

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Richland County

S.C. SUPREME COURT

Honorable G. Thomas Cooper, Circuit Court Judge

TAURUS WATTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000500

SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
 ) FIFTH JUDICIAL CIRCUIT  
 COUNTY OF RICHLAND )

STATE OF SOUTH CAROLINA )  
 )  
 PLAINTIFF, )  
 ) 07-GS-40-5913  
 VS. ) 07-GS-40-5914  
 )  
 TREMAINE WRAY AND TAURUS WATTS, )  
 )  
 DEFENDANT. ) VOLUME 8  
 )  
 )  
 )

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OCTOBER 14, 2009  
 COLUMBIA, SOUTH CAROLINA

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE MICHELLE CHILDS, JUDGE, AND A JURY

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

ATTORNEYS FOR THE STATE:  
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 JOANNA MCDUFFIE, ESQUIRE

ATTORNEY FOR DEFENDANT WRAY  
 JACK SWERLING, ESQUIRE  
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ATTORNEY FOR DEFENDANT WATTS  
 THERESA JOHNS, ESQUIRE

HILDA M. JORDAN, CVR  
 CIRCUIT COURT REPORTER

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1 THE COURT: Okay. Parties are you sufficiently set  
2 up for your closing?

3 MS. SHIPLEY: Yes, ma'am. State's ready.

4 THE COURT: Okay. Check whatever evidence they  
5 need to use and all that.

6 And then Ma'am Clerk do you have all evidence recorded  
7 in. And of course we'll check -- you and the court  
8 reporter.

9 COURT REPORTER: We've got it all, we just have to  
10 double check the numbers.

11 THE COURT: But you've got it all filled out?

12 COURT REPORTER: As far as I'm concerned,  
13 everything's in the courtroom.

14 THE COURT: Okay.

15 COURT REPORTER: We've been very careful, and  
16 Joanna has helped me keep up with the numbers.

17 THE COURT: Great. All right.

18 Okay, are the parties ready to proceed?

19 MS. SHIPLEY: Yes, ma'am.

20 THE COURT: Ms. Johns?

21 MS. JOHNS: Yes, Your Honor.

22 THE COURT: Okay. We had lots of discussion in  
23 chambers this morning about the various jury charges. I  
24 believe we've resolved our issues there, but after closing  
25 they will put on the record what the combined effort of the

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1 parties was with respect to the charges. One other thing we  
2 need to discuss is this case was indicted as a murder  
3 charge, and it's my understanding that the defense is  
4 requesting a charge for voluntary manslaughter. If the  
5 defense would put on the record with respect to the evidence  
6 that would support such a charge?

7 MR. SWERLING: You want to do it now?

8 THE COURT: Yes.

9 MR. SWERLING: Judge, first of all, I'd like to say  
10 I've talked to my client about that and my client wishes for  
11 me to go ahead and as that that charge be submitted to the  
12 jury; is that correct, Mr. Wray?

13 MR. WRAY: Yes, sir.

14 THE COURT: Okay.

15 MR. SWERLING: Secondly, Judge, the way this case  
16 has been presented is there was a fight in the club and  
17 somehow or another the fight in the club was connected to  
18 the shooting that took place outside the club, which  
19 resulted in the death of Demuria Johnson. Even though Mr.  
20 Wray does not -- there was no testimony Mr. Wray was  
21 actually in the fight, Mr. Jacobs has put him inside the  
22 club. And there's been testimony from several witnesses,  
23 like from Charlie Bates, Verda Johnson, Stephanie Boston,  
24 who were also said it seemed like it was them against the  
25 club. So the jury can reasonably infer from that that Mr.

1 Wray was involved in a fight -- Mr. Watts's remarks that  
2 were testified to at the end of the case by Mr. Gallegos,  
3 would put him in the club, and possibly the jury could  
4 conclude from that they were involved in the fight, and as a  
5 result of the fight they went out, armed themselves and then  
6 shot back into the club. That, we believe would support a  
7 charge of manslaughter. It would be sufficient legal  
8 provocation. It all happened very quickly. The issue is if  
9 there was sufficient time for cooling off is a jury  
10 question. Cooling off is held to be as much as several  
11 hours, and depends on the facts and circumstances of the  
12 case. Here these individuals, according to testimony, were  
13 in the parking lot. Mr. Jacobs saw them coming in. Mr.  
14 Watts pulled a gun. Leaving thereafter they got in the car.  
15 He was closing the club because of the fight. They get in  
16 the truck. They go down left on Hardscrabble Road and start  
17 firing. So cooling off would certainly be a question for  
18 the jury.

19 THE COURT: Okay. And I know the state, in  
20 chambers, strenuously objected. Is there anything else that  
21 you would like to add?

22 MS. SHIPLEY: We would just like it noted on the  
23 record that we object.

24 THE COURT: Okay. And I believe that with respect  
25 to any type of charge that once requested the Court has to

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1 just look at it if there is any evidence on that issue,  
2 however slight. And so appropriately I would have to charge  
3 in this case at the request of the defense, because it's  
4 not, again, conflicting evidence or credibility of witnesses  
5 or anything. So if there's any evidence at all on that  
6 issue that could lead to an inference then the Court would  
7 have to charge it. So with that in mind --

8 MR. SWERLING: Judge -- I'm sorry, go ahead.

9 THE COURT: I was just going to say, with that in  
10 mind, are we ready to proceed?

11 MR. SWERLING: Yes, but just to add into that, the  
12 case that just came down on Monday, State verses Belcher.  
13 The implication is the malice charge would not longer be  
14 appropriate.

15 THE COURT: Okay, and that is --

16 MR. SWERLING: From --

17 THE COURT: -- malice inferred from the use of a  
18 deadly weapon based on Belcher, and with voluntary  
19 manslaughter with defense being put up that language will be  
20 stricken from the murder jury charge.

21 MS. SHIPLEY: And my understanding from Belcher is  
22 that the state is still allowed to argue it to the jury.

23 THE COURT: All right. Are we ready to proceed,  
24 then?

25 MS. SHIPLEY: Yes, ma'am.

1 THE COURT: Okay. Parties have had a chance to  
2 prepare in anticipation of this ruling?

3 MS. SHIPLEY: Yes, ma'am. I'm ready.

4 THE COURT: All right. Then --

5 MS. MCDUFFIE: Your Honor, are you going to have  
6 the defense rest on the record?

7 THE COURT: Oh, please, yes. Yes, absolutely.

8 MR. SWERLING: Judge, for purposes of -- I'm sorry.

9 THE COURT: That's okay.

10 MR. SWERLING: For purposes of the record, since  
11 we're going to rest, I'd just ask you to -- I'd like to  
12 renew the motions that were made at the end of the state's  
13 case and have them entered also when we rest, and just  
14 whatever argument I make at the end of the state's case just  
15 adopt that and incorporate it in as if we made -- renewed  
16 those motions at the end of our case.

17 THE COURT: Okay. All right. Ms. Johns?

18 MS. JOHNS: Yes, Your Honor. I would join in that  
19 motion, as well, Your Honor, for the directed verdict. And  
20 also I apologize to the Court, Your Honor, I just came back  
21 from defense table and was looking over my preparation from  
22 last night and when the state said that they wanted it on  
23 the record that they rest, I then reminded myself that there  
24 have been a number of stipulations in this case. One of them  
25 being that Mr. Johnson, the victim in this case, had some

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1 drugs on his person. I am going to mention that in closing.  
2 I don't know whether the Court wants to charge the  
3 definition of stipulation, but I think it would be important  
4 as there was not just one, there were a number of them in  
5 this case. And I do believe it is in Judge Anderson's  
6 charge --

7 THE COURT: It is. I'll be happy to do that.

8 MS. JOHNS: Thank you.

9 MS. MCDUFFIE: No objection.

10 MS. SHIPLEY: No objection.

11 THE COURT: All right. And then the Court's going  
12 to stand by its prior ruling so that the case will go to the  
13 jury. Okay.

14 Jurors, please.

15 (Jury in at 11:15 a.m.)

16 THE BAILIFF: Jury's all present, Your Honor.

17 THE COURT: Thank you ladies and gentlemen for your  
18 patience throughout this trial. We have now come to the  
19 point of the trial where the case will be handed to you and  
20 we will go on to closing arguments. I do want you to know,  
21 again, we did work late last night, and, in fact, the  
22 lawyers were giving me emails as late at 1:00 o'clock in the  
23 morning. So we were dealing with those issues again this  
24 morning. So again, I appreciate your patience. Please do  
25 not hold any of that against the lawyers. We have all been

1 working very diligently on the various breaks. The lawyers  
2 at this time will have the opportunity to present closing  
3 arguments to you.

4 I will remind you that closing arguments are not  
5 evidence. You will need to recall the evidence that was  
6 testified to on the witness stand or the evidence that will  
7 actually be handed to you at the conclusion of the case.  
8 They are, however, at this point allowed to refresh your  
9 memory with respect to the evidence of this over a week's  
10 long trail and then also draw any reasonable inferences, of  
11 course, to try to persuade you to their side of the case.  
12 Please direct your attention appropriately as you have  
13 throughout the case.

14 At this time before we proceed, defense, do you want to  
15 rest on the record?

16 MR. SWERLING: Your Honor, we rest.

17 THE COURT: Okay. So the defense does not intend  
18 to put up a case. Which then we means we're at the  
19 conclusion of the case, so now we go into the closing  
20 arguments. Okay.

21 MS. SHIPLEY: Was that as to both parties?

22 MS. JOHNS: Yes, Your Honor.

23 THE COURT: Yes. Thank you.

24 MS. JOHNS: We rest of behalf of Defendant Watts.

25 THE COURT: Thank you.

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1 MS. SHIPLEY: May it please the Court, Your Honor.

2 THE COURT: Yes.

3 MS. SHIPLEY: Mr. Swerling, Mr. Bax, Ms. Johns.

4 Good morning, ladies and gentlemen.

5 When Demuria Hank Johnson woke up on the morning of  
6 June 29, 2007, he had no idea that that would be the last  
7 24-hours of his life. He had plans that night to go out  
8 with his best friend, Travis Malone, who was about to be  
9 deployed to Iraq and to bid him farewell. The night was  
10 planned to go to Stephanie Boston's house to have some  
11 drinks, play some cards. And while they were there they  
12 decided to go to the H&J club. And that decision proved to  
13 be a fatal on for Mr. Hank Johnson.

14 He had never been there before. He didn't know that  
15 the regulars at this club are thick as thieves. That they  
16 will lie to protect one another, they will fight to protect  
17 one another, and they will kill.

18 What kind of people does it take to pack an M-11 semi-  
19 automatic weapon for a night out on the town. It takes  
20 people who have malice in their hearts and their minds. It  
21 takes people who have a reckless disregard for the safety  
22 and lives of others. And to point an M-11 into a crowd of  
23 people and pull the trigger 10 times, at least, reeks of  
24 malice. What kind of people are they, ladies and gentlemen?  
25 People like Taurus Watts and Tremaine Wray.

1 I want to thank you so much for the attention you've  
2 shown to both sides in this case. I know it's been a long  
3 trial for everybody in this courtroom. I also want to thank  
4 you on behalf of Hank Johnson's family. A lot of times in  
5 murder cases everybody gets go developed and enthraled in  
6 what witnesses are saying and what evidence is collected,  
7 and you forget that a human being has lost their life. And  
8 Mr. and Mrs. Johnson are not in this courtroom, because they  
9 just couldn't bear any more.

10 MR. SWERLING: Objection, Your Honor. That's  
11 outside the record.

12 THE COURT: Sustained.

13 MS. SHIPLEY: His sister is present in the  
14 courtroom ladies and gentlemen. She is present to hear the  
15 closing arguments and to see that justice is done for Hank  
16 Johnson.

17 The procedure for closing argument, ladies and  
18 gentlemen, are that the state gets to argue first. We get  
19 to discuss the law that applies to this, and apply the fact  
20 as we see it, and apply it to the law, and argue our  
21 position and our theories behind our case.

22 I'm going to begin, ladies and gentlemen, by telling  
23 you what the law is that applies to this case. However, as  
24 I begin, I want you all to remember that I don't wear the  
25 black robe. Judge Childs wears the black robe and if I say

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1 anything different from what she instructs you, take the law  
2 as she charges it to you. She is the expert in the law and  
3 I am by no means trying to deceive you or mislead you or  
4 make a mistake, but she is the law as you are the judges of  
5 the facts.

6 The first thing I'm going to discuss with you ladies  
7 and gentlemen, because of the actions of the defendant  
8 Tremaine Wray and Taurus Watts on the early morning hours of  
9 June 30, 2007, they were both charged with the crime of  
10 murder. And I'm going to go into explaining the theory of  
11 hand of one, hand of all. But for purposes of now, the  
12 state of law for murder in South Carolina, 16-3-10, is the  
13 unlawful killing of another with malice aforethought, either  
14 express or implied. Malice aforethought is a term of art, a  
15 legal term. It is basically not an afterthought, it's a  
16 forethought. In South Carolina we do not have to prove  
17 premeditation. We don't have to prove that anybody got in  
18 bushes and lied awake to kill and they planned it for any  
19 significant period of time. Malice aforethought can be a  
20 second before the fatal blow. It can be the moment the  
21 trigger is pulled on a weapon. Ladies and gentlemen, as I  
22 indicated to you, malice is the intent that people have on  
23 their minds when they commit the crime of murder. Criminal  
24 intent is a mental state. A conscious wrong-doing. Did  
25 they know it was wrong to point a semi-automatic weapon into

1 a crowd of people and pull the trigger? Wrong knowing. It  
2 is up to you to determine what the defendants intended to do  
3 based on the circumstances that existed.

4 Criminal intent can arise from action or failure to  
5 act. It can arise from negligence or recklessness or an  
6 indifference to duty or to consequences that is considered  
7 by the law to be the equivalent of criminal intent.

8 The state has the burden of proof to prove criminal  
9 intent and I submit to you pointing a semi-automatic weapon  
10 into a crowd clearly is wrong-doing.

11 As I indicated earlier malice is a legal term. Some  
12 definitions that I'm going to go over with you so you all  
13 understands what it means for purposes of this case. Malice  
14 indicates formed purpose and design to do a wrongful act  
15 under circumstances that exclude any legal right to do it.  
16 Malice is a term of art that imparts wickedness and excludes  
17 just cause or excuse. It is something that springs from  
18 wickedness, from depravity, from a depraved spirit, from a  
19 spirit bent on mischief, and from not having a regard for  
20 the social obligations or the obligations which rests upon  
21 mankind.

22 Now, that was a pretty big mouthful, and so to bring it  
23 down for you, ladies and gentlemen, I've done some research  
24 on different definitions.

25 Ladies and gentlemen, you do not have to have specific

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1 intent in order to find someone guilty of murder. In other  
2 words there is no requirement that the defendant  
3 specifically intended to kill Demuria Johnson on June 30,  
4 2007. A general intent is sufficient. General intent may  
5 be demonstrated by acts and conduct from which a jury may  
6 naturally and reasonably infer intent. So again, ladies and  
7 gentlemen, is it reasonable to conclude that when you point  
8 a semi-automatic weapon and pull the trigger 10 times into a  
9 crowd that someone might be hit and someone might die.

10 General intent. Intent may be proved with the evidence  
11 of the character or the means or instrument used.

12 Instrument. M-11. Likewise the manner in which the  
13 instrument was used. Pointed it into a crowd of people and  
14 pulling the trigger. The purpose to be accomplished. And  
15 the resulting injuries may also prove intent. There is no  
16 question that Demuria Johnson died from his injuries.

17 Malice may be inferred from the evidence of the intent  
18 to kill. The intent to do serious bodily harm, a depraved  
19 or malignant heart, use of a deadly weapon, commission of a  
20 felony, gross recklessness that it tantamount to an intent  
21 to kill can be inferred from the surrounding circumstances.

22 MR. SWERLING: Your Honor, I hate to interrupt the  
23 argument, but I think that's inconsistent with what Your  
24 Honor's going to charge on malice.

25 THE COURT: Okay. And as she indicated earlier,

1 what I charge is the law, and the law that you must go by.

2 MS. SHIPLEY: And, Your Honor, under State v.  
3 Belcher I'm allowed to argue that.

4 Malice does not necessarily require ill will towards  
5 the person injured. It signifies rather a general malignant  
6 recklessness of the lives and safety of others or a  
7 condition of the mind that shows a heart regardless of  
8 social duty and fatally bent on mischief. How more fatally  
9 bend on mischief than pointing a semi-automatic weapon into  
10 a crowd and pulling the trigger at least 10 times? And  
11 again, the fact that there is no ill will shown directed  
12 specifically to Demuria Johnson is not required for the  
13 state prove at all. It does not require that specific  
14 intent toward that specific victim. It's a general -- we're  
15 going to show you you don't mess with us -- and spraying the  
16 public in the crowd with bullets.

17 Judge Childs, as the judge of the law is going to  
18 instruct you on the law of voluntary manslaughter. And just  
19 to make simple, murder is the killing of another human being  
20 with malice aforethought. Voluntary manslaughter, which is  
21 a lesser included offense, is killing another human being  
22 without malice. And that is a charge that you will be able  
23 to consider at well. I don't want you to think that because  
24 I am going to read you the law that is my position. My  
25 position is this is murder, this is malice reeking in this

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1 case. But because she's going to charge it, I want to go  
2 ahead and explain it to you.

3 Voluntary manslaughter, like I said, is killing another  
4 human being without malice. So if you find no malice, you  
5 may consider this offense. Voluntary manslaughter is the  
6 unlawful killing of a human being in the sudden heat of  
7 passion upon sufficient legal provocation. Heat of passion  
8 alone will not suffice to reduce murder to voluntary  
9 manslaughter. Both heat of passion and sufficient legal  
10 provocation must be present at the time of the killing. The  
11 sudden heat of passion upon sufficient legal provocation  
12 which mitigates a felonious killing to manslaughter while it  
13 need not be through reason entirely or shut out knowledge of  
14 volition must be of such that would naturally disturb the  
15 sway or reason and render the mind of an ordinary person  
16 incapable of reflection and produce what according to human  
17 experience may be called uncontrollable to do violence.

18 Now, when I explain this law, I typically use the  
19 scenario where a husband comes into his house from work and  
20 finds his wife in bed with another man, grabs his gun and  
21 shoots the man. Heat of passion.

22 Murder is the cold killing, the cold blooded killing of  
23 another human being. Voluntary manslaughter is a hot  
24 blooded, you're in the heat of passion.

25 Ladies and gentlemen, if you want to consider this not

1 only do you have to find that there was heat of passion,  
2 that the defendants were acting in the heat of passion, that  
3 they were riled up, but also that they had sufficient legal  
4 provocation that they were legally provoked, and ladies and  
5 gentlemen, words alone is no sufficient legal provocation.  
6 People defending others is not sufficient legal provocation.

7 Now, you were briefly told in opening statements by Ms.  
8 McDuffie the theory that applies in South Carolina cases  
9 where you have two defendants charged with murder, and one  
10 obviously is the trigger man. And I wanted to explain to  
11 you the law in South Carolina as to the hand of one is the  
12 hand of all.

13 If a crime is committed by two or more persons who are  
14 acting together in the commission of an offense, the act of  
15 one is the act of both or all. Two people can be guilty of  
16 killing another or murder when only one of the two had a  
17 pistol and only one bullet. If both are together, acting  
18 together, assisting each other in the commission of the  
19 offense, the law says that under those circumstances the act  
20 of one is the act of all, and it is sometimes said that the  
21 hand of one is the hand of all.

22 So you can, just off the bat, you know that Taurus  
23 Watts was seen with an M-11 weapon getting into the  
24 passenger side and you know that Tremaine Wray is driving.  
25 As he drives he's assisting in letting Taurus spray the

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1 parking lot. Or you may find that Taurus handed Tremaine  
2 the firearm and in handing him he's assisting, aiding,  
3 abetting him in completing this crime.

4 When you spray a parking lot with bullets that has a  
5 bunch of people in it, this law applies; accomplice  
6 liability. If two or more combine together to commit an  
7 unlawful act and a crime is committed by the actors as a  
8 probable and natural consequence of the acts done in  
9 pursuance of the common design, all present and  
10 participating in the unlawful undertaking are as guilty as  
11 the one who committed the act. So if you find, ladies and  
12 gentlemen, that it was a natural and probable consequence,  
13 that someone might have gotten struck by one of those 10  
14 bullets and that someone may have died as a result of those  
15 10 bullets, then ladies and gentlemen, that is a natural and  
16 probable consequence of their actions.

17 The common purpose may have not included or may have  
18 not been involved in the killing and the murder of anyone,  
19 but if in executing this common design and purpose, and if  
20 it were unlawful, and in the execution of this common  
21 purpose a homicide is committed by one of the confederates  
22 or one of the associates and you, the jury, determine from  
23 the proof beyond a reasonable doubt that the homicide was a  
24 probable or natural consequence of the acts which were done  
25 in pursuance then all who were present either actually or

1 constructively in participating in the unlawful common  
2 design are as guilty as the slayer himself.

3       What does that all mean? Well, ladies and gentlemen,  
4 you may find from the evidence when they were spraying the  
5 parking lot they were just going to show those people you  
6 don't come into our turf and mess with one of our own.  
7 We're going to scare you and make sure you never come back  
8 here again. And they wanted to spray the parking lot and  
9 not intent to kill, actually shoot somebody. Well, ladies  
10 and gentlemen, when you do that a bullet can ricochet. You  
11 heard from David Collins, firing range of an M-11 is several  
12 hundred feet. Someone is going to get hit, that's a natural  
13 and probable consequence of doing so. And so you are  
14 responsible for your actions under our laws. And if you're  
15 someone and aiding and abetting them or assisting them, or  
16 either handing them the firearm or you're driving and  
17 allowing them to fire over you. Ladies and gentlemen, that  
18 is guilty -- you are as guilty as the other one under hand  
19 of one is the hand of all.

20       Now, I indicated to you that murder is the killing of  
21 another human being with malice aforethought. Voluntary  
22 manslaughter is the killing of a human being without malice.  
23 The state of South Carolina, as every state in this country,  
24 has the burden of proof. We have to prove each element of  
25 the law beyond a reasonable doubt.

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1           Now, reasonable doubt, ladies and gentlemen, is what  
2 you find to be reasonable. You have a reasonable  
3 explanation or not, but there is case law that assists in  
4 explaining to jurors what it means. Proof beyond a  
5 reasonable doubt is proof that leaves you firmly convinced  
6 of the defendant's guilt. There are very few things in this  
7 world that we know with absolute certainty, and in criminal  
8 cases the law does not require proof that overcomes every  
9 possible doubt. So ladies and gentlemen, you don't have to  
10 be absolutely certain. We're not required to prove that.  
11 It's proof beyond a reasonable doubt. Firmly convinced. If  
12 based on your consideration of the evidence if you are  
13 firmly convinced that the defendant is guilty of the crime  
14 charged, you must find him guilty. If, on the other hand,  
15 if you think there is a real possibility that he is not  
16 guilty, you must give him the benefit of the doubt and find  
17 him not guilty.

18           So how does the state go about proving the elements of  
19 reasonable doubt? Well, we use testimony, exhibits. You've  
20 been here for a week and a-half and you're very familiar,  
21 you're practically experts at it with what type of evidence  
22 exists.

23           There's two kinds typically introduced. Direct  
24 evidence. Those are the eyewitnesses, what they hear, what  
25 they see, what they smell, what they taste, what they feel.

1 So that's when you hear from Ricky Jacobs, Stephanie Boston,  
2 Verda Roberts, Charlie Bates, Lamont Goodwine. Those are  
3 direct eyewitnesses.

4 Circumstantial evidence. And I thought at school that,  
5 aw -- they just had a circumstantial case, that that's a  
6 weak case. Well, under the law in South Carolina that's not  
7 true. Both direct and circumstantial evidence have the same  
8 weight, are both equal under the law and it's to be given  
9 the weight that you determine to give it. Guess what,  
10 ladies and gentlemen, circumstantial evidence examples: DNA,  
11 gunshot residue, ballistics. It's basically when you have a  
12 chain of circumstances without eyewitnesses that lead to  
13 only one reasonable conclusion. And a quick example is that  
14 we know that that is Demuria Johnson's DNA, and so is that.  
15 So we know that the directional pattern, he ran around here,  
16 although no one came into court and testified to that. You  
17 can make a reasonable conclusion by the chain of  
18 circumstances that that occurred even though no one actually  
19 came in and said, I think he ran around the car, because it  
20 was so chaotic. They were all dodging bullets, taking  
21 cover. Ladies and gentlemen they are both equal under the  
22 law. The most critical issue in this case ladies and  
23 gentlemen is the credibility of the witnesses because you  
24 are all wearing black robes individually and collectively,  
25 just like Judge Childs is wearing her black robe, you all

1 are wearing black robes as well, because you are the judges  
2 of the fact. It is up to you to determine what happened on  
3 June 30, 2007. It is up to you to determine, who do we  
4 believe. Judge Childs is going to instruct you, that you  
5 don't have to believe everything that a person says, you can  
6 believe all of what a person says or you can believe part of  
7 what a person says. It's up to you to use your common  
8 sense, your ability from your life's experiences to know  
9 when someone is telling the truth or not. Using all of  
10 those tools, you use that to judge the credibility of the  
11 witnesses.

12 There are other factors that you can consider in  
13 judging the credibility of the witnesses. Their demeanor on  
14 the witness stand. I mean that there's no accident that  
15 this witness box is right here in front of this jury box,  
16 because you are supposed to have first advantage of  
17 examining someone when they're testifying. Was the witness  
18 forthright or hesitant. Was the testimony of the witness  
19 consistent and I'm going to get into that in further detail  
20 as I go through the testimony of the witnesses. Was the  
21 testimony of the witnesses corroborated. That's a big one in  
22 this case, ladies and gentlemen. Corroboration is all over  
23 the place in this case. Did the witness have a reason to be  
24 biased or prejudiced. And I'm going to get into more of  
25 that when I discuss the different witnesses who testified.

1 I'm going to leave this over here so you guys won't forget  
2 about these factors.

3 The state called several witnesses in this case over  
4 the last week and a-half. And I'm going to go and briefly  
5 touch on them. And, again, if say anything about the facts  
6 that's different from your memory, I'm not trying to mislead  
7 you. It's been a long trial. You all took some notes. You  
8 have your own memory, so you have to go by what you  
9 remember. In preparing for today's closing argument last  
10 night, I went through, to show you, to make a point, of how  
11 consistent the witnesses at the crime scene were that night.

12 Verda Roberts, Stephanie Boston, Charlie Bates, and  
13 Lamont Goodwine. Can everyone see? When you deal with  
14 eyewitnesses, ladies and gentlemen, let's say we were in a  
15 civil case in a car accident at some intersection and you've  
16 got someone on each corner of that intersection, and then  
17 you get them to testify. Well, they're going to remember  
18 different things, because we're human beings and we all  
19 perceive things differently. We remember details  
20 differently, and I submit to you that if their stories were  
21 identical that would raise a red flag. But the fact that  
22 the details are different, but the guts, the skeleton of  
23 their story is the same that shows the credibility of their  
24 testimony because they are consistent.

25 They all went to the H&J. Charlie and Lisa were on the

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1 dance floor. Fight broke out between Charlie and a guy with  
2 dreads. Who was identified by Stephanie and Verda as this  
3 man, who came in here and admitted that's him, Bryan  
4 Johnson. Lisa Johnson confirmed that that was him.  
5 Remember. She told you, first of all that it was -- and I'm  
6 going to get into her more, but she confirms that he got  
7 involved in the fight. She denies seeing him hit a woman in  
8 the face. It was them against the whole bar. Ladies and  
9 gentlemen, these people had never been -- with the exception  
10 of Stephanie, who would go there from time to time. The  
11 rest of them hadn't been there before. Travis Malone or  
12 Hank Johnson, Lamont Goodwine, they had never been there  
13 before. Charlie Bates may have been there a few times with  
14 Lisa when they dated off and on, but he's not a regular. He  
15 didn't know everybody in there. It was them against the  
16 whole bar. Those witnesses are not coming in here and  
17 identifying Taurus Watts and Tremaine Wray, those are the  
18 people that shot at us and killed our friend. They're not,  
19 because they didn't see. They're being honest about that.  
20 It was them against the whole bar. Because they're  
21 unfamiliar with everybody in the whole bar, they don't know  
22 who was ganging up on them. After the fight broke out  
23 Charlie was bleeding from the lip. That's corroborated.  
24 Y'all heard them testify that they met around this general  
25 area and that he was bleeding profusely from his lip. And

1 ladies and gentlemen, D, E, F, and G are the same unknown  
2 male. They get outside heading towards the car wash to  
3 their cars when shots are fired at them from the road. They  
4 are having to take cover behind the vehicles, and remember  
5 the vehicle, the white Envoy driven by Ms. Verda Roberts was  
6 parked first and then Travis's rental car was parked behind  
7 it. And that's the car where Charlie and Travis and Hank  
8 were riding in. Lamont said no one was firing from that  
9 patio. Remember there's a patio back here. And look,  
10 ladies and gentlemen, if you're firing what's going to block  
11 you? The wall at the car stall. Consistent with evidence  
12 at the scene. Charlie and Lamont said it's the same gun.  
13 To them it sounded like the same gun and it was multiple  
14 shots. They could remember how many because it was too  
15 fast. Verda and Stephanie believed it was more than one gun,  
16 but they can't say how many was fired from each gun. And,  
17 again, ladies and gentlemen, it is chaotic. Verda said that  
18 her brother jumped on top of her. It's chaotic. They take  
19 cover behind the cars in the stall and then Hank is hit.  
20 Verda doesn't recall or realized that he was hit, but  
21 everybody else testified that they knew he was hit. They  
22 leave and they meet at the Waffle House. Travis is not  
23 familiar with this side of town, didn't realize there was a  
24 hospital right there. So Verda says, come on, let's go.  
25 And they go and they take Hank to the hospital because he's

1 bleeding profusely, and you heard Dr. Nichols testify how  
2 quickly he would have bleed out from that artery being  
3 struck. Four to five minutes max.

4 Oh, by the way, before I continue Mr. Swerling did ask  
5 Mr. Bates on cross-examination, I don't know when he said  
6 it. I don't know to whom he said it, but he did say to  
7 someone by Mr. Swerling to talk to him. Isn't it true that  
8 you said that someone fired from behind? Well, I'm going to  
9 show you State's No. 72. Remember I showed this photograph  
10 to Investigator Reed-Enzor and I asked her about the fence,  
11 how it was locked secured. She couldn't even get back there  
12 to look for projectiles. So ladies and gentlemen,  
13 obviously, the shots were not coming from behind. It's a  
14 locked facility. But, again, I'm not saying Mr. Bates is  
15 lying. It was confusion, it was chaos. The skeleton of  
16 their story and their testimony is consistent. And, again,  
17 that's one of the factors you may consider in determining  
18 the credibility of a witness.

19 The next witness to testify, Lisa Johnson, and on this  
20 one, ladies and gentlemen, pay close attention to the  
21 factors dealing with bias, having a reason, stake in the  
22 case. Taurus Watts is her nephew's uncle. So basically the  
23 way I understand it is her brother has a child with a woman  
24 and that woman has a brother, that brother is Taurus Watts.  
25 They are related not by blood but by marriage or some sort

1 of relationship. They're related. Okay. Keep that in the  
2 back of your mind to determine whether she has a reason to  
3 be biased and favor him. She has known Bryan Johnson for a  
4 long time. They live on the same street. She lives on  
5 Briarcliff. I believe -- I don't remember how long she's  
6 lived there, but it's been a long time. Same street as  
7 Tremaine Wray that he lives on, on Briarcliff in Washington  
8 Heights neighborhood. She goes to the pub at 3:00 a.m. in  
9 the morning on June 30. She parked by the phone booth,  
10 which is not show on this exhibit, but in this general area  
11 right there. She goes to the front door, she goes through  
12 security. And, by the way, Verda, Stephanie, Charlie, all  
13 of them testified that they were searched for weapons going  
14 into that place, that they used metal detectors going into  
15 that place, and she corroborates it. Sees Charlie,  
16 Stephanie, and Verda and she meets Travis, Hank, and Lamont  
17 for the first time on the patio. She then says she goes  
18 inside to buy a drink at the bar. And she's approached by  
19 someone who introduced himself as T. T-something, I believe  
20 she said. Five-six, five-seven, 140 pounds, low haircut,  
21 white t-shirt, name T. Charlie is standing beside her or  
22 behind her and this individual approaches and she waves him  
23 away. Charlie feels disrespected. He throw a drink in that  
24 person's face, and according to Lisa Johnson, that's when  
25 Bryan Johnson gets involved and yells: Hey, that's my home

1 boy. Bryan Johnson knows who that was. Things then go  
2 crazy, according to Ms. Johnson. And she didn't even see  
3 Verda get hit. Everybody else saw Verda get hit. Like  
4 Bryan Johnson, her buddy who lives up the street from her.  
5 But, you know, Bryan was just trying to break it up. That  
6 was his role in this whole thing. And so she's pulling him  
7 back. But he's not really involved but she has to hold him  
8 back so much that he comes out of his shirt. And don't  
9 forget about what Ricky Jacobs said about him, he was the  
10 loudest of them all. She's getting ready to leave the bar  
11 when she hears shots, too fast to count. Now, this is very  
12 telling about Ms. Johnson, and the people, how tight they  
13 were in that community and how they will stick up for one  
14 another. Question in her written statement: Who else was in  
15 the bar when you left, and her answer on June 30, 2007, was:  
16 Brian, meaning Bryan Johnson, Chris, meaning Chris Crosby,  
17 and a handful of people. She never once mentions Taurus,  
18 not once. But then she comes into this courtroom and on  
19 cross-examination she says oh, and Taurus, yeah, that's the  
20 ticket. She then also denies telling Investigator McRae  
21 that she came back on July 6, 2007, at 5:15 p.m. and told  
22 him that Taurus Watts goes by T.

23 Bryan Johnson. Again, ladies and gentlemen, reason to  
24 be biased, prejudiced? Has been friends with Taurus and  
25 Tremaine. They all grew up together. He is friends with

1 Lisa Johnson. They live on the same street that he does and  
2 so does Tremaine. Goes to the H&J -- oh, by the way, before  
3 -- I have to remember to tell you this -- I'm so sorry to  
4 back track. Lisa Johnson, and when I asked her: You were  
5 not cooperative with the police that night were you? She  
6 says that she is just upset with them because they woke up  
7 her little boy. She doesn't seem to have a problem leaving  
8 him home alone at 3:00 in the morning. Does that appeal to  
9 your common sense. She's trying to protect her nephew's  
10 uncle.

11 MS. JOHNS: I hate to interrupt during an argument.  
12 She arguing facts that are not in evidence. And I'd asked  
13 that the jury be instructed that they are to remember their  
14 own notes.

15 THE COURT: The jury --

16 MS. SHIPLEY: I already told them that, Your Honor.

17 THE COURT: They will remember their own -- but the  
18 lawyers are entitled to draw reasonable inferences.

19 MS. SHIPLEY: I'm allowed to draw a reasonable  
20 inferences from the evidence that's on the record.

21 All right. So Bryan Johnson gets to the H&J on June  
22 30th. Doesn't remember what time, apparently. Denies  
23 seeing Taurus and Tremaine there. Oh, and by the way, Lisa  
24 said that Taurus -- now, she's changing her story and saying  
25 that he was definitely inside. So is he there or is he not?

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1 You know, y'all grew up together. Is he there or is he not.  
2 He even confirms that he was checked by security, that there  
3 was a metal detector. He denies starting the fight, even  
4 though he is identified by Stephanie and Verda. Stephanie  
5 knew him. Denies coming out of his shirt when Lisa is  
6 holding him back. He denies punching Verda. Everything in  
7 self-serving in this testimony. Sees one of the guys from  
8 the other side with a 25 caliber gun 30 feet away in the  
9 dark. He didn't know what color it was either. I forgot to  
10 put that on the board. I mean, does that appeal to your  
11 common sense, that a person was holding it to their side. So  
12 I don't know how far 30 feet is, but in the dark, in a  
13 nightclub? Anyhow, he remains -- he hears several shots  
14 fired outside. Remains inside the bar after the shots and  
15 that's confirmed by Jacobs. He's not going to make him sit  
16 outside when shots are being fired, even though he wants to  
17 ban him from his nightclub. He allows him to stay there for  
18 his safety and the safety of others in there. He leaves in  
19 a blue Chevy HHR with Darius White and he said it was Darius  
20 White that started it with Charlie Bates and that Charlie  
21 threw the drink in Darius White's face, contradicting  
22 Stephanie, Verda and Charlie. Says Taurus and Tremaine were  
23 not there, yet asked by defense: What did Taurus hair look  
24 like that night and he answers: Low haircut. During his  
25 cross-examination. So was he there or not. He denies

1 speaking with Tremaine at all that night when I asked him.  
2 And then I asked him for his cell phone number: 803-269-  
3 5796. What's important about that? At 4:12 dispatch gets a  
4 call, shots fired, shots fired. Multiple calls were coming  
5 in at 4:12 a.m. Who is Tremaine Wray calling at 4:14 a.m.,  
6 his buddy of Bryan Johnson, who is in the middle of the  
7 fight. Smack in the middle, but apparently they don't talk  
8 very long or talk at all. I don't know, you can look at the  
9 duration of the call. But then, do they talk again? Look  
10 at their cell phone records. 4:35 a.m. Tremaine Wray is  
11 calling Bryan Johnson back again. Wonder why he's so  
12 curious to talk to Bryan Johnson that early in the morning.  
13 Did I hit anybody, man, did you see that. Did you see what  
14 I did for you, buddy? That conversation lasted almost one  
15 --

16 MR. SWERLING: Was that something that was in the  
17 record? I mean, I object to that.

18 MS. SHIPLEY: Your Honor, I'm allowed to make a  
19 reasonable inference as to the evidence on the record. I  
20 already told them I don't know what they talked about.

21 MR. SWERLING: There's on inference to be drawn  
22 from phone calls -- see what I did for you, buddy? I mean  
23 that's just -- I object to that. That's not even an  
24 inference that could be drawn from a phone call.

25 MS. SHIPLEY: I have cell phone records that he

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1 placed the call, Your Honor. I'm speculating and the jurors  
2 know that.

3 THE COURT: Okay. Sustained.

4 MS. SHIPLEY: Obviously, we don't know what the  
5 conversation consisted of but is it a reasonable inference  
6 to be drawn that again at 4:35 for one minute and 54 seconds  
7 there's a phone call placed between Tremaine Wray and Bryan  
8 Johnson, the guy that was pretty much the cause of the  
9 fight. And it's up to you to decide. You're the judges of  
10 the fact. And that's why I brought out his cell phone  
11 number.

12 I'm going to skip Ricky Jacobs because he's the most  
13 important witness in this case, because no one else has  
14 identified the shooter, the shooters.

15 Brian Watson. He testified that it was either a  
16 Saturday or Sunday in June of 2007. And just so everyone is  
17 on the same page, this incident happened on June 30, 2007,  
18 which was a Saturday. Remember he lives across -- on the  
19 same property, but across from his cousin or his niece. He  
20 lives here and this is where Jarrell and Rashonda were  
21 living back in 2007. He says he sees a big SUV parked at  
22 their house. Doesn't remember the color or anything like  
23 that, the make. It's a big SUV consistent with a tan  
24 Suburban. Does not see who was in the vehicle. In other  
25 words, he did not see Tremaine. Question, ladies and

1 gentlemen, if he's going to come in here and lie, why not  
2 make it really good and tell y'all he say Tremaine get out  
3 of his tan Suburban SUV. Because he did not see it, ladies  
4 and gentlemen. So he doesn't see Tremaine at that time.  
5 Later on, he gets a call from Jarrell to come help him get  
6 rid of something. So he goes over there. Jarrell is coming  
7 out of the trailer with a black book bag. Rashonda stays  
8 inside with the children, the kids. They go to the back  
9 yard of the trailer, in this general area, and at that point  
10 he looks inside the bags and see what he knows to be, from  
11 the street or the movies, a Mac 10 and a long clip.

12 Now, whether he unzips the bag or Jarrell unzipped the  
13 bag -- that was a big cross-examination point -- he doesn't  
14 remember. But he looked in the bag and he saw what he  
15 recognizes as a Mac 10 with a very long clip. Jarrell is  
16 worried that Watson is going to try to sell this gun because  
17 it's in good condition. And he is admitting that he is a  
18 crack addict and that he probably would have gone back and  
19 tried to sell it for crack. That's being forthright.

20 Now, Jarrell gets a hammer, as a result of being  
21 worried that -- you might sell my cousins gun that was used  
22 in a murder, we don't need that, so let's damage it.  
23 Jarrell gets a hammer and they take turns hitting the gun,  
24 damaging it. Then the gun is put back in the black book  
25 bag. They all get in the -- all three of them. He says it

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1 was Rashonda and Jarrell and him get into her red SUV, which  
2 is really a burgundy Montero Sport, and drive to Langford  
3 Road bridge first, but a car was coming. So two years later  
4 when he takes investigators there, ladies and gentlemen, he  
5 doesn't remember that a car was coming. Then he remembers  
6 and takes them that very night to the second bridge on  
7 Cherokee Road, the closest one to his momma's church that  
8 was ruined by a tornado. They drive to the second bridge  
9 located closest to the church on Cherokee Road. He tells  
10 them to drive on because there's no shoulder to pull on.  
11 Well, this is 142, and this is that bridge, and there is no  
12 shoulder to pull on. There is a guardrail on both sides. He  
13 then goes underneath the bridge and he then takes the Mac 10  
14 and the clip and he throws it into the creek. And then he  
15 comes back up, they pick him up and they go home.

16 Now, remember, ladies and gentlemen, on cross-  
17 examination a big deal was made about, you put in your  
18 written statement that you were absolutely sure that that  
19 was the bridge that he threw the gun under. Well, remember  
20 ladies and gentlemen, at this point, when he's meeting with  
21 investigators on May 18, 2007, he's meeting with them and  
22 they're verbally getting information from him. Nothing's in  
23 writing yet. After he tell them what he knows verbally,  
24 they take him out to the location and he shows them where to  
25 go. He takes them to the first bridge that someone was

1 coming -- oh, that's right, so we have to go to the other  
2 bridge. And then he comes back to the Sheriff's Department  
3 and gives his statement around 9:30 p.m. and ladies and  
4 gentlemen, that is when Investigator McRae asked him: How  
5 certain are you that this is the bridge? And his answer at  
6 that point is: Absolutely. Okay, ladies and gentlemen, he  
7 was referring to the first bridge in his statement. The  
8 first bridge closest to the church, right there on State's  
9 141. He was not referring to the Langford Road bridge.

10 Now, remember, I asked Investigator McRae, well why did  
11 you go looking for Jarrell Dansby and Rashonda Simpson.  
12 He's a crack-head. He's a criminal. He's got a long  
13 criminal history. We're not going to take his word for it.  
14 Investigator McRae said, I wanted to corroborate it. I  
15 wanted to speak to more people to make sure he was telling  
16 the truth. We're not going to just take Brian Watson's word  
17 for it. So who did they go interview? First they go to  
18 Rashonda Simpson's house. They call. She says, can I come  
19 in tomorrow. No, this is really important. Because the  
20 trial had started that day, ladies and gentlemen. So she  
21 said, fine. They come over, the minute they say Tremaine  
22 Wray's name -- you heard Investigator McRae say that her  
23 demeanor changed. She acted nervous and wanted her lawyer.  
24 She then cooperates and tells the investigators she got home  
25 from work and finds Jarrell burying something in the

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1 backyard. They argue and Jarrell digs up the gun and she  
2 sees him put it in a black book bag. The gun was black.  
3 She's not familiar with guns. She doesn't have a clue what  
4 kind of gun it was. Jarrell walks over to his grandmother's  
5 house, again, that's where Brian Watson was living back  
6 then, to get Brian and she sees him by the shed taking the  
7 gun apart. At that point, she says Jarrell and Brian get  
8 into her burgundy Montero Sport and leave. She was in the  
9 car initially and then she said, well, I got to get out  
10 because the kids are running out of grandmomma's house and I  
11 needed to go take care of them. She, obviously, is trying  
12 to minimize her role, ladies and gentlemen.

13 And this is a perfect example of a witness where the  
14 judge is going to instruct you that you can believe part of  
15 what a witness say, all of what a witness says, or none of  
16 what a witness says. And ladies and gentlemen, it's clear  
17 that she's trying to distance herself from that gun. I  
18 mean, it doesn't take a rocket scientist. The bottom line  
19 is she is corroborating the fact that she saw a gun and that  
20 Brian Watson went and got rid of it. And again their were  
21 making a big deal about well, she visited you -- didn't she  
22 visit you on April 7 and April 19, and remember, it wasn't  
23 until May 18, 2009, that he knew for sure that the case had  
24 not gone to trial yet and it wasn't too late for him to try  
25 to help himself on his armed robbery charges. In fact,

1 what's the point in coming forward. It's too late. I mean,  
2 he's a criminal. He's looking out for himself. Why's he  
3 going to come forward if it's too late. He's not going to  
4 get any help on his charges or help himself on his charges.  
5 That's how criminals behave.

6 However, isn't it telling how Rashonda Simpson's  
7 behavior, her demeanor changed when the name Tremaine Wray  
8 is brought to her attention on the night of May 18, 2009.  
9 What does that tell you, ladies and gentlemen, her change in  
10 demeanor. Oh, this is what you're here about. That.

11 Oh, I almost forgot these two things. Ladies and  
12 gentlemen, after they got corroboration from Rashonda  
13 Simpson, they didn't stop there. They went to find Jarrell  
14 Dansby. And they were having trouble finding him, and law  
15 enforcement knew that he was aware that they were looking  
16 for him. And they got a warrant for his arrest, and they  
17 made arrangements to have him come in, just tell us what  
18 happened and they rescinded the warrant for accessory after  
19 the fact of murder for getting rid of Tremaine Wray's gun.  
20 When he gives his statement on May 20, 2009, two days after  
21 Rashonda and Brian, remember I asked Mr. Dansby, did  
22 Rashonda tell you what she had told police. And he said she  
23 told him she didn't tell them anything, that she didn't give  
24 them a statement. And then obviously we know from Brian  
25 Watson that he never visited -- there's no evidence that he

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1 ever visited him in the jail, and he ever says I never  
2 visited Brian Watson in the jail.

3 He recalls it was either the Saturday before or after  
4 the 4th of July of 2007. Again, 4th of July was a Wednesday  
5 that year. So either before -- that's the date of our  
6 murder or after. Obviously, it's too late then. He gets a  
7 call from Tremaine, 12:30 in the afternoon. And remember I  
8 asked him all those cell phone numbers, because I looked at  
9 Tremaine Wray's cell phone records and there are several  
10 numbers. In fact, I invite you to go through this with a  
11 fine-tooth comb, because you'll see a lot of activity on his  
12 cell phone at all hours of the night on that day of June  
13 30th from about 4:00 o'clock to about 9:00 o'clock. He's  
14 on his phone a lot. So he thinks it was 12:30. He used to  
15 get those cell phones, the disposable kind. So he doesn't  
16 remember his number. There are several calls being placed  
17 around that time on Tremaine Wray's cell phone. And that's  
18 on the records.

19 Now, remember this, Tremaine Wray's first cousin, they  
20 are like brothers. They grew up together. How clear was it  
21 that he did not want to be in this courtroom to take that  
22 witness stand. He gets a call and says Tremaine wanted to  
23 bring over his gun because he didn't want his grandmother to  
24 find it. Well, if you didn't do anything wrong with the gun  
25 why would it be bad for your grandmother to find it. Not at

1 home when Tremaine hides it in the underpinning of the  
2 trailer. And again an example of distancing yourself from  
3 something really, that you know is wrong, that is illegal.  
4 So yeah, I just told him to go to the house and put it under  
5 the underpinning, secret hiding place. Then he gets a call  
6 from a friend about the shooting at the club, so Jarrell  
7 calls Tremaine back upset that he brought the gun to his  
8 house when it was used like that. He says Tremaine says  
9 he's sorry and cries. He can't come get the gun right now  
10 because he has to go to work. So that's when Brian comes  
11 over and Jarrell tell him about the gun and that he will all  
12 the police.

13 Again, self-serving. He had no intention of calling  
14 the police. It's like his brother. I'll protect him.  
15 Brian stated he would just rid of it for him. He and Brian  
16 went to the underpinning and pulled out the potato bag. And  
17 I mean of what kind of book bag it was that Rashonda and  
18 Brian Watson are consistent on -- come on -- a potato bag.  
19 He never looked inside that bag? Again, distancing himself  
20 from it. He just gives it to Brian and Brian leaves alone  
21 with the gun and gets rid of it. He denies ever speaking to  
22 Brian Watson or Rashonda Simpson about this ever again, and  
23 that was confirmed by both of them. I asked him at the end,  
24 because he was telling us how Brian Watson was a liar. I'm  
25 not here to defend Brian Watson, but I'm telling you, ladies

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1 and gentlemen, this is important, because as much of a liar  
2 that Jarrell Dansby thinks Brian Watson is, I flat out asked  
3 him, tell this jury would Brian Watson be telling a truth or  
4 a lie if he said he got rid of Tremaine Wray's gun. And  
5 what was his answer: The truth. Who got you involved in  
6 this case? Tremaine.

7 Judge Childs is going to instruct you about eyewitness  
8 testimony, and because we have Ricky Jacobs who has come  
9 here and taken the witness stand and taken an oath to tell  
10 the truth and has identified Taurus Watts and Tremaine Wray,  
11 we have to establish that his identification of them is  
12 reliable so that you can bank on it.

13 The number one factor. The opportunity to view the  
14 defendant at the time of the crime. You heard how the over  
15 hanging of the gas pumps is well lit. There are photographs  
16 and I'm not going to bore you with them, but just look at  
17 them. It's a well lit area. The parking lot is well lit.

18 The witnesses degree of attention. Well, he's telling  
19 them the club's closed. And he's walking -- they're walking  
20 towards each other. The club is closed due to the fight.  
21 He sees them get into the tan Suburban, and, by the way, I  
22 forgot to tell you that Jarrell Dansby says Tremaine Wray  
23 drives a tan Suburban. He would know. It's his first  
24 cousin, it's like his brother. He tells you, Ricky Jacobs,  
25 that while he's passing -- walking to go get his car from

1 his dad's driveway like he does every time that he closes  
2 down for the night, that he passes the passenger side of the  
3 tan Suburban and what does he see Taurus Watts with, a gun.  
4 All he could see was the long clip and the barrel because  
5 the rest of it was covered in some white clothing of some  
6 sort. But that brought his attention, that caught his  
7 attention. And remember he's crossing the street keeping an  
8 eye on that tan Suburban and as he does, ladies and  
9 gentlemen, that's when he witnesses the shots coming out of  
10 the driver's side.

11 The accuracy of the witness's prior description of the  
12 defendant. Whether Taurus Watts had twists, dreads, or  
13 short, low hair cut. There is no question that Ricky Jacobs  
14 has known him for 19 years. He frequents the club, he's  
15 from the same neighborhood, they all know each other. He  
16 just doesn't remember, he testified that he knew it was  
17 Taurus and he didn't want to tell Mr. McRae that in front of  
18 all the other on-lookers because they're all friends of  
19 Taurus's so until they crossed the street, that's when he  
20 said Taurus. That night at 5:40-ish a.m. in the morning.  
21 Same with Mr. Wray. I've seen him before in the club.  
22 Don't remember his name. But he's a nightclub owner. He  
23 sees lots of regulars all the time. Knows people by face,  
24 some by first name only, some by the whole name. The level  
25 of certainty that he's presented at the time these

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1 photographs lineups, you hear Investigator McRae, he said he  
2 immediately identified both Taurus Watts and Tremaine Wray  
3 in those pictures and Investigator McRae did not suggest to  
4 him in any way, fashion or form which one to pick. And the  
5 time between the crime, which is June 30, 2007, at  
6 approximately 4:15 a.m. and the time of the confrontation,  
7 meaning when was he shown the photographic lineup? July 1  
8 at 1:15 p.m. Barely 24-hours away.

9 Now, Ricky Jacobs gave a written statement on July 1,  
10 2007. Investigator McRae admits he didn't ask him about  
11 anything that happened inside of the bar. He wanted to know  
12 what he saw outside. What did you witness about the  
13 shooting. Verda, Stephanie, Charlie, Travis, and Lamont.  
14 They were all there inside. They were able to provide  
15 enough information to McRae about what occurred inside.  
16 Ricky begins his testimony by saying he was working the bar  
17 when a fight breaks out by the door to the deck, okay.  
18 Ladies and gentlemen, the door to the deck is in this  
19 general vicinity, and the deck is pretty big in the back.  
20 The dance floor, he said, was near the back door. He sees  
21 Brian Johnson and new faces, like Charlie, like Lamont, like  
22 Hank, like Travis. And that Johnson was in the middle of  
23 it. He was the loudest. And he eventually gets banned by  
24 Ricky Jacobs. Closing down the bar because of the fight. I  
25 mean, is that a lie because he didn't say that to

1 Investigator McRae on June 30. I mean, wasn't it self-  
2 explanatory why he was closing down.

3 There was a melee in his nightclub. A guy came in to  
4 get his mother. Obviously, that would have been Charlie  
5 because his momma got hit in the face. Leaves security to  
6 watch the bar and he leaves to go get his car from his dad's  
7 house across the street. And by this point he says the  
8 music is turned off and the lights are turned on. And he  
9 says he goes across the street every time he closes down to  
10 get his car because he parks there so he won't take  
11 customer's parking spaces. He see a man with a red shirt  
12 backing out of the bar with a gun. He never sees him shoot  
13 it. He is walking across the parking lot by the gas pumps.  
14 He sees Taurus Watts and Tremaine Wray walking towards the  
15 bar.

16 Now, at this point, ladies and gentlemen that's when  
17 his statement, his written statement begins when he was  
18 walking across the street to get his car because he was  
19 closing down for the night and that's when he encounters  
20 Taurus Watts and Tremaine Wray. He does not include in his  
21 written statement anything about the fight inside, but  
22 Investigator McRae already testified that he never was  
23 asked. So that doesn't make Mr. Ricky Jacobs a liar. He  
24 has known Taurus Watts for 19 years, has seen Tremaine Wray  
25 before in the bar and he knew his face. Had seen both of

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1 them inside the bar earlier. He doesn't remember when. I  
2 mean, he's a nightclub owner. There's a lot of people  
3 coming and going through his nightclub. He told them that  
4 they were closing and Taurus mumbled something. They turned  
5 around and walked back to the car by the gas pumps. He saw  
6 them getting into a tan Suburban. Tremaine was the driver,  
7 Taurus was the passenger. Had to pass the passenger side of  
8 the tan Suburban and sees Taurus with a black gun wrapped in  
9 some white clothing, but couldn't see it. Had a short  
10 barrel and a long clip. Keeps watching the tan Suburban as  
11 it drives down Hardscrabble. As he reaches the middle of  
12 the street, he hears several shots fired and sees flash from  
13 the mussel from the driver's side of the tan Suburban  
14 towards the crowd at the car wash. Cannot say who fired the  
15 shots because the car was too far. He then testified that  
16 he saw two guys by the Rodeo. The driver had dreads, the  
17 passenger has a low haircut and a pistol smaller than the  
18 gun Taurus had.

19 Now, notice here, ladies and gentlemen, I put an  
20 asterisk there, and I'll get back to that, again. Parks his  
21 car in front of the bar. I put an asterisk there. After  
22 the tan Suburban fires several shots towards the car the  
23 white Isuzu Rodeo pulls a U-turn and the passenger shoots  
24 one time up in the air by the car wash and continues down  
25 Hardscrabble Road towards Farrow Road. Again, I put an

1 asterisk there. I'll get back to that.

2 Didn't call 911. Was busy making sure his customers  
3 were safe. Didn't talk to responding officers because they  
4 were busy securing the crime scene. Talks to McRae when he  
5 arrives and explains what he witnesses, once again, out of  
6 earshot of all the on-lookers, he tells him Taurus had a  
7 gun. Identifies occupants of the white Rodeo as the same he  
8 had witnessed firing one shot in the air. Gives a written  
9 statement on July 1 at 1:15 and in his statement, the very  
10 last thing, because Mr. Swerling was right. In his  
11 statement it does say Tremaine shot several rounds.

12 Tremaine did this --

13 Ladies and gentlemen, he corrected that that day on  
14 July 1, 2007. The very last sentence in his statement says:  
15 Whoa, whoa, whoa, I'm not saying I saw Tremaine. It was too  
16 far away, it came out of the driver's side. He corrected  
17 that that day. He positively identifies both defendants in  
18 the photographic lineups. He identifies the M-11, what he  
19 referred to as an Uzi. And what is different about this  
20 picture, what is different in this picture? It did not have  
21 that shoulder stock on the back. I'm just going to leave  
22 this for a second here. Most importantly he does not know  
23 Brian Watson. And I asked Brian Watson if he had ever  
24 spoken to Ricky Jacobs. No. Why is that important, ladies  
25 and gentlemen, because I left that picture there for a

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1 second, for a reason. Look at the gun that Brian Watson  
2 identified as having gotten rid of on June 30, 2007. The  
3 very same weapon that Tremaine Wray brought to Jarrell  
4 Dansby and he got rid of. And what does Brian Watson  
5 testify about this weapon, ladies and gentlemen, the one  
6 that he referred to as a Mac 10 from the movies? It did not  
7 have a shoulder stock on it. Those are details that only  
8 people that actually saw it would know. Ricky Jacobs  
9 testimony, what he witnessed is corroborated by what the  
10 other witnesses said. For instance, when Stephanie, and  
11 Verda, and Lamont said the shots were coming from the road?  
12 Well, that's consistent with him saying that he saw this tan  
13 Suburban shooting from the road towards the car wash. Not  
14 only is he corroborated by other witnesses, he's  
15 corroborated by forensic scientific evidence that does not  
16 lie. Ballistics. Ten shell casings found along the  
17 roadway. The majority of them concentrated by the car wash.  
18 There're on the side of the road -- you heard people were  
19 getting in their cars and driving and you heard from Reed-  
20 Enzor that some of the casings were damaged. But you also  
21 heard from Collins that that would not in any way to effect  
22 his ability to look at the firing pin impression on the end.  
23 And just to save some time, I'm only going to show you one,  
24 but all this is going back with you to the jury room. You  
25 can look at each one by yourselves. This is the shell

1 casings, No. 13. It doesn't appear to be damaged, but some  
2 of them might be bent a little bit from being run over by  
3 cars, but the fact that a car runs over a shell casing,  
4 ladies and gentlemen, this is what's important at the end.  
5 The firing pin impression that's a little square,  
6 rectangular impression at the base of this bullet. That's  
7 what David Collins relied on in analyzing this evidence.  
8 And he testified it in no way made his -- impaired his  
9 ability to analyze the evidence. We've got 10 shell casings  
10 found at the scene. Seven of them are Winchester and three  
11 of them are Rp, Remington. They're all 9 millimeter Lugers.  
12 They matched one gun. One gun. How many shots did Ricky  
13 Jacobs say came out of the tan Suburban? Several. How many  
14 did he say came out of the Isuzu Rodeo. One. There were not  
15 other shell casings found at the scene belonging to another  
16 gun. So how do we explain that? Is it reasonable to  
17 conclude that perhaps because there was a 38 caliber bullet  
18 found in the passenger seat of the white Isuzu Rodeo that a  
19 revolver was used to fire up in the air. Is that a  
20 reasonable conclusion, because there is no shell casings  
21 from a different gun.

22 And remember, ladies and gentlemen, revolvers do not  
23 expel or eject their shell casings. He says that M-11 leave  
24 very unique firing impressions. Most consistent with M-11  
25 produced by SWD, Cobray and FNJ. M-11 is an uncommon

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1 weapons. He does not see them often. The location of the  
2 shell casings, again, I already went over that, were along  
3 the roadway in front of the car wash. And remember people  
4 are driving because they're trying to get away from there.

5 Can't predict how a shell casing will be expelled and  
6 land. They cylinder, they're going to roll. Once they're  
7 shot they come out to the right. So obviously the shell  
8 casings fired out of the driver's side of the tan Suburban  
9 the firearm had to be out far enough for the shell casings  
10 to be expelled onto the street. However, once it hits the  
11 street, they'll bounce, they'll roll. They're cylinder.  
12 Cars were driving over them, moving them around.

13 They're concentrated around where Ricky Jacobs said he  
14 saw the tan Suburban fire multiple shots. It corroborates  
15 him.

16 Then, what do we have at the crime scene? Two  
17 projectiles that are found in the car stalls. Remember X is  
18 over here in this general area and I is around here. X and  
19 I are projectiles, and when Hank was taken to the hospital  
20 and he didn't make it, you heard from Deputy Smith say that  
21 while the nurse was taking his clothes off I saw the  
22 projectile fall from his pant leg and I picked it up and  
23 kept it in my custody for analysis, put it in the evidence  
24 room for analysis. And lo and behold, it matches, came from  
25 the same gun. So what does that -- just do the math. If

1 the Isuzu Rodeo fired one time in the air, but yet you have  
2 three projectiles that match, well, clearly you can exclude  
3 the white Isuzu Rodeo, okay. It's simple math. Common  
4 sense. You use deductive reasoning.

5 What else corroborates it? That it's most consistent  
6 with a 9 millimeter, the three projectiles, and the rifling  
7 characteristics are consistent with SWD, Cobray, FNJ among  
8 other 9 millimeter gun manufacturers. And he did say there  
9 were like 40 or something, but he couldn't exclude those.  
10 No other projectiles found at the scene. You heard him  
11 testify about the firing range of an M-11, how it's several  
12 hundreds of feet.

13 And, again, I showed you that picture of the secured  
14 fence. You heard Reed-Enzor say that she didn't go back  
15 there and look for projectiles. There was a secured fence.  
16 And if they can't get back there, obviously, someone else  
17 can't get back there and shoot in the other direction  
18 towards the call stall.

19 The DNA corroborates Ricky Jacobs. How does it do  
20 that, because he said that the car was firing towards the  
21 car wash, and we know that the first evidence of any blood  
22 belonging to Mr. Johnson is over here. So he is well into  
23 the stall. If it's coming from the patio -- the wall is  
24 blocking. You can't shoot through a brick, cement wall.  
25 The wall is blocking.

1           So we know from Dr. Nichols that he would start  
2           bleeding immediately, profusely. He would have very little  
3           time to live. And that he then runs and gets in the car.

4           And you heard about the void evidence. But regardless,  
5           ladies and gentlemen, it corroborates Ricky Jacobs that the  
6           shots were being fired at the people in the car wash.

7           What else corroborates it? The GSR evidence. Luther  
8           Landrum was the driver. What did Ricky Jacobs say? He's  
9           not the shooter from that car, the Isuzu Rodeo. Negative  
10          for GSR. That's consistent. Earl Greene, the passenger,  
11          witnessed shooting one time up in the air with his arm out  
12          the window, and I specifically asked the GSR expert, Michael  
13          Moskal, does wind effect it, because it's fragile, gunpowder  
14          residue is fragile and a moving vehicle, wind, you shoot,  
15          you're not going to have GSR on your hands or on the roof  
16          where it was swabbed. Exterior passenger roof. That is  
17          corroboration of Ricky Jacobs, because he said he had his  
18          hand out the window, pointed up in the air and fired one  
19          time.

20          And what's important ladies and gentlemen is every time  
21          you fire a bullet and you pull the trigger, GSR comes out  
22          each time. So the more you shoot, the more you're going to  
23          have. The evidence in the 1999 Chevy Suburban, and here I  
24          put a little cheat-sheet for myself, so I wouldn't forget to  
25          go over this.

1           Now, on my way to work this morning, I was so scared I  
2 was going to be late, because there was accidents all over  
3 the place. I don't know what it is about rain, but  
4 approaching -- I live out at the lake, I'm approaching St.  
5 Andrews Road and I'm stuck in traffic and I'm terrified to  
6 be late for Judge Childs. So I'm looking and I see a tow  
7 truck backing up to a car that had been in a wreck and pull  
8 it up onto the back of its truck, onto the bed of its truck  
9 without ever getting inside the car. And I said, wow, this  
10 is a coincidence.

11           Ladies and gentlemen, they want you to believe that the  
12 tow truck driver got into the is '99 Chevy Suburban, I will  
13 bring your attention to State's 163. List all valuables in  
14 the vehicle. Did not conduct inventory due to search  
15 warrant being served on vehicle. So if officers are going  
16 to treat it like a crime scene, you think they are going to  
17 let a tow truck driver get inside? Let's say the tow truck  
18 driver did get inside -- well, the only reason the tow truck  
19 driver would get inside the car is to change the gear to  
20 neutral, perhaps. I'm not familiar with it. Use your  
21 common sense. But you'd have to open the door, get inside,  
22 put his hands on the gear shift, put it in neutral. Then he  
23 would be done and he'd shut the door, right? Well, why do  
24 we have GSR on the driver's side rear door frame? There's  
25 no reason for a tow truck driver to get in the back seat of

1 a car when he's going to tow it. There's no reason for  
2 that.

3 Well, ladies and gentlemen, remember I asked Agent  
4 Moskal, is it consistent and possible when you are firing a  
5 firearm out of a moving vehicle, outside a window, for GSR  
6 to come back to the backseat, and he said, yes. That's how  
7 it got there.

8 Now, the defense is going to go on about the fact that  
9 there's three round particles of lead only and none of the  
10 barium and antimonium. And expert witnesses are basically  
11 just like any other witness. You ask yourself if Agent  
12 Moskal was lying or telling the truth about his findings.  
13 And his ultimate conclusion, ladies and gentlemen, is that  
14 the evidence is most consistent with a firearm being fired  
15 from the driver's side area. So we've eliminated brake pads  
16 as a source, and the tow truck driver. And we've eliminated  
17 cheap Chinese Christmas lights. And we've eliminated the  
18 fact that no one was fishing with lead weights in that car,  
19 then use your common sense, and that corroborates Ricky  
20 Jacobs, as well. Forensic evidence does not lie.

21 There's a lot to cover, and I'm terribly sorry this is  
22 such a long closing argument. I hate to be long, but I have  
23 to explain the procedures. I won't get to come back up here  
24 and reply to anything defense says in closing arguments. So  
25 I have to have a crystal ball to anticipate what they're

1 going to tell you in their closing arguments. These are  
2 just things that I came up with. I may not cover all of  
3 them, and if I don't just think and ask yourselves what  
4 would Ms. Shipley say in response to that. Forget what I  
5 say, what does the evidence say. That's what's important.

6 Defense strategy. Attack Ricky Jacobs. He has  
7 motivation to lie or to cooperate with the police, because  
8 back in 1989, he had some sort of ABC liquor license  
9 violation or he was open after hours. But he's going to  
10 implicate two innocent men for murder? Does that appeal to  
11 your common sense? And if anything, ladies and gentlemen,  
12 he's losing business by coming forward. He's lost Bryan  
13 Johnson as a customer. He's lost Tremaine Wray, he's lost  
14 Taurus Watts, he's lost Lisa Johnson. He's certainly lost  
15 the party that was with Hank that night. None of them have  
16 been back to this bar since. If anything his business is  
17 being effected, he's in it for money, and there goes all  
18 those sources of money. So I submit to you, ladies and  
19 gentlemen, he had no motivation to cooperate with the  
20 police. He's telling the truth. There's no evidence of any  
21 bad blood between he and the defendants. Focus about the  
22 history of the bar since the 1980s. Obviously, claim that  
23 they didn't -- that he did not see Tremaine and Taurus there  
24 that night at all. It must have been a mistaken identity,  
25 even though he's known them. Or point to some pictures,

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1 some person so far away under an ICE sign and say that's Mr.  
2 Watts. But if he did see them they were just merely  
3 present. They were not working and assisting with one  
4 another. You can't impute what Tremaine did or what Taurus  
5 did to the other. They're just merely present. Focus on a  
6 white Nissan Pathfinder with a black stripe.

7 I asked Deputy Galinski, and everyone knows what they  
8 look like, Isuzu Rodeos are very similar in model as white  
9 Pathfinder, and it's a white SUV with a black stripe. It's  
10 clearly the white Rodeo Isuzu. It's just smoke and mirrors  
11 to distract you.

12 Focus on the GSR kit for the Isuzu Rodeo in a closet,  
13 as it was referred to, a closet, you know, with people's  
14 clothes and shoes. Not an evidence locker that is  
15 maintained in a locked fashion with only the lab technician  
16 and his direct supervisor having access to it. In a locked  
17 laboratory in a Sheriff's Department. There's a difference  
18 in being in a closet in your home verses a locked evidence  
19 locker in a locked and secure crime lab unit in a Richland  
20 County Sheriff's Department. You heard from Agent Moskal,  
21 the fact that it was stored for seven months, and  
22 Investigator Bouknight told you that that's not -- he should  
23 have put it in the same day with the rest of it. It was  
24 behind a box with his diluted solutions and whatever he had  
25 in there. Mistakes happen. We're human beings. Law

1 enforcement are human beings, as well. But you heard from  
2 Agent Moskal, once it's collected and on that sticky tab  
3 it's not going anywhere. It will not degrade. Smoke and  
4 mirrors.

5 Focus on the fact that Landrum and Greene's hands not  
6 bagged. Well, why even talk about Landrum. We know he  
7 didn't fire a shot. Attack Brian Watson. Obviously, no one  
8 in here is going to want Brian Watson over for dinner,  
9 right. I certainly don't. But when he tells you that Mr.  
10 Watts and he ran into one another and Mr. Watts tells him,  
11 I'm going to get away with it. I'm going to get away with  
12 it. All they have is an eyewitness. No gun, no GSR.

13 Well, isn't that interesting. That just happens to be  
14 the evidence in this case, and how would Brian Watson know  
15 that unless it came from the source. And no GSR was  
16 collected on Taurus and Tremaine because they were not  
17 apprehended until after 24 hours. Tremaine Wray was  
18 arrested on July 1, in the evening hours, afternoon hours.  
19 Taurus was arrested July 3, at 7:40 p.m.

20 They attacked Investigator McRae for failing to  
21 interview Marcus Gordan and Timothy Weldon, but it's  
22 apparently the fact that he interviewed Stephanie and --  
23 these witnesses were interviewed; Stephanie, and Verda, and  
24 Charlie, at the hospital. Timothy Weldon and Marcus Gordon  
25 were not part of their party. And there's just so many

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1 details as to what happened.

2 This is what happened. A drink was thrown in his face,  
3 this guy punched me. I identified him in a photographic  
4 lineup and -- I mean, what else is there to talk about the  
5 fight. And obviously the fight led to the shooting. It's  
6 not like they were having tea at the H&J club on June 30,  
7 and for no reason they're being shot at. It's clearly  
8 related.

9 Then ladies and gentlemen, they don't attack the crime  
10 scene investigator at all. I was pleasantly surprised.  
11 Because what is there to argue with. It is meticulously  
12 documented, meticulously collected. There's nothing to  
13 attack. And it what it is. Everything was found where it  
14 was.

15 And again, I'm anticipating. No gun. We know that  
16 Wray gave his gun to Jarrell, his first cousin. And if he  
17 had time to get rid of his gun, to dispose of his gun,  
18 what's to say that he didn't have time to get in his tan  
19 Suburban and if there happened to be any shell casings from  
20 the firing of the gun, that he got rid of those, too, before  
21 he went to work at the Outback. And I already covered that.  
22 And it is a tan Suburban, silver or tan? That's another  
23 thing I wanted to bring to your attention. Here's the Isuzu  
24 Rodeo, looks like a Nissan Pathfinder with a black stripe.  
25 Here is the Chevy Suburban, GMC makes -- they own Chevrolet.

1 This is the car, okay, ladies and gentlemen. This  
2 photograph was brought to the attention of one of the  
3 witnesses about this tan SUV in the parking lot. Well, I'm  
4 not an expert on models and makes and so forth, but that  
5 appears to be a Tahoe. This appears to be a Suburban, made  
6 by the same company, but look at it closely. This is more  
7 square. I mean, obviously this is not the same truck  
8 because it was already gone. This car was witnessed back at  
9 the grandmother's house at 425 Briarcliff. It's not the  
10 same car. Smoke and mirrors.

11 And the last thing I can think of, ladies and  
12 gentlemen, is if they did it, then it was in the heat of  
13 passion. To mitigate the crime of murder to voluntary  
14 manslaughter. So really if you believe Ricky Jacobs that he  
15 saw Taurus and Tremaine, well, they were just merely  
16 present. But if that doesn't work it was in the heat of  
17 passion.

18 We know that they were involved. Taurus Watts tells  
19 Gallegos: It's strange why the other side -- all right, so  
20 we're on sides -- involved were not patted down. He and his  
21 friends were always checked for weapons, during the fight.  
22 Obviously you're there if you're saying during the fight the  
23 other side pulled out firearms. So he's placing himself  
24 inside the bar during the fight. It took security a while  
25 to close down. They had an opportunity to go outside to

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1 Tremaine's car and go get the Mac 10 or the M-11, whatever,  
2 and then try to work their way back in. I mean, they had  
3 the time. It wasn't the fight ended and the shots  
4 immediately started. There was time.

5 Ladies and gentlemen, I'm going to wrap it up now.  
6 It's been long enough. Taurus Watts said in March of 2009  
7 that he was going to get away with it.

8 MS. JOHNS: Your Honor, she's got that displayed  
9 right there in quotation marks and I don't know if that's  
10 appropriate because this is just the testimony of a witness,  
11 and it's not recorded and I think she's using that quotation  
12 mark improperly.

13 MS. SHIPLEY: Your Honor, it's in evidence.

14 THE COURT: Okay. If it's in evidence, you all can  
15 call it exactly what it is. If it's not a direct quote that  
16 you all recall then don't accept it as such.

17 Go ahead.

18 MS. SHIPLEY: March 2009, he told Brian Watson,  
19 that he was going to get away with it.

20 Ladies and gentlemen, on behalf of the state of South  
21 Carolina, on behalf of the Johnson family, we're asking you  
22 to hold them accountable for their reckless disregard for  
23 the safety of everyone in that parking lot and taking the  
24 life of Demuria Johnson. We ask that you hold them  
25 accountable and you find them both guilty of murder.

1 Thank you.

2 THE COURT: We're going to take a short break,  
3 because I don't know how long the other might be. You all  
4 are reminded not to discuss the case until it's given to  
5 you.

6 (Jury out at 12:35 p.m)

7 THE COURT: You all be at ease for about 15  
8 minutes.

9 (Court at recess for short break.)

10 (Court in session after short break.)

11 THE COURT: Do you have that note from the jury  
12 marked as a Court's Exhibit.

13 COURT REPORTER: Yes, ma'am. That's Court's No. 6.

14 (Court's Exhibit No. 7, jury note,  
15 foreman, No. 218, Harry R. Patterson, Jr.)

16 THE COURT: Are you all ready?

17 MS. SHIPLEY: Yes, ma'am.

18 MS. JOHNS: Defense is ready.

19 THE COURT: All right. Jurors, please.

20 (Jury in at 12:55 p.m.)

21 THE BAILIFF: Jury's all present, Your Honor.

22 THE COURT: Ms. Johns, you may proceed with your  
23 closing argument.

24 MS. JOHNS: Thank Your Honor. May it please the  
25 Court.

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1 Ladies and gentlemen, I represent Taurus Watts in this  
2 case.

3 We've come to that part in the trial where Taurus Watts  
4 sits here, still innocent, based on the presumption of his  
5 innocence. You, right now, don't have any choice, based on  
6 your oath, you have to presume him innocent. At this very  
7 moment, as if he was sitting with you. As if each and every  
8 one of you had him cloaked in a robe of righteousness where  
9 this robe protects him from any presumption of guilt. This  
10 robe protects him from any attacks on Taurus Watts.

11 Right now, ladies and gentlemen, I'm going to do the  
12 best that I can do to help your recollection of the facts of  
13 this case. One thing that I think is very important, and  
14 the Judge will instruct you that in each and every case  
15 where we have a defendant that has pled not guilty is two  
16 words that you can use and take with you throughout this  
17 trial and those two words are not guilty. And that's what  
18 Taurus Watts is saying as he sits next to me. That's what  
19 Taurus Watts said on the day that he was arrested. That's  
20 what Taurus Watts has said on the day that he turned himself  
21 in to the Richland County Sheriff's Department.

22 MS. SHIPLEY: Objection. Facts not in evidence.

23 THE COURT: You all should recall only the facts  
24 that are in evidence.

25 MS. JOHNS: A presumption of innocence involves two

1 words, not guilty. You must presume him innocent. The  
2 virtue of him sitting in a courtroom exercising his right to  
3 a jury trial, he is saying I am not guilty. He's been  
4 saying that since the day he turned himself in. You can  
5 take that any way you want to. That's what he says and  
6 that's what we're going to go with.

7 This has been a long case, and I will just try to  
8 highlight some issues that I think are very important to Mr.  
9 Watts.

10 On June 30, 2007, it's 4:00 a.m. you had people from  
11 St. Matthews who drove all the way into Columbia, up North  
12 Main Street to drink, play cards, and eventually go out to a  
13 club. Those people were Verda Roberts, Stephanie Boston,  
14 Travis Malone, James Lamont Goodwine, and Demuria Johnson.

15 Now, you heard from the testimony from the witnesses  
16 that were here, which was Lamont Goodwine, Stephanie Boston,  
17 Verda Roberts and Charlie Bates, that they were drinking.  
18 They had been drinking. They were drinking over at one of  
19 the ladies house over off North Main, and what compelled  
20 them to jump in a car and drive all the way across town to  
21 Hardscrabble Road? Well, it's easy. It's easy to determine  
22 why they did that. They did that because Charlie Bates  
23 wanted to go over there to run into Lisa Johnson. You know,  
24 surely this relationship that as tumultuous was something  
25 that he was interested in, and that was his reason for going

1 over there.

2           When they arrived, the state stipulated that there had  
3 been drinking -- and, well, I'll get to that in a minute.  
4 When they had arrived Lisa Johnson shows up. It's 3:00  
5 o'clock in the morning. And you heard Charlie Bates say on  
6 the witness stand that he had been told that Lisa was there.  
7 And that was his interest. And regardless of what Lisa did  
8 or what time she got there, it's no fault of hers that this  
9 fault broke out. I mean, just because she happened to be  
10 the subject of someone's affection does not in and of itself  
11 indicate that she should be at fault for anything. In fact,  
12 she was trying to prevent anything from happening.  
13 Regardless of what she was seeing, who she was dating it  
14 doesn't matter what her intentions were, but Charlie Bates  
15 after drinking for several hours, whether that be at this  
16 club or whether that be at one of his sister's mother's  
17 house somewhere off North Main, he had been drinking. And  
18 we all know what happens when you start to drink and you mix  
19 alcohol, drugs, love, music, dancing and females. Everybody  
20 established a little bit of pride and that's exactly what  
21 Charlie Bates did that night. He was establishing his  
22 pride, and in the end what happened was somebody got  
23 offended and it resulted in a fight. There is no dispute  
24 whatsoever that Charlie Bates got hit in the face. There's  
25 no dispute about Bryan Johnson being involved. There was no

1 dispute about who was there and who Lisa Johnson met. We're  
2 not trying that part of the case. I think that we can all  
3 concede that there was a fight. However, this fight is what  
4 led to the chaos in this club. And what you had to do is  
5 although the investigation in this case led to statements by  
6 every party that had come with Demuria Johnson that night,  
7 that is not complete. Just receiving statements from them  
8 does not complete the investigation, because if their  
9 statements alone completed the investigation we would have  
10 proof alone beyond a reasonable doubt that a fight occurred.

11 That's not why we're here. We're not here to determine  
12 if a fight occurred. We're here to determine who shot  
13 Demuria Johnson. Plain and simple. Who shot him. And it's  
14 your job to determine who that person was. It's not your  
15 job to speculate as to why, the people in the fight, whether  
16 or not there was corroborating forensic evidence. That's  
17 not your job to determine the level of scientific certainty  
18 in this case.

19 Your job is to figure out who shot Demuria Johnson.  
20 That is just as plain and just as simple as I can make it  
21 for you. And if you determine that my client, Taurus Watts,  
22 shot Demuria Johnson, then you would have no choice, after  
23 determining whether or not it was beyond a reasonable doubt  
24 to convict him. I'm not going to get up here and, as the  
25 state has submitted to you, cause a lot of smoke and mirrors

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1 for you. That's not my job. My job is to get up here and  
2 tell you what highlights reasonable doubt in this case.  
3 That's not smoke and mirrors, ladies and gentlemen. That's  
4 everybody's right to come in here to court and determine  
5 whether the 12 of you can agree on who shot Demuria Johnson.

6 And what we have to look at, we have to look at all the  
7 facts, and after looking at all of the fact, we then have to  
8 determine if reasonable doubt exists, because if reasonable  
9 doubt exists in any of your minds, then you must  
10 collectively agree to that and come back with a verdict of  
11 not guilty of Taurus Watts. It's not smoke and mirrors.  
12 I'm not trying to make you do something that you're not  
13 inclined to do. I just want you to use your common sense in  
14 this case and you establish that there's reasonable doubt in  
15 this case, you should have no problems coming back into this  
16 courtroom and rendering a verdict of not guilty, because  
17 that is what the law is. The law is that if you have a  
18 doubt for which you can state a reason, that's what your  
19 duty is.

20 Now, what I'm going to do is have you look at these two  
21 exhibits right here. This is the arial view of the club. I  
22 want you to look at this arial view of the club, and I want  
23 ask yourself whether or not the eyewitness testimony from  
24 Ricky Jacobs is believable. I'm not coming in here saying  
25 that Ricky Jacobs is a liar. I don't know Ricky Jacobs. I

1 can't tell you that. But I want you to look at this, and I  
2 want you to determine whether or not his testimony is  
3 believable, therefore reliable.

4 It's easy to see, we've all determined this through  
5 witnesses, the exhibit shows Hardscrabble Road and the blue  
6 rooftop indicates the store that is connected to the H&J  
7 club or Chaser's pub. It's been established that the canopy  
8 that extends from the blue rooftop and goes out towards the  
9 roadway and to the right covers up gas pumps that were no  
10 longer working, at this particular time. I want you to then  
11 establish in your minds it being dark. And when Mr. Jacobs  
12 is inside his club, which is over here on the corner, which  
13 includes this back deck. You're going to have to walk  
14 through his testimony and you're going to have to determine  
15 whether or not he had an opportunity to view the defendant  
16 at the time of the crime. There is evidence that says that  
17 Taurus Watts was at the club. You're going to have to make  
18 a determination as to whether or not that evidence is true.  
19 If you determine that evidence is true, that Mr. Watts was  
20 at the club, you're going to have to look at Ricky Jacobs  
21 testimony and then determine number one, his opportunity to  
22 view the defendant at the time of the crime. Not at the  
23 time he was in the club, but at the time of the crime. Was  
24 the crime a shooting, a murder. What was Ricky Jacobs  
25 opportunity at the time of the crime to view Mr. Watts.

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1 Okay. We already know, and we've already established, had  
2 been there for 34 years. That he's known Taurus Watts for  
3 20 years. That Taurus Watts's mother used to cook in this  
4 little area, Granny's Home Cooking, right here between the  
5 store and the club. His mother used to work there. Worked  
6 for his father, Eugene Jacobs, and worked for him. So he's  
7 known Mr. Watts for 20 years. There's no question that he  
8 knew Mr. Watts on June 30, 2007. There's no doubt about him  
9 knowing Mr. Watts. There's no doubt knowing that if he's to  
10 see Mr. Watts over a 20 year period and in 2007 sees Taurus,  
11 he's going to recognize Taurus. He's going to know who  
12 Taurus is. That's common sense. That's the kind of common  
13 sense I'm asking you to trust. You have to trust your  
14 common sense.

15 Second thing that you have to determine is Mr. Jacobs,  
16 what was his degree of attention in this particular case.  
17 All right. What that means is take the circumstances that  
18 was given in this case with regard to what was going on in  
19 that club and determine whether Mr. Jacobs degree of  
20 attention was to the level that he could remember Taurus  
21 Watts and saw him at the time of the crime. Not at the time  
22 that he was in the club, not at the time that he was, you  
23 know, talking to somebody, not at the time that he was  
24 walking out, not at the time that he was getting into any  
25 vehicle. Because the state hasn't established what vehicle.

1 Ricky Jacobs said he got into a tan Suburban. And look at  
2 the degree of attention that Ricky Jacobs had to give to  
3 Taurus Watts at the time of the crime.

4 Now, briefly let me go over this with you again. There  
5 is a fight in the bar. There are major punches being  
6 thrown. You heard Charlie Bates had his lip fall open. You  
7 had testimony that Verda Roberts and Stephanie Boston were  
8 throwing beer bottles at people. You had testimony from  
9 Investigator McRae that there was a Marcus Gordon, who was  
10 at the hospital, who may have been grazed by a bullet. You  
11 had testimony in there that there was a bouncer in there  
12 that was trying to break up the fight. You had Bryan  
13 Johnson who was trying to break up the fight. You had a man  
14 who was backing out of the club with a gun. Okay. You had  
15 chaos, as it's been described, in this club. So these are  
16 the circumstances that Ricky Jacobs is operating under, and  
17 what he does is he leaves from behind the bar. He goes and  
18 tells the DJ to kill the music. And once the music is  
19 killed the lights come on, and what does Mr. Jacobs do? He  
20 goes and he gets Sherman, who is one of his bouncers and  
21 security officers, who is patting down people, takes him off  
22 the door, puts him behind the bar, and Ricky Jacobs goes to  
23 get his bar. As he does every night when he closes. That  
24 was his testimony. So Ricky Jacobs is going to leave the  
25 interior of his club in this kind of chaos. And you heard

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1 him on the witness stand. He's the one that said that he  
2 saw somebody standing in his doorway with a gun.

3 He's the club owner. He's been in business all these  
4 years. I mean, he is open every night of the week at least  
5 until 2:00 a.m., and on this particular night, which was a  
6 Friday night, he leaves the bar open longer because the law  
7 permits it. So he takes one of his security officers off  
8 the door and he puts him behind the bar, and then he walks  
9 to go get his car. When he goes to get his car, you have to  
10 imagine the walk with him. He has to go from the front of  
11 his club all the way past Granny's Home Cooking kitchen,  
12 through this area before you get to the canopy. Walk  
13 through the canopy, walk past the canopy. Continue walking  
14 towards his father's house. The two phone booth thing to  
15 his right. Walk towards the road. Watch for traffic.  
16 Cross over the first lane. Watch for traffic in the other  
17 direction. Cross over that lane, and get somewhere up here  
18 where his father's house is to get his car, because that's  
19 important to him.

20 And guess who's inside the bar taking care of things,  
21 behind the bar watching his money? His security officer.  
22 His bouncer. Sherman, Kelly, somebody. Those two people he  
23 named as employees. So one of his bouncers in the bar  
24 taking care of the money, who's watching the bar. And you  
25 heard Lisa Johnson say you had to pay \$5.00 to get in and

1 they wanted females and they pat people down. That's  
2 important. I think that's a good business thing. When  
3 you've got a club open until 4:00 a.m., that's a good thing  
4 to do. That is taking care of your patrons, it's taking  
5 care of your business. It's making sure that you can  
6 continue to stay open so you can continue to make income,  
7 because if things like this continue to happen you will  
8 eventually be closed down, and you had to do what you have  
9 to do as an owner of a business like that to prevent  
10 anything from happening.

11 So you got to walk with Ricky Jacobs all the way to his  
12 car, which is at his father's house on this corner right  
13 here. Now, you have to also visualize that he had just  
14 closed the club down. There were 40 or 50 people inside  
15 this club. They didn't take the bus to come to this  
16 location. They didn't take a field trip on some Greyhound  
17 bus. They got there in automobiles. So you can imagine how  
18 many cars were at this location prior to anybody from  
19 forensics showing up to take these photographs. You have to  
20 imagine how are those 40 or 50 people going to get from the  
21 club to their homes? And you have to imagine all the cars  
22 that were parked in this area. And you heard testimony, all  
23 along Goodrich, all along parts of this road, up in front of  
24 this -- it was so bad that the owner of this house had to  
25 ask permission to post signs for no parking, because he

1 didn't own this road. This road is owned by the state.  
2 This road is not owned by any private individual. So the  
3 parking at this club was so bad that he had to get special  
4 permission to do that. When you've got cars parking over  
5 here at this car wash, all through these bays, all through  
6 here, and sometimes even over here where this barber shop  
7 is. Down these roads, down the road his father lives on,  
8 down Summercrest Road. You have to navigate through those  
9 obstacles.

10 So under the circumstances you have to look at Ricky  
11 Jacobs degree of attention to what he says he eye witnessed  
12 at the time of the crime. Thirdly, the accuracy of the  
13 witnesses prior description of the defendant. We don't even  
14 need to get there, because he knew him for 20 years. Why  
15 are we wasting all this time on the description of the  
16 defendant. When? At the time of the crime, not the time he  
17 was in the club. The time of the crime. And what does he  
18 say he sees? He says he sees my client with a gun. That's  
19 pretty serious. When he sees him with this gun, how do you  
20 know it's Taurus Watts? Because I'm trying to give the  
21 investigators a full description of who it was. I gave them  
22 height, I gave them weight, I gave them what he was wearing,  
23 I gave them a hair choice. What was that? A low hair cut.  
24 A dread lock hair cut. A twist hair cut. Why does that  
25 matter, if he knows Taurus Watts, a description is

1 irrelevant with regard to who he saw. Is there any doubt in  
2 your mind that he saw Taurus Watts that night? No. Move on  
3 to the next step. Is there any doubt in your mind that he  
4 saw Taurus Watts at the time of the crime? Ask yourself  
5 that. Go through number two. There's no question that he  
6 knows Taurus Watts. He can pick Taurus Watts out of all of  
7 us sitting here in the courtroom. He could see him down at  
8 a grocery store in this neighborhood and know that was  
9 Taurus Watts. He knew his mother. So it's almost a waste  
10 of time for it, because he knew the defendant. So the  
11 description of him doesn't matter. What does matter to him,  
12 however, is whether or not he saw Taurus with a gun, and  
13 ladies and gentlemen, seeing somebody with a gun and seeing  
14 somebody shoot a gun are completely different accusations.  
15 So the accuracy of the witness prior description. This  
16 description is important because he describes Taurus Watts  
17 with a gun. How does he describe Taurus Watts with gun? He  
18 describes Taurus Watts with a gun that was wrapped in some  
19 white towel or shirt or something. Because at one point he  
20 said that his hand was covering the gun. That his hand was  
21 covering a pistol that is that size. And when asked on  
22 cross-examination he said, no, no, I can't say that for  
23 sure, because all I saw was the clip and the barrel. The  
24 barrel, you can see a barrel? It's shorter than the end of  
25 this pen, the barrel. So he sees a clip. Is there any doubt

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1 that he saw a gun that night? Maybe. Maybe, he did see a  
2 gun, but the gun was wrapped in something white. Okay. And  
3 if that gun was wrapped in something white, who was holding  
4 that gun.

5 So that's the only reason why number three is important  
6 is because of the description of Taurus holding the gun, and  
7 when you think about that go back and see the circumstances  
8 that were surrounding that. Level of certainty. Level of  
9 certainty. Certainly he is certain about who Taurus Watts  
10 is. Level of certainty about a gun. He can come in here  
11 and testify, but you, as jurors, are charged with deciding  
12 based on the degree of attention and the opportunity to view  
13 the defendant at the time of the crime, everything that was  
14 going on from his walk from this door all the way to his  
15 father's house. And then getting into his car and driving  
16 back to the front of his club. That was his testimony. So  
17 level of certainty.

18 Now, he already tells you that he saw somebody backing  
19 out of the club with a handgun. Did he describe that gun  
20 for you. Did he tell you what that gun looked like? You  
21 know he had an opportunity to go through a number of guns  
22 because we're looking right here at State's Exhibit No. 140,  
23 and we have automatic guns, we have revolvers. We have six  
24 on one page, six on another. A little tiny gun. Ones with  
25 long barrels, ones with long barrels. Some semi-automatics,

1 some automatics. And you know what, just in case we threw  
2 some rifles in here as well, just in case. Just in case,  
3 okay, because definitely you can see a barrel on a rifle.  
4 So throw those in here -- I'm sorry, two pages of rifles.  
5 So you know, you have to think about those things, ladies  
6 and gentlemen.

7 And number five, think about the time between the crime  
8 and the identification. Why spend all this time on --  
9 between the crime and the ID? I mean, if he knew it was  
10 Taurus Watts, it was Taurus Watts. The state wants to  
11 allege that the reason that he didn't come off with Taurus's  
12 name is the very beginning is because there were people  
13 around. What does he care if there were people around. He  
14 runs this place. He tells people when they are allowed to  
15 come in when they are not allowed to come in. He tells them  
16 whether they can come in, if they can have a drink, how much  
17 it's going to cost them to get in there. He tells Kelly  
18 what to do. He tells the lady to charge \$5.00. The  
19 identification of Taurus Watts has always, always been un-  
20 controverted. The time between the crime and the  
21 identification merely because he didn't want to say anything  
22 to anybody else? Why? I mean, he has the ability to bar  
23 people, to ban people from the bar. Why does he care  
24 whether or not somebody hears him say, I know it was Taurus  
25 Watts? Well, it might have been because he had been working

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1 12, 14, 18 hours. You know, his bar opens at 4:00 o'clock  
2 in the afternoon. This was 4:00 o'clock in the morning.  
3 Maybe it's because he knew Officer McRae and he wanted to  
4 tell Officer McRae everything he knew because he didn't want  
5 to get shut down. I don't know what his motive was to wait  
6 to say, oh, I saw Taurus Watts with a gun. Why doesn't he  
7 tell anybody. Because if you're trying to run a legal  
8 business and something like this happens and you are certain  
9 it's Taurus Watts, what do you care. Call the police. Call  
10 911 and say, hey, this is so-and-so at the H&J club. I have  
11 to call in a shooting. And his reason was -- for not  
12 calling 911 was he didn't have his phone on him. Well, he  
13 could have borrowed somebody's phone. If you're an eye  
14 witness. He could have gone back into the bar and called  
15 from the phone in the bar. You could have called the  
16 Sheriff's Department and specifically asked for Mr. McRae.  
17 There are a lot of things you could have done, but you did  
18 not do, and now you want a jury sitting on the trial in the  
19 State verses Taurus Watts to believe the reason you didn't  
20 say his name at the beginning is because you didn't want  
21 anybody to hear you. How about this, how about just call  
22 911 and say there's been a shooting or there's been gunfire  
23 at my place of business. Can you please come down here and  
24 help me because I have one of my two bouncers behind the bar  
25 watching the money and I can't control the crowd. Is that

1 reasonable to think that somebody might do that after 34  
2 years of business. You heard Mr. McRae, he had patrolled  
3 this area even when he was on the road, no problem. So the  
4 time between the crime and the ID means nothing.

5 So when the state presents this to you and says that  
6 Ricky Jacobs is an eye witness to this crime. We can agree  
7 that he is working the bar when the fight breaks out by the  
8 door to the deck area, the dance floor. See Bryan Johnson.  
9 Closing down bar because of fight. Guy came in to get his  
10 mother. This is from Ricky Jacobs. These were new faces or  
11 did Charlie Bates go in to get his mother. Why didn't know  
12 that? Did he knew Charlie Bates. Did he know Lisa Johnson,  
13 did he know Stephanie Boston, did he know Verda Roberts?

14 Well, I'm going to tell you that seven days ago or  
15 eight days ago when Stephanie Boston and Verda Roberts took  
16 the stand they said that they would speak to the owner every  
17 time they would go in there.

18 Guy came in to get his mother. Did he say it was  
19 Charlie Bates? No. Did he say it was Demuria Johnson  
20 coming back in there with a gun because his friend got in a  
21 fight? No. But he does know there was a fight.

22 Leaves security to watch bar and leaves to go get his  
23 car from his dad's house from across the street. Here we  
24 go. Leaves to go get his car from his dad's house across  
25 the street.

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1           Just like I said, you're going to have to look at this  
2 and walk with him to determine whether or not he was an eye  
3 witness. He sees a man with a red shirt backing out of the  
4 bar with a gun. But he never sees him shoot. Of course, he  
5 never sees him shoot, do you know why? Because he's walking  
6 away from the door of the bar to his father's house to get  
7 his car, and he's going in this direction. He's not looking  
8 behind him. Walking through parking lot through gas pumps  
9 and sees Taurus Watts and Tremaine Wray walking towards bar.

10           So he's walking through the parking lot by the gas  
11 pumps and see Tremaine Wray and Taurus Watts walking towards  
12 the bar. Didn't he say that Tremaine Wray was inside the  
13 bar? Now, he's got him walking towards the bar. Where is  
14 his testimony that he saw Taurus Watts leaving the bar?  
15 Never. You have to question that one. Has known Taurus for  
16 19 years, awesome. We don't have to establish an  
17 identification. No height, no weight.

18           Seen Tremaine in the bar before, knew his face. I'm  
19 not going to comment on that. I'm going to let his lawyer  
20 do that.

21           Had seen at least Taurus inside the bar earlier. Good.  
22 Still doesn't have him leaving the bar. Told him that they  
23 were closing and Taurus mumbled something. Well, if Taurus  
24 is inside the bar while this fight is going on, and the  
25 music is killed and the lights come on. He already knows it

1 closing. He doesn't need to be told it's closing.

2 They turned around and walked to their car by the gas  
3 pumps. Is there any information that this is Taurus's car,  
4 at all? Is there any testimony in this trial at all, other  
5 than Ricky Jacobs, that puts Taurus Watts, my client, in a  
6 vehicle, any vehicle. Rodeo Isuzu, Envoy, HHR, any of the  
7 other vehicles that were seen at this location such as the  
8 Tahoe at the gas pumps. Is there any testimony or evidence  
9 that has come in this court that says Taurus Watts got in  
10 any vehicle other than Ricky Jacobs. And does he say whose  
11 vehicle that he got into? No. He just says, got into their  
12 car.

13 Tan Tahoe right here at the scene. Whose car is that?  
14 I don't know. Didn't matter. Already got a name. Taurus  
15 Watts. We're just going to go with that. Let's just go  
16 with that.

17 Saw them getting into this tan Suburban. Let's go with  
18 this tan, okay, because I know that's important. The reason  
19 it's important is that you heard Investigator McRae on the  
20 stand say, well, you know, looking at the pictures it could  
21 have been silver, tan, gold, white. Is that good enough for  
22 you? Are you satisfied with that? Are you satisfied with  
23 it being one of those four colors? Because if you are you  
24 have to weigh that with your own common sense as responsible  
25 doubt. You have four color choices, and the kind of vehicle

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1 that they got into, alleged by the state.

2 Black gun wrapped in white clothing. Had to pass  
3 passenger side of Suburban and see Taurus Watts with a black  
4 gun wrapped in white cloth. Black gun wrapped in white  
5 clothing. Didn't have to see him. That's what he testified  
6 he saw. Past the passenger side. Where did he say that the  
7 car that was being driven by Tremaine Wray was parked? Over  
8 here in this area. And if you pull into that area how can  
9 you pass by the passenger side, because if you're walking  
10 from the club across the street to go get your car while a  
11 fight is going on, you're going to look over here past the  
12 passenger side door.

13 Now there's been some testimony that maybe the car  
14 wasn't over here, it was over here somewhere, near the phone  
15 booths. So what does that mean? Does that mean he saw  
16 Taurus Watts get into a car over here near the store and  
17 then he went to go get his car and by the time he got back  
18 from getting his car and coming back down here, then he sees  
19 Taurus Watts -- or he sees Tremaine Wray in the driver's  
20 seat. Was that five or ten minutes? How long is it going  
21 to take you to go from this door all the way across the  
22 street to your daddy's house, which by the way is not  
23 depicted in this photograph. I don't know if they couldn't  
24 get it or the satellite image or not. All this right here  
25 they had room, but they didn't put that on here, because,

1 you know, that was just going to be testimony.

2 But how long does it take to walk from here, see a guy  
3 backing out of the bar with a gun with a red shirt on. Go  
4 through the gas pumps. Witness somebody getting into the  
5 passenger side of a tan vehicle. Go across here. All the  
6 way to your daddy's house. Jump into your Dodge, Chrysler  
7 Charger, which means you had to get in the car and lost line  
8 of sight. And then, -- oh, I forgot. Had to wait for  
9 traffic because people were leaving. Then get into your  
10 car, pull up to the road, wait for traffic, take a right and  
11 then pull it into the club. Five, 10 minutes. How long  
12 does it take one to do that?

13 So if he saw Taurus Watts get into the vehicle out of  
14 those five to 10 minutes it took him to go get his car, when  
15 did he see that happen? Well, he claims that he saw that  
16 before he saw the Isuzu. And I'm going to put a star by  
17 that because I'm going to come back to it. Which is wrapped  
18 in white clothing, and he could see that it had a long  
19 barrel and a long clip. He keeps watching the tan Suburban  
20 as it drives down Hardscrabble. Ask yourself, using your  
21 common sense, if that's possible, if that's probable, if you  
22 can believe Ricky Jacobs. Now, I'm not saying he's lying  
23 under oath or anything like that, but you'd certainly want  
24 to get it right because we don't want our bar closed. But  
25 it says -- let me repeat it again. Keeps watching the tan

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1 Suburban as it drives down Hardscrabble.

2           So here's his testimony. Fight in the bar -- leaves  
3 the bar, sees a guy backing out with a gun, continues to  
4 walk back past him. Has to walk all the way to the gas  
5 pumps. He claims that he sees Taurus Watts with a black gun  
6 wrapped in white clothing. As he's passing them or coming  
7 towards them he says, man, we're closed. Taurus mumbled  
8 something, and he sees him get into the passenger side of a  
9 tan Suburban over here. And he continues to walk. The  
10 whole time he's walking, what is he doing? Walking towards  
11 his father's house. He's going to keep an eye on this tan  
12 Suburban the whole time, to see what's going on with the tan  
13 Suburban or is it such common place that guns are brought to  
14 this club that he didn't think twice about it and just went  
15 on to his car. Nonetheless, certainly by the time he gets  
16 to the road or get up near the road, he's got to stop  
17 looking at the tan Suburban to cross the road. Even if he's  
18 walking backwards he's going to have to stop and look before  
19 he crosses that road, especially on this night because it  
20 was so chaotic and people were scrambling and people were  
21 leaving.

22           So as far as him keeping an eye on this tan Suburban  
23 just use your common sense on that one. I'm not going to  
24 beat that down in any way.

25           As he reaches the middle of the street he hears several

1 shots fired and he sees flash mussel from the driver's side  
2 of the tan Suburban towards the crowd at the car wash.  
3 Cannot say who fired the shots because the car was too far  
4 away because he is over here when he's crossing the road and  
5 he's claiming the tan Suburban is way down here, or here, or  
6 at the end of the club, or at the car wash or maybe over  
7 here making a U-turn, but he says, honestly, it's too far  
8 away.

9 I showed you State's No. 53, yesterday. It's in this  
10 pile somewhere, but I'm going to hold up 94 right now and  
11 it's already getting a little bit of daylight. Tell me, how  
12 are you going to see a vehicle on this side of Hardscrabble  
13 Road getting in your car, all the way down here and tell me  
14 what color it is. How are you going to do that? Well, I'll  
15 tell you how you're going to do that, because you have four  
16 paint colors to chose from. You can choose tan, you can  
17 choose white, you can choose silver, and you can chose gold.  
18 And it's not even a Suburban. It's made by GMC. Why do we  
19 keep calling it a Suburban?

20 Now, he can't see. He's already told you that he can't  
21 see. Now, when he tells you that he can't see, then you  
22 have to look back and you have to ask yourself again about  
23 opportunity to view the defendant at the time of the crime.

24 State wants to have it both ways. They want you to  
25 believe that Taurus Watts is the shooter, and if you don't

1 believe he's the shooter, they want Tremaine Wray to be the  
2 shooter.

3 Then he says he saw two guys by the Rodeo and the  
4 driver had dreads. The passenger had a low hair cut and  
5 have a pistol. What did the pistol look like? I don't know.  
6 I didn't have enough choices to choose from. Was it black?  
7 I don't know. Was it silver? I don't know, I don't  
8 remember.

9 So once again, you have Ricky Jacobs with another  
10 opportunity to ask for assistance from local law enforcement  
11 and he chooses not to. Second, third gun -- excuse me --  
12 third gun he sees. Still no 911. But he's able to tell law  
13 enforcement that the pistol was smaller than the gun Taurus  
14 had. We don't know that. Sure it's consistent with the  
15 rest of the witnesses that were in here, but that doesn't  
16 mean anything, because we have no idea what kind of pistol  
17 it was. If he can't pick it out of that four pages of  
18 examples of guns.

19 Then he pulls up and he parks in front of the bar. I  
20 want you to look through each and every one of these  
21 photographs, and I want you to show me where in any of these  
22 photographs that you see a Dodge Charger? Just asking.  
23 Pulled up in front of the bar and he stayed there until  
24 McRae comes out and talks to him, once, twice -- what does  
25 it matter.

1           The CSI team was already on the scene and we know that  
2 because the CSI team is the team that took the photographs  
3 and his car is not there. And where could it have been,  
4 because we know he was in the investigator's truck riding  
5 around looking for Tremaine Wray's tan Suburban over in  
6 Washington Heights because that's the only place in Columbia  
7 where people own tan Suburban's. So he could be driving  
8 his Charger to go to the bank drop off or anything like that  
9 to take care of his business, but we know his car was not  
10 parked in front of the bar. So when you use your common  
11 sense think about that. Think, well, if he could make a  
12 mistake about walking across the street and getting into his  
13 car and driving it across the street to the club, surely he  
14 could be making a mistake about the identification of  
15 somebody holding a gun or the gun itself. Surely that could  
16 be a mistake. So parks his car in front of the bar.  
17 Nothing on that.

18           After the tan Suburban, down the street, and after he  
19 parks his car in front of the bar, see fires -- the tan  
20 Suburban fires several shots towards the car wash and the  
21 white Isuzu Rodeo pulls a U-turn and the passenger shoots  
22 one time, just one time in the air. And that's real  
23 important for the state, because certainly if you have a  
24 semi-automatic pistol that carries 9 millimeter bullets, you  
25 can only shoot it once, and the only reason we know that is

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1 because you have Ricky Jacobs that says so. Does that makes  
2 sense to you, somebody's going to have one of those cowboy  
3 moments and they're going to shoot out the side passenger  
4 window of a vehicle and it has to be only one time. I mean,  
5 if they're doing it at all they're either going to shoot at  
6 somebody or shoot for the thrill of it. Who knows, but  
7 that's real important to the state.

8 And I submit to you that there is nothing else that  
9 says it was only one shot. If it was an automatic pistol or  
10 an automatic M-10 that the Isuzu was shooting from that's  
11 consistent with the state's theory. Consistent with. The  
12 fact that there was a gunshot from the Isuzu Rodeo itself is  
13 consistent with the guys in the Rodeo being the shooter.

14 Now, don't take my word for it, because we all know  
15 that forensic science does not lie. We all know it's from  
16 the same gun. We don't know if it's from a revolver, but  
17 let me point you to this as a potential reason -- If  
18 somebody is shooting an automatic weapon and they're leaning  
19 out the passenger side of their Isuzu Rodeo and they're  
20 shooting over the top of the Isuzu Rodeo where do you think  
21 those shell casings are going to fall? Are they going to  
22 fall on the road. Are they going to fall on the side of the  
23 road, the shoulder of the road. Are they going to fall on  
24 the roadway and roll over to the car wash side. Are they  
25 going to roll over to the other side where the houses were?

1           We don't know where they're going to fall. We don't  
2 know if the Isuzu Rodeo was even in the correct lane,  
3 because we already know he's driving recklessly. He id a U-  
4 turn on Hardscrabble Road. And by this time, I guess, Ricky  
5 Jacobs is already back at the club, I guess. I don't know.

6           So if you can look at the steps that CSI did and you  
7 can determine for yourself where the shell casings fell on  
8 the road, and I don't know if you can draw from this or not,  
9 but you'll have this back there with you. Here's Goodrich  
10 Road, here's the residences, there's the car wash. One,  
11 two, three, four, five, six, seven -- 10, 11. Who knows?  
12 Who knows whether or not the shots fired from the passenger  
13 side door, whether it was leaning out of over the top of the  
14 Isuzu Rodeo, whether it was from the driver's door -- where?  
15 It doesn't tell you anything about who did the shooting.

16           But what we do have is a clear picture of an Isuzu  
17 Rodeo with guess what? Ammunition in the car. You know,  
18 take a closer look at this because a picture tells a  
19 thousand words, right. It can tell you what color a vehicle  
20 is; we know that. But there are other things in this  
21 picture that you may draw from, if you would like. And I'm  
22 asking you to, I'm not going to point out to you any  
23 conclusions that you may draw. But this is the passenger  
24 seat, and who's sitting the passenger seat? Jerome Greene.  
25 And Jerome Greene had a weapon, a pistol. Was it a

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1 revolver? I don't know. Was it a M-11. I don't know. It  
2 looks smaller than the one Taurus had, but Taurus, they  
3 don't have any ammunition connected to Taurus. They don't  
4 have a gun connected to Taurus. They don't even have a car  
5 connected to Taurus.

6 Didn't call 911. Was busy making sure customers were  
7 safe. I submit to you that that is probably not true. But  
8 what he was interested in was not his customers but the  
9 almighty dollar. If he was concerned about his customers he  
10 would have called the police as soon as he saw that man  
11 backing out of the bar with that gun. He would have had  
12 that guy out of the bar, he would have locked all of his  
13 doors, he would have gone and he would have gone and found a  
14 phone and he would have pushed 911, please come and help me.  
15 I just saw a guy leave my business that had a gun. But he  
16 was too busy making sure his customers were safe? No. No.  
17 Cannot be believed. Didn't talk to responding officers  
18 because they were busy securing the crime scene. Well, you  
19 know there was testimony there was an officer on the scene  
20 at 4:15. And Deputy Gregory who doesn't work for them  
21 anymore, but you know what? He made an error in his report,  
22 so it's just discounted. Talks to Investigator McRae when  
23 arrives and explains what he witnessed. You know what time  
24 Investigator McRae arrived at the scene? 5:08. Do you know  
25 what time this happened? 4:12. And hour after this happens

1 he finally decides he's going to say something to somebody.  
2 And do you know why he said something at all, because he was  
3 asked. That's why. Explains what he witnessed, but he was  
4 explaining -- he had an obligation to explain everything.  
5 And he chose not to, and there are reasons for that? Well,  
6 he didn't answer that question because he was never asked.  
7 Then he IDs the occupants inside the white Rodeo that he  
8 witnessed shooting one shot into the air. You saw the video  
9 of this one -- you saw his demeanor on the video. I don't  
10 have to get into that for you. I don't have to subject you  
11 to that when we can clearly see it on the video.

12 So he's in Investigator McRae's truck and he's ridden  
13 with Investigator McRae over to Tremaine Wray's house to  
14 look for a Suburban or he has not. But at some point he  
15 ends up going all the way out Polo Road. Polo and Two  
16 Notch. Polo Road and Two Notch, right here. That's where  
17 he goes with Investigator McRae. Not to ID the person in the  
18 Suburban. Because they already knew it wasn't a tan  
19 Suburban on Polo Road at Blockbuster. They already knew it  
20 was an Isuzu Rodeo, and you know what, they look just like  
21 Nissan Pathfinders, don't they. And they're white. And it  
22 has a black stripe down the side of it. So when he takes a  
23 moment out of his busyness and gets into the car and travels  
24 all the way to Polo Road, he does that to identify the two  
25 occupants of the Isuzu Rodeo. Does he identify them? I

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1 don't know. Did he identify them as the shooter? I don't  
2 know. Is that the one that shot one time? I don't know. I  
3 guess that's the passenger. He's in the passenger seat so  
4 therefore he must be the passenger. The shooter had dread  
5 locks. The shooter was driving and had dread locks and  
6 Ricky Jacobs saw multiple flashes coming from the driver's  
7 side and it's Luther Landrum. And not only that, but  
8 according to Luther Landrum and Jerome Greene when they get  
9 out of the club and they go down Hardscrabble Road, they  
10 make a U-turn and come back down Hardscrabble and then cut  
11 up Rabon Road. Now, the reason we know about Rabon Road is  
12 because Officer Galinski said they were on Rabon Road. And  
13 guess where they live? Way over here. And why were they  
14 going this way to go all the way home. Who did they drop  
15 off? How many people were in their car? Who was it that  
16 leaned out the window and shot towards the car wash in that  
17 white Isuzu Rodeo with a black stripe that looks like a  
18 Nissan Pathfinder. Who did they drop off down that way. It  
19 looks like to me that whoever was driving at the time was  
20 headed home because he took a right down Hardscrabble Road  
21 going towards his house. And all of a sudden, he says, oh,  
22 yeah, I need to drop my friend off. So he makes a U-turn  
23 and he comes back down Hardscrabble Road, turns left on  
24 Farrow, takes a left up Rabon Road and ends up getting  
25 chased and stopped all the way down here. Do you think they

1 had an opportunity to get rid of a third person or fourth  
2 person?

3           Calls McRae, now he's got the civic duty. Now he's  
4 starting to call McRae when he couldn't call 911 before.  
5 Too busy counting money. Couldn't call McRae before, but  
6 now he calls McRae with more information about the  
7 defendants. I don't know. You use your common sense. Now,  
8 he's got a conscience? Or was he made to call him? Was he  
9 supposed to call him? Did he volunteer to call him? Did he  
10 have to call him? He knew Taurus Watts the whole time.  
11 Gives a written statement at 1:15 and corrects, Tremaine did  
12 the shooting. Do you know what, it just doesn't jive, you  
13 know, now to say he saw Taurus with a gun wrapped in a white  
14 cloth but it was the driver -- it came from the driver's  
15 side. It's just not consistent with what our theory of the  
16 case is going to be so let's get that straightened up.

17           So now Tremaine did the shooting is not correct, not a  
18 possibility, so what we're going do now is since you said  
19 you saw Taurus with the gun, we're going to have Taurus  
20 getting in the passenger side and muzzle fire coming from  
21 the driver's side, so that when you're in a GMC Suburban  
22 with a console in the middle you have to literally cross  
23 over the console and lean into the driver and lean out the  
24 window far enough in front of this driver to shoot a gun  
25 where the shell casings are spit out to the right in the air

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1 so it can be Taurus Watts. That makes sense because you saw  
2 him with a gun. Positively IDs both defendants. Well  
3 that's not hard to do especially when you've know somebody  
4 for 20 years. IDs weapon. Well, guess what? No one ID'd  
5 the weapon before that, right? They had Collins come in  
6 here, and Collins said that after the shell casings it was  
7 more than likely or consistent with an M-11. But you heard  
8 David Collins on the stand say that ammunition could be  
9 fired from 49 different guns. That's okay, though, because  
10 it's most consistent with. Makes it look ugly, makes it  
11 look dangerous. I have a clip. Let's go with that. Okay.

12 Does not know Brian Watson. Well, you know what,  
13 that's his fault. Because Brian Watson knows the H&J club,  
14 in fact, he knows it so well that when I said something  
15 about being at the club he corrected me, he corrected me.  
16 He said: That's the pub. It's the pub. Have you been there  
17 before? Yes. So you know what, if Jacobs didn't know  
18 Watson that's Jacobs fault, because Watson had been there  
19 many times. He knows that whole area up there. In fact  
20 that's where he lives. At 37 years old living with his  
21 mother. Cracked out. Knows the ins and outs of creeks, and  
22 rivers, and water, and guns, because he used to work in a  
23 pawn shop. So he knows guns. And he doesn't know anything  
24 about Taurus Watts and this case. Well, you know what,  
25 that's not what his testimony said. He said that he knew

1 Taurus Watts that he'd know him for five years because  
2 Taurus had gone to his apartment before with his friend  
3 Brian Morris, and the whole reason that Brian sat up there  
4 in the jail since his two arrests on armed robbery charges  
5 and kept his mouth shut is because I couldn't remember what  
6 his name was. Well, you knew enough about Brian Morris and  
7 that's his cousin. Why didn't you just call somebody and  
8 say, hey, I'm in jail on armed robbery. I would like to get  
9 a free ride. I don't remember Taurus's name but I do  
10 remember his cousin's name, it's Brian Morris. If you get  
11 in touch with Brian Morris he will for sure know who Taurus  
12 Watts is. But he knew that. No. In fact, he was probably  
13 so addicted to crack cocaine that it didn't clear his head  
14 for months. Then when he sees Taurus Watts. All of a  
15 sudden he remembers Taurus Watts. But what is it that he  
16 remembers about Taurus Watts? Didn't he say that he saw  
17 Taurus Watts in some court in March? He sees Taurus Watts  
18 in court in March and what happens? Nothing. Until he  
19 starts calling looking for Shonda. Okay. So Shonda comes  
20 down there a couple of times. They talk. They get their  
21 story straight. She is the mother of these children that's  
22 fathered by Jarrell Dansby. Why didn't he say, you know  
23 what, I'm down here on a couple armed robbery charges. I'm  
24 looking for a sweet deal. Go talk to Jarrell Dansby.  
25 Nonetheless, he didn't know anything about Taurus Watts. He

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1 knows nothing about him holding a gun. He knows nothing  
2 from anything that Tremaine Wray may have said to him about  
3 Taurus Watts owning a gun. He's admitted to you that he's  
4 addicted to crack cocaine. He's admitted to you that he  
5 would do anything, anything for that drug. And that means  
6 anything, because he needs it. He needs it bad. And I want  
7 you -- you'll have that back there, this little CD, and it  
8 has the recording on it that he has with his mother and  
9 father, and look how that -- treats his parents. Listen to  
10 that. So the fact that Jacobs does not know Brian Watson  
11 means absolutely nothing.

12 THE COURT: I think this would be a good time to  
13 take a break. Do you have that much more?

14 MS. JOHNS: I don't have that much more.

15 THE COURT: Okay.

16 MS. JOHNS: About 10 minutes.

17 THE COURT: Okay. We'll do that, and then we'll  
18 take a break and have lunch between the next closing  
19 argument. Okay.

20 MS. SHIPLEY: Your Honor, if I may. She may not  
21 write on that.

22 MS. JOHNS: I'm not going to.

23 MS. SHIPLEY: Okay. Thanks.

24 MS. JOHNS: I know that they reuse these. I'm not  
25 going to write on the wall.

1 THE COURT: Okay.

2 MS. JOHNS: So where are we now with the reasonable  
3 doubt. We went through a long list of what Ricky Jacobs,  
4 what the might have seen, what he thinks he remembers, about  
5 him not calling 911, on and on and on. The proof beyond if  
6 further than a reasonable doubt is proof that leaves you  
7 firmly convinced that there is no doubt, firmly that there  
8 is no reasonable doubt of the defendant's guilt, which is my  
9 client, Taurus Watts. There are very few things that we  
10 know with absolute certainty. In criminal cases the law  
11 does not require proof that overcomes every possible doubt.  
12 Every possible doubt. Every possible doubt? Is that the  
13 requirement now? No. You have to have a reasonable doubt.  
14 Reasonable. If based on your consideration of the evidence  
15 you're firmly convinced that the defendant is guilty of the  
16 crime charged, you must find him guilty. On the other hand,  
17 there's a real possibility that he's not guilty you must  
18 give Taurus the benefit of that doubt.

19 Now, let me recap something for you. These people, the  
20 six people go to this bar and they run into Lisa Johnson, a  
21 fight occurs. Brian Watson clearly was involved in the  
22 fight.

23 MS. SHIPLEY: Objection. That's not in evidence.

24 THE COURT: Sustained to the extent that they are  
25 to recall the facts that are in evidence.

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1 MS. JOHNS: I'll rephrase that.

2 Bryan Johnson admits on the stand that he tried to  
3 break up the fight. Admitted from the stand is Charlie  
4 Bates, he gets hit in the face. Lisa tells you that Bryan  
5 Johnson with dread locks comes out of his shirt. And so  
6 when you see Ricky Jacobs outside and you walk the path that  
7 Ricky Jacobs is walking and you see somebody with a white  
8 cloth that is wrapped around a black gun, you have to ask  
9 yourself if that person was Bryan Johnson. That, ladies and  
10 gentlemen along leads you to reasonable doubt. And this is  
11 something that you cannot ignore, because it was a white  
12 cloth that he's got a gun wrapped in or maybe it's his hand  
13 because there's evidence that there's blood outside the  
14 front door of that club. And Bryan Johnson has had an  
15 opportunity to go get a weapon and go back in so he can  
16 finish his business is something you can consider. I'll  
17 tell you something else you can consider, you should  
18 consider we've got forensic evidence that does not lie.  
19 Well, maybe it doesn't but does it tell the whole truth?  
20 There were 5000 particles that was used -- gunpowder -- out  
21 of a GMC Suburban, and you know what out of all of them  
22 tested under the protocol -- they just ran these under a  
23 microscope. After a swab and out of 5000 particles guess  
24 how many they came up with? 16.

25 They can't even put Taurus Watts in the car of that GMC

1 Suburban, and out of those 5000 particles they get 16. None  
2 of the 16 particles are near the passenger side of the car,  
3 and there was no white cloth found, and Bryan Johnson came  
4 out of his shirt. And I ask you that when you consider  
5 whether or not reasonable doubt exists I'd like for you to  
6 look at this, because this is real evidence. This is not  
7 microscopic evidence. This is evidence that you can see,  
8 that you can touch, that you can feel, that you can smell,  
9 if you want to. And this evidence was found in the car that  
10 was driven at the time by Luther Landrum and his passenger  
11 Jerome Greene. So all the scientific evidence, if it's not  
12 done correctly doesn't mean anything, but this evidence  
13 right here is real.

14 I'm going to ask you, ladies and gentlemen, to consider  
15 every single reasonable doubt that the state has  
16 conveniently listed for me. Because every single one of  
17 those in addition to what I've just told you, and I'm going  
18 to ask you to use your common sense when you go back to that  
19 jury room you think about Taurus Watts, and you think about  
20 what Ricky Jacobs single accusations and you will have to  
21 tell yourself, you will have to consider a doubt of which  
22 you can state are reasonable. Thank you.

23 THE COURT: Thank you, Ms. Johns.

24 Ladies and gentlemen of the jury, we're going to take a  
25 lunch break now. I remind you that you have not been handed

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1 the case for your deliberations. So you can absolutely not  
2 discuss the case in any shape, form, or fashion in any  
3 regard.

4 We will just take a 45 minute break, and you all can  
5 exercise any comfort needs, but I remind you strictly and  
6 absolutely do not discuss this case.

7 Thank you all.

8 (Jury out at 2:13 p.m.)

9 (Court at recess for lunch.)

10 (Court in session after lunch.)

11 THE COURT: Okay. Are we ready -- jurors, please.

12 (Jury in at 3:07 p.m.)

13 THE BAILIFF: The jury's all present, Your Honor.

14 THE COURT: Thank you. Mr. Swerling.

15 MR. SWERLING: Please the Court.

16 THE COURT: Yes, sir, for your closing argument.

17 MR. SWERLING: Mr. Foreman, ladies and gentlemen,  
18 good afternoon. I hope you had a good lunch.

19 I know that you are anxious to get back to your  
20 everyday activities and relieve yourself of this  
21 responsibility. But I got to tell you that I and I know all  
22 these participants here appreciate the sacrifice you've made  
23 over the last eight days of this trial, and it is a  
24 sacrifice, and we respect the fact that you had to give up  
25 family and work to come here and this is a sacrifice, a

1 necessary sacrifice because someone from the public, from  
2 the community has to sit in judgment between the state of  
3 South Carolina and the defendant that is charged with any  
4 crime and make a decision, a rational decision as to whether  
5 or not the state has proven their guilt beyond a reasonable  
6 doubt.

7           When we went through, last Monday, it seems a long time  
8 ago, you remember there were a number of questions that were  
9 asked of you and then people were called up to the front and  
10 state had an opportunity to object and excuse certain jurors  
11 and defense had an opportunity to excuse certain jurors, and  
12 the Court had the right to excuse certain jurors. What we  
13 were trying to get was we were trying to get a jury that has  
14 no preconceived opinions, no interest, no bias, no motives  
15 other than to seek justice. And that is what, in fact, what  
16 we want to do in this courtroom. The oath that you took  
17 requires that if the state has proven this case beyond a  
18 reasonable doubt you have to find one or more of the  
19 defendants guilty. However, same oath that you took  
20 requires, demands that if you have a reasonable doubt after  
21 going into the jury room and deliberating and discussing  
22 this case then you have to find and resolve that doubt in  
23 favor of the of the particular defendants. That is done  
24 every day in every courtroom throughout every state in this  
25 union. And it is the best system that still exists on the

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1 face of the earth in resolving disputes between people who  
2 are accused of a crime and the state of South Carolina.

3 Now, that's why you are here. You have that role. You  
4 are sitting in between the state and the person accused of a  
5 crime in making that decision without any outside influences  
6 or bias. And we are all satisfied in that jury selection  
7 process. That we have the best jury that can be seated to  
8 resolve this case, because you are the people that we agreed  
9 could sit on this jury. So we all have that faith in you.  
10 We've watched you for the last eight days, probably just  
11 like you've watched us. And trying to see whether you're  
12 paying attention or not, taking notes or not and absolutely.  
13 Every person in this jury has been intent on listening to  
14 the evidence, taking notes, still listening as of this  
15 morning as the lawyers were making their legal arguments to  
16 you. And I appreciate that.

17 There is in law -- and I'm going to touch very briefly  
18 on it, because I don't have to repeat, don't want to repeat  
19 some things that Ms. Shipley said or that Ms. Johns said.  
20 But we have certain principles that guide us in how we  
21 decide cases and resolve disputes. One is, a defendant, any  
22 defendant, no matter if it's a shoplifting case or a  
23 homicide case, enjoys the presumption of innocence. We are  
24 one of the few nations on the face of the earth that has  
25 that presumption of innocence. That presumption of

1 innocense is so powerful, so strong in our laws that it  
2 stays with a person accused of a crime throughout the trial,  
3 even right now the law says that you have to presume those  
4 fellows innocent. The only time that you can resolve that  
5 against them and find them guilty is if you go in the jury  
6 room and after you deliberate and review the evidence,  
7 examine everything the state has presented, only then, if  
8 you resolve beyond a reasonable doubt that the state has  
9 proven their guilt is that robe of righteousness and  
10 presumption of innocense removed from a defendant. That  
11 presumption of innocense in and of itself is enough to have  
12 a jury acquit an individual because it requires the state to  
13 prove beyond a reasonable doubt.

14 Now, you heard some of the lawyers talk about  
15 reasonable doubt, and the Judge is going to give you the  
16 legal definition of reasonable doubt. And here's what it  
17 is, simply. Every day -- not every day, but in the  
18 important affairs of your life you have to make decisions  
19 which effect you, your spouse, your children or your  
20 parents. You have to make important decisions. I'm not  
21 talking about whether to go to Public's or go to Food Lion  
22 or whether or not to go to the movies. I'm talking about  
23 important affairs in your life. You will consider and  
24 evaluation and discuss with other people the pros and the  
25 cons of whether you should take that particular action, and

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1 if you have a doubt you still may go ahead and do it,  
2 because sometimes, whatever it may be, impulsive behavior or  
3 we want something and we go ahead and do it or somebody  
4 wants something and they go ahead and do it. But in the  
5 courtroom, if you have any doubts upon you can base a  
6 reason, it's not that easy, because the law requires you to  
7 come into this room and say not guilty. That is what you  
8 are required to do. So if you have at the end of this case,  
9 when you go into the jury room and you believe that the  
10 state has failed to prove guilty beyond a reasonable doubt,  
11 and you hesitate, you have a doubt, a real doubt about  
12 something that has been presented in this case or not  
13 presented because doubt can come from evidence and the lack  
14 of evidence. Then you have to resolve that doubt in favor  
15 of the individual who is accused of the crime. It's got to  
16 be that. Because by doing that you protect the innocent  
17 people -- every single time a case is held, every time  
18 someone is charged that right has to exist. You can't make  
19 an exception. We never make an exception.

20 Now, one thing I want to talk about combining  
21 reasonable doubt and the presumption of innocense is that  
22 the burden of proving a case is solely on these folks over  
23 here. And by the way, we all know each other. We see each  
24 other all the time. We're going to be in this courtroom  
25 next week or the week after, and I think this case has been

1     tried extremely civilly, there is no animosity. We may  
2     object and we may say something, but believe me, folks,  
3     that's just the courtroom. Outside the courtroom it's not  
4     that way.

5             But what I'm asking you to consider is this. They have  
6     the burden of proof, the law says they have the burden of  
7     proof. None of these guys here, no defendant, has to come  
8     forward and prove that they didn't do something, because the  
9     lawyers and the judges going back to old England decided,  
10    you know what, it is difficult if not impossible to prove  
11    you are innocent. So we require the state, whether it's the  
12    state or federal government or whatever law enforcement  
13    agency or prosecuting office, they have to come into court  
14    and prove guilt beyond a reasonable doubt, and if they don't  
15    then the person is entitled to an acquittal. And they have  
16    to do that right now, at the end of their case. At the end  
17    of the time they present evidence, they have to convince you  
18    beyond a reasonable doubt of the guilt of either one of  
19    these defendants and if they did not, we still have the  
20    right to rely on that doubt, the presumption of innocence  
21    and ask you for an acquittal. And that's why the law never  
22    requires the defendant, any defendant in any case to come  
23    forward and offer testimony, because we have a right to rely  
24    on the failure of the state to prove guilt beyond a  
25    reasonable doubt. The failure of the state to prove

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1 reasonable doubt. And I'll get into a few of those things  
2 in a little bit. I'm not going to rehash everything, but I  
3 would like to highlight a few things for you.

4 Another principle of law in South Carolina is if a  
5 defendant, a person accused of a crime offers no evidence,  
6 then they have the right to address you last. You see, in  
7 every case, since the state has the burden of proof and if  
8 the defendant presents evidence then they have the right to  
9 close, to argue to you last. To hear what the defense has  
10 got to say. Ms. Shipley was saying, I've got to anticipate  
11 what the defense is going to say. Well, if we present any  
12 evidence whatsoever, they don't have to anticipate. They  
13 get up to speak after we speak and can respond. The only  
14 time that a defense or a defendant or a lawyer for them or a  
15 person accused of a crime has a right to address a jury last  
16 is when there's no evidence presented. So those are the  
17 decisions that are made by lawyers, strategic decisions for  
18 one reason or another, but it also has to do with whether or  
19 not the state has proven guilt beyond a reasonable doubt,  
20 and we submit to you they have not.

21 They charged these two folks with murder. Judge will  
22 tell you what the instructions are and murder gets fairly  
23 lengthy, but here's what it comes down to. Murder is the  
24 killing of another individual with malice aforethought.  
25 It's an intentional act, and state has to prove malice, they

1 have to prove that a person acted with malice aforethought.  
2 It has to prove beyond a reasonable doubt that a person had  
3 a criminal intent. The state has all those burdens of  
4 proof, and the defense has none. All the elements of  
5 murder, as the Judge will define them to you, must be proven  
6 to you beyond a reasonable doubt. Every single element.  
7 And if the state does not prove any one of those elements  
8 then the person accused of a crime is entitled to an  
9 acquittal and a verdict of not guilty.

10 Now, murder can be committed in one of two ways. You  
11 can either be the person that does the act that takes  
12 someone's life in which case you are considered a principal  
13 and responsible for the acts that you committed, if the  
14 state proves it beyond a reasonable doubt. Or you can be  
15 convicted under a theory of aiding and abetting or what we  
16 call accomplice liability. I'm giving a lot of legal terms  
17 and I apologize for it, but the Judge will explain all  
18 these, too, but you can convict somebody of murder as a  
19 principal if you find beyond a reasonable doubt that they  
20 were not the one that did the shooting, but they were  
21 present aiding and abetting and committed some act to  
22 further that crime. Mere association, mere presence, mere  
23 knowledge of a crime is not enough. The state's got to  
24 prove whether someone did it beyond a reasonable doubt or  
25 they acted as the hand of one, hand of all, that they were

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1 present, aiding and abetting and committing some act in  
2 furtherance of it.

3 So that is the burden that they have to prove, that is  
4 the burden that they have to overcome. We submit to you  
5 that they have not done that in either case, because there's  
6 reasonable doubt in this case, throughout the case, and in a  
7 moment I'll be getting to the issues that I'd like you to  
8 consider. Before I get there, though, but one of the way  
9 that you evaluate the witnesses that have testified in a  
10 case is to determine whether or not those witnesses has been  
11 consistent with other statements orally or written that  
12 they've given, because a person telling the truth can only  
13 tell it one way. There's only one way to tell the -- I  
14 agree with what Ms. Shipley said. There are four people  
15 standing on the four corners and a traffic accident, someone  
16 is going to see something different. The light maybe green,  
17 maybe yellow. Someone maybe wearing a red tie, a yellow tie.  
18 But guess what, the essential issues involved there really  
19 can't be any deviation from. The truth is the truth. You  
20 cannot deviate from the truth. You can -- everybody can see  
21 something differently, observe something differently, or  
22 hear something differently, but the acts that people do has  
23 got to be consistent on each occasion. It also has to be  
24 consistent with what other people are saying. For example,  
25 you can determine the credibility of a witness if you can

1 find that that person was consistent with other witnesses,  
2 but you can find against that witness if you find that that  
3 person was inconsistent with other witnesses testimony, or  
4 inconsistent with the facts of the case. It's solely for  
5 your to decide. Solely. Nobody makes a decision on the  
6 facts of the case, except you. Nobody determines the  
7 credibility of a witness except you. That is your sole  
8 providence. We're the lawyers. We're the advocates. We're  
9 in the advocating position over here and over here. The  
10 Judge is the judge of the law, but you are the judges of the  
11 facts. No one can ever argue with your determination of the  
12 fact, but please when you go in to determine those facts,  
13 remember the presumption of innocense and how strong it is.  
14 The burden of proof is on the state. It is not on the  
15 defendant to come forward. How to determine the credibility  
16 of the witnesses and how to go ahead and weigh that, because  
17 what happens is we take 13, 14 people from the community  
18 with no legal training and tell you to go back in the jury  
19 room and tell you to decide if someone is guilty of murder  
20 or not. It is difficult. It is difficult. But there are  
21 these cardinal principles that I've just talked about which  
22 should be applicable in the case that you should consider  
23 and that I know you will consider.

24 Now, let's talk about some of the evidence in the case  
25 that I'm going to ask you to consider.

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1 First of all, let's talk about Tremaine Wray for a  
2 minute. The state does not have to prove motive. Well,  
3 what is motive. There is no motive. What motive would  
4 Tremaine Wray possibly have, beyond sheer speculation, as  
5 Ms. Shipley said, I took care of that guy for you. Where is  
6 that in the case? Where's the evidence of that? That's  
7 what people do. They throw that in there for you to  
8 consider. They throw that against the wall and hope  
9 something sticks. Tremaine Wray had no motive to hurt  
10 anyone. No motive, and that is a fact I would submit to you  
11 raises the reasonable doubt in this case. No motive. Why  
12 would he want to hurt anybody. Did you hear anything in the  
13 case, any evidence in this case that would indicate that  
14 Tremaine Wray wanted to hurt somebody? Absolutely not.  
15 There is none.

16 Now, let's talk about Tremaine Wray from another  
17 aspect. He's is supposed to have been in a vehicle where a  
18 Mac-10 or Mac-11 or whatever they are, fired bullets at the  
19 club. Well, they went to his house. They found nothing.  
20 They didn't find a garment of clothing that they could test  
21 or did test to see whether or not there was any gunshot  
22 residue. They took nothing out of there. Guess what also  
23 they didn't find in any of Tremaine Wray's possessions,  
24 whether it be the house or his vehicle? A 9 millimeter  
25 bullet. There is none. They don't have it. They're

1 concerned about it, and they have been concerned about it  
2 because of the other evidence in this case. So you have  
3 Tremaine Wray who does not have any 9 millimeter bullets,  
4 has no motive, was not at the club, ladies and gentlemen,  
5 and we'll discuss that in a moment. Was not in the club.  
6 So what would be the motive. So what would be the motive.  
7 Why would he want to hurt anybody. Now, you can go into  
8 that jury room and you can make some conclusion, draw some  
9 conclusion as to why Tremaine Wray, on the evidence in the  
10 case, not on speculation in the case, but on the evidence in  
11 the case beyond a reasonable doubt why Tremaine Wray would  
12 want to hurt somebody. He has no criminal intent. He has  
13 to act intentionally and with criminal intent. If you can  
14 go in there and find it, find it. But I submit to you it's  
15 not there.

16 Now, I'd like to talk to you a little bit about some of  
17 the witnesses in the case. And basically a couple of  
18 different ones.

19 Verda Roberts. I have nothing against her. And by the  
20 way, there's no question that Demuria Johnson was killed.  
21 Nobody is up here arguing that he wasn't killed or that's  
22 not an issue in the case. He was killed that night by a  
23 gunman. The question is who fired the gun. Have they  
24 proven beyond a reasonable doubt that he did it, or he did  
25 it? Absolutely not. Absolutely not.

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1 Verda Roberts said that she believed that there was  
2 more than one shot, more than one gun. Not sure. Obviously  
3 it was chaos. I agree with what Ms. Shipley said. She  
4 identified Bryan Johnson as an individual who had dreads who  
5 was involved or around the argument. Involved or around the  
6 argument. Person with dreads. You know who he is. He's  
7 been identified. The photograph number is No. 4 and you've  
8 seen him on the witness stand. Everybody identifies Bryan  
9 Johnson, no magic there. Verda Roberts described what  
10 happened in the club. Stephanie Boston described what  
11 happened in the club as they perceived it. Stephanie Boston  
12 described that individual as well. Bryan Johnson. Name  
13 keeps coming up. The man with dreads. The man that she  
14 said, right, whatever your notes are. You reflect on what  
15 you remember, because I agree with what Ms. Shipley said,  
16 there's no way that I can remember everything that happened  
17 in the last eight days and if I do misstate something it is  
18 totally inadvertent, but I submit to you, she said that she  
19 believed he was the one in the altercation or in the fight.  
20 And she said, remember her testimony, that the person who  
21 was in the altercation that she identified in No. 4, or  
22 around the altercation was the same one responsible for the  
23 shooting. I haven't heard anybody mention that.

24 Charlie Bates, another one of that group. I have no  
25 axe to grind with any of those folks. Charlie Bates said he

1 saw Mr. Johnson in or around this argument. The man with  
2 dreads. Charlie Bates said that he believed that the person  
3 involved in the fight was the person who was responsible for  
4 the shooting. He was not asked that by Jack Swerling, he  
5 was asked that by law enforcement. That didn't come from me  
6 and it did not come from Ms. Johns, but law enforcement. He  
7 described an individual in the club with dreads with a black  
8 and red or black and white shirt, which will become  
9 important in a little bit. And Charlie Bates said, I could  
10 not tell where those shots were coming from. I thought they  
11 were coming from behind me on the patio. Well, Ms. Shipley  
12 pointed out that there a fence there, but there's a big gap  
13 between the back of the car wash and the fence from which  
14 somebody could have fired into the car wash. So I don't  
15 know the significance of that that there's a fence there,  
16 because no one's ever argued they had to go beyond the  
17 fence. If could have been right behind the car wash. But  
18 Charlie Bates gave testimony to that effect. And you've got  
19 to listen to all the testimony, all the testimony.

20 Then you have Mr. Goodwine. The guy that didn't  
21 cooperate that night and the guy they could never find.  
22 Guess what he does, too. He identifies Mr. Johnson, as  
23 well, No. 4, in the photo, as being the person right there  
24 with Verda and Charlie Bates and everybody else. He  
25 identifies him, as well. He doesn't know where the shots

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1 were coming from. That's not important. What's important  
2 is this, Verda Roberts, Stephanie Boston, Charlie Bates, and  
3 James Goodwine who were outside with Demuria Johnson and  
4 Travis Malone when the shooting started. Not one of those  
5 individuals have identified Tremaine Wray as being in that  
6 club. Not one.

7 Now, the state would like you to believe that every one  
8 of those witnesses just said that everybody in the club was  
9 involved in the fight. That's nonsense, because you  
10 remember the cross-examination they said, well, we can't say  
11 everybody. It seemed like everybody was involved. Well,  
12 did you hear one person, one person, say that that fellow  
13 was in the club, of those four people? No. No one has  
14 every identified Tremaine Wray as being in the club except  
15 Ricky Jacobs and I'll deal with him in a minute.

16 But what is significant, also, about those four people,  
17 they are the people outside. They're the ones with Demuria  
18 Johnson and Travis Malone, and guess what? Not one of those  
19 individuals has come into the courtroom and said that the  
20 gunfire came from a vehicle going down Hardscrabble Road.  
21 Not one of the. Now, that's important. That's reasonable  
22 doubt, because they're the ones outside. They're the ones  
23 being shot at, and not one of them says to you that the  
24 shots were coming from a vehicle driving down Hardscrabble  
25 Road. They never identified any vehicle in this case. They

1 don't know, a lot of times, where the shots were coming  
2 from, but they said they thought they were coming from  
3 behind. And where was Mr. Johnson shot? In the back. I'd  
4 ask you to consider that when you determine looking at  
5 reasonable doubt.

6 Lisa Johnson. Lisa Johnson told you, and she actually  
7 was the one the one that kind of put this thing together  
8 about who was who and, you know, who this individual was and  
9 who that individual was and sort of explained how the  
10 argument started, because two guys were trying to hit on  
11 her; Charlie and this other guy with dreads. And she didn't  
12 want to be bothered by either one of them. That didn't have  
13 anything to do with Tremaine Wray. And everyone started  
14 arguing and a person threw a drink on another, and somebody  
15 said something to this one, and all of a sudden, you had a  
16 fight going on in the club. Lisa Johnson was a witness for  
17 the state. She is a witness for the state, folks. She  
18 comes in here and tells you that she heard somebody in the  
19 club say, he's fixing to shoot. In the club. He is fixing  
20 to shoot. She also describes a person that she knew -- I  
21 believe it was her -- as Chris. Turns out his real name is  
22 Bryan Johnson, No. 4. Bryan Johnson. Lisa, state's own  
23 witness never puts Tremaine in the club. She don't have any  
24 evidence that she said that he was in the club.

25 And then Bryan Johnson, who the state says, well, you

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1 know, there's a lot of phone calls between him and Tremaine  
2 Wray. Well, folks, they're friends. And you look at this  
3 phone bill they introduced into evidence and all this  
4 suspicious activity going on at 4:00, 5:00 o'clock in the  
5 morning. You look at a couple days before that and you see  
6 whether or not it's the same activity on the phone as it is  
7 on the morning of June 30. Dozens and dozens of phone  
8 calls. Bryan Johnson was on the witness stand. Did the  
9 state asked him what -- Tremaine Wray, if they ever got in  
10 touch with each other, did they ever talk to each other,  
11 what were their conversations about? No. They just want to  
12 throw it on the wall and hope something sticks. There is no  
13 evidence in this record that support a conversation as the  
14 state alleged, I took care of that for you. That's just  
15 nonsense. Nonsense. Now, Bryan Johnson, he told you,  
16 state's witness, he told you that he saw somebody in the  
17 club from the party who had a 25 automatic. It's a small  
18 gun, and he believed it was a 25 automatic. Remember that?  
19 Okay. He also said that that person -- forget whether they  
20 search people or not because you heard testimony of how  
21 people kind of go in and out, but Bryan Johnson told you  
22 that a person had a pistol in their hand and injected that  
23 into to the fight. He never said that Tremaine Wray was  
24 there. He is the state's witness in this case that they put  
25 up on the stand.

1           Also, I would like to remind you that Bryan Johnson,  
2 the guy that everybody's identified in that altercation,  
3 fight, whether he was standing by or intercepting or  
4 whatever he was doing was a guy with dreads and was involved  
5 right in the middle of this thing, and he never said that  
6 Tremaine Wray was in the club. Never said it.

7           And Lisa Johnson, and Bryan Johnson never said that any  
8 shots were being fired for any vehicle on the road.

9           So you have -- that's six people, state's six witnesses  
10 that do not have -- Verda Roberts, Stephanie Boston, Charlie  
11 Bates, Lisa Johnson, Bryan Johnson and Mr. Goodwine. Nobody  
12 says they saw Tremaine Wray and nobody saw anybody firing  
13 from a vehicle on Hardscrabble Road.

14           Who is the only person who has Tremaine Wray in the  
15 club? Ricky Jacobs. He's got a little bit of criminal  
16 history there, and you can consider that, the Judge will  
17 tell you that. He owns the club. It's 4:00 o'clock in the  
18 morning. Who knows that he was doing. He's in the club.  
19 He does say that he observed the altercation and it was  
20 getting out of hand, so he closed the place down.

21           Folks, who does he see in the altercation? Bryan  
22 Johnson. No. 18 -- I mean, I'm sorry, No. 4. Bryan  
23 Johnson, again. In fact, he was so upset with Bryan Johnson  
24 that he barred him from the club. He also testified that he  
25 saw an individual -- by the way, this is a place that

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1 searches people when they come in -- he saw an individual  
2 exiting the door, exiting with a pistol in his hand. He  
3 also, I believe, said that person had dread locks. He also  
4 said that that person had the shirt was red and white or  
5 black. You go back in your notes and listen to the  
6 testimony or review the testimony with the other jurors, but  
7 he had Bryan Johnson involved there, the loudest, the most  
8 boisterous. He has somebody exiting the building with a  
9 pistol, backing out of the building, and he has someone  
10 outside the building that he says he didn't know who it was,  
11 was saying, you step outside and we'll handle it. You step  
12 outside and we'll handle it. That is not attributed to  
13 either one of these individuals. Not at all. So you have a  
14 lot of things going on in this place that you have to  
15 consider and weigh to determine whether or not there's  
16 reasonable doubt.

17 Bryan Johnson testified that he came out of the place  
18 -- and folks, let me just say this, Mr. McRae, I've know him  
19 for a long time. It's hard for me to believe, I don't  
20 disbelieve his testimony, but it's hard for me to believe  
21 that no one at the Richland County Sheriff's Department  
22 between June of 2007 and last week ever discussed with Ricky  
23 Jacobs what happened inside the club. Does that appeal to  
24 your common sense. This is a guy who witnessed the fight.  
25 This is the guy who threw Bryan Johnson out. This was the

1     guy who was making identifications, people exiting the club  
2     with a gun, people saying step outside and handle it, and no  
3     one talks to him about it until last week? Because Mr.  
4     McRae told you in all candor, in all honesty, this is the  
5     first time I heard that. Does that make sense? The first  
6     time you hear something is September, October 2009, when the  
7     event took place in June of 2007. Folks, you know why  
8     nobody ever heard it, because it's completely made up.  
9     Ricky Jacobs never said at any time until you heard it on  
10    the witness stand that Tremaine Wray was in the club. And  
11    by the way, I don't want to forget this, remember who came  
12    into the club -- well, remember who left with Bryan Johnson?  
13    Norris Bond and Darius White. And remember who walked into  
14    the club on September 2007 with a Mac-9 or a Mac-10, I'm not  
15    sure which one it was and a report was made to the Richland  
16    County Sheriff's Department? Bryan Johnson and Norris Bond.  
17    Isn't that a big coincidence in this case; isn't it? The guy  
18    that runs throughout all these things and walks into the  
19    club in September 2007 and is barred forever. Little bit of  
20    a connection there. That's for you to decide. Not for me.  
21    That's for you to decide.

22             So we have Ricky Jacobs. Ricky Jacobs tells you that  
23    he walks outside and he sees Taurus Watts and Tremaine Wray.  
24    I'm not going to get into all that. You've heard it all  
25    before. But that's the first time he ever says he saw

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1 Tremaine Wray. First time. Tremaine Wray is coming in the  
2 club. He had nothing to do with what happened inside the  
3 club. And he's walking past, he sees this pistol, and  
4 Taurus Watts, spoke -- Ms. Shipley spoke to you about that,  
5 and I'm not going to rehash that, but he says as he's  
6 walking past the Suburban it pulls out, makes a left on  
7 Hardscrabble Road and he sees somebody firing from the  
8 driver's side of that vehicle towards the club. He's the  
9 only one who sees it. The only one. Nobody else outside  
10 that club has ever seen that SUV, GMC driving down the road  
11 firing shots. No one. 40 to 50 people in the club, no one  
12 has seen it except Ricky Jacobs. He says it goes down the  
13 road and takes off. And -- you know, it gets kind of  
14 interesting sometimes. In his statement, on two occasions,  
15 which he denied and said Mr. McRae wrote it down wrong, but  
16 on two occasions in the statement he said I saw Tremaine  
17 Wray firing out of the SUV. Well, then Mr. McRae, good  
18 investigator that he is, at the end of the statement on the  
19 last page that Ms. Shipley keeps referring to, says wait,  
20 you're behind the vehicle, you're down the road, how could  
21 you tell who's shooting? Well, I couldn't. It was too far  
22 away. So this rehabilitation that the state talks about was  
23 not his rehabilitation, it was Mr. McRae asking him a  
24 question at the end because he already said, he committed  
25 that he'd seen Tremaine Wray outside firing from that car,

1 and he knew, Mr. McRae know that nobody would believe that.

2 It was dark, it was down the road, and it was too far.

3 Ricky Jacobs also testified to you that as he was  
4 walking past this area up here, right up here, he saw an  
5 Isuzu, a white Isuzu that everybody knows what that is by  
6 now, here. He saw the white Isuzu, the guy sitting in it  
7 with a small pistol. Smaller than the one he'd seen. Well,  
8 guess what? He never told anybody about that until last  
9 week either. Not once. You haven't heard anybody get on  
10 the witness stand and say, oh, he told me that. You were  
11 the first people to ever hear that. Guess what else you're  
12 the first people to hear? Remember when he testified and  
13 Ms. Shipley and Ms. Johns have gone through this, that the  
14 Isuzu -- I mean, the SUV Suburban pulls out and goes left,  
15 and that this particular car, the Isuzu, which is up in this  
16 corner, now, according to him, starts to go right, turns  
17 left -- three to four minutes later, and goes down  
18 Hardscrabble Road and fires one bullet. And in between that  
19 time, he crosses across the street. He gets his car and has  
20 enough time to park it back over here in front of the club.  
21 Three to four minutes. Well, guess what's wrong with that?  
22 You're the first people to ever hear that, too. Because no  
23 one else has ever gotten on this witnesses stand and said  
24 that he said that before, either.

25 These folks were not over here. On cross-examination

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1 you heard me ask Mr. McRae, ultimately, he had to admit that  
2 Jacobs said the Isuzu was near the gas pumps. Right near  
3 the vicinity of the Suburban. And Ricky Jacobs, every time  
4 he was spoken to either orally or in his statement said that  
5 when the Suburban made a left turn the Isuzu started to go  
6 right and shots were fired from the Suburban, according to  
7 Ricky Jacobs. A shot was fired from the Isuzu and the Isuzu  
8 made a U-turn and went down Hardscrabble Road. Immediately  
9 after the shot from the Suburban. At no time prior to last  
10 week did Ricky Jacobs ever tell anybody that that Isuzu  
11 fired the shot going down here. He has always maintained in  
12 all of his statements up until last week when he testified  
13 that the shot was fired here as the Isuzu was supposed to be  
14 turning right, and then immediately followed the Suburban  
15 down the road after the shots. Now, how do you get that  
16 wrong? I mean, I agree, again, with Ms. Shipley, that  
17 people get things differently, but how do you get that  
18 wrong? You can't. It's a completely different set of  
19 facts. Whether or not he moved his car and had three to  
20 four minutes to move his car under the canopy between the  
21 time the shots were fired from the Suburban and the time the  
22 shot was fired from the Isuzu is just a completely different  
23 story. And you know why it's a completely different story,  
24 because just like Tremaine Wray being in that club, it's  
25 made up. It's made up. It's a lie. Now, I have no idea why

1 Mr. Jacobs would lie, but folks, when you go back there you  
2 determine, you weigh his credibility as to what he saw,  
3 based upon the clear implication he gave Detective McRae on  
4 two or three occasions about how that Isuzu fired a shot and  
5 then made a U-turn, and was under or near the gas pumps.  
6 There was no other way. It was immediately followed. No  
7 three to four minutes. You try and square that, along with  
8 the testimony where he said Tremaine Wray was in the club.  
9 Nonsense.

10 Now, he did say there was a shot fired from the Isuzu  
11 and the Isuzu was stopped. What's interesting about a shot  
12 being fired from the Isuzu and nobody wants to really  
13 address or explain is that according to Mr. Collins, all the  
14 cartridges out on the road came from one gun. But we know  
15 that at least two guns were fired. In fact, we know from  
16 witnesses that there was more than one gun being fired. But  
17 we do know the Isuzu fired a weapon. Mr. Jacobs said it did  
18 that night. Where's the cartridge from the Isuzu? I'll  
19 tell you where the cartridge from the Isuzu is, the  
20 cartridge from the Isuzu is just as likely a cartridge  
21 laying on the road as it was from the Suburban that the  
22 state is trying to get you to buy into.

23 Why do I submit that the Isuzu is a target for you to  
24 look at and raises a reasonable doubt in this case? When  
25 the BOLO went out or the dispatch went out they weren't

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1 looking for any tan Suburban. The only two vehicles that  
2 were mentioned on the dispatch were the box like two-toned  
3 Chevy and the Pathfinder. And that's what Deputy Galinski  
4 saw going down Rabon Road. No Suburban was ever mentioned.  
5 Do you know why? Because the Suburban wasn't firing any  
6 bullets. They stopped the car. They get Mr. Landrum out,  
7 who was the driver, and, by the way, has dread locks. And  
8 they get Mr. Greene out, who's supposed to be the one that  
9 fired the shot. And Mr. Greene and Mr. Landrum react. They  
10 are boisterous, they are acting up. They will not discuss  
11 anything that happened in the car. Where's the gun? They  
12 don't talk about the gun. They don't admit they had a gun.  
13 They denied they had a gun. Well, Mr. Jacobs said they  
14 fired a gun. Well, folks, think about this for a minute.  
15 If they fired a shot, then why did they get rid of the gun?  
16 Why did they dump the gun on the side of the road? The  
17 police would never find it. That's not a surprise, it's a  
18 long distance, but doesn't that raise in your mind that a  
19 reasonable doubt as to who was firing toward the club  
20 because the guys in the Isuzu are driving down Rabon Road.  
21 They're supposedly shooting out of the car across --  
22 remember Deputy Galinski said that wasn't in my report, but  
23 he acknowledges the report says the person was firing over  
24 the roof. Why would you dump the gun if you didn't do  
25 anything? But what's interesting about this is Landrum and

1 Greene, they said, no, we didn't have a gun. We didn't do  
2 anything. And they were let go. They're taken down to the  
3 Sheriff's Department, they're being boisterous, they won't  
4 talk, they won't discuss anything, won't even admit that  
5 they had a gun, but they have nothing to hide, supposedly.  
6 But they were hiding something. They tossed the gun that  
7 night driving off Hardscrabble Road. And guess what? Guess  
8 who is sitting on ammunition? Mr. Greene. When you go  
9 through this, the photographs, State's Exhibit No. 19, Mr.  
10 Greene is sitting right there. And I'm not going back  
11 through this. You've heard a lot of testimony about this,  
12 Ms. Johns has referred to it and Ms. Shipley has referred to  
13 it. There are two 9 millimeter bullet jackets, full jackets  
14 that are in that cab. There are the only two 9 millimeter  
15 bullets found in this case, and they're not just not 9  
16 millimeter bullets, they are Winchester 9 millimeter, and  
17 they're not only 9 millimeter bullets, they are full  
18 jacketed Winchester 9 millimeter bullets. And it is such a  
19 coincidence, it is a real coincidence in this case, that the  
20 bullets out on the side of the road in front of the club are  
21 Winchester 9 millimeter full jacketed bullets. Reasonable  
22 doubt? That's a reasonable doubt.

23 The police can't find the gun. They guys are out there  
24 with their hands behind their back. Nobody bags their hands  
25 to preserve gunshot residue. You've heard about gunshot

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1 residue, how it can fall off, you can sweat it off, you can  
2 rub it off. That's why they bag hands. These guys were out  
3 there for a couple of hours on the road, their hands not  
4 bagged. And then they go down there and I think it was Ms.  
5 Reed-Enzor, she does the GSR, sends it out, no GSR. No GSR.  
6 No gunshot residue. Surprise. They dump the gun, they're  
7 sitting out there on bullets. And the Isuzu is processed as  
8 well. The Isuzu was processed by Mr. Bouknight.

9 Now, folks, I can understand mistakes. Nobody -- I can  
10 understand mistake particularly, because I make mistakes, a  
11 lot of them. But an experienced law enforcement officer  
12 with a GSR kit for that Isuzu puts it in locker in the  
13 evidence room and forgets about it. That just doesn't make  
14 sense. And forgets about it for seven months, and it's not  
15 even sent off for analysis for seven months. But everybody  
16 -- you heard Mr. McRae say, that's not the way we do it. We  
17 get evidence we turn it into the evidence room. All the  
18 evidence in this case was turned in by July 12, but not the  
19 GSR kit for the Isuzu.

20 Well, I'm not going to discuss much more about it, but  
21 I think the Isuzu for you is a central issue in this case  
22 that the state would like to ignore. They just want to pass  
23 it by. The connections in this case to that Isuzu are  
24 dramatic and they are very difficult to overcome.

25 Now, you have, also, you have the Suburban is

1 processed. There's no question it was seized at the Outback  
2 Steakhouse. It was no question that it was towed into the  
3 Sheriff's Department, and there was no question that Mr.  
4 McRae said, we probably got the keys and the driver entered  
5 the vehicle to go ahead and put it in possession to be  
6 towed.

7 Well, folks, I don't know what happened out there. I  
8 have no idea what happened, but based upon what you heard  
9 from the GSR analysis anybody entering that vehicle could  
10 taint the vehicle. The only thing they have on this  
11 receipt, two receipt that indicates that somebody was not in  
12 the vehicle it says no inventory was preformed. It does not  
13 say that nobody went into the vehicle, and how easy would it  
14 have been, ladies and gentlemen, and have the officer who  
15 filled this out and approved this, how easy would it have  
16 been to bring him in here to tell you that. They didn't do  
17 that. It is their burden of proof.

18 So you have the Suburban processed, you have the road  
19 being processed, you have the GSR off the two, Landrum and  
20 Greene, the guys who were really being a problem, and you  
21 have the Isuzu.

22 Now, let's talk about the road for a second. Ms. Reed-  
23 Enzor, she was the one that came out here and examined the  
24 road. Here's what I'm going to ask you to consider about  
25 this. The shell casings out there were clearly Winchester

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1 full jacketed 9 millimeter shell casings as they are in the  
2 Isuzu. The description -- the only person who describes the  
3 Suburban firing shots towards the club, the only person,  
4 says it was driving down Hardscrabble Road towards Farrow  
5 Road. And the person, whoever it was on the driver's side,  
6 firing from the driver's side window.

7 My contention, ladies and gentlemen, I submit from the  
8 evidence is that is a reasonable inference to be drawn that  
9 it was not coming from the Suburban, may not have been  
10 coming from the Isuzu, but it was coming from someone who  
11 was in and around this area. Why do I say that? Because  
12 you have one, two, three, four, five, six -- and you look at  
13 this picture over here, this is State's 93, which kind of  
14 better describes it even though it's dark. But you've got  
15 six shell casings on the right hand side of the road.  
16 Whoever is firing the bullets is going down Hardscrabble  
17 Road this way. The testimony is they were firing out of the  
18 driver's side of the car. How did they shell casings get  
19 over here? You know how they get over there? Because  
20 somebody was firing in this vicinity. I don't care what  
21 David Collins said, and he didn't -- he didn't address this  
22 particularly. There is a trajectory, you can go ahead with  
23 that kind of gun will shoot a good distance. Remember what  
24 he said, it ejects out of the right hand side. It can go to  
25 the right, it can go to the left, it can go lower. But

1 firing out of the left side of the car, you can't put them  
2 over here. It doesn't make any sense, and no one's come in  
3 here and explained that to you. There were cars riding down  
4 and they may have driven over them and damaged them. Well,  
5 that may be truth, but they'd be in the roadway. If  
6 somebody drives over a shell and crushes it and damages it,  
7 it's in the roadway. It's not laying all the way over on  
8 the other side of the car, the passenger side of the car  
9 going down Hardscrabble Road.

10 You are being asked to speculate so much about what  
11 happened out there that night. You're also being asked to  
12 assume two different things. One is that the gun was far  
13 enough out of the left side of the vehicle that ejected the  
14 bullets outside, but not inside the cab. And it also was  
15 far enough outside that it also deposited what they call  
16 indications of gunshot residue inside the cab. Now, as I  
17 understood what Ms. Shipley was arguing about the Isuzu, Mr.  
18 Moskal was saying, well the gun was up in the air so the  
19 wind could effect that. Well, folks, if you're driving down  
20 Hardscrabble Road and you've got this Mac-10 sticking out  
21 far enough so that it can eject shells out the right hand  
22 side how do these gunshot residue characteristics get inside  
23 the cab? The same principles of physics would apply to the  
24 Suburban as they would they Isuzu.

25 Well, you had -- I've gone through the crime scene

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1 processing, the scene was being processed. We talked about  
2 Ms. Enzor. We talked about Mr. Collins. All these 10 shell  
3 casings that came from one gun. The projectiles came from  
4 one gun, but he can't say they came from the same gun.  
5 That's just something for you to consider. But that doesn't  
6 matter to us because we say they didn't come from any gun in  
7 that Suburban.

8 Now, let me talk about Mr. Moskal for a minute.  
9 Because we don't have any dispute about what Dr. Nicholson  
10 and Tena Goff said, but we do have some dispute about what  
11 Mr. Moskal said. The gunshot residue expert. First of all,  
12 the GSR kit for the Suburban is sent out there to SLED in  
13 July. He determines on his own based upon information that  
14 he said he had that it was secondary transfer. Now, you've  
15 never seen that information, but he made a decision that  
16 SLED will not allow him to go ahead and do a GSR kit on that  
17 Suburban because of secondary transfer. It was good enough  
18 in July not to go ahead and do gunshot residue, but let's  
19 come back in January or March of 2008, and let's go ahead  
20 and do it. He also testified about the Isuzu. That he  
21 didn't find any characteristics there. He didn't find any  
22 characteristics on Landrum or Greene. Well, the Isuzu kit  
23 wasn't even sent out until January. The kit from Landrum  
24 and Greene came without their hands even being bagged. You  
25 know that they fired a shot, so they must have something on

1 them. Magic. Magic.

2           What did he say about what was in the car? He said  
3 there were characteristics of gunshot residue. There's  
4 three basic elements. There's lead, barium and antimonium.  
5 What did he find? There were no swabs submitted on the  
6 Suburban, which is important in another respect, but he did  
7 the sticky tabs, examined the sticky tabs. And he said he  
8 would have expected over 5000 particles of lead on the  
9 sticky tabs. How many were there? 16. 16. He also said  
10 he found no barium or antimonium. Here's the gunshot  
11 residue worksheet. Two of the basic ingredients for gunshot  
12 residue were not found in the Suburban. Two were not found.  
13 The one that was found was a very low concentration.  
14 Expecting over 5000, but only getting 16. So what was his  
15 conclusion? I can't tell you there gunshot residue in that  
16 vehicle. What I can tell you is what I found is consistent  
17 with gunshot residue, but there's all sorts of other reasons  
18 that lead particles can get in a vehicle. First of all,  
19 someone could have gotten in that vehicle at anytime after  
20 firing a shot and possibly left those elements in the  
21 vehicle. When you get in the vehicle you would be moving it  
22 around. Remember what he said? You'd be moving it around  
23 every time you got in the vehicle. It could come from other  
24 things, make-up, ball bearing, fishing equipment, brakes,  
25 ball bearings. All sorts of other things can bring those

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1 same elements as in the gunshot residue which would have  
2 been in the cab.

3 But ladies and gentlemen, what's important to them,  
4 according to them, they did those sticky tab analysis they  
5 only found one out of three elements in gunshot residue and  
6 what they did find was in low concentration so much so that  
7 he could not call it gunshot residue. And the state wants  
8 you to convict Tremaine Wray and/or Taurus Watts on that  
9 kind of evidence.

10 Remember what he also said about the Isuzu? Well, we  
11 did the swabs. The swabs didn't have any of the elements on  
12 them so we never went ahead and did the sticky tabs. Isn't  
13 it interesting on the Suburban they never did any swabs?  
14 That he would have gone ahead and done the swabs first,  
15 because presumably if you looked at the swabs and they were  
16 negative, he would never have examined the sticky tabs.  
17 Some interesting things for you to think about in this case.

18 Let me finish up here. I know y'all will be happy  
19 about that. Lawyers talk.

20 Let me talk to you about Brian Watson, Rashonda Simpson  
21 and Jarrell Dansby just a moment. This case is two years  
22 old, June of '07. You got a guy sitting in jail on two  
23 armed robbery charges looking at 60 years. No parole. No  
24 parole. This is a guy who has been through the system over  
25 many, many years. He is a liar, he is a thief, and he's a

1 cheat. He's got eight counts of forgery, fraudulent  
2 transactions with credit cards. He's got burglary. He's  
3 got crack cocaine. Driving under suspension. He's got --  
4 and the driving under suspension I throw in there because  
5 remember he said he wouldn't drive because I didn't have a  
6 license. This guy is a career criminal. The day he was  
7 arrested, in February of 2009, the crime rate in Richland  
8 County the crime rate went down 20 percent. He is a thug.  
9 He belongs in jail. But let's -- he know how to work the  
10 system. He knows that if I come up with some information  
11 that will help them, they will help me. No, there's no  
12 express agreement, but there's an understanding by him that  
13 he will benefit by it. And in March of 2009, he says he  
14 runs into Taurus Watts and Taurus Watts makes this statement  
15 to him and he decides at that point that maybe I can turn  
16 this to my advantage. Well, folks, if he ran into Taurus  
17 Watts and Taurus Watts discussed in any way what he was  
18 charged with it's not unusual for people who are accused of  
19 crimes to discuss the evidence against them. So Brian  
20 Watson could have become fully aware of the evidence in this  
21 case as a result of his conversation that he said with  
22 Taurus Watts about what the evidence was in this case. And  
23 if you don't think that happens, I'm telling you.

24 So on March 18, he has this revelation he forgot, he  
25 forgot about for two years. I forgot about it. So on March

1 18, he starts thinking about the wheels and how they're  
2 going to turn. So what he does, he's having a bunch of  
3 conversations with his family. With Rashonda Simpson. We  
4 didn't make those records up. And he waits two months until  
5 May 18, the day the trial is supposed to start in this case.  
6 The day. You talk about a guy manipulating this system.  
7 Knowing how to manipulate the system? He comes forward on  
8 the day this trial is supposed to start and says, hey, I've  
9 got information about that case. I've got information.

10 Ladies and gentlemen, he had information. He probably  
11 got it when he was discussing with Mr. Watts, if you believe  
12 his testimony, when he was discussing with Mr. Watts. He  
13 got information of what he was accused of. And he was  
14 accused of having a Mac-10. Brian Watson knows the angles  
15 and he knows how to beat the system. You talk about a guy  
16 knowing how to best the system, that's the man.

17 So he takes them out at 9:30 at night he takes them out  
18 of three different bridges. Which by the way, you'll just  
19 have to evaluate the testimony as to whether or not he was  
20 absolutely certain as to which bridge it was, and then he  
21 was wrong. Absolutely certain. But you know what the  
22 bottom line of all that is? They didn't find a gun. There  
23 is no gun. Not only is there no gun, no bag, because he  
24 didn't throw the bag away. No hammer. No testimony that  
25 went away. They didn't examine anything to support his

1 testimony, but they did go talk to Rashonda and Jarrell to  
2 corroborate what he said. Well, let's talk about that for a  
3 minute. What did Brian Watson tell you? Well, I got a call  
4 from my nephew, Jarrell Dansby. He asked me to come up to  
5 the house. I came up to the house and he told me, I've got  
6 this gun here and I need to get rid of it, but really, I'm  
7 thinking about going to law enforcement. That's what  
8 Jarrell Dansby said. I'm thinking about going to law  
9 enforcement. And according to Brian Watson he says that  
10 Jarrell Dansby said he wanted to get rid of the gun. Well,  
11 we have a little bit of a discrepancy there. He also says  
12 that they went ahead and they hammered the gun a little bit.  
13 That is was in a black Jansport bag, and that when they  
14 hammered it a little bit they put it back and the bag, and  
15 Rashonda, he and Jarrell went down the road to the bridges  
16 and dumped the gun. Rashonda, Jarrell and him.

17 Now, there are some discrepancies of what he described  
18 and what we'll get into in just a moment about what Rashonda  
19 said and what Jarrell said. But remember this, he said  
20 Rashonda and Jarrell got in the vehicle with him and drove  
21 him down there and he dumped the gun. That Jarrell called  
22 him and ask him to talk to him about this gun and Jarrell  
23 wanted to go ahead and get rid of the gun, that's what his  
24 testimony was. His testimony was he never discussed it with  
25 his niece, he never discussed it with anybody, but you know

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1 better than that. He was talking to her in the jail, he was  
2 talking to her on the phone, he was talking to his family on  
3 the phone.

4 So the state goes ahead with this liar, cheat, burglar  
5 and every other thing, and they say, well, let's go talk to  
6 Rashonda. And they grab Rashonda at 12:00 o'clock at night  
7 and tell her, listen we can charge you with a crime and if  
8 you don't cooperate we're going to charge you with a crime.  
9 And don't worry you're not going to have to testify in this  
10 case because they're going to take a plea. That's what she  
11 testified to. And she says, lo and behold, and there was a  
12 discrepancy about whether she was at work that day or  
13 whether she not at work and she was away with the kids. I'm  
14 not even going to go into that. But she said that Brian and  
15 Jarrell went out -- they got together, she saw them talking  
16 somewhere in the back. She saw something about destroying  
17 or hammering the gun or whatever else she said. Guess what?  
18 That's the first time she ever said that. No one has ever  
19 heard that until you heard it the other day, and what's  
20 important about that? That's an issue that was not in her  
21 statement, she never told anybody at law enforcement about  
22 it, but all of a sudden since May 18, she becomes aware of  
23 that after she made her statement. On May 18 or the morning  
24 of May 19, she happens to throw that in? Trying to  
25 corroborate a little bit. You think she had enough

1 information from her uncle or anybody else as to what they  
2 were looking for.

3 Now, Ms. Shipley remembers it a little bit differently  
4 than I do, and as I told you, you remember it the way you  
5 have written down in your recollection in your memory. He  
6 said a black Jansport bag. It's my recollection in the  
7 testimony and we even have a little dispute among us, that  
8 she never said it was a black Jansport bag. She said she  
9 saw the gun, and it was a black gun. You recall what the  
10 testimony was. You look at your notes. I'm not  
11 representing one way or the other, but I'm just asking you  
12 to consider that. Because frankly at this point I don't  
13 recall. But what is important as this is that Jarrell  
14 Dansby comes in and he says, I walked down to my uncles  
15 house, and I tell him about this gun. I'm going to go ahead  
16 and go to law enforcement, but he says, no, I'll get rid of  
17 it. And he says at that point that Brian takes the gun. He  
18 gets in Rashonda's car and he goes and he comes back and he  
19 says it's taken care of.

20 Now, Jarrell says he knew nothing about the digging and  
21 the burying the gun and digging the gun back up that  
22 Rashonda was talking about. He knew nothing about what  
23 Brian was saying about he and Rashonda got in the vehicle  
24 with him and drove down and got rid of the gun. He knew  
25 nothing about what Rashonda was saying that he and Brian got

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1 in the car and drove away. So you've got three different  
2 stories about who got drove the car away and got rid of the  
3 gun. You've got Brian saying it was all three. You've got  
4 Rashonda saying it was Brian and Jarrell. And you've got  
5 Jarrell saying I don't know what you're talking about. I  
6 didn't even see the gun, it was under the house. Brian says  
7 he got it from the house. Rashonda says, I wasn't much near  
8 where the gun was. I didn't want to have anything to do  
9 with it. I didn't get in the car, they did.

10 That's what I'm talking about the truth. The truth can  
11 only have one version. We're not talking about minor  
12 discrepancies in this case, we're talking about major  
13 discrepancies in this case, and why is that important?  
14 Because maybe the central issue here is the gun, but all of  
15 these other issues that we're talking about are not just  
16 observations and conclusions. They are actual facts that  
17 these three people can't get together on. And will you  
18 telling the truth those facts are going to be consistent  
19 with each other.

20 Brian, if he's telling the truth and he came up to the  
21 house and Jarrell got the gun from the house and came out  
22 with a black Jansport bag, then that's the truth. If  
23 Rashonda says, no, that's not what happened. I came home  
24 and saw him burying the gun. I told him to dig it up. He  
25 and my uncle went ahead and got rid of it. Jarrell's saying

1 I don't know what they're talking about. It was a brown  
2 bag, it was a potato bag. It was a burlap bag. Completely  
3 different bag. Never buried. Not from the house, under the  
4 house.

5 Ladies and gentlemen, when people get together on a  
6 story, they never anticipate that they're going to get  
7 cross-examined about it. They never think about that. They  
8 don't go through their testimony and that's why the classic  
9 sign that someone is lying is that you have such  
10 discrepancies in the testimony. Not just minor  
11 discrepancies, major discrepancies in this case about those  
12 three people. None of them are telling the truth. Jarrell  
13 Dansby told you he wouldn't believe his own wife.

14 Folks, you consider what those three people said. You  
15 decide if in the important affairs of your life you would  
16 rely on what those three people said. You decide if the  
17 truth is as different as they said it was. Or could be as  
18 different as they said it was, and I submit to you that it  
19 could not be. It is not credible. You would not rely on  
20 that in the important decisions in your life.

21 Now, Ms. Shipley said that scientific evidence does not  
22 lie. It does not lie. Well, to an extent it does not lie.  
23 But what is a problem with scientific evidence is the  
24 gathering of the evidence and the analysis of the evidence,  
25 and the later technology that comes about. And to the

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1 extent that people have relied on scientific evidence for  
2 years, because the state argues that all the time and people  
3 have been convicted, later on a new technology is developed  
4 and those people are exonerated. DNA, how many people have  
5 you heard get exonerated when the state relied on it.  
6 Absolute proof. Scientific evidence does not lie to go  
7 ahead and get a conviction. Gathering analysis and later  
8 technology. Scientific evidence may not lie, but it is not  
9 foolproof.

10 November 22, 1963, John F. Kennedy was shot and he was  
11 killed. Some of you may remember that. I was a junior in  
12 high school. I was standing on a street corner in ????? New  
13 Jersey. I heard it on the radio and it was etched in my  
14 life for the rest of my life. I will never forget that  
15 moment. That was almost 50 years ago. Do you know that  
16 today the scientific evidence that Ms. Shipley says doesn't  
17 lie, today, after every major sound expert in the world,  
18 every expert video expert in the world, every major crime  
19 scene investigator, millions of dollars, the Warren  
20 Commission, almost 50 years later there is an argument as to  
21 whether or not Lee Harvey Oswald acted alone from the Book  
22 Depository and fired one shot or whether or not he fired two  
23 shots or whether or not he fired three shots or whether  
24 there was somebody on the bank there, outside the Book  
25 Depository who is also shooting. Scientific evidence, 50

1 years we're still arguing about the same thing. That's not  
2 something I made up. You know, every once in a while  
3 somebody comes up with this theory about what happened that  
4 day. Maybe some day we'll know, but you know what?  
5 Scientific evidence doesn't know everything, and can't draw  
6 absolute conclusions about anything.

7 Thank you so much for your attention. I am sorry, but  
8 I went farther than I thought I was going to. It's a long  
9 case. It's been eight days. I apologize to you. If  
10 there's anything I've done during the course of this trial  
11 to aggravate you a little bit or you think he's popping up  
12 too much or I don't know why he's objecting. It's all part  
13 of what we have to do. We would do it for anybody charged  
14 with a crime, anywhere. We have to be zealous advocates.  
15 We do and they do. But you know what? This is not like a  
16 contest between the state and the defense. It's not like a  
17 football game or a baseball game where we as Americans, we  
18 like a winner where somebody has to win and somebody has to  
19 lose. We like final decisions. It's not like that, because  
20 in a courtroom in this state and this country, when the jury  
21 speaks the truth, which is what Verdicto means, or verdict  
22 means, the Latin term is Verdicto. When the jury speaks the  
23 truth we all win. Everybody wins. There is no victory for  
24 one side or the other. It's for both sides because all  
25 anybody ever asks of a jury is to come in and speak the

1 truth. Speak the truth.

2 If you hesitate, if you have a reasonable belief about  
3 what the state has proven in this case or not proven in this  
4 case and you've examined the evidence as we've reviewed it  
5 with you and you have that reasonable doubt which we submit  
6 you should and you would. We ask you for a verdict of not  
7 guilty.

8 I thank you very much for all your attention, all your  
9 patience, and all your curtses over the last eight days.

10 Thank you.

11 THE COURT: Thank you very much.

12 Ladies and gentlemen of the jury, take a short break  
13 and then the Court will be charging you on the law.

14 I remind you not to discuss the case.

15 (Jury out at 4:20 p.m.)

16 (Jury in at 4:35 p.m.)

17 THE BAILIFF: The jury's all present, Your Honor.

18 THE COURT: I would state for anyone in the  
19 courtroom that I'm going to be charging on the law at this  
20 point. We always secure the courtroom so that no one to go  
21 in or out. While we didn't want the jury distracted at all  
22 through the trial, this is very important because at this  
23 point you are actually deciding the case. I do realize that  
24 I earlier a juror who had a note about time constraint.  
25 We're going to go ahead and give you the case and then we'll

1 just bring you back in the morning to conclude any  
2 deliberations should you choose.

3 All right. Please pay attention to me.

4 Defendant Tremaine Wray and Defendant Taurus Watts are  
5 charged with murder.

6 Now, Mr. Foreperson and members of the jury, you have  
7 heard the evidence and the arguments of the parties. I will  
8 now explain to you the law which applies to this action.

9 I remind you that during this trial you and I have  
10 certain duties to perform. As the trial judge it is my  
11 responsibility to preside over the trial of this case and I  
12 have the duty to rule on the admissibility of the evidence  
13 offered during this trial. You are to consider only the  
14 competent evidence before you. If there was any testimony  
15 ordered stricken from the record in this case during the  
16 trial you must disregard that testimony. You are to  
17 consider only the testimony which has been presented from  
18 this witness stand, any exhibits which have been made a part  
19 of the record in this case and any stipulations of counsel.  
20 A stipulation is an agreement, admission or concession made  
21 in judicial proceedings by the parties thereto or their  
22 attorneys. Stipulations are binding upon those make them. A  
23 stipulation is an agreement, an understanding. The Court  
24 and the jury must accept stipulations as binding upon the  
25 parties. If counsel for the parties have stipulated to any

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1 fact or any fact has been admitted by counsel you will  
2 regard that fact as being conclusively proved as to the  
3 party or parties making the stipulation or admission.

4 I have the additional duty to charge you with the law  
5 applicable to this case. As the presiding judge I am the  
6 sole judge of the laws of this case and it is your duty as  
7 jurors to accept and apply the law as I now state it to you.  
8 I you already have an idea what the law is and it does not  
9 agree with what I now tell you the law is you must abandon  
10 your prior ideas because you are sworn to accept and apply  
11 the law exactly as I state it to you.

12 In every case tried in this court before a jury a jury  
13 becomes a sole and exclusive facts in a case. A trial judge  
14 cannot intimate, state, comment on or make any statement to  
15 a trial jury about the facts of a case, since you the jury  
16 are the sole judge of the facts in this case you are not to  
17 infer from what I said during the progress of this trial in  
18 ruling upon the admissibility of evidence or otherwise or  
19 anything that I now say during the course of this  
20 instruction to you that I have any opinion about the facts  
21 in this case. The law does not allow me to have an opinion  
22 about the facts in this case. This is a matter solely for  
23 you the jury to determine. As jurors it is your duty to  
24 determine the effect, value, weight, and truth of the  
25 evidence as presented during this trial

1           The indictment charges the defendants with the offense  
2 of murder. I remind you that the fact that a defendant was  
3 arrested, charged, and indicted in this case is not evidence  
4 in this case and cannot be considered by you as evidence of  
5 guilt in this case, nor does it create any presumption or  
6 inference of guilty. The indictment is simply the formal  
7 instrument made against each defendant. It is the formal  
8 document by which this case is brought into this court.  
9 Each defendant has pled not guilty to these indictments that  
10 those pleas put the burden of proof on the state to prove  
11 each defendant guilty.

12           A person charged with committing a criminal offense in  
13 South Carolina is never required to prove himself innocent  
14 no matter how grave or serious the offense with which they  
15 are charged, a defendant is presumed to be innocent unless  
16 and until the state has established guilt beyond a  
17 reasonable doubt. This presumption of innocence is legal  
18 proof of innocence and does not end when you begin your  
19 deliberations, but it accompanies a defendant throughout the  
20 trial until you reach a verdict of guilt satisfying you  
21 beyond a reasonable doubt. The presumption of innocence is  
22 like a robe of righteousness placed about the shoulders of  
23 the defendant that remains with the defendant until it has  
24 been stripped from the defendant by evidence satisfying you  
25 of a defendant's guilt beyond a reasonable doubt. The

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1 presumption of innocence is a substantial right to which  
2 every defendant is entitled and remains with the defendant  
3 unless and until you are the jury are satisfied from the  
4 evidence of the defendant's guilt beyond a reasonable doubt.

5 Each defendant is charged with murder. The state must  
6 prove beyond a reasonable doubt that a defendant killed  
7 another person with malice aforethought. Malice is hatred,  
8 ill will or hostility towards another person. It is the  
9 intentional doing of a wrongful act without just cause or  
10 excuse. Malice does not necessarily require ill will toward  
11 the person injured but rather signifies a general malignant  
12 recklessness of the lives and safety of others or a  
13 condition of the mind that shows a heart, regardless of  
14 social duty and fatally bent on mischief. Specific intent  
15 to kill is not required. Malice aforethought does not  
16 require that malice exist for any particular time before the  
17 act is committed, but malice must exist in the mind of a  
18 defendant just before and at the time the act is committed.  
19 Therefore, there must be a combination of the previous evil  
20 intent and the act. Malice aforethought may be expressed or  
21 inferred. These terms, express and inferred do not mean  
22 different kinds of malice, but merely the manner in which  
23 malice may be shown to exist. Malice may be shown to exist  
24 either by direct evidence or circumstantial evidence.  
25 Express malice is shown when a person speaks words which

1 express hatred or ill will for another or when a person  
2 prepared beforehand to do the act, which was later  
3 accomplished.

4 For example, lying in wait for a person or any other  
5 acts of preparation going to show that the deed was within a  
6 defendant's mind would be express malice. If facts are  
7 proved beyond a reasonable doubt sufficient to raise an  
8 inference of malice to your satisfaction this inference  
9 would be simply an evidentiary fact to be taken into  
10 consideration by you, the jury, along with other evidence  
11 in his case and you may give it such weight as you  
12 determine it should receive.

13 In order to establish criminal liability, criminal  
14 intent is required. What does criminal intent mean in the  
15 law. Criminal intent is a state of mind which operates  
16 jointly with an act or omission in the commission of a  
17 crime. Criminal intent is a mental state of conscious  
18 wrong-doing. Criminal intent include those consequences  
19 which include A, represent the very purpose for which an act  
20 is done or B, are known to be substantially certain to  
21 result regardless of ones desire. Intend may be shown by  
22 acts and conduct of a defendant and other circumstances from  
23 which you may naturally and reasonably infer intent.  
24 Criminal intent must be proven by the state beyond a  
25 reasonable doubt. Motive is not an element of murder and

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1 therefore the state need not prove motive to support a  
2 murder conviction. Although the state is not required to  
3 prove motive, the presence or absence of this evidence of  
4 motive may be considered by you in determining whether there  
5 is criminal intent to commit murder. Criminal intent is  
6 always a matter that must be determined by the jury from the  
7 circumstances surrounding the situation. There is no way to  
8 prove intent to a mathematical certainty. There is no way  
9 science can dissect a person's brain and determine what the  
10 person had in mind. So the law says that criminal intent  
11 may be inferred from the circumstances show to have existed.

12 This is how you make a determination of whether or not  
13 the element requiring intent was present. It is not  
14 necessary to establish intent by direct and positive  
15 evidence, but intent may be established by inference in the  
16 same way as any other fact by taking into consideration the  
17 acts of the parties and all the facts and circumstances of  
18 the case. If facts are proved beyond a reasonable doubt  
19 sufficient to raise an inference of intent to your  
20 satisfaction, this inference would be simply an evidentiary  
21 fact to be taken into consideration by you, the jury, along  
22 with other evidence in the case and you may give it such  
23 weight as you determine it should receive. Criminal intent  
24 is a mental state, a conscious wrong-doing. It is up to you  
25 do determine what the defendant intended to do based on the

1 circumstances show to have existed beyond a reasonable  
2 doubt.

3         If you find the state has failed to prove beyond a  
4 reasonable doubt that a defendant committed murder, you may  
5 consider whether the state has proved beyond a reasonable  
6 doubt that a defendant committed voluntary manslaughter.  
7 Voluntary manslaughter is a lesser included offense of  
8 murder. To prove voluntary manslaughter the state must  
9 prove beyond a reasonable doubt that a defendant took the  
10 life of another in the sudden heat of passion based on  
11 sufficient legal provocation. Both heat of passion and  
12 sufficient legal provocation must be present at the time of  
13 the killing to constitute voluntary manslaughter. Sudden  
14 heat of passion may, for a time, effect a person's self-  
15 control and temporarily disturb a person's reason. The  
16 sudden heat of passion must be the type that would make an  
17 ordinary person unable to coolly reflect on his actions and  
18 would produce an uncontrollable impulse to do violence.  
19 Sufficient legal provocation must be the type that would  
20 make a person of ordinary reason and caution become enraged  
21 and lose control temporarily. The provocation needed for  
22 voluntary manslaughter must come from some act of or related  
23 to the victim. Words alone however vulgar or insulting are  
24 not enough to be legal provocation. The words must be  
25 accompanied by some overt act threatening at which could

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1 have produced the sudden heat of passion. If the heat of  
2 passion of passion had cooled or if there was enough time  
3 between provocation, if any, and the killing, for the  
4 passion of a reasonable person to cool, the killing would  
5 not be voluntary manslaughter.

6 In deciding whether a reasonable person would have had  
7 enough time to cool off, you should consider all the  
8 circumstances surrounding the killing. You may consider the  
9 nature of the provocation, if any, a defendant's mental and  
10 physical state and the circumstances and relationships  
11 between the parties.

12 An issue in this case is the identification as the  
13 person who committed the crime charged. The state has the  
14 burden of proving identity beyond a reasonable doubt. You  
15 must be satisfied beyond a reasonable doubt of the accuracy  
16 of the identification of a defendant before you convict a  
17 defendant. Identification testimony is an expression of  
18 belief or impression by a witness. You must determine the  
19 accuracy of the identification of the defendant. You must  
20 the believability of each identification witness in the same  
21 ways as any other witness. You may consider whether the  
22 witness had an adequate opportunity to observe the offender  
23 at the time of the offense. This will be effected by things  
24 like how long or short a time was available, how far or  
25 close the witness was, the lighting conditions and whether

1 the witness had a chance to see or know the person in the  
2 past.

3         Once again, I instruct you the burden of proof on the  
4 state extends to every element of the crime charged, and  
5 this specifically includes the burden of proving beyond a  
6 reasonable doubt the identity of the defendant as the person  
7 who committed the crime. If, after examining the testimony,  
8 you have a reasonable doubt as to the accuracy of the  
9 identification you must find that defendant not guilty. If  
10 you find, however, the state has proved the identity beyond  
11 a reasonable doubt you must find that defendant guilty.

12         When a person does an act in the presence of and with  
13 the assistance of another the act is done by both. Where  
14 two or more people acting with a common plan or intent are  
15 present at the commission of a crime it does not matter who  
16 commits the crime, all are guilty. The hand of one is the  
17 hand of all. Present means to be sufficiently near to aid  
18 and abet and assist in the commission of the crime. Intent  
19 is also a necessary element for there must have been a  
20 common design or intent to commit the crime and a crime must  
21 have been committed pursuant to that plan with the person  
22 aiding and abetting by some overt act. The state must prove  
23 beyond a reasonable doubt by competent evidence the theory  
24 of the hand of one is the hand of all. To be guilty of a  
25 crime a person must personally commit the crime or be

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1 present at the scene of the crime, aid or abet or assist in  
2 the commission of that crime through some overt act. To be  
3 guilty as an aider and abetter, a person must have knowledge  
4 of the criminal conduct of the person that actually commits  
5 the crime. The mere presence of a defendant where a crime  
6 has occurred or the mere association by a defendant when  
7 people who have committed a crime is insufficient proof that  
8 the defendant has committed a crime. Evidence that an  
9 individual is present at the time a crime is committed is  
10 not in and of itself sufficient proof that the individual  
11 committed a crime. There mere knowledge that another person  
12 is going to commit a crime even when the defendant is  
13 present when the crime is committed is not sufficient to  
14 convict a defendant as a principal. The burden is on the  
15 state to prove every element of the crime charged. If you  
16 find after reviewing all the evidence that the state has  
17 proved a defendant was only present at the scene of a crime  
18 or associated with a person who commits a crime or had mere  
19 knowledge that a person was going to commit a crime and that  
20 the state has not proved beyond a reasonable doubt any  
21 participation in the crime, as I have defined that to you  
22 then you are required to find that defendant not guilty.  
23 If, however, you find that the state has proved  
24 participation in the crime, as I have defined that to you,  
25 then you are required to find that defendant guilty.

1           The state has the burden of proving the defendant  
2 guilty beyond a reasonable doubt. The state is required to  
3 prove every element of the charge against the defense by  
4 evidence which satisfies each of you of the guilt of the  
5 defendant beyond a reasonable doubt. A defendant is not  
6 required to prove his innocence. The burden of proving a  
7 defendant guilty beyond a reasonable doubt always remains  
8 upon the state of South Carolina.

9           Some of you may have served as jurors in civil cases  
10 where you were told that it's only necessary to prove that a  
11 fact is more likely true than not true, such as the greater  
12 weight or the preponderance of the evidence.

13           In criminal cases the state's proof must be more  
14 powerful than that. It must be beyond a reasonable doubt.  
15 A reasonable doubt is the kind of doubt that would cause a  
16 reasonable person hesitate to act. The term reasonable  
17 doubt should be given it's plain and ordinary meaning.  
18 There are very few things in this world that we know with  
19 absolute certainty. And in criminal cases the law does not  
20 require proof that overcomes every possible doubt.

21           If, based on your consideration of the evidence, you  
22 are firmly convinced that a defendant is guilty of the crime  
23 charged, you must find him guilty. If, on the other hand,  
24 you conclude there's a real possibility that he is not  
25 guilty, you must give the particular defendant the benefit

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1 of the doubt and find that defendant not guilty.

2           There are two types of evidence generally presented  
3 during a trial; direct evidence and circumstantial evidence.  
4 Direct evidence is the testimony of a person who asserts or  
5 claims to have actual knowledge of a fact, such as an eye-  
6 witness. It is evidence that immediately establishes the  
7 main fact to be proved. Circumstantial evidence is proof of  
8 a chain of facts and circumstances indicating the existence  
9 of a fact. The law makes absolutely no distinction between  
10 the weight or value to be given to either direct or  
11 circumstantial evidence. Nor is a greater degree of  
12 certainty required of circumstantial evidence than of direct  
13 evidence.

14           You should weigh all the evidence in the case. After  
15 weighing all the evidence if you are not convinced of the  
16 guilt of the defendant beyond a reasonable doubt, you must  
17 find that defendant not guilty. If, on the other hand,  
18 after weighing all the evidence you are convinced of the  
19 guilt of the defendant beyond a reasonable doubt you must  
20 find that defendant guilty.

21           Necessarily, you must determine the credibility of  
22 witnesses who have testified in this case. Credibility  
23 simply means believability. It becomes your duty as jurors  
24 to analysis and to evaluate the evidence and determine which  
25 evidence convinces you of its truth.

1           In determining the credibility of witnesses who have  
2 testified in this case you may believe one witness over  
3 several other witnesses or several witnesses over one  
4 witness. You may believe only a part of the testimony of  
5 one witness and reject the remaining part of the testimony  
6 of that same witness. You may believe the testimony of a  
7 witness in it's entirety or reject the testimony of a  
8 witness in it's entirety. You may consider whether any  
9 witness has exhibited to you any interest, bias, prejudice,  
10 or other motive in this case. You may also consider the  
11 appearance and manner of a witness on the witness stand.

12           The rules of evidence ordinarily do not permit  
13 witnesses to testify to opinions or conclusions. An  
14 exception to this rule exists for witnesses we call expert  
15 witnesses. A witness who by education and experience has  
16 become expert in some art, science, profession or calling,  
17 may state an opinion as to relevant and material matters in  
18 which the witness claims to be an expert and may also state  
19 the reasons for the opinion. You should consider an expert  
20 opinion received in evidence in this case and like any other  
21 evidence give it the weight you think it deserves. If you  
22 decide that the opinion of an expert witness is not based on  
23 sufficient education and experience or if you conclude that  
24 the reasons given in support of the opinion are not sound,  
25 or that the opinion is outweighed by other evidence you may

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1 disregard the opinion entirely. And expert witness's  
2 testimony is to be given no greater weight than that of  
3 other witnesses simply because the witness is an expert.  
4 Further you are not required to accept an expert's opinion  
5 even though it is not contradicted.

6 The testimony of a witness may be discredited or  
7 impeached by showing the he or she previously made  
8 statements that are inconsistent with his or her present  
9 testimony. The earlier contradictory statements are  
10 admissible only to impeach the credibility of the witness  
11 and not to establish the truth of the statement.

12 It is the province of you, the jury to determine the  
13 credibility, if any, to be given the testimony of a witness  
14 that you have determined to have given a prior inconsistent  
15 statement. There has been evidence presented that witnesses  
16 have made prior statements which are not consistent with the  
17 witnesses present testimony. You may use this evidence to  
18 decide whether to believe the witness. You may also use  
19 evidence of the earlier contradictory statements to  
20 determine the truth of those statements. It is up to you to  
21 decide whether to believe the earlier statements or to  
22 believe the testimony given at trial. If a witness is shown  
23 to have knowingly testified untruthfully concerning any  
24 material matter you may consider this in determining whether  
25 to trust the witnesses testimony as to other matters. You

1 may reject all the testimony of that witness or give all or  
2 part of the testimony the weight you think it deserves.

3 A person who has a past criminal record is competent to  
4 testify during a trial. A past record does not effect the  
5 ability of that witness to testify. The past record may  
6 only be considered by you, if at all, in determining the  
7 witnesses believability. Remember, you are the sole judges  
8 of the facts in this case, and the believability of any and  
9 all of the witnesses.

10 I instruct you and emphasize the fact that a defendant  
11 did not testify is not a factor to be considered by you in  
12 any way in your deliberations and in your consideration of  
13 the question of the guilt or innocense of that defendant.  
14 It must not be considered by you in any manner whatsoever.  
15 I repeat, under your oath, you are to draw no conclusion  
16 whatsoever from the fact that a defendant did not testify.  
17 The fact that a defendant did not testify should not even be  
18 discussed in the jury room. The burden of proof, as I have  
19 stated to you, is on the state. A defendant is not required  
20 to prove his innocense. The burden of proof remains on the  
21 state to prove guilt beyond a reasonable doubt.

22 Statements alleged to have been made by defendant Watts  
23 have been admitted into evidence in this case. While the  
24 Court has determined that the statements are admissible, I  
25 instruct you that you make the ultimate decision whether or

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1 not defendant Watts made the statements. If defendant Watts  
2 did make the statements, you must determine whether the  
3 statements were made by defendant Watts voluntarily and of  
4 his own free will. This means that statements were not  
5 caused by pressure, force, fear, threats, coercion, or  
6 intimidation, or by hope or a promise of leniency or a  
7 reward of any kind. In determining whether the statements  
8 were voluntary you should consider both the characteristics  
9 of defendant Watts and the details of the questioning.

10 Some of the factors that you must consider are the age  
11 of the defendant, the defendant's education or lack of  
12 education, the defendant's mental ability or capacity, the  
13 defendant's IQ or intelligence, the defendant's background  
14 and environment, the place and length of detention, the  
15 nature of the questioning. And if you find that the  
16 defendant was questioned by the police the advice or lack  
17 thereof to the defendant of his constitutional rights,  
18 including, but not limited to the right to remain silent,  
19 that any statement could be used against him in a court of  
20 law. The right to have a lawyer present. That if he could  
21 not afford a lawyer, a lawyer would be appointed to  
22 represent him without any cost, and that he could stop  
23 making a statement at any time. You must carefully consider  
24 all of the surrounding circumstances before you give any  
25 weight to an alleged statement. The state has the burden of

1 proving beyond a reasonable doubt that the alleged  
2 statements were voluntary. If you determine they were you  
3 may give the statements any further consideration that you  
4 deem proper. You must decide what weight, if any, should be  
5 given to the alleged statement. If you determine the  
6 alleged statements were not the free and voluntary  
7 statements of defendant Watts, you should not consider the  
8 statements at all.

9 I charge you that there are two defendants in this  
10 case. The case of each defendant and the evidence and the  
11 law concerning that defendant should be considered  
12 separately and individually. Your verdict does not have to  
13 be the same for both defendants. The fact that you may find  
14 one defendant guilty or not guilty should not control your  
15 verdict as to the other defendant. When more than one  
16 person is charged with a crime, if the evidence warrants it  
17 you may convict one and acquit the other, or you may acquit  
18 both or you may convict both. It will depend upon your view  
19 of the testimony and the evidence. You must take each  
20 defendant and consider the evidence as to that defendant and  
21 my instructions to you on the law. You will then write a  
22 separate verdict of guilty or not guilty for each individual  
23 defendant.

24 Now, finally, your notes should be used only as an aid  
25 to your memory and should not be allowed to take precedence

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1 over your independent memory of facts. The notes are only  
2 for your personal use in refreshing recollection of the  
3 evidence. When in deliberations at the end of the case do  
4 not rely on the recollections of a juror who took notes  
5 about the testimony of a witness solely because the juror  
6 took notes. You should not be unduly influenced by the  
7 notes of other jurors. As we all know, notes can be wrong.  
8 Notes are not entitled to any greater weight than each  
9 jurors memory of the evidence. Those jurors who did not  
10 take notes should rely on their independent recollection of  
11 the evidence and not be influenced by the fact that another  
12 juror has taken notes.

13 Keep in mind that every word spoken in the courtroom is  
14 recorded verbatim. And can be replayed for you during  
15 deliberations if necessary. If there is a discrepancy  
16 between a jurors recollection of the evidence and a jurors  
17 notes, you the jury, should request a read back of the  
18 record. The court's transcript prevails over a jurors  
19 notes. Your notes are not a substitute for the official  
20 record or the governing principles of law, which I charge to  
21 you now.

22 After you have completed your deliberations the bailiff  
23 will deliver your notes to me and they will be destroyed.

24 Your verdict cannot be based on sympathy, passion,  
25 prejudice, emotion or any other consideration not evidence

1 in this case. It is mandated that your verdict be  
2 unanimous. There cannot be any split or divided vote in any  
3 form or fashion, such as eleven to one, ten to two or nine  
4 to three. Each of you must agree. Please do not sign the  
5 verdict form until every juror agrees.

6 Now, Mr. Foreperson, you will have two verdict forms  
7 that will go back with you. The first one indicates that  
8 each defendant is charged with murder, and you will  
9 indicate: We the jury unanimously find the defendant guilty  
10 or not guilty.

11 If you find the defendant guilty on murder, then you  
12 stop in your deliberations, because if you recall voluntary  
13 manslaughter is a lesser included charge of murder. So if  
14 you don't find -- find not guilty on murder, then you go to  
15 a consideration of voluntary manslaughter and you find  
16 guilty or not guilty. You sign and date the verdict form in  
17 that regard. Again, there are two verdict forms for each  
18 defendant.

19 I will say this. It says guilty and not guilty. There  
20 is no order, it's just G comes before N. That's the reason  
21 it's on the verdict form in that regard. You will take the  
22 verdict forms with you, and then you have to wait until we  
23 bring all this evidence into you. We have determined that  
24 all the evidence is here. Soon as the verdict form and the  
25 evidence comes into the jury room you are free to do your

1 deliberations.

2 Alternates. You will not be participating in the  
3 deliberations. I'd ask that you remain with us for now,  
4 until further instruction, but you will not go into the jury  
5 room to deliberate at this time.

6 The other things is all 12 jurors must always be in the  
7 jury room for deliberations. So to the extent you decide to  
8 take an breaks from deliberations you must stop discussing  
9 the case and wait until all the other jurors come back into  
10 the jury room and then resume your deliberations.

11 Thank you all. I'm going to recess to your jury room,  
12 and alternates, you will follow the bailiff, but you will  
13 not go into the jury room.

14 (Jury out at 5:20 p.m.)

15 THE COURT: All right. Any exceptions to the jury  
16 charge?

17 MS. MCDUFFIE: Not from the state.

18 MR. SWERLING: Judge, the only ones would be that  
19 we've repeated during the pre-trial.

20 THE COURT: Okay.

21 MR. SWERLING: Which were already put on the  
22 record.

23 THE COURT: Okay.

24 MR. SWERLING: Nothing additional.

25 THE COURT: Nothing official.

1 MS. JOHNS: I join that, Your Honor.

2 THE COURT: Thank you, very much.

3 Okay. My computer clock says 5:21. And that will be  
4 the time that the jury will be getting the evidence.  
5 Bailiff will take the jury forms. I will not have the  
6 indictments go back to the jurors.

7 THE BAILIFF: Is this all --

8 THE COURT: I will ask the clerk to help check the  
9 --

10 THE STATE: That's been done.

11 COURT REPORTER: All the evidence has been counted  
12 and checked off. And your time starts at 5:21?

13 THE COURT: Yes.

14 (Evidence taken to jury room at 5:21 p.m.)

15 COURT REPORTER: And due to the fact that I had  
16 issues with the computer last night when I was trying to  
17 download the files, and again this morning when I got here,  
18 I have the entire weeks record. I have no clue what we'll  
19 put it on, but here it is.

20 THE COURT: Okay.

21 COURT REPORTER: It's all the CDs from the entire  
22 trial.

23 THE COURT: Okay. Great. I appreciate that.

24 All right, you can be at ease.

25 (Court in recess for deliberation at 5:22 p.m.)

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1 (Court in session with note from jury at 5:35 p.m.)

2 THE COURT: Okay. All parties in place. We just  
3 got a note from the jury that says: Judge Childs, can we  
4 begin our deliberations on tomorrow, due to the lateness of  
5 the evening. Juror No. 218. P.S. We also need audio visual  
6 equipment and writing material.

7 And my answer will be yes, because it is the lateness  
8 of the hour. It's been a long extensive case. So to be  
9 fair to both side to be fresh, we want them to have full  
10 ability to deliberate. So I'm going to bring them back in  
11 and remind them not to discuss the case over night.

12 Jurors, please.

13 Just to make sure, Mr. Swerling's email to us about  
14 your request for jury charge will be made a Court's Exhibit,  
15 as well.

16 MR. SWERLING: Well, it wasn't meant to be that.

17 THE COURT: Okay. I won't then.

18 MR. SWERLING: It was just to give you some notice.

19 THE COURT: Okay.

20 (Jury in at 5:36 p.m.)

21 THE BAILIFF: Jury's all present, Your Honor.

22 THE COURT: Thank you ladies and gentlemen of the  
23 jury. I got your note, and I'm going to, of course, approve  
24 your request. I thank you for all your time that you've  
25 spent on this case and I'm glad that you're taking your role

1 seriously as jurors and want to have fair deliberation time.  
2 Is 9:00 o'clock okay to meet back in the morning? Okay. We  
3 will have your audio visual in there and there will be  
4 snacks and, you know, anything that you need within reason  
5 for comfort. And so you all can begin your deliberation in  
6 the morning. I remind you you cannot discuss the case,  
7 again, as I gave you cautionary instructions at the  
8 beginning. Don't even discuss what kind of case you're  
9 involved in, absolutely nothing. Don't read anything in the  
10 paper, news media outlets, just anything. So that you can  
11 be fair and only -- you're deliberating upon evidence in  
12 this courtroom.

13 Alternates, I'd like for you to come back in the  
14 morning just on some off-chance that one of our regular  
15 jurors is not here. And then you'll wait around a little  
16 bit for further instructions from me in the morning.

17 Thank you all.

18 (Jury out at 5:37 p.m.)

19 THE COURT: Bailiff's will request that the juror  
20 room will be locked or Madam Court Report do you need to  
21 receive it back; how do you do that?

22 COURT REPORTER: No, ma'am. The clerk and I  
23 generally -- she tells me what to do with it.

24 THE COURT: Okay. It will be locked in with  
25 courtroom security procedures. I recommend that the clerk

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1 handle that.

2 THE CLERK: I'll take care of it.

3 THE COURT: All right. And I'm directing that the  
4 clerk have the audio visual and tablets and pads already in  
5 there before they get here, because I remember last time we  
6 had to look for some.

7 THE CLERK: Yes, ma'am.

8 THE COURT: Okay. Thank you.

9 MS. SHIPLEY: Do we have to be in the courtroom at  
10 9:00 or just go to --

11 THE COURT: No. They can just go to deliberations.  
12 You all can just leave cell phone numbers with us if  
13 something comes up. I understand some of you might have  
14 appointments or what have you. My general practice is if  
15 there's a note, I will call you all, make you all aware of  
16 it. I try to just write a note back to them without  
17 bringing them back here every time. So that will help you  
18 wherever you are. And we'll use our communicative devices.

19 Be at ease.

20 (Court's Exhibit No. 8, request to begin deliberations in  
21 the morning, was marked and entered.)

22 (Court's Exhibit No. 9, request to charge, was marked and  
23 entered.)

24 (Court's Exhibit No. 10, request to charge, was marked and  
25 entered.)

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(Court's Exhibit No. 11, charge, was marked and entered.)

(Court in recess for the day at 5:40 p.m.)

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CERTIFICATE

1  
2 I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT  
3 REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF  
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A  
5 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE  
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF  
7 THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN COURT OF GENERAL  
8 SESSIONS FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 14TH  
9 DAY OF OCTOBER 2009.

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

12  
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14 \_\_\_\_\_  
15 HILDA M. JORDAN, CVR

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18 COLUMBIA, SOUTH CAROLINA

19 MAY 23, 2010  
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STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
 ) FIFTH JUDICIAL CIRCUIT  
 COUNTY OF RICHLAND )

STATE OF SOUTH CAROLINA )  
 )  
 PLAINTIFF, )  
 ) 07-GS-40-5913  
 VS. ) 07-GS-40-5914  
 )  
 TREMAINE WRAY AND TAURUS WATTS, )  
 )  
 DEFENDANT. ) VOLUME 9  
 )  
 )

OCTOBER 15, 2009  
 COLUMBIA, SOUTH CAROLINA

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE MICHELLE CHILDS, JUDGE, AND A JURY

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

ATTORNEYS FOR THE STATE:  
 VANESSA SHIPLEY, ESQUIRE  
 JOANNA MCDUFFIE, ESQUIRE

ATTORNEY FOR DEFENDANT WRAY  
 JACK SWERLING, ESQUIRE  
 ARIE BAX, ESQUIRE

ATTORNEY FOR DEFENDANT WATTS  
 THERESA JOHNS, ESQUIRE

HILDA M. JORDAN, CVR  
 CIRCUIT COURT REPORTER

I N D E X

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1 (Jury begins deliberation at 9:00 a.m.)

2 (Alternate jurors released at 9:30 a.m.)

3 (Court in recess for jury deliberation.)

4 (Court in session for jury note at 2:00 p.m.)

5 (Court's Exhibit No. 12, note from  
6 jury, was marked and entered.)

7 THE COURT: All right. At approximately 11:30  
8 today I received a note from the jurors and they said: Can  
9 we have the written or audio testimonies of Ricky Jacobs,  
10 Brian Watson, Rashonda Simpson and Jarrell Dansby. I then  
11 convened with the attorneys and we have been trying for  
12 quite some time to work with our court reporter to download  
13 the testimony individually on disks, and so that they would  
14 be able to hear each separate set of testimony by disk. I  
15 also worked it out with the solicitor's office to have a  
16 laptop sent in there so that they can review the testimony  
17 on disk and the laptop was instructed to make sure there was  
18 no internet capacity on that. That was all provided for.  
19 Since then we've had some technological difficulties in  
20 terms of actually getting it to transfer the recorded  
21 information from the computers over to the disk, in terms of  
22 cuing up to the particular testimony. Particularly with  
23 respect to Ricky Jacobs and Brian Watson, there were certain  
24 times at which the jury were not in the room because I had  
25 certain testimony that had to be heard off the record. And

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1 so in that regard we were going to have to actually have to  
2 listen to it among the attorneys to make sure it was cued up  
3 correctly. At was, again 11:30. It's now approximately  
4 2:03. The jurors as we have just now cautioned to them,  
5 sent a note shortly thereafter to indicate, we'll be with  
6 you as soon as we can, essentially get what you're looking  
7 for. The jurors have now been told that we were ready, and  
8 now they sent another note saying: Are we going to listen to  
9 the testimony. We no longer need to listen to testimony.  
10 Can you provide us with the definition of murder and  
11 voluntary manslaughter.

12 All right. So the Court would, if there's no objection  
13 by counsel, send just those two charges back, and I'll let  
14 you all read the charges again to see it, to make sure --  
15 the way I understand everything is we can only sent what  
16 they requested, not add to or supplement to the charge.

17 MS. JOHNS: Your Honor, on behalf of Watts, I would  
18 ask that if the written portions of the definitions of those  
19 two crimes are submitted to the jury that you also submit if  
20 they have reasonable doubt that they should --

21 THE COURT: They have not requested that, but I  
22 understand that will be your objection.

23 MS. JOHNS: Yes, ma'am.

24 MR. SWERLING: Judge, could you bring them out and  
25 recharge them?

1 THE COURT: That's fine.

2 MR. SWERLING: So we can give them instructions  
3 instead of sending written instructions back there?

4 THE COURT: That's fine. That's fine.

5 MR. SWERLING: And, of course, I would join Ms.  
6 Johns in asking the Court to go into those portions of the  
7 charge that have to do with murder and manslaughter. Of  
8 course, accomplice liability would be an issue, mere  
9 presence would be an issue. And if they have doubt they  
10 have to resolve in the favor of the defendant. It's all in  
11 accomplice liability charge, mere presence and all those  
12 other charges deal with accomplish liability, murder and the  
13 manslaughter charge.

14 THE COURT: Okay. Ms. Shipley.

15 MS. SHIPLEY: Your Honor, the position of the state  
16 is that they clearly wrote in their note that all they want  
17 to hear is the charge on murder and the charge on voluntary  
18 manslaughter. Exceeding anything beyond that is not what  
19 they requested.

20 THE COURT: That would be the Court's ruling,  
21 because I think if I get beyond it, I'm speculating as to  
22 why they want it. They may -- we don't know why they want  
23 it.

24 MS. SHIPLEY: We don't have a clue.

25 THE COURT: We don't know why they want it. It

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1 could be for guilt or not guilt, and they're close to it.  
2 We don't know why they want it, but that's all they've  
3 asked. They've had the ability to take notes, to understand  
4 the rest of the charges that were asked. And so to the  
5 extent that they had further questions, I feel like this  
6 jury has been very deliberative in informing the Court about  
7 their desires.

8 THE COURT: Thank Your Honor.

9 THE COURT: Okay.

10 MS. SHIPLEY: Make sure your cell phones are off,  
11 everyone.

12 THE COURT: Make the written charge as a Court's  
13 Exhibit.

14 COURT REPORTER: Yes, ma'am.

15 THE BAILIFF: Ladies and gentlemen, the Judge is  
16 going to recharge the jury. Once she starts no one is  
17 allowed to leave the courtroom. So if you need to leave,  
18 now is the time to do that. Thank you.

19 COURT REPORTER: May I go into a new screen now for  
20 your recharge?

21 THE COURT: Yes.

22 COURT REPORTER: Thank you.

23 MS. SHIPLEY: Your Honor, I think we're all ready.

24 THE COURT: Okay. Thank you. Jury please. And  
25 ask them to bring that note, because that needs to be a

1 Court's Exhibit.

2 MR. SWERLING: Judge, could we just approach for a  
3 moment?

4 THE COURT: Sure.

5 (Off the record bench conference with counsel and the  
6 Court.)

7 (Jury in at 2:05 p.m.)

8 THE BAILIFF: The jury's all present, Your Honor.  
9 Here's the note.

10 THE COURT: Ladies and gentlemen of the jury, I'm  
11 aware that we have received your note requesting that you  
12 rehear or -- excuse me, that you receive the written or  
13 audio testimony of Ricky Jacobs, Brian Watson, Rashonda  
14 Simpson and Jarrell Dansby, and we were working diligently,  
15 but ran into some technological difficulties and we just  
16 sincerely apologize, but we are here to give you and provide  
17 you with whatever you need. Then later on when we had the  
18 computers up and running and had that testimony actually  
19 tagged on the computers to replay it for you, because we  
20 were trying to get it down to a disk so we could just hand  
21 it to you, send it in with a laptop, so you could play each  
22 disk and stop and start as you wished. We were offering  
23 that opportunity for you now, as well. And that's what we  
24 intended to do and then we got your second note, just  
25 indicating essentially are you going to listen to testimony,

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1 we no longer need to listen to testimony. Can you provide  
2 us with a copy of the definition of murder and voluntary  
3 manslaughter.

4 I would like to reiterate that we are here to make sure  
5 that you have all the information that you need to make a  
6 decision in this case. The testimony has been cued up. You  
7 have the opportunity to listen to it at this point and then  
8 have it stop and start as you deem necessary, and then there  
9 would be no further trial. The trial is concluded. So the  
10 lawyers would not argue, they will not put up any other  
11 witnesses, they would not do anything. It would just be a  
12 mere playback and then it would be up to you hear control  
13 what you hear or not hear. I still offer that opportunity  
14 to you. Can you all indicate whether or not you wish to go  
15 forward with the ability to hear the testimony?

16 (Jury responds in negative.)

17 JUROR NO. 218, FOREPERSON: No, Your Honor.

18 THE COURT: Okay. And that's the foreman speaking  
19 indicating as such.

20 Therefore, I'm going to recharge you, as you have asked  
21 just on the definition of murder and voluntary manslaughter.

22 Each defendant is charged with murder. The state must  
23 prove beyond a reasonable doubt that a defendant killed  
24 another person with malice aforethought. Malice is hatred,  
25 ill will or hostility towards another person. It is the

1 intentional doing of a wrongful act without just cause or  
2 excuse. Malice does not necessarily require ill will toward  
3 the person injured, but rather signifies a general malignant  
4 recklessness of the lives and safety of others or a  
5 condition of the mind that shows a heart regardless of  
6 social duty and fatally bent on mischief. Specific intent to  
7 kill is not required. Malice aforethought does not require  
8 that malice exists for any particular time before the act is  
9 committed, but malice must exist in the mind of the  
10 defendant just before and at the time the act is committed.  
11 Therefore, there must be a combination of the previous evil  
12 intent and the act. Malice aforethought may be expressed or  
13 inferred. These terms express and inferred do not mean  
14 different kinds of malice, but merely the manner in which  
15 malice may be shown to exist. Malice may be shown to exist  
16 either by direct evidence or by circumstantial evidence.  
17 Express malice is shown when a person speaks words which  
18 express hatred or ill will for another or when the person  
19 prepared beforehand to do the act which was later  
20 accomplished. For example, lying in wait for a person or  
21 any other acts of preparation going to show that the deed  
22 was within the defendant's mind would be expressed malice.  
23 If facts are proved beyond a reasonable doubt sufficient to  
24 raise an inference of malice to your satisfaction, this  
25 inference would be simply and evidentiary fact to be taken

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1 into consideration by you. The jury, along with other  
2 evidence in this case, and you may give it -- I apologize.  
3 The jury, along with other evidence in this case, may give  
4 it such weight as you determine that it should receive.

5 If you find that the state has failed to prove beyond a  
6 reasonable doubt that a defendant committed murder, you may  
7 consider whether the state has proved beyond a reasonable  
8 doubt that a defendant committed voluntary manslaughter.

9 Voluntary manslaughter is a lesser included offense of  
10 murder. To prove voluntary manslaughter, the state must  
11 prove beyond a reasonable doubt that the defendant took the  
12 life of another in the sudden heat of passion based on  
13 sufficient legal provocation. Both heat of passion and  
14 sufficient legal provocation must be present at the time of  
15 the killing to constitute voluntary manslaughter. Sudden  
16 heat of passion may for a time effect a person's self-  
17 control and temporarily disturb a person's reason. The  
18 sudden heat of passion must be the type that would make an  
19 ordinary person unable to fully reflect on his actions and  
20 would produce an uncontrollable impulse to do violence.  
21 Sufficient legal provocation must be the type that would  
22 make a person of ordinary reason and caution become enraged  
23 and to lose control temporarily. The provocation needed for  
24 voluntary manslaughter, must come from some act of or  
25 related to the victim. Words alone, however vulgar or

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1 insulting are not enough to be legal provocation. The words  
2 must be accompanied by some overt threatening act which  
3 could have produced the heat of passion. If the heat of  
4 passion had cooled, or if there was enough time between the  
5 provocation, if any, and the killing for the passion of a  
6 reasonable person to cool the killing would not be voluntary  
7 manslaughter.

8 In deciding whether a reasonable person would have had  
9 enough time to cool off you should consider all of the  
10 circumstances surrounding the killing. You may consider the  
11 nature of the provocation, if any, a defendant's mental and  
12 physical state and the circumstances and relationships  
13 between the parties.

14 Thank you, ladies and gentlemen of the jury. I have  
15 read to you those definitions of murder and voluntary  
16 manslaughter, as you requested. You can continue with your  
17 deliberations.

18 (Jury out 2:15 p.m.)

19 THE COURT: Any exceptions noted?

20 MS. SHIPLEY: None from the state, Your Honor.

21 MS. JOHNS: None from Watts, Your Honor.

22 MR. SWERLING: On Wray, nothing additional than  
23 we've already discussed at the pre-trial conference that was  
24 on the record there.

25 THE COURT: Okay.

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1 MS. SHIPLEY: Your Honor, if you could, just put  
2 the case law that you found that requires the Court not to  
3 exceed what the request is from the jury?

4 THE COURT: Yes. In side bar I indicated that I  
5 would charge pursuant to State verses Anderson, which it  
6 indicates: It's well established in South Carolina that when  
7 a jury requests an additional charge it is sufficient for  
8 the Court to charge only those matters necessary to answer  
9 the jury's request.

10 MR. SWERLING: Judge, prior to recharging the jury  
11 when we approached the bench and I -- I am concerned. I  
12 think Your Honor said the hour was 11:30 that the jury said  
13 they wanted to hear Ricky Jacobs, Brian Watson, Rashonda  
14 Simpson and Jarrell Dansby's testimony again. Obviously,  
15 they had some concerns as those are the four key witnesses  
16 in the case. Because of the technical issues that we had it  
17 wasn't until 2:00 o'clock that we were able to tell the jury  
18 that they could hear that testimony, by that time they had  
19 already decided all they wanted to hear was on the murder  
20 and manslaughter. My concern is that that two and a-half  
21 hours that they were waiting, two and a-half hours that they  
22 were pressured or forced into the situation where they just  
23 decided that they just didn't want to wait any longer. And  
24 did not want to further deliberate and basically gave up and  
25 said let's just get the charge on murder and manslaughter.

1 They could not resolve that issue because they wanted to  
2 hear testimony and never did hear the testimony. So I have  
3 a concern about that. A deep concern about that. They came  
4 to this conclusion in a two and a-half hour period. As soon  
5 as we said it's ready they said they didn't want to hear it.  
6 So I would move for a mistrial.

7 THE COURT: Okay.

8 MS. JOHNS: I join in that.

9 THE COURT: Sure.

10 MS. SHIPLEY: Your Honor, you did ask them, and  
11 explained to them what happened, explained that we have now  
12 resolved the technical difficulties and that we are prepared  
13 to play the testimony right here, right now. They declined.  
14 They all agreed, they all motioned to the foreman nodding  
15 their heads no. And the foreman responded accordingly and  
16 reported to you that they did not need to hear that  
17 testimony. So they obviously resolved any concerns they had  
18 about the testimony about those witnesses that they  
19 requested, and they still had the opportunity to request  
20 them in the future should it become necessary.

21 THE COURT: At this time I'm going to deny the  
22 motion for a mistrial. I do believe that we effectively  
23 cured it by me actually stating to them that they can hear  
24 as much or as little of the testimony as they wished and  
25 they still have the opportunity.

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1 Thank you. Be at ease until I know of anything else.

2 THE COURT: Make this a court's exhibit.

3 COURT REPORTER: Yes, ma'am.

4 (Court's Exhibit No. 13, note from  
5 jury, was marked and entered.)

6 (Court's Exhibit No. 14, recharge,  
7 was marked and entered.)

8 (Court at recess waiting jury verdict.)

9 (Court in session for jury verdict at 2:38 p.m.)

10 THE COURT: Okay. Mr. Bailiff, I understand that  
11 the jury has a verdict. Is that correct?

12 THE BAILIFF: They do, Your Honor.

13 THE COURT: Okay, please bring the jury in.

14 THE BAILIFF: Be glad to, Your Honor.

15 THE COURT: Are the parties ready to receive the  
16 verdict?

17 MR. SWERLING: We're ready, Your Honor, just if the  
18 verdict is guilty of either of the charges, I request  
19 polling.

20 THE COURT: All right.

21 (Jury in at 2:45 p.m.)

22 THE BAILIFF: The jury's all present, Your Honor.

23 THE COURT: Mr. Foreman, have you and your fellow  
24 jurors reached a verdict?

25 THE FOREMAN: Yes, Your Honor.

1 THE COURT: Okay, if you would please hand it to  
2 the bailiff.

3 THE COURT: Before the verdict is published, I do  
4 want to make sure that anyone -- you understand that this  
5 has been a very long trial, and that there are two varying  
6 sides. So if anyone is not able to contain themselves with  
7 respect to the verdict I'll ask that you leave the courtroom  
8 now. And the deputies and bailiffs will be asked to escort  
9 you out so as not to disrupt the proceedings.

10 Okay. Madam Clerk, will you please publish the  
11 verdict.

12 THE CLERK: Yes, Your Honor.

13 Indictment No. 2007-GS-40-5913, the State of South  
14 Carolina verses Taurus Watts. As to the charge or murder we  
15 the jury unanimously find the defendant guilty.

16 Indictment No. 2007-GS-40-5914, the State of South  
17 Carolina verses Tremaine Wray. As to the charge of the  
18 charge of murder we the jury unanimously find the defendant  
19 guilty.

20 Signed No. 218, Foreperson. October 15, 2009.

21 Mr. Foreperson, is this your verdict and the verdict of  
22 the entire jury?

23 MR. FOREPERSON: Yes.

24 THE CLERK: Thank you.

25 THE COURT: Please poll the jurors.

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THE CLERK: Yes, Your Honor.

Ladies and gentlemen of the jury. I'm going to ask you two questions related to your verdict. As I call your number, please answer yes or not to both questions.

As to the verdict of Tremaine Wray.

No. 218, was this your verdict

JUROR NO. 218: Yes.

THE CLERK: Is it still your verdict?

JUROR NO. 218: Yes.

THE CLERK: No. 224, was this your verdict?

JUROR NO. 224: Yes.

THE CLERK: Is it still your verdict?

JUROR NO. 224: Yes.

THE CLERK: No. 297, was this your verdict?

JUROR NO. 297: Yes.

THE CLERK: Is it still your verdict?

JUROR NO. 297: Yes.

THE CLERK: No. 244, was this your verdict?

JUROR NO 244: Yes.

THE CLERK: Is it still your verdict?

JUROR NO. 244: Yes.

THE CLERK: No. 253, was this your verdict?

JUROR NO. 253: Yes.

THE CLERK: Is it still your verdict?

JUROR NO. 253: Yes.

1 THE CLERK: No. 212, is this your verdict?  
2 JUROR NO. 212: Yes.  
3 THE CLERK: Is it still your verdict?  
4 JUROR NO. 212: Yes.  
5 THE CLERK: No. 210, was this your verdict?  
6 JUROR NO. 210: Yes.  
7 THE CLERK: Is it still your verdict?  
8 JUROR NO. 210: Yes.  
9 THE CLERK: No. 260, was this your verdict?  
10 JUROR NO. 260: Yes.  
11 THE CLERK: Is it still your verdict?  
12 JUROR NO. 260: Yes.  
13 THE CLERK: No. 91, was this your verdict?  
14 JUROR NO. 91: Yes.  
15 THE CLERK: Is it still your verdict?  
16 JUROR NO. 91: Yes.  
17 THE CLERK: No. 265, is this your verdict?  
18 JUROR NO. 265: Yes.  
19 THE CLERK: Is it still your verdict?  
20 JUROR NO. 265: Yes.  
21 THE CLERK: No. 44, is this your verdict?  
22 JUROR NO. 44: Yes.  
23 THE CLERK: Is it still your verdict?  
24 JUROR NO. 44: Yes.  
25 THE CLERK: No. 11, was this your verdict?

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JUROR NO. 11: Yes.

THE CLERK: Is it still your verdict?

JUROR NO. 11: Yes.

THE CLERK: As to the verdict of Taurus Watts.

No. 218, was this your verdict?

JUROR NO. 218: Yes.

THE CLERK: Is it still your verdict?

JUROR NO. 218: Yes.

THE CLERK: No. 224, was this your verdict?

JUROR NO. 224: Yes.

THE CLERK: Is it still your verdict?

JUROR NO. 224: Yes.

THE CLERK: No. 297, was this your verdict?

JUROR NO. 297: Yes.

THE CLERK: Is it still your verdict?

JUROR NO. 297: Yes.

THE CLERK: No. 244, was this your verdict?

JUROR NO. 244: Yes.

THE CLERK: Is it still your verdict?

JUROR NO. 244: Yes.

THE CLERK: No. 253, was this your verdict?

JUROR NO. 253: Yes.

THE CLERK: Is it still your verdict?

JUROR NO. 253: Yes.

THE CLERK: No. 212, is this your verdict?

1 JUROR NO. 212: Yes.  
2 THE CLERK: Is it still your verdict?  
3 JUROR NO. 212: Yes.  
4 THE CLERK: No. 210, is this your verdict?  
5 JUROR NO. 210: Yes.  
6 THE CLERK: Is it still your verdict?  
7 JUROR NO. 210: Yes.  
8 THE CLERK: No. 260, was this your verdict?  
9 JUROR NO. 260: Yes.  
10 THE CLERK: Is it still your verdict?  
11 JUROR NO. 260: Yes.  
12 THE CLERK: No. 91, was this your verdict?  
13 JUROR NO. 91: Yes.  
14 THE CLERK: Is it still your verdict?  
15 JUROR NO. 91: Yes.  
16 THE CLERK: No. 265, is this your verdict?  
17 JUROR NO. 265: Yes.  
18 THE CLERK: Is it still your verdict?  
19 JUROR NO. 265: Yes.  
20 THE CLERK: No. 44, is this your verdict?  
21 JUROR NO. 44: Yes.  
22 THE CLERK: Is it still your verdict?  
23 JUROR NO. Yes.  
24 THE CLERK: No. 11, is this your verdict?  
25 JUROR NO. 11: Yes.

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1 THE CLERK: Is it still your verdict?

2 JUROR NO. 11: Yes.

3 THE CLERK: The jury has been polled, Your Honor.

4 THE COURT: Okay. Thank you.

5 Ladies and gentlemen of the jury, thank you so much for  
6 your service. I know it's been a long week and a-half or  
7 so. We thank you for your patience that you've exhibited  
8 throughout the trial as we've had to have some stops and  
9 starts. -- You have done all that we've asked you to do, which  
10 was to listen attentively to all the evidence by both side,  
11 and then render your decision.

12 I will let you know that no one ever knows what's in  
13 the minds of jurors and so sometimes people might contact  
14 you afterwards just to see what you thought about evidence  
15 and your roles. It is totally up to you as to whether or  
16 not you wish to answer any questions by anyone. I don't  
17 believe that anyone should harass you in any regard, but if  
18 you find they are being harassing, be polite enough to tell  
19 them you wish not to speak. And then if it goes beyond that  
20 please report it to our clerk of court and we will handle it  
21 appropriately.

22 This will conclude your term of service, last week,  
23 obviously, and this week, as well. You may report back to  
24 your jury room and you will be given further instructions.

25 Thank you all, and have a great and safe evening and

1 weekend.

2 THE BAILIFF: Everyone remain seated as the jury  
3 leaves the courtroom, please.

4 (Jury out at 2:49 p.m.)

5 THE COURT: Okay. You all be at ease a moment  
6 while we take care of the paper work. I'll step down to do  
7 that.

8 (Court in recess for short break.)

9 (Court in session after short break.)

10 THE COURT: Thank you all. Please take your seats.  
11 Are you all ready to proceed with sentencing?

12 MS. SHIPLEY: Thank Your Honor. Please the Court.  
13 Your Honor --

14 MS. JOHNS: Your Honor, before we do that --

15 THE COURT: Sure.

16 MS. JOHNS: -- request motions.

17 THE COURT: Oh, certainly.

18 MS. SHIPLEY: Okay.

19 MR. SWERLING: Well, Judge, at this point we'd  
20 review all the motions made throughout the course of the  
21 trial, during the presentation of evidence, objections to  
22 evidence. Renew the direct verdict motions, and move for a  
23 new trial.

24 In addition when I made the motion for mistrial because  
25 of the delay in the replaying of testimony my count is -- I

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1 want to make sure the record is accurate, from that moment I  
2 made that mistrial motion and the jury came in and you  
3 reread the charge, which was what they wanted, the time they  
4 came back was less than, maybe nine or 10 minutes. So I  
5 think that sort of indicates what I was saying, it was in  
6 that period of time when the jurors were -- might have been  
7 in our favor. They did not get to hear the testimony they  
8 wanted to hear and were pressured into coming back with a  
9 verdict without hearing the testimony.

10 MS. JOHNS: Your Honor, I join in those motions,  
11 Your Honor, and I would also note for the record that Mr.  
12 Watts intends to appeal.

13 MS. SHIPLEY: Thank Your Honor. You clearly asked  
14 the jurors and explained to them the technical difficulties  
15 we were experiencing and that those issues had been resolved  
16 and that we had everything ready and cued up to play for  
17 them and that we could do so at that time. You allowed the  
18 to confer and as I indicated earlier, they all conferred  
19 with the foreman, and the foreman in turn reported to the  
20 Court that they did not wish to hear further testimony.

21 In my experience, it's not unusual when the jury has  
22 questions about definitions on the law applicable to case  
23 that they would reach a verdict quickly thereafter.

24 MS. JOHNS: Your Honor, I would disagree with Ms.  
25 Shipley's accounting about all the jurors were in agreement

1 regarding the replaying of the testimony. I did see a few  
2 jurors lean over and look at the jury foreperson, but I  
3 don't think that as a record that it should be that all the  
4 jurors nodded their heads because I did not see that.

5 THE COURT: Okay. But ultimately the foreperson  
6 relayed the jurors wishes.

7 MS. SHIPLEY: Yes, ma'am.

8 THE COURT: The Court will stand by its prior  
9 ruling and proceed with sentencing.

10 MS. SHIPLEY: May it please the Court, Your Honor?

11 THE COURT: Yes.

12 MS. SHIPLEY: Your Honor, you are extremely  
13 familiar with the facts in this case. They pretty much  
14 speak for themselves. It is a miracle, however, that we're  
15 not here for an additional five counts, because Verda  
16 Roberts standing right there next to Hank Johnson.  
17 Stephanie Boston, Charlie Bates, Lamont Goodwine, Travis  
18 Malone. Any of them could have been struck by the reckless  
19 spraying of bullets into the crowd. It's a miracle that no  
20 one else got hurt.

21 Your Honor, the recklessness displayed by both  
22 defendants on that night, I believe warrants the maximum  
23 sentence. The mother of Hank Johnson would like to address  
24 the Court. Her name is Queen Johnson. And I do want the  
25 record to reflect that Hank's sister is here and so is his

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1 dad and some other family friends like Lamont Goodwine. And  
2 at the appropriate time Ms. McDuffie will relate the prior  
3 criminal histories for each defendant.

4 THE COURT: Okay.

5 MS. SHIPLEY: Are you ready to hear from Ms.  
6 Johnson?

7 THE COURT: Okay.

8 MS. SHIPLEY: Ms. Johnson.

9 Your Honor, may she come around so she won't have to  
10 yell across the court room.

11 MS. GLOVER: My name is Denise Glover. I want to  
12 read a letter that my mother, Queen Johnson, wrote:

13 Judge Childs, my name is Queen Johnson. I'm the  
14 deceased mother. Demuria was my only son. And my youngest  
15 child. Two years ago, two years and three months ago, I got  
16 the news from my son's best friend Lamont Goodwine that my  
17 son was shot. He told me that he was shot in the leg, there  
18 was a lot of blood. At 4:00 a.m. on June 30, 2007, was my  
19 worst nightmare. It only takes me about 30 minutes to get  
20 to Columbia from where I live, but it seemed like a  
21 lifetime. When I arrived at the hospital, the doctors did  
22 even let me see my child after they told me he had died.  
23 The first time I got to see my child was the day before his  
24 funeral.

25 Judge Childs, my child left behind five children; one

1 daughter and four sons. Even though they get social  
2 security every month it's not enough to help me -- help them  
3 with all their needs. That's where as a grandmother I step  
4 in and help their mothers out. This has been very hard on  
5 me.

6 Judge, all I have are pictures of my son to look at. I  
7 have to go to the grave site to talk to my son's headstone.  
8 I can't celebrate birthdays, Christmas, Thanksgiving or  
9 Father's Day with my son.

10 This senseless shooting has left a hole in my heart.  
11 My son didn't have anything to do with the fight, so why did  
12 my child have to die? All I'm asking is they get sentencing  
13 of life without no parole.

14 MS. SHIPLEY: And, Your Honor, the family did want  
15 me to hand up to the Court a picture of their son, and that  
16 there's no other picture except from the autopsy. And so if  
17 the Court would indulge us. This is a photograph of Hank  
18 Johnson.

19 THE COURT: Thank you.

20 MS. MCDUFFIE: Your Honor, Tremaine Wray's prior  
21 record is June, 2003, ABHAN; five years suspended on five  
22 years probation. By my count, Your Honor, this defendant  
23 would have been on probation at the time this murder  
24 occurred.

25 Taurus Watts, prior record is a 1998, simple possession

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1 of marijuana. 2004, possession of a controlled substance.  
2 And in August of 2005, failure to stop for blue light, three  
3 years suspended on three years probation, which would have  
4 also put him on probation, Your Honor, at the time this  
5 murder occurred.

6 That is the extent of both defendants prior records.

7 THE COURT: Okay. Anything further by the state?

8 MS. SHIPLEY: No, ma'am, Your Honor.

9 THE COURT: Okay. We'll proceed --

10 MR. SWERLING: Of course, you know Tremaine is 28  
11 years of age. He's a life-long resident of Richland County,  
12 Columbia. He lived at 425 Briarcliff Drive with his  
13 grandmother, as you've already heard. She's here and his  
14 uncle is here and if you'd like to say something you can  
15 come down to the corner over there? Okay. Come over  
16 there.

17 Your Honor, this is Nellie Wray.

18 THE COURT: Okay. Thank you, ma'am.

19 MS. WRAY: I wanted to say that I raised Tremaine  
20 from a baby. He was always a good child, a good person. He  
21 went to school, went to college. I've never had any  
22 problems with him. He is a good person. He worked all the  
23 time, tried to save his little money. He did the best he  
24 could. So he's a good person. I know that in my heart. I  
25 know that.

1 THE COURT: Thank you.

2 MR. SWERLING: Your Honor, this is Ronald Wray.

3 MR. WRAY: I'm Tremaine's uncle. I assisted in  
4 raising him with my mother and father. He's always been a  
5 good kid. Just like most people we don't always make the  
6 best decisions but not a bad person.

7 And for our family, we want to continue to pray for the  
8 Johnson family and their loss, because we consider that, as  
9 well. We just pray that you'll take these things under  
10 consideration during the sentencing.

11 THE COURT: Thank you.

12 Okay.

13 MR. SWERLING: Your Honor, this is one of those  
14 situation, this is particularly troubling to me. First of  
15 all, that this happened to this family, but also on a  
16 personal note. When I started practicing with Sen. Lourie  
17 in 1973, one of my first clients at that time was Nellie  
18 Wray, his grandmother, and we kept in close contact over the  
19 years. Even this was seven years before he was born. That  
20 kind of dates me a little, but. But I've known the family  
21 very well during that period of time. I know all of them.  
22 They are good people. He was raised by his grandmother,  
23 Nellie, and I don't know of any finer person in the world.

24 Tremaine went to and graduated from Ridgeview High  
25 School. He also went to Denmark Tech. He's a member of St.

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1 Luke's Baptist Church. When he was in school he was very  
2 active in sports, he loved music. He does have ABHAN from  
3 2003.

4 Judge, I would like to point out to you that he is and  
5 has been all of his life a very hard working individual. As  
6 you know from the testimony in the case, when he was  
7 arrested, he was arrested at the Outback Steakhouse where he  
8 was one of the cooks. So this is not a young man who is  
9 just getting through life, just drifting through life  
10 without trying to get any kind of financial support. He was  
11 a hard working guy. That truck, the GMC Suburban, was his  
12 even though it was in his grandmother's name because of the  
13 insurance issues. He was the one who was paying for it.

14 Your Honor, I'd just ask you to take into consideration  
15 the fact that he has been a hard working individual. He  
16 does come from a good family. He has been a person who I  
17 have known over the years and by nature I think he's a good  
18 person, and I'll just stop at that.

19 THE COURT: All right.

20 MS. JOHNS: Your Honor, may it please the Court.

21 Your Honor, on October 9, 2009, my client, Mr. Watts  
22 turned 31 years old. Your Honor, he has two daughters. He  
23 does not have a significant prior record. Your Honor, if we  
24 were to put up a case we would have put up three witnesses  
25 that Mr. Watts was at this club, and that he did catch a

1 ride after the fight started and the shooting started with  
2 Mr. Tremaine Wray and Mr. Wray dropped him off at his house  
3 down the street, and what happened after that Mr. Watts does  
4 not know. Mr. Watts did not shoot a firearm, he did not  
5 have a firearm in his possession. That's been his  
6 contention since July 12, 2007, when I first met him.

7 Your Honor, I can tell you that my years of  
8 representing people, which is coming close to 19 years, I  
9 can put Mr. Watts in the top five of those people, Your  
10 Honor, who have been very efficient and very faithful  
11 throughout this whole ordeal. He has been detained since  
12 his date of arrest. He has been respectful, he's been I'd  
13 say compliant with everything that I've asked him to do.  
14 I've gotten to know him through this attorney client  
15 relationship over these two years. He never, ever  
16 complained to me, never whined, never because a nuisance,  
17 whatsoever.

18 Your Honor, I can tell you that it is with sincere  
19 concern that this jury finds Mr. Watts guilty. I know that  
20 there are issues that we will have to follow up on in  
21 regards to this record. I will ask this Court to consider a  
22 30 year sentence for Mr. Watts. I don't believe that his  
23 record is a record of recklessness. I think when you are in  
24 a situation like a situation that posed itself on June 30,  
25 2007, you may react, you may end up associating yourself

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1 with the wrong person. You may accidentally become the  
2 wrong person at the wrong place, just like Mr. Johnson.

3 Your Honor, I don't really have any family members that  
4 are here this morning -- this afternoon. I'm sorry. They  
5 were here earlier. But I do know that his mother and his  
6 brother and his sister and the whole gallery of people that  
7 were sitting here during the trial would have been here. I  
8 think that they are highly upset and I ask you to consider  
9 the minimum sentence in this particular case. I think it  
10 was very close.

11 THE COURT: Anything further from anyone?

12 MS. SHIPLEY: Your Honor, the jury has spoken.  
13 They found that Taurus Watts and Tremaine Wray did this  
14 shooting under the hand of one, hand of all, and as a  
15 result, they should be treated equally, sentenced equally to  
16 bring justice to the Johnson family.

17 THE COURT: Anything further.

18 MR. SWERLING: No, Your Honor.

19 THE COURT: Okay. What is the date since they've  
20 been in jail?

21 MS. SHIPLEY: Mr. Wray is July 1, 2007. Mr. Watts,  
22 is July 3, 2007.

23 THE COURT: Say it again? I'm sorry?

24 MS. SHIPLEY: Mr. Wray is July 1, 2007, and Mr.  
25 Watts is July 3, 2007.

1 THE COURT: Okay. Mr. Tremaine Wray for the  
2 offense of murder, Indictment No. 2007-GS-40-5914. You will  
3 get credit for the time served since July 1, 2007. You are  
4 hereby sentenced to the State Department of Corrections for  
5 40 years.

6 Mr. Taurus Watts, for the Indictment No. 2007-GS-40-  
7 5913, you are to get credit for time served since July 3,  
8 2007. You are hereby sentenced to the State Department of  
9 Corrections for 35 years.

10 MS. JOHNS: Thank Your Honor.

11 MR. SWERLING: Thank Your Honor.

12 MS. SHIPLEY: Thank Your Honor.

13 (This proceeding was concluded 3:24 p.m.)  
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