR. BOWMAN: Yes, sir.

20 THE COURT: All right. I'm going to be interested.

21 A Underneath the aqua pants was a pair of baseball
22 pants that were white with a gold stripe down the side.

23 Q He was wearing two pairs of pants?

24 A That's correct.

25 Q And you turned over to the police detective a what --

1 blue hat?

2 A A dark blue hat. That's correct.

3 MR. BOWMAN: I have no further questions, your Honor.

4 THE COURT: All right.

5 SOL. JACKSON: I have nothing further, your Honor.

6 THE COURT: Thank you, Doctor.

7 SOL. JACKSON: That would be the State's case.

8 THE COURT: All right.

9 DR. SEXTON: May I be excused, your Honor?

10 THE COURT: Certainly. Thank you for coming.

11 DR. SEXTON: You're welcome.

12 THE COURT: Nice to see you again. Are you ready to
13 go ahead?

14 MR. BOWMAN: We would have a motion, your Honor.

15 THE COURT: Just note it, and move along. Call your
16 next witness.

17 MR. BOWMAN: At this time the defense would call
18 Terry Murphy.

19 TERRY MURPHY, BEING FIRST
20 DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION BY MR. BOWMAN:

22 MR. BOWMAN: May I proceed, your Honor?

23 THE COURT: Certainly.

24 Q Mr. Murphy, would you state your name again for the
25 record?

1 A Terry Murphy.

2 Q And where do you live, Mr. Murphy?

3 A

4 Q Do you know -- is that in Orangeburg?

5 A Yes.

6 Q I'm going to ask you, if you would, to sit up and
7 speak loudly in the microphone. Do you know where St. Paul
8 Apartments are?

9 A Yes.

10 Q Is that pretty close to Fletcher Street?

11 A Yes.

12 Q Do you have occasion to hang out down there?

13 A Yeah, I have a girl friend stay down there.

14 Q Do you know Richard Butler?

15 A Yes.

16 Q Did you know a man named Trevin Felder?

17 A I didn't know him personally, but I know him when I
18 see him.

19 Q Were you in the vicinity of the St. Paul Apartments in
20 late December when he died?

21 A Yes.

22 Q What was he doing on that day?

23 A Oh, we were sitting up under the tree, drinking some
24 beer.

25 Q What tree are you talking about?

- 1 A In St. Paul's Apartments.
- 2 Q Where is that tree in relation to the apartment
- 3 building?
- 4 A Right across in front.
- 5 Q Is it surrounded by a parking lot?
- 6 A Uh-huh.
- 7 Q The driveway goes around it?
- 8 A Uh-huh.
- 9 Q And there's a tree in it?
- 10 A All right. It's two trees down there. It's one in
- 11 the center, and it's one by the road.
- 12 Q Do you remember seeing Trevin Felder that evening, the
- 13 day he died?
- 14 A Yes.
- 15 Q And what was he doing when you saw him?
- 16 A When I saw him, he was walking, coming from up the
- 17 hill, coming down the projects.
- 18 Q He was coming down the hill?
- 19 A Right.
- 20 Q And what street was that he was coming down?
- 21 A I think that's Fletcher, too. I'm not sure.
- 22 Q You have to go up Fletcher to get to where you live,
- 23 right?
- 24 A Right.
- 25 Q And you saw him coming down that same street?

1 A Uh-huh.

2 Q And do you remember where Richard Butler was at the
3 time?

4 A Yeah.

5 Q And what happened when -- when Trevin Felder got there?

6 A Well, he said that, "I'm going to fuck the Nigger.
7 up, man."

8 Q Who was he talking about?

9 A He was talking about Richard.

10 Q And did you see what happened after that?

11 A No.

12 Q Do you remember about what time it was when you heard
13 him say that?

14 A No, I don't really remember what time it was.

15 Q Was it daylight, dark, morning, or afternoon?

16 A Well, it was dark.

17 Q Dark? And that was the day that he died?

18 A Right.

19 MR. BOWMAN: That's all the questions I have.

20 CROSS-EXAMINATION BY SOL. JACKSON:

21 Q How long had you been sitting under the tree that day
22 drinking?

23 A Oh, maybe about two hours, two or three hours.

24 Q Who was there drinking with you?

25 A It was me, Richard, a boy named Corey, Jacob Brown, a

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1 few more guys.

2 Q And y'all were all drinking, is that right?

3 A Right.

4 Q What were you drinking?

5 A Colt 45.

6 Q Colt 45?

7 A Right.

8 Q What else?

9 A That's about all I can remember we was drinking at the
10 time.

11 Q You don't remember drinking liquor?

12 A No, I don't remember no liquor.

13 Q You don't remember drinking any N & G?

14 A No, I just remember Colt 45.

15 Q And you left?

16 A Right.

17 Q You left that area?

18 A Right.

19 Q And it was over on Fletcher Street when you saw Trevin
20 Felder?

21 A No.

22 Q Where were you?

23 A I was under the tree when I saw Trevin.

24 Q Where did he come from?

25 A Up the hill.

- 1 Q Up the hill?
- 2 A He come down the hill.
- 3 Q He came down to talk to you?
- 4 A No.
- 5 Q Who did he talk to?
- 6 A He talked to some more guys.
- 7 Q To some more guys?
- 8 A Uh-huh.
- 9 Q Who were they?
- 10 A I don't know, some of his friends I don't know.
- 11 Q You don't know?
- 12 A No.
- 13 Q And what did you hear him say?
- 14 A I heard him say, "I'm gonna fuck the Nigger up, man."
- 15 Q Did you tell the police about that later on?
- 16 A No, they didn't never question me about it.
- 17 Q And you didn't go to them and volunteer that informa-
- 18 tion either, did you?
- 19 A No.
- 20 Q You know how to find the police, don't you?
- 21 A Yeah, I know how to find them.
- 22 Q You say it was dark when this happened?
- 23 A Yes.
- 24 Q How do you know it was Trevin Felder?
- 25 A 'Cause I know him. I don't know him personally, but I

1 know him if I see him.

2 Q You didn't know his name, did you?

3 A Yeah, I know his name.

4 Q You didn't at that time, did you?

5 A I had know his name.

6 Q You did?

7 A Yeah.

8 SOL. JACKSON: That's all I have.

9 MR. BOWMAN: That's all for this witness, your Honor.

10 THE COURT: All right.

11 MR. BOWMAN: Call Ms. Ann Butler.

12 ANN MARIE BUTLER, BEING FIRST

13 DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY MR. BOWMAN:

15 Q Ms. Butler, is Ann Butler your whole name?

16 A Yes.

17 Q And where do you live now?

18 A At Apartments.

19 Q And that's in the City of Orangeburg?

20 A Yes.

21 Q And how long have you lived there?

22 A For a year and about seven months.

23 Q Do you know Richard Butler?

24 A Yes.

25 Q He's your brother, isn't he?

1 A Yes.

2 Q And did you know Trevin Felder?

3 A Yes.

4 Q Do you remember, and I ask you to go back in your
5 memory. Do you remember the day that Trevin Felder died?

6 A Yes.

7 Q Did you happen to see your brother and Trevin together?

8 A Yes.

9 Q Could you tell the jury what was said when you saw
10 them.

11 A We was in the apartment that day. I was up
12 apartment there, and my brother, Richard, asked Trevin for a
13 cigarette.

14 COURT REPORTER: Asked him what?

15 A Asked him for a cigarette, and he ---

16 Q Ma'am, you'll have to speak louder so everybody can
17 hear you.

18 A Richard asked Trevin for a cigarette, and Trevin said,
19 "No, man, I ain't giving you nothing." So Richard said,
20 "Man, give me a cigarette," and he said, "Man, I'm not giving
21 you nothing," and then Trevin say, "I got something for you,
22 but it's not no cigarette," and then he started laughing.

23 Q Do you remember what day that was?

24 A Yes, December 22.

25 Q And do you remember what time of day that was?

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1 A No, I don't remember what time it was, but it was in
2 the afternoon.

3 Q It was in the afternoon?

4 A Uh-huh.

5 Q And it was after that that Trevin Felder died?

6 A And then that night.

7 Q You don't ---

8 A It was that afternoon, and then that night.

9 Q And then that night what happened?

10 A I was home then. I went back under the tree, and I
11 seen Richard and Trevin, and it was another guy standing up
12 by Trevin. I glanced over there, and the only thing I heard
13 was Richard say, "Me and my man -- me and my man right here
14 was just playing until the other man grabbed me from behind
15 my neck," but I don't know who he was talking about. And
16 so Trevin say, "You know if you fuck with one, you got to
17 fuck with all," like that; and that's all I heard. And then
18 after that I didn't pay that no attention until Cookie ---
19 Cookie, Kelley told me, she say, "Ann---"

20 SOL. JACKSON: Your Honor, I object to what ---

21 Q Don't go into that. Don't go into what somebody told
22 you. My next question for you is was it after that that
23 Trevin Felder died?

24 A Uh-huh.

25 MR. Bowman: No further questions of this witness.

1 CROSS-EXAMINATION BY SOL. JACKSON:

2 Q You didn't see your brother stab Trevin, did you?

3 A No.

4 Q Did you talk to your brother about it?

5 A No.

6 Q You haven't talked to him about this at all?

7 A Huh-uh.

8 Q Have you talked to Mr. Bowman about it?

9 A Who, the lawyer?

10 Q The lawyer right here.

11 A Just now.

12 Q Just now? You haven't talked with him before today?

13 A Huh-uh.

14 Q Your testimony is that sometime that afternoon in the
15 daylight hours of that afternoon ---

16 A Uh-huh.

17 Q --- your brother asked Trevin for a cigarette?

18 A Uh-huh.

19 Q And he wouldn't give him one?

20 A Uh-huh.

21 Q And he said, "I got something for you, but it's not a
22 cigarette?"

23 A Uh-huh.

24 Q You didn't know what that meant, did you?

25 A No.

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1 Q It didn't bother you, did it?

2 A No.

3 Q It didn't sound like a threat to you, did it?

4 A No.

5 SOL. JACKSON: That's all I have.

6 THE COURT: Thank you, ma'am. You can step down.

7 MR. BOWMAN: Mr. Bailiff, would you call Cynthia
8 Waymer, please.

9 CYNTHIA WAYMER, BEING FIRST

10 DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION BY MR. BOWMAN:

12 Q Ms. Waymer, how long have you lived at St. Paul
13 Apartments?

14 A December will be three years.

15 Q And you know Richard Butler, do you not?

16 A Yes.

17 Q And did you have a relationship with him?

18 A Yes.

19 Q How would you describe that?

20 A Well, we have three kids together, and I would say
21 common-law marriage.

22 Q And did y'all -- do you know -- did you know Trevin
23 Felder?

24 A Not personally.

25 Q Did you know him when you saw him?

1 A Yes.

2 Q And had you and Richard had any run-ins or any
3 confrontations with Trevin Felder before?

4 A Yes.

5 Q Would you tell the jury how that happened.

6 A We was walking from his mother house, well, down in
7 the project, to my house, and they was standing, all of them
8 was standing together.

9 Q Who are they you were talking about?

10 A Trevin and the gang, they was standing together.

11 Q What was -- what kind of gang?

12 A Well, they call themselves Blue Ice. It's a gang.

13 SOL. JACKSON: I think she can describe how many people
14 were there. I don't know that she can describe it as being
15 a gang unless she knows for sure.

16 THE COURT: Well ---

17 Q That's what I'm going to ask ---

18 THE COURT: They all kind of said they used to be in a
19 gang, and they called themselves something. Go ahead.

20 Q Thank you, your Honor. You saw Trevin and the Blue
21 Ice Gang?

22 A Yes.

23 Q Did y'all have -- did they do anything or say anything
24 to you?

25 A Well, they was ---

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1 THE COURT: No, we don't want to know about they. We
2 want to know about the dead fellow.

3 A Well, Trevin and the gang said ---

4 THE COURT: Well, only one person can say something.
5 Who was it said it?

6 A It was a lot of them saying things. All of them was
7 saying all kind of different things.

8 THE COURT: Pick out the one that said what he said,
9 and tell us what it was, and then move to what the next one
10 said, but they can't say something. Some person has to say
11 something.

12 Q What was said to you?

13 A They were saying Michael Jackson with high water pants
14 on him and Billie Jean with her big breasts. Then they
15 was throwing rocks and stuff. We didn't say anything. We
16 just kept on walking.

17 Q And this remark about high water pants, who was that
18 made toward?

19 A Richard.

20 Q And that was made by Trevin Felder and the people with
21 him?

22 A Right.

23 Q And then they made the remark about your person?

24 A Right.

25 Q And then they started -- who was throwing what?

1 A Throwing rocks, but we didn't say anything, and I
2 guess they wanted to get attention, so they start throwing
3 rocks and stuff.

4 Q And what did Richard -- you and Richard do after they
5 started throwing the rocks?

6 A We kept on walking. We was almost to my door --
7 almost to my door, and we kept on walking in the house.

8 Q Do you remember about when this was?

9 A About a month before it happened, the killing happened.

10 MR. BOWMAN: No further questions.

11 CROSS-EXAMINATION BY SOL. JACKSON:

12 Q Miss Waymer, do you know who killed Trevin Felder?

13 A Yes.

14 Q Who?

15 A Richard.

16 Q He told you that, didn't he?

17 A Huh.

18 Q He told you that, didn't he?

19 A Uh-huh.

20 Q And you said the only time you ever had a problem with
21 Trevin Felder was this occasion you described?

22 A Yes.

23 Q And you can't say that Trevin Felder threw a rock at
24 you, can you?

25 A All of them was throwing rocks.

1 Q Every one of them?

2 A All of them.

3 Q How many of them were there?

4 A About five.

5 Q Do you know anybody else's name?

6 A No.

7 Q The only name you knew was Trevin Felder?

8 A I know they say all of them is in the gang together.

9 Q You can't even really say Trevin Felder was part of
10 that group, can you?

11 A I seen him.

12 Q You didn't know his name, did you?

13 A I didn't know his name, but I -- I seen all of them.

14 I don't know all of them name personally, 'cause I'm not out
15 there.

16 Q Did you report this to the police?

17 A No.

18 Q You didn't think that much of it, did you?

19 A No.

20 Q They were running their mouths, and it really didn't
21 bother you all that much, did it?

22 A No, it didn't.

23 SOL. JACKSON: Thank you, ma'am. That's all.

24 REDIRECT EXAMINATION BY MR. BOWMAN:

25 Q Do you know the other people that were with Trevin

1 Felder when you see them?

2 A Yeah.

3 Q Do you see them in the Courtroom?

4 A Yeah.

5 Q Would you point them out.

6 A Right over there.

7 Q Which one of them?

8 A The second row.

9 Q Was it this young man with the white shirt?

10 A Uh-huh.

11 Q Was it the one in the gray shirt?

12 A Yeah.

13 Q The one with the pack, satchel around his neck
14 with the peroxide in his hair?

15 A Yeah.

16 Q You know who threw the rocks at you, don't you?

17 A Right.

18 Q And you didn't call the police, but you didn't like
19 it, did you?

20 A No.

21 MR. BOWMAN: No further questions.

22 SOL. JACKSON: I don't have any questions.

23 MR. BOWMAN: Call Diana Rowe..

24 DIANA ROWE, BEING FIRST DULY
25 SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION BY MR. BOWMAN:

2 Q Ms. Rowe, I notice you are kind of a small lady.
3 Would you sit up a little bit, and as much as you can,
4 speak loudly into the microphone, please.

5 A Okay.

6 Q Where do you live now?

7 A Apartments.

8 Q And do you have any occasion to go to St. Paul
9 Apartments?

10 A Yes. My mother lives there.

11 Q And do you remember being there on December 22 of last
12 year?

13 A Yes.

14 Q Do you remember anything unusual happening that
15 evening?

16 A Well, yes. I was inside, and my sister came inside.
17 She came to tell my mother that -- to come on the outside
18 and check on Richard. And as my mother didn't go, so I went
19 on the outside, and as I was going out, Richard was coming
20 in, and I ---

21 Q Now, who was Richard that you're talking about?

22 A My brother, right here.

23 Q Richard Butler?

24 A Uh-huh.

25 Q He's your brother?

1 A Uh-huh.

2 Q Okay. Then what happened?

3 A And I walked on out the sidewalk, and I seen a gang of
4 people around this guy, like holding him up. So I walked
5 halfway down the sidewalk, and I turned around. As I turned
6 around, it was some guys coming behind me. And I looked
7 back, and they were saying, "I'm going to kill that mother
8 fucker, where he is; I'm going to kill him." And ---

9 Q Do you know who they were talking about?

10 A They were talking about Richard.

11 Q And these were the guys around somebody they were
12 holding up?

13 A Uh-huh.

14 Q Did you see what happened to the person they were
15 holding up?

16 A As he got a little closer over -- over the sidewalk,
17 he fell, and the guy continue on coming. I said, "Y'all
18 not coming in the house because my kids in here." One of
19 them had a gun, and ---

20 Q Now, when you say one of them had a gun ---

21 A It was the guy that was in the front. I can't
22 identify no faces.

23 Q Who -- well, who was he with? Was he with the person
24 they were holding up?

25 A No, they already had left the guy, and that was in

1 front of my mother's house.

2 Q And they -- and one of them had a gun?

3 A Uh-huh.

4 Q And did you say anything to them?

5 A Uh-huh. I say, "Y'all not coming in here with that,
6 'cause my kids are in here."

7 Q What -- what did the gun look like?

8 A It was sort of a silver-looking gun. I -- I can't
9 remember.

10 Q Was it a big, long rifle?

11 A No, it was small. It was a small pistol-like gun.

12 Q And when is it that you saw the gun, before or after
13 they said, "We're going to kill the ---"

14 A After.

15 Q After?

16 A After. They, when they say -- that's when I looked
17 back, when I heard them saying that, I looked back to see
18 who was behind me. It was them coming toward the house.

19 Q And after you told them that you had children in the
20 house, and they weren't coming in, what did they do?

21 A They was still coming, but somebody yelled -- somebody
22 yelled down there to them, say that Trevin had stopped
23 breathing, and then all of them ran back down toward the guy
24 that was laying down on the ground.

25 Q And do you know who that guy laying on the ground was?

1 A Trevin.

2 Q Trevin Felder?

3 A Yes.

4 MR. BOWMAN: No further questions, your Honor.

5 CROSS-EXAMINATION BY SOL. JACKSON:

6 Q Ms. Rowe, where was your brother living during that
7 time?

8 A With Cynthia.

9 Q He didn't have a residence elsewhere?

10 A Huh?

11 Q He didn't have a residence elsewhere?

12 A Not that I knew of.

13 Q He lived full time with her?

14 A I don't know. I assume. I don't know. I was staying
15 in Roosevelt Gardens.

16 Q Do you know anything about a
17 address?

18 A That was like two -- two years, two or three years,
19 I think.

20 Q Two or three years ago when he was living there? At
21 the time of this incident he was living with Cynthia at St.
22 Paul Apartments?

23 A Uh-huh.

24 Q But yet on this particular occasion he came running
25 into your apartment, is that right?

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1 A No, not my apartment. He didn't come running. He was
2 walking into my mother house.

3 Q He went walking to your mother's apartment?

4 A Uh-huh.

5 Q Did he have anything in his hand?

6 A No, I didn't see anything.

7 Q Did you see anything in his belt?

8 A No. I didn't even really look at him. I was going on
9 the outside to see what was going on out there.

10 Q Well, I thought you went to check on him.

11 A Yes. After my sister told my mother to come see what
12 was going on, he was coming on the inside, so I was just
13 going right back on the outside to see what went on out
14 there.

15 Q But once you saw him come inside, there was no need to
16 check on him any more, was it?

17 A Yes, it was, because I figure something had to be going
18 on outside.

19 Q So you went outside to really check what was going on
20 outside rather than check on your brother. Isn't that true?

21 A I went to check and see what was going on.

22 Q What you saw was a person that they were having to hold
23 up over there. Is that right?

24 A Uh-huh.

25 Q And other people who you don't know, one of whom you

1 say had a gun, were trying to chase after your brother?

2 A They wasn't chasing him. He was in the house. They
3 was going to come in the house.

4 Q They were going to come in the house?

5 A Uh-huh.

6 Q And you wouldn't let them in?

7 A They didn't get close enough for me to like keep them
8 away.

9 Q So after you told them they couldn't come in, they
10 turned around and left?

11 A Yes, because someone yelled back down and said that
12 Trevin stopped breathing.

13 Q And you didn't see the gun until after they had turned
14 around and gone ---

15 A No, when I turned around to see who was behind me, I
16 see the gun.

17 Q These people came up from behind you?

18 A Yes.

19 Q How did they do that?

20 A When I was like -- when I turned around from the crowd
21 to come back toward my mother house, they was -- they was
22 coming behind me.

23 Q How far away were you from your mother's door?

24 A About from here to where you're standing.

25 Q And you turned around to see who it was?

- 1 A Uh-huh.
- 2 Q And that's when they made this statement?
- 3 A Uh-huh.
- 4 Q And you told them they couldn't come in?
- 5 A No, I told them not with the gun, not while my kids was
- 6 in the house.
- 7 Q And they left and went back toward Trevin, is that right?
- 8 A Yes.
- 9 Q Did you worry at any time that you brother had had any-
- 10 thing to do with Trevin over there?
- 11 A I heard some guys saying that he did it. That was all.
- 12 Q Did you go back inside and ask your brother what had
- 13 happened?
- 14 A At ---
- 15 Q At that time?
- 16 A No, I told his girl friend and my mother to keep him
- 17 inside, don't let him come back out right now, cause they
- 18 was in front the door; but I didn't question him about
- 19 what happened.
- 20 Q Did the police come up?
- 21 A Uh-huh.
- 22 Q Did you go out and talk with the police?
- 23 A No.
- 24 Q Where was your brother when the police were there?
- 25 A I guess he was still in the house.

1 Q Where were you?

2 A I was on the outside.

3 Q You never did go back in your mother's house to see,
4 or your mother's apartment, to see where your brother was?

5 A Huh-uh.

6 Q Didn't you learn the police were looking for your
7 brother?

8 A That night?

9 Q Yes, ma'am.

10 A I -- they -- well, if they was looking, they didn't look
11 at my mother's house.

12 Q Didn't you know the police wanted to talk to your
13 brother that night?

14 A Yes.

15 Q And you didn't go up and tell the police where your
16 brother was?

17 A Huh-uh.

18 Q Do you know whether the police came to your mother's
19 apartment?

20 A That night, no, the police didn't come in her apartment,
21 no.

22 Q But you don't know whether your brother was really in
23 there or not, do you?

24 A No, not really.

25 Q He might have left.

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1 A Probably so.

2 Q He didn't talk to the police that night, though, did
3 he?

4 A Not to my knowledge, no.

5 Q Did you talk to him any more that night?

6 A No.

7 SOL. JACKSON: That's all I have.

8 MR. BOWMAN: No further questions of this witness, your
9 Honor.

10 THE COURT: All right.

11 MR. BOWMAN: At this time I would call the defendant,
12 Richard Butler.

13 RICHARD L. BUTLER, BEING FIRST
14 DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY MR. BOWMAN:

16 Q Mr. Butler, I ask you, too, to sit up straight and
17 speak loudly enough so everybody can hear your answers.
18 You are a resident of Orangeburg, are you not?

19 A Yes, sir.

20 Q How long have you lived here?

21 A In Orangeburg? All my life.

22 Q And are you employed now?

23 A Well, not right now.

24 Q Where had you previously worked?

25 A At Winn Dixie on Russell Street.

- 1 Q And how long have you worked there?
- 2 A About four years.
- 3 Q And where were you living in December of '88?
- 4 A I was living in St. Paul's Apartments.
- 5 Q And with whom were you living?
- 6 A Well, with my mother.
- 7 Q Now, at that time you knew a person named Trevin Felder,
- 8 did you not?
- 9 A Yes, sir.
- 10 Q And do you remember being with him in Edisto Village
- 11 Shopping Center on December 22?
- 12 A Being with him?
- 13 Q Yeah.
- 14 A I wasn't really with him. Me and a couple of other guys
- 15 went down there. And when -- after we -- on the way --
- 16 when I was in the store, then they came in, him and another
- 17 guy.
- 18 Q What store were you in?
- 19 A In Bi-Lo.
- 20 Q And you saw Trevin and another guy come in there?
- 21 A Yes.
- 22 Q And did y'all say anything while you were in there?
- 23 A No.
- 24 Q Did you see what he did?
- 25 A Well, when I was standing to the -- at the counter

1 talking to Mrs. Brown, and I seen Trevin came in the line
2 and pick up a pack of cigarettes in his pocket, and I went
3 on the outside of the store. You know, after, we all went
4 out there together, me and Victoria, and Sister Brown.

5 Q Now, you said you went in the store and in the checkout
6 counter saw Mrs. Brown?

7 A Yeah, they was -- they was in line getting their
8 groceries checked out.

9 Q Which Mrs. Brown are you talking about?

10 A Sister Brown. I don't remember ---

11 Q Is that the one they call Louise?

12 A Yeah, Louise, uh-huh.

13 Q The one that's already been in here today?

14 A Yeah.

15 Q And you talked to her?

16 A Yeah.

17 Q And then you went outside?

18 A Well, we went out there together, when, you know, I
19 was just standing there till they got their groceries checked
20 out and everything.

21 Q Well, while you were in there, you saw Trevin Felder
22 put a pack of cigarettes in his pocket?

23 A Yes.

24 Q Did he pay for them?

25 A No.

1 Q Well, what happened when you got outside the store?

2 A Well, we started walking. Then they start walking
3 down, you know, kind of like behind us. I say, "Trevin, let
4 me get one of them cigarettes you just stole." That's when
5 he grabbed me. So, he say, "You mother fucker, you always
6 trying to get somebody in trouble." He choked me, so I
7 grabbed my arm, you know, grabbed him by his neck, too, and
8 that's when the other guy came behind me and grabbed me.

9 Q This other guy, do you know who that was?

10 A Rob Base. That's they call him. I don't know his
11 real name.

12 COURT REPORTER: Who was it?

13 A Rob Base.

14 Q He's saying Rob Base.

15 A Base.

16 Q Did you know who this Rob Base was?

17 A Did I know who he was? Well, I done seen him around
18 before, staying over with -- at the house sometime.

19 Q And Trevin Felder put his hands on your throat?

20 A Yeah, he grabbed me around by my throat.

21 Q And at some point you got hit with something, didn't
22 you?

23 A Yes.

24 Q Tell the jury about all that.

25 A Well, after the other guy came and grabbed me, then

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1 Trevin, he went and ran and got a pipe, a plastic pipe, and
2 came back and hit me across the head with it, and it broke;
3 so he ran and got a galvanized pipe, steel pipe, and came
4 back and swung it, hit me across the back a couple of times.

5 Q Where did he go to get the galvanized pipe you call it?

6 A I think he went where they was fixing up the -- doing
7 something to the old folks home across the street.

8 Q Are you talking about the convalescent center that's
9 on Glover Street?

10 A Yes, sir.

11 Q Where were you when he went to get the pipe?

12 A Me and the other guy, Rob Base was still talking.

13 Q And he went across Glover and got this pipe and came
14 back?

15 A Uh-huh.

16 Q And then what happened?

17 A Well, fighting. He kept hitting me. Every time one
18 grabbed me, you know, somebody -- 'cause there was some guys
19 that tried to stop the fight, too. Every time they get one
20 off me, another one come and jump on me, you know, start
21 hitting me and stuff.

22 Q All right, now, do you remember what time this
23 happened?

24 A It was about seven o'clock, somewhere around seven, a
25 little after seven.

1 Q Do you remember how many times you were hit with the
2 plastic pipe?

3 A Not really. I know, I know he hit me 'cross -- the only
4 -- I think I was only hit one time. I'm not sure. That was
5 across the head, with the plastic pipe.

6 Q Well, what happened to you after that?

7 A What you mean, what happened to me?

8 Q Well, I mean did you stay down there? Did you go
9 somewhere else?

10 A No, well, the fight continued until we got all the way
11 up to by the convalescent home, and that's when the police
12 came, the two police.

13 Q Now, you talking about the convalescent home. Is it not
14 a fact that the Edisto Village Shopping Center and the Bi-Lo
15 you're talking about are down -- sort of down a hill and
16 across Glover?

17 A Yeah.

18 Q And then you cross Glover and go up the hill and go
19 past the convalescent home, and then you come to St. Paul
20 Apartments?

21 A Well, as soon as you get right -- well, past -- kind of
22 like past it, it's right -- make a right turn, it just take
23 it straight on to St. Paul Apartments.

24 Q In other words, to go -- to go by that convalescent
25 center and across Glover Street, you're going home from Bi-Lo?

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1 A Yes.

2 Q And you were staying at St. Paul's Apartments, were you
3 not?

4 A Uh-huh.

5 Q Okay. Then you say the police showed up?

6 A Yeah.

7 Q Then what happened?

8 A Then Trevin and this other guy, they started running.
9 They ran up the street, and the cops went behind them, and
10 then I stayed, set there and wait for a while; but when the
11 cops came back, they just got in the car and left, so I went
12 on down to St. Paul's Apartments.

13 Q Did the police tell you anything?

14 A No, they didn't say nothing to me.

15 Q Then what did you do after the time when the police left?

16 A I went on down and sat under, you know, on that little
17 bench, and then Wayne and a couple more other fellows start
18 drinking beer and stuff that they had got from the store,
19 Bi-Lo.

20 Q And this -- you sat on a bench?

21 A Yeah, it's a little bench sitting out there.

22 Q And when you say out there, out there where, in the
23 street?

24 A No, it's a little island -- a little island thing, that,
25 you know, by the mailbox.

1 Q And is this in the sort of the courtyard of St. Paul-
2 Williams Chapel Apartments?

3 A Yeah.

4 Q Is this the little area that's got the driveway around
5 it?

6 A Uh-huh.

7 Q And there's a tree there with a bench?

8 A Yes, sir.

9 Q And you were drinking with Wayne?

10 A Yes, sir. Well, it was me and a couple more other
11 fellows.

12 Q Do you remember what time this was?

13 A It was -- I don't know exactly what time it was. I
14 know it was after seven.

15 Q Well, did you come to see Trevin Felder again that
16 evening?

17 A Well, in the meantime I looked around. I seen Trevin was
18 running down the hill, you know, kind of like holding his
19 pocket, running. Then he came -- came up to me and, you
20 know, hold his hand up like this, like he was going to give
21 me five, I reckon. So I sat there, and I looked at him for
22 a second, and I hold my hand out to give him five. And then
23 the other, the guys that was standing around me said, "Yeah,
24 that's right. Y'all just go ahead and apologize, make up."
25 I said, "I ain't got nothing against nobody," you know. I

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1 said, "But I just don't like what the -- what the guy that
2 was with him did, 'cause he didn't have nothing to do with
3 what we was doing," you know.

4 Q Well, you say you saw him coming down, holding his pants?

5 A Yeah, well, kind of like his pocket, like.

6 Q What kind of pants did he have on? What kind of clothes
7 did he have on?

8 A I don't remember exactly what kind of clothes he had on.
9 I know he -- he was running down like he had something in
10 his pocket. I don't remember what color clothes he had on.

11 Q Well, where -- where was he running down?

12 A He was running down the hill towards me.

13 Q And that's when you saw him holding ---

14 A Yeah.

15 Q --- his pants or his pocket?

16 A Yeah.

17 Q Like there was something in it?

18 A Uh-huh.

19 Q Okay. Then he came to you like he was going to give
20 you high five, and what happened?

21 A And then I -- you know, I told him, I said, "I ain't
22 got nothing against you, man. It's just that I don't like
23 what that guy that was with you did, 'cause he didn't have
24 nothing to do with what we was doing." And then I told him,
25 I said, well, you know, "If I see him, I might bust him in

1 his head." Then Trevin, he got mad and start telling me
2 what he going to do to me and all this kind of stuff, and
3 I said, I said, "Man, you go ahead and get --", you know,
4 I curse, I said, "Get the fuck out my face," you know.
5 That's when he punched me, and then he went to try to punch
6 me again.

7 Q And you say you told him to get out of your face, and
8 then he punched you?

9 A Yeah.

10 Q How did he do that?

11 A How did he punch me? I said, "Man, just go ahead and
12 get out my face." You know, first he was
13 telling me what all they was going to do to me and all this
14 kind of stuff; what they was -- they would kick my ass.

15 Q Who was the they?

16 A I guess he was talking about the gang.

17 Q Who is the gang he was talking about?

18 A The Blue Ice Gang.

19 Q Had you ever -- had you had any dealings with the Blue
20 Ice Gang before?

21 A Yeah, a lot of times.

22 Q How about when you were working at Winn Dixie?

23 A Yeah.

24 Q What did they do up there?

25 A One day they came in there, and they was trying to steal

1 a bottle of wine.

2 SOL. JACKSON: Your Honor ---

3 THE COURT: I sustain the objection.

4 Q Well, this gang that you call the Blue Ice Gang, do
5 you know any members of it?

6 A Yeah, most of them.

7 Q How could you tell who was a member?

8 A Well, they wear -- they had their shirts and stuff with
9 Blue Ice. They got their names on the back, I'm not sure.

10 Q Could you name some of the people?

11 A I don't know all of them names.

12 Q Was Trevin a member of the gang?

13 A Yeah.

14 Q And that's who he was talking about when he said they --
15 what they -- talked about what they were going to do to you?

16 SOL. JACKSON: I object to that. Calls for a conclusion.

17 THE COURT: Yes, sir. I'll let this man, if he wants
18 to, testify about the conversation that he had with the
19 fellow, but he's continuing to interpret. What you need to
20 do is just say what the fellow said.

21 Q Can you remember the words he used when he talked about
22 what was going to happen to you or whatever?

23 A They said they would fuck me up.

24 Q And at that time is when he took his fist and hit you
25 in the face?

- 1 A Yes, sir. He -- after we done -- we set there and
2 argued, and after he was saying what he was going to do to
3 me, we sat there and argue a while; and I just said, "Man,
4 just go ahead and get the fuck out my face." And that's
5 when he hit me.
- 6 Q And what did you -- what had you thought about the fact
7 that he had his hand in his pocket?
- 8 A I thought maybe he had -- I thought he had a gun.
9 Thought maybe, you know, he was trying to get me to fight
10 him again so he could, you know, shoot me or something.
11 That was running through my mind.
- 12 Q And he hit you in the head with his fist?
- 13 A Yeah. I know if we would have fight then, all of them
14 would have jumped on me.
- 15 Q All of them being who?
- 16 A The Blue Ice Gang, 'cause they was out there.
- 17 Q And then he tried to hit you again?
- 18 A Yeah.
- 19 Q And that's when you did what?
- 20 A I stabbed him.
- 21 Q Then what did you do?
- 22 A I went to my mama's.
- 23 Q How many -- how many times did you stab him?
- 24 A Once.
- 25 Q Did you -- Did you know what you were doing at that time?

1 A Not really. I didn't thought I hit him. I didn't
2 thought I stabbed him.

3 Q And then what -- what did you do?

4 A I went home.

5 Q What did he do?

6 A I -- all I -- when I stabbed at him, all he did was
7 walked away, and I went on home. I walked on home.

8 Q Did you follow him anywhere?

9 A No, I didn't follow him.

10 Q Did you follow him or any of his friends anywhere?

11 A No, sir.

12 Q Okay, now, where did you go after that, Mr. Butler?

13 A After I went home?

14 Q Uh-huh.

15 Q Well, my mother -- those guys, the Blue Ice Gang, was
16 trying to come in my mama house, and they was -- my little
17 nieces and nephews was crying and talking about somebody got
18 a gun and stuff, and I was going to go back out there; but
19 my mama had tell me to go out the back door. So I went out
20 the back door and went down to Cynthia's house.

21 Q And did you subsequently come to find out that the
22 police wanted to talk to you?

23 A Yeah, the next day.

24 Q And what did you do?

25 A I told Cynthia to go call the police and tell them to

1 come pick me up.

2 Q And Cynthia, are you talking about Cynthia Waymer?

3 A Yes, sir.

4 Q And did she do that?

5 A Yes, sir.

6 Q And where were you? I mean did you come to see the
7 police after that?

8 A The police, he came through the project, and he passed
9 the house, so I went up there, and I waved him down. He
10 come on down.

11 Q Do you know who that officer was?

12 A No, I don't know. It was a white guy. That's all.

13 Q But he stopped and ---

14 A Yeah.

15 Q Did you get in the car with him?

16 A Yeah, I got in the car with him.

17 Q Where did you go?

18 A Took me to the Complex.

19 MR. BOWMAN: No further questions at this time.

20 CROSS-EXAMINATION BY SOL. JACKSON:

21 Q Mr. Butler, when you got down to the Police Department,
22 did they read you your rights?

23 A Yeah.

24 Q Did you understand those rights?

25 A Yes.

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1 Q And did you waive those rights and then give the police
2 a statement?

3 A Yes, sir.

4 Q You remember doing that?

5 A Yes, sir.

6 Q And that was a voluntary statement, wasn't it?

7 A Yes, sir.

8 Q They didn't beat you up or threaten you or do anything
9 like that to get you to make a statement; is that right?

10 A No, sir.

11 Q And as part of that statement didn't they ask you where
12 you lived?

13 A Yes.

14 Q Isn't it true that on that statement you put that you
15 lived at

16 A Yes, I did.

17 Q Why did you tell them that?

18 A Because I couldn't remember the address at the time.

19 My -- you know, I -- my mind was so messed up, I had a, you
20 know, a lot -- I was puzzled.

21 Q You couldn't remember where you lived, you were so
22 mixed up.

23 A I could remember where I lived, but I couldn't remember
24 the address.

25 Q You know the difference between St. Paul Apartments ---

1 A Yes, sir, I do.

2 Q --- and Campus Drive, don't you?

3 A Yeah. Well, that's the address I used to stay at.

4 Q But you were so mixed up, you gave them the wrong
5 address?

6 A I didn't know the address. I couldn't remember it.

7 Q Well, were you mixed up in any other parts of your
8 statement?

9 A No, I wasn't mixed up, but when I gave him the statement,
10 he didn't believe it anyway. He didn't know it was true. He
11 told me that wasn't -- that ain't what he heard. He heard
12 something else.

13 Q And your testimony is that you and some other fellows
14 went down to Bi-Lo to buy some beer, is that right?

15 A Yes, sir.

16 Q Who all went with you?

17 A It was me, Wayne, and Raymond.

18 Q Wayne?

19 A Wayne Phillips and Raymond Livingston.

20 Q Are either one of them here today?

21 A No.

22 Q And y'all went inside the Bi-Lo, and you bought some
23 beer?

24 A Well, Wayne bought the beer.

25 Q Wayne bought the beer?

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1 A Yeah.

2 Q And that's where you say you saw Trevin put a pack of
3 cigarettes in his pocket?

4 A Uh-huh.

5 Q Did you report that to the store?

6 A No.

7 Q Instead you were going to go out there and get a free
8 one from him, weren't you?

9 A Well, you know, if he would have been, if it would have
10 been my business, I would have, you know, told somebody he
11 was stealing stuff. But I wasn't working there. I figured
12 I didn't have anything to do with it. All I did was ask him
13 for a cigarette.

14 Q It was not your business to turn in shoplifters?

15 A No, it wasn't my business to turn in shoplifters.

16 Q But you were going to take advantage of the situation by
17 going out and get you a cigarette from him, is that right?

18 A I wanted a cigarette. I wanted a smoke.

19 Q When you asked him for that cigarette, where was Wayne
20 and Raymond?

21 A They was out there, standing right out there.

22 Q And when he grabbed you up by the throat like you
23 testified to, what did Wayne and Raymond do? Did they come
24 running to your rescue?

25 A No, no, no, 'cause, see, you know, Wayne -- when we

1 was fighting, Wayne and Raymond was trying to stop the fight.

2 Q You mean these three fellows couldn't stop, get Trevin
3 Felder off of you? Is that your testimony?

4 A They -- every time they grabbed one -- every time they
5 stop one fellow, another fellow come and hit me.

6 Q How tall are you, Mr. Butler?

7 A Six feet.

8 Q How much do you weigh?

9 A One eighty.

10 Q How much did you weigh at that time?

11 A One eighty. I reckon I did.

12 Q You haven't lost any weight lately?

13 A Huh-uh.

14 Q And you are ten years older than Trevin Felder, aren't
15 you?

16 A Yes, sir.

17 MR. BOWMAN: Objection. That's irrelevant.

18 THE COURT: I overrule the objection.

19 Q You knew that Trevin Felder was seventeen years old,
20 didn't you?

21 A No, not at that time. I didn't know how old he was.

22 Q You knew he was a teenager, didn't you?

23 A I knew he was younger than me, but I didn't know
24 whether he was a teenager or not.

25 Q And you couldn't -- you couldn't get him off of you

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1 by yourself? Is that your testimony?

2 A 'Cause he wasn't on me by hisself.

3 Q How many others were there?

4 A Well, it was him and the other guy.

5 Q So it was two of them?

6 A Yeah.

7 Q And the two of them were staying on you despite the fact
8 that you had Wayne and Raymond helping you get them off?

9 A They wasn't helping me. They was trying to stop the
10 fight. They wasn't helping me fight.

11 Q They were trying to stop the fight, but they weren't
12 helping you?

13 A Well, they wasn't helping me fight like.

14 Q Did you hit Trevin during that fight?

15 A Did I hit him?

16 Q Yes, sir.

17 A I don't remember. I remember the fight, but I don't
18 remember if I hit him.

19 Q Well, you probably did, didn't you?

20 A I probably did.

21 Q You probably hit him with your fist, didn't you?

22 A If I hit him, I would have hit him with my fist.

23 Q How much had you had to drink up to that point?

24 A Well, we was out there, well, like, I think when I was
25 under the tree, it was probably about two, two or three

1 o'clock, something like that.

2 Q Well, my question is how much had you had to drink up
3 to that point?

4 A I had a couple of beers and a little -- little bot of B & J
5 not much.

6 Q You didn't have much liquor?

7 A No, not much.

8 Q Just a couple of beers?

9 A Yes.

10 Q You weren't intoxicated or anything at that time?

11 A I wasn't drunk. I was, you know, kind of.

12 Q Where was the knife at that time?

13 A In my coat. At the store? At the Bi-Lo?

14 Q Yes.

15 A I had it in my jacket pocket.

16 Q In your jacket? You didn't pull it out at that time,
17 did you?

18 A No.

19 Q You had it, but you didn't pull it out?

20 A No.

21 Q Why not?

22 A Why not? 'Cause I didn't really wanted to, you know.

23 I ain't figured it was, you know, was just ---

24 Q You didn't need it?

25 A That's right. Not at that time.

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1 Q And you say that while you were fighting with the fellow
2 you call Rob Base Trevin went all the way across Glover
3 Street, up to the nursing home ---

4 A Uh-huh.

5 Q --- got a piece of metal pipe ---

6 A Uh-huh.

7 Q --- and back across the street, back down to the Bi-Lo
8 Shopping Center, and hit you in the head with it? Is that
9 right?

10 A That was -- he hit me in the head with the plastic pipe.

11 Q Where -- where did he hit you with the metal pipe?

12 A Across my back, on my arm, everywhere he could, on the
13 leg.

14 Q And -- and during that time it was just you and Rob
15 Base there, while he was gone on this trip?

16 A I reckon. I don't know whether -- yeah, I think so.

17 Q It would have taken him four or five minutes to go and
18 get that pipe there and get back?

19 A No. He was running. It didn't take no four or five
20 minutes.

21 Q How long did it take?

22 A It didn't take long.

23 Q Where were you ---

24 A Probably about -- Where was who?

25 Q You finish answering your question. I didn't mean to

1 interrupt you.

2 A No, go ahead, no.

3 Q Where was Raymond and Wayne while you were fighting
4 Rob Base?

5 A They was -- they was trying to stop the fight.

6 Q You mean these two fellows couldn't break up the fight?

7 A I -- I don't know why they couldn't. I don't know.

8 Q How big was Rob Base?

9 A He was about probably my size, probably -- I don't
10 know if I'm taller than him or not. He's probably about my
11 size.

12 Q And y'all kept fighting all the way out in the street,
13 is that right?

14 A Uh-huh.

15 Q Right up until the police came?

16 A Yeah.

17 Q And when the police came, that's when it broke up?

18 A Yeah.

19 Q And when the police came and broke it up, where did
20 you go?

21 A I stayed there 'cause I didn't -- you know -- I thought
22 the police wanted to talk to me, but when they -- they went
23 and talked to Trevin and them, and then they came back and
24 jumped in the car and left, so I went on down to the project.

25 Q Okay. Where did you go from there?

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1 A Where did I go from where?

2 Q From when the police left?

3 A I went to the project.

4 Q You went to the project, straight there?

5 A Yeah.

6 Q And did you have that beer with you?

7 A Wayne had the beer.

8 Q Wayne had the beer?

9 A Wayne or Raymond or somebody. I don't know which one
10 exactly. I know one of them had it.

11 Q How much beer did they buy?

12 A They bought a forty ounce of beer and I think it was a
13 pint of wine.

14 Q Now, after that fight was over, that was the end of it,
15 wasn't it?

16 A Yeah, I thought it was.

17 Q You weren't mad about anything?

18 A No, not really.

19 Q And, in fact, when Trevin came up there, he gave you a
20 high five, isn't that right?

21 A Yeah.

22 Q Everything was all right?

23 A Yeah.

24 Q Was he smoking a cigarette?

25 A I don't remember was he smoking a cigarette.

1 Q Did he drop a cigarette on your foot?

2 A I don't even remember that.

3 Q Do you deny that that happened, or ---

4 A It could have happened. It could have happened, but I
5 don't really remember.

6 Q Well, if he had dropped a cigarette on your foot, would
7 you have gotten mad about that?

8 MR. BOWMAN: Objection. He's asking him to speculate
9 about what he would have done.

10 THE COURT: I overrule the objection.

11 Q That would have bothered you if he had dropped a
12 cigarette on your foot, wouldn't it?

13 A I imagine some.

14 Q And how much had you had to drink, now, between the time
15 you got back to the project and when Trevin showed up?

16 A We dranked -- about four or five people drinking that
17 forty ounce of beer and that pint of wine. So you know,
18 four or five people, it wouldn't have been that much.

19 Q There were four or five people there, sitting there with
20 you. Is that right?

21 A There was -- there was probably more than that, but
22 that's all of us was drinking out the bottle.

23 Q So there were more than four or five people sitting
24 around? Is that right?

25 A Yeah, just sitting around.

1 Q Now, when Trevin came up, nobody left, did they?

2 A I don't -- I don't think so. I don't remember nobody
3 leaving.

4 Q And what happened, then, when Trevin came?

5 A When he came?

6 Q Yes, sir.

7 A When he first came back from down the hill?

8 Q Yes, sir.

9 A He came running down the hill just like I said, holding
10 his pocket.

11 Q He came straight to you?

12 A Yeah, came straight to me.

13 Q You don't know what he had in his pocket, if anything?

14 A No, I don't. I don't know what he had in his pocket.

15 Q His pants might have been falling down. He might have
16 been holding them up. Isn't that true?

17 A It could have been, but I doubt it. I doubt
18 it.

19 Q Well, what did he say to you when he got -- when he
20 arrived?

21 A He didn't say nothing. He just look at me and hold his
22 hand up and laughing.

23 Q He was in a good mood?

24 A Uh, you know, I don't know.

25 Q He gave you a high five?

1 A Yeah, he give me a five.

2 Q That was all right with you, wasn't it? You weren't
3 mad with him, were you?

4 A No.

5 Q Then what was the next thing that happened?

6 A The next thing that happened? I start telling him about
7 -- I think -- 'cause the guys -- the guys that was around
8 there, they said, "Man, that's right. Y'all just go ahead
9 and make up." I said, you know, "I ain't got nothing against
10 nobody."

11 Q Your problem was with Rob Base?

12 A Yeah, I said -- 'cause, you know, I said, "The guy that
13 was with you ain't had nothing to do with what me and you was
14 doing." You know what I mean? And he got all upset about
15 that.

16 Q You threatened Trevin to get even with Rob Base,
17 isn't that right?

18 A I did what, now?

19 Q Did you tell Trevin you were going to get even with Rob
20 Base for what he did?

21 A I ain't say I was going to get even with him, now.

22 Q What did you say?

23 A I say -- I say if I see him, I might -- I ought to, you
24 know.

25 Q You what, now?

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- 1 A I say if I see him, again, I ought to kick his ---
- 2 COURT REPORTER: What?
- 3 Q You ought to do what?
- 4 A Kick his butt.
- 5 Q Well, that's a threat, isn't it?
- 6 A Well, I -- I -- well, I reckon you can call it that.
- 7 Q Trevin didn't want you to do that, did he?
- 8 A Well, he -- he got all upset, say what, you know,
- 9 what they -- what they was gonna do, what they would do to
- 10 me, and all this kind of stuff.
- 11 Q Then he tried to talk about what they were going to do
- 12 to you?
- 13 A Yeah.
- 14 Q If you messed up with Rob Base.
- 15 A No, they was -- no, no, no. I wasn't talking about
- 16 messing up Rob.
- 17 Q They were just general principles were going to get you?
- 18 A Huh?
- 19 Q They were just going to get you for no reason at all?
- 20 A I reckon. I don't know.
- 21 Q Were you sitting down or standing up when all this was
- 22 going on?
- 23 A I was standing up.
- 24 Q Who was sitting on the bench?
- 25 A I don't know.

1 Q When did Trevin hit you?

2 A After I told him a couple of times to get out my face,
3 you know ---

4 Q You used a little stronger language than that, is that
5 right?

6 A Yes.

7 Q And when he didn't do that, he hit you?

8 A Uh-huh.

9 Q He hit you with his fist? Right hand or left hand?

10 A I think it was with the right hand.

11 Q Where did he hit you?

12 A On my jaw.

13 Q On your jaw? Did he break it?

14 A No, he didn't break it.

15 Q Cause you to bleed or anything?

16 A No.

17 Q This was the same guy you had earlier been in a fight
18 with, is that right?

19 A At the Bi-Lo?

20 Q And your testimony is that you were afraid that if you
21 got in a fight with him, that these other fellows were going
22 to come up and help him out?

23 A I know they would. I know that, 'cause they ---

24 Q So instead of getting in a fight with him, what you
25 decided to do was to stab him?

- 1 A No, no, no, no.
- 2 Q Isn't that right?
- 3 A No.
- 4 Q You decided to stab him, didn't you, Mr. Butler?
- 5 A No, I didn't really decide to stab him.
- 6 Q Well, you pulled out the knife, and you stabbed him,
- 7 didn't you, Mr. Butler?
- 8 A Well, yeah, I stabbed him.
- 9 Q Well, you must have meant to do it, didn't you, Mr.
- 10 Butler?
- 11 A Not really.
- 12 Q You mean you did something you didn't mean to do?
- 13 A Well, I didn't really mean ---
- 14 Q You wanted to get him off you, didn't you, Mr. Butler?
- 15 A Yes, sir, but I ---
- 16 Q And the way to get him off you was to pull that knife
- 17 out and stab him, isn't that true?
- 18 A I reckon.
- 19 Q You could have left, couldn't you? You could have
- 20 turned around and walked away. Isn't that true?
- 21 A I -- I could have, I reckon, but I -- you know, I guess
- 22 I wasn't thinking.
- 23 Q You didn't have to pull out that knife and stab him,
- 24 did you?
- 25 THE COURT: Let's move along, Solicitor.

1 Q You say you didn't find out the police were looking for
2 you until the next day?

3 A No.

4 Q You didn't see the police out there?

5 A Huh-uh.

6 Q You never went to the window and looked out to see the
7 police?

8 A I wasn't around on that side of the project. I was
9 down in the bottom part.

10 SOL. JACKSON: That's all I have.

11 REDIRECT EXAMINATION BY MR. BOWMAN:

12 Q Mr. Butler, when Mr. Jackson, the Assistant Solicitor,
13 asked you if you could have walked away, it's also a fact
14 that Mr. Trevin Felder didn't have to come back to your
15 territory down there, did he?

16 THE COURT: Don't lead him, Mr. Public Defender. Ask
17 him a question every now and then.

18 Q Now, the reason -- you said you had the knife at the
19 Bi-Lo?

20 A Uh-huh.

21 Q But you didn't use it then?

22 A No.

23 Q Did you think he had any kind of weapon then?

24 A Other than that pipe.

25 Q But when he was at the tree in the courtyard of St.

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1 Paul's Apartments, when you did use the knife, did you think
2 he had a weapon then?

3 A Yeah.

4 Q What did you think he had?

5 A I thought he had a gun, because it was kind of shaped
6 like a gun, and it went in his pocket down like it was a gun.

7 Q And you talked about there being other people, Wayne
8 Phelps and Raymond Livingston?

9 A Uh-huh.

10 Q And he asked you where they were?

11 A Who's that?

12 Q Mr. Jackson asked you where they were?

13 A He asked me was they in the Courtroom, was they here.

14 Q Did you try to find them to help him ?

15 A Yes, I did. Well, you know, I -- I asked around about
16 where they were.

17 Q And you weren't able to, were you?

18 A No, sir.

19 Q And you cooperated with the police?

20 A Yes, sir.

21 Q Gave them a statement?

22 A Yes, sir.

23 Q Then even when you thought the police didn't believe
24 what you were telling them, you gave them a statement?

25 A Yes, sir.

1 MR. BOWMAN: No further questions.

2 THE COURT: Solicitor?

3 SOL. JACKSON: Nothing further.

4 THE COURT: All right.. Step down.

5 MR. BOWMAN: May we approach the bench, please?

6 THE COURT: Yes, sir.

7 (WHEREUPON COUNSEL APPROACH THE BENCH.)

8 MR. BOWMAN: Your Honor, I would like to have included
9 in the record that the State and the defense have agreed on
10 a stipulation, which would be to the effect that had Captain
11 Wolfe testified, it would have been to the effect that my
12 client did as he said. He called the police and turned
13 himself in.

14 SOL. JACKSON: We stipulate to that, your Honor.

15 THE COURT: And that was when?

16 SOL. JACKSON: The next day.

17 MR. BOWMAN: That would be the defense case, your Honor.

18 THE COURT: All right. Anything in reply?

19 SOL. JACKSON: No, sir.

20 THE COURT: All right, Mr. Foreman and members of the
21 jury panel, I'm going to let you go to your room and stretch
22 a little bit. They have refreshments in there for you, Coca-
23 Cola, coffee. Y'all get a little something to wake yourselves
24 up. I'll call you back in a minute.

25 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF

1 THE JURY.)

2 THE COURT: All right, then, you gentlemen, then, are
3 ready to go forward with this particular case?

4 SOL. JACKSON: That's correct, your Honor, and the
5 State would waive opening.

6 MR. BOWMAN: That's correct, your Honor.

7 THE COURT: And that suits you for him to waive opening?

8 MR. BOWMAN: Yes, sir.

9 THE COURT: All right, Madame Reporter, both the
10 lawyers advised me in chambers that -- where is the defend-
11 ant?

12 MR. BOWMAN: He's coming, your Honor.

13 THE COURT: How long do you fellows want to argue?

14 SOL. JACKSON: Your Honor, due to the seriousness of
15 this charge, I would like a little more time, perhaps as
16 much as twenty-five minutes.

17 THE COURT: How much do you want, Public Defender?

18 MR. BOWMAN: Twenty will be adequate for me, your
19 Honor.

20 THE COURT: Twenty. All right, sir. You know the
21 rules, Solicitor.

22 SOL. JACKSON: Half of what he says?

23 THE COURT: Half of what he uses, in that general
24 neighborhood.

25 SOL. JACKSON: I think I can probably be through in

1 twenty.

2 THE COURT: All right. Both of you kind of aim at that,
3 and then use whatever amount you really need.

4 Madame Court Reporter, both counsel advise me that they
5 agree because of the hour and the fact that we always have
6 so many ladies on the jury, that they will make their closing
7 arguments today. I will charge the jury first thing in the
8 morning for deliberations. Is that correct, Solicitor?

9 SOL. JACKSON: The State agrees to that.

10 THE COURT: Public Defender?

11 MR. BOWMAN: The defense agrees, your Honor.

12 THE COURT: All right. Bring the jury in.

13 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
14 JURY.)

15 THE COURT: All right. Is everybody rejuvenated now?
16 Okay. Each of the lawyers want to make a closing statement
17 to you, and Mr. Bowman will make the first statement, then
18 the solicitor.

19 (CLOSING ARGUMENT BY PUBLIC DEFENDER, MR. BOWMAN. NOT
20 REQUESTED IN THIS TRANSCRIPT.)

21 THE COURT: Solicitor.

22 CLOSING ARGUMENT BY SOLICITOR JACKSON

23 SOL. JACKSON: May it please the Court, Mr. Bowman,
24 ladies and gentlemen of the jury, first of all let me take
25 this opportunity to thank you for the close attention you

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1 paid in this case, certainly on behalf of the State, and I'm
2 sure on behalf of Mr. Bowman and his client and everyone
3 involved in this case. We appreciate the fact that you don't
4 necessarily want to be up here, that you don't necessarily
5 want to be on this case, but yet it's our civic duty some-
6 times to come in and do these types of things, and that you
7 are here, ready, willing, and able to serve on this jury.
8 Certainly we cannot ^{re}/solve these types of disputes without
9 jurors such as yourselves, and I know I'm joined by everyone
10 involved in this case in thanking you for doing your duty
11 and your job as citizens.

12 As I told you early on, the burden of proof in this
13 case and every criminal case, rests with the State of South
14 Carolina. Even at this point, even after all this testimony
15 that you've heard today, Mr. Butler stands over there or
16 sits over there cloaked with the presumption of innocence.
17 He's still presumed guilty. That continues to stay with him
18 until such time as you, ladies and gentlemen, in the jury
19 room are convinced beyond a reasonable doubt of his guilt of
20 a crime. That's true in this case and in every case. The
21 State has to present to you sufficient evidence to prove the
22 defendant's guilt of any crime beyond a reasonable doubt.

23 In this instance he's been charged with probably the most
24 serious offense. I don't think there's any question but the
25 most serious offense one can be charged with in this State,

1 and that is the offense of murder. I submit you're also
2 going to hear the law of the lesser included offense called
3 manslaughter. I'm going to talk a little bit about that.

4 Mr. Bowman and his client claim that his client is not
5 guilty by reason of self-defense, and I'm going to talk a
6 little bit about that.

7 First of all we put up a number of police officers who
8 testified about what they did at the scene of the crime.
9 Certainly that probably wasn't earth-shattering testimony.
10 I'll agree with Mr. Bowman on that, but I think it's necessary
11 testimony so that you'll know what police officers do when
12 they have these type of situations.

13 Unfortunately we didn't have a police officer there at
14 St. Paul-Williams Chapel Apartments when this stabbing took
15 place to come into court to testify about what he saw. I
16 wish we had of had one there, but they weren't there. They
17 came later when they got the call.

18 When EMS got the call, Mr. Jones with EMS testified that
19 he found the body, that there was no pulse, there was no
20 breathing, there was no response at all. In effect, Trevin
21 Felder had already met his death by the time the EMS worker,
22 the technician, Mr. Jones, got there.

23 You heard Coroner Adcock come in, Deputy Coroner Adcock,
24 and as he's required to do, to go to the scenes when you have
25 such things and ask that autopsies be done. He did that. He

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1 pronounced the body dead there at the scene of Trevin Felder,
2 and it was sent up to Newberry for an autopsy.

3 You heard testimony from Officer Williams about these
4 measurements and things, and they may not be real critical in
5 this case, but they might be in the next case. I don't know.
6 But certainly this is information that you have for you to
7 consider in determining what happened out there on December
8 22 of 1988. It may be information that you might ultimately
9 not need, but certainly it's information you ought to have,
10 because it belongs to the State, and it ought to be brought
11 into this Courtroom.

12 Certainly we want to bring in to you all the information
13 that we have regarding this case so that a fair and just
14 decision can be reached in this case.

15 You heard Dr. Sexton's testimony. Again I don't think
16 there's any question in this case as to who killed Trevin
17 Felder. It's a little bit of an unusual case in that. We
18 know, everybody knows, who killed Trevin Felder, this man
19 right over here, Richard Butler. He admits to that. He says
20 he did it in self-defense. So that becomes the question.
21 Was he acting in self-defense, or was it murder? That's the
22 question that you have to resolve.

23 One of the things that you ought to consider, I submit
24 to you, in dealing with this case is the question of Dr.
25 Sexton's testimony. His testimony is they examined this body

1 extremely thoroughly. . They take blood samples and urine
2 samples, and they found out that Trevin Felder had been
3 drinking. There's no question about that. But you know
4 the fact that he was drinking, the fact that he had too much
5 to drink, doesn't mean he should die. He doesn't deserve to
6 be killed for that. He wasn't having any drugs in his
7 system. That was the testimony. He was certainly at least
8 that's good, I suppose, in his defense.

9 But Dr. Sexton also told you he -- there was one wound,
10 just one wound. It started right here. It went upward in a
11 right-hand direction, six inches deep and over an inch wide,
12 and that wound killed Trevin Felder. It got into his heart,
13 caused his heart to bleed, caused the blood to go into his
14 lung cavities and so much blood went in there, that it caused
15 him to die.

16 But there were no other bruises. What kind of fight did
17 they have at Bi-Lo Shopping Center and then again, you know,
18 when Trevin Felder punched Richard Butler in the face, if
19 you believe his testimony, without getting bruises on his
20 hands?

21 I mean if you listen to Mr. Butler, that fight down at
22 Bi-Lo must have lasted an hour, maybe not that long, but it
23 certainly must have lasted some time, because not only did
24 he and Trevin fight, but then this person, Rob Base,
25 whoever that is, fought. Then he and Rob Base fought some

1 while Trevin went across Glover Street and up to where they
2 were building this nursing home, got an iron pipe, and came
3 back. So I mean this is a long fight. But yet there are
4 no bruises, no marks, no nothing on the body of Trevin
5 Felder.

6 Certainly if you punch somebody in the jaw, there ought
7 to be some kind of little marks or bruises on your hand.
8 Dr. Sexton says no. There wasn't any such thing. Could
9 this be that the reason for that is because the way Mr.
10 Butler tells you the story is not true?

11 Whatever happened at the Bi-Lo Shopping Center, I
12 submit to you is really not relevant in this case. Mr.
13 Bowman wants to make a big deal out of it because of the
14 fight and all that, and certainly that's his job, and I
15 don't blame him. I'd probably be doing that, too, if I were
16 him.

17 But I submit to you that fight was over and done with
18 by everybody's admission prior to the stabbing. Even this
19 man tells you that. He wasn't mad about that. He wasn't
20 mad with Trevin Felder. Who was he mad with? Rob Base.
21 That's who his problem was with. He wasn't mad with Trevin.
22 Trevin wasn't mad with him. Trevin came up to him. They
23 shook hands, a high five or whatever it was they did. Walter
24 Riley told you that, and Mr. Butler told you that. Said it
25 was a friendly kind of thing.

1 Of course, then the stories change. So I submit to you
2 that the pipe incident and all this kind of stuff down at the
3 Bi-Lo Shopping Center was over with, done with, and passions
4 had cooled, so to speak. Nobody was mad about anything any
5 more at that point. Certainly Mr. Butler, he admits that.

6 What got Mr. Butler mad was this cigarette thing. Walter
7 Riley told you about that. Trevin threw down a cigarette.
8 It hit his foot, and he got mad about that. Trevin tried to
9 explain, well, it was just an accident. He threw it down
10 again, and it hit his foot again, and he got madder about it.
11 And Trevin tried to walk away, Walter Riley tells you. And
12 as Trevin walked away, Richard Butler came up behind him,
13 got him, and turned him around, and stabbed him.

14 And this was not just, you know, just a little light
15 stab. This was a stab wound that started here, went upwards.
16 I mean this had to be a thrust of some type, because it went
17 upward into the right, up to six inches deep. Dr. Sexton
18 told you it might have only been a five-inch blade making a
19 six-inch hole. That's a possibility, but five or six inches,
20 that's a deep, deep stab wound.

21 And he didn't even think he stabbed him, if you believe
22 Mr. Butler. "Oh, I didn't even know I did it." Now, how
23 in the world can you put a stab wound in somebody six inches
24 deep and upward and in a right-hand direction without even
25 knowing that you did it? Mr. Butler's not telling you the

1 truth, ladies and gentlemen. He doesn't want you to know
2 the truth, because the truth is he's guilty of murder. He
3 doesn't want you to know that.

4 I believe your Honor will charge you later in this
5 trial that murder is defined as the unlawful killing of
6 another with malice aforethought, sort of a legal phrase.
7 You've got to have an unlawful killing of a person, and you
8 have to have malice aforethought. I believe he's going to
9 tell you that malice can be inferred by the fact that a
10 deadly weapon, such as a knife, was used in an incident.

11 I believe also he's going to tell you that malice can
12 also come from -- you know, when you intend to inflict
13 bodily harm on somebody, and they die as a result of that,
14 that's malice. I submit to you that malice is a wickedness,
15 an evil spirit, or a wickedness of the heart. The Judge is
16 going to use language like that. He's going to explain it
17 a lot better than me. In fact, really, you need to listen
18 to his charge on the law, not me, because he's the one that
19 gives you that.

20 I submit to you that this man had lots of malice out
21 there. Not only did he use a deadly weapon, he -- he really
22 used it, six inches deep, in a situation where he didn't have
23 to do anything. By his own admission, he could have gotten
24 up and left. You're going to learn, I believe, when the
25 Judge charges you, that one of the elements of self-defense

1 is that you have no reasonable means of escape. There's
2 no question but that Richard Butler had plenty of means of
3 reasonable escape. He had four or five or eight friends
4 sitting around there drinking with him. They're gonna
5 stand there while this seventeen year old, a young man who's
6 a lot younger and a lot smaller than this man, beats up on
7 him? Does that make sense? Is that credible or believable
8 testimony from this man over here? I submit to you that
9 it's not.

10 He had reasonable means of escape; therefore, there is
11 no self-defense in this case. You've got to be in total
12 reasonable fear of your own safety or your own life or your
13 own health for it to be self-defense. I submit to you it
14 was not reasonable for him to be in fear of his life. He
15 had already fought with this young man once, and -- and
16 apparently came out of it okay. There's no self-defense
17 here.

18 Now, let's look at what the defendant tells you, what
19 his testimony and evidence is. First of all, where does
20 Richard Butler live? What he tells the police -- and he
21 says he was mixed up and everything -- of course, he tells
22 the police everything else right; but the one thing he misses
23 on the police was where he lived. He gave them an address
24 he lived two or three years before over on Campus Drive.
25 I submit to you you've got to be awful mixed up to make a

1 mistake like that. I submit to you he was trying to mislead
2 the police in some way.

3 The next thing you hear from his sister, his own sister,
4 now, is that he was living with Cynthia Waymer at St. Paul
5 Chapel Apartments. Now, Cynthia Waymer didn't say that. She
6 said they had three kids, you know, that they were common-
7 law marriage, but she didn't say they lived together. And
8 the next testimony you heard from Mr. Butler himself was
9 that he was living with his mother in St. Paul's Chapel
10 Apartments, three different addresses. I don't even know
11 where he lived, and I submit to you that those are the types
12 of things that you ought to reflect on his credibility as a
13 witness and the credibility of all these witnesses that the
14 defense presented.

15 How much had he been drinking that day, and what was he
16 drinking that day? Jacob Brown tells you they were drinking
17 beer and this V and G liquor or whatever he called it. I'm
18 not even sure what it was. Terry Murphy says they were just
19 drinking beer, and then Mr. Butler gets up there and says,
20 "Well, I had a couple of beers and a little old tiny bit of
21 of that liquor." Well, now, who's telling you the truth
22 there? As I recall Mr. Brown's testimony -- and again don't
23 take the testimony from me, because you are the judges of
24 that, and you listen to what -- and remember what you
25 remember about the testimony, not what I remember about it.

1 But what I got from Mr. Brown was that they had been
2 drinking all day long, beer and liquor. Mr. Murphy said
3 something different. Mr. Butler said something different.
4 Why? Because they're not telling you the truth.

5 You know, another thing about Jacob Brown and Terry
6 Murphy is that they gathered these statements allegedly
7 where Trevin Felder, you know, was making these threats,
8 these mysterious threats; and, of course, none of those
9 threats named Richard Butler. They said things, you know,
10 "I'm gonna mess him up. We're gonna get even with him,"
11 using a lot worse language than that, and I'm like Mr.
12 Bowman. I don't like to use that kind of language in the
13 Courtroom or anywhere else for that matter. But none of
14 those threats threatened Richard Butler. The other thing
15 I noticed about that testimony is that at no time did
16 Jacob Brown say he -- he told Mr. Butler about that threat.

17 Whatever it was Mr. Brown heard, he kept to himself.
18 Mr. Butler didn't know anything about it. So he can't be
19 considered in -- in his state of fear or state of mind on
20 that evening. The same ^{with} Terry Murphy. Terry Murphy never
21 said that he communicated what he heard to Mr. Butler, or
22 did he say that Mr. Butler was there when he heard it.
23 If he had, he would have been testifying about that. "Yeah,
24 they," you know, "They came over." They were pointing right
25 at Mr. Butler. "We're going to get you." You didn't hear

1 that testimony. What Terry Murphy heard and what Jacob
2 Brown heard, if it was said at all -- and I submit to you
3 that there ought to be plenty of doubt about that, they
4 just heard it themselves, and they never communicated it to
5 Mr. Butler. He couldn't even have known about it.

6 They tell you about an incident that happened a month
7 before, but apparently it didn't upset them enough to call
8 the police. It didn't upset them at all, according to Miss
9 Waymer. It was just kids running their mouth, and that's
10 what we have in this situation, a seventeen year old kid.
11 I can't put him on the stand.

12 In every murder case I've ever tried, there's always one
13 witness that can't come to the stand, and it's the victim.
14 I don't know what he would say. He's not here to respond
15 to some of the things that have been said about him. He
16 was accused by Mr. Butler of shoplifting cigarettes. He
17 can't respond to that. I have no way of responding.

18 Yes, Mr. Butler can say a lot of things about Trevin
19 Felder that can't be disputed. I submit to you that Mr.
20 Butler's testimony is patent with just ridiculous --
21 about the fight at Bi-Lo even. If this man over here can't
22 hold off a seventeen year old kid who's younger than him
23 and this other person, Rob Base, when he's got two
24 friends, two friends who aren't in court by the way, who
25 he couldn't get in court to testify for him, I don't know

1 why -- but the three of them couldn't take care of these
2 two young people, one of whom at least is a seventeen year
3 old who you have learned was five feet ten and weighed
4 a hundred and seventy pounds, smaller than Mr. Butler.
5 Does that make sense? It doesn't make any sense at all.

6 I submit to you that Mr. Butler is just trying to
7 embellish the story. Oh, it happened. They had a fight.
8 I don't think there's any question about that. Walter
9 Riley told you about it. John Riley told you about it.
10 They had a fight, and this pipe incident happened. But as
11 I told you earlier, that was over. That was done with.
12 The point I'm making here is that Mr. Butler is trying to
13 embellish it. He's trying to make it worse than what it
14 really happened in order to get off this thing, in order
15 to hide the truth.

16 He tells you that he was there in St. Paul-Williams
17 Chapel Apartments that night with all these people out in
18 the hallway after he stabbed somebody, and he -- of course,
19 he says he didn't realize he stabbed him. But after he
20 stabbed and killed Trevin Felder, all the police are around
21 doing all this measurement and everything else; but he
22 didn't know they were there. He was on the back side of
23 the apartment. He didn't know they were there. He didn't
24 know they were looking for him. Is that believable? Is
25 that credible?

1 You know, the police didn't find him that night, so we
2 don't know what his level of intoxication might be. We
3 don't have a blood test on -- on Mr. Butler. We've got
4 evidence from his own witnesses he was drinking. We don't
5 know how much. We don't have all that stuff. We were able
6 to get it on Trevin Felder, because he --
7 He couldn't leave.

8 Mr. Butler left. He turned himself in the next day.
9 He did turn himself in the next day. There's no dispute
10 about that.

11 This big gang that they want to tell you about, this
12 horrible, terrible gang of teenagers, you know, they're
13 coming -- they're coming after the guy who's just killed
14 their friend; and they run into this lady, Ann Butler, who
15 says, "You're not coming in here." So what do they do?
16 They turn around and leave. What kind of terrible, evil
17 gang is this? Their friend has just been killed by somebody
18 they saw run in the apartment. They've got a gun, and
19 they're going to let this woman right here tell them they
20 can't go in there. I mean is that a terrible, evil, big-city
21 kind of gang? I mean it's just not believable, the story
22 that the defendant and his witnesses are telling.

23 Louise Brown, the first witness they put up -- going back
24 again to the Bi-Lo Shopping Center thing, and just showing
25 you the inconsistencies in the defendant's own testimony,

1 she saw the fight between presumably Trevin and Rob Base
2 although she didn't know who they were. She didn't see any
3 weapon. She didn't see any pipe. She didn't see any blows
4 being passed. They were tussling, as she put it, and then
5 she went on inside.

6 Does that sound like a great big fight like he would
7 make it out to be that lasted for gosh knows how long? They
8 fight all the way across the road. I submit to you that
9 Mr. Butler doesn't want you to know the truth.

10 I submit to you that what happened is that Mr. Butler
11 was still angry about that fight. When he got to St. Paul-
12 Williams Chapel Apartments. . . Trevin Felder approached him,
13 tried to make up, tried to shake his hand. He waited for an
14 opportunity to get angry. That opportunity presented itself
15 with this cigarette incident falling on the ground, what-
16 ever. He had that --- he had the way to take care of it.
17 He could solve that problem, and he did. He took care of
18 it.

19 He took that knife and thrust it in a manner that went
20 to that side of Trevin Felder's chest, upward to his
21 heart. He killed him. He caused the death of Trevin
22 Felder. He says he didn't mean to do that, but what in the
23 world did he mean to do when you take a -- what had to have
24 been a good-size knife, what was described up in the
25 testimony as a big knife, and thrust it right here in

1 somebody. If you don't mean to kill them, I don't know
2 what you mean to do. You're going to cause more than a
3 scratch by doing that when you put it six inches deep.

4 I'm going to stop now, and the Judge is going to charge
5 you as to the law a little later on. I told you at the end
6 of the trial that I was going to ask you to return a
7 verdict which does the right thing, and that's what I want
8 you to do, deliberate, consider all the evidence. If you
9 believe that this man was acting in self-defense, that he
10 had no reasonable means of escape, that he had to do what
11 he did, he had to kill Trevin Felder; even though there's
12 no evidence that there was any weapons found on Trevin
13 Felder, a gun or anything, all we have is just some
14 suspicion that he raises, that nobody else saw, this thing
15 that he tells was in his pocket. No other witnesses saw
16 that. If you believe that he acted in self-defense, then
17 the right thing is to return a verdict of not guilty.

18 On the other hand, if you feel that -- believe beyond a
19 reasonable doubt that this killing was unlawful, that there
20 was malice aforethought, because he used a deadly weapon,
21 because he wanted to kill him when he stabbed him, then the
22 right thing is to return that verdict of guilty of murder.

23 His Honor is going to tell you, I believe, about the
24 defense of manslaughter. That is the unlawful killing where
25 malice aforethought is not present. Something is done in

1 the heat of passion. People get mad with each other. They
2 are not really thinking clearly because of the anger, and
3 they pull out a gun and shoot somebody. That's voluntary
4 manslaughter. His Honor, I think, will charge you on that.
5 If you find that that fits the facts of this case, then
6 your duty is to return a verdict of guilty of voluntary
7 manslaughter.

8 I submit to you that the right thing to do is clear in
9 this case. The right thing to do has been proven by the
10 State beyond a reasonable doubt, and that right thing is to
11 return a verdict of guilty of the offense as charged, murder.
12 Thank you.

13 THE COURT: Mr. Foreman and members of the jury panel,
14 I'm going to let you go home for the evening. I've got to
15 charge you on the legal principles involved in this case,
16 and that takes some little time, and you would then be
17 required to deliberate about your verdict, and I will not
18 require you to do that at this hour in the evening. As I
19 told the jury on yesterday, quite often we have in today's
20 court proceedings we have so many ladies on a jury, and I
21 know that people need you about this time of the evening
22 more than we do here. So I'm not going to require you to
23 deliberate at this hour of the evening. I'll excuse you,
24 ask you to come back in the morning at nine o'clock. Come
25 back to your jury room, not out here to this jury box, not

1 out there with the other jurors; but return to your jury
2 room at nine o'clock, and I will charge you on the law
3 and give you this case for your verdict.

4 While you are gone this evening, remember what I've
5 told you. Do not talk to anybody about this case. Do not
6 let anybody talk to you about it. Do not make up your own
7 minds about your verdict because you've got to know what
8 the legal principles are before you could arrive at a
9 verdict anyhow. So what you want to do is continue open-
10 minded, ready to let me tell you the legal principles
11 involved on tomorrow, and you may then deliberate about
12 your verdict. Have a nice evening. Come back at nine
13 o'clock. You may be excused. Thank you.

14 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
15 THE JURY.)

16 THE COURT: Madame Court Reporter, your record would
17 reflect that the defendant's counsel reserves his motions
18 to be made at the conclusion of the State's case. If you
19 wish to argue now, I will be glad to hear you.

20 MR. BOWMAN: Thank you, your Honor. I was going to ask
21 you about that at this time.

22 THE COURT: Okay.

23 MR. BOWMAN: We would move for a directed verdict of
24 acquittal, your Honor. We believe that the evidence that's
25 been presented is foresquare with the elements as set forth

1 in State v. Davis and reiterated by our Court many times.
2 I note that the state takes the position that our client
3 had a duty to retreat. I submit to you that he was in his
4 own territory. He was in the area that he lived in the St.
5 Paul Apartments, which was a common area of the apartments---

6 THE COURT: That's public property. It wouldn't have
7 -- domicile does not apply to public property. You've got
8 to be in your house or on your own premises. You can't be
9 on public premises and ask for a charge on that. I would
10 not -- I would not charge that he was at his own home. In
11 the first place we haven't been able to determine where that
12 is.

13 MR. BOWMAN: Well, there may be -- there may be some
14 disputed testimony as to that.

15 THE COURT: But even if he did live there, you can't --
16 you do not control an entire project of homes. When you're
17 out in your yard, you don't have the right to talk about not
18 retreating. You've got to be on your own premises to do
19 that, not on public premises owned by everybody, apartment
20 houses.

21 But the point in my refusal of your motion is simply
22 that it's a jury question. They don't have to believe the
23 conflicting accounts about what happened in order to -- in
24 order for me to refuse your motion for directed verdict.
25 The only time I can direct a verdict is when there's only

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1 one verdict which reasonable people could reach, and certain-
2 ly here they could conclude, they simply think that this man
3 murdered the other fellow. They might well believe that he
4 acted in self-defense, but it would be a jury question for
5 the jury. I mean a factual question for the jury. It is
6 certainly not susceptible of only one interpretation. I
7 would refuse your motion.

8 MR. BOWMAN: We would, sir, with all due respect take
9 exception to your ruling.

10 THE COURT: Certainly. Anything else?

11 SOL. JACKSON: I do have a case I would pass up as to
12 the charge. I would ask the Court to consider, The State
13 versus Johnson, basically on the ground that malice has been
14 defined as the wrongful intent to injure another. It indi-
15 cates that wicked or depraved spirit intent on doing wrong.

16 THE COURT: Well, I will charge the jury on the defini-
17 tion of malice. I don't know that I would use that particu-
18 lar language, but I will tell the jury what malice is in
19 the law of homicide.

20 SOL. JACKSON: All right, sir. Thank you.

21 MR. BOWMAN: Is the Court at this time receiving requests
22 to charge?

23 THE COURT: I would do so, or you can give them to me
24 in the morning, either one.

25 MR. BOWMAN: I would request your Honor to charge the

1 law of manslaughter.

2 THE COURT: I will do so. I'm going to charge murder,
3 manslaughter, and self-defense. Anything else?

4 SOL. JACKSON: Your Honor, one other thing I would ask,
5 due to the serious nature of the charge is -- the defendant
6 was out on bond, but I would ask that he be held in custody.

7 THE COURT: Sheriff, take the defendant in custody.

8 MR. BOWMAN: He has been since the trial started, your
9 Honor.

10 THE COURT: Oh. Okay.

11 MR. BOWMAN: I don't know what more they can do to him.

12 THE COURT: Well, they were not going to do anything to
13 him. They were just going to keep him so we'll know where
14 he is in the morning. Anything else?

15 SOL. JACKSON: Nothing from the State, your Honor.

16 THE COURT: All right. I'll see you fellows at nine
17 o'clock tomorrow morning.

18 (RECESS)

19 AUGUST 30, 1989

20 THE COURT: All right. Bring me the lawyers in the case
21 we're trying. Sheriff, bring in the defendant.

22 (DEFENDANT ENTERS THE COURTROOM)

23 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
24 JURY.)

25 THE COURT: Good morning. Gentlemen, none of you asked

1 me about any matters that I'm overlooking, have you?

2 SOL. JACKSON: None that I'm aware of.

3 MR. BOWMAN: None from the defense, your Honor.

4 CHARGE OF THE COURT

5 THE COURT: Mr. Foreman, members of the jury panel, at
6 this point in the trial of a case, while this one has been
7 delayed from time to time, it is my responsibility to tell
8 you what the law is in South Carolina as it relates to a
9 charge such as this one and the law relating to the defenses
10 asserted by the defendant.

11 I would begin talking with you this morning by thanking
12 you for your service, not just on the jury panel, but for
13 your service on this case. I recognize that it would not be
14 a pleasant task to have to resolve the guilt or innocence of
15 one of your fellow citizens, and I appreciate the fact that
16 you are willing to undertake such a job. I'm sure that you
17 ladies and gentlemen understand that under the system that
18 we use, it's necessary for twelve Orangeburg County resi-
19 dents to make such decisions as this one, and so I again
20 thank you for being willing to take on that duty.

21 You ladies and gentlemen are the judges of the facts.
22 It is your absolutely exclusive province and your duty to
23 judge the facts, and by that I mean to decide what really
24 happened on any occasion about which you have heard con-
25 flicting accounts. That's what we mean by judging the facts.

1 We mean deciding what really happened on any occasion about
2 which there has been some factual dispute.

3 In order for you to judge the facts, you are going to
4 have to judge the credibility of the evidence that's been
5 presented, because it is only through the presentation of
6 evidence that there is a factual dispute in the first place.
7 So obviously you would have to sift through the evidence,
8 go over it, deliberate about it, and decide which of the
9 evidence you believe as you go about the task of deciding
10 what, in fact, happened on the disputed occasion.

11 Evidence is presented to you in the forms of testimony
12 from people who sat there and told you what they knew about
13 the case and as exhibits. That is inanimate objects which
14 have been submitted by the lawyers as exhibits for your
15 consideration, and which you will have with you in your
16 jury room. So the evidence is the testimony and the
17 exhibits. You take both of those forms of evidence and
18 judge the credibility of that evidence.

19 Credibility simply means believability, and I'm going
20 to give you some guidelines, Mr. Foreman, that you and your
21 fellow jurors might use, if you wish to, in testing the
22 believability of this evidence.

23 You may take into consideration the interest which any
24 witness might have in the way this case turns out. And if
25 you conclude that any of the witnesses have an interest in

1 the outcome of the case, than you can judge that witness's
2 believability in the light of any interest that you might
3 find that he or she have in the outcome.

4 You may take into consideration the relationships which
5 exist between people who appeared here as witnesses,
6 families, friendships, any relationship that makes you think
7 some witness would have a reason to lean one way or the
8 other in his or her testimony. You may believe part of what
9 a witness told you and disbelieve part of what the same
10 witness told you if you have a good reason for distinguish-
11 ing between parts of a witness's testimony.

12 You would not merely count up the number of witnesses
13 who appeared in the case and decide that the side which had
14 the greater number of witnesses must also have the truth.
15 Quite obviously that's no way to go about deciding where the
16 truth lies in some disputes.

17 You may consider any witness's prior criminal record as
18 it might bear on his credibility. In other words, you're
19 entitled to consider what someone who was a witness here
20 might have done in the past and then determine does that
21 indicate to you that such a person is a truthful person.

22 In short, Mr. Foreman and members of the jury panel,
23 I'm suggesting that you use the good, sound common sense
24 that all of you have applied in your everyday lives and in
25 your business affairs whenever you've been called on in the

1 past to decide who is telling you the truth about some
2 matter that might be in dispute.

3 My job is to judge the law, to be sure that the trial is
4 conducted properly, and to tell you at this point the rules
5 of law which you should apply, and I tell you that in con-
6 junction with the fact that you are the absolute exclusive
7 judges of the facts. If during the course of the trial I
8 have made any statements or made any rulings or taken any
9 actions or anything like that which make you think that I
10 have an opinion about the facts, I tell you to disregard
11 that.

12 Anyone who's charged with committing a crime in this
13 state is presumed to be innocent, and the presumption of
14 his innocence would obtain throughout the trial, and when
15 you go to your jury room, you would commence deliberating
16 from the standpoint that the law presumes the defendant
17 innocent. Such a presumption or that particular presumption
18 is an important right that everybody in this state is
19 entitled to, and I'm confident that when you begin your
20 deliberations, you will do so from the standpoint that the
21 defendant is presumed to be innocent, and the State has the
22 burden of proving that he's guilty.

23 The burden of proof is a term which is bandied about by
24 lawyers and judges quite often. It is a very appropriate
25 method of putting the onus on one party to a lawsuit or the

1 other to prove what they say. The burden of proof is used,
2 not only in our courtrooms, but you would be using it if
3 you had some matter to resolve tomorrow afternoon at home
4 or in your business or anywhere else. If somebody says
5 that somebody else did something wrong, they are required
6 to prove what they said. So that's what we mean here. The
7 State has charged the defendant with unlawful killing,
8 murder or manslaughter. The State is, therefore, required
9 to prove to you that he, in fact, committed that crime,
10 so that's what we mean by assigning the burden of proof in
11 a lawsuit, assign it to the party which claims that some-
12 thing happened. We tell them prove it to the jury which
13 will be impaneled to make that decision.

14 In a criminal case the State is required to prove the
15 elements of a charge beyond a reasonable doubt. Now, that
16 phrase itself has no magical qualities. It means exactly
17 the same thing when I talk to you in this legal context
18 as it would if you used it outside the Courtroom in talking
19 with a friend, and that is a doubt for which you have a real
20 reason. It is distinguished from a fanciful doubt or
21 whimsical doubt because you could doubt any proposition if
22 you wanted to. A reasonable doubt is a substantial doubt
23 for which honest people such as you, when you are seeking
24 the truth, can give a real reason. So it's to that degree
25 of proof, but only to that degree of proof, that the State

1 is required to establish the elements of any charge made
2 against a defendant.

3 In this case the defendant is charged in the indictment
4 by which he is brought to trial with the crime of murder.
5 I tell you that murder is the highest degree of homicide in
6 this, the law of this state. There are other degrees of
7 unlawful homicide, and when the facts warrant the submission
8 to the jury, an indictment for murder also carries with it
9 for the jury's consideration a lesser charge in the law of
10 unlawful homicide known as manslaughter. So I'm going to
11 charge you the law as it relates to the crime of murder and
12 also the law as it relates to the lesser offense, the less
13 heinous, less culpable degree of unlawful homicide, known
14 as manslaughter.

15 Murder is the unlawful killing of another human being
16 with malice aforethought, either express or implied. That
17 in one sentence is the definition in the law of the offense
18 of murder. In order to convict someone of murder, the State
19 must not only prove the killing of the deceased by the
20 defendant, but that it was done with malice aforethought,
21 and the proof must be, as I've explained to you, beyond a
22 reasonable doubt.

23 Malice is defined in the law of homicide as a term of
24 art. That is it's a technical term, and it imports wicked-
25 ness, and it excludes any just cause or excuse for the

1 action taken. It is something which springs from wickedness,
2 from depravity, from a depraved spirit, from a heart which
3 is devoid of social duty and fatally bent on mischief, one
4 not then having due regard for the social obligations and
5 the obligations which rest on all mankind as we live here
6 together.

7 The words, express or implied, do not mean two different
8 kinds of malice. They mean two different ways in which
9 malice might be shown to have existed. Malice may be
10 expressed as where someone makes threats about someone else
11 or where someone lies in wait for someone else to come by
12 so that an assault might then be made upon that person, or
13 any other circumstances which show directly that an intent
14 to kill was really and actually entertained.

15 Malice may also be implied, as where though no express
16 intent to kill was proved by direct evidence, it is in-
17 directly and necessarily inferred from facts which are them-
18 selves proven. Malice may be inferred by a jury from the
19 willful, deliberate, and the intentional doing of an unlaw-
20 ful act without any just cause or excuse.

21 Malice may be inferred by a jury from the use of a deadly
22 weapon in the infliction of the fatal injury. I charge you
23 that a deadly weapon is any object which might be easily and
24 readily put to use in the infliction of serious or fatal
25 injuries on another human being.

1 In other words, in its general signification, malice
2 means the doing of a wrongful act intentionally and without
3 justification or excuse.

4 Now, Mr. Foreman and members of the jury panel, I tell
5 you that if, in your view of the evidence, you conclude that
6 one of the factual situations from which I have told you
7 you may infer malice does in fact exist, and you as jurors
8 and triers of fact infer from that factual situation that
9 malice existed, you will take that inference as another
10 piece of evidence, and you consider all the evidence which
11 has been presented throughout this trial and make your own
12 determination as to whether malice, as I have defined that
13 term, existed in the heart and mind of this defendant at
14 the time of the infliction of the fatal injury.

15 You recall that I told you that malice must be afore-
16 thought. The law does not require that malice exist for
17 any particular length of time, but it does require that it
18 have existed for at least some time before the infliction
19 of the fatal injury. There must be a combination of a
20 previous evil intent and the act which produces the fatal
21 result.

22 I tell you, Mr. Foreman and members of the jury panel,
23 the State is not required to prove any motive for the killing.
24 I have told you already, Mr. Foreman, that the indictment
25 for murder carries with it for your consideration the lesser

1 charge of manslaughter. That is a less culpable degree of
2 the law of unlawful homicide in this state. It carries with
3 it a lesser penalty and is to be considered by you if you
4 conclude that the defendants were not guilty of the crime of
5 murder.

6 Manslaughter is the unlawful killing of another human
7 being without malice, either express or implied. You notice
8 that the absence of malice is what distinguishes man-
9 slaughter from murder. Voluntary manslaughter is the
10 felonious taking of the life of another human being in
11 sudden heat and passion and upon sufficient legal provoca-
12 tion. The law recognizes the fact that sudden heat and
13 passion may for the time being affect one's self control,
14 temporarily disturb the sway of reason, and hence reduces
15 the crime to manslaughter where the homicide was done in
16 sudden heat and passion, provided there was sufficient legal
17 provocation.

18 Let me tell you at this point, I've used the term,
19 homicide, several times. Homicide simply means killing
20 another person, so do not be confused about murder,
21 manslaughter, and homicide. Murder and manslaughter are
22 different degrees of the law of homicide, which means
23 killing somebody else.

24 Sufficient legal provocation must be such as would be
25 calculated to cause a man of ordinary reason and prudence.--

1 We might describe that person as the average person-- would
2 cause the average person to become enraged, to experience
3 sudden heat and passion and to lose control of himself
4 temporarily, and it frequently involves some physical
5 aggression or an assault on the part of the person thus
6 losing his temper and becoming involved in sudden heat and
7 passion.

8 By way of illustration I'll say that when an unjusti-
9 fiable assault is made with violence or indignity upon a
10 man's person, and the party so assaulted kills the aggressor,
11 the crime would be reduced to manslaughter, if it appears
12 that the assault was resented immediately and that the
13 aggressor was killed in the heat of passion, for you recall
14 that such killing must be in sudden heat and passion. If
15 the passion, in fact, had cooled, or if there was sufficient
16 time between the provocation and the killing for passion to
17 have cooled, the killing would not be attributed to the heat
18 of passion, but then would become malice. The sufficiency
19 of the cooling-off period would depend upon whether there
20 was time with all the circumstances being considered for
21 the man of ordinary reason and prudence to have cooled off.
22 In other words, if that factor, the cooling-off period is
23 for your consideration.

24 If you are questioning whether a defendant has had time
25 to cool off, apply the same standards as I've told you

1 earlier. What would the person of ordinary reason and
2 prudence have done? What would the average person have
3 done under those same circumstances?

4 Mr. Foreman, ladies and gentlemen of the jury panel,
5 the law of South Carolina recognizes the right of every
6 person to defend himself from death or from serious bodily
7 harm, and to do this, he may use such force as is necessary,
8 even to the point of taking human life. In other words,
9 self-defense is a complete defense and entitles one charged
10 with any degree of homicide to an acquittal if the legal
11 elements of the plea of self-defense are established by the
12 evidence.

13 In order for the plea of self-defense to be established
14 by the evidence, there are four elements which must be found
15 to have existed. One is that the defendant was without
16 fault in bringing on the immediate difficulty or the neces-
17 sity for taking human life. Obviously one cannot through
18 his own fault bring on a difficulty and then claim the right
19 of self-defense.

20 Secondly, that at the time of the affliction of the
21 fatal injury the defendant believed that he was in imminent
22 danger of losing his own life or of sustaining serious
23 bodily injury. Imminent means immediate. It means right
24 now. It does not mean in the past nor in the future.

25 Thirdly, that a reasonable prudent man, a man of

1 ordinary firmness and courage, under those same circum-
2 stances, would have come to that same conclusion, that he
3 was in imminent danger of losing his own life or of sus-
4 taining serious bodily injury. You notice that it must be
5 shown that the defendant believed that he was in imminent
6 danger.

7 He has the right to act on appearances, and if under
8 the circumstances as they have been related to you, and
9 as they appeared to him at that time, he believed that he
10 was in danger of losing his life or of sustaining serious
11 bodily injury, and that a person of ordinary courage and
12 firmness would have come to that same conclusion; then he
13 has established the belief on which he acted, and that
14 would be sufficient.

15 Lastly, the defendant -- or it must -- it must appear
16 to you that the defendant had no other probable means of
17 escape, that he had no other probable means of avoiding the
18 danger of losing his own life or of being seriously injured
19 than to take the life of the agressor.

20 The law of self-defense is founded on necessity; hence
21 it is a man's duty to avoid taking another human life
22 where it is possible to prevent doing so, even to the
23 extent of retreating from one's adversary. In order to
24 avoid taking another's life, the party so assaulted must
25 retreat unless by the retreating he places himself in more

1 danger, or if he would have continued to be in serious
2 danger of being killed or of receiving serious bodily
3 injury by such a retreat. He does not have to retreat
4 unless he has a reasonable opportunity to do so.

5 Mr. Foreman, members of the jury panel, I tell you
6 further that the degree of force employed by a defendant
7 must be commensurate with the degree of harm which is
8 offered to him by the deceased. One who has a right to use
9 force in repelling force for his self protection or in
10 protection of someone else, which is not an issue here;
11 one who is entitled to use force cannot be required to make
12 a very nice and precise calculation as to the degree or
13 quantity of force necessary for his protection from loss
14 of life or serious bodily harm.

15 If you find that the defendant was without fault in
16 bringing on the difficulty and that he reasonably thought
17 that he was in danger of death or serious bodily injury,
18 he then has the right of self-defense and the right to use
19 such force as was required for his complete protection from
20 loss of life or serious bodily injury.

21 He is not required in defending himself to use just
22 exactly the right amount of force, but he had the right to
23 use so much force as appeared to be necessary for his
24 complete self protection and which in the mind of a person
25 of ordinary reason and prudence, a man of ordinary firmness

1 and courage, would have appeared to be necessary in order
2 to prevent the loss of life or serious bodily injury.

3 I tell you, Mr. Foreman and members of the jury panel,
4 that after considering all of the evidence which has been
5 presented for your consideration, if you have a reasonable
6 doubt as to the defendant's guilt after considering this
7 evidence, including evidence of self-defense, your verdict
8 should be not guilty. On the other hand, if you do not
9 have any reasonable doubt of the defendant's guilt after
10 considering all the evidence, including evidence of self-
11 defense, you would find him guilty.

12 I tell you further, Mr. Foreman, members of the jury
13 panel, that if in consideration of the two degrees of
14 homicide which I have instructed you about, that is murder
15 and manslaughter; if you have a reasonable doubt as to
16 which of the two degrees he might be guilty of, you would
17 give him the benefit of the doubt and find him guilty of
18 the lesser degree of homicide. That is part of the law of
19 reasonable doubt.

20 Mr. Foreman, there are three verdicts which you might
21 return in this case. The order in which I tell you of those
22 verdicts and the order in which my law clerk writes them
23 down -- and I let you have them as a guide -- would not be
24 any indication on my part as to which of those three you
25 should find. Bear in mind that you are the judges of the

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1 facts. So that any order in which I have submitted
2 possible verdicts to you would not be any indication on
3 my part as to which you should return.

4 One verdict which you might return, based on your
5 view of the evidence and the law as I have explained it
6 to you is guilty of murder.

7 The second verdict which you might find based on
8 the evidence and the law as I have explained it to you is
9 guilty of manslaughter.

10 The third verdict which you might find based on
11 your view of the evidence and the law as I have explained
12 it to you is not guilty.

13 So one of those three verdicts would be required
14 in this particular case.

15 Mr. Foreman, members of the jury panel, if you
16 and your fellow jurors are convinced by the evidence and
17 the law that the defendant is guilty of one of these
18 degrees of wrongdoing, do not be concerned with the
19 punishment which those or that offense carries; That is
20 my responsibility, and I will discharge that
21 responsibility based on your verdict.

22 Now, in conclusion, Mr. Foreman, let me tell you
23 this. When you serve as jurors in the Courts of this
24 State you are not here to reward any friends, you are
25 not here to punish any enemies. You would not return

1 verdicts based on sympathy that you might feel for
2 anybody on either side of the unfortunate situation that
3 we have before us in our criminal court.

4 The only -- only duty you have under the oath
5 that you took to serve as a juror is to do what is right
6 between the parties to this lawsuit.

7 So you go to your jury room, you make a honest,
8 conscious effort to resolve the factual dispute, decide
9 what really happened out there that day; then apply the
10 law as I have explained it to you to those facts. And
11 you will do what is right, and I am confident that you
12 will do so.

13 Mr. Foreman, I am going to ask if you and your
14 fellow jurors would retire to your jury room. Mr.
15 Alternate, you may rejoin the rest of the jury. Thank
16 you for being willing to serve.

17 Do not deliberate as yet. I will send you the
18 exhibits, and I will send you the possible forms of
19 verdict for your use when you have arrived at your
20 verdict.

21 Any of those three verdicts returned must be
22 unanimous. All twelve of you must agree before you could
23 return any of those three possible verdicts.

24 Thank you, Mr. Foreman, you and your fellow
25 jurors may retire.

1 (THE FOLLOWING TAKES PLACE
2 OUTSIDE THE PRESENCE OF THE
3 JURY.)

4 THE COURT: Anything else, Solicitor?

5 SOLICITOR JACKSON: Nothing from the State, Your
6 Honor.

7 THE COURT: Mr. Taylor -- Excuse me, not Taylor,
8 Bowman.

9 MR. BOWMAN: Nothing from the defense, Your
10 Honor.

11 THE COURT: All right. I am confident that
12 something must be wrong with the charge. Both of you
13 all are happy with it.

14 (WHEREUPON, THE JURY BEGAN ITS DELIBERATIONS.

15 TIME: 10:44 AM.)

16 (RECESS)

17 (WHEREUPON, THE JURY RETURNED TO THE
18 COURTROOM WITH A QUESTION. TIME: 11:50
19 am)

20 THE COURT: Mr. Foreman, ladies and gentlemen of
21 the jury panel, I have the note which you sent me. Let
22 me be sure I understand what it is you want -- You want
23 me to explain to you again the legal elements of murder-

24 --

25 FOREMAN: Yes, sir.

1 THE COURT: ---and of manslaughter?

2 FOREMAN: Right.

3 THE COURT: All right.

4 FOREMAN: Cooling off period.

5 THE COURT: All right. And you want malice?

6 FOREMAN: Right.

7 THE COURT: All right. Well, of course, malice
8 is one of the operative elements of murder, so it would,
9 in effect, when I define murder for you it will include
10 the definition of the frame of mind which the law says is
11 malicious. So you would already have then a definition
12 of malice. And the cooling off period is to be
13 considered by a jury if it is working on the offense of
14 manslaughter or when they are considering the crime of
15 manslaughter, so a definition of manslaughter would
16 include the definition of the cooling off time.

17 So let me charge you again the elements of murder
18 and of the crime of manslaughter. And when I conclude
19 with that you can then tell me if I have covered the
20 points with which you were concerned.

21 Is that all right?

22 FOREMAN: Yes, sir.

23 THE COURT: Murder is the unlawful killing of
24 another human being with malice aforethought, either
25 express or implied.

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1 In order for the State to convict someone of
2 murder the State must not only prove the killing of the
3 deceased by the defendant but must also prove that it was
4 done with malice aforethought. And the proof of the
5 malice aforethought must be beyond a reasonable doubt.
6 And I have explained that term for you, the -- the way
7 to arrive at your own conclusion as to whether some fact
8 has been established beyond a reasonable doubt.

9 Malice is defined in the law of homicide -- It's
10 a term of art -- It's a technical term which imports
11 wickedness. And it excludes any just cause of excuse for
12 one's action. It is something which springs from
13 wickedness, from depravity, from a depraved spirit, from
14 a heart which is devoid of social duty and fatally bent
15 on mischief. As I told you, malice might be shown to
16 have existed either expressly or by implication. That
17 is the ways of showing malice. The showing might be
18 express or the showing might be implied.

19 Express examples of malice might be threatening to
20 do something to somebody. You have expressed that malice
21 that might be in your heart by saying I am going to do so
22 and so or by taking some action from which a jury
23 concludes that the intent to kill was really entertained
24 by that person; as I said, for example, someone who hides
25 out and waits for somebody else to come by so they can

1 assault them.

2 Implied malice is where there has been no
3 expression of malice and no actions by a defendant from
4 which a jury would find express malice. But it might be
5 inferred from the facts and circumstances which are in
6 fact proved to the jury by direct evidence.

7 I told you that malice may be inferred by the
8 members of the jury panel by a finding that the
9 defendant used a deadly weapon in inflicting the serious
10 bodily injury on a deceased which resulted in his death.
11 It may be inferred from a wilful and deliberate wrongful
12 act for which there was no just cause nor excuse.

13 I also told you that if you as the judges of the
14 facts infer malice on the part of this defendant from the
15 use of a deadly weapon or from the commission of an
16 unlawful act without cause and excuse, you will take that
17 inference and consider it with all the other evidence
18 that was presented in this entire case and you in your
19 deliberations decide if the evidence warrants a finding
20 on your part that malice existed in the heart and mind of
21 this defendant at the time that he struck the fatal blow.

22 I went on to explain to you that malice must be
23 aforethought, it need not have existed for any particular
24 length of time prior to the fatal blow, but it must have
25 existed at least sometime prior to the fatal act. A

1 previous evil intention entered the commission of the
2 act producing the fatal results.

3 Manslaughter is the unlawful killing of another
4 human being without malice aforethought, but the killing
5 of another person would not in the sudden heat and
6 passion when there has been a sufficient legal
7 provocation to cause a person of ordinary reason and
8 prudence to fly into a sudden heat and passion and thus
9 commit the offense of homicide.

10 You recall that I have told you that the very
11 basis of differentiating between murder and manslaughter
12 is the presence of malice and the crime of murder and the
13 absence of malice in the crime of manslaughter.

14 Voluntary manslaughter is the felonious taking of
15 the life of another person in sudden heat and passion and
16 upon sufficient legal provocation.

17 By way of illustration I told you that when a
18 unjustifiable assault is made on the person of someone
19 and that person immediately resents the assault and
20 should kill his aggressor while in a sudden heat and
21 passion, the law would reduce that crime from murder to
22 manslaughter on the theory that such was done in sudden
23 heat and passion and on a sufficient legal provocation;
24 that is, the assault which had just been made on the
25 person of the defendant to cause him to go into sudden

1 heat and passion.

2 If the passion, the sudden heat and passion, had
3 cooled off or if there was sufficient time between the
4 provocation and the killing for the passion to have
5 cooled off, taking in mind -- bearing in mind that such a
6 question would be resolved by you by resorting how would
7 the person of ordinary reason and prudence have reacted
8 under the circumstances that you heard about. Would the
9 person of ordinary reason and prudence, of ordinary
10 firmness and courage, have cooled off under the
11 circumstances that you have heard about today. If so,
12 then the cooling off period would negate the idea of the
13 offense being committed in sudden heat and passion, for
14 under that scenario the sudden heat and passion has
15 evaporated by cooling off. And at that point, under that
16 scenario, the offense would be murder.

17 The cooling off period of time being, if you are
18 concerned with that, how would the average person, how
19 would the person of ordinary reason and prudence, the
20 person of ordinary firmness and courage, have reacted to
21 the situation about which you have heard in this case?

22 Does that help you?

23 (WHEREUPON, JURORS NOD IN THE AFFIRMATIVE)

24 THE COURT: All right. You are aware, of course,
25 even though you didn't ask me for it, I am going to

1 simply remind you without going through the entire charge
2 because you didn't ask for it, those are the two
3 substantive offenses for you to consider against the
4 defendant. You will remember, of course, that the
5 defendant raises the plea of self-defense. I have
6 defined that for you. And you would, of course, give
7 consideration to that defense and you will remember that
8 I told you that if upon a consideration of all the
9 evidence and the legal principles about which I have
10 advised you, you have a reasonable doubt as to whether he
11 has committed any crime at all, you would find him not
12 guilty.

13 If you have a reasonable doubt as to whether he
14 has committed the crime of murder or the lesser crime of
15 manslaughter you would give him the benefit of that doubt
16 and find him guilty of the lesser crime of manslaughter.
17 That's part of the law of reasonable doubt which we
18 afford a defendant the benefit of.

19 With that, I would ask you if you would retire to
20 your jury room if that has answered the question.
21 Continue deliberations, thank you.

22 (THE FOLLOWING TAKES PLACE
23 OUTSIDE THE PRESENCE OF THE
24 JURY.)

25 THE COURT: A note from the Foreman of the Jury

1 for the record. You gentlemen may look at that if you
2 wish to. (Court's Exhibit No. 2 marked and filed.)

3 MR. BOWMAN: You have already shown it to me,
4 Your Honor.

5 THE COURT: All right, sir. I just want you to
6 be aware of what they have requested.

7 MR. BOWMAN: May I approach the bench?

8 THE COURT: Certainly.

9 (COUNSEL APPROACH THE BENCH)

10 (WHEREUPON, AT 12:40 PM THE JURY SENT
11 WORD BY THE BAILIFF THAT THEY COULD NOT
12 REACH A VERDICT.)

13 (THE FOLLOWING TAKES PLACE
14 WITHIN THE PRESENCE OF
15 THE JURY.)

16 THE COURT: Mr. Foreman, members of the jury
17 panel, the bailiff told me that you had sent word that
18 you had not yet arrived at a unanimous verdict. is that
19 correct?

20 FOREMAN: Yes, sir.

21 THE COURT: All right, sir. Then I want to talk
22 with you a little further.

23 I told you earlier during my general charge to
24 you on the law that your task is not an easy one. Nobody
25 would like to have the job of resolving the guilt or

1 innocence of one of your fellow citizens. But I tell you
2 that it is absolutely necessary for 12 Orangeburg County
3 people to make such a decision and I don't have any
4 reason in the world to think that I could find 12 more
5 capable people in Orangeburg County than you 12.

6 So I am going to instruct you to continue with
7 your deliberations in an effort to arrive at a consensus
8 of the 12 of you among the three possible verdicts which
9 I gave you that people could arrive at.

10 I tell you that deliberation implies a state of
11 mind other than simply going into the jury room and
12 saying, well, I have made up my mind to so and so. And
13 somebody else said, well, I have made up my mind to so
14 and so. Deliberation means, in fact, deliberate means
15 the opposite of haste. It means to pay attention to what
16 you are doing. And when I use it in this legal sense it
17 means for you 12 to go back and go over the evidence
18 together and decide together that this evidence leads me
19 and us as we talk about it together to this conclusion.

20 I do not suggest that anyone give up a
21 conscientiously held position about the case, but I do
22 require that each of you expose yourselves to the mental
23 process of your fellow jurors and reason along together
24 to see if there is not a position which represents the
25 consensus of this jury.

1 Each of you 12 need to be sure that you are not
2 being stubborn or contrary. You need to be sure that the
3 position which you are holding is in fact a
4 conscientiously held one based on the evidence which is
5 then presented and the legal principles about which I
6 have instructed you all. Bear in mind that I again tell
7 you, I am not suggesting that anybody give up or recede
8 from a truly conscientiously held opinion, but I do
9 suggest that you need to be sure under the oath that you
10 took to serve as a juror that you are not merely being
11 stubborn in the position which you are holding or taking.

12 With that, Mr. Foreman, ladies and gentlemen of
13 the jury panel, I am going to ask you to return to your
14 jury room and continue your deliberations.

15 I am having the Clerk bring you some lunch. And
16 when your lunch comes I would suggest that you desist
17 from your deliberations, have a nice lunch. And then
18 return to your deliberations.

19 Don't deliberate and eat and provoke indigestion.
20 But when your lunch comes, stop, have a nice lunch, then
21 return to your deliberations. Sometimes that would
22 produce salutary results.

23 But at any rate I would ask you to return to your
24 jury room, continue deliberations within the purview of
25 these additional instructions to you.

1 Thank you. You may retire.

2 (THE FOLLOWING TAKES PLACE
3 OUTSIDE THE PRESENCE OF THE
4 JURY.)

5 THE COURT: Any exceptions, Solicitor?

6 SOLICITOR JACKSON: No, sir.

7 THE COURT: Public defender?

8 MR. BOWMAN: Well, Your Honor, I take exception
9 to your Allen charge. And ---

10 THE COURT: On what basis?

11 MR. BOWMAN: Well, Your Honor, it troubles me and
12 I say this as a preference to a motion for a mistrial,
13 that I think that the delivery to the jury of a Allen
14 charge in this atmosphere---

15 THE COURT: In what atmosphere?

16 MR. BOWMAN: Well, one that provoked laughter in
17 a murder case which is the more serious kind of case that
18 we can have in our criminal justice system I think does
19 my client a disservice. If anybody on that jury thought
20 there was anything, any part of this that had to do with
21 levity or lightness, I think that does him a detriment.

22 THE COURT: You don't think, you as a defendant
23 in a criminal case, you wouldn't rather have a jury that
24 is laughing than one that's glum faced?

25 MR. BOWMAN: I have never been ---

1 THE COURT: Which would you rather have, Public
2 Defender?

3 MR. BOWMAN: I would rather one that -- I would
4 rather have one that was operating in a atmosphere of
5 great seriousness.

6 THE COURT: Well, I contend this jury could not
7 have been more serious than when they have come back and
8 asked me to redefine all elements of the crime which I
9 have done for them. They have come back and told me that
10 they are having difficulty resolving the question which I
11 have given to them. And I think it's -- simply borders
12 on the ridiculous for you as a lawyer to stand there and
13 tell me that you think because I have told the jury
14 "don't give yourselves indigestion" that they are not
15 considering your client's case in a proper light.

16 Anything else?

17 MR. BOWMAN: Then your -- You are denying my
18 motion?

19 THE COURT: You have defined correctly.

20 MR. BOWMAN: I respectfully take exception to
21 your ruling.

22 THE COURT: All right, sir. Anything else

23 SOLICITOR JACKSON: Nothing from me, Your Honor.

24 THE COURT: All right.

25 (RECESS)

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1 THE COURT: All right. Bring the defendant in
2 now.

3 (WHEREUPON, THE JURY RETURNED
4 TO OPEN COURT TO REPORT ITS
5 VERDICT. TIME: 2:15 PM)

6 CLERK OF COURT: Mr. Foreman, Ladies and
7 gentlemen of the jury, have you reached a verdict?

8 FOREMAN: Yes, sir.

9 CLERK OF COURT: Do not publish but pass it up by
10 the bailiff and all exhibits, please.

11 THE COURT: Publish that, please, sir.

12 VERDICT: I bring the Court's attention to
13 Indictment No. 89-222, The State versus Richard Butler
14 for murder. We find the defendant guilty of murder.
15 Signed Melvin Mitchell, Foreman. Is that your verdict
16 and still your verdict?

17 (WHEREUPON, JURORS ANSWERED IN THE
18 AFFIRMATIVE)

19 THE COURT: All right. Anything for the jury
20 before I excuse them?

21 MR. BOWMAN: Your Honor, we would, the defense
22 would move to have the jury polled to make sure it is
23 unanimous, Your Honor.

24 THE COURT: All right.

25 CLERK OF COURT: Ladies and gentlemen of the jury

1 panel, as I call your name, would you please indicate if
2 this is your verdict and still your verdict? I will ask
3 each and everyone of you.

4 (WHEREUPON, ALL JURORS ANSWERED IN
5 THE AFFIRMATIVE WHEN ASKED THE ABOVE
6 QUESTION.)

7 THE COURT: All right, anything else for the jury?

8 MR. BOWMAN: For the jury? No, sir.

9 THE COURT: All right. Mr. Foreman, members of
10 the jury panel, that would conclude your service on this
11 case, and I am going to excuse you. In your absence we
12 have disposed of all the other cases which were waiting
13 for juries.

14 (THE FOLLOWING TAKES PLACE
15 OUTSIDE THE PRESENCE OF THE
16 JURY.)

17 THE COURT: Mr. Bowman.

18 MR. BOWMAN: Thank you, Your Honor. At this time
19 the defense would move for a judgment notwithstanding the
20 jury's verdict or in the alternative for a new trial.

21 THE COURT: What do you say, Solicitor?

22 SOLICITOR JACKSON: Your Honor, if you please, I,
23 I think that the matter was one for the jury to determine
24 the questions of heat and passion, malice, the existence
25 of malice. And they made a, they determined that. I

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1 think it is just a question of fact for the jury and
2 they made their decision, Your Honor. I think that
3 certainly the verdict ought to stand.

4 THE COURT: Well, Solicitor, I don't think it
5 would be, nobody could make any argument whatsoever with
6 the finding of manslaughter. I -- I have some
7 reservation about the appropriateness of a conviction of
8 murder.

9 What does the Rule provide for motions in a
10 criminal trial?

11 SOLICITOR JACKSON: Your Honor, it is my
12 understanding at this point the only, the only motion
13 that can be made and granted by the Court would be one
14 for a new trial.

15 THE COURT: Well, I think you are right. But my
16 question is, do you know the timing and the -- time
17 involved in making the motion stating the grounds, all of
18 that?

19 SOLICITOR JACKSON: Your Honor. I, I don't. I
20 don't see why the Court couldn't retain jurisdiction for
21 some period of time to make the determination.

22 MR. BOWMAN: If the Court please, Your Honor, I
23 take strong exception to the jury verdict as you might
24 imagine. I think that at the very worst what happened,
25 happened in the heat of passion. Everybody involved was

1 using alcohol to a great degree and the testimony is that
2 there was an assault on my client, and I think he acted
3 at the very worst in the heat of passion. And I take
4 great exception to the verdict of murder.

5 THE COURT: Well, I don't know that I blame you,
6 you being a lawyer. Nobody likes to have a jury against
7 them---

8 SOLICITOR JACKSON: Your Honor, Your Honor, if I
9 just might briefly respond.

10 THE COURT: --- go overboard against you.

11 SOLICITOR JACKSON: If I just may briefly
12 respond.

13 THE COURT: Sure.

14 SOLICITOR JACKSON: I mean it is the State's
15 position, and I believe the State's evidence showed that
16 whatever fight they had earlier was over with. They
17 shook hands. Even the defendant agreed to that. He even
18 admitted that he had no problems with Trevin Felder until
19 what he says occurred when Trevin hit him later on. And,
20 of course, the State's version of it, which I think
21 obviously was accepted by the jury was that it had to do
22 with a cigarette hitting the ground and that the only
23 person who got angry at the point was the defendant. The
24 victim walked away and the defendant came up behind him,
25 and that's when the stabbing occurred.

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1 I think the jury was certainly free to accept
2 that version of the facts, and I think that's the version
3 that they accepted as being the true and correct verdict.
4 And I believe that supports the conviction of murder.

5 Thank you, Your Honor.

6 THE COURT: What did your witnesses say about how
7 it happened?

8 SOLICITOR JACKSON: Your Honor, my recollection
9 of the testimony was that the State's witnesses indicated
10 that they shook hands, that everything was okay, that
11 there was an incident involving a cigarette where the
12 victim allegedly threw the cigarette on the ground, hit
13 the defendant's foot or near his foot, and he became
14 angry at that. The victim again picked up the cigarette
15 just to show him what happened, the defendant remained
16 angry about that but that they continued some
17 conversation. I think that the State's witnesses left
18 the area. At least the immediate area where these two
19 were, went to a car, a nearby car.

20 The testimony was that they heard no arguments.
21 I think one of them did say that they were talking loud,
22 but that, that's all he said. Nobody heard the content
23 of any conversation. I think then the State's witnesses
24 indicated that the victim turned and walked away and that
25 the defendant followed him for some short distance, and,

1 you know, had the victim turn around, called his name.
2 Apparently something causing the victim to turn around.
3 And that's when the stabbing occurred. Other State's
4 witnesses indicated any argument or any fight, no fist
5 throwing, no weapons being in the possession of the
6 victim, and, again, I think that's the version that the,
7 obviously the jury accepted as being true and correct.

8 THE COURT: Mr. Bowman, the Solicitor is correct.
9 If there was a factual scenario which would warrant a
10 verdict of murder it would sustain a verdict of guilty of
11 murder. The jury has great latitude in believing what it
12 wants to, and I refuse your motion.

13 Bring the defendant around.

14 Anything to say?

15 SOLICITOR JACKSON: Your Honor, the only thing I
16 would add is that he does not have any prior criminal
17 record.

18 THE COURT: Anything, Mr. Bowman?

19 MR. BOWMAN: Yes, sir. Thank you, sir. I would
20 -- I would remind the Court that my client is 27 years
21 old. I don't think it came out in the testimony but he
22 did get a High School education here in Orangeburg, was
23 gainfully employed at the Winn-Dixie Stores. And he has
24 three children. He and this women have three children,
25 and I just would rely heavily on what the State has

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1 pointed out. This man has been through 27 years of life
2 without any transgression. No DUI, no nothing. And,
3 Your Honor, is well, well, familiar with the factual
4 scenario in this case. And I would ask the Court to
5 consider that and everybody was drinking.

6 Again, I take great exception to the jury verdict.
7 I think it was wrong. But they have spoken, and I know
8 that he has to live with that, but this man felt like he
9 was in grave danger, and I think the law is that he
10 doesn't have to wait until somebody gets the drop on him
11 before he acts.

12 And I would ask the Court to be as lenient as
13 possible in sentencing.

14 THE COURT: Well, what you say is true if you
15 take the best view of it, but the law doesn't say you can
16 just walk up to a man and jam a butcher knife six inches
17 in him because you think he might have a gun.

18 The law requires under those circumstances that
19 you go home. That's what this fellow needed to do.
20 Don't kill somebody because he might have something. Get
21 out of his way, and he won't have any problem with that.

22 He guessed wrong, Public Defender.

23 There is a certain amount of arrogance involved
24 in killing somebody and coming into Court and saying I
25 deny any wrongdoing, I deny any guilt, I deny any

1 culpability.

2 He apparently is going to pay the price for
3 taking that attitude toward somebody else's life. You
4 got anything you want to say, Mr. Butler?

5 DEFENDANT: No, sir.

6 THE COURT: All right. The sentence of the Court
7 you be confined to the Department of Corrections for the
8 remainder of your lifetime.

9 Good luck to you.

10 (SEE PAGES 223 AND 224 FOR COURT'S
11 EXHIBITS IN THIS TRIAL)

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CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST 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 CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE GENERAL SESSIONS COURT FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 29TH AND 30TH DAYS OF AUGUST, 1989.

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

OCTOBER 31, 1989

Harry A. Walker
COURT REPORTER

VOIR DIRE

89-GS-38-224

Honorable C. Anthony Harris

Case No: _____

Judge: _____

Pl./State: The StateState/Pl's. Atty: James B. Jackson, Jr., Esqui
Assistant SolicitorDefendant: Richard ButlerDefense Atty: Reddick A. Bowman, Jr., Esqu
Public DefenderCourt Reporter: Harry A. Walker, Mrs.

Juror No.	Name	Sex	Race	*Court	Strikes		
					Plaintiff	Defense	Accept
57	Charlotte Ann G. Moore	F	W			X	
12	Anthony Davis	M	B	X			
40	Kay Davis Huntley	F	F				X
87	Leslie C. Mestberry	M	W			X	
11	James H. Crutchfield, Jr.	M	W				X
25	Christine D. Grant	F	B				X
58	Johnny Murphy	M	B	X			
50	Gladys B. Martin	F	W			X	
36	Mary Helen Higgins	F	B				X
7	Sandra Calder	F	W			X	
9	Carol M. Council	F	B				X
47	Wayne C. Kirby, II	M	W	X			
16	Marilyn E. Dukes	F	W			X	
74	Lula J. Simon	F	B			X	
H-3	Gerald M. Bradley	M	W			X	
34	Rosa M. Hawkins	F	B				X
27	Marion R. Groomes	M	W			X	
54	Melvin Mitchell	M	B				X

[illegible]

C# 1

STATE OF SOUTH CAROLINA,)
)
 COUNTY OF ORANGEBURG.)

IN THE COURT OF GENERAL SESSIONS
 FIRST JUDICIAL CIRCUIT
 89-GS-38- 224

State of South Carolina,)
)
 vs.)
)
 Richard Butler)
)
 Defendant.)

ADDITIONAL REQUESTS FOR VOIR DIRE

1. Do any of you have the power of arrest due to having been given a commission as an officer of the State of South Carolina?
2. Would any of you have a tendency to believe a law enforcement officer, such as a policeman, a deputy sheriff, or SLED agent, simply because that officer is wearing a uniform or because that person is an agent of the State of South Carolina?
3. Are any of you an auxiliary policeman or sheriff's deputy or a member of a sheriff's posse for this county or any other county?
4. Are any of you related to any one who is on the staff of the Solicitor for this judicial circuit?

Reddick A. Bowman, Jr.
 Reddick A. Bowman, Jr.
 Attorney for Defendant

Dated: August 25, 1989

Orangeburg, South Carolina

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

Richard Butler, 162467,
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

2010-CP-38-00368
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEFFILED FOR RECORD
WINNIE F. B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2010 MAR - 9 PM 2:53

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Allendale Correctional Institution, PO Box 1151, Fairfax, SC 29827
2. Name and location of Court which imposed sentence Orangeburg County Court of General Sessions, 190 Gibson Street, Orangeburg, SC 29115
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 1989-GS-38-224: murder
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 30, 1989: Life

ATTEST: TRUE COPY

Winnie F. B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA
Revised 3/2003

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Supreme Court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 21, 1991
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Memorandum Op. No.: 91-MO-76
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Newly Discovered Evidence of Ineffective Assistance of Counsel.

(b) _____

(c) _____

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

(a) Pursuant to State v. Belcher, 685 S.E.2d 802 (2009), the Applicant is alleging that trial counsel should have objected to the implied malice charge since evidence was presented and the jury was charged on self-defense and manslaughter. The jury was also unable to reach a verdict, and the court recharged implied malice to the jury. Thereafter, the trial court also gave the jury an Allen charge.

(b) Appellate counsel argued that there was insufficient proof of the element of malice, but trial counsel failed to make an objection to the court's charges of implied malice due to the use of a deadly weapon (knife).

(c) _____

12. Prior to this application have you filed with respect to this conviction:

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

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) any other petitions, motions or applications in this or any other Court? No.

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

(a) the specific nature thereof:

i. Application for Post Conviction Relief

ii. Federal Habeas Corpus

iii. Application for Post Conviction Relief

iv. Appeal from Application for Post Conviction Relief

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

i. Orangeburg County Court of Common Pleas, 190 Gibson Street, Orangeburg, SC

29115

ii. _____

iii. Orangeburg County Court of Common Pleas, 190 Gibson Street, Orangeburg, SC

29115

iv. South Carolina Supreme Court, 1231 Gervais Street, Columbia, SC 29201

(c) the disposition thereof:

i. Denied.

ii. Dismissed without prejudice.

iii. Austin Appeal granted.

iv. Denied.

(d) the date of each such disposition:

i. February 27, 1992

ii. December 10, 1993

iii. April 28, 1997

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or

Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) The implied malice instruction was deemed proper prior to the issuance of State v. Belcher on October 12, 2009.

(b) _____

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? Yes.

(c) your sentencing? Yes.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes.

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

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

i. Reddick A. Bowman, Jr., PO Box 793, Orangeburg, SC 29116

ii. Wanda Hagler Haile, Appellate Defense, PO Box 11589, Columbia, SC 29211

iii. Hammond A. Beale, PO Box 9526, Columbia, SC 29290

iv. Michael Horger, 160 Centre Street, Orangeburg, SC 29116

v. Daniel T. Stacey, Appellate Defense, PO Box 11589, Columbia, SC 29211

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

i. Trial.

ii. Direct Appeal.

iii. PCR

iv. PCR

v. PCR Appeal

19. State clearly the relief you seek in filing this application:

A new trial.

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

No.

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STATE OF SOUTH CAROLINA)

County of Allendale)

VERIFICATION

I, Richard Butler, 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.

Richard Butler

SWORN to and subscribed before me this 25
day of February, 2010

Helen P. LaCerna (L.S.)
Notary Public

My Commission Expires: 6/18/14

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

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

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

Richard Butler
Applicant

SWORN or affirmed to and subscribed before me this
25 day of February, 2010

John P. Green
Notary Public

My Commission Expires: 5/18/14

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	2010-CP-38-00368
	)	
Richard Butler, #162467,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed March 9, 2010, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. The Applicant was indicted at the March 1989 term of the Grand Jury for Orangeburg County for Murder (1989-GS-38-0224). Reddick A. Bowman, Esquire, represented him. On August 30, 1989, the Applicant proceeded to trial by jury pursuant to which the Applicant was found guilty as charged. He was sentenced by the Honorable C. Anthony Harris to confinement for Life.

The Applicant filed a Notice of Appeal. Following submission of an Anders brief, the South Carolina Supreme Court affirmed the conviction. State v. Butler, Op. No. 91-MO-76 (filed February 25, 1991). The Remittitur was sent on March 13, 1991.

Applicant filed his first PCR application (1991-CP-38-343) on April 15, 1991. An evidentiary hearing was held on December 17, 1991, at the Orangeburg County Courthouse. The Honorable Julius H. Baggett denied relief in his order of dismissal filed February 27, 1992. The applicant did not appeal.

The Applicant filed his second PCR application (1995-CP-38-0271) on April 25, 1995.

The Applicant alleged the following grounds for relief:

1. Ineffective assistance of counsel.
2. Illegal arrest.
3. Arrest without probable cause.
4. Denial of due process.
5. Violation of 5th, 6th, and 14th Amendments of U.S. Constitution.
6. Denial of witness.
7. "Fail to file Brady Motion."
8. "Shifting the burden of proof [sic]."
9. "Erroneously charged with murder."
10. Evidence never showed murder but (self-defense).
11. Jury was never presented the lesser offense of self-defense.
12. Denial of the right to appeal (PCR).
13. Request for belated appeal (PCR).

Respondent made its Return and Motion to Dismiss on or about August 23, 1996. An evidentiary hearing was held at the Orangeburg County Courthouse on April 28, 1997. The Honorable Edward B. Cottingham granted a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), and dismissed the remaining grounds as successive. Applicant filed a notice of appeal, and a Johnson Petition for Writ of Certiorari was filed. By Order dated March 3, 1999, the South Carolina Supreme Court declined to grant a writ of certiorari. On April 12, 1999, Applicant's *pro se* Petition for Rehearing was denied, and the Remittitur was issued.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Newly discovered evidence of ineffective assistance of counsel.
 - a. "Pursuant to State v. Belcher, 685 S.E.2d 802 (2009), the Applicant is alleging that trial counsel should have objected to the implied malice charge since evidence was presented and the jury was charged on self-defense and manslaughter. The jury was also unable to reach a verdict, and the court recharged implied malice to the jury. Thereafter, the trial court also gave the jury an Allen charge."

- b. "Appellate counsel argued that there was insufficient proof of the element of malice but trial counsel failed to make an objection to the court's charges of implied malice due to the use of a deadly weapon (knife)."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, supra.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Pelouquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on April 30, 1989. The Supreme Court's decision was filed, after the Applicant's unsuccessful appeal, on February 25, 1991. This Application was filed on March 9, 2010, which was more than eighteen (18) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the

application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

Applicant alleges that newly discovered or after discovered evidence exists. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. Most importantly, the "new evidence" offered by the Applicant is not "material to the issue of guilt or innocence," and probably would not "change the result if a new trial was had." Hayden, Id. The Court should summarily dismiss this allegation.

VI.

The Court should also summarily dismiss the application for post-conviction relief under the equitable doctrine of *laches*. The Applicant has filed this application over twenty (20) years after he was convicted. The Respondent submits that the doctrine of *laches* bars the Applicant from raising these allegations in a post-conviction relief application. Absent some explanation or justification for the delay in seeking post-conviction relief, *laches* will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." McElrath, 276 S.C. at 283. Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of laches. The Rule states in pertinent part:

A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

Furthermore, the South Carolina legislature has recognized this problem and instituted a one year statute of limitations. See S.C. Code Ann. §17-27-45(a).

The Applicant's delay has greatly prejudiced the Respondent. It is questionable whether the attorneys will remember the case and whether their files will be available more than twenty (20) years after Applicant's trial. If the Applicant had sought post-conviction relief within a reasonable time after his plea, neither of these problems would exist. Therefore, the Court should summarily dismiss the Application based on the Applicant's lack of diligence in processing his claim for relief.

VII.

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. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b). Trial court error is not cognizable at PCR. 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.

VIII.

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

IX.

WHEREFORE, Respondent moves to summarily dismiss the application.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By:

Mary S. Williams
ATTORNEYS FOR RESPONDENT
P.O. Box 11549
Columbia, S.C. 29211

July 22, 2010.

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

2010-CP-38-0368

RICHARD BUTLER, 162467)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

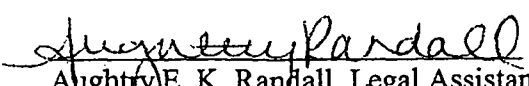
STATE OF SOUTH CAROLINA,)

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:

Tricia A. Blanchette, Esquire
 Law Office of Tricia A. Blanchette, LLC
 Post Office Box 12725
 Columbia SC 29211

DATED this 26th day of July, 2010.


 E. K. Randall, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

RICHARD BUTLER,)
Applicant,)

v.)

STATE OF SOUTH CAROLINA,)
Respondent,)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2010-CP-38-0368

RESPONSE TO RESPONDENT'S
RETURN AND MOTION TO DISMISS

FILED FOR RECORDS
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2010 JUL 30 A 11:00

This matter comes before this Court by way of an Application for Post Conviction Relief filed on March 9, 2010. The Applicant, through his undersigned attorney, received the State's Return and Motion to Dismiss on July 27, 2010. The Applicant, by and through his attorney, would submit the following in support of his Application for Post Conviction Relief and would respectfully request that this Court conduct a hearing on the matter.

Recently, in State v. Belcher, 385 S.C. 597, 610, 685 S.E.2d 802, 809 (2009), the South Carolina Supreme Court held that "the 'use of a deadly weapon' implied malice instruction has no place in a murder (or assault and battery with intent to kill) prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing (or the alleged assault and battery with intent to kill)." The Supreme Court also explained that this ruling would be effective "for all cases which are pending on direct review where the issue is preserved." Id. at 612-13, 685 S.E.2d at 810. The Court further held: "Our ruling, however, will not apply to convictions challenged on post conviction relief." Id. at 613, 685 S.E.2d at 810. The Applicant acknowledges that he is seeking Post Conviction Relief, yet the Applicant alleges that the Court's decision in Belcher lead to

ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

the discovery of outcome determinative issues in his case that amount to an exception to the retroactivity provision set forth in Belcher.

To put the Applicant's claim of newly discovered evidence into context, a brief review of the pertinent portions of the record is as follows:

On August 30, 1989, the Applicant proceeded to trial on the charge of murder (1989-GS038-0224) in the front of the Honorable C. Anthony Harris and a jury. During the State's closing argument and prior to the State's request to give the malice instruction at issue in Belcher, the Assistant Solicitor stated: "I believe he's going to tell you that malice can be inferred by the fact that a deadly weapon, such as knife, was used in the incident." Trial Transcript p. 170, Ins. 8-10. The Assistant Solicitor further stated: "If you feel that – believe beyond a reasonable doubt that this killing was unlawful, that there was malice aforethought, because he used a deadly weapon....return that verdict of guilty of murder." Trial Transcript p. 178, Ins. 18-22. Defense counsel did not object to the State's closing argument, and the State requested and the trial court agreed to "charge the jury on the definition of malice." Transcript p. 182. The trial court also noted that he would charge murder, manslaughter and self-defense. Transcript p. 183.

While charging the jury, the trial court gave a detailed malice instruction, which included the following language:

Malice may be inferred by a jury from the use of a deadly weapon in the infliction of the fatal injury. I charge you that a deadly weapon is any object which might easily and readily be put to use in the infliction of serious or fatal injuries on another human being.

Transcript p. 190, Ins. 21-25. The trial court also gave the jury a charge on manslaughter and self-defense. Trial Transcript p. 192, 194

After being sent out to deliberate, the jury returned with a question and requested to be reinstructed on malice. Transcript p. 200-201. In response, the trial court again gave the jury the malice instruction detailed above and at issue in Belcher. Trial Transcript p. 203, lns. 7-12. Thereafter, the jury again returned to the courtroom and indicated that they could not reach a verdict, so the trial court gave an Allen charge. Trial Transcript p. 207-209. After the jury returned with a guilty verdict on the charge of murder, defense counsel moved for a new trial. Trial Transcript p. 213. In denying the motion, the trial court stated: "I have some reservation about the appropriateness of a conviction of murder." Trial Transcript p. 214, lns. 6-8.

On appeal, an Anders Brief was submitted on the Applicant's behalf by the South Carolina Office of Appellate Defense, which argued that the lower court erred in denying the motion for a new trial due to insufficient evidence of murder. The brief specifically noted that "malice may be inferred from the use of a deadly weapon" but it was argued that the inference was "certainly negated by evidence of legal provocation sufficient to invoke a crime of passion." Brief p. 5-6. On February 25, 1991, the South Carolina Supreme Court dismissed the Applicant's direct appeal and relieved appellate counsel.

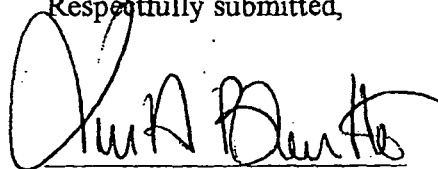
Due to the issuance of the Belcher decision, the Applicant discovered the prejudicial impact of the above referenced malice instruction that was compounded by trial counsel's failure to object to the State's closing argument and the trial court's responses when the jury had questions and was unable to reach a verdict. It is clear from the trial court's comments and the complete record that the murder verdict was fundamentally unfair based upon the evidence presented at trial. Therefore, it must be

considered if but for the instruction and counsel's subsequent inactions the Applicant would have been found guilty.

In determining the retroactivity of the decision in Belcher, the South Carolina Supreme Court cited to Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060 (1989). Interestingly in Teague v. Lane, the United States Supreme Court discussed Justice Harlan's views on retroactivity in detail and noted an exception for cases where the original trial implicates issues of fundamental unfairness or where the "likelihood of an accurate conviction is greatly diminished." 489 U.S. at 305-313, 109 S.Ct. at 1073-1077; See also Mackey v. United States, 401 U.S. 667, 675-702 (1971). The Applicant submits that he is not attempting to bring an Application alleging a change in law, but he is alleging that the decision in Belcher lead to the discovery of the errors committed by trial counsel that resulted in a fundamentally unfair verdict in his case.

For the above stated reasons and due to said reasons containing mixed questions of law and fact, the Applicant would respectfully request that this Court conduct a hearing on the Respondent's Motion to Dismiss the Application for Post Conviction Relief.

Respectfully submitted,



Tricia A. Blanchette
Attorney for the Applicant
Post Office Box 12725
Columbia, South Carolina 2921

July 22, 2010
Columbia, SC

STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)

Richard Butler, 162467,)
 Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT

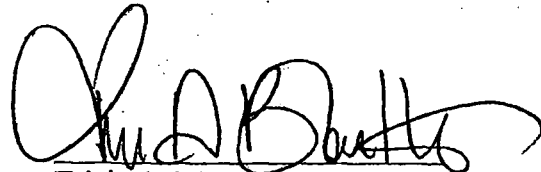
2010-CP-38-0368

CERTIFICATE OF SERVICE

FILED FOR RECORD
 WINNIE B. CLARK
 CLERK OF COURT
 ORANGEBURG, SC
 2010 JUL 30 A 11:00

I, Tricia A. Blanchette, Attorney for the Applicant, hereby certify that I placed
 the United States Mail on this 29th day of July 2010, a copy of a Response to
 Respondent's Return and Motion to Dismiss, with postage prepaid and the return address
 clearly shown on said envelope to Mary S. Williams with the Office of the Attorney
 General at:

Office of the Attorney General
 ATT: Mary S. Williams, Esq.
 P.O. Box 11549
 Columbia, SC 29211



Tricia A. Blanchette
 Attorney for the Applicant
 PO Box 12725
 Columbia, SC 29211

July 29, 2010

ATTEST: TRUE COPY
 Winnie B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG)

2010-CP-38-00368

Richard Butler, #162467,)

Applicant,)

v.)

**CONDITIONAL ORDER
OF DISMISSAL**

State of South Carolina,)

Respondent.)

This matter comes to this Court by of a post-conviction relief (PCR) application filed March 9, 2010.

I. PROCEDURAL HISTORY

This Court has before it the records of the Orangeburg County Clerk of Court, the SCDC records, and the relevant prior PCR records available. The records before this court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. The Applicant was indicted at the March 1989 term of the Grand Jury for Orangeburg County for Murder (1989-GS-38-0224). Reddick A. Bowman, Esquire, represented him. On August 30, 1989, the Applicant proceeded to trial by jury pursuant to which the Applicant was found guilty as charged. He was sentenced by the Honorable C. Anthony Harris to confinement for Life.

The Applicant filed a Notice of Appeal. Following submission of an Anders brief, the South Carolina Supreme Court affirmed the conviction. State v. Butler, Op. No. 91-MO-76 (filed February 25, 1991). The Remittitur was sent on March 13, 1991.

Applicant filed his first PCR application (1991-CP-38-343) on April 15, 1991. An evidentiary hearing was held on December 17, 1991, at the Orangeburg County Courthouse. The

ATTEST: TRUE COPY

Wingia B. Clark

Honorable Julius H. Baggett denied relief in his order of dismissal filed February 27, 1992. The applicant did not appeal.

The Applicant filed his second PCR application (1995-CP-38-0271) on April 25, 1995.

The Applicant alleged the following grounds for relief:

1. Ineffective assistance of counsel.
2. Illegal arrest.
3. Arrest without probable cause.
4. Denial of due process.
5. Violation of 5th, 6th, and 14th Amendments of U.S. Constitution.
6. Denial of witness.
7. "Fail to file Brady Motion."
8. "Shifting the burden of prove [sic]."
9. "Erroneously charged with murder."
10. Evidence never showed murder but (self-defense).
11. Jury was never presented the lesser offense of self-defense.
12. Denial of the right to appeal (PCR).
13. Request for belated appeal (PCR).

Respondent made its Return and Motion to Dismiss on or about August 23, 1996. An evidentiary hearing was held at the Orangeburg County Courthouse on April 28, 1997. The Honorable Edward B. Cottingham granted a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), and dismissed the remaining grounds as successive. Applicant filed a notice of appeal, and a Johnson Petition for Writ of Certiorari was filed. By Order dated March 3, 1999, the South Carolina Supreme Court declined to grant a writ of certiorari. On April 12, 1999, Applicant's *pro se* Petition for Rehearing was denied, and the Remittitur was issued.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Newly discovered evidence of ineffective assistance of counsel.
 - a. "Pursuant to State v. Belcher, 685 S.E.2d 802 (2009), the Applicant is alleging that trial counsel should have objected to the implied malice charge since evidence was presented and the jury was charged on self-defense and manslaughter. The jury was also unable to reach a verdict, and the court recharged

implied malice to the jury. Thereafter, the trial court also gave the jury an Allen charge."¹

- b. "Appellate counsel argued that there was insufficient proof of the element of malice but trial counsel failed to make an objection to the court's charges of implied malice due to the use of a deadly weapon (knife)."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current

¹ In State v. Belcher, 385 S.C. 597, 612-613, 685 S.E.2d 802, 810 - 811 (2009), the Court stated, "Because our decision represents a clear break from our modern precedent, today's ruling is effective in this case and for all cases which are pending on direct review or not yet final where the issue is preserved. ... *Our ruling, however, will not apply to convictions challenged on post-conviction relief.*" [Internal citations omitted.] [Emphasis supplied.]

application is successive and barred under S.C. Code §17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court finds, further, that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on April 30, 1989. The Supreme Court's decision was filed, after the Applicant's unsuccessful appeal, on February 25, 1991. This Application was filed on March 9, 2010, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is

summarily dismissed for failure to file within the time mandated by statute and for being successive.

This Court finds that Applicant's allegation that newly discovered or after discovered evidence exists must be dismissed. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

This Court finds that the Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. Most importantly, the "new evidence" offered by the Applicant is not "material to the issue of guilt or innocence," and probably would not "change the result if a new trial was had." Hayden, Id.

III. CONCLUSION

Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Orangeburg County Clerk of Court and shall serve opposing counsel at the following address:

Mary S. Williams, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

[Signature on next page.]

AND IT IS SO ORDERED this 21 day of August, 2010.

Diane S. Goodstein

DIANE S. GOODSTEIN

Chief Judge for Administrative Purposes

First Judicial Circuit Court

Summerville, South Carolina

Butler v State

DS

1 STATE OF SOUTH CAROLINA

2 COUNTY OF ORANGEBURG

CIRCUIT COURT
2010-CP-38-00368

3
4 RICHARD BUTLER,
5 Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
8 Respondent.

9 Post Conviction Relief Hearing

10 Heard on Thursday, December 9, 2010

11 Orangeburg, South Carolina

12
13 BEFORE:

14 THE HONORABLE EDGAR W. DICKSON
15
16

17 APPEARANCES:

18 Counsel on Behalf of the Applicant:
Tricia A. Blanchette, Esq.

19 Counsel on Behalf of the Respondent, State of SC:
20 Mary S. Williams, Esq.
21
22
23

24 Cheri L. Young, RPR
Circuit Court Reporter
P O Box 1154
25 Aiken, SC 29802-1154

EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

1 ON THURSDAY, DECEMBER 9, 2010 AT 9:45 A.M.:

2 MS. WILLIAMS: May it please the Court.

3 THE COURT: Yes, ma'am.

4 MS. WILLIAMS: Your Honor, this is Richard Butler.

5 I've given you a packet which includes the State's return
6 and motion to dismiss. It includes -- the State's
7 position is that this application is statute of
8 limitations and successive, barred.

9 I believe also pled latches in that application.

10 The specific allegation that he has raised in this
11 application involves the recent Court decision of State
12 versus Belcher. Your Honor may -- I'm sure knows about
13 it, changed the malice instruction, implied malice
14 instruction.

15 THE COURT: Right.

16 MS. WILLIAMS: The State's position on that is kind of
17 twofold. First off, that was a change in the law that an
18 attorney could not anticipate at the time, and also that
19 the last, I believe it's the last sentence of the opinion
20 actually states that the opinion would be not be applied
21 and used for post-conviction relief.

22 So that sums up the State's position, but I'll let --
23 I'll turn it over to Ms. Blanchette.

24 THE COURT: Okay. Ms. Blanchette, yes, ma'am?

25 MS. BLANCHETTE: Thank you, Your Honor. I'm Tricia

1 Blanchette. I'm here on behalf of Richard Butler. It's
2 my understanding you have a copy of our response?

3 THE COURT: Well --

4 MS. WILLIAMS: Actually, no.

5 MS. BLANCHETTE: Okay.

6 MS. WILLIAMS: I have it. I just don't have a copy in
7 my file.

8 THE COURT: Do you need me to have a copy made? I can
9 do that.

10 MS. BLANCHETTE: I think -- I was going to refer to
11 it.

12 THE COURT: Okay. Then we'll make a copy.

13 MS. BLANCHETTE: Okay.

14 THE COURT: Is that the extra copy you have?

15 MS. BLANCHETTE: No, this is my copy but this can be
16 copied.

17 THE COURT: Okay. You might want to get a copy.

18 THE LAW CLERK: Okay.

19 MS. BLANCHETTE: And I apologize. I usually bring too
20 many copies.

21 THE COURT: That's no problem. (Pause.)

22 Ms. Williams, on the return on page six in the last
23 full paragraph before you get to Roman numeral seven, the
24 third line up from there, it says, "This Applicant has
25 sought post-conviction relief the original time after his

1 plea." You mean, after his trial?

2 MS. WILLIAMS: Yes, yes. You're correct.

3 THE COURT: I just wanted to make sure I hadn't
4 misunderstood. Okay. Thank you, ma'am.

5 (Law clerk leaves courtroom to make copies.)

6 MS. BLANCHETTE: While we're waiting, would the Court
7 like a copy of Belcher or Teague versus Lane which is
8 referred to?

9 THE COURT: If you have extra copies. Belcher, I
10 should have it.

11 MS. BLANCHETTE: Yes.

12 THE COURT: Thank you. All right, Ms. Blanchette.
13 I've got a copy now.

14 MS. BLANCHETTE: Okay. Great. Thank you, Your Honor.

15 I'm just going to kind of highlight some of the
16 issues that are presented in this response.

17 THE COURT: Yes, ma'am.

18 MS. BLANCHETTE: I'd like to begin by saying that I am
19 retained on this case. I've received hundreds of requests
20 regarding Belcher once it was decided and I agree with the
21 State's position that it indicates that it's not
22 retroactive.

23 And that's what I've written to all those inmates.
24 But when I received the inquiry from Mr. Butler and I went
25 to meet with him, it's my position that this case is

1 unique. It should be an exception.

2 And that's what I'm here today to talk to the Court
3 about.

4 THE COURT: Okay.

5 MS. BLANCHETTE: I think the best way to demonstrate
6 that is by looking at the record in this case. It's my
7 understanding the Court hasn't been provided a copy of the
8 trial transcript, but if requested the State could provide
9 that.

10 I'm just going to highlight some things from that
11 transcript since my client provided me a copy of it.

12 THE COURT: Okay.

13 MS. BLANCHETTE: In this case in the State's closing
14 argument, and prior to a request to give the malice
15 instruction that is no longer viable under Belcher, the
16 assistant solicitor stated, "I believe he's going to tell
17 you that malice can be inferred by the fact that a deadly
18 weapon such as a knife was used in this incident."

19 Again then in her closing argument, and this is also
20 on page 178, she reiterates the inference of malice
21 instruction from the use of a deadly weapon. At that time
22 defense counsel did not object and the State then
23 requested for, the charge on the definition and inference
24 of malice. And that came on page 182 of the transcript.
25 That was after it had already been given in closing

1 argument.

2 The Court granted that request along with the request
3 to give a manslaughter and self-defense instruction which,
4 I would argue, brings us under the purview of Belcher.

5 The Trial Court did give a detailed malice
6 instruction, that's on page 190 of the transcript, with
7 the inference of malice charge that is detailed in
8 Belcher. He also gave the charge as was requested on
9 manslaughter and self-defense. That's on page 192 and 194
10 of the transcript.

11 After being charged, the jury went out and they
12 returned with a question and requested to be re-instructed
13 on malice. The Judge then again gave the malice
14 instruction that's at issue in Belcher.

15 The jury again returned to the courtroom, couldn't
16 reach a verdict and the Judge gave an Allen charge.

17 After the jury finally returned with a guilty verdict
18 in this case, and this is all outlined in the response,
19 Applicant's -- defense counsel moved for a new trial.

20 In denying the motion, what I think is very
21 interesting, the trial Court stated, "I have some
22 reservation about the appropriateness of the conviction of
23 murder in this case."

24 Following the conviction of murder in the case his
25 case was transferred to appellate defense. They did a

1 direct appeal. And an Anders brief was submitted.

2 That Anders brief was on the issue of insufficient
3 evidence of murder in this case. The brief specifically
4 noted the malice instruction that was given and it was
5 re-given. And it was a central issue in that brief that
6 there was not sufficient evidence of malice in the case.

7 Now I clearly understand the Supreme Court's position
8 in Belcher. And, like I said before, I have explained
9 that to a number of inmates. But what's interesting is in
10 one of the cases that the State cited in their return, Ace
11 versus State, the State cites the portion that says, "At
12 some point judicial review must stop."

13 The State doesn't include the rest of the sentence
14 which says, "There's a rare exception to that rule. When
15 the system has failed the defendant and where to continue
16 the defendant's imprisonment without review would amount
17 to a gross miscarriage of justice."

18 Also in the response I cite Teague versus Lane. In
19 there the Court looks at retroactivity in great detail..
20 And I've provided a copy of that to the Court because I in
21 no way want to misrepresent that very complex decision.

22 But they looked at Justice Harlan's views on
23 retroactivity and it must be noted that he even found
24 there should be exceptions, and that's when it implicates
25 issues of fundamental fairness and when the likelihood of

1 an accurate conviction is greatly diminished.

2 Based upon the facts in this case, I would submit to
3 this Court that this falls into an exception that needs to
4 be acknowledged to the Court's retroactivity decision in
5 Belcher.

6 Furthermore, I would argue that it falls outside of
7 the parameters of that retroactivity provision because
8 here the assistant solicitor stated and said, "The Judge
9 is going to give you this instruction," before the Judge
10 even agreed to give that instruction.

11 My client here, upon review of Belcher, contacted me
12 and it came to my attention that, yes, even though this
13 implicates Belcher, it might be outside of Belcher because
14 it's our position that his attorney should have objected
15 when the assistant solicitor said, "This is what the
16 State -- I'm sorry. "This is what the Judge is going to
17 tell you. He's going to give you this inference of malice
18 instruction."

19 THE COURT: Did she say that at the beginning of the
20 trial or at the end of the trial?

21 MS. BLANCHETTE: She said that on page 178 before she
22 requested the malice instruction. So it was in her
23 closing argument.

24 THE COURT: Okay. Ms. Blanchette, I know in closing
25 arguments you suggest what the Judge is going to charge on

1 the law, too; don't you?

2 MS. BLANCHETTE: I looked up footnote nine
3 specifically in Belcher because it deals with, as far as
4 in closing arguments. And footnote nine of Belcher says
5 it's still appropriate for closing arguments, the
6 inference of malice instruction. But here our position is
7 the State crossed the line by saying it was the law that
8 was going to be charged before it was even requested.

9 And why this has become such a central issue in this
10 case is, I feel and I submit to this Court on behalf of my
11 client, that the malice instruction was why he was
12 convicted in this case. It becomes the central focus of
13 this case.

14 If you take the facts of this case and you set it up
15 against Belcher, I feel that Mr. Butler deserves relief
16 much more than, you know, the facts of the Belcher case.
17 I think these facts exceed the Belcher case.

18 I understand that I'm here today arguing fundamental
19 fairness and facts, but I just strongly believe this is a
20 case that needs to be brought to the Court's attention.

21 THE COURT: You're arguing fundamental unfairness.

22 MS. BLANCHETTE: Yeah. This is a case where there was
23 not fundamental fairness. So fundamental unfairness.

24 THE COURT: Yes, ma'am. Let me ask you another
25 question.

1 MS. BLANCHETTE: Uh-huh.

2 THE COURT: I don't have copy of the transcript --

3 MS. BLANCHETTE: Yes.

4 THE COURT: -- but the Judge charged self; defense.

5 Did the -- did Mr. Butler testify?

6 THE APPLICANT: Yes.

7 MS. BLANCHETTE: Yes. Mr. Butler testified.

8 THE COURT: Okay. And were there any other witnesses
9 of self-defense or just his statement? Mr. Butler?

10 THE APPLICANT: It was basically my -- I was the only
11 person that testified to that, but it was some other
12 people that testified on my behalf.

13 THE COURT: On your behalf?

14 THE APPLICANT: Yes.

15 THE COURT: Did any of the other people that testified
16 on your behalf, did they -- were they witnesses to this
17 situation, incident?

18 THE APPLICANT: Well, they were witnesses, you know,
19 basically to some of the things that happened before,
20 leading up to.

21 THE COURT: Okay. All right, sir.

22 MS. BLANCHETTE: And, Your Honor, it's my
23 understanding that you may have a copy of the Anders
24 brief. I'd be happy to provide a copy if you need that
25 because the appellate defense does a good job of detailing

1 who testified and the facts of the case.

2 THE COURT: I think I do have the Anders brief of
3 appellate -- yeah, I've got that. If you think that would
4 satisfy me rather than, instead of having the transcript.

5 MS. BLANCHETTE: Well, I'd prefer that Your Honor have
6 the complete transcript since I cited to it. I'd like you
7 to be able to check those references and see those for
8 yourself.

9 THE COURT: Well, I'd also like to get a feel for what
10 happened during the trial since you're essentially --

11 MS. WILLIAMS: I'm pretty sure I've got it and I'll
12 send you a hard copy.

13 THE COURT: If you'll do that, I'd appreciate it.
14 What else, Ms. Blanchette?

15 MS. BLANCHETTE: Your Honor, looking at the Hayden
16 factors, I would say that this is in fact newly
17 discovered.

18 My client contacted me upon review of the Belcher
19 decision. This was not a issue that was raised in any of
20 his prior actions. And as I was focusing on my argument
21 previously, the major focus on the Hayden factors or
22 newly-discovered factors is, one, that it's newly
23 discovered and, two, that it would make a difference.

24 And I submit, by looking at the record in this case,
25 the facts of this case, that malice instruction was vital

1 to the State's conviction in this case.

2 And I would even submit to the Court, without it he
3 would not have been convicted. And the reason and what I
4 relied upon with that is the Court's comment that he
5 didn't even think it was appropriate for a conviction in
6 this case.

7 And I know I'm here today arguing against a case that
8 is very clear. And I'm not going to insult the Court's
9 intelligence by, you know, going into Belcher and saying,
10 you know, this case -- that the retroactivity provision is
11 not in there.

12 But like this Court noted, I submit this is an issue
13 of fundamental unfairness, a denial of due process and
14 this conviction should not stand.

15 THE COURT: Okay.

16 MS. BLANCHETTE: If the Court has any further
17 questions, I'd be happy to answer those.

18 THE COURT: No. What I'll do is -- do you have any
19 questions at this time, Ms. Williams?

20 MS. WILLIAMS: Nothing further, Your Honor.

21 THE COURT: Okay. All right. What I will do is,
22 Ms. Williams is going to send me a copy of the
23 transcript. I'll read over the case law, read over the
24 transcript, and I'll get back with you with my decision
25 though it's going to be awhile. Okay.

1 I don't want -- Mr. Butler, I don't want you to leave
2 here thinking you're going to hear anything on this before
3 Christmas. I've got a lot of stuff that I need to try and
4 take care of before Christmas. And if I'm going to read
5 your transcript and like that, it's going to take me a
6 little while.

7 THE APPLICANT: Yes, sir.

8 THE COURT: If you bear with the Court, I will read it
9 over and get back with you.

10 MS. BLANCHETTE: And, Your Honor, I would be remiss not
11 to mention, Mr. Butler has been a model inmate. I think
12 that will be obvious on his record. He's worked in PI for
13 over 10 years. He's been a ward keeper at most of the
14 prisons he's been at.

15 I didn't know if the Court had anything that they'd
16 like to hear from him since he is here today.

17 THE COURT: Anything -- if you want to have him
18 testify, I'll be glad to have him testify but --

19 MS. WILLIAMS: Your Honor, I don't think it's relevant
20 to this determination. It's not a parole hearing.

21 THE COURT: -- but, again, I'm not here for a parole
22 issue. He's answered my questions earlier in court. So I
23 have -- whenever somebody talks to me in court I get a
24 feel for them in the circumstance.

25 MS. BLANCHETTE: I appreciate that, Your Honor. I

1 just didn't want to miss that opportunity. Thank you.

2 THE COURT: No, I understand. I understand.

3 MS. BLANCHETTE: Thank you.

4 THE COURT: Thank y'all.

5 MS. BLANCHETTE: Thank you.

6 THE COURT: Appreciate it.

7 END OF CASE AT 10:19 A.M.

8 * * * *

9 CERTIFICATE OF REPORTER

10 I, Cheri L. Young, Registered Professional Reporter,
11 and Official Court Reporter for the State of South
12 Carolina, do hereby certify that the foregoing transcript
13 of proceedings heard on Thursday, December 9, 2010, in
14 Orangeburg, South Carolina, was reported by me using
15 machine shorthand and realtime computer-aided translation
16 and is a true, accurate and complete transcript of the
17 proceedings had and evidence introduced in the hearing of
18 the matter.

19 I do further certify that I am neither of kin, counsel
20 nor interest to any party hereto. I have hereunto set my
21 hand this Saturday, the 19th day of May, 2012.

22
23
24 Cheri L. Young, RPR
25 Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Richard Butler, #162467,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2010-CP-38-0368

ORDER OF DISMISSAL

FILED FOR RECORD
WINNIE A.B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2012 JAN 10 PM 12:20

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 9, 2010. The Respondent made at Return and Motion to Dismiss dated July 22, 2010, and filed with the clerk on August 26, 2010. Tricia Blanchette, Esquire, responded to the State's Return on behalf of Applicant in a document entitled, "Response to Respondent's Return and Motion to Dismiss" dated July 29, 2010. Thereafter, a Conditional Order of Dismissal was signed by the Honorable Diane Goodstein on August 21, 2010, and was filed on August 26, 2010. However, in light of Applicant's response to the return requesting a hearing, Judge Goodstein requested Respondent schedule a hearing to investigate the allegation of after-discovered evidence based on the recent decision in State v. Belcher, 385 S.C. 597, 685 S.E.2d 803 (2009). A hearing was convened on December 9, 2010, before this Court to review the issue at hand. The Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

This Court had before it the records of the Orangeburg County Clerk of Court, the trial transcript, and the Applicant's records from the South Carolina Department of Corrections.

Page 1 of 7



ATTEST: TRUE COPY

Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

PROCEDURAL HISTORY

The records before this Court indicate the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. The Applicant was indicted at the March 1989 term of the Grand Jury for Orangeburg County for Murder (1989-GS-38-0224). Reddick A. Bowman, Esquire, represented him. On August 30, 1989, the Applicant proceeded to trial by jury pursuant to which the Applicant was found guilty as charged. He was sentenced by the Honorable C. Anthony Harris to confinement for Life.

The Applicant filed a Notice of Appeal. Following submission of an Anders brief, the South Carolina Supreme Court affirmed the conviction. State v. Butler, Op. No. 91-MO-76 (filed February 25, 1991). The Remittitur was sent on March 13, 1991.

Applicant filed his first PCR application (1991-CP-38-343) on April 15, 1991. An evidentiary hearing was held on December 17, 1991, at the Orangeburg County Courthouse. The Honorable Julius H. Baggett denied relief in his order of dismissal filed February 27, 1992. The applicant did not appeal.

The Applicant filed his second PCR application (1995-CP-38-0271) on April 25, 1995. The Applicant alleged the following grounds for relief:

1. Ineffective assistance of counsel.
2. Illegal arrest.
3. Arrest without probable cause.
4. Denial of due process.
5. Violation of 5th, 6th, and 14th Amendments of U.S. Constitution.
6. Denial of witness.
7. "Fail to file Brady Motion."
8. "Shifting the burned of prove [sic]."
9. "Erroneously charged with murder."
10. Evidence never showed murder but (self-defense).
11. Jury was never presented the lesser offense of self-defense.

12. Denial of the right to appeal (PCR).
13. Request for belated appeal (PCR).

Respondent made its Return and Motion to Dismiss on or about August 23, 1996. An evidentiary hearing was held at the Orangeburg County Courthouse on April 28, 1997. The Honorable Edward B. Cottingham granted a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), and dismissed the remaining grounds as successive. Applicant filed a notice of appeal, and a Johnson Petition for Writ of Certiorari was filed. By Order dated March 3, 1999, the South Carolina Supreme Court declined to grant a writ of certiorari. On April 12, 1999, Applicant's *pro se* Petition for Rehearing was denied, and the Remittitur was issued.

Applicant thereafter filed this application for PCR on March 9, 2010. In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Newly discovered evidence of ineffective assistance of counsel.
 - a. "Pursuant to State v. Belcher, 685 S.E.2d 802 (2009), the Applicant is alleging that trial counsel should have objected to the implied malice charge since evidence was presented and the jury was charged on self-defense and manslaughter. The jury was also unable to reach a verdict, and the court recharged implied malice to the jury. Thereafter, the trial court also gave the jury an Allen charge."
 - b. "Appellate counsel argued that there was insufficient proof of the element of malice but trial counsel failed to make an objection to the court's charges of implied malice due to the use of a deadly weapon (knife)."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony

accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Retroactive Application of State v. Belcher Based on Fundamental Unfairness

The Applicant alleges the South Carolina Supreme Court's 2009 decision in State v. Belcher, 385 S.C. 597, 685 S.E.2d, 802, lead to Applicant's discovery of outcome determinative issues that amounted to an exception of the retroactivity provision that was set forth by the Court in Belcher. Therefore, Applicant argues, the inferred malice charge, plus the State's closing arguments and the trial court's responses to the jury when they had questions, made the murder verdict fundamentally unfair in light of the evidence presented during the trial.

The case of State v. Belcher was decided by the South Carolina Supreme Court on October 12, 2009, some twenty (20) years after the Applicant was convicted in 1989. Belcher "represents a clear break from our modern precedent" approving of the jury charge on inference of malice from use of a deadly weapon, expressly overruling some twenty-six (26) cases decided over the course of more than 100 years, ranging in date from 1894 to 2006. 385 S.C. at 612, 685 S.E.2d at 810. The charge given in Applicant's case was, at the time of his trial, the sanctioned charge on the law. In Belcher, the Court held, "where evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon." State v. Belcher at 612, 685 S.E.2d at 810. The opinion expressly stated that "[o]ur ruling, however, will not apply to convictions challenged on post-conviction relief." Id. at 613, 685 S.E.2d at 810.

Both in his response to the State's Return and Motion to Dismiss and at the evidentiary hearing before this court, Applicant conceded that the opinion set forth in Belcher explicitly stated

that it was not to be applied retroactively or to convictions challenged on post conviction relief. Applicant argues, however, trial counsel's failure to object to the State's closing argument in regards to the application of the inference of malice, coupled with the inference of malice jury charge and subsequent questions from the jury about that charge, create an issue of fundamental fairness that carves out an exception to the limitations set forth in Belcher. Further, Applicant states he is not attempting to allege a change in law, but rather that errors committed by trial counsel were only brought to light upon the decision in Belcher, and such errors resulted in a fundamentally unfair verdict, which would allow the decision in Belcher to be applied retroactively. (see Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060 (1989) stating "new rules of criminal procedure generally should not be applied retroactively to cases on collateral review... [u]nless... it requires the observance of "those procedures that ... are implicit in the concept of ordered liberty..." Id. at 295.) The Court in Teague additionally stated, "The fundamental fairness exception is a narrow one, and has been applied in limited circumstances" (Id. at 298) and referred to the case of People v. Goerger, 52 Ill.2d 403, 288 N.E.2d 416(1972), stating that "an improper instruction on reasonable doubt did not constitute such fundamental unfairness as to obviate the *res judicata* and waiver doctrines." (Id. at 406.)

 Because the Belcher decision posed a clear break from long-established precedent some two ~~years~~ ^{decades} after Applicant's trial, Counsel was not unreasonable in failing to pose an objection to the charge given. Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454.(1994) (attorney is not required to be clairvoyant or anticipate changes in the law which were not in existence at time of trial) (overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999)). Additionally, a jury charge applying the correct statement of the law at the time of trial concerning the inference of

malice is not an issue of fundamental unfairness that warrants retroactively applying a change in law made twenty (20) years after a conviction. Based on the explicit language of the Supreme Court's opinion, this court is precluded from applying Belcher to the conviction challenged in this PCR application.

Further, trial counsel was not ineffective for failing to object to statements made by the State in its closing argument in regards to the inference of malice standard as it stood at the time of trial. An Applicant in a post-conviction relief proceeding "may not simply posit suppositions and speculations in an attempt to establish that counsel was ineffective." Simpson v. Moore, 367 S.C. 587, 598, 627 S.E.2d 701, 707 n.2 (2006). "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland v. Washington, 466 U.S. 668, 689, 104 S.Ct. 2052, 2065 (1984). Furthermore, "[t]hough hindsight may provide a different view of counsel's actions," an applicant is not entitled to relief "for the sole purpose of presenting a 'fancier' case." Simpson at 598, 627 S.E.2d at 707 n.2 (quoting Jones v. State, 332 S.C. 329, 339, 504 S.E.2d 822, 827 (1998)). Attorneys are not required "to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial." Thornes v. State, 310 S.C. 306, 310, 426 S.E.2d 764, 765 (1993); see also Robinson v. State, 308 S.C. 74, 78, 417 S.E.2d 88, 91 (1992) (finding counsel not ineffective for failing to assert defense not yet recognized by the Court). Therefore, counsel was not ineffective for failing to object to the State's remarks in closing or to the jury charge given by the trial court based on the then correct statement of law concerning the inference of malice.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

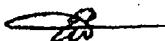
1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 20th day of December, 2011.



EDGAR W. DICKSON
Presiding Judge
First Judicial Circuit

Changabing, South Carolina.



STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

AFFIDAVIT

Personally appeared before me, judge of the Court, one CAPTAIN JOHN H. WOLFE, who being duly sworn, deposes and says that RICHARD BULTER (name of defendant) did within this County and State on DEC. 22, 19 88, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of ORANGEBURG] in the following particulars:

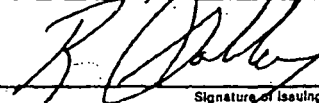
DESCRIPTION OF OFFENSE

MURDER

16-3-10

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that such probable cause is based on the following facts: One Richard Bulter did violate section # 16-3-10 of the South Carolina Code of Laws in that he did, with malice aforethought, murder Trevin Felder by stabbing him with a knife. This occurred in the parking lot of St. Paul William Chapel Apt., in the city of Orangeburg, S.C. At approximately 7:10 P.M. on December 22, 1988, police were notified that someone had been stabbed. Upon their arrival Trevin Felder was dead. Rosalyn Renee Kelly and several other witnesses has given police signed statements that Richard Butler had stabbed Trevin Felder in the stomach and killed him.

Sworn to and Subscribed before me,

This 23 day of Dec, 19 88


Signature of Issuing Judge

(L.S.)

Address 268 MIDDLETON ST.
ORANGEBURG, S.C.
Phone: 534-6924

Capt. John H. Wolfe
Signature of Affiant
Address 268 MIDDLETON ST.
ORANGEBURG, S.C.
Phone: 534-6924

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

ARREST WARRANT

[or MUNICIPALITY OF ORANGEBURG]

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE, COUNTY OR MUNICIPALITY, OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that RICHARD BULTER (name of defendant) did on DEC. 22 19 88, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of ORANGEBURG] as set forth below:

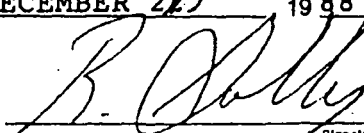
DESCRIPTION OF OFFENSE

MURDER

16-3-10

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at ORANGEBURG, S.C.
on DECEMBER 23 19 88



Signature of Judge

(L.S.)

ORANGEBURG**AFFIDAVIT**

Personally appeared before me, judge of the Court, one Det. Everett LaFrance,
 who being duly sworn, deposes and says that Richard Earl Butler (name of defendant) did within this County
 and State on 2-3 19 89, violate the criminal laws of the State of South Carolina [or ordinance of the municipality
 of _____] in the following particulars:

DESCRIPTION OF OFFENSE**ARMED ROBBERY**

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and
 that such probable cause is based on the following facts:

That on February 3, 1989 at approximately 3:00 A.M. located at Chevron Food Mart,
 Highway 601 North, Orangeburg, South Carolina, one Richard Earl Butler and co-defendant
 did commit the crime of armed robbery, in that he did take \$51.00 in cash out of the
 cash register at said business. This occurring in Orangeburg County, State of South
 Carolina.

Sworn to and Subscribed before me,

This 3rd day of February, 19 89.

Everett B. LaFrance
 Signature of Affiant

Address _____

Phone: _____

W.T. Klappman (L.S.)
 Signature of Judge

Address P.O. BOX 1000
ORANGEBURG SC 29115
 Phone: 531-4651

STATE OF SOUTH CAROLINA ARREST WARRANT

COUNTY OF ORANGEBURG

[or MUNICIPALITY OF _____]

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE, COUNTY OR MUNICIPALITY, OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that Richard Earl Butler
 (name of defendant) did on 2-3 19 89, violate the criminal laws of the State of South Carolina [or ordinance
 of the municipality of _____] as set forth below:

DESCRIPTION OF OFFENSE**ARMED ROBBERY**

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be
 dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
 soon thereafter as is practicable.

Done at ORANGEBURG
 on FEBRUARY 3, 19 89.

W.T. Klappman
 Signature of Judge

COUNTY OF ORANGEBURG

INDICTMENT FOR MURDER

At a Court of General Sessions, convened on February 28, 1989,
the Grand Jurors of ORANGEBURG County present upon their oath:

COUNT ONE - MURDER

That RICHARD BUTLER
did in Orangeburg County on or about December 22, 1988,
feloniously, wilfully and with malice aforethought, kill one _____
Trevin Felder
by means of stabbing him in the left chest area with a knife
and that the said victim died as a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

B. Harrison Bell
SOLICITOR

Capt. John H. Wolfe

ODPS

ARREST WARRANT NO. C039418

ACTION OF GRAND JURY

True Bill

FOREMAN OF GRAND JURY

2-28-89

VERDICT

FOREMAN (PETIT JURY

DATE:

THE STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

COURT OF GENERAL SESSIONS

MARCH TERM 1989

THE STATE

vs.

RICHARD BUTLER

Age:

Attorney:

INDICTMENT FOR

MURDER

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