

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Chesterfield County

G. Thomas Cooper, Circuit Court Judge

WILLIAM OUTLAW,

RECEIVED

NOV 29 2017

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000811

APPENDIX

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHESTERFIELD) 02-GS-13-0159

STATE OF SOUTH CAROLINA)
 PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD
)
 WILLIAM OUTLAW)
 DEFENDANT)

April 4-6, 2005
 Chesterfield, South Carolina
 Volume 1 of 3

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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 JANICE ROSS, Newberry Pathology
 SUSAN WILSON,
 JOHN TALBERT,

HOLLY EARLY,
BETTY ECHOLS,
WILLIE JEAN WINBURN,

HATTIE O. GORDON
Circuit Court Reporter

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Qualification of the Jury

9

1 (Jury pool sworn at 11:42 a.m.)

2 QUALIFICATION OF THE JURY

3 THE COURT: Good morning. I'm Paul Burch, Circuit
4 Court Judge for the Fourth Circuit. I reside here in
5 Chesterfield County. It's a pleasure to be home. I've
6 been on the road for quite some time. I'm back in the
7 county this week to hold this term of General Sessions
8 Court.

9 That means for those of you who are not familiar with
10 the court system that we will be disposing of the criminal
11 cases that are on the docket here in Chesterfield County.

12 So as I said I have been out of the county now for
13 several weeks. I do not know what we are facing this
14 week. The Solicitor's Office calls cases to trial, and we
15 will get into that in a few minutes.

16 My view though to begin with take care of the jury
17 and qualify some of you so we can go forward and work.
18 Now, in order for me to do that I need to explain some
19 things to you. The mere fact that you were subpoenaed
20 here by your little pink slip does not automatically make
21 you a juror.

22 You have to be qualified under our law to be a juror.
23 Our State statute sets forth those qualifications. In
24 order for me to protect the record and make sure you are
25 qualified I have to ask you some questions. These

1 questions are not meant to embarrass you, and I in no any
2 way and I certainly don't intend for them to embarrass
3 you. And to keep that from happening, I will certainly
4 invite you if you would desire to wait until after I have
5 posed all the questions and come and talk with me the
6 court reporter and myself privately up here about any
7 responses that you have to that question or any concern
8 you have.

9 Now, if you're comfortable in going ahead and in
10 answering the questions that are asked of you, that's
11 fine, too. I'll leave that up to you. It will be a
12 personal decision that you need to make. I don't want
13 anybody leaving here saying that Judge Burch embarrassed
14 me down there in Court with a question he asked.

15 That's why I give everybody that opportunity to come
16 up and talk to me at the bench in cause you have any
17 concerns. Most of these questions are straight forward
18 and we will move right straight through them. I
19 understand Madam Clerk has already put you under oath and
20 thank you for all her hard work that she's done in getting
21 the jury list prepared and meeting with the jury
22 commissioners and having the report ready to go.

23 It takes a lot of time and effort and, once again, as
24 usual Madam Clerk has done and excellent job in taking
25 care of that for us. Okay. Now, I know some of you have

1 concerns. I want you to relax. I want you to have an
2 enjoyable experience. I want you to be willing to serve
3 any time you're called to be on a jury. We're here for
4 your service. First of all, let me say this seat that I
5 occupy up here is not my seat. I am your representative
6 within the judicial system. This seat up here is your
7 seat.

8 I am your indirect representative and I am elected by
9 the General Assembly. You in turn elect at the polls. I
10 made up my mind the day I took the oath to represent you
11 judiciary. I would never forget that. So anything that I
12 can do to make your service more comfortable I want to do
13 that.

14 Now, I'm going to tell you. This is what's hard to
15 believe. I am now the third ranking circuit court judge
16 seniority wise. Going on 14 years I've been traveling all
17 over this State and it has been a pleasure to work for
18 juries in that I have found very few jurors will try to
19 beg off jury service or cause the Court a problem because
20 of jury service and that to me indicates after these many
21 years that our people are very -- citizens are very
22 historically minded and they have a kind of appreciation
23 for the rights we have in this country.

24 Our system has evolved from the Old English system.
25 It was brought over by Pilgrims. We adopted the common

1 law. It's a slow process, but it is meant to be slow. If
2 your life or your property or welfare was on the line you
3 would want due consideration, too. No system has been
4 developed which protects the rights of the State and the
5 rights of an individual any more than our system. It is a
6 balancing act that has been evolved over many, many years.
7 So it is a very important service.

8 Churchill often referenced jury service right up
9 there in ranks with military service. It's important.
10 When you're here you're actually taking part in it.
11 Sometimes you forget about that, but once you put it in
12 historical prospective you see how important it is.

13 So I think that was one reason that I have found over
14 the years that jurors are willing to come and take part in
15 the process. I'm not saying they like doing it. On a
16 beautiful day like today I'd rather be someplace else just
17 as you would. But we've got work to do and we've got to
18 meet that obligation. So we're going to get you qualified
19 and go to work.

20 Fortunately, we have a call in system here. When we
21 do seat the jury we will be able to free up the rest of
22 the panel, put you on a call in basis. That way we won't
23 be running you back and forth to the courthouse every
24 morning and every afternoon unless it's absolutely
25 necessary.

Qualification of the Jury

13

1 So I don't know how many I see out there. There are
2 probably 60 or 70. That means that probably close to 55,
3 60 of you will be freed up this afternoon to go on the
4 call in system and the 12, 13 that are seated on the jury,
5 of course, will have to stay and work with us to get a
6 case tried and a jury drawn. A jury is drawn on each
7 individual case.

8 Now, you're the security measures that was explained
9 to you, I have not been involved in that process. I know
10 that our Chief Judge for administrative purposes for this
11 situation met with the sheriff and there have been some
12 change in arranging how you're to come in and report. As
13 far as which doors, which way to come into Court. I don't
14 want to get involved in that until I have to. And I just
15 ask that you be patient with us because we're trying to
16 work that out.

17 We have very, very limited resources to work with.
18 Chief Justice up here a couple months ago and met with
19 County Council, and her assessment was just like mine.
20 This is one of the worst facilities in the State. When
21 you first look at it, you think it's a little impressive.
22 You look at all the brick. It's awful. The acoustics are
23 terrible.

24 The facility lacks every minimum requirement of
25 security to be had. We're working on it. The County

1 Council is delving into it, trying to get funding to get
2 some things change. Possibly a new facility or redo this
3 facility. I apologize for all the limitations we do have.
4 Many of them are unknown to you cause the attorneys catch
5 the blunt of it. When you look here you think, well,
6 there's doors here and there are doors there. There is
7 absolutely no room, not a single room in this facility
8 available for the State to meet with their clients and
9 their witnesses or for the defense attorneys to meet with
10 their clients.

11 If you want to talk with your attorney about
12 something, unless you prearrange a room, you don't have
13 any alternative but to go outside and talk with your
14 lawyer in front of everybody that maybe out there.

15 Now, that folks is pitiful, and I beg of you as you
16 see your County Councilman from time to time let them know
17 what you know, and tell them you don't like it. If it
18 hadn't been for the Grand Jury of this county and petit
19 juries coming in here and actually witnessing what goes on
20 we wouldn't be to the point where we are now.

21 The only reaction that we can get to get anything
22 done from the citizens or from the press. Why? I think
23 the basic explanation to that is that I'm a State
24 employee. Counties don't like State interference. State
25 offices don't like County interference. So you think the

1 Judge can get things done in that regard. No.

2 So it's up to you, the grand jury and the press to do
3 something about it. Please keep that in mind. Help us
4 out cause you may be brought down here to serve on a jury.
5 It's your safety and security at risk as well as mine.

6 All right. Now, that I'm through with the sermon, if you
7 have any problems let the bailiff staff know and we will
8 work on it.

9 We will try our best to take care of any situation
10 that comes up. If you have a situation such as a death in
11 the family or you feel like you are getting sick -- flu is
12 still out there or emergency procedure, whatever, as far
13 as medical let us know and let us know as quickly as you
14 can so we can take care of it.

15 The mere fact that you may need to be out for a
16 doctor's appointment or a funeral or whatever that is no
17 problem if you will let us know where we can plan for it.
18 So communication both ways are critical for us to make
19 this thing work and everybody to have a good week, take
20 care of all your needs.

21 Now, I'm going to start these questions. If, as we
22 go along you would like to answer them should one apply to
23 you, you're welcomed to do it. If you want to postpone it
24 until the end of the questions, feel free to do so.

25 First question. Do I have anybody on the panel who

1 is not a United States Citizen? If so I need you to raise
2 your right hand or stand at this time. Do I have anybody
3 on the panel who is not a resident of Chesterfield County?
4 You may have recently moved. We have some folks living
5 over in Lancaster County or Darlington County that are on
6 our roster. Yes, ma'am.

7 PROSPECTIVE JUROR: I just moved here.

8 THE COURT: What is your name, please?

9 PROSPECTIVE JUROR: Sarah Potthoff.

10 THE COURT: Do you know your number right off hand?

11 CLERK OF COURT: Number 108.

12 THE COURT: 112.

13 CLERK OF COURT: 108.

14 THE COURT: 108. I can't half hear. Can everybody
15 hear me okay? If you would stand up. What county do you
16 reside in?

17 PROSPECTIVE JUROR: I just moved into Darlington
18 County.

19 THE COURT: All right. If you will come up and check
20 with Madam Clerk's desk. While she's here, let me stress
21 one thing to you. This is for everyone in the courtroom.
22 Really, I haven't got the one in here I need right now to
23 address this to, but it's for safety.

24 Unless you are asked by a bailiff or by a Court
25 official do not come through the opening into the inner

1 part of the courtroom cause if you do you're probably
2 going to get tackled. And I don't want you to see the
3 Sheriff -- I think he played high school football. Yes,
4 sir.

5 PROSPECTIVE JUROR: I just recently move to Union
6 County.

7 THE COURT: North Carolina?

8 PROSPECTIVE JUROR: Um hum.

9 THE COURT: All right, sir. You're a resident up
10 there? You can't help us here so come around and meet
11 with Madam Clerk. While we're taking care of that I don't
12 know if the Sheriff wants to talk to you. Nobody needs to
13 be around the exit doors cause of that security worry in
14 itself because the way the courthouse this constructed if
15 you happen to get and go back there and loiter around
16 you're going to be watched very carefully and told to move
17 on somewhere else.

18 I can tell you all the recently constructed and
19 rehabilitated courthouses in the State that I've been in,
20 you should not be in here right now. Every other facility
21 that I have been in has got the jury assembly room where
22 the jury goes and reports where you are secured and not
23 around defendants, witnesses or victims.

24 And you have a particular parking area that you go
25 to. I have begged and begged and begged our County

1 Council to try in their plans to do that, and it's just
2 been to no avail. I have caught pure devil in the
3 newspapers about that. Practically every issue that has
4 comes in and I told them the most important thing they
5 could do is a jury assembly area. I just don't know how
6 to get to them without asking for y'all's help. I
7 apologize for you. This is the only place we have for
8 y'all to assemble.

9 I can tell you right now it may be that I'm going to
10 have to send you from time to time out in the lobby which
11 is even a worse situation while I handle matters of law in
12 here. So just please keep in mind what the Sheriff told
13 you and what I just told you and try to deal with the
14 facility that we have to the best of our ability.

15 Next question, do I have on the panel anyone who does
16 not presently possess at least one of these three
17 documents: A South Carolina Driver's License, a State
18 issued identification card or a voter registration
19 certificate.

20 If so I need you to stand at this time. Your name
21 please.

22 PROSPECTIVE JUROR: James Burr.

23 THE COURT: How you been? I haven't seen you in
24 years.

25 PROSPECTIVE JUROR: Fine.

1 CLERK OF COURT: Number 16.

2 PROSPECTIVE JUROR: I don't have a South Carolina
3 Driver's License.

4 THE COURT: Have you got an identification card?

5 PROSPECTIVE JUROR: No, I don't.

6 THE COURT: Are you registered to vote?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: You're okay. Just so you got one of the
9 three. Anyone else? Is there anybody on the panel who
10 does not have at least a sixth grade education or it's
11 equivalent? If you would rather wait and come up and talk
12 to me about it later feel free to do so.

13 Do I have anybody on the panel who is unable to read,
14 write, speak or, get this, understand the English
15 language? I hate to ask that question cause it makes me
16 look bad. In a way, I wish they would change it.

17 Do I have anybody on the panel who has a doctor's
18 excuse or is unable because of mental or physical
19 infirmity to render efficient jury service? Yes, ma'am.

20 PROSPECTIVE JUROR: May I come to you?

21 THE COURT: Come on up, please.

22 THE BAILIFF: Mary Brown.

23 CLERK OF COURT: Number 14.

24 THE COURT: Good morning.

25 PROSPECTIVE JUROR: Good morning.

1 (Discussion held off record.)

2 THE COURT: Thank you, Miss. Brown. You're excused.
3 I'm going to give those back to you cause you may need
4 them. Please pay close attention to this question. The
5 last thing that a Judge in this State wants to have to do
6 is to put a juror in jail. About ten years ago, over this
7 question in this county, I had to put two young men in
8 jail in one morning. Only time in 14 years that I've done
9 that and it was about hiding their criminal record.

10 Let me tell you why that is such an important
11 question. I'll give you an example. What almost happened
12 I was in Horry County about nine years ago. We set a
13 murder case for trial. Started it on Monday afternoon,
14 and on Wednesday morning it was discovered that a
15 gentlemen on the jury has been convicted of trafficking in
16 cocaine.

17 About five year earlier, did not respond to this
18 question. If I had not seated an alternate juror on that
19 case we would have wasted the taxpayers of Horry County's
20 money in the amount of \$20,000. Fortunately, we caught
21 it. We had a juror we could shift over. We were able to
22 go along with the trial.

23 To make matters worse, I sentenced that gentlemen to
24 90 days in the county jail at Horry County and the sheriff
25 started out the door with him and he had a massive heart

Qualification of the Jury

21

1 attack and fell to the floor at the court house door
2 costing the county about 20 more thousand dollars. It was
3 a no win position for me. But as you can see very drastic
4 consequences can happen over the simplest things. So for
5 goodness sake, the moral of the story is if you've got any
6 kind of criminal record, you got any question about it
7 come up here and talk with me about it cause we don't need
8 anything like that happening here.

9 Has anybody on the jury been convicted by guilty plea
10 or by trial in a state or federal court of record of a
11 crime punishable by imprisonment for more than one year
12 and your civil rights have not been restored by pardon or
13 amnesty. So if you've got a criminal record, rather than
14 cause you any embarrassment come on up when I end these
15 questions and talk to me or you can come up now if you so
16 desire and talk with me about it.

17 I can tell you now that D.U.I., driving under the
18 influence second offense, will not knock you out of jury
19 service nor will driving under suspension.

20 THE BAILIFF: Elbert Coward.

21 CLERK OF COURT: Number 25.

22 PROSPECTIVE JUROR: I was arrested on a drug charge,
23 but I got P.T.I. But I got a case pending. Not against
24 me. Somebody stole my vehicle from me. I have to see a
25 Judge down in Hartsville in the morning. They caught him.

1 I just been arrested before.

2 THE COURT: We'll check on that should you be drawn
3 on a jury.

4 PROSPECTIVE JUROR: I've got to be in Court tomorrow
5 morning.

6 THE BAILIFF: Mary Davis.

7 CLERK OF COURT: Number 30.

8 (Discussion held off of the record.)

9 THE BAILIFF: Stoney Funderburk.

10 CLERK OF COURT: Number 42.

11 (Discussion held off of the record.)

12 THE BAILIFF: Robert Cato.

13 CLERK OF COURT: Number 20.

14 (Discussion held off of the record.)

15 THE BAILIFF: Tawana Duncan.

16 CLERK OF COURT: Number 7.

17 (Discussion held off of the record.)

18 THE COURT: Forgery. You're excused.

19 THE BAILIFF: James Burr.

20 CLERK OF COURT: Number 16.

21 PROSPECTIVE JUROR: Domestic violence.

22 THE COURT: What Judge did you go before?

23 PROSPECTIVE JUROR: It was in North Carolina. I
24 don't remember his name.

25 THE COURT: What was the fine or the sentence?

1 PROSPECTIVE JUROR: One year.

2 THE COURT: Okay. You're excused. Next question.
3 Are any of you a clerk, deputy clerk of Court, constable,
4 sheriff, probate judge, county commissioner, county
5 councilman, magistrate or other county officer or you are
6 a person employed within the walls of any courthouse.

7 It could be this one, another county courthouse, a
8 municipal court, a federal court, courthouse across the
9 State line. If it's a courthouse it disqualifies you and
10 I need to know about that at this time. Do I have any law
11 enforcement officers or corrections officers on the panel.

12 PROSPECTIVE JUROR: Sir, I'm not a correctional
13 officer but I do work for the Department of Corrections as
14 a human resource specialist at Evans.

15 THE COURT: Thank you for letting us know that. That
16 will not disqualify you. Do I have anybody on the panel
17 who has already served on the jury in the Circuit Court in
18 Chesterfield County already in the year 2005?

19 Do I have anybody on the panel who has served on the
20 grand jury out there? The General Assembly has provided
21 for several exceptions to jury service. An exemption
22 doesn't mean you're not qualified to serve. You simply
23 have a right to say I choose not to serve.

24 Even though it may be available to you, if you will
25 be willing to stay and help us, I welcome you to do so.

1 But it is your call on that. Do I have anybody over the
2 age of 65 years that would like to be exempted? Do I have
3 anybody on the panel who has served as a juror, either
4 petit juror or during the calendar years 2004,2003?

5 Do I have anybody on the panel who has a child or
6 children under the age of seven and you do not work or you
7 have an individual at home that is disabled or elderly and
8 you have to look after them and you do not work. In other
9 words, you need to be at home taking care of your family
10 duties and you would like to be exempted because of those
11 young children or disabled or elderly individual you may
12 ask for an examination. Yes, sir, come on up.

13 THE BAILIFF: Benji Black.

14 CLERK OF COURT: Number 156.

15 (Discussion held off of the record.)

16 THE COURT: You're excused. Anyone else? Do I have
17 any school teachers or school employees who would like to
18 defer their service until the end of the school year,
19 keeping in mind that will be your vacation. Come on up.
20 I bet in the last four or five years since that one has
21 been available I haven't had two teachers bite on that
22 one.

23 Got anybody out there that's a college student, full
24 time student and needs to be in school? Sometimes we've
25 got high school students. Your name, please.

1 PROSPECTIVE JUROR: I'm not full time, but I have a
2 national test in Columbia I have to be there for.

3 THE COURT: We'll make sure you are taken care of.
4 You will not be seated on a jury that could possibly go
5 into Friday. Do you need to be studying for that?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Okay. Anyone else? All right. Anybody
8 know of any valid reason why you're not qualified to be a
9 juror in the State I need you to come forward and or
10 anybody that has not responded to one of those questions
11 that would like to come forward, come around to the right.
12 We'll have you come up.

13 THE BAILIFF: Marietta Rorie.

14 CLERK OF COURT: Number 116.

15 PROSPECTIVE JUROR: Drugs, alcoholic. I'm disabled.

16 THE COURT: You on Social Security? Would you like
17 to be excused?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: Okay. Total disability.

20 CLERK OF COURT: Number is 33.

21 PROSPECTIVE JUROR: I have a child at home and victim
22 of a crime, and I'm just not sure I can.

23 THE COURT: Would you rather sit on an civil jury?

24 PROSPECTIVE JUROR: I'm really not sure.

25 THE COURT: Let me transfer you to a civil term later

1 on. That brings up the next question that I have for you.
2 If you have a legitimate reason which this juror did, I
3 can transfer you to a later term. It needs to be a
4 legitimate reason. Now, the mere fact you're out of work
5 today and you're losing money is not a legitimate reason
6 unless you can tell me it's a seasonal type of situation
7 where you can serve later on and you wouldn't be losing
8 any money.

9 Or you had to put the key on the door and you had to
10 lock the door this morning and put other people out of
11 work. Your affecting other people's lives there and later
12 on you wouldn't have to do that, I can grant you a
13 transfer. If you have a death in the family and you need
14 to go out of the state or whatever for the wake and
15 funeral.

16 Or you spent \$2,000 or \$3,000 to take your children,
17 your grandchildren down to Disneyland or Disney World, we
18 don't want you to lose that kind of money. We can
19 transfer you to a later term. But just keep in mind now,
20 if you transfer to a later term it could be criminal. It
21 could be civil. The next Judge might not be as good a
22 looking as I am. Little things like that.

23 All right. I see a lot of smiles out there so I
24 think everybody is happy. Speak now or forever hold your
25 peace. If something comes up, let us know. We'll take

Qualification of the Jury

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1 care of it. Fortunately, we seldom have tragedies happen
2 here. It does happen, and we realize that. We're all
3 mortals and bad things can happen. If we just know quick
4 enough, we can avoid a lot of problems. I'm looking
5 forward to working with you this week. Thank you for your
6 patience with the Court this morning, especially with me
7 going through these questions.

8 We will let you know in a few minutes how we're going
9 to go forward this afternoon, and maybe we're going to
10 seat a jury and let the rest of you go. Or maybe we will
11 let all of you go and come back at a later time. I don't
12 know that yet because I have not met with the attorneys in
13 these cases because I haven't been here.

14 I've been in Lawrence and Charleston and Lancaster,
15 all over there in those parts of the State. Good to be
16 back home. Y'all go ahead and take about at 15 minute
17 recess. Be careful who you talk to. In fact, I would
18 keep to yourselves pretty good now.

19 Let me explain one other thing to you. This is a
20 small county. Lot of you know the attorneys here in the
21 county. You may wonder why they are not speaking to you.
22 I can assure they're not snubbing you in any way. Their
23 protecting their own profession cause they know the
24 trouble they can get into if they were to say something
25 inappropriate to a juror.

Voir Dire of the Jury

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1 are not contesting the voluntariness of the statement and
2 Jackson v. Denno is not necessary in this case.

3 THE COURT: Solicitor, you want to call the first
4 case for trial.

5 MR. REDMOND: May it please the Court. Before you at
6 this time is William Outlaw seated at the Defense table
7 with his attorney, Paul Cannarella. He's before you on
8 2002-GS-13-159; that being and indictment -- a true billed
9 indictment for murder, Your Honor. And he's indicated
10 that he is pleading not guilty. Therefore, Your Honor,
11 the State is ready to proceed to trial in this case.

12 THE COURT: Is that correct?

13 MR. CANNARELLA: That's correct, Your Honor.

14 THE COURT: Ladies and gentlemen of the petit jury
15 panel, if I can have your attention. We're about to
16 commence the trial of the case of State of South Carolina
17 v. William Outlaw, charged in the bill of indictment by
18 the Grand Jury of Chesterfield County with the offense of
19 murder.

20 The defendant is present in Court represented by
21 Mr. Paul Cannarella. Mr. Outlaw, at this time I need you
22 the stand and face the jury for voir dire purposes,
23 please. Thank you, sir. You may be seated.

24 Ladies and gentlemen of the petit jury panel, I now
25 direct the following questions to each of you. Are any

1 members of the petit jury panel related by blood or
2 connected by marriage or have any business or social
3 relationship with the defendant, William Outlaw? If so
4 please stand at this time. Your name, please.

5 PROSPECTIVE JUROR: Donald Parnell.

6 THE COURT: How does that question apply?

7 PROSPECTIVE JUROR: My nephew is married to the
8 defendant's sister.

9 THE COURT: All right. If you were to be seated on
10 this jury because of that relationship between your nephew
11 would you or could you give the State and the Defendant a
12 fair and impartial trial?

13 PROSPECTIVE JUROR: Yes, sir, I believe I could.

14 THE COURT: All right. Thank you, sir. Anyone else?
15 Are any members of the petit jury panel related by blood
16 or connected by marriage or have any business or social
17 relationship with any of following individuals. If they
18 are present in Court I would appreciate it if you would
19 stand and face the jury. I understand some of them are
20 not present because they do not live here.

21 James Dixon of the Sheriff's Department, Deputy
22 George Halma of the Sheriff's Department, Lester Cooke,
23 Joseph Powell with S.L.E.D., Johnny Quick with the
24 Sheriff's Department, David Watson with the Sheriff's
25 Department, Janice Ross, M.D., Dr. Janice Ross, John

Voir Dire of the Jury

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1 Talbert, Susan Wilson, Bruce Gantt, Jr., Gregory L. Rock,
2 Harry Haney with the Sheriff's Department, Ricky Stroud
3 and Dustin Smith with S.L.E.D.

4 Betty Echols, Amanda Echols, David Mitchell, Willie
5 Jean Winburn, Robbie Rose, Mark Truesdale, Richard Outlaw,
6 can't make out that last name, Mr. Cannarella.

7 MR. CANNARELLA: Drotor.

8 THE COURT: Jennifer Drotor, Ricky Stroud, Daniel
9 Wilkes. If so I need for you to stand.

10 PROSPECTIVE JUROR: I know John from a previous
11 marriage.

12 THE COURT: Your name, please.

13 PROSPECTIVE JUROR: Cheryl Newton.

14 THE COURT: You know Mr. Quick?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Would the fact that you know him affect
17 your ability to give a fair and impartial trial in this
18 case?

19 PROSPECTIVE JUROR: No, sir.

20 THE COURT: Your name, please.

21 PROSPECTIVE JUROR: Marty Shaw. I go to church with
22 some of them and it would not affect my ability to serve
23 on a jury.

24 THE COURT: Thank you, sir. Anyone else?

25 PROSPECTIVE JUROR: Judge, I believe that Willie Jean

1 is a distant cousin of my husband's.

2 THE COURT: And your name, please.

3 PROSPECTIVE JUROR: Charlotte Wilkes.

4 THE COURT: Miss Wilkes, would that affect your
5 ability to give a fair and impartial trial in this case?

6 PROSPECTIVE JUROR: No, sir.

7 MR. CANNARELLA: Your Honor, I know James Dixon and
8 Mr. Haney.

9 THE COURT: Would that affect your ability to give a
10 fair and impartial trial in this case?

11 PROSPECTIVE JUROR: No, sir.

12 THE COURT: Your name, please.

13 PROSPECTIVE JUROR: I know James Dixon.

14 THE COURT: Your name, please.

15 PROSPECTIVE JUROR: Cathy Gainey.

16 THE COURT: Would the fact that you know Mr. Dixon,
17 would that affect your ability to give a fair and
18 impartial trial in this case?

19 PROSPECTIVE JUROR: No, sir?

20 THE COURT: Anyone else? Your name?

21 PROSPECTIVE JUROR: I know James Dixon. He volunteers
22 for my recreation program.

23 THE COURT: Your name, please.

24 PROSPECTIVE JUROR: Mr. Bill Powell.

25 THE COURT: Thank you, Mr. Powell. Would that affect

Voir Dire of the Jury

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1 your ability to give a fair and impartial trial in this
2 case?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: Thank you.

5 MR. CANNARELLA: Mr. Tim Knight. I think that's the
6 only additional witness we left off. That's the only
7 additional witness with the Sheriff's Department.

8 THE COURT: Any members of the petit jury panel
9 related by blood or connected by marriage or have any
10 social or business relationship with Tim Knight with the
11 Sheriff's Department?

12 In anybody on the panel presently represented or
13 represented in the past by the Fourth Circuit Solicitor's
14 Office or by Mr. Paul Cannarella of the private bar? If
15 so I need you to stand at this time.

16 Any member of the petit jury panel formed or
17 expressed an opinion as to the guilt or innocence of the
18 defendant? If so I need you to stand at this time. For a
19 little background, I'm going to let the indictment -- it's
20 alleged in the indictment this offense occurred in
21 Chesterfield County on or about January 11th 2002. The
22 victim being one William Michael Johnson. The alleged
23 manner of death was by shooting. If so please stand.

24 Any member of the petit jury panel conscience of any
25 interest any bias or any prejudice for or against the

1 Defendant or the State? If so we need you to stand at
2 this time. Please give all due consideration to these
3 questions at this time because once you're seated on the
4 jury it complicates matters if you have second thoughts
5 about it. So I encourage you to give serious thought to
6 each of these questions.

7 Can each member of the petit jury give the State and
8 the Defendant a fair and impartial trial? If not, please
9 stand but don't make any comments. Any further inquiry
10 from the State.

11 MR. REDMOND: None from the State, Your Honor.

12 THE COURT: From the Defense?

13 MR. CANNARELLA: No, Your Honor.

14 SELECTION OF THE JURY

15 THE COURT: Strikes are five for the State and ten
16 for the Defense. Better seat two alternates. Strikes
17 will be one for the State, two for the Defense per
18 alternate.

19 As your name is called please come to my right, your
20 left, to where Miss Lear will be standing. You will be
21 sent through the opening in the bar. Come right here in
22 front of Madam Clerk and turn and face the counsel tables.
23 They need to get a good look at you where they can decide
24 whether to accept or reject you as a juror on this
25 particular case.

Selection of the Jury

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1 If you have personal belongings please bring them
2 with you. I had a bad experience over in Dillon County
3 several years ago. A missing pocketbook. I know that
4 wouldn't happen in Chesterfield County, but let's just
5 don't take that chance, okay. All right.

6 CLERK OF COURT: Number 21, Jimmy F. Catoe. What
7 says the State?

8 MR. REDMOND: Please present Mr. Catoe.

9 CLERK OF COURT: What says the Defense?

10 MR. CANNARELLA: Seat Mr. Catoe.

11 CLERK OF COURT: Have a seat in the jury box, please.
12 Number 147, Charlotte A. Wilkes. What says the State?

13 MR. REDMOND: Please excuse Miss Wilkes from the
14 trial of this case.

15 CLERK OF COURT: You may return to your seat. Number
16 140, Shiya Threatt. What says the State?

17 MR. REDMOND: Beg the Court's indulgence. Please
18 seat Miss Threatt.

19 CLERK OF COURT: What says the Defense?

20 MR. CANNARELLA: Please excuse Miss Threatt.

21 CLERK OF COURT: You may return to your seat, please.
22 Number 61, Jamie R. Horton. What says the State?

23 MR. REDMOND: Beg the Court's indulgence. Please
24 present Mr. Horton.

25 CLERK OF COURT: What says the Defense?

1 MR. CANNARELLA: Seat Mr. Horton.

2 CLERK OF COURT: Have a seat in the jury box. Number
3 1, Tiffany N. Alexander. What says the State?

4 MR. REDMOND: Please present Miss Alexander.

5 CLERK OF COURT: Defense?

6 MR. CANNARELLA: Please present the juror.

7 CLERK OF COURT: Have a seat in the jury box. Number
8 152, Donald R. Parnell. What says the State?

9 MR. REDMOND: Please excuse Mr. Parnell from the
10 trial of this case.

11 CLERK OF COURT: Please return to your seat. Number
12 78, Kenneth M. Kirkley. What says the State?

13 MR. REDMOND: Please present Mr. Kirkley.

14 CLERK OF COURT: Defense?

15 MR. CANNARELLA: Seat Mr. Kirkley.

16 CLERK OF COURT: Have a seat in the jury box, please.
17 Number 130, Randy W. Sowell. What says the State?

18 MR. REDMOND: Please present Mr. Sowell.

19 CLERK OF COURT: Defense?

20 MR. CANNARELLA: Seat Mr. Sowell.

21 CLERK OF COURT: Have a seat in the jury box. Number
22 15, Mary B. Burnell. What says the State?

23 MR. REDMOND: Please present Miss Burnell.

24 CLERK OF COURT: Defense?

25 MR. CANNARELLA: Seat Miss Burnell.

Selection of the Jury

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1 CLERK OF COURT: Have a seat in the jury box, please.
2 Number 141, Edward M. Truesdale. What says the State?
3 MR. REDMOND: Please present Mr. Truesdale.
4 CLERK OF COURT: Defense?
5 MR. CANNARELLA: Seat Mr. Truesdale.
6 CLERK OF COURT: Have a seat in the jury box, please.
7 Number 99, Billy O. Mullis. What says the State?
8 MR. REDMOND: Please present Mr. Mullis.
9 CLERK OF COURT: Defense?
10 MR. CANNARELLA: Seat Mr. Mullis.
11 CLERK OF COURT: Have a seat in the jury box, please.
12 Number 81, Charles R. Lane. What says the State?
13 MR. REDMOND: Please excuse Mr. Lane from the trial
14 of this case.
15 CLERK OF COURT: Please return to your seat. Number
16 40, Marlowe D. Funderburk. What says the State?
17 MR. REDMOND: Please present Mr. Funderburk.
18 CLERK OF COURT: Defense?
19 MR. CANNARELLA: Seat Mr. Funderburk.
20 CLERK OF COURT: Have a seat in the jury box. Number
21 76, Grover F. Jones, Jr. What says the State?
22 MR. REDMOND: Please present Mr. Jones.
23 CLERK OF COURT: Defense?
24 MR. CANNARELLA: Seat Mr. Jones.
25 CLERK OF COURT: Have a seat in the jury box. Number

1 30, Mary J. Davis. What says the State?

2 MR. REDMOND: Please excuse Miss Davis from the trial
3 of this case.

4 CLERK OF COURT: Return to your seat, please. Number
5 94, Mary M. Miller. What says the State?

6 MR. REDMOND: Please present Miss Miller.

7 CLERK OF COURT: Defense?

8 MR. CANNARELLA: Seat Miss Miller.

9 CLERK OF COURT: Have a seat in the jury box. Number
10 109, Philip G. Powell. What says the State?

11 MR. REDMOND: Please present Mr. Powell.

12 CLERK OF COURT: Defense?

13 MR. CANNARELLA: Seat Mr. Powell.

14 CLERK OF COURT: The next two will be alternates.
15 Number 145, Ray K. Watson, Jr. What says the State?

16 MR. REDMOND: Please present Mr. Watson.

17 CLERK OF COURT: Defense?

18 MR. CANNARELLA: Seat Mr. Watson.

19 CLERK OF COURT: Have a seat in the jury box. Number
20 46, Beverly A. Gaskins. What says the State?

21 MR. REDMOND: Please present Miss Gaskins.

22 CLERK OF COURT: Defense?

23 MR. CANNARELLA: Seat Miss Gaskins.

24 THE COURT: Thank you, Madam Clerk. Are there any
25 matters concerning jury selection from the State?

Colloquy

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1 MR. REDMOND: None from the State, Your Honor.

2 THE COURT: From the Defense?

3 MR. CANNARELLA: None for Mr. Outlaw, Judge.

4 COLLOQUY

5 THE COURT: All right. For the jurors that are on
6 the panel out in the gallery, once again I want to thank
7 you for coming and being willing to take part and help us.

8 As you see jury service comes down to a matter of the
9 draw. We may need you later on this week so I'm going to
10 put you on the call in request. Please do not leave here
11 unless you have the pamphlet or card that has the
12 telephone number we need you to call in.

13 I want you to call in after 6:00 this evening for an
14 update. It may tell you to call in at another time
15 tomorrow. Okay. Anybody missing that telephone
16 information? All right. Thank you very much. Call in
17 after 6:00 and get an update. We'll be back in touch with
18 you.

19 (Jury pool excused from courtroom at 1:23 p.m.)

20 THE COURT: Court appoints you foreperson of this
21 jury. You don't have to change seats now but when you
22 come back after the break if you will take the seat. Now,
23 you will need to obtain that seat during the progress of
24 the trial. The rest of you it doesn't matter where you
25 sit. I need the alternates to sit here. Now, those seat

1 are not very comfortable. I don't think they're pretty
2 packed in there. They will make you think their going to
3 throw you out on the floor, but I don't believe they will.
4 I don't want you to hurt your back or anything so be
5 careful with them.

6 All right. I have a few remarks to make to you.
7 Before we get started with the case I've got to put you
8 under oath. Let me check with the attorneys. Any matters
9 before we swear the jury?

10 MR. REDMOND: None from the State, Your Honor.

11 MR. CANNARELLA: No, Your Honor.

12 THE COURT: Madam Clerk.

13 (Jury panel sworn in at 1:25 p.m.)

14 THE COURT: All right. I just want to talk with you
15 briefly about how we're going to proceed with the trial
16 but also about housekeeping matters. We will try to keep
17 normal hours as far as work cause I know some of you have
18 obligations. You've got family to look after and over the
19 last ten years we have we have been trying to gear Court
20 statewide where we do not work past five o'clock unless we
21 have to because it affects not only jurors but affects the
22 Court staff, too, that have obligations that need to be
23 taken care of.

24 We will normally run anywhere from 9:30, 10:00 until
25 lunchtime, which is normally one o'clock, take an hour

1 time, hour 15 minutes for lunch, come back and work until
2 around 5:00. The latest we will normally go is 5:30. If
3 anything is going to go any further than that in the
4 afternoon we will try to let you know ahead of time.

5 But Chief Justice is very adamant that we don't go
6 way into the night like Court use to be done years ago.
7 Some of you may say why don't we start earlier. Well, two
8 problems with that. Chesterfield County is a big county.
9 It takes a while to get here. The other reason for that
10 traditionally these attorneys have other clients they have
11 to take care of, and the Court also has other cases we
12 have to be working on.

13 As a matter of fact in the morning I'm going to be
14 late reporting a few minutes because I had a case I had to
15 carry over two weeks ago that's got to be finished in the
16 morning. It won't take about 15 or 20 minutes. That's
17 why we start anywhere from 9:00 to 10:00 normally.

18 The attorneys have to meet with other clients and
19 just those little things that you have to have up. Our
20 State court time runs just an hour or two in the morning
21 and sometimes an hour in the afternoon.

22 We try to go ahead and push our cases through to try
23 to meet everybody's time schedule without it getting out
24 of hand such as in California where you could be on a jury
25 for six months. Very seldom do we have a case in this

1 State that lasts over a week. The longest one I could
2 remember in recent history was three weeks. That was a
3 complicated land line dispute over some Air Force Base
4 property over in Horry County.

5 I don't foresee us being here on this case all week.
6 I spoke briefly with the attorneys and I would think that
7 it would go three or four days. Now, right off the bat
8 let me tell you, you need to be careful who you talk to.
9 I instruct you at this time if anybody should approach
10 you, whether it be there in the Court or whether it be at
11 home at night do not discuss this case with them.

12 As a matter of fact if you have family members at
13 home don't even discuss this case with them. Let other
14 family members take any phone calls that come in. Just to
15 give you a little insulation. Very seldom something like
16 that happens, but I do have to talk with you about it.

17 All right. No communication any fashion, telephone,
18 fax, e-mail, in person, whatever. Do not let anybody
19 discuss this case with you. Do not even discuss this case
20 amongst yourselves until you are asked to deliberate which
21 will be at the conclusion, after the actual court
22 presentation to you.

23 Now, that is a small county. In fact it's been a
24 long time since we seated a jury here that I have known as
25 many jurors as I personally know y'all. I know at least

1 eight of you if not more. It' a small county. People
2 like to talk, news. We don't have a lot of radio or t.v.
3 coverage and, therefore, handled by newspapers and people
4 discussing it by telephone. Just be on guard.

5 I instruct you at this time when we finish this case
6 avoid any even news or local newspapers. We do have some
7 active radio stations. Just avoid any local news coverage
8 until we finish this case. Okay. All right. Now, how
9 we're going to proceed.

10 I'm going to let both side -- in other words, both
11 attorneys make brief opening statement to you and that's
12 basically to outline how they will proceed with their
13 case. And what you will be hearing from them. What the
14 attorneys say is not evidence. That comes from the
15 evidentiary portion of the case that will come next.

16 Evident may take many different forms. It maybe
17 testimony from this witness stand or it may be
18 photographs, documents or other physical type items. It
19 is crucial that you listen and observe the evidence
20 because you are the finders of the fact in this case.

21 And South Carolina trial judge is not become involved
22 in the facts of the case. I am the Judge of the law.
23 Simply stated any trial is to seek the truth. To reach a
24 verdict is to seek the truth. How do you reach a verdict?
25 You decide the facts as the finders of the facts. Apply

1 the law of the case that I will provide to you in my
2 charge to you to those fact and thus reach a verdict.

3 Verdict is a Latin derivative word which means a true
4 saying. You should keep in mind that what I told you the
5 attorneys say and what they ask are not evidence. It is
6 what is presented from the witness stand along with those
7 exhibits that come from actual evidence in the case.

8 What weight you give that evidence is totally your
9 decision and yours alone. No one else in this case will
10 be allowed to find the facts except you the jury. Our
11 State Constitution does not allow the trial judge to even
12 comment about facts so I will be of no assistance to you
13 in that regard because by law I have to be neutral, and I
14 am the Judge of the law as I said.

15 Now, after those opening remarks will come that
16 evidentiary portion where you will receive the evidence,
17 where people testify and exhibit are presented to you, the
18 questions that are asked, direct examination
19 cross-examination. We go through all these procedures in
20 that phase. After the evidentiary portion of the case
21 comes time for closing argument, and that's where counsel
22 for the respective sides will argue to you, try to
23 persuade you to see the evidence as they see it.

24 After the closing argument will come the Judge's
25 Charge on the Law where I will explain the law of the case

1 to you. I will explain what the offense of murder is to
2 you. I will tell you exactly what our State statute says
3 what that criminal offense is.

4 The indictment, ladies and gentlemen, which you will
5 have later on that you will write or have the foreperson
6 write the verdict on. It is not evidence in this case.
7 It's just a formal document by which the case is processed
8 for Court. What's in the indictment is mere allegation.
9 You have to decide what happened by finding the facts from
10 the evidence as I told you.

11 Now, when you are asked to deliberate this case, it
12 will have to be a unanimous verdict. All 12 deliberating
13 jurors will have to be in agreement on the verdict
14 whatever it may be. Some Judges do not allow note taking.
15 I have no qualms about it. I have never prohibited a
16 juror from note taking. It's fine. If you want a
17 notebook we will find one for you along with a pen and
18 pencil.

19 But there is one stipulation I have the warn you
20 about. If you keep notes you've got to keep them to
21 yourself. You can't share with other jurors. It would be
22 only a personal-type reference then. My suggestion to you
23 would be don't keep notes because what can happen you will
24 be writing down something on that notepad and your mind
25 zeroed in on what you're writing and you may miss the next

1 piece of evidence or the next piece of testimony that
2 said.

3 So that is a hidden danger of keeping notes, but I
4 will leave that up to you. If you need a pad let the
5 bailiff staff know and we'll arrange that. All right. If
6 you need to take a break let me know. If you can't get my
7 attention, if I happen to be looking away from you just
8 raise your hand and we will take a break or whatever.

9 I had a juror over in York County the other week with
10 the flu, running around and really got sick, actually
11 nauseated and we had to stop the trial to let her go to
12 the restroom to take care of her sickness. Of course,
13 eventually we had to excuse her all together.

14 But, anyway, you know we're all human and things like
15 that happen. And you just feel free. Don't just sit
16 there and suffer over a restroom break whatever. Let us
17 know. Now, one other thing let me talk to you about.
18 This courthouse has very poor circulation as far as the
19 heating and air.

20 In fact I'm not going to wear a long sleeve shirt
21 again because that sun shining down on me now. We have to
22 control this thermostat from some system in Atlanta. It
23 may be hot. It may be cold. Very seldom is it just
24 right. What I'm getting to is that you can get sleepy in
25 here especially after lunch if you've eat. I would eat

1 light to avoid sleepiness. I don't mind if you bring
2 coffee or Coca-Cola in the courtroom. You know if you
3 need to stay awake and you need that. I have no problem
4 with that.

5 Let the bailiff know. We'll take care of that, but
6 goodness sake, if you feel like you are falling asleep
7 raise your hand and let me know so we can take a break
8 because if you fall asleep here in the courtroom just as
9 if I were to fall asleep, and believe me I have come close
10 to doing it before especially in a civil case.

11 It's easy to doze off. Don't do it. Let me know and
12 we will take an immediate break. Okay. All right. I
13 think that's all I wanted to cover with you. Unless
14 anybody needs a brief recess we will proceed with the
15 opening statements. That's totally up to the attorneys
16 whether they want to do that or not.

17 I invite them at this time, and I will also tell you
18 in criminal cases the burden of proof is on the State.
19 It's by what we call a reasonable doubt, and I will give
20 you a full charge on that later on. This is not a civil
21 case. This is a criminal case. The defendant is presumed
22 innocent until proven guilty and that proof must be beyond
23 a reasonable doubt.

24 Because that burden of proof is on the State in most
25 instances, the State goes first. So with that said,

1 Solicitor.

2 MR. REDMOND: Thank you, Your Honor. May it please
3 the ---

4 THE COURT: Hold on one second. We've got to take a
5 lunch break at this time. We're running way over. Let me
6 stop that now. Let's take an hour for lunch, grab a
7 sandwich, go forward with that, and come back in about an
8 hour to an hour and five minutes. Get started with the
9 opening statements.

10 There are several restaurants available right down
11 the street here in town. Most of y'all are familiar with
12 Chesterfield. Break for lunch for an hour and we'll come
13 back and get started. I apologize. All right. Everybody
14 remain seated while the jury departs for lunch.

15 (WHEREUPON, the jury panel excused from the courtroom
16 at 1:40 p.m.)

17 (WHEREUPON, Court was in recess at 1:42 p.m. and
18 reconvenes at 2:35 p.m.)

19 (WHEREUPON, State's Exhibits 1 through 11 marked were
20 for identification.)

21 (WHEREUPON, State's Exhibits Nos. 1-11 were marked
22 for identification only.)

23 THE COURT: All right. Are you ready for the jury?

24 MR. REDMOND: State is ready, Your Honor.

25 MR. CANNARELLA: Yes, Your Honor.

Opening Statement by Mr. Joyner

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1 THE COURT: Bring them in.

2 (WHEREUPON, the jury panel enters the courtroom at
3 3:00 p.m.)

4 THE COURT: Solicitor.

5 OPENING STATEMENT BY MR. JOYNER

6 MR. JOYNER: Thank you, Your Honor. May it please
7 the Court. Ladies and gentlemen, my name is J.R. Joyner,
8 and I'm from Patrick, South Carolina, the metropolis, and
9 sitting here with me at the table is Mr. Kernard Redmond.
10 He's from Hartsville, South Carolina, and together we are
11 both Assistant Solicitors representing the State.

12 And we work for our Solicitor, Jay Hodge, who is over
13 in Chesterfield County. Ladies and gentlemen, in this
14 case the defendant here, Mr. Outlaw, has already confessed
15 to killing the victim in this case, Mr. Michael Johnson.

16 But we are going to put on evidence and testimony
17 that's going to prove to you that not only did he kill
18 him, but it's going to show that he murdered him. Now,
19 throughout the course of this trial I want you to remember
20 the facts this way. I want you to remember before, during
21 and after.

22 I want you to remember what happened before the
23 incident. I want you to remember what happened during the
24 incident, and the incident itself, and I would like you to
25 remember what happened after the incident. It goes very

1 heavily or it's very important for our case.

2 Now, some facts about our case are these. A man
3 named John Talbert, who will be here to testify for you,
4 and Mr. Outlaw in November of 2001 went together to buy
5 some cocaine. And they went -- it was a quarter ounce
6 they bought. They went and bought the cocaine and later
7 that day got into an argument over the cocaine and you
8 know there wasn't really any fighting or anything. It is
9 an argument. A disagreement and that was sort of the end
10 of the thing.

11 Well, two months later on January 11th of 2002,
12 Outlaw and Talbert happened to run into each other at a
13 mutual acquaintance's house, and this mutual acquaintance
14 was the victim in this case, Mr. Michael Johnson. And
15 whenever these guys see each other a few words are passed
16 because they haven't seen each other for two weeks since
17 the argument occurred.

18 But when Outlaw and Talbert see each other they start
19 to argue. You know a few words are exchanged. Licks are
20 passed. They had a little scrap. It wasn't anything
21 major, but they did have a little fight. Well, Outlaw was
22 upset. So he goes and jumps in his car and speeds away
23 from Michael Johnson's house.

24 Well, less than ten minutes later he comes driving
25 back up inside the yard and this time he's got a shotgun

Opening Statement by Mr. Joyner

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1 with him. And he comes up and says, "John Talbert, get
2 out here now." And John Talbert who was standing beside
3 the house sees him. He said, "This guy has got a shotgun.
4 I don't have a gun. I don't have anything. I don't want
5 any part of the gun."

6 So he goes behind the house. Well, the owner of the
7 house, named Mr. Michael Johnson. He's not involved in
8 this drug situation. Well, he has two kids in his house
9 and his wife inside. So he gets his shotgun and comes out
10 and says, "Listen, Outlaw." He said, "I got kids inside.
11 You need to put that gun down and get out of here."

12 Well, he waited a second or two and Outlaw wouldn't
13 put the gun down, so Michael Johnson takes his gun and
14 fires a warning shot up in the air. Now, less than a
15 minute passes and Outlaw points his shotgun, pulls the
16 trigger, shoots and kills Michael Johnson. And Michael
17 Johnson falls dead no more than 2 feet from his house.

18 No more than 2 feet from the edge of his house.
19 Well, as soon as this happens there are several people
20 standing outside that witness the event. Well, they --
21 you know this Miss Wilson, who was the mother of his
22 children, sticks her head out the door and she says,
23 "What's going on?" And everybody says, "Call 911. Call
24 911. Michael's been shot. Michael's been shot."

25 Well, she rushes in and calls 911. Well, meanwhile

1 while all of this took place, after he shot him, Outlaw
2 runs and jumps in his car and speeds away. He speeds away
3 to a nearby creek. He throws the gun into the creek.
4 Then he gets in his car, drives back him where by the way
5 he was already under the influence. He drinks more and
6 passes out and goes to sleep.

7 The 911 call had some officers, obviously, come to
8 the scene, which from all the witnesses they get an arrest
9 warrant and pick him up at the house where he was passed
10 out and sleep. And that brings us to where we are today
11 to present the facts to you and let you make the decision
12 of what should happen.

13 Now, I want to get back to the way I said about us
14 looking at the fact before, during, and after. And what
15 was going on before this incident happened to go over the
16 facts again with you. Before there was an argument over
17 illegal drugs -- they were buying illegal drugs. That's
18 what caused the argument to begin with.

19 Mr. Outlaw was involved in it. During this incident
20 Mr. Outlaw shoots and kills another person at that
21 person's home, and afterwards Mr. Outlaw rides and throws
22 the gun away to hide it in the creek. Those are the
23 facts, ladies and gentlemen.

24 And one thing please keep in mind, you have an
25 important decision to make as jurors in this case. It

1 goes a lot -- these are the victim's family here to your
2 left. And it goes a lot to the sanity. It goes a lot to
3 them having some kind of peace of mind in this case. Your
4 decision does.

5 And I trust that you will make the right decision,
6 and I thank you for your time.

7 -- OPENING STATEMENT BY MR. CANNARELLA

8 MR. CANNARELLA: It's not my responsibility to try to
9 create doubt because to try to create doubt would be like
10 trying to convince you that there is no salt in the ocean
11 or the sun is not going to rise in the morning.

12 My responsibility, contrary to what you might see on
13 t.v., is not to create doubt but to find that doubt
14 because you know when we find that doubt, we're going to
15 find it together. We're going to both be together in the
16 decision that you make.

17 Now, I wish it was as simple as the Solicitor tried
18 to explain it to you. 5-foot three, 160 pounds and you
19 can look in his eye. They are the window to this man
20 soul. He acted as a reasonable person would have acted
21 under the circumstances in the belief that he was under
22 attack.

23 He was attacked by John Talbert and then he believed
24 he was attacked by William Johnson. When Talbert, John
25 Talbert, 6 feet three, 285 pounds comes to the back door

1 with Ricky Stroud and with Travis Winburn, who is now
2 deceased, 5-foot three William Outlaw comes out the back
3 door and for no reason at all 6 foot three, 285 pound John
4 Talbert smacks him in the right eye and you can see the
5 cut.

6 And he's knocked near about to the ground, stunned.
7 That was an unprovoked attack on this man right here, and
8 this man gets in the his car behind this mobile home off
9 of Bullard Ford Road. He begins to drive out. Well, on
10 the way out, John Talbert throws a left hook with his 6
11 foot three, 285 pound body and he busts the windshield
12 with his left hand.

13 William drives down to the bottom of this slight
14 incline that's facing up towards where he came from the
15 trailer. Now, when this altercation was going on outside,
16 Michael Johnson armed himself with that shotgun. And he
17 went outside and he fired that shotgun.

18 And when he fired that shot William believed that he
19 was being shot at, and that was reasonable under the
20 circumstances to believe if you're aware of the decedent's
21 reputation for violence and carrying guns.

22 If John Talbert had not beat down on William Outlaw
23 which was unnecessary unprovoked, if Michael Johnson had
24 never -- had never armed himself for no reason at all,
25 went over in the woods on the dark side of the trailer,

1 loaded his shotgun and fired a shot -- William doesn't
2 know -- I don't care which direction the gun was shot in
3 under the circumstances.

4 You're down there and gunfire is coming from the dark
5 corner of the trailer cause see he went to the dark corner
6 of the trailer because there is a light on the other end
7 of the trailer. We will sketch it out for you. And he
8 got out of his car and says, "John Talbert, come down to
9 the road." And then he sees the ball of fire off to his
10 right.

11 Now, you've got to remember that his eye is gushing
12 with blood. It's bleeding. He can't hardly see out his
13 our eye and he reaches in his trunk cause he feels like
14 he's trapped right then. And he can't see well out of his
15 eye and it's dark down there. He opens the rear trunk.

16 Well, he's got a shotgun, single barrel shotgun,
17 breached in there. But he's down there and he tries -- he
18 wants to shoot to get away at this point in time cause he
19 really believes he's under attack cause he will testify
20 and tell you -- he's going to take the witness stand.

21 He's going to testify and tell you that there are
22 always guns at Michael Johnson's house. And, yeah, you
23 know we can't control all who our children associate with.
24 John Talbert carries a gun. Michael Johnson carries a
25 gun. John Talbert violently attacked him. Michael

1 Johnson has a reputation of violence. All that's going
2 through this man's mind now.

3 He knows about it well I know just because he
4 associated with the wrong people that don't mean he
5 committed murder. And he fired that gun up there in that
6 dark area and it struck Michael Johnson and unfortunately
7 kill them. In may be a tragedy but he wasn't acting
8 unlawful at the time.

9 When you start thinking about what was going on put
10 yourself in his shoes because that's what the law of
11 self-defense is going to be about. Look through his eyes
12 and what he reasonably believed under the circumstances
13 because a person can act reasonable because he has a
14 reasonable belief of imminent danger. It might be
15 incorrect after the fact. He may be.

16 But the Judge will tell you that maybe not always the
17 perfect self-defense because we got to kind of make a cool
18 calculation when you believe you are under attack that
19 belief is reasonable on your part. That's self-defense.
20 This man made a mistake. He made a mistake just with the
21 people he was associated with. The people he associated
22 with.

23 He's a peaceful person. He's not a violent person.
24 He does not have a criminal record. And he acted lawfully
25 that night out of self-preservation, and he's not guilty

Colloquy

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1 by reason of self-defense. And I'm going to find that for
2 you during the trial of this case. Thank you.

3 COLLOQUY

4 MR. REDMOND: Please the Court, Your Honor. Before
5 we call our first witness the State and Defense have
6 reached stipulation on several matters if the Court would
7 allow me the publish them at this time.

8 First, as it relates to evidence, Your Honor, and by
9 reading them out at the conclusion I will ask the Court to
10 introduce them in evidence -- to admit them in evidence.

11 First, State's Exhibit Number One is a 12 gauge
12 shotgun. It belongs to the defendant.

13 State's Exhibit Number Two is a 20 gauge shotgun
14 belonging to Michael Johnson, the victim in this case.

15 State's Exhibit Number Three are pellets that were
16 removed from Michael Johnson during the autopsy.

17 State's Exhibit Number Four is a fired 12 gauge
18 shell.

19 State's Exhibit Number Five is a fired 20 gauge
20 shell.

21 State's Exhibit Number Six an unfired 20 gauge shell.
22 Also State's Exhibit Number Seven is an unfired 20 gauge
23 shell.

24 State's Exhibit Number Eight is the autopsy report.

25 State's Exhibit Number Nine is a toxicology report.

1 State's Exhibit Number Ten is the Miranda Waiver from
2 William Outlaw.

3 And State's Exhibit Number 11 is the statement of
4 William Outlaw. Your Honor, first and at this time, we
5 would ask that those items be admitted into evidence.

6 MR. CANNARELLA: No objection, Your Honor.

7 THE COURT: Thank you very much.

8 MR. REDMOND: And, Your Honor, we have a couple of
9 stipulations that were -- and, of course, all of this was
10 done to speed up the trial and eliminate any need for
11 certain witnesses.

12 First, we stipulate that the cause of death was the
13 fact that William Outlaw did shoot Michael Johnson.
14 However, we do agree that the circumstances were in
15 dispute meaning that the Defense has laid out it's version
16 of the case. The State has laid out our version, but we
17 all agree that William Outlaw did shoot Michael Johnson.

18 And finally, Your Honor, that both the victim and the
19 defendant fire shotguns. The defendant fired a 12 gauge.
20 The victim, Mr. Michael Johnson, fired a 20 gauge. But,
21 again, the circumstances are in dispute. Again, meaning
22 that we have our version that we contend was the case, and
23 the Defense has indicated they will present their version.
24 Those will be the stipulation as we agreed.

25 MR. CANNARELLA: That's correct, Your Honor.

1 THE COURT: Those exhibit will be admitted into
2 evidence and stipulations are noted.

3 MR. REDMOND: Thank you, Your Honor.

4 (WHEREUPON, State's Exhibits Nos. 1-11 were admitted
5 into evidence.)

6 MR. JOYNER: Your Honor, the State would like to call
7 Deputy George Halma.

8 GEORGE HALMA, after being duly sworn, testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MR. JOYNER:

12 Q. Good afternoon, Mr. Halma. Would you set up a little
13 bit and speak in the mike for us. Would you state your
14 name for the Court?

15 A. George Hamma.

16 Q. Mr. Halma, where do you live?

17 A. Chesterfield.

18 Q. And how long have you lived there?

19 A. Sixteen years.

20 Q. Mr. Halma, you say you've lived here for 16 years?

21 A. Yes, sir.

22 Q. What about your family?

23 A. Same time.

24 Q. Are you married?

25 A. Yes, sir.

- 1 Q. Any kids?
- 2 A. One.
- 3 Q. One kid?
- 4 A. Yes, sir.
- 5 Q. How old is he.
- 6 A. She's going to be 11.
- 7 Q. Going to be 11. Good. That's fine to be 11. Okay?
- 8 Okay. So you've been here for 16 years?
- 9 A. Yes, sir.
- 10 Q. A wife of 12 years?
- 11 A. Yes, sir.
- 12 Q. And a child of 11 years?
- 13 A. Yes, sir.
- 14 Q. Sounds good. Sounds good. What's your job title?
- 15 A. Deputy sheriff.
- 16 Q. Deputy sheriff. What do you do? What does that
- 17 entitle? What do you do as a deputy sheriff?
- 18 A. Answer 911 call, serve warrants, protect the county.
- 19 Q. So could you tell us again what your job description
- 20 is as a deputy?
- 21 A. Yes, sir. We answer 911 calls, serve warrants, serve
- 22 patrol.
- 23 Q. And how long have you been in law enforcement?
- 24 A. Almost eight years.
- 25 Q. I want to take you back to January 11th of 2002. You

1 were on call that night?

2 A. Yes, sir.

3 Q. And you got a call about this incident?

4 A. Yes, sir.

5 Q. Tell me a little bit about it. Tell me what happened
6 first when you got the call?

7 A. We received a call, a shooting incident that this
8 located on Bullard For Road, and when I got on the scene I
9 parked at the road. There was a vehicle. I don't know
10 what it was. It was a vehicle parked at the driveway. I
11 walked up the driveway and I immediately noticed the
12 subject laying down on the ground with another man holding
13 him.

14 That was the victim had been shot. And I found out
15 that the shooter had already left the scene, and I just
16 checked real quick to feel a pulse and if he had one I
17 couldn't feel it. But I notified dispatch to go ahead and
18 send the rescue squad in and just secure the scene.

19 Q. Sock by securing the scene, what do you mean by
20 'secure the scene?'

21 A. Well, when I secure the scene I make sure that -- you
22 know there is the probably of the shooter or anything.
23 Just make sure nobody comes in or out besides the people
24 already there other than the policemen.

25 Q. So you sort of lock the place down?

1 A. Yes, sir.

2 Q. Now, is part of your job to secure a scene to make
3 sure that none of the evidence is tampered with or
4 destroyed?

5 A. Yes, sir.

6 Q. Did you see any evidence when you got there? Did you
7 see a gun?

8 A. There was one gun laying beside the victim. I
9 believe it was a shell laying there, too.

10 Q. What kind of gun was it?

11 A. I believe it was a single shot 20 gauge.

12 Q. Single 20 gauge?

13 A. Yes, sir.

14 Q. Like this?

15 A. Yes, sir.

16 Q. This is State's Exhibit Two. There is a 20 gauge
17 single shotgun. Is this similar to what you saw?

18 A. Yes, sir.

19 Q. Thank you. Now, what was general ora of the people
20 there? Was everybody in shock or was everybody running
21 around?

22 A. There were a few woman visible beside the trailer.
23 They were screaming and running back and forth inside the
24 trailer. Whenever the rescue squad got there they told me
25 that they had checked him and gone ahead and notify the

1 coroner. I had the dispatcher on the radio, however, the
2 call had the coroner on the way. I think investigators
3 were already on the way.

4 Q. And at the time you were there and the whole time you
5 were there the Defendant, Outlaw, he wasn't there?

6 A. No, sir.

7 Q. So you never saw him during the time you were there?

8 A. No, sir. I don't believe I ever saw him up until
9 today.

10 Q. Okay. Okay.

11 MR. JOYNER: Judge, I don't have any further
12 questions. Thank you, Mr. Halma.

13 MR. CANNARELLA: No questions, Your Honor.

14 MR. REDMOND: State would call Sergeant James Dixon.

15 JAMES DIXON, after being duly sworn, testified
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. REDMOND:

19 Q. Mr. Dixon or Captain Dixon, could you state -- and I
20 indicate captain, what is your role with the Sheriff's
21 Department, Chesterfield County Sheriff's Department?

22 A. Now?

23 Q. Yes, sir.

24 A. I oversee a lot of the operations regarding daily
25 scheduling, different events, taking care of just about

- 1 all the incoming calls to the Sheriff's Office during the
2 day time office hours.
- 3 Q. How long have you been in law enforcement?
- 4 A. Seventeen years, eight month.
- 5 Q. And how long have you been with the Sheriff's
6 Department?
- 7 A. Back here in Chesterfield County for right at 10
8 years now.
- 9 Q. Now, how long have you been captain in you current
10 capacity?
- 11 A. Three years.
- 12 Q. And were you so employed with the Sheriff's
13 Department on the 11th of January 2002?
- 14 A. Yes, sir, I was.
- 15 Q. And at that particular time did you have the
16 opportunity to respond to a call concerning a shooting
17 incident?
- 18 A. Yes, sir, I did.
- 19 Q. And where was that incident? Where was that?
- 20 A. I unfamiliar with the exact numerics but Bullard Ford
21 Road.
- 22 Q. [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Would that sound correct?
- 23 A. Yes, sir, it does.
- 24 Q. Is that in Chesterfield County?
- 25 A. Yes, sir, it is.

1 Q. And, now, when you got to the scene would you tell
2 the ladies and gentlemen on the jury what you observed
3 when you got to the scene?

4 A. When I arrived at the scene I had two other officers.
5 I had two other officers arrive at the residence shortly
6 before I did, Deputy Halma and Deputy Quick.

7 And when I pulled up with the officers that had
8 already arrived at the scene and they advised me that
9 there been a shooting and that they had a subject laying
10 down on the ground that had been shot.

11 And by the time I was getting there the rescue squad
12 was getting there at that same time to render aid to the
13 victim.

14 Q. Were your able to ascertain the identify of that
15 victim?

16 A. Not at that time, sir. We was securing the scene,
17 making sure we identified everyone that stayed at that
18 residence and tried to get it taped off while rescue was
19 trying to render aid to the victim.

20 Q. Did you subsequently discover who the -- what the
21 identify of that victim was?

22 A. Yes, sir.

23 Q. And what was that victim's name?

24 A. I can't recall his name.

25 Q. Would it be William Johnson?

1 A. Yes, sir, William Johnson.

2 Q. And when you talk about securing the scene what goes
3 into securing the scene?

4 A. The first two officers that arrive make sure there
5 was no other shooters, no other weapons involved, no one
6 else the probably of getting hurt. After that's taken
7 place they make sure that rescue is called in. They go in
8 and start taping off the crime scene and securing the
9 evidence involved in the shooting.

10 Q. Okay. Speaking of secure the evidence, did you
11 observe any evidence at that scene? In other words, did
12 you observe a gun?

13 A. Yes, sir, an officer there pointed it out to me
14 laying on the ground?

15 Q. Was it lying near Mr. Johnson?

16 A. Yes, sir, it was.

17 Q. And if I can show you what has been marked as State's
18 Exhibit Number Two. This look like the weapon?

19 A. Yes, sir, it is.

20 Q. Now, Captain -- excuse me, Captain Dixon, at the time
21 that this incident occurred or when you arrived on the
22 scene was there any call that you can recall from dispatch
23 indicating that William Outlaw had been shot at?

24 In other words, was there any call? Were you
25 dispatched to the scene based on any call from William

1 Outlaw that he had been shot out by -- shot at by Michael
2 Johnson?

3 A. No, sir, it wasn't.

4 Q. Was it a call regarding Michael Johnson being shot?

5 A. Yes, it was.

6 Q. And subsequent to that incident -- in other words, at
7 the time you left and after that time that night did you
8 ever become aware of any calls placed by the defendant or
9 any of his relatives saying Michael Johnson shot at me?

10 A. No, sir.

11 MR. REDMOND: I have nothing further, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. CANNARELLA:

14 Q. Investigator Dixon?

15 A. Captain Dixon.

16 Q. Captain Dixon, who was the lead investigator on this
17 case, Johnny Quick?

18 A. I called investigators on call that night, an
19 Investigator Harold Haney with the 911 call that night by
20 dispatch.

21 Q. Well, do you know that Michael Johnson was found on
22 the right side of his trailer facing his trailer?

23 A. Well, when I got there he was on the right side of
24 the trailer, sir. I'm not sure of the position?

25 Q. All right, sir. I'm going to -- you know here is --

1 I don't want to block anybody's view. You got is it
2 Bullard Ford Road up there let's say. Okay. And I don't
3 know the name of this road that comes down here and turns
4 down to where that trailer sits, right? You remember
5 that?

6 A. Yes, sir.

7 Q. Okay. And Johnson was found right here, right? Up
8 at the top. Look from down up to the trailer?

9 A. If it was I wasn't facing the trailer. He was found
10 to the right of the trailer.

11 Q. And when you went and looked you found that shotgun
12 right there. You found the shotgun right beside him?

13 A. Yes, sir.

14 Q. You found where he fired and emptied one shell?

15 A. Yes, sir. There was spent casings there.

16 Q. There was also an unspent casing there?

17 A. I didn't physically pick the weapon up with the
18 evidence there, but it was one spent shell laying near the
19 weapon.

20 Q. Okay. Now, if there was an unspent shell on the
21 ground would you have seen it?

22 A. Yes, sir, I believe I would, but the one I seen was a
23 spent shell.

24 Q. So and do you remember that ariel light on the side
25 of the trailer over here? The light over here. It was

1 lit up back over there?

2 A. There was a light in the front of the trailer. There
3 was some type of light on the porch and some light at the
4 back of the trailer.

5 Q. Back of the trailer?

6 A. I can't exactly testify what side of the trailer, but
7 it was coming from the trailer.

8 Q. Okay.

9 A. Something similar to a porch light.

10 Q. But you got a shotgun, a spent shell and at least one
11 other unspent shell?

12 A. Shotgun, spent shell, what I testified to.

13 Q. But you don't know about anything other than that?

14 A. No, sir.

15 Q. Thank you, sir.

16 MR. REDMOND: No re-direct.

17 THE COURT: Okay, Captain, you may step down.

18 MR. REDMOND: I would like to call Lester Cooke.

19 LESTER COOK, after being duly sworn, testified
20 as follows:

21 DIRECT EXAMINATION

22 BY MR. JOYNER:

23 Q. Afternoon, Mr. Cooke.

24 A. Good afternoon.

25 Q. Would you please state name for the Court, please?

- 1 A. Lester Cooke.
- 2 Q. And, Mr. Cooke, where do you live now?
- 3 A. I live in Sumter, South Carolina.
- 4 Q. Tell me a little about your family. Are you married?
- 5 A. Yes, sir.
- 6 Q. How long?
- 7 A. I have a new wife. I've only been married seven
- 8 months.
- 9 Q. You have any kids?
- 10 A. Yes, sir.
- 11 Q. How many?
- 12 A. Two.
- 13 Q. Who -- what ages?
- 14 A. My son is 12 and my daughter is 17.
- 15 Q. That's good. Let me ask you this. How long have you
- 16 lived in the county when you worked for the Sheriff's
- 17 Department?
- 18 A. Three years.
- 19 Q. How long did you work for the Sheriff's Department.
- 20 A. Three years.
- 21 Q. Three year. Okay. Well, what is your total time in
- 22 law enforcement?
- 23 A. Nine years.
- 24 Q. Total of nine years. And what was your job title?
- 25 A. Road deputy.

1 Q. Road deputy. What did that involve? What were your
2 duties?

3 A. Enforce the State statutes and laws of the county and
4 the State. Work at the discretion of the sheriff at the
5 time.

6 Q. Okay. I want to take you back to January 11th of
7 2002 about this incident. What was your first knowledge
8 this incident?

9 A. I was called by dispatch. They said that there had
10 been a shoot out on Bullard Ford Road at Michael Johnson's
11 house. They needed me to go out there.

12 Q. And you went out there?

13 A. Yes, sir.

14 Q. What happened when you got out there?

15 A. There was a large crowd, a lot of family members. It
16 was pretty confusing at that time. When I got there I had
17 one of William Outlaw's family members come up to me and
18 say that they were concerned for William's safety; that
19 they were afraid that either of the family of the victim
20 was going to do something to him or that one of the
21 sheriff deputies was going to do something to him.

22 Q. Okay. Why were they afraid? Why would William have
23 anything to worry about?

24 A. I don't think they had anything to fear from the
25 Sheriff's Department. But the family members of the

1 victim, but that's speculate.

2 Q. Okay. What happened next after -- once you got in?

3 What was your duty at the scene?

4 A. I never had a duty at the scene. Once I got there
5 the family members came up to me. As we were talking as I
6 talked to him, he said if I would be the one -- I can pick
7 up William and I promised that he wouldn't be harmed by
8 anybody; that they would tell me where he was. And they
9 agreed to that.

10 I told the deputy that what I was going to do and
11 where I was going. And he stated you contact the
12 residence on New Market Road in Darlington County.

13 Q. Now, let me ask you this. Did you have an arrest
14 warrant?

15 A. I did not at this time.

16 Q. So you picked him up without an arrest warrant?

17 A. No, sir, I did not.

18 Q. Tell me, sir. Explain to me how you got him.

19 A. When I got to the residence there is Darlington
20 County there were two Darlington County deputies waiting
21 on the scene. They were securing -- were aware that
22 William was inside the house. As I got there I talked
23 with them for a couple of minutes and I was informed by
24 Investigator David Watson over the radio that he had a
25 warrant at that time and that if I could find William

1 detain him and transport him to the Sheriff's Department.

2 Q. I see. So there was a warrant. Did you go ahead and
3 the detain him?

4 A. We went to the door and William's mother came to the
5 door. We talked for probably about five minutes. She was
6 also concerned with William's safety where the victim's
7 family having some kind of retribution against him. She
8 allowed me to go to William's bedroom and that's when we
9 detained him then.

10 Q. Okay. Once you got him -- I assume you put him in
11 your car?

12 A. I did put him inside my car and drove him back to the
13 Sheriff's Department.

14 Q. Did anything happen while you were transporting him
15 to the Sheriff's Office?

16 A. Nothing significant happened. He was asleep in the
17 bed when I went to get him. As I woke him up and I told
18 him I needed to transport him to the Sheriff's Office for
19 questioning he told me he didn't know what I was talking
20 about. There had been a shooting at Bullard Ford Road and
21 that Michael had been shot. And he told me he don't know
22 what I was talking about.

23 Q. And did he say anything on the road from his
24 residence to the Sheriff's Department?

25 A. No, sir, we didn't talk.

- 1 Q. Didn't talk at all?
- 2 A. No, sir.
- 3 Q. Okay. Now, once you got there what happened?
- 4 A. To the Sheriff's Department?
- 5 Q. Yes, sir.
- 6 A. Well, I took him over to the jail house and
- 7 interviewed him and stated that David Watson was the
- 8 investigator and I stayed with William until David Watson
- 9 the investigator came in.
- 10 Q. And then you left once David Watson got there?
- 11 A. No, sir. I stayed during the interview and gun
- 12 powder residue test on William's hands and I was there
- 13 also.
- 14 Q. Okay. What happened during the interview? What was
- 15 said?
- 16 A. David read William his rights; that he asked him some
- 17 question, and William's statement, "Was why should I talk
- 18 to you and spend the rest of my life in jail."
- 19 Q. Let me ask you this. Did he ever sign a Miranda
- 20 Waiver?
- 21 A. Yes, sir, he did.
- 22 Q. He then spoke to you after he signed that?
- 23 A. Yes, sir, he did.
- 24 Q. What did he say after he signed it?
- 25 A. He never confessed while I was there. All he said

1 was, "Why should I talk to you and spend the rest of my
2 life in jail."

3 Q. All right. What happened after this talk? When did
4 you finally leave the detention center?

5 A. Probably about 15 minutes after Investigator Watson
6 walked in the room and started with the procedures.

7 Q. I see. Well, let me ask you this. What time did you
8 pick him up that morning?

9 A. I don't remember.

10 Q. Okay. Cause this was in the early morning hours of
11 the 12tt?

12 A. I got to the residence probably an hour, 45
13 minutes to an hour after the incident had happened and
14 probably picked William up within 45 minutes or an hour
15 after that. So I'm not real sure of the time would you
16 say.

17 Q. But it was dark at that time?

18 A. Yes, sir, it was dark.

19 Q. Let me ask you this, and I know this has been a
20 while. Do you remember the lighting at the residence
21 where the incident took place?

22 A. I remember there was a front porch right on the way.
23 That's all I remember. I never made it up to the
24 residence. I got stopped by family members.

25 Q. If we were standing at the residence would you be

1 able the see if I was standing there and you were standing
2 at that trailer? Would it be bright enough?

3 A. We were standing in the front of the trailer. It
4 would have been.

5 MR. JOYNER: Beg the Court's indulgence.

6 BY MR. JOYNER:

7 Q. Now, Officer Cooke, you said you were there at the
8 time he signed his Miranda and gave his statement?

9 A. Yes, sir.

10 Q. Okay.

11 A. He never made a statement while I was there, but he
12 did sign his Miranda.

13 Q. He did sign the Miranda. What I'm showing you is
14 marked as State's Exhibit Two. It's a waiver of rights, a
15 Miranda waiver of rights. Does that refresh your memory?
16 Is that refresh you -- is that what he signed that day?

17 A. Yes, sir. And also I sat behind him proving that he
18 did.

19 Q. Okay. All right. Thank you. Another question I
20 have for you is since you are the officer that picked him
21 up from his residence you said he was asleep. What
22 condition was he in? Was he intoxicated?

23 A. There was a strong smell of alcohol. He was pretty
24 well asleep when we went in his room. He didn't have a
25 shirt on. He had on a pair of pants, I think.

1 Q. Okay. Let me ask you this. Did he appear sleepy
2 like you just wake up in the morning, and you know, you
3 haven't gotten the sleep out of your eyes or did it appear
4 to be an alcohol induced?

5 A. It appeared to be alcohol induced.

6 Q. I see. Did he have any visible problems walking?
7 Was he under the influence to that extent?

8 A. He was wobbly, which once he was cuffed he always
9 held on to me. Whoever was cuffing him at the time helped
10 him out of the house and into the car, but he was walking.

11 Q. When he said, "I'm not tell you anything. I don't
12 want done go to jail," was his speech slurred?

13 A. Well, that's when he was back at the jail. Then his
14 mind was clearing up pretty good.

15 Q. I see. I see. So he had time to wake up?

16 A. Yes.

17 Q. Thank you?

18 MR. JOYNER: I don't have any further questions.

19 CROSS-EXAMINATION

20 BY MR. CANNARELLA:

21 Q. Mr. Cooke, you took him to the jail?

22 A. Yes, sir.

23 Q. Okay. You see the booking report right here?

24 A. Yes, sir.

25 Q. That pertains to William, doesn't it?

1 A. Yes, sir.

2 Q. And that's routine, that booking report, are pretty
3 routine under the ordinary course of the business in the
4 jail?

5 A. Yes, sir.

6 MR. JOYNER: Objection.

7 THE COURT: You object?

8 MR. CANNARELLA: Without objection, Your Honor. The
9 Defense does not object, Your Honor.

10 BY MR. CANNARELLA:

11 Q. Did you remember how his left eye was?

12 A. It remember he had an abrasion. I don't remember
13 which eye.

14 Q. Okay. And that's the notes on this report right
15 here?

16 A. May I see it?

17 Q. Yes, you note an abrasion over the right eye on that
18 report?

19 A. Yes.

20 Q. But you don't remember which eye it was?

21 A. Yes, sir.

22 Q. Could have been the right eye?

23 A. Could have been either one.

24 MR. JOYNER: I have no further questions, Your Honor.

25 MR. REDMOND: No redirect, Your Honor. Your Honor,

1 may we approach?

2 (WHEREUPON, a bench conference was held off the
3 record but in the presence of the jury.)

4 THE COURT: We're going to take a quick recess, come
5 back and continue this. If y'all would step back to your
6 room. If anybody needs to take a smoke break, well, then
7 you have to go outside.

8 (WHEREUPON, the jury panel was excused from the
9 courtroom at 3:44 p.m.)

10 (WHEREUPON, Court was in recess at 3:44 p.m. and
11 reconvenes at 4:05 p.m.)

12 THE COURT: Solicitor, you ready?

13 MR. REDMOND: Yes, Your Honor.

14 THE COURT: Bring the jury in.

15 (WHEREUPON, the jury panel enters the courtroom at
16 4:05 p.m.)

17 MR. REDMOND: State would like to call Investigator
18 David Watson to the stand.

19 DAVID WATSON, after being duly sworn, testified
20 as follows:

21 DIRECT EXAMINATION

22 BY MR. JOYNER:

23 Q. Good afternoon, Mr. Watson.

24 A. Good afternoon.

25 Q. Please state your full name for the Court, please.

- 1 A. David Watson.
- 2 Q. Mr. Watson, you from here in Chesterfield County?
- 3 A. Mainly from Chesterfield.
- 4 Q. How long have you lived here?
- 5 A. Almost all my life.
- 6 Q. How old are you?
- 7 A. Twenty-eight.
- 8 Q. So your 27 years you've been here?
- 9 A. That will work close enough.
- 10 Q. Okay Are you married?
- 11 A. I am.
- 12 Q. And any kids at all?
- 13 A. No, sir.
- 14 Q. How long have you been married.
- 15 A. One year.
- 16 Q. One year. Okay. And where does your wife work?
- 17 A. At the Sheriff's Office.
- 18 Q. Okay. So y'all work there together?
- 19 A. Yes.
- 20 Q. Let me ask you this. As an investigator what does
21 your job entail?
- 22 A. We follow up on crime. A lot of uniforms they just
23 don't have time and need assistance, crimes against
24 persons, crimes against property such as burglary,
25 robbery, murder, arrest, nature of the crime. They don't

1 have time and need assistance with it.

2 Q. So you guys can come in and dig a little deeper?

3 A. Okay.

4 Q. I see. I see. Let me ask you this. On January 11th
5 of 2003 this incident happened. What was your first
6 involvement?

7 A. My first involvement was after midnight, starting
8 around January 12th. My lieutenant at the time, Johnny
9 Quick, called me out and advised me to come to the scene.

10 Half way in route to the scene he called and advised
11 me that they had enough information and stated that rather
12 to obtain a warrant on William Outlaw for murder. I went
13 to Judge Pate's office and did so.

14 Q. Okay. Now, once you tot the arrest warrant what did
15 you do next?

16 A. I was in route to the scene when Deputy Lester Cooke
17 advised that he was there in Darlington County with
18 another Darlington County deputy and they had a location
19 on him. I advised him that I had a warrant in hand and to
20 go ahead and pick him up.

21 Q. Now, after this happened did you go on up to the
22 residence?

23 A. No, sir. I went on to the county jail where Deputy
24 Cooke was carrying him.

25 Q. Okay. I see. Now, what happened when you got there

1 to the county jail?

2 A. When we got to the county jail I read him and advised
3 him what he was there for. And the next thing that I told
4 him that I was going to talk to him about the case. I
5 read him his rights, had him initial on the line as read
6 it, and he signed and Deputy Cooke witnessed it for me.

7 Q. Do you recognize that?

8 A. I do.

9 Q. What is that?

10 A. This is the form.

11 Q. That's the form you gave him?

12 A. Yes, sir.

13 Q. Explain to the jury if you would what involved with a
14 Miranda Waiver?

15 A. Okay. The Miranda Rights is that they do not have
16 the right to talk to us. If they choose not to they're
17 entitled to an attorney. We read them each line. He
18 signs his initials. Then start with you have the right to
19 remain silent and I had him initial. After I read the
20 line anything you say can be used against you in a Court
21 of law. He initialed that he read and understood.

22 That next one is you have the right to talk to a
23 lawyer and have him or her present. He initialed that.
24 Next is if you cannot afford to hire a lawyer to represent
25 you before any questions if you wish. He initialed that.

1 The last one was you can decide to exercise your
2 right to not answer any questions or make any statements
3 and he initialed that and signed it at the bottom that
4 that he read and understood these rights.

5 Q. So if at any time he didn't want to talk you he
6 didn't have to; is that correct?

7 MR. JOYNER: Your Honor, could you publish this
8 exhibit to the jury so they can see it?

9 THE COURT: Yes.

10 MR. JOYNER: Thank you.

11 BY MR. JOYNER:

12 Q. After he signed this Miranda Waiver did he then give
13 you a statement?

14 A. He did.

15 Q. Okay. I'm handing you what's been marked as State's
16 Exhibit 11. Could you tell the jury what this is, please?

17 A. This is his voluntary statement. Again, even after I
18 had already read him his rights and he signed it, he
19 wished to talk with us. There is another section that I
20 read again and he understood that he did not have to give
21 a statement. And then he went on and give a statement and
22 signed it at the bottom.

23 Q. Okay. Now, he did he willingly give this statement?

24 A. Correct.

25 Q. Would you read the statement for us, please?

1 A. I will. It says, "Me and Michael Johnson was riding
2 around and we went to get a louver for my Camaro. We got
3 back and when I got out the car to go in he hit me and I
4 ran. He shot then I ran to the trunk of my car and got
5 my shotgun and shot it backways. I then threw the gun on
6 the power line by the church."

7 Q. Okay.

8 MR. JOYNER: Your Honor, may I publish this for the
9 jury?

10 BY MR. JOYNER:

11 Q. Now, his statement said he threw the gun on the power
12 line?

13 A. On the power line.

14 Q. Did you go look for the gun?

15 A. We did, myself and Deputy Knight escorted Mr. Outlaw
16 to look for the gun and also had people in the area near
17 the church looking for the gun. After riding and looking
18 for over an hour Mr. Outlaw then admitted to me he took
19 the gun and threw it in a creek. So when he showed us at
20 the creek and we went in the creek and State Law
21 Enforcement Division gathered the evidence and it was sent
22 to S.L.E.D.

23 Q. Okay. Let me ask you this. Would you describe ow
24 the gun was found at the creek. Was it hidden? Was it
25 sticking out?

1 A. I can generally tell you the barrel was kind of in
2 the creek, but the butt of the gun was kind of sticking
3 out if I remember right. It could be vice versa. Once we
4 found the gun we called S.L.E.D. there to photograph
5 everything and they came to the scene and retrieved the
6 gun and also the photographs of it.

7 Q. Okay. This creek, was it on the main highway?

8 A. It was a dirt road.

9 Q. Pretty secluded area?

10 A. If you don't know that area it would be kind of
11 secluded.

12 Q. Let me ask you this. From the dirt road, I assume
13 the creek ran under?

14 A. Correct. Correct.

15 Q. How far from the road was the gun if you could
16 estimate in feet or yards? I tell you what we do. Was it
17 as far as you and I?

18 A. I would say that far, give or take.

19 Q. So it could be here?

20 A. Yeah.

21 Q. And it could be here?

22 A. Right. Right.

23 Q. And how was it? Was it laying in the creek or beside
24 it?

25 A. Half in the creek, enough you can see some of the gun

1 sticking out. Deputy Knight observed the gun when Mr.
2 Outlaw showed in general where it was.

3 Q. All right. Investigator, I'm going to show you
4 what's been marked as Exhibit -- State's Exhibit One. Is
5 this the gun you guys found?

6 A. It appears to be the gun, yes.

7 Q. Let me ask you this. Could you demonstrate for the
8 jury how it was placed in the ground if you wouldn't mind?

9 MR. CANNARELLA: I have an objection. How he found
10 it?

11 MR. JOYNER: Yes, Your Honor, that's what I'm saying.

12 BY MR. JOYNER:

13 Q. How -- when you found it?

14 A. I actually didn't remove the gun or find the gun. It
15 was sticking out like this.

16 Q. If you can show ---

17 A. Down more like this or it would have been like this
18 one or the other enough for Deputy Knight to see it when
19 he looked in there in the creek.

20 Q. I see. I see. Now, once you and Deputy Knight
21 retrieved the gun what did you do next?

22 A. We actually didn't retrieve the gun. The State Law
23 Enforcement Division did.

24 Q. You guys just stood there?

25 A. Correct. They were processing the crime scene for

1 us, pictures and all that stuff and collecting the
2 evidence.

3 Q. I see. I see.

4 MR. JOYNER: Beg the Court's indulgence.

5 BY MR. JOYNER:

6 Q. Investigator Watson, I want to go back for just a few
7 minutes. You were present when he gave the statement we
8 went through, the Miranda Waiver, and also through the
9 statement that he gave voluntarily. Was he in his right
10 mind when he gave you the statement?

11 A. Yes, sir. Yes, sir.

12 Q. He was?

13 A. I could smell alcohol. I knew he had been drinking,
14 but I know from training not to take his statement if
15 alcohol was affecting his judgment. Anyway, just from
16 talking with him, general talk, whatever, he was answer --
17 he was coherent and I figured he could make a statement.

18 Q. Was his voice slurred?

19 A. No, sir.

20 Q. When you spoke to him?

21 A. No, sir.

22 Q. Was he having any trouble walking?

23 A. No, sir, he walked in on his own and sat down on his
24 own.

25 Q. So from what you gathered he was in his right mind?

1 A. Correct.

2 Q. And it was a willing statement he gave?

3 A. Correct.

4 Q. Okay. Thank you, sir.

5 MR. JOYNER: No further questions.

6 CROSS-EXAMINATION

7 BY MR. CANNARELLA:

8 Q. He was arrested without incident at his home?

9 A. No, he didn't give me problems.

10 Q. He voluntarily waived his right to talk?

11 A. Correct.

12 Q. He gave a statement?

13 A. Correct.

14 Q. And you found the gun because he showed you where to
15 go look for it?

16 A. Initially, he told us the gun was one place.

17 Q. You found the gun because he showed you where to go
18 look for it?

19 A. After about two hours.

20 Q. If it wasn't for him you wouldn't have found it?

21 A. Correct.

22 Q. Thank you.

23 MR. CANNARELLA: That's all the questions I have,

24 Your Honor.

25 THE COURT: You may step down.

1 MR. REDMOND: The State would ask to reserve the
2 right to recall Investigator Watson. Your Honor, if I may
3 at this point, it's 4:15. Our other witnesses are coming
4 in from Columbia. There are other persons that are here,
5 so I think this would be an appropriate time to break for
6 the day and won't have too many more witnesses tomorrow.
7 We should finish our case tomorrow.

8 COLLOQUY

9 THE COURT: All right. We'll stop for the afternoon.
10 I have an appeal carried over from civil court for a
11 county. I think it was Marlboro or Darlington, but I've
12 got to resolve that in the morning at 10:00.

13 So I'm going to have y'all report at 10:15. There
14 may be attorneys in here arguing that appeal. Just, if
15 you don't mind, just slip on through very quietly. Come
16 around and just report to the jury room.

17 I'm going to instruct the bailiffs to let y'all come
18 on through where you can get in there and sit around and
19 have some coffee. 10:15 in the morning. Remember my
20 instructions, no communications. Have a good night.

21 (WHEREUPON, the jury panel was excused from the
22 courtroom at 4:20 p.m.)

23 THE COURT: Mr. Outlaw, is he out on bond?

24 MR. CANNARELLA: He's out on bond, Judge. Your Honor
25 set bond for him when this happened. Actually, he was

1 placed on house arrest, and it's been no incidents
2 whatsoever. Nothing at all with him. Nobody's heard a
3 peep out of him. All he does is honor His Honor's order
4 about being on house arrest. He goes to work every day
5 and goes back home on time. He has been allowed to go out
6 of town on several occasions, but it was approved by the
7 Court. We ask you to continue to allow him to be on bond
8 and be with his family.

9 THE COURT: I'm inclined to do that unless the State
10 has something.

11 MR. REDMOND: Your Honor, I haven't had a chance to
12 consult with the victim's family but I have consulted with
13 law enforcement, and based on that discussion we would not
14 have any objection to that. If I could just take a minute
15 to explain to the victim's family what's going on.

16 After talking with the victim's family, given the
17 fact that the trial has started and given the nature of
18 the offense, the family has expressed concern and I
19 explained to them that I would convey that to the Court.

20 THE COURT: I understand that stipulation is, Mr.
21 Cannarella, that unless he is meeting with you he is to go
22 directly home and stay there and come straight back to the
23 courthouse in the morning.

24 Mr. Outlaw, I'm advising you now that this case will
25 continue. We're not going to play California. We're not

1 going to play t.v. with this case, understand? This case
2 will continue in case you were to be late or fail to show
3 up I will not wait on you. You understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: We will try you in your absence if you do
6 not report back.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I hate to be that strict about it but
9 that's my policy especially after what's happened in
10 California the last few weeks. This court is not going to
11 tolerate that kind of behavior. Okay?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Then 10:00 in the morning.

14 MR. REDMOND: Thank you, Your Honor.

15 MR. CANNARELLA: Thank you Your Honor.

16 END OF TRANSCRIPT OF RECORD

17

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STATE OF SOUTH CAROLINA)
 -) COURT OF GENERAL SESSION
 COUNTY OF CHESTERFIELD) 02-GS-13-0159

STATE OF SOUTH CAROLINA)
 PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD
))
 WILLIAM OUTLAW)
 DEFENDANT)

April 4-6, 2005
 Chesterfield, South Carolina
 Volume 2 of 3

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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 HAROLD HANEY, Chesterfield Cty. Sheriff Dept.
 JANICE ROSS, Newberry Pathology
 SUSAN WILSON,
 JOHN TALBERT,

HOLLY EARLY,
BETTY ECHOLS,
WILLIE JEAN WINBURN,

HATTIE O. GORDON
Circuit Court Reporter

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	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1				
2				
3	12	Photo	102	114
4	13	Photo	102	118
5	14	Photo	102	118
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1 The question is, "Have you communicated with anyone
2 concerning any issue of this case or has anyone
3 communicated with you concerning any issue of this case."
4 As I said the answer that you will need to give back to
5 Madam Clerk is yes or no. Madam Clerk.

6 CLERK OF COURT: Ray Watson, Jr.?

7 JUROR: No.

8 CLERK OF COURT: Jimmie F. Catoe?

9 JUROR: No.

10 CLERK OF COURT: Jamie R. Horton?

11 JUROR: No.

12 CLERK OF COURT: Tiffany Alexander?

13 JUROR: No.

14 CLERK OF COURT: Randy Sowell?

15 JUROR: No.

16 CLERK OF COURT: Mary Burnell?

17 JUROR: No.

18 CLERK OF COURT: Edward Truesdale?

19 JUROR: No.

20 CLERK OF COURT: Bill Mullis?

21 JUROR: No.

22 CLERK OF COURT: Marlowe Funderburk?

23 JUROR: No.

24 CLERK OF COURT: Grover Jones?

25 JUROR: No.

1 CLERK OF COURT: Mary Miller?

2 JUROR: No.

3 CLERK OF COURT: Phillip Powell?

4 JUROR: No.

5 CLERK OF COURT: Ray Watson?

6 JUROR: No.

7 CLERK OF COURT: Beverly Gaskins?

8 JUROR: No.

9 THE COURT: Thank you. Solicitor, you may call your
10 next witness.

11 MR. JOYNER: Your Honor, the State would like to call
12 Officer Haney, please.

13 HAROLD HANEY, after being duly sworn, testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. JOYNER:

17 Q. Good morning, Officer.

18 A. Morning.

19 Q. Would you please state your full name for the Court?

20 A. Harold Haney.

21 Q. Mr. Haney, where do you live?

22 A. In Cheraw, South Carolina.

23 Q. How long have you been there?

24 A. Approximately 16 years.

25 Q. Sixteen?

1 A. Yes, sir.

2 Q. Okay. And what kind of family do you have?

3 A. I have a wife. I have a lovely daughter and a lovely
4 boy.

5 Q. Good. Good. How long have you been in law
6 enforcement?

7 A. 16 years.

8 Q. Sixteen?

9 A. Yes, sir.

10 Q. Okay. And what's your job? What do you do?

11 A. I'm currently the lieutenant of road patrol,
12 supervisor of street maintain, impound evidence control.

13 Q. Okay. I see. And what does that entail? What do
14 you o with that job?

15 A. I can stay a up here a couple hours explaining what I
16 do. Pretty much what I do is I make sure guys work their
17 shift. I make sure they treat the citizens of
18 Chesterfield County fairly.

19 Q. Okay.

20 A. But tomorrow I may be taking ---

21 Q. I understand. A little bit of the everything?

22 A. Yes.

23 Q. I see. Let me take you back to January 11th of 2002
24 about this incident. What was your first interaction
25 here?

1 A. Well. I was called shortly after midnight by
2 dispatch and they advised me there had been a shooting
3 incident at the Johnson residence off Bullard Ford Road.
4 And I advised him, the investigator on call, and advised
5 him to call Johnny Quick and Deputy David Watson and have
6 them respond as well. We normally went out on shooting
7 incidents as a team.

8 Q. Okay. Now, once you got this call and got to the
9 scene what did you see?

10 A. I pulled up on the scene as I say. I was making my
11 way down there. I was met by Sergeant James Dixon and
12 Deputy Knight. And they just went on and briefed me on
13 what happened and that two other deputies were at that
14 time taking statements from those individuals that were at
15 the scene when this incident took place.

16 But I did notice when I was walking up I did see a
17 body lying on the ground at the corner of the mobile home.

18 Q. Okay. Let me ask you this. The scene was already
19 secure ---

20 A. Yeah.

21 Q. --- when you got there?

22 A. Yes, sir.

23 Q. And you did a sketch?

24 A. Yes, sir, I did.

25 Q. Of the scene? Okay. I'm showing you what's been

1 marked as State's Exhibit 24. Is this the sketch that you
2 did?

3 A. Yes, sir, it is.

4 Q. Okay. And I want to put it where the jury can see
5 it. Would you explain to me and to the jury when you came
6 through which way did you come into the yard?

7 A. I approached -- there is a dirt drive that comes up
8 off Bullard Ford Road this way. I pulled in right here
9 and I walked up and seen -- I come in way. I was met by
10 Sergeant Dixon and Deputy Knight and they briefed me.

11 And from here, like I said, this is not to scale.
12 I'm not very artistic, but to get the point across here, I
13 could see the body of Mr. Johnson laying on the ground. I
14 could see a body. I could not tell who it was at the
15 time.

16 Q. Let me ask you this. What are these dotted lines?

17 A. The dotted lines are taping off the crime scene.
18 It's a system simple the Sheriff likes. We put this up to
19 try to keep folks out the crime scene.

20 Q. I see. It's just another way to ensure the evidence
21 by using red tape where it was?

22 A. That is correct.

23 Q. Now, would you explain to me what this up here, the
24 body?

25 A. Okay. This right here, this would symbolize

1 Mr. Johnson. I had different areas marked. I have
2 different areas mark with an 'A' and this circle here,
3 which would be the shotgun Mr. Johnson had that evening.
4 An area marked 'B' which would be the spent shell casing
5 from the shotgun that Mr. Johnson had. And, 'C' that was
6 the live round that would be put in the shotgun. That's
7 where I have it marked. That takes care of that area.

8 Q. Okay. Let me ask you this. I see there is a night
9 light back here in the back. Could you explain to me -- I
10 know this isn't to scale?

11 A. Well, without maybe giving an exact range on it -- I
12 couldn't give you an exact range on it, but I can tell you
13 at nighttime on this particular night this night light --
14 I can't get everybody to see what I want them to see here.
15 This night light it covers an area that was shown coming
16 across this way.

17 There was also a front porch light on as well, but I
18 can't give you an exact measurement. I can tell you the
19 night light comes back this way.

20 Q. Okay. And this down at the bottom here I see it says
21 'Red Toyota Truck?'

22 A. Yes, sir.

23 Q. If you were standing at that Red Toyota Truck with
24 those two light on the front of the house and the back of
25 the house which you said was casting a shadow, a light?

1 A. Yes, sir.

2 Q. To that end where the body -- were you able to see
3 the body from there?

4 A. I could see it from that area.

5 Q. And if provided enough light could you see?

6 A. Ye, sir, I could see the body laying on the ground in
7 this area.

8 Q. Okay. Okay. What about the woods?

9 A. Hum?

10 Q. Explain to me. I know this was a wooded area?

11 A. This is a wooded area all back through here on the
12 side.

13 Q. Okay. Now, in this area from the truck to the victim
14 is it wooded?

15 A. No, sir.

16 Q. It's open. How far behind the victim was open would
17 you estimate?

18 A. It was several -- it was several yards. I wasn't
19 running exactly kind of parallel to the trailer. It was
20 more back.

21 Q. I see. I see. So if you were to estimate, if you're
22 standing where the victim is beside the trailer, would it
23 be here?

24 A. I'd say further back than that.

25 Q. Maybe here?

1 A. I know it was further than first point where you
2 stopped at. So without seeing a location again I couldn't
3 be sure.

4 Q. So give or take maybe here?

5 A. Yes, sir:

6 Q. I see. And, Mr. Haney, I'm going to show you some
7 pictures there are of the sketch you just drew?

8 A. Yes, sir.

9 Q. The first one has been mark as State's Exhibit 12.
10 Do you recognize that?

11 A. Yes, sir. This is the back of the mobile home.

12 Q. Okay. And this has been marked State's Exhibit 15.
13 You recognize that?

14 A. Yes, sir. This is also a back of the mobile home.
15 You're looking at the back of the mobile home. This is
16 the left side.

17 Q. I see. Okay. And this has been mark State's Exhibit
18 16. Do you recognize that?

19 A. Yes, sir. This would be almost the angle I walked up
20 on the house. This picture was probably taken in the Red
21 Toyota Truck.

22 Q. Okay. I see. This is State's Exhibit 17. Is that a
23 fair and accurate picture?

24 A. Yes, sir, it is.

25 Q. And what is that?

1 A. That's the front of the mobile home and the Red
2 Toyota Truck. At that angle you can't see Mr. Johnson.

3 Q. And this is State's Exhibit 18?

4 A. This is just a more reverse picture to the right.
5 The full picture is over the Toyota Truck on the right
6 side of the mobile home.

7 Q. Okay. Thank you. This is a picture of State's
8 Exhibit 19. Would you explain that for us?

9 A. This is more or less the version of the earlier photo
10 you gave me. It's the back of the mobile home, left side.
11 This is where Mr. Johnson was shot at and eventually died.

12 This show is a picture of Mr. Johnson on the ground
13 covered with a towel and William's shotgun is all I can
14 see. In the background, you can see the Red Toyota Truck
15 in the background.

16 Q. Okay. And if I might ask you this final picture,
17 Exhibit 20. What can you tell me about that? Is that a
18 fair and accurate picture?

19 A. Yes, it is. This would be as we approached the
20 house. The driveway is there on the left side of the
21 mobile home which included the front left side and also a
22 picture of the night light in the backyard.

23 Q. Okay. If I could ask you. What is that and what is
24 this at the front of the house and this above the house?

25 A. This is a night light which is visibly seen in the

1 photograph that I had.

2 Q. Would you mind stepping down and showing the jury?

3 (Witness steps down from witness stand.)

4 MR. JOYNER: Your Honor, if I may publish these
5 photos to the jury?

6 THE COURT: Sure.

7 BY MR. JOYNER:

8 Q. Officer, if you would show the jury -- I know it's a
9 small picture and may be a little difficult to see the
10 light in the picture, but if you would pass it around,
11 please.

12 A. This would be the dirt road coming up. This is the
13 front of the trailer mobile home. This is the left side
14 of the mobile home. This here this is the night light.
15 This is the front porch right over here. Mr. Johnson was
16 lying on this side of trailer in the rear.

17 Q. If you could go down to show the people closer to
18 this end?

19 A. No problem. This would be where you drive up the
20 dirt drive there. This is the left side of the mobile
21 home. This is the front of the mobile home. This is the
22 night light there. And there is a porch light there. As
23 you can see I know it's small, but you can see a light
24 right in that corner and there is a light in the backyard.

25 MR. REDMOND: Your Honor, if it's not improper for me

1 to intervene if I could ask the Solicitor to speak a
2 little louder and a little slower. I think the court
3 reporter might be having a little difficulty.

4 A. Okay. I'll do it. This would be the dirt drive and
5 this is the left side of the mobile home. The front of
6 the mobile home as you can see you can see a light in that
7 truck. There is a night light right here in the backyard.
8 If I'm not mistaken Mr. Johnson used the rear of the home
9 for entering and exiting. Mr. Johnson's body was on the
10 right side. It can't be seen in this picture. It's the
11 very corner. Right back here.

12 Q. Thank you, Officer Haney.

13 A. Yes, sir.

14 (Witness returns to witness stand.)

15 Q. Officer, if I might ask you to hold this diagram up
16 again. This is the night light you just described?

17 A. Yes, sir, it is.

18 Q. By night light do you mean it's up on a light pole?

19 A. Yes, sir, it is.

20 Q. So it casts a pretty good light?

21 A. Yes, sir, it does.

22 Q. And, again, just to be sure, from the red truck to
23 the victim you were able to see the victim when you came
24 up?

25 A. Yes, I could see a body on the ground, yes, sir.

1 Q. Okay.

2 MR. JOYNER: And, Your Honor, I would like to move
3 also that the diagram as well as the photographs read out
4 earlier be entered into evidence.

5 MR. CANNARELLA: No objection, Your Honor.

6 THE COURT: In without objection.

7 (WHEREUPON, State's Exhibits Nos. 12, 15, 16, 17, 18,
8 19, 20, and 24 were admitted into evidence.)

9 MR. JOYNER: I have no further questions, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. CANNARELLA:

12 Q. Sergeant Haney?

13 A. Yes, sir.

14 Q. You brought artificial light with you?

15 A. Yes. I had a flashlight.

16 Q. I mean when those pictures were taken did you have
17 any artificial light? The camera illuminates the area in
18 order for you to see?

19 A. Yes, sir.

20 Q. Other than that you just had your flashlight and the
21 camera as so far as artificial light is concerned?

22 A. As far as the photos is concerned the artificial
23 lights, the S.L.E.D. Forensic Team took the photographs.

24 Q. Okay. And up here there was a shotgun?

25 A. Yes.

1 Q. There was a spent casing?

2 A. Yes, sir.

3 Q. There was a live round?

4 A. Yes, sir.

5 Q. Okay? You took Susan Wilson's statement, didn't you?

6 A. Susan Wilson, yes, sir.

7 Q. Did you take any other statements from anybody?

8 A. No, sir, I did not.

9 Q. Were any other statements taken from anybody?

10 A. Several deputies took statements.

11 Q. Do you know who they took statements?

12 A. Not without reviewing the case file, no, sir.

13 MR. CANNARELLA: That's all the questions I have,

14 Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. JOYNER:

17 Q. Officer Haney, just to be sure, without a flashlight
18 or any other artificial light, the light -- the night
19 light we spoke about and the light on the front of the
20 house that was sufficient for you to see from the truck to
21 the victim on the ground.

22 A. Yes, sir.

23 Q. All right. Thank you.

24 MR. JOYNER: No further questions.

25 RE-CROSS-EXAMINATION

1 BY MR. CANNARELLA:

2 Q. Were you informed in advance where that location of
3 the body was?

4 A. No, sir, I was not.

5 MR. CANNARELLA: I don't have any further questions.

6 THE COURT: All right. You may step down.

7 MR. JOYNER: Your Honor, the State would like to call
8 Investigator David Watson.

9 DAVID WATSON, after being duly sworn, testified
10 as follows:

11 MR. CANNARELLA: Your Honor, we do not object to any
12 exhibits that the Solicitor may his question Investigator
13 Watson about.

14 DIRECT EXAMINATION

15 BY MR. JOYNER:

16 Q. Investigator Watson, thank you for being back with us
17 today?

18 A. Okay.

19 Q. I want to show you an item that's been marked as
20 State's Exhibit 22. Do you recognize that?

21 A. I do.

22 Q. What is that?

23 A. That's the shotgun Mr. Outlaw through out off the
24 Bird Road by the creek.

25 Q. This shotgun, Steven's 12 gauge?

1 A. That is correct.

2 Q. And this has been mark as State's Exhibit One. This
3 is the shotgun in that photograph?

4 A. Correct.

5 Q. Okay. Thank you. And I'd like to show you what's
6 been marked as State's Exhibit 21. Do you recognize that?

7 A. It's just a different picture. Yes, the same. The
8 gun that Mr. Outlaw threw out.

9 Q. It's just a different angle?

10 A. Yes, sir.

11 Q. Let me ask you this. Do you recognize State's
12 Exhibit 13?

13 A. This is the dirt road right by the creek.

14 Q. And State's Exhibit 14?

15 A. That was just a shell casing that was out by the dirt
16 road.

17 Q. Okay. How would the shell casing -- in the picture I
18 see that the gun was open in the creek?

19 A. Right. How would the empty shell casing get all the
20 way down to the creek where the gun is? I would estimate
21 that when he breached the shotgun the spent shell came out
22 and fell on the road.

23 Q. Would you demonstrate to the jury how that would
24 work?

25 A. If you had one in there and did this, it would pop

1 out.

2 Q. I see. There was an ejector.

3 A. Yes, sir.

4 Q. And gun was found breached like that?

5 A. As shown in the photograph.

6 Q. Okay. Thank you.

7 MR. JOYNER: Your Honor, I would like to enter those
8 photographs into evidence.

9 THE COURT: Without objection.

10 (WHEREUPON, State's Exhibits Nos. 13,14,21 and 22
11 were admitted into evidence.)

12 MR. JOYNER: I would you like to publish them to the
13 jury?

14 THE COURT: Okay.

15 MR. JOYNER: No further questions, Your Honor.

16 MR. CANNARELLA: No questions, Your Honor.

17 THE COURT: You may step down.

18 MR. REDMOND: May it please the Court, Your Honor.

19 The State would next call Dr. Janice Ross.

20 JANICE ROSS, after being duly sworn, testified
21 as follows:

22 DIRECT EXAMINATION

23 BY MR. REDMOND:

24 Q. Dr. Ross, by whom are you employed?

25 A. In Newberry. Newberry Pathology Associates.

1 Q. In what capacity?

2 A. I am a forensic pathologist on Hospital Pathology
3 Associates.

4 Q. Could you tell us, first, your educational background
5 towards achieving the status of the position that you have
6 now?

7 A. Yes, I received a bachelor's of science degree at the
8 University of South Carolina and an M.D. from the Upstate
9 Medical Center in Upstate New York. I then did four years
10 of training in pathology in Syracuse and further work
11 after that in forensic pathology.

12 Q. Okay. And could you tell us where you have been
13 employed since the time you became a forensic pathologist?

14 A. I was a hospital pathologist in the coroner and
15 coroner's physician in Central, New York for 12 years.
16 Then I came back home to South Carolina and have been in
17 Newberry since the year 2000.

18 Q. And an estimation about how many times would you say
19 you have testified as an expert in the field of forensic
20 pathology?

21 A. In South Carolina at least 20 times.

22 MR. CANNARELLA: Your Honor, we stipulate to
23 Dr. Ross' qualifications. I know her.

24 THE COURT: All right.

25 MR. REDMOND: Thank you, Your Honor.

1 THE COURT: So qualified. You may proceed.

2 BY MR. REDMOND:

3 Q. Now, in reference to the case involving the victim,
4 William Michael Johnson, did you have an opportunity to
5 perform an autopsy on the 12th of January 2002?

6 A. Yes.

7 Q. And if I might present to you what has been marked
8 and introduced as State's Exhibit Number Eight.

9 MR. REDMOND: Your Honor, permission to approach the
10 witness?

11 THE COURT: Sure.

12 BY MR. REDMOND:

13 Q. Does that look like an accurate, true copy of the
14 statement -- excuse me, of the autopsy report?

15 A. Yes.

16 Q. And pursuant to your autopsy on Mr. Johnson, could
17 you tell the jury what your findings were as it relates to
18 cause of death?

19 A. We found evidence of a shotgun wound with entrance
20 wound and exit wound in the left chest. And then
21 internally these lacerations went through the liver. One
22 went in the liver, the heart, both lungs, and five of the
23 buckshot came out right back and we found five other ones
24 underneath the skin.

25 We, in addition, found two buckshot in the clothes

1 that had come out of the skin but were caught up by the
2 clothing.

3 Q. And pursuant to your autopsy on Mr. Johnson were you
4 able to determine, and approximate, the distance from
5 which he had been shot?

6 A. ~~We could tell it was a distant shot.~~ When you shoot
7 a shotgun there are either pellets or buckshot. In this
8 case buckshot which comes out in a ball all together for
9 several feet and before they start separating and
10 spreading out in a cone shape fashion.

11 I can't tell exactly the distance unless you take
12 that same shotgun and do some target shots and practice
13 shots but we knew it was several feet. Up to 30, 40, 50
14 feet. ~~30, 40 feet.~~

15 Q. Now, you had indicated the pellets.

16 MR. REDMOND: If I may approach the witness with
17 State's Exhibit Number Three?

18 THE COURT: All right.

19 BY MR. REDMOND:

20 Q. If I could ask you to review this, Your Honor -- I
21 mean excuse me, Miss Ross. And would you tell the jury,
22 first of all, if those are the pellets that were removed
23 from the body of William Michael Johnson?

24 A. These were the buckshot removed from the body and,
25 again, two were found underneath the clothing.

1 MR. REDMOND: And if I may also approach ---

2 Q. Well, let me ask you, first. Were there any -- was
3 blood taken and sent to S.L.E.D. for, I guess an
4 examination, through the Toxicology Department?

5 A. Yes.

6 MR. REDMOND: If I may approach with State's Exhibit
7 Number Nine.

8 BY MR. REDMOND:

9 Q. And is that a copy of the S.L.E.D. report that was
10 forwarded to you as conducted by S.L.E.D.?

11 A. Yes.

12 Q. Now, could you tell the jury what the findings were
13 as it relates to that report -- as is indicated on it?

14 A. Briefly, there was a small odor of alcohol coupled
15 with drugs that were antianxiety therapy which the levels
16 are therapeutic. In other words, they are within what
17 they're supposed to be.

18 Q. Okay. And when you say, 'antianxiety medication,'
19 would that be stated as such that it's the type of
20 medication that's supposed to calm someone down as opposed
21 to increase any type anxiety?

22 A. Yes, sir.

23 MR. REDMOND: Beg the Court's indulgence. I'm
24 looking for one of the pictures. I got it right here. If
25 I may approach the witness, Your Honor, with what has been

1 marked as State's Exhibit 23?

2 THE COURT: All right.

3 BY MR. REDMOND:

4 Q. Is that, Dr. Ross, a picture that was taken during
5 the course of the autopsy on William Michael Johnson?

6 A. Yes, sir.

7 MR. REDMOND: And at this time I think the Defense
8 will not object, so I would ask that that picture be moved
9 into evidence?

10 MR. CANNARELLA: No objection, Your Honor.

11 THE COURT: All right. So noted.

12 (WHEREUPON, State's Exhibit No. 23 was admitted into
13 evidence.)

14 MR. REDMOND: And, Dr. Ross, could you explanation
15 that particular picture and, actually, if I could ask you
16 to step down briefly to come to about right where I am
17 since that is a small picture. Try to get stand for the
18 jury to see.

19 (Witness steps down from the witness stand.)

20 A. Yes, sir. This is a picture of ---

21 Q. If you could stand about right here.

22 A. That is a picture of the front of the victim, William
23 Johnson. And these are the entrance wounds and we put
24 little like Q-Tips in there to indicate the direction that
25 they're going in so you can see that they're going into

1 the left side of the chest. And they're going in the
2 direction of forward to right and toward the back.

3 Q. And, Dr. Ross, you can take your seat. Thank you.

4 (Witness returns to witness stand.)

5 BY MR. REDMOND:

6 Q. Dr. Ross, very important question. Does that picture
7 and the results that you found during the course of your
8 autopsy indicate whether or not the victim, William
9 Michael Johnson, whether his arms were extended at the
10 time he was shot?

11 A. From the entrance wounds in the chest, and some were
12 pretty much inside of the side of chest, and there were no
13 wounds at all on the arms. It indicates to us that the
14 arms either had to be, left arm, that they had to be on
15 ~~the side of the body or up so that these wounds went into~~
16 ~~the side without -- and missing the arm.~~

17 MR. REDMOND: Thank you, Dr. Ross. Please answer any
18 questions Mr. Cannarella may have.

19 CROSS-EXAMINATION

20 BY MR. CANNARELLA:

21 Q. Was he standing like that right there?

22 A. Right. That could be possible.

23 Q. And these wounds are left and right?

24 A. Yes.

25 Q. Okay.

1 MR. CANNARELLA: Thank you. That's all the question
2 I have.

3 THE COURT: May the witness be excused?

4 MR. REDMOND: Without objection.

5 MR. JOYNER: The State would like to call Miss Susan
6 Wilson to the stand.

7 SUSAN WILSON, after being duly sworn, testified
8 as follows:

9 DIRECT EXAMINATION

10 BY MR. JOYNER:

11 Q. Miss Wilson, would you state your name for the
12 record.

13 A. Susan Ray Wilson.

14 Q. And Miss Wilson, how old are you?

15 A. Thirty-three .

16 Q. And you have kids?

17 A. Yes, sir, two boys.

18 Q. What are their names?

19 A. Brandon Johnson and William Michael Johnson.

20 Q. Please slow down if your don't mind for the court
21 reporter. What were the names of those children?

22 A. Brandon Johnson and William Michael Johnson.

23 Q. Let me ask you this. How long was your relationship
24 with Mr. Johnson?

25 A. Ten and a half years.

1 Q. And were you guys married?

2 A. Common law.

3 Q. Common law. Y'all had been together consistently for
4 ten and a half years?

5 A. Yes, sir.

6 Q. Let's me take you back to January 11th of 2002 when
7 this incident happened. What was going on right before
8 this started?

9 A. ~~Michael and William had been kidding around. They~~
10 ~~were drinking. Everything was fine.~~

11 Q. Well, and then they came back to your house?

12 A. Yes, sir.

13 Q. Okay. What happened next after they got back?

14 A. Well, they had been there a little while and John
15 Talbert came up.

16 Q. What happened when they came up.

17 A. A confrontation between William and John.

18 Q. Between Mr. Talbert?

19 A. Yes, sir.

20 Q. ~~Was there ever a confrontation between Michael and~~
21 ~~Mr. Outlaw?~~

22 A. ~~No.~~

23 Q. ~~None at all?~~

24 A. ~~None at all.~~

25 Q. Okay. Let me ask you this. What were they fighting

1 about?

2 MR. CANNARELLA: If she has personal knowledge. We
3 object if she doesn't have personal knowledge.

4 A. Cocaine.

5 MR. JOYNER: She has personal knowledge, Your Honor.

6 BY MR. JOYNER:

7 Q. Now, explain to me about what you mean by fight or
8 altercation. What exactly went down? Could you describe
9 it?

10 A. William had met John at the back door and they went
11 outside and they talked and John went in the backyard and
12 William got in his car and he left.

13 Q. ~~Mr. Outlaw left?~~

14 A. Yes, sir.

15 Q. Do you know where he went? You just know that he
16 left?

17 A. I just know he left.

18 Q. About how long was he gone?

19 A. He wasn't gone a long period of time. ~~Maybe five,~~
20 ~~ten minutes, maybe.~~

21 Q. Okay. Not that long.

22 A. Yes, sir.

23 Q. Okay. And then he came back?

24 A. Then he came back.

25 Q. What did he do when he got back?

1 A. He had the shotgun.

2 Q. Now, let me get this right. He got out of the car
3 with a shotgun?

4 MR. CANNARELLA: Objection, leading.

5 THE COURT: Rephrase.

6 BY MR. REDMOND:

7 Q. How did he get out of his car?

8 A. I didn't see William get out of his car cause he was
9 on the side of the trailer and I was on this side.

10 Q. Okay. I see. Well, tell me after he got back tell
11 me the next thing you saw?

12 ~~A. Michael got his gun and went out the back door.~~

13 Q. ~~Did Michael say anything to you about why he got his~~
14 ~~gun?~~

15 A. ~~No.~~

16 Q. ~~Nothing? He just went out with the gun?~~

17 A. ~~Yes, sir.~~

18 Q. What happened next?

19 A. I heard Michael say, "Put that gun down." And after
20 I heard that I heard a gunshot. I opened the door and
21 everyone was hollering at me to call 911.

22 Q. Now, what exactly did Michael say to William?

23 A. "William, man, why don't you put that gun down."

24 Q. He said, "William, man, why don't you put that gun
25 down?"

- 1 A. Yes, sir.
- 2 Q. Okay. You only heard one shot?
- 3 A. ~~I only heard one shot.~~
- 4 Q. ~~From the time Michael said, "William, man, why don't~~
5 ~~you put that gun down," how long before you heard the~~
6 ~~shot?~~
- 7 A. ~~Not long at all. Maybe a few seconds or something~~
8 ~~like that.~~
- 9 Q. Five second? Ten second?
- 10 A. Maybe. Maybe not that long.
- 11 Q. Okay. Now, you saw where Michael was; is that right?
- 12 A. Yes, sir.
- 13 Q. Did you see where Mr. Outlaw was at this time?
- 14 A. ~~Mr. Outlaw was on the other side of the Toyota.~~
- 15 Q. On the Toyota Truck. How far away was it, if you can
16 estimate, from me to you.
- 17 A. Further.
- 18 Q. Further. Here?
- 19 A. A little bit further.
- 20 Q. A little bit further. Was he about right here? Is
21 this pretty close?
- 22 A. Yes, sir. Something like that about that distance.
- 23 Q. About this distance. You being Michael, I'll be
24 Mr. Outlaw. They were about this far away?
- 25 A. Yes.

1 Q. Now, I know there was some testimony earlier about
2 lighting. Could you explain the lighting around your
3 house?

4 A. He had a big night light in the backyard and front
5 porch light.

6 Q. Would the front porch light and the big night light
7 where I was standing being Mr. Outlaw you being
8 Mr. Johnson, would they have been able to see each other?

9 A. Yes, sir.

10 Q. You're sure?

11 A. Yes, sir.

12 Q. Okay. And, again, this night light is it up on a
13 pole?

14 A. Yes.

15 Q. It casts a significant amount of light?

16 A. Yes, sir.

17 MR. JOYNER: Beg the Court's indulgence.

18 BY MR. JOYNER:

19 Q. You said earlier that everyone said to call 911.
20 Michael had been shot. And then you wrote what did you do
21 then?

22 A. I went back in the back door and called 911.

23 Q. Okay. Let me ask you this. Did you see Outlaw after
24 that at all?

25 A. I seen him leaving.

1 Q. You saw him leaving?

2 A. Yes.

3 Q. ~~How far from the time you heard the shot until he~~
4 ~~left?~~ How long would you say?

5 A. Not long at all.

6 Q. Would it be immediately?

7 A. ~~It was immediately.~~

8 Q. Okay. How was he leaving?

9 A. His car.

10 Q. You mean -- could you explain? Was he like a race
11 car? Was he getting out fast or slow?

12 A. He left quickly.

13 Q. And he left immediately at the shooting?

14 A. Yes, sir.

15 MR. JOYNER: Your Honor, I don't have any further
16 questions.

17 CROSS-EXAMINATION

18 BY MR. CANNARELLA:

19 Q. Y'all live off of Bullard Ford Road?

20 A. Yes, sir.

21 Q. What was the name of the dirt road that y'all lived
22 on?

23 A. Quisene.

24 Q. And across the street from where y'all lived those
25 ten years. Did you say ten years?

- 1 A. Yes, sir.
- 2 Q. Miss Betty Echols lived there -- she lives across the
3 street?
- 4 A. Yes, sir, she does.
- 5 Q. And she's been living there a long time, too?
- 6 A. Yes.
- 7 Q. It's pretty close. Y'all are neighbors of the sort
8 in terms of the distance?
- 9 A. Yes.
- 10 Q. You gave a statement to Susan. May I call you Susan?
- 11 A. Yes, sir.
- 12 Q. Susan, you gave a statement to Investigator, I
13 believe it was Sergeant Haney, right?
- 14 A. Yes, sir.
- 15 Q. Do you have a copy of it?
- 16 A. I do but not on me.
- 17 Q. I have one right here. I want to go over this
18 statement with you, okay?
- 19 A. Okay.
- 20 Q. You -- that's your signature right there?
- 21 A. Yes, sir it sure is.
- 22 Q. And, okay, would you read the first -- it says, "At
23 11:30?"
- 24 A. "At 11:30 they pulled up in a red truck."
- 25 Q. You need to slow down. Okay. And it says then, now,

1 when they pulled up in the red truck they pulled up, they
2 ~~parked the red truck at the bottom of the driveway sort~~
3 of. Didn't they -- do you remember where it was?

4 A. Yes, sir.

5 Q. Where was it?

6 A. ~~It was on the left side of the trailer.~~

7 Q. Okay. Like in this State's Exhibit 24. You see
8 where they got the red to drug?

9 A. Yes, sir.

10 Q. And that's accurate, isn't it? That about where it
11 was, isn't it?

12 A. No. But to be honest with you that's not where my
13 Michael was laying. He was lay on the corner.

14 Q. On the corner of the house?

15 A. Yes, sir.

16 Q. And you say John Talbert and William Outlaw had a few
17 words, is that right?

18 A. Yes, sir.

19 Q. ~~And then John hit William Outlaw?~~

20 A. ~~Yes, sir.~~

21 Q. Did you see him hit him?

22 A. ~~Did I see John hit William?~~

23 Q. Um hum.

24 A. ~~Yes, sir.~~

25 Q. You did. Now, can you point John Talbert out in the

1 courtroom?

2 A. Right there.

3 Q. He's raising his hand. Could you stand up, please,
4 Mr. Talbert. Is that Mr. John Talbert?

5 A. Yes, sir

6 Q. You can sit down, Mr. Talbert. When he hit
7 William -- William would you stand, please. When he hit
8 William did he hit him with his fist?

9 A. Yes.

10 ~~Q. He hit him in his left eye?~~

11 ~~A. Yes, sir.~~

12 Q. He clenched -- Talbert clenched his fist? He drew
13 back and popped him up against his vehicle, didn't he?

14 A. Yes, sir.

15 Q. And I believe in your statement you say William was
16 hit in the jaw?

17 A. Okay. On the left side of the face. There was a lot
18 going on at the time.

19 Q. And it knocked -- almost knocked William to the
20 ground, didn't it?

21 ~~A. It knocked William on his car.~~

22 Q. What was about the light pole. You said what about
23 it?

24 A. Cause William's car with you light there where the
25 night light was in the back yard.

1 Q. Well, who hit the light pole?

2 A. William.

3 Q. He fell against the light pole?

4 A. Yes, sir.

5 Q. Staggering?

6 A. Yes, sir.

7 Q. And when he was pulled off did you see John Talbert
8 throw a left hook into his windshield?

9 A. No, sir.

10 Q. You didn't see that?

11 A. No, sir.

12 Q. All right. You say he jumped in his car and drove
13 past down the road, dirt road?

14 A. Yes, sir.

15 Q. Okay. And came back and maybe three ---

16 A. Three minutes.

17 Q. Maybe three minutes. And you say he had a shotgun in
18 your statement but you already admitted you didn't really
19 see him with that gun. You just assumed he had a gun in
20 the statement right here?

21 A. Yes, sir. I assumed he had a shotgun cause he shot
22 Michael.

23 Q. Okay. But that was only after you heard a shot?

24 A. That was after I heard my Michael say, "William, man,
25 why don't you put that gun down."

1 Q. But in your statement right here you never say
2 anything about Michael having a shotgun when you gave this
3 statement at 2:45 that morning?

4 A. I told him Michael got his shotgun after William come
5 back to the trailer.

6 Q. But it's not in the state right here?

7 A. There was a lot going on that night. Might be should
8 have, but there was a lot going on. You don't think about
9 all that at one time.

10 Q. There was one other significant thing you left out
11 here. You only indicated you heard one gunshot?

12 A. And all I heard was that one gunshot.

13 Q. Okay. And you believe that that was the shot that
14 William Outlaw fired?

15 A. I know it was. When I opened the back door Michael
16 was laying in Ricky Stroud's lap.

17 Q. Well, explain this to me. If you didn't hear Michael
18 Johnson fire his gun how could you have heard him say
19 anything to William at all?

20 A. Cause I had the kitchen window open.

21 Q. But you didn't hear Michael Johnson fire a shot?

22 A. No, I didn't.

23 Q. Did y'all keep guns in the house?

24 A. Yes.

25 Q. Two nine millimeters?

- 1 A. There was no nine millimeters in the house at the
2 time, no, sir. They were all gone.
- 3 Q. They had been there before?
- 4 A. They had been there before.
- 5 Q. Well, wasn't Michael on probation for those weapons?
- 6 A. Yeah, Michael was on probation.
- 7 Q. Convicted felon in possession of weapons?
- 8 A. I'm not.
- 9 Q. He was?
- 10 A. He was, yes, sir.
- 11 Q. In violation of law?
- 12 A. Yes, sir.
- 13 Q. Black and chrome, remember that one?
- 14 A. Yes, sir. It was mine.
- 15 Q. It was yours?
- 16 A. Yes, sir.
- 17 Q. And you had purchased it in your name?
- 18 A. Yes.
- 19 Q. That's right because Michael couldn't buy one?
- 20 A. That's correct.
- 21 Q. And that was your's. You remember on September 25th
22 of 2000 what happened in Florence?
- 23 A. Yes, sir.
- 24 Q. You were driving a Buick?
- 25 A. Yes, sir.

- 1 Q. Y'all were in traffic. He was shot riding passenger
2 side?
- 3 A. Yes, sir.
- 4 Q. He had that gun with him then, didn't he?
- 5 A. It was in the glove box?
- 6 Q. A convicted felon in proximity to a leaded nine
7 millimeter?
- 8 A. Yes, sir.
- 9 Q. Well, Sissy, that nine millimeter had already been
10 reported stolen by you, true?
- 11 A. Yes, sir.
- 12 Q. So you filed a false police report?
- 13 A. No, sir. It was my brother who took the gun.
- 14 Q. But you got it back?
- 15 A. Yes, sir.
- 16 Q. Your brother took it?
- 17 A. Yes, sir.
- 18 Q. Okay. And on what night, Sissy, you're saying there
19 was only one gun in the house?
- 20 A. Yes, sir.
- 21 Q. That all you knew about?
- 22 A. That was only one that was there to the best of my
23 knowledge.
- 24 Q. Well, at least at times -- Michael's pretty violent,
25 wasn't he?

1 A. He could be.

2 Q. Well, were you -- do you know -- tell us about the
3 Monday before this happened at your house right across the
4 street from where -- you know Betty lives across the
5 street from you, Betty Echols, and she related to William
6 Outlaw's family, isn't she?

7 A. Yes, sir.

8 Q. And can you tell us what happened. What was that
9 shooting about at y'all's house that Monday before this
10 that involved a green van?

11 MR. REDMOND: Your Honor, I'm having trouble -- I
12 know it's the acoustics, but I'm having trouble hearing
13 his questions. If I can just ask him to speak a little
14 louder.

15 BY MR. CANNARELLA:

16 Q. At times he could be violent. Well, tell us about
17 the violence that occurred at y'all's house on that
18 Monday. Were you there before this incident took place?

19 A. I'm not sure what incident you're talking about.

20 Q. Is that because there's been a lot of them? I'm
21 talking about the incident that happened on that Monday
22 because this occurred on the 11th. So it would have been
23 the Monday before this, maybe, I don't know, the 7th or
24 something when the police were called out there because
25 there was a shooting at the trailer. Were you there? If

1 you weren't there, it's okay?

2 A. I can't recall.

3 Q. You don't remember the green van coming by and firing
4 shots at y'all at the house?

5 A. No, sir.

6 Q. Okay. Well, you say at times his could be a violent
7 person. How about four, five months before that. Did he
8 ever -- did Michael ever chase you and your children off?
9 You drove off in a truck out a path through a field to get
10 away that he fired a gun at you. You remember that? That
11 happened, didn't it?

12 A. Yes, sir. That was me and Michael's business. Not
13 everyone else's.

14 Q. And your children were in the car with you?

15 A. My one child at the time was in the car.

16 Q. A nine millimeter bullets pierced the metal on that
17 truck?

18 A. Yes, it did.

19 Q. And you were getting away from there?

20 A. Yes, sir.

21 Q. How about personal, physical confrontations between
22 you and him?

23 A. Yes, sir. We had them, but I don't know what that's
24 got to do with what's going on now.

25 Q. Did you and Mr. Talbert have a discussion about what

1 your statements to the police were going to be like before
2 y'all gave them?

3 A. No, sir, we sure didn't.

4 Q. Now, the time you had that nine millimeter in the
5 glove box of the car over in Florence, Michael drew that
6 gun out and pointed it at Eliza Singletary?

7 A. Michael did have it out but he didn't point it at
8 anybody.

9 Q. He was arrested for it?

10 A. Yes, he was.

11 Q. He could be violent at times?

12 A. Yes, sir.

13 Q. Where are you and your children living now?

14 A. In Darlington County.

15 Q. How old are they now?

16 A. Ten and four.

17 Q. If in your statement, Susie, you said that William
18 called out John, is that right?

19 A. He did.

20 Q. And but John didn't go?

21 A. He, he didn't.

22 Q. Michael did?

23 A. Yes, sir.

24 Q. Where was John?

25 A. John was on the other side of the mobile home.

1 Q. Now, I don't know what happened. You mean on the
2 other side?

3 A. In the backyard.

4 Q. Where does this -- well, let me show you. They drew
5 that. John was standing over here?

6 A. Yes, sir.

7 Q. Stayed here the whole time?

8 A. Yes, sir.

9 Q. Okay. And you never heard but one shot?

10 A. Never heard one. That one shot.

11 Q. But yet there were other things that you testified to
12 you heard in so far as voices were concerned, but you
13 never heard the first shot?

14 A. Yes, sir.

15 MR. CANNARELLA: That's all the questions I have,
16 Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. JOYNER:

19 Q. Miss Wilson, one thing I want to get right for the
20 jury. After Talbert hit Outlaw, Outlaw left?

21 A. Yes, sir.

22 Q. You saw him get in his car and leave?

23 A. Yes, sir.

24 Q. And then he came back?

25 A. Yes, sir.

- 1 Q. With a gun?
- 2 A. Yes, sir.
- 3 Q. Let me ask you this. You said that there was some
4 business with you and your husband?
- 5 A. Yes, sir.
- 6 Q. And you guys argued sometimes?
- 7 A. Yes, sir.
- 8 Q. And you said it didn't have anything to do with this?
- 9 A. No, sir. It didn't have nothing to do with this.
- 10 Q. Okay. Let me ask you this. Outlaw and Michael were
11 together that day?
- 12 A. Yes, sir.
- 13 Q. Riding around together?
- 14 A. Yes, sir.
- 15 Q. Were they arguing?
- 16 A. No, sir.
- 17 Q. Prior to that day had Michael hit Outlaw?
- 18 A. No, sir.
- 19 Q. Had his pulled a gun on him to your knowledge?
- 20 A. Not to my knowledge.
- 21 Q. When they where there at the house together before
22 Talbert got there, things were fine?
- 23 A. Yes, sir.
- 24 Q. After he was hit, left, came back with the gun, let
25 me ask you this. You said Michael got his gun and went

1 out?

2 A. Yes, sir.

3 Q. Why did he do that? Was he protecting you and the
4 kids?

5 A. Yes.

6 MR. CANNARELLA: Objection, Your Honor. I mean I
7 don't mind him asking one question, but he can't testify
8 for her.

9 THE COURT: Rephrase.

10 BY MR. JOYNER:

11 Q. Why do your think he went out with the gun?

12 A. Because the kids were in the house and he didn't want
13 any trouble there.

14 Q. How many kids were in the house?

15 A. Two. A six year old and a one -- wasn't even one
16 yet.

17 Q. And whose house was it?

18 A. Me and Michael.

19 Q. You own it?

20 A. Yes.

21 Q. And whose yard was it that everybody was in?

22 A. It was our yard.

23 Q. And what proximity to the house was Michael when he
24 was shot? How close was he to the house when he was shot?

25 A. Close.

1 Q. From me to you?

2 A. A little bit closer.

3 Q. A little closer?

4 A. Yeah.

5 Q. So he was this close to the house at least?

6 A. Yes, sir.

7 Q. And Outlaw was up in your yard?

8 A. Yes.

9 Q. The yard that you said earlier that you and Michael
10 owned?

11 A. Yes.

12 Q. Thank you.

13 MR. JOYNER: No further questions.

14 MR. CANNARELLA: Nothing no response, Your Honor.

15 THE COURT: The witness may step down. Ladies and
16 gentlemen of the jury, the Court is asking that we take a
17 15 minute recess. Knock off for 15 minutes. Y'all step
18 back to your room. Everybody else remain seated while the
19 jury departs to the jury room.

20 (WHEREUPON, the jury panel was excused from the
21 courtroom at 11:46 a.m.)

22 COLLOQUY

23 THE COURT: Okay. I know emotions a reeling from
24 high in matters like this. I understand that. I'm human,
25 too. And I know how bad things can be especially in a

1 case where someone's life was taken. I just want to take
2 a minute or two. I know we've got family members on both
3 sides of this issue.

4 We're going to have to take a break. These
5 facilities are very limited. You have the bailiff staff,
6 Sheriff's Department are here for your protection.
7 They're going to be watching things. I don't want any
8 trouble out of anybody.

9 I just wanted to remind everyone the courthouse
10 grounds and the entire courthouse are under the Court's
11 control. But if you feel like that you've got to say
12 something out of the way to someone I would suggest you
13 leave cause any inappropriate behavior on the courthouse
14 grounds is to reported to me. I may take some measure
15 that won't please you.

16 In other words, we're not going to tolerate any
17 trouble. Okay. All right. We're in recess for 15
18 minutes.

19 (WHEREUPON, Court was in recess at 11:50 a.m. and
20 reconvenes at 12:10 p.m.)

21 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
22 identification only.)

23 THE COURT: Y'all ready?

24 MR. REDMOND: State's ready, Your Honor.

25 THE COURT: Bring the jury in.

1 (WHEREUPON, the jury panel enters the courtroom at
2 12:10 p.m.)

3 MR. REDMOND: Your Honor, if it please the Court, the
4 State would now call John Talbert to the stand.

5 JOHN TALBERT, after being duly sworn, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. REDMOND:

9 Q. Mr. Talbert, where are you from originally?

10 A. Hartsville.

11 Q. And in fact you were born and raised in Hartsville?

12 A. Well, I'm move from Patrick to Hartsville in '92 and
13 I stayed in Hartsville from '92.

14 Q. And how long did you live in Hartsville?

15 A. For I'd say approximately about 13, 14 years.

16 Q. I believe I was your school bus driver back years
17 ago. We're not going to get into how many years. Now,
18 where did you move after you left Hartsville?

19 A. Back to Patrick.

20 Q. Back the Patrick. And at this particular time where
21 did you reside?

22 A. I'm staying at the Good Samaritan Colony over in
23 Ruby.

24 Q. Could you tell the jury why are you there at Good
25 Samaritan Colony right now?

1 A. I had got in some trouble and received probation.

2 And I have to stay up there for one year.

3 Q. Okay. And what's the purpose of you being at Good
4 Samaritan Colony?

5 A. They help you get your life together. I had a
6 previous drug problem.

7 Q. And in fact because of the drug problem that you had
8 circumstances were you had been convicted in the past of
9 certain offenses?

10 A. Yes, sir.

11 Q. And in fact and just to go through just in fairness
12 and to be honest with the jury, back in 2002 I believe you
13 had a grand larceny conviction?

14 A. Yes, sir.

15 Q. Forgery conviction in 2003. Actually, three forgery
16 convictions in 2003. A financial card conviction at the
17 same time. Those were all at the same time. As well as
18 grand larceny, forgery and another financial card fraud.
19 Those were all at the same time?

20 A. Yes.

21 Q. And then, currently, in February of 2005 sentenced on
22 burglary second degree?

23 A. Right.

24 Q. And let me take you back to the incident. The 11th
25 of January 2002. Actually, let me take you back a little

1 bit before that. Do you know the defendant?

2 A. Yes, I do.

3 Q. And for purposes of the record is his name William
4 Outlaw?

5 A. To my knowledge that's what I was introduced as.

6 Q. And is he, William Outlaw, the gentleman seated with
7 Mr. Cannarella's left

8 A. Yes.

9 MR. REDMOND: Your Honor, may the record reflect that
10 the defendant has been identified by Mr. Talbert.

11 BY MR. REDMOND:

12 Q. Did you have, prior to this incident on the 11th of
13 January, did you have the opportunity to encounter the
14 defendant in an incident that resulted in what occurred on
15 the 11th of January?

16 A. Yes.

17 Q. And would you tell the jury about that?

18 A. We had went -- it was a couple months prior to this
19 incident. We went ---

20 MR. CANNARELLA: I'll object to that, Your Honor. He
21 said a couple months prior to this something took place,
22 and I don't know exactly what he's going to talk about and
23 ate maybe improper for him to discuss anything they happen
24 two months later.

25 MR. REDMOND: The State's position is that it

1 actually forms the basis of why this incident occurred. I
2 think the jury is entitled to know what led up to this
3 particular incident.

4 THE COURT: All right. I'll go ahead, but be ready
5 to object if you think it's out of ordinarily develop
6 information.

7 MR. CANNARELLA: This defendant -- goes to character.
8 It would be, Your Honor.

9 BY MR. REDMOND:

10 Q. Mr. Talbert, again, you were saying a couple months
11 prior?

12 A. Yes, sir.

13 Q. And could you continue?

14 A. Back in November, we had went one night and picked up
15 ---

16 MR. CANNARELLA: See, Judge, I'm going to object to
17 that. I don't know what he's talking about. I think it
18 might just be safer just to proffer what he's going to
19 say.

20 MR. REDMOND: If we could proffered outside the
21 presence of the jury.

22 THE COURT: Ladies and gentlemen, if y'all could step
23 back and let me sort this out.

24 (WHEREUPON, the jury panel was excused from the
25 courtroom at 12:16 p.m.)

PROFFER TESTIMONY

1
2 BY MR. REDMOND:

3 Q. Mr. Talbert, would you go ahead. We're out of the
4 presence of the jury and testify as to what occurred a
5 couple months prior to this incident, the shooting of
6 Michael Johnson?

7 A. Okay. It was back that November. We had went, me
8 and Michael and William. We went and picked up a quarter
9 ounce of cocaine. And then after it was all over -- it
10 was William's cocaine. And after we had left we come back
11 home.

12 We drop Michael off. Me and William stopped by the
13 bar and got a beer. William carried me home. He dropped
14 me at my house. Well, me and my wife was having trouble
15 so in the process, he was leaving. As I was standing at
16 the door knocking on my door I saw two cars come down the
17 drive and I knew it was the law.

18 So I took off and I ran. Well, he ran going down the
19 driveway at that time he threwed the cocaine out the
20 window.

21 Q. He who?

22 A. William threw his cocaine out the window. The law
23 stopped him, searches him and let's him go on. Okay. The
24 next morning when I returned home that's when I had found
25 out. I didn't stay at my house that night. I found out

1 all that took place that night. When I got home the next
2 morning my wife told me what all had went down about him
3 throwing the cocaine out. Me and Michael come back
4 looking for it that morning, sometime 2:00 or three
5 o'clock in the morning.

6 Well, then that's that night that the shooting took
7 place I had called over there from the bar right up the
8 street, and when I knew -- and, William, matter of fact
9 answered the telephone that night at Michael's house.

10 And when he went down there and pulled up in the yard
11 we got out to walk in the house. William met me at the
12 door and asked me why did I steal his cocaine. And me and
13 him got in a fuss and that's when I hit him in the head.

14 MR. REDMOND: Your Honor, of course, there is more
15 testimony, but that would be the foundation for the
16 testimony because even as counsel eluded to in his
17 opening, and I believe as it relates to some of the
18 questions concerning the fight.

19 I believe the jury is entitled to know what
20 ultimately caused the incident. And, again, I can proffer
21 further, but our contention is that it's directly related
22 and that's where the confrontation occurred.

23 And, in fact, it was a dispute between Mr. Talbert
24 and Mr. Outlaw that led to Mr. Johnson's death.

25 THE COURT: Mr. Cannarella.

1 MR. CANNARELLA: Judge, I would believe that as part
2 of what they call res justae that he could testify as to
3 what Michael Outlaw [sic] said to him at the back door.
4 Why did you steal my cocaine. I think that was his
5 testimony. If you -- and they're entitled to get that in
6 because that is -- that explains very inextricably
7 intertwine the event.

8 But I don't think it's necessary to go back two
9 months to explain that they went -- he went and purchased
10 cocaine. I think it would be sufficient enough just to
11 limit it to saying why did you steal my cocaine. I mean
12 that's what his said on that night and that's part and
13 parcel to the main event then I agree with that.

14 Going back two months later to talk about him
15 purchasing cocaine, the Solicitor can still get the
16 information to the jury that he, if they believe Mr.
17 Talbert, that Mr. Outlaw said why did you steal my
18 cocaine. So they're going to know that he's been -- they
19 can reasonably infer that he's been in possession of some
20 cocaine.

21 But I don't think it necessary -- it's going too far
22 to go back two months before that and testify about my
23 client supposedly going to purchase cocaine when you could
24 encompass the same thing by limiting it to the main event.

25 And you don't really -- that character evidence

1 against my client is admissible under the res justae
2 exception, but I think just to go back two months to
3 further support what he's saying would be going too far in
4 so far as admitting character evidence of my client is
5 concerned. If I began to cross-examine him in detail
6 about that statement I think the Solicitor would then be
7 able to go to months prior.

8 MR. REDMOND: Your Honor, my position, and I
9 understand Mr. Cannarella's position, this is why I
10 disagree. I don't think the res justae here is restricted
11 to just that night. Again, it leads us -- it's directly
12 related. And my Talbert refers to testify, he and
13 Mr. Outlaw had not had any discussions about the alleged
14 theft of the cocaine until after they encountered each
15 other on the 11th.

16 And, again, the statement that was made by the
17 Defendant is that you stole my cocaine. I think this
18 gentlemen, Mr. Talbert, is entitled to explain that
19 because, of course, it's going to be a natural question of
20 the jury. And it is a part of the res justae to start
21 with. To just start with why did you steal my cocaine.

22 What are they talking about? And I think -- I don't
23 think it would be unduly prejudicial to this defendant to
24 at least lay the foundation of that particular incident
25 because it's a part of the res justae.

1 THE COURT: I'm agree with Mr. Cannarella, but I'm
2 not going to be that ironclad. The problem I have is
3 whether I think the prejudicial value outweighs the
4 probative value of it where you're getting go he purchased
5 it. Now, if you can pose the question to where it comes
6 out it's the truth as far as this witness testifying; that
7 some cocaine was thrown out the window and went back to
8 look for it and it was gone.

9 Then that lead to Mr. Outlaw, whatever happened that
10 night, saying or whoever crossed up about it being stolen.
11 That's fine. Where I think we've got a problem is that
12 sale. That doesn't have anything to do with it.

13 MR. REDMOND: I understand that mand I can do that
14 Your Honor. I can just simply ask him who was present at
15 the time? Where some drugs thrown out the window? Did
16 you throw any drugs out the window that night, and then
17 that will lead us up to the incident that night.

18 THE COURT: All right, sir. You're on dangerous
19 ground here.

20 MR. REDMOND: Yes, sir.

21 THE COURT: Okay.

22 MR. CANNARELLA: Okay, Judge.

23 THE COURT: Be ready.

24 MR. CANNARELLA: Yes, sir. I hate to pop up and send
25 them back there again, but I'll hang tight.

1 THE COURT: Well, I need to get the record straight.
2 I am sustaining part of the objection.

3 MR. REDMOND: Well, Your Honor, for the benefit of
4 the record and I think the main concern I have, quite
5 frankly, Your Honor, is the fact that we would establish
6 that this defendant actually approached this witness about
7 an alleged theft of cocaine. That still establishes my
8 goal, and rather than damage the record in the future I
9 have no problem just eliciting that particular ---

10 THE COURT: Okay. Keep it in that confine.
11 Otherwise I think it would be too prejudicial. I agree
12 with Mr. Canarella.

13 MR. CANNARELLA: Mr. Redmond, you stated that you're
14 just going to limit what was said at the back door?

15 MR. REDMOND: Exactly.

16 MR. CANNARELLA: So you're not going to say he threw
17 it out the window or nothing. You're just going to
18 eliminate that and get right to the main event?

19 MR. REDMOND: And because this is your client saying
20 that to this witness and that still establishes my goal.

21 MR. CANNARELLA: Okay.

22 THE COURT: All right. Bring them in.

23 (WHEREUPON, the jury panel enters the courtroom at
24 12:24 p.m.)

25 THE COURT: May it please the Court, Your Honor.

FURTHER DIRECT EXAMINATION

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BY MR. REDMOND:

Q. Let me rephrase, Mr. Talbert, and just ask you this. January 11th 2002, could you tell us that night what occurred leading up to your encounter with this defendant. Talking about that night. In other words, what did you do up until the time that you ended up at Michael Johnson's house?

A. We been out to have something to drink, me and a couple more fellows, Ricky Stroud and Travis Winburn. We had been out to -- we had been to Marlboro County to the Hartsville to a little club at Bullard Ford Road. We stopped there and we went out of there probably five or ten minutes and went on to Michael's house.

Q. Okay. And when you got to Mike's house was he there, Michael Johnson?

A. Yes, sir.

Q. And was the defendant there?

A. Yes, sir.

Q. And would you tell us from that point -- well, let me ask you. Did you encounter this defendant? In other words, did he say anything to you?

A. When we got to Mike's house all three of us got out the truck and went to the back of trailer. When we got to the back door he come out the door and accused me of

1 getting some cocaine -- stealing his cocaine.

2 Q. And at that point in time -- and, again, when you say
3 he, the defendant accused you?

4 A. Right, William Outlaw.

5 Q. Now, after that accusation was lodged against you
6 what happened?

7 A. ~~We kind of had some words and I hit him on the side~~
8 ~~of the head.~~

9 Q. Okay. And from I think Mr. Cannarella illustrated
10 earlier you're quite a bit bigger than Mr. Outlaw?

11 A. Yes, sir.

12 Q. And but he was the one -- was he the one that
13 initiated any discussion or confrontation with you? In
14 other words, did you start the argument or did he?

15 A. He started the argument.

16 Q. Now, so after -- how long did this fight last?

17 A. That was basically it. ~~When I hit him he kind of~~
18 ~~dropped down~~ and I went to hit him again and it was stated
19 that he had a gun.

20 Q. Okay.

21 A. Okay. So I backed off. He got in his car and left.

22 Q. Got and his car and left?

23 A. Right.

24 Q. He -- in other words, he left Michael Johnson's
25 premises?

- 1 A. Right.
- 2 Q. And then continue. What happened next?
- 3 A. We all went in the house. When we went in the house
- 4 ~~I asked where the gun was at cause I figured Michael had a~~
- 5 ~~pistol~~ They said he had a gun and it was stated that he
- 6 had a shotgun in the trunk of his car.
- 7 Q. Okay. So then y'all were in the house at that time?
- 8 A. Right.
- 9 Q. Okay. Did you end up going back outside at some
- 10 point?
- 11 A. Well, we was in the house and seen car lights coming
- 12 up. We all went back in the yard and it come out to be
- 13 his cousin, Daniel Wilkes.
- 14 Q. Okay. Did Michael Johnson go out there with you?
- 15 Did he leave and go back outside?
- 16 A. ~~All of us went back out in the yard.~~
- 17 Q. And you said y'all thought it was William Outlaw?
- 18 A. Right.
- 19 Q. ~~Did William Outlaw say anything when he left the~~
- 20 ~~premises? Do you recall whether his said anything?~~
- 21 A. ~~No.~~
- 22 Q. But other than the comment about him having a gun you
- 23 just heard he had a gun?
- 24 A. Right.
- 25 Q. So but it's Danny Wilkes that actually pulls up the

1 first time?

2 A. Right.

3 Q. So y'all go outside. What does Michael Johnson do at
4 that time Danny Wilkes come to the house?

5 A. We all went back out, and Danny comes up and then I'm
6 not sure how it comes about some way what had went on and
7 him and Danny were cousins and some words was said and
8 that's when his car pulled back up.

9 Q. Okay. And when his car pulled back up, him being the
10 defendant?

11 A. Right.

12 Q. And when the defendant's car pulled back up tell us
13 what happened?

14 A. When his -- now, we was all in the yard at that
15 corner of the trailer, and ~~when his car pulled back up he~~
16 ~~pulled back up in the road out in the road.~~

17 And he got out of his car with the shotgun and then
18 ~~he hollered for me to come out to the road.~~ And I said,
19 "Naw, man, I'm not going out there. You've got a gun."

20 Q. The defendant called you out? In other words, he
21 wanted you to come outside?

22 A. Right. To the road.

23 Q. All right. So then what happened?

24 A. So then we was all still up there. It kind of had
25 turned into a little confrontation when Danny come up

1 there. And we was all kind of arguing back and forth.
2 When I turned and looked he had come up to the yard to the
3 back of the red Toyota.

4 Q. He being, again?

5 A. Mr. William Outlaw.

6 Q. Did the defendant have a weapon?

7 A. Yes, he did.

8 Q. And could you see the weapon?

9 A. Yes, I could.

10 Q. And if I show you what has been marked has Exhibit
11 Number One.

12 MR. REDMOND: If I may approach the witness?

13 BY MR. REDMOND:

14 Q. And I'll just show it to you rather than lay it down.
15 Does this look like the weapon that you saw this defendant
16 we?

17 A. It was a shotgun.

18 Q. About how far away was it?

19 A. It was approximately, probably about 15 to 20 yards.

20 Q. And when you saw him, the defendant with that shotgun
21 what did you do?

22 A. I turned and went behind the trailer.

23 Q. And why did you do that?

24 A. Because me and him done had trouble and he called me
25 to come out there and I didn't have a gun.

1 Q. You didn't want to get shot?

2 A. Right.

3 Q. So what happened? Once he gets out with the shotgun
4 you go behind the trailer? Tell me what happened next?

5 A. Well, I went behind the trailer and I was standing
6 back there about middle ways of the trailer. I was
7 approximately 10 to 15 feet from Michael. ~~Michael started~~
8 ~~walking towards him asking him to leave the premises. To~~
9 just go on and leave. Just let it be through with it.

10 ~~And they got to arguing. Michael shot in the air.~~
11 He never pointed the gun at him or anything. He shot in
12 the air and that's when William shot at him.

13 Q. Now, when -- before Michael shot in the air was the
14 defendant ever told the leave the premises?

15 A. Yes, sir, he was. Several times.

16 Q. Tell me about that?

17 A. He was -- he told him to leave. He had kids in the
18 house and you know just to go ahead and go on home.
19 Everything would be over with.

20 Q. That being Michael Johnson?

21 A. William Outlaw.

22 Q. In other words, Michael Johnson told -- did Michael
23 Johnson tell William Outlaw to leave the premises several
24 times?

25 A. Yes, he did.

1 Q. And to your knowledge did William Outlaw leave the
2 premises?

3 A. No, he didn't.

4 Q. And I asked you said that Michael Johnson fired a
5 warning shot in the air?

6 A. Yes, sir.

7 Q. How were you able to see this?

8 A. Cause I was about 15 foot from him.

9 Q. Where was --- about where was Michael?

10 A. Michael was right at the corner of the trailer.

11 Q. And ---

12 A. He was in arm's reach of the trailer.

13 Q. So ---

14 A. Right where he was found later.

15 Q. And so after the warning shot tell me what happened?

16 A. When the other shot was fired that was it, I heard
17 another shot and I seen Michael fall.

18 Q. And did you see what the defendant did after the
19 shot?

20 A. No, I didn't.

21 Q. Okay. Did you see when he left?

22 A. I seen his car leaving.

23 Q. You saw the car leaving?

24 A. Right.

25 Q. ~~Now, you didn't actually see the shot that killed~~

1 Michael Johnson?

2 A. ~~NO, sir.~~

3 Q. But you had seen the defendant with the shotgun?

4 A. Yes, sir, I did.

5 Q. Now, why did Michael Johnson have his shotgun out?

6 A. When he has first -- when we first went out the house
7 and they -- he had his shotgun cause it has been hearsay
8 that he had shot a house up a couple of months. And
9 Michael said there were youngins were in the house.

10 Q. And was that because they thought -- did they think
11 that Danny Wilkes was actually the defendant at first when
12 he drove up?

13 A. Yes, sir.

14 Q. ~~And is that why Michael Johnson went outside with the~~
15 ~~shotgun?~~

16 A. ~~Yes.~~

17 Q. Now, let me ask you this. When the defendant left
18 about how long would you say he was gone?

19 A. I would say in the range of five to ten minutes.

20 Q. Okay. So in other words he didn't just pull down the
21 road a little bit. He left for a period of time and then
22 came back?

23 A. Right.

24 MR. REDMOND: If I could ask the Court's permission
25 for the witness to step down. If you could step down.

1 I'm going to show you this diagram and ask you a few
2 questions.

3 (WHEREUPON, the witness steps down from the witness
4 stand.)

5 BY MR. REDMOND:

6 Q. I'm get you to stand to the side here and I'm going
7 to get you to turn to the side a little bit if you can and
8 try to look if you could so the court reporter can hear
9 you and the jury can see this diagram. Could you point
10 out for me where you were as it relates to the trailer?

11 A. I had -- when I first seen William, William was right
12 long in here.

13 Q. Okay.

14 A. Okay. That when I turned and went right a here by
15 the trailer, went behind the trailer right here.

16 Q. Okay.

17 A. And then as the shots were fired I went straight up
18 here.

19 Q. When the shots were fired did you actually go towards
20 Mr. Johnson? In other words, when the shots were fired
21 did you go towards him or did you go away from him?

22 A. I was standing here when Michael shot up in the air
23 and that's when the other shots were fired and I went this
24 way towards the woods.

25 Q. Why did you run towards the woods?

1 A. Cause like I said there was already a confrontation
2 between me and him.

3 Q. Did you think you were going to get shot?

4 A. Yes, sir.

5 Q. Did you think you were going to get shot by this
6 defendant?

7 A. Yes, I did.

8 Q. Thank you. You can take your seat.

9 (WHEREUPON, the witness returns to the witness
10 stand.)

11 MR. REDMOND: Beg the Court's indulgence for just a
12 moment. That will be all the questions I have.

13 CROSS-EXAMINATION

14 BY MR. CANNARELLA:

15 Q. Do you consider yourself a powerful person?

16 A. No, I don't.

17 Q. You've never carried around a .45 caliber automatic
18 in your pocket?

19 A. No.

20 Q. Never done that?

21 A. No.

22 Q. How about any home invasions?

23 A. I got -- well, he just said I had a burglary second.

24 Q. Charged with a first though?

25 A. Yes, but I haven't been convicted.

1 Q. It's pending?

2 A. Yep.

3 Q. Went in somebody's house in the night time?

4 A. No. It wasn't night. There was a gun involved.

5 Q. Oh.

6 A. That's why it's a first.

7 Q. Gun. Okay. And your other record was for stealing?

8 A. Yes, sir.

9 Q. And financial transaction frauds?

10 A. That is correct.

11 Q. Like from a bank or something or some individual?

12 A. No. It was a credit card to be exact.

13 Q. So you stole it from somebody?

14 A. Yes, I have.

15 Q. Now, have you reviewed your statement lately that you

16 gave close in time to when this event occurred?

17 A. No.

18 Q. Will you come down here a second, please, sir.

19 (WHEREUPON, the witness steps down from the witness

20 stand.

21 BY MR. CANNARELLA:

22 Q. I want to compare the disparity in size. Come here,

23 William. Now, let's hold your fist. Let me see your

24 fist. Hold it where we can all see it. Now, tell us what

25 act of aggression did he take towards you to cause you to

1 do that?

2 A. He was accusing me of something I didn't do.

3 Q. Okay. But he wasn't attacking you?

4 A. ~~No, his didn't attack me, but he was verbally~~
5 ~~attacking me.~~

6 Q. And you didn't like that, did you?

7 A. Sure didn't.

8 Q. Okay. And you cold cocked him good, didn't you?

9 A. Yeah.

10 Q. Where's that fist? Let me see. Where did you hit
11 him, right here?

12 A. Right in here.

13 Q. Ball your fist up and show us. Okay. How tall are
14 you?

15 A. ~~About six, two.~~

16 Q. How much do you weigh?

17 A. ~~Probably about 250, 260.~~

18 Q. But you're not a violent person?

19 A. No.

20 Q. You're not. Well, you're under a Family Court
21 Restraining Order. Amy got an order of protection against
22 you. That's your wife?

23 A. That's right. At the time she got it I was locked up
24 so I mean what's the need of get something I wasn't even
25 there at.

1 Q. Well, you were going to get out at some point in
2 time?

3 A. Yeah, and under the restraining order it's only good
4 for a year.

5 Q. But the Family Court Judge gave her one?

6 A. She asked for one.

7 Q. And got one because you were violent towards her?

8 A. I had not that I know of.

9 Q. How about violence toward your father-in-law?

10 A. Towards who?

11 Q. Allen Wayne Walker?

12 A. Yes. Me and him got in a confrontation. He took a
13 warrant out for assault and battery and dropped it to
14 simple assault.

15 Q. And you pled to it?

16 A. I pled to a simple assault.

17 Q. Cause you attacked him in his house?

18 A. That's right.

19 Q. Pulled and snatched his hair out?

20 A. I'm not going to say all that.

21 Q. How about the beer can up side his head?

22 A. I didn't.

23 Q. You just don't want to admit?

24 A. I admit -- all that wasn't said. I admit I hit him.
25 I'm not going to say I hit him with a beer can though.

1 Q. What kind of gun did you leave with from that house?

2 A. Which house?

3 Q. The one you broke into?

4 A. I didn't leave with no gun.

5 MR. REDMOND: Your Honor, I understand this is
6 cross-examination and I understand that the Defense gets
7 some leeway, but I think it's been asked and answered for
8 purposes that Mr. Cannarella is seeking. I think he's
9 getting out of bounds into a relevance issue. In other
10 words, I don't think it has any relevance.

11 THE COURT: Sustained.

12 MR. REDMOND: Thank you, Your Honor.

13 BY MR. CANNARELLA:

14 Q. Mr. Talbert, you gave a sworn statement in connection
15 with this investigation. That's your signature right
16 there, John Effert Talbert the Third?

17 A. That is correct.

18 Q. It dated January 12th of '02; is that correct?

19 A. That's what it says.

20 Q. Okay. Did you put this in your own words?

21 A. I wrote down what I had seen at that time.

22 Q. Okay. No more, no less? "I, John Talbert and
23 William Outlaw had words;" is that right?

24 A. Right.

25 Q. That's what on this statement. "He left. He came

1 back and wanted to talk to me in the road?"

2 A. That's right.

3 Q. "I said, no;" is that right.

4 A. Yeah.

5 Q. "We, me and Michael was standing at the back of his
6 trailer," is that right?

7 A. Right.

8 Q. "Michael was in the woods." You said that, didn't
9 you?

10 A. Correct.

11 Q. "He came back to the -- he came back to the corner of
12 his trailer," right?

13 A. Right.

14 Q. "William was at the back of Ricky Stroud's truck?"

15 A. That is correct.

16 Q. "He had a shotgun. Mike had a shotgun, right?
17 William shot and Mike fell over and William got back in
18 his car and drove off?"

19 A. That's right.

20 Q. So you gave a sworn statement that you heard one
21 shot? The shot that William Outlaw fired?

22 A. I said William shot and Michael like fell over. I
23 didn't say that. It don't say that on that paper about
24 one shot.

25 Q. But this statement does account for one shot. You

1 said Michael shot -- I mean -- excuse me, William shot.

2 You don't say anything about Michael firing a gun?

3 A. That is correct.

4 Q. Now, in your testimony you said -- did you say that

5 ~~Michael walked out the house with a shotgun?~~

6 A. ~~Correct.~~

7 Q. Did you see any other shotguns there?

8 A. No. I saw William with a shotgun. He had the
9 shotgun already in his lap.

10 Q. I know, but you don't say that in that statement, "I
11 saw William get out of a car with the shotgun in his
12 hand." It's not in this statement; is that correct?

13 A. That's correct.

14 Q. And it's -- you only talking about one shot. Now,
15 did you and Miss Wilson discuss your statements before
16 y'all gave it?

17 A. No.

18 Q. Do you know how similar your statements to her?

19 MR. REDMOND: Your Honor, I think it's improper for
20 him to go against one witness according to the Rules of
21 Evidence?

22 THE COURT: Pitting witnesses. Go ahead.

23 BY MR. CANNARELLA:

24 Q. Well, have you ever read her statement?

25 A. No, I have not. We were put in separate cars when we

1 gave statements.

2 Q. And Michael was in the woods?

3 A. When William pulled up Michael had walked over to the
4 edge of the woods.

5 Q. Okay.

6 A. And then he come out -- he might have used the
7 bathroom or something. I'm not sure what he did. He
8 walked in the woods.

9 Q. With his loaded shotgun?

10 A. He had a gun at the time. I don't know if it was
11 loaded or not.

12 Q. But you testified earlier that he fired a shot?

13 A. In the air, he did.

14 Q. But it's nothing mentioned in the statement about
15 that?

16 A. That's correct.

17 Q. And it was this shotgun?

18 A. I can't say it was that exact shotgun. I know it was
19 a shotgun.

20 Q. Well, you identified one earlier?

21 A. I didn't identify it. I said it was a shotgun.

22 Q. Do you know who had which shotgun?

23 A. No, I don't.

24 Q. You never say in your statement, though, that I saw
25 him get out of the car and he had his shotgun in his hand.

1 That was significant to you. Wouldn't that be
2 significant, but you never said it in this statement.

3 MR. CANNARELLA: I don't have any further questions.

4 REDIRECT EXAMINATION

5 BY MR. REDMOND:

6 Q. Was this William Outlaw's house?

7 A. No, it wasn't.

8 Q. In fact, it was at Michael Johnson's house, right?

9 A. Correct.

10 Q. And so in your statement though you do say that
11 Mr. Outlaw had a gun?

12 A. Yes.

13 Q. On Mr. Johnson's property?

14 A. Yes, sir.

15 Q. That what I thought I understood. At the time you
16 gave this statement when you wrote out this statement Mr.
17 Cannarella was talking about things that you did not say.
18 Is your testimony here today the truth as it relates to
19 what happened that night?

20 A. Yes, sir, it is.

21 Q. Do you have anything to gain by being here today?

22 A. No, I don't.

23 Q. Anything to gain by testifying in this fashion?

24 A. Now don't.

25 Q. And, again, to clarify William Outlaw had a gun on

1 Michael Johnson's property?

2 A. Yes, he did.

3 MR. REDMOND: Nothing further, Your Honor.

4 RE-CROSS-EXAMINATION

5 BY MR. CANNARELLA:

6 Q. The one you believed was in the trunk?

7 A. I can't say that for the fact, but that was said when
8 he left that he had a gun in the trunk of his car.

9 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
10 identification only.)

11 MR. CANNARELLA: Offer this statement into evidence.

12 MR. REDMOND: Without objection.

13 THE COURT: All right. Without objection.

14 (WHEREUPON, Defendant's Exhibit No. 3 was admitted
15 into evidence.)

16 MR. REDMOND: I have nothing further.

17 THE COURT: You may step down. You got your next
18 witness?

19 MR. REDMOND: Well, actually, Your Honor, at this
20 point the State would respectfully rest.

21 COLLOQUY

22 THE COURT: Okay. All right. We'll break for lunch.
23 Counsel, I'm going to send the jury out to lunch on the
24 County, and therefore, we're going to send some deputies.
25 Y'all waive those or do you want me to put them -- put the

1 detectives under oath?

2 MR. REDMOND: We waive, Your Honor.

3 MR. CANNARELLA: We waive, Judge.

4 THE COURT: All right. Everybody else remain seated
5 while this jury -- if you will accompany them. Everybody
6 else remain seated. The jury is followed by the Sheriff.
7 We're in recess for an hour and 15 minutes.

8 (WHEREUPON, the jury panel was excused from the
9 courtroom at 12:48 p.m.)

10 (WHEREUPON, Court was in recess at 12:49 p.m. and
11 reconvenes at 2:15 p.m.)

12 MR. CANNARELLA: Your Honor, at this time this
13 Defendant would move for a directed verdict of acquittal
14 based on the fact that as a matter of law he acted in
15 self-defense under the circumstances. He was attacked
16 first by John Talbert. And then there was testimony that
17 he did leave. But when he got back there because of how
18 long he had been gone it was obviously a very short period
19 of time there was gunfire from the side of the trailer.

20 And at that time William Outlaw returned fire but he
21 would not -- he would obviously believed that he was in
22 imminent danger of losing his life or suffering serious
23 bodily harm.

24 He knew he was actually in danger when John Talbert
25 hit him and when the gun went off up there beside the

1 trailer. And he obviously returned fire and at that
2 moment in time it is reasonable for the Court to conclude
3 based on all the inferences to draw from the State's case
4 is that this man returned fire.

5 There was evidence that both of them had weapons and
6 that both of them fired the shots. And it would be
7 reasonable to conclude -- for the Court to conclude as a
8 matter of law that he had no other reasonable means of
9 avoiding imminent danger or death to himself if he acted
10 the way he did under the circumstances.

11 And for that reason we ask the Court to direct a
12 verdict of acquittal by reason of self-defense as a matter
13 of law.

14 THE COURT: I'll have to deny that motion. I'm sure
15 you'll present all that for the jury's consideration.

16 MR. CANNARELLA: Thank you, Your Honor. We're ready,
17 Judge.

18 THE COURT: Bring them in.

19 (WHEREUPON, the jury panel enters the courtroom at
20 2:20 p.m.)

21 THE COURT: Mr. Cannarella.

22 MR. CANNARELLA: First witness is Holly Early.

23 HOLLY EARLY, after being duly sworn, testified
24 as follows:

25 DIRECT EXAMINATION

1 BY MR. CANNARELLA:

2 Q. Your name is Holly Early?

3 A. Yes, sir.

4 Q. Holly, are you related to any of the defendant's
5 family or the defendant?

6 A. No, sir.

7 Q. Where do you live?

8 A. Pine Ridge.

9 Q. How old are you?

10 A. Twenty-two.

11 Q. Did you know William Outlaw at the time?

12 A. Yes, sir.

13 Q. On January 11th of 2002 did you have an occasion to
14 go to Michael Johnson's house?

15 A. Yes, sir.

16 Q. When you got there did you -- what time did you
17 arrive?

18 A. Say around 11:00.

19 Q. Did you see any weapons there?

20 A. No, sir.

21 Q. Okay. Now, did you see either of these two weapons?

22 A. No, sir.

23 Q. What did you see?

24 A. It was just a shotgun. The barrel was cut. Little
25 small shotgun. Sawed off.

1 Q. It was a sawed off shotgun?

2 A. Yes, sir.

3 Q. Can you describe it?

4 A. It had a Chesterfield County engravement on it. It
5 looked like somebody took and got the engravements.

6 MR. REDMOND: Your Honor, I would object to what this
7 witness said. It would be deemed speculation. He said it
8 looked like something did something. I think that would
9 be speculative.

10 MR. CANNARELLA: I'll rephrase the question.

11 BY MR. CANNARELLA:

12 Q. When I asked you earlier to describe it you said --
13 well, you basically said it was a sawed off shotgun?

14 A. Yes, sir.

15 Q. Is that because it had a short barrel on it?

16 A. It was a sawed off.

17 Q. And I asked could you describe it further?

18 A. Yes, sir.

19 Q. What did you see with you eyes?

20 A. Engravement, Chesterfield County.

21 Q. And what else did you see?

22 A. It looked like it had been -- try to remove off. It
23 was like somebody scratched it off and tried to scrape it
24 off.

25 Q. Okay.

1 MR. CANNARELLA: I have no other questions, Your
2 Honor.

3 CROSS-EXAMINATION

4 BY MR. REDMOND:

5 Q. What time did you say you were there?

6 A. 11:00 p.m.

7 Q. What time did you leave?

8 A. 11:30, 11:45.

9 Q. Okay. So you weren't there -- were you there when
10 William Outlaw came to Michael Johnson's house?

11 A. He was already there.

12 Q. He was already there. How long have you been there?

13 A. Maybe 15, 20 minutes or so.

14 Q. So he was there before John Talbert got there?

15 A. Right.

16 Q. Were you there men when John Talbert got there?

17 A. As he was walking through the door I was leaving.

18 Q. Okay. So you didn't see anything that happened after
19 you left?

20 A. No, sir.

21 Q. Okay. So, again, William Outlaw was actually in the
22 house with Michael Johnson?

23 A. Right.

24 Q. Okay. Thank you.

25 MR. REDMOND: I have nothing ---

1 BY MR. REDMOND:

2 Q. Well, let me ask you. You don't know from your own
3 observations, you have no idea what happened after that?

4 A. After that, no, sir.

5 MR. REDMOND: Nothing further, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. CANNARELLA:

8 Q. When you saw that sawed off shotgun who was present?

9 A. Michael Johnson was there. He asked did I want to
10 buy the gun.

11 Q. Who else was present?

12 A. Robbie Wilson.

13 Q. Who else?

14 A. Danny Wilkes.

15 Q. Who else?

16 A. Ricky Stroud.

17 Q. Who else?

18 A. William Outlaw.

19 Q. Who else?

20 A. And his wife.

21 Q. Whose wife?

22 A. Michael Johnson's wife.

23 Q. Do you know her name?

24 A. Sissy.

25 Q. Thank you.

1 MR. REDMOND: No questions.

2 THE COURT: You may step down, thank you.

3 MR. CANNARELLA: Your Honor, our next witness is
4 Betty Echols.

5 BETTY ECHOLS, after being duly sworn, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. CANNARELLA:

9 Q. Miss Echols, what is your relationship to William
10 Outlaw?

11 A. He's my nephew?

12 Q. Who is his mother?

13 A. Willie Jean Winburn.

14 Q. And how is he your nephew.

15 A. He's my brother's son.

16 Q. What's your brothers name?

17 A. Edward Outlaw.

18 Q. Who are your parents?

19 A. William Thomas Outlaw, Rever Outlaw.

20 Q. Who was your mother?

21 A. Teresa Outlaw.

22 Q. Where do you live?

23 A. [REDACTED].

24 Q. Where is that in relation to where this residence
25 here is on State's Exhibit 24?

1 A. It's right back down behind me.

2 Q. Okay. You saw what I scratched on the chalkboard.
3 Actually, if you can kind of wheel around a little bit.
4 This would be Bullard Ford Road, okay? And this is where
5 Michael Johnson's home is. And this road right here is a
6 dirt road. And it turns and goes I think towards dead end
7 after that?

8 A. Yes.

9 Q. Okay. Now, in relationship to that where is your
10 house? This is Bullard Ford Road. This is where he
11 lives?

12 A. Right in the middle of ---

13 Q. Can you draw it? I know you're a little shaky?

14 A. No, I can't draw it.

15 Q. There is the dirt road?

16 A. Yes, sir. It's on the this side.

17 Q. Over here?

18 A. Yes.

19 Q. But it faces Bullard Ford Road?

20 A. Yes, it does.

21 Q. Is that fair location on this chalkboard where you
22 live?

23 A. Um hum.

24 Q. What is the distance between your house and Michael
25 Johnson's home would you estimate?

1 A. God. That's probably about at quarter of a mile.

2 Not even that far.

3 Q. Quarter of a mile?

4 A. Not even that far I don't think.

5 Q. How long would it take to walk from your house to his
6 house?

7 A. Probability three or four minutes.

8 Q. Okay. In your opinion was Michael Johnson a violent
9 person?

10 A. Yes, he was.

11 Q. Do you have first hand knowledge of the reason why
12 you say that?

13 A. I do.

14 Q. Are you aware of any specific instance of violent
15 conduct on his part?

16 A. I am.

17 Q. Well, how -- well, in relation to this event occurred
18 at his home how close in time would your first specific
19 instance of that conduct be known? In other words when
20 did something take place?

21 A. The latest one was on Monday morning before that
22 happened on Friday night. I had heard some gunfire early
23 in the morning and I peeped out my window and it was
24 coming from Michael Johnson's.

25 And I saw this green van keep riding up and down the

1 road. And the Sheriff's Department started calling me and
2 said to put Michael Johnson on the phone. I said,
3 "Michael Johnson is not here. He doesn't live here," and
4 ---

5 Q. Okay. Do you remember any specific instances before
6 that close in time to the main event?

7 A. There was a time when Susie just made -- Susan just
8 made her road through the field where Michael was just
9 shooting at her with the little boy in the truck with her.

10 MR. REDMOND: Your Honor, I don't think the
11 foundation been laid for this or whether or not this is
12 hearsay or through the witness' own observation.

13 MR. CANNARELLA: Can I rephrase it?

14 THE COURT: Rephrase it.

15 BY MR. CANNARELLA:

16 Q. Remember I asked you earlier you testified that you
17 in your opinion he was a violent person?

18 A. Yes.

19 Q. And is that opinion based on first hand knowledge
20 of -- which means something that you saw with your own
21 eyes?

22 A. I have seen a lot. Yes, I have seen.

23 Q. The last -- not the Monday incident with the green
24 van, but what about the incident you were about to testify
25 to based on your own personal knowledge of having

1 witnessed something?

2 A. Okay. One day I heard the gun just fire, fire, fire,
3 and then I saw Sissy. She was coming through the field.
4 She just made a road through the field in the truck and
5 Michael was just constantly shooting at her.

6 Q. Who was in the truck?

7 A. Her and her son.

8 Q. Are you aware of any other instances close in time?

9 A. It was an on going thing. This was something that
10 went on all the time.

11 Q. What would you do?

12 A. I would run in the house and stay in the house
13 because the guns shooting off all the time. It was a
14 constant thing.

15 Q. Do you still live there now?

16 A. Yes, I do.

17 Q. Thank you, ma'am. Answer any questions the Solicitor
18 may have.

19 MR. REDMOND: May it please the Court.

20 CROSS-EXAMINATION

21 BY MR. REDMOND:

22 Q. You live a quarter of a mile away, and if I remember
23 correctly you're William Outlaw's aunt.

24 A. Yes, sir.

25 Q. And you made the comment it's an on going thing and

1 what not, right?

2 A. It was.

3 Q. First of all, you were not there the night there at
4 Michael Johnson's house the night of January 11th 2002,
5 were you?

6 A. No, I wasn't.

7 Q. So you have no idea who did what and what happened,
8 do you? Other than from your own observations you don't
9 have any idea cause you weren't there. You didn't see
10 anything?

11 A. Not that night. I was not there.

12 Q. And I'm talking about that night. That's what we're
13 talking about. You did not see anything. You don't know
14 what happened. You don't know who did what based on what
15 you saw, do you?

16 A. I didn't see anything that night.

17 Q. Exactly. Now, but, did here -- I think the testimony
18 that dispute all this stuff going on and on and on as you
19 say it's an on going thing William Outlaw was at Michael
20 Johnson's house, wasn't he?

21 A. Yes.

22 Q. And William Outlaw would go to Michael Johnson's
23 house, wouldn't he?

24 A. Not that often.

25 Q. But he was there sometimes, right?

1 A. They kind on hooked up together.

2 Q. But the bottom line of my question is this defendant
3 would go over to Michael Johnson's house? Despite
4 everything you said supposedly went on?

5 A. He did go there the last, yes.

6 MR. REDMOND: Beg the Court's indulgence. Thank you,
7 Your Honor. No further questions.

8 REDIRECT EXAMINATION

9 BY MR. CANNARELLA:

10 Q. Miss Betty, how often, if you know, how often did
11 William associate with Mr. Johnson?

12 A. It wasn't long before Michael passed away. It wasn't
13 that long.

14 MR. CANNARELLA: Nothing further. William Outlaw,
15 Your Honor.

16 WILLIAM OUTLAW, after being duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. CANNARELLA:

20 Q. Your name is William Outlaw?

21 A. Yes, sir.

22 Q. What's your full name?

23 A. William Edward Outlaw.

24 Q. William Edward Outlaw?

25 A. Yes, sir.

- 1 Q. How old are you?
- 2 A. Twenty-four.
- 3 Q. How tall are you?
- 4 A. ~~Five, three.~~
- 5 Q. How much do you weigh?
- 6 A. ~~One sixty, I think.~~
- 7 Q. Well, I want you to go tell us about the statement
- 8 that's been introduce into evidence that you gave to the
- 9 investigating officer that night. Do you remember what
- 10 you said?
- 11 A. Some of it. I, you know, I been taking Valium,
- 12 Michael gave me some Valium and I was drinking. I got up
- 13 at five o'clock that morning after work. And when I got
- 14 off of work I stopped at the bar. I was drinking.
- 15 Q. What bar?
- 16 A. At Winny's right there at Bullard Ford Road?
- 17 Q. Who was with you?
- 18 A. Nobody. I was by myself.
- 19 Q. What were you doing there?
- 20 A. Just -- I was shooting pool. Just killing time.
- 21 Q. Where did you say you were coming from?
- 22 A. Work.
- 23 Q. All right. Well, how was it then that you ended up
- 24 at Michael Johnson's house?
- 25 A. Michael and Danny come to the bar when I was there,

1 and I went outside. And me and Mike talked and he asked
2 me to come down to his house and I went to his house. I
3 know where he was drinking and together.

4 Q. Who was there?

5 A. At the time it was just me, Daniel, Michael and
6 Susan.

7 Q. And what time did you get there?

8 A. It was earlier. I don't know. Not evening time. It
9 was probably around 8:00 or 9:00, probably, when I first
10 got there.

11 Q. Okay. How would you describe your sobriety, if you
12 will, at that time at the time you got to Michael
13 Johnson's house?

14 A. Well, at the time I got there you know I was level
15 headed. I wasn't mess up or nothing. I hadn't been
16 drinking that much at this time.

17 Q. What did you drive up there in?

18 A. My car.

19 Q. What kind of car?

20 A. Oldsmobile.

21 Q. Where did you park your car?

22 A. When I first got there I parked around back by the
23 back door.

24 Q. What did you do after you pulled up?

25 A. I got out and I went inside.

1 Q. Okay. And what time did you say that was?

2 A. It was probably around, I mean, 7:00 or 8:00. It was
3 early then.

4 Q. When you got out what did you start doing?

5 A. I was leaving and Mike asked could he ride with me,
6 and I said, "Yes, come on." And I went to get a louver
7 Comaro that day.

8 Q. A louver.

9 A. Yeah. It goes of to back windshield of older model
10 Comaro.

11 Q. Where did you'll go?

12 A. Davis Winburn is Louis Winburn where I got -- he
13 moved from where I brought the car at.

14 Q. Why did you pick that time to go get a louver?

15 A. Well, I been meaning to go get it and I just didn't
16 have nothing else to do at that time so I went and got it.

17 Q. What time was -- you and Mike left together?

18 A. Yeah.

19 Q. What time did you get back?

20 A. Probably around 9:00, ten o'clock.

21 Q. What y'all do during the moon time while you were
22 riding? Anything?

23 A. Drank, you know. ~~I drank and yellow Valiums.~~ He was
24 ~~giving me yellow Valiums.~~

25 Q. What did you take?

- 1 A. ~~Yellow Valiums.~~
- 2 Q. ~~How many did you take?~~
- 3 A. ~~I don't know how many he gave me.~~
- 4 Q. Did you go back to the house at what time?
- 5 A. Around 8:00 or 9:00 time?
- 6 Q. Who was at the house when you got there?
- 7 A. Just me, him, and Susan at the time.
- 8 Q. Susan would be Sissy?
- 9 A. Yes, sir.
- 10 Q. So it would be you, Michael and Sissy?
- 11 A. Yes, sir, at that time.
- 12 Q. Okay. What y'all do?
- 13 A. Just sit around talking.
- 14 Q. Of course, John Talbert came at some point in time?
- 15 A. It was later on that night when he come up. It was
- 16 probably around 10:30, eleven o'clock.
- 17 Q. What was your sobriety like at that time?
- 18 A. I mean, ~~I had taken a lot of Valium and drink a lot of~~
- 19 ~~liquor.~~ I wasn't too level headed then at the time.
- 20 Q. Do you recall about what time John Talbert got there
- 21 or who came to the house while you were there?
- 22 A. It was at 11:00 when he got there.
- 23 Q. Tell us what happened?
- 24 A. Well, I asked him did he get my stuff, and he said,
- 25 "I got your what?" And in the middle of saying that he

1 hit me. That's all I asked him. He had no reason to hit
2 me.

3 Q. Well, when you said your stuff, what were you talking
4 about? Why did you ask him that?

5 A. Cause Michael told me he got it.

6 Q. Okay. Now, well, where did you and John Talbert
7 actually meet?

8 A. Up through ---

9 Q. Were you in the house? I don't mean your physical
10 presence?

11 A. I was going out the door as he was coming in and I
12 asked him then.

13 Q. Why were you going out the door at this time?

14 A. I was leaving.

15 Q. Had you heard him pull up? Had you heard anybody
16 pull up?

17 A. No.

18 Q. Now, in retrospect do you remember where Talbert
19 pulled up?

20 A. No.

21 Q. Do you know how Talbert got there?

22 A. Yes, sir. He was with Ricky Stroud. I do know that.

23 Q. What kind of truck was Ricky -- what does Ricky
24 Stroud drive?

25 A. A red Toyota.

1 Q. Do you believe this is the red Toyota they were
2 talking about on this 24 right here?

3 A. Yes, sir.

4 Q. Okay. Where were you exactly when John Talbert hit
5 you?

6 A. I was right at the front of the my car. Like I said
7 at the time my car was parked right at the back door. He
8 hit me and I was right in front of my car when he hit me.
9 I got in my car and tried to leave. He busted my
10 windshield when I tried to leave.

11 Q. Well, William, get up there on that -- the chalk
12 board if you will. You're familiar enough to know this is
13 the house, right?

14 A. Yes, sir.

15 Q. And that I want you to draw your car where it is.
16 Make your car?

17 A. You talking about ---

18 Q. Point your car in the direction where it was. Where
19 was it parked and what direction?

20 A. This is the back door my car.

21 Q. Speak up now.

22 A. This is the back door here. My car was parked right
23 here.

24 Q. Okay?

25 A. I come out. He hit me and I fell up on my car.

1 Q. Put that down. Okay. So would you step down here in
2 front of the jury. Where did he hit you?

3 A. In my eye.

4 Q. You have a scar from that?

5 A. Yes, sir.

6 Q. This one where I'm touching?

7 A. Yes.

8 Q. I want you to walk with me and let them see that.
9 Can you point to the scar?

10 A. Right there.

11 Q. Right there?

12 A. Yes.

13 Q. Okay. Did see receive any treatment for that?

14 A. In jail, yes. I saw the nurse in jail. She examined
15 me.

16 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
17 identification only.)

18 Q. Is that what's reflected on the booking report as
19 Defendant's Exhibit Number One. Is that what's on the
20 booking report? You've seen this booking report where you
21 were booked into the jail?

22 A. I haven't seen it.

23 Q. You haven't seen it?

24 A. No, sir.

25 Q. Okay. All right. Now, when you get it I want you to

1 describe what happened to you when John Talbert hit you?

2 A. When he hit me he spent around on my car and I
3 doubled in my car when I was leaving. And as I was
4 leaving, he busted my windshield.

5 Q. How did he do that?

6 A. His hit it with his left hand.

7 Q. Do you know why he did that?

8 A. No.

9 Q. Well, after he hit you why were you leaving?

10 A. I was scared. I mean he's a big person you know. I
11 didn't want him to beat me no more. My eye was swole. I
12 couldn't see out my eye for four or five days. My left
13 eye.

14 Q. Where did you drive to after he hit you? After he
15 hit you with his right hand and then put a left hook
16 through you windshield where did you drive to?

17 A. I went to the bottom of the driveway and spun around
18 and come back up in the driveway. And I called him to
19 come down there to the bottom of driveway.

20 Q. Well, how long were are you -- there's been talk
21 about your leaving and coming back. How long did you
22 leave?

23 A. I never really left. It mean I got in my car and
24 tried to leave, but I never really left. I might have
25 been gone like four or five seconds.

1 Q. Well, had to be more than four or five seconds?

2 A. I wasn't long.

3 Q. Well, how does that -- you know this exhibit right
4 here has police tape around it, but can you get up there
5 and draw for us on that chalkboard how their driveway
6 configured.

7 A. Yeah.

8 Q. In other words, how do you get in? How do you get
9 out? And speak up and speak slower?

10 A. Come off this dirt road. There is dirt road a going
11 by his house, come around, come back out like this and go
12 out this way.

13 Q. So he really has a circular driveway all around his
14 place?

15 A. Yes.

16 Q. And, now, stand up there and describe for them just
17 by letting your finger follow what you drew. Can you
18 describe for them how you -- you say you went down there
19 and spun around. Let your finger show the ladies and
20 gentlemen of the jury?

21 A. I come around the driveway and sprint around and come
22 back up like this.

23 Q. When you say, 'you sprint around,' you sprint around
24 that road right there?

25 A. The dirt road.

1 Q. And went right back up?

2 A. And went right back up.

3 Q. When you did that, William, you see State's Exhibit
4 Number 24?

5 A. Yeah.

6 Q. You're somewhat familiar with it? Now, you see that
7 in the bottom there's that red truck?

8 A. Yeah.

9 Q. Okay. Well, do you remember that red truck being
10 there when you went over there?

11 A. Yeah, yeah.

12 Q. Okay. Where did you park your car in relation to
13 that red truck?

14 A. Right beside it.

15 Q. Which side of it?

16 A. On the left side.

17 Q. Okay. What direction was your car facing?

18 A. It was facing back up that way.

19 Q. About the same direction as the red truck was facing?

20 A. Yes, sir.

21 Q. You can sit back down. Now, all right, when you
22 pulled up there what did you do?

23 A. When I got out and hollered for John Talbert and
24 that's when I heard a shot. I saw a flame. My eye was
25 bleeding. I couldn't see out of one eye at all, and I

- 1 ~~went to the trunk of my car and shot back.~~
- 2 Q. Well, when you pulled up there and you got out you
- 3 asked -- what did you say?
- 4 A. I hollered for John Talbert to come down here.
- 5 Q. ~~Did you get a response?~~
- 6 A. ~~No.~~
- 7 Q. Now, when you did -- that's when you hollered for
- 8 John Talbert where were you standing?
- 9 A. Beside my car.
- 10 Q. Okay. What side of your car?
- 11 A. ~~The left. The driver side.~~
- 12 Q. Okay. ~~Was you driver side door open or closed?~~
- 13 A. ~~The door was open.~~
- 14 Q. So where were you standing in relation to the open
- 15 door?
- 16 A. ~~I was standing behind the door whenever I hollered~~
- 17 ~~John Talbert.~~
- 18 Q. You got no response?
- 19 A. No.
- 20 Q. ~~What's the next thing you remember?~~
- 21 A. ~~I heard a shot.~~
- 22 Q. You heard a shot?
- 23 A. ~~I saw a flame come out of the barrel.~~
- 24 Q. And can you tell us in relation to Number 24 where
- 25 did you see it coming from?

- 1 A. Right up there at the corner of the trailer.
- 2 Q. Was it this corner right here?
- 3 A. Yes, sir.
- 4 Q. What is the distance in your opinion -- estimation
- 5 between the corner of that place and where you work when
- 6 you fired your weapon?
- 7 A. I mean it was a good ways. Forty foot.
- 8 Q. What is this -- what's the land like there? The land
- 9 level terrain?
- 10 A. I was on the bottom of a hill, and he was on the top
- 11 of a hill.
- 12 Q. And his place on top of a hill?
- 13 A. Yes.
- 14 Q. All right. And when you heard that shot what did you
- 15 do?
- 16 A. I went to the trunk of my car and got a shotgun out
- 17 and shot back.
- 18 Q. Where did that shot come from?
- 19 A. Up on top of the hill.
- 20 Q. Beside the -- what -- well, do you recall what the
- 21 lighting was like?
- 22 A. I couldn't see. You know, my eye was bleeding and it
- 23 was swelling. I couldn't see nothing.
- 24 Q. Well, when you -- okay. What did you think, William,
- 25 when you heard that shot?

- 1 A. He was shooting at me.
- 2 Q. He who?
- 3 A. Michael.
- 4 Q. Why do you think it was Michael?
- 5 A. Well, I know him. I know how he was.
- 6 Q. But you hung around him, though?
- 7 A. Yes, a little bit.
- 8 Q. How often did so associate with him?
- 9 A. Not much. I went over there sometimes. He called me
- 10 and needed a ride. And I would go take him places when he
- 11 needed to go somewhere.
- 12 Q. Well, when you heard that shot did you know -- did
- 13 you tell me already you knew where it came from?
- 14 A. It came from the top of the hill.
- 15 Q. How do you know that?
- 16 A. I saw the flame.
- 17 Q. Then what did you do after you saw that flame?
- 18 A. I got my shotgun and shot back.
- 19 Q. Why did you do that?
- 20 A. Cause I was scared I mean.
- 21 Q. Describe to the ladies and gentlemen of the jury how
- 22 you went from your driver side door to the trunk of your
- 23 vehicle. Tell us what you did?
- 24 A. I dropped down and kind of run up to the trunk of my
- 25 car and opened the trunk and I got my gun out. It was up

1 under the louver that I put in the trunk.

2 Q. The louver?

3 A. Yes.

4 Q. Well, how did you open the trunk?

5 A. With my keys.

6 Q. And describe to us what your position was when you
7 opened that trunk? What was your physical position?

8 A. When I opened the trunk?

9 Q. Yeah, when you open the trunk?

10 A. Where was I standing?

11 Q. Yeah, well, you were standing at the end of the
12 trunk?

13 A. Yes, sir.

14 Q. Okay. Well, how were you standing?

15 A. ~~I crouched down beside the trunk.~~

16 Q. Okay. And describe to us what you did when you
17 opened the trunk?

18 A. When I opened the trunk, ~~I dug my hand through the~~
19 ~~louver.~~ I broke the louver and I ~~got the shotgun out and~~
20 ~~the shotgun was open.~~

21 Q. What was the lighting like in your trunk?

22 A. I didn't have no light in the trunk.

23 Q. Do you remember if your car lights were on or not?

24 A. I can't recall if they was.

25 Q. How about the dome light in your vehicle?

- 1 A. It didn't work either.
- 2 Q. Are you -- when you reached down in there you
- 3 testified that your gun was breached?
- 4 A. Yes.
- 5 Q. Or opened up?
- 6 A. Yes.
- 7 Q. And this is your ---
- 8 A. Yes.
- 9 Q. --- gun right?
- 10 A. Yes, sir.
- 11 Q. State's A -- State's One. Now, if it was opened what
- 12 if anything was in the barrel? Where was the ammunition?
- 13 A. It was laying in my trunk.
- 14 Q. How did you get it?
- 15 A. I found it -- I felt with my hands.
- 16 Q. Why were you just feeling with your hands?
- 17 A. Um.
- 18 Q. How well could you see down there?
- 19 A. I mean I couldn't see.
- 20 Q. What was the condition of your vision at that time?
- 21 A. I mean I could see out my right eye a little bit.
- 22 Q. Why do you say just a little bit?
- 23 A. It was running water. It was watering over. My eye
- 24 was bleeding.
- 25 Q. Okay. When you reached in there you went through the

- 1 louver?
- 2 A. Yes, I broke it.
- 3 Q. And you retrieved the shotgun?
- 4 A. Yes.
- 5 Q. Then what do you remember doing next?
- 6 A. I got the shell and put it in the gun and shot back.
- 7 Q. Okay. How did you go about doing that?
- 8 A. I just mean I shot back the way they shot at me.
- 9 Back towards that way.
- 10 Q. ~~Well, where were you when you shot?~~
- 11 A. ~~I was going to my car to try to leaving~~
- 12 Q. I know that, but, well, where were you when you shot
- 13 back? Where were you standing?
- 14 A. Behind my door.
- 15 Q. Well, so what had you done after you left the trunk
- 16 with the gun?
- 17 A. I shot it.
- 18 Q. I know. Well, where were you standing when you
- 19 loaded the gun?
- 20 A. In the trunk.
- 21 Q. And what movement did you make if any?
- 22 A. I walked around the trunk and shot back up that way.
- 23 Q. What side the car did you go on?
- 24 A. On the driver's side?
- 25 Q. Okay. Why did you choose that side?

- 1 A. I was trying to get away, I mean.
- 2 Q. Was your car door still open?
- 3 A. Yes, sir.
- 4 Q. Okay. All right. Where was the rifle? Where was
5 your gun at? I want you to stand up here and just
6 carefully, carefully assume that's up beside the place up
7 there?
- 8 A. Okay.
- 9 Q. Show the ladies and gentlemen of the jury how you
10 were holding that gun when you fired it?
- 11 A. Like this. This is how I shot it.
- 12 Q. ~~At your side?~~
- 13 A. ~~Yes.~~
- 14 Q. Well, when you fired up there did you see anyone?
- 15 A. ~~I couldn't see.~~ I mean I could see shadows. I
16 couldn't see nothing hardly.
- 17 Q. Why was that?
- 18 A. My eye was bleeding.
- 19 Q. What about your right eye?
- 20 A. It was watering.
- 21 Q. What about the lighting up there in general? What
22 what it like?
- 23 A. I was on the dark side of the trailer.
- 24 Q. The big light's on the back left side of the trailer?
- 25 A. Yes.

1 Q. Do you know if -- well, you didn't really know who
2 was up there?

3 A. I really couldn't tell.

4 Q. Why you fire in that general direction?

5 A. That's where I saw the flame, you know, come out the
6 end of gun.

7 Q. Okay. Now, after you fired this shot back -- after
8 you fired back what did you do?

9 A. I jumped in my car and left.

10 Q. Well, what was your intentions in firing the gun up
11 there in the first place?

12 A. To get away. To leave, you know. I didn't think
13 that nobody shooting at me. I didn't have no gun. I was
14 calling for John Talbert to come down there. He had
15 busted my windshield. That was the only thing I had to
16 drive.

17 Q. Did you ever replace that windshield?

18 A. Yes, I did.

19 Q. Where did you replace it?

20 A. At a chop shop.

21 Q. Why did you believe it was necessary for you to fire
22 back in the direction you did?

23 A. Well, they shot at me one time, and you know, I
24 didn't know if they were going to shoot again. I mean I
25 shot back just trying to get back out the driveway.

- 1 Q. Okay. After you -- when you fired did you reload?
- 2 A. No.
- 3 Q. Did you -- well, why didn't you reload?
- 4 A. I was getting away, I mean.
- 5 Q. Could you have reloaded?
- 6 A. No.
- 7 Q. Why not?
- 8 A. I -- well, I didn't think I had time to reload.
- 9 Q. William, when you reached down in there you testified
- 10 you got ---
- 11 A. One shell.
- 12 Q. Did you know what gauge shell it was?
- 13 A. I couldn't see.
- 14 Q. Did you know if it was pellets or buckshots?
- 15 A. No.
- 16 Q. Did you know what kind of ammunition you had in
- 17 there?
- 18 A. Twelve gauge.
- 19 Q. But you don't know what shot it was?
- 20 A. No.
- 21 Q. When you reached down there and got that shell to
- 22 load your single barrel shotgun did you retrieve any more
- 23 ammunition?
- 24 A. No.
- 25 Q. What -- when -- after you fired the shot or what did

1 you do next?

2 A. I jumped in the car and left.

3 Q. What did you do with you gun at that point in time?

4 A. I threw it in the car as I got in the car.

5 Q. Where did you throw it? In the front seat?

6 A. Yes.

7 Q. Well, how about people -- ~~what about the testimony~~
8 ~~that when you pulled up you had stepped out the car with a~~
9 ~~shotgun already?~~

10 A. No. ~~That's not true. When they shot I went to the~~
11 ~~trunk and got my gun out.~~

12 Q. Did you have any other reason to be afraid of John
13 Talbert?

14 A. Yeah.

15 Q. Why? Go ahead.

16 A. I was introduced to him by Michael. I didn't know
17 him that long. Whenever I see him he had a .45 automatic
18 in his back pocket. I don't know why he carried it. I do
19 know he had it.

20 Q. You were -- well, why would you have had any reason
21 under the circumstances to be afraid at that moment in
22 time when you saw that fire up there above Michael
23 Johnson?

24 A. Well, I mean he shot towards me. I mean, you know.

25 Q. Well, William, in your opinion was William Johnson

1 [sic] a potentially violent person?

2 A. Yeah.

3 Q. Well, you say that, though, William. You need to
4 tell the ladies and gentlemen of the jury why would you
5 ever associate with him in the first place?

6 A. I made a mistakes. I was going down the wrong road I
7 shouldn't have been going down. I regret it every day.

8 Q. All right. I know I kind of rambled on a little bit
9 myself. Your know when you talked about you left and
10 threw the gun in the car?

11 A. Yeah.

12 Q. Where did you go?

13 A. I went to my house.

14 Q. Well, you didn't go -- is that all you can remember?

15 A. I ---

16 Q. Well, let me ask you this way. What did you do with
17 the gun?

18 A. I threw it somewhere.

19 Q. Well, where did you throw it?

20 A. I thew it out my window going down the road.

21 Q. When was that?

22 A. When I -- after I left when I was going to my house.

23 Q. Well, you saw pictures of where you found your gun?

24 A. No, I have not.

25 Q. Well, this is State's 21, William. Can you see that

1 gun down in there?

2 A. Yeah, I can.

3 Q. And this is State's 22, the dirt road?

4 A. Yeah.

5 Q. Didn't you take the police and show them where the

6 gun was?

7 A. Yeah, I helped them find it.

8 Q. How were you able to do that?

9 A. I mean, I don't know.

10 Q. You don't know?

11 A. I been taking a lot of Valium and drinking liquor.

12 Q. Well, in your statement why did you tell them that

13 Michael Johnson hit you?

14 A. I didn't really know what happened. I didn't -- take

15 Valium and drink liquor.

16 Q. How many Valiums did you take?

17 A. How ever many he gave me.

18 Q. Why would you just take them like that?

19 A. I don't know.

20 Q. How much liquor did you drink?

21 A. I drank a lot. When I got off of work I started

22 drinking beer. Whenever I got to the bar I started

23 drinking liquor.

24 Q. And you hadn't gotten up?

25 A. No.

1 Q. Did it happen that you just happen to be over there
2 that night?

3 A. Yeah.

4 Q. Who invited you over there?

5 A. Michael.

6 Q. How did he get up with you?

7 A. Him and Danny had come to the bar where I was at.

8 Q. Danny Wilkes?

9 A. Yes.

10 Q. And where was that bar?

11 A. At Winny's.

12 Q. And where is Winny's?

13 A. At the end of Bullard Ford Road.

14 Q. How far from where Betty lives, Betty Echols?

15 A. About half a mile.

16 Q. Where Michael Johnson's place was, too, right?

17 A. Yes.

18 Q. All right. So had it not been for Danny and Michael
19 coming by there you never would have been at Michael's
20 house?

21 A. No.

22 Q. You didn't have any intention of spending the night
23 there?

24 A. I was heading to my house. I just stopped to have a
25 few drinks before I went home. ~~I had been up since~~

1 ~~five o'clock that morning.~~ I had to be in Chesterfield
2 County.

3 Q. Where do you work?

4 A. I work with R and M Builders for Robbie Rose.

5 Q. What kind of work do you do?

6 A. Construction work. We was building two walk out
7 doors on the roof of a house.

8 Q. But, go back to the statement, okay? Your statement?

9 A. Yes, sir.

10 Q. What was your condition like when you gave that
11 statement?

12 A. I was passing out when I -- they -- I passed out on
13 the desk. They woke me up.

14 Q. Who do you remember who it was?

15 A. Detective I'm not sure.

16 Q. But in that statement of your's did you write in your
17 own handwriting?

18 A. Yes.

19 Q. Did you sign it?

20 A. Yes, I did.

21 Q. And do you recall what time it was that they picked
22 you up; that statement from your momma's house where you
23 live?

24 A. No, sir. I don't remember them getting me out of
25 bed. I was still half asleep and I remember them putting

- 1 me in the patrol car.
- 2 Q. On the way home, now, you threw the shotgun out?
- 3 A. Yes.
- 4 Q. And what did you tell them you did with the shotgun
- 5 in your statement?
- 6 A. I threw it out on the road on the power line.
- 7 Q. Why did you say that?
- 8 A. That's where I thought I had threw it out at.
- 9 Q. Now, how were you able to later on remember where you
- 10 threw it out?
- 11 A. I was coming to sober up. I had been you know
- 12 several hours when they questioned me and stuff.
- 13 Q. The record says you stated this is roughly around
- 14 midnight this occurred, and then you drove from there
- 15 straight home?
- 16 A. Yes.
- 17 Q. Well, did you have -- what route would you have
- 18 taken? I think they call it Queens Road, maybe. What
- 19 route would you have taken on the -- I mean how did you
- 20 get there?
- 21 A. Dirt road all the way. I been drinking.
- 22 Q. You know some short cuts?
- 23 A. Yes.
- 24 Q. Why did you take the short cut?
- 25 A. I'd been drinking. I didn't need to get on the

1 highway.

2 Q. Why did you throw the gun out of the car?

3 A. Well, ~~I figured they were going to call the law on me~~
4 ~~and I had shot, you know, a shotgun.~~

5 Q. Well, did you -- well, had you driven than route
6 before from Bullard Ford Road?

7 A. Yes, I have.

8 Q. Well, was this gun found in the route you would have
9 taken otherwise?

10 A. No.

11 Q. Did you go out of your way to hide this gun?

12 A. No. No, sir.

13 Q. Was it a long the route you took -- would have
14 otherwise taken going home being drunk and taking pills?

15 A. Yes, sir.

16 Q. Well, what did you do when you went home?

17 A. I went to sleep on the floor.

18 Q. Where is your house?

19 A. It's on New Market Road.

20 Q. Well, New Market Road runs a good distance?

21 A. Yes.

22 Q. I think maybe north or south or east or west?

23 A. Goes from Hartsville, Ruby to 151.

24 Q. Now, where is -- this is your momma's house?

25 A. Yes.

- 1 Q. Now, where are y'all living now? Y'all live in
2 between -- y'all live in between Ruby and Middendorf?
- 3 A. Yes.
- 4 Q. On that stretch of New Market Road?
- 5 A. Yes, sir.
- 6 Q. Who lives there with y'all?
- 7 A. My stepfather and my mother.
- 8 Q. What's your stepdaddy's name?
- 9 A. (inaudible.)
- 10 Q. Where does he work at?
- 11 A. Landstar Transport.
- 12 Q. Who else lives at that house with y'all?
- 13 A. My two nieces.
- 14 Q. What are their names?
- 15 A. Courtney and (inaudible).
- 16 Q. And your momma's name?
- 17 A. Willie Jean Winburn.
- 18 Q. So that's you and your momma and your nieces?
- 19 A. Yes, sir.
- 20 Q. Who takes care of your nieces?
- 21 A. My mother.
- 22 Q. Do you contribute in any way to that?
- 23 A. Yes, sir.
- 24 Q. Well, when you got to your home that night where did
25 you park your car?

- 1 A. Under of trailer where I always park.
- 2 Q. Well, is that the trailer facing New Market Road?
- 3 A. Yes.
- 4 Q. Did it have a front entrance to it?
- 5 A. Yes.
- 6 Q. Does it have a rear entrance to it?
- 7 A. Yes.
- 8 Q. Which entrance did you use?
- 9 A. The back door is the door I always went in.
- 10 Q. How long -- how many different driveways do you have?
- 11 How does your driveway work?
- 12 A. Two driveway within one side. One on each side that
- 13 circle around.
- 14 Q. Which driveway did you use? On the left or right?
- 15 Which driveway did you use?
- 16 A. The left driveway, I guess.
- 17 Q. Where did you park your car?
- 18 A. At the end of the trailer.
- 19 Q. Could you see you car from the road?
- 20 A. Yes.
- 21 Q. And you got out of your car and went into the rear?
- 22 A. Yes.
- 23 Q. Why did you use that way?
- 24 A. That's just the door I always went in.
- 25 Q. Okay. As if we're facing the trailer from New Market

- 1 Road?
- 2 A. Yeah.
- 3 Q. Which end do you live on in there? Where is your
4 bedroom?
- 5 A. The end I park my car on.
- 6 Q. That would be the left end?
- 7 A. Yes.
- 8 Q. Well, are there any windows in your bedroom?
- 9 A. Yeah, one.
- 10 Q. Well, where, William, does that look out to?
- 11 A. To the road.
- 12 Q. Okay. And is that the only bedroom on the left end?
- 13 A. Yeah, well, there is a bedroom in the middle.
- 14 Q. Is your bedroom on the front side?
- 15 A. Yes.
- 16 Q. Do you remember what you did when you got in there?
- 17 A. I wiped my eyes off and I went to sleep. I laid down
18 on the floor and went to sleep.
- 19 Q. You laid down on the floor?
- 20 A. Yes.
- 21 Q. Why?
- 22 A. Well, I was scared they would come back and shoot in
23 my window.
- 24 Q. Well, when you left Queens Road ---
- 25 A. Yes.

1 Q. --- after you fired that shot ---

2 A. Yes.

3 Q. --- when was the first time you were made aware that
4 Michael Johnson had been -- had died?

5 A. Whenever the law told me he was dead.

6 Q. That's when they came to your house?

7 A. Yes, sir.

8 Q. So when you laid down on the floor you didn't know
9 that he was deceased?

10 A. No, I did not.

11 Q. And you testified earlier that you didn't aim your
12 weapon. You just fired in that general direction?

13 A. Yes, sir.

14 Q. Now, tell me again why did you lay down on the floor?

15 A. I was scared they might come back by and shoot me in
16 my window.

17 Q. They?

18 A. Yes.

19 Q. Who?

20 A. John Talbert, Michael.

21 Q. What made you distrust Michael at that point in time?

22 A. Well, I knew they was kin.

23 Q. Were you aware of any specific instance of when
24 Michael was violent with a weapon?

25 A. Yeah, he -- I know times his pulled is gun on people.

1 MR. REDMOND: Your Honor, I'm having trouble hearing.

2 BY MR. CANNARELLA:

3 Q. Speak up. Speak up. So you're aware of some of
4 those. Why would -- what made you scared of him that
5 night though?

6 A. What made me scared of him that night?

7 Q. Yeah.

8 A. I mean, I don't know -- I mean, I know that, you
9 know, him and John Talbert is kin, and John Talbert hit me
10 and you know I shot back up that way and.

11 Q. Okay. What time did the police arrive at your house?

12 A. 5:00. I don't know no idea.

13 Q. How long was it before they took you in their custody
14 that you gave that written statement if you remember?

15 A. It was -- I don't remember. It was several hours.

16 Q. Do you have -- what's your explanation for saying
17 that Michael Johnson hit you in that statement.

18 A. I don't know. I really -- I was taking Valium and
19 drinking liquor.

20 Q. What's your explanation for saying that you threw the
21 gun under the power lines?

22 A. I didn't know where I put the gun.

23 Q. Which window did you throw the gun out of?

24 A. Out the driver side window.

25 Q. When you threw it out was it breached?

- 1 A. Yes.
- 2 Q. Did you have to slow down to throw it out the window?
- 3 A. I don't remember.
- 4 Q. You don't remember?
- 5 A. I sure did.
- 6 Q. William, what have you been doing since then?
- 7 A. Nothing.
- 8 Q. What's your life been like since then?
- 9 A. It's different. I mean I work and I go to church and
- 10 I come home?
- 11 Q. What were you doing -- what was your occupation
- 12 before this event? Where did you work?
- 13 A. (inaudible).
- 14 Q. How long did you work there?
- 15 A. Two -- over two years.
- 16 Q. How about before then?
- 17 A. Rushmore Construction. I believe that's the name of
- 18 it was.
- 19 Q. What's your trade?
- 20 A. Carpenter.
- 21 Q. Have you been doing that ever since you were -- been
- 22 out on bond?
- 23 A. Yes.
- 24 Q. Have you ever violated any condition of your bond
- 25 while you've been out?

1 A. No, sir.

2 MR. CANNARELLA: Beg the Court's indulgence just a
3 moment, Your Honor.

4 BY MR. CANNARELLA:

5 Q. William, do you have a prior record for anything?
6 Any other conviction on your record?

7 A. No, sir.

8 Q. Okay. Well, have you ever been arrested before for
9 anything?

10 A. Yes, sir, I have.

11 Q. What was that?

12 A. Zero tolerance drinking. Consumption by a minor.

13 Q. That's a minor in possession of alcohol?

14 A. Yes, sir.

15 Q. How old were you then?

16 A. I was 19.

17 Q. How about after that? Didn't you have another arrest
18 after that, too?

19 A. Open container.

20 Q. Well, we talked about another one before. I'm not
21 talking about a conviction. I'm just talking about an
22 arrest now. Wasn't it assault and battery?

23 A. Yes.

24 Q. Okay. Well, tell us about that cause that's all
25 you've got on your record and it was dismissed, wasn't it?

1 A. Yes, it was.

2 Q. So open consumption. What about assault and battery?

3 Did you have a lawyer helping you on that?

4 A. No, sir.

5 Q. All right. So who dismissed it?

6 A. I forgot the judges name.

7 Q. How old were you?

8 A. I was -- I was probably 17 or 18.

9 Q. You and another boy got in a fight as teenagers?

10 A. I don't remember how old I was.

11 Q. I can't understand you?

12 A. I don't remember how old I was at the time. I'm not
13 sure about that. We got in a fight and he jumped on me
14 and beat me up. And I saw him several weeks later and I
15 beat him up. I mean -- and he signed a warrant on me, but
16 I didn't sign a warrant on him and the judge threw it out.

17 Q. Okay. Answer any questions the Solicitor may have.

18 MR. REDMOND: May it please the Court.

19 CROSS-EXAMINATION

20 BY MR. REDMOND:

21 Q. He beats you up. You didn't take out a warrant.

22 Excuse me, he beats you up a couple weeks before. You
23 didn't take out a warrant. You came back and beat him --
24 I'm trying to make sure I understand.

25 A. Yes, sir

1 Q. And so you end up coming back later and beating him
2 up?

3 A. I was at the store. He came in the door that I was
4 in and we got in a fight again and.

5 Q. This was after the first fight?

6 A. Yes, sir, it was.

7 MR. REDMOND: Beg the Court's indulgence. If I can
8 mark this. I think it's State's 24.

9 (WHEREUPON, State's Exhibit No. 25 was marked for
10 identification only.)

11 MR. REDMOND: May I approach the witness, Your Honor?

12 THE COURT: Yes, sir.

13 BY MR. REDMOND:

14 Q. Look at that. You talk about your eye being bloody
15 and everything?

16 A. Yes, sir.

17 Q. Is that a picture that was taken the night of the
18 incident?

19 A. Yes, sir, it was.

20 Q. Okay. Thank you. Your Honor, at that time I would
21 move to introduce as State 25?

22 MR. CANNARELLA: No objection, Your Honor.

23 MR. REDMOND: Thank you.

24 (WHEREUPON, State's Exhibit No. 25 was admitted into
25 evidence.)

1 BY MR. REDMOND:

2 Q. Now, you kept referring to the fact you weren't too
3 level headed. I think you said it two or three times?

4 A. Yes, I did.

5 Q. Okay. You weren't too level headed when you gave the
6 statement, and in the statement you indicate that Michael
7 Johnson hit you. Isn't that what you initially said?

8 A. Yes, sir.

9 Q. As a matter of fact you initially claimed that night
10 that Michael Johnson supposedly hit you, you ran, he shot
11 at you, and then you went into your trunk and shot back?
12 That's what you claim, isn't it?

13 A. Yes, sir. That's on the statement.

14 Q. But the Valium was messing with you?

15 A. Yes, sir.

16 Q. And then, interestingly, the Valium was also messing
17 with you because you don't remember how you were able to
18 take the officers to where the gun was because of the
19 Valium you referred to?

20 A. Yes, sir.

21 Q. But, amazingly, it seems like everything else in the
22 story you changed is pretty clear, isn't it, based on what
23 you testified?

24 A. Yes, sir.

25 Q. Okay. And in other words, let's concede the fact you

1 have changed your statement? In other words, what you're
2 testifying to today is totally different than what's in
3 this statement, isn't it?

4 A. Yes, sir.

5 Q. And, again, the reason is because you weren't too
6 level headed?

7 A. No, sir.

8 Q. Well, let's talk about being level headed. You
9 testified that you were leaving after you got hit which
10 this picture reflects how you looked after you got hit?

11 A. That was a few hours after that.

12 Q. After you got hit you were leaving and then you
13 stopped and started coming back?

14 A. That was after he busted my windshield.

15 Q. That was after he busted your windshield but the
16 point is you were leaving?

17 A. Yes.

18 Q. And then you stopped and came back?

19 A. Yes, sir.

20 Q. And at the time you stop and came back and got out of
21 your car and then you called for John Talbert?

22 A. Yes, sir.

23 Q. "John Talbert?"

24 A. Yes, sir.

25 Q. What do you say, "John Talbert, come here. I've got

1 something for you?"

2 A. Yes, sir.

3 Q. Something to that effect?

4 A. Yes, sir.

5 Q. Why then in the world would you call somebody who

6 supposedly you knew carried a .25 pistol? Why would you?

7 A. Well, like I said, I'd been drinking liquor and take

8 Valium and he busted my windshield. I was mad.

9 Q. So you were mad. That's the whole point. You were

10 mad?

11 A. Yes, sir, I was.

12 Q. And then here's the thing. Knowing that this person

13 carries a .25 pistol why if you supposedly can't see

14 because your eye is bleeding would you stop and engage

15 somebody when you can't half see according to you?

16 A. Yeah, well, he busted my windshield and I was calling

17 him down there. I thought he should paid for my window.

18 Q. You thought he should pay for your window?

19 A. Yes, sir.

20 Q. Obviously, you thought he should paid for the window.

21 That's fine. Now, you say you heard the shot. You heard

22 a shot and your saw the flames?

23 A. Yes, I did.

24 Q. And then you indicated that you were in the back of

25 the car. You ended up going back to the trunk area?

- 1 A. Yes, I did.
- 2 Q. You can't see, supposedly, but Mr. Cannarella asked
3 you you used the key to open your trunk?
- 4 A. Yes, I did.
- 5 Q. Okay. You were able to do that?
- 6 A. Yes, sir.
- 7 Q. You were able to reach in and get the shotgun?
- 8 A. Yeah, I could feel it.
- 9 Q. You could feel the shotgun?
- 10 A. Yes, sir.
- 11 Q. And you were able to get a shell?
- 12 A. Yes, sir.
- 13 Q. And how did you get the shell? You felt around and
14 found the shells, too?
- 15 A. Yes.
- 16 Q. And you popped open the gun and loaded the shell?
- 17 A. Yes.
- 18 Q. Pop it back and I guess you then didn't fire the shot
19 from behind the trunk, did you?
- 20 A. No.
- 21 Q. Cause you said according to your testimony you came
22 and you were behind ---
- 23 A. I come around from the trunk around the driver side
24 of the car and shot.
- 25 Q. Now, you said I think in your testimony you were

1 behind the driver side door?

2 A. Yes.

3 Q. And the door was open?

4 A. Yes, the door was open.

5 Q. You were behind the driver side door, the door was
6 open, and I think your testimony was that, and I'm
7 assuming you're right handed?

8 A. Yes, I am.

9 Q. Your testimony is that you held it like this?

10 A. Yes, something like that.

11 Q. Something like this. What angle would you say the
12 gun was that you were holding?

13 A. Something like that.

14 Q. Something like this right here?

15 A. Something like that.

16 Q. All right. Behind the driver side door?

17 A. Yeah.

18 Q. It's January, wasn't it? This is in January, right?
19 It was pretty cold?

20 A. I guess.

21 Q. How happen you didn't blow out the windows in your
22 car?

23 A. Hum?

24 Q. Of the window -- you're behind the driver side door?

25 A. Yes, sir.

1 Q. ~~Gun's at your hip?~~

2 A. ~~Yes.~~

3 Q. You're behind the driver side door. When did you get
4 your car fixed from the damage done when you shot the
5 windows out?

6 A. I didn't shot the window out. It busted.

7 Q. You said it busted the windshield. I'm talking about
8 the driver side door window. How much did it cost you to
9 repair it because according to you it was at your hip.
10 You were behind the door. So how much did it cost you to
11 get that repaired when you blew the window out?

12 A. I didn't blow the window out.

13 Q. You didn't blow the window out. In fact, that's not
14 where you were standing?

15 A. ~~I was standing beside my door.~~

16 Q. That's your story and you're sticking to it, right?
17 Right?

18 A. Yeah.

19 Q. Now, you also then talked about the fact that you
20 discarded the gun because you were afraid, but in all that
21 time you never contacted anybody in law enforcement, did
22 you?

23 A. No, sir.

24 Q. You were scare. You said when you got home you were
25 scared, but you never called anybody, never told anybody

1 that you had been shot at?

2 A. No, sir.

3 Q. You were scared you said?

4 A. Yes.

5 Q. Okay. So nobody calls law enforcement. You threw
6 away the gun?

7 A. Yes, sir.

8 Q. Just follow me on this for enter a second. You
9 testified that you were afraid somebody might come back at
10 you. If you're afraid somebody is going to come back at
11 you why in the world would you discard your protection?
12 You don't know, do you?

13 A. Yes, sir.

14 Q. This is your story and you're sticking to it, aren't
15 you?

16 A. Yes, sir. It's the truth.

17 MR. REDMOND: Beg the Court's indulgence. I have
18 nothing further. Your Honor.

19 MR. CANNARELLA: Beg the Court's indulgence, Your
20 Honor.

21 MR. REDMOND: Your Honor, if I may, Your Honor, have
22 permission to publish the picture. I took the Court's
23 Exhibit with me. State's 25.

24 REDIRECT EXAMINATION

25 BY MR. CANNARELLA:

1 Q. That picture they have that we tried to locate, now,
2 how long after that -- what has been done by anybody at
3 the jail for you in so far as helping you with your eye is
4 concerned?

5 A. I'm not sure at that time, I mean?

6 Q. Do you remember being given an ice pack or anything?

7 A. Yeah, I mean when I got to the jailhouse. I don't
8 remember what happened in the jailhouse.

9 Q. Okay.

10 MR. CANNARELLA: That's all the questions I have,
11 Your Honor.

12 MR. REDMOND: No recross, Your Honor.

13 THE COURT: You may step down. Let's take about a 15
14 minute recess and come back.

15 (WHEREUPON, the jury panel was excused from the
16 courtroom at 3:26 p.m.)

17 (WHEREUPON, Court was in recess at 3:26 p.m. and
18 reconvenes at 3:41 p.m.)

19 (WHEREUPON, the jury panel enters the courtroom at
20 3:43 p.m.)

21 THE COURT: Okay.

22 MR. CANNARELLA: Thank you, Your Honor. Your Honor,
23 we call the defendant's mother, Willie Jean Winburn.

24 WILLIE JEAN WINBURN, after being duly sworn,
25 testified as follows:

DIRECT EXAMINATION

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BY MR. CANNARELLA:

Q. Of course, you're name is Willie Jean Winburn?

A. That's correct.

Q. Mrs. Winburn, William is your son?

A. Yes, sir.

Q. Who is his father?

A. Edward Outlaw.

Q. Y'all are divorced?

A. Yes. We are were divorced 15 or 20 years.

Q. How many children do you have?

A. I have four.

Q. Who are they?

A. I have three daughters, Crystal Crow, Annette Williams, Dawn Huggins and William, my oldest son.

Q. How old is William?

A. William is 24.

Q. Did you know Michael Johnson?

A. Yeah, I knew him pretty well. He has lived in the community for a long time. I had actually went over to his house and visited, you know and see Susie on occasions. Took baby stuff.

Q. How would you describe the relationship that your son, William, had with Michael Johnson?

A. I really don't understand why William started to hang

1 around with Michael because he was a lot older. And I
2 really don't know when he hang around him, but when I did
3 realize he was I asked him not to and I even called Sissy
4 on one occasion and I talked to her.

5 And I talked to Michael and I asked them if they, you
6 know, to not encourage him. And Michael might call him
7 late at night and I asked him -- told him I wasn't putting
8 him down or anything like that, but I didn't think no
9 better or anything, but he was just older than William and
10 I had -- I knew he had took some wrong roads.

11 And I would appreciate getting him to not go that
12 same way, you know. And he kept calling and at one point
13 I had my number blocked to keep him from calling.

14 Q. Why did you block your number?

15 A. Well, he called late in the nighttime. He called at
16 2:00 or 3:00 in the morning and he would want William to
17 take him places and stuff. And William, well, would do
18 it.

19 William and I had arguments over it cause I didn't
20 want him to go. He was a grown man, and he would go. So
21 we had several arguments about that. And, you see,
22 William had a car. He had a car and he worked and he had
23 money. So him would call William all of the time to take
24 him places.

25 Q. Where did Mr. Johnson work? Do you know?

1 A. I don't believe he worked anywhere. I don't know if
2 he worked. I don't think he did.

3 Q. Well, what do you remember about that night at your
4 house when the police came?

5 A. I was laying, actually, laying on the couch watching
6 t.v. and there's a mirror there. And there are three
7 mirrors in my living room, and the couch was like this.
8 And I could see in that mirror, and I saw William when he
9 came in the back door. I've raised four kids and I never
10 went to bed until my kids were home.

11 I could just see the corner of his head. He turned
12 his face this way and I said, "Son, get in the bed. You
13 have to go to work tomorrow." And I don't know if he
14 answered me or not. All I know he went to his bedroom and
15 closed the door.

16 And so then a little while later there was a knock at
17 my door. It was Danny Wilkes. He was knocking on the
18 door and I went to the door. And he started telling me
19 that Michael Johnson had been shot, and he said he was
20 dead and he said that William had shot him, but it was in
21 self-defense.

22 And he kept saying that over and over again. I
23 started crying. I never saw an officer. It was Danny.

24 Q. Danny Wilkes?

25 A. Danny Wilkes.

1 Q. Now, what relation is he to you if any?

2 A. He is by marriage my nephew, but he ain't no blood
3 kin to me.

4 Q. Okay?

5 A. But anyway, whenever he kept on talking and he came
6 on in the house, and he was just pacing back and forth and
7 back and forth saying that. And then he started out the
8 back door and I went to the back door at that time.
9 That's when I saw the officers standing kind of back in
10 the corner.

11 And I asked him is he telling me the truth cause it
12 was just so hard to believe. And the way Danny had talked
13 and he said, "Yes, ma'am. It is true." And so what Danny
14 was wanting me to do is let them come and get William. If
15 he didn't give himself up they may shoot him. Of course,
16 I opened the door and told them to come on in.

17 Q. Okay. Well, when they came in? What do you
18 remember? When they -- was it more than one officer?

19 A. At first, I was really upset, too. I can't remember
20 all the details, but at first I think it was that one
21 officer and Danny and then he had called for back up.

22 I guess cause more came in. Before that night was
23 over there was several officers back and forth in my
24 house, you know. So I do not recall how many there were
25 but I do remember I went back there and William was on the

1 floor.

2 And he was almost under his bed laying on the floor.
3 And I remember he had his shirt off. He had pants on and
4 one of his legs was twisted back like this. And there was
5 a white hand towel on the floor that was -- that had blood
6 on it. I guess to his eye.

7 But, anyway, I heard the officer told him that he
8 needed some help getting him up and I could hear him say
9 that. In fact, Danny went back to William's bedroom and
10 helped them to pick him up off the floor and take him out.

11 And whenever they took him out they kept him outside
12 sitting in the officer's car for a long time. It seemed
13 like maybe an hour.

14 Q. What time do you think they get to your house?

15 A. I know my husband gets in from work at 12:15. At
16 that time he was working second shift at Landstar
17 Transport and he got home -- he always was home 15 minutes
18 after he got off at 12:00. I mean it was like clock work.
19 He went on to bed -- took a shower and went to bed by the
20 time the officers came. So I'm going to say maybe 12:30,
21 but I'm not sure. I know it was close.

22 Q. About 12:30 they picked him up?

23 A. Yes, sir.

24 Q. At some point in time shortly thereafter they all
25 left? Is that what you're saying?

1 A. Yes, sir.

2 Q. That would have been maybe about one o'clock?

3 A. Yes, sir.

4 Q. What was the condition of William's eye? Could you
5 see that?

6 A. His eye it was swole shut, and it had been bleeding
7 cause there was a towel on my floor. And after they left
8 the towel laid where he was holding it to his eye, and it
9 was bloody. And I went to see him the next day, and I
10 went to see him at the jail. And his eye, it was still
11 swollen really bad. It looked bad to me, and I asked if
12 he could have medical attention for his eye.

13 Q. How has William been since then?

14 A. He's been home every night on time. He hasn't had
15 any problems at all being on time. At one time we had to
16 get his hours extended because of his work. But at one
17 time his car was running hot, and he had his cell phone
18 calling me I mean really panicked cause he wouldn't make
19 it home on time. And he wanted me to bring him some water
20 to put in his car so he could make out on home.

21 Q. Has he worked all the time since then?

22 A. Yes, sir he has.

23 Q. Well, since whenever he finished going to school or
24 whatever, was he employed?

25 A. Yes, sir. He has worked pretty much in construction

1 ever since when he was about 17.

2 Q. Where did he get his training from?

3 A. His daddy.

4 Q. That's Edward?

5 A. Yes, sir.

6 Q. Outlaw?

7 A. Yes, sir.

8 Q. Where does he work?

9 A. I don't work where. I have no idea.

10 Q. Who lives with you?

11 A. My nephew lives with me. Courtney and (inaudible)
12 that I'm having to take care of and my husband, Frank
13 Winburn, and William.

14 Q. Okay. So probably four or five of you that live
15 there?

16 A. Yes, sir.

17 Q. Y'all still live in the same place now you did on the
18 11th of January?

19 A. Yes, sir.

20 Q. How would you describe the feelings if you know of
21 that William had for Michael?

22 A. He cared for Michael because that's -- as I said
23 earlier he happen -- I had gotten into arguments with
24 Michael because of his age and other things he had done,
25 the violence I heard about. When you live in a community

1 that small you hear things. there is no way to help but
2 hear.

3 So I just didn't want him hanging around, and we
4 argued about Michael because I asked him not to. I asked
5 William not to.

6 Q. He like William?

7 A. Yes, he did.

8 Q. Have you ever had any serious behavior problems with
9 William?

10 A. No, sir. No, sir. William always worked and always
11 helped with the finances because my husband is getting on
12 in an age and didn't make a lot of money. He's a mechanic
13 and there aren't many opportunities to make a lot of
14 money.

15 And my son, William, has contributed to our finances
16 a lot, and I have a debilitating muscle and bone disease.
17 And the two girls there they really did not choose to give
18 custody of those girl, now.

19 Q. They're your grandchildren?

20 A. Right.

21 MR. CANNARELLA: That's all the questions I have,
22 Your Honor.

23 CROSS-EXAMINATION

24 BY MR. JOYNER:

25 Q. Good afternoon, Miss Windham?

1 A. Good afternoon.

2 Q. Now, you just said that Michael Johnson, he was a bad
3 influence?

4 A. Yes, sir.

5 Q. And it would be a bad idea to go around him?

6 A. In my opinion it was.

7 Q. Why did you spend so much time over there?

8 A. The reason I went over there is because my daughter
9 hung around with Sissy a lot and Dawn come and tell me
10 that Sissy needed cigarettes or that she needed milk and I
11 would take it to Sissy.

12 Q. You'd just go buy her cigarettes and stuff?

13 A. Yes, I did.

14 Q. Okay. Okay. And you said that -- what time did you
15 say she came? Did Outlaw -- William come in?

16 A. He came in -- I don't remember what time it was, but
17 he came in right around 12:00 or somewhere 12:10 or
18 something like that cause when my husband worked at
19 Landstar he worked second shift.

20 I judge my time by him because he gets home around
21 12:15. He did work second shift at that time then at that
22 time, and William had just come in. William had just come
23 in the door.

24 Q. You were still awake?

25 A. Yes, he come in almost right behind him.

1 Q. Who come in?

2 A. My husband.

3 Q. Okay. I see and what kind of condition was he in?
4 Was he drunk?

5 A. Well, I didn't really see him. Like I say, he came
6 in that back door, and he sort of turned his head to the
7 side. And I assumed he had been drinking because when
8 William was drinking he didn't want me to know it. He did
9 drink on occasions, and I never approved of it and he knew
10 I didn't.

11 So when he would be drinking he wouldn't want me to
12 see him. I assumed he had been drinking because he turned
13 around and went to his room.

14 Q. Okay. And did you have any idea that he was doing
15 drugs at that time?

16 A. No, sir, I didn't.

17 Q. So you didn't know that he was involved in cocaine?

18 A. No, I did not.

19 Q. Valium?

20 A. No, I did not.

21 Q. And mixing it with alcohol?

22 A. No, I didn't.

23 Q. What time did you say the police got there to pick
24 him up?

25 A. I guess around 12:30 or so. Maybe 12:45.

1 Q. So your husband came in and then 15 minutes later the
2 police got there?

3 A. No. My husband came in from Landstar and William
4 came in around 12:20 or somewhere around about that time
5 and then after my husband had taken a shower -- my husband
6 had taken a quick shower an got in the bed and then the
7 police came after that. He had just laid down when they
8 came.

9 Q. So about 12:30, 12:45?

10 A. Somewhere around that time, yes.

11 Q. Okay.

12 MR. JOYNER: No further questions.

13 MR. CANNARELLA: No redirect, Your Honor.

14 COLLOQUY

15 THE COURT: All right. Ladies and gentlemen of the
16 jury, we will stop for the afternoon. We've got a couple
17 more witness I understand in the morning. Then we will
18 proceed with arguments and finish the case up tomorrow.
19 Okay.

20 With that said remember my instructions about
21 communications. Y'all have a good night, and we will see
22 you in the morning at ten o'clock. I would start at 9:30
23 but we'll go 10:00 cause the County Council may want to
24 talk to Judge Lockemy and myself for a few minutes about
25 some concerns about the courthouse.

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
 COUNTY OF CHESTERFIELD) 02-GS-13-0159

STATE OF SOUTH CAROLINA)
) PLAINTIFF)
) vs.) TRANSCRIPT OF RECORD
))
 WILLIAM OUTLAW)
) DEFENDANT)

April 4-6, 2005
 Chesterfield, South Carolina
 Volume 3 of 3

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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

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 JANICE ROSS, Newberry Pathology
 SUSAN WILSON,
 JOHN TALBERT,

HOLLY EARLY,
BETTY ECHOLS,
WILLIE JEAN WINBURN,

HATTIE O. GORDON
Circuit Court Reporter

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DEFENDANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2			315

1 to get.

2 THE COURT: I feel it would be overstepping if I
3 granted such a motion. I'm going to deny the motion at
4 this time, but I am assuming then that you will be
5 requesting that lessor included?

6 MR. CANNARELLA: Judge, I think the evidence clearly
7 establishes sudden heat and passion for sufficient legal
8 provocation.

9 THE COURT: I agree.

10 MR. CANNARELLA: Okay. Now, the third charge I would
11 like to have is a lessor included of involuntary
12 manslaughter. Now, there is some case law that -- well,
13 involuntary manslaughter is where statutorily provides is
14 that it's the where someone who is acting lawfully but --
15 and killing another unintentional, but it's the result of
16 the reckless disregard of the safety of other.

17 The statute says someone who is acting lawfully and
18 intentionally kills somebody as a result of their reckless
19 disregard for the safety of others. And in the case law I
20 read, he can -- William had a right under the
21 circumstances to arm himself in self-defense.

22 So if somebody had the right to arm themselves in
23 self-defense based upon the testimony in the record then
24 he would be acting lawfully even if he was otherwise in
25 lawful possession of the weapon.

1 So the only lawful possession and acting lawfully is
2 the fact that under the circumstances he had the right to
3 arm himself, but -- and he testified he did not, and there
4 is evidence in the record, he testified that he did not --
5 he aimed -- he aimed in that direction. And we know that
6 he put his finger on the trigger and fired in that
7 direction.

8 He testified that he didn't -- wasn't intending to
9 shoot anybody. He was doing that to escape. And the
10 lighting is questionable. His sight and vision is
11 questionable. He fires from the hip as instinctive
12 reaction and to escape.

13 So he was acting lawfully under the circumstances and
14 didn't intend -- he testified that he didn't intend to
15 shoot anybody. But, clearly, under the circumstances with
16 the way he did it could be -- one could reasonably
17 conclude or infer that he was acting in a reckless
18 disregard safety of others.

19 Now, what if those pellet had -- what if his aim had
20 been in a slightly different direction and something
21 happened and one of those pellets had penetrated the home
22 and it happen to kill a child that was in there. That
23 would certainly be under circumstance of something that
24 would clearly suggest a reckless disregard for the safety
25 of others.

1 And I don't think just because he has raised an issue
2 of self-defense that does not automatically preclude under
3 these set of circumstances from getting a charge on
4 involuntary manslaughter because of the way I just
5 described it happened because it was reckless disregard
6 for the safety of others based on his testimony and the
7 way he fired the gun understood the circumstances.

8 So I think we would be entitled to a charge on, well,
9 voluntary manslaughter, involuntary manslaughter and
10 self-defense. And there is a case. It's the Cabrera-Pena
11 Case. He was -- they had been doing some drugs or
12 something, three or four of them, and two of them came at
13 him and in a menacing fashion and knocked him to the
14 ground.

15 And he picked up the gun and thought he was going to
16 be beaten up. Then another came towards him in a menacing
17 fashion he says in the case. And he just through the gun
18 up and it went up.

19 I know William didn't throw the gun up. William
20 never testified that he didn't mean for the gun to go off.
21 He testified that he meant for the gun to go off just like
22 in Cabrera-Pena that in that case entitled him to arm
23 himself for self-defense cause he was acting lawfully
24 under the circumstances.

25 It the was unintentional killing as a result of his

1 reckless disregard of the safety of others, and I know
2 this doesn't fit squarely into those facts, but taking all
3 the circumstances in consideration William testified to
4 about what happened and how he fired the weapon it's
5 pretty reckless under the circumstances as well entitled
6 us to an involuntary manslaughter charge.

7 MR. REDMOND: May it please the Court, Your Honor.
8 If the Court will allow, first, I'd like to address Mr.
9 Cannarella's argument and then Mr. Joyner will give a more
10 detailed analysis of the self-defense argument.

11 I tell the Court straight out that our position is
12 the defendant is not entitled to a defense of
13 self-defense. We take the position that he's not entitled
14 to the involuntary manslaughter and I cite precedence,
15 State v. Craig, which the facts are very similar to this.

16 And I'm glad Mr. Cannarella brought up the fact that
17 in Cabrera it was accidental. This defendant never
18 indicated it was an accidental shooting. He intended to
19 pull the trigger. That's important. In State v. Craig it
20 says that, "An involuntary manslaughter charge is not
21 necessary when the defendant admits to firing the gun even
22 though it was meant to be fired over the victim's head."

23 And so we would cite that as authority for the fact
24 that I think those facts are closely aligned with this
25 case; that this defendant is not entitled to an

1 involuntary manslaughter instruction.

2 Further, Your Honor, and I save way into the
3 self-defense by saying, and if I understand Mr. Cannarella
4 correctly he's asking for both a self-defense and
5 involuntary manslaughter. Not only does the State take
6 the position that neither one should be instructed, but I
7 cite further, Davis v. State.

8 I do have those cites, Your Honor if necessary where
9 it indicates that the defendant is not entitled to both
10 the self-defense and voluntary manslaughter instruction.
11 In other words, I'm saying in this case I think the facts
12 as they are would say that he's not entitled to either.

13 But also that he's not entitled to both. So at this
14 point I would yield to Mr. Joyner as it relates to why the
15 State contends that he is not entitled to a self-defense
16 argument.

17 MR. JOYNER: Judge, I think the law is pretty clear
18 on self-defense as far as provocation goes, and we know,
19 obviously, that he provoked the argument himself. He said
20 so himself in his direct examination of the defendant that
21 he started the fight. He said he came up to him outside
22 and said, "Where are my drugs? Why did you take them?"

23 I think that alone, Your Honor, is sufficient for
24 provocation because in reading State v. Summer has said
25 that starting an argument orally is enough and has been

1 considered provocation in the past. Another issue, Your
2 Honor, is retreat. It's another clearly obvious reason
3 why self-defense shouldn't be an issue in this case
4 because the defendant testified himself that he got in his
5 car and left.

6 And then he said, "As I was leaving I got mad and
7 stopped and got out and he said I'm going to make this guy
8 pay for what his did." It's clear that he retreated and
9 stopped. It's just not available when one retreats.

10 In the alternative, if Your Honor doesn't find those
11 sufficient, I think that it's also solid law that unusual
12 combat takes away the right to self-defense. And in this
13 case after he retreated he stopped his car and invited
14 Talbert into mutual combat.

15 He said so himself. "I'm going to make him pay for
16 what he did." That was exactly his words on the stand.
17 And for that reason we know the law of transferred intent
18 he may have been intending to fight with Talbert. He
19 might have been intending to shoot Talbert when he got his
20 gun out of his car.

21 But by the law of transferred intent he shot the home
22 owner, who by the way under State v. Jackson has the right
23 to use any means necessary including death to remove a
24 person from his house and from the curtilage of his yard.

25 And for those reasons, Your Honor, I think, again,

1 provocations as well as retreat, and if those aren't
2 sufficient, in the alternative unusual combat accompanied
3 by transferred intent would be sufficient for not charging
4 self-defense in this case. Thank you, Your Honor.

5 THE COURT: I'm going to charge murder. I'm going to
6 charge voluntary manslaughter. I'm going to charge
7 self-defense. However, Mr. Cannarella, unless you talk to
8 me I hope you have a self-defense charge ready for me.

9 MR. CANNARELLA: Judge, I just got some proposed
10 charges from Professor Hubbard.

11 THE COURT: We'll take a break after arguments. All
12 right.

13 MR. REDMOND: State's ready, Your Honor?

14 MR. CANNARELLA: Ready to argue, Judge.

15 MR. REDMOND: State is going to waive first argument.

16 (WHEREUPON, the jury panel enters the courtroom at
17 11:16 a.m.)

18 POLLING OF THE JURY

19 THE COURT: All right. We got everybody? Once again
20 I'm going to pole the jury. The question will be -- I
21 need a yes or no answer response to Madam Clerk as she
22 calls your name. Any juror, any of you communicated with
23 or has anybody communicated with you any issues concerning
24 this case. Yes or no.

25 CLERK OF COURT: Ray Watson, Jr.?

Polling of the Jury

1 JUROR: No.
2 CLERK OF COURT: Jimmie F. Catoe?
3 JUROR: No.
4 CLERK OF COURT: Jamie R. Horton?
5 JUROR: No.
6 CLERK OF COURT: Tiffany Alexander?
7 JUROR: No.
8 CLERK OF COURT: Randy Sowell?
9 JUROR: No.
10 CLERK OF COURT: Mary Burnell?
11 JUROR: No.
12 CLERK OF COURT: Edward Truesdale?
13 JUROR: No.
14 CLERK OF COURT: Bill Mullis?
15 JUROR: No.
16 CLERK OF COURT: Marlowe Funderburk?
17 JUROR: No.
18 CLERK OF COURT: Grover Jones?
19 JUROR: No.
20 CLERK OF COURT: Mary Miller?
21 JUROR: No.
22 CLERK OF COURT: Phillip Powell?
23 JUROR: No.
24 CLERK OF COURT: Ray Watson?
25 JUROR: No.

1 CLERK OF COURT: Beverly Gaskins?

2 JUROR: No.

3 THE COURT: Thank you. First of all, once again, I
4 know y'all may have been back there the last hour asking
5 why did they Judge tell us to be here at 10:00 and here it
6 is eleven o'clock. Well, there were two things. We had
7 to schedule an emergency hearing with the Attorney
8 General's Office on another matter. I had to work that
9 in.

10 The second thing is I told you we will complete the
11 testimony this morning. There will be no further
12 testimony. We will move straight into closing arguments.
13 Because that happened and we had to go ahead and take a
14 little time to sort out some matters of law.

15 In other words, I have to prepare for the charge.
16 Attorneys have to prepare their arguments after we sort
17 out other matters of law. That's what we've been doing.
18 So even though you think you lost some time we really
19 didn't lose any time because of the fact that there no
20 further testimony which threw us in that next phase.

21 I hope that makes sense to you, but anyway, that's
22 just the way it works. We're ready to go to arguments at
23 this time.

24 MR. REDMOND: State ready to go forward at this time.

25 THE COURT: Mr. Cannarella, the floor is yours.

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CLOSING ARGUMENT BY MR. CANNARELLA

MR. CANNARELLA:

Ladies and gentlemen of the jury, the Judge will tell you, after we finish talking to you, he's going to charge you on the law. He's going to tell you what the law is. Y'all find the facts. He gives you the law, and then you take the facts and apply them to the law to reach your decision.

But there will be certain forms of the verdict, and here's what the forms of the verdict will be. I'm writing up here "forms of verdict." Because you're going to have a lot to digest. In another hour the Judge going to start reading the law to you. And you're going to be expected to remember what he read to you.

If this is the first time you may have ever been acquainted with it or informed of it. It's hard to digest so I'm going to help you along in remembering some things. But the first form of verdict, and I list them in no particular order because it goes without saying that you've got to list them in some order.

Mr. Outlaw is indicted for murder. Now, there is a lessor included offense of murder. Even though the indictment, the piece of paper, says murder the law says that based upon the circumstances and the fact of the defendant might be submitted to a charge on the lessor

1 included of offense of voluntary manslaughter.

2 I'm just going to say voluntary man. Now, that's the
3 second option. The third option would be not guilty. Now
4 the Judge will also charge you on the law of self-defense.
5 And your verdict of not guilty will be based upon your
6 belief that he acted in self-defense upon the circumstances.

7 Now, I know you heard the State has the burden of
8 proving guilt beyond all reasonable doubt. So as you
9 begin to deliberate, if you, after he defines murder for
10 you, which is unlawful killing of another with malice
11 aforethought. If you have a doubt about that and you're
12 not sure that it was the unlawful killing of another as
13 opposed to homicide by self-defense, if you believe it was
14 the unlawful killing of another with malice aforethought.

15 And if all y'all believe that in your minds together
16 beyond all reasonable doubt then that's what your verdict
17 would be. But, if any one of you individually or the 12
18 of you collectively have a doubt at all about whether it
19 was the unlawful killing of another with malice, he meant
20 on the kill Michael Johnson, then you would have to say,
21 well, you would be impliedly acquitting him of that in
22 your mind in the jury room, which means, okay. It's not
23 that.

24 Now, let's remember what the Judge told us about
25 voluntary manslaughter, which is the killing of another

1 upon -- in sudden heat and passion upon sufficient legal
2 provocation. That means those circumstances somebody is
3 provoked and the provocations considered under the law to
4 be a legal provocation and the defendant acted as a result
5 of that provocation and kills somebody. That is the
6 unlawful killing of another without malice. No malice.

7 See, murder, you got to have malice. I'm going to
8 kill him or I pull a gun on him and shoot him, and
9 basically, for no reason at all. And that's somebody
10 guilty of murder. Now, voluntary manslaughter is sudden
11 heat and passion upon sufficient legal provocation.
12 That's without malice, but when provoked.

13 When somebody's been provoked. Now, if you have a
14 doubt about that then the reason you will have a doubt
15 about that is because you find him -- you find him not
16 guilty by reason of self-defense. And I'll explain to you
17 in a minute what that law of self-defense is.

18 But, I want to make this point clear to you what I
19 believe the law is about. About your doubts and how you
20 take your doubts from one, cross out the next one, and end
21 up where you want to be. You see all of you unanimously
22 must agree that William Johnson [sic] is guilty of
23 something before you can convict him of it.

24 If any one of you have a reasonable doubt about his
25 guilt, you can stand firm as an individual on that belief

1 and you don't have to change your mind if you don't want
2 to. That's what you believe, and you're firmly convinced
3 of it. Another definition may be beyond all reasonable
4 doubt is that you're firmly convinced that he's guilty of
5 something. But if you're not firmly convinced and that
6 means that you may have a doubt. One of you may -- one of
7 you individually may possess that doubt or a group of you
8 may possess that doubt which means y'all don't unanimously
9 agree.

10 And you always have to give the defendant the benefit
11 of the doubt, too. Let's just say if this -- I'm just
12 going to call this a bar right here, okay? And let's
13 represent -- let's let this bar represent each
14 individual's thoughts. Now, if you are satisfied that the
15 State has convinced you beyond all reasonable doubt that
16 the defense -- that the defendant is guilty, then you're
17 satisfied that they have just disproven to you that he did
18 not act in self-defense.

19 Well, if you all believe -- if you all believe that
20 the State has failed to satisfy you beyond a reasonable
21 doubt; that's all of y'all's belief, one individual's
22 belief in his mind, and he says there is no doubt. There
23 is no doubt in our minds that the State has not convinced
24 us, firmly convinced us he didn't act in self-defense. So
25 y'all agree self-defense. Then he's not guilty.

1 If I go this way -- let's say an individual juror's
2 mind is sort of like this. We know -- we don't have --
3 this is self-defense. We're all satisfied in our minds
4 and together he acted in self-defense. But, now, any one
5 of you individually, you might have a doubt about whether
6 or not he acted in self-defense because you're not real
7 sure.

8 Well, see, if you have a doubt about whether or not
9 he acted in self-defense because you're not real sure,
10 then maybe it looks like this. Okay. Maybe -- maybe this
11 much of my mind tells me he acted in self-defense, but
12 this part of my mind makes me unsure. I don't know if he
13 acted in self-defense. I can't be firmly convinced beyond
14 a reasonable doubt.

15 Well, you've got to be firmly -- and if this bar --
16 if this bar is clear, and let's just say you have no
17 doubt, no doubt all y'all would agree. There is no doubt
18 in your minds he did not act in self-defense. So we're
19 firmly convinced that he's guilty of one of the other two
20 charges -- one of the two charges he's charged with.

21 So you begin to pair it down, but the point I'm
22 really trying to emphasize on this last demonstration
23 right here on this board is if you're not sure about
24 whether or not he acted in self-defense cause you really
25 have to view it as close as you can from the perspective

1 of the defendant at the time this happened.

2 You know, in his shoe. What was he going through.
3 Was it reasonable for him to act under the circumstances
4 the way he did. Well, this means not guilty cause y'all
5 are satisfied that he -- that the State has not proven to
6 you he's guilty beyond a reasonable doubt because he acted
7 in self-defense. Y'all all believe he acted in the
8 self-defense.

9 But if any of y'all believe he might have acted in
10 self-defense or he might not have, you've got to resolve
11 that doubt in his favor cause. You've got to give it to
12 him because you're not firmly convinced he acted in --
13 that he did not act in self-defense.

14 So if you've got no doubt or if you've got some
15 doubt, he's entitle to be found not guilty because -- the
16 reason that is is that in my opinion is that you know you
17 can't -- there might not always be a perfect self-defense.

18 But the Judge will tell you that a defendant, under
19 the circumstances, is not required to make a nice, cool
20 calculation of precisely what to do if he reasonably
21 believes that he's under attack and he might suffer death
22 or serious bodily injury.

23 But y'all have to look at it and sort of put yourself
24 in his place and say, well, was that belief reasonable?
25 Was it reasonable under the circumstances of what he did

1 given everything you heard from the witness stand? What
2 facts do you want to believe? What facts do you not want
3 to believe? What witnesses do you want to believe? And
4 what witnesses you do not want to believe. But you can
5 believe all of what one witness says and disbelieve other
6 parts.

7 But you know who is the key -- who is the key witness
8 in this case for the State. Who is the key witness for
9 the State's case. If John Talbert came knocking on your
10 door trying to sell you something would you risk \$1 on his
11 promise? Would you trust him with \$1? John Talbert, a
12 convicted felony on probation for stealing, under
13 indictment for a home invasion.

14 But the key to his testimony is that he says on the
15 witness stand for the first time that William Outlaw got
16 out of the car and he had the shotgun in his hand. That's
17 very, very key for the State's prosecution of this case.
18 So if you do not have any doubt about whether you would
19 trust him with a dollar or not if he knocked on your door
20 and promised you something, then you go ahead and convict
21 William Outlaw on the basis of that man's testimony
22 because that was the key witness to the State's case and
23 their hinging their desire for a conviction on his
24 testimony.

25 Now, his statement -- his statement, it's in evidence

1 and I introduced in evidence cause in that statement,
2 that's the first time he ever says that William Outlaw got
3 out of the car with a shotgun. He left the house and came
4 back and he armed himself there in the process and got out
5 the car with a shotgun.

6 Well, he didn't convince me that he was telling the
7 truth when he said that because that's a significant fact.
8 That's a real significant fact. If he's giving a
9 statement about what happened that ought to be in his mind
10 very, very vividly two or three hours after the event
11 occurred.

12 I turn the corner. Here he comes. He gets out the
13 car with the shotgun in his hand. Well, he said William
14 Outlaw called out to me, and his said come down here to
15 the road. I want to talk to you. He didn't -- his
16 statement's in the record, and I want it to be there so
17 y'all could read it and compare that statement to what you
18 remember he testified to on direct examination and
19 cross-examination.

20 Because he said that -- William said -- he said he
21 want -- we had words, and I'm going to try to remember.
22 I'm not going to pull it out and read it verbatim. We had
23 words. He wanted me to come down to the road and talk to
24 him. That's what's in that statement.

25 And another interesting thing about that statement,

1 the key witnesses statement, he only mentions one shot.
2 One shot. You know if you read that statement without
3 having the benefit of any other persons around explaining
4 that statement to you it's almost like he wants to create
5 the impression in the reader's mind that there were
6 threats made by Mr. Outlaw. And then all of a sudden Mr.
7 Outlaw fires a shot. The only shot that was fired that
8 took the life of the decedent.

9 And that same thing with Miss Wilson's statement.
10 She didn't mention anything about two shots. She only say
11 one shot, but we know clearly there were two shots fired.
12 The evidence is there -- and the evidence is there, and
13 you know one thing, we don't really know and it does not
14 matter because the shot was fired.

15 I don't know if anybody ever testified whether that
16 gun was loaded or not, but it didn't matter. If I pointed
17 a gun at you, you have a right to assume it's loaded.
18 So -- and Talbert is the key witness for the State because
19 he said that William -- Michael Johnson -- William Michael
20 Johnson is his name. William Michael Johnson, that
21 Johnson fired a warning shot.

22 Well, you see with his eye in the condition that he
23 testified it was in and maybe the questionable lighting
24 that existed on that side of trailer where the lights were
25 probably in the shadow on that of the trailer. It would

1 be up against him. He's said that there was a warning
2 shot. Well, William Outlaw just saw fire, heard gunfire.
3 But, now, he didn't really know under his circumstances if
4 it was William Outlaw -- I mean if it was Michael Johnson
5 or if it were John Talbert. But a gun went off and he
6 went to the trunk and got his gun.

7 You're going to hear that the pellets right here --
8 here's where I think you might find yourself, okay? The
9 doctor on direct examination testified that in questioning
10 about no wounds to the arms, that is going to suggest that
11 the arms were up. I don't know how high or how low they
12 were, but you may hear that, hey, look, you know, he fired
13 one shot and loaded again and was standing up like this
14 with the gun.

15 But that not what Talbert testified to. Talbert did
16 not testify the position that Johnson was in when he
17 fired, but the left to right, and I suggest to you that it
18 would be reasonable for you to infer, which mean read in
19 between the lines, that he could have been drawn down on
20 him at that time with a gun -- with that shotgun and when
21 William Outlaw fired that's why his arms were elevated
22 above his I guess neck, lower neck line.

23 And that's why he was hit, but he was hit sideways.
24 He could have been drawing down on him. The interesting
25 thing is the only thing William Outlaw knew was that he

1 had been attacked twice by John Talbert, hit in the right
2 eye. He goes down. He says he spun around, got back out,
3 and was going to -- you know you busted my window. Come
4 down here. I don't know. You may question that to some
5 extent, but you know when you look back at the statement
6 that John Talbert gave he said he wanted me to come down
7 in the road and talk to him. You know we had words.

8 John Talbert never said, "I punched him in the eye."
9 Six feet, three, 285 pounds beating down on a five foot,
10 three. He never says that in his statement. And a lot
11 of -- read his statement carefully cause he's really been
12 evasive about what he testified to today.

13 So William Outlaw attacked twice by him goes down,
14 spins around and then he hears a gunshot. He gets out.
15 He said, "John Talbert, I want to talk to you." John
16 Talbert, "I'm not going. He says, "Come down. I want to
17 talk to you." I want to talk to you. Nothing about
18 threats. The only threatening -- the only threatening act
19 on the part of William Outlaw is that on John Talbert's
20 part.

21 Now, that's the other thing. He says he came out
22 with a gun. Now, walking up to John Talbert saying, "You
23 got my stuff? Why you steal my stuff?" I brought him up
24 here. Now, he didn't say -- William Outlaw didn't say he
25 didn't use any fighting words to John Talbert. He

1 didn't -- John Talbert said he there was no act of
2 aggression towards me. But it was an unprovoked attack on
3 him. He just asked him what did you do with my stuff. He
4 didn't walk up to him in a menacing fashion and try to
5 fight him. Why would he?

6 If John Talbert never hit William Outlaw and busted
7 his windshield and if Michael Johnson had never pulled out
8 that shotgun this would have never happened because that
9 man right there is not a violent person. And he did not
10 come back there and pull out that shotgun because he
11 wanted to kill Michael Johnson.

12 He was a friend of his, but from the evidence you
13 have in your record you could reasonably conclude that
14 some of the players in this game were very, very trigger
15 happy and always had weapons, handguns, and long guns an
16 even was arrested in Florence in traffic for producing a
17 black and chrome nine millimeter that had been reported
18 stolen.

19 So an on going, on going -- betty said she lived
20 right across the street. It's on going. Guns and
21 shooting. That's got to be a terrible situation to live
22 in. It's got to be. If he wasn't so trigger happy he
23 wouldn't have loaded the shotgun and fired it where he
24 fired it.

25 Just let everybody simmer down. It would have been

1 all right. But it was almost like a fixed habit and
2 pattern of life. Even on that Monday -- even on that
3 Monday before there was gunfire across from her house.

4 And what is important, you know, he went to --
5 Michael Johnson went to the corner of that trailer, and I
6 say that it's reasonable to infer that he nudged, for
7 whatever reason, he positioned himself up the side of the
8 corner of that trailer cause the light was shine -- that
9 light would shine down.

10 That would create a shadow right there in that area
11 right there. That's why he went there, but he was -- now,
12 was he concerned about the safety of some other people --
13 small people in his house? Well, if he was concerned
14 about the safety of the small people in his house why did
15 he, three or four months before that these people that
16 live with him, chase them away with a nine millimeter and
17 piercing the metal truck as they rode away.

18 You know it happened. Betty Echols corroborated it.
19 Well, how much concern would one have for the safety of
20 those people in the house if they fired at their own
21 family? I don't understand. I don't understand. William
22 Outlaw is not an angel, I know.

23 But those people were older than he was, and he got
24 caught up in that thing. And I wish that he -- that he --
25 that Danny Wilkes and Michael Johnson had never run up on

1 William Outlaw at Winny's, the bar, and invited him down
2 there because this would have never happened to him.

3 Self-defense I think it's reasonable for y'all to
4 conclude William Outlaw didn't intend to kill that man.
5 He acted in self-defense because he believed that's what
6 he needed to do, fire his own gun. Get his own gun.

7 Yes, he lied to the police about hitting Michael
8 Johnson. He lied about throwing the gun away. And they
9 may say that that is some evidence that he may be guilty.
10 Well, if you take an individual like him who has no
11 violent past, no criminal record and compare it to the
12 rest of them, you throw him in a situation like that, I
13 don't know how I would have acted either. I don't know.

14 Went to his house. Got on the floor. Didn't even
15 know he had killed anybody. But the quirky sort of thing
16 about is that self-defense because he had a right to arm
17 himself under self-defense under the circumstances he did,
18 and he's not required to make a nice, cool calculation of
19 when to fire and use deadly force.

20 He believes he was under attack with deadly force,
21 and he fired that shot to get away. And, no, he didn't do
22 everything perfectly, but I think y'all know what the
23 facts are in this case because you've listened and you've
24 heard them. And the families, the mom, she would go down
25 there and help him. Help. William works. You know she

1 would go down there and provide charity to them because of
2 the way things were.

3 And she didn't want William -- she didn't want
4 William to be that, but William and Michael they really
5 weren't -- I don't really believe they were enemies even
6 though William knew what Michael might be like. And that
7 might have played something in his mind in that split
8 second in time which caused all this stuff to happen.

9 This is really a very, very unfortunate incident.
10 Self-defense is no fault. The defendant must be without
11 fault. No fault. That's one of the elements. Well,
12 where did -- what did he do? Did he just say where is my
13 stuff enough to make him at fault? Where is my stuff,
14 John Talbert. Is that enough to make him at fault?

15 He was attacked. In his mind he was attacked three
16 times. In his mind -- because you have to as much as you
17 can put yourself in his situation.

18 Number Two. It's got two parts. Number Two has two
19 parts to it. Number Two says that William must have
20 actually believed that he was in -- he actually
21 believed -- okay. This is imminent danger. He believed
22 he was in danger or he actually was in danger.

23 Well, see, it's hard for us to kind of split that up
24 because in his -- well, he believes he was in danger. He
25 knew he was in danger when he got hit twice. Or, well,

1 hit once and in the car. I'm going to call it hit twice
2 because of that. And then the gunfire. When that gunshot
3 went off it was reasonable for him to believe -- see he
4 might have thought that it was Talbert or it was somebody,
5 but you know maybe in the back in his mind somewhere he
6 knows about how serious some people are with the way they
7 are trigger happy and having guns and maybe have a long
8 gun.

9 And then all of a sudden a short gun shows, too, up
10 in the presence of people that deny only seeing -- that
11 deny seeing more than one gun. That goes to credibility.
12 Remember the one with the insignia on it, imminent danger.
13 Okay.

14 Now, did he -- he was actually -- was he actually --
15 he was actually in danger or he was in danger. He
16 actually believed he was in danger. That means what was
17 in his mind. He believed he was in danger or it was real
18 danger. Real danger.

19 Well, you know it's hard to separate these two,
20 really, because he hears a gunshot. His eyes are all
21 busted, so was he in -- was he -- if he believes he was in
22 imminent danger or he actually was in imminent danger.
23 Okay.

24 Now, his belief of being in imminent danger has got
25 to be reasonable if the defense is based upon his belief

1 of imminent danger. A reasonable -- reasonably prudent
2 man of ordinary firmness and prudence would entertain the
3 same belief. If the defendant was actually in danger the
4 circumstances were such that would warrant a man of
5 ordinary, prudence, firmness and courage would do the same
6 to save himself.

7 Was his believe of imminent danger, was it
8 reasonable? Was his belief reasonable? Was his action
9 reasonable from his standpoint as you view them after
10 having heard all the evidence? Was it reasonable for him
11 to fire that shot in self-defense because of his belief of
12 imminent danger.

13 And was that belief reasonable under the
14 circumstances because you're entitled to act on the
15 appearances as they appear to him at the time. You're not
16 required to make a nice, cool calculation when you act in
17 self-defense. You can use whatever force you believe is
18 necessary under the circumstances because he was trying to
19 really effect his departure from there.

20 Now, they will say he should have left and never come
21 back, but when he came back with the key witness believe
22 he had the gun in his hand when he got out the car or are
23 you going to risk a dollar on that guy's promise knocking
24 on your door?

25 Now, he doesn't have to wait until somebody gets the

1 drop on him. He fired from the hip, almost blinded in the
2 eyes in a dark area because he believed that's what he
3 needed to do to get away from the circumstances that had
4 happened right then.

5 Well, yes, I wish William had kept going, but William
6 came back. But did he come back to fight? That's what
7 you've got to decide. Did he come back to fight. He had
8 a gun. Was he inviting Talbert down there to shoot him?
9 Read Talbert's statement because it says he called me down
10 there. He wanted to talk to me and I didn't go. Did he
11 come back to fight?

12 That's what you've got to decide because -- and that
13 he had no other probable means of avoid the danger of
14 losing his own life or sustaining serious bodily harm to
15 the acts as he did in this particular instance. So you
16 need to separate the two. Kind of two instances.

17 He leaves -- he's leaving -- he leaves. Well, what
18 did he come back for? Did he come back to do harm to
19 somebody or to say, "Talbert, why did you bust my
20 windshield. You're going to have to pay for my
21 windshield. You're going to take care of my windshield."

22 And when that gunshot went off after that did he act
23 reasonable under the circumstances in doing what he did.
24 That's what you've got to decide now and the State has got
25 to the convince you beyond all reasonable doubt that he

1 killed somebody -- intentionally killed somebody with
2 malice in his heart. A depraved heart. A mind bent on
3 mischief. A wicked heart.

4 Malice means I've got a wicked heart when I killed
5 him. They've got to prove to you beyond all reasonable
6 doubt that he's guilty of that. If you have a doubt about
7 that then you've got to analyze from the standpoint of the
8 voluntary manslaughter.

9 But, if you have -- if you have no doubt that he
10 acted in self-defense, because they haven't convinced you
11 that he did not. They've got to convince you he did not
12 act in self-defense. If you're not convinced of that, if
13 they've not done that, William Outlaw is entitled to a
14 verdict of not guilty by reason of self-defense.

15 If you've got any doubt in your mind as to whether he
16 acted in self-defense then you have to resolve that doubt
17 in favor and say, "Well, I can't convict him of anything
18 because I'm not sure if he acted in self-defense or not.
19 The evidence not clear enough for me. I can't vote my
20 conscience to convict William Outlaw of anything because I
21 have a doubt in my mind about whether he acted in
22 self-defense or not.

23 And I know under the oath I took I have to resolve
24 that doubt in William Outlaw's favor and find him not
25 guilty. This person should be not guilty. His biggest

1 error in judgment, over all biggest error in judgment, was
2 being where he was. I appreciate your time.

3 CLOSING ARGUMENT BY MR. REDMOND

4 MR. REDMOND: May it please the Court. Mr.
5 Cannarella was exactly right. His biggest error in
6 judgment was being exactly where he was because remember
7 he left and came back. John Talbert come down here. I
8 got something for you or something to that effect. I
9 recall asking that. I recall pointing to the defendant.
10 Yes.

11 So in that one simple statement, ladies and
12 gentlemen, I believe the entire closing argument from the
13 defense has been nullified. But if you will indulge me.
14 I'm going to go a little further. I'm won't abuse your
15 time, and I know you paid attention to everything going
16 on. So I'm not going to abuse your time, but I want to
17 point out several important things.

18 However, before I do that I haven't actually had the
19 chance to properly introduce myself to you. My name is
20 Kennard Redmond. I'm an Assistant Solicitor as is Mr.
21 Joyner. I'm an assistant Solicitor here in -- well, here
22 in the Fourth Circuit. I'm primarily based in Dillon
23 County. Originally from Hartsville.

24 And it's a pleasure to be here in Chesterfield. I
25 have worked in Chesterfield County in the Solicitor's

1 Office, and it's a pleasure to be here today, however, the
2 circumstances which bring me here are in no way
3 pleasurable.

4 Mr. William Michael Johnson's family is here because
5 they lost a son under very tragic, unnecessary and
6 unlawful circumstances. And I've listened to the Defense
7 spend a lot of time talking about Mr. Johnson, how he was
8 before.

9 But, ladies and gentlemen, let me just tell you this.
10 I will submit to you that we are a nation governed by law.
11 The rule of law is paramount in this nation. That is what
12 entitles us to exist. That is what avails us to the
13 freedoms to which we enjoy. That's why we have a
14 constitution. Life, liberty and the pursuit of happiness,
15 life. Does not qualify that. We are all entitled to
16 life.

17 The circumstances in which Mr. William Michael
18 Johnson was deprived of his life were illegal and it is
19 solely based on the actions of the defendant. Let's
20 review a few things.

21 First of all, Mr. Cannarella explained to you murder,
22 voluntary manslaughter and not guilty by reason of
23 self-defense. Malice aforethought as His Honor is going
24 to instruct you -- let me just say that if I make a
25 mistake in any way His Honor will, of course, instruct you

1 on the law. And, of course, if I misstate something don't
2 hold that against me. Excuse me. Don't hold that against
3 the State and family and victims in this case. Hold that
4 against me.

5 I will do my best not to misstate anything because
6 you were here and you heard what took place. And I don't
7 think I need to do that any way, to misstate anything.
8 When William Michael Johnson, at his house -- let me
9 stress that. At his residence with the defendant.

10 Oh, he was so violent and everything, but they were
11 hanging together. He was intoxicated, not level headed he
12 says. Couldn't half see he says cause his eye was
13 bleeding. You got the picture, ladies and gentlemen,
14 taken that night. So you'll have that for your
15 evaluation.

16 He claims all these thing, the defendant does, but he
17 seems to be forgetting one primary thing that was not
18 addresses here. There was a lot of time spent talking
19 about John Talbert and what he did or did not stay. But
20 you will have the statement here and you will see the
21 statement. And Talbert's statement was about a paragraph.
22 And, obviously, a lot of things occurred that I would
23 submit were not covered in the paragraph.

24 Here's my point. Look at the context of the
25 statement. Mr. Cannarella is asking you to look word for

1 word and, well, you will see and it was common sense. He
2 was not on the witness stand that night. He was laying
3 out in general what happened. He told you that in more
4 detail. He told you truthfully and he was upfront with
5 you about the problems. He's not trying to hide that.

6 So when you talk about credibility here it's a
7 paramount thing in this case. Whose got the most to lose?
8 That would be the defendant. Who told you, not just
9 change the wording but the entire context of their
10 statement in this case? That would be the defendant.

11 And why? Because in the statement he gave originally
12 he says Michael Johnson he said, the defendant, he hit me
13 and shot at me. Now, he say he doesn't know. How
14 convenient.

15 So we talk about credibility, and I'm glad Mr.
16 Cannarella brought up credibility because after everybody
17 in this courtroom that took that stand, ladies and
18 gentlemen, I think it is painfully and clearly obvious who
19 was the least credible. And that would be the defendant.

20 Further, ladies and gentlemen, murder is the taking
21 of the life of another with malice aforethought as Mr.
22 Cannarella and His Honor will instruct you. You can use
23 the fact that there was the use of a deadly weapon, if you
24 find there was malice then you may convict of murder.

25 And there is why the State is strongly contending

1 that this is murder as opposed to voluntary manslaughter.
2 Not just the use of a deadly weapon, but there was what we
3 will call a cooling off period. You will here that term
4 again. Cooling off period. This is after having been
5 popped by Mr. Talbert, left, came back, and engaged Mr.
6 Talbert to a fight.

7 Now, Mr. Talbert -- nobody is contesting the fact
8 that Mr. Talbert was actually behind the trailer. In fact
9 the defendant supports that contention because he wanted
10 him to come down. So I say that because, again, that
11 actually enhances to credibility of Mr. Talbert. But also
12 given the fact that Mr. Talbert would not come down, he's
13 being called, would not come down.

14 Mr. Talbert says, "Well, the reason I didn't come
15 down is because he had a shotgun." Think about this. If
16 John Talbert had just whooped his butt why would John
17 Talbert be afraid to engage him further? Well, that's
18 because of this. State's Exhibit one. Defendant's
19 shotgun.

20 That's why John Talbert did not further engage
21 Mr. Outlaw. When he called for him -- the defendant, when
22 he called for Mr. Talbert did anybody -- did the defendant
23 say he came down? No. He wasn't going to come down
24 because the defendant had a shotgun.

25 And in fact, ladies and gentlemen, further, when you

1 talk about cooling off period keep in mind that he left
2 and stooped with the intent to engage. He was retreated.
3 That has two effects. One, takes it out of the voluntary
4 manslaughter into murder. And, Two, nullifies any
5 self-defense because in order for this defendant to be not
6 guilty been reason of self-defense he cannot be in any way
7 at fault in bringing about the difficulty.

8 Ladies and gentlemen, we sat here and listened to
9 everything and not only is he partial at fault. He was
10 fully at fault by bringing about the difficulty. But
11 remember this. The reason the confrontation began was
12 because even though Mr. Talbert is bigger and more
13 imposing, you stole my cocaine.

14 He initiated the confrontation. So he must not have
15 been too afraid. He leaves and stops, gets out with a
16 weapon. He must not have been too afraid. So, ladies and
17 gentlemen, keep that in mind. Mr. Cannarella will tell
18 you to find him not reason -- not guilty by reason of
19 self-defense.

20 This point is very interest, now. I'm going to
21 illustrate a few things, but I do not want you to infer me
22 as saying that he's entitled to involuntary manslaughter
23 cause he's not. But, I like the term voluntary man
24 because when you think -- keep that in mind. Not in the
25 concept of he's guilty of voluntary manslaughter, but

1 let's think about what he voluntarily did. He voluntarily
2 intoxicated himself, the defendant did.

3 Now, he testified that oh, when I gave my statement I
4 wasn't level headed. When I threw the gun out I wasn't
5 level headed, but then he remembers everything else that
6 he is trying so use to support a self-defense argument.
7 Clearly. Let me give you an example, and just keep in
8 mind as I give you this example I'm a lot older than I was
9 then back then.

10 Back a few years ago, I won't say how many. I was a
11 college student down in the College of Charleston, and I
12 remember being distressed about this girl I liked. I mean
13 I was crazy, head over heels for her. I went to this
14 party. She ends up dancing and hanging out with this
15 other guy, so I feel kind of bad.

16 I don't know if you ever heard of PJ? And, again,
17 this was a long time ago. I'm not ashamed. Ever Clear
18 and the fruit juice and drop the fruit in there. Well, I
19 had 13 cups of PJ. The thing about PJ is that it doesn't
20 hit you right then. It kind of sneaks up on you.

21 I remember the 13th cup, and the next thing I
22 remember was waking up that next morning asking the Good
23 Lord to take me. Now, that's how bad I felt, but I don't
24 remember anything that happened after that. And this is
25 my point. From what I do understand I rode to the party

Closing Argument by Mr. Cannarella

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1 with several friends of mind. I was told I rode back with.
2 them. I was also told that on I-26 I tried to open the
3 door and get out while we were on the interstate doing 55
4 miles per hour. I have no recollection of this. I did
5 not remember it then. I do not remember it now.

6 My point is how is it then that this defendant with
7 what he was doing -- he admits he was taking, didn't
8 remember this at the time, but all of a sudden he clearly
9 remembers this. Common sense.

10 Ladies and gentlemen, you were chosen to sit on this
11 jury. You were chosen to go back and deliberate. You do
12 not leave your common sense out there in the seats. You
13 don't leave them out there in the jury box -- in here in
14 the jury box. You take it with you everywhere you go
15 including in that jury room. Common sense, ladies and
16 gentlemen when you talk about credibility of the
17 witnesses.

18 This defendant voluntarily started with John Talbert.
19 He initiated the argument with John Talbert. Voluntarily,
20 left and came back to engage John Talbert. Voluntarily
21 brought out a weapon. Let's talk about the circumstances
22 the defendant talks about that cause you recall
23 cross-examination some of the issues that were brought out
24 on direct and cross.

25 This defendant says he saw a flare. He saw a shot so

1 he goes and I think gets behind the truck. His eye is
2 bleeding. You've been told over and over again. He can't
3 see, but he sees well enough to be able to get the key,
4 open the trunk, get his gun, he says feel for his gun, get
5 a shell, load the gun, and then, obviously, gets back to
6 behind the car door, the driver side door.

7 And this is the interesting thing, ladies and
8 gentlemen. I don't think it escaped anybody in the
9 courtroom. And this is I think a large part of what
10 establishes that the defendant's statement is a crock.
11 Pardon my French. But then he testified that, "Oh, yeah,
12 I held the gun at my hip. I held the gun at my hip about
13 this angle."

14 Remember I asked him several times, "You were behind
15 the car door, yes." It's January. Now keep in mind it's
16 cold. It's January, and then he just fired the shot from
17 his hip standing behind the door. I asked him, "Now, how
18 much did it cost to repair the driver side window." He
19 tried to turn as if I was talking about the windshield.
20 Common sense, ladies and gentlemen.

21 Is there any way that it could have occurred the way
22 this defendant said based on his own words? No.
23 Absolutely not. His Honor will instruct you that
24 credibility of a witness -- if you don't believe a witness
25 you can either believe part, all or none. If you find

1 their not telling you the truth about one thing you can
2 disregard. You can disregard their testimony.

3 Ladies and gentlemen, point blank, defendant lied on
4 the stand. What else did he voluntarily do? He
5 voluntarily tosses the weapon. Now, mind you, he
6 testified later about, "Well, I came home and I was
7 worried about somebody coming to get me" or whatever.

8 Why do you toss your protection if that's what you're
9 worried about? He talked about voluntarily failed --
10 voluntarily failed to notify anybody of what had happened;
11 that he had been shot at, gone through this trauma.
12 Failed to notify anybody of that. And the most compelling
13 thing that he voluntarily did was he voluntarily changes
14 his whole story. Not a part of it. Not most of it. All
15 of it.

16 You will have his statement in the room with you. He
17 completely changes his statement. Why? To save his own
18 rear end. Who has the most to lose right now?
19 Mr. William Outlaw. The defendant.

20 Now, ladies and gentlemen, again, when you step back
21 and using your common sense and looking at everything as
22 it's been it laid out you will realize, one, William
23 Michael Johnson had the absolute right not just to defend
24 his property, but at the time that John Talbert was being
25 called had the right to defend a friend or relative on his

1 property. And at that point, he comes out with a gun.

2 Remember, Mr. Johnson, and I failed to mention this,
3 Mr. Johnson fired a warning shot. Fires a warning shot up
4 in the air. This is where Mr. Cannarella talks about
5 Dr. Ross' testimony, and I need to point something out.
6 Two things. One, he said, "Well, he might have been
7 standing up like this and that might explain the path as
8 far as the pellets."

9 The pellets are spread out across the torso. If
10 Mr. Johnson was turned to the side like this, unless this
11 is some -- and I don't mean any disrespect by saying this,
12 but if there are magic pellets that happen to have
13 penetrated Mr. Johnson; that just happen to come from this
14 direction and turn and go in this way.

15 Otherwise, he would not have had wounds that spread
16 across his torso. And you will see the picture. You will
17 see the pellets are spread across. That's the first
18 thing. Second thing is Mr. Cannarella failed to mention
19 to you, and remember you heard how the premises was laid
20 out. Mr. Johnson would have had to have been aiming down
21 anyway. Again, this was a hill.

22 So what Mr. Cannarella tells you and the context of
23 what he's trying to tell you about Dr. Ross' testimony is,
24 point blank wrong. What make more sense? And, again, you
25 will have the pictures from the autopsy that will indicate

1 that William Michael Johnson was shot pretty much center
2 mass from left to right. And, again, Dr. Ross told you
3 that based on that pattern his arm -- if his arm was up
4 the way the defendant will try to make you believe, then
5 there would have been a different pattern of wounds.

6 But, please, keep those thing in mind when you piece
7 everything together. And once you do that you will really
8 understand the fact that William Outlaw is guilty of
9 murder. Once again, who brought about the difficulty?
10 William Outlaw. Who left? William Outlaw. Who came back
11 to engage someone? He was mad.

12 Remember I asked. He was mad. He was mad because he
13 got hit and supposedly his windshield got busted out. He
14 was made at the time, but he was leaving and that's why I
15 say this case is not about self-defense. This case is
16 about murder v. manslaughter. And the reason I'm telling
17 you that it is murder is because of the fact that the laws
18 of the State of South Carolina one using a deadly weapon
19 infers malice which puts us in murder.

20 Two, the defendant was leaving, came back and
21 engaged. He was retreating. He came back. He had the
22 opportunity to leave. There was a sufficient cooling off
23 period, and again, I'm basing it on his testimony.
24 Mr. Talbert, of course, tells you and Miss Wilson tells
25 you that he was gone for longer than. That it was not

1 just right then, but either way, he was leaving. There is
2 no dispute of the fact that the defendant was leaving. No
3 dispute.

4 There is a question of how long, and we would submit
5 to you that he actually left and came back because the gun
6 was in the trunk. And remember, Mr. Talbert told you,
7 "Well, I heard that the gun was in the trunk." Well,
8 guess where the defendant said the gun was? In the trunk.

9 When you look at these things it makes you realize
10 that in essence the defendant is supporting what
11 Mr. Talbert was telling you. The gun was in the trunk.
12 However, he didn't stop and get it right there. He went
13 down the road, got the gun, came back and was ready for
14 combat because John Talbert had beat his butt.

15 Nobody contests that. He beat his butt, but John
16 Talbert would not have engaged William Michael Johnson --
17 excuse me, William Outlaw, the defendant, if the defendant
18 had simply kept his mouth shut and that's what started
19 everything.

20 So, ladies and gentlemen, I could go through
21 everything piece by piece, but, again, this is where the
22 battle lines are drawn. You've heard the evidence, heard
23 the testimony, seen the evidence. And I submit to you
24 that taking all of these things into consideration.

25 The fact that this defendant volunteered to start and

1 engage John Talbert, volunteered to leave, voluntarily
2 stopped voluntarily came back, got out of his car, and
3 voluntarily and willfully and maliciously killed, murdered
4 William Michael Johnson. In fact makes him guilty of just
5 that; that being murder.

6 Ladies and gentlemen, I thank you for your time. I
7 thank you for your patience with me, and God bless you in
8 your deliberations. I thank you.

9 THE COURT: Thank you, gentlemen. Ladies and
10 gentlemen of the jury, we're going to take a rest brake.
11 We'll come back and we'll get the charge.

12 (WHEREUPON, the jury panel was excused from the
13 courtroom at 12:06 p.m.)

14 (WHEREUPON, Court is in recess at 12:06 p.m. and
15 reconvenes at 12:18 p.m.)

16 (WHEREUPON, the jury panel enters the courtroom at
17 12:18 p.m.)

18 CHARGE OF THE COURT

19 THE COURT: Good afternoon. All right, ladies and
20 gentlemen. It now comes my duty at this time to charge
21 you on the law of the case. I'm going to estimate it will
22 probably take 45, 50 minutes to complete the charge. Then
23 we'll break for lunch.

24 Before I get started I want to thank both counsel for
25 the State and Defense for their presentations and very

1 able arguments. I have noted that all jurors have very
2 attentively paid to this trial, paid attention to the
3 witness and to the attorneys and I thank you for that. I
4 point out to you as juror it's your exclusive duty to
5 decide all the circumstances of fact in this case. And
6 for that purpose to determine the effect, the value, the
7 weight and the truth of the evidence.

8 Both the State and the Defendant have a right to
9 expect that you will conscientiously consider and evaluate
10 the evidence and apply the law of the case, thereto, and
11 the that end, the State of South Carolina and the
12 Defendant will receive a fair and impartial trial in this
13 case.

14 Now, when I use to word, 'defendant' I am referring
15 to Mr. William Outlaw. State of South Carolina by the
16 Bill of Indictment in this case charges the defendant,
17 William Outlaw, with the offense known in the law as
18 murder.

19 To this charge and to the indictment the defendant
20 has entered the plea of not guilty. A plea of not guilty
21 by the defendant places the burden of proof on the State
22 to prove by evidence the guilt of the defendant beyond a
23 reasonable doubt before you the jury can find the
24 defendant guilty.

25 The defendant is presumed in law innocent of the

1 charges contained in the indictment. It is a cardinal and
2 fundamental rule of the law of evidence the defendant,
3 irrespective of the enormity of the charge against him,
4 will always be presumed innocent of the crime for which he
5 was indicted unless and until the guilt of the defendant
6 has been proved by evidence that satisfies you the jury of
7 his guilt by beyond a reasonable doubt.

8 Presumption of innocence is not a mere legal theory.
9 It is not just a legal phrase. The presumption of
10 innocence is a substantial right to which every accused is
11 entitled. Our Supreme Court has declared a presumption of
12 innocence like a robe of righteousness placed about the
13 shoulders of the defendant and remains with him and
14 assigns him to that class, the innocent, until that
15 presumptive robe of righteousness has been stripped from
16 his person by evidence satisfying you the jury beyond a
17 reasonable doubt.

18 The presumption of innocence accompanies a defendant
19 from the time of his arraignment and appearance in Court
20 and continues with the defendant throughout every stage of
21 the trial and continues with the defendant after you
22 retire to the jury room to deliberate your victim.

23 The presumption of innocence continues in existence
24 to the benefit of the defendant until you the jury reach
25 the conclusion that the State has prove the guilt of the

1 defendant beyond a reasonable doubt.

2 Ladies and gentlemen, the State is not required to
3 prove the guilt of the defendant beyond all doubt or
4 beyond every doubt but beyond a reasonable doubt. The
5 government as the burden of proving the defendant guilty
6 beyond a reasonable doubt.

7 Some of you may have served as jurors in civil cases
8 where you were told that it is only necessary to prove
9 that a fact is more likely true than not true. In
10 criminal cases, the government's proof must be more
11 powerful than that. It must be beyond a reasonable doubt.

12 Proof beyond a reasonable doubt is proof that leaves
13 you firmly convinced of the defendant's guilt. There are
14 very few things in this world we know with absolute
15 certainty. In criminal cases the law does not require
16 proof that overcomes every possible doubt.

17 If based on your consideration of the evidence you
18 are firmly convinced that this defendant is guilty of the
19 crime charged, you must find him guilty.

20 If on the other hand you think there is a real
21 possibility that he is not guilty, you must give him the
22 benefit of the doubt and find him not guilty. I charge
23 you that the defendant is entitled to every reasonable
24 doubt arising in the case.

25 In finding the issue of fact essential to the

1 conviction verdict of guilty, if you have a reasonable
2 doubt how that issue should be resolved, it would be your
3 duty to resolve that reasonable doubt in favor of the
4 defendant. A defendant, ladies and gentlemen, is not
5 required to prove his innocence, but the State is required
6 in law to prove every essential charge against the
7 defendant by evidence which satisfies you the jury of the
8 guilt of the defendant beyond a reasonable doubt before
9 you can convict the defendant and find him guilty.

10 If then upon the whole case you have a reasonable
11 doubt as to the guilt or innocence of the defendant, he's
12 entitled to the reasonable doubt and would be entitled to
13 an acquittal and the verdict of not guilty.

14 Upon the whole case you find that the State has
15 proved by evidence which satisfies you the jury of the
16 guilt of the defendant beyond a reasonable doubt then in
17 such circumstances it would be your duty to convict the
18 defendant and find him guilty.

19 Now, in some cases and in this particular case you
20 have a charge of murder. We have what we call possible
21 lessor included offenses of the charged crime, and I will
22 get into that fully in a few minutes. If you find the
23 defendant guilty but you have a reasonable doubt whether
24 the defendant be guilty of the greater crime charged or
25 lessor crime charged, then you would resolve that

1 reasonable doubt in favor of the defendant and write a
2 verdict of guilty as to the lesser charge.

3 Of course, you could not write a verdict of guilty to
4 any charge unless as to that charge you find all elements
5 of the charge have been proven by the State beyond a
6 reasonable doubt.

7 Now, I instruct you that the indictment in this case
8 which you will have when you begin your deliberations are
9 not evidence and cannot be considered by the jury as
10 evidence in the case. This indictment is simply the
11 formal written instrument which contains the charge
12 against the defendant and serves as the formal document by
13 which this case is processed into the Court.

14 During the trial each of us, you and I, have certain
15 duties to perform. As the trial judge it is my
16 responsibility to preside over the trial of the case, and
17 I also have the duty to rule upon or pass upon the
18 admissibility of evidence offered during the progress of
19 the trial.

20 You are to consider only the competent evidence
21 before you, and you are to disregard or disabuse from your
22 mind any testimony ordered stricken from the record of
23 the case during the progress of the trial if there be any.

24 You are to consider only the testimony which has been
25 presented from this witness stand together with any

1 exhibits admitted into the record of this case and any
2 stipulations of counsel made in the record if there be
3 any. I have the additional duty to charge you the
4 applicable law of the case. As the presiding judge, I am
5 the sole judge of the law of the case, and it is your duty
6 to apply the law as I state it to you.

7 If you have a preconceived idea what the law is or
8 what the law ought to be in this case and it should not
9 agree with what I tell you the law is, you are obligated
10 under your oath to abandon this preconception on your part
11 because you are sworn to accept the law as I state it to
12 you.

13 In every case tried in this Court before a jury the
14 jury becomes the sole and exclusive judge of the facts.
15 You the jury you the judge of the facts of this case. The
16 Court is the judge of the law in this case. The
17 constitution of this state has declared that the trial
18 judge shall not intimate, state, comment upon or make any
19 statement to a trial jury about the facts in the case.

20 Since you are the sole judge of the facts you are not
21 to infer anything that I've said here during the progress
22 of this trial in ruling upon the admissibility of the
23 evidence or otherwise for anything that I say to you
24 during the course of this charge to you that I have any
25 opinion about the facts in this case.

1 The law does not permit me to have an opinion.
2 That's a matter solely for you the jury to determine. As
3 jurors it is your duty to the determine, as I have stated
4 to you the effect, the value, the weight and the truth of
5 the evidence presented during the course of this trial.

6 Necessarily then, you must assess the credibility of
7 the witnesses who have testified in the case. Credibility
8 is simply a legalistic term which means believability. Ti
9 becomes your duty then to analyze and evaluate the
10 evidence and determine that evidence which convinces you
11 of it's truth.

12 I charge you that in determining the question of
13 credibility or believability of the witnesses you may
14 believe one witness as against several witnesses or
15 several witnesses as against one witness. You may believe
16 a part of the testimony of a witness and reject the
17 remaining part of the testimony of that same witness.

18 You may believe the testimony of a witness in it's
19 entirety or reject the testimony of a witness in it's
20 entirety. You may consider whether any witness has
21 exhibited any interest, any bias or any prejudice in the
22 case. You may consider the demeanor of a witness and the
23 appearance of a witness from the witness stand. And you
24 may consider those things for knowledge considering those
25 things about which a witness testified.

1 And in doing so exercise in your mental processes and
2 in determining what you consider to be the truth. The law
3 simply states or requires that you exercise your good
4 judgment, your common sense, your sense of logic and
5 reason, and your experiences in life. Then apply these
6 attributes to the evidence and determine what you consider
7 to be the truthful evidence. And that to those true facts
8 as determined by you the jury, take and apply the law as I
9 state it to you and, thus, arrive at a true verdict in the
10 case.

11 I'm now going to instruct you in the law applicable
12 to this indictment. I have identified the indictment to
13 you. As I told you the charge made in this indictment is
14 that of murder. I'm going to first read to you Section
15 16-310 of the Code of Law of South Carolina which states,
16 "Murder is the killing of any person with malice
17 aforethought either expressed or inferred." Now, upon the
18 principal theory of our laws any greater offense includes
19 a lessor offense. The charge of murder also includes the
20 lessor offense of voluntary manslaughter even though the
21 charge of voluntary manslaughter is not written into the
22 body of this particular indictment.

23 I'm going to define for you the law of murder then
24 I'm going to define for you the law of voluntary
25 manslaughter. Murder is the unlawful killing of any

1 person with malice aforethought either expressed or
2 inferred. The word, 'implied' means the same thing
3 basically as the word inferred. Hence, in order to
4 convict one of murder the State must not only prove the
5 killing of the deceased by the defendant but that it was
6 done with malice aforethought.

7 Such proof must be beyond a reasonable doubt. Malice
8 aforethought is an essential element in the crime of
9 murder. What is malice? Malice is also defined in the
10 law of homicide as a term of art. Malice does not
11 necessarily mean an actual intent to kill.

12 This is a technical term importing wickedness and
13 excluding just cause or legal excuse. It is something
14 which springs from wickedness, from depravity, from a
15 deprived spirit, from a heart devoid of social duty, and
16 fatally bent on mischief. The words, 'express or inferred
17 malice' do not mean different kinds of malice, but merely
18 the manner in which the only kind of malice known in the
19 law may be shown to exist.

20 That's to say either by direct evidence or by
21 inference. Malice may be expressed is where previous
22 threats of vengeance or lying in wait or other
23 circumstances show directly that an intent to kill was
24 entertained.

25 Malice may be inferred where though no express intent

1 to kill is proved by direct evidence it maybe inferred
2 from the facts and circumstances which have been proved.
3 Malice maybe inferred from the willful, deliberate and
4 intentional doing of an unlawful act without just cause or
5 legal excuse.

6 In other words, in general terms malice means that
7 doing a wrongful act intentionally without justification
8 or legal excuse. But even if facts proved are sufficient
9 to raise and inference of malice then this inference would
10 be simply an evidentiary fact to be taken into
11 consideration by you the jury along with all the other
12 evidence in the case.

13 And you may give it the weight as your determine it
14 should receive as to whether or not malice has been proven
15 beyond a reasonable doubt.

16 The use of a deadly weapon permits you to infer —
17 malice but it does not require you to infer malice. Where
18 malice -- while malice may be inferred from the use of a
19 deadly weapon where the circumstance relating to the
20 incident are brought out in the evidence these inferences
21 vanish, and the burden is on the State to prove malice by
22 evidence satisfying the jury beyond a reasonable doubt.

23 Now, it will be observed, ladies and gentlemen, that
24 there must be malice aforethought while the law does not
25 require that malice shall exist for any particular period

1 of time before the execution of the act it must be a
2 aforethought. There must be a combination of the previous
3 evil intent and act inducing the fatal result. I charge
4 you the State is not require to prove a motive for a
5 homicide.

6 Now, as I told you malice is an essential of murder.
7 It does not necessarily import ill will towards the
8 individual that's injured, but instead signifies a
9 malignant recklessness for the life and safety of others
10 or a condition of the mind which shows a heart fatally
11 bent on mischief.

12 I charge you that under the law of South Carolina
13 that a person need not have the specific intent to kill or
14 injure another person to be guilty of murder where there
15 is evidence of such recklessness and wantonness as to
16 indicate a depravity of mind and disregard for human life
17 from which malice maybe inferred.

18 I now want to define for you the law of voluntary
19 manslaughter. I've already indicated to you and
20 instructed you that an indictment for murder includes the
21 lessor crime of voluntary manslaughter even though the
22 lessor crime of voluntary manslaughter is not physically
23 written into the Bill of Indictment.

24 In other words, a defendant indicted for murder maybe
25 convicted of voluntary manslaughter if the evidence

1 warrants it. Now, what is voluntary manslaughter? It is
2 the unlawful killing of a human being without malice,
3 expressed or inferred. You will then notice, ladies and
4 gentlemen, that the absence of malice is what
5 distinguishes voluntary manslaughter from murder.

6 I have instructed you that malice is an essential
7 element of the crime of murder. Malice not an essential
8 element of the crime of voluntary manslaughter. The
9 presence of malice in murder and absence of murder in
10 voluntary manslaughter is what distinguishes these two
11 offenses.

12 Now, for information I tell you that manslaughter can
13 be divided into two classes; that of voluntary
14 manslaughter and involuntary manslaughter, and you are not
15 concerned in this case with the offense of involuntary
16 manslaughter.

17 Now, what is voluntary manslaughter? Voluntary
18 manslaughter is the felonious taking of a life of another
19 human being in sudden heat and passion upon a sufficient
20 legal provocation. The law recognizes, ladies and
21 gentlemen, the fact that sudden heat and passion may for
22 the time being effect one's self-control.

23 Temporarily disturb to sway of reason and, hence,
24 reduces the crime of murder to voluntary manslaughter for
25 the homicide was done in sudden heat and passion provided

1 there was a sufficient legal provocation.

2 Sufficient legal provocation must be such that it
3 could calculated to cause a person of ordinary reason and
4 prudence, sometimes described as the average person, to
5 become enraged. That is to experience sudden heat and,
6 hence, lose control of himself temporarily, and
7 frequently, it involves some physical aggression or
8 assault.

9 Merely, by way of illustration and illustration alone
10 I said when an unjustifiable assault is made with violence
11 or with circumstances of indignity upon a man's person and
12 the party so sought kills the aggressor the crime will be
13 reduced to manslaughter if it appears that the assault was
14 presented immediately and the aggressor was killed in the
15 heat of blood.

16 For it will be observed that the killing must be in
17 sudden heat and passion. And if in fact passion has
18 cooled or if there was sufficient time between the
19 provocation and the killing for the passion to cool the
20 killing would not be attributed to the heat of passion but
21 to malice.

22 The sufficiency of cooling time would depend upon
23 whether there was time, all circumstances being
24 considered, for a person of ordinary reason and prudence
25 to cool.

1 Now, in this case it's been raised by the defense of
2 self-defense charge as far as you're concerned with that.
3 Self-defense is a complete justification for homicide and
4 negates the existence of malice. Thus, you must find the
5 defendant is not guilty of murder unless the State proves
6 beyond a reasonable doubt that each of the following four
7 element did not exist in this case.

8 These four elements are: First, the defendant must
9 be without fault in bringing on the difficulty.

10 Second, the defendant must have actually believed he
11 was in imminent danger of losing his life or sustaining
12 bodily injury. Or he was actually in such imminent
13 danger.

14 Third, if his defense is based upon his belief of
15 imminent danger, a reasonably prudent man of ordinary
16 firmness and courage would have entertained the same
17 belief. If the defendant actually was in imminent danger
18 or the circumstances were such that would warrant a man of
19 ordinary prudence, firmness and courage to strike the
20 fatal blow in order to save himself from bodily harm or
21 losing his own life.

22 Fourth, the defendant had no other probable means of
23 avoiding the danger of losing his own life or sustaining
24 serious bodily injury to act as he did in this particular
25 instance.

1 These are the four element of self-defense that the
2 State must show did not exist. In determining whether a
3 defendant acted properly in self-defense it is sufficient
4 that he believed he was there is imminent danger, and a
5 defendant need not actually be in such danger because
6 people are entitled to on appearances.

7 The defendant acts properly in using force in
8 self-defense if under the circumstances as they appear to
9 him he believed he was in such danger and reasonably
10 prudent person of ordinary firmness and courage in this
11 situation and with the defendant's characteristics would
12 have entertained the same belief.

13 One has a right to use force in repelling force or
14 protecting one's self. One can't be required to make a
15 nice, cool calculation as to the degree or quantity or
16 amount of force which maybe necessary for one to complete
17 protection from loss of life or serious bodily injury or
18 harm to one self.

19 The defendant is in imminent danger or defendant's
20 belief that he is in imminent danger of death or receive
21 bodily harm is reasonable. The defendant need not wait
22 until actual attack or injury or until force is used by
23 the aggressor before exercising the right to use deadly
24 force in self-defense. In other words, defendant need not
25 wait until the assailant gets the drop on him in order to

1 be entitled to use force and self-defense.

2 In your consideration of whether self-defense is
3 applicable, herein, you should try as near as you can to
4 put yourself in the defendant's situation at the time he
5 fired the fatal shot. You should consider the
6 circumstances by which he was surrounded and take into
7 consideration the person what whom he was dealing.

8 And all the facts which surrounded him as you obtain
9 the same from the testimony and as near as you can view
10 the situation from the defendant's standpoint. Unless the
11 State shows that a person of ordinary reason, coolness and
12 prudence would not have acted as the defendant did under
13 the circumstances that surrounded him at the time the
14 fatal shot was fired then you should find the defendant
15 not guilty.

16 In determining whether the defendant has a right to
17 use force and self-defense you may consider the following:

18 First, words accompanied by hostile acts which may be
19 sufficient to constitute a threat of physical attack or in
20 some cases, a threat of serious bodily harm.

21 Second, prior difficulty between the defendant and
22 the aggressor.

23 Third, the relative size, ages and weight of the
24 defendant and the aggressor.

25 Four, the representations of the aggressor as a

1 violent person or a violent -- as a violent person.

2 Fifth, prior instances of violence by the assailant
3 including prior acts of unprovoked aggression or violence
4 by the assailant threatening the defendant.

5 Six, threats made by assailant.

6 Seven, the number of assailants involved.

7 You may consider the intoxication of the decedent as
8 a factor which gave the defendant the right to judge the
9 decedent's actions more harshly than otherwise. In
10 determining whether the defendant has a right to use force
11 and self-defense the representation of the assailant as a
12 violent person maybe relevant to whether there was a need
13 for force, to whether the defendant has reason to believe
14 there was a need for force, and to whether deadly force
15 was reasonably necessary.

16 A defendant is presumed to be innocent until proven
17 guilty beyond a reasonable doubt. If you have any
18 reasonable doubt as to whether the State has shown that
19 the defendant did not act properly in self-defense then
20 you must find the defendant not guilty.

21 The defendant must only produce evidence which causes
22 you the jury to have a reasonable doubt as to his guilt.
23 The State has the burden of disproving self-defense by
24 proof beyond a reasonable doubt.

25 Now, ladies and gentlemen, you're not partisans or

1 advocates for the State of South Carolina or the
2 Defendant. You do not serve as jurors to reward friends
3 or punish enemies. Obviously, such a perverted system of
4 justice would be intolerable. You have been selected by
5 both the Defendant and the State as fair and impartial
6 jurors.

7 It is your duty then by your joint deliberations to
8 determine the truth in this case giving to the defendant
9 every reasonable doubt on each and every issue. And then
10 to the facts as you determine them to be true you then
11 take and apply the law which has been given to you by the
12 Court and then reach a verdict that speaks to truth in
13 this case. For the word 'verdict' which has a Latin
14 derivative meaning a true saying.

15 When you have accomplished these responsibilities you
16 will have satisfied your oath as jurors and you will have
17 discharged your duty to the Court. I'm now going to
18 instruct you on the possible forms of the verdict in this
19 case. Once again, if the State has failed to prove the
20 guilt of the defendant beyond a reasonable doubt your
21 verdict would be two words, 'not guilty.'

22 If the State has proved the guilt of the defendant
23 beyond a reasonable doubt as to murder your verdict would
24 be guilty as to murder. Or if the State has proved the
25 guilt of the defendant beyond a reasonable doubt as to

1 that lessor included offense of voluntary manslaughter
2 then your verdict would be guilty of voluntary
3 manslaughter. Whatever your verdict is, ladies and
4 gentlemen, in the case it must be a unanimous verdict.

5 All 12 deliberating jurors will have to be in
6 agreement on the verdict, whatever it maybe. Now, for
7 your ease, Mr. Foreman, this is the indictment. On the
8 back of it the lower left hand corner's got an area down
9 there, and it is entitled, 'verdict.' I have written in
10 the three possible forms of verdict in this case. Do not
11 give any weight as to the numerical order they're put in
12 or the order their put in.

13 But as I said there are three possible forms of
14 verdict, guilty of murder, guilty of voluntary
15 manslaughter, not guilty. Whatever the verdict is it will
16 be your duty to check that appropriate verdict, sign your
17 name and date the verdict. At the time you reach a
18 verdict knock on the door.

19 The bailiff will let me know and we will receive the
20 verdict as soon as we can get everybody back in the
21 courtroom we will be working on other matters most likely.
22 If you have any problems knock on the door. Let Madam
23 Bailiff know and we'll try to address it.

24 Now, we will not begin deliberations at this time
25 because it is almost one o'clock and we will break for

1 lunch. Madam Clerk very kindly arranged for us to have
2 you taken to lunch. It's just more easy to do that than
3 to have it bought in to you. So you will not distribute.
4 Do not deliberate this case until you're back and all 12
5 are present for deliberations after we come back from
6 lunch.

7 Of course, I've got to check with counsel one more
8 time before I give you the right it deliberate. Also,
9 should you take a break, smoke break, whatever, cease your
10 deliberations at that time until all 12 are back. In
11 other words, if three people want to take a break and go
12 outside and smoke, stop deliberations and don't resume
13 until you get everybody back. All right.

14 If y'all would step back to the jury room. Relax
15 just a minute. I'm going to keep all of you in tact until
16 we actually get started with the deliberations and then
17 I'm take care of the alternate jurors at that time. But
18 for right we'll stay intact. Do not deliberate until we
19 come back and I give you to green light to do so.

20 Y'all step back. Let me check in with the attorneys
21 one last time so that they can check the exhibits for us.
22 All right.

23 (WHEREUPON, The jury panel was excused to the jury
24 room at 12:53 p.m.)

25 THE COURT: Counsel, any exception I need to know at

1 this time?

2 MR. REDMOND: None from the State, Your Honor.

3 MR. CANNARELLA: None from the Defendant, Your Honor.

4 THE COURT: Thank you. Once again I appreciate y'all
5 working together to get this case presented, and I
6 appreciate your professionalism once again.

7 MR. REDMOND: Thank you, Your Honor.

8 THE COURT: I need you to check the exhibits and make
9 sure everything is present before we send these back.

10 (WHEREUPON, Defendant's Exhibit No. 2 was admitted
11 into evidence.)

12 THE COURT: Counsel, y'all want me to put the
13 bailiffs and the sheriffs under oath?

14 MR. REDMOND: I waive, Your Honor.

15 MR. CANNARELLA: I waive.

16 THE COURT: All right. Madam Bailiff, bring the jury
17 back out, please.

18 (WHEREUPON, the jury panel enters the courtroom at
19 12:59 p.m.)

20 THE COURT: Mr. Foreman, ladies and gentlemen, at
21 this time let me remind you do not deliberate this case.
22 Do not discuss it with anyone. Do not even discuss it
23 amongst yourselves. You're going to go to lunch and come
24 back. All the exhibits are back along with the
25 indictment. So as soon as all 12 of you clear that door

1 when you return you may begin your deliberations unless I
2 further instruct you.

3 As far as the two alternates I'm going to keep y'all
4 intact during lunch. And when we come back and the first
5 12 enter that door you shall be released from your duty as
6 jurors on this particular case, but I want to thank you
7 for your time at this time. We will see to that as soon
8 as we get back.

9 Everyone else remain seated in the courtroom while
10 the jury is escorted by the Sheriff's Department out to
11 the transportation that's been arranged. As far as folks
12 that are here that are not on the jury I would say it's
13 going to take probably 40 to 45 minutes for lunch and we
14 will be back. All right. Jury may depart.

15 (WHEREUPON, the jury panel was excused from the
16 courtroom at 1:01 p.m.)

17 THE COURT: All right. We'll be in recess for
18 approximately 45 minutes.

19 (WHEREUPON, Court is in recess at 1:02 p.m. and
20 reconvenes at 1:50 p.m.)

21 (WHEREUPON, the jury pool begins deliberations at
22 1:50 p.m.)

23 (WHEREUPON, other Court related business taken on the
24 record not relating to this trial and not transcribed.)

25 (WHEREUPON, Court in recess at 03:00 p.m. and

1 reconvenes at 3:12 p.m.)

2 QUESTION FROM THE JURY

3 THE COURT: Ladies and gentlemen, I've got an inquiry
4 and asked Madam Bailiff to give them a pen and paper to
5 write down what it is. All right. They want to be
6 recharged on murder and involuntary manslaughter.

7 MR. CANNARELLA: Recharge them on involuntary
8 manslaughter. Won't both of those in fairness to the
9 defendant feel like the Court should consider charging
10 them on self-defense as well?

11 THE COURT: What I'm going to do is I'm going to
12 start the tape when she starts on the specific charge. I
13 will tell them to stop us when they've heard everything
14 they want to hear.

15 MR. CANNARELLA: Okay.

16 THE COURT: That's fair enough?

17 MR. CANNARELLA: Yes, sir.

18 (WHEREUPON, the jury panel enters the courtroom at
19 3:25 p.m.)

20 THE COURT: Mr. Foreman, I have received your
21 request. We have Madam Court Reporter assist the Court
22 with that. We have gone back on the tape actual charge
23 locate where I began specific charge on the indictment.

24 I'm going to have Mr. Rivers to start at that point
25 and I'm going to let it play until you instruct me to

1 stop. Okay. Because this particular part of the tape
2 will go through the specific charges and the offense
3 self-defense and to whatever you heard, whatever it is
4 y'all desire to hear, let me know and then we'll stop.
5 It's in it's entirety. I'll leave that up to you. That's
6 fine, too. Some of you are not going to be able to hear
7 it. If so, let me know. I'll go back over it myself.

8 JURY FOREPERSON: Okay. Thank you.

9 THE COURT: Okay.

10 (WHEREUPON, the Court reporter plays Judge's charge
11 on murder, self-defense and involuntary manslaughter to
12 jury from tape.)

13 JURY FOREPERSON: That's it.

14 (WHEREUPON, the jury returns to the jury room to
15 continue deliberations at 3:37 p.m.)

16 MR. REDMOND: No exception by the State, Your Honor.

17 MR. CANNARELLA: Well, no real exception, Judge,
18 except for the fact that would the Court consider
19 inquiring in whatever appropriate manner make sure that
20 all 12 of those people are satisfied individually that
21 they heard what they wanted to here. I can assume that if
22 that's not the case they would come back out here.

23 But I would like to have the comfort of knowing that
24 whoever that was wanted to hear whatever it was that
25 they're satisfied that they heard what that wanted to.

1 THE COURT: Ask Mr. Foreman to come back to the door.
2 (WHEREUPON, the jury foreman returns to the courtroom
3 at 3:39 p.m.)

4 JURY FOREPERSON: Yes, sir.

5 THE COURT: Would you inquire the jury -- pole the
6 jury to make sure everybody heard all that they wanted to
7 hear. If not determine what else.

8 JURY FOREPERSON: I just did and some of them did not
9 hear. They should have spoken up. They did not hear
10 everything. I'll find out what they want to do. We still
11 would like to go through those three again in detail.

12 THE COURT: All right. If you determine exactly what
13 you want us to do we'll come back and go as far as you
14 need us to.

15 JURY FOREPERSON: Okay.

16 (WHEREUPON, the jury foreman returns to jury room at
17 3:40 p.m. and re-enters the courtroom at 3:40 p.m.)

18 JURY FOREPERSON: We would still like to hear it
19 again in some manner so they can go through all three in
20 some manner so they can hear it.

21 THE COURT: Okay.

22 JURY FOREPERSON: Either you or it can be written for
23 us and we can review it. That would be fine.

24 THE COURT: All right. Bring them back out. I'm
25 going back over it. I apologize for the sound system. I

1 should have stopped, but I could hear it but some on the
2 back couldn't hear it. I thought there maybe a problem
3 with it.

4 (WHEREUPON, the jury panel enters the courtroom at
5 3:43 p.m.)

6 THE COURT: Okay. I'm going to go back over it
7 myself this time. If you can't hear me raise your hand,
8 yell at me and I'll try to do better. Can everybody hear
9 me?

10 JURY PANEL: Yes.

11 THE COURT: I apologize for no sound system. It's
12 the Best we've got. All right. I'm going to go back over
13 this for you. Now, I will define for you the law of
14 murder and that of voluntary manslaughter. I'm going to
15 read to you Section 16-310 of the Code of Laws of the
16 State of South Carolina which states, "Murder is the
17 killing of any person with malice aforethought either
18 expressed or inferred."

19 Now, upon principal theory of our law every greater
20 offense includes a lessor offense. The charge with murder
21 also includes the lessor offense of voluntary manslaughter
22 even though the charge of voluntary manslaughter is not
23 written into the body of this particular indictment.

24 I'm going the define the law of murder and then
25 define voluntary manslaughter. Murder is the unlawful

1 killing of any person with malice aforethought either
2 expressed or inferred. Inferred means the same thing as
3 implied. Hence, in order to convict one of murder the
4 State must not only prove the killing of the deceased by
5 the defendant, but that it was done with malice
6 aforethought. Such proof must be beyond a reasonable
7 doubt.

8 Malice aforethought is an essential element in the
9 crime of murder. What is malice? Malice is defined in
10 the law of homicide as a term of art. Malice does not
11 necessarily mean an actual intent to kill. This is a
12 technical term importing wickedness excluding just cause
13 or legal excuse.

14 It is something that springs from wickedness, from
15 depravity, or from a depraved spirit, from a heart devoid
16 of social duty and fatally intent on mischief. The words
17 'expressed and inferred malice' do not mean different
18 kinds of malice, but merely the only kind of malice known
19 to the law shown to exist. That is to say either by
20 direct evidence or by inference.

21 Malice maybe expressed as where previous threats of
22 vengeance or lying in wait or other circumstances show
23 directly that an intent to kill was entertained.

24 Malice maybe inferred where though no express intent
25 to kill is proven by direct evidence, it maybe inferred

1 from the facts and circumstances which are proven. Malice
2 maybe inferred through willful, deliberate and intentional
3 doing of an unlawful act without just cause or legal
4 excuse. In other words, in general terms malice means the
5 going of a wrongful act intensely without justification or
6 legal excuse.

7 But even if facts proven are sufficient to raise an
8 inference of malice this inference would be simply an
9 evidentiary fact to be taken into consideration by you the
10 jury along with all the other evidence in the case. And
11 you may give it such weight as you determine it should
12 receive as to whether or not malice has been proved beyond
13 a reasonable doubt.

14 The use of a deadly force permits you to infer
15 malice, but it does not require you to infer malice.
16 While malice maybe inferred from the use of a deadly
17 weapon where the circumstances related to the homicide are
18 brought out in the evidence this inference may vanish and
19 the burden is on the state to prove malice by evidence
20 satisfying the jury beyond a reasonable doubt.

21 It will be inferred, ladies and gentlemen, there must
22 be malice aforethought. While the law does not require
23 malice to exist for any particular length of time before
24 the commission of the act, must be a aforethought. There
25 must be a combination of the previous evil intent and the

1 act producing the fatal results. But the State is not
2 required to prove a motive for homicide.

3 I charge you that malice is an essential ingredient
4 of murder but not necessarily importing ill will towards
5 the individual that's injured, but instead signifies a
6 recklessness of the safety of others or conditions of the
7 mind which shows a heart fatally bent on mischief.

8 I further charge you that under the law of South
9 Carolina the person need not have any specific intent to
10 kill or injury another person to be guilty of murder *now*
11 whether there is evidence of such recklessness to indicate
12 a depravity of the mind and disregard for human life from
13 which malice maybe inferred.

14 I'm now going to define for you the law of voluntary
15 manslaughter. I've already indicated to you and
16 instructed you that an indictment for murder includes the
17 lessor crime of voluntary manslaughter even though the
18 lessor crime of voluntary manslaughter is not physically
19 written into the Bill of Indictment.

20 In other words, the defendant is indicted for murder,
21 but can be convicted of voluntary manslaughter if the
22 evidence warrants it. What is manslaughter? Manslaughter
23 is the unlawful killing of a human being without malice,
24 expressed or inferred. You will notice then, ladies and
25 gentlemen, that the absence of malice is what

1 distinguishes voluntary manslaughter from murder.

2 I've instructed you that malice is an essential
3 element of the crime of murder. Malice is not an
4 essential of the crime of voluntary manslaughter. The
5 presence of malice in murder and absence of malice in
6 voluntary manslaughter is what distinguishes these two
7 offenses.

8 What is voluntary manslaughter? Voluntary
9 manslaughter is the felonious taking of a life of another
10 human being in sudden heat and passion upon sufficient
11 legal provocation. The law recognizes, ladies and
12 gentlemen, the fact that sudden heat and passion may for
13 the time being effect one's self-control.

14 Temporarily disturb the sway of reason and, hence,
15 reduce the crime of murder to that of voluntary
16 manslaughter where the homicide was done in sudden heat
17 and passion provided there was a sufficient legal
18 provocation.

19 Sufficient legal provocation must be such as would be
20 calculated to cause a person of ordinary reason and
21 prudence sometimes described as an average person to
22 become enraged; that is to experience sudden heat and
23 passion and, thus, lose control of himself temporarily and
24 frequently involves some physical aggression or assault.

25 Merely by way of illustration and illustration alone

1 I say an unjustifiable assault is made with violence or
2 where circumstances of indignity upon a man's person and
3 the party so assaulted kills the aggressor the crime will
4 be reduced to a manslaughter if it appears the assault was
5 presented immediately and the aggressor was killed in the
6 heat of blood for it will be observed as killing in the
7 sudden heat and passion.

8 And if in fact passion had cooled or if there was
9 such time between the provocation and the killing for
10 passion to cool, the killing would not attributable to the
11 heat of passion but to malice. It is sufficiency of
12 cooling time would depend upon what there was time, all
13 circumstances being considered, for a person of ordinary
14 reason and prudence to cool.

15 Now, as to the offense of self-defense. Self-defense
16 is a complete justification for homicide and negates the
17 presence of malice. Thus, you must find that the
18 defendant is not guilty of murder unless the State proves
19 beyond a reasonable doubt that each of the four elements
20 of self-offense did not exist in this case. These four
21 elements are:

22 First, the defendant must be without fault in
23 bringing on the difficulty.

24 Second, the defendant must have actually believed he
25 was in imminent danger of losing his life or sustaining

1 serious bodily injury or he was actually was in such
2 imminent danger.

3 Third, if his defense is based upon his belief of
4 imminent danger a reasonably prudent man of ordinary
5 firmness and courage would have entertained the same
6 belief. If the defendant actually was in imminent danger
7 the circumstances were such as would warrant a man of
8 ordinary prudence, firmness and courage to strike the
9 fatal blow in order to save himself from serious bodily
10 harm or losing his own life.

11 Fourth, the defendant had no other probable means of
12 avoiding the danger of losing his own life or sustaining
13 serious bodily injury to act as he did in this particular
14 instance.

15 These are the four elements of self-defense that the
16 State must show did not exist. In determining whether a
17 defendant acted properly in self-defense it is sufficient
18 that he believed he was in imminent danger.

19 A defendant need not actually be in such danger
20 because people are entitled to act upon appearances. The
21 defendant acts properly in using force for self-defense if
22 under the circumstances as they appear to him he believed
23 he was in such danger and a reasonably prudent person of
24 ordinary firmness and courage in this situation and with
25 the defendant's characteristics would have entertained the

1 same belief.

2 One has a right to use force in repelling force or in
3 protecting one's self and one cannot be required to make a
4 nice, cool calculation as to the degree or quantity, the
5 amount of force used which maybe necessary for one to
6 complete protection from loss of life or serious bodily
7 harm to one's self if the defendant is in imminent danger
8 or if defendant believes that he is in imminent danger of
9 death or receiving bodily harm is reasonable.

10 The defendant need not wait until actual attack or
11 injury or force is used by the aggressor before exercising
12 the right to use deadly force in self-defense. In other
13 words, the defendant need not wait until the assailant
14 gets the drop on him in order to be entitled to use force
15 in self-defense.

16 Consideration of whether self-defense is a applicable
17 herein you should try as near as you can to put yourself
18 in the defendant's situation at the time he fired the
19 fatal shot. You should consider the circumstances in
20 which he was surrounded and take into consideration the
21 person with whom he was dealing and all the facts that
22 surrounded him as you attain the same from the testimony.

23 And as near as you can view the situation from the
24 defendant's standpoint unless the State shows that the
25 person of ordinary reason and coolness and prudence would

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1 not act as this defendant did under the circumstances that
2 surrounded him at the time the fatal shot was fired then
3 you should find the defendant not guilty.

4 In determining whether the defendant had a right to
5 use force and self-defense you may consider the following:

6 First, words accompanied by hostile acts which may be
7 sufficient to constitute a threat of physical attack or in
8 some cases the threat of serious bodily harm.

9 Second, prior difficulty between the defendant and
10 the aggressor.

11 Third, the relative size, ages and weight of the
12 defendant and the aggressor.

13 Fourth, the representation of the aggressor as a
14 violent person.

15 Fifth, prior instances of violence by the assailant
16 including prior acts of unprovoked aggression and violence
17 by the assailant threatening the defendant.

18 Sixth, threats made by assailant.

19 Seventh, the number of assailants involved.

20 You may consider the intoxication of the defendant as
21 a factor which gave the defendant the right to judge the
22 decedent more harshly than otherwise. In determining
23 whether the defendant has a right to use force in
24 self-defense the reputation of the assailant as a violent
25 person may be relevant to whether there was a need for

1 force and whether the defendant had reason to believe
2 there was that need for force and whether deadly force was
3 reasonably necessary.

4 The defendant is presumed to be innocent until proven
5 guilty beyond a reasonable doubt. If you have any
6 reasonable doubt as to whether the State has shown the
7 defendant did not act properly in self-defense then you
8 must find the defendant not guilty.

9 The defendant must only produce evidence which causes
10 you the jury to have a reasonable doubt as to his guilt.
11 The State has the burden of disproving self-defense by
12 proof beyond a reasonable doubt.

13 All right. Once again you are not partisans or
14 advocates for the State of South Carolina or the
15 defendant. You don't serve as jurors to reward friends or
16 punish enemies. Such a perverted system of justice would
17 be intolerable. You were selected by both the State and
18 Defendant as fair and impartial jurors.

19 It is your duty then by your joint deliberations to
20 determine the truth in the case giving the defendant the
21 benefit of every reasonable doubt on each and every issue.
22 Then the facts as you determine them to be true apply the
23 law that has been given to you by the Court and thus
24 arrive at a verdict that speaks the truth of the case.

25 It comes from a Latin derivative word which mean a

Verdict of the Jury

1 true saying. Once you have accomplished these
2 responsibilities you will have satisfied your oath as
3 jurors and you will have discharged your duty to the
4 Court. Anything else?

5 JURY FOREPERSON: That's all.

6 THE COURT: You may return to the jury room.

7 (WHEREUPON, the jury panel was excused from the court
8 room to continue deliberations at 3:59 p.m.)

9 THE COURT: Any exceptions.

10 MR. REDMOND: No, Your Honor.

11 MR. CANNARELLA: No, Your Honor.

12 THE COURT: Thank you, gentlemen. We will stand at
13 ease.

14 (Other Court-related business held on the record not
15 related to this trial and not transcribed.)

16 (WHEREUPON, the Court was in recess at 5:06 p.m. and
17 reconvened at 5:15 p.m.)

18 VERDICT OF THE JURY

19 THE COURT: Okay. We've had a knock at the door.
20 The jury indicates to Madam Bailiff they have a verdict.
21 Whatever their verdict is none of us know what it is
22 except the juror behind that door. Whatever it is, let it
23 be the end of this situation. As I said I know emotions
24 run very strong in situations like this, and I understand
25 that, but if you can't accept what the jury has done,

1 whatever it is, you might all think about stepping out the
2 door because we don't need any trouble in the courtroom.

3 Okay? All right. Bring them in please.

4 (WHEREUPON, the jury panel enters the courtroom at a
5 5:27 p.m.)

6 CLERK OF COURT: Mr. Foreman, have you reached a
7 verdict?

8 JURY FOREPERSON: Yes, we have.

9 CLERK OF COURT: If you will please pass it up.

10 THE COURT: You may publish the verdict, Madam Clerk.

11 CLERK OF COURT: 04-GS-13-0159, State of South
12 Carolina, County of Chesterfield, Court of General
13 Sessions, the State of South Carolina v. William Outlaw.
14 Indictment for murder. We the jury find the Defendant,
15 William Outlaw, guilty of voluntary manslaughter.
16 Foreman, Kenneth Kirkley, April 6, 2005.

17 THE COURT: Mr. Foreman and ladies and gentlemen of
18 the jury, is this your verdict and is it still your
19 verdict? If so signify by raising your right hand. All
20 jurors raised their right hand. Anything further of the
21 jury from the State?

22 MR. REDMOND: None from the jury.

23 MR. CANNARELLA: None from Mr. Outlaw, Your Honor.

24 THE COURT: Gentleman. Okay. Ladies and gentlemen
25 of the jury, your duty now has ended on this case. We

1 want on thank you for serving on this case. Thank you for
2 your patience with the Court. We had several periods
3 there that had I known it I had assumed like probably two
4 or three hours for it that you had to come and y'all sat
5 in that jury room while I worked on other things and those
6 other matters and I apologize for that.

7 And it happens all the time. Thank you so much for
8 your patience. Thank you for your service on this case.
9 If you were drawn in the future to serve I hope you will
10 be willing to serve. Once again, there will be some
11 expense checks. We've got them ready. All right. Very
12 good. So at this time unless you would like to stay and
13 watch the mitigation and sentencing phase of this trial,
14 which you may certainly do.

15 So I'm going to dismiss you at this time, and Madam
16 Bailiff will follow y'all to the door here. And you can
17 pick up you expense check at that time. I would prefer
18 you do that because if you open it and see how much it is
19 in there you may want to get on me and I don't control
20 that.

21 If you speak to your county council about it bring
22 that up now that you have experienced some time these two
23 days now and having to be in what is affectionately
24 referred to as the holding room. If you see your council
25 members whoever your council member may be let them know

1 how you feel about that jury room cause it will help us.
2 Thank you very much. The jury is dismissed at this time.
3 (WHEREUPON, the jury panel was dismissed from the
4 courtroom at 5:31 p.m.)

5 SENTENCE OF THE COURT

6 THE COURT: Everybody else remain seated while the
7 jury departs. Sheriff, if you will have somebody escort
8 them. Everyone that wants to come in needs to be seated.
9 I've asked the Sheriff's Department to secure the
10 defendant. Sheriff, I need you to secure the defendant.

11 Solicitor, I don't think there will be any need
12 unless you just particularly want to publish it cause I
13 think it's already in the record the criminal offenses of
14 the defendant unless there is something you need to add.

15 MR. REDMOND: No, there is nothing I have other than,
16 Your Honor, at the appropriate time, obviously, the
17 victim's family would like to address the Court.

18 THE COURT: All right. If you've got any further
19 criminal record I will hear any matters you have in
20 mitigation. I need, though, when I speak to the family or
21 friends, whatever, we need their names for the record.
22 Okay.

23 MR. REDMOND: First, Miss Vivian Johnson, Your Honor.
24 This is the victim's mother.

25 THE COURT: Mrs. Johnson.

1 MS. JOHNSON: I have some things I would like to say
2 to the defendant. On January -- do I look at him or
3 whoever?

4 THE COURT: That's solely up to you.

5 MS. JOHNSON: On January the 11th 2002, when you left
6 our son's home came back with a gun you not only killed
7 our son you took the life of Brandon's and Cameron's
8 daddy, their mother's companion.

9 I don't know you. He' also had a daughter, Blair.
10 You took her daddy. Cheryl's brother, you broke her
11 heart, and you broke the heart of one niece, three nephews
12 an aunt and uncle and many friends.

13 When Brandon and Cameron went to bed that night they
14 didn't know that they would never see their daddy alive
15 again. Cameron wasn't even a year old. You made sure his
16 daddy wouldn't be there for his first birthday, which was
17 [REDACTED].

18 You took away their life security with that one shot.
19 My son had just made a change in his life. That wasn't
20 brought out in Court. Brandon looked forward to going to
21 church with his daddy. You took that away from him.

22 Cameron can't even remember his daddy. Their little
23 lives were just torn apart because of the decision you
24 made. They've lived in three different states during the
25 past three years. Brandon had made several school

1 changes. He was doing well in school before this
2 happened. And his mother was a good mother before all
3 that happened but hasn't been able to get her life back
4 together.

5 I talk with Brandon when he wants to talk about his
6 daddy's death. He has a lot of hatred built up. This is
7 awful for a young child when he tells me that William
8 Outlaw so going to get what's coming to him when he gets
9 grown.

10 I tell him that's what we have a justice system for;
11 that he will be prosecuted and sent to jail for what he
12 did to his daddy. My prayer is this is true. Don't prove
13 me wrong. Even though the grief is not as great as it
14 was, you created an empty space in our family's lives.

15 There is an empty chair on holidays. Michael was the
16 first one home at Christmas. He was always there at
17 Easter, and the children looked forward to the egg hunts.
18 My prayer is that we're not failing at this time.

19 Family was important to Michael even though the Court
20 portrayed that different. You took all this away from us.
21 I've seen my husband age since this happened. I know his
22 heart is broken.

23 Lynette and Michelle had a very hard time with their
24 brother's death. I have tried with the Lord's help and
25 the support of the family and friends to be strong through

1 all of this, but you left a whole in my heart that will
2 never heal.

3 Michael was our only son. He was our baby and you
4 took that away from us. It's been three years, two
5 months, 27 days since you killed my son. I'm not heard
6 one person say that you said you were sorry for what you
7 did.

8 You had all this time with your family. You've had
9 your holidays, your birthdays, your family celebrations.
10 We spend all our time coping with Michael's death. When
11 you leave this courtroom today your family can hug you.
12 They can tell you goodbye. They can go visit you. All e
13 can do is visit his grave site.

14 We were never given the chance to say goodbye. My
15 son had a right to protect his home. His family was
16 inside and other visitors. If you had a conflict with him
17 or someone that was there you could have taken it
18 somewhere else. You had no right to get a gun and come
19 back.

20 And I'd like to say to your family I've stood in
21 their shoes, and I know their hearts are broken and I know
22 they want to support you, and I don't blame them for that.
23 And one last thing that I want to say to you. When you
24 left my son's home you went and got a gun. You weren't
25 chased. You weren't in any danger. You got the gun and

1 came back, and you did this. You took full responsibility
2 for what happened.

3 It's my prayer that this Court will gives you a much
4 longer time to think about what you did and the decision
5 you made than what you gave yourself. Thank you.

6 THE COURT: Thank you.

7 MR. REDMOND: That will be all, Your Honor, from the
8 victim's family, Your Honor.

9 THE COURT: Mr. Cannarella.

10 MR. CANNARELLA: Thank you. Your Honor, you've heard
11 everything that I can possible want you to hear. In the
12 trial of this case about everything that was involved and
13 still, yet, William has no criminal history, no violent
14 past.

15 It was just poor judgment for him to socialize with
16 the people that he did. And had he listened to his mother
17 and do what she asked him to do we wouldn't one be in this
18 situation here today. I worked with him for three years
19 and couldn't really expect to have to have any better
20 people and considerate people and understanding people.

21 And even William, himself, to represent in a case
22 like this cause it's not easy even for a lawyer living it
23 for three years and culminate in this situation right here
24 because I've gotten to know William real well. I didn't
25 know him before this happened, but I can't see him as a

1 violent person. I only see him as a peaceable person.

2 And had it not been for the circumstances that's took
3 place that night, change circumstances, none of us would
4 be sitting here, and I know his mother is praying every
5 night that these chain of circumstances had never taken
6 place, but they did.

7 Why? I don't know why the Lord lets things happen
8 like this. I don't know because I still -- you know if
9 there was no licks passed, if there was no gunfire in the
10 first place, we still wouldn't be here, either.

11 But the jury has spoken and we accept the way they
12 evaluated the evidence and what they did. I just ask the
13 Court to please take into consideration this man has no
14 criminal record, no violent history. He was on house
15 arrest for three years. Never once did he ever violate
16 that house arrest.

17 I know I'm confident even if the authorities couldn't
18 check on him all the time I know he was always home. He
19 works. He's always been a hard working child. He just
20 went astray and that period of time just costed him
21 dearly.

22 I've talked with him. He will tell me Michael
23 Johnson was a friend of mine. I didn't know I shot
24 anybody, and I didn't mean to shoot anybody. I just fired
25 up in there. That's all I did. I didn't aim the gun. I

1 didn't try to kill anybody. I just did what I did to get
2 away from there.

3 His mother is right here holding his right arm.
4 That's Miss Willie Jean Winburn standing behind him. His
5 father and mother divorced some years ago. His father's
6 name is William Outlaw. Everybody is kind of -- most of
7 them are family members.

8 And I'm sure they want to say something on his
9 behalf. This is probably the worst situation I've been
10 faced with. With the set of facts and the players
11 involved in it and sometimes you've got to do things as a
12 lawyer you don't really want to do, but the professional
13 responsibility requires you to act zealously when you
14 represent people and do whatever you can to see that their
15 story is fully presented and have an opportunity to
16 develop it further.

17 And I feel like we were able to do that, and the jury
18 decided one way. And we accept that. William is my --
19 William is a responsible person. He will stand up here
20 and he will accept the fact of what the jury said. And I
21 know he will be terribly, terribly sad for everybody.

22 On the other side is the Johnson family. And I know,
23 and especially you, Willie Jean and her family, he's just
24 like a child in my mind. Still a baby. I can't believe
25 he finds himself sitting here with no violent past, no

1 criminal record facing what he's facing.

2 MS. WINBURN: Your Honor, I would like to ask you to
3 please handle my son. This is my only son I have. Also,
4 and William has expressed to me day after day these three
5 years of house arrest that he was and how he missed
6 Michael.

7 And he would tell me when I would ask him not to go
8 up there, "Momma, you done know him like I know him." And
9 he loved him and he did not mean to shot him. And he has
10 suffered also every day of his life.

11 And Michael's gone. We can't bring him back, but
12 putting William in jail forever is not going to bring him
13 back. He has learned a lot since the incident. He has
14 chosen a different path. Also, he attends church.

15 His -- without his financial help with my two little
16 grandchildren, I don't know what I'm going to do at this
17 time. And so I pray that you have mercy upon us because
18 of him not being violent. And I have, like I said before,
19 I have a debilitating disease, (inaudible) muscle disease.

20 And I am so sorry for Miss Vivian. And I prayed for
21 her also. Every day of my life I prayed that God would
22 help her in her grief and that she would be able to
23 forgive us and that her hurt would heal also cause I'm a
24 loving, willing, kind hearted person. And I don't want to
25 see anybody hurt, but I can't see locking at my son away

1 at 24 years old forever would help.

2 I don't know how that would help that goal for me to
3 lose my son. So I just ask you to please have mercy upon
4 him and me and my family and don't take him away from us.
5 Away from t those little granddaughters. They love him
6 like a daddy and look to him as their daddy. So I just
7 ask you, please, Your Honor, have mercy.

8 MR. TRUESDALE: Your Honor, I'm William's pastor and
9 I've known William all my life. I'm Pastor Mark Truesdale
10 from Camden, South Carolina and I've known William all my
11 life, sir. And this is not him, not how I know him. And
12 I'd like to employ you to have mercy.

13 He's not only been in my church from years and I've
14 not only know him for years, but he's worked for me. And
15 I know he's a good, honest, responsible person. And I
16 know that he's saved, and I know that he's a good man.
17 And I know that he didn't intend to do what happened. I
18 know he didn't in my heart.

19 I've known him all my life, and I know it and I
20 implore you today to have mercy on his behalf. And I'd
21 like to say to the family that you'll be in my prayers.
22 My condolences and respect. I'm very sorry this took
23 place and I pray that you be comforted.

24 THE COURT: Thank you, Reverend.

25 MR. OUTLAW: My name is Johnny Outlaw and I'm

1 William's cousin. I was also one of his closest friends.
2 Through my whole pregnancy for me, he was helping me
3 through everything. And he was the godfather of my child.

4 And I'd for her to be able to know him and not like
5 to see him. I think he's been through more than enough
6 than I served. I would just, please, ask you to be
7 mean -- gentle as you can because he really -- you just
8 don't realize how much he does for his family and how much
9 he means to all these little girls that he looks out for.

10 His two nieces and my daughter, too. So if you
11 could, please, just be as lenient as you can.

12 THE COURT: Mr. Outlaw, anything you like to say?

13 THE DEFENDANT: I'd like to say I'm sorry. I never
14 meant for nothing like this to happen, and if I could take
15 it back I would. There is nothing I can do. I'm sorry
16 that it happened. I'm sorry. I wish I could take it
17 back. I wish I could go back and I will never go there
18 that night.

19 THE COURT: Okay.

20 MS. WILKES: Your Honor, may I say something. I'm
21 Patsy Wilkes, and I feel for Mr. and Mrs. Johnson. I
22 never knew Michael. I knew William loved him. I don't
23 know them but I, too, lost my only daughter and I did not
24 get to say goodbye. When I went out there -- and her
25 trailer, she lived next door to me. There she was like

1 laying on the floor. I really don't even know why she
2 died, and I know all of us make mistakes. I certainly
3 have made many, many in my life.

4 And it's hard living in the (inaudible) and just call
5 the chief of sinners. Or you can just call me Mrs. Chief
6 and I'll just let it go at that. But I've changed my ways
7 and gave it to the Lord, Jesus Christ.

8 And I know my sister prayed for Mr. and Mrs. Johnson
9 every day of her life, and I pray for them because I know
10 how it feels to lose an only child. I lost my only
11 daughter without getting to say goodbye. I even feel for
12 their other siblings because I lost a brother in Vietnam.
13 And also had a brother take his own life.

14 But I don't know how Susie feels cause I never lost a
15 mate, and but there is nothing we can do to bring Michael
16 back. I wish there was. I wish all this stuff didn't
17 happen and I hope that these young people will learn from
18 this experience. But this is hard to speak because I feel
19 for them because I've been through it.

20 You don't know how it is. You can say you feel for a
21 person, but you don't know unless you lost a child. I
22 know they lost their child in a different way than I did,
23 but still she was my only daughter. I have one other
24 child, a son and grandchildren. But if punishing William
25 will help them bring Michael back I just pray your mercy

1 and I pray that they will be forgive and they will be
2 comforted by God's spirit as only he can comfort you
3 because only Jesus Christ's love is greater than the love
4 you have for a child. Thank you.

5 THE COURT: All right. What's done is done. And
6 this is the hardest part of my job. I normally don't
7 comment about jury actions but I certain believe in this
8 case that after hearing all the evidence that the verdict
9 that was reached was appropriate under the facts. It's a
10 situation of voluntary manslaughter. It was an
11 altercation. Some form of alcohol and drugs exasperated
12 the situation.

13 Mr. Outlaw, you left the altercation and got to
14 seeing red as we say, and you didn't let it rest. You
15 went back up there to try to make -- not say amends, but
16 trying to cause further problems apparently to
17 Mr. Talbert.

18 And, unfortunately, the individual got caught in it
19 and he is no longer with us, but in all probability would
20 not have happened if it hasn't been for the alcohol and
21 the combination of drugs.

22 As I travel around the State time and time again,
23 marijuana, cocaine, alcohol. I just don't know. Our
24 younger generation have just being decimated. I don't
25 know what the answer is. But I know I have to do what I

1 think is right.

2 I have to go home every night, and I have to go to
3 sleep and I have to live with you up here. No, I don't
4 think you deserve the maximum. On the other hand I just
5 can't let you back out on the street. You're going to
6 have to pay a substantial penalty for this.

7 No matter what I do I suspect that very few people
8 here will leave satisfied, but I'm going to do what I have
9 to do. So, no, I'm not going to throw the book at you,
10 but I'm not going on the light side either.

11 I think under the circumstances that I am going to
12 impose ~~on~~ and I therefore impose on you that you be
13 sentenced to the State Department of Corrections for a
14 period of 25 years. You are going to get credit for any
15 jail time that you have. I do that based on the fact that
16 you have no record and the fact that you have behaved
17 yourself while you were out on bond.

18 Otherwise, it would be closer to the maximum. As far
19 as the victim's family is concerned, put it behind you.
20 Hope that things go well for everybody concerned. Hope
21 Mr. Outlaw will take advantage of the good things that are
22 offered to him and avoid any further damage to him or his
23 family.

24 One day maybe he can come out and live a normal,
25 decent life. Several people eluded to the Bible. Court

1 don't get involved in that. Some of us have lot to say
2 about that in regards to the family. The Reverend is here
3 now.

4 Anybody got any serious thoughts about trying to
5 further this thing, not let it come to an end now, for
6 goodness sake, pick up that book right there and read the
7 Book of Matthew and put it behind you cause vengeance and
8 hatred is like a cancer. It will consume you: All right.
9 Good luck.

10 MR. REDMOND: Thank you, Your Honor.

11 END OF TRANSCRIPT OF RECORD

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENREAL SESSIONS
) FOURTH JUDICIAL CIRCUIT
 COUNTY OF CHESTERFIELD) Indictment No.: 02-GS-13-0159
)
 The State,)
)
 vs.) NOTICE OF MOTION AND MOTION
) TO RECONSIDER SENTENCE
 William Outlaw,)
)
 Defendant.)

TO: THE HONORABLE JAY E. HODGE, SOLICITOR OF THE FOURTH JUDICIAL CIRCUIT.

PLEASE TAKE NOTICE that the Defendant above-named, through his undersigned attorney, will move before the Honorable Paul M. Burch, as soon as counsel can be heard, to reconsider the sentence imposed by the Court on the Defendant, William Outlaw, on April 6, 2005.

Respectfully Submitted,

Paul V. Cannarella

Paul V. Cannarella
 Attorney For Defendant
 Post Office Box 38
 Hartsville, SC 29551
 (843)332-0106 office

Date: April 7, 2005
 Hartsville, South Carolina

FILED
 CLERK OF COURT
 05 APR -7 A 11:38 AM
 CHESTERFIELD COUNTY, SC

A True Copy Attest

Wanda C. Miles

CLERK OF COURT C.R. & G.S.
 CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD	)	Indictment No.: 02-GS-13-0159
)	
The State,)	
	)	NOTICE OF MOTION AND
vs.	)	MOTION FOR NEW TRIAL
)	
William Outlaw,)	
)	
Defendant.)	

TO: THE HONORABLE JAY E. HODGE, SOLICITOR FOURTH JUDICIAL CIRCUIT.

PLEASE TAKE NOTICE that the Defendant will move before the Honorable Paul M. Burch for a new trial, as soon as counsel can be heard, at a time and place convenient with the Court, pursuant to Rule 29 (a), SCRCrimP, based upon the ground that Defendant was denied due process of law by the refusal of his request to charge the jury on the lesser-included offense of the law of Involuntary Manslaughter.

April//, 2005
Hartsville, South Carolina

Respectfully Submitted,



Paul V. Cannarella
Attorney For Defendant
Post Office Box 38
Hartsville, SC 29551
(843)332-0106 office
(843)332-0108 fax

FILED
CLERK OF COURT
05 AP 13 A 11:21 S
CHESTERFIELD COUNTY, SC
BOOK PAGE

A True Copy Attest
Wanda C. Miles
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FOURTH JUDICIAL CIRCUIT
 COUNTY OF CHESTERFIELD) Indictment No.: 02-GS-13-0159
)
 The State,)
)
 vs.) **NOTICE OF MOTION AND**
) **MOTION FOR NEW TRIAL**
)
 William Outlaw,)
)
 Defendant.)

TO: THE HONORABLE JAY E. HODGE, SOLICITOR FOURTH JUDICIAL CIRCUIT.

PLEASE TAKE NOTICE that Defendant's attorney will move before the Honorable Paul M. Burch, as soon as counsel can be heard, for a new trial pursuant to Rule 29(b), SCRCrimP, based upon after discovered evidence.

April 21, 2005
 Hartsville, South Carolina

Respectfully Submitted,

Paul V. Cannarella
 Paul V. Cannarella
 Attorney For Defendant
 Post Office Box 38
 Hartsville, SC 29551
 (843)332-0106 office
 (843)332-0108 fax

A True Copy Attest
Wanda C. Miles
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

FILED
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 05 APR 25 11:10:07 AM
 CHESTERFIELD COUNTY, SC
 BOOK PAGE

STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
) FOURTH JUDICIAL CIRCUIT
 COUNTY OF CHESTERFIELD) Indictment Number: 02-GS-13-0159
)
 The State,)
)
)
 versus) **POST-TRIAL ORDER**
)
 William Outlaw,)
)
 Defendant.)

FILED
 CLERK OF COURT
 05 MAY 25 A 9:28 AM
 CHESTERFIELD COUNTY, SC
 BOOK PAGE

The Defendant has filed motions for a new trial pursuant to SCRCrimP, Rules 29(a) and (b) and he has filed a motion to reduce his sentence. The Defendant was convicted and sentenced by this Court on Wednesday, April 4, 2005.

The ballistics pertaining to this case is presently in the custody of the Chesterfield County Clerk of Court. The Clerk shall turn the ballistics over to the Chesterfield County Sheriff's Office for compliance with this Order.

Based upon the nature of Defendant's motion pursuant to Rule 29(b), this Court orders that:

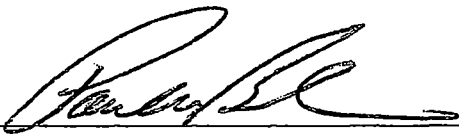
1. The Solicitor, in conjunction with the Chesterfield County Sheriff's office, shall submit all of the ballistics to SLED's Ballistics Laboratory for testing, comparison and analysis.

A True Copy Attest
Wanda C. Miles
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

2. SLED shall also be provided with autopsy notes and photos in the event that gunshot pattern analysis will aid in reaching any conclusion(s).

AND IT IS SO ORDERED.

Date: 5/13/05
Pageland, South Carolina



The Honorable Paul M. Burch
Circuit Court Judge
Fourth Judicial Circuit
Chesterfield County

12-16-06

FILED
CLERK OF COURT

Mrs. Murphy,

07 JAN 10 AM 11:25.7

CHESTERFIELD COUNTY, SC
BOOK _____ PAGE _____

I filed out this application
for my son (William Outlaw)
SCDC 308544 By authority of power
of attorney signed by William.

I have already mailed some
information on this application, but
the problem is, I think I
forgot to put the application
in with the other information.
So this is like part II of
the letter.

Just do hope you find both
parts. Please call me if you need
to.

Sincerely,

Willie Jean Outlaw

843-383-0536

A True Copy Attest

Wanda C. Miller

CLERK OF COURT C.P.A.O.S.
CHESTERFIELD COUNTY

STATE OF SOUTH CAROLINA)

County of Chesterfield)

William E. Outlaw ^{SCDC} (302544))
Full name and prison number (if any) of Applicant)

vs.)

State)
Name of Respondent)

In the Court of Common Pleas

FILED
CLERK OF COURT

07 JA 10 A 11: 26 0

CHESTERFIELD COUNTY, SC
BOOK _____ PAGE _____

**APPLICATION FOR
POST-CONVICTION RELIEF**

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
Bishopville, SC 29010

2. Name and location of Court which imposed sentence Chesterfield
200 W. Main St. Chesterfield, SC 29709

3. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 02-GS-13-0159

(b) VOLUNTARY MANSLAUGHTER

A True Copy Attest
Wanda C. Miles
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

(a) APRIL 6, 2006

(b) 25 years

(c) _____

5. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty (I made a plea of not guilty at the trial.

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgement of _____

I was never given the opportunity to make a plea before the trial started.

7. If you answered "yes" to question (6),

(a) the name of each Court to which you

i. _____

ii. _____

iii. _____

(b) the result of each such Court to which

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reason for not so appealing:

(a) I had an attorney (Paul Cammaralla) at the

(b) time of my trial. He made several post

(c) trial motions. A date was set for

Nov. 5, 2005 for the motions to be heard, but it was cancelled and no new date

was set. I am sending a copy of these post trial motions with this application.

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

- (a) I am not guilty. The judge nor the jury
- (b) even heard all the evidence. There were
- (c) witnesses supposed that gave voluntary

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

- (a) There was evidence discovered during the
- (b) trial, that the judge was not informed of.
- (c) There is also after discovered evidence,

11. 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-conviction relief?

- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court? _____

12. If you answered "yes" to any part of (11), 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. There were three post trial motions
- ii. made in the Chesterfield County
- iii. Court House, ① to reduce my sentence.
- iv. ② not offered a lesser charge of involuntary manslaughter, and ③ 1/3 party guilt.
There were eight statements given to support #3.6 motion

(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. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? yes

14. If you answered yes to (13) identify:

(a) which grounds have been presented:

- i. Reconsider my sentence
- ii. offer a lesser charge of involuntary manslaughter
- iii. third party guilt

(b) the proceedings in which each ground was raised:

- i. There was a very short hearing
- ii. on or about May 4, 2005, the presiding
- iii. judge Paul M. Birch said that he would set a date at a later time to hear post trial motions. The date was set for Nov. 5, 2005. It was cancelled and there was never another date set.

15. If any ground set forth in (9) 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) I cannot afford an attorney.
- (b) My mother cannot afford to hire an attorney.
- (c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgement of conviction or the imposition of sentence?

- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

- (a) the name and address of each attorney who represented you:
 - i. Paul V. Cannarella
111 N. Sixth Street
 - ii. Northside S.C. 29550
 - iii. _____

- (b) the proceedings at which each such attorney represented you:
 - i. at the Bond Hearing and the trial
 - ii. _____
 - iii. _____

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

I am seeking a full pardon because I am innocent. Even tho I fired a gun, the evidence clearly proves that my*

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

No

* gun was not the gun that killed Michael Johnson. We were facing each other, and the forensic expert testified that the direction of the buckshot was left to right and backward. These wounds were mostly in the left chest, also there was testimony that a third gun was involved. This was not followed up on by my attorney, Mr. Cannarella nor by State.

STATE OF SOUTH CAROLINA)
)
County of _____)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground know 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.

SWORN to and subscribed before me this _____ day of _____, 2_____.

(L.S.)

Notary Public

My Commission Expires: _____

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

I, William E. Dultaw, 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.

William E. Dultaw (By Willie Jean Windsor)
Applicant

Mother
power of attorney

SWORN or affirmed to and subscribed before me this 30 day of November, 2006.

Collette L. Walden
Notary Public

My Commission Expires: 8/14/13

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTERFIELD)
)
 William E. Outlaw,)
 S.C.D.C. No. 308544,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2007-CP-13-0029

FILED
 CLERK OF COURT
 01/10/07 11:15
 CHESTERFIELD COUNTY, SC
 BOOK PAGE

RETURN AND MOTION TO DISMISS

The Respondent, making its return to the application for post-conviction relief filed January 10, 2007 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 Chesterfield County Clerk of Court. The Applicant was indicted at the March 2002 term of the Chesterfield County Grand Jury for murder (2002-GS-13-0159). He was represented by Paul V. Cannarella, Esquire.

After the State brought the case to trial, the jury found the Applicant was guilty of voluntary manslaughter. On April 6, 2005, the Honorable Paul M. Burch sentenced the Applicant to twenty-five (25) years imprisonment.

On April 11, 2005, Mr. Cannarella filed two post-trial motions: (1) motion for a new trial and (2) motion to reconsider sentence. Upon information and belief, the Applicant has terminated his representation by Mr. Cannarella and has retained the services of Kenneth Martin, Esquire. Upon information and belief, these post-trial motions have not been heard or ruled

A True Copy Attest
 Wanda C. Miles
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

upon by the trial judge. Upon information and belief, these motions are scheduled to be heard before August 2007.

Attached herewith and incorporated herein by reference are the records of the Chesterfield County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections.

II.

Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). "An application for post-conviction relief cannot be made while an appeal from the conviction or sentence is pending or during the time in which an appeal may be perfected." Rule 71.1(b), SCRPC. Accordingly, as there are pending post-trial motions in this case, post-conviction relief is both premature and unavailable to the Applicant at this time. Since the Applicant's direct appeal is currently pending, the Court should deny and dismiss the post-conviction relief application without prejudice.

III.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests that the matter be summarily dismissed without prejudice.

Respectfully submitted,

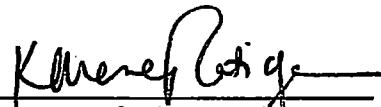
HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

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

By: 
Attorneys for Respondent

Columbia, South Carolina

May 7, 2007

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTERFIELD)
)
 William E. Outlaw,)
 S.C.D.C. No. 308544,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2007-CP-13-0029

FILED
 CLERK OF COURT
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 BOOK

**ORDER OF DISMISSAL
 WITHOUT PREJUDICE**

This matter comes before the Court by way of an application for post-conviction relief filed January 10, 2007. The Respondent filed a return, requesting the application be summarily dismissed because of the existence of pending post-trial motions in this case.

I.

The Applicant was indicted at the March 2002 term of the Chesterfield County Grand Jury for murder (2002-GS-13-0159). He was represented by Paul V. Cannarella, Esquire.

After the State brought the case to trial, the jury found the Applicant was guilty of voluntary manslaughter. On April 6, 2005, the Honorable Paul M. Burch sentenced the Applicant to twenty-five (25) years imprisonment.

On April 11, 2005, Mr. Cannarella filed two post-trial motions: (1) motion for a new trial and (2) motion to reconsider sentence. This Court has been advised that the Applicant has terminated his representation by Mr. Cannarella and retained the services of Kenneth Martin, Esquire. This Court has been advised that the post-trial motions have not been heard or ruled upon by the trial judge. This Court has been advised that the motions are scheduled to be heard before August 2007.

1 

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Wanda C. Miles
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

II.

“An application for post-conviction relief cannot be made while an appeal from the conviction or sentence is pending or during the time in which an appeal may be perfected.” Rule 71.1(b), SCRCPP. Further, the South Carolina Rules of Criminal Procedure clearly state the appeal time after a motion for a new trial “shall run from the receipt of written notice of entry of the order granting or denying such motion.” Rule 29, SCRCrimP (emphasis added). Therefore, this Court finds this application for post-conviction relief must be summarily dismissed without prejudice until such time as the direct appeal is resolved.

III.

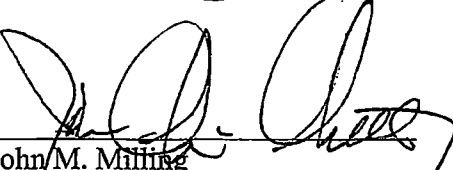
Based on all the foregoing, this Court finds and concludes all issues raised in the Applicant’s post-conviction application are not cognizable claims because jurisdiction still rests in the lower court. As such, an action for post-conviction relief is premature at this time and the application must be denied and dismissed without prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty days from the receipt of this Order if he wants to secure the appropriate appellate review. His attention is also directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.


IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed without prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 1 day of June, 2007.



John M. Milling
Presiding Judge
Fourth Judicial Circuit

 , South Carolina.

2011 SEP 14 AM 9 05

RESTON, VA S.C.

William Outlaw #308344
Lee CI/onal
990 Wisacky Hwy.
Bishopville, S.C. 29010

September 12, 2011

CC To:
Honorable Solicitor
Willie P. Jones
Office by Lettine

Hon. Faye Sellers
Clerk of Court
P.O. Box 529
Chesterfield, S.C.
29709

Re: State v. William Outlaw, C/no. 02-CR-13-0159, etc.
Motion To Reconsider; Motion For New Trial, i.e. at. Seq.
Dispositions, Orders of Hearings, Schedules inquiries, etc.

Dear Ms. Sellers:

Please allow my correspondence to serve as my formal and legible request for entitled information in regards to the above case and ongoing matters as stated. I am respectfully requesting that you do provide to me all commenced orders issued by Judge Paul M. Burch to my case motions filed to the Court by Attorney Paul Cannarella, Esq., see Motion To Reconsider Sentence filed April 07, 2005, and see Motion For New Trial filed April 21, 2005. I do understand Mr. Cannarella was relieved as my case counsel but it is advised to your office that I am entitled to all orders that the judge has issued in my case and I am entitled to be informed about the date of the next scheduled hearing to the Motion For New Trial based upon newly discovered evidence.

Thanking you in advance for your assistance time and I look forward in hearing from you soon.

September 12, 2011

Respectfully Submitted

William Outlaw
William Outlaw pro se
990 Wisacky Hwy.
Bishopville, S.C. 29010

WO/ab

cc: Hon. F. Sellers
File/WO

Copy

STATE OF SOUTH CAROLINA
HORRY COUNTY

State of South Carolina,

vs.

William Outlaw,

Defendant.

IN THE COURT OF GENERAL
SESSIONS
FOURTH JUDICIAL CIRCUIT

Indictment No.: 2002-GS-13-0159

AFFIDAVIT OF JAMES T. IRVIN JR., ESQ

After first being duly sworn, I do testify that the following is true based on my personal knowledge:

1. On September 2, 2010, an order was filed in Chesterfield in response to a Motion for a New Trial and a Motion for Reduction of Sentence in the above matter.
2. I, James T. Irvin, Jr. represented William Outlaw in the trial and Motion Hearings.
3. I was never sent a copy or notice that the order was filed on September 2, 2010.
4. I received a copy on October 17, 2011, when it was faxed to me William Outlaw's mother Willie Jean Winburn.

Sworn to and subscribed before me on
October 27, 2011.

Notary for South Carolina.

My Commission expires on 3/5/2020

JAMES T. IRVIN JR., ESQ.

4

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Chesterfield

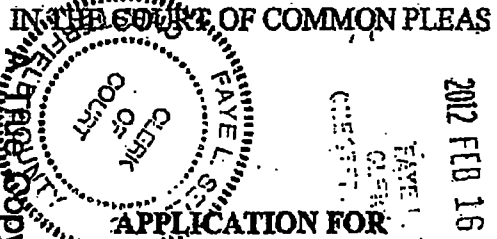
William Dullaw, # 308544,
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

CLERK OF COURT, C.A. & C.S.
CHESTERFIELD COUNTY, SC

John D. Dullaw
Attest



POST-CONVICTION RELIEF

2012-CP-13-0113

2012 FEB 16 AM 9 00

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Ct, 990 Wisacky Hwy, Bishopville, SC 29010
2. Name and location of Court which imposed sentence Chesterfield Co. Gen. Sess. Ct.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2002-C-13-0159 / Murder Voluntary Manslaughter
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4/6/05
 - (b) _____

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
 _____ Attorneys defaulted by not following laws of appeals.

8. If you answered "yes" to (7), list: *n/a*

- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____

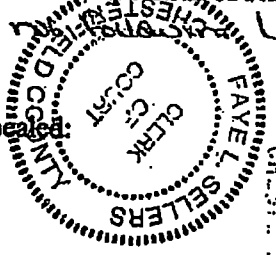
- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____

- (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) The Attorneys of record did file appeal notice as should;
 - (b) The Attorney of record did not know the appeal rules;
 - (c) _____

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



2012 FEB 16 AM

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Jay L. Sellers
 CLERK OF COURT CP & GS
 CHESTER COUNTY ALA.

6

- (a) Denied the rights to effective assistance of Counsel per
- (b) the 13th and 14th Amend. to U.S. Constitution and by the Articles
- (c) 1, 2, 3, 9, and 14 of the S.C. Constitution: as explained;

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

- (a) All of which are both unreasonable and
- (b) extremely prejudicial against Applicant's rights.
- (c) to a guaranteed fair trial, etc. See as explained
Strickland v. Washington, 466 US 668 (1984), etc.

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

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

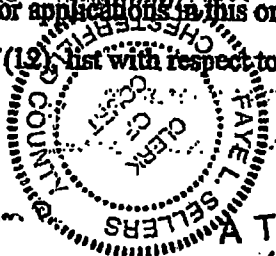
- i. Rule 29(c), SCACR
- ii. _____
- iii. _____
- iv. _____

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

- i. Chesterfield Co. Gen. Sess. Ct.
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Denied
- ii. _____
- iii. _____



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CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, S.C.

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iv. _____

(d) the date of each such disposition:

i. May 04, 2005 & Hear.

ii. September 02, 2010 Order.

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. No findings of new evidence to give new trial by

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

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

(a) No Issues presented due to proper exhaustion

(b) doctrine in effect, per is proper remedy for law

(c) Review to Case adjudication.

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

2012 FEB 16 AM 9 00

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Jaye J. Sellers
 CLERK OF COURT CP. & G.S.
 CHESTERFIELD COUNTY VA

CHESTERFIELD COUNTY
 CLERK OF COURT
 ALBERS

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (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. Paul Cannarella, Esq. P.O. Box 38, Hville, S.C. 29551
 - ii. Irvin James, Esq.
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial, Sentencing, Motion post-trial, pt.
 - ii. _____
 - iii. _____



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Faye L. Sellers
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

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

Vacate Sentence, Demand for dismissal of V-Manslaughter

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

no

2012 FEB 16 AM 9 00
 FAYE L. SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

Memorandum Of Laws w/ Grounds- Issues
post- Conviction Relief- addendum #1:

10. a) Applicant Trial Counsel was ineffective for not filing the Notice of Intent To Appeal Conviction to the Appellate Court once judgement was entered and issued to the Clerk of Court. For New Trial based upon After trial discovered to Rule 29(b), SCRCrim.P., etc.;

Notion
OF
CLERK
SELLERS
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

2012 FEB 16 AM 9 00

10. b) Applicant trial Counsel was ineffective for not prebitricating the Murder Charge based upon the prob. Cause mandates that was not established to have applicant charge with a murder offense in the initial case base on the incompetent evidence the Solicitor presented before the grand jury;

10. c) Trial Counsel was ineffective for not objecting to the improper malice charge given by the Court to the trial jury and leaving the Defendant to have the burdens to prove that his case was not a murder case;

10. d) Trial Counsel was ineffective when he failed to properly investigate the facts and circumstances surrounding the situation that were the causes of the Victim's death, the Counsel's failures to perform his lawful duties in an warranted investigation deprived the

per addendum #2:

applicant's trial jury of relevant information that were facts could have been an assessment used to determine applicant's guilt or innocence:

10. a) Counsel for trial failed to interview potential witnesses who could have presented testimony that were exculpatory to Applicant's defense trial, see letter dated June 20, 2005 to 29(b) motion preparations: 2 page

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CHESTERFIELD COUNTY, SC
SELLERS
JAY J. SELLERS
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JAY J. SELLERS

10. f) Trial Counsel failed to present relevant facts to the jury by a trial strategy that it could have drawn reasonable inferences from to conclude that it was an involuntary manslaughter case, trial Counsel was ineffective for not presenting the supported facts during the trial as trial Counsel waited after trial to file a Rule 29(b) motion to substitute for his recorded incompetencies; see probative documents proffered for post-trial Counsel's Rule 29(b) motion filed on May 2, 2005;

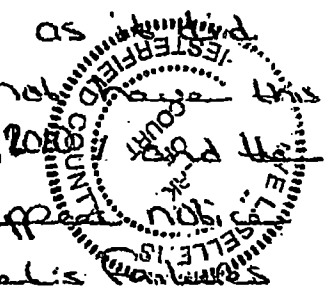
Supporting Facts to each allegations and grounds:

11. a): On June 1, 2007, Judge Millings signed an order of dismissal to appeal due to the S.C. Courts did not have final judgments issued to Applicant's case because Case Counsel for trial had a post-trial motion filed and

per addendum #3;

not ruled upon by trial judge; see attached order of dismissal without prejudice; as appeared the trial Counsel did not have the motion ruled upon until September 07, 2011 and the trial Counsel did not file the appeal to the Appellate Court, by Counsel's failure to file the appeal notice did deprive the Applicant of a Statutory right by the S.C. Laws and Rules that governs Appellant's rights to appeal their convictions; the Applicant did not receive the Order signed by the Honorable Paul M. Burch denying his motion for a new trial on September 7, 2011, by way of signing for legal mail physically receiving it from the Clerk of Chesterfield Court after the Clerk of Chesterfield Court mailed it to the prison mail room; see attached Envelope and Clerk cover sheet;

Applicant explicitly states that he is deprived of his appeal to his conviction based upon the trial Counsel failures to perform his duties pursuant to Rule 408, SCACR, Rule 602(e), SCACR; "Trial Counsel, whether retained, appointed, Public Defender, shall continue representation of an accused until final judgement, including any proceeding on direct appeal, except as it is by rules stated; Applicant will show that it was unreasonable for trial Counsel(s) not to file



CLERK OF COURT
CHESTERFIELD COUNTY, SC

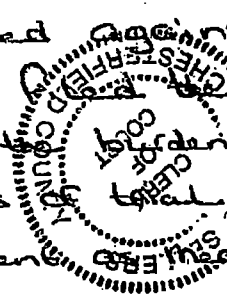
Jay D. Sellers
Attorney at Law

FRANK MILLERS

2012 FEB 16 AM 9 00

per addendum #4;

an Intent to Appeal Notice to the Appellate Court once final judgement was rendered to the Rule 29(b), Motion filed April 11, 2005; Applicant also shows that he was extremely prejudiced against when the Case Counsel of Record didn't give the notice of intent to appeal; per se by the records Applicant has shown by the records Counsel's performance was deficient



by the standard of reasonableness under prevailing professional norms; here how: Counsel Applicant's rights to have an Appellate review based upon the proper exhaustion doctrines established by our U.S. Supreme Court, and

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John J. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

secretly, Applicant shows that he was and extremely prejudiced by trial Counsel's shown deficiencies in not filing for an appeal had the Counsel(s) did the results would be differently shown because an appeal would be filed as should have; As Applicant did filed his per it is upon the Court to review the records and see that Applicant did not knowingly and intelligently waived his right to a direct appeal; as it is incumbent upon the Court to follow its commands of See at Cite: White v. State, 263 SC 110, 208 S2d 35 (1974);

2012 FEB 16 AM 9:00

per Addendum #5.

The Applicant shows that the record does not
 evince a knowing and voluntary waiver of the
 right to appeal, and it is even more so clear
 that neither Counsel followed the self-defense
 procedures of Anders v. California, 386 U.S. 738 (1967);
 and Rule 602(e), S.C.R.C., Applicant shows the
 Court that he never abandoned his rights to have
 his conviction appealed; the Court must
 reinstate to him the right to appeal his
 conviction and the post-trial motion denied
 by Judge P.M. Burch, Clerk of Court.

CLERK OF COURT
 CHESTERFIELD COUNTY, SC
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 J. J. Sellers

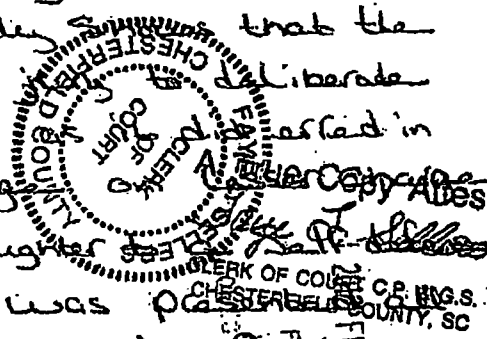
11.6) Trial Counsel failures to pre-trial
 being defective by the fact/body by the basis
 that the Solicitor did not have competent
 evidence in the initially charging phases of
 probable cause established nor by the law
 as per so to §17-19-30, Sec §16-3-10, (1976) (AS Amend.)
 Applicant was prejudiced when he was charged
 with the Murder offense and thus after the trial
 was commenced the self-defense evidence was
 discovered, the Applicant shows that Counsel did
 neglect his duties to best the adverse process to
 elicit the Murder indictment due to misrepresented
 affidavits and the lack of competent evidence,
 as was required to be submitted to the grand
 jury pursuant to the U.S. Const. 5th Amend.

CLERK OF COURT & G.S.
 CHESTERFIELD COUNTY, SC

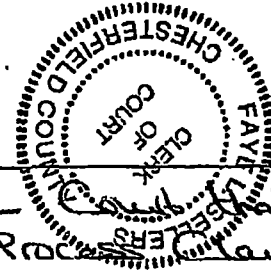
Footnote 20.11.2) applicant's issue are by basis surrounding the decedent's
 Cousin action that was illegal, decedent and Applicant were friends:

per Obdendum # 16;

11. c) Trial Counsel was ineffective assistance. When he did not object to the trial judge malice charge which was improper, see Jury Charge of trial transcript; Applicant explicitly asked into not allowing the for an involuntary manslaughter not charging the jury a charge offense as involuntary manslaughter charge the provocation that was through the defense as it being the Applicant was assaulted by the victim decedent, and as the Applicant made choice to defend himself by law permitting as having a right to arm himself and have a right to defend himself as fearing for his life, and as the Court had propositioned to it Applicant was assaulted and as the results from the assault Applicant sight was compromised whereas he couldn't see after the moment of the assault having him to fear for his life; Applicant was defending himself from grave danger, Counsel failures to object to the improper malice charge violated Applicant's rights to a fair charge during trial, a fair trial per U.S. Const 14th Amend., and 14th Amend. U.S. Const. the Applicant was prejudiced by the Court also pursuant to S.C. Const. V. 21, because the Court have a duties by law to form its charges according to the facts of the case;



per Addendum #1.

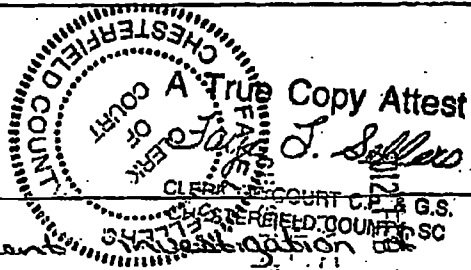


Applicant explicitly shows the Court that he was violated as to the Due Process Clause of the 14th Amend. because the jury charge that was given created a mandatory presumption that impermissibly shifted the burden of proof to the Applicant during trial, as it was shown Applicant had to prove that his crime was not murder as it was reduced from murder to manslaughter voluntary. There were ^{A True Copy Attest} ~~two~~ (2) Charges as ^{Attorney} ~~Attorney~~ ^{Sellers} and manslaughter-voluntary on indictment on face; jury found guilty on Voluntary Manslaughter, that of which is a violation of the Due Process Clause, see Mullaney v. Wilbur, 421 U.S. 684 (1975), here holding that the Due Process Clause forbids a State from placing the burden on the accused to prove his actions reduced the crime from murder to manslaughter; here in Applicant's case he was deprived of involuntary and a proper charge of malice per State v. Alford, 264 S.C. 26, 212 SE2d 252 (1975); (About the use of gun/weapon and just that throws the light that use of deadly weapon does not necessary means malice is defined, trial Counsel did object to no parts of the jury charges; causing an extreme prejudice that can only be remedied by a new trial after vacation of sentence.

CHESTERFIELD COUNTY, SC
P. & G.S.

FEB 16 9 00
CLERK OF SUPERIOR COURT

11. d) Trial Counsel was ineffective when he



per Addendum #8.

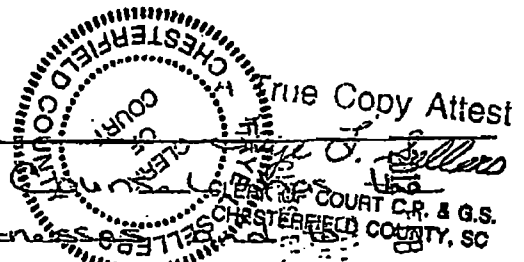
Failed to make an independent investigation of facts and circumstances of Applicant's case. Applicant shows that the trial Counsel did not procure crucial information from the Solicitor's office and its agencies, the Police Reports, the made known facts about the forensic report results, the Atomis Absorption Kit, and clear facts about how the situation of shooting that occurred that resulted in the death of the victim, what was the initial actions of the victim in to the incident. Applicant shows that trial Counsel failures to procure and conduct an independent investigation to present a articulated and strategy defense deprived the Applicant of a fair trial and it was unreasonable for trial Counsel to not test the adverse comments as an interest to case for trial. Applicants 1st Amend of U.S. Const Violated, Troedel v. Wainwright, 661 F.supp. 1456 (1987)

11.2) Trial Counsel is ineffective assistance when he did not interview potential witnesses such as Kendall Lee Wilks, Michael Oreal, Brand Robcoe, Ernest Jerome Dixon, Andrea Morris, Jack F. Crowley, Jennifer Droter and Larry W. Plauer, etc. the trial Counsel failed to comply with his duties that are prescribed by S.C. law, Irby v. State, 348 SC 467, 560 SE.2d 401, 405 (2002); Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir. 1986) and also citing of the

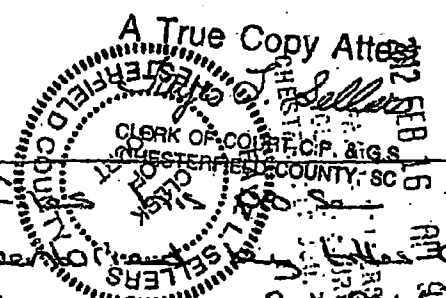
per Addendum #9;

Donald W. Wainwright, Supra.
 duty to interview potential witnesses
 make an independent investigation of the facts and
 circumstances of the case. Applicant is deprived
 of effective assistance of trial Counsel and
 denied a fair trial pursuant to U.S.C.A. 6th and 14th §.

11. F.) Trial Counsel actions presenting ten (10) factors
 on a post-trial motion (see Rule 29(b), Motion) for
 new trial shows his ineffective of assistance when
 and whereas Counsel did not have a trial strategy,
 it is shown that the trial Counsel not having a
 strategized defense deprived Applicant from fully
 presenting his case to trial, all ten (10) factors
 are only showing an involuntary manslaughter
 offense, and in its entirety there are evidence
 that the jury could have drawn the inferences
 from had it been presented during original trial.
 Trial Counsel failed to present these same factors,
 Applicant was denied effective assistance, and
 prejudiced when the jury was without the ten
 (10) factors to have determined that the charge was
 involuntary manslaughter one, see motion brief filed
 trial Counsel, it was unreasonable for Counsel
 not trying Applicant's case without presenting
 evidence to answer to all charges, and the
 outcome would be different but for Counsel
 erroneous decision to not present evidence during
 trial for involuntary manslaughter charge. U.S.C.A. 6th 14th §.



per Addendum #10:



Applicant William Oublaw A
 applications documents as inventor and dates as proffered to the Court per SCRPC; as to potential Counsel to be appointed, he does not waive any rights to proper and ineffective assistance in having his per to be adequately and accurately presented to the per Court, the Court is previously advised that he is entitled to have his per pro se application to be amended with all other available issues of the record for ineffective assistance of trial Counsel, per se Rule 71.1(d), SCRPC. Applicant advises potential appointed per Counsel that he is compelled to raise all issues at the time of per due to Gamble v. State

Superior Court the following documents as:

- 1.) envelope stated Received Sept. 27, 2011 Lee CI Mailroom;
- 2.) Indictment for 0114-Murder 16-3-10, A true Copy, filed 11/15/02;
- 3.) Clerk of Chesterfield Co. Co., Dated: Sept. 26, 2011, to Applicant;
- 4.) Letter to Hon. S. Hodge, Solicitor, dated June 20, 05, from Cannarella;
- 5.) 5 page memo. of law for Rule 29(b) motion dated: May 02, 2005, to Court;
- 6.) Order of Dismissal to Rule 29(b) motion dated: 9-09-10, by Judge Buch.

02/14/12

attested. ATO Ass.

[Signature] 0421

X *[Signature]*

William Oublaw
 Lee CI DN-211
 990 Wisacky Hwy.
 Bishopville S.C. 29010
 pro se Applicant

Exhibit #2

WITNESSES

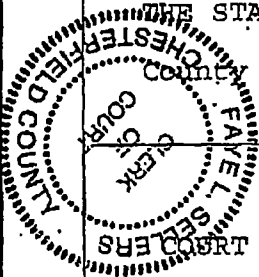
David Watson

Ccsd

gd

DOCKET #: 02GS13-0159

THE STATE OF SOUTH CAROLINA
County of Chesterfield



A True Copy Attest
Jaye J. Sellers

COURT OF GENERAL SESSIONS
COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC
Term: March, 2002

ARREST WARRANT #:

G016135

Arrested on January 12, 2002

THE STATE

vs.

William Outlaw

2012 FEB 16 AM 9 00
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

ACTION OF GRAND JURY

In re Bill

INDICTMENT FOR

0116

MURDER

16-3-10

Foreman: *Cynthia J. Davidson*
Grand Jury

2/28/02

2012 NOV 15 PM 12 16
CLERK OF COURT
CHESTERFIELD COUNTY, SC
BOOK _____ PAGE _____

VERDICT

Guilty of Murder

Guilty of Voluntary Manslaughter

Not Guilty

A True Copy, Attest
Jaye J. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Foreman: *South M. Taylor*
Petit Jury

Date: *4-6-05*



CHESTERFIELD COUNTY CLERK OF COURT

Exhibit #3

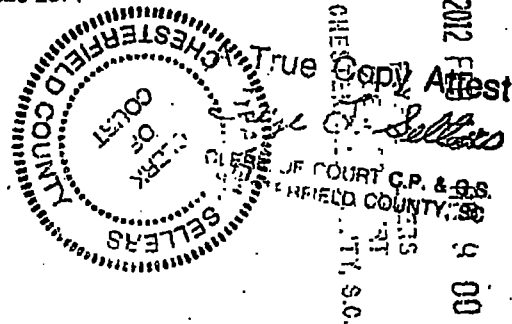
200 West Main Street • P. O. Box 529
Chesterfield, South Carolina 29709

Telephone (843) 623-2574

Court of General Sessions
Court of Common Pleas
Register of Deeds

September 26, 2011

William Outlaw #308544
Lee Correctional Inst.
Dar-S-2116
990 Wisacky Highway
Bishopville SC 29010



XXX PLEASE FIND THE REQUESTED DOCUMENTS ENCLOSED, THERE WILL BE A 25 CENT FEE FOR EACH DOCUMENT THE NEXT TIME THESE DOCUMENTS ARE REQUESTED.

OUR OFFICE DOES NOT HANDLE DETAINERS, YOU WILL HAVE TO CONTACT THE ARRESTING AGENCY THAT PLACED THE DETAINER ON YOU.

I HAVE PLACED YOUR LETTER/MOTION REGARDING A SPEEDY TRIAL IN YOUR FILE AND I HAVE MADE A COPY AND FORWARDED TO THE SOLICITORS OFFICE.

I HAVE PLACED YOUR LETTER REGARDING YOUR CHARGES TO BE DISMISSED OF IN YOUR FILE AND I HAVE ALSO FORWARD A COPY TO THE SOLICITORS OFFICE.

OUR OFFICE DOES NOT HANDLE JAIL TIME YOU WILL NEED TO CONTACT YOUR CASE WORKER TO FIND OUT THAT INFORMATION.

OTHER:

SINCERELY,
COURT SERVICES SECTION

Exhibit # 4

PAUL V. CANNARELLA
ATTORNEY & COUNSELOR AT LAW
111 NORTH SIXTH STREET
HARTSVILLE, SOUTH CAROLINA 29550

P. O. BOX 38
HARTSVILLE, SC 29551

CHESTERFIELD COUNTY, SC
2012 JUN 16 PM 5
(843) 332-0106
FAX (843) 332-0108

June 20, 2005

The Honorable Jay Hodge
Solicitor, Fourth Judicial Circuit
121 Market Street
Cheraw, SC 29520

CLERK OF COURT
JAYE D. SELLERS
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC
FAX AND US MAIL Copy Attest

Re: The State vs. William Outlaw
Case Number: 02-GS-13-0159

Dear Solicitor:

Enclosed are statements from relevant witnesses to my motion for new trial based upon third party guilt.

Based upon these statements and in light of other after discovered evidence, it is my opinion that Mr. Outlaw is clearly entitled to a new trial in order to see that justice is served in this matter.

It is also my opinion, based upon these statements and others after discovered evidence, that Sheriff Parker should re-open the investigation of this case and help us find Jaysana Herring. Mr. Outlaw's family and friends will assist in any way possible.

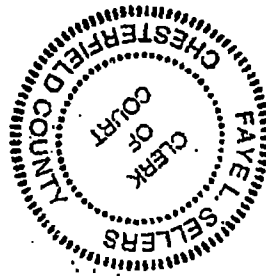
I have spoken with the SLED Firearms agent and he informed me last week that he had four cases ahead of Mr. Outlaw's before he could analyze Mr. Outlaw's evidence.

The third-party guilt witnesses are:

1. Kendell Lee Wilkes (843)335-7558
52 Sherri Drive
Hartsville, SC 29550
2. Michael Oneal (843)332-3830
3301 Substation Road
Hartsville, SC 29550
3. Brandy Roscoe (843)634-3489
7853 Hartsville Ruby Highway
Patrick, SC.29584

Exhibit #4

- 4. Emmett Jerome Dixon (843)335-6450
956 Scotts Pond Road
Hartsville, SC 29550
- 5. Andrea Morris (843)335-6011
2511 Bullard Ford Road
Hartsville, SC 29550
- 6. Jack F. Crowley (843)634-7737
7224 Patrick Highway 145
Patrick, SC 29584
- 7. Jennifer Drostar (843)335-6502
2475 Bullard Ford Road
Hartsville, SC 29550
- 8. Larry Wayne "Smiley" Player (No Phone)
Route 1
Patrick, SC 29584



2012 FEB 16 PM
 FAYE L. SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, SC

A True Copy Attest

Faye L. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Sincerely,

Paul V. Cannarella

PVC/eiw

Enclosures

cc: J.R. Joyner, Assistant Solicitor
Via Fax and US Mail

cc: Kenard Redmond, Assistant Solicitor
Via Fax and US Mail

cc: Sheriff Sam Parker
Via Fax and US Mail

cc: Willie Jean Winburn (On behalf of William Outlaw)
Via US Mail

Exhibit #5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTERFIELD)
)
 The State,)
)
 vs.)
)
 William Outlaw,)
)
 Defendant.)

GENERAL SESSIONS COURT
 FOURTH JUDICIAL CIRCUIT
 Indictment No.: 02-GS-13-0159

MEMORANDUM IN SUPPORT
 OF MOTION FOR NEW TRIAL
 UNDER RULE 29 (A)

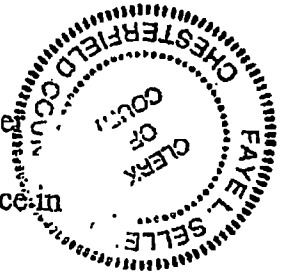


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 A True Copy Attest
 J. J. Sellers
 CLERK OF COURT - C.P. & G.S.
 CHESTERFIELD COUNTY, SC

In 2003, the South Carolina Supreme Court held that it is not the law of this state that the intentional firing of a gun will always preclude a jury instruction on the lesser included offense of involuntary manslaughter. State v. Crosby, 355 S.C. 47, ___ S.E. 2d ___ (2003).

In reversing the trial court and the Court of Appeals, the Supreme Court held that:

In our view, the only evidence which appears to directly support the Court of Appeals' ruling is Crosby's statement to police in which he stated he closed his eyes and pulled the trigger. However, this ignores the fact that Crosby immediately added that he didn't even know he had pulled the trigger. The effect of the Court of Appeals' holding is that if there is any evidence a shooting was intentional, all evidence from which any other inference may be drawn is negated. This is not the law of this state. State v. Hill, 315 S.C. 260, 433 S.E. 2d 848 (1993) (charge must be given if there is any evidence to support it; trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.) We hold Crosby was entitled to a jury charge on the law of involuntary manslaughter.



Thus, a defendant may be entitled to an involuntary manslaughter charge, even if he intentionally fired a gun, when there is other evidence in the record from which reasonable inferences may be drawn that the defendant acted in reckless disregard of the safety of others. (Also, see Crosby fn2).

Therefore, a reasonable interpretation of Crosby is that the focus must be on the application of the term "recklessness" to all the circumstances. (Hubbard infra)

Attest
F. J. Sellers
COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

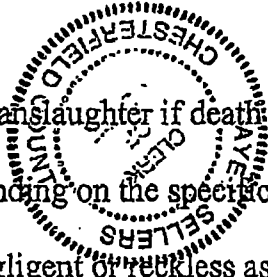
The Crosby Court defined involuntary manslaughter as:

- (1) the unintentional killing of another;
- (2) without malice;
- (3) while engaged in a lawful activity, and
- (4) with reckless disregard for the safety of other.

2012 FEB 16 AM 9 02
FAYE L. SELLE
CLERK OF COURT
CHESTERFIELD COUNTY, SC

The Crosby Court further stated that, to constitute involuntary manslaughter, there must be a finding of criminal negligence, statutorily defined as a reckless disregard of the safety of others. S.C. Code Ann. §16-3-60 (1985).

The (1) unintentional killing of another is not the same as the intentional firing of a gun or the intentional use of a dangerous instrument. The term "intentional conduct" is vague. For example, a car is a dangerous instrument that is intentionally used all the time. A driver is not guilty of



only murder or voluntary manslaughter if death occurs while intentionally driving a car. Indeed, depending on the specific factual context, the driver may not even have been negligent or reckless as to the resulting death.

Thus, the focus must always be on the application of the term "recklessness" to all the circumstances. (Hubbard, Requests to Charge, 2nd Edition, page 90.)

The jury impliedly acquitted Outlaw of murder, so they did not believe that he acted with malice. Thus, he acted (2) without malice.

As to killing another without malice (3) while engaged in a lawful activity, it was apparent, as a matter of law, that Outlaw was entitled to arm himself under the circumstances; therefore he was engaged in a lawful activity, because the law is clear that a person has the right to arm himself in self-defense.

Again, the focus must be on the application of "reckless" disregard of the safety of others under § 16-3-60.

Crosby admitted to closing his eyes and to pulling the trigger but said he didn't mean to do it. One witness for Crosby testified that Crosby said the gun slipped. It appears that this witness' testimony forms part of the basis for the Crosby Court's decision. But, remember, the Crosby Court clearly held that the intentional firing of a gun will not negate all other

Attest
Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC
2012 FEB 16 AM 9 02

reasonable inferences from which it could be drawn that the defendant acted in reckless disregard of the safety of others.

In the present case, Outlaw testified that he was drinking heavily and taking valiums. A much larger John Talbert violently struck Outlaw in the left eye, effecting his vision in both eyes. A gun was fired by the victim. Outlaw panicked and blindly retrieved his gun from the darkness of his car trunk and fired it from the hip in the darkness of the night. It could be said that he, too, closed his eyes and pulled the trigger; that he, too, didn't even know that he pulled the trigger, due to his mental state (alcohol, drugs and P. & S. gun fire), and that he, like Crosby, acted in reckless disregard for the safety of others.



IV ARREST
F. L. Sellers
C. P. & S.
CHESTERFIELD COUNTY, SC

Reasonable inferences to be drawn from the evidence in this record to support a jury verdict of involuntary manslaughter, based upon the reckless disregard for the safety of others, are:

2012 FEB 16 PM 9 02
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

1. Defendant's drunken condition;
2. Defendant's drug usage;
3. Defendant being attacked by John Talbert;
4. Defendant's obscured vision as a result of the attack;
5. Defendant not aiming the gun;
6. Defendant's gun being discharged from the hip;
7. Defendant testifying that he did not intend the result;
8. The victim being a friend of the Defendant;
9. The victim not being a part of the altercation, and
10. Defendant's impaired state of mind causing him to over-react to initial gun fire by his friend.

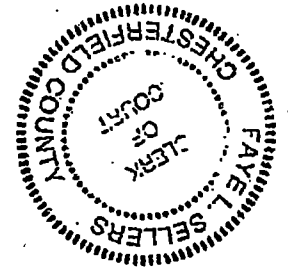
All of these are inferences from which a jury could have reasonably concluded that Defendant acted with reckless disregard and, therefore, found him guilty of involuntary manslaughter.

May 2, 2005

Respectfully Submitted

Paul V. Cannarella

Paul V. Cannarella
Attorney For Defendant
Post Office Box 38
Hartsville, SC 29550
(843)332-0106 office
(843)332-0108 fax



STATE OF SOUTH CAROLINA

County of Do

VERIFICATION

I, Will Outler, 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.

Will Outler
William Outler
See CT. 01-211
990 Wisacky Hwy
Bishopville, SC 29010

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

[Signature] (L.S.)
Notary Public

True Copy Attest

Faye S. Sellers

My Commission Expires: 5/16/14

CLERK OF COURT C.P. & G.S.
SHERFIELD COUNTY, SC

2012 FEB 16 AM 9:20
CLERK OF COURT
SHERFIELD COUNTY, SOUTH CAROLINA
CLERK
FAYE L. SELLERS
SHERFIELD CO. SC

Original

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

William
I, *William*, 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.

William Outlaw
Applicant

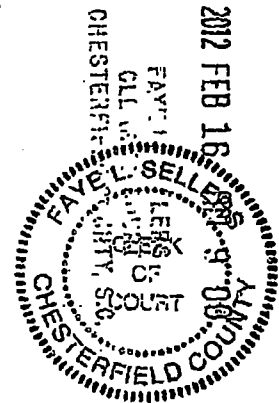
Copy Attest
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

SWORN or affirmed to and subscribed before me this
10 day of February, 2012.

Braun
Notary Public

William Outlaw
2001/0n-211
990 W. Sackville Hwy.
Bishopville, S.C. 29010

My Commission Expires: 5-10-14



Original

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTERFIELD)
)
)
 William Outlaw, 308544)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2012-CP-13- 0113

**RETURN AND MOTION TO
 DISMISS**

2012 APR 3 AM 10 28
 FAYE SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed February 16, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court. The Applicant was indicted for voluntary manslaughter in the March 2002 term of the Chesterfield county grand jury. (2002-GS-13-0159) Paul V. Cannarella, Esquire, represented Applicant. After the State brought the case to trial, the jury found the Applicant was guilty of voluntary manslaughter. On April 6, 2005, the Honorable Paul M. Burch sentenced the Applicant to twenty-five years imprisonment.

On April 11, 2005, Mr. Cannarella filed two post-trial motions: (1) motion for a new trial and (2) motion to reconsider sentence. Before these motions could be ruled upon, Applicant terminated the representation of Mr. Cannarella and alleges that he then retained the services of Kenneth Martin, Esquire. While the motions were still pending, Applicant filed his first PCR

A True Copy Attest
 Wanda C. Miles
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

January 10, 2007. (2007-CP-13-0029). After the Respondent filed its Return and Motion to Dismiss, the Application was dismissed without prejudice by the Honorable John M. Milling on June 1, 2007 since application for PCR may not be made during the time when an appeal is pending or during the time in which an appeal may be perfected. In his current Application, Outlaw alleges his post trial motions were not ruled upon until September 2, 2010 and that his counsel thereafter failed to perfect an appeal on behalf of Applicant.

Attached herewith and incorporated herein are the records of the Chesterfield County Clerk of Court regarding the subject conviction, and documents from Applicant's last PCR. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant makes various allegations of ineffective assistance of trial counsel, including allegations regarding the handling of Applicant's trial as well as failing to perfect an appeal on behalf of Applicant. Applicant seeks "vacate sentence, remand for dismissal of V-Manslaughter" as a result of this proceeding.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test, in addition to being untimely filed and barred by laches. Therefore, Respondent requests this Court summarily dismiss the Application with prejudice.

IV.

The statute of limitations applicable to post-conviction relief actions bars the entire application. S.C. Code Ann. § 17-27-45 (Supp. 2001) requires an inmate to file a post-conviction relief application "within one year after the entry of a judgment of conviction"

This provision applies to all convictions after the July 1, 1995 effective date of the statute. *See Pelouin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996).

Applicant alleges his post trial motions were not ruled upon until September 2, 2010. This Application was filed February 16, 2012, which was well beyond the time the statutory filing period expired. Applicant filed this post-conviction relief application almost seven years after his conviction. Accordingly, since Applicant did not present these allegations in a timely manner, this Court should dismiss the application with prejudice as barred by the statute of limitations.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The doctrine of laches bars Applicant from raising these allegations in a PCR action. Applicant has filed this application almost seven years after his conviction. Absent some explanation or justification for delay in seeking PCR, laches will prevent an applicant from seeking collateral review of a conviction, especially where the delay affects the availability of evidence to refute an applicant's claims. *McElrath v. State*, 276 S.C. 282, 277 S.E.2d 890 (1981).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement “guards the state’s legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available.” *Id.* At 283, 277 S.E.2d at 890-91 (citation omitted).

Applicant’s delay has greatly prejudiced Respondent. A transcript of Applicant’s trial may now be unavailable. It is doubtful counsel would have memory or relevant notes regarding his representation of Applicant. If Applicant had sought relief within a reasonable time after his trial, neither of these problems would exist. Therefore, the Court should summarily dismiss the application based on Applicant’s lack of diligence in processing his claim for relief.

VI.

The State therefore requests that this Court summarily dismiss this Application as it is filed outside the statute of limitations and is barred by laches, pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

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

VIII.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

4/2, 2012.

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS
4th JUDICIAL CIRCUIT

WILLIAM OUTLAW, 308544,)
APPLICANT,)

CASE NO. 2012-CP-13-0113

ORIGINAL

vs.

APPLICANT'S OPPOSITIONS TO THE
RESPONDENT'S MOTION TO DISMISS
POST CONVICTION RELIEF APPLICATION
FILED APRIL 02, 2012 TO PCR COURT.

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

APPLICANT WILLIAM OUTLAW, 308544, COMES NOW WITH HIS PRO SE OPPOSITION TO THE RESPONDENT'S MOTION TO DISMISS FILED APRIL 02, 2012, APPLICANT WOULD RESPECTFULLY SHOW RESPONDENT IS MAKING CLAIMS THAT WOULD BE A FRAUDS UPON THE COURT AND THE RESPONDENT IS MISLEADING THE COURT IN ITS CONFUSING THE COURT RECORDS BY FALSELY STATING THAT APPLICANT IS TIME BARRED IN FILING HIS POST CONVICTION RELIEF APPLICATION TO THE PCR COURT.

PROCEDURAL HISTORY

APPLICANT OUTLAW IS PRESENTLY CONFINED AT LEE C.I. IN THE SOUTH CAROLINA DEPT. OF CORRECTIONS PURSUANT TO ORDERS OF COMMITMENT OF CHESTERFIELD COUNTY CLERK OF COURT. THE APPLICANT WAS INDICTED IN MARCH TERM OF THE CHESTERFIELD CO. GRAND JURY FOR MURDER, 2002-GS-13-0159; HE WAS REPRESENTED AT TRIAL BY PAUL V. CANNARELLA, esq.; THE APPLICANT WAS SENTENCED TO TWENTY-FIVE YEARS FOR VOLUNTARY MANSLAUGHTER ON APRIL 06, 2005 BY THE HON. PAUL M. BURCH, Cir. Ct. JUDGE.

AFTER THE TRIAL WITHIN THE MANDATED TIME, THE APPLICANT'S TRIAL COUNSEL FILED TWO MOTION AS THE RESPONDENT INDICATED, THESE MOTIONS WERE NOT RULED UPON UNTIL SEPTEMBER 02, 2012, BY THE COURT THAT OF WHICH HE HAD COUNSEL TO REPRESENT IN, SEE AFFIDAVIT OF JAMES T. IRVIN, JR., Esq., THE RESPONDENT MADE A CONTENTION AS IF THE APPLICANT WAS BEING DISHONEST TO THE COURT WHEN HAD STATED HE WAS REPRESENTED BY COUNSEL, THERE HAD BEEN A DISBARMENT TO ATTORNEY KENNETH MARIN, Esq. AND THEREFORE IT WAS INCUMBENT UPON THE APPLICANT TO RETAIN OTHER COUNSEL TO BE REPRESENTED BY TO THE COURT AS IS SHOWN BY THE RECORDS. THE RESPONDENT MADE IT CLEAR THAT THE STATE IS PREJUDICED BY THE APPLICANT WHEN HE FILED HIS APPLICATION IN THE TIME FRAMES THAT HE DID, THE

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RESPONDENT ALSO MADE CONTENTIONS THAT IT IS ASSUMED UPON THE COURT THAT THE COUNSEL FOR TRIAL WOULD BECOME WITH AMNESIA THAT WILL PREVENT HIM FROM REMEMBERING THE TRIAL CASE IN QUESTIONS, THIS IS HIGHLY PREJUDICIAL TO THE APPLICANT AND THIS IS NOT A DEFENSE FOR THE RESPONDENT TO MAKE A MOTION TO DISMISS BY, IT IS NOT ACCORDED TO THE ESTABLISHED LAW OF THIS STATE AND THE APPLICANT WOULD SHOW THROUGH THE COMPETENT EVIDENCE HE IS COMPELLED TO PROFFER TO COURT PURSUANT TO RULE 71.1(e), SCRCP., THE RESPONDENT STATED THAT APPLICANT IS TIMED BARRED AND THE STATUTE OF LIMITATION WILL PREVENT HIM FROM BEING ENTITLED TO A POST CONVICTION RELIEF IN HIS CASE MATTER, IT IS ALSO THE POSITION OF THE RESPONDENT THAT APPLICANT DOES NOT HAVE A RIGHT TO MAKE A COLLATERAL ATTACKS AGAINST HIS SENTENCE ACCORDINGLY TO US AND SC CONSTITUTIONAL LAW AS APPLICABLE, FINALLY THE RESPONDENT HAS RAISED THE DEFENSE AS LACHES OF THE DOCTRINE OF LACHES MANDATES, AND IT IS TAKING THE POSITIONS OF HAVING THE COURT TO BELIEVE THAT THE APPLICANT HAS THE SOLE ABILITIES TO BE A CUSTODIAN RECORD KEEPER AND CONTROLLER OF RECORDS IN THE TRIED CASE THAT IS ON COLLATERAL ATTACK BY THE APPLICANT, IN THIS CLAIMS ITSELF WILL COMPEL THE PCR COURT TO DENY THE MOTION TO DISMISS AND REFUSE TO ISSUE A CONDITIONAL ORDER OF DISMISSAL BASED UPON GOOD CAUSE TO BE SHOWN TO THE COURT FOR PCR NOT TO BE DISMISSED, THERE IS NO WAY POSSIBLE FOR THE RESPONDENT TO GO WITHOUT BEING SANCTIONED BY THE COURT IN THIS CLAIMS MADE THAT ARE ERRONEOUSLY STATED AND MISLEADING THE COURT SO THAT THE COURT CAN COMMIT A VIOLATION THAT WILL BE A SHOCK TO THE UNIVERSE OF THE SENSE OF JUSTICE THAT WILL NEED TO BE SERVED IN APPLICANT'S PCR CASE MATTERS BEFORE THE PCR COURT.

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APPLICANT'S OPPOSITIONS AND SUFFICIENT SHOWINGS AND JUSTIFICATIONS AS FOLLOWS:

POSTURES OF CASE

APPLICANT FIRST WILL PROFFER TO THE COURT DOCUMENTS AS SHOWN THAT ARE EXPLICITLY STATED THAT IMPLIES FACTUALS TO THE PCR COURT THE RESPONDENT IS THE RECORD CUSTODIAN KEEPER OF, THERE ARE THE RESPONDENT OWN ISSUED PLEADINGS THEY FILED IN THE FIRST PCR CASE NO. 2007-CP-13-0029, THAT OF WHICH THEM BEING THE RETURN AND MOTION TO DISMISS WITHOUT PREJUDICE FILED ON MAY 07, 2007 BY RESPONDENT'S COUNSEL KAREN RATIGAN, ASST. ATTY. GEN., AND THE ORDER OF

DISMISSAL WITHOUT PREJUDICE FILED AND SIGNED BY THE HONORABLE JOHN M. MILLING, Cir. Ct. JUDGE ON JUNE 07, 2007, AND THESE DOCUMENTS ARE SELF-EXPLANATORY TO THE COURT BECAUSE THE COURT CAN NOT OVERLOOK THE FACTS THAT THE APPLICANT IS BY LAW PROTECTED AND GUARANTEED TO HAVE HIS POST CONVICTION RELIEF APPLICATION HEARD IN BY AND IN THE PCR COURT, BECAUSE THERE EXISTS A INTERFERENCES BY THE COURT ITSELF PREVENTING THE APPLICANT FROM PROSECUTING HIS CASE THROUGH THE COURT WITH DUE DILIGENCE BY A TIMELY FASHIONS, SEE THAT APPLICANT NEVER DID RECEIVED THE ORDER OF DISMISSAL TO THE MOTION FOR A NEW TRIAL UNTIL AFTER SEPTEMBER 14, 2011 FROM THE CLERK OF COURT BECAUSE THE CLERK WAS CONTACTED BY THE APPLICANT ON SEPTEMBER 12, 2011 BECAUSE HE HAD NOT RECEIVED NO NOTICES FROM HIS ATTORNEY JAMES T. IRVIN, Jr., Esq., AS THE COURT HAD SUPPOSE TO SERVE AND PROVIDE THIS ORDER FROM THE COURT ON A TIMELY FASHIONS AND AS SOON AS IT WAS ISSUED FROM THE JUDGE SIGNING THE ORDER OF DISMISSALS IN THE CASE MATTER, THERE ARE PROFFERED TO THE COURT THE DOCUMENTS FROM THE COUNSEL OF RECORD AS JAMES T. IRVIN, Jr., Esq. BY FORM OF AFFIDAVIT SHOWING AND STATING THAT HE NEVER RECEIVED THE ORDER FROM THE COURT AFTER IT WAS ISSUED BY THE TRIAL JUDGE AS HON. PAUL M. BURH, Cir. Ct. JUDGE FOR THE FOURTH JUD. CIR., THIS DOCUMENT IS DATED OCTOBER 27, 2011, AND IT IS SIGNED BY THE ATTORNEY WHOM IS THE ATORNEY OF RECORD FOR THE MOTION FOR NEW TRIAL, THE RESPONDENT HAS SO CAUSALLY TAKEN A POSITION THAT THERE EXISTS A PREJUDICIAL ELEMENT IN THEM ANSWERING TO THE APPLICANT IN HIS COLLATERAL ATTACKS TO HIS CONVICTION AND STATING THAT THERE MAY NOT BE A TRIAL TRANSCRIPT TO PROCURE FROM THE COURT REPORTER AS HON. HATTIE GORDON, IN ALL TRUTHFULNESS, THIS CLAIM IS NOT BASED UPON A FACT ESTABLISHED BY LAW NOR IS IT ONE THAT THE RESPONDENT CAN TAKE A POSITIONS BY AND BE AVAIL IN BECAUSE THROUGH OUT THE HISTORY OF S.C. COURT SYSTEMS ON THE APPELLATE LEVELS ALL OF WHOM DO KNOWS HOW THE OPERATION OF THE ATTORNEY GENERAL OFFICE IS IN REGARDS TO ORDERING TRIAL TRANSCRIPTS OF THESE PROCEEDINGS, IT IS KNOWN THAT THE ATTORNEY GENERAL COUNSELS ARE THE ONES WHO ACTUALLY ORDERS THE TRIAL TRANSCRIPTS FROM THE COURT REPORTERS AND THAN PLACES THEM IN THE APPELLATE COUNSELS AND PCR ATTORNEYS POSSESSIONS, THIS IS AN ESSENTIAL PRACTICES OF THE ATTORNEY GENERAL'S OFFICE, AND FOR THE RESPONDENT TO TAKE A CHEAP SHOT AT THE APPLICANT IN THIS CONTENTION TO THE PCR COURT IS VERY PREJUDICIAL TOWARDS APPLICANT FOR THE REASONS THAT THE COURT WILL OVERLOOK THE STALE AIR THAT IT IS CAUSING CONFUSION TO THE COURT ABILITIES TO GIVE A FAIR REVIEW AND RENDER A FAIR RULING OF LAWS TO THE APPLICANT'S CASE MATTER PRESENTED TO THE PCR COURT, THE APPLICANT PROVIDES TO THE COURT THE

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DOCUMENT AS: THE SUPREME COURT OF S.C., TITLED STATE V. OUTLAW, C/No. 2002GS1300159, AS AN ORDER ISSUED FROM THE SUPREME COURT BY HON. JEAN H. TOAL, CHIEF JUSTICE., ON JANUARY 23, 2006, COORD. BY HON. DESIREE R. ALLEN, SCCA Ct. SERV. MANGR., THIS DOCUMENT EXPLICITLY SHOWS THE IMPLICIT OF THERE DOES EXISTS A TRIAL TRANSCRIPT AND THE RESPONDENT HERE ARE FOUND TO BE MAKING FALSE CLAIMS THAT THEY ARE PREVENTED FROM RESPONDING TO THE APPLICANT'S CLAIMS, IF THE RESPONDENT IS FAILING TO REFUTE AGAINST ANY CLAIMS MADE BY THE APPLICANT THE COURT MUST DEEM THAT THE RESPONDENT IS CONCEDED TO THE APPLICANT'S CLAIMS THAT ARE CLEARLY PRESENTED TO THE PCR COURT IN HIS PCR APPLICATION FILED TO THE PCR COURT ON JANUARY 10, 2012, RESPONDENT STATED THAT THE APPLICANT WAITED MANY YEARS TO FILED HIS PCR APPLICATION THAT OF WHICH IS NOT TRUE, THE APPLICANT FILED HIS PCR WHEN HE RECEIVED THE ORDER FROM THE CLERK OF COURT AND THAT IS WHAT HE WAS REQUIRED TO DO, THIS FACT IS BASED UPON THE UNDERCOURT ACTIVITIES AS SERVING THE APPLICANT WITH PAPERS AND NOTICES, AND HAD NOT THE APPLICANT MADE A STANCE TO PROCURE THESE COURT ORDERS HE STILL WILL BE WITHOUT A CLUE AS WHAT IS GOING ON IN HIS CASE TO THE COURT, THE SHOWN FACTS ARE VERY CLEAR AND SIMPLE TO BE SEEN THAT APPLICANT HAS MADE WITH GOOD FAITH TO PLACE HIS CASE TO THE PROPER COURTS FOR HIS REVIEWS AS REQUIRED, HE HAD COUNSEL AND COUNSEL WERE NEVER SERVED BY THE COURT WITH THE ORDER OF DISMISSAL TO THE MOTION FOR NEW TRIAL BASED UPON AFTER DISCOVER EVIDENCE, AND IS ALSO THE FACTS THAT APPLICANT WAS PUSHED OVER ON THE ROAD BY ATTORNEY KENNETH MARTIN, Esq., DUE TO HIS DISBARMENT BY THE SUPREME COURT, AND TO INCLUDE HIS ILLNESS THAT ALSO PREVENTED HIM FROM PROPERLY PRACTICING LAWS, THIS IS IN ITSELF ARE IRREGULARITIES, THAT PREVENTED THE APPLICANT FROM SEVERAL RIGHTS GUARANTEED BY THE CONSTITUTIONS, HE HAS A RIGHT FIRST AND FOREMOST TO A DIRECT REVIEWS FROM THE APPELLATE COURTS, THIS RIGHT IS VIOLATED DUE TO THE COUNSELS NOT BEING SERVED PROPERLY FROM THE COURT'S CLERK, WITH THIS SAID AND CLEARLY EVIDENT OF THE RECORDS, THE RESPONDENT IS ALSO FOUND BEING THE ADVOCATE TO PREVENT APPLICANT FROM SECURING THIS APPELLATE REVIEW TO HIS CONVICTION THAT HE IS ENTITLED TO BY LAW, SECONDLY, THE RESPONDENT IS BEING A COMPONENT FOR THE COMMITTALS TO GROSS MISCARRIAGE OF JUSTICE TO TAKE PLACE IN APPLICANT'S CASE, IT IS WELL BEYOND THE APPLICANT'S CONTROL TO ENSURE THAT THE CLERK OF COURT PERFORMS THEIR MINISTERIAL DUTIES TOWARDS THE ATTORNEYS AND THE APPLICANTS OF CASE MATTERS OF THEIR COURTS, THE NATURAL FACTS ARE CLEARLY SHOWN FROM THE COURT RECORDS AS TO THERE BEEN INTERFERENCES BY THE COURT OFFICERS THAT IMPEDED APPLICANT'S COUNSEL FROM FILING PAPERS, PROSECUTING APPLICANT'S CASE

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TO THE COURT ON A TIMELY MATTERS AS REQUIRED BY LAWS, AND IT IS PRIORALLY AGREED UPON BY THE RESPONDENT COUNSEL KAREN RATIGAN, ESQ, ASST. ATTY. GENERAL THAT THE APPLICANT IS PROMISED A DIRECT REVIEW OF HIS CONVICTION, IT IS ALSO A FACT THAT THE APPLICANT COULD NOT PRESENT HIS CASE TO THE APPELLATE COURT WITHOUT AND ORDER OF DISMISSAL FROM THE COURT AS DATED TO SECURE APPELLATE REVIEWS BASED UPON THE TIMELY FASHIONS TO PREVENT FROM BEING DENIED WITHOUT IT BEING EXPLAINED TO THE COURT AS TO WHY THE ATTORNEY FAILED TO FILED THE DIRECT APPEAL NOTICE PURSUANT TO RULE 203, SCACR. THE APPLICANT IS NOT USING NOTHING THAT AMOUNTS TO EXCUSES FOR TIME ACCUMULATION OF TIME TO FILE HIS PCR APPLICATION TO THE COURT, AND THE FACTS ABOUT THIS MATTER IS HIS ORIGINAL APPLICATION WERE FILED TO SECURE HIS RIGHTS TO A DIRECT APPEAL TO HIS CONVICTION AND THERE EXISTS ALL EVIDENCE TO PROVE THIS FACTS BY SEEING THE ISSUE RAISED IN HIS PCR, THE APPLICANT TAKES THE POSITIONS OF LEGAL AUTHORITIES OF WHITE V. STATE, 263 S.C. 110, 208 S.E.2d 35 (1974), SEEKING A REVIEW BY THE COURT TO DETERMINE THAT APPLICANT DID NOT WAIVED HIS RIGHTS TO A DIRECT APPEAL, AND IN THIS SCENARIO, THE APPLICANT WILL CONTEND THAT WHERE THERE EXISTS AN ERROR OF LAW TO THE DIRECT APPEAL RIGHTS ARE VIOLATED AND IN THE SHOWING THAT HE DID NOT WAIVED HIS RIGHT TO AN APPEAL THERE COULD NOT BE A STATUTE OF LIMITATION TOLLING AGAINST HIM IN HIS CASE MATTER PRESENTED TO THE COURT, SEE AT ODOM V. STATE, 337 SC 256, 523 S.E.2d 753, 757 (1999), WHERE IT WAS HELD THAT LATE FILED APPEALS ARE CONSIDERED AS BELATED APPEALS AND ARE USED TO JUSTIFY PROCEDURAL DEFECTS, WHEN ATTORNEYS DOES NOT FILE TIMELY APPEALS; IN ODOM, THIS COURT WENT ON TO STATE THAT AN AUSTIN APPEAL ATTACKS THE PCR PROCEDURE USED IN THE CASE, NOT THE MERITS OF THE SENTENCE SO THE ONE YEAR STATUTE OF LIMITATIONS DOES NOT APPLIES. HERE IN APPLICANT'S CASE APPLICANT DOES ATTACKS THE PROCEDURE OF BEING DENIED AN APPEAL BY CHALLENGING THE INEFFECTIVE ASSISTANCE OF COUNSEL AND UNDER THIS STANCES THE APPLICANT WILL COMPEL THE COURT TO SEE THE WELL SETTLED LAW IT HAS ESTABLISHED AND ENFORCED TO SAY THAT THE PROCEDURAL DEFECTS CANNOT GO UNNOTICED AND THERE MUST BE EFFECTIVE REMEDY TO CORRECT SUCH A DEPRIVATION. THE APPEAL FROM AN ADVERSE PCR MATTER IS ONE OF A RIGHT, AND EVENMORESO, THE ONE FROM A CONVICTION IS GUARANTEED TO THE APPLICANT, IT IS NOT THE RIGHT OF THE ATTORNEYS TO NOT PURSUE AND SECOND GUESS WHAT IS THE COURT IS DOING TO RENDER A RULINGS TO THE CASE MATTERS FILED TO IT, SEE ALSO AT HOPE V. STATE, 328 SC 78, 492 S.E.2d 76 N.1 (1997)(APPEALS PERMITTED), AND FINALLY, THE APPLICANT WILL SURELY TAKE THE STANCES AS THE FIRST PCR BEING DISMISSED WITHOUT PREJUDICE AS THE RESPONDENT

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AGREED, THIS DISMISSAL DOES NOT BAR HIM FROM SECOND PCR FILED IN 2012, BECAUSE THERE IS NO WAY THAT THE FIRST PCR FILED AND DISMISSED OPERATES A TRAP FOR THE UNWARY, AS THE APPLICANT, THE RESPONDENT GAVE CONSENT AND SINCE THE STATE IS REPRESENTED BY A DIFFERENT COUNSEL IN THIS CURRENT PCR AND NOT THE PRIOR COUNSEL KAREN RATIGAN, ESQ, THERE EXISTS A RENIG TO THE FIRST ORDER OF DISMISSAL WITHOUT PREJUDICE AND THIS IS AN ARGUMENT THAT WILL SUSTAIN A FACT THAT THE RESPONDENT IS BEING VERY CONFUSED AND MISLEADING THE COURT WITH THEIR CLAIMS PRESENTED TO THE COURT IN THEIR RETURN FILED TO THE COURT. SEE GAMBLE V. STATE, 298 SC 176, 379 SE2d 118 (1989); AND SEE MENDE V. CONWAY HOSP., Inc., 304 SC 313, 404 SE2d 33 (1991); NORRIS V. STATE, 335 SC at 33, 515 S.E.2d 515 (1999) (STATE IS ESTOPPED FROM ASSERTING THE STATUTE OF LIMITATION AS A DEFENSE TO A SUBSEQUENT PCR APPLICATION, AFTER THE STATUTE OF LIMITATION HAS RUN AND AGREES THAT THE APPLICANT SHOULD BE ALLOWED TO RE-FILE AN APPLICATION. WILSON V. STATE, 348 SC 216, 559 S.E.2d 582 (2002), IN HAVING THE AUTHORITIES TO TAKE STANCE BY THE APPLICANT WILL RESPECTFULLY DEMAND THAT THE PCR COURT DENIES THE RESPONDENT'S MOTION TO DISMISS HIS APPLICATION, AND THEREFORE APPOINT PCR COUNSEL AND HAVE THE COURT TO SCHEDULE AN EVIDENTIARY HEARING TO BE HELD SOON AS PRACTICAL SO THAT THE FAIR PROCESS OF APPLICANT'S DUE PROCESS AND EQUAL PROTECTION RIGHTS CAN BE PROTECTED. IT IS FURTHER REQUESTED THAT IF THE RESPONDENT WISHES TO INQUIRE A TRIAL TRANSCRIPT THE SUPREME COURT LIBRARY DOES HAVE IT AND OR THE APPLICANT WOULD ASSIST HIM IN OBTAINING ONE AS A COPY, THIS WILL SERVE AS ECONOMICAL SENSES TO THE COURT'S BUDGETARY DIFFICULTIES AND POSITIONS TO TAKE UPON IT A MATTERS OF CORRECTIONS AND NOT A POSITIONS TO MISGUIDE THE COURT. IN ORDER TO JUST WIN A CASE IT IS FIGHTING AGAINST THE APPLICANT IN AS THE PCR.

CONCLUSION

APPLICANT OUTLAW RESPECTFULLY REQUESTS THAT THIS HONORABLE COURT ENFORCES THE WELL SETTLED LAWS THAT THE SUPREME COURT HAS MADE TO BE ENFORCED IN THIS SUCH TYPE OF PCR CASE MATTERS AND RENDER A FAIR RULING THAT MUST BE FAVORABLE TO HIM IN HIS PCR, THE APPLICANT COMPELS THE COURT TO PERFORM ITS MINISTERIAL DUTIES TO APPOINT PCR ATTORNEY AND SCHEDULE AN EVIDENTIARY HEARING SO THAT THIS PCR CASE MATTER COULD BE ADJUDICATED UPON BY THE PCR COURT. ACCORDINGLY TO THE APPLICANT'S RIGHTS OF THE US CONST. 6th AND 14th AMDEN., AND HIS RIGHTS PURSUANT TO THE SC CONST. Art. I, §§ 3, 9, AND 14, WHEREAS, THE APPLICANT RESPECTFULLY DEMANDS THAT THE COURT FINDS THAT HE HAS PROFFERED TO THE COURT

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PROBATIVE EVIDENCE AS DOCUMENTS TO PROVE HIS CONTENTIONS PLACED UPON THE PCR COURT TO RENDER A FAVORABLE RULING TO HIS CASE ON PCR. IT IS THEREFORE PRAYS FOR RELIEF THAT IS DEEM BY THIS COURT TO REACH AN ENDS OF JUSTICE IN HIS CASE ACCORDINGLY TO APPLICABLE LAWS TO HIS CASE PRESENTED TO THE COURT IN PART AS RULE 12 (d)(e)(f), SCRCP, AND RULE 56(e), SCRCP, ON THIS 12th DAY OF APRIL 2012.

APRIL 12, 2012

RESPECTFULLY SUBMITTED,

 _____

WILLIAM OUTLAW

LEE C.L.

990 WISACKY HWY.

BISHOPVILLE, SC 29010

APPLICANT, ~~pro se~~ ¹¹ ~~ss~~

NOTE: THERE EXIST A CONFLICT OF INTEREST IN THIS CASE MATTER DUE TO THE FACT THAT THE SENIENCING JUDGE, (HON PAUL M. BURCH) HAS THE CAPACITY AS THE CHIEF ADMIN. JUDGE OF THE FOURTH JUD. Cir., THIS WILL AUTOMATICALLY COMPEL JUDGE BURCH TO REOUSE HIMSELF FR M PARTICIPATING IN THIS PCR CASE MATTER AND PURSUANT TO THE FLOAD COURT THIS IS NOT DISCRETIONAL TO THE JUDGE AS HE IS THE APPLICANT'S SENIENCING JUDGE OF THE SENIENCE THAT ARE BEING COLLATERAL ATTACKED BY APPLICANT ON PCR AS HEREIN STATED. SEE FLOYD V. SIMIE, 303 SC 253 SE2d 145 (1991).

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State of South Carolina
County of CHESTERFIELD
WILLIAM OUTLAW, 308544
APPLICANT

In the Court of COMMON PLEAS
FOURTH Judicial Circuit
Case No. 2012-CP-13-0113

v.

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA
RESPONDENT

I CERTIFY THAT I SERVED THE RESPONDENT A COPY OF THE OPPOSITION TO HIS MOTION TO DISMISS POST CONVICTION RELIEF APPLICATION BY WAY OF US MAIL, PREPAID POSTAGE ENVELOPE ADDRESSED TO HIS OFFICE AS: PO BOX 11549, COLUMBIA, SC 29211-1549, ASSISTANT ATTY. GENERAL, TYSON A. JOHNSON, ~~HYPERBOLICALLY~~ DELIVERING IT TO THE PRISON MAILROOM POSTAL DIRECTORS ON THIS 12th DAY OF APRIL 2012.

APRIL 12, 2012

William Outlaw
WILLIAM OUTLAW
LEE C.I./DN-2116
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
APPLICANT; pro se

SWORN AND SUBSCRIBED BEFORE ME ON
THIS 12 DAY OF APRIL 2012.

Madren Bayat
NOTARY PUBLIC
MY COMMISSION EXPIRES: 5/26/2026

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STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS

William Outlaw, 308544

Applicant,

State of South Carolina,

Respondent.

2012-CP-13-13

2012 MAY 21 AM 8 59

CONDITIONAL ORDER OF
DISMISSAL

FAYE L. SELBERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

A True Copy Attest
Faye L. Selbers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 16, 2012. Respondent made its Return on March 28, 2012, requesting summary dismissal of the matter. This Court also has before it the records of the Chesterfield County Clerk of Court regarding the subject convictions as well as documents from Applicant's prior PCR.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court. The Applicant was indicted for voluntary manslaughter in the March 2002 term of the Chesterfield county grand jury. (2002-GS-13-0159) Paul V. Cannarella, Esquire, represented Applicant. After the State brought the case to trial, the jury found the Applicant was guilty of voluntary manslaughter. On April 6, 2005, the Honorable Paul M. Burch sentenced the Applicant to twenty-five years imprisonment.

On April 11, 2005, Mr. Cannarella filed two post-trial motions: (1) motion for a new trial and (2) motion to reconsider sentence. Before these motions could be ruled upon, Applicant

terminated the representation of Mr. Cannarella and alleges that he then retained the services of Kenneth Martin, Esquire. While the motions were still pending, Applicant filed his first PCR January 10, 2007. (2007-CP-13-0029). After the Respondent filed its Return, the Application was dismissed without prejudice by the Honorable John M. Milling on June 1, 2007 since application for PCR may not be made during the time when an appeal is pending or during the time in which an appeal may be perfected. In his current Application, Outlaw alleges his post trial motions were not ruled upon until September 2, 2010 and that his counsel thereafter failed to perfect an appeal on behalf of Applicant.

ALLEGATIONS

Applicant makes various allegations of ineffective assistance of trial counsel, including allegations regarding the handling of Applicant's trial as well as failing to perfect an appeal on behalf of Applicant. Applicant seeks "vacate sentence, remand for dismissal of V-Manslaughter" as a result of this proceeding.

DISCUSSION

This Court finds that the Application should be dismissed with prejudice as it was filed beyond the statute of limitations, and is barred by laches.

Statute of Limitations

Applicant has failed to comply with the filing procedures of the Act. S.C. Code Ann § 17-27-10 to -160 (1976 & Supp. 1997). The Act reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a) (Supp. 1998).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant alleges his post trial motions were not ruled upon until September 2, 2010. This Application was filed February 16, 2012, which was well beyond the time the statutory filing period expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the PCR Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, the Court finds that it should summarily dismiss the Application for PCR for failure to file within the time mandated by statute.

Laches

The doctrine of laches bars Applicant from raising these allegations in a PCR action. Applicant has filed this application almost seven years after his conviction. Absent some explanation or justification for delay in seeking PCR, laches will prevent an applicant from seeking collateral review of a conviction, especially where the delay affects the availability of evidence to refute an applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years

ago, where records and witnesses are no longer available.” *Id.* At 283, 277 S.E.2d at 890-91 (citation omitted).

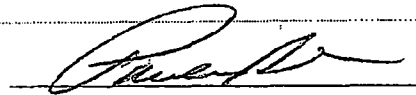
Applicant’s delay has greatly prejudiced Respondent. A transcript of Applicant’s trial may now be unavailable. It is doubtful counsel would have memory or relevant notes regarding his representation of Applicant. If Applicant had sought relief within a reasonable time after his trial, neither of these problems would exist. Therefore, the Court intends to summarily dismiss the application based on Applicant’s lack of diligence in processing his claim for relief.

CONCLUSION

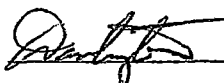
Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Chesterfield County Clerk of Court, P.O. Box 529, Chesterfield SC 29709, and serving such reasons with the SC Office of the Attorney General: Attn. Assistant Attorney General Tyson A. Johnson, Sr., Post Office Box 11549, Columbia, SC 29211.

AND IT IS SO ORDERED this

5th day of April, 2012.



Honorable Paul Burch
Administrative Judge
4th Circuit

, South Carolina.

State of South Carolina
County of Chesterfield
William Outlaw, 308544,
Applicant,

In the Court of Common Pleas
Fourth Judicial Circuit
C/A. # 2012-CP-13-0113

vs.

State of South Carolina,
Respondent.

CLERK OF COURT
CHESTERFIELD COUNTY, SC

Copy Attest
[Signature]

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Comes now William Outlaw, Applicant in
Relief filed February 16, 2012, to present
explanation as to why the Conditional
Dismissal must not become final, as well as
April 5th, 2012, by the Trial Judge whom
the Applicant on April 6, 2012. Applicant
Conditional Order of Dismissal on July 27, 2012 by
way of signing for legal mail from the office of the
General Counsel of SCDC, July 27, 2012.



"PCR procedural History"

Applicant William Outlaw filed his per on 02/16/12.
The Respondent filed the Return to this per on 03/29/12,
requesting for a summary dismissal of the case
matters. see Order of Conditional Dismissal issued
by Judge P. M. Burch, Cir. Judge on April 5th, 2012.
Applicant Outlaw will combine the Order of Dismissal
Without Prejudice dated June 01, 2007, issued by
Judge J. M. Milling, Cir. Ct. Judge, in PCR case
matter C/A. no. 2007-CP-13-0029; this per is relevant
to Applicant's current per matter before the Court.
The Applicant will give new contentions that
there exist a violation to the S.C. Supreme Ct.
well settled laws which is Floyd v. State, at
202 SC 298, 400 SE2d 145 (1991), judge must accuse

himself if he was the judge who presided at the Criminal trial for which relief is being sought; Note: Applicant is not represented by an attorney and is pro se Litigant status and therefore has no way to present this matter to the Court to be Certified, etc.

"Respondent's Contentions and Claims
For Summary dismissal to per."

- *Claim 1.) Respondent stated that Applicant failed to comply with the filing procedures of the Neb. S.C. Code Ann. §17-27-10-160, etc.
- *Claim 2.) Respondent stated that Applicant is barred from raising his issues to the Court basing it by the doctrine of Laches, saying it was 4 years almost after his Conviction when filing per, etc.
- *Claim 3.) Respondent stated that Applicant has caused a great prejudiced to the Respondent because the trial transcript may not be available, and the Counsel would have memory loss of relevant notes regarding his representation, and the Respondent overlooks the interference factors.

Applicant's Rebuttal by evidence
produced by the documents, i.e.

Petitioner Outlaw first make the facts known that Judge Busch should not be the judge presiding in his per case due to the fact that Judge Busch is the Sentencing and trial judge of Applicant Outlaw Criminal Case, that of which

Violates the Hayd v. State, Supra, the Applicant will show that it is by per se policy for the trial judge not to preside over the per matters to eliminate the violation to Canon 3 (B) (1), as it incumbent upon the Applicant to prosecute his case by diligence due, it is by a compelling standards for the Court to excuse himself so no further prejudice will be caused in the Applicant's case for per, the trial judge did overlooked the facts that the Clerks omitted the Applicant and the Case Counsel from being served with the Order signed by Judge Birch on September 01, 2010, in his respectful Chambers. See exhibits # 6 and #7.

As to Respondent's Claim #1, the Order of Dismissal dated June 01, 2007, signed by Judge Milling solidify the action of the Applicant in filing his per, and it further shows that the second per is not time barred due to all of the Government interferences, and it is also defined by the legal authorities settled in: See at Cramble v. State, 298 SC 176, 379 SE2d 118 (1989), the Attorney General agreed with having the Applicant to file a second PCL due to pending motion to be ruled upon by the trial Court, the Applicant's trial Counsel filed post-trial motions for a new trial and Sentence Reduction, and in the waiting period Applicant prosecuted with due diligence his case because he officially was deem without Counsel in his case at that particular time, likewise if the Respondent

will use the dates that is accumulated by the time as it so casually uses the post-trial date as Sept. 02, 2010. It fails to include a Direct Appeal periods which does take just about two years itself, and surely the Applicant is entitled to a Direct Appeal to his Conviction. Now, it is also explicitly stated if Respondent makes oversights to Exhibits # 3, #4, from the Clerk of Court and Attorney James T. Ervin Jr. the Court is further Compelled to do an evaluation pursuant to the State v. White, 263 SC 110, 208 S.E.2d 35 (1974), this mandatory evaluation will determine that Applicant did not waived his rights to a Direct Appeal Voluntary, knowingly and freely, and according to the Supreme Court settled law of the White, Supra, the PCJ Court is by a must to do so because all Convictions are entitled to an initial review on a direct appeal, Applicant therefore request because he could never be time barred to seek an Appellate review to his Conviction especially when the problems are caused by the trial Counsel. The Statute of Limitation does not apply to Applicant's case matter, the Court overlooks the facts that the Government's interferences impeded Applicant and Counsel's ability to raise his claims on direct appeal and post conviction relief and this does constitutes a "gross miscarriage of justice", see ab: McClosky v. Zant, 499 US 467 (1991); Adams v.

State, 337 S.C. 256, 523 SE2d 753, 757 (1999); Austin v
State, 305 S.C. 453, 409 SE2d 395 (1990); White v. State, 310 S.C.
 532, 426 SE2d 315 (1992). Applicant will take
 positions by the above mention authorities
 to show the legal and factual contentions
 showing he is entitled to an initial review
 and an initial collateral attack to his
 conviction by an ineffective assistance
 of Counsel from trial and post trial motion;
 as in Respondent's second claim. "Laches"
 the doctrine of laches does not apply to
 Applicant's case matters due to the facts
 it is only two (2) years post since the judge
 signed the post-trial motion to Applicant's
 case from trial, and therefore, making it
 to be estoppel to the State to make such a
 claim that evidence is not available for
 the Respondent to refute Applicant's claims, it is
 shown in Garber v. Kimball, 311 S.C. 261, 428 SE2d 725 (1993);
Wallace v. Timmons, 232 S.C. 311, 101 SE2d 844 (1958),
 delay alone in the assertion of a right does not
 constitute laches; whereas, the Respondent will
 not surmount its burden to prove that Applicant
 had actual knowledge and notice of facts
 about the situations about the time accumulation
 to his case from 2005 to 2012, being omitted
 from being served with a copy of the
 order of dismissal to his post trial motion,
 and that Applicant knew that his trial Counsel
 was not going to file the Direct Appeal
 notice to his case. Applicant rely on the

Jeff. Pilot. Life Ins. v. Cum, 302 SC 8, 393 SE2d 180 (1990),
 Archambault v. Spruce, 218 SC 500, 43 SE2d 459 (1957);
 Applicant had no knowledge of the omitted
 Order until September 2011 / when Applicant
 was notified by Clerk of Court that there
 were one issued by Judge Burch;
 the prior year;

as in Respondent issue #3; the Applicant
 will show the Court that the Respondent has
 a trial transcript in storage from the
 Respondent's Counsel Valen C. Patigan, Asst. Atty.
 Gen., in case 2007-CP-13-0029, etc., and for
 the Respondent to make this claim is a
 extrinsic fraud upon this Court, Applicant
 bears no responsibility towards what the
 original trial Counsel can and can't make
 recollection of, and Applicant have no
 duties to suppress the memory of the trial
 Counsel through the Respondent, the Applicant
 contends that there exist a law that makes
 the Respondent responsible and accountable
 for storing the Case Files for the appropriate
 legal time, so therefore the Respondent has
 openly admitted that they defaulted in
 doing what they should.

The Applicant can provide a record
 of trial and show that the record of
 transcribed trial is available. Respondent is
 being over zealous in this claim and it must
 be denied.

Conclusion

Applicant Outlaw. Respectfully request that the Court deny Summary dismissal and grant an evidentiary hearing and appoint Counsel to assistance in having his case presented to the per Court, of Post Conviction Relief laws and procedures as entitled to pursuant to U.S. Const 6th, 14th Amend, request and submitted on this 8 day of August 2012.

August 8, 2012

Respectfully Submitted,

S. William Outlaw

William Outlaw
900 Wisocky Hwy
Bishopville, S.C. 29010
PO Box Outlawer

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

) IN THE COURT OF GENREAL SESSIONS
) FOURTH JUDICIAL CIRCUIT
) Indictment No.: 02-GS-13-0159

The State,

vs.

William Outlaw,

Defendant.

RELEASE OF ATTORNEY
A True Copy Attest
Jayce J. Sullens
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Handwritten initials/signature

The Defendant desires to release his attorney, Paul V. Cannarella, from any further representation in connection with his defense. Defendant is aware of his pending post-trial motions for (1) sentence reduction (2) new trial based upon failure to charge involuntary manslaughter and (3) after discovered evidence of third-party guilt. The Defendant is aware of these motions being scheduled for a hearing before Judge Paul M. Burch on November 8, 2005 at 2:00pm at the Chesterfield County Courthouse. Defendant understands that it is his responsibility to obtain substitute counsel and in the event that he is unable to obtain substitute counsel prior to the post-trial motions hearing, then, in such event, the Judge may require Paul V. Cannarella to appear on Defendant's behalf. Defendant is aware that it is necessary for Paul V. Cannarella to inform this Court of this release. The Defendant's mother, Willie Jean Winburn, is signing this release on behalf of the Defendant pursuant to Defendant's grant of power of attorney to her, a copy of which is attached hereto. Mrs. Winburn is receiving a copy of the file and photographs.

September 14, 2005

Willie Jean Winburn
Willie Jean Winburn-POA For Son



HENRY McMASTER
ATTORNEY GENERAL

June 7, 2007



A True Copy Attest

Faye J. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

The Honorable Faye Sellers
Clerk of Court, Chesterfield County
Post Office Box 529
Chesterfield SC 29709

Re: William E. Outlaw, 308544 v. State of South Carolina
2007-CP-13-0029

Dear Ms. Sellers:

Enclosed please find the original **Order of Dismissal Without Prejudice**, signed by The Honorable John M. Milling, in the above-captioned case, for filing in your office.

Sincerely,

Karen C. Ratigan
Karen C. Ratigan
Assistant Attorney General

/jacc
Enclosure

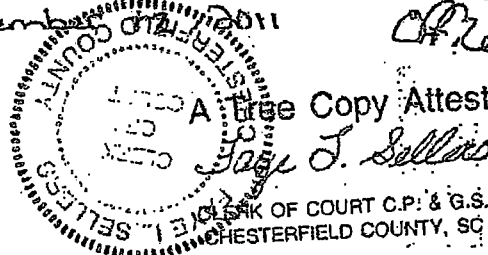
cc: Kenneth Martin, Esquire
William E. Outlaw, 308544

Ex-3

William Outlaw #308344
Lee C I/0nat
990 Wisacky Hwy.
Bishopville, S.C. 29010

CC To:
Honorable Solita
William Burch
Clerk of Court

September 12, 2011



True Copy Attest

Judge J. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

2011 SEP 14 AM 9 05

S.C.

Hon Faye Sellers
Clerk of Court
P.O. Box 529
Chesterfield, S.C.
29709

Re: State vs. William Outlaw, Cno. 02-C.S-13-0159, etc.
Motion to Reconsider, Motion For New Trial, et al;
Dispositions, Orders of Hearings, Schedules inquries, etc.

Dear Ms. Sellers:

Please allow my correspondence to serve as my formal and legible request for entitled information in regards to the above case and ongoing matters as stated. I am respectfully requesting that you do provide to me all commenced orders issued by Judge Paul M. Burch to my case motions filed to the Court by Attorney Paul Cannarella, Esq, see Motion to Reconsider Sentence filed April 07, 2005, and see Motion For New Trial filed April 21, 2005. I do understand Mr. Cannarella was relieved as my case Counsel but it is advised to your office that I am entitled to all orders that the judge has issued in my case and I am entitled to be informed about the date of the next scheduled hearing to the Motion For New Trial based upon newly discovered evidence.

Thanking you in advance for your assistance time and I look forward on hearing from you soon.

September 12, 2011

Respectfully Submitted

William Outlaw
William Outlaw #308344
990 Wisacky Hwy.
Bishopville, S.C. 29010

WOL/ls

cc: Hon. F. Sellers
File: WO

STATE OF SOUTH CAROLINA
Horry County

State of South Carolina,

vs.

William Outlaw,

Defendant.

IN THE COURT OF GENERAL
SESSIONS
FOURTH JUDICIAL CIRCUIT

E. Y.

Indictment No.: 2002-GS-13-0159



A True Copy Attest
James J. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

AFFIDAVIT OF JAMES T. IRVIN JR., ESQ.

After first being duly sworn, I do testify that the following is true based on my personal knowledge:

1. On September 2, 2010, an order was filed in Chesterfield in response to a Motion for a New Trial and a Motion for Reduction of Sentence in the above matter.
2. I, James T. Irvin, Jr. represented William Outlaw in the trial and Motion Hearings.
3. I was never sent a copy or notice that the order was filed on September 2, 2010.
4. I received a copy on October 17, 2011, when it was faxed to me William Outlaws mother Willie Jean Winburn.

Sworn to and subscribed before me on
October 27, 2011.

Elizabeth

Notary for South Carolina.

My Commission expires on 3/5/2020

James T. Irvin Jr.
JAMES T. IRVIN JR., ESQ.

Handwritten initials

IRVIN LAW FIRM, LLC

1101-C 3rd Avenue South
P.O. Box 2677
Myrtle Beach, SC 29578
Office: (843) 445-6200 Fax: (843) 445-6202
On the Web: www.jimirvinlaw.com

JAMES T. IRVIN, JR.
irvinlawfirm@aol.com
Cellular: (843) 222-3228

JONATHAN D. McCOY
jonnymccoy@gmail.com
(803) 269-6379

I, Willie Jean Winburn mother of William Outlaw acknowledge that I am receiving an affidavit from MR. Irvin and a copy of William Outlaws file.

Original
WJW

A True Copy Attest

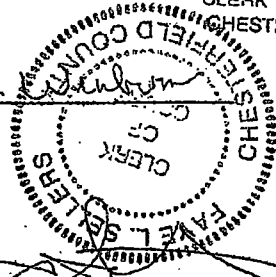
Jay J. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

2012 FEB 10 PM 2 53

Willie Jean Winburn

Willie Jean Winburn



E. Galbreath

Witness

James T. Irvin, Jr.

James T. Irvin, Jr.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTERFIELD)
)
 State)
)
 vs.)
)
 William Outlaw,)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 FOR THE FOURTH JUDICIAL CIRCUIT
 Indictment No.: 2002-GS-13-0159

ORDER

2012 MAR 10 PM 2:03
 FAYE L. SELLERS
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

The Defendant had timely filed a Motion for a New Trial and a Motion for Reduction of Sentence in this case, and upon hearing the Motion, the Court rules as follows:

1. That the Defendant was tried for Murder, but was convicted of Voluntary Manslaughter and sentenced to a Twenty-five (25) year sentence. The Defendant then timely filed this Motion.
2. That the Defendant argued that the Court should have instructed the jury on the lesser - ~~included~~ offense of Involuntary Manslaughter. The Defendant was charged with Murder and was convicted of Voluntary Manslaughter. The Defense cited State v. Crosby, 355 S.C. 47 (2003) to support their contention that the Defendant was entitled to an instruction on Involuntary Manslaughter. However, the facts in this case are distinguishable from Crosby in that the Defendant in the present case testified that he went to his vehicle, armed himself, and intentionally fired in the direction of the Victim in self-defense. The jury was instructed on self-defense, but they rejected this defense and convicted him of Voluntary Manslaughter.
3. That the Defendant then requested that the sentence be reduced. After hearing from the Defense and the victim's family, the Court would hereby deny the Motion to Reconsider this the sentence.
4. **THEREFORE**, The Defendant's Motions for a New Trial and Reduction of Sentence are **DENIED**.

2010 SEP 2 AM 11:17
 FAYE L. SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

A True Copy, Attest
 Faye L. Sellers
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

AND IT IS SO ORDERED!

Handwritten initials/signature

Handwritten signature

Presiding Judge

At Chambers

Sept 2nd, 2010

* 2010 SEP 2 AM 11:17 *

FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

ESJ

STATE OF SOUTH CAROLINA,)
COUNTY OF CHESTERFIELD)
WILLIAM OUTLAW, 308544,)
APPLICANT,)

IN THE COURT OF COMMON PLEAS
4th JUDICIAL CIRCUIT
CASE NO. 2012-CP-13-*113*

2/16/12

v.)

MOTION FOR DISCOVERY PURSUANT TO
RULE 26, SCRCP, per se,
PRC §17-27-150, i.e.

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

A True Copy Attested

Jaye J. Sellers

CLERK OF COURT C.P. & G.C.
CHESTERFIELD COUNTY, SC

2012 MAR 13 AM 9:48
FAYOL SOLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC
VOID

THIS MATTER COMES BY WAY OF A MOTION TO THE COURT BY THE ABOVE-NAMED APPLICANT FOR POST CONVICTION RELIEF FILED *2/16/12*, 2012. THE APPLICANT IS EXERCISING HIS DUE PROCESS RIGHTS THAT ENTITLES HIM TO MAKE DISCOVERIES RECORDS, FILES AND DOCUMENTS, etc.

PROCEDURE HISTORY

THE APPLICANT WAS INDICTED AT THE MARCH 2002 CHESTERFIELD COUNTY GRAND JURY FOR MURDER, 2002-GS-13-1793. APPLICANT WAS REPRESENTED BY PAUL V. CANNARELL, Esq., AFTER THE STATE BROUGHT THE CASE TO TRIAL, THE JURY FOUND THE APPLICANT GUILTY OF VOLUNTARY MANSLAUGHTER. ON APRIL 06, 2005, JUDGE PAUL M. BURCH SENTENCED THE APPLICANT TO TWENTY-FIVE (25) YEARS IMPRISONMENT. ON APRIL 11, 2005, MR. CANNARELLA FILED POST-TRIAL MOTIONS AS SEE MOTION FOR A NEW TRIAL BASED UPON AFTER DISCOVERED EVIDENCE PURSUANT TO RULE 29, SCRCP, AND 2. MOTION TO RECONSIDER SENTENCE, THE ORDER OF DISMISSAL TO THESE MOTIONS WERE NOT RECEIVED FROM THE COURT UNTIL ON SEPTEMBER 27, 2011, THAT OF WHICH DISMISSED THE MOTIONS BY THE COURT AS DATED: SEPTEMBER 09, 2009, THE COUNSEL AS KENNETH MARTIN, Esq. DID NOT FILED THE APPEAL INTENT NOTICE TO THE APPELLATE COURT AS SHOULD HAVE AND THIS PREJUDICED THE APPLICANT BECAUSE HE HAD A RIGHT TO FILED AND APPEAL TO HIS CONVICTIONS.

MOTION JUSTIFICATIONS

APPLICANT OUTLAW RESPECTFULLY REQUEST FOR LEAVE TO OBTAIN DISCOVERY BECAUSE OF THE GOOD CAUSE SHOWN IN THE FOLLOWING: APPLICANT SEEK DISCLOSURES TO THE DOCUMENTS FROM THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION (BALLISTIC REPORTS) THAT THEY HAVE CUSTODY AND CONTROLS OF AS THEY BEING THE RECORD CUSTODIAN KEEPERS FOR, THIS MATERIALS ARE RELEVANT TO THE FACTS THAT ARE PROVED AS CLAIMED BY THE APPLICANT IN HIS APPLICATION SUBMITTED TO THE COURT, THE APPLICANT IS REQUESTING A HEARING TO BE HELD TO HIS MOTION, THE APPLICANT ALSO REQUEST THAT THE SOLICITOR'S OFFICE PRODUCE ALL DOCUMENTS THAT THE SLED PROVIDED

1. OF TWO

CHESTERFIELD COUNTY
CLERK OF COURT
MAY 10 11 53
FAYOL SOLERS

EQ

TO THEM SINCE TRIAL DONE, THIS PRODUCTION OF DOCUMENTS DISCOVERY REQUEST WILL SHOW THAT DUE DILIGENCE MANDATES ARE HERE ASSIGNED AND WILL BE PLACE UPON THE COURT FOR IT'S EVALUATIONS TO SHOW AS A MATTER OF LAW IN APPLICANT'S CASE. THE APPLICANT RESPECTFULLY REQUEST THAT THE COURT HAVE THE ATTORNEY GENERAL OFFICE TO HAVE A HEARING SCHEDULED FOR THIS MOTION TO BE HEARD BEFORE THE CHIEF JUDGE OF THE FOURTH JUDICIAL CIRCUIT COURT, AND FOR HIM NOT TO BE THE SENTENCING JUDGE OF APPLICANT'S CONVICTION SO THAT A CONFLICT OF INTEREST WILL NOT EXIST. IT IS HEREBY RESPECTFULLY REQUESTED BY THE APPLICANT WILLIAM OUTLAW.

CONCLUSION

APPLICANT W. OUTLAW RESPECTFULLY REQUEST THAT HIS MOTION FOR DISCOVERY BE GRANTED AS HAVING THE COURT TO GRANT LEAVE TO DO SO AS TO PRODUCE DOCUMENTS THAT WILL PROVE HIS CLAIMS RAISED TO THE PCR COURT, AS IT IS SUBMITTED ON THIS ~~12th~~ DAY OF MARCH 2012.

RESPECTFULLY SUBMITTED,
s/ *Will Outlaw*
WILLIAM OUTLAW, 308544,
LEE C.I.
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
pre se APPLICANT
ATTORNEY FOR APPLICANT

A True Copy Attest
Jaye J. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

2012 MAR 13 09:11:41
FBI
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

State of South Carolina
County of Chesterfield
William Dittler, 308544,
Applicant,

In the Court of Common Pleas
Fourth Judicial Circuit
C/A. # 2012-CP-13-0113

vs.

State of S.C.,
Respondent.

Certificate of Service

2012 AUG 10 PM
QUEST
True Copy Attest
Jaye J. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

I, certify that I the undersigned did served a true copy of a sufficient legal showings to the PCL case matter by way of U.S. Mail, Postal prepaid postage, addressed to the Respondent T.A. Johnson, Sr., Asst. Atty. Gen., P.O. Box 11549, Columbia, S.C. 29211-1549, on this 8 day of August 2012, personally delivering it to the Prison Mailroom Directors for postage and verification.

August 8 2012

William Dittler
William Dittler
990 Wisacky Hwy
Bishopville, S.C. 29010
petitioner, pro se

Bishopville, S.C. 29010

William Outlaw 208544
Dist. Ct./Rich. Unit
990 Wisacky Hwy.
Bishopville, S.C. 29010

August 8, 2012

Hon: Faye Sellers
Clerk of Court
P.O. Box 529
Chesterfield, S.C. 29709

2012 AUG 10
A True Copy Attest
Faye J. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Re: William Outlaw v. State of S.C., #2012-CP-12-0112,
Enclosed Specific Factual and Legal Reason to PCR.

Dear Ms. Sellers:

please see enclosures as above titled to be
filed in your respectful office in regards to my
case as is ordered prescribed in the Conditional
Order of Dismissal issued by Judge P.M. Burch,
dated April 05, 2012, received on July 27, 2012.
I also provided to you the Certificate of Service
showing the respondent served the same.

Please provide to me a copy of all of the
documents and the pleadings filed to your office,
I appreciate your assistance and time given to
me in this case matter and I look forward in
hearing from you in this very near future.

August 8, 2012

enclosures:

w001

cc: T.A. Johnson, Sr.
Files/L20

Respectfully Submitted,
William Outlaw
William Outlaw
990 Wisacky Hwy.
Bishopville, S.C. 29010

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS

2012-CP-13- 0113

William Outlaw, 308544

Applicant,

State of South Carolina,

Respondent.

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Faye L. Sellers
A True Copy. Attest

**FINAL ORDER
OF DISMISSAL**

FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2012 SEP 4 AM 9 21

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 16, 2012. The Respondent (the State) made its Return on March 28, 2012, requesting that the application be summarily dismissed.

Pursuant to this request, and after reviewing the pleadings and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed May 21, 2012, provisionally denying and dismissing this action, while giving the Applicant twenty days from the date of service of said Order in which to show why the Dismissal should not become final.


Applicant filed a written response to the Conditional Order of Dismissal but failed to explain why his Application was filed after the statute of limitations had expired, or why it was successive. This Court has reviewed the original pleadings and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 20th day of August, 2012.



Honorable Paul Burch
Chief Administrative Judge
4th Judicial Circuit

 South Carolina.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated C. Vandebark (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF Lee)

AFFIDAVIT OF PERSONAL SERVICE

On this 27 day of July 2012, I served the Conditional Order of Dismissal, on Inmate William Outlaw, SCDC Inmate # 308544, by delivering personally and leaving a copy of the same at Lee Correctional Institution, S.C.

Deponent is not a party to this action.

s/ C. Vandebark
SCDC Server

2012 SEP 4 AM 9 21
FBI/LEO SERVICES
CLERK COURT
HESTERFIELD COUNTY, S.C.

SWORN TO AND SUBSCRIBED BEFORE ME
this 27th day of July, 2012

Javica S. Melton (L.S.)
Notary Public for South Carolina
My Commission Expires: 4-26-2014

ADMISSION OF SERVICE

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the South Carolina Department of Corrections (Lee **Correctional Institution**), Bosphoville, Lee County, SC this 7th July day of 27, 2012.

s/ Will Outlaw
Inmate
SCDC Inmate #: 308544

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTERFIELD)
)
)
)
 William Outlaw, 308544)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-13-0113

2012 SEP 18
 CHESTERFIELD COUNTY, SC
FINAL ORDER OF DISMISSAL
 A True Copy, Attest
Jaye S. Satter
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC


This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 16, 2012. The Respondent (the State) made its Return on March 28, 2012, requesting that the application be summarily dismissed.

Pursuant to this request, and after reviewing the pleadings and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed May 21, 2012, provisionally denying and dismissing this action, while giving the Applicant twenty days from the date of service of said Order in which to show why the Dismissal should not become final.

Applicant filed a written response to the Conditional Order of Dismissal but failed to explain why his Application was filed after the statute of limitations had expired, or why it was successive. This Court has reviewed the original pleadings and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 17th day of September, 2012.


Honorable Paul Burch
Chief Administrative Judge
4th Judicial Circuit

Chesterfield, South Carolina.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHESTERFIELD COUNTY
COURT OF COMMON PLEAS

PAUL M. BURCH, Cir. Ct. Judge

CASE NO. 2012-CP-13-0113

WILLIAM OUTLAW, 308544,....., APPELLANT,

v.

STATE OF SOUTH CAROLINA,....., RESPONDENT.

NOTICE OF APPEAL

WILLIAM OUTLAW APPEALS THE FINAL ORDER OF DISMISSAL OF THE HON: PAUL M. BURCH,
DATED SEPTEMBER 17th, 2012. APPELLANT RECEIVED WRITTEN NOTICE OF
ENTRY OF THIS ORDER ON SEPTEMBER 24th, 2012, BY WAY OF SIGNING
FOR LEGAL MAIL FROM THE PRISON MAIL-ROOM.

SEPTEMBER 28, 2012

RESPECTFULLY
s/ *William Outlaw*
WILLIAM OUTLAW
990 WISACKY HWY.
BISHOPVILLE, S.C.
29010

OTHER COUNSEL OF RECORD
TYSON A. JOHNSON, Sr., esq
ASST. ATTY. GENERAL
PO BOX 11549
COLUMBIA, S.C. 29211-1549
RESPONDENT

RECEIVED

OCT 19 2012

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHESTERFIELD COUNTY
COURT OF COMMON PLEAS

PAUL M. BURCH, Cir. Ct. Judge

WILLIAM OUTLAW.....APPELLANT,

v.

STATE OF SOUTH CAROLINA.....RESPONDENT.

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED THE NOTICE OF APPEAL ON TYSON A. JOHNSON, Sr.
BY DEPOSITING A COPY OF IT IN THE UNITED STATES MAIL, POSTAGE PREPAID ON SEPT.
28, 2012, ADDRESSED TO HIS OFFICE AS: ASST. ATTY. GENERAL , PO BOX 11549,
COLUMBIA, S.C. 29211-1549, BY PERSONALLY DELIVERING IT TO THE POSTAL DIRECTOR
IN THE PRISON MAIL-ROOM ON SEPTEMBER 28, 2012.

SEPTEMBER 28, 2012

s/ *William Outlaw*
WILLIAM OUTLAW, 308544
LEE C.I./RID. 240
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
APPELLANT, pro se

RECEIVED

OCT 19 2012

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHESTERFIELD CO.
COURT OF COMMON PLEAS

PAUL M. BURCH, Cir. Ct. JUDGE

CASE NO. 2012-CP-13-01130

WILLIAM OUTLAW,....., APPELLANT,

v.

STATE OF SOUTH CAROLINA,....., RESPONDENT.

REQUIRED EXPLANATION PURSUANT TO
RULE 243(c), SCACR, etc.
WHY THE LOWER COURT RULING IS
IMPROPER AND MUST BE REVERSED AND VACATED,
AND REMANDED FOR PCR EVIDENTIARY HEARING.

WILLIAM OUTLAW, 308544
LEE C.I./RID. 240
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
pro se APPELLANT

OTHER COUNSEL OF RECORD

TYSON A. JOHNSON, Sr., ESQ.
ASST. ATTY. GENERAL
PO BOX 11549
COLUMBIA, S.C. 29211-1549
RESPONDENT

THIS MATTER IS BEFORE THIS COURT WHERE, ON SEPTEMBER 17, 2012, THE HONORABLE PAUL M. BURCH, PRESIDING JUDGE FOR THE FOURTH CIRCUIT, EXECUTED A FINAL ORDER, DENYING APPELLANT'S PCR APPLICATION DUE TO STATUTE LIMITATION HAD EXPIRED. APPELLANT FILE A NOTICE OF APPEAL WITHIN THE JURISDICTION OF THIS COURT, SEEKING APPELLATE REVIEW OF THIS MATTERS PRESENTED AND PRESERVED WITHIN THE RECORDS FILED TO THE COURT THAT ARE INCORPORATED IN PORTIONS OF THIS CASE MATTER BEFORE IT, SEE APPELLANT MOTION FILED IN THE LOWER COURT FOR JUDGE BURCH TO RECUSE HIMSELF DUE TO HIM BEING THE TRIAL JUDGE OF APPELLANT'S CASE, AND SEE ALSO REQUEST TO HAVE A WHITE V. STATE REVIEW FOR A DIRECT APPEAL, etc., AS TO PROFFER ALL EVIDENCE TO THE COURT FOR RELIEF TO GRANTED, INCLUDING THE AFFIDAVIT FROM COUNSEL OF RECORD, JAMES T. IRVIN, Jr. ESQ., FILED TO SHOW COUNSEL OF RECORD WAS OMITTED FROM RECEIVING THE ORDER DENYING APPELLANT POST TRIAL MOTION FOR A NEW TRIAL FILED TO THE TRIAL COURT BY ORIGINAL TRIAL COUNSEL. THE APPELLANT COMES NOW AND PETITION THE COURT FOR THE WARRANTED RELIEF THAT HE IS BY LAW ENTITLED TO THE CONSTITUTIONS OF THE U.S. AND THIS STATE OF S.C..

A FINAL ORDER AUTHORIZED BY JUDGE BURCH WAS SERVED UPON APPELLANT ON SEPTEMBER 24, 2012, AND A TIMELY NOTICE OF APPEAL IS FILED FILED ON SEPTEMBER 28, 2012, TO THE STATE SUPREME COURT, TO INCLUDE THE REQUIRED EXPLANATION PER SE RULE 243(c), SCACR, WHILE SPECIFYING THE REASONS FOR HIS BELIEF THAT THIS APPEAL SHOULD NOT BE DISMISSED. THE FOLLOWING RELATES TO THE SUBJECTS WITHIN THE SOUGHT APPEAL, PURSUANT TO AUSTIN AND ODOM, IN A RELATED ARENA.

ARGUMENTS:

THE ISSUES AND CLAIMS OF THIS CASE ARE NOVEL, AND HAVE BEEN SET BY A STRONG STANDARD IN WHICH TO GUIDE THE COURTS. ESPECIAL WHEN THERE HAS BEEN A DEPRIVATION TO KNOW RIGHT. SUCH RIGHT IS A CRUX CREATURE OF STATUTORY AND CONSTITUTIONAL CREATION. APPELLANT HAS A RIGHT TO POST CONVICTION RELIEF, SEE S.C. CODE ANN. § 17-27-10 et seq., AND HAVE AN EVIDENTIARY HEARING UPON ALL CLAIMS. THERE

IS ONLY "ONE BITE AT THE APPLE", IN A PCR PROCEEDING. SEE S.C. CODE ANN. §17-27-90; AUSTIN V. STATE, 305 S.C. 453, 409 S.E.2d 395 (1991). YET THE "ONE BITE AT THE APPLE", AS APPLIED TO THIS CASE, HAS YET TO BE HAD. APPELLANT FILED HIS PCR ONCE HE LEARNED THAT HE WAS DENIED THE NEW TRIAL THAT HIS COUNSEL FILED FOR AFTER TRIAL, THIS MATTER WAS COMMENCED AT AROUND SEPTEMBER 02, 2010, AND APPELLANT DID NOT RECEIVED THIS NOTICE UNTIL SEPTEMBER 12, 2011, FROM THE CLERK OF COURT OF CHESTEFIELD COUNTY, AND IT WAS ALSO LEARNED THAT THE ATTORNEY OF RECORD WAS NOT SERVED WITH THIS ORDER FROM THE COURT UNTIL OCTOBER 17, 2011, AS IT WAS SERVED TO HIM BY APPELLANT HIMSELF, AND THIS WAS VIOLATIVE TO THE RULES OF COURT AS HAVING THE COUNSEL OF RECORD SERVED WITH THE ORDERS BY THE COURT. APPELLANT SEEK THE REVIEW TO HIS CASE ALSO BASED UPON THE FACTS THAT THE SENTENCING JUDGE OF THIS CASE IS SAME JUDGE FOR PCR, AND APPELLANT DID FILED HIS MOTION TO THE LOWER COURT TO HAVE JUDGE BURCH TO RECUSE HIMSELF JUST FOR THE VERY SAME REASON THAT THE SUPREME COURT STATED IN SEE: FLOYD V. STATE, 303 SC 298, 400 S.E.2d 145 (1991)(FINDING THAT THE JUDGE'S DISQUALIFICATION IS AUTOMATIC DUE TO THE CONVICTION BEING COLLATERAL ATTACKED THAT WAS IMPOSED BY THE JUDGE, AND IT IS BY SC SUPREME COURT POLICY THAT THE SENTENCING JUDGE RECUSE HIMSELF FROM PCR PROCEEDINGS SO THAT THE APPLICANTS WILL RECEIVE A FAIR HEARING BY LAW). THE

APPELLANT MOTION FILED TO THE LOWER COURT IS SELF EXPLANATORY AND WILL AID THIS COURT TO ESTABLISH THE TRUTH ABOUT THIS MATTER THAT THE LOWER COURT LEFT UN-ANSWERED.

THE PCR COURT FAILED TO RECOGNIZE THAT THE APPELLANT CAN ONLY MAKE ONE PURSUIT OF A COLLATERAL ATTACK PURSUANT TO THE PCR STATUTES. SEES.C. CODE ANN. § 17-27-90. THE COMPLICATIONS THAT AS SHOWN HERE IN APPELLANT'S CASE AROSED WHEN THE COUNSEL DID NOT RECEIVED A TRUE COPY OF THE ORDER OF DISMISSAL TO FILED THE NOTICE OF APPEAL TO THE APPELLATE COURT WITHIN THE ten (10) days OF THE SENTENCE IMPOSED BY THE COURT. APPELLANT WILL SHOW THAT THE PCR COURT FAILED TO REVIEW THE TRIAL COURT'S RECORDS TO SEE THAT THE APPELLANT DID NOT WAIVED HIS RIGHTS TO A DIRECT APPEAL TO HIS CONVICTION AND THE COUNSEL OF RECORD WAS NOT PLACED ON PROPER NOTICE TO FILED THE NOTICE OF APPEAL AS HE **SHOULD** HAVE ACCORDINGLY

TO THE SC APPELLATE COURT RULES, et seq., SECONDLY, AS THE LOWER COURT HELD THAT THE STATUTE OF LIMITATIONS WERE APPLICABLE TO THIS CASE, IN THAT, APPELLANT HAD EXCEEDED THE ONE YEAR AS SET FORTH IN S.C. CODE ANN. §17-27-45(A), PETITIONER WOULD TAKE A STANCE THAT ALTHOUGH §17-27-45(A) SETS FORTH A CLEAR AND UNAMBIGUOUS MEANING AND INTENT, IT DOES NOT APPLY TO THIS CASE, SUB JUDICE.

AS THE APPELLANT HAD STATED TO THE LOWER COURT THAT HIS ATTORNEY DID NOT RECEIVED THE ORDER DENYING HIS MOTION FOR A NEW TRIAL AND THE ATTORNEY WAS OMITTED FROM BEING SERVED WITH THE NOTICE FROM THE CLERK OF COURT, HAVING IT TO BE CAUSED THAT NOTICE OF APPEAL NOT TO BE FILED ON A TIMELY FASHIONS, BUT WAIT, THE APPELLANT ONLY RECEIVED THE NOTICE FROM THE CLERK OF COURT DUE TO THE FACT THAT HE REQUESTED FOR IT, AND IN SOMEWHAT THIS MADE IT AS THE APPELLANT BEING OMITTED AS WELL FROM BEING SERVED THE ORDER DENYING HIS MOTIOPN FOR A NEW TRIAL THAT HIS ATTORNEY FILED WITHIN TEN DAYS ON ARE AFTER APPELLANT'S CONVICTION/SENTENCES, THIS HONORABLE COURT ADDRESSED THIS SAME ISSUE IN ODOM V. STATE, 337 S.C. 256, 523 S.E.2d 753, 757 (1999), WHERE IT WAS HELD THAT AUSTIN APPEALS IS CONSIDERED BELATED APPEALS, AND ARE USED TO RECTIFY UNJUST PROCEDURAL DEFECTS SUCH AS WERE WHEN THE ATTORNEYS DOES NOT FILE A TIMELY APPEAL, AS HERE IN THE APPELLANT'S CASE MATTER THE ATTORNEY DID NOT RECEIVED A TIMELY NOTICE FROM THE CLERK OF COURT IN THE LOWER COURT AS IT TO BE A NOTICE SHOWING THE COURT DENIED RELIEF TO THE APPELANT, AND ALSO SEE THAT THIS CASE MATTER IS WITH A DOUBLE WHAMMY AS IT BEING THE APPELLANT IS ENTITLED TO AN APPEAL TO HIS PCR AS IT IS FIRST COURSE OF ACTION TO HAVE REVIEWED WHAT THE PCR COURT FAILED TO GIVE A SPECIFIC FINDING OF FACTS AND A SPECIFIC CONCLUSION OF LAWS TO THE ISSUES PRESENTED TO THE PCR COURT IN THIS APPLICATION AS WAS DENIED, THE ERRONEOUS CONCLUSION GIVEN BY THE LOWER COURT IN ITSELF WARRANTS THE APPELLANT RELIEF DUE TO THE FACTS THAT THE JUDGE OF THE PCR FAILED TO ADVISED THE APPELLANT OF HIS RIGHTS TO AN APPEAL, AS IT IS MANDATORY FOR THE COURT TO PUBLISH IN THE ORDER OF DISMISSALS ACCORDINGLY TO THE POLICY OF THE SUPREME COURT, THIS WHY IT IS INCUMBENT UPON THE COURT TO VACATE THE

ORDER OF DISMISSAL, AND REMAND THIS MATTER BACK BEFORE PCR JUDGE FOR THE CORRECT PROCEEDINGS AND FOR THE WHITE V. STATE REVIEW AS APPELLANT IS ENTITLED TO ONE BY A MATTER OF LAW, SEE PRUITT V. STATE, 310 SC 254, 423 S.E.2d 127 (1992). APPELLANT FURTHER MAKES CONTENTIONS AND TAKE STANCES AS THE FOLLOWING, THE §17-27-100, (2008)(PROVIDING THAT [A] FINAL JUDGMENT ENTERED UNDER THIS CHAPTER MAY BE REVIEWED BY A WRIT OF CERTIORARI AS PROVIDED BY SC APPELLATE COURT RULES"). ETC., THE APPELLANT FURTHER STATES ALSO THAT HE MADE COGNIZABLE CLAIMS IN HIS APPLICATION TO BE GRANTED RELIEF AND TO HAVE A REVIEW BY AN EVIDENTIARY HEARING TO BE HELD.

APPELLANT HAS ONLY ONE WAY TO ATTEMPT TO ENFORCE HIS RIGHTS TO TO HAVE HIS CASE RECTIFIED, AS IN HAVING ERROR OF LAWS CORRECTED IN HIS CASE, THAT IS TO BRING THE ATTENTION OF THE COURT TO THE FACTS OF THE MATTER THAT THE RESPONDENT HAVE PROMISED THAT HE WILL HAVE HIS PCR HEARING, etc., AS IT IS SHOWN THAT THE STATE HAD DISMISSED APPELLANT'S FIRST PCR BECAUSE OF THE MOTION FOR A NEW TRIAL BASE UPON AFTER DISCOVERED EVIDENCE, THE APPELLANT HAD FILED PCR BECAUSE OF THE CLERK OF COURT NOR DID THE APPELLANT'S ATTORNEY AT THE TIME FOR THE RECORD DID NOT RESPONDED TO NONE OF APPELLANT'S LETTERS AND TELEPHONE CALLS AS HE MADE AND SENT TO HAVE SOME INFORMATION GIVEN TO HIM ABOUT HIS MOTION FOR NEW TRIAL AND NEVER RECEIVED IT FROM HIM. THE APPELLANT WILL STAND TO SHOW THAT THE DEPRIVATIONS OF HIS RIGHTS THUS FAR DONE THE LOWER COURT HAS DEPRIVED APPELLANT OF HIS ABILITY TO PURSUE HIS CASE AND THE END OF JUSTICE TO BE SERVED IN HIS CASE NOW ON APPEAL. THE COURT MUST SEE THAT APPELLANT WAS DEPRIVED TO HAVE A FAIR RECORD REVIEW TO HIS CASE MATTER DUE TO THE FACTS THAT HIS TRIAL JUDGE WAS THE SAME JUDGE FOR HIS PCR, AND THIS WAS ERROR OF LAWS, THE SECOND ERROR WAS THAT THE COURT DID NOT GIVE APPELLANT A REVIEW OF LAWS TO HIS ISSUES FILED IN HIS APPLICATION, AND THIRD, THE COURT DID NOT GIVE APPELLANT A WHITE V. STATE, REVIEW TO HIS APPEAL ISSUES, AND THIS WOULD HAVE DETERMINED IF THE APPELLANT WAIVED HIS RIGHTS TO A APPEAL TO HIS CONVICTION, THE COURT ALSO WILL SEE THAT THE APPELLANT WAS DENIED HIS RIGHTS TO A FAIR HEARING OF HIS PCR, IT

BECAUSE THE STATE FAILED TO SEE THE FLOYD COURT VIOLATIONS, AND THIS IS WHY THE COURT MUST ENTERTAINED THIS APPEAL AND GRANT CERTIORARI AND HAVE DISPENSE WITH FURTHER BRIEFING OF LAWS TO THE CASEMATTER AT HAND, etc.

CONCLUSION

APPELLANT RESPECTFULLY REQUEST THAT THE HONORABLE COURT REJECT AND VACATE THE ORDER OF DISMISSAL AND GRANT THE APPEAL AND REVIEW THE CASE MATTER AND CORRECT THE ERRORS OF LAWS COMMITTED AND FURTHER SEE THAT THE SENTENCING JUDGE CAN NOT BE THE SAME JUDGE TO PRESIDE OVER PCR ACCORDINGLY TO THE SUPREME COURT WELL SETTLED LAWS IN CASE FLOYD V. STATE, supra., etc. THE APPELLANT ASK THE COURT TO SEE THAT HE IS ENTITLED TO A ONE BITE AT THE APPLE AND THIS IS A POLICY OF THE SC SUPREME COURT THAT THE LOWER COURT VIOLATED WHEN IT DISMISSED THE APPELANT PCR.

APPELLANT PRAYS FOR THE RELIEF REQUESTED AND DEEM BY THIS HON: SUPREME COURT ON THIS 21st DAY ~~00~~ OF SEPTEMBER 2012.

SEPTEMBER 28, 2012

BY ATTACHMENTS

Respectfully Submitted,

s/- *William Outlaw*
 WILLIAM OUTLAW, 308544
 990 WISACKY HWY
 BISHOPVILLE, S.C. 29010
 APPELLANT, pro se

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Chesterfield County
Paul M. Burch, Circuit Court Judge

WILLIAM OUTLAW,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213200

PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether the statute of limitations and the doctrine of laches were used unfairly to deprive petitioner of his "bite at the apple?"

STATEMENT

Petitioner was convicted of voluntary manslaughter on April 6, 2005, after a jury trial held before the Honorable Paul M. Burch in Chesterfield County. A twenty-five (25) year sentence was imposed. Paul V. Cannarella was trial counsel. (App. p. 30).

Petitioner filed an application for post-conviction relief on January 10, 2007. This application was dismissed without prejudice by the Honorable John M. Milling because petitioner had pending post-trial motions and an application for post-conviction relief could not be made while an appeal is pending or during the time in which an appeal may be perfected. This order was dated June 1, 2007. (App. p. 1-3).

Petitioner filed another application for post-conviction relief on February 16, 2012. (App. p. 4 – p. 29). Respondent filed a return and motion to dismiss dated April 2, 2012. The return noted that petitioner alleged in his application that the post-trial motions were not ruled on until September 2, 2010, and counsel failed to perfect an appeal. Respondent's motion to dismiss was based on petitioner's failing to comply with the statute of limitations. Respondent also relied on the doctrine of laches because a trial transcript may not be available. (App. p. 30 – p. 35). Petitioner filed a response to the return and motion to dismiss. It was dated April 12, 2012. (App. p. 37 – p. 44). The Honorable Paul M. Burch issued a conditional order of dismissal on April 5, 2012. It was filed on May 21, 2012. (App. p. 45 – p. 48). Petitioner filed a response to the conditional order of dismissal that was dated August 8, 2012. (App. p. 49 – p. 75).

On September 17, 2012, Judge Burch issued a final order of dismissal. (App. p. 76 – 77). Petitioner appealed and filed an explanation for the appeal pursuant to Rule 243(c), SCACR.

This petition follows.

ARGUMENT

The statute of limitations and the doctrine of laches were used unfairly to deprive petitioner of his “bite at the apple.”

Petitioner was originally convicted on April 6, 2005, but his case languished at the trial level for over five years until September 2, 2010, when Judge Burch finally issued an order denying the post-trial motions that were filed by trial counsel.¹ (App. p. 69 – p. 70). A different attorney oversaw those motions, but never received notice that the order was filed on September 2, 2010. He finally received a copy on October 17, 2011, when it was faxed to him from petitioner’s mother. (App. p. 67). Petitioner had requested the status of those pending motions on September 11, 2011. (App. p. 66). Because of counsel’s improper follow-up on the post-trial motions, petitioner’s case was never appealed.

Reasons Why the Statute of Limitations Should Not Apply

1. Petitioner filed his current application for post-conviction relief on February 16, 2012. (App. p. 4). This was well within a year after he requested the status of the post-trial motions and when he received a copy of the order denying the motions. (App. p. 66 – p. 68).
2. One of the allegations in his application for post-conviction relief is counsel’s failure to file a notice of intent to appeal. Petitioner then alleged five separate trial errors. (App. p. 9 – p. 10). The statute of limitations should not apply where an applicant

¹ Petitioner’s first application for post-conviction relief was dismissed without prejudice because of the pending post-trial motions.

did not voluntarily waive his right to counsel and petitioner should have been informed of his right to appeal. Dearbury v. State, 367 S.C. 34, 625 S.E.2d 212 (2006); Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002). Thus, the statute of limitations does not apply to appeals filed pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991); Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999).

3. Petitioner is Entitled to One Bite at the Apple.

This Court has previously held that an applicant is entitled to one bite at the apple. Gamble v. State, 298 S.C. 176, 374 S.E.2d 118 (1989); Odom v. State 337, S.C. 256, 523 S.E. 2d 753 (1999). Successive PCR applications are allowed in unusual procedural situations. Case v. State, 277 S. C. 474, 289 S.E.2d 413 (1982); Carter v. State, 293 S.C. 528, 362 S.E.2d 20 (1987); Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999); Washington v. State, 324 S.C. 232, 478 S.E.2d 833 (1996). That rule should apply equally to an application that is not successive.

4. The PCR Judge Was Also the Trial Judge.

Judge Burch presided over petitioner's trial and this post-conviction relief matter. This Court has adopted a per se rule of recusal in such cases. Floyd v. State, 303 S.C. 298, 400 S.E.2d 145 (1991). Petitioner's case should not have been summarily dismissed and the statute of limitations should not be used to bar petitioner's application by this PCR judge.

Reasons Why the Doctrine of Laches Should Not Apply

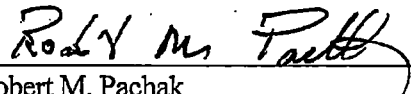
The PCR judge in the conditional order of dismissal wrote that seven years had passed since petitioner's trial and that the doctrine of laches should apply. (App. p. 47). It was the PCR judge as trial judge who took five years to rule on the post-trial motions. Petitioner should not suffer from

that. The PCR judge also wrote that a transcript of petitioner's trial "may" not be unavailable. (App. p. 48). In petitioner's response to the conditional order of dismissal, petitioner wrote that he did have a copy of his trial transcript. He received a copy of it when he filed his first application for post-conviction relief that was dismissed without prejudice. (App. p. 54). The PCR judge has to assume facts presented by the applicant to be true and he must view those facts in a light most favorable to the applicant. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005).

CONCLUSION

Petitioner's writ should be granted and his case should be remanded for a full evidentiary hearing on the merits of his case along with the appointment of counsel.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of March, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Chesterfield County
Paul M. Burch, Circuit Court Judge

WILLIAM OUTLAW,

PETITIONER,

V.

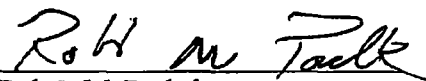
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213200

CERTIFICATE OF SERVICE

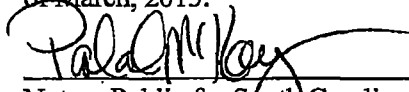
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Tyson Andrew Johnson, Sr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 5th day of March, 2013.

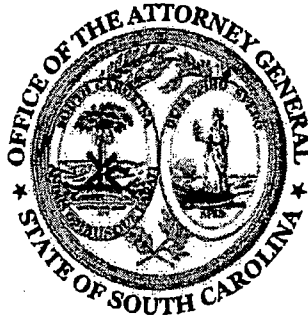


Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 5th day
of March, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.



ALAN WILSON
ATTORNEY GENERAL

March 7, 2013

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: William Outlaw v. State of South Carolina
Appellate Case No. 2012-213200
Lower Court Case No. 2012-CP-13-0113

Dear Mr. Shearouse:

Please accept this letter in lieu of a formal Return to Petition for Writ of Certiorari. Petitioner appeals the summary dismissal of his application for post-conviction relief on the grounds that his application was filed outside the applicable statute of limitations, and is also barred by laches.

Judge Burch issued a Conditional Order of Dismissal on April 5, 2012. Petitioner filed a response to the conditional order of dismissal dated August 8, 2012. Judge Burch issued a final order of dismissal on September 17, 2012.

In light of Wilson v. State, 348 S.C. 215 S.E.2d 581 (2002) and the unique circumstances of this case, including the question of when Petitioner received notice of the decision on his post-trial motions, the State takes the position that the interests of justice will be best served by remanding the matter back to the PCR court for further proceedings.

The State does not waive the defense of the statute of limitations and laches should the evidence of future proceedings fail to conform to the information Petitioner gave in his response and proffer to Judge Burch. Accordingly, the State would ask that the matter be remanded.

If there are any questions or comments, please do not hesitate to contact me at any time.

Sincerely,

Tyson Andrew Johnson, Sr.
Assistant Attorney General

TAJ, Sr./jacc
cc: Robert Pachek, Esquire
William Outlaw, 308544

**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**

William Outlaw, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-213200

Appeal From Chesterfield County
Paul M. Burch, Circuit Court Judge

Unpublished Opinion No. 2014-UP-231
Submitted May 1, 2014 – Filed June 18, 2014

REVERSED AND REMANDED

Appellate Defender Robert M. Pachak, of Columbia, for
Petitioner.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Tyson A. Johnson, Sr., both of
Columbia, for Respondent.

PER CURIAM: Petitioner seeks a writ of certiorari from the denial of his application for post-conviction relief (PCR). Because there is a question of fact as to whether Petitioner knowingly waived his right to appellate review, we grant the

petition for a writ of certiorari, dispense with further briefing, reverse the PCR court's summary dismissal of Petitioner's application, and remand to the PCR court for an evidentiary hearing to consider the merits of Petitioner's application. See *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) ("Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief."); *Wilson v. State*, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002) ("When considering the State's motion for summary dismissal of an application for PCR, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant."); S.C. Code Ann. § 17-27-45(A) (2014) ("An application for [PCR] must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later."); *Wilson*, 348 S.C. at 218, 559 S.E.2d at 582-83 (stating "every defendant has a right to file a direct appeal and one PCR application" (footnote omitted)); *id.* at 218-19, 559 S.E.2d at 583 (reversing the summary dismissal of a petitioner's PCR application and remanding to the PCR court for an evidentiary hearing to determine if the petitioner knowingly and intelligently waived his right to a direct appeal when the petitioner was denied a direct appeal due to ineffective assistance of counsel and then was denied the right to a PCR application because of the statute of limitations).

REVERSED AND REMANDED.¹

HUFF, THOMAS, and LOCKEMY, 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

V. CLAIRE ALLEN
DEPUTY CLERK

CLOSING LETTER SENT
ON 7/2/14

Attorney initials RMP

Assistant initials AD

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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COLUMBIA, SOUTH CAROLINA 29201
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July 08, 2014

The Honorable Faye L. Sellers
PO Box 529
Chesterfield SC 29709-0529

REMITTITUR

Re: William Outlaw v. State
Lower Court Case No. 2012CP1300113
Appellate Case No. 2012-213200

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.

Very truly yours,

V. Claire Allen

DEPUTY CLERK

Enclosure

cc: Tyson A. Johnson, Sr., Esquire
Robert Michael Dudek, Esquire
William Outlaw, #308544

RECEIVED

JUL 8 2014

SC OFFICE OF
APPELLATE DEFENSE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD	)	FOURTH JUDICIAL CIRCUIT
)	
William Outlaw,	)	2012-CP-13-0113
SCDC 308544,)	
Applicant,)	
)	
v.	)	AMENDED RETURN AND
	)	PARTIAL MOTION TO DISMISS
State of South Carolina,)	
)	
Respondent.)	
_____)		

Respondent, making its Amended Return to the application for post-conviction relief (PCR) filed February 16, 2012, would respectfully show this Court:

I.

Applicant is presently confined to South Carolina Department of Corrections pursuant to orders of commitment of the Chesterfield County Clerk of Court. Applicant was indicted at the March 2002 term of the Chesterfield County Grand Jury for murder (2002-GS-13-0159). Paul V. Cannarella, Esquire represented him. On April 6, 2005, Applicant was found guilty as indicted by a jury of his peers. On April 6, 2005, the Honorable Paul M. Burch sentenced him to confinement for twenty-five (25) years.

On April 11, 2005, Mr. Cannarella filed two post-trial motions: (1) motion for a new trial and (2) motion to reconsider sentence. Before these motions could be ruled upon, Applicant terminated the representation of Mr. Cannarella and alleges that he then retained the services of Kenneth Martin, Esquire. While the motions were still pending, Applicant filed his first PCR application on January 10, 2007 (2007-CP-13-0029). After Respondent filed its Return and Motion to Dismiss, the application was dismissed without prejudice by the Honorable John M.

Milling on June 1, 2007 because an application for PCR may not be made during the time when an appeal is pending or during the time in which an appeal may be perfected.

II.

Applicant filed this current application for post-conviction relief on February 16, 2012, in which Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
 - a. "Applicant Trial Counsel was ineffective for not filing the notice of intent to appeal..."
 - b. "Applicant trial counsel was ineffective for not pre-trialing the murder charge based upon the prob. cause mandates..."
 - c. "Trial Counsel was ineffective for not objecting to the improper malice charge given by the Court..."
 - d. "Trial Counsel was ineffective when he failed to properly investigate the facts and circumstances..."
 - e. "Counsel for trial failed to interview potential witnesses..."
 - f. "Trial Counsel failed to present ten (10) factual relevants to the jury..."
- (sic)

On or about April 2, 2012, Respondent made its Return and Motion to Dismiss based on the statute of limitations and the doctrine of laches. On May 21, 2012, a conditional order of dismissal was filed, that later became a final order of dismissal filed on September 4, 2012. Applicant appealed this order to the South Carolina Court of Appeals (App. Ca. No. 2012-213200). In an unpublished opinion filed on June 18, 2014, the Court of Appeals reversed the PCR court's summary dismissal and remanded the case back to this PCR court for an evidentiary hearing to consider the merits of Applicant's claim that he did not knowingly waive his right to appellate review.

Respondent interprets the Court of Appeals opinion as ordering an evidentiary hearing limited to the issue of whether Applicant knowingly waived his right to appellate review. As

such, Respondent amends its Return with regard to that claim and moves to dismiss the remaining allegations.

Attached herewith and incorporated herein are the Chesterfield County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Applicant claims that he was denied effective assistance of counsel because his trial attorney did not appeal his guilty conviction. The one-year statute of limitations does not apply to a claim that an applicant was denied his direct appeal. Wilson v. State, 348 S.C. 215. 559 S.E.2d 581 (2002).

Respondent submits that trial counsel for Applicant was diligent in his representation of Applicant and that he performed within the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). In Strickland, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Respondent submits that trial counsel's performance was not deficient nor was Applicant prejudiced in any way by such performance. The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds that the applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was

unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). Respondent submits that Applicant cannot satisfy the requirements set forth in the Roe test. However, the allegation of counsel's failure to advise Applicant regarding the possibility of an appeal probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Respondent submits that all allegations except the claim that Applicant was denied his right to a direct appeal should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offense he challenges in this application on April 11, 2005, and

his post-trial motions were ruled upon on September 2, 2010. Therefore, Applicant was required to file this application by September 3, 2011. This application was filed on February 16, 2012, which was after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings...that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

[Signature block to follow.]

VI.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, Respondent moves to summarily dismiss all allegations except the allegation of failure to file a direct appeal and requests that an evidentiary hearing be held solely on this issue.

Respectfully submitted,

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Attorney General

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Chief Deputy Attorney General

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By: 
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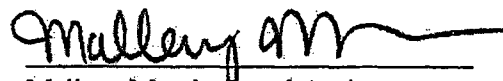
December 30, 2016

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD)	
)	
	)	2013-CP-13-0113
)	
WILLIAM OUTLAW, 308544)	
)	
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 **Amended Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
1400 Laurel Street, Suite A
Columbia, SC 29201

DATED this 30th day of December, 2016.



 Mallory Morris, Legal Assistant
 For Respondent

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I N D E X

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1 MS. GIOVANOLI: We are ready to proceed.

2 THE COURT: Is the applicant ready?

3 MR. BOOZER: Yes, Your Honor.

4 THE COURT: All right. Madam, Attorney General,
5 you may proceed.

6 MS. GIOVANOLI: Thank you, Your Honor, May it please,
7 the Court?

8 This is the case of William Outlaw versus the State of
9 South Carolina, case number 2012-CP-13-0113. We're before
10 the Court on an application for post-conviction relief
11 filed on February 16, 2012. The applicant is presently
12 confined at the South Carolina Department of Corrections
13 pursuant to orders of commitment of the Chesterfield County
14 Clerk of Court. The applicant was indicted in the March
15 2002 term of the Chesterfield County Grand Jury for murder.
16 It was indictment number 2002-GS-13-0159.

17 Paul V. Cannarella, Esquire, represented him and on
18 April 6, 2005 applicant was found guilty as indicted by a
19 jury of his peers.

20 On April 6, 2005, the Honorable Paul M. Burch
21 sentenced him to confinement for twenty-five (25) years.

22 On April 11, 2005 Mr. Cannarella filed two post-trial
23 motions. A motion for new trial and a motion to reconsider
24 sentence. Before these motions could be ruled upon the
25 applicant terminated that representation of Mr. Cannarella

1 and alleged that -- he then retained the services of
2 Kenneth Martin, Esquire.

3 While the motions were still pending, the applicant
4 filed his first PCR application on January 10, 2007. That
5 was case number 2007-CP-13-0029.

6 After the respondent filed its return and motion to
7 dismiss, the application was dismissed without prejudiced
8 by the Honorable John M. Milling on June 1, 2007 because an
9 application for PCR may not be made during the time an
10 appeal is pending or during the time in which an appeal may
11 be perfected.

12 On or about April 2, 2012, respondent made its return
13 and motion to dismiss to this action based on the statute
14 of limitations and doctrine of laches.

15 On May 21, 2012, a conditional order of dismissal was
16 filed that later became a final order of dismissal filed on
17 September 4, 2012. Applicant appealed this order to the
18 South Carolina Court of Appeals an unpublished opinion
19 filed on June 8, 2014.

20 The Court of Appeals reversed the PCR court summary
21 dismissal and remanded the case back to this PCR court for
22 an evidentiary hearing to consider the merits of
23 applicant's claim that he did not knowingly waive his right
24 to an appellate review. And the State now moves to dismiss
25 all remainder of the allegations made in applicant's

1 application aside from the claim that he did not waive his
2 right to an appeal.

3 The post-trial motions were ruled upon on September 2,
4 2010 and this application was filed on February 16, 2012
5 which would be outside the one year statute of limitations
6 required for filing an application for PCR. The State is
7 present and ready to proceed.

8 The applicant is present and is represented by Mr.
9 Lance Boozer and all hand that over to him.

10 THE COURT: So let me -- so this as State's motion
11 to dismiss?

12 MS. GIOVANOLI: Yes, Your Honor. All of the
13 allegations outside the belated appeal issue.

14 THE COURT: Let's just go back through that.

15 MS. GIOVANOLI: Okay.

16 THE COURT: I mean, you went through it pretty
17 quick and I was trying to follow along with your return but
18 you lost me about halfway through there.

19 MS. GIOVANOLI: I can actually do that. The necessary
20 dates we'll start with April 6, 2005 when he was found
21 guilty. April 6, 2005 he was sentenced. Post-trial
22 motions were filed April 11, 2005.

23 THE COURT: So they are timely?

24 MS. GIOVANOLI: They were timely but the order
25 following that was not. It was not filed until September

1 2, 2010.

2 THE COURT: The order?

3 MS. GIOVANOLI: The order ruled upon denying the motion
4 for a new trial and denying the motion to reconsider.

5 THE COURT: So Judge Burch sat on it for five (5)
6 years?

7 MS. GIOVANOLI: Yes, Your Honor.

8 THE COURT: What's the date, 10th?

9 MS. GIOVANOLI: It was September 2, 2010. In this
10 application was filed February 16, 2012.

11 THE COURT: All right. His order ---

12 MS. GIOVANOLI: And there was no appeal.

13 THE COURT: There was no appeal after his order,
14 right?

15 MS. GIOVANOLI: Yes, Your Honor.

16 THE COURT: And then -- when did he file his
17 application?

18 MS. GIOVANOLI: February 16, 2012.

19 THE COURT: What are you -- you say that is outside
20 the statute? When do you take the position that the statute
21 ran?

22 MS. GIOVANOLI: From the date the order was filed on
23 September 2, 2010.

24 THE COURT: Doesn't he have -- isn't he granted a
25 period of time within which the appeal could have been

1 taken or not?

2 MS. GIOVANOLI: From there he would have his thirty
3 (30) days to file a notice of -- thirty (30) days to file a
4 notice of appeal which he did not. And if he waived that
5 appeal that's an issue before the Court today but he would
6 have a year from that date of the order to file his
7 application for post conviction relief.

8 THE COURT: All right. What went to the Court of
9 Appeals? You said something went to the Court of Appeals.

10 MS. GIOVANOLI: That's was actually a previous PCR
11 action and that was during the pendency of the motion to
12 reconsider and motion for a new trial, in that five (5)
13 years.

14 THE COURT: He filed a separate ---

15 MS. GIOVANOLI: He filed a PCR action ---

16 THE COURT: PCR action?

17 MS. GIOVANOLI: Yes, Your Honor.

18 THE COURT: In that five (5) years?

19 MS. GIOVANOLI: Within the five (5) years before Judge
20 Burch ruled upon the two post-trial motions.

21 THE COURT: And Court of Appeals sent that back and
22 said you can't follow PCR while the post-trial motions are
23 pending?

24 MS. GIOVANOLI: Yes, Your Honor.

25 THE COURT: Is that right? This is where we are?

1 MS. GIOVANOLI: Yes, Your Honor.

2 THE COURT: All right. Mr. Boozer?

3 MR. BOOZER: And, if I may, I think, Your Honor,
4 ended it that's where we are. I think she was talking
5 about the '07 PCR that was dismissed without prejudice.

6 THE COURT: Yeah.

7 MR. BOOZER: If I can continue the timelines, it'll
8 make my argument sound a lot more logical. In '07,
9 obviously, his PCR was dismissed without prejudice because
10 he's got this pending post-trial motions.

11 Then finally he actually has a hearing in between 2007
12 into 2010. Mr. Cannarella was his trial lawyer. Mr.
13 Cannarella filed the post-trial motions but in between that
14 time, Mr. Cannarella and Mr. Outlaw severed their attorney
15 relationship. I believe he fired, for lack of better word,
16 Mr. Cannarella and then hired Mr. James Irvin.

17 Mr. Irvin actually represented Mr. Outlaw on the
18 actual hearing on the post-trial motions. So from ---

19 THE COURT: Did he represent him in front of the
20 Court of Appeals?

21 MR. BOOZER: No, Your Honor. Actually they went
22 back, from my understanding is, that they went back and had
23 a hearing on the post-trial motions before the judge some
24 five (5) years after they were filed. And my client, I
25 can't find where the actual date of that post-trial motion

1 was heard, the order was entered September 2, 2010 is when
2 those post-trial motions were denied.

3 THE COURT: Right.

4 MR. BOOZER: My client believes that, that was heard
5 maybe September 1, 2010 or maybe a little bit earlier but,
6 you know, late summer 2010. I'm not sure. The order
7 denying the motion for new trial and a reduction of
8 sentence they referenced September 1st and then -- the
9 order dated September 1st and it was filed September 2nd,
10 is my understanding.

11 Judge, after that, obviously, no appeal was filed.
12 Mr. Irvin is representing him at this point at the post-
13 trial motions. Mr. Cannarella is no longer in the picture.
14 My client -- and, Your Honor, this file is a little bit of
15 a mess. I believe the State, they did not have a copy of
16 the transcript and thought one did not exist.

17 THE COURT: Transcript of?

18 MR. BOOZER: Of the trial.

19 THE COURT: Of the trial.

20 MR. BOOZER: My client has had a transcript the
21 entire time that he and his family had ordered a long time
22 ago which I have a copy of and the AG's office has since
23 made a copy of that trial transcript and I believe, Your
24 Honor ---

25 THE COURT: I have it ---

1 MR. BOOZER: --- has a copy of it ---

2 THE COURT: --- three volume.

3 MR. BOOZER: Correct. Your Honor, going back to Mr.
4 Irvin, so the post-trial motions are denied November 2,
5 2010. No appeal was filed. My client somehow through his
6 mother, who is deceased, gets a copy of the order denying
7 the post-trial motions. She gets them apparently sometime
8 in October 2011 and what she ---

9 THE COURT: From Mr. Irvin?

10 MR. BOOZER: I'm sorry?

11 THE COURT: From Mr. Irvin?

12 MR. BOOZER: No, Your Honor. Supposedly, she gets
13 them herself from the clerk of court after Mr. Outlaw is
14 inquiring as to what's going on with his case.

15 THE COURT: Okay.

16 MR. BOOZER: Okay. Mr. Irvin, who is my
17 understanding, is extremely ill, who is not here today,
18 submitted an affidavit. And, Your Honor, if I May approach
19 and hand that to, Your Honor?

20 THE COURT: Sure. Obviously, I don't have it.
21 (Whereupon, the judge takes a moment to read affidavit)

22 THE COURT: Okay.

23 MR. BOOZER: And, Your Honor -- Your Honor, can see
24 this affidavit indicates that on September 2, 2010, the
25 order denying motion for a new trial and reduction of

1 sentence was entered. Mr. Irvin indicates that he
2 represented Mr. Outlaw in the trial of the motion hearing
3 but he didn't represented in the trial on the motion
4 hearing. Mr. Irvin indicates in the affidavit, "I was
5 never sent a copy of the notice that the order was filed on
6 September 2, 2010." Mr. Irvin goes on to state, "I
7 received a copy on October 17, 2011 when it was faxed to me
8 William Outlaw's mother, Willie Jean Winburn," and it was,
9 obviously, signed James T. Irvin, Jr., Esquire and
10 notarized October 27, 2011.

11 Your Honor, I would move to make this part of the
12 applicant's just for the record. I believe it would show
13 that Mr. Irvin didn't receive it until October 17, 2011.
14 Our -- and Mr. Outlaw filed his application for PCR
15 February 16, 2012. We would argue that the statute of
16 limitations would then start running when he gets notice,
17 written notice, of the entry of the judgment which would've
18 been October 17, 2011 when his lawyer receives it from Mr.
19 Outlaw's mother.

20 We would state that he would then have through October
21 there about 17th, 18th, 2012 to file his application for
22 post-conviction relief. And, Your Honor, if I may continue
23 just briefly touch on what the Court of Appeals ---

24 THE COURT: You want to make this an exhibit?

25 MR. BOOZER: I do. I want to make that part of the

1 record, Applicant's Exhibit.

2 THE COURT: Any objection?

3 MS. GIOVANOLI: The State's only objection would be
4 that I'm not sure as to the authenticity of that document.
5 It was provided to us through, from the applicant. Mr.
6 Irvin has not spoken to us. I've reached out twice and I
7 cannot get a hold of him.

8 MR. BOOZER: And, judge, if I may, and by way of my
9 background into it, obviously this is, of course, hearsay
10 but I did speak with both Mr. Irvin's wife and assistant in
11 the office. They pulled the file and indicated to me that,
12 that was what Mr. Irvin had entered and signed was this
13 affidavit. When I was ---

14 THE COURT: They still have the original?

15 MR. BOOZER: I'm not sure, Your Honor, they have the
16 original, but I can certainly inquire it.

17 THE COURT: The original went somewhere.

18 MR. BOOZER: And, judge, this is actually -- the
19 affidavit -- when he had this PCR application -- he's had
20 two prior PCR applications. One which was, obviously,
21 dismissed without prejudiced. Then the second one that he
22 filed in which a conditional order of dismissal was signed
23 and then a final order was signed dismissing his case as
24 SOL or statue limitations of laches and then it went up on
25 appeal. In the appendix on appeal for Mr. Outlaw this

1 affidavit is actually a part of the appendix. This was one
2 of the arguments for, that his appellate lawyer raised.

3 So first, judge, our position is that he's within the
4 statute of limitations for filing it based on the affidavit
5 and when they got notice of the post-trial motions. The
6 second part of that, judge, is that there's an order that
7 is from the Court of Appeals which brought this case back
8 before Your Honor or to Your Honor. And it should be a
9 part of the record, judge. We, obviously, oppose the
10 motion to dismiss based on the statute of limitations that
11 he should be entitled to a PCR hearing on his entire case,
12 not just the belated appeal.

13 What I did also want to make part of the record and
14 address is the order from the Court of Appeals and I can
15 certainly either hand it up to, Your Honor, or if you have
16 it before Your Honor ---

17 THE COURT: It's not in the packet that I have.

18 MS. GIOVANOLI: Your Honor, I have spare copies, if I
19 May approach?

20 THE COURT: Sure.

21 (Whereupon, the judge took a moment to read)

22 THE COURT: All right. Go ahead.

23 MR. BOOZER: Thank you, Your Honor. The opinion
24 does create a little bit of confusion and I have certainly
25 wrestle with it a little bit and have spoken with the AG's

1 office as well. In this opinion on the reverse and remand
2 of Mr. Outlaw's PCR application, there's really no question
3 that he's entitled to a hearing on his belated appeal
4 issue. Your Honor reviews this, the Court of Appeals says,
5 "petitioner seeks a writ of cert from denial of his
6 application for PCR. Because there is a question as to
7 fact as to whether petitioner knowingly waived his right to
8 appellate review we grant the petitioner writ of cert,
9 dispense for further briefing, reverse the PCR court
10 summary dismissal of application, and remand to the PCR
11 court for an evidentiary hearing to consider the merits of
12 PCR, of the petitioner's application." And as, Your Honor,
13 can certainly read through it states, "that every defendant
14 has the right to file a direct appeal on PCR application."
15 I guess, one could interpret this order as meaning he's
16 only entitled to a hearing on the belated appeal issue,
17 whereas our position is he's entitled not only to the
18 hearing on the belated appeal issue but for the complete
19 merits of his PCR application.

20 THE COURT: Why would they send it back only on the
21 issue of the belated appeal?

22 MR. BOOZER: And that was just one, I guess, reading
23 of when they -- I don't know why they would do that. It's
24 come up in the case they cite where it goes back but it's a
25 little bit different than the applicant's case. That was

William Outlaw- Direct Examination by Mr. Boozer: 16

1 an issue where the person actually file the PCR beyond the
2 statute of limitations. That was uncontested. It was
3 beyond the statute of limitations but he raised the
4 allegation whether he was denied his right to an appeal and
5 that case they remanded back for that issue. So, judge, we
6 would argue motion to dismiss should be denied.

7 THE COURT: That's not -- that's not this case?

8 MR. BOOZER: Correct.

9 THE COURT: All right. Well let's -- let's make
10 this part of this record, the affidavit.

11 MR. BOOZER: Okay.

12 (Whereupon, the Affidavit of James T. Irvin, Jr. has been
13 marked and entered into evidence as Applicant's Exhibit No.
14 1)

15 THE COURT: And the State's motion to dismiss is
16 denied.

17 MS. GIOVANOLI: Thank you, Your Honor.

18 THE COURT: All right. Let's proceed.

19 MR. BOOZER: Thank you, Your Honor. At this time we
20 would call Mr. Outlaw to the stand.

21 THE CLERK: Put your left hand on the Bible and
22 raise your right hand. Do you swear to tell the truth, the
23 whole truth, and nothing but the truth so help you God?

24 MR. OUTLAW: I do.

25 THE CLERK: Have a seat and state your full name

1 please?

2 MR. OUTLAW: My name is William Edward Outlaw.

3 WILLIAM OUTLAW, first being
4 duly sworn, testified as follows:

5 Direct Examination by Mr. Boozer:

6 Q. Mr. Outlaw, how are you doing today?

7 A. Fine.

8 Q. If you would, you do have the tendency sometimes to
9 speak kinda quietly so keep your voice up so everybody can
10 hear you, okay?

11 A. Okay.

12 Q. Mr. Outlaw, you know why you're here today?

13 A. Yes, sir.

14 Q. Why is that?

15 A. For a evidentiary hearing.

16 Q. Okay. You filed a PCR application?

17 A. Yes.

18 Q. All right. And in it, you've made certain allegations
19 against your former attorneys?

20 A. Yes.

21 Q. All right. And do you -- tell us this -- tell me
22 this, what's your current -- what are you currently
23 incarcerated for?

24 A. Manslaughter. Voluntary manslaughter.

25 Q. All right. What were you originally charged with?

William Outlaw- Direct Examination by Mr. Boozer:

18

1 A. Murder.

2 Q. All right. So you went to trial on the murder charge?

3 A. Yes, sir.

4 Q. And you were found guilty of voluntary manslaughter?

5 A. Yes, sir.

6 Q. What type of sentence did you receive?

7 A. Twenty-five (25) years.

8 Q. All right. Now, do you understand - let me ask you
9 this also, when is your max out date?

10 A. Ah, 2026.

11 Q. 2026?

12 A. Yes.

13 Q. Okay. So you've done a significant portion of your
14 sentence?

15 A. Yes, sir.

16 Q. All right. Do you understand that the only thing that
17 this court can do for you is; A) possibly grant you a
18 belated appellate review of your trial; and, also possibly
19 grant you a new trial in your case, do you understand that?

20 A. Yes, sir.

21 Q. Okay. The judge can't reduce your sentence or cut
22 your time or anything like that or make you parole
23 eligible, do you understand that?

24 A. Yes, sir.

25 Q. Okay. Do you understand that if you go back to trial

1 that you would face ---

2 MR. BOOZER: I believe, Your Honor, he would face
3 the voluntary manslaughter since there was a jury verdict
4 in the case.

5 Q. Do you understand that you would go back and face that
6 voluntary manslaughter all over again?

7 A. Yes, sir.

8 Q. Okay. And do you understand that, for whatever
9 reason, let's say you had a trial and you got found guilty
10 of the voluntary manslaughter, there's a chance you could
11 get significantly more time than either what you have left
12 to serve or what you got the first time, do you understand
13 that?

14 A. Yes, sir.

15 Q. Okay. An understanding that is that, is that a risk
16 that you understand?

17 A. Yes, sir.

18 Q. And knowing that risk, do you still wish to go forward
19 with your PCR case?

20 A. Yes, sir.

21 Q. Okay. Now, going back to your trial who was your
22 lawyer for your trial?

23 A. Paul Cannarella.

24 Q. Paul Cannarella?

25 A. Yes, sir.

William Outlaw- Direct Examination by Mr. Boozer:

20

1 Q. Okay. Make sure you keep your voice up.

2 A. I'm sorry.

3 Q. That's all right. How did you come about having Mr.
4 Cannarella represent you?

5 A. My family hired him.

6 Q. All right. When did you first get charged with the
7 murder?

8 A. January 11, 2002.

9 Q. When was Mr. Cannarella hired?

10 A. Right after -- he was one that had my bond posted and
11 -- sometime in January he was hired.

12 Q. Okay. Sometime in January, pretty early on?

13 A. At the end of January.

14 Q. All right. In between when you were first charge, got
15 these charges and the trial, do you know about how many
16 times you have may have met with Mr. Cannarella?

17 A. Twice, I think.

18 Q. You met two times with Mr. Cannarella over those few
19 years?

20 A. Yes. That's all I can recall. Twice.

21 Q. And it's been a long time period, has it not?

22 A. Yes.

23 Q. Okay. What would you two talk about in your meetings?

24 A. He wanted to -- he felt I should be -- it was self-
25 defense. He felt that he could get a jury to find me not

1 guilty by reasonable means of self-defense.

2 Q. Okay.

3 A. So that was his -- that's what he wanted the defense
4 to be.

5 Q. And did y'all discuss your version of the events?

6 A. Yes.

7 Q. And were you in agreement with what he was telling
8 you?

9 A. Yeah, I understood what he said.

10 Q. Did y'all talk about the evidence in the case?

11 A. A little bit, not much.

12 Q. All right. Now, did you review what your -- any
13 witnesses that you would call for your trial, did you know
14 if you would call any witnesses?

15 A. Yes. Yes.

16 Q. All right. Going to trial -- tell me this, when your
17 trial was over, did you file an appeal or asked to file an
18 appeal or did y'all pursue some other motions?

19 A. Post-trial motions.

20 Q. All right. What was your understanding of what those
21 post-trial motions were?

22 A. Post-trial motion for reconsideration of sentence and
23 post-trial motion for new trial based on third-party guilt,
24 new discovered evidence based on third-party guilt, and I
25 didn't get a charge on involuntary manslaughter.

William Outlaw- Direct Examination by Mr. Boozer: 22

1 Q. That you -- that the judge didn't charge you with
2 involuntary manslaughter?

3 A. Yes.

4 Q. Or charge the jury, excuse me?

5 A. Yes.

6 MR. BOOZER: And, Your Honor just for the Court's
7 information, as part of Mr. Outlaws PCR application he has
8 attached his exhibits, a letter from Mr. Cannarella dated
9 June 20, 2005, as well as a memo in support of the motion
10 for a new trial. Those are attached in the application or
11 I consider them part of the record I just want to make sure
12 Your Honor does, as well, if they're in the application.

13 THE COURT: If they were attached when it was
14 filed. Okay. Certainly.

15 Q. Mr. Outlaw, so Mr. Cannarella files these post-trial
16 motions for you?

17 A. Yes, sir.

18 Q. All right. And at some point did you and Mr.
19 Cannarella part ways?

20 A. Yes, sir.

21 Q. All right. Why -- well, when did you part ways? Did
22 you fire him or have him relieved as your lawyer?

23 A. He was released as my attorney.

24 Q. All right. And do you know when that would have been?

25 A. In 2005 -- yeah, in 2005.

1 Q. Okay. Did -- did ---

2 MR. BOOZER: Excuse me, Your Honor. Court's
3 indulgence.

4 Q. He was released in 2005. Did you then get another
5 attorney?

6 A. Yes, sir. Kenneth Martin.

7 Q. Okay. And when did you -- did you retain Mr. Martin?

8 A. Yeah. My family retained -- yes.

9 Q. How long was Mr. Martin your lawyer?

10 A. I'm not really sure. He has some medical conditions
11 that's the reason I had to hire James Irvin.

12 Q. Okay. So did Mr. Martin, to your knowledge, do
13 anything substantive on your case or appear at any motions
14 for you?

15 A. No, he didn't.

16 Q. Okay. Now he was relieved from your case?

17 A. Yes. Yes.

18 Q. And then who did you -- did you hire someone else,
19 then?

20 A. James Irvin.

21 Q. All right. Now, when did you hire Mr. Irvin?

22 A. I can't remember the exact date. Just that it was --
23 Mr. Martin has medical issues and I think couldn't practice
24 law at the time so I had to hire James Irvin to represent
25 me.

William Outlaw- Direct Examination by Mr. Boozer:

24

1 Q. Okay. What were you hiring Mr. Irvin for, for what
2 purpose?

3 A. To represent me during the post-trial motions.

4 Q. All right. Now, do you recall actually having a
5 hearing on those post-trial motions?

6 A. Yes, sir. We had a hearing.

7 Q. Where was the hearing?

8 A. Here.

9 Q. In this courthouse?

10 A. Yes, sir.

11 Q. Okay. Your case is not a Marlboro County case,
12 though, right?

13 A. No, sir.

14 Q. But the hearing, of your recollection, was in this
15 courthouse?

16 A. Yes, sir.

17 Q. Do you know when?

18 A. Ah, 2010.

19 Q. Okay.

20 A. I don't know the exact day.

21 Q. And let me back up just a minute. After your trial
22 was over and Mr. Cannarella filed these post-trial motions,
23 did you have any discussions with him about filing what's
24 called a direct appeal or did y'all just talk about filing
25 post-trial motions right then?

1 A. Yes. It was my understanding he would appeal if the
2 decision was in my favor then he would make an appeal.

3 Q. For post-trial motions?

4 A. Yes.

5 Q. Okay. So y'all have this hearing that you recall
6 where Mr. Irvin represented you, you said that was some
7 time, you think ---

8 A. 2010.

9 Q. Do you know if it was September or August?

10 A. It might have been August, the end of August.

11 Q. Okay.

12 A. Or the first of September.

13 Q. Do you recall what exactly was presented at the
14 hearing?

15 A. No, sir. I spoke with Mr. Irvin for a few minutes
16 when I got here and he explained to me, you know, what he
17 was going to present and he had a packet of paperwork that
18 he was presenting too, I think, Judge Burch at the time.

19 Q. Okay. But the basis of the motion you said was a new
20 trial based on after discovered evidence, is that right?

21 A. Yes.

22 Q. And what was that evidence?

23 A. It was -- the ballistics wasn't done on the shell and
24 they had several statements from different people stating
25 that I didn't shoot, I wasn't the one that killed Michael.

William Outlaw- Direct Examination by Mr. Boozer:

26

1 Q. Okay. So those are from third-party witnesses?

2 A. Yes.

3 Q. And that was part of the basis for your motion?

4 A. Yes.

5 Q. Okay. And then the last part was on the
6 involuntary manslaughter charge?

7 A. Yes.

8 Q. And you also had a motion for reduction sentence?

9 A. Yes.

10 Q. But to your knowledge was all that information that we
11 just literally got done talking about presented during that
12 motion's hearing?

13 A. To my knowledge it was.

14 Q. Okay. After the hearing on your motion, when did you
15 learn or how did you learn that, that motion had been
16 denied or those motions have been denied?

17 A. I spoke with James Irvin. He -- I waited almost a
18 year and James Irvin told me that if it took longer that
19 chances of it being in my favor, the ruling being in my
20 favor. So I waited a year I contacted Mr. Irvin and ask
21 him could he find out about the ruling seeing what was
22 going on, why was it taking so long and he stated to me
23 that he didn't want to aggravate anybody that he would wait
24 a little while longer and he would call and try to find
25 out. And after that I sent a letter to the clerk of court

1 of Chesterfield County asking for any rulings or any other
2 hearings scheduled for the post-trial motions. That's when
3 I was sent the motion to dismiss.

4 Q. Okay. When did you receive the final order on the
5 denying your motions for new trial and reduction of
6 sentence?

7 A. It was in 2011.

8 Q. Do you know when in 2011 it was?

9 A. I have the dates in there. I'm not sure of that date.
10 I think it was September of 2011, I think.

11 MR. BOOZER: Your Honor, May approach the witness
12 with this package of materials, plea work?

13 THE COURT: (Shaking of head, yes)

14 (Whereupon, Mr. Boozer approached the witness)

15 A. It was September 12, 2011.

16 Q. Okay. I'm sorry, Mr. Outlaw. When did you state you
17 receive that notice that your post-trial motions were
18 denied?

19 A. September 12, 2011.

20 Q. Okay. And how did you come about receiving it, the
21 knowledge they were denied?

22 A. Through the Clerk of Court of Chesterfield County.

23 Q. All right. Did you -- and you said you wrote them?

24 A. Yes.

25 Q. All right. When you received -- and at this time in

William Outlaw- Direct Examination by Mr. Boozer:

28

1 September 2011, you said, right?

2 A. Yes, sir.

3 Q. Yes?

4 A. Yes, sir.

5 Q. Okay. Had your lawyer Mr. Irvin ever indicate to you,
6 hey, these post-trial motions have been denied, I got
7 notice of it?

8 A. No.

9 Q. Okay. When you receive notice of those motions had
10 been denied, what did you do?

11 A. I immediately sent it to my mother so she can fax it
12 to Mr. Irvin.

13 Q. Who's your mother?

14 A. Willie Jean Winburn.

15 Q. Okay. And is she no longer with us?

16 A. She's deceased.

17 Q. Okay. To your knowledge, what did your mother then do
18 with that order?

19 A. She faxed it to Mr. Irvin and he wrote a statement
20 saying that he was never -- he never received the motions
21 -- the way he received the motions was through my mother.

22 MR. BOOZER: Your Honor, May I approach the witness?

23 THE COURT: Yes, sir.

24 MR. BOOZER: Thank you.

25 Q. Mr. Outlaw, I'm going to show you a copy of a document

1 marked Applicant's Exhibit 1, can you identify that?

2 A. Yes, sir. It's a statement that Mr. Irvin wrote.

3 Q. Okay. Is that the statement which you're referring to
4 that after your mom delivered or faxed that over to his
5 office that Mr. Irvin wrote?

6 A. Yes, it is.

7 Q. Okay. And is it your understanding that he received a
8 copy of that ruling on October 17, 2011 when your mom fax
9 it over to him?

10 A. Yes, sir.

11 Q. All right. After he received that order to your
12 knowledge, not to your knowledge but, did you have any
13 discussions with him?

14 A. After he received the order?

15 Q. Yes, sir. After your mom faxed it over to him and he
16 got it, did you have any discussion with Mr. Irvin?

17 A. I never heard anything else from him.

18 Q. Okay. And during -- sort of -- let's back up a little
19 bit, you tried to follow PCR pretty early on, right?

20 A. Yes.

21 Q. And was that because you didn't know what was going on
22 and your post-trial motions were still not ruled upon?

23 A. Yes.

24 Q. Okay. So when ---

25 MR. BOOZER: I beg the Court's indulgence, Your

William Outlaw- Direct Examination by Mr. Boozer:

30

1 Honor.

2 Q. Going to when Mr. Irvin received this order, you had
3 no other conversations with Mr. Irvin?

4 A. Could you say that again?

5 Q. Yes, sir. After your mom delivered the order denying
6 your motions for a new trial and reduction of sentence, did
7 you have any other conversation with Mr. Irvin?

8 A. No. I never talk, spoke with him again.

9 Q. Okay. Did he ever talk to you about filing an appeal
10 after those motions had been denied?

11 A. Yes. When I talk with him here, in the little room
12 back here, we talked about it. He said if it wasn't in my
13 favor that he would, you know, we could appeal the
14 decision.

15 Q. Okay. He told you that you could file an appeal ---

16 A. Yes.

17 Q. --- once that decision was made?

18 A. Yes.

19 Q. All right. Did you want him to file an appeal from
20 your trial and/or those post-trial motions?

21 A. Yes.

22 Q. Would you want any lawyer, whoever it was representing
23 you, to file an appeal for you?

24 A. Yes.

25 Q. Did you ever try and file one on your own?

1 A. Just the PCR's that's it.

2 Q. Well, why did you do that? Why did you file the PCR
3 and not try to file an appeal?

4 A. I didn't know. I didn't know. Everybody says no
5 post-conviction relief. I ---

6 Q. Well, let me ask you this you're not a lawyer, are
7 you?

8 A. No.

9 Q. Okay. And before this crime that you had been
10 convicted of, other than a drinking ticket or something
11 like that, had you ever been in trouble?

12 A. No.

13 Q. Okay. So you're not familiar with the law, are you?

14 A. No. Not at all.

15 Q. Okay. Now, going to your -- and you do want a belated
16 appeal from your trial, is that right?

17 A. Yes, sir.

18 Q. Okay. Now, you've got a number of allegations from
19 your, in your PCR about your trial and I want you to tell
20 the Court about them, okay, and we'll go through them one
21 by one. Your first one is that you feel like, and some of
22 these are your words, of course, that you feel like your
23 lawyer was ineffective for what you call not pretrialing
24 the murder charge based upon probable cause, what do you
25 mean by that?

William Outlaw- Direct Examination by Mr. Boozer:

32

1 A. Well, I don't feel like I should've been on trial for
2 murder.

3 Q. Did you have a preliminary hearing, do you recall?

4 A. Not that I recall.

5 Q. Did you feel like you should have?

6 A. Yes.

7 Q. Okay. Do you know if you discussed ever having a
8 preliminary hearing with your lawyer?

9 A. No.

10 Q. All right. You also allege that your lawyer failed to
11 investigate the facts and circumstances surrounding the
12 situation for the causes of the victim's death. Explain
13 that, what you feel like your lawyer should've done?

14 A. Well, at the time there was one statement made that I
15 wasn't the one that shot him. I felt like they could've
16 been some more investigation and he could I had more
17 statements and more evidence to prove that. That's it.

18 Q. Okay. You also allege that your lawyer failed to
19 interview potential witnesses who could have presented
20 testimony that was exculpatory.

21 A. Yes.

22 Q. Are you referring back to, basically, what was the
23 basis of your motion for a new trial?

24 A. Yes.

25 Q. Okay. You can -- these witnesses and this is

1 referring back to the letter and the motion that your
2 lawyer made, he listed a bunch of folks, didn't he?

3 A. Yes.

4 Q. Okay. And those are the people you feel like had
5 exculpatory evidence in your case?

6 A. Yes.

7 Q. All right. Did you not know about them until after
8 your trial?

9 A. Some of them. Most of them.

10 Q. Okay. And did you -- but they -- those witness
11 statements, they were presented to your knowledge at the
12 motion for new trial?

13 A. Yes, sir.

14 Q. Okay. Do you know if they were presented in the form
15 of affidavits or how were they presented?

16 A. I think so.

17 Q. Okay. Do you recall at that hearing on the motion for
18 a new trial whether there were any comments made by the
19 court or anyone as regards to those witnesses?

20 A. Yeah. And to my understanding the judge had a copy of
21 the statements and he was going to go over everything.

22 Q. Okay. He was going to review them?

23 A. Yes.

24 Q. In making a ruling on your motion?

25 A. Yes.

William Outlaw- Cross Examination by Ms. Giovanoli:

34

1 Q. All right. Now, you've also allege that your lawyer
2 failed to to present ten, you call them factual relevance,
3 is the term used, to the jury that it could have drawn
4 reasonable inferences to conclude that you committed
5 involuntary manslaughter and not murder or manslaughter?

6 A. Yes.

7 Q. Explain, sort of, that allegation?

8 A. Well, I don't think that Paul wanted a charge of
9 involuntary because he felt like the jury would choose
10 involuntary versus not guilty by reasonable means of self-
11 defense so I don't think he tried to hard to get a charge
12 on involuntary.

13 Q. And you and I have talked about this allegation,
14 right?

15 A. Yes.

16 Q. Okay. You understand your lawyer did make a request
17 for involuntary manslaughter?

18 A. Yes, I know.

19 Q. And you also understand that was denied, obviously, at
20 trial?

21 A. Yes.

22 Q. Do you also understand that in your motion for a new
23 trial that, that was one of the issues that was presented?

24 A. Yes.

25 Q. Okay. So you understand that, that would be an

1 appellate issue, you understand that?

2 A. Yes, sir.

3 Q. Okay. Now, obviously, this is your day in court for
4 your PCR hearing that you've waited quite a long time for,
5 right?

6 A. Yes, sir.

7 Q. Is there anything that we haven't covered with regard
8 to your PCR allegations that we haven't covered yet that
9 you want to tell the court?

10 A. No, sir. I think that's it.

11 Q. Okay.

12 MR. BOOZER: Thank you, Your Honor. That's all the
13 questions I have.

14 THE COURT: Cross-examination?

15 MS. GIOVANOLI: Thank you, Your Honor.

16 **Cross-Examination by Ms. Giovanoli:**

17 Q. Good afternoon. I just want to clarify that you
18 testified earlier that you only met with Mr. Cannarella
19 only two times prior to your trial?

20 A. Yes.

21 Q. And you were arrested on or you were indicted in April
22 2002 -- March of 2002, excuse me?

23 A. Yes.

24 Q. And your trial was on April 6, 2005?

25 A. Yes.

William Outlaw- Cross Examination by Ms. Giovanoli:

36

1 Q. That's a little over three years?

2 A. Yes, ma'am.

3 Q. You said that Mr. Cannarella was released from your
4 case, why was that?

5 A. In 2005, I met with him at Lee Correctional
6 Institution, he showed me the ballistics that was done
7 after the trial and the shell didn't match my gun and he
8 just -- he wanted me to go for a reconsideration of
9 sentence and I felt like I could've prove my innocence.
10 That's why released him and obtained another attorney.

11 Q. Okay. And you also testified that you believed you
12 would've appealed after the post-trial motions, I just
13 wanted to clarify, who is he, is that Mr. Irvin?

14 A. Yes, ma'am.

15 Q. Now, based on that newly discovered evidence, the
16 shell casing is not matching, what shell casings are you
17 referring to?

18 A. The shells during trial -- during trial they had buck
19 -- he was shot with buckshot, triple-aught buckshot and
20 during the trial they had birdshot. But it was stated that
21 it was triple-aught buckshot.

22 Q. Okay. You testified in this case, right?

23 A. Yes, ma'am, I did.

24 Q. And you testified that you shot the victim out of
25 self-defense?

1 A. I testified that I had fired a gun.

2 Q. And why did you fire the gun?

3 A. Basically, scared, scared for my life and to retreat.

4 Q. Why were you scared for your life?

5 A. I had been assaulted. I had a laceration over my eye
6 and there were shots fired so I fired shots.

7 Q. And you fired in the directions of those shots?

8 A. I fired the shot over the top of my door in the air.

9 Q. But didn't you testify during trial that you saw a
10 flame when the gunshot ---

11 A. Yes ---

12 Q. --- that shot at you?

13 A. Yes, I did.

14 Q. And you shot back at that flame?

15 A. Yes.

16 THE COURT: Explain -- you said you shot over the
17 door?

18 A. Yes, sir.

19 THE COURT: The door was closed?

20 A. Yes, sir. No -- no the car door -- the car door --
21 the open car door.

22 THE COURT: Car door?

23 A. Yes, sir. The open car door.

24 THE COURT: Open car door. And what's this about
25 the shells?

William Outlaw- Cross Examination by Ms. Giovanoli:

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1 A. During the trial the ballistics wasn't done. The
2 ballistics were done after the trial and the ---

3 THE COURT: Why would they do it after the trial?

4 A. I don't know.

5 THE COURT: What did the victim died from?

6 A. Triple-aught buckshot.

7 THE COURT: Where did you get this birdshot?

8 A. From the evidence in trial.

9 THE COURT: I thought you said they waited until
10 after the trial?

11 A. They did. They did -- it was found after the trial
12 they did ballistics and they found it was birdshot and not
13 buckshot.

14 THE COURT: He died from a birdshot?

15 A. He died of a buckshot but the shell they had on
16 evidence was birdshot. But during the trial ---

17 THE COURT: What was it, eight?

18 A. It was birdshot. I'm not sure ---

19 MR. BOOZER: Seven and half, judge.

20 THE COURT: He died from a buckshot?

21 A. Yes, sir.

22 THE COURT: But the shell they introduced was a
23 birdshot, is that what you're telling me?

24 A. Yes, sir.

25 THE COURT: It's marked on the shell?

1 A. Yes, sir.

2 Q. And that was the shell found at the scene?

3 A. Yes, ma'am.

4 Q. Beside the victim's body?

5 A. No, ma'am. His shell was by his body.

6 Q. Okay. And where was the other shell found?

7 A. Where the gun was that.

8 Q. Whose gun?

9 A. My gun.

10 Q. And where was your gun?

11 A. Down the road and by a creek.

12 Q. How far away from the house?

13 A. Maybe two miles.

14 Q. And was it spent or unspent?

15 A. Spent.

16 THE COURT: Was the shell right beside the gun?

17 A. Yes, sir.

18 THE COURT: How did that happen? How would that
19 happen -- how would you explain that?

20 A. Well, when you breach the gun, the gun was breached,
21 when you breach the gun the shell come out of the gun ---

22 THE COURT: So it ---

23 A. --- and was spent.

24 THE COURT: --- was not fired?

25 A. Yeah, it was fired but when you breach the gun open,

William Outlaw- Cross Examination by Ms. Giovanoli:

40

1 the spent shell come out beside the gun.

2 THE COURT: Found it laying beside a creek?

3 A. The gun and the shell.

4 THE COURT: Where did the shooting take place?

5 A. Down the road.

6 THE COURT: Okay. Never mind.

7 Q. Okay. During your testimony you never mentioned any
8 other shots beside the shot by the victim and your gunshot?

9 A. Yes, ma'am.

10 Q. But now you're claiming that someone else's bullet
11 went into the victim?

12 A. Yes, ma'am.

13 Q. Going to the statement that Mr. Irvin sent to you, how
14 did you obtain that affidavit, in the mail?

15 A. Yes.

16 Q. Directly from Mr. Irvin?

17 A. Yes.

18 Q. Did he send any other letters accompanying that
19 affidavit?

20 A. Nah, that's it.

21 Q. And you never had any other discussions with Mr.
22 Irvin?

23 A. No.

24 Q. I just wanted to clarify also part of the motion for a
25 new trial based on newly discovered evidence, was this list

1 of witnesses that could've been called at trial.

2 A. Yes.

3 Q. You stated earlier when Mr. Boozer was asking you
4 questions that you didn't know about some of them?

5 A. Yes.

6 Q. Okay. How did -- did you not tell Mr. Cannarella
7 about that list of witnesses?

8 A. No. To my understanding there was only one that had
9 went to him before the trial but Mr. Cannarella felt like
10 he was incompetent so....

11 Q. Mr. Cannarella felt like he was incompetent ---

12 A. Yes.

13 Q. --- the witness?

14 A. Yes. Yes.

15 Q. Do you recall who testified on your behalf at the
16 trial?

17 A. No, I can't.

18 Q. Did your mother testify?

19 A. Oh, yes.

20 MS. GIOVANOLI: There's nothing further, Your Honor.

21 No more questions. Thank you.

22 MR. BOOZER: Just briefly, Your Honor.

23 THE COURT: Sure.

24 Redirect Examination by Mr. Boozer:

25 Q. A moment ago you were trying to describe in response