

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

Honorable D. Craig Brown, Circuit Court Judge

RECEIVED

NOV 23 2016

S.C. SUPREME COURT

ROSHOD M. BAKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000657

APPENDIX

LAURA R. BAER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

CAITLIN HASTINGS
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (Nov. 13-16, 2006) ¹	1
<u>ANDERS</u> BRIEF OF APPELLANT	392
UNPUBLISHED OPINION, <u>State v. Baker</u> , Opinion No. 2009-UP-426 (S.C. Ct. App. filed Sept. 8, 2009)	402
FIRST APPLICATION FOR POST-CONVICTION RELIEF	404
FIRST STATE'S RETURN	411
AMENDMENT TO FIRST APPLICATION FOR POST-CONVICTION RELIEF	416
FIRST POST-CONVICTION RELIEF HEARING TRANSCRIPT (Aug. 26 & 28, 2014)	417
ORDER OF DISMISSAL	488
SECOND APPLICATION FOR POST-CONVICTION RELIEF	498
SECOND STATE'S RETURN	513
SECOND POST-CONVICTION RELIEF HEARING TRANSCRIPT (Feb. 11, 2016)	518
ORDER GRANTING <u>AUSTIN</u> REVIEW	523
INDICTMENT	526

¹ The trial transcript is missing page number 178. Petitioner's counsel contacted the Court of Appeals to see if the Record on Appeal from Petitioner's direct appeal contained the missing page, but it did not.

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
02-GS-26-2043

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
 vs.)
)
 TELLY D. MANNING AND ROSHAD)
 BAKER,)
)
 DEFENDANTS.)
 _____)

TRANSCRIPT OF RECORD

NOVEMBER 13-16, 2006
CONWAY, SOUTH CAROLINA

BEFORE:

THE HONORABLE, STEVEN H. JOHN, JUDGE; AND A JURY

APPEARANCES:

BY: GEORGE H. DEBUSK, JR., ESQ.
ATTORNEY FOR STATE

BY: RANDALL K. MULLINS, ESQ.
ATTORNEY FOR TELLY D. MANNING

BY: JOHNNY GARDNER, ESQ.
ATTORNEY FOR ROSHAD M. BAKER

BRENDA R. BABB
Circuit Court Reporter

INDEX

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
RENEE HARDWICK				
MR. DEBUSK	60			
MR. MULLINS		65		
MR. GARDNER		(NONE)		
LENORA WILSON				
MR. DEBUSK	65			
MR. MULLINS		71		
MR. GARDNER		73		
DERRICK BOWENS				
MR. DEBUSK	79		113	
MR. MULLINS		91		116
MR. GARDNER		99		
ERNEST Q. SMITH				
MR. DEBUSK	119		161	
MR. MULLINS		134		164
MR. GARDNER		144		165
OFC. ROBERT C. STEPHENS				
MR. DEBUSK	168			
MR. MULLINS		175		
MR. GARDNER		178		
SGT. JEFFREY GAUSE				
MR. DEBUSK	181			
MR. MULLINS		195		
MR. GARDNER		198		

INDEX (CONTINUED)

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
DR. ERIN PRESNELL				
MR. DEBUSK	204		244	
MR. MULLINS		230		
MR. GARDNER		239		
S/A VELLO PAAVEL				
MR. DEBUSK	255		275	
MR. MULLINS		272		
MR. GARDNER		274		
VOIR DIRE				8
MOTION TO LIFT BENCH WARRANT BY DEFENDANT MANNING				39
JURY SELECTION				23
OPENING STATEMENT BY STATE				45
OPENING STATEMENT FOR DEFENDANT MANNING				53
OPENING STATEMENT FOR DEFENDANT BAKER				57
MOTION FOR DIRECTED VERDICT FOR DEFEN. MANNING			277,298,382	
MOTION FOR DIRECTED VERDICT FOR DEFEN. BAKER			279,299,382	
CLOSING ARGUMENT BY STATE				312
CLOSING ARGUMENT FOR DEFENDANT MANNING				329
CLOSING ARGUMENT FOR DEFENDANT BAKER				341
JURY CHARGE				360
POLLING OF JURORS				379
SENTENCING				383
CERTIFICATE OF REPORTER				392

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	911 TAPE	43	63
S-2	PHOTOGRAPH - BRUCES COUNTY KITCHEN	43	71
S-3	PHOTOGRAPH - LINCOLN TOWN CAR	43	71
S-4	PHOTOGRAPH - LINCOLN TOWN CAR	43	71
S-5	PHOTOGRAPH - " "	78	83
S-6	MAP - HORRY COUNTY	78	173
S-7	ROAD MAP - FREEMONT	78	173
S-8	PHOTOGRAPH - PARKING LOT	78	173
S-9	PHOTOGRAPH ITEMS BESIDE LINCOLN DRIVER'S SIDE	78	184
S-10	PHOTOGRAPH ITEMS BESIDE LINCOLN PASSENGER'S SIDE	78	184
S-11	PHOTOGRAPH CASINGS BESIDE LINCOLN PASSENGER'S SIDE	78	184
S-12	PHOTOGRAPH PASSENGER FRONT SEAT IN LINCOLN	78	184
S-13	PHOTOGRAPH DRIVER'S SEAT LINCOLN	78	184
S-14	9MM CASING	186	187
S-15	9MM CASING	186	187
S-16	PROJECTILE MUSC #1	191	194
S-17	PROJECTILE MUSC #2	191	194
S-18	PROJECTILE MUSC #3	191	194
S-19	PROJECTILE MUSC #4	191	194
S-20	PROJECTILE MUSC #5	191	194
S-21	PROJECTILE MUSC #6	191	194
S-22	AUTOPSY DIAGRAM	78	211

EXHIBITS (CONTINUED)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-23	POSTER FULL BODY DIAGRAM	246	255
S-24	PHOTOGRAPH BULLET WOUND A	78	211
S-25	PHOTOGRAPH BULLET WOUND B	78	211
S-26	PHOTOGRAPH BULLET WOUND C	78	211
S-27	PHOTOGRAPH BULLET WOUND D	78	211
S-28	PHOTOGRAPH BULLET WOUND E	78	211
S-29	PHOTOGRAPH BULLET WOUND F	78	211
S-30	PHOTOGRAPH BULLET WOUND G	78	211
S-31	PHOTOGRAPH BULLET WOUND H	78	211
S-32	PHOTOGRAPH BULLET WOUND I	78	211
S-33	PHOTOGRAPH BULLET WOUND J	78	211
S-34	PHOTOGRAPH BULLET WOUND K	78	211
S-35	PHOTOGRAPH BULLET WOUND L AND M	78	211
S-36	X-RAY CHEST WITH PROJECTILE	78	211
S-37	X-RAY LEFT UPPER ARM WITH PROJECTILE	78	211
S-38	X-RAY RIGHT UPPER ARM WITH PROJECTILE	78	211
S-39	X-RAY RIGHT LOWER ARM WITH PROJECTILE	78	211
S-40	PHOTOGRAPH PROJECTILE #1	78	211
S-41	PHOTOGRAPH PROJECTILE #1	78	211
S-42	PHOTOGRAPH PROJECTILE #2	78	211
S-43	PHOTOGRAPH PROJECTILE #3	78	211
S-44	PHOTOGRAPH PROJECTILE #4	78	211
S-45	PHOTOGRAPH PROJECTILE #5	78	211

EXHIBITS (CONTINUED)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-46	PHOTOGRAPH PROJECTILE #6	78	211
S-47	PROJECTILE CORRELATION POSTER	246	
S-48	PROJECTILE CORRELATION TABLE	78	269
S-49	AGREEMENT - ERNEST SMITH	132	
S-50	STATEMENT OF ERNEST SMITH	291	
S-51	PHOTOGRAPH - INTERIOR OF LINCOLN	188	189
S-52	TEETH - FA-00-0121 10/22/06	188	289

(EXHIBITS BY DEFENDANT MANNING)

D-1	PHOTOGRAPH - JEWELRY	78	
D-2	PHOTOGRAPH - MONEY	78	
C-1	NOTE FROM JURY	251	
C-2	QUESTION FROM JURY WITH WRITTEN RESPONSE BY COURT	22	

CALL OF CASE

7

1 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN,
2 WHAT WE'RE GOING TO DO NOW IS WE'RE GOING TO START THE
3 SELECTION PROCESS IN THE FIRST CASE FOR TRIAL. NOW
4 REGARDING THAT PARTICULAR MATTER WHAT I'M GOING TO DO FIRST
5 IS READ TO YOU SOME INFORMATION THAT IS CONTAINED IN THE
6 INDICTMENTS.

7 NOW BEFORE I DO SO, BEFORE I READ THAT
8 INFORMATION TO YOU I'M GOING TO TELL YOU THE INDICTMENT IS
9 MERELY THE CHARGING DOCUMENT DOCKETED BY WHICH THIS MATTER
10 IS BROUGHT TO COURT. IT IS NOT EVIDENCE, CANNOT BE
11 CONSIDERED BY ANYONE AS EVIDENCE IN THE CASE. THE ONLY
12 REASON I'M TELLING YOU ABOUT INFORMATION THAT ALLEGATIONS
13 THAT ARE CONTAINED IN THE INDICTMENT IS TO SEE IF YOU MIGHT
14 HAVE ANY POTENTIAL CONFLICT. YOU MAY KNOW SOME OF THE
15 PARTIES INVOLVED OR YOU MAY HAVE SOME INFORMATION OR THERE
16 MAY BE SOME REASON THAT YOU NEED TO STAND UP AND LET THE
17 COURT KNOW ABOUT. OTHER THAN THAT THAT IS THE ONLY PURPOSE
18 FOR WHICH I WOULD BE READING THE INFORMATION TO YOU.

19 NOW THE INDICTMENTS HERE ARE REGARDING THE STATE
20 OF SOUTH CAROLINA V. TELLY D. MANNING AND THE STATE OF
21 SOUTH CAROLINA V. RASHAD M. BAKER. NOW IT IS ALLEGED IN
22 THE INDICTMENT AS AGAINST TELLY D. MANNING THAT WHILE IN
23 CONCERT WITH OTHERS THAT HE DID IN HORRY COUNTY ON OR ABOUT
24 THE 21ST DAY OF DECEMBER 2000 WILLFULLY, FELONIOUSLY, AND
25 INTENTIONALLY KILL THE VICTIM TROY RIGGINS WITH MALICE

CALL OF CASE

8

1 AFORETHOUGHT EITHER EXPRESSED OR IMPLIED BY MEANS OF
2 SHOOTING THE VICTIM AND THE VICTIM DID DIE IN HORRY COUNTY
3 ON OR ABOUT THE 21ST DAY OF DECEMBER 2000.

4 AS A SEPARATE CASE THAT IS BEING TRIED TODAY, AND
5 BOTH OF THESE ARE SEPARATE CASES, THE INDICTMENT ALLEGES
6 THAT RASHAD M. BAKER, WHILE IN CONCERT WITH OTHERS, DID IN
7 HORRY COUNTY ON OR ABOUT THE 21ST DAY OF DECEMBER 2000
8 WILLFULLY, FELONIOUSLY, AND INTENTIONALLY KILL THE VICTIM
9 TROY RIGGINS WITH MALICE AFORETHOUGHT EITHER EXPRESSED OR
10 IMPLIED BY MEANS OF SHOOTING THE VICTIM ABOUT THE BODY AND
11 THE VICTIM DID DIE IN HORRY COUNTY ON OR ABOUT THE 21ST DAY
12 OF DECEMBER 2000 THIS BEING A VIOLATION OF THE CODE OF LAWS
13 OF THE STATE OF SOUTH CAROLINA.

14 ALL RIGHT, IS THERE ANY MEMBER OF THE JURY PANEL
15 AS A WHOLE THAT KNOWS ANYTHING ABOUT THIS PARTICULAR
16 MATTER, HAS ANY INFORMATION YOU NEED TO BRING TO THE
17 COURT'S ATTENTION, IF SO, PLEASE STAND?

18 ALL RIGHT, SOLICITOR, DO YOU HAVE A WITNESS LIST,
19 ALL RIGHT, GOOD. ALL RIGHT, THESE ARE THE POTENTIAL
20 WITNESSES, THE POSSIBLE WITNESSES IN THIS CASE. THEY ARE:

21 LT. JAMIE DEBARI, HORRY COUNTY POLICE DEPARTMENT;
22 OFFICER R. C. STEPHENS, HORRY COUNTY POLICE
23 DEPARTMENT;

24 SGT. JEFF GAUSE, HORRY COUNTY POLICE DEPARTMENT;
25 SPECIAL AGENT VELLO PAAVEL, SOUTH CAROLINA LAW

CALL OF CASE

9

1 ENFORCEMENT DIVISION;

2 DR. ERIN PRESNELL;

3 ERNEST Q. SMITH;

4 DORMAINE BAKER;

5 DERRICK BOWENS;

6 KENA BETHEA;

7 LENORA WILSON;

8 BRUCE WILLIAMS;

9 ROD CROSS;

10 RENEE HARDWICK;

11 LT. STAN STRICKLAND, HORRY COUNTY POLICE

12 DEPARTMENT;

13 RASHAD M. BAKER;

14 TELLY D. MANNING.

15 IS ANY MEMBER OF THE JURY PANEL AS A WHOLE

16 RELATED BY BLOOD OR MARRIAGE, CLOSE PERSONAL FRIENDS,

17 ACQUAINTANCES OF, KNOW ANY OF THE POTENTIAL WITNESSES, IF

18 SO, PLEASE STAND?

19 ALL RIGHT, NOW REGARDING SOME OTHER QUESTION THE

20 COURT WOULD HAVE OF YOU.

21 IS ANY MEMBER OF THE JURY PANEL AS A WHOLE EITHER

22 YOU YOURSELF OR A MEMBER OF YOUR IMMEDIATE FAMILY EVER HAD

23 ANY MATTERS WHATSOEVER EVER HANDLED BY THE FIFTEENTH

24 CIRCUIT SOLICITOR'S OFFICE? REMEMBER THAT'S THE

25 PROSECUTING OFFICE THAT COVERS HORRY AND GEORGETOWN

CALL OF CASE

10

1 COUNTIES, IF SO, PLEASE STAND?

2 IS THERE ANY MEMBER OF THE JURY PANEL AS A WHOLE
3 THAT'S RELATED BY BLOOD OR MARRIAGE, CLOSE PERSONAL
4 FRIENDS, ACQUAINTANCES OF ANYONE EMPLOYED AT THE FIFTEENTH
5 CIRCUIT SOLICITOR'S OFFICE EITHER HERE IN Horry OR IN
6 GEORGETOWN COUNTIES, IF SO, PLEASE STAND?

7 YES, SIR, YOUR NAME AND JUROR NUMBER, PLEASE?

8 JURY PANEL MEMBER: THOMAS TRACY, JUROR 315.

9 THE COURT: YES, SIR?

10 JURY PANEL MEMBER: I'M ACQUAINTANCE OF ATTORNEY
11 GARDNER.

12 THE COURT: ALL RIGHT, WELL WE'LL GET TO, WE'LL
13 GET TO THE ATTORNEYS THAT IN THIS PARTICULAR CASE IN JUST A
14 SECOND, BUT IS THERE ANYBODY IN THE SOLICITOR'S OFFICE THAT
15 YOU'RE FRIENDS OR ACQUAINTANCES WITH THAT YOU KNOW OF?

16 JURY PANEL MEMBER: NO, SIR.

17 THE COURT: ALL RIGHT, SIR, THANK YOU. ALL
18 RIGHT, IF YOU WOULD, SOLICITOR, IF YOU'D STAND AND IDENTIFY
19 YOURSELF FOR THE JURY, PLEASE?

20 MR. DEBUSK: MY NAME IS SENIOR ASSISTANT
21 SOLICITOR GEORGE DEBUSK, I WORK HERE IN THE CONWAY OFFICE
22 OF THE FIFTEENTH CIRCUIT SOLICITOR'S OFFICE.

23 THE COURT: ALL RIGHT, SIR. ALL RIGHT, MR.
24 MULLINS, IF YOU'D STAND AND IDENTIFY YOURSELF AND ANYONE
25 THAT WORKS IN YOUR OFFICE, PLEASE, SIR?

CALL OF CASE

11

1 MR. MULLINS: MAY IT PLEASE THE COURT, YOUR
2 HONOR?

3 THE COURT: YES, SIR.

4 MR. MULLINS: MY NAME IS RANDY MULLINS, I
5 PRACTICE LAW PRIMARILY IN NORTH MYRTLE BEACH, SOUTH
6 CAROLINA. I HAVE A PARTNER MS. AMY ????. WE ALSO OPERATE A
7 MYRTLE BEACH BRANCH OF THAT PARTICULAR LAW FIRM.

8 THE COURT: THANK YOU, SIR. MR. GARDNER, IF YOU
9 WOULD STAND AND IDENTIFY YOURSELF, PLEASE?

10 MR. GARDNER: THANK YOU, YOUR HONOR, JOHNNY
11 GARDNER, MY OFFICE IS HERE IN CONWAY, SOUTH CAROLINA.

12 THE COURT: ALL RIGHT, ALL RIGHT, LADIES AND
13 GENTLEMEN, IS THERE ANY MEMBER OF THE JURY PANEL AS A WHOLE
14 THAT'S RELATED BY BLOOD OR MARRIAGE, CLOSE PERSONAL
15 FRIENDS, ACQUAINTANCES OF ANY OF THESE THREE LAWYERS THAT
16 HAVE STOOD AND IDENTIFIED THEMSELVES OR ANYONE THAT'S IN
17 THEIR OFFICES, IF SO, PLEASE STAND?

18 YES, SIR, AGAIN YOUR NAME AND JUROR NUMBER BACK
19 IN THE BACK THERE?

20 JURY PANEL MEMBER: THOMAS TRACY, 315.

21 THE COURT: ALL RIGHT, AND YOU KNOW MR. GARDNER
22 YOU SAID, SIR?

23 JURY PANEL MEMBER: YES, SIR.

24 THE COURT: ALL RIGHT, SIR, NOW THE FACT THAT
25 YOU KNOW MR. GARDNER CAN YOU GIVE TO THE STATE OF SOUTH

CALL OF CASE

12

1 CAROLINA AND THE TWO DEFENDANT'S A FAIR AND IMPARTIAL TRIAL
2 AND YOU BE A FAIR AND IMPARTIAL JUROR?

3 JURY PANEL MEMBER: YES, SIR.

4 THE COURT: THANK YOU VERY MUCH. YES, SIR?

5 JURY PANEL MEMBER: 314, I KNOW MR. MULLINS FROM
6 REAL ESTATE CLOSINGS.

7 THE COURT: ALL RIGHT, AND COULD YOU STATE YOUR
8 NAME FOR THE RECORD, SIR?

9 JURY PANEL MEMBER: HARRY THOMAS.

10 THE COURT: ALL RIGHT, SIR. NOW, SIR, COULD YOU
11 GIVE TO THE STATE OF SOUTH CAROLINA AND THE TWO DEFENDANT'S
12 A FAIR AND IMPARTIAL TRIAL AND YOU BE A FAIR AND IMPARTIAL
13 JUROR?

14 JURY PANEL MEMBER: I COULD.

15 THE COURT: THANK YOU VERY MUCH, SIR. YES, SIR?

16 JURY PANEL MEMBER: JAMES HENDRICKS, RANDALL
17 MULLINS AND I ARE CLOSE FRIENDS.

18 THE COURT: ALL RIGHT, SIR, AND DO YOU HAPPEN TO
19 REMEMBER YOUR JUROR NUMBER, SIR?

20 JURY PANEL MEMBER: IT'S 303.

21 THE COURT: 303, ALL RIGHT, YES, SIR. NOW, MR.
22 MULLINS, YOU'RE STANDING FOR A REASON?

23 MR. MULLINS: FOR A REASON, YOUR HONOR, I FEEL
24 AS AN OFFICER OF THE COURT IN ALL CANDOR MR. HENDRICKS
25 WORKED PART TIME IN A REAL ESTATE COMPANY THAT MANAGES THE

CALL OF CASE

13

1 PHYSICAL LOCATION OF MY OFFICE DOING FILE MAINTENANCE. I
2 DON'T RECALL MR. HENDRICKS EVER HAVING ANY ASSOCIATION WITH
3 THIS FILE, BUT I FELT I NEEDED TO BRING THAT TO THE
4 ATTENTION OF THE COURT.

5 THE COURT: ALL RIGHT, SIR, ALL RIGHT. NOW
6 REGARDING THOSE MATTERS THAT HAVE BEEN BROUGHT TO THE
7 COURT'S ATTENTION, SIR, CAN YOU GIVE TO THE STATE OF SOUTH
8 CAROLINA AND THE TWO DEFENDANT'S A FAIR AND IMPARTIAL TRIAL
9 AND YOU BE A FAIR AND IMPARTIAL JUROR?

10 JURY PANEL MEMBER: I'M NOT SURE ABOUT THAT,
11 SIR.

12 THE COURT: ALL RIGHT, SIR, COME FORWARD AND
13 TALK TO ME FOR JUST A SECOND, PLEASE, IF YOU WOULD?
14 COUNSEL, IF YOU'D COME AROUND?

15 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
16 RECORD IN THE PRESENCE OF THE JURY PANEL, BUT OUT OF THE
17 HEARING OF THE JURY PANEL.)

18 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN,
19 DOES ANY MEMBER OF THE JURY PANEL AS A WHOLE HAVE ANY TYPE
20 OF PERSONAL, POLITICAL, RELIGIOUS OR PHILOSOPHICAL BELIEF
21 THAT YOU BELIEVE WOULD PREVENT YOU FROM BEING A FAIR AND
22 IMPARTIAL JUROR, IF SO, STAND?

23 YES, SIR, YOUR NAME AND JUROR NUMBER, PLEASE?

24 JURY PANEL MEMBER: CHARLES LAVENDER.

25 THE COURT: ALL RIGHT, SIR.

CALL OF CASE

14

1 JURY PANEL MEMBER: 144.

2 THE COURT: 144, ALL RIGHT, SIR, DON'T TELL ME
3 ANYTHING IN OPEN COURT, YOU COME FORWARD AND TALK TO ME.
4 GENTLEMEN.

5 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
6 RECORD IN THE PRESENCE OF THE JURY PANEL, BUT OUT OF THE
7 HEARING OF THE JURY PANEL.)

8 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, I
9 MAY OR MAY NOT HAVE, BUT I DON'T KNOW THIS WAS BROUGHT TO
10 MY ATTENTION, I MAY OR MAY NOT HAVE SAID THE NAME OF TROY
11 RIGGINS WHEN I WAS CALLING NAMES. IF YOU ARE ASSOCIATED BY
12 BLOOD OR MARRIAGE, CLOSE PERSONAL FRIENDS, ACQUAINTANCES OF
13 AN INDIVIDUAL BY THE NAME OF TROY RIGGINS, KNOW THAT
14 INDIVIDUAL IN ANY WAY, IF SO, PLEASE STAND?

15 THANK YOU VERY MUCH. NOW IS ANY MEMBER OF THE
16 JURY PANEL AS A WHOLE A FORMER LAW ENFORCEMENT OFFICER OR
17 YOU HAVE A CURRENT FAMILY MEMBER WHO IS NOW A LAW
18 ENFORCEMENT OFFICER OR A FORMER LAW ENFORCEMENT OFFICER,
19 IT DOESN'T MATTER WHERE THAT MIGHT BE, IF SO, PLEASE STAND?

20 ALL RIGHT, WE'LL START OFF FROM THE FRONT HERE,
21 YES, MA'AM, YOUR NAME AND JUROR NUMBER, PLEASE?

22 JURY PANEL MEMBER: HARRIET WHITTEN, 293.

23 THE COURT: YES, MA'AM?

24 JURY PANEL MEMBER: MY HUSBAND WORKS FOR TSA
25 SECURITY OFFICER AT THE MYRTLE BEACH AIRPORT.

CALL OF CASE

15

1 THE COURT: ALL RIGHT, MA'AM, CAN YOU GIVE TO
2 THE STATE OF SOUTH CAROLINA AND THE TWO DEFENDANT'S A FAIR
3 AND IMPARTIAL TRIAL; CAN YOU BE A FAIR AND IMPARTIAL JUROR?

4 JURY PANEL MEMBER: YES, SIR.

5 THE COURT: THANK YOU VERY MUCH, MA'AM. YES,
6 MA'AM?

7 JURY PANEL MEMBER: JUROR 156, JOAN MARRO.

8 THE COURT: AND I'M SORRY, YOUR NAME WAS, MA'AM?

9 JURY PANEL MEMBER: JOAN MARRO.

10 THE COURT: YES, MA'AM?

11 JURY PANEL MEMBER: MY GRANDSON BY MARRIAGE IS
12 WITH THE HORRY COUNTY POLICE.

13 THE COURT: ALL RIGHT, MA'AM, CAN YOU GIVE TO
14 THE STATE OF SOUTH CAROLINA AND THE DEFENDANT'S A FAIR AND
15 IMPARTIAL TRIAL; CAN YOU BE A FAIR AND IMPARTIAL JUROR?

16 JURY PANEL MEMBER: I'LL BE HONEST WITH YOU,
17 JUDGE ---

18 THE COURT: OKAY, PLEASE ANSWER JUST YES OR NO
19 WITHOUT AN EXPLANATION?

20 JURY PANEL MEMBER: I DON'T KNOW.

21 THE COURT: YOU DON'T KNOW?

22 JURY PANEL MEMBER: I DON'T KNOW.

23 THE COURT: ALL RIGHT, MA'AM, YOU NEED TO COME
24 FORWARD AND TALK TO ME.

25 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE

CALL OF CASE

16

1 RECORD IN THE PRESENCE OF THE JURY PANEL, BUT OUT OF THE
2 HEARING OF THE JURY PANEL.)

3 THE COURT: ALL RIGHT, YES, SIR?

4 JURY PANEL MEMBER: 277, JOEL VICK.

5 THE COURT: YES, SIR?

6 JURY PANEL MEMBER: MY FATHER IS A RETIRED
7 FEDERAL AGENT WITH THE USDA OFFICE OF INSPECTOR GENERAL.

8 THE COURT: ALL RIGHT, SIR, CAN YOU GIVE TO THE
9 STATE OF SOUTH CAROLINA AND THE TWO DEFENDANT'S A FAIR AND
10 IMPARTIAL TRIAL; CAN YOU BE A FAIR AND IMPARTIAL JUROR?

11 JURY PANEL MEMBER: YES, SIR.

12 THE COURT: THANK YOU VERY MUCH, SIR. YES, SIR?
13 I'M SORRY, YOU WERE SET ASIDE IN THIS PARTICULAR CASE, SIR,
14 SO YOU DON'T HAVE TO RESPOND TO ANY MORE QUESTIONS, THANK
15 YOU VERY MUCH, THANK YOU. YES, MA'AM?

16 JURY PANEL MEMBER: LUISE BOYD, 28, MY HUSBAND
17 IS WITH THE NORTH MYRTLE BEACH PUBLIC SAFETY.

18 THE COURT: CAN YOU GIVE TO THE STATE OF SOUTH
19 CAROLINA AND THE TWO DEFENDANT'S A FAIR AND IMPARTIAL
20 TRIAL; CAN YOU BE A FAIR AND IMPARTIAL JUROR?

21 JURY PANEL MEMBER: YES, SIR.

22 THE COURT: THANK YOU VERY MUCH, MA'AM. ALL
23 RIGHT, YES, MA'AM, HERE?

24 JURY PANEL MEMBER: DOLORES HERON, 116. MY
25 BROTHER IS A RETIRED NEW YORK POLICE DEPARTMENT PROMOTED TO

CALL OF CASE

17

1 A HIGHWAY PATROL OFFICER.

2 THE COURT: ALL RIGHT, MA'AM, CAN YOU GIVE TO
3 THE STATE OF SOUTH CAROLINA AND THE TWO DEFENDANT'S A FAIR
4 AND IMPARTIAL TRIAL, THAT IS CAN YOU BE A FAIR AND
5 IMPARTIAL JUROR?

6 JURY PANEL MEMBER: I'M NOT SURE.

7 THE COURT: ALL RIGHT, MA'AM, YOU NEED TO COME
8 FORWARD AND TALK TO ME, PLEASE, MA'AM, THANK YOU.

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
10 RECORD IN THE PRESENCE OF THE JURY PANEL, BUT OUT OF THE
11 HEARING OF THE JURY PANEL.)

12 THE COURT: ALL RIGHT, YES, SIR, RIGHT THERE,
13 PLEASE?

14 JURY PANEL MEMBER: MY NAME IS KENNETH SKIPPER,
15 NUMBER IS 236.

16 THE COURT: ALL RIGHT, SIR?

17 JURY PANEL MEMBER: I HAD TWO UNCLES THAT WERE
18 PREVIOUSLY EMPLOYED BY THE HORRY COUNTY POLICE.

19 THE COURT: ALL RIGHT, SIR, CAN YOU GIVE TO THE
20 STATE OF SOUTH CAROLINA AND THE TWO DEFENDANT'S A FAIR AND
21 IMPARTIAL TRIAL; CAN YOU BE A FAIR AND IMPARTIAL JUROR?

22 JURY PANEL MEMBER: YES, SIR.

23 THE COURT: I'M SORRY, SIR?

24 JURY PANEL MEMBER: YES, SIR.

25 THE COURT: THANK YOU VERY MUCH. YES, SIR?

CALL OF CASE

18

1 JURY PANEL MEMBER: NUMBER 316, MY BROTHER IS
2 EMPLOYED BY THE STATE OF SOUTH CAROLINA DHEC DEPARTMENT.

3 THE COURT: ALL RIGHT, SIR, AND YOUR NAME IS?

4 JURY PANEL MEMBER: CLYDE WARREN.

5 THE COURT: ALL RIGHT, SIR, CAN YOU GIVE TO THE
6 STATE OF SOUTH CAROLINA AND THE DEFENDANT'S, TWO
7 DEFENDANT'S A FAIR AND IMPARTIAL TRIAL; CAN YOU BE A FAIR
8 AND IMPARTIAL JUROR?

9 JURY PANEL MEMBER: YES, SIR.

10 THE COURT: THANK YOU VERY MUCH, SIR. YES, SIR?

11 JURY PANEL MEMBER: NUMBER 305, WILLIAM
12 MCDOWELL, MY COUSIN IS A GEORGETOWN SHERIFF DEPUTY.

13 THE COURT: ALL RIGHT, THANK YOU, CAN YOU GIVE
14 TO THE STATE OF SOUTH CAROLINA AND THE TWO DEFENDANT'S A
15 FAIR AND IMPARTIAL TRIAL; CAN YOU BE A FAIR AND IMPARTIAL
16 JUROR?

17 JURY PANEL MEMBER: ABSOLUTELY.

18 THE COURT: THANK YOU VERY MUCH, SIR. YES, SIR,
19 YOUR NAME AND JUROR NUMBER, PLEASE?

20 JURY PANEL MEMBER: NUMBER 320, JULES JAGET.

21 THE COURT: YES, SIR?

22 JURY PANEL MEMBER: I HAVE A NEPHEW WITH THE
23 POLICE FORCE IN A SMALL TOWN OF NEW HAMPSHIRE.

24 THE COURT: IN NEW HAMPSHIRE?

25 JURY PANEL MEMBER: YEAH, I DON'T ---

CALL OF CASE

19

1 THE COURT: ALL RIGHT, SIR.

2 JURY PANEL MEMBER: --- KNOW IF YOU MEAN ALL
3 PLACES..

4 THE COURT: WELL, YES, SIR, IT DOES. REMEMBER I
5 SAID IT DIDN'T REALLY MATTER WHERE OR WHERE THE PERSON
6 MIGHT BE EMPLOYED OR WAS EMPLOYED. CAN YOU GIVE TO THE
7 STATE OF SOUTH CAROLINA AND THE TWO DEFENDANT'S A FAIR AND
8 IMPARTIAL TRIAL; CAN YOU BE A FAIR AND IMPARTIAL JUROR?

9 JURY PANEL MEMBER: YES, SIR.

10 THE COURT: THANK YOU VERY MUCH. ANYONE ELSE?
11 ALL RIGHT, IS THERE ANY MEMBER OF THE JURY PANEL AS A WHOLE
12 THAT IS A MEMBER OF ANY KIND OF A VICTIM'S RIGHTS OR LAW
13 ENFORCEMENT SUPPORT ORGANIZATION? I'LL GIVE YOU A COUPLE
14 OF EXAMPLES, CERTAINLY NOT ANY KIND OF EXHAUSTIVE LIST OF
15 ANY KIND, I'M JUST TRYING TO GIVE YOU A COUPLE OF EXAMPLES
16 LIKE:

17 MOTHERS AGAINST DRUNK DRIVING OR;
18 CITIZENS AGAINST VIOLENT CRIME;
19 JUST SOME KIND OF VICTIM'S RIGHTS, SUPPORT ORGANIZATION, OR
20 LAW ENFORCEMENT SUPPORT ORGANIZATION, IF SO, PLEASE STAND?

21 ALL RIGHT, NOW THIS NEXT QUESTION, LADIES AND
22 GENTLEMEN, I'M GOING TO ASK WHETHER YOU YOURSELF OR A
23 MEMBER OF YOUR IMMEDIATE FAMILY HAS EVER BEEN THE VICTIM OF
24 A CRIME. NOW IN DOING THAT I DO NOT WANT YOU TO VOLUNTEER
25 TO ME ANY INFORMATION. I WILL NOT ASK YOU ANY INFORMATION

CALL OF CASE

20

1 ABOUT WHAT OCCURRED. THE QUESTIONS ARE GOING TO BE
2 STRAIGHTFORWARD, WAS IT YOURSELF OR A FAMILY MEMBER. BASED
3 UPON THAT THEN I WILL ASK THE QUALIFICATION QUESTIONS, BUT
4 THE QUESTION WILL BE STRAIGHTFORWARD, WAS IT YOURSELF OR
5 MEMBER OF YOUR IMMEDIATE FAMILY THAT HAS EVER BEEN A VICTIM
6 OF A CRIME.

7 ALL RIGHT, HAS ANY MEMBER OF THE JURY PANEL AS A
8 WHOLE EITHER YOU YOURSELF OR A MEMBER OF YOUR IMMEDIATE
9 FAMILY EVER BEEN THE VICTIM OF A CRIME, IF SO, PLEASE
10 STAND?

11 ALL RIGHT, YES, MA'AM, YOUR NAME AND JUROR
12 NUMBER, PLEASE, MA'AM?

13 JURY PANEL MEMBER: JANIS ONEILL, 189.

14 THE COURT: WAS IT YOURSELF OR A FAMILY MEMBER?

15 JURY PANEL MEMBER: FAMILY MEMBER.

16 THE COURT: CAN YOU GIVE TO THE STATE OF SOUTH
17 CAROLINA AND THE TWO DEFENDANT'S A FAIR AND IMPARTIAL
18 TRIAL; CAN YOU BE A FAIR AND IMPARTIAL JUROR?

19 JURY PANEL MEMBER: YES, SIR.

20 THE COURT: THANK YOU VERY MUCH, MA'AM. YES,
21 MA'AM?

22 JURY PANEL MEMBER: HARRIET WITTEN, JUROR 293.

23 THE COURT: WAS IT YOURSELF OR FAMILY MEMBER?

24 JURY PANEL MEMBER: FAMILY MEMBER.

25 THE COURT: CAN YOU GIVE TO THE STATE OF SOUTH

CALL OF CASE

21

1 CAROLINA AND THE TWO DEFENDANT'S A FAIR AND IMPARTIAL
2 TRIAL; CAN YOU BE A FAIR AND IMPARTIAL JUROR?

3 JURY PANEL MEMBER: YES, SIR.

4 THE COURT: THANK YOU VERY MUCH, MA'AM. YES,
5 MA'AM?

6 JURY PANEL MEMBER: CRYSTAL MCGHEE, JUROR NUMBER
7 162.

8 THE COURT: YOURSELF OR FAMILY MEMBER?

9 JURY PANEL MEMBER: TWO DIFFERENT INCIDENTS, ME
10 AND A FAMILY MEMBER.

11 THE COURT: ALL RIGHT, MA'AM, CAN YOU GIVE TO
12 THE STATE OF SOUTH CAROLINA AND THE TWO DEFENDANT'S A FAIR
13 AND IMPARTIAL TRIAL; CAN YOU BE A FAIR AND IMPARTIAL JUROR?

14 JURY PANEL MEMBER: YES, SIR.

15 THE COURT: THANK YOU VERY MUCH, MA'AM. YES,
16 MA'AM?

17 JURY PANEL MEMBER: TARA PRASHAW, JUROR 202.

18 THE COURT: YOURSELF OR FAMILY MEMBER?

19 JURY PANEL MEMBER: FAMILY MEMBER.

20 THE COURT: CAN YOU GIVE TO THE STATE OF SOUTH
21 CAROLINA AND THE TWO DEFENDANT'S A FAIR AND IMPARTIAL
22 TRIAL, THAT IS CAN YOU BE A FAIR AND IMPARTIAL JUROR?

23 JURY PANEL MEMBER: YES, SIR.

24 THE COURT: THANK YOU VERY MUCH. ALL RIGHT,
25 LADIES AND GENTLEMEN, I'M GOING TO ASK YOU WHAT I CALL OR

CALL OF CASE

22

1 CLASSIFY AS MY GENERAL OR CATCH ALL QUESTION. DO YOU KNOW
2 OF ANY REASON, HAVE ANY QUESTION IN YOUR MIND, ANY DOUBT IN
3 YOUR MIND WHEREBY YOU BELIEVE YOU CANNOT GIVE THE STATE OF
4 SOUTH CAROLINA AND THE TWO DEFENDANT'S A FAIR AND IMPARTIAL
5 TRIAL, THAT IS FOR SOME REASON, WHATEVER THE REASON MIGHT
6 BE YOU BELIEVE YOU CANNOT BE A FAIR AND IMPARTIAL JUROR, IF
7 SO, PLEASE STAND?

8 THANK YOU VERY MUCH. FURTHER QUESTIONS FROM THE
9 STATE?

10 MR. DEBUSK: NOTHING FROM THE STATE, YOUR HONOR.

11 THE COURT: FURTHER QUESTIONS FROM THE DEFENDANT
12 MANNING?

13 MR. MULLINS: NO FURTHER QUESTIONS, YOUR HONOR.

14 THE COURT: FURTHER QUESTIONS FROM THE DEFENDANT
15 BAKER?

16 MR. GARDNER: NONE, YOUR HONOR.

17 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, WE
18 WILL NOW GO INTO THE SELECTION PROCESS. NOW THE WAY THAT
19 PROCESS WORKS IS YOUR NAME OR A NAME WILL BE CALLED OUT BY
20 RANDOM. WHEN THAT NAME IS CALLED OUT BY RANDOM YOU WILL
21 COME FORWARD FROM WHEREVER YOU ARE SEATED AND YOU WILL COME
22 TO THE FRONT OF THE COURTROOM, BASICALLY RIGHT HERE IN
23 FRONT OF THE COURT REPORTER, AND YOU WILL TURN AND FACE
24 BACK TO THE BACK OF THE COURTROOM. AT THAT POINT IN TIME
25 THE CLERK WILL INQUIRE OF THE STATE OF SOUTH CAROLINA AS TO

JURY SELECTION

23

1 WHETHER TO PRESENT THE JUROR OR TO EXCUSE THE JUROR. IF
2 YOU ARE EXCUSED YOU WILL GO BACK AND HAVE A SEAT BACK IN
3 THE JURY PANEL. IF YOU ARE PRESENTED BY THE STATE THE
4 CLERK WILL THEN TURN TO THE DEFENDANT MANNING TO SEE IF THE
5 DEFENDANT WILL BE SEATED OR WILL BE EXCUSED. IF YOU ARE
6 SEATED BY THE DEFENDANT MANNING THE CLERK WILL THEN TURN TO
7 THE DEFENDANT BAKER TO SEE IF THE JUROR WILL BE SEATED OR
8 EXCUSED. IF YOU ARE SEATED BY THOSE DEFENDANT'S THEN YOU
9 WILL PROCEED TO THE JURY BOX HAVE A SEAT. SO WITH THAT IF
10 YOU HAVE ANY BELONGINGS WITH YOU LIKE A PURSE, A BOOK,
11 WHATEVER YOU MIGHT HAVE, PLEASE, BRING THOSE FORWARD WHEN
12 YOUR NAME IS CALLED SO THAT YOU DO NOT HAVE TO GO BACK TO
13 YOUR SEAT IF YOU ARE SEATED ON THIS PARTICULAR JURY.

14 ALL RIGHT, MADAM CLERK, ARE YOU READY?

15 MADAM CLERK: NUMBER 315, TRACY THOMAS, THOMAS
16 TRACY.

17 THE COURT: STAY RIGHT THERE WILL BE FINE, JUST
18 TURN AND FACE THE OTHER WAY, THANK YOU VERY MUCH.

19 MADAM CLERK: WHAT SAY THE STATE?

20 MR. DEBUSK: PLEASE PRESENT THE JUROR.

21 MADAM CLERK: AS TO DEFENDANT MANNING?

22 MR. MULLINS: PLEASE EXCUSE THE JUROR AT THE
23 TRIAL OF THIS PARTICULAR CASE.

24 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
25 CASE.

JURY SELECTION

24

1 274, MARY VEREEN.
2 WHAT SAY THE STATE?
3 MR. DEBUSK: PLEASE PRESENT THE JUROR.
4 MADAM CLERK: AS TO DEFENDANT MANNING?
5 MR. MULLINS: PLEASE PRESENT THE JUROR TO THE
6 OTHER DEFENDANT, YOUR HONOR.
7 MADAM CLERK: AS TO THE DEFENDANT BAKER?
8 MR. GARDNER: PLEASE SWEAR THE JUROR, YOUR
9 HONOR.
10 MADAM CLERK: HAVE A SEAT IN THE JURY BOX,
11 PLEASE.
12 210, VENITA RANDALL.
13 WHAT SAY THE STATE?
14 MR. DEBUSK: PLEASE PRESENT THE JUROR.
15 MADAM CLERK: AS TO DEFENDANT MANNING?
16 MR. MULLINS: PLEASE PRESENT TO THE OTHER
17 DEFENDANT, YOUR HONOR.
18 THE COURT: AS TO THE DEFENDANT BAKER?
19 MR. GARDNER: SWEAR THE JUROR, YOUR HONOR.
20 MADAM CLERK: HAVE A SEAT IN THE JURY BOX,
21 PLEASE.
22 314, HARRY THOMAS.
23 WHAT SAY THE STATE?
24 MR. DEBUSK: PLEASE PRESENT THE JUROR.
25 MADAM CLERK: AS TO DEFENDANT MANNING?

JURY SELECTION

25

1 MR. MULLINS: PLEASE PRESENT TO THE OTHER
2 DEFENDANT, YOUR HONOR, HE'S ACCEPTABLE TO US.

3 THE COURT: AS TO DEFENDANT BAKER?

4 MR. GARDNER: WE'D ASK TO EXCUSE THIS JUROR,
5 YOUR HONOR.

6 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
7 CASE.

8 202, TARA PRASHAW.

9 WHAT SAY THE STATE?

10 MR. DEBUSK: PLEASE PRESENT THE JUROR.

11 MADAM CLERK: AS TO DEFENDANT MANNING?

12 MR. MULLINS: PLEASE EXCUSE MS. PRASHAW IN THE
13 TRIAL OF THIS PARTICULAR CASE, YOUR HONOR.

14 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
15 CASE.

16 126, JAMES HUCKS.

17 WHAT SAY THE STATE?

18 MR. DEBUSK: PLEASE PRESENT THE JUROR.

19 MADAM CLERK: AS TO DEFENDANT MANNING?

20 MR. MULLINS: WE'LL ACCEPT THE JUROR, YOUR
21 HONOR, PLEASE PRESENT HIM TO THE OTHER DEFENDANT, PLEASE?

22 MR. GARDNER: SWEAR THE JUROR.

23 MADAM CLERK: OKAY, HAVE A SEAT IN THE JURY BOX,
24 PLEASE.

25 176, DIANE MOORE.

JURY SELECTION

26

1 WHAT SAY THE STATE?

2 MR. DEBUSK: PLEASE PRESENT THE JUROR.

3 MADAM CLERK: AS TO DEFENDANT MANNING?

4 MR. MULLINS: WE ACCEPT HER, YOUR HONOR, PLEASE
5 PRESENT HER TO THE OTHER DEFENDANT.

6 MADAM CLERK: AS TO DEFENDANT BAKER?

7 MR. GARDNER: SWEAR THE JUROR, YOUR HONOR.

8 MADAM CLERK: HAVE A SEAT IN THE JURY BOX,
9 PLEASE.

10 212, STEPHANIE REDMOND.

11 WHAT SAY THE STATE?

12 MR. DEBUSK: PLEASE PRESENT THE JUROR.

13 MADAM CLERK: AS TO DEFENDANT BAKER, I MEAN
14 MANNING?

15 MR. MULLINS: PLEASE EXCUSE THE JUROR IN THE
16 TRIAL OF THIS PARTICULAR CASE, YOUR HONOR.

17 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
18 CASE.

19 231, BRANDY SHELLEY.

20 WHAT SAY THE STATE?

21 MR. DEBUSK: PLEASE PRESENT THE JUROR.

22 MADAM CLERK: AS TO DEFENDANT MANNING?

23 MR. MULLINS: WE ACCEPT THE JUROR, YOUR HONOR,
24 PLEASE PRESENT HER TO THE OTHER DEFENDANT.

25 THE COURT: MR. GARDNER.

JURY SELECTION

27

1 MADAM CLERK: AS TO DEFENDANT BAKER?

2 MR. GARDNER: WE'LL ACCEPT HER AS WELL, YOUR
3 HONOR.

4 MADAM CLERK: HAVE A SEAT IN THE JURY BOX,
5 PLEASE.

6 321, SCOTT ARNEBERG.

7 WHAT SAY THE STATE?

8 MR. DEBUSK: PLEASE PRESENT THE JUROR.

9 MADAM CLERK: AS TO DEFENDANT MANNING?

10 MR. MULLINS: DEFENDANT MANNING ACCEPTS, PLEASE
11 PRESENT TO THE OTHER DEFENDANT.

12 MADAM CLERK: AS TO DEFENDANT BAKER?

13 MR. GARDNER: YOUR HONOR, WE ASK THAT THIS
14 DEFENDANT BE EXCUSED FROM THIS CASE.

15 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
16 CASE.

17 156, JOAN MARRO.

18 WHAT SAY THE STATE?

19 MR. DEBUSK: PLEASE PRESENT THE JUROR.

20 MADAM CLERK: AS TO DEFENDANT MANNING?

21 MR. MULLINS: DEFENDANT MANNING ACCEPTS, YOUR
22 HONOR, PLEASE PRESENT TO THE OTHER DEFENDANT.

23 MADAM CLERK: AS TO DEFENDANT BAKER?

24 MR. GARDNER: I'M SORRY, WE ASK THAT SHE BE
25 EXCUSED FROM THIS PARTICULAR CASE.

JURY SELECTION

28

1 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
2 CASE.

3 225, ALLAN SANDERS.

4 WHAT SAY THE STATE?

5 MR. DEBUSK: PLEASE PRESENT THE JUROR.

6 MADAM CLERK: AS TO DEFENDANT MANNING?

7 MR. MULLINS: DEFENDANT MANNING ACCEPTS THE
8 JUROR, PLEASE PRESENT TO THE OTHER DEFENDANT.

9 MADAM CLERK: AS TO THE DEFENDANT BAKER?

10 MR. GARDNER: SWEAR THE JUROR, YOUR HONOR.

11 MADAM CLERK: HAVE A SEAT IN THE JURY BOX,
12 PLEASE.

13 312, REGINA STARR.

14 WHAT SAY THE STATE?

15 MR. DEBUSK: PLEASE PRESENT THE JUROR.

16 MADAM CLERK: AS TO THE DEFENDANT MANNING?

17 MR. MULLINS: DEFENDANT MANNING ACCEPTS, YOUR
18 HONOR, PLEASE PRESENT TO THE OTHER DEFENDANT.

19 MADAM CLERK: AS TO DEFENDANT BAKER?

20 MR. GARDNER: PLEASE SWEAR THE JUROR, YOUR
21 HONOR.

22 MADAM CLERK: HAVE A SEAT IN THE JURY BOX,
23 PLEASE.

24 318, WILLIAM RENALDI.

25 WHAT SAY THE STATE?

JURY SELECTION

29

1 MR. DEBUSK: PLEASE PRESENT THE JUROR.

2 MADAM CLERK: AS TO DEFENDANT MANNING.

3 MR. MULLINS: DEFENDANT MANNING ACCEPTS, PLEASE
4 PRESENT TO THE OTHER DEFENDANT.

5 MADAM CLERK: AS TO DEFENDANT BAKER?

6 MR. GARDNER: YOUR HONOR, WE'D ASK THAT THIS
7 JUROR BE EXCUSED FROM THIS CASE.

8 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
9 CASE.

10 269, JAMES TUTTLE.

11 WHAT SAY THE STATE?

12 MR. DEBUSK: PLEASE PRESENT THE JUROR.

13 MADAM CLERK: AS TO DEFENDANT MANNING.

14 MR. MULLINS: PLEASE EXCUSE MR. TUTTLE IN THE
15 TRIAL OF THIS PARTICULAR CASE, YOUR HONOR.

16 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
17 CASE.

18 116, DOLORES HERON.

19 WHAT SAY THE STATE?

20 MR. DEBUSK: PLEASE PRESENT THE JUROR.

21 MADAM CLERK: AS TO DEFENDANT MANNING?

22 MR. MULLINS: PLEASE EXCUSE THE JUROR AT THE
23 TRIAL OF THIS PARTICULAR CASE, YOUR HONOR.

24 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
25 CASE.

JURY SELECTION

30

1 149, TIMOTHY LEWIS.

2 WHAT SAY THE STATE?

3 MR. DEBUSK: PLEASE PRESENT THE JUROR.

4 MADAM CLERK: AS TO DEFENDANT MANNING?

5 MR. MULLINS: DEFENDANT MANNING ACCEPTS THE
6 JUROR, YOUR HONOR, PLEASE PRESENT TO THE OTHER DEFENDANT.

7 MADAM CLERK: AS TO DEFENDANT BAKER?

8 MR. GARDNER: SWEAR THE JUROR, YOUR HONOR.

9 MADAM CLERK: HAVE A SEAT IN THE JURY BOX,
10 PLEASE.

11 77, DAVID FOX.

12 WHAT SAY THE STATE?

13 MR. DEBUSK: PLEASE PRESENT THE JUROR.

14 MADAM CLERK: AS TO DEFENDANT MANNING?

15 MR. MULLINS: DEFENDANT MANNING ACCEPTS, PLEASE
16 PRESENT TO THE OTHER DEFENDANT.

17 MADAM CLERK: AS TO DEFENDANT BAKER?

18 MR. GARDNER: YOUR HONOR, WE'D ASK THAT THIS
19 JUROR BE EXCUSED FROM THIS CASE.

20 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
21 CASE.

22 93, ALLEN GOINGS.

23 WHAT SAY THE STATE?

24 MR. DEBUSK: PLEASE EXCUSE THE JUROR.

25 MADAM CLERK: BEG YOUR PARDON?

JURY SELECTION

31

1 MR. DEBUSK: PLEASE EXCUSE THE JUROR.

2 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
3 CASE.

4 105, PEGGY HAMMONDS.

5 WHAT SAY THE STATE?

6 MR. DEBUSK: PLEASE PRESENT THE JUROR.

7 MADAM CLERK: AS TO DEFENDANT MANNING?

8 MR. MULLINS: PLEASE EXCUSE THE JUROR IN THIS
9 PARTICULAR CASE, YOUR HONOR.

10 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
11 CASE.

12 189, JANIS ONEILL.

13 WHAT SAY THE STATE?

14 MR. DEBUSK: PLEASE PRESENT THE JUROR.

15 MADAM CLERK: AS TO DEFENDANT MANNING?

16 MR. MULLINS: DEFENDANT MANNING ACCEPTS, PLEASE
17 PRESENT TO THE REMAINING DEFENDANT.

18 MADAM CLERK: AS TO DEFENDANT BAKER?

19 MR. GARDNER: YOUR HONOR, WE'D ASK THAT THIS
20 JUROR BE EXCUSED FROM THIS CASE.

21 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
22 CASE.

23 162, CRYSTAL MCGHEE.

24 WHAT SAY THE STATE?

25 MR. DEBUSK: PLEASE PRESENT THE JUROR.

JURY SELECTION

32

1 MADAM CLERK: AS TO DEFENDANT MANNING.

2 MR. MULLINS: PLEASE EXCUSE THE JUROR IN THE
3 TRIAL OF THIS PARTICULAR CASE.

4 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
5 CASE.

6 323, HEATHER KIMBALL.

7 WHAT SAY THE STATE?

8 MR. DEBUSK: PLEASE PRESENT THE JUROR.

9 MADAM CLERK: AS TO DEFENDANT MANNING?

10 MR. MULLINS: DEFENDANT MANNING ACCEPTS THE
11 JUROR, PLEASE PRESENT TO THE REMAINING DEFENDANT.

12 MADAM CLERK: AS TO THE DEFENDANT BAKER?

13 MR. GARDNER: SWEAR THE JUROR, YOUR HONOR.

14 MADAM CLERK: HAVE A SEAT IN THE JURY BOX,
15 PLEASE.

16 322, LORRAINE BALLERANO.

17 WHAT SAY THE STATE?

18 MR. DEBUSK: PLEASE PRESENT THE JUROR.

19 MADAM CLERK: AS TO DEFENDANT MANNING?

20 MR. MULLINS: PLEASE EXCUSE THE JUROR AT THE
21 TRIAL OF THIS PARTICULAR CASE, YOUR HONOR.

22 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
23 CASE.

24 239, JEFFRY SMITH.

25 WHAT SAY THE STATE?

JURY SELECTION

33

1 MR. DEBUSK: PLEASE PRESENT THE JUROR.

2 MADAM CLERK: AS TO DEFENDANT MANNING?

3 MR. MULLINS: DEFENDANT MANNING ACCEPTS THE
4 JUROR, PLEASE PRESENT TO THE REMAINING DEFENDANT.

5 MADAM CLERK: AS TO DEFENDANT BAKER?

6 MR. GARDNER: SWEAR THE JUROR, YOUR HONOR.

7 MADAM CLERK: HAVE A SEAT IN THE JURY BOX,
8 PLEASE.

9 319, TAMARA CAUSEY.

10 WHAT SAY THE STATE?

11 MR. DEBUSK: PLEASE PRESENT THE JUROR.

12 MADAM CLERK: AS TO DEFENDANT MANNING?

13 MR. MULLINS: DEFENDANT MANNING ACCEPTS, PLEASE
14 PRESENT THE JUROR TO THE REMAINING DEFENDANT.

15 MADAM CLERK: AS TO DEFENDANT BAKER?

16 MR. GARDNER: SWEAR THE JUROR, YOUR HONOR.

17 MADAM CLERK: HAVE A SEAT IN THE JURY BOX,
18 PLEASE.

19 181, DAVID NIRENBERG.

20 WHAT SAY THE STATE?

21 MR. DEBUSK: PLEASE PRESENT THE JUROR.

22 MADAM CLERK: AS TO DEFENDANT MANNING?

23 MR. MULLINS: PLEASE EXCUSE THE JUROR IN THE
24 TRIAL OF THIS PARTICULAR CASE.

25 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR

JURY SELECTION

34

1 CASE.

2 305, WILLIAM MCDOWELL.

3 WHAT SAY THE STATE?

4 MR. DEBUSK: PLEASE PRESENT THE JUROR.

5 MADAM CLERK: AS TO DEFENDANT MANNING?

6 MR. MULLINS: DEFENDANT MANNING ACCEPTS, PLEASE

7 PRESENT TO THE REMAINING DEFENDANT.

8 MADAM CLERK: AS TO DEFENDANT BAKER?

9 MR. GARDNER: PLEASE EXCUSE THIS JUROR, YOUR

10 HONOR.

11 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR

12 CASE.

13 282, ALAN WARD.

14 WHAT SAY THE STATE?

15 MR. DEBUSK: PLEASE PRESENT THE JUROR.

16 MADAM CLERK: AS TO DEFENDANT MANNING?

17 MR. MULLINS: DEFENDANT MANNING ACCEPTS THE

18 JUROR, PLEASE PRESENT TO THE REMAINING DEFENDANT.

19 MADAM CLERK: AS TO DEFENDANT BAKER?

20 MR. GARDNER: SWEAR THE JUROR, YOUR HONOR.

21 MADAM CLERK: HAVE A SEAT IN THE JURY BOX,

22 PLEASE.

23 THE COURT: ONE ALTERNATE.

24 MADAM CLERK: 310, EDEN RHODES.

25 WHAT SAY THE STATE?

JURY SELECTION

35

1 MR. DEBUSK: PLEASE PRESENT THE JUROR.

2 MADAM CLERK: AS TO DEFENDANT MANNING?

3

4 MR. MULLINS: PLEASE PRESENT THE JUROR TO THE
5 REMAINING DEFENDANT.

6 MADAM CLERK: AS TO DEFENDANT BAKER?

7 MR. GARDNER: PLEASE EXCUSE THIS JUROR, YOUR
8 HONOR, FROM THIS CASE.

9 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
10 CASE.

11 142, GUY LANE.

12 WHAT SAY THE STATE?

13 MR. DEBUSK: PLEASE EXCUSE THE JUROR.

14 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
15 CASE.

16 238, AUDIE SMITH.

17 WHAT SAY THE STATE?

18 MR. DEBUSK: PLEASE PRESENT THE JUROR.

19 MADAM CLERK: AS TO DEFENDANT MANNING?

20 MR. MULLINS: PLEASE EXCUSE THE JUROR IN THE
21 TRIAL OF THIS PARTICULAR CASE.

22 MADAM CLERK: YOU'RE EXCUSED IN THIS PARTICULAR
23 CASE.

24 270, WILLIAM VANDERHYDE.

25 WHAT SAY THE STATE?

JURY SELECTION

36

1 MR. DEBUSK: PLEASE PRESENT THE JUROR.

2 MADAM CLERK: AS TO DEFENDANT MANNING?

3 MR. MULLINS: DEFENDANT MANNING ACCEPTS THE
4 JUROR, PLEASE PRESENT TO THE REMAINING DEFENDANT.

5 MADAM CLERK: AS TO DEFENDANT BAKER?

6 MR. GARDNER: MAY I HAVE ONE MOMENT, YOUR HONOR?

7 THE COURT: YES, SIR.

8 MR. GARDNER: PLEASE SWEAR THE JUROR, YOUR
9 HONOR.

10 MADAM CLERK: HAVE A SEAT IN THE JURY BOX,
11 PLEASE.

12 THE COURT: ALL RIGHT, IS THERE ANY OBJECTIONS
13 TO THE JURY AS IMPANELED FROM THE STATE?

14 MR. DEBUSK: NONE FROM THE STATE, YOUR HONOR.

15 THE COURT: IS THERE ANY OBJECTIONS TO THE JURY
16 AS IMPANELED FROM THE DEFENDANT MANNING?

17 MR. MULLINS: NO OBJECTIONS, YOUR HONOR.

18 THE COURT: IS THERE ANY OBJECTIONS TO THE JURY
19 AS IMPANELED FROM THE DEFENDANT BAKER?

20 MR. GARDNER: NONE, YOUR HONOR.

21 THE COURT: I FIND THE JURY HAS BEEN PROPERLY
22 IMPANELED PURSUANT TO BATSON V. KENTUCKY AND JEB V.
23 ALABAMA.

24 ALL RIGHT, LADIES AND GENTLEMEN OF THE JURY OF
25 THIS PARTICULAR MATTER, I'M GOING TO ASK THAT YOU GO TO

JURY SELECTION

37

1 YOUR JURY ROOM AND DO ONE THING FOR ME AND THAT IS TO
2 SELECT YOUR FOREPERSON FOR THIS PARTICULAR JURY.

3 NOW LET ME JUST TELL YOU BRIEFLY WHAT THE
4 FOREPERSON'S RESPONSIBILITIES ARE. IF WE'RE IN THE
5 COURTROOM AND THERE'S ANYTHING THAT THE JURY NEEDS THE
6 COURT TO PAY ATTENTION TO AS FAR AS THE NEEDS OF THE JURY,
7 THEY CAN'T HEAR THE WITNESS OR YOU CAN'T HEAR THE ATTORNEY,
8 BASICALLY THE FOREPERSON RAISES THEIR HAND GETS THE COURT'S
9 ATTENTION TO HANDLE THE MATTER WHATEVER IT MIGHT BE. IF
10 YOU'RE BACK IN THE, BACK IN YOUR JURY ROOM AND THERE'S SOME
11 MATTER THAT COMES UP AND YOU NEED THE COURT'S ATTENTION TO
12 IT THE FOREPERSON WRITES OUT A NOTE, SIGNS IT, HANDS IT TO
13 THE BAILIFF WHO WILL COME TO ME, I'LL HANDLE THE MATTER
14 WHATEVER IT MIGHT BE. THAT'S DURING THE EVIDENTIARY
15 PORTION OF THE TRIAL.

16 WHEN THE EVIDENTIARY PORTION OF THE TRIAL HAS
17 BEEN CONCLUDED AND THE CASE HAS BEEN SUBMITTED TO YOU FOR
18 YOUR DELIBERATIONS AND YOUR UNANIMOUS DECISION IN THIS
19 PARTICULAR MATTER THEN THE FOREPERSON'S RESPONSIBILITY WILL
20 CHANGE IN THIS REGARD. IT'S THE FOREPERSON'S
21 RESPONSIBILITY TO MAKE SURE THAT EVERYBODY HAS AN
22 OPPORTUNITY TO SPEAK ON THE ISSUE TO BE DECIDED.
23 EVERYBODY'S VOICE HAS AN OPPORTUNITY TO BE HEARD THAT WANTS
24 TO BE HEARD ON THE MATTER TO BE DECIDED.

25 NOW THE FOREPERSON'S VOICE AND VOTE ON THE

JURY SELECTION

38

1 ULTIMATE ISSUE TO BE DECIDED CARRIES NO MORE WEIGHT THAN
2 ANYBODY ELSE ON THE JURY. EVERYBODY IS ON AN EVEN PLAIN IN
3 THAT FASHION. SOMEBODY NEEDS TO BE IN CHARGE AND ONCE
4 AGAIN IF THERE IS SOME MATTER THAT THE JURY NEEDS THE
5 COURT'S ATTENTION TO THE FOREPERSON WRITES OUT A NOTE,
6 SIGNS IT, HANDS IT TO THE BAILIFF AND IT WILL COME TO ME
7 AND WE WILL HANDLE THE MATTER WHATEVER IT MIGHT BE.

8 THE FINAL RESPONSIBILITY OF THE FOREPERSON IS
9 ONCE THE JURY HAS DELIBERATED AND REACHED A UNANIMOUS
10 DECISION IN THIS PARTICULAR MATTER ON BOTH DEFENDANT'S,
11 MADE A DECISION ON EACH DEFENDANT, YOU HAVE TO REACH A
12 UNANIMOUS DECISION ON EACH DEFENDANT, ONCE YOU HAVE DONE SO
13 THEN THE FOREPERSON WILL TAKE THE VERDICT FORM THAT I WILL
14 PROVIDE TO YOU, CHECK THE APPROPRIATE BLOCK OR WRITE THE
15 APPROPRIATE WORD THEREAFTER, SIGN YOUR NAME AS THE
16 FOREPERSON OF THE JURY INDICATING THAT THAT IS INDEED THE
17 UNANIMOUS DECISION OF THE JURY IN EACH CASE.

18 SO WITH THAT LITTLE BIT OF EXPLANATION OF THE
19 FOREPERSON'S RESPONSIBILITIES IF YOU WOULD, PLEASE, GO BACK
20 TO YOUR JURY ROOM, SELECT A FOREPERSON, KNOCK ON THE DOOR,
21 LET THE BAILIFF KNOW. SIR, AS THE ALTERNATE YOU CAN VOTE
22 ON THE FOREPERSON BUT YOU CANNOT BE THE FOREPERSON, ALL
23 RIGHT, THANK YOU VERY MUCH. LET US KNOW WHEN YOU'VE
24 SELECTED A FOREPERSON.

25 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT

JURY SELECTION

39

1 12:20 P.M.)

2 THE COURT: ALL RIGHT, THE REMAINING MEMBERS OF
3 THE JURY PANEL THAT WERE NOT SELECTED ON THIS PARTICULAR
4 CASE I'M ABLE TO EXCUSE YOU FOR THE BALANCE OF TODAY. IF,
5 WHAT I'M GOING TO ASK THAT YOU DO IS CALL BACK THE JUROR
6 INFORMATION LINE TOMORROW AFTER 12 NOON. NOW IT MAY VERY
7 WELL TELL YOU TO REPORT THAT AFTERNOON SOMETIME OR MAY TELL
8 YOU TO REPORT SOME OTHER TIME LATER IN THE WEEK, BUT I WANT
9 YOU TO CALL THAT JUROR INFORMATION LINE TOMORROW AFTER 12
10 NOON, FOLLOW THE INSTRUCTIONS WHATEVER THEY MIGHT BE, UNTIL
11 THAT TIME YOU ARE EXCUSED, THANK YOU VERY MUCH.

12 (WHEREUPON, THE JURY VENIRE WAS EXCUSED AT
13 12:27.)

14 THE COURT: WHAT WE'LL DO IS WE'LL COME BACK AT
15 2:00, WE'LL SWEAR THE JURY AT 2:00, WE'LL HAVE THE OPENING
16 STATEMENTS. AS I UNDERSTAND IT THE STATE WILL BE PREPARED
17 TO GO FORWARD WITH TWO INITIAL SHORT WITNESSES, IS THAT
18 CORRECT?

19 MR. DEBUSK: YES, YOUR HONOR.

20 THE COURT: ALL RIGHT, SO WITH THAT THEN WE'LL
21 RECESS FOR THE DAY AND WE'LL COME BACK TOMORROW MORNING.
22 AND, MR. GARDNER, REGARDING YOUR REQUEST AS FAR AS THE
23 DEFENDANT BAKER REMAINING OUT ON BAIL, DID YOU COMMUNICATE
24 WITH THE BONDING?

25 MR. GARDNER: JUDGE, A SHERIFF'S DEPUTY JUST

MOTION TO LIFT BENCH WARRANT BY DEFENDANT MANNING

40

1 HANDED ME A NOTE FROM SOUTHEASTERN SURETIES GROUP, THEY
2 WERE THE UNDERWRITER FOR TRANSFER OF THE CASE, THE AGENT
3 WAS JAMES WOOD IN CONJUNCTION WITH PRISCILLA, A LOCAL LADY,
4 AND THEY HAVE AGREED TO STAY ON THE BOND. THEY'VE EVEN
5 RECITED HIS CASE NUMBER, THE WARRANT NUMBER.

6 THE COURT: ALL RIGHT, SIR. ALL RIGHT, MR.
7 BAKER, IF YOU'D STAND. ALL RIGHT, MR. BAKER?

8 DEFENDANT BAKER: YES, SIR.

9 THE COURT: I UNDERSTAND THAT FROM YOUR ATTORNEY
10 THAT YOU HAVE COMPLIED WITH ALL THE PREVIOUS REQUESTS TO
11 COME TO COURT WHEN YOU WERE SO NOTIFIED AND BASED UPON THAT
12 AND THE BONDING COMPANY WILLING TO STAY OUT ON BOND I WILL
13 ALLOW YOU TO REMAIN ON BOND IN THIS MATTER.

14 DEFENDANT BAKER: YES, SIR.

15 THE COURT: THERE ARE CERTAIN CONDITIONS ON
16 THAT. ONE, YOU UNDERSTAND THAT IF YOU DO NOT COME BACK, IF
17 YOU DO NOT APPEAR FOR TRIAL, THIS TRIAL WILL PROCEED WITH
18 OR WITHOUT YOU; YOU UNDERSTAND THAT?

19 DEFENDANT BAKER: YES, SIR.

20 THE COURT: THE FACT THAT YOU ARE NOT HERE FROM
21 THIS POINT FORWARD WILL NOT STOP THE TRIAL, IT WILL GO
22 FORWARD, SO YOU UNDERSTAND THAT?

23 DEFENDANT BAKER: YES, SIR.

24 THE COURT: YOU ALSO UNDERSTAND OBVIOUSLY A
25 BENCH WARRANT WOULD BE ISSUED FOR YOUR ARREST; YOU

MOTION TO LIFT BENCH WARRANT BY DEFENDANT MANNING

41

1 UNDERSTAND THAT?

2 DEFENDANT BAKER: YES, SIR.

3 THE COURT: IF YOU DO NOT APPEAR?

4 DEFENDANT BAKER: YES, SIR.

5 THE COURT: AND FINALLY I'M GOING TO GIVE YOU A
6 DIRECT ORDER FROM THE COURT AND THAT IS YOU SHALL REAPPEAR
7 THIS AFTERNOON AT 2:00 AND YOU SHALL REAPPEAR AT EVERY TIME
8 DESIGNATED BY THE COURT FOR THIS TRIAL TO PROCEED; YOU
9 UNDERSTAND THAT?

10 DEFENDANT BAKER: YES, SIR.

11 THE COURT: NOW IF YOU DISOBEY THAT THAT'S A
12 SEPARATE FROM THE BENCH WARRANT. IF YOU DISOBEY THAT ORDER
13 THAT SUBJECTS YOU BEING HELD IN CONTEMPT OF COURT AND UPON
14 A PROPER FINDING THE COURT COULD SEND YOU TO A TERM OF
15 PRISON UP TO ONE YEAR JUST BASED UPON YOUR VIOLATION OF THE
16 DIRECT ORDER OF THIS COURT; YOU UNDERSTAND THAT?

17 DEFENDANT BAKER: YES, SIR.

18 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH.
19 YOU MAY STAY ON BOND.

20 MR. GARDNER: THANK YOU, YOUR HONOR.

21 THE COURT: MR. MULLINS, ANYTHING YOU'D LIKE TO
22 PRESENT TO THE COURT?

23 MR. MULLINS: MAY IT PLEASE THE COURT, YOUR
24 HONOR. DEFENDANT MANNING HAD FILED A MOTION TO LIFT A
25 BENCH WARRANT THAT WAS PLACED AGAINST HIM FOR HIS FAILURE

MOTION TO LIFT BENCH WARRANT BY DEFENDANT MANNING

42

1 TO APPEAR AT COURT IN AUGUST OF 2006. YOUR HONOR, THIS
2 CASE HAS BEEN PENDING FOR APPROXIMATELY FIVE YEARS AND HAS
3 BEEN SET FOR TRIAL FOUR TIMES THAT I'M AWARE OF. MR.
4 MANNING APPEARED AT EACH AND EVERY ROSTER CALL UP UNTIL THE
5 ONE IN AUGUST. IN AUGUST OF 2006 HE WAS DOING A SHORT
6 MISDEMEANOR IN A NORTH CAROLINA COURT THAT IS UNRELATED TO
7 THE CHARGES THAT WE'RE HERE ON TODAY BUT HE WAS PRESENT AT
8 ALL OTHER TIMES. WE MOVE TO LIFT THE BENCH WARRANT AND
9 REINSTATE THE BOND.

10 THE COURT: WHAT'S THE STATE'S DECISION?

11 MR. DEBUSK: YOUR HONOR, THE, THE MISDEMEANOR IN
12 QUESTION NORTH CAROLINA OCCURRED AFTER THE TIME OF HE
13 BONDED OUT. IT ITSELF CONSTITUTES A VIOLATION OF THE TERM
14 OF BOND. THE STATE ISSUED THE BENCH WARRANT BASED ON THAT
15 AND WE HAD TO PUT A HOLD ON MR. MANNING AND BRING HIM BACK
16 FROM NORTH CAROLINA IN ORDER TO GET THIS CASE SCHEDULED AND
17 WE BELIEVE THE, THE BENCH WARRANT BASED ON VIOLATION OF THE
18 TERM OF BOND IS, IS SUFFICIENT GROUNDS FOR IT AND WE WOULD
19 ASK THAT YOU SUSTAIN IT, YOUR HONOR.

20 THE COURT: ALL RIGHT, SIR, THE REQUEST TO LIFT
21 THE BENCH WARRANT AT THIS POINT IN TIME IS DENIED, THANK
22 YOU VERY MUCH.

23 ALL RIGHT, WE'LL BE BACK AT 2:00, START THIS
24 TRIAL AT 2:00, THANK YOU VERY MUCH.

25 MR. DEBUSK: THANK YOU, YOUR HONOR.

MOTION TO LIFT BENCH WARRANT BY DEFENDANT MANNING

43

1 (WHEREUPON, COURT WAS RECESSED FOR LUNCH.)

2 (WHEREUPON, STATE'S EXHIBITS NUMBER 1, 2, 3, AND
3 4 MARKED FOR IDENTIFICATION.)

4 THE COURT: BEFORE WE BROKE EARLIER THIS MORNING
5 I HAS ASKED YOU TO MAKE SURE THAT IF THERE WERE ANY OFFERS
6 FROM THE STATE OFFERED TO DEFENSE COUNSEL, HAVE YOU DONE
7 SO, MR. DEBUSK?

8 MR. DEBUSK: YES, YOUR HONOR, AT THAT TIME WE
9 RENEWED AN OFFER TO ONE CODEFENDANT AND I THINK THE FIRST
10 TIME COMMUNICATED AN OFFER TO ANOTHER OF A NEGOTIATED
11 SENTENCE OF 25 YEARS ON VOLUNTARY MANSLAUGHTER.

12 THE COURT: ALL RIGHT, SIR. ALL RIGHT, ON
13 BEHALF OF THE DEFENDANT MANNING, MR. MULLINS, DID YOU HAVE
14 AN OPPORTUNITY TO DISCUSS THAT WITH YOUR CLIENT?

15 MR. MULLINS: I DID, YOUR HONOR, ON TWO
16 OCCASIONS, PRIOR TO LUNCH AND THEN AGAIN AFTER LUNCH, AND
17 MR. MANNING HAS DECLINED THE STATE'S OFFER.

18 THE COURT: ALL RIGHT, SIR, AND, MR. GARDNER,
19 HAVE YOU DISCUSSED THAT OFFER WITH MR. BAKER?

20 MR. GARDNER: I HAVE, YOUR HONOR, HE LIKEWISE
21 HAS TURNED THAT OFFER DOWN, YOUR HONOR.

22 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH.
23 ALL RIGHT, WE'LL BE AT EASE FOR A FEW MINUTES UNTIL THE,
24 APPARENTLY THERE ARE TWO JURORS THAT WE ARE LACKING, I'M
25 HAVING THE BAILIFFS CALL THE ROLL TO SEE WHO THOSE TWO

PRELIMINARY CHARGE BY COURT

44

1 MIGHT BE SO WE'LL JUST BE AT EASE FOR A FEW MOMENTS, THANK
2 YOU VERY MUCH.

3 I WAS TOLD BY THE BAILIFF THAT ALL JURORS ARE
4 PRESENT. ANYTHING FURTHER FROM THE STATE BEFORE I CALL THE
5 JURY IN?

6 MR. DEBUSK: NOTHING FROM THE STATE, YOUR HONOR.

7 THE COURT: ANYTHING FURTHER FROM DEFENDANT
8 MANNING?

9 MR. MULLINS: NOTHING FURTHER, YOUR HONOR.

10 THE COURT: FROM DEFENDANT BAKER?

11 MR. GARDNER: NO, YOUR HONOR.

12 THE COURT: ASK THE JURY TO COME IN, PLEASE.

13 (WHEREUPON, THE JURY ENTERS THE COURTROOM AT 2:15
14 P.M.)

15 THE COURT: ALL RIGHT, GOOD AFTERNOON, LADIES
16 AND GENTLEMEN. DIANE MOORE?

17 MADAM FOREPERSON: YES, SIR.

18 THE COURT: ALL RIGHT, MA'AM, CAN YOU SWITCH
19 PLACES WITH THIS GENTLEMAN DOWN HERE AT THE END, PLEASE.
20 ALL RIGHT, MS. WARD, YOU HAVE BEEN SELECTED BY THE JURY AS
21 THE FOREPERSON IN THIS PARTICULAR JURY?

22 MADAM FOREPERSON: YES, SIR.

23 THE COURT: ALL RIGHT, MA'AM, YOU WILL ALWAYS
24 NEED TO OCCUPY THAT PARTICULAR SEAT WHEN YOU COME BACK FROM
25 THE JURY ROOM AND AS FAR AS THE ALTERNATE YOU ALWAYS NEED

PRELIMINARY CHARGE BY COURT

45

1 TO OCCUPY THE END SEAT. NOW AS THE FOREPERSON AND
2 ALTERNATE THOSE ARE THE TWO SEATS YA'LL NEED TO OCCUPY.
3 THE REST OF YA'LL JUST FILL IN WHEREVER IT IS THAT YOU
4 HAPPEN TO COME INTO THE COURTROOM. I JUST ALWAYS NEED TO
5 KNOW WHERE THE ALTERNATE AND THE FOREPERSON ARE DURING THE
6 COURSE OF THE TRIAL.

7 THE FIRST THING THAT WILL HAPPEN, LADIES AND
8 GENTLEMEN, REGARDING THE TRIAL OF THIS CASE IS THE
9 REPRESENTATIVE FROM THE CLERK'S OFFICE WILL GIVE YOU YOUR
10 OATH SO, PLEASE, STAND AT THIS TIME. MADAM CLERK?

11 (WHEREUPON, THE JURY WAS SWORN.)

12 THE COURT: ALL RIGHT, IS THERE ANY JUROR THAT
13 DID NOT AFFIRMATIVELY TAKE THE OATH THAT WAS GIVEN BY THE
14 CLERK, IF SO, PLEASE STAND?

15 I FIND THE JURY HAS BEEN PROPERLY SWORN IN THIS
16 PARTICULAR MATTER.

17 ALL RIGHT, LADIES AND GENTLEMEN, AS I EXPLAINED
18 TO YOU YOU WILL BE THE JURY OF THIS PARTICULAR CASE. WHEN
19 I SAY THIS PARTICULAR CASE IT IS ACTUALLY TWO CASES BECAUSE
20 WE HAVE TWO DEFENDANT'S. EACH CASE, EACH DEFENDANT IS A
21 SEPARATE CASE. YOU WILL HAVE TO MAKE A DECISION AS TO EACH
22 DEFENDANT. YOU WILL HAVE TO MAKE A SEPARATE DECISION AS TO
23 EACH DEFENDANT. YOUR VERDICT ON ONE DOES NOT BIND YOU TO A
24 VERDICT ON THE OTHER CASE NO MATTER HOW IT IS THAT YOU
25 MIGHT FIND ON EACH CASE. THEY ARE NOT CONNECTED IN THAT

PRELIMINARY CHARGE BY COURT

46

1 FASHION. EACH IS ITS OWN CASE; EACH IS A SEPARATE CASE.
2 YOU MUST REACH A UNANIMOUS DECISION ON EACH CASE WHEN IT IS
3 SUBMITTED TO YOU AT THE END FOR YOUR DELIBERATIONS AND YOUR
4 UNANIMOUS DECISION IN THESE TWO MATTERS.

5 NOW, PLEASE, REMEMBER WHAT I TOLD YOU AT THE VERY
6 BEGINNING REGARDING THE INDICTMENT. I TOLD YOU AND READ TO
7 YOU CERTAIN ALLEGATIONS, CERTAIN CHARGES, THAT HAVE BEEN
8 LEVIED OR BROUGHT AGAINST THESE TWO DEFENDANT'S IN THIS
9 MATTER. THOSE CHARGES ARE NOT EVIDENCE, CANNOT BE
10 CONSIDERED BY YOU AS EVIDENCE IN THE CASE WHAT I READ TO
11 YOU FROM THOSE TWO INDICTMENTS BECAUSE I TOLD YOU THE
12 INDICTMENT IS THE CHARGING DOCUMENT. IT'S THE DOCUMENT
13 THAT BRINGS THIS MATTER TO COURT. THE EVIDENCE THAT YOU
14 WILL HEAR WILL COME FROM THE WITNESS STAND FROM WITNESSES
15 RIGHT HERE UNDER OATH THAT WILL TESTIFY BEFORE YOU AND ANY
16 DOCUMENTS OR OTHER TYPE OF EVIDENCE THAT MIGHT BE PROPERLY
17 BROUGHT INTO EVIDENCE AND COME BEFORE YOU IN THIS TRIAL.

18 THE DEFENDANT'S IN THIS MATTER, MR. TELLY MANNING
19 AND MR. RASHAD BAKER, ARE CHARGED WITH THE CRIME OF MURDER.
20 REGARDING THAT YOU COLLECTIVELY WILL BE THE JUDGES OF THE
21 FACTS OF THESE TWO CASES. I WILL NOT INTIMATE TO YOU, I
22 WILL NOT TELL YOU, I WILL NOT GIVE YOU ANY INDICATION HOW I
23 FEEL ABOUT THE FACTS OF THIS PARTICULAR BECAUSE THAT IS NOT
24 MY JOB, THAT IS YOUR JOB. YOU COLLECTIVELY ARE THE JUDGES
25 OF THE FACTS OF THIS PARTICULAR CASE. YOU COLLECTIVELY

OPENING STATEMENT BY STATE

47

1 WILL JUDGE THE CREDIBILITY, THE BELIEVABILITY OF THE
2 WITNESSES THAT APPEAR BEFORE YOU. YOU WILL COLLECTIVELY
3 LOOK AT THE EVIDENCE THAT IS PRESENTED TO YOU IN THIS
4 PARTICULAR CASE AND ULTIMATELY YOU WILL DECIDE WHETHER OR
5 NOT THE STATE HAS CARRIED ITS BURDEN OF PROOF AS TO EACH
6 DEFENDANT.

7 THE STATE HAS THE BURDEN OF PROOF IN THESE TWO
8 CASES, THAT BURDEN OF PROOF IS BEYOND A REASONABLE DOUBT.
9 THE DEFENDANT'S HAVE NOTHING TO PROVE TO YOU. THE
10 DEFENDANT'S HAVE NOTHING TO SHOW TO YOU. THE STATE MUST
11 PROVE TO YOU BEYOND A REASONABLE DOUBT THE GUILT OF EACH
12 DEFENDANT OF THE CRIME OF MURDER BEFORE YOU MAY FIND THEM
13 GUILTY OF THAT OFFENSE. IT IS YOUR JOB IN JUDGING THE
14 CREDIBILITY AND BELIEVABILITY OF THE WITNESSES IN LOOKING
15 AT THEM AS TO SEE WHETHER OR NOT THE STATE CARRIES THAT
16 BURDEN AS TO EACH DEFENDANT.

17 NOW BESIDES MY JOB IN GIVING YOU THE LAW THAT
18 APPLIES TO THE FACTS AS YOU SO FIND THEM TO BE MY OTHER JOB
19 AND RESPONSIBILITY IS TO GOVERN THE PROCEDURE, THAT IS HOW
20 THE TRIAL WILL TAKE PLACE. DURING THE COURSE OF THE TRIAL
21 THE ATTORNEYS MAY RAISE OBJECTIONS OR THEY MAY HAVE MOTIONS
22 OR THEY MAY HAVE MATTERS THAT COME BEFORE THE COURT. I
23 WILL TELL THE ATTORNEYS, I WILL GIVE THE ATTORNEYS GUIDANCE
24 AS TO HOW THE TRIAL WILL PROCEED BUT, PLEASE, REMEMBER I'M
25 ONLY TELLING THE LAWYERS HOW THE CASE WILL BE TRIED. I'M

OPENING STATEMENT BY STATE

48

1 NOT GIVING ANY INDICATION TO YOU AS TO ANY OPINION ABOUT
2 THE FACTS BECAUSE ONCE AGAIN THAT'S YOUR JOB, THAT'S YOUR
3 RESPONSIBILITY. I WILL CONTROL THE TRIAL OF THE CASE AS TO
4 HOW IT WILL GO FORWARD BUT OTHER THAN THAT IT WILL BE YOUR
5 JOB TO LOOK AT WHAT'S PRESENTED, TO DISCERN, TO SEE WHAT
6 YOU BELIEVE, WHAT YOU DO NOT BELIEVE, AND TO SEE ULTIMATELY
7 WHETHER OR NOT YOU BELIEVE THE STATE HAS PRESENTED TO YOU
8 EVIDENCE WHICH CONVINCES YOU OR IT DOES NOT CONVINCE YOU OF
9 THE GUILT OF EACH DEFENDANT BEYOND A REASONABLE DOUBT.

10 WE WILL HAVE THE ATTORNEYS GIVE THEIR OPENING
11 STATEMENTS. WE WILL HAVE THEN THE EVIDENTIARY PORTION OF
12 THE TRIAL. AFTER THAT WE'LL HAVE THE CLOSING ARGUMENTS OF
13 THE ATTORNEYS. I WILL THEN GIVE YOU THE LAW THAT APPLIES
14 TO THE CASE AND THE CASE WILL THEN BE SUBMITTED TO YOU FOR
15 YOUR DELIBERATIONS AND YOUR UNANIMOUS DECISION.

16 AS FAR AS HOW LONG THIS TRIAL WILL TAKE MY
17 ANTICIPATION IS THAT IT CERTAINLY WILL CONCLUDE ON
18 WEDNESDAY IF NOT BEFORE, THAT BEING MY BEST ESTIMATE AS TO
19 HOW LONG THE TRIAL WILL PROCEED. WITH THAT I WILL TURN IT
20 OVER TO THE LAWYERS FOR THEIR OPENING STATEMENTS.
21 SOLICITOR?

22 MR. DEBUSK: THANK YOU, YOUR HONOR.

23 OPENING STATEMENT

24 BY MR. DEBUSK:

25 LADIES AND GENTLEMEN, I'M GEORGE DEBUSK. I WORK

OPENING STATEMENT BY STATE

49

1 HERE AT THE SOLICITOR'S OFFICE. I'VE BEEN HERE NEARLY
2 EIGHT YEARS NOW. AS THEY GIVE US A TRIAL OF A CASE WHEN
3 SOMEONE HAS BEEN ARRESTED THEY GIVE US THE FILE. ON THAT
4 FILE IS THE NAME OF THE DEFENDANT, THIS CASE TELLY MANNING
5 AND RASHAD BAKER. WHEN I GOT THIS CASE READY FOR TRIAL,
6 WHEN I GET A CASE LIKE THIS READY FOR TRIAL, I PUT A
7 DIFFERENT NAME ON IT. THIS CASE THE NAME ON MY FILE IS
8 TROY RIGGINS.

9 TROY RIGGINS, LADIES AND GENTLEMEN, IS THE VICTIM
10 IN THIS CASE AND WE'RE HERE TODAY BECAUSE TROY RIGGINS DID
11 NOT DESERVE TO DIE. WE'LL HEAR THE STORY OF HIS LAST DAY,
12 HOW TROY RIGGINS WAS IN, IN HIS OWN AUTOMOBILE, A LINCOLN,
13 AND TWO INDIVIDUALS, TWO ARMED INDIVIDUALS GOT IN THAT
14 LINCOLN WITH HIM AND ENGAGED IN WHAT BY ALL APPEARANCES WAS
15 A DRUG DEAL BUT INSTEAD OF BUYING DRUGS OR GETTING MONEY
16 TROY RIGGINS WAS SHOT SEVEN TIMES AND THOSE SHOTS
17 ULTIMATELY PROVED FATAL.

18 YOU'LL HEAR THOSE SHOTS CAME FROM TWO DIFFERENT
19 GUNS. YOU'RE GOING TO HEAR THAT THOSE SHOTS WERE FIRED AT
20 CLOSE RANGE, ONE OF THEM IN CONTACT, THE GUN WAS IN CONTACT
21 WITH THE SKIN OF THE VICTIM WHEN THE SHOT WAS FIRED AND,
22 LADIES AND GENTLEMEN, YOU'RE GOING TO HEAR THAT THE
23 INDIVIDUALS THAT GOT IN THE CAR WITH TROY RIGGINS WHEN HE
24 WAS KILLED WERE TELLY MANNING AND RASHAD BAKER.

25 I TOLD YOU WHO I AM, I WORK FOR THE SOLICITOR'S

OPENING STATEMENT BY STATE

50

1 OFFICE. THE JUDGE HAS TOLD YOU AND HE'S GOING TO TELL YOU
2 AGAIN THROUGHOUT THIS TRIAL THAT THE STATE HAS THE BURDEN
3 OF PROOF IN THIS CASE AND I'M THE REPRESENTATIVE OF THE
4 STATE, THAT BURDEN IS MINE, AND BECAUSE I BEAR SUCH A HEAVY
5 BURDEN IT'S VERY IMPORTANT FOR ME TO TELL YOU EXACTLY WHAT
6 THAT BURDEN IS.

7 THE CHARGE IN THIS CASE IS MURDER. MURDER IS ONE
8 OF THE OLDEST DEFINITIONS IN THE LAW OF THE STATE OF SOUTH
9 CAROLINA. IT GOES BACK TO THE COMMON LAW OF ENGLAND. THE
10 DEFINITION OF MURDER IN THE STATE OF SOUTH CAROLINA IS THE
11 UNLAWFUL KILLING OF ANOTHER WITH MALICE AFORETHOUGHT AND
12 THAT MALICE CAN BE EXPRESSED OR IMPLIED. I'M SURE YOU
13 UNDERSTAND WHAT THE KILLING OF ANOTHER IS SO I WON'T
14 BELABOR THAT POINT, BUT WHAT IS MALICE AFORETHOUGHT AND
15 WHAT ARE EXPRESSED OR IMPLIED.

16 MALICE IS THE INTENT TO HURT ANOTHER, INTENT TO
17 DO HARM TO ANOTHER HUMAN BEING. IT DOESN'T HAVE TO BE THE
18 INTENT TO KILL, THE INTENT TO INFLICT INJURY ON ANOTHER IS
19 MALICE.

20 MALICE AFORETHOUGHT, AFORETHOUGHT DOESN'T MEAN IT
21 WAS PLANNED. AFORETHOUGHT MEANS THAT THEY HAD THE
22 INTENTION TO DO THAT HARM AT THE TIME THE BLOW WAS STRUCK.
23 THERE IS NO TIME INVOLVED. IF THEY DECIDED TO IT DO RIGHT
24 THERE AT THAT MOMENT THAT'S ENOUGH, THAT'S MALICE
25 AFORETHOUGHT PROVIDED THEY HAD THE INTENT, THEY HAD MALICE

OPENING STATEMENT BY STATE

51

1 AT THE TIME THEY STRUCK THE BLOW.

2 EXPRESSED OR IMPLIED, WHAT DOES EXPRESSED OR
3 IMPLIED MEAN. EXPRESSED IS EASY AND IT NEVER WORKS OUT
4 THAT WAY FOR THE PROSECUTOR. EXPRESSED IS WHEN THE
5 INDIVIDUAL SAYS I'M GOING TO KILL YOU AND THEN KILLS THEM.
6 THAT'S EXPRESSED MALICE, IT MAKES THE CASE EASY, BUT FOR
7 YOU YOU HAVE TO THINK OF IMPLIED MALICE AS WELL AND YOU CAN
8 IMPLY MALICE FROM ALL OF THE FACTS OF THE CASE, THE
9 INJURIES INFLICTED, ANYTHING SAID OR DONE DURING THE COURSE
10 OF THE CRIME, THAT'S IMPLIED MALICE. YOU HAVE TO LOOK AT
11 ALL THOSE FACTORS AND DECIDE WHETHER THERE WAS MALICE IN
12 THIS CASE.

13 NOW THOSE ARE THE ELEMENTS I HAVE TO PROVE, THE
14 UNLAWFUL KILLING OF ANOTHER WITH MALICE AFORETHOUGHT. WHAT
15 IS THE BURDEN, WHAT IS THE LEVEL THAT HAS TO BE PROVED.

16 THE JUDGE IS GOING TO INSTRUCT YOU AT THE END OF
17 THE TRIAL AND, PLEASE, REMEMBER THAT NO MATTER WHAT I SAY,
18 NO MATTER WHAT HAPPENS, THE JUDGE SPEAKS THE LAW. WE MAKE
19 ARGUMENTS, THE ATTORNEYS MAKE ARGUMENTS, THE JUDGE SPEAKS
20 THE LAW, AND HE'S GOING TO INSTRUCT YOU AT THE END OF THE
21 CASE ON PROOF BEYOND A REASONABLE DOUBT AND WHAT THAT
22 MEANS.

23 PROOF BEYOND A REASONABLE DOUBT ISN'T PROOF TO AN
24 ABSOLUTE CERTAINTY. IT'S PROOF TO A LEVEL THAT LEAVES YOU
25 FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THE JUDGE WILL

OPENING STATEMENT FOR DEFENDANT MANNING

52

1 GIVE YOU SOME, SOME GUIDANCE IN WHAT PROOF BEYOND A
2 REASONABLE DOUBT IS. IT'S PROOF THAT WOULD NOT CAUSE,
3 CAUSE YOU NOT TO HESITATE TO ACT IN THE MOST IMPORTANT
4 THINGS IN, IN YOUR LIFE. THE JUDGE WILL GIVE YOU A
5 DEFINITION BUT THE JUDGE CAN'T DRAW YOU AN EXACT PICTURE OF
6 REASONABLE DOUBT.

7 REASONABLE DOUBT COMES FROM YOU. IF YOU IMAGINE
8 YOURSELVES AS REFEREES IN A FOOTBALL GAME, IT'S EASY TO
9 DECIDE WHETHER A TOUCHDOWN HAS BEEN SCORED, BUT IT'S HARDER
10 FOR YOU. YOU DON'T HAVE A GOAL LINE. YOU HAVE TO DRAW
11 THOSE LINES YOURSELF. YOU HAVE TO DECIDE WHAT IS
12 REASONABLE DOUBT. YOU DECIDE FIRST WHERE THE LINE IS AND
13 THEN WHETHER WE'VE, WE'VE SURPASSED THAT LINE. IT'S A VERY
14 DIFFICULT AND A VERY IMPORTANT TASK BEING A JUROR AND ALL
15 WE ASK UNTIL THE END OF THIS CASE IS YOUR UTMOST ATTENTION,
16 LISTEN TO EVERY DETAIL OF THE TESTIMONY AND YOU DECIDE THE
17 FACTS.

18 THERE'S TWO KINDS OF EVIDENCE THAT CAN COME OUT,
19 THERE'S DIRECT EVIDENCE, SOMEBODY SAYS THAT THEY SAW
20 SOMETHING, COMES IN HERE AND TELL YOU I WAS AN EYEWITNESS,
21 I SAW THIS. THERE'S ANOTHER KIND OF EVIDENCE CALLED
22 CIRCUMSTANTIAL EVIDENCE. THAT'S THE EVIDENCE THAT, THAT
23 SHOWS THAT THE CIRCUMSTANCES SHOW SOMETHING HAPPENED.

24 LET ME GIVE YOU ANOTHER EXAMPLE, FOR INSTANCE,
25 IF, IF YOU WALK OUT OF THE COURTHOUSE AFTER A LONG DAY

OPENING STATEMENT FOR DEFENDANT MANNING

53

1 SITTING HERE IN A WINDOWLESS ROOM AND YOU SEE THE GROUND IS
2 WET THAT'S CIRCUMSTANTIAL EVIDENCE THAT IT RAINED. IT
3 COULD ALSO BE CIRCUMSTANTIAL EVIDENCE THAT THE SPRINKLERS
4 WERE ON, BUT YOU LOOK AT MORE THAN THAT. YOU LOOK AT HOW
5 THE CIRCUMSTANTIAL EVIDENCE BUILDS ON ITSELF, ONE PIECE
6 BUILDS UPON ANOTHER. IF YOU WALK OUT IN THE PARKING LOT
7 AND THE PARKING LOT IS STILL WET, IF THE CARS ARE WET, THE
8 TREES ARE WET, IF YOU LOOK, YOU CAN, THE CIRCUMSTANTIAL
9 EVIDENCE BUILDS ON ITSELF BECAUSE YOU CAN BE JUST AS
10 CERTAIN AS IF YOU HAD SEEN IT THAT IT HAD RAINED WHILE YOU
11 WERE IN THAT BUILDING. THAT'S WHAT CIRCUMSTANTIAL EVIDENCE
12 IS. YOU CAN END UP JUST AS CERTAIN AS YOU ARE IF YOU SAW
13 IT YOURSELF, CIRCUMSTANTIAL EVIDENCE.

14 ONCE AGAIN WE ASK YOU FOR YOUR UTMOST ATTENTION,
15 LISTEN TO THE FACTS OF THIS CASE, DECIDE AT THE END OF THIS
16 CASE WHAT HAPPENED AND WE'RE GOING TO ASK YOU AT THE END TO
17 COME BACK AND RENDER A VERDICT, A VERDICT THAT SPEAKS THE
18 TRUTH IN THIS CASE. THANK YOU VERY MUCH.

19 THE COURT: ALL RIGHT, MR. MULLINS?

20 MR. MULLINS: MAY IT PLEASE THE COURT, YOUR
21 HONOR.

22 THE COURT: YES, SIR.

23 OPENING STATEMENT FOR DEFENDANT MANNING

24 BY MR. MULLINS:

25 MADAM FORELADY, LADIES AND GENTLEMEN, GOOD

OPENING STATEMENT FOR DEFENDANT MANNING

54

1 AFTERNOON, HOPE YOU HAD A GOOD LUNCH, MY NAME IS RANDY
2 MULLINS AND I'M A DEFENSE ATTORNEY. I'VE BEEN PRACTICING
3 LAW HERE ABOUT 21 YEARS. I'M A PROTEGE, MY FIRST MURDER
4 TRIAL I SAT WITH WAS WITH SENATOR BUD LONG, SOME OF YOU MAY
5 BE LONG ENOUGH TO REMEMBER BUD, HE'S GONE NOW BUT I'M STILL
6 HERE AND I'M STILL FIGHTING. THIS IS MY JOB AND IT'S MY
7 PRIVILEGE HERE TO REPRESENT MR. TELLY MANNING WHO'S SEATED
8 AT THE END OF THE TABLE HERE ALONG WITH MY VERY ABLE
9 ASSISTANT MS. JACOBS WHO'S BEEN WITH ME FOR MORE YEARS THAN
10 EITHER OF US WOULD LIKE TO ADMIT AT THIS POINT, AND WHAT
11 WE'RE HERE TO DO IS DEFEND MR. MANNING FROM THE AWESOME
12 POWER OF THE STATE OF SOUTH CAROLINA BECAUSE THE STATE OF
13 SOUTH CAROLINA WHEN THEY COME AND THEY PROSECUTE YOU THEY
14 HAVE POLICE OFFICERS, WHO DO A DIFFICULT JOB, AND SLED
15 AGENTS, THEY HAVE LABORATORIES, THEY HAVE FORENSIC
16 EVIDENCE, THEY HAVE ALL THOSE THINGS THAT THE STATE OF
17 SOUTH CAROLINA CAN BRING TO BEAR, BUT HERE IS WHAT THEY
18 DON'T HAVE. THEY DON'T HAVE CONTROL OF THE JURY BECAUSE AS
19 THE JUDGE SAID YOU'RE THE FINDERS OF THE FACTS. YOU'RE THE
20 ONES THAT DETERMINE ULTIMATELY GUILT OR INNOCENCE IN EVERY
21 CASE.

22 NOW THE GOOD NEWS IS WE'RE NOT IN CALIFORNIA,
23 THAT MEANS THAT WE'RE NOT GOING TO RUN THROUGH A THREE OR
24 FOUR MONTH MURDER TRIAL FOR YOU. WE HOPE TO HAVE YA'LL OUT
25 OF HERE IN ONE WEEK OR LESS, HOPEFULLY LESS. NOW I KNOW

OPENING STATEMENT FOR DEFENDANT MANNING

55

1 YOU PROBABLY THINKING WELL IT'S JURY DUTY AND IT'S A MURDER
2 CASE I'D RATHER TAKE A LONG CAR TRIP WITH MY IN-LAWS OR
3 SOMETHING LIKE THAT AS OPPOSED TO SITTING HERE ON THIS BUT
4 WE NEED YOU AND WE NEED YOUR HELP TO SOLVE THIS PROBLEM.

5 THERE'S NO QUESTION THAT THERE'S A MAN DEAD.
6 THAT'S A TRAGIC THING, NO QUESTION ABOUT THAT AND OUR
7 HEARTS GO OUT TO THIS FAMILY WHO HAS LOST A MAN, BUT WE'RE
8 NOT HERE TO DEBATE THE LIFE OF THAT MAN. WE'RE HERE TO
9 DECIDE THE FATE OF THESE TWO MEN SEATED HERE.

10 NOW WE ARE BOTH SEATED AT THE DEFENDANT'S TABLE
11 AND I'M SEATED WITH MY FRIEND MR. JOHNNY GARDNER WHO IS
12 ALSO A DEFENSE ATTORNEY, BUT I WANT YOU TO UNDERSTAND THAT
13 JOHNNY AND I'S RULES ARE DIFFERENT. WE'RE SEATED AT THE
14 SAME TABLE BUT THERE ARE TWO DIFFERENT CASES HERE.

15 NOW WHEN THE STATE PUTS ON THEIR CASE WE ONLY ASK
16 YOU SOME VERY SMALL THINGS AND THAT IS THAT YOU KEEP AN
17 OPEN MIND, LISTEN CAREFULLY TO WHAT COMES FROM THAT STAND
18 AND APPLY THE SAME STANDARD ON THAT AS YOU APPLY IN YOUR
19 EVERY DAY LIVES WHEN YOU, WHEN YOU GO OUT AND YOU GOVERN
20 YOUR AFFAIRS, WHEN YOU LISTEN TO YOUR CHILDREN AS TO WHO
21 TURNED OVER THE GLASS OF MILK, WHEN YOUR HUSBAND COMES HOME
22 AND SAYS HE'S ONLY HAD TWO BEERS WITH THE BOYS AND MAYBE
23 IT'S A FEW MORE, THOSE THINGS, YOUR GOOD EVERY DAY COMMON
24 SENSE. THAT'S ALL WE ASK YOU BRING TO THE TABLE HERE
25 BECAUSE AS JURORS THE 12 AND 13 OF YOU WITH THE ALTERNATE

OPENING STATEMENT FOR DEFENDANT BAKER

56

1 YOU GET TO SERVE YOU BROUGHT ALL THAT WITH YOU. THAT'S
2 WHAT YOU APPLY WHEN YOU WEIGH THE EVIDENCE THAT COMES FROM
3 THIS STAND UP HERE AND TAKE THE LAW AS THE JUDGE GIVES IT
4 TO YOU, BUT I ASK YOU TO KEEP A COUPLE OF THINGS IN MIND
5 DURING THE COURSE OF THIS.

6 WHO WANTED TO BE AT BRUCE'S COUNTRY KITCHEN THAT
7 DAY? WHO HAD THE MOTIVE TO COMMIT THE CRIME AND WHAT DOES
8 YOUR GOOD COMMON SENSE TELL YOU AS TO WHO KILLED THIS MAN?
9 THOSE ARE THE QUESTIONS I ASK OF YOU.

10 NOW AS THE STATE SOLICITOR DEBUSK IS A EXTREME
11 GENTLEMAN AND A GOOD TRIAL LAWYER BUT HE TOLD YOU SOME
12 THINGS. I WANT YOU TO HOLD SOLICITOR DEBUSK TO WHAT HE
13 TOLD YOU. HE TOLD YOU HE'S GOING TO SHOW YOU THAT, MAKE
14 HIM SHOW YOU THAT. HOLD THE STATE TO THAT PROOF BEYOND A
15 REASONABLE DOUBT.

16 NOW WHY DO WE HAVE SUCH A HIGH BURDEN? BECAUSE
17 WHEN THE AWESOME POWER OF THE STATE IS PROSECUTING YOU WE
18 NEED TO KNOW THAT YOU, WHEN YOU COME TO YOUR VERDICT IT'S A
19 UNANIMOUS VERDICT AND YOU CAN ALL SAY BEYOND A REASONABLE
20 DOUBT GUILTY OR INNOCENT AND THAT'S WHAT WE ASK OF YOU THIS
21 AFTERNOON. THAT'S WHAT MY CLIENT ASKS YOU, IT'S WHAT THE
22 STATE ASKS YOU, AND I'M SURE THAT'S WHAT MR. GARDNER IS
23 GOING TO ASK YOU AS WELL, THAT WE THANK YOU FOR YOUR TIME
24 AND THIS IS THE SECOND MOST IMPORTANT TRIAL THAT WE PUT ON
25 IN THIS COURTROOM. WE RESPECT YOU FOR BEING HERE AND WE

OPENING STATEMENT FOR DEFENDANT BAKER

57

1 THANK YOU FOR BEING HERE THIS AFTERNOON.

2 THE COURT: ALL RIGHT, MR. GARDNER?

3 MR. GARDNER: THANK YOU, YOUR HONOR.

4 THE COURT: YES, SIR.

5 OPENING STATEMENT FOR DEFENDANT BAKER

6 BY MR. GARDNER:

7 GOOD AFTERNOON, MADAM FORELADY, LADIES AND
8 GENTLEMEN OF THE JURY, I'M GOING TO TALK AS BRIEF AS I CAN
9 ABOUT THE FUNDAMENTAL PRINCIPLES OF JUSTICE AND THEY'VE
10 BEEN TOUCHED ON EARLIER BUT IT'S IMPORTANT ENOUGH FOR ME TO
11 TALK ABOUT SINCE I DO HAVE A SEPARATE CASE WITHIN A CASE
12 HERE.

13 THE FIRST ONE IS THE PRESUMPTION OF INNOCENCE AND
14 THAT'S THE BEST THING THAT WE'VE EVER HAD FORTUNATELY.
15 BOTH OF THESE GUYS PRESUME TO BE INNOCENT AND WILL REMAIN
16 THAT WAY. THEY WALK IN WITH THEIR CLOTHES, A JACKET, IF
17 YOU WILL, OF INNOCENCE. IT SAYS INNOCENT ON THE SLEEVES
18 AND ALL OVER THEM AND IT STAYS THERE WITH THEM THROUGHOUT
19 THIS TRIAL AND THE ONLY TIME IT WILL GO AWAY IS IF AT SOME,
20 AT THE END OF THE TRIAL AND YOUR DELIBERATIONS IF YOU THINK
21 BEYOND A REASONABLE DOUBT THE STATE HAS PROVED EACH AND
22 EVERY ELEMENT OF MURDER, NOT HALF OF IT, NOT ONE OF IT, NOT
23 A LITTLE BIT OF ALL OF IT, BUT BEYOND A REASONABLE DOUBT
24 ALL THE ELEMENTS OF MURDER THEN YOU CAN STRIP IT AWAY FROM
25 HIM AND FIND HIM GUILTY.

OPENING STATEMENT FOR DEFENDANT BAKER

58

1 NOW THE NEXT LOGICAL STEP IS WHAT IS THE BURDEN
2 OF PROOF. WE'VE TALKED ABOUT AND YOU'VE HEARD PEOPLE TALK
3 ABOUT THAT BEYOND A REASONABLE DOUBT AND YOU'LL BE ABLE TO
4 DECIDE WHAT THAT IS WHEN THE JUDGE GIVES HIS INSTRUCTIONS
5 ON IT, BUT WHEN YOU'RE DECIDING THAT REMEMBER THAT THE
6 BURDEN IS ALWAYS ON THE STATE. THEY GO FIRST, THEY SIT
7 CLOSER TO YOU.

8 I AGREE WITH BOTH OF THE LAWYERS OR MOST OF WHAT
9 THEY'VE SAID. THE STATE HAS AWESOME POWER, THEY'VE GOT
10 THE BURDEN OF PROOF AND THAT'S WHAT THEY'VE GOT TO DO WITH
11 YOU. OBVIOUSLY I'VE GOT A DIFFERENT POSITION ON THE
12 OUTCOME OF THE TRIAL SO THE BURDEN IS ALWAYS ON THE STATE.
13 THEY'VE GOT TO PROVE THIS AND WHAT WILL THE EVIDENCE SHOW,
14 WELL I COULD HONESTLY TELL YOU THAT I WOULDN'T KNOW BECAUSE
15 I'M NOT GOING TO PRESENT ANY EVIDENCE OR I MAY NOT PRESENT
16 ANY EVIDENCE. THE LAW SAYS THAT THE DEFENDANT DOESN'T HAVE
17 TO PRESENT ANY EVIDENCE.

18 SOME PEOPLE MAY BE THINKING THAT DOESN'T MAKE ANY
19 SENSE. WELL IF YOU THOUGHT ABOUT IT FOR A MINUTE IT MIGHT
20 MAKE SOME SENSE IN THAT YOU COULD SEE A POSITION THAT A
21 DEFENDANT MIGHT FIND HIMSELF IN WHERE HE COULDN'T PROVE
22 THAT HE WAS INNOCENT. I PLED NOT GUILTY I'M HAVING A
23 TRIAL, I CAN'T PROVE THAT I'M INNOCENT, THAT'S WHY WE HAVE
24 THE JURY TRIAL AND THAT'S WHY WE MAKE THE STATE PROVE IT
25 AND THE STATE ALWAYS HAS TO PROVE IT, OKAY, AND THAT'S WHY

MS. HARDWICK - DIRECT EXAMINATION BY MR. DEBUSK

59

1 THE STATE HAS TO PRESENT THE EVIDENCE.

2 MR. MULLINS SAYS HOLD THE SOLICITOR TO WHATEVER
3 HE SAID HE'S GOING TO PRESENT. HE SAYS HE'S GOING TO
4 PRESENT A GUN OR WHATEVER HE'S GOING TO PRESENT HOLD HIM TO
5 THAT STANDARD AND HOLD HIM TO THE STANDARD THAT'S BEYOND
6 REASONABLE DOUBT..

7 NOW I BELIEVE THAT WE'RE GOING TO HEAR SOME
8 EVIDENCE FROM THE STATE AND I BELIEVE THAT THAT EVIDENCE IS
9 GOING TO SHOW US SEVERAL THINGS. YOU HEARD THE JUDGE EARLY
10 THIS MORNING READING FROM THE INDICTMENT WHEN HE SAID THAT
11 ACTING IN CONCERT, OKAY, THESE TWO DEFENDANT'S ACTING IN
12 CONCERT, AND THERE WAS A LOT OF WORDS IN THERE, BUT BOILING
13 IT DOWN ACTING IN CONCERT COMMITTED MURDER, OKAY. WELL
14 WHAT THE EVIDENCE IS GOING TO SHOW THERE'S FIVE GUYS CAME
15 DOWN FROM NORTH CAROLINA TO BUY TRUCKS, TWO OF THEM ARE ON
16 TRIAL, THREE OF THEM ARE GOING TO TESTIFY, OR I'M TOLD
17 THEY'RE GOING TO TESTIFY, THAT'S UP TO THE STATE, REMEMBER
18 THEY'RE GOING TO PROVE ALL THE CASES AND THEY'RE GOING TO
19 PUT UP THE EVIDENCE, AND THE EVIDENCE IS THERE WILL NOT BE
20 ANY EVIDENCE. THERE WILL BE ZERO EVIDENCE THAT ANYBODY WAS
21 ACTING WITH A PLAN TO COMMIT A MURDER. THERE WILL BE ZERO
22 EVIDENCE THAT ANYBODY WAS ACTING IN CONCERT TO COMMIT A
23 MURDER.

24 THE JUDGE SAID THE INDICTMENT SAID ACTING IN
25 CONCERT. HOLD THE JUDGE OR HOLD THE SOLICITOR TO THAT

MS. HARDWICK - DIRECT EXAMINATION BY MR. DEBUSK

60

1 STANDARD BECAUSE THERE WILL BE ZERO EVIDENCE THAT THERE'S
2 ANYBODY ACTING IN CONCERT OR ACTING WITH A PLAN, PEOPLE
3 PLANNING TO COMMIT A MURDER.

4 THERE WILL BE ZERO EVIDENCE THAT SOMEBODY PLANING
5 TO COMMIT A ROBBERY. THERE WILL BE NO EVIDENCE OF A
6 ROBBERY. THE EVIDENCE WILL BE THAT THESE FIVE GUYS CAME
7 DOWN TO BUY DRUGS, THEY WENT TO A PLACE THAT THEY THOUGHT
8 THAT THEY COULD GET DRUGS, THE GUY THERE DIDN'T HAVE DRUGS,
9 THEY WENT TO ANOTHER PLACE TO GET THE DRUGS AND THEN WHAT
10 HAPPENED THERE WE'LL HAVE TO SEE WHAT HAPPENED. THERE WILL
11 BE NO EVIDENCE OF IN CONCERT AND THERE WILL BE NO EVIDENCE
12 OF ROBBERY OR MURDER AND WE ASK THAT AT THE END OF THE
13 COURT YOU FIND THAT THIS DEFENDANT IS NOT GUILTY OF MURDER
14 BASED ON OUR DEFINITION AND THE FACTS AS THE STATE WILL PUT
15 THEM UP. THANK YOU VERY MUCH.

16 THE COURT: ALL RIGHT, SOLICITOR, YOUR FIRST
17 WITNESS.

18 MR. MULLINS: THANK YOU, YOUR HONOR, THE STATE
19 CALLS RENEE HARDWICK.

20 THE COURT: PLEASE COME AROUND AND BE SWORN,
21 MA'AM.

22 RENEE HARDWICK

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 MADAM CLERK: PLEASE STATE YOUR NAME FOR THE
25 RECORD?

MS. HARDWICK - DIRECT EXAMINATION BY MR. DEBUSK

61

1 THE WITNESS: RENEE HARDWICK.

2 DIRECT EXAMINATION

3 BY MR. DEBUSK:

4 Q MS. HARDWICK, WHO IS YOUR EMPLOYER?

5 A HORRY COUNTY 911.

6 Q HOW LONG HAVE YOU BEEN EMPLOYED WITH HORRY
7 COUNTY 911?

8 A WELL I'VE BEEN WITH THE COUNTY 23 YEARS,
9 911 16.

10 Q COULD YOU DESCRIBE BRIEFLY WHAT THE NATURE
11 OF YOUR WORK IS?

12 A I'M THE DEPUTY DIRECTOR, I HANDLE DAY TO
13 DAY OPERATIONS, EMPLOYEE MATTERS, I'M THE KEEPER OF THE
14 RECORDS FOR THE DEPARTMENT, OVERSEE THE EQUIPMENT AND
15 THINGS OF THAT NATURE.

16 Q SPECIFICALLY AS TO RECORDS HOW LONG HAVE
17 YOU BEEN ENGAGED IN THAT PARTICULAR DUTY, KEEPING THE CALL
18 IN, HOW LONG HAVE YOU BEEN ENGAGED IN KEEPING THE RECORDS
19 OF HORRY COUNTY 911?

20 A SINCE IT STARTED 16 YEARS.

21 Q THANK YOU, WHERE AND HOW ARE THESE RECORDS
22 KEPT?

23 A CURRENTLY WE KEEP RECORDS, MOST RECORDS ARE
24 KEPT BY COMPUTER. OUR RECORDING RECORDS ARE KEPT ON A DVD
25 MEDIUM IS WHAT WE RECORD ALL OF OUR RADIO AND TELEPHONE

MS. HARDWICK - DIRECT EXAMINATION BY MR. DEBUSK

62

1 TRAFFIC TO.

2 Q HOW ABOUT IN DECEMBER OF 2000 HOW WAS, WAS
3 IT KEPT THE SAME WAY?

4 A IT WAS ON A DVD, YES, SIR.

5 Q AND ARE YOU THE CUSTODIAN OF THOSE DVD
6 RECORDS?

7 A I AM, SIR.

8 Q OKAY, LET ME SHOW YOU WHAT'S BEEN MARKED AS
9 STATE'S EXHIBIT 1 AND ASK IF YOU RECOGNIZE THIS?

10 A YES, IT'S A COPY OF THE PHONE CALLS THAT WE
11 RECEIVED IN REGARDS TO THIS CASE.

12 Q WHAT DATE WERE THE PHONE CALLS RECEIVED?

13 A DECEMBER THE 21ST, 2000.

14 Q AND DO YOU KNOW WHAT THE DISPATCH ADDRESS
15 WAS FOR THAT?

16 A THE PHYSICAL ADDRESS OF THE OFFICE IS ---

17 Q NO, OF THE DISPATCH?

18 A OH, OF THE INCIDENT, IT'S PINE NEEDLE
19 ROAD.

20 Q NOW HAVE YOU REVIEWED THAT ITEM?

21 A YES, I HAVE.

22 Q IS IT A FAIR AND ACCURATE REPRESENTATION OF
23 THAT PHONE CALL FROM YOUR RECORDS?

24 A YES, SIR.

25 Q OKAY, AND I HATE TO ASK THE OBEVIOUS BUT

MS. HARDWICK - DIRECT EXAMINATION BY MR. DEBUSK

63

1 WHEN WAS THAT MADE?

2 A WELL FROM THE NATURE OF THE CASE IT WAS
3 PROBABLY MADE WITHIN A DAY OR TWO OF THE INCIDENT ITSELF.

4 Q HOW LONG ARE THOSE RECORDS KEPT?

5 A BY LAW WE HAVE TO KEEP THEM 60 DAYS.

6 MR. DEBUSK: YOUR HONOR, AT THIS TIME THE STATE
7 MOVES STATE'S EXHIBIT 1 INTO EVIDENCE, THAT IS THE RECORD
8 OF THE HORRY COUNTY EMERGENCY DISPATCH?

9 THE COURT: ALL RIGHT, SIR, ANY OBJECTION FROM
10 THE DEFENDANT MANNING?

11 MR. MULLINS: NO OBJECTION, YOUR HONOR.

12 THE COURT: ANY OBJECTION FROM THE DEFENDANT
13 BAKER?

14 MR. GARDNER: NONE, YOUR HONOR.

15 THE COURT: ALL RIGHT, STATE'S 1 IS IN EVIDENCE
16 WITHOUT OBJECTION.

17 (WHEREUPON, STATE'S EXHIBIT NUMBER 1 ENTERED INTO
18 EVIDENCE.)

19 MR. DEBUSK: MAY I PUBLISH IT TO THE JURY?

20 THE COURT: ANY OBJECTION TO THAT, GENTLEMEN?

21 MR. GARDNER: NO, YOUR HONOR.

22 THE COURT: MR. MULLINS?

23 MR. MULLINS: NO, YOUR HONOR.

24 THE COURT: ALL RIGHT, YOU MAY DO SO.

25 MR. DEBUSK: THANK YOU, YOUR HONOR.

MS. HARDWICK - DIRECT EXAMINATION BY MR. DEBUSK

64

1 MR. TRUSLOW: YOUR HONOR?

2 THE COURT: YES?

3 MR. TRUSLOW: THE ACOUSTICS, COULD WE WALK
4 AROUND BY THE JURY SO WE CAN ---

5 THE COURT: YOU CERTAINLY CAN.

6 MR. TRUSLOW: THANK YOU, YOUR HONOR.

7 MR. DEBUSK: YOUR HONOR, I'LL PUT THIS UP CLOSE
8 TO THE JURY SO IT WILL BE CLOSE TO A MICROPHONE.

9 THE COURT: CERTAINLY. NOW, LADIES AND
10 GENTLEMEN OF THE JURY, IF YOU FIND YOU HAVE ANY
11 DIFFICULTIES IN HEARING YOU NEED TO LET ME KNOW, THANK YOU.

12 (WHEREUPON, STATE'S EXHIBIT NUMBER 1 PLAYED IN
13 OPEN COURT.)

14 THE COURT: TURN THAT UP A LITTLE BIT, START
15 OVER.

16 MR. DEBUSK: IT'S AT MAXIMUM VOLUME, YOUR HONOR.

17 THE COURT: ALL RIGHT, SIR.

18 MR. DEBUSK: I'LL PUT IT UP CLOSE SO THE
19 MICROPHONE WILL PICK IT UP.

20 THE COURT: THAT'S FINE.

21 (WHEREUPON, STATE'S EXHIBIT NUMBER 1 PLAYED IN
22 OPEN COURT.)

23 MR. DEBUSK: YOUR HONOR, I HAVE NO FURTHER
24 QUESTIONS OF THIS WITNESS.

25 THE COURT: ALL RIGHT, SIR. MR. MULLINS?

MS. WILSON - DIRECT EXAMINATION BY MR. DEBUSK

65

CROSS EXAMINATION

BY MR. MULLINS:

Q MA'AM, THAT TAPE ACCURATE?

A YES, SIR.

Q BEST OF YOUR RECORDS?

A YES, SIR.

MR. MULLINS: THANK YOU, NO FURTHER QUESTIONS.

THE COURT: ALL RIGHT, MR. GARDNER?

MR. GARDNER: NO QUESTIONS, YOUR HONOR.

THE COURT: ALL RIGHT, DO YOU WISH THIS WITNESS
TO BE EXCUSED?

MR. DEBUSK: YES, YOUR HONOR.

THE COURT: ANY OBJECTION, GENTLEMEN?

MR. MULLINS: NO OBJECTION.

MR. GARDNER: NO, OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT, MA'AM, YOU ARE EXCUSED,
RELEASED FROM YOU SUBPOENA, GO BACK TO YOUR REGULAR DUTIES.

A THANK YOU.

THE COURT: ALL RIGHT, SOLICITOR, YOUR NEXT
WITNESS, PLEASE.

MR. DEBUSK: THANK YOU, YOUR HONOR, THE STATE
CALLS LENORA WILLIAMS.

THE COURT: COME AROUND AND BE SWORN, PLEASE.

LENORA WILSON

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

MS. WILSON - DIRECT EXAMINATION BY MR. DEBUSK

66

1 MADAM CLERK: STATE YOUR NAME FOR THE COURT?

2 THE WITNESS: LENORA WILSON.

3 DIRECT EXAMINATION

4 BY MR. DEBUSK:

5 Q MS. WILSON, WHERE DO YOU LIVE?

6 A AT PINE NEEDLE ROAD IN LONGS.

7 Q ARE YOU FAMILIAR WITH AN AREA IN THE COUNTY
8 CALLED FREEMONT?

9 A YES.

10 Q WHERE IS THAT RELATIVE TO WHERE YOU LIVE?

11 A I LIVE IN FREEMONT.

12 Q THANK YOU, WHAT DO YOU DO?

13 A I'M A YOUTH CARE WORKER.

14 Q I'M SORRY?

15 A I'M A YOUTH CARE WORKER WITH JUVENILES.

16 Q AND I HATE TO ASK YOU THE OBVIOUS BUT WHAT
17 COUNTY, WHAT COUNTY IS FREEMONT IN?

18 A WHAT COUNTY?

19 Q YES?

20 A HORRY.

21 Q THANK YOU, NOW DID YOU LIVE IN THAT SAME
22 PLACE IN DECEMBER 2000?

23 A YES.

24 Q OKAY, I'M GOING TO SHOW YOU A PICTURE

25 THAT'S BEEN MARKED AS STATE'S EXHIBIT 2 AND ASK IF YOU

MS. WILSON - DIRECT EXAMINATION BY MR. DEBUSK

67

1 RECOGNIZE THIS?

2 A YES.

3 Q WHAT IS THAT, MS. WILSON?

4 A THAT'S BRUCE'S COUNTRY KITCHEN, A LITTLE
5 RESTAURANT.

6 Q WHAT IS IT, IT'S A LITTLE RESTAURANT?

7 A YES.

8 Q WHERE IS THAT RELATIVE TO YOUR HOUSE IN
9 FREEMONT?

10 A ABOUT TWO OR THREE BLOCKS DOWN THE ROAD.

11 Q AND IS THAT ALSO IN Horry COUNTY?

12 A YES.

13 Q NOW DO YOU RECALL THE AFTERNOON OF DECEMBER
14 21ST, 2000?

15 A YES.

16 Q ON THAT AFTERNOON DID YOU COME TO BE AT
17 BRUCE'S COUNTRY KITCHEN AT ANY POINT?

18 A YES.

19 Q WHY DID YOU GO OVER THERE?

20 A I GOT A KNOCK AT MY DOOR THAT MY SON HAD
21 GOTTEN SHOT.

22 Q WHO IS YOUR SON?

23 A TROY RIGGINS.

24 Q WAS HE ALWAYS CALLED TROY OR DID HAVE ANY
25 NICKNAMES?

MS. WILSON - DIRECT EXAMINATION BY MR. DEBUSK

68

1 A YES, THEY CALLED HIM CHEEKS.

2 Q CHEEKS?

3 A YES.

4 Q THANK YOU, WHAT DID YOU DO WHEN THIS PERSON
5 TOLD YOU THAT YOUR SON CHEEKS HAD BEEN SHOT?

6 A YELLED FOR MY MOM TO COME AND WE ALL GOT IN
7 THE CAR AND WE WENT DOWN TO WHERE HE WAS AT AND HE WAS
8 SITTING IN THE CAR.

9 Q AND WHAT KIND OF CAR WAS HE SITTING IN,
10 MA'AM?

11 A IT WAS A GRAY LINCOLN, I DON'T KNOW THE
12 YEAR AND THE MODEL.

13 Q I'M GOING TO SHOW YOU STATE'S EXHIBITS 3
14 AND 4 AND ASK IF YOU RECOGNIZE THESE?

15 A YES, THAT'S THE CAR HE WAS IN.

16 Q WHO DID THAT CAR BELONG TO?

17 A IT BELONGED TO HIM.

18 Q TO TROY?

19 A YES.

20 Q WHEN YOU GOT THERE AND YOU FOUND TROY IN
21 THAT CAR WHAT, WHAT WAS HIS CONDITION?

22 A HE HAD BEEN SHOT AND HE WAS JUST SITTING
23 THERE WITH HIS HEAD BACK AND HIS FIST CLUTCHED TIGHT AND HE
24 WAS JUST GRITTING HIS TEETH TOGETHER.

25 Q WAS HE BREATHING?

MS. WILSON - DIRECT EXAMINATION BY MR. DEBUSK

69

1 A YES.

2 Q COULD HE TALK?

3 A NO.

4 Q DID YOU TRY TALKING TO HIM?

5 A YES.

6 Q NOW YOU JUST HEARD A TAPE OF THE 911 CALL,
7 WAS, WAS YOUR VOICE ON THAT TAPE?

8 A YES.

9 Q AND DID YOU MAKE THE CALL TO 911?

10 A YES.

11 Q NOW WHAT DID YOU DO TO TRY TO HELP YOUR
12 SON?

13 A I JUST KEPT TELLING HIM TO PRAY AND THE 911
14 OPERATOR SAID TO APPLY PRESSURE BUT I COULDN'T SEE THE
15 BULLET WOUNDS. THE ONLY ONES I, THE ONLY ONE I SAW WAS IN
16 HIS HAND.

17 Q WAS THERE BLOOD ON HIM?

18 A IT WAS, THEY WAS JUST ON HIS HAND. ALL I
19 COULD SEE WAS THE BLOOD ON HIS HAND.

20 Q NOW WHAT TIME OF DAY WAS THIS? WAS IT, WAS
21 IT LIGHT OR WAS IT DARK?

22 A IT WAS LIGHT.

23 Q WAS IT MORNING OR AFTERNOON?

24 A IN THE EVENING.

25 Q CAN YOU ESTIMATE WHAT TIME IT WAS?

MS. WILSON - DIRECT EXAMINATION BY MR. DEBUSK

70

1 A IT WAS AROUND, IT HAD TO BE AFTER 4.

2 Q NOW HOW LONG WERE YOU THERE WITH TROY?

3 A SEEMED LIKE FOREVER BUT I CAN'T ESTIMATE
4 THE TIME, MAYBE ABOUT 20 MINUTES OR MORE.

5 Q AND DURING THAT WHOLE TIME WERE YOU ABLE
6 TO, WAS TROY ABLE TO COMMUNICATE WITH YOU?

7 A NO.

8 Q NOW DID YOU SEE TROY LEAVE BRUCE'S COUNTRY
9 KITCHEN?

10 A ONLY WHEN THE AMBULANCE TOOK HIM AWAY.

11 Q DO YOU KNOW WHERE THEY TOOK HIM?

12 A YES.

13 Q WHERE, WHERE WAS THAT?

14 A LORIS HOSPITAL.

15 Q AND DID YOU SEE TROY AGAIN?

16 A NOT THAT DAY.

17 Q WHEN DID YOU NEXT SEE TROY?

18 A AT THE FUNERAL HOME.

19 Q I TAKE AT THAT TIME HE HAD PASSED AWAY?

20 MR. DEBUSK: THANK YOU, MS. WILSON, I KNOW THIS
21 IS TOUGH ON YOU, I'M NOT GOING TO ASK YOU ANY MORE
22 QUESTIONS, PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY
23 HAVE.

24 YOUR HONOR, WE'D LIKE TO MOVE TO ADMIT EXHIBITS
25 2, 3, AND 4.

MS. WILSON - CROSS EXAMINATION BY MR. MULLINS

71

1 THE COURT: ALL RIGHT, PHOTOGRAPHS STATE'S 2, 3,
2 AND 4, IS THERE ANY OBJECTION TO THEM, MR. MULLINS?

3 MR. MULLINS: NO OBJECTION, YOUR HONOR.

4 THE COURT: MR. GARDNER?

5 MR. GARDNER: NO OBJECTION, YOUR HONOR.

6 THE COURT: ALL RIGHT, SIR, STATE'S 2, 3, AND 4
7 ARE IN EVIDENCE WITHOUT OBJECTION.

8 (WHEREUPON, STATE'S EXHIBITS NUMBERS 2, 3, AND 4
9 ENTERED INTO EVIDENCE.)

10 THE COURT: ANYTHING FURTHER?

11 MR. DEBUSK: MAY I PUBLISH THEM TO THE JURY?

12 THE COURT: ANY OBJECTION TO PUBLICATION?

13 MR. MULLINS: NO OBJECTION.

14 THE COURT: MR. GARDNER?

15 MR. GARDNER: NO, YOUR HONOR.

16 THE COURT: YOU MAY DO SO. ANYTHING ELSE FROM
17 THE STATE?

18 MR. DEBUSK: NOTHING ELSE FROM THE STATE, YOUR
19 HONOR.

20 THE COURT: MR. MULLINS?

21 MR. MULLINS: MAY IT PLEASE THE COURT?

22 THE COURT: YES, SIR.

23 CROSS EXAMINATION

24 BY MR. MULLINS:

25 Q MS. WILSON, I'M SORRY FOR YOUR LOSS, I'VE

MS. WILSON - CROSS EXAMINATION BY MR. MULLINS

72

1 GOT TO ASK YOU SOME QUESTIONS, OKAY?

2 A OKAY.

3 Q THAT WAS YOU ON THE 911 TAPE, CORRECT,

4 MA'AM?

5 A YES.

6 Q NOW THE 911 OPERATOR WAS TRYING TO GET YOU

7 TO SAY, GET YOU TO ASK YOUR SON WHO KILLED HIM?

8 A YES.

9 Q DID HE SAY A BLACK MALE?

10 A NO.

11 Q HE DIDN'T SAY THAT?

12 A HE DIDN'T SAY ANYTHING.

13 Q OKAY, HE COULDN'T TALK?

14 A HE COULD NOT TALK.

15 Q WHEN YOU GOT THERE, MA'AM, AND I KNOW THIS

16 IS HARD, WHEN YOU GOT THERE WAS YOUR SON STILL IN THE

17 DRIVER'S SIDE OF HIS CAR?

18 A YES.

19 Q HE HADN'T BEEN MOVED?

20 A NO.

21 Q THERE WAS SOME TALK ABOUT A GUN?

22 A I DIDN'T SEE A GUN.

23 Q YOU DIDN'T SEE A GUN?

24 A NO WHERE.

25 Q WAS ANYONE THERE LOOKING FOR A GUN?

MS. WILSON - CROSS EXAMINATION BY MR. GARDNER

73

1 A NO.

2 MR. MULLINS: MAY I HAVE JUST A MOMENT, YOUR
3 HONOR?

4 THE COURT: YES, SIR.

5 MR. MULLINS: THANK YOU, MS. WILSON, NO FURTHER
6 QUESTIONS AT THIS TIME, YOUR HONOR.

7 THE COURT: MR. GARDNER?

8 MR. GARDNER: THANK YOU, YOUR HONOR.

9 CROSS EXAMINATION

10 BY MR. GARDNER:

11 Q MS. WILSON, I ALSO APOLOGIZE. I'M SORRY
12 FOR YOUR LOSS, BUT I HAVE A COUPLE OF QUESTIONS I NEED TO
13 ASK. HIS QUESTION WAS IF I UNDERSTOOD IT RIGHT, WAS THERE
14 SOME TALK OF A GUN AND YOUR ANSWER WAS, I DIDN'T SEE A GUN?

15 A I DIDN'T SEE ONE.

16 Q DID YOU HEAR ANY OF THE PEOPLE WHEN THE 911
17 STUFF WAS GOING AROUND DID YOU HEAR ANYBODY SAY ANYTHING
18 ABOUT A GUN?

19 A NO.

20 Q YOU DIDN'T HEAR ANY OF THAT?

21 A NO.

22 Q DID YOU TALK WITH ANY OF THE PEOPLE THAT
23 WAS THERE LATER ON, DID YOU EVER HAVE ANY CONVERSATION WITH
24 ANY OF THE PEOPLE THAT WAS THERE AT THE CAR THAT NIGHT AND
25 DID ANY OF THEM BRING UP ANYTHING ABOUT A GUN?

MS. WILSON - CROSS EXAMINATION BY MR. GARDNER

74

1 A NO, NOBODY EVER BROUGHT UP ANYTHING ABOUT A
2 GUN UNTIL THIS DAY.

3 Q ALL RIGHT, WELL WE KNOW THAT THE 911 LADY
4 ASKED ABOUT A GUN, RIGHT?

5 A NOT WITH ME SHE DIDN'T.

6 Q OKAY, WELL DID, WOULD IT SURPRISE YOU IF I
7 TOLD YOU THE 911 LADY BROUGHT UP SOMETHING ABOUT A GUN?

8 A NO, IT WOULDN'T.

9 Q OKAY, BECAUSE YOU WERE HERE ---

10 A YES.

11 Q --- WHEN IT PLAYED A WHILE AGO?

12 A YES.

13 Q OKAY, OTHER THAN THAT TAPE PLAYING A WHILE
14 AGO DID YOU HEAR ANYBODY ELSE TALK ANY GUN IN THAT CAR OR
15 AROUND THAT CAR THAT NIGHT?

16 A NO.

17 Q OKAY, AND WHEN YOU WERE THERE YOUR SON WAS
18 INSIDE THE CAR?

19 A YES.

20 Q OKAY, THE WHOLE TIME YOU WERE THERE HE
21 NEVER LEFT OR HE NEVER MOVED OUT OR NOBODY MOVED HIM OUT OF
22 THE CAR?

 A NO.

24 MR. GARDNER: ALL RIGHT, OKAY, THANK YOU, MA'AM.

25 THE COURT: REDIRECT?

MS. WILSON - CROSS EXAMINATION BY MR. GARDNER

75

1 MR. DEBUSK: NOTHING FURTHER, YOUR HONOR.

2 THE COURT: ALL RIGHT, YOU MAY STEP DOWN. ALL
3 RIGHT, SOLICITOR, AS I UNDERSTAND IT THOSE WOULD BE THE
4 STATE'S WITNESSES FOR TODAY; IS THAT CORRECT?

5 MR. DEBUSK: THAT'S CORRECT, YOUR HONOR.

6 THE COURT: ALL RIGHT, SIR. ALL RIGHT, LADIES
7 AND GENTLEMEN, THE COURT HAD CALLED CERTAIN CASES FOR TRIAL
8 OR FOR CERTAIN REASONS TOTALLY OUT OF CONTROL OF THE
9 PARTIES THE REMAINING WITNESSES IN THIS CASE ARE NOT
10 AVAILABLE UNTIL TOMORROW MORNING, THEREFORE, WE ARE GOING
11 TO RECESS FOR THE AFTERNOON. I'M GOING TO HAVE YOU COME
12 BACK AND I WANT YOU TO BE BACK IN YOUR JURY ROOM BY 9:00
13 TOMORROW MORNING, LIKE YOU TO BE IN YOUR JURY ROOM BY 9
14 A.M.

15 NOW WHEN THE COURT EXCUSES YOU THIS AFTERNOON AND
16 YOU SEE ANY OF YOUR FRIENDS, HUSBAND, WIFE, BOYFRIEND,
17 GIRLFRIEND, WHOEVER THAT MIGHT BE, DO NOT DISCUSS THIS
18 CASE. UNINTENTIONALLY THEY WILL GIVE YOU THEIR OPINION
19 ABOUT THIS CASE. THEY DO NOT HAVE AN OPINION ABOUT THIS
20 CASE. THE 12 OF YOU, THE 13 OF YOU MAY NOT DISCUSS THIS
21 CASE AT ANY POINT IN TIME EVEN AMONG YOURSELVES UNTIL I
22 TELL YOU TO BEGIN YOUR DELIBERATIONS, THEREFORE, PLEASE
23 DON'T TALK ABOUT THE CASE, DON'T ALLOW ANYBODY TO TALK TO
24 YOU ABOUT THE CASE. WHEN WE RECONVENE IN THE MORNING WE
25 WILL GO FORWARD WITH THE REMAINDER OF THE TESTIMONY IN THIS

MS. WILSON - CROSS EXAMINATION BY MR. GARDNER

76

1 PARTICULAR CASE.

2 THE OTHER INSTRUCTION I WOULD HAVE FOR YOU IS IF
3 FOR SOME REASON, I DON'T KNOW WHERE YA'LL LIVE IN THIS
4 COUNTY, BUT IF FOR SOME REASON THAT NORMALLY YOU WOULD GO
5 BY WHERE THIS PLACE OF THIS INCIDENT IS SAID TO HAVE
6 OCCURRED FIND SOME OTHER WAY TO GO HOME. DO NOT VISIT THIS
7 PARTICULAR AREA. YOU MAY NOT CONDUCT ANY RESEARCH ON YOUR
8 OWN. YOU HAVE TO DECIDE THIS CASE SOLELY FROM WHAT YOU
9 HEAR IN THIS COURTROOM. YOU MAY NOT GAIN ANY INFORMATION,
10 YOU MAY NOT GAIN ANY KNOWLEDGE ABOUT THIS CASE FROM ANY
11 OTHER SOURCE OTHER THAN WHAT YOU HEAR IN THIS COURTROOM. I
12 DON'T KNOW THAT THERE WOULD BE BUT YOU CAN'T GO ON THE
13 INTERNET, YOU CAN'T LOOK FOR ANY EVIDENCE OF ANY KIND. YOU
14 HAVE TO DECIDE WHAT YOU HEAR IN THE COURTROOM SO WITH THAT
15 LITTLE BIT OF ADMONITION I'LL SEE YOU BACK TOMORROW MORNING
16 IN YOUR JURY ROOM AT 9 A.M., THANK YOU VERY MUCH.

17 (WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING
18 AT 3:06 P.M.)

19 THE COURT: ALL RIGHT, IS THERE ANYTHING FURTHER
20 FROM THE STATE BEFORE WE RECESS FOR THE EVENING?

21 MR. DEBUSK: YOUR HONOR, WE'D LIKE TO REVIEW THE
22 EXHIBITS TO BE NUMBERED WITH THE DEFENSE COUNSEL SO THAT WE
23 MIGHT TRY TO HEAD OFF ANY, ANY COMPLICATIONS FOR TOMORROW.

24 THE COURT: ALL RIGHT, SIR, WELL I CERTAINLY
25 WANT YOU TO SHOW THEM THE EXHIBITS THAT YOU MIGHT HAVE SO,

MS. WILSON - CROSS EXAMINATION BY MR. GARDNER

77

1 GENTLEMEN, YOU WILL HAVE AN IDEA OF WHETHER OR NOT YOU WISH
2 TO OBJECT OR NOT. MAKE SURE THAT YOU REVIEW THE EVIDENCE
3 WITH THEM THIS AFTERNOON, IF YOU WOULD, SOLICITOR.

4 MR. DEBUSK: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT, MR. MULLINS?

6 MR. MULLINS: IF I COULD IMPOSE UPON THE
7 SOLICITOR, YOUR HONOR, I'VE LISTENED TO THAT 911 TAPE
8 SEVERAL TIMES BUT IT'S BEEN A COUPLE OF YEARS, IF I COULD
9 IMPOSE UPON THE SOLICITOR TO HEAR IT ONE MORE TIME THIS
10 AFTERNOON I'D APPRECIATE IT.

11 THE COURT: CERTAINLY, SOLICITOR ---

12 MR. DEBUSK: - YES, YOUR HONOR, WE'RE PREPARED FOR
13 THAT.

14 THE COURT: --- JUST YA'LL TAKE WHAT TIME YOU
15 NEED TO LISTEN TO IT THIS AFTERNOON AND, MR. GARDNER,
16 ANYTHING ELSE?

17 MR. GARDNER: NO, YOUR HONOR.

18 THE COURT: MR. MULLINS, ANYTHING ELSE?

19 MR. MULLINS: NO, SIR.

20 THE COURT: ALL RIGHT, GENTLEMEN, I'LL SEE YOU
21 TOMORROW MORNING AT 9:00. NOW, MR. BAKER?

22 DEFENDANT BAKER: YES, SIR.

23 THE COURT: NOW, REMEMBER OUR DISCUSSION FROM
24 EARLIER THAT YOU REMAIN ON BOND, ALL THE CONDITIONS I'VE
25 PLACED UPON YOU THEY REMAIN THROUGHOUT THE TRIAL, YOU

MR. BOWENS - DIRECT EXAMINATION BY MR. DEBUSK

78

1 UNDERSTAND THAT?

2 DEFENDANT BAKER: YES, SIR.

3 THE COURT: ALL RIGHT, THANK YOU VERY MUCH, I'LL
4 SEE YA'LL BACK TOMORROW MORNING AT 9:00.

5 (WHEREUPON, STATE'S EXHIBITS NUMBERS 5, 6, 7, 8,
6 9, 10, 11, 12, 13, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,
7 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46,
8 47, AND 48 MARKED FOR IDENTIFICATION.)

9 (WHEREUPON, DEFENDANT'S EXHIBITS NUMBER 1 AND 2
10 MARKED FOR IDENTIFICATION.)

11 (WHEREUPON, COURT WAS ADJOURNED FOR THE EVENING.)

12 (WHEREUPON, COURT RESUMES AT 9:00 A.M.)

13 THE COURT: IS THE STATE READY TO PROCEED?

14 MR. DEBUSK: THE STATE IS READY, YOUR HONOR.

15 THE COURT: ALL RIGHT, DEFENDANT'S?

16 MR. MULLINS: YES, SIR, WE HAVE HAD ONE MATTER
17 WE HAVE TAKEN UP WITH THE SOLICITOR, YOUR HONOR, WHILE WE
18 WERE OFF THE RECORD. I UNDERSTAND THE SOLICITOR HAS
19 VOLUNTARILY AGREED TO SEQUESTER HIS WITNESSES. WE WERE
20 GOING TO MAKE A MOTION TO THAT EFFECT BUT I THINK THAT'S
21 BEEN RESOLVED BETWEEN THE SOLICITOR DEBUSK AND I.

22 THE COURT: ALL RIGHT, SOLICITOR, IS THAT
23 CORRECT?

24 MR. DEBUSK: I DON'T KNOW IF I'VE INFORMED MR.
25 TRUSLOW YET WHO REPRESENTS ONE OF THE, ONE OF THE

MR. BOWENS - DIRECT EXAMINATION BY MR. DEBUSK

79

1 WITNESSES. KIRK, WE'RE SEQUESTERING WITNESSES SO DERRICK
2 WILL HAVE TO WAIT.

3 MR. TRUSLOW: PARDON?

4 MR. DEBUSK: WE'RE SEQUESTERING WITNESSES SO
5 DORMAINE WILL HAVE TO WAIT OUT IN ONE OF THE ROOMS OUTSIDE.

6 MR. TRUSLOW: I HAVE TO?

7 MR. DEBUSK: NO, JUST YOUR CLIENT.

8 MR. TRUSLOW: OH, OKAY.

9 MR. MULLINS: THANK YOU, YOUR HONOR.

10 THE COURT: ALL RIGHT, IS THERE ANYTHING ELSE?

11 MR. GARDNER: NO, YOUR HONOR.

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

13 THE COURT: ALL RIGHT, ASK THE JURY TO COME IN,
14 PLEASE.

15 (WHEREUPON, THE JURY ENTERS THE COURTROOM 9:18
16 A.M.)

17 THE COURT: ALL RIGHT, GOOD MORNING, LADIES AND
18 GENTLEMEN, I TRUST YOU FOUND EVERYTHING TO YOUR
19 SATISFACTION THIS MORNING. WE ARE GOING TO GO AHEAD AND
20 CONTINUE WITH THE TRIAL AT THIS POINT IN TIME. SOLICITOR?

21 MR. DEBUSK: THANK YOU, YOUR HONOR, THE STATE
22 CALLS DERRICK BOWENS.

23 THE COURT: PLEASE COME AROUND AND BE SWORN,
24 SIR.

25 DERRICK BOWENS

MR. BOWENS - DIRECT EXAMINATION BY MR. DEBUSK

80

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 MADAM CLERK: PLEASE STATE YOUR NAME FOR THE
3 COURT.

4 THE WITNESS: DERRICK BOWENS.

5 DIRECT EXAMINATION

6 BY MR. DEBUSK:

7 Q MR. BOWENS, WHERE DO YOU LIVE?

8 A IN LUMBERTON, NORTH CAROLINA.

9 Q AND WHAT IS YOUR OCCUPATION, WHAT DO YOU
10 DO?

11 A BACK THEN I WAS SHIPPING, RECEIVING WORKING
12 AT A DOCK, LOADING AND UNLOADING TRUCK.

13 Q WHAT DO YOU DO NOW?

14 A I WORK AT PRESTON'S FOOD, SUPERVISOR OUT
15 THERE.

16 Q AND BACK IN DECEMBER OF 2000 WHERE DID YOU
17 LIVE?

18 A IN ROWLAND, NORTH CAROLINA.

19 Q AND SPECIFICALLY ON THE MORNING OF DECEMBER
20 21ST, 2000, WHERE WERE YOU?

21 A IN PEMBROKE, NORTH CAROLINA.

22 Q WHAT'S IN PEMBROKE?

23 A THE HOME WHERE KELLY AND KENA WORK AT.

24 Q WHO ARE KELLY AND KENA?

25 A I WAS TALKING TO KELLY AND RASHAD WAS

MR. BOWENS - DIRECT EXAMINATION BY MR. DEBUSK

81

1 TALKING TO KENA.

2 Q AND BY RASHAD ARE YOU REFERRING TO THE
3 DEFENDANT RASHAD BAKER?

4 A YES, YES, RASHAD BAKER.

5 Q OKAY, ON THAT MORNING WHAT DID YOU DO?

6 A I LEFT THERE GOING TO ROWLAND TO PICK UP
7 DORMAINE AND TELLY.

8 Q WHO IS DORMAINE AND TELLY?

9 A DORMAINE IS RASHAD BROTHER, IS MY COUSIN,
10 AND TELLY IS OUR COUSIN.

11 Q WHAT ARE LAST NAMES OF DORMAINE, WHAT IS
12 THE LAST NAME OF DORMAINE?

13 A BAKER.

14 Q AND TELLY?

15 A MANNING.

16 Q THAT'S THE DEFENDANT TELLY MANNING?

17 A YES, SIR.

18 Q NOW WHAT WERE, WHAT WERE YOUR PLANS TO DO?

19 A GO SHOPPING AT THE BEACH.

20 Q WHERE?

21 A MYRTLE BEACH.

22 Q MYRTLE BEACH?

23 A YES, SIR.

24 Q WHAT KIND OF PLACE WERE YOU GOING TO SHOP?

25 A OUTLETS.

MR. BOWENS - DIRECT EXAMINATION BY MR. DEBUSK

82

1 Q OKAY, WHAT WAS THE, I MEAN WHAT WERE YOU
2 PLANNING TO BUY?

3 A CLOTHES FOR BABIES, IT WAS NEAR CHRISTMAS,
4 WANTED TO CATCH THE SALES.

5 Q OKAY, NOW YOU REFERRED TO A COUPLE OF
6 PEOPLE THERE, RASHAD BAKER, WHAT DO YOU USUALLY CALL HIM?

7 A RASHAD.

8 Q HOW ABOUT TELLY MANNING?

9 A TELLY, KOJAK.

10 Q AND WHAT ABOUT DORMAINE BAKER?

11 A DORMAINE.

12 Q OKAY, SO HOW WERE YA'LL TRAVELING?

13 A IN KENA CAR, THE MAXIMA.

14 Q OKAY, HOW DID YOU HAVE THAT CAR, HAD YOU
15 BORROWED IT?

16 A YES, SIR.

17 Q YOU BORROWED IT FROM WHO?

18 A KENA, WE BORROWED IT FROM KENA.

19 Q OKAY, LET ME SHOW YOU WHAT HAS BEEN MARKED
20 AS STATE'S EXHIBIT 5 AND ASK IF YOU RECOGNIZE THIS PICTURE?

21 A YES, SIR.

22 Q WHAT IS THAT?

23 A A MAXIMA, THIS IS KENA CAR.

24 Q IS THAT THE MAXIMA YOU DRIVING IN THAT DAY?

25 A YES, SIR.

MR. BOWENS - DIRECT EXAMINATION BY MR. DEBUSK

83

1 Q OKAY, WHAT DOES THE LICENSE PLATE IN THE
2 FRONT SAY?

3 A .

4 Q OKAY, IS THAT A DISTINCTIVE LICENSE PLATE?

5 A YES, SIR.

6 MR. DEBUSK: YOUR HONOR, WE WOULD MOVE STATE'S
7 EXHIBIT 5 INTO EVIDENCE AT THIS TIME?

8 THE COURT: ANY OBJECTION?

9 MR. MULLINS: NO OBJECTION.

10 MR. GARDNER: NO OBJECTION, YOUR HONOR.

11 THE COURT: STATE'S 5 IS INTO EVIDENCE WITHOUT
12 OBJECTION.

13 MR. DEBUSK: THANK YOU, YOUR HONOR.

14 (WHEREUPON, STATE'S EXHIBIT NUMBER 5 ENTERED INTO
15 EVIDENCE.)

16 Q NOW WITH THE THREE OF YOU GOT IN THAT CAR,
17 I MEAN FOUR GOT IN THAT CAR, WHO WAS DRIVING?

18 A WELL RASHAD DROVE FROM PEMBROKE TO HIS
19 HOUSE AND DORMAINE DROVE FROM ROWLAND TO TABOR, TABOR CITY,
20 TABOR CITY?

21 Q TABOR CITY?

22 A TABOR CITY.

23 Q WHAT DID YOU DO IN TABOR CITY?

24 A WENT TO A STORE AND CALLED ERNEST.

25 Q WHO'S ERNEST?

MR. BOWENS - DIRECT EXAMINATION BY MR. DEBUSK

84

1 A ERNEST, THAT'S THAT'S OUR COUSIN, ERNEST
2 SMITH.

3 Q SO JUST MAKE THIS CLEAR TO THE JURY, ALL OF
4 YOU WERE COUSINS?

5 A YES, SIR.

6 Q DORMAINE AND RASHAD ARE BROTHERS?

7 A ARE BROTHERS, YES, SIR.

8 Q OKAY, WHAT DID YOU DO AT THAT STORE AFTER
9 YOU CALLED ERNEST?

10 A WE SAT THERE FOR A WHILE, THERE WAS LIKE A
11 LITTLE, A LITTLE BOOTH THAT WAS SELLING CLOTHES AND STUFF
12 THERE. WE LOOKED, BROWSED, LOOKED AT THAT. WE WAITED
13 UNTIL SOME LITTLE GIRL CAME TO TAKE US TO ERNEST.

14 Q OKAY, AND WHERE DID SHE TAKE YOU?

15 A TO ERNEST HOUSE.

16 Q OKAY, WHAT DID YOU DO THERE?

17 A WE GOT OUT, TALKED, AND WENT, WITH ME I MET
18 FAMILY I HAD NEVER MET BEFORE, THEN WE GOT BACK IN THE CAR.

19 Q SO WHERE DID YOU GO WHEN YOU GOT BACK IN
20 THE CAR?

21 A WE WENT TO SOME, I GUESS IT'S A POOL ROOM
22 OR SOMETHING LIKE THAT.

23 Q HOW FAR AWAY WAS IT FROM WHERE ERNEST
24 LIVES?

25 A I SAY ABOUT 20 25 MINUTES.

MR. BOWENS - DIRECT EXAMINATION BY MR. DEBUSK

85

1 Q OKAY, DID ANYBODY TELL YOU WHY YOU WERE
2 GOING THERE?

3 A NO.

4 Q DID YOU HAVE AN IDEA WHERE YOU GOING?

5 A NO.

6 Q OKAY, WHAT HAPPENED ONCE YOU GOT THERE?

7 A WHEN WE GOT THERE A YOUNG DUDE CAME UP ON A
8 BICYCLE TO TALK TO ERNEST, I DON'T KNOW WHAT THEY WAS
9 TALKING ABOUT, BUT HE LEFT AND WE SOT ABOUT THREE MINUTES
10 THEN WE LEFT.

11 Q AND WHAT HAPPENED NEXT?

12 A AS WE WAS RIDING DOWN THE ROAD THERE WAS A
13 GRAY, GRAY LINCOLN COMING TOWARDS US AND ERNEST FLAGGED IT
14 DOWN, EXCUSE ME.

15 Q LET ME SHOW YOU SOMETHING ELSE, STATE'S
16 EXHIBITS 3 AND 4 IN EVIDENCE, AND ASK IF YOU RECOGNIZE
17 THESE?

18 A YES, SIR.

19 Q WHAT IS THAT?

20 A THAT'S A LINCOLN, THE CAR THAT STOPPED.

21 Q WHAT HAPPENED AFTER, AFTER YOU STOPPED THE
22 CAR?

23 A WHEN WE STOPPED THE CAR RASHAD AND TELLY
24 GOT IN THE CAR WITH HIM.

25 Q OKAY, HOW MANY PEOPLE WERE IN THAT CAR?

MR. BOWENS - DIRECT EXAMINATION BY MR. DEBUSK

86

1 A I, I GUESS ONE. I MEAN, I COULDN'T REALLY
2 TELL BECAUSE THE WINDOWS ARE TINTED SO I COULDN'T TELL.

3 Q OKAY, NOW WHAT HAPPENED AFTER THAT?

4 A HE TURNED AROUND, THE LINCOLN TURNED AROUND
5 AND WE FOLLOWED THE LINCOLN.

6 Q NOW DO YOU REMEMBER WHO GOT IN WHERE IN THE
7 LINCOLN, FRONT SEAT, BACK SEAT, DO YOU REMEMBER THAT?

8 A NO, NO, SIR, I DON'T.

9 Q NOW WHERE DID THEY, WHERE DID YOU FOLLOW
10 THE LINCOLN TO, WELL LET ME ASK YOU THIS, AT THIS TIME WHEN
11 RASHAD AND TELLY GOT OUT OF THE CAR WHO WAS DRIVING THE
12 NISSAN?

13 A ERNEST.

14 Q WHERE WERE YOU SEATED?

15 A ON THE FRONT.

16 Q OKAY.

17 A PASSENGER SIDE.

18 Q THAT WOULD LEAVE DORMAINE IN THE BACK?

19 A IN THE BACK, YES, SIR.

20 Q NOW WHERE DID YOU FOLLOW THIS LINCOLN TO?

21 A TO ANOTHER LITTLE STORE.

22 Q LET ME SHOW YOU WHAT'S BEEN MARKED AND
23 ADMITTED AS STATE'S EXHIBIT 2 AND ASK IF YOU RECOGNIZE
24 THIS?

25 A YES, SIR.

MR. BOWENS - DIRECT EXAMINATION BY MR. DEBUSK

87

1 Q WHAT IS THAT?

2 A THAT'S THE STORE THAT THE LINCOLN HAD
3 PULLED INTO.

4 Q OKAY, WHERE DID THE LINCOLN PARK?

5 A BACK AT A ANGLE, LET ME SEE --

6 Q WAS IT NEAR THE STORE OR FARTHER FROM THE
7 STORE?

8 A IT WAS PRETTY CLOSE, RIGHT IN ABOUT
9 PROBABLY IN THE MIDDLE.

10 Q OKAY, WHAT HAPPENED, WHERE WERE YOU?

11 A IN THE, IN THE NISSAN. WE PULLED TO THE
12 SIDE OF THE ROAD.

13 Q OKAY, AND WHAT WERE YOU DOING?

14 A LISTENING TO THE RADIO, TALKING, LAUGHING
15 AND JOKING.

16 Q THERE WERE THREE OF YOU IN THAT NISSAN?

17 A YES, SIR.

18 Q DID ANY OF YOU GET OUT OF THAT NISSAN?

19 A NO, SIR.

20 Q OKAY, WHAT HAPPENED NEXT?

21 A AS WE WERE SITTING THERE TALKING AND
22 LAUGHING I HEARD A GUNSHOT GO OFF.

23 Q OKAY, LET ME ASK YOU THIS, WERE YOU LOOKING
24 OVER TO SEE WHAT WAS GOING ON IN THAT LINCOLN?

25 A NO, SIR.

MR. BOWENS - DIRECT EXAMINATION BY MR. DEBUSK

88

1 Q WERE YOU PAYING MUCH ATTENTION TO IT?

2 A NO, SIR.

3 Q DID YOU KNOW FOR A FACT WHAT WAS GOING ON
4 IN THAT CAR?

5 A NO, SIR.

6 Q DID YOU HAVE AN IDEA OF WHY TELLY AND
7 RASHAD WENT TO THAT CAR?

8 A YES, SIR.

9 Q WHAT WAS THAT?

10 A TO GET DRUGS.

11 Q NOW WHEN YOU HEARD THE SHOT WHAT DID YOU
12 THINK?

13 A WHEN I HEARD THE SHOT I TURNED TO DORMAINE,
14 ASKED HIM DID YOU HEAR THAT, HE WENT LIKE HEAR WHAT, SO I
15 JUST TURNED BACK AROUND.

16 Q WHAT HAPPENED NEXT?

17 A ABOUT I SAY 5 TO 10, 15 SECONDS LATER
18 DORMAINE, NOT DORMAINE, EXCUSE ME, RASHAD AND TELLY CAME
19 BACK TO THE CAR.

20 Q OKAY, HOW, TELL ME WHEN YOU WERE IN THE CAR
21 BEFORE YOU GOT TO THAT POOL ROOM ---

22 A YES, SIR.

23 Q --- WHAT WAS THE MOOD IN THE CAR?

24 A OH, WE WERE ALL LAUGHING AND JOKING.

25 Q NOW HOW WERE RASHAD AND TELLY ACTING THAT

MR. BOWENS - DIRECT EXAMINATION BY MR. DEBUSK

89

1 NIGHT?

2 A WELL RASHAD ACT A LITTLE TENSE BUT TELLY
3 ACTED A LITTLE NERVOUS, HIS EYES WAS STRETCHED A LITTLE
4 BIT.

5 Q WHAT WAS THE MOOD LIKE WHEN YOU LEFT THAT
6 STORE?

7 A VERY TENSE, IT WAS TENSE.

8 Q WHERE WERE YOU EXPECTING TO GO?

9 A TO THE OUTLETS.

10 Q DID YOU GO TO THE OUTLETS?

11 A NO.

12 Q WHY NOT?

13 A I DON'T KNOW, I DIDN'T ASK, I JUST --

14 Q WHY DIDN'T YOU ASK?

15 A I DON'T, WHEN THEY GOT BACK IN THE CAR THE
16 MOOD WAS SO TENSE I DIDN'T WORRY ABOUT IT NO MORE.

17 Q LET ME ASK YOU THIS, THAT DAY BEFORE THEY
18 GOT OUT OF THE CAR DID YOU SEE TELLY MANNING OR RASHAD
19 BAKER WITH ANY WEAPONS?

20 A NO, SIR.

21 Q ANY GUNS?

22 A NO, SIR.

23 Q NOW YOU DIDN'T GO BACK TO THE OUTLET LIKE
24 YOU SAID, BUT WHERE DID YOU GO?

25 A BACK TO ROWLAND.

MR. BOWENS - DIRECT EXAMINATION BY MR. DEBUSK

90

1 Q OKAY, WHEN DID YOU FIND OUT YOU WEREN'T
2 GOING TO THE OUTLET MALL YOU WERE GOING TO ROWLAND INSTEAD?

3 A WHEN WE HEADED BACK I THINK IT WAS 9, IT'S
4 UP 95, THERE WAS A SIGN SAYING NORTH AND SOUTH WE WENT
5 NORTH, THE BEACH IS SOUTH SO I TAKE IT THEN WE WEREN'T
6 GOING TO THE BEACH.

7 Q NOW WHEN AND WHERE DID YOU LEAVE THE
8 PRESENCE OF TELLY MANNING AND RASHAD BAKER THAT NIGHT?

9 A WHEN WE GOT BACK TO RASHAD HOUSE.

10 Q OKAY, WHAT DID YOU DO?

11 A WE WENT INTO THE HOUSE CALLED MY SISTER
12 BOYFRIEND HE WAS AT MY MOTHERS HOUSE.

13 Q WHAT HAPPENED AFTER THAT?

14 A THEY CAME AND PICKED ME UP.

15 Q DID YOU TALK TO ANYBODY, ANY OF THE OTHER
16 FOUR IN THAT CAR ABOUT WHAT HAPPENED?

17 A NO.

18 Q SINCE THEN HAVE YOU TALKED ABOUT WHAT
19 HAPPENED?

20 A NO, SIR.

21 Q DERRICK, BE HONEST WITH THE JURY, HAVE YOU
22 EVER BEEN ARRESTED OR CONVICTED OF ANY CRIMES?

23 A NO, SIR.

24 MR. DEBUSK: THE COURT'S INDULGENCE FOR ONE
25 MOMENT?

MR. BOWENS - CROSS EXAMINATION BY MR. MULLINS

91

1 THE COURT: YES, SIR.

2 MR. DEBUSK: YOUR HONOR, I BELIEVE THAT EXHIBITS
3 2, 3, AND 4 HAVE BEEN PUBLISHED TO THE JURY.

4 THE COURT: YES, SIR.

5 MR. DEBUSK: I WOULD LIKE TO PUBLISH EXHIBIT 5.

6 THE COURT: ANY OBJECTION TO THAT?

7 MR. MULLINS: NO OBJECTION.

8 MR. GARDNER: NO, YOUR HONOR.

9 THE COURT: YOU MAY DO SO.

10 MR. DEBUSK: THANK YOU, PLEASE ANSWER ANY
11 QUESTIONS THE DEFENSE MIGHT HAVE.

12 A YES, SIR.

13 THE COURT: ALL RIGHT, COUNSEL?

14 MR. MULLINS: MAY IT PLEASE THE COURT, YOUR
15 HONOR?

16 THE COURT: YES, SIR.

17 CROSS EXAMINATION

18 BY MR. MULLINS:

19 Q GOOD MORNING, MR. BOWENS, I'M RANDY
20 MULLINS.

21 A GOOD MORNING.

22 Q I'VE GOT SOME QUESTIONS I NEED TO ASK YOU,
23 SIR, TO CLARIFY YOUR TESTIMONY RIGHT OFF. FIRST OF ALL NO
24 QUESTION THAT RASHAD BAKER WAS THE ONE THAT ARRANGED FOR
25 THE AUTOMOBILE TO BE THERE THAT DAY, CORRECT?

MR. BOWENS - CROSS EXAMINATION BY MR. MULLINS

92

1 A YES, SIR.

2 Q NO QUESTION HE'S THE ONE THAT BORROWED IT,
3 TRUE?

4 A YES, SIR.

5 Q AND NO QUESTION THAT MY CLIENT WASN'T EVEN
6 IN THE CAR WHEN HE CAME TO PICK YOU UP, WAS HE?

7 A NO, SIR.

8 Q ALL RIGHT, SO MR. BAKER, MR. RASHAD BAKER
9 WAS THE ONE THAT GOT THE VEHICLE THAT DAY, CORRECT?

10 A YES, SIR.

11 Q ALL RIGHT, NOW NEXT FROM YOUR TESTIMONY YOU
12 SAID ERNEST WAS THE ONE THAT TALKED TO THE DUDE ON THE
13 BICYCLE, THAT WAS YOUR EXACT LANGUAGE, WASN'T IT?

14 A YES, SIR.

15 Q WHO'S ERNEST?

16 A MY COUSIN.

17 Q ALL RIGHT, WHAT'S HIS FULL NAME?

18 A ERNEST SMITH.

19 Q ERNEST SMITH?

20 A YES, SIR.

21 Q ALL RIGHT, SO WAS ERNEST IN THE CAR WHEN
22 RASHAD BAKER PICKED YOU UP?

23 A NO, SIR.

24 Q ALL RIGHT, WHAT WAS THE ORDER THAT WAS
25 PICKED UP THAT DAY, GIVE US THE ORDER THAT PEOPLE GOT INTO

MR. BOWENS - CROSS EXAMINATION BY MR. MULLINS

93

1 THAT VEHICLE THAT, THAT, THAT NISSAN MAXIMA.

2 Q FIRST THERE WAS ME AND RASHAD THEN THERE
3 WAS TELLY AND DORMAINE AND ERNEST WAS THE LAST PERSON TO
4 GET IN THE CAR.

5 Q ALL RIGHT, AND WHO'S SKITTER?

6 A ERNEST.

7 Q SKITTER, SKITTER IS ERNEST?

8 A ERNEST, YEAH.

9 Q ALL RIGHT, YOU DON'T HAVE A NICKNAME?

10 A DEE.

11 Q DEE?

12 A UH-HUH.

13 Q OKAY, ALL RIGHT, SO ALL OF YA'LL GO DOWN
14 HERE TO HORRY COUNTY TO THE OUTLETS, DID YOU ACTUALLY GO TO
15 THE OUTLETS?

16 A NO, SIR.

17 Q YOU DID NOT?

18 A NO, SIR.

19 Q ALL RIGHT, WHO WAS DRIVING WHEN YOU WERE
20 PICKED UP?

21 A RASHAD, WE LEFT TOGETHER.

22 Q ALL RIGHT, AND WHO WAS DRIVING WHEN YOU
23 WERE AT BRUCE'S COUNTRY KITCHEN?

24 A ERNEST.

25 Q ERNEST, SKITTER?

MR. BOWENS - CROSS EXAMINATION BY MR. MULLINS

94

1 A SKITTER.

2 Q OKAY, NO QUESTIONS THAT TELLY MANNING
3 WASN'T DRIVING?

4 A NO, NO QUESTION.

5 Q NOW THE PERSON RESPONSIBLE FOR BORROWING
6 THIS CAR WAS RASHAD, CORRECT?

7 A YES.

8 Q DID RASHAD DIRECT WHO WAS GOING TO DRIVE
9 AND WHEN?

10 A NO, SIR.

11 Q HE DIDN'T?

12 A NO.

13 Q WAS THERE ANY DISCUSSION ABOUT WHO THE
14 DRIVE WOULD BE?

15 A NO, SIR.

16 Q YOU DID NOT SEE ANY WEAPONS ON TELLY
17 MANNING WHEN HE EXITED THAT CAR TO GET INTO MR. RIGGINS
18 CAR, DID YOU?

19 A NO, SIR.

20 Q DID YOU KNOW TROY RIGGINS?

21 A NO, SIR.

22 Q NEVER MET HIM BEFORE?

23 A NO, SIR.

24 Q OKAY, NOW ARE YOU SAYING YOUR TESTIMONY YOU
25 ONLY HEARD ONE SHOT, IS THAT CORRECT?

MR. BOWENS - CROSS EXAMINATION BY MR. MULLINS

95

1 A YES, SIR.

2 Q ALL RIGHT, NOW IMMEDIATELY AFTER YOU HEARD
3 THAT SHOT DID YOU SEE TELLY MANNING GET OUT OF THE CAR?

4 A NO, SIR.

5 Q YOU DID NOT?

6 A NO, SIR.

7 Q DID YOU SEE HIM RUN BACK TO THE CAR?

8 A NO, SIR.

9 Q ALL RIGHT, WASN'T THAT YOUR TESTIMONY ON
10 DIRECT THAT YOU SAW HIM RUN BACK TO THE CAR?

11 A NO.

12 Q YOU DON'T RECALL THAT?

13 A NO, SIR.

14 Q ALL RIGHT, DO YOU RECALL GIVING A STATEMENT
15 IN THIS CASE?

16 A YES, SIR.

17 Q YOU DID GIVE A STATEMENT, DIDN'T YOU?

18 A YES, SIR.

19 Q WAS THAT ON NOVEMBER 8TH, 2001?

20 A I GUESS IT WAS.

21 Q WAS THAT TO A MEMBER OF THE HORRY COUNTY
22 POLICE DEPARTMENT?

23 A YES, SIR.

24 Q YOU DO RECALL DOING THAT?

25 A YES, SIR.

MR. BOWENS - CROSS EXAMINATION BY MR. MULLINS

96

1 Q OKAY, ALL RIGHT, YOU RECALL THE DETECTIVE
2 ASKING YOU, YOU HEARD HOW MANY GUNSHOTS?

3 A ONE.

4 Q ALL RIGHT, YOU SAY YOU KNOW THE REST OF
5 THAT STATEMENT?

6 A I HEARD ONE SHOT, YES.

7 Q DO YOU RECALL STATING I THINK THERE WAS ONE
8 GUNSHOT BECAUSE WHEN I HEARD THE GUNSHOT I JUST FREAKED AND
9 LOOKED, I LOOKED BACK AT MANNING, YOU KNOW, WHAT'S GOING ON
10 AND HE DIDN'T KNOW, THEN I LOOKED OUT THE WINDOW AND SEEN
11 RASHAD AND KOJAK RUNNING BACK TO THE CAR; DO YOU RECALL
12 MAKING THAT STATEMENT, SIR?

13 A NO, SIR, NO, SIR.

14 Q YOU DO NOT?

15 A NO, SIR.

16 Q OKAY, LET ME SHOW YOU, SIR, A CERTIFIED
17 TRANSCRIPT OF YOUR STATEMENT YOU MADE TO HORRY COUNTY
18 POLICE DEPARTMENT?

19 A YES, SIR.

20 Q DRAW YOUR ATTENTION TO PAGE 10 DOWN HERE
21 LINES 6 THROUGH 10, COULD YOU TAKE A MOMENT AND LOOK AT
22 THAT?

23 A YES, SIR.

24 Q MR. BOWENS, YOU'VE HAD A MOMENT TO LOOK
25 OVER THAT PART OF THE TRANSCRIPT OF THAT STATEMENT,

MR. BOWENS - CROSS EXAMINATION BY MR. MULLINS

97

1 CORRECT?

2 A YES, SIR.

3 Q AND HAVING LOOKED AT THAT ISN'T IT TRUE
4 THAT YOU SAID, THEN I LOOKED OUT THE WINDOW AND SEEN RASHAD
5 AND KOJAK RUNNING BACK TO THE CAR?

6 A YES, SIR.

7 Q SO YOU DID SEE BOTH OF THEM RUNNING BACK TO
8 THE CAR?

9 A NO, I DIDN'T, I DIDN'T SEE THEM RUNNING.

10 Q ALL RIGHT, ARE YOU SAYING THE STATEMENT YOU
11 GAVE THE DETECTIVE WAS INCORRECT?

12 A I CAN'T, MAYBE I DID SAY, I JUST, I DON'T
13 REMEMBER SEEING HIM.

14 Q WELL HAVING READ IT TODAY HAS YOUR
15 RECOLLECTION BEEN REFRESHED THAT YOU NOW REMEMBER TELLING
16 THAT TO THE DETECTIVE?

17 SORRY, SIR, DO YOU NEED MORE TIME?

18 A YES, I CAN'T REMEMBER.

19 Q YOU DON'T REMEMBER?

20 A NO, SIR, I DON'T REMEMBER THEM RUNNING BACK
21 TO THE CAR.

22 Q ALL RIGHT, NOW WOULD YOU AGREE THAT YOUR
23 MEMORY OF THIS EVENT WOULD PROBABLY BE BETTER ON NOVEMBER
24 8TH OF 2001 THAN TODAY WHICH IS NOVEMBER 14TH OF 2006?

25 A YES, SIR.

MR. BOWENS - CROSS EXAMINATION BY MR. MULLINS

98

1 Q SO WHAT YOU TOLD THE DETECTIVE THEN WAS
2 PROBABLY CLOSER TO THE TRUTH THAN TODAY, RIGHT?

3 A TRUTHER THAN TODAY?

4 Q YES?

5 A YES, SIR.

6 Q WELL CAN YOU TELL ME, SIR, WHICH ONE IS THE
7 TRUTH, WHAT YOU'RE TELLING THIS JURY TODAY OR WHAT YOU TOLD
8 THE DETECTIVES THEN?

9 A THAT'S WHAT I'M TRYING TO THINK ON. I
10 CAN'T REMEMBER TELLING THE DETECTIVE THAT THEY RAN TO THE
11 CAR, I CANNOT REMEMBER THAT.

12 Q SURELY YOU'RE NOT ACCUSING A MEMBER OF
13 HORRY COUNTY P.D. OF ALTERING A TRANSCRIPT, ARE YOU?

14 A OH, NO, SIR, NO, NO, SIR, NO, SIR.

15 Q SO YOU MUST HAVE TOLD THAT TO THE
16 DETECTIVE?

17 A I MUST, I MUST OF HAVE BECAUSE I DIDN'T
18 KNOW.

19 Q SO IF YOU SAW TELLY MANNING AND RASHAD
20 BAKER RUNNING BACK TO THE CAR WHERE WERE THEY, WHAT PART OF
21 THE CAR WERE THEY IN WITH MR. RIGGINS?

22 A I DON'T KNOW.

23 Q YOU DON'T KNOW?

24 A NO, SIR.

25 Q OKAY.

MR. BOWENS - CROSS EXAMINATION BY MR. GARDNER

99

1 MR. MULLINS: I'D LIKE TO HAVE JUST A MOMENT,
2 YOUR HONOR.

3 THE COURT: YES, SIR.

4 Q LASTLY, SIR, ISN'T IT TRUE THAT YOU WERE
5 CHARGED WITH MURDER IN THIS CASE?

6 A YES, SIR.

7 Q THOSE CHARGES AGAINST YOU BEEN DROPPED?

8 A NO, SIR.

9 Q THEY HAVE NOT?

10 A NO, SIR.

11 Q IS THERE AN ARRANGEMENT TO DROP THEM?

12 A NO, SIR.

13 Q SO YOU'RE JUST TESTIFYING OUT OF THE
14 GOODNESS OF YOUR HEART TODAY?

15 A YES, SIR.

16 MR. MULLINS: NO FURTHER QUESTIONS AT THIS TIME,
17 YOUR HONOR.

18 THE COURT: ALL RIGHT, MR. GARDNER?

19 MR. GARDNER: THANK YOU, YOUR HONOR. SORRY FOR
20 THE DELAY.

21 CROSS EXAMINATION

22 BY MR. GARDNER:

23 Q MR. BOWENS, I HAVE A FEW QUESTIONS TO
24 FOLLOW UP TO THAT, GOOD MORNING, SIR?

25 A GOOD MORNING.

MR. BOWENS - CROSS EXAMINATION BY MR. GARDNER

100

1 Q OKAY, I WANTED TO SEE IF I GOT THE STORY
2 STRAIGHT, NO MATTER WHAT THE ORDER PICKING UP THE PEOPLE,
3 THERE WERE FIVE?

4 A YES, SIR.

5 Q IN THE CAR; IS THAT RIGHT?

6 A YES, SIR.

7 Q FIVE PEOPLE THAT CAME FROM NORTH CAROLINA?

8 A YES, SIR.

9 Q TO SOUTH CAROLINA?

10 A YES, SIR.

11 Q OKAY, IS IT SAFE TO, FOR US TO FIGURE OUT
12 THAT SKITTER, IS THAT THE NAME?

13 A YES, SIR, SKITTER.

14 Q AND HIS REAL NAME IS ERNEST SMITH?

15 A ERNEST SMITH, YES, SIR.

16 Q WAS THE LAST ONE PICKED UP?

17 A YES, SIR.

18 Q OKAY, YOU TOLD THE SOLICITOR THAT AT SOME
19 POINT IN TIME THESE TWO DEFENDANT'S, TELLY MANNING AND
20 RASHAD BAKER, GOT OUT OF THE CAR THAT YA'LL WERE IN?

21 A YES, SIR.

22 Q AND THAT YOU HAD AN IDEA THAT THEY WERE
23 GOING TO BUY DRUGS?

24 A YES, SIR.

25 Q WHAT MADE YOU HAVE THAT IDEA?

MR. BOWENS - CROSS EXAMINATION BY MR. GARDNER

101

1 A BECAUSE THEY GOT IN THE CAR WITH, WELL THEY
2 PROBABLY KNEW HIM, I DIDN'T KNOW HIM, BUT THE AREA WE WAS
3 IN I COULD TELL IT WASN'T A SAFE AREA.

4 Q WELL, ISN'T IT TRUE THAT YOU HAD THAT IDEA
5 BEFORE YOU GOT DOWN TO THAT AREA?

6 A NO, SIR.

7 Q WHEN THE FIVE OF YA'LL DROVE DOWN TO SOUTH
8 CAROLINA IT NEVER OCCURRED TO YOU THAT THEY WERE GOING DOWN
9 THERE TO BUY DRUGS?

10 A NO, SIR.

11 Q WHAT DID YOU THINK THEY WERE GOING DOWN
12 THERE TO BUY?

13 A WE WERE GOING TO THE OUTLETS.

14 Q OKAY, WHEN YOU PICKED UP DEFENDANT'S
15 SKITTER, IS THAT, IS ERNEST SMITH?

16 A YES, SIR.

17 Q YOU STILL THOUGHT YOU WERE GOING TO THE
18 OUTLET?

19 A YES, SIR.

20 Q AND YOU TOLD THE SOLICITOR YOU NEVER ASKED
21 WHY WE DIDN'T GO TO THE OUTLET?

22 A NO, SIR.

23 Q OKAY, BUT AT SOME POINT IN TIME YOU
24 REALIZED THAT THEY WERE, THEIR TRUE PURPOSE WAS TO BUY THE
25 DRUGS?

MR. BOWENS - CROSS EXAMINATION BY MR. GARDNER

102

1 A YES, SIR.

2 Q ALL RIGHT, AND IN FACT AT THAT POINT IN
3 TIME THAT WAS WHEN ERNEST SMITH STARTED DRIVING THE
4 VEHICLE?

5 A ERNEST STARTED DRIVING, FROM HIS HOUSE,
6 YES, SIR.

7 Q FROM HIS HOUSE?

8 A YES, SIR.

9 Q OKAY, SO HE DROVE FROM HIS HOUSE DOWN TO
10 WHERE THEY WENT TO BUY THE DRUGS?

11 A YES, SIR.

12 Q OKAY, AND AT SOME POINT IN TIME RASHAD AND
13 TELLY GOT OUT OF THAT CAR?

14 A YES, SIR.

15 Q OKAY, IF I SAY SOMETHING WRONG YOU HAVE A
16 CHANCE TO STRAIGHTEN IT OUT, OKAY?

17 A OKAY.

18 Q AND THEN AT THAT TIME ERNEST DROVE THE CAR?

19 A YES, SIR.

20 Q OKAY, AND THEN IN FACT BOTH CARS WENT TO A
21 DIFFERENT LOCATION?

22 A YES, SIR.

23 Q ALL RIGHT, I'M WITH YOU NOW, OKAY, TO BUY
24 DRUGS?

25 A YES, SIR.

MR. BOWENS - CROSS EXAMINATION BY MR. GARDNER

103

1 Q ALL RIGHT, NOW BEFORE YA'LL WENT TO THIS
2 PLACE YA'LL WENT TO ANOTHER PLACE, RIGHT?

3 A YES, SIR.

4 Q OKAY, AND WHO IN THE CAR, WHEREVER YA'LL
5 WENT SOMEBODY IN THAT CAR TALKED TO SOMEONE THERE?

6 A YES, SIR.

7 Q WHO IN THE CAR TALKED?

8 A ERNEST TALKED.

9 Q ERNEST TALKED?

10 A YES, SIR.

11 Q HE TALKED TO BIG MARK?

12 A I DON'T KNOW HIS NAME.

13 Q OKAY, HE TALKED WITH SOMEBODY --

14 A YES, SIR.

15 Q ABOUT THE DRUGS?

16 A I GUESS SO, IT WAS, HE WAS ON A BICYCLE, A
17 DUDE ON A, A YOUNG BOY ON A BICYCLE.

18 Q OKAY, PRIOR TO THAT YA'LL WENT TO SOMEBODY
19 ELSE'S PLACE LOOKING FOR BIG MARK?

20 A NO, SIR.

21 Q OKAY, PRIOR TO MEETING UP WITH THE GUY ON
22 THE BICYCLE ---

23 A YES, SIR.

24 Q --- YOU DIDN'T STOP ANYWHERE ELSE?

25 A NO, SIR.

MR. BOWENS - CROSS EXAMINATION BY MR. GARDNER

104

1 Q OKAY, AFTER MEETING UP WITH THE GUY ON THE
2 BICYCLE DID YOU STOP ANYWHERE ELSE?

3 A NO, SIR.

4 Q PRIOR TO MEETING, MEETING THE FELLOW IN THE
5 OTHER CAR?

6 A NO, SIR.

7 Q THE GRAY LINCOLN?

8 A YES, SIR, WE DIDN'T GO NOWHERE ELSE.

9 Q NOWHERE ELSE?

10 A NOWHERE ELSE.

11 Q NO MENTION OF BIG MARK ANYWHERE?

12 A NO, SIR.

13 Q OKAY, THE GUY, WHO KNEW THE FELLOW ON THE
14 BICYCLE?

15 A I GUESS ERNEST KNEW HIM BECAUSE HE, HE
16 TALKED TO HIM.

17 Q BUT NO DOUBT ERNEST WAS THE ONE THAT TALKED
18 WITH HIM?

19 A YES, SIR.

20 Q BASED ON THAT CONVERSATION FOR WHATEVER
21 REASON THE FIVE OF YA'LL WENT TO THIS LOCATION WHERE YOU
22 ULTIMATELY MET UP WITH THE GRAY LINCOLN?

23 A THE LOCATION WHEN WE WAS LEAVING AND THE
24 LINCOLN WAS COMING TOWARDS US.

25 Q OKAY, YOU MET WITH THE GUY ON A BICYCLE?

MR. BOWENS - CROSS EXAMINATION BY MR. GARDNER

105

1 A YES, SIR.

2 Q CONVERSATION TOOK PLACE?

3 A YES, SIR.

4 Q THEN THE NEXT GUY YOU MET WITH WAS THE GUY
5 DRIVING THE LINCOLN?

6 A YES, SIR.

7 Q OKAY, AND ERNEST TALKED WITH HIM, RIGHT?

8 A YES, SIR.

9 Q OKAY, ALL RIGHT, AND YOU HAD A GOOD IDEA
10 THAT THAT WAS ABOUT DRUGS?

11 A YES, SIR.

12 Q OKAY, AND AT NO TIME DID YOU SEE ANY OF THE
13 GUYS IN THE CAR WITH YOU, THAT BEING YOU AND THE OTHER FOUR
14 PEOPLE ---

15 A YES, SIR.

16 Q --- NONE OF THOSE PEOPLE HAD GUNS?

17 A NO, SIR.

18 Q OKAY, AND THERE WAS NO DISCUSSION ABOUT ANY
19 MURDER, RIGHT?

20 A NO, SIR.

21 Q THERE WAS NO DISCUSSION ABOUT ANY ROBBERY?

22 A NO, SIR.

23 Q DO YOU HAVE ANY EVIDENCE THAT YOU WANT TO
24 TELL THE JUDGE OR THE JURY THAT WILL LEAD US TO BELIEVE
25 THAT THERE WAS ANY PLAN OR ANY CONCERT TO COMMIT A ARMED

MR. BOWENS - CROSS EXAMINATION BY MR. GARDNER

106

1 ROBBERY?

2 A NO, SIR.

3 Q DO YOU HAVE ANY EVIDENCE YOU'D LIKE TO TELL
4 THE JUDGE AND THE JURY THAT THERE WAS A PLAN OR SOMEBODY
5 ACTING IN CONCERT TO COMMIT A MURDER?

6 A NO, SIR.

7 Q IN FACT THAT WAS NOT THE CASE, RIGHT?

8 A NO, SIR.

9 Q ALL RIGHT, NOW I WANT YOU TO TALK ABOUT A
10 COUPLE OF THINGS, MR. MULLINS ASKED YOU ABOUT RASHAD BAKER
11 MAKING ARRANGEMENTS TO BORROW THE CAR?

12 A YES, SIR.

13 Q WAS THAT OUT OF THE ORDINARY?

14 A NO, BECAUSE ME AND RASHAD WE GET THAT CAR
15 ALL THE TIME.

16 Q BORROW THAT CAR ALL THE TIME?

17 A YES, SIR.

18 Q AND RIDE IN IT ALL THE TIME?

19 A YES, SIR.

20 Q AND IN FACT I BELIEVE THAT, WAS THAT HIS
21 GIRLFRIEND?

22 A YES, SIR.

23 Q OKAY, AND HIS GIRLFRIEND'S FRIEND WAS --

24 A MY GIRLFRIEND.

25 Q OKAY, SO THE FOUR OF YA'LL WERE PRETTY

MR. BOWENS - CROSS EXAMINATION BY MR. GARDNER

107

1 TIGHT?

2 A YES, SIR.

3 Q OKAY, ALL RIGHT, SO NOTHING OUT OF THE
4 ORDINARY THAT HE WOULD BORROW HER CAR?

5 A YES, SIR.

6 Q OKAY, ALL RIGHT, YOU ALSO TOLD MR. MULLINS
7 THAT AT THE TIME YOU DIDN'T KNOW ANY OF THE ARRANGEMENTS --

8

9 A NO, SIR.

10 Q --- ABOUT WHO WAS PICKING UP WHO OR --

11 A NO, SIR.

12 Q DID I SAY IT RIGHT?

13 A YES, SIR.

14 Q WHERE THEY WERE PLANNING TO GO?

15 A YES, SIR.

16 Q OKAY, SAID A DIFFERENT WAY THERE'S NOTHING
17 FOR US TO BELIEVE THAT TELLY MANNING HAD MADE THE
18 ARRANGEMENTS ABOUT WHO WOULD BE GETTING PICKED UP AND IN
19 WHAT ORDER?

20 A NO, SIR.

21 Q IN FACT HE COULD HAVE BEEN CALLING THE
22 SHOTS?

23 A HE COULD HAVE BEEN, YEAH.

24 Q ALL RIGHT, NOW YOU SAID THAT YOU DIDN'T
25 KNOW TROY RIGGINS?

MR. BOWENS - CROSS EXAMINATION BY MR. GARDNER

108

1 A NO, SIR.

2 Q NEVER SEEN HIM BEFORE TODAY?

3 A NO, SIR.

4 Q OKAY, DO YOU KNOW IF ANY OF THE OTHER FOUR
5 GUYS IN THE CAR KNEW HIM?

6 A NO, SIR.

7 Q OKAY, COULD HAVE, ERNEST COULD HAVE KNOWN
8 HIM?

9 A YEAH, HE COULD HAVE.

10 Q ALL RIGHT, NOW THIS BUSINESS ABOUT THE
11 TRANSCRIPT AND THE RUNNING AND ALL THAT, DID YOU SEE TELLY
12 MANNING AND RASHAD BAKER COMING FROM THAT GRAY LINCOLN AND
13 GET BACK IN THE CAR WITH YOU?

14 A I DIDN'T, I DIDN'T SEE THEM. I CAN'T
15 RECALL SEEING THEM RUNNING BACK TO THE VEHICLE.

16 Q OKAY, WELL WE KNOW THAT THEY GOT BACK IN
17 THE CAR?

18 A YES, YES, SIR.

19 Q BECAUSE ULTIMATELY THE FIVE OF YA'LL WENT
20 BACK TO NORTH CAROLINA?

21 A YES, SIR.

22 Q OKAY, WHEN THEY GOT IN THE CAR WAS THERE
23 ANY DISCUSSION AT ALL ABOUT ANYTHING THAT HAD JUST TAKEN
24 PLACE?

25 A NO, SIR.

MR. BOWENS - CROSS EXAMINATION BY MR. GARDNER

109

1 Q ANYBODY SAY, SO AND SO JUST GOT SHOT?

2 A NO, SIR.

3 Q DID ANYBODY SAY, I WAS WITH THIS GUY AND
4 THAT GUY SHOT HIM?

5 A NO, SIR.

6 Q DID ANYBODY SAY, OH, I JUST SHOT A GUY?

7 A NO, SIR.

8 Q OKAY, WHEN THE FIVE OF ALL TOOK OFF IN THAT
9 CAR HEADED BACK TO NORTH CAROLINA ANY OF THE FIVE OF YA'LL
10 SAY, I'D LIKE TO GET OUT OF THE CAR NOW?

11 A NO, SIR.

12 Q DID ANYBODY SAY ANYTHING LIKE THAT OR
13 ANYBODY TRY TO GET OUT OF THE CAR OR WANT TO GET OUT OF THE
14 CAR?

15 A NO, SIR.

16 Q DID ANYBODY ASK TO GO TO A DIFFERENT
17 LOCATION THAT THEY WERE NOT ALLOWED TO GO TO?

18 A NO, SIR.

19 Q FOR EXAMPLE, I'VE HEARD GUNSHOTS, I DON'T
20 KNOW WHAT HAPPENED, I WANT TO GO TO MY HOUSE NOT TO THAT
21 HOUSE?

22 A NO, SIR.

23 Q NEVER TOOK PLACE?

24 A NO, SIR.

25 Q EVERYBODY WENT TO THE PLACE THEY WENT AND

MR. BOWENS - CROSS EXAMINATION BY MR. GARDNER

110

1 THEY WERE ALL IN AGREEMENT WITH IT?

2 A YES, SIR.

3 Q AND THAT WAS TO, WHERE WAS THAT?

4 A RASHAD HOUSE.

5 Q ALL RIGHT, WHERE YOU, HE STARTED OUT AT?

6 A YES, SIR.

7 Q OKAY, ALL RIGHT, NOW I WANT TO GO BACK TO
8 THE LAST THING, THE VERY LAST THING, IF I'VE GOT IT RIGHT,
9 THAT THE SOLICITOR ASKED YOU ABOUT WAS, HAVE YOU TALKED TO
10 ANYBODY ABOUT WHAT HAPPENED, AND THESE ARE MY WORDS, SINCE
11 IT HAPPENED?

12 A NO, SIR.

13 Q OKAY, WELL NOW WE DO KNOW THAT YOU TALKED
14 TO THE POLICE ABOUT IT?

15 A WELL, YEAH.

16 Q YEA, OKAY, ALL RIGHT, AND YOU GAVE THAT
17 STATEMENT THAT MR. MULLINS WAS TALKING TO YOU ABOUT?

18 A YES, SIR.

19 Q THEY WROTE ALL THAT DOWN, OKAY, ALL RIGHT,
20 NOW AT THAT TIME YOU WERE CHARGED THE SAME AS THESE TWO
21 FELLOWS?

22 A YES, SIR.

23 Q OKAY, IN FACT ALL FIVE OF YA'LL?

24 A YES, SIR.

25 Q WERE CHARGED THE SAME?

MR. BOWENS - CROSS EXAMINATION BY MR. GARDNER

111

1 A YES, SIR.

2 Q ALL FIVE CHARGED WITH MURDER, OKAY?

3 A YES, SIR.

4 Q ALL RIGHT, NOW YOU ARE NOT HERE TESTIFYING
5 OUT OF THE GOODNESS OF YOUR HEART?

6 A YES.

7 Q YOU ARE HERE TO TESTIFY AS PART OF AN
8 AGREEMENT WITH THE SOLICITOR'S OFFICE?

9 A NO, I DON'T HAVE NO AGREEMENT.

10 Q WELL, LET ME ASK YOU A DIFFERENT WAY?

11 A OKAY.

12 Q DID YOU GO UP TO THE SOLICITOR AND SAY,
13 HEY, I'D LIKE TO TESTIFY AND TELL YOU WHAT I KNOW ABOUT
14 THIS?

15 A NO.

16 Q DID THE SOLICITOR SAY, HEY, WOULD YOU LIKE
17 TO TESTIFY AND TELL US WHAT YOU KNOW ABOUT THIS?

18 A YES, SIR.

19 Q OKAY, AND IN EXCHANGE FOR YOUR TESTIMONY WE
20 WILL WORK WITH YOU?

21 A NO, HE, THE SOLICITOR DIDN'T TELL ME THAT.

22 Q OKAY, HE MAY NOT HAVE USED THOSE WORDS, BUT
23 DID HE USE ANY WORD AT ALL ABOUT WHAT YOUR CHARGE WOULD BE
24 IN EXCHANGE FOR YOUR TESTIMONY?

25 A NO, SIR.

MR. BOWENS - CROSS EXAMINATION BY MR. GARDNER

112

1 Q NOBODY HAS EVER SAID THAT TO YOU?

2 A NO, SIR.

3 Q HOW ABOUT YOUR LAWYER?

4 A NO, SIR.

5 Q SO YOU'VE GOT A LAWYER?

6 A YES, SIR.

7 Q ALL RIGHT, AND YOU HAVE MET WITH YOUR
8 LAWYER?

9 A YES, SIR.

10 Q HAVE YOU MET WITH THE SOLICITOR?

11 A YES, SIR.

12 Q THIS ONE HERE?

13 A YES, SIR.

14 Q OKAY, AND YA'LL HAVE NEVER TALKED ABOUT
15 WHAT KIND OF DEAL YOU WERE GOING TO GET?

16 A NO, SIR.

17 Q AND YOU'RE STILL CHARGED WITH MURDER?

18 A YES, SIR.

19 Q SAME AS THE OTHER FOUR?

20 A YES, SIR.

21 Q FACING THE SAME PENALTY?

22 A YES, SIR.

23 Q AND THEY HAVEN'T TALKED TO YOU ABOUT
24 CHANGING THE CHARGE?

25 A NO, SIR.

MR. BOWEN - REDIRECT EXAMINATION BY MR. DEBUSK

113

1 Q AT ALL OR THE PENALTY YOU'RE FACING?

2 A NO, SIR.

3 Q YOUR LAWYER HASN'T TOLD YOU THAT YOUR DEAL
4 IS GOING TO BE DONE AT THE CONCLUSION OF THIS CASE AND YOU
5 WILL BE REWARDED ON HOW WELL YOU TESTIFY FOR THE STATE?

6 A NO, SIR.

7 Q NOTHING LIKE THAT?

8 A NO, SIR.

9 MR. GARDNER: YOUR HONOR, MAY I HAVE A MOMENT,
10 PLEASE?

11 THE COURT: YES, SIR.

12 MR. GARDNER: THAT WILL BE ALL, YOUR HONOR.

13 THE COURT: REDIRECT?

14 MR. DEBUSK: THANK YOU, YOUR HONOR.

15 REDIRECT EXAMINATION

16 BY MR. DEBUSK:

17 Q JUST A COUPLE OF BRIEF THINGS, DERRICK,
18 WHEN TELLY AND RASHAD GOT BACK INTO THE NISSAN ---

19 A YES, SIR.

20 Q --- WHEN THEY GOT OUT OF THE LINCOLN DO YOU
21 REMEMBER WHERE THEY SAT?

22 A IN THE BACK, IN THE BACK SEAT, YES, SIR.

23 Q NOW YOU GAVE THAT STATEMENT BACK IN 2001;
24 IS THAT CORRECT, TO THE POLICE?

25 A YES, SIR.

MR. BOWEN - REDIRECT EXAMINATION BY MR. DEBUSK

114

1 Q ALL RIGHT, DO YOU HAVE ANY DOUBT IN YOUR
2 THAT YOU SAID RUNNING WHEN YOU TOLD THEM ABOUT HOW THEY
3 CAME BACK TO THE CAR?

4 A I CAN'T RECALL SAYING THEY RAN BACK TO THE
5 CAR, SIR, I REALLY CAN'T.

6 Q ARE YOU SAYING YOU DID NOT SAY THAT OR YOU
7 CAN'T REMEMBER?

8 A I CAN'T REMEMBER, I CAN'T REMEMBER SAYING
9 IT.

10 Q OKAY, LET ME ASK YOU THIS, TODAY ABOUT 38
11 DAYS SHORT OF SIX YEARS AFTER THE FACT, CAN YOU TELL US FOR
12 SURE WHETHER THEY WERE WALKING OR RUNNING WHEN THEY CAME
13 BACK TO THAT CAR?

14 A NO, SIR, I CAN'T, I CAN'T TELL YOU.

15 Q AND AS MR. MULLINS ASKED YOU EARLIER WAS
16 YOUR MEMORY FRESHER IN 2001 OR TODAY?

17 A I WOULD PROBABLY SAY BACK THEN.

18 Q NOW WHEN YOU GOT BACK IN THE CAR AND YOU
19 DROVE BACK TOWARDS ROWLAND MR. GARDNER ASKED YOU IF YOU
20 DROPPED OFF OR LET OFF ANYWHERE?

21 A YES, SIR.

22 Q DID YOU THINK SOMETHING BAD HAD HAPPENED?

23 A YES, SIR, I HEARD, WHEN I HEARD THE GUNSHOT
24 I THOUGHT SOMETHING BAD HAPPENED.

25 Q WELL YOU THOUGHT SOMETHING BAD HAD HAPPENED

MR. BOWEN - REDIRECT EXAMINATION BY MR. DEBUSK

115

1 WHY DIDN'T YOU ASK, LET ME OUT HERE AND I'LL JUST WALK?

2 A WELL I DON'T KNOW THE AREA, I DIDN'T KNOW
3 WHERE I WAS AT SO, BECAUSE I NEVER BEEN DOWN HERE BEFORE.

4 Q NOW WHEN YOU GOT, WERE WAS IT THAT YOU SAID
5 YOU WENT WITH AFTER THE, THE, YOU LEFT THE LINCOLN, YOU
6 WENT BACK TO ROWLAND?

7 A ROWLAND.

8 Q AND WHEN YOU GOT THERE WHAT DID YOU DO?

9 A CALLED MY, I WENT IN THE HOUSE TO CALL MY
10 SISTER BOYFRIEND WHICH HE WAS AT MY MOTHER HOUSE.

11 Q SO YOU, YOU LEFT?

12 A YES, SIR.

13 Q NOW BEFORE YOU CAME HERE AND TESTIFIED
14 TODAY DID YOU CONSULT WITH AND GET ADVICE FROM YOUR
15 ATTORNEY?

16 A NO, SIR.

17 Q YOU DIDN'T CONSULT WITH YOUR ATTORNEY I'M
18 TALKING NOT JUST TODAY BUT ANY TIME?

19 A OH, YES, SIR, YES, SIR.

20 Q DID SIT DOWN AND TALK WITH YOUR ATTORNEY
21 ABOUT THIS?

22 A YES, SIR.

23 Q AND ABOUT WHETHER YOUR WOULD TESTIFY OR
24 NOT?

25 A YES, SIR.

MR. BOWEN - RECROSS EXAMINATION BY MR. MULLINS

116

1 Q SO YOU HAVE THE ADVICE OF YOUR ATTORNEY?

2 A YES, SIR.

3 MR. DEBUSK: I HAVE NO FURTHER QUESTIONS, YOUR
4 HONOR.

5 THE COURT: ALL RIGHT, MR. MULLINS, ANYTHING ON
6 THOSE QUESTIONS ASKED BY THE SOLICITOR?

7 MR. MULLINS: YES, SIR, BRIEFLY, YOUR HONOR.

8 THE COURT: YES, SIR.

9 RECROSS EXAMINATION

10 BY MR. MULLINS:

11 Q MR. BOWENS, YOU KEEP REFERRING TO MY CLIENT
12 AS TELLY DURING YOUR TESTIMONY ON REDIRECT, DIDN'T YOU?

13 A YES, SIR.

14 Q ALL RIGHT, ISN'T IT TRUE, SIR, WHEN YOU
15 WERE FIRST INTERVIEWED BY HORRY COUNTY ---

16 A TELLY IS KOJAK.

17 Q --- P.D. THAT YOU DIDN'T EVEN KNOW WHAT HIS
18 NAME WAS, YOU JUST KNEW HIM AS KOJAK, DIDN'T YOU?

19 A NO, SIR, NO, SIR.

20 Q OKAY, YOU DON'T RECALL GIVING YOUR
21 STATEMENT ONCE AGAIN TO THE DETECTIVE ON NOVEMBER 8TH,
22 2001?

23 A AS KOJAK?

24 Q YEAH, DID THE DETECTIVE ASK YOU, SIR, DO
25 YOU KNOW KOJAK'S REAL NAME, DID HE ASK YOU THAT?

MR. BOWEN - RECROSS EXAMINATION BY MR. MULLINS

117

1 A I CAN'T RECALL.

2 Q ALL RIGHT, AND DO YOU RECALL SAYING, NO, I
3 DON'T KNOW HIS REAL NAME?

4 A NO, I DON'T RECALL SAYING THAT.

5 Q LET ME SHOW YOU A COPY THAT'S BEEN
6 TRANSCRIBED BY A COURT REPORTER OF YOUR STATEMENT THAT YOU
7 GAVE ON THAT OCCASION, LET ME DRAW YOUR ATTENTION TO PAGE
8 5, LINE 20, WHAT DID THE DETECTIVE ASK YOU? COULD YOU
9 SPEAK IT INTO THE MICROPHONE FOR ME?

10 A DO YOU KNOW KOJAK REAL NAME?

11 A AND WHAT DID YOU RESPOND?

12 A NO, I DO NOT KNOW HIS REAL NAME.

13 Q ALL RIGHT, COULD YOU TELL IT LOUD ENOUGH
14 FOR ALL?

15 A NO, I DO NOT KNOW HIS REAL NAME.

16 Q ALL RIGHT, BUT SINCE THEN YOU'VE TALKED TO
17 ENOUGH PEOPLE, HAVEN'T YOU, THAT YOU DO KNOW TELLY
18 MANNING'S REAL NAME?

19 A YES, I KNOW HIS NAME.

20 Q ALL RIGHT, SO YOU OBVIOUSLY HAVE DISCUSSED
21 THIS CASE PRIOR TO TESTIFYING ON THE STAND, HAVEN'T YOU?

22 A NO, SIR. WITH MY LAWYER, YES.

23 MR. MULLINS: I HAVE NO FURTHER QUESTIONS OF
24 THIS WITNESS, YOUR HONOR.

25 THE COURT: MR. GARDNER?

MR. BOWEN - RECROSS EXAMINATION BY MR. MULLINS

118

1 MR. GARDNER: NO, YOUR HONOR.

2 THE COURT: ALL RIGHT, SIR, YOU MAY STEP DOWN.

3 MR. DEBUSK: YOUR HONOR, AT THIS TIME WE WOULD
4 ASK THE WITNESS BE RELEASED FROM HIS SUBPOENA IF IT'S ALL
5 RIGHT WITH DEFENSE?

6 THE COURT: ANY OBJECTION TO THAT, GENTLEMEN?

7 MR. MULLINS: YOUR HONOR, OUT OF AN ABUNDANCE OF
8 CAUTION WE'D ASK THIS WITNESS BE SUBJECT TO RECALL DURING
9 DEFENDANT'S CASE.

10 THE COURT: ALL RIGHT, SIR, HAVE YA'LL SERVED
11 HIM WITH A SUBPOENA?

12 MR. MULLINS: NO, SIR, WE HAVE NOT.

13 THE COURT: ALL RIGHT, ALL RIGHT, I WOULD ASK
14 THAT YOU PREPARE ONE AND IF YOU WOULD THEN I'LL HAVE YOU,
15 MR. BOWENS, TO SAY IN THE COURTROOM AT THIS TIME, YOUR
16 HONOR.

17 MR. MULLINS: THANK YOU, YOUR HONOR.

18 MR. DEBUSK: YOUR HONOR, WITH SEQUESTRATION
19 AGREEMENT

20 THE COURT: HE HAS TESTIFIED ALREADY.

21 MR. DEBUSK: HE MAY STAY IN THE COURTROOM?

22 THE COURT: YES, SIR.

23 MR. DEBUSK: THANK YOU, THE STATE CALLS ERNEST
24 SMITH.

25

MR. SMITH - DIRECT EXAMINATION BY MR. DEBUSK

119

1 THE COURT: COME AROUND AND BE SWORN, SIR.

2 ERNEST Q. SMITH

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 MADAM CLERK: PLEASE STATE YOUR NAME FOR THE
5 COURT.

6 THE WITNESS: ERNEST SMITH.

7 DIRECT EXAMINATION

8 BY MR. DEBUSK:

9 Q MR. SMITH, WHERE DO YOU LIVE?

10 A I LIVE IN FAIR BLUFF.

11 Q FAIR BLUFF, AND WHAT DO YOU DO, WHAT'S YOUR
12 OCCUPATION? WHAT'S YOUR OCCUPATION, WHAT DO YOU DO?

13 A NOTHING.

14 Q OKAY, THAT WILL HAVE TO MEAN YOU'RE
15 UNEMPLOYED?

16 A YES, SIR.

17 Q OKAY, NOW ON DECEMBER 2000 WHERE DID YOU
18 LIVE?

19 A TABOR CITY.

20 Q TABOR CITY, NORTH CAROLINA?

21 A UH-HUH.

22 Q OKAY, DO YOU RECALL DECEMBER 21ST, 2000?

23 A SIR?

24 Q DO YOU RECALL THE DATE OF DECEMBER 21ST,
25 2000?

MR. SMITH - DIRECT EXAMINATION BY MR. DEBUSK

120

1 A YES, SIR.

2 Q DID YOU SEE EITHER OF THE DEFENDANT'S
3 RASHAD BAKER OR TELLY MANNING THAT DAY?

4 A YES, SIR.

5 Q WHEN?

6 A IT WAS PROBABLY IN THE AFTERNOON, SOMETIME
7 IN THE AFTERNOON.

8 Q HOW DID THEY GET TO FIND YOU, HOW DID THEY
9 GET TO YOU?

10 A THEY WERE DRIVING THE BLACK MAXIMA.

11 Q LET ME SHOW YOU STATE'S EXHIBIT 5 AND ASK
12 IF YOU RECOGNIZE THIS?

13 A YES, SIR.

14 Q WHAT IS THAT?

15 A THAT'S THE BLACK MAXIMA.

16 Q IS THAT THE VEHICLE THEY CAME TO SEE YOU
17 IN?

18 A YES, SIR.

19 Q OKAY, WHO ALL WAS IN THAT VEHICLE WHEN THEY
20 CAME TO YOUR HOUSE?

21 A IT WAS, IT WAS, THERE WAS RASHAD, KOJAK
22 MANNING AND DERRICK.

23 Q ALL RIGHT, AND WHAT IS RASHAD'S NAME, FULL
24 NAME?

25 A RASHAD BAKER.

MR. SMITH - DIRECT EXAMINATION BY MR. DEBUSK

121

1 Q HOW ABOUT KOJAK?

2 A I DON'T, I DON'T KNOW HIS REAL NAME, I
3 DON'T KNOW KOJAK VERY WELL.

4 Q IS KOJAK PRESENT IN THE COURTROOM TODAY?

5 A YES, SIR.

6 Q WHERE IS HE?

7 A OVER THERE, OVER THERE IN THAT, IN THAT
8 STRIPED SHIRT.

9 Q OKAY, AND WHO WERE THE OTHER TWO?

10 A THERE WAS DERRICK.

11 Q WHO IS DERRICK, DO YOU KNOW HIS FULL NAME?

12 A YEAH, DERRICK BOWENS.

13 Q AND WHO WAS, WHO WAS THE OTHER GUY?

14 A IT WAS MY COUSIN.

15 Q AND WHO, WHO ELSE WAS IN THE CAR?

16 A THERE WAS DORMAINE BAKER.

17 Q OKAY, DORMAINE BAKER AND RASHAD BAKER WHAT
18 IS THEIR RELATIONSHIP?

19 A BROTHERS.

20 Q WHAT ABOUT THE OTHERS WHAT IS THEIR
21 RELATIONSHIP TO YOU?

22 A COUSINS.

23 Q SO EVERYBODY IS COUSINS THEN?

24 A UH-HUH.

25 Q NOW WHAT, WHAT HAPPENED WHEN THOSE FOUR

MR. SMITH - DIRECT EXAMINATION BY MR. DEBUSK

122

1 PEOPLE CAME TO YOUR HOUSE?

2 A THEY CAME IN THE HOUSE AND THEY SAID, CUZ,
3 LET'S GO TO THE OUTLET SO I GOT IN THE CAR, I MEAN WE ALL
4 GOT IN THE CAR AND LEFT AND, AND I WENT DOWN THERE TO LONGS
5 AREA.

6 Q WHY DID YOU GO TO LONGS, THE OUTLETS AREN'T
7 AT LONGS, ARE THEY?

8 A NO, SIR.

9 Q WHAT DID YOU GO TO LONGS FOR?

10 A I HAD WENT DOWN THERE TO LONGS TO, I HAD
11 WENT DOWN THERE TO LONGS TO SEE A GUY NAMED BIG MARK BUT I
12 DIDN'T NEVER FIND HIM THAT NIGHT.

13 Q WHY WERE YOU LOOKING FOR BIG MARK?

14 A I WENT TO GO, TO GET SOMETHING FROM HIM.

15 Q GET SOME WHAT?

16 A I SAID, I HAD WENT TO LONGS TO GO GET
17 SOMETHING FROM BIG, BIG MARK.

18 Q WHAT WERE YOU GOING TO GET FROM BIG MARK?

19 A I, I WAS GOING TO BUY LIKE A, GOING TO BUY
20 LIKE A BIG EIGHT FROM HIM.

21 Q WHAT'S A BIG EIGHT?

22 A IT'S, IT'S LIKE FOUR OUNCES.

23 Q WHY WERE YOU BUYING A BIG EIGHT?

24 A I WAS, I WAS, I WAS, I WAS JUST GOING TO
25 GET IT FROM HIM.

MR. SMITH - DIRECT EXAMINATION BY MR. DEBUSK

123

1 Q OKAY, DID YOU KNOW BIG MARK?

2 A YEAH, I KNOW BIG MARK.

3 Q WHERE, WHERE DID YOU GOT TO GET, TO FIND
4 BIG MARK?

5 A I DON'T KNOW THE ROAD, I MEAN HE WAS
6 LIVING, LIVING IN A TRAILER AT THE TIME DOWN THIS DIRT
7 ROAD.

8 Q DID YOU FIND BIG MARK?

9 A NO, I AIN'T NEVER FIND HIM.

10 Q AND WHAT DID YOU DO AFTER THAT?

11 A I, I, AFTER I CUT A COUPLE OF BLOCKS I, I
12 WENT TO THE ARCADE AND JUST PARKED AND THEM GUYS JUST
13 INTRODUCED THEIRSELVES TO, TO, TO SOMEBODY AND, AND WE JUST
14 LIKE, YOU KNOW, WE HAD JUST FOLLOW A CAR TO ANOTHER AREA.

15 Q LET ME ASK YOU THIS, WHEN YOU WERE AT THE
16 ARCADE DID YOU TALK TO ANYBODY?

17 A NO, I AIN'T TALK TO NOBODY.

18 Q DID ANYBODY TALK TO SOMEBODY?

19 A SHAD WAS TALKING TO SOMEBODY.

20 Q WHO, DO YOU KNOW WHO HE WAS TALKING TO?

21 A NO, I DON'T KNOW WHO HE WAS TALKING TO.

22 Q DID YOU KNOW ANYBODY THERE AT THE ARCADE?

23 A NO, SIR.

24 Q WHAT WERE THEY TALKING ABOUT?

25 A SIR?

MR. SMITH - DIRECT EXAMINATION BY MR. DEBUSK

124

1 Q WHAT WERE THEY TALKING ABOUT AT THE ARCADE?

2 A THEY WERE STILL TRYING TO GET, THEY WERE
3 STILL, THEY WERE STILL LOOKING FOR BIG EIGHT.

4 Q OKAY, WHAT HAPPENED AFTER THAT?

5 A WE HAD, I HAD, I, I, I LIKE WENT, THEY GOT
6 BACK IN THE CAR AND THEN I FOLLOWED THIS LINCOLN.

7 Q OKAY, WHO WAS DRIVING?

8 A ME, I WAS DRIVING THE CAR.

9 Q WHO WAS IN THE CAR WITH YOU OR WHO WAS
10 BESIDE YOU IN THE FRONT SEAT?

11 A I DON'T REMEMBER IF IT WAS MY COUSIN
12 DERRICK OR IF IT WAS MANNING.

13 THE COURT: YOU NEED TO SPEAK UP, SIR.

14 A I'M TRYING TO THINK, I BELIEVE IT WAS MY
15 COUSIN, I THINK IT WAS DERRICK BESIDE ME ON THE DRIVERS
16 SIDE.

17 Q AND THE OTHER THREE WERE IN THE BACKSEAT?

18 A YES, SIR.

19 Q OKAY, AND WHY DID YOU FOLLOW THIS LINCOLN?

20 A HUH?

21 A WHY DID YOU FOLLOW THIS LINCOLN?

22 A WHY DID I FOLLOW THE LINCOLN?

23 Q YES?

24 A IT WAS, IT WAS SOME GUY THAT CUZ WAS
25 TALKING TO AND HE SAID, JUST LIKE, YOU KNOW, FOLLOW ME.

MR. SMITH - DIRECT EXAMINATION BY MR. DEBUSK

125

1 Q WHO, WHEN YOU SAY THE COUSINS, BUT WHICH
2 COUSIN?

3 A RASHAD.

4 Q RASHAD BAKER?

5 A UH-HUH.

6 Q RASHAD BAKER IS THAT WHO'S TALKING TO YOU?

7 A UH-HUH.

8 Q OKAY, WHERE DID YOU GO?

9 A I WENT TO THIS, I WENT DOWN, I WENT DOWN
10 INTO THIS PARKING LOT.

11 Q UH-HUH?

12 A AND, AND I PARKED LIKE, I, I PARKED LIKE
13 THIS WAY AND THEN THE LINCOLN HAD PARKED LIKE THAT AWAY.

14 Q LET ME SHOW YOU A COUPLE OF PICTURES AGAIN
15 AND ASK IF YOU RECOGNIZE THESE? THIS ONE IS STATE'S
16 EXHIBIT 2 IN EVIDENCE, I ASK IF YOU RECOGNIZE THAT?

17 A I REMEMBER THAT.

18 Q WHAT IS THAT?

19 A THAT'S THE PLACE, THIS HERE IS THE PLACE
20 WHERE ---

21 THE COURT: SPEAK INTO THE MICROPHONE, PLEASE?

22 A THIS HERE THE PLACE WHERE, LIKE, LET ME
23 SEE, I WAS TURNED LIKE TOWARDS THIS WAY AND THE LINCOLN WAS
24 TURNED TOWARD THAT AWAY.

25 Q SO THAT'S THE PLACE WHERE THE LINCOLN AND

MR. SMITH - DIRECT EXAMINATION BY MR. DEBUSK

126

1 YOU WERE PARKED?

2 A YES, SIR.

3 Q LET ME SHOW YOU STATE'S EXHIBITS 3 AND 4
4 AND ASK IF YOU RECOGNIZE THESE?

5 A I REMEMBER THEM CARS.

6 Q AND WHAT IS, WHAT'S THAT CAR?

7 A LINCOLN.

8 Q IS THAT THE LINCOLN THAT YOU SAW AT --

9 A YES, SIR.

10 Q NOW WHERE, WHERE DID YOU PARK RELATIVE TO
11 THAT BUILDING?

12 A I PARKED LIKE TOWARDS, I PARKED LIKE
13 TOWARDS, TOWARDS THE ROAD LIKE.

14 Q WERE YOU CLOSER TO THE ROAD OR CLOSER TO
15 THE BUILDING?

16 A I, I WAS LIKE, I WAS LIKE CLOSER TO THE
17 ROAD TO GO OUT.

18 Q WHAT HAPPENED THEN?

19 A NOTHING BUT SHAD AND KOJAK GOT INTO THE
20 LINCOLN.

21 Q OKAY, WHAT ABOUT THE OTHER THREE OF YOU,
22 DID ANY OF THE OTHER THREE OF YOU GET OUT OF THE CAR?

23 A I DIDN'T HEAR YOU?

24 Q DID ANY OF THE OTHER THREE, YOU ---

25 A I'M SORRY.

MR. SMITH - DIRECT EXAMINATION BY MR. DEBUSK

127

1 Q --- DERRICK BOWENS AND DORMAINE BAKER, DID
2 ANY OF THOSE THREE GET OUT OF THAT NISSAN?

3 A NO, SIR.

4 Q OKAY, WHEN RASHAD AND TELLY GOT OUT OF THE
5 CAR WHERE DID THEY GO?

6 A ONE GOT IN THE FRONT AND, AND ONE GOT IN,
7 IN THE BACK.

8 Q CAN YOU RECALL WHO GOT IN THE FRONT SEAT?

9 A IF I AIN'T MISTAKEN SHAD GOT IN THE FRONT
10 AND KOJAK GOT IN THE BACK.

11 Q OKAY, NOW WHEN THEY LEFT THE CAR DID YOU
12 SEE EITHER ONE OF THEM WITH A WEAPON?

13 A I SEEN THE WEAPON BUT LIKE I SAY I MEANT
14 NOW I DON'T WHAT KIND OF WEAPON IT WAS.

15 Q WAS IT, WAS IT A GUN, A KNIFE?

16 A I, I THINK IT WAS GUNS.

17 Q OKAY, WHO HAD THE GUN?

18 A TELLY AND SHAD.

19 Q DID EACH ONE HAVE ONE GUN?

20 A YEAH.

21 Q SO THERE WERE TWO GUNS TOTAL? WHERE DID
22 THEY HAVE THE GUNS?

23 A IN THE FRONT OF THE AREAS.

24 Q WHERE DO YOU MEAN IN THE FRONT, IN THEIR
25 FRONT?

MR. SMITH - DIRECT EXAMINATION BY MR. DEBUSK

128

1 A YEAH.

2 Q WHERE WAS IT?

3 A IT'S LIKE IN ---

4 Q DID THEY CARRY IT IN THEIR HAND, IN THEIR
5 POCKET?

6 A NO, IT WAS LIKE IN THE FRONT PART AREA.

7 Q WAS IT STUCK IN THEIR PANTS?

8 A YEAH.

9 Q WHAT HAPPENED AFTER, WELL LET ME ASK YOU
10 THIS, THE THREE OF YOU THAT STAYED IN THE CAR, IN THE
11 NISSAN, WHAT WERE YOU DOING?

12 A LISTENING TO, LISTENING TO, WE WERE
13 LISTENING TO THE RADIO.

14 Q DID YOU HAVE IT LOUD?

15 A IT WAS, IT WAS, IT WAS PRETTY LOUD.

16 Q DID YOU PAY ATTENTION TO WHAT WAS GOING ON
17 IN THE LINCOLN?

18 A I DIDN'T PAY ATTENTION.

19 Q WHAT HAPPENED AFTER THAT?

20 A WE JUST LEFT, I MEAN WE LEFT AND WE LEFT
21 AND JUST WENT ON THE ROADWAY.

22 Q WHEN DID TELLY AND RASHAD COME BACK TO THE
23 CAR? WHEN DID TELLY AND RASHAD COME BACK TO THE NISSAN?

24 A I MEAN, I MEAN THEY CAME ON BACK TO, TO
25 THE, TO THE NISSAN, WHEN THEY CAME BACK TO THE NISSAN WE

MR. SMITH - DIRECT EXAMINATION BY MR. DEBUSK

129

1 JUST WENT ON BACK THE ROADWAY.

2 Q OKAY, DID YOU HEAR ANYTHING FROM THE
3 LINCOLN WHILE THEY WERE IN IT?

4 A I CAN'T RECALL IF I HEARD SOMETHING OR NOT.

5 Q WHEN THEY COME BACK DO YOU RECALL WHETHER
6 THEY WERE WALKING OR RUNNING?

7 A THEY WAS, THEY WAS WALKING.

8 Q OKAY, WHEN THEY GOT BACK TO THE CAR WHAT
9 HAPPENED?

10 A WE JUST DROVE ON THE ROAD, I MEAN WE LEAVE,
11 PERSONALLY I WAS DRIVING, I JUST DROVE ON THE ROADWAY.

12 Q NOW WHEN TELLY GOT BACK IN THE CAR DID HE
13 SAY ANYTHING?

14 A NO, KOJAK DIDN'T SAY NOTHING.

15 Q HOW WAS HE ACTING?

16 A HE WAS ACTING NORMAL, I MEAN.

17 Q OKAY, WHAT ABOUT RASHAD BAKER, WHEN HE GOT
18 BACK IN THE CAR DID HE SAY ANYTHING?

19 A HE, HE, HE WAS LIKE, CUZ, DRIVE, JUST DRIVE
20 ON THE ROAD AND WE WENT OUT GOING TO THE OUTLET.

21 Q OKAY, HOW DID HE SAY THAT, DID HE SAY THAT
22 IN A CALM MANNER?

23 A HE JUST, YOU KNOW, SAYING, I MEAN IT WAS
24 LIKE A LITTLE ANGRY LIKE SO I JUST DROVE ON THE ROADWAY.

25 Q A LITTLE WHAT?

MR. SMITH - DIRECT EXAMINATION BY MR. DEBUSK

130

1 A IT, IT, IT WAS LIKE, YOU KNOW, IT WAS LIKE,
2 LIKE, LIKE A DIFFERENT TONE OF VOICE AND I JUST, I JUST
3 DROVE ON THE ROAD.

4 Q OKAY, WHEN YOU GOTTS, WENT WITH THEM WERE
5 YOU PLANNING ON GOING TO THE OUTLET, DID YOU SAY?

6 A NO, I DON'T REMEMBER GOING TO AN OUTLET.

7 Q BUT WAS IT YOUR PLAN, WHEN YOU WERE GOING,
8 AT YOUR HOUSE?

9 A MY PLAN WAS TO GO THE OUTLET CHRISTMAS
10 SHOPPING.

11 Q DID YOU GO TO THE OUTLETS?

12 A NO, SIR.

13 Q WHY NOT?

14 A I MEAN, I MEAN, I MEAN, I MEAN WE JUST
15 DIDN'T GO, HE SAID, CUZ, HE SAID, JUST CUZ, JUST DRIVE ON
16 THE ROAD.

17 Q WHERE DID YOU GO?

18 A I WENT, I WENT TO MY AUNT, I WENT TO MY
19 AUNT LINDA HOUSE AND I LEFT THERE AND I WENT ON TO MY
20 GRANDMA HOUSE.

21 Q DID YOU GO, WHY DIDN'T YOU GO BACK TO YOUR
22 HOUSE, THAT'S WHERE THEY PICKED YOU UP? WHY DID YOU NOT GO
23 BACK TO YOUR HOUSE WHERE THEY PICKED YOU UP?

24 A I MEANT, I MEANT, I DON'T KNOW, I DON'T
25 KNOW WHY I DIDN'T GO BACK TO MY HOUSE BUT I MEAN I JUST

MR. SMITH - DIRECT EXAMINATION BY MR. DEBUSK

131

1 WENT ON TO MY GRANDMA'S HOUSE.

2 Q DID YOU ASK THEM TO GO BACK TO YOUR HOUSE?

3 A NO, I DIDN'T ASK THEM.

4 Q NOW HAVE YOU TALKED TO, THE OTHER FOUR
5 PEOPLE IN THE CAR, HAVE YOU TALKED WITH THEM ABOUT WHAT
6 HAPPENED IN THAT --

7 A NO.

8 Q SINCE THEN?

9 A NO, SIR.

10 Q DID YOU ASK TELLY AND RASHAD BAKER WHAT
11 HAPPENED IN THAT LINCOLN?

12 A NO, SIR.

13 Q WHY NOT?

14 A I AIN'T NEVER ASKED THEM.

15 Q HAVE YOU EVER BEEN ARRESTED OR CONVICTED OF
16 ANY CRIMES OR HAVE YOU EVER BEEN CONVICTED OF ANY CRIMES?

17 A YEAH, I, I, NO, I MEAN NOT REALLY, I, I HAD
18 GOT, I GOT CHARGED LIKE A COUPLE OF YEARS AGO FOR A, A
19 LITTLE BIT OF MARIJUANA BUT I GOT IT, YOU KNOW, THROWN OUT
20 OF COURT, BUT OTHER THAN THAT I AIN'T BEEN IN NO KIND OF
21 TROUBLE.

22 Q OKAY, WERE YOU IN FACT ARRESTED FOR THIS
23 INCIDENT?

24 A YES, SIR.

25 Q NOW DO YOU HAVE AN ATTORNEY?

MR. SMITH - DIRECT EXAMINATION BY MR. DEBUSK

132

1 A YES, SIR.

2 Q WHAT'S HER NAME?

3 A BARBARA PRATT.

4 Q DID YOU TALK WITH BARBARA PRATT ABOUT THIS
5 CASE?

6 A YES, SIR.

7 Q DID YOU, DO YOU REMEMBER SIGNING AN
8 AGREEMENT TO GIVE TESTIMONY IN THIS CASE?

9 A YES, SIR.

10 MR. DEBUSK: YOUR HONOR, I'D LIKE TO HAVE THIS
11 MARKED FOR IDENTIFICATION AT THIS TIME.

12 (WHEREUPON, STATE'S EXHIBIT NUMBER 49 MARKED FOR
13 IDENTIFICATION.)

14 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS
15 STATE'S EXHIBIT FOR IDENTIFICATION 49 AND I'D ASK IF YOU
16 WOULD LOOK AT THAT AND TELL ME IF YOU RECOGNIZE IT? I ASK
17 YOU SPECIFICALLY ABOUT THE LAST PAGE, IS THAT YOUR
18 SIGNATURE?

19 A YES, SIR.

20 Q AFTER DISCUSSING WITH YOUR ATTORNEY DO YOU
21 REMEMBER WHAT THE TERMS OF THAT AGREEMENT ARE?

22 A YEAH, IT WAS LIKE IF I TESTIFY ON THE TRUTH
23 THAT, THAT I WON'T GET CHARGED WITH MURDER.

24 Q OKAY, THE ONLY PROMISE YOU GOT WAS YOU
25 WOULD NOT BE CHARGED WITH MURDER; IS THAT CORRECT?

MR. SMITH - DIRECT EXAMINATION BY MR. DEBUSK

133

1 A YEAH.

2 MR. DEBUSK: I BELIEVE THIS HAS BEEN PROVIDED TO
3 THE DEFENSE.

4 MR. MULLINS: YOUR HONOR, WE WOULD HAVE AN
5 OBJECTION TO TAKE UP EITHER AT THE BENCH OR OUT OF THE
6 PRESENCE OF THE JURY, PLEASE?

7 THE COURT: OUR YOU ASKING TO INTRODUCE THIS
8 INTO EVIDENCE AT THIS TIME?

9 MR. DEBUSK: NO, SIR.

10 MR. MULLINS: OH, OKAY, NEVER MIND.

11 MR. DEBUSK: I WAS JUST --

12 THE COURT: ALL RIGHT, SIR.

13 MR. MULLINS: NO QUESTION WE'VE RECEIVED THAT
14 DOCUMENT.

15 MR. DEBUSK: ALL RIGHT, I THINK THIS HAS BEEN
16 MARKED STATE'S EXHIBIT SO YOU CAN MARK IT COURT'S EXHIBIT.

17 THE COURT: WELL THAT'S STATE'S EXHIBIT 49 FOR
18 IDENTIFICATION ONLY.

19 MR. DEBUSK: THANK YOU, YOUR HONOR.

20 MR. MULLINS: THANK YOU, YOUR HONOR.

21 THE COURT: ANY FURTHER QUESTIONS -- YOU NEED TO
22 GIVE THAT TO THE COURT REPORTER FOR MARKING, PLEASE, SIR?

23 Q JUST ONE FINAL QUESTION, AGAIN JUST FOR
24 CLARITY FOR THE JURY, WHEN RASHAD BAKER GOT INTO THE, WENT
25 TO THE LINCOLN DID YOU SEE, DID HE HAVE A GUN?

MR. SMITH - CROSS EXAMINATION BY MR. MULLINS

134

1 A SIR?

2 Q WHEN RASHAD BAKER GOT OF THE NISSAN AND
3 WENT TO THE LINCOLN DID HE HAVE A GUN?

4 A YES, SIR.

5 Q AND WHEN TELLY MANNING GOT OUT OF THE
6 NISSAN AND WENT TO THE LINCOLN DID HE HAVE A GUN?

7 A YES, SIR.

8 Q DID THEY SAY ANYTHING TO YOU ABOUT WHY THEY
9 HAD THE GUNS?

10 A NO, SIR.

11 MR. DEBUSK: THANK YOU, PLEASE ANSWER ANY
12 QUESTIONS THE DEFENSE MAY HAVE FOR YOU.

13 THE COURT: ALL RIGHT, MR. MULLINS?

14 MR. MULLINS: MAY IT PLEASE THE COURT?

15 THE COURT: YES, SIR.

16 CROSS EXAMINATION

17 BY MR. MULLINS:

18 Q YOU ARE KNOWN AS SKETTER, SIR?

19 A YES, SIR.

20 Q HOW LONG HAVE YOU BEEN KNOWN AS SKETTER?

21 A ALL MY LIFE.

22 Q ALL YOUR LIFE?

23 A YEAH.

24 Q WHAT DO YOU DO FOR A LIVING, SKETTER?

25 A NOTHING.

MR. SMITH - CROSS EXAMINATION BY MR. MULLINS

135

1 Q YOU DON'T DO NOTHING?

2 A NO, SIR.

3 Q OKAY.

4 A I JUST SIT AROUND.

5 Q HOW DID YOU EVER GET ON DOING THAT? HOW

6 DID YOU EVER GET ON DOING THAT?

7 A WHAT DO YOU MEAN?

8 Q YOU'VE NEVER BEEN EMPLOYED?

9 A NO, SIR.

10 Q ALL RIGHT, NOW AT THE SCENE HERE AT BRUCE'S
11 COUNTRY KITCHEN YOU SAY THAT YOU WERE DRIVING THE CAR?

12 A YES, SIR.

13 Q ALL RIGHT, NOW DIDN'T YOU PREVIOUSLY TELL
14 THE COUNTY POLICE THAT DORMAINE OR MANNING WAS DRIVING THE
15 CAR?

16 A YES, SIR.

17 Q ALL RIGHT, SO WHICH ONE OF YA'LL WAS
18 DRIVING THE CAR?

19 A ME, I WAS DRIVING.

20 Q SO YOU WERE THE WHEEL MAN HERE IN THIS
21 DEAL?

22 A YES, SIR, I WAS DRIVING.

23 Q ALL RIGHT, NO QUESTION THAT THE CAR WAS
24 PROCURED BY RASHAD BAKER, SHAD, CORRECT?

25 A SIR?

MR. SMITH - CROSS EXAMINATION BY MR. MULLINS

136

1 Q NO QUESTION THAT SHAD BAKER GOT THE CAR,
2 CORRECT?

3 A YES, SIR, HE GOT THE CAR.

4 Q ALL RIGHT, AND YOU'RE THE ONE THAT
5 APPROACHED THE BOY ON THE BICYCLE IN ORDER TO FIND BIG
6 MARK, CORRECT?

7 A NO, SIR.

8 Q ALL RIGHT, YOU DID NOT?

9 A I, SAY IT AGAIN NOW?

10 Q WASN'T THERE A GENTLEMAN ON A BICYCLE THAT
11 YOU APPROACHED TRYING TO LOCATE BIG MARK?

12 A I DON'T REMEMBER THAT.

13 Q ALL RIGHT, YOU WERE THE ONE LOOKING FOR BIG
14 MARK, WEREN'T YOU?

15 A YES, SIR.

16 Q ALL RIGHT, AND YOU WERE GOING TO SCORE A
17 BIG EIGHT?

18 A YES, SIR.

19 Q CORRECT?

20 A YES, SIR.

21 Q THAT'S A COCAINE, WASN'T IT?

22 A YES, SIR.

23 Q POWDER COCAINE?

24 A YES, SIR.

25 Q ALL RIGHT, AND YOU WERE THE ONE THAT WAS

MR. SMITH - CROSS EXAMINATION BY MR. MULLINS

137

1 LOOKING TO MAKE THE DRUG DEAL THAT DAY, WEREN'T YOU?

2 A NO, SIR.

3 Q ALL RIGHT, DIDN'T YOU GO TO LORIS HIGH
4 SCHOOL?

5 A NO, SIR.

6 Q YOU DID NOT GO TO LORIS HIGH SCHOOL? YOU
7 FROM THIS AREA?

8 A NO, SIR.

9 Q DID YOU KNOW BIG MARK?

10 A YES, SIR.

11 Q AND YOU KNEW HE REGULARLY DEALT IN DRUGS,
12 DIDN'T YOU?

13 A YES, SIR.

14 Q AND YOU KNEW WHERE TO GO OUT THERE IN
15 LONGS, DIDN'T YOU?

16 A YES, SIR.

17 Q ALL RIGHT, SO YOU WERE SETTING UP THIS
18 DEAL, WEREN'T YOU?

19 A NO, SIR.

20 Q ALL RIGHT, NO QUESTION TELLY MANNING IS NOT
21 FROM HERE, IS HE?

22 A NO, SIR.

23 Q ALL RIGHT, NO QUESTION TELLY MANNING DIDN'T
24 GET THE CAR?

25 A NO, SIR.

MR. SMITH - CROSS EXAMINATION BY MR. MULLINS

138

1 Q ALL RIGHT, NOW WHEN YOU GOT OUT TO BRUCE'S
2 COUNTRY KITCHEN AND MR. RIGGINS CAR WAS THERE NO QUESTION
3 THAT RASHAD BAKER GOT IN THE FRONT SEAT BESIDE MR. RIGGINS
4 PASSENGER SIDE, CORRECT?

5 A YES, SIR.

6 Q NO QUESTION THAT KOJAK, TELLY MANNING, GOT
7 IN THE BACK SEAT, CORRECT?

8 A YES, SIR.

9 Q ALL RIGHT, SO THAT'S WHERE EVERYONE WAS AT
10 AT THE TIME YOU WERE BACK IN, IN THE MAXIMA, CORRECT?

11 A SAY IT AGAIN?

12 Q YOU WERE BACK IN THE MAXIMA WHEN THAT
13 OCCURRED, CORRECT?

14 A YEAH, I WAS IN THE MAXIMA.

15 Q BUT YOU SAW EXACTLY WHERE THE TWO GENTLEMEN
16 THAT ARE OVER HERE AT DEFENDANT'S TABLE GOT INTO THAT CAR,
17 THAT LINCOLN?

18 A YES, SIR.

19 Q OKAY, AND YOU KNEW MR. RIGGINS?

20 A NO, SIR.

21 Q YOU DID NOT? ALL RIGHT, NOW --

22 MR. MULLINS: MAY I HAVE JUST A MOMENT, YOUR
23 HONOR?

24 THE COURT: YES, SIR.

25 Q FURTHER AT THAT TIME YOU KNEW RASHAD BAKER

MR. SMITH - CROSS EXAMINATION BY MR. MULLINS

139

1 HAD A TENDENCY TO ROB DRUG DEALERS, DIDN'T YOU?

2 A. NO, SIR.

3 Q DID YOU MAKE A STATEMENT TO THE HORRY
4 COUNTY POLICE DEPARTMENT THAT YOU KNEW RASHAD BAKER ROBBED
5 DRUG DEALERS?

6 A NO, SIR.

7 MR. GARDNER: I'M GOING TO OBJECT TO THAT, YOUR
8 HONOR, I DON'T KNOW ANY FOUNDATION FOR THAT STATEMENT.

9 THE COURT: ALL RIGHT, MR. MULLINS?

10 MR. MULLINS: YOUR HONOR, VOLUNTARY STATEMENT

11 IT'S ---

12 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
13 YA'LL STEP TO YOUR JURY ROOM FOR A FEW MOMENTS, THANK YOU
14 VERY MUCH.

15 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
16 10:12 A.M.)

17 THE COURT: ALL RIGHT, MAY I SEE THE STATEMENT,
18 PLEASE?

19 MR. MULLINS: YES, SIR. FOR THE RECORD THAT IS
20 PAGE 12, LINES 9 THROUGH 17.

21 THE COURT: ALL RIGHT, SIR.

22 MR. DEBUSK: YOUR HONOR, MAY WE MAKE A COPY OF
23 THIS STATEMENT OF COURT'S EXHIBIT, PLEASE?

24 MR. MULLINS: NO OBJECTION.

25 THE COURT: I DON'T MIND IF YOU WANT TO MAKE IT

MR. SMITH - CROSS EXAMINATION BY MR. MULLINS

140

1 A STATE'S EXHIBIT NEXT FOR IDENTIFICATION. I SEE NO
2 NECESSITY IN MAKING IT A COURT'S EXHIBIT.

3 MR. GARDNER: YOUR HONOR, I SEE WHAT HE IS
4 REFERRING TO.

5 THE COURT: DID YOU GET A COPY?

6 MR. GARDNER: I HAVE A COPY OF IT AND I SEE WHAT
7 HE'S REFERRING TO.

8 THE COURT: YES, SIR.

9 MR. GARDNER: I WOULD STILL OBJECT BECAUSE THAT
10 IS A QUESTION FROM THE POLICE OFFICER NOT A VOLUNTARY
11 STATEMENT FROM THE WITNESS AND THE POLICE OFFICER IS GOING
12 INTO INCIDENTS WHICH INVOLVE ALLEGATIONS WHICH WERE
13 SUBSEQUENT TO THIS CASE.

14 THE COURT: HOLD ON A SECOND, JUST LET ME READ
15 THIS. ALL RIGHT, I WOULD SUSTAIN THE OBJECTION.

16 MR. MULLINS: AND, YOUR HONOR, WHILE WE'RE OUT
17 OF THE PRESENCE OF THE JURY --

18 THE COURT: YES, SIR.

19 MR. MULLINS: IF I COULD PROFFER THAT ON THE
20 RECORD AS TO WHAT I WOULD HAVE CROSS EXAMINED THIS WITNESS
21 AS.

22 THE COURT: YES, SIR.

23 MR. MULLINS: AND THE PROFFER, YOUR HONOR,
24 STARTS AT PAGE 12 THE VOLUNTARY STATEMENT OF ERNEST Q.
25 SMITH, THE PROFFER BEING:

MR. SMITH - CROSS EXAMINATION BY MR. MULLINS

141

1 THE DETECTIVE'S QUESTION, BUT RASHAD HAS A
2 TENDENCY TO ROB DRUG DEALERS;

3 RESPONSE, UH-HUH, (AFFIRMATIVE RESPONSE);

4 I MEAN, HE DOES IT IN ROBESON COUNTY, HE DID IT
5 IN DILLON COUNTY, YEAH;

6 RESPONSE, HE GOT ARRESTED IN DILLON COUNTY, YEAH,
7 HE DID GOT IN, HE DID SOME TROUBLE IN DILLON, HE GOT OUT ON
8 BOND.

9 THE COURT: ALL RIGHT, SIR.

10 MR. MULLINS: THAT'S MY PROFFER FOR THE RECORD
11 AS TO WHAT I WOULD HAVE CROSS EXAMINED THIS WITNESS ON IF
12 GIVEN THE OPPORTUNITY.

13 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH.
14 ALL RIGHT, SOLICITOR, YOU WANT TO MARK THAT DOCUMENT AS AN
15 EXHIBIT OR NOT?

16 MR. DEBUSK: FIRST WE DON'T HAVE AN EXTRA COPY
17 AT THIS TIME, I CAN MARK MY OWN COPY THAT'S BEEN
18 HIGHLIGHTED.

19 MR. MULLINS: I'LL GIVE HIM AN EXTRA COPY AT THE
20 BREAK, YOUR HONOR.

21 THE COURT: ALL RIGHT, AT THE BREAK YA'LL MAKE
22 SURE YOU GET ONE THAT HASN'T BEEN MARKED ON, JUST MARK IT
23 AS, WILL THAT BE STATE'S EXHIBIT 50? THAT WILL BE STATE'S
24 EXHIBIT 50 FOR IDENTIFICATION PURPOSES ONLY.

25 MR. DEBUSK: YOUR HONOR, I DOUBT THIS IS

MR. SMITH - CROSS EXAMINATION BY MR. MULLINS

142

1 NECESSARY BUT THE STATE WOULD MOVE FOR CORRECTIVE
2 INSTRUCTION TO THE JURY TO DISREGARD THE LAST ANSWER, THE
3 LAST SQS.

4 THE COURT: THANK YOU.

5 MR. DEBUSK: THANK YOU, YOUR HONOR.

6 THE COURT: ANYTHING ELSE, MR. GARDNER?

7 MR. GARDNER: JUDGE, WHILE THE JURY IS OUT, I'LL
8 TRY TO BE BRIEF, AS I UNDERSTAND THE LAW MY OBJECTION HAD
9 TO BE TO THAT POINT AND AS LONG AS WE'RE ON THAT POINT I
10 WOULD OBJECT TO HIM IN THE EVENT IT COMES OR THE SOLICITOR
11 HE TRIES TO COME OUT, ANY ALLEGATIONS SUBSEQUENT TO THIS
12 ACT AS IS ALLUDED TO IN THIS TRANSCRIPT, THE ROBESON I
13 BELIEVE WE CAN ALL STIPULATE WAS AN ALLEGATION THAT
14 OCCURRED AFTER THIS EVENT. THE DILLON WAS AN ALLEGATION
15 THAT OCCURRED AFTER THIS EVENT IS MY UNDERSTANDING.

16 THE COURT: SOLICITOR, YOU DON'T INTEND TO CROSS
17 EXAMINE THIS WITNESS ON THOSE ISSUES, DO YOU?

18 MR. DEBUSK: THE ONLY THING, NO, NO, YOUR HONOR.

19 THE COURT: ALL RIGHT.

20 MR. DEBUSK: IF HE TESTIFIES I MAY GO INTO THE
21 PRIOR RECORD IF IT'S ADMISSIBLE, THAT'S ALL I WOULD CROSS,
22 YOUR HONOR.

23 THE COURT: ALL RIGHT, THANK YOU.

24 MR. GARDNER: THEN MY, MY, WHAT I WAS GOING TO
25 FOLLOW UP BUT I THINK THE SOLICITOR GOT TO IT BEFORE I DID

MR. SMITH - CROSS EXAMINATION BY MR. MULLINS

143

1 AND I WOULD ASK THAT HIS ANSWERS ABOUT THAT BE STRICKEN AND
2 THAT THE JURY BE GIVEN SOME TYPE OF CURATIVE.

3 THE COURT: WHAT I'LL DO IS TELL THE JURY THE
4 LAST QUESTION AND THE ANSWER SHALL BE STRICKEN FROM THE
5 RECORD.

6 MR. DEBUSK: AND, YOUR HONOR, MY PROFFER JUST TO
7 MAKE SURE THE RECORD IS CLEAR AS PURSUANT TO RULE 404(B) OF
8 THE RULES OF EVIDENCE SHOWING THAT HE ACTED IN CONFORMITY
9 WITH OTHER CRIMES, WRONGS, AND ACTS.

10 THE COURT: I UNDERSTAND THAT. WE STILL HAVE TO
11 A BALANCING TEST AS TO THE ADMISSIBILITY OF EVIDENCE AND
12 PREJUDICE THAT AS TO THE PROBATIVE VALUE IT IS, I FIND THAT
13 PREJUDICE TO THE OTHER DEFENDANT WOULD OUTWEIGH ANY BENEFIT
14 OR PROBATIVE EVIDENCE IN THIS MATTER, THEREFORE, I
15 RESPECTFULLY DECLINE THE ALLOW YOU TO ASK THOSE PARTICULAR
16 QUESTIONS.

17 MR. MULLINS: THANK YOU, YOUR HONOR.

18 THE COURT: THANK YOU VERY MUCH. ALL RIGHT, ASK
19 THE JURY TO COME BACK IN, PLEASE.

20 (WHEREUPON, THE JURY ENTERS THE COURTROOM AT
21 10:18 A.M.)

22 THE COURT: YES, MA'AM?

23 MADAM FOREPERSON: YOUR HONOR, WE WOULD ASK THAT
24 THE SOLICITOR SPEAK A LITTLE LOUDER.

25 THE COURT: ALL RIGHT.

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

144

1 MADAM FOREPERSON: THANK YOU.

2 THE COURT: ALL RIGHT, MR. DEBUSK AND ALL THE
3 ATTORNEYS, THAT WHEN YOU ARE SPEAKING TRY AND GET RIGHT IN
4 FRONT OF THE MICROPHONES, THANK YOU VERY MUCH.

5 ALL RIGHT, LADIES AND GENTLEMEN, AS TO THE LAST
6 QUESTION AND ANSWER THAT WERE QUESTIONS ASKED AND THE
7 ANSWER THAT WAS GIVEN THOSE HAVE BEEN STRUCK FROM THE
8 RECORD AND YOU WILL DISREGARD THOSE, THANK YOU VERY MUCH.
9 YOU MAY PROCEED, SIR?

10 MR. MULLINS: I'LL FINISH UP, YOUR HONOR.

11 MR. MULLINS: (CONTINUING)

12 Q NO QUESTION, SIR, YOU ARE CHARGED WITH
13 MURDER IN THIS CASE, CORRECT?

14 A YES, SIR.

15 Q NO QUESTION YOU'RE NOT ON TRIAL FOR MURDER
16 TODAY, ARE YOU?

17 A NO, SIR.

18 Q DO YOU HAVE AN ARRANGEMENT WITH THE
19 SOLICITOR'S OFFICE?

20 A NO, SIR.

21 MR. MULLINS: NO FURTHER QUESTIONS.

22 THE COURT: ALL RIGHT, MR. GARDNER.

23 MR. GARDNER: THANK YOU, YOUR HONOR.

24 CROSS EXAMINATION

25 BY MR. GARDNER:

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

145

- 1 Q GOOD MORNING, MR. SMITH, YOU ARE
2 UNEMPLOYED?
- 3 A YES, SIR.
- 4 Q YOU MAKE YOUR LIVING DEALING DRUGS?
- 5 A NO, SIR.
- 6 Q YOU GO TO SOUTH CAROLINA TO BUY AN EIGHT
7 BALL OR AN EIGHT, A BIG EIGHT?
- 8 A SIR?
- 9 Q YOU GO TO SOUTH CAROLINA TO BUY A BIG
10 EIGHT?
- 11 A YOU SAY I GO TO SOUTH CAROLINA TO BUY A BIG
12 EIGHT?
- 13 Q SIR, YOU CAME FROM NORTH CAROLINA OR
14 WHEREVER YOU WERE BEFORE YOU WENT DOWN TO WHERE THIS
15 INCIDENT IS ALLEGED TO HAVE TAKEN PLACE --
- 16 A YES, SIR.
- 17 Q YOUR INTENT AT THAT TIME WAS TO BUY DRUGS,
18 CORRECT?
- 19 A YES, SIR.
- 20 Q AND YOU WERE GOING TO BUY A --
- 21 A A BIG EIGHT.
- 22 Q A BIG EIGHT, AND WHAT'S A BIG EIGHT?
- 23 A IT'S FOUR OUNCES.
- 24 Q THAT'S A LOT?
- 25 A YES, SIR.

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

146

1 Q OKAY, THAT'S NOT FOR YOUR PERSONAL
2 CONSUMPTION?

3 A SIR?

4 Q YOU'RE NOT GOING TO USE THAT ALL THAT BY
5 YOURSELF?

6 A NO, SIR.

7 Q WHAT WERE YOU GOING TO DO WITH IT?

8 A I WASN'T BUYING IT FOR, FOR MYSELF. I, I,
9 YOU KNOW, I DIDN'T GO DOWN THERE AND GET IT.

10 Q WHAT?

11 A I SAID I WASN'T BUYING IT FOR MYSELF. I
12 MEAN I WOULDN'T HAVE GONE LOOKING FOR IT.

13 Q YOUR TESTIMONY WAS THAT YOU WENT DOWN THERE
14 TO BUY THESE DRUGS?

15 A YES, SIR.

16 Q OKAY, AND MY QUESTION WAS SIMPLY THAT'S A
17 LOT OF DRUGS, THAT'S NOT JUST FOR ONE PERSON?

18 A YES, SIR.

19 Q OKAY, ALL RIGHT, HOW MUCH DOES A BIG EIGHT
20 COST?

21 A ABOUT, I SAY ABOUT, ABOUT 2,000.

22 Q ABOUT 2,000, OKAY, ALL RIGHT, AND IN FACT
23 YOU KNEW WHERE TO GO TO BUY THIS DRUGS OR THIS DOPE?

24 A NOT ACTUALLY, I JUST KNOW BIG MARK.

25 Q OKAY, YOUR TESTIMONY WAS THAT YOU KNEW BIG

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

147

1 MARK?

2 A YES, SIR.

3 Q BIG MARK LIVES IN THAT AREA?

4 A YES, YES, SIR.

5 Q DEALS DRUGS?

6 A YES, SIR.

7 Q YOU KNEW HIM?

8 A YES, SIR.

9 Q WENT THERE TO BUY IT?

10 A YES, SIR.

11 Q OKAY, COULDN'T FIND HIM?

12 A NO, SIR.

13 Q ALL RIGHT, AND YOU TALKED TO A FELLOW ON A
14 BICYCLE WHO GAVE YOU DIRECTIONS TO SOME OTHER PLACE?

15 A I DON'T REMEMBER.

16 Q ALL RIGHT, NO DOUBT THAT THERE WAS SOMEBODY
17 ON A BICYCLE THAT TALKED WITH SOMEBODY THAT WAS IN THE CAR
18 WITH THE FIVE DEFENDANT'S?

19 A YES, SIR.

20 Q DO YOU REMEMBER SOMETHING ABOUT A GUY ON A
21 BICYCLE?

22 A NO, SIR, I DON'T, IT'S BEEN SO LONG I DON'T
23 REMEMBER.

24 Q IT'S BEEN A LONG TIME?

25 A YES, SIR.

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

148

1 Q SO YOU DON'T REMEMBER ANYBODY ON A BICYCLE?

2 A NO, SIR.

3 Q ALL RIGHT, FROM THE GUY ON THE BICYCLE
4 YA'LL WENT TO A CLUB AREA, CLUB 13, DOES THAT RING A BELL?

5 A I DON'T KNOW THE NAME OF THE CLUB, I MEAN I
6 DON'T KNOW IF IT WAS A CLUB OR NOT.

7 Q OKAY, AND AT THAT PLACE YOU TALKED TO A
8 FELLOW NAMED LARRY WILSON AND ASKED HIM HOW TO GET A HOLD
9 OF TROY RIGGINS?

10 A NO, SIR.

11 Q OKAY, YOU DENY THAT?

12 A YES, SIR.

13 Q ALL RIGHT, AT THIS CLUB THAT YOU DON'T KNOW
14 THE NAME OF, WHO DID YOU TALK TO?

15 A I DON'T, I MEAN I DON'T RECALL TALKING TO
16 NO ONE AT THAT CLUB.

17 Q ALL RIGHT, WHEREVER IT WAS BEFORE YA'LL MET
18 UP WITH TROY RIGGINS YOU GOT OUT OF THE CAR AND TALKED WITH
19 A GENTLEMAN?

20 A I DON'T REMEMBER.

21 Q ALL RIGHT, AND FROM THAT POINT YA'LL ENDED
22 UP MEETING UP WITH TROY RIGGINS?

23 A I REMEMBER FROM THE PLACE THAT, I REMEMBER
24 FROM THE PLACE THAT I WAS PARKED WE HAD WENT AND I MEAN WE
25 WERE, WE WERE SEEING SOME DUDE, I MEAN I DON'T WHETHER HIS

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

149

1 NAME OR NOT.

2 Q AND OUT OF THE FIVE OF YA'LL IN THE CAR YOU
3 WERE THE FIRST ONE TO TALK TO TROY RIGGINS?

4 A NO, SIR.

5 Q AND BASED ON THAT CONVERSATION THE TWO
6 VEHICLES AT SOME POINT IN TIME WENT TO A DIFFERENT
7 LOCATION?

8 A YES, SIR.

9 Q OKAY, AND PRIOR TO THE VEHICLES GOING TO
10 THAT OTHER LOCATION IT'S YOUR TESTIMONY THAT MR. BAKER,
11 RASHAD BAKER, AND MR. MANNING, TELLY MANNING, GOT INTO THAT
12 OTHER CAR?

13 A YES, SIR.

14 Q ALL RIGHT, YOU WERE DRIVING THE CAR THAT
15 YA'LL WERE IN?

16 A YES, SIR.

17 Q THE SOLE ALL TIMES ABOUT THIS?

18 A SIR?

19 Q ALL TIMES THAT WHEN YOU WERE IN THAT AREA
20 YOU WERE DRIVING THAT CAR?

21 A YES, SIR.

22 Q AND YOU HAD DOMINION AND CONTROL OF THAT
23 VEHICLE?

24 A YES, SIR.

25 Q WHEN THESE TWO GENTLEMEN GOT OUT OF THE CAR

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

150

1 YOU WERE IN YOU WERE BEHIND THE WHEEL?

2 A YES, SIR.

3 Q AND YOU COULD HAVE TOOK OFF AND DROVE
4 ANYWHERE YOU WANTED TO?

5 A YES, SIR.

6 Q ALL RIGHT, BUT YOU CHOSE NOT TO DO THAT,
7 RIGHT?

8 A YES, SIR.

9 Q AND YOU STILL THOUGHT YOU WERE GETTING SOME
10 DRUGS, RIGHT?

11 A YES, SIR.

12 Q SO IT WOULD BE FAIR TO SAY THAT THIS WHOLE
13 THING WAS ABOUT A DRUG DEAL?

14 A YES, SIR.

15 Q GOING TO BUY DRUGS?

16 THE COURT: YOU NEED TO SPEAK UP, SIR.

17 Q ALL RIGHT, YOUR, THIS STATEMENT THAT YOU
18 GAVE TO THE POLICE AND THIS DEAL THAT YOU'VE REACHED WITH
19 THE SOLICITOR'S OFFICE WERE IN EXCHANGE FOR YOUR TESTIMONY
20 YOU ARE GOING TO HAVE YOUR CHARGE OF MURDER DISMISSED?

21 A NO, SIR.

22 Q THAT'S NOT IT?

23 A SIR, WHAT YOU SAY NOW?

24 Q YOU SAID, NO, WHAT IS YOUR AGREEMENT? WHAT
25 DO YOU UNDERSTAND IT TO BE?

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

151

1 A I'M SAYING I MEAN MY AGREEMENT WAS I MEAN
2 EITHER WAY IT WAS I BE STILL CHARGED.

3 Q OKAY, I MUST HAVE MISUNDERSTOOD YOU, I
4 THOUGHT THAT YOU SAID YOUR AGREEMENT WAS IF YOU TESTIFIED
5 THEY WOULD NO LONGER CHARGE YOU WITH MURDER?

6 A YES, SIR.

7 Q OKAY, SAID A DIFFERENT WAY, YOU ARE
8 CURRENTLY CHARGED WITH MURDER?

9 A YES, SIR.

10 Q FACING LIFE IN JAIL?

11 A YES, SIR.

12 Q SAME AS THESE TWO GENTLEMEN?

13 A YES, SIR.

14 Q AND BASED ON YOUR TESTIMONY TODAY THEY ARE
15 GOING TO DISMISS YOUR MURDER CHARGE?

16 A NO, SIR.

17 Q I'M SORRY WE'RE HAVING TROUBLE
18 COMMUNICATING?

19 A SAY IT AGAIN?

20 Q YOU'RE CHARGED WITH MURDER?

21 A YES, SIR.

22 Q FACING LIFE IN THE PENITENTIARY?

23 A YES, SIR.

24 Q THAT'S CORRECT?

25 A YES, SIR.

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

152

1 Q YOU STRUCK A DEAL WITH THE SOLICITOR RIGHT
2 THERE WHERE YOU'RE GOING TO TESTIFY AGAINST THESE TWO
3 GENTLEMEN?

4 A TESTIFY TO THE TRUTH.

5 Q YOU'RE TESTIFYING AGAINST THESE TWO
6 GENTLEMEN?

7 A YES, SIR.

8 Q TESTIFYING TODAY?

9 A YES, SIR.

10 Q AGAINST THESE TWO GENTLEMEN?

11 A YES, SIR.

12 Q AND IN EXCHANGE FOR THAT TESTIMONY THEY'RE
13 GOING TO DISMISS YOUR MURDER CHARGE?

14 A THEY, I MEANT, WHAT, IM TRYING TO FIGURE
15 OUT WHAT YOU'RE SAYING.

16 Q I'M TRYING TO BE AS CLEAR AS I CAN, YOU'RE
17 CHARGED WITH MURDER?

18 A YES, SIR.

19 Q AFTER YOU GET OFF THAT WITNESS STAND YOU
20 WILL NO LONGER BE CHARGED WITH MURDER?

21 A I MEAN, I CAN'T SAY YES AND I CAN'T SAY NO.

22 Q ISN'T THAT YOUR AGREEMENT WITH THE
23 SOLICITOR?

24 A SIR?

25 Q DON'T YOU HAVE AN AGREEMENT WITH THE

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

153

1 SOLICITOR?

2 A YES, SIR.

3 Q AND YOUR AGREEMENT IS YOU WOULD TESTIFY?

4 A YES, SIR.

5 Q YOU'RE CHARGED WITH MURDER?

6 A YES, SIR.

7 Q AND AFTER YOU TESTIFY YOU WILL NO LONGER BE
8 CHARGED WITH MURDER?

9 A YES, SIR.

10 Q AND YOU UNDERSTAND THAT, RIGHT?

11 A YES, SIR.

12 Q SO YOU UNDERSTAND THAT YOUR TESTIMONY TODAY
13 WILL GET YOU YOUR MURDER CHARGE DISMISSED?

14 A NO, SIR, I MEANT I AIN'T SAYING DISMISSED.

15 Q YOU WILL NO LONGER BE CHARGED WITH MURDER?

16 A YES, SIR.

17 Q OKAY, NOW YOU SAID EARLY ON IN YOUR DIRECT
18 TESTIMONY THAT BOTH OF THE DEFENDANT'S HAD GUNS AND I WAS
19 VERY UNCLEAR ABOUT HOW YOU KNEW THIS, OKAY. THERE WAS A
20 QUESTION ABOUT A POCKET AND ABOUT A FRONT POCKET AND THE
21 SOLICITOR ASKED YOU IF HE HAD IT IN A HAND, SOMETHING LIKE
22 THAT, DO YOU REMEMBER THAT? ALL RIGHT, TELL ME SO I CAN
23 UNDERSTAND HOW YOU SAW THESE GUYS WITH GUNS?

24 A YOU SAY TELL YOU HOW I SAW THE GUY, THEM
25 GUYS WITH GUNS?

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

154

1 Q WHERE WAS THE GUNS?

2 A I MEANT THERE WERE IN THEIR HAND.

3 Q WHAT NOW?

4 A I SAID, I SAID, I SAID THAT THE GUN WAS IN
5 THEIR HAND.

6 Q IN THEIR HAND?

7 A YES, SIR.

8 Q ALL RIGHT, YOU TOLD THE SOLICITOR A LITTLE
9 WHILE AGO THEY WERE NOT IN THEIR HAND?

10 A NO, NO, I MEAN HE ASKED ME, I MEANT, WHERE
11 WAS THE GUNS AND THEN I TOLD HIM, TOLD HIM THEY HAD PUT
12 THEM IN THE FRONT.

13 Q IN THE FRONT OF WHAT?

14 A I MEANT, I MEANT IN THE FRONT PART OF
15 THEIR, OF THEIR PANTS.

16 Q ALL RIGHT, YOU SAW THEM IN THE PANTS?

17 A I'M SAYING, I MEANT I SAW THEM, I, I SAW
18 THEM WHENEVER THEY HAD STUCK THEM IN THEIR PANTS, WHERE, I
19 MEANT, YOU KNOW, FRONT PART.

20 Q ALL RIGHT, WHAT KIND OF PANTS WERE THEY
21 WEARING?

22 A IF I AIN'T MISTAKEN I MEANT, I MEANT IT
23 BEEN SO LONG I MEANT, I DON'T EVEN REMEMBER.

24 Q WELL, YA'LL WERE ALL RELATED, KNOW EACH
25 OTHER, SEE EACH OTHER QUITE OFTEN, WHAT ARE THE CUSTOMARY

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

155

1 PANTS THAT YA'LL WEAR?

2 A I MEANT --

3 Q IN THE NORMAL COURSE WHAT'S THE STYLE PANTS
4 THAT YA'LL WEAR?

5 A I MEANT, I DON'T KNOW THE STYLE THAT, YOU
6 KNOW, THEY WEAR. I UNDERSTAND WHAT I WEAR.

7 Q ALL RIGHT, ARE THEY BIG AND BAGGY?

8 A I MEANT I DON'T KNOW IF THEIRS IS BIG AND
9 BAGGY OR NOT.

10 Q OKAY, I GUESS I'M TRYING TO FIGURE OUT HOW
11 YOU COULD SEE IF THERE WAS A GUN INSIDE THE FRONT OF THESE
12 PANTS. DID YOU SEE THAT?

13 A YES, SIR.

14 Q OKAY, TELL ME HOW YOU SAW THAT?

15 A I SEEN, I MEAN I SAW THEM WHEN THEY TOOK
16 THEM AND, AND THEY PUT THEM IN FRONT, YOU KNOW, I, I MEAN
17 IN THE FRONT AND THEY WENT ON TO THE CAR.

18 Q ALL RIGHT, IS THAT THE FIRST TIME YOU SAW
19 IT?

20 A YES, SIR.

21 Q OKAY, AND WHEN WAS THIS NOW, WHEN THEY WERE
22 GETTING READY TO GET OUT OF THE CAR?

23 A YES, SIR.

24 Q THAT'S THE VERY FIRST TIME YOU SAW THIS
25 GUN?

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

156

1 A YES, SIR.

2 Q AND THIS IS THE TESTIMONY YOU GIVE AS PART
3 OF YOUR DEAL WITH THE SOLICITOR?

4 A YES, SIR.

5 Q OKAY, AND THIS IS A STATEMENT THAT YOU ALSO
6 MADE WITH THE POLICE THAT GOT YOU TO GET THIS DEAL AT SOME
7 POINT IN TIME, RIGHT?

8 A NO, I AIN'T MADE NO DEAL WITH NO POLICE.

9 Q YOU GAVE A STATEMENT TO THE POLICE OFFICERS
10 ABOUT THIS CASE AND IT WAS RECORDED?

11 A UH-HUH.

12 Q OKAY, THAT'S NOT ---
13 THE COURT: YOU NEED TO ANSWER OUT LOUD, SIR.

14 Q THAT'S NOT THE FIRST TIME YOU GAVE A
15 STATEMENT TO THE POLICE, IS IT?

16 A YES, SIR.

17 Q IT IS?

18 A I'M SAYING THAT'S, I MEANT, I MEANT, I
19 MEANT WHEN I FIRST, LET ME SEE, THEY CAME TO ME ABOUT, THEY
20 CAME TO ME ABOUT A COUPLE OF MONTHS LATER AND THEN ABOUT,
21 ABOUT, ABOUT FOUR OR FIVE MONTHS LATER THEY ARRESTED ME FOR
22 THIS CHARGE.

23 Q OKAY, THE STATEMENT THAT WAS RECORDED AND A
24 TRANSCRIPT MADE AND WAS TALKED ABOUT EARLIER WHEN THE OTHER
25 LAWYER WAS TALKING TO YOU, OKAY?

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

157

1 A UH-HUH.

2 Q AND YOU MADE SOME STATEMENTS ABOUT THIS
3 CASE WHICH RESULTED IN YOUR DEAL, REMEMBER?

4 A NO, I, I MEANT, OKAY, YEAH, YES, SIR.

5 Q ALL RIGHT, THAT WAS NOT YOUR FIRST
6 INTERVIEW? YOU HAD MADE A STATEMENT TO LAW ENFORCEMENT,
7 THE POLICE OFFICERS, ABOUT THIS CASE EARLIER, RIGHT?

8 A YES, SIR.

9 Q WHERE WAS THAT?

10 A THAT WAS SOMETIME IN LORIS, I MEAN, THAT
11 ABOUT LIKE, THAT WAS LIKE SIX MONTHS, THAT WAS ABOUT FIVE
12 OR SIX MONTHS AFTER.

13 Q LORIS POLICE DEPARTMENT?

14 A I MEAN, NO, I MEANT I HAD MADE THE TAPE AT
15 LORIS POLICE DEPARTMENT.

16 Q YOU WENT TO THE LORIS POLICE DEPARTMENT AND
17 YOU MADE A STATEMENT ABOUT THIS CASE?

18 A UH-HUH.

19 Q YOU SAID, I WASN'T THERE?

20 A I DIDN'T SAY THAT.

21 Q BROUGHT AN ALIBI WITNESS WITH YOU, WHO DID
22 YOU BRING WITH YOU?

23 A I HAD BROUGHT, AT THAT TIME I'M TRYING TO
24 THINK.

25 Q MAYBE I CAN, KIM MCCLURE RING A BELL?

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

158

1 A YES, SIR.

2 Q SHE AND YOU WENT TO THE LORIS POLICE
3 DEPARTMENT?

4 A UH-HUH.

5 Q NOVEMBER 1ST?

6 A UH-HUH.

7 Q OF 2001?

8 A UH-HUH.

9 Q SHE WAS YOUR ALIBI, RIGHT?

10 A WHAT YOU MEAN SHE WAS MY ALIBI?

11 Q YOU KNOW WHAT ALIBI MEANS, IT'S SOMEBODY
12 THAT SAYS THIS GUY WASN'T THERE, HE DIDN'T DO IT?

13 A I MEANT, I MEANT NOW I DON'T KNOW STATEMENT
14 SHE TOLD.

15 Q OKAY, WELL I DON'T WANT TO GET INTO ANY
16 STATEMENT NOW?

17 A OKAY.

18 Q ABOUT OTHER PEOPLE.

19 A OKAY.

20 Q LET ME JUST ASK YOU THIS, WHY DID YOU BRING
21 HER THERE?

22 A I MEANT I DIDN'T, I MEANT I WASN'T HOME AND
23 THEY CAME BY AND LEFT A CARD AND SAY, MEET THEM IN LORIS.

24 Q YES, SIR, BUT YOU BROUGHT HER THERE TO TALK
25 TO THE POLICE, WHY DID YOU BRING HER THERE TO TALK TO THE

MR. SMITH - CROSS EXAMINATION BY MR. GARDNER

159

1 POLICE?

2 A WELL I MEANT, NO, I DIDN'T BRING HER THERE
3 TO TALK TO THE POLICE, I MEAN I HAD BROUGHT HER THERE TO
4 DRIVE FOR ME UP THERE TO TALK TO THE POLICE.

5 Q ALL RIGHT.

6 A AND THEN I MEAN, I MEAN AT THE SAME TIME, I
7 MEAN THEY ASKED HER SOME QUESTIONS.

8 Q YES, SIR, SHE MADE A STATEMENT TO THEM,
9 RIGHT?

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

11 Q OKAY, I'M NOT GOING TO ASK YOU WHAT THE
12 STATEMENT WAS BUT YOU KNOW SHE MADE A STATEMENT, CORRECT?

13 A I MEAN I CAN'T SAY YEAH AND I CAN'T SAY NO,
14 I MEANT, I MEANT I DON'T KNOW WHETHER SHE TALKED TO THEM OR
15 NOT.

16 Q ALL RIGHT, OKAY, WELL YOU TALKED TO THEM?

17 A WELL --

18 Q RIGHT?

19 A YES, SIR.

20 Q SAID YOU WEREN'T THERE?

21 A NO.

22 Q YOU DIDN'T GO DOWN THERE, YOU WEREN'T
23 RIDING IN THE CAR WITH THE OTHER FOUR GENTLEMEN WHEN THIS
24 INCIDENT HAPPENED?

25 A YES, SIR.

MR. SMITH - REDIRECT EXAMINATION BY MR. DEBUSK

160

1 Q ALL RIGHT, SO YOUR SECOND STATEMENT AS FAR
2 AS THE STATE OF SOUTH CAROLINA IS CONCERNED GOT BETTER,
3 WOULD YOU AGREE WITH ME ON THAT?

4 A YES, SIR.

5 Q OKAY, FIRST STATEMENT I WASN'T THERE, I
6 HAVE AN ALIBI WITNESS THAT SAYS I WASN'T THERE. THE SECOND
7 STATEMENT I WAS THERE AND I SAW TWO GUYS WITH GUNS IN THE
8 FRONT OF THEIR PANTS AND A BUNCH OF OTHER THINGS, RIGHT?

9 A YES, SIR.

10 Q AS A RESULT OF THAT YOU'RE NO LONGER GOING
11 TO BE CHARGED WITH MURDER, RIGHT?

12 A YES, SIR.

13 Q NO LONGER GOING TO BE FACING LIFE, RIGHT?

14 A I MEANT, I MEAN I CAN'T SAY YEAH AND I
15 CAN'T SAY NO.

16 Q I DON'T UNDERSTAND THAT, I DON'T WANT TO
17 BELABOR THIS POINT BUT DO YOU NOT UNDERSTAND YOUR AGREEMENT
18 WITH THE SOLICITOR'S OFFICE; IS THAT WHAT YOU'RE TELLING
19 US?

20 A YES, SIR, I UNDERSTAND THAT AGREEMENT.

21 Q OKAY.

22 MR. GARDNER: YOUR HONOR, IF I MAY HAVE A
23 MOMENT, I APOLOGIZE.

24 THE COURT: YES, SIR.

25 MR. GARDNER: YOUR HONOR, THAT WILL BE ALL OF

MR. SMITH - REDIRECT EXAMINATION BY MR. DEBUSK

161

1 THIS WITNESS.

2 THE COURT: ALL RIGHT, REDIRECT, SOLICITOR.

3 MR. DEBUSK: THANK YOU, YOUR HONOR.

4 REDIRECT EXAMINATION

5 BY MR. DEBUSK:

6 Q LET ME ASK YOU A COUPLE OF, GO BACK AND ASK
7 YOU A COUPLE OF ITEMS FROM QUESTIONS I ASKED BEFORE. WHEN
8 YOU SAW THAT LINCOLN WHO TALKED TO THE PEOPLE IN THE
9 LINCOLN?

10 A SHAD DID.

11 Q HOW MANY PEOPLE WERE IN THAT LINCOLN?

12 A I CAN'T REMEMBER HOW MANY PEOPLE WERE IN
13 THAT LINCOLN.

14 Q DID YOU SEE THE DRIVER?

15 A YES, SIR.

16 Q OKAY, NOW WHO, MR. GARDNER ASKED YOU IF YOU
17 WERE LOOKING FOR THE BIG EIGHT, YOU SAID IT WASN'T YOU THAT
18 WAS LOOKING FOR THE BIG EIGHT; IS THAT CORRECT?

19 A YES, SIR.

20 Q WHO WAS LOOKING FOR THE BIG EIGHT?

21 A SHAD WAS.

22 Q IS THAT RASHAD BAKER, THE DEFENDANT?

23 A UH-HUH.

24 Q AND HOW MUCH IS A BIG EIGHT AGAIN?

25 A ABOUT, ABOUT 2,000.

MR. SMITH - REDIRECT EXAMINATION BY MR. DEBUSK

162

1 Q AND HOW MUCH IS IT ON OUNCES IS A BIG
2 EIGHT?

3 A ABOUT FOUR OF THEM.

4 Q OKAY, AND JUST TO CLARIFY SOMETHING ELSE
5 YOU SAID YOU SAW THE GUNS ---

6 A YES, SIR.

7 Q --- THAT TELLY MANNING AND RASHAD BAKER HAD
8 WHEN THEY PUT IT IN THEIR PANTS?

9 A YES, SIR.

10 Q SO YOU SAW IT IN THEIR HAND GO INTO THEIR
11 PANTS; IS THAT CORRECT?

12 A YES, SIR.

13 Q NOW WERE YOU IN THAT NISSAN WITH YOUR FOUR
14 COUSINS ON DECEMBER 21ST, 2000?

15 A YES, SIR.

16 THE COURT: SPEAK UP, PLEASE?

17 A YES, SIR.

18 Q THE FIRST TIME THE POLICE ASKED YOU DID YOU
19 DENY THAT YOU WERE IN THAT NISSAN?

20 A NO, I MEANT ---

21 Q WHEN YOU WERE AT THE LORIS POLICE
22 DEPARTMENT?

23 A YEAH, I WAS AT THE LORIS DEPARTMENT, I
24 MEANT, I MEANT THE FIRST TIME WHEN I WENT DOWN THERE HE
25 ASKED ME SOME QUESTIONS AND IF I AIN'T MISTAKEN WHEN, WHEN

MR. SMITH - REDIRECT EXAMINATION BY MR. DEBUSK

163

1 I WAS TALKING TO THEM WHEN HE ASKED ME, BECAUSE THE FIRST
2 WHEN HE CAME TO ME I MEANT, I MEAN WHEN HE CAME TO ME THE
3 FIRST TIME HE CAME TO ME IN A DIFFERENT MATTER THAN HE CAME
4 TO ME THE SECOND TIME.

5 Q WHAT WAS DIFFERENT THE FIRST TIME?

6 A I MEANT THE, I MEANT THE FIRST TIME WHEN I
7 TALKED TO HIM HE WAS LIKE, ERNEST, I KNOW, YOU KNOW, YOU
8 KNOW SOMETHING. I SAID, I SAID, NO, I DON'T KNOW NOTHING.
9 HE SAID, HE SAID, WELL, YOU KNOW MORE THAN YOU SAY YOU KNOW
10 AND THEN, AND THEN ABOUT SIX MONTHS LATER I GOT ARRESTED
11 AND HE SAID, WELL I ALREADY GOT, HE SAID, I'VE ALREADY GOT
12 THE EVIDENCE THAT I NEED, I MEAN HE SAID BECAUSE I KNOW YOU
13 WAS IN, IN THAT NISSAN.

14 Q IF YOU KNEW ALL THESE THINGS HE'S THINKING
15 YOU TOLD THE POLICE ABOUT WHEN YOU WERE ARRESTED AND THESE
16 THINGS YOU TOLD THE JURY ABOUT TODAY WHY DIDN'T YOU TELL
17 THE POLICE THAT FIRST TIME AT LORIS P.D.?

18 A WHY I DIDN'T TELL THE POLICE?

19 Q WHY DIDN'T YOU TELL THEM?

20 A BECAUSE I WAS SCARED.

21 Q OKAY, AND ALL THE OTHER FIVE PEOPLE
22 INVOLVED WERE YOU RELATED TO THEM?

23 A YES, SIR.

24 Q AND WHAT ARE THEY, YOUR COUSINS, IS THAT
25 CORRECT?

MR. SMITH - RECROSS EXAMINATION BY MR. MULLINS

164

1 A COUSINS.

2 MR. DEBUSK: OKAY, PLEASE ANY FURTHER QUESTIONS,
3 THANK YOU.

4 THE COURT: ALL RIGHT, MR. MULLINS, REDIRECT,
5 RECROSS.

6 RECROSS EXAMINATION

7 BY MR. MULLINS:

8 Q SKETTER, YOU WERE DRIVING, CORRECT?

9 A YES, SIR.

10 Q AND RASHAD AND TELLY WERE SETTING IN THE
11 BACK OF THE NISSAN, CORRECT?

12 A YES, SIR.

13 Q ALL RIGHT, AND AS THEY WALKED AWAY FROM YOU
14 THEIR BACKS WERE TO YOU, CORRECT?

15 A WHAT YOU MEAN WHEN THEY WALKED AWAY FROM
16 ME?

17 Q WHEN THEY WALKED AWAY FROM YOU TOWARDS MR.
18 RIGGINS CAR THEIR BACK WAS AWAY TO YOU, CORRECT?

19 A YES, SIR.

20 Q OKAY, NOW YOU CAN'T TELL ME ANYTHING ABOUT
21 THOSE GUNS THAT SUDDENLY APPEARED, CAN YOU?

22 A WHAT YOU MEAN?

23 Q WELL YOU KNOW THE DIFFERENCE BETWEEN A
24 PISTOL AND A REVOLVER, DON'T YOU, SIR?

25 A YES, SIR.

MR. SMITH RECROSS EXAMINATION BY MR. GARDNER

165

1 Q ALL RIGHT, YOU KNOW THE DIFFERENCE BETWEEN
2 A .38, .357, MAGNUM, AND A .9, DON'T YOU?

3 A YES, SIR.

4 Q ALL RIGHT, THAT'S PART OF YOUR BUSINESS,
5 ISN'T IT?

6 A NO, SIR.

7 Q IT'S NOT? ALL RIGHT, WELL WHAT WERE THOSE
8 BOYS CARRYING THAT DAY?

9 A I DON'T KNOW WHAT KIND OF GUNS THEY WERE
10 CARRYING THAT DAY.

11 Q YOU DON'T BECAUSE YOU DIDN'T ACTUALLY SEE
12 THEM, DID YOU?

13 A YES, SIR.

14 Q BUT YET YOU WERE AT THE WHEEL, CORRECT?

15 A YES, SIR.

16 Q THEY GOT OUT OF THE BACK OF THE CAR AND
17 WALKED AWAY FROM YOU, CORRECT?

18 A YES, SIR.

19 MR. MULLINS: NOTHING FURTHER, YOUR HONOR.

20 THE COURT: ALL RIGHT, MR. GARDNER.

21 MR. GARDNER: ONE QUESTION, YOUR HONOR.

22 RECROSS EXAMINATION

23 BY MR. GARDNER:

24 Q WOULD YOUR TESTIMONY TODAY SAYING THAT YOU
25 SAW THESE GUYS WITH GUNS BE BETTER FOR YOU OR WORSE FOR YOU

MR. SMITH RECROSS EXAMINATION BY MR. GARDNER

166

1 AS FAR AS YOUR DEAL THAN IF YOU SAID YOU DIDN'T SEE ANY
2 GUNS?

3 A SAY IT AGAIN, YOU GOT TO SPEAK UP I CAN'T
4 HEAR YOU.

5 Q THE FIRST STATEMENT TO THE POLICE YOU
6 DIDN'T SAY ANYTHING ABOUT GUNS, IN FACT YOU SAID YOU
7 WEREN'T THERE?

8 A UH-HUH.

9 Q ALL RIGHT, AND THEN YOU GOT A DEAL AND IN
10 EXCHANGE FOR YOUR TESTIMONY YOU WILL NOT BE CHARGED WITH
11 MURDER. MY QUESTION, SIR, IS WOULDN'T IT BE BETTER FOR YOU
12 AS YOUR DEAL IS RELATED THAT IF YOU TESTIFY THAT YOU SAW
13 THESE TWO DEFENDANT'S WITH GUNS?

14 A NO, I MEANT IT WON'T BE NO BETTER. I, I, I
15 MEAN EITHER WAY I MEANT, I MEANT I'M STILL CHARGED WITH IT
16 SO I MEANT, I MEANT IT WON'T BE NO BETTER.

17 Q WELL DO YOU, I'VE GOT TO FOLLOW UP ON THAT.
18 YOU THINK IT WOULD BE BETTER FOR YOUR DEAL IF YOU GOT UP
19 HERE AND SAID, THEY DIDN'T HAVE GUNS?

20 A NO, I MEANT, NO, SIR.

21 MR. GARDNER: OKAY, THANK YOU VERY MUCH.

22 THE COURT: ANYTHING ELSE, SOLICITOR?

23 MR. DEBUSK: NOT FOR THIS WITNESS.

24 THE COURT: ALL RIGHT, YOU MAY STEP DOWN, SIR.

25 MR. DEBUSK: MAY WE APPROACH, YOUR HONOR?

OFC. STEPHENS -- DIRECT EXAMINATION BY MR. DEBUSK

167

1 THE COURT: YES, SIR, FIRST DO YOU WISH THIS
2 WITNESS TO BE EXCUSED?

3 MR. DEBUSK: YES, YOUR HONOR.

4 THE COURT: ANY OBJECTION?

5 MR. MULLINS: NO OBJECTION, YOUR HONOR, AND IN
6 LIGHT OF THIS WITNESSES TESTIMONY WE WOULD ASK THAT MR.
7 BOWENS ALSO BE EXCUSED.

8 THE COURT: ALL RIGHT, GENTLEMEN, YOU ARE BOTH
9 RELEASED FROM YOUR SUBPOENA AND EXCUSED, THANK YOU VERY
10 MUCH.

11 MR. DEBUSK: THANK YOU, YOUR HONOR.

12 THE COURT: YA'LL COME AROUND HERE AND TALK.

13 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
14 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
15 OF THE JURY.)

16 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO
17 TAKE A SHORT BREAK AT THIS POINT IN TIME. I DID NOT GIVE
18 THE FOREPERSON A BREAK WHEN I SENT YOU TO THE JURY ROOM SO
19 BE BACK IN ABOUT 10 MINUTES, I'LL CALL YOU BACK THEN, THANK
20 YOU VERY MUCH.

21 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
22 10:40 A.M.)

23 (WHEREUPON, STATE'S EXHIBIT NUMBER 51 MARKED FOR
24 IDENTIFICATION.)

25 THE COURT: ALL RIGHT, WE'LL BE AT EASE FOR

OFC. STEPHENS - DIRECT EXAMINATION BY MR. DEBUSK

168

1 ABOUT 10 MINUTES, THANK YOU VERY MUCH.

2 MR. DEBUSK: THANK YOU, YOUR HONOR.

(WHEREUPON, A RECESS WAS TAKEN AND THE FOLLOWING TAKES PLACE ON THE RECORD

4 AFTER THE RECESS.)

5 THE COURT: IS THE STATE READY TO PROCEED?

6 MR. DEBUSK: THE STATE IS READY, YOUR HONOR.

7 THE COURT: ALL RIGHT, MR. MULLINS?

8 MR. MULLINS: YES, SIR, YOUR HONOR.

9 THE COURT: MR. GARDNER?

10 MR. GARDNER: YES, SIR, WE'RE READY TO GO

11 FORWARD.

12 THE COURT: ALL RIGHT, ASK THE JURY TO COME,

13 PLEASE.

14 (WHEREUPON, THE JURY ENTERS THE COURTROOM AT

15 11:00 A.M.)

16 THE COURT: MR. DEBUSK, YOU MAY PROCEED.

17 MR. DEBUSK: THANK YOU, YOUR HONOR, THE STATE

18 CALLS OFFICER ROBERT STEPHENS OF THE HORRY COUNTY POLICE

19 DEPARTMENT.

20 THE COURT: ALL RIGHT, SIR, PLEASE COME AROUND

21 AND BE SWORN.

22 OFC. ROBERT C. STEPHENS

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 MADAM CLERK: STATE YOUR NAME FOR THE COURT.

25 THE WITNESS: ROBERT STEPHENS.

OFC. STEPHENS - DIRECT EXAMINATION BY MR. DEBUSK

169

DIRECT EXAMINATION

BY MR. DEBUSK:

Q OFFICER STEPHENS, WHO, WHO IS YOUR
EMPLOYER?

A HORRY COUNTY POLICE DEPARTMENT.

Q HOW LONG HAVE YOU BEEN WITH THE POLICE
DEPARTMENT?

A SEVEN YEARS.

Q WHAT ARE YOUR DUTIES NOW?

A AT THE, RIGHT NOW I'M A CORPORAL IN CHARGE
OF TRAINING NEW OFFICERS AND SUPERVISING THE SHIFT.

Q NOW IN DECEMBER OF 2000, WHAT WERE YOUR
DUTIES?

A PATROLMAN, PRIMARY RESPONSIBILITY
RESPONDING TO CALLS FOR SERVICE.

Q NOW ON DECEMBER 21ST, 2000, DID YOU RESPOND
TO PINE NEEDLE ROAD?

A I DID.

Q WHAT SECTION, WHAT COUNTY IS THAT IN?

A THAT'S IN HORRY COUNTY.

Q WHAT SECTION OF THE COUNTY?

A LONGS.

Q OKAY, I WANT TO SHOW YOU WHAT HAS BEEN
MARKED AS STATE'S EXHIBIT 6 AND 7 AND ASK IF YOU RECOGNIZE
THESE?

OFC. STEPHENS - DIRECT EXAMINATION BY MR. DEBUSK

170

1 A YES.

2 Q WHAT DO THOSE DEPICT?

3 A MAPS OF HORRY COUNTY AND LONGS, SOUTH
4 CAROLINA.

5 Q OKAY, WHAT DO THE RED SQUARES ON EACH
6 REPRESENT OR THE RED MARKS?

7 A THAT IS THE SPECIFIC AREA OF THE COUNTY
8 THAT LONGS IS IN.

9 Q OKAY, AND THE OTHER?

10 A THIS IS THE FREEMONT AREA.

11 Q OKAY, WHAT ADDRESS DID YOU RESPOND TO?

12 A PINE NEEDLE ROAD.

13 Q OKAY, WHAT DID YOU SEE THERE?

14 A WHEN I ARRIVED I OBSERVED A SILVER LINCOLN
15 TOWN CAR, I THINK IT WAS A TOWN CAR, LINCOLN CONTINENTAL
16 ACTUALLY, IN THE PARKING LOT ---

17 MR. MULLINS: YOUR HONOR?

18 THE COURT: YES, SIR.

19 MR. MULLINS: IF WE COULD HAVE CORPORAL SPEAK IN
20 THE MICROPHONE, WE'RE TRYING A HARD TIME HEARING HIM WITH
21 THE VENT BEHIND US.

22 THE COURT: ALL RIGHT, SIR.

23 MR. MULLINS: THANK YOU, YOUR HONOR.

24 A IS THAT BETTER?

25 MR. MULLINS: YES, SIR, THANK YOU.

OFC. STEPHENS - DIRECT EXAMINATION BY MR. DEBUSK

171

1 A OKAY, WHEN I ARRIVED ON THE SCENE I
2 DISCOVERED A SILVER LINCOLN CONTINENTAL PARKED KIND OF
3 SIDWAYS IN THE PARKING LOT, THE DRIVERS SIDE DOOR OPEN
4 WITH THE VICTIM IN THE DRIVERS SEAT.

5 Q WHAT WAS THE STATE OF THE VICTIM AT THAT
6 POINT?

7 A HE WAS SEMI COHERENT. I TRIED TO SPEAK
8 WITH HIM AND HE COULDN'T, HE COULDN'T TALK TO ME, HE
9 COULDN'T CARRY ON A CONVERSATION, COULDN'T GIVE ME ANY
10 INFORMATION.

11 Q OTHER THAN THE VICTIM THAT WAS INJURED WHO
12 ELSE WAS AT THE SCENE?

13 A I BELIEVE HIS AUNT WAS BESIDE HIM IN THE
14 APEX OF THE DOOR BESIDE HIM. THERE WERE NUMEROUS OTHER
15 PEOPLE ON SCENE, TOO MANY TO COUNT.

16 Q WHAT DID YOU DO AT THE SCENE?

17 A I SECURED THE CRIME SCENE. I WAITED FOR
18 INVESTIGATIONS AND CRIME SCENE PERSONNEL TO RESPOND AND
19 COMPLETE AN INCIDENT REPORT.

20 Q DID YOU, WERE YOU PRESENT WHEN THE VICTIM
21 LEFT THE SCENE?

22 A YES, I WAS.

23 Q HOW DID HE LEAVE?

24 A HE LEFT VIA AMBULANCE IN ROUTE TO THE
25 HOSPITAL.

OFC. STEPHENS - DIRECT EXAMINATION BY MR. DEBUSK

172

1 Q WERE YOU PRESENT WHEN THE LINCOLN LEFT THE
2 SCENE?

3 A I WAS.

4 Q HOW DID IT LEAVE THE SCENE?

5 A BY WRECKER.

6 Q LET ME SHOW YOU A COUPLE OF PICTURES REAL
7 QUICK, STATE'S 2, 3, 4 AND ASK IF YOU RECOGNIZE THOSE?

8 A I DO.

9 Q WHAT ARE THOSE?

10 A TWO ARE PICTURES OF THE VICTIM'S VEHICLE
11 AND ONE IS A PICTURE OF THE PARKING LOT THE INCIDENT TOOK
12 PLACE IN.

13 Q OKAY, LET ME SHOW YOU WHAT'S BEEN MARKED
14 FOR IDENTIFICATION AS STATE'S EXHIBIT 8 AND ASK IF YOU
15 RECOGNIZE THIS ONE?

16 A YES, THAT'S ANOTHER PHOTOGRAPH OF THE
17 PARKING LOT.

18 Q DOES THAT FAIRLY AND ACCURATELY REPRESENT
19 THE LOCATION OF THE LINCOLN AUTOMOBILE WHEN YOU ARRIVED?

20 A YES.

21 MR. DEBUSK: YOUR HONOR, STATE'S EXHIBIT 8 IS
22 NOT YET IN EVIDENCE, WE'D MOVE TO HAVE THAT IN EVIDENCE.

23 THE COURT: ANY OBJECTION?

24 MR. MULLINS: NO, OBJECTION.

25 MR. GARDNER: NO, YOUR HONOR.

OFC. STEPHENS - DIRECT EXAMINATION BY MR. DEBUSK

173

1 THE COURT: IT'S IN EVIDENCE WITHOUT OBJECTION.

2 (WHEREUPON, STATE'S EXHIBIT NUMBER 8 ENTERED INTO
3 EVIDENCE.)

4 THE COURT: DO YOU INTEND TO WAIT ON 5 AND 6?

5 MR. DEBUSK: YES, YOUR HONOR.

6 Q ON STATE'S EXHIBIT 7 CAN YOU INDICATE WHERE
7 PINE NEEDLE ROAD IS?

8 A PINE NEEDLE ROAD IS BETWEEN FREEMONT ROAD
9 AND HIGHWAY 9.

10 Q OKAY.

11 MR. DEBUSK: YOUR HONOR, MAY I PUBLISH TO THE
12 JURY STATE'S, I'M SORRY, FIRST WE MOVE INTO EVIDENCE
13 STATE'S 6 AND 7 ---

14 THE COURT: YES, SIR.

15 MR. DEBUSK: --- AT THIS TIME?

16 THE COURT: ANY OBJECTION TO 6 AND 7 COMING
17 INTO EVIDENCE?

18 MR. MULLINS: NO, YOUR HONOR.

19 THE COURT: TWO MAPS, THOSE ARE THE TWO MAPS.

20 MR. GARDNER: NO, OBJECTION, YOUR HONOR.

21 MR. DEBUSK: MAY I PUBLISH TO THE JURY VIA POWER
22 POINT, YOUR HONOR.

23 THE COURT: 6 AND 7 ARE IN EVIDENCE WITHOUT
24 OBJECTION.

25 (WHEREUPON, STATE'S EXHIBIT NUMBER 6 AND 7

OFC. STEPHENS - CROSS EXAMINATION BY MR. MULLINS

174

1 ENTERED INTO EVIDENCE.)

2 THE COURT: ANY OBJECTION TO THE PUBLICATION?

3 MR. MULLINS: NO, SIR.

4 MR. GARDNER: NO, YOUR HONOR.

5 THE COURT: YOU MAY DO SO.

6 MR. DEBUSK: MAY I HAVE THE SCREEN, PLEASE?

7 Q OKAY, THIS IS STATE'S 6 MAP OF HORRY
8 COUNTY, DOES THAT REPRESENT THE LONGS, FREEMONT AREA
9 CORRECTLY?

10 A YES.

11 Q OKAY, AND THIS, LET ME HAND YOU A LASER
12 POINTER, CAN YOU INDICATE TO THE JURY THE LOCATION OF PINE
13 NEEDLE ROAD?

14 A LET'S SEE, IT'S KIND OF HARD TO SEE, THAT'S
15 IT RIGHT THERE.

16 Q OKAY, AND TO WHAT ADDRESS DID YOU RESPOND?

17 A PINE NEEDLE ROAD.

18 Q IS THAT WHERE, APPROXIMATELY WHERE PINE
19 NEEDLE ROAD IS?

20 A YES.

21 Q AND IS THAT AGAIN THE LOCATION OF BRUCE'S
22 COUNTRY KITCHEN?

23 A BRUCE'S COUNTRY KITCHEN, YES.

24 MR. DEBUSK: THANK YOU, PLEASE ANSWER ANY
25 QUESTIONS THE DEFENSE MIGHT HAVE.

OFC. STEPHENS - CROSS EXAMINATION BY MR. MULLINS

175

1 THE COURT: ALL RIGHT, MR. MULLINS.

2 MR. MULLINS: MAY IT PLEASE THE COURT, YOUR
3 HONOR?

4 THE COURT: YES, SIR.

5 CROSS EXAMINATION

6 BY MR. MULLINS:

7 Q GOOD MORNING, CORPORAL STEPHENS.

8 A GOOD MORNING.

9 Q GOOD MORNING, WHEN YOU ARRIVED ON THE SCENE
10 THERE YOUR RESPONSIBILITY FIRST IS TO ASSIST ANY VICTIMS,
11 CORRECT?

12 A CORRECT.

13 Q THEN YOUR RESPONSIBILITY IS TO SECURE THE
14 SCENE ONCE YOUR VICTIMS HAVE BEEN, MEDICAL CARE HAS BEEN
15 ESTABLISHED FOR THEM, CORRECT?

16 A CORRECT.

17 Q AND TO ENSURE THAT THERE IS NO POSSIBLE .
18 DEFENDANT'S LEFT ON THE SCENE THAT COULD CREATE ANY
19 VIOLENCE AS WELL?

20 A CORRECT.

21 Q ALL RIGHT, NOW WHEN YOU DID THAT, SIR, DID
22 YOU NOTICE THAT ON THE PASSENGER SIDE OF THE DECEASED
23 VEHICLE THAT THERE WAS SOME SHELL CASINGS?

24 A YES.

25 Q AND WHAT KIND OF SHELL CASINGS WERE THEY?

OFC. STEPHENS - CROSS EXAMINATION BY MR. MULLINS

176

1 A GIVE ME JUST A MOMENT. THERE APPEARED TO
2 BE TWO SMALL CALIBER SHELL CASINGS.

3 Q ALL RIGHT, CONSISTENT WITH A 9 MILLIMETER?

4 A I'M NOT SURE.

5 Q YOU'RE NOT SURE?

6 A I'M --

7 Q BUT YOU DID MARK AND SECURE THAT?

8 A YES, SHELL CASINGS ON SCENE WERE SECURED.

9 Q ALL RIGHT, NO QUESTION THAT THOSE WERE ON
10 THE PASSENGER SIDE OF MR. RIGGINS VEHICLE, CORRECT?

11 A NONE WHATSOEVER.

12 Q ALL RIGHT, AND, SIR, THE DIFFERENCE BETWEEN
13 A PISTOL AND AN AUTOMATIC CAN YOU TELL THAT TO THE JURY?

14 A A PISTOL AND AN AUTOMATIC?

15 Q YOU'RE FAMILIAR WITH WEAPONS, AREN'T YOU,
16 AS A POLICE OFFICER?

17 A ARE YOU SPEAKING OF A REVOLVER AND AN
18 AUTOMATIC?

19 Q YES, SIR, REVOLVER AND AN AUTOMATIC?

20 A AN AUTOMATIC OR SEMI AUTOMATIC WILL EJECT
21 THE ROUNDS, THE CARTRIDGE AS IT FIRES AND A REVOLVER WILL
22 MAINTAIN THOSE CASINGS IN ITS CYLINDER.

23 Q ALL RIGHT, SO A SEMI AUTOMATIC WILL
24 GENERALLY EJECT THE ROUNDS?

25 A YES.

OFC. STEPHENS - CROSS EXAMINATION BY MR. GARDNER

177

1 Q ALL RIGHT, WHERE DO THEY NORMALLY EJECT
2 FROM WITH MOST MAKES OF, OF FIREARMS?

3 A THE EJECTION PORT.

4 Q ALL RIGHT, AND THAT'S NORMALLY ON WHAT
5 SIDE?

6 A THE, WHAT SIDE, IT'S NORMALLY ON TOP OF A
7 WEAPON.

8 Q ALL RIGHT, THE EJECT ITSELF. WHEN YOU
9 ARRIVED ON SCENE YOU FOUND THOSE SHELLS ON THE PASSENGER
10 SIDE OF THE VEHICLE, CORRECT?

11 A YES.

12 Q DID YOU FIND ANY SHELLS ANYWHERE ELSE?

13 A NOT TO MY RECOLLECTION.

14 Q ALL RIGHT, NO QUESTION THAT MR. RIGGINS WAS
15 IN THE DRIVERS SEAT STILL?

16 A NO DOUBT.

17 Q ALL RIGHT, AND NO QUESTION THAT THERE WAS
18 BLOOD IN THE DRIVERS SEAT, THE DRIVERS AREA, CORRECT?

19 A RIGHT.

20 Q DID YOU FIND ANY SPENT SHELL CASINGS IN THE
21 BACK OF THE VEHICLE?

22 A I DIDN'T ENTER THE VEHICLE.

23 Q YOU DID NOT ENTER THE VEHICLE, SO YOU JUST
24 SECURED THE SCENE UNTIL ---

25 A I JUST SECURED THE SCENE.

OFC. STEPHENS - CROSS EXAMINATION BY MR. GARDNER

179

1 Q THESE SHELLS THAT YOU WERE TALKING ABOUT A
2 WHILE AGO BY MR. MULLINS THESE ARE SMALL CALIBER SHELLS?

3 A YES.

4 Q IS THAT RIGHT?

5 A THEY APPEAR TO BE, CORRECT.

6 Q ON THE PASSENGER SIDE?

7 A CORRECT.

8 Q OF THE CAR? AND THERE WERE CLOSER TO THE
9 BACK DOOR?

10 A I CAN'T SAY.

11 Q OKAY, BUT YOU WOULDN'T DISPUTE THAT IF THEY
12 WERE CLOSER TO THE BACK DOOR?

13 A I CAN'T SAY.

14 Q OKAY, HOW IS YOU CAN SAY THAT THEY WERE ON
15 THE PASSENGER SIDE BUT YOU CAN'T SAY IF THEY WERE ---

16 A BECAUSE IT'S DOCUMENTED IN MY REPORT.

17 Q OKAY, ALL RIGHT, OKAY, AND NO STATEMENTS BY
18 MR. RIGGINS?

19 A NO.

20 Q NO STATEMENTS BY ANYBODY ELSE, WERE YOU
21 PRESENT WHEN THE 911 CALL HAD MADE?

22 A NO.

23 Q YOU GOT THERE WHEN ---

24 A I RESPONDED ONCE THE 911 CAR WAS MADE.

25 Q SO YOU GOT THERE RIGHT AT THE CONCLUSION OF

SGT. GAUSE - DIRECT EXAMINATION BY MR. DEBUSK

180

1 THAT?

2 A I GOT THERE SEVEN MINUTES LATER.

3 Q OKAY, SO IT'S PROBABLY, WELL, YOU WOULDN'T
4 KNOW IF THE SAME PEOPLE THAT WERE THERE DURING THAT CALL
5 WERE THERE WHEN YOU GOT THERE?

6 A I WOULD HAVE NO WAY OF KNOWING UNLESS
7 SOMEONE TOLD ME.

8 Q ALL RIGHT, AND YOU DIDN'T FIND ANYTHING OUT
9 OF THE ORDINARY AS PART OF YOUR INVENTORY AT THE SCENE?

10 A OUT OF THE ORDINARY FOR FREEMONT, NO.

11 Q WHAT DID YOU MEAN BY THAT, SIR?

12 A IT'S CUSTOMARY TO HAVE LARGE CROWDS.

13 Q OKAY, BUT ANY CONTRABAND OF ANY SORT?

14 A NOT THAT I DISCOVERED, NO.

15 MR. GARDNER: OKAY, AND THAT WOULD BE ALL WE
16 HAVE, THANK YOU, SIR.

17 THE COURT: REDIRECT?

18 MR. DEBUSK: NOTHING, YOUR HONOR, THANK YOU, WE
19 WOULD ASK THAT THIS WITNESS BE EXCUSED FROM HIS SUBPOENA?

20 MR. GARDNER: NO OBJECTION.

21 THE COURT: ANY OBJECTION?

22 MR. GARDNER: NO OBJECTION, YOUR HONOR.

23 MR. MULLINS: NO OBJECTIONS.

24

25 THE COURT: ALL RIGHT, SIR, YOU'RE EXCUSED AND

SGT. GAUSE - DIRECT EXAMINATION BY MR. DEBUSK

181

1 RELEASED FROM YOUR SUBPOENA. NEXT WITNESS?

2 MR. DEBUSK: THANK YOU, YOUR HONOR, THE STATE
3 CALLS SGT. JEFF GAUSE.

4 SGT. JEFFREY GAUSE

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 MADAM CLERK: STATE YOUR NAME FOR THE COURT.

7 THE WITNESS: JEFFREY WENDELL GAUSE, G-A-U-S-E.

8 DIRECT EXAMINATION

9 BY MR. DEBUSK:

10 Q SGT. GAUSE, WHO'S YOUR EMPLOYER?

11 A Horry COUNTY POLICE DEPARTMENT.

12 Q AND HOW LONG HAVE YOU BEEN EMPLOYED BY THE
13 Horry COUNTY POLICE DEPARTMENT?

14 A APPROXIMATELY 12 YEARS.

15 Q WHAT, CURRENTLY WHAT ARE YOUR DUTIES?

16 A CURRENTLY I'M ASSIGNED TO THE UNIFORM
17 PATROL DIVISION WHICH IS BASICALLY THE PATROL DIVISION THAT
18 RESPONDS ANSWERS TO CALLS SERVICE FROM THE PUBLIC.

19 Q NOW IN DECEMBER OF 2000 WHAT WERE YOUR
20 DUTIES AT THAT TIME?

21 A I WAS ASSIGNED TO THE CRIME SCENE
22 INVESTIGATION UNIT.

23 Q AND WHAT WOULD YOUR RESPONSIBILITIES HAVE
24 BEEN THEN?

25 A AT THAT TIME MY RESPONSIBILITIES WERE TO

SGT. GAUSE - DIRECT EXAMINATION BY MR. DEBUSK

182

1 RESPOND TO THE MAJORITY OF ALL MAJOR CRIME SCENES WITHIN
2 Horry COUNTY, PROCESSING OF EVIDENCE, COLLECTION OF
3 EVIDENCE, DOCUMENTATION, PHOTOGRAPHING, JUST THE LIST GOES
4 ON AND ON, BASICALLY ANYTHING TO DO WITH CRIME SCENE
5 INVESTIGATION OF VIOLENT CRIMES.

6 Q NOW WERE YOU ON DUTY DECEMBER 21ST OF 2000?

7 A YES, I WAS.

8 Q DID YOU RESPOND TO THE FREEMONT AREA OF
9 Horry COUNTY?

10 A YES, I DID.

11 Q WHAT ADDRESS DID YOU RESPOND TO?

12 A THE, THE PHYSICAL ADDRESS WAS ON PINE
13 NEEDLE WHICH RUNS OFF OF FREEMONT ROAD. THE ACTUAL ADDRESS
14 WAS, I'M NOT SURE OF THE EXACT ADDRESS BUT IT WAS AN
15 EATERY, BRUCE'S KITCHEN.

16 Q OKAY, WHAT, WHAT ARE YOU CONSULTING THERE
17 TO?

18 A THESE ARE MY NOTES, DIAGRAMS, INVESTIGATIVE
19 REPORT.

20 Q NOW WHEN YOU GOT THERE WHAT DID YOU SEE?

21 A THERE WAS A, A VEHICLE THAT WAS IN THE
22 PARKING LOT WITH THE DOOR OPEN AND THE WINDOWS PARTIALLY
23 ROLLED DOWN, SOME SCATTERED ITEMS OUT IN THE PARKING LOT.

24 Q OKAY, WHAT DID YOU DO WHEN YOU REACHED THAT
25 SCENE?

SGT. GAUSE - DIRECT EXAMINATION BY MR. DEBUSK

183

1 A INITIALLY WHEN I GOT THERE THERE WAS OTHER
2 UNIFORM PATROL OFFICERS THERE THAT HAD SECURED THE CRIME
3 SCENE. I JUST GATHERED WHAT INFORMATION I COULD OF WHAT
4 THEY HAD LEARNED UPON ARRIVING ON THE SCENE. I WAS
5 INFORMED THAT THE VICTIM RIGGINS HAD ALREADY BEEN
6 TRANSPORTED AWAY FROM THE CRIME SCENE.

7 Q DID YOU TAKE ANY PHOTOGRAPHS?

8 A YES, I DID.

9 Q LET ME SHOW YOU STATE'S EXHIBITS 3, 4 -- 2,
10 3, 4 AND 8 ALREADY IN EVIDENCE AND ASK IF YOU RECOGNIZE
11 THESE?

12 A YES, I DO.

13 Q WHAT ARE THOSE?

14 A THOSE ARE PHOTOGRAPHS THAT I TOOK OF THE
15 CRIME SCENE.

16 Q WHAT DO THEY DEPICT?

17 A THEY SHOW THE PARKING LOT AREA OF THE
18 BRUCE'S KITCHEN WITH A SILVER IN COLOR LINCOLN CAR IN THE
19 PARKING LOT.

20 Q ARE THEY IN THE CONDITION THEY WERE IN WHEN
21 YOU ARRIVED?

22 A YES, THEY WERE.

23 Q OKAY, I HAVE IN MY HAND STATE'S EXHIBITS
24 MARKED FOR I.D. ONLY 9, 10, 11, 12, AND 13 AS WELL AS 51,
25 ASK FOR YOU TO LOOK AT THESE AND SEE IF YOU RECOGNIZE THEM?

SGT. GAUSE - DIRECT EXAMINATION BY MR. DEBUSK

184

1 A YES, I DO.

2 Q WHAT ARE THEY?

3 A THEY ARE PHOTOGRAPHS OF THE LINCOLN CAR IN
4 THE PARKING LOT OF BRUCE'S KITCHEN ON PINE NEEDLE ROAD IN
5 FREEMONT. ALSO THERE ARE PHOTOGRAPHS OF INSIDE THE VEHICLE
6 THAT'S IN THE PARKING LOT ALONG WITH NUMBER CARDS OR
7 PLACARDS THAT WE PLACE DOWN BESIDE EVIDENCE.

8 Q ARE THEY FAIR AND ACCURATE REPRESENTATIONS
9 OF THE STATE OF THE CRIME SCENE WHEN YOU ARRIVED?

10 A YES, SIR.

11 MR. DEBUSK: YOUR HONOR, AT THIS TIME THE STATE
12 WOULD MOVE TO HAVE ADMITTED STATE'S 13, 12, 11, 10, 9 AND
13 51?

14 THE COURT: ANY OBJECTION?

15 MR. MULLINS: NO OBJECTION FROM DEFENDANT
16 MANNING, YOUR HONOR.

17 MR. GARDNER: NO OBJECTION, YOUR HONOR.

18 THE COURT: ALL RIGHT, STATE'S 9 THROUGH 13 AND
19 51 ARE IN EVIDENCE WITHOUT OBJECTION.

20 (WHEREUPON, STATE'S EXHIBITS NUMBERS 9, 10, 11,
21 12, 13 AND 51 ENTERED INTO EVIDENCE.)

22 Q SGT. GAUSE, I DRAW YOUR ATTENTION SPECIFIC
23 TO STATE'S EXHIBIT 13 AND ASK WHAT THAT DEPICTS?

24 A THIS IS THE FRONT SEAT AREA OF THE LINCOLN
25 CAR WITH BLOOD ON THE ARM REST AND SEAT.

SGT. GAUSE - DIRECT EXAMINATION BY MR. DEBUSK

185

1 Q DID YOU FIND BLOOD STAINS ELSEWHERE IN THE
2 CAR THAN UNDER THE DRIVERS SEAT?

3 A YES, SIR.

4 Q WHERE?

5 A IT WAS ON THE DOOR OF THE CAR AND ---

6 Q WHICH DOOR?

7 A THE DRIVERS DOOR.

8 Q ANY OTHER DOORS HAVE BLOOD ON THEM?

9 A NOT THAT I RECALL.

10 Q ANY OTHER SEATS?

11 A NOT THAT I RECALL.

12 Q IF I CAN DRAW YOUR ATTENTION TO STATE'S 10
13 AND 11 AND ASK WHAT THESE TWO DEPICT?

14 A ONE PHOTOGRAPH HERE IS THE PASSENGER SIDE
15 FRONT DOOR ---

16 Q GIVE THE JURY THE NUMBER YOU'RE REFERRING
17 TO?

18 A I'M NOT SURE, EXHIBIT 12.

19 Q THANK YOU. NOW AS TO 10 AND 11 I ASK YOU
20 WHAT THOSE DEPICT?

21 A NUMBER 10, EXCUSE ME, NUMBER 11 IS, IS ON
22 THE PASSENGER SIDE OF THE VEHICLE. ONE IS, THEY HAVE ITEM
23 NUMBER 5 AND 6 OUT BESIDE TWO PIECES OF EVIDENCE ON THE
24 PASSENGER SIDE OF THE DOOR, OF THE DOOR AREA.

25 Q WHAT WERE ITEMS 5 AND 6?

SGT. GAUSE - DIRECT EXAMINATION BY MR. DEBUSK

186

1 A 5 AND 6 ARE SPENT 9 MILLIMETER CASINGS,
2 BULLET CASINGS.

3 Q DID YOU DO ANYTHING WITH THOSE TWO CASINGS?

4 A THEY WERE COLLECTED.

5 Q YOU BROUGHT A BAG WITH YOU, DO YOU HAVE
6 THOSE CASINGS IN THAT BAG?

7 A YES, SIR.

8 Q COULD YOU, PLEASE, TAKE THOSE OUT?

9 MR. DEBUSK: YOUR HONOR, LET THE RECORD REFLECT
10 THAT ITEM NUMBER 5 IS NOW STATE'S EXHIBIT 14; ITEM NUMBER 6
11 IS NOW STATE'S EXHIBIT 15.

12 THE COURT: ALL RIGHT, SIR, FOR IDENTIFICATION.

13 MR. DEBUSK: YES,. YOUR HONOR.

14 (WHEREUPON, STATE'S EXHIBIT 14 AND STATE'S
15 EXHIBIT 15 MARKED FOR IDENTIFICATION.)

16 Q SGT. GAUSE, WOULD YOU OPEN THOSE AND, AND
17 CHECK THOSE CASINGS? OKAY, ARE THOSE STILL IN THE SAME
18 CONDITION THEY WERE WHEN YOU COLLECTED THEM?

19 A THEY APPEAR TO BE IN THE SAME CONDITION AS
20 WHEN I COLLECTED THEM, YES.

21 MR. DEBUSK: YOUR HONOR, AT THIS TIME THE STATE
22 WOULD MOVE STATE'S EXHIBITS 14 AND 15 INTO EVIDENCE.

23 THE COURT: ANY OBJECTION?

24 MR. MULLINS: NO OBJECTION.

25 THE COURT: MR. GARDNER?

SGT. GAUSE - DIRECT EXAMINATION BY MR. DEBUSK

187

1 MR. GARDNER: NO OBJECTION, YOUR HONOR.

2 THE COURT: ALL RIGHT, THEY'RE IN EVIDENCE
3 WITHOUT OBJECTION.

4 MR. DEBUSK: THANK YOU, YOUR HONOR.

5 (WHEREUPON, STATE'S EXHIBITS NUMBERS 14 AND 15
6 ENTERED INTO EVIDENCE.)

7 Q SGT. GAUSE, I GO BACK TO STATE'S EXHIBIT 51
8 AND ASK WHAT THAT DEPICTS?

9 A IT'S THE BACK SEAT AREA OF THE LINCOLN.

10 Q OKAY, THANK YOU. NOW AT THE SCENE AT
11 BRUCE'S COUNTRY KITCHEN DID YOU COLLECT ANY PROJECTILES OR
12 ANY OTHER CASINGS?

13 A NOT AT THE CRIME SCENE OTHER THAN THE SPENT
14 CASINGS.

15 Q OKAY, TAKE SOME OF THESE EXHIBITS AWAY AND
16 CLEAR IT UP FOR YOU A LITTLE BIT. OUT OF THE COURSE OF
17 YOUR INVESTIGATION DID YOU WORK AT ANY OTHER SCENES OTHER
18 THAN BRUCE'S COUNTRY KITCHEN?

19 A THE ONLY OTHER THING THAT I RESPONDED TO
20 WAS THE, THE BODY AT THE OPERATING ROOM IN THE LORIS
21 HOSPITAL AND ALSO I ATTENDED THE AUTOPSY OF THE VICTIM.

22 Q OKAY, DURING THOSE TWO AT LORIS EMERGENCY
23 ROOM AND AT THE AUTOPSY DID YOU COLLECT ANY EVIDENCE?

24 A AT THE EMERGENCY ROOM OR, EXCUSE ME, THE
25 OPERATING ROOM AT THE HOSPITAL THE CLOTHING WAS COLLECTED

SGT. GAUSE - DIRECT EXAMINATION BY MR. DEBUSK

188

1 ALONG WITH SOME GOLD OVER TEETH OVERLAYS. IN OTHER WORDS
2 IT'S KIND OF LIKE A DECORATIVE OR NOVELTY TYPE THING THAT
3 PEOPLE WEAR OVER THEIR TEETH.

4 Q WHAT DID YOU DO WITH THOSE TEETH?

5 A COLLECTED THEM.

6 Q DO YOU HAVE THOSE WITH YOU IN THAT BAG?

7 A YES, SIR.

8 Q WOULD YOU, PLEASE, TAKE THOSE OUT FOR ME?

9 (WHEREUPON, STATE'S EXHIBIT NUMBER 52 MARKED FOR
10 IDENTIFICATION.)

11 MR. DEBUSK: YOUR HONOR, THESE ITEMS ARE MARKED
12 AS STATE'S EXHIBIT 52 FOR I.D. PURPOSES.

13 Q WHERE AGAIN DID THOSE COME FROM?

14 A THEY WERE REMOVED FROM THE MOUTH OF THE
15 VICTIM RIGGINS.

16 Q OKAY, ARE THEY IN SUBSTANTIALLY THE SAME
17 CONDITION THEY WERE WHEN THEY WERE FIRST REMOVED FROM THE
18 MOUTH?

19 A YES, SIR.

20 MR. DEBUSK: YOUR HONOR, THE STATE WOULD MOVE
21 STATE'S EXHIBIT 52 INTO EVIDENCE.

22 THE COURT: ANY OBJECTION?

23 MR. MULLINS: NO OBJECTION.

24 MR. GARDNER: NO OBJECTION, YOUR HONOR.

25 THE COURT: STATE'S 52 IS IN EVIDENCE WITHOUT

SGT. GAUSE - DIRECT EXAMINATION BY MR. DEBUSK

189

1 OBJECTION.

2 (WHEREUPON, STATE'S EXHIBIT NUMBER 52 ENTERED
3 INTO EVIDENCE.)

4 Q OTHER THAN THE CLOTHING AND THE OVER TEETH
5 DID YOU COLLECT ANY OTHER ITEMS FROM THE VICTIM'S
6 POSSESSION?

7 A AT THAT TIME I ALSO PERFORMED WHAT THEY
8 CALL A GSR KIT, GUNSHOT RESIDUE KIT, THAT WAS COLLECTED.
9 THAT'S PRETTY MUCH STANDARD ANY TIME SOMEONE HAS BEEN
10 INVOLVED IN A SHOOTING INCIDENT.

11 Q ANY OTHER ITEMS, ANY PERSONAL ITEMS
12 PROPERTY?

13 A OTHER THAN THE CLOTHING THAT WAS ALREADY
14 REMOVED FROM THE VICTIM AND THAT WAS COLLECTED FROM
15 DETECTIVE STAN STRICKLAND THAT WAS ALREADY ON THE SCENE AT
16 THE HOSPITAL.

17 Q NOW LET'S GO BACK TO THE AUTOPSY, WHERE DID
18 THAT OCCUR?

19 A MUSC IN CHARLESTON.

20 Q DID YOU OBSERVE THE AUTOPSY?

21 A YES, I DID.

22 Q DID YOU COLLECT ANY ITEMS AT THE AUTOPSY?

23 A I COLLECTED SOME FRAGMENTS AND PROJECTILES.

24 Q HOW MANY?

25 A GIVE ME JUST A SECOND, I COUNT 6.

SGT. GAUSE - DIRECT EXAMINATION BY MR. DEBUSK

190

1 Q WERE THEY GIVEN NUMBERS OR ANY OF THAT SORT
2 OF DESIGNATION WHEN THEY WERE COLLECTED AT MUSC?

3 A THEY WERE GIVEN A NUMBER BY THE PATHOLOGIST
4 THAT WHEN THEY WERE REMOVED FROM THE BODY. PLEASE GIVE ME
5 JUST A SECOND AND I'LL GET YOU A NUMBER. FROM THE LIST OF
6 EVIDENCE DESCRIPTION FROM THE PATHOLOGIST THEY'RE NUMBERED
7 FROM EVIDENCE COLLECTED 1 THROUGH 8, THE BULLETS BEING 2,
8 3, 4, 5, 6, AND 7.

9 Q DO YOU HAVE THOSE BULLETS WITH YOU AGAIN?

10 A YES, SIR.

11 Q JUST TO VERIFY, SGT. GAUSE, WHAT WE HAVE
12 HERE ARE THESE BOTTLES, WHERE DID THESE BOTTLES COME FROM?

13 A THEY CAME FROM THE MEDICAL UNIVERSITY OF
14 SOUTH CAROLINA.

15 Q THEY APPEAR TO BE LABELED BULLETS NUMBER 1,
16 2, 3, 4, 5 AND 6; IS THAT CORRECT?

17 A THAT'S CORRECT.

18 Q SO IN FACT 1 THROUGH 6?

19 A WELL ON THE NUMERICAL ORDER OF HOW EVIDENCE
20 WAS COLLECTED THERE WAS OTHER EVIDENCE, A VIAL OF BLOOD
21 THAT WAS COLLECTED BUT THESE ARE THE ---

22 Q THESE BOTTLES THEY'RE LABELED BULLET 1,
23 BULLET 2 --

24 A YES, SIR.

25 Q THOSE ARE THE PROJECTILES YOU COLLECTED AT

SGT. GAUSE - DIRECT EXAMINATION BY MR. DEBUSK

191

1 MUSC?

2 A YES, SIR.

3 Q FROM THE AUTOPSY?

4 A YES, SIR.

5 (WHEREUPON, STATE'S EXHIBITS NUMBERS 16, 17, 18,
6 19, 20, AND 21 MARKED FOR IDENTIFICATION.)

7 MR. DEBUSK: YOUR HONOR, FOR THE RECORD THE ITEM
8 LABELED:

9 BULLET NUMBER 1 IS NOW EXHIBIT 16 FOR
10 IDENTIFICATION;

11 BULLET NUMBER 2 IS 17 FOR IDENTIFICATION;

12 BULLET NUMBER 3 IS 18 FOR IDENTIFICATION;

13 BULLET NUMBER 4 IS 19 FOR IDENTIFICATION;

14 BULLET NUMBER 5 IS 20 FOR IDENTIFICATION;

15 AND BULLET NUMBER 6 IS 21 FOR IDENTIFICATION.

16 Q NOW DURING THE COURSE OF YOUR INVESTIGATION
17 OF THIS CASE, SGT. GAUSE, DID YOU DO A CLOSE EXAMINATION OF
18 THE VEHICLE, THE LINCOLN VEHICLE, THAT THE VICTIM WAS FOUND
19 IN?

20 A YES, SIR, THE VEHICLE WAS PROCESSED FOR
21 LATENT PRINTS, ALSO IT WAS SEARCHED FOR ANY OTHER EVIDENCE.

22 Q IN YOUR SEARCH OF THE VEHICLE WERE YOU ABLE
23 TO IDENTIFY ANY OF THE PRINTS ON THE VEHICLE?

24 A NOT THAT I RECALL, NO, SIR.

25 Q OKAY, NOW WHEN YOU SEARCHED THE VEHICLE DID

SGT. GAUSE - DIRECT EXAMINATION BY MR. DEBUSK

192

1 IT HAVE ANY BROKEN WINDOWS?

2 A NO, SIR.

3 Q DID IT HAVE ANY BULLET HOLES ON THE
4 INTERIOR?

5 A THERE WAS BULLET HOLES IN THE INTERIOR ON
6 THE DRIVERS SIDE AREA. I ATTEMPTED TO REMOVE PART OF THE
7 CAR TO GET TO IT BUT IT WAS LODGED INSIDE THE, THE BODY
8 ACTUAL FRAMING OF THE CAR, I WAS UNABLE TO LOCATE IT, BUT
9 THERE WAS OBVIOUS SIGNS THAT A BULLET HOLE OR A BULLET HAD
10 PASSED THROUGH INTO THE FRAME OF THE CAR.

11 Q NOW WHERE ON THE CAR WAS THAT LOCATED?

12 A IT WAS ON THE LEFT SIDE IN THE AREA OF THE
13 DRIVERS DOOR WHERE THE DOOR ATTACHES TO THE FRAME OF THE
14 VEHICLE.

15 Q WOULD THAT BE THE FRONT OF THE DOOR WHERE
16 IT ATTACHES TO THE HINGES?

17 A NEAR THE REAR OF IT.

18 Q NEAR THE REAR OF IT?

19 A YES, SIR.

20 Q OKAY, SO JUST TO MAKE IT CLEAR, SGT. GAUSE,
21 IF I WERE SITTING IN THE DRIVERS SEAT WHERE RELATIVE TO ME
22 WOULD THEY BE?

23 A UPPER IN YOUR LEFT SHOULDER AREA IN THIS
24 AREA, YES, SIR.

25 Q THROUGH YOUR CAREFUL EXAMINATION OF THE

SGT. GAUSE - DIRECT EXAMINATION BY MR. DEBUSK

193

1 VEHICLE OTHER THAN THAT DID YOU FIND ANY OTHER BULLET HOLES
2 IN THE INTERIOR OF THE VEHICLE?

3 A NOT THAT I RECALL, NO, SIR.

4 Q DID YOU FIND ANY ON THE PASSENGER SIDE?

5 A NO, SIR.

6 Q OR IN THE REAR?

7 A NO, SIR.

8 Q AND AGAIN WAS THERE BLOOD ANYWHERE BESIDES
9 THE DRIVERS SEAT AND THE DRIVERS DOOR?

10 A IT WAS, MOST OF THE BLOOD CONCENTRATION WAS
11 IN THE DRIVERS SEAT AREA.

12 Q NOW YOU'VE COLLECTED THESE BULLETS AND
13 THESE CASINGS WHAT DID YOU DO WITH THEM?

14 A THEY WERE FORWARDED ON TO SLED. WE DIDN'T
15 HAVE A WEAPON TO COMPARE THE LANDS AND GROOVES AND
16 STRIATIONS OF PROJECTILES AND THE EJECTOR MARKS ON THE
17 CASINGS SO WHAT WE DONE WAS BASICALLY SEND THEM ON TO SLED.
18 THEY HAVE A SYSTEM CALLED IBIS. BASICALLY IT'S A SYSTEM
19 KIND OF LIKE AFIS WHICH IS A FINGERPRINT SYSTEM THAT'S MORE
20 GEARED TOWARD THE FINGERPRINT OF A BULLET PATTERN, SO TO
21 SPEAK, AND BASICALLY AS OTHER AGENCIES THROUGHOUT THE STATE
22 SUBMIT THESE BULLETS, CASINGS OR PROJECTILES INTO THE
23 SYSTEM THEY'RE LOGGED IN AS, AND SAVED IN THEIR SYSTEM AND
24 AS OTHER AGENCIES THAT HAVE OR IN THE PROCESS OF
25 INVESTIGATING ANY TYPE CRIME AND THEY SUBMIT A BULLET ALSO

SGT. GAUSE - CROSS EXAMINATION BY MR. MULLINS

194

1 IT KIND OF RANDOMLY CHECKS OTHER CASES THROUGHOUT THE SAME
2 AGENCY OR AGENCY ACROSS THE STATE AND IT COMPARES THESE
3 BULLETS TO IT SO IN OTHER WORDS IF A WEAPON IS USED IN
4 ANOTHER CRIME IN ANOTHER COUNTY SOMEWHERE IN THE STATE
5 BASICALLY IT WOULD GIVE US AN IDENTIFYING POSSIBLE BATCH
6 THAT THIS WEAPON MAY HAVE BEEN USED IN ANOTHER CRIME.

7 Q OKAY, JUST ONE FINAL THING, SGT. GAUSE, I
8 WOULD ASK THAT YOU LOOK AT EXHIBITS 17 THROUGH 21, 16
9 THROUGH 21, TELL ME IF THEY'RE IN SUBSTANTIALLY THE SAME
10 CONDITION AS THEY WERE WHEN YOU COLLECTED THEM?

11 A YES, SIR.

12 MR. DEBUSK: YOUR HONOR, AT THIS TIME THE STATE
13 WOULD MOVE TO ADMIT STATE'S 16 THROUGH 21 INTO EVIDENCE.

14 THE COURT: ANY OBJECTION?

15 MR. MULLINS: NO OBJECTION.

16 MR. GARDNER: NO OBJECTION, YOUR HONOR.

17 THE COURT: ALL RIGHT, SIR, THEY'RE IN EVIDENCE
18 WITHOUT OBJECTION.

19 MR. DEBUSK: THANK YOU, YOUR HONOR.

20 (WHEREUPON, STATE'S EXHIBITS NUMBERS 16, 17, 18,
21 19, 20, AND 21 ENTERED INTO EVIDENCE.)

22 MR. DEBUSK: PLEASE ANSWER ANY QUESTIONS THE
23 DEFENSE MIGHT HAVE.

24 THE COURT: MR. MULLINS.

25 MR. MULLINS: MAY IT PLEASE THE COURT, YOUR

SGT. GAUSE - CROSS EXAMINATION BY MR. MULLINS

195

1 HONOR?

2 THE COURT: YES, SIR.

3 CROSS EXAMINATION

4 BY MR. MULLINS:

5 Q GOOD MORNING, SGT. GAUSE?

6 A GOOD MORNING.

7 Q LET'S START WITH A COUPLE OF THINGS ON THE
8 SCENE, SIR, THAT YOU EXAMINED. THE SHELL CASINGS THAT WERE
9 CONSISTENT WITH THE 9 MILLIMETER THAT WERE FOUND BY THE
10 PASSENGER DOOR OF THE DECEASED CAR, CORRECT?

11 A IT WAS NOT ACTUALLY AT THE DOOR; IT WAS
12 MORE OUT TO THE SIDE BUT IT'S ON THE PASSENGER SIDE, IF YOU
13 REFLECT TO THE PHOTOGRAPHS IT WOULD DEPICT TO WHERE THERE
14 LOCATIONS ARE.

15 Q ALL RIGHT, NO QUESTION NOW THAT, NOW LET'S
16 GO WITH THOSE RIGHT OFF, LET ME SHOW YOU, DRAW YOUR
17 ATTENTION TO STATE'S EXHIBIT NUMBER 10; IS THAT WHAT YOU'RE
18 REFERRING TO?

19 A YES, SIR.

20 Q NO QUESTION THOSE ARE ON THE PASSENGERS
21 SIDE OF MR. RIGGINS VEHICLE?

22 A THAT'S CORRECT.

23 MR. MULLINS: PERMISSION TO PUBLISH TO THE JURY,
24 YOUR HONOR?

25 THE COURT: IS THERE ANY OBJECTION?

SGT. GAUSE - CROSS EXAMINATION BY MR. MULLINS

196

1 MR. DEBUSK: NONE, YOUR HONOR.

2 THE COURT: YOU MAY DO SO.

3 Q DID YOU EXAMINE CLOSELY, SGT. GAUSE, THE
4 INTERIOR OF THE VEHICLE?

5 A YES, SIR.

6 Q ALL RIGHT, THERE WERE NO BULLET HOLES
7 DAMAGE TO EITHER THE DASHBOARD OR THE WINDSHIELD, WERE
8 THERE?

9 A NONE.

10 Q NONE?

11 A NOT THAT I RECALL, NO, SIR. THE ONLY HOLE
12 THAT WAS FOUND TO BE WAS IN THE FRAMING OF THE CAR ON THE
13 DRIVERS SIDE DOOR AREA.

14 Q ON THE DRIVERS SIDE DOOR AREA?

15 A THAT'S CORRECT.

16 Q NOW, SIR, YOU ALSO WENT TO LORIS HOSPITAL
17 TO REMOVE MR RIGGINS CLOTHING AND PERSONAL EFFECTS?

18 A I COLLECTING THE CLOTHING FROM, AT THE
19 HOSPITAL, YES, SIR.

20 Q SOMETHING WAS MISSING FROM YOUR DIRECT
21 TESTIMONY, LET ME SEE IF I CAN REMEMBER NOW, WASN'T THERE
22 \$1626 IN MR. RIGGINS POCKET AT THE HOSPITAL?

23 A ACCORDING TO THE LIST THAT I COLLECTED I
24 HAVE NO INDICATION THAT THERE WAS ANY MONEY THAT I
25 COLLECTED.

SGT. GAUSE - CROSS EXAMINATION BY MR. MULLINS

197

1 Q ALL RIGHT ---

2 MR. DEBUSK: YOUR HONOR, IF I MIGHT THE STATE
3 WOULD STIPULATE THAT THERE WAS THAT AMOUNT OF MONEY
4 COLLECTED, IT WAS COLLECTED BY ANOTHER OFFICER.

5

6 THE COURT: ALL RIGHT, SIR.

7 Q DID YOU ALSO REMOVE THE JEWELRY FROM MR.
8 RIGGINS OR JUST THE TEETH?

9 A NO, SIR.

10 Q YOU DID NOT?

11 A NO, SIR, I DON'T HAVE THE JEWELRY, I DID
12 NOT COLLECT IT.

13 Q BUT YOU DID COLLECT THE TEETH?

14 A YES, SIR.

15 Q WERE THERE ANY OTHER SHELL CASINGS FOUND IN
16 THAT VEHICLE, SIR?

17 A NO, SIR.

18 MR. MULLINS: IF I MAY HAVE JUST A MOMENT, YOUR
19 HONOR?

20 THE COURT: YES, SIR.

21 Q SGT. GAUSE, WAS THERE ALSO A BAG OF WHITE
22 POWDER COLLECTED FROM THIS VICTIM MR. RIGGINS?

23 A I HAVE NO IDEA. THE EVIDENCE THAT I
24 COLLECTED I HAVE A LIST OF IT HERE IN FRONT OF ME, I'M NOT
25 AWARE OF THAT.

SGT. GAUSE - CROSS EXAMINATION BY MR. GARDNER

198

1 Q SO IF THERE WAS A BAG OF WHITE POWDER IT
2 WASN'T IN YOUR CONTROL?

3 A NO, SIR.

4 MR. DEBUSK: YOUR HONOR, AGAIN THE STATE IS
5 PREPARED TO STIPULATE THAT SUCH A BAG WAS COLLECTED; IT WAS
6 COLLECTED BY ANOTHER OFFICER.

7 THE COURT: ALL RIGHT, SIR, THANK YOU.

8 MR. MULLINS: NO PROBLEM, YOUR HONOR, THAT WILL
9 SATISFY, THANK YOU, YOUR HONOR, NO FURTHER QUESTIONS.

10 THE COURT: ALL RIGHT, MR. GARDNER?

11 MR. GARDNER: THANK YOU, YOUR HONOR.

12 CROSS EXAMINATION

13 BY MR. GARDNER:

14 Q SIR, YOU FOUND QUITE A BIT OF MATERIAL
15 OUTSIDE THE VEHICLE; IS THAT RIGHT?

16 A YES, SIR.

17 Q SOME PENNIES AND A KEY RING, QUARTER, SOME
18 OTHER MISCELLANEOUS STUFF?

19 A YES, SIR.

20 Q OKAY, THESE SHELLS THAT THEY WERE TALKING
21 ABOUT I THINK THEY WERE ITEM 5 AND 6 WHICH NOW HAS BEEN
22 TRANSFERRED TO STATE'S 14 AND 15, I'M NOT SURE I
23 UNDERSTOOD, HOW FAR BACK WERE THEY FROM THE PASSENGERS
24 SIDE, DRIVERS SIDE, PASSENGERS SIDE?

25 A HOLD ON JUST A SECOND.

SGT. GAUSE - CROSS EXAMINATION BY MR. GARDNER

199

1 Q DOES 21 INCHES AND 46 INCHES SOUND ABOUT
2 RIGHT?

3 A YES, SIR, THAT WOULD BE CORRECT.

4 Q AND THAT WOULD BE FROM THE RIGHT REAR TIRE/

5 A RIGHT REAR WHEEL LINCOLN CAR TO ITEM 5 WAS
6 21 INCHES, 46 INCHES FROM THE RIGHT REAR WHEEL TO ITEM 6.

7 Q OKAY, SO THE BACK TIRE --

8 A THE BACK PASSENGER SIDE ---

9 Q FROM THE PASSENGER SIDE ---

10 A --- RIGHT REAR TIRE.

11 Q --- 21 AND 46?

12 A 46.

13 Q OKAY, ALL RIGHT, NOW THIS OTHER, NOW THE
14 OTHER THINGS THAT WE REFER TO THAT WAS STUFF THAT WAS ON
15 THE OTHER SIDE, I BELIEVE, THE MISCELLANEOUS STUFF, THE
16 PENNIES AND QUARTERS?

17 A THERE WAS ITEMS SCATTERED AROUND IT, YES,
18 SIR.

19 Q ALL RIGHT, AND YOU HEARD THE SOLICITOR
20 STIPULATE TO TWO OTHER ITEMS THAT WERE COLLECTED FROM MR.
21 RIGGINS THE VICTIM IN THE CASE AND AS I UNDERSTOOD IT FROM
22 THE STIPULATION YOU DIDN'T HAVE ANYTHING TO DO WITH THAT,
23 THAT WAS THE 1600 AND SOMETHING DOLLARS AND THE WHITE
24 POWDERY SUBSTANCE/

25 A NO, SIR, I DIDN'T COLLECT EITHER ONE.

SGT. GAUSE - CROSS EXAMINATION BY MR. GARDNER

200

1 Q ALL RIGHT, BUT YOU UNDERSTAND WHEN HE
2 STIPULATES THAT IT MEANS THAT IT WAS COLLECTED FROM THE
3 VICTIM?

4 A I UNDERSTAND THAT BUT I'M NOT AWARE ---

5 Q YES, SIR.

6 A --- OF EXACTLY WHO DID THAT.

7 Q YOU'VE BEEN A POLICE OFFICER FOR HOW LONG?

8 A I'M ON MY 19TH YEAR.

9
10 Q 19TH YEAR, IF, IF THE VICTIM IN A SITUATION
11 LIKE THIS HAD 1600 SOMETHING DOLLARS IN CASH WITH THEM
12 BASED ON THAT EXPERIENCE WOULD THAT LEAVE YOU TO BELIEVE IT
13 WAS NOT A ROBBERY OR A ROBBERY DID NOT TAKE PLACE?

14 A WELL IT COULD, IT COULD BE CONSTRUED IN
15 VARIOUS DIRECTIONS. IT COULD HAVE BEEN A ROBBERY THAT
16 WASN'T COMPLETED, COULD HAVE BEEN A ROBBERY THAT MAY HAVE
17 WENT BAD AND IT COULD HAVE NOT BEEN A ROBBERY.

18 Q OKAY, VERY WELL, AND THEN YOU KNOW WHERE
19 I'M GOING WITH MY NEXT QUESTION, THE WHITE POWDERY
20 SUBSTANCE, THAT COULD HAVE BEEN A SIMILAR ANSWER TO THAT;
21 IS THAT RIGHT?

22 A IT COULD HAVE BEEN A BAG OF FLOUR, IT COULD
23 HAVE BEEN A BAG OF COCAINE.

24 MR. GARDNER: OKAY, ALL RIGHT, THANK YOU, SIR,
25 NO FURTHER QUESTIONS, YOUR HONOR.

SGT. GAUSE - CROSS EXAMINATION BY MR. GARDNER

201

1 THE COURT: REDIRECT?

2 MR. DEBUSK: NOTHING FROM THE STATE, YOUR HONOR,
3 WE WOULD ASK THAT SGT. GAUSE BE EXCUSED, HE CAN RETURN TO
4 HIS DUTIES.

5 THE COURT: ALL RIGHT, SIR, ANY OBJECTION TO
6 THAT, GENTLEMEN?

7 MR. MULLINS: NO OBJECTION, YOUR HONOR.

8 MR. GARDNER: WITHOUT OBJECTION, YOUR HONOR.

9 THE COURT: ALL RIGHT, SIR, YOU'RE RELEASED FROM
10 YOUR SUBPOENA AND EXCUSED TO GO BACK TO YOUR REGULAR
11 DUTIES, SIR.

12 MR. DEBUSK: YOUR HONOR ---

13 THE COURT: SOLICITOR, JUST HANDS THOSE TO THE
14 COURT REPORTER, PLEASE.

15 MR. DEBUSK: MAY WE APPROACH FOR SOME SCHEDULING
16 PURPOSES, YOUR HONOR?

17 THE COURT: YES, SIR, MR. MULLINS AND MR.
18 GARDNER.

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

22 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN,
23 THE, APPARENTLY THE REMAINING TWO WITNESSES OF THE STATE
24 ARE SCHEDULED TO BE HERE AT 2:00, THEREFORE, WE'LL TAKE A
25 LUNCH BREAK THAT OBVIOUSLY WILL BE EXTENDED AND I'LL HAVE

SGT. GAUSE - CROSS EXAMINATION BY MR. GARDNER

202

1 YOU BACK IN YOUR JURY ROOM BY 2:00, BACK IN YOUR JURY ROOM
2 AT 2:00. REMEMBER DON'T TALK ABOUT THE CASE AND DON'T
3 ALLOW ANYBODY TO TALK TO YOU, THANK YOU VERY MUCH.

4 (WHEREUPON, JURY WAS EXCUSED FOR LUNCH AT 11:48.)

5 THE COURT: ALL RIGHT, SOLICITOR, ANYTHING
6 BEFORE WE TAKE A BREAK?

7 MR. DEBUSK: NO, YOUR HONOR.

8 THE COURT: MR. MULLINS?

9 MR. MULLINS: NO, SIR.

10 THE COURT: MR. GARDNER?

11 MR. GARDNER: NO, YOUR HONOR.

12 THE COURT: ALL RIGHT, WE'LL BE BACK AT 2:00
13 AND, PLEASE, REMEMBER, MR. BAKER, YOU'RE UNDER THIS SAME
14 TERMS AND CONDITIONS THAT WE DISCUSSED YESTERDAY?

15 DEFENDANT BAKER: THANK YOU, SIR.

16 THE COURT: ALL RIGHT, THANK YOU VERY MUCH.

17 (WHEREUPON, COURT WAS RECESSED FOR LUNCH.)

18 THE COURT: SOLICITOR, HOW MANY MORE WITNESSES
19 DO YOU HAVE AT THIS POINT IN TIME?

20 MR. DEBUSK: AT THIS POINT IN TIME, YOUR HONOR,
21 TWO.

22 THE COURT: AND THOSE ARE THE

23 MR. DEBUSK: DR. PRESNELL AND VELLO PAAVEL OF
24 SLED.

25 THE COURT: ALL RIGHT, AND AT THIS POINT IN

SGT. GAUSE - CROSS EXAMINATION BY MR. GARDNER

203

1 TIME, COUNSEL, I GUESS I'M ASSUMING YOU'VE GOING TO WAIT
2 UNTIL THE END OF THE STATE'S CASE BEFORE MAKING ANY FINAL
3 DECISIONS BUT PLANNING PURPOSES AT THIS POINT IN TIME,
4 MULLINS, DO YOU ANTICIPATE ON YOUR CLIENT TESTIFYING?

5 MR. MULLINS: NO, SIR.

6 THE COURT: ALL RIGHT, SIR, AND, MR. GARDNER, DO
7 YOU ANTICIPATE YOUR CLIENT TESTIFYING?

8 MR. GARDNER: JUST A MOMENT, I APOLOGIZE.

9 THE COURT: I'M NOT BINDING YOU ---

10 MR. GARDNER: I JUST WANTED TO MAKE SURE THAT MY
11 CLIENT UNDERSTANDS THAT, YOUR HONOR.

12 THE COURT: ALL RIGHT, SIR.

13 MR. GARDNER: WE HAD JUST, WE MET AT PRETRIAL
14 AND HE AND I DISCUSSED IT ON SUNDAY.

15 THE COURT: THE REASON I'M ASKING IS JUST FOR --

16

17 MR. GARDNER: FOR PLANNING, I UNDERSTAND THAT,
18 AND AT THIS TIME WE'LL NOT BE TAKING THE STAND.

19 THE COURT: ALL RIGHT, SIR, AND, JUST FOR THE
20 RECORD I'M JUST TRYING TO GIVE SOME COMMUNICATIONS TO THE
21 LAWYERS THAT MIGHT BE ON CASES THAT FOLLOW THIS PARTICULAR
22 CASE AND SEE WHERE WE ARE.

23 ALL RIGHT, ANYTHING FROM THE STATE BEFORE WE
24 BRING THE JURY IN?

25 MR. DEBUSK: NOTHING FROM THE STATE, YOUR HONOR.

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

204

1 THE COURT: FROM YOUR CLIENT, MR. MULLINS?

2 MR. MULLINS: NO, SIR.

3 THE COURT: YOUR CLIENT, MR. GARDNER?

4 MR. GARDNER: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT, ASK THE JURY TO COME IN,
6 PLEASE.

7 (WHEREUPON, THE JURY ENTERS THE COURTROOM AT 2:02
8 P.M.)

9 THE COURT: ALL RIGHT, SOLICITOR, ARE YOU READY
10 TO PROCEED?

11 MR. DEBUSK: YES, YOUR HONOR.

12 THE COURT: ALL RIGHT, SIR, CALL YOUR NEXT
13 WITNESS.

14 MR. DEBUSK: DR. ERIN PRESNELL.

15 THE COURT: PLEASE COME AROUND AND BE SWORN.

16 DR. SUSAN ERIN PRESNELL

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 MADAM CLERK: PLEASE STATE YOUR NAME FOR THE
19 COURT.

20 THE WITNESS: MY NAME IS SUSAN ERIN PRESNELL, P-
21 R-E-S-N-E-L-L.

22 DIRECT EXAMINATION

23 BY MR. DEBUSK:

24 Q DR. PRESNELL, IF I COULD START A FEW
25 QUESTIONS ABOUT YOUR QUALIFICATIONS, ARE YOU A DULY

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

205

1 LICENSED PHYSICIAN?

2 A YES, I HAVE A LICENSE, A MEDICAL LICENSE
3 FOR SOUTH CAROLINA.

4 Q OKAY, AND HOW LONG HAVE YOU BEEN LICENSED
5 TO PRACTICE IN SOUTH CAROLINA?

6 A I GUESS I'VE GOTTEN MY TEMPORARY LICENSE IN
7 '93 AND MY PERMANENT IN '95, I BELIEVE.

8 Q NOW ARE YOU PRESENTLY ENGAGED IN THE
9 PRACTICE OF YOUR PROFESSION?

10 A YES, I PRACTICE FORENSIC PATHOLOGY.

11 Q WHERE?

12 A AT THE MEDICAL UNIVERSITY IN CHARLESTON.

13 Q OKAY, DOES THAT WORK INCLUDE THE
14 PERFORMANCE OF AUTOPSIES?

15 A YES, FORENSIC PATHOLOGY IS KIND OF A SUB-
16 SPECIALTY OF THE GENERAL BROAD FIELD, FIELD OF PATHOLOGY
17 WHERE WE DO OUR DIAGNOSIS BY EXAMINING THE BODIES THROUGH
18 THE AUTOPSY.

19 Q OKAY, APPROXIMATELY HOW MANY AUTOPSIES HAVE
20 YOU PERFORMED SINCE YOU HAVE BEEN LICENSED?

21 A I WOULD ESTIMATE ABOUT 1500.

22 Q AND I THINK YOU SAID THIS ALREADY, BUT LET
23 ME BE CLEAR, DO YOU SPECIALIZE IN ANY PARTICULAR BRANCH OR
24 FIELD OR MEDICINE?

25 A I'M BOARD CERTIFIED IN ANATOMIC AND

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

206

1 CLINICAL PATHOLOGY WHICH IS THE GENERAL PATHOLOGY AND THEN
2 ALSO BOARD CERTIFIED IN FORENSIC PATHOLOGY WHICH IS THE
3 SUB-SPECIALTY.

4 Q WHAT DOES THE BROAD FIELD OF PATHOLOGY
5 INCLUDE?

6 A WELL PATHOLOGY IS THE STUDY OF DISEASE AND,
7 AND MOST PATIENTS, AND I ACTUALLY DON'T INTERACT DIRECTLY
8 WITH THE PATHOLOGISTS, BUT IN ANY OF THE STUDIES YOUR
9 PHYSICIAN MAY DO, LIKE IF THEY DO A SKIN BIOPSY OR THEY
10 DISSECT AN ORGAN FOR CANCER OR THEY, OR PAP SMEAR OR THEY
11 TAKE BLOOD, THAT, THAT MATERIAL GOES TO THE PATHOLOGIST,
12 THEY LOOK AT IT AND THEY DIAGNOSE WHICH DISEASE PROCESS IS
13 GOING ON, WHETHER IT'S CANCER, WHETHER IT'S NOT, WHETHER IF
14 IT IS CANCER THEY GOT IT ALL OUT OR IF THEY DIDN'T AND LIKE
15 THEN LIKE I SAID BEFORE FORENSIC PATHOLOGY IS KIND, KIND OF
16 SPECIALIZING AND NOT ONLY DO WE, WE DON'T JUST LOOK AT A
17 BIOPSY OR A SINGLE ORGAN, WE LOOK AT THE WHOLE TOTAL BODY
18 AND WE'RE NOT JUST LOOKING FOR DISEASES, WHICH WE DO ON ALL
19 OF OUR CASES, BUT ALSO WE, AND WE INTERPRET THE TRAUMAS
20 THAT SHOW UP ON THE CASES.

21 Q AND, DOCTOR, ARE YOU A MEMBER OF ANY
22 SPECIALIZED MEDICAL OR SCIENTIFIC GROUPS OR ASSOCIATIONS?

23 A I'M, I BELONG TO MOST OF THE FORENSIC, THE
24 NATIONAL FORENSIC ASSOCIATIONS LIKE THE NAME, NATIONAL
25 ASSOCIATION OF MEDICAL EXAMINERS, COLLEGE OF AMERICAN

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

207

1 PATHOLOGISTS, ORGANIZATIONS LIKE THAT.

2 Q NOW CAN YOU TELL US BRIEFLY WHAT THE
3 AMERICAN BOARD OF PATHOLOGY IS?

4 A THE AMERICAN BOARD OF PATHOLOGIST IS THE
5 INSTITUTION THAT ADMINISTERS THE BOARDS NATIONALLY SO THAT
6 IF YOU WANT TO BECOME BOARD CERTIFIED IN PATHOLOGY YOU
7 WOULD TAKE THE BOARD EXAM OFFERED BY THE AMERICAN BOARD OF
8 PATHOLOGY.

9 Q HAVE YOU TAKEN THAT EXAM?

10 A YES, I'M BOARD CERTIFIED IN PATHOLOGIST
11 AND, AND SUB-SPECIALTY FORENSICS.

12 Q HAVE YOU EVER BEEN QUALIFIED IN THE AREA OF
13 PATHOLOGY, FORENSIC PATHOLOGY BEFORE?

14 A YES, I HAVE..

15 MR. DEBUSK: YOUR HONOR, AT THIS TIME THE STATE
16 WOULD OFFER DR. PRESNELL AS AN EXPERT IN THE AREA OF
17 FORENSIC PATHOLOGY.

18 THE COURT: DO YOU WISH TO VOIR DIRE THE
19 WITNESS?

20 MR. MULLINS: NOT FROM DEFENDANT MANNING, WE'LL
21 STIPULATE SHE'S BOARD CERTIFIED IN FORENSIC PATHOLOGY.

22 THE COURT: MR. GARDNER?

23 MR. GARDNER: LIKewise FROM DEFENDANT BAKER,
24 YOUR HONOR.

25 THE COURT: ALL RIGHT, SIR, I WILL QUALIFY THE

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

208

1 WITNESS TO GIVE HER OPINION.

2 Q DR. PRESNELL, DID YOU HAVE AN OCCASION TO
3 PERFORM AN AUTOPSY ON TROY RIGGINS?

4 A YES, WE AUTOPSIED TROY RIGGINS IN DECEMBER
5 OF 2000..

6 Q WHERE DID THAT AUTOPSY OCCUR?

7 A IT OCCURRED AT THE MEDICAL UNIVERSITY IN
8 CHARLESTON.

9 Q WHEN YOU PERFORMED THE AUTOPSY WERE THERE
10 ANY EVIDENT EXTERNAL INJURIES?

11 A YES, THERE WERE, THERE WERE MULTIPLE
12 EXTERNAL INJURIES.

13 Q FIRST OF ALL LET ME ASK YOU DID YOU
14 REPORTER THOSE EXTERNAL INJURIES ON A DIAGRAM?

15 A YES. TYPICALLY FOR A FORENSIC AUTOPSY AND
16 ON ALL OF OUR CASES ALL OF OUR CASES ARE COMPLETE AUTOPSIES
17 SO THAT INCLUDES LOOKING AT THE ENTIRE EXTERNAL BODY AND WE
18 DOCUMENT INJURIES, WE USE DIAGRAMS AND THEN WE TAKE
19 PICTURES AND WE DO ANCILLARY STUDIES LIKE X-RAYS, WHICH IS
20 SOMETHING WE DID IN THIS CASE, AND THEN WE GO AHEAD AND
21 LOOK INSIDE THE BODY. WE LOOK AT ALL THE ORGANS INCLUDING
22 THE BRAIN AND WE ACTUALLY TAKE SAMPLES OF ALL THE ORGANS TO
23 LOOK, TO SEND OFF TO THE LAB AND THEN THEY SEND IT BACK TO
24 US TO LOOK AT THE SLIDES UNDER THE MICROSCOPE TO SEE IF WE
25 CAN SEE ANYTHING ELSE AND WE ALSO OBTAIN TOXICOLOGY

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

209

1 SPECIMENS AT THAT TIME TO TEST FOR DRUGS AND ALCOHOL, BUT
2 ANYHOW TO ANSWER THE QUESTION, YES, WE DO DIAGRAM AND
3 PHOTOGRAPH ALL OF OUR FINDINGS.

4 Q I'M SHOWING YOU WHAT'S BEEN MARKED AS
5 STATE'S EXHIBIT 22 FOR IDENTIFICATION AND ASK IF YOU
6 RECOGNIZE THAT?

7 A THIS IS A COPY OF THE DIAGRAM, THE BODY
8 DIAGRAM THAT WE DID AT THE AUTOPSY.

9 Q IS IT A FAIR AND ACCURATE REPRESENTATION OF
10 THAT DIAGRAM?

11 A YES, IT'S A COPY OF IT.

12 Q AND WOULD IT AID YOU AND TO EXPLAIN TO THE
13 JURY THE RESULTS OF YOUR AUTOPSY?

14 A GREATLY.

15 Q I ALSO SHOW YOU WHAT HAS BEEN MARKED AS
16 STATE'S EXHIBITS 24 THROUGH 35 FOR IDENTIFICATION, ASK IF
17 YOU RECOGNIZE THESE?

18 A THESE ARE PICTURE THAT, OR COPIES OF THE
19 PICTURES WE TOOK AT THE TIME OF AUTOPSY DEPICTING PRETTY
20 CLOSE UP PICTURES OF THE GUNSHOT WOUNDS.

21 Q WOULD THOSE AID YOU IN EXPLAINING THE
22 NATURE OF THOSE WOUNDS AND THE RESULTS OF YOUR AUTOPSY TO
23 THE JURY?

24 A YES, THEY WOULD.

25 Q LET ME SHOW YOU AGAIN WHAT'S BEEN MARKED AS

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

210

1 STATE'S EXHIBITS 36 THROUGH 39 FOR IDENTIFICATION AND ASK
2 IF YOU RECOGNIZE THESE?

3 A THESE ARE SOME OF THE X-RAYS THAT WE TOOK
4 AT THE TIME OF AUTOPSY TO HELP US LOCATE THE BULLETS.

5 Q WOULD THOSE AID YOU EXPLAINING THE RESULTS
6 OF YOUR AUTOPSY TO THE JURY?

7 A YES.

8 Q FINALLY STATE'S EXHIBITS 40 THROUGH 46 AND
9 ASK IF YOU IDENTIFY THESE?

10 A THESE ARE COPIES OF THE PICTURES OF THE
11 BULLETS THAT WE TOOK, THAT WE RECOVERED AT THE TIME OF
12 AUTOPSY.

13 Q WOULD THOSE AID YOU IN EXPLAINING TO THE
14 JURY THE RESULTS OF YOUR AUTOPSY?

15 A WELL I'M NOT BALLISTICS BUT IT WILL
16 CERTAINLY HELP ME CORRELATE WHICH BULLET GOES TO WHICH
17 WOUND.

18 Q THANK YOU.

19 MR. DEBUSK: YOUR HONOR, AT THIS TIME THE STATE
20 WOULD MOVE EXHIBITS 22 THROUGH 46 INTO EVIDENCE.

21 THE COURT: ALL RIGHT, SIR, I'M SORRY, I JUST
22 HAVE MISSED ONE, WHAT IS 23?

23 MR. DEBUSK: THE COURT'S INDULGENCE ONE MOMENT.

24 THE COURT: IS THAT ONE OF THE PICTURES?

25 MR. DEBUSK: 23 IS THE AUTOPSY DIAGRAM.

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

211

1 THE COURT: OKAY, SIR, IS THAT 22 AND 23?

2 MR. DEBUSK: THERE IS NO 23, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 MR. DEBUSK: 23 IS WITHDRAWN.

5 THE COURT: ALL RIGHT, THANK YOU, ALL RIGHT, SO
6 FROM THE DEFENDANT MANNING THE STATE IS ASKING TO INTRODUCE
7 STATE'S EXHIBIT 2 AND THEN 24 THROUGH 35, 36 THROUGH 39,
8 AND 40 THROUGH 46, DO YOU HAVE AN OBJECTION TO ANY OF THE
9 THOSE?

10 MR. MULLINS: NO OBJECTIONS.

11 THE COURT: ALL RIGHT, FROM THE DEFENDANT BAKER?

12 MR. GARDNER: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT, SO STATE'S EXHIBIT 22 AND
14 THEN 24 THROUGH 35, 36 THROUGH 39, 40 THROUGH 46 ARE ALL IN
15 EVIDENCE WITHOUT OBJECTION.

16 (WHEREUPON, STATE'S EXHIBITS NUMBERS 22, 24, 25,
17 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40,
18 41, 42, 43, 44, 45, AND 46 ENTERED INTO EVIDENCE.)

19 MR. DEBUSK: YOUR HONOR, MAY WE PUBLISH THESE TO
20 THE JURY THROUGH POWER POINT?

21 THE COURT: ANY OBJECTION, MR. MULLINS?

22 MR. MULLINS: NO, SIR.

23 THE COURT: ANY OBJECTION, MR. GARDNER?

24 MR. GARDNER: NO, YOUR HONOR.

25 THE COURT: YOU MAY DO SO.

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

212

1 Q DR. PRESNELL, USING THE POWER POINT
2 PRESENTATION COULD YOU EXPLAIN TO THE JURY THE EXTERNAL AND
3 INTERNAL INJURIES AND THE PROJECTILES RECOVERED FROM THE
4 VICTIM IN THIS CASE?

5 A YES, I'D BE HAPPY TO.

6 Q I WAS GOING TO STAND UP, IF I'M NOT LOUD
7 ENOUGH THEN I, I CAN COME BACK TO THE MICROPHONE, IF THAT'S
8 ACCEPTABLE?

9 THE COURT: ALL RIGHT, MA'AM, IF YOU'RE GOING TO
10 STAND UP YOU EITHER HAVE TO STAND RIGHT NEXT TO THAT
11 MICROPHONE THAT'S NEXT TO THE COURT REPORTER OR THERE IS
12 ONE, IF YOU'D LIKE, IN FRONT OF THE JURY BOX. YOU HAVE TO
13 STAND RIGHT NEXT TO THE MICROPHONE.

14 A I'LL STAND BY THE COURT REPORTER.

15 THE COURT: ALL RIGHT.

16 MR. DEBUSK: THE COURT'S INDULGENCE ONE MOMENT
17 WHILE THE PROJECTOR WARMS UP.

18 THE COURT: ALL RIGHT, SIR.

19 MR. DEBUSK: I APOLOGIZE FOR NOT DOING THAT
20 SOONER.

21 THE COURT: THAT'S FINE.

22
23 MR. DEBUSK: IT'S READY.

24 A CAN YOU FORWARD IT, PLEASE?

25 Q YES, MA'AM.

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

213

1 A OKAY, THIS IS A COPY OF THE DIAGRAM THAT WE
2 DID AT THE TIME OF AUTOPSY. THERE'S A LOT OF MARKINGS ON
3 IT, NOT ONLY THE INJURIES ON IT BUT, YOU KNOW, THE SURGICAL
4 INTERVENTION AND, YOU KNOW, OTHER THINGS LIKE SCARS AND
5 ALL, SO WE'RE GOING TO GO THROUGH THEM INDIVIDUALLY. I
6 HAVE MARKED THE ENTRANCE WOUNDS WITH YELLOW AND AS A MATTER
7 OF FACT I THINK WE'RE GOING TO SEE A BLOWN UP PICTURE OF
8 THAT LATER SO YOU MIGHT BE ABLE TO SEE THAT EASIER, BUT
9 LIKE I SAID THE ENTRANCE WOUNDS ARE IN YELLOW. THERE'S
10 OTHER CIRCLES, WE'RE GOING TO GO THROUGH EACH OF THOSE,
11 EACH OF THE CIRCLES IS A GUNSHOT WOUND.

12 FIRST LET ME JUST SUMMARIZE, THERE ARE SEVEN
13 GUNSHOT WOUNDS TO THE VICTIM. THERE'S ONE TO THE CHEST AND
14 ONE TO THE ABDOMEN. THERE ARE THREE TO THE RIGHT ARM AND
15 TWO TO THE LEFT ARM. THERE'S ALSO A POSSIBLE GRAZE WOUND
16 WHICH WE'LL GO OVER.

17 NOW THE OTHER THING THAT WE'RE GOING TO GO
18 THROUGH WHEN WE GO THROUGH THE INDIVIDUAL WOUNDS IS ALSO
19 CONSIDERING RANGE OF FIRE SO LET ME JUST BACK UP AND JUST
20 SAY WHEN WE'RE DOING AN AUTOPSY ON A GUNSHOT WOUND VICTIM,
21 YOU KNOW, THERE'S SOMETIMES NOT REALLY A QUESTION OF WHAT
22 DID THE PERSON DIE FROM BUT WE'RE DOING A LOT OF OTHER
23 THINGS. WE DO WANT TO KNOW WHAT THE BULLETS WENT THROUGH
24 AND WHAT KIND OF DAMAGE INTERNALLY THEY DID BUT WE ALSO
25 WANT TO KNOW, YOU KNOW, IF THERE'S TWO HOLES IS THAT TWO

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

214

1 GUNSHOT WOUNDS OR AN ENTRANCE AND AN EXIT SO WE'RE, WE'RE
2 PAIRING THOSE ALL UP. WE WANT TO RETRIEVE THE BULLETS, YOU
3 KNOW, FOR EVIDENCE, BUT THE OTHER THING WE'LL DO IS TRY TO
4 CLASSIFY ANATOMICALLY THE RANGE OF FIRE AND THERE'S THREE
5 BIG CATEGORIES THAT WE AS FORENSIC PATHOLOGISTS WILL KIND
6 OF APPLY TO THE GUNSHOT WOUNDS.

7 EITHER A GUNSHOT WOUND CAN BE CONSIDERED CONTACT.
8 IT CAN BE AT CLOSE RANGE OR IT CAN BE DISTANT AND IF, AND
9 I'M NOT SURE HOW MUCH YA'LL KNOW ABOUT GUN BUT BASICALLY
10 WHEN YOU FIRE A GUN NOT ONLY DOES THE BULLET COME OUT THE
11 END OF THE MUZZLE BUT ALSO SO DOES SOOT AND ALSO SO DOES
12 SOME GUN POWDER PARTICLES AND, OF COURSE, THE GUN POWDER IS
13 IGNITED AND ACTUALLY PROPELS THE BULLET DOWN THE, THE
14 BARREL, SO YOU HAVE THE BULLET COMING OUT BUT ALSO SOOT AND
15 GUN POWDER PARTICLES.

16 IF YOU PUT THE, THE BARREL AGAINST THE SKIN OR
17 THE MUZZLE AGAINST THE SKIN THAT IS A CONTACT GUNSHOT WOUND
18 AND WHAT YOU'LL SEE WHEN YOU TAKE, AFTER YOU FIRE AND YOU
19 TAKE THE GUN AWAY IS A RIM, YOU'LL SEE EITHER SOOT AND,
20 AND/OR IF IT'S KIND OF PRESSED HART YOU MAY EVEN SEE AN
21 IMPRINT OF THE MUZZLE, THE MUZZLE OF THE GUN.

22 AS YOU START TO TAKE THAT GUN AWAY FROM THE SKIN
23 YOU STILL MAY GET SOME SOOT REACHING THE SKIN BUT THOSE
24 GUNSHOT PARTICLES START THE SPREAD OUT AND THE GUN POWDER
25 PARTICLES ACTUALLY STRIKE THE SKIN AND ACTUALLY SCRATCH SO

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

215

1 YOU CAN'T WASH IT OFF. YOU ACTUALLY HAVE LITTLE ITTY BITTY
2 SCRATCHES AROUND THE ENTRANCE GUNSHOT WOUND AND THAT'S
3 CALLED STIPPLING, ALL RIGHT, SO THAT'S CLOSE RANGE.

4 AND THEN ONCE YOU GET FAR ENOUGH, THE GUN IS FAR
5 ENOUGH AWAY WHERE NO, NONE OF THOSE GUN POWDER PARTICLES
6 CAN REACH THE SKIN AND MARK IT ANYMORE THAT'S CONSIDERED
7 DISTANT SO DISTANT CAN BE, WELL LET ME BACK UP, FOR SOME
8 HANDGUNS THAT DISTANCE MAY BE 18 INCHES, THAT ONCE THE GUN
9 IS 18 INCHES AWAY THE POWDER, THE GUN POWDER WILL NO LONGER
10 REACH THE SKIN BUT TO ENCOMPASS ALL GUNS PRETTY MUCH MOST
11 HANDGUNS YOU CAN BE PRETTY MUCH ASSURED THAT BY THE TIME
12 YOU'RE A YARD OR A YARD AND A HALF AWAY NONE OF THAT, THAT
13 GUN POWDER PARTICLES WILL REACH THE SKIN. SO WE'LL BACK UP
14 AND SAY CONTACT THE GUN IS AGAINST THE SKIN, CLOSE RANGE IS
15 WITHIN A YARD TO A YARD AND A HALF, SOME, SOMEWHERE WITHIN
16 THAT. IF YOU WANTED TO NARROW IT DOWN MORE YOU WOULD NEED
17 TO TEST FIRE THE GUN WITH THE SUSPECTED AMMUNITION,
18 ETCETERA, AND THEN DISTANT IS SOMEWHERE BEYOND THAT YARD TO
19 YARD AND A HALF OUT TO, YOU KNOW, OUT TO INFINITY
20 BASICALLY.

21 ALL RIGHT, SO NOW WE'RE GOING TO LOOK AT THESE
22 GUNSHOT WOUNDS INDIVIDUALLY. HERE WE HAVE, LIKE I SAID THE
23 DIAGRAM AND WE'LL LOOK AT (A) FIRST WHICH IS TO THE CHEST
24 RIGHT THERE. THAT'S AN ENTRANCE GUNSHOT WOUND AND IT
25 ACTUALLY GOES INTO THE BODY, GOES THROUGH THE RIGHT LUNG,

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

216

1 GOES THROUGH THE LIVER AND STOPS IN THE BACK MUSCULATURE
2 WHERE WE GET THE BULLET.

3 IF WE WANT TO ACTUALLY LOOK AT THE WOUND ITSELF
4 THIS IS AN EXAMPLE OF THAT; THIS IS OUR ENTRANCE GUNSHOT
5 WOUND AND YOU CAN SEE, IT'S VERY FAINT, PROBABLY BECAUSE HE
6 HAD A SHIRT ON AND THAT ACTED KIND AN INTERMEDIATE TARGET
7 MAYBE SOAKING UP SOME OF THAT GUN POWDER, BUT YOU CAN SEE
8 THESE LITTLE PIECES OR THESE LITTLE ITTY BITTY SCRATCHES
9 RIGHT HERE AND THAT'S CONSIDERED STIPPLING MAKING THIS A
10 CLOSE RANGE GUNSHOT WOUND.

11 NEXT, ALL RIGHT, (B) IS OUR NEXT GUNSHOT WOUND
12 AND THESE ARE, THESE ARE NOT IN ORDER. I DON'T BEEN TO
13 IMPLY THAT (A) CAME FIRST AND (B) CAME SECOND. WE GET A
14 VICTIM THAT HAS A LOT OF HOLES AND WE JUST LABEL THEM
15 ARBITRARILY (A) (B) (C) SO IT DOESN'T NECESSARILY INDICATE
16 ORDER. ALL RIGHT, (B) IS A GUNSHOT WOUND TO THE ABDOMEN
17 AND IT ACTUALLY GOES IN AND THROUGH THE LIVER AND THROUGH
18 THE VERTEBRAL COLUMN AND ALSO ENDS UP IN THE BACK
19 MUSCULATURE WHERE WE GET THAT BULLET AS WELL. IF WE LOOK
20 CLOSER AT THAT THIS ONE WE ACTUALLY SEE, NOW REMEMBER HE
21 IS, WELL I DIDN'T SAY THAT, BUT HE'S BEEN, HAD SOME MEDICAL
22 INTERVENTION, SO THEY PROBABLY HAVE SCRUBBED HIM UP A
23 LITTLE BIT AND SO IT'S REAL DIFFICULT TO REALLY APPRECIATE
24 ANY SOOT RIGHT HERE BUT WE CAN REALLY SEE A NICE MUZZLE
25 IMPRINT INDICATING THAT THIS IS A CONTACT RANGE GUNSHOT

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

217

1 WOUND.

2 WE HAVE A CLOSE RANGE TO THE CHEST AND A CONTACT
3 RANGE TO THE ABDOMEN. THOSE ARE OUR TWO FATAL INJURIES,
4 THE ONES THAT ARE CONSIDERED FATAL AND NEXT WE'LL GO OVER
5 THE GUNSHOT WOUNDS TO THE ARMS, REMEMBER THREE TO THE
6 RIGHT, TWO TO THE LEFT.

7 ALL RIGHT, (C) IS ACTUALLY AN EXIT GUNSHOT WOUND
8 SO WE'VE KIND OF GONE A LITTLE BIT OUT OF ORDER AND WE'LL
9 SEE (J) NEXT BUT (J) IS AN ENTRANCE TO THE BACK OF THE
10 RIGHT SHOULDER AND IT JUST GOES BASICALLY THROUGH SOFT
11 TISSUE, MUSCLE AND COMES OUT AT THE FRONT OF THE ARM THERE
12 AT (C) AND THERE'S, THERE'S THE PICTURE OF THE EXIT GUNSHOT
13 WOUND.

14 NOW WE'LL COME BACK TO (D) BECAUSE LIKE I SAID
15 WE'RE GOING (A) (B), THROUGH THE, THROUGH THE LETTERS.

16 (D) IS THE GUNSHOT WOUND TO THE FRONT OF THE, THE
17 RIGHT UPPER ARM. IT GOES THROUGH THE HUMERUS AND FRACTURES
18 THAT AND ACTUALLY COMES OUT (I) BUT LET'S GO AHEAD AND LOOK
19 AT (D) AND (D) YOU CAN SEE A LOT BETTER, THE STIPPLING
20 THAT'S ASSOCIATED WITH A, A CLOSE RANGE GUNSHOT WOUND SO
21 ALL THESE ARE LITTLE ABRASIONS AROUND THE ENTRANCE WOUND
22 RIGHT THERE THROUGH THE ARM. SO (D) IS A CLOSE RANGE
23 GUNSHOT WOUND TO THE ARM

24 NEXT IS (E) WHERE WE'RE STILL ON THE RIGHT ARM,
25 WE'RE ON THE FOREARM HERE AND THIS BULLET GOES THROUGH BOTH

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

218

1 BONES IN THE RIGHT ARM, YOU'RE BREAKING THEM, AND WE GET
2 THE BULLET, WE RECOVERED THAT BULLET WITHIN THE ARM.
3 HERE'S THE GUNSHOT WOUND TO THE FOREARM HERE. IT'S A
4 LITTLE BIT DARK BUT THERE IS SOME STIPPLING THAT IS
5 ASSOCIATED WITH THIS ALSO MAKING THIS A CLOSE RANGE GUNSHOT
6 WOUND.

7 (F) IS, IF WE COULD GO AHEAD AND, IT'S ON THE
8 ELBOW, WE CAN GO AHEAD AND SEE THE PICTURE OF IT. THIS IS
9 WHAT WE CALLED IT A LACERATION BECAUSE WE DON'T SEE ANY
10 BULLET PARTICLES ASSOCIATED WITH IT. THERE'S NOT REALLY A
11 GOOD ENTRANCE OR EXIT WOUND TO, YOU KNOW, SHOW HOLES,
12 HOWEVER, IT COULD BE, COULD BE A GRAZE WOUND, MEANING THAT
13 THE BULLET KIND OF JUST GRAZED ACROSS THE SKIN, BUT WE
14 REALLY CAN'T DIFFERENTIATE THAT FROM A LACERATION MEANING
15 SOME KIND OF BLUNT TRAUMA HIT THE ARM AND SPLIT THE SKIN.

16 OKAY, (G), (G) IS AN ENTRANCE WOUND, OKAY WE'VE
17 SWITCHED NOW TO THE LEFT SIDE OF THE, THE LEFT SIDE OF THE
18 UPPER EXTREMITY SO THE LEFT ARM. (G) IS AN ENTRANCE WOUND
19 TO THE LEFT UPPER ARM AND AS WE LOOK AT WE CANNOT NOT,
20 THERE IS NOT SOOT, THERE IS NO MUZZLE IMPRINT AND THERE'S
21 NO STIPPLING SO (G) IS ONE OF THE GUNSHOT WOUNDS THAT COULD
22 BE CONSIDERED A DISTANT GUNSHOT WOUND IF HE WASN'T WEARING
23 CLOTHING. NOW I DON'T NECESSARILY KNOW THAT, HE DIDN'T
24 HAVE, LIKE I SAW A JACKET ON OVER THAT, BUT (G) DOES NOT
25 SHOW ANY OTHER MARKINGS OTHER THAN THE ENTRANCE WOUND. (G)

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

219

1 GOES THROUGH THE LEFT HUMERUS OR THE BONE IN THE LEFT UPPER
2 ARM FRACTURING THAT AND ACTUALLY EXITS OUT (H) WHICH IS
3 RIGHT THERE, WHICH CONVENIENTLY IS THE NEXT LETTER IN THE
4 ALPHABET SO THIS IS (H), IT'S ON THE BACK OF THE LEFT ARM.

5 (I) IS THE, WE CAN GO AHEAD AND LOOK AT IT, (I)
6 IS THE EXIT WOUND FOR (D).

7 (J), NOW REMEMBER WE ALREADY TALKED ABOUT (C) IS
8 THE EXIT WOUND FOR (J), (J) IS AN ENTRANCE WOUND ON THE
9 BACK SHOULDER OF THE, OF THE RIGHT ARM AND I'M SORRY I SAID
10 WE HAD SWITCHED TO LEFT BUT NOW WE'RE BACK TO RIGHT, BACK
11 SHOULDER OF RIGHT ARM AND IF WE LOOK AT THAT PICTURE THERE
12 ARE SOME MARKS HERE BUT WE DECIDED THAT THESE WEREN'T
13 CONSISTENT WITH STIPPLING AND WE CALLED THIS POTENTIAL
14 DISTANT GUNSHOT WOUND AS WELL.

15 THEN NEXT THE LAST ONE IS (K) AND (K) IS ON THE
16 BACK OF THE LEFT HAND AND IT ALSO SHOWS STIPPLING RIGHT
17 HERE. IT GOES THROUGH THE BONES IN THE HAND AND IT
18 ACTUALLY HAS AN EXIT ON THE PALM OF THE HAND SO THAT THERE
19 IS A HOLE ON THE PALM OF THE HAND BUT THE BULLET IS RIGHT
20 THERE, TOO, AND WHICH WE RECOVERED THAT BULLET. (L) HAS THE
21 STIPPLING SO IT IS A, A CLOSE RANGE GUNSHOT WOUND.

22 THIS CIRCLE, THIS AREA RIGHT HERE IS WHERE THE
23 BULLET FROM (K) EXITED AND HERE'S AN EXAMPLE OF THAT.
24 HERE'S (M) IS WHERE YOU CAN ACTUALLY SEE A LITTLE PIECES OF
25 THE BULLET RIGHT THERE WITH THE EXIT AND (L) IS JUST A,

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK 220

1 IT'S A KIND OF AN EXIT BUT IT'S BASICALLY WHERE A PIECE OF
2 BONEY, A FRAGMENT OF BONE BECAUSE THE BONES WERE FRACTURED,
3 CAME OUT OF THE SKIN THERE.

4 NOW WE'RE GOING TO LOOK AT SOME OF THE X-RAYS
5 WHERE THE BULLETS WERE THAT WE RECOVERED AND WE HAVE THE
6 TWO GUNSHOTS WOUNDS TO CHEST AND ABDOMEN. IF WE LOOK AT
7 THE CHEST X-RAY RIGHT HERE, ON HERE YOU CAN TELL IT'S THE
8 CHEST BECAUSE ALL THE RIBS AND THERE'S ONE BULLET RIGHT
9 THERE AND THAT ACTUALLY CAME FROM GUNSHOT WOUND (B) TO THE
10 ABDOMEN. THERE'S ACTUALLY A BULLET THAT'S A LITTLE BIT
11 LOWER TO THIS THAT CAME FROM THE GUNSHOT WOUND (A) TO THE,
12 TO THE CHEST.

13 ALL RIGHT, NOW WE'RE LOOKING AT THE LEFT ARM AND
14 WE HAVE THE GUNSHOT WOUND (G) THAT GOES INTO THE LEFT ARM
15 AND THEN EXITS OUT THE BACK AND THIS IS JUST SHOWING SOME
16 OF THE FRAGMENTS AND THE FRAGMENTATION OF THE HUMERUS OR
17 THE ARM THE BONE AND THE UPPER ARM.

18 AND THIS IS THE OTHER SIDE SO WE'RE LOOKING AT
19 THE RIGHT ARM NOW AND AGAIN SHOWING THAT A FRACTURE OF THE
20 HUMERUS AS WELL AS SOME BULLET FRAGMENTS.

21 X-RAY OF THE FOREARM SHOWING THE FRACTURED TWO
22 BONES IN THE ARM THERE AND THERE'S THE BULLET THERE, IT'S
23 INTACT, IT WASN'T ASSOCIATED WITH AN EXIT WOUND.

24 AND THEN FINALLY (K) THE GUNSHOT WOUND TO THE
25 HAND, THE LEFT HAND, LOOKING AT THE X, WELL NOT LOOKING AT

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

221

1 THE X-RAYS, IT SHOWS SOME BROKEN METACARPAL BONES IN THE,
2 IN THE HAND, BUT WE WERE GOING THROUGH THE BULLETS NOW THAT
3 ARE ASSOCIATED WITH EACH OF THE, THE GUNSHOT WOUNDS.

4 BULLET ONE THERE'S TWO PICTURES OF IT, THIS ONE
5 AND THE NEXT ONE, THAT IS THE ONE WE RECOVERED FIRST. IT
6 WAS ASSOCIATED WITH GUNSHOT WOUND (K) WHICH WAS THE ONE
7 WITH THE HAND. AGAIN 1, 2, 3, DOESN'T NECESSARILY, YOU
8 KNOW, IMPLY ANY ORDER OR MATCH UP WITH ANY ONE IN
9 PARTICULAR. IT'S RANDOMLY ASSIGNED AND THEN WE MATCH THEM
10 UP AFTER WE GET THEM OUT SO BULLET ONE GOES WITH GUNSHOT
11 WOUND (K) TO THE HAND AND THERE'S THE OTHER PICTURE OF, OF
12 THE BULLET ONE.

13 BULLET NUMBER TWO WAS ACTUALLY A JACKET BECAUSE
14 REMEMBER (G) ACTUALLY WENT THROUGH THE ARM AND EXITED AT
15 (H) OR IF I, YOU MAY NOT REMEMBER, WE'RE GOING TO GO
16 THROUGH IT ONE MORE TIME AFTER THIS, BUT PART OF IT EXITED
17 BUT THE JACKET REMAINED IN THE ARM AND THAT'S WHAT THIS IS.
18 THAT'S WHAT WE RECOVERED AND CALLED NUMBER TWO.

19 (E) IS THE GUNSHOT WOUND TO THE FOREARM AND
20 REMEMBER WE SAW A PRETTY GOOD PICTURE OF THE WHOLE INTACT
21 BULLET INSIDE AND THAT'S THE WHOLE INTACT BULLET RECOVERED
22 RIGHT THERE, A LITTLE BIT DEFORMED BUT RIGHT THERE.

23 OKAY, (D) IS THE GUN, IT'S THAT CLOSE RANGE
24 GUNSHOT WOUND TO THE RIGHT UPPER ARM AND EVEN THOUGH (D)
25 EXITED WE DID HAVE SOME FRAGMENTS THAT REMAINED AND THESE

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

222

1 ARE THOSE, I DON'T KNOW IF YOU CAN REMEMBER BACK TO THE X-
2 RAY THERE WERE A BUNCH OF LITTLE FRAGMENTS, THESE ARE THOSE
3 FRAGMENTS RECOVERED FROM THE ARM.

4 NOW WE'RE UP TO (A) WHICH IS GUNSHOT WOUND TO THE
5 CHEST WHICH WENT THROUGH THE LUNG AND THE LIVER AND DOWN TO
6 THE LOWER BACK AND THAT'S BULLET FIVE FEATURED RIGHT THERE.

7 AND FINALLY A GUNSHOT WOUND OR GUNSHOT (B) WHICH
8 IS THE ONE TO THE ABDOMEN AND THAT GOES TO THE LIVER AND
9 THE VERTEBULAR COLUMN AND INTO THE BACK AND ENDED UP, AT
10 THE END OF ITS PATH WAS THIS BULLET WHICH IS NUMBER 6.

11 Q DR. PRESNELL, JUST TO TAKE CARE OF A LITTLE
12 PIECE OF BUSINESS FIRST, I ASK YOU IF THIS CHART WOULD
13 INDICATE THE ENTRANCE WOUND LETTERS THAT YOU GAVE AND THE
14 BULLET NUMBERS RECOVERED, IS THIS A FAIR ACCURATE
15 REPRESENTATION OF THE ENTRANCE WOUND THAT MATCHES UP WITH
16 EACH ONE OF THESE BULLET HOLES?

17 A YES, THAT'S WHAT WE JUST WENT THROUGH THAT
18 BULLET 1 WENT WITH (K), 2 WENT WITH (G), 3 WITH (E), 4 WITH
19 (D), 5 WITH (A), AND 6 WITH (B).

20 MR. DEBUSK: YOUR HONOR, FOR THE RECORD THAT'S,
21 THAT FIGURE I JUST REFERRED WAS A RESULT OF STATE'S EXHIBIT
22 48, 49, 50.

23 THE COURT: ALL RIGHT, SIR.

24 MR. DEBUSK: A PARTIAL FOUNDATION FOR THAT.

25 THE COURT: ALL RIGHT, SIR.

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

223

1 Q DR. PRESNELL, YOU'VE GIVEN US A SUMMARY OF
2 THE INJURIES AND THE, AND THE PROJECTILES RECOVERED, A FEW
3 OTHER THINGS TO GO THROUGH. LET'S START WITH, LET'S START
4 WITH THE MOST OBVIOUS, WHAT WAS THE ACTUAL CAUSE OF DEATH
5 OF TROY RIGGINS?

6 A WELL WE DIDN'T SEPARATE THE TWO FATAL
7 INJURIES, THE GUNSHOT WOUND TO THE CHEST AND THE ONE TO THE
8 ABDOMEN. BOTH, WELL THE ONE TO THE CHEST WENT THROUGH THE
9 LUNG AND THE LIVER, ONE TO THE ABDOMEN WENT TO THE LIVER
10 AND THE VESTIBULAR COLUMN. HE ENDED UP WITH ABOUT, WELL
11 1.3 LITERS, 1,300 MILLILITERS OF BLOOD IN THE RIGHT CHEST
12 CAVITY AND ABOUT 100 MILLILITERS IN THE LEFT CHEST CAVITY
13 AND WE REALLY DIDN'T DOCUMENT ANY IN THE ABDOMEN BUT AGAIN
14 HE HAD, THEY HAD TRIED SURGICAL INTERVENTION SO I IMAGINE
15 THEY, THEY EMPTIED ANY BLOOD IN THERE AT THAT TIME SO WE
16 CALLED THE CAUSE OF DEATH THE CONTACT GUNSHOT WOUND TO THE
17 ABDOMEN AND THE CLOSE RANGE GUNSHOT WOUND TO THE CHEST AND
18 THEN WE MADE THE OTHER GUNSHOT WOUNDS AS CONTRIBUTORY.

19 Q DR. PRESNELL, WOULD YOU KINDLY APPROACH
20 THIS DIAGRAM AND INDICATE TO THE JURY WHICH OF THOSE WOUNDS
21 WERE THE ONES YOU REFERRED TO AS FATAL WOUNDS?

22 A SURE. SO THIS IS THE SAME DIAGRAM THAT
23 WE'VE BEEN LOOKING AT THE ON ON THE POWER POINT AND SO (A)
24 TO THE CHEST AND (B) TO THE ABDOMEN ARE THE TWO FATAL
25 GUNSHOT WOUNDS.

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

224

1 SEEN A SUMMARY OF ALL THE, THE BULLET WOUNDS WOULD YOU
2 EXPLAIN TO THE JURY WHICH ONES OF THOSE, HOW THERE ARE MORE
3 WOUNDS THAN THERE ARE BULLETS; IS THAT CORRECT, BECAUSE
4 THERE ARE SOME ENTRANCE WOUNDS MATCH UP WITH SOME EXITS
5 WOUNDS; IS THAT CORRECT?

6 A RIGHT, WE, NOT ONLY DO WE HAVE ENTRANCE AND
7 EXITS BUT WE HAVE ENTRANCE AND EXITS WITH BULLETS STILL IN
8 THERE SO THERE'S DEFINITELY MORE CIRCLES THAN THERE ARE
9 BULLETS.

10 Q SO IF I WOULD COULD YOU EXPLAIN FOR THE
11 JURY EACH, FOR EACH OF THE ENTRANCE WOUNDS WHAT THE
12 TRAJECTORY OF THAT BULLET WAS AND THEN HAVE THE POINTER TO
13 INDICATE THE TRAJECTORY AND WE COULD USE ME AS A MODEL IF
14 IT WOULD HELP?

15 A ALL RIGHT, I'M GOING TO CONTINUE USING MY,
16 MY LITTLE CHEAT SHEET HERE, FIRST LET ME JUST SAY WHEN WE
17 DO TRAJECTORY WE SEE THE PERSON AT THE TIME OF AUTOPSY AND,
18 YOU KNOW, THEY'RE LAYING ON AUTOPSY TABLE AND, OF COURSE,
19 THAT'S USUALLY NOT THE WAY SOMEBODY IS, THEIR STANCE IS
20 WHEN, OR THAT'S, WELL I DON'T KNOW IF THAT'S THE NORMAL WAY
21 OR NOT, BUT THAT DOESN'T NECESSARILY MEAN THAT THAT'S THE
22 POSITION THAT THEY WERE IN WHEN THEY WERE SHOT SO WHEN WE
23 ESTIMATE TRAJECTORY WE ESTIMATE IT AND IT IS AN ESTIMATE
24 BECAUSE THINGS CHANGE AFTER DEATH, ORGANS SETTLE, YOU KNOW,
25 SO AS FAR AS EXACT TRAJECTORY THAT'S ALMOST, THAT IS

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

225

1 IMPOSSIBLE TO DO, BUT WE DO TRY TO ESTIMATE IT AND WE DO IT
2 WITH THE BODY AND WHAT WE CALL ANATOMIC POSITION AND THIS
3 DIAGRAM SHOWS WHAT ANATOMIC POSITION IS, ANATOMIC POSITION
4 IS. IT'S NOT LIKE A NORMAL FEELING, LIKE YOU WOULDN'T JUST
5 NORMALLY RELAX AND STAND LIKE THIS, BUT IT'S WITH YOUR
6 PALMS FORWARD AND YOU'RE STANDING STRAIGHT UP, SO ALL OF
7 OUR TRAJECTORIES ARE, ARE, ARE BASED ON THAT POSITION OF
8 THE BODY. ALL RIGHT, SO WE'LL GO THROUGH EACH OF THE
9 TRAJECTORIES. THE ONE FOR THE CHEST AND ABDOMEN WILL MAKE
10 THE MOST SENSE. THE ONES TO THE ARMS ARE GOING TO GET KIND
11 OF CONFUSING BECAUSE AGAIN NO ONE STANDS LIKE THAT SO IF WE
12 HAVE ONE GOING STRAIGHT UP IT DOESN'T MEAN THAT HIS ARM
13 WASN'T LIKE THAT AND IT'S ACTUALLY COMING FROM IN FRONT OR
14 FROM THE SIDE BUT, BUT WE WILL GO THROUGH THE, THE
15 TRAJECTORIES.

16 Q BEFORE WE DO THAT, DR. PRESNELL, JUST TO BE
17 CLEAR TO THE JURY, IS THERE ANY WAY TO TELL FROM THE
18 ANATOMICAL EVIDENCE WHAT POSITION THE BODY WAS IN WHEN
19 THOSE BULLETS HIT?

20 A NO, I, I CAN'T TELL JUST FROM THE BODY AT
21 AUTOPSY THAT HIS POSITION AT THE TIME THAT HE WAS SHOT.

22 Q THANK YOU.

23 A ALL RIGHT, SO FOR GUNSHOT WOUND (A) WHICH
24 IS TO THE CHEST IT'S A LITTLE BIT TO THE, TO THE RIGHT OF
25 THE NIPPLE.

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

226

1 THE NIPPLE.

2 THE COURT: ALL RIGHT, MA'AM, YOU'RE IN FRONT OF
3 THE DIAGRAM AND THAT'S IN BETWEEN YOU AND THE COURT
4 REPORTER.

5 A OKAY, WOULD YOU LIKE, WELL I CAN --

6 THE COURT: SO YOU CAN EITHER MOVE IT UP, MOVE
7 IT TO ONE SIDE OR THE OTHER.

8 MR. DEBUSK: WOULD IT BE BETTER IF I STOOD OVER
9 HERE, YOUR HONOR.

10 THE COURT: THAT WILL BE FINE.

11
12 MR. DEBUSK: THANK YOU, YOUR HONOR.

13 A ALL RIGHT, SO TO THE GUNSHOT WOUND TO THE
14 CHEST WHICH IS TO THE A LITTLE BIT TO THE RIGHT OF THE
15 NIPPLE THIS IS GOING STRAIGHT IN SO NOW I'M GOING TO ADJUST
16 IT ALONG WITH MY ANGLES. ACTUALLY WE'RE GOING TO DO IT
17 THIS WAY. IT'S GOING ABOUT 30 DEGREES BACK AND ABOUT 50
18 DEGREES DOWN SO THIS IS ABOUT THE ANGLE. AGAIN THIS WAS
19 THE BULLET THAT WAS FOUND IN THE, IN THE LEFT BACK KIND OF
20 DOWN LOW SO THIS IS THE DIRECTION OF (A) THE GUNSHOT WOUND
21 TO THE CHEST AND THIS IS ONE OF THE CLOSE RANGE GUNSHOT
22 WOUNDS.

23 THE GUNSHOT WOUND TO THE ABDOMEN IS APPROXIMATELY
24 RIGHT IN THIS GENERAL DIRECTION OR AT THIS GENERAL
25 LOCATION. IF WE, LET ME ADJUST AGAIN, THIS WOULD BE GOING

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

227

1 STRAIGHT IN, THIS IS ABOUT 50 DEGREES UP AND WE HAVE ABOUT
2 10 DEGREES TO THE LEFT SO THIS IS THE ANGLE OF THIS GUNSHOT
3 WOUND. THIS IS THE BULLET THAT YOU SAW ON X-RAY ON THE
4 BACK MUSCLE BEHIND THE CHEST, BEHIND THE CHEST CAVITY. ALL
5 RIGHT, SO THOSE ARE THE EASY ONES.

6 NOW WE'LL GO THROUGH THE OTHER ONES IF YOU COULD
7 TURN AROUND BACKWARDS. (J) IS TO, WE'RE JUST GOING TO GO
8 FROM DOWN ONE EXTREMITY AND THEN DOWN THE OTHER, (J) IS TO
9 THE POSTERIOR OR TO THE BACK OF THE SHOULDER. IF WE JUST
10 ORIENT IT, WE HAVE IT GOING ABOUT 50 DEGREE DOWN TO THE
11 RIGHT AND FORWARD SO ABOUT IN THIS DIRECTION. REMEMBER (J)
12 IS COMING OUT (C) SO OUT THE FRONT OF THE ARM SO YOU CAN
13 KIND OF SEE THAT DIRECTION OF THIS, OF THIS PARTICULAR
14 BULLET, TURN TO THE SIDE, ABOUT LIKE THAT.

15 AND (D), IF YOU CAN FACE THE JURY, PLEASE, (D) IS
16 TO THE FRONT OF THE ARM, THE RIGHT UPPER ARM HERE AND THIS
17 IS GOING STRAIGHT IN. IT GOES ABOUT 50 DEGREES UP, ABOUT
18 10 DEGREES TO THE LEFT IN THIS DIRECTION AND REMEMBER (D)
19 EXITS AT (I) ON THE BACK OF THE ARM SO IT'S ABOUT, IT'S
20 GOING IN THIS DIRECTION.

21 Q DR. PRESNELL, DID THAT, WOULD THAT BULLET
22 BREAK THE ARM?

23 A YES, IT DID. AND THIS IS ANOTHER CLOSE
24 RANGE SKETCH OF IT.

25 ALL RIGHT, (E(IS TO, IF YOU COULD TURN AROUND,

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

228

1 KEEPING HIM IN ANATOMICAL POSITION HE IS TO THE FOREARM
2 RIGHT HERE AND WE HAVE IT GOING ABOUT 60 DEGREES DOWN AND
3 FORWARD AND TO THE LEFT SO ABOUT IN THAT GENERAL DIRECTION.

4 Q NOW, DOCTOR, IS THAT THE BULLET THAT BROKE
5 BOTH ARMS OF THE RIGHT FOREARM?

6 A THIS IS THE BULLET THAT BROKE BOTH BONES IN
7 THE FOREARM AND THE BULLET WAS THAT ONE THAT WAS STILL IN
8 THE ARM.

9 OKAY, (G) IF YOU WOULD TURN BACK AROUND AND FACE
10 THE JURY, IS TO THE FRONT OF THE LEFT UPPER ARM AND THIS
11 DIRECTION IS ABOUT 45 DEGREES UP, ABOUT 40 DEGREES TO THE
12 RIGHT AND BACKWARDS AND REMEMBER (G) IS EXITING AT (H),
13 IT'S GOING THAT WAY.

14 AND FINALLY WE HAVE THE BACK OF THE HAND, IT'S ON
15 THE LEFT BACK OF THE HAND, (K) AND WE HAVE THAT GOING
16 ABOUT, WELL ACTUALLY IT'S ALMOST EASIER TO LOOK AT ON YOUR
17 OWN HAND IF YOU HAVE IT GOING IN THE BACK OF YOUR WEB OF
18 YOUR HAND RIGHT HERE AND THE BULLET IS RIGHT THERE, IT'S
19 ACTUALLY IF YOU PUT YOURSELF IN ANATOMIC POSITION IT'S
20 GOING UP AND FORWARD AND TO THE RIGHT SO IN THERE AND THE
21 BULLETS IS RIGHT THERE.

22 Q HOW ABOUT WOUND (F) DR. PRESNELL?

23 A WOUND (F) IS JUST A HORIZONTAL WHAT WE CALL
24 LACERATION WHICH HAS POTENTIAL TO BE A GRAZE WOUND, A
25 GUNSHOT GRAZE WOUND.

DR. PRESNELL - DIRECT EXAMINATION BY MR. DEBUSK

229

1 Q IF IT WERE A GRAZE WOUND WOULD THERE BE ANY
2 WAY TO TELL IF THE BULLET WAS GOING LEFT, RIGHT, OR WHAT
3 WAY?

4 A NO.

5 Q THANK YOU. AND ONCE AGAIN JUST TO BE
6 PRECISE ABOUT THIS IS THERE ANY WAY TO TELL WHAT POSITION
7 THE ARMS IN WHEN THEY WERE HIT BY THOSE BULLETS?

8 A NO, AND THAT'S WHAT MAKES THE TRAJECTORY
9 FOR THE UPPER EXTREMITIES SO CONFUSING.

10 Q NOW OTHER THAN THE CONTACT WOUND WHICH
11 WOULD THAT INDICATE THAT THE GUN WAS RIGHT UP TOUCHING THE
12 GUN WHEN IT WAS FIRED; IS THAT CORRECT?

13 A YES, HE HAD THE ONE CONTACT WOUND, TWO THAT
14 DIDN'T SHOW ANY, YOU KNOW, MUZZLE OR STIPPLING AND THEN THE
15 REMAINING FOUR WERE CLOSE RANGE GUNSHOT WOUNDS.

16 Q IS THERE ANY WAY TO TELL BEYOND CLOSE RANGE
17 JUST HOW CLOSE THEY WERE?

18 A NO, WELL FOR US ANATOMICALLY AND
19 INCORPORATING MOST HANDGUNS WITH MOST TYPES OF AMMUNITIONS
20 IT'S, YOU CAN PRETTY MUCH SAFELY SAY THAT THAT WOULD BE
21 WITHIN A YARD TO A YARD AND A HALF, WITHIN THAT RANGE
22 SOMEWHERE.

23 Q BUT YOU COULDN'T BE MORE PRECISE THAN THAT
24 RANGE?

25 A NO, I CAN NOT.

DR. PRESNELL - CROSS EXAMINATION BY MR. MULLINS

230

1 Q YOU'VE PROBABLY STATED THIS ALREADY BUT LET
2 ME ASK YOU FORMALLY, BASED ON THIS AUTOPSY WITHIN THE
3 BOUNDS OF REASONABLE MEDICAL CERTAINTY DID YOU FORM AN
4 EXPERT OPINION CONCERNING THE CAUSE OF THE DEATH OF TROY
5 RIGGINS?

6 A THE CAUSE OF DEATH WAS THE CONTACT GUNSHOT
7 WOUND TO THE CHEST AND THE CLOSE RANGE, I MEAN, EXCUSE ME,
8 THE CONTACT GUNSHOT TO THE ABDOMEN AND THE CLOSE RANGE
9 GUNSHOT WOUND TO THE, SEE I JUST MESSED IT UP, CONTACT TO
10 THE ABDOMEN AND CLOSE RANGE GUNSHOT WOUND TO THE CHEST AND
11 THE MANNER OF DEATH WE CLASSIFY IT AS HOMICIDE.

12 MR. DEBUSK: THANK YOU, DR. PRESNELL, PLEASE
13 ANSWER ANY QUESTIONS THE DEFENSE MIGHT HAVE.

14 THE COURT: ALL RIGHT, MR. MULLINS?

15 MR. MULLINS: MAY IT PLEASE THE COURT?

16 THE COURT: YES, SIR.

17 CROSS EXAMINATION

18 BY MR. MULLINS:

19 Q DR. PRESNELL, WERE YOU PREVIOUSLY KNOWN BY
20 THAT NAME?

21 A YES, I WAS. BEFORE I GOT MARRIED I WAS
22 KNOWN AS MCCONNELL, MY LAST NAME WAS MCCONNELL.

23 Q ALL RIGHT, SO YOU ACTUALLY PREPARED THE
24 FORENSIC PATHOLOGY REPORT THAT HAS MCCONNELL ON IT IN THIS
25 CASE?

DR. PRESNELL - CROSS EXAMINATION BY MR. MULLINS

231

1 A YES, I DID THE AUTOPSY REPORT.

2 Q CONGRATULATIONS ON YOUR MARRIAGE?

3 A WHY THANK YOU.

4 Q NOW A COUPLE OF THINGS I NEED TO FOLLOW UP
5 WITH YOU, DOCTOR, BASED UPON THERE TESTIMONY, FIRST OF ALL
6 ONE THING IS THE TRAJECTORIES ON THE BULLETS ON THE
7 EXTREMITIES, WHEN YOU WERE DEMONSTRATING THEM TO THE JURY
8 YOU WERE BASING THEM UPON YOUR ANATOMICAL CHART, CORRECT?

9 A YES, SIR.

10 Q SO THAT DOESN'T NECESSARILY REFLECT HOW THE
11 VICTIM MAY HAVE BEEN SITTING AT THE TIME THOSE INJURIES
12 WERE INFLICTED, DOES IT?

13 A RIGHT.

14 Q SO DID YOU TAKE INTO CONSIDERATION AT ANY
15 TIME THAT THE VICTIM IN THIS CASE MAY HAVE BEEN SITTING?

16 A WELL WHEN WE, NO, BECAUSE WHEN WE DO THE
17 TRAJECTORY WE'LL, IT'S ALWAYS DONE IN ANATOMICAL POSITION.
18 IT WILL STILL, IT'S BASICALLY KIND OF POINTING THE
19 DIRECTION THROUGH THE BODY SO WHETHER YOU THEN SIT THEM
20 DOWN AFTERWARDS IT'S STILL GOING, POINTING IN THE SAME
21 DIRECTION OR WHETHER YOU TURN THEIR ARM OVER THE TRAJECTORY
22 IS STILL POINTING IN THE SAME DIRECTION IT'S JUST YOU MOVE
23 THE BODY SO AS A STANDARD OF REFERENCE WE DO IT IN THE
24 ANATOMIC POSITION.

25 Q ALL RIGHT, NOW IN YOUR CASE HISTORY,

DR. PRESNELL - CROSS EXAMINATION BY MR. MULLINS

232

1 THOUGH, DOESN'T IT STATE THAT THIS WAS A 24 YEAR OLD BLACK
2 MALE WHO WAS FOUND SITTING IN HIS CAR IN THE DRIVERS SEAT?

3 A YES, SIR.

4 Q ALL RIGHT, SO YOU KNEW THAT GOING INTO THIS
5 AUTOPSY?

6 A OH, YES, YES.

7 Q ALL RIGHT, NOW YOU MADE SEVERAL REFERENCES
8 WITH A POINTER USING THIS CHART FOR SOLICITOR DEBUSK?

9 A YES.

10 Q ALL RIGHT, COULD YOU DO THE SAME THING
11 USING THE SAME CHART WITH SOMEONE SITTING IN A CHAIR?

12 A WELL, WHAT I COULD DO IS WE COULD PUT THE
13 TRAJECTORY ON SAY, FOR EXAMPLE, YOU AND THEN WE COULD SIT
14 YOU DOWN AND YOU, AND YOU COULD SEE WHERE THAT WOULD, YOU
15 KNOW, WOULD CHANGE OR WE COULD TURN YOUR ARM OVER AND WE
16 CAN SEE HOW THAT WOULD CHANGE.

17 MR. MULLINS: WITH THE COURT'S INDULGENCE,
18 PLEASE, YOUR HONOR, I'D LIKE TO DO THAT?

19 THE COURT: ANY OBJECTION FROM THE STATE?

20 MR. DEBUSK: NONE FROM THE STATE, YOUR HONOR.

21 THE COURT: MR. GARDNER?

22 MR. GARDNER: NO, YOUR HONOR.

23 THE COURT: YOU MAY DO SO. JUST REMEMBER WHEN
24 YOU'RE DOING THIS YOU HAVE TO BE NEXT TO A MICROPHONE SO
25 PEOPLE CAN HEAR YOU, THANK YOU.

DR. PRESNELL - CROSS EXAMINATION BY MR. MULLINS

233

1 MR. MULLINS: YOUR HONOR, IF I COULD ---

2 THE COURT: IT'S ON.

3 MR. MULLINS: OH, IT'S READY, THANK YOU. IF I
4 MAY BORROW DETECTIVE DEBARI FOR THIS DEMONSTRATION?

5 Q NOW, DOCTOR, DOING THE SAME TESTIMONY ON
6 TRAJECTORY STARTING WITH (A) HERE ON THE PARTICULAR CHART,
7 IF YOU CAN GET CLOSE ENOUGH TO WHERE THE MIKE WILL PICK YOU
8 UP, CAN YOU SHOW US STARTING WITH WOUND THAT YOU DESIGNATED
9 (A) ON YOUR AUTOPSY?

10 A YES, WE CAN GO THROUGH THEM, (A) AND (B)
11 ARE NOT GOING TO CHANGE AS FAR AS TRAJECTORY.

12 Q ALL RIGHT, COULD YOU SHOW ME (A) AGAIN,
13 THOUGH ---

14 A YES, WE WILL.

15 Q --- JUST TO REFRESH MY RECOLLECTION?

16 THE COURT: WHY DON'T YA'LL MOVE THE CHAIR BACK
17 CLOSER TO THE MICROPHONE.

18 A THERE IT GOES. ALL RIGHT, SO GUNSHOT WOUND
19 (A) IT'S RIGHT NEXT TO THE NIPPLE, IT GOES ABOUT 30 DEGREES
20 BACK AND ABOUT 50 DEGREES DOWN SO WHETHER HE'S STANDING UP
21 OR WHETHER HE'S SITTING DOWN IT'S IN THAT DIRECTION. NOW
22 IF HE MOVES HIS BODY THAT WAY, YOU KNOW, THIS IS GOING TO
23 GO WITH IT AND, YOU KNOW OF COURSE THAT, OR IF HE MOVES IT
24 FORWARD IT'S GOING TO CHANGE WHERE THE BULLET IS COMING
25 FROM PER SE IN THAT CAR, BUT AS FAR AS THE ACTUAL

DR. PRESNELL - CROSS EXAMINATION BY MR. MULLINS

234

1 TRAJECTORY TO HIS BODY IT REMAINS THE SAME IN THE SITTING
2 POSITION AS IN, AS IN THE STANDING.

3 Q ALL RIGHT, LET'S GO TO THE NEXT ONE (B)?

4 A ALL RIGHT (B), (B) IS TO THE ABDOMEN AND WE
5 HAVE ABOUT 50 DEGREES UP AND ABOUT 10 DEGREES TO THE LEFT
6 AND BACKWARDS SO AGAIN IT'S THE SAME TRAJECTORY AS STANDING
7 BECAUSE THAT'S STILL HIS ANATOMIC POSITION. IT'S GOING TO
8 CHANGE, THOUGH, WHEN WE GET TO THE ARMS.

9 Q OKAY, AND NEXT?

10 A OKAY, (J) WE'RE GOING TO DO (J) NEXT.

11 Q (J)?

12 A LET'S GO IN THE, WE'LL GO DOWN THE RIGHT
13 ARM FIRST. ALL RIGHT, (J), ALL RIGHT, IF YOU COULD PUT
14 YOUR ARMS THAT WAY AND THIS WAY AND THEN WE'LL HAVE YOU PUT
15 THEM BACK UP ON THE SEAT, ALL RIGHT, (J) IS TO THE BACK.
16 IT GOES ABOUT 50 DEGREES DOWN SLIGHTLY TO THE RIGHT AND
17 FORWARD SO THIS IS THE TRAJECTORY AND, ALL RIGHT, SO IF YOU
18 MOVE YOUR HAND LIKE, TURN, TURN YOUR HAND OVER RIGHT,
19 ACTUALLY IT DOESN'T CHANGE IT THAT MUCH FOR, FOR THIS
20 GUNSHOT WOUND TO THE SHOULDER.

21 LET'S TRY THE NEXT ONE. (D) IS TO THE FRONT OF
22 THE ARM HERE AND WE HAVE US GOING ABOUT 50 DEGREES UP ABOUT
23 10 DEGREES TO THE LEFT AND BACKWARDS. NOW IF YOU START TO
24 MOVE IT HERE THEN WE START TO CHANGE, THE TRAJECTORY STARTS
25 TO MOVE A LITTLE BIT OR THE TRAJECTORY DOESN'T CHANGE IT

DR. PRESNELL - CROSS EXAMINATION BY MR. MULLINS

235

1 DOES IN REFERENCE TO WHERE YOUR, WHERE YOUR, WHAT YOU'RE
2 REFERENCING IT AGAINST SO, FOR EXAMPLE, INSTEAD OF NOW
3 GOING TO THE LEFT IT KIND IS GOING TO THE, TO HIS RIGHT.
4 SEE THE DIFFERENCE?

5 Q I DO, BUT IF HE IS SITTING EXACTLY WHERE
6 HE'S AT THAT WOULD STILL ANGLE TOWARDS THE LEFT, CORRECT?

7 A THAT'S ANGLING TOWARDS HIS RIGHT. IF I
8 TAKE HIM TO AUTOPSY AND PUT HIM IN THE ANATOMICAL POSITION
9 THEN I END UP KIND OF MOVING THIS TO GO A LITTLE BIT MORE
10 TO HIS LEFT BECAUSE THE UPPER ARM GOES LIKE THAT.

11 Q ALL RIGHT, AND THE REMAINDER OF THEM,
12 DOCTOR?

13 A SIMILAR TO THAT, OKAY, (E) IS ON THE BACK,
14 PUT YOUR HAND ALL THE WAY BACK. (E) IS 60 DEGREES DOWN
15 SLIGHTLY FORWARD AND TO THE LEFT SO IF WE, IF THAT'S
16 ANATOMIC POSITION AND NOW HE SITS LIKE THAT OR HE MOVES
17 LIKE THAT THAT'S WHERE THE TRAJECTORY IS GOING TO MOVE TO.

18 OKAY, (G) IS TO THE FRONT OF THE LEFT ARM AND WE
19 HAVE 45 DEGREES UP, 45 DEGREES TO THE RIGHT AND BACK, THAT
20 DOESN'T CHANGE AS MUCH ON THE UPPER ARMS. IT MAY CHANGE A
21 LITTLE AS HE MOVES AND THEN THE (G),

22 THEN THE LAST ONE IS (K) IT'S TO THE BACK OF THE
23 LEFT HAND, HERE PUT IT LIKE THAT. (K) IS, REMEMBER THIS IS
24 THE ONE WE WERE KIND OF DEMONSTRATING KIND OF IN THIS
25 DIRECTION SO, YOU KNOW, AGAIN IF HE MOVES IT IT WILL BE,

DR. PRESNELL - CROSS EXAMINATION BY MR. MULLINS

236

1 THE BULLET WILL BE COMING FROM A DIFFERENT PLACE DEPENDING
2 ON HOW HE'S ACTUALLY SITTING.

3 I CAN'T TELL, YOU KNOW, EXACTLY THE POSITION HE'S
4 SITTING IN FROM OUR AUTOPSY FINDINGS.

5 MR. MULLINS: ALL RIGHT, THANK YOU, DETECTIVE
6 DEBARI.

7 Q PLEASE RETAKE THE STAND. NOW, DOCTOR, A
8 HUMAN BEING UNLESS THEY'RE DECEASED HAVE ANNOYING HABITS OF
9 MOVING WHILE THEY'RE BEING SHOT, DON'T THEY?

10 A THEY DO AND EVEN, WELL NOT I, I DIDN'T MEAN
11 TO, YES, THEY TYPICALLY DON'T STAND IN ANATOMICAL POSITION
12 DURING AN ALTERCATION. I MEAN EVEN DECEASED THEY DON'T
13 TYPICALLY, YOU KNOW, SIT LIKE THAT OR LAY LIKE THAT EITHER.
14 YOU HAVE TO MAKE AN EFFORT TO PUT THEM IN THAT POSITION.

15 Q OF THE HUNDREDS OR IS IT THOUSANDS OF
16 BODIES YOU'VE EXAMINED AT THIS POINT?

17 A THOUSANDS.

18 Q THOUSANDS, ALL RIGHT, OF THOSE USUALLY IF
19 SOMEONE IS STILL ALIVE WHILE THEY'RE BEING SHOT THEY WILL
20 ASSUME DEFENSIVE POSITIONS, WILL THEY NOT?

21 A WE ASSUME THAT SOMEBODY BEING ASSAULTED
22 WOULD IF THEY COULD DEFEND THEMSELVES, YES.

23 Q ALL RIGHT, AND IS IT CONSISTENT WITH NORMAL
24 HUMAN NATURE FROM THE THOUSANDS OF BODIES YOU HAVE EXAMINED
25 THAT SOMEONE BEING SHOT IF THEY'RE NOT SHOOTING BACK

DR. PRESNELL - CROSS EXAMINATION BY MR. MULLINS

237

1 THEY'RE TRYING TO COVER UP, ARE THEY NOT?

2 A THAT SOUNDS REASONABLE.

3 Q ALL RIGHT, AND DOES, IS THAT NOT A
4 REASONABLE EXPLANATION OF THE GUNSHOT WOUNDS TO THE HANDS
5 IN THIS CASE?

6 A THAT COULD EXPLAIN THOSE GUNSHOT WOUNDS.

7 Q AND ALSO THAT COULD ALSO EXPLAIN WHY WOUND
8 NUMBER (J) HERE ON THIS SHOULDER WOULD BE CONSISTENT WITH
9 SOMEONE TURNING AWAY FROM AN ASSAILANT, WOULD IT NOT?

10 A YES, IT WOULD.

11 Q YOU SAID YOU PERFORMED A TOXICOLOGY REPORT

12 ---

13 A WELL ---

14 Q --- ON THE DECEASED?

15 A WHAT WE DO IS WE SEND BLOOD AND IF WE GET
16 URINE WE'LL SEND THAT AS WELL TO THE TOXICOLOGIST TO RUN
17 DRUG AND ALCOHOL SCREEN WHICH WE DID ON HIM, TOO.

18 Q WHAT WAS THE RESULT OF THAT SCREEN?

19 A HIS TOXICOLOGY RESULTS ON HIS BLOOD SHOWED
20 A KETAMINE WHICH IS TYPICALLY A VETERINARIAN ANESTHETIC BUT
21 HAS BEEN USED AS A DRUG OF ABUSE, THEY SHOWED SOME KETAMINE
22 IN HIS BLOOD.

23 Q NORMALLY REFERRED TO ON THE STREET AS
24 SPECIAL K, ISN'T IT?

25 A YOU KNOW WHAT THAT DOES RING A BELL BUT I

DR. PRESNELL - CROSS EXAMINATION BY MR. GARDNER

238

1 DIDN'T HAVE THAT OFF THE TOP OF MY HEAD.

2 Q SO YOU REALLY CAN'T TELL FROM THE AUTOPSY
3 ITSELF EXACTLY WHO THE ASSAILANT WAS, CORRECT?

4 A RIGHT.

5 Q BUT, HOWEVER, YOUR PHYSICAL FINDINGS AREN'T
6 SUBJECT TO SOMEONE REMEMBERING WHAT HAPPENED ON THE SCENE,
7 ARE THEY?

8 A NO, MY PHYSICAL FINDINGS WILL STAY THE
9 SAME, YOU KNOW, NO MATTER WHAT HAPPENS.

10 Q YOU CANNOT CHANGE THE FORENSICS OF THIS
11 PARTICULAR MATTER, CAN YOU?

12 A CORRECT.

13 Q IT'S NOT SUBJECT TO SOMEONE REMEMBERING
14 WHERE SOMEONE WAS SITTING OR WHERE SOMEONE MAY HAVE BEEN AT
15 THE TIME, CORRECT?

16 A RIGHT.

17 Q NOW AS TO THE GUNSHOT RESIDUE, DOCTOR, ON
18 THESE PARTICULAR WOUNDS NO QUESTION THAT THERE WAS RESIDUE
19 ON (A)?

20 A WELL, THERE'S ACTUALLY, IT'S ABRASIONS OR
21 SCRATCHES SO IT'S LITTLE PARTICLES, OR NOT PARTICLES, BUT
22 ACTUAL ABRASIONS.

23 Q ALL RIGHT, NOW THAT LED YOU TO CONCLUDE YOU
24 THAT (A) WAS IN FACT, I THINK I WROTE IT DOWN HERE, WAS IN
25 FACT AN ENTRANCE WOUND THAT HAD A CONTACT WOUND, AS YOU

DR. PRESNELL - CROSS EXAMINATION BY MR. GARDNER

239

1 REFERRED TO IT?

2 A (A) TO THE CHEST IS A CLOSE RANGE SO ---

3 Q CLOSE RANGE?

4 A --- SO NOT CONTACT BUT CLOSE RANGE SO THE
5 GUN IS NOT AGAINST THE SKIN.

6 Q AND (B) WAS A CONTACT?

7 A (B) IS A CONTACT PRIMARILY BECAUSE OF THE
8 MUZZLE IMPRINT WE COULD DISCERN.

9 Q ALL RIGHT, AND NO QUESTION THAT (A) AND (B)
10 WERE THE FATAL SHOTS HERE?

11 A YES, SIR.

12 Q EITHER ONE COULD HAVE BEEN FATAL?

13 A YES.

14 MR. MULLINS: MAY I HAVE JUST A MOMENT, YOUR
15 HONOR?

16 THE COURT: YES, SIR.

17 MR. MULLINS: NO FURTHER QUESTIONS OF THE DOCTOR
18 AT THIS TIME, THANK YOU, YOUR HONOR.

19 THE COURT: MR. GARDNER?

20 MR. GARDNER: THANK YOU, YOUR HONOR.

21 CROSS EXAMINATION

22 BY MR. GARDNER:

23 Q I'LL TRY TO BE BRIEF, I THINK YOU'VE
24 COVERED IT ALL PRETTY GOOD. THE TWO BIG SHOTS WOULDN'T
25 CHANGE NO MATTER IF HE WAS SITTING OR IN THE OTHER

DR. PRESNELL - CROSS EXAMINATION BY MR. GARDNER

240

1 POSITION, DID I UNDERSTAND THAT RIGHT?

2 A WELL IF HE'S SITTING STRAIGHT UP THEN THEY
3 DON'T CHANGE BUT IF HE'S SLUMPED OVER OR TWISTED TO THE
4 SIDE THEN IT DOES CHANGE AND WHEN WE SAY CHANGE TRAJECTORY
5 IT'S NOT NECESSARILY CHANGING THE TRAJECTORY BUT REALLY THE
6 DIRECTION THAT THE BULLET IS COMING FROM SO IF WE HAVE THAT
7 ONE GOING INTO THE CHEST AND HE LIKE TWISTS THEN IT DOES
8 CHANGE THE DIRECTION OF THE BULLETS COMING FROM.

9 Q I'M GLAD I ASKED, I WAS CONFUSED. OKAY, IT
10 WAS, WHEN YOU, WHEN YOU DID IT IT WAS INITIALLY, WAS IT 30
11 BACK AND 50 DOWN ON THE CHEST WOUND?

12 A YES.

13 Q OKAY, BUT IF HE WAS SITTING IT WOULD BE THE
14 SAME ---

15 A IT'S STILL ---

16 Q --- PATH ---

17 A RIGHT, EXACTLY, THE PATH IS STILL THE SAME
18 THROUGH THE ---

19 Q --- INSIDE THE BODY?

20 A --- AND THROUGH, YES.

21 Q OKAY, BUT TELL ME WHAT'S THE DIFFERENT ---

22 A BUT IF YOU TWIST THE BODY THEN IT ACTUALLY
23 DOESN'T CHANGE THE TRAJECTORY OF THE BULLET THROUGH THE
24 BODY BUT IT DOES CHANGE WHERE THE BULLET IS COMING FROM
25 EXTERNALLY.

DR. PRESNELL - CROSS EXAMINATION BY MR. GARDNER

241

1 Q EXTERNALLY?

2 A YES, SIR.

3 Q OKAY, ALL RIGHT, AND ALONG THAT LINE IF
4 THESE WOUNDS WERE IN THIS AREA A PERSON SITTING AT TURNED
5 IN A DIRECTION TO THEIR RIGHT REAR IT WOULD BE INSIDE THE
6 BODY AND STILL BE THE SAME?

7 A RIGHT.

8 Q BUT OUTSIDE THE TRAJECTORY WOULD CHANGE?

9 A RIGHT, THE BULLET WOULD BE COMING FROM A
10 DIFFERENT DIRECTION.

11 Q OKAY, GOOD. THE DEFENSIVE WOUNDS THAT
12 YA'LL TALKED ABOUT (D) AND (G) IF I'M READING THE CHART
13 RIGHT HE HOLDS HIS HANDS WITH THE PALMS OPEN LIKE THIS; IS
14 THAT RIGHT?

15 A FOR, THAT POSITION IS ANATOMIC POSITION
16 JUST FOR OUR DOCUMENTATION SAKE.

17 Q THAT'S WHERE THE BULLET WENT IN, THOUGH,
18 RIGHT?

19 A ACTUALLY I LEFT MY CHART UP THERE, BUT,
20 YES, (G) IS UP ON THE LEFT UPPER ARM.

21 Q THIS PICTURE HERE?

22 A NO, NO, THAT, THE LITTLE ONE.

23 Q THE LITTLE ONE?

24 A YEAH.

25 Q IT'S THE SAME, THOUGH, RIGHT?

DR. PRESNELL - CROSS EXAMINATION BY MR. GARDNER

242

1 A YES, IT IS THE SAME.

2 Q ALL RIGHT.

3 A BUT, OKAY, SO (G) IS IN THE, THE RIGHT
4 UPPER ARM AND, WELL ACTUALLY YOU MADE REFERENCE TO IT BEING
5 DEFENSIVE WOUNDS, THEY DON'T NECESSARILY HAVE TO BE
6 DEFENSIVE WOUNDS BUT THEY CERTAINLY WOULD NOT, IT WOULDN'T,
7 THEY'RE NOT IN THE POSITION WHERE THEY WOULD BE
8 ARGUMENTATIVE AGAINST DEFENSIVE WOUNDS.

9 Q OKAY, I WAS JUST FOLLOWING UP THE ---

10 A RIGHT.

11 Q --- OTHER LINE OF QUESTIONS.

12 A BUT, I'M SORRY, WHAT WAS YOUR QUESTION
13 AGAIN WITH (G)?

14 Q MY QUESTION WAS YA'LL WERE TALKING ABOUT
15 DEFENSIVE WOUNDS AND I WOULD LIKE TO TALK ABOUT (D) AND
16 (G), THOSE WOULDN'T BE DEFENSIVE WOUNDS, WOULD THEY?

17 A THOSE ARE, NO, THOSE ARE ON THIS PART OF
18 THE ARM AND THIS PART OF THE ARM SO UNLESS, YOU KNOW,
19 SOMEBODY IS DOING THIS OR I MEAN IT WOULD BE AN AWKWARD
20 POSITION BUT, LET'S SEE IF (D) GOES IN HERE, GOES INTO THE
21 ANTERIOR OR THE FRONT PART OF THE ARM IT'S GOING UP AND TO
22 THE LEFT, NO, THAT WOULD BE A VERY AWKWARD DEFENSIVE
23 POSITION.

24 Q AND LIKEWISE I BELIEVE WITH THAT ONE?

25 A AND (G) IS GOING IN THE FRONT OF THE ARM 45

DR. PRESNELL - CROSS EXAMINATION BY MR. GARDNER

243

1 DEGREES UP 45 TO THE RIGHT ANOTHER IT WOULD BE A DIFFICULT
2 DEFENSIVE WOUND, THE TWO ON THE UPPER ARMS THERE.

3 Q AND IT LOOKS TO ME LIKE IT WOULD BE FAIR TO
4 SAY THAT WE'VE GOT A LOT OF TRAJECTORIES DIFFERENT WITH
5 THIS ONE BODY LOOKS LIKE?

6 A WE DO, YES, THERE ARE.

7 Q OKAY, WE'VE GOT THE ONE, I BELIEVE IT WAS
8 (J) FROM THE BACK OF HIS RIGHT?

9 A RIGHT, RIGHT ON THE SIDE OF THE BACK OF THE
10 SHOULDER.

11 Q THAT ONE THERE?

12 A UH-HUH.

13 Q OKAY, IF SOMEONE WAS SITTING THE ONLY WAY
14 THAT COULD BE DEFENSIVE WOULD BE IF HE HAD FALLING DOWN OR
15 KNOCKED DOWN OR ---

16 A RIGHT, IF HE'S TURNING OR DUCKING, AGAIN
17 THERE ARE, THERE ARE A LOT OF DIFFERENT TRAJECTORIES IN, IN
18 THIS PARTICULAR CASE.

19 Q OKAY, SO SOME COULD BE COMING DEPENDING ON
20 HOW THE BODY HAD TURNED?

21 A RIGHT, YES.

22 MR. GARDNER: THANK YOU, DOCTOR.

23 A YOU'RE WELCOME.

24 THE COURT: REDIRECT?

25 MR. DEBUSK: BRIEFLY, YOUR HONOR.

MR. PRESNELL - REDIRECT EXAMINATION BY MR. DEBUSK

244

REDIRECT EXAMINATION

BY MR. DEBUSK:

Q WHEN YOU DID THE DRUG SCREENING FOR
COCAINE?

A COCAINE, NO, JUST THE KETAMINE.

Q ARE YOU ABLE TO TELL FROM THE LEVEL OF
KATAMINE FOUND IN THE BLOOD WHETHER IT WOULD HAVE ANY
AFFECT ON THE DEFENDANT, ON THE VICTIM?

A WELL IT'S, IT'S IN THERAPEUTIC RANGE SO,
YES, HE WOULD HAVE BEEN FEELING ITS EFFECTS.

Q OKAY, SHOW YOU STATE'S EXHIBITS 16, 17, 18,
19, 20, AND 21, ARE THESE THE BULLETS YOU SHOWED US THE
PICTURES OF PREVIOUSLY?

A WELL THEY'RE ALL LABELED WITH MY OR WITH
OUR AUTOPSY LABEL AND THEY ALL HAVE MY NAME ON IT.

MR. GARDNER: YOUR HONOR, I'M GOING TO IMPOSE AN
OBJECTION, I DON'T KNOW IF THIS IS PROPER REDIRECT.

THE COURT: SUSTAINED.

MR. DEBUSK: I'LL WITHDRAW IT, YOUR HONOR.

THE COURT: SUSTAINED.

MR. DEBUSK: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ANYTHING FROM YOUR CLIENT, MR.
MULLINS?

MR. MULLINS: NO, SIR.

THE COURT: MR. GARDNER?

MR. PRESNELL - REDIRECT EXAMINATION BY MR. DEBUSK

245

1 MR. GARDNER: NO, YOUR HONOR.

2 THE COURT: SOLICITOR, BEFORE YOU EXCUSE THIS
3 WITNESS YOU MADE SOME REFERENCE TO EXHIBIT 48; IS THAT
4 CORRECT?

5 MR. DEBUSK: JUST A MOMENT, YOUR HONOR. 48,
6 YOUR HONOR, YES.

7 THE COURT: ARE YOU PLANNING TO LEAVE THAT AS
8 IDENTIFICATION AT THIS POINT AND TIME?

9 MR. DEBUSK: THE NEXT WITNESS WILL BE LAYING THE
10 FOUNDATION.

11 THE COURT: ALL RIGHT, SIR. ANY REASON THIS
12 WITNESS SHOULD NOT BE EXCUSED?

13 MR. GARDNER: NO, YOUR HONOR.

14 MR. MULLINS: NO, YOUR HONOR.

15 MR. GARDNER: I'M SORRY.

16 THE COURT: ALL RIGHT, MA'AM, YOU ARE RELEASED
17 FROM YOUR SUBPOENA AND EXCUSED TO GO BACK TO YOUR REGULAR
18 DUTIES.

19 A THANK YOU.

20 THE COURT: ALL RIGHT, AND IF YOU HAVE LEFT ALL
21 THE EXHIBITS WITH THE COURT REPORTER?

22 A I HAVE, YES.

23 THE COURT: THANK YOU, MA'AM. ALL RIGHT,
24 SOLICITOR, BEFORE YOU START YOUR NEXT WITNESS, LADIES AND
25 GENTLEMEN, IF YOU'D GO TO YOUR JURY ROOM FOR A SHORT BREAK,

MR. PRESNELL - REDIRECT EXAMINATION BY MR. DEBUSK

246

1 PLEASE, A VERY SHORT BREAK, THANK YOU.

2 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
3 2:55 A.M.)

4 THE COURT: GENTLEMEN, WE'RE GOING TO TAKE A
5 SHORT BREAK FOR ABOUT 10 MINUTES. COUNSEL, COULD YOU COME
6 BACK IN MY CHAMBERS JUST A SECOND?

7 (WHEREUPON, A RECESS WAS TAKEN.)

8 (WHEREUPON, STATE'S EXHIBITS NUMBERS 23 AND 47
9 MARKED FOR IDENTIFICATION.)

10 THE COURT: FOR THE RECORD SO THAT IT'S CLEAR I
11 HAD THE COURT REPORTER MARK THE TWO DIAGRAMS USED BY THE
12 LAST WITNESS FOR DEMONSTRATIVE PURPOSES ONLY, FOR
13 IDENTIFICATION ONLY, NOT TO GO TO THE JURY, BUT AS I
14 UNDERSTAND IT STATE'S 23 FOR IDENTIFICATION IS THE POSTER
15 BOARD WHICH SHOWED THE OUTLINE OF THE BODY AND THE BODY
16 WOUNDS AND STATE'S 47 FOR IDENTIFICATION ONLY IS THE CHART
17 ON THE POSTER BOARD OF THE BULLET WOUNDS THAT WERE LABELED
18 I THINK (A) THROUGH (K) AND WHICH THE WITNESS MADE
19 REFERENCE TO, SO IS THERE ANY OBJECTION TO THAT FROM THE
20 DEFENDANT MANNING?

21 MR. MULLINS: NO, SIR, NO OBJECTION.

22 THE COURT: FROM DEFENDANT BAKER?

23 MR. GARDNER: NO, YOUR HONOR.

24 THE COURT: ALL RIGHT, SIR, THANK YOU.

25 MR. DEBUSK: YOUR HONOR, THE STATE MAY ACTUALLY

MR. PRESNELL - REDIRECT EXAMINATION BY MR. DEBUSK

247

1 SINCE THERE ARE ANNOTATIONS BY THE DOCTOR ON IT MAY OFFER
2 THIS ONE INTO EVIDENCE BUT NOT THE OTHER ONE.

3 THE COURT: ALL RIGHT, SIR.

4 MR. DEBUSK: I'LL DO THIS BEFORE THE JURY.

5 THE COURT: ALL RIGHT, SIR, THANK YOU. ALL
6 RIGHT, NOW, GENTLEMEN, I TOLD YOU THAT I GOT A NOTE FROM
7 THE FORELADY OF THE JURY AND I'LL READ IT TO YOU AGAIN. IT
8 SAYS, IN AN EFFORT TO AVOID CONTACT WITH THOSE INVOLVED IN
9 THIS CASE WOULD IT BE POSSIBLE FOR ALL THE JURORS TO EXIT
10 THE BUILDING BEFORE THE COURT IS EXCUSED. THEY GIVE ME TWO
11 EXPLANATIONS FOR THIS SIMPLE REQUEST FROM THE JURY SO THAT
12 THERE WILL NOT BE ANY INTENTIONAL CONFLICTS OR SOMETHING
13 HAS OCCASION THAT THERE HAS BEEN CONTACT AND, THEREFORE,
14 THE COURT NEEDS TO EXPLORE THAT SO I'M GOING TO HAVE THE
15 FORELADY COME IN AND EXPLAIN THIS NOTE. ASK THE FORELADY
16 ONLY TO COME IN, PLEASE?

17 THE COURT: MR. GARDNER?

18 MR. GARDNER: I WAS JUST TELLING HIM I THINK
19 SOME OF THEM WERE AT THE RESTAURANT WE WERE TODAY BUT I
20 DIDN'T SEE ANYBODY OUT OF CHARACTER.

21 THE COURT: WELL ANYWAY WELL LET'S JUST, LET'S
22 JUST HEAR FROM THE FORELADY AND SEE WHAT THE, IT MAY JUST
23 BE A SIMPLE REQUEST, IT'S NOTHING MORE THAN THAT, HOPEFULLY
24 THAT'S ALL IT IS.

25 (WHEREUPON, MADAM FOREPERSON ENTERS THE

MR. PRESNELL - REDIRECT EXAMINATION BY MR. DEBUSK

248

1 COURTROOM.)

2 THE COURT: YES, MA'AM, HAVE A SEAT IN THE JURY
3 BOX, PLEASE. MS. FOREMAN?

4 MADAM FOREPERSON: YES.

5 THE COURT: YOU HAD SENT A NOTE IN TO THE COURT
6 FROM, AND READING IT BACK TO YOU, I JUST READ YOUR NOTE,
7 BUT IT SAYS, IN AN EFFORT TO AVOID CONTACT WITH THOSE
8 INVOLVED IN THIS CASE WOULD IT BE POSSIBLE FOR ALL JURORS
9 TO EXIT THE BUILDING BEFORE THE COURT IS EXCUSED. I NEED
10 TO INQUIRE FURTHER OF YOU HAS THERE BEEN SOME CONTACT WITH
11 THE JURORS BY FAMILY MEMBERS OR ANYBODY INVOLVED IN THIS
12 CASE?

13 MADAM FOREPERSON: NO, THERE HAS NOT, BUT WE
14 JUST KEEP RUNNING INTO EACH OTHER WHEN WE'RE COMING AND
15 GOING, JUST IN THE, WHEN WE'RE WAITING FOR THE ELEVATORS OR
16 WHATEVER AND THIS MORNING ONE OF THE JURORS WAS ON THE
17 ELEVATOR WITH THE DEFENDANTS.

18 THE COURT: ALL RIGHT, MA'AM. DO YOU KNOW WHICH
19 JUROR THAT WAS, PLEASE, MA'AM?

20 MADAM FOREPERSON: I DO.

21 THE COURT: ALL RIGHT, MA'AM, WHO WAS THAT
22 JUROR?

23 MADAM FOREPERSON: HEATHER.

24 THE COURT: ALL RIGHT, NOW OTHER THAN THAT DO
25 YOU KNOW OF ANY CLOSE CONTACT BETWEEN FAMILY MEMBERS OR

MR. PRESNELL - REDIRECT EXAMINATION BY MR. DEBUSK 249

1 POTENTIAL PARTIES IN THIS CASE WITH ANYBODY ON THE JURY?

2 MADAM FOREPERSON: NO, OTHER THAN JUST US
3 RUNNING INTO EACH OTHER AS WE'RE COMING AND GOING.

4 THE COURT: ALL RIGHT, THANK YOU, MA'AM, YOU CAN
5 GO BACK TO YOUR JURY ROOM AND THAT IS THE PERSON YOU'RE
6 REFERRING TO IS MS. HEATHER KIMBALL; IS THAT CORRECT?

7 MADAM FOREPERSON: I HAVE TO BE, I DON'T KNOW
8 HER LAST NAME.

9 THE COURT: ALL RIGHT, IF YOU'LL JUST POINT HER
10 OUT TO THE DEPUTY AND HAVE HER COME INTO THE COURTROOM?

11 MADAM FOREPERSON: SURE.

12 (WHEREUPON, MADAM FOREPERSON RETURNED TO THE JURY
13 ROOM.)

14 (WHEREUPON, JUROR NUMBER 323 HEATHER KIMBALL
15 ENTERS THE COURTROOM.)

16 THE COURT: COULD YOU TELL ME YOUR FULL NAME,
17 PLEASE, MA'AM?

18 JUROR KIMBALL: HEATHER LYNN KIMBALL.

19 THE COURT: ALL RIGHT, MS. KIMBALL, IT'S BEEN
20 COMMUNICATED TO THE COURT THAT THERE MAY HAVE BEEN SOME
21 INCIDENTAL CONTACT BETWEEN YOURSELF AND EITHER ONE OF THE
22 DEFENDANT'S OR SOME FAMILY MEMBERS INVOLVED IN THIS
23 PARTICULAR CASE; IS THAT CORRECT?

24 JUROR KIMBALL: YES.

25 THE COURT: CAN YOU TELL ME, EXPLAIN TO ME HOW

MR. PRESNELL - REDIRECT EXAMINATION BY MR. DEBUSK

250

1 THAT HAPPENED, WHAT HAPPENED?

2 JUROR KIMBALL: THIS MORNING COMING IN I RODE IN
3 AN ELEVATOR.

4 THE COURT: AND WITH, WITH WHOM?

5 JUROR KIMBALL: I DON'T KNOW, RASHAD AND SOMEONE
6 ELSE?

7 THE COURT: ALL RIGHT, SO WOULD IT BE THE
8 GENTLEMAN THAT IS CLOSEST TO YOU ON THE DEFENSE TABLE?

9 JUROR KIMBALL: YES.

10 THE COURT: ALL RIGHT, SO YOU WOULD BE THEN
11 IDENTIFYING MR. RASHAD M. BAKER; IS THAT CORRECT?

12 JUROR KIMBALL: YES.

13 THE COURT: ALL RIGHT, DID THAT INDIVIDUAL
14 ATTEMPT TO TALK TO YOU IN ANY WAY?

15 JUROR KIMBALL: NO, SIR.

16 THE COURT: DID YOU TALK TO HIM IN ANY WAY?

17 JUROR KIMBALL: NO, SIR.

18 THE COURT: DID ANYBODY IN THAT ELEVATOR ATTEMPT
19 TO CONTACT YOU OR TALK TO YOU IN ANY WAY?

20 JUROR KIMBALL: NO, SIR.

21 THE COURT: ALL RIGHT, SO ACCORDING TO THE COURT
22 YOU HAPPENED TO RIDE IN THE ELEVATOR WITH ONE OF THE
23 DEFENDANT'S, THERE WAS NO COMMUNICATION OR CONTACT IN ANY
24 WAY BETWEEN YOU AND THEM OR THEM AND YOU; IS THAT CORRECT?

25 JUROR KIMBALL: YES.

MR. PRESNELL - REDIRECT EXAMINATION BY MR. DEBUSK

251

1 THE COURT: ALL RIGHT, THANK YOU, MA'AM, I
2 APPRECIATE IT, YOU CAN GO BACK TO YOUR JURY ROOM, THANK
3 YOU.

4 (WHEREUPON, JUROR KIMBALL RETURNED TO THE JURY
5 ROOM.)

6 (WHEREUPON, COURT'S EXHIBIT NUMBER 1 MARKED.)

7 THE COURT: ALL RIGHT, FOR MY RECORD, GENTLEMEN,
8 I THINK THAT IS JUROR NUMBER 323, IF I'M CORRECT. ALL
9 RIGHT, ANYTHING FROM THE STATE ON WHAT WE'VE HEARD?

10 MR. DEBUSK: NOT ON WHAT WE'VE HEARD, ANOTHER
11 MATTER, YOUR HONOR.

12 THE COURT: ALL RIGHT, ANYTHING FROM THE
13 DEFENDANT MANNING FROM WHAT WE'VE HEARD?

14 MR. MULLINS: NO, SIR.

15 THE COURT: ANYTHING FROM THE DEFENDANT BAKER
16 FROM WHAT WE'VE HEARD?

17 MR. GARDNER: NO, YOUR HONOR.

18 THE COURT: ALL RIGHT, GENTLEMEN, I'M GOING TO
19 OBVIOUSLY HAVE THE JURY EXCUSED BEFORE ANYONE ELSE LEAVES
20 THE COURTROOM THIS EVENING AND I'LL DO MY BEST TO INSTRUCT
21 EVERYONE BEFORE THEY LEAVE THAT YOU HAVE NO CONTACT OF ANY
22 KIND WITH ANY JUROR IN THIS CASE UNTIL IT IS OVER. ALL
23 RIGHT, BUT OTHER THAN THAT I DO NOT FIND THAT THERE HAS
24 BEEN ANY PROBLEM OR TAINT OF THE JURY IN ANY SHAPE MANNER
25 OR FORM AND THERE'S NOTHING FOR THE COURT TO CORRECT OR DO

MR. PRESNELL - REDIRECT EXAMINATION BY MR. DEBUSK 252

1 IN THIS PARTICULAR CASE. THERE HAVE BEEN NO PROBLEMS THAT
2 HAVE BEEN BROUGHT TO THE COURT'S ATTENTION.

3 ALL RIGHT, IS THE STATE READY TO PROCEED?

4 MR. DEBUSK: A COUPLE OF BRIEF MATTERS, YOUR
5 HONOR.

6 THE COURT: YES, SIR.

7 MR. DEBUSK: I THINK THERE'S ONE MORE
8 STIPULATION IF I UNDERSTAND IT CORRECTLY.

9 THE COURT: ALL RIGHT, SIR.

10 MR. DEBUSK: WE WERE GOING TO STIPULATE THAT THE
11 WHITE POWDER SUBSTANCE FOUND IN THE POCKET OF THE VICTIM
12 WAS 22.34 GRAMS OF COCAINE UPON TESTING BY THE HORRY COUNTY
13 POLICE DEPARTMENT AND THAT AN OUNCE IS 28 GRAMS OF COCAINE
14 SO THAT WOULD BE SLIGHTLY LESS THAN AN OUNCE.

15 THE COURT: ALL RIGHT, SIR. NOW, MR. MULLINS?

16 MR. MULLINS: THAT'S CORRECT AS I UNDERSTAND THE
17 STIPULATION, I WOULD LIKE TO HAVE THAT IN THE PRESENCE OF
18 THE JURY.

19 THE COURT: YES, SIR, I UNDERSTAND THAT, BUT I
20 MEAN IS THAT YOUR UNDERSTANDING OF THE STIPULATION?

21 MR. MULLINS: YES, YOUR HONOR.

22 THE COURT: MR. GARDNER, IS THAT YOUR
23 UNDERSTANDING?

24 MR. GARDNER: THAT IS MY UNDERSTANDING, YOUR
25 HONOR.

MR. PRESNELL - REDIRECT EXAMINATION BY MR. DEBUSK 253

1 THE COURT: ALL RIGHT, SIR, WHEN WE DO COME BACK
2 I'LL FIRST BEFORE I HAVE YOU CALL YOUR NEXT WITNESS,
3 SOLICITOR, WHICH I UNDERSTAND WILL BE YOUR LAST WITNESS; IS
4 THAT CORRECT?

5 MR. DEBUSK: THAT'S CORRECT, YOUR HONOR.

6 THE COURT: ALL RIGHT, I'LL HAVE YOU ANNOUNCE TO
7 THE JURY THE STIPULATION OF THE PARTIES AND OBVIOUSLY IF
8 MR. MULLINS AND MR. GARDNER DISAGREE IN ANY WAY WITH WHAT
9 THE SOLICITOR SAYS TO THE JURY, PLEASE, LET ME KNOW AT THAT
10 POINT IN TIME, OKAY?

11 MR. DEBUSK: YES, SIR.

12 THE COURT: THANK YOU VERY MUCH.

13 MR. DEBUSK: YOUR HONOR, AT THAT TIME THE STATE
14 WOULD ALSO MOVE EXHIBIT 23 THE ANNOTATED DIAGRAM INTO, IT'S
15 THE POSTER DIAGRAM.

16 THE COURT: ALL RIGHT, SIR, IT WILL BE IN.
17 GENTLEMEN, DO YOU KNOW WHAT 23 IS?

18 MR. MULLINS: YES, SIR.

19 MR. GARDNER: 23 IS THE POSTER BOARD.

20 THE COURT: ALL RIGHT, YES, THAT IS 23 THAT THE
21 SOLICITOR IS HOLDING. ALL RIGHT, AND YOU ARE GOING TO MOVE
22 THAT INTO EVIDENCE; IS THAT CORRECT, ALL RIGHT, WE'RE NOT
23 DOING IT AT THIS POINT IN TIME, IS THERE AN OBJECTION OR DO
24 YOU ANTICIPATE AN OBJECTION, MR. MULLINS?

25 MR. MULLINS: NO, SIR.

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

254

1 THE COURT: MR. GARDNER?

2 MR. GARDNER: NO, YOUR HONOR.

3 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. ASK
4 THE JURY TO COME IN, PLEASE.

5 (WHEREUPON, THE JURY ENTERS THE COURTROOM AT 3:22
6 P.M.)

7 THE COURT: ALL RIGHT, SOLICITOR --

8 MR. DEBUSK: THANK YOU, YOUR HONOR.

9 THE COURT: I UNDERSTAND THERE IS SOME
10 STIPULATION THAT YOU NEED TO ANNOUNCE IN OPEN COURT?

11 MR. DEBUSK: THERE IS, YOUR HONOR. THE STATE
12 AND DEFENSE ARE STIPULATING THAT THE WHITE POWDER SUBSTANCE
13 FOUND IN THE POCKET OF THE VICTIM TROY RIGGINS WAS TESTED
14 BY THE HORRY COUNTY POLICE DEPARTMENT AND FOUND TO BE 22.34
15 GRAMS OF COCAINE AND THAT AN OUNCE OF COCAINE CONSTITUTES
16 28 GRAMS.

17 THE COURT: ALL RIGHT, SIR, IS THAT THE
18 UNDERSTANDING AND STIPULATION THAT HAS BEEN AGREED TO, MR.
19 MULLINS?

20 MR. MULLINS: IT IS, YOUR HONOR.

21 THE COURT: MR. GARDNER?

22 MR. GARDNER: THAT'S CORRECT, YOUR HONOR.

23 THE COURT: ALL RIGHT, THANK YOU. ALL RIGHT,
24 SOLICITOR, IF YOU'D CALL YOUR NEXT WITNESS, PLEASE.

25 MR. DEBUSK: IF I MIGHT BEFORE, YOUR HONOR, THE

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

255

1 STATE WOULD MOVE EXHIBIT 23, THE DIAGRAM POSTER ANNOTATED
2 BY DR. PRESNELL INTO EVIDENCE?

3 THE COURT: IS THERE ANY OBJECTION TO STATE'S 23
4 COMING INTO EVIDENCE?

5 MR. MULLINS: NO, YOUR HONOR.

6 MR. GARDNER: NO, YOUR HONOR.

7 THE COURT: ALL RIGHT, STATE'S 23 IS IN EVIDENCE
8 WITHOUT OBJECTION.

9 (WHEREUPON, STATE'S EXHIBIT NUMBER 23 ENTERED
10 INTO EVIDENCE.)

11 MR. DEBUSK: THANK YOU, YOUR HONOR, THE STATE
12 CALLS SENIOR AGENT VELLO PAAVEL.

13 THE COURT: ALL RIGHT, SIR, PLEASE COME AROUND
14 AND BE SWORN.

15 VELLO PAAVEL

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 MADAM CLERK: PLEASE STATE YOUR NAME FOR THE
18 RECORD.

19 THE WITNESS: MY NAME IS VELLO PAAVEL, IT'S
20 SPELLED V-E-L-L-O P-A-A-V-E-L.

21 DIRECT EXAMINATION

22 BY MR. DEBUSK:

23 Q SENIOR AGENT PAAVEL, WHO IS YOUR EMPLOYER?

24 A I WORK WITH THE SOUTH CAROLINA LAW

25 ENFORCEMENT DIVISION WHICH IS COMMONLY KNOWN AS SLED. IN

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

256

1 PARTICULAR I WORK IN THE FORENSIC SERVICES LABORATORY IN
2 THE FIREARMS DEPARTMENT WHERE I AM A FIREARM AND TOOL MARK
3 EXAMINER.

4 Q HOW LONG HAVE YOU BEEN EMPLOYED THIS WAY?

5 A I'VE BEEN WITH SLED SINCE APRIL OF 1987 IN
6 THE FIREARMS DEPARTMENT. WHEN I FIRST JOINED THE FIREARMS
7 DEPARTMENT MY RESPONSIBILITIES WERE PRIMARILY LATENT
8 PRINTS, CRIME SCENE, AND SOME FIREARM AND TOOL MARK
9 IDENTIFICATION. IN MAY OF 1989 THE SECTION SPLIT INTO A
10 LATENT PRINT CRIME SCENE SECTION AND A FIREARM SECTION AND
11 I STAYED WITH THE FIREARMS DEPARTMENT SO TECHNICALLY I'VE
12 BEEN DOING EXCLUSIVELY FIREARM AND TOOL MARK IDENTIFICATION
13 EXAMINATION SINCE APPROXIMATELY MAY OF 1989.

14 Q OKAY, YOU'VE TOUCHED ON THIS A LITTLE BIT
15 BUT COULD YOU DESCRIBE BRIEFLY THE NATURE OF THE WORK YOU
16 DO?

17 A YES, SIR, MOST OF THE TIME WHAT I'M DOING
18 IS TRYING TO DETERMINE WHETHER OR NOT FIRED BULLETS OR
19 FIRED CARTRIDGE CASES WERE FIRED BY PARTICULAR FIREARMS OR
20 GUNS. IN MANY CASES I DON'T HAVE GUNS TO COMPARE SO WHAT
21 I'LL DO IS EXAMINE BULLETS AND CARTRIDGE CASES TRY TO
22 DETERMINE WHAT CALIBER THESE BULLETS MAY BE, WHETHER THEY
23 WERE FIRED BY MORE THAN ONE TYPE OF FIREARM AND TRY TO
24 PROVIDE A LIST OF FIREARMS THAT COULD HAVE FIRED THOSE
25 PARTICULAR BULLETS. WE ALSO DO SERIAL NUMBER RESTORATIONS

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

257

1 ON FIREARMS WHERE THE SERIAL NUMBERS HAVE BEEN OBLITERATED
2 OR DAMAGED. ALSO I DO GENERAL TOOL MARK EXAMINATION AND
3 IDENTIFICATION WHERE I EXAMINE TOOL MARKS THAT ARE LEFT,
4 FOR INSTANCE, IN A BURGLARY OR SOME SORT OF CRIME WHERE A
5 PRY BAR OR A CROW BAR OR HAMMER OR SOME SORT OF TOOL IS
6 USED TO PRY OR BREAK SOMETHING WE WILL EXAMINE THOSE TYPES
7 OF MARKS.

8 Q COULD YOU EXPLAIN TO THE JURY WHAT SORT OF
9 SPECIAL STUDIES OR TRAINING YOU'VE HAD TO QUALIFY AS A
10 SPECIALIST IN FIREARMS?

11 A YES, SIR. AS A PART OF BEING EMPLOYED AT
12 SLED IN THE FORENSIC SERVICES LABORATORY IT REQUIRES SOME
13 TYPE OF FOUR YEAR DEGREE. I GRADUATED FROM THE UNIVERSITY
14 OF SOUTH CAROLINA. I MAJORED IN CHEMISTRY ---

15 THE COURT: COULD YOU MOVE THE MICROPHONE BACK A
16 LITTLE BIT.

17 A YES, SIR.

18 THE COURT: THANK YOU VERY MUCH.

19 A WHEN I JOINED SLED WHAT I HAD TO DO IS
20 PARTICIPATE IN A ON THE JOB TRAINING PROGRAM IN FIREARMS
21 IDENTIFICATION AND TOOL MARK IDENTIFICATION. WHAT I HAD TO
22 DO WAS WORK UNDER THE SUPERVISION OF COURT QUALIFIED
23 FIREARM AND TOOL MARK EXAMINERS. I WAS GIVEN INFORMATION
24 THAT I HAD TO READ. I WAS TESTED ON THIS INFORMATION. I
25 WAS GIVEN PRACTICAL PROBLEMS AND I ASSISTED IN WORKING

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

258

1 CASES WITH THESE EXAMINERS. ALSO WHAT I DID WAS DO A
2 TREMENDOUS AMOUNT OF MICROSCOPIC COMPARISON OF FIRED
3 BULLETS, FIRED CARTRIDGE CASES TO KNOWN AND THAT'S WHERE
4 THE BULK OF MY TRAINING IN MICROSCOPIC COMPARISONS COMES
5 FROM. IT IS LITERALLY ON THE JOB TRAINING.

6 PRIOR TO MY LAW ENFORCEMENT CAREER I ACTUALLY WAS
7 IN THE FIREARMS BUSINESS. I BOUGHT, SOLD, AND REPAIRED
8 FIREARMS IN THE COLUMBIA AREA AT A GUN SHOP SO I HAVE A
9 FAIRLY GOOD BACKGROUND IN HOW FIREARMS WORK AND HOW THEY
10 FUNCTION. DURING MY TRAINING PROGRAM AT SLED, HOWEVER, I
11 STILL HAD THE OPPORTUNITY TO GO TO CERTAIN ARMOR SCHOOLS
12 WHICH TAUGHT ME HOW CERTAIN GUNS WORK AND HOW THEY FUNCTION
13 AND ATTEND THE FBI SCHOOL ON SPECIALIZED TECHNIQUES IN
14 FIREARM AND TOOL MARK IDENTIFICATION. AFTER I COMPLETED
15 THAT TRAINING PROGRAM I WAS ALLOWED TO WORK CASES ON MY OWN
16 AND TO TESTIFY IN COURT AS AN EXPERT IN FIREARM AND TOOL
17 MARK IDENTIFICATION.

18 Q NOW HAVE YOU PREVIOUSLY TESTIFIED IN A
19 COURT OF LAW AS AN EXPERT IN FIREARMS?

20 A YES, SIR, I'VE TESTIFIED APPROXIMATELY 290
21 TIMES IN SOUTH CAROLINA GENERAL SESSIONS OR IN FEDERAL
22 COURT IN THE AREA OF FIREARMS, FIREARMS IDENTIFICATION, OR
23 TOOL MARK IDENTIFICATION.

24 MR. DEBUSK: YOUR HONOR, THE STATE WOULD OFFER
25 SENIOR AGENT PAAVEL AS AN EXPERT IN THE FIELD OF FIREARMS.

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

259

1 THE COURT: ANY OBJECTION, MR. MULLINS?

2 MR. MULLINS: NO OBJECTION, SO STIPULATED.

3 THE COURT: MR. GARDNER?

4 MR. GARDNER: LIKEWISE, YOUR HONOR.

5 THE COURT: QUALIFIED TO GIVE HIS OPINION.

6 Q SENIOR AGENT PAAVEL, LET ME SHOW YOU A
7 NUMBER OF EXHIBITS AND ASK IF YOU'VE HAD A CHANCE TO
8 EXAMINE THESE? I NOTICE YOU'RE LOOKING VERY CLOSELY AT THE
9 ITEMS, AGENT PAAVEL, WHAT IS IT YOU'RE LOOKING FOR JUST FOR
10 THE JURY'S BENEFIT?

11 A WHAT I'M LOOKING FOR ARE MARKINGS THAT I
12 ACTUALLY PLACED ON THESE ITEMS WHEN I EXAMINED THEM.
13 TYPICALLY WHAT I PLACE IS A SLED LABORATORY CASE NUMBER, AN
14 ITEM NUMBER, AND MY INITIALS, AND THAT'S USUALLY ENGRAVED
15 ON THE ITEM ITSELF IN A PLACE WHERE IT WILL NOT OBLITERATE
16 OR DAMAGE ANY OF THE MARKINGS THAT I USUALLY USE FOR
17 COMPARISON.

18 YES, SIR, I RECOGNIZE THESE ITEMS. THESE WERE
19 SUBMITTED TO SLED FOR EXAMINATION IN REFERENCE TO THIS
20 CASE.

21 Q AND I ASK YOU SPECIFICALLY ABOUT STATE'S
22 EXHIBITS 14 AND 15 THE TWO BOXES?

23 A YES, SIR.

24 Q THESE CONTAIN SHELL CASINGS?

25 A YES, SIR.

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

260

1 Q UPON YOUR EXAMINATION OF THOSE WHAT WERE
2 YOU ABLE TO CONCLUDE?

3 A WELL FIRST OF ALL WHEN YOU EXAMINE A FIRED
4 CARTRIDGE CASE, AND THAT'S THE PORTION THAT'S LEFT OVER
5 THAT ORIGINALLY HELD THE BULLET OR THE PROJECTILE AND ALSO
6 HELD THE GUN POWDER, YOU CAN LOOK ON THE HEAD OF MOST
7 CARTRIDGE CASES AND IT'LL TELL YOU A CALIBER, LIKE THIS ONE
8 HAS, WIN 9MM LUGER. THE WIN MEANS IT'S A WINCHESTER BRAND;
9 9MM LUGER MEANS THAT'S THE CALIBER OF THE CARTRIDGE AND THE
10 LIKELY CALIBER OF THE FIREARM THAT CAN FIRE THIS PARTICULAR
11 CARTRIDGE.

12 ALSO I WILL EXAMINE MICROSCOPICALLY THE MARKINGS
13 THAT WERE LEFT ON THE CARTRIDGE CASE AND COMPARE IT TO ANY
14 MARKINGS THAT ARE ON ANY OTHER CARTRIDGE CASES THAT WERE
15 SUBMITTED. IN THIS PARTICULAR INSTANCE STATE'S EXHIBIT
16 NUMBER 15 IS ANOTHER FIRED WINCHESTER BRAND OR WINCHESTER
17 HEAD STAMPED 9MM LUGER CALIBER CARTRIDGE CASE. WHEN I
18 MICROSCOPICALLY COMPARED THESE TWO TO EACH OTHER I
19 DETERMINED THAT THEY WERE FIRED BY THE SAME FIREARM.

20 Q OKAY, WERE YOU ABLE TO TELL WHAT KIND OF
21 FIREARM WAS FIRED?

22 A NO, SIR, IT'S VERY DIFFICULT TO TELL FROM
23 CARTRIDGES ALONE WHAT TYPE OF FIREARM COULD HAVE FIRED IT
24 AS A MATTER OF THE BRAND. THERE ARE RARE OCCASIONS WITH
25 CERTAIN TYPES OF FIREARM THAT WILL MARK A CARTRIDGE CASE

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

261

1 DISTINCTLY SO IF YOU SEE A FIRED CARTRIDGE CASE YOU CAN SAY
2 IT WAS LIKELY FIRED FROM THIS BRAND OF FIREARM BUT THAT
3 TYPICALLY DOES NOT HAPPEN.

4 Q WERE YOU ABLE TO TELL EVEN IF IT WAS A
5 SEMI-AUTOMATIC WEAPON OR A REVOLVER THAT FIRED THESE CASES?

6 A BEAR WITH ME ONE MOMENT. BASED ON THE
7 MARKINGS THAT I SEE ON THESE TWO CARTRIDGE CASES, IN
8 PARTICULAR WHAT IS KNOWN AS CHAMBER MARKS, THOSE ARE
9 INDICATIVE THAT THE CARTRIDGES COULD HAVE BEEN FIRED OR
10 WERE LIKELY FIRED FROM SORT OF SELF LOADING TYPE OF PISTOL
11 AS OPPOSED TO A REVOLVER. TYPICALLY REVOLVERS DON'T LEAVE
12 THIS TYPE OF CHAMBER MARK THAT WAS FOUND ON THE TYPE OF
13 CARTRIDGE, ON THESE TWO CARTRIDGE CASES.

14 Q WHAT IS THE DIFFERENCE BETWEEN A REVOLVER
15 AND A SEMI-AUTOMATIC WEAPON IN THE WAY THEY HANDLE THE
16 FIRED CARTRIDGES?

17 A WITH THE REVOLVER NORMALLY THE FIRED
18 CARTRIDGES AND INDEED THE CARTRIDGES THEMSELVES ARE LOADED
19 INTO A CYLINDER WHICH IS AN INTEGRAL PART OF THE FIREARM
20 ITSELF. YOU HAVE TO ACTUALLY SWING OUT THE CYLINDER
21 USUALLY, PLACE CARTRIDGES IN THE CYLINDER, CLOSE THE
22 CYLINDER, THEN AS YOU FIRE A REVOLVER THE FIRED CARTRIDGE
23 CASES STAY INSIDE THE CYLINDER UNTIL THEY'RE NORMALLY
24 MANUALLY EXTRACTED BY SOMEONE.

25 IN A SEMI-AUTOMATIC PISTOL OR SELF LOADING PISTOL

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

262

1 THE CARTRIDGES ARE NORMALLY HELD IN A DEVICE KNOWN AS A
2 MAGAZINE OR SOMETIMES CALLED A CLIP AND AS YOU FIRE THE
3 SEMI-AUTOMATIC PISTOL THE CARTRIDGES ARE LOADED INTO THE
4 BARREL OR CHAMBER BY THE MECHANISM AND FIRING OF THE
5 FIREARM AND EACH TIME YOU FIRE A SEMI-AUTOMATIC PISTOL IF
6 IT'S WORKING PROPERLY IT WILL EJECT OR THROW A FIRED
7 CARTRIDGE CASE OUT OF THE FIREARM ITSELF.

8 Q NOW THE 9MM LUGER CARTRIDGE IS THAT MORE
9 TYPICAL OF A SEMI-AUTOMATIC WEAPON OR A REVOLVER?

10 A THAT IS MORE TYPICAL OF A SEMI-AUTOMATIC
11 TYPE OF FIREARM.

12 Q NOW IF YOU'RE GIVEN A FIRED PROJECTILE AND
13 A FIRED CARTRIDGE FROM A SEMI-AUTOMATIC WEAPON OR EVEN A
14 PISTOL OR EVEN A REVOLVER WITHOUT THE FIREARM TO COMPARE IT
15 TO WOULD THERE BE ANY WAY OF TELLING THAT THE CARTRIDGE AND
16 THE PROJECTILE CAME FROM THE SAME WEAPON?

17 A WE, WE DON'T CONDUCT ANY EXAMINATIONS IN
18 OUR LABORATORY WHERE YOU CAN SO CALL MATCH A BULLET OR
19 DETERMINE WHETHER OR NOT A SPECIFIC BULLET CAME OUT OF A
20 SPECIFIC FIRED CARTRIDGE CASE.

21 Q THANK YOU. NOW LET ME ASK YOU ABOUT
22 STATE'S EXHIBITS 16 THROUGH 21 THE SMALL JARS, DID YOU HAVE
23 A CHANCE TO EXAMINE THOSE?

24 A YES, SIR.

25 Q WHAT DID YOU CONCLUDE ABOUT THE NATURE OF

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

263

1 THOSE ITEMS?

2 A ALL RIGHT, LET ME GET THESE LINED UP HERE.

3 Q FIRST OF ALL IF I MIGHT ASK YOU, WE HAD
4 TESTIMONY TODAY ALREADY THAT THE MEDICAL UNIVERSITY OF
5 SOUTH CAROLINA PUT CERTAIN NUMBERS ON THOSE JARS, DID YOU
6 ASSIGN A SLED NUMBER THAT WAS DIFFERENT FROM THOSE NUMBERS?

7 A YES, IF YOU'RE REFERRING TO AN ITEM NUMBER
8 AND A LABORATORY CASE NUMBER, YES, SIR. WHEN EVIDENCE
9 COMES INTO OUR LABORATORY IT IS ASSIGNED A LABORATORY CASE
10 NUMBER THEN EACH SPECIFIC ITEM OF EVIDENCE WILL GET ITS OWN
11 ITEM NUMBER OR SLED LABORATORY ITEM NUMBER THAT'S
12 ASSOCIATED WITH THAT CASE NUMBER. SO FOR INSTANCE LOOKING
13 AT STATE'S EXHIBIT NUMBER 16 THIS IS MY ITEM NUMBER 15 AND
14 IT'S ALSO BULLET NUMBER 1 FROM THE PATHOLOGIST.

15 Q THANK YOU, WHAT ABOUT SLED ITEM 16 WHAT
16 NUMBER IS THAT, WHAT BULLET NUMBER IS THAT?

17 A NUMBER 16 INDICATES IT AS BEING JACKET
18 NUMBER 2.

19 Q AND NUMBER 17, SLED ITEM 17?

20 A SLED ITEM 17 IS BULLET NUMBER 3.

21 Q AND SLED ITEM 18?

22 A IT HAS BULLET FRAGMENTS NUMBER 4.

23 Q AND SLED ITEM NUMBER 19?

24 A BULLET NUMBER 5.

25 Q AND SLED ITEM NUMBER 20?

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

264

1 A BULLET NUMBER 6.

2 Q SO THEY'RE IN THE SAME ORDER THEY'RE JUST
3 DIFFERENT NUMBERS

4 A YES, SIR.

5 Q 1 THROUGH 6 AND 15 THROUGH 20, IS THAT
6 CORRECT?

7 A YES, SIR.

8 Q OKAY, WHAT, AGAIN, PLEASE, PLEASE, CONTINUE
9 WITH YOUR CONCLUSIONS?

10 A AGAIN USING NOW STATE EXHIBIT NUMBERS,
11 STATE'S EXHIBIT NUMBER 16, 18, AND 19 THIS CORRESPONDS TO
12 MY 15, 17, AND 18. I EXAMINED THESE ITEMS AND FOUND THAT
13 THESE WERE FIRED BULLETS OR BULLET FRAGMENTS. IN
14 PARTICULAR THERE WAS ONE SUBSTANTIALLY WHOLE BULLET. THERE
15 WAS ANOTHER BULLET THAT HAD A CONSIDERABLE PORTION OF IT
16 MISSING AND THEN THERE WERE THREE FIRED BULLET FRAGMENTS
17 AND WHEN I HAVE FIRED BULLET FRAGMENTS OR BULLETS OR
18 PROJECTILES, AND AGAIN WHEN I REFER TO THE BULLET I'M
19 TALKING ABOUT THE PART THAT COMES OUT THE END OF THE BARREL
20 AND TRAVELS TOWARD THE TARGET ITSELF, DON'T CONFUSE THAT
21 WITH THE UNFIRED PIECE OF AMMUNITION SOMETIMES PEOPLE CALL
22 THAT A BULLET, BUT I'M REFERRING TO THE PART THAT GOES AND
23 TRAVELS AND STRIKES THE TARGET. I EXAMINED THESE AND
24 DETERMINED THAT THESE WERE MOST CONSISTENT WITH BULLETS
25 THAT I WOULD EXPECT TO FIND IN 9MM LUGER CALIBER

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

265

1 CARTRIDGES. THAT'S BASED ON THEIR WEIGHT, THEIR DIAMETER
2 AND THEIR CONSTRUCTION. THEN WHAT I DO IS EXAMINE WHAT'S
3 KNOWN AS THE RIFLING CHARACTERISTICS OR THE RIFLING
4 IMPRESSIONS THAT ARE LEFT ON THE BULLET OR THE BULLET
5 FRAGMENTS WHEN THEY TRAVEL THROUGH THE GUN BARREL.

6 THE INSIDE OF MOST MODERN HANDGUNS IS RIFLED AND
7 RIFLING IS A SERIES OF PARALLEL SPIRAL GROOVES THAT ARE
8 PLACED IN THE BARREL BY THE MANUFACTURER. BETWEEN THESE
9 GROOVES IS A SERIES OF RAISED AREAS CALLED LANDS. NOW THE
10 PURPOSE OF THESE LANDS AND GROOVES IS TO CAUSE THE BULLET
11 TO SPIN BECAUSE IT'S NOT STRAIGHT. IT USUALLY GOES
12 CLOCKWISE OR COUNTERCLOCKWISE DEPENDING ON WHAT THE
13 MANUFACTURER WANTS AND THE RIFLING IS DESIGNED AGAIN TO
14 CAUSE THE BULLET TO SPIN AS IT TRAVELS DOWN THE BARREL AND
15 WHEN IT EXITS THE BARREL SO IT WILL TRAVEL TOWARDS THE
16 TARGET MORE ACCURATELY. IT'S MUCH LIKE A FOOTBALL THAT'S
17 BEEN THROWN AND HAS A GOOD TIGHT SPIRAL IT TRAVELS VERY
18 WELL COMPARED TO ONE THAT GOES END OVER END SO RIFLING
19 AGAIN IS DESIGNED TO MAKE THE BULLET SPIN MORE
20 AERODYNAMICALLY.

21 NOW THE BENEFIT TO ME FROM FIREARM AND TOOL MARK
22 EXAMINATION IS THE FACT THAT THE RIFLING ACTUALLY SCRATCHES
23 OR ENGRAVES THE OUTSIDE OF THE BULLET AS THE BULLET TRAVELS
24 THROUGH THAT BARREL. I CAN EXAMINE THOSE MARKINGS THAT ARE
25 LEFT ON THE BULLET MICROSCOPICALLY AND TRY TO DETERMINE

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

266

1 WHAT TYPE OF FIREARM COULD HAVE FIRED THESE BULLETS BASED
2 ON THE NUMBER OF LAND AND GROOVE IMPRESSIONS, THE DIRECTION
3 THEY'RE GOING IN, WHETHER THEY'RE TO THE RIGHT OR TO THE
4 LEFT, AND THE DIMENSIONS OF THIS RIFLING AND I CAN USUALLY
5 PLUG THAT INFORMATION INTO A DATABASE AND GIVE THE
6 CONTRIBUTOR OF THE EVIDENCE AN IDEA WHAT TYPE OR BRANDS OF
7 FIREARMS COULD HAVE FIRED THESE BULLETS.

8 NOW ALL OF THIS HINGES UPON ME BEING ABLE TO
9 CLEARLY SEE WHERE THE LANDS AND THE GROOVES START AND STOP.
10 IN THIS PARTICULAR INSTANCE WITH THESE THREE SPECIMENS,
11 AGAIN STATE'S NUMBER 16, 18, AND 20 THESE SPECIMENS WERE
12 NOT WELL MARKED. THEY WERE, THE BULLETS DID NOT ENGAGE
13 WELL IN THE RIFLING WHICH MAY BE AN INDICATION THAT IT'S A
14 CHEAP GUN, A DAMAGED GUN, OR THE BULLETS WERE UNDERSIZED,
15 OR THE BARREL ITSELF ON THE INSIDE IS OVERSIZED, BUT THE
16 RESULT OF IT IS I CANNOT RELIABLY DETERMINE THE DIMENSIONS
17 AND THE FULL NUMBER OF LANDS AND GROOVES ON THESE BULLETS
18 SO I CANNOT PROVIDE THE CONTRIBUTOR WITH A LIST OF POSSIBLE
19 GUNS THAT COULD HAVE FIRED THEM OTHER THAN THE FACT THAT
20 IT'S PROBABLY GOING TO BE A 9MM LUGER CALIBER FIREARM.

21 I ALSO MICROSCOPICALLY COMPARED THESE SPECIMENS
22 TO EACH OTHER TO TRY TO DETERMINE WHETHER OR NOT IT'S ONE
23 GUN OR MORE THAN ONE GUN. WHAT I FOUND HERE IS AGAIN
24 BECAUSE OF THE POOR ENGAGEMENT AND THE POOR MARKINGS ON THE
25 BULLETS AND THE FRAGMENTS I COULD NOT POSITIVELY TELL

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

267

1 WHETHER THEY WERE FIRED BY ONE FIREARM OR MORE THAN ONE
2 FIREARM SO THE RESULT OF MY EXAMINATION IS WHAT'S KNOWN AS
3 INCONCLUSIVE. IT'S NOT CONCLUSIVE.

4 Q COULD THEY HAVE BEEN FIRED BY THE SAME
5 FIREARM?

6 A YES, SIR, THEY COULD HAVE BEEN FIRED BY THE
7 SAME FIREARM.

8 Q AND LET ME STEP BACK JUST A MOMENT, THE
9 CASINGS IN STATE'S EXHIBITS 14 AND 15 WERE ALSO 9MM LUGER
10 TYPE CASINGS?

11 A YES, SIR, THESE ARE 9MM LUGER CALIBER
12 CARTRIDGE CASES. THESE PARTICULAR SPECIMENS ARE MOST
13 CONSISTENT WITH BULLETS I WOULD EXPECT TO FIND IN 9MM LUGER
14 CALIBER CARTRIDGES.

15 Q SO WOULD THEY BE CONSISTENT WITH POSSIBLY
16 AND HAVING COME FROM THE SAME WEAPON? NOT, NOT DID YOU
17 MATCH THEM BUT COULD THEY HAVE COME FROM THE SAME WEAPON?

18 A THE BULLETS OR THE CARTRIDGES OR ALL?

19 Q BOTH, THE CARTRIDGES CASES AND THE BULLETS?

20 A AGAIN THE BULLETS OFF THESE THREE
21 SPECIMENS, THE 9MM'S, COULD HAVE BEEN FIRED BY THE SAME
22 FIREARM. THE CARTRIDGE CASES WERE FIRED BY ONE FIREARM,
23 HOWEVER, WITHOUT HAVING THE FIREARM ITSELF I CANNOT TELL
24 WHETHER ALL FIVE OF THESE WERE FIRED BY ONE FIREARM.

25 Q THANK YOU, AND THE OTHER THREE?

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

268

1 A THE OTHER THREE WHICH ARE STATE'S 17, 20,
2 AND 21, WHICH CORRESPOND TO MY 16, 19, AND 20 RESPECTFULLY
3 I DID THE SAME THING. I EXAMINED THEM, I WEIGH THEM, I
4 MEASURE THEM, I LOOKED AT THE RIFLING IMPRESSIONS AND THEN
5 TRY TO COMPARE THEM TO EACH OTHER. IN THIS PARTICULAR
6 INSTANCE I FOUND THAT THERE WERE TWO SUBSTANTIALLY WHOLE
7 BULLETS AND THERE WERE, OR WAS RATHER A BULLET FRAGMENT.
8 THESE BULLETS AND FRAGMENTS WERE MOST CONSISTENT WITH
9 BULLETS THAT I SEE LOADED IN SOME .38 SPECIAL CALIBER
10 CARTRIDGES OR POSSIBLY 357 MAGNUM CALIBER CARTRIDGES.

11 MICROSCOPICALLY I COMPARED THESE TWO EACH OTHER
12 AND I DETERMINED THAT ALL OF THEM, MEANING THESE THREE,
13 WERE FIRED BY ONE FIREARM, BUT NOT THE FIREARM OR FIREARMS
14 THAT FIRED THESE.

15 Q TO MAKE IT PERFECTLY CLEAR THERE WERE AT
16 LEAST TWO FIREARMS TO EXPLAIN THOSE 6 BULLETS; IS THAT
17 CORRECT?

18 A . YES, SIR. ONE FIREARM DID FIRE STATE'S
19 EXHIBIT NUMBER 17, NUMBER 20, AND NUMBER 21 AND AT LEAST
20 ONE FIREARM BUT A DIFFERENT FIREARM FIRED 16, 18, AND 19
21 AND COULD HAVE ALSO FIRED THESE CARTRIDGE CASES.

22 Q TELL ME ABOUT THE .38 SPECIAL OR 357 MAGNUM
23 CALIBER BULLET, IS THAT MORE TYPICAL OF A REVOLVER OR A
24 SEMI-AUTOMATIC WEAPON?

25 A THAT IS SOMETHING YOU TYPICALLY FIND IN A

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

269

1 REVOLVER. A .38 SPECIAL AND A 357 ARE COMMONLY FOUND IN
2 REVOLVERS.

3 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS
4 STATE'S EXHIBIT 48 FOR IDENTIFICATION AND ASK YOU IF THAT
5 CLEARLY AND ACCURATELY REPRESENTS THE RESULTS AND ANALYSIS
6 OF THESE ITEMS?

7 A YES, SIR, THIS SUMMARIZES THE INFORMATION
8 THAT'S IN THE REPORT.

9 Q SPECIFICALLY DOES IT DIRECTLY MATCH THE
10 MUSC PROJECTILE NUMBERS TO THE SLED ITEM NUMBERS?

11 A LET ME LOOK AT THAT. YES, SIR IT DOES.

12 MR. DEBUSK: OKAY, YOUR HONOR, THE STATE WOULD
13 OFFER EXHIBIT 48 INTO EVIDENCE AT THIS TIME?

14 THE COURT: MR. MULLINS?

15 MR. MULLINS: NO OBJECTION, YOUR HONOR.

16 THE COURT: MR. GARDNER?

17 MR. GARDNER: I'M SORRY, YOUR HONOR, I'M NOT
18 GOING TO OBJECT TO IT. I'LL JUST TRY TO CLARIFY A COUPLE
19 OF THINGS LATER.

20 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH.
21 IT'S IN EVIDENCE WITHOUT OBJECTION STATE'S 48.

22 (WHEREUPON, STATE'S EXHIBIT NUMBER 48 ENTERED
23 INTO EVIDENCE.)

24 MR. DEBUSK: MAY I PUBLISH TO THE JURY, YOUR
25 HONOR?

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

270

1 THE COURT: ANY OBJECTION, MR. MULLINS?

2 MR. MULLINS: NO, SIR.

3 THE COURT: MR. GARDNER?

4 MR. GARDNER: NO, YOUR HONOR.

5 THE COURT: YOU MAY DO SO.

6 MR. DEBUSK: THANK YOU, YOUR HONOR.

7 Q CAN YOU SEE IT, AGENT PAAVEL?

8 A YES, SIR.

9 Q JUST TO SUMMARIZE FOR THE JURY ---

10 THE COURT: IS THAT A BLOW UP OF STATE'S
11 EXHIBIT?

12 MR. DEBUSK: YES, YOUR HONOR, IT IS A DUPLICATE
13 ENLARGED.

14 THE COURT: ALL RIGHT, GIVE IT IT'S OWN I.D.
15 NUMBER, PLEASE.

16 MR. DEBUSK: IT DOES, YOUR HONOR. THIS IS, FOR
17 THE RECORD THIS IS STATE'S EXHIBIT 47.

18 THE COURT: ALL RIGHT, SIR.

19 MR. DEBUSK: FOR I.D. PURPOSES ONLY.

20 THE COURT: ALL RIGHT, THANK YOU.

21 MR. DEBUSK: THANK YOU, YOUR HONOR.

22 Q AS TO THE SIX BULLETS RECOVERED BY MUSC,
23 THESE ARE THEIR PROJECTILE NUMBERS FROM MUSC AND THESE ARE
24 THEIR SLED ITEM NUMBERS; IS THAT CORRECT?

25 A YES, SIR.

S/A PAAVEL - DIRECT EXAMINATION BY MR. DEBUSK

271

1 Q AND YOU CONCLUDED THAT MUSC NUMBERS 1, 3,
2 AND 4 WERE ALL CONSISTENT WITH 9MM LUGER; IS THAT CORRECT?

3 A YES, SIR, THOSE ARE BULLETS OR BULLET
4 FRAGMENTS I WOULD EXPECT TO SEE IN 9MM LUGER CALIBER
5 CARTRIDGES, YES, SIR.

6 Q AND YOUR, IS IT CORRECT THAT YOUR ANALYSIS
7 IS INCLUSIVE AS TO WHETHER THEY WERE FIRED BY THE SAME
8 WEAPON?

9 A THAT'S CORRECT.

10 Q AND AS TO PROJECTILE, MUSC PROJECTILE
11 NUMBERS 2, 5, AND 6 THOSE WERE ALL A .38 CALIBER OR 357
12 CALIBER WEAPON; IS THAT CORRECT?

13 A YES, SIR, THOSE ARE BULLETS OR FRAGMENTS
14 THAT ARE CONSISTENT WITH BEING FOUND IN .38 SPECIAL OR 357
15 MAGNUM CALIBER CARTRIDGES.

16 Q AND THOSE THREE ITEMS ARE FIRED BY THE SAME
17 FIREARM; IS THAT CORRECT?

18 A YES, SIR, MICROSCOPIC EXAMINATION AND
19 COMPARISON REVEALED THAT THOSE THREE WERE FIRED FROM THE
20 SAME ONE GUN BARREL.

21 MR. DEBUSK: THANK YOU, PLEASE ANSWER ANY
22 QUESTIONS THE DEFENSE MIGHT HAVE.

23 THE COURT: ALL RIGHT, MR. MULLINS.

24 MR. MULLINS: MAY IT PLEASE THE COURT?

25 THE COURT: YES, SIR.

S/A PAAVEL - CROSS EXAMINATION BY MR. MULLINS

272

CROSS EXAMINATION

BY MR. MULLINS:

Q AGENT PAAVEL, THE CONCLUSION THEN WHAT YOU CAN CONCLUDE FROM ALL OF THE EXAMINATION IN THIS CASE IS THIS, THE FIRST ONE IS THESE TWO CARTRIDGES CAME FROM THE SAME GUN, CORRECT?

A YES, SIR, THOSE CARTRIDGE CASES WERE FIRED BY THE SAME GUN.

Q ALL RIGHT, AND THEN YOU ALSO CONCLUDE THAT THERE WERE TWO SEPARATE GUNS FOR THE OTHER TWO PROJECTILES, TWO SETS OF PROJECTILES?

A THAT'S CORRECT.

Q ALL RIGHT, NOW AND YOU CALLED IT A 9MM LUGER, THAT DOESN'T NECESSARILY IT WAS A GERMAN LUGER, DOES IT?

A NO, NO, NO, BUT THAT'S WHERE THE NAME ORIGINATES FROM. OVER A 100 YEARS AGO THERE WAS A PISTOL KNOWN AS THE LUGER PISTOL. IT WAS ORIGINALLY ACTUALLY IN 7.65 MILLIMETER AND THEN GEORGE LUGER WAS HIS NAME HE ACTUALLY ENLARGED THAT CARTRIDGE CASE TO 9MM SO THERE WAS A 9MM LUGER CALIBER CARTRIDGE CASE AND IT WAS ORIGINALLY IN THE LUGER PISTOL. NOW THE FACT THAT IT SAYS LUGER ON HERE ONLY INDICATES THE NAME OF THE CARTRIDGE. IT CAN BE FIRED IN ANY BRAND OF FIREARM THAT IS CHAMBERED FOR THE 9MM LUGER CALIBER CARTRIDGE.

S/A PAAVEL - CROSS EXAMINATION BY MR. MULLINS

273

1 Q WELL YOU JUST TOOK THE WIND OUT OF MY
2 QUESTION, AGENT, BECAUSE I WAS GOING TO ASK YOU THAT AS A
3 HISTORIAN, BUT NORMALLY ANYTHING THAT SHOOTS A 9 WILL SHOOT
4 THOSE CARTRIDGES, CORRECT?

5 A IF IT WILL SHOOT A 9MM LUGER. THERE ARE
6 DIFFERENT 9MM'S THAT PEOPLE CALL THEM THAT AREN'T
7 NECESSARILY THE 9MM LUGER CALIBER CARTRIDGE.

8 Q ALL RIGHT --

9 A THERE IS, GO AHEAD.

10 Q AND YOU DID NOT EXAMINE ANY FIREARM IN THIS
11 CASE, CORRECT?

12 A NO FIREARMS WERE SUBMITTED TO ME FOR
13 EXAMINATION IN THIS CASE.

14 Q ALL RIGHT, NOW THESE TWO CARTRIDGES HERE
15 WHICH WERE PREVIOUSLY FOUND AT THE SCENE FROM PRIOR
16 TESTIMONY ARE THESE THE TYPE OF CARTRIDGES THAT ARE EJECTED
17 FROM A WEAPON AS IT IS FIRED?

18 A YES, SIR, TYPICALLY 9MM LUGER CALIBER
19 CARTRIDGES ARE FOUND IN SEMI-AUTOMATIC PISTOLS AND THEN
20 THESE TWO ITEMS ALSO HAVE AGAIN WHAT I TALKED ABOUT CHAMBER
21 MARKS AND THOSE ARE MARKINGS THAT ARE LEFT ON THE CARTRIDGE
22 CASE AS IT IS LITERALLY BEING PULLED OUT OF THE CHAMBER BY
23 THE MECHANISM OF THE FIREARM.

24 Q FOR THE RECORD WHAT WE'RE REFERRING TO
25 STATE'S 14 AND 15, CORRECT, SIR?

S/A PAAVEL - CROSS EXAMINATION BY MR. GARDNER

274

1 A YES, SIR.

2 MR. MULLINS: IF I MAY HAVE JUST A MOMENT, YOUR
3 HONOR?

4 THE COURT: YES, SIR.

5 MR. MULLINS: NO FURTHER QUESTIONS, YOUR HONOR.

6 THE COURT: MR. GARDNER?

7 MR. GARDNER: THANK YOU, YOUR HONOR.

8 CROSS EXAMINATION

9 BY MR. GARDNER:

10 Q YES, SIR, VERY BRIEFLY, I THINK I
11 UNDERSTAND THE SUMMARY NOW, BASICALLY THERE'S 1, 2, 3, 4,
12 5, 6 PROJECTILES, THREE ARE CONSISTENT WITH ONE TYPE OF
13 WEAPON AND THE OTHER THREE ARE CONSISTENT WITH A DIFFERENT
14 TYPE WEAPON?

15 A THAT'S CORRECT, SIR.

16 Q AND MR. MULLINS WAS ASKING YOU ABOUT THE
17 TWO CARTRIDGES --

18 A CARTRIDGE CASES, YES, SIR, THESE ARE THE
19 FIRED CARTRIDGE CASES.

20 Q OKAY, AND THAT IS FROM A DIFFERENT WEAPON?

21 A NO, THESE ARE 9MM LUGER CALIBER CARTRIDGE
22 CASES. THESE SPECIMENS WHICH ARE STATE'S EXHIBIT NUMBER
23 16, 18, AND 19 THESE BULLETS AND BULLET FRAGMENTS ARE
24 CONSISTENT WITH BULLETS THAT I WOULD FIND IN 9MM LUGER
25 CALIBER CARTRIDGES SO THESE FIVE ITEMS, 14, 15, 16, 18, AND

S/A PAAVEL - REDIRECT EXAMINATION BY MR. DEBUSK

275

1 19 MAY BE RELATED.

2 Q MAY BE?

3 A BUT UNTIL I HAVE THE CORRECT FIREARM I
4 CAN'T TELL THAT.

5 Q THOSE COULD BE, I DIDN'T MEAN TO INTERRUPT
6 YOU.

7 A YES, SIR, THOSE COULD BE, HOWEVER, THEY'RE
8 NOT RELATED TO 17, 20, AND 21, THAT'S A DIFFERENT GUN
9 ENTIRELY.

10 Q I LIKE THE WAY YOU DID THAT, SO WE'VE GOT
11 ONE, AT LEAST ONE WEAPON HERE CONSISTENT WITH BUT
12 INCONSISTENT WITH THIS SIDE OVER HERE?

13 A CORRECT.

14 Q AND THE ONES IN THE BOX MAY GO WITH THOSE
15 BUT MAY NOT GO WITH THOSE?

16 A CORRECT.

17 Q SO AT LEAST TWO GUNS, MAYBE THREE?

18 A THAT'S CORRECT.

19 MR. GARDNER: THANK YOU, SIR.

20 THE COURT: ALL RIGHT, REDIRECT?

21 MR. DEBUSK: JUST ONE QUESTION, YOUR HONOR.

22 REDIRECT EXAMINATION

23 BY MR. DEBUSK:

24 Q JUST TO GET THIS TO THE SIMPLEST TERMS,
25 AGENT PAAVEL, COULD THE SAME FIREARM HAVE FIRED THESE THREE

MOTION FOR DIRECTED VERDICT BY DEFENDANT MANNING

276

1 AND THESE THREE?

2 A NO, SIR, THESE HAVE ENTIRELY DIFFERENT
3 RIFLING MARKINGS ON THEM. THE GENERAL CHARACTERISTICS ARE
4 WRONG. THE FIREARM THAT FIRED THESE THREE PARTICULAR
5 BULLETS, AGAIN 17, 20. AND 21 DID NOT FIRE 16, 18, AND 19,
6 AND IT'S UNLIKELY THAT IT FIRED 14 AND 15 BECAUSE IT'S THE
7 WRONG CALIBER.

8 MR. DEBUSK: THANK YOU, AGENT PAAVEL.

9 THE COURT: ALL RIGHT, ANYTHING ELSE, MR.
10 MULLINS?

11 MR. MULLINS: NO, YOUR HONOR.

12 THE COURT: MR. GARDNER?

13 MR. GARDNER: NO, YOUR HONOR.

14 THE COURT: DO YOU WISH THIS WITNESS TO BE
15 EXCUSED, SOLICITOR?

16 MR. DEBUSK: YES, YOUR HONOR.

17 THE COURT: ANY OBJECTION?

18 MR. MULLINS: NO OBJECTION.

19 MR. GARDNER: WITHOUT OBJECTION, YOUR HONOR.

20 THE COURT: ALL RIGHT, OFFICER PAAVEL, YOU ARE
21 EXCUSED FROM YOUR SUBPOENA AND RELEASED TO GO BACK TO YOUR
22 REGULAR DUTIES.

23 A THANK YOU, SIR.

24 THE COURT: ALL RIGHT, SIR, COULD YOU HAND
25 THOSE, WHEN YOU LEAVE HAND THOSE EXHIBITS TO THE COURT

MOTION FOR DIRECTED VERDICT BY DEFENDANT MANNING

277

1 REPORTER.

2 A YES, SIR, I'LL DO IT.

3 THE COURT: THANK YOU.

4 MR. DEBUSK: YOUR HONOR, MAY I HAVE A MOMENT TO
5 CONSULT WITH THE COURT REPORTER ABOUT THE EXHIBITS?

6 THE COURT: YES, SIR.

7 MR. DEBUSK: YOUR HONOR, AT THIS TIME THE STATE
8 RESTS.

9 THE COURT: ALL RIGHT, IS THERE SOME MATTERS FOR
10 THE COURT FROM THE DEFENDANT'S AT THIS POINT IN TIME?

11 MR. MULLINS: YES, YOUR HONOR.

12 MR. GARDNER: YES, YOUR HONOR.

13 THE COURT: ALL RIGHT, SIR. LADIES AND
14 GENTLEMEN OF THE JURY, IF YOU WOULD GO TO YOUR JURY ROOM
15 FOR A FEW MOMENTS, PLEASE, THANK YOU VERY MUCH.

16 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
17 3:55 P.M.)

18 THE COURT: ALL RIGHT, MR. MULLINS, ANY MOTIONS
19 OR MATTERS FOR THE COURT?

20 MR. MULLINS: ON BEHALF OF DEFENDANT MANNING AT
21 THIS TIME, YOUR HONOR, WE WOULD MOVE FOR A DIRECTED VERDICT
22 OR INVOLUNTARY DISMISSAL ON THE GROUNDS THAT TAKING THE
23 EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE IN THIS
24 MATTER THEY FAILED TO SHOW THAT MY CLIENT PARTICIPATED IN
25 ANY WAY OR CONSPIRED IN ANY WAY TO CAUSE THE DEATH OF THE

MOTION FOR DIRECTED VERDICT BY DEFENDANT MANNING

278

1 DEFENDANT TROY RIGGINS. IN PARTICULAR THE ONLY THING THEY
2 HAVE IS THE UNCORROBORATED TESTIMONY OF ONE WITNESS SAYING,
3 I THINK HE HAD A GUN, NOT THAT HE USED IT, NOT THAT HE SHOT
4 IT, NOT THAT HE WAS THE THAT SET UP THE ARRANGEMENT OR
5 ANYTHING ELSE. THE STATE HAS FAILED TO SHOW ANYTHING MORE
6 THAN MERE PRESENCE OF MY CLIENT AT THE CRIME SCENE WHICH IS
7 NOT ENOUGH UNDER UNITED STATES V. HICKS OR IT'S PROGENY
8 HERE IN THIS STATE TO SHOW THAT MY CLIENT AIDED, ABETTED,
9 OR IN FACT WAS THE ACTUAL PERSON THAT DID THE SHOOTING IN
10 THIS MATTER SO WE MOVE FOR A DIRECTED VERDICT VOLUNTARY
11 DISMISSAL OF THE STATE'S CASE AS TO DEFENDANT MANNING.

12 THE COURT: ALL RIGHT, SIR. SOLICITOR?

13 MR. DEBUSK: THANK YOU, YOUR HONOR, THERE'S
14 EVIDENCE ON THE RECORD THAT THE DEFENDANT WAS ARMED, THAT
15 HE ENTERED THE VEHICLE WITH THE VICTIM, THAT AT LEAST ONE
16 SHOT WAS FIRED, THAT THE VICTIM WAS SHOT NUMEROUS TIMES,
17 IT'S CLEARLY INDICATIVE OF MALICE, YOUR HONOR, THAT THOSE
18 PROJECTILES HITTING THE VICTIM CAME FROM TWO DIFFERENT
19 FIREARMS AND THAT EACH CODEFENDANT WAS ARMED WITH A SINGLE
20 FIREARM APIECE. THERE'S CLEARLY AN INFERENCE THERE THAT
21 THE DEFENDANT WAS ONE OF THE TWO SHOOTERS THAT INFLICTED
22 THE FATAL INJURIES UPON THE VICTIM, YOUR HONOR.

23 THE COURT: ALL RIGHT, SIR, I'D RESPECTFULLY
24 DECLINE TO GRANT YOUR MOTION FOR A DIRECTED VERDICT AT THIS
25 TIME, MR. MULLINS.

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

279

1 MR. MULLINS: THANK YOU, YOUR HONOR.

2 THE COURT: YES, SIR, MR. GARDNER?

3 MR. GARDNER: THANK YOU, YOUR HONOR. ON BEHALF
4 OF RASHAD BAKER I ALSO MOVE THE COURT TO DIRECT A VERDICT
5 IN HIS FAVOR. I DO SO ON THE SAME FACTS SCENARIO AND LAW
6 AS QUOTED BY MR. MULLINS. I BRING TO THE ATTENTION OF THIS
7 COURT A COUPLE OF OTHER CASES IN THAT THIS APPEARS TO ME TO
8 BE A CIRCUMSTANTIAL EVIDENCE CASE. I BRING OUT STATE V.
9 BUCKMAN AND THE CASES CITED THEREIN, THAT'S AT 347 SC 316
10 CASE. BASICALLY YOU'VE GOT THE STATE'S EVIDENCE
11 ESTABLISHING THAT THESE TWO GUYS GOT IN A CAR, HEARD, ONE
12 OF THEM SAID HE HEARD A SHOT AND THEN THEY LEFT. WE'VE GOT
13 NO EVIDENCE OF A TIME LINE, NO EVIDENCE THAT THIS FELLOW
14 WAS SHOT WHEN THEY LEFT AN HOUR LATER, A DAY, WHENEVER IT
15 WAS. THERE'S NOT ENOUGH THERE TO TIE IT TOGETHER ON A
16 SUBSTANTIALLY CIRCUMSTANTIAL FACTUAL SITUATION TO GET IT
17 PAST THIS MOTION AND WE RESPECTFULLY REQUEST THAT UNDER THE
18 CASE LAW THAT THEY HAVE NOT TIED IT TOGETHER ENOUGH TO SEND
19 THIS TO THE JURY.

20 THE COURT: ALL RIGHT, SIR. SOLICITOR?

21 MR. DEBUSK: YOUR HONOR, IT'S THE SAME ESSENTIAL
22 ARGUMENT. THE CIRCUMSTANTIAL EVIDENCE HERE IS SUFFICIENT
23 TO SUPPORT THIS CASE GOING TO THE JURY. AGAIN THERE'S
24 EVIDENCE THAT EACH OF THE DEFENDANT'S WAS ARMED WITH A
25 SINGLE FIREARM. THEY WENT INTO A CAR WHERE SHOTS WERE

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

280

1 FIRED AND THE DEFENDANT WAS, I MEAN THE VICTIM WAS HIT
2 MULTIPLE TIMES BY TWO DIFFERENT FIREARMS AND WHEN THEY CAME
3 BACK THEY, THEIR MOOD HAD CHANGED AND THEY CHANGED THE
4 PLANS OF GOING TO THE OUTLET MALLS. THERE'S SUFFICIENT AND
5 SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE, YOUR HONOR, TO SUPPORT
6 A VERDICT OF GUILTY OF MURDER IN THIS CASE.

7 THE COURT: ALL RIGHT, SIR. ALL RIGHT, I AM
8 RESPECTFULLY DECLINED TO GRANT YOUR MOTION FOR A DIRECTED
9 VERDICT AT THIS POINT IN TIME, MR. GARDNER.

10 ALL RIGHT, GENTLEMEN, DO YOU WISH ME TO INQUIRE
11 OF YOUR CLIENT'S AT THIS POINT IN TIME THEIR, INFORM THEM
12 OF THEIR RESPECTIVE RIGHTS AND WHETHER OR NOT THEY WISHES
13 TO TESTIFY IN THIS PARTICULAR CASE, MR. MULLINS?

14 MR. MULLINS: YES, YOUR HONOR, PLEASE.

15 THE COURT: ALL RIGHT, SIR. ALL RIGHT, MR.
16 MANNING, WOULD YOU, PLEASE, STAND, SIR?

17 ALL RIGHT, MADAM CLERK, COULD YOU PLACE MR.
18 MANNING UNDER OATH, PLEASE?

19 THE COURT: ALL RIGHT, MR. MANNING, I'M GOING TO
20 EXPLAIN TO YOU CERTAIN OF YOUR CONSTITUTIONAL RIGHTS AT
21 THIS POINT IN TIME. IF AT ANY POINT IN TIME YOU DON'T
22 UNDERSTAND ME OR YOU HAVE A QUESTION I WANT YOU TO STOP ME,
23 YOU CAN RAISE YOUR HAND, YOU CAN TELL YOUR ATTORNEY, IN
24 SOME WAY INDICATE TO ME THAT YOU HAVE A QUESTION; DO WE
25 AGREE ON THAT?

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

281

1 DEFENDANT MANNING: YES, SIR.

2 THE COURT: ALL RIGHT, SIR, NOW OBVIOUSLY WE
3 HAVE REACHED THE STAGE IN THE TRIAL WHERE YOU MAY PUT UP A
4 DEFENSE IF YOU SO CHOOSE TO DO SO AND PART OF THAT CAN BE
5 THAT YOU TAKE THE WITNESS STAND AND TESTIFY IN YOUR OWN
6 BEHALF IN THIS CASE; DO YOU UNDERSTAND THAT?

7 DEFENDANT MANNING: YES, SIR.

8 THE COURT: NOW YOU HAVE THE RIGHT TO CLAIM
9 PROTECTION UNDER THE FIFTH AMENDMENT TO THE CONSTITUTION OF
10 THE UNITED STATES OF AMERICA AND THAT FIFTH AMENDMENT IN
11 PART SAYS THAT NO PERSON SHALL BE COMPELLED, THAT IS NO
12 PERSON SHALL BE FORCED IN ANY CRIMINAL CASE TO BE A WITNESS
13 AGAINST HIMSELF, THAT MEANS IN THIS PARTICULAR CASE YOU CAN
14 TESTIFY IF YOU WANT TO BUT NOBODY CAN MAKE YOU TESTIFY IN
15 THIS CASE; DO YOU UNDERSTAND THAT?

16 DEFENDANT MANNING: YES, SIR.

17 THE COURT: ALL RIGHT, SIR, SO YOU HAVE THE
18 RIGHT TO TESTIFY IF YOU WANT TO BUT THERE'S NOTHING OR NO
19 ONE THAT CAN MAKE YOU TESTIFY. NOW IF YOU DECIDE TO
20 TESTIFY YOU WOULD BE SUBJECT TO THE SAME RULES AS ALL THE
21 OTHER WITNESSES THAT HAVE TESTIFIED IN THIS CASE. THAT IS
22 YOU WOULD BE QUESTIONED OR EXAMINED BY YOUR ATTORNEY AND
23 THEN YOU WOULD BE CROSS EXAMINED BY THE SOLICITOR AND BY
24 MR. GARDNER REPRESENTING THE OTHER DEFENDANT; YOU
25 UNDERSTAND THAT?

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

282

1 DEFENDANT MANNING: YES, SIR.

2 THE COURT: NOW, SOLICITOR, IF MR. MANNING WERE
3 TO TESTIFY ARE THERE SOME MATTERS REGARDING ANY PRIOR
4 RECORD THAT YOU WOULD INTEND TO CROSS EXAMINE HIM ABOUT?

5 MR. DEBUSK: YES, YOUR HONOR.

6 THE COURT: AND WHAT MIGHT THOSE BE?

7 MR. DEBUSK: THE COURT'S INDULGENCE ONE MOMENT?
8 FROM 2004 IN THE STATE OF SOUTH CAROLINA CRIMINAL
9 CONSPIRACY CONVICTION; FROM 1998 IN THE STATE OF NORTH
10 CAROLINA LARCENY AFTER BREAKING AND ENTERING, FELONY; AND
11 THE FOLLOWING CONVICTIONS AT THE SAME TIME FROM THE STATE
12 OF NORTH CAROLINA IN 2005 ASSAULT WITH A DEADLY WEAPON,
13 ASSAULT INFLECTING SERIOUS INJURY, WANTON INJURY TO
14 PERSONAL PROPERTY OVER \$200, BREAKING AND ENTERING AND
15 COMMUNICATING THREATS.

16 THE COURT: ALL RIGHT, SIR, NOW, MR. MULLINS, DO
17 YOU HAVE AN OBJECTION THAT IS RAISED ON BEHALF OF YOUR
18 CLIENT AS TO THE VALIDITY OF ANY OF THOSE CRIMES THE STATE
19 WOULD WANT TO CROSS EXAMINE YOUR CLIENT ON? YES, SIR?

20 MR. MULLINS: YOUR HONOR, THE ONLY OBJECTIONS AS
21 I UNDERSTAND IS MY RESEARCH INDICATED THAT THOSE LAST NORTH
22 CAROLINA PLEAS, THE 2005 CASES THAT WERE ENTERED IN 2006
23 WERE ACTUALLY MISDEMEANORS UNLESS THE COURT WOULD RULE
24 THOSE CRIMES A MORAL TURPITUDE. THE REMAINING ONES I
25 UNDERSTAND ARE CONVICTIONS AND WOULD BE USED FOR

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

283

1 IMPEACHMENT PURPOSES.

2 THE COURT: ALL RIGHT, SIR, ALL RIGHT, NOW WITH
3 THAT UNDERSTANDING, MR. MANNING, YOU UNDERSTAND THAT IF YOU
4 HAVE ANY CRIME OR CONVICTIONS, ANY CONVICTIONS AND ALL THE
5 DISHONESTY OR FALSE STATEMENTS OR A CRIME THAT'S PUNISHABLE
6 BY IMPRISONMENT FOR MORE THAN 1 YEAR, THE POSSIBLE
7 PUNISHMENT COULD BE MORE THAN 1 YEAR, AND THE COURT
8 DETERMINED THAT THE VALUE OF THE STATE IN ASKING THOSE
9 QUESTIONS OUTWEIGHS ANY PREJUDICE TO YOU, THAT IS I FIND
10 THAT A JURY SHOULD HEAR THAT STATEMENT I WILL ALLOW THE
11 STATE TO ASK THOSE QUESTIONS OF YOU, THAT IS HAVE YOU BEEN
12 CONVICTED OF THOSE CRIMES IN THOSE YEARS; YOU UNDERSTAND
13 THAT?

14 DEFENDANT MANNING: YES, SIR.

15 THE COURT: ALL RIGHT, SIR, NOW IF YOU DECIDE TO
16 TESTIFY THAT'S GOT TO BE YOUR DECISION. YOU HAVE, YOU CAN
17 ASK WHAT QUESTIONS YOU WANT TO OF YOUR ATTORNEY IN GETTING
18 HIS ADVICE BUT YOU UNDERSTAND IT'S YOUR DECISION?

19 DEFENDANT MANNING: YES, SIR.

20 THE COURT: ALL RIGHT, SIR, NOW IF YOU DECIDE
21 NOT TO TESTIFY I WILL PUT AS PART OF MY CHARGE TELL THE
22 JURY AS PART OF MY CHARGE THEY CANNOT GIVE THAT FACT ANY
23 CONSIDERATION. THEY CAN'T TALK ABOUT IT IN THE JURY ROOM;
24 IT CAN'T COME UP IN THE JURY ROOM; THEY CAN'T BASE THEIR
25 DECISION ON IT. IT HAS NO PART IN THIS PARTICULAR CASE THE

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

284

1 FACT THAT YOU DID NOT TESTIFY IF THAT IS WHAT HAPPENS; YOU
2 UNDERSTAND THAT?

3 DEFENDANT MANNING: YES, SIR.

4 THE COURT: ALL RIGHT, SIR, DO YOU WANT TO ASK
5 YOUR ATTORNEY ANY QUESTIONS AT THIS POINT IN TIME?

6 DEFENDANT MANNING: YES, SIR, I WOULD LIKE TO
7 CONSULT WITH HIM FOR JUST A MINUTE.

8 THE COURT: YES, SIR, PLEASE DO SO.

9 MR. MULLINS: WE'VE MADE A DECISION, YOUR HONOR.

10 THE COURT: ALL RIGHT, SIR. ALL RIGHT, NOW, MR.
11 MANNING, YOU'VE HAD AN OPPORTUNITY TO TALK TO YOUR LAWYER;
12 IS THAT CORRECT?

13 DEFENDANT MANNING: YES, SIR.

14 THE COURT: AND HE ANSWERED WHATEVER QUESTIONS
15 YOU HAD?

16 DEFENDANT MANNING: YES, SIR.

17 THE COURT: ALL RIGHT, SIR, DO YOU UNDERSTAND
18 WHAT WE HAVE JUST TALKED ABOUT?

19 DEFENDANT MANNING: I COMPLETELY UNDERSTAND IT.

20 THE COURT: ALL RIGHT, SIR, DO YOU WANT TO
21 TESTIFY IN THIS PARTICULAR CASE?

22 DEFENDANT MANNING: NO, SIR, I REFUSE TO
23 TESTIFY.

24 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH,
25 YOU CAN HAVE A SEAT.

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

285

1 MR. MULLINS: THANK YOU, YOUR HONOR.

2 THE COURT: ALL RIGHT, NOW, MR. BAKER AND MR.
3 GARDNER, COULD YA'LL STAND, PLEASE?

4 MR. GARDNER: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT, MADAM CLERK, COULD YOU
6 PLACE MR. BAKER UNDER OATH, PLEASE?

7 ALL RIGHT, MR. BAKER, I'M GOING TO TALK TO YOU
8 JUST LIKE I DID MR. MANNING ABOUT YOUR CONSTITUTIONAL
9 RIGHTS. NOW THEY ARE SEPARATE FROM MR. MANNING. THEY'LL
10 BE THE SAME DISCUSSION BUT YOU UNDERSTAND I'M TALKING TO
11 YOU ABOUT YOUR RIGHTS IN THIS CASE; YOU UNDERSTAND THAT?

12 DEFENDANT BAKER: YES, SIR.

13 THE COURT: ALL RIGHT, SIR, NOW WE'VE REACHED
14 THE STAGE WHERE YOU CAN PRESENT A DEFENSE IF YOU WANT TO
15 AND THAT WOULD INCLUDE IF YOU WANTED TO YOU CAN TESTIFY IN
16 THIS CASE; YOU UNDERSTAND THAT?

17 DEFENDANT BAKER: YES, SIR.

18 THE COURT: ALL RIGHT, SIR, YOU HAVE THE RIGHT
19 TO CLAIM PROTECTION GIVEN TO YOU UNDER THE FIFTH AMENDMENT
20 TO THE CONSTITUTION OF THE UNITED STATES. AS YOU HAVE
21 HEARD WHAT THAT SAYS IS IMPORTANT, THAT NO PERSON SHALL BE
22 COMPELLED, THAT MEANS NOBODY CAN BE FORCED TO TESTIFY IN
23 ANY CRIMINAL CASE AGAINST THEMSELVES SO NOBODY CAN MAKE YOU
24 TESTIFY IN THIS CRIMINAL CASE; YOU UNDERSTAND THAT?

25 DEFENDANT BAKER: YES, SIR.

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

286

1 THE COURT: YOU COULD TESTIFY IF YOU WANT TO BUT
2 NOBODY CAN MAKE YOU; YOU UNDERSTAND THAT?

3 DEFENDANT BAKER: YES, SIR.

4 THE COURT: NOW REGARDING THIS PARTICULAR RIGHT
5 IF YOU DECIDE TO TESTIFY YOU WOULD BE SUBJECT TO THE SAME
6 RULES THAT YOU HAVE SEEN ALL THE OTHER WITNESSES IN THIS
7 CASE. YOU WOULD BE QUESTIONED OR EXAMINED BY YOUR ATTORNEY
8 MR. GARDNER. AFTER THAT YOU WOULD BE CROSS EXAMINED BY MR.
9 MULLINS AND BY THE SOLICITOR; YOU UNDERSTAND THAT?

10 DEFENDANT BAKER: YES, SIR.

11 THE COURT: ALSO IF YOU HAVE A PRIOR RECORD THAT
12 THE COURT MAY VERY WELL ALLOW THE STATE ASK YOU ABOUT THAT
13 PRIOR RECORD, IS THAT INVOLVED IN THIS PARTICULAR CASE,
14 SOLICITOR?

15 MR. DEBUSK: YES, YOUR HONOR.

16 THE COURT: IN REGARDS TO MR. BAKER?

17 MR. DEBUSK: YES, YOUR HONOR.

18 THE COURT: AND WHAT MIGHT THAT BE?

19 MR. DEBUSK: FROM THE STATE OF NORTH CAROLINA IN
20 2005 POSSESSION OR SELLING ALCOHOLIC BEVERAGE WITHOUT A
21 PERMIT; IN THE STATE OF NORTH CAROLINA THE SAME YEAR
22 POSSESSION WITH INTENT TO SELL, DISTRIBUTE COCAINE FELONY
23 LEVEL AND MAINTAIN A VEHICLE DWELLING PLACE FOR CONTROLLED
24 SUBSTANCES IN THE SAME YEAR, YOUR HONOR.

25 THE COURT: ALL RIGHT, SIR. ALL RIGHT, MR.

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

287

1 GARDNER, DO YOU HAVE ANY MATTERS YOU WANT TO BRING UP TO
2 THE COURT REGARDING ANY OF THOSE PARTICULAR CRIMES AS
3 STATED BY THE SOLICITOR?

4 MR. GARDNER: I DIDN'T QUITE CATCH ALL OF THE
5 THIRD ONE, JUDGE, AND I APOLOGIZE BUT I CAN'T SEE ---

6 THE COURT: ALL RIGHT, SIR, THE THIRD ONE,
7 SOLICITOR, WOULD BE?

8 MR. DEBUSK: MAINTAINING A VEHICLE WITH DWELLING
9 PLACE FOR CONTROLLED SUBSTANCES.

10 THE COURT: FOR THE SALE OF CONTROLLED
11 SUBSTANCE, ALL RIGHT, WAS THAT AT THE SAME TIME AS THE
12 CONVICTION FOR DRUGS THAT WAS THE SECOND OFFENSE OR IS THAT
13 A SEPARATE OFFENSE?

14 MR. DEBUSK: THE COURT'S INDULGENCE ONE MOMENT.

15 THE COURT: I'M SORRY?

16 MR. DEBUSK: THE COURT'S INDULGENCE ONE MOMENT,
17 YOUR HONOR, I'M CHECKING. THE DATE OF OFFENSE IS THE SAME,
18 YOUR HONOR.

19 THE COURT: ALL RIGHT, SO APPARENTLY, MR.
20 GARDNER, NUMBER TWO AND NUMBER THREE THOSE DRUG OFFENSES OR
21 RELATED OFFENSES WERE AT THE SAME TIME. ANY QUESTIONS OR
22 ANYTHING YOU WANT TO PRESENT TO THE COURT AS ARGUMENTS?

23 MR. GARDNER: NO, YOUR HONOR.

24 THE COURT: ALL RIGHT, SIR. NOW, MR. BAKER, YOU
25 UNDERSTAND THAT IF THE COURT FINDS THAT THE VALUE OF

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

288

1 ALLOWING THE STATE TO EXAMINE YOU ABOUT THOSE CRIMES THAT
2 YOU'VE BEEN CONVICTED OF OUTWEIGHS ANY PREJUDICE TO YOU OR
3 HARM TO YOU I WILL ALLOW THE STATE TO QUESTION YOU AS TO
4 THOSE PARTICULAR CONVICTIONS; YOU UNDERSTAND THAT?

5 DEFENDANT BAKER: YES, SIR.

6 THE COURT: ALL RIGHT, SIR, IF YOU DECIDE TO
7 TESTIFY THAT'S GOT TO BE YOUR DECISION. YOU CAN ASK YOUR
8 ATTORNEY'S ADVICE OR GET INFLUENCE FROM HIM BUT YOU
9 UNDERSTAND IT'S YOUR DECISION. YOU CONTROL WHETHER OR NOT
10 YOU WANT TO TESTIFY IN THIS CASE; YOU UNDERSTAND THAT?

11 DEFENDANT BAKER: YES, SIR.

12 THE COURT: ALL RIGHT, SIR, NOW IF YOU DECIDE
13 NOT TO TESTIFY I WILL TELL THE JURY THEY CAN'T GIVE THAT
14 FACT ANY CONSIDERATION AT ALL. THEY CAN'T TALK ABOUT IT IN
15 THE JURY ROOM; IT CAN'T BE PART OF THEIR DECISION IN THIS
16 CASE. IT'S NOT PART OF THIS CASE IF YOU DO NOT TESTIFY;
17 YOU UNDERSTAND THAT?

18 DEFENDANT BAKER: YES, SIR.

19 THE COURT: ALL RIGHT, SIR, DO YOU WANT TO TALK
20 TO YOUR ATTORNEY OR ASK HIM ANY QUESTIONS AT THIS POINT IN
21 TIME?

22 DEFENDANT BAKER: YES, SIR.

23 THE COURT: ALL RIGHT, SIR, PLEASE DO SO.

24 MR. GARDNER: JUDGE, HIS FIRST QUESTION IS, HE'S
25 JUST ASKED ME ---

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

289

1 THE COURT: ALL RIGHT, SIR.

2 MR. GARDNER: --- AND I TOLD HIM IT BE UP TO YOU
3 BECAUSE WE HAD PRE-TRIED THE SCHEDULING OF THIS.

4 THE COURT: AS FAR AS THE TESTIMONY?

5 MR. GARDNER: IF HE TAKES THE STAND WILL THAT BE
6 TONIGHT OR IN THE MORNING?

7 THE COURT: YES, SIR, I WILL INTEND TO FINISH
8 THE TESTIMONY IN THIS CASE TODAY FOR HOWEVER LONG THAT
9 WOULD TAKE ---

10 MR. GARDNER: YES, SIR.

11 THE COURT: --- I WOULD FINISH THE TESTIMONY
12 TODAY.

13 MR. GARDNER: THANK YOU, JUDGE.

14 THANK YOU FOR YOUR TIME, YOUR HONOR.

15 THE COURT: ALL RIGHT, SIR, THANK YOU. NOW, MR.
16 BAKER, DID YOU HAVE AN OPPORTUNITY TO TALK TO YOUR LAWYER,
17 HAVE YOU HAD ENOUGH TIME TO TALK WITH HIM?

18 DEFENDANT BAKER: YES, SIR.

19 THE COURT: ALL RIGHT, SIR, DID HE ANSWER THE
20 QUESTIONS THAT YOU HAD?

21 DEFENDANT BAKER: YES, SIR.

22 THE COURT: ALL RIGHT, SIR, HAVE YOU UNDERSTOOD
23 WHAT YOU AND I HAVE TALKED ABOUT?

24 DEFENDANT BAKER: YES, SIR.

25 THE COURT: ALL RIGHT, SIR, DO YOU WANT TO

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

290

1 TESTIFY IN THIS PARTICULAR CASE?

2 DEFENDANT BAKER: NO, SIR.

3 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH,
4 YA'LL CAN BE SEATED, THANK YOU.

5 ALL RIGHT, NOW, MR. MULLINS, YOUR CLIENT
6 EXERCISES HIS CONSTITUTIONAL RIGHTS REGARDING THE FACT THAT
7 HE WOULD NOT TESTIFY IN THIS PARTICULAR MATTER, WOULD YOU
8 HAVE ANY OTHER WITNESSES ON BEHALF OF THE DEFENDANT
9 MANNING?

10 MR. MULLINS: NO, THE DEFENDANT RESTS.

11 THE COURT: ALL RIGHT, SIR. NOW, MR. GARDNER,
12 YOUR CLIENT MR, BAKER?

13 MR. GARDNER: I'M SORRY?

14 THE COURT: MR. GARDNER, YOUR CLIENT, MR. BAKER,
15 HAVING EXERCISED HIS CONSTITUTIONAL RIGHTS NOT TO TESTIFY
16 IN THIS PARTICULAR CASE DO YOU HAVE ANY OTHER WITNESSES ON
17 HIS BEHALF AT THIS POINT IN TIME?

18 MR. GARDNER: WE WILL PRESENT NO DEFENSE BY WAY
19 OF TESTIMONY, YOUR HONOR.

20 THE COURT: ALL RIGHT, SIR, SO THE DEFENSE WILL
21 REST AT THIS POINT IN TIME; IS THAT CORRECT?

22 MR. GARDNER: YES, SIR.

23 THE COURT: ALL RIGHT, SIR. ALL RIGHT,
24 GENTLEMEN, MY PROPOSAL IS WE'LL TAKE A VERY SHORT BREAK
25 THEN I WILL CALL THE JURY IN. AT THAT POINT IN TIME I WILL

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

291

1 ASK YOU, MR. MULLINS, THE POSITION OF THE DEFENDANT MANNING
2 AND YOU CAN TELL SO THE JURY WILL HEAR AND UNDERSTAND THAT
3 THE DEFENSE RESTS ON BEHALF OF MR. MANNING AND THEN, MR.
4 GARDNER, I WILL ASK YOU THE SAME QUESTION. AT THAT POINT
5 IN TIME I ASSUME THERE'S NOT GOING TO BE, WELL THERE
6 WOULDN'T BE ANY CLIENT TESTIMONY SO AT THAT POINT IN TIME I
7 WILL TURN TO THE JURY AND TELL THEM IF WE WERE TO PROCEED
8 TONIGHT, THAT THAT IS WE HAVE THE CLOSING ARGUMENTS AND THE
9 CHARGE ON THE LAW THE CASE WOULD BE SUBMITTED TO THEM AND
10 WE WOULD BE HERE AND REMAIN HERE TONIGHT UNTIL THEY COME
11 BACK WITH A UNANIMOUS DECISION. I WILL LEAVE IT TO THEM IF
12 THEY WOULD LIKE TO COME BACK TOMORROW MORNING FOR THE
13 CLOSING ARGUMENTS AND THE CHARGE BUT THE JURY BEING THE
14 ONLY ONES THAT WE ARE ABSOLUTELY KEEPING HERE WHEN THEY
15 HAVE BEFORE TODAY OR BEFORE MONDAY HAVING NO STAKE IN THIS
16 PARTICULAR MATTER I'M GOING TO INCONVENIENCE THEM AS LITTLE
17 AS POSSIBLE. I'M GOING TO LEAVE IT TO THEM AS FAR AS
18 WHETHER WE STAY HERE TONIGHT OR NOT.

19 ALL RIGHT, LET'S TAKE A SHORT BREAK, FIVE MINUTES
20 AND COME BACK AND BRING THE JURY BACK IN, THANK YOU VERY
21 MUCH.

22 MR. GARDNER: THANK YOU, YOUR HONOR.

23 (WHEREUPON, A RECESS WAS TAKEN.)

24 (WHEREUPON, STATE'S EXHIBIT NUMBER 50 MARKED FOR
25 IDENTIFICATION.)

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

292

1 THE COURT: YES, SIR, MR. MULLINS?

2 MR. MULLINS: MAY IT PLEASE THE COURT, YOUR
3 HONOR, WHILE WE'VE BEEN OFF THE RECORD THE TRANSCRIBED
4 STATEMENT OF ERNEST "SKETTER" SMITH WAS MARKED AS STATE'S
5 NUMBER 50 FOR IDENTIFICATION ONLY WHICH WAS PART OF YOUR
6 HONOR'S DIRECTIVE ON MY PROFFER OF THE CROSS EXAMINATION OF
7 MR. SMITH.

8 THE COURT: ALL RIGHT, SIR.

9 MR. MULLINS: AND, SECOND ---

10 THE COURT: THAT'S FOR IDENTIFICATION ONLY, YES,
11 SIR?

12 MR. MULLINS: SECONDLY, THERE WERE TWO
13 PHOTOGRAPHS THAT WERE MARKED FOR IDENTIFICATION, PRE-MARKED
14 FOR IDENTIFICATION, AS DEFENDANT MANNING'S 1 AND 2.

15 THE COURT: ALL RIGHT, SIR.

16 MR. MULLINS: IN LIGHT OF THE STATE'S
17 STIPULATION I AM NOT INTRODUCING THOSE EVIDENCE, THOSE
18 PHOTOGRAPHS ARE NOT IN EVIDENCE.

19 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH.
20 ALL RIGHT, MR. GARDNER, IS THERE ANY MATTERS YOU NEED TO
21 BRING, SIR?

22 MR. GARDNER: NOTHING FROM OUR SIDE, YOUR HONOR.

23 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH.
24 ASK THE JURY TO COME IN, PLEASE.

25 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

293

1 4:26 P.M.)

2 THE COURT: ALL RIGHT, THE STATE HAVING RESTED
3 ITS CASE I WILL TURN NOW TO YOU, MR. MULLINS, ON BEHALF OF
4 MR. MANNING.

5 MR. MULLINS: DEFENDANT MANNING RESTS.

6 THE COURT: THANK YOU VERY MUCH, SIR. MR.
7 GARDNER, ON BEHALF OF DEFENDANT BAKER.

8 MR. GARDNER: RASHAD BAKER RESTS, YOUR HONOR.

9 THE COURT: THANK YOU. LADIES AND GENTLEMEN,
10 THAT IS THE EVIDENTIARY PORTION OF THIS TRIAL. WE HAVE
11 CONCLUDED THE EVIDENTIARY PORTION OF THE TRIAL. THE PARTS
12 THAT REMAIN ARE THE CLOSING ARGUMENTS OF THE ATTORNEYS AND
13 THE CHARGE ON THE LAW REGARDING THIS PARTICULAR MATTER AND
14 THEN THE CASE WOULD BE SUBMITTED TO YOU FOR YOUR
15 DELIBERATIONS AND YOUR UNANIMOUS DECISION ON BOTH THE
16 MATTER INVOLVING THE DEFENDANT MANNING AND THE DEFENDANT
17 BAKER.

18 IT IS APPROXIMATELY 4:30 P.M. IF WE GO INTO THE
19 CLOSING ARGUMENTS AND THE CHARGE ON THE LAW THIS AFTERNOON
20 AND THIS EVENING THIS CASE WILL BE SUBMITTED TO YOU AND YOU
21 WILL BE HERE UNTIL YOU REACH A DECISION, A UNANIMOUS
22 DECISION IN EACH CASE. IF YOU WISH WE CAN COME BACK
23 TOMORROW MORNING AND RESUME THE TRIAL AT THAT POINT IN TIME
24 WITH THE CLOSING ARGUMENTS AND THE CHARGE ON THE LAW SO,
25 MS. MOORE, WOULD YOU LIKE TO TAKE YOUR JURY BACK TO YOUR

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

294

1 JURY ROOM AND DECIDE WHETHER YOU WANT TO STAY HERE AND
2 FINISH THIS CASE TONIGHT UNTIL IT IS OVER WITH OR DO YOU
3 WANT TO COME BACK TOMORROW MORNING UNDERSTANDING IF I
4 SUBMIT THE CASE TO YOU YOU WILL BE HERE UNTIL YOU REACH A
5 UNANIMOUS DECISION IN EACH CASE. DO YOU WISH TO TAKE YOUR
6 JURY BACK TO THE JURY ROOM AND DISCUSS THIS?

7 MADAM FOREPERSON: YES.

8 THE COURT: ALL RIGHT, PLEASE DO SO, KNOCK ON
9 THE DOOR AND LET THE BAILIFF KNOW WHEN YOU HAVE A DECISION
10 ON THAT ISSUE.

11 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
12 4:30 P.M.)

13 THE COURT: WHILE THE JURY IS DISCUSSING THAT
14 WHO'S THE LADY THAT HAS THE CELL PHONE?

15 AUDIENCE MEMBER: HERE I AM.

16 THE COURT: PLEASE COME FORWARD, MA'AM. YOU CAN
17 COME FORWARD AND STAND RIGHT BEFORE THE COURT REPORTER,
18 PLEASE MA'AM. TELL ME YOUR NAME, PLEASE, MA'AM?

19 AUDIENCE MEMBER: TAWANDA WILLIAMS.

20 THE COURT: I'M SORRY, MA'AM, I CAN'T HEAR YOU.

21 MS. WILLIAMS: TAWANDA WILLIAMS, TAWANDA
22 WILLIAMS.

23 THE COURT: ALL RIGHT, CAN YOU SPELL THAT,
24 PLEASE, FOR THE COURT REPORTER?

25 MS. WILLIAMS: T-A-W-A-N-D-A.

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

295

1 THE COURT: YOUR LAST NAME?

2 MS. WILLIAMS: WILLIAMS.

3 THE COURT: ALL RIGHT, TELL ME YOUR ADDRESS,
4 PLEASE, YOUR STREET ADDRESS?

5 MS. WILLIAMS: LONG ACRE ROAD, LONGS, SOUTH
6 CAROLINA.

7 THE COURT: ALL RIGHT, MA'AM, YOU WERE IN THE
8 COURTROOM AND YOUR CELL PHONE WENT OFF, CORRECT, MA'AM?

9 MS. WILLIAMS: YES, SIR.

10 THE COURT: ALL RIGHT, MA'AM, YOU ARE AWARE OF
11 THE COURT REGULATIONS. THERE ARE SIGNS POSTED AT THE DOOR
12 OF THIS COURTROOM. THERE IS NOTIFICATION TO YOU WHEN YOU
13 COME INTO THE COURTROOM. THIS IS TUESDAY, YOU HAVE COME
14 INTO THIS COURTROOM A NUMBER OF TIMES. YOU UNDERSTAND YOUR
15 CELL PHONE IS NOT SUPPOSED TO BE ON, CORRECT, MA'AM?

16 MS. WILLIAMS: YES, SIR.

17 THE COURT: THIS BEING A VIOLATION NOT ONLY OF
18 THIS COURT'S RULES BUT OF THE ORDER OF CHIEF JUSTICE OF THE
19 STATE OF SOUTH CAROLINA I FIND YOU IN DIRECT CRIMINAL
20 CONTEMPT OF THIS COURT. I HEREBY FINE YOU \$100 THAT SHALL
21 BE PAID BY FRIDAY AT 12 NOON. FAILURE TO DO THAT A BENCH
22 WARRANT WILL BE ISSUED FOR YOUR ARREST, THANK YOU. YOU MAY
23 RETURN HER CELL PHONE TO HER.

24 MR. DEBUSK: YOUR HONOR, MAY THE ATTORNEYS
25 APPROACH THE BENCH FOR A MOMENT?

1 THE COURT: ABSOLUTELY.

2 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
3 4:34 P.M.)

4 THE COURT: YES, MS. FOREMAN?

5 MADAM FOREPERSON: WE WILL BE BACK TOMORROW.

6 THE COURT: ALL RIGHT, I WILL TELL YA'LL THERE
7 IS, THERE'S ACTUALLY TWO MATTERS THAT THE COURT MUST TAKE
8 UP TOMORROW MORNING BEFORE YOU RETURN, BEFORE WE START THIS
9 CASE, SO I'LL HAVE YA'LL COME BACK TOMORROW MORNING, BE IN
10 YOUR JURY ROOM BY 10:00, PLEASE. I'LL HAVE YOU BACK IN
11 YOUR JURY ROOM BY 10:00. AT THAT POINT IN TIME WE'LL
12 RESUME THIS TRIAL. PLEASE REMEMBER DON'T TALK ABOUT THIS
13 CASE, DON'T ALLOW ANYBODY TO TALK TO YOU. DON'T TALK ABOUT
14 IT WITH ANYONE AT HOME OR WORK OR ANYWHERE ELSE BECAUSE
15 OBVIOUSLY AGAIN THEY'LL UNINTENTIONALLY GIVE YOU THEIR
16 OPINION ABOUT THIS CASE AND YA'LL SHOULD NOT BE DISCUSSING
17 THE CASE UNTIL I SUBMIT IT TO YOU FOR YOUR DELIBERATIONS SO
18 I'LL SEE YOU BACK TOMORROW MORNING 10:00, THANK YOU VERY
19 MUCH. EVERYONE ELSE REMAIN SEATED.

20 (WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING
21 AT 4:35 P.M.)

22 THE COURT: ALL RIGHT, EVERYONE ELSE WILL REMAIN
23 IN THE COURTROOM UNTIL THE COURT EXCUSE THEM. THERE HAS
24 BEEN SOME UNINTENTIONAL CONTACT WITH THE JURY, THEREFORE,
25 I'M GOING TO GIVE THEM PLENTY OF TIME TO GET OUT OF THE

CHARGE CONFERENCE

297

1 BUILDING AND IN THEIR CARS AND OUT OF THIS AREA BEFORE
2 ANYONE LEAVES THIS COURTROOM.

3 ALL RIGHT, GENTLEMEN, YOU HAD, WE PROBABLY NEED
4 TO DISCUSS AS FAR AS A CHARGE TO THE JURY IN THIS MATTER.
5 ARE THERE ANY REQUESTS THAT THE STATE WOULD LIKE TO MAKE AT
6 THIS POINT IN TIME?

7 MR. DEBUSK: THE COURT'S INDULGENCE ONE MOMENT,
8 YOUR HONOR?

9 THE COURT: YES, SIR.

10 MR. DEBUSK: I WOULD ASK THERE BE AN INSTRUCTION
11 THAT A KILLING COMMITTED IN THE COMMISSION, DURING THE
12 COMMISSION OF A FELONY THAT CAN BE CONSIDERED AS EVIDENCE
13 OF MALICE. IT'S SOMETIMES MISTAKENLY CALLED THE FELONY
14 MURDER RULE, YOUR HONOR.

15 THE COURT: ALL RIGHT, SIR. WHAT WOULD THE
16 DEFENDANT MANNING'S POSITION BE IN THAT?

17 MR. MULLINS: CERTAINLY, YOUR HONOR I THINK
18 THERE'S AT LEAST ENOUGH EVIDENCE IN THE RECORD THAT FELONY
19 MURDER RULE COULD BE CHARGED. I CERTAINLY PREFER THAT TO
20 THE HAND OF ONE IS THE HAND OF ALL BUT I CERTAINLY THINK
21 THAT'S WITHIN THE RECORD AND A REALM OF POSSIBILITY OF AN
22 INTERPRETATION OF THE EVIDENCE.

23 THE COURT: ALL RIGHT, SIR. MR. GARDNER?

24 MR. GARDNER: OBVIOUSLY I WOULD LIKE TO GO BACK
25 TO MY DIRECTED VERDICT MOTION AND GET A CHARGE ON

MOTION FOR DIRECTED VERDICT BY DEFENDANT MANNING

298

1 CIRCUMSTANTIAL EVIDENCE, YOUR HONOR.

2 THE COURT: AND WE DO NEED TO HAVE YOUR DIRECTED
3 VERDICT MOTIONS BEFORE WE DISCUSS THE CHARGE IN THIS CASE,
4 THAT'S CORRECT.

5 MR. GARDNER: I THOUGHT WE WERE GOING ---

6 THE COURT: THANK YOU FOR BRINGING THAT TO MY
7 ATTENTION.

8 MR. GARDNER: I THOUGHT ---

9 THE COURT: THAT'S ALL RIGHT, MR. GARDNER.

10 MR. GARDNER: I DIDN'T MEAN TO GO INTO THAT. I
11 THOUGHT THAT WAS ONE OF THINGS YOU WANTED TO DO IN THE
12 MORNING.

13 THE COURT: NO, SIR, WE NEED TO GO OVER THAT NOW
14 BECAUSE BOTH OF YOU HAVE RESTED YOUR CASES AND YOU'RE
15 EXACTLY CORRECT. MR. MULLINS?

16 MR. MULLINS: WE RENEW OUR MOTION, YOUR HONOR.

17 THE COURT: ALL RIGHT, SIR.

18 MR. MULLINS: SAME GROUNDS.

19 THE COURT: I RESPECTFULLY DECLINE TO GRANT YOUR
20 MOTION FOR A DIRECTED VERDICT AT THIS STAGE OF THE
21 PROCEEDINGS. I DO FIND THAT THERE IS SUFFICIENT EVIDENCE
22 EITHER DIRECT OR CIRCUMSTANTIAL FOR THIS MATTER TO PROCEED
23 TO THE JURY AND I RESPECTFULLY DECLINE TO GRANT YOUR MOTION
24 FOR A DIRECTED VERDICT.

25 MR. GARDNER?

MOTION FOR DIRECTED VERDICT BY DEFENDANT BAKER

299

1 MR. GARDNER: MINE, I WOULD RENEW MINE AS WELL
2 AND AS I UNDERSTAND THE LAW, I DON'T WANT TO BELABOR IT,
3 BUT I WOULD RENEW IT ON THE SAME GROUNDS AND MY REPLY TO
4 THE SOLICITOR'S EVIDENCE THAT HE RECITED TO YOU IN RESPONSE
5 TO THAT IS THAT STILL IS NOT ENOUGH SUBSTANTIAL
6 CIRCUMSTANTIAL EVIDENCE TO SEND IT TO THE JURY.

7 THE COURT: ALL RIGHT, SIR.

8 MR. GARDNER: UNDER THAT CASE AND IT'S CASES
9 CITED THEREIN.

10 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH.
-11 I RESPECTFULLY DECLINE TO GRANT YOUR MOTION FOR A DIRECTED
12 VERDICT. I FIND THERE IS SUFFICIENT DIRECT AND
-13 CIRCUMSTANTIAL EVIDENCE TO PRESENT THE MATTER TO THE JURY.

14 ALL RIGHT, ANY FURTHER REQUESTS, I'M SORRY, AS TO
15 THE STATE'S?

16 MR. DEBUSK: JUST THAT I STATED, YOUR HONOR.

17 THE COURT: ALL RIGHT, SIR. ALL RIGHT, MR.
18 MULLINS?

19 MR. MULLINS: YOUR HONOR, DEFENDANT MANNING HAS
20 HANDED UP OUR REQUEST TO CHARGE NUMBERS 1 THROUGH 5, AS I
21 RECALL, MOST OF THOSE DEALING WITH MERE PRESENCE. WE'VE
22 CITED BOTH HICKS V. UNITED STATES, STATE V. GREEN, STATE V.
23 LEONARD AND THEIR PROGENY AS WELL AS STATE V. DENNIS. I
24 THINK ALSO THERE'S A REASONABLE INTERPRETATION OF THE
25 EVIDENCE THAT'S BEEN PRESENTED HERE THAT MY CLIENT WAS

CHARGE CONFERENCE CONTINUED

300

1 MERELY PRESENT AT THE SCENE THAT IN ANY CIRCUMSTANTIAL
2 EVIDENCE CASE, JUDGE, UNLESS THERE'S DIRECT EVIDENCE THAT
3 MY CLIENT ACTUALLY COMMITTED THIS CRIME THERE IS AN
4 OPPORTUNITY FOR THE JURY TO FIND THAT HE WAS MERELY PRESENT
5 AND WE'VE DESIGNED FOUR CHARGES AROUND THOSE THAT WE WOULD
6 LIKE TO BE CHARGED TO THE JURY IN SOME CAPACITY SO THAT WE
7 HAVE A REASONABLE OPPORTUNITY TO ARGUE THAT TO THE JURY.

8 THE COURT: ALL RIGHT, SIR, THERE'S NO QUESTION
9 THAT I INTEND TO CHARGE MERE PRESENCE TO THE JURY IN THIS
10 PARTICULAR CASE. I WILL LOOK AT MY CHARGE TO SEE IF THE
11 REQUEST TO CHARGE THAT YOU HAVE SUBMITTED, THERE ARE THINGS
12 THAT I BELIEVE SHOULD BE ADDED I MAY LOOK AT YOUR REQUEST
13 TO CHARGE NUMBER 4 AND 5 AS SOME ACCOMMODATION OF THAT, BUT
14 I WILL LET YOU KNOW THAT IN THE MORNING, BUT CERTAINLY AS
15 FAR AS MERE PRESENCE I WILL DEFINITELY CHARGE THAT GENERAL
16 PROPOSITION LAW TO THE JURY, NO QUESTION I'LL DO THAT.

17 ALL RIGHT, MR. GARDNER?

18 MR. GARDNER: THANK YOU, JUDGE. YOUR
19 CIRCUMSTANTIAL EVIDENCE CHARGE IS IT THE GENERAL STANDARD
20 ONE OR DO YOU --

21 THE COURT: THE ONE THAT I HAVE FOR THE
22 CIRCUMSTANTIAL EVIDENCE CHARGE WOULD BE THE ONE THAT THE
23 SOUTH CAROLINA SUPREME COURT HAS DETERMINED SHOULD BE
24 CHARGED. I STILL DON'T KNOW IF IT'S STATE V. GRIPPON OR
25 STATE V. GRIPPON, I'M NOT SURE HOW THAT NAME IS PRONOUNCED

CHARGE CONFERENCE CONTINUED

301

1 BUT HOWEVER THAT IS PRONOUNCED THAT IS WHAT I WILL CHARGE,
2 BUT THAT'S THE NAME THAT I THINK THAT IN SOME CASES THE
3 CHIEF JUSTICE'S DISSENT BY MAKING SOME SENSE IN A
4 CIRCUMSTANTIAL CASE, BUT IT IS CLEAR THE WILL OF THE SOUTH
5 CAROLINA SUPREME COURT IS WHAT THEY HAVE STATED IN THE
6 STATE V. GRIPPON, I AM BOUND BY THAT AND THAT IS WHAT I
7 WILL CHARGE TO THE JURY.

8 MR. GARDNER: ONE MORE REQUEST, JUDGE.

9 THE COURT: YES, SIR.

10 MR. GARDNER: PROBABLE AND NATURAL CONSEQUENCE
11 LANGUAGE, IF YOU GO INTO THE COMMON SCHEME DESIGN PLAN,
12 ACCOMPLICE LIABILITY OR THE MALICE AS PART OF EVIDENCE
13 BASICALLY THAT IF TWO OR MORE COMBINE TOGETHER TO COMMIT AN
14 UNLAWFUL ACT TO THE CRIME WAS COMMITTED BY ONE OF THE
15 ACTORS AS A PROBABLE AND NATURAL CONSEQUENCE OF THE ACTS
16 DONE AND I GET THAT LANGUAGE FROM THE NEW CASE FROM, IT'S
17 NOT NEW ANY MORE IT'S A COUPLE OF MONTHS OLD I THINK, JUNE
18 15TH, THADEUS CURRY.

19 THE COURT: HOLD ON ONE SECOND. ALL RIGHT, LET
20 ME GIVE TO YOU WHAT I BELIEVE THAT I WOULD CHARGE TO THE
21 JURY FOR THAT PARTICULAR ISSUE AND TELL ME IF YOU WOULD
22 LIKE SOMETHING ADDED TO THAT.

23 IF A CRIME IS COMMITTED BY TWO OR MORE PEOPLE WHO
24 ARE ACTING TOGETHER COMMITTING A CRIME THE ACT OF ONE IS
25 THE ACT OF ALL.

CHARGE CONFERENCE CONTINUED

302

1 THE PERSON WHO JOINS WITH ANOTHER TO ACCOMPLISH
2 ILLEGAL PURPOSE IS CRIMINALLY RESPONSIBLE FOR EVERYTHING
3 DONE BY THE OTHER PERSON WHICH OCCURS AS AN ACTUAL AND
4 PROBABLE CONSEQUENCE OF THE ACTS DONE CARRYING OUT THE
5 COMMON PLAN AND PURPOSE.

6 THE ACT OF ONE IS THE ACT OF ALL WHERE IT IS
7 SOMETIMES SAID THE HAND OF ONE IS THE HAND OF ALL.

8 PRIOR KNOWLEDGE THAT A CRIME IS GOING TO BE
9 COMMITTED WITHOUT MORE IS NOT SUFFICIENT TO MAKE A PERSON
10 GUILTY OF THAT CRIME.

11 MERE KNOWLEDGE THAT ANOTHER PERSON IS GOING TO
12 COMMIT A CRIME EVEN IF THE DEFENDANT IS PRESENT WHEN THE
13 CRIME IS COMMITTED IS NOT SUFFICIENT TO CONVICT A
14 DEFENDANT.

15 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT BY
16 COMPETENT EVIDENCE THE THEORY OF THE HAND OF ONE IS THE
17 HAND OF ALL.

18 A PRINCIPLE IN A CRIME IS ONE WHO EITHER ACTUALLY
19 COMMITS THE CRIME OR WHO IS PRESENT AIDING, ABETTING OR
20 ASSISTING IN COMMITTING A CRIME.

21 WHEN THE PERSON DOES AN ACT IN THE PRESENCE OF
22 AND WITH THE ASSISTANCE OF ANOTHER THE ACT IS DONE BY BOTH.

23 WHEN TWO OR MORE ACT WITH A COMMON PLAN OR INTENT
24 OR PRESENT AT THE COMMISSION OF A CRIME IT DOES NOT MATTER
25 WHO ACTUALLY COMMITS THE CRIME ALL ARE GUILTY, THE HAND OF

CHARGE CONFERENCE CONTINUED

303

1 ONE IS THE HAND OF ALL.

2 PRESENT AT THE COMMISSION OF THE CRIME MEANS TO
3 BE SUFFICIENTLY NEAR AIDING, ABET, AND ASSIST IN THE
4 COMMISSION OF THE CRIME, HOWEVER, MERE PRESENCE AT THE
5 SCENE OF THE CRIME IS NOT SUFFICIENT TO CONVICT.

6 INTENT IS THE NECESSARY ELEMENT BUT IT MUST HAVE
7 BEEN A COMMON DESIGN OR INTENT TO COMMIT THE CRIME AND THE
8 CRIME MUST HAVE BEEN COMMITTED PURSUANT THERETO WITH THE
9 PERSON AIDING AND ABETTING BY SOME COVERT ACT.

10 INTENT MEANS INTENDING THE RESULT WHICH ACTUALLY
11 OCCURS NOT ACCIDENTLY OR INVOLUNTARILY.

12 INTENT MAY BE SHOWN BY ACTS OR CONDUCT OF THE
13 DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY
14 NATURALLY AND REASONABLY INFER INTENT.

15 THE STATE MUST PROVE ALL OF THESE ELEMENTS BEYOND
16 A REASONABLE DOUBT.

17 MR. GARDNER: YES, SIR.

18 THE COURT: OKAY, IS THERE ANYTHING THAT YOU
19 BELIEVE THAT YOU WANT ADDED TO THAT?

20 MR. GARDNER: I JUST WANTED TO, AND IT SOUNDED
21 LIKE YOU HAD IT IN THERE, YOUR HONOR, I RESPECTFULLY WANTED
22 TO ASK THAT THE PROBABLE AND NATURAL CONSEQUENCE LANGUAGE -

23

24 THE COURT: ALL RIGHT, SIR.

25 MR. GARDNER: --- AND I BELIEVE I HEARD THAT

CHARGE CONFERENCE CONTINUED

304

1 THAT WAS IN THERE.

2 THE COURT: ALL RIGHT, SIR, AND IN ADDITION TO
3 THAT, THOUGH, I DO AS A MERE PRESENCE I DO HAVE ALSO HAVE
4 ADDITIONAL SHORT CHARGE ON THAT THAT SAYS MERE PRESENCE AT
5 THE SCENE IS NOT SUFFICIENT TO PROVE SOMEONE GUILTY OF A
6 CRIME. THE BURDEN IS ON THE STATE TO PROVE EVERY ELEMENT
7 OF THE CRIME CHARGED. IF YOU FIND AFTER REVIEWING ALL OF
8 THE EVIDENCE THE STATE HAS PROVED ONLY THAT THE DEFENDANT
9 WAS PRESENT AT THE SCENE OF THE CRIME AND THAT THEY HAVE
10 NOT PROVED BEYOND A REASONABLE DOUBT ANY OTHER
11 PARTICIPATION AT THE CRIME YOU MUST FIND THE DEFENDANT NOT
12 GUILTY. THE LAW IS THAT PROOF THAT SOMEONE AT THE SCENE OF
13 THE CRIME IS NOT SUFFICIENT TO FIND SOMEONE GUILTY, SO I'LL
14 HAVE THAT IN ADDITION TO THE LANGUAGE THAT I'VE ALREADY
15 CHARGED AND I TOLD YOU, MR. MULLINS, I WILL GET YOUR
16 REQUEST NUMBER 4 AND 5 TO SEE IF I MAY DRAW A SENSE FROM
17 THAT TO ADD TO WHAT I HAVE. I BELIEVE THAT 1, 2, 3 ARE
18 SUFFICIENTLY COVERED BY MERE PRESENCE STATES THAT I WOULD
19 MAKE TO THE JURY OTHERWISE.

20 MR. MULLINS: THANK YOU, YOUR HONOR.

21 THE COURT: ALL RIGHT, MR. GARDNER, IS THERE
22 ANYTHING ELSE THAT YOU KNOW OF?

23 MR. GARDNER: NO, YOUR HONOR.

24 THE COURT: ALL RIGHT, NOW, GENTLEMEN, MR.

25 MANNING AND MR. BAKER HAVE BEEN CHARGED WITH THE CRIME OF

CHARGE CONFERENCE CONTINUED

305

1 MURDER, IS THERE ANY REQUEST ON BEHALF OF THE DEFENDANT TO
2 SUBMIT ANY OTHER CHARGE OR ANY OTHER CRIME TO THE JURY
3 OTHER THAN THE CRIME OF MURDER FROM THE DEFENDANT MANNING?

4 MR. MULLINS: NO, SIR, I THINK IT'S ALL OR
5 NOTHING.

6 THE COURT: ALL RIGHT, SIR. I BELIEVE THAT I
7 AGREE WITH YOU BUT I WOULD WANT TO, HOWEVER I DID WANT TO
8 KNOW IF THERE WAS A QUESTION. FROM DEFENDANT BAKER?

9 MR. MULLINS: I DON'T THINK THERE'S ANYTHING IN
10 THE RECORD, YOUR HONOR, TO SUPPORT A LESSER INCLUDED.

11 THE COURT: WELL I WILL SAY TO YOU I AGREE WITH
12 YOU BUT I ALSO WANTED TO KNOW IF YOU HAD A REQUEST I WAS
13 CERTAINLY GOING TO LISTEN TO YOU TO SEE IF, IF YOU MIGHT
14 PERSUADE ME OF ANYTHING ELSE, BUT I WILL TELL YOU THAT I DO
15 NOT BELIEVE THERE IS.

16 MR. GARDNER, ON BEHALF OF MR. BAKER?

17 MR. GARDNER: JUDGE, I BELIEVE IT'S CLEAR IT'S
18 ALL OR NOTHING.

19 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH,
20 GENTLEMEN. I WILL TELL YOU THAT THAT IS ALSO THE COURT'S
21 OPINION BUT I CERTAINLY WANTED TO HEAR FROM BOTH OF YOU
22 AGAIN IN THAT REGARD.

23 GENTLEMEN, OBVIOUSLY I WILL HAVE IN THE CHARGE
24 WHAT I TOLD MR. MANNING AND MR. BAKER ABOUT THE FACT THAT
25 THEY DID NOT TESTIFY I WILL INSTRUCT THE JURY THEY CAN'T

CHARGE CONFERENCE CONTINUED

306

1 CONSIDER THAT, CAN'T TALK ABOUT IT, IT CAN'T BE PART OF
2 THIS CASE IN ANY FASHION AND I WILL CERTAINLY TELL THEM
3 ABOUT THAT IN MY CHARGE TO THEM.

4 IS THERE ANYTHING ELSE THAT THE STATE KNOWS OF AT
5 THIS PRESENT IN TIME THAT YOU WOULD LIKE TO REQUEST OF ME?

6 MR. DEBUSK: NO, YOUR HONOR.

7 THE COURT: FROM THE DEFENDANT MANNING?

8 MR. MULLINS: NO, YOUR HONOR.

9 THE COURT: FROM THE DEFENDANT BAKER?

10 MR. GARDNER: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT, WELL THEN CERTAINLY IN
12 THE MORNING AND OVER THE EVENING IF YA'LL THINK OF
13 SOMETHING THAT YOU WANT ME TO CONSIDER I'LL BE GLAD FOR
14 YA'LL TO GIVE THAT TO ME IN THE MORNING AND I'LL CERTAINLY
15 LOOK AT IT AND SEE IF I WOULD WANT TO DO IT, ALL RIGHT?

16 MR. GARDNER: THANK YOU, JUDGE.

17 THE COURT: ALL RIGHT, I THINK THERE HAS BEEN
18 SUFFICIENT TIME FOR THE JURY TO HAVE EXITED THE BUILDING
19 AND GONE TO THEIR VEHICLES SO EVERYONE IS FREE TO LEAVE.
20 AGAIN, MR. BAKER, PLEASE REMEMBER THAT YOU REMAIN UNDER
21 THOSE TERMS AND CONDITIONS REGARDING YOUR BOND AND
22 OBVIOUSLY THE, YOU KNOW, ALL EVERYTHING THAT WE TALKED
23 ABOUT WILL STAY IN FULL FORCE AND AFFECT; YOU UNDERSTAND
24 THAT?

25 DEFENDANT BAKER: YES, SIR.

CHARGE CONFERENCE CONTINUED

307

1 THE COURT: ALL RIGHT, THANK YOU VERY MUCH, SEE
2 YOU BACK TOMORROW MORNING, GENTLEMEN, AT 10:00, THANK YOU.

3 MR. GARDNER: YES, SIR, 10:00.

4 MR. MULLINS: 10:00, YOUR HONOR.

5 (WHEREUPON, COURT WAS ADJOURNED FOR THE EVENING
6 AT 5:30 P.M..)

7 (WHEREUPON, COURT RESUMES ON NOVEMBER 15, 2006 AT
8 10:00 A.M.)

9 THE COURT: SOLICITOR DEBUSK, MR. GARDNER AND
10 MR. MULLINS, THE CLERK OF COURT GOT A PHONE CALL FROM ONE
11 OF THE JURORS, NUMBER 312 REGINA STARR, INDICATING THAT
12 THAT JUROR WAS UP ALL NIGHT SICK. THIS MORNING THAT JUROR
13 INDICATED THAT THEY WERE SICK ALL NIGHT, THEY ARE STILL
14 SICK THIS MORNING. THEY ARE UNABLE TO COME TO COURT SO
15 WHAT IS THE STATE'S POSITION AS TO THE ALTERNATE BEING
16 SEATED?

17 MR. DEBUSK: YOUR HONOR, THE STATE WOULD ASK
18 THAT YOU SEAT THE ALTERNATE.

19 THE COURT: ALL RIGHT, SIR. MR. MULLINS?

20 MR. MULLINS: DEFENDANT MANNING WOULD CONCUR.

21 THE COURT: MR. GARDNER?

22 MR. GARDNER: THAT'S FINE, YOUR HONOR, THANK
23 YOU.

24 THE COURT: ALL RIGHT, THE, WHEN THE JURORS
25 RETURN TO THE COURTROOM I WILL MAKE NOTE OF THIS AND TELL

CHARGE CONFERENCE CONTINUED

308

1 PART OF THE REGULAR JURY OF THIS PARTICULAR CASE.

2 ALL RIGHT, I DON'T KNOW THAT THERE'S MUCH TO TALK
3 ABOUT BUT AS FAR AS THE VERDICT FORM BUT, THE STATE, HAVE
4 YOU HAD A CHANCE TO LOOK AT THE VERDICT FORM?

5 MR. DEBUSK: YES, YOUR HONOR, NO OBJECTION.

6 THE COURT: FROM THE DEFENDANT MANNING, MR.
7 MULLINS?

8 MR. MULLINS: NO OBJECTION.

9 THE COURT: DEFENDANT BAKER?

10 MR. GARDNER: NO OBJECTION, YOUR HONOR.

11 THE COURT: ALL RIGHT, AND, MR. MULLINS, I HAVE
12 GIVEN FURTHER CONSIDERATION REGARDING YOUR REQUEST TO
13 CHARGE AND WHAT I HAVE DONE IS TAKING YOUR REQUEST TO
14 CHARGE NUMBER 4 AND CHANGED IT IN THIS FASHION TO STATE
15 THAT THE DEFENDANT'S MERE PRESENCE, SINCE THAT IS THE
16 CHARGE, THE DEFENDANT'S MERE PRESENCE WHERE A CRIME IS
17 BEING COMMITTED FOR MERE ASSOCIATION WITH A PERSON WHO
18 COMMITS A CRIME DOES NOT IN AND OF ITSELF MAKE A DEFENDANT
19 A CO-CONSPIRATOR OR ACCOMPLICE WHO HAS AGREED TO JOIN IN
20 THE COMMISSION OF A CRIME. SO WITH THAT I BASICALLY, IN MY
21 ESTIMATION AND FROM YOUR REQUEST TO CHARGE NUMBER 4 AND 5
22 AND THAT I BELIEVE IS THE PROPER CHARGE ON THE LAW AND
23 THAT'S WHAT I WILL CHARGE. I BELIEVE THE ESSENCE OF WHAT
24 YOU HAD REQUESTED IN YOUR REQUEST TO CHARGE 1, 2, AND 3 IS
25 CONTAINED IN MY MERE PRESENCE CHARGE. ANYTHING ELSE, MR.

CHARGE CONFERENCE CONTINUED

309

1 CONTAINED IN MY MERE PRESENCE CHARGE. ANYTHING ELSE, MR.
2 MULLINS?

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

4 THE COURT: ALL RIGHT. ALL RIGHT, BEFORE WE GET
5 STARTED, GENTLEMEN, IS THERE ANYTHING ADDITIONAL IN THE
6 REQUEST TO CHARGE THAT YOU WANTED TO BRING TO THE COURT'S
7 ATTENTION FROM THE STATE?

8 MR. DEBUSK: NO, YOUR HONOR, NOTHING FROM THE
9 STATE, YOUR HONOR.

10 THE COURT: FROM THE DEFENDANT MANNING?

11 MR. MULLINS: NO, SIR.

12 THE COURT: FROM DEFENDANT BAKER?

13 MR. GARDNER: DOES THE CLERK NEED THIS BACK OR
14 IS THIS A COPY FOR US TO LOOK AT?

15 THE COURT: THAT IS YA'LL'S COPY.

16 MR. GARDNER: THANK YOU, JUDGE.

17 THE COURT: THANK YOU VERY MUCH.

18 MR. GARDNER: NOTHING ELSE FROM US.

19 THE COURT: THAT'S YA'LL'S COPY. ALL RIGHT, SO
20 THERE'S NOTHING FURTHER FROM DEFENDANT BAKER AS REQUEST TO
21 CHARGE?

22 MR. GARDNER: NO, YOUR HONOR.

23 THE COURT: ALL RIGHT, SIR. ALL RIGHT, ANYTHING
24 ELSE FROM THE STATE AT THIS POINT IN TIME?

25 MR. DEBUSK: NOTHING FROM THE STATE, YOUR HONOR.

CHARGE CONFERENCE CONTINUED

310

1 THE COURT: ALL RIGHT, FROM THE DEFENDANT
2 MANNING?

3 MR. MULLINS: ON BEHALF OF DEFENDANT MANNING,
4 YOUR HONOR, TWO THINGS DURING MY CLOSING, I HAVE A HABIT OF
5 USING THE PULPIT IF THE COURT WOULD NOT MIND THE
6 DISTRACTION FOR THAT.

7 THE COURT: ABSOLUTELY NOT.

8 MR. MULLINS: AND I WOULD LIKE TO USE AS A
9 VISUAL AID DURING MY CLOSING FOUR OF THE COURT'S CHAIRS.

10 THE COURT: ALL RIGHT, SIR. ALL RIGHT --

11 MR. MULLINS: ANY FOUR WILL DO.

12 THE COURT: OKAY, WHY DON'T WE, IF YOU WOULD
13 THEN, WHY DON'T YOU, DO WE HAVE ENOUGH OVER HERE THAT WE
14 COULD USE?

15 THE BAILIFF: YES, SIR, YOU NEED, WHAT, FOUR?

16 THE COURT: YES, SIR.

17 THE BAILIFF: YES, SIR, WE HAVE THEM.

18 THE COURT: ALL RIGHT, SIR, ALL RIGHT, GOOD.

19 ALL RIGHT, IF YOU WANT, WHY DON'T WE JUST MOVE THOSE AROUND
20 SO THEY ARE CLOSER AND BEHIND THE COURT REPORTER'S AREA SO
21 AT THE RIGHT TIME SO IT WON'T TAKE ALL THAT LONG TO MOVE
22 THEM.

23 MR. DEBUSK: YOUR HONOR, WHILE WE'RE SETTING UP
24 I'M GOING TO BE USING THE EASEL. WILL IT BE ALL RIGHT IF I
25 SET THAT UP?

CLOSING ARGUMENT BY STATE

311

1 THE COURT: ALL RIGHT, SIR, WHY DON'T WE JUST
2 TAKE FIVE MINUTES, YA'LL GET ORGANIZED AND THEN WE'LL COME
3 BACK AND GET STARTED, THANK YOU VERY MUCH.

4 (WHEREUPON, A RECESS WAS TAKEN.)

5 THE COURT: LET'S HAVE THE JURY BACK, PLEASE.

6 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
7 10:47 A.M.)

8 THE COURT: ALL RIGHT, MA'AM, IF YOU'D JUST MOVE
9 DOWN ONE SEAT, PLEASE, NO, YOU STAY TO THE RIGHT THERE.
10 MR. VANDERHYDE, WHERE ARE YOU AT? I HAVE EXCUSED ONE JUROR
11 DUE TO SEVERE ILLNESS, THEREFORE, MR. VANDERHYDE, AS THE
12 ALTERNATE THAT YOU ARE NOW SUBSTITUTED IN HER PLACE AND YOU
13 ARE NOW A MEMBER OF THE REGULAR 12 FIRST JURY IN THIS
14 PARTICULAR CASE, ALL RIGHT.

15 ALL RIGHT, NOW, LADIES AND GENTLEMEN, WE ARE
16 GOING TO GO FORWARD WITH THE CLOSING ARGUMENTS AND THE
17 CHARGE OF THE LAW IN THIS PARTICULAR CASE. NOW AS I TOLD
18 YOU THE OPENING ARGUMENTS AND THE CLOSING ARGUMENTS THOSE
19 ARE NOT EVIDENCE, CAN'T BE CONSIDERED BY YOU AS EVIDENCE IN
20 THE CASE, BUT THESE CLOSING ARGUMENTS ARE IMPORTANT. THEY
21 ARE EACH SIDES SUMMATION, EACH SIDES PRESENTATION TO YOU OF
22 WHAT THEY BELIEVE THE EVIDENCE HAS SHOWN TO YOU DURING THE
23 COURSE OF THE TRIAL UNDERSTANDING, OF COURSE, THAT
24 COLLECTIVELY YA'LL ARE THE JUDGES OF THE FACTS IN THIS
25 PARTICULAR MATTER. THEY WILL GIVE TO YOU ARGUMENTS AS TO

CLOSING ARGUMENT BY STATE

312

1 WHAT THEY BELIEVE AND ULTIMATELY WHAT THEY'RE ASKING YOU TO
2 DO AS A RESULT OF YOUR COLLECTIVE WISDOM AND YOUR UNANIMOUS
3 VERDICTS IN BOTH OF THESE TWO PARTICULAR MATTERS. WHEN
4 THAT'S DONE I'LL GIVE YOU THE LAW THAT APPLIES TO THIS
5 PARTICULAR CASE AND THEN I WILL SUBMIT THE TWO CASES TO YOU
6 FOR YOUR DELIBERATIONS AND YOUR UNANIMOUS DECISION IN BOTH
7 MATTERS.

8 ALL RIGHT, SOLICITOR?

9 MR. DEBUSK: THANK YOU, YOUR HONOR, MAY IT
10 PLEASE THE COURT?

11 THE COURT: YES, SIR.

12 CLOSING ARGUMENT

13 BY MR. DEBUSK:

14 LADIES AND GENTLEMEN, I'VE BEEN DOING THIS JOB
15 FOR A WHILE NOW SEVERAL YEARS AND I'VE DEVELOPED MY HABITS
16 AND SOME MIGHT CALL THEM BAD HABITS BUT I LIKE TO THINK OF
17 IT AS SORT OF MY TRADEMARK AND ONE OF THEM IS, IS I LIKE TO
18 DO A LITTLE LITERARY QUOTATION BEGINNING WITH CLOSING.
19 TODAY'S FROM WILLIAM SHAKESPEARE'S PLAY JULIUS CAESAR A
20 SPEECH MARK ANTHONY MADE AT CAESAR'S FUNERAL. YOU PROBABLY
21 HAVE HEARD IT. FRIENDS, ROMANS, COUNTRYMAN, LEND ME YOUR
22 EARS, I COME TO BURY CAESAR NOT TO PRAISE HIM. I CHOOSE
23 THAT BECAUSE I'M HERE, I'M HERE TO SEEK JUSTICE FOR TROY
24 RIGGINS. I'M NOT HERE TO PRAISE HIM. MARK ANTHONY WENT
25 ON, THE EVIL THAT MEN DO LIVE AFTER THEM BUT THE GOOD IS

CLOSING ARGUMENT BY STATE

313

1 OFTEN INTERNED WITH THEIR BONES. THAT'S THE CASE HERE,
2 THERE HAD TO BE GOOD IN TROY RIGGINS. HIS MOTHER LOVED
3 HIM, THERE HAD TO BE GOOD IN HIM, BUT WE'RE NOT HERE TO
4 TALK ABOUT THAT, BUT WE ARE HERE IN A VERY ESSENTIAL WAY TO
5 TALK ABOUT SOMETHING BAD HE DID. HE'S A DRUG DEALER; HE
6 WAS SELLING DRUGS AND THAT'S WHAT GOT HIM KILLED. HE WAS
7 THE MAN WITH A BIG EIGHT, THAT FOUR OUNCES OF COCAINE GOT
8 HIM KILLED.

9 WHY? WELL YOU'VE HEARD OF THE, THE OLD GANGSTER
10 JOHN DILLINGER, THEY ASKED HIM ONCE, WHY DO YOU ROB BANKS,
11 MR. DILLINGER, AND HE SAID, CAUSE THAT'S WHERE THE MONEY IS
12 AND THAT'S WHY TROY RIGGINS IS DEAD BECAUSE HE WAS THE MAN
13 WITH THE BIG EIGHT. YOU WANT A BIG EIGHT YOU GO TO THE MAN
14 WITH THE BIG EIGHT.

15 NOW WE KNOW THAT TROY WAS A DRUG DEALER. I HATE
16 TO SPEAK POORLY OF THE DEAD BUT, BUT HE HAD ALL THE SIGNS
17 BECAUSE DRUG DEALERS THEY'RE KIND OF LIKE WAL MART OR
18 TARGET. THEY HAVE TO DEVELOP THE BRAND. TARGET, WHEN YOU
19 GO TO TARGET THEY'VE GOT THAT BIG SIGN WITH THE CONCENTRIC
20 RED CIRCLES, EVERYTHING IS RED. YOU GO IN THERE EVERYBODY
21 IS WEARING RED, THE SHELVES ARE ALL RED. THERE'S SO MUCH
22 RED IF YOU'RE A UNIVERSITY OF GEORGIA FAN IT MIGHT DRIVE
23 YOU CRAZY. THAT'S THE BRAND BECAUSE THEY WANT YOU TO KNOW
24 WHEN YOU SEE THAT RED, WHEN YOU SEE THAT TARGET SIGN YOU'RE
25 GOING TO GET QUALITY MERCHANDISE AND A DRUG DEALER IS THE

CLOSING ARGUMENT BY STATE

314

1 SAME WAY. HE HAS TO PUT FORTH AN IMAGE.

2 HE'S GOT A NICE CAR WITH THE BIG NICE RIMS, NICE
3 CLOTHES, ALWAYS GOT THAT BIG HORSE CHOKING WAD OF CASH IN
4 THEIR POCKET AND ALL KINDS OF BADGES. THIS ONE, YOU'VE GOT
5 TO BELIEVE IT SAYS IT, YOU LOOK AT THEM CLOSE YOU CAN SEE
6 THAT THESE, THESE TEETH COVERS THEY'VE GOT LITTLE MARIJUANA
7 LEAVES ON THEM WITH, WITH RUBIES INSIDE. THAT'S A BADGE
8 THAT SAYS I'M A PROSPEROUS DRUG DEALER. WHY IS THAT
9 IMPORTANT, BECAUSE IF THE DRUG DEALER IS MAKING ALL THE
10 MONEY PEOPLE WHO BUY FROM HIM ~~KNOW~~ HIS CUSTOMERS KEEP
11 COMING BACK AND WHEN THEY GO TO HIM THEY GET GOOD PRODUCT.
12 THEY GET THEIR MONEYS WORTH; HE'S A RELIABLE SOURCE,
13 BECAUSE IF HE'S NOT A RELIABLE SOURCE HE WON'T BE MAKING
14 THE MONEY AND HE WON'T BE ABLE TO GET THE NICE CAR AND THE
15 FANCY TEETH, THE BADGES OF THE OFFICE.

16 NOW IF A DRUG BUYER TAKES THE DRUGS WITHOUT
17 PAYING FOR THEM, FOR INSTANCE, WELL THEN THE DRUG DEALER
18 WON'T SELL IT TO THEM ANYMORE BUT HE CAN SELL IT TO
19 EVERYONE ELSE. IF THE DRUG BUYER DOESN'T PAY WELL HE DOES
20 THAT A FEW TIMES EVERYBODY IN TOWN, NOBODY IN TOWN WILL
21 SELL IT TO HIM. HE MIGHT HAVE TO GO OUT OF STATE, GO TO
22 ANOTHER STATE JUST TO BUY DRUGS. I BET YOU THAT'S PROBABLY
23 WHAT HAPPENED HERE, BUT I'M GETTING A LITTLE FAR AFIELD.

24 LET'S LOOK DIRECTLY IN THIS CASE AT THE EVIDENCE,
25 THE EVIDENCE YOU SAW FROM THAT STAND BECAUSE THAT'S WHAT

CLOSING ARGUMENT BY STATE

315

1 YOU HAVE TO JUDGE BY, AND THERE WERE TWO, REALLY THREE
2 KINDS OF EVIDENCE IN THIS CASE. THERE'S CIRCUMSTANTIAL
3 EVIDENCE, AND THE JUDGE WILL INSTRUCT YOU THAT'S THE SAME,
4 YOU CAN JUDGE THAT THE SAME AS DIRECT EVIDENCE, YOU HAVE TO
5 JUDGE ITS CREDIBILITY AND IF IT POINTS AS A CONCLUSION YOU
6 HAVE TO FOLLOW THAT POINTING AND THERE WAS DIRECT
7 TESTIMONIAL EVIDENCE AND THERE WAS PHYSICAL EVIDENCE, THREE
8 DIFFERENT KINDS. I WANT TO TALK A LITTLE BIT ABOUT EACH IN
9 TERM.

10 LET'S START WITH THE CIRCUMSTANTIAL EVIDENCE AND
11 THERE'S ONE GLARING FACT FROM THE CIRCUMSTANTIAL EVIDENCE
12 IN THIS CASE THAT IS UNDENIABLE AND THAT IS ON DECEMBER THE
13 21ST, 2000, TROY RIGGINS DIDN'T EXPECT TROUBLE. IT'S
14 CLEAR. TROY RIGGINS WAS JUST OUT TO MAKE A BUCK, TO SELL A
15 BIG EIGHT. HOW DO WE KNOW THAT? WELL A CAR FULL OF GUYS
16 FROM NORTH CAROLINA, FIVE OF THEM, PULL UP TO HIM. HE'S
17 OUTNUMBERED FIVE TO ONE AND WHAT DOES HE DO, HE LEADS THEM
18 OFF TO A SECLUDED PLACE. HE'S OUTNUMBERED FIVE TO ONE AND
19 HE GOES OFF TO SOME CLOSED RESTAURANT, PARKS IN THE PARKING
20 LOT AWAY FROM THE STREET, GOOD PLACE TO CONDUCT A DRUG
21 DEAL, NOT A VERY GOOD PLACE IF YOU'RE OUTNUMBERED AND
22 YOU'RE FACING A FIGHT.

23 WHAT ELSE DID HE DO THAT SHOWS HE WASN'T
24 EXPECTING TROUBLE? WELL HE DID SOMETHING THAT NOBODY
25 WHETHER THEY'RE IN A FIST FIGHT OR IN A MILITARY CAMPAIGN

CLOSING ARGUMENT BY STATE

316

1 WOULD EVER WE DO. HE LET HIMSELF GET OUTFLANKED AND NOT
2 ONLY THAT HE LET HIS ENEMY GET BEHIND HIM. IF YOU'RE IN A
3 FIST FIGHT OR IF YOU'RE IN A WAR YOU WANT TO KEEP YOUR
4 ENEMY IN FRONT OF YOU WHERE YOU CAN KEEP AN EYE ON HIM OR
5 WHERE YOU CAN STRIKE YOUR BLOWS AND WHEN YOU LET YOUR ENEMY
6 BEHIND YOU YOU'RE LOST AND HE NOT ONLY DID HE LET ONE OF
7 HIS ATTACKERS GET IN THE CAR BESIDE HIM, YOU HEARD THE
8 TESTIMONY, THAT WAS THE DEFENDANT RASHAD BAKER, HE LET THE
9 OTHER ONE GET IN BEHIND HIM WHERE HE COULDN'T EVEN KEEP AN
10 EYE ON HIM, TELLY MANNING SEATING IN THE BACKSEAT BY THE
11 TESTIMONY. TROY RIGGINS WASN'T EXPECTING TROUBLE, HE WAS
12 EXPECTING A QUICK BUCK.

13 SOMETHING ELSE THE CIRCUMSTANTIAL EVIDENCE TELLS
14 YOU, TELLY MANNING AND RASHAD BAKER WERE EXPECTING TROUBLE.
15 HOW DO WE KNOW THAT, WELL LOOK AT THE CIRCUMSTANCES. THEY
16 CAME ALL THE WAY FROM NORTH CAROLINA TO A PLACE WHERE
17 NOBODY KNEW THEM. WHY DIDN'T THEY BUY THAT BIG EIGHT IN
18 NORTH CAROLINA? WHY DIDN'T THEY GET IT IN ROWLAND OR
19 NEARBY, MAYBE IN LUMBERTON? WAS IT BECAUSE EVERYBODY KNEW
20 THEM THERE AND IF THEY HAD TRIED SOMETHING LIKE THIS IN
21 NORTH CAROLINA THEY'D KNOW WHO THEY WERE AND THEY MIGHT
22 CALL THE POLICE AND IDENTIFY THEM OR WORSE YET, NOT CALL
23 THE POLICE AND TAKE CARE OF IT THEMSELVES. WAS IT BECAUSE
24 NOBODY ON ROWLAND WOULD SELL TO THEM ANYMORE? I DON'T
25 KNOW, BUT THEY DID, THEY LEFT ROWLAND AND CAME ALL THE WAY

CLOSING ARGUMENT BY STATE

317

1 TO SOUTH CAROLINA TO BUY THIS BIG EIGHT.

2 WHAT ELSE DID THEY DO? THEY BROUGHT PLENTY OF
3 COMPANY, BROUGHT A WHOLE POSSE. THEY WERE FIVE MEN IN THAT
4 CAR, SIX MEN, I'M SORRY, SIX MEN IN THAT CAR, FIVE, I'M
5 SORRY, EXCUSE MY MATH, AND THEY WEREN'T SMALL GUYS EITHER,
6 THEY WERE BIG GUYS. YOU SAW ERNEST SMITH, YOU SAW DERRICK
7 BOWENS. HE'S A BIG GUY, MUSCULAR, LOOKS LIKE HE MIGHT HAVE
8 PLAYED FOOTBALL AT SOME POINT. YOU SEE THE DEFENDANT'S,
9 THEY'RE BIG GUYS. THERE'S ONE MORE WHO'S A BROTHER OF ONE
10 OF THE DEFENDANT'S. HE MUST HAVE BEEN, COULDN'T HAVE BEEN
11 A SMALL GUY EITHER, ALL PACKED IN THAT LITTLE CAR, PRETTY
12 INTIMIDATING, AND THEY WEREN'T JUST ANYBODY. THEY WERE
13 PEOPLE THEY COULD TRUST, THEY WERE THEIR COUSINS.
14 EVERYBODY IN THERE WAS EITHER COUSINS OR BROTHERS TO
15 EVERYBODY ELSE, PEOPLE THEY COULD RELY ON. YOU SAW EVEN
16 SIX YEARS LATER HOW HESITANT ERNEST SMITH WAS TO TESTIFY
17 AGAINST THESE GUYS. THEY KNEW THEY COULD TRUST ERNEST.

18 ERNEST GOT UP THERE, HE DIDN'T EVEN WANT TO SAY
19 IT WAS RASHAD THAT WAS LOOKING FOR THOSE DRUGS. HE SAID I
20 WAS TRYING TO FIND A BIG EIGHT AND IT WASN'T UNTIL RASHAD'S
21 OWN ATTORNEY PUSHED HIM THAT HE SAID, IT WASN'T ME LOOKING
22 FOR THE BIG EIGHT, IT WAS RASHAD.

23 YOU SAW DERRICK. HE WAS BEING HONEST BUT HE
24 DIDN'T WANT TO SAY THAT THEY RAN BACK FROM THE CAR. HE
25 JUST DIDN'T WANT TO SAY THAT. YEAH, HE SAID IT BACK IN

CLOSING ARGUMENT BY STATE

318

1 2001 BUT NOW I CAN'T REMEMBER, WANTED TO GIVE HIS COUSINS A
2 BREAK. THEY HAD PICKED THE RIGHT GUYS. THEY WERE BIG AND
3 THEY WERE RELIABLE.

4 THE MOST IMPORTANT THING, THE MOST IMPORTANT
5 THING THAT SHOWS ABSOLUTELY THAT TELLY MANNING AND RASHAD
6 BAKER WERE EXPECTING TROUBLE IS THEY BROUGHT GUNS. YOU
7 HEARD ERNEST SMITH TESTIFY, HE SAID IT SEVERAL TIMES, THEY
8 HAD GUNS SHOVED DOWN THE FRONT OF THEIR PANTS. HE SAW THEY
9 TAKE THE GUN WITH THEIR HAND PUT IT IN THE FRONT OF THEIR
10 PANTS. BOTH OF THEM HAD A GUN, ONE GUN A PIECE. THEY WERE
11 EXPECTING TROUBLE AND THE BIGGEST PIECE OF CIRCUMSTANTIAL
12 EVIDENCE OF ALL IS THREE PEOPLE CAME OUT OF THAT CAR, WENT
13 INTO THAT CAR, WENT INTO THAT LINCOLN, THREE PEOPLE, TO BUY
14 A BIG EIGHT. YOU HAD TROY RIGGINS, YOU HAD TELLY MANNING,
15 AND YOU HAD RASHAD BAKER, BUT ONLY TWO CAME OUT. TROY
16 HEMINGWAY STAYED IN THERE FATALLY WOUNDED, I'M SORRY, TROY
17 RIGGINS STAYED IN THERE FATALLY WOUNDED, BIGGEST PIECE OF
18 CIRCUMSTANTIAL EVIDENCE OF ALL.

19 LET'S LOOK AT THE DIRECT TESTIMONIAL EVIDENCE,
20 EVEN MORE IMPORTANT. YOU HEARD FROM THE STAND TWO
21 WITNESSES, COUSINS OF THE DEFENDANT'S, GET UP THERE AND
22 SAY, RASHAD BAKER AND TELLY MANNING GOT OF THE CAR, GOT OUT
23 OF THE NISSAN AND GOT INTO THE LINCOLN AND THEY WERE
24 LOOKING FOR A BIG EIGHT. THEY WERE LOOKING TO BUY DRUGS.

25 YOU HEARD ERNEST SMITH SAY THEY BOTH HAD GUNS.

CLOSING ARGUMENT BY STATE

319

1 YOU HEARD DERRICK BOWENS SAY WHEN THEY WERE IN
2 THERE EVEN THOUGH THE RADIO WAS TURNED UP AND WE WERE
3 TALKING ABOUT SOMETHING ELSE AND I WASN'T PAYING ATTENTION
4 TO THE LINCOLN I HEARD A SHOT WHILE THEY WERE IN THERE IN
5 THAT LINCOLN, DIRECT TESTIMONIAL EVIDENCE WHAT HAPPENED IN
6 THAT CAR.

7 HERE'S SOMETHING ELSE VERY IMPORTANT AS WELL,
8 THEY CAME BACK TO THE CAR EITHER RUNNING OR WALKING, THEY
9 CAME BACK TO THAT CAR, BUT WHEN THEY CAME BACK TO THE CAR
10 THE MOOD HAD CHANGED. BEFORE THAT THEY HAD BEEN HAPPY,
11 THEY HAD BEEN JOKING, DRIVING AROUND, BUT THEY GOT IN THERE
12 IT CHANGED. IT WAS NO MORE OUTLET MALLS, IT WAS JUST
13 DRIVE, GET US OUT OF HERE. IT WAS QUIET IN THERE AND THE
14 PLAN CHANGED. THEY DIDN'T GO TO THE OUTLET MALLS. THEY
15 TURNED AROUND AND HIGH TAILED IT BACK TO NORTH CAROLINA AND
16 THEY KNEW SOMETHING BAD HAD HAPPENED. THEY MAY NOT HAVE
17 ASKED. ERNEST SMITH AND DERRICK BOWENS MAY NOT HAVE ASKED
18 BUT THEY KNEW SOMETHING BAD HAD HAPPENED. WHY, BECAUSE
19 THEY HAD PICKED ERNEST SMITH UP AT HIS HOUSE, THAT'S WHERE
20 HE WAS, HE DIDN'T HAVE A RIDE TO GO ANYWHERE ELSE AND
21 INSTEAD OF TAKING HIM BACK TO HIS HOUSE THEY TOOK HIM BACK
22 TO ROWLAND, NORTH CAROLINA, HAD HIM DRIVE, AND HE NEVER
23 EVEN ASKED WHY DIDN'T YOU TAKE ME BACK TO MY HOUSE, BECAUSE
24 HE KNEW SOMETHING BAD HAD HAPPENED AND DERRICK BOWENS, HE
25 WANTED TO GO CHRISTMAS SHOPPING, THAT'S WHY HE WAS ALONG.

CLOSING ARGUMENT BY STATE

320

1 HE DIDN'T HAVE ANYTHING TO DO WITH THIS DRUG DEAL, HE WAS
2 JUST ALONG FOR THE RIDE. HE KNEW WHAT THEY WERE DOING BUT
3 HE FIGURED AFTER THIS THEY WILL DO THEIR BUSINESS AND WE'LL
4 GO ON DOWN TO THE OUTLET MALLS. THEY LEFT, DIDN'T EVEN GO,
5 GO TO THE OUTLET MALLS. WHEN THEY GOT IN THE HIGHWAY
6 INSTEAD OF TURNING SOUTH THEY TURNED NORTH AND HE DIDN'T
7 ASK WHY BECAUSE HE KNEW SOMETHING BAD HAD HAPPENED IN THAT
8 CAR, DIRECT TESTIMONIAL EVIDENCE, SOMETHING BAD HAPPENING
9 AND IT WAS A SHOOTING BECAUSE THEY HEARD A SHOT AND THAT IT
10 WAS TELLY MANNING AND RASHAD BAKER EACH HAD A GUN THAT DID
11 THAT SHOOTING AND THAT'S THE IMPORTANT TESTIMONIAL EVIDENCE
12 BUT THERE'S SOMETHING ELSE.

13 . THERE IS ANOTHER WITNESS THERE WHO ISN'T EVEN A
14 LIVING PERSON, THAT'S THE CRIME SCENE. IT'S A WITNESS THAT
15 CAN'T LIE, AND THE CRIME SCENE IN THIS CASE WAS TWO THINGS.
16 IT WAS A LINCOLN AND IT WAS THE BODY OF TROY RIGGINS.

17 YOU REMEMBER THE TWO EXPERTS, A DOCTOR AND A SLED
18 AGENT. THEY EXPLAINED TO YOU, WENT TROUGH IT WITH YOU IN
19 DETAIL ABOUT ALL THE WOUNDS ON THE BODY OF TROY RIGGINS AND
20 ALL THE BULLETS THAT WERE TAKEN FROM HIS BODY AND YOU HEARD
21 FROM THE CRIME SCENE ANALYST JEFF GAUSE. HE TOLD YOU ABOUT
22 WHAT THAT CAR WAS LIKE. THERE WEREN'T ANY BULLET HOLES IN
23 THAT CAR EXCEPT ONE PLACE, RIGHT BESIDE TROY RIGGINS BODY,
24 NOTHING ON THE PASSENGER SIDE, NOTHING IN THE BACKSEAT.
25 ALL OF THE SHOTS THAT WERE FIRED IN THAT CAR WENT INTO TROY

CLOSING ARGUMENT BY STATE

321

1 RIGGINS.

2 YOU HEARD ABOUT ALL THESE SHOTS, ABOUT SEVEN
3 ENTRANCE WOUNDS, BUT I TELL YOU THOSE SEVEN ENTRANCE WOUNDS
4 ONLY REPRESENT SIX SHOTS, LET ME TELL YOU WHY. YOU HAVE TO
5 PLAY A LITTLE GAME YOU MIGHT HAVE PLAYED WHEN YOU WERE A
6 KID WHICH OF THESE THINGS IS NOT LIKE THE OTHER. LOOK AT
7 EVERY ONE OF THESE SHOTS AND REMEMBER THE DARKER COLOR, THE
8 THE ENTRANCE SHOTS RED, EVERY ONE AND ON THE ARMS AND HERE
9 COULD HAVE BEEN EXPLAINED BY SHOTS COMING FROM THE FRONT.
10 THE ARMS DON'T NECESSARILY HAVE TO BE LIKE THIS. THEY
11 MIGHT HAVE BEEN LIKE THIS. EVERY ONE OF THOSE CAN BE
12 EXPLAINED BY A SHOT FROM THE FRONT EXCEPT ONE, (J), WOUND
13 (J) A LITTLE ROUND ENTRANCE HOLE.

14 THE PRISTINE THING ABOUT THAT WOUND (J) ALL THESE
15 WOUNDS THEY RECOVERED BULLETS FROM OR THEY RECOVERED
16 FRAGMENTS OF BULLETS THERE WAS NOTHING ASSOCIATED WITH
17 WOUND (J), THAT BULLET PASSED CLEAN THROUGH, REMEMBER THE
18 DOCTOR'S TESTIMONY, IT CAME OUT AT WOUND (C), LOOK AT WOUND
19 (J) A LITTLE ROUND ENTRANCE HOLE.

20 LOOK AT WOUND (C) IT'S DIFFERENT, IT'S OBLONG.
21 WHY, BECAUSE A BULLET IS NOT ROUND LIKE A SPHERE, IT'S
22 OBLONG LIKE, LIKE THE END OF THAT PEN AND IF IT GOES IN
23 STRAIGHT IT JUST MAKES A LITTLE ROUND HOLE AND WHEN IT CAME
24 OUT IT WAS NO LONGER GOING STRAIGHT, IT WAS NOW TUMBLING.
25 IT CAME OUT AT AN ANGLE SO INSTEAD OF IT GOING IN LIKE THIS

CLOSING ARGUMENT BY STATE

322

1 IT CAME OUT LIKE THIS AND MADE AN OBLONG HOLE. IF YOU LOOK
2 AT EVERY ONE OF THOSE ENTRANCE WOUNDS ON THIS BODY THEY'RE
3 JUST LIKE WOUND (J), LITTLE ROUNDS HOLES. THE PICTURES ARE
4 THERE YOU CAN LOOK AT THEM.

5 THERE'S ONE EXCEPTION. THERE'S ONE ENTRANCE
6 WOUND THAT'S NOT LIKE THE OTHERS, YOU LOOK AT IT CAREFULLY,
7 WOUND (D). WOUND (D) IT'S OBLONG, IT'S NOT ROUND. THAT
8 BULLET LIKE THE BULLET THAT EXITED THROUGH HOLE (C) WAS
9 TUMBLING. IT WAS NOT GOING STRAIGHT. IT'S IN EVIDENCE,
10 YOU CAN LOOK AT IT AS MUCH AS YOU WANT AND THERE'S
11 SOMETHING ELSE DIFFERENT ABOUT WOUND (E) AND FOR THAT YOU
12 NEED TO LOOK AT THE X-RAYS.

13 YOU RECALL TROY RIGGINS HAD ARMS BROKEN IN THREE
14 PLACES, WOUND (D) AND WOUND (G), THEY BOTH BROKE THE ARM.
15 (C) BROKEN ARM, LOOK AT THE BULLET, THE BULLET ISN'T WHOLE.
16 THE BULLET HAS SHATTERED. IT'S IN FRAGMENTS AND THE OTHER
17 UPPER ARM ALSO BROKEN, LOOK AT THE BULLET, IT'S SHATTERED,
18 IT'S IN FRAGMENTS.

19 WHAT IS DIFFERENT ABOUT WOUND (E), THAT BULLET
20 DIDN'T SHATTER. IT BROKE THE ARM BUT IT DIDN'T SHATTER,
21 DIDN'T EVEN SHATTER THE BONE, JUST BROKE IT CLEAN. IT
22 WASN'T GOING AS FAST AS THOSE OTHER TWO BULLETS. IT HAD
23 BEEN SLOWED. IT HAD BEEN SLOWED BY PASSING THROUGH WOUND
24 (J) OUT THROUGH WOUND (C). IT BEGAN TUMBLING AND THERE'S
25 SOMETHING ELSE THAT'S DIFFERENT ABOUT THAT BULLET, TOO,

CLOSING ARGUMENT BY STATE

323

1 BESIDES BEING WHOLE, A DENT IS ON THE SIDE OF THE BULLET,
2 THAT BULLET WAS TUMBLING WHEN IT ENTERED. IT WAS TUMBLING
3 BECAUSE IT HAD ALREADY PASSED THROUGH HIS SHOULDER.
4 THERE'S SOMETHING VERY, VERY IMPORTANT ABOUT THAT. I HAVE
5 TO GET A CHAIR TO SHOW YOU.

6 THIS IS WHAT THE PHYSICAL EVIDENCE, THE WOUND
7 THAT CAN'T LIE TELLS YOU. UNLIKE EVERY ONE OF THOSE OTHER
8 INJURIES WOUND (J) CAME FROM THE BACK, RIGHT HERE, CAME OUT
9 HERE LIKE THAT AND FOR THAT BULLET TO HAVE BEEN SLOWED DOWN
10 TO PASS THROUGH HERE AND BREAK THIS ARM TO COME OUT WHOLE
11 WITH A DENT ON THE SIDE IT HAD TO HIT THE RIGHT ARM WHEN
12 THAT BULLET CAME OUT. THAT PLACES TROY RIGGINS HAND IN
13 FRONT OF HIM, BULLET COMING FROM THE BACK WITH TROY RIGGINS
14 HAND IS IN FRONT OF HIM JUST LIKE IT WAS SITTING ON THE
15 STEERING WHEEL. IT CAME FROM HIS BACK WHERE HE COULDN'T
16 SEE. HE WASN'T EXPECTING IT.

17 WHAT'S SO DIFFERENT ABOUT EVERY OTHER ENTRANCE
18 WOUND, IT COMES FROM THE FRONT, EVERY OTHER ENTRANCE WOUND
19 COMES FROM THE FRONT. (A), (B), (G), (D) ALL FROM THE
20 FRONT. (K), OH, (K) COULD HAVE COME FROM ANYWHERE BECAUSE
21 IT'S ON THE HAND AND THE HAND CAN GO ANYWHERE BUT ALL THOSE
22 OTHER ONES HAVE TO COME FROM THE FRONT BUT THIS ONE (J)
23 GOING THROUGH TO (E) CAME FROM THE BACK. THAT WAS THE
24 FIRST SHOT, LADIES AND GENTLEMEN.

25 WHY DID THE OTHER SHOTS COME FROM THE FRONT, I

CLOSING ARGUMENT BY STATE

324

1 PUT IT TO YOU BECAUSE TROY RIGGINS DID SOMETHING TOO LATE
2 THAT HE SHOULD HAVE DONE FROM THE BEGINNING, HE TURNED TO
3 FACE HIS ATTACKERS, HIT HERE YOU CAN IMAGINE THE PAIN OF
4 SHATTERING THE LOWER ARM. THAT GOT HIS ATTENTION SO HE
5 TURNED AROUND, WHAT'S GOING ON, AND WAS MET BY A FUSILLADE
6 OF FIRE, LADIES AND GENTLEMEN. FIVE MORE BULLETS CAME INTO
7 HIM HITTING IN EACH ARM BREAKING EACH ARM, THE FATAL
8 BULLETS HERE AND HERE, AND THE ONE MORE IN HIS HAND, AND
9 THERE'S SOMETHING ELSE VERY IMPORTANT ABOUT ONE OF THESE
10 FATAL WOUNDS, IT'S WOUND (B).

11 YOU HEARD THE DOCTOR TESTIFY ABOUT IT. WHAT'S
12 DIFFERENT ABOUT WOUND (B) IT'S A CONTACT WOUND. THAT MEANS
13 THE BARREL OF THE GUN WAS RIGHT UP AGAINST HIS STOMACH WHEN
14 THAT FIRED, SHOT WAS FIRED, THE BARREL WAS IN CONTACT.

15 THIS SHOT HAD TO COME FROM THE BACKSEAT BECAUSE
16 THAT'S, THAT'S WHERE THE ONLY PLACE IT COULD HAVE COME FROM
17 FROM HIS REAR. THIS SHOT HAD TO COME FROM THE FRONT SEAT.

18 SOMETHING ELSE INTERESTING, TOO, IF YOU LOOK AT
19 THE BULLET THAT INFLECTED THE DAMAGE IN WOUND (E) AND THE
20 BULLET THAT INFLECTED THE DAMAGE AT WOUND (B) (E) AND (B),
21 (E) WAS A 9MM LUGER (B) WAS A .38 SPECIAL, TWO DIFFERENT
22 GUNS, TWO DIFFERENT LOCATIONS, A 9MM IN THE BACKSEAT
23 SHOOTING THROUGH WOUND (J) HITTING IN THE ARM, .38 IN THE
24 FRONT SEAT PUTTING THE BARREL RIGHT UP AGAINST TROY RIGGINS
25 STOMACH AND FIRING THAT FATAL SHOT. PHYSICAL EVIDENCE

CLOSING ARGUMENT BY STATE

325

1 TELLS YOU NOT ONLY WHY TROY RIGGINS DIED IT TELLS YOU HOW
2 HE DIED AND WHO DID IT. IT TELLS YOU TELLY MANNING IN THE
3 BACKSEAT WITH A 9MM FIRED THE FIRST SHOT AND THEN ACTING IN
4 CONCERT BOTH RASHAD BAKER AND TELLY MANNING IN THE BACKSEAT
5 INTENDING TO FIRE WHEN HE TURNED AROUND TO FACE HIS
6 ATTACKERS AND TROY RIGGINS WAS LEFT, LEFT WITH TWO BROKEN
7 ARMS, ONE BROKEN IN TWO PLACES, HELPLESS, AND THEN HIS
8 ATTACKERS LEFT.

9 RASHAD BAKER AND TELLY MANNING LEFT BUT THEY
10 DIDN'T LEAVE WITH EMPTY HANDS BECAUSE THEY TOOK THE ONE
11 THING THAT WAS MISSING FROM THE CRIME SCENE, ONE THING THAT
12 WASN'T THERE, THEY TOOK THE BIG EIGHT. THEY TOOK FOUR
13 OUNCES OF COCAINE, WHAT THEY CAME ALL THE WAY FROM NORTH
14 CAROLINA LOOKING FOR, THE BIG EIGHT, 100, OVER 110 GRAMS OF
15 COCAINE GONE.

16 YOU HAD ERNEST SMITH SAY, ERNEST SEEMED TO KNOW
17 THESE THINGS, FOUR OUNCE OF COCAINE \$2,000. THEY TOOK
18 \$2,000 WORTH OF COCAINE, THAT'S WHY TROY RIGGINS DIED AND
19 THEY FLED TO NORTH CAROLINA AND TROY RIGGINS WAS LEFT
20 FATALLY INJURED, A POCKET FULL OF MONEY, A LITTLE BIT LESS
21 THAN AN OUNCE, NOT EVEN A QUARTER OF WHAT A BIG EIGHT IS, A
22 LITTLE BIT LESS THAN OUNCE IN HIS POCKET OF COCAINE, SIX
23 BULLETS IN HIS BODY.

24 THAT'S WHAT THE PHYSICAL EVIDENCE TELLS YOU,
25 LADIES AND GENTLEMEN, TELLS YOU THE STORY OF TWO GUNS

CLOSING ARGUMENT BY STATE

326

1 FIRING IN THAT CAR, A STIPPLING ON SOME OF THE WOUNDS,
2 CONTACT ON SOME OF THE WOUNDS, TWO GUNS FIRING IN CLOSE
3 CONFINES, ONE FROM THE REAR AND ONE FROM THE SIDE, KILLING
4 TROY RIGGINS, A WITNESS THAT CAN'T LIE, AND YOU ADD ALL
5 THAT EVIDENCE TOGETHER, THE CIRCUMSTANTIAL AND THE
6 TESTIMONIAL AND THE PHYSICAL AND YOU COME UP WITH ONLY ONE
7 ANSWER OF WHAT HAPPENED, TROY RIGGINS DIED BECAUSE HE HAD A
8 BIG EIGHT.

9 TELLY MANNING AND RASHAD BAKER CAME ALL THE WAY
10 FROM ROWLAND, NORTH CAROLINA, DOWN TO FREEMONT, SOUTH
11 CAROLINA, LOOKING FOR SOMEBODY WITH A BIG EIGHT. THEY WERE
12 LOOKING FOR A BIG MARK TO BEGIN WITH, BUT YOU KNOW
13 SOMETHING, BIG MARK MAY NOT KNOW IT BUT DECEMBER 21ST,
14 2000, WAS THE LUCKIEST DAY OF HIS LIFE BECAUSE THEY DIDN'T
15 FIND HIM. WE MAY BE HERE TODAY TALKING ABOUT THE MURDER OF
16 BIG MARK, WHOEVER HE MIGHT BE, BUT INSTEAD WE'RE TALKING
17 ABOUT TROY RIGGINS BECAUSE HE WAS THE MAN WITH THE BIG
18 EIGHT. THEY CAME DOWN HERE LOOKING FOR HIM. THEY FOUND
19 HIM.

20 NOW DID THEY PLAN ALL THE WAY FROM ROWLAND TO DO
21 WHAT THEY DID, WELL THERE'S EVIDENCE THAT THEY DID. THEY
22 BROUGHT THEIR GUNS, THEY BROUGHT THEIR POSSE, THEY CAME TO
23 A PLACE WHERE NOBODY KNEW THEM, BUT I WANT YOU TO REMEMBER
24 WE DON'T HAVE TO PROVE THAT. THAT'S NOT PART OF THE PROOF
25 OF THIS CASE. THEY COULD HAVE DECIDED ON THE SPUR OF THE

CLOSING ARGUMENT BY STATE

327

1 MOMENT HERE'S AN EASY SCORE, LET'S TAKE IT AND THAT'S STILL
2 MURDER. AS LONG AS YOU BELIEVE THAT TROY RIGGINS WAS
3 KILLED WITH MALICE AFORETHOUGHT IT'S MURDER, AND SO LET'S
4 LOOK BRIEFLY AT THE ELEMENTS OF THIS CRIME.

5 I JUST SAID THE KILLING, UNLAWFUL KILLING OF
6 ANOTHER WITH MALICE AFORETHOUGHT AND CLEARLY TROY RIGGINS
7 WAS KILLED, THAT'S ELEMENTARY. IT WAS UNLAWFUL BECAUSE
8 THEY HAD NO REASON TO KILL HIM. HE WAS SITTING THERE
9 MINDING HIS OWN BUSINESS. IT APPEARS HIS HAND WAS IN FRONT
10 OF HIM, PROBABLY ON THE STEERING WHEEL WHEN THAT FIRST SHOT
11 HIT HIM. HE WAS DOING NOTHING TO, TO THREATEN OR TO HARM
12 AND HE WAS KILLED. IT'S UNLAWFUL KILLING OF ANOTHER WITH
13 MALICE AFORETHOUGHT.

14 WHAT PROVES MALICE? ONE, A SHOT FIRED FROM
15 BEHIND WHERE HE COULDN'T SEE IT COMING. TWO, A SHOT FIRED
16 WITH A GUN IN CONTACT WITH HIS STOMACH. THAT'S NOT A SHOT
17 THAT YOU PUT TO INJURE. THAT'S NOT A THREAT. THAT IS TO
18 KILL, THAT IS A SHOT TO KILL. YOU CAN'T MISS WHEN THE
19 BARREL IS TOUCHING THE VICTIM. MALICE AFORETHOUGHT, THE
20 WOUNDS PROVE IT, THE EVIDENCE PROVES IT, THE MISSING BIG
21 EIGHT PROVES IT, AND REMEMBER AFORETHOUGHT DOESN'T MEAN
22 THEY PLANNED IT. AFORETHOUGHT COULD HAVE COME ON THE SPUR
23 OF THE MOMENT. IT COULD BE THAT THEY CAME ALL THE WAY FROM
24 NORTH CAROLINA INTENDING TO DO TO BIG MARK EXACTLY WHAT
25 THEY DID TO TROY RIGGINS OR IT COULD BE THAT THEY WERE, HAD

CLOSING ARGUMENT FOR DEFENDANT MANNING

328

1 SOME OTHER PLAN AND WHEN THEY FOUND OUT THAT TROY RIGGINS
2 DIDN'T TAKE ANY PRECAUTIONS AND GAVE THEM A CHANCE FOR AN
3 EASY SCORE THEY TOOK THAT CHANCE WHEN THEY FOUND OUT THEY
4 HAD HIM OUTNUMBERED. THEY HAD HIM OUTNUMBERED FIVE TO ONE
5 IN TOTAL AND TWO TO ONE IN THAT CAR. THEY HAD ARMED, EACH
6 ONE HAD A GUN AND THEY HAD POSITION ON HIM, ONE IN THE REAR
7 AND ONE AT THE FLANK. MAYBE THEY DECIDED RIGHT THEN THIS
8 IS AN EASY SCORE LET'S DO IT, LET'S GET THAT \$2,000 WORTH
9 OF DRUGS, LET'S GET THAT BIG EIGHT, LET'S GET THAT FOUR
10 OUNCES OF COCAINE, LET'S GET THAT OVER 110 GRAMS OF COCAINE
11 AND GET OUR BUTTS BACK IN NORTH CAROLINA.

12 IF YOU BELIEVE BASED ON ALL THIS EVIDENCE THAT
13 THEY KILLED TROY HEMINGWAY WITH MALICE, TROY RIGGINS WITH
14 MALICE AFORETHOUGHT YOU HAVE TO FIND THEM GUILTY OF MURDER
15 SO I PUT IT TO YOU, LADIES AND GENTLEMEN, PUT IT TO YOU TO
16 NOT TO PRAISE TROY RIGGINS BUT TO GIVE HIM JUSTICE, GIVE
17 HIM JUSTICE ANYONE DESERVES BECAUSE HE WAS KILLED FOR
18 NOTHING, FOR DRUGS. HE DIED FOR THE BIG EIGHT AND WHAT DID
19 HE GET IN EXCHANGE.

20 THIS, THIS, THIS LITTLE TRANSACTION WHERE HE
21 EXPECTED TO MAKE A QUICK BUCK, WHAT DID HE GET, HE LOST HIS
22 BIG EIGHT AND HE LOST HIS LIFE AND WHAT DID HE GET IN
23 RETURN, SIX LITTLE PIECES OF LEAD. IT'S SORT OF WOULD BE
24 IRONIC, WOULDN'T IT, THE TOTAL WEIGHT OF THOSE IS ABOUT
25 FOUR ROUNDS, BE A BIG EIGHT OF LEAD, THAT'S WHAT HE GOT IN

CLOSING ARGUMENT FOR DEFENDANT MANNING

329

1 RETURN, A BIG EIGHT OF LEAD AND A MOTHER WITH A BROKEN
2 HEART, SO I PUT IT TO YOU, LADIES AND GENTLEMEN, TO DO
3 JUSTICE FOR TROY RIGGINS, COME BACK WITH THE ONLY VERDICT
4 THAT THE EVIDENCE IN THIS CASE WILL SUPPORT, GUILTY OF
5 MURDER, FOR TELLY MANNING GUILTY OF MURDER, FOR RASHAD
6 BAKER. THANK YOU VERY MUCH.

7 THE COURT: ALL RIGHT, MR. MULLINS.

8 MR. MULLINS: MAY IT PLEASE THE COURT, YOUR
9 HONOR?

10 THE COURT: YES, SIR.

11 CLOSING ARGUMENT

12 BY MR. MULLINS:

13 IF YOU'LL PARDON ME, LADIES AND GENTLEMEN, I LIKE
14 TO HAVE A LITTLE PLACE TO PUT MY NOTES WHEN I'M TALKING.
15 IF YOU RECALL I SAID THAT WE WEREN'T GOING TO TAKE TOO MUCH
16 OF YOUR TIME AND I THANK YOU TO BE HERE TO TRY THIS CASE
17 BECAUSE WE CAN'T TRY THIS CASE WITHOUT THE 12 OF YOU.
18 UNFORTUNATELY WE HAD AN ALTERNATE, BECAUSE THINGS COME UP
19 DURING THE COURSE OF JURY SERVICE. I UNDERSTAND THIS IS,
20 THIS IS CONVENIENT CIVIC DUTY AND IT'S HARD. THIS IS THE
21 SECOND HARDEST CASE WE ASK YOU TO SET ON, BUT AS I
22 EXPLAINED TO YOU IN OPENING STATEMENT BOTH MR. GARDNER AND
23 I AND THE SOLICITOR THIS ISN'T CALIFORNIA, WE'RE NOT GOING
24 TO KEEP YOU HERE FOR TWO OR THREE MONTHS TO TRY A MURDER
25 CASE. WE TRY TO MOVE EFFICIENTLY THROUGH THE EVIDENCE AND

CLOSING ARGUMENT FOR DEFENDANT MANNING

330

1 GET DOWN TO THINGS WE NEED YOU TO DECIDE AND THAT'S WHERE
2 WE ARE NOW. WE'RE AT CLOSING ARGUMENT AND THAT'S WHAT IT
3 IS. WHEN I ARGUE TO YOU I'M ARGUING WHAT I THINK THE
4 EVIDENCE SHOWS IN MY INTERPRETATION AS DOES THE SOLICITOR,
5 AS DOES MR. GARDNER, AND, PLEASE, GIVE US ALL THE SAME
6 CLOSE ATTENTION THAT I KNOW YOU HAVE.

7 NOW THERE'S A PORTRAIT OF A JUDGE BACK THERE WHO
8 USED TO TELL ME IN CLOSING ARGUMENT THAT YOUR HEAD CAN'T
9 OBSERVE MORE THAN YOUR BOTTOM CAN STAND SO I WANT TO TRY TO
10 BE BRIEF WITH YOU BUT UNDERSTAND THAT I'M ARGUING HERE FOR
11 THE LIFE OF THAT MAN, TELLY MANNING, SITTING OVER THERE AND
12 HIS FAMILY. I'M ARGUING FOR THAT LIFE TODAY.

13 NOW WHAT'S HAPPENED HERE IS A TRAGEDY. THERE IS
14 NO QUESTION ABOUT THAT. DURING THAT HOLIDAY SEASON TROY
15 RIGGINS LOST HIS LIFE. WE'RE HERE AT THE HOLIDAY SEASON
16 AGAIN; WE'VE GOT TWO OTHER GENTLEMEN THAT YOU HAVE TO
17 DECIDE THE FATE OF THEIR LIVES TODAY.

18 AS I ASKED YOU IN OPENING STATEMENT THESE ARE TWO
19 SEPARATE CASES. MR. GARDNER AND I ARE BOTH DEFENSE
20 ATTORNEYS AND WE'RE GOOD FRIENDS, BUT WE'RE SITTING FAR
21 ENOUGH APART AT THAT TABLE FOR A REASON AND THAT IS BEAUSE
22 THEY ARE TWO SEPARATE DECISIONS WE ARE ASKING YOU TO MAKE
23 AND THEY ARE SEPARATE DECISIONS THAT ARE SEPARATE REGARDING
24 THE GUILT OR INNOCENCE OF THESE TWO DEFENDANT'S.

25 NOW IT'S NOT AN EASY DECISION. IT'S NOT EASY AT

CLOSING ARGUMENT FOR DEFENDANT MANNING

331

1 ALL. THAT'S WHY THE STATE'S BURDEN IS ALWAYS BEYOND A
2 REASONABLE DOUBT IN EVERY CASE THAT'S A CRIMINAL CASE,
3 BEYOND A REASONABLE DOUBT, AND THAT'S NOT AS I SAID IN
4 OPENING STATEMENT, THAT'S NOT ANYTHING UNUSUAL. THAT'S THE
5 SAME THING THAT YOU CONSIDER EVERY DAY WHEN YOU CONSIDER
6 WHETHER SOMEONE IS LYING TO YOU OR TELLING THE TRUTH, THE
7 WAY YOU MANAGE YOUR EVERY DAY AFFAIRS, WHEN YOUR CHILD
8 DENIES SPILLING THAT GLASS OF MILK OR USING A CRAYON ON THE
9 WALL, WHEN THE REPAIRMAN TRIES TO SELL YOU SOMETHING AT THE
10 CAR SHOP THAT YOU KNOW YOU DON'T NEED. THOSE ARE ALL
11 THINGS YOU THINK ABOUT WHEN YOU DETERMINE WHETHER SOMEONE
12 IS LYING OR TELLING THE TRUTH BECAUSE THAT'S YOUR ROLE.
13 YOU JUDGE THE CREDIBILITY OF THESE WITNESSES AND THE 12 OF
14 YOU MAKE THAT JOINT DECISION BACK IN THE JURY ROOM WHICH IS
15 THE BEAUTY OF OUR SYSTEM.

16 NOW IF I SAY SOMETHING THAT YOU SEE DIFFERENTLY
17 REMEMBER THERE ARE 12 OF YOU AND THERE'S JUST ME AND MY
18 ASSISTANT OVER THERE TAKING NOTES. THE 12 OF YOU ARE GOING
19 TO REMEMBER THINGS DIFFERENTLY. THAT'S WHAT THE FRANK
20 EXCHANGE BACK IN THE JURY ROOM IS FOR, FOR YOU TO MAKE
21 THOSE DECISIONS, BUT TAKE THE LAW AS THE JUDGE GIVES IT,
22 THE FACTS AS YOU FIND THEM, BUT, PLEASE, GIVE SOME
23 CONSIDERATION TO MY ARGUMENT ON BEHALF OF MR. MANNING HERE.

24 NOW IN EVERY TRIAL WE HAVE ISSUES THAT COME UP
25 AND HERE'S WHERE THE ISSUES START TO DIFFER FROM DR. DEBUSK

CLOSING ARGUMENT FOR DEFENDANT MANNING

332

1 WHO IS A GOOD SOLICITOR, PUTS UP A GOOD AND EFFICIENT CASE,
2 BUT TWO THINGS COME TO MIND DURING THE COURSE OF THIS AND
3 DR. DEBUSK PROBABLY READ MORE SHAKESPEARE, I READ TOO MUCH
4 OF THE WARREN COMMISSION. I WAS FASCINATED BY THE
5 ASSASSINATION OF PRESIDENT KENNEDY AND AS WE'RE SITTING
6 HERE TODAY THERE WAS A MAGIC BULLET BACK IN NOVEMBER OF
7 1963 THAT THEY TRIED TO TELL ME AS A CHILD AS I READ ALL
8 THESE THINGS AND UP UNTIL THE TIME THAT I ACTUALLY TAUGHT
9 SOME FORENSICS OUT AT HORRY GEORGETOWN TECH OF A MAGIC
10 BULLET. THAT BULLET TUMBLED AND MOVED AND MOVED AROUND TO
11 GO THROUGH THE PRESIDENT AND GOVERNOR CONNELLY AND EVERYONE
12 ELSE AND WE'VE GOT ANOTHER MAGIC BULLET HERE TODAY AND
13 THAT'S THE MAGIC BULLET THAT DR. DEBUSK IS TRYING TO HAVE
14 YOU BELIEVE CAUSED ALL THESE THINGS. THAT MAGIC BULLET
15 THAT HE'S TRYING TO SAY IS MAGIC BULLET (J) THAT CAME FROM
16 BEHIND THAT DID ALL OF THESE THINGS. THAT'S WHAT THE
17 SOLICITOR IS TRYING TO TELL YOU HERE.

18 HE'S ALSO TRYING TO TAKE THAT MAGIC BULLET AND
19 PAIR IT WITH SOMETHING THAT'S NOT THERE IN THE RECORD. WE
20 DON'T KNOW WHAT HAPPENED IN THAT CAR. WHAT WE DO KNOW IS
21 WHAT IS BEHIND THE UNCONTROVERTED FORENSIC EVIDENCE THAT
22 CAN'T CHANGE.

23 NOW WE DID HAVE TWO WITNESSES THAT TESTIFIED FROM
24 THAT STAND AND LET'S CONSIDER THEM FOR A MINUTE, YOU
25 WATCHED THEM, POOR SKETTER. SKETTER HAD A BAD CASE OF THE

CLOSING ARGUMENT FOR DEFENDANT MANNING

333

1 SHAKES UP THERE, FRANKLY, AND I WAS HARD ON HIM, YA'LL KNOW
2 I WAS HARD ON HIM. I COULDN'T HELP IT. IT WAS LIKE A
3 SHARK FEEDING FRENZY, IT WAS BLOOD IN THE WATER. IT WAS
4 SKETTER'S BLOOD AND I WAS GOING AFTER IT AND YOU KNOW WHY I
5 WAS GOING AFTER IT, BECAUSE, LADIES AND GENTLEMEN, SKETTER
6 WOULD HAVE TOLD YOU ANYTHING THAT HE HAD TO TO GET OUT OF
7 THESE CHARGES. SKETTER WAS FACING MURDER.

8 LET'S LOOK AT WHO SKETTER'S INVOLVEMENT IN THIS
9 AS THE STATE HAS HUNG THEIR CASE ON WHAT SKETTER HAD TO
10 TELL YOU HERE AND LET'S LOOK AT THAT FOR A MINUTE. IF
11 THEY'RE SAYING THERE'S A PLAN LET'S LOOK AT WHO WAS
12 INVOLVED IN THAT PLAN AND HOW IT UNFOLDED. DID TELLY
13 MANNING GET THE CAR, NO. THERE IS NO TESTIMONY FROM
14 ANYBODY THAT TELLY MANNING PROCURED THIS AUTOMOBILE FOR
15 THIS TRIP, RASHAD BAKER DID.

16 DID TELLY MANNING KNOW WHERE TO LOOK FOR BIG
17 MARK, NO. SKETTER KNEW WHERE TO LOOK FOR BIG MARK. I
18 AGREE WITH SOLICITOR IT WAS BIG MARK'S LUCKY DAY, SUCH AS
19 THE NATURE OF THAT BUSINESS, BUT SKETTER WHEN HE COULDN'T
20 FIND BIG MARK TALKED TO, AND I RECALL THE TESTIMONY, OF THE
21 DUDE ON THE BICYCLE. THEY WERE LOOKING TO MAKE THIS DEAL,
22 SKETTER AND RASHAD.

23 NOW YOU KNOW AFTER SKETTER GOES OUT AND FIRST HE
24 CAN'T GET HIS STORY STRAIGHT TO START WITH, FIRST HE SAYS
25 HE DROVE, BUT THEN IN HIS STATEMENT TO THE COUNTY POLICE HE

CLOSING ARGUMENT FOR DEFENDANT MANNING

334

1 SAYS DORMAINE DROVE BUT THEN HE COMES BACK AND SAYS WELL I
2 WAS DRIVING. SKETTER WAS THE WHEEL MAN BUT HE DIDN'T WANT
3 TO ADMIT TO THAT SO HE TRIED TO GET HIS GIRLFRIEND TO GO
4 LIE TO THE POLICE TO START WITH TO CREATE AN ALIBI, I
5 WASN'T THERE AT ALL, WELL WAIT A MINUTE I WAS THERE,, WELL
6 I WASN'T DRIVING, OH, WAIT A MINUTE, I WAS DRIVING. HOW
7 MANY TIMES DOES SKETTER'S CREDIBILITY HAVE TO BE QUESTIONED
8 HERE AND THIS IS FROM A GENTLEMAN WHO IS PURCHASING THIS
9 BIG EIGHT WITH \$2,000 BUT HE CAN'T TELL YOU WHAT HE DOES
10 FOR A LIVING. WHERE DOES HE COME UP WITH \$2,000 AND HOW
11 HARD DOES ANY ONE OF US HAVE TO WORK FOR \$2,000, BUT
12 SKETTER'S GOT \$2,000 OR AT LEAST HE HAD A PLAN TO SECURE A
13 BIG EIGHT WITH \$2,000. WHERE DID THAT COME FROM IF IT
14 EXISTED AT ALL.

15 WHO KNOWS WHO TO TRUST IN THIS ARRANGEMENT? THIS
16 ISN'T EXACTLY A BREACH OF CONTRACT WHERE YOU CAN COME IN
17 HERE IN SIMPLE COURT AND SAY, YOUR HONOR, HE BREACHED A
18 DEAL TO SELL ME A BIG EIGHT. THEY'LL LAUGH AND THEY'LL
19 LEAD YOU OUT THROUGH THAT DOOR RIGHT OVER THERE SO WHO CAN
20 WE TRUST IN THIS TRANSACTION.

21 WELL I'LL SUBMIT TO YOU THE EVIDENCE SHOWS FROM
22 THE WAY THAT MAN ACTED ON THE WITNESS STAND THERE ISN'T
23 MUCH TRUST WE CAN PUT IN SKETTER, YOU KNOW, THAT'S HOW HE
24 TESTIFIED AND THAT'S WHAT YOU HAVE TO JUDGE. YOU HAVE THE
25 JUDGE HOW MUCH WEIGHT TO GIVE THAT TESTIMONY AND I SUBMIT

CLOSING ARGUMENT FOR DEFENDANT MANNING

335

1 TO YOU THAT HE JUST CAN'T, CAN'T TELL THE TRUTH. IT'S THE
2 LITTLE THINGS THAT MATTERS AND LET'S SAY WHAT'S NOT IN THAT
3 RECORD.

4 SOLICITOR SAYS THERE WAS A PLAN WHEN THESE BOYS
5 LEFT ROWLAND, WAS THERE? DO YOU THINK IF THERE WAS A PLAN
6 HERE THAT SKETTER WOULD HAVE TESTIFIED TO IT TO AVOID THESE
7 MURDER CHARGES. HE TESTIFIED TO EVERYTHING ELSE. THERE
8 WASN'T ANY PLAN. THERE WASN'T A PLAN HERE. SKETTER WOULD
9 HAVE TOLD YOU IF THERE WAS BECAUSE HE CERTAINLY TRIED TO
10 HANG EVERYTHING ELSE. THE LITTLE THINGS IN HIS TESTIMONY
11 ARE THE THINGS THAT MAKE A PROBLEM HERE. THERE WAS NO
12 DISCUSSION OF ROBBERY OR MURDER DURING THAT TRIP AND I
13 ASKED SKETTER THAT AND I WROTE IT DOWN SO I COULD TALK TO
14 YOU ABOUT IT NOW.

15 NOW THE WEAPONS, DERRICK NEVER SAW A GUN. HE'S
16 ONE OF YOUR TWO CODEFENDANT'S ESCAPING MURDER CHARGES BUT
17 DERRICK SAYS I DIDN'T SEE IT AND DERRICK WAS IN THE CAR THE
18 WHOLE TIME. DERRICK HEARD A SHOT BUT HE NEVER SAW A GUN ON
19 ANYBODY.

20 SKETTER SAYS, AND NOW THAT IT FITS THE STORY,
21 SKETTER SAYS, WELL I SAW BOTH OF THEM WITH A GUN. OH,
22 REALLY, SKETTER, WHAT KIND OF GUN, WELL, I DON'T KNOW.
23 WELL SKETTER LET'S SEE NOW, WE KNOW YOU DON'T WORK, WE KNOW
24 YOU GOT \$2,000, WE KNOW YOU KNOW WHAT A BIG EIGHT IS, IS IT
25 POSSIBLE THAT SKETTER KNOWS WHAT A 9 IS. IS IT POSSIBLE

CLOSING ARGUMENT FOR DEFENDANT MANNING

336

1 THAT SKETTER KNOWS WHAT A .38 SPECIAL OR A 357 IS OR IS
2 SKETTER JUST TRYING TO SNOW YA'LL BY SAYING, I DON'T KNOW
3 WHAT KIND OF GUN IT WAS. REALLY, CAN YOU BELIEVE THAT, CAN
4 YOU TRUST THAT. CAN YOU TRUST A MAN THAT SAYS, I CAN SET
5 UP A BIG EIGHT AND I KNOW WHAT IT IS AND GOT TWO GRAND BUT
6 I DON'T KNOW WHAT KIND OF GUN IT IS.

7 PLUS, LOOK AT THE SCENE HERE, IF THESE TWO
8 GENTLEMEN GOT OUT OF THE CAR AND SKETTER WAS DRIVING AND
9 THEY PUT THE GUN DOWN IN THE FRONT UP HERE HOW DID SKETTER
10 SEE IT WHEN THEY WENT TO THE CAR. HERE'S THE MORE LIKELY
11 SCENARIO, SKETTER DIDN'T SEE IT. SKETTER NEEDED TO SAY
12 THAT SO SKETTER COULD GET OUT OF MURDER CHARGES. THAT'S
13 THE MORE LIKELY SCENARIO HERE BECAUSE SKETTER WHEN HE COME
14 IN HERE HE WAS TELLY THIS AND TELLY THAT BUT WHEN SKETTER
15 TALKED TO THE COUNTY POLICE HE DIDN'T EVEN KNOW WHAT TELLY
16 MANNING'S NAME WAS, HE KNEW HIS NICKNAME. DID HE TALK TO
17 ANYBODY BETWEEN THE TIME THAT THAT OCCURRED SO HE KNEW WHAT
18 TO TELL THEM, HUM, THINGS THAT MAKE YOU GO, HUM. I WROTE
19 THAT DOWN SO I COULD TALK TO YOU ABOUT THAT, TOO. SKETTER
20 SET UP THE DEAL, SKETTER SAID WHAT HE NEEDED TO GET OUT OF
21 THE CHARGES.

22 NOW THE FORENSIC IN THIS CASE GEORGE IS RIGHT,
23 FORENSICS DON'T CHANGE, THE QUESTION IS IS HOW YOU
24 INTERPRET THEM. NOW THE DOCTOR SHE'S A SCIENTIST. WHAT
25 SHE KNOWS IS WHAT THE BULLET TRAJECTORIES ARE, THAT'S WHAT

CLOSING ARGUMENT FOR DEFENDANT MANNING

337

1 SHE KNOWS. NOW FOR A MOMENT HERE, IF YOU CAN GIVE ME A
2 MOMENT, I'M GOING TO MOVE FOUR CHAIRS OVER HERE TO TALK TO
3 YOU ABOUT THE LAST PART OF THIS, IF YOU CAN GIVE ME JUST A
4 SECOND.

5 LET'S ASSUME NOW WITH THESE FOUR CHAIRS I'VE
6 PLACED IN A BOX SHAPE IN FRONT OF YOU JUST FOR THE PURPOSE
7 OF THIS DISCUSSION TO SHOW MY ARGUMENT HERE, OKAY. MR.
8 RIGGINS ALL THE EVIDENCE SAYS THAT HE WAS HERE IN THE
9 DRIVERS SEAT OF THAT LINCOLN SEATED HERE. ALL THE EVIDENCE
10 SAYS THAT TELLY MANNING WAS SEATED BEHIND HIM IN THE
11 LINCOLN. NOW SOLICITOR DEBUSK WANTS THAT MAGIC BULLET TO
12 GO THROUGH THE BACK OF HIS SHOULDER AND BREAK HIS ARM, THAT
13 FITS SOLICITOR DEBUSK THEORY. THAT'S WHERE WE HAVE A
14 PROBLEM, OKAY.

15 IF YOU'RE GOING TO BELIEVE THAT TELLY MANNING IS
16 THE COLD BLOODED KILLER THAT YOU HAVE MADE HIM OUT TO BE,
17 THAT HE WAS THERE TO KILL THIS MAN OVER THIS BIG EIGHT THAT
18 RASHAD SET UP THAT SKETTER BROKERED, THEN WHY, LADIES AND
19 GENTLEMEN, WHY, WHY DOESN'T TELLY MANNING JUST PULL OUT
20 THAT HANDGUN AND SHOOT MR. RIGGINS RIGHT THROUGH THE BACK
21 OF THE HEAD. WHY NOT, WHY SHOOT HIM IN THE SHOULDER,
22 YOU'RE GOING TO KILL HIM. IT MAKES ABSOLUTELY NO SENSE THE
23 WAY THE STATE HAS TRIED TO BROKER THIS DEAL TO YOU.
24 THEY'VE GOT TO MAKE THE FORENSICS FIT BECAUSE IT DOESN'T
25 FIT THE COMMON SENSE.

CLOSING ARGUMENT FOR DEFENDANT MANNING

338

1 IF TELLY MANNING WAS GOING TO KILL THIS MAN HE
2 WOULD HAVE SHOT HIM THROUGH THE BACK OF THE HEAD. THERE
3 WOULD HAVE BEEN BLOOD SPLATTER ALL OVER THE FRONT OF THAT
4 LINCOLN AND GRAY MATTER AND EVERYTHING ELSE THAT COMES WITH
5 A HEAD WOUND FROM BEING SHOT WITH EITHER A .38 OR A 9 MIL
6 BUT THE FORENSICS DOESN'T SHOW THAT. THEY DON'T AND WE
7 CAN'T CHANGE THE FORENSICS.

8 NOW DO YOU REMEMBER WHEN I HAD THE LIEUTENANT,
9 AND I APOLOGIZE TO THE LIEUTENANT, I ACCIDENTALLY CALLED
10 HIM DETECTIVE DURING THAT CROSS, HE'S OBVIOUSLY WELL ABOVE
11 THE RANK OF DETECTIVE, BUT DO YOU REMEMBER WHEN I HAD HIM
12 SET UP HERE AND HAD THE DOCTOR RUN BACK THROUGH EACH AND
13 EVERY ONE OF THOSE WITH YOU AND THAT LITTLE POINTER WHERE
14 SHE SHOWED THE ANGLES, ALL OF THOSE ANGLES POINTED TO THE
15 PERSON BEING THE SHOOTER SITTING IN THE PASSENGER SIDE OF
16 THE LINCOLN RIGHT HERE TO WHERE HE COULD HAVE BEGAN WITH
17 ONE WEAPON AND WHO KNOWS WHERE THE SECOND WEAPON COME FROM.
18 IS IT A HOLD OUT GUN THAT HE HAD IN CASE OF EMERGENCY OR IS
19 IT A GUN HE TOOK OFF THE VICTIM, WE DON'T KNOW, BUT ALL OF
20 THOSE ANGLES CAME FROM RIGHT HERE. ALL OF THOSE ANGLES
21 SHOW THAT THE MAN WHO WAS THE SHOOTER WAS SITTING IN THE
22 FRONT AND IN FACT WHEN HE WOULD HAVE EXITED THE VEHICLE
23 WITH THE 9MM NOT ALL THE SHOTS WERE CLOSE RANGE. TWO OF
24 THOSE SHELLS WERE EJECTED BESIDE THE PASSENGER SIDE OF THE
25 VEHICLE. YOU HEARD SGT. GAUSE TESTIFY TO THAT AND IN FACT

CLOSING ARGUMENT FOR DEFENDANT MANNING

339

1 IF YOU GO BACK IN HERE TO STATE'S NUMBER 10 YOU CAN SEE
2 THOSE TWO, AND THEY'RE MARKED ON THERE 5 AND 6, ON THE
3 PASSENGER SIDE OF THAT VEHICLE AND YOU HEARD AGENT PAAVEL
4 TESTIFY THAT A TYPE OF WEAPON CUSTOMARILY USED WITH A 9MM
5 EJECTS THE SHELL AS IT GOES.

6 IF YOU'VE EVER SHOT A FIREARM, NOT ASSUMING YOU
7 HAVE OR NOT, BUT IF YOU DO IT EJECTS THOSE SHELLS AND IF
8 YOU USE A WEAPON OF THAT TYPE TO KILL A MAN WITH THAT'S
9 PART OF THE DANGER IS, YOU'RE GOING TO LEAVE THOSE SHELL
10 CASINGS BEHIND. THAT'S WHY WE HAVE THIS WHOLE FIELD OF
11 FORENSIC SCIENCE THAT AGENT PAAVEL HAS COME UP IN. WHERE
12 WERE THEY AT, ON THE SIDE OF THE CAR OVER HERE WHERE RASHAD
13 BAKER EXITED THE VEHICLE.

14 NOW YOU'RE GOING TO SAY WELL, RANDY, HOW DO YOU
15 EXPLAIN (J), HOW DO YOU EXPLAIN (J)? WELL IF YOU RECALL
16 DURING THE TESTIMONY OF THE DOCTOR I ASKED HER, I SAID,
17 DOCTOR, ARE ALL OF THE WOUNDS EXCEPT FOR (A) AND (B)
18 CONSISTENT WITH DEFENSIVE WOUNDS AND SHE SAID, YES, WHY,
19 BECAUSE HUMAN BEINGS WHEN WE'RE BEING SHOT DON'T HOLD GOOD
20 AND STILL FOR THE PERSON SHOOTING US. IF MR. RIGGINS WAS
21 SEATED HERE AND THE INITIAL SHOTS CAME, AND WE DON'T KNOW
22 WHAT ORDER THEY'RE IN, BUT GOOD SENSE WILL TELL YOU THAT
23 THE FIRST ONE WAS PROBABLY THAT CONTACT WOUND CLOSE IN. IF
24 HE STARTED COVERING UP AT THAT POINT IN A FETAL POSITION AS
25 WE ALL DO WHEN WE'RE HURT HE CAUGHT THE OTHER ONES AND THEN

CLOSING ARGUMENT FOR DEFENDANT MANNING

340

1 TURNING AWAY FROM HIS ASSAILANT CAUGHT THE LAST ONE (J) AND
2 THERE'S A GRAZING WOUND HERE ON THE ARM THAT THE STATE IS
3 IGNORING, ON THE ELBOW. THEY'RE IGNORING THAT ONE AND
4 REMEMBER WHERE DID SGT. GAUSE SAY THAT THE BULLET THAT THEY
5 RECOVERED FROM THE CAR WAS FOUND, LEFT HAND ABOVE THE
6 DRIVER, AND DO YOU RECALL WHEN I ASKED HIM, WAS THERE ANY
7 DAMAGE TO THE WINDSHIELD OR DASH AND HE SAID, NO. COULD
8 TELLY MANNING HAVE OPENED UP FROM THAT BACKSEAT AND SHOT
9 THAT MANY TIMES WITHOUT THERE BEING ONE PIECE OF BLOOD
10 SPLATTER OR DAMAGE TO THAT PART OF THE CAR. IT'S
11 IMPOSSIBLE. WHAT YOU HAVE TO BELIEVE IS THIS MAGIC
12 TUMBLING BULLET THAT SOLICITOR DEBUSK WANTS YOU TO BELIEVE,
13 NOT THE FIRST ONE WE EVER HAD THROUGHOUT HISTORY, BUT IT'S
14 CERTAINLY THE SECOND ONE I'VE EVER QUESTIONED.

15 LADIES AND GENTLEMEN, FORENSICS IN THIS MATTER
16 THEY DON'T LIE. THEY ARE SUBJECT TO INTERPRETATION, MY
17 INTERPRETATION, MR. DEBUSK INTERPRETATION, AND MR.
18 GARDNER'S GOING TO HAVE AN INTERPRETATION AS WELL, BUT THEY
19 HAVE TO BE LOOKED AT WITHIN THE CONTEXT OF THE SCENE AND
20 THE GOOD COMMON SENSE YOU BROUGHT IN HERE. IF TELLY
21 MANNING WAS GOING TO KILL THIS MAN HE'D HAVE SHOT HIM IN
22 THE BACK OF THE HEAD, WE'D HAVE HAD ONE SHOT THAT WOULD
23 HAVE BEEN IT, BUT, NO, TELLY MANNING WAS PRESENT WITH HIS
24 COUSIN, AND BUT FOR THE GRACE OF GOD GOETH ANY ONE OF US.

25 HAVE YOU NEVER BEEN PRESENT WHEN YOUR COUSIN DID

CLOSING ARGUMENT FOR DEFENDANT MANNING

341

1 SOMETHING STUPID, I GOT A BUNCH OF COUSINS, GROWING UP
2 SOMETIMES THEY DID SOME REALLY STUPID THINGS, BUT AS I
3 ANTICIPATE THE COURT CHARGING YOU MERE PRESENCE ALONE AT A
4 CRIME SCENE IS NOT ENOUGH TO CONVICT A MAN OF MURDER. MERE
5 PRESENCE, KEEP THAT THOUGHT FOR A MOMENT, SHOULD THEY HAVE
6 BEEN THERE, NO, WAS IT A BAD AREA, YES, SIR, YES, MA'AM.
7 IT WAS A BAD AREA. IT WASN'T ANYWHERE YOU WANTED TO BE ON
8 THAT MORNING, BUT THAT ALONE WILL NOT CONVICT TELLY
9 MANNING.

10 NOW YOU TOOK AN OATH, LISTEN CAREFULLY, YOU TOOK
11 AN OATH TO SIFT THROUGH THESE FACTS, THAT'S ALL I ASK YOU
12 TO DO. GIVE ME A FAIR DISCUSSION OF WHETHER YOU THINK IN
13 YOUR MIND TELLY MANNING EITHER TOOK THIS MAN'S LIFE OR
14 AIDED AND ABETTED ENOUGH TO BE CRIMINALLY RESPONSIBLE, BUT
15 IF YOU BACK THERE IN YOUR JURY ROOM DETERMINE THAT HE IS
16 MERELY PRESENT MADE A BAD DECISION I ASK YOU TO RETURN A
17 VERDICT OF NOT GUILTY IN THIS CASE. THANK YOU SO MUCH, I
18 REALIZE I'VE TAKEN A LITTLE BIT LONGER THAN I WANTED TO,
19 BUT THANK YOU SO MUCH FOR LISTENING CAREFULLY TO ME AND IF
20 YOU'LL GIVE ME A MOMENT I'LL MOVE THESE CHAIRS AND LET MR.
21 GARDNER TALK TO YOU.

22 CLOSING ARGUMENT

23 BY MR. GARDNER:

24 GOOD MORNING, MADAM FORELADY, LADIES AND
25 GENTLEMEN OF THE JURY, I WILL TRY TO BE BRIEF BECAUSE THIS

CLOSING ARGUMENT FOR DEFENDANT MANNING

342

1 IS THE THIRD ONE YOU HAVE HEARD IN ALMOST AN HOUR. THIS, I
2 AGREE WITH MR. MULLINS, IS A TRAGEDY BECAUSE WE'RE DEALING
3 WITH A CASE INVOLVING SOMEBODY THAT WAS KILLED. I ASK THAT
4 WE NOT LET THAT COLOR OUR THOUGHTS AND THAT WE DO OUR JOB.
5 THIS IS A SERIOUS ISSUE AND REQUIRES SERIOUS DELIBERATIONS
6 AND THAT, AND NOT SYMPATHY. WE NEED TO LOOK AT THE FACTS
7 AND DECIDE WHAT WE BELIEVE HERE. I THINK THAT A GOOD WAY
8 TO LOOK AT A MURDER TRIAL IS TO START AT THE BEGINNING
9 KEEPING IN MIND THE LAW, THE BURDEN OF PROOF BEING ON THE
10 STATE OF SOUTH CAROLINA BEYOND A REASONABLE DOUBT AS TO
11 EACH AND EVERY ELEMENT, SO YOU START WITH THE SOLICITOR'S
12 OPENING STATEMENT, WHAT DID HE TELL YOU HE WAS GOING TO PUT
13 UP THERE AND WHAT DID HE PUT UP THERE, COMPARE THE TWO,
14 OKAY.

15 THIS MURDER CASE, THIS TRIAL, IS MISSING MORE
16 FACTS OR EVIDENCE OR ANSWERS THAN YOU'VE BEEN SUPPLIED
17 WITH. I'VE HEARD THE TESTIMONY AND IF I DIDN'T KNOW
18 ANYTHING ABOUT IT THAN WHAT I HAD HEARD TODAY I'D HAVE MORE
19 QUESTIONS THAN I HAVE ANSWERS. YOU'RE ENTITLED TO CONSIDER
20 THAT IN YOUR DELIBERATIONS AND IN WHILE YOU'RE CONSIDERING
21 THAT IN YOUR DELIBERATIONS BASED ON A BURDEN OF PROOF
22 BEYOND A REASONABLE DOUBT IF THE STATE HASN'T SUPPLIED THAT
23 THEN YOU ONLY HAVE ONE VERDICT THAT YOU CAN COME BACK WITH
24 AND THAT'S THE NOT GUILTY VERDICT SO, YOU KNOW, AND WE'LL
25 GET INTO SOME OF THE THINGS, I'LL TRY TO, IF I REMEMBER,

CLOSING ARGUMENT FOR DEFENDANT MANNING

343

1 SOME OF THE THINGS SPECIFICALLY THAT I'VE GOT SOME
2 QUESTIONS ABOUT AND SOME OF THE THINGS THAT ARE MISSING IN
3 THIS CASE BUT BACK TO HIS OPENING STATEMENT, THERE WAS NO
4 PRESENTATION OF A THEORY OF THE CASE, OF A MOTIVE FOR THE
5 CASE. THERE WAS NO TALK ABOUT FORENSIC EVIDENCE WHICH
6 WOULD TIE THE DEFENDANTS TO THE KILLING. AT THE CONCLUSION
7 OF THE CASE THERE'S STILL ZERO FORENSIC EVIDENCE WHICH TIES
8 RASHAD AND TELLY TO THE KILLING AND I'LL TALK ABOUT THIS
9 FORENSIC STUFF LATER.

10 THERE'S NO FINGERPRINTS OF THE CAR, IN THE CAR
11 SAYING IF THEY HAD BEEN IN THE CAR THAT THESE ARE
12 FINGERPRINTS TYING IT TO IT. THERE'S NO DNA THAT SAYS THAT
13 THEY HAD LEFT WHATEVER DNA IS IN THE CAR. WE DON'T HAVE
14 ANY OF THAT STUFF THERE THAT TIES THEM TO IT, OKAY.

15 NOW YOU KNOW I ALSO SAID IN MY STATEMENT EARLIER
16 ON MONDAY, TODAY IS, MONDAY, I SAID THAT WE AS A DEFENSE WE
17 DON'T HAVE TO PUT UP WITNESSES AND DEFENDANT'S DON'T HAVE
18 TO TESTIFY AND YOU CAN'T HOLD THAT AGAINST THEM, THE JUDGE
19 WILL TELL YOU THAT WHEN HE GIVES YOU THE LAW ON THAT AND AS
20 A MATTER OF FACT AS I UNDERSTAND IT IF A DEFENDANT DOESN'T
21 TAKE THE STAND YOU CAN'T EVEN CONSIDER THAT IN YOUR
22 DELIBERATIONS, CAN'T TALK ABOUT IT, CAN'T MENTION IT.
23 THAT'S THE LAW AS I UNDERSTAND IT AND THE JUDGE WILL TELL
24 YOU MORE ABOUT THAT LATER SO IT'S EASY TO APPLY IN THEORY,
25 I HOPE THAT WE CAN APPLY THAT IN FACT TODAY AS PART OF OUR

CLOSING ARGUMENT FOR DEFENDANT MANNING

344

1 OATH, OKAY, BUT DESPITE ALL THAT WE DON'T HAVE TO PRESENT A
2 THEORY OR TALK ABOUT A THEORY OR PRESENT TESTIMONY OR
3 ANYTHING LIKE THAT.

4 I SAID IN MY OPENING STATEMENT BACK ON MONDAY
5 THAT I BELIEVE THAT THE EVIDENCE WOULD SHOW, THAT YOU WOULD
6 HEAR FROM THE CODEFENDANT'S TESTIMONY AND DESPITE THEIR
7 TESTIMONY THERE WOULD BE ZERO EVIDENCE OF A PLAN TO COMMIT
8 A MURDER OR A ROBBERY FOR THAT MATTER. I SAID THERE WOULD
9 BE ZERO EVIDENCE OF, AND THE JUDGE HAD READ THIS INDICTMENT
10 THING THAT SAID ACTING IN CONCERT, THERE WOULD BE ZERO
11 EVIDENCE OF ACTING IN CONCERT TO COMMIT A MURDER OR TO
12 COMMIT A ROBBERY.

13 THE INDICTMENT IS JUST A PIECE OF PAPER, IT'S A
14 MECHANISM TO GET US TO START THE CASE. IF WE DIDN'T HAVE
15 TO WRITE THINGS DOWN IT WOULD BE LIKE THE BAILIFF CALLING
16 THE GUYS NAME, THE STATE VERSUS IN THIS CASE RASHAD AND
17 TELLY. IT'S NO EVIDENCE OR ANYTHING BUT WHAT THEY'VE
18 ACCUSED THEM OR CHARGED THEM WITH WAS ACTING IN CONCERT,
19 THERE IS ZERO EVIDENCE, THE CASE IS OVER, I TOLD YOU AT THE
20 BEGINNING, I WILL TELL YOU NOW ZERO EVIDENCE OF ACTING IN
21 CONCERT, SO WE MOVE FORWARD WITH THAT AND IT'S INTERESTING,
22 THOUGH, WHAT IS REALLY INTERESTING TO ME IS IN HIS CLOSING
23 ARGUMENT THE SOLICITOR HAS SAID THAT THERE WAS A ROBBERY,
24 OKAY.

25 YOU CAN MAKE REASONABLE INFERENCES FROM THE

CLOSING ARGUMENT FOR DEFENDANT MANNING

345

1 TESTIMONY THAT YOU'VE HEARD. THERE IS ZERO TESTIMONY ON
2 THAT WITNESS STAND THAT THERE WAS A ROBBERY, THAT A ROBBERY
3 TOOK PLACE. THERE WAS ZERO TESTIMONY ON THAT WITNESS STAND
4 THAT ANYBODY TOOK DRUGS FROM THE VICTIM IN THIS CASE.
5 THERE IS NO MAGICAL MISSING EIGHT, BIG EIGHT, WHATEVER IT
6 WAS. THERE'S NOTHING THERE. IN FACT THE TESTIMONY IS THAT
7 HE STILL HAD DRUGS AND HE STILL HAD A LOT OF MONEY SO
8 THERE'S NO EVIDENCE OF A ROBBERY PRIOR TO OR AT THE END OF
9 THIS CASE AND I WOULD SUBMIT THAT THAT'S NOT A GOOD
10 INFERENCE THAT THERE IS A ROBBERY THAT TOOK PLACE BECAUSE
11 HE DID HAVE DRUGS AND STILL HAD HIS DRUGS, STILL HAD HIS
12 MONEY, OKAY.

13 I'M GOING TO TRY TO GO INTO A LITTLE BIT ABOUT
14 THIS TESTIMONY OF THESE FELLOWS. NUMBER, THE FIRST WITNESS
15 WAS THE BOWENS KID AND I TELL YOU WHAT WHEN IT COMES TO
16 WITNESSES CREDIBILITY OR BELIEVABILITY YOU CAN BELIEVE
17 EVERYTHING THEY'VE SAID OR ZERO OF WHAT THEY'VE SAID OR
18 WHATEVER IN THE, IN THE MIDDLE THAT YOU THINK THAT YOU'D
19 LIKE TO DO, OKAY. SOME OF THE STUFF I BELIEVE THAT HE SAID
20 WAS VERY CREDIBLE.

21 HE SAID, IF I REMEMBER RIGHT, THAT THERE WAS NO
22 GUNS, OKAY, DIDN'T SEE THE GUNS, NO GUNS. HE'S BEEN IN THE
23 CAR THE WHOLE TIME HE DIDN'T SEE THEM. WHO WOULD HAVE BEEN
24 IN A GOOD POSITION TO SEE GUNS IF THERE HAD BEEN GUNS
25 THERE. THE REASON I SUBMIT TO YOU THAT THAT'S CREDIBLE

CLOSING ARGUMENT FOR DEFENDANT MANNING

346

1 EVIDENCE IS BECAUSE IT FLIES IN THE FACE OF ANY DEAL THAT
2 HE HAD WITH THE SOLICITOR.

3 IF THE SOLICITOR MAKES A DEAL WITH SOMEBODY TO
4 DROP A MURDER CHARGE OR ANY OTHER KIND OF DEAL HE WANTS
5 THAT WITNESS TO SAY AS MANY THINGS AS HE CAN ABOUT WHOEVER
6 THE DEFENDANT IS AND WHEN HE GOT UP THERE AND SAID THERE
7 WAS NO GUNS OR I DIDN'T SEE ANY GUNS AND HE WAS IN A
8 POSITION TO HAVE SEEN THE GUNS IF THERE IN FACT HAD OF BEEN
9 GUNS AND THAT'S VERY CREDIBLE EVIDENCE BECAUSE IT'S FLYING
10 IN THE FACE OF WHAT THE SOLICITOR WANTS DESPITE THE DEAL,
11 THE FACT THAT HE HAS A DEAL WITH THE SOLICITOR, OKAY.

12 HE ALSO SAID THAT RASHAD AND TELLY GOT OUT OF
13 THIS CAR AND WENT TO THE OTHER CAR THAT THE VICTIM WAS IN.
14 HE HEARD A SHOT AND FIVE OR TEN SECONDS LATER TELLY AND
15 RASHAD WERE RUNNING BACK TO THE CAR. THAT'S A SHORT PERIOD
16 OF TIME. I DON'T KNOW IF THAT'S AN OVER EXAGGERATION OR
17 UNDER EXAGGERATION. I WOULD TAKE IT AT, I TAKE IT FOR WHAT
18 HE MEANT IT, IT WAS A SHORT, VERY, VERY SHORT PERIOD OF
19 TIME.

20 I ASKED, I WANT TO SKIP AHEAD FOR A MINUTE, I TRY
21 NOT TO CONFUSE MYSELF, BUT I WANT TO SKIP AHEAD BECAUSE I'M
22 REMINDED BY WHAT THE CORPORAL SAID ON ONE OF MY QUESTIONS
23 THAT I ASKED HIM. THE CORPORAL WAS THE GUY, THE HORRY
24 COUNTY POLICE OFFICER THAT WAS THE FIRST RESPONDER, HIS JOB
25 WAS TO SECURE THE SCENE, I ASKED HIM SOMETHING LIKE WAS

CLOSING ARGUMENT FOR DEFENDANT MANNING

347

1 ANYTHING OUT OF THE ORDINARY OF THAT, OR ANYTHING NOT
2 NORMAL ABOUT THAT AND HE SAID, NO, NOT FOR THAT AREA OR HE
3 MAY HAVE SAID NOT FOR FREEMONT, BUT WHATEVER HE SAID WAS IT
4 MEANT TO WHAT THAT AREA WE WERE TALKING ABOUT WHERE THIS,
5 WHERE HE WAS KILLED AND I CAN INFER FROM THOSE TWO
6 WITNESSES AND FACTS FROM THE REST OF THE CASE THAT IF IN
7 FACT THAT TELLY AND RASHAD GOT OUT OF THAT CAR AND IF IN
8 FACT SOMEBODY HEARD GUNSHOT AND IF IN FACT THEY WERE BACK
9 AT THE CAR IN 5 OR 10 SECONDS THE LOGICAL EXPLANATION AND
10 INFERENCE THAT WE COULD INFER AND MAKE AS A DECISION HERE
11 IS THAT THEY HEARD A GUNSHOT AND RAN BACK TO THE CAR AND
12 THEY NEVER MADE THEIR MEETING WITH THE VICTIM. IF THAT'S
13 THE TRUTH THEN WE'VE STILL GOT ONE VERDICT. WE'RE STILL
14 ONLY ONE VERDICT NOW, NOT GUILTY. THAT'S AN INFERENCE THAT
15 YOU CAN MAKE OR YOU CAN REJECT IT OR YOU CAN INCORPORATE IT
16 INTO WHATEVER YOU FINALLY DECIDE.

17 NOW THE SOLICITOR WANTS YOU TO MAKE AN INFERENCE
18 THAT NOT ONLY DID THEY GET IN THE CAR THEY DID ALL THIS
19 SHOOTING AND DID ALL THESE OTHER THINGS AND YOU CAN ACCEPT
20 THAT ONE OR REJECT IT OR MAKE IT AS PART OF YOUR DEAL.
21 THEY'RE BOTH INFERENCES YOU CAN MAKE. I'D SUBMIT THAT THE
22 DIFFERENCE BETWEEN THE TWO IS, THIS IS SOMETHING I QUITE
23 FRANKLY THOUGHT OF WHILE I WAS GOING OVER IT AND LISTENING
24 TO IT, THEY HAVE HAD SIX YEARS TO COME UP WITH THEIRS AND
25 THE OTHER DIFFERENCE IS THEIRS HAS TO WITHHOLD THE HIGH

CLOSING ARGUMENT FOR DEFENDANT MANNING

348

1 BURDEN. THEY'VE GOT TO PROVE THAT IT'S TRUTH BEYOND A
2 REASONABLE DOUBT. NOW THAT'S THE TWO THAT WE, OURS WE
3 DON'T HAVE TO PROVE ANYTHING. I'VE TOLD YOU SOMETHING I
4 THINK THAT'S REASONABLE. THEIRS I DON'T THINK IS
5 REASONABLE, NUMBER ONE, IT CERTAINLY IS NOT BEYOND A
6 REASONABLE DOUBT, OKAY, AND IT'S CIRCUMSTANTIAL EVIDENCE,
7 IT'S A GREAT LEAP TO GO FROM BEING IN A CAR TO COMMITTING
8 THESE OTHER CRIMES AND I WANT TO GO BACK TO THAT, TOO. NOW
9 I'LL TRY TO GO BACK AND STAY IN THE SAME ORDER WE WERE IN.

10 THE NEXT WITNESS WAS ERNEST SMITH. NOW IT'S
11 RIGHT IN LINE WITH MY THEORY OF THE CASE FROM THE
12 BEGINNING, ERNEST SMITH, MY FIRST QUESTION TO HIM WAS, YOU
13 ARE A DRUG DEALER. I AGREE WITH MR. MULLINS IF YOU HAVE
14 \$2,000 AND YOU DON'T HAVE A JOB THAT SOMETHING GOING ON
15 THERE, OKAY. NOW HE WAS WISHY WASHY, MY WORDS, AND I
16 APOLOGIZE THAT OFFENDS SOMEBODY, THAT'S JUST THE WAY I SAY
17 THINGS SOMETIMES, AT BEST YOU ARE ENTITLED TO REJECT HIS
18 ENTIRE LINE OF TESTIMONY. YOU CAN SAY I DON'T BELIEVE A
19 WORD HE SAID OR THERE'S SO MANY THINGS HE SAID THAT ARE
20 UNBELIEVABLE IT'S TAINTED EVERYTHING HE SAID. THAT'S YOUR
21 DECISION, I WANT YOU TO KEEP IN MIND THAT YOU HAVE THAT
22 WITHIN YOUR PROVINCE, ALL RIGHT. I WOULD REJECT EVERYTHING
23 HE SAID AND I'LL TELL YOU A COUPLE OF REASONS WHY.

24 HE WOULD HAVE YOU TO BELIEVE THAT HIS TESTIMONY
25 IS NOT INFLUENCED BECAUSE OF HIS DEAL, AND I HATED TO

CLOSING ARGUMENT FOR DEFENDANT MANNING

349

1 BELABOR THAT, THAT CONVERSATION, THAT PART OF IT WITH HIM,
2 BUT IT WAS SO IMPORTANT THAT, THAT I TRY TO GET IT THROUGH
3 TO HIM SO THAT WE WOULD ALL KNOW THAT THIS TESTIMONY IS
4 EXCHANGE FOR A MURDER CHARGE BEING DISMISSED AGAINST HIM
5 AND HE'S MOTIVATED TO DO FOR THE SOLICITOR WHAT THE
6 SOLICITOR COULDN'T DO OTHERWISE, THAT IS GET UP THERE AND
7 SAY THINGS TO TRY TO PERSUADE YA'LL THAT THESE GUYS HAD
8 ANYTHING TO DO WITH THE KILLING, OKAY.

9 NOW LET'S THINK ABOUT HIS HISTORY. THIS WAS NOT
10 THE STATEMENT THAT HE TALKED ABOUT AND THAT WAS THE ONE
11 THAT WAS TYPED UP AND WE SPENT SOME TIME ON THAT AND THAT'S
12 THE ONE THAT RESULTED IN HIS DEAL, SAID THAT HE WAS THERE
13 AND THAT RASHAD AND TELLY GOT OUT OF THE CAR AND WENT AND
14 MET WITH THE VICTIM IN THE CASE, OKAY.

15 WELL HIS FIRST STATEMENT WAS ONE WHERE HE WENT TO
16 THE POLICE ON HIS OWN AND BROUGHT THE ALIBI WITNESS AND
17 TOLD THEM NOTHING BUT LIES, ALL A BUNCH OF LIES, ZERO
18 CREDIBILITY ON THAT, OKAY, AND I ASKED HIM ABOUT THAT AND
19 HIS ANSWER, AS I UNDERSTOOD IT, WAS WHEN HE GAVE HIS SECOND
20 STATEMENT HE WAS UNDER ARREST. WELL IF YOU'RE UNDER ARREST
21 YOU'RE MUCH MORE OR YOU HAVE MUCH MORE, I BELIEVE, REASON
22 TO LIE TO GET OUT OF THAT ARREST AND WHAT DOES THE STATE
23 WANT TO HEAR. WELL THEY WANT TO HEAR WE KNOW YOU WERE
24 THERE, HE WAS PROBABLY THE FIRST ONE BECAUSE HE SAID HE WAS
25 UNDER ARREST AND THAT WAS A YEAR AFTER THIS HAPPENED, THAT

CLOSING ARGUMENT FOR DEFENDANT MANNING

350

1 WOULD BE '01, PROBABLY THE FIRST, FIRST SUSPECT, OR FIRST
2 ONE ARRESTED, I'M GUESSING, SO ALL THE MORE REASON FOR HIM
3 TO COME UP WITH HIS, NOT AN ALIBI NOW BECAUSE WE KNOW HE
4 WAS IN THE CAR, WHAT CAN YOU DO TO GET OUT OF IT. I CAN
5 SAY PRETTY MUCH WHATEVER WILL GET ME THIS DEAL WHERE MY
6 MURDER CHARGE WILL GO AWAY AND I BELIEVE THAT'S WHAT HE
7 SAID. THE REST OF HIS STUFF REALLY DIDN'T MAKE ANY SENSE.

8 THE FIRST WITNESS, THE CODEFENDANT BOWENS, SAID
9 THAT IT WAS ERNEST THAT FLAGGED THE BLACK GUY DOWN. ERNEST
10 WAS THE ONE THAT KNEW BIG MARK. ERNEST WAS THE ONE THAT
11 FLAGGED THE CONTINENTAL DOWN. ERNEST WAS THE ONE THAT
12 TALKED WITH HIM. FOR THE LIFE OF ME I DON'T KNOW WHY
13 ERNEST ISN'T THE ONE THAT WENT TO THE CAR TO BUY THE DRUGS,
14 FOR ALL I KNOW HE WAS. HE'S THE ONLY THAT SAID THAT RASHAD
15 AND TELLY WENT TO THE CAR TO BUY THE DRUGS. HE'S THE ONLY
16 ONE THAT PUTS THEM THERE.

17 WE HAD SOME 8, 9, 10 WITNESSES OR SO, HE IS THE
18 ONLY ONE THAT PUTS RASHAD AND TELLY IN THE VICTIM'S CAR AND
19 ERNEST'S CREDIBILITY I SUBMIT TO YOU IS, IS ALMOST LIKE IT
20 WAS WHEN HIS FIRST STATEMENT AND YOU CAN TAKE IT FOR WHAT
21 YOU FEEL LIKE TAKING IT AND A COUPLE MORE THINGS ABOUT
22 THAT.

23 THE GUNS, HE TOLD THE SOLICITOR THAT HE SAW THE
24 GUNS IN THE FRONT OF THEIR PANTS. WELL TO ME THAT DIDN'T
25 MAKE ANY SENSE. I MIGHT BE MISTAKEN BUT THEY WEAR BIG

CLOSING ARGUMENT FOR DEFENDANT MANNING

351

1 BAGGY PANTS, HE HAD ON BIG BAGGY PANTS, EVERY DAY HE'S HAD
2 ON BIG BAGGY PANTS AND I DON'T KNOW IF YOU COULD SEE A GUN
3 IN THERE SO I HAD TO ASK THAT QUESTION. I DIDN'T KNOW THE
4 ANSWER TO IT, I HAD TO ASK IT. IF HE HAD THE GUN DOWN IN
5 THE FRONT HOW COULD YOU SEE IT AND HIS ANSWER WAS I SAW IT
6 IN HIS HAND. WELL I DIDN'T HEAR HIM TELL THE SOLICITOR
7 THAT. I'M THINKING NOW HE'S GETTING HIS STORY BETTER. TO
8 START OFF I WASN'T THERE, I'VE GOT AN ALIBI, I WAS THERE
9 BUT I DIDN'T GO TO THE CAR, I DID EVERYTHING ELSE, BUT I
10 DIDN'T GO TO THE CAR. I WENT, THEY WENT TO THE CAR BUT I
11 DIDN'T SEE, WELL I SAW THE GUNS, THEY WERE IN THEIR PANTS,
12 WELL I SAW THEM IN THEIR HAND. IT JUST GETS BETTER AND
13 BETTER FOR HIM AND WORSE AND WORSE FOR THESE GUYS AND IT'S
14 ZERO CREDIBILITY AND HE'S THE ONLY ONE PUTTING THEM THERE.
15 I ASK YOU NOT TO CONSIDER OR CONSIDER IT WITH WHAT YOU
16 THINK IT'S WORTH.

17 BEFORE WE GET TO OUR OTHER WITNESSES, BEFORE WE
18 GET TO THE OTHER WITNESSES, YOU KNOW, THEY HAVE NO REASON
19 TO HAVE THEIR OPINION OR THEIR TESTIMONY BIASED BY THEIR
20 OWN PREJUDICE OR ANYTHING LIKE THAT, LIKE, LIKE THE ERNEST
21 SMITH DID. YOU KNOW WE'VE HAD THE 911 TAPE, THAT LADY THAT
22 WAS WHAT IT WAS. IT'S WHAT IT IS AND NOTHING MORE AND
23 NOTHING LESS.

24 WE'VE HAD THE VICTIM'S MOTHER TESTIFY AND GOD
25 BLESS HER AND WE'RE SORRY FOR HER LOSS BUT SHE DOESN'T KNOW

CLOSING ARGUMENT FOR DEFENDANT MANNING

352

1 WHO KILLED HER SON AND I DON'T KNOW, YOU KNOW, THAT CAN'T
2 HELP US MAKE THE DECISION, OKAY.

3 NOW THE OTHER WITNESSES, THE ONE WAS THE CORPORAL
4 WE TALKED ABOUT, ALL HE DID WAS SECURE THE SCENE AND I
5 ADDRESSED HIM, HIS TESTIMONY A LITTLE BIT.

6 THE FOLLOWING WAS MR. GAUSE, I BELIEVE WAS HIS
7 NAME, HE WAS THE CRIME SCENE GUY THAT TALKED ABOUT THESE
8 SHELLS AND WHETHER OR NOT THEY WERE NEXT TO THE RIGHT REAR,
9 I THINK IT WAS 21 INCHES FROM THE RIGHT TIRE AND I SAW THE
10 MOCK UP THAT RANDY HAD, RIGHT TIRE 21 INCHES ON ONE AND 41
11 INCHES, I BELIEVE, BACK HERE FURTHER AWAY FROM THE
12 PASSENGER SEAT.

13 BEFORE WE EVEN GET TO ALL THAT STUFF OR THE NEXT
14 WITNESSES, I THINK THE NEXT ONE WAS THE DOCTOR, SHE DID A
15 WONDERFUL JOB, BUT SHE DOESN'T KNOW WHO KILLED THE VICTIM.
16 SHE DID GOOD WITH THESE TRAJECTORIES AND THE POINTS OF
17 IMPACT AND THE NUMBER OF WOUNDS AND ALL THESE THINGS AND
18 SHE DID A REALLY GOOD JOB. WE DON'T DISPUTE ANY, ANY OF
19 THAT. WE DON'T DISPUTE THAT TROY WAS MURDERED, OKAY, WE'RE
20 HERE BECAUSE OF THAT, BUT SHE CAN'T TESTIFY WHO DID IT.
21 SHE'S GOT NO IDEA WHO DID IT SO TAKE HER EVIDENCE ANY WAY
22 YOU WANT TO. IT DOESN'T, IT'S NOT ENOUGH TO GIVE YOU
23 ENOUGH INFORMATION TO MAKE A DECISION TO FIND A GUILTY
24 VERDICT, OKAY.

25 THE SLED GUY AS GOOD AS HE WAS, HE KNOWS HIS

CLOSING ARGUMENT FOR DEFENDANT MANNING

353

1 PISTOLS AND BULLETS AND ALL THOSE THINGS, HE DOESN'T KNOW
2 WHO KILLED THE VICTIM. HE DOESN'T EVEN KNOW WHICH GUN
3 FIRED WHICH BULLET. HE KNOWS THE TYPE IT'S CONSISTENT WITH
4 OR THIS IS CONSISTENT WITH THAT AND I LIKE THE WAY HE HAD
5 IT THERE. HE SEPARATED THREE OVER HERE AND THERE OVER
6 THERE, ALL THAT MEANS A LOT OF GOOD SCIENCE STUFF THAT I
7 DON'T KNOW MUCH ABOUT BUT I KNOW THAT DOESN'T TELL ME WHO
8 KILLED TROY, OKAY.

9 WHAT I'D LIKE TO HAVE HAD HAPPEN IN A MURDER CASE
10 OR ANY OTHER CASE IS HAVE SOME ANSWERS TO QUESTIONS, NOT
11 MORE QUESTIONS. GOT MORE QUESTIONS NOW THAN I HAD WHEN WE
12 STARTED LISTENING TO THE TESTIMONY AND I'M GOING TO TELL
13 YOU WHEN YOU COME TO FIND A VERDICT WITH THE LAW THAT WE'VE
14 GOT TO FOLLOW, BEYOND A REASONABLE DOUBT EACH AND EVERY
15 ELEMENT, WHEN YOU KEEP ALL THAT TOGETHER WITH THESE FACTS
16 THERE IS NO WAY THAT YOU CAN REACH ANY OTHER VERDICT THAN
17 NOT GUILTY, OKAY. THAT'S, THAT'S ALL WE CAN DO.

18 I, BUT I WANT TO, TO MAKE SURE I DIDN'T LEAVE
19 THIS PART OUT, THAT BEFORE YOU CONSIDER ALL THESE SHOOTINGS
20 AND ALL THE STUFF THAT OUR PROFESSIONAL WITNESSES SAID YOU
21 GOT TO PUT THE DEFENDANT'S IN THE CAR AND THE SOLICITOR IS
22 HANGING HIS HAT ON CIRCUMSTANTIAL EVIDENCE. CIRCUMSTANTIAL
23 EVIDENCE IS NOT DIRECT EVIDENCE AND IT'S EVIDENCE THAT IF
24 YOU LOOK AT IT IT CAUSES, IT SEEMS TO CAUSE A FACT THAT
25 HAPPENED AND WE DIDN'T SEE IT HAPPEN AND SO ON AND SO

CLOSING ARGUMENT FOR DEFENDANT MANNING

354

1 FORTH. WELL IT'S STILL GOT TO BE GOOD EVIDENCE. IT'S
2 STILL GOT TO BE COMPETENT, CREDIBLE, RELIABLE, AND IT'S
3 STILL GOT TO RISE TO THE LEVEL TO PROVE BEYOND A REASONABLE
4 DOUBT, OKAY.

5 THE ONLY PERSON THAT PUTS THEM IN THE CAR IS
6 ERNEST SMITH, OKAY, SO THAT'S NOT RELIABLE. I WOULD STOP
7 MY INQUIRY AT THAT POINT BUT IF I WANTED TO MAKE A FURTHER
8 INQUIRY ABOUT THE FORENSIC EVIDENCE THAT WE DO HAVE I WOULD
9 SAY, FINE, THAT TELLS ME THAT TROY IS DEAD, IT TELLS ME
10 THAT SOMEBODY SHOT HIM, THAT TWO PEOPLE SHOT HIM OR TWO
11 DIFFERENT TYPES OR STYLE GUNS SHOT HIM, AND I'D BE FINE
12 WITH THAT. IT DOESN'T HELP ME MAKE A DECISION ON WHO
13 KILLED HIM, BUT IF I WANTED TO TALK ABOUT THAT I WOULD
14 REMEMBER A COUPLE OF THINGS AND ONE OF THE LAST THINGS, I
15 THINK IT WAS THE LAST QUESTION I ASKED THE DOCTOR, COULD,
16 AND I DON'T REMEMBER THE NUMBERS, THERE WAS ONE RIGHT HERE
17 IN THE ABDOMEN, THAT WAS (A) AND THERE WAS ONE RIGHT UP
18 HERE THAT WAS (A), I JUST READ THAT BACKWARDS. IT'S A (B)
19 AND A (A), OKAY, A (B) AND A (A), WOULD THE TRAJECTORY HAVE
20 CHANGED IF THAT HAD ONE HAD BEEN IF HE HAD BEEN REACHING
21 INTO THE BACK OR TURNING TO THE BACK AND I BELIEVE IF I
22 UNDERSTOOD IT RIGHT THE TRAJECTORY INSIDE THE BODY DOESN'T
23 CHANGE BUT THE ARC OF THE TRAJECTORY OUTSIDE THE BODY
24 CHANGES BASED ON THE OTHER THINGS. I ASKED HER THIS
25 DOESN'T MAKE SENSE TO ME TO BE DEFENSIVE WOUNDS AND WE

CLOSING ARGUMENT FOR DEFENDANT MANNING

355

1 ESTABLISHED THAT THESE WOULDN'T BE DEFENSIVE WOUNDS AND
2 THAT WOULD BE CONSISTENT WITH TURNING AROUND TO THE BACK
3 AND I BELIEVE THAT THIS ONE IS CLEARLY FROM SOMEBODY IN THE
4 BACK. THOSE ARE THE THINGS I'D LOOK AT IF I GAVE
5 CREDIBILITY TO PEOPLE BEING IN THE CAR, OKAY, BUT, AND I
6 DID ASK HER, WE'VE GOT A LOT OF ODD ANGLES, A LOT OF
7 STRANGE ANGLES, THERE'S A LOT OF BULLETS FLYING AROUND AND
8 A LOT OF OTHER QUESTIONS ASKED, I DON'T KNOW THE ANSWER OF
9 WHERE EXACTLY YOU'D HAVE TO BE TO PUT THE ARC OUT OF THE
10 BODY TO MAKE THOSE SHOTS WITH THE ARC INSIDE THE BODY.

11 THOSE ARE QUESTIONS THAT I'VE ASKED MYSELF AND
12 CLEARLY THE SHOTS COULD HAVE COME FROM THE FRONT SEAT AND
13 THE BACKSEAT AND THE ONE IF THE WINDSHIELD WOULD HAVE BEEN
14 BROKEN COULD HAVE COME FROM THE, FROM THE HOOD OF THE CAR.
15 THAT IS NOT SOMETHING THAT I WOULD BE TOO CONCERNED ABOUT
16 BECAUSE WHOEVER DID THIS DID IT HOWEVER THEY DID IT BUT
17 THERE'S NO EVIDENCE THAT RASHAD AND TELLY DID IT AND I HOPE
18 I'VE BEEN EFFECTIVE IN THAT IN TRYING TO EXPLAIN THAT TO
19 YOU.

20 I THINK THAT THIS IS A SERIOUS CASE THAT REQUIRES
21 SERIOUS INQUIRY. WE SHOULD TREAT IT SERIOUSLY. I DON'T,
22 YOU KNOW, YOU CAN'T, I DON'T THINK YOU COULD CONVICT
23 SOMEBODY FOR MURDER ON THE EVIDENCE THAT WE HAVE AND I ASK
24 THAT YOU KEEP THAT IN MIND, TOO.

25 I DID THINK THAT THE SOLICITOR, HE'S DONE A

CLOSING ARGUMENT FOR DEFENDANT MANNING

356

1 COUPLE OF THINGS THAT I'VE AGREED WITH THAT I'VE SAID THAT
2 FROM THE OUTSET AND SO HAS MR. MULLINS. ONE OF THE THINGS
3 THAT WAS, HE DID DO BY TRYING TWO DEFENDANT'S TOGETHER, I
4 THINK THAT ONE COULD HOPE TO GET A CONVICTION THAT EITHER
5 THEY START FIGHTING AMONG EACH OTHER OR THAT THE JURY COULD
6 SAY SOMEBODY DID IT, IT MUST HAVE BEEN ONE OF THEM, OR IT
7 HAD TO BE TWO OF THEM OR MAYBE IT WAS ERNEST BUT ERNEST HAS
8 GOT HIS DEAL SO WE DON'T KNOW WHAT HIS DEAL IS SO LET'S,
9 THAT COULD BE PART OF YOUR DELIBERATIONS. I WOULDN'T PUT
10 MUCH WEIGHT ON IT BECAUSE IT DOESN'T MATTER HOW YOU THROW
11 SOMETHING UP AGAINST THE WALL WHAT MATTER IS WHAT STICKS
12 AND NONE OF THIS IS STICKING AS FAR AS I'M CONCERNED. IT'S
13 NOT CREDIBLE, OKAY.

14 I DO WANT TO TALK ABOUT, A LITTLE BIT ABOUT THE,
15 THE LAW AND THEN I'M GOING TO TRY TO SIT DOWN IF I HAVEN'T
16 FORGOTTEN ANYTHING. THAT CIRCUMSTANTIAL EVIDENCE IS THE
17 MOST IMPORTANT THING THAT WE'VE GOT HERE AND I, I HEARD THE
18 SOLICITOR IN HIS OPENING TALK ABOUT THAT BECAUSE HE USED AN
19 EXAMPLE OF THE RAIN ON THE GROUND OR THE RAIN ON THE GRASS
20 OR SOMETHING LIKE THAT AND, AND THAT'S FINE AND DANDY, BUT
21 THAT DOESN'T GET US THIS GIANT LEAP TO COME OUT OF THIS CAR
22 TO GO TO THAT CAR. THERE'S, YOU CAN GIVE AS MUCH EVIDENCE
23 TO THE, I'M GOING TO CALL THEM FACT WITNESSES NOW, PEOPLE
24 THAT TESTIFIED TO THE FACTS AS THEY SAW THEM RELATED TO
25 ACTIONS TAKING PLACE THAT DAY, A TIME LINE IF YOU WILL, AND

CLOSING ARGUMENT FOR DEFENDANT MANNING

357

1 THE ONLY ONES THAT WE PRIOR TO THE INCIDENT WOULD BE THE
2 TWO, THE FIRST TWO CODEFENDANT WITNESSES, OKAY. EVERYBODY
3 ELSE TESTIFIED TO WHAT THEY FOUND. THE POLICE WHAT THEY
4 FOUND AND THEN THE DOCTOR AND THE SLED AGENT WHAT THEY DID
5 THROUGH THEIR EXPERIMENTS. YOU KNOW YOU CAN GIVE BOTH OF
6 THEM, IF YOU GAVE ALL, IF YOU GAVE ONE, THE FIRST GUY IF
7 YOU BELIEVE EVERYTHING HE SAID THEN THAT NATURALLY WOULD BE
8 IN CONFLICT WITH THE SECOND GUY SO THAT'S ENOUGH TO PROVE A
9 CHAIN OF EVENTS TO SAY WE DROVE UP, THAT'S ASSUMING THAT
10 THEY WERE IN THE CAR WITH THEM TO BEGIN WITH, OKAY, TO GET
11 FROM THERE TO NOW THEY'RE IN THE CAR WITH THE VICTIM. IT'S
12 NOT ENOUGH TO GET YOU THERE SO I THINK THE INQUIRY SHOULD
13 END THERE AND THE VERDICT SHOULD BE NOT GUILTY, BUT THAT'S
14 AN IMPORTANT THING TO DO. DON'T TREAT IT ANY DIFFERENTLY
15 THAN YOU WOULD DIRECT EVIDENCE, OKAY.

16 IF THE GUY SAID TO YOU I SAW THE LIGHT, IT WAS
17 GREEN AND I'M CRYSTAL CLEAR ABOUT IT AND THEN ON CROSS
18 EXAMINATION HE SAID WELL IT COULD HAVE BEEN YELLOW, WELL
19 THAT'S DIRECT EVIDENCE BUT I DON'T KNOW IF I'D HANG A
20 MURDER CONVICTION ON SOMEBODY FOR THAT BECAUSE TO ME IT'S A
21 LITTLE WISHY WASHY OR FLIMSY OR SOMETHING LIKE THAT. I
22 BELIEVE THAT THAT'S SIMILAR, MORE SIMILAR SO TO WHAT WE HAD
23 HERE THAN WHAT WE HAD BEFORE, OKAY, AND LIKE I SAID AT THE
24 BEGINNING WE'VE HEARD THE EVIDENCE AND WHEN I SAID ON
25 MONDAY AFTER YOU EVEN THOUGH WE DIDN'T HAVE TO PUT ANYTHING

CLOSING ARGUMENT FOR DEFENDANT MANNING

358

1 UP, WE WEREN'T GOING TO PUT ANY, I DIDN'T SAY WEREN'T GOING
2 TO PUT ANYTHING UP, I WOULD GO INTO WHAT I THOUGHT WE
3 WOULD, THE CASE WOULD SHOW, THE CASE HAS BEEN VERY
4 CONSISTENT FROM WHAT I SAID IT WOULD SHOW. I SAID I WOULD
5 ASK FOR A NOT GUILTY VERDICT, OBVIOUSLY I'M GOING TO SAY
6 THAT, BUT I ASK THAT NOW THAT WHEN YOU GO BACK AND
7 DELIBERATE THAT YOU CONSIDER THINGS THAT I'VE ASKED YOU TO
8 CONSIDER, DISREGARD THE TESTIMONY OF ERNEST SMITH, DON'T
9 DISCUSS THE FACT THAT THE GENTLEMEN TOLD, OR GENTLEMEN
10 FOLLOWED THE LAW AND DECIDED NOT TO TESTIFY, DON'T LET THAT
11 COLOR YOUR DECISIONS OR EVEN MAKE IT A PART OF IT, HOLD THE
12 STATE TO THE HIGH BURDEN OF PROOF THAT THEY'VE GOT, HOLD
13 THEIR FACT WITNESSES TO THEIR TIME LINE, AND I STARTED TO
14 SAY THAT A WHILE AGO AND I COMPLETELY FORGOT ABOUT IT, JUST
15 BECAUSE I'M TELLING YA'LL THINGS THERE'S 12 OF YA'LL, YA'LL
16 REMEMBER COLLECTIVELY MUCH MORE THAN I REMEMBER. I FORGOT
17 ABOUT THE TIME LINE SO WHEN YA'LL GET BACK THERE DO WHAT
18 YOU WANT TO DO, THERE ARE THINGS I THINK ARE IMPORTANT BUT
19 ON THAT CIRCUMSTANTIAL EVIDENCE THING THERE'S NO TIME LINE,
20 OKAY. I DIDN'T REMEMBER A TIME LINE UNDER THE TESTIMONY.

21 FOR SOMETHING TO BE CLEAR AND CIRCUMSTANTIAL TO ME IF
22 I, THERE WAS NO TIME LINE WHERE THEY SAID IT WAS X O'CLOCK
23 IN THE EVENING WHEN THEY WENT TO THE CAR, THE VICTIM DIED
24 AT X PLUS TWO MINUTES OR WHATEVER AND THEN WE DROVE BACK.
25 THERE'S NOT ENOUGH TIME LINE THERE, THAT WITH THE

JURY CHARGE

359

1 SOLICITOR, AFTER THE CASE WAS OVER, SAYING THAT THERE WAS A
2 ROBBERY WHEN THERE'S NO TESTIMONY AT ALL ABOUT A ROBBERY
3 WHICH FLIES IN THE FACE OF WHAT THE FACTS THAT WE DO KNOW
4 ARE THAT THE VICTIM HAS HIS DOPE WITH HIM AND HAD HIS MONEY
5 WITH HIM SO WE KNOW THERE'S NO ROBBERY THERE. THERE'S NOT
6 ENOUGH TIME TO CONNECT THE TWO SO WE'VE GOT A TIME LINE
7 PROBLEM WHICH YOU HAVE WITH ANY CIRCUMSTANTIAL EVIDENCE
8 CASE.

9 WITH ANY CIRCUMSTANTIAL EVIDENCE CASE YOU NEED TO
10 HAVE, MAKE SURE IT'S ALL CONNECTED UP TOGETHER. WE DON'T
11 HAVE THAT HERE SO THAT SHOULD END THE INQUIRY AND IT SHOULD
12 BE NOT GUILTY, BUT EVEN IF YOU GO BEYOND THAT AND SAY, WELL
13 I WANT TO KNOW MORE, I'M NOT CONCERNED ABOUT THE TIME OF
14 DAY THEN WE DON'T HAVE CREDIBLE EVIDENCE TO PUT THEM THERE,
15 BUT THE TIME LINE IS IMPORTANT BECAUSE IF THEY WENT THERE
16 TO BUY DOPE AND IF THEY BOUGHT THEIR DOPE AND LEFT THEN THE
17 PRESUMPTION IS THAT HE WAS STILL ALIVE AND SOMEBODY ELSE
18 DID THIS WITH THE TIME LINE THAT'S VERY POSSIBLE. IF THEY
19 WENT THERE TO MURDER THE GUY AND ROB HIM AND TAKE HIS DOPE
20 AND TAKE HIS MONEY WELL THAT DOESN'T MAKE SENSE EITHER
21 BECAUSE THERE'S NO EVIDENCE OF THAT HAPPENING, NUMBER ONE,
22 AND THERE'S EVIDENCE THAT IT DIDN'T HAPPEN BECAUSE HE STILL
23 HAD HIS DOPE AND HIS MONEY. ALL THAT POINTS TO NOT GUILTY,
24 WE'D ASK YOU TO BRING BACK A NOT GUILTY, THANK YOU.

25 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN,

JURY CHARGE

360

1 WE'RE GOING TO TAKE A SHORT BREAK FOR ABOUT FIVE MINUTES,
2 GO BACK TO YOUR JURY ROOM, COME BACK IN IN FIVE MINUTES AND
3 I'LL GIVE YOU THE CHARGE, THANK YOU VERY MUCH.

4 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
5 12:09 P.M.)

6 THE COURT: IS THE STATE READY TO PROCEED?

7 MR. DEBUSK: THE STATE IS READY, YOUR HONOR.

8 THE COURT: DEFENDANT MANNING?

9 MR. MULLINS: READY TO PROCEED, YOUR HONOR.

10 THE COURT: DEFENDANT BAKER?

11 MR. GARDNER: YES, YOUR HONOR.

12 THE COURT: ASK THE JURY TO COME IN, PLEASE.

13 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
14 12:15 P.M.)

JURY CHARGE

15
16 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN,
17 IT'S NOW COME TO THE STAGE OF THE TRIAL WHERE I MUST GIVE
18 YOU THE LAW THAT APPLIES TO THE FACTS AS YOU SO FIND THEM
19 TO BE. NOW AS I TOLD YOU AT THE VERY BEGINNING
20 COLLECTIVELY YOU ARE THE JUDGES OF THE FACTS IN THIS
21 PARTICULAR CASE AND I TOLD YOU WOULD NOT INTIMATE OR
22 INDICATE TO YOU IN ANY WAY WHAT I BELIEVE THE FACTS OF THIS
23 CASE TO BE BECAUSE THAT WAS NOT MY JOB. THAT IS YOUR JOB
24 AND YOUR RESPONSIBILITY.

25 IN THAT SAME WAY THAT YOU ARE THE JUDGES OF THE

JURY CHARGE

361

1 FACTS IF YOU CAME INTO THE COURTROOM WITH ANY PRECONCEIVED
2 IDEAS OF WHAT THE LAW IS, WHAT IT OUGHT TO BE, WHAT IT
3 SHOULD BE, WHAT YOU HOPED IT WOULD, YOU'RE GOING TO
4 DISREGARD THEM. YOU WILL TAKE THE LAW AS I NOW GIVE IT TO
5 YOU AND APPLY IT TO THE FACTS AS YOU SO FIND THEM TO BE IN
6 THIS PARTICULAR CASE.

7 NOW IN YOUR JOB AS THE JUDGES OF THE FACTS ONE OF
8 THE THINGS THAT YOU HAVE TO DO IS TO JUDGE THE CREDIBILITY,
9 THAT IS THE BELIEVABILITY OF THE WITNESSES THAT HAVE
10 TESTIFIED BEFORE YOU IN THIS PARTICULAR CASE.

11 NOW WHEN YOU DO THAT YOU CAN BELIEVE ONE WITNESS
12 AGAINST SEVERAL, SEVERAL AGAINST ONE. YOU CAN BELIEVE A
13 PORTION OF WHAT A WITNESS SAYS AND DISREGARD THE REMAINING
14 PORTION OF IT. IF YOU'VE GOT A GOOD SOUND REASON FOR DOING
15 SO YOU CAN DISREGARD IN ITS ENTIRETY THE TESTIMONY OF A
16 PARTICULAR WITNESS.

17 NOW HOW DO YOU DO THAT? HOW DO YOU LOOK AT THAT
18 CREDIBILITY AND BELIEVABILITY? WELL YOU CONSIDER WHETHER
19 OR NOT THE WITNESS HAS EXHIBITED TO YOU ANY KIND OF
20 INTEREST, BIAS, PREJUDICE, ANY KIND OF MOTIVE THAT THEY
21 MIGHT HAVE IN GIVING YOU THE TESTIMONY THAT THEY GAVE YOU
22 FROM THE WITNESS STAND.

23 YOU COULD CONSIDER THEIR DEMEANOR, THAT IS HOW
24 DID THEY APPEAR WHEN THEY TESTIFIED BEFORE YOU.

25 YOU ALSO CONSIDER THE OPPORTUNITY FOR KNOWLEDGE.

JURY CHARGE

362

1 HOW DID THEY COME ABOUT THAT INFORMATION THAT THEY GAVE YOU
2 FROM THE WITNESS STAND. HOW DID THEY KNOW THAT INFORMATION
3 THAT THEY GAVE YOU FROM THE WITNESS STAND.

4 NOW YOU DON'T EXERCISE THIS KIND OF JUDGMENT
5 ARBITRARILY. IF YOU THINK ABOUT IT'S SOMETHING YOU DO
6 EVERY SINGLE DAY OF YOUR LIFE, JUDGE THE CREDIBILITY AND
7 BELIEVABILITY. IF SOMEBODY TELLS YOU SOMETHING YOU
8 AUTOMATICALLY JUDGE WHETHER OR NOT YOU BELIEVE THEM OR YOU
9 DO NOT BELIEVE THEM AND HOW DO YOU DO THAT. YOU USE YOUR
10 GOOD COMMON SENSE, YOUR GOOD JUDGMENT, THAT YOU USE IN
11 CONDUCTING YOUR OWN AFFAIRS. YOU APPLY THAT SAME GOOD
12 JUDGMENT TO THE FACTS THAT YOU'VE HEARD IN THIS CASE AND
13 FIND THOSE FACTS THAT YOU BELIEVE TO BE THE TRUTH IN THIS
14 PARTICULAR CASE. THAT IS, THAT IS WHAT WHEN YOU GIVE YOUR
15 VERDICT ULTIMATELY IN THIS CASE, THAT IS WHAT YOU ARE
16 DOING. YOU ARE SAYING THIS IS THE TRUTH OF THIS PARTICULAR
17 MATTER.

18 YOU DON'T HAVE ANY FRIENDS TO REWARD; YOU DON'T
19 HAVE ANY ENEMIES TO PUNISH. YOUR VERDICT CAN'T BE THE
20 RESULT OF ANY KIND OF PASSION, PREJUDICE OR SYMPATHY. YOUR
21 JOB IS TO ANALYZE THE FACTS AND THE EVIDENCE, FIND THAT
22 EVIDENCE WHICH CONVINCES YOU OF ITS TRUTH AND USE THAT TO
23 ARRIVE AT YOUR VERDICT IN THIS PARTICULAR MATTER.

24 IF YOU REMEMBER IN THIS TRIAL I QUALIFIED TWO
25 WITNESSES TO GIVE THEIR OPINION. BECAUSE I QUALIFIED THEM

JURY CHARGE

363

1 TO GIVE THEIR OPINION THAT DOES NOT GIVE THEM ANY SPECIAL
2 STATUS ABOVE ANY OTHER WITNESS. YOU JUDGE ALL THE OTHER,
3 ALL THE WITNESSES THE SAME, BUT SOME WITNESSES CAN GIVE
4 THEIR OPINION. NORMALLY WE DON'T ALLOW PEOPLE TO GIVE
5 THEIR OPINION. THEY HAVE TO TESTIFY ABOUT WHAT THEY
6 ACTUALLY SAW, HEARD, WHAT THEY ACTUALLY KNOW, BUT IF YOU'RE
7 EDUCATED IN A CERTAIN FIELD, HAVE EXPERIENCE IN A CERTAIN
8 FIELD THE COURT MAY ALLOW YOU TO GIVE YOUR OPINION AND I
9 DID THAT ON TWO WITNESSES, BUT ONCE AGAIN YOU MUST JUDGE
10 EVERYBODY'S CREDIBILITY AND BELIEVABILITY THE SAME DESPITE
11 THE FACT THAT THE COURT MAY HAVE ALLOWED SOMEONE TO GIVE
12 THEIR PARTICULAR OPINION ABOUT A MATTER.

13 IN THIS PARTICULAR CASE AS WITH VIRTUALLY ALL
14 CASES THAT ARE TRIED IN THIS COURTROOM THERE WERE TWO TYPES
15 OF EVIDENCE, DIRECT AND CIRCUMSTANTIAL EVIDENCE.

16 DIRECT EVIDENCE, THAT'S THE TESTIMONY OF A PERSON
17 WHO CLAIMS TO HAVE HAD ACTUAL KNOWLEDGE OF A FACT.

18 CIRCUMSTANTIAL EVIDENCE THAT'S A CHAIN OF FACTS
19 AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.

20 THE LAW DOESN'T MAKE ANY DISTINCTION BETWEEN
21 DIRECT AND CIRCUMSTANTIAL EVIDENCE. THERE'S NO GREATER
22 DEGREE OF PROOF THAT'S REQUIRED OF ONE OR THE OTHER. WHEN
23 YOU'RE LOOKING AT THE EVIDENCE YOU'RE LOOKING AT ALL THE
24 EVIDENCE THE SAME. YOU'RE LOOKING AT AND JUDGING IT ALL
25 THE SAME, GIVING IT THE SAME STANDARD AS TO WHETHER OR NOT

JURY CHARGE

364

1 YOU BELIEVE THAT PARTICULAR EVIDENCE OR NOT.

2 IN THIS PARTICULAR CASE THE DEFENDANTS DID NOT
3 TESTIFY. I TELL YOU, INSTRUCT YOU AND EMPHASIZE TO YOU THE
4 FACT THAT THEY DID NOT TESTIFY IN THIS CASE IS NOT A PART
5 OF THIS CASE. YOU MAY NOT TALK ABOUT IT IN YOUR JURY ROOM.
6 IT IS NOT PART OF YOUR DELIBERATIONS. IT CANNOT IMPACT
7 YOUR DECISION IN ANY MANNER WHATSOEVER. ANYONE CHARGED
8 WITH A CRIME HAS THE RIGHT TO EXERCISE THEIR CONSTITUTIONAL
9 RIGHT TO REMAIN SILENT. THAT CANNOT BE HELD AGAINST THEM.
10 IT CANNOT BE USED AGAINST THEM. IT CANNOT IMPACT YOUR
11 DECISION IN ANY MANNER.

12 THE REASON FOR THAT IS THE BURDEN, AS I TOLD YOU
13 AT THE VERY BEGINNING, THE BURDEN OF PROOF IS ON THE STATE
14 OF SOUTH CAROLINA. THE DEFENDANTS HAVE NO BURDEN. THE
15 BURDEN IS ON THE STATE OF SOUTH CAROLINA. THE STATE OF
16 SOUTH CAROLINA MUST PRODUCE TO YOU EVIDENCE WHICH CONVINCES
17 YOU BEYOND A REASONABLE DOUBT OF THE GUILT OF THE
18 DEFENDANTS.

19 THE DEFENDANTS TO THE INDICTMENTS, THAT WAS FOR
20 THE CHARGES THAT I READ TO YOU AT THE BEGINNING WHEN WE
21 WERE QUALIFYING THE WHOLE JURY PANEL, THE DEFENDANTS PLED
22 NOT GUILTY TO THOSE INDICTMENTS. WHEN THAT HAPPENED THAT'S
23 WHEN THE BURDEN OF PROOF CAME UPON THE STATE OF SOUTH
24 CAROLINA TO PROVE THE DEFENDANTS GUILTY BEYOND A REASONABLE
25 DOUBT. DEFENDANT'S ARE PRESUMED INNOCENT. NO MATTER WHAT

JURY CHARGE

365

1 THE CHARGE MAY BE A PERSON CHARGED WITH A CRIME IS ALWAYS
2 PRESUMED INNOCENT OF THAT CRIME UNTIL YOU DECIDE WHETHER OR
3 NOT THERE IS EVIDENCE THAT SATISFIES YOU OF THEIR GUILT
4 BEYOND A REASONABLE DOUBT.

5 THIS PRESUMPTION OF INNOCENCE DIDN'T END AT THE
6 START OF THE TRIAL. IT HASN'T ENDED NOW. IT DOES NOT END
7 UNTIL YOU BELIEVE THE STATE HAS PRODUCED SUFFICIENT
8 EVIDENCE WHICH CONVINCES YOU BEYOND A REASONABLE DOUBT OF
9 THEIR GUILT IF THAT IS YOUR VIEW OF THE EVIDENCE.

10 PRESUMPTION OF INNOCENCE IS LIKENED TO A ROBE OF
11 RIGHTEOUSNESS THAT'S PLACED UPON THE SHOULDERS OF THE
12 DEFENDANT AND IT STAYS UPON THE SHOULDERS OF THE DEFENDANT
13 UNTIL YOU BELIEVE THE STATE HAS PRODUCED SUFFICIENT
14 EVIDENCE WHICH STRIPS THAT ROBE OF RIGHTEOUSNESS FROM THEM
15 BY PROOF THAT LEAVES YOU CONVINCED OF THEIR GUILT BEYOND A
16 REASONABLE DOUBT.

17 I SAID REASONABLE DOUBT A NUMBER OF TIMES, WHAT
18 IS REASONABLE DOUBT? IT'S THE KIND OF DOUBT THAT WOULD
19 CAUSE AN ORDINARY REASONABLE PERSON TO HESITATE TO ACT.

20 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
21 LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANTS GUILT.

22 NOW THERE IS VERY FEW THINGS FOR YOU KNOW WITH
23 ABSOLUTE CERTAINTY BUT THE LAW DOES NOT REQUIRE THE STATE
24 OF SOUTH CAROLINA TO PROVE THE GUILT OF THE DEFENDANTS TO
25 YOU BEYOND OR TO THIS STANDARD OF ABSOLUTE CERTAINTY.

JURY CHARGE

366

1 WHAT IS REQUIRED IS THAT IF BASED UPON YOUR
2 CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED THAT
3 THE DEFENDANTS ARE GUILTY OF THE CRIME CHARGED YOU MUST
4 FIND THE DEFENDANTS GUILTY.

5 ON THE OTHER HAND BASED UPON YOUR VIEW OF THE
6 EVIDENCE YOU ARE NOT FIRMLY CONVINCED THAT ONE OR MORE OF
7 THE DEFENDANTS ARE GUILTY OF THE CRIMES CHARGED THEN YOU
8 MUST GIVE THEM THE BENEFIT OF THE DOUBT AND FIND BOTH OR
9 EITHER OF THEM NOT GUILTY. THE STATE HAS THE BURDEN OF
10 PROOF. THE STATE MUST PROVE THE DEFENDANTS GUILTY BEYOND A
11 REASONABLE DOUBT.

12 THE DEFENDANTS IN THIS MATTER ARE CHARGED WITH
13 MURDER. THE STATE HAS TO PROVE BEYOND A REASONABLE DOUBT
14 THAT THE DEFENDANTS KILLED ANOTHER PERSON WITH MALICE
15 AFORETHOUGHT.

16 WHAT IS MALICE? MALICE IS HATRED, ILL WILL,
17 HOSTILITY TOWARDS ANOTHER PERSON. IT'S THE INTENTIONAL
18 DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE, WITH
19 AN INTENT TO INFLICT AN INJURY OR WITH THE CIRCUMSTANCES
20 THAT THE LAW WOULD INFER AN EVIL INTENT.

21 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE
22 EXIST FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED,
23 BUT MALICE DOES HAVE TO EXIST IN THE MIND OF THE DEFENDANT
24 JUST BEFORE AND AT THE TIME THE ACT IS COMMITTED,
25 THEREFORE, THERE HAS TO BE THAT COMBINATION OF THE EVIL

JURY CHARGE

367

1 INTENT AND THE ACT.

2 NOW MALICE AFORETHOUGHT CAN BE SHOWN THROUGH
3 EITHER EXPRESSED OR INFERRED EVIDENCE. BY THESE TERMS
4 THAT'S NOT DIFFERENT KINDS OF MALICE BUT IT'S JUST HOW THEY
5 ARE SHOWN TO EXIST.

6 EXPRESSED WOULD BE WHEN SOMEBODY SPEAKS WORDS
7 WHICH EXPRESS HATRED OR ILL WILL TOWARD ANOTHER OR WHEN A
8 PERSON PREPARED BEFOREHAND TO DO WHAT THEY LATER
9 ACCOMPLISHED OR WHAT THEY LATER DID.

10 INFERRED MALICE MEANS CONDUCT SHOWING A TOTAL
11 DISREGARD FOR HUMAN LIFE. INFERRED MALICE CAN ALSO ARISE
12 WHEN THE DEED IS DONE WITH A DEADLY WEAPON.

13 NOW DEADLY WEAPON CAN BE ANY KIND OF ARTICLE OR
14 INSTRUMENT WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY
15 HARM. WHETHER OR NOT SOMETHING HAS BEEN USED AS A DEADLY
16 WEAPON DEPENDS UPON THE FACTS AND CIRCUMSTANCES OF EACH
17 PARTICULAR CASE.

18 IN THIS STATE MOTIVE IS NOT AN ELEMENT OF THE
19 OFFENSE OF MURDER AND THE STATE DOES NOT NEED TO PROVE
20 MOTIVE.

21 IF A CRIME IS COMMITTED BY TWO OR MORE PEOPLE WHO
22 ARE ACTING TOGETHER IN COMMITTING A CRIME THE ACT OF ONE IS
23 THE ACT OF ALL.

24 A PERSON WHO JOINS WITH ANOTHER TO ACCOMPLISH AN
25 ILLEGAL PURPOSE IS CRIMINALLY RESPONSIBLE FOR EVERYTHING

JURY CHARGE

368

1 DONE BY THE OTHER PERSON WHICH OCCURS AS A NATURAL
2 CONSEQUENCE OF THE ACT THAT'S DONE IN CARRYING OUT THAT
3 COMMON PLAN OR PURPOSE, THEREFORE, IF TWO OR MORE PEOPLE
4 ARE ACTING TOGETHER ASSISTING EACH OTHER IN COMMITTING THE
5 OFFENSE IT IS THE ACT OF ONE IS THE ACT OF ALL OR AS THE
6 LAW STATES THE HAND OF ONE IS THE HAND OF ALL.

7 PRIOR KNOWLEDGE THAT A CRIME IS GOING TO BE
8 COMMITTED WITHOUT MORE IS NOT SUFFICIENT TO MAKE A PERSON
9 GUILTY OF THAT CRIME.

10 MERE KNOWLEDGE THAT ANOTHER IS GOING TO COMMIT A
11 CRIME EVEN IF THE DEFENDANT IS PRESENT IS NOT SUFFICIENT TO
12 CONVICT THAT PARTICULAR PERSON. THE STATE HAS TO PROVE
13 BEYOND A REASONABLE DOUBT THE THEORY OF THE HAND OF ONE IS
14 THE HAND OF ALL.

15 NOW SOMEONE WHO IS A PRINCIPAL IN A CRIME IS ONE
16 WHO EITHER ACTUALLY COMMITS THE CRIME OR WHO IS PRESENT
17 ASSISTING IN THE COMMITTING OF THAT CRIME SO WHEN A PERSON
18 DOES AN ACT IN THE PRESENCE OF AND WITH THE ASSISTANCE OF
19 ANOTHER THE ACT IS DONE BY BOTH.

20 WHERE TWO OR MORE ARE ACTING TOGETHER WITH A
21 COMMON PLAN OR INTENT ARE PRESENT AT THE COMMISSION OF A
22 CRIME IT DOES NOT MATTER WHO ACTUALLY COMMITS THE CRIME,
23 ALL ARE GUILTY, THE HAND OF ONE IS THE HAND OF ALL.

24 NOW PRESENT AT THE COMMISSION OF A CRIME MEANS TO
25 BE SUFFICIENTLY NEAR TO AID AND ABET AND ASSIST IN THE

JURY CHARGE

369

1 COMMISSION OF THAT CRIME, BUT I TELL YOU MERE PRESENCE AT
2 THE SCENE OF A CRIME IS NOT SUFFICIENT TO CONVICT.

3 INTENT IS A NECESSARY ELEMENT. THERE MUST HAVE
4 BEEN A COMMON DESIGN OR INTENT TO COMMIT THE CRIME AND THE
5 CRIME MUST HAVE BEEN COMMITTED PURSUANT TO THAT INTENT.

6 THE STATE HAS TO PROVE ALL THE ELEMENTS BEYOND A
7 REASONABLE DOUBT.

8 NOW INTENT CAN BE SHOWN BY THE ACTS AND THE
9 CONDUCT OF THE DEFENDANTS AND OTHER CIRCUMSTANCES FROM
10 WHICH YOU COULD INFER INTENT.

11 AS I STATE MERE PRESENCE AT THE SCENE OF A CRIME
12 IS NOT SUFFICIENT TO PROVE SOMEONE GUILTY. THE BURDEN IS
13 ON THE STATE OF SOUTH CAROLINA TO PROVE EVERY ELEMENT OF
14 THE CRIME CHARGED.

15 IF YOU FIND AFTER REVIEWING ALL THE EVIDENCE THAT
16 THE STATE HAS PROVED THAT THE DEFENDANT WAS ONLY PRESENT AT
17 THE SCENE OF A CRIME AND THAT THEY HAVE NOT PROVED BEYOND A
18 REASONABLE DOUBT ANY OTHER PARTICIPATION IN THE CRIME THEN
19 YOU MUST FIND THE DEFENDANT NOT GUILTY.

20 THE DEFENDANTS MERE PRESENCE WHERE A CRIME IS
21 BEING COMMITTED OR MERE ASSOCIATION WITH A PERSON WHO
22 COMMITS A CRIME DOES NOT IN AND OF ITSELF MAKE THAT
23 DEFENDANT A CO-CONSPIRATOR OR AN ACCOMPLICE WHO HAS AGREED
24 TO JOIN IN THE COMMISSION OF A CRIME.

25 ALL RIGHT, LADIES AND GENTLEMEN, THAT IS THE LAW

JURY CHARGE

370

1 THAT APPLIES TO THE FACTS AS YOU SO FIND THEM TO BE IN THIS
2 PARTICULAR CASE. TO AID YOU IN ARRIVING IN YOUR UNANIMOUS
3 VERDICT IN THIS PARTICULAR MATTER I HAVE PREPARED TWO
4 VERDICT FORMS.

5 I TOLD YOU AT THE VERY BEGINNING, AND I REMIND
6 YOU NOW, YOU ARE DECIDING TWO CASES. YOU APPLY THE LAW
7 THAT I JUST GAVE TO YOU TO EACH OF THE DEFENDANTS TO THE
8 FACTS AS YOU SO FIND THEM TO BE IN THIS PARTICULAR CASE.

9 THE STATE HAS THE BURDEN OF PROOF IN EACH CASE TO
10 PROVE THAT DEFENDANT GUILTY BEYOND A REASONABLE DOUBT SO
11 I'M GOING TO LOOK AT ONE VERDICT FORM BEFORE THE OTHER,
12 DON'T ASSIGN ANY VALUE TO THAT.

13 IT HAS AT THE TOP OF THE PAGE, THE STATE OF SOUTH
14 CAROLINA COUNTY OF HORRY, IT HAS THE CAPTION OF THE CASE
15 THE STATE OF SOUTH CAROLINA V. TELLY MANNING DEFENDANT
16 MURDER. ON THE CHARGE OF MURDER WE THE JURY BY UNANIMOUS
17 CONSENT FIND THE DEFENDANT, AND THERE'S TWO CHOICES, I PUT
18 ONE BEFORE THE OTHER, ONCE AGAIN DON'T ASSIGN ANY VALUE TO
19 THAT, THERE'S A BLOCK FOR NOT GUILTY AND A BLOCK FOR
20 GUILTY.

21 REGARDING THE STATE OF SOUTH CAROLINA V. RASHAD
22 BAKER, SEPARATE CASE, VERDICT, ON THE CHARGE OF MURDER WE
23 THE JURY BY UNANIMOUS CONSENT FIND THE DEFENDANT NOT GUILTY
24 OR GUILTY.

25 MADAM FORELADY, WHEN YOUR JURY HAS DELIBERATED

JURY CHARGE

371

1 AND REACHED A UNANIMOUS DECISION AS TO EACH CASE YOU WILL
2 TAKE THE VERDICT FORMS, YOU WILL CHECK THE APPROPRIATE
3 BLOCK, YOU WILL SIGN YOUR NAME AS THE FOREPERSON INDICATING
4 THAT YOUR JURY HAS WELL AND TRULY DELIBERATED IN EACH CASE
5 AND REACHED A UNANIMOUS VERDICT IN EACH PARTICULAR CASE.

6 NOW I SAID UNANIMOUS I DON'T KNOW HOW MANY TIMES,
7 IT MEANS EXACTLY WHAT YOU THINK IT MEANS, EVERYBODY AGREES
8 THE VERDICT IN EACH CASE WHATEVER THE VERDICT IS MUST BE
9 TWELVE ZERO. IT'S NOT ELEVEN ONE, TEN TWO, ANY COMBINATION
10 THEREOF. WHATEVER THE VERDICT IS, WHATEVER IT IS ON EACH
11 CASE IT MUST BE TWELVE ZERO, EVERYBODY AGREES TO THAT
12 VERDICT.

13 ALL RIGHT, MADAM FORELADY, I'LL HAVE YOU TAKE THE
14 JURY BACK TO YOUR JURY ROOM IN JUST A MINUTE. DO NOT BEGIN
15 YOUR DELIBERATIONS. I WILL SEND INTO YOU THE VERDICT FORMS
16 AND THE EXHIBITS. LUNCH SHOULD BE COMING AT SOME POINT IN
17 TIME VERY CLOSE TO NOW. MY SUGGESTION TO YOU WOULD BE GO
18 AHEAD AND EAT LUNCH THEN BEGIN YOUR DELIBERATIONS IF IT HAS
19 COME OR TAKE A BREAK AND DO THAT, BUT UNTIL I SEND INTO YOU
20 THE VERDICT FORMS AND THE EXHIBITS PLEASE DO NOT BEGIN YOUR
21 DELIBERATIONS, TAKE YOUR JURY BACK TO YOUR JURY ROOM,
22 PLEASE.

23 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
24 12:34 P.M.)

25 THE COURT: ANY EXCEPTIONS, DELETIONS, OR

JURY CHARGE

372

1 ADDITIONS TO THE CHARGE FROM THE STATE?

2 MR. DEBUSK: I'M SORRY, YOUR HONOR, DID YOU
3 CHARGE THE FELONY MURDER INFERENCE?

4 THE COURT: I DON'T THINK I DID. CITE TO ME
5 WHAT YOU WOULD HAVE ME CHARGE?

6 MR. DEBUSK: THE MODEL CHARGE I HAVE IS, IF ONE
7 INTENTIONALLY KILLS ANOTHER DURING THE COMMISSION OF A
8 FELONY THE INFERENCE OF MALICE MAY ARISE. IF FACTS ARE
9 PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN
10 INFERENCE OF MALICE TO YOUR SATISFACTION THIS INFERENCE
11 WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN INTO
12 CONSIDERATION BY YOU ALONG WITH ALL OTHER EVIDENCE IN THE
13 CASE AND YOU MAY GIVE IT THE WEIGHT THAT YOU DECIDE IT
14 SHOULD RECEIVE.

15 THE COURT: I DID NOT CHARGE THAT. DO YOU
16 DISAGREE, MR. MULLINS?

17 MR. MULLINS: NO, SIR, I WISH I COULD, BUT I
18 CAN'T.

19 THE COURT: ALL RIGHT, SIR, DO YOU DISAGREE, MR.
20 GARDNER?

21 MR. GARDNER: NO, SIR, I DON'T.

22 THE COURT: ALL RIGHT.

23 MR. GARDNER: I WOULD IF YOU'RE GOING TO CHARGE
24 THEM ON THAT I HOPE WE'VE GOT SOMETHING THAT THEY WOULDN'T
25 THINK THAT'S A SPECIAL CHARGE BECAUSE IT'S GOING TO BE BY

JURY CHARGE

373

1 ITSELF.

2 THE COURT: NO, I'M GOING TO TELL THEM ---

3 MR. GARDNER: OKAY.

4 THE COURT: --- THAT THE ATTORNEYS REMINDED ME
5 AND I NEGLECTED AND SHOULD HAVE INCLUDED IT IN THE WHOLE
6 CHARGE THEY'RE CONSIDERING WITH ALL THE REST OF THE CHARGE.
7 IT'S ONLY BECAUSE OF MY ERROR THAT THEY DID NOT HEAR IT
8 WITH THE ENTIRETY OF THE CHARGE. THAT'S WHAT I WILL TELL
9 THEM, ANY OBJECTION TO THAT?

10 MR. MULLINS: NO, SIR.

11 MR. DEBUSK: NO, YOUR HONOR.

12 MR. GARDNER: NO, YOUR HONOR.

13 THE COURT: WITHOUT ME LOOKING THAT UP, HAND
14 THAT TO BE, SOLICITOR, SO I'LL HAVE IT. CALL THE JURY
15 RIGHT BACK IN, PLEASE?

16 I'M SORRY. IS THERE ANY ADDITIONS OR DELETIONS
17 OTHER THAN THAT FROM THE DEFENDANT MANNING?

18 MR. MULLINS: NO, YOUR HONOR.

19 THE COURT: FROM THE DEFENDANT BAKER?

20 MR. GARDNER: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT, SIR.

22 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
23 12:37 P.M.)

24 JURY CHARGE

25 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN,

JURY CHARGE

374

1 THERE WAS A GOOD REASON WHY I TOLD YOU NOT TO BEGIN YOUR
2 DELIBERATIONS AND THAT IS BECAUSE AFTER DISCUSSING WITH THE
3 LAWYERS OF WHETHER OR NOT THERE IS SOME MATTER THAT NEEDED
4 TO BE ADDED TO THE CHARGE AND IN DISCUSSION I FIND THAT
5 THERE IS SOMETHING THAT I SHOULD ADD TO YOU NOW.

6 WHEN I GIVE YOU THIS MATTER THAT I WILL EXPLAIN
7 TO YOU YOU TAKE IT WITH ALL THE REST OF THE CHARGE.
8 THERE'S NO SPECIAL SIGNIFICANCE OTHER THAN I SHOULD HAVE
9 INCLUDED IT WITH THE TOTAL CHARGE THAT I JUST GAVE YOU SO
10 YOU JUST TAKE THIS AS A PART OF THE TOTAL CHARGE.

11 THAT BEING IF ONE INTENTIONALLY KILLS ANOTHER
12 DURING THE COMMISSION OF A FELONY THE INFERENCE OF MALICE
13 MAY ARISE IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT
14 SUFFICIENT TO RAISE INFERENCE OF MALICE TO YOUR
15 SATISFACTION. THIS INFERENCE IS SIMPLY AN EVIDENTIARY FACT
16 TO BE TAKEN INTO CONSIDERATION BY YOU ALONG WITH ALL THE
17 OTHER EVIDENCE IN THE CASE. YOU MAY GIVE IT THE WEIGHT
18 THAT YOU DECIDE IT SHOULD RECEIVE SO WITH THAT THAT IS THE
19 LAW THAT APPLIES TO THIS PARTICULAR CASE.

20 THE COURT REPORTER HAS THE VERDICT FORM AND
21 EXHIBITS AND THOSE WILL BE NOW SENT INTO YOU AND YOU MAY
22 BEGIN YOUR DELIBERATIONS AT YOUR CHOOSING. IF LUNCH IS
23 THERE I WOULD SUGGEST YOU EAT LUNCH BUT YOU ARE NOW IN
24 CHARGE OF YOUR DELIBERATIONS. THANK YOU VERY MUCH.

25 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT

JURY CHARGE

375

1 12:34 P.M.)

2 THE COURT: IS THERE ANY PROBLEM WITH THE CLERK
3 COLLECTING ALL THE EXHIBITS AND TAKING THOSE INTO THE JURY
4 ROOM, GENTLEMEN?

5 MR. DEBUSK: NONE FROM THE STATE, YOUR HONOR.

6 MR. MULLINS: NO, YOUR HONOR.

7 MR. GARDNER: NO, YOUR HONOR.

8 THE COURT: ALL RIGHT, THANK YOU VERY MUCH.

9 (WHEREUPON, THE VERDICT FORMS AND EXHIBITS WERE
10 DELIVERED TO THE JURY ROOM AND WITH INSTRUCTIONS TO BEGIN
11 DELIBERATIONS 12:39 P.M.)

12 THE COURT: ALL RIGHT, GENTLEMEN, I WANT TO TELL
13 YOU, SOLICITOR, I WANT TO TELL YOU, MR. MULLINS AND MR.
14 GARDNER, THAT EACH OF YOU DID EXACTLY WHAT THE COURT WOULD
15 HAVE EXPECTED OF, YOU ALL THREE OF YOU TRIED A VERY GOOD
16 CASE. YOU REPRESENTED YOUR PARTICULAR INTEREST, YOUR
17 PARTICULAR CLIENTS VERY WELL, AND I WANT TO THANK YOU AS
18 YOUR PRESIDING JUDGE FOR THAT. THANK YOU, GENTLEMEN.

19 MR. DEBUSK: THANK YOU.

20 MR. MULLINS: THANK YOU, YOUR HONOR.

21 MR. GARDNER: THANK YOU.

22 THE COURT: WE'LL BE AT EASE UNTIL THE JURY
23 NEEDS US.

24 MR. GARDNER: JUDGE --

25 THE COURT: YES, SIR?

JURY CHARGE

376

1 MR. GARDNER: JUDGE, MY CLIENT WOULD LIKE ME TO
2 OBJECT -- HE'D LIKE ME TO OBJECT TO IT. I'VE EXPLAINED TO
3 HIM IT'S A SECURITY MATTER AND THAT YOU WOULD OVERRULE MY
4 OBJECTION BUT FOR THE RECORD HE'S ASKED ME TO OBJECT ON THE
5 GROUNDS THAT HE'S SHOWN UP EVERY TIME.

6 THE COURT: AND I APPRECIATE THAT. MR. BAKER,
7 AT THE PRESENT TIME, THOUGH, AS THE JURY IS DELIBERATING IN
8 ITS FINAL CONCLUSION IN THIS MATTER, THEREFORE, I AM GOING
9 TO REMAND YOU IN THE CUSTODY AND CONTROL OF THE SHERIFF'S
10 OFFICE, THANK YOU.

11 (WHEREUPON, THE JURY KNOCKED WITH A QUESTION AT
12 12:45 P.M.)

13 (WHEREUPON, THE COURT MET WITH THE ATTORNEYS IN
14 CHAMBERS AND THEREAFTER SENT IN A WRITTEN ANSWER WITH THE
15 CONSENT OF ATTORNEYS.)

16 (WHEREUPON, THE JURY KNOCKED WITH A VERDICT AT
17 2:00 P.M.)

18 THE COURT: ALL RIGHT, WE ARE NOW RECONVENING IN
19 THE MATTER OF THE STATE OF SOUTH CAROLINA V. TELLY MANNING
20 AND RASHAD BAKER. I'M INFORMED -- OH, WE DON'T HAVE THE
21 DEFENDANTS.

22 THE BAILIFF: THEY'RE ON THEIR WAY, JUDGE.

23 THE COURT: THEY'RE ON THEIR WAY, I THOUGHT WE
24 HAD, I THOUGHT EVERYBODY WAS SITTING THERE.

25 ALL RIGHT, ON THE RECORD IN THE MATTER OF THE

JURY CHARGE

377

1 STATE OF SOUTH CAROLINA V. TELLY MANNING AND RASHAD BAKER
2 THE DEFENDANTS FACING THE CHARGES OF MURDER I AM INFORMED
3 THAT THE JURY HAS REACHED A VERDICT IN THIS PARTICULAR
4 MATTER. IS THE STATE READY TO RECEIVE IT?

5 MR. DEBUSK: YES, YOUR HONOR.

6 THE COURT: IS THE DEFENDANT MANNING READY TO
7 RECEIVE IT?

8 MR. MULLINS: YES, YOUR HONOR.

9 THE COURT: IS DEFENDANT BAKER READY TO RECEIVE
10 IT?

11 MR. GARDNER: YES, YOUR HONOR.

12 THE COURT: ALL RIGHT, TO EVERYONE WHO IS IN THE
13 COURTROOM I HAVE NO IDEA, DO NOT KNOW WHAT THE VERDICT IS
14 IN THIS PARTICULAR MATTER, WHATEVER THE VERDICT IS IT WILL
15 BE RECEIVED IN SILENCE. IT WILL BE RECEIVED WITH RESPECT.
16 THERE WILL BE NO OUTBURST. THERE WILL BE NO REACTION TO
17 THE VERDICT WHATEVER IT IS. IF THERE IS THAT PARTICULAR
18 PERSON WILL BE HELD IN CONTEMPT OF COURT. IF YOU CANNOT
19 ABIDE BY THESE DIRECTIONS LEAVE THE COURTROOM NOW.

20 ALL RIGHT, I ASSUME EVERYONE UNDERSTANDS THE
21 COURT'S DIRECTIONS. HAVE THE JURY COME IN, PLEASE.

22 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
23 2:22 P.M.)

24 THE COURT: ALL RIGHT, MADAM FORELADY, HAS YOUR
25 JURY REACHED A VERDICT IN THESE TWO MATTERS?

VERDICT

378

1 MADAM FORELADY: YES, WE HAVE.

2 THE COURT: ALL RIGHT, WOULD YOU HAND THE
3 VERDICT FORMS TO THE CLERK, PLEASE, MA'AM?

4 YOU MAY PUBLISH THE VERDICT.

5 MADAM CLERK: THE STATE OF SOUTH CAROLINA V.
6 TELLY MANNING 2002-GS-26-2043 ON THE CHARGE OF MURDER WE
7 THE JURY BY UNANIMOUS CONSENT FIND THE DEFENDANT GUILTY,
8 DIANE MOORE, FOREPERSON.

9 THE STATE OF SOUTH CAROLINA V. RASHAD BAKER
10 INDICTMENT 2002-GS-26-2040 ON THE CHARGE OF MURDER WE THE
11 JURY BY UNANIMOUS CONSENT FIND THE DEFENDANT GUILTY, DIANE
12 MOORE, FOREPERSON.

13 LADIES AND GENTLEMEN OF THE JURY, IF THIS IS YOUR
14 VERDICT SO SIGNIFY BY RAISING YOUR RIGHT HAND.

15 (WHEREUPON, ALL JURORS RESPONDED AFFIRMATIVELY.)

16 THE COURT: DOES THE STATE WISH THE JURY POLLED
17 IN THIS MATTER?

18 MR. DEBUSK: NO, YOUR HONOR.

19 THE COURT: DOES THE DEFENDANT MANNING WISH THE
20 JURY POLLED?

21 MR. MULLINS: YES, YOUR HONOR.

22 THE COURT: ALL RIGHT, DOES THE DEFENDANT BAKER
23 WISH THE JURY POLLED?

24 MR. GARDNER: YES, YOUR HONOR.

25 THE COURT: ALL RIGHT, MADAM CLERK, PLEASE POLL

POLLING OF JURY

379

1 THE JURY.

2 MADAM CLERK: PLEASE STAND WHEN I CALL YOUR
3 NAME, I'LL ASK YOU A QUESTION, AFTER YOU ANSWER YOU MAY BE
4 SEATED.

5 176, DIANE MOORE, IS THIS YOUR VERDICT AND IS
6 THIS STILL YOUR VERDICT?

7 JUROR MOORE: THIS IS MY VERDICT.

8 MADAM CLERK: 274, MARY VEREEN, IS THIS YOUR
9 VERDICT AND IS THIS STILL YOUR VERDICT?

10 JUROR VEREEN: YES, STILL MY VERDICT.

11 MADAM CLERK: 210, VENITA RANDALL, IS THIS YOUR
12 VERDICT AND IS THIS STILL YOUR VERDICT?

13 JUROR RANDALL: YES.

14 MADAM CLERK: 126, JAMES HUCKS, IS THIS YOUR
15 VERDICT AND IS THIS STILL YOUR VERDICT?

16 JUROR HUCKS: YES.

17 MADAM CLERK: 231, BRANDY SHELLEY, IS THIS YOUR
18 VERDICT AND IS THIS STILL YOUR VERDICT?

19 JUROR SHELLEY: YES.

20 MADAM CLERK: 225, ALLAN SANDERS, IS THIS YOUR
21 VERDICT AND IS THIS STILL YOUR VERDICT?

22 JUROR SANDERS: YES.

23 MADAM CLERK: 149, TIMOTHY LEWIS, IS THIS YOUR
24 VERDICT AND IS THIS STILL YOUR VERDICT?

25 JUROR LEWIS: YES.

POLLING OF JURY

380

1 MADAM CLERK: 323, HEATHER KIMBALL, IS THIS YOUR
2 VERDICT AND IS THIS STILL YOUR VERDICT?

3 JUROR KIMBALL: YES.

4 MADAM CLERK: 239, JEFFRY SMITH, IS THIS YOUR
5 VERDICT AND IS THIS STILL YOUR VERDICT?

6 JUROR SMITH: YES.

7 MADAM CLERK: 319, TAMARA CAUSEY, IS THIS YOUR
8 VERDICT AND IS THIS STILL YOUR VERDICT?

9 JUROR CAUSEY: YES.

10 MADAM CLERK: 282, ALAN WARD, IS THIS YOUR
11 VERDICT AND IS THIS STILL YOUR VERDICT?

12 JUROR WARD: YES.

13 MADAM CLERK: 270, WILLIAM VANDERHYDE, IS THIS
14 YOUR VERDICT AND IS THIS STILL YOUR VERDICT?

15 JUROR VANDERHYDE: YES.

16 THE COURT: THE JURY VERDICT HAVING BEEN
17 AFFIRMED BY THE JURY IS THERE ANYTHING FURTHER FROM THE
18 STATE AS TO THE JURY IN THIS PARTICULAR MATTER?

19 MR. DEBUSK: NOTHING FROM THE STATE, YOUR HONOR.

20 THE COURT: IS THERE ANYTHING FURTHER AS TO THE
21 JURY FROM THE DEFENDANT MANNING?

22 MR. MULLINS: NO, SIR, NO, YOUR HONOR.

23 THE COURT: FROM THE DEFENDANT BAKER?

24 MR. GARDNER: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF

POLLING OF JURY

381

1 THE JURY, IN THIS PARTICULAR MATTER YOU DID WHAT THE COURT
2 ASKED YOU TO DO AND THAT IS TO WELL AND CONSIDER THE FACTS
3 IN THIS CASE AND BY THE VERDICT YOU HAVE RENDERED THE TRUTH
4 IN THIS PARTICULAR MATTER. THEREFORE, I'M ABLE TO EXCUSE
5 YOU FROM YOUR JURY SERVICE IN THIS PARTICULAR CASE AND
6 THOUGH I WILL BE PICKING OTHER CASES FOR TRIAL THIS
7 PARTICULAR WEEK, I WILL EXCUSE THE 12 OF YOU FROM FURTHER
8 JURY SERVICE THIS PARTICULAR WEEK SO THAT YOU WILL BE
9 EXCUSED FROM YOUR JURY DUTY FOR THIS WEEK.

10 YOU HAVE EARNED AN EXEMPTION FOR THREE YEARS FROM
11 SERVING IN CIRCUIT COURT SO IF YOU GET A SUMMONS FROM YOUR
12 FINE CLERK OF COURT HERE FOR JURY DUTY. HERE IN CIRCUIT
13 COURT PLEASE LET HER KNOW THAT YOU'VE SERVED AND YOU'LL
14 HAVE THAT EXEMPTION FOR THREE YEARS. THAT DOES NOT EXCUSE
15 YOU, HOWEVER, FROM SERVING IN CITY COURT OR MAGISTRATES
16 COURT. IF YOU GET A SUMMONS FROM THEM YOU DO NEED TO
17 RESPOND TO THAT PARTICULAR SUMMONS.

18 AS YOUR PRESIDING JUDGE I WANT TO THANK YOU FOR
19 YOUR SERVICE AND FOR THE ATTENTION AND THE CARE THAT YOU
20 GAVE TO THIS PARTICULAR MATTER AND YOU ARE NOW EXCUSED.
21 MADAM BAILIFF, IF YOU'LL COLLECT THEIR BADGES.

22 (WHEREUPON, THE JURY WAS EXCUSED AT 2:26 P.M.)

23 THE COURT: ALL RIGHT, MOTIONS ON BEHALF OF THE
24 DEFENDANT MANNING?

25 MR. MULLINS: YOUR HONOR, ON BEHALF OF DEFENDANT

MOTION FOR DIRECTED VERDICT BY DEFENDANTS MANNING & BAKER⁸²

1 MANNING WE RENEW OUR MOTION FOR DIRECTED VERDICT AND ASK
2 THIS COURT TO SET ASIDE THE VERDICT IN THIS MATTER UNDER
3 THE SAME IDENTICAL GROUNDS AS WE HAVE BROUGHT OUR MOTIONS
4 FOR DIRECTED VERDICT AT THE CONCLUSION OF THE STATE'S
5 EVIDENCE.

6 THE COURT: ALL RIGHT, SIR, I WOULD RESPECTFULLY
7 DECLINE TO GRANT YOUR MOTION. I DO FIND THAT THIS WAS A
8 CASE OF DIRECT AND CIRCUMSTANTIAL EVIDENCE. I DO BELIEVE
9 THAT THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE VERDICT
10 OF THE JURY TO FIND THE DEFENDANTS GUILTY BEYOND A
11 REASONABLE DOUBT, THEREFORE, I RESPECTFULLY DECLINE TO
12 GRANT YOUR MOTION.

13 MR. MULLINS: THANK YOU, YOUR HONOR.

14 THE COURT: FROM THE DEFENDANT BAKER?

15 MR. GARDNER: YOUR HONOR, I WOULD HAVE THE SAME
16 MOTION?

17 THE COURT: ALL RIGHT, SIR. REGARDING YOUR
18 MOTIONS FOR DIRECTED VERDICT ON THE GROUNDS THAT WERE
19 PREVIOUSLY EXPRESSED BY COUNSEL AT THE END OF THE STATE'S
20 CASE, AT THE END OF THE DEFENSE CASE, I RESPECTFULLY
21 DECLINE TO GRANT YOUR MOTION FOR A DIRECTED VERDICT AT THIS
22 PARTICULAR TIME. I DO FIND THAT THERE WAS SUFFICIENT
23 EVIDENCE BELIEVED BY THE JURY TO FIND THE DEFENDANTS GUILTY
24 BEYOND A REASONABLE DOUBT, THEREFORE, I RESPECTFULLY
25 DECLINE TO GRANT YOUR MOTION AT THIS TIME.

SENTENCING

383

1 THIS POINT IN TIME?

2 MR. MULLINS: NOT AT THIS POINT IN TIME, YOUR
3 HONOR. WE WOULD RESPECTFULLY REQUEST LEAVE OF THE COURT
4 TEN DAYS TO FILE MOTIONS FOR A NEW TRIAL AS WE INVESTIGATE
5 THE APPROPRIATE MOTIONS.

6 THE COURT: I WILL GRANT YOU LEAVE TO DO SO BUT
7 THE COURT INTENDS TO PROCEED WITH SENTENCING AT THIS POINT
8 IN TIME.

9 MR. MULLINS: I UNDERSTAND, YOUR HONOR.

10 THE COURT: ANYTHING FROM THE DEFENDANT BAKER?

11 MR. GARDNER: JUST THE SAME THING, YOUR HONOR,
12 ASSUMING YOU'RE GOING TO GO FORWARD NOW ANYWAY.

13 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH.
14 ALL RIGHT, SOLICITOR, ARE YOU PREPARED TO GO FORWARD?

15 MR. DEBUSK: YES, YOUR HONOR.

16 THE COURT: THANK YOU. I'LL BE GLAD TO HEAR
17 FROM YOU, SOLICITOR, IF THERE'S ANYTHING YOU'D LIKE TO SAY.

18 MR. DEBUSK: YOUR HONOR, JUST, I'VE ALREADY PUT
19 ON THE RECORD THE PRIOR RECORD OF THE DEFENDANTS BUT IF THE
20 COURT WISHES I CAN DO SO AGAIN.

21 THE COURT: YES, SIR.

22 MR. DEBUSK: THANK YOU, YOUR HONOR.

23 FOR DEFENDANT TELLY MANNING, YOUR HONOR, CRIMINAL
24 CONSPIRACY IN SOUTH CAROLINA FROM THE YEAR 2004;

25 AND IN THE STATE OF NORTH CAROLINA IN 1998

SENTENCING

384

1 AND IN THE STATE OF NORTH CAROLINA IN 1998
2 LARCENY AFTER BREAKING AND ENTERING;

3 AND FROM NORTH CAROLINA IN THE YEAR 2005 ASSAULT
4 WITH A DEADLY WEAPON ASSAULT INFLICTING SERIOUS INJURY;

5 AND WANTON INJURY TO PERSONAL PROPERTY OVER \$200
6 AS WELL AS BREAKING AND ENTERING MISDEMEANOR AND
7 COMMUNICATING THREATS MISDEMEANOR.

8 YOUR HONOR, AS TO RASHAD BAKER, THE COURT'S
9 INDULGENCE ONE MOMENT.

10 THE COURT: YES, SIR.

11 MR. DEBUSK: FROM THE STATE OF NORTH CAROLINA
12 THE YEAR 2005 POSSESSION AND SELLING OF ALCOHOLIC BEVERAGE
13 WITHOUT A PERMIT;

14 POSSESSION WITH INTENT TO SELL AND DELIVER
15 COCAINE;

16 AND MAINTAINING A VEHICLE OR DWELLING PLACE FOR
17 CONTROLLED SUBSTANCES.

18 I BELIEVE THOSE ARE THE ONLY CONVICTIONS SHOWING
19 ON HIS RECORD.

20 THE COURT: ALL RIGHT, SIR.

21 MR. DEBUSK: YOUR HONOR, I'VE NOT HAD A CHANCE
22 TO SPEAK TO THE FAMILY OF THE VICTIM TO SEE IF ANYONE WANTS
23 TO SPEAK.

24 THE COURT: ALL RIGHT, SIR, IF YOU'D SO NOW.

25 MR. DEBUSK: YOUR HONOR, THE MOTHER OF THE

SENTENCING

385

1 VICTIM WOULD LIKE TO BE HEARD.

2 THE COURT: ALL RIGHT, MA'AM, IF YOU'D COME
3 FORWARD TO THE MICROPHONE AND STATE YOUR NAME, IF YOU'D
4 ADDRESS YOUR COMMENTS TO THE COURT ONLY, PLEASE, MA'AM.

5 FAMILY MEMBER: MY NAME IS LENORA WILSON AND I
6 WOULD LIKE TO SAY TO THE YOUNG MAN THAT I DO FORGIVE YOU
7 ALL FOR KILLING MY SON AT THIS TIME. I REALLY DO FORGIVE
8 BOTH OF YA'LL BUT I WANTED JUSTICE TO BE SERVED BECAUSE ---

9 THE COURT: ALL RIGHT, MA'AM, PLEASE JUST DIRECT
10 YOUR ATTENTION TO THE COURT, PLEASE, MA'AM. I'LL BE GLAD
11 TO YOU TO SPEAK BUT YOU NEED TO SPEAK TO THE COURT.

12 MS. WILSON: OKAY.

13 THE COURT: THANK YOU, MA'AM.

14 MS. WILSON: I ALSO WANTED TO SAY IF THIS IS
15 GOING TO PREVENT CRIME TO STOP AMONG ANYBODY THAT'S GOING
16 TO CONTINUE TO CAUSE CRIME TO BE WHERE THERE IS IN A
17 SECLUDED PLACE WHERE THEY CANNOT CONTINUE TO DO SO I WOULD,
18 I WOULD LOVE TO BE A PART OF THAT; AND TO THE MOTHERS I
19 WANT TO SAY I KNOW YA'LL DID NOT RAISE YOUR SONS TO BE THIS
20 WAY BUT WHEN THEY WALK OUT OF YOUR DOOR INTO THE WORLD
21 THERE'S SO MUCH THEY HAVE TO FACE AND THEY CHOSE TO BE FROM
22 WHAT YOUR TEACHINGS WAS TO BE OUT INTO THE WORLD AND TO
23 YA'LL I JUST WANT TO SAY MY HEART DO GO OUT FOR YA'LL. I
24 SYMPATHIZE FOR ALL THE MOTHERS OF THE TWO YOUNG MEN BUT TO
25 KNOW THAT JUSTICE HAS BEEN SERVED MEANS SO MUCH TO ME. I

SENTENCING

386

1 HAD SO MANY QUESTIONS THAT I WANTED TO BE ANSWERED AND NOW
2 I FEEL RELIEF, I FEEL SO MUCH RELIEF.

3 THE COURT: THANK YOU, MA'AM. ANYTHING FURTHER,
4 SOLICITOR?

5 MR. DEBUSK: NO, YOUR HONOR, THANK YOU VERY
6 MUCH.

7 THE COURT: ALL RIGHT, MR. MULLINS, ON BEHALF OF
8 DEFENDANT MANNING, SIR.

9 MR. MULLINS: MAY IT PLEASE THE COURT, YOUR
10 HONOR. YOUR HONOR, YOU'VE JUST LISTENED TO THREE DAYS OF
11 TESTIMONY AND OBVIOUSLY YOU KNOW THE FACTS IN THIS CASE.
12 I'D JUST LIKE TO TELL YOU A LITTLE BIT ABOUT MY CLIENT THAT
13 DIDN'T COME OUT IN THE RECORD.

14 HE IS 31 YEARS OLD. HE HAS SEVEN CHILDREN. HE
15 HAS AN ELEVENTH GRADE EDUCATION. YOUR HONOR, YOU KNOW, OUR
16 THEORY OF THE CASE WAS THAT MY CLIENT WASN'T THE SHOOTER IN
17 THIS MATTER AND, OF COURSE, I'VE BEEN FIGHTING THE HAND OF
18 ONE IS THE HAND OF ALL FOR ALMOST 20 YEARS NOW BUT -- AND
19 THAT IS THE LAW IN THIS STATE. UNFORTUNATELY OUR THEORY
20 DIDN'T PLAY OUT. I THINK THE COURT IS WELL AWARE OF THE
21 FACTS IN THE MATTER. MY CLIENT'S BEEN CONVICTED; THERE'S
22 NOT TOO MUCH YOU CAN SAY ABOUT THAT AT THIS POINT. WE'D
23 LIKE TO ASK FOR SUCH MERCY AS THIS COURT COULD GIVE.

24 HE DID DO 254 DAYS IN JAIL FROM FEBRUARY 22ND,
25 2002 UNTIL HE WAS RELEASED ON BOND ON NOVEMBER 3RD, 2002.

SENTENCING

387

1 HE RETURNED BACK TO HORRY COUNTY ON NOVEMBER 23RD, 2006.
2 AND AS OF TODAY ADDING THAT TO THE 254 HE'S BEEN IN JAIL
3 FOR 309 DAYS TIME CREDIT. WE'D ASK THAT THE COURT'S
4 DISCRETION GIVE HIM CREDIT FOR THE TIME THAT HE HAS BEEN
5 INCARCERATED WHILE THESE CHARGES HAVE BEEN PENDING FOR
6 ALMOST SIX YEARS.

7 THE COURT: ALL RIGHT, SIR, THANK YOU.

8 MR. MULLINS: THANK YOU, YOUR HONOR. I DON'T
9 KNOW IF MY CLIENT HAS ANYTHING TO SAY OR NOT, SIR.

10 THE COURT: MR. MANNING, IS THERE ANYTHING YOU'D
11 LIKE TO SAY TO THE COURT AS THIS TIME?

12 DEFENDANT MANNING: NOT, NOT, NOT SO MUCH THAT I
13 GOT ANYTHING TO SAY.

14 THE COURT: ALL RIGHT, SIR.

15 DEFENDANT MANNING: MAYBE SAY, YOU KNOW, SOMEONE
16 DID, BUT I DIDN'T KILL HIM BUT STILL THEY FOUND ME GUILTY,
17 BUT I'D LIKE TO TELL THE LADY FOR HER SON I'M SORRY. I'M
18 SORRY.

19 THE COURT: THANK YOU, SIR.

20 DEFENDANT MANNING: BECAUSE SHE, BECAUSE I HAVE
21 A MOTHER, TOO.

22 THE COURT: YES, SIR, THANK YOU VERY MUCH.
23 ANYTHING ELSE, MR. MULLINS?

24 MR. MULLINS: NO, SIR, THANK YOU, YOUR HONOR.

25 THE COURT: THANK YOU.

SENTENCING

388

1 MR. MULLINS: I DON'T KNOW IF MS. WALDO IS HERE.
2 DO YOU WANT TO ADDRESS THE COURT, MA'AM?

3 THE COURT: ALL RIGHT, SIR. IF YOU'D JUST COME
4 AROUND NOW, COME AROUND.

5 MR. MULLINS: JUDGE, SHE'S BEEN ACTIVE IN HER
6 SON'S DEFENSE DURING THIS WHOLE TRIAL.

7 THE COURT: ALL RIGHT, SIR. IF YOU'D STATE YOUR
8 FULL NAME, PLEASE, MA'AM?

9 FAMILY MEMBER: MY NAME IS AMY MANNING WALDO.

10 THE COURT: YES, MA'AM.

11 MS. WALDO: I'D JUST LIKE TO SAY I SYMPATHIZE
12 WITH THE MOTHER, YOU KNOW, BECAUSE I HAVE A SON AND I CAN
13 STILL SEE MY SON AND SHE CAN'T SEE HER SON. I CAN STILL
14 PUT MY HANDS ON MY SON. I CAN GO WHEREVER HE'S GOING IF
15 GOD WILL TO LET ME. AS I WANT TO SAY JUST THAT I DID NOT
16 RAISE MY SON TO TAKE ANOTHER PERSONS LIFE BECAUSE I'M
17 SERVING A GOD OUT THERE THAT'S A GIVER OF LIFE. HE'S NOT A
18 GIVER OF TAKING A LIFE, BUT I WOULD LIKE TO SAY THIS HERE,
19 I DON'T IN BEHALF OF MY NEPHEW AND MY SON, I DON'T IN MY
20 OPINION, THIS IS MY OPINION AS A MOTHER, I DON'T BELIEVE
21 THAT THEY ARE KILLERS AND I DON'T BELIEVE THAT THEY COULD
22 HAVE KILLED THIS MAN. I BELIEVE THAT THEY WERE OUT THERE
23 IN THE WORLD DOING WHAT THEM MENS DO. I AGREE WITH HER I
24 BE GLAD IN JESUS NAME AND THIS WE WILL SEE THIS DAY THAT
25 OUR CHILDREN WILL BE ABLE TO LIVE TOGETHER WITHOUT THIS

SENTENCING

389

1 DRUG PROBLEM OF YOUTHS OF SELLING DRUGS OR GUNS, TAKING OUR
2 KIDS PUTTING THEM BEHIND BARS, PUTTING THEM IN THE JAIL.
3 THIS IS MY PRAYER TO ANYBODY THAT HAVE A CHILD IN THIS
4 WORLD THAT THEY WILL NEVER HAVE TO FACE THIS DAY OF
5 STANDING OVER THEIR CHILD OVER A GRAVE BECAUSE OF A DEATH
6 OR EVEN HAVE TO SET IN A COURTROOM WITH THEIR NEPHEW AND
7 THEIR SON AND SEE THEM GO OFF TO JAIL AND I JUST WANT TO
8 THANK GOD THAT YOU BE MERCIFUL TO MY NEPHEW AND MY SON.

9 THE COURT: THANK YOU, MA'AM. ALL RIGHT, MR.
10 GARDNER, ON BEHALF OF MR. BAKER, SIR?

11 MR. GARDNER: THANK YOU, YOUR HONOR. HE'S 26,
12 HE HAS A FIVE-YEAR-OLD CHILD AS WELL. THE ONLY RECORD THAT
13 I'M AWARE OF MATCHES WITH WHAT THE SOLICITOR TOLD YOU. HIS
14 FATHER IS PRESENT IN THE COURTROOM. AS I UNDERSTAND IT
15 THERE IS A MANDATORY SENTENCE YOU CAN IMPOSE, I WOULD ASK
16 THAT YOU CONSIDER DOING THAT. IS THERE ANYTHING YOU WANT
17 TO TELL THE COURT, AND HE WOULD LIKE TO --

18 THE COURT: ALL RIGHT, SIR, MR. BAKER?

19 DEFENDANT BAKER: YES, SIR. I UNDERSTAND WHAT
20 SHE WANTING FOR ME. I LOST MY MOTHER LAST YEAR OCTOBER. I
21 WAS INCARCERATED SO I COULDN'T GO TO THE FUNERAL. I FEEL
22 SORRY FOR WHAT HAPPENED TO YOUR SON BUT I'M INNOCENT. I
23 MEAN I HAD NOTHING TO DO WITH IT. TODAY YA'LL CONVICTED ME
24 GUILTY, I MEAN MY LIFE IS IN YA'LL HANDS. I MEAN AND I'M
25 INNOCENT, I MEAN I'M SORRY FOR WHAT HAPPENED TO YOUR SON.

SENTENCING

390

1 I'M SORRY. MY HEART GOES OUT TO YOU BECAUSE I LOST MY MAMA
2 AND THEY WOULDN'T LET ME GO TO THE FUNERAL SO I KNOW WHAT
3 YOU'RE GOING THROUGH, YOU KNOW.

4 THE COURT: ALL RIGHT, SIR.

5 MR. GARDNER: JUDGE, I KNOW ---

6 THE COURT: THANK YOU, MR. BAKER.

7 MR. GARDNER: YES, SIR, I KNOW YOU KNOW WHAT I
8 MEANT. I THINK I MISSPOKE, I MEANT THE MINIMUM.

9 THE COURT: YES, SIR, I UNDERSTAND THAT.

10 MR. GARDNER: ALL RIGHT.

11 THE COURT: UNDERSTANDING THAT THE MINIMUM
12 SENTENCE THAT THE COURT CAN IMPOSE IN THIS MATTER IS 30
13 YEARS AND I COMPLETELY UNDERSTAND THAT. I UNDERSTAND
14 THAT'S A REQUEST FROM BOTH THE DEFENDANT MANNING AND THE
15 DEFENDANT BAKER.

16 MR. GARDNER: YES, SIR, AND THE FATHER IS HERE,
17 I DON'T THINK HE'S ABLE TO TALK TO YOU RIGHT NOW.

18 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH,
19 ALL RIGHT, SIR.

20 MR. GARDNER, I KNOW MR. BAKER HAS BEEN OUT ON
21 BOND FOR SOME PERIOD OF TIME. WAS THERE ANY PERIOD OF TIME
22 THAT HE SPENT IN JAIL REGARDING THIS PARTICULAR MATTER AND
23 I DON'T NEED FOR YOU TO STATE SPECIFICALLY JUST WHETHER OR
24 NOT HE DID OR NOT?

25 MR. GARDNER: I KNEW THERE WAS SOME TIME, I

SENTENCING

391

1 DIDN'T KNOW WHAT IT WAS.

2 THE COURT: ALL RIGHT, SIR. WELL WHAT I'M GOING
3 TO DO IS, IT'S NOT NECESSARY THAT I SET THE EXACT TIME
4 PERIOD ON THE SENTENCING SHEET. I JUST NEED TO SET FORTH
5 WHETHER OR NOT HE DID SERVE ANY TIME OR NOT, THANK YOU.

6 ALL RIGHT, 2002 -- GENTLEMEN, IF YOU'D PLEASE
7 STAND, MR. MANNING AND MR. BAKER, THANK YOU.

8 2002-GS-26-2043 THE STATE OF SOUTH CAROLINA
9 COUNTY OF Horry V. TELLY D. MANNING AND 2002-GS-26-2040 THE
10 STATE OF SOUTH CAROLINA COUNTY OF Horry V. RASHAD M. BAKER
11 REGARDING THE CHARGES OF MURDER THE SENTENCE FOR EACH
12 INDIVIDUAL IS THE DEFENDANT BE COMMITTED TO THE STATE
13 DEPARTMENT OF CORRECTIONS FOR A DETERMINATE TERM OF 30
14 YEARS. EACH DEFENDANT IS GIVEN CREDIT FOR ANY TIME THAT HE
15 DID SERVE. THANK YOU VERY MUCH.

16 MR. GARDNER: THANK YOU, YOUR HONOR.

17 (WHEREUPON, COURT'S EXHIBIT NUMBER 2 MARKED.)

18 END OF REQUESTED TRANSCRIPT - - - -
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED BRENDA R. BABB, OFFICIAL COURT REPORTER THE SOUTH CAROLINA COURT ADMINISTRATION, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR HORRY COUNTY, SOUTH CAROLINA.

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

January 22, 2007
Brenda R. Babb
BRENDA R. BABB, CAR

OFFICIAL REPORTER

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

DEC 28 2007

Appeal from Horry County

SC Court of Appeals

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROSHOD M. BAKER,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, S. C. 29211-1589

(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL.....	3
STATEMENT OF FACTS.....	4
ARGUMENT.....	5
PETITION TO BE RELIEVED AS COUNSEL.....	7
CERTIFICATE OF COUNSEL.....	8

TABLE OF AUTHORITIES**Cases**

<i>State v. Buckmon</i> , 347 S.C. 316, 555 S.E.2d 402 (2001)	5
<i>State v. McHoney</i> , 344 S.C. 85, 544 S.E.2d 30 (2001).....	5
<i>State v. Pittman</i> , 373 S.C. 527, 647 S.E.2d 144 (2007).....	5

STATEMENT OF ISSUE ON APPEAL

The trial judge erred by denying Baker's motion for a directed verdict, since the State's evidence did not rise above a mere suspicion that he had killed Riggins.

STATEMENT OF FACTS

On November 13 through 16, 2006, Roshad M. Baker stood trial in Horry County, before Judge Steven H. John and a jury, on an indictment charging him and Telly D. Manning with the murder of a cocaine dealer, Troy Riggins. Two other codefendants, Derrick Bowens and Ernest Smith, testified that Baker and Manning, both of whom were armed, got into Riggins' automobile ostensibly to purchase "a big eight" (that is, four ounces) of cocaine, but instead shot him to death. Riggins was shot seven times by two different guns. ROA p. 213, lines 12 and 13; ROA p. 268, lines 15-21. An autopsy revealed that Riggins' blood contained traces of ketamine, an animal tranquilizer known on the street as "Special K". ROA p. 237, line 18 – p. 238, line 1. Riggins also had \$1626 and 22.34 grams of cocaine in his pockets. ROA p. 196, line 20 – p. 197, line 4; ROA p. 254, lines 11-16. Neither Manning nor Baker testified or offered any other evidence. The case went to the jury as murder or nothing. The jury found Baker guilty, and the judge sentenced him to imprisonment for 30 years.

ARGUMENT

The trial judge erred by denying Manning's motion for a directed verdict, when State's evidence did not rise above a mere suspicion that he was guilty of murdering Riggins.

According to the State's evidence, Manning was in the car with Riggins and Baker when Riggins was shot to death. Neither of the purported eyewitnesses, who were also accused of murdering Riggins, identified Manning as the shooter. This evidentiary deficiency led the judge to instruct the jury that "mere presence at the scene of a crime is not sufficient to convict." ROA p. 368, line 24 – p. 369, line 2.

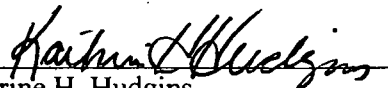
Counsel for Baker moved for a directed verdict on the ground that the State's circumstantial evidence was too nebulous to prove that Baker had killed Riggins. ROA p. 279, lines 3-19; the judge denied the motion. ROA p. 280, lines 7-9.

A defendant is entitled to a directed verdict when the State fails to prove the offense charged. *State v. McHoney*, 344 S.C. 85, 544 S.E.2d 30 (2001). The trial judge must submit the case to the jury only when there is some direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. *State v. Buckmon*, 347 S.C. 316, 555 S.E.2d 402 (2001). Evidence which merely raises a suspicion of guilt is not sufficient to survive a directed verdict motion. *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007).

The State's case against Baker for the murder of Riggins was based entirely upon supposition. The circumstantial evidence supplied by the purported eyewitnesses to the incident, who may have been guilty themselves, was too insubstantial to allow the case to go to the jury.

For this reason, the Court should reverse the trial judge and direct a verdict acquitting Roshad Baker of the murder of Troy Riggins.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of December, 2007.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry CountySteven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROSHOD M. BAKER,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Roshod M. Baker states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Steven H. John, which was held on 11-15-06, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve her as counsel for Roshod M. Baker.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of December, 2007.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b) of the SCASR

RECEIVED

DEC 28 2007

December 28, 2007

SC Court of Appeals



Kathrine H. Hudgins
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, SC 29211-1589
803) 734-1343
Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

RECEIVED

DEC 28 2007

SC Court of Appeals

THE STATE,

RESPONDENT,

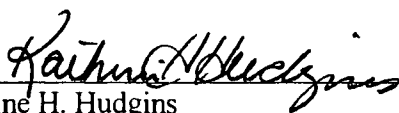
V.

ROSHOD M. BAKER,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 28th day of December, 2007. A copy of the brief and record on appeal have also been served on Roshad M. Baker, #304949 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC, 29472, this 28th day of December, 2007.


 Kathrine H. Hudgins
 Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
 this 28th day of December, 2007.

 (L.S.)
 Notary Public for South Carolina
 My Commission Expires: March 19, 2017

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

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

The State,

Respondent,

v.

Roshad M. Baker,

Appellant.

Appeal From Horry County
Steven H. John, Circuit Court Judge

Unpublished Opinion No. 2009-UP-426
Submitted September 1, 2009 – Filed September 8, 2009

APPEAL DISMISSED

Appellate Defender Kathrine H. Hudgins, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Donald J.
Zelenka, all of Columbia; and Solicitor J. Gregory
Hembree, of Conway, for Respondent.

PER CURIAM: Roshad M. Baker appeals his conviction and sentence for murder, arguing the trial judge erred in denying his motion for a directed verdict. After a thorough review of the record and counsel's brief, pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

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

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

FORM 5

STATE OF SOUTH CAROLINA)

County of Horry)

IN THE COURT OF COMMON PLEAS

2010-7814

Rashad M. Baker #318551)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

RECEIVED
10 AUG 24 AM 11:19
CLERK OF COURTINSTRUCTIONS - 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 Litton Correctional Institution
P.O. Box 705, Ridgely, S.C. 29472
2. Name and location of Court which imposed sentence Horry County
3. Name(s) of co-defendant(s) (if any) Telly D. Manning
Daniel Brown, Ernest D. Smith, Lorraine Baker
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2002-65-20-2041

- (b) _____
 (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) ~~November 16, 2006~~ November 16, 2006 30 YEARS
 (b) _____
 (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
 (b) after a plea of not guilty November 15, 2006 (Plea Not Guilty)
 (c) after a plea of nolo contendere _____

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

YES

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

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

- i. Court of Appeals
 ii. _____
 iii. _____

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

- i. REVERSED
 ii. _____
 iii. _____

(c) the date of each such result:

- i. SEPTEMBER 8, 2009
 ii. _____
 iii. _____

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

- i. unpublished opinion NO. 2009-472 420
 ii. _____
 iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) NO

- (b) N/A
 (c) N/A

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

- (a) INTERMITTENT ASSISTANCE OF COUNSEL
 (b) OUR PROGRESS OF CASE
 (c) _____

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

- (a) VIOLATION OF 6th US CONSTITUTIONAL AMENDMENT
 (b) VIOLATION OF 14th US CONSTITUTIONAL AMENDMENT
 (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? N/A
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? N/A

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

(a) the specific nature thereof:

- i. N/A N/A N/A
 ii. N/A N/A N/A
 iii. N/A N/A N/A
 iv. N/A N/A N/A

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

- i. N/A N/A N/A
 ii. N/A N/A N/A
 iii. N/A N/A N/A

iv. NA

(c) the disposition thereof:

i. NA NA NA

ii. NA

iii. NA NA NA

iv. NA

(d) the date of each such disposition:

i. NA

ii. NA

iii. NA

iv. NA

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

i. NA

ii. NA

iii. NA

iv. NA

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. NA

ii. NA

iii. NA

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

i. NA

ii. NA

iii. NA

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) _____
 (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? _____

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

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

i. William Ambrose "Trial Attorney"
200 Main St. Conway S.C. 29524
 ii. Robert H. Huggins Appellate Attorney
P.O. Box 11589 Columbia S.C. 29211-1589
 iii. _____

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

i. Trial Attorney
 ii. Appellate Attorney
 iii. _____

19. State clearly the relief you seek in filing this application:

I REQUEST A NEW TRIAL

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

"No"

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Abbeville)

I, Rashad M. Baker # 318851, 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.

Rashad M. Baker

SWORN to and subscribed before me this 5th
day of August, 2010.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

110 AUG 24 AM 11:19
CLERK OF COURT

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Rashad M. Baker #318851, 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.

Rashad M Baker
Applicant

SWORN or affirmed to and subscribed before me this
6th day of August, 2016.

Ludham Bryant
Notary Public

My Commission Expires: May 26, 2020

10 AUG 24 AM 11:19
CLERK OF COURT
COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Roshod M. Baker, # 318851,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2010-CP-26-7814

RETURN
(Attorney Appointment Requested)

Respondent, making its Return to the Application for post-conviction relief filed August 24, 2010, by Roshod M. Baker, would respectfully show this Court:

I. – Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Horry County. In May 2002, the Applicant was indicted for the murder of Troy Riggins (2002-GS-26-2040). He was represented by Johnny Gardner, Esquire. On November 13-15, 2006, the Applicant was tried before the Honorable Steven H. John. The jury found him guilty, and Judge John sentenced him to thirty years. A timely notice of appeal was filed, and Kathrine H. Hudgins, Esquire, perfected an appeal on the Applicant's behalf pursuant to Anders v. California, 386 US 738 (1967). The South Carolina Court of Appeals affirmed the conviction on September 8, 2009 (2009-UP-426), and the case was remitted to the circuit court on September 24, 2009.

Incorporated herein by reference are the records of the Horry County Clerk of Court regarding the conviction, the Applicant's records from the Department of Corrections, and the appellate records. The trial transcript will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. – Allegations

In his Application, Mr. Baker alleges that his custody is unlawful for the following reasons:

- (1) Ineffective assistance of counsel – violation of the 6th Amendment; and
- (2) Due process of law – violation of the 14th Amendment.

The Applicant states that he is seeking to have a new, fair trial.

III.

In a post-conviction relief action, the applicant bears the burden of proving his or her allegations by a preponderance of the evidence. Stalk v. State, 375 S.C. 289, 297, 652 S.E.2d 402, 405 (Ct. App. 2007) (citations omitted); Rule 71.1(e), SCRPC. “Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that ‘counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.’” Dalton v. State, 654 S.E.2d 870, 873 (Ct. App. 2007) (citing Strickland v. Washington, 466 U.S. 668, 669 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985)). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id.

A two-pronged test is used to evaluate allegations of ineffective assistance of counsel. Dalton v. State, 654 S.E.2d 870, 873 (Ct. App. 2007). “In order to prove that counsel was ineffective, a PCR applicant must show that: (1) counsel’s performance was deficient; and (2) there is a reasonable probability that, but for counsel’s errors, the result of the trial would have been different.” Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007) (citations omitted). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Id. (citations omitted). “Furthermore, when a defendant’s conviction is challenged, ‘the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt.’” Id. (citations omitted). “There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional

judgment in making all significant decisions in the case." Id. (citations omitted). The applicant must overcome this strong presumption in order to obtain relief. Stalk, supra (citation omitted).

Respondent submits that the Applicant will not be able to meet his burden of proof as to any of his claims. However, because some of the allegations may raise questions of fact that the record does not conclusively refute, Respondent requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation, claim, or statement contained within the Application not expressly admitted, qualified, or explained is hereby DENIED.

V.

WHEREFORE, having made its Return, the Respondent requests that counsel be appointed and an evidentiary hearing held.

Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

October 25, 2010

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Roshod M. Baker, # 318851,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

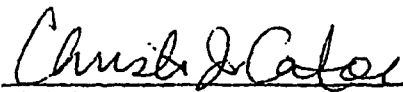
2010-CP-26-7814

CERTIFICATE OF SERVICE BY MAIL

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 State's RETURN in the above-captioned matter on the following person(s) by depositing in the United States mail, postage prepaid:

**Roshod M. Baker, # 318851
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472**

DATED this 26th day of October, 2010.



Christina J. Catoe
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

ROSHOD BAKER, #318851)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2010-CP-26-7814

AFFIDAVIT OF SERVICE BY MAIL

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 filed copy of the Order of Dismissal the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan Michael Shaffer, Esquire
4701 Oleander Drive
Myrtle Beach, SC 29577

DATED this 8TH day of December, 2014.


Norma Bigbee, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

RASHAD M. BAKER, 318851

IN THE COMMON PLEAS COURT

DOCKET NO.: 2010-CP-26-7814

Applicant

CLERK OF COURT

NOTICE AND MOTION TO AMEND
POST CONVICTION RELIEF APPLICATION

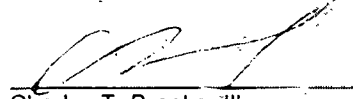
STATE OF SOUTH CAROLINA

Respondent,

The Applicant through his undersigned Counsel moves this before this Honorable Court in the above entitled matter to add the below grounds/arguments to his original Post Conviction Relief Application as follows:

- 1) Trial Counsel prejudiced applicant when he failed to move for a "separate trial", from Applicant's co-defendant, Telly Manning.
- 2) And, further prejudiced Applicant when he did not object to Applicant's co-defendant's counsel, Mr. Mullins who kept pointing out in joint trial that Applicant was the master-mind and the guilty party, murdering Troy Riggins. See Mullins cross of Bowens and Smith. Counsel Mullins should not have been able to point his finger at Applicant without applicant's own counsel objecting to this line of cross by Mullins, which prevented the jury from making a reliable judgment about who was really in fact, guilty or not guilty.
- 3) And, since applicant's co-defendant was not testifying, making these statements, Applicant could not confront him, his counsel should not have been able to, which violated applicant's constitutional right per the 6th and 14th Amendment to the U. S. and S. C. Constitution.

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, RASHAD BAKER


Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

December 29, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) CASE NO.: 2010-CP-26-7814

ROSHOD BAKER,

APPLICANT,

VS.

STATE OF SOUTH CAROLINA,

RESPONDENT.

POST CONVICTION RELIEF

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit

Tuesday, August 26, 2014

and

Thursday, August 28, 2014

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

COPY

APPEARANCES OF COUNSEL

FOR THE APPLICANT: Tristan M. Shaffer, Esquire
Axelrod & Associates
4701 Oleander Drive
Myrtle Beach, South Carolina 29577

FOR THE RESPONDENT: Joshua L. Thomas, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

INDEX TO PROCEEDINGS

PAGE

AUGUST 26, 2014

MOTION FOR A CONTINUANCE	4
PROCEEDINGS	11

AUGUST 28, 2014

PROCEEDINGS	20
RENEWED MOTION FOR A CONTINUANCE BY MR. SHAFFER	21
 ROSHOD BAKER	
Direct Examination by Mr. Shaffer	26
Cross-Examination by Mr. Thomas	43
 JOHNNY GARDNER	
Direct Examination by Mr. Shaffer	46
Cross-Examination by Mr. Thomas	57
Redirect Examination by Mr. Shaffer	61
MOTION TO AMEND BY MR. SHAFFER	62
Continued Redirect Examination by Mr. Shaffer	66
 CERTIFICATE OF COURT REPORTER	71

- - - - -

EXHIBITS

[None]

Roshod Baker vs. State of South Carolina
Motion for a Continuance
August 26, 2014

1

- - - - -

2

AUGUST 26, 2014

3

in the Horry County Courthouse

4

Conway, South Carolina

5

on Tuesday, August 26, 2014, Commencing at 9:49 a.m.

6

- - - - -

7

MOTION FOR A CONTINUANCE

8

THE COURT: Counsel, are you ready?

9

MR. SHAFFER: Yes, Your Honor. I'm actually moving
for a continuance in this matter.

10

11

THE COURT: Let's get started. If you will state
your name for the record and the party you represent.

12

13

MR. SHAFFER: Tristan Shaffer, and I'm here for
Roshod Baker.

14

15

THE COURT: Are you Roshod Baker?

16

MR. BAKER: Yes, ma'am.

17

THE COURT: Mr. Thomas, you are here on behalf of
the State; is that correct?

18

19

MR. THOMAS: Yes. Yes, Your Honor. Josh Thomas on
behalf of the respondent, State of South Carolina.

20

21

THE COURT: And are you prepared to go forward?

22

MR. THOMAS: The State is prepared, Your Honor.

23

THE COURT: Mr. Shaffer, let me hear from you
regarding your motion for continuance.

24

25

MR. SHAFFER: Thank you, Your Honor.

MIA PERRON, CVR-CM-M

-4-

Roshod Baker vs. State of South Carolina
Motion for a Continuance
August 26, 2014

1 It appears to me that I was -- well, this case
2 is a rather old case and I was appointed to it May
3 30th of this year. I believe that's the date of my
4 appointment, according to the public index. At the
5 time, I was actually moving law offices, so it took me
6 a little while to really know about the case. I'm not
7 sure of the exact date that we opened a file on it, but
8 it was sometime after that.

9 I'm not sure if there was a miscommunication
10 between me, or perhaps I didn't see the -- in this
11 county, they e-mail the orders of appointment. Perhaps
12 I didn't see the order of appointment. But it was
13 sometime after that I -- and it might have been my
14 mistake, as well, Your Honor. To be honest with you, I
15 can't recall -- right around that time I started a new
16 job on the -- which was a few days after I got
17 appointed.

18 Essentially, I had talked to the client but -- and
19 I had written communication with him. And in July,
20 whenever I notified him that there was a case, the case
21 was going to go forward, he had written me in reference
22 -- in a letter that -- he referenced a motion that he
23 filed when he was pro se, apparently. He had asked for
24 investigative funds and for a doctor.

25 To be honest with you, Your Honor, I'm not sure

Roshod Baker vs. State of South Carolina
Motion for a Continuance
August 26, 2014

1 if -- I can ask for the doctor but I believe that the
2 investigator, probably fairly important in the case.
3 He wanted him to run down some witnesses that -- or at
4 least run down some information, one of the witnesses
5 that had testified. And that being the case, he came
6 to me probably about three weeks to a month ago.

7 There is a new claim, as well, that honestly, Your
8 Honor, I just found recently. I was going through a
9 couple of things and checking some of the codefendants
10 out. I've read the trial --

11 THE COURT: What is the new claim?

12 MR. SHAFFER: It involves failure to cross-examine,
13 based off of pending charges.

14 THE COURT: To cross-examine who?

15 MR. SHAFFER: One of the testifying codefendants.
16 Mr. Smith. Ernest Q. Smith.

17 THE COURT: And you are aware of that, Mr. Thomas?

18 MR. THOMAS: He had brought that to my attention
19 this morning, and we talked it over with counsel, and
20 we're prepared to go forward on that issue.

21 THE COURT: Because there were some issues about
22 cross-examining another codefendant, Mr. Bowen, as
23 well?

24 MR. THOMAS: Yes, Your Honor. It's a different
25 codefendant.

Roshod Baker vs. State of South Carolina
Motion for a Continuance
August 26, 2014

1 MR. SHAFFER: And, Your Honor, regarding the
2 codefendants, I know that there was an amendment filed
3 by Mr. Brooks whenever he represented my client. Your
4 Honor, and to be honest with you, I don't think I can
5 go forward on the amendment that he had put forward. I
6 don't -- maybe I'm misreading it, but I don't really
7 see a basis for the exact allegations that he raised in
8 that amendment.

9 And, you know, there's other issues I could go
10 forward on: you know, general ineffective assistance
11 of counsel. And, you know, Your Honor, I have read the
12 transcript. I'm aware of the issues. But the -- I
13 mean, this issue is probably a fairly strong issue. I
14 had thought it was the strongest issue, given the fact
15 that the -- it was my understanding of --

16 THE COURT: What do you believe is the strongest
17 issue?

18 MR. SHAFFER: The issue that was just discovered
19 involving the prior charges. Basically, Mr. Smith, who
20 was the testifying codefendant, one of the two
21 testifying codefendants, that put my client away.
22 There were two witnesses that basically were all the
23 evidence saying that he did it, more or less.

24 One of them had been arrested a month before the
25 trial. It doesn't come up in the transcript that

Roshod Baker vs. State of South Carolina
Motion for a Continuance
August 26, 2014

1 basically they didn't cross-examine him on the fact
2 that, you know, he had pending charges, which probably
3 would have basically given him another motivation --

4 THE COURT: How would pending charges have come in,
5 Mr. Shaffer?

6 MR. SHAFFER: Your Honor, I believe that they would
7 come in as evidence of bias, evidence of a reason --
8 motivation to lie. They did bring up the murder charge
9 that obviously that he had been charged with murder, as
10 well. But according to the State's theory, he was
11 basically merely present at the time.

12 THE COURT: So wouldn't they have been able to
13 establish -- I'm just -- I'm hesitant. This is a 2010
14 PCR.

15 MR. SHAFFER: Yes, Your Honor.

16 THE COURT: I'm hesitant to continue it, so I
17 want to make sure that you're fully articulating to me
18 why -- and at this point, I'm not hearing anything
19 that would --

20 MR. SHAFFER: And, Your Honor --

21 THE COURT: -- cause me to continue it.

22 MR. SHAFFER: -- since the State doesn't have a
23 problem with me -- if the State doesn't have a problem
24 with me going forward on that issue.

25 The basis of my motion for a continuance mainly

Roshod Baker vs. State of South Carolina
Motion for a Continuance
August 26, 2014

1 deals with the fact that he had previously asked for an
2 investigator to look into information about Mr. Smith.
3 He had asked for that during a period that I believe
4 that he didn't have counsel. Mr. Thomas could probably
5 speak to that a little bit more clearly. But my
6 understanding is I got appointed on 5/30, 2014, and
7 this was filed on May 14th -- or May 1st, 2014. I
8 believe that previous counsel, Mr. Selwa, was relieved
9 due to a conflict in February or March of this year.
10 The last term of court, or the term of court -- court
11 there.

12 Based off of his motion to request investigative --
13 an investigator, I'm actually -- that's a basis for my
14 motion to continue: basically so I have more time to
15 communicate with him, more time to actually follow up
16 on information, to have an investigator look into his
17 case.

18 THE COURT: Mr. Thomas, what is your position?

19 MR. THOMAS: Beg the Court's indulgence one second.

20 [Whereupon, Mr. Thomas reviews documents]

21 MR. THOMAS: Your Honor, just briefly, I do have
22 a copy of an order here, signed by Judge John on
23 March of 2012, authorizing \$800 for expenses for an
24 investigation. And that was to a prior attorney, so I
25 don't know if that factors into anything, but -- so

Roshod Baker vs. State of South Carolina
Motion for a Continuance
August 26, 2014

1 that investigation should have been done. I have no
2 copy of a motion of any sort from Mr. Baker while he
3 was pro se. He does have a motion for appointment of
4 new counsel that I got, and that was on May 14th. And
5 I think just the order from Judge James had not been
6 signed at that point. Judge James' order relieving
7 counsel was filed April 7th. New counsel was appointed
8 May 30th.

9 Again, the State is prepared to go forward on all
10 the new allegations, but we'll leave it to the Court's
11 discretion.

12 MR. SHAFFER: Your Honor, the previous
13 investigation, Your Honor, is not -- I actually did
14 not -- I was unaware of the fact that they had ordered
15 funding for it. I certainly don't have anything from
16 an investigator.

17 And this case has gone through I think four
18 attorneys prior to me, so that might have been the
19 problem. It might have gotten lost in the shuffle,
20 essentially, Your Honor.

21 THE COURT: I haven't heard anything -- I'm denying
22 your request for a continuance. We will go forward at
23 this time.

24 - - -

25 - - -

Roshod Baker vs. State of South Carolina
Proceedings
August 26, 2014

PROCEEDINGS

THE COURT: Mr. Baker, if you will please stand. I have a few questions for you.

Please place Mr. Baker under oath.

MR. BAKER: Can I say something?

THE COURT: Sir, I'm attempting to place you under oath.

MR. BAKER: Yes, ma'am.

THE COURT: You need to listen to what is going on here --

MR. BAKER: Yes, ma'am.

THE COURT: -- so that you do not find yourself in contempt.

Do you understand me?

MR. BAKER: Yes, ma'am.

THE COURT: Thank you.

THE CLERK OF COURT: Please raise your right hand.

[Whereupon, Mr. Baker is duly sworn by the clerk of court as follows: do you solemnly swear that the testimony you're about to give the Court in this case will be the truth, the whole truth, and nothing but the truth, so help you God]

MR. BAKER: Yes, ma'am.

THE CLERK OF COURT: Please state your name for the record.

Roshod Baker vs. State of South Carolina
Proceedings
August 26, 2014

1 MR. BAKER: Roshod Baker. Roshod Montrell
2 [phonetic] Baker.

3 THE COURT: And spell your last name, please.

4 MR. BAKER: B-A-K-E-R.

5 THE COURT: Mr. Baker, you are here on your
6 application of post conviction relief. I show that you
7 were indicted and found guilty for murder and were
8 sentenced to thirty years on November 15th of 2006.

9 Is that your understanding?

10 MR. BAKER: Yes, ma'am.

11 THE COURT: Were there any charges, Mr. Shaffer,
12 that were dismissed or nol prossed as a result of this
13 trial?

14 MR. SHAFFER: No, Your Honor. He was convicted at
15 trial.

16 THE COURT: Mr. Baker, you understand should I
17 grant your motion for post conviction relief, you are
18 not released here today. It simply goes back and you
19 likely will be retried for this case.

20 Do you understand, sir?

21 MR. BAKER: Yes, ma'am.

22 THE COURT: And Judge John sentenced you to the
23 minimum.

24 Do you understand that, sir?

25 MR. BAKER: Yes, ma'am.

Roshod Baker vs. State of South Carolina
Proceedings
August 26, 2014

1 THE COURT: And so you would be facing the
2 potential of life in prison if you were retried and
3 convicted again.

4 Do you understand, sir?

5 MR. BAKER: Yes, ma'am.

6 THE COURT: There is no guarantee that if we start
7 from the beginning that you would be entitled to a
8 thirty-year sentence and a judge would impose that same
9 on you.

10 Do you understand?

11 MR. BAKER: Yes, ma'am.

12 THE COURT: By my calculations, you will be fifty-
13 six by the time you max this sentence out.

14 Do you understand that?

15 MR. BAKER: Yes, ma'am.

16 THE COURT: And based upon my understanding of the
17 life-expectancy table, a man similarly situated in
18 South Carolina is expected to live well beyond the age
19 of fifty-six.

20 Do you understand that, sir?

21 MR. BAKER: Yes, ma'am.

22 THE COURT: Do you still wish to go forward here
23 today? I understand your attorney is asking for a
24 continuance. I have denied that request. I do not
25 wish to hear from you regarding that matter.

Roshod Baker vs. State of South Carolina
Proceedings
August 26, 2014

1 Do you still wish to go forward here today,
2 understanding the possible consequences of your PCR
3 being granted?

4 MR. BAKER: Can I say something before --

5 THE COURT: No, sir. I asked you a simple
6 question.

7 MR. BAKER: So if I say I don't wish to go forward
8 -- I mean, I don't even know this guy. I mean, the guy
9 just received a letter stating that he was my lawyer
10 June the 21st. And he sent me this letter right --
11 this letter right here stating -- he sent me this
12 letter stating that I had to be here on the 26th.

13 I'm thinking I'm coming for a motion. I haven't
14 brought no paperwork or nothing because I did this with
15 pro se for the doctor and for the mental health expert
16 and all the stuff like that.

17 THE COURT: Mr. Baker, let me ask you this
18 question. And it's a very simple question. Do you
19 wish to continue with this application for post
20 conviction relief?

21 MR. BAKER: What you mean by that? I'm lost. I'm
22 saying that I -- yeah. If I say I don't want to go
23 forward, I'm not set to go forward today so me saying
24 I'm not set to go forward today --

25 I come for a continuance. That's what I'm thinking

Roshod Baker vs. State of South Carolina
Proceedings
August 26, 2014

1 I'm coming for. So if I say that, then you can say
2 I'm -- I'm basically saying I'm just -- I'm done with
3 my PCR if I say I'm not prepared to go forward today?
4 Because I ain't --

5 THE COURT: That wasn't my question. I didn't ask
6 if you were prepared to go forward today.

7 Are you still prepared to go forward on this
8 application for post conviction relief?

9 MR. BAKER: Yes, ma'am, in the future. I don't
10 have no paperwork or nothing with me today.

11 THE COURT: Mr. Baker, I'm asking very simple
12 questions that require only a yes or a no.

13 MR. BAKER: Yes, ma'am.

14 THE COURT: Do you still wish to go forward on this
15 application for post conviction relief?

16 MR. BAKER: Yes, ma'am.

17 THE COURT: Thank you. All right. Please have a
18 seat.

19 Mr. Shaffer, I have heard your client indicate to
20 me that he has not met with you and he does not feel
21 comfortable going forward with you.

22 MR. SHAFFER: Yes, ma'am.

23 THE COURT: How many times have you met with
24 Mr. Baker?

25 MR. SHAFFER: I have only met with him one time,

Roshod Baker vs. State of South Carolina
Proceedings
August 26, 2014

1 and that would --

2 MR. BAKER: Just for --

3 MR. SHAFFER: -- be today, Your Honor.

4 THE COURT: All right. Mr. Baker, you're trying my
5 patience, and it's awfully early in this stage of the
6 game for you to be trying my patience.

7 Do you understand, sir?

8 MR. BAKER: Yes, ma'am. I apologize for that.

9 THE COURT: I hope that you understood that I
10 listened to what you said. Did I not repeat what you
11 said back to your attorney?

12 MR. BAKER: Yes, ma'am. I apologize for that
13 again, Your Honor.

14 THE COURT: Thank you.

15 MR. SHAFFER: Yes, Your Honor. I have only met
16 with him in person one time about his case.

17 THE COURT: Mr. Shaffer, are you prepared to -- do
18 you feel that you are adequately prepared to go forward
19 here today?

20 MR. SHAFFER: Your Honor, I don't feel that I am
21 adequately prepared to present the issues that he wants
22 me to present.

23 I have reviewed the transcript, and I am aware of
24 the case, Your Honor. Would I be able to present the
25 issues as listed in the application? Yes, Your Honor.

Roshod Baker vs. State of South Carolina
Proceedings
August 26, 2014

1 Not the issues he wants to present based off of his
2 amendments, Your Honor. Not his pro se amendments,
3 Your Honor.

4 THE COURT: Mr. Gardner, I understand your office
5 is just across the street; is that correct?

6 MR. GARDNER: Yes, ma'am.

7 THE COURT: So here's what I'm going to do today.
8 You have other cases, Mr. Shaffer?

9 MR. SHAFFER: No, Your Honor.

10 THE COURT: This is your only matter here today?

11 MR. SHAFFER: Yes, Your Honor.

12 THE COURT: I'm going to continue this matter. I
13 want y'all to sit and speak, and you let me know if
14 you're ready.

15 If we're going to go forward, we'll call you.

16 MR. GARDNER: Yes, ma'am.

17 THE COURT: And I have some free time tomorrow, as
18 well, and perhaps on Friday. If it's inconvenient for
19 you to walk back over, you just make sure you let Mr.
20 Thomas know that. We may proceed with this matter
21 later today or later in the week. All right?

22 MR. GARDNER: Okay. Thank you.

23 THE COURT: Yes, sir.

24 MR. GARDNER: I just want the Court to know.
25 Earlier I was in with Judge -- I was in courtroom A.

Roshod Baker vs. State of South Carolina
Proceedings
August 26, 2014

1 Somebody had called our office to see where I was, and
2 I apologize to Your Honor --

3 THE COURT: You were on time. I would have
4 addressed that matter separately. But thank you,
5 Mr. Gardner.

6 So the two of you need to go meet and you let me
7 know what you need to do. Thank you.

8 [Whereupon, a recess is taken from 10:06 a.m. to
9 12:01 p.m.]

10 THE COURT: Just for the record, Mr. Thomas, what
11 did we do on Mr. Shaffer's case?

12 MR. THOMAS: He said he will be ready to go later
13 this week.

14 THE COURT: And he's going to perhaps bring me an
15 order to sign for an expert?

16 MR. THOMAS: That's what he said. I will call him
17 when we leave here today and tell him --

18 THE COURT: And you'll keep me posted, as we
19 progress throughout the week, on when we'll do --

20 And you have got an order to keep his client
21 here?

22 MR. THOMAS: I'm going to do that for you real
23 quick before you leave.

24 THE COURT: All right. Please do that --

25 MR. THOMAS: And then --

Roshod Baker vs. State of South Carolina
Proceedings
August 26, 2014

1 THE COURT: -- so that he maintains --

2 If you do not have the order, he is -- and it is
3 mister --

4 MR. THOMAS: That's Baker. Roshod Baker.

5 THE COURT: Mr. Baker is not to leave Horry County
6 unless there is an order for him to go to Georgetown,
7 but there is to be -- he is not to be transported back.

8 [HEARING ADJOURNS AT 12:03 P.M.]

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

- - -

24

- - -

25

- - -

Roshod Baker vs. State of South Carolina
Proceedings
August 28th, 2014

1

- - - - -

2

AUGUST 28, 2014

3

in the Georgetown County Courthouse

4

Georgetown, South Carolina

5

on Thursday, August 28, 2014, Commencing at 4:07 p.m.

6

- - - - -

7

PROCEEDINGS

8

THE COURT: Call your next case.

9

MR. THOMAS: Your Honor, the next case would be

10

Roshod Baker versus the State of South Carolina, 2010-

11

CP-26-7814.

12

[Off the record momentarily]

13

MR. THOMAS: Your Honor, this is Roshod Baker

14

versus South Carolina. It's case number 2010-CP-26-

15

7814. It's a November 2006 conviction for murder,

16

for which he got thirty years. He is represented by

17

Mr. Shaffer. And the State is ready to proceed.

18

THE COURT: Mr. Shaffer, are you prepared to go

19

forward at this time?

20

MR. SHAFFER: I am, Your Honor.

21

22

23

- - -

24

- - -

25

- - -

Roshod Baker vs. State of South Carolina
Renewed Motion for a Continuance by Mr. Shaffer
August 28th, 2014

1 RENEWED MOTION FOR A CONTINUANCE

2 MR. SHAFFER: My client has asked I renew the
3 previous continuance request.

4 THE COURT: And tell me why I should grant that
5 continuance, Mr. Shaffer.

6 MR. SHAFFER: Your Honor, I mean, I have spoken to
7 him. Honestly, Your Honor, I think that I know
8 everything there is to know about the case. He doesn't
9 feel that I do know everything there is to know about
10 the case, Your Honor. You know, we have spoken on
11 Tuesday, yesterday, and today -- or not today, really,
12 until just a second ago, Your Honor. But I have spoken
13 to him for a substantial amount of time. At least on
14 Tuesday I spoke with him for a substantial amount of
15 time. I spoke to Mr. Gardner about it. I've read the
16 transcript, Your Honor. But, you know, Mr. Baker
17 believes that there might be some way to get --

18 You know, this has been pending for four years. He
19 apparently had five attorneys, including me. Each
20 attorney has seen him right before the hearing and he's
21 never actually had a chance to sit down in prison and
22 talk to any of the attorneys. And I think that's the
23 basis of why he feels that I am not prepared to go
24 forward, because of the fact that we haven't spoken in
25 the prison.

MIA PERRON, CVR-CM-M

-21-

Roshod Baker vs. State of South Carolina
Renewed Motion for a Continuance by Mr. Shaffer
August 28th, 2014

1 THE COURT: Did you speak to him Tuesday?

2 MR. SHAFFER: Yes, Your Honor.

3 I spoke to him for probably at least an hour. And
4 it was probably more than that, but it was at least
5 an hour. I spoke to him yesterday, too, which was
6 Wednesday.

7 Your Honor, he did want me to look into hiring an
8 expert to look over the -- look over the autopsy. I
9 had tried to call one expert.

10 I spoke with Mr. Gardner, as well, I believe that
11 was Tuesday, about the autopsy. I didn't see where it
12 was necessary to call any independent witness for --
13 based off of what he had told me about the autopsy. It
14 didn't sound like it was. And I had read what the
15 doctor's testimony was. I don't see a basis for
16 calling an independent --

17 You know, obviously, if you call an expert on every
18 single thing -- you can possibly do that in a PCR, I
19 guess, call an expert on every single thing the State
20 presents as physical evidence -- your Honor, I don't
21 think it would be fruitful to do so. I don't have any
22 indication that it would. That's why I say that I
23 essentially think we should go forward. But he would
24 want an autopsy -- someone to look over the autopsy, at
25 least, Your Honor.

Roshod Baker vs. State of South Carolina
Renewed Motion for a Continuance by Mr. Shaffer
August 28th, 2014

1 He also has made a claim regarding the mental
2 health of one of the testifying codefendants. I
3 advised him that I did not think that that was a claim.
4 He wanted an expert to look at his mental health
5 records. I said I -- that I didn't know if I could
6 have gotten them but, even if so, I don't know if
7 there's a claim outside of the fact -- unless he was
8 not even competent to testify, which I don't really see
9 any basis for making that argument.

10 THE COURT: The State is ready to go forward,
11 Mr. Thomas?

12 MR. THOMAS: The State is ready to go, Your Honor.

13 THE COURT: I'm going to take about seven minutes,
14 because we have been seated. I know you have been so
15 patient.

16 [Whereupon, a recess is taken from 4:17 p.m. to
17 4:23 p.m.]
18
19
20
21
22
23
24
25

- - -
- - -
- - -

Roshod Baker vs. State of South Carolina
Proceedings
August 28th, 2014

PROCEEDINGS

THE COURT: Are you ready to proceed, Mr. Thomas?

MR. THOMAS: Yes, Your Honor.

THE COURT: Mr. Shaffer, are you ready to proceed
with Mr. Baker?

MR. SHAFFER: Yes, Your Honor, I'm ready to go on.

THE COURT: Let's go ahead and go. What grounds
are we going forward here today?

MR. SHAFFER: Ineffective assistance of counsel and
failure to investigate.

THE COURT: And specifically that he was prejudiced
because the trials were not separate; is that correct?

MR. SHAFFER: Your Honor, that was -- we'll go
forward on that ground. I had previously on Monday or
Tuesday said something about that. But, Your Honor, if
there's evidence of that, I don't want to actually
waive it. We're also failure to cross-examine a
pending -- on pending charges that I think we addressed
briefly on Tuesday. There's also failure to ask for a
mistrial, at one point, when some evidence was
suppressed. There's also the failure to bring up an
inconsistent statement by the codefendant. And that's
around page 95 through 98 and then 116 through 117.

THE COURT: Are you prepared to go forward on those
allegations?

Roshod Baker vs. State of South Carolina
Proceedings
August 28th, 2014

1 MR. THOMAS: Absolutely, Your Honor.

2 THE COURT: Call your first witness.

3 MR. SHAFFER: The applicant will call Roshod Baker.

4 [Whereupon, Mr. Baker comes forward]

5 [Whereupon, Mr. Baker is duly sworn by the clerk of
6 court as follows: do you solemnly swear or affirm that
7 the testimony you're about to give will be the truth,
8 the whole truth, and nothing but the truth, so help you
9 God]

10 THE WITNESS: Yes, ma'am.

11 THE CLERK OF COURT: State your name, please.

12 THE WITNESS: Roshod Montrell [phonetic] Baker.

13 THE CLERK OF COURT: You may have a seat.

14 [Whereupon, Mr. Baker takes the witness stand]

15 THE COURT: Mr. Shaffer.

16 MR. SHAFFER: Good afternoon, Mr. Baker.

17

18

19

20

21

22

23

- - -

24

- - -

25

- - -

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 ROSHOD BAKER,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. SHAFFER:

6 Q. If you could, tell us where you currently reside.

7 A. Say that one more time. I couldn't hear you.

8 Q. Where do you currently reside at?

9 A. McCormick, South Carolina.

10 Q. Is that McCormick Correctional Institution?

11 A. Yes, sir.

12 Q. How long of a sentence do you have?

13 A. Thirty years.

14 Q. And what was that for?

15 A. Murder.

16 Q. Do you have any other sentences pending?

17 A. No, sir.

18 Q. Did you -- who represented you?

19 A. Mr. Gardner. Johnny Gardner.

20 Q. When did this murder allegedly occur?

21 A. I know when I was convicted. I can't --

22 Q. When were you convicted?

23 A. November, 2006.

24 Q. About how long prior to your conviction did the
25 murder allegedly occur?

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 A. I can't recall. I think it was like 2000, maybe
2 2001 or something, when they arrested me on those charges.

3 Q. So quite a while?

4 A. Yes. It's been a while.

5 Q. Were you out on bond prior to your trial?

6 A. Been out on bond for almost I want to say anywhere
7 from five to six years.

8 Q. How many times did you meet with Mr. Gardner?

9 A. Wow. I can't recall. It's been a few.

10 Q. When was the first time you met with Mr. Gardner?

11 A. I couldn't recall right off the back of my hand.
12 I mean, I know it was after I made bond that I met with
13 Mr. Gardner.

14 Q. Did you see him at your bond hearing?

15 A. No.

16 There was another lady filling in for him. I don't
17 recall what her name was but he wasn't there, though.

18 Q. Did you ever hear an explanation for why it took so
19 long to take you to trial?

20 A. No, sir.

21 Q. But you were out on bond; right?

22 A. Yes, sir.

23 Q. Did you ever go by Mr. Gardner's office?

24 A. Yes, sir. Quite a few times.

25 Q. And did you discuss the case with Mr. Gardner?

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 A. Yeah.

2 Q. Was there a plea offer in your case?

3 A. No.

4 I think my plea offer came after -- during the
5 midst of the trial.

6 Q. What was that plea offer?

7 A. If I'm not mistaken, it was zero to twenty, or zero
8 to twenty-five, or something like that.

9 Q. Do you know if that was for voluntary manslaughter,
10 or armed robbery, or what?

11 A. Well, I didn't have an armed robbery charge so --

12 Q. Okay. I'm just wondering how you would have got
13 the zero to twenty.

14 A. I have no idea.

15 All I know it's like they -- in the midst of the
16 trial, he was -- they offered me a plea from zero to
17 twenty-five, or something like that.

18 Q. And if you could, explain to us what your strategy
19 was, or what Mr. Gardner told you the strategy was, going
20 into the trial.

21 A. I don't remember Mr. Gardner really saying having a
22 strategy.

23 I remember him asking for a continuance because he
24 said he didn't really have enough time to prepare for the
25 case. And the judge was like, you've been on this case

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 for like six years, it's impossible that you're not ready.
2 So we just went forward with the case.

3 Q. And during the six-year period, do you know of any
4 investigation that he conducted in the case?

5 A. No, I don't know no investigation he conducted on
6 the case.

7 Q. And your PCR has been pending quite a while, as
8 well; right?

9 A. Yes, sir.

10 Q. And you had issues that you wanted to bring up;
11 right?

12 A. Yes, sir.

13 Q. One of those issues involves Mr. Bowen's cross-
14 examination; is that right?

15 A. Yes, sir.

16 Q. What issue did you want to bring up regarding
17 Mr. Bowen's cross-examination?

18 A. On direct examination of Bowens by the State, the
19 State did not even mention that Bowens had given a
20 statement. But, again, Mr. Mullins, my codefendant
21 counsel, ask that he -- did he recall stating --

22 Q. Slow down just a little bit.

23 A. Okay. You want me to take it back from the top?

24 Q. No. Just tell us about it.

25 A. Okay. On direct examination of Bowens by the

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 State, the State didn't even mention that Bowens had gave
2 a statement. But, again, Mr. Mullins, my codefendant
3 counsel, had asked him that he did not recall stating
4 hearing one gunshot. He looked out the window and seen
5 Roshod and Kojack running back to the car. See page 95
6 through 98 and also page 116 through 117.

7 Q. So your codefendant did not -- had testified -- and
8 which -- we're talking about Mr. Bowen?

9 A. Yes, sir.

10 Q. He testified that he heard one gunshot; right?

11 A. Yes, sir.

12 Q. How many bullet holes were in the alleged victim in
13 this case?

14 A. If I'm not recall -- if I'm not mistaken, I think
15 they said six, maybe seven.

16 Q. But it was more than one; right?

17 A. Yes, sir.

18 Q. Did your attorney ever bring that out?

19 A. No.

20 He mentioned something about a magic bullet one
21 time. I don't recall.

22 Q. Do you think that that adequately addressed that
23 issue?

24 A. No, sir. I don't think so.

25 Q. And then the -- he said there was a magic bullet

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 that entered and exited the body?

2 A. Yes, sir.

3 Q. What other issues did you want me to bring up here
4 today?

5 A. All of them.

6 Q. Well, let me ask you this. At some point during
7 your trial, didn't one of the codefendants make a
8 statement about you robbing drug dealers?

9 A. Yes. I -- yes.

10 Q. Where was that at?

11 A. Ernest made that statement.

12 Q. Ernest made the statement?

13 A. Yes.

14 Q. And what did he say? Basically, what did he say?

15 A. [No response]

16 Q. He said that you robbed drug dealers; right?

17 A. Yeah.

18 When I was accusing -- I was accused on trial for
19 murder and robbing a drug dealer, Ernest stated that
20 that's what I do, said that was my thing, said robbing and
21 murder drug dealers and --

22 Q. And that came out at trial; right?

23 A. Yes, sir. He was on the stand when he said that.

24 Q. Did your attorney object to that?

25 A. No, sir, he did not.

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 The State itself moved for a -- the State did. But
2 he agreed with the judge. But he didn't.

3 Q. There was a curative instruction; right?

4 A. Yes. The judge did that.

5 Q. Did your attorney ask for a mistrial?

6 A. No.

7 I was ready for him to ask for a mistrial because
8 it was prejudice and was heard by the jury, but he just
9 went along with the judge. He agreed to it, but he didn't
10 ask for a mistrial his self. He didn't even object.

11 Q. So your attorney didn't specifically ask for a
12 mistrial?

13 A. No, he didn't. He didn't even object.

14 Q. Do you think that that prejudiced you?

15 A. Yes. That prejudiced my whole trial and my appeal.

16 Q. How did it prejudice your appeal? You said it
17 prejudiced your appeal?

18 A. Yeah.

19 I felt like it prejudiced my whole trial and my
20 appeal when he failed to ask -- when he failed to ask for
21 a mistrial when Mr. Mullins, my codefendant counsel, asked
22 Ernest about me murdering and robbing drug dealers, a case
23 accused what happened after the case I was on trial for.

24 Q. So even if the trial court denied the mistrial
25 motion, you think that an appellant court might have

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 reversed based off of that issue?

2 A. Yes, I felt like they were.

3 Q. Now, are there any other issues that you had wanted
4 to bring up?

5 A. How he prejudiced me and --

6 Q. What do you mean about how he prejudiced you?

7 A. Okay. Like I was saying, he prejudiced the outcome
8 of the trial by not asking for a mistrial.

9 Q. And that's what we just talked about; right?

10 A. Yes, sir.

11 Although the State -- like you said, although the
12 State itself asked for a constructive instrument
13 [phonetic], you can see page 142 through --

14 THE COURT: Slow down. Are you reading something?
15 Are you reading? What you need to do when you're
16 reading is she's got to take this down and when you're
17 reading --

18 THE WITNESS: Yes, ma'am.

19 THE COURT: So maybe if you lift your paper up a
20 little bit so you don't read into the paper. Slow down
21 just a little bit, and a little bit louder.

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Can you do that for me?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Because it's important we get down

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 everything you say.

2 THE WITNESS: Yes, ma'am. So I --

3 THE COURT: Madam Court Reporter, if you will just
4 make sure -- just signify if he's getting too fast.

5 THE COURT REPORTER: Thank you.

6 THE COURT: Thank you.

7 A. Counsel further prejudiced my whole trial and
8 appeal when he failed to ask for a mistrial when Mr.
9 Mullins, my codefendant's counsel, asked Earnest about --
10 Earnest about me robbing drug dealers, a case accused what
11 happened after the case I was on trial for, when I was on
12 trial for accused of robbing and murdering a drug dealer.
13 You can see page 139. Although the State itself moved for
14 a construction instance [phonetic], you can see page 142,
15 which the judge granted. You can see page 144, which
16 counsel should -- which counsel should not have agreed to
17 and have asked for a mistrial because it was too prejudice
18 and was heard by the jury.

19 Counsel further prejudiced me when he failed to
20 attack Ernest upon his mental condition. Counsel further
21 prejudiced me when he failed to hire a mental health
22 expert to show how Ernest --

23 MR. THOMAS: Your Honor, I'm going to object to
24 that.

25 We have already decided the mental health of the

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 codefendant wasn't an issue, and we would ask that that
2 testimony be stricken.

3 THE COURT: All right. It will be.

4 MR. SHAFFER: Thank you, Your Honor.

5 THE COURT: Thank you.

6 Q. [Mr. Shaffer] Now, do you recall him asking your
7 codefendant, Ernest, whether or not he had ever been
8 arrested?

9 A. Yeah.

10 They had brought that up one time about him being
11 arrested and while on marijuana charges or something like
12 that.

13 Q. So he responded he had been arrested on marijuana
14 charges?

15 A. Yes, sir.

16 Q. Do you recall the solicitor clarifying that he had
17 also been arrested for burglary -- I mean -- or murder?
18 I'm sorry. For this murder?

19 A. Yeah, he was arrested for this murder.

20 Q. They clarified that; right?

21 A. Yes, sir.

22 Q. Did the solicitor mention anything about burglary?

23 A. No.

24 That never came up, period, in the midst of the
25 trial.

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 Q. Did you know that he had been arrested for burglary
2 a month beforehand?

3 A. No.

4 Q. Now, during -- or prior to your trial, when was --
5 or your trial started on a Monday; right?

6 A. Yes, sir.

7 Q. When was the last time you had seen Mr. Gardner?

8 A. Ernest?

9 Q. No. Mr. Gardner.

10 A. Oh. Actually, that Saturday afternoon. I thought
11 it was kind of strange. Mr. Gardner had called me, and I
12 was with Ernest at the moment, and he was like --

13 Q. Ernest wasn't in jail at that time?

14 A. No.

15 Mr. Gardner was like, I need to see you Sunday.
16 And I was like, all right, cool; I be by the phone. I was
17 like, you're sure Sunday. He was like, yeah.

18 So once I get to his office, he said that -- he
19 showed me a tape of Ernest crime on this date and that if
20 I get out of jail he's a dead man --

21 He said we was picking a jury the very next day,
22 which --

23 Q. And that --

24 A. -- which was Monday.

25 Q. -- did say --

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 THE COURT: Please don't speak over him. I'm
2 having a really hard time.

3 MR. SHAFFER: I apologize.

4 THE COURT: You're so soft-spoken.

5 And so if you would please make sure you do not
6 speak over the witness. Thank you.

7 MR. SHAFFER: I apologize, Your Honor.

8 THE COURT: Can you repeat that last thing that you
9 said?

10 A. Oh. Mr. Gordon [phonetic] had called me on a
11 Saturday. And I was with Mr. Ernest. And he said he
12 needed to see me, which was the next day, which was a
13 Sunday. And I was like, are you sure on a Sunday. He was
14 like, yeah. So once I get down to Mr. Gardner office, he
15 showed me the tape that he got where Ernest on the crime
16 stating that if they let me out of jail, that he was a
17 dead man --

18 And Mr. Gardner was like the very next day, which
19 would be Monday, that we was picking a jury and we was
20 going to trial. And I asked Mr. Gardner, I was like, man,
21 I've been out on bond for almost six years, you've been my
22 lawyer all this time, you just now showing me this. And,
23 I mean --

24 Q. So you hadn't seen that video before then?

25 A. No.

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 Q. Did you know that -- did you actually start that
2 next day, which would have been Monday --

3 A. Yes, sir. We picked a --

4 Q. -- the day after you saw --

5 A. -- we picked a jury Monday morning.

6 Q. Do you know of ever being on a trial docket before
7 that?

8 A. No.

9 They always have me come for I guess what you
10 call -- it was a roll call or something like that, or
11 otherwise, to make sure that I wasn't jump bail or
12 something like that. I been to a thousand of those. I
13 mean, but I never been on a trial docket.

14 Q. Did Mr. Gardner ever say, we're about to try your
15 case?

16 A. No. Yeah.

17 That Sunday he told me they was about to try it the
18 next day. Said we was picking a jury.

19 Q. Prior to that, did you have -- had he ever told you
20 previously that they were about to try your case?

21 A. No, never told me that.

22 Q. Now, prior to that Sunday, do you recall the last
23 time prior to that that you had seen Mr. Gardner? How
24 long it had been?

25 A. It's been a minute. Like I say, every time I come

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 to the -- they had this little roll call or whatever, and
2 I'd stop by his office and speak with him then on every
3 occasion. So whenever the last occasion of that was,
4 that's the last time I spoke to him.

5 Q. Did Mr. Gardner ever tell you anything about a
6 trial being delayed based off of Ernest being arrested for
7 burglary?

8 A. No.

9 He -- I never even -- this the first that I ever
10 heard Ernest had a burglary. Mr. Gardner never even
11 mentioned that.

12 Q. You're cousins with Ernest; right?

13 A. Yes.

14 First cousin. My mother and his father are
15 brothers and sisters. Yeah, we're first cousins. Growned
16 up together.

17 Q. You knew that he had just got out of jail for a
18 burglary; right?

19 A. I know he just got out of prison recently for a
20 burglary.

21 I don't know -- I talked to my Auntie all the time,
22 so she just --

23 Q. But you don't know which burglary that was?

24 A. No.

25 I know he just come home from prison for a

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 burglary. That's all I know.

2 Q. But at the time of your trial, were you aware that
3 he had been charged with burglary?

4 A. Like I said, I never even know he had a burglary
5 charge. Mr. Gardner never even mentioned that.

6 Q. Now, are there any other issues that you had wanted
7 me to address that I have not addressed here today?

8 A. No.

9 Q. Have you ever seen Mr. Gardner's file?

10 A. Never. I never seen his file.

11 That's actually what I thought I was coming for,
12 for a motion to get Mr. Gardner file, and experts, and
13 stuff like that. I never even had his file.

14 Q. So you filed a pro se motion; right?

15 A. Yes, sir, I filed a pro se motion.

16 That's what I think I was coming for, but I see
17 we're going forward with the hearing.

18 Q. Have you ever requested from Mr. Gardner a copy of
19 his file?

20 A. No.

21 Actually, I thought I had to go through my
22 attorneys. I thought that's what the proper channel was.
23 That's why I had so many attorneys. I was asking all of
24 them for the files.

25 But I never know I had to reach out to Mr. Gardner

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 himself for the files. I didn't know that until you told
2 me that, so I --

3 Q. And I told you that there's a possibility that
4 Mr. Gardner would let me look at his file; right?

5 A. Yeah.

6 You mentioned that. You said it's a possibility he
7 would let you look at them.

8 Q. But that you had the right, the absolute right as a
9 client, to ask for a copy; right?

10 A. Yes. You mentioned --

11 MR. THOMAS: Objection.

12 Q. [Mr. Shaffer] But as of yet --

13 THE COURT: Hold on one second.

14 MR. THOMAS: Relevance. I'm not sure how him
15 asking for a copy of the file, and Mr. Shaffer doing
16 all that legwork, is relevant to the PCR issues.

17 THE COURT: Mr. Shaffer?

18 MR. SHAFFER: Your Honor, I promised my -- my
19 client is not real happy with me, obviously. I
20 promised him I would put that on the record.

21 THE COURT: Well, I appreciate that, Mr. Shaffer.

22 MR. SHAFFER: Yes, Your Honor.

23 THE COURT: But sometimes making promises to
24 clients -- you're the attorney and you need to know
25 what is and is not acceptable courtroom behavior and

Roshod Baker
Direct Examination by Mr. Shaffer
August 28th, 2014

1 what is allowed by law to come in. So you have an
2 ethical obligation not only to your client but, first
3 and foremost, you're an officer of this Court and you
4 are sworn to uphold the law.

5 Do you understand what I'm saying to you, Mr.
6 Shaffer?

7 MR. SHAFFER: Yes, Your Honor, I am.

8 THE COURT: All right. Move on. Thank you.

9 MR. SHAFFER: No further questions.

10 THE COURT: Thank you.

11

12

13

14

15

16

17

18

19

20

21

22

23

- - -

24

- - -

25

- - -

Roshod Baker
Cross-Examination by Mr. Thomas
August 28th, 2014

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Mr. Baker --

A. Yes, sir.

Q. -- you said you had a -- you had a few meetings
with Mr. Gardner?

A. Yes, sir.

Q. During those meetings, did he get a chance to go
over the State's evidence with you?

A. No, sir.

He never even -- he talked about some cassette
tapes that supposedly was blank, and he was giving it to
me how he received them. So, I mean, that's -- other than
that, he never mentioned the video to me until, like I
said, that Sunday.

Q. And did he ever get an opportunity -- did you get
an opportunity to discuss with him any possible defenses
to this charge?

A. No.

He never really even like -- like I say, I mean,
our meetings was real brief and he never really sat down
and explained how he was going to go at it.

I know when -- Monday, he was like he wasn't ready,
he wasn't prepared. He asked the judge for a continuance,
said he hadn't had enough time to work on the case and the

Roshod Baker
Cross-Examination by Mr. Thomas
August 28th, 2014

1 judge denied his request, said he'd been my lawyer for
2 over six years on this case, it's impossible that he's not
3 ready.

4 Q. Did you ever give him any leads to investigate?
5 Anybody he needed to go out and interview and talk to?

6 A. No.

7 Because like I said, at the time, I didn't know all
8 this was going on for a while, this with Ernest.

9 MR. THOMAS: No further questions, Your Honor.

10 THE COURT: Mr. Shaffer.

11 MR. SHAFFER: No redirect, Your Honor.

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

13 [Whereupon, Mr. Baker is excused and exits the
14 witness stand]

15 THE COURT: Call your next witness.

16 MR. SHAFFER: I call Johnny Gardner.

17 [Whereupon, Mr. Gardner comes forward]

18 [Whereupon, Mr. Gardner is duly sworn by the clerk
19 of court as follows: do you solemnly swear or affirm
20 that the testimony you are about to give will be the
21 truth, the whole truth, and nothing but the truth, so
22 help you God]

23 THE WITNESS: Yes, ma'am.

24 THE CLERK OF COURT: State your name, please.

25 THE WITNESS: Johnny Gardner.

Roshod Baker
Cross-Examination by Mr. Thomas
August 28th, 2014

1 THE CLERK OF COURT: You may have a seat.

2 THE WITNESS: Thank you.

3 [Whereupon, Mr. Gardner takes the witness stand]
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- - -

- - -

- - -

Johnny Gardner
Direct Examination by Mr. Shaffer
August 28th, 2014

JOHNNY GARDNER,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. SHAFFER:

Q. Mr. Gardner, you represented Roshod Baker; correct?

A. That is correct.

Q. And were you appointed or retained?

A. Appointed.

Q. Do you recall generally about what time -- or when
you got appointed?

A. It wasn't too far after he had been -- after he
made bond.

I wasn't at the bond hearing because I wasn't his
lawyer. If somebody was in there, it was probably a
member of the public defender's office. Because there
were five codefendant in this case, four of them were
appointed out.

Q. And when you took over the case, did you request
discovery?

A. Yes, we did. And we received it.

Q. Could you briefly tell us about the allegations in
this case?

A. Well, the allegation was that it was five guys that
came into South Carolina from North Carolina in two cars

Johnny Gardner
Direct Examination by Mr. Shaffer
August 28th, 2014

1 and that they met somebody up in the -- I can't remember
2 what section of Horry County -- up towards Loris, to buy
3 an eight-ball from a fellow, and that Telly Manning and
4 Mr. Baker got in the car with the fellow and the other
5 people -- the other three defendants left in another car.
6 And the allegations were that there was a shooting and
7 that Telly Manning or Roshod Baker shot and killed the
8 dope dealer.

9 When this case went to trial, those were the two
10 that went to trial. And the other three, I think one -- I
11 think two of those testified. Those three were kind of on
12 the periphery. They were never -- they were maybe
13 originally charged with murder, but that was quickly
14 worked out.

15 Q. Did you ever move to sever the two cases?

16 A. I did not.

17 Q. Why did you not?

18 A. Well, as Monday morning quarterback, I wish we
19 would have.

20 But even though I wish we would have, I don't think
21 that the judge would have done it. And the reason I say
22 that is based on that scenario that I just told you, that
23 I think one concert of action, multiple defendants going
24 to do I think -- I don't think it was undisputed that they
25 went to buy drugs. I think, obviously, there were

Johnny Gardner
Direct Examination by Mr. Shaffer
August 28th, 2014

1 disputes that they did a murder. And they certainly would
2 dispute that there was a plan to do a murder. But I just
3 didn't see the judge doing that.

4 Q. Tell us about the investigation you performed.

5 A. Well, I think it's important to remember that this
6 case was about six years old -- or while we had it.

7 We had all the discovery. We had ample
8 opportunity. I do not remember making a motion for a
9 continuance. I'm almost positive I did not.

10 I do remember we had a pretrial conference and I do
11 remember making a statement to the judge, I would like for
12 you to get your head around the idea of my client staying
13 out on bond.

14 I've tried a lot of murder cases and I've never had
15 a client stay out on bond before. And Roshod stayed out
16 on bond during this murder trial and the reason that he
17 was allowed to do that is because over the course of six
18 years, he cooperated. He came to my office.

19 Early on, he did not. Early on, I sent him
20 multiple letters, letter after letter. He was living in
21 North Carolina and I don't know if he wasn't getting them
22 or if he was ignoring me, because he did come by my office
23 and stop by one day and I said, look, man, I'm no public
24 defender; you need to come when you're told to come and
25 you need to sit down and help me get ready for this case.

Johnny Gardner
Direct Examination by Mr. Shaffer
August 28th, 2014

1 And he was cool. I always liked Roshod and we always got
2 along. We never had any problems. So he started
3 cooperating with me.

4 We went over -- every murder case I've ever done,
5 and every serious case I've ever done, I've taken the
6 discovery and I've offered it to my client. I've offered
7 to make copies of it. Some have not taken it, for
8 different reasons. I've had jail people not take it
9 because they didn't want a copy in the jail. I've had
10 some -- most of them will take it, though.

11 And I've always gone through it page by page. They
12 don't have to pay attention, they just have to be in the
13 room while I'm talking: this is a witness statement from
14 your -- this is a police officer, this is a whatever it
15 is, this is eight pages of -- I go through every bit of
16 that. And I've done that on every case. I don't remember
17 every case, I just remember I've done that on every case.
18 And if they want to go further, then we'll go further.
19 But I make sure that we at least do that part of it.

20 So that was our preparation of the case. And it
21 went on and went on and went on.

22 Now, it's not unusual for me to work on a Saturday.
23 And, in fact, I probably work more Saturdays than I don't.
24 But it's certainly not unusual to work on Saturday and
25 Sunday prior to a murder trial. In fact, I probably have

Johnny Gardner
Direct Examination by Mr. Shaffer
August 28th, 2014

1 worked all day Saturday and all day Sunday prior to every
2 big trial I've ever done, civil or criminal. So it would
3 not be out of the ordinary for me to call him.

4 I will tell you it would be out of the ordinary for
5 that to be the first notification. So I don't think
6 that's how it played out. But even if -- I know that's
7 not how it played out.

8 And I'll tell you this case, to the best of my
9 knowledge, was scheduled for number one to be tried. And
10 Telly Manning got arrested. I think that might be where
11 some confusion is when the question earlier was were we
12 aware that the codefendant was arrested. When I hear that
13 question, I think it's Telly Manning because Telly Manning
14 was the codefendant. Now, those are the two guys that
15 went to trial. Technically, there were five codefendant
16 at the beginning, but there were two guys that went to
17 trial.

18 The original trial date was delayed because Telly
19 Manning fought extradition on a thirty-day -- some kind of
20 thirty-day deal that he had up there in North Carolina.
21 So they had to reschedule the trial. And I don't know --
22 it wasn't like the very next week. It was obviously
23 thirty days later. But it was a while back. And we
24 didn't ask for a continuance. We didn't -- we were ready
25 to go with what we had.

Johnny Gardner
Direct Examination by Mr. Shaffer
August 28th, 2014

1 Q. Were you aware that Ernest had been charged a month
2 prior?

3 A. You know, I know you asked me that earlier, and
4 that was confusion on my part. I was not. I was thinking
5 codefendant Telly Manning. Okay? But if I think I know
6 where you're going, would that have made a difference?
7 No, it wouldn't have made a difference in my mind.

8 Q. Okay. But he had been charged with burglary;
9 correct?

10 A. I don't know. That was just brought to my
11 attention by you the other day.

12 Q. And how was it brought to your attention by me?

13 A. I think you asked me did you know the codefendant
14 was charged with burglary prior to the trial.

15 Q. And I showed you a --

16 A. Some kind of a --

17 Q. -- public index --

18 A. -- printout. Yeah. Yeah.

19 Q. But it's your testimony that you were unaware of
20 that right now?

21 A. Yeah. To the best of my knowledge, I was unaware
22 of that.

23 Q. Now --

24 A. But can I respond to that?

25 Q. Yeah.

Johnny Gardner
Direct Examination by Mr. Shaffer
August 28th, 2014

1 A. But I want to make sure that it's -- even if I had
2 been aware of that, I don't think it would have mattered
3 because that probably didn't have anything to do with this
4 case. Right?

5 Q. And --

6 A. I mean, it wasn't a charge involving this murder.

7 Q. No, it was not a charge involving this murder.

8 A. And when that fellow testified --

9 I got some of the best cross-examination I've ever
10 done in my career on this case. I believe I started out
11 one witness by saying something to the effect of isn't it
12 true you're a drug dealer. That's the first question. I
13 mean, you don't get that every day. Okay? So I impeached
14 these guys on everything that I had going.

15 In fact, I think that was what was the first case
16 with me under this law that allows you to tell the jury
17 basically what was going on. And it might not have been
18 the first case that was allowed to do it but it was the
19 first one that I was ever allowed to do it, and I was able
20 to ask these guys, you know, isn't it true you were facing
21 murder, you were life without parole and now you're
22 sitting up here as a State's witness, words to that
23 effect.

24 So I don't think an unrelated burglary charge, or
25 anything like that, would have done anything on this case.

Johnny Gardner
Direct Examination by Mr. Shaffer
August 28th, 2014

1 Q. Now, during Ernest Smith's initial -- his initial
2 direct examination, the solicitor asked him if he had ever
3 been arrested; correct?

4 A. Probably.

5 Q. And he said that he had been arrested for
6 marijuana; right?

7 A. I don't recall what his answer was.

8 Q. Do you recall him mentioning anything about a
9 burglary --

10 A. I don't recall answering anything about a burglary
11 --

12 Q. -- about a month beforehand?

13 A. No.

14 Q. If you had -- assuming that he did not, if you knew
15 about the burglary, would you have impeached him on it?

16 A. If the solicitor said have you ever been arrested,
17 if that was the question, then the solicitor would have
18 opened the door for me to ask about arrest. But if that
19 was not the exact words of the question, I don't think the
20 judge would look kindly at me asking have you ever been
21 arrested for -- or isn't it true you were arrested for
22 burglary.

23 Q. But if I told you that the solicitor did make the
24 comment have you ever been arrested, and he said I've been
25 arrested one time for marijuana and he didn't mention

Johnny Gardner
Direct Examination by Mr. Shaffer
August 28th, 2014

1 anything about the burglary, if I had told you that would
2 you believe me?

3 A. Oh, I would believe you, yeah.

4 Q. In the transcript.

5 A. Yeah. Yeah.

6 Q. If you had known that he was also arrested for a
7 burglary a month beforehand, would you have brought that
8 up during cross-examination?

9 A. Most likely.

10 But he isn't the same guy that was originally
11 charged with murder; right?

12 Q. Yeah.

13 A. And was that brought up?

14 Q. That was brought up.

15 A. But don't you think that's more persuasive?

16 Q. Well, it's not my opinion, I guess.

17 A. Okay. All right.

18 Q. Now, do you recall -- do you recall Ernest making a
19 comment about Mr. Baker robbing drug dealers?

20 A. I think Randy asked him that somehow and -- but --
21 and I heard the testimony earlier.

22 But I don't think anybody said what the answer to
23 the question was. The answer to the question was no.

24 Okay? The answer to the question was no.

25 So there was an objection, because obviously that

Johnny Gardner
Direct Examination by Mr. Shaffer
August 28th, 2014

1 was impermissible. Randy shouldn't have asked that
2 question -- Mr. Mullins, the codefendant's attorney. We
3 sent the jury out. We went over, around it, around and
4 around and around.

5 I don't know if the judge would have granted a
6 mistrial. I kind of think that he wouldn't have, because
7 the answer was no. Nobody has talked about the answer,
8 they just talk about the question. I don't think the
9 judge would have granted a mistrial.

10 But at that particular time in the trial, we didn't
11 want a mistrial. We were doing pretty good. We had
12 pretty much -- we had done pretty good with these
13 witnesses.

14 Q. Now, if you could, what -- why do you think -- so
15 at that time you thought you were doing well; right?

16 A. I think so, yeah.

17 Q. Was that still your opinion later on throughout the
18 trial?

19 A. Basically, the allegations are you've got two
20 shooters. There may have been one shooter and there may
21 have been two shooters. But you've got three people in
22 the car. The evidence in the light most favorable to the
23 State put Mr. Baker and Mr. Manning in the car with the
24 decedent. Decedent is shot full of holes.

25 When the expert witness testified, she said that

Johnny Gardner
Direct Examination by Mr. Shaffer
August 28th, 2014

1 basically either one of them could have done it. And that
2 was what -- you know, that was what -- of all the
3 witnesses, that was the most damning witness. So at the
4 end of that one, yeah, that was pretty damning. So we did
5 pretty good except for maybe against her.

6 MR. SHAFFER: The Court's indulgence.

7 THE COURT: Take your time.

8 [Whereupon, Mr. Shaffer and Mr. Baker confer]

9 MR. SHAFFER: No further questions, Your Honor.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

- - -

24

- - -

25

- - -

Johnny Gardner
Cross-Examination by Mr. Thomas
August 28th, 2014

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Mr. Gardner, just give us a brief overview of your experience as a criminal lawyer.

A. I started out in the solicitor's office about twenty-three years ago, and then I started my own practice and I've been doing criminal defense ever since then.

Q. And how did you become involved in Mr. Baker's case?

A. I was appointed.

It was -- the public defender needed four extra lawyers so she had -- at that time she had a small group of people that she appointed murder cases to, people that had tried murder cases before.

Q. So this wasn't your first murder case?

A. No, sir.

Q. You already said that you filed discovery and got a response from the State?

A. Yes, sir. That's correct.

Q. Did you get a chance to review everything the State had with Mr. Baker?

A. To my knowledge, yes.

And in that vein, let me follow up if I can. I think it's real important for the people in this room that have tried these cases to know, or to let the other people

Johnny Gardner
Cross-Examination by Mr. Thomas
August 28th, 2014

1 know, that it's not fun and games during a trial and when
2 the day is over at 5:00 or 6:00 or 7:00, however late the
3 judge wants to go, sometimes that's the start of day two.
4 Okay? We hit the books, we go to the jail, we do the
5 things that we need to do, and sometimes it's run down a
6 witness and all that stuff. I didn't have to do all that
7 during this trial because we had had this case for six
8 years.

9 The other thing I didn't have to do was go out to
10 the jail to do stuff with my client, because he was out on
11 bond. We didn't really do anything because we didn't
12 really -- there was really nothing for us to do.

13 The reason I bring all that out, I think it's
14 important to know that we had the time to do what we could
15 do, and we did what we could do with what we had.

16 Q. And during all your meetings with him, did you get
17 a chance to discuss sort of I guess what his version of
18 events was? Did he tell you what his version of events
19 was that day?

20 A. Well, yes is the answer to the question. And
21 obviously that the best light for him is that it was Telly
22 Manning that did the shooting.

23 Q. And so just let me -- let's go through -- I kind of
24 want to cover your investigation, what you did to prepare
25 for this trial.

Johnny Gardner
Cross-Examination by Mr. Thomas
August 28th, 2014

1 A. Okay.

2 Q. You reviewed any photos that they had from the
3 scene?

4 A. Yes, sir, everything that they had.

5 Q. And let's talk about the specific witnesses. Did
6 the State provide you with sort of an NCIC or any sort of
7 criminal history from everybody?

8 A. They generally do that with all of these lay-people
9 type witnesses. And to the best of my knowledge, they
10 provided us with everything in this case.

11 Q. And so you're telling us to this day that you've
12 never seen any warrant or indictment for Mr. Smith for a
13 burglary charge?

14 A. Well, I don't remember seeing that.

15 If we're talking about this thing that was asked
16 about earlier, thirty days prior being charged with a
17 burglary, I don't recall that.

18 But I might be completely wrong on this, but I just
19 want to emphasize that I don't -- I wouldn't have done
20 anything with that. I don't see anything with that.

21 Q. That's because you cross-examined him on the fact
22 that he was also charged with this murder?

23 A. Right. And also, you know, unless -- but for a
24 solicitor opening the door on that, I don't think there's
25 any circuit judge that I know that would allow somebody to

Johnny Gardner
Cross-Examination by Mr. Thomas
August 28th, 2014

1 ask a witness that question.

2 Q. And I guess the ballistics in this case, the
3 ballistics clearly showed that there were two guns that
4 were used for the murder weapon?

5 A. Yeah, the ballistics told the story.

6 But, you know, I've been here all day -- or all
7 afternoon, and I heard some testimony earlier about, you
8 know, sometimes you have cases and sometimes you don't
9 have cases and stuff. But, you know, if the jury believed
10 that two fellows got in a car to rob and shoot somebody
11 and one of those people robbed and shot that person, then
12 they could really find both of them guilty, despite the
13 fact that Telly Manning might have been the only shooter.

14 Q. And you explained all that to Mr. Baker?

15 A. Yeah.

16 We knew all that, we -- and we talked about it.
17 You know, that was a -- that law and that part of the
18 facts made this a hard case.

19 Q. And so, ultimately, whose decision was it to go to
20 trial instead of trying to plea this out?

21 A. Mr. Baker.

22 MR. THOMAS: Thank you, Mr. Gardner. That's all I
23 have.

24 THE WITNESS: Yes, sir.

25 THE COURT: Mr. Shaffer.

Johnny Gardner
Redirect Examination by Mr. Shaffer
August 28th, 2014

REDIRECT EXAMINATION

BY MR. SHAFFER:

Q. Now, if you knew that the solicitor had opened the door into it and then the -- I mean, the witness testified contrary, you would have brought it up; right?

A. Yes, sir.

MR. SHAFFER: No further questions.

THE COURT: Anything further?

MR. THOMAS: Nothing further.

THE COURT: You may step down.

THE WITNESS: Thank you, Your Honor.

[Whereupon, Mr. Gardner is excused and exits the witness stand]

- - -

- - -

- - -

Roshod Baker vs. State of South Carolina
Motion to Amend by Mr. Shaffer
August 28th, 2014

MOTION TO AMEND

THE COURT: Call your next witness.

MR. SHAFFER: Your Honor, we have no further witnesses.

However, I would like to orally move to amend the application, pursuant to Rule 15, to include a due process violation for failure to disclose the -- it's both a Brady issue and a prosecutorial misconduct issue.

First, it's a Brady issue for failure to disclose the prior arrest for burglary. Which I would ask the Court to take judicial notice of the public index which indicates that the codefendant was convicted -- or was arrest a month beforehand for burglary --

THE COURT: I'm going to get to you, Mr. Thomas.

MR. SHAFFER: We also -- you know, so we've got the -- it's first a Brady issue. It's also a due process issue.

Your Honor, I apologize if I didn't raise that right at the beginning. I had spoken to both Mr. Thomas and Mr. Gardner about this on Tuesday and there was a miscommunication apparently between Mr. Gardner and myself. He had indicated that he knew about that issue. I think I put that on the record, that on Tuesday that he had indicated that to me.

Roshod Baker vs. State of South Carolina
Motion to Amend by Mr. Shaffer
August 28th, 2014

1 THE COURT: I asked you what issues we were going
2 forward on and you did not mention that at all.

3 MR. SHAFFER: Yes, Your Honor, I did not -- I was
4 not aware of that until he brought it up and the
5 understanding --

6 THE COURT: If you put it on the record Tuesday,
7 then you would have been aware of it; right? Is that
8 what you're telling me?

9 MR. SHAFFER: I was aware of it, Your Honor, and
10 then what I was aware of was different than what
11 actually came out on the stand. I was aware that he
12 had previously been arrested, Your Honor.

13 I said to Josh Tuesday morning, Mr. Thomas Tuesday
14 morning, that I was going to raise the issue about
15 failure to disclose the prior arrest of Earnest Smith.
16 I mentioned it to Mr. Gardner. Mr. Gardner said, well,
17 I knew about that because the trial had been delayed
18 because of that codefendant being arrested.

19 Apparently, Mr. Gardner had thought I was talking
20 about Telly Manning. What I was really talking about
21 was Ernest Smith, Your Honor. And based off of Mr.
22 Gardner's response to me Tuesday morning when I spoke
23 to him, I did not believe that there was an actual
24 issue for -- you know, Riddle vs. Osmont [phonetic],
25 that's the other case that addresses it, a South

Roshod Baker vs. State of South Carolina
Motion to Amend by Mr. Shaffer
August 28th, 2014

1 Carolina case. But I didn't believe there was an issue
2 involving prosecutorial misconduct and a Brady issue
3 involving that arrest. Now I do, based off the
4 testimony that came at trial. That's why I'm moving,
5 pursuant to Rule 15, to amend.

6 THE COURT: Mr. Thomas?

7 MR. THOMAS: Your Honor, I'm confused a little bit
8 because I have not seen a warrant or an indictment for
9 these burglary charges. I mean, there's been some
10 discussion about a possible burglary charge that was
11 out there, but I've seen no evidence that there was a
12 burglary charge to this point. And, again, Mr. Gardner
13 has testified he never heard anything about it. So I'm
14 just -- I'm not sure if there was one.

15 Secondly, you know, if you want to amend to include
16 something along those lines, I think a little bit more
17 notice is proper. I mean, this is clearly something
18 that he's known about since Monday. If I had known
19 that we were going to switch this failure to cross-
20 examine to a claim that the solicitor should have
21 disclosed it, I could have found the solicitor, tracked
22 him down, and brought him in. It's just a little late
23 in the game for that, Your Honor.

24 MR. SHAFFER: Your Honor, for the purposes of this
25 motion, may I actually call Mr. Gardner to discuss our

Roshod Baker vs. State of South Carolina
Motion to Amend by Mr. Shaffer
August 28th, 2014

1 conversation on Tuesday morning concerning this matter?

2 And concerning the issue of whether or not the I
3 presented a warrant, Your Honor: based off of that, I
4 didn't think I needed to. I think the Court can take
5 judicial notice of it, or I would ask that the clerk --

6 THE COURT: Well, why didn't you ask him when he
7 was on the stand?

8 MR. SHAFFER: Your Honor, I mentioned this whenever
9 he was on the stand. I discussed this with him. His
10 testimony on the stand was different than what he had
11 told me by mistake. I'm not saying he's lying, I'm
12 just saying that he was mistaken about which
13 codefendant had been arrested a month prior.

14 THE COURT: He was mistaken when he talked to you,
15 or when he testified?

16 MR. SHAFFER: When he talked to me, Your Honor.

17 The testimony on the stand came out that they did
18 not disclose the prior charge.

19 THE COURT: Please come back. You are still under
20 oath.

21 [Whereupon, Mr. Gardner re-takes the witness stand]

22

23

24

25

- - -

- - -

- - -

Johnny Gardner
Continued Redirect Examination by Mr. Shaffer
August 28th, 2014

CONTINUED REDIRECT EXAMINATION

BY MR. SHAFFER:

Q. Mr. Gardner, on Tuesday morning we had a discussion; correct?

A. Correct.

Q. Okay. When you initially came in the courtroom, I showed you some convictions that were from the -- or a public index printout showing conviction of Earnest Smith; right?

A. You showed me a piece of paper. To the best of my recollection, you said that it had something to do with his being -- the codefendant being charged.

Q. For burglary; right?

A. Yes.

Q. And I said that it was a month prior; right?

A. Right.

Q. And you had told me that you were aware of that; right?

A. I was aware of the codefendant being charged in North Carolina and that's --

Q. What codefendant are we talking about?

A. Well, in my mind there's only one codefendant, Telly Manning.

Q. Did you think I was talking about Telly Manning --

A. I did.

Johnny Gardner
Continued Redirect Examination by Mr. Shaffer
August 28th, 2014

1 Q. -- on Tuesday morning?

2 A. Yes.

3 Q. Did you see the paper that I showed you --

4 A. I didn't look at that. I can't --

5 I have a personal animus towards that public index.
6 It's not reliable. It's not accepted by any court in any
7 land. The public will get on it and they will be mistaken
8 about people's charges. It's led to more disappointment.
9 I get people calling me saying, I'm so and so's lawyer,
10 because they read it on the public index. Are you kidding
11 me? So, no, I didn't read that.

12 Q. But you had told me that you were aware that the
13 codefendant had been arrested and had been to trial a
14 month before; right?

15 A. That's correct.

16 MR. SHAFFER: Okay. No further questions.

17 MR. THOMAS: Nothing, Your Honor.

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

19 [Whereupon, Mr. Gardner is excused and exits the
20 witness stand]

21 THE COURT: Anything else before I make my ruling
22 on amending? allowing you to amend?

23 MR. SHAFFER: Your Honor, the only thing I would
24 ask: that if you were to allow the amendment, to allow
25 me to get a certified conviction from downstairs and

Johnny Gardner
Continued Redirect Examination by Mr. Shaffer
August 28th, 2014

1 submit it to the Court.

2 THE COURT: From downstairs here?

3 MR. SHAFFER: Yes, Your Honor. Or I imagine they
4 have records of the conviction.

5 THE CLERK OF COURT: I'm not -- well, for Horry
6 County?

7 MR. SHAFFER: Oh. Your Honor, I apologize. You
8 are absolutely correct. It's -- was an Horry County
9 case.

10 If I could submit it to you tomorrow or have the
11 clerk directly send it to you concerning that matter?

12 MR. THOMAS: Your Honor, he's known this was going
13 to happen today. He's known since Tuesday, or at least
14 since yesterday. I just would --

15 MR. SHAFFER: The other thing I would say in my
16 defense is that based off our discussion whenever I
17 showed him a piece of paper that said Ernest Smith and
18 I said, do you know that the codefendant had been
19 arrested a month beforehand -- and showed him the piece
20 of paper that showed the date of the arrest -- that
21 when he said, yeah, I knew about that, that was a
22 reasonable basis for me to assume that there was not a
23 prosecutorial misconduct or a Brady issue involving
24 this conviction, that it was merely a failure to cross-
25 examine involving that conviction. I discussed that,

Johnny Gardner
Continued Redirect Examination by Mr. Shaffer
August 28th, 2014

1 the record, on Monday, as well.

2 THE COURT: I'm denying -- at this time, I'm
3 denying your motion to amend the pleadings. I
4 specifically asked, prior to beginning today's hearing
5 that we passed in order for you to speak with your
6 client, from Horry County to today, and scheduled it at
7 your convenience.

8 I am denying your motion. This is an old case.
9 You should have had this prepared earlier in the week.
10 Deny your motion to amend.

11 I believe you have presented enough that -- and it
12 is in accordance with the applicant's position.

13 Anything further, Mr. Shaffer?

14 MR. SHAFFER: Nothing, Your Honor.

15 THE COURT: Anything further, Mr. Thomas? Any
16 argument?

17 MR. THOMAS: No witnesses for the State. And we'll
18 waive argument, as well, Your Honor.

19 THE COURT: I made that assumption. There is no
20 one else and so I made the assumption that since
21 Mr. Gardner had been called, that you did not have any
22 additional witnesses. I'm sorry.

23 Give you until September 15th. I know that that's
24 been the common date, Mr. Thomas, so if there is any --
25 again, this is later in the week so if you need any

Johnny Gardner
Continued Redirect Examination by Mr. Shaffer
August 28th, 2014

1 additional time in submitting a proposed order.

2 Mr. Shaffer, September 15th at 9:00 a.m.

3 MR. SHAFFER: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. THOMAS: Thank you, Your Honor.

6 THE COURT: Good luck to you, sir. Thank you.

7 I'm going to take the matter under advisement.

8 Your attorney is going to submit a proposed order
9 indicating to me how he thinks that I should rule in
10 your case. And so once I get those orders from your
11 attorney, I will allow -- I will make my ruling. So it
12 should be within about -- within the month. All right?
13 Thank you. Good luck to you, sir.

14 [HEARING CONCLUDES AT 5:14 P.M.]

15

16

17

18

19

20

21

22

23

24

25

Roshod Baker vs. State of South Carolina
August 26th and August 28th, 2014

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the PCR hearing held before the Honorable Kristi L. Harrington, on August 26, 2014, and August 28, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 12th day of September, 2015.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

COPY

-71-

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Roshod Baker, #318851,

) Case No. 2010-CP-26-7814
)

) Applicant,
)

) v.
)

) State of South Carolina,
)

) Respondent.
)
_____)

ORDER OF DISMISSAL

FILED
HORRY COUNTY
14 MAY 19 AM 9:43
N. L. A. S. HIGGINS-WARD
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 24, 2010. Respondent made a timely Return on or about October 25, 2010. The Court convened an evidentiary hearing into the matter on August 28, 2014, at the Georgetown County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Johnny Gardner, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendments, and the return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In May 2002, the Horry County

Grand Jury indicted Applicant for Murder (2002-GS-26-2040). Johnny Gardner, Esquire ("trial counsel"), represented Applicant. On November 13, 2006, Applicant, along with co-defendant Telly Manning, proceeded to trial before the Honorable Steven H. John and a jury. On November 15, 2006, the jury found Applicant guilty as indicted. Judge John sentenced Applicant to thirty (30) years imprisonment.

Applicant filed a timely notice of appeal. Kathrine H. Hudgins, Esquire, of the Office of Appellate Defense perfected the appeal with the filing of an *Anders*¹ brief. The South Carolina Court of Appeals dismissed Applicant's appeal on September 8, 2009. *State v. Baker*, Op. No. 2009-UP-426 (S.C. Ct. App. filed September 8, 2009). The remittitur was returned to the circuit court on September 24, 2009.

ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Violation of 6 US Constitutional Amendment"
2. "Due Process of Law"
 - a. "Violation of 14th US Constitutional Amendment"

On January 4, 2014, Applicant filed an amendment to his application raising the following grounds for relief:

1. "Trial Counsel prejudiced applicant when he failed to move for a 'separate trial', from Applicant's co-defendant, Telly Manning."
2. And, further prejudiced Applicant when he did not object to Applicant's co-defendant's counsel, Mr. Mullins who kept pointing out in joint trial that Applicant was the master-mind and the guilty party, murdering Troy Riggins. See Mullins cross of Bowens and Smith. Counsel Mullins should not have been able to point his finger

¹ Anders v. California, 386 U.S. 738 (1967).

at Applicant without Applicant's own counsel objecting to this line of cross by Mullins, which prevented the jury from making a reliable judgment about who was really in fact, guilty or not guilty.

3. And, since Applicant's co-defendant was not testifying, making these statements, Applicant could not confront him, his counsel should not have been able to, which violated Applicant's constitutional right per the Sixth and Fourteenth Amendment to the United States and South Carolina Constitution.

At the evidentiary hearing, Applicant proceeded on the following allegations of ineffective assistance of trial counsel:

1. Failure to investigate.
2. Failure to cross-examine a testifying co-defendant on pending charges.
3. Failure to move for a severance.
4. Failure to move for a mistrial.
5. Failure to impeach a co-defendant with an inconsistent statement.

The Court denied Applicant's Motion to Amend the Pleadings to include an allegation of prosecutorial misconduct or failing disclose a witness's pending charges because Applicant failed to present evidence to support the allegation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Applicant testified he only had a few meetings with trial counsel while he was out on bond. Applicant alleged trial counsel did not hire an investigator and asked for a continuance because he was not prepared for trial. He testified trial counsel did not have a copy of co-defendant Derrick Bowens' statement. Applicant testified Bowens' statement was presented at trial by Manning's attorney. Applicant also testified Manning's attorney accused Applicant of

"robbing drug dealers," and trial counsel did not move for a mistrial based on this statement. Applicant testified trial counsel did not cross examine co-defendant Ernest Smith on a pending burglary charge. Applicant averred his trial was delayed because Smith was in jail on the burglary charge. On cross-examination, Applicant admitted he never gave trial counsel any leads to investigate. Applicant also admitted he was in the company of Smith weekend before his trial.

Trial counsel testified he was appointed to Applicant's case because the public defender's office could not represent all of the co-defendants. Trial counsel testified Applicant was initially uncooperative with him, but they did have several meetings as the case progressed. Counsel recalled three (3) of the five (5) co-defendants entered pleas before trial and testified against Applicant and Manning. Trial counsel testified he did not move to sever the trials because he did not believe there were grounds for a severance based on the facts of the case. Counsel further testified a severance would not have been helpful because the testimony and ballistics indicated both co-defendants shot the victim and both injuries contributed to the victim's death. Counsel testified that he did not recall ever moving for a continuance because he was unprepared. Instead, trial counsel testified he felt he had sufficient time to prepare for trial. Trial counsel testified he reviewed the discovery with Applicant. He recalled this discovery consisted of ballistics, witness statements, photos, and the criminal records of the lay witnesses.

Trial counsel recalled Smith was also indicted for the murder. However, he was unaware of any pending burglary charges. Trial counsel testified that both he and Manning's attorney vigorously cross-examined Smith on his involvement in the murder and the rewards he hoped to gain from testifying against Applicant. Trial counsel testified the trial was delayed, but not

because Smith was incarcerated. The delay was due to co-defendant Manning's incarceration in another state and Manning had to be returned to Horry County. Trial counsel testified any further pending charges against Smith would not have bolstered his cross-examination because the murder charge was so important. Trial counsel also recalled asking for and receiving a curative instruction when Manning's attorney characterized Applicant as "robbing drug dealers."

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Id.* at 442, 334 S.E.2d at 814 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Id.* (citing *Strickland*, 466 U.S. at 687; *Turner v. Bass*, 753 F.2d 342 (4th Cir. 1985); *Marzullo v. Maryland*, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* Under this prong, courts measure an attorney's performance by its

"reasonableness under prevailing professional norms." *Id.* (citing *Strickland*, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

The Court finds Applicant failed to meet his burden of proving trial counsel ineffective for failing to investigate his case. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. *See Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Applicant has not shown what information a further investigation into the facts of his case would have revealed. Trial counsel testified he reviewed discovery and was prepared for trial. Applicant also admitted he did not provide trial counsel with any leads to investigate. Accordingly, the Court finds trial counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation.

The Court finds Applicant failed to meet his burden of proof to demonstrate trial counsel ineffective for failing to cross-examine Smith on any pending charges. Applicant asserted that the trial was delayed because Smith was incarcerated. However, testimony showed that the delay was actually due to Manning's incarceration. Trial counsel testified he was not aware of any burglary charges against Smith at the time of trial. Furthermore, Applicant admitted to being in Smith's presence the weekend before trial began. Applicant had ample opportunity to provide trial counsel information about Smith's alleged pending charges before trial.

The Court finds Applicant failed to show he was prejudiced by trial counsel not further cross-examining Smith. Applicant presented no probative evidence, other than his own

testimony, to prove Smith had a pending burglary charge at the time of trial. *Jackson v. State*, 329 S.C. 345, 349, 495 S.E.2d 768, 770 (1998). The record indicates trial counsel and Manning's attorney thoroughly impeached Smith regarding his involvement in the murder as well as his plea bargain with the State. In light of this thorough cross-examination, further questioning about a burglary charge would have been merely cumulative to trial counsel's impeachment during cross-examination. *Id.* at 351, 495 S.E.2d at 771 (no prejudice where testimony could not have provided additional information to jury).

The Court further finds Applicant did not meet his burden to demonstrate trial counsel ineffective for failing to move for a severance. The Court finds there were no grounds to move for severance and further finds trial counsel's reasoning valid. *See Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992))). "Criminal defendants who are jointly tried [...] are not entitled to separate trials as a matter of right." *State v. Dennis* 337 S.C. 275, 281, 523 S.E.2d 173, 176 (1999) (citing *State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998); *State v. Holland*, 261 S.C. 488, 201 S.E.2d 118 (1973); *State v. Crowe*, 258 S.C. 258, 188 S.E.2d 379 (1972)). Instead, a court should only grant a severance "when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent a jury from making a reliable judgment about a co-defendant's guilt." *Id.* at 282, 523 S.E.2d at 176. The testimonial and ballistic evidence in this case indicate Applicant and Manning were in the car with the victim, and that two guns were used in the shooting. There is no evidence indicating a severance would have been warranted in this case. Therefore, the Court finds that trial counsel

was not deficient in not requesting a severance.

In any event, Applicant was not prejudiced by the joint trial with Manning. A cautionary instruction as to multiple defendants is sufficient to protect each co-defendant from prejudice that might result from a joint trial. *See State v. Holland*, 261 S.C. 488, 494, 201 S.E.2d 118, 121 (1973). Here, Judge John gave a thorough jury instruction on the duties of the jury regarding multiple defendants on three (3) separate occasions. (Trial Tr. p. 8, lines 8-5; p. 45, line 18-p. 46, line 4; p. 370, lines 5-12). The instructions negated any prejudice that may have resulted from the joint trial. Applicant has failed to prove prejudice from trial counsel's decision.

The Court finds Applicant failed to meet his burden of proof regarding his allegation trial counsel was ineffective in failing to move for a mistrial when Manning's attorney referred to Applicant as someone who "robbed drug dealers." Trial counsel objected to Manning's counsel's question about whether Applicant "had a tendency to rob drug dealers." (Trial Tr. p. 138, line 25-p. 139, line 8). Judge John sustained the objection and trial counsel asked for a curative instruction. (Trial Tr. p. 142, line 24-p. 143, line 2). Trial counsel's performance was reasonable under the circumstances.

Applicant also failed to demonstrate how he was prejudice by trial counsel's performance in this regard. The witness, Smith, initially responded to the question in the negative. (Trial Tr. p. 138, line 25-p. 139, line 2). The jury was instructed to disregard Manning's attorney's question. "Generally, a curative instruction is deemed to have cured any alleged error." *State v. Patterson*, 337 S.C. 215, 226, 522 S.E.2d 845, 850 (Ct.App. 1999) (citing *State v. George*, 323 S.C. 496, 476 S.E.2d 903 (1996); *State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998); *State v.*

Jones, 325 S.C. 310, 479 S.E.2d 517 (Ct. App. 1996)). Judge John's instruction sufficiently cured any prejudice Applicant may have suffered as a result of Manning's attorney's question.

The Court finds Applicant failed to prove trial counsel was ineffective in failing to impeach Bowens with a prior statement. Manning's attorney thoroughly cross-examined Bowens regarding his prior statement. (Trial Tr. p. 95-98). Trial counsel also referred to the statement in his cross-examination. (Trial Tr. p. 110). Manning's attorney and trial counsel thoroughly impeached Bowens regarding his expected reward for testifying. The Court finds Applicant has not shown how any further impeachment would have affected the outcome of his trial. *Jackson*, 329 S.C. at 351, 495 S.E.2d at 771.

The Court finds Applicant has not demonstrated he was prejudiced by the actions of trial counsel because overwhelming evidence of his guilt exists. Three witnesses testified Applicant and Manning were in a car with the victim when he was shot and that Applicant sat in the passenger seat with Manning seated in the rear. One witness saw both men with guns prior to entering the car. The witnesses also testified that they observed Applicant and Manning run back to the car after hearing the shots. The forensic evidence indicates the victim was shot with two different guns. The forensic evidence further indicates the victim was shot from the back and from the side. The Court finds Applicant has not demonstrated trial counsel was ineffective nor has Applicant demonstrated any prejudice resulted from trial counsel's performance. *See Harris v. State*, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt).

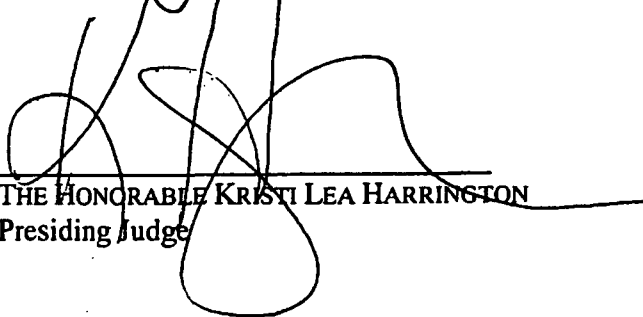
CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, Applicant's petition for post-conviction relief is **denied** and **dismissed** with prejudice.

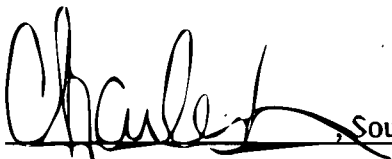
IT IS THEREFORE ORDERED THAT the Application for Post-Conviction Relief is denied and dismissed with prejudice; and

IT IS FURTHER ORDERED THAT Applicant be remanded to the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 8th day of October, 2014.



THE HONORABLE KRISTI LEA HARRINGTON
Presiding Judge



Charles, South Carolina

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Rashad M. Baker #318851

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

15

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

- MC Cormick Corr. Inst. 386 Redemption
- Place of detention Way MC Cormick S.C. 29899
 - Name and location of Court which imposed sentence Gen. Session
 - Name(s) of co-defendant(s) (if any) _____
 - The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2002 - 65-26-2040 / Murder

(b) _____

(c) _____

- The date upon which sentence was imposed and the terms of the sentence:

(a) Nov 15, 2006

(b) _____

FILED
2015 JAN 21 AM 11:07
MELANIE HUGHES-WARD
CLERK OF COURT

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Sept 8, 2009
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Op. No. 2009-UP-426 (S.C. Ct. App.)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N
- (b) _____
- (c) A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Violation of the 14th Amend per S.C. and U.S.
 (b) Const. (5) / Ineffective Assistance of PCR
 (c) Counsel

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

- (a) _____
 (b) SEE ATTACHED SHEETS pg 1-6
 (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. P.C.R.
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. Common Pleas / Harry Co.
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. Denied
 ii. _____
 iii. _____