

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM FAIRFIELD COUNTY  
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

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Appellate Case No. 2017-000826

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David Allen Goins, .....Respondent,

v.

State of South Carolina, .....Petitioner.

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**APPENDIX**

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## INDEX

|                                                          |     |
|----------------------------------------------------------|-----|
| INDEX .....                                              | i   |
| TRIAL TRANSCRIPT .....                                   | 1   |
| S.C. COURT OF APPEALS OPINION .....                      | 643 |
| REMITTITUR .....                                         | 645 |
| PCR APPLICATION .....                                    | 646 |
| RETURN.....                                              | 653 |
| PCR HEARING TRANSCRIPT.....                              | 660 |
| ORDER GRANTING POST-CONVICTION RELIEF .....              | 713 |
| MOTION TO RECONSIDER, ALTER OR AMEND .....               | 721 |
| ORDER DENYING MOTION TO RECONSIDER, ALTER OR AMEND ..... | 726 |
| CLERK'S RECORDS .....                                    | 727 |

- 1 A HE'S ABOUT, MAYBE WHERE THAT MAN IS WITH THE RED SHIRT  
2 ON.
- 3 Q IN WHAT HAND DID YOU HAVE THE GUN?  
4 A MY RIGHT HAND.
- 5 Q YOUR RIGHT HAND?  
6 A RIGHT.
- 7 Q WHEN HE PULLED THE GUN OUT OF HIS WAIST,---  
8 A RIGHT.
- 9 Q ---WHAT HAND DID HE HAVE THE GUN IN?  
10 A I'M NOT REALLY SURE. I KNOW HE WAS FACING THIS WAY. IT  
11 MUST HAVE BEEN-- I THINK IT WAS HIS RIGHT HAND, BUT I'M FOR  
12 SURE ABOUT THAT.
- 13 Q ARE YOU RIGHT-HANDED?  
14 A YES SIR.
- 15 Q SO, YOU HAVE THE GUN IN YOUR RIGHT HAND.  
16 A RIGHT.
- 17 Q DID YOU SHOOT AT JAMIE?  
18 A RIGHT.
- 19 Q AND AFTER THAT, DID YOU SHOOT AT MICHAEL?  
20 A YES SIR.
- 21 Q HOW DID YOU SHOOT AT MICHAEL?  
22 A I KIND OF LIKE SHOT DOWN BECAUSE I WAS, LIKE, OFF  
23 BALANCE.
- 24 Q YOU CAN RETURN TO YOUR SEAT.  
25 (WHEREUPON WITNESS RETURNED TO WITNESS STAND)

## DAVID GOINS - DIRECT EXAMINATION BY MR. HEMLEPP

- 1 Q DID YOU THEN RUN?
- 2 A YES SIR.
- 3 Q WHERE DID YOU GO?
- 4 A I RAN FROM-- I RAN UP TOWARDS THE BALLPARK, LIKE, THE
- 5 BASEBALL PARK, OR SOMETHING LIKE THAT UP THE STREET.
- 6 Q WHERE DID YOU GO?
- 7 A I CLIMBED THROUGH-- I JUMPED OVER SOME GATES AND I WENT
- 8 DOWN THE STREET AND I RAN INTO-- I RAN INTO FLEMING ANDERSON.
- 9 Q WHO IS FLEMING ANDERSON?
- 10 A HE'S MY COUSIN'S BABY DADDY, MY FIRST COUSIN.
- 11 Q DID YOU KNOW HIM PRIOR TO THIS EVENING, PRIOR TO THIS
- 12 HAPPENING?
- 13 A YES SIR.
- 14 Q WHAT HAPPENED THEN? WHEN YOU MET UP WITH FLEMING
- 15 ANDERSON? WELL, LET ME-- I WITHDRAW THAT QUESTION.
- 16 WHERE DID YOU MEET UP WITH FLEMING ANDERSON?
- 17 A I MET UP WITH HIM, I'M NOT EXACTLY SURE OF THE NAME OF
- 18 THE STREET. BUT IT WAS LIKE, I WANT TO SAY, I THINK IT'S CALLED
- 19 SIXTH STREET. I BELIEVE IT WAS SIXTH STREET, SOMETHING LIKE
- 20 THAT.
- 21 Q WHERE DID YOU GO AFTER THAT?
- 22 A WE WENT TO HIS BROTHER HOUSE. HE STARTED, LIKE, ASK IF I
- 23 HAD A GUN, YOU KNOW. AND I WAS TRYING TO TELL HIM. AND WE
- 24 WENT TO HIS BROTHER HOUSE BECAUSE HIS BROTHER WAS RIGHT ON
- 25 THAT STREET.

## DAVID GOINS - DIRECT EXAMINATION BY MR. HEMLEPP

- 1 Q WHAT WAS HIS BROTHER'S NAME?
- 2 A CHRIS ANDERSON.
- 3 Q AND YOU MADE IT TO HIS HOUSE?
- 4 A THAT'S CORRECT.
- 5 Q WHAT DID YOU DO THEN? WHAT DID YOU DO AT CHRIS
- 6 ANDERSON'S HOUSE?
- 7 A I DIDN'T DO MUCH. I TOLD HIM I HAD TO GO.
- 8 Q DID YOU LEAVE?
- 9 A YES SIR.
- 10 Q WHERE'D YOU GO?
- 11 A I WENT TO NICK McGOOGAN'S HOUSE.
- 12 Q DID YOU KNOW NICK?
- 13 A NOT REALLY. I DIDN'T REALLY KNOW HIM TOO MUCH. I KNEW,
- 14 LIKE, OF HIM, BUT I DIDN'T REALLY KNOW HIM.
- 15 Q WHAT'D YOU DO AT NICK McGOOGAN'S HOUSE?
- 16 A I CAUGHT A RIDE WITH HIM TO WINNFIELD WEST APARTMENTS.
- 17 Q WHO WAS AT WINNFIELD WEST?
- 18 A AT THE TIME I HAD TWO SISTERS THAT LIVED OVER THERE AT
- 19 THE TIME.
- 20 Q TELL THE JURY WHAT YOU DID. PICK UP THE STORY AT THIS
- 21 POINT AND THEN CONTINUE.
- 22 A WHEN I GOT TO WINNFIELD, I... OKAY. I GOT TO WINNFIELD
- 23 AND I WAS, I WAS TELLING THAT I HAD NEEDED A RIDE, YOU KNOW,
- 24 BECAUSE, LIKE, THESE BOYS WAS TRYING TO KILL ME AND I WAS
- 25 TRYING TO GET AWAY.

DAVID GOINS - DIRECT EXAMINATION BY MR. HEMLEPP

1 SO, I WAS, LIKE, ... SO, I HAD TALKED TO MY SISTER'S  
2 HUSBAND. HIS NAME IS DANNY HUGHES. I HAD TALKED TO HIM AND  
3 HE WAS, LIKE, YOU KNOW, HE WAS GONNA TAKE ME. SO, WE RODE TO  
4 COLUMBIA.

5 Q WHEN YOU SAY WE RODE TO COLUMBIA, WHO RODE?

6 A IT WAS ME AND DANNY AND... I THINK IT WAS ME AND DANNY  
7 AND CHRIS, IF I'M NOT MISTAKEN.

8 Q WHERE DID YOU GO?

9 A I WENT TO MY UNCLE'S HOUSE ON, I THINK IT'S [REDACTED], OR  
10 [REDACTED].

11 Q HOW LONG DID YOU STAY WITH YOUR UNCLE?

12 A I STAYED THERE A COUPLE OF HOURS.

13 Q WHAT DID YOU DO AFTER THAT?

14 A I DON'T KNOW. OH, I KNOW. I THINK I WENT AND GOT-- I THINK  
15 WE WENT TO-- I AIN'T REALLY SURE. I KNOW SOMETIMES WHEN I'M  
16 THERE, I'M NOT EVEN SURE WHAT I DID. I'M NOT SURE THAT AFTER I  
17 LEFT FROM MY UNCLE'S HOUSE, OR WHATEVER, OR DOING WHAT WE  
18 DID OR WHATEVER.

19 Q WHY ARE YOU NOT SURE?

20 A WELL, LIKE, FOR ONE, IT'S, LIKE, FIVE YEARS AGO. AND THEN  
21 DURING THE TIME, I WAS, LIKE, STRESSED OUT, SCARED AND  
22 PANICKED AND EVERYTHING. SO, IT'S, LIKE, I DON'T KNOW. I WAS  
23 JUST NERVOUS, I GUESS.

24 Q WHERE'D YOU GO WHEN YOU LEFT YOUR UNCLE'S?

- 1 A DAYS INN BEHIND-- IT'S BEHIND, I THINK, IT'S, LIKE, CALLED THE  
2 DAYS INN TRUCK STOP.
- 3 Q IS THAT IN COLUMBIA?
- 4 A YES SIR.
- 5 Q DID YOU GET THE ROOM YOURSELF?
- 6 A NO SIR.
- 7 Q WHO GOT THE ROOM?
- 8 A MY GIRLFRIEND'S COUSIN. MY GIRLFRIEND'S COUSIN GOT THE  
9 ROOM.
- 10 Q WHY DID SHE DO THAT?
- 11 A WHY DID SHE DO IT?
- 12 Q YES.
- 13 A BECAUSE I AIN'T WANT MY NAME ON NO ROOM.
- 14 Q AND DID YOU STAY AT THAT ROOM?
- 15 A YEAH. I STAYED THERE SOME, OFF AND ON.
- 16 Q FOR HOW MANY DAYS?
- 17 A MAYBE THREE OR FOUR DAYS, SOMETHING LIKE THAT.
- 18 Q NOW, AT SOME POINT DID YOU DISCOVER THAT THE SHERIFF'S  
19 DEPARTMENT HERE IN FAIRFIELD COUNTY WANTED TO SEE YOU AND  
20 TALK TO YOU?
- 21 A YES SIR, I DISCOVERED THAT. YES SIR, I DID DISCOVER THAT.
- 22 Q WHO TOLD YOU THAT?
- 23 A MY MOM HAD BROUGHT IT TO MY ATTENTION.
- 24 Q HAD SHE SPOKEN TO SOMEBODY AT THE SHERIFF'S  
25 DEPARTMENT?

DAVID GOINS - DIRECT EXAMINATION BY MR. HEMLEPP

- 1 A YES SIR. AT THE TIME SHE DID SPOKE TO SOME OFFICERS. I  
2 THINK ONE OF THEM WAS KEITH LEWIS.
- 3 Q FROM THAT CONVERSATION DID YOU THEN DECIDE TO TURN  
4 YOURSELF IN?
- 5 A YES SIR.
- 6 Q TELL THE JURY HOW THAT PROCESS CAME ABOUT. HOW DID  
7 THAT WORK? HOW YOU MADE THAT DECISION TO DO THAT.
- 8 A OKAY. WELL, I HAD TALKED TO MY MOTHER, YOU KNOW, AND  
9 SHE WAS TELLING ME, YOU KNOW, I---
- 10 MR. BARFIELD: OBJECTION. WHAT HIS MOM SAID IS HEARSAY.  
11 THE COURT: SUSTAINED.
- 12 Q DON'T SAY WHAT YOUR MOM TOLD YOU.
- 13 A WELL, LIKE, I JUST, AFTER TALKING TO MY MOTHER AND I CAME  
14 TO THE CONCLUSION THAT WOULD BE THE RIGHT THING TO DO.
- 15 Q LET ME ASK ME ARTFULLY SO WE CAN MOVE ON. DID YOU CALL  
16 THE SHERIFF'S DEPARTMENT AND TELL THEM THAT YOU WERE GOING  
17 TO TURN YOURSELF IN?
- 18 A THAT'S CORRECT.
- 19 Q WHO DID YOU TALK TO?
- 20 A I'M NOT REALLY SURE AT THE TIME. I THINK I TALKED TO A GUY  
21 NAMED JOHN BURTON, IF I'M NOT MISTAKEN.
- 22 Q DEPUTY BURTON?
- 23 A YES.
- 24 Q DESCRIBE DEPUTY BURTON.

1 A HE'S A BIG GUY, AFRICAN-AMERICAN. HE PRETTY BIG, SIX FOOT-  
2 SOMETHING. HE GOT, LIKE, A BOX.

3 Q IS THAT A HAIRCUT?

4 A YEAH, A FLAT-TOP HAIRCUT.

5 Q AND YOU SPOKE TO HIM ON THE TELEPHONE?

6 A YES SIR.

7 Q DID YOU MAKE ARRANGEMENTS TO MEET WITH HIM?

8 A YES SIR.

9 Q WHERE DID YOU MAKE ARRANGEMENTS TO MEET WITH HIM?

10 A I HAD MADE ARRANGEMENTS TO MEET WITH HIM AT COOK'S  
11 CORNER, AND I HAD MADE ARRANGEMENTS FROM THERE.

12 Q DID YOU IN FACT MEET WITH HIM THERE?

13 A YES SIR.

14 Q WHEN YOU MET WITH DEPUTY BURTON AT COOK'S CORNER  
15 HOW LONG WAS IT BETWEEN SPEAKING TO HIM ON THE PHONE AND  
16 YOU TURNING YOURSELF IN?

17 A IT PROBABLY WOULD BE TWENTY-FIVE MINUTES OR  
18 SOMETHING. IT WASN'T LONG. BECAUSE I TALKED TO HIM AND HE  
19 TOLD ME TO MEET HIM THERE, AND THEN I HAD TO GO ALL THE WAY  
20 OUT THERE. SO, IT WAS, LIKE, MAYBE TWENTY, TWENTY-FIVE  
21 MINUTES. IT WASN'T LONG.

22 Q WHEN YOU TURNED YOURSELF IN TO DEPUTY BURTON, WERE  
23 YOU COOPERATIVE?

24 A YES SIR.

## DAVID GOINS - DIRECT EXAMINATION BY MR. HEMLEPP

- 1 Q WAS THAT A DIFFICULT EXPERIENCE FOR YOU? WAS THAT A  
2 HARD TO DO?
- 3 A DIFFICULT EXPERIENCE?
- 4 Q WELL, LET ME-- WAS HE MEAN?
- 5 A NO SIR.
- 6 Q DID HE ACT PROFESSIONAL?
- 7 A YES SIR.
- 8 Q DID HE HANDCUFF YOU?
- 9 A I'M NOT REALLY SURE. I DON'T THINK HE DID, BUT I'M NOT  
10 REALLY SURE.
- 11 Q THEN WHAT DID HE DO?
- 12 A HE TOOK ME TO THE SHERIFF'S DEPARTMENT. I MEAN, TO THE--  
13 I THINK HE TOOK ME TO THE JAIL.
- 14 Q AND YOU WERE PROCESSED THERE?
- 15 A YES SIR.
- 16 Q AND DID YOU-- AFTER YOU WERE PROCESSED AND-- YOU WERE  
17 BOOKED INTO THE JAIL?
- 18 A YES SIR.
- 19 Q WERE YOU AT SOME POINT TAKEN TO THE SHERIFF'S  
20 DEPARTMENT TO TALK TO THEM THERE?
- 21 A YES SIR.
- 22 Q WAS THAT THE CONVERSATION THAT WE WITNESSED A  
23 PORTION OF ON THE VIDEOTAPE?
- 24 A YES SIR.

DAVID GOINS - DIRECT EXAMINATION BY MR. HEMLEPP

1 Q I HAND YOU WHAT IS MARKED AS STATE'S EXHIBIT NUMBER  
2 THREE. IT'S BEEN IDENTIFIED ALREADY. I ASK THAT YOU LOOK AT  
3 THAT.

4 A CAN I TAKE IT OUT OF THE BAG?

5 Q YOU CAN. HAVE YOU EVER SEEN THAT BEFORE TODAY?

6 A YES SIR.

7 Q WHEN WAS THAT?

8 A I THINK I SAW IT YESTERDAY.

9 Q I'M SORRY. HAVE YOU SEEN IT BEFORE THIS TRIAL?

10 A NO SIR.

11 Q ON THE DAY THAT YOU WENT TO MICHAEL ROBERTSON'S  
12 HOUSE, DID YOU HAVE A GUN?

13 A NO SIR, I DIDN'T HAVE ANY KIND OF WEAPONS AT ALL.

14 Q DID YOU HAVE BULLETS IN THAT BOX?

15 A NO SIR, I DIDN'T HAVE ANY BULLETS.

16 Q I HAND YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT  
17 TWELVE. IT'S A PHOTOGRAPH. HAVE YOU SEEN THAT PHOTOGRAPH  
18 BEFORE?

19 A NO SIR.

20 Q DEPUTY PHILLIPS TESTIFIED THAT SHE TOOK THAT  
21 PHOTOGRAPH, THAT PHOTOGRAPH OF A BOX IN A BAG IN YOUR CAR.  
22 DID YOU HAVE THAT WHEN YOU WENT OUT THERE?

23 A NO SIR, I DIDN'T.

24 Q HOW DID THAT GET INTO YOUR CAR?

1 A I HAVE NO IDEA. I HAD WINDOWS IN MY CAR, TOO, AND A  
2 RADIO. SO, I CAN'T TELL YOU. YOU KNOW WHAT I'M SAYING, HOW  
3 THAT GOT IN THERE. IT WASN'T IN THERE WHEN I WAS DRIVING THE  
4 CAR.

5 Q DID YOU SEND TISHA TO GO BUY THE GUN?

6 A NO SIR, I DIDN'T.

7 Q WHEN YOU WENT OVER THERE, DID CHRIS HAVE A GUN?

8 A NO SIR, HE DID NOT.

9 Q WITHOUT TESTIFYING TO ANYTHING ANYBODY ELSE HAS TOLD  
10 YOU, HAVE YOU AND TISHA EVER ARGUED ABOUT YOU-- AT THIS  
11 TIME, IN 2005, DID YOU ARGUE ABOUT YOU BEING UNFAITHFUL TO  
12 HER?

13 A HAVE I EVER ARGUED WITH HER?

14 Q HAVE YOU AND TISHA-- TISHA WAS YOUR GIRLFRIEND?

15 A RIGHT.

16 Q AND YOU LIVED WITH TISHA?

17 A THAT'S CORRECT.

18 Q DID YOU AND TISHA ARGUE ABOUT YOU BEING UNFAITHFUL TO  
19 HER?

20 A YES SIR.

21 Q WHAT WAS THAT ABOUT?

22 A IT WAS ABOUT, UH, ... I'LL TELL YOU WHAT IT WAS ABOUT. IT  
23 WAS, LIKE, IT WAS A COUPLE OF OCCASIONS. I MEAN, WE FIGHT ON  
24 MORE THAN ONE OCCASIONS. I GOT KIDS. I DON'T WHETHER YOU  
25 KNOW IT, BUT I HAVE FIVE BABY MOTHERS. SO, YOU KNOW, IT'S QUITE

1           OFTEN, YOU KNOW, THAT SOMETHING COME UP, YOU KNOW,  
2           ARGUING, OR WHATEVER, YOU KNOW.

3   Q           SO, YOU ADMIT THAT YOU WERE UNFAITHFUL TO HER?

4   A           THAT'S CORRECT.

5   Q           WAS THAT A PROBLEM WITH THE TWO OF Y'ALL?

6   A           NOT REALLY BECAUSE SHE WAS MORE-- DURING THAT TIME  
7           SHE WAS MARRIED DURING THAT TIME. SO, IT WASN'T REALLY LIKE,  
8           YOU KNOW,... I DON'T KNOW. IT WAS JUST SOMETHING THAT, LIKE, ...

9   Q           DID SHE CARE?

10   A           I MEAN, I WOULDN'T SAY THAT SHE DIDN'T CARE. BUT, I MEAN,  
11           IT WAS JUST LIKE, IT WAS KIND OF LIKE THE NORM, PRETTY MUCH. I  
12           WAS ALWAYS, YOU KNOW, YOU KNOW, DOING SOME STUFF WITH  
13           SOMEONE ELSE.

14   Q           IS THIS A SITUATION THAT HAD OCCURRED PRIOR TO JUNE 30, OF  
15           2005? HAD THIS WHOLE DISCUSSION BETWEEN YOU AND TISHA, THIS  
16           WHOLE ISSUE ABOUT SHE WAS MARRIED AND YOU WERE SOMETIMES  
17           UNFAITHFUL? HAD THAT BEEN GOING ON?

18   A           YES SIR.

19   Q           THAT WAS AN ONGOING THING?

20   A           SHE-- WELL, IT WAS, LIKE, ... LET ME SEE HOW COULD I SAY IT.  
21           ALL RIGHT. IT WAS, LIKE, I HAVE-- LIKE, I SAID, I HAVE MORE, MORE,  
22           LIKE, KIDS BY OTHER WOMEN OR WHATEVER AND IT WAS, LIKE, YOU  
23           KNOW,... AND I USED TO GO AND SEE MY CHILDREN OR WHATEVER  
24           SHE WAS, LIKE,... SOMETIMES IT WOULD BE LIKE, YOU KNOW, JUST  
25           LITTLE STUFF, YOU KNOW. SOMEBODY TO HANG OUT WITH, OR

DAVID GOINS - DIRECT EXAMINATION BY MR. HEMLEPP

1           SOMETHING, YOU KNOW. IT DIDN'T MEAN ANYTHING. AND I MEAN, I,  
2           IT WASN'T THE EASIEST THING TO DO.

3    Q           DID YOU AND TISHA GET ALONG?

4    A           OF COURSE WE DID.

5    Q           DID YOU GET ALONG AT THE TIME, JUNE 30, 2005?

6    A           YES SIR.

7    Q           DO YOU STILL GET ALONG TODAY?

8    A           YES SIR.

9    Q           DID THAT ISSUE, THE ISSUE BETWEEN YOU AND TISHA,  
10           WHETHER OR NOT IT WAS A HEALTHY RELATIONSHIP, OR NOT A  
11           HEALTHY RELATIONSHIP, OR WHETHER OR NOT YOU WERE HAVING AN  
12           AFFAIR OR NOT HAVING AN AFFAIR, DID THAT HAVE ANYTHING TO DO  
13           WITH THE EVENTS OF THIS EVENING AND MICHAEL ROBERTSON?

14   A           NO SIR, IT DID NOT.

15   Q           DID THAT, DID ALL OF THAT EVER COME INTO YOUR MIND WHEN  
16           YOU WERE AT HIS HOUSE?

17   A           NO SIR, IT DID NOT.

18   Q           NOW, THIS OCCURRED FOUR AND A HALF YEARS AGO. IT  
19           OCCURRED JUNE, 2005. HOW OLD ARE YOU NOW?

20   A           ACTUALLY, I'M THIRTY-FIVE. I'LL BE THIRTY-SIX ON JANUARY  
21           SEVENTEENTH.

22   Q           SO, AT THE TIME, HOW OLD WERE YOU, THIRTY-ONE?

23   A           YES SIR.

24   Q           A YOUNGER GUY THAN YOU ARE NOW?

25   A           YES SIR.

DAVID GOINS - DIRECT EXAMINATION BY MR. HEMLEPP

1 Q AND IN FACT, WHEN YOU WERE MUCH YOUNGER, YOU HAD  
2 DIFFICULTY WITH THE LAW, DIDN'T YOU?

3 A YES SIR.

4 Q IN FACT, YOU HAVE SERVED TIME IN PRISON?

5 A YES SIR.

6 Q BUT IT WAS A LONG TIME AGO?

7 A YES SIR.

8 Q HOW HAS THAT IMPACTED ON YOUR LIFE NOW?

9 MR. BARFIELD: YOUR HONOR, I'M GOING TO OBJECT. I DON'T  
10 THINK THAT'S RELEVANT TO THIS CASE.

11 THE COURT: HOW IS IT RELEVANT?

12 MR. HEMLEPP: I'LL WITHDRAW THE QUESTION.

13 THE COURT: ALL RIGHT.

14 Q SINCE THAT TIME, HAVE YOU OWNED A GUN?

15 A NO SIR.

16 Q SINCE THAT TIME, HAVE YOU HAD ANY DIFFICULTY WITH ANY  
17 SORT OF VIOLENCE?

18 A NO SIR.

19 Q SINCE THAT TIME, OTHER THAN TRAFFIC OFFENSES, DID YOU  
20 GET IN TROUBLE?

21 A NO SIR. I BEEN TRYING TO GET MY LIFE STRAIGHTENED UP.  
22 YOU KNOW, I JUST TRY TO DO THE RIGHT THING AND TAKE CARE OF  
23 MY FAMILY. SO, I HAD GOT A JOB. SO, ME AND MY BROTHER WAS SO  
24 HAPPY BECAUSE WE BOTH HAD GOT JOBS AND THINGS WERE

DAVID GOINS - DIRECT EXAMINATION BY MR. HEMLEPP

1           STARTING TO FINALLY LOOK GOOD FOR US, YOU KNOW WHAT I'M  
2           SAYING. WE HAD BEEN DOWN FOR A LIMIT. SO, THAT WAS IT.

3                   WE WAS PRETTY MUCH HAPPY ABOUT THE WHOLE THING. HE  
4           HAD GOT A NEW JOB. I HAD GOT A NEW JOB. WE HAD FINALLY GOT  
5           CARS. HE HAD A TRUCK. SO, YOU KNOW, WE WAS DOING PRETTY  
6           GOOD, YOU KNOW. AND WE WAS REAL EXCITED ABOUT IT. YOU  
7           UNDERSTAND ME? LOOKING FORWARD TO THE FUTURE, YOU KNOW,  
8           WITH OUR FAMILY COMING UP.

9    Q           DID YOU GO TO THAT RESIDENCE TO SHOOT AND KILL MICHAEL  
10           ROBERTSON?

11   A           NO SIR, I DID NOT.

12   Q           DID YOU GO TO THAT RESIDENCE LOOKING TO SHOOT OR KILL  
13           OR HURT ANYBODY?

14   A           NO SIR, I HAD NO INTENTION OF HURTING ANYONE.

15   Q           IS THERE ANYTHING ABOUT THIS CASE THAT THIS JURY NEEDS  
16           TO KNOW IN THIS MATTER THAT WE HAVEN'T GONE OVER?

17   A           NO SIR, NOT TO MY KNOWLEDGE.

18   Q           WHY DID YOU SHOOT MICHAEL ROBERTSON?

19   A           WELL, THE ONLY REASON THAT THIS INCIDENT OCCURRED, I  
20           WAS FIGHTING FOR MY LIFE. THAT'S THE ONLY REASON I SHOT, AND  
21           THIS WOULD HAVE NEVER HAPPENED. YOU KNOW, I HATE IT DID  
22           HAPPEN, YOU KNOW, AND I FEEL BAD ABOUT IT, YOU KNOW, AND  
23           EVERYTHING.

24                   I HAD NO INTENTION ON DOING ANYTHING LIKE THAT.  
25           BECAUSE, LIKE I WAS SAYING, I WAS JUST NOW GETTING MY LIFE

## DAVID GOINS - CROSS EXAMINATION BY MR. BARFIELD

1 TOGETHER. YOU KNOW WHAT I'M SAYING. I WAS TRYING TO DO THE  
2 RIGHT THING AND DO POSITIVE THINGS FOR MYSELF AND JUST TAKE  
3 CARE OF MY KIDS AND EVERYTHING LIKE THAT.

4 Q THANK YOU, MR. GOINS. YOU'LL NEED TO ANSWER ANY  
5 QUESTIONS THAT SOLICITOR BARFIELD MAY HAVE.

6 MR. HEMLEPP: THANK YOU, YOUR HONOR.

7 THE COURT: CROSS EXAMINATION.

## 8 CROSS EXAMINATION BY MR. BARFIELD:

9 Q MR. GOINS, I WANT TO GET ONE THING SQUARE BEFORE WE GET  
10 TOO FAR INTO THIS. YOU ADMIT THAT YOU SHOT AND KILLED  
11 MICHAEL ROBERTSON?

12 A YES SIR.

13 Q YOU ADMIT THAT YOU SHOT JAMIE ROBERTSON IN THE  
14 SHOULDER AND IN THE ARM?

15 A I DON'T KNOW WHERE I SHOT HIM AT.

16 Q DO YOU ADMIT THAT YOU SHOT JAMIE ROBERTSON, AND DIDN'T  
17 KILL HIM?

18 A YES SIR.

19 Q MR. HEMLEPP WAS ASKING YOU ABOUT BEING IN PRISON. YOU  
20 ALSO DID A LITTLE BIT OF JAIL TIME FOR A BLUE LIGHT CHARGE, DID  
21 YOU NOT?

22 A FAILURE TO STOP FOR A BLUE LIGHT?

23 Q YES.

24 A YES SIR.

## DAVID GOINS - CROSS EXAMINATION BY MR. BARFIELD

1 Q YOU'VE SEEN SOME OF THE VIDEOTAPE THAT I PLAYED

2 YESTERDAY, AND ACTUALLY, YOU'VE SEEN ALL OF IT WITH MR.

3 HEMLEPP. IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q JUST ABOUT ALL OF WHAT'S ON THAT TAPE YOU'VE LOOKED AT

6 THIS WEEK. RIGHT?

7 A YES SIR.

8 Q REMEMBER AT THE VERY END OF THE TAPE WHEN I WAS

9 PLAYING IT LAST NIGHT, YOU TELLING INVESTIGATOR PHILLIPS THAT

10 MICHAEL ROBERTSON WAS TELLING LATISHA THAT A GUY THAT WAS

11 GOING WITH HER-- I'M SORRY.

12 MICHAEL ROBERTSON WAS TELLING LATISHA THAT YOU WERE

13 GOING WITH SOME OTHER GIRL, AND VICE-VERSA. DO YOU

14 REMEMBER TELLING MARY ANN PHILLIPS THAT ON THE TAPE THAT I

15 PLAYED LAST NIGHT?

16 A I DON'T RECALL IT. SOMETHING LIKE THAT, I DON'T REMEMBER

17 EXACTLY, BUT IT WAS SOMETHING LIKE THAT.

18 Q WELL, LET ME CUT TO THE CHASE. MICHAEL ROBERTSON WAS

19 TALKING ABOUT YOU SCREWING AROUND AND HE WAS TALKING

20 ABOUT LATISHA SCREWING AROUND, WASN'T HE?

21 A YEAH, SOMETHING LIKE THAT.

22 Q AND WHEN YOU REALLY GOT TO THE NUTS AND BOLTS OF THIS

23 WITH MARY ANN PHILLIPS DURING THAT TWO HOUR AND FORTY-FIVE

24 MINUTE INTERVIEW, THAT'S WHERE YOU ENDED UP. RIGHT? THAT

25 MICHAEL ROBERTSON WAS TALKING ABOUT YOU SCREWING AROUND

1           AND WAS TELLING YOU THAT LATISHA WAS SCREWING AROUND.  
2           ISN'T THAT TRUE?

3    A           NO SIR.

4    Q           YOU SAID THAT ON THE TAPE, DID YOU NOT?

5    A           I SAID-- I DO RECALL ONE TAPE THAT THAT WAS COMMENTING.  
6           AND THEN IT WAS BEING SAID BY MY OTHER BABY MOTHER, VICKY  
7           COLE. SO, I HAD TOLD HER. SHE ASKED ME THAT. THAT'S WHY I WAS  
8           TRYING TO EXPLAIN TO HER THAT WAS THE USUAL THING FOR US,  
9           YOU KNOW, FOR THAT TO BE GOING ON. SO, IT WASN'T NO PROBLEM  
10          FOR ME.

11   Q           ARE THERE FIVE WOMEN THAT YOU'VE GOT CHILDREN BY THAT  
12          YOU'VE BEEN ACCUSED OF CONTINUING TO SEE?

13   A           NOT FIVE.

14   Q           HOW MANY WOMEN HAVE YOU GOT CHILDREN WITH THAT YOU  
15          BEEN ACCUSED OF CONTINUING TO SEE?

16   A           I COULDN'T REALLY TELL YOU.

17   Q           HOW MANY-- YOU GOT FIVE CHILDREN. RIGHT?

18   A           NO. I GOT SIX CHILDREN.

19   Q           SIX CHILDREN. I'M SORRY. SIX CHILDREN, YOU'VE GOT SIX  
20          CHILDREN?

21   A           THAT'S CORRECT.

22   Q           ONE OF THEM WITH LATISHA.

23   A           RIGHT.

24   Q           ARE THE OTHER FIVE CHILDREN WITH FIVE DIFFERENT WOMEN  
25          OR SEVERAL, MORE THAN ONE WITH ANY OF THOSE WOMEN?

## DAVID GOINS - CROSS EXAMINATION BY MR. BARFIELD

1 A I HAVE TWO DAUGHTERS WITH ONE, AND THE REST IS BY  
2 SEPARATE INDIVIDUALS.

3 Q ALL RIGHT. LATISHA'S GOT ONE. TWO DAUGHTERS BY ONE.  
4 THAT'S TWO MAMAS. AND THEN THREE OTHERS BY THREE WOMEN.  
5 THAT'S FIVE MAMAS. RIGHT?

6 A THAT'S CORRECT.

7 Q AND YOU'VE BEEN ACCUSED OF CONTINUING TO SEE ALL OF  
8 THEM WHILE YOU WERE WITH LATISHA. IS THAT RIGHT?

9 A I BEEN ACCUSED OF BEING WITH-- LIKE I WAS SAYING, I BEEN  
10 ACCUSED OF BEING WITH-- WHEN I BE WITH ALL MY BABY MOTHERS I  
11 BEEN ACCUSED OF BEING WITH EACH ONE AT VARIOUS DIFFERENT  
12 TIMES.

13 Q AND MICHAEL ROBERTSON WAS ONE OF THE ONES WHO WAS  
14 TALKING THAT TRASH ABOUT YOU SCREWING AROUND, WAS HE NOT?

15 A THAT'S CORRECT.

16 Q MICHAEL ALSO TOLD YOU AT SOME POINT THAT OTHER BOYS  
17 WERE GOING OVER TO YOUR HOUSE WHERE LATISHA WAS WHEN YOU  
18 WERE AT WORK. IS THAT TRUE?

19 A YES SIR, THAT'S CORRECT.

20 Q MICHAEL SAID ALL OF THAT?

21 A YOU SAID I COULDN'T SAY WHAT HE SAID.

22 Q NO SIR. YES, YOU CAN, IF I'M ASKING YOU. YOU QUOTED  
23 MICHAEL, AND YOU QUOTED MICHAEL ON THE TAPE. MICHAEL WAS  
24 SAYING THAT, WAS HE NOT?

25 A YES SIR.

1 Q AND YOU SAID A LITTLE BIT AGO THAT LATISHA WAS MARRIED  
2 WHEN ALL THIS WAS GOING ON. SHE WAS MARRIED TO SOMEBODY  
3 ELSE. IS THAT WHAT YOU'RE TELLING US?

4 A THAT'S CORRECT.

5 Q BUT SHE WAS LIVING WITH YOU. RIGHT?

6 A THAT IS CORRECT.

7 Q SO, THE FACT THAT SHE WAS MARRIED MUST HAVE NOT BEEN  
8 NO BIG DEAL TO ANYBODY?

9 A NO.

10 Q THAT WAS JUST A LEGAL STATUS SHE WAS UNDER. IS THAT  
11 RIGHT?

12 A THAT'S CORRECT.

13 Q Y'ALL WERE SUPPOSEDLY A COUPLE AT THAT TIME. IS THAT  
14 CORRECT?

15 A THAT'S CORRECT.

16 Q AND DO YOU RECALL LATISHA, THE DAY THIS INCIDENT  
17 HAPPENED, SOME TIME THE DAY THIS INCIDENT HAPPENED,  
18 CONFRONTING YOU ABOUT MICHAEL HAVING SAID THAT YOU WERE  
19 SEEING VICKY COLE?

20 A NO SIR. I RECALL HER SAYING SOMETHING TO THE EFFECT OF,  
21 SHE WAS TELLING ME DON'T INVOLVE HER IN-- HER SISTER LAJESKA  
22 HAD GOT INTO IT WITH ONE OF HIS NEPHEWS ABOUT AIDS OR  
23 SOMETHING. I DON'T KNOW. I CAN'T EVEN RECALL WHAT IT WAS  
24 ABOUT. BUT I KNOW THEY HAD GOT INTO IT EARLIER, AND THAT HAD  
25 NOTHING TO DO WITH ME, BECAUSE, LIKE I SAID, I WAS AT WORK.

1 Q DO YOU DENY THAT ON JUNE 30, OF 2005, LATISHA FANT, ELGIN  
2 THEN, YOUR LIVE-IN GIRLFRIEND, DO YOU DENY THAT SHE  
3 CONFRONTED YOU ABOUT MICHAEL HAVING TOLD HER THAT YOU  
4 WERE SCREWING AROUND WITH VICKY COLE? DO YOU DENY THAT OR  
5 DO YOU ADMIT THAT?

6 A I DENY THAT.

7 Q RIGHT.

8 A BECAUSE I NEVER SCREWED AROUND WITH VICKY COLE.

9 Q IT'S NOT WHETHER YOU DID OR DIDN'T. IT'S WHETHER SHE WAS  
10 MAD BECAUSE SHE HAD HEARD YOU HAD BEEN. DO YOU DENY THAT  
11 SHE CONFRONTED YOU ABOUT SCREWING WITH VICKY COLE THE DAY  
12 YOU KILLED MICHAEL ROBERTSON?

13 A YES SIR, I DENY THAT.

14 Q DO YOU DENY THAT LATISHA ELGIN-- YOU SAID LATISHA  
15 ELGIN-- WE'LL COME BACK TO THAT. IS IT YOUR TESTIMONY THAT  
16 FLEMING ANDERSON WASN'T AT THE INCIDENT WHEN YOU KILLED  
17 MICHAEL ROBERTSON, WASN'T AT THE SCENE? IS IT YOUR TESTIMONY  
18 THAT HE WASN'T THERE?

19 A THAT'S CORRECT.

20 Q THE FIRST TIME YOU GOT UP WITH HIM IS WHEN YOU WERE  
21 RUNNING ON YOUR FIVE-DAY, FUGITIVE STATUS?

22 A THAT'S CORRECT.

23 Q YOU SAW HIM WALKING?

24 A YES SIR.

25 Q HE WASN'T OVER THERE?

- 1 A NO SIR.
- 2 Q HAVE YOU GOT ANY IDEA WHY HE WOULD HAVE SAID HE WAS  
3 OVER THERE?
- 4 A I HAVE NO IDEA.
- 5 Q AND IT'S YOUR TESTIMONY THAT AT THE TIME YOU SHOT AND  
6 KILLED MICHAEL ROBERTSON THERE WERE TWO GUNS TRAINED ON  
7 YOU, AND JUST BEFORE THAT, THE THIRD GUN, THE ONE YOU KILLED  
8 HIM WITH, HAD BEEN POINTED, HAD BEEN PRODUCED IN YOUR  
9 PRESENCE. IS THAT RIGHT?
- 10 A WELL, ACTUALLY, I DIDN'T SAY TWO GUNS WAS TRAINED ON  
11 ME. I SAID I SAW ONE GUN TRAINED ON ME JAMIE ROBERTSON. I  
12 COULDN'T REALLY SEE WHERE, YOU KNOW, WHERE RENARDO HAD  
13 THE OTHER GUN. I COULDN'T REALLY SEE, BECAUSE, LIKE I SAY, I WAS  
14 RASSLIN' WITH MIKE TRYING TO GET LOOSE.
- 15 Q WELL, YOU TALKED ABOUT THE OTHER GUY - I PRESUME THAT'S  
16 RENARDO, - EVEN IN THE VIDEOTAPE HAVING A SHOTGUN.
- 17 A A RIFLE.
- 18 Q DID YOU NOT SAY IN THE VIDEOTAPE THAT BOTH JAMIE AND  
19 RENARDO HAD LONG GUNS DURING THIS INCIDENT?
- 20 A I THOUGHT A RIFLE WAS A LONG GUN.
- 21 Q I UNDERSTAND THAT. DID YOU NOT SAY IN THE INTERVIEW ON  
22 THE VIDEOTAPE THAT IN ADDITION TO THE PISTOL---
- 23 A YES SIR.
- 24 Q ---THERE WERE LONG GUNS OUT THERE; THAT JAMIE HAD ONE  
25 AND RENARDO HAD ONE?

## DAVID GOINS - CROSS EXAMINATION BY MR. BARFIELD

- 1 A YES SIR.
- 2 Q SO, IT'S YOUR TESTIMONY THAT WHILE YOU WERE THERE THAT  
3 DAY, MICHAEL PRODUCED A PISTOL AND JAMIE AND RENARDO EACH  
4 PRODUCED A LONG GUN?
- 5 A THAT'S CORRECT.
- 6 Q AND WHEN YOU HAD POSSESSION OF THAT PISTOL, IT'S YOUR  
7 TESTIMONY THAT THE OTHER TWO GUYS, JAMIE AND RENARDO, HAD  
8 LONG GUNS?
- 9 A THAT'S CORRECT.
- 10 Q NOBODY ELSE FIRED A SHOT, DID THEY?
- 11 A NOT TO MY KNOWLEDGE.
- 12 Q THE ONLY SHOOTING-- MICHAEL ROBERTSON DIDN'T FIRE A  
13 SHOT, DID HE?
- 14 A I DON'T KNOW. TOO MUCH WAS GOING ON FOR ME TO KNOW IF  
15 HE FIRED A SHOT OR NOT. I DON'T KNOW.
- 16 Q YOUR HANDS, NUMBER ONE, WERE ON THE ONLY GUN THAT GOT  
17 FIRED. RIGHT?
- 18 A SAY AGAIN.
- 19 Q YOUR HANDS WERE ON THE ONLY GUN THAT GOT FIRED. IS  
20 THAT RIGHT?
- 21 A I GUESS. I DON'T KNOW.
- 22 Q AND YOUR HANDS WAS ON THAT GUN WHEN IT GOT FIRED.  
23 RIGHT?
- 24 A I GUESS. I DON'T KNOW.

- 1 Q LET'S TALK A LITTLE BIT ABOUT THE GUN. YOU SAY THE GUN IS  
2 MICHAEL ROBERTSON'S. RIGHT?
- 3 A THAT'S CORRECT.
- 4 Q AND WE AIN'T GOT THAT GUN, DO WE?
- 5 A NO SIR.
- 6 Q WE AIN'T GOT THAT GUN BECAUSE YOU GOT SHED OF THAT  
7 GUN, DIDN'T YOU?
- 8 A I DID WHAT?
- 9 Q YOU GOT RID OF IT.
- 10 A NO SIR.
- 11 Q WELL, HAND IT TO ME. WHERE IS IT?
- 12 A HOW COULD I HAVE THE GUN? IT CAME FROM THE JAILHOUSE.
- 13 Q THAT'S A SMALL QUESTION. WHAT'D YOU DO WITH THE GUN?
- 14 A LIKE I TOLD YOU PREVIOUSLY, I HAD WENT TO WINNFIELD WEST  
15 APARTMENTS AND I MET UP WITH MY BROTHER-IN-LAW-- I MEAN, --  
16 YEAH, MY BROTHER-IN-LAW, AND MY BROTHER, HAD GAVE IT TO  
17 THEM.
- 18 Q OH, WAIT A MINUTE NOW. I DON'T COMPLETELY UNDERSTAND  
19 ALL THAT. LET ME GET YOU TO CLARIFY THAT FOR ME. ARE YOU  
20 SAYING THE LAST TIME-- WHO HAD THE GUN LAST? WHEN YOU GOT  
21 RID OF THE GUN WHO'D YOU HAND IT TO?
- 22 A ACTUALLY, I DIDN'T HAVE IT. I JUST LEFT IT IN THE CAR.
- 23 Q THAT AIN'T WHAT YOU SAID ON THE TAPE, IS IT?
- 24 A I DON'T REMEMBER.

- 1 Q LET'S LOOK AT WHAT YOU SAID ON THE TAPE ABOUT THE GUN.  
2 THE FIRST THING YOU SAID ON THE TAPE ABOUT THE GUN IS YOU LEFT  
3 RUNNING FROM [REDACTED] AND TOSSED THE GUN. ISN'T THAT  
4 WHAT YOU SAID FIRST?
- 5 A RIGHT.
- 6 Q THAT WAS A LIE, WASN'T IT?
- 7 A YEAH. I WAS TRYING TO PROTECT MY BROTHER AND, YOU  
8 KNOW, I DIDN'T WANT HIM TO GET INTO ANY TROUBLE.
- 9 Q YOUR BROTHER, CHRIS KAUFFIN, WHO GOT ON THE WITNESS  
10 STAND FOR ABOUT AN HOUR EARLIER THIS MORNING?
- 11 A YES SIR.
- 12 Q WHO STILL DENIES THAT HE EVER HAD THAT GUN?
- 13 A (NO RESPONSE)
- 14 Q IS THAT TRUE? YOU HEARD HIM DENY THAT TODAY?
- 15 A THAT'S CORRECT.
- 16 Q SO, HE AIN'T TELLING THE TRUTH, EITHER, IS HE?
- 17 A I DON'T KNOW.
- 18 Q WELL, YOU KNOW HE HAD THE GUN, DON'T YOU?
- 19 A CORRECT.
- 20 Q SO, HE'S NOT TELLING THE TRUTH IF HE SAID HE DIDN'T. IS  
21 THAT CORRECT?
- 22 A YES SIR.
- 23 Q ALL RIGHT. SO, YOU FIRST SAID YOU THREW THE GUN.  
24 CORRECT? YOU TOLD KEITH LEWIS, I JUST THREW IT AS I LEFT [REDACTED]  
25 [REDACTED]. RIGHT?

## DAVID GOINS - CROSS EXAMINATION BY MR. BARFIELD

- 1 A THAT'S CORRECT.
- 2 Q AND THAT WASN'T TRUE, WAS IT?
- 3 A NO SIR.
- 4 Q AND THEN YOU SAID, YOU NEXT SAID ABOUT THE GUN THAT
- 5 YOU WENT TO McGOOGAN'S HOUSE AND YOU GAVE THE GUN TO
- 6 FLEMING ANDERSON AND NICHOLAS McGOOGAN. THAT THE NEXT
- 7 THING YOU SAID YOU DID WITH---
- 8 A NO, I DIDN'T SAY---
- 9 Q YOU DON'T REMEMBER SAYING THAT?
- 10 A NO, I NEVER SAID IT.
- 11 Q YOU WANT TO WATCH THE TAPE AGAIN LATER?
- 12 A TO PROVE TO YOU THAT I NEVER SAID THAT I---
- 13 Q ALL RIGHT.
- 14 A ---NEVER SAID THAT, LET'S WATCH IT NOW. I NEVER SAID THAT I
- 15 GAVE THE GUN TO FLEMING ANDERSON OR NICK McGOOGAN, EVEN ON
- 16 THE TAPE. I NEVER SAID THAT.
- 17 Q ALL RIGHT. AND THEN LATER ON, KEITH LEWIS KNEW YOU
- 18 WEREN'T TELLING THE TRUTH ABOUT THE GUN, AND HE PUSHED YOU
- 19 ABOUT IT, DIDN'T HE?
- 20 A YES SIR.
- 21 Q AND HE TOLD YOU WHY IT WAS IMPORTANT FOR LAW
- 22 ENFORCEMENT TO GET THAT GUN BACK, DIDN'T HE?
- 23 A YES.

1 Q HE TOLD YOU WHY IT WAS IMPORTANT FOR LAW ENFORCEMENT  
2 TO GET THAT GUN BACK. IT WASN'T YOUR GUN TO START WITH,  
3 ACCORDING TO YOUR STORY. IS THAT TRUE?

4 A THAT'S CORRECT.

5 Q AND WE NEVER GOT IT BACK, DID WE?

6 A NOT TO MY KNOWLEDGE.

7 Q BECAUSE YOU'RE RESPONSIBLE FOR GETTING RID OF IT. ISN'T  
8 THAT TRUE?

9 A I....

10 Q YOU BOUNCED IT ALONG AND IT RESULTED IN IT NEVER BEING  
11 FOUND BY LAW ENFORCEMENT. IS THAT TRUE? WOULD YOU SAY  
12 THAT'S TRUE?

13 A I GUESS.

14 Q ALL RIGHT. SO, WE AIN'T GOT A CLUE ABOUT THAT GUN. NO  
15 NUMBERS ON IT, NO BRAND ON IT, NO FINGERPRINTS ON IT, NO  
16 NOTHING ABOUT THAT GUN BECAUSE YOU JUST PASSED IT OFF AND IT  
17 GOT GONE. RIGHT?

18 A THAT IS CORRECT.

19 Q ULTIMATELY, YOU GAVE THE GUN TO YOUR BROTHER, CHRIS  
20 KAUFFIN, AS Y'ALL WERE AT YOUR UNCLE'S IN COLUMBIA FOR HIM TO  
21 GET RID OF. RIGHT? THAT'S THE TRUTH. IS THAT WHAT YOU'RE  
22 TELLING US TODAY?

23 A ACTUALLY, I DON'T REALLY RECALL WHEN I GAVE THE WEAPON  
24 UP, OR WHATEVER.

1 Q WELL, GIVE US A IDEA, THEN. TELL US-- GIVE US YOUR LAST  
2 RECOLLECTION OF THAT GUN. GIVE US YOUR LAST RECOLLECTION OF  
3 SEEING AND YOU BEING IN CHARGE OF THAT GUN. WHERE WAS IT?

4 A MY LAST RECOLLECTION, AS I RECALL, I WAS IN MY SISTER CAR  
5 ON THE WAY TO COLUMBIA.

6 Q WHICH SISTER?

7 A MY YOUNGEST SISTER.

8 Q YOU TALKING ABOUT DANIEL SEIBLES' WIFE?

9 A THAT'S CORRECT.

10 Q SO, THE LAST TIME YOU WERE IN CHARGE OF THAT GUN IS  
11 WHEN DANIEL SEIBLES AND CHRISTOPHER KAUFFIN WERE DRIVING  
12 YOU TO COLUMBIA IN SEIBLES' WIFE'S CAR. IS THAT RIGHT?

13 A THAT IS CORRECT.

14 Q AND THEY LET YOU OUT IN COLUMBIA AT YOUR UNCLE'S  
15 HOUSE AND THEY LEFT IN THAT CAR. CHRISTOPHER KAUFFIN AND  
16 DANIEL SEIBLES LEFT IN THAT CAR AND LEFT YOU IN COLUMBIA.  
17 RIGHT?

18 A THAT IS CORRECT.

19 Q AND THE PISTOL WAS LAST IN THE CAR WITH YOU BEFORE YOU  
20 GOT TO COLUMBIA. RIGHT?

21 A THAT'S RIGHT.

22 Q NOW, WHO DID YOU TELL TO DO SOMETHING WITH THE PISTOL?

23 A OH, I AIN'T TELL NOBODY TO DO NOTHING WITH IT.

24 Q WERE YOU HIDING THE PISTOL FROM ANDERSON, FROM  
25 FLEMING ANDERSON, HIDING IT FROM HIM?

1 A I...

2 Q WERE YOU TRYING TO KEEP FLEMING ANDERSON FROM  
3 KNOWING YOU HAD THAT PISTOL? LET ME ASK YOU THE QUESTION A  
4 DIFFERENT WAY.

5 A ALL RIGHT.

6 Q FLEMING ANDERSON SAW AND KNEW THAT YOU HAD THAT  
7 PISTOL, DIDN'T HE?

8 A YES SIR.

9 Q AND YOU WENT TO FLEMING ANDERSON'S BROTHER, CHRIS  
10 ANDERSON'S HOUSE, AND HE SAW AND KNEW THAT YOU HAD THAT  
11 PISTOL AND RAN YOU OFF, DIDN'T HE?

12 A YES SIR.

13 Q AND YOU WENT TO NICHOLAS McGOOGAN'S HOUSE TO GET A  
14 RIDE TO WINNFIELD WEST AND HE SAW AND KNEW THAT YOU HAD  
15 THAT PISTOL. ISN'T THAT TRUE?

16 A I THINK SO.

17 Q AND THEN YOU WENT TO, AT SOME POINT GOT UP WITH YOUR  
18 BROTHER, CHRISTOPHER KAUFFIN. REMIND ME AGAIN WHERE YOU  
19 AND CHRIS HOOKED BACK UP WITH YOU AND CHRIS AND DANIEL  
20 SEIBLES TO BE GOING TO COLUMBIA. WHEN DID YOU AND CHRIS,  
21 YOUR BROTHER, GET BACK TOGETHER?

22 A AS I SAID EARLIER, WE GOT THE GUN AND WENT TO WINNFIELD  
23 WEST APARTMENTS.

24 Q NOW, WHEN YOU WERE AT WINNFIELD WEST, YOU HAD THE  
25 PISTOL IN YOUR POSSESSION. RIGHT?

## DAVID GOINS - CROSS EXAMINATION BY MR. BARFIELD

- 1 A THAT IS CORRECT.
- 2 Q AND YOUR BROTHER, CHRIS KAUFFIN, SAW AND KNEW THAT
- 3 YOU HAD THE PISTOL. RIGHT?
- 4 A THAT IS CORRECT.
- 5 Q AND YOUR BROTHER-IN-LAW, DANIEL SEIBLES, SAW AND KNEW
- 6 THAT YOU HAD THE PISTOL. RIGHT?
- 7 A YES SIR.
- 8 Q WAS THERE A CONVERSATION BETWEEN YOU AND CHRIS
- 9 KAUFFIN AND DANIEL SEIBLES ABOUT THE PISTOL?
- 10 A NOT TO MY KNOWLEDGE.
- 11 Q WELL, DID YOU---
- 12 A WE HAD A CONVERSATION ABOUT, YOU KNOW, JUST A
- 13 CONVERSATION.
- 14 Q WELL, LET ME JUST SET THIS UP FOR YOU.
- 15 A ALL RIGHT.
- 16 Q YOU HAD JUST SHOT A COUPLE OF PEOPLE. LET ME BACK UP A
- 17 LITTLE BIT FARTHER. WHEN YOU LEFT [REDACTED], WHERE WAS
- 18 MICHAEL ROBINSON? WHEN YOU TOOK OFF RUNNING FROM [REDACTED]
- 19 [REDACTED], WHERE WAS MICHAEL ROBERTSON?
- 20 A HE WAS AT HIS HOUSE.
- 21 Q WHERE IN HIS HOUSE WAS HE?
- 22 A HE WAS OUT IN THE YARD.
- 23 Q AND WHAT POSITION WAS HE IN HIS YARD ON [REDACTED]?
- 24 A I CAN'T REALLY TELL YOU WHAT POSITION. I KNOW THE LAST
- 25 TIME I SEEN HIM HE GRABBED MY LEGS. THAT'S ALL I REMEMBER.

## DAVID GOINS - CROSS EXAMINATION BY MR. BARFIELD

- 1 Q DID YOU KNOW HE WAS DOWN WHEN YOU LEFT [REDACTED]  
2 [REDACTED]?
- 3 A I WASN'T QUITE SURE IF HE WAS DOWN OR NOT DURING THAT  
4 TIME.
- 5 Q DID YOU HAVE A PRETTY GOOD IDEA YOU HAD SHOT MICHAEL  
6 ROBERTSON?
- 7 A YEAH, I WOULD SAY, I THINK I HAD A PRETTY GOOD IDEA THAT I  
8 HAD.
- 9 Q AND YOU SHOT HIM IN THE BACK OF THE HEAD, AS YOU SAY, AS  
10 HE WAS HOLDING YOUR LEGS. IS THAT RIGHT?
- 11 A NO, I NEVER SAID I SHOT HIM IN THE BACK OF THE HEAD, NO.
- 12 Q WELL, I'M ASKING YOU: DID YOU KNOW YOU HAD SHOT HIM IN  
13 THE BACK OF THE HEAD?
- 14 A NO, I DIDN'T KNOW THAT.
- 15 Q BUT YOU KNEW HE WAS DOWN. RIGHT? YOU HAD A PRETTY  
16 GOOD IDEA YOU HAD SHOT HIM. RIGHT?
- 17 A YEAH, I HAD A PRETTY GOOD IDEA.
- 18 Q YOU HAD SOME BLOOD ON YOUR SHIRT, DIDN'T YOU?
- 19 A NO.
- 20 Q YOU DON'T REMEMBER SEEING BLOOD ON YOUR SHIRT THAT  
21 OTHER PEOPLE DID, THAT OTHER PEOPLE SAW?
- 22 A NO, I DON'T REMEMBER HAVING NO BLOOD ON MY SHIRT. IT  
23 WAS, LIKE, AROUND THE BOTTOM OF MY LEGS, YOU KNOW. I DON'T  
24 REMEMBER NO BLOOD ON MY SHIRT.

## DAVID GOINS - CROSS EXAMINATION BY MR. BARFIELD

- 1 Q WELL, WHEN YOU SHOOT SOMEBODY, NORMALLY, THEY'LL  
2 BLEED. WOULDN'T YOU AGREE THAT'S TRUE?
- 3 A YEAH, I WOULD THINK SO.
- 4 Q YOU DON'T WHETHER YOU SHOT JAMIE OR NOT. YOU DON'T  
5 WHETHER JAMIE WAS HIT OR NOT?
- 6 A NO, I DON'T KNOW IF HE WAS HIT OR NOT.
- 7 Q LET'S GO BACK TO THE GUN. YOU HAD A PRETTY GOOD IDEA  
8 THAT YOU HAD SHOT SOMEBODY WITH THE GUN THAT YOU WERE  
9 TOTING AROUND WINNSBORO THAT THURSDAY NIGHT AFTER THIS  
10 INCIDENT. RIGHT?
- 11 A COULD YOU REPEAT THAT?
- 12 Q YEAH. IS IT TRUE THAT YOU KNEW THAT YOU HAD SHOT  
13 SOMEBODY WITH THAT GUN YOU WERE TOTING AROUND?
- 14 A LIKE YOU SAID EARLIER, I WASN'T REALLY SURE, BUT I WAS  
15 KIND OF A LITTLE BIT-- I MEAN, I THOUGHT I MAY HAVE. I WASN'T  
16 REALLY SURE.
- 17 Q YOU HAD A PRETTY GOOD IDEA YOU HAD SHOT SOMEBODY  
18 WITH THE GUN YOU WERE TOTING AROUND THURSDAY NIGHT. IS  
19 THAT CORRECT?
- 20 A YEAH, I HAD A PRETTY GOOD IDEA, AS YOU SAY.
- 21 Q NOW, AND AT THIS POINT, CHRIS KAUFFIN KNEW YOU HAD THE  
22 GUN. FLEMING ANDERSON NOW KNOWS YOU GOT THE GUN.  
23 NICHOLAS McGOOGAN NOW KNOWS YOU GOT THE GUN. DANIEL  
24 SIEBLES NOW KNOWS YOU GOT THE GUN. RIGHT? THAT'S AT LEAST

## DAVID GOINS - CROSS EXAMINATION BY MR. BARFIELD

1           FOUR PEOPLE THAT KNOW YOU'RE TOTING THAT GUN AROUND. IS  
2           THAT CORRECT?

3    A           REALLY, I'M NOT SURE IF NICHOLAS McGOOGAN KNEW I HAD  
4           THE GUN.

5    Q           ALL RIGHT. I'LL GIVE YOU THAT ONE. NOW, YOU'RE IN THE CAR  
6           NOW, GETTING OUT OF TOWN. YOU GONNA GET OUT OF TOWN AND  
7           YOU GOT THE WEAPON WITH YOU.

8           IS IT YOUR STATEMENT TO THIS JURY THAT THERE WASN'T ANY  
9           TALK BETWEEN YOU AND KAUFFIN OR YOU AND SEIBLES ABOUT  
10          WHAT AM I GONNA DO WITH THIS GUN THAT I'VE PROBABLY SHOT  
11          SOMEBODY WITH? ARE YOU SAYING NOBODY TALKED ABOUT THE  
12          GUN?

13   A           NO, NOT-- WE DIDN'T TALK MUCH. WE JUST-- LIKE I TOLD YOU  
14          EARLIER, THAT I WAS TALKING, AND JUST TRYING TO GET AWAY AND  
15          TRYING TO MAKE SURE THAT, YOU KNOW, MY SISTERS WERE SAFE,  
16          YOU KNOW.

17   Q           ISN'T IT TRUE, MR. GOINS, THAT AS SOON AS THE SHOT HIT THE  
18          HEAD, AND MICHAEL BLACKMON LET GO OF YOUR FEET, YOU  
19          STARTED RUNNING AND DIDN'T STOP RUNNING UNTIL JULY 5, OF 2005?  
20          IS THAT TRUE?

21   A           WHO'S MICHAEL BLACKMON?

22   Q           MICHAEL ROBERTSON. I'M SORRY. YOU RAN AS SOON AS HE LET  
23          GO OF YOUR FEET. RIGHT?

24   A           THAT'S CORRECT.

1 Q AND YOU STAYED RUNNING AND HIDING UNTIL JULY 5 OF 2005.

2 IS THAT CORRECT?

3 A YES, I TURNED MYSELF IN.

4 Q I UNDERSTAND THAT. I'LL GIVE YOU THAT. YOU TURNED

5 YOURSELF IN. NOBODY SUGGESTS OTHERWISE.

6 YOU WENT TO YOUR UNCLE'S HOUSE AFTER MIDNIGHT

7 SOMETIME. WAS IT AFTER MIDNIGHT WHEN YOU GOT TO YOUR

8 UNCLE'S HOUSE IN COLUMBIA?

9 A I COULDN'T REALLY SAY.

10 Q THAT'S FINE. IS IT DARK OR DAYLIGHT WHEN EDNA ELGIN GOES

11 AND RENTS A ROOM AT THE DAYS INN DOWN YONDER BEHIND THE

12 FLYING J?

13 A IT HAD BEEN DARK.

14 Q WELL, LET ME ASK YOU THIS: DID ALL OF YOU JUST HEAD IN

15 THERE TO THE DAYS INN TOGETHER, OR DID EDNA ELGIN JUST GO

16 OVER THERE AND RENT THE ROOM AND BRING YOU BACK? HOW DID

17 THE ROOM GET RENTED? TELL US THAT?

18 A I DON'T REALLY RECALL HOW IT WENT ABOUT.

19 Q WERE YOU THERE?

20 A WAS I NEAR WHAT? WHEN THE ROOM WAS RENTED? OR DID I

21 STAY IN THE ROOM? WHAT?

22 Q WE KNOW YOU STAYED IN THE ROOM. WE SAW THE TAPE. MY

23 QUESTION IS THIS:

24 A WAS I THERE WHEN SHE RENTED THE ROOM.

1 Q LET ME BACK UP. WHOSE IDEA WAS IT TO RENT A ROOM AT THE  
2 DAYS INN BEHIND THE FLYING J?

3 A I DON'T RECALL.

4 Q WHO WAS AMONG THE CROWD OF PEOPLE- APPARENTLY THERE  
5 WAS ONE - WHO WAS DISCUSSING WHAT WAS GONNA HAPPEN WITH  
6 YOU AND WITH LATISHA AND WITH THE BABY?

7 A (NO RESPONSE)

8 Q THIS ROOM JUST DIDN'T HAPPEN TO GET RENTED. DAYS INN  
9 DIDN'T JUST CALL AND SAY WE GOT A ROOM OVER HERE FOR YOU.  
10 WHO WERE YOU TALKING TO?

11 A WHO WAS I TALKING TO?

12 Q YES SIR.

13 A I HAD TO TALK TO THE PERSON THAT RENTED THE ROOM.

14 Q DID YOU TALK EDNA ELGIN YOURSELF?

15 A AS I SAID, I DON'T REALLY REMEMBER. IT'S BEEN A WHILE  
16 BACK.

17 Q WOULD YOU AGREE, MR. GOINS, THAT JUNE 30, 2005, AND  
18 PROBABLY THE EARLY MORNING HOURS OF JULY 1, 2005, THAT WAS  
19 PROBABLY THE MOST IMPORTANT PERIOD OF TIME IN YOUR LIFE IN  
20 YOUR THIRTY-SIX YEAR LIFE UP TO THIS POINT? WOULD YOU AGREE  
21 THAT'S PROBABLY THE MOST IMPORTANT DAY OF YOUR LIFE SO FAR?

22 A YES, I WOULD.

23 Q AND YOU DON'T REMEMBER A WHOLE LOT ABOUT IT?

- 1 A I AIN'T SAY I AIN'T REMEMBER A WHOLE LOT ABOUT IT. I  
2 ANSWERED-- I JUST DON'T REMEMBER EVERY SINGLE DETAIL FROM  
3 FIVE YEARS AGO.
- 4 Q AND I UNDERSTAND YOU WON'T. BUT YOU GOT NO IDEA ABOUT  
5 HOW THIS ROOM HAPPENED TO COME TO BE RENTED IN EDNA ELGIN'S  
6 NAME?
- 7 A I JUST TOLD YOU SHE RENTED IT.
- 8 Q DID YOU ASK HER TO RENT IT? DID LATISHA ASK HER TO RENT  
9 IT. DID YOUR UNCLE IN COLUMBIA ASK HER TO RENT IT. DID YOUR  
10 SISTER---
- 11 A I'M GONNA SAY THIS, JUST SO YOU WILL-- I MUST HAVE BEEN  
12 OUT IN THE CAR. I PROBABLY DID, OUT IN THE CAR.
- 13 Q I DON'T WANT YOU TO GUESS. I JUST WANT YOU TO KNOW IF  
14 YOU WANT TO KNOW.
- 15 A I SAID I DON'T.
- 16 Q OKAY. SO, FROM THE TIME-- WHO DID YOU TALK TO FROM THE  
17 TIME YOU LAST PULLED THE TRIGGER ON THAT PISTOL? DID YOU  
18 TALK TO LATISHA BEFORE YOU GOT TO COLUMBIA?
- 19 A NO.
- 20 Q WHEN DID YOU NEXT TALK TO LATISHA?
- 21 A I THINK I TALKED TO LATISHA MAYBE, MAYBE THE FOLLOWING  
22 DAY OR SO.
- 23 Q WHERE? ON THE PHONE OR IN PERSON?
- 24 A ON THE PHONE.
- 25 Q AND WHERE DID YOU NEXT SEE LATISHA?

## DAVID GOINS - CROSS EXAMINATION BY MR. BARFIELD

- 1 A PROBABLY IT WAS THE FOLLOWING DAY OR TWO.
- 2 Q SHE STAYED IN THAT MOTEL ROOM. YOU STAYED IN THAT
- 3 MOTEL ROOM WITH HER. ISN'T THAT TRUE?
- 4 A OFF AND ON.
- 5 Q SHE STAYED IN THE ROOM AND YOU STAYED IN THE ROOM OFF
- 6 AND ON. RIGHT?
- 7 A AT SOME POINT, YEAH. I MEAN, I WAS WITH HER SOME.
- 8 Q SO, WHEN SHE SAID SHE DIDN'T SEE YOU BETWEEN THAT
- 9 AFTERNOON BEFORE THE KILLING AND THE DAY YOU TURNED
- 10 YOURSELF IN, EVEN THIS WEEK, SHE AIN'T TELL THE TRUTH, IS SHE?
- 11 DID YOU HEAR HER SAY THAT?
- 12 A I THINK I DID.
- 13 Q THAT AIN'T TRUE, EITHER, IS IT?
- 14 A NO, I GUESS NOT.
- 15 Q WHO ELSE STAYED IN THAT ROOM AT ANY TIME? WHO ELSE
- 16 CAME IN THE DOOR OF THAT ROOM AT ANY TIME FROM WHENEVER IT
- 17 GOT RENTED TO WHEN IT GOT TURNED BACK OVER? WHO ELSE CAME
- 18 THERE?
- 19 A NOBODY.
- 20 Q JUST YOU AND LATISHA?
- 21 A THAT'S ALL I REMEMBER.
- 22 Q YOU SAID ON THE TAPE THAT PEOPLE WERE CALLING OR
- 23 CHECKING ON YOU DURING THE TIME YOU WERE ON THE RUN. WHO
- 24 WAS CALLING AND CHECKING ON YOU?
- 25 A OH, YEAH, MY MOM.

1 Q I WANT TO KNOW EVERYBODY YOU SAW DURING THAT FIVE-  
2 DAY PERIOD.

3 A MY MOM, SHE WAS TELLING THAT I HAD, NEEDED TO-- SHE WAS  
4 SAYING THAT, YOU KNOW, THE POLICE WAS SAYING, YOU KNOW,  
5 THAT POLICE WAS SAYING JUST TO LOOK OUT FOR MY WELL BEING  
6 AND I NEEDED TO TURN MYSELF IN, AND ET CETERA, ET CETERA, YOU  
7 KNOW.

8 Q SO, YOU TALKED TO LATISHA AND YOU TALKED TO YOUR  
9 MAMA. WHO ELSE DID YOU TALK TO DURING THAT FIVE-DAY PERIOD  
10 THAT YOU WERE ON THE RUN?

11 A LATISHA AND MY MOTHER.

12 Q NOBODY ELSE?

13 A NOBODY-- OH, YEAH, MY SON, I TALKED TO HIM.

14 Q DID YOU TALK TO CHRIS?

15 A NO.

16 Q DID YOU HAVE YOUR CELL PHONE WITH YOU?

17 A I DIDN'T EVEN OWN A CELL PHONE.

18 Q DID LATISHA HAVE A CELL PHONE?

19 A SHE DIDN'T OWN A CELL PHONE.

20 Q DID YOU HAVE ACCESS TO A TELEPHONE SOMEWHERE? EVEN IF  
21 YOU HAD TO PULL QUARTERS OUT OF YOUR POCKET, COULD YOU  
22 HAVE CALLED SOMEBODY? DID YOU HAVE ACCESS TO A TELEPHONE  
23 WHILE YOU WERE ON THE RUN?

24 A YEAH. I HAD ACCESS TO A TELEPHONE. I HAD THE ROOM  
25 PHONE. YOU KNOW, THE ROOMS HAVE PHONES.

- 1 Q WHEN DID YOU FIND OUT THAT, FIRST OF ALL, JAMIE  
2 ROBERTSON HAD BEEN SHOT, NOT KILLED, BUT SHOT? WHEN DID YOU  
3 FIND OUT THAT YOU HAD HIT JAMIE?
- 4 A I DON'T REMEMBER EXACTLY. IT MAY HAVE BEEN THE DAY,  
5 THE DAY AFTER OR SO, OR SOMETHING.
- 6 Q WITHIN A DAY OR SO?
- 7 A YEAH.
- 8 Q WITHIN A DAY OR SO, DID YOU KNOW THAT BOTH MICHAEL AND  
9 JAMIE HAD BEEN SHOT BY YOU?
- 10 A RIGHT.
- 11 Q DID YOU FIND OUT-- YOU TURNED YOURSELF IN JULY 5. THE  
12 TESTIMONY SO FAR HAS BEEN MICHAEL DIED JULY 3. WHEN'D YOU  
13 FIND OUT MICHAEL WAS DEAD?
- 14 A I'M SURE EXACTLY. IT PROBABLY WAS AROUND THE FOURTH.
- 15 Q WHILE YOU WERE STILL-- BEFORE YOU TURNED YOURSELF IN?
- 16 A RIGHT.
- 17 Q AND HOW DID FIND OUT, NUMBER ONE, THAT YOU HAD  
18 ACTUALLY SHOT THOSE TWO FELLOWS? WHO TOLD YOU THAT YOU  
19 ACTUALLY HIT THEM? WHO'D YOU FIRST FIND THAT OUT FROM?
- 20 A MY MOM.
- 21 Q WHO'D YOU FIND OUT FROM THAT MICHAEL WAS DEAD?
- 22 A THE NEWS-- THE WOMAN, DARCY STRICKLAND, ON CHANNEL  
23 TEN, I BELIEVE IT WAS.
- 24 Q SO, YOU WATCHED CHANNEL TEN AND FOUND OUT YOU'D  
25 ACTUALLY NOW KILLED SOMEBODY?

1 A RIGHT.

2 Q AND IT'S YOUR TESTIMONY THAT YOU GOT OFF WORK AT THE  
3 UNIROYAL PLANT, WHICH AIN'T TOO FAR FROM WHERE Y'ALL LIVE. IS  
4 THAT RIGHT?

5 A YES SIR.

6 Q SEVEN O'CLOCK. THAT YOU AND CHRISTOPHER RODE AROUND  
7 FOR ONE OR TWO HOURS. RIGHT?

8 A YES SIR.

9 Q SO, IT COULDN'T HAVE BEEN BEFORE OR ALMOST NINE O'CLOCK  
10 BEFORE YOU EVER ENDED UP OVER AT MICHAEL ROBERTSON'S HOUSE.  
11 IS THAT CORRECT?

12 A I'D SAY WE MIGHT HAVE RODE-- I REALLY CAN'T TELL YOU  
13 EXACTLY HOW LONG WE RODE AROUND. BECAUSE, LIKE I SAID, I  
14 WASN'T EVEN CHECKING THE TIME. I WAS JUST TRYING TO HANG OUT.

15 Q YOU DIDN'T HANG OUT AT MICHAEL'S HOUSE FOR TWO OR  
16 THREE HOURS, DID YOU? YOU WEREN'T THERE THAT LONG, WERE  
17 YOU?

18 A I DON'T KNOW.

19 Q DO YOU REMEMBER TALKING ON THE VIDEOTAPE? DO YOU  
20 REMEMBER ON THE VIDEOTAPE SAYING YOU HADN'T BEEN THERE FOR  
21 FIFTEEN TO TWENTY MINUTES WHEN THE SHOOTING STARTED? DO  
22 YOU REMEMBER SAYING THAT?

23 A YEAH, I REMEMBER I TOLD HER I THOUGHT THAT. I MEAN, LIKE I  
24 TOLD YOU A FEW MINUTES AGO, I WASN'T SURE OF THE TIME. AND  
25 LIKE I TOLD YOU ON THE TAPE, I TOLD YOU SHE SAID THE SAME

## DAVID GOINS - CROSS EXAMINATION BY MR. BARFIELD

1           THING. THAT'S WHAT I THOUGHT. I DIDN'T KNOW FOR SURE HOW  
2           LONG I WAS THERE.

3    Q           DO YOU AGREE THAT FIFTEEN TO TWENTY MINUTES IS A LOT  
4           DIFFERENT THAN TWO OR THREE HOURS? WOULD YOU AGREE THAT'S  
5           A BIG DIFFERENCE IN TIME FRAME?

6    A           THAT'S WHY I TOLD HER I THOUGHT I DIDN'T KNOW FOR SURE.  
7           THAT'S WHY I USED THAT WORD.

8    Q           ALL RIGHT. HOW MUCH DID YOU DRINK THAT NIGHT?

9    A           ACTUALLY, I DON'T REMEMBER HOW MUCH I DRANK THAT  
10          NIGHT.

11   Q           I THINK YOU DESCRIBED THE GUN ON THE VIDEOTAPE AS BEING  
12          A REVOLVER. IS THAT TRUE?

13   A           I DON'T REMEMBER.

14   Q           WELL, YOU HAD THE GUN IN YOUR HAND.

15   A           NOW, I REMEMBER-- YOU JUST SAID DID I REMEMBER SAYING  
16          THAT. I DON'T REMEMBER SAYING IT. I DON'T KNOW.

17   Q           LET ME ASK YOU A DIRECT QUESTION. WAS THE GUN A  
18          REVOLVER?

19   A           YEAH, I THINK IT WAS.

20   Q           HAD ONE OF THEM CYLINDERS THAT SPINS WHEN YOU SHOOT  
21          IT?

22   A           YES.

23   Q           AND WHEN YOU SHOOT IT, IT DOESN'T EJECT CARTRIDGE  
24          CASINGS, DOES IT?

25   A           RIGHT.

## DAVID GOINS - CROSS EXAMINATION BY MR. BARFIELD

- 1 Q THEY STAY IN THE GUN. RIGHT?
- 2 A RIGHT.
- 3 Q DID YOU EVER UNLOAD THE GUN?
- 4 A NO.
- 5 Q YOU LEFT EVERYTHING IN IT JUST LIKE IT WAS WHEN YOU SHOT
- 6 IT. IS THAT RIGHT?
- 7 A THAT'S RIGHT.
- 8 Q DO YOU REMEMBER WHETHER IT HELD FIVE BULLETS OR SIX?
- 9 A NO SIR, I DON'T KNOW.
- 10 Q DO YOU HAVE ANY IDEA HOW MANY TIMES YOU SHOT?
- 11 A NO SIR.
- 12 Q I'M SHOWING YOU STATE'S EXHIBIT NUMBER NINETEEN. TAKE A
- 13 MINUTE AND LOOK AT IT. THEN I'M GOING TO ASK YOU A COUPLE OF
- 14 QUESTIONS ABOUT IT.
- 15 A (PAUSE TO EXAMINE EXHIBIT)
- 16 Q IS THAT THE WRITTEN STATEMENT THAT YOU WROTE OUT
- 17 WHILE YOU WERE SITTING IN THE INTERVIEW ROOM THAT'S ON THE
- 18 VIDEOTAPE?
- 19 A THAT IS CORRECT.
- 20 Q I'M JUST GOING TO ASK YOU A COUPLE OF QUICK QUESTIONS.
- 21 LOOK ON THE FIRST PAGE, RIGHT WHERE IT SAYS, "NEXT, WE CAME
- 22 AROUND". BEFORE YOU READ THAT, IS THIS RECOUNTING THE
- 23 CONVERSATION BETWEEN YOU AND MICHAEL ROBERTSON AT HIS
- 24 HOUSE BEFORE THIS INCIDENT HAPPENED THAT NIGHT?
- 25 A YEAH.

1 Q READ THAT, JUST THE ONE SENTENCE, STARTING RIGHT THERE  
2 AT NEXT, THAT ONE SENTENCE.

3 A "NEXT WE CAME AROUND AND THEN WE WAS TALKING ABOUT  
4 THE CAR AND EVERYTHING."

5 Q READ THE REST OF THE SENTENCE.

6 A "HE BROUGHT UP SOMETHING ABOUT MY GIRLFRIEND AND HER  
7 SISTER COMING OVER THERE CURSING HIM OUT, NOT THAT I DIDN'T  
8 CARE ABOUT THAT."

9 Q HE WAS TALKING STUFF ABOUT YOUR GIRLFRIEND WHEN YOU  
10 WERE OVER THERE. RIGHT?

11 A NO. I SAID THAT MY SISTER, MY GIRL'S SISTER, MY  
12 GIRLFRIEND'S SISTER WAS IN A ARGUMENT AT HER BROTHER, HIS  
13 NEPHEW.

14 Q YOUR STATEMENT SAYS, AND TELL ME IF I'M WRONG. PART OF  
15 THAT SENTENCE SAYS, "HE BROUGHT UP SOMETHING ABOUT MY  
16 GIRLFRIEND AND HER SISTER."

17 A RIGHT, RIGHT.

18 Q DID YOU WRITE THAT IN YOUR OWN HANDWRITING?

19 A YES, I DID.

20 Q AND THEN, ALSO, LOOK OVER ON THE SECOND PAGE. YOU SAID,  
21 I THINK TOWARD THE LAST SENTENCE, "NARD HAD A RIFLE OF SOME  
22 KIND AND STARTING RUNNING AT ME." DID YOU WRITE THAT?

23 A YEAH.

24 Q RENARDO WAS---

25 A YES SIR.

DAVID GOINS - RE-DIRECT EXAMINATION BY MR. HEMLEPP

1 A NOT TO MY KNOWLEDGE. I DON'T KNOW.

2 Q THANK YOU.

3 MR. HEMLEPP: NOTHING FURTHER, YOUR HONOR.

4 RE-CROSS EXAMINATION BY MR. BARFIELD:

5 Q DANNY SEIBLES AIN'T SHOT NOBODY, HAS HE, AS FAR AS YOU  
6 KNOW? NOT ON JUNE 30, 2005, DID HE?

7 A NOT TO MY KNOWLEDGE.

8 Q THAT'S ALL, THANK YOU.

9 THE COURT: STEP DOWN, SIR.

10 A THANK YOU, YOUR HONOR.

11 THE COURT: MR. HEMLEPP.

12 MR. HEMLEPP: YOUR HONOR, IF I MAY HAVE AN OPPORTUNITY  
13 TO CONFER WITH MY CLIENT?

14 THE COURT: YES SIR.

15 (PAUSE FOR DEFENSE COUNSEL TO CONFER WITH DEFENDANT)

16 MR. HEMLEPP: YOUR HONOR, THE DEFENSE RESTS.

17 THE COURT: LADIES AND GENTLEMEN, YOU'VE HEARD THE  
18 DEFENDANT'S CASE. ANY REPLY FROM THE STATE?

19 MR. BARFIELD: NOTHING IN REPLY FROM THE STATE, YOUR  
20 HONOR.

21 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THAT  
22 MEANS THAT YOU HAVE HEARD ALL THE EVIDENCE IN THIS CASE. I'M  
23 GOING TO LET YOU ALL GO UNTIL TWO-THIRTY. BE BACK IN THE JURY  
24 ROOM AT TWO-THIRTY. PLEASE DO NOT DISCUSS THE CASE OR ALLOW

1 ANYONE TO DISCUSS IT WITH YOU, OR IN YOUR PRESENCE. WE'LL SEE  
2 YOU BACK AT TWO-THIRTY.

3 (WHEREUPON THE JURY EXITED THE COURTROOM AT 1:02 P.M.)

4 ALL RIGHT, SOLICITOR.

5 MR. BARFIELD: YOUR HONOR, JUST A HOUSEKEEPING MATTER.  
6 FLEMING ANDERSON WAS SUBPOENAED BY THE STATE AND NEITHER  
7 ONE OF US CALLED HIM. ALSO, CHRISTOPHER KAUFFIN WAS  
8 SUBPOENAED BY THE STATE. WE AGREED THAT ALL WITNESSES  
9 WOULD STAY UNTIL RELEASED BY THE COURT. THE EVIDENCE IS ALL  
10 IN NOW. I'M ASKING THE COURT TO RELEASE THOSE SO THAT ONE OF  
11 THE LAW ENFORCEMENT FOLKS CAN GO OUT AND TELL THEM THEY  
12 CAN LEAVE IF THEY WANT TO.

13 THE COURT: ALL WITNESSES ARE RELEASED. ANY MATTERS OF  
14 LAW?

15 MR. HEMLEPP: YOUR HONOR, I HAVE NO MOTIONS AT THIS TIME.  
16 I WOULD ASK YOU FOR A CHARGE CONFERENCE.

17 THE COURT: NO, JUST DO YOU WANT TO MAKE ANY MOTIONS  
18 AT THIS TIME?

19 MR. HEMLEPP: NO, YOUR HONOR.

20 THE COURT: REGARDING THE CHARGES, WE'LL TALK ABOUT  
21 THAT FOR A FEW MINUTES BEFORE WE GO TO LUNCH.

22 MR. BARFIELD: I'M SORRY, YOUR HONOR. I WAS TALKING TO  
23 MR. MAXWELL. WHAT'D YOU JUST SAY?

24 THE COURT: REQUEST FOR CHARGES, WE'LL TALK ABOUT THAT  
25 NOW. ANY REQUEST FOR CHARGES BY THE STATE OR THE DEFENSE?

1 MR. HEMLEPP: YOUR HONOR, OF COURSE WE WOULD WANT A  
2 SELF-DEFENSE CHARGE. WE WOULD WANT THIS COURT TO CHARGE  
3 ACTUAL MALICE, BUT NOT CHARGE INFERRED MALICE, UNDER THE  
4 RULE OF STATE VERSUS BELCHER.

5 I DON'T KNOW OF THE COURT'S WORDING OF THE SELF-DEFENSE  
6 CHARGE. SOME JUDGES' WORDING OF THE SELF-DEFENSE CHARGE  
7 INCLUDES THE DEFENDANT HAS THE RIGHT TO ACT ON APPEARANCES.  
8 IF HIS HONOR DOES NOT INCLUDE THAT, I WOULD ASK THE COURT TO  
9 CONSIDER THAT, AND INCLUDE THAT, THAT SELF-DEFENSE IS A  
10 COMPLETE DEFENSE, AND THAT THE STATE HAS THE BURDEN OF  
11 PROVING THAT. THAT'S UNDER STATE VERSUS ADDISON.

12 CERTAINLY EXPERT TESTIMONY HAS BEEN PRESENTED IN THE  
13 CASE BY THE STATE. I WOULD ALSO ASK THE COURT TO CONSIDER  
14 CHARGING CIRCUMSTANTIAL EVIDENCE.

15 THE COURT: WHAT SAYS THE STATE?

16 MR. BARFIELD: YOUR HONOR, I DON'T DISAGREE WITH ANY OF  
17 THE REQUEST FOR CHARGES BY MR. HEMLEPP. I DON'T KNOW IF  
18 YOU'LL DO IT OR NOT, BUT I THINK THE LAW ON FLIGHT IS RELEVANT  
19 IN THIS CASE, AND I WOULD ASK YOU-- I DON'T KNOW IF YOU HAVE A  
20 CHARGE ON FLIGHT, AND I DON'T HAVE ONE HANDY. BUT IT OCCURS  
21 TO ME THAT THERE IS SOME INFERENCE THEY CAN MAKE FROM  
22 SLIGHT AND I INTEND TO ARGUE THAT. I'LL SEE IF I CAN FIND  
23 SOMETHING ON THAT IF YOU DON'T HAVE ANYTHING. AND IT MIGHT  
24 BE SOMETHING YOU CAN'T CHARGE, BUT I THINK IT'S CERTAINLY  
25 SOMETHING THAT I CAN ARGUE.

1 THE ONLY OTHER THING FROM THE STATE'S PERSPECTIVE IS  
2 WHETHER THERE ARE ANY LESSER, INCLUDED OFFENSES. AND I HAVE  
3 STRUGGLED WITH THIS ALL WEEK. I'M NOT SURE THERE'S EVIDENCE  
4 OF IT, AND I'M NOT SURE IF THERE WAS, IF I WANTED YOU TO CHARGE  
5 IT. I NEED TO THINK ABOUT THAT FOR A FEW MINUTES. I COULDN'T  
6 REALLY KNOW UNTIL I HEARD THE LIVE TESTIMONY FROM THE  
7 DEFENDANT. AND I NEED TO THINK ABOUT THAT SOME MORE.

8 THE COURT: REGARDING THE QUESTION OF NOT TO CHARGE ON  
9 INFERRED MALICE, AN INFERENCE OF MALICE WOULD COVER THAT.  
10 SELF-DEFENSE AS DEEMED-- ARE YOU ASKING THAT THE COURT  
11 SHOULD NOT MAKE ANY REFERENCE TO MALICE BEING INFERRED?

12 MR. HEMLEPP: YES, YOUR HONOR.

13 THE COURT: DO YOU AGREE WITH THAT?

14 MR. HEMLEPP: I CERTAINLY WOULD-- OF COURSE, ACTUAL  
15 MALICE IS AN ISSUE IN THIS CASE.

16 THE COURT: I'M NOT TALKING ABOUT ACTUAL MALICE, IT'S  
17 INFERRED MALICE.

18 MR. BARFIELD: ARE YOU SAYING THAT YOU'RE NOT GONNA  
19 EVEN TALK ABOUT INFERRED MALICE, OR JUST SIMPLY SAY IT CAN'T  
20 BE INFERRED FROM THE USE OF A DEADLY WEAPON?

21 THE COURT: WELL, IS THE QUESTION THAT THE COURT NOT  
22 CHARGE INFERRED MALICE? YOU SAID YOU DON'T DISAGREE WITH  
23 THAT.

24 MR. BARFIELD: I DID NOT CATCH THAT AND I APOLOGIZE---

25 THE COURT: I CLARIFIED WHAT HIS REQUEST IS.

1 MR. BARFIELD: NO, I DID NOT CATCH THAT, AND I APOLOGIZE. I  
2 WAS THINKING ABOUT ONE OF THE OTHER ISSUES. I CERTAINLY  
3 THINK YOU SHOULD CHARGE INFERRED MALICE. I THINK UNDER THE  
4 RECENT CASE, THAT I CAN'T REMEMBER THE NAME OF, BUT YOU CAN'T  
5 JUST SAY THEY CAN INFER MALICE FROM THE USE OF A DEADLY  
6 WEAPON.

7 I REQUEST THAT YOU CHARGE BOTH EXPRESSED AND IMPLIED,  
8 OR INFERRED MALICE, BUT NOT JUST SAY THEY CAN INFER IT FROM  
9 THE USE OF A DEADLY WEAPON. I THINK WE'RE ALL CLEAR ABOUT  
10 THAT.

11 MR. HEMLEPP: I'M GOING TO SHOW MY IGNORANCE. HOW ELSE  
12 WOULD YOU INFER MALICE EXCEPT FOR THE USE OF A DEADLY  
13 WEAPON? THAT WOULD BE THE ONLY WAY TO INFER.

14 THE SOLICITOR CAN CERTAINLY ARGUE THAT THERE ARE FACTS  
15 IN THE RECORD THAT EVIDENCE MALICE, BUT IT HAS TO BE ACTUAL  
16 MALICE. THE MALICE IS THE STATE OF MIND OF THE DEFENDANT. HE  
17 HAS TO PROVE THE STATE OF MIND OF THE DEFENDANT.

18 I DON'T HOW ELSE THE JURY CAN INFER MALICE TO THE  
19 DEFENDANT OTHER THAN---

20 THE COURT: I WANT TO BE CLEAR ON WHAT YOU'RE  
21 REQUESTING. ARE YOU REQUESTING THAT THE COURT NOT GIVE ANY  
22 INFERRED MALICE CHARGE?

23 MR. HEMLEPP: EXACTLY. THE SOLICITOR ARGUE THAT IT BE  
24 SOLELY LIMITED TO A DEADLY WEAPON AND THAT YOU WOULD BE  
25 ABLE TO CHARGE INFERRED MALICE, LEAVING OUT THE PART ABOUT

1 THE DEADLY WEAPON. I'M NOT SO SURE HOW THAT WOULD WORK,  
2 YOUR HONOR.

3 MR. BARFIELD: YOUR HONOR, THE TYPICAL CHARGE THAT I'VE  
4 HEARD ABOUT INFERRED MALICE GIVES EXAMPLES OF ONLY ONE,  
5 WHICH IS THE USE OF A DEADLY WEAPON. I THINK ALL OF THAT  
6 OTHER THAN THE USE OF A DEADLY WEAPON IS STILL A GOOD  
7 CHARGE.

8 THE COURT: WHAT WILL REMAIN IS THAT IT CAN INFERRED  
9 FROM A TOTAL DISREGARD FOR HUMAN LIFE.

10 MR. BARFIELD: YES SIR.

11 THE COURT: CONDUCT THAT TENDS TO SHOW A TOTAL  
12 DISREGARD FOR HUMAN LIFE.

13 MR. HEMLEPP: I CERTAINLY CAN'T ARGUE AGAINST THAT.

14 THE COURT: ALL RIGHT, THAT'S THAT ISSUE. WHAT'S YOUR  
15 RESPONSE ON THE REQUEST CHARGE FOR FLIGHT?

16 MR. HEMLEPP: FIRST OF ALL, THERE'S THE ISSUE OF THERE WAS  
17 A FIVE-DAY TIME PERIOD IN BETWEEN THE INCIDENT AND MY CLIENT  
18 BEING ARRESTED. HOWEVER, HE WAS ARRESTED UPON HIM TURNING  
19 HIMSELF IN, SO I DON'T KNOW IF THAT ACTUALLY APPLIES IN THIS  
20 CASE.

21 SECOND OF ALL, TO BE PERFECTLY FRANK WITH THE COURT, I---

22 THE COURT: PLEASE.

23 MR. HEMLEPP: ---DIDN'T ANTICIPATE---

24 THE COURT: PLEASE BE PERFECTLY FRANK WITH THE COURT.

1 MR. HEMLEPP: I'M SORRY. I ACTUALLY WOULD LIKE TO DO  
2 SOME RESEARCH ON THAT OVER THE LUNCH TIME BECAUSE I'M NOT  
3 WELL-VERSED IN THAT.

4 THE COURT: WELL, THE LAW IS THAT COUNSEL CAN ARGUE  
5 FLIGHT, BUT IT'S IMPROPER FOR THE COURT TO CHARGE FLIGHT AS  
6 EVIDENCE OF GUILT. IT SHIFTS THE BURDEN, WHICH WOULD BE  
7 IMPROPER.

8 MR. HEMLEPP: ISSUE RESOLVED.

9 THE COURT: STATE V. KAGAN.

10 MR. HEMLEPP: THANK YOU.

11 THE COURT: THE LESSER, INCLUDED OFFENSE.

12 MR. BARFIELD: I'M NOT ASKING FOR IT RIGHT NOW. I NEED TO  
13 THINK ABOUT IT FOR A LITTLE BIT.

14 THE COURT: ARE YOU REQUESTING A CHARGE FOR MURDER,  
15 GUILTY OR NOT GUILTY OF MURDER?

16 MR. BARFIELD: YES SIR.

17 THE COURT: YOU'RE NOT REQUESTING ANYTHING OTHER THAN  
18 GUILTY OR NOT GUILTY OF MURDER BASED ON YOUR MOTION?

19 MR. BARFIELD: YES SIR.

20 THE COURT: ALL RIGHT.

21 MR. HEMLEPP: I ALSO-- IF THE SOLICITOR WERE TO MAKE THAT  
22 MOTION AND IT WERE TO BE A PROSECUTION ISSUE, THERE'S OF  
23 COURSE THE SUDDEN HEAT OF PASSION UPON SUFFICIENT LEGAL  
24 PROVOCATION. I DON'T KNOW IF THERE'S EVIDENCE IN THIS CASE OF  
25 PROVOCATION. I THINK IT FAILS ON THAT. THAT'S SOMETHING I

1 LOOKED AT LAST EVENING, AND THAT ISSUE DOESN'T NECESSARILY  
2 APPLY TO ABHAN.

3 THE COURT: YOU'RE NOT REQUESTING A MANSLAUGHTER  
4 CHARGE?

5 MR. HEMLEPP: I'M NOT, YOUR HONOR.

6 MR. BARFIELD: AND I DON'T THINK I AM, BUT I MIGHT BEFORE  
7 WE CHARGE.

8 THE COURT: I UNDERSTAND. THIS IS JUST A GENERAL  
9 DISCUSSION. AND YOU'RE NOT REQUESTING AN ACCIDENT CHARGE?

10 MR. HEMLEPP: NO.

11 THE COURT: ARE YOU REQUESTING AN ABHAN CHARGE?

12 MR. HEMLEPP: YOUR HONOR, OTHER THAN THE FACTS THAT  
13 HAVE BEEN ESTABLISHED, THERE IS EVIDENCE IN THE RECORD WHICH  
14 COULD SUPPORT A JURY FINDING FOR ABHAN.

15 THE COURT: SO, YOU'RE REQUESTING AN ABHAN CHARGE?

16 MR. HEMLEPP: YES.

17 MR. BARFIELD: I OPPOSE IT UNLESS AFTER A WHILE I ASK YOU  
18 FOR A MANSLAUGHTER CHARGE. I DON'T THINK-- IT'S NOT  
19 CONSISTENT. IF THE SHOOTING WAS DONE WITH MALICE AS TO THE  
20 MURDERS THEN IT HAD TO BE DONE WITH MALICE AS TO THE NON-  
21 FATAL SHOOTING. I THINK IT'S INCONSISTENT. THE ONLY CHARGE,  
22 MURDER FOR THE DEATH VICTIM, AND CHARGE ABHAN FOR---

23 THE COURT: WHAT IF THE JURY FINDS NOT GUILTY OF MURDER,  
24 AND THEY SEPARATELY CONSIDER THE VICTIM WHO WASN'T KILLED?  
25 THEY MUST CONSIDER EACH CASE.

1 MR. BARFIELD: YEAH, I UNDERSTAND. THEY'VE GOT TWO  
2 VICTIMS, AND THEY CAN FIND NOT GUILTY OF ONE VICTIM, BUT  
3 GUILTY OF THE OTHER. THAT'S RIGHT.

4 MR. HEMLEPP: AND IN ADDITION, THERE ARE ELEMENTS NOT  
5 AT ALL THE SAME. MALICE IS-- FOR MURDER AND ASSAULT AND  
6 BATTERY WITH INTENT TO KILL, MALICE EXISTS IN BOTH OF THOSE.  
7 BUT WHEN YOU GO TO TWO COUNTS, VOLUNTARY MANSLAUGHTER  
8 AND ABHAN, ABHAN DOES NOT INCLUDE SUDDEN HEAT OF PASSION  
9 UPON SUFFICIENT LEGAL PROVOCATION, WHICH ARE TWO ELEMENTS.  
10 THOSE ARE TOTALLY DIFFERENT ANALOGIES. I DISAGREE WITH HIM  
11 THAT THAT WOULD BE INCONSISTENT.

12 THE COURT: I'LL JUST TELL YOU WHERE I'M LEANING. I'M  
13 LEANING TO CHARGE ABHAN, NOT GUILTY; GUILTY OF ASSAULT AND  
14 BATTERY WITH INTENT TO KILL; GUILTY OF ASSAULT AND BATTERY  
15 OF A HIGH AND AGGRAVATED NATURE.

16 MR. BARFIELD: YES SIR.

17 THE COURT: SIMPLY BECAUSE OF THE FACT THAT THE RANGE  
18 OF POSSIBILITY FOR JURIES IN GENERAL IS A QUESTION OF WHAT  
19 ASSAULT AND BATTERY WITH INTENT TO KILL OR ABHAN IS SO  
20 VARIED. YOU'VE GOT PEOPLE SHOT TEN TIMES AND THE JURY FINDS  
21 THEM GUILTY OF ABHAN, NOT ASSAULT AND BATTERY WITH INTENT  
22 TO KILL. IT'S JUST AN OPTION, I THINK, I'M CURRENTLY LEANING  
23 TOWARDS. SO, THEREFORE, THE JURY COULD CONCLUDE THAT HE DID  
24 NOT INTEND TO KILL THE PERSON THAT HE SHOT.

25 MR. BARFIELD: YES SIR.

1 THE COURT: SO, THAT'S THE PRELIMINARY RULING. WE CAN  
2 DISCUSS THIS FURTHER BEFORE WE BRING IN THE JURY AT 2:30. SO,  
3 WE'LL COME BACK AT 2:15 FOR A FINAL CLEAN UP ON ALL OF THAT.

4 MR. BARFIELD: YES SIR.

5 THE COURT: DID WE COVER EVERYTHING, OR IS THERE  
6 SOMETHING ELSE WE NEED TO DISCUSS.

7 MR. BARFIELD: I THINK WE'VE COVERED EVERYTHING.

8 MR. HEMLEPP: YES SIR.

9 MR. BARFIELD: YOUR HONOR, I DO NOT INTEND TO OPEN AND  
10 CLOSE. I WAIVE MY OPENING AND INTEND SIMPLY TO CLOSE.

11 THE COURT: WELL, LET ME JUST RAISE THIS: AS PART OF SELF-  
12 DEFENSE, THERE'S-- ARE YOU'RE BASING IT ON A REPUTATION FOR  
13 VIOLENCE? DO YOU REQUIRE THAT AS PART OF THE SELF-DEFENSE  
14 CHARGE?

15 MR. HEMLEPP: YES, YOUR HONOR. I THINK THERE IS EVIDENCE  
16 IN THERE. AND OF COURSE, MY CLIENT TESTIFIED THAT HE WAS  
17 AFRAID OF THEM. I THINK THERE WAS TESTIMONY, I KNOW HOW THEY  
18 ARE. THOSE STATEMENTS, I THINK, GIVE RISE TO THAT.

19 THE COURT: IT COULDN'T BE BASED ON WHAT'S IN HIS MIND. IT  
20 HAS TO BE BASED ON SOMETHING IN THE RECORD, AS OPPOSED TO  
21 WHAT'S IN HIS MIND.

22 MR. HEMLEPP: YES SIR. THERE WAS TESTIMONY THAT HE--  
23 FROM BOTH MY CLIENTS WHO SAID, I KNEW HOW THEY WERE. AND  
24 MR. KAUFFIN HAS ALSO TESTIFIED TO THAT.

1           MR. BARFIELD: I DON'T THINK IT'S RISEN ANYWHERE NEAR THE  
2           LEVEL FOR A REPUTATION FOR VIOLENCE AS TO THE TWO VICTIMS IN  
3           THIS CASE FOR YOU TO GIVE THE JURY ANY KIND OF CHARGE ABOUT  
4           THAT. THERE'S JUST SOME VAGUE COMMENTS ABOUT BEING SCARED  
5           OF THEM. OF COURSE, BY THE TIME HE MADE THOSE STATEMENTS HE  
6           WAS RUNNING BECAUSE HE HAD SHOT THEM.

7           AND SOME VAGUE COMMENTS ON THE VIDEOTAPE ABOUT THE  
8           ROBERTSONS IN GENERAL. BUT NOTHING SPECIFIC ABOUT THINGS  
9           THEY HAD DONE. NOTHING AT ALL SPECIFYING ANY ACTS OF  
10          VIOLENCE THEY'D COMMITTED, JUST WE WERE SCARED OF THEM.

11          THE COURT: WELL, I'M JUST TRYING TO REMEMBER THE  
12          TESTIMONY AS FAR AS WHAT, NOT SO MUCH AS WHAT THEY SAID, BUT  
13          WHAT WAS CONTAINED ON THE VIDEOTAPE ABOUT VIOLENT  
14          REPUTATION. WHAT'S THE TESTIMONY ON THAT?

15          MR. BARFIELD: LET ME FLIP THROUGH MY NOTES.

16          THE COURT: ANY INKLING OF IT, I GET TO CHARGE.

17          MR. BARFIELD: LET ME FLIP THROUGH, YOUR HONOR.

18          THE COURT: ALL RIGHT.

19          (PAUSE)

20          MR. HEMLEPP: I'M TRYING TO RECALL THE POINT IN THE  
21          INTERVIEW.

22          (PAUSE)

23          MR. BARFIELD: YOUR HONOR, THE ONLY-- AND AGAIN, IT'S  
24          BASED ON MY NOTES. MR. HEMLEPP CAN CERTAINLY LOOK AT MY  
25          NOTES AND HE CAN LOOK AT HIS NOTES, BUT NO, IT'S NOT VERBATIM.

1 THE ONLY REFERENCE I SEE IN WHAT I PLAYED, WHICH IS ALL  
2 THE JURY'S SEEN. MR. HEMLEPP DID NOT COME BACK AND PLAY ANY  
3 MORE. AT ABOUT 12:06 ON THE TAPE, THEY'RE IN COLUMBIA AT  
4 UNCLE LONZO'S HOUSE, AND I THINK THE DEFENDANT IS HEARD ON  
5 THE TAPE SAYING, UNCLE SAID THEY ALWAYS DOING STUFF TO  
6 PEOPLE, I COULD HAVE BEEN THE ONE DEAD.

7 THAT'S THE ONLY REFERENCE THAT I'M AWARE OF. THERE IS A  
8 REFERENCE OF LAW ENFORCEMENT, WE WERE WORRIED ABOUT YOU,  
9 TOO. RETALIATION FEARS, BUT THAT'S NOT REPUTATION PRIOR TO  
10 THE FACT OF RETALIATION. AND I WOULD SUBMIT IT WOULD NOT BE  
11 REPUTATION FOR VIOLENCE PRIOR TO A CRIME BEING COMMITTED.

12 I THINK THAT'S ABOUT ALL THERE WAS, YOUR HONOR.

13 THE COURT: ALL RIGHT. THE THING I'M TRYING TO  
14 UNDERSTAND FROM YOU, MR. HEMLEPP, YOUR REQUEST FOR A SELF-  
15 DEFENSE CHARGE. THEY LEFT, THE WITNESSES TESTIFIED ON THAT  
16 DAY. HAD PEOPLE SEEN THEM?

17 MR. HEMLEPP: NO, YOUR HONOR. I BELIEVE THE SELF-DEFENSE  
18 IS SUPPORTED BY HIS BELIEF THAT HE WAS UNDER IMMINENT DANGER  
19 AT THE TIME. HE ACTUALLY TESTIFIED, I THOUGHT HE WAS GOING TO  
20 SHOOT ME.

21 THE COURT: ALL RIGHT.

22 MR. HEMLEPP: I CAN'T ARGUE THAT THERE WAS A THREAT  
23 PRIOR TO THE INCIDENT.

24 THE COURT: IF THERE WAS A THREAT AT THE TIME OF THE  
25 INCIDENT.

1 MR. HEMLEPP: YES. THERE WAS A SPOKEN THREAT. THERE WAS  
2 THE BRANDISHING OF THE WEAPON. MY CLIENT TESTIFIED HE WAS IN  
3 ACTUAL---

4 THE COURT: SO, THAT'S WHAT YOU'RE BASING IT ON, THE  
5 THREAT BY THE VICTIM, AND THE OTHER ONE IS?

6 MR. HEMLEPP: ACTUALLY IT WOULD BE BY BOTH VICTIMS.

7 THE COURT: OKAY. THREAT BY THE VICTIMS, AND SECONDLY?

8 MR. HEMLEPP: WELL, THEY'RE ACTIONS.

9 THE COURT: ARE YOU CLAIMING ANYTHING RELATING TO  
10 VIOLENCE BASED ON REPUTATION? OR IS IT BASED ON WHAT  
11 OCCURRED THAT DAY?

12 MR. HEMLEPP: BASED ON WHAT OCCURRED THAT DAY.

13 THE COURT: YOU'RE NOT REQUESTING A CHARGE OF THE  
14 VICTIMS' VIOLENT REPUTATION?

15 MR. HEMLEPP: NO SIR.

16 THE COURT: WELL, I THINK WE'RE THROUGH WITH THE  
17 ENTIRE... I'M GOING TO TELL THEM ABOUT THE THREAT, THAT IT  
18 COULD BE THE BASIS OF A THREAT MADE BY THE VICTIMS. OF  
19 COURSE, THAT'S UP TO THE JURY TO DETERMINE WHETHER ANY OF  
20 THAT HAPPENED. OKAY. ANYTHING FURTHER?

21 MR. BARFIELD: JUST A QUICK QUESTION.

22 THE COURT: ALL RIGHT.

23 MR. BARFIELD: DO YOU LIMIT CLOSING? I DON'T WANT YOU TO  
24 GET NERVOUS WHEN I ASK YOU THAT, BUT ARE YOU GOING TO PUT US  
25 ON A TIME LIMIT?

1 THE COURT: HOW LONG DO YOU PLAN TO ARGUE?

2 MR. BARFIELD: WELL, DON'T GET SCARED ABOUT THIS EITHER.  
3 MY INVESTIGATOR SAT THERE BESIDE ME ONE DAY WHEN I SAT DOWN  
4 AND SAID, YOU KNOW, YOU'VE BEEN STANDING FOR AN HOUR AND  
5 FORTY MINUTES. THAT AIN'T GONNA HAPPEN. BUT I WOULD TAKE AT  
6 LEAST THIRTY MINUTES. THAT WAS ANOTHER CASE, ANOTHER DAY,  
7 AND I'M GLAD THAT ONE IS OVER.

8 THE COURT: MY PRACTICE IS TO LET YOU GO UNTIL YOU ARE  
9 WORN OUT.

10 MR. BARFIELD: ALL RIGHT. OR UNTIL THEY START THROWING  
11 STUFF AT ME?

12 THE COURT: RIGHT. I'LL TELL THE JURORS NOT TO THROW  
13 ANYTHING AT YOU.

14 MR. BARFIELD: THANK YOU.

15 THE COURT: VERY GOOD. I'M GLAD WE GOT THAT STRAIGHT.

16 MR. BARFIELD: AND I ASSUME YOU'RE GOING TO CHARGE AND  
17 IT'S GOING TO GO TO THE JURY THIS AFTERNOON?

18 THE COURT: YES SIR.

19 MR. BARFIELD: THANK YOU.

20 THE COURT: WE'LL BE IN RECESS FOR LUNCH UNTIL 2:30.

21 (WHEREUPON COURT WAS IN RECESS AT 1:45 P.M.)

22 COURT IN SESSION - 2:30 P.M.

23 THE COURT: ARE WE READY FOR THE JURY?

24 MR. BARFIELD: THE STATE'S READY, YOUR HONOR.

25 MR. HEMLEPP: THE DEFENSE IS READY.

1 THE COURT: BRING IN THE JURY.

2 (WHEREUPON THE JURY ENTERED THE COURTROOM)

3 THE COURT: MR. HEMLEPP.

4 MR. HEMLEPP: MAY IT PLEASE THE COURT.

5 THE COURT: YES SIR.

6 MR. HEMLEPP: MAY YOU GET WHAT YOU ASK FOR. MAY YOU  
7 GET WHAT YOU ASK FOR. THAT IS AN OLD CHINESE PROVERB. MAY  
8 YOU GET EXACTLY WHAT YOU ASK FOR.

9 LADIES AND GENTLEMEN, IN THIS CASE, YOU HAVE SPENT THE  
10 BULK OF THIS CASE LISTENING TO WITNESSES TELL YOU ABOUT AN  
11 INCIDENT THAT HAPPENED FOUR AND A HALF YEARS AGO HERE IN  
12 WINNSBORO. IT WAS AN INCIDENT THAT RESULTED IN TRAGEDY. WE  
13 KNOW THAT. IT WAS AN INCIDENT IN WHICH THE STATE HAS  
14 CHARGED MY CLIENT WITH THE OFFENSE OF MURDER AND ASSAULT  
15 AND BATTERY WITH INTENT TO KILL.

16 I'VE BEEN VERY IMPRESSED WITH THE ATTENTION THAT YOU  
17 ALL HAVE BEEN ABLE TO GIVE THIS CASE. IN A COURTROOM,  
18 SOMETIMES IT'S COLD, SOMETIMES IT'S HOT, AND SOMETIMES WE GO  
19 ON AND ON. BUT YOU ALL HAVE DONE A GREAT JOB OF PAYING  
20 ATTENTION. NOW IS THE OPPORTUNITY FOR SOLICITOR BARFIELD  
21 AND I TO COME UP AND TELL YOU WHAT OUR ARGUMENTS ARE IN THE  
22 CASE.

23 NOW, THE SOLICITOR WASN'T THERE AT THE TIME OF THE  
24 INCIDENT AND I WASN'T THERE. WHAT WE'RE DOING IS PRESENTING  
25 TO YOU OUR VERSION OF THE EVIDENCE. NOW, WHEN WE'RE DONE,

1 JUDGE NEWMAN WILL PROVIDE YOU WITH THE LAW WHICH IS  
2 APPLICABLE TO THIS CASE. HE'S THE JUDGE OF THE LAW AND HE  
3 WILL TELL YOU WHAT THE LAW IS.

4 NOW, SOME TIME BETWEEN NOW AND THEN, THE SOLICITOR OR I  
5 MAY TALK TO YOU ABOUT THE LAW. YOU LISTEN TO THE JUDGE. HE  
6 IS THE JUDGE OF THE LAW.

7 I'M GOING TO TRY TO BE BRIEF, BUT THIS WAS NOT A BRIEF  
8 TRIAL. IT STARTED ON MONDAY. YOU CAME IN HERE AND YOU SAT  
9 ALL WEEK. IT'S NOW THURSDAY AFTERNOON. AND THE STATE'S  
10 PRESENTED TWENTY-THREE WITNESSES TO YOU, TWENTY-THREE  
11 WITNESSES.

12 THAT'S THEIR PREROGATIVE. THEY HAVE THE BURDEN OF  
13 PROOF. THEY HAVE TO PROVE HIM GUILTY BECAUSE, AS I TOLD YOU  
14 ON MONDAY, HE WAS NOT GUILTY ON MONDAY. HE WAS NOT GUILTY  
15 EVERY SINGLE MOMENT OF THIS TRIAL. HE REMAINS RIGHT NOW NOT  
16 GUILTY UNTIL THE STATE'S PROVEN HIM GUILTY TO ALL OF YOU  
17 BEYOND A REASONABLE DOUBT. PAY ATTENTION TO THAT PHRASE.  
18 IT'S A MOST IMPORTANT PHRASE.

19 BEAR WITH ME FOR A FEW MINUTES. THE STATE PRESENTED  
20 WITNESSES AND THE DEFENSE PRESENTED WITNESSES. THE STATE  
21 BEGAN WITH MS. COLLINS. YOU REMEMBER MS. COLLINS. SHE  
22 TESTIFIED SHE LIVED ACROSS THE STREET, SAID SHE HEARD  
23 SOMETHING. SHE LOOKED OUTSIDE. SHE COULDN'T TELL WHO IT  
24 WAS, BUT PEOPLE WERE BEATING ON THE CARS AND SHE DID THE  
25 RESPONSIBLE THING AND CALLED LAW ENFORCEMENT.

1 MR. COLEMAN, HE TESTIFIED HE WAS OVER THERE  
2 CELEBRATING HIS BIRTHDAY, AND HE WAS AT MICHAEL ROBERTSON'S  
3 HOUSE. AND THAT HE HAD TO USE THE BATHROOM AND HE HAD GONE  
4 TO THE SIDE YARD. MR. COLEMAN, WHO TESTIFIED MONDAY.

5 DEPUTY COOPER. DEPUTY COOPER WAS A DEPUTY FOR THE  
6 SHERIFF'S DEPARTMENT WHO RESPONDED TO THE SCENE. SHE  
7 RESPONDED TO THE SCENE. SHE SECURED THE SCENE. SHE DID WHAT  
8 SHE WAS TRAINED TO DO.

9 SHE WAS JOINED BY HER SUPERVISOR, JEFF SPIRES. THEY'VE  
10 SECURED THE SCENE, AND ONE WOULD IMAGINE THEY ARE MAKING  
11 SURE THAT NOTHING ELSE IS HAPPENING AND NOBODY ELSE IS  
12 BOTHERING THE SCENE. AND THEY BOTH DID A GOOD JOB OF DOING  
13 THAT.

14 THE STATE THEN CALLED LAJESKA WILLINGHAM. LAJESKA  
15 WILLINGHAM. SHE IS THE SISTER OF THE DEFENDANT'S GIRLFRIEND.  
16 HER FRIEND, MARY YOUNG, ALSO TESTIFIED. MARY YOUNG, WHO HAD  
17 ACCOMPANIED LAJESKA EARLIER THAT DAY. THERE WAS AN  
18 ARGUMENT AT MICHAEL ROBERTSON'S HOUSE WITH REGARDS TO  
19 RUMORS ABOUT LAJESKA. HORRIBLE RUMORS, HORRIBLE RUMORS,  
20 WHICH ANY REASONABLE PERSON WOULD FIND VERY, VERY  
21 OFFENSIVE.

22 LATISHA ELGIN FANT, YOU MET HER ON TUESDAY. SHE DATED  
23 THE DEFENDANT. SHE WAS FRIENDS WITH LAJESKA AND MARY. SHE  
24 WAS ACTUALLY HER SISTER. SHE HAD A CHILD IN COMMON WITH THE  
25 DEFENDANT. SHE LIVED WITH THE DEFENDANT.

1 EDNA MAE ELGIN. EDNA MAE ELGIN WAS THE AUNT OF LATISHA  
2 FANT. SHE RENTED THE ROOM AT THE DAYS INN WHERE LATISHA  
3 TESTIFIED SHE STAYED.

4 TAVARES ROBERTSON. TAVARES ROBERTSON, THAT IS THE  
5 NEPHEW OF THE DECEASED, THE NEPHEW OF MICHAEL ROBERTSON.  
6 TAVARES ROBERTSON, THE YOUNG MAN, WHO LAJESKA KNEW, AND  
7 WHO LAJESKA GOT INTO AN ARGUMENT WITH IN THE YARD EARLIER  
8 THAT DAY WHILE MY CLIENT WAS AT WORK AT UNIROYAL. TAVARES  
9 ROBERTSON.

10 RENARDO WOOD. RENARDO WOOD TESTIFIED HE WAS AT THE  
11 YARD. THAT HE WAS JUST PLAYING A GAME. HE TESTIFIED TO FACTS  
12 AND CIRCUMSTANCES THAT SURROUNDED THE SHOOTING. AND WE'LL  
13 GET BACK TO THAT.

14 NICHOLAS McGOOGAN, THE YOUNG MAN DRESSED IN THE  
15 WHITE SHIRT AND THE TIE, WHO CAME UP TO COURT TO SAY HE GAVE  
16 A RIDE FROM HIS HOUSE TO THE DEFENDANT. HE WASN'T AT THE  
17 INCIDENT, BUT HE DID TESTIFY TO THAT.

18 AND CHERYL ROBERTSON, WHO TESTIFIED THAT SHE WAS AT  
19 THE HOSPITAL AND SAW HIM ON AND SAW THAT HE HAD BEEN SHOT.  
20 SHE TESTIFIED THAT SHE LEARNED OF THE INCIDENT AFTER HE WAS  
21 TRANSFERRED TO COLUMBIA.

22 AND HER SISTER, BARBARA ROBERTSON, TESTIFIED TO SIMILAR  
23 FACTS WITH REGARDS TO MICHAEL ROBERTSON, WHO HAD GONE TO  
24 THE HOSPITAL AND WAS AIR LIFTED TO COLUMBIA, TO THE HOSPITAL  
25 THERE.

1 THE LEAD INVESTIGATOR, INVESTIGATOR, MARY ANN TOLBERT,  
2 WHO NOW WORKS FOR A SECURITY FIRM, WAS AT THE TIME OF THE  
3 INCIDENT A DETECTIVE FOR THE WINNSBORO SHERIFF'S DEPARTMENT.  
4 AND SHE TESTIFIED ACCORDING TO HER INVESTIGATION AND THE  
5 FACTS SHE FOUND.

6 DONNIE ANDERSON, ANOTHER INVESTIGATOR. DONNIE  
7 ANDERSON TESTIFIED ALONG WITH A SLED AGENT, STEVE DERRICK.  
8 STEVE DERRICK, THE FINGERPRINT EXPERT.

9 THE EVIDENCE CUSTODIAN FOR THE SHERIFF'S DEPARTMENT IS  
10 JIMMY JOYNER. INVESTIGATOR JOYNER CAME AND TESTIFIED.

11 THE ASSISTANT CORONER, DANNY ODOM. DANNY ODOM CAME  
12 AND TESTIFIED TO HIS DUTIES AS AN ASSISTANT CORONER IN  
13 CONNECTION WITH THIS CASE.

14 DOCTOR ROSS. DOCTOR ROSS, WHO PERFORMED THE AUTOPSY  
15 AND WAS ABLE TO DETERMINE THAT MICHAEL ROBERTSON DIED OF A  
16 GUNSHOT WOUND.

17 DUSTIN SMITH WORKS FOR THE TOXICOLOGY DEPARTMENT AT  
18 SLED AND TRANSPORTED SOME THINGS. AND THEN CAL REIGHLEY,  
19 FROM THE TOXICOLOGY DEPARTMENT TESTED.

20 YESTERDAY, WE ENJOYED THE TESTIMONY OF MR. VELLO  
21 PAAVEL, A DELIGHTFUL GUY, AND A MEMBER OF SLED.

22 THEY THEN PRESENTED MR. KEITH LEWIS, WHO IS THE CHIEF  
23 DEPUTY ON THE CASE, AND STILL IS THE CHIEF DEPUTY FOR THE  
24 SHERIFF'S DEPARTMENT.

1           THIS MORNING, YOU HEARD FROM TWO WITNESSES FOR THE  
2           DEFENSE, CHRIS KAUFFIN AND DAVID GOINS.

3           WOULD YOU LOOK AT THAT. THEY'VE PRESENTED ALL THESE  
4           PEOPLE WHO HAVE COME IN HERE TO TALK TO YOU. ALL OF THESE  
5           PEOPLE.

6           LADIES AND GENTLEMEN, THERE IS ONE THING I WOULD LIKE  
7           YOU ALL TO REMEMBER MORE THAN ANYTHING ELSE WHEN YOU GO  
8           BACK IN THAT JURY ROOM. THE ONLY THING THAT MATTERS IS WHAT  
9           HAPPENED AT THAT TIME. THE ONLY THING THAT MATTERS IS WHAT  
10          HAPPENED WITH THAT GUN IN THAT YARD AT THAT MOMENT IN THAT  
11          INCIDENT OF WHAT HAPPENED TO MICHAEL ROBERTSON. THAT'S IT.

12          WHAT HAPPENED BEFORE, WHAT HAPPENED AFTER, WHAT  
13          HAPPENED IN BETWEEN, IT DOESN'T MATTER. WHAT HAPPENED ON  
14          THAT DAY AT THAT TIME, 10:30 AT NIGHT, IS WHAT MATTERS.

15          YOU KNOW, THE STATE PRESENTED SOME EVIDENCE. THEY  
16          PRESENTED SOME EVIDENCE. LOOK AT THAT. THEY PRESENTED A .22  
17          CALIBER GUN FRAGMENTS. THEY PRESENTED THAT. OH, MAN. CAME  
18          OUT OF THE DEFENDANT'S CAR. WE GOT A PICTURE OF IT. AND IT WAS  
19          IN A BAG. AND IN THE BAG WAS A BOX.

20          THEY ALSO PRESENTED PHOTOGRAPHS, PHOTOGRAPHS. THEY  
21          PRESENTED A HOTEL RECEIPT. SOME FORENSIC EVIDENCE. FINALLY,  
22          SOME REPORTS.

23          ONE OF THE CHARGES THAT THE JUDGE IS GOING TO TELL YOU,  
24          ONE OF THE PRINCIPLES OF LAW THAT THE JUDGE IS GOING TO TELL  
25          YOU, IS THAT YOU AS THE JURY WEIGH THE EVIDENCE. YOU WEIGH

1 THE EVIDENCE. WHAT DOES THAT MEAN? ONE'S HEAVIER THAN THE  
2 OTHER? NO. WHAT IT MEANS IS YOU DECIDE WHAT TO BELIEVE.  
3 YOU DON'T BELIEVE MANY WITNESSES OVER ONE, OR ONE OVER  
4 MANY.

5 WHAT YOU BELIEVE, IF YOU LISTENED TO THE EVIDENCE-- YOU  
6 LISTEN TO PEOPLE TALKING TO YOU. EVERYDAY PEOPLE ARE  
7 TALKING TO YOU. EVERYDAY PEOPLE ARE SAYING THINGS TO YOU,  
8 AND YOU'VE GOT TO DECIDE WHAT TO BELIEVE. DO THEY KNOW  
9 WHAT THEY'RE TALKING ABOUT. ARE THEY IN A POSITION TO SEE IT?  
10 DOES THEIR OPINION MATTER? EVERYDAY YOU WEIGH WHAT PEOPLE  
11 SAY TO YOU AND IT DOESN'T STOP HERE.

12 THE REASON WHY CRIMINAL CASES ARE DECIDED BY A JURY IS  
13 BECAUSE YOU HAVE COMMON SENSE. YOU LIVE IT EVERYDAY, ALL  
14 DAY LONG. SO, HOW DO YOU WEIGH THIS?

15 WELL, I'M TELLING YOU THE FIRST THING IS THE ONLY THING  
16 THAT MATTERS IS WHAT HAPPENED IN THE LESS THAN THIRTY  
17 SECONDS OF THIS SHOOTING. THAT'S ALL THAT MATTERS. IF IT DIDN'T  
18 RESULT IN THE SHOOTING, IT DOESN'T MATTER.

19 EVEN IF YOU BELIEVE THE RIDICULOUS STORY THAT DAVID  
20 GOINS WENT OVER THERE TO SHOOT HIM BECAUSE HE HAD A FIGHT  
21 WITH HIS GIRLFRIEND, EVEN IF YOU BELIEVE IT, IT DOESN'T MATTER IF  
22 IT DIDN'T RESULT IN A SHOOTING. THE SHOOTING IS THE CRIME.

23 LOOK AT ALL THESE WITNESSES. THERE ARE A LOT OF  
24 WITNESSES. THERE ARE LIVE WITNESSES. NOW, WHEN ASKED, SOME  
25 OF THESE WITNESSES, OVER AND OVER AGAIN, SAID YEAH, I WASN'T

1       THERE, I DON'T KNOW ANYTHING ABOUT THE FACTS OF IT. WHO WAS  
2       THAT? THAT WOULD HAVE BEEN JEFF SPIRES. SO, THAT DOESN'T  
3       COUNT. AND DANNY ODOM, HE DIDN'T SEE IT EITHER. THEY WEREN'T  
4       THERE. THEY DIDN'T SEE WHAT HAPPENED. THEY CAN'T TELL YOU  
5       WHO PULLED THE GUN. THEY CAN'T TELL YOU WHO WAS THE  
6       AGGRESSOR. SO, WE'VE CLEANED THAT UP A LITTLE BIT.

7       WELL, MS. COLLINS, SHE HEARD EVERYTHING. BUT SHE DIDN'T  
8       SEE ANYBODY'S FACE. SHE DIDN'T SEE ANYTHING. ALL SHE TESTIFIED  
9       TO WAS SHE HEARD NOISE, SHE LOOKED OUT THE WINDOW, AND  
10      SOMEBODY WAS BEATING THE STUFFING OUT OF A CAR. SHE  
11      COULDN'T TELL WHOSE CAR OR WITH WHAT OR WHY. SO, SHE CAN'T  
12      REALLY HELP US EITHER.

13      BUT THERE'S STILL A TREMENDOUS NUMBER OF WITNESSES  
14      HERE. DONNIE ANDERSON, ALL HE DID WAS TRAN\$PORT STUFF. SO, I  
15      GUESS THAT DOESN'T COUNT BECAUSE HE WASN'T THERE. AND  
16      NICHOLAS McGOOGAN, HE WASN'T THERE, BUT HE GAVE THE  
17      DEFENDANT A RIDE. BUT HE COULDN'T TESTIFY TO THE INCIDENT  
18      BECAUSE HE WASN'T THERE. SO, WE CAN ELIMINATE HIM.

19      THE GIRLS, THEIR TESTIMONY WAS A LITTLE BIT MORE  
20      ACCURATE, BUT THEY TESTIFIED ABOUT ALL THIS ARGUMENT  
21      BEFORE. AND THERE'S NO EVIDENCE THEY WERE EVEN NEAR THE  
22      HOUSE AT THE TIME. SO, WE'LL TAKE THEM OFF. THAT MAKES IT A  
23      LITTLE BIT BETTER.

1           AND BLESS THEIR HEART, THE ROBERTSONS, CHERYL AND  
2           BARBARA, TESTIFIED ABOUT THE INJURIES AND WHAT NOT. BUT THEY  
3           HAVE NO IDEA HOW THEY WERE SUSTAINED. SO, THEY'RE NOT THERE.

4           THERE'S A LOT GOING ON HERE. WE DID HEAR FROM A  
5           FINGERPRINT EXPERT. HE CAME AND DID FINGERPRINTS ON ALL  
6           THESE BAGS AND EVERYTHING AND HE WAS A GOOD GUY, BUT HIS  
7           TESTIMONY WAS HE CAME UP HERE AND HE SAID I TRIED TO FIND  
8           FINGERPRINTS, BUT I COULDN'T. SO, HE REALLY CAN'T HELP US  
9           EITHER.

10          AND RENARDO WOOD, HE WAS THE SOURCE OF THE RUMOR  
11          THAT WAS THE CAUSE OF THE ARGUMENT THAT EVENING. THAT  
12          INCIDENT, THE ONE THAT LAJESKA AND MARY WERE INVOLVED IN,  
13          WHEN MICHAEL ROBERTSON SAID GET OUT OF MY YARD, AND THEY  
14          DID.

15          AND DOCTOR ROSS. NOW, DOCTOR ROSS HELPED US A LITTLE  
16          BIT. DOCTOR ROSS HELPED US A LITTLE BIT BECAUSE SHE WAS ABLE  
17          TO TELL US THE CAUSE OF DEATH. SO, WE'VE GOT ANOTHER ONE. HE  
18          HAD A GUNSHOT WOUND TO THE HEAD. AND SHE WAS ABLE TO SHOW  
19          IT, WHERE IT WAS, AND WHICH WAY THE GUN WAS POINTED. IT WAS  
20          POINTED. AND SHE WAS ALSO ABLE TO TELL US THAT THE  
21          DEFENDANT HAD BEEN DRINKING. SO, SHE COULD TELL US THAT, BUT  
22          SHE CAN'T TELL US WHAT HAPPENED IN THE YARD THAT NIGHT.

23          AND MR. REIGHLEY, HE DID THE TEST ON THE BLOOD, THE TEST  
24          THAT SHOWED MICHAEL ROBERTSON, WHO HAD A, AND IT DOESN'T  
25          MATTER IF IT WAS .10 OR .08, HE WAS STILL DRUNK, STILL WOULD

1 HAVE GOTTEN A DUI. COULDN'T REMEMBER AT THE TIME WHETHER IT  
2 WAS .08 OR .10. DOESN'T MATTER, HE WAS STILL SOBER.

3 AND MR. COLEMAN, HE HEARD A BUNCH OF ARGUING. HE CAME  
4 AROUND, HE HEARD SHOTS, HE HIT THE GROUND. HE HAD DIFFICULTY  
5 SAYING THAT. BUT HE HIT THE GROUND, TOOK OFF. HOW DO WE  
6 KNOW HE TOOK OFF? NOBODY REMEMBERS HIM BEING THERE,  
7 NOBODY. AND YET, APPARENTLY, ACCORDING TO HIS TESTIMONY, IT  
8 WAS HIS BIRTHDAY.

9 SO, IN THE TIME, IN THE TIME THAT SOMEBODY PULLED A GUN  
10 ON SOMEBODY ELSE AND SOMEBODY GOT KILLED, NOBODY  
11 REMEMBERS HIM BEING THERE AND IT BEING HIS BIRTHDAY. BUT HIS  
12 TESTIMONY WAS HE DIDN'T SEE IT.

13 AND CHIEF DEPUTY LEWIS, HE DIDN'T TESTIFY TO ANYTHING  
14 OTHER THAN HE MADE THE TAPE. THERE WAS NO EVIDENCE  
15 PRESENTED TO YOU BY HIM OTHER THAN HE MADE THE TAPE. HE  
16 CERTAINLY WASN'T THERE. AND IN FACT, TALKED TO THE  
17 DEFENDANT. HE TALKED TO THE DEFENDANT WHAT, FIVE DAYS  
18 LATER?

19 AND THE WITNESS, VELLO PAAVEL, THE FIREARMS EXAMINER,  
20 AN EXPERT ON FIREARMS, AN EXPERT ON FIREARMS. AND WHAT WAS  
21 HE ABLE TO TELL US? HE WAS ABLE TO TELL US THAT'S A .22. HE ALSO  
22 SAID SOMETHING. YOU'LL REMEMBER, I'LL SPECIFICALLY ASKED HIM,  
23 WHAT MAKES YOU AN EXPERT ON THE MAKE, THE MODEL AND THE  
24 MANUFACTURE OF WEAPONS AND AMMUNITION. ABSOLUTELY, I'VE  
25 DONE THIS SINCE I WAS LITTLE. HE SAID THERE ARE BILLIONS OF

1           THESE .22 CALIBER BULLETS SOLD EVERY YEAR. HE MADE THAT  
2           CLEAR, BILLIONS OF THESE SOLD EVERY YEAR. BILLIONS.

3                   SO, LET'S TALK ABOUT THAT. A MILLION SECONDS ELEVEN  
4           MINUTES. A BILLION SECONDS IS THIRTY-FOUR YEARS. AND HE  
5           TESTIFIED BILLIONS OF THESE ARE SOLD EVERY YEAR.

6                   AND MARY ANN TOLBERT, SHE WAS A GOOD WITNESS, BUT ALL  
7           SHE KNOWS IS WHAT OTHER PEOPLE TELL HER. SHE WAS NOT THERE.  
8           ALL SHE KNOWS IS WHAT OTHER PEOPLE TOLD HER. AND SHE  
9           CERTAINLY DOESN'T KNOW ANYTHING FROM THE FORENSIC  
10          EVIDENCE.

11                   I MEAN, COME ON. THEY TOOK BULLETS, AND THEY EXAMINED  
12          THEM AND SAID THEY WERE .22, BUT THEY CAN'T IDENTIFY THEM.  
13          THEY FOUND BULLETS IN THE CAR, BUT THE CAR THAT EVERYONE  
14          KNOWS WAS TAMPERED WITH. EVERYONE IN THIS CASE AGREES THAT  
15          THE CAR WAS TAMPERED WITH. MS. COLLINS SAW IT BEING BEATEN.  
16          RENARDO SAW IT BEING BEATEN. CHRIS KAUFFIN SAW IT BEING  
17          BEATEN. AND WHO WAS DOING THE BEATING? AND WHO THAT BE?  
18          RENARDO SAID JAMIE. THEY'RE TAKING EVIDENCE FROM A CAR THAT  
19          THEY KNOW WAS TAMPERED WITH.

20                   THERE ARE SOME PHOTOGRAPHS AND THAT'S GOOD. I'M  
21          AWFULLY GLAD I REMINDED THEM THAT THERE WERE PHOTOGRAPHS.  
22          BECAUSE EVERYONE TESTIFIED THAT THERE WAS UNTIL I ASKED, AND  
23          THEN THE SOLICITOR ADMITTED THEM. BUT I'M GLAD I REMINDED  
24          THEM.

1 THE CAR WAS BEATEN UP AND THERE'S NOT ONE SHRED OF  
2 EVIDENCE IN THIS CASE THAT IT WAS ANYBODY OTHER THAN JAMIE  
3 ROBERTSON. WITH WHAT? HE SAID A CANE. THEY NEVER FOUND A  
4 CANE. MS. COLLINS SAID SHE THOUGHT SHE SAW A BAT.

5 YOU KNOW WHAT? THERE WAS A SHOOTING IN THE YARD. MS.  
6 TOLBERT, SHE DIDN'T COLLECT A BAT AS EVIDENCE. SHE COLLECTED  
7 THE RADIO FROM THE CAR AS EVIDENCE. WHAT RELEVANCE DOES  
8 THAT HAVE? BUT SHE SEES A BAT? IT'S A WEAPON. IT'S A WEAPON.  
9 AND SHE DIDN'T COLLECT IT?

10 WE HAVE A THIRD VERSION OF THAT. CHRIS KAUFFIN SAYS  
11 JAMIE ROBERTSON DID BEAT THE CAR WITH THE LONG GUN THAT HE  
12 HAD. THE LONG GUN THAT WAS JAMMED, THAT DIDN'T WORK. IT'S  
13 NOT ONLY HIS TESTIMONY, BUT IF YOU LOOK IN THE DEFENDANT'S  
14 STATEMENT, HE INDICATES THAT HE HAD TURNED THE GUN AROUND  
15 AND WAS SWINGING IT LIKE A BAT.

16 AND LOOK AT ALL THREE OF THESE BAGS, LOOK AT ALL THIS  
17 EVIDENCE, LOOK AT ALL OF IT. IT'S ALL THERE FOR YOU TO LOOK AT.  
18 AND WEIGH THE EVIDENCE. THE PHOTOGRAPHS. THE PHOTOGRAPHS  
19 OF THE CAR. THE CAR THAT HAD BEEN TAMPERED WITH BY PEOPLE  
20 WHO WERE THERE. THEY WERE ANGRY.

21 HOW DO WE KNOW THEY WERE ANGRY. WE KNOW RENARDO  
22 WAS ANGRY. HOW DO WE KNOW RENARDO WAS ANGRY? HE TOLD US  
23 HE WAS ANGRY. WHEN ASKED, I DIDN'T TELL THE POLICE  
24 EVERYTHING. YOU DIDN'T TELL THE POLICE EVERYTHING? NO, I  
25 DIDN'T TELL THE POLICE EVERYTHING. AND WHAT'S HIS ANSWER TO

1           THAT? WAS HIS ANSWER, BECAUSE I'D BEEN DRINKING? NO, HIS  
2           RESPONSE WAS I WAS MAD, I WAS ANGRY. HE'S THE ONE WHO TOLD  
3           YOU JAMIE ROBERTSON WAS BEATING THE CAR.

4                   MARY ANN TOLBERT CAN'T TELL US BECAUSE SHE WASN'T  
5           THERE. RENARDO WOOD WAS THERE.

6                   THE SOLICITOR SOUGHT TO PRODUCE THE VIDEO. THE STATE  
7           PLAYED THREE-FOURTHS OF IT. THEY BROUGHT THAT VIDEO IN THE  
8           COURTROOM AND THEY SHOWED YOU THAT VIDEO. AND ON THE  
9           VIDEO IS THE STATEMENT BY MY CLIENT. I WOULD POINT OUT A FEW  
10          THINGS THAT YOU SHOULD REMEMBER. MY CLIENT TURNED HIMSELF  
11          IN. HE WAS READY TO COME IN. HE WAS THERE. HE HAD WALKED  
12          THIS PATH BEFORE. HE HAD WALKED THAT LINE. HE HAD PUT HIS  
13          LIFE ON THE LINE.

14                   THERE WERE CIRCUMSTANCES THAT WERE PUT IN MOTION  
15          THAT WERE NONE OF HIS FAULT. HERE HE IS CAUGHT UP IN A  
16          SITUATION, SO HE TURNS HIMSELF IN, AND HE TELLS HIS STORY.

17                   THERE WERE THREE PEOPLE WHO TESTIFIED WHO WAS THERE.  
18          ONE, TWO, THREE. THEIR TESTIMONIES ARE SUBSTANTIALLY THE  
19          SAME. HIS PRIOR VIDEOTAPE STATEMENT IS SUBSTANTIALLY THE  
20          SAME. THIS INCIDENT HAPPENED FOUR AND A HALF YEARS AGO.  
21          RIGHT NOW, CAN YOU REMEMBER WHAT YOU DID FOUR AND A HALF  
22          YEARS AGO? SO, THEY ARE SUBSTANTIALLY THE SAME.

23                   LADIES AND GENTLEMEN, I SUBMIT TO YOU RENARDO WOOD'S  
24          STATEMENT IS FALSE. HIS STATEMENT IS HE WAS INSIDE, PLAYING A  
25          VIDEO GAME. WHEN HE CAME OUTSIDE, HE SAW MICHAEL

1 ROBERTSON BEING SHOT IN A MANNER I WOULD DESCRIBE  
2 EXECUTION-STYLE.

3 FIRST OF ALL, THE WAY DOCTOR ROSS DESCRIBED THE WOUND  
4 MAKES THAT UNLIKELY. BECAUSE IF YOU STAND LIKE THIS, NUMBER  
5 ONE, THE WOUND WOULD BE UP HERE. DOCTOR ROSS SAID SHE  
6 WASN'T REALLY SURE. THAT'S NUMBER ONE.

7 NUMBER TWO: DOCTOR ROSS SAID THERE WAS NO STIPPLING  
8 ON THE HEAD. SHE INDICATED THAT EVEN IF THERE HAD BEEN  
9 STIPPLING THERE WOULD BEEN SCARRING. SHE TESTIFIED THAT SHE  
10 LOOKED FOR STIPPLING, WHICH IS RESIDUE, IN THAT AREA, AND IT  
11 WAS NOT THERE, AND THAT MEANS THAT IT WAS A DISTANT WOUND.  
12 IT WASN'T ON THE VICTIM'S HEAD, SO THE SHOT HAD TO BE HAVE  
13 BEEN FARTHER AWAY THAN A FOOT. SO, IT WAS NOT EXECUTION-  
14 STYLE.

15 WHAT WAS IT MORE CONSISTENT WITH? WHAT'S IT MORE  
16 CONSISTENT WITH? ANYBODY FIRING FROM A DISTANCE,  
17 ADDRESSING GUNFIRE.

18 THERE'S ANOTHER REASON WHY RENARDO WOOD'S STORY  
19 MAKES NO SENSE. ACCORDING TO THE DEFENDANT AND IS WRITTEN  
20 STATEMENT, CHRIS KAUFFIN AND THE DEFENDANT ON THE STAND,  
21 THEY GO THERE, MICHAEL ROBERTSON IS ARMED, JAMIE ROBERTSON  
22 ARMS HIMSELF, AND RENARDO MAY OR MAY NOT HAVE ARMED  
23 HIMSELF.

24 SO, JAMIE HAS A GUN, DAVID GETS THE OTHER GUN, AND DAVID  
25 DOES NOT GET INTO HIS CAR BECAUSE HE'S AFRAID HE WOULD GET

1 SHOT. HE TOLD Y'ALL THAT. HE SAID IT ON THE VIDEO AND HE SAID  
2 IT AGAIN HERE TODAY. HE DIDN'T GET IN HIS CAR BECAUSE HE WAS  
3 AFRAID HE WOULD GET SHOT.

4 HE SAID DAVID HAD A GUN, DAVID BROUGHT THE GUN,  
5 MICHAEL DIDN'T HAVE A GUN, JAMIE HAD A GUN. I HAD A LITTLE  
6 STICK. I DON'T KNOW WHERE I GOT IT, BUT I HAD A LITTLE STICK. A  
7 LITTLE STICK. UNDER HIS VERSION OF THE STORY, THE ONLY PERSON  
8 ARMED WAS DAVID GOINS.

9 SO, WHY DIDN'T HE DRIVE AWAY? WHAT IF HE'S TELLING THE  
10 TRUTH? I GIVE UP. I'M MAD. I SHOOT YOU. I SHOOT YOU. I SHOOT  
11 YOU IN THE BACK OF THE HEAD, AND I'M THE ONLY GUY THERE  
12 ARMED. WHY DON'T IN GET IN MY CAR AND DRIVE AWAY? WHAT?  
13 YOU HAVE YOUR CAR. YOU HAVE YOUR KEYS. IT'S NOT BEEN TORN  
14 UP YET. YOU'VE GOT A GUN. WHO ARE YOU AFRAID OF WHEN YOU'RE  
15 THE ONLY MAN IN THE ROOM WHO'S GOT A GUN? NOBODY. SO, YOU  
16 GET IN YOUR CAR AND DRIVE AWAY.

17 HE'S GONNA SAY, WELL, CLEARLY, HE WAS GUILTY BECAUSE HE  
18 RAN, HE RAN AROUND FROM THEM, HE WAS SCARED. AND HE DIDN'T  
19 GET IN HIS CAR, IT'S RIGHT THERE. BUT HE DIDN'T. HE LEFT HIS CAR  
20 TO BE DESTROYED BY THE PEOPLE REMAINING.

21 HE WAS THERE. HE WAS THERE. HE WAS THERE. WHERE WAS  
22 FLEMING ANDERSON? I THINK THE BIGGER QUESTION IS: DOES IT  
23 MATTER WHERE FLEMING ANDERSON WAS. BECAUSE FLEMING  
24 ANDERSON DID NOT TESTIFY. THE STATE HAD THREE DAYS TO  
25 PRESENT THEIR CASE, THREE. I HAD A HALF A DAY. THEY HAD THREE

1 DAYS TO PRESENT THEIR CASE AND THEY DIDN'T PRESENT FLEMING  
2 ANDERSON. AS A MATTER OF FACT, IN THE THREE DAYS THAT THEY  
3 HAD TO PRESENT THEIR CASE, THE ONLY EYE WITNESS THEY  
4 PRESENTED WAS RENARDO WOOD, EVEN THOUGH THEY HAD  
5 SUBPOENAED CHRIS KAUFFIN AND DIDN'T CALL HIM. THEY  
6 SUBPOENAED HIM. THEY INTERVIEWED HIM AND DIDN'T CALL HIM.

7 FLEMING ANDERSON DID NOT APPEAR IN COURT. FLEMING  
8 ANDERSON DID NOT TELL YOU WHAT HAPPENED ON THIS MORNING,  
9 THIS EVENING. FLEMING ANDERSON IS A NONENTITY BECAUSE HE'S  
10 NOT HERE. AS IS THE GUN.

11 CLEARLY HE'S GUILTY. HE'S GOTTA BE GUILTY. HE DISPOSES OF  
12 THE MURDER WEAPON. GOTTA BE GUILTY. AND THEY HAVE TO BE  
13 LYING. THEY'RE LYING, LIARS, THEY'RE SUCH LIARS. BECAUSE WHO  
14 SAYS HE NEVER GOT THE GUN, WHO SAYS HE NEVER GAVE IT HIM,  
15 AND WHO SAYS HE NEVER GOT IT FROM HIM?

16 BUT WHO HAD THE GUN LAST? HE WAS IN THE CAR GOING TO  
17 COLUMBIA. HE HAD THE GUN IN THE CAR. HE WAS IN THE CAR. HE  
18 HAD THE GUN. AND THE SOLICITOR CAN STAND UP HERE ALL DAY  
19 LONG AND SAY HE HAD THE GUN ALL HE WANTS. BUT IT IS POSSIBLE  
20 FOR THEM BOTH TO BE TESTIFYING INCONSISTENTLY AND BOTH  
21 TELLING THE TRUTH. I GAVE IT TO THEM. I DIDN'T HAVE A GUN.  
22 WHY? I LEFT IT IN THE CAR WITH TWO GUYS.

23 YOU'VE GOT TO LOOK AT THE EVIDENCE THE WAY YOU SEE IT.  
24 NOT THE WAY THE SOLICITOR TELLS YOU TO, NOT THE WAY I TELL  
25 YOU TO. YOU'VE GOT TO LOOK AT IT THE WAY YOU SEE IT. AND THE

1 BOTTOM LINE IS THAT YOU DECIDE THIS CASE BASED ON THE FACTS  
2 AND THE LAW.

3 WHAT IS THE LAW? THE LAW IS THAT THEY HAVE THE BURDEN  
4 OF PROOF. THEY HAVE THE BURDEN OF PROOF. THEY HAVE TO PROVE  
5 THAT HE DID. AND HOW DO THEY PROVE IT? BEYOND A REASONABLE  
6 DOUBT. BEYOND A REASONABLE DOUBT. THE JUDGE IS GOING TO  
7 EXPLAIN WHAT THAT MEANS.

8 THAT DOESN'T MEAN THAT YOU BELIEVE ONE SIDE OVER ONE  
9 OR THE OTHER. THAT MEANS BEYOND A REASONABLE DOUBT. AND  
10 I'M GONNA PUT IT TO YOU THIS WAY: IF YOU REASONABLE PEOPLE  
11 BELIEVE THAT IT IS POSSIBLE UNDER THE FACTS THAT HE IS TELLING  
12 THE TRUTH, AND HIS VERSION IS CORRECT, HE'S NOT GUILTY. IF IT'S  
13 POSSIBLE. YOU DON'T EVEN HAVE TO BELIEVE IT TO BE TRUE. IF IT'S  
14 POSSIBLE THAT IT'S TRUE, YOU WOULD NOT FIND HIM GUILTY.

15 HE HAS ASSERTED THE DEFENSE OF SELF-DEFENSE. THE JUDGE  
16 WILL TELL YOU IT IS A COMPLETE DEFENSE, A COMPLETE DEFENSE.  
17 HE DOESN'T HAVE TO PROVE SELF-DEFENSE. THEY HAVE TO PROVE  
18 THAT IT WASN'T SELF-DEFENSE. AND HOW WELL DO THEY HAVE DO  
19 THEY HAVE TO PROVE IT WASN'T SELF-DEFENSE? BEYOND A  
20 REASONABLE DOUBT. EVEN IF YOU BELIEVE IT WASN'T SELF-  
21 DEFENSE, EVEN IF YOU BELIEVE IT COULD BE SELF-DEFENSE.

22 THERE ARE FOUR ELEMENTS OF SELF-DEFENSE. ONE: THE  
23 DEFENDANT WAS NOT AT FAULT. THAT'S ONE. TWO: THAT HE WAS IN  
24 ACTUAL IMMINENT DANGER OR BELIEVE HIMSELF TO BE IN IMMINENT  
25 DANGER. HE TESTIFIED TO YOU ABOUT THAT. THREE: THAT UNDER

1 THE CIRCUMSTANCES A REASONABLE PRUDENT, ORDINARY MAN OF  
2 COMMON FIRMNESS AND COURAGE IN THE SAME POSITION WOULD  
3 ALSO BE OF THE SAME BELIEF. THERE WAS REASON TO BE OF THE  
4 SAME BELIEF. AND FOUR: THAT HE HAD NO WAY OF GETTING WAY,  
5 NO WAY OF GETTING AWAY.

6 THEY COME INTO COURT WITH STATEMENTS AND A BAG OF  
7 CARTRIDGES THAT THEY CAN'T TIE TO ANYTHING THAT THEY GOT  
8 OUT OF THE CAR THAT THEY KNOW HAS BEEN TAMPERED WITH. THEY  
9 CAME INTO COURT WITH TWENTY-THREE WITNESSES. WHY? TO  
10 CONVICT MY CLIENT OF MURDER. IF IT COULD BE TRUE. IF IT COULD  
11 BE REASONABLY TRUE THAT IT WAS SELF-DEFENSE; THAT MICHAEL  
12 ROBERTSON HAD THE GUN, THAT HE PULLED THE GUN, THAT HE HELD  
13 DAVID GOINS; THAT JAMIE SAID DON'T GET THAT GUN, GO GET MY  
14 OTHER GUN. IF IT COULD BE TRUE, MY CLIENT IS NOT GUILTY OF  
15 THOSE CHARGES. LADIES AND GENTLEMEN OF THE JURY, I ASK YOU  
16 FOR THAT VERDICT.

17 THE COURT: WE'LL TAKE ABOUT FIVE MINUTES BEFORE WE  
18 HEAR FROM THE SOLICITOR.

19 (WHEREUPON THE JURY EXITED THE COURTROOM AT 2:30 P.M.,  
20 AND COURT WAS IN RECESS)

21 COURT IN SESSION - 2:35 P.M.

22 THE COURT: BRING IN THE JURY.

23 (WHEREUPON THE JURY ENTERED THE COURTROOM)

24 MR. BARFIELD: I TOLD YOU WHEN WE STARTED THIS THING  
25 THAT SOME OF IT WAS GONNA BE KIND OF TEDIOUS. I ALSO TOLD YOU

1           THAT YOU COULD BELIEVE EVERYTHING YOU DIDN'T KNOW ABOUT  
2           THIS CASE OR AT LEAST WERE SUPPOSED TO AND THAT IF YOU DIDN'T  
3           KNOW ANYTHING ABOUT IT. AFTER ABOUT A MATTER OF WEEKS OF  
4           LEARNING THIS THING AND STUDYING THIS THING, WE'VE SAT HERE  
5           FOR THREE AND A HALF DAYS AND EXPECTED Y'ALL TO ABSORB IT  
6           ALL. SO, YOU GOT A HARD JOB.

7                   AND WE KIND OF HAVE A HARD JOB TO GET UP HERE AFTER  
8           THREE AND A HALF DAYS AND KIND OF BOIL IT DOWN TO A FEW  
9           MINUTES TO TALK TO YOU ABOUT IT. BUT THAT'S WHAT I'M GONNA  
10          DO.

11                   A COUPLE OF THINGS: MR. HEMLEPP GOT UP HERE IN HIS  
12          OPENING STATEMENT AND HE GOT UP HERE IN HIS CLOSING  
13          ARGUMENT, AND HE SAID, YOU GET WHAT YOU ASK FOR. AND THE  
14          IMPLICATION FROM THAT IS THAT MICHAEL ROBERTSON AND JAMIE  
15          ROBERTSON ASKED TO BE SHOT. AND MICHAEL ROBERTSON ASKED  
16          TO BE SHOT IN THE BACK OF THE HEAD AND DIE. AND THAT JAMIE  
17          ROBERTSON ASKED TO BE SHOT IN THE SHOULDER AND THE ARM AND  
18          SUFFER INJURIES FROM THAT. BUT THEY DIDN'T. THEY DIDN'T  
19          DESERVE IT.

20                   WHAT OCCURRED WAS A CRIME AND DAVID ALLEN GOINS  
21          COMMITTED THE CRIME. AND IN A FEW MINUTES, AND RIGHT NOW  
22          AND AGAIN, I'M GOING TO ASK YOU TO FIND HIM GUILTY OF THOSE  
23          CRIMES.

24                   THE JUDGE ALSO SAID IN THE OPENING STATEMENT THAT WHAT  
25          I SAY AND WHAT MR. HEMLEPP SAYS IS NOT EVIDENCE IN THE CASE,

1 BUT WE DO GET TO TALK TO YOU. SO, I WANT TO PAY ATTENTION TO  
2 ME. BUT ALSO, ANYTHING YOU SAY, LIKE MR. HEMLEPP SAID,  
3 ANYTHING WE SAY ABOUT THE LAW IS NOT AUTHORITATIVE. WHAT  
4 YOU HEAR ABOUT THE LAW IN THIS CASE COMES FROM THE JUDGE UP  
5 THERE IN THAT ROBE.

6 I DISAGREE TO SOME DEGREE ABOUT WHAT MR. HEMLEPP SAID  
7 ABOUT THE BURDEN OF PROOF IN THIS CASE. AND I SIMPLY TELL YOU  
8 THAT YOU DON'T DECIDE THIS CASE, GUILTY OR NOT GUILTY, ONE  
9 WAY OR THE OTHER, BASED ON POSSIBILITIES. YOU DECIDE IT BASED  
10 ON EVIDENCE AND BASED ON THE LEGAL STANDARD OF BEYOND A  
11 REASONABLE DOUBT.

12 SO, WHEN MR. HEMLEPP SAYS THAT SOMETHING IS POSSIBLE,  
13 THEN YOU'VE GOT TO FIND DAVID ALLEN GOINS NOT GUILTY, I SAY TO  
14 YOU, THAT'S NOT LEGALLY CORRECT. LISTEN TO WHAT THE JUDGE  
15 SAYS ABOUT HOW TO DEFINE REASONABLE DOUBT.

16 THERE IS NO CERTAINTY IN LIFE. THERE IS NO CERTAINTY IN  
17 LAW MOST OF THE TIME. AND WE UNDERSTAND THAT, AND THAT IS  
18 WHAT MAKES YOUR JOB SO HARD. YOU CAN'T KNOW WITH  
19 CERTAINTY EVERY SINGLE FACT IN ANY CASE, INCLUDING THIS CASE.  
20 THE QUESTION IS HAS THE STATE MET THE BURDEN OF PROOF BEYOND  
21 A REASONABLE DOUBT.

22 THINK ABOUT THAT AND LISTEN CAREFULLY WHEN THE JUDGE  
23 TELLS YOU WHAT REASONABLE DOUBT IS AT THE TIME. AND HE IS IN  
24 A FEW MINUTES GOING TO DO HIS PART. THIS IS KIND OF A THREE-  
25 PART THING AT THE END OF A CASE. LAWYER ONE TALKS, LAWYER

1 TWO TALKS, AND THEN THE JUDGE TALKS. AND HIS CHARGE TO YOU  
2 WILL PROBABLY TAKE ABOUT AS LONG AS IT TAKES MR. HEMLEPP  
3 AND I EACH TALK TO YOU.

4 AND HE'S GONNA TELL YOU ABOUT A LOT OF LEGAL PRINCIPLES  
5 AND HE'S GONNA TELL YOU WHAT MURDER IS. AND HE'S GONNA TELL  
6 YOU THAT MURDER IS THE UNLAWFUL KILLING OF ANOTHER PERSON  
7 WITH MALICE AFORETHOUGHT, EITHER EXPRESSED OR IMPLIED.

8 MALICE IS THE KEY TO MURDER. AND HE'S GONNA GIVE YOU  
9 PROBABLY, A LOT OF LEGAL THINGS THAT MIGHT SEEM LIKE MUMBO-  
10 JUMBO, BUT THEY HAVE MEANING AND THEY'RE IMPORTANT. BUT  
11 MALICE IS ONE OF THE IMPORTANT THINGS IN HIS DEFINITION OF  
12 MURDER HE'S GONNA TELL ABOUT MALICE. AND HE'S GONNA TELL  
13 YOU THAT MALICE IS HATRED OR ILL WILL OR WICKEDNESS, BAD  
14 FEELING.

15 HE'S ALSO GONNA TELL YOU THAT YOU CAN FIND MALICE IN A  
16 COUPLE OF DIFFERENT WAYS. YOU CAN FIND MALICE AS WE DEFINE  
17 IT AS EXPRESSED MALICE. IF YOU SAY AND SOMEBODY HEARS YOU  
18 SAY THAT YOU'RE GONNA DO SOMETHING BAD TO SOMEBODY, YOU'VE  
19 EXPRESSED YOUR MALICE TOWARDS THAT PERSON. AND WE HAVE  
20 SOME OF THAT IN THIS CASE.

21 WE'VE GOT TAVARES ROBERTSON WHO WAS NOT A WITNESS TO  
22 WHAT HAPPENED, BUT WAS A WITNESS TO SOME OF THE THINGS  
23 LEADING UP TO WHAT HAPPENED, WHO TOLD YOU THAT DAVID ALLEN  
24 GOINS - AND I'M NOT GONNA USE THE WORD BECAUSE I'M OFFENDED  
25 BY THE WORD - SAID I'M GONNA GO SHOOT THAT, AND USED THE N

1 WORD. AND HE'S CLEARLY REFERRING TO MICHAEL ROBERTSON.  
2 THAT IS AS EXPRESSED AS MALICE CAN GET.

3 YOU ALSO HEARD TESTIMONY FROM TAVARES THAT DAVID  
4 ALLEN GOINS WHILE AT HIS HOUSE OVER THERE WHERE DAVID AND  
5 LATISHA LIVED NEXT TO LA MARY YOUNG AND TAVARES; THEY ALL  
6 LIVED IN THAT DUPLEX. YOU HEARD TAVARES SAY THAT HE HEARD  
7 AND SAW LATISHA GIVE GOINS A KEY TO GO GET THE BULLETS.

8 AND REMEMBER THOSE BULLETS. THOSE BULLETS ARE  
9 IMPORTANT. I'M GOING TO TALK A LITTLE MORE ABOUT THEM LATER.

10 AND THEN RIGHT AFTER THAT DAVID ALLEN GOINS LEAVES THE  
11 HOUSE. AND IN HIS VERSION OF THE TRUTH, AND DRIVES FOR TWO OR  
12 THREE MINUTES, SOMEBODY TESTIFIED THAT IT TOOK FROM WHERE  
13 HE LIVED ON [REDACTED] OVER TO WHERE MICHAEL ROBERTSON  
14 LIVED ON [REDACTED].

15 AND WHAT'S IMPORTANT? WHAT ELSE IS IMPORTANT ABOUT  
16 THOSE EVENTS, THOSE STATEMENTS, THOSE TRANSACTIONS, AND  
17 DAVID ALLEN GOINS LEAVING [REDACTED] TO HEAD TO [REDACTED]  
18 [REDACTED] HE DIDN'T LEAVE BY HIMSELF. HE TOOK EITHER ONE OR  
19 TWO BUDDIES WITH HIM. AND FRANKLY, WE'RE NOT SURE. BUT HE  
20 DEFINITELY TOOK HIS BROTHER, CHRISTOPHER KAUFFIN WITH HIM.

21 SO, HE'S ALL HACKED OFF. HE'S MADE SOME MALICIOUS  
22 COMMENTS TOWARD THE VICTIM. THERE'S BEEN DISCUSSION ABOUT  
23 BULLETS. AND HE TAKES SOMEBODY WITH HIM TO GO OVER THERE  
24 TO INITIATE A CONFRONTATION.

1           WHAT ELSE IS IMPORTANT? LOTS OF STUFF IS IMPORTANT. BUT  
2           ANOTHER THING THAT'S IMPORTANT IS THIS: THEY'RE NOT GOING TO  
3           MEET ON SOME BASKETBALL COURT TO DUKE IT OUT. THEY'RE NOT  
4           GOING TO SOME NEUTRAL LOCATION BY MUTUAL AGREEMENT TO  
5           FIGHT. DAVID ALLEN GOINS IS TAKING THE FIGHT TO THE VICTIM'S  
6           OWN HOUSE, WHERE THE VICTIM HAS THE RIGHT TO FEEL SAFE AND  
7           PROTECTED AND NOT HAVE TO PUT UP WITH NONSENSE LIKE THAT.

8           HE LOADS HIS BUDDY UP IN A SEPARATE CAR, DAVID GOINS  
9           DOES, AND THEY RIDE OVER TO THE VICTIM'S HOUSE AND GET INTO  
10          THE CONFRONTATION IN THE VICTIM'S OWN YARD.

11          YOU CAN ALSO FIND MALICE IN A MURDER CASE FROM THIS  
12          CONDUCT THAT'S CALLED INFERRED MALICE, OR, IMPLIED MALICE.  
13          NOT INFERRED. YOU CAN FIND MALICE EVEN IF SOMEBODY DOESN'T  
14          SAY SOMETHING THAT MAKES YOU KNOW EXPLICITLY THAT HE HAS  
15          MALICE TOWARDS A VICTIM. AND I SUBMIT TO YOU IN THIS CASE  
16          THAT THE LAW ALLOWS YOU TO FIND MALICE FROM THE USE OF THIS  
17          DEADLY WEAPON, THIS PISTOL, WHAT WE NOW KNOW WAS A .22  
18          REVOLVER.

19          IT DOESN'T GET ANY MORE MALICIOUS THAN TAKING A PISTOL  
20          AND PUTTING TOWARD THE BACK OF SOMEBODY'S HEAD AND  
21          PULLING THE TRIGGER AND PUTTING THE BULLET IN HIS BRAIN. IT  
22          JUST DOESN'T GET ANY MORE MALICIOUS THAN THAT, LADIES AND  
23          GENTLEMEN. AND THAT'S WHERE MALICE ALSO CAN BE FOUND IN  
24          THIS CASE.

1           YOU'VE ALSO GOT THE CHARGE OF ASSAULT AND BATTERY  
2           WITH INTENT TO KILL. MURDER, OBVIOUSLY, APPLIES TO WHAT  
3           HAPPENED TO MICHAEL ROBERTSON, AND ASSAULT AND BATTERY  
4           WITH INTENT TO KILL IS WHAT HAPPENED TO JAMIE ROBERTSON. AND  
5           THE JUDGE IS GOING TO DEFINE FOR YOU ASSAULT AND BATTERY  
6           WITH INTENT TO KILL, TOO. AND HE'S ALSO GONNA SAY ASSAULT  
7           AND BATTERY WITH INTENT TO KILL, YOU HAVE TO FIND ABSOLUTE  
8           MALICE.

9           AGAIN, THE SAME THINGS I SAID TO YOU ABOUT THE MALICE IN  
10          MURDER, I WOULD ARGUE TO YOU WITH THE MALICE IN ASSAULT AND  
11          BATTERY WITH INTENT TO KILL.

12          IN EVERY CASE THERE ARE THINGS THAT WE JUST DON'T KNOW.  
13          IN THIS CASE, THERE IS SOMETHING THAT WE DO KNOW. THAT IT IS  
14          UNDISPUTED FROM THE MINUTE WE STARTED THIS CASE TO THE  
15          MINUTE WE ENDED THIS CASE, OR GONNA END THIS CASE, IT IS  
16          UNDISPUTED THAT DAVID ALLEN GOINS FIRED SHOTS THAT RESULTED  
17          IN THE DEATH OF MICHAEL ROBERTSON, AND FIRED SHOTS THAT  
18          RESULTED IN THE INJURY TO JAMIE ROBERTSON.

19          THE JUDGE IS GONNA TALK TO YOU ABOUT SELF-DEFENSE. HE'S  
20          GONNA TELL YOU THERE ARE FOUR ELEMENTS OF SELF-DEFENSE. I'M  
21          NOT GONNA SPEND A WHOLE LOT OF TIME TALKING ABOUT THEM  
22          RIGHT NOW. THE LEGAL PART OF IT IN THIS CASE, I SUBMIT TO YOU IS  
23          IMPORTANT, BUT THE FACTUAL SCENARIO IS PROBABLY WHAT'S MORE  
24          IMPORTANT.

1 I'VE GOT TO TALK ABOUT SELF-DEFENSE BECAUSE MR. HEMLEPP  
2 HAS, AND BECAUSE THE JUDGE IS GONNA DO IT, AND BECAUSE  
3 YOU'VE HEARD A CLAIM THROUGH TESTIMONY OF SELF-DEFENSE.

4 I TELL YOU, THOUGH, BY ME TALKING ABOUT IT, I'M NOT  
5 TELLING YOU THAT THE STATE AGREES THAT THIS IS A SELF-DEFENSE  
6 CASE. OBVIOUSLY, WE DON'T. THE STATE CONTENDS THAT SELF-  
7 DEFENSE IS REALLY SOMETHING THAT SHOULDN'T EVEN BE A  
8 CONSIDERATION IN THIS CASE, BUT I'VE GOT TO ADDRESS IT.

9 THERE ARE ELEMENTS OF SELF-DEFENSE. AND THE VERY FIRST  
10 ELEMENT OF SELF-DEFENSE IS - AND THIS IS IMPORTANT - IF YOU--  
11 FOR EXAMPLE - IF YOU KILL SOMEBODY AND YOU GO TO COURT AND  
12 YOU WANT THE JURY TO SAY YOU'RE NOT GUILTY BECAUSE YOU  
13 ACTED IN SELF-DEFENSE, FOR THAT TO BE SUCCESSFUL I HAVE TO  
14 SHOW WHAT THE FACTS HAVE TO BE, THAT THE DEFENDANT CANNOT  
15 HAVE BEEN AT FAULT IN BRINGING ON THE DIFFICULTY THAT LED TO  
16 THE KILLING. THAT'S THE MUMBO-JUMBO.

17 YOU CAN'T PICK THE FIGHT AND KILL SOMEBODY AND THEN  
18 TRY TO GET OFF BASED ON SELF-DEFENSE. AND I TELL YOU, LADIES  
19 AND GENTLEMEN, IN THIS CASE DAVID ALLEN GOINS PICKED THE  
20 FIGHT. HE STARTED THE WHOLE THING. MICHAEL ROBERTSON IS AT  
21 HIS HOUSE WITH HIS NEPHEW, WITH HIS TWO NEPHEWS, MINDING HIS  
22 OWN BUSINESS, AND DAVID ALLEN GOINS AND CHRIS KAUFFIN WHEEL  
23 UP OVER THERE STARTING TROUBLE. SELF-DEFENSE IS NOT  
24 AVAILABLE AS A BASIS FOR ACQUITTAL IN THIS CASE BECAUSE DAVID  
25 ALLEN GOINS STARTED IT.

1           SELF-DEFENSE ALSO SAYS THAT UNLESS YOU ARE ON YOUR  
2           OWN PROPERTY OR YOUR OWN HOUSE, OR UNDER SIMILAR  
3           CIRCUMSTANCES, YOU'VE GOT TO RETREAT, IF YOU CAN SAFELY DO  
4           SO. AND HOW DO WE DETERMINE THAT? AT WHAT POINT COULD  
5           DAVID ALLEN GOINS HAVE SAFELY LEFT? OR IF YOU BELIEVE THAT  
6           HE WAS CONFRONTED WITH GUNS. AND AGAIN, THE STATE DOES NOT  
7           AT ALL CONCEDE THAT HE WAS CONFRONTED WITH GUNS.

8           I'M GOING TO TELL YOU RIGHT NOW THERE WAS ONE GUN OUT  
9           THERE. MY POSITION IS THERE WAS ONE GUN OUT THERE AND THAT'S  
10          THE PISTOL THAT WE DON'T HAVE THAT HE GOT RID OF. BUT IF YOU  
11          CAN GET AWAY, YOU'VE GOT TO GET AWAY UNLESS YOU'RE ON YOUR  
12          OWN PROPERTY. DAVID ALLEN GOINS WASN'T ON HIS OWN PROPERTY.  
13          HE WAS ON HIS DEAD VICTIM'S PROPERTY AND HE DIDN'T LEAVE. HIS  
14          CAR IS RIGHT THERE IN FRONT OF THE HOUSE. AND HE COULD HAVE  
15          LEFT AT ANY TIME HE WANTED TO LEAVE AND SHOULD HAVE. HE  
16          SHOULD HAVE LEFT - IF YOU BELIEVE IT - THE MINUTE MICHAEL  
17          ROBERTSON SAID, GET THE F OUT OF MY YARD, HE SHOULD HAVE  
18          LEFT. HE DIDN'T LEAVE. CHRIS KAUFFIN WAS OVER THERE AT HIS  
19          TRUCK AND THE MINUTE HE HEARD THAT, CHRIS KAUFFIN'S PACKING  
20          HIS STUFF AND HE FIXING TO GO.

21          BUT DAVID ALLEN GOINS JUST HANGS RIGHT ON IN THERE AND  
22          LETS THE TROUBLE CONTINUE TO BOIL UNTIL WE'VE GOT A DEAD GUY  
23          AND A SHOT GUY IN THE YARD.

24          HE STARTED IT. HE'S AT FAULT IN BRINGING ON THE  
25          DIFFICULTY. AND HE DIDN'T LEAVE WHEN HE HAD THE CHANCE TO

1 LEAVE AS SOON - IF YOU BELIEVE HIM - AS SOON AS HE WAS TOLD;  
2 GET OUT OF HERE, HE SHOULD HAVE GOTTEN OUT OF THERE.

3 YOU'VE GOT TO JUDGE THE CREDIBILITY OF WITNESSES. AND I  
4 AM NOT ABOUT TO STAND UP HERE AND GO THROUGH EVERY  
5 WITNESS THAT WE SAW, THAT GOT CALLED IN THIS CASE AND TELL  
6 YOU WHAT THEY SAID, AND TELL YOU WHAT'S IMPORTANT AND  
7 WHAT'S NOT. I'M GONNA TALK ABOUT A LITTLE OF THAT. BUT WE  
8 AIN'T GONNA BACK THROUGH, WITNESS BY WITNESS, AND RECAP THIS  
9 CASE. YOU HEARD AND YOU REMEMBER WHAT YOU REMEMBER.

10 BUT YOU'VE GOT TO DECIDE. I MEAN, OBVIOUSLY, IN EVERY  
11 CASE, IN EVERY CASE, IT SEEMS LIKE, WITNESSES WILL SAY  
12 SOMETHING DIFFERENT. AND THERE ARE INCONSISTENCIES, SO THERE  
13 ARE CONTRADICTIONS. I SUPPOSE IT'S LOGICAL TO SAY THAT IF  
14 EVERY WITNESS THAT'S INVOLVED IN A CASE ON BOTH SIDES IS GOING  
15 TO SAY THE SAME THING, THEN WE AIN'T GONNA HAVE A TRIAL  
16 BECAUSE THERE'S NOTHING FOR ANYBODY TO DECIDE. SO, THERE  
17 ARE ALWAYS GOING TO BE FACTUAL DISPUTES.

18 AND TO RESOLVE FACTUAL DISPUTES, WHEN TWO WITNESSES  
19 SAY SOMETHING 180 DEGREES DIFFERENT FROM EACH OTHER, THEN  
20 YOU'VE GOT TO DECIDE, WELL, WHAT DO I BELIEVE. HOW DO YOU DO  
21 THAT? WELL, IT'S NOT EASY. BUT ONE THING YOU DO IS YOU LOOK AT  
22 WHAT CONNECTION THE WITNESS MIGHT HAVE TO THE CASE.

23 ANOTHER THING YOU THINK ABOUT IS DOES THE WITNESS HAVE  
24 SOME REASON TO SHADE TESTIMONY OR FLAT-OUT SAY STUFF THAT'S  
25 NOT TRUE. YOU ALSO LOOK AT HOW THE WITNESS APPEARED ON THE

1 WITNESS STAND. WE ALL THINK SOMETIMES THAT WE'RE GOOD  
2 JUDGES OF CHARACTER AND GOOD JUDGES OF CREDIBILITY AND THAT  
3 WHEN WE'RE TALKING TO SOMEBODY WE CAN TELL WHETHER HE'S  
4 TELLING THE TRUTH OR NOT. AND SOMETIMES, I SUBMIT TO YOU,  
5 THAT'S PROBABLY TRUE.

6 YOU CAN LOOK AT SOMEBODY ON THE WITNESS STAND AND  
7 YOU CAN JUST GET SOME FEEL WHETHER YOU BELIEVE THAT PERSON.  
8 IS HE BEING FORTHRIGHT? IS HE SQUIRMING AROUND, OR IS HE  
9 DUCKING QUESTIONS? OR DOES HE SIT RIGHT UP THERE AND TAKE  
10 THE QUESTIONS AND GIVE ANSWERS? YOU CAN DO THAT.

11 THIS THING SORT OF DOES BOIL DOWN TO A COUPLE OF PEOPLE,  
12 THREE PEOPLE, REALLY. DAVID GOINS IS THE DEFENDANT. AND I  
13 SUBMIT TO YOU THAT HE IS THE DEFENDANT WHO IS BEING TRIED FOR  
14 MURDER AND ASSAULT AND BATTERY WITH INTENT TO KILL. DOES HE  
15 HAVE SOME REASON TO TELL YOU SOMETHING IN HERE THAT AIN'T  
16 TRUE? HE CERTAINLY DOES. OF ALL PEOPLE IN THIS CASE, HE'S GOT  
17 THE MOST REASON NOT TO BE TRUTHFUL WITH YOU.

18 AND HOW DO WE KNOW DAVID GOINS AIN'T ABOVE BEING  
19 UNTRUTHFUL. YOU SAW HIM ON TV BEING UNTRUTHFUL, ALL ABOUT  
20 THE GUN, AND OTHER THINGS, TOO, BUT THE GUN IN PARTICULAR.  
21 HE'S LYING ABOUT THE GUN FROM THE GET-GO. LIED TWO OR THREE  
22 TIMES ABOUT THE GUN BEFORE HE FINALLY EXPLAINS WHY HE AIN'T  
23 GOT THE GUN.

24 CHRIS KAUFFIN AND RENARDO WOOD, THEY'RE BOTH SORT OF  
25 SIMILARLY CONNECTED. CHRIS KAUFFIN IS DAVID GOINS' HALF-

1           BROTHER. AND I THINK YOU HEARD FROM THE TESTIMONY THAT  
2           RENARDO WOOD IS JAMIE ROBERTSON'S BROTHER. SO, THERE'S TWO  
3           BROTHERS, ONE BROTHER OF THE DEFENDANT, ONE BROTHER OF THE  
4           VICTIM. SO, I CAN'T REALLY ARGUE ONE WAY OR THE OTHER ABOUT  
5           THAT, AS TO THOSE WITNESSES.

6                    BUT THINK ABOUT KAUFFIN AND WHAT HE TOLD YOU ABOUT  
7           HIS CLOSENESS AND HIS CONNECTION TO DAVID GOINS. I SUBMIT TO  
8           YOU HE'S GOT EVERY REASON IN THE WORLD TO WANT TO BE  
9           PROTECTING HIS BROTHER.

10                   AND THINK ABOUT WHEN I WAS ASKING HIM QUESTIONS THAT  
11          HE WOULDN'T ANSWER. THIS IS AN EFFORT TO GET TO THE TRUTH  
12          AND THERE WERE QUESTIONS HE WOULDN'T ANSWER. AND HE TOLD  
13          YOU HE DIDN'T WANT TO ANSWER THEM ABOUT WHERE HE LIVED AND  
14          WHO HE LIVED WITH BECAUSE HE WAS AFRAID. WELL, IT'S BEEN FOUR  
15          AND A HALF YEARS AND NOTHING'S HAPPENED TO HIM. HE'S ALIVE,  
16          HEALTHY AND WELL, AND HERE, AND CERTAINLY EASY ENOUGH TO  
17          FIND. WE FOUND HIM AND HE GOT HERE. BUT HE WOULDN'T ANSWER  
18          QUESTIONS.

19                   WHAT ELSE DID HE TELL YOU THAT MAKES YOU THINK, WELL, I  
20          OUGHT NOT BELIEVE HIM? HOW LONG DID CHRIS KAUFFIN SAY THEY  
21          HUNG OUT AT MICHAEL ROBERTSON'S HOUSE? TWO OR THREE HOURS.  
22          EVEN DAVID GOINS SAID IT WASN'T BUT FIFTEEN OR TWENTY  
23          MINUTES. THAT'S INCONSISTENT.

24                   AND LET ME SAY THIS TO YOU. THIS IS SOMETHING I PROBABLY  
25          SAID WHEN I FIRST GOT UP. I CAN TALK TILL I'M BLUE IN THE FACE. I

1 CAN BORE Y'ALL TO DEATH. I CAN PUT YOU TO SLEEP. PROBABLY THE  
2 MOST IMPORTANT THING I CAN ASK YOU TO DO WHEN YOU GO BACK  
3 THERE TO DECIDE WHAT'S GONNA HAPPEN IN THIS CASE IS, USE YOUR  
4 COMMON SENSE.

5 LEGAL PRINCIPLES, FACTUAL DISPUTES, TECHNICALITIES,  
6 FORENSIC EVIDENCE, IT'S OVERWHELMING SOMETIMES. WHEN IT ALL  
7 BOILS AND YOU BOIL THE BROTH OFF THAT CHICKEN YOU REALLY  
8 GET DOWN TO WHAT MAKES SENSE. USE YOUR COMMON SENSE WHEN  
9 YOU GO BACK AND YOU THINK ABOUT WHETHER THIS STUFF COULD  
10 HAVE HAPPENED, WHAT WAY THIS COULD HAVE HAPPENED. USE  
11 YOUR COMMON SENSE.

12 I TALKED TO YOU ABOUT SELF-DEFENSE, BUT I SUBMIT TO YOU,  
13 AND AGAIN, WE DON'T ADOPT THE THEORY THAT THERE WERE OTHER  
14 GUNS INVOLVED. BUT YOU'VE GOT TO CONSIDER WHO WAS AT FAULT  
15 IN BRINGING ON THE DIFFICULTY AND WHETHER THE DEFENDANT  
16 COULD HAVE FLED.

17 BUT LET'S LOOK AT WHETHER SELF-DEFENSE SHOULD EVEN BE  
18 CONSIDERED IN THIS CASE. AND THAT'S WHERE THE COMMON SENSE  
19 STUFF COMES IN.

20 THE BASIC THEORY OF A DEFENSE, THE BASIC FACTUAL  
21 SCENARIO THE DEFENSE WANTS YOU TO BELIEVE IS THAT DAVID  
22 GOINS AND CHRIS KAUFFIN AND MAYBE FLEMING ANDERSON SHOW  
23 UP THERE, AND THERE FOR TWO OR THREE MINUTES, ACCORDING TO  
24 RENARDO WOODS, OR FIFTEEN OR TWENTY MINUTES, ACCORDING TO

1       DAVID GOINS, OR TWO OR THREE HOURS, ACCORDING TO CHRIS  
2       KAUFFIN.

3               AND DAVID GOINS WANTS YOU TO BELIEVE THAT WHEN THEY  
4       GET THERE, AT SOME POINT AFTER HE'S BEEN THERE, THREE HOSTILE  
5       FOLKS PRODUCED WEAPONS AND THREATENED HIM WITH WEAPONS.  
6       MICHAEL ROBERTSON COMES OUT OF HIS WAISTBAND WITH A PISTOL.  
7       AND JAMIE ROBERTSON AND RENARDO WOOD LEAVE FROM WAY  
8       OVER YONDER WHERE KAUFFIN'S TRUCK IS TO THE LEFT OF THE  
9       HOUSE ON THE ROAD, WHERE THEY'RE STANDING NEAR KAUFFIN,  
10      THEY LEAVE THERE, GO IN THE HOUSE AND COME BACK OUT WITH  
11      TWO LONG GUNS, A RIFLE AND A SHOTGUN, AND IT WAS NEVER  
12      REALLY CLEAR WHO HAD WHICH, ACCORDING TO GOINS.

13             SO, NOW GOINS IS OUT THERE BEING CONFRONTED WITH A  
14      PISTOL AND A RIFLE AND A SHOTGUN. IT'S IMPLAUSIBLE, BUT IT'S  
15      EVEN MORE IMPLAUSIBLE WHEN YOU CONSIDER WHAT GOINS SAYS  
16      WHAT HAPPENED NEXT. HE SAYS THAT WHILE THOSE TWO GUYS GOT  
17      LONG GUNS TRAINED ON HIM, HE IS IN A FIGHT WITH MICHAEL  
18      ROBERTSON OVER MICHAEL ROBERTSON'S PISTOL, HE SAYS, AND HE  
19      WRESTLES THE PISTOL AWAY FROM MICHAEL ROBERTSON AND HE,  
20      DAVID GOINS, CRACKS OFF MULTIPLE SHOTS AT MICHAEL ROBERT  
21      AND JAMIE ROBERTSON.

22             AND THE WHOLE TIME, THE WHOLE TIME THAT'S GOING ON,  
23      NOBODY LAYS A HAND ON THIS YOUNG MAN OVER HERE. THREE  
24      GUNS AGGRESSIVELY BEING USED AGAINST HIM. HE MUST BE A  
25      SUPER HERO. HE NEEDS TO GO OVERSEAS AND CLEAN UP THE WAR. IF

1 HE CAN GET OUT OF THREE GUNS BEING USED TO THREATEN HIM,  
2 WRESTLE ONE AWAY AND SHOOT HIMSELF OUT OF IT WITHOUT A  
3 SCRATCH ON HIM, THAT IS UNBELIEVABLE. UNBELIEVABLE.

4 WHY DO I TELL YOU THAT THERE WEREN'T ANY OTHER GUNS  
5 OUT THERE? THERE WEREN'T ANY OTHER GUNS OUT. NOW,  
6 OBVIOUSLY, I WOULD BE AN IDIOT TO STAND UP HERE AND SAY  
7 SOMEBODY FROM LAW ENFORCEMENT FROM THE MINUTE THIS  
8 HAPPENED AND WE KNOW EXACTLY WHO DID WHAT. BECAUSE THAT  
9 JUST IS TOO STUPID FOR ME TO TRY TO CONVINCE YOU OF THAT.

10 BUT HOW COULD ALL OF THAT STUFF HAVE HAPPENED QUICKLY  
11 AND ALL OF THIS EVIDENCE GET GONE QUICKLY AND NOT BE THERE  
12 WHEN LAW ENFORCEMENT GOT THERE?

13 FIRST OF ALL, LET'S TALK ABOUT THE SHELL CASINGS. WE NOW  
14 KNOW IT'S A REVOLVER. AND I THINK DAVID GOINS ADMITTED WHEN  
15 YOU SHOOT A REVOLVER, NOTHING COMES OUT OF THE GUN EXCEPT  
16 THE BULLET THAT GOES INTO THE BACK OF SOMEBODY'S HEAD. SO,  
17 THERE'S THAT MANY SHELL CASINGS THERE BECAUSE THE FIRE WAS  
18 COMING OUT OF A REVOLVER.

19 WE'VE GOT NO GUNS FOUND ANYWHERE, NO LONG GUNS FOUND  
20 ANYWHERE; INSIDE, OUTSIDE, IN THE STREET, NOTHING. WE DO,  
21 HOWEVER, HAVE MARY ANN PHILLIPS, MARY ANN TOLBERT WHO  
22 FOUND THE STICK. WE DON'T KNOW IF THAT WAS THE STICK WAS  
23 USED TO HIT THE CAR. BUT A STICK WAS FOUND THERE AND SHE  
24 SHOULD HAVE PICKED IT UP. SHE DIDN'T. WE DON'T HAVE. BUT SHE  
25 SAW IT. IF THEY'RE GONNA TAKE THE GUNS, AREN'T THEY GONNA

1 TAKE THE STICK THAT THEY BEAT THE CAR WITH? NO. THERE  
2 WEREN'T ANY GUNS OUT THERE. THEY LEFT WHAT WAS THERE WHICH  
3 WAS THE STICK. NO GUNS FOUND.

4 HOW ABOUT THE ONLY GUN WE REALLY KNOW ABOUT? WHAT  
5 HAPPENED TO IT? WHO KNOWS? DAVID GOINS WANTS YOU TO  
6 BELIEVE IT WASN'T HIS GUN. AND HE CARRIED IT OFF FROM THERE.  
7 SO, WE DON'T HAVE IT. WE DON'T HAVE IT BECAUSE HE TOOK IT. IF IT  
8 WAS MICHAEL ROBERTSON'S GUN MAYBE WE COULD HAVE FIGURED  
9 THAT OUT IF WE'D HAD THE GUN. THEY'RE SUPPOSED TO HAVE  
10 NUMBERS ON THEM. WE HAVEN'T GOT THE GUN TO BE TESTED.

11 WHAT'D HE TELL YOU FIRST? HE FIRST TOLD YOU-- AND HE  
12 DISPUTED-- WHEN I WAS QUESTIONING HIM, HE DISPUTED-- WELL, LET  
13 ME TELL YOU ABOUT LIE NUMBER ONE, ABOUT THE GUN. IT'S ON THE  
14 TAPE. AND AGAIN, IT AIN'T WHAT I SAY. YOU REMEMBER WHAT THE  
15 TAPE SHOWS YOU.

16 HE TAKES THE GUN, HE SAYS, AS HE'S WALKING OUT THE YARD.  
17 I THINK HE WENT SO FAR AS TO TALK ABOUT UNLOADING THE GUN.  
18 HE'S TALKING TO KEITH LEWIS. AND I THINK HE'S TALKING ABOUT  
19 GETTING THE BULLETS OUT OF THE GUN. HE SAYS HE TOSSED THE  
20 GUN AS HE WALKED OUT OF THE YARD. LIE NUMBER ONE. HE DIDN'T.  
21 WE KNOW HE DIDN'T. KEITH LEWIS KNEW HE DIDN'T. HE SEARCHED  
22 FOR IT. THAT'S PROBABLY THE ONLY DISCUSSION THERE WAS IN TWO  
23 HOURS AND FORTY-FIVE MINUTES WHEN KEITH LEWIS GOT ON HIM  
24 ABOUT THE GUN BECAUSE KEITH LEWIS KNEW HE WASN'T TELLING  
25 THE TRUTH ABOUT THE GUN. SO, HE LIED ABOUT THE GUN. HE DIDN'T

1           WANT THEM TO HAVE THAT GUN BECAUSE IT'S HIS GUN AND HE HAD  
2           KILLED SOMEBODY WITH IT.

3           HIS NEXT LIE ABOUT THE GUN, AND THIS IS THE ONE THAT HE  
4           DISPUTED. AND IF I'M WRONG, I'M WRONG. YOU SAW THE TAPE. MY  
5           RECOLLECTION IS ON THAT TAPE HE SAYS, WHEN HE GETS UP WITH...

6           (PAUSE)

7           I BELIEVE HE TOLD YOU THAT WHEN HE GOT UP WITH FLEMING  
8           ANDERSON AND NICHOLAS McGOOGAN THEY WERE GONNA TAKE HIM  
9           OVER TO WINNFIELD WEST, THAT HE GAVE THE GUN TO THEM. I  
10          BELIEVE HE SAID THAT. IF I'M WRONG, I'M WRONG. WHATEVER HE  
11          SAYS, IT'S ON THE TAPE.

12          AND THEN FINALLY WE GOT DOWN TO WHAT REALLY  
13          HAPPENED TO THE GUN BECAUSE HE CARRIED THE GUN WITH HIM TO  
14          COLUMBIA. HE'S TAKING IT OUT OF THE COUNTY WHERE THE CRIME  
15          WAS COMMITTED AND HE TELLS YOU LIE NUMBER THREE. ON THE  
16          TAPE HE SAYS, AND THIS IS HOW I'M REMEMBERING IT, I GAVE THE  
17          GUN TO CHRISTOPHER KAUFFIN. HE SPECIFICALLY SAID ON THE TAPE,  
18          I BELIEVE, I GAVE THE GUN TO CHRISTOPHER KAUFFIN. HE BACKED UP  
19          ON THAT TAPE BECAUSE CHRISTOPHER KAUFFIN IS HIS BROTHER AND  
20          HE DON'T WANT HIS BROTHER TO GET IN TROUBLE. HE BACKED UP ON  
21          THAT A LITTLE BIT TODAY, AND SAYS NO, I JUST LEFT THE GUN IN THE  
22          CAR, IN DANIEL SEIBLES' CAR, THAT I AND CHRISTOPHER KAUFFIN  
23          WENT TO COLUMBIA IN.

24          HE JUST LEFT THE GUN THERE AND JUST WANTS TO DENY THAT  
25          THERE WAS EVER ANY DISCUSSION ABOUT WHAT ARE Y'ALL GONNA

1 DO WITH THIS GUN. CAN YOU BELIEVE THAT? HE'S GOT A HOT GUN  
2 THAT HE'S KILLED SOMEBODY WITH AND THEY'RE TRUCKIN' HIM TO  
3 COLUMBIA TO HIDE IT. AND THEY GOT THIS GUN THEY GOTTA DO  
4 SOMETHING WITH. YOU THINK THEY DIDN'T TALK ABOUT WHAT'S  
5 GONNA HAPPEN WITH THAT GUN?

6 YEAH, THEY TALKED ABOUT WHAT'S GONNA HAPPEN WITH  
7 THAT GUN. THERE WAS SOME KIND OF PLAN ABOUT THAT GUN,  
8 WHICH GOT EXECUTED AND THE GUN'S OUT THERE SOMEWHERE. BUT  
9 HE WOULDN'T TELL YOU ABOUT IT. HE TOOK THE GUN THAT MIGHT  
10 HAVE TOLD US SOMETHING MORE ABOUT THIS CASE.

11 WHAT ABOUT HIM RUNNING? WHAT'S SIGNIFICANT ABOUT HIM  
12 RUNNING? WHAT'S SIGNIFICANT ABOUT WHO DIDN'T RUN? THINK  
13 ABOUT THAT A MINUTE. JAMIE ROBERTSON-- MICHAEL ROBERTSON  
14 DIDN'T RUN BECAUSE MICHAEL ROBERTSON HAD A BULLET IN HIS  
15 BRAIN AND DIED FROM IT FOUR DAYS LATER. WE WOULDN'T EXPECT  
16 HIM TO RUN.

17 JAMIE ROBERTSON DIDN'T RUN. IF HE HAD DONE ALL OF THIS  
18 TERRIBLE STUFF ABOUT GUNS AND THREATENING HIM WITH A LONG  
19 GUN AND HIS BROTHER BEING, PULLING A GUN ON DAVID GOINS,  
20 DON'T YOU THINK JAMIE ROBERTSON WOULD HAVE TAKEN OFF, TOO?  
21 NO, HE DIDN'T TAKE OFF.

22 HE STAYS RIGHT HERE, GOES TO THE HOSPITAL, FOUND WITHIN  
23 MINUTES AT THE HOSPITAL. JAMIE ROBERTSON DIDN'T RUN. JAMIE  
24 ROBERTSON HAD A WITNESS WHO WAS THERE WHO WAS ON HIS SIDE  
25 OF THE CASE. IT'S NOT LIKE IT WAS TWO GUYS WERE INVOLVED.

1       THERE WERE WITNESSES. IF YOU'RE GONNA RUN AND YOU DON'T  
2       TAKE THE WITNESSES, YOU'RE NOT GONNA BE HELPING YOURSELF  
3       TOO MUCH. JAMIE ROBERTSON DIDN'T RUN.

4               RENARDO WOOD DIDN'T RUN. WHO RAN? DAVID GOINS RAN.  
5       WHY'D HE RUN? WELL, HE PROBABLY WAS AFRAID OF RETALIATION  
6       FROM THE ROBERTSONS OR SOMEBODY HAD CONNECTED WITH THEM.  
7       HE HAD KILLED ONE AND SHOT ONE. HE SHOULD HAVE BEEN SCARED.

8               WHAT ELSE WAS HE SCARED ABOUT? GETTING ARRESTED,  
9       GETTING PUT IN JAIL FOR MURDER. IT WASN'T MURDER FOR THREE  
10      DAYS, FOR FOUR DAYS. HE'S RUNNING FROM THE LAW AND HE RUNS  
11      PRETTY GOOD FOR A WHILE.

12              WHAT ELSE IS INTERESTING IN THIS CASE? LATISHA FANT,  
13      LATISHA ELGIN, HIS GIRLFRIEND AT THE TIME, I CALLED HER AS A  
14      WITNESS. DID YOU RENT THIS ROOM? DID YOU GET EDNA ELGIN TO  
15      RENT YOU THIS ROOM IN COLUMBIA AT THE DAYS INN? YEAH, I DID.  
16      DID YOU STAY THERE? YEAH, I DID. DID YOU SEE DAVID GOINS AT  
17      ANY TIME FROM BEFORE THE SHOOTING UNTIL HE TURNED HIMSELF  
18      IN ON JULY 5? NO, I DIDN'T. WOW.

19              THEY DIDN'T GET THEIR STORIES TOGETHER TOO GOOD, DID  
20      THEY. HE TOLD YOU TODAY THE ROOM REALLY WAS RENTED FOR  
21      HIM AND HE STAYED WITH HER. YOU KNOW THEY'RE NOT TELLING  
22      THE TRUTH.

23              SO, HE'S RUNNING. HE GOES TO COLUMBIA. EVERYWHERE HE  
24      GOES, HE'S GOT THIS GUN. AND EVERYWHERE HE GOES, EVEN  
25      INCLUDING COLUMBIA, HE'S GOT THIS GUN, AND PEOPLE SEE IT, AND

1 SAY, YOU GOT TO GET ON OUT OF HERE WITH THAT GUN. HE ENDS UP  
2 AT HIS UNCLE'S HOUSE IN COLUMBIA AND THE GUN'S IN THE CAR OR  
3 WHEREVER IT IS. HIS UNCLE FINDS OUT EVENTUALLY WHAT'S GOING  
4 ON AND HIS UNCLE SAYS YOU GOT TO GET ON OUT OF HERE. THOSE  
5 WERE SMART PEOPLE HE'S DEALING WITH WHO WERE RUNNING HIM  
6 OFF AFTER WHAT HE DONE.

7 SO, HE'S GOT REALLY NOWHERE TO GO. GETS A MOTEL ROOM  
8 AND GETS IT IN SOMEBODY ELSE'S NAME. WELL, YOU KNOW, MAYBE  
9 HE DIDN'T WANT THE ROBERTSONS TO GO CHECK ALL THE MOTEL  
10 REGISTERS IN THREE COUNTIES TO FIND OUT WHERE HE WAS  
11 STAYING. NO. HE DIDN'T WANT THE POLICE TO FIND OUT WHERE HE'S  
12 STAYING. SO, HE GETS A ROOM IN EDNA ELGIN'S NAME.

13 WHAT ELSE IS SIGNIFICANT ABOUT WHY HE'S ON THE RUN? HE'S  
14 PANICKED. HE DOESN'T KNOW WHAT TO DO AND HE'S GOT TO GET  
15 SOME HELP. HE'S OUT THERE, WINGING IT ON HIS OWN AND HE'S GOT  
16 TO GET SOME HELP. AND WHAT DID HE TELL YOU? PEOPLE WERE  
17 CALLING TO CHECK ON HIM. I BET YOU EVERYBODY AND HIS  
18 BROTHER KNEW EXACTLY WHERE HE WAS. IT WAS ON THE TAPE.  
19 THEY KNEW EXACTLY WHERE HE WAS. THE PEOPLE HE WANTED TO  
20 KNOW WHERE HE WAS KNEW WHERE HE WAS. THEY HAD CELL  
21 PHONES PROBABLY COMING OUT THE WAZOO AND HE WAS TALKING  
22 BACK AND FORTH TO PEOPLE EVERYDAY FOR FOUR OR FIVE DAYS,  
23 TRYING TO FIGURE OUT WHAT HE WAS GONNA DO.

24 AND WHAT'S SIGNIFICANT ABOUT THAT? WELL, OF COURSE, HE  
25 DENIES TALKING TO CHRIS KAUFFIN, HIS BROTHER, DURING THAT

1 PERIOD OF TIME. I TELL YOU, LADIES AND GENTLEMEN, HE HAD FIVE  
2 DAYS TO FIGURE OUT HOW AM I GONNA MAKE THIS WORK FOR ME SO  
3 THAT I CAN GO TURN MYSELF IN AND TRY TO WEASEL OUT OF THIS  
4 THING. HE'S GOT FIVE DAYS TO COOK A PLAN, COOK A STORY WITH  
5 THESE PEOPLE, AND THAT'S EXACTLY WHAT HE DID.

6 THINK ABOUT THE INTERVIEW, THE KEITH LEWIS PART. WELL,  
7 THE WHOLE INTERVIEW. HE WAS PRETTY COOL IN THAT INTERVIEW.  
8 HE NOW KNOWS ON JULY 5, HE KNOWS HE SHOT AND KILLED ONE GUY  
9 BY SHOOTING HIM IN THE BACK OF THE HEAD, AND HE KNOWS HE  
10 SHOT ANOTHER GUY IN THE ARM AND THE SHOULDER.

11 AND THIS IS JUST A PRETTY MATTER OF FACT RECITATION BY  
12 HIM OF WHAT HAS HAPPENED. HE DOESN'T LOOK LIKE IT BOTHERS  
13 HIM A BIT. KIND OF FLIPPANT, KIND OF NONCHALANT ABOUT IT. USED  
14 THE PHRASE, I THINK I WROTE IT DOWN HERE SOMEWHERE, AS YOU  
15 RECALL FROM THE TAPES YOURSELF, DIDN'T SEEM UPSET AT ALL, HE  
16 SAID POW-POW, LIKE A LITTLE KID PLAYING COWBOYS AND INDIANS.  
17 BOOM, HE SAID BOOM ONE TIME. HE SAID I HAD TO SHOOT DOWN,  
18 LIKE IT JUST WASN'T ANY BIG DEAL AT ALL.

19 WHY IS HE SO RELAXED? BECAUSE HE THINKS HE'S GOT LAW  
20 ENFORCEMENT SNOWED, THAT HE GOT AWAY WITH IT, THIS WHOLE  
21 SELF-DEFENSE THING. HE THINKS HE'S GOT THEM SNOWED. HE  
22 THINKS, YOU KNOW, EVERYTHING'S GONNA BE OKAY. THEY TELLING  
23 HIM ABOUT BOND HEARINGS AND PRELIMS AND THE GRAND JURY  
24 AND ALL THAT STUFF. THEY KIND OF PLAY ALONG WITH HIM AND HE  
25 THINKS HE'S GOT IT WORKING. HE'S TOLD THEM THIS STORY THAT

1 MAKES NO SENSE, AND HE THINKS THEY BELIEVE IT ALL. HE'S PRETTY  
2 COMFORTABLE ABOUT EVERYTHING. THAT'S WHAT HE TELLS THEM.

3 HOW ABOUT THE BULLETS IN THE CAR? AGAIN, COMMON  
4 SENSE, COMMON SENSE. ANYTHING'S POSSIBLE. BUT USE YOUR  
5 COMMON SENSE.

6 THE CAR GOT TRASHED BY JAMIE ROBERTSON, WE'VE HEARD, IN  
7 A RAGE, NO DOUBT. ALL THE WINDOWS GOT BUSTED OUT OF THE CAR.  
8 IN STATE'S EXHIBIT NUMBER TWELVE, WHICH IS A PICTURE OF STATE'S  
9 NUMBER TWO, STATE'S NUMBER THREE AND STATE'S NUMBER FOUR,  
10 IS A BLACK PLASTIC BAG WITH A REMINGTON 550 COUNT, .22 LONG  
11 RIFLE CARTRIDGE BOX. AND I AIN'T GONNA COUNT THEM AND YOU  
12 DON'T NEED TO COUNT THEM, BUT JUST A WHOLE BOATLOAD SITTING  
13 IN THAT CAR.

14 YOU'LL LOOK AT THE PICTURE. YOU'LL HAVE IT BACK THERE  
15 WITH YOU. HE WANTS YOU TO BELIEVE SOMEBODY PLANTED THOSE  
16 BULLETS IN HIS CAR. AFTER ALL OF THIS, AFTER ALL OF THIS STUFF  
17 THAT HAPPENED AND THE EMERGENCY CALL AND LAW  
18 ENFORCEMENT'S ON THE WAY, THAT THERE'S TIME FOR SOMEBODY TO  
19 CAREFULLY PLAN A PLASTIC BAG WITH A BOX OF BULLETS IN THE  
20 FRONT, PASSENGER FLOOR BOARD OF THAT CAR. AND THEN TO MAKE  
21 IT LOOK LIKE THEY HAD BEEN IN THERE BEFORE THE CAR GOT  
22 TRASHED. PUT THEM IN THERE BEFORE THE WINDOWS GOT BUSTED  
23 OUT.

24 HOW DO WE KNOW THEY GOT PUT IN THERE? THEY WERE IN  
25 THERE BEFORE THE WINDOWS GOT BUSTED OUT BECAUSE THERE'S

1 GLASS ALL IN THE BACK. MARY ANN PHILLIPS TOLD YOU THAT. SHE  
2 KEPT SOME OF THAT GLASS. AND YOU CAN SEE FROM SOME OF THE  
3 PICTURES, THROUGH THE BUSTED WINDOW, THE BOX IS SITTING  
4 UPRIGHT. SHE TOLD YOU THE BULLETS WERE IN THE BOX. THERE  
5 WERE TWO OR THREE, I THINK SHE SAID LOOSE IN THE BAG. BUT THEY  
6 WEREN'T STILL DOWN ON THE FLOOR OF THAT CAR.

7 THOSE BULLETS RODE TO [REDACTED] RIGHT THERE WHERE  
8 THEY WERE FOUND ON [REDACTED] AND WITH ONE MAN IN THE  
9 HOSPITAL WITH A HEAD WOUND AND ANOTHER MAN IN THE HOSPITAL  
10 WITH OTHER WOUNDS.

11 AND WE AGAIN HAVE CONVERSATIONS EARLIER THAT DAY BY  
12 WITNESSES WHO SAY GOINS SAID GIVE ME THE KEYS SO I CAN GO GET  
13 THE BULLETS. HE GOT THE KEYS FOR WHATEVER FROM WHATEVER  
14 AND WENT AND GOT THE BULLETS. AND HE HAD THE PISTOL. AND  
15 THOSE BULLETS, I SUBMIT TO YOU, -- I CAN'T SAY ANY BULLETS THAT  
16 WERE FOUND IN THE HEAD OF MICHAEL ROBERTSON CAME OUT OF  
17 THAT BOX, BUT DOCTOR ROSS TOLD YOU THEY WERE CONSISTENT.

18 WHAT HAVE WE GOT? WE CAN'T EXPLAIN, NOBODY CAN  
19 EXPLAIN WHY SOMEBODY KILLS SOMEBODY. IN THIS CASE, THE  
20 JUDGE WILL TELL THE JURY THE STATE HAS TO PROVE TO YOU A  
21 MOTIVE FOR THE COMMISSION OF THIS CRIME. IT'S NOT AN ELEMENT  
22 OF CRIME AND I DON'T HAVE TO PROVE MOTIVE. AND SOME CASES  
23 JUST GO BEYOND ANY EXPLANATION OF MOTIVE.

24 BUT THERE IS SOME BASIS FOR WHY THIS HAPPENED. AND YOU  
25 HEARD YAK-YAK. YOU HEARD ABOUT THE GIRLS BEING OVER THERE

1 EARLIER IN THE AFTERNOON WHEN GOINS WASN'T EVEN THERE. YOU  
2 HEARD ALL THE YAK-YAK ABOUT AIDS AND ABOUT SLEEPING  
3 AROUND AND ABOUT THIS, THAT AND THE OTHER. YOU HEARD ALL  
4 THAT TALK. YOU GOT GOINS IN HIS INTERVIEW TALKING ABOUT THAT  
5 STUFF. HE WAS AWARE OF THAT STUFF. HE WAS AWARE IT ALL  
6 ORIGINATED OVER AT MICHAEL ROBERTSON'S HOUSE. YOU HEARD  
7 GOINS SAYING, YOU KNOW, THIS ALL HAPPENED OVER A RIM THAT  
8 WAS ON MY CAR. THAT DOESN'T MAKE ANY SENSE EITHER.

9 YOU GET TO THE VERY END OF IT, THE VERY LAST STUFF YOU  
10 SAW ON THE VIDEO, I SUBMIT TO YOU EXPLAINS WHY THIS HAPPENED.  
11 AND IT'S PROBABLY NOT A SUFFICIENT REASON FOR IT TO HAPPEN.  
12 CLEARLY, IT'S NOT A SUFFICIENT REASON FOR THIS TO HAVE  
13 HAPPENED. BUT I TELL YOU, YOU SAW DAVID GOINS ON THAT TAPE  
14 TELL YOU WHAT THIS IS ALL ABOUT.

15 IT ALL GOES BACK TO MICHAEL ROBERTSON AND MICHAEL  
16 ROBERTSON RUNNING HIS MOUTH ABOUT DAVID GOINS AND HIS  
17 WOMEN. WHAT DID DAVID GOINS TELL YOU MICHAEL ROBERTSON  
18 SAID? DAVID GOINS SAID THAT MICHAEL ROBERTSON TOLD DAVID  
19 GOINS' GIRLFRIEND, LATISHA, THAT DAVID GOINS WAS STILL GOING  
20 OVER YONDER AND SEEING VICKIE COLE. SO, THE DEAD GUY RATTED  
21 THE DEFENDANT OUT TO HIS GIRLFRIEND.

22 WE KNOW THAT DAVID GOINS KNEW THAT BECAUSE LATISHA  
23 FANT GOT ON THE WITNESS STAND AND TOLD YOU THAT HOURS  
24 BEFORE THIS OCCURRED SHE CONFRONTED DAVID GOINS ABOUT  
25 WHAT SHE NOW KNEW WAS BEING SAID ABOUT HIM. FANT DIDN'T SAY

1        THAT MICHAEL ROBERTSON SAID IT. GOINS SAID MICHAEL  
2        ROBERTSON SAID IT. BUT MICHAEL ROBERTSON IS CAUSING  
3        PROBLEMS FOR DAVID GOINS WITH HIS GIRLFRIEND. AND HIS  
4        GIRLFRIEND CONFRONTS. AND WITHIN A FAIRLY SHORT PERIOD OF  
5        TIME HE'S OVER THERE AT MICHAEL ROBERTSON'S HOUSE SHOOTING  
6        MICHAEL ROBERTSON.

7                WHAT ELSE DID DAVID GOINS TELL YOU MICHAEL ROBERTSON  
8        SAID? MICHAEL ROBERTSON ALSO SAID TO DAVID GOINS SOMEBODY  
9        NAMED BOZO IS GOING TO YOUR HOUSE WHILE YOU'RE AT WORK TO  
10       SEE YOUR GIRLFRIEND. HE'S MAD. HE'S MAD AT MICHAEL ROBERTSON  
11       SOMETIME THE EVENING OF JUNE 30, 2005, WHEN ALL THAT TRASH  
12       TALKING, AND WHATEVER ELSE WE MIGHT NEVER KNOW, AND HE  
13       GOES OVER THERE AND HE TAKES HIS BROTHER WITH HIM AND HE  
14       TAKES A PISTOL WITH HIM. AND YOU KNOW NOW WHAT THE  
15       OUTCOME WAS.

16               WE DON'T HAVE VIDEO OF THE KILLING AND YOU KNOW ALL  
17       YOU'RE GOING TO KNOW ABOUT IT. BUT THINK ABOUT WHAT DOCTOR  
18       ROSS TOLD US. A GUNSHOT WOUND TO THE BACK OF THE HEAD,  
19       STRAIGHT AND A LITTLE BIT TO THE RIGHT, I THINK SHE SAID. TWO  
20       PIECES OF LEAD FOUND IN MICHAEL ROBERTSON'S BRAIN. THAT'S  
21       WHAT KILLED HIM, A LACERATION OF THE BRAIN, AFTER THREE OR  
22       FOUR DAYS.

23               IT WAS PRETTY MUCH AN EXECUTION. IT WAS PRETTY MUCH  
24       LIKE RENARDO WOOD TOLD YOU. DAVID GOINS HAD CONTROL OF  
25       THAT PISTOL AND IS STANDING OVER MICHAEL ROBERTSON IN HIS

1 YARD, WHO IS ON HIS KNEES WITH HIS HANDS UP, AND AT SOME POINT  
2 FIRES OFF A SHOT WHICH STRIKES HIM IN THE HAND. AND HE FIRES  
3 OFF ANOTHER SHOT INTO THE BACK OF HIS HEAD AND HE DIES. IT'S  
4 SENSELESS, ABSOLUTELY SENSELESS.

5 THERE'S NOTHING THAT YOU'VE HEARD IN THIS CASE THAT CAN  
6 MAKE THIS JUSTIFIED BY WAY OF MOTIVE, OR NOT CERTAINLY BY  
7 WAY OF SELF-DEFENSE. WE'VE GOT ONE GUY DEAD. WE'VE GOT  
8 ANOTHER GUY WITH TWO BULLET WOUNDS. WE'VE GOT DAVID GOINS  
9 WHO WE ALL KNOW NOW FIRED THE SHOTS THAT RESULTED IN THAT  
10 TRAGEDY.

11 YOUR JOB IS NOT EASY. AND THE WORST PART OF YOUR JOB IS  
12 PROBABLY JUST ABOUT TO START. GO BACK THERE AND YOU THINK  
13 ABOUT ALL THIS STUFF AND USE YOUR COMMON SENSE, LADIES AND  
14 GENTLEMEN. AND I AM CONVINCED AND I URGE YOU TO CONCLUDE  
15 FOR YOURSELF THAT THIS IS MURDER, THAT THIS IS ASSAULT AND  
16 BATTERY WITH INTENT TO KILL. AND WHEN YOU'RE READY, I ASK  
17 YOU, YOUR FOREMAN, TO WRITE THOSE VERDICTS ON THE VERDICT  
18 FORMS AND COME BACK OUT HERE AND TELL US THAT DAVID GOINS  
19 IS GUILTY OF BOTH. THANK YOU.

20 **CHARGE TO THE JURY**

21 THE COURT: MR. FOREMAN AND MEMBERS OF THE JURY,  
22 YOU'VE HEARD THE TESTIMONY AND EVIDENCE, AND ARGUMENTS OF  
23 THE STATE AND THE DEFENDANT. I WILL NOW EXPLAIN TO YOU THE  
24 LAW THAT APPLIES IN THIS CASE.

1           NOW, UNDER THE CONSTITUTION AND LAWS OF SOUTH  
2           CAROLINA, YOU ARE THE FINDERS OF THE FACTS IN THIS CASE. I DO  
3           NOT HAVE THE RIGHT TO PASS UPON THE FACTS OR EVEN EXPRESS  
4           ANY OPINION I MIGHT HAVE AS TO THEM BECAUSE THIS IS A MATTER  
5           SOLELY FOR YOU THE JURY TO DETERMINE. AND AS JURORS IT IS  
6           YOUR DUTY TO DETERMINE THE RESPECT, THE VALUE, THE WEIGHT,  
7           AND THE TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

8           YOU ARE ALSO THE JUDGES, THE SOLE JUDGES OF THE  
9           CREDIBILITY; THAT IS, THE BELIEVABILITY OF THE WITNESSES WHO  
10          HAVE TESTIFIED IN THIS CASE. AND IN PASSING UPON THEIR  
11          CREDIBILITY YOU MAY TAKE INTO CONSIDERATION, MANY THINGS,  
12          SUCH AS THE DEMEANOR OR MANNER OF TESTIFYING; WHETHER THE  
13          WITNESS HAD A REASON TO BE BIASED OR PREJUDICED; WHETHER A  
14          WITNESS' TESTIMONY WAS CONTRADICTED ON THE ONE HAND OR  
15          REPORTED AND CORROBORATED ON THE OTHER HAND.

16          YOU MAY BELIEVE A SMALL PORTION OF A WITNESS'  
17          TESTIMONY AND DISREGARD THE LARGER, OR VICE-VERSA. YOU MAY  
18          BELIEVE ONE WITNESS AGAINST MANY OR MANY AGAINST ONE. ALL  
19          OF THESE THINGS YOU WILL CONSIDER, BEARING IN MIND THAT YOU  
20          SHOULD GIVE THE DEFENDANT THE BENEFIT OF ANY REASONABLE  
21          DOUBT.

22          IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO  
23          EVALUATE THE EVIDENCE AND DETERMINE WHAT EVIDENCE  
24          CONVINCES YOU OF ITS TRUTH.

1           NOW, AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO  
2           PRESIDE OVER THE TRIAL OF THIS CASE. AND I ALSO HAVE THE DUTY  
3           TO RULE UPON OR PASS UPON THE ADMISSIBILITY OF THE EVIDENCE  
4           OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE  
5           TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND,  
6           TOGETHER WITH ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF  
7           THE RECORD IN THIS CASE, AS WELL AS ANY STIPULATIONS OF  
8           COUNSEL MADE INTO THE RECORD.

9           I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW  
10          APPLICABLE TO THIS CASE. AND AS THE PRESIDING JUDGE, I AM THE  
11          SOLE JUDGE OF THE LAW OF THIS CASE. AND IT IS YOUR DUTY AS  
12          JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU,  
13          AND THEN REACH THE VERDICT.

14          AND FINALLY, I CHARGE YOU IN THIS REGARD THAT YOU  
15          SHOULD NOT BE CONCERNED ABOUT WHAT YOU THINK THE LAW  
16          OUGHT TO BE, BUT WHAT I CHARGE THE LAW TO BE.

17          THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY  
18          PRESENTED DURING A TRIAL. THAT IS DIRECT EVIDENCE AND  
19          CIRCUMSTANTIAL EVIDENCE.

20          DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS  
21          TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AN EYE WITNESS. IT  
22          IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACTS TO  
23          BE PROVED.

24          CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS  
25          AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS

1 EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS  
2 FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL  
3 EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL  
4 KNOWLEDGE OR OBSERVATION.

5 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE  
6 WEIGHT OR VALUE TO BE GIVEN EITHER DIRECT OR CIRCUMSTANTIAL  
7 EVIDENCE. NOR IS A GREATER DEGREE OF CERTAIN REQUIRED OF  
8 CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE.

9 YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THIS CASE.  
10 AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED OF  
11 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU  
12 MUST FIND THE DEFENDANT NOT GUILTY.

13 THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT  
14 WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN  
15 EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WE CALL EXPERT  
16 WITNESSES. A WITNESS WHO BY EDUCATION AND EXPERIENCE HAS  
17 BECOME EXPERT IN SOME ART, SCIENCE OR PROFESSIONAL CALLING  
18 MAY STATE AN OPINION AS TO RELEVANT AND MATERIAL MATTERS IN  
19 WHICH THE WITNESS CLAIMS TO BE AN EXPERT. AND MAY ALSO  
20 STATE THE REASON FOR THE OPINION.

21 YOU SHOULD CONSIDER ANY EXPERT'S OPINION RECEIVED IN  
22 EVIDENCE IN THIS CASE. AND LIKE ANY OTHER EVIDENCE, GIVE IT  
23 THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE THAT THE  
24 OPINION OF AN EXPERT IS NOT BASED ON SUFFICIENT EDUCATION  
25 AND EXPERIENCE, OR CONCLUDE THAT THE REASONS GIVEN IN

1 SUPPORT OF THE OPINION ARE NOT SOUND, OR THAT THE OPINION IS  
2 OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE  
3 OPINION ENTIRELY.

4 AN EXPERT WITNESS' TESTIMONY IS BE GIVEN NO GREATER  
5 WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THE  
6 WITNESS IS AN EXPERT. FURTHER, YOU ARE NOT REQUIRED TO  
7 ACCEPT AN EXPERT'S OPINION EVEN THOUGH IT IS NOT  
8 CONTRADICTORY.

9 NOW, YOU'VE HEARD EVIDENCE THAT THE DEFENDANT WAS  
10 CONVICTED OF A CRIME, OR CRIMES OTHER THAN THE ONES FOR  
11 WHICH THE DEFENDANT IS NOW ON TRIAL. THIS EVIDENCE MAY BE  
12 CONSIDERED BY YOU IF YOU CONCLUDE IT'S TRUE, ONLY IN DECIDING  
13 WHETHER THE DEFENDANT'S TESTIMONY IS BELIEVABLE AND FOR NO  
14 OTHER PURPOSE. YOU MUST NOT CONSIDER THE DEFENDANT'S PRIOR  
15 RECORD AS ANY EVIDENCE OF THE DEFENDANT'S GUILT OF THE  
16 CHARGES WE ARE TRYING TODAY.

17 NOW, THE FACT THAT THE DEFENDANT WAS ARRESTED,  
18 CHARGED, AND INDICTED IN THIS CASE IS NOT EVIDENCE IN THIS  
19 CASE, AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT  
20 IN THIS CASE. NOR DOES IT CREATE ANY PRESUMPTION OF INFERENCE  
21 OF GUILT. THESE INDICTMENTS ARE SIMPLY THE FORMAL WRITTEN  
22 INSTRUMENTS WHICH CONTAIN THE CHARGES MADE AGAINST THE  
23 DEFENDANT. THE INDICTMENTS ARE THE FORMAL DOCUMENTS BY  
24 WHICH THIS CASE WAS BROUGHT INTO THIS COURT.

1 THE DEFENDANT HAS PLEAD NOT GUILTY TO THESE  
2 INDICTMENTS. AND THAT PLEA PUTS THE BURDEN ON THE STATE TO  
3 PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH  
4 COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER  
5 REQUIRED TO PROVE HIMSELF INNOCENT.

6 I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF THE LAW  
7 THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE  
8 SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS PRESUMED TO  
9 BE INNOCENT OF THE CRIMES FOR WHICH THE INDICTMENT WAS  
10 ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING  
11 YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

12 THE PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU  
13 BEGIN YOUR DELIBERATIONS. BUT IT ACCOMPANIES THE DEFENDANT  
14 THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT  
15 BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A  
16 REASONABLE DOUBT. THE PRESUMPTION OF INNOCENCE IS LIKE A  
17 ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE  
18 DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS  
19 BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU  
20 OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

21 THE PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL  
22 THEORY. IT'S NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT  
23 TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU THE JURY  
24 ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT

1 BEYOND A REASONABLE DOUBT THE STATE MUST PROVE THE  
2 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

3 NOW, WHAT'S A REASONABLE DOUBT IN THE LAW? A  
4 REASONABLE DOUBT IS THE DOUBT WHICH MAKES AN HONEST,  
5 SINCERE, CONSCIENTIOUS JUROR IN SEARCH OF THE TRUTH TO  
6 HESITATE TO ACT.

7 PROOF BEYOND A REASONABLE DOUBT IS THEREFORE A PROOF  
8 OF SUCH A CONVINCING CHARACTER THAT A REASONABLE PERSON  
9 WOULD NOT HESITATE TO RELY AND AMPLIFY IT IN THE MOST  
10 IMPORTANT OF HIS OR HER AFFAIRS.

11 PROOF BEYOND A REASONABLE DOUBT CAN ALSO BE  
12 DESCRIBED AS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE  
13 DEFENDANT'S GUILT.

14 NOW, THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE  
15 KNOW WITH ABSOLUTE CERTAINTY. AND IN CRIMINAL CASES, THE  
16 LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE  
17 DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU  
18 ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY, YOU MUST  
19 FIND HIM GUILTY.

20 IF, ON THE OTHER HAND, YOU THINK THERE IS A REAL  
21 POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE HIM THE  
22 BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

23 NOW, A STATEMENT ALLEGED TO HAVE BEEN MADE BY THE  
24 DEFENDANT HAS BEEN ADMITTED INTO EVIDENCE IN THIS CASE.  
25 WHILE THE COURT HAS DETERMINED THAT THE STATEMENT IS

1 ADMISSIBLE, I INSTRUCT YOU THAT YOU MAKE THE ULTIMATE  
2 DECISION OF WHETHER THE STATEMENT WAS MADE BY THE  
3 DEFENDANT VOLUNTARILY AND OF HIS OWN FREE WILL.

4 THIS MEANS THAT THE STATEMENT WAS NOT CAUSED BY  
5 PRESSURE, FORCE, FEAR, THREATS, COERCION, OR INTIMIDATION; OR  
6 BY HOPE, OR A PROMISE OF LENIENCY, OR A REWARD OF ANY KIND. IN  
7 DETERMINING WHETHER THE STATEMENT WAS VOLUNTARY, YOU  
8 SHOULD CONSIDER BOTH THE CHARACTERISTICS OF THE DEFENDANT  
9 AND THE DETAILS OF THE QUESTIONING.

10 SOME OF THE FACTORS THAT YOU MUST CONSIDER ARE THE  
11 AGE OF THE DEFENDANT, THE DEFENDANT'S EDUCATION OR LACK OR  
12 EDUCATION, THE DEFENDANT'S MENTAL ABILITY OR CAPACITY, THE  
13 DEFENDANT'S IQ OR INTELLIGENCE. THE DEFENDANT'S BACKGROUND  
14 AND ENVIRONMENT, THE PLACE OF DETENTION, THE NATURE OF  
15 QUESTIONING.

16 THE ADVICE OR LACK THEREOF, TO THE DEFENDANT OF HIS  
17 CONSTITUTIONAL RIGHTS, INCLUDING, BUT NOT LIMITED TO THE  
18 RIGHT TO REMAIN SILENT, THAT ANY STATEMENT COULD BE USED  
19 AGAINST HIM IN A COURT OF LAW; THE RIGHT TO HAVE A LAWYER  
20 PRESENT; THAT IF HE CANNOT AFFORD A LAWYER, A LAWYER WOULD  
21 BE APPOINTED TO REPRESENT HIM WITHOUT ANY COST. AND THAT HE  
22 COULD STOP MAKING HIS STATEMENT AT ANY TIME.

23 YOU MUST CONSIDER ALL OF THE SURROUNDING  
24 CIRCUMSTANCES BEFORE GIVING ANY WEIGHT TO AN ALLEGED  
25 STATEMENT. THE STATE HAS THE BURDEN OF PROVING BEYOND A

1 REASONABLE DOUBT THAT THE ALLEGED STATEMENT WAS  
2 VOLUNTARY. IF YOU DETERMINE THAT IT WAS, YOU MAY GIVE THE  
3 STATEMENT ANY FURTHER CONSIDERATION THAT YOU DEEM PROPER.

4 YOU MUST DECIDE WHAT WEIGHT, IF ANY, SHOULD BE GIVEN  
5 THE ALLEGED STATEMENT. IF YOU DETERMINE THAT THE ALLEGED  
6 STATEMENT WAS NOT THE FREE AND VOLUNTARY STATEMENT OF THE  
7 DEFENDANT, YOU SHOULD NOT CONSIDER THE STATEMENT AT ALL.

8 NOW, THE INDICTMENT IN THIS CASES ALLEGES TWO DIFFERENT  
9 OFFENSES AGAINST THE DEFENDANT. THE CHARGES ARE: ON  
10 INDICTMENT NUMBER ONE, MURDER. INDICTMENT NUMBER TWO,  
11 ASSAULT AND BATTERY WITH INTENT TO KILL.

12 EACH INDICTMENT CHARGES A SEPARATE AND DISTINCT  
13 OFFENSE. YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON THE  
14 EVIDENCE AND THE LAW APPLICABLE TO IT, UNINFLUENCED BY YOUR  
15 DECISION AS TO ANY OTHER INDICTMENT.

16 THE DEFENDANT MAY BE CONVICTED OR ACQUITTED ON ANY  
17 OR ALL OF THE OFFENSES CHARGED. YOU WILL BE ASKED TO WRITE A  
18 SEPARATE VERDICT FOR EACH INDICTMENT.

19 THE DEFENDANT IS CHARGED WITH THE MURDER OF MICHAEL  
20 ROBERTSON. THE STATE MUST PROVE BEYOND A REASONABLE  
21 DOUBT THAT THE DEFENDANT KILLED ANOTHER PERSON WITH  
22 MALICE AFORETHOUGHT.

23 MALICE IS HATRED, ILL WILL, OR HOSTILITY TOWARD ANOTHER  
24 PERSON. IT IS THE INTENTIONAL DOING OF A WRONG ACT WITHOUT

1 JUST CAUSE OR EXCUSE, AND WITH THE INTENT TO INFLICT AN INJURY  
2 UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AS EVIL INTENT.

3 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE  
4 EXIST FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED.  
5 BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST  
6 BEFORE AND AT THE TIME OF THE ACT THAT IS COMMITTED.

7 THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS  
8 EVIL INTENT AND THE ACT. MALICE AFORETHOUGHT MAY BE  
9 EXPRESSED OR INFERRED. THESE TERMS, EXPRESSED AND INFERRED,  
10 DO NOT MEAN DIFFERENT KINDS OF MALICE, BUT MERELY THE  
11 MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST; THAT IS, EITHER  
12 BY DIRECT EVIDENCE OR BY INFERENCE BY THE FACTS AND  
13 CIRCUMSTANCES WHICH ARE PROVED.

14 EXPRESSED MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS  
15 WHICH EXPRESS HATRED OR ILL WILL TOWARDS A PERSON. OR WHEN  
16 THE PERSON IS PREPARED BEFOREHAND TO DO THE ACT WHICH IS  
17 LATER ACCOMPLISHED. FOR EXAMPLE, LYING IN WAIT FOR A PERSON  
18 OR ANY OTHER ACT OF SEPARATION, GOING TO SHOW THAT THE DEED  
19 WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESSED MALICE.  
20 MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL  
21 DISREGARD FOR HUMAN LIFE.

22 ON INDICTMENT NUMBER TWO, THE DEFENDANT HAS BEEN  
23 CHARGED WITH ASSAULT AND BATTERY WITH INTENT TO KILL JAMIE  
24 ROBERTSON.

1           IN ORDER TO PROVIDE ASSAULT AND BATTERY WITH INTENT TO  
2           KILL, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT  
3           THE DEFENDANT COMMITTED AN UNLAWFUL ACT OF A VIOLENT  
4           NATURE TO THE PERSON OF ANOTHER WITH MALICE AFORETHOUGHT.

5           AN ASSAULT OCCURS WHEN A PERSON UNLAWFUL ATTEMPTS  
6           OR OFFERS TO COMMIT A VIOLENT INJURY UPON ANOTHER PERSON  
7           AND HAS THE PRESENT ABILITY TO COMPLETE THE ATTEMPTED  
8           INJURY. AN ASSAULT IS THE INTENTIONAL CREATION OF A  
9           REASONABLE FEAR OF IMMEDIATE BODILY HARM.

10          A BATTERY IS THE UNLAWFUL TOUCHING OF ANOTHER BY A  
11          PERSON WHO HAS COMMITTED THE ASSAULT. AN UNLAWFUL  
12          TOUCHING CAN BE CAUSED BY A PART OF THE ACCUSED'S BODY, OR  
13          BY ANY OBJECT THE ACCUSED PUTS IN MOTION. THE BATTERY IS THE  
14          COMPLETION OF THE ASSAULT BY USING OR APPLYING FORCE TO  
15          ANOTHER PERSON IN A RUDE, ANGRY OR RESENTFUL MANNER  
16          WITHOUT LEGAL JUSTIFICATION FOR DOING SO.

17          MALICE IS THE SHOWING OF HATRED OR ILL WILL OR HOSTILITY  
18          TOWARD ANOTHER PERSON, WITH THE INTENTIONAL DOING OF A  
19          WRONGFUL ACT WITHOUT A JUST CAUSE OR EXCUSE, AND WITH AN  
20          INTENT TO INFLICT INJURY OR UNDER CIRCUMSTANCES THAT THE  
21          LAW WOULD INFER AS EVIL INTENT.

22          NOW, IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT  
23          SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR  
24          SATISFACTION, THIS INFERENCE IS TO BE SIMPLY AN EVIDENTIARY  
25          FACT TO BE CONSIDERED BY YOU ALONG WITH THE OTHER EVIDENCE

1 IN THIS CASE. YOU MAY GIVE IT THE WEIGHT YOU DECIDE IT IS TO  
2 RECEIVE.

3 A SPECIFIC INTENT TO KILL IS NOT AN ELEMENT OF ASSAULT  
4 AND BATTERY WITH INTENT TO KILL. BUT THERE MUST BE A  
5 GENERAL INTENT TO COMMIT SERIOUS BODILY INJURY. INTENT  
6 MEANS INTENDING THE RESULT WHICH ACTUALLY OCCURS, NOT  
7 ACCIDENTALLY OR INVOLUNTARY. INTENT MAY BE SHOWN BY THE  
8 ACTS AND CONDUCT OF THE DEFENDANT, AND OTHER  
9 CIRCUMSTANCES WHICH YOU MAY NATURALLY AND REASONABLY  
10 INFER INTENT.

11 EVIDENCE OF THE CHARACTER OF THE ASSAULT AND THE  
12 RESULTING WOUNDS OR INJURIES MAY BE CONSIDERED IN  
13 DETERMINING THE INTENT WITH WHICH THE ASSAULT WAS  
14 COMMITTED.

15 INTENT MAY BE INFERRED WHEN IT IS DEMONSTRATED THAT  
16 THE DEFENDANT VOLUNTARILY AND WILLFULLY COMMITTED AN ACT,  
17 THE NATURAL TENDENCY OF WHICH IS TO DESTROY ANOTHER LIFE.

18 IF YOU FIND THAT THE STATE HAS NOT PROVEN THAT THE  
19 DEFENDANT IS GUILTY OF ASSAULT AND BATTERY WITH INTENT TO  
20 KILL, YOU MUST THEN DETERMINE WHETHER THE STATE HAS PROVED  
21 THAT THE DEFENDANT IS GUILTY OF ASSAULT AND BATTERY OF A  
22 HIGH AND AGGRAVATED NATURE.

23 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE  
24 INCLUDES ALL THE ELEMENTS OF ASSAULT AND BATTERY WITH  
25 INTENT TO KILL EXCEPT MALICE AFORETHOUGHT. IN ADDITION, THE

1 STATE MUST PROVE BEYOND A REASONABLE DOUBT AN  
2 AGGRAVATING CIRCUMSTANCE. CIRCUMSTANCES OF AGGRAVATION  
3 INCLUDE THE INFLICTION OF SERIOUS BODILY INJURY.

4 NOW, THE DEFENDANT HAS RAISED THE DEFENSE OF SELF-  
5 DEFENSE. SELF-DEFENSE IS A COMPLETE DEFENSE. AND IF IT IS  
6 ESTABLISHED, YOU MUST FIND THE DEFENDANT NOT GUILTY. THE  
7 STATE HAS THE BURDEN OF DISPROVING SELF-DEFENSE BY PROOF  
8 BEYOND A REASONABLE DOUBT. IF YOU HAVE A REASONABLE DOUBT  
9 OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL THE EVIDENCE,  
10 INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND  
11 THE DEFENDANT NOT GUILTY.

12 ON THE OTHER HAND, IF YOU HAVE NO REASONABLE DOUBT OF  
13 THE DEFENDANT'S GUILT AFTER CONSIDERING ALL OF THE EVIDENCE,  
14 INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND  
15 THE DEFENDANT GUILTY.

16 NOW, THE FOLLOWING ELEMENTS ARE REQUIRED TO ESTABLISH  
17 SELF DEFENSE: FIRST, THE DEFENDANT MUST BE WITHOUT FAULT IN  
18 BRINGING ON THE DIFFICULTY. IF THE DEFENDANT'S CONDUCT WAS  
19 THE TYPE WHICH WAS REASONABLY CALCULATED TO AND DID  
20 PROVOKE A DEADLY ASSAULT THE DEFENDANT WOULD BE AT FAULT  
21 IN BRINGING ON THE DIFFICULTY, AND WOULD NOT BE ENTITLED TO  
22 AN ACQUITTAL BASED ON SELF-DEFENSE.

23 SELF-DEFENSE IS NOT AVAILABLE TO A PERSON WHO USES  
24 LANGUAGE WHICH IS SO CONTEMPTUOUS THAT A REASONABLE

1 PERSON WOULD EXPECT IT TO BRING ON A PHYSICAL ENCOUNTER AND  
2 WHICH DID ACTUALLY CONTRIBUTE TO A PHYSICAL ENCOUNTER.

3 THE SECOND ELEMENT OF SELF-DEFENSE IS THAT THE  
4 DEFENDANT WAS ACTUALLY IN IMMINENT DANGER OF DEATH OR  
5 SERIOUS BODILY INJURY. OR THAT THE DEFENDANT ACTUALLY  
6 BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS  
7 BODILY INJURY.

8 IF THE DEFENDANT WAS ACTUALLY IN IMMINENT DANGER, IT  
9 MUST BE SHOWN THAT THE CIRCUMSTANCES WOULD HAVE  
10 WARRANTED A PERSON OF ORDINARY FIRMNESS AND COURAGE TO  
11 STRIKE THE FATAL BLOW TO PREVENT DEATH OR SERIOUS BODILY  
12 INJURY.

13 IF THE DEFENDANT BELIEVED HE WAS IN IMMINENT DANGER OF  
14 DEATH OR SERIOUS BODILY INJURY, IT MUST BE SHOWN THAT A  
15 REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND  
16 COURAGE WOULD HAVE HAD THE SAME BELIEF.

17 IN DECIDING WHETHER THE DEFENDANT ACTUALLY WAS OR  
18 BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS  
19 BODILY INJURY YOU SHOULD CONSIDER ALL THE FACTS AND  
20 CIRCUMSTANCES SURROUNDING THE CRIME, INCLUDING THE  
21 PHYSICAL CONDITION AND CHARACTERISTICS OF THE DEFENDANT  
22 AND THE VICTIM OR VICTIMS.

23 THE DEFENDANT DOES HAVE THE RIGHT TO SHOW THAT HE WAS  
24 ACTUALLY IN-- THE DEFENDANT DOES NOT HAVE TO SHOW THAT HE  
25 WAS ACTUALLY IN DANGER. IT WAS ENOUGH IF THE DEFENDANT

1 BELIEVED HE WAS IN IMMINENT DANGER, AND A REASONABLY  
2 PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD  
3 HAVE HAD THE SAME BELIEF. THE DEFENDANT HAS THE RIGHT TO  
4 ACT ON APPEARANCES, EVEN THOUGH THE DEFENDANT'S BELIEFS  
5 MAY HAVE BEEN MISTAKEN.

6 IT IS FOR YOU TO DECIDE WHETHER THE DEFENDANT'S FEAR OF  
7 IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY WAS  
8 REASONABLE AND WOULD HAVE BEEN FELT BY AN ORDINARY PERSON  
9 IN THE SAME SITUATION.

10 NOW, WORDS ACCOMPANIED BY HOSTILE ACTS MAY,  
11 DEPENDING ON THE CIRCUMSTANCES, ESTABLISH SELF-DEFENSE.  
12 CONSIDERED IN DECIDING WHETHER THERE WAS A NEED FOR FORCE,  
13 WHETHER THE DEFENDANT HAD. I'M SORRY. I'LL START OVER.

14 CONSIDERING DECIDING WHETHER THERE WAS A NEED FOR  
15 FORCE, WHETHER THE DEFENDANT HAD A REASON TO BELIEVE THERE  
16 WAS A NEED FOR FORCE, AND WHETHER DEADLY FORCE WAS  
17 REASONABLY NECESSARY.

18 THREATS MADE BY THE VICTIM MAY BE CONSIDERED, OR BY  
19 VICTIMS MAY BE CONSIDERED IN DETERMINING WHETHER THE  
20 DEFENDANT ACTUALLY WAS OR BELIEVED HE WAS IN IMMINENT  
21 DANGER.

22 THE INTOXICATION OF A VICTIM MAY BE CONSIDERED, OR THE  
23 VICTIM MAY BE CONSIDERED IN DECIDING WHETHER THE  
24 DEFENDANT'S FEAR OF DEATH OR BODILY HARM WAS REASONABLE.

1 THE FINAL ELEMENT OF SELF-DEFENSE IS THAT THE DEFENDANT  
2 HAD NOT OTHER PROBABLE WAY TO AVOID THE DANGER OF DEATH  
3 OR SERIOUS BODILY INJURY THAN TO ACT AS THE DEFENDANT DID IN  
4 THIS PARTICULAR INSTANCE.

5 NOW, THE DEFENDANT HAD NO DUTY TO RETREAT, IF BY DOING  
6 SO, THE DANGER OF BEING KILLED OR SUFFERING SERIOUS BODILY  
7 INJURY WOULD INCREASE. A PERSON CANNOT BE REQUIRED TO MAKE  
8 AN EXACT CALCULATION AS TO THE DEGREE OR AMOUNT OF FORCE  
9 WHICH MAY BE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM.

10 THEREFORE, IN SELF-DEFENSE, A DEFENDANT HAS THE RIGHT TO  
11 USE THE FORCE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM.  
12 FORCE USED IN SELF-DEFENSE DOES NOT HAVE TO BE LIMITED TO THE  
13 DEGREE OR AMOUNT OF FORCE USED BY THE VICTIM OR VICTIMS. THE  
14 DEFENDANT HAS A RIGHT TO USE AS MUCH FORCE AS APPEARS TO BE  
15 NECESSARY FOR COMPLETE SELF PROTECTION, AND WHICH A PERSON  
16 OF ORDINARY REASONABLENESS AND FIRMNESS WOULD HAVE  
17 BELIEVED TO BE NEEDED TO PREVENT DEATH OR SERIOUS BODILY  
18 HARM.

19 IF THE DEFENDANT IS JUSTIFIED IN DEFENDING HIMSELF AND  
20 OTHERS IN FIRING THE FIRST SHOT, THEN THE DEFENDANT IS ALSO  
21 JUSTIFIED IN CONTINUING TO SHOOT UNTIL IT IS APPARENT THAT THE  
22 DANGER OF DEATH OR SERIOUS BODILY INJURY HAS COMPLETELY  
23 ENDED.

24 NOW, MR. FOREMAN AND MEMBERS OF THE JURY, YOU HAVE  
25 BEEN SELECTED BY BOTH THE STATE AND THE DEFENDANT TO BE

1 FAIR AND IMPARTIAL JURORS. IT IS YOUR DUTY, THEN, BY YOUR JOINT  
2 DELIBERATIONS TO DETERMINE THE TRUTH IN THIS CASE, GIVING THE  
3 DEFENDANT THE BENEFIT OF EVERY REASONABLE DOUBT ON EACH  
4 AND EVERY ISSUE. AND FROM THE FACTS WHICH YOU DETERMINE TO  
5 BE TRUE, TO TAKE AND APPLY THE LAW WHICH I HAVE JUST GIVEN TO  
6 YOU AND THUS ARRIVE AT A VERDICT WHICH SPEAKS THE TRUTH IN  
7 THIS CASE.

8 I'VE TOLD YOU THE STANDARDS YOU HAVE TO APPLY TO THE  
9 CHARGE OF ASSAULT AND BATTERY WITH INTENT TO KILL AND  
10 MURDER. I WILL GIVE YOU A COPY OF THESE INSTRUCTIONS IN  
11 WRITTEN FORM DURING YOUR DELIBERATIONS. YOU MAY CONSIDER  
12 THE INSTRUCTIONS TO GUIDE YOUR DECISION MAKING. YOU MAY  
13 CONSIDER THE INSTRUCTIONS AS A WHOLE AND NOT FOLLOW SOME  
14 AND IGNORE OTHERS. PLEASE RETURN THE INSTRUCTIONS TO THE  
15 COURT AT THE TIME YOUR VERDICT IS RENDERED.

16 THE FACT THAT I HAVE CHARGED YOU ON MANY THINGS MUST  
17 NOT BE CONSIDERED BY YOU AS ANY INDICATION AS TO WHAT THE  
18 COURT MAY THINK YOUR FINDING OF FACTS SHOULD BE OR WHAT  
19 YOUR VERDICT SHOULD BE IN THIS CASE.

20 YOU'VE HEARD THE EVIDENCE. NOW YOU'VE HEARD THE LAW.  
21 WHATEVER YOUR VERDICT AS TO EACH CHARGE, MR. FOREMAN, IF  
22 YOU WILL INDICATE IT BY WRITING IT ON THE VERDICT FORM WHICH  
23 WILL GO BACK TO THE JURY ROOM WITH YOU.

24 THERE IS NO SIGNIFICANCE IN THE ORDER IN WHICH I STATE THE  
25 POSSIBLE VERDICT. SIMPLY ONE MUST STATED FIRST. AND AS TO THE

1 FIRST INDICTMENT, AS TO MURDER, THE VERDICT IS NOT GUILTY OR  
2 GUILTY OF MURDER, AND YOU WILL CHECK THE APPROPRIATE BOX.  
3 AS TO ASSAULT AND BATTERY WITH INTENT TO KILL, THE VERDICT  
4 WILL EITHER BE GUILTY OF ASSAULT AND BATTERY WITH INTENT TO  
5 KILL OR GUILTY OF ASSAULT AND BATTERY OF A HIGH AND  
6 AGGRAVATED NATURE, OR NOT GUILTY.

7 AND REMEMBER THAT ALTHOUGH THE FOREMAN IS THE ONLY  
8 JUROR WHO SIGNS THE VERDICT, IT'S NOT HIS ALONE. THE VERDICT  
9 HAS TO BE A UNANIMOUS VERDICT AS TO EACH CHARGE. MR.  
10 FOREMAN, YOU ARE NOT AUTHORIZED TO COMPLETE NOR SIGN THAT  
11 VERDICT UNTIL ALL OF YOU HAVE AGREED AS TO WHAT THE VERDICT  
12 SHOULD BE.

13 NOW, LADIES AND GENTLEMEN, I AM GOING TO SEND YOU TO  
14 YOUR JURY ROOM ALL OF YOU EXCEPT THE LAST TWO JURORS  
15 SELECTED. BUT DO NOT BEGIN TO DISCUSS THE CASE UNTIL YOU  
16 HAVE RECEIVED A COPY OF THIS JURY CHARGE, THE VERDICT FORM,  
17 AND THE EXHIBITS. AND IF ANY OF YOU NEED TO MAKE A PHONE  
18 CALL OR ANYTHING TO INFORM YOUR FAMILY OR FRIENDS THAT YOU  
19 ARE STILL HERE, YOU MAY DO SO BEFORE YOU BEGIN DELIBERATING  
20 AS WELL.

21 NOW, ONCE YOU RECEIVE THESE THINGS, THAT WILL BE YOUR  
22 SIGNAL TO BEGIN YOUR DELIBERATIONS. AND ONCE YOU BEGIN YOUR  
23 DELIBERATIONS, YOU WILL DELIBERATE UNTIL YOU HAVE REACHED A  
24 VERDICT, AT WHICH TIME YOU WILL KNOCK ON THE DOOR, ADVICE

1 THE BAILIFF, AND WE WILL BRING YOU OUT TO RECEIVE YOUR  
2 VERDICT.

3 PLEASE GO TO THE JURY ROOM, ALL OF YOU EXCEPT THE  
4 ALTERNATE JURORS.

5 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4:50 P.M.)  
6 ANY EXCEPTIONS OR ADDITIONS TO MY CHARGE FROM THE  
7 STATE?

8 MR. BARFIELD: NOTHING FROM THE STATE, YOUR HONOR.

9 THE COURT: MR. HEMLEPP?

10 MR. HEMLEPP: NO. THANK YOU, YOUR HONOR.

11 THE COURT: IF YOU ALL WILL GATHER THE EXHIBITS AND SEE  
12 THAT THEY ARE IN ORDER.

13 (WHEREUPON COUNSEL AND COURT REPORTER RECONCILED  
14 EXHIBITS)

15 MR. BARFIELD: JUDGE, YOUR PLEASURE ON THE VIDEOTAPES  
16 THEMSELVES, WHICH ARE IN EVIDENCE, WHETHER THEY GO TO THE  
17 JURY ROOM, OR NOT?

18 THE COURT: YES SIR, THEY ARE IN EVIDENCE.

19 MR. BARFIELD: BUT WE ARE NOT TO TAKE THE TV IN UNLESS  
20 THEY ASK FOR IT. IS THAT CORRECT?

21 THE COURT: THE TV IS NOT IN EVIDENCE.

22 MR. BARFIELD: YES SIR. EVERYTHING IS READY TO GO, YOUR  
23 HONOR.

24 THE COURT: ALL RIGHT. I WANT TO THANK YOU TWO  
25 ALTERNATE JURORS FOR SERVING ON THIS TRIAL. FORTUNATELY, NO

1 ONE GOT SICK OR HAD TO LEAVE FOR ANY REASON, SO WE DID HAVE  
2 TO USE YOUR SERVICES IN DELIBERATION. BUT I WANT TO THANK  
3 YOU AGAIN FOR YOUR SERVICE, AND YOU ARE FREE TO LEAVE AT  
4 THIS TIME.

5 (WHEREUPON ALTERNATE JURORS EXIT COURTROOM)

6 ALL RIGHT. NOW, THAT WE'VE GOTTEN ALL THE EXHIBITS  
7 TOGETHER, DELIBERATIONS MAY BEGIN. AND WE'LL BE AT EASE  
8 UNTIL WE GET A VERDICT OR A QUESTION.

9 (WHEREUPON DELIBERATIONS BEGAN AT 4:57 P.M. AND COURT WAS IN  
10 RECESS)

11 COURT IN SESSION - 5:30 P.M.

12 THE COURT: I'VE GOTTEN A NOTE FROM THE JURY THAT SAYS,  
13 MAY WE HAVE A CHALK BOARD OR A WHITE BOARD FOR A GRAPH. I  
14 INTEND TO SEND THAT BOARD BACK THERE FOR THE JURY'S USE. ANY  
15 OBJECTION?

16 MR. BARFIELD: NONE FROM THE STATE, YOUR HONOR.

17 MR. HEMLEPP: NONE, YOUR HONOR.

18 THE COURT: ALL RIGHT. WE'LL END THAT BACK. AND WE'LL  
19 ONCE AGAIN BE AT EASE.

20 (WHEREUPON JURY NOTE WAS MARKED AS COURT'S EXHIBIT ONE)

21 (WHEREUPON COURT WAS IN RECESS AT 5:33 P.M.)  
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COURT IN SESSION - 7:50 P.M.

THE COURT: WE HAVE ANOTHER NOTE FROM THE JURY. IT ASKS, IS THE DEFENSE OF SELF DEFENSE AVAILABLE FOR THE SECOND WARRANT. AND I'M ASSUMING YOU'RE REFERRING TO ASSAULT AND BATTERY WITH INTENT TO KILL. ANYTHING BEFORE THE JURY IS BROUGHT IN?

MR. BARFIELD: NOTHING FROM THE STATE, YOUR HONOR.

MR. HEMLEPP: NO SIR.

THE COURT: BRING IN THE JURY.

(WHEREUPON THE JURY ENTERED THE COURTROOM)

MR. FOREMAN, I HAVE YOUR NOTE, AND IT ASKS, IS THE DEFENSE OF SELF DEFENSE AVAILABLE FOR THE SECOND WARRANT. AND I'M ASSUMING YOU'RE REFERRING TO ASSAULT AND BATTERY WITH INTENT TO KILL.

JURY FOREMAN: THAT'S RIGHT. WE ARE, YOUR HONOR.

THE COURT: THE DEFENDANT CONTENDS THAT HE ACTED IN SELF-DEFENSE AS RELATES TO ALL CHARGES IN THIS CASE. THE SAME LAW THAT APPLIES TO THE MURDER INDICTMENT APPLIES TO THE SECOND INDICTMENT AS WELL.

JURY FOREMAN: THANK YOU, YOUR HONOR. WE APPRECIATE THAT AND WE'LL GET BACK TO YOU.

THE COURT: THANK YOU VERY MUCH.

(WHEREUPON THE JURY EXITED THE COURTROOM)

1 ANY EXCEPTIONS TO THE COURT'S INSTRUCTIONS?

2 MR. BARFIELD: NONE FROM THE STATE.

3 MR. HEMLEPP: NO, THANK YOU, YOUR HONOR.

4 THE COURT: ALL RIGHT. WE'LL HAVE THIS MARKED.

5 (WHEREUPON THE JURY NOTE WAS MARKED AS COURT'S  
6 EXHIBIT TWO)

7 COURT IN SESSION - 8:33 P.M.

8 THE COURT: I UNDERSTAND THAT THERE IS A JURY VERDICT.

9 THE JURY WILL COME OUT AND ANNOUNCE THE VERDICT. I DON'T  
10 KNOW WHAT THE VERDICT WILL BE. I FIND THAT THIS HAS BEEN AN  
11 EMOTIONAL MATTER AND PROBABLY WILL CONTINUE TO BE FOR A  
12 LOT OF PEOPLE WHO ARE CONCERNED.

13 MY PRIMARY CONCERN, HOWEVER IS WITH RUNNING COURT  
14 AND MAKING SURE THAT THE ORDER OF THE COURT IS MAINTAINED  
15 AT ALL TIMES. THEREFORE, I WANT TO CAUTION ANYONE AND  
16 EVERYONE THAT THERE IS TO BE NO OUTBURST WHATSOEVER WHEN  
17 THE JURY VERDICT IS ANNOUNCED, NO RESPONSE OF ANY KIND.

18 ANYONE WHO VIOLATES THAT ORDER CAN BE SUBJECTED TO A  
19 SENTENCE OF UP TO SIX MONTHS FOR CONTEMPT OF COURT. AND  
20 THAT IS A SENTENCE THAT CAN BE IMPOSED ON THE SPOT WITHOUT  
21 LAWYER, TRIAL, JURY, OR ANYTHING.

22 I JUST WANT TO TELL YOU THAT IN ADVANCE SO THAT  
23 EVERYONE CAN CONTROL THEMSELVES, UNDERSTANDING THIS BEING  
24 DIFFICULT CIRCUMSTANCES FOR MANY PEOPLE.

25 WITH THAT, WE WILL BRING THE JURY IN.

1 (WHEREUPON THE JURY ENTERED THE COURTROOM)

2 MR. FOREMAN, IF YOU WILL STAND FOR ME, PLEASE.

3 (WHEREUPON JURY FOREMAN STANDS)

4 THE COURT: HAS THE JURY REACHED A VERDICT?

5 JURY FOREMAN: WE HAVE, YOUR HONOR.

6 THE COURT: IS IT A UNANIMOUS VERDICT?

7 JURY FOREMAN: IT IS A UNANIMOUS VERDICT.

8 THE COURT: ALL RIGHT. IF YOU WILL PLEASE PASS THAT UP.

9 AND THE DEFENDANT WILL PLEASE RISE.

10 (WHEREUPON THE JURY VERDICT WAS PASSED TO THE COURT  
11 AND THE DEFENDANT STOOD)

12 MADAM CLERK, YOU MAY PUBLISH THE VERDICT.

13 CLERK OF COURT: STATE OF SOUTH CAROLINA VERSUS DAVID  
14 ALLEN GOINS. WE THE JURY BY UNANIMOUS CONSENT FIND THE  
15 DEFENDANT, DAVID ALLEN GOINS, AS TO MURDER, GUILTY OF  
16 MURDER. AS TO ASSAULT AND BATTERY WITH INTENT TO KILL, NOT  
17 GUILTY. THIS IS SIGNED BY THE FOREPERSON, JOHN FANTRY, OF THE  
18 PETIT JURY, TODAY'S DATE, JANUARY 7, 2010.

19 LADIES AND GENTLEMEN, IF THIS WAS YOUR VERDICT AND IS  
20 STILL NOW YOUR VERDICT, PLEASE SIGNIFY BY RAISING YOUR RIGHT  
21 HAND.

22 (WHEREUPON JURORS ROSE THEIR RIGHT HANDS)

23 LET THE RECORD REFLECT ALL JURORS RAISED THEIR RIGHT  
24 HAND. VERDICT STANDS AS READ.

1 CLERK OF COURT: ANY ADDITIONAL POLLING REQUESTED OF  
2 THE JURY?

3 MR. HEMLEPP: PLEASE, YOUR HONOR.

4 THE COURT: MADAM CLERK, IF YOU WILL POLL EACH JUROR  
5 INDIVIDUALLY.

6 CLERK OF COURT: AS I CALL YOUR NAME, TELL ME IF THIS STILL  
7 YOUR VERDICT.

8 KENNETH SEGARS, IS STILL NOW YOUR VERDICT?

9 KENNETH SEGARS: YES.

10 CLERK OF COURT: AMANDA SISTARE, WAS THIS YOUR VERDICT  
11 AND IS STILL NOW YOUR VERDICT?

12 AMANDA SISTARE: YES.

13 CLERK OF COURT: CYNTHIA ARMSTRONG, WAS THIS YOUR  
14 VERDICT AND IS STILL NOW YOUR VERDICT?

15 AMANDA SISTARE: YES.

16 CLERK OF COURT: CARLTON BAUGHMAN, WAS THIS YOUR  
17 VERDICT AND IS STILL NOW YOUR VERDICT?

18 CARLTON BAUGHMAN: YES.

19 CLERK OF COURT: LENORA GINYARD, WAS THIS YOUR VERDICT  
20 AND IS STILL NOW YOUR VERDICT?

21 LENORA GINYARD: YES.

22 CLERK OF COURT: JASON JOHNSON, WAS THIS YOUR VERDICT  
23 AND IS STILL NOW YOUR VERDICT?

24 JASON JOHNSON: YES.

1 CLERK OF COURT: JOHN FANTRY, WAS THIS YOUR VERDICT AND  
2 IS STILL NOW YOUR VERDICT?

3 JOHN FANTRY: YES.

4 CLERK OF COURT: ROBERT MILLER, WAS THIS YOUR VERDICT  
5 AND IS STILL NOW YOUR VERDICT?

6 ROBERT MILLER: YES.

7 CLERK OF COURT: SANDRA CRAIG, WAS THIS YOUR VERDICT  
8 AND IS STILL NOW YOUR VERDICT?

9 SANDRA CRAIG: YES.

10 CLERK OF COURT: KAREN COOK, WAS THIS YOUR VERDICT AND  
11 IS STILL NOW YOUR VERDICT?

12 KAREN COOK: YES.

13 CLERK OF COURT: DEBORAH TRAPP FOSTER, WAS THIS YOUR  
14 VERDICT AND IS STILL NOW YOUR VERDICT?

15 DEBORAH TRAPP FOSTER: YES.

16 CLERK OF COURT: MARCIA WEDDING, WAS THIS YOUR VERDICT  
17 AND IS STILL NOW YOUR VERDICT?

18 MARCIA WEDDING: YES.

19 CLERK OF COURT: THANK YOU. LET THE RECORD REFLECT ALL  
20 JURORS STILL SAY THIS IS THEIR VERDICT.

21 THE COURT: ANY ADDITIONAL POLLING REQUESTED?

22 MR. HEMLEPP: NO SIR.

23 THE COURT: THE JURY HAS BEEN POLLED. THE VERDICT WAS  
24 THE UNANIMOUS VERDICT OF THE JURY. ANY POST-TRIAL MOTIONS  
25 AT THIS TIME?

1 MR. HEMLEPP: NO, YOUR HONOR, NOT AT THIS TIME.

2 THE COURT: THE DEFENDANT HAS NO POST-TRIAL MOTIONS?

3 MR. HEMLEPP: I BELIEVE THE ONLY POST-TRIAL MOTION THAT  
4 WOULD BE AVAILABLE TO US WOULD BE A MOTION FOR A NEW TRIAL  
5 BASED UPON IRREGULARITIES IN THE TRIAL. I WOULD MAKE THAT  
6 MOTION IN THE COURT'S DISCRETION.

7 THE COURT: ANY STATEMENT OF IRREGULARITY THAT YOU  
8 WANT TO HIGHLIGHT OR EMPHASIZE AT THIS TIME?

9 MR. HEMLEPP: YOUR HONOR, I WOULD LEAVE THAT IN THE  
10 COURT'S DISCRETION.

11 THE COURT: ALL RIGHT. I FIND THAT THE MATTER OF GUILT OR  
12 INNOCENCE REGARDING THE TWO INDICTMENTS WERE MATTERS FOR  
13 THE JURY. THE TESTIMONY OF THE STATE AND THE DEFENSE WERE IN  
14 SHARP CONTRAST TO EACH OTHER. THE JURY WAS CALLED UPON TO  
15 WEIGH THE EVIDENCE AND TO DETERMINE THE TRUTH OF THE  
16 MATTER BASED ON THE JURY'S EVALUATION AND ASSESSMENT OF  
17 THE EVIDENCE PRESENTED. THE JURY HAS UNANIMOUSLY  
18 CONCLUDED THAT THE DEFENDANT IS GUILTY OF MURDER. AND THE  
19 COURT WILL NOT DISTURB THE JURY'S VERDICT AND I DENY,  
20 RESPECTFULLY DENY THE POST-TRIAL MOTION FOR A NEW TRIAL.

21 MR. HEMLEPP: THANK YOU, YOUR HONOR.

22 THE COURT: LADIES AND GENTLEMEN, I WANT TO THANK YOU  
23 FOR YOUR SERVICES AS JURORS. YOU CAME IN MONDAY AND YOU  
24 HAD NO CLUE AS TO WHAT YOU WOULD BE CALLED UPON TO DO. IT'S  
25 NOT OFTEN THAT YOU ARE CALLED UPON TO SIT IN JUDGMENT OF

1 YOUR FELLOW MAN AND RENDER A DECISION BASED ON THE LAW  
2 AND THE EVIDENCE AS YOU WERE CALLED UPON TO DO. IT'S A  
3 DIFFICULT JOB, DIFFICULT FOR ALL OF US INVOLVED. YOU HAVE  
4 RESPONDED TO THE CALL AND I WANT TO THANK YOU. CERTAINLY  
5 ANYONE WHO HAD TO BE IN COURT WOULD WANT TO HAVE TWELVE  
6 CONSCIENTIOUS JURORS SUCH AS YOU TO LISTEN AND EVALUATE THE  
7 EVIDENCE AND MAKE A FAIR AND BALANCED DECISION BASED ON  
8 THE LAW AND EVIDENCE, AND YOU HAVE DONE THAT. THANK YOU.

9 YOUR ROLE IN THIS MATTER IS CONCLUDED. AS I SAY, YOU  
10 HAVE FOUND SOMEONE GUILTY AND YOUR DUTY TO THE COURT IS  
11 FINISHED. AT THIS POINT WE WILL GO INTO THE SENTENCING PHASE  
12 OF THE MATTER. SO, ALTHOUGH YOUR PART IS FINISHED, YOU MAY  
13 STAY AND OBSERVE IF YOU WOULD LIKE. IF NOT, AND YOU WANT TO  
14 LEAVE, YOU MAY LEAVE AT THIS TIME.

15 THANK YOU FOR YOUR SERVICE.

16 (WHEREUPON JURORS BEGAN TO DISPERSE)

17 LADIES AND GENTLEMEN, ALSO, I WANT TO LET YOU KNOW  
18 THAT THIS CONCLUDES YOUR JURY SERVICE.

19 CLERK OF COURT: WE WILL PUT YOUR CHECK IN THE MAIL  
20 POSSIBLY TOMORROW ALONG WITH A CERTIFICATE OF YOUR SERVICE.  
21 THANK YOU FOR SERVING.

22 THE COURT: I'M NOW READY TO ENTER THE SENTENCING  
23 PHASE.

24 MR. BARFIELD: YOUR HONOR, THE STATE'S READY. YOUR  
25 HONOR, I AM HANDING THE CLERK A SENTENCING SHEET. I WILL

1 FULLY EXPOUND UPON MR. GOINS' CRIMINAL HISTORY. AND AS YOU  
2 ARE WELL AWARE, THERE ARE MANY FAMILY MEMBERS OF THE  
3 VICTIM, MICHAEL ROBERTSON, IN THE COURTROOM TODAY. I WOULD  
4 ASK YOU TO HEAR FROM A REPRESENTATIVE FROM AT LEAST TWO OF  
5 THE FAMILY, WHO I WILL ASK AT THE APPROPRIATE TIME TO STEP  
6 FORWARD AND IDENTIFY THEMSELVES, IF THEY DESIRE TO SPEAK.

7 YOUR HONOR, THE CRIMINAL HISTORY: 1991 FOR TRESPASSING;  
8 1991, BURGLARY, SECOND DEGREE, GOT A SUSPENDED YOUTHFUL  
9 OFFENDER SENTENCE AND FIVE YEARS PROBATION. 1994, AS YOU  
10 HEARD-- WELL, IN 1994, HAD A DISTRIBUTION OF CRACK COCAINE  
11 FIRST AND GOT AN ACTIVE YOUTHFUL OFFENDER SENTENCE. ALSO,  
12 AT THE SAME TIME HAD A BURGLARY, SECOND DEGREE, VIOLENT.  
13 GOT AN ACTIVE YOUTHFUL OFFENDER ON THAT ALSO.

14 1995, MANUFACTURING AND DISTRIBUTING CRACK COCAINE,  
15 SECOND OFFENSE. GOT AN ACTIVE EIGHT-YEAR SENTENCE.

16 THE COURT: I'M SORRY. YOU CAN GO BACK FOUR OR FIVE  
17 YEARS AT ANY POINT.

18 MR. BARFIELD: YES SIR. WELL, HE HAD, AGAIN, IN '91, THE  
19 BURGLARY SECOND, WHICH HE GOT A SUSPENDED YOUTHFUL  
20 OFFENDER SENTENCE ON. THEN IN '94, HE GOT A DISTRIBUTION OF  
21 CRACK, FIRST OFFENSE, AND A BURGLARY SECOND, VIOLENT. ACTIVE  
22 YOUTHFUL OFFENDER ON THOSE SENTENCES.

23 '95, WITH A COURT DATE OF 4/24/96, HE HAD EITHER A  
24 DISTRIBUTION OR A PWID CRACK, SECOND OFFENSE. GOT AN ACTIVE

1 EIGHT-YEAR SENTENCE. IT APPEARS THAT IT WAS IN FACT A  
2 DISTRIBUTION CONVICTION.

3 THEN IN '99, HE HAD THE FAILURE TO STOP FOR A BLUE LIGHT,  
4 GOT NINE MONTHS SUSPENDED TO TWENTY-ONE DAYS, WHICH I  
5 PRESUME WAS TIME SERVED, FOLLOWED BY TWELVE MONTHS  
6 PROBATION. AND THAT'S IT.

7 THE COURT: WHEN WAS HE RELEASED FROM PRISON?

8 MR. BARFIELD: I THINK WE DETERMINED THAT HE GOT OUT IN  
9 '99, AND HE FINISHED HIS PAROLE UP IN 2000, I THINK. SEPTEMBER OF  
10 2000 IS WHEN HE ROLLED OFF PAROLE. BUT HE GOT OUT, I BELIEVE, IN  
11 '99, I THINK. AND THAT'S IT.

12 THE COURT: I'LL BE HAPPY TO HEAR FROM ANY AND EVERYONE  
13 WHO WANTS TO SPEAK, WHATEVER THEY'D LIKE TO SAY TO ME  
14 REGARDING SENTENCING. WE HAVE THE VICTIMS' FAMILY.

15 MR. BARFIELD: YOUR HONOR, WOULD YOU PREFER THAT THEY  
16 STEP UP ONE AT A TIME TO THE RAIL HERE, OR COME TO HERE?

17 THE COURT: THEY CAN COME OVER HERE.

18 MR. BARFIELD: ALL RIGHT. ANYBODY WHO WISHES TO SPEAK,  
19 STEP UP AT THIS TIME.

20 (WHEREUPON PERSONS STEP FORWARD)

21 YOUR HONOR, THIS IS REVEREND EDDIE WOODS, WHO, IT IS MY  
22 UNDERSTANDING, THE BROTHER OF MICHAEL ROBERTSON.

23 THE COURT: REVEREND WOODS, YES SIR.

24 REVEREND WOODS: YES SIR. I AM THE OLDEST ONE IN THE  
25 FAMILY. I JUST WANT TO SAY THAT THE LAST FOUR YEARS AND SIX

1 MONTHS HAVE REALLY BEEN A CHALLENGE TO ME AS A MINISTER  
2 TRYING TO MINISTER TO MY FAMILY AND ENCOURAGE THEM TO BE  
3 PATIENT AND DO WHAT'S RIGHT AND ALLOW JUSTICE TO HAVE ITS  
4 WAY.

5 IT WAS HARD DOING MY BROTHER'S FUNERAL. NOT ONLY THAT,  
6 BUT, YOU KNOW, MONTHS LATER I HAD TO COME BACK AND DO  
7 JAMIE'S FUNERAL. AND THEN MONTHS LATER AFTER THAT, THEIR  
8 DAD DIED. AND MONTHS LATER AFTER THAT, ANOTHER FATHER DIED,  
9 TOO, AS WELL. SO, THIS HAVE BEEN A CHALLENGE FOR ME AS A  
10 MINISTER.

11 AS I STAND HERE I WANT TO SAY MY HEART ACHES. MY HEART  
12 ACHES BECAUSE NOT ONLY DID WE LOST A BROTHER, BUT MICHAEL'S  
13 KIDS LOST A FATHER. MY NEPHEW AND NIECES, THEY LOST AN  
14 UNCLE.

15 THE COURT: ARE HIS CHILDREN HERE?

16 REVEREND WOODS: YES SIR, SOME OF THEM ARE HERE. NOT  
17 ONLY MY HEART ACHES BECAUSE AS I LOOK OVER HERE AND SEE MR.  
18 GOINS, YOUR PARENTS WILL LOSE A SON BECAUSE OF THE SYSTEM.  
19 YOUR KIDS WILL LOSE A FATHER BECAUSE YOU WILL BE IN THE  
20 SYSTEM. YOUR NEPHEWS AND NIECES WILL LOSE A UNCLE BECAUSE  
21 YOU ARE IN THE SYSTEM. MY HEART ACHES BECAUSE WE ALL LOST IN  
22 THIS SITUATION.

23 I TRULY SAY YOU ARE FORGIVEN. THERE IS NO ANGER IN MY  
24 HEART. I TRY TO PRACTICE WHAT I PREACH. I DO HOPE AND PRAY  
25 THAT MY FAMILY MEMBERS CAN FIND FORGIVENESS IN THEIR HEART

1           AND FORGIVE YOU. I DO HOPE AND PRAY AT ONE POINT IF YOU HAVE  
2           NOT, THAT YOU WOULD GO TO THE CREATOR AND AS THE CREATOR,  
3           TO FORGIVE YOU.

4                   AND MOST OF ALL, WHEN THE CREATOR FORGIVE YOU, MY  
5           BROTHER, I PRAY AND I ASK THAT YOU FORGIVE YOURSELF, TOO, AS  
6           WELL. MY PRAYERS WILL BE WITH YOU AND YOUR FAMILY.

7                   I AM INVOLVED IN THE PRISON SYSTEM. SOME YEARS AGO I DID  
8           TIME. EIGHTEEN YEARS OLD, THE PRISON SYSTEM HAD ME. AT  
9           EIGHTEEN YEARS OLD I WENT IN THE PRISON SYSTEM. COMMITTED A  
10          ARMED ROBBERY JOB AT THE AGE OF EIGHTEEN YEARS OLD. I DID SIX  
11          YEARS. AND WHEN I CAME OUT OF PRISON BACK IN 1982, I CAME OUT  
12          FREE AND I GAVE A TRIAL SERMON AT THE PRISON AT WATERREE  
13          CORRECTIONAL INSTITUTION.

14                   WHEN I WAS RELEASED BACK IN 1983, '82, I WENT BACK IN 1983,  
15          AS A VOLUNTEER CHAPLAIN WITH THE SOUTH CAROLINA  
16          DEPARTMENT OF CORRECTIONS. SO, THEY KNOW ME IN THE PRISON  
17          SYSTEM. DON'T BE SURPRISED IF YOU SEE ME IN THE PRISON SYSTEM  
18          BECAUSE I GO ALL OVER.

19                   BUT I WANT YOU TO KNOW IF I GO ALL OVER IN THE PRISON  
20          SYSTEM AND YOU SEE ME, YOU NEED TO TALK WITH ME. I'M THERE TO  
21          ENCOURAGE YOU, TO MINISTER UNTO YOU. BECAUSE, AGAIN, YOU  
22          ARE FORGIVEN.

23                   THANK YOU SO KINDLY, YOUR HONOR.

24                   THE COURT: YES SIR.

1 MR. BARFIELD: NEXT WE HAVE BARBARA ROBERTSON, WHO IS  
2 THE VICTIMS' BROTHER.

3 THE COURT: I KNOW THAT EVERYONE WOULD LIKE TO SPEAK  
4 TO THE DEFENDANT, ---

5 BARBARA ROBERTSON: I'M GONNA SPEAK TO YOU.

6 THE COURT: ---BUT WE'RE DEALING WITH SENTENCING. I  
7 ALLOWED REVEREND WOODS SOME LEEWAY, BUT IF YOU ALL WILL  
8 SPEAK TO ME, I WOULD APPRECIATE IT.

9 BARBARA ROBERTSON: OKAY. MY NAME IS BARBARA  
10 ROBERTSON. I'M MICHAEL SISTER. HE WASN'T ONLY LIKE A BROTHER  
11 TO ME, I PRACTICALLY, LIKE, RAISED HIM. AND I KNOW HIM REAL  
12 GOOD AND EVERYTHING AND I KNOW WHAT KIND OF PERSON HE WAS.  
13 AND I CAN SPEAK ON MY BROTHER AND MY SISTER AND MY NEPHEWS  
14 AND NIECES NOW.

15 I MEAN, THIS SITUATION THAT HAPPENED, I MEAN, IT TOOK A  
16 PART OF ME. I KNOW IT DID. I MEAN, WE GOT SICKNESS ALL IN OUR  
17 FAMILY ALL BECAUSE OF THIS. AND TO BE HONEST WITH YOU, YEAH, I  
18 PRAY AND BELIEVE IN THE LORD, TOO.

19 BUT HERE GO, I KNOW, MY BROTHER WASN'T GONNA MAKE IT.  
20 ALL THE DOCTOR TOLD ME IF HE LIVE HE BE A VEGETABLE. AND I  
21 LOOK AT IT LIKE GOD TOOK HIM, BUT IF IT WASN'T FOR THAT BULLET  
22 GOD WOULDN'T HAVE TOOK HIM.

23 BUT JUST BECAUSE GOD TOOK HIM AND EVERYTHING, BECAUSE  
24 I KNOW IF HE WOULD HAVE BEEN ALIVE, HE BEEN A VEGETABLE. HE

1       WOULDN'T WANT TO LIVE THAT LIKE BECAUSE HE WAS A PERSON  
2       WHO GO HERE AND HELP THE COMMUNITY AND STUFF.

3               I KNOW WE GONNA MISS HIM AFTER SO MANY YEARS GO BY  
4       AND NEVER'S THE TIME I NEVER MISS HIM. EVERY FIRST OF THE  
5       MONTH OR EVERY MORNING, I KNOW HE COME TO MY HOUSE. AND TO  
6       JUST HIS KIDS AND STUFF, IT REALLY, IT HURTS ME. AND NOT ONLY  
7       THAT, IT PUT A VEX ON A LOT OF PEOPLE IN MY FAMILY BECAUSE  
8       RIGHT AFTER MY BROTHER DIED, MY DADDY GOT WORD, MY NEPHEW  
9       GOT WORD BECAUSE PEOPLE IN THE STREET WAS ACCUSING MY  
10      NEPHEW, SAYING THAT OH, HE WAS THE CAUSE OF IT AND STUFF. BUT  
11      NO, HE WASN'T.

12             THEN, ALL OF A SUDDEN MY NEPHEW GOT KILLED. THEN ALL OF  
13      A SUDDEN MY DADDY DIED. MY DADDY HAD A HEART ATTACK ON  
14      ACCOUNT OF ALL THIS BECAUSE HE KEPT THE PRESSING THE ISSUE ON  
15      ME, PUTTING A LOT ON ME. HE KEPT SAYING, YOU KNOW THE PEOPLE  
16      DOWN THERE IN FAIRFIELD. I'M NOT FROM DOWN HERE. GO DOWN  
17      THERE AND TELL THEM WHY THEY HAVE BOTHERED THE COURT.

18             AND I WAS TRYING EVERYTHING I CAN. I ALSO BEEN HOUNDING  
19      THE SOLICITORS. I BEEN TALKING TO THE POLICES UP UNTIL. YOU  
20      KNOW WHAT I'M SAYING. I'M JUST TRIED. I'M REAL TIRED. BECAUSE I  
21      LEAVE OUT THIS COURTROOM, TALK TO THESE PEOPLE. AND WHEN I  
22      KEPT TALKING TO THEM, IT WAS HURTING ME BECAUSE I MEAN, I KEPT  
23      TRYING TO EXPLAIN TO THEM, THEY DON'T KNOW HOW IT FEEL TO  
24      LOSE SOMEBODY. I MEAN, PEOPLE HAVE TO WEAR THAT SHOE SO  
25      THEY CAN SAY HOW IT FEELS.

1 I MEAN, I KNOW EVERYBODY IN HERE. BUT YOU KNOW WHAT?  
2 Y'ALL DON'T KNOW HOW IT IS TO LOSE A PART THAT'S REALLY A PART  
3 OF YOU. YOU DON'T KNOW UNTIL YOU GET IT. AND WHEN YOU GET IT,  
4 YOU'LL SEE HOW IT IS. IT HURTS.

5 BUT, YES, I MISS MY BROTHER AND I LOVE HIM. AND I KNOW WE  
6 GONNA ALWAYS MISS HIM BECAUSE AFTER GOING ON, IT'S ALMOST  
7 FOUR AND GOING ON FIVE YEARS I STILL MISS HIM. AND YOU KNOW  
8 WHAT? I ALWAYS CARRY HIS-- HE WILL ALWAYS BE IN MY HEART.  
9 AND I ALWAYS CARRY MY PICTURE BOOK WITH HIM IN IT. I HAVE NO  
10 MORE TO SAY.

11 THE COURT: THANK YOU, MA'AM.

12 MR. BARFIELD: I THINK WE'RE COMPLETE, YOUR HONOR.

13 THE COURT: ANYONE ELSE?

14 (NO RESPONSE)

15 THANK YOU, SOLICITOR.

16 MR. BARFIELD: THANK YOU, YOUR HONOR.

17 THE COURT: COUNSEL, COME UP FOR SENTENCING.

18 MR. HEMLEPP: THANK YOU, YOUR HONOR. WITH ME ARE MY  
19 CLIENT'S FATHER AND HIS STEPMOTHER, WHO HAVE TRAVELED DOWN  
20 FROM PHILADELPHIA FOR THIS. THIS IS HIS SISTER, AKELAH GOINS,  
21 WHO HAS BEEN VERY INVOLVED IN THE DEFENSE OF THIS CASE.

22 HIS HONOR, OF COURSE, HAS HEARD THE FACTS. THE JURY--  
23 THIS WAS A CASE IN WHICH MY CLIENT FROM THE VERY BEGINNING  
24 OF ME BEING APPOINTED BACK IN 2005, HAS TOLD ME A STORY

1           CONSISTENT FOR THAT ENTIRE TIME. AND OF COURSE, THE JURY HAS  
2           HEARD THAT AND HAS MADE THEIR DECISION REGARDING THAT.

3           SO, ANY KIND OF MITIGATING PRESENTATION WITH REGARD TO  
4           THE FACTS OF THIS CASE I THINK WOULD BE INAPPROPRIATE AT THIS  
5           TIME. BUT I WILL LET THE COURT CONSIDER THE FACTS AS THE  
6           COURT HAS HEARD AT THE TRIAL.

7           I WOULD ASK THE COURT TO CONSIDER WITH REGARD TO THE  
8           EVIDENCE IN THIS CASE, MY CLIENT ENTERED INTO THE DECISION TO  
9           GO TO TRIAL. WHILE HE DIDN'T DO IT LIGHTLY, I BELIEVE THAT HE  
10          HAD A MERITORIOUS DEFENSE. I DON'T BELIEVE THAT HE WENT TO  
11          TRIAL AS A MEANS OF DELAY OR AS A MEANS OF NOT ACCEPTING  
12          RESPONSIBILITY. BUT RATHER, WENT TO TRIAL BECAUSE HE HAD A  
13          MERITORIOUS DEFENSE IN THIS CASE. AND I WOULD ASK THE COURT  
14          TO CONSIDER THAT IN SENTENCING.

15          HE IS THIRTY-SIX YEARS OLD. HE IS THE FATHER OF SIX  
16          CHILDREN. HE HAS BEEN GAINFULLY EMPLOYED ALMOST HIS ENTIRE  
17          LIFE. HE IS CURRENTLY WORKING. HE LIVES IN COLUMBIA. HE  
18          WORKS IN ORANGEBURG AT THE TIME FOR A ROOFER. AND HE ALSO  
19          DOES SOME HANDYMAN WORK AND SOME ODD JOBS ON THE SIDE.  
20          ROOFING IS VERY SEASONAL IN ITS WORK.

21          HIS HONOR KNOWS THAT NOWADAYS WITH THE ECONOMY AS IT  
22          IS, ESPECIALLY IN THE MIDLANDS, GETTING WORK AT ALL IS VERY  
23          DIFFICULT FOR YOUNG MEN LIKE MY CLIENT, ESPECIALLY WHO HAVE  
24          A RECORD AND WHO HAVE GOTTEN THEIR GED.

1 THE SITUATION THAT OCCURRED, THAT RESULTED IN THIS  
2 CONVICTION, YOUR HONOR, EVEN WHEN ONE CONSIDERS HIS RECORD,  
3 IT IS CLEAR FROM HIS RECORD THAT THIS CONVICTION IS AN  
4 ABERRATION. HE HAS NO RECORD OF VIOLENCE. HE HAS NO RECORD  
5 OF GUN CONVICTIONS. HE HAS NO RECORD OF THREATENING  
6 CONVICTIONS. HE ADMITS THAT HE HAD A DRUG PROBLEM BACK  
7 WHEN HE WAS YOUNGER AND IN FACT HAS TURNED HIMSELF AROUND  
8 FROM THAT PERIOD OF TIME. AND HAS ATTEMPTED TO MAKE  
9 HIMSELF A GOOD AND SOLID CITIZEN OF SOUTH CAROLINA AND A  
10 CONTRIBUTION TO SOUTH CAROLINA.

11 I'D ASK THE COURT TO TAKE ALL OF THAT INTO CONSIDERATION  
12 AND TO GIVE MY CLIENT SOME HOPE. TO GIVE MY CLIENT SOME HOPE  
13 BY GIVING HIM A SENTENCE THAT IS NOT A MANDATORY LIFE  
14 SENTENCE. I WOULD ASK THE COURT TO CONSIDER SOMETHING IN  
15 THE LOWER END, EVEN PERHAPS AS LOW AS THIRTY YEARS. THIRTY  
16 YEARS TO MY CLIENT, HE RECOGNIZES THAT THAT IS A NO-PAROLE  
17 SENTENCE, THAT THAT IS A SUBSTANTIAL SENTENCE.

18 A LIFE SENTENCE WOULD BE A SENTENCE WITHOUT HOPE. A  
19 LIFE SENTENCE WOULD BE THE ULTIMATE. AND IN THIS CASE, YOUR  
20 HONOR, THIS INCIDENT WAS AN ABERRATION IN THE HISTORY OF MY  
21 CLIENT'S LIFE.

22 I WOULD ASK THE COURT TO CONSIDER HEARING FROM MY  
23 FAMILY AS WELL AS FROM MY CLIENT BEFORE SENTENCING.

24 THE COURT: YES SIR.

1 DUBBIE VINSON: HELLO, YOUR HONOR. MY NAME IS DUBBIE  
2 VINSON, DAVID GOINS' FATHER. I TRAVELED DOWN HERE FROM  
3 PHILADELPHIA JUST TO HEAR THE CASE. I WASN'T FAMILIAR WITH  
4 ANYTHING OF IT AT ALL. BUT DAVID DID TALK TO ME A LITTLE BIT  
5 ABOUT IT.

6 FIRST OF ALL, I WOULD LIKE TO CONVEY MY CONDOLENCE TO  
7 THE ROBERTSON FAMILY, WHO I DON'T KNOW AT ALL, SINCE I'M NOT  
8 FROM DOWN HERE.

9 AND MY SON DID TALK TO ME WITH SORROW. HE SAID HE WAS  
10 SORRY ABOUT WHAT HAPPENED AND IF HE COULD CHANGE IT, HE  
11 WOULD. SO, IF YOU WOULD FEEL IT IN YOUR HEART, YOUR HONOR, TO  
12 GIVE HIM A LITTLE LIGHTER SENTENCE AS POSSIBLE, WHATEVER YOU  
13 COULD DO WOULD BE VERY APPRECIATED. THANK YOU.

14 THE COURT: HOW LONG HAS IT BEEN SINCE HE LIVED WITH  
15 YOU?

16 DUBBIE VINSON: IT'S BEEN A WHILE.

17 THE COURT: DID HE GROW UP WITH YOU?

18 DUBBIE VINSON: NO. PARTIALLY, AND THEN HE CAME DOWN  
19 HERE.

20 THE COURT: HE CAME HERE AT WHAT AGE?

21 DAVID VINSON: I THINK IT WAS ABOUT FIFTEEN, FOURTEEN,  
22 FIFTEEN YEARS OLD.

23 THE COURT: AND HOW INVOLVED HAVE YOU BEEN IN HIS LIFE  
24 SINCE HE'S BEEN HERE?

1 DUBBIE VINSON: WELL, I TALKED TO HIM OCCASIONALLY ON  
2 THE PHONE. I COME DOWN MAYBE ONCE A YEAR.

3 THE COURT: THIS IS YOUR HOME AS WELL?

4 DUBBIE VINSON: NO.

5 THE COURT: WHERE ARE YOU FROM?

6 DUBBIE VINSON: BORN AND RAISED IN PHILADELPHIA.

7 THE COURT: WHAT'S YOUR NAME?

8 DUBBIE VINSON: DUBBIE VINSON.

9 THE COURT: DUBBIE VINSON?

10 DUBBIE VINSON: YES SIR.

11 THE COURT: MR. VINSON, IS THERE ANYTHING ELSE YOU WANT  
12 TO TELL ME?

13 DUBBIE VINSON: NOTHING ELSE I CAN THINK OF RIGHT NOW.

14 THE COURT: THANK YOU.

15 AKELAH GOINS: (TEARFULLY) EXCUSE ME. MY NAME IS  
16 AKELAH GOINS. AND I WANT TO BEG AND ASK YOU TO HAVE MERCY  
17 ON MY BROTHER, IF YOU CAN IN ANY WAY, PLEASE.

18 DAVID IS NOT A BAD GUY. HE'S REALLY NOT. AND I KNOW  
19 THERE'S NOT ANYTHING YOU CAN DO OTHER THAN SENTENCE HIM.  
20 BUT PLEASE HAVE MERCY ON HIM, PLEASE.

21 THE COURT: MS. GOINS, DO YOU LIVE DOWN HERE?

22 AKELAH GOINS: YES, I DO.

23 THE COURT: IN WINNSBORO?

24 AKELAH GOINS: UH-HUH.

1 MR. HEMLEPP: MS. GOINS HAS BEEN INVOLVED IN THE CASE  
2 FROM THE VERY BEGINNING IN HELPING TO COORDINATE. MY CLIENT  
3 DIDN'T HAVE A PHONE AND IT WAS DIFFICULT FOR ME IN PREPARING  
4 FOR TRIAL. MS. GOINS WAS COOPERATIVE AND HELPFUL WITH  
5 COMMUNICATIONS AND TRANSPORTATION AND ALL THAT SORT OF  
6 THING.

7 THE COURT: ANYTHING ELSE, MS. GOINS?

8 AKELAH GOINS: NO SIR.

9 THE COURT: THANK YOU. YES SIR, MR. GOINS.

10 DAVID ALLEN GOINS: YES SIR, YOUR HONOR. I WOULD JUST  
11 BASICALLY LIKE TO SAY THAT I WAS SORRY FOR WHAT HAPPENED.  
12 AND YOU KNOW, I FEEL IF IT WAS UP TO ME, I WISH I COULD TAKE IT  
13 BACK. AND I WAS HOPING THAT, YOU KNOW, THAT YOU COULD JUST  
14 GIVE ME AS LIGHT A SENTENCE AS POSSIBLE, FOR LENIENCY, IS WHAT  
15 I ASK YOUR HONOR.

16 THE COURT: WHAT IS IT ABOUT THE SENSE OF POWER OF  
17 HAVING A GUN IN YOUR HAND?

18 DAVID ALLEN GOINS: YOUR HONOR, I DIDN'T HAVE ANY SENSE  
19 OF POWER OF HAVING A GUN IN MY HAND, YOUR HONOR.

20 THE COURT: ANYTHING ELSE, MR. GOINS?

21 DAVID ALLEN GOINS: YET AGAIN, YOUR HONOR, I WOULD JUST  
22 LIKE TO SAY I'M SORRY. AND I FEEL BAD ABOUT IT. AND I HOPE, YOU  
23 KNOW, I WISH THINGS COULD HAVE TURNED OUT DIFFERENT.

24 THE COURT: ANYTHING ELSE AT THIS TIME?

25 MR. HEMLEPP: NO, THANK YOU, YOUR HONOR.

1 THE COURT: ANYTHING ELSE FROM THE STATE?

2 MR. BARFIELD: NO SIR.

3 MR. HEMLEPP: I APOLOGIZE, YOUR HONOR. I'M SORRY, YOUR  
4 HONOR.

5 THE COURT: YES MA'AM?

6 MARGARET VINSON: YOUR HONOR, I'M MARGARET VINSON.

7 THE COURT: MARGARET VINSON?

8 MARGARET VINSON: YES.

9 THE COURT: YES, MS. VINSON.

10 MARGARET VINSON: I'M DAVID'S STEPMOTHER. BUT HE'S LIKE A  
11 SON THAT I BIRTHED MYSELF BECAUSE I TOOK CARE OF HIM FOR  
12 MANY YEARS UNTIL HE DECIDED TO COME BACK HERE. I'M REALLY  
13 SORRY FOR WHAT HAPPENED AND I'M SORRY FOR THE ROBERTSON  
14 FAMILY AS WELL, BECAUSE I'VE LOST SOMEONE, TOO, BUT NOT IN A  
15 VIOLENT WAY LIKE THAT. BUT I KNOW WHAT IT'S LIKE TO LOSE A  
16 YOUNGER BROTHER.

17 BUT WHAT I'M SAYING IS DAVID IS A GOOD BOY. HE REALLY IS  
18 A GOOD CHILD AND I LOVE HIM SO MUCH. I REALLY DO. I DIDN'T  
19 WANT HIM TO COME BACK HERE BUT HE WANTED TO. I WANTED HIM  
20 TO STAY WITH US IN PHILADELPHIA, YOU KNOW, WHERE HE COULD  
21 GET A BETTER JOB AND GET A BETTER EDUCATION, YOU KNOW.

22 I WORKED FOR THE POLICE DEPARTMENT FOR TWENTY YEARS  
23 MYSELF. I KNOW A LOT OF THINGS THAT THEY WERE TALKING  
24 ABOUT. SO, YOU KNOW, IF YOU COULD JUST NOT SENTENCE HIM FOR  
25 SUCH A LONG TIME, I WOULD APPRECIATE THAT.

1           YOU KNOW, HE HAS FOUR SISTERS IN PHILADELPHIA. HE'S, LIKE,  
2           JUST, I NEED HIM BECAUSE I HAVE ARTHRITIS SO BAD AND HE DID  
3           THINGS FOR ME. AND I WISH YOU WOULD JUST GIVE HIM A MINIMUM  
4           SENTENCE.

5           THE COURT: THE MINIMUM SENTENCE IS A LONG TIME.

6           MARGARET VINSON: I'M SORRY, YOUR HONOR. I DON'T KNOW  
7           WHAT IT IS. I DON'T KNOW, BUT....

8           THE COURT: THE LAW SAYS THAT A PERSON WHO IS CONVICTED  
9           OF MURDER MUST BE PUNISHED BY DEATH, BY IMPRISONMENT FOR  
10          LIVE, OR BY A MANDATORY, MINIMUM TERM OF IMPRISONMENT FOR  
11          THIRTY YEARS. CORRECTION: IN ORDER FOR DEATH TO BE  
12          APPLICABLE, THERE HAS TO BE CERTAIN AGGRAVATING  
13          CIRCUMSTANCES THAT WERE NOT PRESENT HERE.

14          SO, PUNISHABLE BY IMPRISONMENT FOR LIFE OR BY A  
15          MANDATORY, MINIMUM TERM OF IMPRISONMENT FOR THIRTY YEARS,  
16          WHICH MEANS THIRTY YEARS TO A THOUSAND YEARS, OR LIFE  
17          IMPRISONMENT.

18          YOU DON'T NEED TO CLARIFY WHAT YOU SAY. I KNOW YOU  
19          DON'T UNDERSTAND BASED ON PHILADELPHIA.

20          MARGARET VINSON: I DO, I DO. I JUST WISH YOU WOULD JUST  
21          SHOW HIM SOME MERCY, PLEASE. SHOW HIM SOME MERCY, PLEASE.  
22          PLEASE.

23          THE COURT: WELL, THE JURY HAS SPOKEN. IT'S A CASE IN  
24          WHICH THERE WAS OVERWHELMING EVIDENCE OF GUILT. THEY  
25          WEIGHED THE EVIDENCE AND THE JURY CONCLUDED THAT MR. GOINS

1 WAS GUILTY OF MURDER. THE MURDER THAT MR. GOINS IS GUILTY  
2 OF, THE MURDER THAT PRETTY MUCH WAS AN EXECUTION-STYLE  
3 MURDER. SO, WHEN YOU ASK FOR MERCY, I HAVE TO CONSIDER THE  
4 MERCY THAT YOU'RE ASKING FOR AND BALANCE IT WITH THE MERCY  
5 THAT HE SHOWED TOWARD THE VICTIM IN THIS CASE IN SHOOTING  
6 HIM IN THE HEAD. THOSE THINGS HAVE TO BE BALANCED TO SOME  
7 EXTENT.

8 I DON'T KNOW WHY IT'S SUCH THAT-- IT GOES BACK TO THE  
9 QUESTION THAT I HAD OF MR. GOINS WHERE HE SAID HE CAN'T  
10 ANSWER OR DOESN'T WANT TO CONSIDER ANSWERING; THAT IS, WHAT  
11 IS IT ABOUT HAVING A GUN IN YOUR HAND THAT WOULD GIVE YOU  
12 SOME SENSE OF POWER AND AUTHORITY THAT WOULD LEAD YOU TO  
13 IN EFFECT EXECUTE SOMEONE BY SHOOTING THEM IN THE BACK OF  
14 THE HEAD. THAT'S THE VERSION OF THE STORY THAT THE JURY  
15 UNANIMOUSLY AGREED TO HAPPENED IN THIS CASE.

16 IT'S A TRAGEDY, A TRAGEDY FOR THE VICTIM'S FAMILY, AND A  
17 TRAGEDY FOR YOUR OWN FAMILY. AND IT GENERALLY TURNS OUT,  
18 THE FAMILY SEEMS TO END UP SUFFERING MORE THAN THE PERSON  
19 WHO ACTUALLY DOES THE CRIME.

20 MR. GOINS, IT IS THE SENTENCE OF THE COURT THAT YOU BE  
21 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A  
22 TERM OF THIRTY-FIVE YEARS. GIVE CREDIT FOR ANY TIME THAT HE'S  
23 SERVED TO THIS POINT. GOOD LUCK TO YOU, SIR.

24 MR. HEMLEPP: THANK YOU, YOUR HONOR.

1 THE COURT: I WANT TO ADDRESS YOU ALL. YOU ALL HAVE  
2 BEEN IN COURT AND IT'S BEEN A TOUGH SITUATION. BUT YOU ALL  
3 HANDLED YOURSELF WELL. AND MY CONDOLENCES GO OUT TO  
4 EVERYONE WHO HAS BEEN NEGATIVELY IMPACTED BY THIS  
5 SITUATION.

6 WITH THAT, COURT IS ADJOURNED UNTIL TEN O'CLOCK.

7 (WHEREUPON COURT WAS ADJOURNED AT 9:15 P.M.)

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## 1 CERTIFICATE

2 I, THE UNDERSIGNED PHYLLIS S. BARRETT, OFFICIAL COURT REPORTER FOR  
3 THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE  
4 FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD  
5 OF THE TRIAL HELD IN THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE  
6 COURT OF GENERAL SESSIONS FOR THE SIXTH JUDICIAL CIRCUIT, FAIRFIELD  
7 COUNTY, ON THE 4TH, 5TH, 6TH, AND 7TH DAYS OF JANUARY, 2010.

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

10  
11  
12   
PHYLLIS S. BARRETT

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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.

David Allen Goins,

Appellant.

---

Appeal From Fairfield County  
Clifton Newman, Circuit Court Judge

---

Unpublished Opinion No. 2012-UP-331  
Submitted May 1, 2012 – Filed May 30, 2012

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**APPEAL DISMISSED**

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Appellate Defender Tristan M. Shaffer, of Columbia,  
for Appellant.

Attorney General Alan Wilson, Chief Deputy  
Attorney General John W. McIntosh, Senior  
Assistant Deputy Attorney General Salley W. Elliott,  
and Assistant Deputy Attorney General Donald J.

Zelenka, all of Columbia; and Solicitor Douglas A. Barfield Jr., of Lancaster, for Respondent.

**PER CURIAM:** David Allen Goins appeals his convictions of murder and assault and battery with intent to kill, arguing the circuit court erred in failing to charge the jury on the lesser-included offenses of voluntary and involuntary manslaughter and that the State improperly argued in its closing that the law allows a jury to find malice from the use of a deadly weapon. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.<sup>1</sup>

**APPEAL DISMISSED.**

**PIEPER, KONDUROS, and GEATHERS, JJ., concur.**

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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June 15, 2012

The Honorable Betty Jo Beckham  
PO Drawer 299  
Winnsboro SC 29180-0299

### REMITTITUR

Re: The State v. Goins, David Allen  
Lower Court Case No. 2005GS2000348, 2005GS2000347  
Appellate Case No. 2010-150547

Dear Ms. Beckham:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

*V. Claire Allen, Deputy Clerk*  
CLERK

cc: Donald J. Zelenka  
Riley Johnson Maxwell  
William Michael Hemlepp, Jr.  
Tristan M Shaffer

**FORM 5**

STATE OF SOUTH CAROLINA

COUNTY OF Fairfield

David Allen Goins SCDC# 210520  
Full name and prison number (if any) of Applicant.

2017 SEP -6 P 1:28 IN THE COURT OF COMMON PLEAS

FAIRFIELD COUNTY  
CLERK OF COURT  
JO BECKHAM

2012 - CP. 20.362

V.

State of South Carolina

# APPLICATION FOR

## POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lee Correctional Inst.
2. Name and location of Court which imposed sentence General Sessions/Fairfield
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: H840021(DOA-7-5-05) Assault and Battery
  - (a) with Intent to kill
  - (b) H840032(DOA-7-5-05) Murder
  - (c)
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) January 7, 2010
  - (b) Sentence to 35 years

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) ☒ after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. June 4, 2012
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2012-UP-331
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) Prosecutorial Misconduct
- (c) Ineffective Assistance of Appellant Counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10): Counsel failed to take reasonable steps to investigate all  
 (a) avenues of defense. Failure to make timely objections and a proper defense.  
 (b) Prosecutor inflicted the trial with such unfairness and multiple violations.  
 (c) Counsel failed to take reasonable steps to investigate all avenues of defense.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Issues were not preserved at trial
- (b) Issues were not preserved at trial
- (c) Issues were not preserved at trial
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? yes \_\_\_\_\_
- (c) your sentencing? yes \_\_\_\_\_
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A \_\_\_\_\_
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- i. Trial \_\_\_\_\_
- ii. Sentencing \_\_\_\_\_
- iii. Appeal \_\_\_\_\_
19. State clearly the relief you seek in filing this application:
- New Trial \_\_\_\_\_
20. Are you now under sentence from any other court that you have not challenged?
- No \_\_\_\_\_

STATE OF SOUTH CAROLINA )

VERIFICATION

County of Fairfield )I, David A. Goins

, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

David Goins

SWORN to and subscribed before me this 4  
day of Sept, 2012.

Dona Jones (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

2012 SEP -6 P 1:29  
FAIRFIELD COUNTY  
CLERK OF COURT  
BETTY JO BECKHAM

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

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

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

*David A. Goins*  
Applicant

SWORN or affirmed to and subscribed before me this

4 day of Sept, 2012.  
*Delma Suris*  
Notary Public

My Commission Expires: 11-4-2015

2012 SEP -6 P 1:29  
FAIRFIELD COUNTY  
CLERK OF COURT  
BETTY JO BECKHAM

|                             |   |                              |
|-----------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA     | ) | IN THE COURT OF COMMON PLEAS |
|                             | ) | SIXTH JUDICIAL CIRCUIT       |
| COUNTY OF FAIRFIELD         | ) |                              |
|                             | ) |                              |
|                             | ) | 2012-CP-20-0362              |
| David Allen Goins, #210510, | ) |                              |
|                             | ) |                              |
| Applicant,                  | ) |                              |
|                             | ) |                              |
| v.                          | ) | RETURN                       |
|                             | ) |                              |
| State of South Carolina,    | ) |                              |
|                             | ) |                              |
| Respondent.                 | ) |                              |

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The Respondent, making its Return to the application for post conviction relief (PCR) filed September 6, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Fairfield County Clerk of Court. The Applicant was indicted at the July 2005 term of the Fairfield County Grand Jury for assault and battery with intent to kill (2005-GS-20-0347) and murder (2005-GS-20-0348). The Applicant was represented by Tristan M. Shaffer, Esquire. On January 4-7, 2010, the Applicant proceeded to a jury trial. The jury returned a verdict of guilty for murder. The Applicant was sentenced by the Honorable Clifton Newman to confinement for a period of thirty-five (35) years for murder.

A timely Notice of Appeal was filed on the Applicant's behalf by Tristan M. Shaffer, Esquire. Following the submission of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed the appeal. State v. Goins, Op. No. 2012-UP-331 (filed May 30, 2012). The Remittitur was issued on June 15, 2012.

Attached herewith and incorporated herein are the records of the Fairfield County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. Ineffective assistance of trial counsel, in that;
  - a. Counsel failed to take reasonable steps to investigate all avenues of defense,
  - b. Counsel failed to make timely objections and a proper defense,
2. Ineffective assistance of appellate counsel, in that;
  - a. Counsel failed to take reasonable steps to investigate all avenues of defense,
3. Prosecutorial misconduct, in that;
  - a. "Prosecutor inflicted the trial with such unfairness and multiple violations."

## III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional

judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

## V.

Applicant also alleges prosecutorial misconduct. Respondent first submits that prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived

this allegation as grounds for relief. Regardless, it is an Applicants' burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

Second, Respondent submits that the Applicant has failed to explain with any specificity the grounds upon which this claim is based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985).

Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This allegation is so vague that it is impossible for the State to respond. Since the Applicant has not made the minimum *prima facie* showing, the Court should dismiss this ground for failure to comply with the Uniform Post-Conviction Procedure Act.

VI.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE  
Assistant Attorney General

By: Karlene Perry for su  
ATTORNEYS FOR RESPONDENT

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

June 25, 2013.

STATE OF SOUTH CAROLINA  
COUNTY OF FAIRFIELD

)  
)

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

David Allen Goins,

)  
)

2012-CP-20-0362

Applicant,

)  
)

v.

)  
)

**CERTIFICATE OF SERVICE BY MAIL**

State of South Carolina,

)  
)

Respondent.

)  
)

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

Robert L. Hartman, III, Esquire  
P.O. Drawer 450  
Ridgeway, South Carolina 29130



Anne A. Mueller

Legal Assistant for the Respondent

DATED this 25<sup>th</sup> day of June, 2013.

1                   STATE OF SOUTH CAROLINA

2                   COURT OF COMMON PLEAS

3                   COUNTY OF FAIRFIELD

4                   2012-CP-20-0362

5     David Goins

6     vs.

7     State of South Carolina

8

9                   Lancaster, South Carolina

10                  July 12, 2016

11                  Before the Honorable Markley Dennis

12

13                               APPEARANCES

14     For the State:   Patrick Schmeckpeper

15     For the Applicant: Ernest Spong

16

17     Reported by:       Michael C. Watkins

18                               Official Court Reporter

19

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|   |                   |    |
|---|-------------------|----|
| 1 | Michael Hemlepp:  | 3  |
| 2 | David Goins:      | 35 |
| 3 | Fleming Anderson: | 39 |
| 4 | Michael Hemlepp:  | 43 |
| 5 | Certificate:      | 53 |

6

7

NO EXHIBITS

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1 THE COURT: Good morning. This is your application,  
2 it's case number 2012-CP-20-362. You've talked with your  
3 lawyer with this process?

4 THE APPLICANT: Yes, sir.

5 THE COURT: And you're prepared to go forward, sir?

6 THE APPLICANT: Yes, sir.

7 THE COURT: Okay. Very well. You're ready to go, Mr.  
8 Spong?

9 MR. SPONG: Yes, sir, Your Honor.

10 THE COURT: The State is ready?

11 MR. SCHMECKPEPER: Yes, Your Honor.

12 THE COURT: You may call your first case, please, sir.

13 MR. SPONG: Your Honor, we would call Michael Hemlepp.

14 The witness, MICHAEL HEMLEPP, was first duly sworn and  
15 Testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SPONG:

18 Q Mr. Hemlepp, we're here, I guess as you know, on an  
19 application for Mr. Goins for a PCR on a trial that you  
20 represented him in. Have you had an opportunity to review  
21 the transcript to your satisfaction and your file in this  
22 matter?

23 A I did review the transcript. I actually had a  
24 problem with the file and I couldn't locate it, because at  
25 the time of this trial I was not practicing law. I was

## TESTIMONY OF MICHAEL HEMLEPP

1 actually working as the executive director of the State  
2 Trial Lawyers Association and I have since that time moved  
3 several times, so I did retain the file but I couldn't  
4 locate it. I did find the file yesterday and I was able  
5 to look through it and that helped me greatly.

6 Q Just kind of as a preliminary matter, could you give  
7 us and the Court --

8 MR. SPONG: I don't know if the Court has had an  
9 opportunity to read the transcript or not.

10 THE COURT: Not yet.

11 Q Could you just tell us in general how this case came  
12 to you, what it was about in general? It was a murder  
13 trial.

14 A This is a murder that occurred in Fairfield County,  
15 it was an alleged murder in Fairfield County that occurred  
16 in 2005. The victim was a young man named Michael  
17 Robertson. The Robertson family I had known, because  
18 prior to being a private lawyer I was a prosecutor and I  
19 had prosecuted several members of that family so I knew  
20 them, and Fairfield County was a very small county and  
21 everybody knows each other. My recollection is that David  
22 was arrested and my recollection is that he had a lawyer  
23 before me, that I was actually a second lawyer for some  
24 reason, but I was appointed to this case some time late  
25 2000, probably late 2005 or early 2006. I remember

## TESTIMONY OF MICHAEL HEMLEPP

1 specifically that one of the first things that you have to  
2 deal with -- he had a very unusual term to his bond, the  
3 bond provision barred him from Fairfield County. He  
4 actually had to move to Richland County, I think, in part  
5 because the victim and his family -- there was fear there  
6 would be retaliation against Mr. Goins and the bond judge  
7 wanted to get him out of the county to make things calm  
8 down. I remember I had a hearing in circuit court,  
9 because my office at the time was in Chester, and  
10 Fairfield County was in between Richland County and  
11 Chester so I didn't want him violating his bond coming to  
12 see me and talking to me and we were able to successfully  
13 do that. I remember that during the term of his bond --  
14 the trial was long after the arrest.

15 Q Right. Would you agree in 2010, I think, was the  
16 trial?

17 A Yes, the trial was June 4th of 2010.

18 Q And he was charged with --

19 A He was charged with murder and assault and battery  
20 with intent to kill. He was charged with murder because  
21 Michael Robertson -- the allegation was that Michael  
22 Robertson had been shot by Mr. Goins and that his brother,  
23 Jamie Robertson, also had been shot but did not die. In  
24 between the arrest and the trial Jamie Robertson, the  
25 other victim, was the victim of another murder that

## TESTIMONY OF MICHAEL HEMLEPP

1 happened in the county from another circumstance of --

2 Q Okay. And you would agree, again just sort of giving  
3 general information, that basically this was an incident  
4 that occurred between a group of people who knew each other  
5 and one fellow was shot and killed and another fellow was  
6 shot, but there really weren't any witnesses to the actual  
7 shooting itself other than Mr. Goins. There were people  
8 who were witnesses immediately around the shooting  
9 immediately before and immediately after, but as to the  
10 shooting itself there wasn't much witnesses other than my  
11 client.

12 A I really don't remember specifics about negotiations  
13 with the solicitor as far as any plea negotiations, but I  
14 do remember that when Jamie Robertson was the victim of a  
15 shooting, frankly not to be crude, my case got  
16 significantly better, because the one person who would  
17 testify for the State that Mr. Goins came and  
18 intentionally did this had died. There really weren't  
19 that many eye witnesses. There were lots of statements  
20 from people who say, "I heard it and then went over and I  
21 saw Michael Robertson on the ground," or, "I saw Michael  
22 Robertson at the hospital and he had been shot," or things  
23 along those lines. There was some witnesses who  
24 testified -- because Mr. Goins after the gun fired ran  
25 from the scene and there was some testimony about that,

## TESTIMONY OF MICHAEL HEMLEPP

1 his flight, but not people who were eye witnesses to the  
2 event.

3 Q All right. And there were some people in the house of  
4 the home of the victim that ran out afterwards --

5 MR. SCHMECKPEPER: I apologize, I don't mean to  
6 interrupt, I can't hear you.

7 (Break in proceedings.)

8 Q So that's kind of the general facts of this trial was  
9 that there had been a murder, somebody else had been shot,  
10 there were limited witnesses to the actual shooting and  
11 there was a trial.

12 A There was testimony that the victim and Mr. Goins and  
13 David had been together earlier that day, that they all  
14 knew each other, that they all --

15 Q We can kind of get into the details later, if I can  
16 just go into some of the preliminaries first. Do you  
17 recall -- and I know it has been a long time, but do you  
18 recall what your trial preparation was?

19 A When I was originally appointed -- when I was  
20 originally appointed I practiced law in Chester, which I  
21 had two partners, Milton Hamilton and Greg Delleney, but I  
22 lived in Fairfield County so I was on the Fairfield County  
23 appointment list. After I left that firm I went to be the  
24 executive director for the Association of Justice, so at  
25 the time for this trial, for several years prior to this

## TESTIMONY OF MICHAEL HEMLEPP

1 trial I was not practicing law so I wasn't working in a  
2 law office. And there was a little bit of an ethical -- I  
3 had a little bit of an ethical -- it wasn't a dilemma but  
4 an issue that my staff at the trial lawyers didn't have  
5 the same ethical duties and confidentiality that a law  
6 office would have, so I kept everything from them. Most  
7 of the discussion, talking to witnesses, was done back in  
8 2006 and 2007 and I had gone over the statements with  
9 them. I really don't remember all of the specifics of  
10 that. I do remember being at the Association for Justice  
11 in Columbia with this file and preparing, and my method  
12 for preparing a case is I would go to the conference room  
13 and I would tear the whole file apart and then I would put  
14 it back together again.

15 Q Would it be fair to say that because the case laid  
16 dormant for several years, and as you said, you had done  
17 your kind of initial prep back in 2006, that, in fact, the  
18 call of this to trial somewhat surprised everybody?

19 A Yes.

20 Q Including you?

21 A Yes.

22 Q And then at the time it was called you were having  
23 some particular health problems and you made a motion to  
24 have it continued; is that correct?

25 A I did.

## TESTIMONY OF MICHAEL HEMLEPP

1 Q Could you elaborate on your motion?

2 A Back in 2010 I was a competitive strength athlete for  
3 many years, I was a power lifter and a strong man and had  
4 done fairly well in that and I was kind of known for that.  
5 The trial was called for trial on January 4th. On January  
6 2nd, which was the very first time in 2010 for me to go to  
7 the gym, I went with my brand new coach that I was working  
8 with and I tore my tricep off the bone, it totally  
9 ruptured. And I've had sports injuries before and I have  
10 had two prior surgeries before, this one was the most  
11 painful, and my arm swelled up. I called my orthopedic  
12 doctor in Columbia who at the time was Dr. Ekman, he gave  
13 me an emergency appointment, and the emergency is that  
14 when you rupture a muscle or a tendon it starts to track  
15 pain, so there is a window in which you have to have  
16 surgery and beyond that window it is not repairable. So I  
17 had an appointment for the week of the trial, and I made  
18 the motion with Judge Newman based upon that.

19 Q And you were in pain?

20 A I was in pain.

21 Q And were you on medication?

22 A I was. I think I was probably on a lot of Advil,  
23 because I hadn't gotten to a doctor for a prescription and  
24 I generally don't like taking medicine, but I don't know  
25 if I had any other type of medicine.

## TESTIMONY OF MICHAEL HEMLEPP

1 Q But you made the motion and it was denied.

2 A It was denied. Judge Newman told me that he would  
3 give me some consideration for getting to the doctor and  
4 if I had a MRI scheduled, which I did.

5 Q Do you know at that point in January 4th, I think that  
6 was the date we decided this is, do you know how long it  
7 had been since you had seen your client?

8 A I don't.

9 Q Could it have been several years?

10 A No, I don't think it -- no.

11 Q I don't know what your practice is, do you normally  
12 interview witnesses in a trial like this before trial?

13 A Yes, I do. Now, I had talked to a lot of witnesses  
14 before when I had first got appointed to the case. This  
15 was a case where -- I listened to the PCR hearing you just  
16 heard and in that case there was a lot of physical  
17 evidence, this is a case where physical evidence didn't  
18 help. We knew there was a weapon, we knew there was a  
19 bullet, we knew --

20 Q Mr. Goins acknowledged that the gun went off while he  
21 was holding it.

22 A He contended from the very, very beginning that this  
23 was in self-defense, and I agree with him, so this was one  
24 where it was really going to be based upon his testimony.  
25 But you're talking about witnesses in Fairfield County who

## TESTIMONY OF MICHAEL HEMLEPP

1 often gave inconsistent information, and frankly I think  
2 some of the witnesses were scared of the victim's family.  
3 My experience has been in both prosecuting criminal cases  
4 and defending criminal cases is that most lay witnesses,  
5 you have to go with what they said on the stand.

6 Q So you would not have talked to the State witnesses  
7 before this trial then?

8 A I did. I talked to them, but I didn't do it  
9 immediately before this trial, before it was called to  
10 trial. I talked to them back in --

11 Q 2006?

12 A Or 2007, in the early part of the case as well.

13 MR. SPONG: I look around and notice there's a lot of  
14 people here, I think, maybe from both families, I suspect  
15 they had an expectation of being told we were starting and  
16 they wanted to come in, it doesn't matter to me but I --

17 THE COURT: Is anyone waiting to come in?

18 MR. SPONG: I know some of them drove a long way to be  
19 here.

20 THE COURT: They're welcome to come in.

21 (Break in proceedings.)

22 Q Let me sort of get into one of the issues in the case  
23 involving the gentleman who was deceased, who died, it was  
24 Mr. Robertson, Michael Robertson. That group had a  
25 terrible criminal reputation in the community; is that

## TESTIMONY OF MICHAEL HEMLEPP

1 correct?

2 A Yes. The victim -- both victim's, because there was  
3 a victim on the murder warrant and a victim on the assault  
4 and battery with intent to kill. If my memory serves I  
5 think I prosecuted both of them. I know I prosecuted  
6 Jamie Robertson in family court as well as general  
7 sessions court, and I think Michael when he was a juvenile  
8 and when he was in general sessions.

9 Q But reading the trial transcript it appears you  
10 weren't very successful in getting any reputation evidence  
11 in.

12 A I was not.

13 Q Can you explain why not?

14 A First of all that's difficult to do anyway. Second  
15 of all, it's especially difficult to get people to  
16 testify. As I already testified, the bond judge  
17 recognized the danger of Mr. Goins remaining in the  
18 community. This was a family with a reputation for  
19 community violence, and I think that's just a supposition.  
20 I think a lot of witnesses were afraid to come forward. I  
21 did not get a lot of cooperation on that front from  
22 interviewing witnesses.

23 Q Do you think if you would have gotten cooperation you  
24 could have gotten some of that evidence in?

25 A I'm considering what I think Judge Newman would have

## TESTIMONY OF MICHAEL HEMLEPP

1 done with that. It's possible I could have gotten some of  
2 it in if it would have been consistent with the statement  
3 of the defendant, if it was a story that was consistent  
4 with the defendant. It's still a high hurdle to get that  
5 in, that reputation evidence in. Plus the fact in the  
6 defense -- in the statement -- one of the -- when you are  
7 defending a criminal case, and lawyers sitting in here  
8 know this, when the defendant gives a statement that  
9 statement is evidence and you -- it kind of builds -- you  
10 build your defense along that statement. The statement  
11 was not that he was afraid of the victim, in fact, that he  
12 had been with the victim before it happened, but rather  
13 that the victim pulled a gun on him and expressly  
14 threatened him, and that he had actual fear based upon a  
15 weapon and a threat.

16 Q Well, other than reputation associated with the  
17 defense of self-defense, is it your position that there  
18 wasn't any other way just to get in his bad guy reputation?

19 A I think that would have been very difficult to do. I  
20 think that's -- you would have had to have had somebody  
21 willing to testify that -- because I think Judge Newman  
22 would have required me to limit it to gun violence. You  
23 can't just say, "Yes, I was scared of him," I don't think  
24 the Court would have allowed that.

25 Q And I understand that. There was one particular

## TESTIMONY OF MICHAEL HEMLEPP

1 incident that -- from reviewing the transcript and I wanted  
2 to ask you about. Apparently there was a videotape that  
3 was substantially used to establish the voluntariness of  
4 Mr. Goins' statements and there was a videotape associated  
5 with that. And after a lot of discussion I think both  
6 sides agreed to admit it in its entirety and then to play  
7 whatever portions that each side deemed that they wanted to  
8 play, and, of course, the State played the part where Mr.  
9 Goins says what he did. From the transcript it sounded  
10 like that there were also two different statements, but  
11 there was a statement from law enforcement officer that he  
12 thought Mr. Goins had a good self-defense claim, and then  
13 there was another kind of group of statements that talked  
14 about the reputation of the Robertsons. Quite frankly, I'm  
15 not sure from the transcript but it appears that those two  
16 things didn't get played back as part of Mr. Goins'  
17 defense. Is that right or can you add anything to that?

18 A I can't, I really can't. I just -- I don't remember  
19 the details about that. I remember that part of the issue  
20 is that statements by law enforcement -- the statement of  
21 the defendant is a statement by a party, so the  
22 admissibility rules for that statement for what he says is  
23 very different from the admissibility rules for what a  
24 police officer says. You may have -- on the videotape you  
25 certainly are going to have to have Miranda and whatnot,

## TESTIMONY OF MICHAEL HEMLEPP

1 but his substantive statements about the conclusions that  
2 he is making, well, that's hearsay, whereas the statements  
3 of the defendant are not because he's a party. And I  
4 remember that issue and I remember us playing the  
5 videotape but I would have -- to be honest I don't  
6 remember the details about it.

7 Q And I understand this is the clout of trial, but in  
8 fact, the tapes were admitted in total.

9 A It was.

10 Q And so it was there to be played by anybody that  
11 wanted to play it.

12 A Yes. It wasn't published in total.

13 Q I'm sorry?

14 A I don't think it was published in total, I think it  
15 was admitted.

16 Q Right. The tape was admitted and my understanding  
17 from the transcript was that the solicitor played the parts  
18 that he wanted to play and that you had the opportunity to  
19 play the parts that you wanted to play, but you didn't  
20 really play any of those parts, and you've already said you  
21 don't remember so that's fine.

22 A I don't remember, I really don't, I don't remember.

23 Q Do you have a copy of the transcript?

24 A I do.

25

## TESTIMONY OF MICHAEL HEMLEPP

1 MR. SPONG: Does the Court have a copy of the  
2 transcript?

3 THE COURT: I do.

4 Q What I would like to ask you to do is to read a  
5 portion of Mr. Goins' testimony. And I think -- give me  
6 just a second. How about, can we just start at one -- I'm  
7 sorry, page 492, line one?

8 THE COURT: I would be happy to read it, too. You're  
9 welcome to have him read it but I can read it.

10 MR. SPONG: Well, I want to be efficient about it.  
11 But you've got it?

12 THE COURT: I have it right here if you want to ask  
13 him questions about it I can read it while you do it. But  
14 if you want him to read it that's perfectly all right with  
15 me.

16 MR. SPONG: Well, what I want to do -- because I did  
17 have a couple of follow-up questions based on his  
18 testimony, but if the Court will read it at some point.

19 THE COURT: Oh, I will.

20 Q Mr. Hemlepp, you have it in front of you. It's fair  
21 to say that David Goins' testimony was he went to Mr.  
22 Robertson's house, that he was not agitated, they had been  
23 partying with him at a store, which is indirect  
24 contradiction to the State's testimony, or the State's  
25 evidence, and that they were all sitting around talking.

## TESTIMONY OF MICHAEL HEMLEPP

1 Mr. Robertson got mad about something about the rims on his  
2 car that he had lent Mr. Goins, he got mad and that Mr.  
3 Robertson pulled a gun out from under his belt. Mr. Goins  
4 then describes the pistol --

5 MR. SPONG: Can I just read it, Your Honor?

6 THE COURT: That's on page 495 where he's talking  
7 about the black gun?

8 MR. SPONG: Right. Is it all right if I just read it  
9 and then ask --

10 THE COURT: Sure.

11 Q So on page 49 he goes on to say, talking about the  
12 gun, "He pulled it up towards me and I grabbed his arm, he  
13 was like -- I was littler than him and he pushed me down  
14 but I was still holding on to the gun because I didn't want  
15 him to shoot me with it. So we wrestled with the gun like,  
16 I don't know, it was all happening so fast, but I did come  
17 up. I came up with the gun in my hand so I was still  
18 trying to leave and I was trying to get away because my car  
19 was like right in front of the house so I was trying to go  
20 backwards and get away but he had grabbed on to the bottom  
21 of my legs in a motion like he grabbed me like this, so he  
22 was grabbing me so I got him lose and I got my balance to  
23 get away. And by this time his nephew was coming out of  
24 the house and when I got up the second time" -- I assume he  
25 was talking about the nephew -- "he had a rifle and

## TESTIMONY OF MICHAEL HEMLEPP

1 shotgun." And then you asked which nephew he's referring  
2 to and Jamie Robertson would be the other person who gets  
3 shot. And Mr. Goins continues, "So when he pulled a gun on  
4 me, when Jamie Robertson pulled a gun on me then Mike was  
5 trying to hold my legs and shoot me and I was going to  
6 wrestle him and get him off my legs so I fell back and I  
7 got up, he was holding me like this. So when I stood up  
8 the next time, you know, I was trying to get him off me  
9 before he had shot me because I thought I was about to die.  
10 So I started shooting at them, and then -- I don't remember  
11 if I shot down first, but I know I had shot at Jamie and I  
12 didn't know if I had hit him, because the simple fact that  
13 he couldn't get the gun loaded because it was clicking, so  
14 he turned his gun around like a bat or sticker or something  
15 and he was swinging at me. So I had went down and shot and  
16 then Mike let my legs go and I started out and I took out  
17 running. I didn't go to the car because Renardo, he had  
18 the rifle so I couldn't get to my car in time because I  
19 felt like if I tried to get to the car, you know, he's  
20 going to kill me so I ran up the street." I would like to  
21 jump ahead. With that in mind, just kind of a refresher on  
22 that, jump ahead to the charge portion of this case.

23 A Do you have a page?

24 Q Yeah, it's going to be around 554.

25 MR. SPONG: I apologize, Your Honor.

## TESTIMONY OF MICHAEL HEMLEPP

1 Q 551 is sort of the discussion about the charge, it  
2 begins on line three. The Court, I guess, addressing both  
3 you and the solicitor, says, "You're not requesting a  
4 manslaughter charge?" And you responded, "I am not, Your  
5 Honor. Mr. Barfield indicates that he might request it at  
6 a later time but he's not right now." Is that your  
7 recollection and was that kind of what happened so far?

8 A I have no recollection, but if that's what the  
9 transcript says, then --

10 Q Then the Court, I guess, asks you, "Are you requesting  
11 an ABHAN charge?" And I'm assuming -- and I guess I'm  
12 asking if you could clarify that -- there was also an  
13 assault and battery with intent to kill charge out there  
14 and so it looks like the judge is asking you if you want an  
15 ABHAN charge, a lesser included charge -- I'm not really  
16 clear whether he's talking about the assault and battery  
17 with intent to kill or the murder charge.

18 A He's talking about the assault and battery with  
19 intent to kill.

20 THE COURT: It's reflected in the verdict form.

21 MR. SPONG: Okay.

22 A The difference between -- the absence of malice has a  
23 different affect on the old ABWIK than it does on murder,  
24 because -- as far as lesser-includeds are concerned.

25 Q Okay. So you ended up requesting and received a

## TESTIMONY OF MICHAEL HEMLEPP

1 self-defense charge, and there was also a murder charge and  
2 assault and battery with intent to kill, there were no  
3 other charges to the jury.

4 A And ABHAN. I requested ABHAN and I thought the Judge  
5 did charge ABHAN.

6 Q You requested ABHAN which as a lesser-included --

7 A That would mean that the charges on the verdict form  
8 would be murder, guilty or not guilty, assault and battery  
9 with intent to kill, guilty, assault and battery of a high  
10 and aggravated, guilty or not guilty.

11 Q But the murder charge was left alone with no  
12 lesser-included things.

13 A Yes.

14 Q Do you agree that you could have had a manslaughter  
15 charge if you would have wanted it based on your client's  
16 testimony?

17 A No, not based upon what you just read. Whether Judge  
18 Newman would have included voluntary manslaughter as a  
19 lesser-concluded, I can't -- that would be -- I would have  
20 to predict because that question wasn't posed to him.

21 Q But you didn't ask him to include it.

22 A I did not and neither did the solicitor.

23 Q And I guess my question is in your opinion, could you  
24 have asked him -- well, obviously you could have asked him.  
25 But wasn't it likely that you could have gotten it had you

## TESTIMONY OF MICHAEL HEMLEPP

1 asked?

2 MR. SCHMECKPEPER: Objection, calls for speculation.

3 MR. SPONG: I'm just --

4 THE COURT: Rephrase your question.

5 Q In your opinion at the time of trial, with your  
6 assessment of facts as have been testified to that your  
7 client's testimony was that he had a gun pointed on him and  
8 so he didn't cause that to happen, and that his life was  
9 threatened, you had asked for self-defense, but is it not  
10 your opinion that you could have gotten an involuntary  
11 manslaughter charge and maybe a -- I'm sorry, maybe  
12 voluntary charge as well and possibly even an accident  
13 charge? At one point he testifies that he's tripping,  
14 people are holding his leg, he's trying to get away, and so  
15 none of those charges were requested.

16 MR. SCHMECKPEPER: Your Honor, I would have the same  
17 objection, this also calls for opinion testimony.

18 THE COURT: I appreciate it, I overrule your  
19 objection. He asked him did he ask for the charge, and of  
20 course, the record speaks for itself, I think, in that  
21 regard he didn't, so -- although he responded that he  
22 didn't want the manslaughter because the Judge asked him  
23 whether he wanted it and he said no.

24 MR. SPONG: Okay.

25 THE COURT: There was a discussion and he asked and he

## TESTIMONY OF MICHAEL HEMLEPP

1    said no, and that could be strategy, could be a lot of  
2    things, we don't know.

3    Q     Was it strategy?

4    A     There was a lot of it that was strategy, yes. David  
5    was consistent from the very beginning of this case, from  
6    the first statement that he gave he was consistent on the  
7    video statement that he gave, he was consistent on his  
8    testimony that he was acting in self-defense, and  
9    self-defense is an absolute bar to being criminally liable  
10   if we can establish that. If the State cannot disprove  
11   self-defense then he is not guilty. I felt like at the  
12   time of the trial that the State's lay witnesses were not  
13   strong, and frankly, to be honest, I believed my client.  
14   I think he did act in self-defense and I think he did -- I  
15   think it went down exactly the way he described. And to  
16   have included voluntary manslaughter would have  
17   been giving the jury -- would have done two things in my  
18   head, one, it would have been giving the jury a  
19   compromised verdict that would still carry significant  
20   prison time. Number two, it would be -- I felt like it  
21   could seem like, not an admission, but a recognition of  
22   guilt. Because voluntary manslaughter is not --  
23   self-defense is, yes, you took another life but it was  
24   justified under the facts. Voluntary manslaughter is,  
25   yes, you took another life but you did it unlawfully under

## TESTIMONY OF MICHAEL HEMLEPP

1 circumstances that is something less than you did it with  
2 malice, so you still unlawfully killed somebody.

3 Q And the difference in potential sentencing between  
4 those two charges is what?

5 A Significant, it's significant.

6 Q Fifteen on one and 35 on the other or --

7 A Yes. Well, murder at the time was 30 to life and  
8 voluntary manslaughter was up to 30, the minimum.

9 Q You've had a chance to review your file now, not as  
10 much time as you would like, do your notes reflect a  
11 discussion with your client on that issue and did he decide  
12 to not ask for a manslaughter charge?

13 A I don't have any notes on that. I typically would  
14 not have made notes on that, and frankly I don't remember  
15 whether we discussed it or not. I really don't have any  
16 recollection on whether we discussed it or not.

17 Q I appreciate your frankness. You don't have a  
18 specific recollection if y'all discussed that.

19 A No. I remember whenever we would have breaks in the  
20 trial we would go back in the grand jury room, or the jury  
21 room back in the back and we would talk and I remember we  
22 would do that whenever we had breaks but I don't remember  
23 whether we discussed the charges.

24 Q Would it be your opinion that it should be discussed  
25 with a client?

## TESTIMONY OF MICHAEL HEMLEPP

1 A I think that's very circumstance dependent. I think  
2 it depends upon -- because you're getting into very  
3 technical areas. The question -- the difference between  
4 murder and voluntary and self-defense is actually  
5 something that a lot of lawyers who don't practice  
6 criminal law don't understand, and I think that's a  
7 strategic decision and I think under the law in South  
8 Carolina lawyers get to make that decision.

9 Q I don't mean to be overly pointed, but it's a decision  
10 that entails 15 years of someone's life.

11 A It does.

12 Q And would you think that that might be a decision that  
13 he should be part of?

14 A In hindsight it probably would have been good to  
15 discuss with him at the trial in this case. Of course, at  
16 the time I believed he was going to get found not guilty,  
17 so --

18 Q You thought the jury was going to buy into  
19 the self-defense.

20 A The trial went fairly well for us.

21 Q There was significant evidence against him.

22 A There was significant witnesses against him. There  
23 were 23 witnesses but most of them didn't see what  
24 happened. And they had witnesses from SLED that said that  
25 this was a bullet, well, we knew it was a bullet.

## TESTIMONY OF MICHAEL HEMLEPP

1 Q I guess I wanted to ask you about your evaluation that  
2 he had a good chance on self-defense. Because, in fact,  
3 there was testimony from his girlfriend that said he was  
4 going to kill that person, and that he said he was going to  
5 get some bullets. So I guess I'm wondering how you were so  
6 confident that he was going -- that they were going to go  
7 with him on self-defense? You don't have an answer to  
8 that.

9 A I don't have an answer.

10 Q As much for the Court's -- this jury did actually find  
11 him not guilty on the assault and battery with intent to  
12 kill.

13 A Yes.

14 Q I guess it's dangerous inferring what a jury's  
15 reasoning -- it may be dangerous inferring why a jury does  
16 what it does, but at least in some part they must have  
17 believed some of his story.

18 A Yes.

19 Q They found him not guilty of shooting Jamie Robertson.

20 A Yes.

21 Q And he admits he took the shot at him.

22 A Yes. It has been my experience -- I've been doing  
23 criminal law for 25 years and it's been my experience that  
24 you put 12 people in a box and you don't know what they  
25 are going to do. I have faith in the system, I believe

## TESTIMONY OF MICHAEL HEMLEPP

1 they usually come up with the right result, but they make  
2 decisions based upon what they make decisions on.

3 Q Well, I'm going to ask you just in your opinion as his  
4 trial attorney and the person that's probably in the best  
5 position to give an educated answer to this, that had the  
6 jury had a voluntary manslaughter charge in front of them,  
7 could that have changed the outcome of this trial?

8 A If the jury had a voluntary manslaughter charge in  
9 front of them, could it have changed the outcome of the  
10 trial? It probably could have resulted in a voluntary  
11 manslaughter conviction. If we had had voluntary  
12 manslaughter as a potential verdict, let's say that the  
13 solicitor had wanted that and the Judge had agreed, and  
14 without regard to whether I thought it was appropriate or  
15 not if it was charged I would have argued it, I would have  
16 argued that.

17 Q It's a big enough deal to where it could have changed  
18 the outcome from a murder charge.

19 A Absolutely. The difference is in terms of the  
20 difference -- absolutely. I don't think -- if they would  
21 have found him guilty of voluntary manslaughter I don't  
22 think that that verdict could have been overturned on a  
23 legal ground.

24 Q Do you recall the person Fleming Anderson?

25 A I do.

## TESTIMONY OF MICHAEL HEMLEPP

1 Q He was subpoenaed and present during the whole trial?

2 A Yes.

3 Q You may not know that. He was there at least --

4 A He was there for part of the trial.

5 MR. SPONG: Your Honor, I think that's all of the  
6 questions I have.

7 THE COURT: Cross examine?

8 MR. SCHMECKPEPER: Your Honor, I apologize, if I may  
9 take a brief recess.

10 THE COURT: Sure. We'll take about a ten minute  
11 break, is that sufficient?

12 MR. SCHMECKPEPER: Or five.

13 THE COURT: We'll be at ease for about ten minutes.

14 (A recess was taken.)

15 CROSS EXAMINATION

16 BY MR. SCHMECKPEPER:

17 Q Good morning, Mr. Hemlepp.

18 A Good morning, or afternoon now.

19 Q I apologize. I've got a couple of brief questions for  
20 you. Start off with, I think you were asked a couple of  
21 questions about some medical issues you had during the  
22 trial. And you brought those to the Court's attention I  
23 think is what you testified to; is that correct?

24 A I did.

25 Q And you asked for a continuance?

## TESTIMONY OF MICHAEL HEMLEPP

1 A I did.

2 Q Did the Judge ask you whether or not you were capable  
3 of going forward, I think, mentally and/or physically?

4 A Yes.

5 Q And what was your answer?

6 A That I was in pain but that it didn't affect me  
7 otherwise. As an officer of the court I can't -- and  
8 honestly I was in pain but it didn't affect me. It was an  
9 orthopedic sports injury, it wasn't a fever or anything.

10 Q I'm sorry to rehash it. So you didn't feel like it  
11 affected the quality of your representation?

12 A I don't.

13 Q And I think the Court also -- did the Court not  
14 mention specifically something about pain pills and whether  
15 or not you might end up taking pain pills? I can point you  
16 to the transcript if necessary.

17 A If the transcript reflects that then I'm sure --  
18 Judge Newman -- it was clear that Judge Newman was not  
19 going to continue this case, it was not going to be  
20 continued. However, Judge Newman did want to accommodate  
21 me over the fact that this is not -- certainly I needed to  
22 address it either through pain medication or making sure  
23 that I was at my doctor's appointment to get an MRI. I  
24 actually did have surgery the next week, I think, maybe  
25 Monday or Tuesday of the next week.

## TESTIMONY OF MICHAEL HEMLEPP

1 Q And I apologize, is it fair to say that the Judge told  
2 you if there are anymore issues or if there are any issues  
3 with medication to let the Court know?

4 A I believe I read that in the transcript, yes. I  
5 don't not have a recollection of that but that was in the  
6 transcript.

7 MR. SCHMECKPEPER: Just for the record that's on page  
8 36.

9 Q If you would have felt like during the trial pain or  
10 issues of medication became an issue, would you have  
11 brought it to the Court's attention?

12 A Of course.

13 Q And we talked a little bit about trial preparation.  
14 Is it fair to say you reviewed discovery in this case?

15 A I did.

16 Q You mentioned you talked to witnesses, talked to  
17 State's witnesses.

18 A I did back when I was back at the -- when I was still  
19 in my law practice. When I first got the case I had done  
20 a lot of investigation back then.

21 Q And you had a substantial amount of time to prepare  
22 for this trial as it went on for quite awhile?

23 A Well, you know, of course during that time I was also  
24 doing other things, but yeah, this case had been pending  
25 for a long time. The incident happened in July of 2005

## TESTIMONY OF MICHAEL HEMLEPP

1 and I was appointed some time late 2005, we had bond  
2 hearings, I believe, in 2006, and then it pended for a  
3 long time. I remembered having discussions with the  
4 solicitor after -- because Jamie Robertson had died and I  
5 remember having discussions with the solicitor in addition  
6 to talking to witnesses and whatnot, because as I stated  
7 before, I thought our case got significantly better. So  
8 yes -- I may be rambling -- yes, it was pending for a long  
9 time.

10 Q Now, I want to take a step back for a moment. You  
11 mentioned that you had been practicing for 25 years at this  
12 point?

13 A Yes. Well, at this point.

14 Q So at that point about 19 years?

15 A Whatever the math is, yes.

16 Q What was the focus of your criminal law practice? Of  
17 your legal practice, I'm sorry.

18 A I had been a prosecutor for Solicitor Justice for ten  
19 years, and when I went out into private practice I went  
20 with a trial lawyer firm and I did the general trial  
21 lawyer practice, but the bulk of my practice was criminal  
22 defense. I had a lot of family court as well, but the  
23 bulk of my practice was criminal defense.

24 Q I know you were asked several questions about a  
25 possible manslaughter charge. If you could turn your

## TESTIMONY OF MICHAEL HEMLEPP

1 attention to page 551. The Judge asked you specifically  
2 whether or not you were requesting a manslaughter charge;  
3 is that correct?

4 A Yes.

5 Q And what was your answer?

6 A "I'm not, Your Honor."

7 Q And earlier you said a good deal of that was based on  
8 your strategy of the case.

9 A Yes. If you go back to page 550, the Court asked  
10 Solicitor Barfield, "You're requesting anything other than  
11 guilty or not guilty of murder?" Mr. Barfield, "Yes." I  
12 responded, "If the solicitor were to make that motion it  
13 would be a prosecution issue because sudden heat of  
14 passion (inaudible) and there is no provocation in this  
15 case and I think it fails on that." I actually argued the  
16 grounds for why I didn't do it.

17 Q Had the solicitor requested a manslaughter charge  
18 would you have objected to it?

19 A Yes.

20 Q Because you did not want a manslaughter charge here.

21 A I did not want it.

22 Q Let's go into the strategy a little bit. I think you  
23 said on direct examination you thought trial was going  
24 pretty well.

25 A I did.

## TESTIMONY OF MICHAEL HEMLEPP

1 Q Would you elaborate on that a little bit?

2 A Their witnesses were not strong. The primary witness  
3 that I was worried about the most was Renardo who  
4 originally testified that he saw David standing over the  
5 victim shooting him. That's not what he testified to at  
6 trial. At trial it was, "I was inside and I heard  
7 gunshots and I came outside." And as anybody who's done  
8 criminal law knows the statements don't come in, it's what  
9 did they say at the trial, and I did feel like we were --  
10 I felt like we had a good shot in this case.

11 Q We talked about what the possible prejudicial effect  
12 could have been. Do you think a voluntary manslaughter  
13 charge would have made it less likely to get a self-defense  
14 acquittal?

15 A I have no idea, I can't answer that. And I'm not  
16 being flippant, there's no way I could.

17 Q Was that a consideration going into the charge  
18 conference, whether or not the jury would try and split the  
19 baby?

20 A Yes.

21 MR. SCHMECKPEPER: Beg the Court's indulgence.

22 THE COURT: Sure.

23 (Break in proceedings.)

24 MR. SCHMECKPEPER: No further questions.

25 THE COURT: Redirect?

## TESTIMONY OF MICHAEL HEMLEPP

1 MR. SPONG: Just briefly, Your Honor.

2 THE COURT: Sure.

3 REDIRECT EXAMINATION

4 BY MR. SPONG:

5 Q Mr. Hemlepp, if I could take you back to page 550, I  
6 think you were testifying from line 21. I think 'before  
7 that the Court is asking Mr. Barfield if he wants any  
8 lesser-included offense, and you made the statement that  
9 you didn't think that there was sufficient legal  
10 provocation to support a lesser-included offense. The  
11 pulling of the gun by Mr. Robertson on Mr. Goins would not  
12 have been sufficient legal provocation?

13 A Well, that would have been self-defense.

14 Q I'm sorry?

15 A That would have been self-defense. The State's  
16 theory was that David had brought a gun with him.

17 Q But it would have also been involuntary manslaughter.

18 A Voluntary manslaughter. Involuntary manslaughter?

19 Q Yeah, thank you.

20 A Yeah, voluntary manslaughter.

21 Q I'm not a regular criminal attorney.

22 A Well, the State's theory was that David went there  
23 armed, the defense theory was that Michael was armed and  
24 pulled the gun. If Michael is armed, that leads itself to  
25 a self-defense verdict, if David was armed that would have

## TESTIMONY OF MICHAEL HEMLEPP

1    leant itself to a voluntary manslaughter verdict.  And  
2    ultimately you don't know what the jury is going to  
3    believe until the jury hears the evidence and renders a  
4    verdict.

5    Q     But it sort of reads -- the interpretation of this is  
6    that you really didn't think you had met the grounds of a  
7    manslaughter charge.  Rather than strategy it was more that  
8    you just didn't think you had it.

9    A     It was a combination of two.

10   Q     So it was part you didn't think you had it.

11   A     Partly, yes.  And what percent is which, I don't  
12   know, but yes, that was a consideration.  I didn't think I  
13   had grounds for voluntary manslaughter.  I didn't want a  
14   voluntary manslaughter but I also didn't think I had  
15   grounds.

16           MR. SPONG:  Okay.  Thank you.

17           THE COURT:  Recross?

18           MR. SCHMECKPEPER:  Briefly, Your Honor.

19                        RE CROSS EXAMINATION

20   BY MR. SCHMECKPEPER:

21   Q     Had you wanted voluntary manslaughter, would you have  
22   argued for it?

23   A     Oh, absolutely.

24           MR. SCHMECKPEPER:  No further questions.

25           THE COURT:  Okay.  You may come down, sir.  Call your

## TESTIMONY OF DAVID GOINS

1 next witness.

2 MR. SCHMECKPEPER: Your Honor, if I may, I would just  
3 request that the subpoena stay in place in case I need to  
4 recall him.

5 THE COURT: Yes, sir, if you will please remain with  
6 us.

7 MR. SPONG: Your Honor, I call David Goins.

8 THE COURT: Okay. Mr. Goins, come forward.

9 The witness, DAVID GOINS, was first duly sworn and  
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SPONG:

13 Q Mr. Goins, where are you currently incarcerated?

14 A Lieber Correctional Institution.

15 Q And how long have you been incarcerated?

16 A About close to seven years, or six.

17 Q Just kind of out of curiosity, in the past several  
18 years other than some telephone disciplines, have you had  
19 any other kind of disciplinary problem?

20 A No, sir.

21 Q Your murder trial was called in January of 2010?

22 A Yes.

23 Q January 4th, that was the first day y'all came to  
24 court?

25 A Yes, sir.

## TESTIMONY OF DAVID GOINS

1 Q You have told me how long it had been since you had  
2 seen your attorney.

3 A Right.

4 Q How long had it been since you had spoken or seen your  
5 attorney?

6 A It was like 2006, probably around -- I can't say for  
7 sure, but it was in '06 when I had got out on bond, so  
8 that was the last time I had really spoke with Mr.  
9 Hemlepp.

10 Q Well, let's talk about the thing that I think matters  
11 most to you, the manslaughter charge. Were you aware at  
12 any time during this trial that there was going to be a  
13 strategy of making the jury decide between murder or  
14 nothing?

15 A No, sir, I wasn't aware of it. In fact, if I would  
16 have known I would have asked him.

17 Q You would have asked for what?

18 A For a manslaughter charge.

19 Q And why was that?

20 A Because I mean, I feel as though something that I did  
21 was wrong but I didn't murder him, I didn't murder Mr.  
22 Robertson. I feel bad about it but I didn't murder him  
23 though.

24 Q But you are clear -- are you clear or being clear to  
25 the Court here today there was never any discussion about

## TESTIMONY OF DAVID GOINS

1 whether or not you should ask the Judge to give the jury  
2 some sort of manslaughter charge?

3 A Yes, I'm clear. There was no discussion of a  
4 manslaughter charge at all. It was just --

5 Q Were there any witnesses in the courtroom that you  
6 would have wanted called?

7 A Yes, sir. It was a witness that I had wanted to  
8 call, Mr. Anderson, that was one of the witnesses that I  
9 would like to have called at that time.

10 Q And he is here today?

11 A Yes, sir.

12 MR. SPONG: Your Honor, that's really all of the  
13 questions I have.

14 THE COURT: All right. Cross examine?

15 CROSS EXAMINATION

16 BY MR. SCHMECKPEPER:

17 Q Good afternoon, Mr. Goins. So you said you did not  
18 meet with counsel prior to trial -- I believe since 2006.

19 A That's correct.

20 Q So you hadn't seen your attorney four years prior to  
21 trial?

22 A That's correct.

23 Q Now, the last time you said you saw him was when you  
24 got out on bond?

25 A Right, in 2006.

## TESTIMONY OF DAVID GOINS

1 Q You never -- are you saying your bond never got  
2 modified so you could drive through Fairfield and go to his  
3 office?

4 A I went to his office through -- I had to go down 77  
5 to go to his office. Before that I was talking through  
6 the bondsman, I'm not for sure if you know about he was  
7 dealing with the bondsman at that time, Mr. Kingly, I  
8 think that was his name back then. But like I said, I  
9 haven't spoke to him since 2006.

10 Q Did you ever try to call him?

11 A Did I ever call him?

12 Q Did you ever try and call him?

13 A No, I never called him.

14 Q Concerning the manslaughter charge, your testimony was  
15 this was self-defense; is that correct?

16 A Yes, sir.

17 Q That you did this because you thought he was going  
18 to -- you said that the victim had the gun, you took the  
19 gun from the victim and in order to escape you shot the  
20 victim and somebody else, is that your testimony?

21 A Yes, sir.

22 Q Did you tell your attorney about Mr. Anderson?

23 A Excuse me.

24 Q Did you tell your attorney that you wanted to get Mr.  
25 Anderson to testify?

## TESTIMONY OF FLEMING ANDERSON

1 A I can't recall at the time, it's been awhile.

2 MR. SCHMECKPEPER: I have no further questions.

3 THE COURT: Redirect?

4 MR. SPONG: Nothing further, Your Honor.

5 THE COURT: You can step down, sir. Any other  
6 witnesses?

7 MR. SPONG: Fleming Anderson.

8 THE COURT: Okay.

9 The witness, FLEMING ANDERSON, was first duly sworn  
10 and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SPONG:

13 Q Mr. Anderson, you have been sworn in?

14 A Yes, sir.

15 Q Where are you from?

16 A Winnsboro.

17 MR. SCHMECKPEPER: I apologize. I would object to  
18 this witness testifying at all considering the fact that  
19 applicant couldn't remember whether or not he told his  
20 attorney of his existence.

21 THE COURT: Overruled.

22 Q Were you subpoenaed to be at this trial that we have  
23 been talking about back in January of 2010?

24 A Yes, sir.

25 Q Do you know who subpoenaed you, whether it was the

## TESTIMONY OF FLEMING ANDERSON

1 State or the defense?

2 A I have no idea.

3 Q If I told you it was the State, would you disagree?

4 A Yeah, I have no idea.

5 Q You don't know how you got a subpoena but you showed  
6 up?

7 A Yes, sir.

8 Q Did anybody call you?

9 A I was told by -- I can't recall the guy, he just told  
10 me to sit in the back, we'll get to you when we get to  
11 you. I was never gotten to.

12 Q Could you say that again?

13 A Well, when I spoke with one of the -- I can't  
14 remember who the guy was, but he told me to sit in the  
15 back and we'll get to you when we get to you.

16 Q So you were present for the trial?

17 A Yes, sir.

18 Q And you were under subpoena to be there?

19 A Yes, sir.

20 Q Did you ever talk with Mr. Goins' attorney?

21 A No.

22 Q Had you been present -- were you a witness to some of  
23 the events that were on trial?

24 A Yes, sir.

25 Q Were you with Mr. Goins immediately before y'all went

## TESTIMONY OF FLEMING ANDERSON

1 over to Mr. Michael Robertson's house?

2 A Yes, sir.

3 Q From that point could you tell us what you would have  
4 testified to?

5 A Could you repeat it?

6 Q If you could just kind of pick up with what you would  
7 have testified to that you were a witness to from the point  
8 where you and Mr. Goins go to the store and start drinking  
9 beer with Mr. Robertson.

10 A First it was me, Mr. Goins and his brother, we were  
11 riding, drinking, but we was riding and we saw them at the  
12 store, we stopped, we was talking to them and he said,  
13 "Well, y'all just come over to the house, we can drink  
14 over there." So we went there and started drinking. Mr.  
15 Robertson starting arguing about rims or something and it  
16 escalated from there.

17 Q This was a rim he put on Mr. Goins' car that all of  
18 sudden he wanted back.

19 A Right. And from there I was trying to break them up,  
20 I was just saying, "Y'all calm down, there's nothing  
21 wrong." Mr. Robertson nodded toward his brother to go  
22 into the house to get a gun. So at that point me and Mr.  
23 Goins' other brother, we just -- everybody was like -- I  
24 don't know if Mr. Goins stayed or whatever. But come to  
25 find out he stayed, he was wrestling over a gun, which I

## TESTIMONY OF FLEMING ANDERSON

1 know for a fact he didn't have any weapons because we were  
2 together all day. Mr. Goins is like my brother, we didn't  
3 have any weapons.

4 Q So your testimony would have concluded there was no  
5 hostility, no open hostility between Mr. Goins and Mr.  
6 Robertson immediately preceding this incident, right?  
7 Everybody was getting along?

8 A Yes, sir.

9 Q You went over to his house to have beer?

10 A Yes, sir.

11 Q And your testimony would have concluded that Mr. Goins  
12 didn't have a gun?

13 A No, he never had a gun.

14 Q And I think what you said either now or maybe earlier  
15 you didn't see Mr. Robertson pull a gun out?

16 A No, sir. I know his brother was going in the house  
17 to get the gun.

18 Q You heard him call out for a gun?

19 A Yes, sir.

20 Q And that would have been your testimony?

21 A Yes, sir.

22 MR. SPONG: Thank you very much.

23 THE COURT: Cross examine?

24 MR. SCHMECKPEPER: I have no questions, Your Honor.

25 THE COURT: The Court has one. Did you know Michael

## TESTIMONY OF FLEMING ANDERSON

1 Robertson?

2 THE WITNESS: Yes, sir.

3 THE COURT: You had known him for a long time?

4 MR. SCHMECKPEPER: Yes, sir.

5 THE COURT: You knew about him as a person in the  
6 community?

7 THE WITNESS: Yes, sir. He was a bad person in the  
8 community.

9 THE COURT: All right. Anything further?

10 MR. SPONG: Your Honor, may I have a second?

11 (Break in proceedings.)

12 MR. SPONG: Nothing further of this witness.

13 THE COURT: All right. You may step down, thank you,  
14 sir.

15 MR. SPONG: Nothing further.

16 THE COURT: All right. Does the State have any  
17 witnesses?

18 MR. SCHMECKPEPER: Yes, Your Honor. The State recalls  
19 Michael Hemlepp.

20 The witness, MICHAEL HEMLEPP, remained sworn and  
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SCHMECKPEPER:

24 Q Mr. Hemlepp, thank you for coming back. I just have a  
25 couple of questions in response to the testimony we just

## TESTIMONY OF MICHAEL HEMLEPP

1 heard. Let's go to the trial in 2010. Had you seen the  
2 applicant in any of previous four years?

3 A I had. I can't really testify on specifics about  
4 that because I would have kept those records on my  
5 computer which remained at my law practice and I didn't  
6 know that was an issue coming into this hearing. I can't  
7 tell you when, but I do remember meeting with David. I  
8 really liked my client and his family, they were good  
9 people. In talking about the case, I can't give you  
10 specifics on that. I would be very surprised if it was  
11 four years, that would be very surprising to me. I don't  
12 think I agree with that.

13 Q That's actually my question. Do you remember a four  
14 year gap in communications, any sort of communications  
15 whether phone calls or visitations?

16 A We did talk on the phone. I believe I called him, I  
17 don't believe he called me but I believe I called him, but  
18 I can't give you specifics about that.

19 Q Referring to Mr. Anderson, did you have any knowledge  
20 of Mr. Anderson going into the trial?

21 A I did. And during his testimony -- and I believe  
22 that Mr. Anderson and I had met before in other  
23 circumstances as well. I knew he was in the courtroom and  
24 I had the statement, there was a reason that -- there had  
25 to be a reason why he wasn't called but for the life of me

## TESTIMONY OF MICHAEL HEMLEPP

1 right now I can't remember what that was. I know that I  
2 had spoken with him briefly in the hallway during the  
3 trial and he was subpoenaed by the State, and I knew that  
4 because I was looking at serving subpoenas and Solicitor  
5 Barfield, who has always been very honest, he'd already  
6 told me that he was going to subpoena him. He had given  
7 me a list of people that he had subpoenaed.

8 Q But you remember deciding you weren't going to call  
9 him?

10 A I apologize, that was a long time ago.

11 Q If he would have had anything useful to say at that  
12 time, would you have used him?

13 MR. SPONG: Objection, leading.

14 THE COURT: I'll allow it, overruled.

15 A If he was going to help establish our case I would  
16 have called him, but for the life of me right now I can't  
17 tell you why we didn't. I don't know. And I apologize,  
18 that wasn't -- that was six and a half years ago.

19 MR. SCHMECKPEPER: Thank you, Mr. Hemlepp. I have no  
20 more questions.

21 THE COURT: Cross?

22 CROSS EXAMINATION

23 BY MR. SPONG:

24 Q Mr. Hemlepp, I am moved to go over this again. But  
25 whether it was four, three years or two years, there was no

## TESTIMONY OF MICHAEL HEMLEPP

1 period of time immediately before this trial, within a week  
2 or a couple of weeks, where anybody sat down and got ready  
3 for trial, correct?

4 A Actually, no, because this was very sudden. I  
5 remember talking -- I believe I talked on the phone with  
6 Mr. Goins' family to attempt to get in touch with him, and  
7 then, of course, I started trial preparation. But we had  
8 met before, and, of course, we were coming out of the  
9 holidays. I want to say that I had gotten notice right  
10 before the holidays and this was, of course, right after  
11 New Years.

12 Q I appreciate your candidness.

13 MR. SPONG: Nothing further, Your Honor.

14 THE COURT: Thank you, sir, you may step down.  
15 Anything further from the State?

16 MR. SCHMECKPEPER: Your Honor, the State rests.

17 THE COURT: Any reply?

18 MR. SPONG: No, Your Honor.

19 THE COURT: I will be happy to hear from you in  
20 closing?

21 MR. SPONG: Your Honor, just briefly. The Court has a  
22 lot more experience in criminal trials than I do and I  
23 think -- we have expressed to the Court our concerns, what  
24 we feel like is the biggest problem, we tried not to  
25 nitpick on little things. But we do firmly believe that

1   there was serious legal error in this case.  It's a case  
2   (sic) anybody could have made, not condemning Mr. Hemlepp  
3   for that, but it was an error.  And it's an error that  
4   quite frankly Mr. Hemlepp was honest about, that it could  
5   have changed the outcome of this case.  I think it's  
6   uncontested that there was no discussion -- if it were for  
7   strategy reasons -- and I'm not sure it was, but if it was  
8   it's uncontested that it was not discussed with my client,  
9   my client feels very clearly it wasn't.  And again, to Mr.  
10  Hemlepp's credit, he didn't try to say he thought it was,  
11  he said he didn't remember so it's uncontested.  Your  
12  Honor, my client testified that had he had the opportunity  
13  for a manslaughter charge to be included that he would have  
14  taken it, that he felt like he might have deserved some  
15  punishment for what happened but not murder and he should  
16  have an opportunity at it.

17       THE COURT:  Thank you, sir.  Respondent?

18       MR. SCHMECKPEPER:  Briefly, Your Honor.  Just taking  
19  the issues kind of one at the time.  As far as trial  
20  preparation, I think counsel testified credibly as to his  
21  preparations.  He interviewed witnesses and met with the  
22  applicant a number of times.  The applicant's allegations  
23  that counsel didn't meet with him in four years frankly is  
24  not credible, Your Honor, especially in light of  
25  respondent's testimony that they kept in touch, and to say

1   that there was a four year gap where applicant didn't even  
2   try to get in touch, didn't even try to make a phone call,  
3   I think that goes pretty strongly towards his credibility,  
4   and that affects the manslaughter issue. I think first  
5   off, counsel testified again credibly as to what his  
6   considerations were, and he did not want a manslaughter  
7   charge because he thought he could win the case. And  
8   counsel thought had he a good self-defense -- a good chance  
9   of getting an acquittal on self-defense, that the  
10   manslaughter would have given the jury something else to  
11   bite into is what counsel says his strategy was.  
12   Strickland is pretty clear that when counsel testified to  
13   or when counsel makes a valid trial strategy, or counsel is  
14   acting pursuant to trial strategy it's very, very  
15   difficult, if not impossible, to find ineffective  
16   assistance of counsel. PCR is not to second guess how  
17   counsel tried his case, it's to decide whether or not his  
18   decisions were objectively unreasonable, and I submit they  
19   weren't here. But even the issue of whether or not the  
20   applicant -- or counsel discussed the issue of the  
21   manslaughter charge with the applicant, counsel says he  
22   doesn't know. I would submit credibility issues affect  
23   applicant's testimony in that, and too, applicant was clear  
24   that he thought he was not guilty by reason of  
25   self-defense. I don't think it's necessarily certain that

1 had counsel talked to applicant about whether or not he  
2 wanted to maybe try and split the baby, applicant would  
3 have said yes. I think applicant probably would have said,  
4 "No, I want to go all the way in self-defense." As far as  
5 Mr. Anderson, I think counsel's testimony was that -- and I  
6 don't want to put words into counsel's mouth -- he talked  
7 to him and didn't use him. I think the inference there was  
8 counsel decided he didn't have anything useful to say. In  
9 any event, I'm not sure what the prejudice is. In  
10 listening to what Mr. Anderson said, it was pretty much  
11 cumulative to everything the applicant and his other  
12 witness testified to. Other than that, Your Honor, the  
13 State rests on the record and would be happy to answer any  
14 questions.

15 THE COURT: Thank you. Any reply?

16 MR. SPONG: No, but. The testimony was very thin in  
17 this case and I would just argue a little bit more would  
18 have helped a lot.

19 THE COURT: Well, it's interesting, because the  
20 verdict almost seemed to be inconsistent to some extent,  
21 but I agree that there was a way to perceive that very  
22 easily. And, of course, the State as Mr. Hemlepp said has  
23 to disprove self-defense. You always have got that problem  
24 area of could you have met the fourth element and that's  
25 always a real toughy, I think, in these trials. But it

1 really -- there were several areas that I think -- it calls  
2 in mind my years of practicing and my years on the bench,  
3 January terms are nightmares after holidays for everybody,  
4 and certainly for lawyers. And I understand, and I think  
5 you did an amazing job on short notice and with all of the  
6 other complications that are attached, but clearly there  
7 were several areas that I think were deficient and could  
8 have changed the outcome. One, the statement, the video  
9 that was put in, it was played as parts, not played as to  
10 all. There was conversation -- and I understand his legal  
11 thought about well, that's hearsay, but once it comes in  
12 it's there and the jury has a chance to see it and as the  
13 person is talking about a good case of self-defense,  
14 whether that would have helped, it certainly didn't hurt,  
15 it would have been nice. That was law enforcement's  
16 comments as I recall the testimony, that's important.  
17 Secondly, I understand it's very difficult, he's absolutely  
18 right, we have this problem in a lot of places, and  
19 Charleston is notorious for it, people don't want to come  
20 forward and testify. But 404A2 is a critical factor in  
21 self-defense, too, and that's the character of the victim.  
22 And because of the threats -- and I probably -- I didn't  
23 hear the bond but that would be certainly a reasonable  
24 conclusion that that's why he wasn't allowed in Fairfield  
25 because of the family and the victim's family, that there

1 was potential retaliation. Clearly there's Mr. Anderson,  
2 he said he talked to you, and here is a person that knows  
3 his reputation in the community and could have testified  
4 about him being violent, which would have been extremely  
5 helpful, very supportive of the self-defense position and  
6 the State would have had a tough time. That's probably why  
7 the State didn't call him, too, because it wasn't going to  
8 help the State. I've never been a prosecutor but Mr.  
9 Hemlepp has and you have to weigh those things as a  
10 damaging thing for them. The other, I agree with you,  
11 Attorney General, from the standpoint of a lawyer has to  
12 make the call, but I just believe that the client has got  
13 to be involved. I think Mr. Bell said it best, and I have  
14 heard it said and I said it too, it has got to be your call  
15 because I'm going home, if you're convicted you're going to  
16 jail, but ultimately you need to be involved. And I have  
17 had cases that -- Cottrell is one that I wish I had charged  
18 voluntary manslaughter when the fellow had a .44 Magnum  
19 stuck in his waistband and shot a policeman because he  
20 tapped him on the shoulder to ask him whether he went to  
21 court and they reversed it because I refused to charge  
22 voluntary manslaughter. Do you know what the provocation  
23 was? Detaining him, stopping him for that long. Clearly  
24 there's provocation here and clearly manslaughter could  
25 easily have been charged and should have been charged in my

1 opinion, as well as accident, I mean that would have been  
2 another part, "clearly I didn't do it." Assuming -- again,  
3 I agree, we all have to make assessments of how strong we  
4 believe our case is and we pitch it in that fashion, but  
5 this is that gray area where you've got to say, "Yeah, but  
6 what's better, is it manslaughter or murder?" No question  
7 30 years minimum for murder, maximum 30 for manslaughter,  
8 but there's a little different -- 30 for murder is day for  
9 day, 30 for manslaughter is 85 percent so that's a  
10 significant benefit also even if you got maxed out. Close  
11 case obviously, it was very close, because as I say, you  
12 were successful as to the self-defense argument and the  
13 other alleged victim in this case. So for all of those  
14 reasons I believe applicant has met the burden of proof. I  
15 need you to prepare the order, please, Mr. Spong.

16 MR. SPONG: Thank you.

17 THE COURT: And send it to -- and if there are any  
18 objections just let me know. Thank you very much.

19 (End of the hearing.)

20

21

22

23

24

25

1 I, the undersigned, Michael C. Watkins,  
2 Official Court Reporter for the Sixth Judicial  
3 Circuit of the State of South Carolina, do hereby  
4 certify that the foregoing is a true, accurate and  
5 complete transcript of the proceedings had and  
6 evidence introduced in the trial of the captioned  
7 case relative to appeal in the Court of Common Pleas  
8 for Fairfield County, South Carolina, on the 12th  
9 day of July, 2016.

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

12

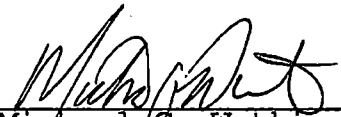
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September 14, 2016

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Michael C. Watkins

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Court Reporter

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STATE OF SOUTH CAROLINA )  
COUNTY OF FAIRFIELD )  
David Allen Goins, #210510 )  
Applicant )  
v. )  
State of South Carolina, )  
Respondent )

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

2012-CP-20-0362

PCR ORDER

2016 DEC 19 PM 2:14  
FAIRFIELD COUNTY  
CLERK OF COURT  
BETTY JO DEGENHARDT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed by Applicant Goins. Respondent subsequently filed its responsive pleadings. An evidentiary hearing into the matter was convened on July 12, 2015 at Lancaster County Courthouse. Applicant was present and was represented by Ernest M. Spong, III, Esq.. Respondent was represented by Patrick L. Schmeckpeper, Esq., of the Office of the Attorney General.

PROCEDURAL STORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to Orders of Commitment of the Clerk of Court for Fairfield County. The Applicant was indicted for Murder and Assault and Battery with Intent to Kill at the July 2005 term of the Fairfield County Grand Jury. The matter came to trial on January 4, 2010. The Applicant was represented by Michael Hemlepp, Esq. The jury returned a verdict of Guilty on the Murder charge and Not Guilty for Assault and Battery with Intent to Kill. The Applicant was sentenced by the Honorable Clifton Newman to confinement for thirty-five (35) years. Applicant appealed his conviction which was dismissed by State v. Goins, 2012-UP-331 (Cl. App. 2012). He filed his PCR application on September 10, 2012, the PCR hearing was heard July 12, 2016.

FACTS

On June 30, 2005, Applicant Goins and Michael Robertson got into an argument outside of Michael Robertson's residence in Winnsboro, S.C. Michael Robertson was shot and later died of his wounds. During the argument, Jamie Robertson, Michael Robertson's nephew, emerged from the residence with a gun and also suffered a gunshot but survived. Subsequently, but before the trial in this matter, Jamie Robertson died of unrelated causes. There were several witnesses to facts before the argument and to events immediately after the shooting but there were no witnesses to the shooting itself, other than the Applicant. The State presented testimony that Applicant had previously stated he was going to get a gun and confront Michael Robertson. There was no testimony that Applicant had actually gotten a gun

*Handwritten signature/initials*

or had one in his possession prior to arriving at the Robertson residence.

The State's case was essentially that Applicant had heard that Michael Robertson had been spreading rumors about him, Applicant got angry and threatened to arm himself and go confront Michael Robertson, he arrived at the Robertson residence angry and during the ensuing argument, Applicant pulled a gun and shot both Michael Robertson and Jamie Robertson.

Applicant testified that he had not been upset at Michael Robertson, the rumors were no big deal that he and some friends ran into Michael or Michael's cousins at a store and were invited over to Michael's house to drink some beers. Applicant testified that he did not have a gun with him, until he took one away from Michael Robertson, after arriving at what was expected to be a friendly gathering. Applicant stated that while standing outside of the residence, Michael Robertson had become inexplicably belligerent about some tire rims he had previously lent to Applicant which he now wanted back immediately and while yelling at Applicant, Michael Robertson drew a gun from under his shirt and raised it up at him. Applicant testified that he grabbed Michael Robertson's arm while he was raising the gun and wrestled with him, they both fell to the ground where he wrestled the gun away from Michael Robertson. Applicant then managed to get up and was trying to run away when Michael Robertson grabbed him around his ankle and he started to fall. At the same time, Jamie Robertson arrived with a rifle pointed and pulled the trigger but the gun misfired and he heard it "click". It was at this time and while falling, he shot at both victims. He then ran away, not knowing for sure if he had hit anyone. There was no other testimony about where the gun came from or who had it prior to the wrestling.

At the PCR hearing, the Applicant testified he was being held illegally on the limited allegations of ineffective assistance of counsel for the following reasons:

1. That counsel failed to take reasonable steps to investigate all avenues of defense
2. That Counsel failed to make timely objections and to assert a proper defense.

#### SUMMARY OF EVIDENCE PRESENTED AT THE PCR HEARING

At the PCR hearing, Counsel testified that he had been appointed to represent the applicant in 2006 and he had interviewed witnesses back then. He made notes but did not speak with anyone else prior to the onset of the trial in 2010. He had ten years of criminal law experience but had stopped practicing law when he took employment with the Trial Lawyers Association several years prior to this trial, this

case had been pending for several years and he was surprised when it was called for trial on January 4, 2010, the first case after the Christmas break. Two days before the scheduled trial he had ruptured his tricep muscle weight lifting and was in considerable pain but the trial court denied his motion for a continuance. He testified that he did not think his injury affected his performance at trial. He did not know when he had last spoken with the Applicant about the trial but he was familiar, from his prior employment with the Solicitor's Office, with both the Robertson victims' extensive criminal history and substantial criminal reputations for violence in the community. He was unable to find anyone who would testify to their criminal reputation in the community and agreed it would have been important to the case. He expressed that his trial strategy was to rely solely on the direct threats of the victims to the Applicant at the time of the shooting to establish self-defense. He expressed that, other than actual threats made at the time, general reputation for violence evidence was very difficult to get admitted. He testified that he did not seek a jury charge on voluntary manslaughter because of both trial strategy and that he did not think he had grounds to get it. (see PCR transcript pg 34 lines 5-15). Counsel testified that he did not recall discussing the decision to not seek a charge of voluntary manslaughter with Applicant because he thought the Applicant was going to be found not guilty based upon self-defense. He did not object to the trial court's denial of his request for a charge on the violent reputation of the victims apparently agreeing with the Solicitor that there was little evidence presented. As to the video of Applicants interview with law enforcement, Counsel agreed that the entire video had been admitted into evidence and that it contained statements by law enforcement that they believed applicant had a good self-defense claim and that the victims had a reputation for violence. Counsel acknowledged that the Solicitor published those parts of the video that it felt were helpful to it's case. His explanation was that he did not publish any of the video it because he considered the law enforcement officers statements hearsay. Counsel agreed that the inclusion of the charge of voluntary manslaughter could have made a significant difference in the outcome of the case.

Applicant Goins testified that he had been incarcerated seven years during which time he had only some minor disciplinary problems related to unauthorized use of the telephone. He testified he had not met with counsel since 2006 at his bond hearing. He testified that he was certain that there was no consultation with him about the decision to not ask for a voluntary manslaughter charge, that if he had been asked he would have considered it. He testified that he felt he had done something wrong in the shooting but that it wasn't murder. He testified that Mr. Fleming Anderson, a friendly witness, was present at the trial and that he wanted him to testify he could not recall if he asked Counsel to call him to testify.

Mr. Fleming Anderson testified that he was present all week in the courtroom the week of trial. He was not sure who subpoenaed him but he was present. He testified he was not interviewed by Counsel though he was on the witness list provided by the State. Had he been called

he stated he would have testified that he had been with the Applicant the entire day, that he knew Applicant did not have a gun, that they were not mad at anyone but only went to Michael Robertson's house by invitation and to drink some beers. He would have testified that Michael Robertson started the argument with the Applicant about the tire rims and became very belligerent and that Michael Robertson told Jamie Robertson to go get a gun and that was when he ran. He did not see either party pull a gun but knew that Applicant did not have a gun with him. He testified that he had known Michael Robertson for a long time and was aware that he had a very bad reputation in the community.

#### FINDING OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing; observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the applicant's convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented. The Court finds that Applicant has met his burden of proof and that he was deprived of constitutionally effective assistance of counsel on the allegations in dispute. I find that the Applicant is entitled to a new trial.

#### APPLICABLE LAW

In a post-conviction relief action, where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that counsel's performance was deficient, and the deficient performance prejudiced the applicant's case.

*Strickland v. Washington*, 466 U.S. 668 (1984) 688-89 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. To show counsel was deficient, the applicant must establish counsel failed to render reasonably effective assistance under prevailing professional norms. *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052; *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625. To show prejudice, the applicant must show that but for counsel's errors, there is a reasonable probability the result of the trial would have been different. *Strickland*, 466 U.S. at 694, 104 S.Ct. 2052; *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Johnson*, 325 S.C. at 186, 480 S.E.2d at 735.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The Courts presume that counsel tendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 668. The Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

*Failure to investigate: Ard v Catoe*, 372 SC 318, 642 S.E. 2d 590 (2007); *Freiburger v State*, 413 SC 243, 775 S.E. 2d 391 (2015)

*Without a doubt, "[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation." Thompson v. Wainwright*, 787 F.2d 1447, 1450 (11th Cir.1986); see also *Strickland v. Washington*, 466 U.S. at 691, 104 S.Ct. 2052. When evaluating the reasonableness of counsel's conduct, "the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." *Strickland v. Washington*, 466 U.S. at 690, 104 S.Ct. 2052. Moreover, while the scope of a reasonable investigation depends upon a number of issues, "at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff'd*, 828 F.2d 670 (11th Cir.1987) (emphasis in original).

*Failure to request charges:*

*Stone v State*, 294 SC 286, 363 S.E.2d 903 (1988); *Roseboro v State*, 317 SC 292, 454 S.E. 2d 312 (1995)

*Failing to call a witness: Martinez v State*, 304 SC 39, 403 S.E. 2d 113

(1991) the court also note trial counsel admitted his failure could have made a difference.

*Where voluntary manslaughter charge should have been given: State v Knoten*, 347 SC 296, 555 S.E. 2d 391 (2001)

*Character of Victim: Rule 404(a) (2) and State v Boyd*, 126 SC 300, 119 S.E. 839 (1923)

In the present case this Court finds that: Counsel's performance was ineffective in the following particulars:

- 1) *Counsel failed to introduce evidence of the victims' reputation for violence.*

Counsel testified that evidence of the victims' reputation for violence was important but that it was difficult to find anyone to testify to that and difficult to get that evidence admitted. Counsel testified that he was personally aware of both victims' history of violence, in that while employed with the Solicitor's office in the past he had prosecuted both victims both as juveniles and as adults. It appears from the transcript both the Applicant and his only witness, Mr. Kauffin, were knowledgeable of the victims reputation but no effort was made to include it in their testimony. Mr. Kauffin actually began to testify about the victims' reputation but was prevented from doing so by objection from the State. Counsel did not oppose the objection nor raise Rule 402 A as an exception. It appears to the Court based upon the trial transcript and the PCR testimony that Counsel was either unaware of Rule 402A or overlooked it.

RWD/5

Mr. Fleming was also available for the purpose of establishing the victims' reputation for violence.

Additionally, there was also video evidence of Applicant's statement to law enforcement which was admitted in its entirety. It contained statements of law enforcement on the victims' reputation for violence. Counsel did not publish this. Counsel's explanation was that he considered the law enforcement comments hearsay does not adequately explain his failure to publish in so much as it had already been admitted in its entirety. Due to the lack of evidence, Counsel was denied on his request for a jury charge on victim's reputation for violence. This court finds there was ample opportunity to get into evidence the violent reputation of both victims and that the failure to do so could have had a significant impact on the outcome of the trial.

- 2) *Counsel's failure to investigate, identify, or call to testify Mr. Fleming Anderson as a witness favorable to the Applicant.*

Mr. Anderson's testimony at the PCR hearing was that he was present all week at the trial, under a subpoena from the State, listed on the State's witness list and willing to testify on behalf of the Applicant. His testimony would have directly contradicted the State's case in several significant particulars. He was prepared to contradict the State's theory on issues concerning Applicant's possession of the gun. Mr. Anderson would have testified he was with Applicant the day of the incident and was certain that Applicant did not have a gun in his possession when they arrived at the victims' residence. He would have disputed the State's theory of motivation, that they were at Michael Robertson's residence not to seek revenge but by an invitation from the Robertson's cousin and to "drink some beers". He would have testified that Michael Robertson started the argument and was the aggressor. Though Mr. Anderson's testimony would have been similar to Applicant's other witness, Mr. Kauffin, this Court does not find it to be cumulative. This was a murder trial with a self-defense claim, the principal witnesses were either related or friends of the victims. Mr. Kauffin, Applicant's only witness, was the brother of the Applicant. Mr. Fleming, though a friend of applicant, in the Court's view could have had a substantial impact on the outcome of a trial that depended heavily on the credibility of the witnesses. Applicant did not testify that he asked Counsel to call Mr. Anderson, but this Court finds that Counsel should have and easily could have located him, identified the importance of his testimony, and called him to testify.

*Rmef/6*

- 3) *Counsel's failure to request a charge of voluntary manslaughter and to consult with his client on significant trial strategy.*

Counsel testified that the decision to not seek a voluntary manslaughter charge was both a trial strategy and a belief that it was not appropriate for the facts of the case. As to the latter, this court finds that such a charge was appropriate and if requested likely would have been given. This court finds that based upon its review of the trial record, a request for a voluntary manslaughter charge was clearly supported by the evidence. At trial, Applicant testified he was unarmed when Michael Robertson, standing less than an arm's length away, pulled a gun from under his shirt and pointed it at him and called out for his nephew to go get more guns, threatened to "teach them a lesson" and in the ensuing struggle Applicant was prevented from running away while another gun was pointed at him and the trigger pulled, that he was saved only by that gun misfiring and that is when he fired at both victims. Counsel's statement to the trial court (see page 550 lines 17-25 and page 551 lines 1-5) suggests that Counsel considered a voluntary manslaughter jury charge not supported by the facts, not just a trial strategy. He stated to the trial court that he would object to the State seeking it if they had. He also testified that he did not seek it because he thought the jury was going to find the Applicant not guilty based on self-defense.

The differential punishment for murder and voluntary manslaughter is significant. Considering the jury's not guilty verdict on the assault and battery with intent to kill charge on Jamie Robertson, it is clear that the jury was not convinced that the entire responsibility for events fell on Applicant. However, even if the decision to not seek a voluntary manslaughter charge was an acceptable trial strategy to maximize Applicant's self-defense claims, this court finds that Counsel had a duty to discuss this decision with the Applicant and that he did not. The Court acknowledges that not every trial decision can be discussed and approved by Defendants during the course of a trial nor does this court believe that trial counsel has a duty to do so. However, the decision to go for "all or nothing" on the self-defense claim in a murder trial was such importance that it should have been discussed with Applicant. The outcome could have meant a difference of 15-20 years in jail. Counsel agrees at the PCR hearing that this decision could have had a substantial impact on the outcome of the case. If there had been a plea negotiation involving a voluntary manslaughter offer, Applicant would have been entitled to know and decide.

Rmf/7

Applicant testified unambiguously that this trial strategy was not discussed with him. Counsel could not recall if it had been or not, but upon reflection agreed that it should have been. Applicant testified that if he had been consulted he would have strongly considered it. He testified that he felt responsible in some fashion for the outcome of events though he did not believe he was guilty of murder.

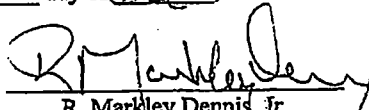
#### CONCLUSION

Based on all of the foregoing, this Court finds and concludes that the Applicant has established his claim of ineffective assistance of counsel and that he is entitled to a new trial on the indictment for murder.

#### IT IS THEREFORE ORDERED

The Applicant is granted a new trial on the murder indictment.

AND IT IS SO ORDERED this 13<sup>th</sup> day of Dec, 2016.

  
R. Markley Dennis, Jr.  
Presiding Judge

|                          |   |                                     |
|--------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS        |
|                          | ) | FOR THE SIXTH JUDICIAL CIRCUIT      |
| COUNTY OF FAIRFIELD      | ) |                                     |
|                          | ) |                                     |
| David A. Goins,          | ) | Case No. 2012-CP-20-0362            |
|                          | ) |                                     |
| Applicant,               | ) |                                     |
|                          | ) | <b>MOTION TO RECONSIDER, ALTER,</b> |
| v.                       | ) | <b>OR AMEND</b>                     |
|                          | ) |                                     |
| State of South Carolina, | ) |                                     |
|                          | ) |                                     |
| Respondent.              | ) |                                     |
| _____                    | ) |                                     |

Respondent, pursuant to Rules 59(a) and (e), SCRCP, would respectfully show unto this Court:

### I.

This matter came before the Court by way of an Application for Post-Conviction Relief filed September 10, 2012. The Court convened an evidentiary hearing into the matter on July 12, 2016, at the Lancaster County Courthouse. Applicant was present at the hearing and represented by Ernest M. Spong, III, Esquire. By order filed December 19, 2016, the Court granted relief on the grounds that 1) Counsel failed to introduce evidence of the victims' reputation for violence; 2) Counsel's failure to investigation, identify, or call to testify Mr. Fleming Anderson as a witness favorable to the Applicant; and 3) Counsel's failure to request a charge of voluntary manslaughter and to consult with his client on significant trial strategy. Respondent received a copy of this order via email on December 19, 2016.

### II.

Respondent respectfully asks this Court to reconsider its judgment granting Applicant post-conviction relief for the following reasons:

1) Counsel failed to introduce evidence of the victims' reputation for violence;

a) counsel's decision not to introduce evidence regarding the victim's reputation for violence was made pursuant to a valid trial strategy. PCR Tr. p. 12-13. Specifically, counsel testified:

"when you are defending a criminal case . . . when the defendant gives a statement that statement is evidence and you . . . build your defense along that statement. The statement was not that [the Applicant] was afraid of the victim, in fact, that he had been with the victim before it happened, but rather that the victim pulled a gun on him and expressly threatened him, and that he had actual fear based upon a weapon and a threat."

PCR Tr. p. 13, l. 5-15.

b) Applicant did not present any admissible evidence regarding the victim's reputation for violence. Applicant did not testify that the victim had a reputation for violence. Mr. Anderson simply testified, on questioning for the court, that the victim was a "bad person in the community." PCR Tr. p. 42, l. 25 - p. 43, l. 8. To the extent the Court relied on counsel's testimony in ruling, counsel would not have been able to testify at trial.

c) to the extent this Court relied on the video of Applicant's statement to law enforcement it did so in error, where it is apparent from the record that counsel was acting pursuant to a valid trial strategy; and Applicant did not present the video at the evidentiary hearing, therefore failing to meet his burden to prove prejudice. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998).

2) Counsel's failure to investigation, identify, or call to testify Mr. Fleming Anderson as a witness favorable to the Applicant;

a) His testimony was cumulative and practically identical to the other witness that testified at trial.

b) The Court did not give counsel's strategic decision their appropriate weight in ruling the failure to call Mr. Anderson was deficient. Counsel testified that if Mr. Anderson would have helped establish Applicant's case, then he would have called him. PCR Tr.

p. 45, l. 11-18. Counsel further stated that he knew Mr. Anderson was in the courtroom, that he had his statement, and that there was a reason why he did not call him. PCR Tr. p. 44, l. 19 - p. 45, l. 7.

3) Counsel's failure to request a charge of voluntary manslaughter and to consult with his client on significant trial strategy;

- a) Counsel testified that this was a tactical decision, and had valid strategic reasons for choosing not to request a voluntary manslaughter charge;
- b) A charge of voluntary manslaughter was not supported by the facts and evidence in the record.

*[Signature block follows]*

## III.

WHEREFORE, Respondent respectfully requests the Court reconsider its ruling for the foregoing reasons.

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

JOHANNA VALENZUELA  
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPER  
Assistant Attorney General  
Bar No. 102100

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

By:



Attorneys for Respondent

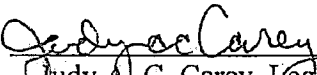
December 29, 2016

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                              |
|                          | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF FAIRFIELD      | ) |                              |
|                          | ) |                              |
|                          | ) | 2012-CP-20-0362              |
|                          | ) |                              |
| DAVID A. GOINS, 210510   | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) |                              |
| vs                       | ) | AFFIDAVIT OF SERVICE BY MAIL |
|                          | ) |                              |
| STATE OF SOUTH CAROLINA, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |
| _____                    | ) |                              |

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

**Ernest M. Spong, III, Esquire**  
**110 South Vanderhorst Street**  
**Winnsboro, SC 29180**

DATED this 29th day of December, 2016.

  
 Judy A. C. Carey, Legal Assistant  
 For Respondent

FAIRFIELD COUNTY  
CLERK OF COURT  
STATE OF SOUTH CAROLINA  
COUNTY OF FAIRFIELD  
FEB 16 AM 10 47

IN THE COURT OF COMMON PLEAS  
FOR THE SIXTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-20-0362

David A. Goins, 210510,

Applicant,

v.

State of South Carolina

Respondent.

ORDER

This matter comes before me upon Motion to Alter or Amend the Order of the Respondent filed by Patrick Schmeckpeper, Esquire, Robert Bolchoz, Esquire, Johanna Valenzuela, Esquire and Alan Wilson, Esquire, Attorneys for Defendant, David A. Goins, filed on January 3, 2017. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Motion to Alter or Amend the Order of the Respondent is respectfully DENIED;

AND IT IS SO ORDERED!

  
R. MARKLEY DENNIS, JR.  
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

Dated: February 6, 2017

STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS

COUNTY OF FAIRFIELD )

2008-GS-20-347, 2008-GS-20-348

State of South Carolina )

## VERDICT FORM

vs. )

David Allen Goins, )

Defendant. )  
\_\_\_\_\_ )

We, the jury, by unanimous consent find the Defendant David Allen Goins:

1. As to Murder:

\_\_\_\_\_ Not Guilty

☒ Guilty of Murder

2. As to Assault and Battery with Intent to Kill:

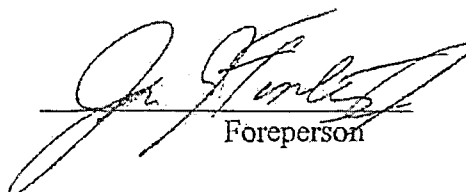
☒ Not Guilty

\_\_\_\_\_ Guilty of Assault and Battery with Intent to Kill

\_\_\_\_\_ Guilty of Assault and Battery of a High and Aggravated Nature

Winnsboro, South Carolina

Jan 7, 2010


  
Foreperson

## STATE OF SOUTH CAROLINA

COUNTY OF Fairfield  
STATE VS.

DAVID GOINS

AKA:

Race: B Sex: M Age: 35DOB: -1974 SS#: [REDACTED]Address: [REDACTED]City, State, Zip: WINNSBORO, SC 29180DL#: [REDACTED] SID#: [REDACTED]\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was  
TO: Murder / MurderIN THE COURT OF GENERAL SESSIONS **728**INDICTMENT/CASE#: 2005GS2000348A/W#: H840032Date of Offense: 6/30/05S.C. Code §: 16-03-0010; 16-03-0020CDR Code #: 0116

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45  
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Barfield, Doug A514  
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 35 ~~months~~ <sup>years</sup> or ☐ under the Youthful Offender Act not to exceed        years  
and/or to pay a fine of \$       ; provided that upon the service of        days/months/years and/or payment  
of \$       ; plus costs and assessments as applicable\*; the balance is suspended with probation for       months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$        plus 20% fee: \$       Payment Terms:       ☐ Set by SCDPPPS       Recipient:       \*Fine: \$       

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$       § 56-5-2995 (DUI Assessment) \$12 \$       § 56-1-286 (DUI Breath Test) \$25 \$       § 47.12 (Public Def/Prob) \$500 \$ 25.00§ 14-1-212 (Law Enforce. Funding) \$25 \$       § 14-1-213 (Drug Court Surcharge) \$100 \$       § 50-21-114 (BUI Breath Test Fee) \$50 \$       § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$       § 90.7 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90       days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp.       May serve W/E beginning       Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$        beginning       \$        paid to Public Defender FundOther:       ☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.Presiding Judge C NewmanJudge Code: 2127Sentence Date: January 7, 2010Clerk of Court/ Deputy Clerk Betty Jo BeckhamCourt Reporter: Phyllis Bennett

SCCA/217 (11/2009)

STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF FAIRFIELD         )

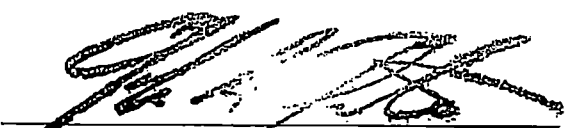
## INDICTMENT

At a Court of General Sessions, convened on July 19, 2005, the Grand Jurors of Fairfield County present upon their oath:

**MURDER**

That David Allen Goins did in Fairfield County on or about June 30, 2005, feloniously, willfully and with malice aforethought kill the victim, Michael Robertson by means of shooting him in head and that the said victim died as a proximate result thereof, in violation of the common law of South Carolina and §16-3-10, *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.

  
John R. Justice, SOLICITOR

WITNESSES

M.A. Phillips-FSD

F. CRAIG

ARREST WARRANT NUMBER/DOA

H840032 (DOA-7-5-05)

ACTION OF GRAND JURY

TRUE BILL

07-19-05

20

Foreperson of Grand Jury

Date: 7-19-05 Michael R. Gresh

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-20-348

The State of South Carolina

County of Fairfield

COURT OF GENERAL SESSIONS

JULY TERM 2005

THE STATE

vs.

David Allen Goins

Indictment for

Murder

SC Code: §16-3-10,20

CDR Code: 0116

Class: Felony, EXM

2005 JUL 19 P 4: 56

FAIRFIELD COUNTY  
CLERK OF COURT  
BETTY JO BECKHAM

ORIGINAL

730

## ARREST WARRANT

H- 840032

## STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of  
Fairfield County

THE STATE  
against

David Allen Goins

Address: [REDACTED]  
Winnsboro, SC 29180

Phone: [REDACTED] SSN: [REDACTED]  
Sex: M Race: B Height: 5'05" Weight: 150  
DL State: SC DL #: [REDACTED]  
DOB: [REDACTED]/1974 Agency ORI#: SC0200000  
Prosecuting Agency: Fairfield County Sheriff's Dept.  
Prosecuting Officer: 0  
Offense: Murder

Offense Code: 116

Code/Ordinance Sec. 16-3-10

This warrant is CERTIFIED FOR SERVICE in the  
☐ County/ ☐ Municipality of

The accused  
is to be arrested and brought before me to be  
dealt with according to law.

Signature of Judge

(L.S.)

Date:

## RETURN

A copy of this arrest warrant was delivered to  
defendant David Allen Goins  
on 7/5/05

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:  
W F. POPE, JUDGE  
115-B S. Congress St.  
Winnsboro, SC 29180  
803-635-4525

## STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of  
Fairfield County

## AFFIDAVIT

Form Approved by  
S.C. Attorney General  
April 21, 2003  
SCCA 618

Personally appeared before me the affiant M.A. Phillips who  
being duly sworn deposes and says that defendant David Allen Goins  
did within this county and state on June 30, 2005 violate the criminal laws of the  
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of Fairfield County)  
in the following particulars:  
DESCRIPTION OF OFFENSE: Murder

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:  
The defendant did on 6-30-2005, shoot the victim with malice aforethought, after being involved in an  
altercation with the victim Michael Robertson. The defendant did shoot the victim with a 22 cal.  
handgun. The victim was transported to Palmetto Richland where he died on July 3, 2005. An autopsy was  
performed on the victim indicating that he died as a direct result of this gunshot wound to his head.  
This occurred at the victim's residence at [REDACTED] in Fairfield County. This is based on witness  
and defendant's statements and investigation by FCSO.

Signature of Affiant

## STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of  
Fairfield County

Affiant's Address 320 Columbia Road  
Winnsboro, SC 29180  
Affiant's Telephone 803-635-4141

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that  
on June 30, 2005 defendant David Allen Goins  
did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Fairfield County) as set forth below:

DESCRIPTION OF OFFENSE: Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said  
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to  
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 07/05/2005

[Signature] (L.S.)

Signature of Issuing Judge

Judge Code: 5255

Judge's Address 115-B S. Congress St.  
Winnsboro, SC 29180

Judge's Telephone 803-635-4525

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

H-840032

Xref #: 05-2977

731

BAIL set by

Judge \_\_\_\_\_

on \_\_\_\_\_

Type and Amount: \_\_\_\_\_

Name of Surety: \_\_\_\_\_

**PRELIMINARY HEARING held by**

Judge \_\_\_\_\_

on \_\_\_\_\_

Defense Attorney: \_\_\_\_\_

Decision: \_\_\_\_\_

\_\_\_\_\_

Judge \_\_\_\_\_

on \_\_\_\_\_

by \_\_\_\_\_

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: \_\_\_\_\_

Sentence: \_\_\_\_\_

**JURORS**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**WITNESSES**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

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Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

**CODEFENDANTS**

\_\_\_\_\_

\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FAIRFIELD )

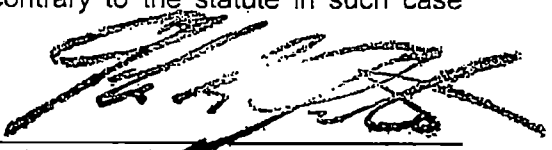
## INDICTMENT

At a Court of General Sessions, convened on July 19, 2005, the Grand Jurors of  
Fairfield County present upon their oath:

**ASSAULT AND BATTERY WITH INTENT TO KILL**

That David Goins did in Fairfield County on or about June 30, 2005, with malice  
aforethought commit an assault and battery constituting an unlawful act of violent injury  
to the person of the victim, Jamie Robertson , to wit: did shoot him in shoulder, with the  
intent to kill the victim.

Against the peace and dignity of the State, and contrary to the statute in such case  
made and provided.

  
\_\_\_\_\_  
John R. Justice, SOLICITOR

WITNESSES

M.A. Phillips-FSD

F. CRAIG

ARREST WARRANT NUMBER/DOA

H840021 (DOA-7-5-05)

ACTION OF GRAND JURY

TRUE BILL 07-19-05 20

Foreperson of Grand Jury

Date: 7-19-05 Michael R. Amick

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-20-347

The State of South Carolina

County of Fairfield

COURT OF GENERAL SESSIONS

JULY TERM 2005

THE STATE

VS.

David Goins

Indictment for

Assault and Battery with Intent to Kill

SC Code: §16-03-0620

CDR Code: 0014

Class: Felony, C

2005 JUL 19 P 4: 56

FAIRFIELD COUNTY  
CLERK OF COURT  
BETTY JO BECKHAM

ORIGINAL

734

## ARREST WARRANT

H- 840021

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of  
Fairfield County

THE STATE

against

David Goins

Address: [REDACTED]  
Winnsboro, SC 29180

Phone: [REDACTED] SSN [REDACTED]

Sex: M Race: B Height: 5'09" Weight: 165

DL State: SC DL #: [REDACTED]

DOB: [REDACTED]/1974 Agency ORI#: SC0200000

Prosecuting Agency: Fairfield County Sheriffs Dept

Prosecuting Officer: [REDACTED]

Offense: Assault and Battery with intent to Kill

Offense Code: 14

Code/Ordinance Sec. 16-3-620

This warrant is CERTIFIED FOR SERVICE in the  
☐ County/ ☐ Municipality ofThe accused  
is to be arrested and brought before me to be  
dealt with according to law.

Signature of Judge

(L.S.)

Date:

## RETURN

A copy of this arrest warrant was delivered to  
defendant David Goins  
on 7/5/05

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:  
JERRY REED, JUDGE115-B S CONGRESS ST  
Winnsboro, SC 29180  
803-625-4525

STATE OF SOUTH CAROLINA )

☒ County/ ☐ Municipality of  
Fairfield County )

## AFFIDAVIT

Form Approved by  
S.C. Attorney General  
April 21, 2003  
SCCA 618

Personally appeared before me the affiant M. A. Phillips who  
being duly sworn deposes and says that, defendant David Goins  
did within this county and state on June 30, 2005  
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of Fairfield County)  
in the following particulars: violate the criminal laws of the  
**DESCRIPTION OF OFFENSE: Assault and Battery with intent to Kill**

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:  
The defendant did on above date shoot the victim, Janie Robertson, once in the right shoulder, once in  
the left bicept with a handgun, type unknown. the victim did have to seek medical attention at Fairfield  
Memorial Hospital and was transferred to Richland Memorial. This incident took place at the victim's  
residence located at [REDACTED] in Fairfield County. This is based on victim and witness statement  
and investigation by FCSO.

Signature of Affiant

STATE OF SOUTH CAROLINA )

☒ County/ ☐ Municipality of  
Fairfield County )
Affiant's Address 350 Columbia Road  
Winnsboro, SC 29180Affiant's Telephone 803-635-4141

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that  
on June 30, 2005 defendant David Goins  
did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Fairfield County ) as set forth below:
**DESCRIPTION OF OFFENSE: Assault and Battery with intent to Kill**

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said  
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to  
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me )

on 7/10/2005 )
Jerry Reed (L.S.) )

Signature of Issuing Judge

Judge Code: 5983Judge's Address 115-B S CONGRESS ST  
Winnsboro, SC 29180Judge's Telephone 803-625-4525Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

H-840021

Xref #: 05-2977

735

BAIL set by

Judge \_\_\_\_\_

on \_\_\_\_\_

Type and Amount: \_\_\_\_\_

Name of Surety: \_\_\_\_\_

PRELIMINARY HEARING held by

Judge \_\_\_\_\_

on \_\_\_\_\_

Defense Attorney: \_\_\_\_\_

Decision: \_\_\_\_\_

\_\_\_\_\_

Judge \_\_\_\_\_

on \_\_\_\_\_

by \_\_\_\_\_

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: \_\_\_\_\_

Sentence: \_\_\_\_\_

JURORS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

WITNESSES

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

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CODEFENDANTS

\_\_\_\_\_

\_\_\_\_\_