

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable R. Ferrell Cothran, Circuit Court Judge

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S.C. SUPREME COURT

ROBERT LEE, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000187

APPENDIX

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Dr. John David Wren
Direct examination by Mr. Bulsa

1 County.

2 Q Would you give the jury the benefit of your education?

3 A I have a bachelor's degree, a master's degree and a
4 Doctor of Philosophy Degree in chemical engineering from
5 Clemson University. I have an M.D. degree from the Medical
6 University of South Carolina.

7 I did a combined anatomic and clinical pathology
8 residency in Charleston County. With my background in
9 research at the university while I was a medical student as
10 well as at Clemson in biological systems, I finished my
11 required 5-year residency in three years and ten months.

12 While I was there I did -- I was the assistant medical
13 examiner for Charleston County from July of 1980 until I
14 left, finishing in the end of January of 1983.

15 I also did forensic autopsies at the Medical
16 University, anywhere from one to eight, every weekend,
17 every fourth weekend a month there, and filled in for the
18 forensic pathologists when they weren't there while I was a
19 resident.

20 I also was the chief resident in pathology, both in
21 anatomic and clinical laboratory while I was there. I
22 passed my first attempt at my anatomic boards in 1984, my
23 first attempt in clinical boards in 1987. So I have a
24 combined board certification in anatomic and clinical
25 pathology.

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1 I fulfilled the requirements for forensic pathology
2 while I was at the medical university to take my exams, but
3 I got relatively busy here and I didn't. I never took
4 them, but I've been qualified as an expert in forensic
5 pathology in probably half the counties in the State of
6 South Carolina. I've never testified outside of the state
7 in any cases.

8 I've been doing all of the forensic pathology exams --
9 autopsies for the county since January of -- well, actually
10 November of 2008. When the other forensic pathologist we
11 had retired it left only me. So I do them all now, and
12 I've about 4,000 autopsies in my career.

13 MR. BULSA: Your Honor, the state would offer Dr. Wren
14 as an expert in forensic pathology.

15 MR. DELANEY: No objection.

16 THE COURT: He is so qualified.

17 Q Dr. Wren, in your position did you have an occasion to
18 perform an autopsy on Rebecca Rosa?

19 A Yes. I did an autopsy on an individual identified by
20 the coroner's office as Rebecca Christine Rosa in the
21 S.R.M.C. autopsy room on June the 15th of 2010 beginning at
22 approximately 5:40 p.m.

23 Q And Ms. Rosa had to be identified through dental
24 records?

25 A Yes.

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Direct examination by Mr. Bulsa

1 Q why was that?

2 A She was moderately advanced decomposed.

3 Q So what was her condition when you first began your
4 autopsy?

5 A She was fully dressed. She had on a navy short-sleeve
6 pullover shirt with a Food Lion insignia on the lateral
7 left sleeve, a pair of tan pants, underlying purple panties
8 with a red waist band and a pair of white footy socks with
9 the right sock only covering the distal aspect of the foot.

10 There were no shoes with the body. The clothing was
11 dirty, and there were maggot eggs all over the shirt and
12 decomposition fluid on the shirt.

13 Q Okay. You took the clothing off her to perform the
14 autopsy?

15 A Well, that was the examination of the clothing.

16 After I removed the clothing she had three defects in
17 the shirt -- one in the front, two in the back, which
18 overlay stab wounds to the lower -- well, to the upper
19 medial left abdomen -- and two to the back. One just below
20 the neck in the left upper back, the other one about just
21 below the scapula of the shoulder blade on the left side
22 sort of in the middle of the area between the, the spinal
23 column, vertebral column, and the side of the body.

24 Q Right before you took the clothing off -- was the
25 shirt fully pulled down over her abdomen?

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1 A Well, not -- no. It was pushed. It was up some.

2 Q Okay. And was there anything protruding from her
3 abdomen?

4 A The defect in her abdomen where she had been stabbed,
5 her intestines had -- as they swelled and as one
6 decomposes, gas is produced. And it pushed the intestines
7 out through the, the defect in the abdomen there.

8 Q Did that affect your ability to examine that wound?

9 A No. You can pull it back through or cut it off, and
10 you can still see the wound. The decomposition affects the
11 wound.

12 Q How did that affect it?

13 A The sides will start fraying and the wound edges will
14 not be as sharp as they would in a fresh stab wound. And
15 it's just artifact that's produced after one starts
16 decomposing.

17 Q Is there any way you can tell how long she had been
18 deceased?

19 A Not really. A lot of it depends on temperature, the
20 conditions of the surroundings. She had been dead at least
21 several days.

22 As a general rule of thumb, one day in the air, normal
23 air, not hot, not real cold -- one day in the air is equal
24 to two days in the water and four days in the ground. So I
25 think probably she'd been dead a little while before she

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1 was, she was buried depending on the history I was given.

2 Q Okay. Just so if somebody actually is not buried it
3 would decompose faster than it would if they were buried.

4 A Yes.

5 Q Okay. So in this instance you can't give us a
6 specific time of death?

7 A No. I can't tell for sure. She did have maggot eggs
8 on her. And with entomology tests and a lot of effort you
9 can sometimes tell how long a person has been dead. But
10 all of the eggs were about the same size, so I don't think
11 it would have helped.

12 Q Based on her stage of decomposition was it easy or
13 difficult to find the wounds that you identified?

14 A No. The wounds were readily apparent.

15 Q All right. And, Dr. Wren, did you prepare a diagram
16 for me to bring to court to demonstrate those wounds to the
17 jury?

18 A Yes. Rather -- well, than show pictures you asked me
19 to try to sketch out where the wounds were, and this is the
20 one I, I used from my notes and from the pictures that I
21 reviewed.

22 Q Okay.

23 MR. BULSA: Your Honor, the state would offer
24 State's 89 into evidence.

25 MR. DELANEY: No objection.

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Direct examination by Mr. Bulsa

1 THE COURT: It's admitted.

2 (Diagram marked State's Exhibit No. 89.)

3 Q You sort of alluded to it, but how many wounds did you
4 actually find on Ms. Rosa?

5 A She had one in her abdomen and two in the back.

6 Q Was her face in any condition for you to be able to
7 examine whether she had any marks to her face?

8 A No. It was real black from decomposition,
9 considerably swollen. It was extremely hard. I did not
10 see any obvious wounds. And without cutting into the face
11 and all one can be fooled by the lividity. If a person is
12 face down for a while blood will settle in there and one
13 can't tell real well as they decompose. The longer and
14 more severely decomposed the worst, worst it is.

15 Q Using State's Exhibit 89, Dr. Wren, would you just
16 identify the wounds you found and describe them to us?

17 A The wounds in the back were not immediately life
18 threatening, so I'll cover those first.

19 The one -- the most superior wound in the back was
20 just below the nape of the neck. It was slightly diagonal.
21 It had a sharp edge at the end and a blunt edge at the top.
22 That wound measured three-quarters of an inch in length.
23 I'm sorry. That's the wrong one. That wound measured
24 seven-tenths of an inch in length, just a little bit less
25 than three quarters of an inch. And it measured about .03

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1 or three-hundredths of an inch in width at the blunt edge
2 with the inferior edge toward the bottom of the body.

3 It did not penetrate anything vital. It just hit. It
4 was just more like -- more or less a superficial wound.

5 Q Okay. Does that wound suggest that this knife was a
6 1-bladed knife to the wound?

7 A Yes, yes. It was consistent. As I said, the blunt
8 edge was superior. The sharp edge was inferior. By
9 Reapproximating wounds, if they haven't gotten extremely
10 decomposed one can usually tell whether there's a thickness
11 to the blade, which in this case was -- the width of the
12 wound was three one-hundredths.

13 Now, I need to tell you about measurements. And I'm
14 going to talk in general terms.

15 If you have a wound in a body that's one inch long
16 that wound does not give the exact dimensions of whatever
17 caused it except under specific circumstances.

18 Now, if one were stabbed and at that time the skin was
19 stretched for any reason and then the blade was pulled out
20 and then the body -- the person died and the skin relaxed,
21 of course the skin's going to shrink some.

22 And on the other hand if it's -- if it's folded in and
23 it comes back out to its normal shape it's going to stretch
24 some. So as a general rule of thumb when one says a wound
25 is one inch, then it can vary plus or minus 25 percent.

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1 So in this case this wound was three-hundredths of an
2 inch in width. So a quarter of that is roughly .01. So it
3 could be from .05 to .02 wide, the blade, to have caused
4 that wound. And of course knives get a little bit thicker
5 toward the hilt of the blade, so one can only say if
6 something's consistent with it. Now, that's that wound.

7 This wound was more decomposed, and it was gapping
8 open. It was very difficult to put it back together. That
9 wound was three-quarters of an inch in length when you
10 pulled it out straight, and it was also 40 one-hundredths
11 of an inch in width or two-fifths of an inch wide at its
12 widest point.

13 And when you pushed it back together one could not
14 tell whether it had a sharp -- you could tell a sharp edge,
15 but you could not tell the, the blunt edge. The sharp edge
16 was inferior, again. So both of those, the sharp edge of
17 the blade was toward the bottom of the body when those two
18 wounds were inflicted.

19 Q What were the depths of those wounds?

20 A That one went through the skin, adipose tissue, the
21 muscle under there. It grazed the bottom of the sixth rib
22 on the left side and barely punctured the lung.

23 Now, depending on whether a person was breathing in or
24 breathing out at that time would make the thickness that it
25 had to penetrate variable.

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1 I estimated that all of these the blade had to be at
2 least two and a half inches in length and probably longer
3 because there was no hilt mark. A hilt mark is if you put
4 a -- stab a person and put all of the way up to the hilt of
5 the blade. Not only will one find where there's little
6 nicks in there and it'll show up in the skin, but as the --
7 as the handle hits the skin it will abrade it.

8 There was none of that on either one of -- either of
9 these wounds. And it probably wouldn't have been anyway
10 because all of these had clothing on them. But so one can
11 estimate the depth and then say it had to be at least that
12 long if you don't see a hilt mark or any other artifacts
13 that a blade, a knife, would have caused.

14 The third wound -- well, this one. Sorry. Go back to
15 the one in the -- in the mid left back. That one
16 penetrated the intercostal artery, which is an artery that
17 runs along the base of every rib. Everyone has an artery
18 running from the spinal -- from the aorta around, all the
19 way around the -- that rib. And that one was lacerated.
20 So a person would be bleeding arterial blood from that.
21 And it caused a hemothorax on the left side from that
22 bleeding.

23 So that one -- this one was only -- the one at the
24 neck was only potentially fatal because the only -- if that
25 would have been the only one they incurred that person

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1 would not have died immediately. They could have died
2 later. So we call it potential, potentially fatal, from
3 infection or various other causes.

4 This one here was intermediately fatal, which if it
5 did not clot off -- and our arteries do not clot off very
6 easily -- and was not corrected it would have continued to
7 bleed and would have led to death a little bit later. So
8 that one was potentially fatal.

9 The immediately fatal wound was in the abdomen, and
10 that wound was what we call an in-and-out stab wound in
11 that the blade went in and the blunt edge was superior and
12 the sharp edge was inferior. And then either the knife
13 turned or the person turned. And as it came back out it
14 made essentially another cut that was a little bit shorter
15 than the one at the top.

16 And that wound was -- the vertical part or almost
17 vertical part was 1.4 inches in length, almost one and a
18 half inches long, and two-tenths of an inch from the
19 superior portion. This other one occurred that intersected
20 with it. And that arm of the wound was a half-inch in
21 length. Let me make sure. Yes. And the maximum width,
22 the blunt edge, in this case was measured to be
23 two-hundredths of an inch wide. So it was a thinner wound
24 than this one here, although they're both within the same
25 range.

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1 And that one passed through the intestines, portion of
2 the small intestine called the jejunum in two places.

3 As it passed more posteriorly into the body it
4 actually caused a wound through the aorta. It actually
5 incised the aorta. And the aorta is the biggest -- it's a
6 big blood vessel that comes directly out of the heart.

7 It goes up to behind the sternum just about -- I mean
8 the -- where the top of the sternum or the chest plate is.
9 And then it descends all the way into the lower abdomen and
10 gives off vessels to the legs and to the pelvis.

11 And that -- depending on how, how big the wound is, a
12 person bleeds very quickly because there's nothing
13 obstructing it except the soft tissues of the back in that
14 case, which are very thin in that area unless a person is
15 extremely overweight.

16 So this is the immediately fatal wound. It would have
17 had to have been clamped off immediately and repaired or
18 the person would have bled to death. So that wound was the
19 immediately fatal wound.

20 So I assigned a cause of death as exsanguination
21 meaning she bled to death secondary to stab wounds to the
22 abdomen and back because these -- this one particularly did
23 contribute some to it.

24 Q Okay. You gave us the approximate -- how long the
25 knife would have had to have been, at least two and a half

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1 inches.

2 A Yes. Now, the reason I say that is because if you
3 pull your chest -- if you pull your stomach in you've
4 got -- you know, some people can pull it in to where it's
5 only like that. And then if you push a knife in it's going
6 to give too.

7 So unless you have a solid object that doesn't give at
8 all you cannot tell exactly how deep it is. But it went
9 all the way into the back in front of the spinal column.
10 And, by the way, the -- well, it hit the vertebral column,
11 the bone of the vertebra back there.

12 Q Okay. So it basically went all the way almost through
13 her but it hit the vertebra.

14 A Yeah. It hit the underlying vertebra.

15 Q Okay. And you gave us the approximate depth. How
16 about the width, the width of it?

17 A I said it was two-hundredths of an inch wide.

18 Q Is that thickness?

19 A Yes.

20 Q What's the other dimension we're looking for?

21 A Length. Length is how long the blade is.

22 Q Okay.

23 A Width is how far it is from the blunt edge to the
24 sharp edge at its maximum point, or all the way through.

25 You know, if you have a -- if you stab somebody with

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1 the point of a knife it's not going to be very -- and then
2 it comes up to the maximum width usually near the, near the
3 handle, that's the -- that's the width of the blade. And
4 then the thickness of the blade is how thick it is.

5 Q Okay. So the width --

6 A But when you measure -- when you measure wounds it
7 only has a depth, which is equivalent to the length. A
8 width -- I mean, a length of the wound itself, which is
9 equivalent to the width of the blade, and a width of the
10 wound, which is equivalent to the thickness of the blade,
11 because we're measuring in two dimensions.

12 Q Yes, sir. So that middle dimension is what,
13 approximately an inch and a half?

14 A Well, yeah. Well, it could be only an inch.

15 Q Okay.

16 A The reason is because this wound here in the, in
17 the -- it could have been longer than that because it could
18 have been pulled down.

19 Q Okay. Now, do you have an expert opinion as to the
20 amount of force that would have been used?

21 A No. You can't tell that.

22 Q You can't tell the amount of force?

23 A I don't know how, how to do that. It's not, it's
24 not -- you know, if somebody -- if there was a knife
25 sticking up on the floor and somebody fell on it, then that

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Direct examination by Mr. Bulsa

1 would be sufficient because there's no give to it on the
2 floor. But if you were stabbing somebody and you pushed it
3 in, you can of course push it in depending on how sharp the
4 knife is, or the person can run up against it, or you could
5 run and stab them. So you can't tell.

6 Q How about --

7 A And besides, if I gave you a pound's force nobody
8 would understand that anyway.

9 Q Okay. Are these wounds consistent with somebody being
10 over the top of her stabbing her?

11 A The two in the back -- the person -- those are -- were
12 relatively hard unless a person was considerably tall,
13 particularly this one. That would be either the person
14 were downed and they were standing over them. This one
15 here is not low enough to -- for the person to have done
16 like this and stabbed them.

17 So, so those cases a person was either leaned over and
18 they were stabbed or they were down and they were stabbed.
19 They're not consistent with both of them being standing
20 straight up, I don't think.

21 Q And the one to the middle?

22 A This one here the blade itself, the weapon itself,
23 most people when they hold a knife if they're going to stab
24 someone, they hold the sharp edge down. I don't know
25 anybody that holds the sharp edge up. I've never seen

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Direct examination by Mr. Bulsa

1 anybody do that. Now, if they're going to push at them
2 like this they'll hold the sharp edge up.

3 So I can't tell you which way they were. All I can
4 say is the sharp edge was down. If, if -- and it was going
5 slightly down. So if the person were lying down the person
6 would have stabbed them that way. If they had -- if --
7 it's hardly any way that the person could have had the
8 sharp edge up and stabbed them that way. That's just not
9 consistent.

10 Q Okay.

11 A Now, if you want to postulate the person was down,
12 then the person would be down in this area to stab them.
13 If they were at their head the sharp edge would probably
14 have been up. That's all I can tell you.

15 Q So there is no way you can tell for certain by the
16 wounds as to the position of the attacker to the victim.

17 A Just the relative positions.

18 Q Okay. Can you give us an opinion as to how long Ms.
19 Rosa would have been conscious?

20 A Would have what?

21 Q Would have been conscious after receiving these
22 wounds.

23 A That, that's also difficult because I give the example
24 where I went to a scene one time and the person had been
25 shot with a primitive weapon and it actually blew their

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Direct examination by Mr. Bulsa

1 heart apart. The heart was^e -- had stopped beating
2 essentially. It was still beating a little bit because it
3 was quivering.

4 That person left the front of a Piggly-wiggly store
5 where the cash registers are, ran all the way back to the
6 back of the store, jumped over a refrigerator -- one of the
7 open refrigerator things -- went through the door behind it
8 and collapsed going out the back door of the building.

9 So I usually say that a person once they've lost
10 enough blood for their brain not to get enough oxygen, they
11 can probably last for about as long as they can hold their
12 breath.

13 So, you know, I can't tell you how long she could have
14 held her breath. She lost enough blood to where it would
15 have only been at the most two or three minutes before she
16 would have collapsed and become unresponsive based on how
17 much you can lose at a time. But that's not to say that,
18 you know, she didn't tamp or nod a little bit. But if it
19 were open it would have been, been certainly less than five
20 minutes.

21 Q Okay. Were you able to determine her height and
22 weight?

23 A She was 5'7". Well, her length was 5'7", which I need
24 to add to that too. If a person is -- whatever their
25 length is when they die, some of their muscles relax and

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Direct examination by Mr. Bulsa

1 all. So, generally speaking, the length of the body is --
2 can be plus or minus almost two inches to what their
3 standing height is. But I measured her 67 inches long,
4 which is 5'7". And I had to estimate her weight. It was
5 140 pounds.

6 Q Estimated by eyesight?

7 A Pardon?

8 Q You estimated my viewing her body?

9 A Yes.

10 Q Okay.

11 A what it would have been, because as one decomposes
12 they lose weight from the decomposition fluid running out,
13 which is part of the body. And they bloat up from the
14 swelling of the tissues. So you have to put all of that
15 together and, and, and try to estimate it. She wasn't
16 overweight. And, in fact, she was probably about normal
17 size for her height --

18 Q Okay.

19 A -- or length.

20 Q Dr. Wren, did you recover any portion of her body for
21 further testing?

22 A Liver.

23 Q And why?

24 A Because there was no, no blood that wasn't
25 contaminated by either decomposition or, or intestinal

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Direct examination by Mr. Bulsa

1 contents. So I took portions of the liver for toxicology.

2 Q Were you able to put those in the refrigerator there
3 in the morgue?

4 A Yeah. We put them in -- in cases of decomposed bodies
5 if we can't get any virgin blood or blood that's not
6 possibly contaminated we always take two vials of about a
7 hundred grams apiece of liver. And we freeze both of
8 those. One in this case was sent to SLED. The other one
9 is saved for posterity.

10 Q The coroner's office would be the one that --

11 A We lock them in the refrigerator as soon as the
12 autopsy is finished. There's a log kept of them. And the
13 coroner comes, and he has a key to the refrigerator,
14 whoever is assigned to that part of the coroner's
15 investigation. And they take them directly to SLED --

16 Q Okay.

17 A -- and sign out who took it out.

18 Q Okay. Dr. Wren, my last question would be if Ms.
19 Rosa -- her body had fully decomposed due to it being
20 buried, how difficult would it have been to determine her
21 cause of death?

22 A If she would have completely decomposed?

23 Q Yes, sir. She would not have been --

24 A There was a nick in her vertebral column. So one
25 would have postulated that it was a stab wound.

Dr. John David Wren
Cross-examination by Mr. Delaney

1 Q That's the one --

2 A The one in the back.

3 Q -- in the back.

4 A I mean the one in the front, yeah. You could have
5 seen that nick if when you -- we've had several cases where
6 we found nicks in the -- either in the ribs or in the chest
7 plate or in the head or somewhere where we -- they wouldn't
8 have been there if they hadn't been stabbed.

9 Q And you also had the mark to the rib which you
10 commented about went to the back.

11 A Yeah. You could have seen that mark too, right.

12 Q Thank you, Dr. Wren. Answer any questions Mr. Delaney
13 may have.

14 CROSS-EXAMINATION

15 BY MR. DELANEY

16 Q Good afternoon. Is there any way of knowing the
17 sequence in which these three wounds occurred?

18 A No, sir.

19 Q Is there any way of knowing based on your autopsy of
20 this body if there was any type of mutual combat engaged in
21 by Ms. Rosa?

22 A Well, as I told the solicitor, we examine the bodies
23 as well as we can. If we see anything that looks like
24 injuries and if it's not on actually the face, then we take
25 sections and pictures of it. And I did not see any that

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1 could not be attributed to decomposition.

2 Q would it have been -- based on the decomposition --
3 decomposed state of the body would it have been difficult
4 to tell?

5 A what?

6 Q If there was mutual combat or any other --

7 A If she didn't have any injuries, yeah, it would have
8 been difficult in that case.

9 Also, in a case if one person has a weapon and the
10 other one doesn't, oftentimes you have defense wounds where
11 the person will grab the knife or put their hands up. She
12 didn't have any injuries to her hands or arms. I can tell
13 you for sure she didn't have any to her hands, arms and
14 legs.

15 Now, she possibly could have had a minor bruise to her
16 face that would have been masked somewhat.

17 There were no injuries to the soft tissues. We
18 reflect the soft tissues back to see if we see any bruises
19 or hemorrhages in any of the tissues, and there were none
20 that were recognizable.

21 So there were no actual contusions or bruises,
22 whatever, whichever you'd rather call them, to the -- to
23 the front part of her body. And I could not document any
24 to her face or her head. We reflect a scalp back too.
25 There were none on the top of her head all the way down to

1 her eyebrows and back to the neck.

2 Q Thank you.

3 MR. BULSA: Nothing further.

4 THE COURT: You may step down.

5 MR. BULSA: We ask Dr. Wren be excused.

6 THE COURT: He may be.

7 (Whereupon, the witness was excused.)

8 MR. BULSA: Your Honor, may I confer with the court
9 reporter briefly?

10 (Pause.)

11 MR. BULSA: Your Honor, the state would rest at this
12 time.

13 THE COURT: All right. Ladies and gentlemen, that is
14 all of the testimony or other evidence be offered by the
15 state, at least in their case in chief.

16 Before we go any further I've got some legal matters
17 I'll need to address with the lawyers. And as soon as I
18 conclude with that we'll bring you back to continue with
19 the balance of the trial. So please retire to your jury
20 room, but do not begin any discussions of the case as of
21 yet.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Mr. Delaney, do you have any motions or
25 other matters to address?

1 MR. DELANEY: Your Honor, I would make a motion for a
2 directed verdict at this time because there has not been
3 sufficient evidence presented for this matter to be handed
4 to the jury. So we would ask the Court as a matter of law
5 to dismiss this case at this time.

6 THE COURT: That motion is denied based upon my
7 recollection and consideration of all of the evidence
8 presented.

9 Any others?

10 MR. DELANEY: No, sir.

11 THE COURT: Have you talked with Mr. Lee about his
12 right to testify or not testify?

13 MR. DELANEY: I have discussed that with him, Your
14 Honor. We've gone over the pros and cons of that. I've
15 talked to him and informed him that ultimately that
16 decision is his decision. But I have talked to him about
17 his right to testify or not testify.

18 THE COURT: All right. Mr. Lee, you've heard
19 Mr. Delaney tell me you and he have discussed your right to
20 testify, as well as your right not to testify.

21 Any time that a person is accused of a crime as you
22 are now, when the case comes to trial you have an absolute
23 right to remain silent. And that just means that nobody
24 can make you take the witness stand and testify during the
25 trial of this case.

1 Nobody can require that you call any witnesses.
2 Nobody can require that you produce any evidence. You have
3 an absolute right to remain silent and to rest upon the
4 state's burden of establishing your guilt to the
5 satisfaction of this jury beyond a reasonable doubt. And
6 you of course never have to assist them in their efforts to
7 prove your guilt by you taking the witness stand and
8 answering any questions or making any statements that might
9 relate to these allegations against you.

10 At the same time, if you wish to testify or if you
11 wish to make a statement to the jury now is the only
12 opportunity that you're going to have to do so.

13 In other words, you can't wait until after the jury
14 has reached a decision and then change your mind about
15 whether you will testify or not.

16 So now is the only opportunity that you're going to
17 have to present any additional evidence either through your
18 own testimony or the testimony of other witnesses or the
19 introduction of other evidence.

20 Do you understand you have a right to testify?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand you have a right not to
23 testify?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that that is your

1 choice?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And only you can make that decision.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you and Mr. Delaney discussed the
6 advantages and the disadvantages of testifying as well as
7 not testifying?

8 THE DEFENDANT: Yes.

9 THE COURT: And do you appreciate what those
10 advantages and disadvantages are?

11 THE DEFENDANT: Yes.

12 THE COURT: And have you had sufficient time to
13 reflect upon your decision as to whether or not you will
14 testify?

15 THE DEFENDANT: Not really.

16 THE COURT: Well, do you need a few more minutes to
17 talk to Mr. Delaney about it?

18 THE DEFENDANT: Yeah.

19 THE COURT: All right. We'll take 15 minutes.
20 Discuss it with your lawyer.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right. Mr. Lee, have you had time to
23 talk to your lawyer about your decision now?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand it's still your

1 decision, he can't make that decision for you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And have you thought about it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And have you come to a decision?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And what is your decision?

8 THE DEFENDANT: I have decided not to testify.

9 THE COURT: All right. And is that a decision you
10 made of your free will and accord?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Anybody force you into it?

13 THE DEFENDANT: No, sir.

14 THE COURT: Anybody pressure you into it?

15 THE DEFENDANT: No, sir.

16 THE COURT: Did anybody tell you that's the decision
17 you ought to make?

18 THE DEFENDANT: They told me it was my decision, my
19 choice.

20 THE COURT: Right. But nobody else told you to
21 testify or not to testify.

22 THE DEFENDANT: No.

23 THE COURT: You made that decision on your own?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And you're satisfied with it?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Mr. Delaney, do you have other
3 witnesses you would like to call?

4 MR. DELANEY: Yes, sir. We've got two witnesses.

5 THE COURT: Okay. All right. Any other matters we
6 need to address before we bring the jury in?

7 MR. BULSA: Yes, sir. Concerning the testimony of
8 these witnesses, neither one was on the witness list
9 presented to the jury. Also, the subject and nature of
10 their testimony we don't believe is admissible or relevant
11 to this matter.

12 THE COURT: All right. Tell me who the witnesses are,
13 Mr. Delaney.

14 MR. DELANEY: Sheera S-H-E-E-R-A, Lee, L-E-E, last
15 name Lee, and Diana Murray, sister of Mr. Lee and cousin of
16 Mr. Lee.

17 THE COURT: And what's the nature of their testimony?

18 MR. DELANEY: Both of these individuals have
19 witnesses -- witnessed episodes in the past wherein Ms.
20 Rosa attacked Mr. Lee with a knife.

21 THE COURT: All right. Mr. Bulsa, do you think that's
22 not relevant?

23 MR. BULSA: Your Honor, we, we have no information of
24 this. We've been through a year and a half preparing for
25 this case.

1 This only came to our attention just this morning. So
2 we had no opportunity to check this information out. We
3 don't know how remote this, these acts, were.

4 THE COURT: Well, do you want to talk to them first?

5 MR. BULSA: If I could, yes, sir.

6 THE COURT: All right. We'll take a break while you
7 talk to Ms. Lee and Ms. Murray.

8 MR. BULSA: Okay.

9 THE COURT: Y'all let me know when you're ready.

10 MR. BULSA: Yes, sir.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Any matters we need to address
13 before the jury is brought in?

14 MR. BULSA: No, sir.

15 MR. DELANEY: No, sir.

16 THE COURT: Okay. Bring them in, please.

17 (The following takes place in the presence of the
18 jury.)

19 THE COURT: All right. Ladies and gentlemen, as you
20 know, the state has rested in their presentation.

21 So we'll now proceed with any to be offered by the
22 defense.

23 Mr. Delaney.

24 MR. DELANEY: Thank you, Your Honor. We call Diana
25 Murray.

Diana Murray
Direct examination by Mr. Delaney

1 DIANA MURRAY, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. DELANEY

4 THE COURT: Let me inquire of the jury.

5 This witness -- I don't think this witness was
6 announced as a potential witness when I recited the list of
7 witnesses prior to your selection.

8 So I'll ask you now does anybody believe that you have
9 any connection whatsoever or you know Ms. Murray from any
10 contacts. If so, indicate by raising your hand.

11 (No response.)

12 THE COURT: Let the record reflect all have answered
13 negatively.

14 All right. Mr. Delaney.

15 Q State your name, please.

16 A Diana Murray.

17 Q Are you related to Robert Lee?

18 A Yes.

19 Q How?

20 A I'm his third cousin.

21 Q Did you witness an episode in the past where there was
22 a physical altercation?

23 MR. BULSA: Objection, Your Honor, as to leading.

24 THE COURT: Well, rephrase it.

25 MR. DELANEY: I'll rephrase it.

Diana Murray
Cross-examination by Mr. Bulsa

1 Q Have you witnessed any events between Ms. -- Ms. Rosa
2 and Mr. Lee?

3 A Yes.

4 Q What have you seen?

5 A In '07 I received a phone call saying that --

6 MR. BULSA: Objection, Your Honor. Hearsay.

7 THE COURT: Sustained.

8 Q Tell the --

9 THE COURT: You can't testify to what somebody else
10 said, but you can testify what you've perceived or
11 experienced or saw yourself.

12 Q Just tell the jury what you saw.

13 A I arrived to the home, and Becky was standing outside
14 crying with a knife in her hand.

15 Q And where was Mr. Lee?

16 A He was standing at the front door.

17 MR. DELANEY: No further questions.

18 CROSS-EXAMINATION

19 BY MR. BULSA

20 Q Okay. Ms. Murray, when was this?

21 A This was in '07.

22 Q And which residence did you go to?

23 A They were staying in the apartment in Duncan.

24 Q What kind of apartment -- part of the building?

25 A Yes, like a regular apartment.

Diana Murray
Cross-examination by Mr. Bulsa

1 Q Okay. And Ms. Rosa was standing outside the
2 apartment?

3 A Yeah, she was standing outside. Well, both of them
4 actually was outside.

5 Q Okay. She was -- where was he? You said he was in
6 the doorway.

7 A He was standing in the front door and she was standing
8 on the sidewalk.

9 Q How far away was she?

10 A It's not that far. It's like a distance, like that,
11 like this. This is -- this is him and this is where she
12 was.

13 Q Okay. Well, you be him and you tell me how close she
14 was to him.

15 A She was like, yeah, right there where you're standing.

16 Q So it was about this far?

17 A Uh-huh.

18 Q Okay. From your perception she was away from the
19 building.

20 A Yes. She was standing in front of the building.

21 Q Okay. Outside of her apartment.

22 A Uh-huh.

23 Q All right. And what kind of knife was it?

24 A It was like a knife that you use to cut like tomatoes
25 and carrots. It wasn't a big knife. It was like next to

Sheera Lee
Direct examination by Mr. Delaney

1 the big knife, like a medium-size knife.

2 Q And she was crying?

3 A Yes.

4 Q Okay. Thank you. That's all I have.

5 MR. DELANEY: No other questions.

6 THE COURT: You may step down.

7 MR. DELANEY: Sheera Lee.

8 SHEERA LEE, having been first
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. DELANEY

11 THE COURT: Let me inquire of the jury also.

12 I don't think this witness was -- her name was called
13 out either.

14 Does anybody on the panel know this witness? If so,
15 indicate so by raising your hand.

16 (No response.)

17 THE COURT: All have answered in the negative. Okay.

18 Q State your name, please.

19 A My name is Sheera Lee.

20 Q Are you Robert Lee's sister?

21 A Yes. I'm his baby sister.

22 Q Did you live in the trailer with him and Ms. Rosa on
23 Miller Road some?

24 A Yes, I did.

25 Q And when was that?

Sheera Lee
Direct examination by Mr. Delaney

1 A It was two years ago in '09, in around August.

2 Q And was there an episode in the middle of the night
3 one time?

4 A It was in the morning.

5 Q Tell the jury about that.

6 A It was probably about 9:00 in the morning. And I
7 heard a conflict between my brother and Becky. And I heard
8 my brother say something about a knife. So I got out of
9 the bed.

10 MR. BULSA: Objection, Your Honor.

11 A Well, I got -- I got outta the bed.

12 THE COURT: You can't say what anybody said. You can
13 tell us what you observed.

14 A Okay. Well, I walked into the living room area, and I
15 seen my brother and Becky standing in the kitchen. And
16 Becky was holding a knife up towards my brother, and my
17 brother responded to Becky to put the knife down.

18 THE COURT: You can't testify to what anybody said.

19 A Well, Becky threw the knife in the sink and she walked
20 off when she seen me.

21 Q And when was that?

22 A This was around August sometime.

23 Q What year?

24 A '09.

25 Q Have you ever seen any other episodes of physical

Sheera Lee
Cross-examination by Mr. Bulsa

1 violence between Robert and Rebecca?

2 A No. Just regular arguments.

3 Q Have you ever seen Robert Lee be physically violent
4 towards Rebecca Rosa?

5 A Never.

6 MR. DELANEY: No further questions, Judge.

7 CROSS-EXAMINATION

8 BY MR. BULSA

9 Q Ms. Lee, the police spoke with you about this case,
10 didn't they?

11 A Yes, sir.

12 Q In fact, you saw Rosa, Ms. Rosa, out the night before
13 she was murdered, didn't you?

14 A Yes, sir.

15 Q Okay. And they basically asked you about if you had
16 seen her, is that right?

17 A Yes, sir.

18 Q Okay. Where was it that you saw her?

19 A At Club Sidelines.

20 Q Okay. And did you tell your brother that you had seen
21 her out there that evening?

22 A I believe it was that Sunday morning when I called to
23 check in on him.

24 Q And why did you call to check in on him?

25 A Because he was already going through so much with not

Sheera Lee
Cross-examination by Mr. Bulsa

1 seeing the kids.

2 Q Okay. And why was he not seeing the kids?

3 A Well, Becky was -- well, I can't -- it was just
4 hearsay.

5 Q Okay. But Becky had left him, right?

6 A Basically, from my understanding my brother left her,
7 but she ended up leaving him because of a situation that
8 she couldn't handle.

9 Q Wait a minute. You're classifying their separation as
10 your brother leaving Becky?

11 A Over a situation.

12 Q Isn't it Becky that left the house?

13 A She left the house, yes.

14 Q She took the kids with her.

15 A And she took the kids.

16 Q She went to a Safe Home.

17 A She went to a Safe Home.

18 Q All right. Now, you're testifying here for the
19 defendant, your brother.

20 A Uh-huh.

21 Q But you're saying you heard a conflict and then you
22 came out and saw your -- I guess not your sister-in-law
23 because they weren't married -- but you saw Rebecca, Becky,
24 in the kitchen with a knife.

25 A Yes.

Sheera Lee
Cross-examination by Mr. Bulsa

1 Q Well, did your brother leave her at that time?

2 A No.

3 Q Were the police called?

4 A No.

5 Q So he didn't leave the house and go to Safe Homes?

6 A No. He just basically stayed there in shock.

7 Q And you knew he had been arrested for this case,
8 right?

9 A Well, I didn't know he was arrested. I know he was
10 told about it, about what she had left for.

11 Q I'm talking about when he was arrested for her murder.

12 A Oh, yes.

13 Q Clearly known -- it has been almost 18 months, right?

14 A Yeah.

15 Q And you had prior contact with the police about this
16 case.

17 A Just a day when they took my brother to question him
18 at the city hall. I had talked to Officer Nelson.

19 Q So you never went to the police to tell them about
20 this supposed knife incident, did you?

21 A I had mentioned it.

22 Q To who?

23 A To my mother.

24 Q But you didn't go to the police.

25 A No, sir.

Sheera Lee
Cross-examination by Mr. Bulsa

1 Q okay. In fact, you don't know why your sister -- I
2 keep calling her your sister-in-law. You don't know why
3 Becky had the knife that though, do you?

4 A No.

5 Q In fact, she was in the kitchen where knives exist.
6 Don't they?

7 A Yes.

8 Q Okay. And it wasn't until today that you told anybody
9 about that?

10 A Well, I didn't know exactly who to go to about this
11 situation, but I had numerous of times ran by my mom about
12 it and told her to tell his lawyer about it.

13 Q Now, wait a minute. The reason you were staying with
14 your brother was because the police were helping you,
15 right?

16 A Yes. I was under police protection.

17 Q Okay. So you're familiar with the police.

18 A Officer Nelson and Officer Steadman.

19 Q And you never thought that maybe what you claim is
20 Becky pulling a knife, you could go to them and tell them?

21 A No.

22 Q Okay. Thank you.

23 MR. DELANEY: Nothing further.

24 THE COURT: You may step down.

25 MR. DELANEY: That's all, that's all we have, Judge.

1 THE COURT: Any reply?

2 MR. BULSA: No, sir.

3 THE COURT: All right. Ladies and gentlemen, that is
4 all of the testimony and all of the evidence to be
5 introduced in the trial of this case. Therefore what
6 remains to be done are the lawyers' final summations, after
7 which I'll instruct you on the law, and then you'll begin
8 with your deliberations.

9 That could take some time, likely into the evening.
10 And I told you earlier I'm not going to impose upon your
11 evening hours like we do your daytime hours if I can help
12 it, and ordinarily we can.

13 So we do have some legal matters I'll need to address
14 anyway. I don't know how long that will take, but I don't
15 want to have you sitting back there any longer than is
16 necessary. Plus, I don't think we can conclude before the
17 evening hours arrive.

18 So what we're going to do is excuse you for the
19 balance of today and ask that you report back in the
20 morning at 9:30.

21 Keep in mind you're still not to discuss the case, not
22 to conduct any research. Don't do any type of
23 investigation. Don't allow yourselves to be exposed to any
24 type of media coverage -- television, radio or newspaper --
25 that relates to the case.

1 Do have a good evening, and please report to your jury
2 room at 9:30 in the morning.

3 Before you leave if you'll hand that to the
4 forelady -- I'm going to ask those who have been taking
5 notes, put your notepads in an envelope, seal it up and
6 leave it on the table in there, and the bailiff will pick
7 it up and we'll lock it up tonight. And it'll be given
8 back to you in the morning. Just put your notes, your
9 pads, in there and seal the envelope.

10 And, Madam Forelady, you can put your initials across
11 the seal if you'd like. And just leave it on the desk and
12 the bailiff will pick it up.

13 Okay. Have a good evening. We will see you in the
14 morning at 9:30.

15 (The following takes place outside the presence of the
16 jury.)

17 THE COURT: All right. Mr. Delaney, do you want to
18 renew your motion for a directed verdict?

19 MR. DELANEY: Yes, Your Honor. We will renew that
20 motion at this time based on the testimony and the
21 presentation of all of the evidence.

22 THE COURT: All right. Do you have any additional
23 grounds?

24 MR. DELANEY: No, sir.

25 THE COURT: All right. Motion is denied.

1 Any other matters we need to address before we talk
2 about jury instructions?

3 MR. BULSA: Not from the state.

4 MR. DELANEY: No, sir.

5 THE COURT: Court is in recess until 9:30 in the
6 morning.

7 I'll ask the lawyers to step back in chambers. We'll
8 have a charge conference.

9 END OF PROCEEDINGS NOVEMBER 30, 2011

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1 (Proceedings December 1, 2011)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Requests for instructions from
5 the state?

6 MR. BULSA: From the state just the charged
7 indictment, charge in the indictment, Your Honor, of
8 murder.

9 THE COURT: All right, sir. Mr. Delaney.

10 MR. DELANEY: Your Honor, we would request charges of
11 voluntary manslaughter, involuntary manslaughter and
12 self-defense.

13 THE COURT: All right. What's the state's position on
14 the lesser inclusions on the defense of self-defense?

15 MR. BULSA: Your Honor, the state does not believe
16 there's been any showing of any sufficient legal
17 provocation by the victim or in the heat of passion
18 displayed by the defendant.

19 The statement he gave to Investigator Burgess merely
20 referenced that she pulled a knife and he was able to
21 de-arm her. And his claim is that she came at him, he did
22 not go at her. So that's not any action by her causing the
23 injuries. All right.

24 THE COURT: All right. Well, after carefully
25 reviewing the evidence, at least as I recall it to be, I do

1 think there's sufficient evidence if the jury believes, in
2 fact, that she brought the knife into -- that she brought
3 the knife into the altercation -- assuming there was an
4 altercation -- circumstantially you can infer there was --
5 she brought the knife into that altercation attacking him
6 first. And if that's believed, I think that would be a
7 sufficient legal provocation in as he took the knife away,
8 as the evidence reflects, that he swung it wildly stabbing
9 her and killing her.

10 So I think that's some evidence, and sufficient
11 evidence, to submit the question of whether or not it's a
12 lesser included offense of voluntary manslaughter to the
13 jury.

14 So far as involuntary manslaughter is concerned, the
15 elements that have to be established are that it was an
16 unintentional killing and that has been -- that evidence
17 has been presented through the defendant's statement.

18 Secondly, it has to be shown that he was engaged in
19 lawful activity. It can be argued that at the time he was
20 taking the knife from her he was acting in his own defense
21 and that's lawfully -- that's lawful activity.

22 Then when he wildly swung the knife stabbing her and
23 causing her death, that would clearly be use of a dangerous
24 instrumentality in a reckless fashion. And so I think
25 there is evidence to support the instruction of involuntary

1 manslaughter.

2 I do not think there's sufficient evidence to support
3 an instruction for self-defense in that there -- while
4 there is some evidence that he was without fault in
5 bringing on the immediate difficulty, there is no evidence
6 that he feared for his life or that he was actually in
7 danger of losing his life or sustaining serious bodily
8 injury, because I think the evidence establishes that he
9 was in control of the knife. He took the knife away from
10 her prior to her death, and he caused her death by the use
11 of the knife. But there was no other weapon involved, and
12 he was in control of the deadly weapon. And therefore he
13 was not reasonably in fear of losing his life. And he had
14 a duty to retreat being in her residence. And there's no
15 evidence that he made any attempt to do so before employing
16 the use of a deadly weapon.

17 So based upon those facts I find that the defense of
18 self-defense is not applicable in this case.

19 All right. Anything else?

20 MR. BULSA: No, sir.

21 MR. DELANEY: No, Your Honor.

22 THE COURT: Okay. Bring the jury in, please.

23 (The following takes place in the presence of the
24 jury.)

25 THE COURT: Good morning, ladies and gentlemen.

Closing arguments

1 As you know, when we recessed yesterday all the
2 evidence had been received and what remained to be done
3 were the lawyers' final summations, my instruction to you
4 on the law that's applicable in the case and then your
5 deliberations.

6 So please give the lawyers your attention now as they
7 give you their final summations.

8 MR. DELANEY: Thank you, Your Honor. May it please
9 the Court.

10 THE COURT: Mr. Delaney.

11 MR. DELANEY: Good morning.

12 First of all, ladies and gentlemen, thank you for your
13 time and attention during this case. It's a very important
14 matter, and I appreciate your service and your willingness
15 to come forward and do this. Obviously this process can't
16 take place without willing citizens like yourself coming
17 forward.

18 So let me talk a little bit, start off a little bit,
19 about Mr. Lee and his relationship with Rebecca Rosa.

20 They had been dating for quite some time and had two
21 children together. Never married. They had a volatile
22 relationship. I think that's pretty obvious. But they --
23 no one that came forward offered any evidence that Mr. Lee
24 was ever physically violent toward Rebecca Rosa -- witness
25 after witness after witness. No, he was not physically

Closing arguments

1 violent towards her.

2 I think what you've got here is something going on a
3 little bit under the surface. A lot of times unfortunately
4 there's people out there that'll take advantage of services
5 that they may not otherwise qualify for.

6 For example, say there's a natural disaster somewhere
7 and a government agency comes in and offers benefits to
8 people who have been effected. But there are people that
9 come in who haven't been effected to take advantage of
10 those benefits.

11 What Mr. Lee and Ms. Rosa were doing was allowing Ms.
12 Rosa to go to the Safe Home and get benefits, get an
13 apartment, get help. And he wasn't beating her. They were
14 taking advantage of the system so she could get a benefit
15 that she otherwise wouldn't qualify for.

16 She would call him from the safe home and he'd come
17 and pick her up. He'd take her out shopping, he'd take her
18 to work, and he'd take her back to the Safe Home.

19 He wasn't beating her, but she wanted to get out of
20 the -- outta the house and go get an apartment. And Safe
21 Home was a way and an agency that can assist her in doing
22 that.

23 So, unfortunately, you know, they were engaging in
24 conduct that probably amounts to a fraud. But that was
25 kind of the nature of their relationship. That gives you

closing arguments

1 an idea of kind of how they interacted with one another.

2 But she didn't fear. She wasn't fearful of her -- of
3 him. He never beat her. He hasn't been convicted of any
4 crime. He has never been to jail. He's not a bad person.
5 He'd never been to jail before in his life. He's 25 years
6 old and he has two children whom he loves very much. He
7 loved Rebecca. He still does.

8 So let's talk about the evidence that was presented in
9 this case. And, again, the judge is going to charge you on
10 a number of things. He's going to charge you on what the
11 state has to prove for him to be found guilty of murder.

12 Again, and we talked about that a little bit at the
13 beginning. The unlawful killing of another human being
14 with malice aforethought, which means you have to have
15 anger in your heart and you have to plan it out. And the
16 judge will instruct you on that.

17 The judge is also going to instruct you on a couple of
18 other things. Voluntary manslaughter, the heat of passion.
19 And he'll go further into the details of what -- what your
20 determination of the facts to be could fit the legal
21 definition of voluntary manslaughter. So listen closely to
22 his instructions on that.

23 And then there's also involuntary manslaughter. He's
24 going to instruct you on that. Involuntary manslaughter in
25 a nutshell is reckless use of a dangerous instrumentation.

closing arguments

1 If someone's recklessly using dangerous instrumentation,
2 and then unintentionally that dangerous use unintentionally
3 results in the death of another person that would be
4 involuntary manslaughter.

5 If you came into a scene or an altercation and you
6 didn't intend for anybody to die but due to your reckless
7 conduct a death occurred, then that could be classified as
8 involuntary manslaughter. But, again, the judge is going
9 to tell you about that.

10 There was -- I'm going to talk a little bit about some
11 of the things maybe you didn't see. You didn't see any
12 blood in the Dodge Durango.

13 There's no fingerprints of Mr. Lee in the apartment.
14 There's no blood of Mr. Lee in the apartment. There's two
15 different sets of blood in that apartment. One was Ms.
16 Rosa's, the other from an unidentified.

17 And, again, the burden, as we always talked about,
18 always lies, always rests with the state. They get to talk
19 to you last. And the reason they get to talk to you last
20 is because the burden is on them. And they have to prove
21 their case beyond a reasonable doubt.

22 And I submit to you that they have not proven murder
23 beyond a reasonable doubt. And, again, I would ask you to
24 closely listen to the judge's definition of the other
25 charges that he's going to give you. And I submit to you

Closing arguments

1 that they cannot prove murder beyond a reasonable doubt.
2 And I would ask you to closely listen to the charge of
3 voluntary and involuntary manslaughter.

4 The officers testified that up to this event that Ms.
5 Rosa and Mr. Lee were getting along fine, that their
6 friends and family members testified they were getting
7 along fine.

8 There was no evidence that Mr. Lee hatched some grand
9 plan to go over there and murder Rebecca Rosa. That's just
10 not the evidence that was presented here, because that's
11 not what he did. He didn't do that.

12 He is, he is extremely upset that Rebecca Rosa, the
13 mother of his children, is not here. And for anybody to
14 infer or imply that he is not in desperation over the death
15 of his wife is just incor -- the death of the mother of his
16 children is incorrect. They were never married.

17 His first, first significant run-in with the legal and
18 judicial process, and he's distraught, absolutely
19 distraught, about what's unfolding.

20 Investigator Burgess talked about in his testimony
21 that there was altercation and a knife was introduced into
22 the altercation by Ms. Rosa.

23 There was two witnesses that testified that Ms. Rosa
24 has brought a knife into an altercation before. So
25 unfortunately this wasn't the first time, but unfortunately

Closing arguments

1 it was the last time. And, again, Mr. Lee is absolutely
2 distraught by it.

3 Mr. Lee was scheduled to get his children on
4 June 12th of 2010, and he never got them, and he hasn't
5 seen them since.

6 Rebecca had a history of kind of running off for a
7 couple of days and not coming back. And so when she had
8 disappeared it was -- it had happened before. So if he --
9 you know, if he didn't start sending up smoke signals
10 calling 9-1-1, it's because there was a pattern. Again,
11 that goes back to the nature of their relationship. There
12 was a lot going on underneath the surface.

13 They had this Safe Home benefit-getting scam, fraud,
14 whatever you want to call it. So if she had been gone for
15 a couple of days it wouldn't necessarily cause him great
16 concern because she had done it before.

17 Again, there was, there was never any testimony
18 presented that Mr. Lee was angry or in a rage at any point
19 or had anger in his heart. That has not been submitted to
20 the jury.

21 Again, malice aforethought. That anger, that rage in
22 the heart, that has not been submitted to you. There has
23 been no evidence or testimony presented.

24 To prove malice aforethought beyond a reasonable
25 doubt, it's a high standard. We talked about those scales

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1 earlier. Preponderance of the evidence, tip them just a
2 little bit, 51-49. Beyond a reasonable doubt. You put
3 your own percentage on it -- 95, 96, 97. There's been
4 nothing presented to prove malice aforethought. And that
5 is an element of the crime of murder -- unlawful killing of
6 a human being with malice aforethought.

7 If all you can prove is unlawful killing of a human
8 being you have not proven murder. You have to prove with
9 malice aforethought. It's a big -- that's a big deal.
10 It's a big point.

11 Unlawful killing of a human being. Okay. Let's say I
12 proved that. I have not proved murder. I haven't. with
13 malice aforethought. Have to have that proof beyond a
14 reasonable doubt.

15 There's been nothing submitted to you to show malice
16 aforethought. That's why I'm asking you to listen closely
17 to Judge Cole's instructions regarding voluntary and
18 involuntary manslaughter. And if you find that they have
19 proved -- have not proven any of those you have a legal
20 duty to find him not guilty.

21 But you have options. There are options for you.
22 There's murder, voluntary manslaughter, involuntary
23 manslaughter, not guilty. So, so when you go back into
24 that jury room it's not necessarily an all-or-nothing case.
25 It's not necessarily murder or not guilty. There's going

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1 to be other charges given to you by Judge Cole. I would
2 ask you to listen closely to those.

3 Voluntary, heat of passion. Involuntary, reckless use
4 of dangerous instrumentation. Mr. Lee did not have anger.
5 He did not plan, have a plan, for this to occur. That's
6 not what happened.

7 It's a very important case, and I know that you all
8 have paid close attention, and I appreciate that. I would
9 ask you to consider all of the evidence presented and
10 remember the standard of beyond a reasonable doubt. And
11 listen closely to Judge Cole's instructions.

12 And my client and I -- we both trust that you will
13 come back with a fair and just verdict. And I am not going
14 to ask you for any specific verdict. I'm not going stand
15 up here and ask you to do something. It's in your hands.
16 My client trusts you. I trust you.

17 We want you to determine the facts of this case as
18 they've been presented to you and apply them to the law
19 that Judge Cole gives to you. See where it fits. You've
20 got a couple of different options of where these facts fit.

21 But I will take the position that there was no malice
22 aforethought in this case. That's the one thing I will
23 submit to you firmly, that there was no malice aforethought
24 in this case. Therefore, they have not proven murder. It
25 hasn't happened.

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1 Yeah, I represent Mr. Lee. It's my duty to stand up
2 here and zealously advocate for him. It's also my duty to
3 give my client an honest assessment of the facts. And an
4 honest assessments of the facts is there has been no proof
5 of malice aforethought. Hasn't happened. And if they
6 don't prove malice aforethought you cannot find him guilty
7 of murder.

8 You have to start looking. You have to look at other
9 places now. You have to look at other options. Judge Cole
10 will spell those options out for you.

11 So when you go back into that jury room and you all
12 determine the facts look at where they properly fit. Look
13 closely where they properly fit. This man's life depends
14 on it.

15 They have not proven malice aforethought, period. You
16 must look elsewhere.

17 MR. BULSA: Good morning, ladies and gentlemen.

18 I thank you for your time and attention throughout
19 this case. I'm going to show you a few of these again.

20 I couldn't show you a picture of the wounds to Ms.
21 Rosa because it's not allowed by the evidence. I have to
22 show you a mere diagram that Dr. Wren prepared.

23 Mr. Delaney talks about malice aforethought. Picture
24 in your mind a two-and-a-half-inch wound to the gut with a
25 twist. It wasn't straight in and out as if someone ran

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1 into the knife, which is completely unbelievable. It's a
2 stab with a twist. Malice aforethought. Two wounds to the
3 back. One deep enough to strike a rib. Those are pictures
4 of malice aforethought, ladies and gentlemen.

5 I opened my case -- in my opening statement I talked
6 about the defendant's actions. I appreciate the question
7 the jury sent out after a few of the witnesses, the comment
8 that you all were getting confused by the locations and the
9 dates. There's a lot that happened in this case.

10 It's interesting that Mr. Delaney started his opening
11 or his closing remarks with the comments about fraud. This
12 case is about death and deception. It's about a bucket
13 full of lies.

14 The defendant was -- is distraught? Was he distraught
15 when he stuck a knife in his children's mother? Was he
16 distraught as he cleaned up her blood? Was he distraught
17 as he took her body down the stairs?

18 He saw the man in the back playing with his kid. Did
19 he say, hey, something bad just happened, come help me,
20 help my girlfriend?

21 Was he distraught as he stuck her under a tree and
22 buried her with dirt? He's distraught. He couldn't even
23 give her a proper burial. He didn't even let her family
24 see her -- her children.

25 He's a fraud all right. He's a fraud as shown by his

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1 actions. He stabbed in the abdomen in a twist. He stabbed
2 in the neck and the back. There's your picture of malice,
3 ladies and gentlemen.

4 I wish you could have seen the picture of the body of
5 Ms. Rosa as she was pulled out of the dirt, her intestines
6 bloating out of her body.

7 His actions at the scene are consistent with his
8 actions during the crime. The malice continued as he
9 disposed of all of the evidence and disposed of her like a
10 piece of trash in the trash dump out behind the property he
11 lived in.

12 Ladies and gentlemen, you heard from friends he was a
13 controlling and possessive man. As to what he tells you
14 that she had run away before but he -- but she came back,
15 I'm not sure if that's true or not. But if she did she was
16 running away from him.

17 Well, the last time she ran away it was clear her
18 intentions were not to come back. She went to a Safe Home.
19 She got her own apartment. But, like any woman, she wanted
20 the kids to have contact with their dad. That was a
21 mistake. She reestablished contact with Mr. Lee.

22 And then she came to note that the brother helped get
23 a piece of furniture out of Miller -- a bed, child's
24 bed. Took it and helped set it up.

25 And then on Friday, July 11th, there's evidence that

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1 the defendant assisted Ms. Rosa to get some furniture. But
2 where did he take her to get furniture? He took her to a
3 donation center, some sort of child center for donated
4 property.

5 These are the reasons why we showed you the pictures,
6 the extensive pictures, of both residences. He didn't take
7 her back to her residence to get that nice bedroom set.

8 He was still trying to control her. He was wanting
9 her back. He took her to get something from a center and
10 then didn't even help her set it up.

11 He realized Friday, June 11th, that she was serious,
12 that she wasn't coming back. And I submit to you it's very
13 plausible that he went there Saturday, July -- July the --
14 excuse me -- June the 12th. This is June, not July. June
15 the 12th. And there was a confrontation all right. He was
16 still trying to control her. She was getting ready for
17 work. She had her uniform on. Nothing happened all right.
18 He decided to kill her.

19 Malice aforethought. Ladies and gentlemen, the judge
20 will instruct you aforethought means at or during the
21 commission of a crime. He didn't have to go over there
22 with the specific intent to kill her. He can be there.
23 Something happened. And it makes him mad. And he decides
24 that, okay, she's not going to do what I say, I've brought
25 this knife with me and I'm going to use it.

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1 And it's not clear whether this, the murder weapon,
2 came out of this butcher block, but it's kind of
3 interesting that there's one missing.

4 We had ample testimony and photographs of the victim's
5 new kitchen. She had nothing similar in that kitchen, that
6 she had access to any knife.

7 Dr. Wren testified that knife had to be at least two
8 and a half inches long and an inch to two-and-a-half inches
9 in width. It seems possible. It wasn't very pleasant:

10 I wanted to walk you through everything and make sure
11 everybody got a clear understanding of what happened. We
12 know that she left sometime a few weeks before this
13 occurred. She went into a Safe Home. She got assistance
14 to go up to Prince Hall Apartments. She got her an
15 apartment on July 11th. She -- I keep saying July.
16 June 11th. Something occurred. There was contact.

17 She went out that evening with her brother Jonathan
18 and saw the other brother Matthew. Jonathan brought her
19 back home.

20 Her kids were with her mother and sister. They were
21 safe. She was going to get up the next morning and go to
22 work. She worked at Food Lion in Lyman. We know she never
23 made it.

24 We can tell by the fixings in the kitchen that it
25 appears that she was in the process of making some

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1 breakfast when something occurred.

2 The downstairs neighbors heard noises, screams,
3 violence, furniture moving and then silence.

4 The man was outside. There's a car out there. This
5 is odd. We have a parking lot up front. Nobody pulls
6 around back.

7 He sees this man, the defendant. The defendant
8 doesn't acknowledge him, closes the doors and drives back
9 around front waiting for Mr. Smith to go back inside.
10 Mr. Smith goes inside. The car pulls back around.

11 And then we have Ms. Green seeing him putting
12 something in his truck. We know now that is, that was,
13 Rebecca Rosa. He closes up and drives off.

14 We know clearly from the crime scene when the police
15 searched it they found the spots of blood on the wall. I
16 submit to you that he did a pretty good job of cleaning it
17 up. But if you dismiss those specks on the wall, if he had
18 not missed those, he might have got away with this, because
19 those specks on the wall caused the police to say, hey,
20 looks like something happened in here. Second, something
21 happened in here, let's do some, let's do some further
22 looking. This is kind of shocking -- shocking and terror.

23 The spatter on the wall was near the doorway of the
24 victim's bedroom. Two, three and four were the spots --
25 were the one that was kind of a smear on the doorjamb.

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1 The defendant's version was -- is Ms. Rebecca pulled a
2 knife on him in the kitchen area. Well, what in the world
3 is she doing with a blood spot under the hallway? Doesn't
4 make sense. That ain't the way it happened.

5 I submit to you that the physical evidence shows she
6 ran away, stabbed in the back, fell to the ground and was
7 killed on the ground.

8 Dr. Wren says you can't border -- border the wounds,
9 but he does say with the one to the gut she'd lose
10 consciousness in two to three minutes. There's no way she
11 could have been talking and having a conversation with
12 Mr. Lee for five to ten minutes, telling him not to get
13 help, telling him he's going to get in trouble for this.
14 She was gasping for her last breaths.

15 We know clearly that he cleaned up the apartment. He
16 took the murder weapon; he took whatever he used to wrap
17 her up in; he took a mop and drove away; and he drove to
18 Tibbs Drive.

19 This is all on Saturday. It's all -- you can see a
20 pretty nice trek over to Tibbs Drive. You saw the aerial
21 photographs of how remote Tibbs Drive was, the Tyger River
22 down here.

23 He disposed of her body and then he treks way down in
24 the woods to pitch the murder weapon and the cell phone in
25 the river. And it was kind of curious. He pitched the

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1 cell phone. Remember what he did with the cell phone? He
2 used her cell phone to help set up his alibi. You don't
3 have to come and pick me up today, around 10:30. She's
4 already dead. So he gets rid of that piece of evidence.

5 Then he treks up here to Fred's according to his
6 statement, disposes of the comforter, the mop and the
7 shirt. Stab wounds plus contact with blood on it. He
8 throws his shirt out.

9 Then he treks back here to Miller Drive. All of that
10 took place, ladies and gentlemen, in the span of three to
11 four hours. Around 9:00 is when he got around to the
12 apartment per his statement and the witness hearing the
13 fight.

14 We've got him over here at Tibbs Drive midmorning
15 according to Jerry Harris and Markeisha Whitmire. And then
16 we have him back at actually across the street at his
17 aunt's house shortly after lunch, because he leaves with
18 her to go to visit some of her friends who are grieving
19 because they lost a brother-in-law. That suggests that he
20 had to put some thought into this and if something happened
21 what he was going to do.

22 This case is fraught with deception, with deceit. His
23 mother, the grandmother of his children, she calls and says
24 do you know what's happened to Becky, would you mind trying
25 to contact her. Sure, grandma or whatever he calls her.

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1 He texts back.

2 All of this, ladies and gentlemen, I submit to you is
3 a picture of a malicious heart, a malicious man that
4 maliciously killed his girlfriend with this intent to cover
5 it up, intent to escape.

6 He lied to his family; he lied to his friends; and he
7 lied to the police, the actual investigative measure,
8 missing person. Talked to the boyfriend. No. I don't
9 know what happened to her. She's run off before. She's
10 met other people recently. Maybe she's off with them.
11 Okay. Give me a call if you know anything. Ever hear from
12 him?

13 The police get word that maybe she's at Tibbs Drive.
14 The defendant happens to be over there with his uncle or
15 aunt, I think it is, Ms. Hunter. They take a walk. How's
16 he been acting? He's been down. She's trying to lift him
17 up.

18 They see a deputy's car drive by, so he knows the
19 police are in the area. They hear the scream. Becky's
20 been found. Does he run? Oh thank, God, y'all found her.
21 What in the world happened to her?

22 No. He goes the opposite direction. He begins his
23 flight. His deception had failed him, and now he's off on
24 a run.

25 He goes to George's house, the house he's never been

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1 to before. George, give me a ride. I got to get out of
2 here. Give me a ride. Drive me to Reidville Road. Never
3 mind. Drop me here.

4 calls Jennifer. Jennifer, give me a ride. Somebody's
5 been threatening me and Becky. I got a call yesterday.
6 This is on Tuesday. He's lying to her. He's trying to set
7 up another defense. Drop me off up here by Bryant Road.
8 Bryant Road, ladies and gentlemen, is on the other side of
9 the county.

10 called Cintyna Miller. Somebody's trying to set me
11 up. I've been threatened. Somebody's trying to set me up.

12 The defendant's actions are consistent with the
13 killing. The police give him an opportunity to tell them
14 what happened. I don't know, I don't know. I had nothing
15 to do with her death. Only when he spends a night in jail
16 and realizes I better come up with something and asked to
17 speak with the officer, and what in the world story does he
18 come up with?

19 Didn't get confused. It's a story of blame. It
20 wasn't me. It was Becky. Becky grabbed the knife. I had
21 to take it away from her. Becky ran into the knife. Becky
22 was swinging wildly. I had to swing back. Becky wouldn't
23 let me call for help. Becky wouldn't let me help her.
24 Blame, blame, blame everybody except him.

25 He wants to use that story to try to convince you,

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1 Ladies and gentlemen, that this isn't murder, that it's
2 something less. I submit to you it's not. Please do not
3 let them deceive you. Please do not let the deception
4 continue. Please put an end to it.

5 And he even brought deception into the courtroom with
6 him yesterday. He wants you to infer from his cousin and
7 sister because Becky had a knife in her hand on two other
8 occasions that that means she pulled it on the occasion in
9 the apartment.

10 Well, neither person actually saw or heard exactly
11 what happened about how Becky had came to be with a knife.
12 One occasion with the sister occurred at the house when she
13 was in her kitchen with a knife. She heard argument.
14 Becky threw the knife in the sink.

15 On the other one Ms. Murray, I think it was, 2007,
16 Becky was outside the apartment as if trying to get away
17 from the man with a knife and crying. You can easily flip
18 that to she was in fear of her life. Get out of the
19 apartment.

20 Then this letter, it was found in the Durango. You
21 may or may not think there is any significance to it, but
22 it reads almost like a good-bye letter. I suggest he's
23 thinking about doing something. I submit to you you have
24 seen what he was thinking of doing.

25 Hopefully you're no longer confused by the number of

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1 locations. Those locations were created by the defendant.

2 The dates -- June the 11th, June the 12th, June the
3 13th, June the 14th, June the 15th, June the 16th.

4 Something happened each day. His deception grew.

5 The police did their job. The family was distraught.
6 I can't imagine what was going through Matthew Cook's mind
7 as he pulled his sister out of a grave.

8 Ladies and gentlemen, this is not a case of
9 involuntary manslaughter. This is not a case of mere
10 negligence, mere recklessness. There was no heat of
11 passion. He was not provoked. He acted with malice. He
12 murdered Rebecca "Becky" Rosa. That is the decision that
13 has to be reached.

14 The evidence is great. While he attempted to dispose
15 of much of it, and he was successful -- we don't have the
16 murder weapon, but we have a pretty good description of
17 what it was probably like thanks to Dr. Wren.

18 We don't have the actual location in the apartment
19 where this occurred, but we can pretty much tell by the
20 spatter of blood that he left on the wall.

21 We don't have her cell phone because he threw it in
22 the river. We don't have the mop because he threw it away.

23 But you can get a clear picture, ladies and gentlemen,
24 of what occurred. But for a few drops of blood he might
25 have gotten away with it. But for the grace of God that

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1 led Matthew Cook to his sister Rebecca Rosa might never
2 have been found.

3 I ask that you give the family closure and find the
4 proper verdict of the crime as charged of murder. Thank
5 you.

6 THE COURT: Madam forelady and ladies and gentlemen of
7 the jury, you of course have heard and seen all the
8 evidence, and now you've heard the final summations of the
9 lawyers. And therefore it now becomes by duty and
10 obligation to instruct you on the law that's applicable in
11 this case. And then you'll be asked to go back and begin
12 with your deliberations. And through that process you'll
13 examine the evidence, decide the facts, apply the law and
14 arrive at a fair and just decision, whatever that decision
15 may be.

16 It is your exclusive duty to determine what the facts
17 are, and you do that through your own common sense
18 examination and evaluation of all of the testimony and the
19 other evidence received during the trial of this case.

20 You 12 jurors alone will decide what weight, value and
21 effect to give to any particular witness' testimony, or
22 even portions of that testimony. Your sole objective is to
23 simply reach the truth in the matter, and by doing that you
24 will have fulfilled your obligations as jurors, and that is
25 to simply give both the state and the defendant a fair and

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1 impartial trial.

2 Now, as you know, in this case the state through the
3 prosecutor has charged the defendant, Robert Lee, Jr., with
4 having committed the crime of murder. They have made those
5 accusations by setting forth in the indictment that I
6 referred to earlier.

7 The state alleges that on or about June the 12th of
8 2010 that Robert Lee, Jr. did here in Spartanburg County
9 wilfully and with malice aforethought kill one Rebecca
10 Christine Rosa by stabbing her and that she died as a
11 proximate result of that stab wound.

12 As to those allegations and as to that charge the
13 defendant has entered a plea of not guilty. And, as I've
14 told you, that plea of not guilty has placed upon the state
15 the burden of proving the allegations that they have set
16 forth in the indictment, the burden of proving each of the
17 essential elements of the crime they allege against the
18 defendant; and therefore the burden is upon the state to
19 establish his guilt to the satisfaction of you 12 jurors
20 beyond a reasonable doubt before a verdict of guilty could
21 be returned.

22 As I told you, the indictment is the charging paper.
23 It's not evidence of anything. It's not proof of anything.
24 But it will be in the jury room, Madam Forelady, because it
25 is on the back of the indictment that you're going to be

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1 asked to indicate the jury's unanimous decision, whatever
2 that decision may be. But other than serving as the
3 verdict form the indictment serves no purpose so far as you
4 jurors are concerned.

5 Now, as to those allegations, as I've said, he's
6 entered a plea of not guilty. That plea has placed upon
7 the state the burden of proving his guilt to your
8 satisfaction beyond a reasonable doubt.

9 The burden is never upon a defendant who is charged
10 with a crime to prove that he is or she is not guilty or to
11 prove that he or she is innocent because in some cases that
12 might not be possible. The burden is always upon the state
13 because they have brought the charge against another to
14 establish that person's guilt beyond a reasonable doubt.

15 You are instructed that is it a vital, important and
16 cardinal rule of law that every defendant in a criminal
17 trial, no matter how serious might be the offense for which
18 that person stands charged, that person shall always be
19 presumed innocent of that charge.

20 That presumption of innocence remains with any
21 defendant, as it does with this defendant, from the time
22 that he is placed under arrest and throughout the course of
23 the criminal process and even throughout the course of the
24 actual trial in the case.

25 That presumption of innocence will be with Mr. Lee

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1 even as you go back to begin with your deliberations in
2 this case. That presumption of innocence will be with him
3 in that jury room, and it'll be with him forever unless you
4 12 jurors determine that he's no longer entitled to that
5 presumption of innocence.

6 In other words, after you have carefully considered
7 all of the evidence in the case and evaluated the testimony
8 and statements of witnesses and after you have decided the
9 facts and then you've applied the law that I will have
10 provided you, if you 12 jurors unanimously determine that
11 his guilt as to a crime has been proven beyond a reasonable
12 doubt, then he is no longer entitled to that presumption of
13 innocence. But it's only if, unless and until you are
14 satisfied of his guilt beyond a reasonable doubt that the
15 presumption of innocence would no longer be applicable.

16 Now, while the state does have the burden of proving
17 the defendant's guilt beyond a reasonable doubt, that
18 doesn't require that the state prove his guilt beyond all
19 doubt or beyond any possible doubt. But it does require
20 the state to prove his guilt to your satisfaction beyond a
21 reasonable doubt.

22 The term reasonable doubt should be given its plain
23 and ordinary meaning. A reasonable doubt is the kind of
24 doubt that would cause a reasonable person to hesitate to
25 act upon the information provided.

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1 A defendant in a criminal trial is entitled to any
2 reasonable doubt that arises from the evidence or lack of
3 evidence in a case. And if upon any factual issue
4 essential to a finding of a verdict of guilty you have some
5 reasonable doubt as to how that issue should be resolved it
6 would be your duty to resolve any reasonable doubt in favor
7 of the defendant.

8 Therefore, if upon your consideration of the whole
9 case you have a reasonable doubt as to his guilt it would
10 be your duty to resolve that doubt in his favor and to
11 return a verdict of not guilty.

12 And, at the same time, after you've considered all of
13 the evidence in the case and decided the facts and applied
14 the law, if you have no reasonable doubt as to his guilt as
15 it relates to a particular charge, then it would be your
16 corresponding duty to find him guilty of any charge that
17 you find has been proven to your satisfaction beyond a
18 reasonable doubt.

19 Now, the same law that provides that you are the
20 judges of the facts also provides that I am the judge of
21 the law. That simply means that nobody's going to tell you
22 how to arrive at your determination of fact in this case.
23 You do that as I've already stated through the exercise of
24 good judgment and common sense conscientiously applied to
25 the testimony and other evidence received during the trial.

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1 You must however under your oath as a juror accept the
2 law as I provide it to you as being the law that you are to
3 apply in this case. In other words, you're never to
4 concern yourself with what you thought the law was before
5 you came to serve as a juror this week or what you think it
6 ought to be.

7 You must simply under your oath as a juror accept the
8 law as I provide it to you as being the law that you are to
9 apply in this case. You then simply take that law and you
10 apply it to the facts as you 12 jurors determine those
11 facts to be based upon your common sense examination of the
12 evidence in the case.

13 Now, as I've stated, you are the sole judges of the
14 facts in this case, and you are therefore necessarily the
15 sole judges of the credibility and the believability of
16 each witness that has testified during the course of this
17 trial.

18 You 12 jurors alone will decide what weight, value and
19 effect to give to any particular witness' testimony or even
20 a portion of that testimony. But as you assess and
21 evaluate a witness' credibility there are several factors
22 which you should consider in making that judgment. And I'm
23 going to list those factors for you.

24 You should consider the demeanor of the witness, that
25 is how the witness appeared to you as the witness testified

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1 from the witness stand. Was the witness straight forward
2 in responding to questions, or was the witness hesitant or
3 evasive in responding to questions that were asked of that
4 witness.

5 Simply put, did the witness appear to you to be
6 telling the truth and to have knowledge of the facts to
7 which that witness has testified.

8 You should also consider whether or not the testimony
9 of a witness was consistent or inconsistent with testimony
10 provided in court or with statements made by a witness
11 outside of court. You should consider whether or not the
12 testimony of a witness is consistent or inconsistent with
13 other testimony received during the trial as well as other
14 evidence introduced during the course of the trial.

15 You should also consider how a witness came to know
16 the facts to which a witness has testified. In other
17 words, what was a witness' opportunity and ability to
18 perceive the existence of those facts to which that witness
19 has testified by having previously used his or her senses,
20 and then what is the ability of that witness to be able to
21 come into court and to accurately recollect to you as to
22 what they have previously perceived.

23 You should also consider any bias or prejudice or
24 interest that a witness might have with respect to the
25 result in this case. In other words, do you find some

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1 reason that a particular witness would come into court and
2 would testify one way or another to help or to hurt one
3 side or the other.

4 You may consider any interest that a witness may have
5 in the case if you determine that a witness does have such
6 an interest and you find that that interest would bear upon
7 that particular witness' credibility.

8 You should also consider whether or not the testimony
9 a witness is strengthened, or is it weakened by other
10 testimony or other evidence received during the course of
11 the trial.

12 Now, because you are the sole judges of the facts and
13 because you are the sole judges of the credibility of each
14 witness you are permitted to believe as much or as little
15 of what a witness has testified to as you deem is
16 appropriate. And therefore you may believe everything that
17 a witness testified to. You may choose to believe none of
18 it. You may believe some portion of a witness' testimony
19 and reject some other portion of that same witness'
20 testimony.

21 In a given case you could believe one witness as
22 opposed to several, or several as opposed to one. But
23 whatever your good judgment and common sense tells you is
24 the most believable and credible testimony is the testimony
25 you should accept. And you should reject any testimony or

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1 other evidence that you find not to be credible or
2 believable. Again, your sole objective is to simply reach
3 the truth in this matter. And by doing that you will have
4 fulfilled your obligations as jurors.

5 Now, while there are various forms of evidence such as
6 testimony, photographs, documents, charts and other types
7 of physical exhibits, there are really only two types of
8 evidence. And either or both of those types of evidence
9 may be used to prove any fact in issue. But the two types
10 of evidence are direct evidence and circumstantial
11 evidence.

12 Now, direct evidence is the testimony of a person who
13 testifies from actual knowledge of the fact. It is
14 testimony by a person who has perceived the existence of a
15 fact by means of his or her senses, and then they come into
16 court and they testify as to what they have previously
17 seen, heard, or felt for that matter.

18 Circumstantial evidence, on the other hand, is the
19 proof of some other fact or set of facts which taken either
20 singly or collectively may prove the existence of a fact in
21 question as a necessary consequence, that is through an
22 inference.

23 An inference is simply a deduction of fact that may
24 logically and reasonably be drawn from the proof of some
25 other fact or set of facts. In other words, it's not a

Jury charge

1 fact proven by the direct testimony of a person based upon
2 their personal perception, but it is a conclusion which
3 might reasonably be drawn from the proof of other facts.

4 In other words, you may infer that a particular event
5 occurred or that a particular fact exists based upon the
6 proof of sufficient factual circumstances which would
7 reasonably warrant your arriving at a particular
8 conclusion.

9 The law however makes absolutely no distinction
10 between the weight or value to be given to either direct
11 evidence or circumstantial evidence. Nor is a greater
12 degree of certainty required of circumstantial evidence as
13 opposed to direct evidence.

14 Whatever the type of evidence used to prove any fact
15 in issue, you should consider all of the evidence presented
16 during the trial of this case. And after carefully
17 considering that evidence and weighing it in your minds if
18 you are not convinced of the guilt of the defendant beyond
19 a reasonable doubt, then you must resolve that doubt in his
20 favor.

21 Now, as you know, the defendant by way of the
22 indictment has been accused of the crime of murder. During
23 the course of a trial when evidence is received, the
24 evidence in the case, depending upon your determination of
25 fact from that evidence, may support a

Jury charge

1 lesser-included-offense determination by you. As opposed
2 to finding the defendant guilty of the greater offense you
3 might determine that while he's not been found guilty of
4 the greater offense he has been proven to be guilty of some
5 lesser included offense.

6 Lesser included offenses may be considered by the jury
7 where the evidence would support such a finding, even
8 though that lesser included offense is not actually set
9 forth in the indictment itself. And lesser included
10 offense of the crime of murder includes the offenses of
11 voluntary manslaughter and involuntary manslaughter. So
12 I'm going to instruct you on the law and the legal
13 definition of the crimes of murder, of voluntary
14 manslaughter and of involuntary manslaughter.

15 Any determination that you make with regard to whether
16 or not the defendant has been proven guilty of one of those
17 offenses obviously will be dependent upon your
18 determination of fact from your review of all of the
19 evidence in the case and then your application of the law
20 to those facts as you determine them to be.

21 Murder is defined in a South Carolina code section.
22 And the code of laws are these blue volumes of books that
23 set over here on the shelves. And every year the
24 legislature meets from January until June. They pass a
25 number of laws and rules and regulations that govern our

Jury charge

1 conduct in a variety of ways. But some of those statutes
2 that are passed are criminal statutes. And when the
3 legislature passes a criminal statute it simply prohibits
4 us from engaging in particular types of conduct. And where
5 we are found to have engaged in that prohibited conduct,
6 then it provides for some punishment or form of penalty for
7 our engaging in the conduct that is violative of the
8 statute.

9 Section 16-3-10 of the Code of Laws is the code
10 section which defines to some degree the crime of murder.
11 And I'll define for you that offense based upon the law of
12 the State of South Carolina. It's statutory and common law
13 and case law.

14 But that particular code section provides that the
15 killing of any person with malice aforethought, either
16 expressed or implied, is murder.

17 Therefore in order for you to find the defendant
18 guilty of the crime of murder it would be necessary that
19 the evidence in this case has established to your
20 satisfaction beyond a reasonable doubt that the defendant
21 did commit some act or acts which proximately caused the
22 death of Rebecca Christine Rosa and that the killing was
23 done with malice aforethought. Malice aforethought is an
24 essential element of the crime of murder.

25 So what is malice? Well, malice as an essential

Jury charge

1 element of the crime of murder is a state of mind connoting
2 an ill will and having the intent to do harm. The term
3 intent refers to the state of a person's mind which directs
4 his actions towards a specific object or goal.

5 Intent would include those consequences which
6 represent the very purpose for which an act is done, as
7 well as those consequences which are known to be
8 substantially certain to result whether actually intended
9 or not.

10 Malice is a technical importing wickedness and
11 excluding just cause or legal excuse. It is something
12 which springs from depravity, from a heart devoid of social
13 duty and fatally bent on mischief. It is a state of mind
14 indicating an extreme disregard for or an extreme
15 indifference to human life.

16 Malice may be likewise defined as a state of mind
17 which indicates a formed purpose and design to do a
18 wrongful act under circumstances that exclude any legal
19 right to do it.

20 The words expressed or implied malice do not mean
21 different kinds of malice but merely the manner in which
22 malice may be shown to have existed, that is to say either
23 proof by direct evidence or by circumstantial evidence from
24 which the existence of malice might be reasonably inferred.

25 Malice may be expressed as where there is an expressed

Jury charge

1 threat to kill or a lying in wait or where the
2 circumstances show directly that the intent to kill was
3 entertained by the killer.

4 Malice may be inferred, though no expressed intent to
5 kill is proven by direct evidence, where the facts and
6 circumstances which have been established by the evidence
7 in this case satisfy you beyond a reasonable doubt that
8 malice was present in the mind of the killer at the time
9 any killing took place.

10 The existence of malice may be inferred from
11 circumstances shown to have existed at the time of the
12 event. And the existence of malice may be inferred from
13 acts, declarations and conduct of the killer, along with
14 any other circumstances from which you might reasonably
15 infer such a fact, as often the state of a person's mind
16 can only be proven by circumstantial evidence.

17 Malice as an essential element of the crime of murder
18 does not necessarily require proof of an actual or a
19 specific intent to take human life, although such an intent
20 may be proven by the evidence in the case. But rather what
21 it means is it's a state of mind accompanying conduct
22 signifying a general malignant recklessness and an extreme
23 disregard for or an extreme indifference to human life.

24 The state is required to prove malice just as it must
25 prove any other essential element of the crime charged, and

Jury charge

1 it is for you 12 jurors to determine whether or not the
2 evidence in this case establishes malice beyond a
3 reasonable doubt.

4 It's also essential that there exist not only malice
5 but that it be malice aforethought. The law does not
6 require that malice must exist for any appreciable length
7 of time before the commission of an act proximately causing
8 a fatal result. Indeed, it may be conceived at the very
9 moment that the fatal act is committed.

10 It is sufficient in the law so long as the state does
11 prove beyond a reasonable doubt both the existence of
12 malice and the commission of some act or acts by the
13 defendant which proximately caused the fatal result.

14 You must determine whether or not malice aforethought
15 existed based upon your consideration of all of the
16 evidence introduced during the trial of this case and any
17 reasonable inferences that might be drawn therefrom in the
18 exercise of your own good judgment and common sense.

19 Now, while the state must prove beyond a reasonable
20 doubt that a killing did occur and that that killing was
21 accompanied by malice aforethought in order to establish
22 the crime of murder, it is not necessary that the state
23 prove any motive for such a killing. Motive is not an
24 essential element of the crime of murder which must be
25 proven, although in some cases there may be evidence

Jury charge

1 relating to such fact introduced during the trial of the
2 case.

3 Now, as I've stated, where the evidence in a case
4 would, depending upon your determination of fact would,
5 support a lesser included offense the jury may consider
6 those lesser included offenses even though they're not
7 actually set forth in the indictment itself. And in this
8 case, as I've told you, I'm going to instruct you on the
9 two lesser included offenses, those being voluntary
10 manslaughter and involuntary manslaughter. I will first
11 instruct you on voluntary manslaughter.

12 Manslaughter is defined as an unlawful killing of a
13 human being without the element of malice either expressed
14 or implied being present. While the element of malice must
15 be proven in order for the defendant to be found guilty of
16 the crime of murder, malice is not an element of the
17 offense of manslaughter.

18 Voluntary manslaughter is defined in the law as the
19 unlawful killing of another human being committed in a
20 sudden heat of passion which was provoked by a sufficient
21 legal provocation.

22 The law recognizes that sudden heat of passion arising
23 out of exasperation, rage, anger, sudden resentment, fear
24 or terror may for the time being affect the self control of
25 an individual temporarily disturbing the ability to

Jury charge

1 properly reason creating in a person an uncontrollable
2 impulse to do violence. And therefore the law reduces the
3 crime from that of murder to that of voluntary manslaughter
4 provided that the sudden heat of passion arose from a
5 sufficient legal provocation.

6 The law does not reduce from murder to voluntary
7 manslaughter every homicide that is committed in the heat
8 of passion. It must be the heat of passion justly excited
9 by a sufficient legal provocation. If a sufficient legal
10 provocation does not exist, then the killing even committed
11 in the heat of passion is murder and not voluntary
12 manslaughter.

13 The sudden heat of passion aroused by a sufficient
14 legal provocation which may reduce a homicide from that of
15 murder to that of voluntary manslaughter need not be such
16 emotion as would dethrone reason entirely or shut out
17 knowledge and volition, but it must be a heat of passion
18 which is provoked by such facts or circumstances created by
19 the deceased as would naturally disturb the ability of an
20 ordinary reasonable person to properly reason and rendering
21 his mind incapable of cool reflection and producing what
22 according to human experience may be described as an
23 uncontrollable impulse to do violence.

24 In determining whether an act resulting in the death
25 of another was impelled by heat of passion aroused by a

Jury charge

1 sufficient legal provocation or by malice you should take
2 into consideration all of the surrounding circumstances and
3 conditions which accompany the event, including any
4 previous relations or difficulties that may have existed
5 between the parties.

6 Therefore, as I've stated, voluntary manslaughter is
7 the unlawful homicide committed in the absence of malice
8 but in sudden heat of passion provided it was aroused by a
9 sufficient legal provocation.

10 An additional lesser included offense that you will be
11 instructed as to is that of involuntary manslaughter.
12 Involuntary manslaughter is defined as the unintentional
13 killing of another person without malice while engaged in a
14 lawful activity but with a reckless disregard for the
15 safety of others.

16 It's an unintentional killing of another person
17 without malice aforethought while engaged in a lawful
18 activity with a reckless disregard for the safety of
19 others.

20 Now, ladies and gentlemen, I instruct you further, and
21 I emphasize to you, that the fact that a defendant does not
22 testify during the course of a criminal trial is not a
23 circumstance that might be considered by you 12 jurors
24 during your deliberations or in your determination as to
25 whether or not his guilt has been proven beyond a

Jury charge

1 reasonable doubt because, as I've stated, the burden is
2 never upon a person accused of a crime to prove that they
3 are not guilty or to prove that they are innocent because
4 in many cases that might not be possible.

5 The burden is always upon the state to establish the
6 defendant's guilt beyond a reasonable doubt. And therefore
7 you are not to reach any conclusion nor draw any inference
8 from the fact that the defendant does not testify during
9 the trial of the case, nor may you allow that to influence
10 your decision whatsoever in your determination as to whether
11 or not his guilt has been proven beyond a reasonable doubt,
12 nor may you even discuss that fact while you are in your
13 jury room and engaged in your deliberations.

14 Now, Madam Forelady and ladies and gentlemen of the
15 jury, I am not in any way concerned with what your decision
16 is, but, as I have previously stated, your verdict must be
17 unanimous. All 12 of you must be in agreement.

18 Now, Madam Forelady, as you know, you're going to be
19 called upon to preside over jury deliberations in the jury
20 room simply to ensure that those deliberations are carried
21 out in some orderly fashion. And it's also going to be
22 your duty to indicate the jury's unanimous decision,
23 whatever that decision may be. And you'll indicate that
24 decision on the back of the indictment, as I indicated to
25 you, in the lower left-hand corner. You'll see the word

Jury charge

1 verdict. It's beneath that word that you'll indicate the
2 jury's unanimous decision. You'll also sign the verdict
3 form as the foreperson and place the appropriate date. You
4 are the only juror that needs to sign that verdict form.

5 Now, in this case you're going to have four potential
6 verdict forms. Those four potential verdict forms are
7 guilty, the one word guilty, which means guilty of the
8 charge set forth in the indictment, which is the crime of
9 murder. So the first verdict form is guilty.

10 A second verdict form is guilty of voluntary
11 manslaughter. So if the state has failed to prove an
12 essential element of the crime of murder but the state has
13 proven all of the essential elements of the crime of
14 voluntary manslaughter, then the verdict form would be
15 guilty of voluntary manslaughter. You'd have to write that
16 out.

17 The third potential verdict form is guilty of
18 involuntary manslaughter. So if upon your determination of
19 fact and application of the law the state has failed to
20 prove an essential element of the crime of murder and the
21 state has failed to prove an essential element of the crime
22 of voluntary manslaughter, then you would be permitted to
23 consider the lesser included offense of involuntary
24 manslaughter.

25 If your determination is that he is guilty of only

Jury charge

1 that lesser included offense, then that verdict form,
2 again, would be guilty of involuntary manslaughter. And
3 you would have to write that out.

4 And if the state has failed to prove one or more of
5 the essential elements of the crimes of murder and
6 voluntary manslaughter and involuntary manslaughter, then
7 the verdict form would be not guilty.

8 So, again, the four verdict forms are guilty, guilty
9 of voluntary manslaughter, guilty of involuntary
10 manslaughter and not guilty. You only have one verdict to
11 reach.

12 During the course of your deliberations -- I don't
13 know how many people smoke on the jury. But if you do and
14 you want to smoke, you can, but you can't smoke in the jury
15 room. You have to go outside to accomplish that purpose.
16 So if anybody wants to smoke tell the bailiff. They'll
17 take those outside to accomplish that purpose.

18 However, you are instructed that deliberations must
19 stop, and deliberations may only resume when all 12 jurors
20 are present so that all may participate. So if at any time
21 a juror is absent for some authorized purpose the
22 deliberations have to stop. They may only resume when all
23 12 are present.

24 If at any time you have a question about the evidence
25 in the case and if you have a question about whether

Jury charge

1 there's something else available that you could have to
2 assist you, no additional evidence can be received now that
3 you're going back to begin with your deliberations.

4 So even if something exists and even if it might help
5 you in resolving the case, you can't have it because the
6 evidence is closed. No additional evidence may be
7 received. So don't ask me about that if it should come up,
8 because I can't answer those questions. And even if there
9 is evidence existing, it cannot be received.

10 If you have a question about a witness' testimony and
11 you think that that question could be answered by having a
12 witness' testimony replayed in whole or in part, we can
13 bring you back into the courtroom to have that testimony
14 replayed.

15 I do not have transcripts of witnesses' testimony to
16 send back for your benefit, but if you want to hear a
17 witness' testimony replayed, you let the bailiff know.
18 We'll bring you back into the courtroom, and the court
19 reporter will make those arrangements to have a witness'
20 testimony replayed in whole or in part as you might need.

21 If you ever have a question about the law that is
22 applicable, I am permitted to answer those questions. So
23 should you need an additional instruction or you need an
24 explanation or a clarification of the law that I provided,
25 I am permitted to answer those questions.

Jury charge

1 So, Madam Forelady, if at any time you have a question
2 that you need to address to me, if you'll write it on a
3 piece of paper, give it to the bailiff, he'll provide it to
4 me and I'll address that as need be.

5 So far as lunch is concerned, it's not lunchtime yet,
6 but there's no way of knowing how long your deliberations
7 will take. So if you get to a point where you think it's
8 appropriate to order lunch if you'll let the bailiff know
9 of that fact the clerk of court will come into the jury
10 room and take your lunch orders.

11 It usually takes about an hour and maybe an hour and
12 ten minutes to have lunch orders taken -- ordered, prepared
13 and brought to the courthouse for your benefit.

14 So when you go back and when you're asked to begin
15 deliberations, just keep that timeframe in mind. So if you
16 get to a point where you think, well, it's going to be a
17 while or we'll be into the lunchtime, just keep that
18 timeframe in mind. It usually takes a little over an hour
19 to have it ordered and brought to the jury room.

20 I think that covers everything, but if it doesn't I'll
21 bring you back. I've got some matters I'll need to address
22 with the lawyers. If I don't need to bring you back for
23 any reason I'll send word by way of the bailiff that you
24 may begin with your deliberations. And in that event he'll
25 bring to the jury room all of the exhibits which have been

Jury charge

1 introduced during the trial.

2 And to you, Madam Forelady, he'll also bring the
3 indictment which will serve as the verdict form.

4 I'll ask Ms. Wyatt and Ms. Henderson if you'll just
5 stay here in the courtroom with me. And I'll ask the 12
6 primary jurors to please go to your jury room. But do not
7 begin deliberations until I send you word to do so.

8 (Whereupon, the jury retired to deliberate at
9 11:03 a.m.)

10 THE COURT: Ms. Wyatt and Ms. Henderson, it appears
11 that the initial 12 jurors are able to participate in
12 deliberations. And as a result that means you can't
13 participate any further, because, as I've told you, your
14 purpose is to take the place of one of them in the event
15 they could not serve. And they appear to all be in good
16 health and able to do that.

17 So that's going to conclude your service for this
18 case. It will also conclude your service for the week. So
19 you won't need to come back any more or call back any
20 further.

21 You will be receiving pay vouchers for your service
22 this week. If your address that appears on your juror
23 summons is not your correct address and you've not provided
24 a different address to the clerk, you need to do that
25 before you leave, because those pay vouchers are going to

Jury charge

1 be mailed to you at those addresses. So if you need to
2 provide the clerk an address, just do that before you
3 leave.

4 If you are curious about the decision the jury's going
5 to make you're welcome to stay. You don't have to. I'll
6 leave that up to you. But I do want to thank you for your
7 service as jurors in this case and for your service this
8 week. I hope that it has not posed too much a hardship on
9 you. And I do sincerely hope that it has been an
10 educational and a beneficial experience for you.

11 Do either of you wish to stay? Well, you don't have
12 to tell me. You just do what you want to. But before you
13 leave you'll have to give your juror tags to the bailiff.

14 Okay. Thanks again for your participation.

15 (Whereupon, the alternate jurors were excused.)

16 THE COURT: Are there any exceptions taken to the
17 instruction or requests for additions to the instruction by
18 the state?

19 MR. BULSA: No, Your Honor.

20 THE COURT: By the defendant?

21 MR. DELANEY: No, Your Honor.

22 THE COURT: The defense does except to my refusing to
23 charge self-defense?

24 MR. DELANEY: Oh, I, I would make that. We do make a
25 formal objection to Your Honor's failure to charge the jury

Jury charge

1 on self-defense.

2 THE COURT: Okay. Let me ask y'all to verify the
3 exhibits please before they go back.

4 (Pause.)

5 THE COURT: All of the exhibits are accounted for?

6 MR. BULSA: Yes, sir.

7 MR. DELANEY: Yes, sir.

8 THE COURT: All right. Send them back and ask the
9 jury to begin their deliberations and notify us when
10 they've concluded.

11 We'll be at ease while the jury is deliberating.

12 (Whereupon, a recess was taken.)

13 THE COURT: Bring the jury in, please.

14 (Whereupon, the jury returned to the courtroom at
15 1:20 p.m.)

16 THE COURT: All right. Madam Forelady, I have your
17 note. The jury would like to be reinstructed on the
18 definition of murder and of voluntary manslaughter. So
19 I'll instruct you again on the law of murder, including
20 malice aforethought, and then voluntary manslaughter.

21 Murder is defined in section 16-3-10 as the killing of
22 any person with malice aforethought, either expressed or
23 implied.

24 Malice as an essential element of the crime of murder
25 is a state of mind connoting an ill will and having the

Jury charge

1 intent to do harm. It is a technical importing wickedness
2 and excluding just cause or legal excuse. It is something
3 which springs from depravity, from a heart devoid of social
4 duty and fatally bent on mischief. It is a state of mind
5 indicating an extreme disregard for or an extreme
6 indifference to human life.

7 It may likewise be defined as a state of mind which
8 indicates a formed purpose and design to do a wrongful act
9 under circumstances that exclude any legal right to do it.

10 Malice may be expressed as where there is an expressed
11 threat to kill or a lying in wait or where the evidence
12 shows directly that the intent to kill was entertained by
13 the killer.

14 Malice may be inferred, though no expressed intent to
15 kill is proven by direct evidence, where the facts and
16 circumstances which have been established by the evidence
17 in the case satisfy you beyond a reasonable doubt that
18 malice was present in the mind of the killer at the time
19 any killing took place.

20 The existence of malice may be inferred from the
21 circumstances shown to have existed at the time of the
22 event. And the existence of malice may be inferred from
23 acts, declarations and conduct of the killer, along with
24 any other circumstances from which you might reasonably
25 infer such a fact, as often the state of a person's mind

Jury charge

1 can only be proven by circumstantial evidence.

2 Malice as an essential element of the crime of murder
3 does not necessarily require proof of an actual or a
4 specific intent to take human life, although such an intent
5 may be proven by the evidence. But rather it means a state
6 of mind accompanying conduct signifying a general malignant
7 recklessness and an extreme disregard for or an extreme
8 indifference to human life.

9 It is also essential that there exist not only malice
10 but that it be malice aforethought. However, the law does
11 not require that malice must exist for any appreciable
12 length of time before the commission of an act proximately
13 causing the fatal result. Indeed, it may be conceived at
14 the very moment that the fatal act is committed.

15 It is sufficient in the law so long as the state does
16 prove beyond a reasonable doubt both the existence of
17 malice and the commission of an act or acts by the
18 defendant which proximately caused the fatal result.

19 Voluntary manslaughter is defined in the law as an
20 unlawful killing of another human being committed in a
21 sudden heat of passion which was provoked by a sufficient
22 legal provocation.

23 The law recognizes that sudden heat of passion arising
24 out of exasperation, rage, anger, sudden resentment, fear
25 or terror may for the time being effect the self control of

Jury charge

1 an individual temporarily disturbing the ability to
2 properly reason creating in a person an uncontrollable
3 impulse to do violence and therefore may reduce the crime
4 from that of murder to that of voluntary manslaughter
5 provided that the sudden heat of passion arose from a
6 sufficient legal provocation.

7 The law does not reduce from murder to voluntary
8 manslaughter every homicide that is committed in the heat
9 of passion. It must be the heat of passion justly excited
10 by a sufficient level provocation.

11 If a sufficient legal provocation does not exist, then
12 the killing even committed in the heat of passion is murder
13 and not voluntary manslaughter.

14 The heat of passion aroused by a sufficient legal
15 provocation which may reduce a homicide from that of murder
16 to that of voluntary manslaughter need not be such emotion
17 as would dethrone reason entirely or shut out knowledge and
18 volition. But it must be a heat of passion which is
19 provoked by such facts or circumstances created by the
20 deceased as would naturally disturb the ability of an
21 ordinary reasonable person to be able to properly reason
22 rendering his mind incapable of cool reflection and
23 producing what according to human experience may be
24 described as an uncontrollable impulse to do violence.

25 In determining whether an act resulting in the death

Jury charge

1 of another was impelled by heat of passion or aroused by a
2 sufficient level provocation or by malice, either expressed
3 or implied, you should take into consideration all of the
4 surrounding circumstances and the conditions accompanying
5 the event.

6 All right. That concludes it.

7 Now, if you will, please retire. Continue with your
8 deliberations. And, again, if you need additional
9 guidance, clarification or explanation, let me know. I'll
10 be happy to provide it.

11 (Whereupon, the jury retired to deliberate at
12 1:28 p.m.)

13 (Question from the jury marked Court's Exhibit No. 2.)

14 THE COURT: Are there any exceptions taken to that
15 additional instruction by the state?

16 MR. BULSA: Your Honor, I did not hear the Court
17 instruct the jury as to voluntary manslaughter, that it is
18 the unlawful killing of another without malice. That is
19 the distinction between murder and manslaughter, is my
20 understanding, is murder has to have malice and
21 manslaughter does not.

22 THE COURT: That's true.

23 MR. BULSA: I didn't hear that description given to
24 the jury.

25 MR. DELANEY: I thought it was your first sentence,

Jury charge

1 Judge.

2 THE COURT: Let me look. I thought it was too, but
3 I'm not certain.

4 (Pause.)

5 THE COURT: Well, Mr. Bulsa, I'm not -- I don't --
6 quite frankly don't really know if I gave that exact
7 definition or not. But I did define murder as a killing
8 accompanied by malice, and voluntary manslaughter as being
9 a killing in sudden heat of passion based upon a sufficient
10 legal provocation, so.

11 MR. BULSA: Yes, sir. That's how I recall Your Honor
12 stated the voluntary manslaughter.

13 You did not include the without-malice language. I'm
14 afraid the jury could be confused and think malice could
15 exist with manslaughter as well.

16 THE COURT: Okay. Well, I'll bring them back and make
17 that clarification.

18 Bring them back in, please.

19 (Whereupon, the jury returned to the courtroom at
20 1:31 p.m.)

21 THE COURT: Ladies and gentlemen, I may have neglected
22 to add one additional portion of the instruction that is
23 important to the definitions and the distinction between
24 murder and manslaughter.

25 So I'm going to provide you that portion of the

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1 instruction. It's no more important than any of the other
2 instruction that I've already provided you. I just
3 neglected to tell you, and so I'm going to tell you this.
4 But you just put it in the context of the entire
5 instruction.

6 And the additional portion is while the element of
7 malice aforethought must be proven in order for the
8 defendant to be found guilty of the crime of murder, malice
9 is not an essential element of the crime of voluntary
10 manslaughter.

11 Okay. Please retire and continue with your
12 deliberations.

13 (Whereupon, the jury retired to deliberate at
14 1:32 p.m.)

15 THE COURT: Any further additions or clarifications
16 requested by the state?

17 MR. BULSA: No, sir.

18 THE COURT: The defendant?

19 MR. DELANEY: No, Your Honor.

20 THE COURT: All right. We'll continue to be at ease
21 while the jury is deliberating.

22 (Whereupon, a recess was taken.)

23 THE COURT: I'm told the jury has reached a decision.
24 Are we ready to receive the verdict?

25 MR. BULSA: Yes, sir.

Verdict

1 MR. DELANEY: Yes, sir.

2 THE COURT: Okay. Bring them in.

3 (Whereupon, the jury returned to the courtroom at
4 1:42 p.m. to report its verdict.)

5 THE COURT: Madam Forelady, have you and your fellow
6 jurors reached a unanimous decision?

7 THE FOREPERSON: Yes, sir.

8 THE COURT: And have you indicated that decision on
9 the back of the indictment as requested?

10 THE FOREPERSON: Yes, sir.

11 THE COURT: And did you sign your name as the
12 foreperson and date it?

13 THE FOREPERSON: Yes, sir.

14 THE COURT: If you will, please hand that verdict form
15 up by way of the bailiff.

16 You may publish the verdict.

17 THE CLERK: Case No. 2010-GS-42-5387, the State vs.
18 Robert Lee, Jr., the verdict is guilty. Signed by the
19 foreperson and dated December the 1st of 2011.

20 Ladies and gentlemen of the jury, is this your verdict
21 and still your verdict? If so, please raise your right
22 hand.

23 (Whereupon, all jurors responded in the affirmative.)

24 THE COURT: All have responded in the affirmative.
25 Does the defendant wish to have the jury polled?

Verdict

1 MR. DELANEY: Yes, sir, Your Honor.

2 THE COURT: All right. Poll the jury, please, ma'am.

3 THE CLERK: Ladies and gentlemen of the jury, I will
4 pose a question to you, after which I will ask each of you
5 to stand individually and respond to my question, the
6 question being is this your verdict and still your verdict.

7 Juror 155, Scott Waddell.

8 THE JUROR: Guilty.

9 THE CLERK: Juror 38, Julie Farmer.

10 THE JUROR: Guilty.

11 THE CLERK: Juror 85, Melissa Martin.

12 THE JUROR: Guilty.

13 THE CLERK: Juror 30, Gerald Edwards.

14 THE JUROR: Yes.

15 THE CLERK: Juror 96, Tammy Messer.

16 THE JUROR: Yes, ma'am.

17 THE CLERK: Juror 139, Conley Soden.

18 THE JUROR: Guilty.

19 THE CLERK: Juror 35, Chris Ervin.

20 THE JUROR: Guilty.

21 THE CLERK: Juror 126, Evelyn Salters.

22 THE JUROR: He's guilty.

23 THE CLERK: Juror 2, Sherard Ansley.

24 THE JUROR: He's guilty.

25 THE CLERK: Juror 124, George Runyon.

Verdict

1 THE JUROR: Yes. Guilty.

2 THE CLERK: Juror 17, Phillip Coleman.

3 THE JUROR: Yes. Guilty.

4 THE CLERK: And Juror 70, Jennifer Johnson.

5 THE JUROR: Guilty.

6 THE CLERK: Your Honor, the jury has been polled.

7 THE COURT: All right. Any other matters to address
8 with the jury present?

9 MR. DELANEY: No, Your Honor.

10 MR. BULSA: No, sir.

11 THE COURT: All right. Ladies and gentlemen, that
12 concludes your service for this case, as well as for the
13 week.

14 So I do want to take this opportunity to thank you for
15 your willingness to serve as jurors this week, and of
16 course for your actual service in the trial of the case.

17 I do hope that that service has been an educational
18 and a beneficial experience for you. I do sincerely hope
19 that your service has not posed too much of a hardship or
20 inconvenience on you.

21 You will receive a pay voucher for your service this
22 week. It'll be mailed to you at the addresses that appears
23 on your juror summons unless you have provided the clerk
24 with a different address. So if the address that appears
25 on your summons is not your correct mailing address, be

Motion and sentence

1 sure you see the clerk before you leave so that we can get
2 your proper address so that you will receive that pay
3 voucher.

4 Okay. Thank you again for your participation.

5 You will not need to call back or report back any
6 further.

7 (Whereupon, the trial jury was excused.)

8 THE COURT: All right. Any other matters to address
9 prior to the imposition of sentence?

10 MR. BULSA: Not from the state, Your Honor.

11 MR. DELANEY: None from the defense, Judge, unless you
12 are inclined to grant a judgment J.N.O.V. as there was not
13 sufficient evidence for this verdict to be reached by the
14 jury, if Your Honor is inclined to rule from the bench.

15 THE COURT: All right. Do you want to make a motion
16 for a new trial?

17 MR. DELANEY: Yes, sir.

18 THE COURT: All right. That motion is denied.

19 All right. Complete that information at the top,
20 please, Mr. Delaney.

21 (Pause.)

22 THE COURT: All right. Anything further from the
23 state?

24 MR. BULSA: No, Your Honor.

25 THE COURT: All right. Mr. Delaney, anything further

Sentence

1 from the defendant?

2 MR. DELANEY: No, Your Honor.

3 THE COURT: Mr. Lee, do you have anything you'd like
4 to tell me prior to the imposition of sentence?

5 THE DEFENDANT: I ask you, Judge, to have mercy on me,
6 please. And that's all. Have mercy.

7 THE COURT: All right. On Indictment 2010-5387, an
8 indictment for murder, wherein the jury has found the
9 defendant, Robert Lee, Jr., guilty of the crime of murder,
10 the Sentence of the Court is you, Robert Lee, Jr., be
11 confined to the South Carolina Department of Corrections
12 for the period of your natural life.

13 END OF REQUESTED TRANSCRIPT OF RECORD

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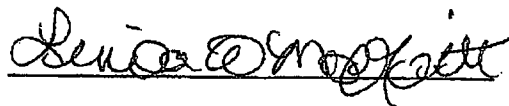
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 28th, 29th, 30th days of November and the 1st day of December 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 8, 2012



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT LEE, JR.,

APPELLANT

Appellate Case No. 2011-205428

FINAL BRIEF OF APPELLANT

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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's request for a self-defense charge at trial because appellant's case was similar to State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008), and other cases where imminent danger existed and there was no other means of avoiding said danger other than to act in self-defense.

STATEMENT OF THE CASE

Appellant Robert Lee, Junior, was convicted of murder per jury trial held at the December 2001 term of the Spartanburg County General Sessions Court before Judge J. Derham Cole. Appellant was sentenced to life imprisonment. Brendan M. Delaney represented appellant at trial.

Appellant appealed his trial court conviction and sentence. This brief follows.

ARGUMENT

The trial judge erred in denying appellant's request for a self-defense charge at trial because appellant's case was similar to State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008), and other cases where imminent danger existed and there was no other means of avoiding said danger other than to act in self-defense.

After a seven-year relationship with appellant that resulted in two children, twenty-one year-old Rebecca Rosa moved out of the residence that she shared with appellant in June 2010. Rebecca Rose moved to a "Safe Home," and later on into her own residence at Prince Hall Apartments in Spartanburg, South Carolina. Rosa's mother, sister, and brother testified that the relationship between appellant and Rosa was tumultuous and abusive, and that Rosa wanted to leave appellant and exit for those reasons. R. 7, l.11-14; R. 10, l. 7 – 18; R. 14, lines 1-10; R. 42, lines 22-25; R. 104, l. 16 – R. 105, l.4.

Rosa's mother Deborah Cook, sister Rachel Cook, and brother Jonathan Rosa testified that they last saw Rosa alive on Friday June 11, 2010, because that was the date on which Rosa brought her two kids over to have their mother to babysit. R. 10, l. 21-25; R. 15, l. 16 – R. 16, 107, l. 21. Then, later on that during that same Friday evening, brother Jonathan Rosa stated that he took Rosa out with him to Club Sidelines, and claimed that he dropped Rosa off at her apartment around 3:00 am on the morning of July 12, 2010. R. 20, lines 17-25; R. 88, l. 20- p. R. 92, l. 18. Then, around 10:00 am on June 12, 2010, everyone realized that Rosa was missing according to Rosa's sister because she did not appear to pick up her kids at her mother's house (R. 16, lines 1-5) and that she (Rosa) did not show up for work at Food Lion as scheduled. Food Lion Co-worker Kamaiya McMahan testified that Rosa did not show up for work on the morning of June 12, 2010. R. 140, l. 16- R. 146, l.1. On July 15, 2010, police and Rosa's brothers Jonathan and Matthew found Rosa's

body buried in the woods near Tibbs Road. R. 170, l. 3 – R. 176, l. 5; R. 187, l. 2 – R. 199, l. 19; R. 115, l. 1 – R. 136, l. 13. Thereafter, police arrested appellant in connection with Rosa's death.

Note that there were no eye-witnesses to the events that led to Rosa's death. Note further that appellant did not testify in his defense at trial. Only two defense witnesses testified on behalf of the defense and they both stated that Rosa frequently argued with appellant and confronted him with knives during those arguments. Diana Murray testified that in 2007 she recalled seeing Rosa standing and holding a knife outside the residence where she (Rosa) and appellant resided at that time. R. 423, l. 1 – R. 425, l. 3. Also, appellant's sister Sheera Lee testified that she lived with appellant and Rosa at one point in 2009, and that she recalled an incident where Rosa held appellant at knife-point during one of their arguments. R. 426, l. 8 – R. 427, l. 24. Again, the only account of the incident at the apartment that gave rise to Rosa's death appeared in appellant's statements given to Police Officer Burgess as follows:

[Appellant told Officer Burgess that on] Saturday morning... he went over there...[she] ...would say things and then roll her eyes. [Then]...Becky turned around and said "F- you," and she ha[d] a knife in her hand. He got [hand] cuts because she was swinging the knife...he took the knife from her...[and] told Becky to stop. Becky walked up him...but never said he stabbed her...said it was a cut- in her -stomach area...when he turned around she began to swing again. She was turning around, and he began to swing the knife and thinks he hit her one more time in the back...She ran up on him...she was just swinging the knife...she was still cursing...he end[ed] up with the knife after that...She walk[ed] up on him. She walks into the knife and yank[ed]s it, and he yank[ed] it back. She start[ed] to swing and he starts to swing. She turn[ed] around and he hit her in the back...she's wildly swinging, and he's swinging back still holding the knife...and at some point she turn[ed] around and he stab[bed] her in the back. R. 376, l. 15 – R. 380, l. 2.

Officer Burgess was questioned on the issue of self-defense as follows:

Counsel: Who does it appear brought the knife into this fight if you will, based on his second statement?

Police Officer Burgess: [Appellant's] claiming Rebecca did...I afforded him the opportunity to ask – to give me an explanation of what happened the first night. The second time based on what he told me that was the only reason he could come up with, was a self-defense claim.

Counsel: based on Mr. Delaney's questions, are you telling us [appellant's] version was he was acting in self-defense?

Police Officer Burgess: That's what he told me.
R. 395, lines 7-25.

Rosa died from stab wounds to her abdomen, neck, and back. R. 418, l. 11 – R. 419, l. 10.

At the close of the case, defense counsel requested a self-defense charge in the case. R. 432,

l. 10-12. Trial judge denied the request¹ under the following rationale:

The Court: I do not think there's sufficient evidence to support an instruction for self-defense in that there – while there is some evidence that he was without fault in bringing on the immediate difficulty, there is no evidence that he feared for his life or that he was actually in danger of losing his life or sustaining serious bodily injury, because I think the evidence establishes that he was in control of the knife. But there was no other weapon involved, and he was in control of the deadly weapon. So based upon those facts I find that the defense of self-defense is not applicable in this case.

R. 434, lines 2-18.

In a case of self defense, the law to be charged is determined from the facts presented in the case. State v. Bryant, 336 S.C. 340, 520 S.E. 2d 319 (1999). If there is any evidence in the record

¹ Counsel renewed his objection to the judge's failure to charge self-defense at the close of the case. R. 459, l. 16-R. 460, l. 1.

from which it can be reasonably inferred that an accused justifiably inflicted a wound in self defense, then the accused is entitled to a charge on the law of self defense. State v. Stone 285 SC 386 330 S.E. 2d 286 (1985). In order to establish self defense, the defendant must have been without fault in bringing on the difficulty and was or believed that he was in actual imminent danger of losing his life or sustaining serious bodily injury, which a reasonably prudent person would have so believed, and he had no other means of avoiding the danger. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). In the case at bar, the evidence supported appellant's self-defense claim.

WITHOUT FAULT IN BRINGING ON THE DIFFICULTY

Clearly, appellant was without fault in bringing on the difficulty and the trial judge admitted to this obvious fact as well. R. 434, 1.3-5. For example, Rosa approached and confronted appellant with a knife while saying "f--- you" and started swinging a knife at appellant and appellant actually received cuts as a result. Undoubtedly, Rosa was the armed aggressor who cursed and made threats and advances toward appellant.

IMMINENT DANGER

Also, in light of Rosa's behavior via swinging the knife, cursing, and making advances toward him, it was clear that appellant, who was initially unarmed and being approached in a violent manner, stood in imminent danger, and the circumstances justified his fear for his life or serious bodily injury as any reasonably prudent man would have so feared in such a situation. Compare, State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008), where the court held that the defendant was in imminent danger when his aggressor confronted him with a gun, "acted a fool" by screaming and threatening him in a jealous rage to the point where the defendant, who was justifiable in his belief that he was in imminent danger, had to pull the gun away prior to the struggle that ensued. The Court in Light held that a self-defense charge was warranted despite the fact that the defendant

disarmed the aggressor due to his reasonable belief that he was in imminent danger, particularly where he had been warned previously by the aggressor about how “messy” things would get if another jealous rage erupted. Compare, State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011), where the court found the defendant reasonably believed he was in imminent danger where he was faced with a highly intoxicated, belligerent, and agile aggressor who reached under his shirt (for what the defendant thought was a gun) as he (aggressor) advanced for the purpose of assaulting the defendant. Here, appellant reacted also by disarming Rosa via the taking her knife, but Rosa continued to advance, swing and threaten until she caught herself up in the melee. Thus, appellant rightfully acted on the imminent danger he faced in the case.

NO OTHER MEANS OF AVOIDING THE DANGER

Finally, appellant had no means of avoiding the danger as he could not retreat per the circumstances. In other words, appellant reacted by taking the knife from Rosa and asking her to stop, but she continued to walk towards him and did “swing again.” As a rule, once the right to defend arises, a person is not required to wait until his adversary is on equal terms in order to defend or to wait until he “gets the drop” on him because, one has the right to act on self-preservation. State v. Frazier, 2013 WL 11879 (S.C. App. Ct Jan 2, 2013) State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000). In Frazier, the Court held that a self-defense charge should have been given where the defendant had ducked behind a vehicle for safety, but had to continue firing because shots were still being fired at him from someone in another car. In Starnes, the defendant was entitled to a self-defense charge where he had and a right to act on appearances when he fired his gun in response to the decedent’s action of holding a gun to his head and threatening to shoot if he moved or attempted to leave. The Starnes Court held that the defendant did not have to wait to be fired upon before reacting in the case. In other words, it is one’s duty to avoid taking human life where it

is possible to prevent it even to the extent of retreating from his adversary unless by doing so the danger of being killed or suffering seriously bodily harm is increased or it is reasonably apparent that such danger would be increased. State v. Frazier, *supra*. A defendant is not required to retreat if he has no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act in self-defense. State v. Dickey, *supra*. In Dickey, the Court ruled that had the defendant turned his back, he would likely have been attacked from behind by his belligerent aggressor who reached to become armed and advanced toward him. See State v. Day, 341 S.C. 410, 535 S.E.2d 431 (2000), where the defendant was entitled to a self-defense charge where he shot and killed the victim because he believed he was in imminent danger as he thought the victim would pull the gun on him. Here, it was clear that appellant could not escape Rosa's wild and armed advances toward him and that he acted properly in self-defense.

Furthermore, one has a right to act on appearances in self-defense cases where words accompanied by hostile acts would support actions in self-defense. State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989). In Fuller, the defendant fired shots when he saw two men who were threatening and pursuing him open the trunk of their car, and when he saw something shiny in one of the men's hands as they both approached and yelled that they were "going to take care of him (defendant)." See also, State v. Williams, 400 S.C. 308, 733 S.E.2d 605, (2012), where the court held that a self-defense charge should have been given because the decedent had a demented look on his face, and had begun cursing, and started to reach for a gun as this was sufficient evidence to warrant the unarmed defendant's fear for his life. Note further that the defendant in Williams stated that he knew that the decedent had shot people in the past and knew that he (decedent) would have shot him if he had not fired his weapon. Again, compare State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011), where the Court held the defendant had a right to fire in self-defense when the belligerent

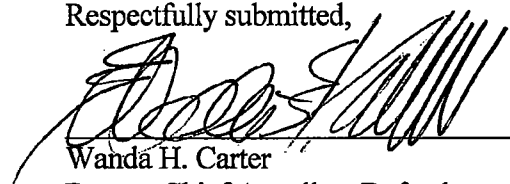
and intoxicated aggressor began advancing towards him in an aggressive manner. Here, appellant was in imminent danger and feared for his life as any reasonably prudent man would have feared likewise if placed in such a position, and he acted properly in self-defense when he was confronted by Rosa who advanced toward him while she held and swung a knife and yelled "f--- you," and actually cut him (appellant) while swinging the knife.

The trial judge erred in denying appellant's request for a self-defense charge in the case since the facts warranted such a charge because this violated his right to due process of law at trial as guaranteed under the Fourteenth Amendment to the United States Constitution and Article 1, §3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, appellant requests that the Court reverse appellant's conviction and sentence and remand the case for a new trial.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

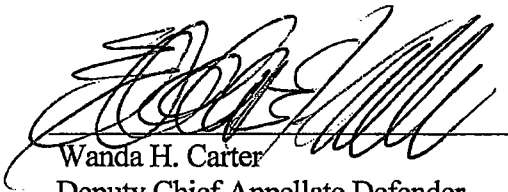
ATTORNEY FOR APPELLANT

This 27th day of August, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 27, 2013



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

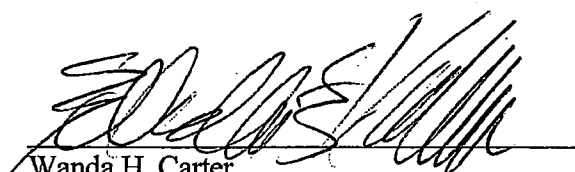
V.

ROBERT LEE, JR.,

APPELLANT

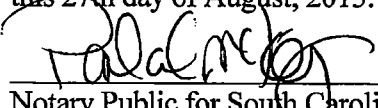
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of August, 2013.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of August, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 24, 2022.

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2011-205428

THE STATE,

Respondent,

v.

ROBERT LEE, JR.,

Appellant.

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's request for a self-defense charge at trial because appellant's case was similar to State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008), and other cases where imminent danger existed and there was no other means of avoiding the danger other than to act in self-defense. (Initial Brief of Appellant, p. 2).

STATEMENT OF THE CASE

Appellant, Robert Lee, Jr., murdered Rebecca Rosa on Saturday, June 12, 2010. Lee was arrested on Tuesday, June 15, 2010 and charged with Rosa's murder. The Spartanburg County grand jury subsequently indicted Lee for murder. (Ind. No. 2010-GS-42-5387). Lee was represented on the charge by Brendan Delaney, Esquire. The case was prosecuted by Deputy Solicitor Derrick Bulsa and Assistant Solicitor Chad Graham. Lee proceeded to trial from November 28 - December 1, of 2011 before the Honorable J. Derham Cole, Circuit Court Judge, and a jury. At the conclusion of the trial, Lee was convicted of murder. Judge Cole sentenced Lee to life imprisonment for Rebecca Rosa's murder. This appeal followed. (R. 1, 2-3, 4, 5, 362-394, 466-71, Indictment).

RESPONDENT'S STATEMENT OF FACTS

The victim, Rebecca "Becky" Rosa, was living alone with her three (3) children at the time of her disappearance and murder in June of 2010. Becky had recently moved from a "safe home" to the current apartment she was living in located in the City of Spartanburg. The individuals at the "safe home" had assisted Becky in getting her own place and the furnishings in her apartment were described as sparse. Becky had no silverware, using plastic utensils, and a friend had to provide her with cleaning supplies. Becky's grandmother had also given her a pot or pan to cook things in. Becky had moved into her new apartment approximately a week or two (2) before her disappearance and murder. (R. pp. 6-45, 46-59, 82-113, 140-42, 149-50, 152-53, 168-69, 200-255, 391-92).

Becky had previously lived with appellant Robert Lee ("Lee") the father of two (2) of her children. Becky had moved out of the residence where she and the children resided with Lee in May of 2010 because of the abusive nature of the relationship. One (1) witness described Lee as possessive. Whenever Becky would try to do anything, Lee would call and see where she was and what she was doing. He would also make sure he took Becky everywhere she went. Witnesses also described seeing marks on Becky's body before or shortly after she moved out of Lee's home. Another witness testified Lee was jealous, and after Becky left and went to the "safe home," Lee began looking for Becky. Lee also told this witness, after Becky left him, that he would "'F' her [Becky] up, that he wanted his kids back." Lee's great aunt also testified Lee was upset the whole time after Becky left. Lee's residence was located on Miller Road in rural western Spartanburg County. (R. pp. 6-45, 46-59, 82-113, 140-42, 149-50, 152-53, 168-69).

On Friday night, June 11, 2010, Becky went out to eat with her brother Jonathan, and then the two (2) siblings went to several night clubs in Spartanburg. While at one (1) night club, Becky

and her brother ran into two (2) of appellant Lee's sisters. Eventually, Jonathan, who was a college student at the time, took Becky to her home, the apartment, and dropped her off around 3:00 a.m. on Saturday, June 12, 2010. Jonathan then checked by voice mail to make sure his sister Becky got into her apartment safely. She did. (R. pp. 82-113).

Becky was supposed to be at her place of employment, the Food Lion in Lyman, S.C., around 10:30 a.m. that Saturday morning, June 12, 2010. She did not appear for work. Before going to work, Becky was also supposed to pick up her children, who had stayed with Becky's mother while Becky and her brother Jonathan went out the night before. Becky did not appear to pick up her children either. (R. pp. 6-11, 12-45, 82-113).

The same morning, Saturday June 12, 2010, during daylight, neighbors in Becky's apartment complex heard hollering or screaming coming from Becky's apartment, and then the noise stopped. One (1) neighbor was later behind the apartment complex throwing baseball with his son, when he noticed appellant Lee's blue Dodge Durango parked behind the apartment building in a grassy area located at the bottom of the apartment building's staircase.¹ The fact that Lee had parked his vehicle behind the apartment complex appeared strange to the neighbor because only maintenance people parked behind the apartment complex. This neighbor then noticed the vehicle was moved to the parking lot, and then he later saw it again behind the apartment complex. Another neighbor, saw appellant Lee carrying what appeared to be a body wrapped in a blanket and placing it in his blue

¹At some point in time after moving to the "safe home," Becky had re-established contact with appellant Lee and was allowing Lee to see his children at her apartment; however, Lee was not allowed to live with Becky. Lee had also brought some limited items to the apartment and would also drive Becky to work because Becky had never obtained a driver's license. As a result, residents of Becky's apartment complex knew Lee and recognized his vehicle the morning of her disappearance and murder.

Dodge Durango, while the vehicle was parked behind the apartment complex. According to this neighbor, Lee was looking around suspiciously to see if anyone was watching before he placed whatever he had in the blanket in his vehicle. Lee then left Becky's apartment complex in his vehicle. (R. pp. 36-37, 46-82).

On that same Saturday morning, around 11:00 a.m. to 12:00 p.m., residents on Tibbs Road in rural western Spartanburg County saw Lee's blue Dodge Durango backed into a wooded area beside Tibbs Road. Lee had lived in this area as a boy when there was a residence there. One (1) witness, who knew Lee, saw Lee coming out of the woods, and he asked Lee what he was doing there. Lee replied he was looking for an old refrigerator or freezer. The witness told Lee he was wasting his time and then drove away while Lee was getting back into his own vehicle. Lee's residence on Miller Road was located approximately one-quarter (1/4) to one-half (1/2) mile from Tibbs Road. (R. pp. 170-79, 179-186, 187-199).

Either that same Saturday or the following Sunday morning, Becky's family arrived at her apartment complex looking for Becky because they received a call she did not report to work, and they already knew she did not pick up her children.² They searched Becky's apartment in hopes of finding Becky, but she was not there. The family noticed the apartment did not appear as it had the night before when Becky left to go out with her brother Jonathan.³ There was duct tape or pieces of duct tape in different parts of the home. Becky's sister testified Becky did not have any duct tape

²Jonathan testified it was Saturday morning that the family went to Becky's apartment looking for her. Becky's brother Matthew testified it was Sunday morning. Becky's sister testified it was Saturday and Sunday morning.

³Several of Becky's family members were at her apartment the night before when she and her brother left to go out to eat and visit several night clubs.

in her apartment prior to her disappearance. Furniture was also not where it had been located on Friday night. Toys that had been placed in a closet were strewn on the floor.⁴ Becky's work clothes were missing and the clothes she had worn to the night club were missing as well. Becky's family also attempted to reach her by phone and text message but she did not reply. (R. pp. 82-113, 11-45, 6-11, 117-126).

They contacted Lee by phone or text and in person. Lee stated he had no contact with Becky except she sent him a text message around 10:30 that morning to tell him she did not need a ride to work. He even showed Becky's brothers the text message. Lee told Becky's brothers that she had run away before, and she was probably just taking some time for herself. Lee did not acknowledge that he had been to Becky's apartment Saturday morning in his Blue Durango. Becky's family contacted police and filed a missing person's report. (R. pp. 82-113, 11-45, 6-11, 117-126).

Police obtained and executed a search warrant on Becky's apartment based on the missing person's report filed by her family. There they found medium velocity human blood spatter at the end of the hallway near the bedroom in the lower half of the hallway wall of the apartment and going into the bedroom. They also found a bloody palm or fingerprint print on the wall. Blood was also found on a bed spread under a comforter in the bedroom, in the kitchen sink, and on the accompanying faucet. Several of the blood spatters at the lower end of the hallway were identified through DNA testing as belonging to Becky. One blood swab also contained the D.N.A. of another donor, but the amount of D.N.A. was too small to identify that person. A mop bucket still full of dirty water was found on the kitchen floor. The apartment appeared as if someone had mopped up

⁴Becky's children did not return to their mother's apartment after they left to stay with their grandmother on Friday night June the 11th.

the crime scene. The mop was nowhere to be found. (R. pp. 200-228, 270-73).

Police then interviewed Lee.⁵ Lee denied he had anything to do with Becky's disappearance. Lee claimed Becky must have run off somewhere, and Lee stated she would return as she always did. Lee claimed the last contact he had with Becky was when she sent the text message to him at 10:30 a.m. on Saturday, June 12th informing him she would not be needing a ride to work. Lee even showed police the text message. Police could not locate Becky's cell phone anywhere. (R. pp. 339-346, 382-83, 238-249).

A fellow employee of Lee remembered that one day, months before Becky's disappearance, while just passing the time, she and other employees including Lee were discussing what they would do if they murdered someone. Lee told the other employees that if he murdered someone he would bury them behind his house because it was wooded. When Becky disappeared, this employee reported to police and Becky's family what Lee had said months before Becky's disappearance. (R. pp. 140-150).

Police eventually determined Lee had lived at one time in a residence on Tibbs Road, which is near Miller Road where Lee currently lived. On Monday night, June 14, 2010, police searched the wooded area immediately behind where Lee had lived on Tibbs Road, but because of darkness were unable to locate Becky. On Tuesday morning, friends and family of Becky formed a search party and began searching the same area immediately behind where Lee had lived as a boy.⁶ Approximately one hundred and twenty-five (125) yards off Tibbs Road, Becky's brother Matthew,

⁵Lee was not under arrest at this time, and after questioning on June 13th left the police department with his aunt.

⁶Police were on the way to search this area again at the time the search party formed by family and friends began searching this wooded area. (R. pp. 350-51).

found freshly dug dirt. He began digging with his hands and uncovered his sister's dead body. He screamed for an unknown period of time. Becky's body was so decomposed she had to be identified with dental records. However, Becky was still wearing her Food Lion blouse. (R. pp. 229-236, 258-60, 349-353, 364-67, 98-104, 129-136, 402).

Appellant Lee, who was walking nearby with two (2) of his cousins, but not involved in the search for Becky, took off running in the opposite direction when Becky's brother screamed out. He ran to an aunt's home and asked a step-uncle to drive him to Reidville Road. He then changed the address he wanted to be dropped off at, and was eventually let out of the car. Lee then called a friend who took him to another location where he got out of that car. During the ride with this friend, Lee stated he and Becky had been receiving threatening phone calls from someone. (R. pp. 111-12, 273-291, 296-302, 303-08, 308-321).

Police eventually determined the bloody print found in Becky's apartment belonged to Lee. Police also began an attempt to locate Lee using cell phone towers and triangulating phone calls from Lee's cell phone. (R. pp. 220, 221, 353-54)

During that afternoon, Lee called a female friend several times, and during one (1) phone conversation asked to meet her at her apartment later. She became suspicious when news of the body's discovery near Lee's family's property was broadcast on the local news. In a phone call, Lee told her he was being framed by another person for Becky's murder. This female friend was eventually brought to the Spartanburg City Police Department in an attempt to locate Lee. Police later arrested Lee at this female friend's apartment in Spartanburg as he was descending the staircase outside her apartment at dusk. (R. pp. 322-331, 332-34, 353-54).

Becky's autopsy revealed she had been stabbed a total of three (3) times. There were two (2)

stab wounds to her back and one (1) stab wound to the stomach. One of the stab wounds to her back was at the nape of her neck and the other was at the sixth (6th) rib and penetrated her lung. The wound to the neck was potentially fatal. The wound to the mid-back was intermediately fatal. With regard to both stab wounds, the blunt edge of the knife was toward the top of the victim's body and the sharp edge was toward the bottom of her body. The pathologist testified the victim would have had to have been leaning forward when stabbed in the back or down on the floor when stabbed in the back. The immediately fatal wound to Becky was the wound to her stomach which was caused with a knife that was at least one (1) inch wide or greater. This wound entered through Becky's stomach and went all the way to the vertebral column and severed Becky's aorta. With regard to this wound, the sharp edge of the knife was pointed toward the bottom of her body. The pathologist testified the cause of death was exsanguination (bled to death) as a result of the stab wound to the stomach and the wound to the mid-back. The pathologist testified Becky at most lost consciousness two (2) to three (3) minutes after being attacked. (R. pp. 400-21).

Lee was questioned the same day as his arrest. *He was confronted by police with the evidence against him.* He again denied having anything to do with Becky's disappearance. He told basically the same story he had told police and Becky's family before, that he had not seen Becky on Saturday and only received the text message. (R. pp. 334-361, 367-374).

On the next day, June 16th, after having the entire night to consider the evidence police had against him, Lee sent word he wanted to talk to police. At this time, Lee claimed he did see Becky at her apartment that Saturday morning. He stated they were discussing the children, and she started cursing him and got a kitchen knife. He claimed she was swinging it and caused some cuts to his hands. He stated he took the knife away from her completely and had it in his right hand. He told

her to stop. He claimed she then came at him, unarmed, and ran up on the knife which he was holding. He also claimed that she grabbed the knife at this time and jerked it toward her, and he jerked it back. He claimed her running forward onto the knife or her jerking it toward her caused a stab wound to her stomach. He told police this stab wound was “an accident.” He stated he did not intentionally stab her. Lee stated he still had possession of the knife. He claimed her turned away from her, and she then, unarmed, started to swing at him. Lee stated he turned and swung back wildly with the knife in his right hand, as she turned her back to him, and he must have stabbed Becky one (1) time in the back. Lee claimed all of this occurred at the kitchen-hallway area or the end of the hallway nearest the kitchen, not the bedroom. (R. pp. 375-380).⁷

Lee then claimed Becky told him not to call the police or E.M.S. Lee also claimed he did not call police because no one would believe him because of the “safe home” and everything else and her cursing him. Lee claimed he sat with Becky talking to her for five (5) to ten (10) minutes as she expired. (R. pp. 375-380).

Lee stated he then mopped down the crime scene before he left Becky’s apartment. He admitted he sent the text message to himself using Becky’s phone to make it appear she had told him she did not need a ride to work. He admitted he snuck her body out of the apartment and into his Dodge Durango. Lee claimed he got the blanket he used to wrap her body out of his vehicle. He admitted he buried her body in the woods off Tibbs Road. (R. pp. 380-86).

Police searched the home Lee and Becky had lived in on Miller Road, Lee’s home, which

⁷The State did not introduce this statement because it believed Lee’s version of events, but simply to establish Lee’s identity as the killer and to show he changed his original story after being confronted with the evidence against him including the discovery of Becky’s body on Lee’s family’s property.

is approximately one quarter (1/4) mile from where her body was discovered. Inside the home, police found a knife cutlery set and photographed it. One (1) of the knives was missing from the cutlery set. Lee later stated he threw the knife used to kill Becky and Becky's cell phone in some rapids on the Middle Tyger River. Police searched the river but were never able to recover the murder weapon or Becky's phone. Nor were police ever able to recover the blanket, used to secrete her body from her apartment to Lee's truck, or the mop, used to clean up the crime scene. (R. pp. 238-39).

ARGUMENT

Judge Cole did not err in refusing to charge self-defense where Lee's version of events constituted voluntary manslaughter or involuntary manslaughter, which Judge Cole did charge to the jury, but did not meet the elements of self-defense.

What Occurred Below

At trial, Lee did not testify. Nor did he offer any version of events regarding the victim's death. In the State's case in chief, Investigator Burgess testified to Lee's final version of events provided to police on June 16th, the day after his arrest. (R. pp. 376-80).⁸ To Burgess, Lee claimed he had gone to the victim's apartment, an argument began over the children, the victim began cursing, produced a kitchen knife swinging it and causing cuts to his hands, he took the knife

⁸Lee called only two (2) witnesses in his defense case. These two (2) witnesses testified to coming upon domestic altercations between Lee and Becky months or years before Becky's disappearance and murder. Both testified that the respective incidents they came upon were basically over when they arrived and Becky was holding a knife. Neither could testify Becky was the initial aggressor in the incident or whether she had armed herself in self-defense. In fact, in one (1) incident Becky was standing outside the home in the yard holding a knife and crying as if trying to get away from Lee, and appellant Lee was standing in the door of the home. In the other incident, Lee's sister testified she heard an argument and came downstairs and allegedly saw Becky holding a knife up toward Lee but she did not cut or stab him with the knife and then threw the knife in the sink. (R. pp. 423-431).

completely away from the victim and had it in his possession, he told her to stop, she came at him without a weapon and ran up on the knife or walked up and pulled the knife into her while he was holding the same causing the stomach wound, and then she backed away, he turned away from her, she started to swing at him with her hand, and as he turned with the knife still in his hand, she turned away from him, and he swung at her wildly with the knife in his right hand stabbing her in the back one (1) time after she had turned away from him. (R. pp. 376-380).⁹ It was undisputed at trial that the immediately fatal wound to the victim was the wound to the victim's stomach. (R. pp. 400-421, Doctor Wren's testimony). And, the wound to the mid-back was intermediately fatal. It was also undisputed the victim had three (3) knife wounds, two (2) to the back and one (1) to the stomach. At the charge conference, the State requested the Court instruct the jury on the indicted offense of murder and its elements. Lee's counsel requested Judge Cole instruct the jury on the lesser included offenses of voluntary manslaughter and involuntary manslaughter. Lee's counsel also requested Judge Cole instruct the jury on the defense of self-defense. Lee *did not* request an instruction on the defense of accident. After carefully reviewing the evidence, Judge Cole agreed that viewing the evidence in the light most favorable to the defendant it was proper to instruct the jury on the lesser included offenses of voluntary manslaughter and involuntary manslaughter. (R. pp. 432-33). Judge Cole declined to instruct the jury on the defense of self-defense for the following reasons:

I do not think there's sufficient evidence to support an instruction for self-defense in that there - - while there is some evidence that he was without fault in bringing on the immediate difficulty, there is no evidence that he feared for his life or that he was

⁹Lee's final statement to police is contained on pages 472-76 [R. 376-380] of the trial transcript. Investigator Burgess explained that Lee told this version several times repeating himself. It is necessary to read these pages together to understand what Lee claimed occurred. Respondent believes it has accurately summarized above Lee's final statement to police after reviewing the same numerous times.

actually in danger of losing his life or sustaining serious bodily injury, because I think the evidence establishes that he was in control of the knife. He took the knife away from her [the victim] prior to her death, and he caused her death by the use of the knife. But there was no other weapon involved, and he was in control of the deadly weapon. And therefore he was not reasonably in fear of losing his life. And he had a duty to retreat being in her residence. And there's no evidence that he made any attempt to do so before employing the use of a deadly weapon.

So based upon those facts I find that the defense of self-defense is not applicable in this case.

(R. p. 434, ll. 2-18). Thereafter, Judge Cole instructed the jury on the crimes of murder, voluntary manslaughter, and involuntary manslaughter and on a verdict of not guilty. As previously stated, the jury convicted Lee of murder. (R. pp. 435-466).

Standard of Review

In criminal cases, an appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Wood, 362 S.C. 520, 525, 608 S.E.2d 435, 438 (Ct. App. 2004). Thus, the appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.; State v. Landis, 362 S.C. 97, 101, 606 S.E.2d 503, 504 (Ct. App. 2004). On appeal, the appellate court is limited to determining whether the trial court abused its discretion. State v. Walker, 366 S.C. 643, 653, 623 S.E.2d 122, 127 (Ct. App. 2005). The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion. State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982); State v. Patterson, 367 S.C. 219, 230, 625 S.E.2d 239, 245 (Ct. App. 2006).

Jury Instructions

"An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Commander, 396 S.C. 294, 721 S.E.2d 413 (2011), *quoting* State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). "To warrant reversal, a trial judge's

refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.” Mattison, 388 S.C. at 479, 697 S.E.2d at 583, *citing* State v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002). The law to be charged to the jury is determined by the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001); State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000); State v. Lee, 298 S.C. 362, 364, 380 S.E.2d 834, 835 (1989); State v. Dantonio, 376 S.C. 594, 658 S.E.2d 337 (Ct. App. 2008); State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002); State v. Harrison, 343 S.C. 165, 172, 539 S.E.2d 71, 74 (Ct. App. 2000)(*citing* State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993)). If there is any evidence to warrant a jury instruction, a trial court must, upon request, give the instruction. State v. Smith, 391 S.C. 408, 706 S.E.2d 12 (2011), *citing* State v. Shuler, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001). The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand constitutes an error of law. State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (Ct. App. 2011), *citing* State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 167 (2007). A trial court commits reversible error when it fails to give a requested charge on an issue raised by the evidence presented. Lee, 298 S.C. at 364, 380 S.E.2d at 835. The court has a duty to charge the jury as to the law applicable to the facts brought out in the testimony. State v. West, 138 S.C. 421, 136 S.E. 736 (1927).

When reviewing a circuit court’s refusal to deliver a requested jury instruction, an appellate court must consider the evidence in the light most favorable to the defendant. State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000). “If there is any evidence in the record from which it could reasonably be inferred the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge’s refusal to do so is reversible error.” State v. Light, 378 S.C. 641,

650, 664 S.E.2d 465, 469 (2008). “Because all of the elements are required to establish self-defense . . . [i]t is an axiomatic principle of law that [self-defense] has not been established if any one element is disproven.” *In re Tracy B.*, 391 S.C. 51, 704 S.E.2d 71 (Ct.App. 2011), *quoting State v. Bixby*, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010). A self-defense charge is not required unless supported by the evidence. *State v. Bryant*, 336 S.C. 340, 344, 520 S.E.2d 319, 321 (1999); *State v. Goodson*, 312 S.C. 278, 440 S.E.2d 370 (1994)(a self-defense charge is not required unless supported by the evidence). Moreover, “[n]o instruction should be given which tenders an issue which has not been presented or supported by the evidence ...[as] even a slight remark, apparently innocent in its language, may, when uttered by the court, have a decided weight in shaping the opinion of the jury.” *See State v. Huckabee*, 388 S.C. 232, 694 S.E.2d 781 (Ct. App. 2010), *quoting State v. Mollison*, 319 S.C. 41, 48, 459 S.E.2d 88, 93 (Ct. App. 1995)(internal citation and quotation omitted). *See also State v. Bruno*, 322 S.C. 534, 536, 473 S.E.2d 450, 452 (1996)(holding that the defendant was not entitled to a self-defense charge where he presented no evidence that he believed that he was in imminent danger when he shot the victim).

Analysis

Self-defense

Under South Carolina law, the defense of self-defense is recognized. However, simply because a defendant requests an instruction on the defense of self-defense does not mean he is entitled to one. In order to be entitled an instruction on the law of self-defense, the defendant must produce some evidence or some evidence must be presented at trial establishing the elements of self-defense. *State v. Bryant*, 336 S.C. 340, 344, 520 S.E.2d 319, 321 (1999)(A self-defense charge is not required unless supported by the evidence); *State v. Goodson*, 312 S.C. 278, 440 S.E.2d 370

(1994)(a self-defense charge is not required unless supported by the evidence); State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (Ct. App. 2012), *quoting* State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000)(“The law to be charged must be determined from the evidence presented at trial.”); State v. Bruno, 322 S.C. 534, 536, 473 S.E.2d 450, 452 (1996)(holding that the defendant was not entitled to a self-defense charge where he presented no evidence that he believed that he was in imminent danger when he shot the victim).

The elements of self-defense under South Carolina law are as follows:

(1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in actual danger of losing his life or sustaining serious bodily injury; (3) if his defense is based on his belief of imminent danger, the defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such that would warrant a person of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or loss of his life; and (4) the defendant had no other probable means of avoiding the danger. If however the defendant was on his own premises he has no duty to retreat before acting in self-defense. State v. Rivera, 389 S.C. 399, 699 S.E.2d 157 (2010), *citing* State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). *See also* State v. Frasier, 401 S.C. 224, 736 S.E.2d 301 (Ct. App. 2013).

The learned trial judge was correct in declining to charge self-defense. State v. Bryant, 336 S.C. 340, 344, 520 S.E.2d 319, 321 (1999)(a self-defense charge is not required unless supported by the evidence); State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994)(same). Lee’s version of

events justified a charge on voluntary manslaughter, which Judge Cole gave. *See State v. Jackson*, 301 S.C. 401, 389 S.E.2d 650 (1990)(assault or threat of assault sufficient for voluntary manslaughter instruction), *overruled on other grounds*, *Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999); *State v. Smith*, 304 S.C. 129, 403 S.E.2d 162 (Ct. App. 1991)(blows to a person sufficient for a voluntary manslaughter instruction); *State v. Davis*, 278 S.C. 544, 298 S.E.2d 778 (1983)(fighting between deceased and victim sufficient legal provocation). And, Lee's version of events also clearly justified a charge on involuntary manslaughter, which Judge Cole gave. *See State v. Burris*, 334 S.C. 256, 513 S.E.2d 104 (1999)(negligent use of weapon); *State v. Chatman*, 336 S.C. 149, 519 S.E.2d 100 (1999)(unlawful act manslaughter theory). *See also State v. Brayboy*, 387 S.C. 174, 691 S.E.2d 482 (Ct. App. 2010) (struggle over a weapon justified instruction on involuntary manslaughter); *Casey v. State*, 305 S.C. 445, 409 S.E.2d 391 (1991)(same).

However, even if one accepts Lee's final version of events as true, which Judge Cole did, Lee was not entitled to an instruction on the defense of self-defense for the following reasons:¹⁰ (1) Lee was not in imminent danger of losing his life or sustaining serious bodily injury when the immediately fatal blow was struck or the potentially or intermediately fatal blows were struck nor did he believe he was in such danger when those blows were struck; (2) if he believed such, that belief was not reasonable; and (3) he failed to retreat while in the victim's home, and Lee had other means of avoiding the difficulty rather than employing deadly force in stabbing the victim in the

¹⁰It has been repeatedly noted by our Courts that there is a difference between *arming* oneself in self-defense and *acting* in self-defense. *State v. Burris*, 334 S.C. 256, 265 n. 10, 513 S.E.2d 104, 109, n. 10 (1999); *State v. Light*, 378 S.C. 641, 664 S.E.2d 465, n. 6 (2008). Lee did not act in self-defense. Therefore, he was not entitled to an instruction on the defense of self-defense. He was entitled to instructions on the lesser included offenses of voluntary manslaughter and involuntary manslaughter, which were given.

back. Regardless, any error was harmless because the immediately fatal wound was the first (1st) wound which constituted accident or involuntary manslaughter, if appellant's story is believed, not self-defense, and the jury was instructed on involuntary manslaughter and rejected the same. Brayboy; Casey. (R. pp. 435-469).¹¹ Further, under Lee's version of events, the second (2nd) and third (3rd) stab wounds were inflicted by Lee after the female victim was merely starting to swing at him with her hand, and he was not in any danger of losing his life or suffering serious bodily injury. Lee admitted that after the victim ran up on the knife, he turned away, and she started to swing her hand at him. He in turn turned and struck her one (1) time in the back with the knife *after* she had turned away from him. He was not acting in self-defense but in anger. He could simply have walked away and left the apartment but he chose not to.

Lee was not in danger of losing his life or sustaining serious bodily injury when any of the blows to the victim were struck

There is no evidence in the record the defendant was in actual imminent danger of losing his life or sustaining serious bodily injury when the immediately fatal blow was struck or that he believed he was in imminent danger. Davis, supra. Lee had taken the knife away from the victim and had the knife in his complete control. In fact, Lee asserted the victim's stab wound to the stomach was an accident or caused completely by the victim. See State v. Turbeville, 275 S.C. 534, 273 S.E.2d 764 (1981)(where the defendant relied on a theory of accidental homicide, and there was no testimony of self-defense, the jury need not have been instructed on self-defense). At no time did Lee tell police he was afraid the victim was going to kill him or cause him serious bodily injury

¹¹Lee did not request an instruction on accident. (R. pp. 432-34). The State should not be punished and a new trial granted for appellant's failure to request an instruction to which he *may* have been entitled.

after he took the knife away from her. At no time did he state he intentionally stabbed her in the stomach. As a result, the trial court correctly declined to instruct the jury on self-defense. *See State v. Bruno*, 322 S.C. 534, 536, 473 S.E.2d 450, 452 (1996)(holding that the defendant was not entitled to a self-defense charge where he presented no evidence that he believed that he was in imminent danger when he shot the victim); *State v. Goodson*, 312 S.C. 278, 440 S.E.2d 370 (1994)(same); *see also Tate v. State*, 308 S.C. 163, 417 S.E.2d 553 (1992)(where there is no evidence to suggest defendant believed she was in imminent danger of loss of life at the time she killed, counsel's failure to secure expert on self-defense was not ineffective assistance because the defense was not applicable).¹² Further, there is no evidence Lee was in danger or losing his life or suffering serious bodily injury when he stabbed the victim in the back. Lee admitted when he struck the victim in the

¹²Lee argues he was entitled to a self-defense instruction under *State v. Light*, *supra*. However, *Light* is clearly distinguishable from the present case. In *Light* the defendant was in his own home and had no duty to retreat. Further, in *Light* the victim had armed herself with a loaded rifle that the defendant stated he took away from the victim and in taking the gun away from the victim the gun accidentally discharged. *Id.* That did not occur in this case. According to Lee's version of events, Becky did not arm herself with a loaded firearm, and he was not taking a loaded firearm away from Becky when a loaded firearm accidentally discharged. Under his version of events, he took the knife completely away from Becky. Further, in *Light*, the victim had previously threatened the defendant before that if she caught him running around with another woman it was going to be bad and had found what she believed was a woman's hair and confronted the defendant with it shortly before the shooting. In the present case, there was no evidence of any previous threats by the victim against the defendant, but the opposite, Lee had threatened to "F" Becky up. Further, the testimony from appellant's two (2) witnesses only established Becky had armed herself in the past when there was domestic abuse or a domestic altercation, not that she was the initial aggressor. *Light* is not controlling on these facts. Lee also argues Investigator Burgess' characterization on cross-examination and re-direct of Lee's final statement as a "self-defense" claim in support of reversal. However, Burgess' characterization is not controlling here. (See R. p. 395). Burgess was not an expert witness or qualified as one at trial. He cannot give an opinion on an ultimate issue in the case. Nor is he an expert in the law. Further, his characterization is not controlling but instead the facts Lee told Burgess in his final statement. Judge Cole had to determine whether those facts or any others in evidence met the elements of self-defense. They did not.

back, he was completely in control of the knife, and the victim had merely raised her hand back to strike him with her hand. As a result, he turned and stabbed her in the back after she had turned away from him. Judge Cole correctly ruled Lee was not entitled to a self-defense instruction.

Even if Lee believed he was in imminent danger that belief was not reasonable

Further, even if Lee believed he was in danger of losing his life or suffering serious bodily injury that belief was not reasonable under the circumstances and a reasonable person would not have so believed. State v. Fuller, 297 S.C. 440, 442-43, 377 S.E.2d 328, 330 (1989). See State v. Lee, 293 S.C. 536, 362 S.E.2d 24 (1987)(finding on the facts of that case that any belief in the necessity of using deadly force was unreasonable as a matter of law; consequently holding that the trial judge did not err in failing to instruct on defense of habitation, and noting defendant *was not* entitled to self-defense instructions he did receive). Lee had taken the knife away from the victim and had control of the same. According to Lee, the victim ran up on the knife stabbing herself. He then turned away. She then started to swing her hand at him. He turned with the knife in his hand, and she turned and away from him with her back turned to him. He then stabbed the victim in the back with the knife. Even if Lee's version is believed, the belief that he needed to use deadly force was unreasonable. See State v. Wood, 1 S.C.L. (1 Bay)(1794)(key to self-defense is that the defendant can only respond with proportionality).

Lee had other means of avoiding the difficulty than employing deadly force

Further, appellant Lee was not in his own home but the home of the victim. State v. Brown, 321 S.C. 184, 467 S.E.2d 922 (1996); State v. Chambers, 310 S.C. 43, 425 S.E.2d 45 (Ct. App. 1992). As Judge Cole correctly found, Lee had a duty to retreat and there was no evidence that he retreated before the fatal blow or the blow that he admitted he intentionally wielded. Brown;

Chambers. “It is one’s duty to avoid taking human life where it is possible to prevent it even to the extent of retreating from his adversary unless by doing so the danger of being killed or suffering serious bodily harm is increased or it is reasonably apparent that such danger would be increased.” State v. Frasier, *citing* State v. Jackson, 227 S.C. 221, 279, 87 S.E.2d 681, 685 (1955). Lee claimed the wound to the victim’s stomach was an accident or caused by the victim. He did not claim he was acting in self-defense. He claimed the victim ran up on the knife or pulled the knife into her own stomach. Lee admitted he had complete control of the knife before the victim started to swing at him with her hand, and rather than retreat, he turned and struck the victim with his right hand that contained the knife even as the victim had turned away from him with her back toward appellant. “It is an axiomatic principle of law that the defense has not been established if any one element is disproven.” State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (Ct. App. 2012), *quoting* State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010). Lee *failed to present* any evidence that retreating would have increased the danger to himself when he had sole possession of the knife. And, *there was no evidence in the record* that retreating would have increased the danger to himself when he had sole possession of the knife. Frasier; Jackson.

Summary

Viewing the evidence presented at trial in the light most favorable to the defendant, Judge Cole in his wisdom properly charged the jury on murder, voluntary manslaughter, involuntary manslaughter, and not guilty. Lee did not request a charge on the defense of accident. Judge Cole correctly declined to charge self-defense because Lee did not meet several of the elements of self-defense in South Carolina: (1) At the time the immediately fatal blow was struck Lee was not in actual imminent danger of losing his life or sustaining serious bodily injury, nor was there any

testimony that he believed he was in actual danger of losing his life or sustaining serious bodily injury. Nor was Lee in actual imminent danger of losing his life or sustaining serious bodily injury when the potentially or intermediately fatal wounds were inflicted by Lee into the victim's back; (2) Even if Lee believed he was in actual danger of losing his life or sustaining serious bodily injury that belief was not reasonable under the circumstances; (3) Lee did not retreat even though he was required to do so in the victim's residence, and Lee had other means of avoiding the difficulty rather than using deadly force because he had taken the knife away from the victim at the time of the fatal blow (which he described as an accident caused by the victim), and she had merely started to swing at him with her hand when he turned and unreasonably intentionally stabbed her in the back after she had turned away from him. Again, Judge Cole *did charge* the lesser included offenses of voluntary and involuntary manslaughter which were issues raised by Lee's final statement. This appeal must be dismissed.

Harmless Error

This Court has previously held that the refusal to charge the jury with an appellant's requested instruction is subject to harmless error analysis. State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), *affirmed* 387 S.C. 310, 692 S.E.2d 895 (2010); State v. Jeffries, 316 S.C. 13,21, 446 S.E.2d 427, 431 (1994)(noting that the harmless error analysis is appropriate where the error complained of is a "trial error" rather than a "structural defect" in the trial mechanism itself). *See also* Lee-Grigg, 387 S.C. 310, 319, 692 S.E.2d 895, *Toal, C.J. concurring. Contra Light; Lee*, 298 S.C. 362, 380 S.E.2d 834. The failure to charge self-defense in this case was harmless where Lee's version of events was so preposterous and non-credible that the jury would not have accepted the same and acquitted him of murder even had self-defense been charged.

Even if Lee was somehow entitled to a self-defense charge, and even if the charge was erroneous, Lee is not entitled to a new trial because the failure to charge the language requested by Lee was not prejudicial. To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. State v. Hughey, *supra*; State v. Adkins, *supra*. Error is harmless when it could not reasonably have affected the result at trial. State v. Sherard, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991). The evidence of Lee's guilt of murder was overwhelming. The probative force of the requested charge, given the evidence in this case and the remainder of the charge given, was minimal. Lee Grigg, 374 S.C. 388, 649 S.E.2d 41, *affirmed* 387 S.C. 310, 692 S.E.2d 895.

In Jackson v. State, 355 S.C. 568, 586 S.E.2d 562 (2003), a post-conviction relief action,¹³ the Court held the appellant's failure to receive a self-defense instruction in a murder prosecution, even though he was entitled to one, was not prejudicial where: (1) his testimony on the issue of self-defense was not supported by the physical evidence and was highly incredible, (2) the evidence of his guilt was overwhelming; (3) forensic evidence did not support the appellant's contention, (4) the appellant gave inconsistent statements and testified he did not remember noteworthy events, and (5) the jury rejected the charge of involuntary manslaughter.

Likewise in the present case, Lee's statement regarding how the stabbing occurred is highly incredible. Lee denied stabbing Rosa the first (1st) time intentionally. Lee stated he was simply holding the knife and the victim ran up on the knife or grabbed the knife and pulled it into her stomach. Lee admitted he did stab her intentionally one (1) time in the back but only because she

¹³While the prejudice standard in Jackson was different, the Court's reasoning is instructive under the facts of this case.

was swinging wildly at him with her hands. The victim was stabbed in the back two (2) times. This final statement also directly contradicts statements made by Lee to police the day previously and much earlier when he denied having any involvement in the victim's murder and disappearance. This statement also directly contradicts Lee's statements to the victim's family shortly after her disappearance. This story is also incredible given the fact that Lee claimed he did not call for medical assistance because the victim asked him not to and was cursing him. His claim that he sat and talked with the victim for around five (5) to ten (10) minutes as she died was contradicted by the pathologist.

Second, the evidence against Lee was overwhelming. This case is distinguishable from Stone v. State, 294 S.C. 286 363 S.E.2d 903 (1988), also a PCR case, in which the Court held that a defendant was prejudiced by the failure to receive a self-defense charge where the state relied primarily on the testimony of the victim and police officers. In the present case, the State also relied on the forensic evidence found at the scene and on Lee's actions and statements before his final statement.

First, the evidence at trial showed the victim left Lee because of the abusive nature of the relationship. The evidence also showed Lee was jealous and possessive of the victim. The evidence showed Lee was unhappy with the victim leaving him and had even threatened to "F" her up. The evidence showed the victim had gone out to two (2) night clubs with her brother the night before her murder and had ran into two (2) of Lee's sisters while at one (1) night club. The next morning she was murdered and her night club clothes were missing. The evidence showed it was Lee who killed her. The evidence showed the victim was murdered with a knife; however the testimony at trial was she did not have any silverware in her apartment, but a knife was missing from Lee's residence after

the victim's body was recovered, and no murder weapon was ever found.

Second, Lee told a series of lies to police, the victim's family, and his own family from the day of the murder up until his final statement to police, which was given in an attempt to exculpate himself after he had overnight to consider the case police had against him. Lee initially informed the victim's family the Saturday morning she disappeared that he had not seen her and had no contact with her except that she had texted him that she did not need a ride to work. Not only was the statement that he had not seen the victim a lie, but the text message was created by Lee to provide himself an alibi, i.e. it was a lie. Lee told police the same false story when initially approached by police about the victim's whereabouts, stating he had no contact with her except for the text message. Lee also told police she had probably run off with some man, but she would return, when in fact he knew he had buried her body in a shallow grave just a few miles from his rural residence. On the day of the discovery of the victim's body, Lee called a new girlfriend and claimed someone was trying to frame him for the victim's murder, when in fact he knew he had killed her, and he had buried her body in the woods behind where he had grown up. Lee told another friend that he and the victim had been receiving death threats when Lee in fact knew he had buried the victim himself.

After Lee was arrested, Lee told police the same story again. That he had nothing do with the victim's disappearance. He did not know what had happened to her. And, the only contact he had with the victim before her disappearance was the text message she sent him that she did not need a ride to work. It was only after his formal arrest for her murder, after being told what evidence police had against him, and after being held in jail overnight that Lee sent word to police that he wanted to talk and explain to them his version of what really happened. It was clear to the jury, and is clear to anyone, that this final version was false and was made solely as another means or attempt

by Lee to escape responsibility for his actions.

Lee now admitted he was at the victim's residence that morning, even though police already knew this fact from their interviews with neighbors of the victim who lived in the same apartment complex and knew and recognized Lee and his vehicle. Lee now admitted he disposed of the body, which police already knew from interviews with the victim's neighbors who saw him acting suspiciously and from residents on Tibbs Road who had seen Lee in the area and from the victim's family's discovery of the body in the shallow grave directly behind where Lee had lived as a child. Lee now claimed the victim produced a knife, even though several witnesses had testified the victim had no silverware in her home and did not have a knife as appellant described, and the jury knew a knife was missing from Lee's cutlery set in *his home* on Miller Road as photographed by police. Lee also claimed he took the knife away from the victim, and he made the preposterous claim she ran up on the knife to explain the first stab wound. Lee also claimed the victim swung at him wildly, and he swung wildly with the knife in return stabbing the victim an additional time. Lee failed to explain how medium velocity blood spatter was found on the lower half of the hallway wall near and into the entrance to the bedroom. Lee also failed to explain how his bloody print was found on the wall in the hallway. Lee also failed to explain how the victim's blood was found on a sheet in the bedroom under the comforter or bed spread. Lee then made the preposterous claim that the victim told him not to call 911 or for an ambulance, and he sat there with the victim as she expired on the floor talking to him for five (5) to ten (10) minutes. Lee then claimed rather than calling police, he attempted to secrete the victim's body from the residence, even though he claimed the stabbing was the victim's fault and not his own. As a result, the failure to charge self-defense given the evidence in this case was harmless error. The evidence of murder was overwhelming. See Ford v. State, 314

S.C. 245, 442 S.E.2d 604 (1994)(no prejudice from deficient representation in failing to request alibi charge because evidence was overwhelming).

Third, Lee's version of events was not supported by the physical evidence. Lee claimed the altercation occurred near the end of the hallway where the kitchen was located. The physical evidence [blood spatter] showed the victim was stabbed to death at the other end of the hallway near or in the opening to the bedroom. Furthermore, the pathologist testified that the victim was likely bent forward when stabbed in the back. Further, the pathologist testified the victim was stabbed not once but two (2) times in the back. One (1) time at the nape of her neck and another time in the mid back region. And, the victim was stabbed a third (3rd) time in the stomach and that wound extended from the victim's stomach all the way to her spine, severing her aorta.

Fourth, Lee could not remember noteworthy facts or events. Lee could not remember the size of the knife used to murder the victim. Lee could only remember stabbing the victim one (1) time in the back.

And fifth, as in Jackson, the jury rejected a lesser included offense. In the present case the jury rejected the lesser offenses of voluntary manslaughter *and* involuntary manslaughter. The jury was charged extensively and more than once on the difference between murder, voluntary manslaughter. Within that charge the jury was instructed that the victim could have provoked appellant by a combination of words and conduct such that it caused appellant to act in the heat of passion. The jury heard all the testimony in the case and the extensive charge on legal provocation and found no provocation or heat of passion. The jury was also instructed appellant could be found guilty of involuntary manslaughter if he killed the victim recklessly with a dangerous instrumentality such as a knife. The jury heard Lee's final version of what occurred. The jury found appellant guilty

of murder, not voluntary manslaughter *or* involuntary manslaughter.

Given these circumstances and the overwhelming evidence of guilt in the record, there was no prejudice to appellant from the judge's failure to charge self-defense. See State v. Jeffries, 316 S.C. 13, 446 S.E.2d 427 (1994); State v. Green, 278 S.C. 239, 294 S.E.2d 335 (1982). Viewing the evidence in its entirety that the jury considered in reaching its verdict, against the probative force of the requested charge, it is clear the failure to charge self-defense was harmless beyond a reasonable doubt. Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). This ground of Lee's appeal should be denied.

CONCLUSION

For the above stated reasons, Lee's conviction for murder and the accompanying sentence should be affirmed.

Respectfully submitted,

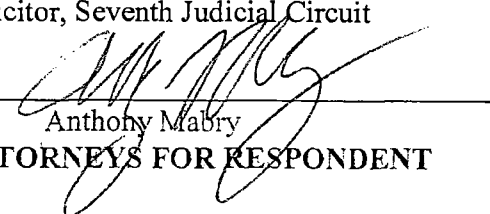
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By: 

Anthony Mabry

ATTORNEYS FOR RESPONDENT

August 27, 2013

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 201

THE STATE,

Respondent,

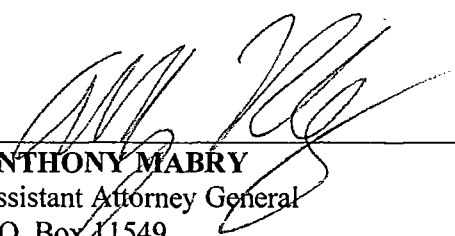
v.

ROBERT LEE, JR.,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled “Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.”



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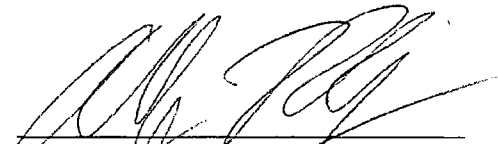
August 27, 2013

CERTIFICATE OF SERVICE

I, Anthony Mabry, hereby certify that I have served the *Final Brief of Respondent* in the foregoing action by deposition copies in the Interagency Mail to:

Wanda H. Carter
Deputy Chief Appellate Defender
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, SC 29201

This 27th day August, 2013.



ANTHONY MABRY
Assistant Attorney General

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

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Robert Lee, Jr., Appellant.

Appellate Case No. 2011-205428

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2014-UP-169
Submitted January 1, 2014 – Filed April 16, 2014

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, and
Assistant Attorney General J. Anthony Mabry, all of
Columbia; and Solicitor Barry Joe Barnette, of
Spartanburg, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Light*, 378 S.C. 641, 649, 664 S.E.2d 465, 469 (2008) ("A self-defense charge is not required unless it is supported by the evidence."); *id.* at 650, 664 S.E.2d at 469 ("If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense"); *State v. Brown*, 321 S.C. 184, 188, 467 S.E.2d 922, 924 (1996) ("[W]here the attacker is [at home], a lawful guest has a duty to retreat before a claim of self-defense will stand."); *State v. Hendrix*, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978) ("[O]ne is not justified in . . . employing a deadly weapon after the [attacker] has been disarmed").

AFFIRMED.¹

FEW, C.J., and PIEPER and KONDUROS, JJ., concur.

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



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

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May 02, 2014

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Robert Lee, Jr.
Lower Court Case No. 2010GS4205387
Appellate Case No. 2011-205428

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Dear Clerk of Court:

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

The following exhibit filed in this case is being returned to you:

State's Exhibits #2 (video statement), and #4 (video statement)

Please sign and return the enclosed copy of this letter acknowledging receipt of this item

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Wanda H. Carter, Esquire
Donald J. Zelenka, Esquire
J. Anthony Mabry, Esquire
Alan McCrory Wilson, Esquire
John W. McIntosh, Esquire
Barry Joe Barnette, Esquire

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FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg
Robert Lee 348833

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2014-CP-42-2364

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 concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

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

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

1. Place of detention Perry CI
2. Name and location of Court which imposed sentence General Sessions
3. Name(s) of co-defendant(s) (if any) None Spartanburg County/CI
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Indictment # 201065426538
 - (b) SC Code # 16-03-0010
 - (c) CDR Code # 0116
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) December 1st 2011
 - (b) Life Sentence / without Parole
Violent / Most Serious

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 JUN 13 AM 10:45
M. HOPE BLACKLEY

- (c) Convicted by Jury
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. They Affirmed my Conviction
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted Jan, 1 2014 / Filed April 16, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____ Unpublished Opinion No: 2014-up-169
(Per Curiam) Affirmed pursuant to
Rule 220(b) SCACR
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 Counsel
 (b) Due Process violations
 (c) _____

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

- (a) due to being pro-se Applicant will
 (b) amend after Counsel is appointed
 (c) _____

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

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
 ii. _____
 iii. _____
 iv. _____

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

- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- 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?
- _____
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) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

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CLERK OF COURT
SEAFORD, DELEWARE COUNTY
2014 JUN 13 AM 10:45
M. HOPE BLACKLEY

- (a) your arraignment and plea? NO
- (b) your trial, if any? YES
- (c) your sentencing? they sent me at trial
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
- i. (Trial/Case): Brendan M Delaney (Pro-Bono giving to me by the State) P.O. Box 2421, Spartanburg SC 29304
- ii. Indigent Appellate Defense (Appeal) Wanda H Carter P.O. Box 11589 Columbia SC 29211
- (b) the proceedings at which each such attorney represented you:
- i. (Brendan M Delaney) Case/Trial (giving to me by the State)
- ii. _____
- iii. (Wanda H Carter) (I was my indigent attorney who worked in (Appeal Case))

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

I seek to get a lesser charge/with less time involuntarily Manslaughter/Manslaughter (1st trial)

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

NO

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SPARTANBURG COUNTY
2014 JUN 13 AM 10:45
HOFER BLACKLEY

STATE OF SOUTH CAROLINA)

County of Greenville)

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.

Robert Lee J.

SWORN to and subscribed before me this 10th
day of June, 2014.

Mary C. Muehst (L.S.)
Notary Public

My Commission Expires: 1-23-2021

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SOUTH CAROLINA
2014 JUN 13 AM 10:45
M. HOPE BLACKLEY

**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.

Robert Lee Jr
Applicant

SWORN or affirmed to and subscribed before me this

10th day of June, 2014.

Nancy C. Muehler
Notary Public

My Commission Expires: 1-23-2023

FILED
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STAFFORD COUNTY
2014 JUN 13 AM 10:45
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2014-CP-42-2364
Robert Lee, #348883,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed June 13, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the October 2010 term of the Spartanburg County Grand Jury for murder (2010-GS-42-5387). The Applicant was represented by Brendan M. Delaney, Esquire. The Applicant proceeded to trial and was convicted by a jury as indicted on December 1, 2011. The Honorable J. Derham Cole sentenced the Applicant to a term of life imprisonment.

A timely notice of appeal and brief was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Lee, Op. No. 2014-UP-169 (S.C. Ct. App. filed April 16, 2014). The Remittitur was returned on May 2, 2014.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel,
2. Due Process violations.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The respondent submits that the applicant's final allegation of due process violations is without merit because the applicant has failed to specifically set forth the grounds upon which it is based in accordance with S.C. Code Ann. §17-27-50. As a result, this claim should be summarily dismissed.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

[signatures continued on next page]

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

November 18, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2014-CP-42-2364
ROBERT LEE, JR., #348883	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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

Mr. John Brandt Rucker, Esquire
Brandt Rucker Attorney At Law
522 North Church Street
Greenville, SC 29601

DATED this 18TH day of November, 2014.


 Ashley Haworth, Legal Assistant
 For Respondent

State of South Carolina)
)
County of Spartanburg)

In the Court of Common Pleas
Seventh Judicial Circuit
2014-CP-42-2364

Robert Lee, Jr.,
Applicant,
vs.
State of South Carolina,
Respondent.

Transcript of Record.

January 11, 2016
Spartanburg, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Jr., Judge

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

J. Brandt Rucker, Esquire
Attorney for Applicant

Alicia A. Olive, Esquire
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 11:45 a.m.)

MS. OLIVE: Your Honor, this is the case of *Robert Lee v. the State*. This is 2014-CP-42-2364. Mr. Lee was indicted in October 2010 in Spartanburg County for murder. Mr. Brendan Delaney represented him on that charge.

On December 1st, 2011, he proceeded to trial before a jury on the murder charge as indicted. He was convicted of murder and sentenced to -- Judge Cole sentenced him to a term of life imprisonment.

Thereafter, a timely notice of appeal and brief was filed on behalf -- on -- I'm sorry -- on -- on Mr. Lee's behalf. The Court of Appeals affirmed his conviction and sentence.

And Mr. Lee filed this application on June 13th, 2014. The -- he set forth two claims in his application: ineffective assistance of counsel and due process violations. And the -- the -- he is present and represented today by Mr. Brandt Rucker.

I would turn it over to Mr. Rucker at this time. And I would also ask him if he has any amendments to go ahead and -- and put those on the record.

MR. RUCKER: Your Honor ---

THE COURT: Okay.

MR. RUCKER: --- I believe our -- we wouldn't need any

1 amendments. I mean, this is a basic ineffectual assistance
2 of counsel, failure to communicate properly with the
3 client, and several trial errors. So I think it's
4 straightforward from what we ---

5 THE COURT: Okay.

6 MR. RUCKER: I call my client, Robert Lee, to the
7 stand.

8 THE COURT: All right. Will you come around please,
9 sir.

10 (Whereupon, the witness came forward.)

11 ROBERT LEE, having been first duly sworn,
12 testified as follows:

13 MR. RUCKER: May it please the Court?

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION

16 BY MR. RUCKER:

17 Q Make sure you speak -- speak loudly enough for the
18 Court to be able to hear and so the court reporter can get
19 a record, okay? Because ---

20 A Okay.

21 Q --- you're soft-spoken.

22 A Okay.

23 Q Okay. What -- do you go by a nickname?

24 A Yes. They call me Nick.

25 Q Okay. Nick -- and do you mind if I call you that

1 during the ---

2 A That's ---

3 Q --- this ---

4 A --- that's fine.

5 Q --- hearing?

6 Okay. Nick, what's your current sentence?

7 A I am currently serving life without parole.

8 Q And what were you -- were you convicted or did you
9 plead guilty?

10 A I was convicted. I was convicted in a court by a
11 jury.

12 Q Okay. And what were you convicted of?

13 A Murder.

14 Q All right. And what -- who was your attorney -- first
15 of all, did you have more than one attorney for this case?

16 A Yes. At first, we started off with Mr. Robert Hall.
17 He was -- either he removed himself or he was removed
18 because of a -- personal ties to my biological father.

19 Q Okay. So there was a potential conflict of interest;
20 is that true?

21 A Uh-huh.

22 Q Okay. And then, did you have any other attorneys?

23 A Then I was later on assigned Mr. Brendan Delaney.

24 Q All right. To your knowledge, did Mr. Delaney work
25 with the public defender's office or did you hire him

1 separately or was he appointed?

2 A He was appointed, to my knowledge, by the public
3 defender's office.

4 Q Okay. After you were arrested, did you -- did you
5 stay in jail until your trial?

6 A Yes, sir.

7 Q All right. So if he was going to meet with you, that
8 would've been there at the jail?

9 A Yes, sir.

10 Q How many times did Mr. Delaney actually meet with you?

11 A On my hand, one, two, three -- maybe four/five times.

12 Q How long would these meetings last?

13 A It depends on -- not really much of them were long,
14 except for the last two ---

15 Q Okay. And ---

16 A --- or the last one we had before he informed me that
17 they would be taking me to trial -- I was on the docket to
18 go to trial in two weeks.

19 Q Okay. Let's get some trial -- some time frames here.
20 The first -- are you testifying that the first couple
21 meetings were short?

22 A Yeah.

23 Q All right. How long is short to you?

24 A I mean, I don't know how long it took him to get back
25 there. We might've spent 15 minutes at the most.

1 Q Okay. What did y'all talk about during those
2 meetings?

3 A My first meeting with him, he introduced himself. He
4 left; he told me I had a preliminary hearing, which he did
5 -- he was there at the preliminary hearing. We didn't stay
6 there long. They said it went upstairs. He just walked
7 over to me and told me it went upstairs and they took me
8 back to the county jail.

9 The second time we met, he brought me a copy of my --
10 is it a -- a competency -- a mental -- a mental exam?

11 Q Do you -- was it some kind of mental exam? Do you
12 recall ---

13 A Yeah.

14 Q --- that?

15 A Yeah.

16 Q Okay.

17 A Yeah. He brought me -- he actually brought me a copy
18 of my mental exam. And it read on there that I was
19 competent to stand trial. He kind of asked me did I have
20 any -- I vaguely remember the conversation with him of that
21 one.

22 Q Okay. And let's go back over the competency real
23 quick. How -- what's your level of education?

24 A I graduated high school.

25 Q All right. Do you believe you had mental issues at

1 the time?

2 A Yeah. A lot of stuff is foggy. I don't remember a
3 lot of what I done and said during the -- a lot of that
4 process.

5 Q Okay. But you believe that they found you competent
6 to stand trial?

7 A That's what the paper said.

8 Q Okay. Did you mention any kind of insanity defense or
9 a version of insanity defense with Mr. Delaney?

10 A No. I -- I hadn't.

11 Q Okay. Now, you said the last couple times you met, it
12 was lengthy. How long -- when was the next-to-last time he
13 came and met with you?

14 A I think he came in a couple of weeks before -- maybe a
15 week or two before Thanksgiving.

16 Q Okay. Now ---

17 A He ---

18 Q --- let me make sure too. Were you under any kind of
19 medication at the time while ---

20 A No, sir.

21 Q --- you were in jail?

22 Okay. And how long did that meeting around
23 Thanksgiving last?

24 A Well, I know he was trying to get my mother back to
25 the -- back with the county -- the county jail, but they

DIRECT EXAMINATION BY MR. RUCKER - ROBERT LEE

10

1 wouldn't allow it. So I don't know how much time he spent
2 in the lobby, discussing things with my mother, before he
3 actually came back with me. I think we may have had a -- a
4 -- maybe a 30/35-minute conversation.

5 Q All right. And how -- did you -- what's your mom's
6 name?

7 A Tammy Hunter.

8 Q Did she testify ---

9 A At the ---

10 Q --- at your trial?

11 A No, sir.

12 Q Okay. After that discussion did you talk about
13 witnesses -- potential witnesses with Mr. Delaney?

14 A No. We never had the chance.

15 Q Okay. And ---

16 A He ---

17 Q --- then you -- oh. Go ahead.

18 A Oh. He wanted me -- he -- only thing that was brought
19 to my attention at that moment was that we were on the
20 trial docket to go and that we were going to -- he had a
21 plea with no number. That was the first offer ---

22 Q Uh-huh.

23 A --- that I recall on the table. He said they had a
24 plea, but it was going to be a *Alford* plea. He explained
25 to ---

1 Q Okay.

2 A --- me what a *Alford* plea was. And I told him -- at
3 that time I believe I told him why didn't they have a
4 number. So I gave him a number and told him what I would
5 accept.

6 Q Okay. And what was that number?

7 A That was -- I told him I would plead zero to 15 to
8 involuntary manslaughter.

9 Q Okay. Did y'all -- did you discuss involuntary
10 manslaughter or voluntary manslaughter, in addition to the
11 murder elements ---

12 A No. I ---

13 Q --- with him?

14 A --- didn't know what it was. I just knew it was a
15 lesser offense.

16 Q Okay. How did you find that out? Did Mr. Delaney
17 inform you of that?

18 A No. My roommate.

19 Q Okay. In jail?

20 A Uh-huh.

21 Q All right. The -- after that meeting you had one more
22 meeting with Mr. Delaney; is that right?

23 A Yes.

24 Q And how long -- when was that meeting?

25 A That meeting was right -- it had to be right after the

DIRECT EXAMINATION BY MR. RUCKER - ROBERT LEE

12

1 holidays. It had to be sometime at Thanksgiving. He came
2 back. He had a number this time. And they offered me 45
3 years -- from what I understood -- because I asked him.

4 I said, "What does this mean?" Forty-five years
5 mandatory.

6 And he told -- he -- we were sitting there, talking.
7 And I told him that it was something I was -- I was asking
8 him a lot of questions about the plea, because I didn't
9 really understand why they were offering me 45 years
10 mandatory.

11 Then he expressed to me that he got some other guy 60
12 years and this was the best that he can do. I told him
13 that I would -- I refused to take the plea; I was not going
14 to take the plea. Because he had been coinciding with my
15 family -- my aunt -- my great-aunt, Betty Ruth Miller; my
16 mother; possibly other people -- trying to get them to
17 convince me to take the plea that was offered to me.

18 Sometime during our conversation, he got upset and
19 told me that I was not listening to him and that I just was
20 going to have to fire him. But I told him no. I said I
21 was not going to do that.

22 Q Do you believe at that point you disagreed about what
23 you were going to do in the case?

24 A Yes, sir.

25 Q Okay. And you communicated that disagreement with

1 him?

2 A Yes, sir.

3 Q And his reaction to you was "You need to fire me"?

4 A Well, basically. That's what he told me. He said I
5 wasn't listening to him.

6 Q Okay. Did -- at any point did he make a motion to not
7 be your attorney anymore or did you?

8 A Not as far as I know. He -- he kind of -- I believe
9 the responsibility must've been on me to say, "Hey, I'm
10 going to fire you." But I told him I wasn't going to do
11 it.

12 Q Did you tell him to bring that up to the judge at --
13 for the trial or you could bring it up?

14 A No. He -- by that time Monday, by -- after he left
15 and we sit down and talked for a few more minutes, he left.
16 I guess he -- I'm assuming he went back out and had another
17 conversation with my family members. I was informed that
18 night by phone call by my mother, the one phone call that I
19 had with her, Tammy Hunter, that they had subpoenaed
20 everyone I knew -- or they tried, anyway.

21 Q Had y'all ever gone over that witness ---

22 A No.

23 Q --- those witnesses?

24 A I saw all of that day of court. And that's in
25 transcript.

DIRECT EXAMINATION BY MR. RUCKER - ROBERT LEE

14

1 Q Okay. Did that affect your ability to understand
2 whether you should plea or not?

3 A It -- I knew I was going to plea.

4 Q Okay.

5 A Due to the fact that I was informed of -- by Mr.
6 Delaney of the self-defense statement that was given to the
7 -- to the police.

8 Q All right. Well, let's go back for a second because
9 the judge is going to be -- have all this material in front
10 of him, just so he can have some context. Did you give
11 statements to the police or confessions to the police about
12 the alleged murder?

13 A Yes, I did.

14 Q All right. And tell -- describe to the judge when the
15 first statement was given. And we need to talk about
16 whether you -- whether the police brought you in to talk
17 about it.

18 A Are you talking about when I got arrested?

19 Q When you -- yes, when you got arrested.

20 A Okay. When I got arrested -- okay. That's kind of
21 vague. But I'll -- I'll tell you what I remember. When I
22 got arrested, I was brought in. I think the officer -- the
23 male's name was Burgess. Officer Burgess -- we were in the
24 car.

25 He had got on his -- he got on the phone. And he told

1 someone to tell my mother that they had -- they have me and
2 I'm safe. He looked at me; told me that my mother was
3 worried. We were on our way back to the police station.
4 They pulled -- they told me -- I had been informed by him
5 that we were going to pull around back because it was too
6 many news cameras in the parking lot so I wouldn't be
7 exposed to any television at that moment.

8 He -- when we got in there, they were picking -- they
9 were getting dirt and leaves off my clothes. They were --
10 they gave me something to eat.

11 Q All right. And just to go back: Were you Mirandized
12 -- did they write -- read you your *Miranda* warning before
13 they put you in the patrol car?

14 A Yes. Yes ---

15 Q All right.

16 A --- they did.

17 Q Was that after you were handcuffed?

18 A It was -- I think it was during.

19 Q All right. Did they ---

20 A Well, like, when I was -- when they asked me to come
21 -- because I walked to them. I didn't really -- they
22 didn't really, like, put me down on the ground. When I
23 turned around and then they put me up against this wall. I
24 was at an apartment complex. They put me up against a
25 wall. And he started -- some -- one of the -- I think it

1 was the lady that started reading me my *Miranda* rights and
2 Officer Burgess was cuffing me.

3 Q All right. Did you invoke your rights under *Miranda*?
4 Did you ask for an attorney at that time?

5 A No, I did not.

6 Q All right. Did you invoke your right to -- against
7 self-incrimination by not speaking with the police?

8 A No, I did not.

9 Q What did the officers say to you, as far as why you
10 were being arrested?

11 A He told me I was being -- there was -- I was being
12 arrested for -- I had been a warrant or -- or something of
13 murder.

14 Q Okay. Did you -- when did you give a statement in
15 relation to that time period after you were droven [sic] to
16 the sheriff's office?

17 A Right -- well, first, my -- I was informed that my
18 mother was in the building; that she -- she wanted to talk
19 to me before I -- well, Officer Burgess said my mother had
20 something she needed to say. And I said okay.

21 What -- before that happened, he put out a bunch of
22 papers. Like, I'm assuming these are *Miranda*-right papers
23 or whatever. It says all the same things he basically said
24 when he was -- or when they were cuffing me. Yeah. About
25 all the same things.

1 My mother was talking to me. She was very upset. She
2 was crying. And we had -- Officer Burgess -- the --
3 Officer Nelson stepped out of the room because he was
4 involved in my -- one of my sister's prior incidents where
5 she had to come stay at my house. So he didn't say
6 anything. Officer Burgess really conducted the whole
7 thing.

8 And we sit down. After talking with my mother,
9 Officer Burgess informed me -- he informed me before the
10 tape or whatever they put out there to record started to --
11 he informed me that it would not look good if his captain
12 -- and this is exactly how he said it -- if his captain
13 went out there to the media with no information about what
14 happened.

15 Q Did you feel pressure at that time to give a
16 statement?

17 A Very much.

18 Q All right. Did you invoke your right to counsel at
19 that time?

20 A Well, I didn't realize how important that was. I
21 thought I was helping. I was informed -- I was informed by
22 Officer Burgess that this would look good on me and they
23 would come down and realize what happened by -- by me
24 giving a statement that helped the media, it -- it kept --
25 it kept things at bay.

DIRECT EXAMINATION BY MR. RUCKER - ROBERT LEE

18

1 Q Did you talk to Mr. Delaney about the circumstances of
2 that first statement?

3 A We talked about that during the trial.

4 Q All right. But not -- at no time prior to the trial
5 ---

6 A No.

7 Q --- itself?

8 All right. Did he -- how many total statements did
9 you give to the police?

10 A Oh. Maybe two.

11 Q Okay. Were any of those after you had invoked your
12 right to counsel?

13 A At -- yes. There was one where they came to the
14 county jail. And Mr. Robert Hall was my public defender at
15 the time. I didn't know that I wasn't supposed to talk to
16 them. When I -- but when I went to the front, they were
17 also coming to retrieve some property of mine.

18 They needed my house keys and my car keys for -- my
19 mother had obtained power of attorney to get my
20 possessions. And they wanted to go back in the house. And
21 they were still looking for stuff, I guess -- my
22 assumption.

23 Officer Nelson and another officer that I didn't know
24 -- I don't know -- he was -- both of them African-American
25 males -- came in and asked me would I talk to them again.

1 Q All right. Now, let's -- let's be clear about this.
2 You had already asked for a public defender at this time?

3 A Yeah. I had already signed up for one, I believe.

4 Q All right. Did you communicate that directly to the
5 sheriff's deputies?

6 A I asked Mr. Nelson was Robert Hall here.

7 Q Okay.

8 A That -- that's the name they had gave me. By that
9 time I had knew who Mr. Hall was. And he told me -- he
10 said, "Well, do -- do you need" -- basically, he said, "Do
11 you need an attorney to talk?"

12 Because basically, I had already said what I said. I
13 said, "Well, I -- I'm -- I'm -- I would like to know where
14 he is, you know, if he needs to be here."

15 And he said it would be all right. So we went in the
16 room. And -- and I entrusted that because he has dealt
17 with my family before. So it really wasn't an issue of
18 trying to hide anything. I just thought, by cooperating, I
19 was making it better on myself.

20 Q So they -- even though you had an attorney, they
21 talked you into giving another statement at that point?

22 A Yes. Him and another officer. They kind of talked to
23 me; asked me how I was doing, how I was holding up.

24 Q All right. Let's be clear about this too. Did you
25 reach out to them to talk to them, or did they come to you

1 and retrieve ---

2 A I believe ---

3 Q --- you from ---

4 A --- the first ---

5 Q --- the jail?

6 A --- statement that was given to Officer Burgess after
7 -- after they took me back to the county jail, because I
8 was thinking about what he had said to me about it not
9 looking good that I'm not talking. I had asked to speak
10 with him. And when he came back in -- actually, they took
11 me right there from the county jail back to the city --
12 city police station.

13 Q All right. That was the first -- that's the first
14 statement, right?

15 A Uh-huh.

16 Q But the second statement, you already had an attorney
17 and you did not seek out the sheriff at that -- or
18 sheriff's deputies?

19 A No. They ---

20 Q They came ---

21 A --- back on their own accord.

22 Q Okay. Where was the -- that statement actually given?
23 Did they take you out of the jail?

24 A No. They took me into a little room that is located
25 within the lobby of the county jail.

1 Q All right. To your knowledge, was that recorded as
2 well?

3 A I don't know. They were doing so much talking.

4 Q Did they have you sign a statement at that point?

5 A I believe I signed a piece of paper. I could -- I
6 couldn't tell you what it was.

7 Q Did you -- did -- did you -- just to be clear, then:
8 Did you write out a statement for them?

9 A No. No.

10 Q Okay.

11 A Unh-unh.

12 Q Did they ---

13 A They -- they sat there. They -- I signed one piece of
14 -- I signed one piece of paper. As I said, the officers
15 were kind of talking to me, asking me how I was -- Officer
16 Nelson was very concerned about how I was doing. He -- he
17 knew I was in a bad place. So he wanted to make sure I was
18 up for talking.

19 Q Okay.

20 A And yeah. That -- that was about that one. When it
21 ended, they just left. I didn't ---

22 Q All right. And -- and let's -- let's make -- I want
23 to make sure this is clear. Did you ask to speak with your
24 attorney when they started questioning you, that second ---

25 A I asked ---

1 Q --- that second ---

2 A --- where he was.

3 Q Okay. Did you want to talk to him?

4 A Well, it -- I -- I'm not -- I -- I wasn't as
5 knowledgeable then as -- as I was. So I -- when I asked
6 him, I said, "Well, I know they giving me an attorney." So
7 my assumption was if they were coming to speak to me, there
8 wasn't no way he didn't know about it.

9 Q Okay. Did ---

10 A And I wondered where he was. And I -- I actually told
11 Officer Nelson his name. I said, "His name is Robert
12 Hall."

13 And he asked somebody. He said, "Well, you'll check
14 into that for me?" He asked the other officer. Whoever
15 the other officer was, he asked him. He said, "You'll just
16 check into that for me?"

17 But really, by the time we got in the room, it -- it
18 was just -- okay. Well, you cooperated once. You're doing
19 good. Let's just -- we just got a few questions based off
20 of things we've heard. From what I understood, it was
21 stuff that was coming up in the motion of discovery.

22 Q Okay. The -- did you think they were building -- at
23 that time did you think they were building a case against
24 you or they were trying to help you?

25 A I thought they were trying to help me.

1 Q And now you realize they were trying to help their
2 case -- build their case?

3 A Yeah.

4 Q All right. And you gave one more statement; is that
5 right? Three total statements?

6 A Yeah.

7 Q Okay. And the third statement, you were already
8 represented by Robert Hall or Brendan Delaney at that time?

9 A The last time I talked to them, I was still
10 represented by Robert Hall.

11 Q Okay. Did you have a preliminary hearing during this
12 time?

13 A No. Never. I hadn't had one yet. I -- I -- Robert
14 Hall came and visited me at the county jail. He informed
15 that he knew of my father; he had talked with my mother and
16 my stepfather.

17 He also informed that -- I informed him that I had
18 talked with them. And he wrote it down. And he said,
19 "Never do that again."

20 Q All right.

21 A He said, "They were not supposed to come here to" --
22 and I didn't know that. But I -- I informed him that they
23 had been there to talk to me.

24 Q All right. The third -- the third statement, did you
25 ask the police to -- or sheriff's deputies to come see you

1 or did they just show up at the jail?

2 A They showed up at the jail.

3 Q All right. And they -- did you talk with them about
4 you having an attorney at that time?

5 A Same -- same issue. They were just going over some
6 things that were already there.

7 Q Okay. Did you -- you want to speak with Robert Hall
8 or Brendan Delaney, whoever is your attorney, at the time?

9 A Well, every time I would ask about either attorney --
10 well, Mr. -- that would've put Mr. Delaney at -- at -- no.
11 it would've put Mr. Hall at that one, I think. Either way,
12 they wasn't trying to get ahold to him. They may've made
13 it seem that way, but it was not -- that's not the way it
14 was happening.

15 Q All right. Were the -- were they plainclothes
16 detective, do you recall, or were they in uniform?

17 A Plain -- plainclothes detectives.

18 Q All right. They identified themselves as detectives
19 with ---

20 A Police officers. One was from the county jail, and
21 one was from -- one was from the -- Spartanburg County.
22 And one was from Spartanburg City.

23 Q All right.

24 A And I knew Officer Nelson, as I said before. The
25 other one, I -- I don't know who he was.

1 Q All right. When you got to your trial, were those
2 statements used against you as part of your trial?

3 A I believe Mr. Burgess read off them statements.

4 Q Okay.

5 A He referred to things in his testimony during a motion
6 hearing that, I believe, Mr. Delaney brought up. And they
7 talked about it. But everything he was saying was coming
8 off based -- I guess, based off the statements and what
9 they had in the motion of discovery.

10 Q Do you recall a hearing before the actual trial ---

11 A Yeah.

12 Q --- where the judge -- they -- the judge was informed
13 about these issues with these statements? It would be
14 called a *Jackson v. Denno* hearing.

15 A I've -- I recall that hearing. Yes.

16 Q Okay. Did you have sufficient time to communicate
17 with Mr. Delaney about those previous statements and the
18 circumstances around those statements?

19 A Me and Mr. Delaney, prior to him bringing my mother
20 and my -- and my biological father back to the holding room
21 where I was, again, to try to convince me to take the 45
22 years that was being offered to me.

23 Q Did y'all -- did you -- did he discuss with you the
24 fact that -- or -- or whether he thought those statements
25 could be -- could be not presented to the jury?

1 A He -- he didn't really say that. He just -- when I
2 brought -- I -- I was the one that brought up the
3 statements. I was the one that told him that I felt I was
4 being -- I had been coerced into giving the statements. I
5 didn't realize that they would hurt me that bad, seeing
6 that I was being cooperative at the moment.

7 And he told me something about he was going to put in
8 for a hearing. He didn't really say which one it was. And
9 when we -- after -- I think it was after the jury pick --
10 or was it before? I -- I can't really remember. That's
11 when that -- that hearing happened.

12 And he informed, when I got in the courtroom that day,
13 that we were going to have that ---

14 Q All right. You ---

15 A --- hearing.

16 Q Did you -- do you feel like you went -- were able to
17 go over all the details with him, though, about those
18 statements?

19 A No. Unh-unh. No. It ---

20 Q All right.

21 A --- was little -- it was little bits and pieces, like,
22 right then. I -- I sat over in the chair with a note pad
23 the whole time, trying to -- he pulled out a witness list.
24 He pulled out -- I was looking at things, asking questions,
25 after he got done talking during the -- the hearing. It

1 was really just -- we were going -- we were just going
2 right there at the moment, really.

3 Q Did you feel prepared when you got there for the
4 trial?

5 A No.

6 Q All right.

7 A And I expressed that to the judge.

8 Q And it's obviously very serious charge , and you were
9 looking at a lot of time ---

10 A Yes.

11 Q --- right?

12 Do you think Mr. Delaney took your case seriously?

13 A I don't -- I don't believe Mr. Delaney -- I don't
14 believe Mr. Delaney wanted to come to trial with this case.
15 I don't believe he was, in my opinion, ready. We weren't
16 ready. It wasn't no doubt about it. It should've been
17 people on that witness list that should've been subpoenaed
18 or talked to way beforehand.

19 I had sent many, many a letters to Mr. Delaney. I've
20 -- I've -- well, through the card of address that he gave
21 me. I never known if he even received them. He's talked
22 to my mother probably on one or two occasions. I've had
23 her e-mail. I've had people e-mail. I've -- I've wrote --
24 I wrote and wrote and wrote and never got responses.

25 He would come in. When he came -- like I said, he

1 came in with the police. He came in with the competency
2 thing that said I could stand trial or whatever at the
3 time.

4 It was very -- it was difficult, coming into this. It
5 was -- I wasn't prepared. I -- I -- I -- really, literally
6 ---

7 Q Did -- did you have any meetings with him over the
8 phone, or were they only face to face?

9 A Face to face.

10 Q Okay. You don't recall any phone meetings?

11 A If I called -- if I tried -- I tried to call his
12 office, based off the card that I had at the time or the
13 information that I had. He didn't have a setup for a call.
14 So when he showed up is when he showed up.

15 Q All right. As to the witnesses, who were the
16 witnesses that you wanted subpoenaed that weren't
17 subpoenaed?

18 A There should've been people subpoenaed, far as the
19 safe home where my baby mama was staying.

20 Q What do you believe that testimony would've showed --
21 shown?

22 A It -- well, they were basically trying to say she was
23 afraid of me and I were -- I was abusing her.

24 Q All right. Let -- let's -- let's -- what -- what was
25 your defense in this case?

1 A As far as what happened?

2 Q Yeah. Did you have a self-defense claim?

3 A Yes. Yes.

4 Q Okay. And did you discuss that with Mr. Delaney?

5 A That was brought up -- that was brought up during -- I
6 believe during the jury charge or -- or ---

7 Q Right. But I'm asking you if you, during your three
8 meetings with him, went over the elements of self-defense
9 and what would have to be shown?

10 A No. No.

11 Q All right. Did he ever tell you, you would have to
12 take the stand in this case?

13 A We never discussed that until trial.

14 Q Why did you not testify in this case?

15 A I didn't testify based off the advice of Mr. Delaney.

16 Q All right. Did he tell you why he thought it was not
17 in your best interests to testify?

18 A We had the -- we had a few minutes during the -- I --
19 with us and the judge. And we discussed it over. No. It
20 was just that it wasn't in my best interests. And I -- and
21 I went off his advice, and I -- and I didn't do it.

22 Q Did you have a prior record at the time?

23 A No, sir.

24 Q All right. But -- and you were trying to establish a
25 self-defense claim?

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1 A No.

2 Q Okay. And is -- is that "yes" or "no"? I apologize
3 -- just ---

4 A Yes, sir.

5 Q --- for the record. Okay.

6 Who -- what are the other witnesses that were -- you
7 wanted subpoenaed that he did not subpoena?

8 A Well, the date -- I -- I want to say the first or
9 second day of trial, he actually subpoenaed my sister and
10 my cousin.

11 Q Okay. Which sister?

12 A Sheera Lee.

13 Q All right. Is Ms. Lee here today?

14 A Yes, sir.

15 Q All right. And who is your -- what's your cousin's
16 name?

17 A Diana Murray.

18 Q All right. Is Ms. Murray here today?

19 A No, sir. I don't ---

20 Q All right.

21 A --- see her in ---

22 Q What would ---

23 A --- the courtroom.

24 Q --- Ms. Murray have testified to?

25 A They testified to incidents where the mother of my

1 children has pulled knives on me on numerous occasions.

2 Q Okay. And did you tell Mr. Delaney about this and the
3 -- what the facts would be?

4 A We really would just -- like, as I said, we really
5 were just going -- I told him. And I also told him about
6 my sister, Shalena Lee. Because the solicitor was trying
7 to attest to a knife that was missing out of a knife block
8 in my house. And my sister knows what happened to that
9 knife.

10 She didn't get to show back up for a couple days
11 because of transportation reasons. But he had Sheera, and
12 he had -- Sheera, my sister; and Diana -- Diana Murray.
13 They were here. So he handed them subpoena papers that
14 day.

15 Q They were not subpoenaed previously?

16 A No.

17 Q And is your sister Shalena here?

18 A No. Shalena's not here.

19 Q All right. Was she -- to your knowledge, she was
20 never subpoenaed, though ---

21 A No.

22 Q --- in your ---

23 A She's currently -- as far as I was told, she's just
24 been severely burned on parts of her body with second-
25 degree burns and she's in Charleston, South Carolina, with

1 my mother right now.

2 Q All right. But as far as -- here -- here's what we're
3 getting at: Did he ever talk to these witnesses before
4 y'all went to trial?

5 A No.

6 Q Did he -- when he saw the witnesses, did you tell him
7 who they were, your family members?

8 A Yeah. I -- I told him in the courtroom.

9 Q All right. And based on that, did he then go over and
10 finally talk to them?

11 A I truly don't know what he said to them. I just know
12 he told me that he handed them subpoenas.

13 Q Okay. As far as the actual trial process, at some
14 point did you complain to the judge that you had not had
15 enough time to meet with Mr. Delaney?

16 A Oh, yes.

17 Q And all this was in the transcript. But as a result
18 of that discussion, what did Judge Cole do?

19 A Judge Cole -- he said that me -- what me -- me and Mr.
20 Delaney could do was over the overnight recess, we -- he
21 would return to the county jail to talk to me. And I
22 believe this was on the -- November the 28th.

23 Q It was sometime during your trial, November ---

24 A Yeah.

25 Q --- 28th through December ---

1 A He ---

2 Q --- 1st?

3 A --- he was told to basically come back and discuss a
4 strategy with me after that first day.

5 Q Did he ever come and speak with you?

6 A No.

7 Q The -- the following day did he try to make a
8 continuance motion to have some time to talk to you -- or
9 at least asked the judge on the record if he had time to
10 talk to you?

11 A No. Not that I know of.

12 Q So y'all never had a discussion based on what the
13 judge told you, you could discuss with him?

14 A No.

15 Q Okay. What did you want to talk to him about that
16 night?

17 A Well, I -- I wanted to understand how the -- it all
18 worked. I mean, because I was informed that my family was
19 subpoenaed. I was also informed that pictures of the body
20 were going to be shown.

21 And once again, the roommate that I had at the time
22 was very law-literate. And I came back and had a -- a
23 hearing in the courthouse. I told Mr. Delaney that -- I
24 forgot what I told him at the time. It was a certain
25 motion or something that he could put in to keep the

1 pictures from being showed in the courtroom.

2 Q Did he ever make that motion to ---

3 A Yes, he did.

4 Q Okay. But did you -- you're the one who told him
5 about that?

6 A Yes.

7 Q All right. Did y'all ever discuss that beforehand?

8 A No. I -- I had just got the information that night.
9 And I -- when I came back the next day, I told him about
10 it. And he said he would look into it for me.

11 Q All right. Were the pictures actually shown to the
12 jury or not?

13 A No, sir.

14 Q Okay. Did -- do you recall, during the closing
15 argument of the assistant or deputy solicitor, him
16 mentioning what the pictures looked like, though, to the
17 jury?

18 A Yes, he did.

19 Q Did your attorney object to that?

20 A No.

21 Q Did he describe in detail what those pictures would've
22 shown to ---

23 A Yes ---

24 Q --- the jury?

25 A --- he did.

1 Q Did your attorney object to that?

2 A No.

3 Q If you would've had more time with your -- with Mr.
4 Delaney, how do you think the result would've been
5 different?

6 A Very differently.

7 Q All right.

8 A I think ---

9 Q What do -- go ahead.

10 A I think the results would've been differently if I
11 would've had time to prepare. I mean, I know he's not a --
12 a paid -- paid attorney, far as me. But my Sixth Amendment
13 right -- I feel my six -- my feel -- Sixth and Fourteenth
14 Amendment rights were violated.

15 Q Okay.

16 A And at the same time, he didn't know me at all. And I
17 understand that I'm -- what I was charged with and what it
18 looks like. I was trying to be reasonable at the time.

19 Because I've never dealt with the system before. As
20 I've said, I don't have a record and never had to deal with
21 this. So I figured what they gave me would work.

22 He -- in any case, I felt like if we would've had time
23 to subpoena people before the solicitor actually got a
24 chance to do this, talk to people -- there should've been
25 witnesses called based from the safe home, neighbors, my

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1 aunt. There is a -- there is -- they were really trying to
2 come down hard on me about this -- this -- these abuse
3 allegations.

4 And there is a letter that existed that, if I would've
5 had time to tell him about this and he could've looked into
6 it and tried to find it -- and actually, my great-aunt,
7 another witness, which is a family friend of both me and
8 the mother of my children, and my sister Shalena, have read
9 and seen this letter that she wrote and left to me that
10 expresses that she -- what she had done and why she was
11 doing what she was doing.

12 Q Let's be clear. Who is she?

13 A The mother of my children, Rebecca Rosa.

14 Q The alleged victim in this case?

15 A Yes.

16 Q All right. Did -- do you know where that letter is?

17 A That letter disappeared.

18 Q Did it disappear after the sheriff's office got
19 involved?

20 A It disappeared out of my car.

21 Q Okay. Was your car confiscated ---

22 A Yes.

23 Q --- as part of this?

24 Did Mr. -- did you tell Mr. Delaney about this issue
25 with the letter?

1 A Yes, I did.

2 Q Did he do anything affirmative to try to help you get
3 -- get something with that?

4 A He brought it up during the trial. I believe it was
5 with my great-aunt, Betty Ruth Miller. He brought it up
6 during the trial. And the solicitor -- I believe the
7 solicitor stood up and objected and then they didn't --
8 that was it.

9 Q Did -- to your knowledge, did Mr. Delaney or Mr. Hall
10 or anybody from the public defender's list include an
11 inventory request from your car as part of their discovery?

12 A No. I didn't see -- no. I didn't see anything. I --
13 I -- I knew what they told me they found during trial.
14 They went -- kind of went over. They said paperwork, the
15 power bills. They went through the house. They didn't
16 really say that they found much of nothing in the car,
17 except for one letter that -- it was a -- it -- it was a
18 suicide letter that I had written that they actually read
19 off during the trial.

20 Q All right. And I know this is tough, if you need to
21 take a second to catch your breath.

22 A Uh-huh.

23 Q To -- what did that suicide letter say in it, as far
24 as anything -- your feelings towards the victim?

25 A I was letting her know that I was sorry that she felt

1 the way she felt; that I loved her and our children. I
2 felt I -- I felt that I failed because of what she had did.

3 Q Okay.

4 A And I couldn't -- I couldn't fix it. And I didn't
5 want to live because it was too much.

6 Q Was this letter written after she -- she passed away
7 or before?

8 A Before.

9 Q All right. And how long before that was it written?

10 A This was probably written -- I want to say her first
11 -- her first set of communication with me, actually, she --
12 she text -- she texted me on the telephone on May 16th.
13 And she let me know that she was going to let me see my
14 kids.

15 And I almost didn't believe it was her, because of
16 everything that had been going on. So I had prepared to
17 leave a letter with her -- well, for her -- for her and the
18 kids because I was going to take my life prior to that.

19 Q Did you seek any kind of treatment after that?

20 A No.

21 Q All right. Now, we've covered a lot. And I know this
22 is an emotional thing, but I want to make sure we cover
23 everything you want to cover. Are there other issues you
24 want to bring in front of the judge right now?

25 A Yes. The fact that they never brought up -- they had

1 my telephone. There were text messages in the phone.

2 Phone records should've been pulled that morning.

3 Because I had assumed that I was going to pick up my
4 kids. I didn't know I was walking into a trap. And when I
5 got there, my kids wasn't there. But the -- the main cause
6 for me going to get her was to take her to work, because
7 she had been literally cussing me about not coming and
8 helping.

9 And my great-aunt, who I love to death, she gave me
10 advice. She told me, "Don't make it easy on her. She took
11 the kids and left, so don't go -- you know, she's dragging
12 you through all of this. Just calm down and -- and tell
13 her, if she needs a babysitter or she needs this, you're
14 not -- she put you in this predicament in the place where
15 you are. You don't need to be going to do that. You need
16 to let her handle it."

17 And that -- and when I told her that, she got very
18 angry.

19 Q Okay.

20 A So it was ---

21 Q All right. Outside of relitigating the trial, you --
22 you understand we're focusing on the errors of your lawyer.

23 A Yeah.

24 Q Are there any other legal issues that you think your
25 lawyer should've pressed with the Court or any other issues

1 that you think the lawyer didn't do -- that ---

2 A Yes. He should've objected to self-defense being
3 taken off the table.

4 Q Okay. And as far as the jury charges for
5 manslaughter, involuntary and voluntary manslaughter, and
6 ---

7 A Uh-huh.

8 Q --- murder, do you have objections to the way he
9 handled that situation?

10 A Yes. I believe, if I would have -- I believe, if I
11 would have testified, and I believe, if we would've had
12 certain things at our disposal, it would've helped. I just
13 felt like we -- we -- we walked into this thing bad. It
14 was -- it -- it -- to me, it was a trap. It was ---

15 Q Those things that would've helped you, have we already
16 -- have you already testified about that today? Are there
17 additional things?

18 A As far -- oh. Well, I -- I told you about the safe
19 home. I think they should've got safe-home records. I
20 think they kept records of that. Witnesses to testify that
21 she actually allowed me to pick her up from the safe home.
22 I knew exactly where -- I could take you there. I could
23 tell you how to get there.

24 Like I said, moments of -- a lot of people seen us
25 together. And only reason at that time I was really truly

1 dealing with her was because of my children. And she took
2 -- I have two children with her biologically.

3 And I have one that's -- well, he's not mine
4 biologically. But anyway, I've raised him. And Tyus --
5 Tyus is my youngest son. And Tylia is my only daughter.
6 And she had -- she had them. So she knew how important
7 they were, as far as -- and I believe it -- it -- people
8 could've testified and attested to what was going on during
9 the time.

10 My mental state, it -- it was pretty bad. I had lost
11 a lot of weight and things and kind of went downhill into a
12 deep, dark place. A lot of things are vague, as I've said.
13 But it's -- it's a lot of people that I feel should've been
14 brought up during the trial.

15 Q You also think it would've been important for you to
16 testify?

17 A Yes. Very.

18 Q All right. Are those the issues you want the judge to
19 -- that we've already gone over that you want the judge to
20 consider?

21 A Yes.

22 Q All right.

23 MR. RUCKER: No further questions.

24 MS. OLIVE: May it please the Court?

25 THE COURT: Yes, ma'am.

CROSS-EXAMINATION

BY MS. OLIVE:

Q Mr. Delaney met with you more than four or five times, right?

A Far as I know, only four or five.

Q Okay. Do you recall -- I mean, he went over the -- he at least tried to go over the discovery with you ---

A No, he ---

Q --- right?

A --- did not.

Q No?

A (Shook head from side to side.)

Q So you -- you weren't really very cooperative with him, were you?

A I wasn't cooperative as far as taking the plea he wanted me to take.

Q But in terms of him trying to review the discovery with you, you weren't all that cooperative, were you?

A No. He was not trying to review the discovery. He brought my mother and he got my great-aunt, who is sitting in this courtroom today, and other family members of mine to try to convince me to take 45 years.

Q I'm talking about when he would come and meet with you

A That was it.

- 1 Q --- and your meetings.
- 2 A Yes. That's what ---
- 3 Q So every ---
- 4 A --- we talked ---
- 5 Q --- time he ---
- 6 A --- about.
- 7 Q Okay. So when he met with you, none of those times he
- 8 went over discovery with you?
- 9 A No.
- 10 Q Never tried to ---
- 11 A He ---
- 12 Q --- show you ---
- 13 A I asked ---
- 14 Q --- any photographs ---
- 15 A --- him what ---
- 16 Q --- or ---
- 17 A --- what -- when I had -- no. We never seen -- he
- 18 said they were on CD.
- 19 Q Okay. Did he -- so he never -- okay. But he went
- 20 over these statements that you -- that you gave to the
- 21 officers?
- 22 A No. He told me I had to give an officers a -- a
- 23 statement. Yes. That was known, because I had brought
- 24 that up.
- 25 Q Okay. Okay. But do you remember at your trial, when

1 -- when -- and I think you mentioned this before -- when
2 you brought up to Judge Cole -- your -- your attorney, Mr.
3 Delaney, actually informed him that you were not being
4 cooperative with the discovery when he was coming to meet
5 with you.

6 A Yes, he ---

7 Q Do you ---

8 A --- did.

9 Q --- remember that?

10 A And I interrupted and called him a liar.

11 Q And back to the -- these statements that you gave ---

12 A Uh-huh.

13 Q --- you kind of gave three different statements,
14 right? And they -- they were kind of inconsistent with
15 each other.

16 A Not as ---

17 Q Obviously ---

18 A --- far as ---

19 Q --- the last ---

20 A --- I know.

21 Q --- one ---

22 A Not as far as I know.

23 Q Okay. You didn't -- you didn't say something
24 different in your second statement, as opposed to your
25 first statement?

1 A Not that I know of.

2 Q As far as your whereabouts that evening, the -- the
3 night that she disappeared and the morning ---

4 A Are we -- are we talking about when they questioned
5 me, or are you talking about after I got arrested?

6 Q I'm talking about in the statements that you gave the
7 -- the -- the statements that were recorded on DVD that you
8 gave to the officers.

9 A Okay. I don't know which ones they recorded on DVD
10 exactly. But I was brought in from my aunt's house the
11 first time for questioning.

12 Q Okay.

13 A And then after that, the other one was after I were
14 arrested.

15 Q Okay. But prior to trial, prior to -- and I think to
16 answer the -- okay. Y'all had already gone through jury
17 qualification.

18 A Uh-huh.

19 Q And then you remember that there was a *Jackson v.*
20 *Denno* hearing, correct?

21 A Yeah. Whatever that was.

22 Q Okay. And so -- well, your lawyer tried to get those
23 statements excluded, correct?

24 A Is that what that is? Because I -- I'm -- like ---

25 Q You were ---

- 1 A --- as of ---
- 2 Q --- there.
- 3 A --- now -- yeah.
- 4 Q Do you ---
- 5 A I mean ---
- 6 Q --- remember?
- 7 A --- I'm assuming that's what that was about.
- 8 Q Okay. So y'all -- y'all kind of reviewed. The
- 9 officers got up. They testified.
- 10 A Yeah. They ---
- 11 Q They kind of ---
- 12 A Okay.
- 13 Q --- reviewed ---
- 14 A I remember that.
- 15 Q --- the statements that you gave.
- 16 A Uh-huh.
- 17 Q Okay. And your lawyer asked them questions?
- 18 A Okay.
- 19 Q Okay. And he made a motion to have that excluded, to
- 20 not have that allowed in the trial, correct?
- 21 A Yes.
- 22 Q Okay.
- 23 A I believe it's what that was.
- 24 Q And -- and he -- he argued that you had, in fact,
- 25 invoked your right to counsel, correct?

- 1 A What do you mean?
- 2 Q I mean, that he was trying to get these statements
3 excluded. You ---
- 4 A Okay.
- 5 Q --- remember that?
- 6 A Okay.
- 7 Q Okay. And as your lawyer was talking with you earlier
8 and asking you if you had asked to see your lawyer ---
- 9 A Yes.
- 10 Q --- when these statements were given. Okay.
- 11 A Uh-huh.
- 12 Q Okay. So at trial Mr. Delaney tried to get these
13 statements excluded because you had -- because he argued
14 that you had requested counsel and that they should be
15 excluded because you had invoked this constitutional right
16 to counsel.
- 17 A Uh-huh.
- 18 Q Okay. So you remember him doing that?
- 19 A I remember he told me a little bit. We were going to
20 have a hearing about the statements. As far as everything
21 that was said and done, he mentioned -- which I also
22 mentioned to him that there was a few minutes of the taping
23 missing. There was a little bit of -- which he ---
- 24 Q Okay.
- 25 A --- brought up during the trial. Mr. -- excuse me --

1 which Mr. Delaney brought up during the trial.

2 And during the process of that, I brought up to him
3 that I was told by Officer Burgess, during that statement I
4 gave when I was brought from the county jail, that it would
5 look good on me if I cooperated. He said if his captain
6 goes out of here -- out this city jail or city police
7 department and goes to the public, it's going to look bad,
8 so they need information. That's what Officer Burgess told
9 me before he cut the tape on, during the process of which
10 before that he brought my mother in to sit down in front of
11 me to convince me to talk.

12 Q Okay. But you never said, "I'm not talking to you. I
13 want my lawyer." Right?

14 A I -- I wouldn't have said that, because ---

15 Q No, sir.

16 A --- I really ---

17 Q Yes or no?

18 A No.

19 Q Okay. And again ---

20 MS. OLIVE: And, Your Honor, for your reference I
21 think this is -- starts on page 39 of the trial transcript
22 ---

23 THE COURT: Okay.

24 MS. OLIVE: --- or -- I'm sorry -- 38.

25 Q There was a *Jackson v. Denno* hearing. And the judge

1 ruled that he was going to allow these statements in,
2 correct?

3 A I'm assuming.

4 Q Okay. So your lawyer argued this at trial; tried to
5 get these statements excluded.

6 A Okay.

7 Q But the judge admitted them anyway?

8 A Uh-huh.

9 Q Okay. Now, and I know you're talking about your --
10 your sisters -- you're claiming that -- your sisters,
11 Sheera and Diana, they did testify at trial, correct?

12 A One of them is my cousin.

13 Q I'm sorry.

14 A Okay.

15 Q Forgive me.

16 A Diana is my cousin. Sheera is my sister.

17 Q Okay. But they did testify at the trial, correct?

18 A Yes, they did.

19 Q Okay. And you didn't tell your attorney about any
20 other witnesses that could testify on your behalf, did you?

21 A I hadn't had the time to tell him.

22 Q Okay. In those four or five meetings that you had
23 had, you never had a chance to ---

24 A All ---

25 Q --- tell him?

1 A --- Mr. Delaney wanted me to do was take a plea. He
2 informed me that he got another guy 60 years like it was
3 supposed to make me feel better.

4 Q And then, regarding your decision not to testify, you
5 did -- the judge did advise you of that right, correct?

6 A Yes.

7 Q Okay. And you did have any opportunity to discuss
8 that with your attorney, correct?

9 A Yes.

10 Q And he felt it was not in your best interests?

11 A Based off his advice.

12 Q But you still felt like that was -- that -- that you
13 still chose not to testify, correct?

14 A Yes.

15 Q Okay. Now, do you remember the evidence that the
16 state had against you in this case?

17 A What -- what do you mean? What they presented during
18 trial?

19 Q Correct.

20 A As far as what?

21 Q Well, I mean, just in general. You knew ---

22 A I mean ---

23 Q --- the ---

24 A --- all I knew was they had a body and my statement.

25 Q Okay. But they also -- there were several individuals

1 that saw you sort behaving -- excuse me -- suspiciously on
2 the days in question?

3 A I mean, okay.

4 Q Some people got up and testified about that ---

5 A Yeah.

6 Q --- that they saw?

7 You -- at first, you told the police that you were not
8 at -- at her apartment the night that she disappeared or
9 the morning that she disappeared. But one of her
10 neighbors, in fact, testified that she saw your blue
11 Durango pull behind the apartment and put a large -- a -- a
12 carpet in the back of your -- your blue Durango. You
13 remember that?

14 A Yeah. You talking about the nosy lady.

15 Q Okay. Yes. The nosy neighbor.

16 And ultimately, you did end up giving a statement to
17 the authorities about -- about these events. And you, in
18 fact, told them where you threw the knife that you stabbed
19 ---

20 A That was ---

21 Q --- her with?

22 A --- their assumption.

23 Q That -- okay. But you -- you gave them the statement?

24 A Yeah. I gave them what they wanted.

25 Q Okay. And if you recall, at trial the -- the forensic

1 examiner testified, correct, about the injuries to the
2 victim, the -- the stab wounds? There were three stab
3 wounds. Do you remember that?

4 A Wait a minute. Which one was the -- the who?

5 Q It's the very last person that testified at your
6 trial.

7 A Well, the male or the woman? Was it a male or female?

8 Q I'm -- I'm -- honestly, I don't know.

9 A I don't -- I -- okay. It might -- okay. Yeah. I
10 remember -- I remember that, though.

11 Q Okay.

12 A Uh-huh.

13 Q But they discussed the fact that she had been stabbed
14 three times?

15 A That's right.

16 Q Okay. Her body was buried on -- I think it was your
17 family's property, right?

18 A Uh-huh.

19 Q Okay. And there was blood spatter found in her
20 apartment. You remember that?

21 A Uh-huh.

22 Q Okay. And your fingerprints were found in her
23 apartment ---

24 A Yeah.

25 Q --- with her blood on them? You remember that?

1 A Yeah. They -- the -- there was also testimony to two
2 different blood samples in the house. And they couldn't
3 identify the other one.

4 Q Right. They couldn't identify the second. But the
5 other blood samples were hers ---

6 A Uh-huh.

7 Q --- correct?

8 Okay. Okay. So back to the claim about the -- now,
9 you were originally indicted -- well, you were indicted for
10 murder, right? That's what you were charged with.

11 A That's what they did.

12 Q Okay. And your attorney told you that you were
13 charged with murder?

14 A Yeah. Uh-huh.

15 Q And he explained what murder was?

16 A Who explained what murder was?

17 Q Your attorney.

18 A No.

19 Q Mr. Delaney ---

20 A I mean ---

21 Q --- never told you ---

22 A --- I just ---

23 Q --- what ---

24 A --- assumed that -- no. Mr. Delaney didn't explain
25 anything to me.

1 Q He told you what murder was, right, and what the
2 elements of murder ---

3 A No.

4 Q --- would be, what the state would be required ---

5 A No.

6 Q Okay. Now, at the end of your trial, there was a jury
7 charge -- I mean -- I'm sorry -- a jury conference,
8 correct?

9 A What do you mean?

10 Q All right. Your -- your attorney asked the judge to
11 give a jury charge on involuntary manslaughter, voluntary
12 manslaughter, and self-defense, correct?

13 A Yes. I ---

14 Q Okay.

15 A --- believe so.

16 Q And the judge actually decided he was going to charge
17 involuntary manslaughter and voluntary manslaughter as
18 well?

19 A Yeah. Yes.

20 Q Okay.

21 A The judge did.

22 Q But he decided that he didn't feel the evidence --
23 that -- that there was not evidence presented at the trial
24 that would support a self-defense charge, correct?

25 A Yeah. That's what he felt.

1 Q Okay. And that was actually argued on appeal, was it
2 not?

3 A Argued on what appeal?

4 Q Okay.

5 A Are you talking about my direct appeal?

6 Q Yes.

7 A I -- I don't know. I -- I -- the woman that I had for
8 direct appeal, she just said she -- she basically informed
9 me, unless I just didn't do the crime, it wasn't going to
10 -- nothing was going to come of it. So she just sent me
11 copies of things she argued. But I really didn't read over
12 it.

13 Q Okay. Well, anyways, your lawyer did ask for a self-
14 defense charge, correct?

15 A Yes.

16 Q And the judge denied it?

17 A Uh-huh.

18 Q Okay.

19 A He -- and he denied it based off what the solicitor
20 stood up and said. I felt at that time Mr. Delaney
21 should've objected due to my statement that was given of
22 self-defense and that -- excuse me -- and the fact that I
23 could have testified on my own behalf and -- and gave my
24 side of the story.

25 Q Well, I mean, the -- the -- but the evidence was what

1 it was, right?

2 A What do you mean?

3 Q I mean, the judge had -- he had sat through the entire
4 trial and seen all the evidence, right?

5 A I'm assuming.

6 Q Well, you were there, were you not?

7 A I mean, he didn't say exactly what he seen and what he
8 didn't see. He felt -- if he felt enough to charge
9 involuntary manslaughter, manslaughter, and -- oh -- and
10 murder, he also -- he also seen in the evidence that that
11 was plausible. Now, I wouldn't have known that.

12 All I knew was -- is that these were -- self-defense,
13 involuntary manslaughter, and manslaughter are lesser
14 charges than murder. Now, that I did know. But at the
15 same time, I wouldn't have known, if anything, as I said
16 before, me and her are the only two that know what happened
17 in that apartment. And I gave my side of the story on
18 paper.

19 And I should, based off what I know now, I should've
20 gotten up there and not listened to him and testified and
21 gave my half of the story. I believe this could've been
22 made a very big difference in the trial, me telling what
23 happened.

24 Q Okay. Now -- but a plea -- a plea offer was made to
25 you, correct?

1 A Yes.

2 Q Okay. Was it 40 years?

3 A No. The first plea was no number. He came in; he
4 said he didn't have a number. I gave him a number. And he
5 took it. And he said he would take it to the solicitor.
6 This was the same day he tried to bring my mother in to
7 convince me just to take it. But he did inform me that it
8 was a *Alford* plea.

9 Q Uh-huh.

10 A And he did inform me that basically, I was saying they
11 have enough evidence to convict me.

12 Q Okay. So you ---

13 A Or whatever. He -- he informed me of that. But I
14 asked him what the evidence was. And there was nothing.
15 The -- after that, it was over -- it was over with. He
16 left; he went to -- I guess he talked to somebody in the
17 solicitor's office.

18 He came back. And he informed me that they offered --
19 they were offering me 45 years. And that's when he also
20 informed me that he had just got somebody 60 years, and
21 that's the best he could do.

22 Q Okay. But you -- and you -- but you did ultimately
23 make the decision that you wanted to go to trial?

24 A Well, he ---

25 Q Yes or no.

REDIRECT EXAMINATION BY MR. RUCKER - ROBERT LEE

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1 A Yes. Yes, I did.

2 Q Okay.

3 MS. OLIVE: Your Honor, I think that's all the
4 questions I have.

5 THE COURT: Okay. Anything ---

6 MR. RUCKER: Your Honor, just a few questions on
7 redirect.

8 REDIRECT EXAMINATION

9 BY MR. RUCKER:

10 Q Nick, would you -- you were going to talk about that
11 first statement the attorney general -- assistant attorney
12 general asked you whether you said no or yes to invoking
13 your right to counsel. Do you ---

14 A Uh-huh.

15 Q --- recall her question on that?

16 A Yes.

17 Q And -- and you were going to -- what -- what did you
18 want the judge know at that point?

19 A Being truthfully honest, never dealing with the police
20 system before -- and I -- and being a firm believer in the
21 law at the time -- I would've never guessed that any of
22 this would've made a difference, as far as me talking. I
23 was trying to be cooperative and helpful because I wanted
24 them to know what happened.

25 I understood that something bad had happened. It just

1 didn't happen the way I believe the warrant that the --
2 Officer Burgess had told me that existed, what it said on
3 it, when I seen it -- and it was signed by a judge, I
4 believe -- when I first seen it, I asked him why does it
5 say murder -- I believe murder -- murder.

6 And by him letting me -- or informing -- Officer
7 Burgess informing me that it would look good if I
8 cooperated, at that point I wanted to cooperate. At that
9 point I wanted them to know what happened. I was afraid.
10 I was afraid that nobody would believe me or listen to me
11 because of -- of what I had went through with the mother of
12 my children.

13 And I -- I just wanted it to be okay. I -- I
14 understood I had -- like I said, something bad had
15 happened. But it wasn't the way that it was being put. So
16 I wanted to tell them the story. I wanted to tell them
17 what happened. That's why I told them what happened.

18 Q Did you believe the police were playing by the rules
19 and that you didn't have to speak to your lawyer at that
20 point?

21 A No. I think they played on my gullibleness.

22 Q What -- what I'm asking you is at the point you gave
23 the statements, did you believe the police were doing what
24 they were supposed to?

25 A Oh, yeah. At that point, yes. I ---

RECROSS-EXAMINATION BY MS. OLIVE - ROBERT LEE

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1 Q And you ---

2 A --- thought so.

3 Q --- didn't -- you didn't understand that once you
4 invoked your right to counsel, that stopped and ---

5 A No ---

6 Q --- you could ---

7 A --- I did not.

8 Q Okay.

9 MR. RUCKER: No further questions.

10 THE COURT: Okay. Any ---

11 MS. OLIVE: Your Honor, just briefly.

12 RECROSS-EXAMINATION

13 BY MS. OLIVE:

14 Q Mr. Lee, you understand that if you did -- if you had
15 testified at trial -- you said that you wanted to tell your
16 side of the story?

17 A Yes, ma'am.

18 Q Do you understand that the statements in which you
19 gave inconsistent statements would've been used to impeach
20 your testimony, right?

21 A I -- I -- no. I didn't know that.

22 MS. OLIVE: That's all the questions I have. Thank
23 you.

24 THE COURT: You can step down. Thank you, sir.

25 THE WITNESS: Thank you.

DIRECT EXAMINATION BY MS. OLIVE - BRENDAN DELANEY 61

1 (Whereupon, the witness exited the witness stand.)

2 MR. RUCKER: Your Honor, we have several rebuttal
3 witnesses, including the officer from the jail. Depending
4 on Mr. Delaney's testimony, they may not be necessary. So
5 I -- we're going to close our portion of the case now. But
6 I still reserve my right to call them in rebuttal.

7 THE COURT: Okay.

8 MS. OLIVE: Your Honor, we would call -- the state
9 would call Brendan Delaney to the stand.

10 THE COURT: All right.

11 (Whereupon, the witness came forward.)

12 BRENDAN DELANEY, having been first duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. OLIVE:

16 Q Good afternoon, Mr. Delaney.

17 A Good afternoon.

18 Q Have you -- excuse me -- reviewed your file in
19 preparation for today's hearing?

20 A I have.

21 Q Mr. Delaney, how long have you been practicing law?

22 A Fifteen years.

23 Q Okay. So at the time of the -- of the trial ---

24 A It was about 11 at the time of the trial.

25 Q Okay. And do you -- do you recall what portion of --

1 of that has been criminal law?

2 A Hard to put a percentage on it. But I started in
3 2000, and a -- a fair amount of my practice has been
4 criminal defense. This was my first murder trial. But
5 I've had plenty of experience in general-sessions court.

6 Q Okay. You had trials before this?

7 A I had.

8 Q Okay. Do you recall whether you were appointed or
9 retained in this case?

10 A Robert Hall had conflicted out, and then I was
11 appointed to represent Mr. Lee.

12 Q Okay. And how far in advance of trial had you been
13 appointed?

14 A I want to say it was -- if it wasn't a year, it was
15 close to a year before -- before the trial.

16 Q Did you feel that it'd given you ample time to
17 prepare?

18 A Yeah. I had plenty of time to prepare. One of the
19 problems that I was having was my first meeting with Mr.
20 Lee, I had some serious questions about his mental
21 competency. He wasn't responding to any of my questions.
22 He seemed like that he was just in a -- in a whole
23 different place.

24 So at that point I requested a mental evaluation, which
25 was done. It came back that he was competent. And at that

1 point I began again meeting with him at the jailhouse. I
2 probably met with him half a dozen times.

3 I would show up with documents, with my laptop, with a
4 disk, with the discovery. We would get -- depending, you
5 know, 15/20 minutes into a meeting, I'd start showing him
6 documents, photographs, evidence that the state had against
7 him and he would shut me down. He would usually break down
8 into crying; that he couldn't do it anymore.

9 Maybe the first one or two times, I might've pushed
10 back and tried to get him to -- to look at the documents
11 and go over the evidence with me. And he just wouldn't do
12 it. He would shut down; didn't want to see it. It was
13 like he was in some -- some state of denial about what the
14 evidence was and that he just didn't want to see it.

15 So I would leave; come back. I -- I think, when I
16 first realized what he was doing, as far as not wanting to
17 go over the documents, for whatever reason, he had his --
18 he had his own personal reasons for -- for shutting me
19 down. And that's what was happening. Would ---

20 Q Okay. I'm going to back up a little bit. Did you --
21 so did you file *Brady* or Rule 5 motions in this case?

22 A I did. I was, you know, timely given all of the --
23 the discovery from the state. The majority of it was in --
24 was on CD. And, you know, I got cleared to take my
25 computer back there and went back there.

DIRECT EXAMINATION BY MS. OLIVE - BRENDAN DELANEY 64

1 And I can remember the first time popping that CD in
2 my computer and starting to pull up documents. And he
3 didn't want to have any part of it, especially when we got
4 to the photographs. That's when it was really -- when I
5 was shut down from -- from going any further with him. He
6 -- he couldn't look at them. And, you know, they were --
7 they weren't -- weren't pleasing. So -- but ---

8 Q Did you feel like you had complete discovery from the
9 state?

10 A Yeah. That -- there was nothing at trial that came up
11 that -- that it -- that I hadn't seen before. And so what
12 happened when I -- I wasn't able to go over all the
13 discovery with Mr. Lee is I had gotten in touch with his
14 mother. We -- we stayed in pretty good contact.

15 I went over not necessarily all the discovery, but I
16 went over some of it with -- with her; showed them what the
17 state had; showed them his statements; told them I was
18 going to try to get some of these statements excluded but
19 that was going to be up to the trial judge and that
20 obviously if those statements got in, then we had a major
21 problem. So we talked about that; talked about, again, the
22 -- the totality of the circumstances.

23 Eventually, I got a -- a -- a plea offer from the
24 state. It was my recollection that it was a 40-year offer.
25 It may have been 45.

1 And I talked -- I went back to the jail to talk about
2 that with Mr. Lee. He shut me down again; didn't really
3 want to have anything to do with it. I wanted him to
4 carefully, seriously consider the option of taking a plea
5 deal, which, in my opinion, he never really had done.

6 I don't think that he was ever really seriously
7 digesting anything that I was taking to him. I -- he was
8 in a -- it's good to see that he's doing much better now.
9 But at the time of my representation of Mr. Lee, he was in
10 a very, very bad mental place. And I was trying to get
11 through to him.

12 And -- and I saw his mother as my main ally in doing
13 that. I was hoping that maybe she could get him to begin
14 to look at these things and discuss them and talk about
15 reality a little bit.

16 And that's how we were able to -- I believe I was able
17 to get the jailers to allow me to take her back there with
18 me one time. And we had a joint meeting in one of the pods
19 back there. I think -- I think that's right. I -- I know
20 I was able to arrange a meeting between him and his mother.
21 Where it took place, I can't say for sure. But -- so
22 that's kind of the way it was going.

23 Q I'm just going to back up just a ---

24 A Uh-huh.

25 Q --- little bit. So you said you tried -- so you did

1 try to at least share the discovery with him?

2 A I did. And -- and again, I didn't -- he would shut me
3 down. I don't know any other way of putting it. But he
4 would just shut it down.

5 Q So do you feel that he cooperated with you during the
6 course of your representation?

7 A He -- he didn't cooperate. I don't think it was a --
8 I don't think he -- it was willingly noncooperative. I
9 just think that mentally, he was in a very dark place and
10 that he couldn't get past thinking logically and going
11 through this. And -- and when it hit him, he would just
12 shut down. And that was it.

13 Q Were you able to discuss with him the elements of --
14 of the murder charge and what the state would have to prove
15 against him at trial?

16 A I'm sure that's one of the first things I did. The
17 first time I met with him, I'm sure I told him he was
18 charged with murder and -- and what the elements of that
19 were -- you know, the unlawful killing of a human being
20 with malice aforethought -- and that they were going to
21 have to prove that to a jury beyond a reasonable doubt.

22 You know, whether or not he -- he heard that, I'm
23 convinced that there's probably many conversations that I
24 had with him that he probably didn't even hear. I -- I --
25 when I got that letter back from Columbia on his competency

1 -- competency evaluation, I was disappointed that -- that
2 they found him competent to -- to stand trial because he --
3 to me, he was -- he was gone mentally.

4 Q Was he able to discuss his version of the facts with
5 you?

6 A I think the short answer to that is no. He -- he
7 never really -- he never really discussed anything with me.
8 So that -- that'd be my answer.

9 Q Okay. So he wouldn't -- didn't have the opportunity
10 -- so ---

11 A I -- I afforded him the opportunity to try to create a
12 defense. We were going to have to come up with something.
13 They had a lot of evidence against him. And, you know, I
14 would search -- visit; try to come up with some defense.
15 Nothing ever came up.

16 They -- it -- ultimately, I think the defense of
17 accident is what -- if you had to say we relied on
18 something, was -- as the transcript bears out, the mother
19 of his children brought the knife into the altercation.
20 Mr. Lee got control of the knife. And then there was this
21 accident, where she fell into the knife -- the defense of
22 accident, I guess, if you had to -- to pin it down.

23 Q Okay. But that -- but she was actually stabbed three
24 times, right?

25 A Yes.

DIRECT EXAMINATION BY MS. OLIVE - BRENDAN DELANEY

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1 Q Okay. So that was -- wasn't really -- I mean, you
2 didn't ask for a charge on that, did you?

3 A No.

4 Q Okay. Can you briefly describe the state's evidence
5 against Mr. Lee in that trial?

6 A They had residents of the Prince Hall apartment
7 complex that saw his Durango parked around back, where
8 there's generally not vehicles. They had a witness that
9 saw him carrying a quilt with what this person believed to
10 be -- may have been a body in it. They found blood
11 splatter in the apartment.

12 They had the body. Her body was located on his
13 property on Tibbs Road, found by her brother. There was a
14 search party put together that -- among friends and family
15 members. And her brother actually found the body in the
16 woods. And when he -- as the search team was combing
17 through the woods, he let out this loud screech.

18 Mr. Lee was actually a part of that search party. At
19 that point he fled. They found him at a -- at a female
20 friend's house.

21 That was testimony -- that was a statement given by
22 Mr. Lee about the knife being thrown, I believe, into the
23 Tyger River. He actually showed them -- the investigators
24 where he tossed the knife into the river. The knife was
25 never found in the river. I guess it -- generally, that's

1 ---

2 Q And, of course, as we -- as he testified earlier --
3 and he gave a confession, right?

4 A Yes.

5 Q Okay. And did you attempt to exclude that confession
6 at the trial?

7 A I did.

8 Q Okay. Did you make -- let's see. Go back a little
9 bit. So was Mr. Lee able to give you any potential
10 witnesses or leads for investigation purposes in his trial
11 -- or in this case?

12 A I -- you know, we -- we called two witnesses in his
13 defense. And I called anybody and everybody he told me to.
14 I -- you know, I -- he sits up here today and says he had
15 some extensive witness list that I was supposed to pursue.
16 I don't recall that as being the case.

17 Whenever we got to a point of him telling me what
18 witnesses he wanted me to call, I did everything I could to
19 get them to come to trial and testify. And ultimately,
20 that was the two witnesses we -- we called.

21 Was there somebody else out there that maybe I didn't
22 track down or we couldn't find? That's possible. But ---

23 Q So to your recollection, though, anyone he told you
24 about, you at least attempted to contact them; and if you
25 did make contact them -- with them, you discussed ---

1 A Yes.

2 Q --- what their testimony might be?

3 A Yeah. And, of course, that -- when Mr. Lee finally
4 realized that, hey, we're having a trial here, his level of
5 cooperation and it -- his clarity of mind seemed to get a
6 little bit of -- little bit better. But, you know, in the
7 months prior to that trial, you know, I wasn't getting a
8 whole lot.

9 Q So was -- what -- what kind of investigation did you
10 do, other than just speaking with him and attempting to
11 contact any witnesses that he ---

12 A I, of course ---

13 Q --- identified?

14 A --- reviewed all the state's evidence. You know, I
15 looked over Mr. Lee's statements; tried to have certain
16 evidence excluded. Met with Mr. Lee. Tried to, you know,
17 pursue any defense that -- that he may have. And . . .

18 Q And I apologize if I've already asked you this. But
19 did you have ample time to prepare for trial?

20 A I feel like -- I feel like we had enough time. And,
21 you know, that doesn't change the fact that once that --
22 once the trial cranks up, then, you know, you certainly
23 feel a lot of pressure. And I know Mr. Lee was feeling
24 that pressure. He -- he didn't want to go to trial.

25 But our only option for not going to trial was to

1 accept a plea of either 40 or 45 years. And it -- like I
2 said, it may have been 45. My recollection was 40.

3 But -- and I talked to his mother about that plea.
4 His mother's come up a few times. She became my sounding
5 board because I couldn't -- I couldn't really sound off of
6 Mr. Lee. I -- I just couldn't get a whole lot of response
7 from him in those early months, especially. So I would
8 talk to his mom.

9 And I talked to his mom about the plea. And
10 ultimately, I think she agreed that -- that Mr. Lee -- that
11 her son may should take the plea. And -- and they had some
12 conversation. I don't recall being a part of that
13 conversation or not. I may have been in the room, but I --
14 I don't recall.

15 Q Regarding the -- the *Jackson v. Denno* hearing, you did
16 -- you did request that there be a *Jackson v. Denno*
17 hearing, correct?

18 A Yes.

19 Q Okay.

20 A I had the same concerns. I -- I had the concerns
21 about this statement that Mr. Lee gave, from what I saw as
22 after he was appointed Mr. Hall lawyer. So I -- Mr. Hall
23 was appointed as his lawyer. I had -- I had some concerns
24 about that.

25 And I voiced them to the Court. And that's why I made

1 that motion. And ultimately, the Court disagreed and let
2 the statements in. But yeah. I was concerned about --
3 about the -- the statements as well.

4 Q And did you discuss with him his right to testify?

5 A Yeah. We talked about that. Obviously, that was a
6 big point in the trial. Now, I -- you know, I'm drawing
7 from memory here. But I remember talking to Mr. Lee about
8 the pros and cons of, you know, testifying and not
9 testifying. And -- and I don't think I came down hard on
10 either side of that.

11 I -- I -- you know, just like the Court told him, I --
12 you know, I let him know that it was his decision and that,
13 you know, he could expect to be -- you know, prior
14 inconsistent statements that he gave would be used against
15 him. I told him it was a gamble if he testified. But --
16 but ultimately, it's his decision.

17 I -- I wouldn't have leaned on him real hard either
18 way on that. I -- I don't recall coming down and saying,
19 "Oh, no. You can't testify."

20 You know, when the state rested their case, there was
21 a mountain of evidence against Mr. Lee. And -- and we --
22 we did the best we could. So on the one hand, you know,
23 maybe it was time for Mr. Lee to -- to take the stand and
24 testify, even take that gamble. You know, and we talked,
25 to some level, about it. I wouldn't have told him firmly

1 one way or the other what to do or what not to do. That
2 was going to be his decision.

3 And it was a tough decision, I'm sure. But he -- he
4 made the decision he made. And -- and I -- and I backed
5 him in it, you know. It was -- I thought either decision
6 could be -- could be backed up. I mean, you could make an
7 argument for -- for either -- either way on that.

8 And -- and he chose not to testify. And -- and -- and
9 that was that.

10 Q Okay. So it was his choice?

11 A Yeah. I -- I didn't force him to not take the stand.

12 Q But you -- you did feel that there would be some
13 issues with his testimony if he did testify?

14 A Yeah. And I probably told him that. But, you know,
15 he could've taken the stand. And then, you know, if he --
16 if he can get the jury to buy what he's selling, then yeah.
17 The outcome could've been different.

18 Q If he ---

19 A Maybe it ---

20 Q --- could get them ---

21 A --- wouldn't have been.

22 Q --- to buy it?

23 A If -- you know, I -- maybe it wouldn't have. I -- I
24 don't know. I -- you know ---

25 Q What was your trial strategy going into the trial?

1 A To try to discredit the state's witnesses and
2 evidence. We didn't have an alibi defense. We didn't
3 have, you know, some smoking-gun defense that -- that we
4 could rely on.

5 I -- I -- you know, to be quite honest, I didn't have
6 much of anything. And so at that point, my job was to try
7 to discredit the state's evidence and witnesses. And, you
8 know, as we -- as we got through the trial, it kind of
9 morphed into: Okay. I guess we're going to have to maybe
10 rely on this accident defense a little bit that he had
11 given in one of his prior statements that, you know -- that
12 the mother of his -- of his children had introduced this
13 knife into the conflict and that Mr. Lee got control of it
14 and this horrible accident happened.

15 But, you know, then you -- then, you start having to
16 deal with: Well, was there three accidents or one?
17 Because she had three stab wounds. And, you know, it just
18 -- it was very problematic.

19 Q Did you feel like after the presentation of all the
20 state's evidence, that you could -- that you had enough to
21 ask for a charge on that, on accident?

22 A No.

23 Q Okay.

24 A No.

25 Q And what -- what requests to charge did you make?

1 A Well, it was obviously going to be murder, voluntary
2 manslaughter, involuntary manslaughter, and self-defense.
3 Again, I think the -- the evidence was -- I don't know if
4 it was completely uncontradicted. But I think it was
5 pretty clear that Ms. Rosa brought -- brought the knife.
6 And I think you could certainly argue that she's the one
7 that brought the knife into the picture.

8 Q Okay.

9 A You could argue that from the testimony presented.

10 Q Did you make objections at trial?

11 A I would imagine I did.

12 Q If you had felt anything objectionable had happened,
13 would you have made an objection?

14 A Yep. And -- and maybe I missed an objection during
15 the solicitor's closing, if he went into the description of
16 the photographs ---

17 Q Do you typically ---

18 A --- too much.

19 Q --- make objections during closing arguments?

20 A You should. You know, it's -- you know, I think all
21 of us lawyers try to give the other side as much leeway as
22 we can during closing. But maybe on that one, maybe I
23 should have objected.

24 Q Do you recall him discussing the photographs?

25 A I don't -- I didn't recall that until it was brought

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1 up in testimony today.

2 Q Okay.

3 A But I'm assuming he did, just based on what Mr. Lee
4 testified to earlier today.

5 Q Frankly, I don't recall either. But -- I think that's
6 all the questions I have.

7 MR. RUCKER: Your Honor ---

8 THE COURT: Let -- let me talk to y'all real quick.

9 MR. RUCKER: Okay.

10 (Whereupon, a bench conference was held off the
11 record.)

12 (Off the record briefly.)

13 THE COURT: We'll take a two-minute break, and then
14 we'll finish.

15 (Off the record from 1:03 p.m. until 1:07 p.m.)

16 THE COURT: Okay.

17 MR. RUCKER: We're ready, Your Honor.

18 THE COURT: Yes, sir.

19 MR. RUCKER: May it please the Court.

20 CROSS-EXAMINATION

21 BY MR. RUCKER:

22 Q Mr. Delaney, I'm Brandt Rucker. I represent your
23 former client, Robert Lee. I'm going to talk with you
24 about a few things with you. To start, how many times did
25 you actually meet with my client ---

1 A I would ---

2 Q --- at the jail?

3 A --- say approximately six.

4 Q Okay. I -- I'm going to show you ---

5 MR. RUCKER: Your Honor, may I approach the witness?

6 THE COURT: Yes, sir.

7 MR. RUCKER: Well, before that let me get it marked.

8 (Whereupon, Plaintiff's Exhibit 1 was marked for
9 identification.)

10 Q Let me show you what's been marked as Plaintiff's
11 Exhibit No. 1. It's -- that is a copy of the information
12 the detention center has about visitors for Robert Lee.
13 Would you -- if -- if that log shows four actual visits,
14 would you disagree with that?

15 A Potentially, yes.

16 Q Okay. Feel free to flip through to -- to review it.

17 A Yeah. If it says four, that's fine. But what you'll
18 have in -- in reality is a lot of times -- and it happens
19 now -- is I might have a couple of clients over there. And
20 I got in and meet with somebody. And then say, you know,
21 "Can I see John Doe while I'm here as well?" And it might
22 not necessarily show up on a log. So ---

23 Q But the -- the reality is you never went and met with
24 him the night during trial when Judge Cole suggested you do
25 that? You didn't go over there to meet with him?

1 A No.

2 Q Okay. Well, are you testifying that my client was
3 uncooperative even during trial or before -- simply before
4 trial?

5 A Before trial. During trial, like I said, when he
6 realized -- and I tried to explain to him that, you know,
7 we're going to trial, Robert. You know, I'm not sure it
8 was sinking in.

9 When we got over there and started to strike a jury,
10 you know, things started to get a little more clear for
11 him. But -- and during the trial he was cooperative, more
12 so than he had ever been up ---

13 Q All right.

14 A --- to that point.

15 Q So at the -- the beginning of the trial is when he
16 started getting cooperative?

17 A You could say that. Sure.

18 Q Do you -- do you think he was willfully trying to just
19 disobey what you were saying or not listening, or he just
20 wasn't mentally with it enough to ---

21 A I don't think ---

22 Q --- understand?

23 A --- it was willful at all. I -- I had serious
24 questions about his mental competency. And again, that's
25 why I requested the evaluation. I couldn't get through to

1 him. And it was very disconcerting to me, especially early
2 on. And he -- he was just in a really dark place. And --
3 and I didn't see him coming out of it.

4 Q Did you make a motion to continue the case at the
5 beginning of the -- of the trial because of that, because
6 of his noncooperation?

7 A No, I didn't. I didn't.

8 Q But did you talk -- attempt to talk with the solicitor
9 to see if they would agree to a continuance?

10 A I didn't. Again, it -- as time -- as more time
11 passed, his mental state seemed to be getting a little bit
12 better. And once we got to trial in the week or two before
13 trial, he -- he kind of started to get it a little bit.

14 Q Did you meet with him a week or two before trial?

15 A I'm sure I did.

16 Q All right. Do you recall when that was?

17 A A week or two before trial would be the best I could
18 say.

19 Q Would that have been 11 -- and if you don't know I
20 understand. Would ---

21 A Uh-huh.

22 Q --- that have been November 9th, 2011? Would that be
23 your last visit with him?

24 A That -- I wouldn't -- there was times when he was
25 starting to get pulled over here to the courthouse. And I

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1 wasn't meeting with him at the -- at the county lockup
2 anymore. He was sitting in the -- in the waiting room they
3 have over here. And so I would meet over -- over there
4 with him. I'm sure I met with him after November the 9th.

5 Q You understand that he told the judge he didn't think
6 he had communicated with you and wasn't prepared to go
7 forward?

8 A I do.

9 Q And the judge gave you an opportunity to go talk to
10 him and -- and go through that. Did you think maybe you
11 could have a continuance motion at that point?

12 A I -- I didn't see the need for one.

13 Q All right. But, I mean, the judge gave you that
14 opportunity to go talk to him and you didn't do it.

15 A And, you know, come to think about it, I didn't go to
16 the jailhouse. But what I more than likely did, if I'm
17 recalling correctly, again, they bring him back to this --
18 this holding area. And that's where I would go meet with
19 him. So probably after court that day, that's probably
20 what -- what I did, is met -- went and met with him in his
21 holding room.

22 Q Do you recall what y'all talked about?

23 A I don't.

24 Q Would it have been a very short meeting before they
25 transported him back?

1 A I -- I don't recall.

2 Q All right. As to -- let's get into the *Jackson v.*
3 *Denno* hearing. I notice, when reviewing the transcript,
4 you didn't actually cite any case law as part of your
5 argument; is that true?

6 A If that's what the transcript shows, that's what the
7 transcript shows.

8 Q And you may not independently recall this. But Mr.
9 Bulsa from the solicitor's office actually argued a case
10 that he called *Montjoy v. Louisiana*. Do you recall that?

11 A No.

12 Q All right. It's actually *Montejo v. Louisiana*. Are
13 you familiar at all with that case?

14 A I don't recall it.

15 Q Are you familiar with *Michigan v. Jackson* line on
16 right to counsel versus Fifth Amendment right to counsel?

17 A No.

18 Q Okay. Did you prepare to argue to get these
19 statements tossed based on any of those cases?

20 A I don't recall.

21 Q All right. Were you basically basing it on a general
22 understanding of right to counsel and Fifth Amendment right
23 to counsel, or did you have actual case law you were
24 depending on?

25 A I believe I was making a general argument that day.

1 Q Are you -- do you understand that -- that what Mr.
2 Bulsa actually -- or told the Court about *Montejo v.*
3 *Louisiana* was incorrect on the law?

4 A I don't recall what he said that day.

5 Q He -- his ---

6 A So ---

7 Q And -- and do you need to look at the transcript? I
8 can let you or ---

9 A However you want to proceed is fine.

10 Q Okay. If he -- if he told the judge that *Montejo v.*
11 *Louisiana* stood for the proposition that the police were
12 free to initiate contact with the defendant who has an
13 attorney, would you agree or disagree that's right on the
14 law?

15 A I would disagree.

16 Q Okay. Why did you not argue that specific case back
17 at Mr. Bulsa or, obviously, before Judge Cole?

18 A I don't recall.

19 Q Do you think, if -- if there was case law that said
20 these statements couldn't have come in because the police
21 initiated that contact and he already had an attorney, that
22 would've helped your case if at least two statements were
23 let out?

24 A I agree with that.

25 Q Was his first statement damning evidence against him,

1 or was it all three together because there was a shifting
2 -- alleged shifting story?

3 A I think all three would -- certainly, all three
4 together creates more of a problem for him.

5 Q Okay. Is it your view, if he testified, those
6 statements could come in at that point if he did not talk
7 about what was in those statements?

8 A It could possibly be used against him as prior
9 inconsistent statements.

10 Q But do you know of any direct case law in this
11 circumstance with "fruit of the poisonous tree" kind of
12 confessions that would've allowed that in if he did not
13 testify to what was in the statement?

14 A Well, certainly, if Judge Cole would've excluded him
15 at the pretrial -- excluded those statements at the
16 pretrial hearing, then it's not a problem for us anymore.

17 Q Okay.

18 A So then, testifying at the end of the case becomes a
19 different story.

20 Q Okay. Do -- why did -- why did you not call him as
21 part of the *Jackson v. Denno* hearing ---

22 A I don't ---

23 Q --- my client.

24 A --- I don't recall.

25 Q Was his mental state -- and I'm not talking about his

1 capacity to understand right or wrong -- but his mental
2 state at the time of the alleged incident, part -- a big
3 part of the trial?

4 A At the time of the incident, no.

5 Q Okay. Are you aware of any witnesses who could've
6 testified to having seen the victim alleged to -- threaten
7 to kill my client the night before this actual incident?

8 A The only witnesses I recall that could testify -- that
9 were brought to my attention that could testify as to the
10 victim's propensity of violence towards Mr. Lee were
11 called. And those were our two witnesses.

12 Q Okay. And who were those two witnesses?

13 A His cousin and his sister.

14 Q All right. And was his sister Sheera Lee?

15 A Yeah.

16 Q Was that who ---

17 A Yes.

18 Q --- if you recall?

19 Okay. Did she testify about seeing that event the
20 night before?

21 A I would have to look at the transcript. But she
22 testified, I think, to some episode of violence that the
23 mother of his children had towards him.

24 Q Okay. Did you call -- talk to her before the actual
25 trial started?

1 A I think she was brought to my attention -- I don't
2 think she was brought to my attention before the trial
3 started.

4 Q So are you saying that Mr. -- my client just withheld
5 that information that could help his defense?

6 A I'm not saying he withheld it. I'm saying that, for
7 whatever reason, it -- it didn't come up until -- until the
8 trial.

9 Q Could it be because of his mental state that he didn't
10 -- he couldn't recall these things because he was so upset
11 about the situation?

12 A That's a possibility.

13 Q If -- if you discovered witnesses that he didn't tell
14 you before, could that be a grounds for a continuance, at
15 least a brief delay so that you'd have time to talk to
16 these witnesses?

17 A That could be grounds. But with those particular
18 witnesses, if I recall correctly, they were present in the
19 courtroom. And I had the opportunity to talk to them at a
20 recess and corroborate what Mr. Lee was telling me about --
21 about what their testimony would be.

22 Q All right. But it's your -- your testimony that he
23 never told you about Sheera Lee before the actual trial
24 started?

25 A I don't know if I can -- I -- I just don't recall ---

1 Q Okay.

2 A --- when he first ---

3 Q Would you ---

4 A --- told me about her.

5 Q That would be a pretty important witness, wouldn't it?

6 A Yeah.

7 Q Did you note in your file that you had talked to her
8 previously?

9 A The first time I talked to her was at the trial.

10 Q Okay. All right. As far as prior behavior of
11 witnesses, would there -- do you recall any prior behavior
12 being used against my client at trial? I'm talking about
13 404-type evidence, Rule 404.

14 A I don't recall there being any.

15 Q Okay. And -- and it's your testimony now, you do not
16 -- or you do recall the statements by Derrick Bulsa to the
17 jury about what the pictures showed?

18 A I -- I didn't recall that as being objectionable until
19 today.

20 Q All right. So it's -- it's -- it's your view, if he
21 described what was going on in the pictures or said
22 directly to the jury, "I'm not allowed to show you these
23 pictures, but it showed the victim and it showed this,"
24 that is not admissible evidence?

25 A I ---

1 Q Is it?

2 A --- probably should've objected to that as being
3 overly prejudicial.

4 Q I -- I should say that's improper argument ---

5 A Yeah.

6 Q --- not ---

7 A Yeah.

8 Q Okay. And you -- you couldn't -- you did not -- and
9 if it's in the transcript, you just did not catch that or
10 you ---

11 A Yeah.

12 Q Okay. Do you think that was done to inflame the jury,
13 to affect their emotions on the case?

14 A I think you could certainly argue that.

15 Q Do you recall -- recall Derrick Bulsa actually
16 pleading with them to do the right thing, using that kind
17 of language?

18 A Yes.

19 Q Make this cycle stop ---

20 A Yes.

21 Q --- for example?

22 And did you object to any of that?

23 A No.

24 Q Was there a strategic reason not object to that?

25 A I don't recall.

1 Q Okay.

2 A I couldn't imagine there would be.

3 Q Now, you testified earlier that my client, Robert Lee,
4 was part of the search party. Do you recall that?

5 A I -- yeah. That -- that -- it was my -- my
6 recollection that a group of individuals in that area were
7 brought in, friends and family members. And I think Mr.
8 Lee may have been there. He may not have participated,
9 actually, in the walking through the woods. I think he was
10 in the general area of where that search was being
11 conducted.

12 Q It's not your testimony that he was part of the search
13 and when they found the body, he took off running? That's
14 not what you're saying?

15 A No.

16 Q Okay. You're saying that at some point he evaded the
17 police -- or they allege he evaded the police afterwards?

18 A Yes.

19 Q But it's not a -- just for the Court's edification,
20 it's not a "he was in the search party, heard the yell, and
21 then took off running" situation?

22 A I -- I -- I don't think that would accurately -- I --
23 I think he may have been in the area of the search.

24 Q Okay.

25 A But I don't think he was in -- he -- he wasn't an

1 active participant.

2 Q It wasn't an immediate flight in the presence of
3 police officers, is what ---

4 A Correct.

5 Q --- I'm asking.

6 Okay. All right. Explain to me the defense of --
7 your version or your view, I should say, of the defense of
8 accident under South Carolina law.

9 A That there was -- in -- in Mr. Lee's particular case,
10 that this instrumentality -- dangerous instrumentality was
11 brought into the physical altercation and -- and an episode
12 occurred that neither party wanted to occur. And it
13 resulted in seriously bodily injury to ---

14 Q What -- I'm sorry. Go ahead.

15 A --- to the mother of his children.

16 Q All right. Why didn't you ask for a jury charge on
17 that?

18 A Well, the three -- the three stab wounds were -- were
19 problematic. I -- I think that you could glean from his
20 statements that you might could -- could say that she fell
21 into the knife once. But then once the testimony of the
22 three stab wounds became part of the -- you know, part of
23 the -- the case, then that -- it -- it just wasn't going to
24 fly.

25 Q Do you recall Mr. Bulsa talking about, in closing

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1 argument, the knife stab being turned? There was -- he --
2 he -- he -- he told the jury that the knife had been turned
3 while the knife was inside this ---

4 A I recall ---

5 Q --- victim.

6 A --- that.

7 Q Do you recall that coming out actually as part of the
8 expert testimony?

9 A I don't recall.

10 Q All right. Would -- if -- if he made that argument
11 without it being part of the underlying evidence, would
12 that have been improper argument?

13 A Yes.

14 Q All right. Would you have objected -- should you have
15 objected to that, if that's the -- if that's the case?

16 A Yes.

17 Q All right. Additionally -- well, here -- here's the
18 big question: Why did you not think -- you said there was
19 -- there were positives and negatives to my client
20 testifying in the case. What were the negatives about him
21 -- with him testifying?

22 A His prior -- what -- what I -- what I thought his
23 testimony at trial would be, would be inconsistent with his
24 statements. And then, the -- the prosecution could then
25 pound away at these statements he gave -- the three

1 statements that he gave earlier and just hammer those home
2 and bring them up again and again and again.

3 Q He didn't have a prior record, right?

4 A Correct.

5 Q That there was nothing impeachable with that?

6 A No. He didn't -- he didn't have any -- any run-ins
7 with the law. And I -- and I think that was brought to the
8 jury's attention in my closing, if I recall correctly.

9 Q Okay. Also in your closing, you said that it -- the
10 -- my client and the victim were involved in fraud; is that
11 right? As ---

12 A I didn't ---

13 Q --- far as ---

14 A --- that word came up. I don't know if I -- yeah.
15 That -- I was trying to come up with a defense. And --
16 yeah.

17 Q Was there evidence given at the -- that they were
18 participants in a fraud, or is that something you just said
19 as part of your closing?

20 A That's something I said to try to bring in -- to try
21 to have the jury question the victim's -- what's the word
22 I'm looking for? That whole theory was used to show that
23 Mr. Lee and the mother of his children were acting together
24 and that they got along good and that they had this plan
25 that I referred to as "the fraud" to gain benefits for

1 housing and food and -- and things of that nature. And the
2 -- the reason behind that was to show that they got along
3 and they interacted with one another and that there wasn't
4 any animosity or hatred or anger by Mr. Lee towards the
5 mother of his children; that they were riding to -- he
6 would give her a ride to work and bring her back to the
7 safe home and this, that, and the other.

8 So the word "fraud" was used just because I was trying
9 to make it palatable for the jury.

10 Q In retrospect do you think that was a mistake ---

11 A No.

12 Q --- using the word "fraud"?

13 A No.

14 Q Mr. Bulsa actually seized upon that. And that was
15 basically the theory of his closing argument, correct?

16 A I don't know.

17 Q Was there any evidence for the jury to even glean that
18 there had been fraud by ---

19 A No. I mean ---

20 Q --- my client?

21 A --- the case wasn't about fraud. And -- but I was
22 using that term to show that -- that -- again, that Mr. Lee
23 and the mother of his children got along and did things
24 together. Good, bad, or indifferent, I didn't care. I was
25 just using it to show that they weren't violent towards one

1 another.

2 Q But -- but it's reasonable to think a jury would say:
3 "Well, they're -- they're involved in all this kind of
4 shady stuff, lying with the applications. We can't believe
5 anything he's saying in his statements. He probably just
6 flat killed her." Is that fair?

7 A I -- I mean, that's your version. You know, I -- I
8 didn't see it that way.

9 Q Well, I -- I understand. But I'm saying that you
10 introduced the concept that they -- that my client couldn't
11 be completely trusted to the jury in a closing argument,
12 based on no evidence, just in your closing argument.

13 A You -- you know, you could certainly interpret it that
14 way. But it -- it was used to show that Mr. Lee and the
15 mother of his children engaged in conduct together, that
16 they worked together, and they weren't violent towards each
17 other. If -- if you want to interpret it that way, then it
18 -- that's reasonable.

19 Q Okay.

20 (Whereupon, Mr. Rucker and the applicant conferred.)

21 Q Do you recall that in one of his statements, my client
22 talked about why there were three stab wounds?

23 A I don't recall that.

24 Q Were those statements introduced into evidence? I
25 mean, they were introduced ---

REDIRECT EXAMINATION BY MS. OLIVE - BRENDAN DELANEY 94

1 A Yes.

2 Q --- in evidence ---

3 A Yes.

4 Q --- weren't they?

5 A Yes.

6 Q And so the judge will be able to review that in the
7 file to ---

8 A Yes.

9 Q --- determine, even if you can't recall.

10 A Yes.

11 Q Okay.

12 MR. RUCKER: No further questions, Your Honor.

13 THE COURT: Okay.

14 MS. OLIVE: I have brief redirect, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. OLIVE:

17 Q Regarding the solicitor's statements in closing
18 argument about the photo, would this be -- would it be your
19 recollection that what he said was -- and this is page 549
20 of the trial transcript, lines 4 through 6 (As read): "I
21 wish I could've -- I wish you could've seen the picture of
22 the body of Ms. Rosa as she was pulled out of the dirt, her
23 intestines bloating out of her body." That was his
24 statement. Do you remember that?

25 A I remember it now that you're reading it.

1 Q Okay. Did you -- is that something you feel that you
2 should've objected to?

3 A Yeah.

4 Q Okay. But -- but they discuss in the trial that her
5 -- I mean, there was testimony that her intestines had come
6 out of her body by, I believe, the forensic ---

7 A Yeah.

8 Q --- expert ---

9 A Again, the ---

10 Q --- were there not?

11 A --- I -- I -- again, the -- the photographs and any
12 reference to them, I think, can be overly prejudicial. And
13 then, I -- I probably should've objected to that statement.

14 Q Okay. But there was a lot of -- I mean, was there a
15 lot of testimony about where her body was found?

16 A Yeah. That was ---

17 Q Okay.

18 A --- certainly.

19 Q And ---

20 A Yeah.

21 Q --- I mean, probably -- I mean, a couple witnesses
22 testified about where her body was found.

23 A At least.

24 Q And that it had -- and where was her body found?

25 A In the woods on his family's property.

REDIRECT EXAMINATION BY MS. OLIVE - BRENDAN DELANEY 96

1 Q Okay. Was it underground?

2 A Yeah. In a shallow grave.

3 Q Okay. And did -- okay. And then -- I'm sorry. I'm
4 -- this is on page 206 of the transcript. Oh. I'm sorry.
5 Regarding the -- the statement, you testified that you
6 recalled the solicitor saying something in his closing
7 about the knife being twisted, correct?

8 A Yes.

9 Q Okay. And do you recall the examiner's testimony
10 about the -- the -- the wounds to the victim's body?

11 A I don't recall that testimony specifically. But it
12 wouldn't surprise me if the examiner testified to injuries
13 consistent with the twisting of the knife.

14 Q Okay. So then, if that was the case, you wouldn't
15 have -- would that have been something to object to in
16 closing argument?

17 A No.

18 Q Okay. Thank you. That's all the questions I have.

19 MR. RUCKER: Your Honor, before I -- we're done with
20 Mr. Delaney.

21 THE COURT: Okay. Thank you, sir.

22 THE WITNESS: Thank you.

23 (Whereupon, the witness exited the witness stand.)

24 MR. RUCKER: I -- I -- I have two potential witnesses.
25 One we may be able to let go. I need to talk to the

1 attorney general real quick.

2 THE COURT: Okay.

3 (Whereupon, Mr. Rucker and Ms. Olive conferred.)

4 (Off the record briefly.)

5 MR. RUCKER: Your Honor, we're in agreement that the
6 evidence that Mr. Delaney just reviewed, the jail logs,
7 will be admitted into evidence so that we can allow the
8 lieutenant to go pick up his children from school. So the
9 need for his -- we do not have a need for his testimony
10 now.

11 THE COURT: Okay. That correct?

12 POTENTIAL WITNESS: Yes, sir.

13 THE COURT: No. I mean, do you agree -- I'm talking
14 to the attorney general. You agree with ---

15 MS. OLIVE: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. RUCKER: I have ---

18 THE COURT: Thank you, sir.

19 MR. RUCKER: I have one additional witness, Sheera
20 Lee. I expect that's a very short witness.

21 THE COURT: Okay.

22 MR. RUCKER: And we call Ms. Lee to the stand.

23 (Whereupon, the witness came forward.)

24 MR. RUCKER: Just have a seat.

25 SHEERA LEE, having been first duly sworn,

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. RUCKER:

4 Q All right. Ms. Lee, make sure you speak into the
5 microphone and -- loud enough for her to be able to hear,
6 okay?

7 A Okay.

8 Q How are you related to my client, Robert Lee -- Nick
9 Lee?

10 A He's my older brother.

11 Q Okay. Did you -- do you recall -- do you know who
12 Brendan Delaney is?

13 A I just knew him as his attorney, I guess, or his
14 public defender.

15 Q Okay. Did you see him testify earlier? Were you in
16 the courtroom? Was that the same lawyer you knew as
17 Brendan Delaney?

18 A Yes.

19 Q All right. How many times have you talked to Brendan
20 Delaney in your life?

21 A Once.

22 Q All right. When did you talk to him?

23 A The first day of my brother's trial.

24 Q Okay. You had never heard from him or had any contact
25 with him?

1 A No, sir.

2 Q Did your brother know your phone number and all your
3 contact information before the trial to be able to get in
4 touch with you?

5 A Yes.

6 Q Had you -- had -- had Mr. Delaney ever sent you a
7 letter in -- go ahead.

8 A No.

9 Q All right. What -- what was your testimony -- what
10 would've your testimony been at trial? I know you did
11 testify. But if you would've been able to speak with Mr.
12 Delaney, what did you want the Court or at least the jury
13 to know?

14 A The day that they captured my brother, Mr. Nelson, as
15 you heard my brother say before, had mentioned me and came
16 and got me. I was actually up there when they had him and
17 he was speaking to my mother. Mr. -- Officer Nelson pulled
18 me to the side because he knew me from a -- a previous case
19 that I helped him with and had actually put threats towards
20 me and my children. But I actually helped him out in a big
21 case.

22 Q Okay.

23 A And he trusted me. So he pulled me to the side. And
24 what he explained to me was over the weekend before Becky
25 was found, that it was people telling him that they seen me

1 ---

2 MS. OLIVE: Objection, Your Honor: hearsay.

3 A I'm sorry.

4 Q Let me rephrase it. Did -- did you ---

5 THE COURT: Okay.

6 Q --- actually witness the victim in this case threaten
7 your brother?

8 A Yes.

9 Q All right. When did that happen?

10 A The night before she went missing!

11 Q Okay. Did you tell the police about this?

12 A Yes. I told Officer Nelson.

13 Q Did you give an actual statement to the sheriff's
14 department or city police about this?

15 A No. I just talked to Officer Nelson about it.

16 Q But the sheriff's office was aware, at least through
17 one individual there, that -- that you had seen an
18 altercation in which my client was threatened?

19 A Yes, sir.

20 Q Did you -- when -- did Mr. Delaney ask you about this
21 before trial?

22 A No, sir.

23 Q Did he ask you during trial, including at -- as part
24 of your testimony?

25 A About the knife situation, yes. But not about Mr.

1 Nelson.

2 Q All right. Do you believe that he -- he needed that
3 -- strike that. You think that could've helped your --
4 your -- your brother's case, correct?

5 A Yes.

6 Q Because the -- Mr. Delaney would've had more
7 information to be able to cross-examine the officers?

8 A Yes.

9 Q All right. Do you have any other pertinent evidence
10 about that night before that the judge needs to know?

11 A That night, when I had seen Rebecca at the club, she
12 was very intoxicated. And when she approached me, she was
13 actually with her brother, Jonathan, and his girlfriend
14 that night. And I don't know if this is hearsay. But this
15 is what she told me. She told me that she was very upset
16 that my brother wouldn't take her back and that she told a
17 couple of people that she was going to kill him.

18 Q Did you communicate that to Mr. Delaney?

19 A No.

20 Q Okay. Did he give you time -- did you have sufficient
21 time to talk about all that?

22 A No. I actually tried to present it to him the day
23 that we first spoke to each other. And he told me that it
24 would just get denied and that he just needed me to talk
25 about the knife situation.

1 Q Okay.

2 MR. RUCKER: No further questions.

3 CROSS-EXAMINATION

4 BY MS. OLIVE:

5 Q So you're saying that you -- you did or didn't tell
6 him about this?

7 A I didn't. I didn't -- he never spoke to me until the
8 day of the trial.

9 Q Okay. Did you think it was important?

10 A Oh, yeah.

11 Q Okay. So you didn't think it was important enough to
12 tell him, though, before ---

13 A But I ---

14 Q --- the trial?

15 A --- tried to tell him that. But he told me that it
16 wouldn't matter. Like, he told me that they would just
17 push it to the side, for me to just stick with the knife
18 situation.

19 Q Okay. But you never actually saw her with a weapon
20 that night, correct?

21 A No.

22 Q Okay.

23 A She was at a club.

24 Q Okay. So she was at a club?

25 A Yeah.

1 Q Okay. And that's the last time you saw her that
2 night?

3 A Yes.

4 Q Okay. Thank you.

5 MS. OLIVE: That's all the questions I have.

6 MR. RUCKER: No further questions, Your Honor.

7 THE COURT: Okay. You -- you -- you made a statement
8 when they asked you that you told him and he said it didn't
9 make a difference. You told the attorney that the day of
10 trial?

11 THE WITNESS: Yes, sir.

12 THE COURT: You told him about -- what -- the
13 conversation with the victim at the club?

14 THE WITNESS: Yes, sir.

15 THE COURT: So he knew about that the day of trial; he
16 just didn't know about that beforehand.

17 THE WITNESS: Yes, sir.

18 THE COURT: Okay. Thank you.

19 (Whereupon, the witness exited the witness stand.)

20 MR. RUCKER: We have no other witnesses, Your Honor.

21 THE COURT: All right. Anything further from the
22 state?

23 MS. OLIVE: Nothing from the state, Your Honor.

24 THE COURT: Okay. I will review the file and let
25 y'all know.

1 MR. RUCKER: Okay. Thank you ---

2 THE COURT: Thank you.

3 MR. RUCKER: --- Your Honor.

4 (Whereupon, the proceeding was concluded at 1:33 p.m.)

5 --- END OF TRANSCRIPT OF RECORD ---

6

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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR SPARTANBURG COUNTY, SOUTH CAROLINA, ON THE
11TH DAY OF JANUARY, 2016.

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



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

MAY 27, 2017

01/07/16

Spartanburg County Sheriff's Office

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17:10

Visitation Summary Report, by Visitor Date

Page: 1

In	Out	Visitor	Visitee	Relation
Destination				

06/21/10				
=====				
08:44	10:00	06/21/10 BELCHER, TAMMY LY LEE, ROBERT		mother MAIN
JAIL V				
Total visits:		1		
06/23/10				
=====				
13:22	14:30	06/23/10 BELCHER, TAMMY LY LEE, ROBERT		mom MAIN
JAIL V				
13:32	14:30	06/23/10 BELCHER, BOBBY DE LEE, ROBERT		uncle MAIN
JAIL V				
Total visits:		2		
07/05/10				
=====				
09:10	10:00	06/05/10 BELCHER, TAMMY LY LEE, ROBERT		friend MAIN
JAIL V				
Total visits:		1		
07/14/10				
=====				
08:58	09:53	07/14/10 YARBROUGH, PATTI LEE, ROBERT		AUNT MAIN
JAIL V				
08:59	09:53	07/14/10 BELCHER, BOBBY DE LEE, ROBERT		UNCLE MAIN
JAIL V				
Total visits:		2		
07/15/10				
=====				
09:01	10:00	07/15/10 BELCHER, TAMMY LY LEE, ROBERT		mother MAIN
JAIL V				
09:02	10:00	07/15/10 LEE, SHALENA N LEE, ROBERT		sister MAIN
JAIL V				
Total visits:		2		
07/22/10				
=====				
09:13	10:00	07/22/10 BELCHER, TAMMY LY LEE, ROBERT		MOTHER MAIN
JAIL V				
Total visits:		1		



07/23/10

=====

10:11 11:00 07/23/10 LEE, SHALENA N LEE, ROBERT SISTER MAIN
JAIL V

10:12 11:00 07/23/10 KEARSE, OLIVIA MA LEE, ROBERT FRIEND MAIN
JAIL V

Total visits: 2

08/04/10

=====

10:04 11:00 08/04/10 BELCHER, TAMMY LY LEE, ROBERT mom MAIN
JAIL V

Total visits: 1

08/12/10

=====

13:27 14:30 08/12/10 SHANNON, SHANNON LEE, ROBERT friend MAIN
JAIL V

Total visits: 1

08/13/10

=====

12:40 13:30 08/13/10 BELCHER, BOBBY DE LEE, ROBERT uncle MAIN
JAIL V

12:43 13:30 08/13/10 BELCHER, TAMMY LY LEE, ROBERT mom MAIN
JAIL V

01/07/16

Spartanburg County Sheriff's Office

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Visitation Summary Report, by Visitor Date

Page: 2

In	Out	Visitor	Visitee	Relation
Destination				

Total visits: 2

09/08/10

=====

10:10 11:00 09/08/10 BELCHER, TAMMY LY LEE, ROBERT mother MAIN
JAIL V

Total visits: 1

09/09/10

=====

10:03 11:00 09/09/10 WALKER, RYAN EUGE LEE, ROBERT brother MAIN
JAIL V

10:03 11:00 09/09/10 LEE, SHALENA N LEE, ROBERT sister MAIN
JAIL V

Total visits: 2

09/15/10

=====

10:09 11:00 09/15/10 BELCHER, TAMMY LY LEE, ROBERT MOTHER MAIN
JAIL V

10:09 11:00 09/15/10 LEE, SHEERA NMN LEE, ROBERT SISTER MAIN
JAIL V

Total visits: 2

09/21/10

=====

10:52 11:58 09/21/10 FILLER, LAURA A LEE, ROBERT atty/guardi POD
3

Total visits: 1

09/22/10

=====

23:40 18:30 09/22/10 BELCHER, TAMMY LY LEE, ROBERT mom MAIN
JAIL V

Total visits: 1

09/23/10

=====

09:58 11:00 09/23/10 BELCHER, TAMMY LY LEE, ROBERT MOTHER MAIN
JAIL V

09:59 11:00 09/23/10 LEE, SHEERA NMN LEE, ROBERT SISTER MAIN
JAIL V

Total visits: 2

09/30/10

=====

20:33 21:30 09/30/10 SHANNON, SHANNON LEE, ROBERT friend MAIN
JAIL V

Total visits: 1

10/15/10

=====

12:59 14:00 10/15/10 DELANEY, BRENDAN LEE, ROBERT attorney vi MAIN
JAIL V

Total visits: 1

11/15/10

=====

19:20 20:00 11/15/10 BELCHER, TAMMY LY LEE, ROBERT mother MAIN
JAIL V

Total visits: 1

12/14/10

=====

13:16 15:30 12/14/10 BELCHER, TAMMY LY LEE, ROBERT mom MAIN
JAIL V

01/07/16

Spartanburg County Sheriff's Office

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Visitation Summary Report, by Visitor Date

Page: 3

In	Out	Visitor	Visitee	Relation
Destination				

Total visits:		1		
12/20/10				
=====				
17:23	18:30	12/20/10 BELCHER, TAMMY LY LEE, ROBERT	mother	MAIN
JAIL V				
Total visits:		1		
12/23/10				
=====				
07:45	09:00	12/23/10 HOLCOMBE, FANNIE LEE, ROBERT	aunt	MAIN
JAIL V				
08:01	09:00	12/23/10 MILLER, BETTY POR LEE, ROBERT	aunt	MAIN
JAIL V				
Total visits:		2		
01/04/11				
=====				
08:48	08:53	01/04/11 BELCHER, TAMMY LY LEE, ROBERT	MOTHER	MAIN
JAIL V				
Total visits:		1		
02/01/11				
=====				
12:23	14:30	02/01/11 BELCHER, TAMMY LY LEE, ROBERT	mother	MAIN
JAIL V				
Total visits:		1		
02/07/11				
=====				
09:55	11:00	02/07/11 MURPHY, JUANITA J LEE, ROBERT	sister	MAIN
JAIL V				
Total visits:		1		
02/08/11				
=====				
13:13	14:30	02/08/11 BELCHER, TAMMY LY LEE, ROBERT	mom	MAIN
JAIL V				
Total visits:		1		
02/21/11				
=====				

20:14 21:30 02/21/11 BELCHER, TAMMY LY LEE, ROBERT friend MAIN
JAIL V
Total visits: 1

03/09/11
=====

11:56 13:30 03/09/11 BRIDGES, LINDSEY LEE, ROBERT FRIEND MAIN
JAIL V
11:57 13:30 03/09/11 LEE, SHALENA N LEE, ROBERT SISTER MAIN
JAIL V
Total visits: 2

03/21/11
=====

13:16 14:30 03/21/11 LEE, SHEERA NMN LEE, ROBERT sister MAIN
JAIL V
13:16 14:30 03/21/11 BELCHER, TAMMY LY LEE, ROBERT mother MAIN
JAIL V
Total visits: 2

04/18/11
=====

14:13 15:30 04/18/11 BELCHER, TAMMY LY LEE, ROBERT mom MAIN
JAIL V

01/07/16
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Spartanburg County Sheriff's Office

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Visitation Summary Report, by Visitor Date

Page: 4

In	Out	Visitor	Visitee	Relation
Destination				

Total visits: 1

04/25/11
=====

14:21 15:30 04/25/11 LEE, SHEERA NMN LEE, ROBERT sister MAIN
JAIL V
14:22 15:30 04/25/11 BELCHER, TAMMY LY LEE, ROBERT mother MAIN
JAIL V
Total visits: 2

05/02/11
=====

13:18 14:30 05/02/11 BELCHER, TAMMY LY LEE, ROBERT mom MAIN
JAIL V
Total visits: 1

05/06/11

=====

09:42 11:00 05/06/11 DIRTON, TAMMY R LEE, ROBERT aunt MAIN
JAIL V

Total visits: 1

05/16/11

=====

14:22 15:30 05/16/11 BELCHER, TAMMY LY LEE, ROBERT mom MAIN
JAIL V

Total visits: 1

05/23/11

=====

14:19 14:23 05/23/11 LEE, SHEERA NMN LEE, ROBERT MAIN
JAIL V

Total visits: 1

05/30/11

=====

11:42 13:30 05/30/11 BELCHER, TAMMY LY LEE, ROBERT mom MAIN
JAIL V

Total visits: 1

06/03/11

=====

09:55 11:00 06/03/11 DIRTON, TAMMY R LEE, ROBERT mom MAIN
JAIL V

09:59 11:00 06/03/11 DIRTON, NIKIA CHA LEE, ROBERT God Sister MAIN
JAIL V

Total visits: 2

06/08/11

=====

11:58 13:30 06/08/11 SCOTT, WILLIAM DA LEE, ROBERT pastor MAIN
JAIL V

Total visits: 1

06/13/11

=====

14:19 15:30 06/13/11 BELCHER, TAMMY LY LEE, ROBERT mom MAIN
JAIL V

Total visits: 1

06/17/11

=====

09:41 11:00 06/17/11 DIRTON, TAMMY R LEE, ROBERT GOD MOTHER MAIN
JAIL V

Total visits: 1

01/07/16

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Visitation Summary Report, by Visitor Date

Page: 5

In	Out	Visitor	Visitee	Relation	
Destination					

06/27/11					
=====					
14:14	15:30	06/27/11 LEE, SHEERA NMN	LEE, ROBERT	sister	MAIN
JAIL V					
14:15	15:30	06/27/11 BELCHER, TAMMY LY	LEE, ROBERT	mother	MAIN
JAIL V					
Total visits:		2			
06/29/11					
=====					
12:17	13:30	06/29/11 SCOTT, WILLIAM DA	LEE, ROBERT	pastor	MAIN
JAIL V					
Total visits:		1			
07/01/11					
=====					
09:43	09:44	07/01/11 DIRTON, TAMMY R	LEE, ROBERT	GOD MOTHER	MAIN
JAIL V					
Total visits:		1			
07/15/11					
=====					
08:48	10:00	07/15/11 MILLER, BETTY POR	LEE, ROBERT	AUNT	MAIN
JAIL V					
Total visits:		1			
07/18/11					
=====					
13:19	14:30	07/18/11 BELCHER, TAMMY LY	LEE, ROBERT	mother	MAIN
JAIL V					
Total visits:		1			
07/22/11					
=====					
13:20	13:21	07/22/11 DIRTON, TAMMY R	LEE, ROBERT	godmother	MAIN
JAIL V					
Total visits:		1			
07/29/11					
=====					
08:46	10:00	07/29/11 DIRTON, TAMMY R	LEE, ROBERT	god mom	MAIN
JAIL V					
08:52	10:00	09/27/11 ANDERSON, DEBRA J	LEE, ROBERT	friend	MAIN
JAIL V					
Total visits:		2			

08/01/11

=====

13:11 14:30 08/01/11 BELCHER, TAMMY LY LEE, ROBERT MOTHER MAIN
JAIL V

Total visits: 1

08/08/11

=====

14:11 14:56 08/08/11 DELANEY, BRENDAN LEE, ROBERT atty POD
4

Total visits: 1

09/01/11

=====

09:55 09:56 09/01/11 DIRTON, TAMMY R LEE, ROBERT godmother MAIN
JAIL V

Total visits: 1

09/30/11

=====

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17:10 Visitation Summary Report, by Visitor Date

Page: 6

In	Out	Visitor	Visitee	Relation
Destination				
-----	-----	-----	-----	-----
09:44 11:00 09/30/11 DIRTON, TAMMY R LEE, ROBERT			god mother	MAIN
JAIL V				
Total visits:	1			

10/03/11

=====

13:07 14:30 10/03/11 BELCHER, TAMMY LY LEE, ROBERT mom MAIN
JAIL V

Total visits: 1

10/07/11

=====

09:49 11:00 10/07/11 HOLCOMBE, FANNIE LEE, ROBERT aunt MAIN
JAIL V

Total visits: 1

10/21/11

=====

09:45 11:00 10/21/11 DIRTON, TAMMY R LEE, ROBERT god mother MAIN
JAIL V

Total visits: 1

11/04/11

=====

09:45 11:00 11/04/11 DIRTON, TAMMY R LEE, ROBERT godmom MAIN
JAIL V

14:53 16:53 11/04/11 DELANEY, BRENDAN LEE, ROBERT ATTY POD
4

Total visits: 2

11/07/11

=====

12:23 13:30 11/07/11 BELCHER, TAMMY LY LEE, ROBERT mother MAIN
JAIL V

12:24 13:30 11/07/11 LEE, SHEERA LEE, ROBERT sister MAIN
JAIL V

Total visits: 2

11/09/11

=====

12:55 13:58 11/09/11 DELANEY, BRENDAN LEE, ROBERT Atty POD
4

Total visits: 1

11/18/11

=====

09:47 11:00 11/18/11 DIRTON, NIKIA CHA LEE, ROBERT god sister MAIN
JAIL V

09:48 11:00 11/18/11 DIRTON, TAMMY R LEE, ROBERT god mother MAIN
JAIL V

Total visits: 2

12/02/11

=====

09:47 11:00 12/02/11 DIRTON, TAMMY R LEE, ROBERT FRIEND MAIN
JAIL V

09:47 11:00 12/02/11 DIRTON, NIKIA CHA LEE, ROBERT FRIEND MAIN
JAIL V

Total visits: 2

Total visits, this report: 78

Report Includes:

All arrival dates

All destinations

All visatee numbers matching ` 131267`

01/07/16 Spartanburg County Sheriff's Office

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17:10

Visitation Summary Report, by Visitor Date

Page: 7

All visitor numbers
All visatee last names
All visatee first names
All visatee middle names
All visitor last names
All visitor first names
All visitor middle names

*** End of Report /tmp/rptz-akMa-rpjvvsr.r1_1 ***

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Robert Lee, Jr., #348883,	)	Case No. 2014-CP-42-2364
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

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This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 13, 2014. Respondent made a Return on November 18, 2014. The Court convened an evidentiary hearing into the matter on January 11, 2016, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by J. Brandt Rucker, Esquire. Alicia A. Olive, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Brendan M. Delaney, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In October 2010, the Spartanburg County Grand Jury indicted Applicant for murder (2010-GS-42-5387). Brendan M. Delaney, Esquire, ("Counsel") represented Applicant. November 28-December 1, 2011,

Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. The jury found Applicant guilty as indicted. Judge Cole sentenced Applicant to a term of life imprisonment.

Applicant filed a timely notice of appeal. Wanda H. Carter, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Lee, Op. No. 2014-UP-169 (S.C. Ct. App. filed April 16, 2014). The Remittitur was returned to the circuit court on May 2, 2014.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel,
2. Due Process violations.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Summary of Testimony

Applicant testified that Robert Hall was initially appointed to represent him. Applicant testified he met with Counsel about four or five times. He stated that the first couple of meetings were not long but that the last two meetings were longer.

Applicant testified the first couple of meetings were short and lasted approximately fifteen minutes. Applicant testified he underwent a competency evaluation and that he was found

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competent to stand trial. He stated that Counsel did not mention an insanity defense. Applicant testified that he was offered a plea of forty-five years and he told Counsel he would not plead guilty. Applicant testified regarding the statements that he made to authorities. Applicant testified that a hearing was held before trial in which two of the statements were addressed. Applicant testified that when he gave the first statement to police he thought it would look good if he cooperated.

Applicant testified that at the first interview he did not ask for an attorney and did not invoke his right to remain silent. Applicant testified the officers informed him that his mother was in the building and she wanted to talk to him. Applicant testified that he gave his second statement after he had invoked his right to counsel. Applicant stated he did not know he was not supposed to talk to them. Applicant stated he had already signed up for an attorney and that he asked where his attorney was. He stated that the officer asked another officer to get his attorney.

Applicant testified he did not realize his statements were hurting him. Applicant stated he did not feel he was able to go over all of the detail with Counsel. He testified he did not feel prepared. Applicant testified that Counsel should have objected to self-defense being taken off the table. Applicant also testified that the State referenced a photo that was not admitted into evidence in his closing argument.

Applicant mentioned a letter that the victim had allegedly written on May 16 to Applicant but stated Counsel could not get the letter in. No letter was presented at the PCR hearing.

Counsel testified that he took over the case when Hall was conflicted out. He stated he was appointed about a year before trial and that he had plenty of time to prepare. Counsel testified that he recalls he probably met with Applicant approximately half a dozen times before

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trial. He stated that Applicant was not cooperative during the course of his representation. Counsel testified that he requested an evaluation because Applicant was not being responsive in their meetings. Counsel testified he filed Brady and Rule 5 motions for discovery and that the State timely provided discovery. Counsel testified he tried to review all discovery with Applicant but that Applicant did not want to see it and that Applicant "couldn't handle it." Counsel testified he would start reviewing the discovery with Applicant and Applicant would shut down and did not want to see it. Counsel testified that he went over the materials with Applicant's mother and that he took her back with him once when he met with Applicant. Counsel testified that he discussed with Applicant the elements of the charges and what the state was required to prove. Counsel testified that he recalls a forty-year plea offer being made.

Counsel testified the main evidence against Applicant at trial was that there was a bloody palm print on the wall of the victim's apartment and the print belonged to Applicant; Applicant fled and was found at a female friend's house; Applicant showed investigators where he tossed the murder weapon in the river, though it was not recovered; someone saw Applicant's car suspiciously parked behind the victim's apartment; and the victim's body was found on his family's land.

Counsel testified that his main strategy at trial was to try to discredit the State's witnesses, he had no alibi and there was not much else that he could rely on for the defense. Counsel testified that it was Applicant's decision not to testify and they discussed that his prior inconsistent statements could be used against him. Counsel testified that a hearing was held pursuant to Jackson v. Denno, 378 U.S. 368 (1964), at his request, to determine whether Applicant's statements were admissible, but that the trial judge ultimately ruled the state's

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were admissible. He testified that he made objections when he felt that something objectionable was raised during trial.

Counsel testified he called the witness he thought could testify to the victim's propensity for violence. He testified that Sheera Lee testified regarding the victim's propensity for violence. He stated that the issue had not come up before with those witnesses, but that they were present in the courtroom and he had an opportunity to discuss it with them at recess. He stated that the first time he spoke with Sheera was at trial.

On cross-examination, Counsel was asked about whether he objected to the solicitor's comments in closing. Counsel stated that he did not recall any statement as being objectionable. Counsel stated he did not recall having a strategic reason for not objecting, but that he did not think there would be a basis for it. Counsel stated he did not ask for a jury charge on the defense of accident because the victim had three stab wounds and one of the injuries was consistent with the knife being twisted.

Counsel testified that he did not object to the solicitor's statement in closing that the knife had been twisted, but agreed that the forensic pathologist testified that one of the wounds indicated that either the knife turned or the person turned. (Tr. p. 506, lines 9-15). Counsel also agreed that the forensic pathologist's testimony concerning how the victim's body appeared was consistent with the solicitor's comments in closing. (Tr. p. 496, lines 4-7; p. 549, lines 4-6).

B. Ineffective Assistance of Trial Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective

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assistance of counsel as a ground for relief, the applicant must prove counsel's "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court uses a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the Court measures counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced 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.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v.

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Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

Failure to suppress statements

Applicant alleges that Counsel was ineffective for failing to suppress his statements to police. This Court finds this allegation is meritless. "A criminal defendant is deprived of due process if his conviction is founded, in whole or in part, upon an involuntary confession." State v. Parker, 381 S.C. 68, 75, 671 S.E.2d 619, 622 (Ct. App. 2008) (quoting State v. Pittman, 373 S.C. 527, 565, 647 S.E.2d 144, 164 (2007)). "The trial judge determines the admissibility of a statement upon proof of its voluntariness by a preponderance of the evidence." State v. Parker, 381 S.C. 68, 74, 671 S.E.2d 619, 622 (Ct. App. 2008) (citing State v. Miller, 375 S.C. 370, 378, 652 S.E.2d 444, 448 (Ct.App.2007)). "Factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion." State v. Parker, 381 S.C. 68, 74, 671 S.E.2d 619, 622 (Ct. App. 2008) (quoting State v. Arrowood, 375 S.C. 359, 365, 652 S.E.2d 438, 441 (Ct. App. 2007)). "In criminal cases, appellate courts are bound by fact finding in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law." State v. Parker, 381 S.C. 68, 74, 671 S.E.2d 619, 622 (Ct. App. 2008) (quoting State v. Asbury, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997)). In general, "[i]n determining whether a defendant's will was overborne in a particular case, the court[s] [have] assessed the totality of all the surrounding circumstances both the

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characteristics of the accused and the details of the interrogation." Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973). The factors courts consider include (1) the youth of the accused, (2) his education and intelligence, (3) the lack of any advice to the accused regarding his constitutional rights, (4) the length of detention and whether questioning was prolonged or repeated, and (5) use of physical punishment including the deprivation of food or sleep. Schneckloth, 412 U.S. at 226-27 (collecting cases). However, none of these factors is determinative. Id.

Here, Counsel made a pretrial motion pursuant to Jackson v. Denno, 378 U.S. 368 (1964), to determine the admissibility of Applicant's statements made to authorities prior to trial. The court ruled that the statements made on June 16 and 30 were freely and voluntarily made. The record reflects Applicant's statements were made voluntarily and were not the product of coercion, deception, or intimidation. See Moran v. Burbine, 475 U.S. 412, 421 (1986) (holding Miranda waiver must be voluntary "in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception."). Applicant never asked for the interview to end, and he never invoked his right to counsel. Applicant testified at the PCR hearing that he never asked for counsel during these interviews. Applicant was provided his preinterrogation rights several times, the investigator went over them again directly prior to the June 16 interview and testified he appeared to understand those rights, and Applicant never exercised those rights. The June 16 interview took place at City Hall, was video-recorded, and lasted less than an hour and a half. Counsel challenged the June 30 statement and trip to the river based on the fact that Applicant submitted an application for a public defender on June 17. However, the trial judge found that there was no evidence that any one in law enforcement was

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aware he had applied for an attorney, and Applicant never indicated to law enforcement that he wished to have counsel appointed or that he wished to have counsel present. Further, Applicant testified at the PCR hearing that he never asked to have his attorney present.

This Court finds Counsel made the appropriate motion to determine the admissibility of the statements, and that Applicant has failed to show any deficient performance in this regard. Moreover, this Court finds Applicant has failed to show any alleged deficiency prejudiced him. As stated above, Applicant signed the appropriate waiver forms and made no indication to his interviewers that he did not understand. Applicant never invoked his right to an attorney or asked the investigators to cease the questioning. There is no indication in the record, and Applicant provided no testimony at the PCR hearing, that his confession was involuntary. Therefore, this Court finds there is no reasonable probability that but for the alleged error of Counsel, the result of the proceeding would have been different. Accordingly, this allegation is without merit and is hereby denied and dismissed.

Failure to adequately consult with Applicant and failure to prepare

Applicant provided testimony at the PCR hearing that Counsel failed to adequately consult with him prior to trial. Even if meetings with Applicant were brief, "this fact alone is not indicative of inadequate trial preparation." Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) ("[B]revity of time spent in consultation, without more, does not establish that counsel was ineffective.")). To establish counsel failed to adequately prepare for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Moorehead v. State, 329 S.C. 345, 495 S.E.2d 768 (1998).

329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result). When claims of ineffective assistance of counsel are based on lack of preparation time, an applicant challenging his conviction must show specific prejudice resulting from counsel's lack of time to prepare. U. S. v. LaRoache, 896 F.2d 815 (4th Cir. 1990). Counsel stated he met with Applicant at least half a dozen times. He stated that he tried to review all of the discovery with Applicant but that Applicant would shut down and could not handle it. Concerned over this, Counsel had Applicant undergo a competency evaluation. The results of the evaluation were made part of the trial court record, and provided that Applicant was competent to stand trial. Further, Counsel conducted an investigation that was reasonable under the circumstances. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011) (citing Daniels v. State, 676 S.E.2d 13 (Ga. 2009)).

This Court finds trial counsel conducted a proper investigation, adequately conferred with Applicant, and was competent in his representation. Applicant has failed to satisfy his burden of proving that Counsel was deficient in this regard.

This Court further finds Applicant has failed to show he was prejudiced any alleged defect in this regard. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Even without the confession, the evidence against Applicant, though much of it was circumstantial, was substantial. Applicant and the victim had been in a lengthy relationship, had previously lived together, and had children together. Applicant's bloody palm print was

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found in the victim's apartment after she went missing, which, according to testimony, appeared to have been cleaned. The blood from the palm print matched the victim. A knife was missing from a butcher block in Applicant's home. A neighbor testified she heard commotion coming from the victim's apartment that sounded like someone was fighting and saw Applicant's car suspiciously parked behind the victim's apartment the morning following the night she was last seen alive. Another neighbor stated they saw him carry a heavy blanket to the car. Applicant's vehicle had debris from his family's property on Tibbs Dr. There was testimony at trial that the victim had recently broken up with Applicant and spent time in a safe home. Applicant's family members saw him parked on the Tibbs property the morning of the victim's disappearance, and he stated he was there looking for discarded items. Lastly, the victim's body was found on the Tibbs property and the cause of death was stabbing. Applicant has failed to point to any additional information that Counsel could have uncovered, and has failed to show that but for any alleged error of Counsel, the results of the trial would have been different. Accordingly, this Court finds this allegation is without merit and it is hereby denied and dismissed.

Jury Instructions

Applicant contends that Counsel was ineffective for failing to request a jury charge on accident and for not objecting to taking the self-defense charge off the table. This Court finds this allegation is without merit. "The law to be charged to the jury is determined by the evidence presented at trial." State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994) (citing State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989)). "The trial judge should charge only the law applicable to the case, as the purpose of jury instructions is to enlighten the jury. State v. Lee, 298 S.C. 362, 364, 380 S.E.2d 834, 836 (1989) (citing State v. Fair, 209 S.C. 439, 400 S.E.2d 634 (1989)).

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(1946); State v. Rivers, 186 S.C. 221, 196 S.E. 6 (1938)). Providing instructions to the jury which do not fit the facts of the case may tend to confuse the jury. Id.

Self-defense is shown if:

(1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; (3) if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief; if the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness, and courage to strike the fatal blow to save himself from serious bodily harm or losing his own life, and; (4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). "A self-defense charge is not required unless it is supported by the evidence." State v. Light, 378 S.C. 641, 649, 664 S.E.2d 465, 469 (2008).

Counsel requested an instruction on self-defense, voluntary manslaughter, and involuntary manslaughter. The judge declined to charge self-defense, finding self-defense was not applicable because there was no evidence that Applicant feared for his life or was actually in danger of losing his life, and the evidence established that he was in control of the deadly weapon. Counsel formally objected to the judge's refusal to charge self-defense, and that was the sole issue raised in Applicant's direct appeal. The Court of Appeals affirmed Applicant's conviction. This Court finds this allegation that Counsel was deficient for failing to object to the trial judge's refusal to charge self-defense is without merit. Counsel requested the charge and preserved his objection for appellate review. Accordingly, Applicant has failed to show either deficiency or prejudice with respect this allegation.

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This Court likewise finds Applicant has failed to show Counsel's performance was deficient due to his failure to request a charge of accident. "For a homicide to be excusable on the ground of accident, it must be shown that the killing was unintentional, that the defendant was acting lawfully, and that due care was exercised in the handling of the weapon. State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994) (finding no error for failing to charge accident where defendant contended the gun accidentally discharged but presented no evidence that he was acting in self-defense (citing State v. Brown, 205 S.C. 514, 32 S.E.2d 825 (1945))). Counsel testified he did not request the defense of accident because the victim was stabbed multiple times. In addition, one of the wounds was consistent with the knife being twisted. Because the trial judge determined that there was no evidence that Applicant was acting in self-defense, there was likewise no evidence supporting a defense of accident. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency where "it would have been futile for Attorney to have made such arguments"); see also Arnette v. State, 306 S.C. 556, 557, 413 S.E.2d 803, 804 (1992) (counsel not ineffective for failing to advise of potential defense where no evidence exists to support the defense).

Likewise, Applicant has failed to show prejudice with regard to this allegation. Given the trial judge's refusal to charge self-defense and the Court of Appeals' affirmation of that refusal, there is no reasonable probability that but for the alleged error, the result of the proceeding would have been different. See State v. Weaver, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975) ("No instruction should be given by the trial judge, at the request of the appellant, which tenders an issue which is not presented or supported by the evidence.").

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Accordingly, Applicant has failed to show either deficient performance or prejudice with regard to this allegation. Therefore, this allegation is without merit and is hereby denied and dismissed.

Closing Arguments

Lastly, Applicant alleges Counsel was ineffective for failing to object to the solicitor's closing argument that allegedly referred to photographs that were not in evidence, and referring to the injury as being the result of a twisting knife.

This Court notes that where an objection is made to a closing argument, the trial court has broad discretion in dealing with the propriety of the solicitor's closing argument. State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). In addition, Appellate courts will not disturb the trial court's ruling regarding a closing argument unless there is a clear abuse of discretion. Brown v. State, 383 S.C. 506, 516, 680 S.E.2d 909, 915 (2009) (citing State v. Rudd, 355 S.C. 543, 548, 586 S.E.2d 153, 156 (Ct. App. 2003)). A solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it. Simmons v. State, 331 S.C. 333, 503 S.E.2d 164 (1998); State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996). "Unquestionably, the solicitor was permitted to comment on the evidence adduced during trial and the inferences to be drawn from it." Brown v. State, 383 S.C. 506, 516, 680 S.E.2d 909, 915 (2009) (citing State v. Pitts, 256 S.C. 420, 428, 182 S.E.2d 738, 742 (1971)). "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (1996).

(2002). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997).

Here, as a result of Counsel's objections at trial, photographs of the victim showing her intestines protruding from the wound in her abdomen were excluded from evidence. In closing arguments, the solicitor made the comment: "I wish you could have seen the picture of the body of Ms. Rosa as she was pulled out of the dirt, her intestines bloating out of her body." (Tr. p. 549, lines 4-6). The solicitor also commented that the wound was a "stab with a twist." (Tr. p. 547, lines 23-p. 548, line 4). Counsel testified that he did not object to the solicitor's statement in closing that the knife had been twisted, but agreed that the forensic pathologist testified that the one of the wounds indicated that either the knife turned or the person turned. (Tr. p. 506, lines 9-15). Counsel also agreed that the forensic pathologist's testimony concerning how the victim's body appeared was consistent with the solicitor's comments in closing. (Tr. p. 496, lines 4-7; p. 549, lines 4-6). This Court finds Applicant has failed to show that the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. See Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2004) (reversing grant of PCR where solicitor's argument comparing applicant to cockroaches and calling him dirty did not so infect trial with unfairness as to deny applicant due process and noting substantial evidence); Brown v. State, 383 S.C. 506, 680 S.E.2d 909 (2009) (affirming denial of PCR and finding that though counsel was deficient for failing to object to improper statement, there was no prejudice because evidence showed applicant had made a damaging statement, child victim had gonorrhea, and applicant had access to her). Both of the solicitor's comments were supported by the evidence introduced at

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trial. The forensic pathologist had already testified about the extent of the victim's injuries, including the bloating of her intestines, and the fact that the stab was consistent with either her body twisting or the assailant twisting the knife. The solicitor's comments did nothing more than comment on the inferences to be drawn from the evidence adduced at trial. Accordingly, this Court finds Applicant has failed to show Counsel's was deficient for not objecting to the solicitor's closing argument.

Likewise, Applicant has failed to show that there is a reasonable probability that but for the alleged deficiency, the outcome of the trial would have been different. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt). Even though the solicitor mentioned that a photograph had been excluded from evidence, the jury had already heard medical testimony about the injuries and about the appearance of those injuries. The solicitor's comments contained no description that had not already been presented to the jury through testimony at trial. Furthermore, the trial judge instructed the jury that closing statements are not evidence. (Tr. p. 86).

Accordingly, this Court finds Applicant has failed to establish either deficiency or prejudice with respect to this allegation. Therefore, the allegation is without merit and is denied and dismissed.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

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IV. CONCLUSION

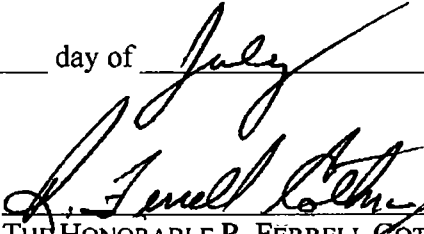
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

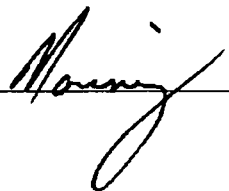
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 11 day of July, 2016.


THE HONORABLE R. FERRELL COTHRAN,
Presiding Judge

, South Carolina

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M. Hope Blackley

Clerk of Court

July 19, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Robert Lee, Jr. # 348883

7TH JUDICIAL CIRCUIT

CASE # 204CP422364

Applicant

CERTIFICATE OF SERVICE

VS
State
Respondent

I certify that, on this date, I served a copy of the

In this action dated 7-11, 2016 on Order of Dismissal

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Shirley Hammett
John Risher
Suzanne White

7-19-16
(Date)

Corrie Seef
(Signature)

WITNESSES

Spartanburg City Police Department

1. SENTENCE MADE

2. REPORT EN

3. CARD PULLED

4. INDEXED

ARREST WARRANT NUMBER

6. CHECKED SIGNATURE

M121397

7. ASSESSMENT AND
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

10-GS-42-5387

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 11 2010

TERM

THE STATE

VS.

ROBERT LEE, JR.

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2010 OCT -4 PM 1:50

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

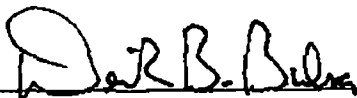
INDICTMENT

At a Court of General Sessions, convened on SEP 30 2010, the
Grand Jurors of Spartanburg County present upon their oath:

MURDER

The Defendant, Robert Lee, Jr., did in the City of Spartanburg, County of Spartanburg on or about June 12, 2010, feloniously, willfully, and with malice aforethought, kill one Rebecca Christine Rosa, by stabbing the victim, and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Deputy Solicitor

COUNTY OF SPARTANBURG
 STATE VS.
Robert Jr Lee
 AKA: _____
 Race: BLACK Sex: M Age: 25
 DOB: ██████ SS#: ██████████
 City, State, Zip: Miller Dale
Spartanburg, SC 29301
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2010GS4205387
 A/W#: M121397
 Date of Offense: 6/12/2010
 S.C. Code § : 16-03-0010
 CDR Code #: 0116

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010, of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST B. B. Bulsa 15264 B. B. Bulsa 68516
BULSA, DERRICK SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed — years
 and/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or payment
 of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for —

~~months/years~~ and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
 § 14-1-206 (Assessments 107.5 %) \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 180.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso 47.9 (Public Def/Prob) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$ _____
 § 50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk A. Weary

Court Reporter: Moffitt

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2053

Sentence Date: December 1, 2011