

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Oconee County
Alexander S. Macaulay, Circuit Court Judge

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Opinion No. 2011-UP-304 (S.C. Ct. App. filed 6/17/2011) S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

BILLY WALTER WINCHESTER,

APPELLANT

APPENDIX

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INDEX

INDEX	i
UNPUBLISHED OPINION No. 2011-UP-304, FILED JUNE 17, 2011	1
PETITION FOR REHEARING	3
ORDER DENYING PETITION FOR REHEARING.....	12

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Billy Walter Winchester,

Appellant.

Appeal From Oconee County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2011-UP-304
Submitted June 1, 2011 – Filed June 17, 2011

AFFIRMED

Appellate Defender Elizabeth Franklin-Best, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General Deborah Shupe, all of

2

Columbia; and Solicitor Christina T. Adams, of
Anderson, for Respondent.

PER CURIAM: Billy Walter Winchester appeals his conviction for resisting arrest with a deadly weapon, arguing the circuit court erred in (1) denying Winchester's motion for a directed verdict on the ground that the State failed to prove he possessed the requisite mens rea; and (2) denying Winchester's request for a jury charge that Winchester did not know police officers were attempting to serve an arrest warrant on him. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the circuit court erred in denying Winchester's motion for a directed verdict on the ground that the State failed to prove he possessed the requisite mens rea: State v. Weston, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006) (holding in the review of the denial of a defendant's directed verdict motion "if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate c]ourt must find the case was properly submitted to the jury").

2. As to whether the circuit court erred in denying Winchester's request for a jury charge: State v. Robinson, 306 S.C. 399, 401, 412 S.E.2d 411, 413 (1991) ("The [circuit court] must charge the jury with the 'current and correct law' of the State."); State v. Brown, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004) ("To warrant reversal, [the circuit court's] refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.").

AFFIRMED.

HUFF, WILLIAMS, and THOMAS, JJ., concur.

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

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

BILLY WALTER WINCHESTER,

APPELLANT

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

Opinion No. 2011-UP-304

PETITION FOR REHEARING

Counsel for Billy Winchester respectfully asks this Court, pursuant to SCAR, Rule 221(a) to rehear his case and reverse his conviction. Petitioner submits this Court has overlooked or misapprehended points necessary to the proper resolution of this case. Specifically, this Court committed an error of law when it summarily decided petitioners case by citing State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006) for the proposition that the review of a denial of a defendant's directed verdict motion "if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate c]ourt must find the case was properly submitted to the jury." Petitioner submits that the trial court judge misconstrued the law

and his error denied petitioner the right to present a defense. Petitioner asks this Court to grant his petition for rehearing and address the issue of law which is at the heart of his claim.

RELEVANT FACTS

Billy Winchester was tried on the sole count of resisting arrest with a deadly weapon. As explained more fully, *infra*, these events occurred at nighttime, at his home, and Winchester is handicapped. Winchester's defense to the charge was that he did not realize that these were officers at his home, attempting to effectuate this arrest on a CDV warrant. The language of the statute, however, did not allow this defense to be considered by the jury and he was convicted.

At the close of the State's case, Winchester moved for a directed verdict:

Your Honor, we would move for a directed verdict at this point. Insufficient evidence to show the *mens rea* or intent of Mr. Winchester to violate the statute.

ROA p. 114, ll.17-19.

The court denied the motion:

Well, unlike some of the other statutes, I think 16-9-320(A) and (B) whether you have a knowing and willingly—willful action, there is no requirement or—under this particular statute, 16-3-625, a person who resists the lawful efforts of a law enforcement officer to arrest him with the use or threat of use of a deadly weapon against the officer and the person is in possession or claims to be in possession of a deadly weapon is guilty of a felony.

I find there's sufficient evidence to go to the jury on the statute.

ROA p. 114, l. 20- p. 115, l. 3.

As the judge explained later, he construes this particular crime to be *malum prohibitum*.

ROA p. 163, ll.1-2. The judge then discussed State v. Williams, 36 S.C. 493, 15 S.E.554 (1892):

THE COURT: In fact, I think that's one of the cases you've cited that—it is even the least of us are supposed to presume to know what the law is. And I think that was in a Spartanburg case. They should have known the Mayor of Spartanburg had the authority to arrest and so they didn't have the right to resist. Alright.

ROA p. 163, ll. 4-9.

In fact, that case draws the distinction between a mistake of fact and a mistake of law, and asserts that a mistake of law—ignorance of the law—is not a defense. In this case, Winchester asserted that he made a mistake of fact regarding the identity of the policemen.

The judge then charged the jury, at the end of the case, with the following instructions regarding the statute:

The defendant is charged with the resisting arrest with a deadly weapon pursuant to section 16-3-625 of the South Carolina code of laws, which provides in pertinent part, a person who resists the lawful efforts of a law enforcement officer to arrest them with the use of—use or threat of a deadly—excuse me, with the use or threat of use of a deadly weapon against the officer and the person is—or and the person in possession or claims to be in possession of a deadly weapon is guilty of a felony. As used in this section deadly weapon means the instrument which can be used to inflict deadly force.

The defendant is charged with resisting arrest with a deadly weapon. In order to prove this offense the state must prove first that the defendant resisted the lawful efforts of a law enforcement officer to arrest him. Secondly, the State must prove that the defendant resisted the law arrest with the use or threat of use of a deadly weapon against the officer. Lastly, the State must prove the defendant was in possession or claimed to be in possession of a deadly weapon. A deadly weapon, as I said, is—means any instrument that can be used to inflict deadly force.

ROA p. 2, ll. 1-22.

The indictment in this case did include the “knowingly and willfully” language:

That Billy Walter Winchester did in Oconee County on or about May 17, 2007, knowingly and willfully oppose or resist an arrest being made by. . . whom he/she knew or reasonably should have known were law enforcement officers . . . (Indictment 2007-GS-37-1346).

Defense counsel requested a number of jury charges, including the definitions of “knowing” and “intentional.” The court declined to charge the jury with those requests.

Defense counsel also requested “knowledge of a fact”:

A defendant who is not conscious of a fact does not act with knowledge of that fact even though a reasonable person in the same situation as defendant would have been consciously aware of that fact. Knowledge is based on what a person was aware of, not what he or she ought to have been aware of.

See W. LaFave & A. Scott, Criminal Law §3.4(c).

The judge declined to charge the above:

"I find that under the circumstances of this case that I will charge the law rather than something that is not the law. So I decline to charge number three."

ROA p. 157, ll. 20-22.

While deliberating, the jury requested a copy of the law that they were asked to consider. The judge then reinstructed them on statute, and also re-read the elements that the State had to prove. ROA p. 3, l. 18-p. 7, l. 10.

Billy Winchester was 58 years old at the time of his conviction. ROA p. 178, ll.10-14. At trial, an orthopedic surgeon testified to his numerous back surgeries. ROA p.116, l.1- p. 125, l.4. He was wheelchair bound during his trial, and there was ample evidence presented that he had significant mobility issues. He is self-described as "crippled." ROA p. 148, ll.20-21. He lived alone in a small house in Walhalla. He only used the back part of his home so that he would not have to heat and cool the other part of it. ROA p. 126, ll.21-25; ROA p. 140, ll.15-17. On the night of these events, he was taking a pain medication, Lorcet. ROA p. 141, ll.9-12.

On the night of these events, three officers from the Sheriff's Department approached his home around 10:30 pm to serve him with an arrest warrant. It was dark, and the officers carried their flashlights. Two officers approached the front of the house; the other officer, the rear. ROA p. 12, l.20- p. 15, l. 19. The officer who approached the rear, Turner, was a reserve officer. ROA p. 34, ll.17-19. They all pounded on the door trying to get Winchester's attention. Winchester testified that he did not hear the officers identify themselves as police men. He had received no prior warning they were coming to his home, and was not otherwise expecting them. ROA p. 52, ll.3-17. They did not use their blue lights or sirens. ROA p. 139, l. 25-p. 154, l.19; ROA p. 11,

11.22-24; ROA p. 31, 11.8-9; 11.11-13. Despite his brother's wife working as a dispatcher, he never received a courtesy call. ROA p. 31, 11. 3-16; ROA p. 52, 11.3-17. Winchester's television was on. ROA p. 54, 11.6-7; ROA p. 67, 11.1-2.

Winchester testified he was frightened, and that he believed he was about to be victimized during a home invasion. He grabbed a revolver, a .22, and fired a single shot, hoping to scare away the intruders. Once the shot was fired, the officers took cover behind vehicles in the yard. They again yelled to him that they were the police. ROA p. 43, l. 3- p. 44, l.21. Relieved that these were police officers and not intruders, Winchester then walked outside to surrender. The officers testified they warned him to take his hands out from behind his back; Winchester testified he simply walked outside, where he was subsequently Tasered by the officers. He was ultimately taken to the hospital, and then charged with this crime. ROA p. 139, l. 25- ROA p. 154, l. 19.

His defense at trial, to the extent he was allowed to raise one under the language of the statute, was that he did not realize these were police officers at his home and, therefore, he did not knowingly and willfully resist his arrest.

Legal Analysis

S.C. Code Ann. §16-3-25 (1976) stands alone among other criminal statutes that criminalize behavior against law enforcement officers seeking to discharge their duties in peace, in that it omits the language that a person "knowingly and willfully" commit the act. See S.C. Code Ann. §16-9-320 (1976), Opposing or resisting law enforcement officer serving process; assaulting officer engaged in serving process:

(A) It is unlawful for a person knowingly and willfully to oppose or resist a law enforcement officer . . . whom the person knows or reasonably should know is a law enforcement officer . . . whether under process or not.

(B) It is unlawful for a person to knowingly and willfully assault, beat, or wound a law enforcement officer . . . by one whom the person knows or reasonably should know is a law enforcement officer... whether under process or not.

Indeed, a bill introduced into the South Carolina Senate during the 118th Session, 2009-2010 (S.292, Sponsored by Senator Bryant) proposes to incorporate that same language into S.C. Code Ann. §16-3-625 (1976). The proposed new subsection (A) would read:

A person who knowingly and willfully commits an assault and battery on a law enforcement officer during the lawful discharge of the officer's official duties, or when the offense is directly related to the officer's official duties, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not less than two months nor more than three years, or both. No person sentenced under this subsection for a second or subsequent offense shall have the sentence suspended to less than six months nor shall the person be eligible for parole until after service of six months.

As of the date of the submission of this brief, this bill is, upon information and belief, residing in the Judiciary Committee.

The trial court judge erred in not granting Winchester's motion for a directed verdict because the state did not offer any evidence that he intended to violate the statute, and he erred in denying Winchester's requested jury instructions that would have allowed the jury to consider whether he knowingly and willfully violated the statute.

S.C. Code Ann. §16-3-625 (1976) is ambiguous

This statute is ambiguous because it is not clear whether an accused must know, or have reason to believe, that the person attempting to arrest him is a law enforcement officer. Does this section apply, for example, only when police officers are identified by their badges or self-representation? Does it apply when a driver, at nighttime, and on a deserted road, sees a blue light behind her, signaling her to pull over, and she has a gun in the glove compartment? In other words,

to what extent should an accused have some indication that a law enforcement officer is who he purports to be, in order to be liable under this statute?

These questions are answered by the language contained in *S.C. Code Ann.* §16-9-320 (1976) and the proposed *S.C. Code Ann.* §16-3-625 (1976) with the inclusion of the phrase "knowingly and willfully." With this additional language, it is clear that an accused would be liable if he or she knowingly and willfully resisted an arrest. And also see Southern Ry. Co. v. South Carolina State Highway Department, 237 S.C. 75, 115 S.E.2d 685, 689 (1960) ("While, as a general rule, references to statutes in *pari materia* for purposes of construction has been made largely where there is ambiguity in the language of the statute construed, yet this principle has not been limited solely to such instances.").

Resolving the ambiguity

The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). Statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result. Joiner v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000). See Howell v. United States Fidelity and Guaranty Insurance Company, 370 S.C. 505, 636 S.E.2d 626 (2006).

This ambiguity is resolved by applying the principle of *in pari materia*. Statutes *in pari materia* are to be construed together when they have a common purpose, or for comparable events. Here, this statute should be read in conjunction with S.C. Code Ann. §16-9-320 (1976) since both statutes make criminal the act of resisting law enforcement officers while they are attempting to

fulfill their duties. Reading S.C. Code Ann. §16-3-625 (1976) to include the requirement of “knowingly and willfully” resolves the ambiguity and harmonizes the two statutes, and the additional proposed amendment to the statute.

Had this requirement been read into the statute at the time of Winchester’s trial, the jury would have been able to consider the defense that he raised. Indeed, Winchester had notice that he would be allowed to raise this defense since the “knowingly and willfully” language was included in the indictment, the notice document created by the state. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Winchester was prejudiced because the jury was not allowed to consider whether he intended to violate the statute. Respectfully, Winchester asks this Court to grant his petition for rehearing.

Respectfully submitted,


Elizabeth A. Franklin-Best
Appellate Defender

This 5th day of July, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

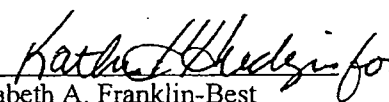
V.

BILLY WALTER WINCHESTER,

APPELLANT

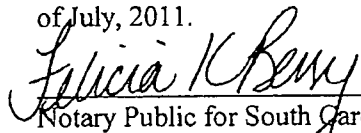
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Deborah R.J. Shupe, Esquire, this 5th day of July, 2011.


Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 5th day
of July, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020.

The South Carolina Court of Appeals

The State,

Respondent,

v.

Billy Walter Winchester,

Appellant.

The Honorable Alexander S. Macaulay
Oconee County
Trial Court Case No. 2007-GS-37-1346

ORDER

After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

Thomas C. Hoff J.
H. B. [Signature] J.
Paul E. Thomas J.

Columbia, South Carolina

FILED
AUG 16 2011

18332

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BILLY WALTER WINCHESTER,

APPELLANT

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
PROPOSED JURY CHARGES	185
INDICTMENT	201
CERTIFICATE OF COUNSEL	203

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 BILLY W. WINCHESTER,)
)
 DEFENDANT.)
 _____)

2007-GS-37-1346

TRANSCRIPT OF RECORD

DECEMBER 15 - 17, 2008
WALHALLA, SOUTH CAROLINA

BEFORE:

THE HONORABLE ALEXANDER S. MACAULAY

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

BLAIR L. STOUDEMIRE
ASSISTANT SOLICITOR

ATTORNEYS FOR DEFENDANT:

WILSON BURR, ESQUIRE
R. DANIEL DAY, ESQUIRE

RENEE H. TOLLISON
CIRCUIT COURT REPORTER

1 MADAME SOLICITOR: YES, SIR.

2 THE COURT: SEE YOU AT 2:30.

3 (WHEREUPON COURT'S EXHIBIT 1 WAS MARKED)

4 (WHEREUPON COURT WAS IN RECESS AT 12:10 PM)

1 THE OPENING STATEMENTS BY THE ATTORNEYS, BUT ONCE THE
2 ATTORNEYS FINISH THE OPENING STATEMENTS AND THE FIRST
3 WITNESS IS CALLED, IF ALL WITNESSES WILL -- OTHER THAN THE
4 ONES BEING CALLED TO THE STAND WILL GO WITH MS. MARTIN AND
5 SHE'LL SHOW YOU WHERE YOU'LL BE SEQUESTERED. ALL RIGHT.
6 ANY QUESTIONS?

7 MR. STOUDEMIRE: NONE.

8 THE COURT: AND, AS I SAY, AS I SAID TO THE OTHER
9 WITNESS THAT IF YOU REMAIN OR COME BACK INTO THE COURTROOM,
10 YOU CANNOT BE CALLED AS A WITNESS OR RECALLED AS A WITNESS.
11 ALL RIGHT. ANYTHING FURTHER FROM THE STATE?

12 MADAME COURT REPORTER: WE STILL HAVE A FEW EXHIBITS

13 ---

14 THE COURT: OH, YES, MA'AM.

15 MADAME COURT REPORTER: --- BECAUSE WE STOPPED.

16 THE COURT: ALL RIGHT. DID YOU MARK THE EXHIBITS?

17 MR. STOUDEMIRE: YOUR HONOR, I THINK I DO NEED TO GO
18 AHEAD AND HAVE MINE MARKED NOW.

19 THE COURT: OKAY.

20 (WHEREUPON COURT WAS IN RECESS)

21 (WHEREUPON STATE'S EXHIBITS 1 - 6 WERE MARKED FOR
22 IDENTIFICATION)

23 THE COURT: ALL RIGHT. YOU GOT YOUR EXHIBITS MARKED?

24 MR. STOUDEMIRE: YES, SIR. WE'RE READY.

25 THE COURT: ALL RIGHT. IS THERE ANY OBJECTION TO THE

1 EXHIBITS, MR. BURR?

2 MR. BURR: NO, YOUR HONOR, THERE'S NOT.

3 THE COURT: ALL RIGHT. SO THESE WILL BE STATE'S
4 EXHIBITS, MADAME COURT REPORTER?

5 MADAME COURT REPORTER: 1 - 6.

6 THE COURT: STATE'S EXHIBITS NUMBERS 1, 2, 3, 4, 5 AND
7 6 ARE ADMITTED WITHOUT OBJECTION.

8 MADAME COURT REPORTER: DEFENSE 1 - 11.

9 THE COURT: WELL, I'LL HOLD OFF ON ADMITTING, BUT THE
10 STATE'S EXHIBITS CAN BE USED DURING THE ARGUMENT -- OPENING
11 STATEMENTS BY COUNSEL. ALL RIGHT. ANYTHING FURTHER FROM
12 THE STATE?

13 MR. STOUDEMIRE: NOTHING, YOUR HONOR.

14 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT?

15 MR. BURR: NOTHING FROM THE DEFENSE, YOUR HONOR.

16 THE COURT: ALL RIGHT. SUBJECT TO THE COURT'S PRIOR
17 RULING. ALL RIGHT. ASK THE JURY TO JOIN US, PLEASE.

18 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 10:38 AM)

19 THE COURT: MR. BEEBE?

20 MR. BEEBE: YES, SIR.

21 THE COURT: I'M GOING TO ASK YOU TO SERVE AS FOREPERSON
22 OF THE JURY. SO IF YOU WOULD, PLEASE, MOVE TO THE END. NOT
23 ALL THE WAY TO THE END. JUST, I THINK, Y'ALL PROBABLY WANT
24 TO SIT -- THAT'LL BE GOOD. AND, MR. CARLSON, YOU'RE GOING
25 TO -- OH, WE'VE GOT ONE MORE? OH, ALL RIGHT. YOU'RE NOW

1 PART OF THE JURY. I KNEW IT DIDN'T SEEM TO BE QUITE RIGHT.
2 ALL RIGHT.

3 MADAME CLERK, IF YOU WOULD, PLEASE, SWEAR THE JURY.

4 MADAME CLERK: LADIES AND GENTLEMEN, IF YOU WOULD,
5 PLEASE STAND. IF YOU WOULD, RAISE YOUR RIGHT HAND.

6 (WHEREUPON THE JURY WAS DULY SWORN)

7 MADAME CLERK: PLEASE BE SEATED.

8 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
9 JURY, I'M SURE EACH OF YOU NOW FULLY APPRECIATES THAT THIS
10 COURT, THE COURT OF GENERAL SESSIONS FOR OCONEE COUNTY
11 EXISTS FOR THE PURPOSE OF RESOLVING QUESTIONS OF ALLEGED
12 CRIMINAL CONDUCT ARISING BETWEEN THE STATE OF SOUTH CAROLINA
13 AND THE DEFENDANT.

14 IT IS A GUARANTEED RIGHT OF EVERY CITIZEN THAT A CHARGE
15 OF CRIMINAL CONDUCT BE PRESENTED IN OPEN COURT ACCORDING TO
16 CERTAIN RULES OF PROCEDURE. THE STATE HAS NOT ONLY AN EQUAL
17 RIGHT, BUT THE DUTY TO PRESENT A CHARGE OF CRIMINAL CONDUCT
18 IN OPEN COURT ACCORDING TO THE SAME RULES OF PROCEDURE.
19 EACH OF THE PARTIES, THEREFORE, BOTH THE STATE AND THE
20 DEFENDANT, THEN HAVE AN EQUAL RIGHT TO THE OPPORTUNITY OF
21 THIS JUDICIAL PROCEEDING AND TO HAVE YOU AS THE JURY
22 SELECTED AND NOW SWORN FOR THE TRIAL OF THIS CASE.

23 ONE OF THE MOST IMPORTANT ASPECTS OF YOUR DUTY AS A
24 JURY LIES ESSENTIALLY IN THE OATH THAT YOU HAVE NOW TAKEN TO
25 WELL AND TRULY TRY AND DETERMINE THE FACTS OF THIS CASE.

1 THAT OATH IN A VERY ESSENTIAL WAY SAYS THAT YOU ARE THE SOLE
2 JUDGES OF THE FACTS IN THIS CASE. OBVIOUSLY, ANY CASE TRIED
3 IN COURT WILL INVOLVE A QUESTION ABOUT WHAT HAPPENED OR HOW
4 SOMETHING CAME TO HAPPEN OR WHOM, IF ANYONE, DID ANYTHING IN
5 A PARTICULAR OCCURRENCE OR CIRCUMSTANCE.

6 FROM THIS POINT FORWARD NO ONE CONCERNED -- CONCERNED
7 WITH THIS TRIAL HAS A RIGHT TO DECIDE ANY QUESTIONS OF FACT
8 IN THIS TRIAL OR THE TRUTH OF IT EXCEPT YOU, THE JURY. THE
9 FACTS THEN ARE FOR YOUR RESOLUTION AND YOUR DECISION AND
10 YOURS ALONE.

11 AND AFTER YOU HEAR ALL OF THE EVIDENCE IN THE CASE,
12 THEN IT WILL BE YOUR DUTY BY YOUR MUTUAL AND JOINT
13 DISCUSSIONS TO DETERMINE THE TRUTH OF THIS CASE BY DECIDING
14 THE WEIGHT AND THE BELIEVABILITY OF EACH PART OF THE
15 EVIDENCE AND BY APPLYING THE LAW OF THE CASE AS I WILL GIVE
16 IT TO YOU.

17 THE TRIAL JUDGE IS THE JUDGE OF THE LAW OF THIS CASE.
18 IT IS ALSO MY RESPONSIBILITY, AMONG OTHER DUTIES, TO PRESIDE
19 OVER THE TRIAL AND TO RULE ON THE ADMISSIBILITY OF EVIDENCE
20 OFFERED DURING THE PROGRESS OF THE TRIAL AND TO STATE TO
21 YOU, THE JURY, THE LAW APPLICABLE TO THE CASE.

22 THE CONSTITUTION OF SOUTH CAROLINA SAYS AND MANDATES
23 THAT I, AS THE TRIAL JUDGE, CANNOT DIRECTLY OR INDIRECTLY
24 COMMENT ABOUT THE FACTS IN THIS CASE. THE PROCESS OF A
25 VERDICT THEN IS SIMPLY THAT YOU, THE JURY, FIRST DETERMINE

1 WHAT IS THE TRUTH OF THE FACTS AND THEN APPLY TO THAT TRUE
2 STATE OF FACTS THAT PRINCIPLE OF LAW APPLICABLE AND BY THAT
3 PROCESS DETERMINE AND REPORT TO THIS COURT YOUR FINAL
4 VERDICT IN THE CASE, SPEAKING THE TRUTH AS YOU DETERMINE IT.

5 I'LL MORE FULLY AND COMPLETELY STATE TO YOU THE
6 PRINCIPLES OF LAW APPLICABLE TO THE ISSUES IN THE CASE
7 BEFORE THE CASE IS SUBMITTED TO YOU, THE JURY, FOR YOUR
8 DECISION. HOWEVER, THERE ARE CERTAIN PRINCIPLES OF LAW
9 APPLICABLE TO THE FRAMEWORK OF EVERY CASE IN GENERAL
10 SESSIONS COURT.

11 FIRST, THE DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY
12 TO THE CHARGES CONTAINED IN THE INDICTMENT. THE INDICTMENT
13 IN THE CASE IS NOT EVIDENCE. IT IS SIMPLY THE WRITTEN
14 INSTRUMENT THAT CONTAINS THE CHARGE AND CHARGES AGAINST THE
15 DEFENDANT. AND IT SERVES AS A FORMAL DOCUMENT BY WHICH THIS
16 CASE IS PROCESSED INTO THIS COURT.

17 THE PLEA OF NOT GUILTY PLACES UPON THE STATE THE BURDEN
18 OF PROOF IN THIS CASE. AS TO WHAT IS MEANT BY THE BURDEN OF
19 PROOF, THE DEFENDANT IS PRESUMED IN LAW INNOCENT OF ALL
20 CHARGES CONTAINED IN THE INDICTMENT. THE BURDEN OF PROOF
21 REQUIRES THAT THE STATE TO PROVE GUILT BEYOND A REASONABLE
22 DOUBT.

23 AND, THEREFORE, CONSISTENT WITH THAT BURDEN THE
24 DEFENDANT OR THE ACCUSED PARTY SHALL BE PRESUMED TO BE
25 INNOCENT. AND THAT PRESUMPTION OF INNOCENCE IS SUFFICIENT

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

49

1 ELEMENT THAT IS IN DISPUTE, AND THAT IS WHAT WAS MY CLIENT
2 THINKING? COMMON SENSE, LOGIC. IF YOU WILL LISTEN TO ALL
3 THE TESTIMONY, SOME DISPUTED, SOME UNDISPUTED, THE DISPUTED
4 PART IS GOING TO BE, WHAT WAS GOING ON IN HIS MIND? SO
5 PLEASE PAY CLOSE ATTENTION TO ALL THE EVIDENCE, BUT
6 ESPECIALLY THAT PORTION. THANK YOU.

7 THE COURT: MR. STOUDEMIRE, YOU MAY CALL YOUR FIRST
8 WITNESS.

9 MR. STOUDEMIRE: THANK YOU, YOUR HONOR. WE WOULD CALL
10 OFFICER EARL RHUDY WITH THE WALHALLA POLICE DEPARTMENT.

11 EARL RHUDY, BEING DULY
12 SWORN TESTIFIED AS FOLLOWS:

13 THE COURT: IF YOU WOULD, PLEASE, GIVE US YOUR FULL
14 NAME FOR THE RECORD.

15 MR. RHUDY: EARL EDGAR RHUDY.

16 THE COURT: THANK YOU, SIR.

17 DIRECT EXAMINATION BY MR. STOUDEMIRE:

18 Q. OFFICER RHUDY, WHERE ARE YOU EMPLOYED?

19 A. WITH THE WALHALLA POLICE DEPARTMENT.

20 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE WALHALLA
21 POLICE DEPARTMENT?

22 A. ABOUT TWO AND A HALF YEARS.

23 Q. WERE YOU EMPLOYED IN LAW ENFORCEMENT PRIOR TO THAT
24 TIME?

25 A. YES, SIR.

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

50

1 Q. WHERE WERE YOU EMPLOYED?

2 A. I FIRST STARTED OUT IN 1976 IN THE ORANGEBURG POLICE
3 DEPARTMENT WHERE I WAS THERE FOR TWELVE YEARS. I LEFT THERE
4 AND WENT TO THE CALHOUN COUNTY SHERIFF'S DEPARTMENT DOWN IN
5 CALHOUN COUNTY FOR THREE AND A HALF YEARS. AND THEN I CAME
6 TO OCONEE COUNTY SHERIFF'S DEPARTMENT. AND I WAS THERE FOR
7 RIGHT AT TWELVE YEARS.

8 Q. AND DID YOU LEAVE THE SHERIFF'S DEPARTMENT TO JOIN THE
9 WALHALLA POLICE DEPARTMENT?

10 A. I LEFT ON RETIREMENT AND THEN WENT BACK TO WORK WITH
11 THE POLICE DEPARTMENT.

12 Q. OKAY. SO ALL IN ALL, HOW LONG HAVE YOU BEEN EMPLOYED
13 IN LAW ENFORCEMENT?

14 A. ABOUT THIRTY YEARS.

15 Q. THIRTY. OKAY. WERE YOU ON DUTY ON THE DAY OF MAY
16 17TH, 2007?

17 A. YES, SIR, I WAS.

18 Q. OKAY. DO YOU REMEMBER WHAT SHIFT YOU WERE WORKING THAT
19 DAY?

20 A. I WAS WORKING MIDNIGHT SHIFT.

21 Q. OKAY. AND WHAT TIME DO YOU GO IN ON THAT SHIFT?

22 A. I THINK ABOUT TEN.

23 Q. OKAY. AND WHAT HAPPENED ON YOUR SHIFT THAT DAY?

24 A. I WAS CALLED TO THE POLICE DEPARTMENT BY MY SUPERVISOR,
25 MIKE EPPES.

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

51

1 Q. OKAY. AND WHEN YOU GOT TO THE -- WHEN YOU GOT TO THE
2 POLICE DEPARTMENT WHAT WERE YOU -- WHAT WERE YOU TOLD?

3 A. I -- WHEN I ARRIVED AT THE POLICE DEPARTMENT DEPUTY TIM
4 HUNNICUTT WAS THERE, RESERVE OFFICER TONY TURNER WAS AT THE
5 DEPARTMENT AND LIEUTENANT EPPES WAS THERE. AND I WAS GIVEN
6 A WARRANT BY LIEUTENANT EPPES AND ASKED THAT THEY GO WITH ME
7 OUT AND SERVE THE WARRANT.

8 Q. OKAY. WHO WERE YOU SUPPOSED TO SERVE THIS WARRANT ON?

9 A. ON MR. WILLIAM WINCHESTER.

10 Q. AND WHAT WAS THIS WARRANT FOR? WAS IT AN ARREST
11 WARRANT, SEARCH WARRANT, WHAT TYPE OF WARRANT WAS IT?

12 A. IT WAS A ARREST WARRANT.

13 Q. OKAY. AND WHERE IS MR. WINCHESTER'S HOUSE IN RELATION
14 TO THE POLICE DEPARTMENT?

15 A. WEST NORTH BROAD STREET NEAR THE INTERSECTION OF LAUREL
16 STREET AND BROAD STREET.

17 Q. OKAY. AND IS THAT HOUSE WITHIN THE CITY LIMITS OF
18 WALHALLA?

19 A. YES, IT IS.

20 Q. OKAY. SO IS IT WITHIN YOUR JURISDICTION TO SERVE
21 WARRANTS THERE?

22 A. YES, SIR.

23 Q. OKAY. DID YOU DRIVE IN THE CAR OVER THERE BY YOURSELF?

24 A. NO, SIR. RESERVE OFFICER TURNER WENT WITH ME.

25 Q. OKAY. AND HOW LONG DID IT TAKE YOU TO GET TO THAT

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

52

1 HOUSE?

2 A. TWO, THREE MINUTES FROM THE POLICE DEPARTMENT.

3 Q. OKAY. AND IN THOSE TWO TO THREE MINUTES, ON THE DRIVE
4 OVER WAS OFFICER HUNNICUTT IN THE CAR WITH YOU AS WELL?

5 A. NO. HE WAS DRIVING HIS VEHICLE.

6 Q. OKAY. WAS HIS VEHICLE IN FRONT OF YOURS OR BEHIND
7 YOURS?

8 A. HE WAS BEHIND ME.

9 Q. OKAY. AND WHEN YOU GOT IN THE VEHICLE -- WHEN YOU GOT
10 TO MR. WINCHESTER'S RESIDENCE WHERE DID YOU PARK?

11 A. I WENT IN OFF OF NORTH BROAD STREET INTO HIS DRIVEWAY,
12 WHICH IS ABOUT FIFTY, HUNDRED FEET UP TO HIS RESIDENCE. I
13 WENT ALONGSIDE TO THE REAR OF HIS HOUSE.

14 Q. OKAY. DID YOU STAY IN THE DRIVEWAY OR DID YOU PULL OUT
15 OF THE DRIVEWAY?

16 A. STAYED IN THE DRIVEWAY.

17 Q. OKAY. WERE THERE ANY VEHICLES AT THE DEFENDANT'S
18 RESIDENCE AT THAT TIME?

19 A. THERE WAS A PICKUP TRUCK. AND I'M NOT -- I THINK THERE
20 WAS ANOTHER VEHICLE ALONGSIDE OF IT, BUT THERE WAS A PICKUP
21 TRUCK THAT WAS -- THAT I NOTICED THAT WAS THERE.

22 Q. OKAY. AND WHEN YOU PARKED DID YOU HAVE BLUE LIGHTS
23 FLASHING OR ANYTHING LIKE THAT?

24 A. NO, SIR.

25 Q. OKAY. DID YOU LEAVE YOUR HEADLIGHTS ON?

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

53

1 A. YES, SIR.

2 Q. OKAY. AND WHEN OFFICER HUNNICUTT -- DID HE PULL IN
3 BEHIND YOU OR WHERE DID HE PARK?

4 A. HE PULLED IN BEHIND ME, BUT HE WAS TWO OR THREE CAR
5 LINKS BEHIND ME WHERE HE STOPPED AT.

6 Q. OKAY. DO YOU RECALL WHETHER OR NOT HIS HEADLIGHTS WERE
7 ON OR OFF?

8 A. I THINK THEY WERE. I'M NOT POSITIVE ON THAT.

9 Q. YOU THINK THEY WERE WHAT? ON OR OFF?

10 A. SIR?

11 Q. WERE THEY ON OR OFF?

12 A. I THINK THEY WERE ON.

13 Q. OKAY. AND ONCE YOU GOT THERE WHAT DID YOU DO THEN?

14 A. DEPUTY HUNNICUTT AND MYSELF WENT TO THE FRONT DOOR.
15 OFFICER TURNER WENT TO THE REAR DOOR.

16 Q. OKAY. WHAT TIME OF DAY WAS THIS?

17 A. ABOUT 10:30, 10:35, SOMEWHERE IN THAT AREA.

18 Q. OKAY. SO OBVIOUSLY NIGHTTIME. WERE YOU ABLE TO SEE
19 YOUR WAY AROUND THE HOUSE OKAY?

20 A. YES, SIR. WE -- I DON'T REMEMBER WHERE I HAD MY
21 FLASHLIGHT -- I THINK I DID HAVE MY FLASHLIGHT IN MY HAND.

22 Q. OKAY. AND SO YOU AND DEPUTY HUNNICUTT WENT TO THE
23 FRONT DOOR?

24 A. FRONT DOOR, YES, SIR.

25 Q. OKAY. AND TELL ME WHAT YOU WERE WEARING THAT EVENING.

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

54

1 A. I WAS WEARING A UNIFORM LIKE THIS EXCEPT FOR SHORT
2 SLEEVES.

3 Q. OKAY. IS THAT STANDARD UNIFORM FOR WALHALLA POLICE
4 DEPARTMENT?

5 A. YES, SIR.

6 Q. OKAY. ANY WEAPONS ON YOU AT THAT POINT?

7 A. I HAD MY SERVICE REVOLVER.

8 Q. OKAY. DID YOU HAVE HANDCUFFS ON YOU AS WELL?

9 A. YES, SIR.

10 Q. OKAY. ANYTHING ELSE THAT YOU WOULD USE IN THE LINE OF
11 DUTY?

12 A. JUST NORMAL GEAR STUFF THAT I CARRY. NO, THAT'S ALL,
13 HANDCUFFS AND THE WEAPON.

14 Q. OKAY. AND DO YOU RECALL WHAT DEPUTY HUNNICUTT WAS
15 WEARING?

16 A. HE WAS WEARING HIS DEPUTY'S UNIFORM. SOMETHING SIMILAR
17 TO OURS. A LITTLE BIT DIFFERENT, BUT FULL DRESS UNIFORM
18 WITH SERVICE BELT.

19 Q. OKAY. WHAT DID YOU DO ONCE YOU GOT TO THE FRONT?

20 A. I STARTED KNOCKING ON THE DOOR. BOTH OF US, DEPUTY
21 HUNNICUTT AND MYSELF STARTED KNOCKING ON THE DOOR. I TOOK
22 THE FLASHLIGHT, WHICH IS A LONG MAGLITE AND WAS TAPPING ON
23 THE DOOR 'CAUSE IT MAKES A LOUDER SOUND THAN A FIST AND
24 HOLLERED, POLICE, WE NEED TO TALK TO YOU, PLEASE COME OUT.

25 Q. OKAY. COULD YOU SEE ANY LIGHTS ON IN THE FRONT OF THE

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

55

1 RESIDENCE WHEN YOU WERE UP THERE?

2 A. NO, SIR, NOT IN THE FRONT.

3 Q. OKAY. HOW LOUD WERE YOU SPEAKING?

4 A. AS LOUD AS WE COULD. BOTH OF US, DEPUTY HUNNICUTT AND
5 MYSELF WAS BOTH HOLLERING FOR -- LAW ENFORCEMENT, PLEASE
6 COME OUT.

7 Q. OKAY. WERE YOU USING A LOUDER TONE THAN WHAT YOU'RE
8 USING NOW?

9 A. YES, SIR.

10 Q. OKAY. AND WHY WERE YOU DOING THAT?

11 A. TO LET HIM KNOW WHO WE WERE, WHAT WE WERE. I KEPT ON
12 KNOCKING TOO TO MAKE SURE HE KNEW THAT SOMEBODY WAS THERE.

13 Q. OKAY. DID YOU GET ANY RESPONSE AT THE FRONT DOOR?

14 A. NO, I DID NOT.

15 Q. AND HOW LONG WERE YOU KNOCKING AT THE FRONT DOOR?

16 A. I'D SAY MINUTE, MAYBE TWO MINUTES.

17 Q. AND AFTER GETTING NO RESPONSE WHAT DID YOU DO THEN?

18 A. WELL, I HEARD OFFICER TURNER KNOCKING ON THE REAR DOOR.
19 AND I HEARD HIM KEEP SAYING, POLICE, WE NEED TO TALK TO YOU,
20 COME ON OUT. THREE OR FOUR TIMES HE REPEATED HIMSELF.

21 Q. OKAY. AND WAS THIS DURING THE TIME YOU WERE AT THE
22 FRONT DOOR?

23 A. YES.

24 Q. OKAY. AND HE'S ALL THE WAY AROUND THE BACK OF THE
25 HOUSE?

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

56

- 1 A. THAT'S CORRECT.
- 2 Q. ARE WE TALKING ABOUT A HUGE HOUSE HERE?
- 3 A. NO, WE'RE NOT. NO, SIR.
- 4 Q. OKAY.
- 5 A. IT'S A SMALL TO MEDIUM ---
- 6 Q. OKAY.
- 7 A. --- HOUSE.
- 8 Q. ALL RIGHT. BUT YOU WERE ABLE -- WERE YOU ABLE TO HEAR
- 9 THE WORDS THAT OFFICER TURNER WAS SAYING FROM YOUR POSITION
- 10 IN THE FRONT?
- 11 A. I KEPT HEARING HIM SAY, POLICE, PLEASE COME OUT, ---
- 12 Q. OKAY.
- 13 A. --- POLICE, WE NEED TO TALK TO YOU.
- 14 Q. OKAY. AND HEARING THAT AND NOT GETTING A RESPONSE AT
- 15 THE FRONT DOOR, WHAT DID YOU DO THEN?
- 16 A. DEPUTY HUNNICUTT AND MYSELF WENT AROUND TO THE REAR OF
- 17 THE HOUSE WHERE OFFICER TURNER WAS.
- 18 Q. OKAY. AND WHEN YOU GOT TO THE REAR OF THE HOUSE WHERE
- 19 WAS OFFICER TURNER STANDING?
- 20 A. HE WAS UP ON A LITTLE CONCRETE STOOP AT THE REAR DOOR
- 21 OF THE HOUSE.
- 22 Q. OKAY. THE DOOR THAT HE WAS STANDING AT, DOES THAT
- 23 ENTER DIRECTLY INTO MR. WINCHESTER'S HOUSE OR ANOTHER AREA?
- 24 A. IT GOES INTO A LITTLE PORCH-LIKE AREA. AND THEN
- 25 ANOTHER DOOR GOES INTO THE REAR OF HIS HOUSE.

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

57

1 Q. OKAY. AND WHEN YOU AND DEPUTY HUNNICUTT GOT AROUND
2 BACK WAS OFFICER TURNER STILL KNOCKING?

3 A. I DON'T RECALL ON THAT.

4 Q. OKAY. DO YOU RECALL WHETHER OR NOT YOU COULD SEE ANY
5 LIGHTS ON IN THE REAR OF THE HOUSE?

6 A. AS I WENT TO THE REAR OF THE HOUSE, BEFORE I GOT TO THE
7 STOOP WHERE OFFICER TURNER WAS, THERE IS A WINDOW IN THE
8 BACK OF THE HOUSE THAT I COULD SEE THROUGH. STANDING BACK
9 OFF FROM THE HOUSE I COULD SEE THROUGH INTO ANOTHER ROOM
10 THAT HAD A LIGHT ON, WHICH WAS LATER IDENTIFIED AS A
11 BEDROOM.

12 Q. OKAY. BUT YOU COULDN'T SEE INTO THAT ROOM ITSELF?

13 A. ALL I COULD SEE WAS THE DOOR, THE DOOR FACE AND ABOUT
14 HALF OF THE DOOR FROM OVER THE WALL. IT WAS A HIGH WINDOW.
15 AND I WAS KIND OF LOOKING AT AN ANGLE AT IT.

16 Q. OKAY.

17 A. BUT I COULD SEE THROUGH AND SEE THE LIGHT ON IN THE
18 BEDROOM.

19 Q. OKAY. SO YOU COULD SEE ILLUMINATION?

20 A. YES.

21 Q. OKAY. AND WHEN YOU GOT TO THE REAR OF THE HOUSE, SAW
22 ALL OF THIS, WHERE DID YOU TAKE UP POSITION AT THAT POINT?

23 A. I WAS STAYING WATCHING THROUGH THAT WINDOW TO SEE IF
24 ANYONE WAS GOING TO COME OUT TO COME TO THE DOOR SO I COULD
25 TELL OFFICER TURNER SOMEBODY WAS COMING.

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

58

1 Q. OKAY. BASED ON WHERE OFFICER TURNER WAS STANDING, THIS
2 WINDOW THAT YOU SAW LIGHT COMING THROUGH, WOULD THAT HAVE
3 BEEN TO HIS RIGHT OR HIS LEFT?

4 A. THE WINDOW?

5 Q. YES.

6 A. IT WOULD BE TO HIS RIGHT.

7 Q. OKAY. AND WHERE WERE YOU STANDING IN RELATION TO
8 OFFICER TURNER?

9 A. I WAS STANDING DOWN ON THE GROUND APPROXIMATELY EIGHT,
10 TEN FEET FROM HIM.

11 Q. OKAY.

12 A. MAYBE.

13 Q. TO HIS RIGHT OR LEFT?

14 A. TO HIS LEFT.

15 Q. OKAY. AND WHEN YOU CAME AROUND WHERE WAS OFFICER
16 HUNNICUTT STANDING AT THAT POINT? DO YOU RECALL?

17 A. AS I RECALL, HE WAS STANDING BETWEEN US BACK MORE TO MY
18 RIGHT BACK TO THE LEFT OF OFFICER TURNER.

19 Q. OKAY. ALL RIGHT. AND AFTER Y'ALL GOT AROUND THERE DID
20 OFFICER TURNER MAKE ANYMORE ATTEMPTS TO KNOCK OR TO YELL OR
21 ANYTHING LIKE THAT?

22 A. I WAS UNDER THE IMPRESSION THAT HE HAD MADE CONTACT
23 WITH HIM, THAT HE WAS COMING TO THE DOOR.

24 Q. OKAY.

25 A. AND WE JUST KIND OF WAITED FOR A SHORT PERIOD OF TIME.

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

59

1 Q. OKAY.

2 A. AND NOBODY CAME TO THE DOOR.

3 Q. WHAT PERIOD OF TIME WOULD YOU SAY IS A SHORT PERIOD OF
4 TIME?

5 A. THIRTY, FORTY-FIVE SECONDS MAYBE.

6 Q. OKAY. AND WHAT HAPPENED AFTER THIRTY OR FORTY-FIVE
7 SECONDS?

8 A. A SHOT RANG OUT.

9 Q. OKAY. DID YOU SEE ANY MOVEMENT IN THE HOUSE PRIOR TO
10 THAT?

11 A. NO, SIR.

12 Q. OKAY. AND WHEN THE SHOT RANG OUT WERE YOU ABLE TO TELL
13 WHERE THE SHOT CAME FROM?

14 A. CAME FROM THE HOUSE.

15 Q. OKAY. COULD YOU TELL WHAT PART OF THE HOUSE?

16 A. TO THE RIGHT OF OFFICER TURNER.

17 Q. OKAY. AND WHEN THE SHOT -- WHEN THE SHOT RANG OUT,
18 WHAT DID YOU DO?

19 A. I HEARD THE SHOT HIT BACK TO OUR RIGHT. I WENT TO THE
20 PATROL CAR AND CALLED FOR OR CALLED INTO DISPATCH, WE HAD
21 SHOTS FIRED.

22 Q. OKAY. AND DID YOU -- WHAT SIDE OF YOUR PATROL CAR DID
23 YOU GO TO?

24 A. MY PASSENGER'S SIDE.

25 Q. OKAY. WHY DID YOU GO TO YOUR PASSENGER'S SIDE AS

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

60

1 OPPOSED TO THE DRIVER'S SIDE?

2 A. WELL, TO TAKE COVER FOR ONE THING 'CAUSE THE OTHER FEW
3 OFFICERS ALSO TOOK COVER. AND ALSO I WENT TO THE
4 PASSENGER'S SIDE TO GET INTO MY PATROL CAR TO ATTEMPT TO GET
5 ONTO THE PA SYSTEM OF THE PATROL CAR AND MAKE CONTACT WITH
6 THE SUBJECT.

7 Q. OKAY. WERE YOU ABLE TO DO THAT AT THAT POINT?

8 A. I COULD NOT GET MY PA SYSTEM TO WORK AT THAT TIME.

9 Q. OKAY. WERE YOU ABLE TO SEE WHERE DEPUTY HUNNICUTT AND
10 OFFICER TURNER HAD TAKEN UP COVER?

11 A. ALL I KNOW, AND I DON'T KNOW WHO WAS WHERE, THEY WAS
12 BEHIND, TAKING COVER BEHIND THE PICKUP TRUCK THAT WAS
13 SETTING IN THE DRIVEWAY.

14 Q. OKAY. ALL RIGHT. AND FROM YOUR VANTAGE POINT WHAT
15 HAPPENED THEN AFTER YOU CALLED IN THAT SHOTS HAD BEEN FIRED?

16 A. I CALLED IN SHOTS FIRED. AND I WAS TRYING TO GET THE
17 PA SYSTEM TO TURN ON IN THE CAR. AND I HEARD ONE OR BOTH OF
18 THEM KEEP TELLING, KEEP HOLLERING, KEEP YOUR HANDS WHERE WE
19 CAN SEE THEM, KEEP YOUR HANDS WHERE YOU CAN SEE THEM. AND I
20 WAS GETTING OUT. ABOUT THE TIME I GOT OUT OF THE PATROL CAR
21 -- OF COURSE, I WAS STAYING UNDER THE COVER TOO. AND A SHOT
22 WENT OFF. IT WAS EVIDENTLY THE TASER.

23 Q. OKAY. WELL, WHEN YOU WENT TO YOUR CAR AND CALLED IN,
24 SHOTS FIRED, HOW LONG WAS IT BEFORE YOU SAW MR. WINCHESTER
25 COME OUT OF THE HOUSE?

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

61

1 A. IT SEEMED LIKE A LONG TIME, BUT IT COULDN'T -- MINUTE,
2 MAYBE.

3 Q. OKAY.

4 A. MINUTE, TWO MINUTES. I DON'T KNOW. IT SEEMED LIKE A
5 LONG TIME.

6 Q. OKAY. DURING THAT TIME BEFORE HE CAME OUT OF THE HOUSE
7 COULD YOU HEAR OFFICER TURNER OR DEPUTY HUNNICUTT YELL?

8 A. OH, THEY -- YOU MEAN WHEN WE FIRST WENT UP THERE?

9 Q. NO, I MEAN FROM THEIR COVER POSITION.

10 A. I DIDN'T HEAR THEM YELL UNTIL I WAS INSIDE. I OPENED
11 THE DOOR AND CRAWLED INTO THE POLICE CAR. I WAS NOT
12 OBSERVING ANYTHING OTHER THAN TRYING TO GET THE PA SYSTEM ON
13 THE PATROL CAR, GET ON THERE AND TELL HIM TO COME OUT.

14 Q. OKAY. DID YOU SEE MR. WINCHESTER COME OUT OF THE
15 HOUSE?

16 A. I SAW MR. -- WHEN I GOT OUT, AND I STAYED DOWN. AND,
17 LIKE I SAID, THE TASER HAD WENT OFF. AND WHEN I LOOKED UP
18 HE WAS ON THE GROUND.

19 Q. OKAY. SO WERE YOU ABLE TO SEE WHETHER OR NOT HE WAS
20 WALKING OR ANYTHING ---

21 A. NO, SIR.

22 Q. --- PRIOR TO THAT?

23 A. NO, SIR.

24 Q. OKAY. DO YOU KNOW ANYTHING ELSE ABOUT THIS OTHER THAN
25 WHAT YOU'VE TOLD US?

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

62

- 1 A. OTHER THAN I WENT TO THE HOSPITAL THEN.
- 2 Q. OKAY. WELL, AFTER THE TASER WENT OFF, WHAT HAPPENED
- 3 THEN?
- 4 A. WE CALLED OR I CALLED FOR EMS TO COME ON THE SCENE.
- 5 AND CHIEF CHASTAIN WAS NOTIFIED, I THINK, BY LIEUTENANT
- 6 EPPES ---
- 7 Q. OKAY.
- 8 A. --- TO COME ON THE SCENE. AND I STAYED WITH MR.
- 9 WINCHESTER.
- 10 Q. ALL RIGHT. WAS LIEUTENANT EPPES ON THE SCENE BEFORE OR
- 11 AFTER THE TASER WENT OFF?
- 12 A. I REALLY DON'T KNOW, SIR.
- 13 Q. OKAY. WERE YOU STILL IN YOUR VEHICLE AT THAT TIME?
- 14 A. WHEN THE TASER WENT OFF?
- 15 Q. YES.
- 16 A. YES.
- 17 Q. OKAY.
- 18 A. OR I WAS GETTING OUT AT THAT TIME WHEN I HEARD IT.
- 19 Q. OKAY. SO WHY DID YOU CALL EMS?
- 20 A. WELL, BECAUSE WHEN I GOT DOWN I SAW THERE WAS SOME
- 21 BLOOD COMING, I THINK, FROM HIS FOREHEAD. AND I SAW HIM --
- 22 HE WAS DOWN ON THE GROUND. SO, OF COURSE, IF WE HAD ONE
- 23 HURT, I WANTED EMS THERE ON THE SCENE. THAT'S NORMAL
- 24 PROCEDURE.
- 25 Q. OKAY. ALL RIGHT. AND THAT'S WITH ANYBODY IN THAT

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

63

1 POSITION?

2 A. SOMEBODY THAT'S BLEEDING, YES.

3 Q. OKAY. DO YOU RECALL HOW LONG IT TOOK BEFORE EMS GOT
4 THERE?

5 A. NO, SIR, I SURE DON'T.

6 Q. OKAY. DID YOU RIDE -- WELL, HOW WAS MR. WINCHESTER
7 TRANSPORTED TO THE HOSPITAL?

8 A. BY AMBULANCE.

9 Q. OKAY. DID YOU RIDE IN THE AMBULANCE WITH HIM DOWN TO
10 THE HOSPITAL?

11 A. I FOLLOWED IN THE PATROL CAR TO THE HOSPITAL WITH HIM.

12 Q. OKAY. WHEN YOU GOT TO THE HOSPITAL DID YOU ASK MR.
13 WINCHESTER ANY QUESTIONS OR ANYTHING LIKE THAT?

14 A. NO, SIR.

15 Q. OKAY. DID YOU EVER ASK MR. WINCHESTER ANY QUESTIONS
16 ---

17 A. NO, SIR.

18 Q. OKAY. AND WHEN YOU GOT TO THE HOSPITAL DID YOU SPEAK
19 WITH ANYBODY THERE?

20 A. I INFORMED THE MEDICAL PERSONNEL DOWN THERE WHAT HAD
21 OCCURRED SO THEY KNEW WHAT THEY HAD TO WORK WITH, WHAT HAD
22 HAPPENED TO HIM.

23 Q. OKAY. AND WHAT DID YOU TELL THEM?

24 A. THAT HE CAME OUT, HE HAD BEEN TASERED, AND HE HAD FELL
25 AND STRUCK HIS HEAD ON THE SIDEWALK AND BASICALLY JUST HOW

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

64

1 HE RECEIVED HIS INJURIES.

2 Q. OKAY. AND HOW LONG WERE YOU AT THE HOSPITAL WITH MR.
3 WINCHESTER?

4 A. PROBABLY A COUPLE OF HOURS.

5 Q. OKAY. WERE YOU IN THE ROOM WHERE HE WAS BEING TREATED?

6 A. YES.

7 Q. OKAY. AND DO YOU RECALL WHAT YOU SAW HIM BEING TREATED
8 FOR?

9 A. NO, SIR. I WAS JUST IN THE ROOM, STOOD OFF AND LET THE
10 MEDICAL PERSONNEL DO THEIR JOB.

11 Q. OKAY. DID HE HAVE TO STAY AT THE HOSPITAL THAT NIGHT?

12 A. NO, SIR. HE WAS TAKEN TO X-RAYS. HE WAS X-RAYED AND
13 THEN BROUGHT BACK AND RELEASED BACK INTO MY CUSTODY.

14 Q. OKAY. AND ONCE HE WAS RELEASED INTO YOUR CUSTODY WHAT
15 DID YOU DO AT THAT POINT?

16 A. I PUT HIM IN THE BACK OF THE PATROL CAR AND BROUGHT
17 HIM TO THE LAW ENFORCEMENT CENTER TO THE COUNTY JAIL.

18 Q. OKAY. DID YOU HAVE ANY DIFFICULTY GETTING HIM IN THE
19 BACK OF THE PATROL CAR?

20 A. WELL, THEY WHEELED HIM OUT OF THE -- AS NORMAL. THEY
21 WHEELED HIM OUT OF THE EMERGENCY ROOM IN THE WHEELCHAIR TO
22 THE PATROL CAR AND HELPED HIM GET INTO THE PATROL CAR AND
23 BROUGHT HIM BACK. AND WE HELPED HIM GET OUT OF THE PATROL
24 CAR AT THE JAIL. AND HE WALKED IN ON HIS OWN POWER INTO THE
25 BOOKING AREA.

EARL RHUDY - DIRECT EXAMINATION BY MR. STOUDEMIRE

65

1 Q. WAS HE HANDCUFFED WHEN HE WAS WALKING IN?

2 A. I DID NOT HANDCUFF HIM, NO.

3 Q. OKAY. WHERE WERE HIS ARMS WHEN HE WALKED INTO THE
4 JAIL?

5 A. TO HIS SIDE.

6 Q. OKAY. JUST WALKING NORMAL?

7 A. YES, SIR.

8 Q. OKAY. DID HE HAVE TO USE A CANE OR ANYTHING AT THAT
9 POINT?

10 A. SIR?

11 Q. DID HE HAVE TO USE A CANE OR ANYTHING AT THAT POINT?

12 A. NO, SIR.

13 Q. OKAY. AND ONCE YOU GOT TO THE JAIL, WHAT HAPPENED
14 THEN?

15 A. HE WAS BOOKED IN. AND I'D INFORMED THEM THAT HE HAD
16 BEEN TRANSPORTED TO THE HOSPITAL AND HAD RECEIVED MEDICAL.
17 AND I THINK THEY GAVE ME A FORM TO GIVE TO THE DETENTION
18 CENTER THAT HE HAD BEEN TREATED AND RELEASED. I THINK
19 THAT'S WHAT IT WAS. USUALLY THEY LET US KNOW THAT HE'S OKAY
20 TO BE INCARCERATED.

21 Q. OKAY. ALL RIGHT. THAT'S ALL THE QUESTIONS I WOULD
22 HAVE FOR YOU AT THIS TIME. PLEASE ANSWER ANY MR. BURR MAY
23 HAVE.

24 THE COURT: CROSS EXAMINE.

25 MR. BURR: MAY IT PLEASE THE COURT, YOUR HONOR?

EARL RHUDY - CROSS EXAMINATION BY MR. BURR

66

1 CROSS EXAMINATION BY MR. BURR:

2 Q. OFFICER RHUDY, IS IT SAFE TO SAY THERE WAS A GOOD BIT
3 OF CONFUSION GOING ON OUT AT MR. WINCHESTER'S HOUSE ON MAY
4 17TH?

5 A. OH, YES, SIR.

6 Q. MR. STOUDEMIRE JUST ASKED YOU WHETHER LIEUTENANT EPPES
7 ARRIVED BEFORE YOU GOT BACK THERE TO YOUR CAR. DO YOU KNOW
8 WHERE YOU WERE WHEN HE CAME OUT? WERE YOU STILL IN YOUR
9 CAR?

10 A. WHEN MR. WINCHESTER CAME OUT?

11 Q. NO, WHEN MR. -- LIEUTENANT EPPES SHOWED UP.

12 A. I DON'T KNOW WHERE I WAS WHEN HE CAME 'CAUSE WHEN I GOT
13 ON THE RADIO AND CALLED, SHOTS FIRED -- I ASSUME HE LEFT. I
14 DID NOT SEE HIM SHOW UP UNTIL -- BASICALLY I DIDN'T KNOW HE
15 WAS THERE UNTIL AFTER THE INCIDENT HAD OCCURRED THAT WE
16 CALLED EMS.

17 Q. ON THE EVENING OF THIS OCCURRENCE, MAY 17TH, YOU DID DO
18 AN INCIDENT REPORT AND SUMMARIZED YOUR FACTS AS YOU KNEW
19 THEM, CORRECT?

20 A. LIEUTENANT EPPES AND I BOTH DID THE REPORT, YES, SIR.

21 Q. OKAY. AND YOU DID PUT IN THIS REPORT THAT LIEUTENANT
22 EPPES IS THE ONE THAT ORDERED THE TASERING ON MR.
23 WINCHESTER?

24 A. I HAVE NO EARTHLY IDEA HOW -- I DID NOT HEAR IT.

25 Q. ARE YOU SAYING THIS REPORT THAT YOU SIGNED -- ARE YOU

EARL RHUDY - CROSS EXAMINATION BY MR. BURR

67

1 RESPONSIBLE FOR THIS REPORT? HAVE YOU READ IT?

2 A. CAN I SEE THE REPORT, SIR?

3 (PAUSE)

4 A. THIS REPORT HAS MY NAME AND ALSO LIEUTENANT MIKE EPPES
5 ON IT. IT'S OUR POLICY EVER WHO DOES THE REPORT INITIALS
6 THE REPORT. AND IT IS INITIALED BY LIEUTENANT MIKE EPPES.

7 Q. SO YOU DID NOT DO THAT REPORT?

8 A. I DID NOT DO THIS REPORT.

9 Q. OKAY. READ OVER THE BODY OF THAT REPORT WHERE IT
10 STATES WHEN YOU GOT TO THE BACK OF THE HOUSE. IS SOME OF
11 THE TESTIMONY YOU JUST GAVE, YOU AND LIEUTENANT -- YOU AND
12 HUNNICUTT WENT TO THE FRONT DOOR, RESERVE OFFICER TURNER
13 WENT TO THE BACK?

14 A. YES, SIR.

15 Q. THEN THE TWO OF YOU FALL INTO THE BACK, YOU GOT A
16 RESPONSE FROM TURNER OR TURNER TOLD YOU OR SOMEHOW YOU KNEW
17 HE SAID HE HAD GOTTEN A RESPONSE FROM INSIDE.

18 A. THAT'S CORRECT.

19 Q. I NOW SHOW YOU LIEUTENANT TURNER'S SWORN STATEMENT.
20 AFTER READING HIS SWORN STATEMENT DO YOU STILL AGREE WITH
21 THAT? DOES HE NOT CLEARLY STATE THERE WAS NO RESPONSE?

22 A. THERE'S NO ANSWER ON THIS REPORT. BUT I HAD NOTHING TO
23 DO WITH THIS WRITTEN REPORT. YOU'LL HAVE TO ASK OFFICER
24 TURNER ABOUT THAT.

25 Q. WELL, IS TURNER'S NAME ON THAT REPORT ALSO? THAT'S HIS

EARL RHUDY - CROSS EXAMINATION BY MR. BURR

68

1 STATEMENT. LOOK ON THE REPORT NOW.

2 A. YES, SIR.

3 Q. DID HE ALSO HELP YOU AND LIEUTENANT EPPES DO THE
4 REPORT?

5 A. NO, SIR.

6 Q. SO IF THAT'S NOT YOUR INPUT IN THE REPORT, BUT THAT
7 PORTION HAPPENED WHEN NOBODY WAS THERE BUT YOU, HUNNICUTT
8 AND TURNER, LIEUTENANT EPPES HAD NO WAY OF KNOWING WHAT
9 TURNER SAID. THAT INFORMATION HAD TO COME FROM YOU, DIDN'T
10 IT?

11 A. HE MIGHT HAVE TALKED TO OFFICER TURNER AND GOT HIS
12 INFORMATION AND PUT IT ON A REPORT.

13 Q. THERE AGAIN, THAT WOULD BE INCONSISTENT. HE'S GOT A
14 SWORN STATEMENT SAYING HE DIDN'T GET AN ANSWER. SO
15 CERTAINLY HE WOULDN'T HAVE LIED TO YOU IN THE REPORT AND
16 SAID HE DID GET AN ANSWER.

17 A. I DON'T KNOW -- THIS --- THIS VOLUNTARY STATEMENT WAS
18 MADE ON THE 18TH. AND THIS OCCURRED ON THE 17TH.

19 Q. THAT'S ---

20 A. SO THIS WAS MADE ---

21 Q. MIDNIGHT, ELEVEN, 11:00 WHEN ---

22 A. 12:35 PM.

23 Q. THAT'S WHEN THE STATEMENT WAS GIVEN.

24 A. WOULD BE -- PM WOULD BE AFTERNOON.

25 Q. THE STATEMENT ---

EARL RHUDY - CROSS EXAMINATION BY MR. BURR

69

1 A. THIS STATEMENT, YES.

2 Q. RIGHT. THE STATEMENT'S GIVEN WITHIN TWELVE HOURS OF
3 THE INCIDENT.

4 A. CORRECT.

5 Q. OKAY.

6 A. OR APPROXIMATELY.

7 Q. WELL, THERE IS SOME PRETTY SERIOUS DISPUTES BETWEEN THE
8 TWO?

9 A. LIKE I SAID, I HAD NOTHING TO DO WITH THOSE WRITTEN
10 REPORTS EXCEPT MY INPUT TO LIEUTENANT EPPES WHAT HAD
11 OCCURRED ON MY PART.

12 Q. WELL, SOMEBODY'S QUOTING YOU AS SAYING YOU GOT TO THE
13 BACK OF THE HOUSE AND TURNER TOLD YOU HE HAD A RESPONSE.
14 THAT'S PRETTY IMPORTANT INFORMATION WHETHER OR NOT MY CLIENT
15 WAS COMMUNICATING WITH YOU OR NOT.

16 A. I THINK I TESTIFIED WHEN MR. STOUDEMIRE ASKED THE
17 QUESTION THAT HE INDICATED TO ME THAT HE HAD GOT A RESPONSE.

18 Q. SO THAT'S WHERE THE INFORMATION CAME FROM IN THE
19 REPORT, FROM YOU. BUT YET NOW YOU SEEN OFFICER TURNER'S
20 STATEMENT, SWORN STATEMENT, SAYING HE DID NOT GET A
21 RESPONSE.

22 A. WELL, LIKE I SAID, THERE'S A LOT OF CONFUSION THERE
23 THAT NIGHT.

24 Q. AND, OFFICER, THAT'S THE POINT I'M MAKING. I'M NOT
25 TRYING TO BEAT YOU UP ON THAT, BUT THERE WAS A LOT OF

EARL RHUDY - CROSS EXAMINATION BY MR. BURR

70

1 CONFUSION. WHEN YOU WERE AT THIS INCIDENT, THE NIGHT OF THE
2 INCIDENT WHEN YOU GOT TO THE BACK COULD YOU HEAR MR.
3 WINCHESTER'S TELEVISION?

4 A. NO, SIR.

5 Q. COULD YOU HEAR THE FAN GOING IN HIS HOUSE?

6 A. NO, SIR.

7 Q. AND LET ME SHOW YOU WHAT'S PREVIOUSLY MARKED AS DEFENSE
8 EXHIBIT 7 FOR IDENTIFICATION. DOES THAT APPEAR TO BE THE
9 RESIDENCE WE'RE DISCUSSING?

10 A. YES, SIR.

11 Q. AND WAS YOUR REASON FOR YOU AND OFFICER HUNNICUTT TO --
12 FOR ALL THREE OF YOU TO END UP IN THE BACK OF THE HOUSE WHY
13 DID YOU ABANDON THE FRONT DOOR?

14 A. 'CAUSE I COULD HEAR OFFICER TURNER BACK THERE
15 CONVERSING. AND WE FIGURED THAT HE HAD ALREADY MADE
16 CONTACT. THAT'S WHAT -- WE DID NOT KNOW, BUT WE FIGURED.
17 SO WE WENT TO THE REAR OF THE HOUSE.

18 Q. I JUST SHOWED YOU HIS STATEMENT WHERE HE'S SAYING HE
19 DID NOT CONVERSE OR GET A RESPONSE.

20 A. OFFICER TURNER WAS BACK THERE HOLLERING, POLICE, COME
21 OUT.

22 Q. SO WERE YOU GUYS NOT ON THE FRONT DOOR HOLLERING,
23 POLICE, COME OUT?

24 A. WE WERE.

25 Q. BUT THERE'S NO EXPLANATION OF WHY YOU ALL CONGREGATED

EARL RHUDY - CROSS EXAMINATION BY MR. BURR

71

1 TO THE REAR?

2 A. NO, SIR.

3 Q. I'D LIKE TO SHOW YOU WHAT'S BEEN MARKED AS DEFENSE
4 EXHIBIT 3 FOR IDENTIFICATION. IS THAT AN ACCURATE PICTURE
5 OF THE REAR OF THE HOUSE?

6 A. YES, IT IS.

7 Q. AND THAT IS A GLASS STORM DOOR ENCLOSING THE BACK OF
8 THE HOUSE?

9 A. THAT'S WHAT IT APPEARS TO BE, YES, SIR.

10 Q. SO IS THAT WHAT OFFICER TURNER WAS BEATING ON WHEN HE
11 WAS TRYING TO GET THE ATTENTION?

12 A. I DON'T KNOW WHAT HE WAS BEATING ON.

13 Q. BUT YOU COULD HEAR HIS BEATS ON SOMETHING?

14 A. YES.

15 Q. OFFICER RHUDY, I HATE TO KEEP HOUNDING ON THESE LITTLE
16 MINOR INCONSISTENCIES, BUT YOU TESTIFIED ON DIRECT THAT YOU
17 WERE ON DUTY OF THE NIGHT OF MAY 17TH. IS THAT YOUR DUTY
18 ROSTER FOR THE MONTH OF MAY?

19 A. YES, IT IS.

20 Q. AND UNDER MAY 17TH, SWING SHIFT, OFFICER EARL RHUDY.
21 HOW DOES IT HAVE YOU LISTED?

22 A. IT HAD ME LISTED OFF.

23 Q. SO IT HAS YOU LISTED AS OFF DUTY. OFFICER TURNER IS
24 THE RESERVE OFFICER, NOT EVEN WORKING FOR THE COUNTY OR
25 ANYBODY ELSE. AND OFFICER HUNNICUTT WAS BORROWED FROM

EARL RHUDY - CROSS EXAMINATION BY MR. BURR

72

1 ANOTHER AGENCY, CORRECT?

2 A. THAT'S RIGHT.

3 Q. AND YOU WERE THE THREE THAT DECIDED TO GO OUT TO MR.
4 WINCHESTER'S HOUSE DURING THE HOURS OF DARKNESS. DID YOU
5 TRY CALLING HIM BEFORE YOU WENT OUT AND SAY, HEY, WE'RE
6 COMING TO SEE YOU?

7 A. NO, WE DID NOT.

8 Q. WHEN YOU PULLED UP DID YOU FLASH YOUR BLUE LIGHT WHERE
9 HE MIGHT LOOK OUT HIS WINDOW AND SEE YOU?

10 A. NO, SIR.

11 Q. DID YOU HIT YOUR SIREN WHERE HE'D SAY THAT SOUNDS LIKE
12 A FIRE OR POLICEMAN?

13 A. NO, SIR.

14 Q. SO YOU JUST SNUCK UP FROM THE BACK AND BEAT ON THE DOOR
15 AND SCARED THE CRAP OUT OF HIM?

16 A. WE DID NOT SNEAK UP. WE DROVE ---

17 THE COURT: ALL RIGHT, MR. BURR, LET'S ---

18 MR. BURR: I'M SORRY, YOUR HONOR. I APOLOGIZE.

19 Q. OFFICER, TO CONCLUDE THIS, IT IS YOUR TESTIMONY THAT
20 YOU PERSONALLY HAD NO COMMUNICATIONS WITH MR. WINCHESTER ON
21 THE NIGHT OF MAY 17TH? NO RESPONSE, YOU HEARD NO RESPONSE
22 FROM HIM?

23 A. AT THE FRONT DOOR, NO, SIR.

24 Q. AT THE BACK DOOR PRIOR TO HIM COMING OUT DID YOU HEAR
25 ANYTHING FROM HIM?

EARL RHUDY - REDIRECT EXAMINATION BY MR. STOUDEMIRE

73

1 A. NO, I DID NOT.

2 Q. AND YOU COULD NOT HEAR HIS TELEVISION?

3 A. NO, SIR.

4 Q. BUT WHEN YOU GO ALL THE WAY AROUND THE FRONT YOU COULD
5 HEAR OFFICER TURNER BEATING ON THE DOOR?

6 A. THAT'S CORRECT.

7 Q. OKAY.

8 MR. BURR: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

9 THE COURT: REDIRECT.

10 REDIRECT EXAMINATION BY MR. STOUDEMIRE:

11 Q. OFFICER RHUDY, IN YOUR EXPERIENCE WHEN YOU SERVE
12 WARRANTS DO YOU ALWAYS GO WITH BLUE LIGHTS FLASHING?

13 A. NO, SIR.

14 Q. OKAY. DO YOU GO WITH SIRENS BLARING?

15 A. NO, SIR.

16 Q. DO YOU ALWAYS CALL PEOPLE AND ASK THEM TO COME IN
17 NICELY BEFORE YOU GO TO THEIR HOUSE AND SERVE THEM?

18 A. NO, SIR.

19 Q. HOW DO YOU USUALLY GO DO IT?

20 A. DRIVE UP LIKE A NORMAL CALL, GO TO THE DOOR, KNOCK, GET
21 THE RESPONSE AND STATE MY BUSINESS.

22 Q. OKAY. DOES THE WALHALLA POLICE DEPARTMENT AS FAR AS
23 YOU KNOW HAVE SOME SORT OF SET PROTOCOL ON EXACTLY HOW
24 WARRANTS ARE SUPPOSED TO BE SERVED?

25 A. NO, SIR.

EARL RHUDY - REDIRECT EXAMINATION BY MR. STOUDEMIRE

74

1 Q. OKAY: NOW LOOKING AT THE DUTY ROSTER THAT MR. BURR
2 SHOWED YOU WERE YOU SCHEDULED TO WORK THAT NIGHT?

3 A. NO, SIR, I WAS NOT.

4 Q. OKAY. HOW DID YOU COME TO WORK THAT NIGHT?

5 A. I WAS CALLED IN. ONE OF THE OFFICERS WAS SICK OR
6 SOMETHING. I WAS CALLED IN AT 4:00 THAT -- FOUR OR 5:00
7 THAT AFTERNOON AND TOLD I NEEDED TO COME TO WORK.

8 Q. OKAY. AND DO YOU PREPARE THAT ROSTER OR DOES SOMEONE
9 ELSE PREPARE THAT?

10 A. CHIEF CHASTAIN PREPARES THE ROSTER.

11 Q. OKAY. SO THAT'S NOT PAPERWORK THAT YOU WOULD HAVE HAD
12 TO SIGN OFF ON OR ANYTHING?

13 A. NO, SIR.

14 Q. OKAY. SO YOU -- DID YOU COME IN SPECIFICALLY FOR THE
15 PURPOSE OF SERVING THIS WARRANT?

16 A. I CAME IN SPECIFICALLY FOR WORKING THE SHIFT.

17 Q. OKAY. SO WHETHER YOU SERVED THAT WARRANT OR NOT YOU
18 WERE THERE ALL NIGHT?

19 A. THAT IS CORRECT.

20 Q. OKAY. ALL RIGHT. THAT'S ALL I'D HAVE. THANK YOU.

21 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

22 MR. STOUDEMIRE: YOUR HONOR, MAY WE APPROACH BRIEFLY?

23 THE COURT: CERTAINLY.

24 (WHEREUPON A BENCH CONFERENCE WAS HELD ON THE RECORD IN
25 THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

1 THE COURT: ALL RIGHT. LET THE RECORD REFLECT THE
2 JURY'S IN THE JURY BOX. MR. FOREMAN, LADIES AND GENTLEMEN
3 OF THE JURY, WE'LL NOW CONTINUE WITH THE TRIAL OF THE CASE.
4 SOLICITOR, YOU CAN CALL YOUR NEXT WITNESS.

5 MR. STOUDEMIRE: THANK YOU, YOUR HONOR. WE'D CALL
6 THOMAS TURNER.

7 THOMAS TURNER, BEING DULY

8 SWORN TESTIFIED AS FOLLOWS:

9 **THE COURT:** ALL RIGHT. IF YOU WOULD, SIR, PLEASE GIVE
10 US YOUR FULL NAME FOR THE RECORD.

11 MR. TURNER: THOMAS ANTHONY TURNER.

12 THE COURT: VERY GOOD. THANK YOU, SIR. YOU MAY
13 PROCEED.

14 MR. STOUDEMIRE: THANK YOU.

15 DIRECT EXAMINATION BY MR. STOUDEMIRE: •

16 Q. OFFICER TURNER, WHERE ARE YOU EMPLOYED?

17 A. I WORK WITH BLOSSMAN AND GAS AT WALHALLA. AND I ALSO
18 WORK AS A RESERVE OFFICER WITH THE WALHALLA POLICE
19 DEPARTMENT.

20 Q. OKAY. AND ARE YOU EMPLOYED FULL TIME WITH BLOSSMAN AND
21 GAS?

22 A. YES, SIR.

23 Q. OKAY. AND HOW MANY HOURS WOULD YOU USUALLY WORK IN A
24 MONTH FOR THE WALHALLA POLICE DEPARTMENT?

25 A. USUALLY IT'S AROUND TWENTY HOURS A MONTH.

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

77

1 Q. OKAY. AND WHAT TYPE OF DUTIES DO YOU DO WHEN YOU'RE
2 WORKING FOR THE WALHALLA POLICE DEPARTMENT?

3 A. PATROL, JUST BASICALLY ANYTHING THAT NEEDS TO BE DONE.
4 I'VE BEEN UP THERE SEVERAL YEARS. SO ...

5 Q. OKAY. HAVE YOU BEEN TO THE LAW ENFORCEMENT ACADEMY,
6 RECEIVED ANY TRAINING?

7 A. YES, SIR. I GRADUATED THE POLICE ACADEMY IN 1995,
8 FEBRUARY THE 10TH.

9 Q. OKAY. IS THERE ANY SPECIAL TRAINING AS A RESERVE
10 OFFICER AS WELL?

11 A. WE WENT THROUGH -- THE FIRST TIME I WENT THROUGH
12 RESERVE SCHOOL WAS IN 1986. AND WE HAD TO GO THROUGH
13 BASICALLY THE SAME THING YOU GO THROUGH AT THE ACADEMY.
14 IT'S JUST A SMALLER VERSION OF IT. BUT WE HAD FIREARMS
15 TRAINING, DEFENSE TRAINING, DRIVING TRAINING, ALL THAT
16 THERE.

17 Q. OKAY. SO AT THIS POINT ARE YOU A CERTIFIED POLICE
18 OFFICER?

19 A. I WOULDN'T SAY CERTIFIED, NOT AS FAR AS WORKING FULL-
20 TIME, BUT AS FAR AS A RESERVE OFFICER, YES, SIR.

21 Q. OKAY. ALL RIGHT. WERE YOU ON DUTY ON MAY 17TH, 2007?

22 A. NO, SIR. I WAS AT HOME AT THE TIME.

23 Q. OKAY. WERE YOU CALLED IN TO DUTY AT SOME POINT?

24 A. I HEARD LIEUTENANT EPPES TALKING ON THE RADIO, WHICH I
25 USUALLY KEEP ON. AND HE STATED THAT THEY HAD A WARRANT.

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

78

1 AND SO I JUST CALLED AND ASKED HIM IF I COULD HELP HIM OUT.

2 AND HE SAID, YEAH, SURE, IF YOU'RE NOT BUSY. AND SO I CAME
3 UP TO HELP HIM OUT.

4 Q. OKAY. BUT YOU WEREN'T SCHEDULED TO WORK ---

5 A. NO, SIR.

6 Q. --- AT THAT TIME? ALL RIGHT. AND WHEN YOU WENT UP TO
7 HELP HIM OUT, AS YOU SAID, WHAT -- WHO ELSE WAS UP THERE?

8 A. OFFICER RHUDY WAS THERE, LIEUTENANT EPPES AND DEPUTY
9 HUNNICUTT WAS THERE.

10 Q. OKAY. AND WHO WERE YOU SUPPOSED TO SERVE A WARRANT ON?

11 A. MR. BILLY WINCHESTER.

12 Q. OKAY. AND DOES MR. WINCHESTER LIVE IN WALHALLA?

13 A. YES, SIR.

14 Q. OKAY. DO YOU RECALL WHERE HIS RESIDENCE IS?

15 A. I DON'T KNOW THE EXACT ADDRESS, BUT I KNOW IT'S ON
16 BROAD STREET, NORTH BROAD STREET RIGHT THERE AT -- WHERE IT
17 COMES OUT AT LAUREL STREET.

18 Q. ALL RIGHT. AND ABOUT WHAT TIME DID YOU ARRIVE AT THE
19 POLICE DEPARTMENT THAT EVENING?

20 A. IT WAS ABOUT 10:00 THAT EVENING.

21 Q. WAS DEPUTY HUNNICUTT OR OFFICER RHUDY THERE ALREADY
22 WHEN YOU GOT THERE?

23 A. YES, SIR, I BELIEVE SO. THEY WERE STANDING IN THERE.

24 Q. OKAY. WHAT TYPE OF WARRANT WERE YOU ASKED TO SERVE?
25 WAS IT A SEARCH WARRANT OR WHAT TYPE?

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

79

- 1 A. AS FAR AS I KNOW IT WAS A CDV WARRANT.
- 2 Q. OKAY. WAS IT AN ARREST WARRANT?
- 3 A. YES, SIR.
- 4 Q. OKAY. AND WHEN YOU WENT OUT TO SERVE THIS WARRANT HOW
- 5 DID YOU GET OUT TO THE HOUSE?
- 6 A. OFFICER RHUDY AND I RODE IN THE PATROL CAR TOGETHER OUT
- 7 THERE.
- 8 Q. OKAY. WHO DROVE?
- 9 A. OFFICER RHUDY DID.
- 10 Q. ALL RIGHT. AND DEPUTY HUNNICUTT, HOW DID HE GET OUT
- 11 THERE?
- 12 A. HE DROVE HIS PATROL CAR OUT THERE.
- 13 Q. OKAY. WAS HE IN FRONT OF YOU OR BEHIND YOU?
- 14 A. HE WAS BEHIND US.
- 15 Q. OKAY. HOW LONG DID IT TAKE YOU TO GET TO MR.
- 16 WINCHESTER'S HOUSE?
- 17 A. THREE MINUTES MAYBE, TWO, THREE MINUTES.
- 18 Q. OKAY. AND WHEN YOU GOT THERE WHERE DID YOU AND OFFICER
- 19 RHUDY PARK YOUR VEHICLE?
- 20 A. WE PARKED UP IN THE BACK ALMOST RIGHT NEXT TO THE --
- 21 THERE WAS A PICKUP TRUCK THAT WAS BACK THERE. WE PULLED UP
- 22 BACK THERE KIND OF TO THE SIDE AND THE BACK OF THE HOUSE
- 23 THERE.
- 24 Q. OKAY. DID YOU PULL INTO THE DRIVEWAY, THE YARD OR
- 25 WHERE ---

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

80

1 A. DRIVEWAY, YES, SIR.

2 Q. OKAY. HOW LONG IS THE DRIVEWAY ROUGHLY?

3 A. PROBABLY A HUNDRED AND FIFTY FEET FROM THE ROAD UP
4 THERE.

5 Q. OKAY. AND WHERE DID DEPUTY HUNNICUTT PARK HIS CAR?

6 A. HE PARKED BACK FROM US DOWN NEAR THE FRONT OF THE HOUSE
7 KIND OF -- WELL, I GUESS YOU'D SAY THE SIDE OF THE HOUSE IS
8 WHERE HE PARKED. PROBABLY ABOUT FORTY OR FIFTY FEET FROM
9 US.

10 Q. OKAY. DID Y'ALL HAVE BLUE LIGHTS ON OR ANYTHING LIKE
11 THAT?

12 A. NO, SIR, JUST HEADLIGHTS.

13 Q. SIRENS?

14 A. NO, SIR.

15 Q. WHAT ABOUT YOUR HEADLIGHTS, DID THEY STAY ON OR DID
16 THEY GO OFF?

17 A. YES, SIR, THEY WERE ON AT THE TIME.

18 Q. AND DO YOU RECALL IF DEPUTY HUNNICUTT'S STAYED ON OR
19 WENT OFF?

20 A. I'M NOT FOR SURE OF THAT, BUT I BELIEVE THE HEADLIGHTS
21 WERE STILL ON ON THE CAR.

22 Q. OKAY. WHAT ABOUT HIS BLUE LIGHTS, DO YOU ---

23 A. NO, THEY WERE NOT ON.

24 Q. WHEN YOU EXITED THE VEHICLE HOW DID Y'ALL DISPERSE AT
25 THE HOUSE?

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

81

1 A. OFFICER RHUDY AND DEPUTY HUNNICUTT WENT TO THE FRONT OF
2 THE HOUSE. AND I WENT AROUND TO THE BACK OF THE HOUSE JUST
3 TO OBSERVE AT THE TIME TO SEE IF ANY MOVEMENT WAS BACK
4 THERE.

5 Q. OKAY. AND WHERE DID YOU GO ON THE BACK OF THE HOUSE?

6 A. I WENT TO THE BACK DOOR, THE SCREEN DOOR. THERE WAS A
7 PORCH BACK THERE. I WENT TO THE SCREEN DOOR.

8 Q. OKAY. IS THERE MORE THAN ONE DOOR TO THE BACK OF THIS
9 HOUSE?

10 A. WELL, YOU HAVE THE SCREEN DOOR. THEN YOU GO IN IT AND
11 AUTOMATICALLY TO YOUR LEFT IS THE BACK DOOR THAT GOES INSIDE
12 THE HOUSE, THE KITCHEN AREA, I THINK IT IS THERE.

13 Q. OKAY. SO IS THAT THE MAIN MEANS OF INGRESS AND EGRESS
14 FOR THE HOUSE FROM THE REAR?

15 A. YES, SIR.

16 Q. OKAY. DID YOU GO INSIDE THAT SCREEN DOOR OR DID YOU
17 STAND AT THAT SCREEN ---

18 A. I STAND -- I STOOD OUTSIDE, SIR.

19 Q. OKAY. DID YOU HAVE YOUR FLASHLIGHT WITH YOU?

20 A. YES, SIR.

21 Q. OKAY. WHAT TIME OF NIGHT WAS THIS?

22 A. IT'S PROBABLY AROUND 10:15, 10:20 AT THAT TIME.

23 Q. OKAY. AND WHEN YOU GOT TO THE BACK DOOR WHAT DID YOU
24 DO?

25 A. I KNOCKED ON THE DOOR AND STATED THAT I WAS WITH THE

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

82

1 WALHALLA POLICE DEPARTMENT, TO -- THAT I NEEDED TO SPEAK TO
2 HIM, TO COME OUTSIDE, WE NEEDED TO SPEAK TO HIM.

3 Q. OKAY. DID YOU USE YOUR HAND TO KNOCK ON THE DOOR OR
4 ---

5 A. YES, SIR.

6 Q. OKAY. DID YOU KNOCK ON THE DOOR ITSELF OR ...

7 A. I KNOCKED ON THE SCREEN DOOR, YEAH.

8 Q. OKAY. DO YOU RECALL IF IT WAS GLASS OR SCREEN?

9 A. IT'S JUST A SCREEN WIRE OVER IT IS ALL. NO GLASS OR
10 ANYTHING THERE.

11 Q. OKAY. HOW LONG DID YOU KNOCK?

12 A. OVER AND OVER PROBABLY FOUR OR FIVE MINUTES, I GUESS.
13 JUST KEPT REPEATEDLY, YOU KNOW, CALLING OUT POLICE
14 DEPARTMENT, WALHALLA POLICE DEPARTMENT, YOU KNOW, COME TO
15 THE DOOR, WE NEED TO TALK TO YOU SEVERAL TIMES.

16 Q. OKAY. WHAT WERE YOU WEARING THAT EVENING?

17 A. I WAS WEARING A PAIR OF BDU PANTS AND A BLACK SHIRT,
18 POLICE SHIRT, WHICH HAD POLICE WRITTEN ALL ACROSS THE FRONT
19 OF IT IN ABOUT EIGHT INCH LETTERS WITH A VEST ON UNDER THAT.

20 Q. OKAY. WERE YOU WEARING A HAT OR ANYTHING?

21 A. YES, SIR. WE HAD A HAT ON THAT SAID POLICE ON IT.

22 Q. OKAY..

23 A. I DID.

24 Q. OKAY. AND WHAT WAS YOUR PURPOSE IN WEARING THAT THAT
25 EVENING?

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

83

1 A. WELL, I WANTED, NUMBER ONE, FOR HIM TO KNOW THAT I WAS
2 A POLICE OFFICER, YOU KNOW. YOU DON'T SEE PEOPLE EVERY DAY
3 WALKING AROUND WITH THAT ON. SO, YOU KNOW ...

4 Q. OKAY. COULD YOU HEAR ANY -- I'LL WITHDRAW THAT. WERE
5 THERE ANY INDICATIONS ANYBODY WAS HOME ON THE REAR OF THE
6 HOUSE?

7 A. THERE WAS LIGHTS ON IN ONE ROOM OF THE HOUSE THERE.

8 Q. OKAY.

9 A. THAT I COULD SEE JUST INSIDE THE BACK PORCH.

10 Q. OKAY. WAS THAT TO YOUR RIGHT OR TO YOUR LEFT AS YOU
11 WERE STANDING FACING THE DOOR?

12 A. ACTUALLY THE ROOM WAS STRAIGHT AHEAD OF ME FROM WHERE I
13 WAS STANDING AT. I COULD LOOK STRAIGHT IN AND SEE THE
14 WINDOWS IN THAT ROOM.

15 Q. OKAY. COULD YOU SEE INTO THE ROOM ITSELF?

16 A. NO, SIR. THERE WAS BLINDS AND STUFF UP. I COULDN'T
17 ACTUALLY SEE IN THE ROOM. I JUST SAW THE LIGHTS WERE ON.

18 Q. OKAY. COULD YOU HEAR ANY NOISE FROM INSIDE THE HOUSE?

19 A. NO, SIR. I JUST SAW REFLECTIONS OF LIKE A TV, YOU
20 KNOW, HOW IT REFLECTS ON THE WALLS OR WHATEVER. THAT'S ALL
21 I COULD SEE.

22 Q. OKAY. BUT YOU DIDN'T HEAR ANY SOUND OR ANYTHING?

23 A. NO, SIR.

24 Q. OKAY. WERE YOU -- WHEN YOU WERE KNOCKING ON THE DOOR
25 AND IDENTIFYING YOURSELF AND ALL THAT WERE YOU DOING THIS IN

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

84

1 A NORMAL SPEAKING VOICE?

2 A. NO, SIR.

3 Q. OKAY. HOW LOUD WERE YOU SPEAKING?

4 A. I WAS SPEAKING LOUD ENOUGH FOR THEM TO HEAR ME AROUND
5 THE FRONT OF THE HOUSE.

6 Q. OKAY. HOW DO YOU KNOW THAT?

7 A. THEY TOLD ME THAT THEY HEARD ME, THAT'S THE REASON THEY
8 CAME AROUND THERE. THEY THOUGHT I WAS TALKING TO HIM
9 BECAUSE THEY HEARD ME YELLING.

10 Q. OKAY. AND WERE YOU, IN FACT, TALKING TO HIM?

11 A. NO, SIR.

12 Q. OKAY. DURING THIS TIME WHERE YOU WERE YELLING FOR HIM
13 TO COME OUT OF THE HOUSE DID YOU LET HIM KNOW YOU HAD A
14 WARRANT? DID YOU YELL THAT OUT?

15 A. YES, SIR. I ALSO STATED THAT WE HAD A WARRANT FOR HIS
16 ARREST, THAT HE NEEDED TO COME OUTSIDE AND TALK TO US.

17 Q. OKAY. AND DID YOU EVER GET ANY RESPONSE FROM MR. ---

18 A. NO, SIR.

19 Q. --- WINCHESTER?

20 A. NO, SIR.

21 Q. OKAY. WHEN DEPUTY HUNNICUTT AND OFFICER RHUDY GOT TO
22 THE BACK OF THE HOUSE DO YOU RECALL WHERE THEY TOOK UP
23 POSITION?

24 A. THEY WERE TO MY LEFT OVER AROUND THE -- RIGHT AT THE
25 CORNER OF THE HOUSE.

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

85

1 Q. OKAY. HOW FAR AWAY FROM YOU WERE THEY?

2 A. PROBABLY TEN, TWELVE FEET.

3 Q. OKAY. AND WHAT HAPPENED ONCE THEY GOT TO THE BACK OF
4 THE HOUSE? DID YOU CONTINUE TO KNOCK?

5 A. YES, SIR.

6 Q. OKAY. AND WHAT HAPPENED THEN?

7 A. THAT'S WHEN THE SHOT WAS FIRED.

8 Q. OKAY. WERE YOU ABLE TO TELL IMMEDIATELY WHERE THE SHOT
9 CAME FROM?

10 A. NO, SIR, NOT AT THE -- RIGHT IMMEDIATELY I COULDN'T.
11 BUT, I MEAN, I JUST GOT BEHIND COVER THEN BECAUSE I KNEW
12 SHOTS HAD BEEN FIRED. THEY DIDN'T KNOW IF THEY WERE GOING
13 TO BE MORE.

14 Q. OKAY. AND WHEN YOU WENT AND TOOK UP COVER WHERE DID
15 YOU GO TAKE UP COVER?

16 A. I WENT TO THE FRONT OF THE PICKUP TRUCK THAT WAS
17 SITTING OUT THERE.

18 Q. OKAY. SO WERE YOU IN FRONT OF THE PICKUP TRUCK?

19 A. I WAS ON THE RIGHT FRONT FENDER OF IT.

20 Q. OKAY.

21 A. ON THE OTHER SIDE OF THE TRUCK FROM THE HOUSE.

22 Q. OKAY. SO IS IT FAIR TO SAY THE PICKUP TRUCK WOULD HAVE
23 BEEN SHIELDING YOU?

24 A. YES.

25 Q. OKAY. DID YOU DRAW YOUR GUN AT THAT TIME?

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

86

1 A. YES, I DID.

2 Q. OKAY. COULD YOU SEE WHERE ANY OF THE OTHER TWO
3 OFFICERS WENT?

4 A. NO, I JUST -- I SAW THE DEPUTY AT THE CORNER OF THE
5 HOUSE. I COULDN'T TELL YOU WHERE OFFICER RHUDY WENT 'CAUSE
6 I WAS FOCUSED ON THE DOOR AND ON THE SUBJECT THAT WAS, YOU
7 KNOW, WE WAS TRYING TO GET OUT OF THE HOUSE. I WAS PAYING
8 ATTENTION TO HIM IN CASE HE COME OUT WITH A WEAPON.

9 Q. OKAY. WERE YOU SUBSEQUENTLY ABLE TO IDENTIFY WHERE
10 DEPUTY HUNNICUTT TOOK UP COVER?

11 A. YES. HE WAS AT THE REAR OF THE TRUCK.

12 Q. OKAY. SO THERE -- WERE YOU ABLE TO MAKE SURE THERE
13 WERE NO OFFICERS IN BETWEEN YOU AND THE HOUSE?

14 A. YES. YES, SIR.

15 Q. AND AT THAT POINT DID YOU SAY ANYTHING ELSE TOWARDS THE
16 HOUSE?

17 A. YES. I WAS YELLING FOR HIM TO COME OUTSIDE, YOU KNOW,
18 POLICE DEPARTMENT. I JUST KEPT OVER, AND OVER, AND OVER,
19 YOU KNOW, LETTING HIM KNOW THAT IT WAS THE POLICE
20 DEPARTMENT, IT WASN'T, YOU KNOW, SOMEBODY OUT THERE TRYING
21 TO BREAK IN ON HIM OR NOTHING.

22 Q. OKAY. AND DID MR. WINCHESTER EVER COME OUT OF THE
23 HOUSE?

24 A. HE FINALLY CAME OUT OF THE HOUSE, YES, SIR.

25 Q. OKAY. WHEN HE CAME OUT OF THE HOUSE WHAT DOOR DID HE

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

87

1 COME OUT OF?

2 A. HE COME OUT THE REAR DOOR OF THE KITCHEN. THEN HE CAME
3 OUT THE SCREEN DOOR, OUT ON THE LITTLE STOOP AREA, PORCH
4 AREA THERE.

5 Q. OKAY. DO YOU RECALL IF HE CLOSED THE DOOR TO THE HOUSE
6 BEHIND HIM?

7 A. WELL, NOT THE ONE GOING IN THE HOUSE, I DON'T RECALL.
8 BUT THE SCREEN DOOR JUST SHUT. WHEN HE COME OUT IT SHUT BY
9 ITSELF.

10 Q. OKAY. AND WHEN HE CAME OUT THERE HOW DID HE -- WAS HE
11 WALKING?

12 A. YES, SIR.

13 Q. OKAY. WAS HE MOVING SWIFTLY OR SLOWLY? DO YOU RECALL?

14 A. HE WAS -- HE COME OUT PRETTY GOOD, BUT, I MEAN, HE
15 WASN'T, YOU KNOW, WALKING WITH A CANE OR ANYTHING. BOTH HIS
16 HANDS WERE BEHIND HIS BACK WHEN I SAW HIM.

17 Q. OKAY. HOW DID HE OPEN THE DOOR? COULD YOU SEE THAT?

18 A. NO, SIR. I WAS JUST FOCUSED ON HIM. I WASN'T, YOU
19 KNOW, PAYING ATTENTION TO WHETHER HE, YOU KNOW, PUSHED IT
20 WITH HIS HEAD OR HIS HANDS OR WHAT. I WASN'T ...

21 Q. OKAY. ONCE HE GOT OUT ON THE STOOP -- I BELIEVE THERE
22 WERE SOME RAILS OUT ON THE STOOP, IS THAT RIGHT?

23 A. YES, SIR.

24 Q. DID HE BRACE HIMSELF ON THOSE AT ALL?

25 A. NO, SIR.

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

88

1 Q. OKAY. WHERE WERE HIS HANDS WHILE HE WAS OUT ON THE
2 STOOP?

3 A. THEY WERE BEHIND HIS BACK.

4 Q. OKAY. WERE YOU ABLE TO SEE WHAT WAS IN HIS HANDS?

5 A. NO, SIR.

6 Q. OKAY. AND WHAT DID YOU -- DID YOU GIVE ANY
7 INSTRUCTIONS TO MR. WINCHESTER AT THAT POINT?

8 A. I ORDERED HIM TO LAY DOWN. SEVERAL TIMES I ORDERED HIM
9 TO HOLD HIS HANDS UP AND TURN AROUND, LET ME SEE HE DIDN'T
10 HAVE A WEAPON. HE WOULDN'T DO -- HE JUST STOOD THERE
11 LOOKING AT ME. HE WOULDN'T DO ANYTHING I TOLD HIM TO DO.

12 Q. OKAY. SO DO YOU REMEMBER SPECIFICALLY WHAT
13 INSTRUCTIONS YOU GAVE?

14 A. I TOLD HIM TO PUT HIS HANDS UP IN THE AIR. I TOLD HIM
15 THAT WHEN HE COME OUT.

16 Q. OKAY.

17 A. LET ME SEE YOUR HANDS, PUT YOUR HANDS UP OVER, AND
18 OVER, AND OVER AND OVER. AND HE WOULDN'T BRING HIS HANDS
19 OUT.

20 Q. OKAY. WAS HE -- DID HE SEEM STEADY ON HIS FEET?

21 A. YES, SIR.

22 Q. OKAY. AND AGAIN, WAS HE LEANING ON ANYTHING?

23 A. NO.

24 Q. OKAY. AND WHAT HAPPENED WHEN HE WOULD NOT SHOW YOU HIS
25 HANDS?

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

89

1 A. AFTER PROBABLY THIRTY SECONDS OR WHATEVER AFTER THE
2 LAST COMMAND WAS GIVEN, THEN THAT'S WHEN DEPUTY HUNNICUTT,
3 YOU KNOW, INSTRUCTED THAT HE WAS GOING TO TASE HIM IF HE
4 DIDN'T SHOW US HIS HANDS. AND HE STILL WOULDN'T DO IT. SO
5 THAT'S WHEN THEY HIT HIM WITH THE TASER.

6 Q. OKAY. AND AFTER -- LET ME BACK UP A LITTLE BIT. DID
7 LIEUTENANT EPPES ARRIVE ON THE SCENE AT SOME POINT?

8 A. YES, SIR, HE DID.

9 Q. OKAY. DO YOU RECALL WHEN HE ARRIVED? WERE YOU ABLE TO
10 NOTE THAT?

11 A. I DON'T KNOW THE TIME-FRAME OF IT. I JUST KNOW IT WAS
12 RIGHT WHEN MR. WINCHESTER WAS COMING OUT OF THE HOUSE
13 LIEUTENANT EPPES -- I HEARD THE RADIO THAT HE WAS THERE.

14 Q. OKAY. AND DID YOU SEE WHERE HE WAS AT THAT POINT?

15 A. NO, SIR, I DIDN'T. I WAS JUST FOCUSED ON MR.
16 WINCHESTER. AND STILL, AGAIN, HE DIDN'T HAVE HIS HANDS OUT.
17 SO I WASN'T -- I WASN'T TAKING MY EYES OFF OF HIM. I KEPT
18 MY EYES ON HIM JUST IN CASE HE DIDN'T PULL OUT A WEAPON.

19 Q. OKAY. AND -- WELL, WHAT WAS YOUR CONCERN WITH HIM
20 HAVING HIS HANDS BEHIND HIS BACK?

21 A. THAT HE DID HAVE A WEAPON BEHIND HIM. I DIDN'T KNOW.

22 Q. OKAY.

23 A. I MEAN, ...

24 Q. AND WHAT WAS -- WHAT WAS THAT CONCERN BASED ON?

25 A. 'CAUSE HE'D ALREADY -- SOMEBODY -- HE'D ALREADY SHOT AT

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

90

1 ME ONE TIME.

2 Q. OKAY.

3 A. IT LANDED SEVERAL FEET FROM MY HEAD. SO ...

4 Q. OKAY. ONCE HE WAS HIT WITH THE TASER, WHAT HAPPENED?

5 A. HE IMMEDIATELY WENT DOWN.

6 Q. OKAY. AND DID HE GO DOWN THERE -- DID HE GO DOWN RIGHT
7 ON THAT STOOP?

8 A. YES, SIR.

9 Q. OKAY. ARE THERE STEPS UP TO THAT?

10 A. I THINK THERE WAS ONE STEP UP TO IT, I BELIEVE.

11 Q. OKAY. DID HE FALL DOWN THAT?

12 A. I THINK HIS CHEST AREA, UPPER CHEST AND HEAD MIGHT
13 HAVE, YOU KNOW, WAS LAYING ON THE STEP WHEN HE WENT DOWN.

14 Q. OKAY. AND ONCE HE WENT DOWN WHAT DID YOU DO?

15 A. I WENT OVER AND IMMEDIATELY TRIED TO HANDCUFF HIM. I
16 GOT ONE ARM OUT, BUT I COULDN'T GET THE OTHER ONE OUT.

17 Q. OKAY.

18 A. HE ---

19 Q. HOW ---

20 A. --- WOULDN'T BRING IT OUT.

21 Q. HOW DID MR. WINCHESTER HAVE HIS ARMS AT THAT POINT?

22 A. THEY WERE UP UNDER HIM.

23 Q. OKAY. DID YOU GIVE HIM ANY INSTRUCTIONS AT THAT POINT?

24 A. I WAS TELLING HIM TO GIVE ME HIS HANDS SO I COULD

25 HANDCUFF HIM. GIVE ME YOUR ARM, YOU KNOW. LET ME HAVE YOUR

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

91

1 HAND SO I CAN HANDCUFF YOU.

2 Q. OKAY.

3 A. AND HE WOULDN'T -- HE WOULDN'T BRING IT OUT.

4 Q. OKAY.

5 A. I GOT ONE OUT FORCIBLY, BUT HE WOULDN'T GIVE ME THE
6 OTHER ONE.

7 Q. DO YOU RECALL WHICH ARM YOU WERE ABLE TO GET OUT?

8 A. IT WOULD HAVE BEEN HIS LEFT ARM.

9 Q. OKAY. WHEN YOU HAD HIS LEFT ARM OUT WAS HE STRUGGLING
10 AT ALL WITH THAT ARM?

11 A. YES, SIR.

12 Q. OKAY. HOW WAS HE STRUGGLING?

13 A. JUST RESISTING, PULLING IT AWAY FROM ME. HE DIDN'T
14 WANT ME TO HANDCUFF HIM.

15 Q. OKAY. WERE YOU ABLE TO GET HIM HANDCUFFED?

16 A. YES, SIR, AFTER HE WAS TASED A SECOND TIME.

17 Q. OKAY. DID THAT -- HOW DID THAT ENABLE YOU TO HANDCUFF
18 HIM?

19 A. WELL, AS SOON AS THE TASER QUIT I REACHED AND GRABBED
20 HIS ARM. AND THEN I COULD PULL IT OUT THEN.

21 Q. OKAY.

22 A. 'CAUSE HE WAS MOVING, YOU KNOW, WITH THE TASER. SO ---

23 Q. OKAY.

24 A. --- IT KIND OF BROUGHT HIS ARM OUT A LITTLE BIT WHERE I
25 COULD GET MY HAND -- THE PORCH AREA WAS KIND OF TIGHT RIGHT

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

92

1 THERE ANYWAY. SO ...

2 Q. OKAY. AND ONCE YOU HAD HIM HANDCUFFED WHAT DID YOU DO
3 THEN?

4 A. I PICKED HIM UP AND SET HIM UP ON -- THERE WAS A LITTLE
5 PORCH AREA ON THE RIGHT THERE, A LITTLE DECK AREA. I PICKED
6 HIM UP AND SET HIM UP THERE, YOU KNOW, AND WAS HOLDING HIM
7 UP AND JUST ASKED HIM IF HE WAS ALL RIGHT AND ASKED HIM WHY
8 HE SHOT AT ME.

9 Q. OKAY. AND NOT GETTING INTO ANYTHING MR. WINCHESTER MAY
10 HAVE SAID TO YOU, WHAT -- WHAT HAPPENED THEN?

11 A. THEN HE LAID BACK ON THE PORCH WITH HIS HANDS CUFFED.
12 HE LAID BACK ON THE PORCH AND JUST LAID THERE LIKE HE WAS
13 PASSED OUT OR WHATEVER.

14 Q. OKAY.

15 A. THAT'S WHEN WE CALLED EMS.

16 Q. OKAY. WERE YOU ABLE TO NOTE ANY PHYSICAL INJURIES ON
17 HIM THAT YOU COULD SEE?

18 A. NOT THAT I COULD SEE, NO, SIR.

19 Q. OKAY. HOW WAS MR. WINCHESTER TRANSPORTED AWAY FROM HIS
20 HOUSE?

21 A. HE WAS TRANSPORTED IN THE AMBULANCE.

22 Q. OKAY. AND WHY WAS THAT?

23 A. THEY TOOK HIM TO CHECK HIM OUT 'CAUSE HE WAS TASED WITH
24 THE TASER.

25 Q. OKAY. DID YOU -- BUT YOU DIDN'T SEE ANY BLOOD OR CUTS

THOMAS TURNER - DIRECT EXAMINATION BY MR. STOUDEMIRE

93

1 OR ANYTHING?

2 A. I THINK HE HAD A CUT OVER HIS EYE ON HIS -- SOMEWHERE
3 ON HIS FOREHEAD HE HAD A CUT WHERE HE HIT A ROCK OR
4 SOMETHING ON THE WAY DOWN ---

5 Q. OKAY.

6 A. --- ON THE GROUND.

7 Q. OKAY. BUT OTHER THAN THAT DID YOU SEE ANY ---

8 A. NO, SIR.

9 Q. --- INJURIES? OKAY. AND DID YOU HAVE ANY OTHER
10 INVOLVEMENT IN THIS PAST THAT POINT?

11 A. WHEN WE ENTERED TO SECURE THE HOUSE -- WE WENT IN TO
12 SECURE THE HOUSE TO MAKE SURE NOBODY ELSE WAS IN THERE.

13 Q. OKAY. AND WHO WAS INSIDE THE HOUSE WHEN Y'ALL SECURED
14 THE HOUSE?

15 A. WHAT OFFICERS WAS IN THERE?

16 Q. UM-HUM (AFFIRMATIVE).

17 A. MYSELF, LIEUTENANT EPPES AND CHIEF CHASTAIN WAS IN
18 THERE.

19 Q. OKAY.

20 (PAUSE)

21 Q. ALL RIGHT. THAT'S ALL I HAVE FOR YOU AT THIS TIME.
22 PLEASE ANSWER ANY QUESTIONS MR. BURR MIGHT HAVE.

23 THE COURT: CROSS EXAMINE.

24 MR. BURR: MAY IT PLEASE THE COURT, YOUR HONOR?

25 CROSS EXAMINATION BY MR. BURR:

THOMAS TURNER - CROSS EXAMINATION BY MR. BURR

94

1 Q. GOOD AFTERNOON.

2 A. HOW YOU DOING, SIR?

3 Q. FINE. WHEN YOU WERE CALLED OUT TO HELP SERVE THIS
4 WARRANT WERE YOU AWARE OF THE FACT THAT THE WARRANT STEMMED
5 FROM A MINOR INCIDENT FIVE DAYS PRIOR?

6 A. NO, SIR.

7 Q. WERE YOU AWARE OF THE FACT THAT NOBODY HAD EVER
8 NOTIFIED MR. WINCHESTER THAT A COMPLAINT WAS EVER MADE?

9 A. NO, SIR.

10 Q. WERE YOU AWARE OF THE FACT THAT CHARGES NEVER BEEN
11 PURSUED, NOTHING EVER HAPPENED ON IT?

12 A. NO, SIR, I'M NOT AWARE OF THAT.

13 Q. BUT YOU -- NOBODY, TO YOUR KNOWLEDGE, OR YOU DID NOT
14 CALL HIM AND TELL HIM YOU WERE COMING?

15 A. CALL WHO?

16 Q. MR. WINCHESTER AND LET HIM KNOW YOU WERE COMING OVER?

17 A. NO, SIR.

18 Q. LET ME SHOW YOU WHAT'S MARKED AS DEFENSE EXHIBIT 3 FOR
19 IDENTIFICATION. IS THAT AN ACCURATE PICTURE OF THE REAR OF
20 MR. WINCHESTER'S HOUSE?

21 A. BEST OF MY KNOWLEDGE IT IS, SIR. I'VE ONLY BEEN THERE
22 THE ONE TIME WHEN I WAS THERE THAT NIGHT.

23 Q. AND AS YOU FACE THE REAR OF THAT HOUSE, ---

24 A. UM-HUM (AFFIRMATIVE).

25 Q. --- THE POLICE VEHICLE THEN WOULD HAVE BEEN PARKED DOWN

THOMAS TURNER - CROSS EXAMINATION BY MR. BURR

95

1 TO THE LEFT ON THE DRIVE?

2 A. ONE OF THEM WAS. OUR CAR WAS UP TO THE BACK CORNER OF
3 THE HOUSE. THERE WAS A TRUCK SITTING BACK HERE ALSO. WE
4 WERE BEHIND THE TRUCK.

5 Q. RIGHT. SO IF SOMEBODY WERE LOOKING OUT OF THAT WINDOW
6 THEY COULDN'T SEE THE POLICE CAR PARKED IN THE DRIVE, COULD
7 THEY?

8 A. YES, SIR.

9 Q. THEY COULD?

10 A. YES, SIR.

11 Q. OKAY. DID YOU ---

12 A. WHERE OUR PATROL CAR WAS.

13 Q. DID YOU HAVE OCCASION TO LOOK INTO THOSE BACK WINDOWS?

14 A. YEAH.

15 Q. OKAY. AND YOU ---

16 A. I LOOKED IN THE BACK WINDOWS WHEN I CROSSED -- WHEN I
17 CROSSED GOING TO THE DOOR TO MAKE SURE NOBODY WAS STANDING
18 THERE.

19 Q. OKAY. AND IS THAT WHEN YOU COULD SEE THE TELEVISION
20 LIGHT FLICKERING IN THE -- WHAT YOU ASSUMED TO BE THE
21 BEDROOM?

22 A. YES, SIR.

23 Q. COULD YOU HEAR THE TELEVISION?

24 A. NO, SIR.

25 Q. COULD YOU HEAR A FAN RUNNING?

THOMAS TURNER - CROSS EXAMINATION BY MR. BURR

96

1 A. NO, SIR.

2 Q. DO YOU RECALL WHEN YOU ACTUALLY WENT IN TO INSPECT THE
3 HOUSE, WAS THERE, IN FACT, A LARGE FAN SITTING AT THE FOOT
4 OF THE BED?

5 A. I DON'T RECALL THAT, SIR.

6 Q. WAS THE TELEVISION, IN FACT, ON ONCE YOU WENT INSIDE?

7 A. I THINK IT WAS, YEAH.

8 Q. AND UPON YOUR INSPECTION WHEN YOU AND THE CAPTAIN AND
9 WHOEVER ELSE WENT IN DID YOU FIND ANYTHING ILLEGAL IN THE
10 HOUSE?

11 A. ILLEGAL?

12 Q. ILLEGAL?

13 A. WELL, THERE WAS A GUN LAYING ON THE BED, BUT OTHER THAN
14 THAT, NO, SIR.

15 Q. THIS DEFENSE EXHIBIT 1 FOR IDENTIFICATION, A CLOSER
16 PICTURE OF THAT SAME BACK DOOR, YOU TESTIFIED EARLIER IT WAS
17 A SCREEN DOOR. THAT'S, IN FACT, A GLASS STORM DOOR,
18 COMMONLY REFERRED TO AS A STORM DOOR, RIGHT?

19 A. YES, SIR. IT HAS A SCREEN ON IT.

20 Q. OKAY. AND THAT'S WHAT YOU WERE KNOCKING ON?

21 A. THAT'S WHAT I WAS KNOCKING ON, YES, SIR.

22 Q. AND ALL THE DOORS ADJACENT TO THAT ROOM WERE CLOSED
23 OFF?

24 A. THE DOOR GOING IN THE KITCHEN THERE WAS CLOSED, YES,
25 SIR.

THOMAS TURNER - CROSS EXAMINATION BY MR. BURR

97

1 Q. OKAY. AND YOU NEVER HAD ANY COMMUNICATIONS WITH MR.
2 WINCHESTER WHATSOEVER?

3 A. NO, SIR. I NEVER HEARD THE FIRST THING. ALL I HEARD
4 WAS A GUNSHOT.

5 Q. AND THAT GUNSHOT UPON LATER INSPECTION WAS, IN FACT, ON
6 THE INTERIOR WALL. YOU TESTIFIED EARLIER, CLOSE TO YOUR
7 HEAD.

8 A. IT CAME OUT. I DIDN'T SEE WHERE IT WENT, SIR. I JUST
9 KNOW IT CAME OUT.

10 Q. IT DIDN'T COME OUT THE DOOR WHERE YOU WERE, DID IT?

11 A. NO, SIR, IT DIDN'T COME OUT THE DOOR WHERE I WAS AT.

12 Q. DID YOU EVER ATTEMPT TO OPEN THE STORM DOOR?

13 A. NO, SIR.

14 Q. WAS THERE ANY LIGHTS ON OUT BACK?

15 A. NO, SIR. MY FLASHLIGHT WAS ON.

16 Q. YOU HAVE A FLASHLIGHT.

17 A. UM-HUM (AFFIRMATIVE).

18 Q. THE OTHER TWO OFFICERS HAD FLASHLIGHTS?

19 A. YES, SIR, AS FAR AS I REMEMBER.

20 Q. THOSE FLASHLIGHTS WERE ON?

21 A. YES, SIR.

22 Q. AND THE THREE OF YOU WERE WONDERING AROUND IN THE DARK
23 WITH FLASHLIGHTS?

24 A. WELL, I WAS STANDING AT THE BACK DOOR WITH MINE IN MY
25 HAND LIKE THIS SHINING IN THE DOOR.

THOMAS TURNER - CROSS EXAMINATION BY MR. BURR

98

1 Q. SO YOU WERE TESTIFYING EARLIER AS TO THE GARB, DRESS
2 YOU WERE WEARING, YOU WERE IN THE DARK. I MEAN, YOU WEREN'T
3 HOLDING THE LIGHT FLASHING IT ON YOURSELF, WERE YOU?

4 A. NO, SIR. IF ANYBODY WOULD HAVE LOOKED OUT THE DOOR
5 THEY COULD HAVE SAW WITH THE PATROL LIGHTS ON ALL THAT IT,
6 YOU KNOW, I MEAN, I WOULD HAVE LOOKED OUT TO SEE IF ANYBODY
7 ---

8 Q. WELL, ---

9 A. --- WAS OUT THERE.

10 Q. --- ARE YOU -- YOU SAID THE BLUE LIGHTS WERE ON?

11 A. NO, I SAID THE LIGHTS, THE CAR LIGHTS.

12 Q. OKAY.

13 A. HEADLIGHTS.

14 Q. YOU DIDN'T HAVE YOUR BLUE LIGHTS ON?

15 A. NO, SIR.

16 Q. DIDN'T USE A SIREN?

17 A. NO, SIR.

18 Q. DIDN'T USE A BULLHORN?

19 A. NO, SIR.

20 Q. DIDN'T DO ANY OF THE NORMAL STUFF TO ALERT MR.

21 WINCHESTER ---

22 A. WE DON'T HAVE A BULLHORN.

23 Q. YOU DON'T HAVE A BULLHORN?

24 A. NOT THAT I'M AWARE OF.

25 Q. OKAY. OFFICER, THIS WHOLE CASE HAS KIND OF COME DOWN

THOMAS TURNER - CROSS EXAMINATION BY MR. BURR

99

1 TO ONE THING, ---

2 A. UM-HUM (AFFIRMATIVE).

3 Q. --- AND THAT'S WHAT MR. WINCHESTER HEARD. YOU HAVE NO
4 WAY OF KNOWING WHETHER HE HEARD YOU -- YOUR VERBAL COMMANDS
5 OR NOT, DO YOU?

6 A. WHEN HE WAS INSIDE THE HOUSE?

7 Q. RIGHT.

8 A. I DON'T KNOW IF HE HEARD OR NOT, BUT HE SHOULD HAVE
9 'CAUSE, YOU KNOW, THE OTHER OFFICERS DID, AND THEY WERE ON
10 THE OTHER SIDE OF THE HOUSE ABOUT FIFTY OR SIXTY FEET AWAY.

11 Q. YOU HAVE NO WAY OF KNOWING OF WHAT HE HEARD?

12 A. YOU'RE RIGHT.

13 Q. AND IT WAS DARK OUTSIDE?

14 A. YES, SIR.

15 Q. AND YOU WERE ASSUMING HE WAS ASLEEP WHEN ALL THIS
16 STARTED?

17 A. I IMAGINE. I DON'T KNOW. I WASN'T IN THERE.

18 Q. BEAR WITH ME ONE SECOND.

19 A. SURE.

20 (PAUSE)

21 Q. YOUR TESTIMONY AS TO THE HANDCUFFING OF MR. WINCHESTER,
22 YOU TESTIFIED HE FELL DOWN ON THE CEMENT ---

23 A. ON THE STOOP THERE, YEAH.

24 Q. LANDING ON THE STOOP?

25 A. YES, SIR.

THOMAS TURNER - CROSS EXAMINATION BY MR. BURR

100

1 Q. FACE DOWN?

2 A. YES, SIR.

3 Q. AND YOU HANDCUFFED HIM, HANDS BEHIND HIM?

4 A. YES, SIR.

5 Q. THEN LATER YOU PICKED HIM UP AND PUT HIM ON THE DECK?

6 A. I HELPED HIM UP AND LET HIM SIT ON THE DECK THAT I SAW
7 IN THE PICTURE THERE, WHERE THE GENTLEMAN WAS SETTING.

8 Q. AND YOUR TESTIMONY WAS THAT HE LAID BACK ---

9 A. YES, SIR.

10 Q. --- AT THAT POINT?

11 A. HE JUST LAID BACK, YES, SIR.

12 Q. DID HE LEAN BACK WITH HIS HANDS UNDER HIM?

13 A. YES, SIR, HE DID.

14 Q. AND YOU ALSO TESTIFIED HE DIDN'T -- DIDN'T COOPERATE IN
15 THE HANDCUFFING AND HE WAS TASED A SECOND TIME?

16 A. YES, SIR.

17 Q. HOW MANY TIMES WAS HE TASED ALTOGETHER?

18 A. JUST TWO AS FAR AS I KNOW. I DIDN'T TASE HIM.

19 Q. BUT YOU DO KNOW HE WAS TASED AT LEAST TWO TIMES?

20 A. AS FAR AS I REMEMBER, YES, SIR.

21 Q. OKAY. AND HE ONLY FELL DOWN ONE TIME?

22 A. AS FAR AS I KNOW, YEAH. THAT'S ALL I SAW.

23 Q. SO ALL THE DAMAGES THAT WE'RE -- IF THERE'S TESTIMONY
24 ABOUT DAMAGES, THE FACE, EYE AND THE BACK -- ALL THAT CAME
25 FROM THAT ONE FALL?

THOMAS TURNER - REDIRECT EXAMINATION BY MR. STOUDEMIRE

101

1 A. YES, SIR. HE WENT DOWN QUICK.

2 Q. AND WAS TASED TWICE? THANK YOU..

3 THE COURT: RE-EXAMINE.

4 MR. STOUDEMIRE: THANK YOU, JUDGE.

5 REDIRECT EXAMINATION BY MR. STOUDEMIRE:

6 Q. MR. BURR ASKED YOU IF YOU KNEW WHETHER OR NOT MR.

7 WINCHESTER HEARD YOU, CORRECT?

8 A. UM-HUM (AFFIRMATIVE).

9 Q. OKAY. WHEN YOU WERE GIVING YOUR WARNINGS AND YELLING
10 AND SAYING, POLICE, WARRANT, ALL THAT, WHAT WAS THE REACTION
11 YOU GOT FROM MR. WINCHESTER FROM INSIDE THE HOUSE?

12 A. NOTHING. I DIDN'T HEAR A THING.

13 Q. OKAY. HE DIDN'T RESPOND TO YOU VERBALLY?

14 A. NO, SIR.

15 Q. OKAY. DID YOU GET ANY RESPONSE AT ALL?

16 A. NO, SIR. THE ONLY RESPONSE I GOT WAS A GUNSHOT.

17 Q. RIGHT. SO -- AND YOU DON'T KNOW WHY MR. WINCHESTER
18 WOULD HAVE SHOT AT YOU?

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

20 Q. AND WHEN MR. WINCHESTER DID FINALLY COME OUT ON THAT
21 LITTLE STOOP AREA, ---

22 A. UM-HUM (AFFIRMATIVE).

23 Q. --- WERE YOU STILL TELLING HIM YOU WERE POLICE
24 OFFICERS?

25 A. YES, SIR.

THOMAS TURNER - RECROSS EXAMINATION BY MR. BURR

102

1 Q. DID HE COMPLY WITH YOUR INSTRUCTIONS AT THAT TIME?

2 A. NO, SIR.

3 Q. OKAY. ALL RIGHT. THAT'S ALL I'D HAVE.

4 MR. BURR: RECROSS, YOUR HONOR?

5 THE COURT: CERTAINLY.

6 RECROSS EXAMINATION BY MR. BURR:

7 Q. YOU JUST TESTIFIED AFTER ALL YOUR SCREAMING OR WHATEVER
8 MR. WINCHESTER DID NOT VERBALLY RESPOND, IS THAT CORRECT?

9 A. YES, SIR.

10 Q. NOW IS THAT WHAT YOU MEAN TO SAY OR YOU MEAN TO SAY YOU
11 DIDN'T HEAR HIM RESPOND?

12 A. NO, SIR, HE DID NOT RESPOND. HE ---

13 Q. HOW DO YOU KNOW?

14 A. --- STOOD THERE AND LOOKED -- 'CAUSE I WAS STANDING
15 THERE LISTENING TO HIM.

16 Q. BUT HE COULD HAVE RESPONDED AND YOU DIDN'T HEAR HIM.

17 IN FACT, ---

18 A. ARE YOU ---

19 Q. --- YOU WERE SCREAMING AT HIM AND HE DIDN'T HEAR YOU.

20 SO HOW CAN YOU ASCERTAIN THAT HE HEARD YOU?

21 A. EVERYBODY ELSE HEARD ME. DOES HE HAVE A -- HE DOESN'T
22 HAVE A HEARING PROBLEM.

23 Q. HOW CAN YOU ASCERTAIN THAT MR. WINCHESTER HEARD YOU?

24 A. WELL, HE HAD TO HEAR ME, HE WAS WITHIN TEN FEET OF ME.

25 Q. HE HAD TO HEAR YOU?

THOMAS TURNER - RE-REDIRECT EXAMINATION BY MR. STOUDEMIRE

103

1 A. UM-HUM (AFFIRMATIVE). HE WAS LOOKING AT ME.

2 MR. BURR: THANK YOU, YOUR HONOR.

3 THE COURT: ALL RIGHT. ANYTHING ELSE?

4 MR. STOUDEMIRE: JUST ONE QUESTION.

5 RE-REDIRECT EXAMINATION BY MR. STOUDEMIRE:

6 Q. WHEN I ASKED YOU IF HE FAILED TO COMPLY WITH YOU WAS HE
7 INSIDE THE HOUSE OR OUTSIDE THE HOUSE AT THAT POINT?

8 A. YOU TALKING ABOUT WHEN HE COME OUTSIDE?

9 Q. YES.

10 A. YEAH, HE WAS OUTSIDE THE HOUSE. HE WAS OUTSIDE THE
11 DOOR WITHIN PROBABLY, I WOULD SAY, MAYBE TWELVE, FIFTEEN
12 FEET AT THE MOST ---

13 Q. OKAY.

14 A. --- FROM WHERE I WAS AT.

15 Q. ALL RIGHT. THANK YOU.

16 THE COURT: ALL RIGHT. YOU MAY STEP DOWN. LET'S SEE.
17 WOULD YOU APPROACH, PLEASE?

18 MR. STOUDEMIRE: YES, SIR.

19 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
20 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

21 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
22 JURY, IT'S ALMOST 12:30. AND THE NEXT WITNESS MIGHT TAKE
23 SOME TIME. SO I'M SUGGESTING WE TAKE LUNCH AT THIS TIME.

24 NOW, MR. FOREMAN, THIS IS GOING TO BE YOUR FIRST DUTY.
25 WHAT TIME WOULD THE JURY LIKE TO COME BACK FROM LUNCH?

TIMOTHY HUNNICUTT - DIRECT EXAMINATION BY MR. STOUDEMIRE

106

1 JURY BACK?

2 MR. STOUDEMIRE: NOTHING, YOUR HONOR.

3 THE COURT: FROM THE DEFENSE?

4 MR. BURR: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT. ASK THE JURY TO JOIN US,
6 PLEASE.

7 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 1:33 PM)

8 THE COURT: ALL RIGHT. LET THE RECORD REFLECT THAT THE
9 JURORS ARE IN THE JURY BOX. MR. FOREMAN, LADIES AND
10 GENTLEMEN, THE JURY WILL CONTINUE WITH THE TRIAL OF THE
11 CASE.

12 MR. STOUDEMIRE: THANK YOU, YOUR HONOR. WE WOULD CALL
13 TIM HUNNICUTT.

14 TIM HUNNICUTT, BEING DULY
15 SWORN TESTIFIED AS FOLLOWS:

16 THE COURT: IF YOU WOULD, PLEASE, SIR, GIVE US YOUR
17 FULL NAME FOR THE RECORD.

18 MR. HUNNICUTT: TIM HUNNICUTT.

19 THE COURT: VERY GOOD. YOU MAY PROCEED.

20 MR. STOUDEMIRE: THANK YOU.

21 DIRECT EXAMINATION BY MR. STOUDEMIRE:

22 Q. OFFICER HUNNICUTT, WHERE ARE YOU EMPLOYED?

23 A. I'M EMPLOYED AT SENECA POLICE DEPARTMENT?

24 Q. OKAY. AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

25 A. ABOUT FOUR MONTHS.

TIMOTHY HUNNICUTT - DIRECT EXAMINATION BY MR. STOUDEMIRE

107

- 1 Q. OKAY. DO YOU HAVE PREVIOUS LAW ENFORCEMENT EXPERIENCE?
- 2 A. YES, I DO.
- 3 Q. OKAY. AND WHERE WAS THAT?
- 4 A. OCONEE SHERIFF'S OFFICE.
- 5 Q. OKAY. AND HOW LONG DID YOU WORK THERE?
- 6 A. ABOUT SIX YEARS.
- 7 Q. ROUGHLY FROM WHEN TO WHEN?
- 8 A. 2001 TO 2007.
- 9 Q. OKAY. AND WHAT TYPE OF TRAINING DID YOU RECEIVE?
- 10 A. I'M CERTIFIED BY THE CRIMINAL JUSTICE ACADEMY.
- 11 Q. OKAY. DO YOU RECALL WHEN YOU WENT TO THE CRIMINAL
- 12 JUSTICE ACADEMY?
- 13 A. IT WAS THE BEGINNING OF 2002.
- 14 Q. OKAY. WERE YOU EMPLOYED BY THE OCONEE SHERIFF'S
- 15 DEPARTMENT IN MAY OF 2007?
- 16 A. YES, I WAS.
- 17 Q. OKAY. WERE YOU ON DUTY THE EVENING OF MAY 17TH, 2007?
- 18 A. YES.
- 19 Q. OKAY. WAS THAT YOUR REGULAR SHIFT, IN THE EVENING?
- 20 A. NO.
- 21 Q. OKAY.
- 22 A. I WORKED DAY SHIFT. I WAS A MASTER DEPUTY ON THE FIRST
- 23 SHIFT.
- 24 Q. OKAY. WERE YOU STILL ON DUTY AROUND 10:00 THAT NIGHT?
- 25 A. YES. I WAS HELPING OUT WITH THE SECOND SHIFT.

TIMOTHY HUNNICUTT - DIRECT EXAMINATION BY MR. STOUDEMIRE

108

- 1 Q. OKAY. SO YOU WERE WORKING ---
- 2 A. OVER TIME.
- 3 Q. FAIR TO SAY YOU WERE WORKING OVER TIME?
- 4 A. YES.
- 5 Q. OKAY. DID YOU HAVE OCCASION TO COME INTO CONTACT WITH
- 6 MR. BILLY WINCHESTER THAT EVENING?
- 7 A. YES, I DID.
- 8 Q. OKAY. TELL ME, HOW DID YOU COME TO BE INVOLVED IN
- 9 THAT?
- 10 A. I WAS ASKED BY THE NIGHT SHIFT SUPERVISOR TO MEET OVER
- 11 AT WALHALLA PD TO ASSIST THEM IN SERVING A WARRANT.
- 12 Q. OKAY. AND DID YOU GO TO THE WALHALLA POLICE
- 13 DEPARTMENT?
- 14 A. YES, I DID.
- 15 Q. OKAY. WHO DID YOU MEET UP WITH THERE?
- 16 A. OFFICER RHUDY AND OFFICER LIEUTENANT EPPES AND RESERVE
- 17 OFFICER -- I CAN'T THINK OF HIS LAST NAME.
- 18 Q. RESERVE OFFICER TURNER?
- 19 A. TURNER, YES.
- 20 Q. OKAY. AND WHAT WERE YOU ASSIGNED TO DO AT THAT POINT?
- 21 A. JUST ASSIST THEM ON ARRESTING MR. WINCHESTER ---
- 22 Q. OKAY.
- 23 A. --- WITH A WARRANT.
- 24 Q. WAS THERE A WARRANT FOR HIM AT THAT POINT?
- 25 A. YES, THERE WAS.

TIMOTHY HUNNICUTT - DIRECT EXAMINATION BY MR. STOUDEMIRE

109

1 Q. AND WAS IT AN ARREST WARRANT?

2 A. YES, IT WAS.

3 Q. OKAY. TELL ME HOW YOU WENT OVER FROM THE POLICE
4 DEPARTMENT TO MR. WINCHESTER'S HOME.

5 A. I FOLLOWED -- THE TWO OFFICERS RODE TOGETHER FROM
6 WALHALLA PD. I FOLLOWED THEM OVER TO MR. WINCHESTER'S
7 RESIDENCE.

8 Q. OKAY. AND DO YOU RECALL ABOUT WHERE MR. WINCHESTER
9 LIVES?

10 A. IT WAS OFF OF BROAD STREET.

11 Q. OKAY. IS THAT IN THE CITY LIMITS ---

12 A. YES.

13 Q. --- OF WALHALLA? OKAY. THEN, OF COURSE, IN OCONEE
14 COUNTY?

15 A. YES.

16 Q. AND WHEN YOU GOT TO MR. WINCHESTER'S RESIDENCE WHERE
17 DID YOU PARK YOUR VEHICLE?

18 A. BEHIND THERE'S -- WAS KIND OF -- BEHIND THERE WAS A
19 LITTLE BIT WHERE I COULD SEE -- STILL SEE THE FRONT DOOR AND
20 WE COULD, I GUESS, KIND OF SEE THE BACK ALSO A LITTLE BIT.

21 Q. OKAY. DID YOU GO IN WITH BLUE LIGHTS FLASHING OR
22 ANYTHING?

23 A. NO.

24 Q. IS IT YOUR NORMAL POLICY WHEN YOU GO SERVE A WARRANT TO
25 GO IN WITH BLUE LIGHTS FLASHING OR SIRENS?

TIMOTHY HUNNICUTT - DIRECT EXAMINATION BY MR. STOUDEMIRE

110

1 A. NO, IT'S NOT.

2 Q. OKAY. AND WITH THIS BEING NIGHTTIME DID YOU TURN YOUR
3 HEADLIGHTS OFF OR DID YOU LEAVE THEM ON?

4 A. I LEFT THEM ON.

5 Q. OKAY. SO WERE YOU PARKED IN MR. WINCHESTER'S DRIVEWAY?

6 A. YES, I WAS.

7 Q. OKAY. AND ABOUT HOW FAR BEHIND THE WALHALLA PATROL
8 VEHICLE WERE YOU -- WERE YOU?

9 A. MAYBE TWENTY FEET. I'M NOT SURE EXACTLY.

10 Q. OKAY. DID YOUR HEADLIGHTS ILLUMINATE THE PATROL CAR IN
11 FRONT OF YOU?

12 A. YES, IT DID.

13 Q. OKAY. WERE THEIR HEADLIGHTS ON OR ---

14 A. YES.

15 Q. --- DO YOU RECALL?

16 A. YES.

17 Q. THEY WERE? OKAY. AND ONCE REACHING THE SCENE WHAT DID
18 YOU DO AT THAT POINT?

19 A. MYSELF AND OFFICER RHUDY WENT TO THE FRONT DOOR. THE
20 OTHER OFFICER, TURNER, HE WENT AROUND TO THE BACK. OFFICER
21 RHUDY WOULD KNOCK ON THE FRONT DOOR A GOOD BIT AND THEN
22 WHILE THE OTHER OFFICER WAS AT THE BACK KNOCKING TRYING TO
23 GET HIM TO COME TO THE DOOR.

24 Q. OKAY. WHEN YOU WENT TO THE FRONT DOOR DID YOU SEE ANY
25 LIGHTS ON?

TIMOTHY HUNNICUTT - DIRECT EXAMINATION BY MR. STOUDEMIRE

111

1 A. THROUGH THE TOP OF THE DOOR THERE'S A WINDOW. YOU CAN
2 SEE THERE'S A TV OR -- APPEARED TO BE ON. AND KIND OF AT AN
3 ANGLE IF YOU LOOKED THROUGH THERE'S A ROOM, WHICH, I GUESS,
4 WAS HIS BEDROOM.

5 Q. IS THAT IN THE FRONT OF THE HOUSE OR THE BACK OF THE
6 HOUSE?

7 A. THIS WAS IN THE FRONT.

8 Q. OKAY. AND DID YOU KNOCK ON THE DOOR YOURSELF OR DID
9 OFFICER RHUDY DO THAT?

10 A. BOTH OF US DID.

11 Q. OKAY. DID YOU SAY ANYTHING?

12 A. I DIDN'T, HE DID. HE ANNOUNCED HIS PRESENCE THAT THE
13 POLICE WAS THERE.

14 Q. OKAY. AND WHAT WERE YOU WEARING AT THAT TIME?

15 A. MY UNIFORM, OCONEE SHERIFF'S OFFICE UNIFORM.

16 Q. OKAY. IS IT SIMILAR TO THE ONE YOU'RE WEARING NOW?

17 A. IT'S BLUISH GRAY KIND OF.

18 Q. OKAY. IS IT KIND OF LIKE THE ONE ---

19 A. YEAH.

20 Q. --- THE DEPUTY OVER THERE IS WEARING?

21 A. YES.

22 Q. OKAY. THANK YOU. HOW LONG DID YOU STAY AT THE FRONT
23 DOOR?

24 A. JUST FOR A FEW MINUTES. AND THEN WE WENT AROUND TO THE
25 BACK TO ASSIST. I HEARD OFFICER TURNER -- IT SOUNDED LIKE

TIMOTHY HUNNICUTT - DIRECT EXAMINATION BY MR. STOUDEMIRE

112

1 WHEN HE WAS YELLING TO HIM TO LET HIM KNOW THAT THE POLICE
2 WAS THERE, HE WAS ANNOUNCING HIS PRESENCE AND HEARD HIM
3 SAYING THAT HE HAD A WARRANT FOR HIS ARREST. SO I THOUGHT
4 HE MIGHT HAVE HAD CONTACT WITH HIM. I'M NOT SURE. AND THEN
5 WE WENT AROUND BACK TO ASSIST HIM.

6 Q. OKAY. WERE YOU ABLE TO -- FROM THE FRONT DOOR WERE YOU
7 ABLE TO HEAR THE WORDS THAT OFFICER TURNER WAS SAYING OR
8 JUST SOUND?

9 A. YOU COULD HEAR HIS WORDS, YEAH.

10 Q. OKAY.

11 A. AND THEN WE WENT AROUND BACK AND HE WAS STILL SAYING
12 THE SAME THING ---

13 Q. OKAY.

14 A. --- TRYING TO GET HIM TO COME OUT.

15 Q. ALL RIGHT. DID JUST YOU GO AROUND BACK?

16 A. BOTH OF US DID.

17 Q. OKAY. AND WHEN YOU GOT AROUND BACK WHERE WAS OFFICER
18 TURNER AT THAT POINT?

19 A. HE WAS OVER IN FRONT OF THE BACK DOOR. AND MYSELF AND
20 OFFICER RHUDY -- I KNOW I WAS KIND OF TO THE LEFT OF HIM. I
21 BELIEVE HE WAS NEXT TO ME. IF YOU'RE LOOKING AT THE HOUSE
22 FROM THE BACK, I WAS TO THE LEFT SIDE OF HIM.

23 Q. OKAY. WERE YOU EVEN WITH OFFICER TURNER OR KIND OF
24 BEHIND HIM OR IN FRONT OF HIM OR ---

25 A. TO THE SIDE OF HIM RIGHT NEXT TO THE HOUSE. I WAS --

TIMOTHY HUNNICUTT - DIRECT EXAMINATION BY MR. STOUDEMIRE

113

1 THERE WAS A WINDOW, I WAS TRYING TO KIND OF LOOK IN TO SEE
2 IF I COULD SEE ANYBODY.

3 Q. OKAY. AND WHEN YOU LOOKED IN DID YOU SEE ANYBODY?

4 A. NO.

5 Q. OKAY. WERE THERE ANY LIGHTS IN THE BACK OF THE HOUSE
6 THAT WERE ILLUMINATED?

7 A. I MEAN, YOU COULD JUST SEE THE -- WHERE IT LOOKED LIKE
8 A TV ON, BUT THAT'S ALL I -- THAT'S PRETTY MUCH IT.

9 Q. OKAY. COULD YOU SEE INTO THE HOUSE AT ANY POINT?

10 A. INTO THE HOUSE?

11 Q. YEAH.

12 A. JUST IN THROUGH -- IN A CERTAIN AREA WHERE THE -- I
13 BELIEVE WHERE THE KITCHEN WAS AT.

14 Q. OKAY. ALL RIGHT. WHAT ABOUT WHERE YOU SAW THE LIGHT
15 ---

16 A. THAT'S WHERE I'M TALKING ABOUT. REMEMBER, THERE'S A
17 KITCHEN. THEN IT GOES INTO THE LIVINGROOM. AND THEN
18 THERE'S A DOOR THAT GOES TO A BEDROOM. IT'S LIKE YOU CAN
19 SEE AT AN ANGLE.

20 Q. OKAY. SO YOU WEREN'T ABLE TO SEE MR. WINCHESTER OR
21 ANYBODY ELSE IN THE HOUSE AT THAT POINT?

22 A. NO.

23 Q. OKAY. AND HOW LONG WERE YOU AROUND BACK?

24 A. JUST -- IT WASN'T LONG. WE WERE JUST BACK THERE FOR A
25 MINUTE OR TWO. AND THE NEXT THING I HEARD WAS A GUNSHOT.

TIMOTHY HUNNICUTT - DIRECT EXAMINATION BY MR. STOUDEMIRE

114

1 Q. OKAY. DID YOU HEAR MR. WINCHESTER YELL ANYTHING OR ANY
2 VOICES OR ANY NOISE FROM INSIDE THE HOUSE AT ALL?

3 A. I DON'T REMEMBER HEARING ANYTHING.

4 Q. OKAY. WAS OFFICER TURNER CONTINUING TO ANNOUNCE HIS
5 PRESENCE OR HAD HE STOPPED AT THAT POINT?

6 A. AFTER THE GUNSHOT?

7 Q. BEFORE.

8 A. THERE WAS A MINUTE OF -- YOU KNOW, HE'D DONE SAID THAT,
9 YOU KNOW, THEY ANNOUNCED THEIR PRESENCE SEVERAL TIMES. AND
10 THEN JUST KIND OF A MINUTE OF SILENCE AND THEN THERE WAS A
11 GUNSHOT.

12 Q. OKAY. AND ONCE THE GUNSHOT WENT OFF WHAT DID YOU DO
13 THEN?

14 A. THERE WAS A OLD TRUCK OUT THERE PARKED BEHIND HIS
15 PLACE. I GOT BEHIND IT AND TOOK COVER.

16 Q. OKAY. DID YOU TAKE COVER AT THE FRONT OF THE TRUCK OR
17 ----

18 A. BACK.

19 Q. AT THE BACK?

20 A. YES.

21 Q. OKAY. AND WHEN YOU SAY YOU TOOK COVER WHAT DID YOU DO
22 WHEN YOU TOOK COVER?

23 A. BACK SO I DIDN'T GET SHOT.

24 Q. OKAY. DID YOU DRAW YOUR GUN OR ---

25 A. YES.

TIMOTHY HUNNICUTT - DIRECT EXAMINATION BY MR. STOUDEMIRE

115

1 Q. --- ANYTHING AT THAT POINT?

2 A. YES, I DREW MY DUTY WEAPON.

3 Q. OKAY. AND DID YOU YELL ANYTHING AT THAT POINT?

4 A. YEAH. I WAS YELLING FOR HIM TO COME OUT ALSO.

5 Q. OKAY. SO AT THAT POINT YOU STARTED YELLING?

6 A. YES.

7 Q. OKAY. AND WHAT DID YOU SAY?

8 A. SHERIFF'S OFFICE AND TELLING HIM HE NEEDED TO COME OUT.

9 Q. OKAY. AND WAS ANYBODY ELSE YELLING BUT YOU?

10 A. OFFICER TURNER WAS. AND OFFICER RHUDY HAD WENT TO HIS
11 CAR TO TRY TO GET ON THE RADIO TO GET US SOME HELP OUT
12 THERE.

13 Q. OKAY. WHERE WAS OFFICER TURNER LOCATED?

14 A. IN THE FRONT OF THE -- THE BACK SIDE OF THE -- FRONT OF
15 THE TRUCK.

16 Q. OKAY. SO Y'ALL ARE -- WERE Y'ALL BEHIND THE SAME
17 VEHICLE?

18 A. YES.

19 Q. JUST AT DIFFERENT POINTS?

20 A. RIGHT.

21 Q. AND DID MR. WINCHESTER SUBSEQUENTLY COME OUT OF THE
22 HOUSE?

23 A. YES, HE DID.

24 Q. OKAY.

25 A. AFTER A FEW MINUTES. I'M NOT SURE EXACTLY HOW LONG IT

1 WAS. HE DID COME OUT, COME WALKING OUT.

2 Q. OKAY. WHEN HE CAME OUT OF THE HOUSE WAS HE DRESSED?

3 A. HE HAD A PAIR OF SHORTS ON, I BELIEVE, IS WHAT HE HAD
4 ON.

5 Q. OKAY. WAS HE WEARING SHOES?

6 A. I DON'T REMEMBER THAT ---

7 Q. OKAY.

8 A. --- IF HE HAD SHOES ON OR NOT.

9 Q. OKAY. AND WHEN YOU SAY HE CAME OUT OF THE HOUSE, TELL
10 ME HOW HE CAME OUT OF THE HOUSE.

11 A. HE WALKED OUT. YOU KNOW, WE WAS TELLING HIM, YOU KNOW,
12 'CAUSE WE JUST HAD THE GUNSHOT FIRED. TELLING HIM TO GET ON
13 THE GROUND, SHOW US HIS HANDS. HE WOULDN'T SHOW HIS HANDS.
14 HE HAD THEM KIND OF RIGHT HERE. AND I WAS WORRIED HE COULD
15 HAVE HAD THE GUN STILL AND HAD IT IN HIS WAISTBAND. AND HE
16 STILL WOULDN'T FOLLOW MY ORDERS. SO THAT'S WHEN I USED THE
17 TASER.

18 Q. OKAY. HOW MANY TIMES DID YOU ASK HIM TO SHOW HIS
19 HANDS?

20 A. AT LEAST FOUR OR FIVE TIMES, SEVERAL TIMES.

21 Q. OKAY.

22 A. ALL OF US TELLING HIM TO. HE WOULDN'T DO IT.

23 Q. OKAY. AND YOU SAID HIS HANDS WERE WHERE NOW?

24 A. IT WAS KIND OF LIKE RIGHT HERE. I DON'T KNOW IF HE HAD
25 -- JUST KIND OF LIKE THIS, DOWN TO HIS SIDE AND KIND OF TO

TIMOTHY HUNNICUTT - DIRECT EXAMINATION BY MR. STOUDEMIRE

117

1 THE BACK.

2 Q. OKAY.

3 A. I WAS WORRIED ABOUT HIM -- HE COULD HAVE HAD THE GUN
4 BACK THERE. AND I WAS WORRIED ABOUT HIM GRABBING IT AND
5 SHOOTING ONE OF US.

6 Q. OKAY. DID YOU WARN HIM YOU WERE GOING TO USE THE
7 TASER?

8 A. YES.

9 Q. OKAY. SO AT THIS POINT DID YOU HAVE YOUR TASER WEAPON
10 OUT?

11 A. AT THE TIME WHEN I -- AT FIRST I HAD MY, I STILL HAD MY
12 WEAPON ON HIM, I WAS GOING TOWARDS HIM, MY DUTY WEAPON. AS
13 I WAS WALKING TOWARDS HIM HE STILL WOULDN'T FOLLOW THE
14 ORDERS. AND THAT'S WHEN I PULLED IT OUT AND TOLD HIM I WAS
15 GOING TO TASE HIM. AND HE STILL DIDN'T FOLLOW ORDERS. SO
16 HE WAS STILL RESISTING ARREST. SO I TASED HIM.

17 Q. OKAY. AND WHAT HAPPENED WHEN YOU TASED HIM?

18 A. HE FELL TO THE GROUND.

19 Q. OKAY. HOW DID HE FALL TO THE GROUND?

20 A. I GUESS KIND OF FACE FORWARD AND SCRATCHED -- HIT HIS
21 HEAD OR SCRATCHED HIS HEAD ON, I THINK, THE STEP.

22 Q. OKAY. DID HE FALL DOWN ANY STEPS?

23 A. I DON'T KNOW IF HE ACTUALLY FELL DOWN THEM. I'M NOT --
24 HE WAS RIGHT THERE ON THE STEPS. SO -- WHEN HE FELL.

25 Q. OKAY. NOW WHEN YOU SHOOT -- WHEN YOU SHOOT A TASER HOW

TIMOTHY HUNNICUTT - DIRECT EXAMINATION BY MR. STOUDEMIRE

118

1 DOES THAT TASER DEPLOY?

2 A. IT'S GOT TWO SMALL LITTLE PRONGS THAT COME OUT. AND
3 THEY STICK IN THE PERSON. SO IT'LL ACTUALLY -- THE CURRENT
4 RUNS BETWEEN THE TWO. AND IT'LL SHOCK THEM SO THEY'LL ---

5 Q. OKAY.

6 A. --- COMPLY.

7 Q. OKAY. WHERE -- DO YOU RECALL WHERE THE -- WHERE THE
8 PRONGS HIT ON MR. WINCHESTER?

9 A. I BELIEVE ONE WAS IN THE CHEST, ANOTHER ONE WAS IN THE
10 STOMACH.

11 Q. OKAY. SO ONE UP IN THIS AREA AND ONE DOWN HERE?

12 A. I BELIEVE SO, YES, SIR.

13 Q. OKAY. AND WHAT HAPPENS WHEN THOSE PRONGS HIT SOMEONE?

14 A. THEY GET -- THEY GET SHOCKED.

15 Q. OKAY. AND WHAT'S THE PURPOSE OF DOING THAT?

16 A. I MEAN, IT'S A LESS -- SEEMS LIKE A LESS LETHAL FORCE
17 TOOLS TO, YOU KNOW, TO TRY TO GET SOMEBODY INTO CUSTODY. IF
18 THEY'RE NOT FOLLOWING ORDERS OR, YOU KNOW, TRYING TO ARREST
19 SOMEBODY AND THEY'RE NOT -- IT'S TO HELP US GET THEM IN
20 CUSTODY AND GET THEM UNDER CONTROL.

21 Q. OKAY. AND AFTER YOU HIT HIM WITH THE TASER WERE YOU
22 ABLE TO GET HIM UNDER CONTROL AT THAT POINT?

23 A. NO. HE'S STILL GOT HIS HANDS UP IN FRONT OF HIM. AND
24 OFFICER TURNER KEPT TRYING TO GET HIS HANDS BEHIND HIS BACK.
25 AND HE REFUSED TO, JUST HOLDING THEM TIGHT AND STILL

TIMOTHY HUNNICUTT - DIRECT EXAMINATION BY MR. STOUDEMIRE

119

1 RESISTING. AND HE -- SO I LET HIM KNOW I WAS GOING TO HIT
2 HIM AGAIN. WHICH ALL IT DOES, YOU HIT THE BUTTON AGAIN AND
3 IT RUNS THROUGH THE SAME CORDS THAT'S ALREADY HOOKED TO HIM
4 AND SHOCKS HIM AGAIN.

5 Q. OKAY.

6 A. AFTER THAT, WAS ABLE TO GET HIM DETAINED.

7 Q. OKAY. SO PRIOR TO HITTING HIM WITH THE TASER THE
8 SECOND TIME GIVING HIM, I GUESS, A SECOND JOLT, AS IT IS,
9 YOU GAVE HIM WARNING ---

10 A. YES.

11 Q. --- THAT YOU WERE GOING TO DO THAT?

12 A. YES.

13 Q. OKAY. AND DID YOU GIVE HIM AN OPPORTUNITY TO COMPLY
14 WITH OFFICER TURNER AT THAT POINT?

15 A. OH, YEAH.

16 Q. OKAY. AND SO HE ONLY COMPLIED AFTER THE SECOND TIME
17 WITH THE TASER?

18 A. YES.

19 Q. OKAY. DID YOU STAY ON THE SCENE WHILE OFFICER TURNER
20 HANDCUFFED HIM?

21 A. YES.

22 Q. OKAY. TELL ME WHAT HAPPENED -- WHAT YOU SAW WHILE HE
23 WAS BEING HANDCUFFED.

24 A. HE WAS HANDCUFFED AND TAKEN INTO CUSTODY. AND THEN WE
25 CALLED THE PARAMEDICS.

TIMOTHY HUNNICUTT - DIRECT EXAMINATION BY MR. STOUDEMIRE

120

1 Q. OKAY. IMMEDIATELY AFTER BEING HANDCUFFED WHERE WAS MR.
2 WINCHESTER PUT?

3 A. IT WAS RIGHT THERE -- THEY HELPED HIM -- THEY SAT HIM
4 UP, PUT HIM -- IT'S LIKE A -- IT'S RIGHT NEXT TO HIS PORCH,
5 A LITTLE THING, PLACE WHERE HE COULD SIT.

6 Q. OKAY. AND ---

7 A. THEY SAT THERE UNTIL THE PARAMEDICS GOT THERE.

8 Q. DID HE SIT UP RIGHT THERE ---

9 A. YES.

10 Q. --- WITH HIS HANDS BEHIND HIS BACK?

11 A. YES.

12 Q. OKAY. DO YOU RECALL HIM LEANING BACK OR ANYTHING AT
13 ANY POINT?

14 A. I DON'T REMEMBER.

15 Q. AND YOU SAID THAT PARAMEDICS CAME?

16 A. YES.

17 Q. OKAY. DO YOU KNOW HOW LONG IT WAS BEFORE THE
18 PARAMEDICS GOT THERE?

19 A. I'M NOT SURE.

20 Q. OKAY.

21 A. IT WASN'T LONG.

22 Q. OKAY. WHY WERE PARAMEDICS CALLED?

23 A. SINCE HE FELL AND HIT HIS HEAD WE WANTED TO GET HIM
24 CHECKED OUT. WE USUALLY DO THAT.

25 Q. OKAY. JUST A MOMENT.

TIMOTHY HUNNICUTT - CROSS EXAMINATION BY MR. BURR

121

1 (PAUSE).

2 Q. OKAY. THAT'S ALL THE QUESTIONS I'D HAVE. PLEASE
3 ANSWER ANY QUESTIONS MR. BURR WOULD HAVE FOR YOU.

4 THE COURT: MR. BURR.

5 MR. BURR: MAY IT PLEASE THE COURT, YOUR HONOR?

6 CROSS EXAMINATION BY MR. BURR:

7 Q. MR. HUNNICUTT, YOU JUST TESTIFIED THAT THE USE OF BLUE
8 LIGHTS ON ARRIVAL IS NOT NORMAL PROCEDURE.

9 A. RIGHT.

10 Q. IS THERE A NORMAL PROCEDURE?

11 A. THE ONLY TIME YOU USE BLUE LIGHTS IN A SITUATION WHERE
12 YOU'VE GOT TO GET SOMEWHERE QUICK OR SOMEBODY'S IN DANGER OR
13 SOMETHING LIKE THAT. AND IT'S GOT TO BE SOMETHING SERIOUS
14 LIKE THAT. IT'S LIKE A -- NOT ON A WARRANT. YOU DON'T DO
15 THAT.

16 Q. YOU'RE SAYING IT'S NOT PROCEDURE SERVING A WARRANT,
17 WHICH INDICATES THAT THERE IS SOME OTHER PROCEDURE. SO IS
18 THERE ---

19 A. PROCEDURE SERVING A WARRANT, WHAT ARE ---

20 Q. IS THERE A PROCEDURE FOR SERVING A WARRANT?

21 A. YOU GO TO THEIR HOUSE AND PICK THEM UP. KNOCK ON THEIR
22 DOOR AND GET THEM.

23 Q. THERE'S NO REAL GUIDELINES? JUST DO WHATEVER YOU WANT
24 TO DO?

25 A. IT JUST DEPENDS ON THE CIRCUMSTANCES OF WHAT HAPPENS.

TIMOTHY HUNNICUTT - CROSS EXAMINATION BY MR. BURR

122

1 Q. YOU ALSO TESTIFIED THAT YOU AND OFFICER RHUDY WENT TO
2 THE FRONT DOOR ---

3 A. YES.

4 Q. --- WHILE OFFICER TURNER WENT TO THE BACK. I THINK YOU
5 SAID THAT OFFICER RHUDY WAS ANNOUNCING YOUR PRESENCE, SAYING
6 LAW ENFORCEMENT, IS THAT CORRECT?

7 A. YES.

8 Q. AND THAT'S THE SAME THING THAT OFFICER TURNER WAS DOING
9 IN THE BACK?

10 A. YES.

11 Q. BUT YOU GUYS HEARD HIM AND ASSUMED THAT HE HAD CONTACT
12 OR SOMETHING MORE WAS GOING ON THAN WHAT YOU WERE DOING IN
13 THE FRONT?

14 A. WELL, WHEN HE STARTED TALKING ABOUT THE -- TELLING HIM
15 ABOUT THE WARRANT, HAD A WARRANT FOR HIS ARREST, THAT'S WHEN
16 I THOUGHT HE MIGHT ACTUALLY BE TALKING TO THE FELLOW.

17 Q. THE REPORT INDICATES THAT LIEUTENANT EPPES ORDERED YOU
18 TO USE YOUR TASER. IS THAT CORRECT OR DID YOU DO IT OF YOUR
19 OWN VOLITION?

20 A. I DID IT ON MY OWN.

21 Q. AND I THINK YOU TESTIFIED THAT THE TASER ACTUALLY HAS
22 SOME TYPE OF A CABLE THAT CONNECTS THE ELECTRODES TO ---

23 A. YES, IT HAS TWO.

24 Q. --- THE DEVICE? HOW LONG IS THAT CABLE?

25 A. TWENTY-ONE FEET.

TIMOTHY HUNNICUTT - CROSS EXAMINATION BY MR. BURR

123

1 Q. AND YOU TESTIFIED EARLIER YOU HAD TAKEN COVER BEHIND
2 THE VEHICLE, THE TRUCK PARKED OUT IN THE DRIVEWAY OR BEHIND
3 THE HOUSE?

4 A. YES.

5 Q. SO WERE YOU ABLE TO SHOOT YOUR TASERS FROM BEHIND ---

6 A. I DIDN'T SHOOT FROM THERE, NO.

7 Q. YOU ACTUALLY GOT OUT AND APPROACHED MR. WINCHESTER?

8 A. STARTED TO, YES.

9 Q. SO EITHER YOU WERE NO LONGER CONCERNED THAT HE WAS
10 ARMED OR YOU'RE AN EXTREMELY BRAVE PERSON. WHICH IS IT?

11 A. I KNEW I HAD TO JUST -- WHAT I FELT I NEEDED TO DO.
12 YOU DON'T KNOW WHAT YOU'RE IN UNTIL YOU'RE IN THAT CERTAIN
13 SITUATION WHEN ---

14 Q. YOU GOT ---

15 A. --- YOU'RE GETTING SHOT AT.

16 Q. --- AND YOU HAD NO REASON TO BELIEVE YOU WERE STILL IN
17 HARM, DID YOU?

18 A. YES OR I WOULDN'T HAVE TASED HIM.

19 Q. DID YOU -- WHEN HE WENT DOWN DID YOU MAINTAIN YOUR
20 POSITION?

21 A. YES, I DID.

22 Q. WHERE DID OFFICER TURNER COME FROM?

23 A. I MAINTAINED THE POSITION BECAUSE I HAD THE TASER STILL
24 IN MY HAND IN CASE HE DIDN'T FOLLOW ORDERS AGAIN. THAT'S
25 THE REASON, I COULD HIT HIM AGAIN WITH IT.

TIMOTHY HUNNICUTT - CROSS EXAMINATION BY MR. BURR

124

1 Q. OKAY. AND WHAT ACTION DID YOU SEE OFFICER TURNER TAKE
2 AT THAT POINT?

3 A. HE WAS TRYING TO GET HIS HANDS FROM OUT FROM BEHIND HIS
4 BACK, I MEAN, FROM HIS STOMACH AROUND HIS BACK.

5 Q. DID HE DROP HIS KNEE INTO MR. WINCHESTER'S BACK?

6 A. NO.

7 Q. MEDICAL RECORDS -- IF THE MEDICAL RECORDS INDICATE
8 SERIOUS BRUISING IN THE BACK, HOW DO YOU EXPLAIN THAT?

9 A. THAT COULD HAVE HAPPENED ANY TIME.

10 Q. SO IT IS YOUR TESTIMONY HE ONLY FELL ONE TIME FROM A
11 STANDING POSITION ---

12 A. YES.

13 Q. --- ONTO THE PLATFORM?

14 A. YES, HE FELL ONE TIME.

15 Q. BUT YOU DID, YOU TASED HIM AT LEAST TWICE?

16 A. YEAH, TWO TIMES.

17 Q. AND IT WAS YOUR TESTIMONY YOU COULD SEE LIGHT WHEN YOU
18 WERE IN FRONT OF THE HOUSE?

19 A. YES. THROUGH A FRONT WINDOW, YES.

20 Q. WERE YOU ONE OF THE OFFICERS THAT WENT INTO THE
21 RESIDENCE AFTER THE ARREST?

22 A. NO.

23 Q. HOW MANY TIMES HAVE YOU USED YOUR TASER IN YOUR CAREER?

24 A. MAYBE THREE, MAYBE THREE TIMES MAYBE.. THREE OR FOUR
25 TIMES.

TIMOTHY HUNNICUTT - CROSS EXAMINATION BY MR. BURR

125

1 Q. IS IT SAFE TO SAY YOU'RE PRETTY EXCITED DURING THIS --
2 THIS EPISODE?

3 A. NO. I'D RATHER NOT USE IT.

4 Q. NERVOUS?

5 A. NERVOUS?

6 Q. NERVOUS, EXCITED? TALKING ABOUT EXCITED, WERE YOU ---

7 A. DURING WHEN THIS WAS GOING ON?

8 Q. YES.

9 A. WELL, IF YOU'RE GETTING SHOT AT YOU'RE GOING TO BE A
10 LITTLE SCARED, YOU KNOW.

11 Q. YEAH. AND THAT'S, I'M ASSUMING, ---

12 A. IT'S NORMAL.

13 Q. BUT THERE WAS A LOT OF CONFUSION AT THE TIME?

14 A. I WASN'T CONFUSED, NO.

15 Q. NO CONFUSION?

16 A. I DONE WHAT I HAD TO DO.

17 Q. HOW MANY OFFICERS ULTIMATELY ARRIVED ON THE SCENE?

18 A. FIRST OF ALL THERE WAS THREE THERE. AND THEN AS HE WAS
19 COMING OUT LIEUTENANT EPPES PULLED UP. AND THAT'S WHO ALL
20 WAS THERE WHEN IT TOOK PLACE.

21 Q. WAS HE ALREADY HANDCUFFED WHEN THE OTHER -- LIEUTENANT
22 EPPES ARRIVED?

23 A. NO, I DON'T BELIEVE SO.

24 Q. WHO ELSE SHOWED UP?

25 A. THAT WAS IT, LIEUTENANT EPPES.

REDIRECT EXAMINATION BY MR. STOUDEMIRE

126

1 Q. THE ENTIRE EVENING THAT WAS ALL ---

2 A. NO. LATER ON OFFICER -- CHIEF SHOWED UP, CHASTAIN.
3 SOME PARAMEDICS. I BELIEVE THAT'S ALL THE OFFICERS THAT
4 SHOWED UP.

5 Q. SO WHAT WAS YOUR APPROXIMATE DISTANCE FROM MR.
6 WINCHESTER WHEN YOU FIRED AT HIM WITH THE TASER?

7 A. I'M NOT SURE EXACTLY. IT'S -- BEING IN THE PAPERWORK
8 THAT YOU'D HAVE. MAYBE FIFTEEN FEET MAYBE. I'M NOT SURE.

9 Q. BUT IT'S YOUR TESTIMONY THAT HE WAS STILL RESISTING?

10 A. YES.

11 Q. BUT HE WAS DOWN ON THE GROUND?

12 A. IF SOMEBODY'S TRYING TO HANDCUFF YOU AND YOU'VE GOT
13 YOUR HANDS HOLDING RIGHT HERE ON YOUR STOMACH, AND YOU'RE
14 NOT PUTTING THEM BEHIND YOUR BACK, THAT'S RESISTING.

15 Q. BUT OFFICER TURNER WAS ALREADY ON HIS PERSON ---

16 A. HE WAS TRYING TO GET HIS HANDS BEHIND HIS BACK, YES.

17 Q. SO YOU GUYS AT THAT POINT WERE REASONABLY CONFIDENT
18 THAT HE NO LONGER HAD A WEAPON?

19 A. RIGHT. THAT HAS NOTHING TO DO WITH IT. IF THEY'RE
20 RESISTING ARREST, YOU FIRE THE TASER. IT HAS NOTHING TO DO
21 WITH HAVING A GUN.

22 Q. OKAY. I HAVE NO FURTHER QUESTIONS.

23 MR. BURR: THANK YOU, YOUR HONOR.

24 REDIRECT EXAMINATION BY MR. STOUDEMIRE:

25 Q. OFFICER HUNNICUTT, WHEN YOU WENT FROM BEHIND THE

REDIRECT EXAMINATION BY MR. STOUDEMIRE

127

1 VEHICLE AND WENT TOWARDS MR. WINCHESTER WITH YOUR TASER
2 DRAWN WHERE WAS OFFICER TURNER AT THAT POINT?

3 A. HE HAD HIM AT GUNPOINT.

4 Q. OKAY. SO WOULD YOU HAVE LEFT YOUR COVER POSITION IF
5 SOMEONE ELSE DIDN'T HAVE MR. WINCHESTER ---

6 A. NO.

7 Q. --- COVERED? OKAY.

8 A. I KNEW HE WAS COVERED.

9 Q. OKAY. AND AGAIN, YOU WARNED MR. WINCHESTER, CORRECT?

10 A. RIGHT.

11 Q. OKAY. NOW MR. BURR SAID YOU USED YOUR TASER AT LEAST
12 TWICE. AT LEAST TWICE TO ME KIND OF SEEMS THAT YOU COULD
13 HAVE USED IT MORE. HOW MANY TIMES DID YOU ACTUALLY PULL THE
14 TRIGGER AND USE THE TASER?

15 A. TWO TIMES.

16 Q. NOT LESS?

17 A. NO.

18 Q. NOT MORE?

19 A. NO.

20 Q. TWO TIMES AND TWO TIMES ONLY?

21 A. RIGHT.

22 Q. OKAY. AND ALSO MR. BURR ALSO ASKED YOU ABOUT, I GUESS,
23 YOUR MENTAL STATE AT THAT TIME. WOULD YOU CLASSIFY IT AS
24 EXCITED?

25 A. AS EXCITED?

MICHAEL EPPES - DIRECT EXAMINATION BY MR. STOUDEMIRE

128

1 Q. YES.

2 A. WASN'T EXCITED.

3 Q. OKAY.

4 A. I MEAN, YOUR -- I MEAN, I DON'T KNOW WHAT YOU MEAN BY
5 EXCITED. I MEAN, EXCITED TO GET TO WHAT'S GOING ON OR WHAT?

6 Q. WELL, HOW WOULD YOU CLASSIFY IT? WHAT WORD WOULD YOU
7 USE?

8 A. I MEAN, IT'S JUST A, I DON'T KNOW, IT'S A SCARY
9 SITUATION. I MEAN, YOU'RE GETTING SHOT AT. I ---

10 Q. OKAY.

11 A. YOU DON'T KNOW WHAT'S GOING TO HAPPEN NEXT.

12 Q. ALL RIGHT. THANK YOU. THAT'S ALL I HAVE.

13 MR. BURR: NOTHING, YOUR HONOR.

14 THE COURT: VERY WELL. YOU MAY STEP DOWN.

15 MR. STOUDEMIRE: YOUR HONOR, WE WOULD CALL LIEUTENANT
16 MIKE EPPES. WE WOULD ASK THAT OFFICER HUNNICUTT BE RELEASED
17 AT THIS POINT.

18 MR. BURR: NO OBJECTION.

19 THE COURT: ALL RIGHT. WITHOUT OBJECTION, YOU'RE
20 EXCUSED. THANK YOU VERY MUCH, SIR.

21 MICHAEL EPPES, BEING DULY
22 SWORN TESTIFIED AS FOLLOWS:

23 THE COURT: ALL RIGHT. IF YOU WOULD, PLEASE, SIR, GIVE
24 US YOUR FULL NAME FOR THE RECORD.

25 MR. EPPES: MICHAEL LEE EPPES.

MICHAEL EPPES - DIRECT EXAMINATION BY MR. STOUDEMIRE

129

1 THE COURT: VERY GOOD. THANK YOU.

2 DIRECT EXAMINATION BY MR. STOUDEMIRE:

3 Q. MR. EPPES, WHERE ARE YOU EMPLOYED?

4 A. WITH THE WEST UNION POLICE DEPARTMENT.

5 Q. AND IN WHAT YEAR -- IN WHAT CAPACITY ARE YOU EMPLOYED
6 THERE?

7 A. I'M THE CHIEF THERE.

8 Q. OKAY. HOW LONG HAD YOU BEEN CHIEF AT WEST UNION?

9 A. SINCE SEPTEMBER, LATE SEPTEMBER.

10 Q. OKAY. AND PREVIOUS TO THAT WERE YOU EMPLOYED IN LAW
11 ENFORCEMENT?

12 A. YES, WITH THE WALHALLA POLICE DEPARTMENT.

13 Q. AND HOW LONG WERE YOU EMPLOYED BY THE WALHALLA POLICE
14 DEPARTMENT?

15 A. A LITTLE OVER SIX, WORKING TOWARDS SEVEN YEARS.

16 Q. OKAY. SO HOW LONG TOTAL IN LAW ENFORCEMENT HAVE YOU
17 HAD?

18 A. TWENTY-SEVEN YEARS.

19 Q. SO YOU WERE EMPLOYED PRIOR TO WALHALLA POLICE
20 DEPARTMENT?

21 A. YES.

22 Q. WHERE WERE YOU EMPLOYED THEN?

23 A. PRIOR TO THAT?

24 Q. UM-HUM (AFFIRMATIVE).

25 A. PENDLETON CITY.

MICHAEL EPPES - DIRECT EXAMINATION BY MR. STOUDEMIRE

130

1 Q. OKAY. AND HOW LONG DID YOU WORK THERE?

2 A. FOUR YEARS, THEREABOUT. FOUR YEARS.

3 Q. OKAY. AND YOU WORKED AT OTHER LAW ENFORCEMENT AGENCIES
4 PRIOR TO THAT?

5 A. YES.

6 Q. OKAY. WERE YOU ON DUTY WITH THE WALHALLA POLICE
7 DEPARTMENT THE NIGHT OF MAY 17TH, 2007?

8 A. I WAS.

9 Q. OKAY. AND IN WHAT CAPACITY WERE YOU WORKING WITH
10 WALHALLA PD AT THAT TIME?

11 A. I WAS THE LIEUTENANT ON THE NIGHT SHIFT.

12 Q. OKAY. AND ON THE 17TH, WAS THAT YOUR REGULAR SHIFT
13 THAT NIGHT?

14 A. YES.

15 Q. OKAY. TELL ME WHAT YOU WERE DOING THAT EVENING?

16 A. WELL, WE COME IN AT 7:00, SHIFT STARTED. AND WE DO OUR
17 NORMAL PATROLS, GOING CHECKING NEIGHBORHOODS AND BUSINESSES
18 AND ANSWERING CALLS. AND THEN SOMEWHERE APPROXIMATELY 10:00
19 THEREABOUT I WAS WORKING ON AN INVESTIGATION TAKING
20 STATEMENTS.

21 Q. OKAY. AND DID YOU CALL OFFICER RHUDY INTO THE STATION
22 AT SOME POINT THAT EVENING?

23 A. YES, SIR. HAD A WARRANT THAT WAS SIGNED EARLIER THAT
24 DAY THAT I HAD SIGNED. AND CALLED HIM IN FOR THE SERVICE
25 ONCE EVERYTHING KIND OF SETTLED DOWN. AND AT THAT TIME I

MICHAEL EPPES - DIRECT EXAMINATION BY MR. STOUDEMIRE

131

1 TOLD HIM I HAD A WARRANT THAT NEEDED TO BE SERVED. AND
2 CALLED THE SHERIFF'S OFFICE FOR ASSISTANCE IN REFERENCE TO
3 SERVING THE WARRANT. SO, YOU KNOW, NOT ONE OFFICER GO OUT
4 THERE. AND THEN THEY DISPATCHED AN OFFICER UP THERE. AND
5 WHICH WAS OFFICER HUNNICUTT.

6 AND THEN OFFICER TURNER WAS LISTENING TO A SCANNER,
7 WHICH WAS A RESERVE OFFICER WITH US AT THAT TIME. AND HE
8 CALLED UP THERE AND ASKED WHAT WAS GOING ON. AND I TOLD HIM
9 WE WAS FIXING OR RHUDY AND TIM HUNNICUTT WAS GOING TO GO
10 SERVE THE WARRANT. AND HE ASKED IF I WANTED HIM TO COME IN.
11 AND I SAID, SURE, GO AHEAD, COME IN FOR THE SERVICE OF THE
12 WARRANT.

13 Q. OKAY. AND ABOUT WHAT TIME WAS THIS? DO YOU RECALL?

14 A. IT WAS WHEN -- IT WAS A LITTLE AFTER TEN.

15 Q. OKAY. AND WHO WAS THE WARRANT FOR THAT WAS BEING
16 SERVED?

17 A. THE DEFENDANT.

18 Q. MR. WINCHESTER?

19 A. YES.

20 Q. OKAY. AND WAS IT AN ARREST WARRANT?

21 A. YES, SIR, IT WAS.

22 Q. OKAY. SO WHAT TIME DID ALL THE OFFICERS LEAVE THE
23 POLICE STATION?

24 A. SOMEWHERE AROUND 10:15, 10:20.

25 Q. OKAY. AND WHERE'S MR. WINCHESTER'S HOUSE LOCATED?

MICHAEL EPPES - DIRECT EXAMINATION BY MR. STOUDEMIRE

132

1 A. IT'S ON NORTH WEST BROAD STREET INSIDE THE COUNTY
2 LIMITS OF WALHALLA.

3 Q. ALL RIGHT. AND HOW LONG DOES IT TAKE DRIVING-WISE TO
4 GET FROM WALHALLA POLICE DEPARTMENT TO MR. WINCHESTER'S
5 HOUSE?

6 A. TWO OR THREE MINUTES, I SUPPOSE.

7 Q. OKAY. AND IS THAT DRIVING AT A NORMAL RATE OF SPEED?

8 A. UM-HUM (AFFIRMATIVE), ACCORDING TO THE TRAFFIC. I
9 MEAN, IF YOU GET STOPPED AT LIGHTS OR WHATNOT IT COULD TAKE
10 A FEW MINUTES LONGER.

11 Q. OKAY. BUT NOT TERRIBLY LONG?

12 A. NO, SIR.

13 Q. OKAY. AND AFTER THE OFFICERS LEFT AND WENT TO GO SERVE
14 THE WARRANT WHAT DID YOU DO?

15 A. I WAS DOING ANOTHER INVESTIGATION. I WAS TAKING
16 STATEMENTS IN REFERENCE TO A DIFFERENT INVESTIGATION.

17 Q. OKAY. AND DID YOU DO THAT FOR THE REST OF THE EVENING?

18 A. NO, SIR, DID NOT.

19 Q. OKAY. WHAT HAPPENED AFTER THE OFFICERS LEFT AND WENT
20 TO MR. WINCHESTER'S HOUSE?

21 A. WHEN THEY SIGNED UP THERE, SHORTLY AFTER COME ACROSS
22 THE RADIO FROM OFFICER RHUDY, HE STATED SHOTS WERE FIRED.
23 AND AT THAT TIME ALL THE PEOPLE I HAD INSIDE, I TOLD THEM
24 THEY'D NEED TO GO -- IN THE EVENING IT WASN'T MANNED AT THAT
25 TIME. WE DIDN'T HAVE THE MAN IN THE POLICE DEPARTMENT IN

MICHAEL EPPES - DIRECT EXAMINATION BY MR. STOUDEMIRE

133

1 THE LATE EVENING FOR THAT TIME. AND I TOLD THEM THEY'D HAVE
2 TO WAIT OUTSIDE.

3 AND THEN I PROCEEDED TO THE CALL. AND WHEN I GOT THERE
4 I PULLED UP AND -- IN THE DRIVEWAY AT THE LOCATION THAT THEY
5 WERE AT AND STOPPED THE CAR, GOT OUT SHY OF THE HOUSE. I
6 WASN'T -- 'CAUSE I DIDN'T ACTUALLY KNOW WHERE ANYBODY WAS AT
7 THE TIME.

8 PROCEEDED UP THE DRIVEWAY ON FOOT. GOT WITHIN PROBABLY
9 FIFTY FEET OF THE OFFICERS AND THE DEFENDANT AS HE WAS
10 COMING OUT OF THE HOUSE.

11 Q. OKAY. DID YOU HAVE BLUE LIGHTS ON OR ANYTHING AT THAT
12 POINT?

13 A. WELL, GOING TO THE CALL, I DEFINITELY DID.

14 Q. OKAY. AND ONCE YOU GOT THERE DID YOU LEAVE THE
15 FLASHERS ON OR TURN THEM OFF?

16 A. I DON'T RECALL.

17 Q. OKAY. BUT YOU HAD THEM ON ON THE WAY THERE?

18 A. YES.

19 Q. ANY SIRENS OR ANYTHING LIKE THAT?

20 A. YES. BLUE LIGHTS AND SIRENS GOING TO A CALL OF THAT
21 NATURE, YES.

22 Q. OKAY. AND WHEN YOU GOT THERE AND WENT UP THE DRIVEWAY
23 WHAT DID YOU SEE?

24 A. WHEN I GOT TO THE BACK SIDE -- THE CORNER OF THE HOUSE
25 SORT OF, BUT OUT FROM THE HOUSE A LITTLE WAYS, SAW THE

MICHAEL EPPES - DIRECT EXAMINATION BY MR. STOUDEMIRE

134

1 DEFENDANT WALK OUT OF THE HOUSE. AT THAT TIME THEY WAS
2 GIVING HIM ORDERS TO BRING HIS HANDS AROUND AND/OR TURN
3 AROUND WHERE THEY COULD VISUALLY SEE IF HE HAD ANYMORE
4 WEAPONS.

5 AND DURING THE TIME THEY WERE TRYING TO GET HIM TO
6 COOPERATE, OF COURSE HE CONTINUED TO, YOU KNOW, HE JUST --
7 HE REFUSED TO DO ANYTHING OF THE COMMANDS. OFFICER
8 HUNNICUTT THEN PULLED HIS TASER OUT AND HE WAS TELLING HIM
9 IF HE WOULDN'T FOLLOW THROUGH, YOU KNOW, THAT HE WOULD --
10 THAT HE WOULD BE TASED. AND THAT WENT ON PROBABLY FOR A
11 COUPLE OF MINUTES.

12 AND THEN AT THAT TIME I FELT LIKE THE SAFETY ISSUE WAS
13 GETTING -- IT WAS GETTING AT A HIGHER LEVEL BECAUSE HE
14 WASN'T COOPERATING WITH THE COMMANDS OF THE OFFICERS. AND
15 THEN I -- I HOLLERED FOR HUNNICUTT TO TASE HIM. AND JUST
16 WITHIN A FEW SECONDS HE WAS TASED.

17 Q. OKAY. DO YOU KNOW WHETHER OR NOT OFFICER HUNNICUTT
18 HEARD YOUR INSTRUCTION?

19 A. LATER SPEAKING WITH HIM HE SAID HE NEVER HEARD ME ---

20 Q. OKAY.

21 A. --- GIVE THE COMMAND, BUT I DID.

22 Q. OKAY. BUT YOU FELT THAT THE TASER WAS APPROPRIATE AT
23 THAT POINT?

24 A. YES, SIR.

25 Q. OKAY. FROM WHERE YOU WERE STANDING COULD YOU SEE

MICHAEL EPPES - DIRECT EXAMINATION BY MR. STOUDEMIRE

135

1 BEHIND MR. WINCHESTER TO SEE IF HE HAD A WEAPON?

2 A. NO, SIR, I COULDN'T.

3 Q. OKAY. AND CAN YOU SHOW ME HOW HE WAS HOLDING HIS HANDS
4 WHEN HE CAME OUT?

5 A. THEY WERE JUST --- THEY WERE BEHIND HIM. AND IT WAS
6 JUST LIKE HE WAS JUST -- IT COULD BE THAT HE HAD A GUN. AND
7 THAT'S THE WAY I SAW IT, THAT HE WOULD HAVE HAD A GUN BEHIND
8 HIS BACK AND JUST PROPPING HIS HANDS ON IT OR HIS WAISTLINE
9 OR WHATNOT.

10 Q. OKAY. WHEN YOU SAW HIM COME OUT DID HE APPEAR TO HAVE
11 ANY TROUBLE MOVING AT THAT POINT?

12 A. NO. HE WALKED OUT FINE.

13 Q. OKAY.

14 A. HE WALKED OUT ON HIS OWN. HE DIDN'T HAVE ANYTHING TO
15 -- HE DIDN'T WALK OUT HOLDING ONTO ANYTHING. HE WAS
16 STANDING AND WALKED OUT, CLEARED THE DOORWAY.

17 Q. OKAY. DID HE HOLD ONTO ANYTHING ONCE HE GOT OUT ON THE
18 ---

19 A. THERE WAS NOTHING THERE FOR HIM TO HOLD ONTO.

20 Q. OKAY. ALL RIGHT. SO OFFICER HUNNICUTT DISCHARGES HIS
21 TASER. WHAT HAPPENS THEN?

22 A. HE WENT -- AT THAT POINT HE WENT DOWN. AND THEN
23 OFFICER TURNER -- THE TASE HOLDS FOR APPROXIMATELY FIVE
24 SECONDS. AT THAT TIME OFFICER TURNER -- THEY CALLED FOR HIM
25 TO BRING HIS HANDS OUT BECAUSE HE HAD WENT FORWARD AND HE

1 STRUCK HIS HEAD, I BELIEVE IT WAS. HIS HANDS WAS UP UNDER
2 HIS -- UP UNDER HIM. AND OFFICER TURNER HAD WENT UP TO HIM
3 TO CUFF HIM, WAS PROCEEDING TO PULL HIS ARM OUT AND HAD TO
4 STRUGGLE TO GET ONE OUT. HE STILL WOULDN'T COMPLY AND
5 WOULDN'T BRING HIS OTHER ARM OUT.

6 OFFICER HUNNICUTT CONTINUED TO TELL HIM TO -- TO GET
7 HIS OTHER HAND OUT. THAT DID NOT HAPPEN. SO, YOU KNOW, HE
8 ADVISED HIM THAT IF HE DIDN'T -- HE WAS KIND OF YELLING, YOU
9 KNOW, IT WAS MORE OF A YELLING COMMAND TO MAKE -- WITH ALL
10 THE COMMOTION GOING ON. AND THEN HE HAD NOTIFIED HIM THAT
11 HE'D TASE HIM AGAIN. AND SO WE BACKED AWAY, AND HE DID TASE
12 HIM AGAIN.

13 Q. OKAY. AND AFTER THE SECOND TASER HIT DID MR.
14 WINCHESTER COMPLY AT THAT POINT?

15 A. THERE'S NOT A SECOND STRIKING OF THE TASER. IT'S ONLY
16 ONE STRIKING OF THE TASER. IT'S JUST AN INITIATION WITH THE
17 TRIGGER OF THE FIRST TASE.

18 Q. OKAY. SO AFTER THE SECOND TRIGGER DID MR. WINCHESTER
19 COMPLY THEN?

20 A. YES. THEY GOT HIS HANDS OUT TO WHERE HE COULD BE
21 CUFFED.

22 Q. OKAY. AND ONCE HE WAS CUFFED, WHAT HAPPENED THEN?

23 A. I CALLED THE -- CHIEF CHASTAIN. THE MEDICAL UNIT WAS
24 DISPATCHED OUT. AND THEY ARRIVED. AND THE CHIEF ARRIVED AT
25 THAT TIME.

MICHAEL EPPES - DIRECT EXAMINATION BY MR. STOUDEMIRE

137

1 Q. OKAY. AND AT SOME POINT AFTER THE CHIEF ARRIVED DID
2 MR. WINCHESTER GET TRANSPORTED FROM THE SCENE?

3 A. YES, HE WAS TRANSPORTED FROM THE SCENE.

4 Q. OKAY. AND DID YOU THEN ENTER MR. WINCHESTER'S HOME?

5 A. YES, WE DID. I DID ASK HIM, YOU KNOW, IF IT WAS ALL
6 RIGHT FOR US TO ENTER -- ENTER THE HOME. BUT WE WERE GOING
7 TO HAVE TO ENTER THE HOME ANYWAY UNDER THE CIRCUMSTANCES TO
8 MAKE SURE THAT THERE WASN'T A SECOND OR THIRD PARTY IN
9 THERE. BUT HE DID ACKNOWLEDGE THAT WE COULD ENTER ANYWAY.
10 WE ASKED HIM WHERE THE GUN WOULD HAVE BEEN LOCATED AT. AND
11 HE STATED IT WAS ON HIS BED.

12 Q. OKAY. AND WHO ENTERED THE HOME WITH YOU?

13 A. THE CHIEF, MYSELF AND OFFICER TURNER.

14 Q. OKAY. DID YOU HAVE A CAMERA WITH YOU AT THAT POINT
15 WHEN YOU ENTERED THE HOME?

16 A. I DID HAVE THE CAMERA. YES, I DID GET THE CAMERA
17 BEFORE WE ENTERED.

18 Q. OKAY. AND WERE YOU IN CHARGE OF TAKING PHOTOGRAPHS OF
19 WHATEVER WAS INSIDE THE HOME?

20 A. YES.

21 Q. OKAY.

22 MR. STOUDEMIRE: YOUR HONOR, MAY I APPROACH THE
23 WITNESS?

24 THE COURT: CERTAINLY.

25 Q. DEPUTY TURNER, I WANT TO SHOW YOU WHAT'S BEEN

MICHAEL EPPES - DIRECT EXAMINATION BY MR. STOUDEMIRE

138

1 PREVIOUSLY, EXCUSE ME, CHIEF EPPES. I'M GOING TO SHOW YOU
2 WHAT'S BEEN PREVIOUSLY IDENTIFIED AS PLAINTIFF'S EXHIBITS 1,
3 2, 3 AND 4. CAN YOU BRIEFLY TELL ME WHAT THOSE ARE?

4 A. THIS FIRST ONE HERE IS WHERE WE FOUND THE GUN ON THE
5 BED. THE SECOND ONE IS A SHOT OR A BULLET HOLE FROM INSIDE
6 THE HOUSE GOING THROUGH THE CURTAIN. THE THIRD ONE IS WHERE
7 IT EXITED THE WINDOW ON THE OUTSIDE AND BUSTING OUT THE
8 GLASS. AND THE FOURTH ONE IS WHERE THE ROUND WENT THROUGH
9 THE -- I BELIEVE IT'S A ONE -- SOMETHING LIKE THAT, ON THE
10 OUTSIDE OF THE PORCH.

11 Q. OKAY. NOW ARE THESE PHOTOGRAPHS THAT YOU TOOK OR
12 SOMEONE ELSE?

13 A. I TOOK THEM.

14 Q. OKAY. DO THEY FAIRLY AND ACCURATELY REPRESENT THE
15 SCENE AS YOU SAW IT ON MAY 17TH, 2007?

16 A. YES.

17 Q. OKAY.

18 MR. STOUDEMIRE: YOUR HONOR, I WOULD MOVE TO HAVE
19 PLAINTIFF'S 1 THROUGH 4 MOVED INTO EVIDENCE AT THIS TIME.

20 MR. BURR: I HAVE NO OBJECTION.

21 THE COURT: ALL RIGHT. WITHOUT OBJECTION, PLAINTIFF'S
22 NUMBER 1, 2, 3 AND 4 ARE ADMITTED.

23 MR. STOUDEMIRE: THANK YOU, YOUR HONOR.

24 (WHEREUPON STATE'S EXHIBITS 1, 2, 3 AND 4 WERE ENTERED
25 INTO EVIDENCE)

MICHAEL EPPES - DIRECT EXAMINATION BY MR. STOUDEMIRE

139

1 Q. AND GOING BACK TO STATE'S NUMBER 1, WHAT TYPE OF GUN IS
2 THAT THAT'S FROM THE BED?

3 A. IT'S A .22 MAGNUM.

4 Q. OKAY. IS ---

5 A. REVOLVER.

6 Q. ALL RIGHT. AND GOING TO STATE'S NUMBER 2, TELL ME WHAT
7 THAT IS BRIEFLY ONE MORE TIME.

8 A. THAT'S THE SHADE THAT WAS DRAWN DOWN, THE WINDOW SHADE.

9 Q. OKAY. WHAT ROOM WAS THAT LOCATED IN?

10 A. THAT'S HIS BEDROOM.

11 Q. OKAY. IS THAT THE SAME ROOM WHERE THIS GUN WAS FOUND?

12 A. YES.

13 Q. AND WHAT ABOUT PLAINTIFF'S NUMBER 3?

14 A. THAT'S THE OUTSIDE OF HIS BEDROOM WINDOW. THAT'S THE
15 WINDOW TO THE OUTSIDE.

16 Q. OKAY. AND IS THAT BROKEN GLASS?

17 A. THAT'S THE BROKEN GLASS.

18 Q. OKAY. AND AGAIN, ONE MORE TIME, PLAINTIFF'S NUMBER 4.

19 A. OKAY. THAT'S THE -- LIKE THE PORCH AREA. THAT'S THE
20 CORNER, LIKE CORNER POST.

21 Q. OKAY.

22 A. OF THE BACK PORCH WHERE THE BULLET ---

23 Q. WHAT'S THIS GRAY PORTION ON THE WOOD?

24 A. THIS HERE, I THINK, IS THE -- IS THE BULLET HOLE.

25 Q. OKAY.

MICHAEL EPPES - DIRECT EXAMINATION BY MR. STOUDEMIRE

140

1 MR. STOUDEMIRE: YOUR HONOR, PERMISSION TO PUBLISH
2 THESE ---

3 THE COURT: CERTAINLY.

4 Q. OKAY. WHILE YOU WERE IN THE HOME AND AFTER YOU LOCATED
5 THE GUN WHAT WAS DONE WITH THE -- WHAT WAS DONE WITH THE GUN
6 AT THAT POINT?

7 A. I TOOK THE PICTURE. CHIEF CHASTAIN PICKED IT UP AND
8 HANDED IT TO ME. AND AT THAT TIME I UNLOADED THE GUN.

9 Q. OKAY. AND WHAT DID YOU FIND WHEN YOU UNLOADED THE GUN?

10 A. FIVE ROUNDS, FIVE LIVE ROUNDS AND ONE SPENT CARTRIDGE.

11 Q. OKAY. AND WHAT DID YOU DO WITH THE FIVE LIVE ROUNDS
12 AND ONE SPENT CARTRIDGE?

13 A. I TOOK POSSESSION OF IT ---

14 Q. OKAY.

15 A. --- AND PUT IT IN AS EVIDENCE.

16 Q. OKAY. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
17 STATE'S EXHIBIT NUMBER 5. CAN YOU IDENTIFY THAT FOR ME,
18 PLEASE?

19 A. YES. THAT'S THE FIVE LIVE ROUNDS FROM THE .22 MAGNUM
20 AND ONE SPENT ROUND THAT I TOOK ---

21 Q. OKAY.

22 A. --- INTO EVIDENCE ON THAT DAY.

23 Q. ALL RIGHT. AND THE WRITING THAT'S ON THIS BAG, IS THAT
24 YOUR ---

25 A. YES.

MICHAEL EPPES - DIRECT EXAMINATION BY MR. STOUDEMIRE

141

1 Q. --- HANDWRITING?

2 A. THAT'S DEFINITELY MY HANDWRITING.

3 Q. OKAY. AND -- WELL, READ TO ME ON THE BOTTOM WHAT THE
4 DESCRIPTION IS. SORRY.

5 A. THAT'S ALL RIGHT. IT'S FIVE .22 LONG RIFLE ROUNDS AND
6 ONE .22 SPENT ROUND.

7 Q. OKAY. WHEN YOU SAY LONG RIFLE ROUNDS, ARE THOSE STILL
8 ROUNDS THAT WILL FIT IN THAT HANDGUN THAT YOU RECOVERED?

9 A. YES. THAT'S THE .22 MAGNUM -- WE CALL -- I CALL IT
10 LONG RIFLE. IT'S A .22 MAGNUM ROUND. IT FITS IN THAT
11 REVOLVER.

12 Q. OKAY.

13 A. THOSE BULLETS CAME FROM THAT REVOLVER.

14 Q. OKAY.

15 MR. STOUDEMIRE: YOUR HONOR, AT THIS TIME WE'D MOVE TO
16 HAVE PLAINTIFF'S NUMBER 5 ADMITTED INTO EVIDENCE.

17 MR. BURR: NO OBJECTION.

18 THE COURT: ALL RIGHT. WITHOUT OBJECTION, PLAINTIFF'S
19 NUMBER 5 IS ADMITTED.

20 (WHEREUPON STATE'S EXHIBIT 5 WAS ENTERED INTO EVIDENCE)

21 Q. OKAY. AND AFTER OBTAINING THE EVIDENCE FROM THE SCENE
22 WHAT DID YOU DO AT THAT POINT?

23 A. WE WENT AHEAD AND WENT THROUGH THE HOUSE. AND WE ALSO
24 FOUND OTHER GUNS THAT WE TOOK IN FOR JUST SAFETY -- SAFETY
25 REASONS OF THE -- OF THE LOCATION. WE TOOK PICTURES OF THE

MICHAEL EPPES - CROSS EXAMINATION BY MR. BURR

142

1 GUNS WE COLLECTED.

2 Q. OKAY. WAS ANYONE ELSE FOUND TO BE IN THE HOUSE WHEN

3 YOU WENT IN?

4 A. NO.

5 Q. OKAY. DID YOU CLEAR THE SCENE FIRST TO MAKE SURE NO

6 ONE ELSE WAS IN THE HOUSE?

7 A. WENT THROUGH THE ROOMS TO CLEAR THE HOUSE FIRST. OF

8 COURSE, DOING SO IS WHERE WE SAW THE GUN IN THE BEDROOM.

9 AND ONCE -- BUT WE KEPT ON -- WE WENT AHEAD AND CLEARED THE

10 HOUSE. ONCE THAT WAS DONE, THEN WE TOOK PICTURES AND

11 COLLECTED EVERYTHING ELSE INTO EVIDENCE.

12 Q. OKAY. ALL RIGHT. THANK YOU. I APPRECIATE IT. AND

13 PLEASE ANSWER ANY QUESTIONS MR. BURR MIGHT HAVE.

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

15 THE COURT: MR. BURR.

16 CROSS EXAMINATION BY MR. BURR:

17 Q. CHIEF EPPES, THERE'S SOME CONFUSION EARLIER AS TO WHO

18 ACTUALLY COMPLETED THE INCIDENT REPORT FROM THIS NIGHT. THE

19 REPORT HAS DEPUTY RHUDY'S NAME ON IT, BUT HE GAVE A LOT OF

20 CREDIT TO YOU. DO YOU REMEMBER, DID YOU ACTUALLY PUT

21 INFORMATION INTO THAT REPORT?

22 A. I DON'T RECALL IF I ACTUALLY DID THE -- DID THE TYPING,

23 BUT WE WOULD HAVE WORKED TOGETHER ON THE -- ON THE INCIDENT

24 REPORT WHERE -- WHERE I WAS CONCERNED FOR SURE.

25 Q. THE UNDERLYING COMPLAINT OR INCIDENT THAT WAS THE

MICHAEL EPPES - CROSS EXAMINATION BY MR. BURR

143

1 GENESIS OR STARTED THE WHOLE THING CAME INTO YOUR OFFICE ON
2 MAY 12TH, 2007, CORRECT?

3 A. YOU TALKING ABOUT IN REFERENCE TO THE CDV?

4 Q. THE ORIGINAL COMPLAINT, RIGHT.

5 A. OKAY.

6 Q. IT CAME IN ON MAY 12TH.

7 A. THAT'S WHAT THE INCIDENT REPORT SHOWS.

8 Q. AND YOU WAITED UNTIL MAY 17TH TO PRESENT THAT TO A
9 MAGISTRATE.

10 A. WHAT TOOK PLACE DURING THAT TIME WAS INVESTIGATION ON
11 THE INCIDENT THAT YOU'RE IN QUESTION ON. IT WAS OFFICER
12 WILBANKS THAT TOOK THE INITIAL ---

13 Q. REPORT?

14 A. --- INCIDENT.

15 Q. BUT IT WAS MAY 17TH BEFORE YOU WENT TO THE MAGISTRATE
16 AND GOT THE WARRANT, IS THAT CORRECT?

17 A. THAT'S WHEN I TOOK IT AND SIGNED IT.

18 Q. AND FROM MAY 12TH TO MAY 17TH NOBODY CONTACTED OR MR.
19 WINCHESTER HAD NO WAY OF KNOWING A COMPLAINT HAD EVEN BEEN
20 MADE?

21 A. NOT BY MY UNDERSTANDING, THAT'S NOT THE WAY IT WENT.

22 Q. AND ON MAY 17TH, 2007 CHIEF CHASTAIN WAS YOUR
23 SUPERVISOR, IS THAT RIGHT?

24 A. YES.

25 Q. AND YOU DID NOT CLEAR THIS WARRANT SERVING PROCESS WITH

MICHAEL EPPES - CROSS EXAMINATION BY MR. BURR

144

1 HIM AT ALL, DID YOU?

2 A. THAT'S NOT THE WAY IT WORKS EITHER, SIR.

3 Q. YOU TESTIFIED EARLIER THAT WHEN YOU SAW MR. WINCHESTER
4 OUT ON THE LITTLE STOOP HE HAD HIS HANDS SOMEWHERE BY HIS
5 SIDE OR BEHIND HIS BACK?

6 A. YES, TALKING ABOUT WHEN I FIRST ARRIVED.

7 Q. EVERYBODY TESTIFIES, HAS SUCH A CLEAR MEMORY OF THAT.
8 BUT I'VE ALSO ASKED EVERYBODY WHO ELSE WAS PRESENT. DO YOU
9 KNOW WHO ELSE WAS PRESENT THAT NIGHT?

10 A. OFFICER TURNER, RHUDY, TIM WITH THE SHERIFF'S OFFICE,
11 MYSELF, WHEN I ARRIVED, THE DEFENDANT, AND, OF COURSE,
12 EVERYBODY THAT WE CALLED IN ---

13 Q. I'VE SUBPOENAED THE RECORDS FROM YOUR OFFICE. A D-2
14 LONG, WHAT'S D-2 MEAN? IS THAT A CALL SIGN OR A POSITION?

15 A. THAT WOULD BE -- DID YOU SAY D-2 LONG?

16 Q. D-2 AND THE NAME LONG.

17 A. THAT POSSIBLY WOULD BE A DEPUTY.

18 Q. DO YOU REMEMBER HIM BEING PRESENT?

19 A. I DON'T RECALL.

20 Q. AND THERE'S A ---

21 A. I JUST DON'T ---

22 Q. --- D-1 PRESSLEY. DO YOU KNOW WHO PRESSLEY IS?

23 A. NOT BY NAME. NOT THAT I CAN RECALL RIGHT NOW.

24 Q. WHEN YOU ARRIVED ON THE SCENE -- YOU PROBABLY TESTIFIED
25 TO THIS. MR. WINCHESTER WAS STILL -- STILL STANDING?

MICHAEL EPPES - CROSS EXAMINATION BY MR. BURR

145

1 A. YES.

2 Q. AND IT WAS YOUR ORDER TO USE THE TASER?

3 A. I WAS -- I DID GIVE AN ORDER TO -- THAT WASN'T HEARD,
4 TO MY UNDERSTANDING. OFFICER HUNNICUTT FIRED ON HIS OWN
5 ALSO. I KNOW THE EXCITEMENT OF THE -- HUH?

6 Q. TELL ME AGAIN. DID YOU ---

7 A. I GAVE THE ORDER TO FIRE A TASER, OKAY? LATER HE SAID
8 THAT HE NEVER DID HEAR THE ORDER COME, YOU KNOW, ME TO SAY
9 GO AHEAD AND LIGHT HIM UP WITH THE TASER, BUT DID TAKE THE
10 ACTION, YOU KNOW, UPON HIMSELF BEING THE CIRCUMSTANCES.

11 Q. YOU TESTIFIED EARLIER ON DIRECT THAT THE REASON ---

12 A. WHEN I ---

13 Q. --- YOU TOLD HIM TO DO IT, YOU THOUGHT IT WAS -- THE
14 RISK WAS GETTING HIGHER?

15 A. YES. AND -- I DID FEEL THAT THE RISK WAS GETTING
16 HIGHER. ALSO OFFICER HUNNICUTT WOULD, UNDER THE PROFESSION,
17 HE EVIDENTLY FELT THE SAME WAY AND TOOK INITIATIVE TO GO
18 AHEAD AND FIRE THE TASER.

19 Q. SO NOW YOU'RE ---

20 A. SO WE BOTH ---

21 Q. --- TELLING US ---

22 A. WE BOTH -- I'M SAYING THAT ---

23 THE COURT: GENTLEMEN, LET'S LET HIM FINISH HIS ANSWER.
24 AND THEN YOU CAN ASK ANOTHER QUESTION.

25 A. I FEEL THAT WE BOTH FELT THIS SAME TENSION GOING ON

MICHAEL EPPES - CROSS EXAMINATION BY MR. BURR

146

1 THAT THE THREAT NEEDED TO BE ELIMINATED. AND HE RESPONDED
2 IN THE WAY THAT I DID GIVE THE COMMAND.

3 Q. WHERE WAS OFFICER TURNER WHEN THIS TASING WAS TAKING
4 PLACE?

5 A. HE WAS, I BELIEVE, TO THE -- I BELIEVE IT WAS TO THE
6 LEFT OF OFFICER HUNNICUTT.

7 Q. AND HE HAD MR. WINCHESTER UNDER GUN, UNDER WHATEVER IN
8 HIS AIM?

9 A. YES.

10 Q. BUT YOU STILL FELT THAT TENSIONS WERE RISING?

11 A. WELL, IT'S A LESS OF A LETHAL FORCE TO BE USED.

12 Q. AND YOU DID TESTIFY THAT YOU ENTERED THE RESIDENCE
13 LATER WITH THE CHIEF AND DEPUTY TURNER?

14 A. I DID.

15 Q. DID NOT FIND ANYTHING THAT MR. WINCHESTER WAS
16 ATTEMPTING TO HIDE?

17 A. NO, SIR.

18 Q. NO ILLEGAL ACTIVITY?

19 A. NO WHAT?

20 Q. NO ILLEGAL ACTIVITY?

21 A. NO, SIR.

22 Q. NOTHING TO CAUSE HIM TO PREVENT LAW ENFORCEMENT FROM
23 COMING IN?

24 A. NO, SIR.

25 Q. IN FACT, HE GAVE YOU PERMISSION TO GO IN ---

TIMOTHY CHASTAIN - DIRECT EXAMINATION BY MR. STOUDEMIRE

147

1 A. YES, SIR.

2 Q. --- ONCE HE KNEW YOU WERE LAW ENFORCEMENT?

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

4 THE COURT: RE-EXAM.

5 MR. STOUDEMIRE: NOTHING FURTHER, YOUR HONOR.

6 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

7 MR. STOUDEMIRE: YOUR HONOR, WE WOULD CALL CHIEF TIM
8 CHASTAIN.

9 TIMOTHY CHASTAIN, BEING
10 DULY SWORN TESTIFIED AS FOLLOWS:

11 THE COURT: IF YOU WOULD, PLEASE, SIR, GIVE US YOUR
12 FULL NAME FOR THE RECORD.

13 MR. CHASTAIN: TIMOTHY HAROLD CHASTAIN.

14 THE COURT: VERY GOOD. THANK YOU, SIR.

15 DIRECT EXAMINATION BY MR. STOUDEMIRE:

16 Q. MR. CHASTAIN, ARE YOU EMPLOYED WITH THE WALHALLA POLICE
17 DEPARTMENT?

18 A. YES, SIR.

19 Q. AND EMPLOYED THERE AS CHIEF?

20 A. YES, SIR.

21 Q. OKAY. HOW LONG HAVE YOU BEEN CHIEF OF THE WALHALLA
22 POLICE DEPARTMENT?

23 A. SIX YEARS.

24 Q. OKAY. AND PRIOR TO BEING CHIEF OF THE WALHALLA POLICE
25 DEPARTMENT WHERE WERE YOU EMPLOYED IN LAW ENFORCEMENT?

TIMOTHY CHASTAIN - DIRECT EXAMINATION BY MR. STOUDEMIRE

148

1 A. OCONEE COUNTY SHERIFF'S DEPARTMENT.

2 Q. OKAY. AND HOW LONG WERE YOU EMPLOYED WITH THE OCONEE
3 COUNTY SHERIFF'S DEPARTMENT?

4 A. I WAS THERE FOR THREE YEARS.

5 Q. OKAY. SO HOW LONG TOTAL IN LAW ENFORCEMENT DO YOU
6 HAVE?

7 A. ALMOST SIXTEEN YEARS.

8 Q. OKAY. WELL, IF YOU'VE BEEN CHIEF SIX AND WITH THE
9 SHERIFF'S DEPARTMENT THREE, THAT'S NINE. SO WHERE IS THE
10 REST OF OUR TIME?

11 A. I'VE BEEN AT THE SHERIFF'S DEPARTMENT TWICE AND CAME
12 BACK HOME TO WALHALLA THREE TIMES.

13 Q. OKAY. UNDERSTOOD. NOW THE OFFICERS THAT HAVE
14 TESTIFIED SO FAR, OFFICER TURNER, RHUDY AND EPPES WERE IN
15 THE EMPLOY OF THE WALHALLA POLICE DEPARTMENT AT THE TIME
16 THIS INCIDENT OCCURRED, IS THAT RIGHT?

17 A. YES.

18 Q. OKAY. IS IT FAIR TO SAY THEY WERE UNDER YOUR COMMAND?

19 A. YES.

20 Q. OKAY. ON THE DATE OF THIS INCIDENT, AT THE TIME OF
21 THIS INCIDENT WHO WAS ON DUTY AND IN CHARGE?

22 A. LIEUTENANT EPPES HAD BEEN IN CHARGE. AND I BELIEVE
23 OFFICER RHUDY GOT CALLED IN TO COVER FOR A SICK OFFICER.

24 Q. OKAY. WITH REGARD TO SERVING THIS WARRANT ON MR.
25 WINCHESTER WHAT'S THE USUAL POLICY WHEN A WARRANT IS SERVED

TIMOTHY CHASTAIN - DIRECT EXAMINATION BY MR. STOUDEMIRE

149

1 BY THE WALHALLA POLICE DEPARTMENT?

2 A. SERVE IT AS SOON AS POSSIBLE.

3 Q. OKAY. IS THERE ANY PROTOCOL WITH REGARD TO HOW THAT'S
4 DONE? DO YOU CALL THE PERSON FIRST OR ANYTHING LIKE THAT?

5 A. NO, SIR.

6 Q. OKAY.

7 A. I MEAN, IT DEPENDS ON THE OFFICER AND THEIR TECHNIQUE.
8 SOME OFFICERS CHOOSE TO DO THAT. WE DON'T HAVE A WARRANT
9 DIVISION. SO BASICALLY OUR OFFICERS ANSWER CALLS, SERVE
10 WARRANTS, WORK TRAFFIC. JUST WHENEVER THEY GET TIME TO
11 SERVE A WARRANT, THEY GO SERVE THE WARRANT.

12 Q. OKAY. ALL RIGHT. AND GIVEN THAT IT WAS 10:00 AT NIGHT
13 WOULD THINGS BE MORE OR LESS BUSY IN THE CITY LIMITS OF
14 WALHALLA THEN?

15 A. THAT'S YOUR PRETTY BUSY TIME IN THE EVENINGS. YES,
16 SIR.

17 Q. OKAY. SO WOULD THERE HAVE BEEN A LOT OF OFFICERS OUT
18 ON THE STREET THEN?

19 A. WE USUALLY RUN TWO OFFICERS STANDARD ON THE NIGHT
20 SHIFT.

21 Q. OKAY.

22 A. TO COVER THE WHOLE TOWN.

23 Q. OKAY. THROUGH THE WHOLE TOWN?

24 A. YES, SIR.

25 Q. OKAY. ARE TWO OFFICERS ABLE TO COVER THE WHOLE TOWN AT

TIMOTHY CHASTAIN - DIRECT EXAMINATION BY MR. STOUDEMIRE

150

1 THAT POINT?

2 A. YES.

3 Q. OKAY. HOW MANY OFFICERS TOTAL DO YOU HAVE?

4 A. FOURTEEN FULL-TIME, THREE RESERVES.

5 Q. OKAY. SO THERE'S TWO IN THE NIGHT. DID YOU SAY THAT
6 IS A BUSY TIME OR NOT?

7 A. FROM USUALLY -- FROM THREE TO ELEVEN IS THE BUSY TIME
8 OF DAY DURING -- IN WALHALLA.

9 Q. OKAY. SO WOULD IT HAVE BEEN REASONABLE TO SERVE THIS
10 WARRANT DURING THAT TIME WITH IT BEING BUSY?

11 A. YES, SIR.

12 Q. OKAY. IS IT ALSO REASONABLE TO HAVE THREE OFFICERS TO
13 GO OUT AND SERVE A WARRANT?

14 A. YES, SIR.

15 Q. OKAY. WHY WOULD YOU HAVE MORE THAN ONE OFFICER GO OUT
16 AND SERVE A WARRANT?

17 A. SAFETY.

18 Q. OKAY. WERE YOU ON DUTY ON THE EVENING OF SEPTEMBER 7TH
19 OR, EXCUSE ME, MAY 17TH, 2007?

20 A. NO, SIR.

21 Q. OKAY. HOW DID YOU COME TO BE AT MR. WINCHESTER'S HOME
22 THAT EVENING?

23 A. LIEUTENANT EPPES HAD CALLED ME AND STATED THAT THEY'D
24 WENT TO SERVE A WARRANT AND AN OFFICER HAD BEEN SHOT AT.

25 Q. OKAY. DID YOU ALREADY KNOW WHERE TO GO OR DID THEY

TIMOTHY CHASTAIN - DIRECT EXAMINATION BY MR. STOUDEMIRE

151

1 HAVE TO GIVE YOU AN ADDRESS?

2 A. OFFICER EPPES TOLD ME IT WAS AT BILL WINCHESTER'S,
3 WHICH I KNEW HIS RESIDENCE AT 803 WEST NORTH BROAD STREET.

4 Q. OKAY. AND WHEN YOU GOT TO THE SCENE WHAT DID YOU
5 OBSERVE?

6 A. PULLED UP AND OBSERVED ONE COUNTY MARKED PATROL
7 VEHICLE, TWO MARKED WALHALLA VEHICLES, EMS. AND TO THE BEST
8 OF MY RECOLLECTION WHEN I ARRIVED EMS WAS ATTENDING TO MR.
9 WINCHESTER.

10 Q. OKAY. SO THE ONE SHERIFF'S VEHICLE, THAT WOULD HAVE --
11 WOULD THAT HAVE BEEN THE ONE DRIVEN BY DEPUTY ---

12 A. OFFICER HUNNICUTT.

13 Q. --- HUNNICUTT?

14 A. YES, SIR.

15 Q. OKAY. AND THE TWO WALHALLA VEHICLES, WHO WOULD THEY
16 HAVE BELONGED TO?

17 A. OFFICER RHUDY AND OFFICER TURNER AND LIEUTENANT EPPES.

18 Q. OKAY. AND DID THAT ACCOUNT FOR ALL THE VEHICLES THERE?

19 A. I THINK THERE WERE A COUPLE OF VEHICLES BEHIND THE
20 HOUSE THAT MAY HAVE BELONGED TO MR. WINCHESTER.

21 Q. OKAY. AND UPON GETTING THERE WAS MR. WINCHESTER
22 ALREADY IN CUSTODY?

23 A. YES, SIR.

24 Q. OKAY. DID YOU ENTER THE HOME AT THAT POINT?

25 A. NOT AT THAT POINT. I CHECKED WITH THE OFFICERS TO SEE

TIMOTHY CHASTAIN - DIRECT EXAMINATION BY MR. STOUDEMIRE

152

1 THE DETAILS OF WHAT HAD HAPPENED. AND WE WERE DISCUSSING
2 WHAT CHARGE TO GO WITH.

3 Q. OKAY.

4 A. AND I VERIFIED WITH THE OFFICERS THAT THEY HAD KNOCKED
5 AND ANNOUNCED PRIOR TO THE SHOOTING.

6 Q. DID YOU SAY THEY KNOCKED AND ANNOUNCED?

7 A. I ASKED THE OFFICERS, TRYING TO DETERMINE WHAT CHARGE
8 TO USE, AND I VERIFIED WITH THEM TO MAKE SURE THAT THEY HAD
9 KNOCKED AND ANNOUNCED THAT THEY WERE THE POLICE THERE TO
10 SERVE A WARRANT.

11 Q. OKAY. WERE ---

12 A. AND THEY DID.

13 Q. --- YOU ABLE TO VERIFY THAT?

14 A. YES, SIR.

15 Q. OKAY. AND SUBSEQUENTLY THIS CHARGE CAME OUT OF ---

16 A. YES.

17 Q. --- THAT? ALL RIGHT. WHEN DID YOU ENTER THE
18 RESIDENCE?

19 A. I BELIEVE MR. WINCHESTER WAS BEING LOADED INTO THE
20 AMBULANCE. ABOUT THE TIME HE WAS BEING TAKEN TO THE
21 AMBULANCE MR. EPPES HAD ASKED FOR PERMISSION TO GO INTO THE
22 HOUSE. AND WE ENTERED THERE SHORTLY AFTER.

23 Q. OKAY. WHO ENTERED THE HOUSE?

24 A. MYSELF, LIEUTENANT EPPES AND OFFICER TURNER.

25 Q. OKAY. IMMEDIATELY UPON ENTERING THE HOUSE WHAT DID YOU

TIMOTHY CHASTAIN - DIRECT EXAMINATION BY MR. STOUDEMIRE

153

1 DO FIRST?

2 A. CHECKED THE HOUSE FOR ANY OTHER SUSPECTS, PRETTY MUCH
3 DONE A PROTECTIVE SWEEP JUST TO MAKE SURE THERE WAS NOBODY
4 ELSE IN THE HOUSE.

5 Q. OKAY. AND WAS THERE ANYBODY ELSE IN THE HOUSE?

6 A. NO, SIR.

7 Q. WHAT DID YOU FIND IN THE HOUSE?

8 A. WALKED TO THE BEDROOM AND THERE WAS A .22 MAGNUM LAYING
9 ON THE BED.

10 Q. OKAY. WHEN YOU WENT IN THE BEDROOM WAS THE TELEVISION
11 ON?

12 A. I DON'T RECALL.

13 Q. OKAY. WAS THERE A FAN IN THE ROOM THAT YOU RECALL?

14 A. I DON'T RECALL THAT EITHER, SIR.

15 Q. OKAY. ALL RIGHT.

16 MR. STOUDEMIRE: YOUR HONOR, PERMISSION TO APPROACH THE
17 WITNESS.

18 THE COURT: YES, SIR.

19 Q. CHIEF, I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
20 STATE EXHIBIT NUMBER 6. WOULD YOU OPEN THAT UP AND IDENTIFY
21 IT FOR ME?

22 A. IT'S A .22 CALIBER REVOLVER, SIX SHOT.

23 Q. OKAY. AND IS THAT THE SIX SHOT REVOLVER THAT WAS
24 RECOVERED FROM MR. WINCHESTER'S HOUSE?

25 A. YES, SIR.

1 Q. OKAY. I'M GOING TO ALSO SHOW YOU WHILE YOU'VE GOT THAT
2 WHAT'S BEEN ENTERED AS STATE'S EXHIBIT NUMBER 1. DOES THAT
3 LOOK TO BE A PICTURE OF THE SAME WEAPON?

4 A. YES, SIR, IT IS WHERE WE FOUND THE WEAPON. AND THAT'S
5 -- THE PICTURE WAS TAKEN BEFORE WE EVER TOUCHED IT.

6 Q. OKAY. AND IS THAT YOUR HANDWRITING ON THE EVIDENCE
7 TAG?

8 A. YES, SIR, IT IS.

9 Q. OKAY. AND IS THERE A SERIAL NUMBER LOCATED ON THE
10 EVIDENCE TAG?

11 A. YES.

12 Q. AND DOES THAT SERIAL NUMBER MATCH THE SERIAL NUMBER
13 THAT'S LOCATED ON THE WEAPON ITSELF?

14 A. YES, 66-09107.

15 Q. OKAY.

16 MR. STOUDEMIRE: YOUR HONOR, AT THIS TIME WE WOULD MOVE
17 TO HAVE STATE'S EXHIBIT NUMBER 6 ENTERED INTO EVIDENCE.

18 THE COURT: OKAY.

19 (WHEREUPON STATE'S EXHIBIT 6 WAS ENTERED INTO EVIDENCE)

20 Q. AND WHEN YOU GOT THIS WEAPON OFF THE BED WAS IT LOADED
21 OR UNLOADED?

22 A. IT WAS LOADED.

23 Q. OKAY. AND WHO UNLOADED THE WEAPON?

24 A. OFFICER EPPES.

25 Q. AND HOW MANY ROUNDS WERE FOUND IN THE WEAPON?

TIMOTHY CHASTAIN - CROSS EXAMINATION BY MR. BURR

155

1 A. FIVE LIVE ROUNDS, ONE SPENT ROUND.

2 Q. AND IS THIS .22 CALIBER PISTOL WE'RE TALKING ABOUT, IS
3 THAT A SIX SHOT REVOLVER?

4 A. YES, SIR.

5 Q. AND JUST TO VERIFY, I'M GOING TO SHOW YOU WHAT'S BEEN
6 ENTERED AS STATE'S NUMBER 5. ARE THOSE THE ROUNDS THAT WERE
7 TAKEN FROM THE GUN?

8 A. THAT APPEARS TO BE THE ROUNDS, YES, SIR.

9 Q. OKAY. AND THESE ARE -- THESE ARE ROUNDS THAT WOULD FIT
10 INTO THAT PISTOL?

11 A. YES, SIR.

12 Q. ALL RIGHT. AND AFTER SECURING THE SCENE AND OBTAINING
13 EVIDENCE WHAT ELSE DID YOU DO AT THE SCENE THAT EVENING?

14 A. RECOVERED SOME LONG RIFLES AND A SHOTGUN. AND I
15 ENTERED THEM ALSO AT THE OFFICE IN SAFEKEEPING.

16 Q. OKAY.

17 A. SECURED THE HOUSE AND LEFT THE SCENE.

18 Q. OKAY. THAT'S ALL THE QUESTIONS I WOULD HAVE. PLEASE
19 ANSWER ANY QUESTIONS ---

20 THE COURT: CROSS EXAM.

21 MR. BURR: MAY IT PLEASE THE COURT, YOUR HONOR?

22 CROSS EXAMINATION BY MR. BURR:

23 Q. CHIEF, THOSE OTHER WEAPONS THAT YOU CONFISCATED, THOSE
24 WERE COMPLETELY LEGAL ---

25 A. YES.

TIMOTHY CHASTAIN - CROSS EXAMINATION BY MR. BURR

156

1 Q. --- FOR MR. CHASTAIN [SIC] TO HAVE ---

2 A. YES.

3 Q. CONFUSED ON ONE POINT, YOU JUST TESTIFIED ON DIRECT, A
4 RESPONSE TO THE PROSECUTOR'S QUESTION, THAT THREE TO SEVEN
5 IS A BUSY TIME OF THE EVENING, BUT A REASONABLE TIME TO
6 SERVE A WARRANT?

7 A. YES, SIR. IT'S A BUSY TIME AS FAR AS TWO OFFICERS
8 TRYING TO DO WHAT DAY SHIFT DOES WITH FOUR OFFICERS.

9 Q. AND I WAS JUST LOOKING AT YOUR DUTY ROSTER HERE.
10 DURING THE DAYTIME YOU WOULD HAVE AT LEAST TWICE THE NUMBER
11 OF OFFICERS AVAILABLE, ---

12 A. YES, SIR.

13 Q. --- WOULD YOU NOT?

14 A. YES, SIR.

15 Q. THAT WOULD BE A MORE REASONABLE TIME TO SERVE THE
16 WARRANTS, ---

17 A. YES, SIR.

18 Q. --- WOULDN'T IT? CHIEF, I'VE INTERVIEWED -- YOU
19 REFERENCED THIS RECENTLY, AND YOU DID TELL ME, YOU'VE KNOWN
20 MR. WINCHESTER YOUR ENTIRE LIFE?

21 A. YES, SIR, SINCE THE DAY I WAS IN THE HOSPITAL BORN.

22 Q. THAT'S WHAT YOU TOLD ME. YOU AND HIS SON WERE BORN AT
23 THE SAME TIME, SAME HOSPITAL.

24 A. YES.

25 Q. I THINK YOU ALSO TOLD ME THAT YOU HAVE NO REASON TO

TIMOTHY CHASTAIN - REDIRECT EXAMINATION BY MR. STOUDEMIRE

157

1 DOUBT HE WOULD HAVE COME DOWN TO YOUR OFFICE HAD YOU CALLED
2 HIM?

3 A. YES.

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

5 REDIRECT EXAMINATION BY MR. STOUDEMIRE:

6 Q. JUST BECAUSE HE MIGHT HAVE COME DOWN TO THE POLICE
7 DEPARTMENT FOR YOU, DOES THAT MEAN HE WOULD AUTOMATICALLY
8 COME DOWN TO THE POLICE DEPARTMENT FOR SOMEBODY ELSE?

9 A. I DON'T KNOW.

10 Q. OKAY. WHETHER HE WOULD OR HE WOULDN'T, DOES THAT GIVE
11 HIM THE RIGHT TO FIRE A WEAPON OUT OF HIS WINDOW AT AN
12 OFFICER?

13 A. ABSOLUTELY NOT.

14 Q. OKAY. AND WHETHER OR NOT IT IS A BUSY TIME TO SERVE A
15 WARRANT OR NOT A BUSY TIME TO SERVE A WARRANT, IS THERE ANY
16 SORT OF RULE THAT A WARRANT CAN AND CANNOT BE SERVED DURING
17 CERTAIN HOURS OF THE DAY?

18 A. NO, SIR.

19 Q. OKAY. THANK YOU THEN. THAT'S ALL I'D HAVE.

20 MR. BURR: I HAVE NOTHING, YOUR HONOR.

21 THE COURT: YOU MAY STEP DOWN. THANK YOU, SIR. CALL
22 YOUR NEXT WITNESS.

23 MR. STOUDEMIRE: YOUR HONOR, THAT IS ALL OF THE STATE'S
24 WITNESSES. WE WOULD REST AT THIS TIME AND, OF COURSE,
25 RESERVING THE RIGHT TO ---

1 **THE COURT:** ALL RIGHT. MR. FOREMAN, LADIES AND
2 GENTLEMEN OF THE JURY, THE STATE HAS NOW RESTED. SO I'M
3 GOING TO HAVE SOME MATTERS TO TAKE UP WITH THE ATTORNEYS
4 BEFORE WE PROCEED. SO I'M GOING TO ASK YOU TO RETIRE TO THE
5 JURY ROOM. WHY DON'T WE TAKE -- DO THEY HAVE SOME
6 REFRESHMENTS THERE?

7 **THE BAILIFF:** YES, SIR.

8 **THE COURT:** OH, I SEE. TAKE THIS AS YOUR AFTERNOON
9 BREAK. AND THEN WHEN YOU'RE READY TO COME BACK JUST KNOCK
10 ON THE DOOR AND WE'LL PROCEED. AGAIN, DO NOT UNDERTAKE THE
11 DISCUSSION OF THE CASE AMONG YOURSELVES. THANK YOU VERY
12 MUCH.

13 (WHEREUPON THE JURY EXITED THE COURTROOM AT 2:38 PM)

14 **THE COURT:** ALL RIGHT. ANYTHING ELSE FROM THE STATE?

15 **MR. STOUDEMIRE:** NOTHING AT THIS TIME, YOUR HONOR.

16 **THE COURT:** ANYTHING FROM THE DEFENSE?

17 **MR. BURR:** YOUR HONOR, WE WOULD MOVE FOR A DIRECTED
18 VERDICT AT THIS POINT. INSUFFICIENT EVIDENCE TO SHOW THE
19 MENS REA OR INTENT OF MR. WINCHESTER TO VIOLATE THE STATUTE.

20 **THE COURT:** WELL, UNLIKE SOME OF THE OTHER STATUTES, I
21 THINK 16-9-320 (A) AND (B) WHETHER YOU HAVE A KNOWING AND
22 WILLINGLY -- WILFULLY ACTION, THERE IS NO REQUIREMENT OR --
23 UNDER THIS PARTICULAR STATUTE, 16-3-625, A PERSON WHO
24 RESISTS THE LAWFUL EFFORTS OF A LAW ENFORCEMENT OFFICER TO
25 ARREST HIM WITH THE USE OR THREAT OF USE OF A DEADLY WEAPON

1 AGAINST THE OFFICER AND THE PERSON IS IN POSSESSION OR
2 CLAIMS TO BE IN POSSESSION OF A DEADLY WEAPON IS GUILTY OF A
3 FELONY.

4 I FIND THERE'S SUFFICIENT EVIDENCE TO GO TO THE JURY ON
5 THE STATUTE. BY THE WAY, ALSO AS YOU KNOW, DEADLY WEAPON IS
6 DEFINED AS -- MEANS ANY INSTRUMENT WHICH CAN BE USED TO
7 INFLECT DEADLY FORCE. ALL RIGHT.

8 MR. BURR: THANK YOU, YOUR HONOR.

9 THE COURT: VERY GOOD. MOTION DENIED. ALL RIGHT. HOW
10 MANY WITNESSES DO YOU HAVE ---

11 MR. BURR: YOUR HONOR, I HAVE ONE ISSUE WE MAY TAKE UP
12 TO SAVE TIME. I ANTICIPATE CALLING CAPTAIN CRENSHAW FROM
13 THE SHERIFF'S OFFICE. AND ON THE NIGHT OF THIS INCIDENT ---

14 THE COURT: IS THAT CAPTAIN MIKE CRENSHAW?

15 MR. BURR: YES, SIR.

16 THE COURT: OKAY.

17 MR. BURR: HE WAS WORKING A MOONLIGHTING POSITION OR A
18 SECOND JOB AT THE HOSPITAL WHEN MR. WINCHESTER WAS BROUGHT
19 IN. HE KNEW MR. WINCHESTER FROM SOME PREVIOUS EXPERIENCE,
20 WAS NOT QUESTIONING HIM AS LAW ENFORCEMENT, BUT WHEN HE SAW
21 HIM, SIMPLY SPOKE TO HIM. AND IMMEDIATELY MR. WINCHESTER IN
22 AN EXCITED UTTERANCE SPOKE OUT TO HIM, I DID NOT KNOW LAW
23 ENFORCEMENT WAS OUTSIDE. I WOULD LIKE TO HAVE HIM TESTIFY
24 TO THAT UNDER 803(2), YOUR HONOR.

25 MR. STOUDEMIRE: AND, YOUR HONOR, I WOULD OBJECT TO

GEORGE BRUCE, M.D. - DIRECT EXAMINATION BY MR. BURR

174

1 A. YES. I AM EMPLOYED BY THE OCONEE ORTHOPAEDIC CLINIC,

2 P. A.

3 Q. AND YOUR EDUCATIONAL BACKGROUND?

4 A. I AM A ORTHOPAEDIC SURGEON WITH COLLEGE FROM THE
5 CITADEL, MEDICAL COLLEGE, AND MEDICAL COLLEGE OF THE SOUTH
6 CAROLINA IN CHARLESTON, INTERNSHIP IN ATLANTA, SERVED IN THE
7 U.S. AIR FORCE AND SCHOOL OF AEROSPACE MEDICINE, FOUR YEARS
8 AS A ORTHOPAEDIC RESIDENT, AND I'M BOARD CERTIFIED IN
9 ORTHOPAEDIC SURGERY.

10 MR. STOUDEMIRE: CERTAINLY NOT TO INTERRUPT, MR. BURR,
11 BUT WE WOULD STIPULATE THAT DR. BRUCE IS QUALIFIED AS AN
12 EXPERT IN THE FIELD OF ORTHOPAEDIC SURGERY IF IT'LL MOVE
13 THINGS ALONG.

14 MR. BURR: AND IT WOULD, YOUR HONOR.

15 THE COURT: VERY GOOD. ALL RIGHT. MR. FOREMAN, LADIES
16 AND GENTLEMEN OF THE JURY, NORMALLY WITNESSES ARE NOT
17 PERMITTED TO TESTIFY TO ANYTHING OTHER THAN WHAT THEY KNOW
18 OF THEIR OWN KNOWLEDGE. IN OTHER WORDS, WHAT THEY RECEIVE
19 AND ACCUMULATE BY REASONABLE EXERCISE OF THEIR SENSES SUCH
20 AS WHAT THEY SEE, THEY HEAR AND THINGS OF THAT NATURE.

21 HOWEVER, IF A WITNESS BY REASON OF THEIR TRAINING,
22 BACKGROUND OR EXPERIENCE HAVE EXPERTISE OR INFORMATION OR
23 LEARNING IN A CERTAIN AREA, A PARTICULAR AREA AND THEY'RE
24 QUALIFIED AS AN EXPERT IN THAT AREA, THEN THEY ARE NOT ONLY
25 PERMITTED TO GIVE WHAT THEY KNOW OF THEIR OWN KNOWLEDGE, BUT

GEORGE BRUCE, M.D. - DIRECT EXAMINATION BY MR. BURR

175

1 ALSO GIVE YOU THE BENEFIT OF THEIR OPINIONS WHEREAS NORMALLY
2 WITNESSES ARE NOT PERMITTED TO TESTIFY TO OPINIONS.
3 HOWEVER, REMEMBER ON EXPERT TESTIMONY, JUST LIKE ANY OTHER
4 WITNESS' TESTIMONY, IS FOR YOUR EVALUATION. YOU MAY
5 PROCEED.

6 MR. BURR: THANK YOU, YOUR HONOR.

7 Q. DR. BRUCE, AT MY REQUEST, DID YOU REVIEW ALL THE PAST
8 AND CURRENT MEDICAL RECORDS OF MR. WINCHESTER?

9 A. YES, SIR. I'VE REVIEWED ALL THAT WAS GIVEN TO ME.

10 Q. AND YOU'VE ALSO LISTENED TO THE MAJORITY OF THE
11 TESTIMONY HERE TODAY?

12 A. THAT'S CORRECT.

13 Q. BEEN PRIVY TO THE INCIDENT REPORT?

14 A. THAT'S CORRECT.

15 Q. WERE YOU ABLE TO OBTAIN THE X-RAYS THAT WERE ACTUALLY
16 TAKEN AT THE EMERGENCY ROOM THE NIGHT OF THE INCIDENT OF MR.
17 WINCHESTER?

18 A. YES, SIR, I DID.

19 Q. WOULD YOU PLEASE SHOW, EXPLAIN THOSE X-RAYS TO THE
20 JURY?

21 A. X-RAYS TAKEN IN THE EMERGENCY ROOM THE NIGHT HE WAS
22 BROUGHT IN CONSISTED OF THREE SEPARATE LEVELS OF THE SPINE,
23 THE CERVICAL, THE THORACIC AND THE LUMBAR. THE CERVICAL AND
24 THORACIC WAS COMPLETELY WITHIN NORMAL LIMITS AS FAR AS NO
25 EVIDENCE OF FRACTURE, NO EVIDENCE OF PREVIOUS SURGERY, NO

GEORGE BRUCE, M.D. - DIRECT EXAMINATION BY MR. BURR

176

1 EVIDENCE OF PREVIOUS INVOLVEMENT.

2 THE X-RAYS I'M GOING TO SHOW YOU INVOLVES THE LUMBAR X-
3 RAYS. AS YOU CAN SEE, HIS ENTIRE LOWER LUMBAR SPINE IS
4 COMPLETELY FIXED WITH METAL. FOUR -- THE BOTTOM FOUR
5 VERTEBRAE IN HIS BACK ARE COMPLETELY FUSED AND HELD WITH
6 THESE BIG SCREWS. SO HE HAS BASICALLY NO MOVEMENT IN HIS
7 LOWER PART OF HIS BACK, ANY BASIC USEFUL MEANS.

8 AND THIS IS LOOKING AT IT FROM THE FRONT. THE OTHER
9 ONE WAS LOOKING AT IT FROM THE SIDE. THIS PRETTY MUCH
10 CONCLUDES WHAT WE HAVE HERE.

11 Q. OKAY. AND BASED ON YOUR VIEW OF HIS MEDICAL RECORDS
12 COULD YOU DETERMINE HOW MANY SURGERIES, BACK SURGERIES HE'S
13 HAD?

14 A. WELL, ACCORDING TO THE MEDICAL RECORDS THAT I HAVE HE
15 HAS HAD FIVE BACK OPERATIONS. THE FIRST OPERATION I
16 PERFORMED IN 1986, WHICH HE HAD A RUPTURED DISK.

17 AFTER THAT PERIOD OF TIME HE BEGAN TO DEVELOP ARTHRITIC
18 CHANGES ALSO IN HIS JOINTS, WHICH LED TO A FUSION OF HIS
19 BACK. THE FUSION HELD FOR A SHORT PERIOD OF TIME AND THEN
20 BROKE DOWN.

21 AND HE HAD TO HAVE A SECOND FUSION SEVEN YEARS LATER.
22 THIS LASTED FOR ABOUT SEVEN OR EIGHT MORE YEARS. AND THEY
23 BEGAN TO GET LOOSE. AND AT THAT POINT HE HAD ADDITIONAL
24 FUSION OF HIS SURGERY OF HIS BACK, WHICH LASTED ONLY ABOUT
25 SIX MONTHS.

GEORGE BRUCE, M.D. - DIRECT EXAMINATION BY MR. BURR

177

1 AND THE BONES GOT LOOSE AGAIN REQUIRING THE LAST
2 SURGERY, WHICH THE BEST I CAN TELL WAS PERFORMED APRIL 2005
3 ON HIS BACK.

4 Q. PHASE TWO, IS THAT PHRASED IN THE MEDICAL RECORDS --
5 ARE YOU ABLE TO DETERMINE TO ANY MEDICAL CERTAINTY WHAT HIS
6 ABILITY TO GET AROUND AND MOVE UNASSISTED WOULD BE ON MAY
7 17TH, 2007?

8 A. HE WOULD HAVE CONSIDERABLE DIFFICULTY WITH ANY TYPE OF
9 STRENGTH OR STAMINA IN HIS LOW BACK. SECONDARILY NOT ONLY
10 TO THE LACK OF MOVEMENT YOU CAN SEE, BUT ALSO THE PAIN THAT
11 IS PRESENT WITH HIS MOVEMENT. THAT DOESN'T MEAN HE COULDN'T
12 SHUFFLE, COULDN'T POSSIBLY, YOU KNOW, STAND, MAYBE EVEN WALK
13 UNASSISTED, BUT I WOULD EXPECT HIM TO BE KIND OF HOLDING
14 ONTO SOMETHING AS HE MOVES MOST OF THE TIME BECAUSE AN
15 AWKWARD MOVE IS GOING TO CAUSE TREMENDOUS AMOUNT OF PAIN IN
16 HIS BACK IN MY OPINION.

17 Q. AND CAN YOU PREDICT ANY CERTAINTY WHAT HIS ABILITY TO
18 GO FROM A STANDING UPRIGHT POSITION TO LYING DOWN ON THE
19 GROUND?

20 A. THAT WOULD TAKE HIM SOME DOING. HE WOULD HAVE TO GO
21 DOWN ON THE KNEE AND THEN FORWARD. HE COULD NOT JUST FALL
22 FLAT DOWN ON HIS FACE.

23 Q. OKAY. YOU'VE ALSO REVIEWED ALL THE MEDICAL RECORDS
24 FROM THE EMERGENCY ROOM THE NIGHT OF THE INCIDENT?

25 A. THAT IS CORRECT, SIR.

GEORGE BRUCE, M.D. - DIRECT EXAMINATION BY MR. BURR

178

1 Q. DID HE HAVE ANY ADDITIONAL INJURIES?

2 A. YES, SIR. HE HAD -- HE WAS SEEN AT THAT TIME BY THE --
3 HE WAS EXAMINED BY TWO SEPARATE PEOPLE. EMS WAS THE FIRST
4 ONE. THESE ARE THE FIRST RESPONDERS. THESE ARE THE ONES
5 THAT COME ON THE AMBULANCE TO LOOK AT HIM INITIALLY.

6 AT THAT TIME HE WOULD SEEM TO HAVE AN ABRASION ON THE
7 LEFT SIDE OF HIS FOREHEAD, A CONTUSION TO THE LEFT SHOULDER.
8 AND IT WAS MORE CONSIDERED POSTERIOR, BEHIND THE SHOULDER
9 THAN IT WAS IN FRONT. HE WAS ALSO NOTED BY THE -- BY THE
10 EMS TO HAVE TASER -- TWO TASER MARKS, ONE ON THE LEFT UPPER
11 CHEST AND ONE ON THE ABDOMEN.

12 WHEN HE GOT TO THE EMERGENCY ROOM HE WAS FURTHER
13 EVALUATED BY DR. BARTON, WHO'S A EMS PHYSICIAN. SHE
14 COMPLAINED -- SHE NOTED HE HAD THE INJURY TO THE FACE, A
15 CONTUSION TO THE LEFT SHOULDER AND TWO TASER BURNS ON THE
16 ABDOMEN. ONE ON THE CHEST AND NOW TWO ON THE ABDOMEN BY THE
17 RECORDS.

18 THE -- AND THIS IS NOT UNUSUAL. YOU HAVE THE EMS WHEN
19 THEY RESPOND ON THE SCENE. THEY'RE MORE THAN LIKELY MORE
20 INTERESTED IN THE CHEST THAN THEY ARE ANYTHING ELSE BECAUSE
21 THEY ALL IMMEDIATELY WANT TO WORRY ABOUT THE HEARTBEAT, THE
22 BLOOD PRESSURE, THE RESPIRATIONS AND ALL THIS KIND OF STUFF.
23 SO THEY WERE LOOKING MORE THERE AT THAT TIME. AND THAT'S
24 BASICALLY WHAT WE SEE AT THIS POINT IN TIME, SIR.

25 Q. ARE THOSE RECORDS IN YOUR VIEW CONSISTENT WITH THE

GEORGE BRUCE, M. D. - CROSS EXAMINATION BY MR. STOUDEMIRE

179

1 TESTIMONY YOU'VE HEARD TODAY OF MR. WINCHESTER SIMPLY
2 FALLING FACE DOWN ON THE PAVEMENT?

3 A. WELL, BASICALLY HE FELL WHEN HE WAS TASERED. HE FELL
4 AND BASICALLY MADE -- RENDERED UNABLE TO STAND. AND HE
5 DIDN'T HAVE THAT GOOD OF ABILITY TO STAND ANYWAY. SO WHEN
6 HE WAS -- WHEN HE WAS HIT HE'S GOING TO FALL FORWARD AT THIS
7 POINT AND TIME. AND THAT'S WHEN HE COULD HAVE HIT HIS HEAD
8 AT THAT POINT IN TIME. WE DON'T KNOW HOW FAR HE DID FALL.
9 AND HE WOULD FALL TRYING TO CATCH HIMSELF WITH HIS HANDS
10 UNDERNEATH HIM WHEN HE WENT DOWN 'CAUSE HE'S GOING TO BE
11 SEMI-PARALYZED.

12 Q. AND WOULD THESE CONDITIONS ALSO HAVE AN EFFECT ON HIS
13 ABILITY TO RESIST -- RESIST ARREST AS WE'VE HEARD REFERENCE
14 TO?

15 A. YES, SIR. AFTER THE TASER'S SHOT YOU'RE NOT IN CONTROL
16 FOR A WHILE.

17 Q. OKAY.

18 MR. BURR: I HAVE NO FURTHER QUESTIONS, YOUR HONOR, AT
19 THIS TIME.

20 MR. STOUDEMIRE: THANK YOU.

21 CROSS EXAMINATION BY MR. STOUDEMIRE:

22 Q. DR. BRUCE, WHEN YOU SAY YOU'RE NOT IN CONTROL FOR A
23 WHILE AFTER A TASER SHOT, WHAT DOES FOR A WHILE MEAN?

24 A. EVERYONE IS INDIVIDUAL, SIR. IT JUST DEPENDS ON HOW
25 ACTIVE YOUR NERVOUS SYSTEM IS TO RESPOND TO -- TO REGROUP

GEORGE BRUCE, M. D. - CROSS EXAMINATION BY MR. STOUDEMIRE

180

1 FROM THE TIME OF BEING SHOCKED.

2 Q. OKAY. AND BASED ON THE MEDICAL RECORDS YOU'VE SEEN AT
3 THIS POINT YOU'RE NOT ABLE TO DETERMINE THAT FROM WHAT
4 YOU'VE SEEN WHAT MR. WINCHESTER'S ABILITY TO RESPOND WOULD
5 BE, IS THAT ---

6 A. NO, SIR.

7 Q. --- FAIR TO SAY?

8 A. NO, SIR.

9 Q. OKAY. SO, I MEAN, IT COULD HAVE BEEN HE COULD HAVE
10 RESPONDED IN A FEW SECONDS, IT COULD HAVE BEEN A FEW
11 MINUTES, JUST DON'T KNOW?

12 A. EVERYTHING IS POSSIBLE.

13 Q. OKAY. NOW WITH REGARD TO THE BACK INJURIES THAT HE HAD
14 YOU SAID THERE'S NO -- ON THE X-RAYS AND THE MEDICAL RECORDS
15 YOU EXAMINED THERE WAS NO PROBLEM WITH HIS UPPER BACK,
16 CORRECT?

17 A. THAT IS CORRECT, SIR, NOT ANYTHING INVOLVED IN THIS
18 PARTICULAR EVENT. HE HAS SOME ARTHRITIS OVER ALL OF HIS
19 SPINE, ---

20 Q. OKAY.

21 A. --- BUT NOT INVOLVED IN THIS.

22 Q. OKAY. SO THE PROBLEMS BASICALLY CENTER AROUND HIS
23 LUMBAR REGION OR HIS LOWER BACK, IS THAT FAIR TO SAY?

24 A. THAT IS CORRECT, SIR.

25 Q. OKAY. BUT YOU SAID ON THE DATE WE'RE TALKING ABOUT

GEORGE BRUCE, M. D. - CROSS EXAMINATION BY MR. STOUDEMIRE

181

1 HERE, BACK ON MAY 17TH OF '07 HE DID HAVE THE ABILITY TO
2 WALK OR AT LEAST SHUFFLE AROUND ---

3 A. HE COULD HAVE, YES, SIR.

4 Q. OKAY. OKAY. BUT MOST LIKELY HE WOULD HAVE NEEDED TO
5 PUT HIS ARMS OUT TO HOLD ONTO SOMETHING?

6 A. AS A RULE, I EXPECT HE WOULD DO THAT EVERY DAY. HE
7 WOULD ALSO -- THERE WERE TIMES THROUGH HIS MEDICAL RECORDS,
8 JUST VERY BRIEFLY BEFORE THAT HE WAS ACTUALLY IN A
9 WHEELCHAIR WHEN HE WAS SEEN BY OTHER PHYSICIANS. SO HE WAS
10 IN A WHEELCHAIR, ON CRUTCHES, HOLDING AND SHUFFLING. SO HE
11 DID SOME OF ALL OF IT.

12 Q. OKAY. BUT HE HAD THE -- BASED ON WHAT YOU'VE SEEN
13 WOULD HE HAVE HAD THE ABILITY TO STAND WITHOUT BRACING
14 HIMSELF ON SOMETHING FOR A BRIEF PERIOD OF TIME?

15 A. FOR A BRIEF PERIOD OF TIME, I WOULD EXPECT THAT.

16 Q. OKAY. SO IT'S MORE -- HIS BACK IS -- EVEN GIVEN THE
17 INJURIES IT'S AT LEAST PARTIALLY A STAMINA AND A STRENGTH
18 ISSUE WITH HIS LOWER BACK?

19 A. CORRECT. HE'S GOING TO BE EXTREMELY WEAK AND HE'S
20 GOING TO BE PAIN SENSITIVE.

21 Q. OKAY. BUT NONE OF THIS AFFECTS HIS ABILITY TO FIRE A
22 GUN OR USE HIS HANDS?

23 A. NO, SIR.

24 Q. NONE OF THIS AFFECTS HIS HEARING OR HIS EYESIGHT IN ANY
25 WAY?

1 A. NOT UNLESS HE WAS TAKING MEDICATION.

2 Q. OKAY. AND BASED ON THE RECORDS YOU'VE SEEN YOU DON'T
3 HAVE ANY -- YOU DON'T HAVE ANY INDICATION THAT HE WAS TAKING
4 SOME SORT OF MEDICATION THAT WOULD AFFECT HIS EYESIGHT ---

5 A. THAT'S NOT IN THE RECORDS, NO, SIR.

6 Q. OKAY. AND THE POSTERIOR INJURY TO THE SHOULDER, IS IT
7 POSSIBLE THAT WHEN AN OFFICER WAS TRYING TO GET HIS LEFT ARM
8 OUT THAT HE COULD HAVE PUT A HAND ON MR. WINCHESTER'S
9 SHOULDER AND HIS OTHER HAND TO TRY TO GET HIS HAND OUT FROM
10 UNDERNEATH HIM?

11 A. THAT IS POSSIBLE.

12 Q. COULD THAT HAVE CAUSED A BRUISE?

13 A. I WOULDN'T EXPECT IT TO CAUSE A REAL BRUISE, BUT HE
14 COULD HAVE A RED SPOT THERE.

15 Q. OKAY.

16 A. THEY REALLY COMPLAINED OF A BRUISE ALMOST LIKE HE HAD
17 FALLEN AND HIT.

18 Q. OKAY.

19 A. NOT JUST PUTTING A HAND DOWN AND TRYING TO GET AN ARM
20 OUT.

21 Q. OKAY. OKAY. BUT WE DON'T KNOW WHAT THAT WAS -- WHAT
22 THAT WOULD HAVE BEEN FROM?

23 A. THAT IS CORRECT, SIR.

24 Q. OKAY. ALL RIGHT. THAT'S ALL I'D HAVE. THANK YOU.

25 THE COURT: RE-EXAMINE.

BETTY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

183

1 MR. BURR: I HAVE NO FOLLOW-UP, YOUR HONOR.

2 THE COURT: ALL RIGHT. VERY GOOD. DOCTOR, THANK YOU
3 VERY MUCH. MAY THE WITNESS BE EXCUSED?

4 MR. STOUDEMIRE: NO OBJECTION.

5 MR. BURR: YES, YOUR HONOR.

6 THE COURT: WITHOUT OBJECTION, YOU MAY BE EXCUSED. ALL
7 RIGHT. YOU MAY CALL YOUR NEXT WITNESS.

8 MR. BURR: YOUR HONOR, AS OUR NEXT WITNESS WE'D CALL
9 MS. BETTY WINCHESTER.

10 THE COURT: WELL, DOCTOR, YOU NEED TO PICK UP YOUR ...

11 DR. BRUCE: CAN I TAKE THAT BACK?

12 THE COURT: YES, SIR. LET'S DO ...

13 (PAUSE)

14 DR. BRUCE: THANK YOU, YOUR HONOR.

15 THE COURT: YES, SIR.

16 BETTY WINCHESTER, BEING
17 DULY SWORN TESTIFIED AS FOLLOWS:

18 THE COURT: IF YOU WOULD, PLEASE, GIVE US YOUR NAME FOR
19 THE RECORD.

20 MS. WINCHESTER: BETTY WINCHESTER.

21 THE COURT: VERY GOOD. THANK YOU, MA'AM.

22 MR. BURR: MAY IT PLEASE THE COURT, YOUR HONOR?

23 THE COURT: CERTAINLY.

24 DIRECT EXAMINATION BY MR. BURR:

25 Q. MS. WINCHESTER, WOULD YOU PLEASE STATE YOUR CURRENT

BETTY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

1 PLACE OF EMPLOYMENT?

2 A. OCONEE COUNTY SHERIFF'S OFFICE.

3 Q. AND WHAT CAPACITY?

4 A. I'M A SECRETARY IN THE CRIMINAL INVESTIGATIONS
5 DIVISION.

6 Q. DO YOU KNOW THE DEFENDANT, BILLY WINCHESTER?

7 A. I DO.

8 Q. WHAT IS YOUR RELATION TO MR. WINCHESTER?

9 A. HE IS MY BROTHER'S -- MY HUSBAND'S BROTHER. I'M SORRY.

10 Q. MS. WINCHESTER, I'D LIKE TO SHOW YOU WHAT'S PREVIOUSLY
11 BEEN MARKED AS DEFENSE EXHIBIT 11 FOR IDENTIFICATION. IT'S
12 A DIAGRAM PREPARED FOR THIS HEARING. IF YOU WOULD, LOOK AT
13 THAT AND SEE IF YOU CAN IDENTIFY THAT FLOOR PLAN.

14 A. YES, THIS LOOKS LIKE BILL'S HOUSE.

15 Q. AND HOW MANY TIMES HAVE YOU HAD OCCASION TO BE IN THAT
16 HOUSE?

17 A. NUMEROUS OVER THE YEARS. HE'S LIVED THERE FOR A GOOD
18 WHILE. AND I HAVE BEEN IN THE HOUSE MANY TIMES.

19 Q. IS THERE ANYTHING UNIQUE ABOUT THE PARTIAL USE OF THE
20 HOUSE?

21 A. HE ONLY USES TWO ROOMS NOW BECAUSE OF HEATING.

22 Q. AND WHICH -- WHAT PORTION OF THE HOUSE IS THAT IN?

23 A. THAT IS IN THE BACK SIDE OF THE HOUSE.

24 Q. SO IS THE FRONT SIDE USED AT ALL?

25 A. NO.

BETTY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

185

1 Q. HAVE YOU EVER HAD OCCASION TO VISIT MR. WINCHESTER AND
2 NOT BE ABLE TO, WHEN YOU KNOW HE'S INSIDE, TO NOT BE ABLE TO
3 GET HIM TO THE DOOR?

4 A. OH, YES. WHEN HE'S ON HIS PAIN MEDICATION HE'S VERY
5 HARD TO WAKE UP.

6 Q. HOW FREQUENT HAS THAT HAPPENED?

7 A. I WOULD SAY AT LEAST FIVE TIMES OVER THE YEARS.

8 Q. ARE YOU AWARE OF THE INCIDENT THAT TOOK PLACE ON MAY
9 17TH, 2007?

10 A. YES.

11 Q. HOW SOON AFTER THAT DID YOU SEE MR. WINCHESTER?

12 A. WE VISITED WITH HIM IN THE JAIL, I THINK IT WAS LIKE
13 THREE DAYS, MAYBE TWO DAYS AFTER. I'M NOT SURE.

14 Q. AND WHAT WAS HIS GENERAL APPEARANCE?

15 A. HE HAD A BIG BRUISE ON THE LEFT SIDE OF HIS HEAD IN THE
16 FOREHEAD AREA. AND THAT IS ALL THAT I SAW AT THAT TIME.

17 Q. DID YOU SEE -- WELL, WHEN DID YOU -- WHEN DID YOU NEXT
18 SEE HIM?

19 A. I SAW HIM WHEN HE GOT HOME FROM THE DETENTION CENTER.

20 Q. WHICH WAS APPROXIMATELY HOW LONG AFTER THE 17TH?

21 A. I THINK HE WAS IN THERE FOR A WEEK. AND I SAW HIM THE
22 FOLLOWING DAY.

23 Q. AND WAS THERE ANYTHING UNIQUE ABOUT HIS APPEARANCE WHEN
24 YOU SAW HIM THEN?

25 A. WELL, THE BRUISES ON HIS FACE THAT I DIDN'T SEE IN THE

BETTY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

1 JAIL, I SAW THEN. HE SHOWED ---

2 Q. IF YOU COULD, DESCRIBE THOSE BRUISES TO ME.

3 A. WELL, THIS WAS THE BLUE PLACES ON HIS FACE. HE ALSO
4 HAD A BRUISE ON HIS BACK.

5 Q. DESCRIBE THE BRUISE. HOW SEVERE WAS THE BRUISE?

6 A. IT WAS IN THE BLACK AND PURPLE STAGE AT THAT TIME. IT
7 LOOKED LIKE SOMEBODY HAD STEPPED ON HIM.

8 Q. ANYTHING ELSE REMARKABLE?

9 A. I DID SEE THE MARKS LEFT BY THE TASER. THERE WAS ONE
10 FAIRLY CLOSE TO THE CENTER OF HIS CHEST. AND THEN HE HAD
11 ONE ON EACH SIDE ON HIS STOMACH AREA.

12 Q. AT LEAST THREE DISTINCT ---

13 A. YES, ---

14 Q. --- MARKS?

15 A. --- THERE WERE THREE.

16 Q. WOULD YOU DESCRIBE THE DECK THAT'S ADJACENT TO MR.
17 WINCHESTER'S BACK -- THE BACK OF HIS HOUSE?

18 A. IT'S SORT OF A -- IT'S ROUND. HE USED TO HAVE AN ABOVE
19 GROUND POOL THERE. THE DECK IS WOOD, BUT YOU'VE GOT THE
20 CEMENT, THE STEPS THAT GO UP BESIDE THE DECK.

21 Q. HOW HIGH IS THAT DECK FROM THE GROUND?

22 A. MAYBE FOUR FEET.

23 Q. SHOW YOU WHAT'S PREVIOUSLY BEEN MARKED AS DEFENSE
24 EXHIBIT 3 FOR IDENTIFICATION. DOES THAT ACCURATELY DEPICT
25 THE DECK THAT WE'VE BEEN MAKING REFERENCE TO?

BETTY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

187

1 A. YES.

2 Q. SO IT'S NOT -- IS IT A USABLE DECK AS YOU COME OUT THE
3 BACK DOOR?

4 A. NO. YOU WOULD HAVE TO CLIMB UP ON IT. I MEAN, IT'S --
5 IT'S THERE TO SIT ON, BUT YOU CAN'T -- YOU HAVE TO CLIMB UP
6 ON IT TO USE IT AS A -- AS ANYTHING EXCEPT SOMEWHERE TO SIT.

7 Q. I WANT TO SHOW YOU DEFENSE EXHIBIT 5 FOR
8 IDENTIFICATION. CAN YOU TELL US WHAT THAT'S A PICTURE OF?

9 A. THAT'S THE DOORWAY LEAVING OUT OF HIS KITCHEN INTO WHAT
10 HE CALLS HIS WASH ROOM AND THEN THE OUTSIDE DOOR GOING TO
11 THE BACK YARD.

12 Q. AND DEFENSE EXHIBIT 4 FOR IDENTIFICATION.

13 A. OKAY. THAT'S HIS BACK DOOR IN THE KITCHEN.

14 Q. DEFENSE EXHIBIT 10 FOR IDENTIFICATION.

15 A. OKAY. THAT IS AN AREA THAT IS ACTUALLY BETWEEN HIS
16 BEDROOM AND THE BACK DOOR THERE AT THE WASH ROOM.

17 Q. COULD YOU DESCRIBE THAT A LITTLE MORE CLEARLY AS YOU
18 APPROACH FROM THE BACK OF THE HOUSE? WHEN WOULD YOU FIRST
19 SEE THAT DOOR?

20 A. YOU WOULD SEE THAT DOOR WHEN YOU OPENED THE STORM DOOR
21 GOING INTO THE WASH ROOM FROM THE OUTSIDE OF HIS HOUSE.

22 Q. AND TO YOUR KNOWLEDGE IS THAT DOOR UTILIZED?

23 A. NO, THAT DOOR IS NOT USED.

24 Q. FROM THE INTERIOR OF THE HOUSE ---

25 A. NO.

BETTY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

188

1 Q. --- WHERE IS THAT DOOR? WELL, WHERE IS THAT IN
2 REFERENCE TO ---

3 A. IT IS IN HIS BEDROOM RIGHT BESIDE HIS BED.

4 Q. DEFENSE EXHIBIT 9 FOR IDENTIFICATION.

5 A. OKAY. THIS IS A PICTURE OF THE STORM DOOR GOING OUT TO
6 HIS STEPS FROM THE WASH ROOM.

7 Q. AND DEFENSE EXHIBIT 6 FOR IDENTIFICATION, ONCE AGAIN,
8 IT APPEARS TO BE A DOOR.

9 A. YES. THIS IS HIS BEDROOM AND THE BED HE SLEEPS IN.
10 AND THAT DOOR IS THE ONE THAT YOU SEE FROM THE WASH ROOM.
11 IT IS NOT USED.

12 Q. I'LL GIVE YOU BOTH DEFENSE EXHIBITS 1 AND 2 FOR
13 IDENTIFICATION AT ONE TIME, WHICH ARE SIMILAR PICTURES.
14 WOULD YOU DESCRIBE THOSE?

15 A. OKAY. THIS ONE IS THE PORCH AREA GOING INTO HIS WASH
16 ROOM AND THROUGH THE BACK DOOR. AND THAT'S JUST A LITTLE
17 CLOSER VIEW OF THAT WASH ROOM. AND THE DOOR THAT YOU WERE
18 TALKING ABOUT IS BEHIND THE WASHER AND DRYER.

19 Q. DEFENSE EXHIBIT 8 FOR IDENTIFICATION.

20 A. OKAY. THAT'S THE SMALL PORCH THAT HE HAS GOING INTO
21 THE BACK DOOR OF HIS HOUSE.

22 Q. AND LASTLY, DEFENSE EXHIBIT 7 FOR IDENTIFICATION.

23 A. OKAY. IT LOOKS LIKE THAT'S A PICTURE OF THE FRONT AND
24 THE SIDE OF HIS HOME.

25 Q. DOES THAT SHOW THE ENTIRE HOME?

BETTY WINCHESTER - CROSS EXAMINATION BY MR. STOUDEMIRE

189

1 A. YES.

2 Q. IF YOU KNOW, WHERE WOULD THE BLOCKED OFF PORTION START
3 ON THAT PICTURE?

4 A. FROM THE FRONT DOOR, BOTH ROOMS ON THE FRONT SIDE, THE
5 LEFT SIDE AND THE RIGHT SIDE OF THE HOUSE.

6 MR. BURR: YOUR HONOR, WE WOULD OFFER DEFENSE EXHIBITS
7 1 THROUGH 11 INTO EVIDENCE AT THIS TIME.

8 THE COURT: ANY OBJECTION?

9 MR. STOUDEMIRE: NONE, YOUR HONOR.

10 THE COURT: ALL RIGHT. WITHOUT OBJECTION, DEFENSE
11 EXHIBITS NUMBERS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 AND 11 ARE
12 ADMITTED.

13 (WHEREUPON DEFENSE EXHIBITS 1 - 11 WERE ENTERED INTO
14 EVIDENCE)

15 MR. BURR: REQUEST PERMISSION TO PUBLISH THESE TO THE
16 JURY, YOUR HONOR.

17 THE COURT: CERTAINLY.

18 MR. BURR: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

19 THE COURT: CROSS EXAM.

20 CROSS EXAMINATION BY MR. STOUDEMIRE:

21 Q. MS. WINCHESTER, YOU WERE NOT AT BILLY WINCHESTER'S
22 HOUSE ON MAY 17TH, 2007, WERE YOU?

23 A. NO, I WAS NOT.

24 Q. OKAY. SO YOU HAVE NO WAY OF KNOWING WHETHER OR NOT HE
25 WAS ON PAIN MEDICATION THAT EVENING, CORRECT?

BETTY WINCHESTER - CROSS EXAMINATION BY MR. STOUDEMIRE

- 1 A. NOT FOR SURE, NO.
- 2 Q. OKAY. AND WHEN YOU SAY THE BACK PORTION OF THE HOUSE
- 3 IS BLOCKED OFF, THAT HE ONLY USES THAT BACK PART NOW, IS IT
- 4 JUST -- HOW IS IT BLOCKED OFF?
- 5 A. THE DOORS ARE CLOSED.
- 6 Q. JUST DOORS CLOSED?
- 7 A. UM-HUM (AFFIRMATIVE).
- 8 Q. OKAY. SO IF THE DOORS WERE ALL OPEN ON A PREVIOUS
- 9 NIGHT WOULD THAT HAVE BEEN OUT OF THE ORDINARY IF IT WERE
- 10 WARM ENOUGH?
- 11 A. NO, IT WOULDN'T NOT WHEN -- HE MOVED HIS BEDROOM TO THE
- 12 BACK AND JUST STOPPED USING THE FRONT.
- 13 Q. OKAY. BUT IT'S JUST FOR HEATING PURPOSES BASICALLY?
- 14 A. AND COOLING.
- 15 Q. AND COOLING, OKAY. OKAY. SO AGAIN, ANYTHING INVOLVING
- 16 MAY 17TH WITH POLICE BEING OUT THERE AND MR. WINCHESTER
- 17 FIRING A GUN, ANYTHING RELATING TO THAT YOU WERE NOT PRESENT
- 18 FOR, CORRECT?
- 19 A. I WAS NOT PRESENT.
- 20 Q. AND ANYTHING YOU KNOW ABOUT THAT YOU'VE HEARD EITHER
- 21 FROM MR. WINCHESTER OR FROM SOMEONE ELSE?
- 22 A. RIGHT.
- 23 Q. OKAY. THAT'S ALL I'D HAVE. THANK YOU.
- 24 THE COURT: RE-EXAM.
- 25 MR. BURR: NO REDIRECT, YOUR HONOR.

GARY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

191

1 THE COURT: ALL RIGHT. YOU MAY STEP DOWN, MA'AM.

2 MR. BURR: I ASK THAT SHE BE EXCUSED.

3 MR. STOUDEMIRE: NO OBJECTION.

4 THE COURT: WITHOUT OBJECTION, YOU MAY BE EXCUSED.

5 THANK YOU, MA'AM. ALL RIGHT. YOU MAY CALL YOUR NEXT
6 WITNESS.

7 MR. BURR: DEFENSE WOULD CALL MR. GARY WINCHESTER.

8 GARY WINCHESTER, BEING
9 DULY SWORN TESTIFIED AS FOLLOWS:

10 THE COURT: IF YOU WOULD, PLEASE, SIR, GIVE US YOUR
11 FULL NAME FOR THE RECORD.

12 MR. WINCHESTER: GARY DWAYNE WINCHESTER.

13 THE COURT: THANK YOU, SIR.

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

15 THE COURT: MR. BURR.

16 DIRECT EXAMINATION BY MR. BURR:

17 Q. MR. WINCHESTER, DO YOU KNOW MR. BILLY WINCHESTER, THE
18 DEFENDANT IN THIS CASE?

19 A. YES, SIR. HE'S MY FATHER.

20 Q. WHAT IS YOUR CURRENT PLACE OF EMPLOYMENT?

21 A. I'M AN ELECTRICIAN FOR DUKE ENERGY AT THE OCONEE
22 NUCLEAR PLANT.

23 Q. I WOULD LIKE TO DIRECT YOUR ATTENTION TO THE TIME
24 PERIOD, MAY 17TH, 2007. WHAT WAS YOUR FATHER'S GENERAL
25 HEALTH CONDITION AT THAT TIME?

GARY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

192

1 A. HE WAS IN VERY BAD SHAPE. HIS BACK WAS REAL -- HAD A
2 LOT OF NERVE DAMAGE WITH HIS BACK AND LEGS AND HAD A HEART
3 CONDITION.

4 Q. DO YOU HAVE ANY PERSONAL KNOWLEDGE OF HIS ABILITY TO
5 MANEUVER, TO MOVE AROUND?

6 A. VERY WELL.

7 Q. PARDON?

8 A. VERY WELL, YES.

9 Q. OKAY. WHAT WAS THAT?

10 A. IT'S BEEN LIKE THAT FOR THE LAST TEN YEARS OR SO. I'VE
11 BEEN HAVING TO HELP HIM. THE BEST HE COULD WALK WAS AROUND
12 THE HOUSE TO THE BEDROOM OR THE COUCH OR THE BED, WHEREVER
13 HE WAS STAYING. THAT WAS ABOUT AS FAR AS HE COULD MAKE IT.
14 AS FAR AS GOING OUT ANYWHERE TO THE STORE, HE HAD TO USE
15 CRUTCHES OR A WHEELCHAIR EITHER ONE. IT WAS ACCORDING TO
16 WHAT DAY HE FELT THE BEST ON.

17 Q. AND ARE YOU ALSO FAMILIAR WITH HIS RESIDENCE, WHERE HE
18 WAS LIVING?

19 A. YES, SIR.

20 Q. DURING THAT TIME PERIOD DID YOU HAVE OCCASIONS TO VISIT
21 HIM?

22 A. ALMOST EVERY DAY.

23 Q. DID YOU EVER HAVE ANY DIFFICULTY GETTING HIM TO THE
24 DOOR?

25 A. ALMOST EVERY DAY.

GARY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

193

1 Q. DESCRIBE THAT DIFFICULTY.

2 A. I COULDN'T COUNT THE TIMES I'VE BEEN BY THERE TO CHECK
3 ON HIM AFTER WORK OR, YOU KNOW, LATER ON IN THE EVENINGS
4 AFTER I -- BEFORE I WENT HOME TO SEE HOW HE WAS DOING. I'VE
5 REPEATEDLY KNOCKED ON THE DOOR, CALLED HIM, CALLED HIM,
6 CALLED HIM.

7 A LOT OF TIMES HE WOULDN'T COME, SOMETIMES HE WOULD.
8 HE'D HOLLER AND LET ME IN OR SOMETIMES I HAD A KEY AND HAD
9 TO LET MYSELF IN JUST TO CHECK AND SEE TO MAKE SURE HE WAS
10 ALL RIGHT. AND BACK THEN WHEN HE WAS IN SO MUCH PAIN, WHEN
11 HE TOOK A PILL OR SOMETHING AND WENT TO SLEEP, HE WAS OUT OF
12 THE WORLD, YOU KNOW, COULDN'T WAKE HIM UP.

13 Q. DID HE ROUTINELY SLEEP WITH A FAN ON?

14 A. OH, YEAH. THAT HELPED HIM TO GO TO SLEEP.

15 Q. YOU'RE FAMILIAR WITH THE INCIDENT THAT TOOK PLACE ON
16 MAY 17TH, 2007. HOW SOON AFTER THAT DID YOU SEE HIM?

17 A. THE NEXT DAY.

18 Q. AND WHAT WAS HIS GENERAL APPEARANCE?

19 A. HE WAS IN BAD SHAPE THAT DAY. HURTING REAL BAD, YOU
20 KNOW, JUST LIVED IN PAIN 24/7 FOR A LONG TIME.

21 Q. AND HIS GENERAL OUTWARD APPEARANCE?

22 A. THE DAY I WENT TO SEE HIM IN JAIL, OH, LORD, HE WAS --
23 HIS FACE WAS CUT UP REAL BAD. HE HAD SEVERAL BURN MARKS
24 DOWN THROUGH HERE ON HIS CHEST, SEVERAL BRUISES ON THE OTHER
25 SIDE, ON HIS BACK WAS BRUISED REAL BAD, VERY GOOD BLACK EYE,

GARY WINCHESTER - CROSS EXAMINATION BY MR. STOUDEMIRE

194

1 BAD CUT ACROSS HIS FOREHEAD.

2 Q. LEADING UP -- TWO WEEKS PRIOR TO MAY 17TH WHAT WAS THE
3 FARTHEST YOU SAW HIM WALK OR MOVE UNASSISTED?

4 A. LIKE I SAY, WHAT TIME I WASN'T AROUND HIM HE MIGHT HAVE
5 COULD GOT TO THE BATHROOM BY HIMSELF WALKING. IF I TOOK HIM
6 TO THE STORE OR ANYWHERE I HAD TO HELP HIM. BUT AS FAR AS
7 AROUND THE HOUSE, THE BEST HE COULD DO WAS TO GET TO THE
8 BATHROOM AND BACK TO WHEREVER HE WAS LYING DOWN EITHER ON
9 THE COUCH OR THE BED. THE HOUSE IS NOT THAT BIG. AND THAT
10 WAS THE BEST HE COULD DO. AND OVER THE LAST SEVERAL YEARS,
11 BELIEVE ME, I'VE SEEN HIM CRAWL TO THE BATHROOM HE WAS
12 HURTING SO BAD.

13 Q. YOU DISCUSSED THE BRUISING TO THE FACE AND MARKS ON THE
14 BODY. DID HE HAVE ANY ADDITIONAL BRUISES OR SCRATCHES,
15 ABRASIONS THAT YOU SAW?

16 A. LIKE I SAY, MAINLY THE FACE, BLACK EYE, CUT, SEVERAL
17 BURN LOOKING MARKS RIGHT HERE, ALL OVER HIS CHEST, BRUISES,
18 VERY HEAVY BRUISE TO THE BACK, ARM.

19 MR. BURR: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

20 THE COURT: CROSS EXAMINATION.

21 CROSS EXAMINATION BY MR. STOUDEMIRE:

22 Q. MR. WINCHESTER, ON THESE OCCASIONS WHEN YOU'VE BEEN
23 OVER TO SEE YOUR DAD YOU SAID IT TOOK A LONG TIME FOR HIM TO
24 GET TO THE DOOR SOMETIMES?

25 A. YEAH. NOT EVERY TIME, BUT A LOT OF TIMES, YOU KNOW.

GARY WINCHESTER - REDIRECT EXAMINATION BY MR. BURR

195

1 Q. OKAY. DOES YOUR DAD FREQUENTLY NEED ASSISTANCE FROM
2 YOU OR SOMEBODY ELSE TO GET TO PLACES, THINGS LIKE THAT?

3 A. AS FAR AS SHOPPING, GROCERY STORE, YEAH, YOU KNOW, MOST
4 OF THE TIME, YEAH.

5 Q. DOES HE HAVE A PHONE AT THE HOUSE?

6 A. YES, SIR.

7 Q. OKAY. IS THAT IN HIS NAME OR WHOSE NAME IS THAT IN?

8 A. THAT WOULD BE IN MY NAME.

9 Q. OKAY. IS THAT 638-0250?

10 A. THAT'S RIGHT.

11 Q. OKAY. ON THE OCCASIONS THAT IT TOOK HIM A LONG TIME TO
12 GET TO THE DOOR WHEN YOU WERE OVER THERE WOULD ANY OF THOSE
13 OCCASIONS BE AT NIGHT OR WHEN IT WAS DARK OUTSIDE?

14 A. OH, YEAH.

15 Q. DID HE EVER SHOOT AT YOU?

16 A. NO, BUT HE'S HOLLERED ASKING ME WHO IT WAS REPEATEDLY.
17 AND I'D HAVE TO HOLLER AND HOLLER AND HOLLER JUST SEVERAL
18 TIMES TO LET HIM KNOW IT WAS HIS SON.

19 Q. I UNDERSTAND. ALL RIGHT. THAT'S ALL THE QUESTIONS I'D
20 HAVE.

21 A. OKAY.

22 Q. THANK YOU.

23 MR. BURR: ONE FOLLOW-UP QUESTION, YOUR HONOR.

24 REDIRECT EXAMINATION BY MR. BURR:

25 Q. AS TO HIS TELEPHONE, DO YOU KNOW WHAT STYLE TELEPHONE

1 HE HAD DURING THE MAY TIME-FRAME OF 2007?

2 A. I KNOW HE HAD ONE, A LITTLE CORDLESS PHONE, SMALL WHITE
3 ONE. AS FAR AS ANY OTHER, I COULDN'T TELL YOU ABOUT IT. I
4 DON'T KNOW.

5 Q. NO FURTHER QUESTIONS.

6 MR. BURR: THANK YOU, YOUR HONOR.

7 MR. STOUDEMIRE: ONE FOLLOW-UP QUESTION TO THAT.

8 RECROSS EXAMINATION BY MR. STOUDEMIRE:

9 Q. DO YOU KNOW WHETHER MR. WINCHESTER HAS A CELL PHONE AS
10 WELL?

11 A. YEAH, HE DOES. WHETHER IT'S IN USE, I DON'T KNOW.
12 IT'S ONE OF THOSE YOU HAVE TO GO TO THE STORE AND BUY A CARD
13 FOR. AND I HAVE BOUGHT SOME FOR HIM OCCASIONALLY ESPECIALLY
14 BEFORE I GOT THIS PHONE TURNED ON IN MY NAME. HE DIDN'T
15 HAVE A PHONE. AND I HAD -- I WENT AND GOT HIM ONE OF THOSE
16 PHONES WHERE I COULD CALL HIM, YOU KNOW, OR HE COULD GET IN
17 TOUCH WITH ME IN CASE OF AN EMERGENCY.

18 Q. ALL RIGHT. HOW LONG HAS HE HAD THAT PHONE THAT YOU ---

19 A. THE ---

20 Q. JUST THE REGULAR ---

21 A. --- REGULAR PHONE?

22 Q. YES.

23 A. MAN, COUPLE OF YEARS IN MY NAME AT LEAST.

24 Q. OKAY. THANK YOU. THAT'S ALL I'D HAVE.

25 MR. BURR: NOTHING FURTHER, YOUR HONOR.

BILLY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

199

1 BUT COME BACK IN THE MORNING AND CONCLUDE WITH ARGUMENT
2 AND CHARGE AND THEN LET THE JURY HAVE IT. AND THEN THAT'LL
3 GIVE THEM TIME TO CONSIDER IT. I THINK IF WE GO TODAY THEY
4 MIGHT WOULD FEEL PRESSED IN SOME FASHION. ALL RIGHT. WE'LL
5 PROBABLY -- THIS WILL BE OUR LAST WITNESS TODAY. ALL RIGHT.
6 LET'S TAKE A SHORT BREAK.

7 (WHEREUPON COURT WAS IN RECESS)

8 **THE COURT:** ALL RIGHT. TELL YOU WHAT, LET'S SEE IF WE
9 CAN'T MAKE SOME ARRANGEMENTS RIGHT NOW FOR MR. WINCHESTER TO
10 TESTIFY.

11 (PAUSE)

12 **THE COURT:** ALL RIGHT. ANYTHING FROM THE STATE BEFORE
13 WE BRING THE JURY BACK?

14 **MR. STOUDEMIRE:** NOTHING, YOUR HONOR.

15 **THE COURT:** FROM THE DEFENDANT?

16 **MR. BURR:** NOTHING FROM THE DEFENSE, YOUR HONOR.

17 **THE COURT:** VERY GOOD. ASK THE JURY TO JOIN US,
18 PLEASE.

19 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 4:15 PM)

20 **THE COURT:** ALL RIGHT. LET THE RECORD REFLECT THE JURY
21 IS IN THE BOX. YOU MAY CALL YOUR NEXT WITNESS.

22 **MR. BURR:** THANK YOU, YOUR HONOR. THE DEFENSE NOW
23 CALLS THE DEFENDANT, MR. WILLY WINCHESTER.

24 **BILLY WINCHESTER, BEING**
25 DULY SWORN TESTIFIED AS FOLLOWS:

BILLY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

200

1 THE COURT: ALL RIGHT. MR. WINCHESTER, IF YOU WOULD,
2 PLEASE, GIVE US YOUR FULL NAME FOR THE RECORD.

3 MR. WINCHESTER: BILLY WALTER WINCHESTER.

4 THE COURT: VERY GOOD. THANK YOU, SIR.

5 MR. BURR: THANK YOU, YOUR HONOR.

6 DIRECT EXAMINATION BY MR. BURR:

7 Q. MR. WINCHESTER, WHAT'S YOUR CURRENT RESIDENCE?

8 A. 803 WEST NORTH BROAD STREET, WALHALLA.

9 Q. WOULD YOU STATE THAT ADDRESS AGAIN, PLEASE?

10 A. 803 WEST NORTH BROAD STREET IN WALHALLA.

11 Q. AND HOW LONG HAVE YOU LIVED THERE?

12 A. TWELVE YEARS.

13 Q. AND WOULD YOU DESCRIBE TO THE JURY HOW YOU HAVE THE
14 UTILIZATION OF YOUR HOUSE DIVIDED UP?

15 A. I'VE GOT THE TWO FRONT ROOMS CLOSED OFF. AND I LIVE IN
16 THE BACK PART OF IT, WHICH IS A BEDROOM, A KITCHEN/DINING
17 ROOM COMBINATION AND BATHROOM.

18 Q. AND WHEN YOU'RE IN YOUR LIVING QUARTERS OF YOUR HOUSE
19 CAN YOU HEAR ANY KNOCKING OR WHAT'S GOING ON WITH THE FRONT
20 PORTION OF THE HOUSE?

21 A. NO, SIR.. I'VE GOT IT SEALED OFF PRETTY GOOD. SO I
22 DON'T HEAT IT OR COOL IT EITHER ONE.

23 Q. DIRECTING YOUR ATTENTION TO MAY 17TH, 2007, THE -- YOU
24 HEARD THE TESTIMONY OF DR. BRUCE EARLIER TODAY. IS THAT AN
25 ACCURATE DESCRIPTION OF YOUR MEDICAL SITUATION ON THAT DATE?

BILLY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

201

1 A. YES, SIR, HE'S PRETTY ACCURATE.

2 Q. AND ON MAY 17TH, 2007 WHAT TIME DID YOU RETIRE TO BED
3 OR GO TO BED?

4 A. I LAID DOWN ABOUT 3:00 AND -- WATCHING TV.

5 Q. AND WERE YOU ---

6 A. AND I DOSED OFF TO SLEEP WHILE THE 6:00 NEWS WAS ON. I
7 THINK I SEEN THE SPORTS COME ON, BUT I WENT TO SLEEP WHILE
8 IT WAS ON.

9 Q. AND WERE YOU TAKING PRESCRIPTION MEDICATION ---

10 A. YES, ---

11 Q. --- ON MAY 17TH, 2007.

12 A. YES, I TAKE PAIN MEDICATION, LORCET.

13 Q. AND ONCE AGAIN, WHAT TIME DO YOU THINK YOU WENT TO
14 SLEEP?

15 A. I SEEN THE SPORTS COME ON THE 6:00 NEWS ON CHANNEL 7,
16 BUT I DIDN'T -- I DIDN'T SEE IT ALL. I WENT TO SLEEP WITH
17 THE TV ON.

18 Q. WERE YOU EXPECTING ANY COMPANY ON THAT EVENING?

19 A. NO. I WENT AHEAD AND LOCKED THE DOOR 'CAUSE I FIGURED
20 I'D GO TO SLEEP WITH THE LIGHTS ON WATCHING TV. AND I GO
21 AHEAD AND LOCK THE DOOR SO NOBODY CAN'T JUST WALK IN.

22 Q. DID YOU HAVE ANY KNOWLEDGE OF ANY COMPLAINT, LEGAL
23 COMPLAINT, HAD BEEN MADE AGAINST YOU PRIOR TO THAT?

24 A. NO, SIR.

25 Q. AFTER YOU WENT TO SLEEP AT SIX, SEVEN, WHATEVER, WHEN

BILLY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

202

1 WERE YOU NEXT AWAKENED?

2 A. WELL, I WAS AWAKENED BY A POUNDING ON MY DOORS AND
3 WALLS IN MY LAUNDRY ROOM. AND I ROLLED OUT OF THE BED AND
4 FLIPPED ON THE BEDROOM LIGHT. AND I REALIZED IT WASN'T
5 SOMEBODY JUST KNOCKING ON A DOOR. I THOUGHT IT WAS SOMEBODY
6 -- A BURGLAR TRYING TO COME IN MY HOUSE. AND I QUICKLY CUT
7 THE LIGHT BACK OFF.

8 Q. LET ME INTERRUPT RIGHT HERE. WAS YOUR TELEVISION STILL
9 ON?

10 A. YES, SIR.

11 Q. WAS THERE ANY OTHER NOISE IN THE ROOM?

12 A. WELL, I HAVE A FAN, A BOX FAN SITTING IN A DINETTE
13 CHAIR AT THE FOOT OF THE BED.

14 Q. OKAY. AFTER YOU HEARD THE KNOCKING ON THE WALL, WHAT
15 HAPPENED?

16 A. WELL, IT JUST CONTINUED. I HOLLERED, WHO IS IT? WHAT
17 DO YOU WANT? I DIDN'T GET NO ANSWER. IT JUST -- THEY JUST
18 KEPT ON KNOCKING, POUNDING. THEY WAS POUNDING ON THE WALL
19 IN BETWEEN MY BED AND THE LAUNDRY ROOM. AND THEY KNOCKED --
20 POUNDING ON THE DOOR AND WENT INTO THE KITCHEN. AND THEY
21 JUST WOULDN'T LET UP. THE LONGER IT WENT ON THE MORE SCARED
22 I GOT.

23 Q. DID YOU EVER HEAR ANYBODY IDENTIFY THEMSELVES?

24 A. NO. THAT'S WHAT I KEPT SAYING, WHO ARE YOU? WHAT DO
25 YOU WANT? AND I FINALLY STUCK MY HEAD OUT THE BEDROOM DOOR

BILLY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

203

1 AND LOOKED OUT THE DOUBLE WINDOWS OVER THE KITCHEN SINK.

2 AND I NOTICED THEY HAD MY LIGHT ON OVER THE BACK DOOR, THE

3 STORM DOOR. AND THAT'S A THREE HUNDRED WATT BULB. IT WAS

4 ---

5 Q. DID YOU SEE ANYBODY ---

6 A. --- ON. IT WAS LIT UP REAL GOOD. ALL I COULD SEE WAS

7 MY PICKUP TRUCK.

8 Q. DID YOU SEE ANYONE IN YOUR BACKYARD?

9 A. I DIDN'T SEE NO ONE, NO VEHICLE. I COULD SEE OUT THE

10 DINING ROOM WINDOW TO THE SIDE. IT'S GOT A SHEER CURTAIN ON

11 IT. AND IF THEY'D BEEN A CAR OFF TO THE SIDE I COULD HAVE

12 SEEN IT. NO CAR OUT THERE.

13 Q. DID YOU HAVE A TELEPHONE AVAILABLE TO USE?

14 A. I HAD A CORDLESS PHONE, BUT I DIDN'T KNOW WHERE IT WAS

15 AT. I USUALLY -- I GOT A BAD HABIT OF LAYING IT DOWN ON THE

16 BED, UNDER THE -- PROBABLY LAYING UNDER BOOKS THERE BESIDE

17 ME ON THE KITCHEN TABLE. IT COULD HAVE EVEN BEEN OUTSIDE.

18 I DON'T -- I SIT OUT IN THE YARD SOMETIMES IN A WHEELCHAIR.

19 Q. AFTER ALL THIS POUNDING CAN YOU DESCRIBE YOUR EMOTIONAL

20 STATE TO THE JURY?

21 A. WELL, IT WENT ON FOR, YOU KNOW, WHAT SEEMED LIKE

22 FOREVER, BUT IT WAS PROBABLY SIX OR EIGHT MINUTES. NO

23 BREAK, JUST POUNDING. I COULD TELL THEY WAS MORE THAN TWO

24 OR THREE OF THEM.

25 Q. AND WHAT ACTION, IF ANY, DID YOU TAKE?

BILLY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

204

1 A. WELL, AFTER THAT WHEN THEY WOULDN'T TELL ME I REACHED
2 -- I GOT A BOOKCASE HEADBOARD ON MY BED. AND RIGHT UP ON
3 THE OTHER SIDE OF THAT WALL IS THE LAUNDRY ROOM. THERE'S A
4 CHIMNEY 'CAUSE I GOT A GAS DRYER. AND THERE'S A -- I MEAN,
5 A GAS WATER HEATER. A CHIMNEY, A GAS WATER HEATER, WASHER
6 AND A DRYER BACKED UP TO THAT WALL.

7 I REACHED UP THERE AND GOT MY PISTOL OUT OF THE
8 HEADBOARD AND LAID DOWN CROSS-WAYS IN THE BED. AND THEN I
9 HOLLERED, I SAID, IF YOU DON'T TELL ME WHO YOU ARE I'M GOING
10 TO START SHOOTING. THEY JUST KEPT POUNDING.

11 Q. AND WHAT DID YOU DO?

12 A. I LAID CROSS-WAYS IN THE BED SO MY BODY WOULD BE BEHIND
13 THAT CHIMNEY AND THAT WATER HEATER. I STILL DIDN'T KNOW
14 WHAT TO DO. I FINALLY RAISED THE PISTOL UP, THAT WAY. I
15 PULLED THE HAMMER BACK. I HOLLERED AGAIN, IF Y'ALL DON'T
16 TELL ME WHO YOU ARE, I'M GOING TO START SHOOTING. NOTHING.

17 I JUST RAISED THE PISTOL UP, PULLED THE HAMMER BACK AND
18 PULLED THE TRIGGER. THEN THE BEATING STOPPED. THEY SAID,
19 THIS IS THE POLICE. WE'VE GOT A WARRANT FOR YOU. I SAID,
20 WELL, WHY DIDN'T YOU SAY SO TO START WITH? AND I FELT
21 RELIEVED, YOU KNOW.

22 I SAT UP IN THE BED, PUT THE PISTOL DOWN AND SLID OFF
23 THE BED. I SAID, WELL, YOU KNOW, AT LEAST IT AIN'T A
24 BURGLAR. SLID OFF THE BED. AND I'VE GOT AN IN-HOUSE
25 WHEELCHAIR AS I CALL IT. IT'S SITTING RIGHT AROUND THE

BILLY WINCHESTER - DIRECT EXAMINATION BY MR. BURR

205

1 CORNER. I USUALLY SIT DOWN IN IT AND PULL MYSELF BACK TO
2 THE BACK DOOR.

3 Q. ON THIS OCCASION WERE YOU ABLE TO WALK UNDER YOUR OWN
4 POWERS ---

5 A. WELL, I HAD -- I HAD ALL KIND OF FURNITURE AND
6 CABINETS. AND I WENT TO THE DOOR ON MY FEET HOLDING ONTO
7 THE FURNITURE. BUT I GOT ALL THE WAY BACK TO THE KITCHEN
8 CABINET RIGHT UNDER THAT DOUBLE WINDOW.

9 AND I WAS LOOKING OUT. THEY HAD THAT LIGHT ON. I
10 LOOKED OUTSIDE. I DID NOT SEE NO VEHICLES, NO PEOPLE, NO
11 POLICE, NO NOTHING. BUT I STILL STUCK THE KEY IN THE DOOR
12 AND I HOLLERED LOUD. I SAID, OKAY, I AM COMING OUT. I HAVE
13 NO WEAPON. I SAID IT TWICE VERY LOUD. THEN I OPENED THAT
14 -- THERE'S ONLY THAT STORM DOOR GOING ON OUT TO THE LAUNDRY
15 ROOM OUTSIDE. THE ONE GOING OUT OF THE KITCHEN IN THROUGH
16 THE LAUNDRY ROOM IS LOCKED WITH A DEADBOLT.

17 Q. ONCE YOU GOT OUTSIDE DID YOU INTENTIONALLY RESIST
18 ARREST?

19 A. WELL, I OPENED THAT DOOR WITH THE DEADBOLT AND I
20 STARTED OUT LIKE THIS. I PUSHED THE DOOR OPEN. THAT
21 KITCHEN DOOR OPENED OUT INTO THE LAUNDRY ROOM. AND I
22 STARTED OUT, BUT THE NEXT THING I KNEW I WAS BELLY DOWN ON
23 THE BACK PORCH, THE CONCRETE BACK PORCH GETTING THE CRAP
24 BEAT OUT OF ME, AND HIT AND STOMPED AND ALL THAT.

25 Q. MY QUESTION, DID YOU INTENTIONALLY RESIST ARREST ONCE

BILLY WINCHESTER - CROSS EXAMINATION BY MR. STOUDEMIRE

206

1 YOU WENT OUTSIDE?

2 A. NO. I DIDN'T HAVE A CHANCE. I WAS GOING OUT LIKE
3 THIS. I WASN'T RESISTING. I WAS GIVING UP.

4 Q. BACKING YOU UP AGAIN, PRIOR TO FIRING YOUR HANDGUN DID
5 YOU HAVE ANY IDEA WHO WAS OUTSIDE BEATING ON YOUR HOUSE?

6 A. NO, SIR. I THOUGHT I WAS BEING BURGLARIZED, BROKEN
7 INTO. I HAD NO IDEA IT WAS THE POLICE. IT WAS AFTER I
8 FIRED THAT GUN THEY SAY POLICE.

9 Q. SO YOU COULDN'T SEE A POLICE CAR ANYWHERE?

10 A. NOWHERE.

11 Q. DIDN'T SEE ANY POLICE OFFICERS?

12 A. NO BLUE LIGHTS, NO NOTHING.

13 Q. NEVER HEARD ---

14 A. NO VOICE.

15 Q. IS THERE ANY ROOM FOR CONFUSION? ANY DOUBT?

16 A. NO DOUBT. IF THEY'D SAID POLICE, I'D WENT TO THE DOOR
17 AND OPENED IT.

18 MR. BURR: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

19 THE COURT: CROSS EXAM.

20 **CROSS EXAMINATION BY MR. STOUDEMIRE:**

21 Q. MR. WINCHESTER, YOU SAID ON MAY 17TH YOU WENT TO SLEEP
22 ABOUT MIDWAY THROUGH THE SPORTS ON THE 6:00 NEWS, RIGHT?

23 A. YES, SIR.

24 Q. OKAY. AND YOU SAID YOU WERE TAKING PAIN MEDICATION AT
25 THAT TIME?

BILLY WINCHESTER - CROSS EXAMINATION BY MR. STOUDEMIRE

207

1 A. YES, I TAKE IT PRETTY REGULARLY NOW.

2 Q. OKAY. WE'VE HEARD SOME TALK EARLIER TODAY ABOUT NOT
3 ONLY THIS PISTOL BEING FOUND IN YOUR HOUSE ON YOUR BED, BUT
4 SEVERAL OTHER GUNS IN THE HOUSE AS WELL?

5 A. YES, SIR.

6 Q. AND YOU HAD THE RIGHT TO HAVE THOSE GUNS, RIGHT?

7 A. I USED TO COLLECT GUNS. I USED TO BE A HUNTER BACK
8 WHEN I WAS ---

9 Q. OKAY.

10 A. --- ABLE.

11 Q. AND SOME OF THESE GUNS WERE IN CASES, SOME OF THEM WERE
12 NOT, CORRECT?

13 A. RIGHT.

14 Q. OKAY. WERE THEY ALL IN THESE BACK TWO ROOMS OF THE
15 HOUSE THAT YOU USE?

16 A. YES, SIR.

17 Q. EVERY SINGLE ONE OF THOSE GUNS WAS IN THE BACK TWO
18 ROOMS?

19 A. YES, THERE WERE SIX OF THEM. WELL, THEY WERE UNDER THE
20 BED, STANDING IN THE CORNER. THEY WERE UNLOADED.

21 Q. OKAY. SO IF THEY WERE IN OTHER ROOMS -- IF THEY WERE
22 PHOTOGRAPHED AND IN OTHER ROOMS OF THE HOUSE SOMEBODY WOULD
23 HAVE HAD TO TAKE THEM THERE AND PUT THEM THERE AND THEN
24 PHOTOGRAPH THEM? IS THAT WHAT YOU'RE SAYING?

25 A. OH, I HAD SOME IN THE FRONT ROOM, BUT THEY WERE OLD

BILLY WINCHESTER - CROSS EXAMINATION BY MR. STOUDEMIRE

1 MILITARY RIFLES. THEY WAS RIFLES THAT DIDN'T EVEN HAVE TO
2 BE REGISTERED. I'VE BEEN COLLECTING GUNS SINCE I WAS
3 EIGHTEEN YEARS OLD.

4 Q. OKAY. SO YOU HAVE SEVERAL GUNS IN THE HOUSE?

5 A. I USED TO HAVE. I'VE BEEN BURGLARIZED A TIME OR TWO.

6 Q. AT THIS HOUSE?

7 A. YOU KNOW, WELL, NOT REALLY BURGLARIZED. PEOPLE JUST
8 TOTING THEM OFF ONE AT A TIME AND ---

9 Q. OKAY.

10 A. --- ASSOCIATES.

11 Q. OKAY. NOW -- AND YOU HAD A PHONE, BUT YOU DIDN'T KNOW
12 WHERE IT WAS. SO WHY DIDN'T YOU KNOW WHERE THE PHONE ---

13 A. I REALLY DIDN'T EVEN HAVE TIME -- I WASN'T EVEN
14 THINKING ABOUT A PHONE. I WAS THINKING ABOUT JUST ANY
15 MINUTE PEOPLE, WHOEVER IT WAS, WAS GOING TO BE COMING
16 THROUGH THAT DOOR.

17 Q. OKAY. SO THE FACT THAT YOU HAD A PHONE REALLY IS KIND
18 OF IRRELEVANT 'CAUSE YOU WEREN'T THINKING ABOUT CALLING
19 ANYBODY ---

20 A. I WAS TERRIFIED 'CAUSE I WAS CRIPPLED.

21 Q. OKAY.

22 A. AND I KNOWED THEY WAS AT LEAST MORE THAN TWO OR THREE
23 PEOPLE OUT THERE AND THEY WERE TRYING TO GET IN MY HOUSE.

24 Q. OKAY. BUT THE THOUGHT OF CALLING 911, YOU JUST SAID
25 YOU DIDN'T THINK ABOUT THE -- ABOUT THE PHONE. SO THE

BILLY WINCHESTER - CROSS EXAMINATION BY MR. STOUDEMIRE

209

1 THOUGHT OF CALLING 911 WITH SOMEBODY BREAKING INTO YOUR
2 HOUSE NEVER ENTERED YOUR MIND?

3 A. I WAS THINKING ABOUT WHAT I WAS GOING TO DO WHEN THEY
4 GOT IN. AND IT SOUNDED LIKE THEY WAS ALMOST IN THERE.

5 Q. OKAY. SO THE REASONABLE THING FOR YOU TO DO WAS TO
6 PICK UP THE LOADED PISTOL YOU HAD ON YOUR HEADBOARD AND FIRE
7 A SHOT OUT A CLOSED WINDOW?

8 A. WELL, I DIDN'T KNOW WHERE THE PHONE WAS. I DIDN'T FIRE
9 OUT A CLOSED WINDOW. I FIRED UPWARD AND AWAY FROM WHERE THE
10 RACKET WAS COMING FROM, FROM WHERE I WAS LAYING.

11 Q. I'M GOING TO SHOW YOU STATE'S NUMBER 2 AND STATE'S
12 NUMBER 3. ARE THOSE BOTH PHOTOGRAPHS OF THE WINDOW YOU
13 FIRED OUT OF?

14 A. UM-HUM (AFFIRMATIVE). BUT I WAS UP HERE.

15 Q. OKAY. IS THAT THE WINDOW YOU FIRED OUT OF?

16 A. UM-HUM (AFFIRMATIVE).

17 Q. THOSE BLINDS OPEN OR CLOSED?

18 A. CLOSED.

19 Q. OKAY. AND THIS, BLINDS OPEN OR CLOSED?

20 A. THAT'S ON THE OTHER SIDE. AND THE SHOT CAME FROM THAT
21 WAY AND WENT THAT WAY. SEE THE HOLE'S THERE AND THE WOOD'S
22 THERE. SO IT'S ---

23 Q. OKAY.

24 A. DEFINITELY SHOWS THAT THE BULLET COME FROM THE OPPOSITE
25 DIRECTION.

BILLY WINCHESTER - CROSS EXAMINATION BY MR. STOUDEMIRE

210

1 Q. OKAY. SO YOU FIRED TOWARDS WHERE YOU THOUGHT SOMEBODY
2 WOULD BE COMING INTO YOUR HOUSE?

3 A. I FIRED UP AND AWAY.

4 Q. OKAY. THROUGH A WINDOW AND THE BLINDS WERE CLOSED?

5 A. YES, BUT I WAS LOWER THAN THAT, THE BULLET HOLE 'CAUSE
6 THE BULLET WENT UP.

7 Q. OKAY. BUT YOU COULDN'T SEE ---

8 A. I COULDN'T SEE ---

9 Q. YOU COULDN'T SEE WHERE IT WAS GOING, CORRECT?

10 A. I KNOWED IT WAS GOING UPWARD AND AWAY.

11 Q. OKAY. AND YOUR INTENTION WAS TO GET RID OF WHOEVER WAS
12 ---

13 A. MY INTENTION ---

14 Q. --- OUTSIDE YOUR HOUSE?

15 A. --- WAS TO SCARE SOMEBODY AWAY IF IT WAS A BURGLAR.

16 Q. OKAY.

17 A. THAT THAT WOULD SCARE THEM AWAY.

18 Q. SO YOUR INTENTION WAS TO SCARE SOMEBODY AWAY BY FIRING
19 A DEADLY WEAPON?

20 A. UPWARD AND AWAY.

21 Q. OKAY. WELL, ---

22 A. IF I'D BEEN WANTING TO SHOOT SOMEBODY I WOULD HAVE SHOT
23 SIX TIMES RIGHT THROUGH THE WALL OR THROUGH THE DOOR OR
24 WHATEVER. I JUST WANTED THEM TO GO ON.

25 Q. AND YOU SAID YOU -- YOU SAID THAT YOU LOOKED OUT ONE OF

BILLY WINCHESTER - CROSS EXAMINATION BY MR. STOUDEMIRE

211

1 YOUR WINDOWS TOWARDS YOUR DRIVEWAY AND DIDN'T SEE ANY POLICE

2 ---

3 A. THAT WAS ON THE ---

4 Q. --- CARS?

5 A. --- THROUGH THE DINING ROOM FROM THE BEDROOM DOOR

6 STRAIGHT ACROSS. THAT WASN'T WHERE THE RACKET WAS COMING

7 FROM, OUT TOWARD THE WOODS, THE DRIVEWAY SIDE OF THE HOUSE.

8 I DID NOT SEE A CAR.

9 Q. OKAY. SO YOU LOOKED TOWARDS THE DRIVEWAY SIDE OF THE
10 HOUSE?

11 A. YES.

12 Q. AND YOU SAW NO CARS?

13 A. THROUGH THAT SHEER CURTAIN I SAW NO CARS.

14 Q. OKAY. WELL, WHEN YOU GOT OUTSIDE ON YOUR STOOP DID YOU
15 SEE ANY POLICE CARS THEN?

16 A. NO, SIR. ALL I SEEN WAS MY TRUCK.

17 Q. SO WHEN OFFICER RHUDY TESTIFIED THAT HE DROVE OVER

18 THERE, OFFICER TURNER TESTIFIED THAT HE WAS OVER THERE,

19 OFFICER HUNNICUTT TESTIFIED THAT THEY WERE OVER THERE AND

20 ALL OF THEM DROVE OVER THERE, YOU'RE SAYING YOU DIDN'T SEE

21 ANY OF THEIR CARS?

22 A. I DIDN'T SEE ANY OF THEIR CARS.

23 Q. OKAY. AND YOU DIDN'T SEE ANY OF THEM?

24 A. I SEEN -- ONCE THEY PICKED ME UP OFF THE PORCH I SEEN A

25 BUNCH OF POLICE. THEY PICKED ME UP OFF THE PORCH, CUFFED ME

BILLY WINCHESTER - CROSS EXAMINATION BY MR. STOUDEMIRE

212

1 AND SET ME ON THE DECK.

2 Q. OKAY. SO ---

3 A. AND THEN I SEEN A WHOLE LOT OF POLICE.

4 Q. WELL, THE PAIN MEDICATION THAT YOU TAKE, DOES IT KIND
5 OF KNOCK YOU OUT AND MAKE YOU SLEEPY AND DROWSY?

6 A. OH, I WENT TO SLEEP AT -- BEFORE 6:30. I MEAN, THIS IS
7 LIKE 11:30 WHEN I WOKE UP.

8 Q. OKAY. SO HOW OFTEN DO YOU TAKE THIS PAIN MEDICATION?

9 A. WELL, I DON'T HAVE A SET TIME. I TAKE IT WHEN I ---

10 Q. YOU JUST TAKE IT WHEN ---

11 A. --- GET TO HURTING AND WHEN I -- AND I NEED IT, BUT I
12 DON'T ABUSE IT.

13 Q. OKAY. BUT EVEN TAKING THIS PAIN MEDICATION YOU'RE ABLE
14 TO REMEMBER ALL THESE DETAILS ABOUT WHAT WENT ON EXCEPT FOR
15 THE PART ABOUT THE POLICE IDENTIFYING THEMSELVES AND THEIR
16 CARS BEING IN YOUR YARD?

17 A. WHEN I -- I'D SLEPT THAT LONG. AND WHEN I WOKE UP, I
18 WAS ALERT.

19 Q. OKAY.

20 A. I KNOWED I WAS BEING BROKEN INTO. AND THE PEOPLE THAT
21 WAS DOING THE BEATING WOULDN'T TELL ME WHO IT WAS.

22 Q. AND YOU'RE SAYING YOU YELLED, RIGHT? AND YOU'RE SAYING
23 YOU YELLED TO THEM?

24 A. I YELLED AND YELLED. I SAID, WHO ARE YOU? WHAT DO YOU
25 WANT?

BILLY WINCHESTER - CROSS EXAMINATION BY MR. STOUDEMIRE

213

1 Q. OKAY. AND AGAIN, THE THOUGHT OF CALLING 911, YOU'VE
2 ALREADY SAID THAT NEVER ENTERED INTO YOUR MIND?

3 A. WELL, I LOOKED FOR THE PHONE, BUT I DIDN'T SEE IT.

4 Q. WELL, ---

5 A. I ONLY GOT ONE. AND IT'S A CORDLESS PHONE. AND I'M
6 BAD TO LAY IT DOWN.

7 Q. WELL, WHAT ABOUT THE CELL PHONE THAT YOUR SON SAID YOU
8 HAD?

9 A. OH, THE CELL PHONE WAS IN THE TRUCK. I JUST -- IT'S A
10 PREPAID PHONE. I PUT IT IN THE TRUCK.

11 Q. OKAY.

12 A. SOMETIMES I'M ABLE TO DRIVE MAYBE TO THE CONVENIENCE
13 STORE. AND IF I GET BROKE DOWN I CAN'T WALK. SO I CALL
14 SOMEBODY.

15 Q. OKAY. BUT YOU'RE ABLE TO GET AROUND TO A CERTAIN
16 EXTENT ---

17 A. OH, I CAN GET AROUND A LITTLE BIT SOMETIMES, NOT ALL
18 THE TIME. I CAN GET AROUND THE HOUSE.

19 Q. OKAY.

20 A. BUT THERE'S A WHOLE LOT THERE TO HOLD ONTO. BUT IT'S
21 MOSTLY -- PART OF IT'S MY BACK BECAUSE I'VE HAD ABOUT FIVE
22 SURGERIES. BUT I'VE GOT A LOT OF NERVE DAMAGE GOING DOWN IN
23 MY LEGS. I USE THE CRUTCHES FOR BALANCE WHEN MY BACK'S
24 WORKING DECENT.

25 Q. BUT YOU WEREN'T USING THE CRUTCHES THAT NIGHT WHEN YOU

BILLY WINCHESTER - CROSS EXAMINATION BY MR. STOUDEMIRE

214

1 WALKED OUT?

2 A. NO. I HAD A LOT OF CABINETS AND FURNITURE TO HOLD ONTO
3 TO GET TO THE BACK DOOR.

4 Q. AND EVERYTHING ON THE BACK STOOP, YOU'RE JUST SAYING
5 THAT YOU DON'T REMEMBER ANY OF THAT?

6 A. WELL, I GOT MY HEAD BEAT AGAINST THE CONCRETE PRETTY
7 GOOD AND RATTLED MY BRAIN.

8 Q. OKAY. SO EVEN THOUGH YOUR BRAIN GOT RATTLED YOU WERE
9 ABLE TO REMEMBER ALL THESE OTHER DETAILS?

10 A. I REMEMBERED WHEN THEY SET ME UP ON THE DECK THERE WAS
11 A WHOLE LOT OF POLICE THERE. AND ---

12 Q. OKAY. SO THEY SAT ---

13 A. --- I REMEMBER ---

14 Q. SO THEY SAT YOU UP ON ---

15 A. --- IN THE HOSPITAL.

16 Q. OKAY. SO YOU REMEMBERED THAT PART?

17 A. UM-HUM (AFFIRMATIVE).

18 Q. OKAY.

19 MR. STOUDEMIRE: THAT'S ALL I'D HAVE, YOUR HONOR.

20 THE COURT: RE-EXAMINE.

21 MR. BURR: YOUR HONOR, I HAVE NO REDIRECT.

22 THE COURT: ALL RIGHT. LET MR. WINCHESTER MOVE BACK,
23 IF YOU WOULD, PLEASE. ALL RIGHT. YOU MAY CALL YOUR NEXT
24 WITNESS.

25 MR. BURR: YOUR HONOR, THE DEFENSE RESTS AT THIS POINT.

1 RIGHT.

2 AGAIN THOUGH, YOU HAVE NOT HEARD THE WHOLE ENTIRE CASE.
3 SO IT'S IMPORTANT THAT YOU HEAR NOT ONLY THE ARGUMENT BY
4 COUNSEL, BUT THE LAW APPLICABLE TO THIS CASE AND THAT YOU'RE
5 TO APPLY TO THIS CASE. SO, THEREFORE, PLEASE DON'T LET
6 ANYBODY INTERFERE WITH THE PROPER RESOLUTION. YOU CAN SEE,
7 THIS IS AN IMPORTANT CASE TO EVERYBODY THAT'S INVOLVED AND
8 NEEDS TO BE RESOLVED IN THE PROPER FASHION.

9 SO WITH THAT I'M GOING TO EXCUSE YOU UNTIL 9:30 IN THE
10 MORNING. JUST COME BACK TO THE JURY ROOM WHERE YOU WERE --
11 HAVE BEEN FOR THE LAST TWO DAYS. ALL RIGHT. WITH THAT,
12 I'LL EXCUSE YOU AND SEE YOU IN THE MORNING AT 9:30.
13 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES FROM THE
14 COURTROOM.

15 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4:43 PM)

16 **THE COURT:** GENTLEMEN, THERE'S ONE THING WE CAN DO. WE
17 CAN HAVE THE CHARGE CONFERENCE NOW. I DON'T THINK IT'S
18 GOING TO BE THAT INVOLVED, BUT LET ME JUST GO THROUGH WITH
19 WHAT I'VE GOT. NOW DO YOU HAVE ANY CHARGES THAT YOU'RE ...

20 **MR. BURR:** WE DO, YOUR HONOR. AND MY ASSISTANT, MR.
21 DANIEL DAY, HAS THEM READY FOR THE COURT.

22 **MR. DAY:** I JUST NEED TO NUMBER THEM, YOUR HONOR.

23 (PAUSE)

24 **THE COURT:** ALL RIGHT. LET'S SEE WHAT WE HAVE. THE
25 STATE'S CHARGE IS GOING TO BE COVERED. I HAVE THAT ALREADY.

1 (PAUSE)

2 THE COURT: I WANT TO THANK YOU FOR THE TIMELINESS OF
3 THE TEN REQUESTS FOR CHARGES. WE'VE BEEN AT TRIAL -- THIS
4 WILL BE THE THIRD DAY TOMORROW, BUT WE'VE BEEN AT TRIAL FOR
5 TWO DAYS. PERHAPS WE COULD HAVE GIVEN MORE ATTENTION TO THE
6 REQUESTS IF THEY'D BEEN TIMELY, BUT I WILL GIVE ATTENTION TO
7 THE REQUESTS.

8 AS I SAY, THE ONLY REQUEST I HAVE FROM THE STATE IS
9 COVERED BY THE CHARGE. AS FAR AS DEFENDANT'S REQUEST NUMBER
10 ONE, I DON'T KNOW HOW IT'S APPLICABLE TO THIS CASE. AND I
11 DECLINE TO CHARGE IT.

12 I AM LOOKING AT IT. IT SAYS ANY PERSON AT NIGHTTIME BY
13 SUCH EFFICIENT MEANS AS THE DARKNESS AND THE PROBABILITY OF
14 ESCAPE -- NECESSARY EVEN IF THE LIFE OF SUCH PERSON SHOULD
15 BE THEREBY TAKEN. APPARENTLY THAT'S THE USE OF DEADLY FORCE
16 AND PROTECTION OF THE -- AT BEST THE HOME. AND THAT'S BEEN
17 DECIDED. WE'LL GET TO IT IN A MINUTE.

18 THE TESTIMONY OF A POLICE OFFICER -- I'M NOT GOING TO
19 CHARGE THAT, AND I'M NOT GOING TO CHARGE THAT IT IS. THE
20 TESTIMONY OF ALL WITNESSES, THE CREDIBILITY IS FOR THE JURY
21 TO DETERMINE.

22 NUMBER THREE, IF I'M NOT MISTAKEN WE HAD -- I SAID THIS
23 EARLIER, 625 DOES NOT REQUIRE KNOWING AND WILFUL AS SOME OF
24 THE OFFENSES DO.

25 MR. BURR: YOUR HONOR, THE DEFENSE AGREES WITH THAT,

1 HOWEVER, THIS INDICTMENT READS WHO HE KNEW OR REASONABLY
2 SHOULD HAVE KNOWN WERE LAW ENFORCEMENT. THAT'S BEEN ADDED
3 IN THE INDICTMENT.

4 THE COURT: WHAT DO YOU SAY ABOUT THAT, MR. STOUDEMIRE?

5 MR. STOUDEMIRE: I CAN'T SAY ANYTHING ABOUT WHAT'S BEEN
6 ADDED IN THE INDICTMENT. IT SAYS WHAT IT SAYS. HOWEVER, I
7 THINK YOU'VE ALREADY TOLD THE JURY THAT THE INDICTMENT IN
8 ITSELF IS NOT LAW AND SHOULD NOT BE CONSIDERED EVIDENCE.

9 THE COURT: YEAH, BUT IT'S ALSO WHAT THE -- THE CASE IS
10 TRIED ON. THAT'S ONE OF THE REASONS THAT WE DON'T
11 PARAPHRASE STATUTORY CRIMES, SET OUT THE LANGUAGE. I DON'T
12 THINK IT'S -- THAT LANGUAGE IS SUPERFLUOUS IN THE SENSE THAT
13 IT DOESN'T NOT TRACK THE STATUTE.

14 I MIGHT NOTE THAT AT ONE TIME THE INDICTMENTS READ ON
15 THE FINAL LINE IN THE PRINTED INDICTMENT, DONE WITH FORCE
16 AND FORCE OF ARMS AT THE COURTHOUSE DOOR AGAINST THE DIGNITY
17 OF THE STATE -- CASES MADE AND PROVIDED. OBVIOUSLY THAT
18 LANGUAGE WAS NOT APPLICABLE TO ANYTHING THAT WAS ALLEGED IN
19 THE INDICTMENT, BUT YET IT WAS A PART OF THE INDICTMENT.

20 I FIND THAT UNDER THE CIRCUMSTANCES OF THIS CASE THAT I
21 WILL CHARGE THE LAW RATHER THAN SOMETHING THAT IS NOT THE
22 LAW. SO I DECLINE TO CHARGE NUMBER THREE.

23 AGAIN, NUMBER FOUR, NUMBER FIVE, I'M GOING TO COVER, I
24 THINK, REASONABLE DOUBT AND WHAT -- I MIGHT MODIFY IT AND
25 CHARGE A PORTION OF CHARGE NUMBER SIX, THAT IT MUST BE MORE

1 THAN JUST A SUSPICION. DO YOU HAVE THAT IN THERE? YOU
2 DON'T HAVE THAT, DO YOU? ALL RIGHT. I'LL LOOK AT IT AND
3 SEE. ALL RIGHT.

4 YOU HAVE ONE IN HERE, NUMBER SEVEN, -- ALL RIGHT.
5 THERE HAS BEEN NO EFFORT TO LIMIT THE PLAINTIFF'S, I MEAN,
6 EXCUSE ME, THE DEFENDANT'S TESTIMONY AS TO WHY WHAT WAS DONE
7 WAS DONE OR WHAT WAS THOUGHT. AND THIS IS NOT A CONSPIRACY
8 CASE. WE HAVE DIRECT EVIDENCE RATHER THAN ANY SORT OF
9 EVIDENCE OF COMMON PURPOSE. SO I'M GOING TO DECLINE TO
10 CHARGE THE CONSPIRACY LANGUAGE IN NUMBER SEVEN.

11 NUMBER EIGHT, ...

12 MR. BURR: YOUR HONOR, TO MAKE SURE WE'RE ON THE SAME
13 -- I HAVE THIS NUMBERED. YOU'RE DENYING TO CHARGE SEVEN,
14 ---

15 THE COURT: RIGHT.

16 MR. BURR: --- THAT'S MANDOLLI (PHONETICS)?

17 THE COURT: RIGHT.

18 MR. BURR: DEFENDANT HAD GOOD FAITH. I THOUGHT YOU
19 MEANT CONSPIRACY.

20 THE COURT: THAT'S WHAT THE CHARGE WAS IN MANDOLLI
21 (PHONETICS).

22 MR. BURR: OKAY.

23 THE COURT: AND -- WELL, LET ME SEE IF I'VE GOT THE
24 LANGUAGE RIGHT. ALL RIGHT. THEY WERE CHARGED UNDER SECTION
25 16-17-410, WHICH I UNDERSTAND IS CONSPIRACY.

1 PROSECUTION FOR CONSPIRACY IN AN ASSAULT AND BATTERY OF
2 A HIGH AND AGGRAVATED NATURE, THE TRIAL JUDGE ERRED BY
3 REFUSING TO ALLOW DEFENDANTS TO TESTIFY REGARDING THEIR GOOD
4 FAITH BELIEF AND LEGALITY OF THEIR ACTIONS SINCE, HOWEVER,
5 IMPLAUSIBLE SUCH AN EXPLANATION MAY HAVE APPEARED DEFENDANT
6 SHOULD HAVE BEEN PERMITTED TO PRESENT THEIR SIDE OF THE
7 STORY TO THE JURY.

8 I AM PERMITTING -- I DIDN'T DISALLOW ANY TESTIMONY, BUT
9 THE ONLY THING IS THIS IS NOT A CONSPIRACY CASE. AND IT
10 WOULD BE -- SO I DON'T FIND THAT NUMBER SEVEN IS APPROPRIATE
11 UNDER THE ACTS OF THIS CASE AND THE LAW OF THIS CASE. BUT
12 I'LL NOTE YOUR EXCEPTION.

13 DEFENDANT'S REQUEST NUMBER EIGHT, I DON'T THINK THAT'S
14 GOOD LAW. CITING PAYTON VERSUS NEW YORK THE COURT IN LOFTIN
15 STATED A VALID ARREST WARRANT IMPLICITLY GRANTS POLICE A
16 LIMITED AUTHORITY IN A SUSPECT'S RESIDENCE WHEN THERE IS
17 REASON TO BELIEVE THE SUSPECT IS WITHIN. IT'S WHEN THEY USE
18 THE ENTRY FOR THE PURPOSES OF AN ILLEGAL SEARCH. AND THAT
19 WAS WHAT LOFTIN WENT TO. BUT THE LAW OF LOFTIN IS THAT THEY
20 CAN ENTER AND ARREST WITH AN ARREST WARRANT. THEY CAN'T USE
21 IT FOR A SEARCH WARRANT.

22 NOW THIS IS THE ONE THAT WAS -- LET'S SEE. FIRST OF
23 ALL, I THINK, -- LET ME GO TO NUMBER TEN. WELL, NUMBER TEN
24 AND NUMBER NINE. I WOULD REFER THE NUMBER NINE AND NUMBER
25 TEN TO TOWN OF SPRINGDALE VERSUS BUTLER, 299 SC 276. LAND

1 OWNER DID NOT HAVE RIGHT TO USE DEADLY FORCE IN RESISTING
2 LAWFUL ARREST. LANDOWNER DID NOT HAVE THE RIGHT TO USE
3 DEADLY FORCE IN RESISTING ARREST WHERE THE ARREST WAS
4 LAWFUL.

5 THE DEFENDANT THERE SAID THAT THE TRIAL COURT ERRED IN
6 FINDING THAT THE DEFENDANT HAD THE RIGHT TO USE DEADLY --
7 HAD THE RIGHT TO USE FORCE IN RESISTING ARREST. AND THIS
8 WAS A CASE WHERE THE COURT OF APPEALS DID SAY THAT THEY
9 COULD USE DEADLY FORCE IN RESISTING THE ARREST.

10 THE SUPREME COURT REVERSED THEM AND SAID THAT THE
11 DEFENDANT CITES A LINE OF CASES THAT SUPPORTS THE CONTENTION
12 THAT FORCE MAY BE USED IN RESISTING AN UNLAWFUL ARREST. WE
13 CONCLUDE THAT THOSE CASES ARE INAPPLICABLE TO THE SITUATION
14 THAT BAR WHERE THE ARREST WAS LAWFUL. SO I DECLINE TO
15 CHARGE NINE AND TEN TOO.

16 FORTUNATELY I'LL HAVE TONIGHT TO CONSIDER THESE RATHER
17 THAN THE TWO DAYS THAT I DID -- OTHERWISE INVOLVED. AND I
18 WILL -- I WILL SEE IF THERE IS SOMETHING MORE THAT I HADN'T
19 CONSIDERED.

20 BUT I DO -- I WOULD -- PLEASE, IN THE FUTURE, GIVE ME
21 -- IF YOU'VE GOT ANY REQUEST FOR CHARGES, GIVE THEM TO MY
22 LAW CLERK THE FIRST DAY. YOU KNOW, IF YOU'RE GOING TO TRY A
23 CASE, YOU KNOW WHAT THE CASE IS ABOUT. YOU DON'T HAVE TO
24 EXCHANGE THEM UNTIL WE GO TO THE JURY, WHICH IS THE TIME
25 NOW, BUT AGAIN, IT JUST HELPS THE COURT TO KNOW WHAT -- WHAT

1 THE -- IS ON YOUR MIND. AND IT HELPS THE COURT ALSO TO BE
2 BETTER PREPARED ON WHETHER OR NOT IT SHOULD BE CHARGED. ALL
3 RIGHT.

4 LET ME JUST GO THROUGH WHAT MY CHARGES WILL BE. OF
5 COURSE, CREDIBILITY OF TESTIMONY, EXPERT WITNESSES,
6 PRESUMPTION OF INNOCENCE, REASONABLE DOUBT. AND, OF COURSE,
7 I USE STATE VERSUS MANNING, REASONABLE DOUBT IS THE KIND OF
8 DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO
9 ACT.

10 THE ONLY TIME I WILL CHARGE VICTOR VERSUS NEBRASKA, ANY
11 OF THE CHARGES ON -- OTHER CHARGES ON REASONABLE DOUBT IS IF
12 THE JURY COMES BACK AND SAYS THEY WANT FURTHER EXPLANATION
13 AS TO WHAT REASONABLE DOUBT, THEN I WILL CHARGE VICTOR
14 VERSUS NEBRASKA, BUT, OTHERWISE, IT'S JUST STATE VERSUS
15 MANNING.

16 DIRECT AND CIRCUMSTANTIAL EVIDENCE, CRIMINAL INTENT,
17 GENERAL -- CRIMINAL INTENT IS A STATE OF MIND THAT OPERATES
18 JOINTLY WITH AN ACT OR OMISSION -- IN THE COMMISSION OF A
19 CRIME. CRIMINAL INTENT IS A MENTAL STATE. CRIMINAL
20 LIABILITY IS NORMALLY BASED UPON THE CONCURRENCE OF TWO
21 FACTORS, AN EVIL MEANING MIND AND AN EVIL DOING HAND, PROOF
22 OF INTENT NECESSARILY RESTS ON THE INFERENCE OF CONDUCT. IN
23 ORDER TO ESTABLISH CRIMINAL LIABILITY CRIMINAL INTENT IS
24 NECESSARY AND REQUIRED.

25 AN INDICTMENT'S NOT EVIDENCE. AND THEN I CITE JUST THE

1 STATUTE REALLY. AND THEN I DO PROVIDE THAT THERE ARE THREE
2 ELEMENTS FROM THE STATUTE.

3 FIRST, THAT A PERSON -- ALL RIGHT. FIRST, THAT
4 DEFENDANT RESISTED THE LAWFUL EFFORTS OF A LAW ENFORCEMENT
5 OFFICER TO ARREST HIM. SECONDLY THE STATE MUST PROVE THAT
6 THE DEFENDANT RESISTED THE LAWFULLY -- LAWFUL ARREST WITH
7 THE USE OF A THREAT OR USE OF A DEADLY WEAPON AGAINST THE
8 OFFICER. LAST THE STATE MUST PROVE THAT THE DEFENDANT WAS
9 IN POSSESSION OR CLAIMED TO BE IN POSSESSION OF A DEADLY
10 WEAPON.

11 THE STATE HAS THE BURDEN OF PROOF ESTABLISHING EACH
12 ELEMENT BEYOND A REASONABLE DOUBT. YOU SHOULD ENTER A
13 VERDICT BASED ON WHETHER OR NOT YOU'RE SATISFIED THE STATE
14 HAS ESTABLISHED BEYOND A REASONABLE DOUBT ALL OF THE
15 ELEMENTS OF THE OFFENSE. AND THAT'S ABOUT IT. ANYTHING
16 FURTHER FROM THE STATE?

17 MR. STOUDEMIRE: JUST ONE QUESTION, JUDGE. WITH REGARD
18 TO THE CRIMINAL INTENT CHARGE, THAT SEEMS TO BE A *MENS REA*
19 CHARGE TO ME. AND YOU'VE ALREADY SAID THAT THE STATUTE,
20 THIS PARTICULAR STATUTE DOESN'T REQUIRE *MENS REA*. I'M JUST
21 WONDERING ---

22 THE COURT: WELL, IT DOES REQUIRE -- IN ORDER TO HAVE A
23 VIOLATION OF A CRIMINAL STATUTE YOU DO HAVE TO HAVE AN
24 INTENT TO DO SOMETHING THAT IS WRONG.

25 MR. STOUDEMIRE: OKAY.

1 THE COURT: BUT THE THING IS, IGNORANCE IS NOT A
2 DEFENSE ON A *MALUM PROHIBITUM* TYPE ---

3 MR. STOUDEMIRE: OKAY.

4 THE COURT: IN FACT, I THINK THAT'S ONE OF THE CASES
5 YOU'VE CITED THAT -- IS IT EVEN THE LEAST OF US ARE SUPPOSED
6 TO PRESUME TO KNOW WHAT THE LAW IS. AND I THINK THAT WAS IN
7 A SPARTANBURG CASE. THEY SHOULD HAVE KNOWN THE MAYOR OF
8 SPARTANBURG HAD THE AUTHORITY TO ARREST AND SO THEY DIDN'T
9 HAVE THE RIGHT TO RESIST. ALL RIGHT.

10 AGAIN, I'LL LOOK FORWARD TO SEEING YOU AT 9:30 IN THE
11 MORNING. IF YOU HAVE SOMETHING ELSE, I WILL CONSIDER IT.
12 BUT AS I SAY, I THINK THAT THIS IS ONE -- WHEN THEY AMENDED
13 THE, I THINK, THIS STATUTE IN, GOSH, 1990, '91 IT PRETTY
14 MUCH TOOK IT OUT OF THE OTHER RESISTING AND ASSAULT AND
15 BATTERY AND ALL THOSE OTHER CASES, I MEAN, -- LET'S SEE.

16 WELL ANYWAY, NOW IS THERE ANY LESSER INCLUDED? BECAUSE
17 THAT GOES TO -- THAT'S WHY THEY SAY THERE IS NO LESSER
18 INCLUDED IN THIS -- ON THE FACE OF THIS STATUTE BECAUSE IT
19 DOESN'T REQUIRE KNOWING OR WILFUL.

20 MR. STOUDEMIRE: YOUR HONOR, MY -- I THINK THERE'S SOME
21 INFERENCE THAT THERE CAN BE A LESSER INCLUDED IF THERE'S
22 EVIDENCE THAT HE MAY HAVE COMMITTED THE LESSER INCLUDED. I
23 THINK IT'S IN YOUR DISCRETION OF WHETHER OR NOT TO CHARGE
24 THAT.

25 I THINK IF YOU LOOK AT STATE VERSUS RITTER, 296 SC 51,

1 A 1988 CASE, IT SAYS THE TRIAL JUDGE IS REQUIRED TO CHARGE
2 SIMPLE RESISTING ARREST UNDER SOUTH CAROLINA CODE 16 9
3 320(B) IF THERE IS EVIDENCE FROM WHICH THE JURY COULD INFER
4 THAT THE DEFENDANT COMMITTED THIS LESSER OFFENSE RATHER THAN
5 THE GREATER.

6 THE COURT: YEAH, BUT THOSE ARE 320s (A) AND (B).

7 MR. STOUDEMIRE: OKAY.

8 THE COURT: (B) REQUIRES, IF I'M NOT MISTAKEN,
9 KNOWINGLY AND WILFULLY.

10 MR. STOUDEMIRE: THAT'S TRUE.

11 THE COURT: SO IF YOU DON'T HAVE KNOWING AND WILFULLY
12 THERE, THEN ---

13 MR. STOUDEMIRE: THAT'S TRUE. THE ELEMENTS AREN'T THE
14 SAME.

15 THE COURT: BUT WE DON'T HAVE KNOWING AND WILFULLY
16 HERE. ALL RIGHT. SEE YOU IN THE MORNING.

17 MR. STOUDEMIRE: ALL RIGHT.

18 THE COURT: OH, WE'LL DO IT IN THE MORNING. I'M GOING
19 TO NOTE THAT THE DEFENDANT ACCEPTS MY FAILURE TO CHARGE ANY
20 AND ALL OF THEIR REQUESTS.

21 MR. BURR: THANK YOU, YOUR HONOR.

22 THE COURT: EXCEPT FOR SIX, I WOULD JUST HAVE TO LOOK
23 AT IT AND SEE IF I CAN -- BUT JUST REMIND ME TO DO THAT, IF
24 YOU WOULD.

25 MR. BURR: YES, SIR.

1 STATE OF SOUTH CAROLINA.

2 IN THE COURT OF GENERAL SESSIONS

3 COUNTY OF OCONEE

4
5 STATE OF SOUTH CAROLINA :

6 :

7 -vs-

8 :

TRANSCRIPT OF RECORD

9 :

10 BILLY WALTER WINCHESTER :

11 December 17, 2008

12 Walhalla, South Carolina

13
14 B E F O R E:

15 HONORABLE ALEXANDER S. MACAULAY, Judge.

16
17 A P P E A R A N C E S:

18 JULIAN STAUEMIRE, ESQ.

19 Attorney for the Plaintiff

20 WILSON BURR, ESQ.

21 Attorney for the Defendant

22
23
24 MARY E. DIGIROLAMO

25 Court Reporter

1 (REPORTER'S NOTE: This is the only portion of the
2 trial that I took. Ms. Renee Tollison took the
3 first portion.)

4 THE COURT: All right. Anything from the State
5 before we bring the jury?

6 MR. STADEMIRE: Nothing, Your Honor.

7 THE COURT: From the defense?

8 MR. BURR: Your Honor, we renew our objection to the
9 refusal for our instructions.

10 THE COURT: All right. Very good. I'll note for
11 the record that we had a charge conference yesterday in
12 the afternoon, and the Court declined to charge any of
13 the defense's request, except for six that I might charge
14 which is the suspicion charge. And note the objection to
15 the Court's failure to charge any of the defense charges.
16 The Court will charge or cover the State's charge. So
17 there's no objection there. All right. Anything else?
18 Also you renewed your motion for a directed verdict at
19 the close of ---

20 MR. BURR: Yes, Your Honor, I did.

21 THE COURT: All right. Very good. Thank you.
22 That's also denied based on the same ruling as before.

23 MR. BURR: Okay.

24 THE COURT: All right. Anything else?
25

1 circumstantial evidence, nor is a greater degree of
2 certainty required of circumstantial evidence than of
3 direct evidence. You should weigh all of the evidence in
4 the case and after weighing all the evidence, if you are
5 not convinced of the guilt of the defendant beyond a
6 reasonable doubt you must find the defendant not guilty.

7 I charge you that suspicion, however strong, is not
8 enough to sustain a conviction. The evidence presented
9 by the State must be substantial evidence that tends to
10 prove the guilt of the defendant beyond a reasonable
11 doubt.

12 Now, criminal intent is a state of mind that
13 operates jointly with an act or omission in the
14 commission of a crime. Criminal intent is a mental
15 state. Criminal liability is normally based upon the
16 concurrence of two factors, an evil meaning mind, an evil
17 doing hand. Proof of intent necessarily rests on
18 inference from conduct. In order to establish criminal
19 liability, criminal intent is required. Criminal intent
20 must be proven by the State beyond a reasonable doubt.
21 Criminal intent is always a matter that must be
22 determined by the jury from the circumstances surrounding
23 the situation. There's no way to prove intent to a
24 mathematical certainty. There is no way medical science
25 can dissect a person's brain and determine what the

1 person had in mind. So the law says that criminal intent
2 may be inferred from the circumstances shown to have
3 existed.

4 This is how you make a determination of whether or
5 not the element required requiring intent was present.
6 It's not necessary to establish intent by direct or
7 positive evidence, but intent may be established by
8 inference in the same way as any other fact, taking into
9 consideration the facts of the parties -- taking into
10 consideration the acts of the parties and all the facts
11 and circumstances of the case. Criminal intent is a
12 mental state of -- of conscious wrongdoing. It is up to
13 you to determine what the defendant intended to do based
14 on the circumstances shown to have existed.

15 The indictment charges the defendant with resisting
16 arrest with a deadly weapon. I would remind you, the
17 fact that the defendant was arrested, and charged, and
18 indicted in this case is not evidence in this case. It
19 cannot be considered by you as evidence in the case, nor
20 does it create any presumption or inference of guilt.
21 It's documented simply to form -- or the indictment is
22 simply the document or formal written instrument which
23 contains the charge made against the defendant. It is
24 the formal document which this case is brought into this
25 court.

1 The defendant is charged with the resisting arrest
2 with a deadly weapon pursuant to section 16-3-625 of the
3 South Carolina code of laws, which provides in pertinent
4 part, a person who resists the lawful efforts of a law
5 enforcement officer to arrest them with use of -- use or
6 threat of a deadly -- excuse me, with the use or threat
7 of use of a deadly weapon against the officer and the
8 person is -- or and the person in possession or claims to
9 be in possession of a deadly weapon is guilty of a
10 felony. As used in this section deadly weapon means the
11 instrument which can be used to inflict deadly force.

12 The defendant is charged with resisting arrest with
13 a deadly weapon. In order to prove this offense the
14 state must prove first that the defendant resisted the
15 lawful efforts of a law enforcement officer to arrest
16 him. Secondly, the State must prove that the defendant
17 resisted the law arrest with the use or threat of use of
18 a deadly weapon against the officer. Lastly, the State
19 must prove the defendant was in possession or claimed to
20 be in possession of a deadly weapon. A deadly weapon, as
21 I said, is -- means any instrument that can be used to
22 inflict deadly force.

23 The State has the burden of proving each and -- each
24 element of the charge beyond a reasonable doubt. And if
25 you as jurors have a reasonable doubt as to whether the

1 State has met its burden of proof and shown all the
2 elements of the crime of resisting arrest with a deadly
3 weapon, you would find the defendant not guilty. You
4 should enter your verdict based on whether or not you are
5 satisfied that the State has established beyond a
6 reasonable doubt all of the elements of the offense.

7 As I said, if you have an reasonable doubt as to
8 whether the State has met its burden of proof and shown
9 all the elements of the crime of resisting arrest with a
10 deadly weapon, you would find the defendant not guilty.

11 Now, Mr. Foreman, ladies and gentlemen of the jury,
12 you have been selected as fair and impartial jurors,
13 sworn to impartially try and determine the facts of the
14 case. When you comply with your duty to do so then no
15 one will have a right to criticize your verdict and you
16 will have fully discharged your duty as jurors. You
17 should not be influenced by opinions or expressions of
18 opinions if any which you may have heard on the outside.
19 But you are to decide this case according to the
20 testimony that you have heard from the lips of the sworn
21 witnesses along with other evidence that may have been
22 introduced.

23 As I said earlier, you are the judges of the facts
24 in this case, and you are to determine only if the
25 defendant is guilty or not guilty based upon the

1 And then once you have reached your verdict and you noted
2 it on the verdict form, then you will sign the verdict on
3 the line above your name. At that time you will knock on
4 the door and we'll return and receive your verdict. If
5 you would please pass the verdict form up.

6 I'm going to ask you to retire to the jury room one
7 more time without deliberating on the case, but I need to
8 take up some matters with the attorneys that will take
9 just a few minutes. But I'll be sending in all of the
10 exhibits that have been introduced into evidence with the
11 verdict form. Once you get that begin your
12 deliberations. Once you've reached a verdict and the
13 verdict form has been completed, knock on the door, as I
14 say, and return. As I said earlier, whatever verdict you
15 have has to be unanimous, all 12 members of the jury.
16 All right. I'll excuse you now. Do not begin your
17 deliberations. I'll send the verdict forms and exhibits
18 in.

19 (The jury exited the courtroom at 10:13 a.m.)

20 THE COURT: All right. Any requests or exceptions
21 from the State?

22 MR. STAUEMIRE: None, Your Honor.

23 THE COURT: From the defendant other than
24 previously?

25 MR. BURR: Your Honor, you have ruled on closely

1 related matters twice before and I understand the current
2 law on indictments, but I would object that the element
3 of -- the statement knew or should have known of law
4 enforcement was included in the indictment. It should be
5 in fact included as an element.

6 THE COURT: All right. As I say I have ruled
7 earlier that that's perfilious and that it would not --
8 so I would deny your motion.

9 MR. BURR: Yes, Your Honor.

10 THE COURT: And overrule your objection.

11 MR. BURR: Thank you, Your Honor.

12 THE COURT: All right. But it is noted for the
13 record. It might be a good issue certainly if we have
14 to. All right. See that all of the exhibits that are to
15 go back do go back, those that aren't don't. Now, I
16 might suggest that I don't like to send, even though
17 you've got your firearm cord, or whatever it is on there,
18 I don't like to send bullets back.

19 A DEPUTY: Do you want to send the firearm but not
20 the ---

21 THE COURT: Send the firearm but not the bullets.

22 MR. STAUEMIRE: Judge, I think, and if you remember
23 right, it is doesn't matter to me whatever you want to
24 do, but the barrel at least has been removed, so if you
25 wanted to keep this part out they couldn't ---

1 join us, please.

2 (The jury entered the courtroom at 11:45 a.m.)

3 THE COURT: Mr. Foreman, I understand the jury has
4 reached a verdict?

5 MR. BEEBE: Yes, sir.

6 THE COURT: If you would, please hand it up to the
7 bailiff. All right. Would the -- attention of the
8 defendant. State of South Carolina versus Billy W.
9 Winchester, indictment number 2007-GS-37-1346. We the
10 jury unanimously find that the defendant, Billy W.
11 Winchester, is guilty of resisting arrest with a deadly
12 weapon in violent of South Carolina code section
13 16-3-625, Eric Beebe, foreperson.

14 Mr. Foreman, ladies and gentlemen of jury, is this
15 your verdict and still your verdict so say y'all? If so
16 indicate by raising your right hand.

17 (All jurors raise their right hand.)

18 THE COURT: Very good. Let the record reflect that
19 each member of the jury affirmed the verdict. Is there
20 anything from the State before I dismiss the jury?

21 MR. STAUEMIRE: Nothing, Your Honor.

22 THE COURT: From the defense.

23 MR. BURR: Your Honor, defense requests individual
24 polling of the jury.

25 THE COURT: Very well. Madam Clerk.

1 And with that you will be excused. And hope y'all have
2 and wonderful holiday and a very merry Christmas. Thank
3 you. Everything else remain seated while the jury
4 retires from the courtroom. Oh, excuse me. Mr. Beebe, I
5 need to see you one minute.

6 (Mr. Beebe approached the bench to sign the
7 indictment.)

8 (The jury exited the courtroom.)

9 THE COURT: All right. Anything from the State?

10 MR. STAUEMIRE: Nothing, Your Honor.

11 THE COURT: All right. Anything from the defendant?

12 MR. BURR: No, Your Honor.

13 THE COURT: All right. Very well. Sentencing. Mr.
14 Burr? All right. Is the State ready?

15 MR. STAUEMIRE: We are, Your Honor.

16 THE COURT: All right. We are here for the
17 sentencing on indictment 2007-GS-37-1346, the defendant,
18 Billy Walter Winchester, having been found guilty of
19 resisting arrest with a deadly weapon in violation of
20 section 16-3-625.

21 Mr. Solicitor, I understand that the range of
22 sentence is not less than two years and not more than 10
23 years. Any suspended sentence has to be at least six
24 months. Is that what you understand?

25 MR. STAUEMIRE: That is my understanding as well.

1 THE COURT: Is that your understanding, Mr. Burr?

2 MR. BURR: Yes, Your Honor, it is.

3 THE COURT: All right. Does the State have anything
4 to present?

5 MR. STAUEMIRE: No, Your Honor, we don't, outside
6 of his record which in the last 10 years only consists of
7 a discharging a firearm within the city limits of
8 Walhalla.

9 THE COURT: Mr. Burr?

10 MR. BURR: May it please the Court, Your Honor? As
11 Your Honor knows, for lack of a better term, this statute
12 is actually a strict liability, did not lend itself to
13 any form of defense at all once you meet the elements.
14 Also, because of the penalties which Your Honor has just
15 discussed with the mandatory minimum, Mr. Staudemire and
16 I have discussed this on numerous occasions over the past
17 year and a half, and there just wasn't a reasonable
18 ground for a negotiated plea.

19 Since this statute was passed, South Carolina has
20 gone more and more to using home incarceration. You've
21 heard the testimony about Mr. Winchester's medical
22 condition. He does live right here in the city limits.
23 He does not get out very much. We would ask the Court to
24 convert any prison time to a home incarceration then
25 followed by any suitable probation.

1 THE COURT: Do we have that in Oconee?

2 MR. BURR: Yes, sir, we do.

3 THE COURT: Is that correct, Mr. Staudemire?

4 MR. STAUEMIRE: Your Honor, we do have home
5 incarceration available in Oconee County. If you want me
6 to state my position?

7 THE COURT: Please.

8 MR. STAUEMIRE: My position, after discussing it
9 with Chief Chastain, is while I'm in favor of home
10 incarceration in a lot of cases, I think that this is --
11 this concerns me in this particular type of crime because
12 the crime is one that is committed not against a regular
13 citizen but it is committed against a law enforcement
14 official. That being the case, personally I'm not in
15 favor of home incarceration on this offense. However, we
16 do leave it in the discretion of the Court.

17 THE COURT: In the last 10 years his only other
18 offense has to do with a weapon?

19 MR. STAUEMIRE: Yes, sir, it's discharging a
20 firearm. And if you want to know any particulars about
21 that, Chief Chastain may know something about the
22 particulars.

23 THE COURT: Okay. Chief, if you would, please.
24 Chief, that's right, you've been sworn before.

25 MR. CHASTAIN: Best I can recall, he had a visitor

1 in his house some years ago, asked the visitor to leave
2 and the visitor wouldn't leave. It was Roger Bagwell.
3 He shot at the floor toward Roger Bagwell to get Roger to
4 leave. The original charges at the time that were
5 brought by Captain Brock was assault with intent to kill
6 and discharging in the city limits. And Mr. Winchester
7 plead guilty to the discharging and they dismissed the
8 assault due to the victim not wanting to pursue it.

9 MR. BURR: Your Honor, if I may address that?

10 THE COURT: Please.

11 MR. BURR: Based on the information Mr. Winchester
12 has provided me on that same charge, that was the
13 uninvited guest in his house he was trying to get out.
14 That's -- that was the mitigating circumstance as to why
15 it was reduced to simply a discharging a firearm.

16 THE COURT: All right. Is anything you would like
17 to say, or anybody would like to say anything on behalf
18 of Mr. Winchester?

19 MR. ROBERT WINCHESTER: Yeah, I'd like to if I
20 could.

21 THE COURT: All right. If you would for the record
22 identify yourself.

23 MR. BURR: Just stand here. Identify yourself.

24 MR. ROBERT WINCHESTER: My name is Robert
25 Winchester, and I'm the brother to the defendant. And I

1 don't believe based on what happened that he was
2 intending to shoot anybody.

3 MR. BURR: That's already been said.

4 MR. ROBERT WINCHESTER: Yeah, I know. But you know,
5 I'd ask the Court to, of course considering his medical
6 condition, that, you know, leniency -- and I don't
7 condone anything, you know, as far as violence, but I
8 would ask for leniency of the Court based on his age and
9 of course his condition. Thank you.

10 THE COURT: How old is Mr. Winchester?

11 MR. WINCHESTER: I'm 58.

12 THE COURT: 56? Pardon?

13 MR. WINCHESTER: I'm 58.

14 THE COURT: 58.

15 MR. WINCHESTER: And I'm scheduled for heart surgery
16 in the next couple months, bypass surgery.

17 THE COURT: Anyone else?

18 MR. BURR: No, Your Honor.

19 THE COURT: Well, the thing that concerns the Court
20 of course is what seems to be the common or reoccurring
21 problem with deadly weapons. And that's what they are.
22 I have known cases where people have died from warning
23 shots. Obviously when you fire through the wall or a
24 window, you don't know what you might hit. In
25 particular, if you do it in a residential area you don't

1 know where it might go.

2 Does he have any other record at all? I mean I
3 don't want to go beyond the 10 years, but is there
4 anything else -- well, what sort of record does he have
5 even beyond that for sentencing?

6 MR. STAUEMIRE: Your Honor, the record I have dates
7 back to 1975. In '75 we've got a driving under the
8 influence. In 1979 there is another driving under the
9 influence. In 1982, driving under the influence. In
10 1985, driving under the influence and driving under
11 suspension. In 1991, another driving under the
12 influence.

13 THE COURT: Are these driving -- mostly driving
14 offenses?

15 MR. STAUEMIRE: Yeah, that's it.

16 THE COURT: No violence other than the one?

17 MR. STAUEMIRE: Your Honor, he had one simple
18 assault that he was charged with that's marked as a
19 non-conviction. So he has had no other convictions for
20 anything that would be considered weapon related or
21 violence related, other than discharging a firearm and
22 this.

23 THE COURT: Home incarceration, is that done through
24 the detention center or through probation?

25 PROBATION AGENT: It's done through the detention

1 center. He'd go over to the jail and then they would
2 contact the person. I think it's Eagle Eye Monitoring,
3 and that representative would come up and set him up.

4 MR. BURR: And there is a daily charge there, Your
5 Honor, that the defendant is responsible for paying for.

6 THE COURT: Thank you, ma'am. What sort of
7 monitoring do they have, I mean?

8 PROBATION AGENT: It's an electronic monitoring, and
9 it's real strict. They allow them to leave for doctor's
10 appointments and things like that, but otherwise they are
11 incarcerated in their home. It works off of EM,
12 electronic ---

13 THE COURT: Well, how about activities, such as --
14 well, I think do they have the same requirements that
15 even probation, as far as drinking? You don't know?

16 PROBATION AGENT: I don't think that it's that type
17 of supervision.

18 MR. BURR: I have been instructed that they're
19 subject to drug testing. And certain monitoring that is
20 involved, I can't tell the Court exactly what it is. And
21 in fact, there are two different monitors that are
22 available, Your Honor. One for \$9 a day where they can
23 monitor where they're going, their location is. They
24 have to call if they're to leave their approved spot.
25 There's a \$15 a day that's the positioning thing where

1 they can mark off certain spots. It's alarmed. That's
2 primarily for child molesters, or whatever. But there
3 are two available, different charges. And the defendant
4 is responsible for paying it.

5 THE COURT: Well, it's bad enough when the public at
6 large is put at jeopardy by indiscriminate or negligent
7 use of firearms, and an officer is subjected to that.
8 All right. Has he served any time?

9 MR. BURR: Yeah. Seven days, Your Honor.

10 THE COURT: All right. Mr. Winchester, anything
11 you'd like to say?

12 MR. WINCHESTER: Well, like I said, I had no idea I
13 was being invaded by the police. And I just was -- shot
14 to scare whoever it was away. And had I known it was
15 police I wouldn't have shot at them like one Indian
16 trying to scare away the calvary.

17 THE COURT: I hope you understand the Court is
18 concerned that rather than taking the law in your own
19 hands that it might have been better to call the very
20 people who you were putting in jeopardy.

21 MR. WINCHESTER: Yes, sir.

22 THE COURT: And I happen to know your Chief of
23 Police.

24 MR. WINCHESTER: Yes, sir, I know.

25 THE COURT: I think I've had him in court before.

1 And I think I've had him in court on a case that was a
2 murder case. And I think in that case that he was --
3 there's a type of person that does help others.

4 MR. WINCHESTER: Yes, sir, I know Chief Chastain.

5 THE COURT: And I -- excuse me, sir. I think that
6 you can rely on your law enforcement to be of help rather
7 than a threat to you. It would be better that you --
8 obviously in this instance it would have been better if
9 you had. Fortunately the result was not as bad as it
10 could have been. And obviously this has got an impact
11 upon your family and those others that have cared about
12 you. A lot of times the victim or people that suffer the
13 most are not the ones who actually bring the action on
14 themselves. All right. Anything else from the State?

15 MR. STAUDEMIRE: Nothing, Your Honor.

16 THE COURT: From the defense?

17 MR. BURR: Nothing, Your Honor.

18 THE COURT: All right. Mr. Winchester, anything
19 else?

20 MR. WINCHESTER: I'm just at the mercy of the Court.

21 THE COURT: Well, that's one of the things that I
22 gave up doing about 15 years ago. I now do not what I
23 want to do but what I have to do.

24 Indictment number 2007-GS-37-1346, the sentence of
25 the Court that the defendant, Billy Walter Winchester, be

*697 384 S.E.2d 697

299 S.C. 276

Supreme Court of South Carolina.

TOWN OF SPRINGDALE, Appellant,

v.

Jon Kevin BUTLER, Respondent.**No. 23059.**

Heard Jan. 23, 1989.

Decided Aug. 14, 1989.

Defendant's conviction by a magistrate and jury of disorderly conduct in violation of town ordinance was reversed by the Circuit Court, Lexington County, George Bell Timmerman, Jr., Special Circuit Judge, and town appealed. The Supreme Court, Toal, J., held that: (1) fact that defendant was on his private property did not preclude conviction for disorderly conduct under town ordinance which did not require that incident occur in a public area; (2) statute dealing with entering premises after warning or refusing to leave on request did not apply since officers responding to noise complaint had legal cause to be on property; and (3) landowner did not have right to use deadly force in resisting lawful arrest.

Reversed.

West Headnotes

[1] Disorderly Conduct ☞ 1

129 ----

129k1 Nature and Elements of Offenses.

[See headnote text below]

[1] Municipal Corporations ☞ 596

268 ----

268X Police Power and Regulations

268X(A) Delegation, Extent, and Exercise of Power

268k596 Public Peace and Order.

Disorderly conduct is not a common-law crime and what constitutes an offense depends primarily on the wording of the particular ordinance providing for its punishment.

[2] Municipal Corporations ☞ 640

268 ----

268X Police Power and Regulations

268X(B) Violation and Enforcement of Regulations

268k634 Criminal Prosecutions

268k640 Evidence.

Evidence that defendant became belligerent to officers responding to noise complaint, yelling obscenities at them, ordering them to leave his property, and swinging his arms as he approached them, was sufficient to support conviction for disorderly conduct under town ordinance; ordinance did not require that incident occur in a public area and therefore fact that defendant was on his private property did not preclude conviction.

[3] Municipal Corporations ☞ 632

268 ----

268X Police Power and Regulations

268X(B) Violation and Enforcement of Regulations

268k632 Defenses.

Statute dealing with entering premises after warning or refusing to leave on request did not apply as defense to prosecution of landowner for disorderly conduct involving shouting obscenities and swinging his arms as he approached police officers after ordering them to leave his property; statute which refers to person who is on property "without legal cause or good excuse" did not apply to officers who were responding to noise complaint and therefore had legal cause to be on property. Code 1976, § 16-11-620.

[4] Trespass ☞ 81

386 ----

386III Criminal Responsibility

386k81 Trespass After Warning or Notice.

Statute dealing with entering premises after warning or refusing to leave on request does not grant the landowner the right to eject. Code 1976, § 16-11-620.

[5] Homicide ☞ 805

203 ----

203VI Excusable or Justifiable Homicide

203VI(B) Self-Defense

203k805 Resistance of Arrest.

(Formerly 203k111)

Landowner did not have the right to use deadly force in resisting arrest for disorderly conduct in violation of town ordinance where the arrest was lawful.

[299 S.C. 277] E. Danny Scott, William J. Buchanan, both of Setzler, Chewning and Scott, West Columbia; and James B. Richardson, Jr., of Richardson and Smith, Columbia, for appellant.

James E. Hunter, Cayce, for respondent.

TOAL, Justice:

This case involves the arrest of a person for disorderly conduct on his own property. Jon Kevin Butler was convicted by a magistrate and jury of disorderly conduct in violation of an ordinance in the Town of Springdale. The Circuit Court, however, reversed, holding not only that Butler was not guilty of disorderly conduct, but also that he had the right to resist the arrest even to the point of using deadly force. We disagree and reverse.

On March 11, 1987, Officer Clackley of the Airport Police Department and Officer Haynes of the Springdale Police Department were requested to investigate a complaint of loud music coming from a house in Springdale. Upon arriving at the house, *698 the officers knocked on the door, explained that there had been a complaint and asked that the playing of the music be discontinued. The persons in the house were cooperative and agreed to stop playing the music. When the officers started going back towards their car, they were approached by the defendant, Jon Kevin Butler. Butler asked the identity of the person who had called in the complaint. According to the officers' testimony, Butler became belligerent, yelling obscenities at the officers. He ordered the officers to leave his property. Officer Haynes told Butler to calm down or he would be arrested. Butler continued to shout obscenities and swing his arms as he approached the officers. Butler was placed under arrest for disorderly conduct in violation of Chapter 4, § 15-401 of the Town of Springdale Code.

[299 S.C. 278] Butler was charged with disorderly conduct and resisting arrest. The resisting arrest charge was withdrawn. Butler was tried before the Lexington County Magistrate and a jury and convicted of disorderly conduct. On appeal to the circuit court, Judge Timmerman reversed the conviction.

DISORDERLY CONDUCT

The Town of Springdale contends that there was

sufficient evidence to support a conviction for disorderly conduct. We agree and, therefore, reverse the Circuit Court.

[1][2] Disorderly conduct is not a common law crime and what constitutes an offense depends primarily on the wording of the particular ordinance providing for its punishment. *State v. Hill*, 175 S.E.2d 227, 254 S.C. 321 (1970). Section 15-401 of the Town of Springdale Code provides that a person will be guilty of disorderly conduct in the following situations:

(1) Any person who shall act in a violent or tumultuous manner toward another whereby any person is placed in fear of safety of his life, limb, or health;

* * * * *

(3) Any person who shall endanger lawful pursuits of another by acts of violence, angry threats, and abusive conduct;

* * * * *

(11) Any person who utters while in a state of anger in the presence of another any lewd or obscene words or epithets;

* * * * *

(13) Any person who shall act in a dangerous manner toward others.

It is clear from the record that Butler's actions were specifically prohibited by this ordinance.

Butler argues that he was not in a public place and, therefore, cannot be guilty of disorderly conduct. Springdale, however, contends that the place where the conduct is committed is not an element of the offense, and therefore, the fact that Butler was on his private property does not defeat the charge. We agree. Unlike most municipal ordinances, [299 S.C. 279] the Springdale ordinance does not require that the incident occur in a public area. As noted above, the wording of the particular ordinance controls the definition of the offense. Therefore, the offense does not have to occur in a public place in order for it to be charged under this ordinance.

USE OF FORCE AGAINST OFFICERS

Springdale contends that the Circuit Court erred in

201

WITNESSES

WPD/RHUBBY

[Signature]

REST WARRANT NO. H665408

ACTION OF GRAND JURY

TRUE BILL

AUG 13 2007

Kevin W Sheriff

remman of Grand Jury

VERDICT

Guilty

[Signature]

17 DEC 08

remman of Petit Jury

Date:

DOCKET NO. 2007-GS-37-1346

The State of South Carolina,

County of OCONEE

COURT OF GENERAL SESSIONS

AUG 13 2007

TERM 2007

THE STATE

vs.

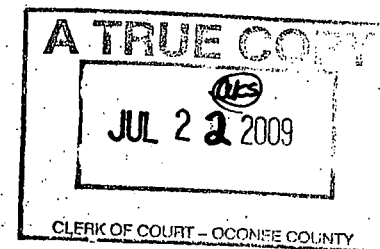
BILLY WALTER WINCHESTER

Indictment for

RESISTING ARREST WITH A DEADLY
WEAPON

16-3-625 [2352]

BLAIR L. STOUDEMIRE, ASSISTANT SOLICITOR



FILED OCONEE, SC
SALLIE C. SMITH
CLERK OF COURT

2007 AUG 13 P 12:21

BW

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

INDICTMENT FOR

OCONEE

RESISTING ARREST WITH A
DEADLY WEAPONAt a Court of General Sessions, convened on AUG 13 2007 16-3-625 [2352]

the Grand Jurors of _____ County present upon their oath:
OCONEE

THAT BILLY WALTER WINCHESTER DID IN OCONEE COUNTY ON OR ABOUT MAY 17, 2007, KNOWINGLY AND WILLFULLY OPPOSE OR RESIST AN ARREST BEING MADE BY OFFICER RHUDY, OFFICER TURNER AND DEPUTY HUNNICUTT, WHOM HE/SHE KNEW OR REASONABLY SHOULD HAVE KNOWN WERE LAW ENFORCEMENT OFFICERS WITH THE USE OR THREAT OF USE OF A DEADLY WEAPON AGAINST THE OFFICERS, AND THE DEFENDANT WAS IN POSSESSION OR CLAIMED TO BE IN POSSESSION OF A DEADLY WEAPON, TO WIT: DEFENDANT FIRED A GUN FROM INSIDE HIS HOME WHILE OFFICERS WERE OUTSIDE HIS HOME ATTEMPTING TO SERVE AN ARREST WARRANT UPON HIM. ALL IN VIOLATION OF SECTION 16-3-625, CODE OF LAWS OF SOUTH CAROLINA, (1976), AS AMENDED.

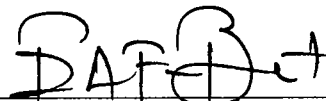
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Sh. L. Add
SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 7th, 2010

A handwritten signature in black ink, appearing to read "EAFB", written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BILLY WALTER WINCHESTER,

APPELLANT

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUES ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION	13
CERTIFICATE OF COUNSEL	14

TABLE OF AUTHORITIES

Cases

<u>Hodges v. Rainey</u> , 341 S.C. 79, 533 S.E.2d 578 (2000)	11
<u>Howell v. United States Fidelity and Guaranty Insurance Company</u> , 370 S.C. 505, 636 S.E.2d 626 (2006)	11
<u>Joiner v. Rivas</u> , 342 S.C. 102, 536 S.E.2d 372 (2000)	11
<u>Southern Ry. Co. v. South Carolina State Highway Department</u> , 237 S.C. 75, 115 S.E.2d 685, 689 (1960)	11
<u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005)	12
<u>State v. Williams</u> , 36 S.C. 493, 15 S.E.554 (1892)	6

Statutes

S.C. Code §16-9-230 (1976)	3, 5
S.C. Code Ann. §16-3-625 (1976)	3,5,6,10,11
S.C. Code Ann. §16-9-320 (1976)	9, 11

STATEMENT OF ISSUES ON APPEAL

Should S.C. Code Ann. §16-3-625 (1976), resisting arrest with a deadly weapon, be read in conjunction with S.C. Code §16-9-230 (1976), opposing or resisting law enforcement officer serving process; assaulting officer engaged in serving process, to provide that an accused "knowingly and willfully" intend to violate the statute? Did the trial court judge err in denying Winchester's motion for a directed verdict when he argued that he lacked the *mens rea* to commit the crime? And did the trial court judge err in denying Winchester's request for a jury charge that would have allowed the jury to consider his defense—that Winchester did not realize that police officers were attempting to serve him with a CDV warrant when he fired a single shot attempting to frighten away would-be home intruders?

STATEMENT OF THE CASE

Billy Walter Winchester was indicted by the Oconee County grand jury on August 13, 2007 for resisting arrest with a deadly weapon. He was tried before the Honorable Alexander S. Macaulay and a jury on December 15th- 17th, 2008. He was represented by Wilson Burr, Esquire. He was convicted, and sentenced to a term of 10 years, provided upon the service of 6 months, with the balance suspended to 5 years probation.

This appeal timely follows.

ARGUMENT

S.C. Code Ann. §16-3-625 (1976), resisting arrest with a deadly weapon, should be read in conjunction with S.C. Code §16-9-230 (1976), opposing or resisting law enforcement officer serving process; assaulting officer engaged in serving process, to provide that an accused "knowingly and willfully" intend to violate the statute. The trial court judge erred in denying Winchester's motion for a directed verdict when he argued that he lacked the *mens rea* to commit the crime. The trial court judge also erred in denying Winchester's request for a jury charge that would have allowed the jury to consider his defense—that Winchester did not realize that police officers were attempting to serve him with a CDV warrant when he fired a single shot attempting to frighten away would-be home intruders?

Billy Winchester was tried on the sole count of resisting arrest with a deadly weapon. As explained more fully, *infra*, these events occurred at nighttime, at his home, and Winchester is handicapped. Winchester's defense to the charge was that he did not realize that these were officers at his home, attempting to effectuate this arrest on a CDV warrant. The language of the statute, however, did not allow this defense to be considered by the jury and he was convicted.

At the close of the State's case, Winchester moved for a directed verdict:

Your Honor, we would move for a directed verdict at this point. Insufficient evidence to show the *mens rea* or intent of Mr. Winchester to violate the statute.

ROA p. 114, ll.17-19.

The court denied the motion:

Well, unlike some of the other statutes, I think 16-9-320(A) and (B) whether you have a knowing and willingly—willful action, there is no requirement or—under this particular statute, 16-3-625, a person who resists the lawful efforts of a law enforcement officer to arrest him with the use or threat of use of a deadly weapon against the officer and the person is in possession or claims to be in possession of a deadly weapon is guilty of a felony.

I find there's sufficient evidence to go to the jury on the statute.

ROA p. 114, l. 20- p. 115, l. 3.

As the judge explained later, he construes this particular crime to be *malum prohibitum*. ROA p. 163, ll.1-2. The judge then discussed State v. Williams, 36 S.C. 493, 15 S.E.554 (1892):

THE COURT: In fact, I think that's one of the cases you've cited that—it is even the least of us are supposed to presume to know what the law is. And I think that was in a Spartanburg case. They should have known the Mayor of Spartanburg had the authority to arrest and so they didn't have the right to resist. Alright.

ROA p. 163, ll. 4-9.

In fact, that case draws the distinction between a mistake of fact and a mistake of law, and asserts that a mistake of law—ignorance of the law—is not a defense. In this case, Winchester asserted that he made a mistake of fact regarding the identity of the policemen.

The judge then charged the jury, at the end of the case, with the following instructions regarding the statute:

The defendant is charged with the resisting arrest with a deadly weapon pursuant to section 16-3-625 of the South Carolina code of laws, which provides in pertinent part, a person who resists the lawful efforts of a law enforcement officer to arrest them with the use of—use or threat of a deadly—excuse me, with the use or threat of use of a deadly weapon against the officer and the person is—or and the person in possession or claims to be in possession of a deadly weapon is guilty of a felony. As used in this section deadly weapon means the instrument which can be used to inflict deadly force.

The defendant is charged with resisting arrest with a deadly weapon. In order to prove this offense the state must prove first that the defendant resisted the lawful efforts of a law enforcement officer to arrest him. Secondly, the State must prove that the defendant resisted the law arrest with the use or threat of use of a deadly weapon against the officer. Lastly, the State must prove the defendant was in possession or claimed to be in possession of a deadly weapon. A deadly weapon, as I said, is—means any instrument that can be used to inflict deadly force.

ROA p. 2, ll. 1-22.

The indictment in this case did include the “knowingly and willfully” language:

That Billy Walter Winchester did in Oconee County on or about May 17, 2007, knowingly and willfully oppose or resist an arrest being made by . . . whom he/she knew or reasonably should have known were law enforcement officers . . . (Indictment 2007-GS-37-1346).

Defense counsel requested a number of jury charges, including the definitions of “knowing” and “intentional.” The court declined to charge the jury with those requests. Defense counsel also requested “knowledge of a fact”:

A defendant who is not conscious of a fact does not act with knowledge of that fact even though a reasonable person in the same situation as defendant would have been consciously aware of that fact. Knowledge is based on what a person was aware of, not what he or she ought to have been aware of.

See W. LaFave & A. Scott, Criminal Law §3.4(c).

The judge declined to charge the above:

“I find that under the circumstances of this case that I will charge the law rather than something that is not the law. So I decline to charge number three.”

ROA p. 157, ll. 20-22.

While deliberating, the jury requested a copy of the law that they were asked to consider. The judge then reinstructed them on statute, and also re-read the elements that the State had to prove. ROA p. 3, l. 18-p. 7, l. 10.

Relevant Facts

Billy Winchester was 58 at the time of his conviction. ROA p. 178, ll.10-14. At trial, an orthopedic surgeon testified to his numerous back surgeries. ROA p.116, l.1- p. 125, l.4. He was wheelchair bound during his trial, and there was ample evidence presented that he had significant mobility issues. He is self-described as "crippled." ROA p. 148, ll.20-21. He lived alone in a small house in Walhalla. He only used the back part of his home so that he would not have to heat and cool the other part of it. ROA p. 126, ll.21-25; ROA p. 140, ll.15-17. On the night of these events, he was taking a pain medication, Lorcet. ROA p. 141, ll.9-12.

On the night of these events, three officers from the Sheriff's Department approached his home around 10:30 pm to serve him with an arrest warrant. It was dark, and the officers carried their flashlights. Two officers approached the front of the house; the other officer, the rear. ROA p. 12, l.20- p. 15, l. 19. The officer who approached the rear, Turner, was a reserve officer. ROA p. 34, ll.17-19. They all pounded on the door trying to get Winchester's attention. Winchester testified that he did not hear the officers identify themselves as police men. He had received no prior warning they were coming to his home, and was not otherwise expecting them. ROA p. 52, ll.3-17. They did not use their blue lights or sirens. ROA p. 139, l. 25-p. 154, l.19; ROA p. 11, ll.22-24; ROA p. 31, ll.8-9; ll.11-13. Despite his brother's wife working as a dispatcher, he never received a courtesy call. ROA p. 31, ll. 3-16; ROA p. 52, ll.3-17. Winchester's television was on. ROA p. 54, ll.6-7; ROA p. 67, ll.1-2.

Winchester testified he was frightened, and that he believed he was about to be victimized during a home invasion. He grabbed a revolver, a .22, and fired a single shot, hoping to scare away the intruders. Once the shot was fired, the officers took cover behind vehicles in the yard. They again yelled to him that they were the police. ROA p. 43, l. 3- p. 44, l.21. Relieved that these were police officers and not intruders, Winchester then walked outside to surrender. The officers testified they warned him to take his hands out from behind his back; Winchester testified he simply walked outside, where he was subsequently Tasered by the officers. He was ultimately taken to the hospital, and then charged with this crime. ROA p. 139, l. 25- ROA p. 154, l. 19.

His defense at trial, to the extent he was allowed to raise one under the language of the statute, was that he did not realize these were police officers at his home and, therefore, he did not knowingly and willfully resist his arrest.

Legal Analysis

S.C. Code Ann. §16-3-25 (1976) stands alone among other criminal statutes that criminalize behavior against law enforcement officers seeking to discharge their duties in peace, in that it omits the language that a person “knowingly and willfully” commit the act. See S.C. Code Ann. §16-9-320 (1976), Opposing or resisting law enforcement officer serving process; assaulting officer engaged in serving process:

(A) It is unlawful for a person knowingly and willfully to oppose or resist a law enforcement officer . . . whom the person knows or reasonably should know is a law enforcement officer . . . whether under process or not.

(B) It is unlawful for a person to knowingly and willfully assault, beat, or wound a law enforcement officer . . . by one whom the person

knows or reasonably should know is a law enforcement officer... whether under process or not.

Indeed, a bill introduced into the South Carolina Senate during the 118th Session, 2009-2010 (S.292, Sponsored by Senator Bryant) proposes to incorporate that same language into S.C. Code Ann. §16-3-625 (1976). The proposed new subsection (A) would read:

A person who knowingly and willfully commits an assault and battery on a law enforcement officer during the lawful discharge of the officer's official duties, or when the offense is directly related to the officer's official duties, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not less than two months nor more than three years, or both. No person sentenced under this subsection for a second or subsequent offense shall have the sentence suspended to less than six months nor shall the person be eligible for parole until after service of six months.

As of the date of the submission of this brief, this bill is, upon information and belief, residing in the Judiciary Committee.

The trial court judge erred in not granting Winchester's motion for a directed verdict because the state did not offer any evidence that he intended to violate the statute, and he erred in denying Winchester's requested jury instructions that would have allowed the jury to consider whether he knowingly and willfully violated the statute.

S.C. Code Ann. §16-3-625 (1976) is ambiguous

This statute is ambiguous because it is not clear whether an accused must know, or have reason to believe, that the person attempting to arrest him is a law enforcement officer. Does this section apply, for example, only when police officers are identified by their badges or self-representation? Does it apply when a driver, at nighttime, and on a deserted

road, sees a blue light behind her, signaling her to pull over, and she has a gun in the glove compartment? In other words, to what extent should an accused have some indication that a law enforcement officer is who he purports to be, in order to be liable under this statute?

These questions are answered by the language contained in *S.C. Code Ann.* §16-9-320 (1976) and the proposed *S.C. Code Ann.* §16-3-625 (1976) with the inclusion of the phrase “knowingly and willfully.” With this additional language, it is clear that an accused would be liable if he or she knowingly and willfully resisted an arrest. And also see Southern Ry. Co. v. South Carolina State Highway Department, 237 S.C. 75, 115 S.E.2d 685, 689 (1960) (“While, as a general rule, references to statutes in *pari materia* for purposes of construction has been made largely where there is ambiguity in the language of the statute construed, yet this principle has not been limited solely to such instances.”).

Resolving the ambiguity

The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole. Mid-State Auto Auction of Lexington, Inc. v Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). Statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result. Joiner v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000). See Howell v. United States Fidelity and Guaranty Insurance Company, 370 S.C. 505, 636 S.E.2d 626 (2006).

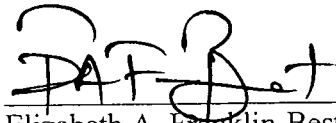
This ambiguity is resolved by applying the principle of *in pari materia*. Statutes *in pari materia* are to be construed together when they have a common purpose, or for comparable events. Here, this statute should be read in conjunction with S.C. Code Ann. §16-9-320 (1976) since both statutes make criminal the act of resisting law enforcement officers while they are attempting to fulfill their duties. Reading S.C. Code Ann. §16-3-625 (1976) to include the requirement of “knowingly and willfully” resolves the ambiguity and harmonizes the two statutes, and the additional proposed amendment to the statute.

Had this requirement been read into the statute at the time of Winchester’s trial, the jury would have been able to consider the defense that he raised. Indeed, Winchester had notice that he would be allowed to raise this defense since the “knowingly and willfully” language was included in the indictment, the notice document created by the state. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Winchester was prejudiced because the jury was not allowed to consider whether he intended to violate the statute. Respectfully, he asks this Court to reverse his conviction.

CONCLUSION

For the preceding reason, Winchester respectfully asks this Court to reverse his conviction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'EAF-Best', written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

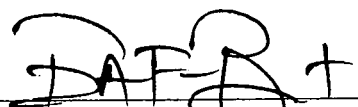
ATTORNEY FOR APPELLANT.

This 25th day of May, 2010.

CERTIFICATE OF COUNSEL

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

May 25, 2010



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

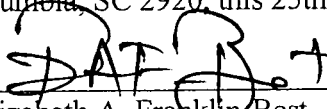
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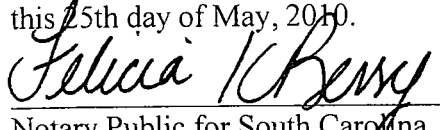
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R. J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 2920, this 25th day of May, 2010.


Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 25th day of May, 2010.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 15, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Oconee County
The Honorable Alexander St. Macaulay, Circuit Court Judge

THE STATE,

Respondent,

vs.

BILLY WALTER WINCHESTER,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
ARGUMENT	7
I. The circuit court properly interpreted S.C. Code §16-3-625 in denying Appellant's directed verdict motion.	7
II. The circuit court properly refused to give a jury charge that was not the law in South Carolina.	13
CONCLUSION	14

TABLE OF AUTHORITIES

Cases:

<u>Auto Owners Ins. Co. v. Rollison</u> , 378 S.C. 600, 663 S.E.2d 484 (2008)	8
<u>Cain v. Nationwide Prop. & Cas. Ins. Co.</u> , 378 S.C. 25, 661 S.E.2d 349 (2008)	8
<u>Clark v. Cantrell</u> , 339 S.C. 369, 529 S.E.2d 528 (2000)	13
<u>Cole v. Raut</u> , 378 S.C. 398, 663 S.E.2d 30 (2008)	13
<u>Grant v. City of Folly Beach</u> , 346 S.C. 74, 551 S.E.2d 229 (2001)	9
<u>Howell v. United States Fid. & Guar. Ins. Co.</u> , 370 S.C. 505, 636 S.E.2d 626 (2006)	8
<u>In re Campbell</u> , 379 S.C. 593, 666 S.E.2d 908 (2008)	8
<u>Joiner ex. rel. Rivas v. Rivas</u> , 342 S.C. 102, 536 S.E.2d 372 (2000)	9
<u>McClanahan v. Richland County Council</u> , 350 S.C. 433, 567 S.E.2d 240 (2002)	8
<u>Original Blue Ribbon Taxi Corp. v. South Carolina Dept. of Motor Vehicles</u> , 380 S.C. 600, 670 S.E.2d 674 (Ct. App. 2008)	8
<u>Peake v. S.C. Dep't of Motor Vehicles</u> , 375 S.C. 589, 654 S.E.2d 284 (Ct.App. 2007) ..	8
<u>Rabon v. S.C. State Hwy. Dept.</u> , 258 S.C. 154, 187 S.E.2d 652 (1972)	9
<u>Sloan v. South Carolina Bd. of Physical Therapy Examiners</u> , 370 S.C. 452, 636 S.E.2d 598 (2006)	9
<u>State v. American Agr. Chemical Co.</u> , 118 S.C. 333, 110 S.E. 800 (1922)	11
<u>State v. Dodd</u> , 354 S.C. 13, 579 S.E.2d 331(Ct. App. 2003)	12
<u>State v. Dunbar</u> , 356 S.C. 138, 587 S.E.2d 691 (2003)	7
<u>State v. Ferguson</u> , 302 S.C. 269, 395 S.E.2d 182 (1990)	11
<u>State v. Gaines</u> , 380 S.C. 23, 667 S.E.2d 728 (2008)	12

<u>State v. Holland</u> , 385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009)	13
<u>State v. Jefferies</u> , 316 S.C. 13, 446 S.E.2d 427(1994)	11
<u>State v. Moore</u> , 357 S.C. 458, 593 S.E.2d 608 (2004)	7
<u>State v. Morgan</u> , 352 S.C. 359, 574 S.E.2d 203 (Ct.App. 2002)	8
<u>State v. Padgett</u> , 354 S.C. 268, 580 S.E.2d 159 (Ct.App.2003)	12
<u>State v. Pittman</u> , 373 S.C. 527, 647 S.E.2d 144 (2008)	12
<u>State v. Price</u> , 368 S.C. 494, 629 S.E.2d 363 (2006)	7
<u>State v. Robinson</u> , 306 S.C. 399, 412 S.E.2d 411 (1991)	13
<u>State v. Taylor</u> , 355 S.C. 392, 585 S.E.2d 303 (2003)	7
 <u>Other Authorities:</u>	
S.C. Code §16-3-625 (2003)	7-11
S.C. Code §16-9-320 (2003)	7-10

STATEMENT OF ISSUES ON APPEAL

I.

The circuit court properly interpreted S.C. Code §16-3-625 in denying Appellant's directed verdict motion.

II.

The circuit court properly refused to give a jury charge that was not the law in South Carolina.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On August 13, 2007, the Oconee County Grand Jury indicted Appellant Billy Walter Winchester ("Winchester") on one count of resisting arrest with a deadly weapon. (Indictment No. 2007-GS-37-1346; Record on Appeal [R.], pp. 201). The case was called for a jury trial on December 15, 2008, before the Honorable Alexander S. Macaulay, Circuit Court Judge.

Officer Earl Rhudy and Reserve Officer Tony Turner of the Walhalla Police Department, and Deputy Tim Hunnicutt of the Oconee County Sheriff's Office, testified they went to Winchester's residence around 10:30 p.m. on May 17, 2007, to serve an criminal domestic violence (CDV) arrest warrant on Winchester. They drove to Winchester's residence in marked patrol cars, and parked the cars in the driveway with the headlights on. All three officers were wearing standard police uniforms. (Trial Transcript [TT], pp. 49-54, 76-80, 82, 107-110; R., pp. 8-13, 34-38, 40, 63-66).

Officer Rhudy and Deputy Hunnicutt went to the front door of the residence while Officer Turner went to the back porch door. They knocked on the doors repeatedly, loudly identified themselves as police officers with a warrant, and asked Winchester to comes outside to talk with them. (TT, pp. 53-55, 81-84, 110-112; R., pp. 12-14, 39-42, 66-68). Deputy Hunnicutt and Officer Rhudy could hear Officer Turner knocking on the rear door, and repeatedly identifying himself as a police officer with an arrest warrant. (TT, pp. 55-56, 111-112; R., pp. 14-15, 67-68).

Deputy Hunnicutt and Officer Rhudy thought Officer Turner had contact with someone inside the residence, so they walked around to the back of the house. Officer

Rhudy looked through a window on the back of the house and saw light coming from an interior room. Officer Turner saw what appeared to be illumination from a television inside the house. None of the officers heard any sound from inside the house. (TT, pp. 57-59, 83-84, 101, 112-114; R., pp. 16-18, 41-42, 59, 68-70).

Several minutes after Deputy Hunnicutt and Officer Rhudy got to the back of the house, a shot rang out from inside. The bullet came by Officer Turner's head, and Officer Rhudy heard it hit to his right. (TT, pp. 59, 84-85, 90, 113; R., pp. 18, 42-43, 48, 69).

Officer Rhudy took cover in his patrol car, called for assistance, and attempted to use the car's public announcement system to make contact with the person inside the house, but the system would not work. Deputy Hunnicutt and Officer Turner got behind a truck parked in the driveway, and yelled repeatedly for Winchester to come out. (TT, pp. 59-61, 85-86, 113-115; R., pp. 18-20, 43-44, 69-71).

Winchester finally came out of the house a few minutes later, but had his hands behind his back. Deputy Hunnicutt and Officer Turner were concerned he had the gun in his hand, and repeatedly yelled at him to put his hands up and keep them where they could see them. Rather than comply, Winchester stood just outside the back porch and looked at the officers. Deputy Hunnicutt yelled he was going to use his taser if Winchester did not bring his hands from behind his back. (TT, pp. 86-90, 115-117, 133-135; R., pp. 44-48, 71-73, 89-91).

When Winchester still did not take his hands from behind him, Deputy Hunnicutt hit him with the taser, and Winchester fell down with his arms underneath him. Officer Turner was able to get his right arm handcuffed, but Winchester resisted efforts to get his left arm

out and Deputy Hunnicutt hit him with the taser again so they could get him handcuffed and under control. (TT, pp. 90-92, 117-119, 135-136; R., pp.48-50, 73-75, 91-92).

Winchester apparently hit his head when he fell to the ground and was bleeding from a cut on his forehead. Officer Rhudy called for an ambulance, and Winchester was transported by ambulance to the hospital for treatment. Officer Rhudy followed the ambulance in his patrol car, and remained at the hospital until Winchester was released into his custody. (TT, pp. 61-65, 92-93, 120; R., pp. 20-24, 50-51, 76).

Prior to going to the hospital, Winchester gave consent to search his house, and told officers the gun was on his bed. Officers found the gun on the bed, and no one else was in the house. (TT, pp. 137-140, 152-153; R., pp. 93-96, 108-109).

At the close of the State's case, Winchester moved for a directed verdict on the ground the State failed to prove he intended to violate the statute. The circuit court denied the motion, finding the statute did not require knowing and wilful conduct, and there was sufficient evidence to submit the case to the jury. (TT, pp. 158-159; R., pp. 114-115).

Winchester then presented medical testimony regarding his physical condition on May 17, 2007. (TT, pp. 175-182; R., pp. 117-124). His sister-in-law, who was a secretary at the Oconee County Sheriff's Office, testified Winchester only used the back portion of his house and he was hard to wake up sometimes. (TT, pp. 183-184; R., pp. 125-126). His son testified Winchester had significant medical problems that made it difficult for him to get around. (TT, pp. 191-195; R., pp. 133-137).

Winchester testified he lived in the back part of his house and the front part was closed off. He stated he was sleeping when he heard pounding on his doors, and he thought

it was a burglar. Thinking a burglar was trying to get into his house, he "hollered, who is it," and "what do you want," but did not get a response, so he got his pistol and shot it. He then heard someone say "this is the police," "we've got a warrant for you," so he "hollered loud . . . okay, I am coming out," "I have no weapon." He testified he was immediately hit with the taser as he walked outside, and he never resisted arrest. (TT, pp. 200-214; R., pp. 140-154).

The jury convicted Winchester as charged, and the circuit court sentenced him to ten years, suspended to six months. (TT, Vol. II, pp. 42, 46-55; R., pp. 173, 174-183). This appeal followed.

ARGUMENT

I. The circuit court properly interpreted S.C. Code §16-3-625 in denying Appellant's directed verdict motion.

Winchester contends the circuit court erred in denying his directed verdict motion because the State failed to present any evidence he intended to violate S.C. Code §16-3-625 (2003). In support of that contention, he asserts §16-3-625 is ambiguous, and should be read in conjunction with S.C. Code §16-9-320 (2003) under the rule of *in pari materia*.

A. Issue Preservation

This issue is not preserved for appellate review. It is axiomatic an issue must have been raised to and ruled on by the trial court to preserve the issue for review on appeal. *See e.g., State v. Price*, 368 S.C. 494, 629 S.E.2d 363 (2006) (issue must have been raised to and ruled on by trial judge to be preserved for appellate review); *State v. Moore*, 357 S.C. 458, 593 S.E.2d 608 (2004) (argument procedurally barred when it was not made to the trial judge); *State v. Taylor*, 355 S.C. 392, 585 S.E.2d 303 (2003) (when particular argument was not presented to the trial court, it was not preserved for appellate review); *State v. Dunbar*, 356 S.C. 138, 587 S.E.2d 691 (2003) (party need not use exact name of legal doctrine to preserve an issue for appellate review, but it must be clear that the argument was presented on that ground).

The only argument presented to the circuit court on this issue was the directed verdict motion on the ground there was “[i]nsufficient evidence to show the *mens rea* or intent of Mr. Winchester to violate the statute.” (TT, p. 158; R., p. 114). Winchester never asserted §16-3-625 is ambiguous. Rather, he ultimately conceded the statute is actually a strict liability offense. (TT, Vol. II, p. 47; R., p. 175).

Further, Winchester never even mentioned §16-9-320, or the *in pari materia* rule, in the circuit court. In fact, the only time §16-9-320 was mentioned was when the State raised it in the context of whether a lesser included offense should be submitted to the jury. (TT, pp. 224-225; R., pp. 163-164). Since the issue raised on appeal was not submitted to or ruled on by the circuit court, it is not properly before this Court for review.

B. Statutory Construction

Even if preserved, however, the circuit court properly interpreted and applied §16-3-625. The cardinal rule of statutory interpretation is to ascertain and effectuate the legislature's intent. In re Campbell, 379 S.C. 593, 666 S.E.2d 908, 911 (2008); Howell v. United States Fid. & Guar. Ins. Co., 370 S.C. 505, 636 S.E.2d 626, 628 (2006); Original Blue Ribbon Taxi Corp. v. South Carolina Dept. of Motor Vehicles, 380 S.C. 600, 670 S.E.2d 674, 677 - 678 (Ct. App. 2008); *see also* State v. Dingle, 376 S.C. 643, 659 S.E.2d 101, 105 (2008) ("In interpreting statutes, the Court looks to the plain meaning of the statute and the intent of the Legislature."). Legislative intent must prevail if it can be reasonably discovered in the language employed, which must be construed in light of the intended statutory purpose. McClanahan v. Richland County Council, 350 S.C. 433, 567 S.E.2d 240, 242 (2002); State v. Morgan, 352 S.C. 359, 574 S.E.2d 203, 206 (Ct.App. 2002). The plain language of the statute is the principal guidepost in discerning legislative intent, and words in the statute should be given their plain and ordinary meaning, without resulting to forced or subtle construction. Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484, 488 (2008); Cain v. Nationwide Prop. & Cas. Ins. Co., 378 S.C. 25, 661 S.E.2d 349, 352 (2008); Peake v. S.C. Dep't of Motor Vehicles, 375 S.C. 589, 654 S.E.2d 284, 289 (Ct.App.

2007).

When statutes address the same subject matter, they are *in pari materia*, and must be construed together, if possible, to produce a single, harmonious result. Grant v. City of Folly Beach, 346 S.C. 74, 551 S.E.2d 229, 231 (2001); Joiner ex. rel. Rivas v. Rivas, 342 S.C. 102, 536 S.E.2d 372, 375 (2000). It is not necessary, however, to apply the *in pari materia* rule when the meaning of a particular statute is clear and unambiguous. Sloan v. South Carolina Bd. of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598, 607 (2006); Rabon v. S.C. State Hwy. Dept., 258 S.C. 154, 187 S.E.2d 652, 654 (1972).

Contrary to Winchester's contentions, §16-3-625 is clear and unambiguous, and the legislative intent can be ascertained without resorting to §16-9-320 and the *in pari materia* rule. Section 16-3-625 is included in Title 16, Chapter 3, which is entitled "Offenses Against the Person," and provides:

A person who resists the lawful efforts of a law enforcement officer to arrest him or another person with the use or threat of use of a deadly weapon against the officer, and the person is in possession or claims to be in possession of a deadly weapon, is guilty of a felony and, upon conviction, must be punished by imprisonment for not more than ten or less than two years.

The legislature clearly considered resisting arrest with a deadly weapon to be a crime against the law enforcement officer, regardless of whether the offender knew it was a law enforcement officer or not, and the use of a deadly weapon warranted making the offense a felony.

On the other hand, §16-9-320 is included in Title 16, Chapter 9 ("Offenses Against Public Justice"), Article 4 ("Interference with Judicial Process"), and provides in pertinent part:

(A) It is unlawful for a person knowingly and wilfully to oppose or resist a law enforcement officer in serving, executing, or attempting to serve or execute a legal writ or process or to resist an arrest being made by one whom the person know or reasonable should know is a law enforcement officer, whether under process or not. A person who violates the provisions of this subsection is guilty of a misdemeanor

(B) It is unlawful for a person to knowingly and wilfully assault, beat or wound a law enforcement officer engaged in serving, executing, or attempting to serve or execute a legal writ or process or to assault, beat, or wound an officer when the person is resisting an arrest being made by one whom the person knows or reasonable should know is a law enforcement officer, whether under process or not. A person who violates the provisions of this subsection is guilty of a felony

This statute addresses crimes against the orderly administration of public justice and judicial process, rather than against a particular individual. Nothing in §16-9-320 references use of a deadly weapon, clearly indicating the legislature intended the use of such a weapon in the course of resisting a lawful arrest to be a separate and distinct offense under §16-3-625.

Winchester's reference to S. 292 as support for his contention regarding the legislative intent of §16-3-625 blatantly misrepresents the proposed statutory amendment. Rather than supporting Winchester's contention S. 292 reveals a legislative intent to require a knowing and wilful violation of §16-3-625, the proposed amendment actually makes it abundantly clear the legislature did not intend to impose a knowing and wilful element when a person resists arrest with a deadly weapon.

The proposed amendment in S. 292 merely adds subsection (A), which provides assault and battery on a law enforcement officer during the lawful discharge of the officer's official duties is a misdemeanor. Subsections (B), (C) and (D) are verbatim the language currently in §16-3-625. Significantly, while the proposed new subsection (A) does contain the "knowingly and wilfully" element, subsection (B), which is verbatim the first paragraph

in the current statute under which Winchester was charged, does not include that language. Given the "knowingly and wilfully" language in the new proposed subsection (A), if the legislature intended "knowingly and wilfully" to be an element of resisting arrest with a deadly weapon, it clearly knows how to make it an element.

Criminal intent is generally an element of any criminal offense in South Carolina. *See State v. American Agr. Chemical Co.*, 118 S.C. 333, 110 S.E. 800, 802 (1922) (in common law offenses, and under statutes which do not disclose a contrary legislative purpose, an act must be accompanied by criminal intent, or by such negligence or indifference to a duty or to consequences as is regarded by the law as equivalent to a criminal intent). If it so chooses, however, the legislature may make an act or omission a crime regardless of fault, which is commonly referred to as a "'strict liability'" offense. *State v. Ferguson*, 302 S.C. 269, 395 S.E.2d 182, 183 (1990) (*citing American Agricultural Chem. Co.*); *see also State v. Jefferies*, 316 S.C. 13, 446 S.E.2d 427, 430 (1994) (criminal liability is normally based on concurrence of an evil meaning mind and an evil doing hand, but legislature may declare an act criminal regardless of the actor's mental state).

Arguably, §16-3-625 makes resisting arrest with a deadly weapon a strict liability offense because it does not require knowing or intentional conduct. In this case, however, even though the circuit court indicated at the directed verdict stage that the statute did not require knowing and wilful conduct, it then instructed the jury on the general law regarding criminal intent, stating criminal intent was required and the State had to prove it beyond a reasonable doubt. (TT, pp. 29-30; R., pp.167-168). Therefore, even though intent was not a specific element of the offense, it is clear the court found there was sufficient evidence of

general criminal intent to submit the issue to the jury. As instructed by the court, in order to convict Winchester of resisting arrest with a deadly weapon, the jury had to find beyond a reasonable doubt he intended to do so.¹

C. Directed Verdict

When ruling on a directed verdict motion, the trial court is concerned with the existence or nonexistence of evidence, not its weight. State v. Gaines, 380 S.C. 23, 667 S.E.2d 728, 732-33 (2008). In reviewing the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State, and affirm the trial court if there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the accused's guilt. *Id.* at 733; State v. Pittman, 373 S.C. 527, 647 S.E.2d 144, 155 (2008); State v. Padgett, 354 S.C. 268, 580 S.E.2d 159, 161 (Ct.App.2003); State v. Dodd, 354 S.C. 13, 579 S.E.2d 331, 334 (Ct. App. 2003).

There was ample evidence in the record to support the circuit court's denial of Winchester's directed verdict motion. It is undisputed the police officers went to Winchester's home to make a lawful arrest on an outstanding warrant. The officers testified they identified themselves as police officers, and stated they were there with a warrant for Winchester's arrest. They also testified their marked police cars were illuminated by the car headlights, and clearly visible from Winchester's windows. It is undisputed Winchester fired a gun at them through the window, and the bullet almost hit one officer in the head. Considering the evidence in the light most favorable to the State, the circuit court properly denied Winchester's directed verdict motion, and its ruling should be affirmed.

¹The fact the indictment contained the words "knowingly and wilfully" does not trump the language of the statute charged therein. As the circuit court found, given the language of the statute, those words in the indictment were superfluous.

II. The circuit court properly refused to give a jury charge that was not the law in South Carolina.

Winchester also contends the circuit court erred in denying his request “for a jury charge that would have allowed the jury to consider his defense - that Winchester did not realize that police officers were attempting to serve him with a CDV warrant when he fired a single shot attempting to frighten away would-be home intruders.” The circuit court properly refused to charge something that was not the law as to the particular statute at issue. Further, as discussed above, the jury instructions in essence did allow the jury to consider his defense because the jury had to find criminal intent beyond a reasonable doubt.

“The trial judge must charge the jury with the ‘current and correct law’ of the State.” State v. Robinson, 306 S.C. 399, 412 S.E.2d 411, 413 (1991). An appellate court will not reverse the trial court's decision regarding jury instructions absent an abuse of discretion. Cole v. Raut, 378 S.C. 398, 663 S.E.2d 30, 33 (2008) (citing Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 [2000]); State v. Holland, 385 S.C. 159, 682 S.E.2d 898, 901 (Ct. App. 2009).

The circuit court properly charged the unambiguous language of §16-3-625. In addition, the circuit court charged the jury on general criminal intent, even though §16-3-625 does not require knowing or intentional conduct as an element of resisting arrest with a deadly weapon. The circuit court did not abuse its discretion, and its denial of Winchester's request for jury charges that were inapplicable to the case before the court should be affirmed.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

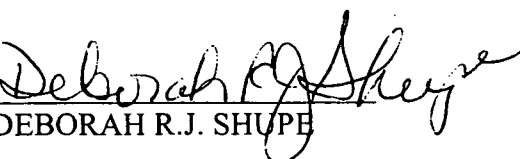
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May 27, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Oconee County
The Honorable Alexander S. Macaulay, Circuit Court Judge

THE STATE,

Respondent,

vs.

BILLY WALTER WINCHESTER,

Appellant.

CERTIFICATE OF COUNSEL

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

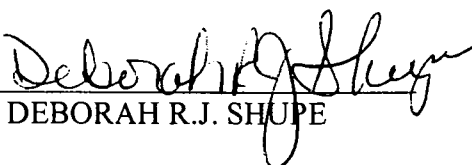
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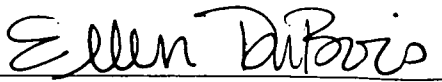
PROOF OF SERVICE

I, Ellen R. DuBois, certify I served the within Final Brief of Respondent on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.

This 27th day of May, 2010.



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