

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Orangeburg County
Honorable Kristi Lea Harrington, Circuit Court Judge

WALTER HARRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000891

A P P E N D I X

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1 INTO THE JURY ROOM, INTO THAT QUIET PLACE IN RELATION
2 TO MARIO SHIVERS WHEN YOU GO BACK THERE, TO DETERMINE
3 WHETHER MS. BUSBY, UNDER THE INFLUENCE OF ALCOHOL, SHE
4 SAID TWO, IT COULD HAVE BEEN THREE, COULD HAVE BEEN
5 FOUR, USE YOUR COMMON SENSE AND LIFE EXPERIENCES, AND
6 SEE WHETHER THAT IDENTIFICATION WAS CORRECT, ACCURATE,
7 TRUTHFUL AND RELIABLE.

8 NOW, LET'S GET TO, WE HAD SEVERAL WITNESSES
9 DEALING WITH THE INVESTIGATION AT THE SCENE AND, OF
10 CORSE, WHAT WAS FOUND AT THAT PARTICULAR SCENE. AND I
11 THINK THE FIRST LAW ENFORCEMENT OFFICER WAS MR., WAS A
12 LIEUTENANT GERALD CARTER WHO -- EXCUSE ME, CRAIG DAVIS
13 WAS THE FIRST ONE. AND BASICALLY, SERGEANT DAVIS WENT
14 TO THE SCENE, DID HIS JOB, SECURED THE SCENE TO MAKE
15 SURE THE INTEGRITY OF THE SCENE WAS NOT COMPROMISED.
16 I THINK HE STATED HE STAYED ABOUT SEVERAL HOURS UNTIL
17 ABOUT TWO O'CLOCK IN THE MORNING. HE DID HIS JOB, HE
18 KEPT OTHER PERSONS NOT INVOLVED FROM COMPROMISING THE
19 SCENE. SO, IT WAS LAID OUT, IT WAS LAID OUT FOR THE
20 CRIME SCENE INVESTIGATOR.

21 NOW, LIEUTENANT CARTER TESTIFIED AFTER, AFTER HE
22 SECURED THE EXTERIOR OF THE APARTMENT THAT THEY CAME
23 IN TO COLLECT EVIDENCE. AND HE STATED THAT HIS
24 PRIMARY CONCERN -- AGAIN, I DISAGREE, BUT I'M NOT IN
25 LAW ENFORCEMENT -- THAT HIS PRIMARY CONCERN WAS THE

1 INVESTIGATIONS IN THE LIVING ROOM. AND HE SAID HE
2 CAME -- THE FIRST THING, THE FIRST ITEM THAT HE DUSTED
3 FOR PRINTS WAS THE DOOR KNOB WITH NO SUCCESS, AND I
4 THINK SEVERAL OF MY COLLEAGUES MENTIONED THAT. THEN I
5 THINK HE ALSO STATED THAT HE DUSTED THE DOOR, THE
6 ACTUAL SURFACE AREA OF THE DOOR FOR PRINTS. AGAIN, NO
7 PRINTS FOUND. BUT THEN ON CROSS I STARTED ASKING HIM,
8 OKAY, SOME ADDITIONAL THINGS. IF WE HAVE SOMEONE
9 ENTERING A ROOM DID YOU DUST THE DOOR FRAME? HE SAID,
10 NO. THEN HE WENT IN HERE AND YOU NOTICE THE BODY IS
11 NEAR A TELEVISION, WELL, A T.V. TABLE AND A
12 TELEVISION. I ASKED LIEUTENANT CARTER, WELL, DID YOU
13 DUST FOR PRINTS, YOU KNOW, IF SOMEONE IS IN THERE
14 INADVERTENTLY SOMETHING CAN, YOU CAN SWIPE SOMETHING.
15 IT HAPPENS ALL THE TIME. PEOPLE ARE NOT CONSCIOUS OF
16 WHAT THEY TOUCH WHEN THEY'RE DOING THINGS. HE SAID,
17 NO, MR. KOGER, I DIDN'T DUST THE T.V. TABLE. WELL,
18 LIEUTENANT CARTER, DID YOU DUST THIS BIG FLAT SCREEN
19 T.V. NEAR THE BODY? NO, MR. KOGER, I DIDN'T DUST THAT
20 FOR PRINTS. WELL, YOU'RE PRIMARILY CONCERNED WITH THE
21 LIVING ROOM, DID YOU DUST THIS COFFEE TABLE? NO, MR.
22 KOGER, I DIDN'T. ANY ITEMS ON THE COFFEE TABLE? NO,
23 MR. KOGER, I DIDN'T. THE END TABLE? NO, MR. KOGER, I
24 DIDN'T. NOW, THIS RIGHT HERE -- AND AGAIN, YOU KNOW,
25 I'M NOT SAYING ANYTHING ABOUT LIEUTENANT CARTER, THERE

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1 WAS A LOT OF BULLETS AND PROJECTILES AND CASINGS ON
2 THE SCENE, SO MAYBE IT WAS AN OVERSIGHT. OKAY?
3 INEXCUSABLE, BUT MAYBE IT WAS. BUT WHEN YOU HAVE THE
4 COUCH AND THE LOVE SEAT RIPPED, NO DOUBT IN ANYONE'S
5 MIND THAT THESE TWO ITEMS WERE TOUCHED, AND EVEN
6 THOUGH HE OFFERED A PRE-EMPTIVE EXPLANATION, WELL,
7 THIS SUEDE MATERIAL ON THIS COUCH AND LOVE SEAT, IT'S
8 HARD TO TAKE PRINTS, BUT IT'S POSSIBLE. BUT HE
9 WOULDN'T KNOW, AND EVENTUALLY YOU WOULDN'T KNOW AS
10 JURORS IN THIS CASE BECAUSE HE DIDN'T DO IT. AND
11 THEN, YOU KNOW, AND YOU'LL SEE IT IN THE EXHIBITS, IS
12 THAT THIS COUCH AND LOVE SEAT HAD THIS SIMULATED WOOD
13 SIMILAR TO WHAT WE HAVE HERE THAT NO DOUBT THAT YOU
14 COULD HAVE LIFTED SOME PRINTS. AND HE STATED, MR.
15 KOGER, I DIDN'T DUST THE FRONT NOR THE SIDE OF THE
16 COUCH OR LOVE SEAT. AND THEN ALSO, TOO, AGAIN, HIS
17 EXPLANATION WAS, WELL, IT PRIMARILY HAPPENED IN THE
18 LIVING ROOM BUT IT SEEMS LIKE TO ME, AS HE TESTIFIED,
19 IF THE DRUGS AND SOME OF THE MONEY IS LOCATED IN THE
20 KITCHEN AND SUPPOSEDLY THEY WERE THERE TO GET SOME
21 MONEY OR MAYBE DRUGS, IT SEEMS LIKE OUT OF AN
22 ABUNDANCE OF CAUTION WOULD YOU HAVE DUSTED FOR PRINTS
23 IN THE KITCHEN? IT SEEMS LIKE YOU WOULD HAVE DUSTED
24 FOR PRINTS EVERYWHERE, BECAUSE GUESS WHAT? AN
25 ESSENTIAL PART OF THE STATE PROVING THEIR CASE BEYOND

1 A REASONABLE DOUBT IS TO PROVE THE PRESENCE OF THE
2 DEFENDANTS HERE.

3 NOW, LET'S FAST FORWARD TO INVESTIGATOR SHUMPERT.
4 AGAIN, AND I CAN'T RECALL WHICH ONE OF MY COLLEAGUES
5 STATED IT, BUT ESSENTIALLY, BASED UPON THE
6 INVESTIGATIVE PROCEDURES AFTER THE EXISTENCE OF THIS
7 FACT, IT SEEMS TO BE TRUE IS THAT FOR ALL INTENTS AND
8 PURPOSES THE INVESTIGATION WAS OVER AFTER A STATEMENT
9 WAS RECEIVED FROM PATRICK TYLER. I ASKED INVESTIGATOR
10 SHUMPERT ON THE STATE, WELL, WHAT ABOUT, WHAT ABOUT,
11 WHAT ABOUT THE ALLEGED MURDER WEAPONS, DID YOU EXECUTE
12 A SEARCH WARRANT IN PARTICULAR TO MY CLIENT, MARIO
13 SHIVERS? IF YOU DIDN'T HAVE HIS CORRECT ADDRESS
14 BEFORE HE ARRESTED, AFTER HE WAS ARRESTED -- AND HE
15 STATED THAT HE ASCERTAINED THAT INFORMATION. DID YOU
16 EXECUTE A SEARCH WARRANT TO SEE WHETHER -- AND OF
17 COURSE, WE DON'T HAVE THEM HERE IN EVIDENCE BECAUSE
18 IT'S PHANTOM EVIDENCE OF ANY RIFLES, OF ANY NINE
19 MILLIMETER CHROME PISTOL OR ANY OTHER EVIDENCE OF THE
20 CRIME, BE IT MONEY, BE IT THE THREE FIFTY-SEVEN
21 REVOLVER THAT MR. PRINGLE POSSESSED. NOT ONLY THEY
22 DIDN'T EXECUTE A SEARCH WARRANT ON MR. SHIVERS'S
23 RESIDENCE NEITHER ON MR. RYANT'S, NEITHER ON MR. RALPH
24 COLEMAN AND MR. CHRISTIAN COLEMAN. NOW, SOME OF YOU
25 MAY THINK, WELL, MR. KOGER, WHERE ARE YOU GOING WITH

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1 THIS HERE? THE STATE HAS AN OBLIGATION THAT WHEN THEY
2 BRING A CASE BEFORE A JURY HERE IN ORANGEBURG COUNTY
3 TO BRING FORTH THE BEST EVIDENCE, THE BEST EVIDENCE.
4 AND IN ORDER FOR YOU AS A JURY TO MAKE THE BEST
5 DECISION IN THE CASE AND IN ORDER FOR THE STATE TO
6 RECEIVE THE BEST EVIDENCE, THEN THE BEST EVIDENCE HAS
7 TO BE PLACED AT THE BEGINNING TO GET IT TO THIS POINT.
8 SO, IT IS YOU, THE JURY, THAT DON'T HAVE THE PROPER
9 INFORMATION TO MAKE DETERMINATION WHETHER MR. SHIVERS
10 IS GUILTY OR NOT GUILTY OF THE CRIMES CHARGED.

11 NOW, WE HAD MR. GREEN FROM SLED WHO TESTIFIED TO
12 PROJECTILES, CASINGS, BULLETS IN THIS PARTICULAR CASE,
13 AND YOU KNOW, I'M NOT GOING TO GO OVER IT, BUT YOU
14 KNOW, HE TESTIFIED THE CASINGS TO THIS FORTY CALIBER
15 GUN, I BELIEVE THAT'S THE BAG THAT IT CAME OUT OF, AND
16 HE TESTIFIED ABOUT FORTY-FIVE MINUTES THAT HE FOUND
17 ALL THESE CASINGS AND PROJECTILES AND BULLETS ON THE
18 FLOOR. BUT WHAT HE STATED ON CROSS, MAYBE WITH ME,
19 MAYBE WITH ONE OF THE CO-DEFENDANTS, IS THAT IN
20 RELATION TO MARIO SHIVERS THERE IS NOTHING THAT WAS
21 FOUND ON THE SCENE AT SIX THIRTY-FIVE KINGS ROAD THAT
22 EVER INDICATES THAT MR. SHIVERS WAS ON THE PREMISES,
23 NOTHING.

24 NOW, THE STATE HAD A PHOTOGRAPH OF A GUN, OF A
25 RIFLE, AND THEY HAD THIS FORTY CALIBER IN WHICH THE

1 EXPERT TESTIFIED THAT MR. SHIVERS HAD NOTHING TO DO
2 WITH IT, BUT THEN THEY BROUGHT IN ALL THIS, THE
3 CASINGS AND PROJECTILES OF TWO RIFLES AND A NINE
4 MILLIMETER. I'M USING CUPS BECAUSE THEY DON'T HAVE
5 THEM. THEY DON'T HAVE THE MURDER WEAPONS, THE ALLEGED
6 MURDER WEAPONS. AND THAT GOES BACK TO THE BEST
7 EFFORTS AT THE BEGINNING TO TRY TO OBTAIN THAT
8 INFORMATION. SO, YOU HAVE TO MAKE A DECISION, YOU
9 HAVE TO MAKE A DETERMINATION WHETHER THE STATE IN
10 THEIR ATTEMPT TO PROVE THEIR CASE BEYOND A REASONABLE
11 DOUBT THAT THEY CAN DO THAT.

12 NOW, GOING OVER SOME OTHER WITNESSES, ANDRE
13 WASHINGTON TESTIFIED, HE TESTIFIED TO HIS INVOLVEMENT
14 WITH THE FORTY CALIBER GUN, NO TYPE OF CONNECTION WITH
15 MARIO SHIVERS.

16 SHANNON MITCHELL, WHO WAS ON THE SCENE FOR A
17 PARTICULAR PERIOD OF TIME TESTIFIED THAT MR. SHIVERS,
18 MARIO SHIVERS WAS NOT ON THE SCENE.

19 NOW WE'RE GOING TO FAST FORWARD TO, WHY I SAY,
20 TWO OF THE STAR WITNESSES HERE, ONE MORE THAN THE
21 OTHER. OF COURSE, YOU'VE HEARD OVER THE LAST HOUR AND
22 A HALF ABOUT PATRICK TYLER. YOU HEARD ABOUT THE
23 STATEMENT THAT HE GAVE THAT ALLEGEDLY CONNECTS
24 EVERYONE TO THIS PARTICULAR CRIME. NOW, MR. TYLER'S
25 STATEMENT AND TESTIMONY IS UNDER THE SAME CRITERIA AS

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1 I STATED FOR IDENTIFICATION. IT IS YOUR JOB TO PROVE
2 BEYOND A REASONABLE DOUBT THAT HIS STATEMENT IS
3 CORRECT, ACCURATE AND TRUTHFUL. THE STATE EVEN STATED
4 IN THEIR OPENING PORTION OF THE CLOSING THAT YOU ARE
5 TO LOOK FOR ANY TYPE OF BIAS, ANY TYPE OF PREJUDICE,
6 ANY TYPE OF HESITANCY, BUT THIS FOURTH ONE, THIS
7 FOURTH LISTING IS VERY IMPORTANT BECAUSE IT WAS AN
8 ADMISSION BY THE DEFENDANT HIMSELF THAT HIS STATEMENT
9 AT TIMES IS NOT ENTIRELY TRUTHFUL. THAT GOES TO
10 WHETHER IT WAS CONSISTENT OR NOT. AND INVESTIGATOR
11 SHUMPERT, THE LEAD INVESTIGATOR, TESTIFIED ON THE
12 STAND THERE MAY BE, THERE ARE SOME INCONSISTENCIES IN
13 HIS STATEMENT. SO, IF THAT'S THE CASE, HOW CAN YOU AS
14 THE JURY DETERMINE THAT HIS STATEMENT IS CORRECT,
15 ACCURATE AND TRUE BEYOND A REASONABLE DOUBT? BECAUSE
16 THAT'S WHAT YOUR JOB IS TO DO, BUT THOSE ARE FACTORS
17 THAT YOU NEED TO KEEP IN MIND. AS FAR AS ALONG WITH
18 THE OTHER SEVERAL, OR MAY OTHER INCONSISTENCIES, MR.
19 TYLER IN HIS STATEMENT SAID THAT MR. SHIVERS CALLED
20 HIM. ON THE STAND HE STATED HE CALLED MR. SHIVERS.
21 OKAY. ANOTHER ONE, HE SAID IN HIS STATEMENT THAT A
22 GROUP OF DEFENDANTS WENT TO BROOKDALE AND GOT HIM.
23 GARNER TESTIFIED THAT THEY ENDED UP AT WOODBINE. NOW,
24 AGAIN, WHAT I SAY IS NOT EVIDENCE, WHAT MY COLLEAGUES
25 SAY IS NOT EVIDENCE, WHAT THE SOLICITOR SAYS WHEN HE

1 GETS A SECOND CHANCE IS NOT EVIDENCE. SO, YOU RECALL
2 WHAT YOU HEARD ON THE STAND. BUT THAT IS AN EXAMPLE
3 OF THE INCONSISTENCIES. AND ALSO, YOU KNOW, I GOT
4 SOME STRANGE LOOKS WHEN I KIND OF ASKED ABOUT THE DOG
5 WITH LIEUTENANT CARTER, BECAUSE MR. TYLER SAID ON THE
6 STAND THE DOG WAS SHOT. AND AS YOU CAN RECALL,
7 LIEUTENANT CARTER STATED THAT DOG WAS VERY MUCH ALIVE,
8 TIED TO A CEMENT BLOCK, ANOTHER INCONSISTENCY.

9 WHAT DOES SOMEONE HAVE TO LOSE, WHAT DOES SOMEONE
10 HAVE TO GAIN? IT IS NOT BELIEVABLE FOR MR. TYLER TO
11 SIT IN THAT CHAIR, OR TO HAVE SAT IN THAT CHAIR AND
12 STATED, I EXPECT NO BENEFIT, NO EXPECTATIONS FOR MY
13 TESTIMONY, THAT I'M DOING THIS OUT OF THE GOODNESS OF
14 MY HEART. THIS IS FROM A PERSON THAT ACCORDING TO HIS
15 WEED BUDDY HAS SMOKED MARIJUANA CONTINUOUSLY FOR THREE
16 YEARS, SEVEN DAYS A WEEK, FIFTY-TWO WEEKS A YEAR. AS
17 ATTORNEY WISE STATED SO APTLY, HE SUDDENLY DEVELOPED A
18 STREAM OF CONSCIOUS. BUT YOU ARE ENTITLED, YOU ARE
19 ENTITLED AS JURORS WHEN YOU LOOK AT MR. TYLER'S
20 DEMEANOR ON THE STAND, HOW HE REACTED ON THE STAND,
21 YOU ARE ENTITLED TO USE THOSE FACTORS TO DETERMINE
22 WHETHER HIS TESTIMONY AND HIS STATEMENT IS CORRECT,
23 ACCURATE OR TRUTHFUL. AND IF THE STATE CANNOT PROVE
24 BEYOND A REASONABLE DOUBT THAT THOSE THINGS, THAT THAT
25 BURDEN IS MET, THEN YOU ARE OBLIGATED TO FIND NOT

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1 GUILTY FOR MR. MARIO SHIVERS, AND THE REST IF YOU SO
2 CHOOSE, THE REST OF THE DEFENDANTS.

3 I'M NOT GOING TO BELABOR THE POINT, BUT DON'T
4 MAKE THIS EASY FOR THE PROSECUTION. DON'T LET THE
5 PROSECUTION COME UP HERE AND IMPLORE YOU TO TREAT ALL
6 OF THESE DEFENDANTS AS A GROUP, TO TRY TO SAY IF ONE
7 KNEW, ALL KNEW, IF ONE ACTS, ALL ACTS. DON'T ALLOW
8 THAT. DON'T ALLOW THE STATE, AS SOLICITOR PASCOE
9 ATTEMPTED TO DO IN HIS OPENING, TO CHANGE THE STANDARD
10 FROM BEYOND A REASONABLE DOUBT TO FIRMLY CONVINCED.
11 EACH ONE OF THESE DEFENDANTS HAVE A QUIET ROOM. WHEN
12 YOU GO BACK IN THERE PROVIDE A QUIET ROOM FOR
13 CHRISTIAN COLEMAN, PROVIDE A QUIET ROOM FOR RALPH
14 COLEMAN, PROVIDE A QUIET ROOM FOR WALTER HARRIS,
15 PROVIDE A QUIET ROOM FOR DANNY RYANT, AND PROVIDE A
16 QUIET ROOM FOR MARIO SHIVERS, AND MAKE Y'ALL'S
17 DETERMINATION BASED ON EACH AND EVERY ONE OF THEM AND
18 NOT UNDER SOME THEORY, HAND OF ONE, HAND OF ALL.

19 I SUBMIT TO YOU THAT THE STATE HAS NOT PROVED
20 THEIR CASE OF MURDER BEYOND A REASONABLE DOUBT AGAINST
21 MARIO SHIVERS. I SUBMIT TO YOU THAT THE STATE HAS NOT
22 PROVED THEIR CASE BEYOND A REASONABLE DOUBT ON ARMED
23 ROBBERY FOR MARIO SHIVERS. AND I SUBMIT TO YOU THAT
24 THE STATE HAS NOT PROVED THEIR CASE BEYOND A
25 REASONABLE DOUBT ON THE BURGLARY, FIRST DEGREE, FOR

1 MARIO SHIVERS. AND I SUBMIT TO YOU, NOT ONLY THEY
2 HAVE NOT PROVED IT, BUT THEY HAVE FAILED MISERABLY IN
3 ATTEMPTING TO DO SO.

4 THANK YOU.

5 THE COURT: THANK YOU, MR. KOGER.

6 ALRIGHT, LADIES AND GENTLEMEN, WHAT WE'RE GOING
7 TO DO RIGHT NOW IS, WE'RE GOING TO TAKE ABOUT A TEN
8 MINUTE BREAK, AND LET Y'ALL GO BACK INTO THE JURY ROOM
9 SO YOU CAN ORDER YOUR LUNCH. OKAY? AFTER ABOUT A TEN
10 MINUTE BREAK YOU'LL COME BACK OUT HERE AND THEN,
11 WHILE WE WAIT FOR THE FOOD, MR. PASCOE WILL FINISH UP
12 WITH HIS CLOSING ARGUMENTS, AND THEN I WILL CHARGE YOU
13 WITH THE LAW. OKAY? NOW, REMEMBER, AGAIN, YOU HAVE
14 NOT HEARD ALL THE CLOSING ARGUMENTS YET SO YOU CANNOT
15 BEGIN DISCUSSING THIS CASE. OKAY, Y'ALL ARE NOW
16 EXCUSED TO GO BACK INTO THE JURY ROOM.

17 (Whereupon, the jury retires
18 to the jury room and the following
19 takes place out of the presence
20 of the jury.)

21 THE COURT: ALRIGHT, WE'LL BE IN RECESS FOR ABOUT
22 TEN MINUTES.

23 (Recess)

24 THE COURT: ALRIGHT, MR. PASCOE, ARE YOU READY?

25 SOLICITOR PASCOE: YES, SIR.

1 THE COURT: ALRIGHT, BRING THE JURY BACK IN.
2 (Whereupon, the jury enters
3 the courtroom and the following
4 takes place in the presence
5 of the jury.)

6 THE COURT: ALRIGHT, LADIES AND GENTLEMEN, I HOPE
7 Y'ALL HAVE GOT YOUR LUNCH ORDERED. OKAY? WE'RE GOING
8 TO CONTINUE WITH THE CLOSING.

9 SOLICITOR PASCOE.

10 SOLICITOR PASCOE: MAY IT PLEASE THE COURT.

11 THE COURT: YES, SIR.

12 FINAL CLOSING ARGUMENT BY SOL. PASCOE

13 ON THE NIGHT OF MARCH THE TWELFTH, TWO THOUSAND
14 TEN, THIS YEAR, CHARLES PRINGLE DIDN'T STAND A CHANCE
15 WHEN SIX MEN, CRIS COLEMAN, RALPH COLEMAN, WALTER
16 HARRIS, DANNY RYANT, MARIO SHIVERS AND PATRICK TYLER
17 WENT STORMING INTO HIS HOUSE ARMED WITH AT LEAST FOUR
18 GUNS AND DUCT TAPE. HE DIDN'T STAND A CHANCE.

19 CHARLES PRINGLE WASN'T PERFECT, WE DIDN'T COME IN
20 HERE AND TELL YOU HE WAS PERFECT, ALTHOUGH YOU HEARD
21 ON THE WITNESS STAND UNDER THEIR CROSS-EXAMINATION, HE
22 WAS A NICE GUY. BUT HE WASN'T PERFECT, HE SOLD
23 MARIJUANA. BUT HE WAS SOMEBODY'S SON, HE WAS
24 SOMEBODY'S NEPHEW, HE WAS SOMEBODY'S FRIEND. AND HE
25 GOT GUNNED DOWN BY SIX PEOPLE TWENTY-FOUR TIMES,

1 TWENTY-FOUR TIMES BY SIX PEOPLE WHO HAVE ABSOLUTELY NO
2 RESPECT FOR HUMAN LIFE. PATRICK TYLER, TOO, PATRICK
3 TYLER, HE'S NOT MY FRIEND, HE WASN'T MY FRIEND IN
4 MARCH, HE WAS THEIR FRIEND. ONE THING I WILL AGREE
5 WITH WITH MS. ULLMAN ON, PATRICK TYLER NEEDS TO BE
6 PUNISHED. PATRICK TYLER WILL BE PUNISHED. BUT TODAY
7 THEY ARE GOING TO BE PUNISHED FOR THE MALICIOUS AND
8 VICIOUS ACT THEY DID ON THAT NIGHT, ON MARCH THE
9 TWELFTH.

10 THE THING ABOUT MARCH THE TWELFTH IS, WE
11 WITNESSED TWO SEPARATE ACTS IN ORANGEBURG COUNTY, TWO
12 SEPARATE ACTS, THE FIRST ACT, EVIL, THE WORST OF
13 ORANGEBURG COUNTY, THE COWARDLY ACTS OF THE
14 DEFENDANTS. BUT IN THE SECOND ACT AS A RESULT OF
15 MARCH THE TWELFTH WE GOT TO SEE THE BEST OF ORANGEBURG
16 COUNTY. LET'S TALK ABOUT THOSE COWARDLY ACTS, THE
17 WORST OF ORANGEBURG COUNTY.

18 THE WORST OF ORANGEBURG COUNTY WAS WHEN PATRICK
19 TYLER, MARIO SHIVERS AND RALPH COLEMAN GOT TOGETHER AT
20 RALPH COLEMAN'S FAMILY'S HOME ON WOODBINE AND DECIDED
21 TO COMMIT AN ARMED ROBBERY OF CHARLES PRINGLE, WHO
22 MARIO SHIVERS KNEW. CHRIS COLEMAN SHOWS UP WITH HIS
23 BUDDY, RONNIE WASHINGTON. THEY'VE GOT A RIDE NOW,
24 THEY'RE INVOLVED IN IT. THEY GO AND PICK UP WALTER
25 HARRIS WHO HAS A FORTY CALIBER HAND GUN, A BLACK

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1 PISTOL. WALTER HARRIS GOES INSIDE, SCOPES IT OUT,
2 THEY THEN GO TO THE CORNER POCKET WHICH IS ABOUT A
3 HALF A MILE FROM THE VICTIM'S HOME, AND THEY PICK UP
4 DANNY RYANT. AND CHRISTOPHER COLEMANA GOES INTO THAT
5 HOME WITH A NINE MILLIMETER PISTOL, RALPH COLEMAN GOES
6 INTO THAT HOME WITH A FORTY CALIBER PISTOL, WALTER
7 HARRIS WITH DUCT TAPE, DANNY RYANT AND MARIO SHIVERS
8 WITH SKS RIFLES. PATRICK TYLER GOES IN THERE AND HE'S
9 INVOLVED, TOO, AND THEY GUN HIM DOWN TWENTY-FOUR TIMES
10 LIKE THEY'RE USING HIS BODY FOR TARGET PRACTICE, AND
11 THEY RUN LIKE COWARDS. THAT'S THE FIRST ACT, THE
12 VIOLENT SIDE, THE EVIL PART OF WHAT HAPPENED IN THIS
13 COUNTY.

14 BUT WE ALSO GOT TO WITNESS THE GREAT SIDE OF
15 ORANGEBURG COUNTY, COURAGE, AND I'M TALKING ABOUT THE
16 COURAGE OF WITNESSES COMING FORWARD BACK IN MARCH TO
17 TELL THE POLICE WHAT HAPPENED. I'M TALKING ABOUT THE
18 COURAGE OF PEOPLE THAT ARE FRIENDS WITH DANNY RYANT
19 WHO CAME FORWARD AND SAID, DANNY RYANT, YEAH, HE WAS
20 AT THE CORNER POCKET WHICH IS JUST ABOUT A HALF A MILE
21 FROM THE VICTIM, BUT WE COULDN'T FIND HIM FOR A WHILE.
22 AND ONE WITNESS WHO I'LL TALK ABOUT IN A MINUTE WHO
23 ACTUALLY SAID, HEY, AND I SAW HIM GETTING IN THE CAR
24 WITH TWO PEOPLE. AND SHE PICKS OUT MARIO SHIVERS AND
25 PATRICK TYLER. I'M TALKING ABOUT THE COURAGE OF A

1 SHANNON MITCHELL WHO GETS ON THE WITNESS STAND AND
2 TELLS THE POLICE, WALTER HARRIS WAS IN THAT HOUSE
3 RIGHT BEFORE THE MURDER. AND THAT'S KIND OF UNUSUAL,
4 I DON'T KNOW WHY HE WOULD BE IN THERE, I'VE NEVER
5 KNOWN HIM TO BE IN THERE. AND WHY WOULD HE GO IN
6 THERE? BECAUSE CHARLES PRINGLE KNOWS MARIO SHIVERS
7 BUT HE DOESN'T KNOW WALTER HARRIS, PART OF THE
8 CONSPIRACY. I'M TALKING ABOUT THE COURAGE, YES, OF A
9 PATRICK TYLER, A SIXTEEN YEAR OLD CHILD. YOU THINK
10 YOU'RE A MAN WHEN YOU'RE SIXTEEN, YOU'RE NOT A MAN,
11 YOU'RE STILL A KID, BREAKING DOWN AND CRYING IN FRONT
12 OF HIS PARENTS WITH INVESTIGATOR SHUMPERT AND FINALLY
13 TELLING HIM ON MARCH THE EIGHTEENTH, NOT JUST ON
14 TUESDAY, BUT MARCH THE EIGHTEENTH WHO WAS INVOLVED IN
15 THIS MURDER, HE AND HIS BUDDIES. AND NOT JUST THE
16 COURAGE BACK IN MARCH OF THESE WITNESSES TO COME
17 FORWARD, BUT THE COURAGE OF THEM TO THEN COME INTO
18 THIS COURTROOM, PUT THEIR HAND ON THAT BIBLE, GET ON
19 THAT WITNESS STAND, FACE THOSE ATTORNEYS, FACE ME,
20 FACE THOSE DEFENDANTS, AND TESTIFY. YOU SAW THE
21 GRILLING YOU GET WHEN YOU GET ON A WITNESS STAND, YOU
22 SAW WHAT YOU HAVE TO GO THROUGH. AND THEY HAD THE
23 COURAGE TO GET ON THAT WITNESS STAND AND TESTIFY
24 AGAINST THOSE FIVE DEFENDANTS. EVEN THOUGH SOME OF
25 THEM WERE FRIENDS WITH THEIR FAMILY, EVEN THOUGH SOME

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1 FO THEM WERE FRIENDS WITH THE DEFENDANTS. THAT'
2 COURAGE. AND WHAT I'M ASKING OF YOU TODAY, LADIES AND
3 GENTLEMEN, IS THAT YOU DISPLAY THAT SAME DEGREE OF
4 COURAGE THAT EVERY SINGLE ONE OF THOSE WITNESSES HAD
5 WHEN YOU REACH YOUR VERDICT TODAY. HAVE THE COURAGE TO
6 DO THE RIGHT THING LIKE THOSE WITNESSES AND FIND THOSE
7 DEFENDANTS GUILTY OF MURDER, ARMED ROBBERY, AND
8 BURGLARY IN THE FIRST DEGREE. BECAUSE, LADIES AND
9 GENTLEMEN, HOW IS THERE ANY DOUBT WHATSOEVER, MUCH
10 LESS A REASONABLE DOUBT -- I'M GOING TO SAY IT BECAUSE
11 IM' GOING TO PROVE IT -- HOW IS THERE ANY DOUBT, MUCH
12 LESS A REASONABLE DOUBT THAT ALL FIVE OF THEM, AND
13 PATRICK TYLER ARE GUILTY. AND IF I'M WRONG, FIND THEM
14 NOT GUILTY, FIND THEM NOT GUILTY.

15 THERE WAS A BUNCH OF ASSERTIONS DURING THE TRIAL
16 AND IN CLOSING ARGUMENTS, WHERE ARE THE GUNS, WHERE
17 ARE THE GUNS? WELL, THEY KNOW WHERE THE GUNS ARE.
18 THEY'RE MARIO SHIVERS'S GUNS. THEY USED THEM. FIND
19 THEM NOT GUILTY, LET THEM GO BACK TO THEM. BUT TO
20 THAT, I SUBMIT YOU'D HAVE TO DISREGARD EVERY PIECE OF
21 EVIDENCE IN THIS CASE. BECAUSE THE EVIDENCE DOESN'T
22 JUST PROVE THE DEFENDANTS' GUILT BEYOND A REASONABLE
23 DOUBT, IT PROVES IT BEYOND ANY DOUBT WHATSOEVER.
24 THERE'S AN OLD EXPRESSION, FACTS ARE STUBBORN THINGS,
25 FACTS ARE STUBBORN THINGS, AND IN A MINUTE I'M GOING

1 TO TALK TO YOU ABOUT THOSE STUBBORN FACTS OF GUILT.
2 BUT FIRST I'M GOING TO PUT ONE THING TO REST RIGHT
3 NOW, WHICH IS WHY THE STATE OF SOUTH CAROLINA, WE HAVE
4 THE SOLE BURDEN OF PROOF. THE DEFENSE DOESN'T HAVE TO
5 ASK ONE QUESTION, THEY DON'T HAVE TO THROW UP ANY
6 ASSERTIONS OR SAY A WORD. BUT ONCE THEY DO START
7 THROWING UP ASSERTIONS, ONCE THEY DO START TALKING
8 THEY'RE SUBJECT TO SCRUTINY JUST LIKE ANYTHING ELSE.
9 AND FIRST AND FOREMOST, THINGS WE SAY AS ATTORNEYS,
10 QUESTIONS WE ASK ARE NOT EVIDENCE. THE ONLY THING YOU
11 AN CONSIDER FOR YOUR VERDICT IS WHAT YOU HEARD FROM
12 THAT WITNESS STAND AND WHAT YOU GET TO TAKE BACK WITH
13 YOU, THAT'S IT. NOT STATEMENTS FROM ATTORNEYS, JUST
14 THE EVIDENCE. BUT THE DEFENSE DOESN'T WANT YOU TO
15 BASE YOUR VERDICT ON THE EVIDENCE, THEY WANT YOU TO
16 BASE IT ON ASSERTIONS, ASSERTIONS, LIKE NO GUNS,
17 REASONABLE DOUBT, NO GUNS. THAT'S RIDICULOUS. WE
18 DON'T REWARD MURDERERS FOR WAITING A WEEK, TEN DAYS,
19 ALMOST TWO WEEKS BEFORE THEY TURN THEMSELVES IN. THEY
20 DON'T GET REWARD FOR THAT. AND BESIDES, WE GOT TO
21 SEE, YOU GOT TO WITNESS WHAT MURDERERS DO WITH THEIR
22 WEAPONS, THEY SELL THEM, LIKE WALTER HARRIS SOLD HIS
23 FORTY CALIBER PISTOL SATURDAY, I SUBMIT, THE DAY AFTER
24 THE MURDER, TO ANDRE WASHINGTON. WE DON'T REWARD
25 MURDERERS FOR GETTING RID OF THEIR WEAPONS AFTER A

1. MURDER AND WAITING TEN DAYS TO TURN THEMSELVES IN.

2. OH, ASSERTIONS LIKE, NO FINGERPRINTS, REASONABLE
3. DOUBT. THAT IS, THAT'S JUST UNTRUE. I HOPE IF
4. THERE'S ANYTHING YOU LEARNED DURING THE COURSE OF THIS
5. TRIAL, AND IT DRIVES ME UP A WALL, AND I HAVE TO
6. EXPLAIN IT TO MY FAMILY AND I HAVE TO EXPLAIN IT TO
7. FRIENDS, LIKE GERALD CARTER SAID, HE'S THE EXPERT, IT
8. IS A MISCONCEPTION THAT PEOPLE LEAVE FINGERPRINTS AND
9. DNA AT CRIME SCENES. AS HE SAID, JUST BECAUSE YOU
10. TOUCH SOMETHING DOESN'T MEAN YOU'RE GOING TO LEAVE A
11. FINGERPRINT WITH SUFFICIENT RIDGE DETAIL THAT YOU CAN
12. COMPARE IT WITH SOMETHING ELSE. YOU MIGHT LEAVE,
13. MIGHT LEAVE SMUDGES, BUT YOU'RE NOT GOING TO LEAVE
14. NECESSARILY FINGERPRINTS. THIS IS NOT CSI, IT'S NCIS,
15. IT'S NOT T.V., IT'S THE REAL WORLD. AND BESIDES, HOW
16. DO WE PROVE THAT, HOW DO YOU KNOW THAT? WHAT DOES
17. EVERYBODY TOUCH? A DOOR KNOB. AND THERE ARE NO
18. IDENTIFIABLE PRINTS ON THE DOOR KNOB BECAUSE IT IS A
19. MISCONCEPTION THAT WHEN YOU TOUCH SOMETHING YOU LEAVE
20. DNA OR A FINGERPRINT. IT'S CHARLES PRINGLE'S HOME,
21. COULDN'T FIND ANY OF HIS FINGERPRINTS IN THERE. WE
22. KNOW SOMEBODY MURDERED AND SHOT CHARLES PRINGLE
23. TWENTY-FOUR TIMES, BUT THERE ARE NO PRINTS OR DNA.
24. MISCONCEPTION. DON'T LET THEM GET AWAY WITH IT,
25. BECAUSE YOUR JOB IS NOT TO LOOK AT WHAT'S NOT THERE,

1 YOUR JOB IS TO LOOK AT WHAT IS THERE AND ASK
2 YOURSELVES, AM I FIRMLY CONVINCED OF THE DEFENDANT'S
3 GUILT?

4 ASSERTIONS LIKE, WHERE IS RONNIE WASHINGTON?
5 WELL, LET'S TALK ABOUT RONNIE WASHINGTON. WHERE IS
6 HE? WHY ISN'T HE CHARGED WITH MURDER YET? SOMEONE
7 SAID IN THEIR CLOSING STATEMENT, I ASSUME IT'S BECAUSE
8 THE PROSECUTION IN THEIR DEFENSE OF MAYBE MERE
9 PRESENCE. WELL, I APPRECIATE THEIR INDIGNATION
10 TOWARDS THE GET AWAY DRIVER, RONNIE WASHINGTON, IT
11 PROVES THAT THE DEFENDANTS ARE GUILTY. I APPRECIATE
12 THAT. BUT LET'S TALK ABOUT RONNIE. IT IS NOT
13 REASONABLE, HE CAME FORTH, AS YOU HEARD, TWO WEEKS
14 AGO, WHILE WE WERE GETTING READY FOR THIS TRIAL,
15 RONNIE WASHINGTON GOES TO THE SHERIFF'S OFFICE, THIS
16 CAME OUT, AND ADMITTED, I WAS THE GET AWAY DRIVER.
17 HOW DOES THAT HELP THEM? AND WE'LL TALK MORE ABOUT
18 THAT IN A MINUTE. I WAS THE GET AWAY DRIVER, AND I'M
19 FRIENDS WITH CHRIS COLEMAN, JUST LIKE PATRICK TYLER
20 TOLD YOU ON THE WITNESS STAND. HOW DOES THAT HELP
21 THEM? BUT HOW IS IT REASONABLE FOR RONNIE WASHINGTON
22 TO DRIVE THOSE SIX INDIVIDUALS ARMED WITH SKS'S, ARMED
23 WITH PISTOLS, DUCT TAPE, AS PATRICK TYLER TOLD YOU,
24 TALKING ABOUT THE ROBBERY IN THE CAR, HOW WOULD IT BE
25 REASONABLE FOR RONNIE WASHINGTON NOT TO KNOW WHAT'S

1 GOING TO HAPPEN? I SUBMIT, IT'S NOT. WELL, WHAT DOES
2 THAT MEAN? IT MEANS, AS THEY SAID, HE NEEDS TO BE
3 CHARGED. HOW CAN I ETHICALLY CALL A WITNESS IF I'M
4 ABOUT TO CHARGE HIM WITH A CRIME? I CAN'T. THAT'S
5 WHY RONNIE WASHINGTON IS NOT HERE. THAT'S THE TRUTH.
6 WELL, HOW CAN RONNIE WASHINGTON IN ANY WAY HELP THEM?
7 NOT AT ALL. IT KILLS THEM. HE CORROBORATES PATRICK
8 TYLER FROM THE TESTIMONY YOU GOT TO HEAR ABOUT RONNIE
9 WASHINGTON. HE WAS THE GET AWAY DRIVER, THAT'S THE
10 ONLY EVIDENCE IN THIS CASE, HE'S FRIENDS WITH
11 CHRISTOPHER COLEMAN, AND HE DROVE AN SUV, A JEEP TYPE
12 CAR, AN EXPLORER. AND THEY ACCURATELY POINT OUT THE
13 LAW WITH REGARD TO RONNIE WASHINGTON, I REALLY
14 APPRECIATED THAT AGAIN. YOU DO NOT HAVE TO BE THE
15 GUNMAN, YOU DO NOT EVEN HAVE TO GO IN THE HOUSE TO BE
16 GUILTY OF MURDER, ARMED ROBBERY, AND BURGLARY, THAT'S
17 EXACTLY RIGHT. BUT THEN THEY GET UP HERE AND
18 SOMETIMES MIS-STATE THE LAW WITH REGARDS TO THEIR
19 CLIENT.

20 AND ONE MIS-STATEMENT THAT WAS MADE, AND I DON'T
21 THINK IT WAS INTENTIONAL, BUT I WANT TO CORRECT
22 SOMETHING, THAT I CHANGED THE STANDARD OF PROOF FROM
23 BEYOND A REASONABLE DOUBT TO FIRMLY CONVINCED. WHEN
24 YOU LISTEN TO THE JUDGE'S CHARGE, LISTEN CAREFULLY
25 ABOUT REASONABLE DOUBT, YOU WILL HEAR THE WORDS,

1 FIRMLY CONVINCED. HE'S GOING TO TELL YOU IF YOU'RE
2 FIRMLY CONVINCED OF THE DEFENDANT'S GUILT THAT MEANS
3 THAT'S PROOF BEYOND A REASONABLE DOUBT, THAT MEANS YOU
4 MUST CONVICT THEM. I DIDN'T MIS-STATE ANYTHING.

5 INCONSISTENCIES. THERE ARE BROAD ASSERTIONS,
6 WHETHER ALL KINDS OF INCONSISTENCIES IN THE
7 STATEMENTS, INCONSISTENCIES ON THE WITNESS STAND, I
8 HOPE SO. THAT'S HOW YOU KNOW THINGS ARE CREDIBLE. YOU
9 KNOW THIS FROM YOUR OWN EXPERIENCE. TWO PEOPLE, JUST
10 TWO PEOPLE WITNESS THE SAME EVENT, YOU ASK THEM A
11 MINUTES LATER TO RECOUNT IT, THEY'RE ALL GOING TO HAVE
12 DIFFERENT DETAILS. THAT'S HOW YOU KNOW THEY'RE
13 CREDIBLE. IF THEY'RE GOING TO GET UP AND LIE, GET UP
14 THERE AND SAY THE SAME THING. BUT WE DON'T WANT THAT,
15 WE WANT THE TRUTH, WE WANT THE TRUTH. IT'S ABSOLUTELY
16 UNTRUE TO SAY THAT INCONSISTENCIES ARE ALWAYS A LACK
17 OF CREDIBILITY.

18 AND TALK ABOUT A LACK OF CREDIBILITY, LET'S SEE,
19 WHEN YOU GET UP IN AN OPENING STATEMENT AND SAY, WELL,
20 THE STATE WON'T PROVE THAT MY CLIENT WAS THERE, BUT IF
21 THEY DO PROVE HE WAS THERE, THEY WON'T PROVE HE
22 PARTICIPATED. NOW, I KNOW I HAVE THE SOLE BURDEN OF
23 PROOF, BUT HOW IS THAT CREDIBLE? COME ON.

24 MR. PALMER ADDRESSED, ACCURATELY SO, HE SPOKE
25 ABOUT THE LAW OF WITHDRAWAL, ABOUT HOW YOU CAN

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1 WITHDRAW FROM A CRIME. HE WAS VERY ACCURATE IN THE
2 WAY HE EXPLAINED IT, AND I WOULD ALSO ASK THAT YOU
3 LISTEN TO THE JUDGE WHEN HE TELLS YOU ABOUT HOW YOU
4 CAN WITHDRAW FROM A CRIME. OKAY? THE PROBLEM FOR MR.
5 HARRIS IS, IN ORDER TO BE NOT GUILTY TO WITH DRAW FROM
6 THE CRIME YOU HAVE TO WITHDRAW BEFORE THE CONSPIRACY
7 STARTS. THE CONSPIRACY STARTED WHEN HE WENT IN THAT
8 HOUSE AND SCOPED IT OUT. YOU ALSO HAVE TO WITHDRAW
9 DURING THE ENTIRETY OF THE CRIME, AND AS WE KNOW, THE
10 ONLY EVIDENCE IN THIS CASE IS, HE WENT IN THERE WITH
11 DUCT TAPE AND PUT DUCT TAPE OVER THE VICTIM'S MOUTH.
12 BUT AGAIN, LISTEN TO THE JUDGE'S CHARGE ON THAT.

13 MISREPRESENTATIONS, AND I KNOW Y'ALL SAW, I WAS
14 OPENING A VESSEL OVER HERE AT ONE POINT AND I'M SORRY,
15 I APOLOGIZE, BUT TO GET UP HERE AND SAY TWO THINGS,
16 FIRST OF ALL, THAT CHRISTOPHER DWIGHT SHOULD HAVE BEEN
17 INVESTIGATED, THERE IS NO EVIDENCE, IT IS OFFENSIVE TO
18 COME IN A COURTROOM AND POINT THE FINGER AT SOMEBODY
19 WHEN THERE'S NO EVIDENCE THAT THEY HAD ANY INVOLVEMENT
20 IN THIS CRIME. THE ONLY EVIDENCE IS THAT MR. DWIGHT
21 ASSISTED LAW ENFORCEMENT IN FINDING THAT WEAPON. NONE
22 WHATSOEVER, IT'S OFFENSIVE TO MR. DWIGHT, WHO IS NOT
23 EVEN IN THIS COURTROOM TO ANSWER THAT. IT'S OFFENSIVE
24 TO THE PROCESS TO GET UP HERE IN FRONT OF YOU AND SAY
25 THAT THERE'S EVIDENCE THAT RALPH COLEMAN HAD PROBLEMS

1 WITH PATRICK TYLER, THAT PATRICK TYLER HAD ISSUES WITH
2 RALPH COLEMAN, WHEN THERE'S NO EVIDENCE OF THAT
3 WHATSOEVER, THAT'S A BLATANT UNTRUTH, BLATANT UNTRUTH.
4 THE ONLY EVIDENCE IS, THEY WERE BUDDIES, THEY WERE
5 HANGING OUT THAT NIGHT SMOKING MARIJUANA AT COLEMAN'S
6 FAMILY'S PLACE. THAT'S BLATANT UNTRUTH, NO EVIDENCE
7 OF THAT.

8 WE ALL HAD TO HEAR A BUNCH OF OLD PHRASES THAT WE
9 ALL HEARD IN LAW SCHOOL, MY FIRST DAY OF LAW SCHOOL,
10 THE FIRST PHRASE I EVER HEARD FOR LAWYERS, IF THE
11 FACTS AREN'T ON YOUR SIDE, ARGUE THE LAW. IF THE LAW
12 IS NOT ON YOUR SIDE, ARGUE THE FACTS. IF NEITHER ARE
13 ON YOUR SIDE TRY TO CONFUSE THE JURY. THAT'S ALL
14 THEY'RE TRYING TO DO. NONE OF THEM, THE FACTS OR THE
15 LAW, NONE OF IT IS ON THEIR SIDE. CONFUSE THE JURY.

16 LADIES AND GENTLEMEN, ALL THESE DIVERSIONS, THESE
17 ASSERTIONS, THEY'RE JUST ATTEMPTS TO DIVERT YOUR
18 ATTENTION AWAY FROM THE FACTS OF THIS CASE. QUICK
19 STORIES, QUICK STORIES. I WAS THINKING ABOUT IT WHEN
20 I WAS SITTING THERE, I LOVED BASEBALL GROWING UP, I
21 LOVED IT. MY FAVORITE BASEBALL TO THIS DAY IS HANK
22 AARON. EVERY TIME HE WAS ON T.V. I'D GO WATCH IT, I'D
23 WATCH. I BEGGED MY FATHER TO TAKE ME TO GAMES IN
24 ATLANTA. AND ONE SATURDAY I'M WATCHING THE SATURDAY
25 AFTERNOON GAME ON NBC, I'LL NEVER FORGET IT, AND

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1 YOU'RE GOING TO HAVE TO EXPLAIN TO SOME OF THE YOUNGER
2 JURORS HOW WE ONLY HAD THREE CHANNELS BACK THEN AND IT
3 WAS A BIG DEAL TO GET A BASEBALL ON SATURDAY, TO WATCH
4 A GAME WITH JOE GRAGIOLI AND TONY CUBECK. AND HANK
5 AARON WAS GETTING UP THERE IN AGE AND HE WAS FACING A
6 GUY NAMED NOLAN RYAN, THE HARDEST PITCHER IN THE
7 HISTORY OF BASEBALL. AND HANK AARON -- AND I WAS WITH
8 MY GRANDFATHER, MY UNCLE, AND I WATCHED HANK AARON HIT
9 A HOME RUN ON NOLAN RYAN, AND I SAW TONY CUBECK
10 INTERVIEW HANK AARON AT THE END OF THE GAME. AND HE
11 ASKED HIM, HANK, YOU'RE GETTING UP THERE IN AGE, HOW
12 IS IT THAT YOU'RE ABLE TO HIT THAT FAST BALL SO WELL
13 WHEN IT'S OVER A HUNDRED MILES AN HOUR? AND HANK
14 AARON SMILED AND HE SAID, IT'S EASY, I JUST KEEP MY
15 EYE ON THE BALL. I MEAN, TALK ABOUT ADVICE FOR, NOT
16 JUST HITTING A BASEBALL, BUT FOR LIFE. VERDICT COMES
17 FROM THE LATIN WORD, VERE DICTO, IT MEANS TO SPEAK THE
18 TRUTH. IF YOU KEEP YOUR EYE ON THE BALL IN THIS CASE,
19 IF YOU STAY FOCUSED ON WHAT'S IN FRONT OF YOU AND NOT
20 ON THE DIVERSIONS AND THE ASSERTIONS, THE ONLY VERDICT
21 YOU CAN RENDER IS GUILTY. BECAUSE AS THE JUDGE IS
22 GOING TO TELL YOU, THERE ARE VERY FEW THINGS IN THIS
23 WORLD WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL
24 CASES THE STATE DOESN'T HAVE TO PROVE A DEFENDANT'S
25 GUILT BEYOND ANY AND ALL CERTAINTY. BUT IF THERE'S

1 EVER A CASE WHERE THAT'S DONE, IT'S THIS ONE. LET'S
2 START TALKING ABOUT THOSE STUBBORN FACTS VERY BRIEFLY,
3 THOSE STUBBORN FACTS OF GUILT.

4 FIRST, PATRICK TYLER, AND LOOK AT THE
5 CIRCUMSTANCES WITH PATRICK TYLER WHEN YOU'RE ASSESSING
6 HIS CREDIBILITY. OKAY? HE WAS SIXTEEN YEARS OLD.
7 AGAIN, IT DOESN'T MINIMIZE WHAT HE DID, HE HAS TO BE
8 TREATED AS AN ADULT EVEN AT SIXTEEN. I AIN'T CUTTING
9 HIM A DEAL. HE ISN'T GOING TO GET TO BE TREATED AS A
10 JUVENILE. YOU SAW HIM, I WASN'T PROUD OF THIS. IT
11 DOESN'T MAKE ME FEEL GOOD TO BRING PEOPLE IN HERE IN
12 ORANGE JUMP SUITS AND CHAINS. BUT HE COMMITTED A
13 HORRIBLE ACT AND HE HAS TO PAY FOR IT. SIXTEEN YEARS
14 OLD, AND HE'S HANGING OUT WITH PEOPLE THREE, FOUR,
15 FIVE YEARS OLDER THAN HIM. AND NOW, BECAUSE OF THAT -
16 - AND I'M NOT EXCUSING IT, BUT BECAUSE OF WHAT HE
17 DECIDED TO DO AT SIXTEEN, HANGING OUT WITH THEM, HE'S
18 LOOKING AT A SENTENCE OF FIFTEEN YEARS TO LIFE. THINK
19 ABOUT HIS CIRCUMSTANCES WHEN YOU ASSESS WHAT HE TOLD
20 THE POLICE AND NOW. HOW SHOULD HE BE HELD RESPONSIBLE
21 AND THEY NOT? AND HE WAS ASKED AT ONE POINT ON CROSS-
22 EXAMINATION, AREN'T YOU JUST MINIMIZING WHAT YOU DID,
23 MR. TYLER? YOU'RE MINIMIZING WHAT YOU DID, BECAUSE
24 YOU CLAIM YOU DIDN'T HAVE A GUN. WELL, TWO QUICK
25 POINTS, HOW DO THEY KNOW HE'S MINIMIZING WHAT HE DID

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1 IF THEY DIDN'T GO IN THERE? AND MORE IMPORTANTLY, HIS
2 ANSWER, HOW AM I MINIMIZING IT, SIR, WHEN, YEAH, I
3 SAID I DIDN'T GO IN THREE WITH A GUN, BUT I'M STILL
4 PLEADING GUILTY TO BURGLARY IN THE FIRST DEGREE. I'M
5 STILL PLEADING GUILTY TO ARMED ROBBERY, AND I'M STILL
6 PLEADING GUILTY TO THE HOMICIDE. HOW IS THAT
7 MINIMIZING YOUR GUILT? SAY WHAT YOU WANT ABOUT
8 PATRICK TYLER, BUT HE ACCEPTED RESPONSIBILITY IN THIS
9 COURTROOM, AND HE ACCEPTED RESPONSIBILITY ON MARCH THE
10 EIGHTEENTH WITH INVESTIGATOR SHUMPERT.

11 AND LET'S TALK ABOUT THAT, THE STATEMENT THAT HE
12 GAVE TO INVESTIGATOR SHUMPERT AT FOUR:FORTY-THREE P.M.
13 ON MARCH THE EIGHTEENTH. HE TOLD INVESTIGATOR
14 SHUMPERT THAT DAY, AFTER HE BROKE DOWN AND CRIED,
15 EVERYBODY THAT WSA INVOLVED IN THIS MURDER, INCLUDING
16 HIMSELF, EVERYBODY. HE ALSO TOLD YOU, HE WAS HONEST
17 ABOUT HIS STATEMENT, WHICH IS DEFENSE EXHIBIT TWO, HE
18 TOLD YOU ON THE WITNESS STAND, I WASN'T A HUNDRED PER
19 CENT ACCURATE IN THE STATEMENT. I DIDN'T WANT TO TELL
20 THE POLICE THAT I KNEW EVERYBODY'S REAL NAME. I WASN'T
21 A HUNDRED PER CENT ACCURATE, IW AS SCARED, I WAS
22 CRYING, BUT I TOLD THEM WHO THE SIX PEOPLE WERE . AND
23 WHAT MAKES THIS STATEMENT REALLY CREDIBLE? TWO
24 THINGS: NUMBER ONE, THE STATEMENT BY ITSELF CONVICTS
25 ALL SIX OF THEM. SO IF HE WANTED TO LIE, ALL HE NEEDS

1 TO DO IS GET ON THE WITNESS STAND AND SAY EXACTLY
2 WHAT'S IN THE STATEMENT. IF HE WAS GOING TO LIE TO
3 YOU, JUST GET UP THERE AND SAY THE EXACT SAME THAT'S
4 IN THE STATEMENT BECAUSE IT CONVICTS ALL SIX OF THEM,
5 HIMSELF AND THE FIVE DEFENDANTS. BUT HE DIDN'T DO
6 THAT, HE TOLD YOU THE TRUTH. THERE ARE SOME THINGS IN
7 THE STATEMENT THAT AREN'T TRUE THAT Y'ALL NEED TO KNOW
8 ABOUT, LIKE, HOW I GOT A RIDE TO THE WOODBINE ADDRESS;
9 LIKE, WHO HAD WHICH GUN; LIKE WHO WENT IN THE HOUSE AT
10 WHAT TIME; AND WHAT WAS SAID AND DONE AFTER THE
11 MURDER. AND HOW ELSE DO WE KNOW THAT'S TRUE? LIKE
12 INVESTIGATOR SHUMPERT TOLD YOU, WHAT'S GREAT ABOUT
13 THAT STATEMENT, WHAT MAKES IT TRUSTWORTHY IS, HE
14 IMPLICATES HIMSELF. THAT'S WHAT MAKES A DEFENDANT'S
15 STATEMENT TRUSTWORTHY, WHEN YOU IMPLICATE YOURSELF
16 AND, YOU SAY, YEAH, I'M GUILTY, TOO. IT'S NOT LIKE HE
17 WENT TO THE POLICE AND SAID, I DIDN'T HAVE ANYTHING TO
18 DO WITH IT, I WAS JUST IN THE CAR, THEY DID IT. HE
19 IMPLICATED HIMSELF, AND THAT'S WHAT MAKE THAT
20 STATEMENT TRUSTWORTHY. STUBBORN FACTS OF GUILT. AND
21 WHAT MAKES IT TRUSTWORTHY IS, HE GOT ON THAT WITNESS
22 STAND AND HAD THE GUTS TO FACE THOSE FIVE LAWYERS AND
23 TESTIFY. AND LET'S TALK ABOUT WHAT HE TESTIFIED TO.
24 HE TESTIFIED THAT THAT EARLY, LATE AFTERNOON,
25 EARLY EVENING HE WAS HANGING OUT WITH HIS FRIEND,

1 DARIUS GARNER. HE GETS A PHONE CALL, OR HE TALKS ON
2 THE PHONE WITH DANNY RYANT. DURING THAT CONVERSATION
3 DANNY RYANT TELLS HIM, HEY, MARIO SHIVERS HAS SOME
4 GUNS, YOU NEED TO GO CHECK THESE GUNS OUT. RIGHT
5 AFTER HE TALKS TO DANNY RYANT HE GETS ON THE PHONE
6 WITH MARIO SHIVERS. SOMETIME AROUND SEVEN:THIRTY HE
7 HAS DARIUS TAKE HIM TO WOODBINE STREET WHERE THE FOUR
8 OF THEM AT THAT TIME, RALPH COLEMAN AND MARIO SHIVERS
9 ARE SMOKING MARIJUANA AT WOODBINE STREET, COLEMAN'S
10 PLACE. DARIUS LEAVES, AND HE ADMITTED TO YOU THAT
11 THAT'S WHEN THEY STARTED TALKING ABOUT ROBBING CHARLES
12 PRINGLE. HE DIDN'T LIE. HE DIDN'T SAY, OH, I DIDN'T
13 HAVE ANYTHING TO DO WITH IT. HUH-UH. HE ADMITTED TO
14 THAT.

15 HE ALSO TOLD YOU THAT CHRIS COLEMAN ARRIVES WITH
16 A DRIVER, AND I DON'T KNOW WHO THE DRIVER IS, BUT THEY
17 ARRIVE IN AN SUV. THEY GET IN THE CAR, THEY TALK
18 ABOUT THE ROBBERY, AND THE DRIVER, WHO I DON'T KNOW,
19 IS DRIVING US IN THAT SUV, THE DRIVER IS CHRIS
20 COLEMAN'S FRIEND.

21 HE TELLS YOU THAT AT ONE POINT WALTER SHIVERS
22 CALLS WALTER HARRIS, THAT THEY GO AND PICK UP WALTER
23 HARRIS, AND WALTER HARRIS IS PACKING A BLACK GUN.
24 WALTER HARRIS GOES INTO CHARLES PRINGLE'S APARTMENT.
25 WHY WOULD THEY PICK WALTER HARRIS, WHY DOES HE NEED TO

1 GO IN? BECAUSE THEY KNOW THAT CHARLES PRINGLE WON'T
2 KNOW WALTER HARRIS. SO, HE GOES IN THERE TO SCOPE IT
3 OUT. HE COMES BACK OUT AND HE SAYS, THERE'S SOMEBODY
4 IN THERE I KNOW. SO, ACCORDING TO PATRICK TYLER -- AND
5 I WANT YOU TO REMEMBER THE TESTIMONY BECAUSE AT THE
6 END I'M GOING TO CORROBORATE THESE PHONE CALLS --
7 PATRICK TYLER SAYS THEY THEN CALL DANNY RYANT, AND
8 THEY GO AND PICK DANNY RYANT UP ABOUT A HALF A MILE
9 FROM CHARLES PRINGLE'S AT THE CORNER POCKET. AND THEN
10 ALL SIX OF THEM GO INTO CHARLES PRINGLE'S APARTMENT
11 ARMED WITH GUNS AND DUCT TAPE TO ROB HIM, TO
12 BURGLARIZE HIS HOME, AND THEY KILL HIM. ALL FOUR
13 WEAPONS WERE USED TO GUN HIM DOWN.

14 THE TESTIMONY OF PATRICK TYLER IS THE ONLY
15 EVIDENCE IN THIS CASE. THINK ABOUT THAT. IT IS THE
16 ONLY EVIDENCE IN THIS CASE. HIS TESTIMONY BY ITSELF
17 PROVES THE DEFENDANTS' GUILT BEYOND A REASONABLE
18 DOUBT. BUT WHAT MAKES THIS CASE EVEN MORE THAN BEYOND
19 A REASONABLE DOUBT IS THE UNBELIEVABLE AMOUNT OF
20 CORROBORATION TO PATRICK TYLER'S TESTIMONY,
21 UNBELIEVABLE AMOUNT OF CORROBORATION. FIRST, WE HAVE
22 ASHLEY PARSLEY, ASHLEY PARSLEY. AND SHE WAS HONEST
23 WITH YOU. SHE OBVIOUSLY TOLD YOU, SHE'S NOT PERFECT,
24 BUT SHE TOLD YOU THE TRUTH. SHE SOLD MARIJUANA. SHE
25 ALSO TOLD YOU HOW SOMEONE HAD COME INTO THE HOUSE

1 EARLIER, TO THE APARTMENT EARLIER TO OSTENSIBLY BUY
2 MARIJUANA AND THAT LATER ON THAT NIGHT THE HOME
3 INVASION OCCURRED. SHE TOLD YOU SHE DIDN'T SEE
4 EVERYBODY, THAT ONE PERSON CAME IN THERE, I SUBMIT,
5 PATRICK TYLER, WHY SHE COULDN'T PICK HIM OUT, COVERING
6 HIS FACE UP, AND THE SECOND PERSON BEHIND HIM HAD A
7 GUN, SHOVED IT INTO HER FACE AND SAID, GET ON THE
8 GROUND. SHE HEARD THE FOOTSTEPS, SHE HEARD THE DUCT
9 TAPE, SHE HEARD THE GUN SHOTS. SHE HEARD THE MALICE,
10 SHE HEARD THE HORRIFYING ACTS OF THAT NIGHT WHEN HER
11 FRIEND WAS GUNNED DOWN. AND SHE WAS HONEST WITH YOU,
12 AND SHE WAS HONEST WITH THE POLICE. SHE COULDN'T --
13 THEY SHOWED HER MULTIPLE LINEUPS. TALK ABOUT
14 CREDIBILITY, SHE CALLED NINE ONE ONE, OF CORSE, BUT
15 TALK ABOUT CREDIBILITY, IF WE'RE GOING TO GET HER TO
16 LIE, ESPECIALLY AFTER THEY KNOW WHO'S INVOLVED, GET
17 HER TO PICK THEM ALL OUT OF THE PHOTO LINEUP, PICK
18 THEM ALL. SHE'S NOT GOING TO DO THAT, BUT ISN'T IT
19 INTERESTING WHO SHE IS ABLE TO PICK OUT? SHE PICKS
20 OUT RALPH COLEMAN. WHY WOULD SHE PICK OUT RALPH
21 COLEMAN? IS IT BECAUSE PATRICK TYLER SAYS THAT HE WAS
22 RIGHT BEHIND HIM, AND HE'S THE ONE THAT SHOVED THE GUN
23 IN HER FACE? THAT WOULD BE ONE OF THE DEFENDANTS THAT
24 SHE GOT THE BEST LOOK AT, RALPH COLEMAN. WHY WOULD
25 YOU BE ABLE TO MAYBE PICK OUT MARIO SHIVERS AND THINK

1 THAT HE WAS IN THERE? IS IT BECAUSE MARIO SHIVERS IS
2 THE MAIN GUY GOING IN THERE CALLING THE SHOTS, THE
3 MAIN ONE TALKING THAT YOUR ATTENTION WOULD GO TOWARDS?
4 AND OF COURSE, SHE PICKS OUT WALTER HARRIS FROM COMING
5 IN THERE EARLIER THAT NIGHT. PROOF BEYOND A
6 REASONABLE DOUBT? ARE YOU KIDDING ME?

7 AND THEN THE ATTORNEYS, NOT ONLY IN CLOSING BUT
8 DURING THE QUESTIONING OF WITNESSES, THEY SAID, WELL,
9 THERE'S A BLACK LIGHT, OR A LIGHT BULB, AND YOU CAN'T
10 SEE AS WELL. UNDER THEIR OWN CROSS-EXAMINATION, HE
11 ASKED SHANNON MITCHELL, MR. WISE DID, WITH THAT
12 LIGHTING, COULD YOU SEE MY FACIAL FEATURES FROM HERE?
13 AND HE SAID, YES, SIR. WELL, COULD YOU SEE SOMEBODY'S
14 FACIAL FEATURES FROM HERE?

15 YOU HEARD FROM SHANNON MITCHELL. HE TOLD THE
16 POLICE THAT HOURS, JUST HOURS AFTER THE MURDER, HOURS
17 AFTER THE MURDER THAT WALTER HARRIS WAS IN THAT
18 APARTMENT, AND HE TOLD Y'ALL, I DON'T KNOW OF WALTER
19 HARRIS EVER COMING IN THERE BEFORE. WHY WOULD WALTER
20 HARRIS BE THERE UNLESS HE'S GETTING READY TO HELP THEM
21 DO A ROBBERY, JUST AS PATRICK TYLER TESTIFIED TO,
22 THAT WALTER HARRIS WENT IN THERE FIRST AND THEN CAME
23 BACK OUT?

24 YOU HEARD FROM DARIUS GARNER. HE TOLD YOU HOW HE
25 AND PATRICK TYLER HAD BEEN HANGING OUT TOGETHER, AND

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1 THAT HE TOOK THE DEFENDANT, OR TOOK PATRICK TYLER TO
2 WOODBINE, JUST LIKE PATRICK TYLER TOLD YOU. AND IF WE
3 WERE GOING TO GET DARIUS TO LIE, HE SAID THAT THERE
4 WERE TWO OTHER PEOPLE THERE, ONE OF THEM HE KNEW,
5 LITTLE M, MARIO SHIVERS. THE OTHER ONE I DIDN'T KNOW
6 BUT HE HAD DREDS, AND HE WAS STOCKY. WE KNOW IT WAS
7 RALPH COLEMAN BECAUSE PATRICK TOLD US THAT. AND WHAT
8 ELSE DOES DARIOUS SAY, BEFORE I FORGET? HE DOESN'T LIE
9 AND SAY, I SAW THE GUNS, BUT HE DOES SAY, I SAW A
10 RIFLE BAG, A CAMOUFLAGE RIFLE BAG. ANYBODY WANT TO
11 GUESS WHAT WAS IN THAT BAG? PROOF BEYOND A REASONABLE
12 DOUBT?

13 THEN YOU HEARD ABOUT THE FORD EXPLORER. I'VE
14 ALREADY TALKED ABOUT IT SOME, BUT AGAIN, IT
15 CORROBORATES PATRICK TYLER. HE TOLD Y'ALL, HE TOLD
16 THE POLICE THAT HE WAS PICKED UP IN AN SUV, A JEEP
17 LIKE VEHICLE. HE TOLD YOU AN EXPLORER. AND WE KNOWN
18 IT HAD TO BE SOME KIND OF SUV, I MEAN, I KNOW THEY'RE
19 ONLY DRIVING A HALF A MILE FROM CORNER POCKET AND FROM
20 HOUSE TO THE VICTIM'S PLACE, BUT WE KNOW IT'S NOT
21 GOING TO BE A PINTO WITH SIX PEOPLE IN IT, OR A GOLF
22 CART. AND WHAT DO WE FIND OUT? RONNIE WASHINGTON WAS
23 THE GET AWAY DRIVER, RONNIE WASHINGTON DROVE THEM IN
24 THIS VEHICLE, SOMEBODY PATRICK TYLER DIDN'T KNOW,
25 CHRIS COLEMAN'S FRIEND. CORROBORATION.

1 YOU HEARD FROM MONEAK BUSBY AND YVONNE
2 SHARPERSON. AND I WANT TO MAKE SURE THAT I GET THIS
3 RIGHT. I DON'T WANT TO MISREPRESENT ANYTHING, BUT BOTH
4 OF THEM ARE FRIENDS OF DANNY RYANT. IT WAS NOT EASY
5 FOR THEM TO COME IN HERE AND TESTIFY, IT COULDN'T BE.
6 WELL, YOU KNOW THEY DIDN'T WANT TO COME IN HERE AND
7 TESTIFY AGAINST HIM. BUT WHAT DID, I BELIEVE IT WAS
8 MS. SHARPERSON, TELL THE POLICE BACK THEN AND TELL YOU
9 TODAY, OR IN THE COURTROOM, THIS WEEK? SHE'S THE ONE
10 WHO TOLD THE POLICE RYANT'S FAMILY WAS EVEN LOOKING
11 FOR HIM IN THE CORNER POCKET. FOR A WHILE THEY
12 COULDN'T FIND HIM. AND MORE IMPORTANTLY, WHAT DID
13 MONEAK BUSBY TELL THE POLICE, AND SHE GOT HERE AND
14 TESTIFIED TO? SHE TOLD THEM THAT NOT ONLY WAS DANNY
15 RYANT MISSING, BUT HE WENT TO THE DOOR AND LEFT WITH
16 TWO PEOPLE, AND SHE PICKED OUT MARIO SHIVERS AND
17 PATRICK TYLER. PROOF BEYOND ANY DOUBT, CORROBORATING
18 PATRICK TYLER.

19 WE HEARD FROM ANDRE WASHINGTON, A
20 MISREPRESENTATION THAT WAS BROUGHT UP IN THE CLOSING
21 AND I JUST REMEMBERED, SHE SAID, ONE OF THE ATTORNEYS
22 SAID THAT ANDRE WASHINGTON BOUGHT THIS GUN FROM
23 CHRISTOPHER DWIGHT. NO, NO, NO, THAT'S NOT TRUE. THE
24 EVIDENCE IS, ANDRE WASHINGTON BOUGHT THIS GUN FROM
25 WALTER HARRIS ON SATURDAY, BEFORE HE SOLD THE GUN ON

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1 MARCH THE SEVENTEENTH. THAT WOULD BE SATURDAY, MARCH
2 THE THIRTEENTH, THE DAY AFTER THAT GUN IS USED TO KILL
3 CHARLES PRINGLE. THE DAY AFTER WALTER HARRIS GAVE
4 THAT GUN TO RALPH COLEMAN TO KILL CHARLES PRINGLE HE'S
5 SELLING IT TO ANDRE WASHINGTON.

6 PATRICK TYLER, HE WASN'T GOING TO LIE, HE WASN'T
7 GOING TO SAY, YES, THAT'S THE GUN. HE WAS HONEST, HE
8 SAID, I DIDN'T GET AS GOOD A LOOK AT RALPH, OR EXCUSE
9 ME, AT WALTER HARRIS'S GUN, THE ONE RALPH USED,
10 BECAUSE IT WAS HARRIS'S GUN. I SAW THE NINE
11 MILLIMETER THAT BELONGED TO MARIO SHIVERS THAT CHRIS
12 COLEMAN, BUT I NEVER HANDLED THIS, I JUST REMEMBER IT
13 WAS A BLACK GUN. AND WE GOT LUCKY AND WE GOT THIS GUN
14 RIGHT AFTER THE MURDER, WALTER HARRIS'S FORTY CALIBER,
15 BLACK, JUST LIKE PATRICK TYLER TOLD YOU IT WOULD BE,
16 USED TO KILL CHARLES PRINGLE.

17 YOU HEARD FROM THE CRIME SCENE, BALLISTICS, AND
18 DR. ROSS ABOUT THIS CRIME. WE LEARNED THAT THERE WERE
19 AT LEAST FOUR FIREARMS USED, TWO SKS RIFLES, ONE NINE
20 MILLIMETER PISTOL AND ONE FORTY CALIBER PISTOL, JUST
21 LIKE PATRICK TYLER TOLD US, CORROBORATION. YOU
22 LEARNED THAT TWENTY-FOUR BULLET WOUNDS WENT INTO THE
23 VICTIM, WITH THE BULLETS GOING IN DIFFERENT
24 DIRECTIONS, LACERATING HIS HEART, HIS LUNGS, HIS
25 LIVER. DANNY RYANT AND MARIO SHIVERS POSSESSED THE

1 SKS'S AND ONE OF THEM FIRED ONE SHOT, THE OTHER FIRED
2 FOUR. IT DOESN'T MATTER WHO FIRED WHICH ONE, THEY'RE
3 BOTH GUILTY OF MURDER, BURGLARY, AND ARMED ROBBERY.
4 WE LEARNED THAT CHRIS COLEMAN HAD A NINE MILLIMETER,
5 HE FIRED ELEVEN SHOTS, MANY OF THOSE SHOTS INTO THE
6 VICTIM AT POINT BLANK RANGE WHILE HE'S LYING ON THE
7 GROUND. WE LEARNED THAT RALPH COLEMAN HAD WALTER
8 HARRIS'S FORTY CALIBER, EIGHT SHOTS INTO THE VICTIM BY
9 RALPH COLEMAN. A LOT OF THOSE SHOTS WHILE THE VICTIM
10 IS LYING ON THE GROUND. AND WALTER HARRIS GAVE RALPH
11 COLEMAN THIS GUN, AND THAT WALTER HARRIS HAD THE DUCT
12 TAPE, AND HE PUT THE DUCT TAPE OVER THE VICTIM'S
13 MOUTH. AND I REMEMBER, THEY WERE TRYING TO IMPEACH
14 PATRICK ON THE WITNESS STAND ABOUT HOW, HOW COULD HE
15 TALK WITH DUCT TAPE OVER HIS MOUTH? AND THEY WOULDN'T
16 LET PATRICK ANSWER THE QUESTION. YOU LOOK AT THE
17 PICTURE WHEN YOU TAKE IT BACK IN CHAMBERS. YOU CAN
18 TELL IT'S OVER HIS MOUTH, OVER THE TOP, SO HE COULD
19 TALK.

20 HOW MUCH MORE MALICIOUS CAN YOU GET THAN INVADING
21 ANOTHER PERSON'S HOME WITH FOUR WEAPONS? I'M ALMOST
22 DONE. THE FINAL PIECE OF CORROBORATION I WANT TO TALK
23 TO YOU ABOUT ARE THE PHONE RECORDS AND THE TIME LINE
24 THAT CORROBORATE PATRICK TYLER. AND YOU'LL HAVE THE
25 ACTUAL PHONE RECORDS IN CHAMBERS, AND THIS IS A BLOW

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1 UP USED TO HELP ME. AND YOU'RE GOING TO HAVE THESE
2 RECORDS BACK THERE, AND YOU'RE GOING TO HAVE --
3 BECAUSE REMEMBER, THE POLICE GOT LUCKY, WITHIN LESS
4 THAN A WEEK OF THIS CRIME THEY WERE ABLE TO GET TYLER
5 AND GET HARRIS SO THEY WERE ABLE TO GET THEIR RECORDS.
6 AND THEY GOT THE PHONE RECORDS. NOW, WHAT DO WE FIND
7 OUT WHEN WE LOOK AT THEIR PHONE RECORDS DURING THIS
8 TRIAL? THAT AT SIX:THIRTY-ONE TO SIX:FORTY RYANT
9 CALLS PATRICK TYLER, JUST LIKE PATRICK TYLER TOLD US,
10 I GOT A PHONE CALL FROM DANNY RYANT. NUMBER OF PHONE
11 CALLS FROM SIX:THIRTY-ONE TO ABOUT, IT LOOKS LIKE
12 SIX:FORTY-FOUR, ACTUALLY, WHERE HE'S TELLING ME ABOUT
13 THE GUNS MARIO HAS. WHAT WAS PATRICK'S NEXT
14 TESTIMONY? THAT I GOT A HOLD OF MARIO SHIVERS. AND
15 FROM SIX:FORTY-SIX TO SEVEN:TWENTY-SIX, YOU'RE GOING
16 TO SEE PHONE CALLS ON PATRICK TYLER'S PHONE RECORDS
17 FROM MARIO SHIVERS, EIGHTEEN:FORTY-FOUR HOURS TO
18 NINETEEN:TWENTY-SIX HOURS, MARIO SHIVERS. AND THEN WE
19 THEN KNOW THAT SOMETIME AFTER SEVEN:THIRTY, ACCORDING
20 TO NOT ONLY THEIRS BUT PATRICK TYLER, THEY GO TO THE
21 HOME ON WOODBINE. WE ALSO KNOW THAT THEY CONSPIRED TO
22 COMMIT THE ROBBERY, THEY'RE PICKED UP BY CHRIS AND
23 RONNIE WASHINGTON. WE ALSO KNOW FROM PATRICK TYLER,
24 MARIO SHIVERS CALLED WALTER HARRIS, AND SURE ENOUGH,
25 ON WALTER HARRIS'S PHONE RECORDS, AT EIGHT:FIFTY-TWO,

1 WHICH IS TWENTY:FIFTY-TWO HOURS, HE GETS A PHONE CALL
2 FORM MARIO SHIVERS. THIS IS PROOF BEYOND A REASONABLE
3 DOUBT. CORROBORATION. EIGHT:FIFTY-TWO, AND THERE ARE
4 THREE CONVERSATIONS UP TO EIGHT:FIFTY-SEVEN, WHICH I
5 SUBMIT WAS RIGHT AFTER THAT TIME THEY PICKED HIM UP.

6 WE ALSO LEARNED FROM PATRICK TYLER THAT AFTER
7 HARRIS GOES IN THEY DECIDE TO GET ANOTHER GUN, ANOTHER
8 PERSON INVOLVED, DANNY RYANT. AND PATRICK TYLER TOLD
9 YOU, I CALLED DANNY RYANT. WELL, IF THAT'S TRUE THAT
10 WOULD BE ON PATRICK TYLER'S PHONE RECORDS. TWENTY-
11 ONE:THIRTY-FOUR HOURS, WHICH IS NINE:THIRTY-FOUR, HE
12 CALLS DANNY RYANT. THEY TALK FOR A COUPLE OF MINUTES.
13 AT NINE:FORTY HE CALLS HIM BACK, I SUBMIT PROBABLY TO
14 SAY, I'M OUTSIDE, AND DANNY RYANT IS GONE FROM THE
15 CORNER POCKET, ACCORDING TO MONEAK BUSBY.
16 CORROBORATION.

17 AT NINE:FORTY CHARLES PRINGLE DOESN'T HAVE MORE
18 THAN FIFTEEN MINUTES TO LIVE, BECAUSE SIX MEN, SEVEN
19 COUNTING RONNIE WASHINGTON, ARE ON THE WAY TO HIS
20 HOUSE TO ROB AND BURGLARIZE HIM AND THEN GUN HIM DOWN,
21 LESS THAN FIFTEEN MINUTES FOR HER SON TO LIVE.

22 NINE:FIFTY-EIGHT, SERGEANT CARTER OF THE
23 SHERIFF'S DEPARTMENT IS DISPATCHED TO KINGS ROAD.
24 CHARLES PRINGLE IS DEAD. AT TEN:O-TWO, PATRICK TYLER
25 TOLD Y'ALL, AS DID DARIUS, THAT HE CALLED HIS FRIEND

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1 TO COME PICK HIM UP IN THAT COLEMAN AREA OFF OF
2 BELLEVILLE AND GIVE HIM A RIDE TO SANTEE. THAT'S WHAT
3 ONE THE PHONE RECORDS, AT TEN:O-TWO HE'S CALLING
4 DARIUS GARNER TO PICK HIM UP. THREE PHONE CALLS, IT'S
5 THE ONES AT TWENTY-TWO:O-ONE TO TWENTY-TWO:O-SEVEN,
6 JUST LIKE PATRICK TYLER TOLD YOU.

7 ONE MORE INTERESTING THING ABOUT THESE PHONE
8 RECORDS, BETWEEN THE HOURS OF THE CONSPIRACY AFTER
9 WALTER HARRIS GETS PICKED UP TO START THE ROBBERY OF
10 CHARLES PRINGLE, HE MAKES NO MORE PHONE CALLS OR GETS
11 NO MORE PHONE CALLS UNTIL TEN:O-FIVE P.M., AFTER THE
12 MURDER OF CHARLES PRINGLE. HE GOES OVER AN HOUR
13 WITHOUT ANY PHONE CALLS TO OR FROM HIS PHONE. WHY?
14 BECAUSE HE'S INVOLVED IN THE ROBBERY AND MURDER OF
15 CHARLES PRINGLE.

16 NOT PROOF BEYOND A REASONABLE DOUBT, LADIES AND
17 GENTLEMEN, YES, PROOF BEYOND ANY POSSIBLE DOUBT
18 WHATSOEVER. YOUR JOB IS EASY. DO THE RIGHT THING AND
19 CONVICT THOSE FIVE MEN FOR WHAT THEY DID. IT'S BEEN
20 MADE EASY BECAUSE PEOPLE HAD THE COURAGE TO COME INTO
21 THIS COURTROOM AND TESTIFY. THEY HAD THE COURAGE TO
22 COME FORWARD IN MARCH. DO THE RIGHT THING. ON MARCH
23 THE TWELFTH OF THIS YEAR WHEN PATRICK TYLER AND THOSE
24 FIVE DEFENDANTS WENT INTO CHARLES PRINGLE'S HOME TO
25 ROB HIM THEY THOUGHT NOBODY CARED. WHEN THEY GUNNED

1 HIM DOWN TWENTY-FOUR TIMES THEY THOUGHT THEY HAD GOT
2 AWAY WITH MURDER. PROVE THEM WRONG.

3 IN CLOSING, I WANT TO THANK YOU AGAIN. YOU HAVE
4 BEEN UNBELIEVABLY ATTENTIVE. I'VE NEVER HAD A JURY
5 THIS ATTENTIVE, AND I MEAN THAT, AND ALL FIVE OF THE
6 ATTORNEYS WOULD JOIN ME IN THAT, AND PROBABLY THE
7 JUDGE. INCREDIBLE, NO FOOD, UNBELIEVABLE. I CAN'T
8 IMAGINE WHAT YOU'VE HAD TO GO THROUGH, YOU'VE HAD TO
9 HEAR ABOUT THINGS THAT YOU DON'T WANT TO HEAR ABOUT.
10 YOU'VE HAD TO LOOK AT THINGS THAT YOU DON'T CARE TO
11 LOOK AT, AND YOU'VE HAD TO DO IT ALL SITTING THERE
12 QUIET. BUT SOON, THE IRONY IS, YOU'RE GOING TO HAVE
13 THE MOST POWERFUL VOICE IN THIS COURTROOM, AND WITH
14 ONE WORD YOU CAN LET THE DEFENDANTS KNOW WHAT THEY DID
15 WA WRONG. WITH ONE WORD YOU CAN LET THEM KNOW YOU
16 CANNOT TAKE THAT WOMAN'S SON AND GET AWAY WITH IT.
17 WITH ONE WORD YOU CAN LET THEM KNOW THAT THERE IS
18 JUSTICE IN ORANGEBURG COUNTY. AND THAT ONE WORD IS
19 GUILTY.

20 ON BEHALF OF THE STATE OF SOUTH CAROLINA, AS YOUR
21 SOLICITOR I RESPECTFULLY ASK THAT YOU FIND THE
22 DEFENDANTS, CHRIS COLEMAN, RALPH COLEMAN, WALTER
23 HARRIS, DANNY RYANT AND MARIO SHIVERS GUILTY OF
24 MURDER, GUILTY OF BURGLARY IN THE FIRST DEGREE, AND
25 GUILTY OF ARMED ROBBERY.

1 THANK YOU.

2 THE COURT: THANK YOU, MR. PASCOE. DO YOU MIND
3 TAKING THOSE DOWN?

4 SOLICITOR PASCOE: YES, SIR.

5 THE COURT: I HATE TO BOTHER YOU BUT ...

6 ALRIGHT, LADIES AND GENTLEMEN, I DON'T THINK YOUR
7 LUNCH HAS GOTTEN HERE YET, SO I'M GOING TO GO AHEAD
8 AND CHARGE Y'ALL WITH THE LAW RIGHT NOW.

9 CHARGE BY THE COURT

10 LET ME TELL Y'ALL AT THE VERY FIRST OF THIS CASE,
11 THE INDICTMENTS THAT ARE IN THIS CASE CHARGE EACH OF
12 THESE YOUNG MEN, CHRISTIAN COLEMAN, RALPH COLEMAN,
13 WALTER HARRIS, DANNY RYANT, AND MARIO SHIVERS, WITH
14 ARMED ROBBERY, FIRST DEGREE BURGLARY AND MURDER. BUT
15 THE FACT THAT THESE DEFENDANTS WERE ARRESTED, CHARGED
16 AND INDICTED IN THIS CASE IS NOT EVIDENCE IN THIS CASE
17 AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT
18 IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR
19 INFERENCE OF GUILT. THE INDICTMENTS ARE SIMPLY THE
20 FORMAL WRITTEN INSTRUMENTS WHICH CONTAIN THE CHARGES
21 MADE AGAINST THE DEFENDANTS. IT IS THE FORMAL
22 DOCUMENTS BY WHICH THIS CASE IS BROUGHT TO THIS COURT.

23 NOW, EACH INDICTMENT CHARGES A SEPARATE AND
24 DISTINCT OFFENSE. YOU MUST DECIDE EACH INDICTMENT
25 SEPARATELY ON THE EVIDENCE AND THE LAW APPLICABLE TO

1 IT UNINFLUENCED BY YOUR DECISION AS TO ANY OTHER
2 INDICTMENT. EACH DEFENDANT MAY BE CONVICTED OR
3 ACQUITTED ON ANY OR ALL OF THE OFFENSES CHARGED. YOU
4 WILL BE ASKED TO WRITE A SEPARATE VERDICT OF GUILTY OR
5 NOT GUILTY FOR EACH INDICTMENT. AND MADAM FORELADY,
6 AT THE CLOSE MY CHARGE I WILL GO OVER THESE VERDICT
7 FORMS WITH YOU TO MAKE SURE YOU UNDERSTAND THEM.
8 OKAY?

9 NOW, THE CASE OF EACH DEFENDANT AND THE EVIDENCE
10 AND LAW CONCERNING THAT DEFENDANT SHOULD BE CONSIDERED
11 SEPARATELY AND INDIVIDUALLY. THE DEFENDANTS HAVE BEEN
12 TRIED TOGETHER BUT YOU MUST DETERMINE EACH DEFENDANT'S
13 GUILT OR INNOCENCE SEPARATELY AS TO EACH CHARGE. YOUR
14 VERDICT DOES NOT HAVE TO BE THE SAME FOR ALL THE
15 DEFENDANTS. THE FACT THAT YOU MAY FIND ONE DEFENDANT
16 GUILTY OR NOT GUILTY SHOULD NOT CONTROL YOUR VERDICT
17 AS TO THE OTHER DEFENDANTS. WHERE MORE THAN ONE
18 PERSON IS CHARGED WITH A CRIME, IF THE EVIDENCE
19 WARRANTS IT YOU MAY CONVICT ONE AND ACQUIT THE OTHERS,
20 OR YOU MAY ACQUIT ALL, OR YOU MAY CONVICT ALL. IT
21 WILL DEPEND UPON YOUR VIEW OF THE TESTIMONY AND THE
22 EVIDENCE. YOU MUST TAKE EACH DEFENDANT AND CONSIDER
23 THE EVIDENCE AS TO THAT DEFENDANT AND MY INSTRUCTIONS
24 TO YOU ON THE LAW. YOU WILL THEN WRITE A SEPARATE
25 VERDICT OF GUILTY OR NOT GUILTY FOR EACH INDIVIDUAL

1 DEFENDANT AS TO EACH CHARGE.

2 EVERY ONE OF THE DEFENDANTS HAS PLED NOT GUILTY
3 TO THESE INDICTMENTS, AND THAT PUTS THE BURDEN ON THE
4 STATE TO PROVE EACH ONE OF THE DEFENDANTS GUILTY. A
5 PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN
6 SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF
7 INNOCENT. I CHARGE YOU THAT IT IS AN IMPORTANT RULE
8 OF LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO
9 MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL
10 ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIMES FOR
11 WHICH THE INDICTMENTS WERE ISSUED UNLESS THE GUILT HAS
12 BEEN PROVEN BY EVIDENCE SATISFYING YOU, THE JURY, OF
13 THAT GUILT BEYOND A REASONABLE DOUBT. THIS
14 PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN
15 YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANTS
16 THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF
17 GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT
18 BEYOND A REASONABLE DOUBT. THE PRESUMPTION OF
19 INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT
20 THE DEFENDANT, OF EACH OF THE DEFENDANT, WHICH REMAINS
21 WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE
22 DEFENDANT BY EVIDENCE SATISFYING YOU OF THE
23 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. THE
24 PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL THEORY,
25 IT IS NOT JUST A LEGAL PHRASE, IT IS A SUBSTANTIAL

1 RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU,
2 THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE
3 DEFENDANT'S GUILTY BEYOND A REASONABLE DOUBT. THE
4 DEFENDANTS ARE ENTITLED TO EVERY INFERENCE IN THEIR
5 FAVOR WHICH CAN REASONABLY BE DRAWN FROM THE EVIDENCE.
6 WHEN TWO INFERENCES MAY BE DRAWN FROM THE SAME SET OF
7 FACTS, ONE CONSISTENT WITH THE VERDICT OF GUILTY, AND
8 ONE INFERENCE CONSISTENT WITH A VERDICT OF NOT GUILTY,
9 THE DEFENDANTS ARE ENTITLED TO THE INFERENCE WHICH IS
10 CONSISTENT WITH A VERDICT OF NOT GUILTY. YOU CANNOT
11 FIND THE DEFENDANTS GUILTY BASED UPON SUSPICION,
12 CONJECTURE OR SPECULATION, NO MATTER HOW STRONG. A
13 CONVICTION CAN ONLY BE BASED UPON PROOF OF GUILT
14 BEYOND A REASONABLE DOUBT. IF THE PROOF DOES NOT MEET
15 THAT STANDARD YOU MUST FIND THE DEFENDANT NOT GUILTY.

16 WHAT IS REASONABLE DOUBT IN THE LAW? A
17 REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE
18 A REASONABLE PERSON TO HESITATE TO ACT. THE STATE HAS
19 THE BURDEN OF PROVING EACH DEFENDANT GUILTY BEYOND A
20 REASONABLE DOUBT. IN CRIMINAL CASES, AS I'VE SAID,
21 THE STATE'S PROOF MUST BE BEYOND A REASONABLE DOUBT.
22 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES
23 YOU FIRMLY CONVINCED OF THE DEFENDANTS' GUILT. THERE
24 ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH
25 ABSOLUTE CERTAINTY. IN CRIMINAL CASES THE LAW DOES

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1 NOT REQUIRE PROOF THAT OVERCOMES VERY POSSIBLE. IF
2 BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE
3 FIRMLY CONVINCED THAT A DEFENDANT IS GUILTY OF THE
4 CRIME CHARGED, YOU MUST FIND THAT DEFENDANT GUILTY.
5 IF, ON THE OTHER HAND, YOU THINK THERE IS A REAL
6 POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU MUST
7 GIVE THAT DEFENDANT THE BENEFIT OF THE DOUBT AND FIND
8 HIM NOT GUILTY.

9 DURING THIS TRIAL YOU AND I HAVE CERTAIN DUTIES
10 TO PERFORM. AS THE TRIAL JUDGE IS IT MY
11 RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE,
12 AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY
13 FO THE EVIDENCE OFFERED DURING THE TRIAL.

14 YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE
15 BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED
16 STRICKEN FROM THE RECORD IN THIS CASE DURING THIS
17 TRIAL YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO
18 CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED
19 FROM THIS WITNESS STAND, FROM ANY EXHIBITS WHICH HAVE
20 BEEN MADE A PART OF THE RECORD IN THIS CASE, AND
21 STIPULATIONS OF COUNSEL.

22 I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW
23 APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE I AM
24 THE SOLE JUDGE OF THE LAW IN THIS CASE AND IT IS YOUR
25 DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I STATE

1 IT TO YOU. IF YOU ALREADY HAVE ANY IDEA AS TO WHAT
2 THE LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT
3 AGREE WITH WHAT I TELL YOU THE LAW IS, YOU MUST
4 ABANDON THIS IDEA BECAUSE YOU ARE SWORN TO ACCEPT THE
5 LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

6 IN EVERY CASE TRIED BEFORE A JURY THE JURY IS THE
7 SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN THE CASE. A
8 TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON OR MAKE
9 ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN THE
10 CASE. SINCE YOU ARE THE SOLE JUDGES OF THE FACTS IN
11 THE CASE YOU ARE NOT TO INFER FROM WHAT I HAVE SAID
12 DURING THE PROGRESS OF THIS TRIAL IN RULING UPON THE
13 ADMISSIBILITY OF THE EVIDENCE OR OTHERWISE, OR
14 ANYTHING THAT I SAY NOW DURING THE COURSE OF THIS
15 INSTRUCTION TO YOU THAT I HAVE ANY OPINION ABOUT THE
16 FACTS IN THE CASE. THE LAW DOES NOT ALLOW ME TO HAVE
17 AN OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A
18 MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS
19 JURORS IT IS YOUR DUTY TO DETERMINE THE EFFECT, VALUE,
20 WEIGHT AND TRUTH OF THE EVIDENCE PRESENTED DURING THIS
21 TRIAL.

22 NOW, DURING THIS TRIAL YOU'VE HEARD SOME
23 TESTIMONY OF THE POSSIBLE LENGTH OF PUNISHMENT FOR
24 CERTAIN CRIMES. YOU AS JURORS ARE NOT TO CONSIDER
25 POSSIBLE SENTENCES IN ANY MANNER WHATSOEVER IN

1 DETERMINING YOUR VERDICT. DEPENDING ON YOUR VERDICT
2 IT IS MY DUTY AS JUDGE TO DO THE SENTENCING. SO, I
3 REMIND YOU, YOU ARE NOT CONSIDER SENTENCING OR
4 PUNISHMENT. YOUR DUTY IS TO DETERMINE THE GUILT OR
5 INNOCENCE OF EACH DEFENDANT AS TO EACH CHARGE AND
6 RENDER A FAIR AND JUST VERDICT.

7 THERE ARE TWO TYPES OF EVIDENCE WHICH ARE
8 GENERALLY PRESENTED DURING A TRIAL, DIRECT EVIDENCE
9 AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE
10 TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL
11 KNOWLEDGE OF A FACT, SUCH AS AN EYE WITNESS. IT IS
12 EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT
13 TO BE PROVED. CIRCUMSTANTIAL EVIDENCE IS PROOF OF A
14 CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE
15 EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY
16 ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT
17 MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON
18 INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR
19 OBSERVATION. THE LAW MAKES ABSOLUTELY NO DISTINCTION
20 BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER
21 DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER
22 DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL
23 EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH
24 ALL OF THE EVIDENCE IN THIS CASE, AND AFTER WEIGHING
25 ALL OF THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE

1 GUILT OF A DEFENDANT BEYOND A REASONABLE DOUBT YOU
2 MUST FIND THAT DEFENDANT NOT GUILTY.

3 YOU MUST DETERMINE THE CREDIBILITY OF THE
4 WITNESSES WHO HAVE TESTIFIED IN THIS CASE.
5 CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT IS YOUR
6 DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE
7 AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS
8 TRUTH. IN DETERMINING THE BELIEVABILITY OF WITNESSES
9 WHO HAVE TESTIFIED IN THIS CASE YOU MAY BELIEVE ONE
10 WITNESS OVER SEVERAL WITNESSES, OR SEVERAL WITNESSES
11 OVER ONE WITNESS. YOU MAY BELIEVE A PART OF THE
12 TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART
13 OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY
14 BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY, OR
15 YOU MAY REJECT THE TESTIMONY OF A WITNESS IN ITS
16 ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS
17 EXHIBITED TO YOU ANY INTEREST, BIAS, PREJUDICE OR
18 OTHER MOTIVE IN THIS CASE. YOU MAY ALSO CONSIDER THE
19 APPEARANCE AND MANNER OF THE WITNESS STAND.

20 THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT
21 WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSION. AN
22 EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WE CALL
23 EXPERT WITNESSES. A WITNESS WHO BY EDUCATION AND
24 EXPERIENCE HAS BECOME EXPERT IN SOME ART, SCIENCE,
25 PROFESSION OR CALLING MAY STATE AN OPINION AS TO

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1 RELEVANT AND MATERIALS IN WHICH THE WITNESS CLAIMS TO
2 BE AN EXPERT, AND MAY ALSO STATE THE REASONS FOR THAT
3 OPINION. YOU SHOULD CONSIDER ANY EXPERT OPINION
4 RECEIVED INTO EVIDENCE IN THIS CASE, AND LIKE OTHER
5 EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES. IF
6 YOU DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS
7 NOT BASED ON SUFFICIENT EDUCATION AND EXPERIENCE, OR
8 IF YOU CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF
9 THE OPINION ARE NOT SOUND, OR THAT THE OPINION IS
10 OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE
11 OPINION ENTIRELY. AN EXPERT WITNESS'S TESTIMONY IS TO
12 BE GIVEN NO GREATER WEIGHT THAN THAT OF OTHER
13 WITNESSES SIMPLY BECAUSE A WITNESS IS AN EXPERT.
14 FURTHER, YOU ARE NOT REQUIRED TO ACCEPT AN EXPERT'S
15 OPINION EVEN THOUGH IT IS NOT CONTRADICTED.

16 I INSTRUCT YOU AND EMPHASIZE TO YOU THAT THE FACT
17 THAT THE DEFENDANTS DID NOT TESTIFY IS NOT A FACTOR TO
18 BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS
19 AND IN YOUR CONSIDERATION OF THE QUESTIONS OF THE
20 GUILT OR INNOCENCE OF EACH OF THE DEFENDANTS. IT MUST
21 NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. A
22 DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN
23 SILENT, AND THE ASSERTION OF THIS RIGHT MUST NOT BE
24 CONSIDERED BY YOU IN YOUR DELIBERATIONS. I REPEAT,
25 UNDER YOUR OATH AS JURORS YOU ARE TO DRAW NO

1 CONCLUSION WHATSOEVER FROM THE FACT THAT THE
2 DEFENDANTS IN THIS CASE DID NOT TESTIFY. THE FACT
3 THAT THE DEFENDANTS DID NOT TESTIFY SHOULD NOT EVEN BE
4 DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF, AS I
5 HAVE STATED TO YOU, IS ON THE STATE. A DEFENDANT IS
6 NOT REQUIRED TO PROVE HIS INNOCENCE, THE BURDEN OF
7 PROOF REMAINS ON THE STATE TO PROVE GUILT BEYOND A
8 REASONABLE DOUBT AS TO EACH DEFENDANT AND AS TO EACH
9 CHARGE.

10 IF A CRIME IS COMMITTED BY TWO OR MORE PEOPLE WHO
11 ARE ACTING TOGETHER IN COMMITTING A CRIME, THE ACT OF
12 ONE IS THE ACT OF ALL. A PERSON WHO JOINS WITH
13 ANOTHER TO COMMIT AN UNLAWFUL ACT IS CRIMINALLY
14 RESPONSIBLE FOR EVERYTHING DONE BY THE OTHER PERSON
15 WHICH HAPPENS AS A PROBABLE OR NATURAL CONSEQUENCE OF
16 THE ACTS DONE IN THE CARRYING OUT THE COMMON PLAN AND
17 PURPOSE. IF TWO OR MORE PEOPLE ARE TOGETHER, ACTING
18 TOGETHER, ASSISTING EACH OTHER IN COMMITTING THE
19 OFFENSE, THE ACT OF ONE IS THE ACT OF ALL, OR AS IT IS
20 SOMETIMES SAID, THE HAND OF ONE IS THE HAND OF ALL.

21 PRIOR KNOWLEDGE THAT A CRIME IS GOING TO BE
22 COMMITTED, WITHOUT MORE, IS NOT SUFFICIENT TO MAKE A
23 PERSON GUILTY OF THAT CRIME. MERE KNOWLEDGE THAT
24 ANOTHER PERSON IS GOING TO COMMIT A CRIME, EVEN IF THE
25 DEFENDANT IS PRESENT WHEN THE CRIME IS COMMITTED, IS

1 NOT SUFFICIENT TO CONVICT THE DEFENDANT AS A
2 PRINCIPAL. GUILT AS A PRINCIPAL IS SHOWN BY ACTUAL OR
3 CONSTRUCTIVE PRESENCE AT THE SCENE AS THE RESULT OF
4 PRIOR ARRANGEMENT. THEREFORE, A FINDING OF A PRIOR
5 ARRANGED PLAN OR COMMON SCHEME IS NECESSARY FOR A
6 FINDING OF GUILT AS A PRINCIPAL. THE STATE MUST PROVE
7 BEYOND A REASONABLE DOUBT BY COMPETENT EVIDENCE THE
8 THEORY OF THE HAND OF ONE IS THE HAND OF ALL. A
9 PRINCIPAL IN A CRIME IS ONE WHO EITHER ACTUALLY
10 COMMITS THE CRIME OR WHO IS PRESENT, AIDING, ABETTING
11 OR ASSISTING IN COMMITTING THE CRIME. WHEN A PERSON
12 DOES AN ACT IN THE PRESENCE OF AND WITH THE ASSISTANCE
13 OF ANOTHER THE ACT IS DONE BY BOTH. WHERE TWO OR MORE
14 ARE ACTING WITH A COMMON PLAN OR INTENT OR PRESENT AT
15 THE COMMISSION OF A CRIME IT IS NOT, IT DOES NOT
16 MATTER WHO ACTUALLY COMMITS THE CRIME, ALL ARE GUILTY.
17 THE HAND OF ONE IS THE HAND OF ALL. PRESENT AT THE
18 COMMISSION OF A CRIME MEANS TO BE SUFFICIENTLY NEAR TO
19 AID AND ABET AND ASSIST IN THE COMMISSION OF THE
20 CRIME. HOWEVER, MERE PRESENCE AT THE SCENE OF A CRIME
21 IS NOT SUFFICIENT TO CONVICT ONE AS A PRINCIPAL ON THE
22 THEORY OF AIDING AND ABETTING. INTENT IS ALSO A
23 NECESSARY ELEMENT, FOR THERE MUST HAVE BEEN A COMMON
24 DESIGN OR INTENT TO COMMIT THE CRIME, AND THE CRIME
25 MUST HAVE BEEN COMMITTED PURSUANT THERETO WITH THE

1 PERSON AIDING AND ABETTING BY SOME OVERT ACT. INTENT
2 MEANS INTENDING THE RESULT WHICH ACTUALLY OCCURS, NOT
3 ACCIDENTALLY OR INVOLUNTARILY. INTENT MAY BE SHOWN BY
4 ACTS AND CONDUCT OF THE DEFENDANT AND OTHER
5 CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND
6 REASONABLY INFER INTENT. THE STATE MUST PROVE THESE
7 ELEMENTS BEYOND A REASONABLE DOUBT.

8 MERE PRESENCE AT THE SCENE IS NOT SUFFICIENT TO
9 PROVE SOMEONE GUILTY OF A CRIME. A DEFENDANT'S MERE
10 PRESENCE WHERE A CRIME IS BEING COMMITTED, OR MERE
11 ASSOCIATION WITH A PERSON WHO COMMITS A CRIME DOES NOT
12 MAKE A DEFENDANT AN ACCOMPLICE, OR AN AIDER OR AN
13 ABETTER OF THE PERSON COMMITTING THE CRIME. THE
14 BURDEN IS ON THE STATE TO PROVE EVERY ELEMENT OF THE
15 CRIME CHARGED. IF YOU FIND AFTER REVIEWING ALL OF THE
16 EVIDENCE THAT THE STATE HAS PROVEN THAT THE DEFENDANT
17 WAS ONLY PRESENT AT THE SCENE OF A CRIME AND THAT THEY
18 HAVE NOT PROVED BEYOND A REASONABLE DOUBT ANY OTHER
19 PARTICIPATION IN THE CRIME, THEN YOU MUST FIND THE
20 DEFENDANT NOT GUILTY. THE LAW IS THAT PROOF OF
21 PRESENCE AT THE SCENE OF A CRIME IS NOT SUFFICIENT TO
22 FIND SOMEONE GUILTY.

23 IF TWO OR MORE COMBINE TOGETHER TO COMMIT AN
24 UNLAWFUL ACT AND IN THE EXECUTION OF THAT CRIMINAL ACT
25 A HOMICIDE IS COMMITTED BY ONE OF THE ACTORS AS A

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1 PROBABLE OR NATURAL CONSEQUENCE OF THE ACTS DONE IN
2 PURSUANCE OF THE COMMON DESIGN, ALL PRESENT,
3 PARTICIPATING IN THE UNLAWFUL UNDERTAKING ARE AS
4 GUILTY AS THE ONE WHO COMMITTED THE FATAL ACT. THE
5 COMMON PURPOSE MAY NOT HAVE BEEN TO KILL OR MURDER,
6 BUT IF IT WAS UNLAWFUL AND IN THE EXECUTION OF THIS
7 COMMON PURPOSE A HOMICIDE IS COMMITTED BY ONE AS A
8 PROBABLE OR NATURAL CONSEQUENCE OF THE ACTS DONE IN
9 PURSUANCE OF THE COMMON DESIGN, THEN ALL PRESENT AND
10 PARTICIPATING IN THE UNLAWFUL DESIGN ARE AS GUILTY AS
11 THE SLAYER.

12 AN ISSUE IN THIS CASE IS THE IDENTIFICATION OF
13 THE DEFENDANTS AS A PERSON WHO COMMITTED THE CRIME
14 CHARGED. THE STATE HAS THE BURDEN OF PROVING IDENTITY
15 BEYOND A REASONABLE DOUBT. YOU MUST BE SATISFIED
16 BEYOND A REASONABLE DOUBT OF THE ACCURACY OF THE
17 IDENTIFICATION OF THE DEFENDANT BEFORE YOU MAY CONVICT
18 THE DEFENDANT. IDENTIFICATION TESTIMONY IS AN
19 EXPRESSION OF BELIEF OR IMPRESSION BY A WITNESS. YOU
20 MUST DETERMINE THE ACCURACY OF THE IDENTIFICATION OF
21 THE DEFENDANT. YOU MUST CONSIDER THE BELIEVABILITY OF
22 EACH IDENTIFICATION WITNESS IN THE SAME WAY AS ANY
23 OTHER WITNESS. YOU MAY CONSIDER WHETHER THE WITNESS
24 HAD AN ADEQUATE OPPORTUNITY TO OBSERVE THE OFFENDER AT
25 THE TIME OF THE OFFENSE. THIS WILL BE AFFECTED BY

1 THINGS LIKE, HOW LONG OR SHORT A TIME WAS AVAILABLE;
2 HOW FAR OR CLOSE THE WITNESS WAS; THE LIGHTING
3 CONDITION, AND WHETHER THE WITNESS HAD THE CHANCE TO
4 SEE OR KNOW THE PERSON IN THE PAST. ONCE AGAIN I
5 INSTRUCT YOU, THE BURDEN OF PROOF ON THE STATE EXTENDS
6 TO EVERY ELEMENT OF EACH CRIME CHARGED, AND THIS
7 SPECIFICALLY INCLUDES THE BURDEN OF PROVING BEYOND A
8 REASONABLE DOUBT THE IDENTITY OF THE DEFENDANT AS THE
9 PERSON WHO COMMITTED THE CRIME. IF AFTER EXAMINING
10 THE TESTIMONY YOU HAVE A REASONABLE DOUBT AS TO THE
11 ACCURACY OF THE IDENTIFICATION YOU MUST FIND THE
12 DEFENDANT NOT GUILTY.

13 IN ORDER TO ESTABLISH CRIMINAL LIABILITY,
14 CRIMINAL INTENT IS REQUIRED. FOR EXAMPLE, THE MENTAL
15 STATE REQUIRED TO BE PROVEN BY THE STATE FOR A
16 PARTICULAR CRIME MIGHT BE PURPOSE, INTENT, KNOWLEDGE,
17 RECKLESS OR CRIMINAL NEGLIGENCE. CRIMINAL INTENT MUST
18 BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT.
19 CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE
20 DETERMINED BY THE JURY FROM THE CIRCUMSTANCES
21 SURROUNDING THE SITUATION. THERE IS NOT WAY TO PROVE
22 INTENT TO A MATHEMATICAL CERTAINTY. THERE IS NO WAY
23 MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN AND
24 DETERMINE WHAT THE PERSON HAD IN MIND, SO THE LAW SAYS
25 THAT CRIMINAL INTENT MAY BE INFERRED FROM THE

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1 CIRCUMSTANCES SHOW TO HAVE EXISTED. THIS IS HOW YOU
2 MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT
3 REQUIRING INTENT WAS PRESENT. IT IS NOT NECESSARY TO
4 ESTABLISH BY DIRECT AND POSITIVE, BUT INTENT MAYBE
5 ESTABLISHED BY INFERENCE IN THE SAME WAY AS ANY OTHER
6 FACT, BY TAKING INTO CONSIDERATION THE ACTS OF THE
7 PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF THE
8 CASE. CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS
9 WRONG DOING. IT IS UP TO YOU DETERMINE THAT THE
10 DEFENDANT INTENDED -- WHAT THE DEFENDANT INTENDED TO
11 DO BASED ON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED.
12 CRIMINAL INTENT CAN ARISE FROM ACTION OR A FAILURE TO
13 ACT. IT MAY ARISE FROM NEGLIGENCE, RECKLESSNESS, OR
14 INDIFFERENCE TO DUTY, OR TO CONSEQUENCES THAT ARE
15 CONSIDERED BY THE LAW TO BE THE EQUIVALENT OF CRIMINAL
16 INTENT.

17 THE DEFENDANTS ARE CHARGED WITH ARMED ROBBERY.
18 IN ORDER TO PROVE THIS OFFENSE THE STATE MUST FIRST
19 PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
20 TOOK PERSONAL PROPERTY FROM THE PERSON OR PRESENCE OF
21 ANOTHER PROPERTY. PROPERTY IS IN THE PRESENCE OF A
22 PERSON IF IT IS WITHIN THE PERSON'S REACH, INSPECTION,
23 OBSERVATION OR CONTROL SO THAT A PERSON COULD, IF NOT
24 OVERCOME WITH VIOLENCE OR PREVENTED BY FEAR, KEEP
25 POSSESSION OF THE PROPERTY. THE STATE MUST ALSO PROVE

1 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT CARRIED
2 THE PROPERTY AWAY INTENDING TO PERMANENTLY DEPRIVE THE
3 OWNER OF THE PROPERTY AND TO KEEP THE PROPERTY FOR THE
4 DEFENDANT'S OWN USE. THE SLIGHTEST REMOVAL OF THE
5 PROPERTY OR THE COMPLETE POSSESSION OF THE PROPERTY,
6 EVEN FOR AN INSTANT, BY THE DEFENDANT IS SUFFICIENT TO
7 SHOW A TAKING AND CARRYING AWAY OF THE PROPERTY. THE
8 TAKING AND CARRYING AWAY OF THE PROPERTY MUST HAVE
9 BEEN DONE WITH VIOLENCE OR BY PUTTING THE OWNER OF THE
10 PROPERTY IN FEAR OF VIOLENCE. AND FINALLY, THE STATE
11 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE
12 DEFENDANT WAS ARMED WITH A DEADLY WEAPON DURING THE
13 ROBBERY. A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT
14 OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT
15 BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A
16 DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES
17 IN EACH CASE. THE FOLLOWING ARE EXAMPLES OF
18 INSTRUMENTS WHICH MAY BE DEADLY WEAPONS: A PISTOL,
19 SHOT GUN, A RIFLE, A DAGGER, A KNIFE, A SLING SHOT,
20 METAL KNUCKLES, A RAZOR, GASOLINE, A FIRE BOMB OR A
21 MOLOTOV COCKTAIL; AND LIGHTER FLUID. A GUN MAY BE A
22 DEADLY WEAPON EVEN IF IT IS NOT OPERATING.

23 AN ATTEMPT IS AN EFFORT TO ACCOMPLISH A CRIME
24 WHICH DOES NOT SUCCEED. AN ATTEMPT INCLUDES A
25 SPECIFIC INTENT TO DO A PARTICULAR CRIMINAL ACT ALONG

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1 WITH AN ACT FALLING SHORT OF THE ACT INTENDED. THE
2 STATE MUST SHOW MORE THAN MERE PREPARATION AND INTENT.
3 THERE MUST BE SOME OVERT ACT ACCOMPANIED IN THE EFFORT
4 TO COMMIT THE CRIME. INTENT MEANS INTENDING THE
5 RESULT WHICH ACTUALLY OCCURS NOT ACCIDENTALLY OR
6 INVOLUNTARILY. INTENT MAY BE SHOWN BY ACTS AND
7 CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM
8 WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT.

9 THE DEFENDANTS ARE ALSO CHARGED WITH FIRST DEGREE
10 BURGLARY. THE STATE MUST FIRST PROVE BEYOND A
11 REASONABLE DOUBT THAT THE DEFENDANT ENTERED A DWELLING
12 WITHOUT CONSENT. A DWELLING IS ANY BUILDING OR
13 PORTION OF A BUILDING IN WHICH A PERSON ORDINARILY
14 SLEEPS. A BUILDING CONSTRUCTED AS A DWELLING THAT HAS
15 NEVER BEEN OCCUPIED CANNOT BE CONSIDERED A DWELLING
16 FOR PURPOSES OF BURGLARY, BUT A BUILDING IS A DWELLING
17 EVEN IF THE RESIDENTS ARE TEMPORARILY ABSENT FROM THE
18 BUILDING. IN ORDER TO PROVE THAT THE DEFENDANT
19 ENTERED THE DWELLING THE STATE DOES NOT HAVE TO SHOW
20 THAT THE DEFENDANT'S ENTIRE BODY ENTERED THE
21 DWELLING, THE SMALLEST ENTRY IS SUFFICIENT. IT MAY BE
22 ANY PART OF THE BODY SUCH AS A HAND, A FOOT, OR EVEN
23 AN INSTRUMENT SUCH AS A HOOK OR OTHER INSTRUMENT. IN
24 ADDITION, THE STATE DOES NOT HAVE TO PROVE THAT FORCE
25 WAS USED TO GAIN ENTRY. IF A PERSON ENTERS A

1 BUILDING BY USING DECEPTION, ARTIFICE, TRICK OR
2 MISREPRESENTATION TO GET CONSENT TO ENTER, THIS IS AN
3 ENTRY WITHOUT CONSENT. NEXT, THE STATE MUST PROVE
4 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT INTENDED
5 TO COMMIT A CRIME, EITHER A FELONY OR A MISDEMEANOR,
6 AT THE TIME OF THE ENTRY. THE MERE ENTRY INTO A
7 DWELLING WITHOUT CONSENT IS NOT BURGLARY. IF THE
8 INTENT TO COMMIT A CRIME IS FORMED AFTER THE ENTRY IT
9 IS NOT BURGLARY. ON THE OTHER HAND, IF THE DEFENDANT
10 INTENDED TO COMMIT A CRIME AT THE TIME OF THE ENTRY IT
11 IS BURGLARY, EVEN IF THE INTENT WAS ABANDONED AFTER
12 ENTRY. IT DOES NOT MATTER THAT THE INTENDED CRIME WAS
13 NOT COMPLETED. INTENT MAY BE SHOWN BY ACTS AND
14 CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM
15 WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT.
16 AND FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE
17 DOUBT THAT WHEN ENTERING, WHILE IN THE DWELLING, OR
18 WHILE FLEEING, THE DEFENDANT OR AN ACCOMPLICE, WAS
19 ARMED WITH A DEADLY WEAPON OR EXPLOSIVE. AS I'VE SAID
20 BEFORE, A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT OR
21 SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT
22 BODILY HARM, WHETHER THE INSTRUMENT HAS BEEN USED AS A
23 DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES
24 IN EACH CASE. I HAVE ALREADY GIVEN YOU EXAMPLES OF
25 THOSE INSTRUMENTS THAT MAY BE DEADLY WEAPONS AND I'M

1 NOT GOING TO REPEAT THAT.

2 COURT REPORTER: JUST A MINUTE, JUDGE. OKAY, I'M
3 READY.

4 THE COURT: OKAY, THANK YOU.

5 BREAKING IN IS NOT AN ELEMENT OF THE CRIME OF
6 BURGLARY. THE PHRASE, ENTERS A BUILDING WITHOUT
7 CONSENT IS DEFINED AS, TO ENTER WITHOUT THE CONSENT OF
8 A PERSON IN LAWFUL POSSESSION OR TO ENTER BY USING
9 DECEPTION, ARTIFICE, TRICK OR MISREPRESENTATION TO
10 GAIN CONSENT TO ENTER FROM THE PERSON IN LAWFUL
11 POSSESSION. DECEPTION IS DEFINED AS USE OF DECEIT.
12 ARTIFICE IS DEFINED AS SUBTLE BUT BASE DECEPTION.
13 TRICK IS DEFINED AS AN ACTION DESIGNATED TO ACHIEVE AN
14 END BY DECEPTION OR FRAUDULENT MEANS.
15 MISREPRESENTATION IS DEFINED AS TO GIVE AN INCORRECT
16 OR MISLEADING REPRESENTATION OF.

17 THE DEFENDANTS IN THIS CASE ARE ALSO CHARGED WITH
18 MURDER. THE STATE MUST PROVE BEYOND A REASONABLE
19 DOUBT THAT THE DEFENDANT KILLED ANOTHER PERSON WITH
20 MALICE AFORETHOUGHT. MALICE IS HATRED, ILL WILL OR
21 HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE
22 INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE
23 OR EXCUSE AND WITH AN INTENT TO INFLECT AN INJURY OR
24 UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL
25 INTENT. MALICE AFORETHOUGHT DOES NOT REQUIRE THAT

1 MALICE EXIST FOR ANY PARTICULAR TIME BEFORE THE ACT IS
2 COMMITTED, BUT MALICE MUST EXIST IN THE MINDS OF THE
3 DEFENDANTS JUST BEFORE AND AT THE TIME THE ACT IS
4 COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF
5 THE PREVIOUS EVIL INTENT AND THE ACT. MALICE
6 AFORETHOUGHT MAY BE EXPRESSED OR INFERRED. THE TERMS,
7 EXPRESS AND INFERRED DO NOT MEAN DIFFERENT KINDS OF
8 MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE
9 SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR
10 BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH
11 ARE PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON
12 SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR
13 ANOTHER OR WHEN THE PERSON PREPARED BEFOREHAND TO DO
14 THE ACT WHICH WAS LATER ACCOMPLISHED. FOR EXAMPLE,
15 LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF
16 PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN THE
17 DEFENDANT'S MIND WOULD BE EXPRESS MALICE. MALICE MAY
18 ALSO BE INFERRED FROM THE CONDUCT SHOWING A TOTAL
19 DISREGARD FOR HUMAN LIFE. INFERRED MALICE MAY ALSO
20 ARISE WHEN THE DEED IS DONE WITH A DEADLY WEAPON. AS
21 I TOLD YOU BEFORE, A DEADLY WEAPON IS ANY ARTICLE,
22 INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH
23 OR GREAT BODILY HARM, AND WHETHER AN INSTRUMENT HAS
24 BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND
25 CIRCUMSTANCES IN EACH CASE. AGAIN, I REFER YOU TO YOU

1 THE EXAMPLES OF INSTRUMENTS WHICH MAY BE DEADLY
2 WEAPONS WHICH I HAVE STATED EARLIER.

3 IF A PERSON COMPLETELY WITHDRAWS FROM THE COMMON
4 DESIGN OR PLAN AND COMMUNICATES HIS WITHDRAWAL TO HIS
5 ASSOCIATES UNDER CIRCUMSTANCES THAT PERMIT THE
6 ASSOCIATES TO WITHDRAW THEN THE PERSON ESCAPES
7 CRIMINAL RESPONSIBILITY FOR THE ACTS OF THE
8 ASSOCIATES. HOWEVER, IF THE WITHDRAWAL WAS NOT
9 COMMUNICATED TO A PARTICULAR ASSOCIATE OR IF THAT
10 ASSOCIATE DID NOT HAVE THE OPPORTUNITY TO WITHDRAW
11 AFTER THE COMMUNICATION THEN THE PERSON REMAINS
12 RESPONSIBLE FOR THE ACTIONS OF THAT ASSOCIATE THAT
13 WERE THE NATURAL AND PROBABLE CONSEQUENCES OF THEIR
14 COMMON DESIGN.

15 NOW, THE LAW REQUIRES THAT A PERSON INVOLVED IN A
16 COMMON DESIGN MUST WITHDRAW ENTIRELY AND COMPLETELY
17 FROM IT, AND MUST COMMUNICATE THAT WITHDRAWAL TO HIS
18 ASSOCIATE. A PERSON WHO CONTINUES IN THE COMMON
19 DESIGN CANNOT CLAIM WITHDRAWAL. IT IS THE BURDEN ON
20 THE STATE TO PROVE THAT THE DEFENDANT HAD NOT
21 WITHDRAWN FROM AN UNLAWFUL COMMON DESIGN OR PLAN AT
22 THE RELEVANT TIME.

23 VOLUNTARY INTOXICATION OR THE USE OF DRUGS DOES
24 NOT CONSTITUTE A DEFENSE TO A CRIME.

25 I AM REQUIRED TO DECLARE THE LAW TO YOU AS I HAVE

1 DONE THROUGH THESE INSTRUCTIONS TO HELP GUIDE YOU TO A
2 JUST AND LAWFUL VERDICT. WHETHER SOME OF THESE
3 INSTRUCTIONS WILL APPLY WILL DEPEND UPON WHAT YOU FIND
4 TO BE THE FACTS IN THIS CASE. THE FACT THAT I HAVE
5 INSTRUCTED YOU ON VARIOUS SUBJECTS IN THIS CASE MUST
6 NOT BE TAKEN AS INDICATING AN OPINION OF THIS COURT AS
7 TO WHAT YOU SHOULD FIND TO BE THE FACTS OR AS TO WHAT
8 YOUR VERDICT SHOULD BE.

9 YOUR VERDICT MUST REPRESENT THE CONSIDERED
10 JUDGEMENT OF EACH JUROR. IN ORDER TO RETURN A VERDICT
11 IT IS NECESSARY THAT EACH ONE OF YOU AGREE. YOUR
12 VERDICT MUST BE UNANIMOUS, ALL TWELVE OF YOU MUST
13 AGREE ON THE VERDICT. YOUR VERDICT CANNOT BE BASED ON
14 SYMPATHY, PASSION, PREJUDICE, EMOTION OR ANY OTHER
15 CONSIDERATION NOT IN EVIDENCE IN THIS CASE. REMEMBER,
16 YOU ARE NOT PARTISANS FAVORING ONE PARTY OVER ANOTHER,
17 YOU ARE THE JUDGES OF THE FACTS. YOUR SOLE INTEREST IS
18 TO SEEK THE TRUTH FROM THE EVIDENCE IN THIS CASE AND
19 RENDER A FAIR AND JUST VERDICT.

20 NOW, LADIES AND GENTLEMEN OF THE JURY, I HAVE
21 FIVE DIFFERENT VERDICT FORMS FOR EACH ONE OF THE FIVE
22 DEFENDANTS, AS YOU HAVE GOT TO JUDGE THEM EACH
23 SEPARATELY, AND I'M GOING TO GO OVER JUST ONE OF THEM,
24 JUST TO GIVE YOU AN IDEA OF HOW YOU ARE TO FILL THEM
25 OUT. THIS IS THE VERDICT FORM, MADAM FORELADY. IT

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1 SAYS, "PLEASE CIRCLE THE APPROPRIATE VERDICT BELOW AND
2 FOLLOW THE ACCOMPANYING INSTRUCTIONS CAREFULLY." AND
3 THE FIRST QUESTION IS, "WE, THE JURY, UNANIMOUSLY FIND
4 THE DEFENDANT AS TO THE CHARGE OF MURDER," AND THEN
5 Y'ALL HAVE TO DECIDE WHETHER THAT DEFENDANT IS GUILTY
6 OR NOT GUILTY, AND YOU WILL CIRCLE WHICHEVER ONE YOU
7 FIND. THE NEXT QUESTION, "WE, THE JURY, UNANIMOUSLY
8 FIND THE DEFENDANT AS TO THE CHARGE OF BURGLARY IN THE
9 FIRST DEGREE," EITHER GUILTY OR NOT GUILTY. NOW EACH
10 ONE OF THESE IS FOR EACH SEPARATE DEFENDANT. YOU HAVE
11 GOT TO DETERMINE EACH DEFENDANT'S GUILT AS TO EACH
12 CHARGE SEPARATELY. THE THIRD QUESTION, "WE, THE JURY,
13 UNANIMOUSLY FIND THE DEFENDANT AS TO THE CHARGE OF
14 ARMED ROBBERY," EITHER GUILTY OR NOT GUILTY. NOW, ON
15 THIS CHARGE IF YOU FIND THE DEFENDANT NOT GUILTY OF
16 NUMBER THREE -- IF YOU FIND THE DEFENDANT GUILTY OF
17 NUMBER THREE, EXCUSE ME, THEN SKIP FOUR, STOP AND END
18 YOUR DELIBERATIONS. OKAY? IF YOU FIND THE DEFENDANT
19 NOT GUILTY OF NUMBER THREE, THEN YOU GO TO NUMBER
20 FOUR. AND IF I CAN SEPARATE THIS I'LL TELL YOU WHAT
21 NUMBER FOUR IS. AND NUMBER FOUR READS, "WE, THE JURY,
22 UNANIMOUSLY FIND THE DEFENDANT AS TO THE CHARGE OF
23 ATTEMPTED ARMED ROBBERY," EITHER GUILTY OR NOT
24 GUILTY. OKAY? AND THEN, STOP AND END YOUR
25 DELIBERATIONS. AND MADAM FORELADY, YOU'LL HAVE TO

1 SIGN AND DATE IT. OKAY?

2 ALRIGHT, NOW, I'M NOT GIVING YOU THESE VERDICT
3 FORMS YET, BECAUSE WHAT'S GOING TO HAPPEN NOW IS, I'M
4 GOING TO EXCUSE Y'ALL TO GO BACK TO THE JURY ROOM.
5 AGAIN, YOU CANNOT BEGIN YOUR DELIBERATIONS YET, I HAVE
6 NOT TOLD YOU TO BEGIN YOUR DELIBERATIONS. WHILE YOU
7 ARE BACK IN THE JURY ROOM I WILL GO OVER WITH THE
8 LAWYERS INVOLVED IN THIS CASE AND SEE IF THEY HAVE ANY
9 CORRECTIONS OR ADDITIONS THAT I NEED TO MAKE TO THE
10 CHARGES THAT I GAVE TO YOU. IF I HAVE TO MAKE ANY
11 CORRECTIONS OR ADDITIONS TO THESE CHARGES I WILL BRING
12 YOU BACK OUT HERE AND I WILL DO THAT.

13 NOW, IF THEY TELL ME THAT EVERYTHING IS OKAY, I
14 DON'T NEED TO CHARGE YOU ON ANYTHING, I DON'T NEED TO
15 CORRECT ANYTHING, THEN WHAT I WILL DO IS, I WILL SEND
16 THE VERDICT FORMS BACK INTO THE JURY ROOM WITH YOU,
17 ALL THE EVIDENCE WILL GO BACK INTO THE JURY ROOM WITH
18 YOU, AND YOU WILL BE TOLD TO BEGIN YOUR DELIBERATIONS.
19 OKAY? BUT UNTIL YOU ARE TOLD TO BEGIN YOUR
20 DELIBERATIONS YOU MAY NOT DISCUSS THIS CASE.

21 ALRIGHT, I'M GOING TO LET Y'ALL GO BACK INTO THE
22 JURY ROOM NOW WHILE I GO OVER THIS WITH THE ATTORNEYS.
23 (Whereupon, the jury retires
24 to the jury room and the following
25 takes place out of the presence

1 of the jury.)

2 THE COURT: ALRIGHT, ANYTHING FROM THE STATE?

3 SOLICITOR PASCOE: YES, YOUR HONOR, UNLESS I
4 MISSED IT, WHEN YOU WERE GOING OVER THE CHARGE ON
5 BURGLARY IN THE FIRST DEGREE I DIDN'T HEAR -- HEARD
6 THE AGGRAVATING CIRCUMSTANCES ABOUT THE USE OF A
7 DEADLY WEAPON, BUT I DIDN'T HEAR ABOUT OTHER
8 AGGRAVATING CIRCUMSTANCES SUCH AS INJURY TO THE
9 VICTIM, HOURS OF DARKNESS.

10 THE COURT: OH, YEAH, I'M SORRY, I'VE GOT --
11 THAT'S WHEN WE WERE CHANGING THE TAPE, WEREN'T WE?

12 SOLICITOR PASCOE: PROBABLY WAS, YES, SIR RIGHT
13 AROUND THERE, YES, SIR.

14 THE COURT: YEAH, I APOLOGIZE.

15 SOLICITOR PASCOE: IT'S MS HARRY DOT'S FAULT.

16 THE COURT: NO, NO, NO, IT'S MY FAULT, BUT I DID
17 NOT FINISH LISTING -- YOU'RE CORRECT ABOUT THAT.
18 OKAY. ALRIGHT. ANYTHING FROM THE DEFENDANTS?

19 MR. LACKEY: NO, SIR.

20 MS. ULLMAN: NO SIR.

21 MR. PALMER: NO, SIR, YOUR HONOR.

22 MR. MELLARD: NO, YOUR HONOR.

23 MR. KOGER: NO, YOUR HONOR.

24 THE COURT: OKAY. I'M GOING TO HAVE TO CALL THE
25 JURY BACK OUT HERE AND FINISH READING OVER THAT PART

1 OF THE BURGLARY CHARGE.

2 SOLICITOR PASCOE: AND JUST WHILE I'M THINKING
3 ABOUT IT, BEFORE THEY COME OUT, AND YOUR HONOR WAS
4 PROBABLY GOING TO DO THIS ANYWAY, I WOULD ASK THAT THE
5 ALTERNATE NOT BE EXCUSED, BECAUSE WE DON'T KNOW HOW
6 LONG THIS JURY MIGHT DELIBERATE. I WOULD ASK THAT SHE
7 JUST BE ISOLATED FROM THE OTHER JURORS IN CASE
8 SOMETHING HAPPENS, IF THAT'S OKAY.

9 THE COURT: OKAY. WELL, I'LL DO THAT.

10 OKAY, WOULD YOU BRING THE JURY BACK OUT. I'M
11 JUST GOING TO PICK UP WHERE I LEFT OFF ON THAT CHARGE,
12 I'M NOT GOING TO GO BACK OVER THE WHOLE CHARGE.

13 SOLICITOR PASCOE: YES, SIR, THAT'S FINE.

14 THE COURT: AND I'M NOT GOING TO SEND THE STUFF
15 BACK IN THERE UNTIL THEY FINISH EATING.

16 SOLICITOR PASCOE: YES, SIR. SO, YOU'RE JUST
17 GOING TO TELL THEM NOT TO DELIBERATE UNTIL THEY GET
18 THE EVIDENCE?

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1 THE COURT: YES, I'LL LET THEM EAT AND THEN WE'LL
2 GET EVERYTHING BACK IN THERE.

3 OKAY, TELL, THEM TO COME ON OUT.
4 (Whereupon, the jury enters
5 the courtroom and the following
6 takes place in the presence
7 of the jury.)

8 THE COURT: ALRIGHT, LADIES AND GENTLEMEN, WHEN I
9 WAS DOING THE CHARGE ON BURGLARY, I THINK YOU MAY
10 RECALL, MS. WALKER HAD TO STOP AND CHANGE THE TAPE,
11 AND UNFORTUNATELY I DROPPED, I FORGOT TO FINISH
12 READING YOU ON THE CHARGES ABOUT CIRCUMSTANCES WITH
13 DIFFERENT EXAMPLES REGARDING BURGLARY, SO I'M GOING TO
14 FINISH THAT UP. AND THIS IS ON THE BURGLARY CHARGE.

15 FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE
16 DOUBT THAT WHEN ENTERING OR WHILE IN THE DWELLING, OR
17 WHEN FLEEING THE DEFENDANT OR AN ACCOMPLICE CAUSE
18 PHYSICAL INJURY TO ANYONE NOT PARTICIPATING IN THE
19 CRIME OR WHEN ENTERING, WHILE IN THE DWELLING, OR WHEN
20 FLEEING THE DEFENDANT OR AN ACCOMPLICE USED OR
21 THREATENED TO USE A DANGEROUS OBJECT, OR WHEN
22 ENTERING, WHILE IN THE DWELLING, OR WHEN FLEEING THE
23 DEFENDANT OR AN ACCOMPLICE DISPLAYED WHAT WAS OR
24 APPEARED TO BE A KNIFE, PISTOL, REVOLVER, RIFLE, SHOT
25 GUN, MACHINE GUN OR OTHER FIREARM OR THE DEFENDANT OR

1 REMAINED IN THE DWELLING IN THE NIGHT TIME. NIGHT
2 TIME IS THE PERIOD BETWEEN SUNSET AND SUNRISE, DURING
3 WHICH THERE IS NOT ENOUGH DAYLIGHT TO RECOGNIZE A
4 PERSON'S FACE EXCEPT BY ARTIFICIAL LIGHT OR MOONLIGHT.

5 ALRIGHT. ALRIGHT, NOW, HAVING SAID, THAT I
6 UNDERSTAND YOUR LUNCH IS THERE. OKAY? I'M GOING TO
7 EXCUSE Y'ALL TO GO BACK INTO THE JURY ROOM. I WILL LET
8 YOU EAT YOUR LUNCH. WHEN Y'ALL ARE THROUGH EATING
9 YOUR LUNCH IF YOU WILL LET THE BAILIFF KNOW AND SHE
10 WILL LET ME KNOW, AND THEN I'LL SEND THE EVIDENCE BACK
11 IN THERE AND THE VERDICT FORMS AND TELL YOU TO BEGIN
12 YOUR DELIBERATIONS.

13 NOW, WHILE YOU ARE EATING LUNCH YOU ARE NOT TO
14 DISCUSS THIS CASE. OKAY? YOU CANNOT DISCUSS THE CASE.
15 YOU'VE NOW HEARD EVERYTHING, BUT YOU CANNOT DISCUSS
16 THIS CASE UNTIL I SEND THE VERDICT FORMS BACK IN THERE
17 ALONG WITH THE EVIDENCE AND TELL YOU TO BEGIN YOUR
18 DELIBERATIONS. OKAY? Y'ALL ARE NOW EXCUSED TO GO
19 BACK INTO THE JURY ROOM.

20 (Whereupon, the jury retires
21 to the jury room and the following
22 takes place out of the presence
23 of the jury.)

24 THE COURT: ALRIGHT, ANYTHING ELSE FROM THE
25 STATE?

1 SOLICITOR PASCOE: NO, YOUR HONOR.

2 THE COURT: OKAY. ANYTHING FROM ANY OF THE
3 DEFENDANTS?

4 MR. LACKEY: NO, YOUR HONOR.

5 MS. ULLMAN: NO, YOUR HONOR.

6 MR. PALMER: NO, YOUR HONOR.

7 MR. MELLARD: NO, SIR.

8 MR. KOGER: NO, SIR.

9 THE COURT: ALRIGHT, GENTLEMEN, IF Y'ALL WANT TO
10 GO AHEAD AND EAT LUNCH, AND LADIES, IF Y'ALL WANT TO
11 GO GET SOMETHING TO EAT, IT'S GOING TO BE A WHILE
12 BEFORE THE JURY FINISHES. AS SOON AS THEY TELL ME
13 THEY'RE THROUGH I WILL -- WELL, YOU KNOW WHAT, I NEED
14 FOR Y'ALL, BEFORE Y'ALL LEAVE, IF Y'ALL WILL SIT DOWN,
15 MAKE SURE WE'VE GOT ALL THE EVIDENCE STRAIGHT SO
16 THEY'LL BE READY TO GO BACK, YOU KNOW, WHENEVER THE
17 JURY TELLS ME THAT THEY'RE READY TO BEGIN THEIR
18 DELIBERATIONS.

19 SOLICITOR PASCOE: YES, SIR, AND WE DON'T HAVE TO
20 BE HERE TO DO THAT BECAUSE THE BAILIFFS WILL JUST DO
21 THAT?

22 THE COURT: YEAH, THE BAILIFFS ARE GOING TO TAKE
23 IT BACK THERE, BUT I WANT Y'ALL TO MAKE SURE IT'S ALL
24 HERE, AND I THINK THERE WAS ONLY ONE THAT ONLY MARKED
25 FOR IDENTIFICATION - OKAY, MS. HARRY DOT'S GOT THAT.

1 OKAY.

2 SOLICITOR PASCOE: YOUR HONOR, I WANT TO MAKE
3 SURE THAT THE BAILIFFS -- MAKE SURE THAT THE ALTERNATE
4 IS TAKEN OUT AND ISOLATED SOMEWHERE?

5 THE COURT: YEAR, BEFORE THEY BEGIN THEIR
6 DELIBERATIONS. WHAT I WANT YOU TO DO -- THEY CAN EAT,
7 SHE CAN, YEAH, WHENEVER THE EVIDENCE GOES BACK THERE
8 IF YOU WILL HAVE HER GO SIT IN THE, ISN'T THERE
9 ANOTHER ROOM? OKAY. IF YOU WILL DO THAT I'LL
10 APPRECIATE IT.

11 ALRIGHT, WE ARE IN RECESS. THANK Y'ALL.

12 (Recess)

13 (Whereupon, the jury begins
14 their deliberations at 3:15 p.m.)

15 (Whereupon, the jury sends in
16 a note at 5:00 p.m.)

17 COURT REPORTER: THIS WILL BE COURT'S FIVE.
18 (Court's Exhibit Five
19 marked and filed.)

20 THE COURT: ALRIGHT, MS. WALKER, ARE YOU READY?

21 COURT REPORTER: YES, SIR.

22 THE COURT: LADIES AND GENTLEMEN, THE JURY HAS
23 SENT A QUESTION OUT TO ME. IT SAYS, "MAY WE PLEASE
24 HAVE THE CHARGES OF LAW IN RELATION TO HAND OF ONE,
25 HAND OF ALL." SO, WHAT I WAS PLANNING ON DOING WAS

1 READING MY HAND OF ONE, HAND OF ALL CHARGE AGAIN TO
2 THEM EXACTLY AS I GAVE IT TO THEM LAST TIME.

3 ANY OBJECTION FROM THE STATE?

4 SOLICITOR PASCOE: NO, SIR.

5 THE COURT: ANY OBJECTION, MR. LACKEY?

6 MR. LACKEY: NO, SIR, YOUR HONOR.

7 THE COURT: OKAY. MS. ULLMAN?

8 MS. ULLMAN: I GUESS THE ONLY THING I WOULD ASK
9 IF YOU'RE GOING TO DO THAT IS MAYBE ALSO AGAIN CHARGE
10 THEM ON THE MERE PRESENCE.

11 THE COURT: I UNDERSTAND YOUR REQUEST BUT THEY
12 DIDN'T ASK FOR THAT.

13 MS. ULLMAN: YES, SIR.

14 THE COURT: OKAY. MR. PALMER?

15 MR. PALMER: OH, I WAS GOING TO SUGGEST THE
16 SAME, YOUR HONOR, BUT - - -

17 THE COURT: OKAY.

18 MR. PALMER: --- IF YOUR HONOR CONSIDERS THOSE
19 TWO SEPARATE CHARGES ...

20 THE COURT: YEAH, ACTUALLY, IN THE HAND OF ONE
21 CHARGE IT HAS, IT HAS, IT SAYS SOMETHING ABOUT
22 PRESENCE AT THE SCENE NOT BEING ENOUGH. SO, MY HAND
23 OF ONE CHARGE ALREADY HAS THAT IN THERE, SO I'M NOT
24 GOING TO -- IT SAYS, "HOWEVER, MERE PRESENCE AT THE
25 SCENE AT THE CRIME IS NOT SUFFICIENT TO CONVICT ONE AS

1 A PRINCIPAL ON THE THEORY OF AIDING AND ABETTING."

2 MR. PALMER: YES, SIR, THAT WILL BE FINE.

3 MS. ULLMAN: YES, SIR.

4 THE COURT: SO, YEAH, OKAY.

5 MR. MELLARD: YES, THAT WILL BE FINE.

6 MR. KOGER: NO OBJECTION, YOUR HONOR.

7 THE COURT: OKAY. ALRIGHT, IF YOU'LL BRING THE
8 JURY ON OUT. EVEN THOUGH THE ALTERNATE HAS NOT BEEN
9 PART OF THE DELIBERATIONS, SINCE I'M GOING TO MAKE A
10 CHARGE I'M GOING TO BRING HER BACK OUT HERE ALSO JUST
11 SO SHE'LL BE IN THE SAME POSITION Y'ALL ARE IN.

12 (Whereupon, the jury enters
13 the courtroom and the following
14 takes place in the presence
15 of the jury.)

16 THE COURT: ALRIGHT, LADIES AND GENTLEMEN, I HAD
17 THE REQUEST THAT Y'ALL WANTED THE CHARGE OF HAND OF
18 ONE, HAND OF ALL AGAIN. SO, I'M GOING TO READ THAT
19 CHARGE TO YOU AGAIN, AND THIS IS IT.

20 IF A CRIME IS COMMITTED BY TWO OR MORE PEOPLE WHO
21 ARE ACTING TOGETHER IN COMMITTING A CRIME THE ACT OF
22 ONE IS THE ACT OF ALL. A PERSON WHO JOINS WITH
23 ANOTHER TO COMMIT AN UNLAWFUL ACT IS CRIMINALLY
24 RESPONSIBLE FOR EVERYTHING DONE BY THE OTHER PERSON
25 WHICH HAPPENS AS A PROBABLE OR NATURAL CONSEQUENCE OF

1 THE ACTS DONE IN CARRYING OUT THE COMMON PLAN AND
2 PURPOSE. IF TWO OR MORE PEOPLE ARE TOGETHER, ACTING
3 TOGETHER, ASSISTING EACH OTHER IN COMMITTING THE
4 OFFENSE, THE ACT OF ONE IS THE ACT OF ALL, OR AS IS
5 SOMETIMES SAID, THE HAND OF ONE IS THE HAND OF ALL.
6 PRIOR KNOWLEDGE THAT A CRIME IS GOING TO BE COMMITTED
7 WITHOUT MORE IS NOT SUFFICIENT TO MAKE A PERSON GUILTY
8 OF THAT CRIME. MERE KNOWLEDGE THAT ANOTHER PERSON IS
9 GOING TO COMMIT A CRIME, EVEN IF THE DEFENDANT IS
10 PRESENT WHEN THE CRIME IS COMMITTED IS NOT SUFFICIENT
11 TO CONVICT THE DEFENDANT AS A PRINCIPAL. GUILT AS A
12 PRINCIPAL IS SHOWN BY ACTUAL OR CONSTRUCTIVE PRESENCE
13 AT THE SCENE AS A RESULT OF PRIOR ARRANGEMENT.
14 THEREFORE, A FINDING OF A PRIOR ARRANGED PLAN OR
15 COMMON SCHEME IS NECESSARY FOR A FINDING OF GUILT AS A
16 PRINCIPAL. THE STATE MUST PROVE BEYOND A REASONABLE
17 DOUBT BY COMPETENT EVIDENCE, THE THEORY OF, THE HAND
18 OF ONE IS THE HAND OF ALL. A PRINCIPAL IN A CRIME IS
19 ONE WHO EITHER ACTUALLY COMMITS THE CRIME OR WHO IS
20 PRESENT, AIDING, ABETTING OR ASSISTING IN COMMITTING
21 THE CRIME. WHEN A PERSON DOES AN ACT IN THE PRESENCE
22 OF AND WITH THE ASSISTANCE OF ANOTHER THE ACT IS DONE
23 BY BOTH. WHERE TWO OR MORE ACTING WITH A COMMON PLAN
24 OR INTENT ARE PRESENT AT THE COMMISSION OF A CRIME IT
25 DOESN'T MATTER WHO ACTUALLY COMMITS THE CRIME, ALL ARE

1 GUILTY. THE HAND OF ONE IS THE HAND OF ALL. PRESENT
2 AT THE COMMISSION OF A CRIME MEANS TO BE SUFFICIENTLY
3 NEAR TO AID AND ABET AND ASSIST IN THE COMMISSION OF
4 THE CRIME. HOWEVER, MERE PRESENCE AT THE SCENE OF A
5 CRIME IS NOT SUFFICIENT TO CONVICT ONE AS A PRINCIPAL
6 ON THE THEORY OF AIDING AND ABETTING. INTENT IS ALSO
7 A NECESSARY ELEMENT, FOR THERE MUST HAVE BEEN A COMMON
8 DESIGN OR INTENT TO COMMIT THE CRIME, AND THE CRIME
9 MUST HAVE BEEN COMMITTED PURSUANT THERETO WITH THE
10 PERSON AIDING AND ABETTING BY SOME OVERT ACT. INTENT
11 MEANS INTENDING THE RESULT WHICH ACTUALLY OCCURS, NOT
12 ACCIDENTALLY OR INVOLUNTARILY. INTENT MAY BE SHOWN BY
13 ACTS AND CONDUCT OF THE DEFENDANT AND OTHER
14 CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND
15 REASONABLY INFER INTENT. THE STATE MUST PROVE THESE
16 ELEMENTS BEYOND A REASONABLE DOUBT.

17 ALRIGHT, LADIES AND -- YOU CAN'T ASK A QUESTION,
18 NO, MA'AM. I KNOW YOU'RE GETTING TO ASK SOMETHING,
19 YOU LOOKED LIKE YOU WERE. I'VE READ THE CHARGES TO
20 YOU. OKAY? NOW, IF Y'ALL HAVE ANOTHER QUESTION YOU
21 CAN GO BACK THERE AND IF YOU WANT TO REWORD THE
22 QUESTION. OKAY? SO, I'VE READ THE CHARGE TO YOU, AND
23 Y'ALL ARE NOW EXCUSED TO GO BACK AND RESUME YOUR
24 DELIBERATIONS.

25 AND IF YOU WILL KEEP THE ALTERNATE IN THE

1 SEPARATE ROOM. OKAY?

2 THANK Y'ALL.

3 (Whereupon, the jury retires
4 to the jury room and continues
5 their deliberations.)

6 THE COURT: AND THIS IS COURT'S EXHIBIT FIVE.

7 FROM THE FOREPERSON -- IT LOOKED LIKE SHE WAS
8 TRYING TO SAY SOMETHING, AND I DIDN'T -- SO, IF YOU
9 WANT TO SIT TIGHT AND LET'S SEE. BUT WE'LL BE IN
10 RECESS, TO SEE IF THERE IS ANOTHER QUESTION.

11 OH, AND WHILE WE'RE HERE I'M GOING TO MAKE
12 ANOTHER COURT'S EXHIBIT. WHILE WE WERE IN COURT THIS
13 WEEK, AND THIS IS JUST FOR THE COURT RECORD, THERE WAS
14 A -- ON TUESDAY, DECEMBER FOURTEENTH, THERE WAS
15 LOCATED AN UNFIRED TWENTY-TWO LONG RIFLE CARTRIDGE WAS
16 UNDER ONE OF THE BENCHES IN THE SECOND FLOOR
17 COURTROOM, AND THERE IS A REPORT THAT WAS FILED BY --
18 WHO IS THIS, KEN KINSEY? AND I'M JUST GOING TO HAVE A
19 -- JUST FOR THE RECORD, I'M JUST GOING TO HAVE A COPY
20 -- OH, THERE IT IS UP AT THE TOP, KENNY KINSEY, I'M
21 JUST MAKING THIS A COURT'S EXHIBIT SO IT WILL BE PART
22 OF THE RECORD, JUST TO SHOW, INDICATE WHAT WAS GOING
23 ON IN THE COURTROOM DURING THAT TIME. AND THIS WOULD
24 BE COURT'S EXHIBIT NUMBER SIX. OKAY? THAT'S A COPY.
25 AND IF ANYBODY NEEDS A COPY I'VE GOT A COPY FOR YOU.

1 THAT'S THE ORIGINAL, YOU CAN GIVE IT BACK TO HIM.

2 OKAY?

3 (Court's Exhibit Six
4 marked and filed.)

5 THE COURT: ALRIGHT, WE'RE IN RECESS UNTIL
6 SOMETHING ELSE HAPPENS. OKAY? THANK Y'ALL.

7 (Recess)

8 THE COURT: I HAVE BEEN TOLD THAT THE JURY HAS
9 REACHED A VERDICT.

10 MS. ULLMAN: YOUR HONOR, - - -

11 THE COURT: YES, MA'AM. MARK RAN DOWNSTAIRS, I
12 JUST TRIED TO CALL TO GET HIM.

13 THE COURT: OKAY. WELL, THEN, WE'LL -- OKAY,
14 WELL ...

15 MS. ULLMAN: IT CAN'T BE MORE THAN TWENTY SECONDS.

16 THE COURT: YEAH, YOU CAN ...

17 MS. ULLMAN: I'M SORRY.

18 THE COURT: OKAY. I HAVE BEEN TOLD THAT THE JURY
19 HAS REACHED A VERDICT, AND WE'VE HAD SOME DIFFERENT
20 SUGGESTIONS ABOUT HOW TO HANDLE THAT. I THINK THE
21 SHERIFF'S OFFICE IS CONCERNED A LITTLE BIT ABOUT
22 SECURITY AT THIS STAGE OF THE GAME, AND WHAT I THINK
23 WE WOULD LIKE TO DO IF THERE'S NO OBJECTION FROM THE
24 DEFENSE ATTORNEYS IS TO BRING OUT EACH DEFENDANT,
25 AFTER I BRING THE JURY OUT, BRING OUT A DEFENDANT AT A

1 TIME, AND THEN GO THROUGH WITH THAT DEFENDANT WHAT THE
2 VERDICT IS, AND WHATEVER WE NEED TO DO WITH THAT
3 DEFENDANT. ANY OBJECTION FROM YOU, MR. LACKEY?

4 MR. LACKEY: I DON'T BELIEVE SO, YOUR HONOR.

5 THE COURT: OKAY. MS. ULLMAN?

6 MS. ULLMAN: NO, SIR.

7 THE COURT: MR. PALMER.

8 MR. PALMER: NO OBJECTION.

9 MR. MELLARD: NO OBJECTION.

10 MR. KOGER: NONE, YOUR HONOR.

11 THE COURT: ALRIGHT. IS THE STATE READY?

12 SOLICITOR PASCOE: YES, SIR.

13 THE COURT: OKAY. ARE DEFENDANTS READY?

14 MR. LACKEY: YES, SIR.

15 THE COURT: OKAY. IF YOU WILL BRING OUT
16 CHRISTIAN, HE'S FIRST ON THE LIST. OKAY? AND BRING
17 THE JURY ON OUT. AND THEN WHAT I'M GOING TO HAVE HIM
18 GO BACK ONE AT A TIME, AND SO WE'LL JUST HAVE ONE
19 PERSON OUT HERE AT A TIME.

20 MR. LACKEY: WOULD YOU LIKE US TO STAND, YOUR
21 HONOR?

22 THE COURT: YOU CAN STAND RIGHT THERE. THAT WILL
23 BE FINE.

24 AND EVERYONE IN THE AUDIENCE, LET ME TELL YOU,
25 WE'RE GETTING READY TO ANNOUNCE THE VERDICTS, AND

1 WHATEVER THE VERDICT IS WE'RE NOT GOING TO HAVE ANY
2 OUTCRIES, NO TALKING, NO YELLING, NO, YOU KNOW,
3 NOTHING. AND IF YOU DON'T THINK YOU CAN SIT QUIETLY
4 YOU NEED TO EXIT THE COURTROOM NOW, BECAUSE IF I HAVE
5 ANY OUTBURSTS OR ANYTHING LIKE THAT YOU WILL BE DEALT
6 WITH. OKAY.

7 (Whereupon, the jury and
8 defendant Christian Coleman
9 enter the courtroom and
10 the following takes place
11 in the presence of the jury.)

12 THE COURT: ALRIGHT, LADIES AND GENTLEMEN OF THE
13 JURY, IT'S MY UNDERSTANDING THAT Y'ALL HAVE REACHED A
14 VERDICT, IS THAT TRUE, MADAM FORELADY?

15 JURY FORELADY: YES.

16 THE COURT: OKAY. AND YOUR VERDICT IS
17 UNANIMOUS?

18 JUROR FORELADY: YES.

19 THE COURT: AND YOUR VERDICT IS, REGARDING EACH
20 ONE OF THE DEFENDANTS AND EACH ONE OF THE CHARGES?

21 JUROR FORELADY: YES.

22 THE COURT: OKAY. NOW, MADAM FORELADY, WHAT
23 WE'RE GOING TO DO IS, WE'RE GOING TO DO EACH DEFENDANT
24 ONE AT A TIME. OKAY? SO, WHAT I'M GOING TO ASK YOU
25 TO DO IS, THE FIRST DEFENDANT THAT WE'RE GOING TO DEAL

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1 WITH IS MR. CHRISTIAN COLEMAN. OKAY? SO; IF YOU
2 WOULD GET HIS VERDICT FORM OUT FOR ME, PLEASE, MA'AM,
3 AND IF YOU'LL GET READY. AND MADAM FORELADY, WITH
4 REGARD TO THE DEFENDANT, CHRISTIAN COLEMAN, THE JURY
5 HAS REACHED A UNANIMOUS VERDICT REGARDING ALL OF THE
6 CHARGES AGAINST MR. CHRISTIAN COLEMAN, IS THAT
7 CORRECT?

8 JURY FORELADY: YES, SIR.

9 THE COURT: OKAY. IF YOU WOULD HAND THAT VERDICT
10 FORM TO THE BAILIFF, PLEASE, MA'AM.
11 (Whereupon, the Court examines
12 the verdict forms.)

13 THE COURT: ALRIGHT, MADAM CLERK, IF YOU WOULD
14 PLEASE PUBLISH THE VERDICT.

15 VERDICT OF THE JURY

16 AS TO CHRISTIAN COLEMAN

17 CLERK: IN THE MATTER OF THE STATE VERSUS
18 CHRISTIAN COLEMAN, THE JURY UNANIMOUSLY FINDS THE
19 DEFENDANT AS TO THE CHARGE OF MURDER, GUILTY.

20 AS TO THE CHARGE OF BURGLARY IN THE FIRST DEGREE,
21 GUILT.

22 AS TO THE CHARGE OF ARMED ROBBERY, GUILTY.

23 THE COURT: AND ON THE BACK PAGE, IT WAS SIGNED
24 AND DATED BY THE FORELADY?

25 CLERK: KELLY WILLIAMS, DECEMBER SEVENTEENTH, TWO

1 THOUSAND TEN.

2 THE COURT: ALRIGHT. IS THAT THE DECISION OF THE
3 JURY?

4 JURY FORELADY: YES, SIR.

5 THE COURT: IS THAT STILL YOUR DECISION? IS THAT
6 A YES?

7 JURY FORELADY: YES, SIR.

8 THE COURT: OKAY. ALRIGHT, ANYTHING FROM THE
9 DEFENSE?

10 MR. LACKEY: NOT AT THIS TIME.

11 THE COURT: OKAY. THANK YOU, SIR. ALRIGHT, MR.
12 COLEMAN, YOU'RE EXCUSED TO GO BACK IN THE HOLDING CELL
13 FOR RIGHT NOW. OKAY? IF YOU'D BRING OUT MR. RALPH
14 COLEMAN.

15 (Whereupon, Christian Coleman
16 leaves the courtroom and Ralph
17 Coleman enters the courtroom.)

18 THE COURT: HAS THE JURY REACHED A VERDICT
19 REGARDING MR. RALPH COLEMAN?

20 JURY FORELADY: YES, SIR.

21 THE COURT: IS THAT VERDICT UNANIMOUS?

22 JURY FORELADY: YES, SIR.

23 THE COURT: AND THAT VERDICT IS REGARD TO ALL OF
24 THE CHARGES AGAINST MR. RALPH COLEMAN?

25 JURY FORELADY: YES, SIR.

1 THE COURT: OKAY. IF YOU'D PLEASE HAND THE
2 BAILIFF THE VERDICT FORM, PLEASE, MA'AM.

3 (Whereupon, the Court examines
4 the verdict.)

5 THE COURT: ALRIGHT, MADAM CLERK, IF YOU WILL
6 PUBLISH THE VERDICT FOR ME, PLEASE, MA'AM.

7 VERDICT OF THE JURY

8 AS TO RALPH COLEMAN

9 CLERK: IN THE MATTER OF STATE OF SOUTH CAROLINA
10 VERSUS RALPH BERNARD COLEMAN, THE JURY HAS UNANIMOUSLY
11 FOUND THE DEFENDANT AS TO THE CHARGE OF MURDER,
12 GUILTY.

13 AS TO THE CHARGE OF BURGLARY IN THE FIRST DEGREE,
14 GUILTY.

15 AS TO THE CHARGE OF ARMED ROBBERY, GUILTY.

16 AND IT WAS SIGNED BY KELLY WILLIAMS,
17 TWELVE/SEVENTEEN/TWO THOUSAND TEN.

18 THE COURT: THANK YOU, MA'AM. IS THAT THE
19 DECISION OF THE JURY?

20 JURY FORELADY: YES, SIR.

21 THE COURT: AND IS THAT STILL THE DECISION?

22 JURY FORELADY: YES, SIR.

23 THE COURT: OKAY. ALRIGHT, ANYTHING FROM THE
24 DEFENSE AT THIS TIME?

25 MS. ULLMAN: YOUR HONOR, I DO HAVE A POST TRIAL

1 MOTION BUT I DON'T KNOW IF YOU WANT ME TO ...

2 THE COURT: NO, WE'LL DO THE POST TRIAL MOTIONS
3 IN A MINUTE IF THAT'S OKAY.

4 MS. ULLMAN: YES, SIR.

5 THE COURT: OKAY. ALRIGHT, THANK YOU, MA'AM.

6 MS. ULLMAN: YOUR HONOR, COULD YOU POLL THE JURY?

7 THE COURT: YES, MA'AM. MADAM CLERK, IF YOU
8 WOULD POLL THE JURY FOR ME, PLEASE, MA'AM.

9 LADIES AND GENTLEMEN OF THE JURY, WHEN THEY
10 REQUEST THAT THE JURY BE POLLED, THE CLERK IS GOING TO
11 ASK EACH ONE OF YOU INDIVIDUALLY IF THIS IS STILL YOUR
12 VERDICT, AND YOU WILL NEED TO RESPOND WHEN SHE CALLS
13 YOUR NAME.

14 YES, MA'AM.

15 CLERK: KELLY WILLIAMS.

16 JUROR WILLIAMS: YES.

17 CLERK: DID YOU FIND THE DEFENDANT GUILTY?

18 JUROR WILLIAMS: I DID.

19 CLERK: DO YOU NOW STATE THAT THE DEFENDANT IS
20 STILL GUILTY?

21 JUROR WILLIAMS: I DO.

22 CLERK: CHARLES STRECKER, DID YOU, WAS THAT
23 CHOICE OF FINDING THE DEFENDANT GUILTY?

24 JUROR STRECKER: YES.

25 CLERK: IS THAT STILL YOUR DECISION?

1 JUROR STRECKER: YES.

2 CLERK: WAYNE LOVETTE.

3 JUROR LOVETTE: YES.

4 CLERK: DID YOU FIND THE DEFENDANT GUILTY?

5 JUROR LOVETTE: YES.

6 CLERK: IS THAT STILL YOUR DECISION?

7 JUROR LOVETTE: YES.

8 CLERK: TAMEKA JOHNSON.

9 JUROR JOHNSON: YES.

10 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON
11 ALL CHARGES?

12 JUROR JOHNSON: YES.

13 CLERK: IS THAT STILL YOUR DECISION?

14 JUROR JOHNSON: YES.

15 CLERK: INDIA JAMISON.

16 JUROR JAMISON: YES.

17 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
18 CHARGES?

19 JUROR JAMISON: YES.

20 CLERK: IS THAT STILL YOUR DECISION?

21 JUROR JAMISON: YES.

22 CLERK: JAMIE HEADDEN, DID YOU FIND THE DEFENDANT
23 GUILTY ON ALL CHARGES?

24 JUROR HEADDEN: YES.

25 CLERK: IS THAT STILL YOUR DECISION?

1 JUROR HEADDEN: YES.

2 CLERK: BRENDA HAYWARD.

3 THE COURT: NO, NO, SHE'S THE ALTERNATE.

4 CLERK: JEROME FRANKLIN.

5 JUROR FRANKLIN: YES.

6 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
7 CHARGES?

8 JUROR FRANKLIN: YES.

9 CLERK: IS THAT STILL YOUR DECISION?

10 JUROR FRANKLIN: YES.

11 CLERK: LORETTA COLTER.

12 JUROR COLTER: YES.

13 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
14 CHARGES?

15 JUROR COLTER: YES.

16 CLERK: IS THAT STILL YOUR DECISION?

17 JUROR COLTER: YES.

18 CLERK: MERLINDA BUTLER.

19 JUROR BUTLER: YES.

20 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
21 CHARGES?

22 JUROR BUTLER: YES.

23 CLERK: IS THAT STILL YOUR DECISION?

24 JUROR BUTLER: YES.

25 CLERK: OTIS BOYD.

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1 JUROR BOYD: YES.

2 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
3 CHARGES?

4 JUROR BOYD: YES.

5 CLERK: IS THAT STILL YOUR DECISION?

6 JUROR BOYD: YES.

7 CLERK: SAMANTHA BENTON.

8 JUROR BENTON: YES.

9 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
10 CHARGES?

11 JUROR BENTON: YES.

12 CLERK: IS THAT STILL YOUR DECISION?

13 JUROR BENTON: YES.

14 CLERK: COURTNEY ASBERRY.

15 JUROR ASBERRY: YES.

16 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
17 CHARGES?

18 JUROR ASBERRY: YES.

19 CLERK: IS THAT STILL YOUR DECISION?

20 JUROR ASBERRY: YES.

21 THE COURT: ALRIGHT, THANK Y'ALL.

22 MS. ULLMAN: THANK YOU, JUDGE.

23 THE COURT: ANYTHING ELSE? ALRIGHT, MR. COLEMAN,
24 YOU'RE EXCUSED TO GO BACK TO THE HOLDING CELL FOR A
25 MINUTE.

1 IF YOU WOULD BRING OUT MR. WALTER LEE HARRIS.

2 (Whereupon, Ralph Coleman

3 leaves the courtroom and

4 Walter Lee Harris enters

5 the courtroom.)

6 THE COURT: ALRIGHT, MADAM FORELADY, HAS THE JURY
7 REACHED A DECISION REGARDING WALTER LEE HARRIS?

8 JURY FORELADY: YES, SIR.

9 THE COURT: OKAY. IS THE DECISION OF THE JURY
10 UNANIMOUS?

11 JURY FORELADY: YES, SIR.

12 THE COURT: OKAY. AND IT WAS UNANIMOUS REGARDING
13 ALL THREE OF THE CHARGES?

14 JURY FORELADY: YES, SIR.

15 THE COURT: OKAY. IF YOU'D HAND THE VERDICT FORM
16 TO THE BAILIFF, PLEASE, MA'AM.

17 (Whereupon, the Court examines
18 the verdict.)

19 THE COURT: ALRIGHT, MADAM CLERK, WOULD YOU
20 PUBLISH THE VERDICT FOR ME, PLEASE, MA'AM.

21 VERDICT OF THE JURY

22 AS TO WALTER LEE HARRIS

23 CLERK: IN THE MATTER OF THE STATE OF SOUTH
24 CAROLINA VERSUS WALTER LEE HARRIS, THE JURY HAS
25 UNANIMOUSLY FOUND THE DEFENDANT AS TO THE CHARGE OF

1 MURDER, GUILTY.

2 AS TO THE CHARGE OF BURGLARY IN THE FIRST DEGREE,
3 GUILTY.

4 AS TO THE CHARGE OF ARMED ROBBERY, GUILTY.

5 AND IT HAS BEEN SIGNED BY KELLY WILLIAMS,
6 TWELVE/SEVENTEEN/TWO THOUSAND TEN.

7 THE COURT: AND MADAM FORELADY, THAT IS THE
8 JURY'S VERDICT, IS THAT CORRECT?

9 JURY FORELADY: YES, SIR.

10 THE COURT: OKAY. ALRIGHT, ANYTHING FROM THE
11 DEFENDANT?

12 MR. PALMER: WE WOULD RESPECTFULLY ASK THAT THE
13 JURY BE POLLED, YOUR HONOR.

14 THE COURT: ALRIGHT, LADIES AND GENTLEMEN, YOU'RE
15 GOING TO BE POLLED AGAIN. OKAY?

16 CLERK: COURTNEY ASBERRY.

17 JUROR ASBERRY: YES.

18 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
19 CHARGES?

20 JUROR ASBERRY: YES.

21 CLERK: IS THAT STILL YOUR DECISION?

22 JUROR ASBERRY: YES.

23 CLERK: SAMANTHA BENTON.

24 JUROR BENTON: YES.

25 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL

1 CHARGES?

2 JUROR BENTON: YES.

3 CLERK: IS THAT STILL YOUR DECISION?

4 JUROR BENTON: YES.

5 CLERK: OTIS BOYD.

6 JUROR BOYD: YES.

7 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL

8 CHARGES?

9 JUROR BOYD: YES.

10 CLERK: IS THAT STILL YOUR DECISION?

11 JUROR BOYD: YES.

12 CLERK: MERLINDA BUTLER.

13 JUROR BUTLER: YES.

14 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL

15 CHARGES?

16 JUROR BUTLER: YES.

17 CLERK: IS THAT STILL YOUR DECISION?

18 JUROR BUTLER: YES.

19 CLERK: LORETTA COLTER.

20 JUROR COLTER: YES.

21 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL

22 CHARGES?

23 JUROR COLTER: YES.

24 CLERK: IS THAT STILL YOUR DECISION?

25 JUROR COLTER: YES.

1 CLERK: JEROME FRANKLIN.

2 JUROR FRANKLIN: YES.

3 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
4 CHARGES?

5 JUROR FRANKLIN: YES.

6 CLERK: IS THAT STILL YOUR DECISION?

7 JUROR FRANKLIN: YES.

8 CLERK: JAMIE HEADDEN.

9 JUROR HEADDEN: YES.

10 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
11 CHARGES?

12 JUROR HEADDEN: YES.

13 CLERK: IS THAT STILL YOUR DECISION?

14 JUROR HEADDEN: YES.

15 CLERK: INDIA JAMISON.

16 JUROR JAMISON: YES.

17 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
18 CHARGES?

19 JUROR JAMISON: YES.

20 CLERK: IS THAT STILL YOUR DECISION?

21 JUROR JAMISON: YES.

22 CLERK: TAMEKA JOHNSON.

23 JUROR JOHNSON: YES.

24 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
25 CHARGES?

1 JUROR JOHNSON: YES.

2 CLERK: IS THAT STILL YOUR DECISION?

3 JUROR JOHNSON: YES.

4 CLERK: WAYNE LOVETTE.

5 JUROR LOVETTE: YES.

6 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
7 CHARGES?

8 JUROR LOVETTE: YES.

9 CLERK: IS THAT STILL YOUR DECISION?

10 JUROR LOVETTE: YES.

11 CLERK: CHARLES STRECKER.

12 JUROR STRECKER: YES.

13 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
14 CHARGES?

15 JUROR STRECKER: YES.

16 CLERK: IS THAT STILL YOUR DECISION?

17 JUROR STRECKER: YES.

18 CLERK: KELLY WILLIAMS.

19 JUROR WILLIAMS: YES.

20 CLERK: DID YOU FIND THE DEFENDANT ON ALL
21 CHARGES?

22 JUROR WILLIAMS: YES.

23 CLERK: IS THAT STILL YOUR DECISION?

24 JUROR WILLIAMS: YES.

25 THE COURT: ALRIGHT, THANK YOU, MA'AM.

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1 ALRIGHT, THANK YOU, MR. HARRIS, YOU ARE EXCUSED
2 TO GO BACK INTO THE HOLDING CELL.

3 ALRIGHT, WOULD YOU CALL OUT DANNY RYANT, JUNIOR,
4 PLEASE.

5 (Whereupon, Walter Lee Harris
6 leaves the courtroom and Danny
7 Ryant, Jr., enters the courtroom.)

8 THE COURT: ALRIGHT, LADIES AND GENTLEMEN OF THE
9 JURY, HAVE YOU REACHED A DECISION REGARDING DANNY
10 RYANT, JUNIOR?

11 JURY FORELADY: YES.

12 THE COURT: IS THAT DECISION UNANIMOUS?

13 JURY FORELADY: YES, SIR.

14 THE COURT: AND THAT IS IN REGARD TO ALL OF THE
15 CHARGES FACING MR. RYANT?

16 JUROR FORELADY: YES, SIR.

17 THE COURT: OKAY. WOULD YOU PASS THE VERDICT
18 FORM OVER TO THE BAILIFF FOR ME, PLEASE, MA'AM.

19 (Whereupon, the Court examines
20 the verdict.)

21 THE COURT: ALRIGHT, MADAM CLERK, WOULD YOU.
22 PUBLISH THE VERDICT FOR ME, PLEASE, MA'AM.

23 VERDICT OF THE JURY

24 AS TO DANNY RYANT, JR.

25 CLERK: IN THE MATTER OF STATE OF SOUTH CAROLINA

1 VERSUS DANNY RYANT, JUNIOR, THE JURY UNANIMOUSLY FINDS
2 THE DEFENDANT, AS TO THE CHARGE OF MURDER, GUILTY.

3 AS TO THE CHARGE OF BURGLARY IN THE FIRST DEGREE,
4 GUILTY.

5 AND AS TO THE CHARGE OF ARMED ROBBERY, GUILTY.

6 AND IT HAS BEEN SIGNED BY KELLY WILLIAMS,
7 TWELVE/SEVENTEEN/TWO THOUSAND TEN.

8 THE COURT: ALRIGHT, MADAM FORELADY, THAT IS
9 YOUR, THE JURY'S DECISION, AND IT IS UNANIMOUS, IS
10 THAT CORRECT?

11 JURY FORELADY: YES, SIR.

12 THE COURT: OKAY.

13 MR. MELLARD: WE WOULD ASK THAT THE JURY BE
14 POLLED ON ALL CHARGES, YOUR HONOR.

15 THE COURT: OKAY.

16 CLERK: KELLY WILLIAMS.

17 JUROR WILLIAMS: YES.

18 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
19 CHARGES?

20 JUROR WILLIAMS: YES.

21 CLERK: IS THAT STILL YOUR DECISION?

22 JUROR WILLIAMS: YES.

23 CLERK: CHARLES STRECKER.

24 JUROR STRECKER: YES.

25 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL

1 CHARGES?

2 JUROR STRECKER: YES.

3 CLERK: IS THAT STILL YOUR DECISION?

4 JUROR STRECKER: YES.

5 CLERK: WAYNE LOVETTE.

6 JUROR LOVETTE: YES.

7 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL

8 CHARGES?

9 JUROR LOVETTE: YES.

10 CLERK: IS THAT STILL YOUR DECISION?

11 JUROR LOVETTE: YES.

12 CLERK: TAMEKA JOHNSON.

13 JUROR JOHNSON: YES.

14 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL

15 CHARGES?

16 JUROR JOHNSON: YES.

17 CLERK: IS THAT STILL YOUR DECISION?

18 JUROR JOHNSON: YES.

19 CLERK: INDIA JAMISON.

20 JUROR JAMISON: YES.

21 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL

22 CHARGES?

23 JUROR JAMISON: YES.

24 CLERK: IS THAT STILL YOUR DECISION?

25 JUROR JAMISON: YES.

1 CLERK: JAMIE HEADDEN.

2 JUROR HEADDEN: YES.

3 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
4 CHARGES?

5 JUROR HEADDEN: YES.

6 CLERK: IS THAT STILL YOUR DECISION?

7 JUROR HEADDEN: YES.

8 CLERK: JEROME FRANKLIN.

9 JUROR FRANKLIN: YES.

10 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
11 CHARGES?

12 JUROR FRANKLIN: YES.

13 CLERK: IS THAT STILL YOUR DECISION?

14 JUROR FRANKLIN: YES.

15 CLERK: LORETTA COLTER.

16 JUROR COLTER: YES.

17 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
18 CHARGES?

19 JUROR COLTER: YES.

20 CLERK: IS THAT STILL YOUR DECISION?

21 JUROR COLTER: YES.

22 CLERK: MERLINDA BUTLER.

23 JUROR BUTLER: YES.

24 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
25 CHARGES?

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JUROR BUTLER: YES.

CLERK: IS THAT STILL YOUR DECISION?

JUROR BUTLER: YES.

CLERK: OTIS BOYD.

JUROR BOYD: YES.

CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
CHARGES?

JUROR BOYD: YES.

CLERK: IS THAT STILL YOUR DECISION?

JUROR BOYD: YES..

CLERK: SAMANTHA BENTON.

JUROR BENTON: YES.

CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
CHARGES?

JUROR BENTON: YES.

CLERK: IS THAT STILL YOUR DECISION?

JUROR BENTON: YES.

CLERK: COURTNEY ASBERRY.

JUROR ASBERRY: YES.

CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
CHARGES?

JUROR ASBERRY: YES.

CLERK: IS THAT STILL YOUR DECISION?

JUROR ASBERRY: YES.

THE COURT: ALRIGHT, THANK YOU.

1 ALRIGHT, MR. RYANT.

2 ALRIGHT, IF YOU'LL BRING OUT MARIO SHIVERS,
3 PLEASE.

4 (Whereupon, Danny Ryant, Jr.,
5 leaves the courtroom and Mario
6 Shivers enters the courtroom.)

7 THE COURT: ALRIGHT, MADAM FORELADY, HAS THE JURY
8 REACHED A DECISION REGARDING MARIO SHIVERS?

9 JURY FORELADY: YES, SIR.

10 THE COURT: IS THAT DECISION UNANIMOUS?

11 JURY FORELADY: YES, SIR.

12 THE COURT: AND IT'S REGARDING ALL OF THE CHARGES
13 AGAINST HIM?

14 JURY FORELADY: YES, SIR.

15 THE COURT: OKAY. IF YOU WOULD HAND THE VERDICT
16 FORM TO THE BAILIFF, PLEASE, MA'AM. THANK YOU.

17 (Whereupon, the Court
18 examines the verdict.)

19 THE COURT: ALRIGHT, MADAM CLERK, IF YOU WOULD
20 PUBLISH THE VERDICT FOR ME, PLEASE.

21 VERDICT OF THE JURY

22 AS TO MARIO SHIVERS

23 CLERK: IN THE MATTER OF THE STATE OF SOUTH
24 CAROLINA VERSUS MARIO MONTEZ SHIVERS, THE JURY HAS
25 UNANIMOUSLY FOUND THE DEFENDANT AS TO THE CHARGE OF

1 MURDER GUILTY.

2 AS TO THE CHARGE OF BURGLARY IN THE FIRST DEGREE,
3 GUILTY.

4 AS TO THE CHARGE OF ARMED ROBBERY, GUILTY.
5 AND IT HAS BEEN SIGNED BY KELLY WILLIAMS,
6 TWELVE/SEVENTEEN/TWO THOUSAND TEN.

7 THE COURT: OKAY. THANK YOU, MA'AM.

8 ALRIGHT, MADAM FORELADY, THAT IS THE VERDICT OF
9 THE JURY?

10 JURY FORELADY: YES, SIR.

11 THE COURT: AND IT WAS A UNANIMOUS DECISION?

12 JURY FORELADY: YES, SIR.

13 THE COURT: OKAY. ANYTHING FROM THE DEFENDANT?

14 MS. KOGER: YES, YOUR HONOR, I'D LIKE THE JURY TO
15 BE POLLED.

16 THE COURT: OKAY. WOULD YOU PLEASE POLL THE JURY
17 FOR ME, MADAM CLERK.

18 CLERK: COURTNEY ASBERRY.

19 JUROR ASBERRY: YES.

20 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
21 CHARGES?

22 JUROR ASBERRY: YES.

23 CLERK: IS THAT STILL YOUR DECISION?

24 JUROR ASBERRY: YES.

25 CLERK: SAMANTHA BENTON.

1 JUROR BENTON: YES.

2 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
3 CHARGES?

4 JUROR BENTON: YES.

5 CLERK: IS THAT STILL YOUR DECISION?

6 JUROR BENTON: YES.

7 CLERK: OTIS BOYD.

8 JUROR BOYD: YES.

9 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
10 CHARGES?

11 JUROR BOYD: YES.

12 CLERK: IS THAT STILL YOUR DECISION?

13 JUROR BOYD: YES.

14 CLERK: MERLINDA BUTLER.

15 JUROR BUTLER: YES.

16 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
17 CHARGES?

18 JUROR BUTLER: YES.

19 CLERK: IS THAT STILL YOUR DECISION?

20 JUROR BUTLER: YES.

21 CLERK: LORETTA COLTER.

22 JUROR COLTER: YES.

23 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
24 CHARGES?

25 JUROR COLTER: YES.

1 CLERK: IS THAT STILL YOUR DECISION?
2 JUROR COLTER: YES.
3 CLERK: JEROME FRANKLIN.
4 JUROR FRANKLIN: YES.
5 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
6 CHARGES?
7 JUROR FRANKLIN: YES.
8 CLERK: IS THAT STILL YOUR DECISION?
9 JUROR FRANKLIN: YES.
10 CLERK: IS THAT STILL YOUR DECISION?
11 JUROR FRANKLIN: YES.
12 CLERK: JAMIE HEADDEN.
13 JUROR HEADDEN: YES.
14 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
15 CHARGES?
16 JUROR HEADDEN: YES.
17 CLERK: IS THAT STILL YOUR DECISION?
18 JUROR HEADDEN: YES.
19 CLERK: INDIA JAMISON.
20 JUROR JAMISON: YES.
21 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
22 CHARGES?
23 JUROR JAMISON: YES.
24 CLERK: IS THAT STILL YOUR DECISION?
25 JUROR JAMISON: YES.

1 CLERK: TAMEKA JOHNSON.

2 JUROR JOHNSON: YES.

3 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
4 CHARGES?

5 JUROR JOHNSON: YES.

6 CLERK: IS THAT STILL YOUR DECISION?

7 JUROR JOHNSON: YES.

8 CLERK: WAYNE LOVETTE.

9 JUROR LOVETTE: YES.

10 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
11 CHARGES?

12 JUROR LOVETTE: YES.

13 CLERK: IS THAT STILL YOUR DECISION?

14 JUROR LOVETTE: YES.

15 CLERK: CHARLES STRECKER.

16 JUROR STRECKER: YES.

17 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
18 CHARGES?

19 JUROR STRECKER: YES.

20 CLERK: IS THAT STILL YOUR DECISION?

21 JUROR STRECKER: YES.

22 CLERK: KELLY WILLIAMS.

23 JUROR WILLIAMS: YES.

24 CLERK: DID YOU FIND THE DEFENDANT GUILTY ON ALL
25 CHARGES?

1 JUROR WILLIAMS: YES.

2 CLERK: IS THAT STILL YOUR DECISION?

3 JUROR WILLIAMS: YES.

4 THE COURT: ALRIGHT, THANK YOU, MA'AM.

5 ALRIGHT, ANYTHING FROM THE STATE BEFORE I RELEASE
6 THE JURY?

7 SOLICITOR PASCOE: NO, YOUR HONOR, THANK YOU.

8 THE COURT: ANYTHING FROM THE DEFENDANTS BEFORE I
9 RELEASE THE JURY?

10 MS. ULLMAN: NO, SIR.

11 MR. PALMER: I'D JUST LIKE TO THANK THE JURY FOR
12 THEIR SERVICE, YOUR HONOR.

13 THE COURT: OKAY. I'M GOING TO DO THAT.

14 ALRIGHT, LADIES AND GENTLEMEN, IT'S BEEN A LONG
15 WEEK. I WANT TO TELL Y'ALL, AND THE ATTORNEYS
16 MENTIONED IT TO YOU IN THEIR CLOSINGS AND BEFORE WE
17 STARTED HOW MUCH THEY APPRECIATED YOUR SERVICE. THEY
18 STILL MEAN THAT, AND ONE OF THE THINGS I WANT TO THANK
19 YOU ABOUT, BUT ONE OF THE IMPORTANT THINGS I WANT TO
20 THANK YOU ABOUT DOING WAS SHOWING UP ON A TIMELY
21 FASHION, YOU KNOW, COMING TO WORK EVERY DAY. DURING
22 THE TRIAL I APPRECIATE ALL THE ATTENTION THAT YOU GAVE
23 TO EVERYBODY. Y'ALL, I KNOW MORE THAN ONE ATTORNEY
24 MENTIONED TO ME THAT Y'ALL WERE INTERESTED IN THE
25 TRIAL, AND I APPRECIATE YOU SHOWING YOUR INTEREST IN

1 THE TRIAL, AND I APPRECIATE YOU TAKING THE TIME TO BE,
2 TO DELIBERATE LIKE YOU DID. AND NOW, Y'ALL ARE FREE
3 TO GO. AND IF YOU REMEMBER, YOU DON'T HAVE TO SERVE,
4 ANYMORE THIS YEAR, BUT YOU ALSO GET FOR THE NEXT TWO
5 YEARS, TOO, YOU GET THAT, YOU CAN CLAIM AN EXEMPTION
6 FOR THE NEXT TWO YEARS IF YOU NEED TO.

7 NOW, MADAM CLERK, MS. CLARK IS GOING TO STEP DOWN
8 AND GO OVER THERE BECAUSE I THINK SHE HAS YOUR CHECKS,
9 MILEAGE CHECKS AND EXCUSES AND ALL LIKE THAT SO YOU
10 CAN TELL AT WORK THAT YOU WERE REALLY THERE, AND I'LL
11 LET HER GIVE THOSE OUT TO YOU IN THE ROOM.

12 AGAIN, I WANT TO THANK Y'ALL FOR YOUR SERVICE,
13 AND I HOPE Y'ALL HAVE A MERRY CHRISTMAS AND A HAPPY
14 NEW YEAR. THANK YOU.

15 (Whereupon, the jury leaves
16 the courtroom.)

17 THE COURT: ALRIGHT, MR. LACKEY, ANYTHING FROM
18 THE DEFENDANT?

19 MR. LACKEY: YOUR HONOR, YOU NEED MY MOTION FOR
20 DIRECTED VERDICT.

21 THE COURT: OKAY.

22 MR. LACKEY: NOTHING NEW TO ADD IN THAT REGARD.

23 THE COURT: ALRIGHT, MS. ULLMAN.

24 MS. ULLMAN: YES, SIR. FIRST OFF, I OBVIOUSLY
25 RENEW ALL MOTIONS AND OBJECTIONS I HAVE MADE PRIOR TO,

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1 DURING AND AFTER THIS TRIAL. I ALSO MAKE A MOTION FOR
2 A NEW TRIAL. I DON'T FEEL THAT THERE WAS EVIDENCE TO
3 SUPPORT THE CONVICTION AGAINST RALPH COLEMAN, SO I
4 WOULD ASK YOUR HONOR FOR A NEW TRIAL.

5 THE COURT: OKAY. MR. PALMER.

6 MR. PALMER: I LIKewise WOULD RENEW ALL MOTIONS
7 AND OBJECTIONS AND EXCEPTIONS FOR THE RECORD, YOUR
8 HONOR.

9 THE COURT: OKAY, AND THEY ARE PRESERVED, I HOPE.

10 MR. PALMER: AND I'D LIKewise MOVE FOR A NEW
11 TRIAL, ON THE SAME GROUNDS.

12 THE COURT: ALRIGHT. MR. MELLARD.

13 MR. MELLARD: YES, SIR, I WOULD RENEW MY MOTION
14 FOR A DIRECTED VERDICT, ALL MY OBJECTIONS. I WOULD
15 ALSO RENEW MY DUE PROCESS ARGUMENT, AND THE COURT'S
16 AWARE OF THAT.

17 THE COURT: YES, SIR.

18 MR. MELLARD: I JUST WANT TO MAKE SURE THAT
19 THAT'S PRESERVED FOR THE RECORD.

20 THE COURT: YES, SIR. I BELIEVE WE WERE TRYING
21 TO PRESERVE EVERYTHING.

22 MR. MELLARD: AND I WOULD JOIN IN THE MOTION FOR
23 A NEW TRIAL. I, TOO, DON'T BELIEVE THERE'S ENOUGH
24 EVIDENCE FOR A CONVICTION, YOUR HONOR.

25 THE COURT: OKAY. AND MR. KOGER?

1 MR. KOGER: YOUR HONOR, MAY IT PLEASE THE COURT.

2 THE COURT: YES, SIR.

3 MR. KOGER: I ASK THAT ALL MY EARLIER OBJECTIONS
4 AND DIRECTED VERDICT BE RENEWED, AND ALSO, I JOIN IN
5 WITH ATTORNEY ULLMAN AND ATTORNEY PALMER AND ATTORNEY
6 MELLARD AND FILE A MOTION FOR A NEW TRIAL BASED UPON
7 INSUFFICIENT EVIDENCE, AND ALSO THE DUE PROCESS MOTION
8 THAT WAS MADE BY MR. MELLARD, I'D LIKE TO RENEW THAT,
9 TOO.

10 THE COURT: OKAY. THANK YOU, SIR. AND WITH
11 REGARD TO THE DIRECTED VERDICT MOTIONS, I WILL STAND
12 BY MY EARLIER DECISION REGARDING THAT. REGARDING THE
13 DUE PROCESS ARGUMENTS, I HAVE ADDRESSED THOSE EARLIER.
14 MY DENIAL OF YOUR MOTION BASED ON THAT WILL BE
15 MAINTAINED. I NOTE YOUR OBJECTION SO THAT IS STILL
16 MAINTAINED FOR THE RECORD. AND I'M GOING TO DENY YOUR
17 MOTIONS FOR A NEW TRIAL. I BELIEVE THAT IT WAS, WE
18 HAD A REPRESENTATIVE JURY, AND I FEEL LIKE ALL THE
19 EVIDENCE WAS PLACED IN THE RECORD, YOU KNOW, IN A
20 PROPER FASHION, AND I FIND THAT THE DEFENDANTS, YOU
21 KNOW, CHOSE HOW THEY WISHED TO PROCEED WITH THIS, EVEN
22 THOUGH NOTING YOUR DUE PROCESS ARGUMENT THAT THEY WERE
23 FORCED TO TRY THIS CASE TOGETHER, BUT I AM GOING TO
24 DENY YOUR MOTION FOR A NEW TRIAL. OKAY?

25 ALRIGHT, WITH REGARD TO THE SENTENCING, IF Y'ALL

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1 WANT TO GET A FEW MINUTES TO GET -- I DON'T KNOW IF
2 YOU HAVE ANYBODY THAT YOU WANT TO TALK ON YOUR BEHALF
3 OR ANYTHING LIKE THAT, BUT IF YOU HAVE THOSE I'LL GIVE
4 Y'ALL A FEW MINUTES TO DO THAT, AND THEN WE'LL GO
5 THROUGH THE SENTENCING IN THE ORDER IN WHICH WE'VE
6 DONE EVERYTHING ELSE. OKAY? BUT I'LL GIVE Y'ALL
7 ABOUT FIFTEEN MINUTES TO GET EVERYTHING READY AND THEN
8 WE'LL COME BACK AND DO THAT. OKAY? GET THE
9 SENTENCING SHEETS TO ME. WE'LL BE IN RECESS FOR ABOUT
10 FIFTEEN MINUTES.

11 (Recess)

12 THE COURT: ALRIGHT, AGAIN, LADIES AND GENTLEMEN,
13 LET ME REMIND EVERYBODY IN THE AUDIENCE THAT THERE
14 WILL BE NO OUTBURSTS DURING THE SENTENCING PHASE OF
15 THIS TRIAL.

16 ALRIGHT, MR. LACKEY, REPRESENTING CHRISTIAN
17 COLEMAN.

18 MR. LACKEY: YES, SIR, YOUR HONOR.

19 THE COURT: OKAY.

20 MR. LACKEY: I'LL BRING MY CLIENT UP, BUT I
21 BELIEVE HIS FIANCÉ AND THE MOTHER OF HIS CHILD WALKED
22 OUT A LITTLE WHILE AGO, AND I'M JUST REQUESTING IF SHE
23 COULD COME BACK IN FOR THE SENTENCING PHASE.

24 THE COURT: DIDN'T SHE ...

25 MR. LACKEY: I'M NOT SURE.

1 THE COURT: WASN'T SHE ESCORTED OUT BECAUSE SHE

2

3 DEPUTY: SHE LEFT OUT IN THE MIDDLE OF THE
4 GUILTY. AND SHE LEFT OUT ON HER OWN BEFORE ...

5 THE COURT: OKAY, SO YOU THINK SHE'S COMPOSED
6 ENOUGH TO COME BACK IN?

7 DEPUTY: WELL, EVERYONE THAT WALKED OUT LIKE
8 THAT, YOUR HONOR, WE MADE THEM STAY OUTSIDE.

9 THE COURT: OKAY.

10 DEPUTY: SO, I DON'T KNOW, IT'S UP TO YOU NOW IF
11 YOU WANT TO LET THEM COME IN.

12 THE COURT: IS SHE THE ONLY PERSON YOU HAVE?

13 MR. LACKEY: YES, SIR, YOUR HONOR.

14 THE COURT: OKAY. WELL, SINCE THAT'S THE ONLY
15 PERSON HE HAS TO STAND WITH HIM I WILL LET HER COME
16 IN, BUT YOU REMIND HER, ANY OUTBURSTS AND SHE'S BACK
17 OUT AT ANYTIME. OKAY?

18 DEPUTY: YES, SIR.

19 THE COURT: AND NOBODY ELSE THAT'S HAD AN
20 OUTBURST IS ALLOWED BACK IN. OKAY?

21 MR. LACKEY: THANK YOU, YOUR HONOR.

22 THE COURT: YES, SIR.

23 SOLICITOR PASCOE: CAN I GIVE YOU, PASS THESE
24 SENTENCING SHEETS UP, YOUR HONOR?

25 THE COURT: OH, YEAH, IF YOU DON'T MIND. THANK

1 YOU.

2 SOLICITOR PASCOE: LET ME MAKE SURE I'VE GOT ALL
3 OF THEM. THESE ARE CHRISTIAN COLEMAN'S, YES, SIR.

4 THE COURT: OKAY. AND DO Y'ALL HAVE -- ALRIGHT.
5 OKAY, MR. COLEMAN, HOW ARE YOU SIR?

6 DEFENDANT CHRISTIAN COLEMAN: HOW YOU DOING?

7 THE COURT: I'M DOING ALRIGHT, SIR. MR. COLEMAN,
8 LET'S SEE -- SOLICITOR PASCOE, LET ME MAKE SURE -- THE
9 ARMED ROBBERY CARRIES A MINIMUM OF TEN?

10 SOLICITOR PASCOE: TEN TO THIRTY, YOUR HONOR,
11 YES, SIR.

12 THE COURT: AND THE BURGLARY, ONE, AND THE
13 MURDER, THE MAXIMUM IS LIFE?

14 SOLICITOR PASCOE: YES, SIR.

15 THE COURT: OKAY. ALRIGHT, LET ME HEAR FROM YOU.

16 MR. LACKEY: THANK YOU, YOUR HONOR. OF COURSE,
17 MY CLIENT, CHRISTIAN COLEMAN, IS TWENTY-ONE YEARS OF
18 AGE. STANDING WITH US HERE IS LASHEKA PAGE, THE
19 MOTHER OF HIS CHILD AND FIANCÉ. YOUR HONOR, JUST
20 BRIEFLY, MY CLIENT ATTENDED O-W THEN, FOR A WHILE,
21 THEN WENT TO THE ALTERNATIVE SCHOOL HERE IN
22 ORANGEBURG. HE WAS ESSENTIALLY RAISED BY HIS FOSTER
23 MOTHER, MS. CHERRY CHRISTY, WHO DOES LIVE AT THAT
24 WOODBINE ADDRESS. HIS MOTHER WAS, HIS REAL MOTHER
25 ACTUALLY WAS OUT OF THE PICTURE BECAUSE OF A DRUG

1 ADDICTION. HE IS, DOES HAVE OTHER BROTHERS, AND
2 YOUNGER BROTHER, SHAWN COLEMAN, AS WELL, WHO HE HAS
3 NOT SEEN IN QUITE A WHILE. HE BASICALLY, OF COURSE,
4 HAS HIS OTHER BROTHER, RALPH. HE'S HAD AN EXTREMELY
5 ROUGH UPBRINGING AND ROUGH LIFE WITH LITTLE OR NO
6 FAMILY, AND NOW WITH THIS, OF COURSE, HIS OLDER
7 BROTHER IS IN THE SAME SITUATION, TOO. HE DID, OF
8 COURSE, WAS TRYING TO MAKE HIS WAY WITH THE CHILD AND
9 SUCH BEFOREHAND, AND THEN, OF COURSE, HE'S HERE BEFORE
10 YOU AFTER THIS WEEK LONG TRIAL.

11 I GUESS JUST ADDRESSING BRIEFLY THE FACTS OF THIS
12 CASE, I THINK IT SHOWS THAT MR. CHRISTIAN COLEMAN WAS
13 NOT A RING LEADER HERE. I THINK IT'S SOMETHING THAT, A
14 SITUATION THAT HE KIND OF FELL INTO, AND NOW HE'S IN
15 THE POSITION OF HAVING TO STAND BEFORE YOU IN THIS
16 SENTENCING. WE WOULD JUST ASK AT THIS TIME THAT THE
17 COURT HAVE MERCY ON MR. COLEMAN.

18 THE COURT: ALRIGHT, THANK YOU, SIR.

19 MR. LACKEY: ANYTHING FROM YOU, SOLICITOR?

20 SOLICITOR PASCOE: VERY BRIEFLY, YOUR HONOR, MR.
21 CHRISTIAN COLEMAN'S ONLY CONVICTIONS ARE AN
22 ADJUDICATION IN FAMILY COURT IN TWO THOUSAND AND THREE
23 FOR CONTEMPT OF COURT. I THINK THAT WAS FOR A STATUS
24 OFFENSE OF NOT GOING TO SCHOOL. ALSO, YOUR HONOR,
25 WHEN YOUR HONOR FEELS IT'S APPROPRIATE I THINK MS.

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1 PRINGLE AT SOME TIME WOULD LIKE TO ADDRESS THE COURT.

2 THE COURT: YES, SIR, OKAY, IF SHE WOULD LIKE TO
3 DO IT NOW.

4 SOLICITOR PASCOE: THANK YOU. THIS IS CHARLES
5 PRINGLE'S MOTHER, YOUR HONOR.

6 THE COURT: HEY, MS. PRINGLE. AND MS. PRINGLE, I
7 KNOW YOU'VE BEEN HERE ALL WEEK, AND I KNOW IT'S BEEN
8 TOUGH TO LISTEN TO ALL OF THIS.

9 MRS. PRINGLE: YES, SIR.

10 THE COURT: YES, MA'AM. LET ME HEAR FROM YOU.

11 MRS. PRINGLE: JUDGE DICKSON, WE JUST WANT TO, MY
12 HUSBAND AND I, WE JUST WANT TO THANK YOU, THANK THE
13 COURT. WE WANT TO THANK ORANGEBURG COUNTY, AND
14 CERTAINLY, OUR PRAYERS HAVE BEEN ANSWERED. SO, WE
15 HAVE NO OTHER REQUEST, AND WE CERTAINLY LEAVE
16 SENTENCING IN YOUR HANDS.

17 THE COURT: OKAY. THANK YOU, MRS. PRINGLE.

18 MRS. PRINGLE: THANK YOU.

19 THE COURT: OKAY. MR. COLEMAN, YOU KNOW, THIS IS
20 THE TOUGHEST PART OF MY JOB WHEN I HAVE TO SENTENCE
21 YOUNG MEN THAT SHOULD HAVE MADE OTHER DECISION, AND
22 NOW YOU'RE GOING TO BE RESPONSIBLE FOR THE DECISIONS
23 THAT YOU MADE.

24 DEFENDANT CHRISTIAN COLEMAN: YES, SIR.

25 THE COURT: OKAY.

SENTENCE BY THE COURT OF CHRISTIAN COLEMAN

ALRIGHT, REGARDING THE ARMED ROBBERY CHARGE,
INDICTMENT NUMBER 2010-802, THE SENTENCE OF THIS COURT
IS YOU ARE COMMITTED TO THE STATE DEPARTMENT OF
CORRECTIONS FOR A PERIOD OF THIRTY YEARS.

REGARDING BURGLARY IN THE FIRST DEGREE,
INDICTMENT NUMBER 2010-803, AND THE MURDER CHARGE,
2010-805, THE SENTENCE OF THE COURT IN EACH ONE OF
THESE CHARGES IS THAT YOU'RE COMMITTED TO THE STATE
DEPARTMENT OF CORRECTIONS FOR A PERIOD OF FORTY-FIVE
YEARS.

THE SENTENCES ARE CONCURRENT, AND YOU WILL GET
CREDIT FOR TIME SERVED.

THANK YOU, SIR.

(Whereupon, Christian Coleman
leaves the courtroom and
Ralph Coleman enters the
courtroom.)

THE COURT: MS. ULLMAN.

MS. ULLMAN: YOUR HONOR, I UNFORTUNATELY, AM ALSO
IN THE SAME POSITION. MR. COLEMAN'S FIANCÉ, WHO IS
THE ONLY PERSON HERE FOR HIM, STEPPED OUT WHEN HE,
WHEN THE VERDICT WAS BEING READ AND SHE DID NOT MAKE
ANY SORT OF SCENE OR ANYTHING.

THE COURT: SHE'S THE ONLY PERSON HERE FOR HIM?

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1 MS. ULLMAN: THE ONLY PERSON, AND SHE'S STANDING
2 OUTSIDE.

3 THE COURT: ALRIGHT. DEPUTY ASBERRY, I'M SORRY,
4 MR. RALPH COLEMAN HAS HIS FIANCÉ, IF YOU WILL REMIND
5 HER, THAT'S THE ONLY PERSON HE HAS TO STAND WITH HIM,
6 SO IF YOU'LL REMIND HER THERE WILL BE NO OUTBURST OR
7 SHE WILL BE REMOVED.

8 MS. ULLMAN: AGAIN, YOUR HONOR, I THINK IT WAS AN
9 OUTBURST WHEN LAKESHA WALKED OUT. I DON'T THINK IT
10 WILL BE AN ISSUE.

11 THE COURT: OKAY. ALRIGHT, MS. ULLMAN, WHAT
12 WOULD YOU LIKE TO TELL ME?

13 MS. ULLMAN: MR. COLEMAN IS TWENTY-TWO YEARS OLD.
14 PART OF WHAT I'VE GOT TO SAY YOU'VE KIND OF ALREADY
15 HEARD. HE'S THE OLDEST OF THREE BROTHERS. HE WAS
16 RAISED BY A FOSTER MOTHER ALONG WITH HIS SIBLINGS. HE
17 CERTAINLY WAS RAISED IN A ROUGH LIFE, HIS PARENTS HAD
18 DRUG ADDICTIONS, HE ENDED UP IN FOSTER CARE. YOUR
19 HONOR, I DO BELIEVE HE DOES HAVE A JUVENILE
20 ADJUDICATION FOR A TRUANCY, AND THEN I DO ACTUALLY
21 THINK HE HAS A SIMPLE ASSAULT FROM QUITE A FEW YEARS
22 WHEN HE WAS A YOUNG KID. HE HAS NO PRIOR RECORD OTHER
23 THAN THAT. YOUR HONOR, IN SPEAKING WITH HIS FIANCÉ,
24 SHE TELLS ME THAT HE'S QUIET PERSON, HE'S A HOME
25 PERSON, HE'S A FAMILY MAN. THEY HAVE TWO CHILDREN,

1 SHE HAS A CHILD OF HER OWN THAT HE ACTUALLY HELPS
2 RAISE AND TAKES CARE OF. HER CHILD IS THE OLDEST OF
3 THE CHILDREN. HE HAD BEEN WORKING BUT RECENTLY HE HAD
4 QUIT WORKING TO STAY HOME. HIS FOSTER MOTHER, MS.
5 CHRISTIE, THAT WE HEARD OF, SHE HAD SOME MAJOR SURGERY
6 DONE TO HER LEG, SHE CANNOT GET AROUND, SHE'S IN A
7 WHEEL CHAIR, HE HAD BEEN HELPING TAKE CARE OF HER
8 BEFORE THIS INCIDENT, AND HIS FIANCÉ WAS ALSO LIVING
9 WITH HIM AT HIS FOSTER MOTHER'S, I THINK THEY CALL HER
10 GRANDMA, BUT AT THAT HOME. HE WAS HELPING TAKE CARE
11 OF HER. UNFORTUNATELY, ABOUT THE WEEK BEFORE THIS
12 TRIAL STARTED MS. MOORE, HIS FIANCÉ, FOUND OUT THAT
13 SHE HAS CANCER. SHE WAS ACTUALLY SUPPOSED TO START
14 CHEMOTHERAPY THIS WEEK BUT SHE FOREWENT THAT AND PLANS
15 TO START HOPEFULLY NEXT WEEK, OBVIOUSLY SO SHE COULD
16 BE HERE TO SUPPORT MR. COLEMAN. MR. COLEMAN MAINTAINS
17 HIS INNOCENCE, AND WHILE I SAY THAT I WILL NOTE,
18 ACCEPTING, WHILE ACCEPTING THE VERDICT, I MEAN, HE'S
19 ACCEPTING THIS AND HE'S STANDING HERE BEFORE. YOUR
20 HONOR, IN THE EVIDENCE THAT CAME OUT, TAKING IT FOR
21 WHAT IT IS, HE WAS NOT THE PERSON WHO CAME UP WITH
22 THIS IDEA, HE WAS NOT THE PERSON WHO BROUGHT THE GUNS
23 ALONG. THE PLANNING, ACCORDING TO WHAT CAME OUT IN
24 THE TESTIMONY, MAY HAVE STARTED AT MS. CHRISTIE'S
25 HOUSE BUT IT CERTAINLY HAS NEVER BEEN PRESENTED THAT

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1 IT WAS MR. COLEMAN'S IDEA, THAT HE MADE ANY OF THESE
2 PHONE CALLS TO WRAP THESE PEOPLE TOGETHER, BROUGHT ANY
3 OF THE WEAPONS. SO, I WOULD ASK YOU TO CONSIDER ALL
4 OF THAT, CONSIDER THAT THIS WAS COMPLETELY OUT OF
5 CHARACTER AND TO HAVE MERCY ON HIM. AND I BELIEVE
6 THAT I'VE SAID EVERYTHING THAT I NEEDED TO SAY.

7 THE COURT: OKAY.

8 SOLICITOR PASCOE: YOUR HONOR, I HAVE MR.
9 SORENSON GETTING MR. COLEMAN'S RAP SHEET JUST IN CASE
10 I WROTE IT DOWN WRONG, BUT ACCORDING TO THE
11 INFORMATION I HAD AND WHAT I WROTE DOWN WAS THAT, IT'S
12 A JUVENILE ADJUDICATION, A NINETEEN NINETY-FOUR
13 TRUANCY, TWO THOUSAND, CONTEMPT OF COURT, TWO THOUSAND
14 ONE, SIMPLE ASSAULT, TWO THOUSAND AND FOUR CONTEMPT OF
15 COURT, PROBABLY FOR TRUANCY. BUT THEN AS AN ADULT
16 I'VE GOT TWO THOUSAND AND EIGHT BURGLARY, THIRD,
17 CONVICTION, POSSESSION OF A STOLEN MOTOR VEHICLE
18 CONVICTION, FAILURE TO STOP FOR A BLUE LIGHT, AND
19 INTIMIDATION OF A WITNESS OR A COURT HOUSE OFFICIAL,
20 AND ALSO A POINTING AND PRESENTING OF A FIREARM.

21 MS. ULLMAN: YOUR HONOR, I WOULD - - -

22 SOLICITOR PASCOE: AND I SEE HE'S SHAKING HIS
23 HEAD. I'LL GET HIS RAP SHEET AND CHECK IT. THAT WAS -
24 - -

25 MS. ULLMAN: --- I ACTUALLY REPRESENTED MR.

1 COLEMAN BEFORE ON A CASE THAT WAS DISMISSED, AND IN
2 THAT I NEVER LEARNED OF ANY OF THIS, AND IN THIS
3 SITUATION I'VE NEVER RECEIVE A RAP SHEET THAT SAID ANY
4 OF THAT, YOUR HONOR. THE ONLY INFORMATION THAT I
5 WOULD SAY, AND FROM MY KNOWLEDGE PREVIOUSLY OF MR.
6 COLEMAN, LIKE I SAID, I REPRESENTED HIM AND WHEN WE
7 GOT THE CHARGE DISMISSED HE CERTAINLY WAS NOT GUILTY
8 OF THAT, IS THIS JUVENILE TRUANCY ISSUE AND THE
9 CONTEMPT OF COURTS ARE TRUANCY RELATED.

10 SOLICITOR PASCOE: IT'S NOT HIM, YOUR HONOR. MR.
11 SORENSON CHECKED AND IT'S NOT HIM.

12 MS. ULLMAN: I DIDN'T THINK SO.

13 THE COURT: OKAY. ALRIGHT.

14 SOLICITOR PASCOE: I WILL JUST ADD, THOUGH, THAT
15 IT'S THE STATE'S POSITION THAT MR. COLEMAN AND MR.
16 SHIVERS WERE INVOLVED IN THIS AT THE INCEPTION, AND
17 ONE OF THE REASONS CHRISTOPHER COLEMAN GOT IN TROUBLE,
18 HE'S IN THIS BECAUSE HE'S A FOLLOWER OF HIS OLDER
19 BROTHER, RALPH COLEMAN.

20 THE COURT: ALRIGHT.

21 SENTENCE BY THE COURT OF RALPH COLEMAN

22 RALPH COLEMAN, THE SENTENCE OF THIS COURT IS,
23 REGARDING INDICTMENT NUMBER 2010-811, THE ARMED
24 ROBBERY, THE SENTENCE OF THIS COURT IS THAT YOU'RE
25 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A

1 PERIOD OF THIRTY YEARS.

2 REGARDING THE INDICTMENTS NUMBER 2010-808 AND
3 2010-810, WHICH IS THE BURGLARY, FIRST DEGREE AND THE
4 MURDER, THE SENTENCE OF THIS COURT IS THAT YOU'RE
5 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
6 PERIOD OF FORTY-FIVE YEARS.

7 THESE SENTENCES ARE CONCURRENT AND I'LL GIVE YOU
8 CREDIT FOR YOUR TIME SERVED.

9 MS. ULLMAN: THANK YOU, YOUR HONOR.

10 SOLICITOR PASCOE: THANK YOU, YOUR HONOR.

11 THE COURT: THANK YOU.

12 (Whereupon, Ralph Coleman
13 leaves the courtroom and
14 Walter Lee Harris enters
15 the courtroom.)

16 SOLICITOR PASCOE: THESE ARE WALTER HARRIS'S.

17 THE COURT: OH, THANK YOU, SIR.

18 COURT REPORTER: WALTER HARRIS?

19 THE COURT: WALTER LEE HARRIS. MS. WALKER, THIS
20 IS WALTER LEE HARRIS.

21 COURT REPORTER: YES, SIR.

22 THE COURT: MR. PALMER

23 MR. PALMER: THANK YOU, YOUR HONOR, MAY IT PLEASE
24 THE COURT.

25 THE COURT: YES, SIR.

1 MR. PALMER: OBVIOUSLY, THE JURY HAS SPOKEN, YOUR
2 HONOR. MR. HARRIS HAD SOME FAMILY MEMBERS HERE BUT AT
3 HIS REQUEST THEY'VE BEEN EXCUSED FROM THE COURTROOM.
4 I'D JUST LIKE TO SAY A FEW WORDS ABOUT MY CLIENT, YOUR
5 HONOR, HE'S TWENTY-ONE YEARS OLD, AND I DON'T BELIEVE
6 THAT THEY'RE GOING TO HAVE ANY KIND OF RECORD EXCEPT
7 MAYBE A JUVENILE INFRACTION THAT WAS RESOLVED IN
8 FAMILY COURT. I MIGHT BE MISTAKEN BUT I BELIEVE
9 THAT'S IT. BUT, YOUR HONOR, I THINK THE IMPORTANT
10 INFORMATION IS THAT, YOU KNOW, OBVIOUSLY, THE JURY HAS
11 CONVICTED MR. HARRIS, BUT IT WAS OBVIOUS FROM THE
12 TESTIMONY IN THE STATE'S CASE THAT, TWO THINGS, YOUR
13 HONOR, MR., -- OR ACTUALLY MORE THAN THAT. MR. HARRIS
14 WAS INCLUDED IN THIS CHAIN OF EVENTS RELATIVELY LATE
15 IN THE GAME. THERE CERTAINLY IS NO ALLEGATION OR
16 PROOF THAT HE WAS ANY KIND OF MASTER MIND OR, IN THE
17 INITIAL PLANNING STAGES. AND EVEN MORE IMPORTANTLY,
18 YOUR HONOR, THERE'S EVIDENCE THAT AT SOME POINT HE
19 TRIED TO EXTRACT HIMSELF, GAVE UP HIS WEAPON, AND
20 TRIED TO EXTRACT HIMSELF FROM THIS GROUP. WHY HE
21 CONTINUED, I DON'T KNOW IF WE'LL EVER KNOW THAT, BUT
22 CERTAINLY, AT THE MOMENT OF TRUTH THE EVIDENCE IS THAT
23 HE DID NOT HAVE A WEAPON, HE WAS AN ACCOMPLICE. AND
24 YOUR HONOR, WHAT DIDN'T COME OUT BECAUSE HE EXERCISED
25 HIS RIGHT OF NOT SELF INCRIMINATION IS, HE WAS THE

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1 FIRST ONE TO PROVIDE A STATEMENT IN THIS CASE, YOUR
2 HONOR, TO LAW ENFORCEMENT. AND IN FACT, HE PROVIDED
3 THREE SEPARATE STATEMENTS. AND I WOULD SUBMIT, YOUR
4 HONOR, THAT THOSE STATEMENTS AND THE INFORMATION THAT
5 THIS MAN PROVIDED GREATLY ASSISTED LAW ENFORCEMENT IN
6 MAKING THIS CASE AGAINST THE REST OF THE DEFENDANTS.
7 AND I'M SIMPLY ASKING THAT YOUR HONOR CONSIDER THAT
8 MR. HARRIS CAN BE DISTINGUISHED FROM THE REST OF THESE
9 DEFENDANTS FOR THOSE REASONS, AND I BELIEVE THAT HE IS
10 DUE YOUR HONOR'S UTMOST CONSIDERATION FOR THOSE
11 REASONS. THANK YOU.

12 THE COURT: OKAY. THANK YOU, SIR. MR. PASCOE.

13 SOLICITOR PASCOE: YES, SIR, I AGREE WITH
14 EVERYTHING MR. PALMER SAID, YOUR HONOR, AS FAR AS MR.
15 HARRIS DID GIVE STATEMENTS TO THE POLICE, AND HIS ONLY
16 CONVICTION IS AN ADJUDICATION IN TWO THOUSAND AND FOR
17 BURGLARY IN THE THIRD DEGREE.

18 THE COURT: OKAY. THAT'S GOING TO, IT HELPS YOU
19 OUT SOME, YOU KNOW.

20 SENTENCE BY THE COURT OF WALTER LEE HARRIS

21 THE SENTENCE OF THIS COURT REGARDING INDICTMENT
22 NUMBER 2010-814, THE ARMED ROBBERY, THE SENTENCE OF
23 THIS COURT IS, YOU'RE COMMITTED TO THE STATE
24 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF THIRTY
25 YEARS.

1 REGARDING INDICTMENTS NUMBER 2010-813 AND 812,
2 BURGLARY IN THE FIRST DEGREE AND MURDER, THE SENTENCE
3 OF THIS COURT IS, YOU'RE COMMITTED TO THE STATE
4 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF THIRTY-FIVE
5 YEARS.

6 THESE SENTENCES ARE CONCURRENT, AND I WILL GIVE
7 YOU CREDIT FOR TIME SERVED.

8 OKAY. THANK YOU, SIR.

9 MR. PALMER: THANK YOU, YOUR HONOR.

10 SOLICITOR PASCOE: THANK YOU, YOUR HONOR.

11 THE COURT: YES, SIR.

12 (Whereupon, Walter Lee Harris
13 leaves the courtroom and
14 Danny Ryant, Jr., enters
15 the courtroom.)

16 SOLICITOR PASCOE: HERE'S DANNY RYANT, YOUR
17 HONOR.

18 THE COURT: OKAY. YOU ARE HIS?

19 BROTHER OF DEFENDANT RYANT: BROTHER.

20 THE COURT: OKAY. HOW ARE YOU DOING, SIR?

21 BROTHER OF DEFENDANT RYANT: ALRIGHT.

22 THE COURT: ALRIGHT, MS. WALKER, THIS IS DANNY
23 RYANT, JUNIOR.

24 ALRIGHT, LET ME HEAR FROM YOU, MR. MELLARD.

25 MR. MELLARD: YES, SIR. MR. RYANT IS TWENTY

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1 YEARS OLD. HE HAS FAMILY HERE, HIS MOM IS HERE, HIS
2 SISTER IS HERE. AS YOU CAN SEE, HIS BROTHER IS HERE.
3 HIS FAMILY HAS INFORMED ME THAT HE HAS ALWAYS BEEN A
4 VERY HELPFUL PERSON. HE, IF THEY NEED HELP HE'S
5 ALWAYS THERE FOR THEM. HE DOES WHAT HE CAN DO TO BE
6 PART OF THIS FAMILY. SO, HE DOES HAVE THE SUPPORT OF
7 FAMILY, YOUR HONOR.

8 THE COURT: YES, SIR.

9 MR. MELLARD: HE HAS ONE CHILD. THE FAMILY SAYS
10 HE'S A VERY GOOD FATHER. OBVIOUSLY, HE MAINTAINS HIS
11 INNOCENCE, BUT I WOULD ASK THE COURT TO NOTE THAT THE
12 EVIDENCE PRESENTED HERE SHOWED THAT HE WAS NOT
13 INVOLVED IN THE PLANNING IN ANY WAY, THAT HE WAS NOT
14 INVOLVED IN FURNISHING ANY FIREARMS IN ANY WAY, THAT
15 HIS INVOLVEMENT WITH THE GROUP WAS PROBABLY NO MORE
16 THAN FIVE MINUTES BEFORE THE CRIME OCCURRED. AND
17 THERE'S AN ALLEGATION THAT HE HAD AN SKS. IF THAT'S
18 TRUE THEN HE EITHER FIRED ONE SHOT OR FOUR, NOT THE
19 BULK OF WHAT THE EVIDENCE WAS.

20 SO, YOUR HONOR, IT'S OUR POSITION THAT HE WAS
21 NOT, HE WAS NOT A PLANNER, HE WAS NOT A PERSON WHO
22 PROVIDED THE FIREARMS, AND THAT HE GOT PICKED UP MERE
23 MINUTES BEFORE THIS HAPPENED. SO, HE WAS NOT PART OF
24 ANY, ANY PLAN.

25 WE WOULD SUBMIT THAT HE SHOULD NOT BE GIVEN THE

1 SAME SENTENCE AS THE PEOPLE WHO PLANNED THIS THING,
2 HE SHOULD NOT BE GIVEN THE SAME SENTENCE AS THE
3 PEOPLE WHO PROVIDED THE FIREARMS AND WENT IN, YOUR
4 HONOR. SO, WE WOULD JUST ASK FOR THE MERCY OF THIS
5 COURT.

6 THE COURT: OKAY. ALRIGHT, MR. PASCOE.

7 SOLICITOR PASCOE: YOUR HONOR, MR. RYANT, THE
8 ONLY THING HE HAS IS AN ADJUDICATION IN FAMILY COURT
9 FOR TRUANCY, I DIDN'T EVEN WRITE DOWN THE YEAR. AND
10 AGAIN, I'D HAVE TO AGREE WITH MR. MELLARD IN ONE
11 REGARDS, MR. RYANT MADE A HORRIBLE DECISION, TWENTY
12 MINUTES, HE WAS WITH THEM FOR NO MORE THAN TWENTY
13 MINUTES, AND THAT'S WHAT GOT HIM INVOLVED IN THIS
14 ARMED ROBBERY AND MURDER.

15 THE COURT: ALRIGHT.

16 DEFENDANT RYANT: I AIN'T PARTICIPATED IN THESE
17 CRIME, SIR, I WAS IN THE AREA, I AIN'T SHOT NOBODY,
18 SIR.

19 COURT REPORTER: I'M SORRY.

20 DEFENDANT RYANT: I WAS IN THE AREA, I AIN'T SHOT
21 NOBODY, SIR.

22 SOLICITOR PASCOE: AND LIKE I SAID, WE GOT - - -

23 DEFENDANT RYANT: ALL I WANTED TO DO WAS ENJOY MY
24 MOTHER, I WAS IN THE CLUB. I JUST GOT IMPLICATED IN
25 THIS, BUT I AIN'T TOOK NO PART, LIKE, NO PART IN

1 NOTHING. I WAS JUST AROUND, BUT I AGREE WITH THE
2 COURT, AND I'VE JUST GOT TO ACCEPT IT.

3 THE COURT: MR. PASCOE, THE ONLY THING YOU SAID
4 IS, YOU AGREED THAT IT WAS A BAD DECISION, IS THAT
5 CORRECT?

6 SOLICITOR PASCOE: YES, SIR, TWENTY MINUTES. HE
7 WAS GONE FOR TWENTY MINUTES AND THAT GOT HIM INVOLVED
8 IN THIS MURDER. AND AS MR. MELLARD SAID, THE EVIDENCE
9 IS, HE HAD ONE OF THE SKSES.

10 DEFENDANT RYANT: THAT'S NOT TRUE, SIR.

11 THE COURT: OKAY.

12 SOLICITOR PASCOE: AND CAN I SAY ONE THING? THE
13 REASON I MENTIONED ABOUT THE SKSES IS, AND THAT'S AN
14 EVIL THING, BUT THE PEOPLE THAT HAD THE PISTOLS, RALPH
15 AND CHRIS COLEMAN, FIRED AT THAT VICTIM AT POINT BLANK
16 RANGE WHEN HE WAS LYING ON THE GROUND NINETEEN, A
17 TOTAL OF NINETEEN SHOTS. AND THAT'S WHY I'M
18 DIFFERENTIATING BETWEEN WHO HAD THE RIFLE AND THE
19 PISTOLS.

20 THE COURT: SO, YOU WOULD SAY A DIFFERENTIATED
21 SENTENCE WOULD BE APPROPRIATE?

22 SOLICITOR PASCOE: YES, SIR, YES, SIR.

23 THE COURT: OKAY.

24 SOLICITOR PASCOE: ABSOLUTELY, FROM MR. RALPH
25 COLEMAN, CHRIS COLEMAN, AND WALTER HARRIS. THERE'S NO

1 QUESTION, THE STATE'S OPINION, THEY'RE THE THREE
2 WORST, -- NOT WALTER HARRIS, -- MARIO SHIVERS, MARIO
3 SHIVERS.

4 THE COURT: ALRIGHT, SIR.

5 SENTENCE BY THE COURT OF DANNY RYANT, JR.

6 ALRIGHT, MR. RYANT, REGARDING INDICTMENT NUMBER
7 2010-819, THE ARMED ROBBERY, THE SENTENCE OF THIS
8 COURT IS YOU'RE COMMITTED TO THE STATE DEPARTMENT OF
9 CORRECTIONS FOR A PERIOD OF THIRTY YEARS.

10 REGARDING INDICTMENTS NUMBER 2010-818 AND 817,
11 THIS WAS THE BURGLARY IN THE FIRST DEGREE AND THE
12 MURDER, THE SENTENCE OF THIS IS COURT IS YOU'RE
13 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
14 PERIOD OF FORTY YEARS.

15 THESE SENTENCES ARE CONCURRENT, AND I'LL GIVE YOU
16 CREDIT FOR YOUR TIME SERVED.

17 OKAY.

18 MR. MELLARD: THANK YOU, YOUR HONOR.

19 THE COURT: THANK YOU.

20 (Whereupon, Danny Ryant, Jr.,
21 leaves the courtroom and
22 Mario Shivers enters
23 the courtroom.)

24 THE COURT: ALRIGHT, MR. KOGER AND MR. SHIVERS.

25 ALRIGHT, MR. KOGER.

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1 MR. KOGER: YOUR HONOR, MAY IT PLEASE THE COURT.

2 THE COURT: YES, SIR.

3 MR. KOGER: I'M HERE, OF COURSE, ON BEHALF OF
4 MARIO SHIVERS, WHO WAS ONE OF THE DEFENDANTS IN THE
5 TRIAL HERE THIS WEEK. AS YOU CAN SEE, YOUR HONOR,
6 MR. SHIVERS HAS SIGNIFICANT FAMILY SUPPORT HERE. THIS
7 IS HIS MOTHER, CAROLYN BUSBY -- I'M SORRY, CAROLYN
8 BROWN, HIS FATHER, REGGIE SHIVERS. THIS IS THE MOTHER
9 OF HIS CHILD, DANIELLE MONROE. THIS IS THE PERSON
10 THAT HE STAYED WITH FOR THE LAST YEAR, MS. HOWLE, AND
11 HIS BROTHER, KENDRAE, IN THE BACK.

12 THE COURT: OKAY. THANK YOU.

13 MR. KOGER: BASICALLY, WE WANTED TO POINT OUT
14 THAT MR. SHIVERS CAME FROM A SUPPORTIVE FAMILY. FROM
15 OUR CONVERSATIONS WITH MS. BROWN, THE MOTHER, SHE IS
16 CURRENTLY EMPLOYED A PALMETTO RICHLAND AS A
17 HOUSEKEEPER AND HAS HAD SIGNIFICANT EMPLOYMENT IN THE
18 PAST. MARIO IS JUST ONE OF FIVE CHILDREN. HIS OLDEST
19 BROTHER WORKS AT HOME DEPOT AND DISTRIBUTION CENTER IN
20 CAYCE. HIS OTHER SISTER IS IN THE UNITED STATES ARMY
21 AND HAS BEEN THERE ON ACTIVE DUTY FOR TWO YEARS.
22 KENDRAE IS HERE TODAY IN THE BACK, AND ERIC, HIS
23 YOUNGEST BROTHER, IS A STUDENT AT EDISTO.

24 BEFORE MR. SHIVERS FOUND HIMSELF IN THIS
25 PREDICAMENT HE ACTUALLY WAS GAINFULLY EMPLOYED AND HE

1 WAS LAID OFF JUST BEFORE THIS HAPPENED, HE WAS
2 GAINFULLY EMPLOYED IN CONSTRUCTION AT THE NEW AQUATIC
3 CENTER ON THE OLD ST. MATTHEWS ROAD.

4 FROM TALKING WITH HIS FAMILY AND TALKING WITH
5 PEOPLE THAT HE'S BEEN INVOLVED WITH, THEY BASICALLY
6 SAID THAT MR. SHIVERS IS A GOOD PERSON. AND, OF
7 COURSE, YOU KNOW, HE FOUND HIMSELF IN A VERY
8 DIFFICULTY SITUATION. MY CONVERSATIONS WITH HIM OVER
9 AT THE DETENTION CENTER, HE WAS ALWAYS VERY
10 RESPECTFUL, AND SEEMED THAT IF HE HAD MADE SOME
11 DIFFERENT CHOICES THEN, OF COURSE, HE WOULD END UP AT
12 A DIFFERENT PLACE.

13 WE'D JUST ASK THAT YOUR TAKE INTO CONSIDERATION
14 THAT HE IS TWENTY-TWO YEARS OF AGE. I KNOW YOUR HONOR
15 HAS TO BALANCE THAT WE HAD A DEATH HERE, AND THE
16 STATE'S INTEREST MUST BE BALANCED WITH THE INTEREST OF
17 THE DEFENSE. AS STATED, HE HAS A SON FOUR YEARS OF
18 AGE, AND WE'D JUST ASK THAT YOU COULD CONSIDER SOME
19 TYPE AMOUNT OF TIME THAT HE WILL BE ABLE TO GET OUT TO
20 BE A PRODUCTIVE MEMBER OF SOCIETY AND TO, I GUESS, AT
21 THAT POINT TO RE-ESTABLISH A RELATIONSHIP WITH HIS
22 SON.

23 THE COURT: THANK YOU, SIR. MR. PASCOE.

24 SOLICITOR PASCOE: YOUR HONOR, HE'S GOT
25 ADJUDICATIONS IN FAMILY COURT, TWO THOUSAND AND TWO

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1 MALICIOUS INJURY, AND TWO THOUSAND AND THREE, ASSAULT
2 AND BATTERY OF A HIGH AND AGGRAVATED NATURE.

3 THE COURT: THAT WAS IN FAMILY COURT?

4 SOLICITOR PASCOE: YES, SIR, THOSE WERE
5 ADJUDICATIONS IN FAMILY COURT. IT'S THE STATE'S
6 POSITION THAT FROM THE RECORD THE EVIDENCE IN THIS
7 CASE, MR. SHIVERS PLANNED THIS ROBBERY, MR. SHIVERS
8 OWNED THREE OF THE WEAPONS THAT WERE USED IN THIS
9 MURDER AND BURGLARY, AND HE SHOULD BE HELD ACCOUNTABLE
10 FOR THAT.

11 SENTENCE BY THE COURT OF MARIO MONTEZ SHIVERS

12 WITH REGARD TO 2010-824, THE ARMED ROBBERY
13 CHARGE, THE SENTENCE OF THIS COURT, MR. SHIVERS, IS
14 THAT YOU ARE COMMITTED TO THE STATE DEPARTMENT OF
15 CORRECTIONS FOR A PERIOD OF THIRTY YEARS.

16 WITH REGARD TO INDICTMENTS NUMBER 2010-822 AND
17 2010-823, THE BURGLARY IN THE FIRST DEGREE AND THE
18 MURDER, THE SENTENCE OF THIS COURT, MR. SHIVERS, IS
19 THAT YOU ARE COMMITTED TO THE STATE DEPARTMENT OF
20 CORRECTIONS FOR A PERIOD OF FIFTY YEARS.

21 THESE SENTENCES ARE CONCURRENT. I WILL GIVE YOU
22 CREDIT FOR TIME SERVED.

23 THANK YOU.

24 MR. KOGER: THANK YOU, YOUR HONOR.

25 THE COURT: APPRECIATE IT.

1 ALRIGHT, IF YOU'LL LET THE PEOPLE IN THE AUDIENCE
2 LEAVE, YOU CAN DIRECT THEM OUT AS YOU WANT TO DIRECT
3 THEM OUT. OKAY?

4 SOLICITOR PASCOE: THANK YOU, JUDGE.

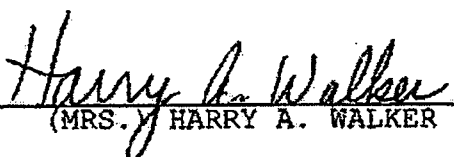
5 THE COURT: THANK YOU.

CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE TENTH THROUGH SEVENTEENTH DAYS OF DECEMBER, 2010.

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

DATE: MARCH 2, 2010


(MRS.) HARRY A. WALKER

COUNTY: ORANGEBURG DATE: DECEMBER 13, 2010

VOIR DIRE (PAGE 1 OF 3)

Judge: EDGAR DICKSON

Pl./State: State/Pl's.Atty:
STATE OF SOUTH CAROLINA DAVID PASCOE & DON SORENSON

Defendant: Defense Atty:
CHRISTIAN COLEMAN RICHARD LACKEY
RALPH BERNARD COLEMAN JILLIAN ULLMAN & MARK WISE
WALTER LEE HARRIS SCOTT PALMER
DANNY RYANT, JR. DOUGLAS MELLARD
MARIO MONTEZ SHIVERS JOSHUA KOGER

Court Reporter: (Mrs.) Harry A. Walker

Juror No.	Name	Race	Sex	Pl.	Def.	Accept
77	JAMIE HEADDEN	W	M			X
169	CHARLES STRECKER	W	M			X
94	INDIA JAMISON	B	F			X
11	JANICE BOGLIN	B	F		X	
38	GUY CROUT	W	M		X	
198	AUSIA WINE	B	F	X		
193	KELLY WILLIAMS	W	F			X
97	DELORIS JEFFERSON	B	F	X		
66	JOSEPH GRIFFIN	W	M		X	
112	LORETTA LADSON	B	F		X	
98	EMMA JEFFERSON	B	F	X		
160	TAMMY SEAWRIGHT	B	F	X		
110	WANDA KITTRELL	W	F		X	
78	THOMASENIA HICKS	B	F		X	
84	SUSAN HUGHES	W	F		X	

COUNTY: ORANGEBURGDATE: DECEMBER 13, 2010VOIR DIRE (PAGE 2 OF 3)Judge: EDGAR DICKSONPl./State:
STATE OF SOUTH CAROLINAState/Pl's Atty:
DAVID PASCOE & DON SORENSONDefendant:
CHRISTIAN COLEMAN
RALPH BERNARD COLEMAN
WALTER LEE HARRIS
DANNY RYANT, JR.
MARIO MONTEZ SHIVERSDefense Atty:
RICHARD LACKEY
JILLIAN ULLMAN & MARK WISE
SCOTT PALMER
DOUGLAS MELLARD
JOSHUA KOGERCourt Reporter: (Mrs.) Harry A. Walker

Juror No.	Name	Race	Sex	Strikes:		Def.	Accept
				Pl.			
166	ALVIN SMOAK	W	M			X	
48	JEROME FRANKLIN	B	M				X
14	OTIS BOYD	B	M				X
114	CLAREY LIVINGSTON	B	M		X		
7	LADSON BEACH	W	M		X		
131	CANNETTE MOORER	B	F		X		
3	VIVIAN BAIR	W	F			X	
92	HATTIE JAMES	B	F		X		
141	JERRY POOR	W	M			X	
93	KIA JAMES	B	F				X
152	DAVID ROBERTS	W	M			X	
2	COURTNEY ASBERRY	B	F				X
23	MERLINDA BUTLER	B	F				X
123	ALLEN MILLER	W	M			X	

COUNTY: ORANGEBURGDATE: DECEMBER 13, 2010VOIR DIRE (PAGE 3 OF 3)Judge: EDGAR DICKSONPl./State:
STATE OF SOUTH CAROLINAState/Pl's Atty:
DAVID PASCOE & DON SORENSONDefendant:
CHRISTIAN COLEMAN
RALPH BERNARD COLEMAN
WALTER LEE HARRIS
DANNY RYANT, JR.
MARIO MONTEZ SHIVERSDefense Atty:
RICHARD LACKEY
JILLIAN ULLMAN & MARK WISE
SCOTT PALMER
DOUGLAS MELLARD
JOSHUA KOGERCourt Reporter: (Mrs.) Harry A. Walker

Juror		Strikes:				
No.	Name	Race	Sex	Pl.	Def.	Accept
34	LORETTA COLTER	B	F			X
9	SAMANTHA BENTON	W	F			X
176	ELLIS THIGPEN	W	M		X	
103	TAMEKA JOHNSON	B	F			X
ALTERNATE NO. 1						
165	LEON SMITH	B	M		X	
115	WAYNE LOVETTE	W	M			X
ALTERNATE NO. 2						
76	BRENDA HAYWARD	B	F			X

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG 2013 JAN 17 AM 10:33 IN THE COURT OF COMMON PLEAS

Walter Lee Harris #344193

Full name and prison number (if any) of Applicant.

FILED FOR RECORD

2013-CP-38-00118

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 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 Lieber Correctional Institution
2. Name and location of Court which imposed sentence Orangeburg County
3. Name(s) of co-defendant(s) (if any) Mario Sivers, Darryl Ryan, Ralph Coleman, Patrick Tyler, Cristian Cole
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-38-0813 Burglary First Degree
 - (b) 2010-Gs-38-0814 Armed Robbery
 - (c) 2010-GS-38-0812 Murder
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) December 17, 2010 - 35 year sentence
 - (b) December 17, 2010 - 30 year sentence concurrent
 - (c) Dec. 17, 2010 - 35 years concurrent

Revised 3/2003

(c) December 17, 2010 - 35 year sentence concurrent

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty Yes _____
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

- i. S.C Court of Appeals
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. Conviction Affirmed
- ii. _____
- iii. _____

(c) the date of each such result:

- i. December 5, 2012
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. 2012-UP-644
- ii. _____
- iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) _____
- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of trial counsel and appellate
- (b) counsel, denial of Fifth, Sixth and Fourteenth Amendment
- (c) Violation of article 1, Section 14, of the S.C. Constitution

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) My attorneys failed to provide me with effective assistance
- (b) and in doing so denied me the fundamental protections afforded
- (c) to me under the State constitution and the United States Const.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? 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. Direct Appeal
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. S.C. Court of Appeals, Columbia, S.C.
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Appeal Denied - Conviction Affirmed
- ii. _____
- iii. _____

2003 JAN 17 AM 10:33
 FILED FOR RECORD
 CLERK OF COURT
 ORANGE COUNTY

- iv. _____
- (d) the date of each such disposition:
 - i. December 17, 2012
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. 2012-UP-644
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) No
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Scott Palmer, Esq.
 - ii. Robert M. Dudek, Esq.
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Arraignment, Plea, Trial and Sentencing
 - ii. Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

Vacate sentence and conviction and receive new trial

20. Are you now under sentence from any other court that you have not challenged?

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

I, , 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.

Walter Harris

SWORN to and subscribed before me this 10th
day of January, 2013

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

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

I, _____, 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.

Walter Harris
Applicant

SWORN or affirmed to and subscribed before me this
10th day of January, 2013

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Walter Lee Harris,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

Case No. 2613-CP-38-00118

A M E N D M E N T T O
P C R A P P L I C A T I O N

2009 JAN 22 PM 1:02
CLERK OF COURT
ORANGEBURG CO.

The Applicant hereby amends answers to questions numbered 9 and 10 of his Application for Post-Conviction Relief to state the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution. The Applicant was also denied his Fourth, Fifth, and Fourteenth Amendment rights secured to him by the United States Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in question (9):

The Applicant was provided deficient representation by his trial attorney, in that the conduct of his attorney was unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668(1984). The outcome of Applicant's proceeding was prejudiced, and it is reasonable and probable that the outcome would have been different had counsel's performance not been deficient, and had the Applicant's Constitutional rights not been violated. Applicant was not provided effective assistance of counsel and he was denied his Constitutional protections in the following manner:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge my arrest and failed to challenge the sufficiency of my indictment.
3. My defense attorney failed to act as my diligent conscientious advocate by his failure to put forth any type of strategic defense. There were material witnesses and physical evidence that could have been presented at trial which would have created reasonable doubt as to Applicant's guilt.
4. My defense attorney did not have my best interest in mind and failed to properly investigate and prepare for my case.
5. My defense attorney failed to serve my cause in good faith and he never intended to offer any type of defense for the jury's consideration.
6. My defense attorney never explained to me the advantages or disadvantages of putting forth a defense or not putting forth a defense.
7. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all the issues involved in my case.
8. My defense attorney never properly consulted with me or kept me informed about what was going to take place at trial or how the trial process would proceed.
9. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
10. My defense attorney never informed me of any of the defenses available or the possibility of a lesser included offense.

11. My defense attorney did not subject the prosecutions' case-in-chief to any adverse forensic testing and failed to oppose the prosecution's case with any adverse litigation.

12. Because of my defense attorneys' gross neglect and his many legal errors, no defense at all was put in issue on my behalf.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

1. My appellate attorney failed to raise several preserved meritorious issues on appeal that there is a reasonable probability would have changed the outcome of my appeal.

2. My appellate attorney failed to raise and argue the trial courts denial of Applicant's motion for a direct verdict where the evidence presented at trial was insufficient and circumstantial only raising a mere suspicion of guilt and allowed the jury to speculate.

3. Because of my appellate attorney's gross neglect, many meritorious issues in my case have now been forever lost or are considered to be waved thereby denying me of a "full and complete bite at the apple" cause me to be denied fundamental due process of law and effective assistance of appellate counsel.

Both, my trial counsel and my appellate counsels' representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendants' claim that his counsel's assistance was so defective as to require reversal of conviction, requires that the defendant show that the deficient performance prejudiced the defense or the appeal so as to deprive the defendant of a fair trial or appeal. Sosebee v. Leeke, 362 F.2d 221(1987), citing Strickland; see also Butler v. State, 286 S.C. 441, 334 S.E.2d 813(1985).

s/ Walter L. Harris

Dated: 1-16-2013, 2013

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Walter Lee Harris, #344193,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-38-00118

RETURN

In response to the post-conviction relief application filed January 17, 2013, amended January 22, 2013, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. The Applicant was true bill indicted during the May 2010 term of the Orangeburg County Grand Jury for murder (2010-GS-38-0812), burglary first degree (2010-GS-38-0813), armed robbery (2010-GS-38-0814), possession of a weapon during the commission of a violent crime (2010-GS-38-0815), and kidnapping (2010-GS-38-0816). Scott Palmer, Esquire, represented the Applicant. The Applicant proceeded to a joint trial by jury with his four co-defendants on December 10, 2010. On December 17, 2010, the jury convicted the Applicant of murder, burglary first degree, and armed robbery. The possession of a weapon during the commission of a violent crime and kidnapping charges were *nolle prossed*. The Honorable Edgar W. Dickson sentenced the Applicant to thirty-five years imprisonment for murder, thirty-five years imprisonment for burglary first degree, and thirty years imprisonment for armed robbery, with all three sentences to run concurrently.

A Notice of Appeal was filed with the South Carolina Court of Appeals and an appeal was perfected on the Applicant's behalf by Robert M. Dudek, Esquire. The Court of Appeals affirmed Applicant's conviction and sentence on December 5, 2012. The Remittitur was issued on January 4, 2013.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the 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 for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of trial counsel"
 - a. "attorney failed to conscientiously discharge his professional responsibilities while handling my case"
 - b. "attorney failed to effectively challenge my arrest and failed to challenge the sufficiency of my indictments"
 - c. "attorney failed to act as my diligent conscientious advocate by his failure to put forth any type of strategic defense"
 - d. "attorney did not have my best interest in mind and failed to properly investigate and prepare for my case"
 - e. "attorney failed to serve my cause in good faith and he never intended to offer any type of defense for the jury's consideration"
 - f. "attorney never explained to me to advantages or disadvantages of putting forth a defense or not putting forth a defense"
 - g. "attorney...never properly ascertained whether or not I actually understood or comprehended all the issues involved in my case"
 - h. "attorney never properly consulted with me or kept me informed about what was going to take place at trial or how the trial process would proceed"
 - i. "attorney never explained to me or discussed with me any of the elements of the crime charged"
 - j. "attorney never informed me of any of the defenses available or the possibility of a lesser included offense"
 - k. "attorney did not subject the prosecutions' case-in-chief to any adverse forensic testing and failed to oppose the prosecution's case with any adverse litigation"

1. "because of my attorney's gross neglect and his many legal errors, no defense at all was put in issue on my behalf"
2. Ineffective assistance of appellate counsel
 - a. "appellate attorney failed to raise several preserved meritorious issues on appeal that there is a reasonable probability would have changed the outcome of my appeal"
 - i. "failed to raise and argue the trial courts denial of Applicant's motion for a directed verdict"
 - ii. "because of my appellate attorney's gross neglect, many meritorious issues in my case now have been forever lost or are considered to be waived thereby denying me of a full and complete bite at the apple"

Any claims not specifically enumerated in the post-conviction relief application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In his application, the Applicant alleges ineffective assistance of trial counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 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 trial 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 trial 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.

The Applicant also alleges that appellate counsel was ineffective. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S.

745, 103 S.Ct. 3308 (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).

When a claim of ineffective assistance of appellate 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 submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

{signature page to follow}

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: Megan E. Harrigan
Attorneys for the Respondents

April 24, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

)
) IN THE COURT OF COMMON PLEAS

2013-CP-38-00118

Walter L. Harris, 344193

Applicant,

vs

State of South Carolina,

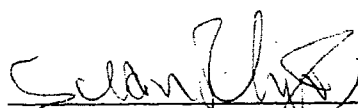
Respondent.

)
)
)
) AFFIDAVIT OF SERVICE BY MAIL
)
)
)
)
)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

David Reynolds Williams, Esquire
Williams & Williams
PO Box 1084
Orangeburg, SC 29116

DATED this 2nd day of May, 2013.



Jean R. Indriago, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG) CASE NO.: 2013-CP-38-00118

WALTER HARRIS,)
)
 APPLICANT,)
)
VS.)
)
STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)

POST CONVICTION RELIEF HEARING

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Dorchester County Courthouse
St. George, South Carolina
on Wednesday, October 29, 2014, Commencing at 1:54 p.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE APPLICANT: Charles T. Brooks, III, Esquire
Attorney at Law
309 Broad Street
Sumter, South Carolina 29150

FOR THE RESPONDENT: Clay Mitchell, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

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- - - - -

EXHIBITS

[None]

Walter Harris vs. The State of South Carolina
Proceedings
October 29, 2014

PROCEEDINGS

MR. MITCHELL: May it please the Court?

THE COURT: Yes.

MR. MITCHELL: The next matter is Walter Harris versus The State of South Carolina, docket number 2013-CP-38-0118. Applicant was indicted in the May, 2010 term of the Orangeburg County Grand Jury for murder on a five-count indictment with burglary first, armed robbery, kidnaping and possession of a weapon during the commission of a violent crime. He's represented on these charges by Mr. Scott Palmer.

Following a jury trial before Judge Dixon on December 10th through December 17th of 2010, applicant was convicted of murder, burg first, and armed robbery. The kidnaping and weapons charges were dismissed by the State. Judge Dixon sentenced the applicant to thirty-five years for murder, thirty-five years for burglary first, and thirty years for armed robbery, with each sentence to be served concurrently.

A notice of appeal was filed and appeal was perfected on applicant's behalf. South Carolina Court of Appeals affirmed applicant's conviction and sentence. The remittitur in that case was remitted on January 4th, 2013.

Applicant filed this application for post

Walter Harris vs. The State of South Carolina
Proceedings
October 29, 2014

1 conviction relief January 17th of 2013, where he
2 alleged various aspects of ineffective assistance of
3 counsel and -- ineffective assistance of trial counsel
4 and ineffective assistance of appellate counsel.

5 Mr. Harris is present here today and he is
6 represented by Mr. Charles Brooks. I'll turn it over
7 to them at this time.

8 THE COURT: All right. Mr. Brooks?

9 MR. BROOKS: Before we begin, Judge: on Monday,
10 if you recall, I talked to you about Mr. Shivers and
11 the fact that I represent both of these individuals,
12 even though they had separate counsel and PCRs against
13 different people. And I put that on the record.
14 We've put that on the record several times before when
15 we dealt with asking for an investigator. I just
16 wanted to remind the Court of that and put that fact
17 on the record. Obviously, my client got thirty-five
18 years, so he still wants his new trial.

19 THE COURT: All right. Are you Walter Lee
20 Harris?

21 MR. HARRIS: Yes, ma'am.

22 THE COURT: I'm sorry?

23 MR. HARRIS: Yes, ma'am.

24 THE COURT: Please swear Mr. Harris.

25 THE CLERK OF COURT: Please raise your right

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1 hand. State your full name for the record.

2 MR. HARRIS: Walter Lee Harris.

3 [Whereupon, Mr. Harris is duly sworn by the
4 clerk of court as follows: do you solemnly swear or
5 affirm to tell the truth, the whole truth, and nothing
6 but the truth, so help you God]

7 MR. HARRIS: Yes, ma'am.

8 THE CLERK OF COURT: Thank you.

9 THE COURT: Mr. Harris, you are here on an
10 application for post conviction relief; is that
11 correct?

12 MR. HARRIS: Yes, ma'am.

13 THE COURT: And you were sentenced on a murder
14 charge for thirty-five years, you were sentenced on
15 the burglary first for thirty-five years, and you were
16 sentenced on the armed robbery to thirty years, all to
17 run concurrent. The possession of a weapon was nol-
18 prossed, and the kidnaping was nol-prossed. You were
19 facing a potential of a life sentence plus -- or
20 excuse me -- two life sentences, plus an additional
21 sixty-five years.

22 Do you understand?

23 MR. HARRIS: Yes, ma'am.

24 THE COURT: And just by my calculation, because
25 in South Carolina life is life, thirty-five years is

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1 substantially less than the potential you were facing.

2 Do you understand that?

3 MR. HARRIS: Yes, ma'am.

4 THE COURT: And you understand that should I
5 grant your application for post conviction relief, it
6 doesn't mean the charges go away. You simply go back
7 to as to where you began when these charges were
8 initially indicted.

9 Do you understand?

10 MR. HARRIS: Yes, ma'am.

11 THE COURT: So you would then be facing again
12 two life sentences, potentially, plus an additional
13 sixty-five years.

14 Do you understand, sir?

15 MR. HARRIS: Yes, ma'am.

16 THE COURT: And you still wish to go forward
17 here today?

18 MR. HARRIS: Yes, ma'am.

19 THE COURT: All right. Please have a seat.

20 [Whereupon, Mr. Harris complies]

21 THE COURT: Mr. Brooks, what are the allegations
22 that we are going forward on?

23 MR. BROOKS: Judge, briefly, we've already filed
24 this. My client previously filed this. The point
25 he's talking about is trial counsel's failure to

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1 discharge his professional responsibilities. And I
2 know that's very general, but he talks about it,
3 Judge, is failure to research, failure to investigate
4 his case. Talks about lack of a defined strategy. My
5 client admitted in his application that there were
6 some material witnesses that Mr. Palmer could have
7 maybe used some investigators to go out and utilize
8 and that would have changed the outcome of this case.

9 There was offered what we call a good-faith
10 defense towards the jury on behalf of Mr. Harris. He,
11 my client, also claims that trial counsel never
12 explained to him the advantages and disadvantages of
13 putting forth a defense.

14 If you recall, Judge, in this particular case
15 the defense, one other lawyer for a codefendant, had
16 put in I guess one piece of evidence and that gave up
17 everybody's right to argue last.

18 His trial counsel never explained to him the
19 elements of crimes and various crimes charged. The
20 client is talking about his defense lawyer didn't look
21 at any type of independent forensic testing.

22 Also, Judge, we also put in there ineffective
23 claim against appellate counsel. And, Judge, like I
24 said, we put these on the record in his brief that we
25 disclosed to the Court, but I'm just kind of

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1 summarizing it for the Court.

2 Basically, he failed -- appellate counsel was
3 ineffective in failure to argue a denial of Mr.
4 Harris' motion for a directed verdict. The claim is
5 that the only evidence that was submitted should have
6 been insufficient and should have been argued as such
7 on appeal.

8 And, obviously, that this appellate counsel's
9 failure to look into all of the meritorious issues and
10 weigh them basically caused him to lose his full and
11 complete bite of the apple.

12 And those are the allegations that he has put in
13 his brief, in summary, Judge.

14 THE COURT: Call your first witness.

15 MR. BROOKS: We would call Walter Harris to the
16 stand.

17 [Whereupon, Mr. Harris comes forward]

18 THE COURT: Mr. Brooks.

19 MR. BROOKS: Thank you, Judge.

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WALTER HARRIS,

Having Been Previously Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BROOKS:

Q. Mr. Harris?

A. Yes, sir.

Q. How old are you?

A. Twenty-five.

Q. Now, at the time of this trial you would have
been, what, twenty --

A. One.

Q. -- twenty-one?

And I know you don't go into court a whole lot,
so take a deep breath. This is your opportunity today to
tell Judge Harrington why you should be granted a new
trial.

As she's also questioned, you understand she
can't cut your time or make you parole eligible any faster
or any sooner. The only thing you can do is start by
over. And, of course, like everything else, you
understand the dangers or potential dangers in that; is
that correct?

A. Yes, sir.

Q. Now, you had Scott Palmer as your lawyer; is

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Direct Examination by Mr. Brooks
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1 that correct?

2 A. Yes, sir.

3 Q. And he was appointed to you?

4 A. Yes, sir.

5 Q. Do you recall how long you met with him or how
6 many times you met with him in preparing your case?

7 A. Not a lot. Before Scott Palmer, I had Ash --

8 Q. Okay.

9 A. -- before my trial.

10 Q. All right. So how long was Mr. Palmer on your
11 case?

12 A. I would say -- I went to trial in nine months,
13 so I would say five.

14 Q. Okay.

15 A. Five months.

16 Q. And you say you didn't talk to him that much?

17 A. No, not as much as I needed to prepare for a
18 trial for murder.

19 Q. And how much do you think you should have talked
20 to him in preparing a trial for murder?

21 A. Going to the fact that I went to trial in nine
22 months, I would say at least twice, three times, out of
23 the week.

24 Q. Did he ever communicate any deals to you or plea
25 offers from the solicitor's office?

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1 A. No, sir.

2 Q. Now, you put in here in your application that
3 Mr. Palmer failed to discuss any strategic defenses with
4 you, and put forth that to the Court, in the trial of your
5 case; is that right?

6 A. Yes, sir.

7 Q. Can you tell the Court what you mean by that?

8 A. I feel like if I knew -- if I knew the things
9 before I went to trial, as far as testifying on my behalf
10 or, you know, just letting my codefendants just testify
11 and letting his word be the word and not saying that I
12 didn't do those things or -- you know, those sort of
13 things.

14 When he got up there and went to trial -- and he
15 could have told me if I was -- got up and went on -- got
16 on the stand and let the jury know that anything that
17 hadn't -- the things that my codefendant was testifying
18 saying that I did, if I could have got -- if I would have
19 gotten on the stand and testified, it would have went
20 different.

21 Q. Well, you're on the stand here today.

22 A. Right.

23 Q. If you had gotten a chance to testify, what
24 would you have told a jury?

25 A. That I withdrew.

Walter Harris
Direct Examination by Mr. Brooks
October 29, 2014

1 Q. That you withdrew?

2 A. That I withdrew from the crime..

3 Q. Explain that. Explain all of that.

4 A. All right. On the day of the crime, I would
5 have told the Court, not only the jury, that I withdrew
6 from the crime once I knew that there was going to be a
7 murder in play or --

8 Q. Now, that -- I understand that. You know, some
9 of the facts is that, you know, you, along with a group of
10 other fellows --

11 A. Right.

12 Q. -- robbed and then this guy ended up getting
13 killed?

14 A. Right.

15 Q. Now, explain what you -- for us who weren't --
16 who was not there -- Judge Harrington wasn't there, I
17 wasn't there, and neither of these two guys here and the
18 attorney general, they weren't there.

19 What do you mean when you say withdrew? Tell us
20 the factual scenario of what was going on.

21 A. First off, I was smoking weed. I was smoking
22 weed. I was smoking marijuana, to clear it up. And
23 that's what I was going to do, point-blank period. I was
24 going to buy weed, because I smoke weed.

25 Well, once it was brought to me that it was

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1 going to be a robbery, I withdrew. I told them I didn't
2 want to do it. Not only --

3 Q. Okay. And --

4 A. Not only that I didn't want to do it because
5 there was a robbery, I also told them I didn't want to do
6 it because I knew the people that was in there.

7 Q. And what did you do in order to withdraw from
8 this whole thing?

9 A. Stayed in the car.

10 Q. Did you tell Mr. Palmer all of that?

11 A. Yes.

12 Q. And what happened? You didn't end up
13 testifying. You didn't put that defense of trying to
14 withdraw from the whole plan. What happened? What was
15 discussed between you and Mr. Palmer?

16 A. I mean, nothing basically could have helped me
17 far as telling me -- far as him telling me that, well, you
18 need to get up and let the court know that you stayed in
19 the car, or you need to get up and let the Court know that
20 you withdrew. None of that was said to me.

21 And me being -- that was my first time getting
22 in trouble, first time going to trial. So me getting on
23 the stand was kind of big, in front of all those people,
24 you know. So I didn't --

25 Q. So that's what you mean by saying Mr. Palmer

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1 didn't go over the strategic defense, particularly the
2 defense of withdrawing?

3 A. Far as letting me know that me testifying would
4 have helped me or not.

5 If I would have knew that testifying could have
6 helped me, I'm quite sure a hundred percent I would have
7 got on the stand.

8 Q. Okay. Did you have a prior record before all of
9 this?

10 A. I didn't

11 Q. None?

12 A. None.

13 Q. Now, so you're saying that you told all this to
14 Mr. Palmer and he just decided not to put this up; is that
15 correct?

16 A. Correct.

17 Q. And it's your position, as far as the PCR is
18 concerned, is if he had, that would have changed -- you
19 feel would have changed the whole outcome of your
20 particular case?

21 A. It would have changed my whole mind set. It
22 would have changed my whole mind set. And I think here
23 until today, almost five years later, if I would have got
24 up and testified, if I would have knew --

25 Q. Do you think that would have changed the jury

Walter Harris
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1 coming back and finding you guilty?

2 A. Yes, sir.

3 Q. Do you think that if the jury would have known
4 the facts as they related to you, and the fact that you
5 went there and the only thing you wanted to do was smoke
6 some weed but then you got wind of this thing is going to
7 turn into a murder-robbery, that you didn't want to be a
8 part of, and that's why you stayed in the car? You're
9 saying if the jury knew all that and would have heard all
10 that out of your mouth, that that would have changed their
11 verdict as it relates to you?

12 A. Yes.

13 It would have changed it because my codefendant
14 testified that I did withdraw. In his testimony, he
15 testified that I did withdraw. Then he also testified
16 when I withdrew, I came back into the scene.

17 Q. And did you ever talk to Mr. Palmer about trying
18 -- because of your position that you weren't as guilty as
19 some of the others, did you talk to him about trying to
20 work something out with the solicitor's office?

21 A. To be honest, yes, but I can't quite quote what
22 I asked him about it.

23 I know there was questions about it about far as
24 me, you know, asking the solicitor's office, well, since I
25 withdrew, I mean, can I get -- can I get some type of

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1 deal, can I get less time than everybody else.

2 Q. Did you -- I guess what I'm saying is you told
3 that to --

4 A. I asked Mr. Scott Palmer that.

5 Q. And what did he say to that?

6 A. I can't quote him.

7 Q. What do you -- I mean, to the best of your
8 recollection.

9 A. No.

10 Q. Now, you also said that Mr. Palmer didn't try to
11 get any forensic testing done, like experts,
12 investigators, ballistics, things of that sort. Do you
13 think that that would have been helpful in your case?

14 A. A hundred percent.

15 Q. And just to make sure. To your knowledge, there
16 was never an investigator involved in your case on your
17 side? A private investigator.

18 A. Correct.

19 Q. And would you have wanted your lawyer to have --
20 you were willing to give up the last argument if you would
21 have put up that whole issue about you withdrawing; is
22 that right?

23 A. Yes, sir.

24 Q. Now, you raised some issues about your appellate
25 counsel, the person that did your appeal.

Walter Harris
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1 A. [Indicates affirmatively]

2 Q. One of the things you talked about was you felt
3 that your appellate counsel did not try to talk about the
4 denial of the directed verdict.

5 A. Correct.

6 Q. Do you want to tell the jury [sic] about that?

7 A. Could you explain that to me a little bit more,
8 please?

9 A. In your pleadings --.

10 A. Uh-huh.

11 Q. -- the stuff that you filed, you're saying that
12 your appellate counsel was ineffective because he didn't
13 try to argue that the denial of your directed verdict --
14 you remember after the State put up their case your lawyer
15 said, hey, Judge, we need to -- there's not enough
16 evidence, this case needs to be dismissed?

17 A. Uh-huh.

18 Q. You're saying that your appellate lawyer didn't
19 argue that to the appellate court?

20 A. Right.

21 Q. And you said that was a basis of him being
22 ineffective?

23 A. Right.

24 Q. Do you want to explain that to the judge?

25 A. I mean, far as that go, I mean, with my

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1 appellate lawyer -- with my appellate lawyer, I mean --
2 when I read over my transcript, there's all type of things
3 that I seen inside of my transcript that he could have
4 brought forward that could have helped me far as --

5 Q. Such as?

6 A. -- the things that was brought forward, the
7 evidence that was put in, put into my trial, the
8 testimony, the testimony from my codefendant, things of
9 that nature, because of to my understanding I was
10 convicted because of testimony.

11 Q. Correct.

12 A. I was convicted because of testimony.

13 And inside of my transcript, it proved that my
14 codefendant lied on the stand, under oath.

15 Q. And what else about the claim against the
16 ineffectiveness of your appellate counsel?

17 A. Of my appellate counsel?

18 Q. You raised an issue saying that appellate
19 counsel didn't raise meritorious issues and that since he
20 didn't do that, that pretty much waived your appellant
21 rights. Is that your understanding?

22 A. Can you explain it better than you did?

23 Q. You filed it, now.

24 A. Right.

25 Q. All right? You said that your appellate counsel

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1 was negligent --

2 A. Right.

3 Q. -- in that there were other meritorious issues
4 in your case that he did not raise on appeal and because
5 he didn't raise them on appeal, that they were waived. Do
6 you remember that in your pleadings that you submitted to
7 the Court?

8 A. No, I don't.

9 Q. But do you remember having any communication,
10 letters, correspondence, with your appellate counsel?

11 A. Yes.

12 But it was, you know, sort of like -- he was
13 just telling me things sort of like he was going to try
14 his best. It wasn't no -- it wasn't no communication with
15 him telling me that he did this or he did that. He was
16 just telling me that he was on it, he was reading it.

17 He didn't really step it out to me what he was
18 reading or what he was doing to try to help me. He just
19 was telling me that he was on it. Sending me letters
20 every -- I guess, you know, every other week, every week.
21 He never really -- he never really put a subject on what
22 he was really doing.

23 Q. Now, Walter, I'm going to ask you this. Is
24 there anything else you want to tell the jury that we
25 haven't raised?

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1 A. Yes.

2 When my codefendant -- in my codefendant's
3 testimony, he testified -- there's something that really
4 bothers me.

5 Q. That would be Patrick Tyler?

6 A. Patrick Tyler.

7 Mr. Palmer, Scott Palmer, my trial lawyer, he
8 asked him while he was on the stand was he getting a deal
9 and Patrick Tyler told him no.

10 Q. Did he get a deal?

11 A. Yes.

12 Q. What kind of deal he got?

13 A. Before I -- another thing Scott -- Mr. Scott
14 Palmer, my trial lawyer, asked him was --

15 Q. What did he get?

16 A. Fifteen years. He got fifteen years.

17 Q. All right. What else you were going to say?

18 A. My codefendant said on the stand that he was
19 charged with everything that the rest of us was charged
20 with, which he wasn't.

21 Q. What charge he was not charged with?

22 A. Murder.

23 Q. Okay. Everybody else was?

24 A. Everybody else was.

25 Q. And he got a deal? How did you find out about

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Direct Examination by Mr. Brooks
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1 that?

2 A. Through newspapers. Through newspapers and
3 through my --

4 Q. Your family?

5 A. Through my family.

6 Q. Did he get sentenced after the trial?

7 A. Yes.

8 Q. Is there anything else

9 A. No.

10 Q. So you felt that Patrick had had as much
11 culpability as you did; is that right?

12 A. Absolutely.

13 Q. And you understand what I mean by culpability?

14 A. Explain that.

15 Q. All right. Culpability: more guilty, less
16 guilty. You think he was --

17 A. More guilty.

18 Q. Okay. Than say you?

19 A. Yes, sir.

20 Q. Is there anything else that we need to tell
21 Judge Harrington here today that we haven't covered?

22 A. No, sir.

23 Q. You're sure?

24 A. Yes, sir.

25 MR. BROOKS: I'm going to sit down and you

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1 answer any questions of Mr. Mitchell; okay?

2 THE WITNESS: All right.

3 MR. MITCHELL: Good afternoon, Mr. Harris.

4 THE WITNESS: Good afternoon.

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Walter Harris
Cross-Examination by Mr. Mitchell
October 29, 2014

CROSS-EXAMINATION

1
2 BY MR. MITCHELL:

3 Q. Mr. Palmer: he was appointed in the case; is
4 that right?

5 A. Yes, sir.

6 Q. And you met with him beforehand a number of
7 times?

8 A. Yes, sir.

9 Q. About as many times as you felt necessary; is
10 that right?

11 A. Right.

12 Q. And he go -- he went over the discovery in this
13 case with you, didn't he?

14 A. No.

15 Q. He did not go over the discovery with you?

16 A. No.

17 Q. Did he go over the statements you gave law
18 enforcement?

19 A. No.

20 Q. He never went over the statement that you gave
21 to the investigators in the case with you?

22 A. One of them he did. There was three of them.

23 Q. There was three of them; right?

24 A. Yes, sir.

25 Q. So y'all only went over -- which one was that?

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1 A. The one where I stated I was there on Kings Road
2 the night of the murder.

3 Q. That you were at that club the night of the
4 murder?

5 A. No. That I was at the place.

6 Q. That you were there. That's right. Okay.

7 And you bring up a point about plea offers.
8 Now, Solicitor Pascal, he was willing to talk to you,
9 wasn't he?

10 A. If I testified.

11 Q. So that would have been part of the plea deal;
12 right?

13 A. [No response]

14 Q. So the only way he would let you plea is if you
15 testified at the trial; is that right?

16 A. Right.

17 Q. So you would have testified, like Mr. Tyler did,
18 against your other codefendants; right?

19 A. No.

20 Q. But you did not do that, but that's what he
21 wanted you to do in order to get a plea deal; is that
22 right?

23 A. Yes, sir.

24 Q. So those were her -- that was his terms of the
25 plea offer?

Walter Harris
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1 A. Yes, sir.

2 Q. Well, let's go to that. You did not testify in
3 the trial; is that right?

4 A. Right.

5 Q. And Mr. Palmer went over with you the rights --
6 your right to testify, didn't he?

7 A. No.

8 Q. He didn't --

9 A. No.

10 Q. -- go over the rights to testify?

11 A. No.

12 Q. You had a meeting with him, after the State had
13 rested, where he was trying to encourage you to -- or
14 advising you that he thought you should testify; is that
15 right?

16 A. No.

17 Q. You never had a meeting with him after the State
18 closed?

19 A. Yes. But not pertaining to me testifying.

20 Q. It wasn't over whether you were going to
21 testify?

22 A. Right.

23 Q. Your mother was involved in that meeting, too;
24 right?

25 A. Right.

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1 Q. Now, Judge Dixon went over whether you wanted to
2 testify at the trial; isn't that right?

3 A. It was at the end of the trial.

4 Q. Right. And you told him you did not want to
5 testify?

6 A. Right.

7 Q. And you chose not to testify; right?

8 A. Right.

9 Q. That was your decision? You told Judge Dixon it
10 was your decision not to testify?

11 A. Right.

12 Q. Now, the -- and you thought your best defense
13 was withdraw? You thought you withdrew from the crime; is
14 that right?

15 A. Yes, sir.

16 Q. So you went into this apartment, bought weed,
17 saw some people in there; right?

18 A. Right.

19 Q. And you recognized some individuals in the
20 apartment at that time?

21 A. Yes, sir.

22 Q. And then the State alleged that you were part of
23 the -- that went back in there and robbed the apartment;
24 is that right?

25 A. Yes, sir.

Walter Harris
Cross-Examination by Mr. Mitchell
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1 Q. So it's your testimony that you did not go back
2 in the apartment today -- or --

3 A. That night.

4 Q. -- that night; right?

5 A. Yes, sir.

6 Q. So you withdrew from the crime when you found
7 out there was going to be a robbery; is that right?

8 A. Yes, sir.

9 Q. And that's what Mr. Palmer argued at trial,
10 isn't it?

11 A. I mean, kind of sort of. I wouldn't say he -- I
12 wouldn't say he put his best effort into trying to prove
13 that I did withdrew from that crime that night.

14 But he did argue. He did argue, that I
15 withdraw. But he didn't -- he didn't put -- you know, he
16 didn't --

17 Q. He didn't put any evidence showing that you did
18 withdraw; right?

19 A. Correct.

20 Q. So the only way you could present any evidence
21 that you withdrew is if you testified yourself; right?

22 A. Yes. Or --

23 Q. Or that was an option. That was --

24 A. Or the driver, Ronnie Washington, the one I was
25 trying to subpoena in court, he could have also testified

Walter Harris
Cross-Examination by Mr. Mitchell
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1 that I did withdraw, stay in the car with him, away from
2 the crime.

3 Q. But Mr. Palmer advised you that he thought you
4 should withdraw -- or he thought you should have
5 testified, if you were going to raise the withdrawal
6 defense; isn't that right?

7 A. No.

8 Q. But isn't that what -- he never told you that
9 you should testify in order to bring up this defense of
10 withdraw?

11 A. No.

12 Q. Because there was no evidence admitted on your
13 side, was there, in your particular case?

14 A. No.

15 Q. So there was no evidence that you did withdraw;
16 right?

17 A. Right.

18 Q. But it was still argued in closing argument;
19 right?

20 A. Right.

21 Q. So he argued that you withdrew and that you
22 should be given credit for that?

23 A. Right.

24 Q. And you should not be sentenced as heavy as
25 everyone else because you weren't as culpable; right?

Walter Harris
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1 A. Right.

2 Q. And that's even what Judge Dixon said at your
3 sentencing hearing; right?

4 A. What?

5 Q. That you -- that there was questions of whether
6 you were a full participant in the crime; right?

7 A. Right.

8 Q. That he took into account that you might have
9 tried to withdraw at some point and that's why he gave you
10 a lesser sentence than some of the other codefendants; is
11 that right?

12 A. No.

13 Q. Judge Dixon didn't go over that with you at the
14 sentencing?

15 A. No.

16 Q. He didn't explain that's why he gave you --

17 A. He gave me less time? No.

18 Q. He gave you thirty-five years; right?

19 A. Yes.

20 Q. Your codefendant, Shivers, got fifty years;
21 right?

22 A. Right.

23 Q. So you did get less than him?

24 A. Yes.

25 Q. And Judge Dixon did that because he thought you

Walter Harris
Cross-Examination by Mr. Mitchell
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1 were less culpable because you might have -- there might
2 have been a question of whether you attempted to withdraw
3 at some point?

4 A. Right.

5 I mean, maybe he did, but he didn't state that
6 to me. He didn't put that on the table and say, son,
7 that's why I'm giving you thirty-five years, because I
8 feel like you didn't play this or play that. He didn't
9 tell me nothing.

10 MR. MITCHELL: One second, Your Honor.

11 THE COURT: Take your time.

12 Q. [Mr. Mitchell] On to the forensic testing. You
13 felt Mr. Palmer should have gotten a forensic investigator
14 or some kind of forensic expert; is that right?

15 A. Yes, sir.

16 Q. But if you claim that you withdrew from the
17 crime, then you -- what would they have tested? They
18 couldn't have tested the gun because you claimed you
19 weren't there to fire a gun; right?

20 A. Right.

21 Q. So there's no reason to get an investigator to
22 look at forensics if you claim that you never had a gun --
23 that you never shot a gun. Excuse me.

24 A. Right.

25 Q. That's consistent with Mr. Tyler's testimony,

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1 too; right? He said you didn't have a gun when they went
2 back -- when y'all went back in there?

3 A. No.

4 Actually, he said I did have a gun when we went
5 back in there, I gave it away once we got back --

6 Q. Right.

7 A. -- in there.

8 Q. So he never said that you fired the gun, though;
9 right?

10 A. Right.

11 Q. So like forensic testing, that would have been
12 like gunshot residue or something like that; right?

13 A. Uh-huh.

14 Q. But that wouldn't have helped you because if you
15 claim you didn't have the gun, and that's consistent with
16 the codefendant's testimony, then that's not going to help
17 your case to have an expert come in and say that; right?

18 A. Or fingerprints.

19 MR. MITCHELL: No further questions.

20 MR. BROOKS: No other questions, Judge.

21 THE COURT: You may step down. Thank you.

22 [Whereupon, Mr. Harris is excused and exits the
23 witness stand]

24 THE COURT: Call your next witness.

25 MR. BROOKS: Judge, no other witnesses. That's

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1 the applicant's case.

2 THE COURT: All right. Call your first witness.

3 MR. MITCHELL: Your Honor, the State calls Mr.
4 Scott Palmer.

5 [Whereupon, Mr. Palmer comes forward]

6 THE CLERK OF COURT: Please raise your right
7 hand. State your full name for the record.

8 MR. PALMER: W. Scott Palmer.

9 [Whereupon, Mr. Palmer is duly sworn by the
10 clerk of court as follows: do you solemnly swear or
11 affirm to tell the truth, the whole truth, and nothing
12 but the truth, so help you God]

13 MR. PALMER: I do.

14 MR. MITCHELL: Good afternoon, Mr. Palmer.

15 MR. PALMER: Good afternoon.

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SCOTT PALMER,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MITCHELL:

Q. How long have you been practicing law?

A. This is my twenty-sixth year.

Q. Have you handled -- have you done a lot of
criminal defense in your career?

A. That's been part of my practice for over twenty
years.

Q. How did you become involved in Mr. Harris' case?

A. I happened to be in court one day in September,
whatever year this case was tried in -- I think it was
2010 -- and I think I was there for another criminal case
and Judge Dixon was approached I think by someone from the
public defender's office with regard to this case we're
here about, with an issue of conflict of interest within
the public defender's office I believe because there were
so many codefendants.

Judge Dixon said, well, I'm going to appoint
someone from the private bar. And there I was, so he
signed the order I think that day and told me that I was
going to represent Mr. Harris.

Q. So have you had an opportunity to review your

MIA PERRON, CVR-CM-M

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1 file in preparation for this hearing today?

2 A. I have.

3 Q. When you initially met with Mr. Harris, did you
4 go over the charges he was facing and what the State would
5 have to prove to convict him of those charges?

6 A. Yes.

7 That would have been part of the standard
8 procedure with him or any other client in a similar
9 situation.

10 Q. What else would you go over in that initial
11 meeting? What was your standard procedure with criminal
12 defendants?

13 A. Well, the initial meeting is to determine how
14 much -- how many more meetings we're going to need.

15 And Mr. Harris actually was quite articulate
16 about this case. He was presenting his defense, which I
17 don't know if he wanted to call it that at the time, but
18 this issue of withdrawal. I mean, he was going there from
19 the get-go.

20 His story was that he had been part of this
21 group and he had gone in, before they actually committed
22 the crimes, as sort of a recon agent. In other words, he
23 was sent in to this marijuana dealer's house to make a
24 buy, and it looked like part of his mission was to look
25 around and see who was in there and what the scene looked

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1 like and then go back and report to the other guys and
2 then they were going to go in and commit the robbery and
3 whatnot. So that -- you know, he told me that the very
4 first meeting.

5 Q. So the withdrawal, that was something you had
6 from day one with him as a possible defense in this case?

7 A. Absolutely.

8 Q. So did you go over how to go about defending the
9 case in that manner? How did --

10 A. Yeah.

11 I mean, that was a recurring theme in our
12 meetings. And I would say -- and he's right about one
13 thing. This case was sort of ushered to trial pretty
14 quickly. He says nine months. But, actually, I had much
15 less time than that because he had been appointed a public
16 defender who had represented him for most of 2010. And
17 then I was appointed in September of 2010. And, actually,
18 I don't think I met with him until later September. And
19 so, you know, really, I had just a couple of months to
20 meet with him and get ready for trial.

21 I think the solicitor's office considered this a
22 high-profile case and they wanted to get it tried before
23 the end of 2010. I think that's what was happening.

24 Q. The trial was I think December 10th through the
25 17th; is that right?

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1 A. Yes.

2 Tried it in mid December, and it lasted about a
3 week.

4 Q. Did you discuss his need to testify in order to
5 really present the defense of withdrawal?

6 A. Yes.

7 Q. So what did you advise him as far as testifying
8 or whether that would be beneficial -- if you thought it
9 would be beneficial?

10 A. I thought it was mandatory.

11 And let me explain that answer. This was a
12 situation where he had -- I mean, there was no question he
13 was with this group. There's no question he was at the
14 scene in some capacity. There was no question that this
15 had taken place pretty much as alleged. And what I mean
16 is the sequence of events that led to the charges.

17 So as the case progressed and as I became more
18 familiar with the facts, and later as the trial
19 progressed, it became apparent to me that he really might
20 have a shot of presenting a successful defense, and that
21 is the defense of withdrawal.

22 And as you can see from the transcript, I feel
23 like I worked pretty hard to get that charged. And Judge
24 Dixon, fortunately, did charge it.

25 But before that, I don't think Mr. Harris

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1 remembers, but I arranged a meeting, which was a little
2 unusual, in the solicitor's office down in the basement of
3 the courthouse. And he and the deputy solicitor and the
4 investigator were all there. And the purpose of the
5 meeting was to see if we could work out some kind of plea
6 arrangement.

7 And as a precursor to the meeting, I sort of had
8 a gentleman's agreement with David Pascoe that whatever
9 Walter said in that meeting, you know, that they would not
10 use it against him. And I was fine with that but -- and
11 he basically said the same story, that he thought these
12 guys were going to buy weed, he went in to get the weed,
13 he came back and at some point told them he didn't want to
14 continue.

15 But then there was some evidence that he did go
16 back in. And the Defendant Tyler actually stated in his
17 statement and on the stand that Mr. Harris had been the
18 one that tied up the victim, before he was shot, with duct
19 tape.

20 But, you know, that notwithstanding, I still
21 thought that this was pretty good.

22 But anyway, back to the plea meeting, he was
23 allowed to tell this story to the solicitor --

24 Q. This was after the State had rested?

25 A. No, no, no. This was --

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1 Q. Before that?

2 A. -- I think this was before the trial, as I
3 recall. And there's really no record of it --

4 Q. Right.

5 A. -- but it did happen.

6 And Mr. Pascoe's response was, well, even before
7 I start negotiating, you need to understand that before I
8 put any deal -- because they had made no plea offer. I
9 don't think they made a plea offer to any of these guys
10 before the trial. They were confident they had a strong
11 case. But David Pascoe said to Mr. Harris and I, he said,
12 before I even start dealing, you're going to need to agree
13 and testify. And he said, what I mean by that is I want
14 to know everything, who was at the planning meeting, who
15 had what gun, what caliber, who was in what seat in the
16 car, who went in there, who did what. And that was
17 obviously a deal-breaker for Mr. Harris. He -- after
18 hearing that he said, I'm not going to testify, I'm not
19 going to --

20 And, you know, I think throughout this whole
21 trial, all of these guys sort of cut the united front,
22 obviously except for Mr. Tyler.

23 Q. So you advised him that you thought -- how did
24 you advise him? Did you think -- did you advise him you
25 thought it would be beneficial to testify? Did you urge

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1 him to do so?

2 A. I actually did on a number of occasions.

3 And that became especially apparently after the
4 State rested. I think that was December 16th. I met with
5 him. They brought him -- they would bring him over from
6 the detention center. And they had a little holding cell
7 back there behind the judge's chambers, and I met with
8 him.

9 And I had actually, the night before, prepared a
10 little page and a half thing of him to review of what I
11 thought his situation was. And I told him basically I
12 thought he had three options and those options were to
13 continue with trial, to basically hope for the best and
14 hang on type option; to plead straight up, which is always
15 an option because the State had still offered no deal, to
16 plead straight up and hope for the best; or to take the
17 stand and really hammer this withdrawal defense.

18 And the meeting in the holding cell probably
19 lasted about thirty minutes, because the judge was
20 pressing me. He said, you know, I need to know if your
21 guy is going to testify or any of your defendants are
22 going to testify. You know, he obviously needed to know
23 that.

24 So Mr. Harris said, well, I don't want to decide
25 without talking to my mom, which I totally got. And so

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1 then I arranged a meeting between me and him and his
2 mother, which took place in the little conference room in
3 the back of the Orangeburg Courthouse. There's a little
4 room back there with a glass window. And so the three of
5 us went back there and I again presented him with this
6 paper. I had wanted him to sign it, just for moments like
7 this. But I presented it to him again and went over it.
8 And I went over it with his mother, too. And the decision
9 was not to testify. And obviously he declined to sign it.

10 Q. So he did not want to testify and ended up
11 telling Judge Dixon he did not want to testify?

12 A. Correct.

13 And, you know, I -- the withdrawal defense
14 wasn't a hundred-percent foolproof because the guy that
15 turned State's evidence, you know, he clearly said that
16 Mr. Harris went back in and he duct-taped the victim and
17 he was involved in the thing.

18 And the difference between him -- between Tyler
19 and Harris was that the evidence, the testimony, was that
20 Harris went back in and Tyler said as soon as he heard a
21 shot he left, he went back and waited in the car, which I
22 think had something to do with what sentence he got.

23 Anyway, I don't know if Mr. Harris remembers
24 this conversations. But I can say this particular case,
25 as a trial lawyer, I did want -- I really wanted him to

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1 testify. I really thought he had a shot at beating at
2 least some of these charges, and really nothing to lose.

3 Q. Going to Mr. Tyler's testimony, you cross-
4 examined him on his version of events; is that right?

5 A. I did.

6 Q. And you tried to frame that questioning around a
7 withdrawal, that Mr. Harris withdrew, a little bit; is
8 that right?

9 A. Yes.

10 Q. And so Mr. Tyler testified that Mr. Harris went
11 in to buy the drugs and then he came back out and then he
12 went back in again. But that wasn't extremely helpful to
13 you with that, so --

14 MR. MITCHELL: Well, I withdraw that question.

15 Excuse me.

16 Q. [Mr. Mitchell] The deal that Mr. Tyler got, he
17 pled after the trial; is that right?

18 A. I believe so, yeah.

19 Q. He was facing murder charges at the time of his
20 testimony?

21 A. He was.

22 Q. Moving to the forensic issue: did you hire an
23 investigator in this case?

24 A. No.

25 Q. Did you see any need for an investigator in this

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1 case?

2 A. No.

3 Q. And why is that?

4 A. Well, there was -- I mean, there was no question
5 about that Mr. Harris was there. I think the question was
6 whether he went back in. But there was some evidence of
7 that.

8 But I didn't really see any need. I mean, what
9 would a forensic investigator have proven or disproved?
10 There was no alibi defense. There was no gunshot residue
11 on this defendant that was part of the State's case.

12 Q. I think it was Mr. Tyler's testimony that
13 Mr. Harris gave the gun to another codefendant during the
14 robbery?

15 A. Yeah. I don't think that was really disputed.

16 Q. So Mr. Harris did not have a gun and probably
17 did not fire a shot at the robbery; is that -- do you
18 think that's accurate?

19 A. That's what I believe.

20 MR. MITCHELL: One second.

21 [Whereupon, Mr. Mitchell reviews documents]

22 Q. [Mr. Mitchell] Mr. Palmer, did you explain to
23 him accomplice liability? how he could be charged with
24 murder even if he did not shoot the actual shot that
25 killed the victim?

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1 A. Yeah.

2 And, actually, I do remember going over that a
3 good bit because it seems to be that I think a lot of
4 lawyers end up representing defendants where there were
5 other codefendants and it seems to be necessary to always
6 go over the hand of one is the hand of all theory of law
7 and to tell them exactly what the law is. Because it
8 seems like a lot of folks know the hand of one is the hand
9 of all but they don't know the fine points of it, that
10 mere presence at the scene is not enough to trigger that
11 figure.

12 But, yeah, I went over that. Of course.

13 MR. MITCHELL: No further questions. Thank you.
14 Please answer any questions Mr. Brooks has.

15 THE COURT: Mr. Brooks?

16 MR. BROOKS: Mr. Palmer --

17 THE WITNESS: How are you doing, Mr. Brooks?

18 MR. BROOKS: How are you today?

19 THE WITNESS: I'm fine. Thank you.

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CROSS-EXAMINATION

1
2 BY MR. BROOKS:

3 Q. Did you -- on that defense of withdrawal, did
4 you recommend that Walter testify?

5 A. I can positively say yes.

6 I actually very much wanted him to testify, to
7 the point that the night before I typed with my own hands
8 the document that I presented to him urging him to testify
9 and recommending that that was his best course of action.

10 Q. As opposed to pleading or going to trial and not
11 testifying?

12 A. Those were the other two options that I laid out
13 in the document: continue his trial, hope for the best;
14 plead straight up, again, hoping for the best; or to
15 hammer -- I say hammer, to emphasize, the defense of
16 withdrawal. I really thought there was some evidence to
17 support that.

18 Q. And you had only been on the case basically less
19 than ninety days before it went to trial?

20 A. I was appointed -- I've got the order of
21 appointment, but let me just off memory. I think it was
22 signed in mid September.

23 I have a letter from Mr. Harris, that he wrote
24 me from the jail, sort of a welcome aboard letter, if you
25 want to call it that, and the mailing date on that was

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1 September 29th. And I think that this letter and I
2 crossed paths and I think that's about the time I first
3 met with him.

4 So if you carry it forward from September 29th
5 -- October, November -- I would say less than ninety days.
6 I would say about two and a half months.

7 Q. And you said that even though that Walter did
8 not testify, you were still able to get the charge of
9 withdrawal?

10 A. I tried very hard to get that in. And there was
11 some evidence.

12 From Mr. Tyler's testimony, there was some
13 evidence that Mr. Harris tried to get out of this. Of
14 course, there was some other evidence from the same
15 witness that was contrary to that. But Judge Dixon agreed
16 to charge it.

17 Q. And you did say you met with his mama and him,
18 went over that whole strategy about testifying about
19 withdrawal?

20 A. Yes.

21 MR. BROOKS: I beg the Court's indulgence, Your
22 Honor.

23 THE COURT: Take your time.

24 [Whereupon, Mr. Brooks and Mr. Harris confer]

25 Q. [Mr. Brooks] Mr. Palmer, you asked Mr. Tyler

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1 about a plea deal during your cross-examination?

2 A. Repeatedly.

3 Q. And he denied it?

4 A. He continually denied it, yeah.

5 Q. Okay.

6 A. And let me just say I'm not sure he was being
7 untruthful at that point because I don't think -- David
8 Pascoe is a good prosecutor, and I think they purposefully
9 did not offer him anything before the trial so he wouldn't
10 --

11 Q. Kind of like a gentlemen's agreement?

12 A. Well, I think that they may have said -- you
13 know, I'm speculating, which --

14 Q. Right.

15 A. -- I guess I'm allowed to do.

16 But my thought was, as I cross-examined, and as
17 I spoke with prosecutors, was that they basically told
18 him, if you want to testify, we can't offer you anything
19 but, you know, it won't hurt you.

20 Now, that was my feeling, my gut feeling. But
21 when Tyler was answering my questions about -- you know,
22 because I asked him over and over again -- there's a
23 couple of pages of me going, you got a deal, this is going
24 to help you, right, blah, blah, blah, blah, and he kept
25 saying no.

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1 I'm not sure he was being untruthful. I just
2 didn't think he knew and he was just hoping for the best.

3 Q. He ended up getting fifteen years?

4 A. I don't know. I didn't follow it.

5 But, I mean, if that -- I would imagine, you
6 know, that that's true. I don't know.

7 Q. And then Walter, of course, got thirty-five?

8 A. Walter got thirty-five. Yes.

9 MR. BROOKS: Beg's the Court's indulgence one
10 more time, Judge.

11 [Whereupon, Mr. Brooks and Mr. Harris confer]

12 MR. BROOKS: No other questions of this witness,
13 Judge.

14 MR. MITCHELL: No further questions.

15 THE COURT: You may step down.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Thank you. Good to see you.

18 Is he free to go?

19 MR. MITCHELL: Mr. Palmer is free to go.

20 THE WITNESS: Thank you.

21 THE COURT: Any objections?

22 MR. BROOKS: No objection, Your Honor.

23 THE COURT: You are free to go, Mr. Palmer, but
24 feel free to stay with us.

25 THE WITNESS: Thank you, Your Honor. I have

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1 something to do. Sorry.

2 [Whereupon, Mr. Palmer is excused and exits the
3 witness stand]

4 THE COURT: Call your next witness.

5 MR. MITCHELL: Your Honor, the State calls Mr.
6 Robert Dudek.

7 [Whereupon, Mr. Dudek comes forward]

8 THE CLERK OF COURT: Please raise your right
9 hand. State your full name for the record.

10 MR. DUDEK: Robert Dudek.

11 [Whereupon, Mr. Dudek is duly sworn by the clerk
12 of court as follows: do you solemnly swear or affirm
13 to tell the truth, the whole truth, and nothing but
14 the truth, so help you God]

15 MR. DUDEK: I do.

16 THE CLERK OF COURT: Thank you.

17 MR. MITCHELL: Good afternoon, Mr. Dudek.

18 MR. DUDEK: Good afternoon.
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Robert Dudek
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ROBERT DUDEK,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MITCHELL:

Q. Where are you presently employed?

A. At the appellate division of the office of now
the Commission on Indigent Defense --

Q. Is that where you were employed where you
handled Mr. Harris' case?

A. Yes, it was.

Q. How long have you been practicing law?

A. Twenty-nine years.

Q. How long have you been representing defendants
in appeals?

A. In February, it will be twenty-five years.

Q. About how many murder direct appeals do you
think you've handled?

A. Wow. We put together a capital division, which
at that time was Joe Savatz [phonetic] and myself,
probably around 1996 and probably did nothing but murders
and capital cases for about ten years.

I don't know, really, Mr. Mitchell. Let's say
for twenty-four years, a little longer, I did a hundred
murder -- a hundred cases a year, it would be about 2400.

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1 If I had a take a wild guess, I might say 1500, 2,000.

2 Q. So you're very familiar with murder cases at the
3 trial level --

4 A. Yes.

5 Q. -- and handling them on appeal?

6 A. Yes, sir.

7 Q. Have you reviewed your file in this case in
8 preparation for this hearing?

9 A. Yes.

10 And I went back over notes and parts of the
11 trial transcript.

12 Q. What is your standard procedure, when you review
13 cases, to decide which issues to brief or to raise on
14 appeal?

15 A. Well, we -- if you take -- you take notes from
16 the witnesses. At times you'll have a separate objection
17 sheet or at the top of a legal pad, depends on the
18 particular case, and then you see which issues are
19 preserved. And then from there you narrow it down to what
20 you -- you try and have a strategy. Just like a trial,
21 you try and have a strategy on appeal for what you think
22 would win.

23 I guess as Justice Toal said in her little kind
24 of appellate ad, you know, there might be one, two issues
25 in most cases, you know, sometimes three or four.

Robert Dudek
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1 But you're trying to narrow it down and have a
2 strategy of how to win the case.

3 Q. Do you have a duty to raise all issues that are
4 preserved on appeal?

5 A. No.

6 Jones v. Barnes says it is a duty -- it is a
7 right and a duty of appellate counsel to pick and choose
8 between preserved issues.

9 Q. What issues did you decide to raise in this
10 particular case?

11 A. In this particular case I raised the denial of
12 the severance.

13 Which, you know, usually you wouldn't think much
14 of a severance issue. It can be kind of like a
15 continuance. It can be a big loser on appeal.

16 Here there were some atmospherics that really
17 made it different. There were five defendants, as I
18 recall, tried at the same time. Our Supreme Court, in a
19 couple of past cases -- one I was involved in -- State vs.
20 Baroso, and prior cases, State v. Gunn and Stress, don't
21 have these mass trials. The Court going back into I guess
22 the felony case in the '80s, the Stress, the dangers of
23 multiple trials.

24 Here I think, you know, Mr. Palmer had done a
25 good job, as had some of the others, in trying to point

Robert Dudek
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1 out the unfairness of what five defendants being tried
2 together, how that would prejudice Mr. Harris and also
3 potentially the others. You know, they pointed out that
4 they would look disorganized, there would be five of them
5 all sitting there together. I know in my brief I raised
6 some of the other grounds that were brought up.

7 And, you know, I didn't know until I sat here
8 today kind of what had happened obviously prior to the
9 trial because I try to explain to my clients, Mr. Harris
10 included, I wasn't at the trial or what happened before, I
11 didn't know.

12 But one of the things I had pointed out in my
13 brief, I found kind of interesting here this afternoon,
14 was that by allowing five defendants to be tried together
15 -- you know, the usual arguments, which I think are good,
16 are that the jury is going to lose track of five guys on
17 trial for say five different charges, twenty-five charges,
18 and they're not going to be able to tell Mr. Harris apart
19 from say Mr. Tyler or the others.

20 But here, one thing that's interesting -- kind
21 of not talking about this particular case, I pointed out
22 in my brief was if you try them separately, that does put
23 some pressure on the solicitor, here, Mr. Pascoe, to go to
24 the defendants individually and to work harder on swinging
25 them over to testify against the other defendants.

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1 So that was kind of interesting today to hear
2 what had occurred before the trial, because that was
3 another factor.

4 So, again, severance, usually wouldn't think
5 much of it as an issue. But our Court had stressed, you
6 know, don't try three, four, five people at trial at one
7 time, it's really not a fair thing. And being involved in
8 Baroso and some of the other cases I had, I was kind of
9 aware of what -- why I still, you know, consider just the
10 unfairness of doing that, for what it's worth coming from
11 me.

12 Q. So you thought the severance issue was the
13 strongest issue you could raise on appeal?

14 A. I did.

15 Q. Mr. Harris talked about the directed verdict
16 issue. Was that something you considered?

17 A. Yes.

18 You always consider -- you always consider
19 directed verdict.

20 Again, the withdrawal thing was brought up. And
21 Mr. Tyler, again, in his testimony, you know, did admit
22 that Mr. Harris came out of there, said he didn't want
23 anymore part of this. That did come out during the trial.
24 Unfortunately, what also came out was Mr. Tyler's claim
25 that Mr. Harris went back inside and tied up, you know,

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1 with duck tape, the victim.

2 Now, you know, again, one thing I try to stress
3 to my clients: it's hard to understand, not being a
4 lawyer, that, you know, the appellate court doesn't judge
5 the credibility of the witnesses. They're not going to
6 sit up there as an appellate court and decide Mr. Tyler,
7 or this witness or that witness was telling the truth.
8 You know, they -- if there -- if they say, you know, Bob
9 Dudek came out and said, I don't want to participate in
10 the crime, but then Dudek went back in, he could be the
11 biggest liar on this planet. But as a defendant, and then
12 later as an appellate attorney, I mean, I'm stuck with --
13 I'm stuck with that as being evidence, as being direct
14 evidence.

15 And, you know, there was also something, again,
16 at some time in May, as I recall, that Mr. Harris had sold
17 the gun. Again, you know, if they -- not meaning he's
18 guilty, but there would be further circumstantial
19 evidence. And, you know, my memory is, you know, David
20 Pascoe, he's obviously an outstanding prosecutor, but, you
21 know, he stressed the hand of one in his thing.

22 You know, subsequently, there have been some
23 interesting directed verdict cases, I think a couple of
24 mine, State v. Bostic and State v. Odoms. And, you know,
25 our court, our Supreme Court, has really been very

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1 excellent, you know, in more recent years on directed
2 verdict cases. Given that this was a hand of one case,
3 and given Tyler's testimony, I'm -- even though there was
4 evidence of withdrawal, that he went -- that Mr. Harris
5 went back in there, I didn't see this as a directed
6 verdict case.

7 And, you know, if I'm wrong, then, you know, I
8 certainly would want the Court to say I'm wrong and for
9 Mr. Harris to go home. That's the way I saw it at the
10 time.

11 Q. Moving on from that. How do you typically
12 communicate with your clients?

13 A. We have -- or we take collect calls from all of
14 our incarcerated clients. When we open a file we send a
15 letter to Corrections, which we sign, saying don't monitor
16 our phone calls. And they're allowed to call collect.

17 And, also, you know, we can come -- I guess to
18 fully answer the question, you know, with my clients
19 usually on initially phone calls or letters I say, look,
20 you know, I wasn't in your trial and until I read this
21 transcript, I'm not going to know what it's about.

22 Because usually, initially when I talk to
23 clients, they call in and it's kind of, well, this guy was
24 lying, this guy was lying, this guy was lying. And I try
25 to explain that's not going to help us on appeal with who

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1 was lying or telling the truth.

2 And I usually ask -- and I don't know if I did
3 this in Mr. Harris' case, might have and might not have --
4 but usually I will say, you know, why don't you just write
5 me a letter pointing out parts in your transcript that you
6 want me to look at, as far as objections; I'm going to
7 look at them anyway; but I'll look also back at your
8 letter once I read the transcript.

9 And I typically tell my clients, you know, don't
10 -- please don't get a rip-writer in the jail to write me
11 about due process, you know, fundamental fairness, God and
12 country and all that, because it's really not going to do
13 me any good. But if you want to give me a list of things
14 to look at, I will look at them.

15 That's my usual practice. And, again, I don't
16 know if I did that with Mr. Harris.

17 MR. MITCHELL: Thank you, Mr. Dudek. That's all
18 the questions I have. Please answer any questions
19 that Mr. Brooks has.

20 THE WITNESS: Yes, sir.

21 MR. BROOKS: Mr. Dudek, how are you?

22 THE WITNESS: I'm doing well, Mr. Brooks.

23 - - -

24 - - -

25 - - -

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CROSS-EXAMINATION

BY MR. BROOKS:

Q. As far as taking a call or corresponding, you don't know if you actually did that with Mr. Harris, that's just your practice? Is that not my understanding?

A. Yeah. That is correct.

Q. And the issue you raised in his case was the denial of the severance motion?

A. That's correct.

Q. And that was because you felt that that was the strongest issue after reading through the transcript?

A. That's correct. Yes, sir.

Q. And did you -- you communicated that to Mr. Harris?

A. I do not know if I specifically said that to Mr. Harris.

I did -- I was in the courtroom when he testified about, you know, some conversations between us and apparently me saying, I'll do my best.

When I'm trying to put this together, what I probably was saying was I haven't gotten to your case yet, when I get to it, you know, I promise you I'll do the best job that I can. And I think I'm, you know, a man of my word on that or at least, you know, I try to be.

Q. And just for background information, generally

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1 how many cases would you handle? What's the typical
2 appellate case load?

3 A. Well, I guess the best way to answer that, when
4 I was being cross-examined by Derrick Inderling [phonetic]
5 one time on a case in Greenville -- and I hope this makes
6 a point, Mr. Brooks --

7 Q. That's fine.

8 A. -- he says, well, Mr. Dudek, how many cases do
9 you do a year, appellate defender? About a hundred? And
10 I said, you know, you're very close, let's do the math.
11 That that was -- if I did two briefs or -- week, that
12 would be eight a month times ten months, that would be
13 eighty. Add on two more months, that's about ninety-six;
14 yeah, you're pretty close to right-on to what we do.

15 Q. And two briefs a month, eight a month, just
16 under a hundred for a year.

17 A. Again, you know, it's always going to be -- I
18 think my -- you know, my first year at appellate defense.
19 It's gone down. I think I did about a 120. But, again,
20 Mr. Brooks, you know, round figures.

21 Q. Yeah. Sometimes a little less, sometimes a
22 little more --

23 A. Yes, sir.

24 Q. -- depends on the cases that come through.

25 And I know Mr. Mitchell may have asked you this,

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1 but do you feel you raised all of the issues in Mr.
2 Harris' case that were meritorious?

3 A. Well, let me say this. I've been questioned
4 about directed verdict, and I gave my reasons. I didn't
5 think I would win on it. If I'm wrong, I want Mr. Harris
6 to get relief. I don't want anybody to suffer because of
7 my mistake.

8 The other ones I remember are being, you know,
9 Batson. And I think that was conceded -- that issue was
10 kind of conceded away after the prosecutor, Mr. Pascoe,
11 gave his reasons.

12 I'm really -- you know, if you want to help me
13 out here and mention some other meritorious issues. I'm
14 not really remembering those.

15 I mean, I know there was the complaint about the
16 last -- loss of last argument. And I hate that, and I
17 think that's terribly unfair that, you know, one out of
18 five attorneys can introduce something, sometimes a
19 totally useless exhibit, and, you know, the rest of y'all
20 lose the right of last argument as trial lawyers. But, I
21 mean, that's the law.

22 It is the law. You know, maybe I could have
23 argued it as a novel issue. But that's been the law. And
24 I hope it, you know, changes sometimes soon.

25 I think there's a -- my memory is I think it was

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1 a change of venue. You know, a change of venue is about
2 impossible to win on, even in death penalty cases because,
3 you know, as long as you have voir dire and jurors come
4 forward and say, you know, I can put it aside, you're not
5 going to win it on appeal. That might be a little too
6 broad of a statement, but I don't think very much.

7 MR. BROOKS: Beg the Court's indulgence, Judge.

8 THE COURT: Take your time.

9 [Whereupon, Mr. Brooks and Mr. Harris confer]

10 MR. BROOKS: No other questions, Judge.

11 MR. MITCHELL: Nothing in response, Your Honor.

12 THE COURT: You may step down. And I believe
13 you are free to go.

14 THE WITNESS: Thank you, Judge.

15 THE COURT: Thank you. It's nice to see you.

16 THE WITNESS: Good to see you.

17 [Whereupon, Mr. Dudek is excused and exits the
18 witness stand]

19 THE COURT: Call your next witness.

20 MR. MITCHELL: Your Honor, the State rests.

21 THE COURT: Any rebuttal?

22 MR. BROOKS: No, ma'am.

23 THE COURT: Any argument?

24 MR. BROOKS: Judge, be that as it may, you heard
25 my client testify why his appellate counsel and his

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1 trial counsel was ineffective, and we would basically
2 submit that to the Court and strongly request that my
3 client be granted a new trial, post conviction relief
4 be granted, based on the testimony that you've heard
5 here today.

6 MR. MITCHELL: Your Honor, it's the State's
7 position that applicant has not met either prong of
8 Strickland. I don't think he's presented any credible
9 testimony to support that counsel -- either counsel,
10 trial or appellate counsel, acted unreasonably.

11 I think, you know, the failure to enter into
12 plea negotiations, I think Solicitor Pascoe would not
13 have entered into any of those unless applicant agreed
14 to testify.

15 I think that brings us to the right to whether
16 he was advised of his right to testify. I think his
17 attorney clearly did that multiple times. Judge Dixon
18 also did it on the record.

19 I think withdrawal was probably the best defense
20 in this case, and that's exactly what Mr. Palmer
21 hammered the whole way. He argued it in opening, he
22 crossed the State's witness, Mr. Tyler, on it, and he
23 also argued it in closing.

24 And as far as ineffective assistance of
25 appellate counsel goes, appellate counsel is not

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1 required to raise every non-frivolous issue that is
2 presented by the record. Appellate counsel has a
3 professional duty to choose among potential issues
4 according to their merit, and I'm quoting to Jones v.
5 Barnes, in that case, and I think that's exactly what
6 Mr. Dudek did. He went through and picked up the
7 issue that he thought was strongest and raised that
8 issue on appeal. Thank you.

9 THE COURT: Any response?

10 MR. BROOKS: Judge, I know the State, and I know
11 they -- my client so bad with their argument. Judge,
12 we just think that it clearly existed to my client how
13 this trial went and the deficiencies he testified.
14 There's ample evidence enough to give him a new trial.

15 THE COURT: I'm going to take the matter under
16 advisement.

17 Please submit proposed orders by November the
18 14th. November 14th. Thank you.

19 Good luck to you, Mr. Harris. Thank you.

20 [PCR CONCLUDES AT 3:06 P.M.]

Harris vs. The State

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the PCR hearing held before the Honorable Kristi L. Harrington, on Wednesday, October 29, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 14th day of July, 2016.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Walter Lee Harris, #344193,

2015 JAN 15 AM 11:42
FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2013-CP-38-00118

ORDER OF DISMISSAL

ATTEST: TRUE COPY

Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

THIS MATTER COMES BEFORE THE COURT pursuant to an application for post-conviction relief (PCR) filed January 17, 2013, and amended January 22, 2013. Respondent made its Return on May 7, 2013, requesting an evidentiary hearing be convened. Andrew B. Farley, Esquire, was appointed by the Orangeburg County Clerk of Court. Charles T. Brooks, III, Esquire, then took over representation of Applicant. Applicant filed a Motion for Funding in order to hire an expert investigator. A hearing was held on said Motion on May 28, 2014, at the Dorchester County Courthouse. Applicant and Counsel Brooks were present. This Court denied that motion by written Order filed August 28, 2014.

An evidentiary hearing was held on October 29, 2014, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Brooks. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Also testifying were Applicant's trial counsel, W. Scott Palmer, Esquire, and appellate counsel, Robert M. Dudek, Esquire. The Court had before it the Orangeburg County Clerk of Court records, Applicant's

South Carolina Department of Corrections records, the PCR application, the Return, the trial transcript, and the appellate records.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was true bill indicted during the May 2010 term of the Orangeburg County Grand Jury for Murder (2010-GS-38-0812), Burglary First-Degree (2010-GS-38-0813), Armed Robbery (2010-GS-38-0814), Possession of a Weapon during the Commission of a Violent Crime (2010-GS-38-0815), and Kidnapping (2010-GS-38-0816). W. Scott Palmer, Esquire, represented Applicant.

Applicant proceeded to a joint trial by jury with four co-defendants on December 10, 2010. On December 17, 2010, the jury found Applicant guilty of Murder, Burglary First-Degree, and Armed Robbery. The remaining indictments were *nolle prossed*. The Honorable Edgar W. Dickson sentenced Applicant to thirty-five years imprisonment for Murder, thirty-five years imprisonment for Burglary First-Degree, and thirty years imprisonment for Armed Robbery, all three sentences to run concurrent.

A Notice of Appeal was filed with the South Carolina Court of Appeals and an appeal was perfected on Applicant's behalf by Robert M. Dudek, Esquire, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense. Applicant raised the following issue on appeal:

Whether the trial court erred by refusing to grant a severance where the state sought to try five co-defendants each charged with murder, armed robbery, and burglary in the first degree since defense counsel correctly argued the jury would have difficulty considering their guilt or innocence separately in a mass trial, where the attorneys were forced to look disorganized to appellant's detriment, and particularly since the Supreme Court has warned about the dangers of multiple co-defendant trial such as this one for a variety of reasons?

The Court of Appeals affirmed Applicant's convictions and sentences on December 5, 2012. *State v. Harris*, Unpub. Op. No. 2012-UP-644 (S.C Ct. App. filed December 5, 2012). The Remittitur was issued on January 4, 2013.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel; and
2. Ineffective assistance of appellate counsel in that counsel failed to raise the issue of directed verdict.

PCR HEARING

Applicant alleged that his trial Counsel was ineffective for not properly advising him of risks and advantages of testifying in his defense. Applicant testified that Counsel failed to advise him that he could have testified in support of his defense of withdrawal. Applicant admitted to smoking marijuana the night of the incident and then going into the apartment where the crimes occurred to buy marijuana from the victim. He testified he left the apartment and went back to the car where his codefendants were waiting. He stated his codefendants told him about their plans to rob the victim, and he then made the decision not to participate in the robbery and claims he remained in the car when the murder and robbery took place. Applicant also alleged Counsel was ineffective in not arguing the defense of withdrawal throughout the trial.

Applicant alleged his trial Counsel was ineffective in failing to hire an investigator and a forensic expert. Applicant testified that an investigator and an expert would have supported his version of the facts. Applicant also alleged that Counsel did not effectively cross-examine codefendant, also a witness for the State, Patrick Tyler. Applicant testified that Counsel should have brought out the fact that Tyler was likely to receive a favorable plea deal in exchange for his testimony against his five codefendants.

Applicant argued trial Counsel was ineffective in failing to secure a plea deal. It was Applicant's testimony that he wanted trial Counsel to attempt to elicit an offer from the Solicitor. Applicant claimed trial Counsel did not advise him of his right to testify. Applicant conceded the State would agree to initiate a plea deal if Applicant agreed to testify at trial as a State witness against his codefendants. Applicant admitted the trial judge reviewed his right to testify in detail and that he told the judge it was his decision not to testify.

Applicant further alleged that appellate Counsel was ineffective for not raising a directed verdict issue on appeal. Applicant testified the direct verdict motion should have been granted and that this issue should have been raised by appellate Counsel in his direct appeal.

Trial Counsel testified that he has been practicing law for over twenty-five (25) years. Trial Counsel testified he was appointed by the Orangeburg County Clerk to represent Applicant. He stated he met with Applicant numerous times. He testified he explained the charges to Applicant and how the State has the burden of proving all elements of the charges. Trial Counsel testified that Applicant was articulate during their meetings.

Trial Counsel testified that he presented a withdrawal theory of defense in this case. He testified that Applicant was part of a group and acted as a recon agent to buy drugs, look around the victim's apartment, and then report back to the group. Trial Counsel emphasized that this was what Applicant had told him from the very beginning of his representation; that he withdrew from the crime when he realized his codefendants planned to rob the victim.

Trial Counsel testified he encouraged Applicant to testify and actually advised him that he must testify in order to get the withdrawal defense in front of the jury. He stated there was no doubt Applicant was present at the scene when the murder and robbery took place. Trial Counsel testified he successfully argued for a jury charge on withdrawal. Trial Counsel testified he urged

Applicant to testify on many occasions even after the State rested. Trial Counsel testified he prepared a letter to Applicant where he set out what he believed were his three options after the State had completed its fifth day of testimony. These options were that Applicant could continue the trial, but it was trial Counsel's opinion that it was highly likely Applicant would be convicted on all three charges. The other two options were that Applicant could also plead guilty "straight up" to all three charges or he could take the stand in his own defense. Applicant decided not to testify and instead to continue on with the trial. Trial Counsel testified he presented a withdrawal defense theory to the jury and argued it thorough the trial in opening arguments, on cross-examination of State witnesses, and in closing arguments.

Trial Counsel testified there was no need for an investigator because there was no doubt Applicant was at the scene when the crimes were committed. He also stated he thought there was no reason to employ a forensic expert because he could not prove or disprove whether Applicant shot a gun or was present when the victim was robbed and murdered. The State did not plan to offer any evidence of gunshot residue linking Applicant to the crime.

Trial Counsel testified he cross-examined the State's witness Tyler in order to challenge his version of the facts. He also cross-examined him on the charges he was currently facing and whether he had received a favorable plea deal in exchange for his testimony against Applicant and his other codefendants.

Trial Counsel stressed there were no plea negotiations before trial. He testified he was able to arrange a meeting with the deputy solicitor, lead investigator, and Applicant to discuss whether a plea deal could be worked out the day before the State rested. Applicant was able to tell his version of the facts and that he withdrew his participation, but it was noted there was also evidence that Applicant reentered the scene and actually tied the victim up before he was shot.

Trial Counsel testified the solicitor stated that in order for a plea offer to be extended, Applicant would have to testify against his codefendants. Trial Counsel testified he reviewed this with Applicant, who then declined the offer to testify as a witness for the State.

Appellate Counsel testified he has been practicing law for twenty-nine (29) years, twenty-five (25) of which representing indigent defendants in their criminal appeals. Appellate Counsel testified he has likely handled somewhere between 1,500-2,000 murder appeals over his career.

Appellate Counsel testified when deciding which issues to raise on appeal he first determines what issues are preserved, takes notes from witnesses, and tries to form a strategy giving his client the best chance to win on appeal. He testified he does not have a duty to raise all preserved issues. Appellate Counsel testified he raised the issue of severance because he thought it was the strongest issue citing circumstances that trying five codefendants together can raise issues with the jury losing track of which evidence pertains to which specific defendant. Appellate Counsel testified he considered raising the denial of the directed verdict motion on appeal, but decided against it because the solicitor stressed "the hand of one, hand of all" theory of liability and because Tyler's testimony directly implicated Applicant. He concluded this was not a directed verdict issue case.

APPLICABLE LAW

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. Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* (citing *Strickland*, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, Applicant's appellate records, and the legal arguments made by the attorneys. 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.

Failure to Advise of Right to Testify and Present Withdrawal Defense

This Court finds Applicant failed to meet his burden to prove Counsel was ineffective in advising him of his constitutional rights to testify. "An on-the-record waiver of a constitutional or statutory right is but one method of determining whether the defendant knowingly and intelligently waived that right." *Brown v. State*, 317 S.C. 270, 272, 453 S.E.2d 251, 252 (1994). "The same principles apply to the lack of a knowing and intelligent waiver of the defendant's right to testify at trial." *Id.* "The Fifth Amendment provides that [n]o person ... shall be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V. The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes the opportunity to tell the jury his version of events. On the other hand, if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions. Rule 609, SCRE. If a defendant chooses not to take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant's failure to testify cannot be held against him or considered by the jury in any manner during its deliberations. *Brown v. State*, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) (internal quotations omitted). This Court finds Counsel adequately advised Applicant on his fundamental constitutional rights at issue. It is apparent from trial Counsel's testimony that Applicant was well aware of his constitutional rights to testify. The record fully supports this conclusion as the trial judge entered a thorough colloquy on the matter where Applicant knowingly, intelligently, and voluntarily made the ultimate decision not to testify.

This Court finds Applicant's contention that he was allegedly prejudiced by trial Counsel's advice because had he testified, he would have been able to tell the jury how he withdrew from the crimes. This Court finds trial Counsel not only properly advised Applicant of his Constitutional rights to testify, but rather he urged him to testify in his defense. Counsel's

testimony shows that he met with Applicant after beginning the trial and advised him to testify and that by doing so there was a possibility he could be acquitted on one or more of the charges. This Court finds this allegation is denied and dismissed.

This Court finds Applicant's allegation that trial Counsel was ineffective in failing to present the defense theory of withdrawal to be without merit. The record fully supports trial Counsel's testimony that he argued Applicant withdrew from the crimes as it is clear that was trial counsel's strategy in presenting the case to the jury. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). This allegation is denied and dismissed.

Failure to Investigate

Applicant's allegations that Counsel was ineffective for failing to hire an investigator and a forensic expert are also without merit. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998).

Applicant specifically argues Counsel was ineffective for failing to hire an investigator and a forensic expert. This Court finds this allegation is without merit. This Court finds Counsel's testimony both credible and very persuasive on this issue. This Court finds Applicant

failed to meet his burden of proving trial Counsel was ineffective in failing to properly investigate the case, as there was no need for either an investigator or a forensic expert. There was ample evidence in the record to show that Applicant was present at the scene, including the three statements he gave to investigators. Applicant never denied being at the scene, but rather, that he withdrew when he learned of the plan to rob the victim. No forensic testing would have supported Applicant's version of events as he was not alleged to have fired a gun. This Court finds Applicant has not presented any evidence that could have been discovered by an investigator or a forensic expert. Applicant did not present any testimony at the hearing regarding what a forensic expert would have concluded and how that would have supported his case. The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). This Court will not speculate on this issue and finds Applicant has failed to carry his burden of proving Counsel was ineffective for failing to investigate his case.

Failure to Effectively Cross-Examine State Witness Tyler

This Court finds Applicant has not demonstrated trial Counsel was ineffective for failing to more thoroughly cross-examine the State's witness Patrick Tyler. Applicant's primary contention is that trial Counsel should have elicited testimony from Tyler that he was promised a favorable plea deal and recommendation from the State if he testified against Applicant and codefendants. The record indicates trial Counsel thoroughly cross-examined Tyler on whether he had been promised anything in exchange for his testimony. It is noteworthy that Tyler still had pending murder and armed robbery charges when he testified at trial which he admitted at trial on cross-examination. He also did not have a formal agreement with the State to reduce those charges. In light of trial Counsel's thorough cross-examination of the witness on this exact point,

the Court finds Applicant has not shown either a deficiency or prejudice from trial counsel's performance. *See Skeen v. State*, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997) (court will not "speculate whether a 'better' cross examination would have helped" a defendant's case).

Failure to Effectuate a Favorable Plea Deal

This Court finds Applicant has failed to meet his burden in proving trial Counsel was ineffective in not effectuating a favorable plea deal. A defendant has no constitutional right to a plea bargain. *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). The State has the discretion to offer a defendant the opportunity to enter a plea as opposed to calling a case for trial. *State v. Blakely*, 402 S.C. 650, 658, 742 S.E.2d 29, 33 (Ct. App. 2013) (quoting *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012)). Trial counsel has no general duty to initiate plea negotiations. *Van Wart v. United States*, CRIM. RWT-07-0492, 2013 WL 3788535, at *3 (D. Md. July 18, 2013) (quoting *United States v. Pender*, 514 Fed. Appx. 359 (4th Cir. 2013) (unpublished)). When negotiating a plea on behalf of a defendant, counsel is merely required to "fully communicate with the client so that the client can make an informed decision regarding any proposals by the State." *Davie v. State*, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009). This Court finds the State never made a plea offer to Applicant. There were no offers made by the solicitor prior to trial. During trial, trial Counsel and Applicant were advised that no plea offer would be extended unless Applicant agreed to testify against the codefendants. Applicant declined to testify as a witness for the State, so no plea offer was extended.

Accordingly, as to issues related to trial Counsel, this Court finds the Applicant failed to prove the first prong of the *Strickland* test – that trial Counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds the Applicant failed to prove the second prong of *Strickland* – that he was prejudiced by trial Counsel's

performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. *See Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

Ineffective Assistance of Appellate Counsel

Finally, this Court finds Applicant's allegation that appellate Counsel was ineffective is without merit. A defendant is constitutionally entitled to effective assistance of appellate counsel. *Evitts v. Lucey*, 469 U.S. 387, 396 (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, 526 (1990) (citing *Jones v. Barnes*, 463 U.S. 745 (1983)). Appellate counsel has a professional duty to choose among potential issues according to their merit. *Jones*, 463 U.S. at 753. 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, 1235 (4th Cir. 1985).

An applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. *Thrift*, 302 S.C. at 537, 397 S.E.2d at 526; *Strickland*, 466 U.S. at 687. 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). Furthermore, the applicant must prove prejudice by showing "there is a reasonable probability he would have prevailed on appeal." *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003) (citations omitted).

This Court finds Applicant failed to meet his burden of showing appellate Counsel was deficient in failing to challenge the trial judge's denial of Applicant's directed verdict motion.

This Court finds appellate Counsel's testimony on this allegation persuasive. Appellate Counsel briefed what he considered to be the strongest issue on appeal, the severance issue. Appellate Counsel considered raising the directed verdict issue but decided against it as there was testimony directly implicating Applicant. Appellate Counsel made a valid strategic decision not to brief this issue. *See Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992) (Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.).

This Court finds Applicant also cannot show there is a reasonable probability that he would have prevailed on appeal and, therefore, cannot show prejudice. There is ample evidence to support the trial judge's ruling denying the directed verdict motion. "When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. *Id.* When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. *State v. Cherry*, 361 S.C. 588, 593-593, 606 S.E.2d 475, 477-478 (2004). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." *Id.* There was sufficient evidence presented at trial to show Applicant was involved in these offenses. Patrick Tyler's testimony directly implicated Applicant as a full participant in the crimes and that he even tied up the victim before he was murdered. Applicant has failed to carry his burden in proving appellate Counsel was deficient.

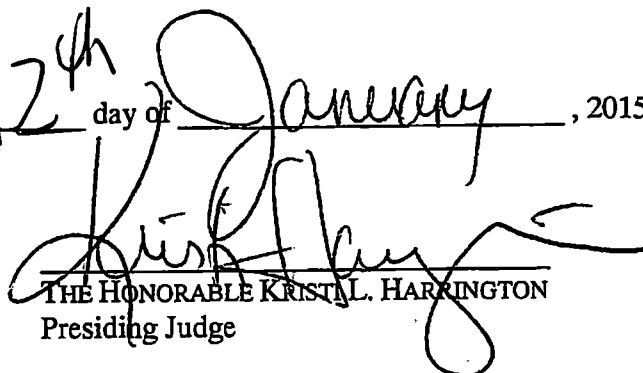
CONCLUSION

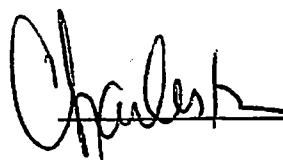
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsels' performance was unreasonable under prevailing professional norms. *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625; *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12th day of January, 2015.


THE HONORABLE KRISTAL HARRINGTON
Presiding Judge

 South Carolina



ALAN WILSON
ATTORNEY GENERAL

April 8, 2014

Lisa Miller, Program Coordinator
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221-1787

Re: Mario Shivers, #344174 v. State of South Carolina
2013-CP-38-0016

Walter Lee Harris, #344193 v. State of South Carolina
2013-CP-38-0118

Dear Ms. Miller:

This letter is to inform you that a Post-Conviction Relief hearing has been scheduled for Friday, April 11, 2014 at 10:30 a.m. at the Orangeburg County Courthouse in the above mentioned cases. I am requesting that the inmates be transported to the Orangeburg County Courthouse by 9:30 a.m. Please do not hesitate to contact me should you have any questions or concerns at (803) 734-3737 or by email at MHarrigan@scag.gov.

Sincerely,

Megan E. Harrigan

Megan E. Harrigan
Assistant Attorney General

MEH/ko

cc: The Honorable Edgar W. Dickson, Presiding Judge
The Honorable Winnif Brown-Clark, Orangeburg County Clerk of Court
Charles T. Brooks, III, Esquire
Trisha Allen, Victim's Services

WITNESSES

James Shumpert

Orangeburg County Sheriff

2010002741

ARREST WARRANT NUMBER
M213383

Arrested: March 18, 2010

ACTION GRAND JURY
TRUE BILL

Mary E. W. Brown

Date MAY 12 2010

Foreperson of Grand Jury
Date: May 12, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS38-0812

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

May 10, 2010 TERM

THE STATE
vs.

Walter Lee Harris

Indictment for

MURDER

ATTEST: TRUE COPY
Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-10

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2010 MAY 12 A 11:17
FILED
CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

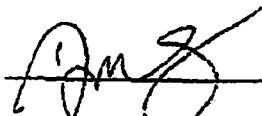
INDICTMENT
2010GS38-0812

At a Court of General Sessions, convened on May 12, 2010 the Grand Jurors of Orangeburg County present upon their oath:

MURDER

That in Orangeburg County on or about March 12, 2010, with malice aforethought, the defendant, Walter Lee Harris did kill one Charles Pringle by means of shooting the victim. The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Donald N. Sorenson, Solicitor

WITNESSES

James Shumpert

Orangeburg County Sheriff

2010002741

ARREST WARRANT NUMBER

M213393

Arrested: March 22, 2010

ACTION OF GRAND JURY
TRUE BILL

Mary Todd W. Brown
MAY 12 2010

Date

Foreperson of Grand Jury

Date: May 12, 2010

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010GS38-0813

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

May 10, 2010 TERM

THE STATE

vs.

Walter Lee Harris

Indictment for

BURGLARY - FIRST DEGREE

ATTEST: TRUE COPY

Winnifred B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-11-311

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED MAY 12 2010
CLERK OF COURT
ORANGEBURG COUNTY, SC

2010 MAY 12 A 11:11

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

INDICTMENT
2010GS38-0813

At a Court of General Sessions, convened on May 12, 2010 the Grand Jurors of Orangeburg County present upon their oath:

BURGLARY - FIRST DEGREE

That in Orangeburg County, South Carolina, on or about March 12, 2010, the Defendant, Walter Lee Harris, did willfully and unlawfully enter a dwelling, 635 Kings Rd., Orangeburg, SC, belonging to Charles Pringle, without consent and with the intent to commit a crime therein, and the defendant or another participant was armed with a deadly weapon and/or caused physical injury to a non-participant and/or used or threatened the use of a dangerous instrument and/or the offense occurred in the nighttime. This offense being in violation of the Common Law and Section 16-11-311, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Donald N. Sorenson, Solicitor

WITNESSES

James Shumpert

Orangeburg County Sheriff

2010002741

ARREST WARRANT NUMBER
M213394

Arrested: March 22, 2010

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury
Date: May 12, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS38-0814

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

May 10, 2010 TERM

THE STATE
vs.

Walter Lee Harris

Indictment for
ARMED ROBBERY

ATTEST: TRUE COPY
Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-11-330(A)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG COUNTY
SOUTH CAROLINA
2010 MAY 12 PM 1:17

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

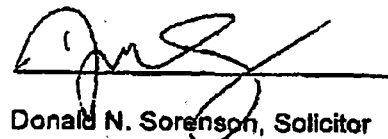
INDICTMENT
2010GS38-0814

At a Court of General Sessions, convened on May 10, 2010 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That on or about March 12, 2010, in Orangeburg County, the defendant, Walter Lee Harris did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, Charles Pringle, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a handgun. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Donald N. Sorenson, Solicitor