

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Howard P. King, Circuit Court Judge

CASEY STUCKEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001737

APPENDIX

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S.C. SUPREME COURT

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1 STATE OF SOUTH CAROLINA

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COUNTY OF SUMTER
COURT OF GENERAL SESSIONS

4

THE STATE OF SOUTH CAROLINA,
PLAINTIFFS

5

VS.

6

CASEY BERNARD STUCKEY,
DEFENDANT

7

TRANSCRIPT OF TRIAL
01-GS-43-283

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9

NOVEMBER 10TH & 12TH, 2003
SUMTER, S. C.

10

11

BEFORE: THE HONORABLE THOMAS W. COOPER, JR., JUDGE.

12

APPEARANCES:

13

14

MR. WILLIAM H. CONNER, JR.,
ASSISTANT SOLICITOR FOR THE STATE

15

16

MS. LAUREN B. FERRARI,
ATTORNEY FOR DEFENDANT

17

18

MARGARET T. SULLIVAN,
OFFICIAL COURT REPORTER

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1 THE COURT: MR. SOLICITOR, IF YOU ARE PREPARED WE CAN
2 CALL YOUR CASE.

3 MR. CONNER: MAY IT PLEASE THE COURT, AT THIS TIME WE
4 WOULD CALL THE STATE OF SOUTH CAROLINA VERSUS CASEY BERNARD
5 STUCKEY. INDICTMENT 2001-283. ASSAULT AND BATTERY WITH
6 INTENT TO KILL, POSSESSION OF A WEAPON DURING A VIOLENT
7 CRIME. ALSO FOR LYNCHING AND KIDNAPPING.

8 HE'S IN COURT, AND HE'S REPRESENTED BY LAUREN FERRARI,
9 YOUR HONOR. AND HE INDICATES HE WISHES TO HAVE A JURY
10 TRIAL.

11 THE COURT: THANK YOU. LADIES AND GENTLEMEN, GIVE ME
12 YOUR ATTENTION FOR A FEW MOMENTS PLEASE. LADIES AND
13 GENTLEMEN, WE'RE ABOUT TO BEGIN THE JURY SELECTION IN THE
14 TRIAL OF THE CASE OF THE STATE VERSUS CASEY BERNARD STUCKEY.
15 MR. STUCKEY HAS BEEN INDICTED BY THE GRAND JURY OF SUMTER
16 COUNTY AND CHARGED IN COUNT 1 IN THE INDICTMENT WITH ASSAULT
17 AND BATTERY WITH INTENT TO KILL. THAT COUNT IN THE
18 INDICTMENT ACCUSES CASEY BERNARD STUCKEY ON OR ABOUT OCTOBER
19 THE 4TH OF THE YEAR 2000 WITH MALICE AFORETHOUGHT,
20 COMMITTING AN ASSAULT AND BATTERY UPON ONE DARNELL ROBINSON
21 BY SHOOTING HIM WITH A DEADLY WEAPON; THAT IS, WITH A PISTOL
22 WITH THE INTENT TO KILL HIM IN VIOLATION OF THE LAW.

23 COUNT 2 OF THE INDICTMENT CHARGES MR. STUCKEY WITH
24 POSSESSION OF WEAPON DURING THE COMMISSION OF A VIOLENT
25 CRIME. AND THAT COUNT OF THE INDICTMENT ACCUSES MR. STUCKEY

1 HERE IN SUMTER COUNTY AT THE SAME TIME AND PLACE; THAT IS,
2 OCTOBER 4TH OF THE YEAR 2000, WITH VISIBLY DISPLAYING A
3 FIREARM; SPECIFICALLY, A PISTOL DURING THE COMMISSION OR
4 ATTEMPTED COMMISSION OF A VIOLENT CRIME IN VIOLATION OF THE
5 LAW.

6 COUNT 3 OF THE INDICTMENT ACCUSES MR. STUCKEY AND TWO
7 OTHER CO-DEFENDANTS HERE IN SUMTER COUNTY ON OR ABOUT
8 OCTOBER 4TH OF 2000, BY ACTING AS A MOB WITH INFLECTING AN
9 ACT OF VIOLENCE UPON THE BODY OF DARNELL ROBINSON WHICH DID
10 NOT RESULT IN DEATH, IN VIOLATION OF THE LAW. HE IS
11 THEREFORE CHARGED WITH LYNCHING IN THE SECOND DEGREE IN
12 CONNECTION WITH THOSE EVENTS.

13 COUNT 4 OF THE INDICTMENT ACCUSES MR. STUCKEY AND TWO
14 OTHERS HERE IN SUMTER COUNTY ON OR ABOUT OCTOBER THE 4TH OF
15 THE YEAR 2000 WITH UNLAWFULLY SEIZING, CONFINING,
16 INVEIGLING, DECOYING, KIDNAPPING, ABDUCTING OR CARRYING AWAY
17 DARNELL ROBINSON WITHOUT AUTHORITY OF THE LAW AND IN
18 VIOLATION OF THE LAW.

19 NOW, LADIES AND GENTLEMEN, THE INDICTMENT THAT I HAVE
20 JUST READ TO YOU IS NOT EVIDENCE NOR PROOF OF THE CHARGES
21 THAT IT CONTAINS. IT IS SIMPLY A PIECE OF PAPER THAT HAS
22 THE CHARGES WRITTEN DOWN ON IT SO THAT YOU OR I OR ANYONE
23 ELSE WHO READS THE INDICTMENT, WILL KNOW WHAT THESE CHARGES
24 ARE ALL ABOUT.

25 TO THE CHARGES CONTAINED IN THE INDICTMENT, MR. STUCKEY

1 HAS ENTERED PLEAS OF NOT GUILTY AND HAS ASKED FOR A JURY
2 TRIAL AT YOUR HANDS. MR. STUCKEY, WILL YOU PLEASE STAND AND
3 FACE THE JURY BEHIND YOU? THANK YOU, YOU CAN BE SEATED.
4 LADIES AND GENTLEMEN, ARE ANY OF YOU KIN TO MR.
5 STUCKEY; THAT IS, ARE YOU RELATED TO HIM BY BLOOD OR
6 MARRIAGE? ARE YOU A FRIEND OF HIS OR A BUSINESS ASSOCIATE
7 OR A CASUAL ACQUAINTANCE OF HIS, OR A PERSON WHO HAS ANY
8 DIRECT OR INDIRECT CONTACT WITH HIM MR. STUCKEY? IF SO,
9 PLEASE STAND.

10 (THEREUPON, NO RESPONSE.)

11 THE COURT: THANK YOU. LADIES AND GENTLEMEN, POTENTIAL
12 WITNESSES WHO MAY TESTIFY IN THE TRIAL OF THIS CASE ARE
13 JAMES FITZPATRICK, JAMES TURNER, AL POSTON, ERNESTINE
14 GOODWIN, DARNELL OR DONNELL ROBINSON, DELORES SINGLETON,
15 MARVIN MOSES, LEROY GOODMAN, JOYCE BURCH, CAROLYN DICKSON,
16 DR. LINDA RHYNE. R-H-Y-N-E. CINDY PEARSON, DONALD BUSH,
17 KENDELL NELSON.

18 ARE ANY OF Y'ALL KIN TO ANY OF THOSE POTENTIAL
19 WITNESSES; THAT IS, IF YOU ARE RELATED TO THEM BY BLOOD OR
20 BY MARRIAGE OR FRIENDS OF THEIRS OR BUSINESS ASSOCIATES OF
21 THEIRS, OR CASUAL ACQUAINTANCES OF THEIRS OR PEOPLE WHO HAVE
22 ANY HAVE ANY DIRECT OR INDIRECT CONTACT WITH ANY OF THOSE
23 POTENTIAL WITNESSES IF SO, PLEASE STAND.

24 YES, MA'AM, AT THE BACK, YOUR NAME, PLEASE.

25 THE JUROR: MY NAME IS VICKY CANNON. THAT'S MY COUSIN

1 SITTING UP THERE, CAROLYN.

2 THE COURT: DID YOU SAY MS. CANNON?

3 THE JUROR: CANNON. UH-HUH. (AFFIRMATIVE.)

4 THE COURT: VICKY CANNON?

5 THE JUROR: UH-HUH. (AFFIRMATIVE.)

6 THE COURT: JUROR NO. 21. AND, MS. CANNON, TELL ME WHO

7 THE CONNECTION IS AGAIN. WHO IS YOUR COUSIN?

8 THE JUROR: CAROLOYN DICKSON.

9 THE COURT: CAROLYN DICKSON IS YOUR COUSIN?

10 THE JUROR: YES, SIR.

11 THE COURT: IS IT FIRST COUSIN, OR DISTANT COUSIN?

12 THE JUROR: DISTANT COUSIN.

13 THE COURT: DISTANT COUSIN?

14 THE JUROR: YES.

15 THE COURT: MS. CANNON, DO YOU MAINTAIN CLOSE CONTACT

16 WITH MS. DICKSON?

17 THE JUROR: NO, NOT REALLY.

18 THE COURT: OKAY.

19 THE JUROR: I HAVEN'T SEEN HERE IN A WHILE.

20 THE COURT: BUT YOU JUST -- YOU'RE JUST DISTANT COUSINS

21 AND THAT'S ABOUT HOW YOU PUT IT?

22 THE JUROR: UH-HUH. (AFFIRMATIVE.)

23 THE COURT: MS. CANNON, WOULD THAT RELATIONSHIP TO MS.

24 DICKSON MAKE IT DIFFICULT FOR YOU TO BE FAIR AND IMPARTIAL

25 AS A JUROR IN THE TRIAL IN THIS CASE IN WHICH SHE MIGHT

1 TESTIFY?

2 THE JUROR: WELL I REALLY WOULDN'T WANT TO DO THAT
3 BECAUSE ME AND HER-----

4 THE COURT: NO, YOU'VE ANSWERED THAT QUESTION, OKAY.

5 THE JUROR: OKAY.

6 THE COURT: SO YOU FEEL LIKE THE FACT THAT SHE IS A
7 POTENTIAL WITNESS IN THIS CASE MIGHT MAKE IT DIFFICULT FOR
8 YOU TO SERVE FAIRLY AND IMPARTIALLY, IS THAT WHAT YOU'RE
9 TELLING ME?

10 THE JUROR: YES, SIR.

11 THE COURT: WE'LL HONOR THAT, MS. CANNON. WE'LL STAND
12 YOU ASIDE AS A JUROR FOR THIS TRIAL. JUROR NO. 21 WILL BE
13 EXCUSED AS A JUROR FOR THIS CASE. THANK YOU.

14 LADIES AND GENTLEMEN, I HAVE READ TO YOU THE INDICTMENT
15 AS I HAVE SAID, NOT BECAUSE IT IS EVIDENCE OR PROOF OF THE
16 CHARGES, BECAUSE IT'S NOT. IT'S JUST A CHARGING PAPER THAT
17 TELLS US WHAT THE CASE IS ALL ABOUT. AND I READ IT TO YOU
18 SO THAT YOU WOULD KNOW WHAT THIS CASE IS ABOUT, SO THAT NOW
19 YOU CAN TELL ME IF ANY OF YOU KNOW ANYTHING THIS CASE. IF
20 YOU HAVE SEEN OR HEARD OR READ ANYTHING ABOUT THIS CASE, OR
21 IF YOU HAVE ANY KNOWLEDGE ABOUT THIS CASE FROM ANY SOURCE AT
22 ALL, WOULD YOU PLEASE STAND?

23 (THEREUPON, NO RESPONSE.)

24 THE COURT: THANK YOU. THE LAWYERS WHO WILL BE
25 INVOLVED IN THE TRIAL OF THIS CASE, LADIES AND GENTLEMEN ON

1 BEHALF OF THE STATE, THE CASE WILL BE REPRESENTED BY
2 ASSISTANT SOLICITOR HARRY CONNER, AND SOLICITOR KELLY
3 JACKSON FROM THE THIRD JUDICIAL CIRCUIT SOLICITOR'S OFFICE.
4 THE DEFENDANT MR. STUCKEY, IS REPRESENTED BY MS. LAUREN
5 FERRARI WHO IS IN PRIVATE PRACTICE HERE, AND IS ALSO ONE OF
6 THE PUBLIC DEFENDERS OF SUMTER COUNTY. THANK YOU.

7 LADIES AND GENTLEMEN, ARE ANY OF Y'ALL RELATED BY BLOOD
8 OR CONNECTED BY MARRIAGE TO ANY OF THESE LAWYERS; THAT IS,
9 KIN TO THEM, OR FRIENDS OF THEIRS OR ASSOCIATES OF THEIRS OR
10 CASUAL ACQUAINTANCES OF THEIRS OR PEOPLE WHO HAVE ANY
11 DIRECT OR INDIRECT CONTACT WITH THEM; INCLUDING, EVER HAVING
12 BEEN REPRESENTED BY ANY OF THEM IN THE PAST? IF SO, PLEASE
13 STAND.

14 (THEREUPON, NO RESPONSE.)

15 THE COURT: THANK YOU. LADIES AND GENTLEMEN, THE
16 INDICTMENT CHARGES SEVERAL CRIMES: ASSAULT AND BATTERY WITH
17 INTENT TO KILL, POSSESSION OF A WEAPON DURING A VIOLENT
18 CRIME, LYNCHING IN THE SECOND DEGREE AND KIDNAPPING. THOSE
19 ARE WHAT WE TRADITIONALLY CALL CRIMES OF PERSONAL VIOLENCE;
20 THAT IS, CRIMES AGAINST AN INDIVIDUAL. I NEED TO KNOW IF
21 YOU OR ANY MEMBERS OF YOUR FAMILY HAVE EVER HAD ANY
22 CONNECTION WITH A CRIME OF PERSONAL VIOLENCE. THERE ARE
23 OTHER CRIMES OF PERSONAL VIOLENCE WHICH ARE NOT INVOLVED IN
24 THIS PARTICULAR INDICTMENT: MURDER, MANSLAUGHTER, ARMED
25 ROBBERY, CRIMINAL SEXUAL CONDUCT. THESE ARE TYPICAL

1 EXAMPLES OF CRIMES OF PERSONAL VIOLENCE; THAT IS, A CRIME OF
2 VIOLENCE AGAINST A PERSON.

3 I NEED TO KNOW IF YOU OR ANY MEMBERS OF YOUR FAMILY
4 HAVE EVER HAD ANY INVOLVEMENT IN SUCH A CRIME. SO FIRST OF
5 ALL, LADIES AND GENTLEMEN, THE QUESTION DOES NOT ONLY APPLY
6 JUST TO YOU, IT APPLIES TO ANY MEMBERS OF YOUR IMMEDIATE
7 FAMILY; THAT IS, ANY MEMBERS OF YOUR HOUSEHOLD.
8 SECONDLY, THE QUESTION APPLIES TO NOT ONLY TO THESE
9 PARTICULAR CRIMES NAMED IN THIS INDICTMENT, BUT ALSO ANY
10 OTHER SIMILAR CRIME OF PERSONAL VIOLENCE AS I HAVE JUST
11 DESCRIBED THAT TO YOU. AND FINALLY, THE QUESTION INVOLVES A
12 WIDE RANGE OF POSSIBLE INVOLVEMENT IN THE CRIME. YOU OR
13 YOUR FAMILY MEMBER MIGHT HAVE BEEN A VICTIM OF THE CRIME;
14 THAT IS, A PERSON AGAINST WHOM THE CRIME IS COMMITTED. YOU
15 OR YOUR FAMILY MEMBER COULD HAVE BEEN A DEFENDANT; THAT IS,
16 A PERSON WHO WAS ACCUSED OF COMMITTING THE CRIME. OR YOU OR
17 YOUR FAMILY MEMBER COULD HAVE BEEN A WITNESS TO THE CRIME.

18 SO IF YOU OR YOUR FAMILY MEMBER HAVE EVER HAD ANY
19 INVOLVEMENT IN A CRIME OF PERSONAL VIOLENCE AS I HAVE JUST
20 DESCRIBED THAT TO YOU, I WANT YOU TO STAND NOW AND LET ME
21 IDENTIFY YOU. THEN I WILL BRING YOU DOWN AND WE'LL ASK YOU
22 SOME QUESTIONS IN THE RELATIVE PRIVACY OF THE COURT REPORTER
23 AND THE LAWYERS IN JUST A FEW MOMENTS. IF THAT QUESTION
24 APPLIES TO ANYONE PLEASE STAND AT THIS TIME.

25 YOUR NAME ON THE FRONT, PLEASE.

1 THE JUROR: DAVID MOBLEY.

2 THE COURT: DAVID MOBLEY. MR. MOBLEY, WOULD YOU
3 PLEASE, SIR, FORM A -- START THE FIRST OF YOUR LINE RIGHT
4 HERE? IN THAT CENTER AISLE. THANK YOU, SIR.

5 YOUR NAME PLEASE.

6 THE JUROR: DELORES ATKINSON.

7 THE COURT: DELORES ATKINSON, JUROR 151. MS. ATKINSON,
8 IF YOU WILL GET RIGHT BEHIND MR. MOBLEY, PLEASE. YES,
9 MA'AM, YOUR NAME, PLEASE.

10 MS. DORITY: CAROLYN DORITY.

11 THE COURT: MS. DORITY IS JUROR NO. 36. MS. DORITY, IF
12 YOU WILL JOIN THE LINE AS WELL, PLEASE. YES, SIR, YOUR
13 NAME, PLEASE, SIR.

14 THE JUROR: JERRY FORD.

15 THE COURT: MR. FORD, IS JUROR NO. 45. THANK YOU, MR.
16 FORD, IF YOU WILL GET IN LINE AS WELL. WE WILL START HERE
17 AND WORK OUR WAY BACK ACROSS THE COURTROOM AGAIN. YOUR
18 NAME, PLEASE.

19 THE JUROR: SYNDER DAVIS.

20 THE COURT: MR. DAVIS IS JUROR NO. 31. THANK YOU, MR.
21 DAVIS. IF YOU GET IN LINE, THANK YOU. YOUR NAME IN THE
22 CENTER.

23 THE JUROR: GEORGE JAMES.

24 THE COURT: GEORGE JAMES IS JUROR NO. 63. MR. JAMES,
25 IF YOU WILL GET IN LINE AS WELL. THANK YOU. YOUR NAME,

1 PLEASE.

2 THE JUROR: EMANUAL VELASCO.

3 THE COURT: MR. VELASCO, IF YOU WILL GET IN LINE AS
4 WELL. JUROR NO. 127. YOUR NAME, PLEASE.

5 THE JUROR: VANANDRA HARDY.

6 THE COURT: I'M SORRY, I COULDN'T HEAR THAT LAST NAME.

7 THE JUROR: MS. HARDY.

8 THE COURT: NO. 51. COUNSEL, IF YOU WILL APPROACH,
9 PLEASE.

10 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
11 HEARING OF THE JURY PANEL.)

12 THE COURT: MR. MOBLEY, IF YOU WILL COME FORWARD,
13 PLEASE, FIRST OF ALL. WERE YOU OR A FAMILY MEMBER?

14 MR. MOBLEY: I WAS.

15 THE COURT: WHAT WAS YOUR INVOLVEMENT?

16 MR. MOBLEY: A GUN WAS POINTED TOWARDS ME.

17 THE COURT: A GUN WAS POINTED TOWARDS YOU. YOU WERE
18 THE VICTIM IN THAT CASE.

19 MR. MOBLEY: YES, SIR.

20 THE COURT: HOW LONG AGO DID IT HAPPEN?

21 MR. MOBLEY: ABOUT 6 YEARS AGO, WALKING DOWN THE
22 STREET.

23 THE COURT: HERE IN SUMTER?

24 MR. MOBLEY: YES, SIR.

25 THE COURT: WAS ANYONE EVER CAUGHT AND ACCUSED:

1 MR. MOBLEY: THEY WERE CAUGHT AND IT WAS DROPPED,
2 DISMISSED.

3 THE COURT: DID THE SOLICITOR'S OFFICE PROSECUTE THAT
4 CASE?

5 MR. MOBLEY: YES, SIR.

6 THE COURT: AND WHAT WAS THE DEFENDANT'S NAME? DO YOU
7 REMEMBER?

8 THE COURT: I DON'T.

9 THE COURT: OKAY, IF YOU DON'T REMEMBER.

10 THE COURT: WOULD THAT INVOLVEMENT PREVENT YOU FROM
11 SERVING AS A JUROR IN THIS CASE?

12 MR. MOBLEY: NO, SIR.

13 THE COURT: YOU THINK YOU COULD BE A FAIR AND
14 IMPARTIAL JUROR IN THE TRIAL OF THIS CASE?

15 MR. MOBLEY: YES, SIR.

16 THE COURT: YOU COULD DO THAT?

17 MR. MOBLEY: YES, SIR.

18 THE COURT: THANK YOU. MS. ATKINSON, STAND RIGHT THERE
19 AND SPEAK IN HERE. WAS IT YOU OR A FAMILY MEMBER INVOLVED?

20 MS. ATKINSON: ME.

21 THE COURT: WHAT WAS YOUR INVOLVEMENT?

22 MS. ATKINSON: I WAS ROBBED AT GUNPOINT 3 TIMES AND
23 SHOT AT.

24 THE COURT: ROBBED. WHERE DID THAT HAPPEN?

25 MS. ATKINSON: LAS VEGAS, NEVADA.

1 THE COURT: IT HAPPENED THERE AND NOT IN SUMTER. HOW
2 LONG AGO THAT HAPPEN?

3 MS ATKINSON: 10 YEARS AGO.

4 THE COURT: 10 YEARS AGO. DID IT HAPPEN IN CLOSE
5 PROXIMITY TO EACH OTHER?

6 MS. ATKINSON: WITHIN 6 MONTHS.

7 THE COURT: HOW LONG DID YOU STAY IN LAS VEGAS AFTER
8 THAT?

9 MS. ATKINSON: THE LAST NIGHT I GOT ROBBED.

10 THE COURT: HAVE YOU HAD BETTER LUCK SINCE YOU'VE BEEN
11 HERE?

12 MS. ATKINSON: I HAVE.

13 THE COURT: DID THEY PROSECUTE ANYONE IN THOSE CASES?

14 MS. ATKINSON: NO, SIR.

15 THE COURT: MS. ATKINSON, WOULD YOU ABLE TO BE A FAIR
16 AND IMPARTIAL JUROR IF YOU WERE ASKED TO SERVE AS A JUROR IN
17 THIS CASE?

18 MS. ATKINSON: YES.

19 THE COURT: YOU WOULD BE ABLE TO SIT HERE IN THE
20 COURTROOM WITHOUT REGARD TO THOSE THINGS?

21 MS. ATKINSON: YES, SIR.

22 THE COURT: WOULD YOU DO THAT?

23 MS. ATKINSON: YEAH, UH-HUH. (AFFIRMATIVE.)

24 THE COURT: MS. DORITY, FIRST OF ALL, WAS IT YOU OR A
25 FAMILY MEMBER WHO WAS INVOLVED?

1 MS. DORITY: IT HAS BEEN BOTH.

2 THE COURT: WELL START WITH, WHAT WAS THE INVOLVEMENT?

3 MS. DORITY: I WAS VIOLENTLY RAPED.

4 THE COURT: HOW LONG DID THAT HAPPEN?

5 MS. DORITY: 66.

6 THE COURT: WHERE DID THAT HAPPEN?

7 MS. DORITY: SUMTER COUNTY.

8 THE COURT: WHO WAS THE DEFENDANT IN THAT CASE? WAS IT
9 TRIED AND PROSECUTED?

10 MS. DORITY: NO, SIR.

11 THE COURT: IT WAS NEVER PROSECUTED?

12 MS. DORITY: NO.

13 THE COURT: AND TELL ME ABOUT WHO ELSE? WAS A FAMILY
14 MEMBER INVOLVED.

15 MS. DORITY: MY FATHER WAS PROSECUTED.

16 THE COURT: YOUR FATHER? WHAT IS YOUR FATHER'S NAME?

17 MS. DORITY: LEE PACK.

18 THE COURT: WHAT WAS HE PROSECUTED FOR?

19 MS. DORITY: CHILD MOLESTATION AND SERVED TIME.

20 THE COURT: WOULD EITHER OF THOSE EVENTS OR BOTH OF
21 THEM TOGETHER MAKE IT DIFFICULT FOR YOU TO SERVE AS A FAIR
22 AND IMPARTIAL JUROR IN THE TRIAL OF THIS CASE?

23 MS. DORITY: YES, SIR.

24 THE COURT: WE WILL STAND YOU ASIDE AS A JUROR IN THIS
25 CASE. JUROR NO. 36 WILL BE STOOD ASIDE IN THIS CASE.

1 THE COURT: MR. FORD.
2 MR FORD: WAS IT YOU OR A FAMILY MEMBER INVOLVED?
3 MR. FORD: A FAMILY MEMBER, MY BROTHER.
4 THE COURT: YOUR BROTHER?
5 MR. FORD: YES, SIR.
6 THE COURT: WHAT WAS THAT INVOLVEMENT?
7 MR. FORD: WELL WHEN HE WAS 16 HE WAS CHARGED WITH
8 ATTEMPTED MURDER AND ARMED ROBBERY. INTENT TO KILL.
9 THE COURT: WAS HE PROSECUTED FOR THOSE CRIMES?
10 MR. FORD: YES, SIR.
11 THE COURT: WHAT WAS THE OUTCOME OF THAT? WAS HE
12 CONVICTED?
13 MS. FORD: YES, SIR.
14 THE COURT: AND HOW LONG AGO WAS THAT?
15 MR FORD: THAT WAS ABOUT 11 YEARS AGO. AND ALSO MY
16 BROTHER WAS KILLED IN GEORGIA ON AUGUST 8TH.
17 THE COURT: ANOTHER BROTHER, A DIFFERENT BROTHER?
18 MR. FORD: YES.
19 THE COURT: THAT WAS AUGUST 8TH OF THIS YEAR?
20 MR. FORD: YES.
21 THE COURT: HE WAS ROBBED THREE TIMES, AND MY BROTHER
22 WAS KILLED AS A RESULT OF A CRIME. A HOMICIDE.
23 THE COURT: HAS ANYBODY BEEN CAUGHT AND PROSECUTED AS A
24 RESULT OF THAT?
25 MR. FORD: NO, SIR.

1 THE COURT: I AM SORRY ABOUT THAT, MR. FORD. WOULD
2 EITHER OF THOSE SITUATIONS OR BOTH OF THEM MAKE IT DIFFICULT
3 FOR YOU TO SERVE AS A JUROR IN THIS CASE?
4 MR. FORD: NO, SIR.
5 THE COURT: COULD YOU SET THAT ASIDE AND DECIDE THIS
6 CASE BASED ON WHAT YOU HEAR IN COURT?
7 MR. FORD: YES, SIR.
8 THE COURT: WOULD YOU DO THAT?
9 MR. FORD: YES, SIR.
10 THE COURT: YOU MAY HAVE A SEAT. YOUR NAME, PLEASE.
11 THE JUROR: MR. DAVIS.
12 THE COURT: MR. DAVIS, YOUR JUROR NO?
13 MR. DAVIS: 31.
14 THE COURT: WAS IT YOU OR A FAMILY MEMBER THAT WAS
15 INVOLVED?
16 MR. DAVIS: A FAMILY MEMBER.
17 THE COURT: WHAT RELATION IS THAT TO YOU?
18 MR. DAVIS: MY FATHER.
19 THE COURT: YOUR FATHER. WHAT WAS YOUR FATHER'S
20 INVOLVEMENT? WHAT WAS THE CRIME?
21 MR. DAVIS: IT WAS SELF-DEFENSE, AND IT WAS AT HIS
22 HOUSE. SOMEONE TRIED TO KILL, AND HE DID WOUND UP -- HE
23 SHOT AND KILLED HIM. WHEN HE HAD THE TRIAL IT WAS SELF
24 DEFENSE.
25 THE COURT: AND HOW LONG AGO DID THAT HAPPEN?

1 MR. DAVIS: PROBABLY 15 OR 20 YEARS AGO.

2 THE COURT: WAS THAT HERE IN SUMTER COUNTY?

3 MR. DAVIS: YES, SIR.

4 THE COURT: AND THAT CASE WAS PROSECUTED BY THE
5 SOLICITOR'S OFFICE HERE IN SUMTER. WHAT DID THEY FIND AT
6 TRIAL, DID THEY FIND SELF DEFENSE?

7 MR. DAVIS: IT DIDN'T GO TO TRIAL.

8 THE COURT: SO THE SOLICITOR IN EFFECT AGREED WITHOUT A
9 JURY.

10 MR. DAVIS: YES, SIR.

11 THE COURT: WOULD THAT INVOLVEMENT WITH YOUR FATHER
12 MAKE IT DIFFICULT FOR YOU TO BE A FAIR AND IMPARTIAL JUROR
13 IN THIS TRIAL? IF YOU WERE ASKED TO SERVE, WOULD YOU BE A
14 FAIR JUROR? WOULD YOU HAVE ANY TROUBLE SETTING ASIDE YOUR
15 FATHER'S INVOLVEMENT AND DECIDE THIS CASE BASED ON WHAT YOU
16 HEAR IN THIS COURTROOM?

17 MR. DAVIS: NO, IT'S NOT A PROBLEM.

18 THE COURT: AND YOU COULD SERVE. THANK YOU. MR.
19 JAMES, SPEAK SO WE CAN HEAR YOU. WAS IT YOU OR A FAMILY
20 MEMBER?

21 MR. JAMES: A FAMILY MEMBER.

22 THE COURT: WHAT RELATION?

23 MR. JAMES: IT WAS MY SON.

24 THE COURT: WHAT WAS YOUR SON'S NAME?

25 MR. JAMES: MARROW VINCENT JAMES.

1 THE COURT: WHAT WAS HIS INVOLVEMENT?

2 MR. JAMES: HE WAS CHARGED WITH LYNCHING, MURDER AND A
3 COUPLE OF OTHER CRIMES.

4 THE COURT: WAS THAT HERE IN SUMTER COUNTY?

5 MR. JAMES: SUMTER COUNTY.

6 THE COURT: HOW LONG AGO WAS THAT?

7 MR. JAMES: ABOUT 8 YEARS AGO NOW.

8 THE COURT: WAS HE PROSECUTED?

9 MR. JAMES: YES.

10 THE COURT: WAS HE CONVICTED?

11 MR. JAMES: NOT GUILTY.

12 THE COURT: WOULD YOUR SON'S INVOLVEMENT IN THAT REGARD
13 MAKE IT DIFFICULT FOR YOU TO BE A FAIR AND IMPARTIAL JUROR
14 ON A CASE WHICH INVOLVED THE SAME TYPE OF CHARGE AS YOUR
15 SON?

16 MR. JAMES: NO, I DON'T THINK SO.

17 THE COURT: WOULD YOU BE ABLE TO SET ASIDE YOUR
18 EXPERIENCE AND DECIDE THIS CASE BASED ON WHAT YOU HEAR IN
19 THIS COURT ON THIS CASE, AND NOT WHAT HAPPENED TO YOUR SON?

20 MR. JAMES: YES.

21 THE COURT: AND WOULD YOU DO THAT?

22 MR. JAMES: YES, SIR.

23 THE COURT: THANK YOU, MR. JAMES. YOU ARE?

24 THE JUROR: EMANUAL VELASCO.

25 THE COURT: JUROR NO. 127. SPEAK IN HEAR, MR.

1 VELASCO, SO WE CAN HEAR YOU. MR. VELASCO, WAS IT YOU OR A
2 FAMILY MEMBER?

3 MR. VELASCO: A FAMILY MEMBER.

4 THE COURT: AND WHAT RELATION?

5 MR. VELASCO: MY FIRST COUSIN.

6 THE COURT: AND WHAT WAS HIS INVOLVEMENT?

7 MR. VELASCO: IT WAS JUST RECENT. AND IT WAS A PIZZA
8 DELIVERY.

9 THE COURT: AND THAT'S YOUR FIRST COUSIN?

10 MR. VELASCO: YES, SIR.

11 THE COURT: THAT HAPPENED JUST A FEW DAYS AGO?

12 MR. VELASCO: I THINK LAST WEEK.

13 THE COURT: HAS SOMEBODY BEEN CAUGHT?

14 MR. VELASCO: THEY CAUGHT HIM.

15 THE COURT: AND SO HE HAS NOT YET BEEN PROSECUTED. AND
16 HE WAS ARRESTED.

17 MR. VELASCO: YES, SIR.

18 THE COURT: WOULD THAT TROUBLE WITH YOUR COUSIN IN THAT
19 TYPE OF CRIME MAKE IT DIFFICULT FOR YOU TO BE A FAIR AND
20 IMPARTIAL JUROR IN THIS TYPE OF CASE IF YOU WERE ASKED TO
21 SERVE ON A JURY?

22 MR. VELASCO: PROBABLY. I SEEN WHAT HAPPENED TO MY
23 COUSIN AND IT MIGHT HAVE AN EFFECT ON ME.

24 THE COURT: WE CAN HONOR THAT AND STAND YOU ASIDE AS A
25 JUROR IN THIS CASE. JUROR NO. 127 WILL BE EXCUSED. EXCUSED

1 FOR CAUSE. AND YOUR NAME, MA'AM.

2 THE JUROR: MS. HARDY.

3 THE COURT: AND, MS. HARDY, WAS THAT INVOLVEMENT WITH
4 YOUR OR A FAMILY MEMBER?

5 MS. HARDY: A FAMILY MEMBER.

6 THE COURT: WHAT WAS THE RELATION TO YOU?

7 MS. HARDY: MY FIANCEE.

8 THE COURT: YOUR FIANCEE. AND WHAT WAS HIS NAME?

9 MS. HARDY: WILLIE SMITH.

10 THE COURT: WILLIE SMITH. WHAT WAS HIS INVOLVEMENT?
11 WHAT WAS THE PROBLEM?

12 MS. HARDY: WELL SOMEONE SHOT OUR CAR. AND I CAN'T
13 REMEMBER WHETHER HE GOT IT DOWN. I KNOW IT WAS INTENT TO
14 KILL.

15 THE COURT: SOMEONE HAS BEEN CAUGHT BUT NOT PROSECUTED
16 FOR THAT?

17 MS. HARDY: YES, SIR.

18 THE COURT: BUT YOU THINK HE HASN'T BEEN PROSECUTED
19 YET, BUT HE'S BEEN CAUGHT.

20 MS. HARDY: YES, SIR.

21 THE COURT: WERE YOU IN THE CAR WITH HIM?

22 MS. HARDY: NO, SIR.

23 THE COURT: HAVE YOU BEEN ARRESTED OR CHARGED WITH
24 ANYTHING YOURSELF?

25 MS. HARDY: YES, SIR.

1 THE COURT: WHEN WAS THAT?

2 MS. HARDY: I'VE GOT A GENERAL SESSIONS CASE COMING UP
3 FOR JANUARY.

4 THE COURT: AND WHAT WAS THAT CASE?

5 MS. HARDY: I THINK FELONY.

6 THE COURT: WHAT WAS THAT INVOLVEMENT FOR? WHAT WERE
7 YOU ACCUSED OF?

8 MS. HARDY: INVOLVING A STATEMENT, POLICE STATEMENT.

9 THE COURT: A POLICE STATEMENT. AND THAT WAS A
10 STATEMENT YOU GIVE LATER FOR SOMETHING?

11 MS. HARDY: UH-HUH. (AFFIRMATIVE.)

12 THE COURT: MS. HARDY, I AM GOING TO STAND YOU ASIDE AS
13 A JUROR IN THIS PARTICULAR CASE BECAUSE OF THAT INVOLVEMENT,
14 AND BECAUSE OF THE FACT THAT YOU HAVE A CASE, PERSONAL CASE,
15 YOU DON'T HAVE TO SERVE. THANK YOU. JUROR NO. 51 WILL BE
16 STOOD ASIDE.

17 THE COURT: IS THERE ANY ARGUMENT YOU HAVE IN THAT
18 REGARD, MS. FERRARI?

19 MS. FERRARI: NONE, YOUR HONOR.

20 THE COURT: LADIES AND GENTLEMEN, THANK YOU VERY MUCH
21 FOR YOUR PATIENCE AS WE HAVE WORKED THROUGH THAT SOMEWHAT
22 TIME CONSUMING BUT VERY NECESSARY PART OF THIS QUALIFICATION
23 PROCESS. LADIES AND GENTLEMEN, I NOW NEED TO KNOW IF ANY OF
24 YOU HAVE FORMED OR EXPRESSED ANY OPINION AS TO THE GUILT OR
25 THE INNOCENCE OF THE DEFENDANT MR. STUCKEY IN THIS CASE. IF

1 SO, PLEASE STAND.

2 (THEREUPON, NO RESPONSE.)

3 THE COURT: ARE ANY OF YOU AWARE OF, THAT IS TO SAY,
4 CONSCIOUS OF ANY BIAS OR PREJUDICE THAT YOU MIGHT HAVE FOR
5 OR AGAINST STATE OR FOR OR AGAINST THE DEFENDANT? IF YOU
6 ARE SO AWARE, WOULD PLEASE STAND?

7 (THEREUPON, NO RESPONSE.)

8 THE COURT: DO ANY OF YOU KNOW THEN OF ANY REASON OF
9 ANY KIND WHATSOEVER THAT WOULD KEEP YOU FROM BOTH GIVING
10 BOTH SIDES A FAIR AND IMPARTIAL TRIAL IN THIS CASE? IF YOU
11 KNOW OF ANY SUCH REASON, WOULD YOU PLEASE STAND?

12 (THEREUPON, NO RESPONSE.)

13 THE COURT: ANY FURTHER QUESTIONS FROM THE STATE, MR.
14 CONNER?

15 MR. CONNER: NONE FROM US, YOUR HONOR.

16 THE COURT: MS. FERRARI, FROM THE DEFENDANT?

17 MS. FERRARI: NO, SIR, YOUR HONOR.

18 THE COURT: THANK YOU. ALL RIGHT, MADAM CLERK -- MR.
19 CLERK, YOU CAN GIVE US A JURY. THE STRIKES WILL BE 5 FOR
20 THE STATE; 10 FOR THE DEFENDANT. WE WILL PICK ONE
21 ALTERNATE. STRIKES WILL BE 1 AND 2 FOR THE ALTERNATE.
22 LADIES AND GENTLEMEN, AS YOUR NAMES ARE CALLED, PLEASE
23 LISTEN TO THE INSTRUCTIONS GIVEN TO BY THE CLERK AND FOLLOW
24 THOSE INSTRUCTIONS THROUGHOUT THE COURSE OF THIS PROCESS.
25 THANK YOU.

1 THE CLERK: JUROR NO. 101 ROBERT ROGERS (M-W) ACCEPTED.
2 JUROR NO. 133 LARRY WESTON (M-B) DEFENSE STRUCK. JUROR NO.
3 95 RUSSELL PENTZ (M-W) DEFENSE STRUCK. JUROR NO. 47 DENISE
4 FENTERS (F-W) DEFENSE STRUCK. JUROR NO. 97 KENNETH PURVIS
5 (M-W) ACCEPTED. JUROR NO. 20 KAREN BURTON (F-W) DEFENSE
6 STRUCK. JUROR NO. 29 CHRISTIAN CRIBB (W-M) ACCEPTED. JUROR
7 NO. 110 PATRICIA SHIVELY (F-W) DEFENSE STRUCK. JUROR NO.
8 135 ROSA LEE WILEY (F-B) ACCEPTED. JUROR NO. 91 HENRY OAKS
9 (M-B) ACCEPTED. 155 RICHARD MCKENZIE (M-W) DEFENSE STRUCK.
10 JUROR NO. 13 MARY BRANCH (F-B) ACCEPTED. JUROR NO. 2 MABLE
11 ADAMS (F-B) ACCEPTED. JUROR NO. 35 ROBERT DEWITT (M-W)
12 DEFENSE STRUCK. JUROR NO. 12 BRYON BENDENBAUGH (M-W)
13 ACCEPTED. JUROR NO. 634 GEORGE JAMES (M-B) STATE STRUCK.
14 JUROR NO. 74 MELISSA JEFFERSON (F-B) ACCEPTED. JUROR NO.
15 159 NATASHA FULLARD (F-B) ACCEPTED. JUROR NO. 1 ALEXIS
16 ADAMS (F-W) ACCEPTED. JUROR NO. 153 LANNA BETHEA (F-B)
17 ACCEPTED.

18 THE COURT: ONE ALTERNATE, STRIKES WILL BE 1 FOR THE
19 STATE AND 2 FOR THE DEFENSE.

20 THE CLERK: JUROR NO. 138 JACKIE WILLIAMS (M-B) STATE
21 STRUCK. 80 ELLA MCKNIGHT (F-B) ACCEPTED.

22 THE COURT: MR. CONNER, ARE THERE ANY MATTERS OF LAW
23 REGARDING THE JURY SELECTION PROCESS FROM THE STATE?

24 MR. CONNER: NONE FROM US, YOUR HONOR.

25 A. MS. FERRARI, FROM THE DEFENDANT?

1 MS. FERRARI: NO, SIR, YOUR HONOR.

2 THE COURT: THANK YOU. NOW, LADIES AND GENTLEMEN,
3 THOSE OF YOU WHO WERE SELECTED AS JURORS FOR THE TRIAL OF
4 THIS CASE, WE ARE GOING TO START THIS TRIAL THIS AFTERNOON
5 AT 2:30, IS THAT RIGHT GENTLEMEN?

6 MR. CONNER: THAT WOULD BE GOOD. CAN WE APPROACH A
7 MINUTE, YOUR HONOR?

8 (THEREUPON, THE ATTORNEYS APPROACH THE BENCH AND CONFER
9 WITH JUDGE.)

10 THE COURT: THANK YOU, LADIES AND GENTLEMEN, WE WERE
11 JUST TALKING ABOUT A SCHEDULING MATTER. 2:30 WILL BE THE
12 TIME THAT WE WILL START THIS TRIAL THIS AFTERNOON. WE HAVE
13 GOT SOME OTHER MATTERS THAT WE NEED TO DO IN THIS CASE TO
14 GET IT READY TO PRESENT TO YOU AT THAT TIME. NOW WHEN YOU
15 COME BACK AT 2:30 THIS AFTERNOON, YOU WILL COME BACK THE
16 BACK WAY. IN JUST A MOMENT WHEN YOU LEAVE HERE, YOU WILL
17 FOLLOW MR. HOLMES AND HE WILL SHOW YOU THE JURY ROOM THAT
18 YOU WILL REPORT TO ACROSS THE HALL WHEN YOU COME BACK AT
19 2:30. YOU WILL REPORT DIRECTLY TO THAT JURY ROOM. YOU
20 WON'T COME BACK INTO THE COURTROOM. AND AS I'VE SAID,
21 THERE WILL BE A BACK WAY THAT YOU WILL COME UP AND ENTER AND
22 LEAVE THE COURTROOM DURING THE BALANCE OR SERVICE AS JURORS
23 IN THIS TRIAL.

24 BEFORE WE START THE TRIAL AT 2:30 THIS AFTERNOON, I
25 WILL GIVE YOU SOME INSTRUCTIONS ABOUT YOUR SERVICE AS JURORS

1 AND SOME OF THE THINGS THAT YOU CAN AND CAN NOT DO WHILE
2 YOU'RE SERVING AS JURORS IN THIS CASE. BUT BEFORE THAT TIME
3 JUST TO MAKE SURE YOU DON'T DO ANY OF THESE THINGS YOU'RE
4 NOT SUPPOSED TO DO BETWEEN NOW AND THEN, BEFORE I GET A
5 CHANCE TO TALK TO YOU MORE COMPLETELY, LET ME TELL THAT YOU
6 ARE NOT ALLOWED TO DISCUSS THIS CASE OR ANY ASPECT OR ISSUE
7 OF THIS CASE AT ANY TIME DURING THIS TRIAL. NOW I KNOW THAT
8 YOU DON'T KNOW ANYTHING ABOUT THIS CASE ITSELF, BECAUSE I
9 ASKED YOU, AND YOU TOLD ME YOU DIDN'T KNOW ANYTHING ABOUT
10 THIS CASE. BUT YOU DO UNDERSTAND WHAT THE CHARGES ARE IN
11 THIS CASE. SO YOU MIGHT UNDERSTAND WHAT SOME OF THE ISSUES
12 MIGHT BE IN THE TRIAL. AND SO IT'S IMPROPER FOR YOU TO
13 DISCUSS ANY OF THOSE THINGS AMONG YOURSELVES AT ANY TIME
14 DURING THIS TRIAL.

15 AND I'LL TELL YOU WHY THAT'S SO BEFORE WE START THE
16 TRIAL THIS AFTERNOON. AND CERTAINLY YOU CAN'T LET ANYBODY
17 ELSE TALK WITH YOU ABOUT THIS CASE. IF SOMEONE SHOULD ASK
18 YOU ABOUT THIS CASE OR APPROACH YOU AND TRY TO TALK WITH YOU
19 ABOUT THIS CASE, TELL THEM YOU ARE A JUROR IN THIS CASE, AND
20 I TOLD YOU YOU CAN'T TALK ABOUT THIS CASE. AND I AM PRETTY
21 SURE THAT WILL END THAT DISCUSSION AT THAT TIME. BUT IF IT
22 DOES NOT, AND IF FOR SOME REASON THEY TRY TO CONTINUE THEIR
23 EFFORTS TO TALK WITH YOU AFTER YOU HAVE MADE THAT PLAIN TO
24 THEM, PLEASE FIND OUT WHO THEY ARE, AND LET ME KNOW WHO THEY
25 ARE WHEN YOU GET BACK TO COURT THIS AFTERNOON AND WE WILL

1 TAKE CARE OF THAT MATTER FOR YOU.

2 YOU ARE NOT TO TRY TO FIND OUT ANYTHING ON YOUR OWN
3 ABOUT THIS CASE OUTSIDE THIS COURTROOM. I DOUBT THAT YOU
4 WOULD WANT TO, BUT YOU CAN'T EXPOSE YOURSELF TO ANY
5 INFORMATION ABOUT THIS CASE FROM ANY OTHER SOURCE OUTSIDE
6 THIS COURTROOM WHILE YOU ARE SERVING AS JURORS IN THIS CASE.

7 I WANTED TO TELL YOU THOSE THINGS BETWEEN NOW AND THEN
8 BECAUSE BETWEEN NOW AND 2:30 YOU MIGHT WANT TO TALK WITH
9 SOMEBODY IN THE JURY ROOM WHEN YOU GET BACK AND DISCUSS SOME
10 OF THE CHARGES THAT ARE IN THIS TRIAL AND DISCUSS SOME
11 ISSUES THAT MIGHT COME UP, YOU CAN'T DO THAT. AND AS I SAY,
12 I'LL MAKE IT PLAINER TO YOU BEFORE WE START THE TRIAL THIS
13 AFTERNOON. ENJOY YOUR PROLONGED LUNCH, LADIES AND
14 GENTLEMEN. NORMALLY WE START AT 9:30 IN THE MORNING
15 AND TAKE A LUNCH AROUND 12:30 OR 1 O'CLOCK WHENEVER WE GET
16 TO A GOOD STOPPING PLACE. WE TAKE AN HOUR AND 15 MINUTES
17 FOR LUNCH AND COME BACK IN THE AFTERNOON TO COMPLETE THE
18 AFTERNOON'S WORK STOPPING AROUND 5 OR 5:30 IN THE AFTERNOON.
19 BUT I AM HAVING TO LET YOU GO A LITTLE BIT EARLY TODAY
20 BECAUSE WE HAVE GOT SOME OTHER MATTERS THAT WE HAVE GOT TO
21 TAKE CARE OF AS I'VE SAID, BEFORE WE CAN START THIS CASE AND
22 GET IT READY TO PRESENT TO YOU. ENJOY YOUR LUNCH. I WILL
23 SEE YOU BACK AT 2:30. FOLLOW MR. HOLMES ACROSS THE HALL,
24 AND HE WILL SHOW YOU WHERE YOU ARE TO COME BACK, PLEASE.

25 (THEREUPON, THE JURY IS DISMISSED FOR LUNCH AT 12:20.)

1 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
2 PRESENCE OF THE JURY.)

3 THE COURT: MADAM REPORTER, WE HAVE AN IDENTIFICATION
4 HEARING THAT WE WILL CONVENE IN THIS CASE AT 2 O'CLOCK. IS
5 THAT ALL RIGHT WITH EVERYBODY? SO WE WILL REPORT BACK AT 2
6 O'CLOCK. OTHER THAN THAT, ARE THERE ANY OTHER PRETRIAL
7 MOTIONS, MS. FERRARI, FROM THE DEFENSE? I THINK YOU
8 INDICATED A DESIRE TO RENEW BRADY AND RULE 5 MOTIONS?

9 MS. FERRARI: YES, YOUR HONOR, I DO RENEW THOSE. I DO
10 NOT HAVE CRIMINAL RECORDS FOR ANY OF THE POTENTIAL
11 WITNESSES. I DO NOT HAVE STATEMENTS FROM ANY OF THE
12 POTENTIAL WITNESSES. AND I AM ENTITLED TO THOSE.

13 THE COURT: WHAT SAYS THE STATE IN THAT REGARD, MR.
14 CONNER?

15 MR. CONNER: YOUR HONOR, THE ONLY -- WE GAVE HER A COPY
16 OF THE POLICE REPORT WHICH SUMMARIZES SOME OF THE TESTIMONY,
17 OF COURSE. AND THE ONLY PERSON THAT I HAVE GOT A WRITTEN
18 STATEMENT FROM IS KENDELL NELSON. AND MY RULE 5 DISCOVERY
19 RESPONSE INDICATED THAT WE PROVIDED HER WITH THAT. AND I
20 BELIEVE THAT'S ALL WE HAVE.

21 THE COURT: DO YOU HAVE A STATEMENT FROM MR. NELSON?

22 MS. FERRARI: YES, SIR, YOUR HONOR. SO HE IS TELLING
23 ME THAT NONE OF HIS POTENTIAL WITNESSES HAVE CRIMINAL
24 RECORDS?

25 MR. CONNER: THAT'S NOT WHAT I SAID. I ADDRESSED THE

1 STATEMENTS. NOW I HAVE A, TWO POSSIBLE WITNESSES, MR. BUSH
2 AND MR. NELSON WHO HAVE CRIMINAL RECORDS. AND I HAVE GOT
3 COPIES OF THOSE THAT I WILL GIVE YOU.

4 THE COURT: OKAY, ALL RIGHT.

5 MR. CONNER: IF I DISCOVER THAT ANY OF THE REST OF THEM
6 HAVE RECORDS, I WILL PROVIDE YOU WITH THAT.

7 THE COURT: CERTAINLY BEFORE THEY TESTIFY, SHE IS
8 ENTITLED TO KNOW THAT. AS A MATTER OF FACT, WE ALL NEED TO
9 KNOW THAT SO THAT WE CAN CLEAR UP ANY RECORD THAT NEEDS TO
10 BE CLEARED UP FOR THE PURPOSES OF ADMISSIBILITY OF ANY OF
11 THOSE OF THINGS OR FOR IMPEACHMENT PURPOSES DURING THE
12 EXAMINATION -- CROSS EXAMINATION OF THE WITNESS.

13 MS. FERRARI, ANYTHING FURTHER THEN FROM YOUR
14 PERSPECTIVE? YOU WANT TO GET THE CRIMINAL RECORDS OF MR.
15 BUSH AND MR. NELSON. AND ANY OTHER CRIMINAL RECORD THAT
16 MIGHT BE MADE AVAILABLE TO THE STATE BEFORE THOSE WITNESSES
17 TESTIFY.

18 MS. FERRARI: YES, SIR.

19 THE COURT: DOES THAT SATISFY ALL THE DISCOVERY
20 PROBLEMS THAT YOU HAVE? CONCERNS YOU HAD?

21 MS. FERRARI: YES, SIR.

22 THE COURT: THANK YOU. OKAY, IN THIS CASE, LADIES AND
23 GENTLEMEN, WE WILL RECESS UNTIL 2 O'CLOCK. THE JURY IS
24 COMING BACK AT 2:30. WE WILL BE A POSITION AT THAT TIME AT
25 2 O'CLOCK THAT IS, TO CONDUCT THE NEIL V. VIGGERS OR THE

1 IDENTIFICATION HEARING.

2 MR. CONNER: MAY IT PLEASE THE COURT, ONE OTHER MATTER
3 IS, THIS DEFENDANT HAS BEEN OUT ON BOND. HE WAS LATE
4 GETTING HERE TODAY. IN FACT, WE DIDN'T THINK HE WAS GOING
5 TO APPEAR. AND HE CAME IN AT THE LAST MINUTE. ALSO HIS
6 BONDING COMPANY IS NO LONGER IN BUSINESS. HE WAS BONDED OUT
7 BY AN OUTFIT BY THE NAME OF GREEN BONDING. THEY ARE NO
8 LONGER OPERABLE. I WOULD REQUEST THAT HIS BOND BE REVOKED
9 AND HE BE PLACED IN CUSTODY UNTIL THE CONCLUSION OF THE
10 TRIAL.

11 THE COURT: MS. FERRARI, WHAT SAYS THE DEFENSE?

12 MS. FERRARI: YOUR HONOR, HE IS HERE. HE WAS RUNNING
13 LATE THIS MORNING; AS SOMETIMES WE DO. HE HAS NOT HAD A
14 BENCH WARRANT ISSUED ON HIM WHILE HE'S HAD THESE CHARGES.
15 AND THE JURY HAS NOT BEEN SWORN, YOUR HONOR, SO TECHNICALLY
16 THE TRIAL HASN'T STARTED.

17 THE COURT: THE ONLY CONCERN I HAVE IS THE FACT THAT
18 THERE IS NO BOND AT THIS TIME, BECAUSE THE BONDING COMPANY
19 IS OUT OF BUSINESS. GRANTED THE OTHER CONCERNS I THINK WE
20 COULD ADDRESS IN SOME WAY. IN EFFECT, THE BOND APPARENTLY
21 IS INVALID. WHO IS THE BONDING COMPANY?

22 MR. CONNER: GREEN BAIL BONDING.

23 MS. MATHIS: YES, SIR. GREEN'S BAIL BONDING COMPANY,
24 YOUR HONOR.

25 THE COURT: AND THEY ARE OUT OF BUSINESS?

1 MS. MATHIS: YES, SIR, THEY ARE.

2 THE COURT: MS. FERRARI, I AM GOING TO REQUIRE THAT HE
3 BE TAKEN IN TO CUSTODY UNTIL SUCH TIME AS SOME OTHER
4 SATISFACTORY BONDING ARRANGEMENTS CAN BE MADE. IF THEY CAN
5 BE MADE, THEN I WILL CONSIDER RELEASING HIM DURING THE TRIAL
6 OF THIS CASE. BUT UNTIL SUCH TIME AS THAT'S BEEN DONE, I
7 AM GOING TO REQUIRE THAT HE STAY IN CUSTODY.

8 MS. FERRARI: YES, YOUR HONOR.

9 THE COURT: FOLKS, WE WILL BE IN RECESS IN THIS CASE
10 UNTIL 2 O'CLOCK THIS AFTERNOON, AND THEN I BE GLAD TO DEAL
11 WITH WHATEVER PLEAS WE HAVE.

12 (THEREUPON, THE COURT TAKES A LUNCH RECESS.)

13 THE COURT: ALL RIGHT, MADAM REPORTER, WE WILL BEGIN
14 WITH THE IDENTIFICATION HEARING. SOLICITOR, YOU CAN CALL
15 YOUR FIRST WITNESS.

16 MR. CONNER: MAY IT PLEASE THE COURT, I WOULD CALL
17 JAMES TURNER.

18 THE COURT: MR. TURNER, COME FORWARD, PLEASE, SIR, AND
19 BE SWORN.

20 JAMES TURNER, BEING FIRST DULY SWORN,
21 TESTIFIED AS FOLLOWS:

22 THE CLERK: STATE YOUR FULL NAME AND SPELL YOUR LAST
23 NAME FOR THE RECORD, PLEASE, SIR.

24 A. JAMES R. TURNER. T-U-R-N-E-R.

25 DIRECT EXAMINATION BY MR. CONNER:

JAMES TURNER-DIRECT BY CONNER

31

1 Q. MR. TURNER, WHERE ARE YOU EMPLOYED?

2 A. WITH THE SUMTER COUNTY SHERIFF'S OFFICE.

3 Q. IN WHAT CAPACITY?

4 A. I'M AN INVESTIGATOR IN THE CRIMINAL INVESTIGATION
5 DIVISION.

6 Q. AND HOW LONG HAVE YOU BEEN DOING THAT KIND OF WORK?

7 A. A LITTLE OVER 13 YEARS.

8 Q. AND DID YOU BECOME INVOLVED IN THE TRIAL OF THE
9 CASE THAT WE'RE INVOLVED IN NOW? DID YOU BECOME INVOLVED AS
10 THE INVESTIGATOR BACK IN OCTOBER OF 2000?

11 A. YES, THE CASE WAS ASSIGNED TO ME.

12 Q. AND IN THAT REGARD, DID YOU HAVE AN OPPORTUNITY TO
13 PREPARE SOME PHOTOGRAPHIC DISPLAYS?

14 A. YES, SIR, I DID.

15 Q. DID YOU ALSO HAVE IS AN OPPORTUNITY TO TALK WITH
16 THE VICTIM IN THE CASE ONE DONNELL OR DARNELL ROBINSON?

17 A. I DID.

18 Q. AND I SHOW YOU HERE FIRST OF ALL, IN THIS EXHIBIT.
19 CAN WE MARK THIS AS STATE'S EXHIBIT NO. 1 FOR
20 IDENTIFICATION? AND THIS ONE AS STATE'S NO. 2 FOR
21 IDENTIFICATION?

22 (PHOTOGRAPHIC LINEUPS MARKED AS STATE'S NOS. 1 AND
23 STATE'S NO. 2 FOR ID ONLY.)

24 Q. AND I SHOW YOU HERE FIRST OF ALL, STATE'S EXHIBIT
25 NO. 1 FOR IDENTIFICATION AND ASK IF YOU CAN IDENTIFY THAT.

JAMES TURNER-DIRECT BY CONNER

32

1 A. I CAN.

2 Q. AND DID -- DOES THAT DISPLAY CONTAIN THE PHOTOGRAPH
3 OF ONE DONALD BUSH?

4 A. IT DOES.

5 Q. AND DID YOU SHOW THAT PHOTO DISPLAY TO DARNELL
6 ROBINSON?

7 A. I DID.

8 Q. WHEN DID YOU SHOW THAT TO HIM?

9 A. ON OCTOBER 12TH OF 2000 AT 9:30 A.M.

10 Q. AND DID HE PICK OUT THE PHOTO OF ONE OF PEOPLE WHO
11 WAS INVOLVED IN THIS ROBBERY?

12 MS. FERRARI: YOUR HONOR, THIS IS NOT MY CLIENT. MR.
13 BUSH SHOULDN'T -- MR. BUSH'S ATTORNEY SHOULD BE HERE FOR
14 THIS CASE IF HE WANTS TO USE IT LATER IN THE TRIAL. I HAVE
15 TO OBJECT TO THIS IDENTIFICATION.

16 THE COURT: WELL, OF COURSE AT MR. BUSH'S SUBSEQUENT
17 TRIAL IN THE EVENT IT OCCURS, NATURALLY THAT WOULD HAVE TO
18 BE REDONE AT THAT POINT AND TIME. THIS IS NOT BINDING ON
19 HIM AS FAR AS FAR AS THAT'S CONCERNED. THIS IS FOR THE
20 PURPOSE I GUESS, OF JUST GOING THROUGH THE PROCESS.

21 MS. FERRARI: OKAY.

22 THE COURT: THANK YOU. SINCE HE IS NOT A PART OF THIS,
23 HE WOULD NOT BE BOUND.

24 MS. FERRARI: THANK YOU.

25 Q. DID HE SELECT THE PHOTO OF ONE DONALD BUSH AS BEING

JAMES TURNER-DIRECT BY CONNER

33

1 ONE OF THE PEOPLE WHO KIDNAPPED AND ROBBED HIM? AND OR
2 KIDNAPPED -- NOT ROBBED HIM, BUT KIDNAPPED HIM AND
3 PARTICIPATED IN THIS PARTICULAR CRIME THAT WE ARE HERE
4 TRYING HERE TODAY?

5 A. YES, SIR.

6 Q. AND I ALSO SHOW YOU THIS PHOTO DISPLAY MARKED
7 STATE'S EXHIBIT NO. 2 FOR IDENTIFICATION AND ASK YOU IF YOU
8 CAN IDENTIFY THAT.

9 A. I CAN.

10 Q. AND IS THAT A PHOTO DISPLAY THAT YOU PREPARED IN
11 THIS CASE?

12 A. YES, SIR.

13 Q. DOES IT CONTAIN THE PHOTOGRAPH OF THE DEFENDANT IN
14 THIS CASE, CASEY STUCKEY?

15 A. YES, IT DOES.

16 Q. WHICH PHOTOGRAPH IS THAT IN THE PHOTO DISPLAY?

17 A. IT WAS NO. 1.

18 Q. AND DID AND YOU SHOW THAT DARNELL ROBINSON?

19 A. I DID.

20 Q. WHEN DID YOU SHOW THAT TO MR. ROBINSON?

21 A. ON NOVEMBER 9TH OF 2000 AT 12:50 P.M.

22 Q. AND WHERE WERE YOU WHEN SHOWED HIM THESE
23 PHOTOGRAPHIC DISPLAYS?

24 A. I WAS AT THIS HOME ON HOBSON STREET.

25 Q. AND DID HE PICK OUT A PHOTO DISPLAY OF ANOTHER

1 PERSON WHO WAS INVOLVED IN THE ASSAULT AND BATTERY WITH
2 INTENT TO KILL, LYNCHING, AND KIDNAPPING CHARGES?

3 A. WHEN I WENT ON THE 12TH OF OCTOBER HE HAD -- HE
4 ALSO KNEW KENDELL NELSON. THEY WENT TO SCHOOL TOGETHER.
5 I TOOK A PICTURE OF KENDELL NELSON, AND ASKED HIM IS THIS
6 THE KENDELL NELSON YOU'RE REFERRING TO, AND HE SAID YES.

7 MR. SPIGNER: YOUR HONOR, I'M MR. NELSON'S LAWYER. HE
8 CAN'T LAY THE GROUNDWORK OF HOW MR. NELSON GOT TO BE A
9 SUSPECT.

10 THE COURT: I DON'T KNOW WHAT THE RELEVANCE OF THIS
11 WOULD BE. AS I SAY, IF MR. NELSON IS NOT INVOLVED IN THIS
12 PARTICULAR TRIAL THEN NONE OF THIS STUFF IS GOING TO BE
13 ADMISSIBLE AGAINST HIM. AND IT WOULD HAVE TO BE REDONE IN
14 HIS PRESENCE CLEARLY WITH THE CHANCE FOR YOU AT THAT TIME TO
15 FULLY CROSS EXAMINE HIM. I SUPPOSE THIS IS FOR THE PURPOSE
16 OF LAYING SOME CONTEXT FOR THIS WHOLE SCENARIO OF THE
17 INVESTIGATION. I'LL ALLOW HIM TO DO IT IN THAT -- ALONG
18 THOSE LINES. CERTAINLY THIS IS NOT BINDING WITH EITHER MR.
19 BUSH NOR MR. NELSON. ALL RIGHT.

20 MR. SPIGNER: YOUR HONOR, BUT HE DID MENTION THAT IT'S
21 JUST A SINGLE PHOTOGRAPH AND NOT A LINEUP.

22 THE COURT: THAT'S RIGHT.

23 MR. SPIGNER: I NOTE THAT FOR THE RECORD.

24 THE COURT: I GATHERED FROM THE CONTEXT APPARENTLY THAT
25 THE VICTIM IN THIS CASE, MR. ROBINSON HAD MENTIONED MR.

JAMES TURNER-DIRECT BY CONNER

35

1 NELSON'S NAME. AND SO THAT'S THE REASON THAT MR. TURNER
2 GOT THE PHOTOGRAPH AND SHOWED IT TO HIM, TO CONFIRM IT'S THE
3 SAME PERSON. YOU KNOW, I AM NOT SURE HOW THIS BEARS ON THE
4 IDENTIFICATION IF ANY OF MR. STUCKEY AT THIS POINT AND TIME,
5 BUT I AM SURE WE'LL GET TO THAT. THANK YOU.

6 Q. NOW WHAT DAY WAS IT THAT YOU SHOWED HIM THE PHOTO
7 DISPLAY THAT CONTAINED MR. STUCKEY'S PICTURE?

8 A. THAT WAS ON NOVEMBER THE 9TH AT 12:50 P.M.

9 Q. AND DID MR. ROBINSON PICK OUT MR. STUCKEY'S PICTURE
10 OUT OF THE PHOTO DISPLAY?

11 A. YES, HE DID.

12 Q. AND DID HE HESITATE OR STUMBLE AND FUMBLE AROUND,
13 OR DID HE JUST SAY THAT WAS HIM?

14 A. HE WENT STRAIGHT TO HIM.

15 Q. DID YOU ASK HIM WHEN HE SAW THAT PHOTO DISPLAY, TO
16 WRITE ANYTHING ON THE PHOTO DISPLAY?

17 A. I ASKED HIM TO SIGN HIS NAME ACROSS THE PHOTO.

18 Q. SO HE PUT HIS NAME ON TOP OF THIS PICTURE?

19 A. YES, HE DID.

20 MR. CONNER: ANSWER ANY QUESTIONS HIS LAWYER MIGHT HAVE
21 FOR YOU.

22 THE COURT: MS. FERRARI, YOU CAN CROSS EXAMINE.

23 MS. FERRARI: YES, SIR.

24 CROSS EXAMINATION BY MS. FERRARI:

25 Q. WHEN DID THIS INCIDENT OCCUR?

JAMES TURNER-CROSS BY FERRARI

36

1 A. THE SHOOTING?

2 Q. YES.

3 A. OCTOBER THE 4TH.

4 Q. WHAT TIME OF THE DAY?

5 A. ACCORDING TO THE REPORT, IT'S ABOUT A QUARTER TILL
6 5 IN THE MORNING.

7 Q. DID THEY TAKE ANY BLOOD SAMPLES FROM MR. ROBINSON?

8 A. THE HOSPITAL PROBABLY DID, I DIDN'T.

9 Q. SO YOU DON'T KNOW WHETHER HIS ADMISSION IN HIS
10 STATEMENT THAT THEY WERE SMOKING POT AND DRINKING BEER IS
11 TRUE OR NOT?

12 A. NO, I DO NOT.

13 Q. DID HE TELL YOU HOW LONG DID, OR DID HE GIVE YOU
14 ANY DESCRIPTION OR DID THE FIRST POLICE OFFICER ON THE SCENE
15 GIVE YOU A DESCRIPTION OF THE MALE THAT DID THIS TO HIM?

16 A. NOT ACCORDING TO THE REPORT. HE JUST SAYS THERE IS
17 THREE BLACK MALES AND THEY WERE DRIVING A LATE MODEL GRAY
18 FOUR DOOR VEHICLE.

19 Q. OKAY. DID HE TELL YOU HOW LONG HE WAS WITH THESE
20 GENTLEMEN?

21 A. IT LOOKS LIKE ABOUT -- THEY PICK HIM UP ON THE 3RD
22 AT AROUND 11 O'CLOCK THAT NIGHT.

23 Q. THE CRIME SCENE, WHERE IS IT?

24 A. WE NEVER DETERMINED THAT. WE JUST KNOW IT'S THE
25 END OF REAVES STREET. IT'S A LITTLE DIRT LANE. THERE IS A

JAMES TURNER-CROSS BY FERRARI

37

1 TRAILER PARK BACK THERE NOW. BUT AT ONE TIME IT'S JUST A
2 DIRT LANE THAT KIND OF HOOKED AROUND TO THE BACK.

3 Q. WHAT'S THE LIGHTING THERE LIKE? OR WHAT WAS THE
4 LIGHTING THERE LIKE IN OCTOBER OF 2000?

5 A. WELL I KNOW WHERE THE INCIDENT OCCURRED AT BACK ON
6 THE DIRT LANE. THERE WAS NO LIGHTS BACK THERE.

7 MS. FERRARI: THANK YOU.

8 THE COURT: REDIRECT, MR. CONNER?

9 REDIRECT EXAMINATION BY MR CONNER:

10 Q. NOW DOES YOUR REPORT INDICATE WHAT THE TIME THIS
11 WAS REPORTED AND WHEN THE DISPATCH CALL CAME?

12 A. EMS WAS DISPATCHED AT 4:59 A.M. AND LAW ENFORCEMENT
13 WAS DISPATCHED AT 5 O'CLOCK.

14 Q. SO YOU SAY THAT MR. ROBINSON HAD BEEN PICKED UP AT
15 HIS HOME BY SOME OF THESE INDIVIDUALS ON THE 3RD, SOMETIME
16 BEFORE MIDNIGHT ON THE 3RD?

17 A. HE SAID HE WAS PICKED UP FROM HIS AUNT'S RESIDENCE
18 AT AROUND 11 O'CLOCK BY TWO BLACK MALES WHO WERE LATER
19 IDENTIFIED AS CASEY STUCKEY AND DONALD BUSH.

20 Q. SO HE WOULD HAVE BEEN IN THEIR PRESENCE THEN FOR
21 SOME 6 HOURS ROUGHLY THEN?

22 A. YES, SIR.

23 MR. CONNER: I HAVE NO FURTHER QUESTIONS OF HIM AT THIS
24 TIME, YOUR HONOR.

25 THE COURT: ANYTHING TO FOLLOW UP ON THAT POINT, MS.

1 FERRARI?

2 MS. FERRARI: NO, SIR, YOUR HONOR.

3 THE COURT: YOU MAY STEP DOWN, MR. TURNER. MR. CONNER.

4 MR. CONNER: YOUR HONOR, AT THIS TIME WE WOULD CALL

5 DARNELL ROBINSON.

6 DONNELL ROBINSON, BEING FIRST DULY SWORN,

7 TESTIFIED AS FOLLOWS:

8 THE CLERK: STATE YOUR FULL NAME AND SPELL YOUR LAST

9 NAME FOR THE RECORD, PLEASE, SIR.

10 A. DONNELL ROBINSON.

11 THE CLERK: WOULD YOU SPELL YOUR LAST NAME PLEASE?

12 A. R-O-B-I-N-S-O-N.

13 DIRECT EXAMINATION BY MR. CONNER:

14 Q. IF YOU WOULD TALK INTO THIS MICROPHONE, DARNELL, SO
15 EVERYBODY CAN YOU HEAR YOU, OKAY.

16 A. UH-HUH. (AFFIRMATIVE)

17 Q. NOW, DARNELL, WHERE DO YOU LIVE?

18 A.

19 Q. AND WHO DO YOU LIVE WITH ON HOBSON STREET?

20 A. MY MOTHER.

21 Q. AND WHO ELSE LIVES WITH YOU?

22 A. MY SISTER.

23 Q. WHAT IS YOUR SISTER'S NAME?

24 A. CAROLYN DIXON.

25 Q. IS THIS LADY SEATED RIGHT HERE, IS THAT YOUR

DARNELL ROBINSON-DIRECT BY CONNER

39

1 SISTER?

2 A. YES, SIR.

3 Q. AND IS SHE OLDER THAN YOU OR YOUNGER THAN YOU?

4 A. OLDER.

5 Q. DON'T PUT YOUR HAND UP ON YOUR FACE. IT KIND OF
6 MUFFLES YOUR VOICE WHEN YOU DO THAT. IT MAKES IT HARD TO
7 HEAR YOU. NOW ON -- BACK IN OCTOBER OF 2000, WERE YOU SHOT?

8 A. YES, SIR.

9 Q. AND NOW WHERE WERE YOU TAKEN AFTER YOU WERE SHOT?
10 DID THEY TAKE YOU TO THE HOSPITAL?

11 A. YES, SIR.

12 Q. AND HOW LONG DID YOU STAY IN THE HOSPITAL?

13 A. 2 DAYS.

14 Q. AND WAS THAT IN SUMTER? DID THEY TAKE YOU TO THE
15 HOSPITAL IN SUMTER?

16 A. YES, SIR.

17 Q. DID THEY TAKE YOU SOMEWHERE ELSE?

18 A. COLUMBIA.

19 Q. NOW AFTER YOU GOT OUT OF THE HOSPITAL AND CAME BACK
20 TO SUMTER, DID YOU AN OPPORTUNITY TO MEET WITH MR. TURNER
21 OVER HERE AND LOOK AT SOME PHOTOGRAPHS?

22 A. YES, SIR.

23 Q. AND DID HE ASK YOU TO TELL HIM WHAT HAPPENED, AND
24 TELL HIM WHETHER YOU SAW ANY PEOPLE IN THE PHOTOGRAPHS THAT
25 PARTICIPATED IN SHOOTING YOU?

DARNELL ROBINSON-DIRECT BY CONNER

40

1 A. YES, SIR.

2 Q. AND I SHOW YOU HERE FIRST OF ALL, THIS PHOTO
3 DISPLAY MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NO. 1,
4 AND ASK YOU TO LOOK AT THAT. YOU CAN HOLD IT. NOW IS
5 THAT ONE OF THE PHOTO DISPLAYS THAT WAS SHOWN TO YOU BY MR.
6 TURNER?

7 A. YES, SIR.

8 Q. AND DID YOU PICK OUT A MAN IN THAT PARTICULAR
9 PHOTO DISPLAY THAT WAS INVOLVED IN THIS CRIME?

10 A. YES, SIR.

11 Q. WHO DID YOU PICK OUT?

12 A. DONALD BUSH.

13 Q. DONALD BUSH. AND DID YOU WRITE THE NAME ACROSS
14 DONALD BUSH'S PICTURE?

15 A. YES, SIR.

16 Q. AND LET ME HOLD IT PLEASE. AND THAT'S PICTURE NO.
17 4 IN THIS?

18 A. YES, SIR.

19 Q. NOW SOME TIME LATER, A FEW DAYS LATER, DID MR.
20 TURNER BRING YOU ANOTHER SET OF PHOTOGRAPHS? DID HE?

21 A. YES, SIR.

22 Q. AND I SHOW YOU HERE STATE'S EXHIBIT NO. 2, AND ASK
23 YOU TO TAKE A LOOK AT IT. NOW WHEN HE SHOWED YOU THAT GROUP
24 OF PHOTOS, DID YOU PICK OUT ANOTHER PERSON THAT WAS INVOLVED
25 IN THE CRIME?

DARNELL ROBINSON-DIRECT BY CONNER

41

1 A. YES, SIR.

2 Q. WHICH ONE WAS THAT?

3 A. CASEY STUCKEY.

4 Q. AND WHAT WAS HIS NUMBER?

5 A. 1.

6 Q. NO. 1?

7 A. YES, SIR.

8 Q. AND DID YOU WRITE HIS NAME ACROSS HIM?

9 A. YES, SIR.

10 Q. NOW DO YOU SEE THE MAN THAT YOU IDENTIFIED AS CASEY
11 STUCKEY IN THE COURTROOM TODAY?

12 A. YES, SIR.

13 Q. AND WOULD YOU POINT HIM OUT FOR US, PLEASE?

14 A. (WITNESS POINTS TO THE DEFENDANT.)

15 Q. TELL US SOMETHING THAT WOULD MAKE IT A LITTLE MORE
16 DEFINITE. JUST, IN OTHER WORDS, WHERE IS HE SEATED?

17 A. OVER THERE.

18 THE COURT: WHAT IS HE WEARING?

19 A. SIR?

20 THE COURT: WHAT HE IS WEARING?

21 A. BLUE AND WHITE.

22 MR. CONNER: YOUR HONOR, WE WOULD ASK THAT RECORD
23 REFLECT THAT HE IDENTIFIED THE DEFENDANT.

24 THE COURT: YES, SIR.

25 Q. NOW THE PERSON WHO ACTUALLY -- WHO SHOT YOU THAT

1 NIGHT, THERE WERE -- HOW MANY PEOPLE WERE IN THE CAR WITH
2 YOU OTHER THAN YOURSELF? WHO ELSE WAS IN THERE?

3 A. HUH?

4 Q. OKAY, YOU SAID THAT THESE TWO. DONALD BUSH WAS IN
5 THE CAR WITH YOU. WHERE WAS HE SEATED?

6 A. IN THE BACK.

7 Q. AND WHERE WERE YOU SEATED?

8 A. IN THE BACK.

9 Q. SO YOU AND DONALD BUSH WERE BOTH IN THE BACK SEAT?

10 A. YES, SIR.

11 Q. NOW WHO WAS IN THE FRONT SEAT?

12 A. CASEY STUCKEY.

13 Q. AND WHERE WAS HE SEATED?

14 A. PASSENGER SIDE.

15 Q. AND WHO WAS DRIVING?

16 A. KENDELL.

17 Q. KENDELL NELSON?

18 A. YES, SIR.

19 Q. AND WHICH ONE OF THEM SHOT YOU?

20 A. CASEY.

21 Q. CASEY WHO?

22 A. STUCKEY.

23 MR. CONNER: ANSWER ANY QUESTIONS HIS LAWYER MIGHT HAVE
24 FOR YOU.

25 THE COURT: MS. FERRARI, YOU CAN CROSS EXAMINE THIS

DARNELL ROBINSON-CROSS BY FERRARI

43

1 WITNESS.

2 CROSS EXAMINATION BY MS. FERRARI:

3 Q. DID YOU KNOW MR. NELSON WHEN THIS INCIDENT
4 OCCURRED?

5 A. MA'AM?

6 Q. DID YOU KNOW MR. NELSON THE NIGHT THIS INCIDENT
7 OCCURRED?

8 A. YES, MA'AM.

9 Q. DID YOU KNOW MR. BUSH THE NIGHT THIS INCIDENT
10 OCCURRED?

11 A. YES, MA'AM.

12 Q. DID YOU KNOW MR. STUCKEY THE NIGHT THIS INCIDENT
13 OCCURRED?

14 A. YES, MA'AM.

15 Q. SO YOU ALREADY KNEW CASEY STUCKEY?

16 A. NO, I DIDN'T KNOW HIM. NO. NO.

17 Q. THAT'S WHAT I JUST ASKED.

18 A. NO, MA'AM.

19 Q. WELL HOW DO YOU KNOW WHAT HIS NAME IS? DO I NEED
20 TO REPEAT THE QUESTION?

21 A. YES, MA'AM.

22 Q. HOW DO YOU KNOW WHAT HIS NAME IS?

23 A. MR. TURNER HAD TOLD ME.

24 Q. WAS THAT BEFORE OR AFTER YOU LOOKED AT HIS PICTURE?

25 A. BEFORE.

DARNELL ROBINSON-CROSS BY FERRARI

44

1 Q. IN YOUR STATEMENT YOU SAID THAT YOU HAD BEEN
2 SMOKING POT AND DRINKING BEER. HOW MUCH POT DID YOU SMOKE?

3 A. NOT MUCH.

4 Q. HOW MUCH BEER DID YOU DRINK?

5 A. NOT TOO MUCH.

6 Q. SO YOU WERE WITH THESE GUYS FOR 6 HOURS AND YOU
7 DIDN'T SMOKE VERY MUCH POT OR DRINK MUCH BEER?

8 A. NO, MA'AM.

9 Q. WHERE DID YOU GO TO SMOKE THIS POT AND DRINK THIS
10 BEER?

11 A. THEY TOOK ME TO A TRAILER.

12 Q. WHERE?

13 A. I AIN'T REMEMBER THE NAME OF THAT STREET.

14 Q. OKAY, WHO DROVE?

15 A. MA'AM?

16 Q. WHO DROVE?

17 A. CASEY. CASEY STUCKEY.

18 Q. SO CASEY STUCKEY DROVE.

19 A. YES, MA'AM.

20 Q. WHO ELSE WAS IN THE CAR AT THAT TIME?

21 A. AND DONALD BUSH.

22 Q. ANYBODY ELSE?

23 A. NO, SIR.

24 Q. HOW DID KENDELL NELSON GET INVOLVED IN ALL THIS?

25 A. HE HAD CAME OVER LATER.

DARNELL ROBINSON-CROSS BY FERRARI

45

1 Q. SO WHEN THE THREE OF YOU WERE -- YOU AND YOU'RE
2 SAYING IT WAS MY CLIENT AND MR. BUSH, EVER WALKING DOWN THE
3 STREET TOGETHER?

4 A. NO, MA'AM.

5 Q. AND YOU SAID WHEN YOU WERE IN THE CAR, WHEN THE
6 FOUR OF YOU WERE IN THE CAR, WHOSE CAR IS THAT? WHEN THE
7 FOUR OF YOU WERE IN THE CAR, WHOSE CAR WAS THAT?

8 A. KENDELL.

9 Q. DID YOU EVER GIVE THE POLICE A DESCRIPTION OF THESE
10 GENTLEMEN?

11 A. YES, MA'AM.

12 Q. WHICH ONE OF THEM DID YOU DESCRIBE?

13 A. KENDELL.

14 Q. DID YOU DESCRIBE THE OTHER TWO?

15 A. NO, I AIN'T HAD KNOW THEM.

16 Q. YOU DIDN'T KNOW THEM. SUPPOSEDLY YOU GOT A GOOD
17 LOOK AT THEM BUT YOU COULDN'T DESCRIBE THEM TO THE POLICE?

18 A. YES, MA'AM.

19 Q. YES MA'AM YOU DID DESCRIBE THEM, OR YES MA'AM YOU
20 DIDN'T DESCRIBE THEM?

21 A. YES, MA'AM, I DID.

22 Q. YOU DID?

23 A. YES, MA'AM.

24 Q. WHAT DID YOU TELL THEM? WHAT DID YOU TELL THEM
25 ABOUT THIS?

1 A. WELL HE HAD SHOWED ME THE PICTURES OF THEM.

2 Q. BEFORE HE SHOWED YOU THE PICTURES, DID YOU GIVE
3 THEM A DESCRIPTION?

4 A. NO. NO, MA'AM.

5 Q. BUT YOU GOT A GOOD LOOK AT THEM?

6 A. YES, MA'AM.

7 Q. DO YOU WEAR GLASSES?

8 A. NO, MA'AM.

9 Q. HOW MUCH TIME DID YOU SPEND IN DOORS WITH THESE
10 GENTLEMEN?

11 A. I DON'T KNOW.

12 Q. HOW MUCH TIME DID YOU SPEND IN THESE CARS WITH
13 THESE GENTLEMEN?

14 A. NOT TOO LONG.

15 MS. FERRARI: I HAVE NO FURTHER QUESTIONS.

16 THE COURT: THANK YOU. REDIRECT, MR. CONNER?

17 REDIRECT EXAMINATION BY MR. CONNER:

18 Q. NOW ON THE NIGHT THAT THIS HAPPENED, THEY PICKED
19 YOU UP BEFORE MIDNIGHT?

20 A. YES, SIR.

21 Q. AND TOOK YOU OVER TO A TRAILER SOMEWHERE, IS THAT
22 RIGHT?

23 A. YES, SIR.

24 Q. AND WHAT WAS THAT FELLOW'S NAME THAT WAS AT THE
25 TRAILER?

DARNELL ROBINSON-RECROSS BY FERRARI

47

1 A. GLENN, ISN'T IT?

2 Q. GLENN?

3 A. YES, SIR.

4 Q. AND DID YOU GO INSIDE AT GLENN'S HOUSE?

5 A. YES, SIR.

6 Q. AND DID YOU SIT AROUND AND TALK WITH CASEY STUCKEY

7 AND DONALD BUSH?

8 A. YES, SIR.

9 Q. YOU DID?

10 A. YES, SIR.

11 Q. AND Y'ALL WERE THERE FOR A WHILE?

12 A. YES, SIR.

13 Q. AND WHILE YOU WERE THERE, YOU DRANK SOME BEER?

14 A. YES, SIR.

15 MR. CONNER: I HAVE NOTHING FURTHER.

16 THE COURT: THANK YOU. ANY FOLLOW UP ON THOSE POINTS,

17 MS. FERRARI?

18 MS. FERRARI: I JUST HAVE ONE QUESTION. I AM NOT

19 SURE.

20 RECROSS EXAMINATION BY MS. FERRARI:

21 Q. WHERE WERE YOU SHOT?

22 A. IN THE BACK.

23 MS. FERRARI: OKAY, THAT'S IT.

24 THE COURT: THANK YOU. MR. CONNER?

25 MR. CONNER: I NOTHING FURTHER.

1 THE COURT: THANK YOU, YOU CAN STEP DOWN, MR. ROBINSON.
2 MR. CONNER.

3 MR. CONNER: I HAVE NOTHING FURTHER ON THIS POINT OF
4 THESE ISSUES, YOUR HONOR.

5 THE COURT: THANK YOU. MS. FERRARI, DOES THE DEFENSE
6 WISH TO OFFER ANY EVIDENCE AND TESTIMONY ON THE
7 IDENTIFICATION ISSUE?

8 MS. FERRARI: NO, YOUR HONOR. WE JUST HAVE A MOTION.

9 THE COURT: I WILL BE GLAD NOW TO HEAR THE MOTION IN
10 CONNECTION WITH THIS ISSUE, MS. FERRARI.

11 MS. FERRARI: YES, SIR, YOUR HONOR. WHEN MR. ROBINSON
12 WAS SHOWN THE PHOTO LINEUP OF MY CLIENT, IT OCCURRED
13 APPROXIMATELY A MONTH AND A COUPLE OF DAYS LATER. IT WAS
14 AT HIS HOME. AND HE WAS TOLD THAT BY HIS OWN ADMISSION, THE
15 NAME OF THE PERSON THAT SHOT HIM. IN HIS STATEMENT HE SAID
16 THAT HE WAS SMOKING GRASS AND DRINKING BEER WITH THESE
17 GENTLEMEN. NEVER IN ANY OF THE REPORTS THAT I HAVE, IS
18 THERE A DESCRIPTION OF MY CLIENT. IT IS A BLACK MALE IN THE
19 INCIDENT REPORT. NO HEIGHT; NO WEIGHT. SUPPOSEDLY HE GOT A
20 GOOD LOOK AT THESE PEOPLE. AND THE ONLY PERSON HE COULD
21 IDENTIFY AT THE TIME WAS KENDELL NELSON.

22 HE SAYS HE KNEW DONALD BUSH AT THE TIME AS WELL. IT
23 DOESN'T SAY THAT HE KNOWS MY CLIENT. BUT THERE IS NO
24 DESCRIPTION BEFOREHAND FOR US TO SAY WHETHER YES, THIS LOOKS
25 LIKE THE MAN HE IDENTIFIED TO BEGIN WITH, JUST THROUGH THE

1 PICTURE. MR. STUCKEY ALLEGEDLY WAS IN THE CAR IN FRONT OF
2 HIM. HE DID NOT HAVE A CHANCE TO LOOK AT HIM IN THE CAR.

3 THE INCIDENT, THE PLACE OF THE INCIDENT ACCORDING TO
4 MR. TURNER IS DARK. IT'S IN THE WOODS. THE ONLY TIME HE
5 COULD HAVE GOTTEN A GOOD LOOK AT MY CLIENT IF IT WERE MY
6 CLIENT WAS AT THE TRAILER. THE WHOLE TIME HE'S IN THE
7 TRAILER, HE IS DRINKING BEER AND SMOKING POT. I WOULD
8 SUBMIT TO YOU, YOUR HONOR, THAT HE DID NOT HAVE A GOOD
9 OPPORTUNITY TO SEE MY CLIENT. THERE IS NO PRIOR
10 IDENTIFICATION I.D. AT THE TIME TO -- THAT WOULD -- WHEN YOU
11 SEE THE PICTURE OF MY CLIENT AND YOU SAY THAT LOOKS LIKE THE
12 GUY HE SAID DID IT TO HIM 45 DAYS AGO. HE KNEW AHEAD OF
13 TIME WHO IT WAS THAT SUPPOSEDLY SHOT HIM. KNEW THAT THE
14 GUY THAT SUPPOSEDLY SHOT HIM WAS IN THE PHOTO LINEUP.

15 AND I THINK THAT HE PICKED MY CLIENT OUT UNDER PRESSURE
16 NOT BECAUSE MY CLIENT IS THE ONE WHO SHOT HIM. SO I WOULD
17 SUBMIT TO YOU THAT THE AMOUNT OF THE TIME BETWEEN THE
18 INCIDENT AND THE PHOTO LINEUP, THE FACT THAT THERE WAS NO
19 PRIOR DESCRIPTION TO COMPARE IT TO, AND THE FACT THAT I
20 SUBMIT HE DID GET A GOOD -- HAVE THE OPPORTUNITY TO GET A
21 LOOK AT MY CLIENT TO MAKE THAT IDENTIFICATION.

22 THE COURT: THANK YOU, MA'AM. MR. CONNER.

23 MR. CONNER: OF COURSE, YOUR HONOR, IT IS MY
24 UNDERSTANDING THAT BASED ON THE TESTIMONY OF BOTH THIS
25 DEFENDANT AND MR. TURNER, AND WHAT MR. TURNER SAID HE HAD

1 TOLD HIM IS, HE WAS IN HIS PRESENCE SOME 6 HOURS. BECAUSE
2 THIS DEFENDANT PARTICIPATED IN PICKING HIM UP AT HIS HOME.
3 OR AT A RELATIVE'S HOME, AND TAKING HIM OVER THERE TO THIS
4 TRAILER WHERE THEY STAYED THERE FOR A WHILE BEFORE THEY GOT
5 IN A SECOND AUTOMOBILE AND WENT TO THE PLACE WHERE HE WAS
6 SHOT. THAT LENGTH OF TIME AND IN HAVING THE OPPORTUNITY TO
7 SIT AROUND AND TALK WITH PEOPLE AND LOOK AT THEM OVER A 6
8 HOUR PERIOD OF ITEM, CERTAINLY WOULD BE AMPLE TO SUPPORT AN
9 IDENTIFICATION.

10 THE COURT: THANK YOU. CAN I LOOK AT STATE'S 2 FOR
11 IDENTIFICATION, PLEASE? IN NEIL, N-E-I-L V. VIGGERS,
12 V-I-G-G-E-R-S, AND STOVALL V. DENNO, D-E-N-O BOTH UNITED
13 STATES SUPREME COURT CASES. NEIL V. VIGGERS IF 409 U.S.
14 188. AND STOVALL V. DENNO 388, U.S. 293. AND THE PROGENY
15 OF CASES THAT FOLLOW, HAVE GIVEN US THE FACTORS THAT THE
16 TRIAL COURT WOULD TAKE INTO ACCOUNT IN DECIDING WHETHER THE
17 LIKELIHOOD OF MISIDENTIFICATION, SO AS TO SUPPRESS THE IN
18 COURT IDENTIFICATION OF THE DEFENDANT. THE TEST IS WHETHER
19 THE IN COURT IDENTIFICATION OF THE STATE'S WITNESS IS BASED
20 ON THAT WITNESS' RECOLLECTION OF THE CRIME ITSELF, OR
21 WHETHER IT'S THE PRODUCT OF SUGGESTION THAT CAME DURING THE
22 COURSE OF THE PRETRIAL INVESTIGATION.

23 THE TRIAL COURT HAS TO DETERMINE THAT THE OUT OF
24 IDENTIFICATION BY THE WITNESS WAS NOT SO UNNECESSARILY
25 SUGGESTIVE AND CONDUCIVE THAT TO IRREPARABLY MISTAKEN

1 IDENTITY THAT IT DENIED THE DEFENDANT DUE PROCESS. ONLY
2 UNDER THOSE CIRCUMSTANCES WHICH THEY ARE -- WHICH THE TRIAL
3 COURT IS CONVINCED THAT THE IDENTIFICATION WAS NOT
4 UNNECESSARILY SUGGESTIVE, CAN THE SUBSEQUENT IN COURT
5 IDENTIFICATION BE ALLOWED.

6 IN THIS PARTICULAR CASE CONSIDERING THE NEIL V. VIGGERS
7 FACTORS, FIRST OF ALL, THE OPPORTUNITY OF THE WITNESS TO
8 VIEW THE CRIMINAL AT THE TIME. AND HERE THERE WAS
9 APPARENTLY A PERIOD FROM 5 TO 6 HOURS WHEN THEY WERE IN EACH
10 OTHER'S COMPANY. AT LEAST SOME OF THAT PERIOD INSIDE A
11 TRAILER. AND THAT WOULD CERTAINLY SATISFY THE FIRST FACTOR
12 TO BE CONSIDERED.

13 THE WITNESS' DEGREE OF ATTENTION. WELL DURING THE
14 6-HOUR PERIOD OF COURSE, THE DEGREE OF ATTENTION AT ANY ONE
15 SINGLE INCIDENT IS NOT QUITE SO SIGNIFICANT AS IT IS IN A
16 CASE OF IMMEDIATE -- A CRIME THAT OCCURS IN THE SPACE OF A
17 FEW SECONDS OR A MINUTE OR SO. OR IN THE CONTEXT WHEN THE
18 WITNESS IS LIKELY TO BE DIVERTED IN HIS ATTENTION OR
19 DISTRACTED BY SOMETHING ELSE.

20 IN THIS PARTICULAR CASE, THE FACT THAT THEY RODE AROUND
21 TOGETHER FOR A PERIOD OF TIME IN THE VEHICLE; THAT THEY
22 WERE TOGETHER IN THE MOBILE HOME AT SOME TIME PRIOR TO THAT,
23 THE DEGREE OF ATTENTION I THINK IS IMPLICIT IN THAT LENGTH
24 OF THAT RELATIONSHIP. NOW THE ACCURACY OF THE WITNESS'
25 PRIOR DESCRIPTION OF THE CRIMINAL AND THE LEVEL -- EXCUSE

1 ME, THAT PRONG IN AND OF ITSELF. THERE IS NO EVIDENCE THAT
2 HE HAD PREVIOUSLY DESCRIBED OR IDENTIFIED THIS INDIVIDUAL,
3 AND SO WE HAVE NOTHING TO MEASURE THAT PRONG AGAINST;
4 HOWEVER, A PART OF THAT PRONG IS THE LEVEL OF CERTAINTY
5 DEMONSTRATED BY THE WITNESS AT THE CONFRONTATION; THAT IS,
6 AT THE TIME THE IDENTIFICATION WAS MADE A MONTH OR SO
7 LATER. AND IT WAS CERTAIN.

8 THE OFFICER TESTIFIED THAT HE DIDN'T HESITATE; THAT HE
9 WENT DIRECTLY TO IT. AND FINALLY, THE LENGTH OF TIME
10 BETWEEN THE CRIME AND THE CONFRONTATION ITSELF, A PERIOD OF
11 TIME OF ABOUT A MONTH. THE TOTALITY OF THOSE FACTORS LEND
12 THEMSELVES TO MY BEING CONVINCED THAT THE OUT OF COURT
13 IDENTIFICATION WAS NOT SO UNNECESSARILY SUGGESTIVE OR
14 CONDUCIVE TO IRREPARABLE MISTAKEN IDENTITY, AND BY THAT DUE
15 PROCESS HAS BEEN VIOLATED. NOW THE OFFICER DID, ACCORDING
16 TO, I BELIEVE MR. ROBINSON, GIVE HIM THE NAME OF A PERSON IN
17 THIS CASE, THE DEFENDANT'S NAME. HOWEVER, HE HAD INDICATED
18 THAT HE DID NOT KNOW THE DEFENDANT; WOULD HAVE NO WAY OF
19 BEING ABLE TO ATTACH A NAME TO A PHOTOGRAPH ON THIS
20 PARTICULAR EXHIBIT. AND WHILE THE BEST COURSE OF ACTION IS
21 TO FOLLOW THE INSTRUCTIONS THAT ARE ON THE EXHIBIT ITSELF,
22 WHICH SAY, YOU SHOULD NOT CONCLUDE OR GUESS THAT THE
23 PHOTOGRAPHS CONTAIN THE PICTURE OF THE PERSON WHO COMMITTED
24 THE CRIME. YOU ARE NOT OBLIGED TO IDENTIFY ONE.

25 THE BEST CHOICE, OF COURSE, IS SIMPLY TO LET THE

1 EXHIBIT SPEAK FOR ITSELF WITHOUT ANY ASSISTANCE OF ANY SORT
2 FROM THE OFFICER WHO SHOWED IT TO HIM. HOWEVER, EVEN IF THE
3 COURT WERE TO BELIEVE THAT THE OFFICER DID DEVIATE FROM THAT
4 PRACTICE AND DID GIVE MR. ROBINSON THE NAME OF THE DEFENDANT
5 IN THIS CASE, THAT IN AND OF ITSELF IS NOT SUGGESTIVE
6 BECAUSE THE DEFENDANT -- EXCUSE ME, THE VICTIM DID NOT KNOW
7 THE DEFENDANT; COULD NOT HAVE TIED THE TWO TOGETHER, AS I
8 HAVE SAID.

9 I AM TAKING INTO ACCOUNT THE TOTALITY OF THE
10 CIRCUMSTANCES. I FIND THAT THE IN COURT IDENTIFICATION OF
11 THAT DEFENDANT BY MR. ROBINSON WOULD BE ALLOWED. THANK YOU.
12 FOLKS, ARE THERE ANY OTHER PRELIMINARY MATTERS WE NEED TO
13 TAKE CARE OF BEFORE THE JURY IS BROUGHT IN, MS. FERRARI?

14 MS. FERRARI: CAN I STEP OUT FOR TWO SECONDS?

15 THE COURT: OKAY.

16 MS. FERRARI: I'LL BE RIGHT BACK.

17 THE COURT: ALL RIGHT.

18 THE COURT. IS THE STATE READY?

19 MR. CONNER: WE ARE, YOUR HONOR.

20 THE COURT: IS THE DEFENSE READY, MS. FERRARI?

21 MS. FERRARI: YES, SIR, YOUR HONOR.

22 THE COURT: LADIES AND GENTLEMEN, THE JURY WILL BE
23 BROUGHT IN AND SWORN. I WILL APPOINT A FOREPERSON AND MAKE
24 SOME INTRODUCTORY COMMENTS. AND ALLOW Y'ALL OPENING
25 STATEMENTS AND WE'LL START THE TRIAL. BRING US THE JURY,

1 PLEASE, SIR.

2 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
3 PRESENCE OF THE JURY.)

4 THE COURT: MS. BETHEA, I WILL ASK YOU TO SIT IN THAT
5 CHAIR, PLEASE, MA'AM, BECAUSE I WANT YOU TO SERVE AS THE
6 FORELADY OF THIS JURY. THAT MEANS THAT Y'ALL BE THE JURY'S
7 SPOKESPERSON IN COURT. AND WHEN THE TRIAL IS OVER, IT WILL
8 BE YOUR RESPONSIBILITY TO WRITE THE VERDICT OF THE JURY. I
9 WILL TELL YOU MORE ABOUT THAT BEFORE YOU HAVE TO DO IT. YOU
10 DON'T NEED TO CONCERN YOURSELF RIGHT NOW ABOUT THAT. ALL
11 YOU NEED TO KNOW RIGHT NOW IS YOU HAVE GOT A RESERVED CHAIR.
12 YOU WILL OCCUPY THE CHAIR THROUGHOUT THE TRIAL OF THE CASE.

13 MS. MCKNIGHT, AS THE ALTERNATE JUROR, MA'AM, YOU WILL
14 OCCUPY THAT CHAIR UNLESS SOME TIME DURING THE TRIAL I ASK
15 YOU TO MOVE. STAY RIGHT WHERE YOU ARE. THANK YOU. THE
16 REST OF YOU LADIES AND GENTLEMEN DON'T HAVE RESERVED SEATS.
17 THOSE ARE THE ONLY TWO RESERVED SEATS; ONE FOR THE FORELADY
18 AND ONE FOR THE ALTERNATE. IT'S ALWAYS A GOOD IDEA TO MOVE
19 ALL THE WAY DOWN JUST LIKE YOU DID THIS TIME, BECAUSE IF YOU
20 DON'T, SOMEBODY IS GOING TO HAVE TO STUMBLE ACROSS YOU TO
21 GET TO THAT OPEN CHAIR. LADIES AND GENTLEMEN, YOU ARE GOING
22 TO BE SWORN IN NOW AS JURORS IN THE TRIAL OF THIS CASE. I
23 WANT YOU TO PAY PARTICULAR ATTENTION TO THE OATH THAT YOU'RE
24 ABOUT TO TAKE AS JURORS. I AM GOING TO BE REMINDING YOU
25 DURING THE TRIAL AND AFTER THE TRIAL AS TO EXACTLY WHAT YOU

1 HAVE SWORN TO DO AS JURORS IN THIS CASE. SO I WANT YOU TO
2 LISTEN THE FIRST TIME YOU HEAR IT. THANK YOU, MR. CLERK,
3 YOU CAN SWEAR THE JURY.

4 (THEREUPON, THE JURY IS SWORN.)

5 THE COURT: NOW, LADIES AND GENTLEMEN, LET ME TAKE A
6 FEW MOMENTS TO TELL YOU ABOUT THE PROCEDURE WE WILL FOLLOW
7 DURING THE TRIAL OF THE CASE. IT'S ALWAYS HELPFUL TO ME
8 WHEN I'M ADDRESSING THE JURY FOR THE FIRST TIME IN A TRIAL
9 LIKE THIS, TO FIND OUT IF ANY OF YOU HAVE EVER HAD A CHANCE
10 TO SERVE AS A JUROR BEFORE IN ANY TYPE OF CASE. HAVE YOU
11 EVER DONE THAT? IF YOU HAVE, WOULD YOU RAISE YOUR HANDS?
12 THAT'S NOT BAD. THAT'S ABOUT AS MUCH EXPERIENCE AS WE'VE
13 EVER HAD REALLY. YOU DON'T NEED TO HAVE EXPERIENCE IN THIS
14 JOB, BUT IT'S HELPFUL TO ME AT LEAST TO KNOW IF ANY OF YOU
15 HAVE EVER DONE IT BEFORE.

16 LET ME TELL YOU PROCEDURALLY WHAT'S GOING TO HAPPEN
17 THROUGHOUT THE BALANCE OF THE DAY AND THROUGHOUT THE BALANCE
18 OF THIS TRIAL. THE FIRST THING THAT IS GOING TO HAPPEN WHEN
19 I FINISH TALKING TO YOU IS, THAT MR. CONNER WHO IS THE
20 ASSISTANT SOLICITOR WHO IS PROSECUTING THIS CASE ON BEHALF
21 OF THE STATE, HE WILL STAND BEFORE YOU AND MAKE A BRIEF
22 OPENING STATEMENT. AND IN THAT OPENING STATEMENT, HE IS
23 GOING TO OUTLINE FOR YOU IN SOMETHING OF A PREVIEW FASHION
24 WHAT THIS CASE IS ALL ABOUT FROM THE STATE'S POINT OF VIEW.
25 AND AFTER HE HAS PRESENTED THE OPENING STATEMENT ON BEHALF

1 OF THE STATE, MS. FERRARI WHO REPRESENTS THE DEFENDANT IN
2 THIS CASE HAS THE RIGHT TO MAKE AN OPENING STATEMENT. BUT
3 SHE DOESN'T HAVE TO AND I'LL TELL YOU WHY IN JUST A MINUTE.
4 AND AFTER THE OPENING STATEMENTS HAVE BEEN MADE, THEN YOU
5 WILL ACTUALLY BEGIN TO SEE AND HEAR THE PRESENTATION OF
6 EVIDENCE; WITNESSES WHO TAKE THIS CHAIR RIGHT HERE UNDER
7 OATH AND ANSWER QUESTIONS THAT WILL PUT TO THEM BY LAWYERS
8 FOR BOTH SIDES.

9 EVIDENCE MIGHT ALSO TAKE THE FORM OF PHOTOGRAPHS OR
10 DOCUMENTS OR DIAGRAMS OR ITEMS. I DON'T KNOW WHAT THE
11 EVIDENCE IS GOING TO BE IN THIS CASE. I HAVEN'T SEEN IT
12 YET, BUT THAT'S THE SORT OF THING THAT YOU MIGHT EXPECT TO
13 COME INTO EVIDENCE IN A TRIAL LIKE THIS. THE STATE WILL
14 OFFER IT'S EVIDENCE AND TESTIMONY FIRST. AND AFTER THE
15 STATE HAS PUT IN ITS EVIDENCE AND TESTIMONY, THEN THE
16 DEFENDANT HAS THE RIGHT TO OFFER EVIDENCE AND TESTIMONY.
17 BUT ONCE AGAIN, DOESN'T HAVE TO DO IT. AND I'LL TELL YOU
18 WHY IN JUST A MOMENT. AND AFTER ALL THE EVIDENCE AND
19 TESTIMONY HAS BEEN PRESENTED TO YOU, LADIES AND GENTLEMEN,
20 THEN THE LAWYERS WILL COME BACK BEFORE YOU AND PRESENT THEIR
21 CLOSING STATEMENTS, THEIR FINAL ARGUMENTS AS THEY'RE
22 SOMETIMES CALLED.

23 AND AFTER THAT HAS BEEN DONE, THEN I WILL INSTRUCT YOU
24 ON THE LAW. I'LL TELL YOU WHAT THE LAW IS. AND THEN YOU
25 WILL GO TO YOUR JURY ROOM WHERE YOU JUST CAME FROM A FEW

1 MOMENTS AGO, AND BEGIN DELIBERATING THIS CASE, AND REACH A
2 VERDICT IN THIS CASE. I REMIND YOU AGAIN, THAT DURING THE
3 TRIAL OF THIS CASE, YOU CANNOT DISCUSS THIS CASE AMONG
4 YOURSELVES. YOU MAY HEAR SOMEBODY SAY SOMETHING OUT HERE ON
5 THIS WITNESS STAND. AND WHEN YOU TAKE A BREAK FOR THE
6 AFTERNOON OR THE MORNING AND YOU GO BACK ACROSS THE HALL AND
7 YOU WANT TO TALK ABOUT IT AMONG YOURSELVES RIGHT THEN WHEN
8 IT'S FRESH IN YOUR MIND, BUT YOU CAN'T DO THAT. AND THE
9 REASON THAT YOU CAN'T DO THAT IS BECAUSE YOU HAVE TO KEEP AN
10 OPEN MIND THROUGHOUT THIS ENTIRE TRIAL.

11 AND IF YOU START DISCUSSING THIS CASE AND THE EVIDENCE
12 EARLY, YOU'RE NOT GOING TO BE ABLE TO KEEP AN OPEN MIND. IT
13 MAY HAPPEN THAT YOU WILL HEAR LATER IN THE CASE EVIDENCE
14 THAT IS DIFFERENT FROM THAT YOU HAVE HEARD, AND START
15 TALKING ABOUT IT. BUT IF YOU'VE ALREADY STARTED TO DISCUSS
16 THE EVIDENCE AMONG YOURSELVES, YOU'RE NOT GOING TO RECEIVE
17 THAT LATER EVIDENCE WITH AN OPEN MIND. SO YOU CANNOT TALK
18 ABOUT THIS CASE AT ALL AMONG YOURSELVES DURING THIS TRIAL.
19 WHEN THE TRIAL IS OVER, WHEN ALL HAS BEEN SAID AND DONE, YOU
20 CAN TAKE AS MUCH TIME AS YOU WANT TO TALK ABOUT THE CASE
21 AMONG YOURSELVES, BUT NOT UNTIL THEN. AND YOU CAN'T TALK
22 ABOUT IT WITH ANYONE ELSE OR LET ANYBODY ELSE TALK TO YOU
23 ABOUT IT. OR EXPOSE YOURSELF TO ANY INFORMATION ABOUT THIS
24 CASE IF ANY SHOULD BE GENERATED IN THE PRESS OR OTHERWISE,
25 OR TRY TO FIND OUT ANYTHING ON YOUR OWN ABOUT THIS CASE FROM

1 ANY OTHER SOURCE.

2 THE OATH THAT YOU JUST TOOK JUST A MOMENT AGO SAID YOU
3 WOULD WELL AND TRULY TRY THIS CASE AND RENDER A TRUE VERDICT
4 ACCORDING TO THE EVIDENCE SO HELP YOU GOD. THE EVIDENCE IS
5 GOING TO COME FROM ONLY TWO SOURCES, THE ANSWERS THAT THE
6 WITNESSES WILL BRING FROM THIS WITNESS CHAIR RIGHT HERE, AND
7 THOSE ITEMS, THOSE DOCUMENTS THAT YOU MAY LOOK AT DURING THE
8 COURSE OF THIS TRIAL. ANYTHING ELSE IS NOT EVIDENCE, AND
9 YOU MAY NOT CONSIDER IT. AND YOU WOULD VIOLATE YOUR OATH IF
10 YOU WENT BEYOND THAT EVIDENCE IN REACHING A VERDICT IN THIS
11 CASE.

12 NOW, LADIES AND GENTLEMEN, ON THE MATTER OF EVIDENCE,
13 IT IS IMPORTANT THAT YOU UNDERSTAND AS I JUST TOLD YOU, WHAT
14 IS EVIDENCE; THAT IS, THE TESTIMONY THAT IS OFFERED HERE AND
15 THOSE ITEMS, THOSE DOCUMENTS. THE OPENING STATEMENTS AND
16 THE CLOSING STATEMENTS ARE NOT EVIDENCE. AND THE QUESTIONS
17 THAT THE LAWYERS ASK ARE NOT EVIDENCE. THEY ARE ALL AN
18 IMPORTANT PART OF THIS PROCESS, AND IT WOULD NOT FLOW
19 SMOOTHLY WITHOUT THOSE THINGS, BUT THEY ARE NOT EVIDENCE.
20 THE EVIDENCE IS NOT THE QUESTIONS THAT ARE ASKED. THE
21 EVIDENCE IS THE ANSWERS TO THOSE QUESTIONS THAT COME FROM
22 THE SWORN WITNESS ON THE WITNESS STAND RIGHT HERE, ALONG
23 WITH THOSE ITEMS THAT MIGHT COME IN TO PLAY. AND THE REASON
24 THAT IT'S IMPORTANT THAT YOU UNDERSTAND THAT DISTINCTION
25 BETWEEN WHAT IS AND WHAT IS NOT EVIDENCE IS THIS: WHEN IT

1 COMES TO EVIDENCE, LADIES AND GENTLEMEN, YOU ARE ACTUALLY
2 THE JUDGES OF THE EVIDENCE. THAT BADGE THAT YOU'RE WEARING
3 SAYS JUROR. BUT WHEN IT COMES TO EVIDENCE, THAT BADGE COULD
4 JUST AS ACCURATELY SAY JUDGE, BECAUSE YOU HAVE TO JUDGE THE
5 EVIDENCE.

6 YOU HAVE TO DECIDE THE TRUTHFULNESS OF WHAT YOU HEAR
7 FROM THIS STAND. IF THERE IS TRUTHFULNESS IN IT OR NOT, YOU
8 HAVE TO DETERMINE THAT. IF YOU DETERMINE IT TO BE TRUE, YOU
9 HAVE TO DECIDE HOW IMPORTANT IT IS TO THE DECISION THAT YOU
10 HAVE TO MAKE. I'VE REALLY GOT THE EASY JOB. AS THE JUDGE
11 OF THE LAW, WHAT I HAVE TO DO IS JUST DECIDE WHETHER YOU CAN
12 HEAR SOMEBODY TELL YOU SOMETHING FROM THIS WITNESS STAND OR
13 WHETHER YOU CAN LOOK AT A PHOTOGRAPH OR AN ITEM OR A
14 DOCUMENT. BUT ONCE I DECIDE AS A MATTER OF LAW THAT YOU CAN
15 HEAR THE TESTIMONY, OR LOOK AT THE ITEM OF EVIDENCE, THEN
16 WHAT YOU DO FROM THAT POINT ON, WHAT YOU DO WITH IT IS
17 ENTIRELY UP TO YOU. YOU'VE GOT THE RIGHT TO BELIEVE IT OR
18 NOT BELIEVE IT YOU.

19 AND IF YOU BELIEVE IT, YOU'VE GOT THE RIGHT TO DECIDE
20 HOW IMPORTANT IT IS TO THE DECISION YOU HAVE TO MAKE. AND
21 YOU MAKE THOSE DECISIONS, LADIES AND GENTLEMEN, BY USING THE
22 SAME ABILITIES IN THAT JURY BOX, AND IN THAT JURY ROOM THAT
23 YOU USE EVERY DAY OF YOUR LIVES OUTSIDE OF THIS COURTROOM IN
24 YOUR OWN WORLD, AND YOUR OWN HOME, IN YOUR OWN JOB, IN YOUR
25 OWN WALK OF LIFE. AND THAT'S HOW YOU ARE QUALIFIED AS

1 JURORS TO COME INTO THIS COURTROOM WHERE MANY HAVE NEVER
2 BEEN BEFORE, AND HEAR A CASE INVOLVING PEOPLE THAT YOU HAVE
3 NEVER SEEN BEFORE, AND INVOLVING A SET OF CIRCUMSTANCES THAT
4 YOU DON'T KNOW ANYTHING ABOUT OTHER THAN WHAT YOU HEAR IN
5 THIS COURTROOM. YOU'RE QUALIFIED BECAUSE YOU USE YOUR GOOD
6 COMMON SENSE. BECAUSE YOU ARE CITIZENS WHO LAY ASIDE YOUR
7 OWN BUSINESS AFFAIRS THIS WEEK AND THE THINGS THAT YOU WOULD
8 RATHER DO AND SUBMIT YOURSELVES TO THIS TYPE OF JURY
9 SERVICE.

10 EVER SINCE YOU'RE BEEN ABLE TO THINK ON YOUR OWN, TO
11 MAKE DECISIONS ON YOUR OWN, YOU'VE BEEN MAKING THE SAME TYPE
12 OF CHOICES THAT WE ASK YOU TO MAKE IN THIS COURTROOM, FROM
13 THE MOST IMPORTANT DECISION THAT YOU EVER HAVE TO MAKE, TO
14 THE LEAST SIGNIFICANT THAT YOU HAVE TO MAKE. YOU USE YOUR
15 GOOD COMMON SENSE IN EVERYTHING YOU DO. I TELL JURORS THAT
16 THE MOST BASIC EXAMPLE THAT I GIVE IS A WEATHER REPORT.
17 I WATCH IT EVERY MORNING TO TRY TO DECIDE HOW COLD OR HOW
18 HOT IT'S GOING TO BE SO I'LL KNOW WHAT TO WEAR SOMETIMES
19 WHEN I'M GIVEN A CHOICE. AND SO I WATCH THE WEATHER REPORT
20 IN THE MORNING. AND IF THEY SAY IT'S GOING TO BE 40
21 DEGREES THEN I AM GOING TO PUT ON AN OVERCOAT OR A SWEATER
22 OR A HEAVY JACKET. IF THEY SAY IT'S GOING TO BE 80, I'M
23 GOING TO WEAR SHORT SLEEVES. IF THEY SAY IT'S GOING TO BE
24 POURING DOWN RAIN THAT DAY AND I SEE THE SUN SHINING, I AM
25 NOT LIKELY TO TAKE A RAIN COAT.

1 AND ON OTHER HAND, IF THEY SAY IT'S GOING TO BE BRIGHT
2 AND SUNNY, I AM GOING TO TAKE AN UMBRELLA WITH ME THAT DAY.
3 BECAUSE I USE MY COMMON SENSE JUST LIKE YOU DO. AND THAT'S
4 WHAT WE ASK YOU TO DO IN THIS COURTROOM. THAT'S A
5 SIMPLISTIC EXAMPLE OF WHAT YOU WILL BE DOING, PERHAPS IN A
6 MUCH MORE COMPLICATED FACTUAL SCENARIO, BUT IT ILLUSTRATES
7 THE PRINCIPLES IN THIS TRIAL AS JURORS TO DECIDE THE
8 TRUTHFULNESS OF WHAT YOU HEAR. THAT'S YOUR JOB.

9 AND NOW, LADIES AND GENTLEMEN, I TOLD YOU EARLIER, THAT
10 THE DEFENDANT IN THIS CASE DID NOT HAVE TO MAKE AN OPENING
11 STATEMENT AND DOES NOT HAVE TO OFFER EVIDENCE AND TESTIMONY
12 IF HE CHOSE NOT TO DO SO. BECAUSE AS I INDICATED TO YOU
13 BEFORE WE BEGAN THE SELECTION PROCESS TODAY, MR. STUCKEY,
14 THE DEFENDANT IN THIS CASE, HAS PLED NOT GUILTY TO THESE
15 CHARGES. AND UNDER THE LAW UNDERSTAND AND UNDER OUR
16 CONSTITUTION WHEN SOMEBODY PLEADS NOT GUILTY TO A CHARGE IN
17 A CRIMINAL CASE, HE IS PRESUMED TO BE INNOCENT OF THOSE
18 CHARGES. WHEN WE SAY THAT SOMEONE IS PRESUMED TO BE
19 INNOCENT OF THE CHARGES, THAT MEANS THAT HE DOES NOT HAVE TO
20 PROVE THAT HE INNOCENT. HE DOES NOT HAVE TO TAKE THE STAND
21 AND TRY TO CONVINCING YOU THAT HE DID NOT DO THESE THINGS OR
22 BRING IN ANY OTHER WITNESSES TO THIS CHAIR AND TRY TO
23 CONVINCE YOU THAT HE DID NOT DO THESE THINGS. HE IS
24 PRESUMED TO BE INNOCENT. HE IS PRESUMED UNDER THE LAW NOT
25 TO HAVE DONE THEM.

1 HOW MANY OF YOU HAVE EVER HEARD THE SAYING THAT A
2 PERSON IS INNOCENT UNTIL PROVEN GUILTY? MOST OF YOU,
3 HAVEN'T YOU? BECAUSE IT IS A FUNDAMENTAL PART OF THE
4 CONSTITUTION IN THE LAW OF OUR LAND. AND THAT'S ALL I AM
5 TELLING YOU NOW. INNOCENT UNTIL PROVEN GUILTY MEANS JUST
6 WHAT IT SAYS. THERE IS NOTHING IN THAT PHRASE THAT SAYS
7 INNOCENCE HAS TO BE PROVEN. INNOCENT UNTIL PROVEN GUILTY
8 MEANS THAT THE GUILT HAS TO BE PROVEN; NOT JUST IN THIS
9 CASE, BUT IN EVERY CASE BROUGHT IN OUR CRIMINAL COURTS.

10 AND SO THE BURDEN OF PROOF THAT IS ON THE STATE IN
11 EVERY CASE OF THIS NATURE IS TO PROVE TO YOU AS JURORS BY
12 EVIDENCE THAT SATISFIES YOU BEYOND A REASONABLE DOUBT, THAT
13 THE DEFENDANT IS GUILTY OF THESE CHARGES. IF THE STATE IS
14 ABLE TO MEET THAT BURDEN, THE STATE IS ENTITLED TO A VERDICT
15 AT YOUR HANDS. IF THE STATE IS UNABLE TO MEET THAT BURDEN,
16 THE DEFENDANT IS ENTITLED TO A VERDICT OF NOT GUILTY AT YOUR
17 HANDS. WHEN THE TRIAL IS OVER, I WILL DEFINE FOR YOU MORE
18 PRECISELY WHAT WE MEAN BY PROOF BEYOND A REASONABLE DOUBT.
19 I SIMPLY TELL YOU NOW, THAT THE BURDEN IS ON THE STATE TO
20 FIRMLY CONVINCE YOU OF THE DEFENDANT'S GUILT. IF IT IS
21 ABLE TO FIRMLY CONVINCE YOU OF THE DEFENDANT'S GUILT, IT HAS
22 MET IT'S BURDEN OF PROOF.

23 ON THE OTHER HAND, AFTER HEARING ALL OF THE EVIDENCE
24 YOU THINK THERE IS A REAL POSSIBILITY THAT THE DEFENDANT IS
25 NOT GUILTY, THE STATE HAS NOT MET ITS BURDEN OF PROOF AND

1 THE DEFENDANT IS ENTITLED TO BE FOUND NOT GUILTY. I WILL
2 DESCRIBE FOR YOU, AS I SAID, THAT BURDEN IN A MORE SPECIFIC
3 AND LENGTHY DETAIL WHEN THE TRIAL IS OVER. I SIMPLY GIVE
4 YOU THOSE PRELIMINARY INSTRUCTIONS TO LET YOU KNOW WHAT
5 YOU'RE BEING ASKED TO DO. LADIES AND GENTLEMEN, I
6 APPRECIATE VERY MUCH YOUR ATTENTION TO THESE REMARKS. I ASK
7 YOU NOW TO GIVE THAT SAME ATTENTION TO THE LAWYERS AS THEY
8 MAKE THEIR OPENING STATEMENTS. MR. CONNER.

9 MR. CONNER: MAY IT PLEASE THE COURT.

10 THE COURT: YES, SIR.

11 MR. CONNER: LADIES AND GENTLEMEN OF THE JURY, MY NAME
12 IS HARRY CONNER AND I'M AN ASSISTANT SOLICITOR HERE IN
13 SUMTER COUNTY. IN THIS CASE WE'RE ABOUT TO TRY, THIS
14 GENTLEMAN OVER HERE ON THE END IS NAMED DONNELL OR DARNELL
15 ROBINSON. STAND UP, MR. ROBINSON. THANK YOU, YOU MAY BE
16 SEATED. NOW HE WAS SHOT IN THE BACK, BACK IN OCTOBER OF
17 2000. AND YOU'VE HEARD WHEN THE CHARGES WERE READ OUT
18 AGAINST THE DEFENDANT HERE, HE IS CHARGED WITH FOUR
19 DIFFERENT THINGS. BUT IT ALL COMES FROM ONE INCIDENT, AND
20 THAT ONE INCIDENT IS THE SHOOTING OF DARNELL IN THE BACK.

21 THE -- YOU'RE GOING TO LEARN THAT THERE WERE THREE
22 PEOPLE CHARGED IN THIS CASE. AND THE REASONING BEHIND THAT,
23 THEY'RE NOT CHARGED IN ALL, SOME OF THEM ARE NOT CHARGED IN
24 ALL OF THE CHARGES. BUT THE ONE WHO IS CHARGED WITH PULLING
25 THE TRIGGER, THE ONE WHO IS CHARGED WITH SHOOTING DARNELL IN

1 THE BACK, IS CASEY STUCKEY, THE DEFENDANT ON TRIAL HERE.

2 AND YOU ARE GOING TO LEARN SOMETHING ELSE ABOUT DARNELL
3 YOU CANT'T TELL BY LOOKING AT HIM.. IF YOU STAND HERE AND
4 LOOK, HE LOOKS JUST LIKE A NORMAL, AVERAGE, ORDINARY PERSON.
5 AND YOU CAN TELL HIM IF YOU JUST ASK HIM A SIMPLE QUESTION
6 OR TWO, HE WILL GIVE YOU A YES A NO ANSWER. BUT IF YOU TALK
7 TO HIM VERY MUCH AND MS. FERRARI IS GOING TO HAVE AN
8 OPPORTUNITY TO TALK WITH HIM. AND I AM GOING TO HAVE AN
9 OPPORTUNITY TO ASK HIM QUESTIONS. BUT HE CAN ANSWER REAL
10 SIMPLE STRAIGHTFORWARD QUESTIONS AND HE CAN SAY YES OR NO.
11 HE CAN ADD A LITTLE TO HIS YES OR NO OCCASIONALLY, BUT HE
12 CAN'T GET TOO COMPLICATED BECAUSE HE IS MENTALLY RETARDED.

13 AND YOU'RE GOING TO HEAR FROM HIS SISTER, THE LADY
14 SEATED RIGHT THERE BY HIM. AND SHE'S GOING TO TELL YOU HE
15 DRAWS AN SSI CHECK. IN OTHER WORDS, THE GOVERNMENT HAS
16 DECLARED THAT HE IS MENTALLY RETARDED.

17 NEVERTHELESS, HE'S THE VICTIM. HE IS THE MAN WHO WAS
18 SHOT IN THE BACK. AND IF SOMEBODY ASKS HIM A LONG CONTORTED
19 QUESTION, OR ISN'T IT TRUE THAT SO AND SO AND SO AND SO AND
20 SO AND SO, IT GETS TOO LONG, HE GETS CONFUSED AND HE CAN'T
21 ANSWER. AND IT LOOKS LIKE HE'S -- IT MIGHT LOOK TO YOU LIKE
22 HE'S TRYING TO BE TRICKY. BUT HE'S JUST SLOW, THAT'S ALL
23 THERE IS TO IT. BUT DESPITE HIS MENTAL DEFICIENCY, THERE
24 IS ONE THING THAT HE IS STEADFAST IN HIS CASE ON, AND THAT'S
25 HIS IDENTIFICATION OF THE PEOPLE THAT DID HIM WRONG. AND

1 THE MAN WHO SHOT HIM IN THE BACK.

2 AND YOU'RE GOING TO HEAR FROM MR. TURNER OVER THERE,
3 THE GENTLEMAN SEATED THERE IN THE MIDDLE WITH THE BLUE COAT.
4 HE IS AN INVESTIGATOR WITH THE SHERIFF'S DEPARTMENT ABOUT
5 THE PROCEDURE THAT HE WENT THROUGH WITH DARNELL. IT'S NOT
6 JUST A PROCEDURE FOR DARNELL. IT'S JUST A PROCEDURE THAT'S
7 SUPPOSED TO BE USED BY THE LAW ENFORCEMENT AGENCIES WHEN
8 THEY WANT TO BE SURE THAT THEY'VE DONE A THOROUGH JOB. AND
9 THEY'RE NOT -- AND THEIR IDENTIFICATION OF SOMEBODY IS NOT
10 BIASED; THAT THEY'RE PICKING OUT, YOU KNOW, THAT THEY'RE NOT
11 PICKING OUT THE WRONG MAN OR PROSECUTING THE WRONG MAN.

12 THEY USE A 6 PERSON PHOTO DISPLAY. AND THEY USE AND
13 GIVE THE DEFENDANT WITH NO IDENTIFICATION ON THERE OTHER
14 THAN A NUMBER. AND THEN GIVE HIM AN OPPORTUNITY TO LOOK AT
15 THESE PICTURES AND PICK OUT THE ONE OR PICK OUT ONE IF THERE
16 IS ONE THERE, PICK OUT THE PERSON WHO DID THE CRIME. AND HE
17 PICKED OUT CASEY STUCKEY. AND HE ALSO PICKED OUT THE OTHER
18 TWO PEOPLE WHO WERE NAMED IN THIS INDICTMENT AGAINST HIM.
19 LADIES AND GENTLEMEN, ALL WE ASK FOR IS FOR YOU TO USE YOUR
20 COMMON SENSE IN EVALUATING THIS CASE. WE'LL DO OUR BEST AND
21 PRESENT EVERYTHING WE HAVE THAT WE THINK IS RELEVANT. AND
22 WE SUBMIT TO YOU THAT THERE IS AMPLE EVIDENCE HERE TO FIND
23 THIS DEFENDANT GUILTY. AND ALL WE ASK FOR IS YOUR
24 ATTENTION. THANK YOU.

25 THE COURT: THANK YOU, MR. CONNER. MS. FERRARI.

1 MS. FERRARI: DIFFERENT JUDGES DO IT A DIFFERENT WAY
2 WHEN THEY ADDRESS A JURY. THE JUDGE STOLE SOME OF MY
3 THUNDER. I WAS GOING TO TRY TO TELL YOU ABOUT THE
4 REASONABLE DOUBT, AND PAYING ATTENTION AND NOT GUILTY --
5 INNOCENT UNTIL PROVEN GUILTY. SO IF I SOUND LIKE I'M JUST
6 REPEATING WHAT THE JUDGE SAID, IT'S MY NORMAL SPEECH, AND HE
7 JUST STOLE A LITTLE THUNDER.

8 CASEY PLEASE STAND UP. THIS IS CASEY BERNARD STUCKEY.
9 THIS IS HIS DAY IN COURT. AND HE IS INNOCENT UNTIL PROVEN
10 GUILTY. GO AHEAD SIT DOWN. WE'RE NOT DENYING THAT MR.
11 ROBINSON GOT SHOT. AND I AM SURE THAT WAS A TERRIFYING
12 EXPERIENCE FOR HIM. FOR ANYONE TO GET SHOT. BUT YOU HAVE
13 TO REMEMBER THAT WE ARE HERE BECAUSE MY CLIENT HAS SAID HE
14 IS NOT GUILTY, AS HE HAS THE RIGHT TO DO. HE HAS SAID, I
15 DID NOT DO THIS. SO NOW THE BURDEN IS UPON THE STATE.

16 MR. CONNER TOLD YOU WHAT YOU WERE GOING TO HEAR. WELL
17 IF YOU DO HEAR IT, FINE. BUT WHAT YOU NEED TO CONCENTRATE
18 ON IS NOT ONLY WHAT YOU DO HEAR FROM THE STAND, BUT WHAT
19 YOU DON'T HEAR. BECAUSE REMEMBER, HE IS INNOCENT UNTIL
20 PROVEN GUILTY. AND THE STANDARD IS BEYOND A REASONABLE
21 DOUBT. AND THE JUDGE WILL EXPLAIN THAT TO YOU AT THE END OF
22 THE TRIAL, THE REASONABLE DOUBT PART. SO LISTEN TO NOT ONLY
23 WHAT YOU DO HEAR, BUT WHAT YOU DON'T. AND I FIND IT
24 INTERESTING THAT MR. CONNER IS GOING TO GO AHEAD AND TELL
25 YOU THAT MR. ROBINSON MAY LOOK LIKE HE DOESN'T UNDERSTAND

1 THE QUESTION OR IF HIS ANSWERS ARE WRONG THAT'S BECAUSE OF
2 HIS MENTAL STATE. YOU DECIDE IF THAT WAS BECAUSE OF HIS
3 MENTAL STATE, OR IF THAT'S BECAUSE HE CAN'T REMEMBER OR
4 DOESN'T KNOW FOR SURE.

5 YOU NEED TO DECIDE THAT. DON'T KEEP IT IN YOUR HEAD,
6 OH, HE'S CHALLENGED, HE'S SLOW. SO IF YOU MAKE A MISTAKE ON
7 THE STAND, I'M JUST GOING TO BLAME IT ON THAT. THAT'S NOT
8 WHY WE ARE HERE. REMEMBER, REASONABLE DOUBT. INNOCENT
9 UNTIL PROVEN GUILTY. DON'T GO IN TO THIS THINKING THAT
10 WE'RE GOING TO EXCUSE ANY INCONSISTENCIES BECAUSE OF HIS
11 MENTAL STATE. BECAUSE THAT'S NOT AGAIN, THE STANDARD. THE
12 STANDARD IS INNOCENT UNTIL PROVEN GUILTY BEYOND A REASONABLE
13 DOUBT. MAKE SURE THAT THE STATE DOES THAT, BECAUSE THAT'S
14 WHAT OUR SYSTEM IS ABOUT. NOT EVERYONE THAT IS ARRESTED IS
15 GUILTY. THAT'S WHY WE HAVE TRIALS. THAT'S WHY IT'S GREAT
16 THAT PEOPLE LIKE YOU ARE WILLING TO GIVE UP YOUR TIME.
17 BECAUSE IF PEOPLE LIKE YOU WEREN'T WILLING TO GIVE UP YOUR
18 TIME, THINK ABOUT WHAT OUR SYSTEM WOULD BE LIKE. IT
19 WOULDN'T BE INNOCENT UNTIL PROVEN GUILTY, IT WOULD JUST BE
20 GUILTY. THANK YOU.

21 THE COURT: THANK YOU, MS. FERRARI. MR. CONNER, YOU
22 CAN CALL YOUR FIRST WITNESS.

23 MR. CONNER: YOUR HONOR, AT THIS TIME, I'D CALL DELORES
24 SINGLETON.

25 THE COURT: COME FORWARD, MS. SINGLETON, AND BE SWORN.

DELORES SINGLETON-DIRECT BY CONNER

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1 DELORES SINGLETON, BEING FIRST DULY
2 SWORN, TESTIFIED AS FOLLOWS:

3 THE BAILIFF: STATE YOUR FULL NAME AND SPELL YOUR LAST
4 NAME FOR THE RECORD PLEASE.

5 A. DELORES SINGLETON. S-I-N-G-L-E-T-O-N.

6 DIRECT EXAMINATION BY MR. CONNER:

7 Q. MS. SINGLETON, WHERE -- DO YOU LIVE HERE IN
8 SUMTER?

9 A. YES, SIR.

10 Q. ON WHAT STREET DO YOU LIVE ON?

11 A. ON GAMBLE.

12 Q. AND HOW LONG HAVE YOU LIVED ON GAMBLE STREET?

13 A. SINCE 99. 1999.

14 Q. AND DO YOU WORK HERE IN SUMTER?

15 A. YES SIR.

16 Q. WHERE DO YOU WORK?

17 A. BECTON DICKINSON.

18 Q. BECTON DICKINSON?

19 A. UH-HUH. (AFFIRMATIVE.)

20 Q. AND HOW LONG HAVE WORKED AT BECTON DICKINSON?

21 A. ABOUT 7 YEARS.

22 Q. NOW ON A, BACK ON THE EARLY MORNING OF OCTOBER 4,
23 2000, WERE YOU LIVING ON GAMBLE STREET AT THAT TIME?

24 A. YES, SIR.

25 Q. DID SOMETHING UNUSUAL HAPPEN OUTSIDE YOUR HOME THAT

DELORES SINGLETON-DIRECT BY CONNER

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1 MORNING?

2 A. UH-HUH. (AFFIRMATIVE.)

3 Q. TELL US ABOUT IT.

4 A. WELL I WOKE UP TO HEAR SOME GUNSHOTS. AND IT
5 STARTLED ME, AND I JUST STOOD STILL. AND THEN I HEARD
6 PEOPLE RUNNING ACROSS MY YARD. BUT I WAIT FOR A WHILE AND
7 THEN I WENT TO MY FRONT ROOM WINDOW, AND I JUST PEEPED
8 THROUGH IT. AND I SAW SOME PEOPLE JUMP IN THE CAR AND TAKE
9 OFF.

10 Q. YOU SAW SOME PEOPLE JUMP IN THE---

11 A. YEAH, UH-HUH. (AFFIRMATIVE.)

12 Q. ---CAR? AND WAS THAT THE ONLY CAR OUT THERE?

13 A. THAT'S THE ONLY CAR I SAW.

14 Q. AND DO YOU -- HOW MANY GUNSHOTS DID YOU HEAR?

15 A. I AM NOT QUITE SURE. BUT IT COULD HAVE BEEN MORE
16 THAN ONE, BECAUSE LIKE I SAID, IT WOKE ME UP.

17 Q. BUT YOU THINK IT WAS MORE THAN ONE? OR YOU---

18 A. IT COULD HAVE BEEN.

19 Q. AND AFTER THAT HAPPENED, DID YOU GET UP?

20 A. AFTER IT HAPPENED I SIT UP FOR AWHILE. AND THEN
21 WHEN I SIT UP, I HEARD, YOU KNOW, PEOPLE RUNNING. AND THEN
22 I WAITED AND I WENT TO MY FRONT ROOM WINDOW. AND I JUST
23 PEEPED THE BLIND OPEN. AND, YOU KNOW, I SEE PEOPLE GOT IN
24 AND SHUT THE DOOR AND TOOK OFF. SO I DIDN'T...

25 Q. AND THERE WAS MORE THAN ONE PERSON OUT THERE?

DELORES SINGLETON-DIRECT BY CONNER

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1 A. I ASSUME. BOTH DOORS WAS OPEN.

2 Q. BOTH DOORS WERE OPEN?

3 A. IT LOOKED LIKE THEY HAD BEEN, BECAUSE THE DRIVER'S
4 SIDE WAS ON THE OPPOSITE SIDE. I SAW THE PASSENGER SIDE
5 DOOR.

6 Q. NOW DID THE -- DID YOU CALL 911 OR DID SOMEBODY
7 ELSE CALL 911?

8 A. I CALLED MY MOM. AND THEN SHE TOLD ME TO CALL 911.
9 BUT THEY TOLD ME SOMEBODY ELSE HAD DONE CALLED. SEVERAL
10 PEOPLE HAD CALLED.

11 Q. AND AT THAT TIME DID YOU GO OUTSIDE?

12 A. AFTERWARDS. I SEE THAT AMBULANCE AND THE POLICE.
13 THAT'S WHEN I WENT OUT.

14 Q. OR DID YOU GO OUT THE FRONT OF YOUR HOUSE, OR THE
15 BACK?

16 A. THE BACK.

17 Q. AND THAT'S WHERE THE PEOPLE WERE CONGREGATED?

18 A. YES, IN THE STREET AREA. BUT I WAS IN MY GATE.

19 Q. I WOULD LIKE FOR YOU TO COME DOWN HERE AND LOOK AT
20 THIS SKETCH IF YOU WOULD.

21 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
22 STAND.)

23 MR. CONNER: MAY IT PLEASE THE COURT, WE WOULD LIKE TO
24 MARK THIS AS STATE'S EXHIBIT NO. 3 AND OFFER IT INTO
25 EVIDENCE IF THERE IS NO PROBLEM.

DELORES SINGLETON-DIRECT BY CONNER

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1 THE COURT: MS. FERRARI, WHAT SAYS THE DEFENSE?

2 MS. FERRARI: IT IS BEING OFFERED INTO EVIDENCE FOR
3 WHAT PURPOSE?

4 THE COURT: I GUESS TO DEMONSTRATE THE PHYSICAL LAYOUT
5 OF THE PLACE WHERE THIS CRIME ALLEGEDLY OCCURRED.

6 MS. FERRARI: NOT DRAWN TO SCALE.

7 THE COURT: NOT DRAWN TO SCALE, I THINK IS SAFE, IS
8 THAT RIGHT?

9 MR. CONNER: THAT'S SAFE TO SAY.

10 MS. FERRARI: SO IT'S JUST FOR DEMONSTRATION PURPOSES.
11 IT'S NOT TO SAY THAT THIS IS 50 FEET AT THIS POINT OR
12 NOTHING LIKE THAT.

13 THE COURT: IT WILL BE USED FOR DEMONSTRATIVE PURPOSES
14 CERTAINLY IN THE COURTROOM. DO YOU WISH FOR THIS TO GO INTO
15 THE JURY ROOM AT THE CONCLUSION OF TRIAL, MR. CONNER?

16 MR. CONNER: I WOULD.

17 THE COURT: SO IT WOULD BE OFFERED FOR EVIDENCE FOR
18 DEMONSTRATIVE OR SUBSTANTIVE PURPOSES IN THAT REGARD. IF
19 SHE CAN IDENTIFY THIS AS A LAYOUT OF THIS AREA WHERE SHE
20 LIVES AND IF IT REASONABLY REPRESENTS THAT EVEN THOUGH IT IS
21 NOT TO SCALE, I WILL ALLOW IT. I WOULD ASK HER HOWEVER TO
22 STAND ON THE OTHER SIDE. IF YOU CAN, SHE CAN SWAP PLACES. SO
23 SHE WILL BE FACING THE COURT REPORTER AS SHE TALKS ABOUT IT.
24 MR. CONNER, YOU CAN EITHER STAND THERE OR OVER HERE
25 WHEREVER YOU ARE COMFORTABLE IN THAT REGARD. IF SHE'S

DELORES SINGLETON-DIRECT BY CONNER

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1 FAMILIAR WITH THAT AND CAN IDENTIFY IT, THEN LET'S SEE.

2 Q. MS. SINGLETON, IF YOU WOULD LOOKING AT THE DIAGRAM
3 THERE, CAN YOU IDENTIFY THE AREA SHOWN?

4 A. YES.

5 Q. AND WHAT, TELL US ABOUT THAT.

6 A. LIKE I SAY, THIS IS REAVES, AND THIS I WHERE I
7 LIVE.

8 Q. SO YOU...

9 A. THIS IS GAMBLE.

10 Q. SO THAT'S GAMBLE STREET?

11 A. UH-HUH. (AFFIRMATIVE.)

12 Q. NOW THAT VEHICLE THAT YOU SAW, WHERE WAS IT?
13 WOULD YOU POINT TO THAT?

14 A. IT WAS KIND OF ALONG HERE.

15 Q. CHARLIE, HAVE YOU GOT ANOTHER MARKER? YOU WANT
16 TO DRAW IT, OR DO YOU WANT ME TO DRAW IT? SO IT WAS RIGHT
17 HERE?

18 A. YES, UH-HUH. (AFFIRMATIVE.)

19 Q. WHICH WAY WAS IT HEADING?

20 A. THIS WAY.

21 Q. THAT FRONT---

22 A. UH-HUH. (AFFIRMATIVE.)

23 Q. ---WAS HERE?

24 A. UH-HUH. (AFFIRMATIVE.)

25 Q. NOW WHICH WAY DID THE VEHICLE LEAVE WHEN YOU SAW IT

DELORES SINGLETON-DIRECT BY CONNER

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1 LEAVE?

2 A. THIS WAY.

3 Q. SO IT CAME OUT AND TURNED DOWN GAMBLE LIKE THIS?

4 A. YES, SIR.

5 Q. NOW SHOW US THE GENERAL AREA WHERE YOU SAW -- YOU
6 SAW SOME PEOPLE CONGREGATED BEHIND YOUR HOME?

7 A. YEAH, IT WAS BACK HERE SOMEWHERE. IN THE STREET
8 AREA, IS WHERE I RECALL.

9 Q. IN THE STREET?

10 A. YES.

11 Q. AND DID YOU ACTUALLY SEE THE VICTIM?

12 A. NO, SIR.

13 Q. DID YOU SEE THE AMBULANCE COME THERE?

14 A. I SAW THE AMBULANCE, YES.

15 Q. AND THAT'S WHERE THE AMBULANCE CAME?

16 A. YES.

17 Q. AND THERE WERE SOME OTHER PEOPLE GATHERED AROUND?

18 A. YES, SOME MORE CARS.

19 Q. YOU WENT OUTSIDE AND YOU COULD SEE---

20 A. YES, SIR.

21 MR. CONNER: OKAY, HAVE A SEAT. YOUR HONOR, WE WOULD
22 OFFER THIS AS STATE'S EXHIBIT NO. 3.

23 THE COURT: THANK YOU. I WILL ALLOW IT INTO EVIDENCE.
24 I THINK SHE'S SUFFICIENTLY LAID THE FOUNDATION. AND HAS
25 IDENTIFIED IT AS BEING -- REASONABLY DESCRIBING THE AREA.

DELORES SINGLETON-DIRECT BY CONNER

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1 THANK YOU. STATE'S 3 INTO EVIDENCE.

2 (DIAGRAM MARKED AS STATE'S EXHIBIT NO. 3 INTO
3 EVIDENCE.)

4 Q. DO YOU KNOW WHAT TIME OF DAY IT WAS THAT THIS
5 HAPPENED, MS. SINGLETON?

6 A. IT WAS AT NIGHT.

7 Q. IT WAS AT NIGHT?

8 A. UH-HUH. (AFFIRMATIVE.) LIKE IN THE MORNING.

9 Q. EARLY IN THE -- WELL IT WAS IN THE MORNING.

10 A. YES.

11 Q. CLOSE TO DAYLIGHT?

12 A. IT WAS ABOUT -- IT WAS ABOUT THREE SOMETHING WHEN I
13 WOKE UP. I CAN'T REMEMBER EXACTLY WHAT TIME AROUND THREE.

14 Q. DID THE AMBULANCE COME PRETTY QUICK AFTER YOU HEARD
15 THIS STUFF GOING ON?

16 A. I CAN'T -- MAYBE 30-45 MINUTES, I AM NOT SURE.

17 Q. MAYBE 30 MINUTES.

18 A. YEAH, I AM NOT SURE ON THAT.

19 MR. CONNER: THANK YOU, MA'AM.

20 THE COURT: MS. FERRARI, YOU MAY CROSS EXAMINE.

21 CROSS EXAMINATION BY MS. FERRARI:

22 Q. HOW MANY GUNSHOTS DID YOU HEAR?

23 A. I AM NOT QUITE SURE. IT COULD HAVE BEEN MORE THAN
24 ONE, YOU KNOW. LIKE I SAY, I WAS ASLEEP.

25 Q. AND YOU SAID YOU HEARD SOMEBODY RUNNING ACROSS THE

DELORES SINGLETON-CROSS BY FERRARI

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- 1 YARD?
- 2 A. YES.
- 3 Q. COULD YOU TELL HOW MANY SOMEBODIES?
- 4 A. NO.
- 5 Q. OKAY. AND THEN YOU SAID YOU WAITED A FEW MINUTES?
- 6 A. YEAH.
- 7 Q. HOW LONG?
- 8 A. IT WAS MAYBE 2OR 3 MINUTES.
- 9 Q. OKAY. AND THEN YOU SAID THAT YOU SAW PEOPLE JUMP
- 10 IN THE CAR?
- 11 A. YES.
- 12 Q. BUT YOU CAN'T SAY HOW MANY?
- 13 A. NO.
- 14 Q. CAN YOU DESCRIBE THE CAR?
- 15 A. NO. IT WAS DARK, AND WE DON'T HAVE A STREET LIGHT
- 16 OUT THERE IN THAT AREA. BUT IT WAS DARK.
- 17 Q. BUT YOU SAID THAT YOU SAW AT LEAST ONE DOOR OPEN?
- 18 A. NO. I JUST SEE PEOPLE JUMP IN THE CAR AND LEFT.
- 19 NOW THE DOOR HAD TO BEEN OPEN FOR THEM TO JUMP IN. SO I
- 20 DON'T KNOW, YOU KNOW, AFTER THEY LEFT.
- 21 Q. DID YOU HEAR DOORS CLOSE?
- 22 A. YES.
- 23 Q. HOW MANY DID YOU HEAR CLOSE?
- 24 A. I DIDN'T REALLY PAY IT NO ATTENTION. BUT I, YOU
- 25 KNOW.

1 Q. AND WHEN YOU SAW THE PEOPLE JUMP IN THE CAR, WERE
2 YOU LOOKING OUT YOUR FRONT DOOR OR YOUR BACK DOOR? OR FRONT
3 WINDOW OR BACK WINDOW?

4 A. MY FRONT WINDOW.

5 Q. YOU DON'T NEED TO COME DOWN HERE AGAIN, BUT I'M
6 ASSUMING THIS HOUSE---

7 A. UH-HUH. (AFFIRMATIVE.)

8 Q. ---IS YOUR HOUSE?

9 A. UH-HUH. (AFFIRMATIVE.)

10 Q. THE ONE ON THE CORNER OF---

11 A. UH-HUH. (AFFIRMATIVE.)

12 Q. ---GAMBLE AND REAVES?

13 A. YES, MA'AM.

14 Q. IS THERE A HOUSE ACROSS THE STREET FROM YOU?

15 A. RIGHT ACROSS?

16 Q. UH-HUH. (AFFIRMATIVE.)

17 A. YEAH.

18 Q. WAS THE CAR PARKED IN FRONT OF THAT HOUSE ON THE
19 STREET, IN THE DRIVEWAY, WHAT?

20 A. IN THE STREET.

21 Q. IN THE STREET.

22 A. UH-HUH. (AFFIRMATIVE.)

23 Q. YOU SAID YOU WENT OUT THE BACK DOOR WHEN THE
24 AMBULANCE ARRIVED.

25 A. YES.

DELORES SINGLETON-CROSS BY FERRARI

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1 Q. AND THAT'S WHERE EVERYBODY WAS CONGREGATING?

2 A. YES.

3 Q. WHERE IS BRENT STREET?

4 A. IT'S OFF OF RED BAY.

5 Q. OFF OF RED BAY? IS THAT CLOSE---

6 A. YEAH.

7 Q. ---TO WHERE THIS IS?

8 A. UH-HUH. (AFFIRMATIVE.)

9 MS. FERRARI: NOTHING FURTHER.

10 THE COURT: MR. CONNER, REDIRECT?

11 MR. CONNER: I HAVE NOTHING FURTHER, YOUR HONOR.

12 THE COURT: THANK YOU, MS. SINGLETON, YOU CAN STEP

13 DOWN.

14 MR. CONNER: WE WOULD LIKE TO HAVE THIS LADY EXCUSED SO
15 SHE CAN GO TO WORK..

16 MS. FERRARI: I HAVE NO OBJECTION, YOUR HONOR.

17 THE COURT: WITHOUT OBJECTION MS. SINGLETON IS EXCUSED.

18 YOU CAN GO BACK TO WORK. THANK YOU, MS. SINGLETON. MR.

19 CONNER.

20 MR. CONNER: YOUR HONOR, AT THIS TIME I WOULD CALL

21 CAROLYN DIXON.

22 THE COURT: MS. DIXON, COME FORWARD AND BE SWORN.

23 CAROLYN DIXON, BEING FIRST DULY SWORN,

24 TESTIFIED AS FOLLOWS:

25 THE CLERK: STATE YOUR FULL NAME AND SPELL YOUR LAST

- 1 NAME FOR THE RECORD, PLEASE, MA'AM.
- 2 A. CAROLYN DIXON. D-I-X-O-N.
- 3 DIRECT EXAMINATION BY MR. CONNER:
- 4 Q. CAROLYN WHERE DO YOU LIVE?
- 5 A.
- 6 Q. HERE IN SUMTER?
- 7 A. YES, SIR.
- 8 Q. WHO LIVES THERE WITH YOU?
- 9 A. MY MOTHER AND MY BROTHER AND MY CHILDREN.
- 10 Q. AND WHAT'S YOUR RELATIONSHIP TO DONNELL?
- 11 A. HE IS MY BROTHER.
- 12 Q. NOW, IF YOU WOULD, HOW ABOUT TELL US ABOUT DARNELL.
- 13 IS HE YOUNGER THAN YOU OR OLDER THAN YOU?
- 14 A. HE'S -- HE IS THE BABY BOY IN THE FAMILY.
- 15 Q. AND HOW MUCH YOUNGER THAN YOU IS HE?
- 16 A. ABOUT 14. I WOULD SAY 14 YEARS.
- 17 Q. 14 YEARS?
- 18 A. 14. UH-HUH. (AFFIRMATIVE.)
- 19 Q. AND I BELIEVE YOU TOLD ME YOU CHANGED HIS DIAPERS
- 20 WHEN HE WAS A LITTLE GUY.
- 21 A. YES, SIR.
- 22 Q. AND TELL US ABOUT HIS MENTAL ABILITIES.
- 23 A. HE BEEN BORN SLOW, PREMATURE AND HANDICAPPED.
- 24 Q. AND DID HE HAVE TO HAVE ANY SPECIAL TRAINING AS HE
- 25 CAME ALONG?

DELORES SINGLETON-CROSS BY FERRARI

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1 A. YES, SIR, WITH HIS SPEECH. HE COULDN'T HARDLY TALK
2 RIGHT WHEN HE WAS LITTLE. AND CAN'T HARDLY TALK RIGHT NOW.

3 Q. DOES HE -- HAS HE BEEN DECLARED DISABLED AND GET
4 SOME KIND OF SUBSISTENCE?

5 A. YES, SIR, MENTALLY.

6 Q. TELL US ABOUT THAT.

7 A. HE GETS SSI. AND HE HAS TO BE WATCHED DAILY
8 BECAUSE HE WILL FOLLOW PEOPLE OFF AND TALK TO STRANGERS AND
9 STUFF. AND HE THINKS EVERYBODY IS HIS FRIEND.

10 Q. AND WHAT ABOUT HIM MAKES YOU THINK THAT HE'S EASY
11 TO LEAD OR SOMEBODY ELSE TO LEAD HIM ON?

12 A. HE JUST DO THAT ALL THE TIME. THAT'S WHY WE HAVE
13 TO KEEP A CLOSE EYE HIM. HE'LL BE OUT THERE TALKING TO
14 SOMEBODY, AND IF THEY ASK HIM TO GO SOMEWHERE, HE WILL GO.

15 Q. IF SOMEBODY ASKS HIM TO GO---

16 A. UH-HUH. (AFFIRMATIVE.)

17 Q. ---HE WILL GET IN THE CAR AND RIDE OFF WITH THEM?

18 A. YES, SIR.

19 Q. NOW WHEN DOES HE GET THIS SSI CHECK?

20 A. ON THE FIRST OF EVERY MONTH.

21 Q. ON THE FIRST OF THE MONTH?

22 A. UH-HUH. (AFFIRMATIVE.)

23 Q. AND WHO MANAGES HIS MONEY FOR HIM?

24 A. I DO.

25 Q. SO THE CHECK COMES TO YOU OR COMES TO HIM, AND HE

1 GIVES IT TO YOU OR?

2 A. NO, SIR, IT COMES TO ME. AND I BUY HIS CLOTHES AND
3 PAY THE BILLS.

4 Q. DO YOU USUALLY GIVE HIM A LITTLE MONEY AT THE FIRST
5 OF THE MONTH WHEN HIS CHECK COMES?

6 A. YES, SIR.

7 Q. AND HE THINKS EVERYBODY IS HIS FRIEND?

8 A. YES, SIR.

9 Q. NOW THE NIGHT OR THE MORNING THAT HE GOT SHOT
10 THERE, DID YOU GO DOWN TO THE HOSPITAL?

11 A. YES, SIR.

12 Q. AND WHERE WAS THAT?

13 A. TUOMEY.

14 Q. AND TELL US WHAT -- WHO WENT WITH YOU?

15 A. MY MOMMA, MY STEPDADDY, MY OTHER BROTHER, MY AUNT.
16 IT BEEN ABOUT---

17 Q. THE WHOLE FAMILY.

18 A. ---THE WHOLE FAMILY, YEAH.

19 Q. AND WHEN Y'ALL GOT THERE, WERE YOU ABLE TO SEE
20 DARNELL?

21 A. NO, SIR, NOT AT FIRST.

22 Q. AND AFTER HE WAS THERE FOR A WHILE, DID THEY MAKE A
23 DECISION ON DOING SOMETHING ELSE WITH HIM?

24 A. YES, TO SEND HIM TO COLUMBIA. BECAUSE THE BLEEDING
25 WASN'T STOPPED. AND THE BULLET, THEY WAS SCARED TO MOVE IT.

DELORES SINGLETON-CROSS BY FERRARI

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1 Q. SO THE BULLET WAS INSIDE OF HIM?

2 A. YES, SIR. IT STILL IS.

3 Q. IT STILL IS INSIDE OF HIM?

4 A. UH-HUH. (AFFIRMATIVE.)

5 Q. AND DID YOU GO TO COLUMBIA TO SEE HIM?

6 A. YES, SIR.

7 Q. AND DID YOU AND YOUR MAMMA TALK WITH THE DOCTORS
8 OVER THERE?

9 A. YES, SIR.

10 Q. AND NOW WHEN DID HE COME BACK -- HOW LONG WAS HE IN
11 THE HOSPITAL OVER THERE?

12 A. 2 DAYS.

13 Q. AND AFTER THEY SENT HIM HOME, WHAT WAS YOUR
14 RESPONSIBILITY IN CARING FOR HIM?

15 A. WASHING HIM OFF AND CHANGING THE BANDAGES.

16 Q. AND HE HAD A BANDAGE WHERE THE BULLET WENT IN?

17 A. UH-HUH. (AFFIRMATIVE.) YES, SIR.

18 Q. I'D LIKE FOR YOU TO COME DOWN HERE AND SHOW US
19 WHERE THAT BULLET WENT IN HIM. COME OVER HERE, DARNELL.

20 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
21 STAND.)

22 Q. AND STAND HERE AND FACE ME, AND LET'S SHOW THE
23 PEOPLE HERE WHERE THE BULLET WENT IN. PULL UP YOUR SHIRT
24 FOR THEM.

25 A. RIGHT THERE.

1 MR. CONNER: YOUR HONOR, WE WOULD ASK THAT THE RECORD
2 REFLECT THAT SHE POINTS TO THE RIGHT PART OF HIS BACK, ABOUT
3 THREE INCHES TO THE RIGHT OF THE MIDLINE.

4 THE COURT: THANK YOU.

5 MR. CONNER: COME AROUND HERE AND MAKE SURE THAT
6 EVERYBODY GETS AN OPPORTUNITY. AND THEN TURN THAT WAY A
7 LITTLE BIT AND POINT THAT.

8 (WITNESS INDICATES TO THE JURY.)

9 Q. YOU CAN HAVE A SEAT.

10 (THEREUPON, THE WITNESS RESUMES THE WITNESS STAND.)

11 Q. AND THAT -- SO THAT ONE PLACE WAS THE ONLY INJURY
12 HE HAD ON HIM?

13 A. HIS FACE AND STUFF WAS SCRAPED.

14 Q. BUT THE BULLET -- AS FAR AS THE BULLET?

15 A. OH, THAT'S THE ONLY -- THE ONLY WOUND, YEAH.

16 Q. HE HAD SOME SCRAPES ON HIS FACE YOU SAY?

17 A. YES, SIR.

18 Q. BUT HE HAD THIS ONE PLACE WHERE THE BULLET WENT IN,
19 BUT THE BULLET DIDN'T COME OUT?

20 A. NO, SIR, IT IS STILL IN HIS BACK.

21 Q. TELL US ABOUT THAT.

22 A. THEY CAN'T REMOVE IT BECAUSE IT WILL PARALYZE HIM.

23 Q. DID -- CAROLYN, THE NIGHT THAT HE WAS TAKEN, DID
24 YOU SEE ANYTHING HAPPEN?

25 A. I WAS SITTING ON THE BACK PORCH. I SAW A RED CAR

DELORES SINGLETON-CROSS BY FERRARI

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1 CAME THROUGH THERE AND STOP ON THE CORNER. THEN WENT DOWN
2 THERE. AND WALKING DOWN THE STREET, AND PICK HIM AND
3 AROUND MY FATHER-IN-LAW -- STEPFATHER'S BROTHER UP.

4 Q. BUT THAT WAS BEFORE? THE NIGHT BEFORE?

5 A. YEAH, ON THE 3RD.

6 Q. AND WAS THAT THE NIGHT HE DISAPPEARED AND DIDN'T
7 COME HOME UNTIL---

8 A. YES, SIR.

9 Q. ---THAT MORNING?

10 A. YES, SIR.

11 Q. AND THE NEXT DAY DID SOMEONE COME BY ASKING ABOUT
12 HIM?

13 A. YES, SIR. MY MOTHER'S STEPMOTHER. NOT HER
14 STEPMOTHER, HER MOTHER-IN-LAW. SHE CAME TO PICK US AND TOOK
15 US TO THE HOSPITAL.

16 Q. THAT'S LEROY GOODMAN'S MOTHER?

17 A. UH-HUH. (AFFIRMATIVE.) AND MY STEPFATHER AND
18 MOTHER.

19 Q. WAS THERE ANY TIME DID YOU SEE A FELLOW BY THE NAME
20 OF DONALD BUSH COME AROUND THERE?

21 A. YES, SIR, THE NEXT DAY.

22 Q. AND THAT WAS -- THE NEXT DAY. AND WHAT WAS THE
23 NEXT DAY? WAS THAT THE DAY THAT DARNELL WAS SHOT, OR WAS IT
24 THE DAY AFTER DARNELL WAS SHOT?

25 A. THE DAY HE WAS -- LET ME SEE, THE DAY AFTER HE WAS

1 SHOT, ON THE 4TH. THAT SAME DAY I GUESS. LATER ON THAT
2 AFTERNOON, HE CAME AND ASKED ME HOW MY BROTHER BEEN DOING.

3 Q. AND THAT WAS DONALD BUSH.

4 A. YES, SIR.

5 MR. CONNER: ANSWER ANY QUESTIONS THAT HIS LAWYER MIGHT
6 HAVE.

7 THE COURT: MS. FERRARI, YOU MAY CROSS EXAMINE.

8 CROSS EXAMINATION BY MS. FERRARI:

9 Q. I AM NOT SURE I UNDERSTOOD WHAT YOU SAID. I THINK
10 HIS QUESTION WAS, DID ANYTHING HAPPEN THE DAY OR EVENING HE
11 WAS TAKEN. AND I HEARD, SITTING ON THE BACK PORCH.

12 A. I SAID I WAS SITTING ON THE BACK PORCH.

13 Q. UH-HUH. (AFFIRMATIVE.)

14 A. I SAID I WAS SITTING ON THE BACK PORCH, AND A RED
15 CAR CAME THROUGH OUR ROAD.

16 Q. UH-HUH. (AFFIRMATIVE.)

17 A. AND DARNELL WAS WALKING TO THE CORNER WHERE MY AUNT
18 LIVE IN ROLLING CREEK.

19 Q. OKAY.

20 A. AND THAT'S WHEN I SAW HIM GOT IN THAT CAR.

21 Q. OKAY. DO YOU REMEMBER WHAT TIME THAT WAS?

22 A. NO, MA'AM.

23 Q. OKAY. AND IT WAS A RED CAR. DO YOU KNOW HOW MANY
24 PEOPLE WERE IN IT?

25 A. I COULDN'T SEE THAT FAR.

DELORES SINGLETON-CROSS BY FERRARI

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1 Q. SO YOU DIDN'T SEE WHO WAS DRIVING THE RED CAR.

2 A. NO, MA'AM.

3 Q. AND OTHER THAN THE FACT THAT IT WAS RED AND DONNELL
4 GOT IN THERE, THERE IS NOT MUCH YOU CAN TELL US ABOUT IT?

5 A. THAT'S IT.

6 MS. FERRARI: NOTHING FURTHER.

7 THE COURT: MR. CONNER, ANYTHING ON REDIRECT?

8 MR. CONNER: YOU CAN COME DOWN. YOUR HONOR, AT THIS
9 TIME, I'D CALL JAMES FITZPATRICK.

10 THE COURT: MS. DIXON, YOU CAN STEP DOWN. MR.

11 FITZPATRICK, COME FORWARD AND BE SWORN.

12 JAMES FITZPATRICK, BEING FIRST DULY
13 SWORN, TESTIFIED AS FOLLOWS:

14 THE CLERK: STATE YOUR FULL NAME AND SPELL YOUR LAST
15 NAME FOR THE RECORD PLEASE.

16 A. JAMES FITZPATRICK. F-I-T-Z-P-A-T-R-I-C-K.

17 DIRECT EXAMINATION BY MR. CONNER:

18 Q. OFFICER FITZPATRICK, WHERE ARE YOU EMPLOYED?

19 A. WITH THE SUMTER COUNTY SHERIFF'S OFFICE.

20 Q. HOW LONG HAVE YOU WORKED WITH THE SUMTER COUNTY
21 SHERIFF?

22 A. JUST UNDER 6 YEARS.

23 Q. AND WHAT DO YOU DO FOR THE SHERIFF?

24 A. PATROL DIVISION DEPUTY.

25 Q. AND WHAT DOES A PATROL DEPUTY, WHAT ARE SOME OF

1 YOUR DUTIES THERE, OFFICER FITZPATRICK?

2 A. YOUR PRIORITY IS TO ANSWER 911 CALLS, CALLS FOR
3 SERVICE.

4 Q. AND HOW MANY PEOPLE DO YOU HAVE ON THE SHIFT?

5 A. NOW WE HAVE 12 ON A SHIFT.

6 Q. AND BACK ON OCTOBER 4, 2000, IN THE EARLY MORNING
7 HOURS, DID YOU GET A CALL IN REGARDS TO A SHOOTING OF ONE
8 DARNELL ROBINSON?

9 A. YES.

10 Q. AND TELL US WHAT YOU DID IN REGARDS TO THAT.

11 A. I RECEIVED A CALL FOR SERVICE IN REFERENCE TO A
12 SHOOTING INCIDENT ON REAVES STREET OVER NEAR A WOODED AREA.
13 AND I RESPONDED TO THE RESIDENCE THAT MR. ROBINSON WAS AT,
14 AND REALIZED THAT HE HAD A GUNSHOT WOUND IN HIS BACK, AND
15 CALLED FOR AN AMBULANCE. AND THEN NOTIFIED MY SUPERVISOR
16 ALONG WITH AN INVESTIGATOR.

17 Q. WHAT TIME OF DAY DID Y'ALL GET THIS CALL?

18 A. THE DISPATCH TIME THAT I HAVE IS 5 A.M. IN THE
19 MORNING.

20 Q. AND DID YOU HAVE AN OCCASION TO TALK WITH ANY OTHER
21 PEOPLE THERE IN THE VICINITY WHEN YOU ARRIVED?

22 A. MS. SINGLETON.

23 Q. THE LADY THAT TESTIFIED HERE A FEW MINUTES AGO?

24 A. YES, SIR.

25 Q. AND DID YOU TALK WITH ANY OTHER PEOPLE?

JAMES FITZPATRICK-DIRECT BY CONNER

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1 A. I TALKED WITH A MARVIN MOSES WHO STATED HE LIVES AT

2 ---

3 MS. FERRARI: YOUR HONOR, ---

4 A. ---REAVES STREET.

5 THE COURT: YES, MA'AM. I'LL SUSTAIN THE OBJECTION TO
6 HEARSAY UNLESS THIS COMES UNDER AN EXCEPTION. AND I'LL BE
7 GLAD TO HEAR FROM YOU ON THAT.

8 Q. DID YOU TALK WITH ANY OTHER PEOPLE? JUST TELL US,
9 YOU SAID YOU TALKED WITH A MARVIN MOSES?

10 A. YES, SIR.

11 Q. AND DID YOU TALK WITH ANY OTHER PEOPLE?

12 A. FROM WHAT I RECALL, JUST MS. SINGLETON AND MR.
13 MOSES.

14 Q. WHEN YOU GOT THERE, OFFICER FITZPATRICK, WAS
15 DONNELL STILL THERE?

16 A. YES.

17 Q. AND SO -- AND THEN EMS CAME AND TOOK HIM AWAY?

18 A. YES, ONCE EMS WAS NOTIFIED AND THE SCENE WAS
19 SECURED AS FAR AS THE DANGER LEVEL. THEN THEY CAME IN AND
20 THEN THEY TREATED HIM.

21 MR. CONNER: ANY QUESTIONS THEY MIGHT HAVE FOR YOU.

22 THE COURT: MS. FERRARI.

23 CROSS EXAMINATION BY MS. FERRARI:

24 Q. SO YOU SAW HIM BEFORE HE WAS TAKEN ON THE
25 AMBULANCE?

1 A. YES

2 Q. DID YOU SPEAK TO HIM?

3 A. BRIEFLY.

4 Q. OKAY. DID HE TELL YOU WHAT HAPPENED?

5 A. HE DID.

6 Q. DID HE GIVE YOU ANY DESCRIPTION?

7 A. HE DID. A LIMITED DESCRIPTION.

8 Q. DID HE TELL YOU HOW TALL THEY WERE? BLACK? WHITE?

9 A. HE SAID THEY WERE THREE BLACK MALES. AND WE GOT A
10 VEHICLE DESCRIPTION. WE -- I DIDN'T GET A HEIGHT OR WEIGHT
11 AT THE TIME.

12 Q. DID HE GIVE YOU ANY NAMES?

13 A. HE DID NOT GIVE ME NO NAMES.

14 Q. OKAY, AND YOU GOT THERE PRETTY MUCH RIGHT AFTER IT
15 HAPPENED WHEN IT WAS FRESH IN HIS MIND?

16 A. YES.

17 MS. FERRARI: NOTHING FURTHER.

18 THE COURT: THANK YOU. REDIRECT EXAMINATION, MR.
19 CONNER?

20 MR. CONNER: NOTHING FURTHER.

21 THE COURT: THANK YOU, MR. FITZPATRICK, YOU CAN STEP
22 DOWN.

23 MR. CONNER: WE WOULD ASK THAT THIS OFFICER BE EXCUSED,
24 YOUR HONOR.

25 MS. FERRARI: NO OBJECTION.

JAMES TURNER-DIRECT BY CONNER

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1 THE COURT: WITHOUT OBJECTION, OFFICER FITZPATRICK, YOU
2 CAN GO BACK TO WORK. MR. CONNER.

3 MR. CONNER: MAY IT PLEASE THE COURT, I'D CALL JAMES
4 TURNER TO THE STAND.

5 THE COURT: MR. TURNER, COME FORWARD, PLEASE, SIR, AND
6 BE SWORN.

7 THE CLERK: STATE YOUR FULL NAME AND SPELL YOUR LAST
8 FOR THE RECORD, PLEASE, SIR.

9 A. JAMES R. TURNER. T-U-R-N-E-R.

10 DIRECT EXAMINATION BY MR. CONNER:

11 Q. OFFICER TURNER, WHERE ARE YOU EMPLOYED?

12 A. SUMTER COUNTY SHERIFF'S OFFICE.

13 Q. AND HOW LONG HAVE YOU WORKED FOR THE SUMTER COUNTY
14 SHERIFF?

15 A. A LITTLE OVER 13 YEARS.

16 Q. AND WHAT DO YOU DO FOR HIM?

17 A. I'M ONE OF THE SUPERVISOR'S. I'M A SERGEANT IN
18 THE CRIMINAL INVESTIGATION DIVISION.

19 Q. AND HOW LONG HAVE YOU BEEN IN THE CRIMINAL
20 INVESTIGATIONS DIVISION?

21 A. SINCE 1995.

22 Q. AND WERE YOU WORKING AND BECOME INVOLVED IN THIS
23 CASE BACK IN OCTOBER OF 2000?

24 A. YES, SIR. THIS CASE WAS ASSIGNED TO ME.

25 Q. AND AS THE RESULT OF THAT, COULD YOU TELL US WHAT

1 YOU DID?

2 A. I ACTUALLY FOUND OUT THAT MR. ROBINSON WAS IN THE
3 HOSPITAL. AND I GOT A CALL WHICH WAS ON OCTOBER THE 6TH
4 THAT HE WAS AT HOME. I THEN PROCEEDED AROUND TO HOBSON
5 STREET WHERE HE WAS LIVING AND CONDUCTED AN INTERVIEW OF HIM
6 AND MS. DIXON.

7 Q. SO YOU TALKED WITH HIM ON OCTOBER 6TH, WHICH WOULD
8 HAVE BEEN TWO DAYS AFTER THIS THING HAPPENED?

9 A. YES, SIR.

10 Q. AND THEN BASED UPON THAT CONVERSATION, WELL LET ME
11 ASK YOU THIS QUESTION. BASED UPON YOUR CONVERSATIONS WITH
12 HIM, DID HE IMMEDIATELY GIVE YOU THE NAME OF ONE OF THE
13 PEOPLE THAT WAS INVOLVED IN THIS INCIDENT?

14 A. YES, SIR.

15 Q. ~~WHAT NAME WAS THAT?~~

16 A. KENDELL NELSON.

17 Q. KENDELL NELSON. SO HE TOLD YOU A KENDELL NELSON
18 WAS INVOLVED?

19 A. YES, SIR.

20 Q. AND THEN DID HE INDICATE THAT HE KNEW KENDELL
21 NELSON?

22 A. HE SAID HE WENT TO SCHOOL WITH HIM.

23 Q. HE WENT TO SCHOOL WITH HIM?

24 A. YES, SIR.

25 Q. AND BASED UPON YOUR CONVERSATION IN THAT REGARD,

JAMES TURNER-DIRECT BY CONNER

91

1 DID YOU DO ANYTHING ELSE?

2 A. I DID AN NCIC HISTORY ON KENDELL NELSON. I ALSO
3 OBTAINED A PICTURE OF MR. NELSON FROM THE LOCAL JAIL.

4 Q. AND THEN WHAT DID YOU DO?

5 A. WELL ON THE 9TH, WHICH IS OCTOBER THE 9TH, WHICH
6 WAS A COUPLE OF DAYS LATER, I RECEIVED A TIP THAT A DONALD
7 BUSH---

8 Q. OKAY.

9 A. ---THAT DONALD BUSH WAS INVOLVED. I THEN AT THAT
10 TIME DONE THE SAME THING WITH HIM, EXCEPT I DONE A LINEUP
11 INVOLVING DONALD BUSH. MR. NELSON, IT WAS NOT NECESSARY TO
12 DO A LINEUP FOR MR. NELSON OTHER THAN FOR PURPOSES OF, IS
13 THIS THE RIGHT KENDELL NELSON. BECAUSE HE KNEW KENDELL
14 NELSON. IT WAS NOT LIKE I WAS TRYING TO FIND SOMEBODY NOT
15 KNOWING HIM.

16 I DONE A LINEUP OF DONALD BUSH AND KENDELL NELSON.
17 AND NOT A LINEUP OF KENDELL NELSON, BUT SHOWED HIM A PICTURE
18 WHICH WAS ON -- WHICH WAS ON OCTOBER THE 12TH. I SHOWED HIM
19 THE LINEUP INVOLVING DONALD BUSH. AND THEN I SHOWED HIM THE
20 PICTURE OF KENDELL NELSON. HE DID IN FACT IDENTIFY KENDELL
21 NELSON AS THE PERSON HE WENT TO SCHOOL WITH AND WAS DRIVING
22 THAT VEHICLE THAT NIGHT.

23 Q. DID YOU SHOW HIM -- YOU SAY YOU SHOWED HIM A LINEUP
24 OF -- THAT CONTAINED THE PICTURE OF DONALD BUSH?

25 A. YES, I DID.

JAMES TURNER-DIRECT BY CONNER

92

1 Q. AND I SHOW YOU THIS STATE'S EXHIBIT NO. 1, AND ASK
2 YOU TO EXAMINE THAT.

3 A. THIS IS THE LINEUP.

4 Q. THAT'S THE LINEUP YOU SHOWED?

5 A. OF DONALD BUSH.

6 Q. AND YOU SHOWED THAT LINEUP TO WHO?

7 A. I SHOWED IT TO DONNELL ROBINSON ON OCTOBER 12TH AT
8 9:30 A.M.

9 Q. AND DARNELL TOLD YOU THAT ONE OF THE PEOPLE THAT
10 WAS INVOLVED -- PICTURE WAS IN THAT LINEUP?

11 A. YES, SIR.

12 Q. AND WHAT DID HE DO ON THAT PICTURE THAT HE
13 SELECTED?

14 A. I ASKED HIM TO SIGN HIS NAME ACROSS IT.

15 Q. SO HE SIGNED HIS NAME CROSS IT?

16 A. YES.

17 Q. WHAT NUMBER PICTURE IS THAT IN THE PHOTO DISPLAY?

18 A. THIS ONE IS NO. 4.

19 Q. NO. 4. AND THAT'S A PICTURE OF WHO?

20 A. DONALD BUSH.

21 MR. CONNER: YOUR HONOR, WE WOULD OFFER THIS ITEM INTO
22 EVIDENCE AT THE TIME, STATE'S EXHIBIT NO. 1.

23 THE COURT: MS. FERRARI, WHAT SAYS THE DEFENSE?

24 MS. FERRARI: YOUR HONOR, I WOULD OBJECT AT THIS TIME,
25 BECAUSE MR. ROBINSON HAS NOT SAID THAT IT WAS INDEED THE ONE

JAMES TURNER-DIRECT BY CONNER

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1 THAT HE HAD SEEN; THAT WAS THE ONE.

2 THE COURT: I'LL SUSTAIN THAT OBJECTION. I AM NOT SURE
3 YET OF THE RELEVANCE OF THAT AT THIS PARTICULAR TRIAL. BUT
4 NONETHELESS, I WILL SUSTAIN THAT OBJECTION UNTIL THAT CAN
5 CERTAINLY BE DEPOSED IN THAT REGARD.

6 Q. THANK YOU. NOW SUBSEQUENTLY, DID YOU HAVE AN
7 OPPORTUNITY TO PREPARE A PHOTO DISPLAY THAT CONTAINED THE
8 PICTURE OF CASEY STUCKEY?

9 A. YES, I DID.

10 Q. AND I SHOW YOU THAT PHOTO DISPLAY, STATE'S EXHIBIT
11 NO. 2, AND ASK YOU TO EXAMINE IT.

12 A. YES, THIS IS THE PHOTO LINEUP.

13 Q. THAT'S THE PHOTO DISPLAY THAT YOU SHOWED---

14 A. OF CASEY STUCKEY.

15 Q. ---CONTAINED THE PICTURE OF CASEY STUCKEY. AND HOW
16 MANY PHOTOS ARE IN THE DISPLAY?

17 A. SIX.

18 Q. AND WHEN YOU PREPARE THOSE DISPLAYS, MR. TURNER,
19 WHAT DO YOU MAKE AN EFFORT TO DO?

20 A. WELL YOU TRY TO -- YOU DON'T WANT TO HAVE A
21 PICTURE THAT SETS THE SUSPECT OUT. IN OTHER WORDS, WHERE HE
22 IS OBVIOUSLY TOTALLY DIFFERENT FROM THE REST OF THE
23 PICTURES. YOU TRY TO GET PICTURES WHERE THE SUBJECTS ARE
24 ALIKE. LIKE FROM IN THIS CASE, THE SUSPECT IN THIS CASE HAD
25 IN THIS PICTURE, HAD A GOATEE AND A SMALL MUSTACHE. SO YOU

1 TRY TO GET PICTURES OF SIMILAR APPEARANCES. SO IT IS NOT --
2 IF THE MAN IS NOT CERTAIN OF THE PICTURE, HE IS NOT GOING TO
3 JUST ARBITRARILY PICK SOMEBODY OUT BECAUSE, HEY, HE IS IN A
4 BLACK AND WHITE PICTURE AND EVERYBODY ELSE IS IN COLOR.

5 Q. SO YOU TRY TO PICK SIMILAR -- PEOPLE WITH SIMILAR
6 FEATURES AND SIMILAR HAIR STYLES AND SIMILAR FACIAL HAIR AND
7 THINGS OF THAT SORT?

8 A. YES, SIR.

9 Q. AND SO THAT'S THE DISPLAY THAT YOU PREPARED WITH
10 CASEY STUCKEY'S PICTURE IN IT?

11 A. YES, SIR.

12 Q. AND DID DONNELL ROBINSON PICK OUT MR. STUCKEY'S
13 PICTURE AS ONE OF THE PEOPLE THAT WAS INVOLVED IN THIS
14 CRIME?

15 A. YES, SIR.

16 Q. AND WHICH ONE DID HE PICK OUT?

17 A. IN THIS CASE HE WAS NO. 1. IN THIS LINEUP MR.
18 STUCKEY IS NO. 1. AND HE SIGNED HIS NAME -- MR. ROBINSON
19 SIGNED HIS NAME ACROSS THE FRONT OF THAT ONE.

20 Q. MR. ROBINSON SIGNED HIS NAME ACROSS CASEY
21 STUCKEY'S PHOTO.

22 A. YES, SIR.

23 MR. CONNER: YOUR HONOR, WE WOULD OFFER THIS ITEM AS
24 STATE'S EXHIBIT NO. 2 INTO EVIDENCE.

25 THE COURT: SAME OBJECTION?

JAMES TURNER-DIRECT BY CONNER

95

1 MS. FERRARI: SAME OBJECTION.

2 THE COURT: I'LL SUSTAIN THE OBJECTION UNTIL SUCH TIME
3 AS IT HAS BEEN IDENTIFIED BY MR. ROBINSON. NO MORE THAN
4 HEARSAY. THANK YOU.

5 Q. NOW DID -- NOW DID HE IDENTIFY THESE THREE PEOPLE
6 THAT'S HE TOLD YOU ABOUT FIRST OF ALL, KENDELL NELSON AND
7 THEN DONALD BUSH AND THEN CASEY STUCKEY, DID HE IDENTIFY ONE
8 AS BEING THE PERSON WHO SHOT HIM?

9 A. YES.

10 Q. WHICH ONE DID HE IDENTIFY, THE PERSON WHO SHOT HIM?

11 A. CASEY STUCKEY.

12 Q. CASEY STUCKEY. AND WHEN HE MADE THESE
13 IDENTIFICATIONS, MR. TURNER, DID HE SEEM CERTAIN, OR DID HE
14 HEM AND HAW AROUND ABOUT WHO HE WAS PICKING, OR DID HE GO
15 RIGHT TO THEM?

16 A. HE WENT RIGHT TO BOTH THE PICTURES. I MEAN, HE
17 DIDN'T HESITATE WHATSOEVER. HE WENT STRAIGHT TO THE
18 PICTURES.

19 Q. HE SEEMED TO YOU TO BE CERTAIN IN HIS
20 IDENTIFICATION.

21 A. YES, SIR.

22 MR. CONNER: ANSWER ANY QUESTIONS MS. FERRARI MAY HAVE.

23 THE COURT: MS. FERRARI, YOU MAY CROSS EXAMINE.

24 MS. FERRARI: YES, SIR. THANK YOU.

25 CROSS EXAMINATION BY MS. FERRARI:

JAMES TURNER-CROSS BY FERRARI

96

1 Q. SO HE TOLD YOU 2 DAYS LATER THAT MR. NELSON WAS
2 INVOLVED?

3 A. YES, HE DID.

4 Q. DID HE TELL YOU WHY HE DIDN'T TELL THE OFFICER AT
5 THE SCENE THAT MR. NELSON WAS INVOLVED?

6 A. NO, SIR. I MEAN, NO, MA'AM.

7 Q. DIDN'T TELL YOU WHY HE COULDN'T DESCRIBE HIM TO THE
8 OFFICER?

9 A. NO, MA'AM.

10 Q. YOU SAID AN ANONYMOUS TIP LED TO YOU TO BUSH?

11 A. A TELEPHONE CALL.

12 Q. AND YOU DON'T KNOW WHO IT WAS FROM?

13 A. NO, MA'AM.

14 Q. BUT TO YOUR KNOWLEDGE, HE DOES KNOW MR. BUSH,
15 CORRECT? MR. ROBINSON DOES KNOW MR. BUSH?

16 A. I BELIEVE HE KNOWS HIS FACE, BUT I DON'T BELIEVE
17 HE KNOWS HIM BY NAME. YOU'D HAVE TO ASK HIM THAT QUESTION,
18 HOW HE KNOWS HIM.

19 Q. WHEN HE GAVE YOU THE NEL -- KENDELL NELSON'S NAME,
20 DID HE GIVE YOU A DESCRIPTION OF THE OTHER TWO PEOPLE?

21 A. I DON'T HAVEN'T ANY RECORD OF HIM GIVING ME
22 DESCRIPTION.

23 Q. AND HOW LONG WAS HE WITH THESE THREE PEOPLE?

24 A. APPROXIMATELY 6 HOURS.

25 Q. OKAY. AND HE TOLD YOU ABOUT KENDELL. BUT HE

JAMES TURNER-CROSS BY FERRARI

97

1 DIDN'T TELL YOU -- GIVE YOU DONALD BUSH'S NAME OR A
2 DESCRIPTION OF THE OTHER TWO PEOPLE?

3 A. HE TOLD ME -- I TALKED TO HIM TWO DAYS -- I TALKED
4 TO HIM AFTER HE GOT OUT OF THE HOSPITAL. NOW I DON'T KNOW
5 WHAT OCCURRED ON THAT MORNING. BUT THE CASE WAS ASSIGNED TO
6 ME LATER. ANOTHER INVESTIGATOR RESPONDED TO THAT SCENE. I
7 DON'T KNOW WHAT WAS SAID TO THOSE PEOPLE. ON THE 6TH IS
8 WHEN I TALKED TO HIM.

9 Q. AND HE KNEW KENDELL BECAUSE HE WENT TO SCHOOL WITH
10 HIM.

11 A. RIGHT.

12 Q. AND WHERE WAS HE SHOT?

13 A. IN THE BACK.

14 Q. OKAY. AND HOW DID HE DESCRIBE THE SHOOTING TO YOU.

15 A. HOW HE TOLD ME, HE WAS ORDERED OUT OF CAR BY
16 STUCKEY. AND ORDERED TO WALK AWAY. AND THEN AT SOME POINT
17 HE WAS SHOT. AND THEN ONCE HE HIT THE GROUND, HE WAS WALKED
18 UP TO AND ANOTHER SHOT WAS OFF -- SHOT OFF, AND IT WENT
19 RIGHT BESIDE HIS EAR.

20 Q. DID HE TELL YOU HE SAW WHO SHOT HIM?

21 A. HE SAID HE WAS ON GROUND PLAYING DEAD BECAUSE HE
22 DIDN'T WANT -- YOU KNOW, WHEN THEY SHOT THE SECOND TIME, HE
23 THOUGHT HE WAS DEAD.

24 Q. SO IT HIT HIM THE FIRST TIME OR THE SECOND TIME?

25 A. IT HIT HIM THE FIRST TIME.

1 Q. DID HE TELL YOU HE SAW WHO SHOT HIM?

2 A. NO MA'AM. HE JUST SAID CASEY STUCKEY ORDERED HIM
3 OUT OF THE CAR, AND TOLD HIM TO WALK AWAY. AND WHEN HE WAS
4 WALKING AWAY, HE WAS SHOT.

5 Q. DID HE USE STUCKEY'S NAME?

6 A. NO, NOT AT THAT POINT.

7 Q. OKAY, BUT HOW COULD YOU DETERMINE WHICH BLACK MALE
8 IT WAS?

9 A. AFTER HE WAS IDENTIFIED IN THE PHOTO LINEUP, AND
10 ONCE WE PUT THE NAME TO THE FACE AND THAT'S WHEN HE STARTED
11 REFERRING TO CASEY STUCKEY.

12 Q. DID HE DESCRIBE THE GUN?

13 A. NO, HE NEVER SAW THE GUN.

14 Q. BUT YET HE KNOWS WHO SHOT HIM WITH A GUN?

15 A. YOU'D HAVE TO ASK HIM THAT QUESTION.

16 Q. SO HE NEVER SAW A GUN IN THE CAR.

17 A. NO.

18 Q. NEVER SAW A GUN AT THE TRAILER, TO YOUR KNOWLEDGE?

19 A. NO.

20 Q. AND NEVER SAW THE GUN BEING SHOT, OR HAD IT IN
21 THEIR HAND?

22 A. NO, HE WAS SHOT IN THE BACK.

23 MS. FERRARI: OKAY, NOTHING FURTHER.

24 THE COURT: THANK YOU. MR. CONNER, REDIRECT?

25 MR. CONNER: YOU CAN COME DOWN.

JAMES TURNER-CROSS BY FERRARI

99

1 THE COURT: YOU CAN STEP DOWN, MR. TURNER. MR.
2 CONNER, THIS IS A GOOD TIME TO TAKE THE AFTERNOON BREAK.

3 LADIES AND GENTLEMEN, WE'RE GOING TO TAKE A BRIEF
4 AFTERNOON RECESS AT THIS POINT AND TIME BEFORE WE HEAR FROM
5 THE NEXT WITNESS. IF Y'ALL STEP TO YOUR JURY ROOM, WE'LL
6 GET OUT IN 15 MINUTES. WE'LL START BACK AT 10 AFTER THE
7 HOUR. PLEASE DO NOT DISCUSS THIS CASE AMONG YOURSELVES
8 WHILE YOU'RE IN THE JURY ROOM. THANK YOU.

9 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

10 THE COURT: MR. CONNER, IS THE STATE READY TO PROCEED?

11 MR. CONNER: YES.

12 THE COURT: IS THE DEFENSE READY TO START, MS. FERRARI?

13 MS. FERRARI: YES, YOUR HONOR.

14 THE COURT: IF YOU WOULD BRING US THE JURY.

15 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
16 PRESENCE OF THE JURY.)

17 THE COURT: THANK YOU, LADIES AND GENTLEMEN, WE WILL
18 CONTINUE NOW AS THE STATE OFFERS ADDITIONAL EVIDENCE AND
19 TESTIMONY IN THIS CASE. MR. CONNER, YOU CAN CALL YOUR NEXT
20 WITNESS.

21 MR. CONNER: YOUR HONOR, AT THIS TIME I AM GOING TO
22 CALL LEROY GOODMAN.

23 LEROY GOODMAN, BEING FIRST DULY
24 SWORN, TESTIFIED AS FOLLOWS:

25 THE CLERK: STATE YOUR FULL NAME AND SPELL YOUR LAST

LEROY GOODMAN-DIRECT BY CONNER

100

1 NAME.

2 A. LEROY G-O-O-D-M-A-N.

3 DIRECT EXAMINATION BY MR. CONNER:

4 Q. LEROY, TELL US SOMETHING ABOUT YOURSELF. WHERE DO
5 YOU WORK?

6 A. CAROLINA FURNITURE.

7 Q. AND HOW LONG HAVE YOU WORKED FOR CAROLINA
8 FURNITURE?

9 A. 5 YEARS.

10 Q. AND WHAT DO YOU DO THERE?

11 A. I WORK AT THE ROUGH MILL.

12 Q. WHERE DO YOU LIVE, LEROY?

13 A.

14 Q. HOW LONG HAVE YOU LIVED THERE ON ?

15 A. 7 YEARS.

16 Q. SEVEN YEARS. AND WHO LIVES THERE WITH YOU?

17 A. JOYCE.

18 Q. THAT'S JOYCE BURCH?

19 A. YEAH.

20 Q. IS SHE HERE WITH YOU TODAY?

21 A. YES.

22 Q. BACK IN -- NOW IF YOU LIVED THERE 7 YEARS, I RECKON
23 BACK IN OCTOBER OF 2000 YOU WERE LIVING THERE TOO.

24 A. YEAH.

25 Q. ARE YOU FAMILIAR WITH THIS GENTLEMAN SEATED OVER

LEROY GOODMAN-DIRECT BY CONNER

101

1 HERE IN THE JACKET WITH THE RED TRIM ON IT?

2 A. YES, I REMEMBER HIM.

3 Q. HOW DO YOU KNOW?

4 A. WELL IT WAS MY BROTHER. BETWEEN MY BROTHER.

5 Q. IT WAS SOME CONNECTION TO YOUR BROTHER?

6 A. UH-HUH (AFFIRMATIVE.)

7 Q. AND WHAT CONNECTION IS THAT?

8 A. WELL HIS MOTHER MARRIED ONE OF MY BROTHERS.

9 Q. SO HE'S YOUR BROTHER'S STEPSON?

10 A. YEAH.

11 Q. HOW LONG HAVE YOU KNOWN HIM?

12 A. NOT TOO LONG.

13 Q. NOW BACK IN OCTOBER OF 2000, ON THIS MORNING OF
14 OCTOBER THE 4TH OF 2000, DID HE COME TO YOUR DOOR?

15 A. YEAH.

16 Q. WERE YOU EXPECTING HIM?

17 A. UH-UH. (NEGATIVE.)

18 Q. YOU WERE NOT EXPECTING HIM?

19 A. NO.

20 Q. TELL US HOW YOU KNEW HE WAS OUT THERE. WHAT
21 HAPPENED?

22 A. WELL I WAS GETTING UP. I HEAR SOMEBODY KNOCKING ON
23 THE DOOR TWICE. AND I LOOKED AND THEN HE CALLED MY NAME
24 OUT. AND HE TOLD ME HE GOT SHOT. AND THEN HE TOLD ME TO
25 CALL THE AMBULANCE. AND I WENT TO CALL THE AMBULANCE.

LEROY GOODMAN-DIRECT BY CONNER

102

1 Q. AND DID YOU -- AFTER YOU CALLED THE AMBULANCE, DID
2 YOU GET AN OPPORTUNITY TO LOOK AT HIM?

3 A. NO, UH-UH. (NEGATIVE.)

4 Q. AFTER YOU DETERMINED THAT HE HAD BEEN SHOT.

5 A. YEAH, HE TOLD ME HE HAD GOT SHOT IN THE BACK.

6 Q. IN THE BACK. DID YOU TALK WITH HIM ANY?

7 A. UH-HUH (NEGATIVE.)

8 Q. DID THE AMBULANCE COME?

9 A. YEAH.

10 Q. DID THE POLICE COME TOO?

11 A. UH-HUH (AFFIRMATIVE.)

12 Q. NOW IF YOU WOULD, HOW ABOUT COME DOWN HERE AND
13 STAND BY ME, AND LOOK AT THIS EXHIBIT HERE. THIS HAS BEEN
14 MARKED INTO EVIDENCE AS STATE'S EXHIBIT NO. 3. IF YOU
15 WOULD, JUST STAND OVER TO THE SIDE THERE, AND LET ME GET
16 SOMETHING TO POINT. LET'S MOVE IT OVER THIS WAY. IF YOU
17 WOULD, STAND RIGHT HERE AND HOLD THE POINTER.

18 NOW MS. SINGLETON TESTIFIED SHE LIVES HERE ON THE
19 CORNER OF GAMBLE AND REAVES. THIS BEING REAVES. WHERE DO
20 YOU LIVE?

21 A. I WOULD SAY UP BETWEEN HERE.

22 Q. SO YOU THINK THIS WOULD BE ABOUT WHERE YOU LIVE?

23 A. YEAH.

24 Q. AND NOW BACK IN HERE, BACK IN THIS AREA UP IN HERE,
25 WHAT'S BACK IN THERE?

LEROY GOODMAN-DIRECT BY CONNER

103

1 A. NOTHING BUT WOODS.

2 Q. WOODS? NOTHING BUT WOODS?

3 A. YEAH. I STAY RIGHT HERE. AND THE WOODS ARE BACK
4 UP IN THIS AREA UP IN HERE. YOU GO ALL THE WAY AROUND BY
5 THE RAILROAD TRACKS.

6 Q. OKAY, HAVE A SEAT, LEROY.

7 (THEREUPON, THE WITNESS RESUMES THE WITNESS STAND.)

8 Q. NOW WHAT TIME DO YOU GO TO WORK USUALLY? OR WHAT
9 TIME DID YOU HAVE TO GO TO WORK THAT DAY, DO YOU KNOW?

10 A. SIX.

11 Q. SIX. SO YOU WERE -- YOU HAD TO LEAVE PRETTY QUICK
12 TO GO TO WORK?

13 A. UH-HUH. (AFFIRMATIVE.)

14 Q. DID YOU LEAVE BEFORE THE AMBULANCE?

15 A. UH-UH. (NEGATIVE.) AFTER THE AMBULANCE HAD CAME,
16 THEN I LEFT.

17 Q. AS SOON AS THE AMBULANCE CAME YOU LEFT FOR WORK.
18 ANSWER ANY QUESTIONS THIS LAWYER MAY HAVE.

19 THE COURT: MS. FERRARI, YOU CAN CROSS EXAMINE.

20 CROSS EXAMINATION BY MS. FERRARI:

21 Q. YOU SAID YOU HAD TO BE AT WORK AT 6 A.M. DO YOU
22 KNOW -- WHAT TIME DO YOU NORMALLY GET UP TO GET READY TO GO
23 TO WORK?

24 A. 4:45.

25 Q. AND SO YOU WERE AWAKE WHEN HE KNOCKED ON THE DOOR.

1 A. NOT YET.

2 Q. YOU GET UP AT 4:45. YOU'RE SURE OF THAT.

3 A. UH-HUH. (AFFIRMATIVE.)

4 Q. AND DID YOU HEAR ANY GUNSHOTS?

5 A. NO.

6 Q. AND DID YOU SEE ANY CAR SPEED AWAY?

7 A. UH-UH. (NEGATIVE.)

8 THE COURT: MR. GOODMAN, I NEED YOU TO SAY YES OR NO IN
9 RESPONSE TO THAT,---

10 A. OKAY.

11 THE COURT: ---IT'S EASIER FOR THE COURT REPORTER TO
12 PICK IT UP. IF YOU'LL SAY YES OR NO INSTEAD OF UH-UH.

13 A. OKAY.

14 THE COURT: THANK YOU.

15 Q. AND YOU SAID, YOU CAME DOWN AND YOU POINTED THAT
16 YOU LIVE NOT IN THIS HOUSE HERE, BUT MAYBE NEXT TO IT. SO
17 YOUR HOUSE ISN'T DRAWN ON HERE.

18 A. YEAH.

19 Q. SO THIS IS YOUR HOUSE HERE. SO YOU LIVE BASICALLY
20 RIGHT ACROSS THE STREET FROM MS. SINGLETON?

21 A. UH-HUH. (AFFIRMATIVE.) YES, MA'AM.

22 Q. OKAY. BUT YOU DIDN'T HEAR ANY GUNSHOTS AND YOU
23 DIDN'T SEE A CAR.

24 A. NO, MA'AM.

25 Q. AND YOU WAKE UP AT 4:45 TO GO TO WORK AT SIX.

LEROY GOODMAN-CROSS BY FERRARI

105

1 A. YES, MA'AM.

2 MS. FERRARI: NOTHING FURTHER.

3 THE COURT: OKAY, YOU MAY COME DOWN.

4 THE COURT: THANK YOU, MR. GOODMAN, YOU CAN STEP DOWN.

5 MR. CONNER: I AM GOING TO CALL JOYCE BURCH.

6 THE COURT: MS. BURCH, COME FORWARD AND BE SWORN,
7 PLEASE, MA'AM.

8 JOYCE BURCH, OR BEING FIRST DULY
9 SWORN, TESTIFIED AS FOLLOWS:

10 THE CLERK: STATE YOUR FULL NAME AND SPELL YOUR LAST
11 NAME FOR THE RECORD, PLEASE, MA'AM.

12 A. JOYCE BURCH. B-U-R-C-H.

13 THE CLERK: AND YOUR FIRST IS JOYCE?

14 A. UH-HUH. (AFFIRMATIVE.)

15 DIRECT EXAMINATION BY MR. CONNER:

16 Q. AND, JOYCE, YOU LIVE THERE AT
17 ALSO?

18 A. YES.

19 Q. AND WHERE DO YOU WORK?

20 A. THE HUDDLE HOUSE RESTAURANT.

21 Q. AND WHAT DO YOU DO FOR THE HUDDLE HOUSE?

22 A. DISHWASHER AND PREP.

23 Q. AND HOW LONG HAVE YOU BEEN WORKING FOR THE HUDDLE
24 HOUSE?

25 A. SEVEN AND A HALF YEARS.

JOYCE BURCH-DIRECT BY CONNER

106

- 1 Q. AND WERE YOU THERE AT THE MORNING
2 THAT DARNELL ROBINSON CAME THERE AND KNOCKED ON THE DOOR?
3 A. YES.
4 Q. TELL US ABOUT IT.
5 A. WELL I HEARD A KNOCK AT THE DOOR, AND I GET UP AND
6 WENT TO SEE WHO IT WAS.
7 Q. AND DID YOU RECOGNIZE HIM?
8 A. YEAH..
9 Q. YOU KNEW HIM FROM---
10 A. YEAH.
11 Q. ---BEING CONNECTED TO LEROY'S BROTHER?
12 A. YES.
13 Q. AND TELL US WHAT YOU WHAT YOU NOTICED WHEN YOU
14 OPENED THE DOOR AND STARTED TALKING WITH HIM.
15 A. I NOTICED THAT HE WAS SHOT.
16 Q. HE WAS SHOT?
17 A. UH-HUH. (AFFIRMATIVE.)
18 Q. WHAT MADE YOU NOTICE THAT HE WAS SHOT?
19 A. BLOOD.
20 Q. BLOOD.
21 A. HE WAS BLEEDING.
22 Q. AND WHAT DID YOU DO AT THAT POINT?
23 A. I DIDN'T DO NOTHING, LEROY DID. LEROY THE ONE THAT
24 CALLED THE COPS.
25 Q. DID YOU GO OUT ON THE PORCH---

JOYCE BURCH-DIRECT BY CONNER

107

1 A. NO, UH-UH. (NEGATIVE.)

2 Q. ---WITH HIM? OR DID YOU STAY IN THE HOUSE?

3 A. I STAYED IN THE HOUSE.

4 Q. DID HE STAY OUT ON THE PORCH?

5 A. UH-HUH. (AFFIRMATIVE.)

6 Q. AND YOU SAY HE WAS BLEEDING?

7 A. YES.

8 Q. AND WAS HE BLEEDING PRETTY HEAVY?

9 A. KIND OF.

10 MR. CONNER: ANSWER ANY QUESTIONS HIS LAWYER MIGHT HAVE
11 FOR YOU.

12 THE COURT: YOU CAN CROSS EXAMINE, MS. FERRARI.

13 CROSS EXAMINATION BY MS. FERRARI:

14 Q. WERE YOU AWAKE WHEN HE KNOCKED ON THE DOOR?

15 A. NO. NO, I WAS ASLEEP.

16 Q. DID YOU HEAR ANY GUNSHOTS?

17 A. NO.

18 Q. DO YOU KNOW WHAT TIME IT WAS WHEN HE KNOCKED ON THE
19 DOOR?

20 A. ABOUT FIVE, I THINK.

21 MS. FERRARI: NOTHING FURTHER.

22 THE COURT: MR. CONNER.

23 MR. CONNER: THANK YOU. YOU MAY COME DOWN. WE WOULD
24 LIKE TO HAVE HIM EXCUSED, YOUR HONOR.

25 MS. FERRARI: NO OBJECTION, YOUR HONOR.

1 THE COURT: THANK YOU. WITHOUT OBJECTION MS. BURCH AND
2 MR. GOODMAN ARE EXCUSED.

3 MR. CONNER: CAN WE APPROACH THE BENCH?

4 THE COURT: YES, SIR.

5 (THEREUPON, THE ATTORNEY'S APPROACH THE BENCH AND
6 CONFER WITH JUDGE.)

7 THE COURT: LADIES AND GENTLEMEN, BEFORE THE NEXT
8 WITNESS TESTIFIES, I HAVE GOT SOME MATTERS OF LAW TO TAKE UP
9 OUTSIDE OF YOUR PRESENCE. IN VIEW OF THE TIME OF THE DAY,
10 IT WILL PROBABLY BE AROUND 5 O'CLOCK BEFORE WE CONCLUDE
11 THOSE MATTERS OF LAW AND BEFORE THAT WITNESS IS AVAILABLE TO
12 TESTIFY. SO I AM GOING TO SEND YOU HOME FOR THE DAY RATHER
13 THAN KEEP YOU HERE AND START THE WITNESS' TESTIMONY HERE AT
14 5 O'CLOCK THIS AFTERNOON. YOU MAY HAVE BEEN TOLD BY JUDGE
15 KING EARLIER THAT TOMORROW IS A STATE AND COUNTY HOLIDAY.
16 SO WE WILL NOT BE HOLDING COURT TOMORROW. YOU WON'T NEED TO
17 COME BACK TOMORROW. YOU CAN GO AHEAD AND MAKE WHATEVER
18 PLANS YOU HAD MADE FOR TOMORROW, AND YOU CAN FOLLOW UP ON
19 THOSE BECAUSE WE WON'T INTERFERE WITH THOSE THINGS TOMORROW.
20 BUT WE WILL NEED YOU BACK ON WEDNESDAY MORNING AT 9:30.

21 SO WHEN YOU COME BACK ON WEDNESDAY, YOU WILL REPORT
22 DIRECTLY TO THE JURY ROOM JUST LIKE YOU DID AFTER LUNCH
23 TODAY, AND WE WILL RESUME THE TRIAL OF THIS CASE ON
24 WEDNESDAY MORNING AT 9:30. I NEED TO REMIND YOU AGAIN
25 BEFORE YOU GO TODAY, OF COURSE, TO NOT DISCUSS THIS CASE

1 WITH ANYBODY. DON'T LET ANYBODY TALK TO YOU ABOUT. DO NOT
2 EXPOSE YOURSELF TO ANY INFORMATION ABOUT THIS CASE. AND
3 WHEN YOU GET BACK INTO THE JURY ROOM ON WEDNESDAY MORNING,
4 DO YOU NOT DISCUSS IT AMONG YOURSELVES AT THAT TIME. I HOPE
5 TOMORROW WILL BE A HOLIDAY FOR YOU IN OBSERVANCE OF
6 VETERAN'S DAY, BUT IF IT'S NOT, I HOPE YOU ENJOY YOUR TIME
7 OUT OF THE COURTROOM, AND I'LL SEE YOU BACK ON WEDNESDAY
8 MORNING AT 9:30. THANK YOU.

9 T (THEREUPON, AT 4:37 P.M. JURY IS DISMISSED.)

10 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
11 PRESENCE OF THE JURY.)

12 THE COURT: MR. CONNER, YOU'VE INDICATED THAT NELSON, I
13 BELIEVE?

14 MR. CONNER: KENDELL NELSON.

15 THE COURT: WE HAD A BENCH CONFERENCE, MADAM REPORTER.
16 THERE WAS SOME DISCUSSION AS TO WHETHER OR NOT KENDELL
17 NELSON MAY BE AN IDENTIFICATION WITNESS, WHICH WOULD REQUIRE
18 AN ADDITIONAL NEIL V. VIGGERS HEARING IN REGARD TO HIS
19 TESTIMONY. WE ARE NOT SURE WHAT THAT TESTIMONY IS GOING TO
20 BE. THE SOLICITOR SUGGESTED AND RIGHTLY SO, OUT OF AN
21 ABUNDANCE OR PRECAUTION, WE CONDUCT THE NECESSARY HEARING TO
22 DETERMINE THAT. SO THE PURPOSE OF THIS PROCEEDING OUTSIDE
23 THE PRESENCE OF THE JURY WOULD BE TO DETERMINE IF HE IS AN
24 IDENTIFICATION WITNESS. AND IF SO, IF THE NEIL V. VIGGERS
25 STANDARDS HAVE BEEN MET. THANK YOU.

KENDELL NELSON-DIRECT BY CONNER

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1 MR. NELSON, COME AROUND, PLEASE, AND BE SWORN.

2 KENDELL NELSON, BEING FIRST DULY
3 SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: STATE YOUR FULL NAME AND SPELL YOUR LAST
5 NAME FOR THE RECORD, PLEASE, SIR.

6 A. KENDELL NELSON. N-E-L-S-O-N.

7 DIRECT EXAMINATION BY MR. CONNER:

8 Q. MR. NELSON, WHERE ARE YOU CURRENTLY RESIDING?

9 A. KERSHAW.

10 Q. KERSHAW CORRECTIONAL INSTITUTION?

11 A. YES, SIR.

12 Q. AND HOW LONG HAVE YOU BEEN THERE?

13 A. FOR ALMOST 4 MONTHS.

14 Q. AND HOW DID YOU -- WHAT IS THE UNDERLYING REASON
15 FOR YOU BEING THERE?

16 A. A DRUG CHARGE.

17 Q. NOW WERE YOU LIVING HERE IN SUMTER COUNTY BACK IN
18 OCTOBER OF 2000?

19 A. YES, SIR.

20 Q. AND WHILE YOU WERE LIVING HERE IN OCTOBER OF 2000,
21 DID YOU HAVE AN OCCASION TO COME IN CONTACT WITH DARNELL
22 ROBINSON AND DONALD BUSH?

23 A. YES, SIR.

24 Q. AND HOW DID YOU KNOW DARNELL ROBINSON?

25 A. ME AND DARNELL WENT TO SCHOOL TOGETHER.

KENDELL NELSON-DIRECT BY CONNER

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1 Q. AND THE NIGHT OF THE 3RD OF OCTOBER AND THE EARLY
2 MORNING HOURS OF THE 4TH, WHERE DID YOU COME IN CONTACT WITH
3 HIM?

4 A. WELL I DID -- I SEE -- I MEET UP WITH THEM WALKING
5 DOWN THE ROAD. I WAS DRIVING A CAR.

6 Q. DID YOU GO TO A FELLOW NAMED GLENN'S?

7 A. YEAH.

8 Q. SAY AGAIN.

9 A. YES, SIR.

10 Q. DID YOU GO TO THE TRAILER?

11 A. YES, SIR.

12 Q. WHO WAS THERE?

13 A. AIN'T NOBODY WAS THERE WHEN I WENT IN THERE.

14 Q. YOU DIDN'T SEE THEM THERE?

15 A. NO, I SEEN THEM LIKE A LITTLE WHILE AFTER THAT.

16 Q. AND WHERE DID YOU SEE HIM?

17 A. DOWN SOUTH MAIN.

18 Q. AND THIS WAS IN THE EARLY MORNING HOURS OF OCTOBER
19 THE 4TH?

20 A. IT AIN'T BEEN EARLY MORNING. IT BEEN LIKE PROBABLY
21 LIKE ONE. YEAH, SOMETHING---

22 Q. IT WAS DARK.

23 A. ---LIKE THAT. YEAH.

24 Q. IT WAS AFTER MIDNIGHT. IT WAS AFTER MIDNIGHT,
25 WASN'T IT?

KENDELL NELSON-DIRECT BY CONNER

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1 A. YES, SIR.

2 Q. AND WHO DID YOU SEE?

3 A. I SEEN DONNELL ROBINSON, DONALD BUSH. JUST LIKE I
4 TOLD THE OTHER FOLLOW, I DIDN'T KNOW OF HIM.

5 Q. THE OTHER FELLOW YOU DIDN'T KNOW?

6 A. I DIDN'T KNOW OF HIM.

7 Q. AND WERE YOU -- WHAT KIND OF VEHICLE WERE YOU
8 DRIVING?

9 A. A GOLD BMW.

10 Q. NOW WHAT DID YOU DO?

11 A. REPEAT THAT.

12 Q. DID YOU HAVE ANY CONVERSATION WITH THEM?

13 A. THEY JUST ASKED ME TO GIVE THEM A RIDE OVER THERE
14 ON RED BAY TO PICK UP SOME MONEY FROM HIS MOTHER OR
15 SOMETHING.

16 Q. WHOSE MAMA?

17 A. DARNELL.

18 Q. AND WHO ASKED YOU TO DRIVE THEM OVER THERE?

19 A. I CAN'T REALLY REMEMBER. THAT WAS THREE AND A HALF
20 YEARS AGO. I CAN'T REALLY REMEMBER.

21 Q. WHAT DID YOU DO?

22 A. I TOLD HIM I WAS LOW ON GAS. I TOLD HIM TO GIVE
23 ME SOME GAS MONEY, I'LL TAKE HIM OVER THERE. AND I TOLD --
24 AFTER AWHILE I TOLD HIM I WAS GOING THAT WAY ANYWAY, AND I
25 WOULD DROP HIM OFF. AND I DROPPED HIM OFF. I LEFT.

KENDELL NELSON-DIRECT BY CONNER

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1 Q. AND WHERE DID YOU SIT IN THE AUTOMOBILE?

2 A. I WAS DRIVING.

3 Q. YOU WERE DRIVING?

4 A. YEAH.

5 Q. NOW WHERE DID DARNELL SIT? WELL, I'LL MAKE IT

6 EASY---

7 A. I WANT TO SAY HE WAS SITTING IN THE BACK OF ME.

8 Q. HE WAS IN THE BACK SEAT?

9 A. YEAH.

10 Q. AND WHERE WAS DONALD BUSH?

11 A. IN THE BACK SEAT.

12 Q. AND WHERE WAS THIS THIRD INDIVIDUAL?

13 A. HE WAS ON THE PASSENGER SIDE OF ME.

14 Q. HE WAS ON THE PASSENGER SIDE BESIDE YOU?

15 A. YEAH.

16 Q. AND YOU WERE DRIVING?

17 A. YES, SIR.

18 Q. NOW WHAT STREET DID YOU TAKE GOING OVER THERE?

19 YOU WENT DOWN RED BAY, DIDN'T YOU?

20 A. YEAH.

21 Q. AND THEN DID YOU TURN OFF ON WHAT?

22 A. I WENT ALL THE WAY DOWN BY -- WELL THAT'S SOUTH

23 MAIN, I GUESS. LIKE I TOLD THEM, I DON'T KNOW -- REALLY

24 KNOW THAT STREET, BUT I WENT DOWN BRENT STREET.

25 Q. BRENT.

KENDELL NELSON-DIRECT BY CONNER

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1 A. I DON'T REALLY KNOW THE STREETS OVER THERE.

2 Q. NOW DO YOU KNOW REAVES AND GAMBLE STREET?

3 A. NO, I DON'T KNOW EXACTLY WHERE THAT AT.

4 Q. WELL YOU DROPPED THEM OFF YOU SAY?

5 A. THAT'S BRENT. I SAID BRENT STREET.

6 Q. YOU WENT ON BRENT STREET. AND YOU DROPPED ALL
7 THREE OF THEM OUT?

8 A. YES, SIR.

9 Q. AND THAT WAS DONALD BUSH AND DARNELL ROBINSON AND A
10 THIRD INDIVIDUAL?

11 A. YES, SIR.

12 Q. NOW I WANT TO SHOW YOU THIS EXHIBIT HERE. IT'S
13 STATE'S EXHIBIT NO. 2, AND ASK YOU TO LOOK AT THAT. NOW DID
14 MR. TURNER SHOW YOU THAT PHOTO DISPLAY EARLIER TODAY?

15 A. YES, SIR.

16 Q. AND DID YOU PICK OUT ONE OF THE PICTURES THERE AND
17 SAY THAT THAT LOOKED LIKE THE PERSON THAT WAS WITH YOU, THIS
18 THIRD INDIVIDUAL?

19 A. YES, SIR.

20 Q. AND WHICH ONE DID YOU PICK OUT?

21 A. NO. 1.

22 Q. NO. 1. AND MR. TURNER THEN AFTER YOU TOLD HIM
23 THAT, HE TOLD YOU THAT WAS THE PICTURE OF CASEY STUCKEY, IS
24 THAT RIGHT?

25 A. NO, WHEN HE CAME TO ME, HE ASKED ME WAS -- HE

KENDELL NELSON-DIRECT BY CONNER

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1 THOUGHT THAT WAS ME.

2 Q. WHO DID?

3 A. UM -- UM....

4 Q. YOU TOLD MR. TURNER THAT THIS NO. 1 LOOKED OUT OF
5 THESE -- YOU LOOKED AT THAT 6 PICTURE PHOTO DISPLAY, AND
6 YOU SAID NO. 1 LOOKED LIKE THE PERSON WHO WAS WITH YOU THAT
7 NIGHT.

8 A. YES, SIR.

9 Q. NOW WHEN YOU WENT TO GLENN'S HOUSE, HOW LONG WERE
10 YOU THERE?

11 A. HOW LONG WAS I IN THE HOUSE? NOT -- I WASN'T THERE
12 THAT LONG.

13 Q. WHAT IS GLENN'S LAST NAME?

14 A. I DON'T KNOW.

15 Q. HOW LONG HAVE YOU KNOWN GLENN?

16 A. UM, I AIN'T REALLY KNOW HIM THAT LONG. GLENN IS A
17 LOT OLDER THAN ME.

18 Q. WHAT STREET DOES HE LIVE ON?

19 A. I BELIEVE -- BRANCH, I BELIEVE.

20 Q. AND DO YOU RECALL THAT ON NOVEMBER 8TH 2000 THAT
21 YOU WERE ARRESTED AND CHARGED IN THIS PARTICULAR CASE BY---

22 A. YES, SIR.

23 Q. ---BY MR. TURNER RIGHT OVER THERE?

24 A. YES, SIR.

25 Q. AND YOU TOLD HIM THAT YOU WENT TO GLENN'S TRAILER,

KENDELL NELSON-DIRECT BY CONNER

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1 AND THAT DARNELL ROBINSON WAS SITTING IN THE LIVING ROOM
2 WITH ANOTHER PERSON?

3 A. NO, SIR.

4 Q. YOU DON'T REMEMBER TELLING HIM THAT?

5 A. NO, SIR.

6 Q. AND THAT DARNELL OWED THE OTHER FELLOW \$200? AND
7 THAT DARNELL WAS SUPPOSED TO BE GETTING A CHECK TO PAY HIM
8 BACK?

9 A. NO, SIR.

10 Q. YOU DON'T REMEMBER TELLING HIM ALL THAT?

11 A. NO, SIR. I REMEMBER GIVING THE OTHER STATEMENT
12 THOUGH.

13 Q. YOU GAVE A SECOND STATEMENT LATER ON, DIDN'T YOU?

14 A. I DON'T REMEMBER GIVING THAT FIRST STATEMENT.

15 MR. CONNER: I HAVE NOTHING FURTHER OF HIM.

16 ~~THE COURT: THANK YOU. MS. FERRARI.~~

17 CROSS EXAMINATION BY MS. FERRARI:

18 Q. OKAY, AND YOU SAY THAT YOU -- IT WAS ABOUT ONE
19 O'CLOCK IN THE MORNING WHEN YOU SAW THEM WALKING DOWN MAIN
20 STREET OR SOUTH MAIN STREET?

21 A. YES, MA'AM.

22 Q. AND YOU DROPPED THEM OFF ON BRENT STREET YOU SAID?

23 A. YES, MA'AM.

24 Q. AND YOU SAID YOU DID NOT KNOW WHERE REAVES AND
25 GAMBLE STREETS WERE. DO YOU HAVE ANY IDEA WHERE EITHER ONE

KENDELL NELSON-CROSS BY FERRARI

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1 OF THOSE TWO IS?

2 A. NO, MA'AM.

3 Q. OKAY. AND YOU WERE DRIVING WHAT KIND OF CAR?

4 A. A BMW.

5 Q. OKAY. HOW LONG WERE YOU IN THE CAR WITH THESE
6 THREE OTHER PEOPLE?

7 A. UM, PROBABLY LIKE -- PROBABLY ALMOST 20 MINUTES.
8 15 TO 20 MINUTES MIGHT HAVE.

9 Q. IT TOOK 15 MINUTES TO GET FROM SOUTH MAIN STREET BY
10 WILDER SCHOOL TO BRENT STREET?

11 A. I AM JUST SAYING SUPPOSEDLY, I DON'T KNOW EXACT.
12 THIS WAS THREE AND A HALF YEARS AGO.

13 Q. OKAY. AND WHEN THEY SHOWED YOU THIS BACK THERE
14 TODAY, DID IT LOOK EXACTLY LIKE IT LOOKS NOW?

15 A. NO, MA'AM.

16 Q. WHAT WAS DIFFERENT?

17 A. WELL ON THE -- NOT ON THIS ONE, IT WASN'T DARK WHEN
18 THEY SHOWED IT TO ME THE FIRST TIME.

19 Q. THE ONE THEY SHOWED TODAY DID IT HAVE THIS WRITING
20 ON IT RIGHT HERE?

21 A. YES, MA'AM.

22 Q. OKAY. AND YOU KNEW THAT MR. ROBINSON WAS THE
23 VICTIM, IS THAT CORRECT?

24 A. YES, MA'AM.

25 Q. SO YOU KNEW WHY WE WERE HERE TODAY.

1 A. YES, MA'AM.

2 MS. FERRARI: I HAVE NOTHING FURTHER.

3 THE COURT: REDIRECT, MR. CONNER?

4 MR. CONNER: I HAVE NOTHING FURTHER OF HIM AT THIS
5 POINT, YOUR HONOR.

6 THE COURT: MR. NELSON, YOU CAN STEP DOWN.

7 MR. CONNER: MAY IT PLEASE THE COURT, I MIGHT CALL
8 OFFICER TURNER IN REGARDS TO THAT.

9 THE COURT: MR. TURNER, YOU MAY RESUME THE STAND. YOU
10 ARE STILL UNDER OATH.

11 OFFICER TURNER, BEING PREVIOUSLY
12 SWORN, RETAKES THE WITNESS STAND AND TESTIFIES AS FOLLOWS:

13 DIRECT EXAMINATION BY MR. CONNER:

14 Q. MR. TURNER, FIRST OFF, ON STATE'S EXHIBIT NO. 2,
15 DID YOU GO ALONG WITH NELSON'S LAWYER INTO A ROOM HERE IN
16 THE COURTHOUSE TODAY AND SHOW TO THEM THIS PHOTOGRAPHIC
17 DISPLAY?

18 A. YES, I DID.

19 Q. AND DID THE DEFENDANT -- DID KENDELL NELSON PICK
20 OUT THE DEFENDANT CASEY STUCKEY'S PICTURE OUT OF THAT PHOTO
21 DISPLAY AND TELL YOU THAT THAT APPEARED TO BE THE PERSON WHO
22 WAS WITH HIM ON THE NIGHT THIS CRIME OCCURRED?

23 A. YES, HE DID.

24 Q. NOW BACK IN NOVEMBER OF 2000, OR MORE SPECIFICALLY,
25 ON NOVEMBER 8TH 2000, DID YOU HAVE AN OCCASION TO INTERVIEW

JAMES TURNER-DIRECT BY CONNER

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1 MR. NELSON IN REGARD TO A CRIME?

2 A. YES, SIR, ON NOVEMBER THE 8TH AT 10:15 A.M.

3 Q. DID HE INDICATE TO YOU AT THAT TIME THAT HE WENT TO
4 A FELLOW NAMED GLENN'S TRAILER ON BRENT STREET HERE IN
5 SUMTER?

6 A. YES, HE DID.

7 Q. AND WHILE HE WAS THERE, DID HE INDICATE TO YOU
8 ANYBODY ELSE WAS THERE?

9 A. HE SAID THERE WAS OTHER THAN GLENN, THERE WAS TWO
10 OTHER PEOPLE THERE, DARNELL ROBINSON AND ANOTHER BLACK MALE.

11 Q. AND HE DIDN'T GIVE YOU THE NAME OF THE OTHER BLACK
12 MALE, I ASSUME.

13 A. NO, HE DIDN'T KNOW HIM.

14 Q. BUT HE DID SAY DARNELL ROBINSON WAS THERE.

15 A. YES, HE DID.

16 Q. AND DID HE SAY THAT DARNELL -- THAT THEY WERE
17 SAYING, THE PEOPLE THERE WERE SAYING THAT DARNELL OWNED THIS
18 OTHER FELLOW SOME MONEY?

19 A. YEAH, HE OWED HIM \$200.

20 MR. CONNER: I HAVE NOTHING FURTHER OF HIM, YOUR HONOR.

21 THE COURT: THANK YOU, MS. FERRARI.

22 CROSS EXAMINATION BY MS. FERRARI:

23 Q. WHEN YOU SHOWED THIS PHOTO LINEUP TO MR. NELSON,
24 IT HAD DONNELL ROBINSON'S SIGNATURE ON IT?

25 A. YES, MA'AM.

JAMES TURNER-DIRECT BY CONNER

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1 Q. AND WAS HE ABSOLUTELY POSITIVE IT WAS HIM, OR DID
2 HE SAY SOMETHING TO THE EFFECT OF THAT KIND OF LOOKS LIKE
3 THE GUY?

4 A. HE SAID HE BELIEVED THAT WAS THE ONE; THAT HE HAD
5 MORE HAIR ON THAT NIGHT. AND OF COURSE THIS WAS A PICTURE
6 THAT WAS TAKEN EARLIER, YOU KNOW, AT SOME OTHER ARREST. THE
7 ONLY THING HE MENTIONED THAT WAS DIFFERENT WAS HE THOUGHT HE
8 HAD MORE HAIR. MORE OF AN AFRO THAT NIGHT.

9 Q. WAS HE AS SURE AS SAY DONNELL ROBINSON WAS?

10 A. NO, HE WASN'T AS SURE AS DONNELL ROBINSON WAS.

11 MS. FERRARI: I HAVE NOTHING FURTHER.

12 THE COURT: THANK YOU. MR. CONNER, REDIRECT?

13 MR. CONNER: I HAVE NOTHING FURTHER.

14 THE COURT: YOU CAN STEP DOWN, MR. TURNER. MR.

15 CONNER, ANYTHING FURTHER IN REGARD TO MR. NELSON'S?

16 MR. CONNER: I HAVE NOTHING FURTHER IN REGARDS TO IT,
17 YOUR HONOR. I WOULD SAY THIS. HE SAYS THAT HE WAS IN THE
18 COMPANY OF HIM FOR 15 TO 20 MINUTES, AND THAT HE WAS SITTING
19 RIGHT BESIDE HIM IN AN AUTOMOBILE NEAR ENOUGH TO HAVE
20 REACHED OVER AND TOUCHED HIM.

21 MS. FERRARI: YOUR HONOR, HE DIDN'T TESTIFY TO THAT.

22 MR. CONNER: MY UNDERSTANDING IS THAT HE SAID THAT HE
23 WAS THE DRIVER; KENDELL NELSON WAS THE DRIVER. AND THE
24 OTHER FELLOW WAS SEATED IN THE PASSENGER SEAT.

25 THE COURT: HE SAID THAT.

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1 MS. FERRARI: HE SAID THAT.

2 THE COURT: HE SAID IT WAS 10 OR 15 MINUTES OR 15 TO 20
3 MINUTES. I CAN'T REMEMBER EXACTLY HOW LONG IT TOOK HIM TO
4 GET -- 15 TO 20 MINUTES IS WHAT HE SAID THEY WERE IN THE CAR
5 TOGETHER.

6 MR. CONNER: AND THEY HAD SOME CONVERSATION APPARENTLY
7 ABOUT THE GASOLINE AND WHAT NOT. I WOULD SUBMIT THAT HE HAD
8 A GOOD OPPORTUNITY TO TALK WITH HIM. BASED UPON WHAT HE
9 TOLD -- HE DENIES THAT AT THIS POINT. BUT BASED UPON WHAT
10 HE HAD TOLD MR. TURNER WHEN HE WAS INITIALLY ARRESTED, HE
11 WAS IN THE PRESENCE OF THESE PEOPLE AT THIS FELLOW GLENN'S
12 HOME. I SUBMIT THERE'S AMPLE EVIDENCE IN THIS RECORD THAT
13 HIS ATTENTION WAS ON WHAT WAS GOING ON. AND HE HAD
14 CONVERSATIONS WITH HIM. HE WAS CLOSE TO HIM. HE HAD A GOOD
15 OPPORTUNITY TO OBSERVE THEM. AND THAT THERE IS AMPLE
16 EVIDENCE THAT -- AMPLE BACKGROUND TO ALLOW THIS TO COME INTO
17 EVIDENCE IN THIS CASE.

18 THE COURT: MS. FERRARI.

19 MS. FERRARI: OPPORTUNITY TO SEE. HE SAYS 15 OR 20
20 MINUTES. BUT I ASKED THE FIRST WITNESS HOW FAR AWAY BRENT
21 STREET WAS, AND SHE SAID NOT FAR. I -- AND SOUTH MAIN IS
22 RIGHT. SO I CANNOT IMAGINE IF THEY WERE WALKING ON THEIR
23 HANDS AND KNEES IT TOOK THAT LONG. BUT LET'S ASSUME IT DID
24 TAKE HIM 20 MINUTES. AND IF HE'S DRIVING HIS ATTENTION
25 SHOULD HAVE BEEN ON THE ROAD AND NOT ON THE PASSENGER BESIDE

1 HIM. SECOND OF ALL, THERE IS NO PRIOR DESCRIPTION TO
2 COMPARE IT TO. WE DID THAT A LITTLE BIT EARLIER. THE LEVEL
3 OF CERTAINTY. HE SAID, HIS TESTIMONY WAS, IT KIND OF LOOKED
4 LIKE HIM.

5 BUT, YOUR HONOR, THE MAIN THING IS, THERE IS A "BIG"
6 DONNELL ROBINSON WRITTEN RIGHT ACROSS MY CLIENT'S FACE.
7 IT'S NOT LITTLE. IT'S NOT HIDDEN. IT'S ACROSS MY CLIENT'S
8 FACE. SO THE FACT THAT DONNELL ROBINSON IDENTIFIED HIM AS
9 THE MAN THAT WAS IN THE CAR IS EVIDENT. THERE IS NO WAY TO
10 HIDE THAT. THE LENGTH OF TIME BETWEEN THE CRIME AND THE
11 IDENTIFICATION AS HE SAID HIMSELF, IS THREE AND A HALF
12 YEARS. HE DOESN'T REMEMBER. HE DOES NOT SAY THAT HE SAW MY
13 CLIENT IN A TRAILER. HE TESTIFIED FROM RIGHT THERE. WHAT
14 IS IN THE STATEMENT IS NOT BEFORE THE JUDGE. THAT'S NOT
15 WHAT HE TESTIFIED TO. THEY ASKED HIM WHILE ON THE STAND IF
16 THERE WERE OTHER PEOPLE IN THE TRAILER. AND HE SAID ON THE
17 STAND, NO.

18 THERE IS NO WRITTEN MEMORIALIZATION OF THAT STATEMENT
19 TO JAMIE TURNER. THERE IS A STATEMENT WRITTEN BY MY CLIENT
20 WHERE HE SAID THEY WERE MET. HE SAW THEM WALKING ON THE
21 STREET. SO I WOULD SUBMIT TO YOU, YOUR HONOR, THAT HE
22 DIDN'T HAVE THAT LONG TO LOOK AT HIM. THE DEGREE OF
23 ATTENTION, HE WAS LOOKING AT THE ROAD. HE WAS DRIVING.
24 THERE IS NO PRIOR DESCRIPTION. HE SAYS HE WASN'T CERTAIN.
25 AND MR. TURNER SAID HE WASN'T AS CERTAIN AS MR. ROBINSON.

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1 THE LENGTH OF TIME HAS BEEN THERE AND A HALF YEARS. OR
2 ACTUALLY 3 YEARS. AND DONNELL ROBINSON'S NAME IN BIG
3 LETTERS IS WRITTEN ACROSS MY CLIENT'S FACE.

4 I THINK THAT IN AND OF ITSELF, TAINTS THE
5 IDENTIFICATION BECAUSE HE ALREADY KNOWS THAT DONNELL
6 ROBINSON SAID THAT'S THE GUY THAT DID IT.

7 THE COURT: MR. CONNER, ANYTHING IN RESPONSE?

8 MR. CONNER: I HAVE NOTHING FURTHER, YOUR HONOR.

9 THE COURT: THE TESTIMONY OFFERED BY MR. NELSON, ONE, A
10 STATEMENT THAT HE GAVE EARLIER THAT HE ADMITTED TO. ANOTHER
11 LATER STATEMENT THAT HE DENIED. AND THEN WHEN WE SAT HERE
12 IN COURT, HE DID NOT IDENTIFY THE DEFENDANT IN COURT. I
13 ASSUME THAT'S WHAT THIS IS LEADING UP TO IS AN IN COURT
14 IDENTIFICATION. OR THE VERY LEAST, AN IDENTIFICATION ON THE
15 PHOTO I.D.

16 FIRST OF ALL, IF WE DEAL WITH THE STATEMENT, THE FIRST
17 STATEMENT, MR. KENDELL DENIES MAKING THE FIRST STATEMENT.
18 HE ADMITTED THE SECOND STATEMENT. I AM NOT SURE HOW HE KNEW
19 ABOUT A SECOND ONE IF HE DIDN'T MAKE A FIRST ONE. BUT
20 NONETHELESS, THAT'S THE WAY HE DESCRIBED IT. BUT HE DID
21 NOT, ACCORDING TO MR. TURNER'S TESTIMONY OR HIS OWN PERHAPS,
22 INDICATE THIS OTHER BLACK MAN IN THE GLENN'S TRAILER WITH
23 THE VICTIM WAS THE SAME BLACK MAN THAT WAS IN THE CAR WITH
24 HIM. AND SO I AM NOT SURE THAT THAT IS EVEN RELEVANT ON ANY
25 ISSUE. THE QUESTION THEN REMAINS AS TO WHETHER OR NOT HE

1 HAS IDENTIFIED THE DEFENDANT AS THE PERSON WHO WAS IN THE
2 CAR WITH HIM. THAT'S WHEN HE PICKED HIM UP SOMEWHERE IN THE
3 SOUTH MAIN AREA AND DROPPED HIM OFF IN THE BRENT STREET
4 AREA.

5 AND ONCE AGAIN, I DON'T NEED TO RESTATE THE TOTALITY OF
6 THE CIRCUMSTANCES TEST THAT I TALKED ABOUT EARLIER TODAY.
7 BUT PERHAPS I DO NEED TO STATE ANOTHER CASE, KIRBY V.
8 ILLINOIS, A UNITED STATES SUPREME COURT CASE FROM 1972.
9 FOUND AT 92 SUPREME COURT 1877. I READ A PART OF THIS
10 HOLDING EARLIER TODAY. THIS IS NOT A QUOTE FROM THE CASE,
11 IT IS A SUMMARY OF THE HOLDING. THE JUDGE CAN DECIDE AS A
12 FACT BEYOND A REASONABLE DOUBT THAT THE OUT OF COURT
13 IDENTIFICATION BY THE WITNESS WAS NOT SO UNNECESSARILY
14 SUGGESTIVE AND CONDUCTIVE TO IRREPARABLE MISTAKEN
15 IDENTIFICATION THAT IT DENIED THE DEFENDANT DUE PROCESS.
16 AND THAT THE IN COURT IDENTIFICATION IS BASED ON THE
17 WITNESS' RECOLLECTION OF THE CRIME.

18 NOW THERE WAS AN OPPORTUNITY TO VIEW THE DEFENDANT OR
19 WHOEVER WAS IN THE CAR WITH HIM THAT NIGHT. WITHOUT A
20 DOUBT, HIS DEGREE OF ATTENTION DURING THAT 15 TO 20 MINUTES
21 WOULD HAVE BEEN DIVIDED TO SAY THE LEAST IF HE WAS DRIVING.
22 BUT CERTAINLY THERE MAY HAVE BEEN SOME OPPORTUNITY FOR THEM
23 TO SEE EACH OTHER. THERE IS NO PRIOR IDENTIFICATION AS TO
24 THAT PRONG OF THE TEST. THE LEVEL OF CERTAINTY DEMONSTRATED
25 BY THE WITNESS AT THE CONFRONTATION, HE WAS SOMEWHAT

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1 CERTAIN. HE WAS PRETTY SURE. WORDS TO THAT EFFECT. THERE
2 WAS SOME EQUIVOCATION. AND THE SIGNIFICANCE OF THAT
3 EQUIVOCATION AROSE IN THE FACE AS MS. FERRARI HAS SAID, AN
4 IDENTIFICATION WRITTEN ACROSS THE FACE OF THIS DEFENDANT.

5 HERE IS A CASE IN WHICH MR. NELSON KNOWS THAT DONNELL
6 ROBINSON IS THE VICTIM IN THE CASE. HE UNDERSTANDS WHAT THE
7 CASE IS ALL ABOUT. HE UNDERSTANDS THAT SOMEBODY IS ACCUSED
8 OF ASSAULTING DONNELL ROBINSON. AND HE IS SHOWN A LINEUP
9 THAT HAS DONNELL ROBINSON'S NAME ACROSS THE FACE OF THE
10 DEFENDANT. IT IS IMPOSSIBLE FOR HIM TO DISCOUNT THAT OR NOT
11 BE DRAWN TO THAT OR NOT DRAWN TO THAT OR TO DISREGARD THAT
12 IN MAKING A DECISION AS TO WHETHER OR NOT THAT PERSON LOOKS
13 LIKE OR IS THE DEFENDANT IN THIS CASE. EVEN WITH THAT
14 HOWEVER, THERE WAS SOME EQUIVOCATION. SUPPOSE THAT MIGHT
15 WEIGH IN THE STATE'S FAVOR, THE FACT THAT HE EQUIVOCATED IN
16 SPITE OF THE FACT THAT THERE WAS A RED FLAG ATTACHED TO THE
17 DEFENDANT'S NAME IN THIS PARTICULAR CASE.

18 I CAN NOT ANALYZE AT THIS POINT AND TIME HOW HE MAY
19 HAVE VIEWED THAT. ALL I CAN SAY IS THAT IT WAS
20 UNNECESSARILY SUGGESTIVE. IT WAS THE SAME AS IF THE -- IT
21 WAS MORE COMPELLING THAN IF THE DEFENDANT'S NAME ALONE HAD
22 BEEN WRITTEN ACROSS THE BOTTOM OF THOSE PHOTOGRAPHS. IF
23 THEY HAD BEEN IDENTIFIED BY NAME, WHICH WAS NEVER DONE, THAT
24 IS ONE THING. BUT TO IDENTIFY THE VICTIM ACROSS THE FACE OF
25 THE DEFENDANT, INEXORABLY TIES THOSE TWO THINGS TOGETHER AND

1 CERTAINLY IS SUGGESTIVE OF THE FACT THAT THAT DEFENDANT,
2 THAT PICTURE IS THE ONE WHO ASSAULTED THAT VICTIM WHOSE NAME
3 APPEARS ON IT. FOR THAT REASON, THE MOTION TO SUPPRESS THE
4 IN COURT IDENTIFICATION BY MR. NELSON OF THE DEFENDANT, IS
5 GRANTED.

6 IS THERE ANYTHING ELSE BEFORE WE BREAK FOR THE DAY AND
7 RETURN ON WEDNESDAY MORNING TO RESUME THE TRIAL? MR.
8 CONNER, FROM THE STATE?

9 MR. CONNER: NOTHING FURTHER FROM US, YOUR HONOR.

10 THE COURT: HOW MANY OTHER WITNESSES DO YOU ANTICIPATE
11 AT THIS TIME CALLING, MR. CONNER, FOR SCHEDULING PURPOSES?
12 THE JURY IS GOING TO CALL BACK SOMETIME WEDNESDAY, AND I WAS
13 TRYING TO FIGURE OUT HOW LONG WE MIGHT BE GOING ON WEDNESDAY
14 BEFORE WE PICK ANOTHER JURY.

15 MR. CONNER: I HAVE GOT TWO FOR SURE, AND I MIGHT HAVE
16 THREE.

17 THE COURT: THAT'S AS CLOSE AS I NEED TO KNOW. THANK
18 YOU. MS. FERRARI, ANYTHING FROM THE DEFENSE BEFORE WE BREAK
19 FOR THE DAY?

20 MS. FERRARI: YES, SIR, YOUR HONOR. THERE IS THE
21 MATTER OF MY CLIENT'S BOND.

22 THE COURT: RIGHT.

23 MS. FERRARI: HIS BROTHER APPEARED HE TELLS ME. HE HAS
24 THE MONEY TO PAY ANOTHER BONDING COMPANY THE ORIGINAL BOND
25 ON THIS CHARGE.

1 THE COURT: ALL RIGHT. WHEN THAT HAS BEEN DONE, IF YOU
2 ALL WILL LET ME KNOW, THEN I WILL BE GLAD TO REVISIT THAT
3 AREA.

4 MR. CONNER: YOUR HONOR.

5 THE COURT: YES, SIR.

6 MR. CONNER: ONE THING I WOULD LIKE TO BRING TO YOUR
7 ATTENTION, WE HAVE SEVERAL OTHER INDICTMENTS ON HIM. AND
8 EVERY ONE OF THOSE GREEN BAIL BONDING COMPANY IS ON -- WELL
9 THERE IS ONE OF THEM IS HARRIS BAIL BONDING. BUT HE HAS
10 ANOTHER \$5,000 BOND ON A DRUG CASE WITH GREEN BAIL BONDING.
11 AND IT'S ESSENTIALLY A DEAD BOND. THEY ARE NO LONGER IN
12 BUSINESS---

13 THE COURT: RIGHT.

14 MR. CONNER: --- ANOTHER \$500 BOND. I BELIEVE I HAVE
15 ONE WITH HARRIS AND HAVE A MOTION IN THE FILE FOR THEM TO GO
16 OFF OF THAT BOND. I DON'T KNOW WHETHER THAT HAS EVER BEEN
17 HEARD OR NOT.

18 THE COURT: MS. FERRARI, IT'S GOING TO TAKE -- WELL I
19 AM NOT SURE HOW LONG IT'S GOING TO TAKE TO GET THOSE THINGS
20 DONE. IT CERTAINLY CAN'T BE DONE TODAY. I'M NOT GOING TO
21 BE HERE TOMORROW. WE'RE GOING TO FINISH THIS CASE ON
22 WEDNESDAY. AND OBVIOUSLY, THERE IS SOME PROBLEMS ACCORDING
23 TO MR. CONNER'S FILE WITH OTHER BONDS AS WELL. I AM NOT
24 SURE THAT IT IS RELEVANT TO WASTE THAT MONEY ON A BONDSMAN
25 AT THIS POINT AND TIME. I AM GOING TO LEAVE IT UP TO HIM.

1 BUT IT DOESN'T LOOK LIKE MR. STUCKEY IS GOING TO BE ABLE TO
2 GET OUT OF JAIL BEFORE WE CONCLUDE THIS TRIAL ON WEDNESDAY.
3 AND FRANKLY, IF WE'RE AT THE END OF THIS TRIAL WHEN THE BOND
4 IS POSTED I AM NOT INCLINED TO GRANT IT AT THAT TIME AGAIN.

5 MS. FERRARI: YES, SIR, YOUR HONOR.

6 THE COURT: AND HIS BROTHER WOULD PROBABLY BE WELL
7 SERVED NOT TO WASTE THAT MONEY ON A BOND.

8 MS. FERRARI: YES, SIR, YOUR HONOR.

9 THE COURT: THANK YOU FOLKS, 9:30 ON WEDNESDAY MORNING.

10 (THEREUPON, THE TRIAL COMMENCES ON WEDNESDAY, NOVEMBER
11 12, 2003 AT 9:30 A.M.)

12 THE COURT: THANK YOU, LADIES AND GENTLEMEN, FOR YOUR
13 PROMPT RETURN AFTER THE DAY OFF. I HOPE YOU ENJOYED YOUR
14 DAY OUT OF THE COURTROOM. SOME OF YOU PROBABLY HAD TO WORK
15 SO IT WASN'T A DAY OFF FOR YOU. BUT IN ANY EVENT, YOU
16 DIDN'T HAVE TO BE WITH US. WE ARE NOW READY TO CONTINUE
17 THE TRIAL OF THIS CASE. THE STATE IS CONTINUING TO OFFER
18 TESTIMONY AND EVIDENCE IN SUPPORT OF THE CHARGES. MR.
19 CONNER, YOU CAN CALL YOUR NEXT WITNESS.

20 MR. CONNER: YOUR HONOR, WE WOULD CALL MARVIN MOSES.

21 THE COURT: MR. MOSES, COME FORWARD PLEASE, SIR.

22 MARVIN MOSES, BEING FIRST DULY
23 SWORN, TESTIFIED AS FOLLOWS:

24 THE CLERK: STATE YOUR FULL NAME AND SPELL YOUR LAST
25 NAME FOR THE RECORD.

MARVIN MOSES-DIRECT BY CONNER

129

1 A. MARVIN MOSES. M-O-S-E-S.

2 DIRECT EXAMINATION BY MR. CONNER:

3 Q. MR. MOSES, WHAT KIND OF WORK DO YOU DO?

4 A. I DO AUTO MECHANIC.

5 Q. TELL US SOMETHING ABOUT YOUR AUTOMOBILE MECHANIC
6 BUSINESS.

7 A. I GOT A BUSINESS RIGHT THERE ON BARTLETT, SOUTH
8 MAIN AND BARTLETT. MCELVEEN, THE OLD PONTIAC PLACE.

9 Q. AND HOW LONG HAVE YOU BEEN IN BUSINESS THERE?

10 A. ABOUT TWO YEARS.

11 Q. AND HAVE -- AND HOW LONG HAVE YOU LIVED IN SUMTER?

12 A. ABOUT 20 YEARS.

13 Q. AND WHERE DO YOU LIVE IN SUMTER?

14 A.

15 Q. REAVES STREET?

16 A. R-E-A-V-E-S.

17 Q. AND WERE YOU LIVING THERE ON OCTOBER THE 4TH OF
18 2000? THAT WOULD HAVE BEEN WHEN THIS CASE HAPPENED.

19 A. UH-HUH. (AFFIRMATIVE.)

20 Q. WERE YOU LIVING THERE THEN?

21 A. YES, SIR.

22 Q. AND IN THE EARLY MORNING HOURS OF OCTOBER 4TH OF
23 2000, DID YOU HEAR ANYTHING OUT OF THE ORDINARY?

24 A. I HEARD ABOUT 2 OR 3 SHOTS.

25 Q. 2 OR 3 GUNSHOTS?

MARVIN MOSES-DIRECT BY CONNER

130

1 A. YES, SIR.

2 Q. AND AS A RESULT OF THAT, WHAT DID YOU DO?

3 A. I GOT UP. I TOLD MY WIFE I HEARD SOMEBODY
4 SHOOTING. SO WE WANTED TO SEE WHAT IT WAS. SO WE LOOKED
5 OUT THE WINDOW AND WE DIDN'T SEE NO ONE. BUT THE NEXT DAY I
6 WALKED OVER TO MY NEIGHBOR'S, ROY.

7 Q. IS THAT ROY GOODMAN?

8 A. YES, SIR.

9 Q. WHERE WAS HE LIVING IN RELATION TO YOU?

10 A. HE LIVED NEXT DOOR TO ME. RIGHT ACROSS THE STREET
11 FROM ME.

12 Q. HE LIVES ACROSS THE STREET FROM YOU?

13 A. YES, SIR.

14 Q. SO YOU WALKED OVER THERE AND TALKED TO HIM?

15 A. RIGHT, THE NEXT MORNING.

16 Q. AND WHAT DID YOU LEARN?

17 A. HE TOLD ME, SAID, SOMEONE HAD GOT SHOT AND CAME TO
18 HIS HOUSE. SO HE CALLED THE COPS AND THE AMBULANCE.

19 MR. CONNER: I HAVE GOT NO FURTHER QUESTIONS OF HIM.

20 THE COURT: THANK YOU. MS. FERRARI, ANY QUESTIONS?

21 MS. FERRARI: JUST TWO QUICK QUESTIONS.

22 CROSS EXAMINATION BY MS. FERRARI:

23 Q. HOW MANY SHOTS DID YOU HEAR?

24 A. 2 OR 3.

25 Q. YOU DON'T REMEMBER THE NUMBER?

MARVIN MOSES-CROSS BY FERRARI

131

1 A. 2 OR 3 IS ALL I CAN REMEMBER. THREE YEARS AGO IT'S
2 KIND OF HARD.

3 Q. WOULD IT SURPRISE YOU TO KNOW THAT YOU TOLD THE
4 POLICE AT THE TIME THAT IT WAS 3 SHOTS?

5 A. WELL THAT'S WHAT I'M SAYING, 2 OR 3 SHOTS.

6 Q. AND YOU SAID, WAS IT RIGHT AFTER YOU SAW THE SHOTS
7 THAT YOU LOOKED OUT THE WINDOW?

8 A. I DIDN'T SEE NO SHOTS NOW. I HEARD THE SHOTS, I
9 DIDN'T SEE ANY.

10 Q. WAS IT RIGHT AFTER YOU HEARD THE SHOTS THAT YOU
11 LOOKED OUT THE WINDOW?

12 A. I ASKED MY WIFE, I SAID, DID YOU HEAR THE SHOT.
13 SHE SAID, YEAH, I HEARD IT. SO WE WENT AND PEEPED OUT THE
14 WINDOW BUT WE DIDN'T SEE ANYONE.

15 Q. YOU DIDN'T SEE ANYONE OR ANYTHING?

16 A. NO.

17 MS. FERRARI: NO FURTHER QUESTIONS.

18 THE COURT: THANK YOU. MR. CONNER?

19 MR. CONNER: I HAVE NOTHING FURTHER, YOUR HONOR.

20 THE COURT: THANK YOU, MR. MOSES, YOU CAN STEP DOWN.

21 MR. CONNER: YOUR HONOR, WE WOULD LIKE TO HAVE MR.
22 MOSES EXCUSED TO GO BACK TO HIS JOB.

23 THE COURT: SURE.

24 MS. FERRARI: NO OBJECTION, YOUR HONOR.

25 THE COURT: MR. MOSES, YOU CAN GO BACK TO WORK. THANK

DONNELL ROBINSON-DIRECT BY CONNER

132

1 YOU FOR COMING.

2 MR. CONNER: YOUR HONOR, AT THIS TIME, I AM GOING TO
3 CALL DONNELL ROBINSON.

4 THE COURT: MR. ROBINSON, COME FORWARD AND BE SWORN.

5 DONNELL ROBINSON, BEING FIRST DULY
6 SWORN, TESTIFIED AS FOLLOWS:

7 THE CLERK: STATE YOUR FULL NAME AND SPELL YOUR LAST
8 NAME FOR THE RECORD, PLEASE, SIR.

9 A. DONNELL ROBINSON.

10 THE CLERK: SPELL YOUR LAST NAME.

11 A. R-O-B-I-N-S-O-N.

12 DIRECTION EXAMINATION BY MR. CONNER:

13 Q. NOW, DONNELL, WHERE DO YOU LIVE?

14 A.

15 Q. WHO DO YOU LIVE WITH ON HOBSON STREET?

16 A. MY MOTHER.

17 Q. WHO ELSE?

18 A. MY SISTER.

19 Q. AND DOES ANYBODY ELSE LIVE THERE WITH YOU?

20 A. MY BROTHER.

21 Q. AND HOW LONG HAVE YOU LIVED ON HOBSON STREET?

22 A. ABOUT 4 YEARS.

23 Q. AND WERE YOU LIVING THERE BACK ON THE 4TH OF
24 OCTOBER OF 2000 WHEN YOU GOT SHOT?

25 A. YES, SIR.

DONNELL ROBINSON-DIRECT BY CONNER

133

- 1 Q. NOW DO YOU DO ANY KIND OF WORK, DONNELL?
- 2 A. YEAH, A LITTLE SIDE WORK.
- 3 Q. A LITTLE SIDE WORK?
- 4 A. YES, SIR.
- 5 Q. YOU DON'T HAVE A REGULAR JOB?
- 6 A. NO, SIR.
- 7 Q. WHAT KIND OF SIDE WORK DO YOU DO?
- 8 A. ALL KINDS.
- 9 Q. LIKE TELL US WHAT KIND OF WORK IT IS. IS IT YARD
- 10 WORK?
- 11 A. YES, SIR.
- 12 Q. AND WHO DO YOU DO THAT YARD WORK FOR?
- 13 A. DARRELL NEWMAN.
- 14 Q. DARRELL NEWMAN?
- 15 A. YES, SIR.
- 16 Q. NOW ON THE DATE, ON THE NIGHT THAT YOU GOT SHOT,
- 17 DID SOME PEOPLE COME BY YOUR HOUSE?
- 18 A. YES, SIR.
- 19 Q. DID YOU KNOW THOSE PEOPLE?
- 20 A. NO, SIR.
- 21 Q. YOU DIDN'T KNOW THEIR NAMES?
- 22 A. NO.
- 23 Q. DID YOU KNOW THEIR FACES?
- 24 A. NO, SIR.
- 25 Q. AND WHERE WERE YOU WHEN THEY STARTED TALKING TO

DONNELL ROBINSON-DIRECT BY CONNER

134

1 YOU?

2 A. OUTSIDE.

3 Q. YOU WERE OUTSIDE?

4 A. YES, SIR.

5 Q. AND WHAT DID THEY TELL YOU?

6 A. COME RIDE WITH THEM.

7 Q. COME ON AND GO TO RIDE WITH THEM?

8 A. YES, SIR.

9 Q. DID THEY TALK ABOUT ANYTHING ELSE? DID THEY OFFER

10 YOU ANYTHING AND TELL YOU THEY WOULD GIVE YOU ANYTHING IF

11 YOU RODE WITH THEM?

12 A. YES, SIR.

13 Q. WHAT DID THEY TELL YOU?

14 A. SOME BEER.

15 Q. GET YOU SOME BEER?

16 A. YES, SIR.

17 Q. SO YOU GOT IN THE CAR WITH THEM, IS THAT RIGHT?

18 A. YES, SIR.

19 Q. NOW DID YOU -- AT SOME POINT LATER IN TIME IN THIS

20 CASE, DID YOU FIND OUT WHAT THOSE PEOPLE'S NAME WAS?

21 A. YEAH, AFTER.

22 Q. I AM SORRY, I DIDN'T UNDERSTAND YOU.

23 A. AFTER THE PICTURES BEEN SHOWED.

24 Q. AFTER YOU SAW THE PICTURES?

25 A. YES, SIR.

DONNELL ROBINSON-DIRECT BY CONNER

135

1 Q. YOU LEARNED THE NAMES?

2 A. YES, SIR.

3 Q. AND WHAT DID YOU LEARN THE NAMES WERE?

4 A. CASEY STUCKEY, DONALD BUSH AND KENDELL NELSON.

5 Q. NOW WHEN THEY CAME BY YOUR HOUSE THAT NIGHT,

6 KENDELL NELSON WASN'T WITH THEM, WAS HE?

7 A. NO, SIR.

8 Q. JUST TWO OF THEM IN THE CAR?

9 A. YES, SIR.

10 Q. AND THAT WAS WHO?

11 A. CASEY STUCKEY AND DONALD BUSH.

12 Q. NOW WHERE DID THEY TAKE YOU?

13 A. GLENN'S HOUSE.

14 Q. GLENN'S HOUSE?

15 A. YES, SIR.

16 Q. AND WHO IS GLENN? DO YOU KNOW GLENN'S LAST NAME?

17 A. NO, SIR.

18 Q. HAD YOU EVER SEEN HIM BEFORE?

19 A. YES, SIR.

20 Q. SO YOU DID KNOW HIS FACE THEN.

21 A. (WITNESS NODS IN THE AFFIRMATIVE.)

22 Q. AND WHAT DID YOU DO WHEN YOU GOT OVER TO GLENN'S
23 PLACE?

24 A. SIT DOWN AND TALKED.

25 Q. AND YOU SAT THERE AND TALKED? DID YOU TALK FOR A

DONNELL ROBINSON-DIRECT BY CONNER

136

- 1 GOOD WHILE?
- 2 A. YES, SIR.
- 3 Q. AND WHAT PART OF THE HOUSE WERE YOU IN?
- 4 A. LIVING ROOM.
- 5 Q. AND WHO WAS SITTING THERE TAKING WITH YOU?
- 6 A. DONALD BUSH.
- 7 Q. AND WHERE WAS MR. STUCKEY? MR. STUCKEY, WAS HE
- 8 THERE TOO?
- 9 A. YES, SIR.
- 10 Q. AND WHILE YOU WERE THERE, WHAT DID Y'ALL DO?
- 11 A. WE DRANK BEER AND SMOKED WEED.
- 12 Q. YOU DRANK BEER AND SMOKED WEED?
- 13 A. YES, SIR.
- 14 Q. NOW WAS KENDELL NELSON THERE?
- 15 A. YEAH, ON THE OUTSIDE.
- 16 Q. SO WAS HE THERE WHEN YOU HAD FIRST GOTTEN THERE, OR
- 17 DID HE---
- 18 A. NO.
- 19 Q. ---COME AFTER YOU GOT THERE?
- 20 A. AFTER.
- 21 Q. NOW AT SOME TIME LATER THAT MORNING OR THAT --
- 22 SOME TIME THAT NIGHT, DID YOU GET UNEASY?
- 23 A. HUH?
- 24 Q. DID YOU GET CONCERNED ABOUT YOUR SAFETY?
- 25 A. YES.

DONNELL ROBINSON-DIRECT BY CONNER

137

- 1 Q. WHAT DID YOU DO?
- 2 A. RUN.
- 3 Q. WHERE DID YOU RUN TO?
- 4 A. SOUTH MAIN.
- 5 Q. AND WHEN YOU WERE RUNNING? WHAT HAPPENED?
- 6 A. THEY CAME BEHIND ME.
- 7 Q. THEY CAME BEHIND YOU?
- 8 A. YES, SIR.
- 9 Q. DID ONE OF THEM IN PARTICULAR COME BEHIND YOU?
- 10 A. YES, SIR.
- 11 Q. AND WHICH ONE WAS THAT?
- 12 A. DONALD BUSH.
- 13 Q. AND DID HE CATCH YOU?
- 14 A. YES, SIR.
- 15 Q. AND WHERE DID HE CATCH YOU?
- 16 A. ON SOUTH MAIN.
- 17 Q. ON SOUTH MAIN?
- 18 A. YES, SIR.
- 19 Q. NOW WHEN HE CAUGHT UP WITH YOU, WHAT HAPPENED THEN?
- 20 A. HE PUT ME IN THE CAR.
- 21 Q. AND WHO ELSE WAS IN THE CAR?
- 22 A. CASEY STUCKEY.
- 23 Q. CASEY STUCKEY WAS IN THE CAR?
- 24 A. YES, SIR.
- 25 Q. AND WHO ELSE?

DONNELL ROBINSON-DIRECT BY CONNER

138

- 1 A. AND KENDELL.
- 2 Q. KENDELL NELSON?
- 3 A. YES, SIR.
- 4 Q. AND WHO WAS THE DRIVER OF THE CAR?
- 5 A. KENDELL NELSON.
- 6 Q. AND WHERE WAS CASEY STUCKEY SEATED?
- 7 A. ON THE PASSENGER SIDE.
- 8 Q. AND WHERE WERE YOU AND MR. BUSH?
- 9 A. IN THE BACK SEAT.
- 10 Q. AND YOU SAY BUSH PUT YOU IN THE CAR?
- 11 A. YES, SIR.
- 12 Q. AND THEN WHAT HAPPENED THEN? WHAT WAS THE
- 13 CONVERSATION IN THE CAR?
- 14 A. TAKE ME ON 15.
- 15 Q. TAKE YOU ON WHERE?
- 16 A. ON 15.
- 17 Q. AND WHO WANTED TO TAKE YOU ON 15?
- 18 A. CASEY STUCKEY.
- 19 Q. WHAT DID KENDELL NELSON RESPOND WHEN HE WAS ASKED
- 20 TO TAKE YOU ON 15?
- 21 A. HE DIDN'T HAVE ENOUGH GAS.
- 22 Q. AND SO WHAT HAPPENED THEN?
- 23 A. HE TAKE ME TO THE OTHER SPOT.
- 24 Q. BUT CASEY STUCKEY WANTED TO TAKE YOU OUT 15?
- 25 A. YES, SIR.

DONNELL ROBINSON-DIRECT BY CONNER

139

1 Q. AND THEY TOOK YOU TO THE PLACE WHERE YOU WERE SHOT?

2 A. YES, SIR.

3 Q. AND WHEN YOU GOT THERE, TELL US WHAT HAPPENED.

4 WHEN YOU GOT THERE, WHERE YOU WERE SHOT.

5 A. HE TOLD ME TO GET OUT OF THE CAR AND WALK.

6 Q. WHO TOLD YOU TO GET OUT?

7 A. CASEY STUCKEY.

8 Q. CASEY STUCKEY?

9 A. YES, SIR.

10 Q. AND DID YOU GET OUT OF THE CAR?

11 A. YES, SIR.

12 Q. AND DID ANYBODY ELSE GET OUT OF THE CAR?

13 A. DONALD BUSH.

14 Q. WELL DID CASEY STUCKEY GET OUT OF THE CAR?

15 A. YES, SIR.

16 Q. AND SO YOU GOT OUT AND CASEY STUCKEY GOT OUT?

17 A. YES, SIR.

18 Q. AND DONALD BUSH GOT OUT?

19 A. YES, SIR.

20 Q. AND WHO TOLD YOU TO WALK?

21 A. CASEY STUCKEY.

22 Q. NOW DID YOU SEE ANYTHING IN CASEY STUCKEY'S HAND?

23 A. YES, SIR.

24 Q. WHAT DID YOU SEE?

25 A. A GUN.

DONNELL ROBINSON-DIRECT BY CONNER

140

- 1 Q. DID YOU SEE ANY GUN IN DONALD BUSH'S HAND?
- 2 A. NO, SIR.
- 3 Q. SO CASEY STUCKEY HAD THE GUN.
- 4 A. YES, SIR.
- 5 Q. AND HE WAS TELLING YOU TO WALK.
- 6 A. YES, SIR.
- 7 Q. AND YOU STARTED WALKING OFF FROM HIM. AND TELL US
- 8 WHAT HAPPENED..
- 9 A. AND HE SHOOT ME.
- 10 Q. WHO SHOT YOU?
- 11 A. CASEY STUCKEY.
- 12 Q. AND NOW DID YOU FALL DOWN?
- 13 A. YES, SIR.
- 14 Q. WERE THERE ANY OTHER SHOTS FIRED?
- 15 A. A SECOND ONE.
- 16 Q. A SECOND SHOT WAS FIRED?
- 17 A. YES, SIR.
- 18 Q. HOW DID YOU KNOW THAT?
- 19 A. HOW I KNEW IT?
- 20 Q. YEAH.
- 21 A. I HEARD IT.
- 22 Q. SO THERE WERE 2 SHOTS.
- 23 A. YES, SIR.
- 24 Q. BUT DID THE SECOND SHOT HIT YOU?
- 25 A. NO, SIR.

DONNELL ROBINSON-DIRECT BY CONNER

141

1 Q. DID THE FIRST SHOT HIT YOU?

2 A. YES, SIR.

3 Q. AND IT CAUSED YOU TO FALL DOWN?

4 A. YES.

5 Q. AND WHERE DID IT HIT YOU?

6 A. IN THE BACK.

7 Q. NOW AFTER THEY SHOT YOU, WHAT DID THEY DO?

8 A. GET BACK IN THE CAR AND LEFT.

9 THE COURT: I COULDN'T HEAR THAT ANSWER, UNDERSTAND
10 THAT ANSWER. COULD YOU REPEAT IT, PLEASE?

11 Q. WHAT DID THEY DO AFTER THEY SHOT YOU?

12 A. GOT BACK IN THE CAR AND LEFT.

13 Q. SO DONALD BUSH AND CASEY STUCKEY GOT BACK IN THE
14 CAR AND LEFT?

15 A. YES, SIR.

16 Q. NOW AFTER YOU GOT UP OFF THE -- YOU GOT UP OFF THE
17 GROUND AFTER THEY LEFT?

18 A. YES, SIR.

19 Q. AND WHAT DID YOU DO AT THAT POINT?

20 A. I WENT TO SOMEBODY'S HOUSE.

21 Q. YOU WENT TO LEROY GOODMAN'S HOUSE?

22 A. YES, SIR.

23 Q. DID YOU KNOW IT WAS LEROY'S HOUSE?

24 A. NO, SIR.

25 Q. YOU DO KNOW LEROY?

DONNELL ROBINSON-DIRECT BY CONNER

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- 1 A. YES, SIR.
- 2 Q. WHAT DID YOU DO AT LEROY'S HOUSE?
- 3 A. ASKED FOR HELP.
- 4 Q. AND DID YOU GO INSIDE?
- 5 A. NO, SIR.
- 6 Q. WHAT DID YOU DO THEN?
- 7 A. STAY ON THE PORCH.
- 8 Q. AND DID LEROY CALL AND GET SOME HELP FOR YOU?
- 9 A. YES, SIR.
- 10 Q. AND WHERE DID THEY TAKE YOU THEN?
- 11 A. TUOMEY.
- 12 Q. TUOMEY HOSPITAL?
- 13 A. YES, SIR.
- 14 Q. NOW LATER THAT DAY, DID THEY TAKE YOU SOME WHERE
- 15 ELSE?
- 16 A. COLUMBIA.
- 17 Q. HOW LONG WERE YOU IN THE HOSPITAL?
- 18 A. TWO DAYS.
- 19 Q. TWO DAYS?
- 20 A. YES, SIR.
- 21 Q. NOW AFTER YOU GOT OUT OF THE HOSPITAL, DID YOU HAVE
- 22 AN OPPORTUNITY TO MEET THIS GENTLEMAN RIGHT HERE, MR.
- 23 TURNER?
- 24 A. YES, SIR.
- 25 Q. AND AT THAT POINT, DID YOU TELL HIM THAT YOU WENT

DONNELL ROBINSON-DIRECT BY CONNER

143

1 TO SCHOOL WITH ONE OF THE PEOPLE THAT WAS IN THE CAR AND YOU
2 KNEW HIS NAME?

3 A. YES, SIR.

4 Q. AND WHO DID YOU TELL HIM THAT WAS?

5 A. KENDELL NELSON.

6 Q. AND THAT WAS THE DRIVER OF THE CAR?

7 A. YES, SIR.

8 Q. AND DID HE BRING YOU A PICTURE OF MR. NELSON AND
9 HAVE YOU LOOK AT THAT?

10 A. YES, SIR.

11 Q. DID YOU TELL HIM THAT WAS THE KENDELL NELSON YOU
12 KNEW?

13 A. YES, SIR.

14 Q. THE ONE YOU WENT TO SCHOOL WITH?

15 A. YES, SIR.

16 Q. NOW AFTER THAT, DID HE COME BACK SOMETIME LATER
17 AND SHOW YOU WHAT'S BEEN MARKED FOR IDENTIFICATION AS
18 STATE'S EXHIBIT NO. 1, THESE PHOTOGRAPHS HERE?

19 A. YES, SIR.

20 Q. DID HE SHOW YOU THOSE?

21 A. YES, SIR.

22 Q. AND DID YOU TELL HIM AT THAT POINT AND TIME THAT
23 YOU RECOGNIZED ONE OF THEM?

24 A. YES, SIR.

25 Q. NOW AT THE TIME -- BEFORE YOU SAW THAT PHOTO

DONNELL ROBINSON-DIRECT BY CONNER

144

1 DISPLAY AND TALKED WITH MR. TURNER, DID YOU KNOW THAT
2 FELLOW'S NAME?

3 A. NO, SIR.

4 Q. AND SO YOU DIDN'T KNOW HIS NAME?

5 A. NO, SIR.

6 Q. AND THAT'S THE ONE YOU LATER FOUND OUT HIS NAME WAS
7 WHAT?

8 A. DONALD BUSH.

9 Q. DONALD BUSH.

10 A. YES, SIR.

11 Q. AND WHEN YOU LOOKED AT THESE PHOTOS, DID YOU WRITE
12 YOUR NAME ON THAT PHOTO OF DONALD BUSH?

13 A. YES, SIR.

14 Q. SAYING THAT THAT WAS THE ONE THAT YOU WERE
15 IDENTIFYING OUT OF THAT GROUP?

16 A. YES, SIR.

17 Q. NOW AT SOME LATER TIME, DID HE COME BACK AND SHOW
18 YOU THIS PHOTO DISPLAY WHICH HAS BEEN MARKED FOR
19 IDENTIFICATION STATE'S EXHIBIT NO. 2 CONTAINING 6
20 PHOTOGRAPHS?

21 A. YES, SIR.

22 Q. AND DID YOU FIND A PERSON IN THAT PHOTO DISPLAY
23 THAT WAS INVOLVED IN THIS SHOOTING?

24 A. YES, SIR.

25 Q. WHICH ONE WAS THAT?

DONNELL ROBINSON-DIRECT BY CONNER

145

- 1 A. CASEY STUCKEY
- 2 Q. AND DID YOU WRITE YOUR NAME ACROSS HIS PHOTO---
- 3 A. YES, SIR.
- 4 Q. ---SAYING THAT WAS THE ONE THAT YOU HAD IDENTIFIED?
- 5 A. YES, SIR.
- 6 Q. NOW BEFORE YOU SAW THAT PHOTO DISPLAY AND BEFORE
- 7 YOU PICKED HIS PICTURE OUT, YOU DIDN'T KNOW HIS NAME, DID
- 8 YOU?
- 9 A. NO, SIR.
- 10 Q. AND AFTER IT WAS OVER WITH, THEN MR. TURNER TOLD
- 11 YOU WHO HE WAS?
- 12 A. YES, SIR.
- 13 Q. AND THAT'S HOW YOU LEARNED THE NAMES, IS THAT
- 14 RIGHT?
- 15 A. YES, SIR.
- 16 Q. NOW DO YOU SEE THAT PERSON HERE IN COURT TODAY
- 17 WHOSE PHOTO YOU HAVE IDENTIFIED AS CASEY STUCKEY? DO YOU
- 18 SEE THAT PERSON HERE IN COURT TODAY?
- 19 A. YES, SIR.
- 20 Q. YOU DO?
- 21 A. YES, SIR.
- 22 Q. WOULD YOU POINT HIM OUT FOR US PLEASE?
- 23 A. (WITNESS INDICATING.)
- 24 Q. WILL YOU TELL US WHAT COLOR OF SHIRT HAS HE GOT ON?
- 25 A. BLUE.

DONNELL ROBINSON-DIRECT BY CONNER

146

1 MR. CONNER: YOUR HONOR, WE WOULD ASK THAT THE RECORD
2 REFLECT THAT HE IDENTIFIES THE DEFENDANT.

3 THE COURT: YES, SIR.

4 MR. CONNER: AND AT THIS POINT AND TIME, WE WOULD OFFER
5 INTO EVIDENCE STATE'S EXHIBIT NO. 1 AND NO. 2.

6 THE COURT: THANK YOU. MS. FERRARI.

7 MS. FERRARI: NO OBJECTION, YOUR HONOR.

8 THE COURT: THANK YOU. STATE'S 1 AND STATE'S 2 NOW IN
9 EVIDENCE WITHOUT OBJECTION.

10 (PHOTO LINEUPS MARKED STATE'S EXHIBIT NOS. 1 AND 2 INTO
11 EVIDENCE.)

12 MR. CONNER: I HAVE NOTHING FURTHER AT THIS POINT.
13 ANSWER ANY QUESTIONS HIS LAWYER MIGHT HAVE FOR YOU.

14 THE COURT: THANK YOU. YOU CAN CROSS EXAMINE, MS.
15 FERRARI.

16 CROSS EXAMINATION BY MS. FERRARI:

17 Q. YOU TESTIFIED EARLIER YOU DIDN'T KNOW THE PEOPLE
18 WHO SHOT YOU, CORRECT?

19 A. YES, MA'AM.

20 Q. BUT YOU WENT TO SCHOOL WITH KENDELL NELSON.

21 A. YES, MA'AM.

22 Q. SO HOW DID YOU NOT KNOW HIM?

23 A. KNOW WHO?

24 Q. KENDELL NELSON.

25 A. I KNOW HIM.

DONNELL ROBINSON-CROSS BY FERRARI

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1 Q. BUT YOU TESTIFIED EARLIER YOU DIDN'T KNOW ANY OF
2 THE PEOPLE. HOW ABOUT DONALD BUSH? YOU SAID YOU DIDN'T
3 KNOW HIM.

4 A. YES, MA'AM.

5 Q. DON'T YOU THINK IT'S ODD THAT SOMEONE YOU DON'T
6 KNOW COMES BY YOUR HOUSE THE NEXT DAY TO FIND OUT HOW YOU
7 ARE YOU?

8 A. YES, MA'AM.

9 Q. SO YOU STILL SAY YOU DIDN'T KNOW DONALD BUSH AHEAD
10 OF TIME?

11 A. NO, MA'AM.

12 Q. DID YOU NOT TESTIFY MONDAY THAT YOU KNEW DONALD
13 BUSH AHEAD OF TIME?

14 A. NO, MA'AM.

15 Q. THEY TOLD YOU TO COME ON AND GET SOME BEER. SO
16 YOU JUST GOT IN WITH STRANGERS? IT'S A YES OR NO QUESTION.

17 A. NO.

18 Q. NO? A FEW MINUTES AGO IT WAS YES. IS IT YES OR IS
19 IT NO?

20 A. YES.

21 Q. DID THEY OFFER YOU MARIJUANA AT THAT TIME TOO?

22 A. NO, MA'AM.

23 Q. AND SO THAT WAS JUST A BONUS, A BENEFIT?

24 A. YES, MA'AM.

25 Q. WHERE IS GLENN'S TRAILER?

DONNELL ROBINSON-CROSS BY FERRARI

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1 A. I AIN'T KNOW.

2 Q. THEN HOW DO YOU KNOW YOU WERE ON SOUTH MAIN IF YOU
3 DON'T EVEN KNOW WHERE YOU WERE? SAT DOWN AND TALKED HOW
4 LONG? HOW LONG?

5 A. SEVERAL HOURS.

6 Q. SEVERAL ONE? SEVERAL FIVE? OR SEVERAL?

7 A. 6 HOURS.

8 Q. HOW MUCH BEER DID YOU DRINK?

9 A. A GOOD BIT.

10 Q. HOW MUCH POT DID YOU SMOKE?

11 A. NOT MUCH.

12 Q. OKAY, YOU SAID YOU GOT NERVOUS AND RAN. HOW FAR
13 DID YOU RUN?

14 A. SOUTH MAIN.

15 Q. WHERE WERE YOU? WHERE IS GLENN'S TRAILER? HOW FAR
16 DID YOU RUN?

17 A. TO SOUTH MAIN.

18 Q. HOW FAR DID YOU RUN?

19 A. NOT FAR.

20 Q. AND WHEN WAS KENDELL AT GLENN'S TRAILER?

21 A. ON THE SOUTH SIDE.

22 Q. NOT WHERE, WHEN?

23 A. WHEN?

24 Q. WHEN DID HE GET THERE?

25 A. I DON'T KNOW.

DONNELL ROBINSON-CROSS BY FERRARI

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- 1 Q. AND HOW DO YOU KNOW HE WAS THERE?
- 2 A. BECAUSE I SAW HIM.
- 3 Q. WHERE DID YOU SEE HIM?
- 4 A. ON THE OUTSIDE.
- 5 Q. WHEN?
- 6 A. LATER.
- 7 Q. WHEN LATER? SO YOU SAY YOU RAN TO SOUTH MAIN AND
- 8 SOMEONE CAME UP BEHIND. WHO CAME UP BEHIND YOU?
- 9 A. DONALD BUSH.
- 10 Q. DO YOU KNOW IT WAS DONALD BUSH BECAUSE YOU KNOW
- 11 DONALD BUSH, OR IS IT BECAUSE THEY TOLD YOU IT WAS DONALD
- 12 BUSH?
- 13 A. I KNEW.
- 14 Q. HOW DID YOU IT WAS DONALD BUSH? I THOUGHT YOU
- 15 DIDN'T KNOW DONALD BUSH?
- 16 A. I SEE HIS FACE.
- 17 Q. WHO PUT YOU IN THE CAR?
- 18 A. DONALD BUSH.
- 19 Q. WHO WAS IN THE CAR.
- 20 A. CASEY STUCKEY AND KENDELL.
- 21 Q. WHAT KIND OF CAR WAS IT?
- 22 A. I AIN'T PAY ATTENTION.
- 23 Q. WAS IT THE SAME CAR THAT YOU ARRIVED AT GLENN'S
- 24 TRAILER IN OR WAS IT A DIFFERENT CAR?
- 25 A. A DIFFERENT.

DONNELL ROBINSON-CROSS BY FERRARI

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1 Q. HOW DO YOU KNOW, YOU DIDN'T NOTICE THE CAR? WHEN
2 YOU GOT TO WHERE THIS INCIDENT OCCURRED, WHO GOT OUT OF THE
3 CAR?

4 A. HUH?

5 Q. WHEN YOU GOT TO WHERE THIS INCIDENT OCCURRED WHO
6 GOT OUT OF THE CAR?

7 A. CASEY STUCKEY.

8 Q. WHO ELSE?

9 A. DONALD BUSH.

10 Q. HOW DO YOU KNOW?

11 A. I SAW THEIR FACE.

12 Q. SO YOU SAW BOTH OF THEM GET OUT?

13 A. YES, MA'AM.

14 Q. SO WHEN YOU SAY YOU WERE WALKING AWAY FROM THE CAR,
15 YOU WERE TURNING AROUND LOOKING AT THE CAR? WERE YOU
16 TURNED AROUND AND LOOKING AT THE CAR, OR WERE YOU WALKING
17 AWAY FROM THE CAR?

18 A. WALKING AWAY.

19 Q. THEN HOW DO YOU KNOW WHO GOT OUT? HOW COME TODAY
20 IS THE FIRST DAY YOU MENTIONED SEEING THE GUN? WHY DIDN'T
21 YOU TELL MR. TURNER THAT WHEN HE INTERVIEWED YOU?

22 A. I DON'T KNOW.

23 Q. IT'S KIND OF CONVENIENT THAT TODAY YOU MENTION IT,
24 AND YOU DON'T MENTION IT THREE YEARS AGO. IF YOU WERE
25 WALKING AWAY HOW DO YOU KNOW WHO SHOT YOU? DID YOU SEE WHO

DONNELL ROBINSON-CROSS BY FERRARI

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1 SHOT YOU?

2 A. YES, MA'AM.

3 Q. HOW?

4 A. I HAD LOOKED BACK WHEN I WAS WALKING.

5 Q. SO YOU LOOKED BACK AS YOU WERE WALKING. AND YET
6 YOU, I JUST ASKED YOU THAT QUESTION AND YOU SAID NO. WHICH
7 IS IT? DID---

8 MR. CONNER: YOUR HONOR, I OBJECT---

9 Q. ---YOU LOOK BACK OR NOT?

10 MR. CONNER: ---TO HER DEBATING THE ISSUES WITH THE
11 WITNESS.

12 THE COURT: I SUSTAIN THE OBJECTION AS TO THE
13 CHARACTERIZATIONS TO THE QUESTIONS. THE JURY WILL BE ABLE
14 TO ACCESS WHAT THE QUESTIONS HAVE BEEN. HOWEVER, SHE'S
15 ALLOWED TO DEBATE TO A CERTAIN EXTENT IN CROSS EXAMINATION.

16 Q. DID YOU TURN AROUND OR NOT?

17 A. YES, MA'AM.

18 Q. WHEN?

19 A. WHEN I WAS WALKING.

20 Q. BEFORE OR AFTER YOU GOT SHOT?

21 A. BEFORE.

22 Q. HOW FAR AWAY WERE YOU WHEN YOU TURNED AROUND? HOW
23 FAR AWAY WERE YOU WHEN YOU GOT SHOT?

24 A. NOT TOO FAR.

25 Q. NOT TOO FAR?

1 A. NO, MA'AM.

2 Q. WERE THERE ANY LIGHTS THERE?

3 A. NO, MA'AM.

4 Q. SO IT WAS DARK?

5 A. YES, MA'AM.

6 Q. SO YOU COULDN'T SEE WHO PULLED THE TRIGGER EVEN IF
7 YOU LOOKED BACK? SO YOU TESTIFIED THAT DONALD BUSH AND
8 ALLEGEDLY MY CLIENT GOT OUT OF THE CAR, CORRECT?

9 A. YES, MA'AM.

10 Q. SO THERE WERE AT LEAST 2 PEOPLE STANDING BEHIND YOU,
11 CORRECT?

12 A. YES, MA'AM.

13 Q. SO HOW DO YOU KNOW WHICH ONE SHOT YOU? YOU DON'T,
14 DO YOU? YOU DON'T KNOW WHICH ONE SHOT YOU. IT'S A YES OR
15 NO QUESTION. YES OR NO, MR. ROBINSON?

16 MR. CONNER: YOUR HONOR, I OBJECT TO THAT. IT IS NOT A
17 QUESTION.

18 THE COURT: THE QUESTION WAS WHETHER OR NOT HE KNOWS
19 WHO SHOT HIM. AND THAT IS A QUESTION. AND I WILL ALLOW HIM
20 TO ANSWER THE QUESTION IF HE KNOWS THE ANSWER. DO YOU
21 UNDERSTAND THE QUESTION, MR. ROBINSON? DO YOU UNDERSTAND
22 WHAT SHE IS ASKING YOU?

23 A. NO, SIR.

24 THE COURT: SHE'S ASKING YOU IF YOU KNOW WHO SHOT YOU.
25 DO YOU UNDERSTAND THAT?

DONNELL ROBINSON-CROSS BY FERRARI

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1 A. NO.

2 THE COURT: SHE WANTS TO KNOW IF YOU KNOW WHO SHOT YOU
3 THAT NIGHT, THAT'S THE QUESTION. DO YOU UNDERSTAND THE
4 QUESTION?

5 A. YES, SIR.

6 Q. I AM STILL WAITING ON THE ANSWER, MR. ROBINSON.

7 MR. CONNER: YOUR HONOR, I WOULD ASK THAT SHE REPEAT
8 THE QUESTION.

9 THE COURT: DO YOU WANT TO RESTATE IT?

10 Q. DO YOU KNOW WHO SHOT YOU THAT NIGHT?

11 MS. FERRARI: YOUR HONOR.

12 THE COURT: MA'AM?

13 MS. FERRARI: HE STILL HAS NOT ANSWERED MY QUESTION.

14 THE COURT: WELL, I AM NOT SURE WHETHER HE HAS OR NOT.
15 BUT THE JURY WILL HAVE TO ASSESS THAT. DO YOU KNOW THE
16 ANSWER TO THE QUESTION, MR. ROBINSON? DO YOU KNOW WHO SHOT
17 YOU?

18 A. YES, SIR.

19 THE COURT: YOU DO?

20 A. YES, SIR.

21 THE COURT: THAT'S WHAT SHE'S ASKING YOU. SHE WANTS TO
22 KNOW IF YOU KNOW WHO SHOT YOU.

23 A. YES, MA'AM.

24 Q. WHO?

25 A. CASEY STUCKEY.

1 Q. AND HOW DO YOU KNOW?

2 MR. CONNER: YOUR HONOR, I OBJECT TO THIS. IT'S JUST
3 REPETITION. HE'S ALREADY SAID THAT HE SAW HIM WITH THE GUN
4 AND THAT HE SHOT HIM.

5 THE COURT: WELL HE SAID HE SAW HIM WITH THE GUN.
6 THAT'S RIGHT. AND I WILL -- IF THAT'S THE ANSWER TO THE
7 QUESTION, THEN THAT'S THE ANSWER. I WILL ALLOW HER TO ASK.

8 Q. HOW DO YOU KNOW?

9 A. I SAW HIS FACE.

10 MS. FERRARI: NO FURTHER QUESTIONS.

11 THE COURT: MR. CONNER, REDIRECT.

12 MR. CONNER: I HAVE NOTHING FURTHER OF HIM, YOUR HONOR.

13 THE COURT: THANK YOU, MR. ROBINSON, YOU CAN STEP DOWN.

14 MR. CONNER: BRING OUT KENDELL NELSON PLEASE.

15 KENDELL NELSON, BEING FIRST DULY
16 SWORN, TESTIFIED AS FOLLOWS:

17 THE CLERK: STATE YOUR FULL NAME AND SPELL YOUR LAST
18 NAME FOR THE RECORD, PLEASE, SIR.

19 A. KENDELL NELSON.

20 THE COURT: MR. NELSON, YOU ARE REPRESENTED BY COUNSEL
21 IN THIS CASE. AND THEREFORE, IF YOU WANT TO HAVE A LAWYER
22 PRESENT WITH YOU BEFORE YOU ANSWER ANY OF THESE QUESTIONS, I
23 WILL BE GLAD TO WAIT UNTIL WE CAN LOCATE YOUR LAWYER. IF
24 YOU WISH TO ANSWER ANY QUESTIONS WITHOUT YOUR LAWYER, IF YOU
25 FEEL COMFORTABLE IN ANSWERING THE QUESTIONS WITHOUT YOUR

1 LAWYER BEING HERE IN COURT, THEN YOU CAN ANSWER THEM. BUT
2 YOU DON'T HAVE TO, DO YOU UNDERSTAND THAT?

3 A. I WOULD RATHER TALK TO MY LAWYER FIRST. BECAUSE I
4 DIDN'T KNOW I WAS SUPPOSED TO COME BACK UP HERE AND TESTIFY.

5 THE COURT: SEE IF WE CAN LOCATE, MR. SPIGNER.

6 MS. FERRARI: YOUR HONOR, HE WAS HERE THIS MORNING. HE
7 MAY BE IN THE BACK TALKING TO ANOTHER CLIENT.

8 THE COURT: WELL WHY DON'T WE JUST SEE IF WE CAN'T FIND
9 HIM. IT'S A BIG COURTHOUSE, A BUNCH OF FOLKS, MAYBE THEY
10 CAN FIND HIM. MR. NELSON HAS A LAWYER TO REPRESENT HIM.
11 THEREFORE, HE HAS A RIGHT TO HAVE HIS LAWYER PRESENT. EVEN
12 THOUGH HE IS NOT ON TRIAL IN THIS PARTICULAR CASE, HE HAS A
13 RIGHT TO HAVE HIS LAWYER PRESENT WITH HIM. BECAUSE WHAT HE
14 SAYS IN THIS COURT COULD BE USED AGAINST HIM IN HIS TRIAL
15 WHEN THAT OCCURS. AND FOR THAT REASON WE ARE TRYING TO
16 LOCATE HIS LAWYER IN THE COURTHOUSE BEFORE THIS QUESTIONING
17 GOES FORWARD. IF Y'ALL JUST BEAR WITH US FOR JUST A MINUTE.
18 WE'LL EITHER LOCATE OR LET MR. NELSON STAND DOWN IN COURT.
19 THANK YOU. MR. NELSON, STAND DOWN PLEASE, SIR.

20 IS MR. NELSON YOUR LAST WITNESS, MR. CONNER?

21 MR. CONNER: HE WOULD BE.

22 THE COURT: LADIES AND GENTLEMEN, STEP TO YOUR JURY
23 ROOM FOR JUST A FEW MOMENTS PLEASE, WHILE WE MAKE ONE MORE
24 EFFORT TO TRY TO CONTACT MR. SPIGNER HIS ATTORNEY. PLEASE
25 DON'T DISCUSS THIS CASE AMONG YOURSELVES WHILE YOU'RE IN THE

1 JURY ROOM. WE'RE NOT GOING TO LOOK LONG. IF HE'S NOT HERE,
2 WE'LL CONTINUE THE TRIAL.

3 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
4 PRESENCE OF THE JURY.)

5 THE COURT: FOLKS, WHY DON'T WE TAKE A 10 MINUTES TO
6 SEE IF WE CAN'T GET A BENCH WARRANT ISSUED FOR MR. SPIGNER.
7 AT 10:30 WE'LL HAVE TO START BACK WITHOUT HIM.

8 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

9 THE COURT: FOLKS, TELL ME WHAT WE'VE BEEN ABLE TO FIND
10 OUT ABOUT MR. SPIGNER. ANY WORD ON WHERE HE IS OR WHERE HE
11 MIGHT BE OR ANYTHING OF THAT NATURE, MR. CONNER?

12 MR. CONNER: JUDGE, THE ONLY THING I FOUND OUT IS, MY
13 SECRETARY SAID THAT HE HAD BEEN IN THERE JUST A FEW MINUTES
14 BEFORE WE STARTED CALLING DOWN THERE. I CALLED OUR OFFICE
15 THINKING HE MIGHT BE IN THERE TALKING TO ONE OF THE OTHER
16 LAWYERS.

17 THE COURT: RIGHT.

18 MR. CONNER: AND HE WAS NOT IN THERE, BUT THEY SAID HE
19 HAD JUST BEEN IN THERE AND I DON'T....

20 THE COURT: DOES HE HAVE AN OFFICE WHERE WE CAN TRY TO
21 LOCATE HIM?

22 MR. CONNER: I ASKED THEM TO CALL HIS OFFICE, BUT HE'S
23 GOT AN ANSWERING MACHINE. HE DOESN'T HAVE A SECRETARY
24 THERE. HE IS DIFFICULT TO GET UP WITH.

25 THE COURT: WELL WHAT DO YOU SUGGEST WE DO, MR. CONNER,

1 IN VIEW OF THAT? YOU KNOW, IF ANOTHER FEW MINUTES DELAY
2 IS LIKELY TO GET HIM HERE, CERTAINLY I'LL BE AMENABLE TO
3 THAT IF WE'VE GOT SOME LEADS. IF IT'S JUST THE KIND OF
4 SITUATION WE'RE WAITING ON HIM TO SHOW UP, THEN I AM NOT
5 INCLINED TO DO THAT. BUT IF WE HAVE GOT SOMEBODY OUT
6 LOOKING FOR HIM AND TRYING TO BEAT THE BUSH FOR HIM.

7 MR. CONNER: WELL I TOLD THE SECRETARIAL STAFF THERE TO
8 SPREAD THE WORD AROUND THE BUILDING. I ASKED -- MS. FERRARI
9 SAID SHE WAS GOING DOWN TO THE PUBLIC DEFENDER'S CUBBYHOLE
10 AND SEE IF THERE WAS ANYBODY DOWN THERE TO GIVE THEM THE
11 WORD. IF THERE WAS ANYBODY THERE THAT COULD TELL HIM IF HE
12 CAME IN.

13 MS. FERRARI: YES. MR. WILDER AND HIS DAUGHTER WERE
14 DOWN THERE. YOUR HONOR, MIGHT I SUGGEST SINCE WE HAVE A FEW
15 MINUTES AND WE NEED TO ADDRESS ONE'S RIGHT TO TESTIFY OR NOT
16 OUT OF THE PRESENCE OF THE JURY, THAT WE PERHAPS DO THAT AND
17 GIVE MR. SPIGNER SOME MORE TIME TO SHOW UP.

18 THE COURT: SURE, WE CAN DO THAT. AND WE CAN HANDLE
19 OTHER MATTERS PERHAPS OF AN IN CAMERA NATURE, MS. FERRARI,
20 THAT'S A GOOD IDEA. WHY DON'T WE FOLLOW UP ON THOSE THINGS
21 WHILE WE HAVE A CHANCE. MR. STUCKEY, IF YOU WOULD RAISE
22 YOUR RIGHT HAND AND LET ME PUT YOU UNDER OATH, THERE ARE
23 SOME QUESTIONS THAT I NEED TO ASK YOU.

24 (THEREUPON, THE DEFENDANT IS SWORN.)

25 THE COURT: MR. STUCKEY, YOU MAY BE CALLED TO TESTIFY

1 AS A WITNESS IN THIS CASE. I DON'T KNOW WHETHER YOU WILL BE
2 OR NOT. THAT'S A MATTER FOR YOU AND YOUR LAWYER TO DISCUSS.
3 BUT BEFORE YOU MAKE THAT DECISION, I NEED TO TELL YOU THAT
4 UNDER OUR STATE AND UNITED STATES CONSTITUTION,
5 YOU HAVE A RIGHT NOT TO TESTIFY. THE FIFTH AMENDMENT OF OUR
6 UNITED STATES CONSTITUTION AND SIMILAR AMENDMENT IN OUR
7 STATE CONSTITUTION SAYS THAT NO PERSON CAN BE FORCED OR
8 COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST
9 HIMSELF OR TO TESTIFY AGAINST HIMSELF. AND THAT MEANS YOU
10 HAVE THE RIGHT NOT TO TESTIFY IN THIS CASE. AND IF YOU
11 CHOOSE TO EXERCISE THAT RIGHT, THE JURY WILL BE TOLD THAT
12 THEY CANNOT HOLD THAT AGAINST YOU. THEY CANNOT EVEN DISCUSS
13 THE FACT THAT YOU DID NOT TESTIFY AGAINST YOU IN THEIR
14 DELIBERATIONS, BECAUSE YOU HAVE EXERCISED A CONSTITUTIONAL
15 RIGHT.

16 YOU ALSO, HOWEVER, HAVE A RIGHT TO TESTIFY. SO YOU CAN
17 GIVE UP YOUR RIGHT AGAINST SELF-INCRIMINATION, YOU CAN GIVE
18 UP YOUR RIGHT TO REMAIN SILENT AND TESTIFY JUST LIKE OTHER
19 WITNESSES HAVE BEEN DOING. AND IF YOU DO THAT, THEN YOU
20 WILL ASKED QUESTIONS NOT ONLY BY YOUR OWN LAWYER, BUT BY MR.
21 CONNER AS WELL. AND YOU CAN BE IMPEACHED AND CROSS EXAMINED
22 ON ANY ISSUE THAT IS RELEVANT TO THIS PARTICULAR CASE. AND
23 SO YOU NEED TO UNDERSTAND THE RIGHT THAT IS YOURS. IT IS
24 THE RIGHT TO TESTIFY IF YOU WISH, AND GIVE UP THE RIGHT
25 AGAINST SELF-INCRIMINATION. AND THAT'S A RIGHT THAT NOBODY

1 ELSE CAN GIVE UP BUT YOU. AND YOU'RE THE ONLY ONE WHO HAS
2 THAT RIGHT AND YOU'RE THE ONLY ONE WHO CAN GIVE IT UP. BUT
3 YOU DO HAVE THE RIGHT TO GIVE IT UP AND TESTIFY OR YOU HAVE
4 THE RIGHT NOT TO TESTIFY. DO YOU UNDERSTAND THE RIGHTS THAT
5 ARE YOURS CONCERNING YOUR TESTIMONY IN THIS CASE?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: DO YOU HAVE ANY QUESTIONS YOU WANT TO ASK
8 ME ABOUT THOSE RIGHTS?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: WHAT QUESTIONS DO YOU WANT TO ASK ME?

11 THE DEFENDANT: NO, I HAVE NO QUESTIONS.

12 THE COURT: MS. FERRARI, HAVE Y'ALL DISCUSSED WHETHER
13 HE IS GOING TO TESTIFY IN THE CASE YET OR NOT?

14 MS. FERRARI: YES, SIR, YOUR HONOR, WE HAVE. THE
15 DEFENSE WILL REST AS SOON AS THE STATE RESTS.

16 THE COURT: THANK YOU.

17 MS. FERRARI: MR. SPIGNER IS HERE, YOUR HONOR.

18 THE COURT: THE RECORD WILL REFLECT THAT MR. NELSON IS
19 BACK IN COURT. YOU CAN RESUME THE STAND, MR. NELSON. AND
20 THAT MR. SPIGNER IS PRESENT IN COURT AS WELL. THANK YOU,
21 MR. SPIGNER.

22 MR. SPIGNER: YOUR HONOR, I APOLOGIZE TO THE COURT. I
23 WASN'T SURE WHETHER THEY WERE GOING TO CALL HIM AS A WITNESS
24 OR NOT.

25 THE COURT: I UNDERSTAND. AND THAT'S -- THEY WERE ABLE

1 TO RUN YOU DOWN SO THAT'S NO PROBLEM. BRING US THE JURY,
2 PLEASE.

3 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
4 PRESENCE OF THE JURY.)

5 THE COURT: THANK YOU, LADIES AND GENTLEMEN. MR.
6 SPIGNER IS HERE IN COURT NOW. HE WAS NOT AWARE THAT MR.
7 NELSON WOULD BE CALLED TO TESTIFY. AND THAT'S THE REASON HE
8 WAS NOT IN COURT EARLIER. MR. NELSON HAS ALREADY BE PLACED
9 UNDER OATH. AND, MR. CONNER, YOU CAN CROSS EXAMINE -- YOU
10 CAN EXAMINE THE WITNESS. THANK YOU.

11 DIRECT EXAMINATION BY MR. CONNER:

12 Q. STATE YOUR NAME FOR US, PLEASE.

13 A. KENDELL NELSON.

14 Q. KENDELL, WHERE ARE YOU FROM?

15 A. SUMTER COUNTY.

16 Q. HOW LONG HAVE YOU LIVED IN SUMTER COUNTY?

17 A. 22 YEARS.

18 Q. AND WHERE ARE YOU LIVING RIGHT NOW, KENDELL?

19 A. I WAS AT KERSHAW.

20 Q. YOU WERE AT KERSHAW CORRECTIONAL INSTITUTE?

21 A. YES, SIR.

22 Q. AND HOW LONG HAVE YOU BEEN THERE?

23 A. BETWEEN 4 AND 5 MONTHS.

24 Q. AND THAT'S WITH THE DEPARTMENT OF CORRECTIONS?

25 A. YES, SIR.

KENDELL NELSON-DIRECT BY CONNER

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1 Q. JUST TO REVIEW THINGS HERE, BACK IN MARCH OF 2001,
2 WERE YOU CHARGED WITH AGGRAVATED ASSAULT AND BATTERY?
3 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE? YOU
4 PLED GUILTY TO IT AND GOT A YOUTHFUL OFFENDER SENTENCE.

5 A. YES, SIR.

6 Q. IS THAT RIGHT?

7 A. YES, SIR.

8 Q. AND AT THE SAME TIME YOU ALSO PLED GUILTY TO
9 POSSESSION OF CRACK COCAINE AND YOU GOT A YOUTHFUL OFFENDER
10 SENTENCE, IS THAT RIGHT?

11 A. YES, SIR.

12 Q. AND AT THE SAME TIME YOU WERE SENTENCED FOR PWID,
13 POSSESSION WITH INTENT TO DISTRIBUTE COCAINE AND YOU GOT A
14 15-YEAR SENTENCE SUSPENDED TO 3 YEAR PROBATIONS AFTER
15 YOUTHFUL OFFENDER WAS OVER?

16 A. I FEEL LIKE I DON'T NEED TO ANSWER THAT, BECAUSE
17 THAT HAS GOT NOTHING TO DO WITH THIS CASE.

18 THE COURT: YES, SIR. I'LL DECIDE WHETHER IT'S
19 RELEVANT OR NOT, MR. NELSON. IF THERE IS NO OBJECTION AS TO
20 RELEVANCY, THE JURY HAS THE RIGHT TO TAKE THOSE THINGS INTO
21 ACCOUNT IN DISCUSSING YOUR CREDIBILITY. SO YOU HAVE TO
22 ANSWER THE QUESTION.

23 A. YES, SIR.

24 Q. SO YOU DID PLEAD GUILTY TO POSSESSION WITH INTENT
25 TO DISTRIBUTE COCAINE?

KENDELL NELSON-DIRECT BY CONNER

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1 A. YES, SIR.

2 Q. NOW ON JUNE 10TH OF 2003 THIS YEAR, RIGHT NOW, YOU
3 PLED GUILTY TO PWID CRACK COCAINE AND POSSESSION WITH INTENT
4 TO DISTRIBUTE CRACK COCAINE, IS THAT RIGHT?

5 A. YES, SIR.

6 Q. AND YOU GOT A 5-YEAR SENTENCE.

7 A. YES, SIR.

8 Q. AND THAT'S WHY YOU ARE AT KERSHAW CORRECTIONAL
9 INSTITUTE?

10 A. YES, SIR.

11 Q. NOW BACK ON OCTOBER 4, 2000, SOMETIME THAT NIGHT,
12 YOU HAD AN OCCASION TO GO A FELLOW NAMED GLENN'S TRAILER
13 HERE IN THE SUMTER COMMUNITY, IS THAT RIGHT?

14 A. YES, SIR.

15 Q. AND COULD YOU TELL US WHAT TIME OF NIGHT YOU WENT
16 THERE?

17 A. I DON'T KNOW, IT HAD TO HAVE BEEN BETWEEN 11:30; 11
18 OR 12 SOME TIME LIKE THAT.

19 Q. AND WHEN YOU GOT THERE, THERE WAS SOME PEOPLE
20 THERE. THERE WAS GLENN, WASN'T IT?

21 A. GLENN WAS THERE.

22 Q. WHERE DOES GLENN LIVE?

23 A. OFF OF BRENT STREET. I MEAN, BRANCH.

24 Q. OFF OF BRANCH STREET. AND THERE WAS SOME OTHER
25 PEOPLE THERE, RIGHT?

KENDELL NELSON-DIRECT BY CONNER

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1 A. FROM MY UNDERSTANDING WHEN I WENT THERE, HE TOLD --
2 NOBODY WASN'T THERE. I STOPPED BY THERE AND I LEFT.

3 Q. AND YOU WERE ARRESTED IN THIS SAME CASE BACK ON
4 NOVEMBER 8TH 2003, WEREN'T YOU?

5 A. I CAN'T REALLY REMEMBER WHEN I GOT ARRESTED.

6 Q. I BEG YOUR PARDON, ON NOVEMBER THE 8TH OF 2000 YOU
7 WERE ARRESTED, WEREN'T YOU?

8 A. YES, SIR.

9 Q. AND YOU TALKED TO THIS GENTLEMAN RIGHT OVER HERE,
10 DIDN'T YOU?

11 A. YES, SIR.

12 Q. AND YOU TOLD HIM THAT NIGHT WHEN YOU WENT TO
13 GLENN'S TRAILER THAT DONNELL WHO YOU WENT TO SCHOOL WITH,
14 WAS THERE.

15 A. NO, SIR.

16 Q. YOU DIDN'T TELL HIM THAT?

17 A. NOT THAT I CAN REMEMBER.

18 Q. AND YOU TOLD HIM THERE WAS SOMEBODY ELSE THERE
19 TALKING TO DONNELL; CLAIMED THAT DONNELL OWED THEM SOME
20 MONEY, IS THAT RIGHT?

21 A. NO, SIR.

22 Q. NOW YOU DID SEE DONNELL THAT NIGHT, DIDN'T YOU?

23 A. YES, SIR.

24 Q. AND HOW DID YOU KNOW DONNELL?

25 A. LIKE I TOLD Y'ALL YESTERDAY, I HAVE BEEN KNOWING

1 HIM FROM SCHOOL.

2 Q. HOW DID YOU KNOW HIM FROM SCHOOL?

3 A. WE WENT TO SCHOOL TOGETHER.

4 Q. WHERE WAS THAT?

5 A. HUH?

6 Q. WHERE WAS THAT? WHERE DID YOU GO TO SCHOOL WITH
7 HIM?

8 A. SUMTER HIGH.

9 Q. NOW WHEN DID YOU SEE HIM THAT NIGHT?

10 A. WHEN DID I SEE HIM?

11 Q. UH-HUH. (AFFIRMATIVE.)

12 A. WELL JUST LIKE I TOLD YOU, WHEN I WAS GOING DOWN
13 SOUTH MAIN STREET, I SEEN THREE PEOPLE WALKING. SOMEBODY
14 WAS WAVING ME DOWN. I SEEN THEM THAT NIGHT. THE LAST TIME
15 I SEEN THEM.

16 Q. AND YOU SAW SOMEBODY ELSE, DIDN'T YOU?

17 A. YES, SIR.

18 Q. WHO ELSE DID YOU SEE?

19 A. I TOLD YOU IT WAS DONALD BUSH AND THE OTHER FELLOW
20 WAS UNKNOWN. I DIDN'T NEVER KNOW HIM.

21 Q. SO YOU SAW THREE PEOPLE ON SOUTH MAIN STREET,
22 DONALD BUSH---

23 A. YES, SIR.

24 Q. ---DONNELL. DONNELL WAS THE SECOND ONE, RIGHT?

25 A. YES, SIR.

KENDELL NELSON-DIRECT BY CONNER

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- 1 Q. AND MR. UNKNOWN WE'LL CALL HIM WAS THE THIRD ONE.
2 IS THAT RIGHT?
- 3 A. YES, SIR.
- 4 Q. AND THEY WAVED YOU DOWN?
- 5 A. YES, SIR.
- 6 Q. AND YOU STOPPED?
- 7 A. YES, SIR.
- 8 Q. NOW THEY GOT IN THE CAR WITH YOU, DIDN'T THEY?
- 9 A. YES, SIR.
- 10 Q. AND WHO GOT IN -- LET'S, YOU WERE THE DRIVER, IS
11 THAT RIGHT?
- 12 A. YES, SIR.
- 13 Q. AND NOW WHERE DID DONNELL SIT?
- 14 A. I WANT TO SAY BEHIND THE PASSENGER.
- 15 Q. DONNELL WAS BEHIND THE PASSENGER?
- 16 A. I WANT TO SAY, YEAH.
- 17 Q. AND HE WAS IN THE BACK SEAT?
- 18 A. YES, SIR.
- 19 Q. AND DONALD BUSH NOW, WHERE WAS HE SEATED?
- 20 A. HE WAS IN THE BACK SEAT.
- 21 Q. DONNELL BUSH WAS IN THE BACK SEAT WITH DONNELL?
- 22 A. YES, SIR.
- 23 Q. AND WHERE WAS MR. UNKNOWN?
- 24 A. HE WAS ON THE PASSENGER SIDE.
- 25 Q. HE WAS ON THE PASSENGER SIDE IN THE FRONT?

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- 1 A. YES, SIR.
- 2 Q. RIGHT BESIDE YOU?
- 3 A. YES, SIR.
- 4 Q. YOU COULD REACH OUT AND TOUCH HIM.
- 5 A. YES, SIR.
- 6 Q. IF YOU WANTED TO.
- 7 A. YES, SIR.
- 8 Q. NOW WAS THERE ANY TALK ABOUT WHERE Y'ALL WERE
- 9 GOING?
- 10 A. THEY JUST ASKED ME TO GIVE THEM A RIDE ON RED BAY.
- 11 I TOLD THEM I HAD NEEDED SOME GAS. BUT I TOLD THEM SINCE I
- 12 WAS GOING THAT WAY, I WOULD JUST DROP THEM OFF THAT WAY.
- 13 Q. ON RED BAY -- YOU'D GIVE THEM A RIDE ON RED BAY.
- 14 A. YEAH, I WAS GOING THAT WAY ANYWAY.
- 15 Q. BUT THEY SAID SOMETHING, YOU TOLD THEM YOU DIDN'T
- 16 HAVE MUCH GAS?
- 17 A. YES, SIR.
- 18 Q. SO THERE WAS SOME CONVERSATION ABOUT GAS FOR YOUR
- 19 CAR?
- 20 A. YES, SIR.
- 21 Q. AND WHY DID THEY SAY THEY WANTED TO GO ON RED BAY?
- 22 A. WELL I CAN'T REALLY SAY WHO SAID IT, BUT ONE OF
- 23 THEM SAID THEY NEEDED TO GO OVER THERE AND PICK UP SOME
- 24 MONEY. SO I DROPPED THEM OFF AND I WENT ABOUT MY WAY.
- 25 Q. SAID WHAT NOW?

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1 A. ONE OF THEM SAID THAT THEY HAD TO PICK UP SOME
2 MONEY. I CAN'T REALLY REMEMBER WHO SAID IT. THIS WAS
3 ALMOST 4 YEARS AGO; THREE AND A HALF YEARS AGO.

4 Q. IT WASN'T DONALD BUSH THAT SAID IT, WAS IT?

5 A. REALLY I CAN'T REMEMBER.

6 Q. AND IT WASN'T DONNELL THAT SAID IT, WAS IT?

7 A. I CAN'T SAY THAT NEITHER. I CAN'T SAY WHO SAID IT.

8 Q. AND WHERE DID YOU TAKE THEM?

9 A. LIKE I TOLD Y'ALL, ALMOST TO THE END OF BRENT.
10 BRENT STREET. ALMOST TO THE END OF BRENT STREET.

11 Q. AND BRENT STREET RUNS RIGHT PARALLEL TO RED BAY,
12 DOESN'T IT?

13 A. YES, SIR.

14 Q. AND YOU COME RIGHT OFF OF BRENT ON TO GAMBLE, IS
15 THAT RIGHT?

16 A. WELL I DON'T KNOW ALL THEM ROADS OVER THERE.

17 Q. YOU DON'T KNOW ALL THE ROADS OVER THERE?

18 A. NO.

19 Q. AND YOU PUT THEM -- YOU PUT THEM OUT? EVERYBODY
20 GOT OUT OF THE CAR BUT YOU?

21 A. YES, SIR.

22 Q. AND THEN DONALD BUSH AND CASEY STUCKEY GOT BACK IN
23 THE CAR, DIDN'T THEY?

24 A. I CAN'T SAY THAT.

25 THE COURT: DISREGARD THAT. STRIKE THAT, LADIES AND

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1 GENTLEMEN. THANK YOU. LADIES AND GENTLEMEN, PLEASE
2 DISREGARD THE QUESTION. THE QUESTION IS NOT EVIDENCE IN
3 THIS PARTICULAR CASE. AND YOU ARE INSTRUCTED SPECIFICALLY
4 TO DISREGARD IT. THANK YOU.

5 MR. CONNER: I HAVE NO FURTHER QUESTIONS OF HIM, YOUR
6 HONOR.

7 THE COURT: THANK YOU. MS. FERRARI.

8 CROSS EXAMINATION BY MS. FERRARI:

9 Q. SO YOU PICKED UP THREE INDIVIDUALS ON SOUTH MAIN?

10 A. YES, MA'AM.

11 Q. HOW CLOSE IS THAT TO GLENN'S TRAILER?

12 A. IT'S LIKE A BLOCK, A BLOCK AWAY.

13 Q. OKAY. AND YOU DROPPED THREE PEOPLE OFF?

14 A. YES, MA'AM.

15 Q. AND THEN YOU DROVE AWAY?

16 A. YES, MA'AM.

17 MS. FERRARI: I HAVE NO FURTHER QUESTIONS.

18 THE COURT: MR. CONNER, REDIRECT?

19 MR. CONNER: I HAVE NOTHING FURTHER OF HIM, YOUR HONOR.

20 THE COURT: THANK YOU, MR. NELSON, YOU CAN STEP DOWN.

21 MR. CONNER.

22 MR. CONNER: I HAVE NOTHING FURTHER, YOUR HONOR. WE
23 WOULD REST AT THIS POINT.

24 THE COURT: LADIES AND GENTLEMEN, THE STATE HAS NOW
25 RESTED ITS CASE. THAT MEANS YOU HAVE HEARD ALL THE EVIDENCE

1 THAT YOU WILL HEAR FROM THE STATE IN THE PRESENTATION OF ITS
2 CASE. NECESSARILY AT THIS JUNCTURE, I HAVE TO SEND YOU OUT
3 OF THE COURTROOM FOR A FEW MOMENTS TO DEAL WITH SOME MATTERS
4 OF LAW THAT WOULD NOT REQUIRE YOUR PRESENCE. WE WILL GET
5 YOU OUT HERE SHORTLY TO CONTINUE THE TRIAL OF THIS CASE.
6 BUT FOR NOW LET ME REMIND YOU AGAIN AS YOU'RE IN THE JURY
7 ROOM, PLEASE DON'T DISCUSS THIS CASE AMONG YOURSELVES. AND
8 WE WILL GET YOU OUT SHORTLY, AS I SAID, TO CONTINUE THE
9 TRIAL.

10 THANK YOU, IF YOU WILL STEP TO YOUR JURY ROOM.

11 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
12 PRESENCE OF THE JURY.)

13 THE COURT: MS. FERRARI, I'LL BE GLAD TO HEAR MOTIONS
14 FROM THE DEFENSE.

15 MS. FERRARI: YES, SIR, YOUR HONOR. I WOULD MAKE A
16 MOTION FOR A DIRECTED VERDICT. NONE OF THE WITNESSES OTHER
17 THAN MR. ROBINSON CAN PLACE MR. STUCKEY AT THE SCENE OF THE
18 CRIME. MR. ROBINSON NEVER WOULD ANSWER MY QUESTION AS TO
19 HOW HE KNEW WHO SHOT HIM. HIS STORY IS THAT HE SAW A GUN IN
20 MR. STUCKEY'S HAND. AND THEN WALK AWAY. WHEN THAT STORY
21 DIDN'T FIT, HE TURNED AROUND AND LOOKED, BUT STILL COULDN'T
22 SEE WHOSE FACE. YOUR HONOR, HE NEVER TESTIFIED THAT HE SAW
23 MR. STUCKEY SHOOT HIM. HE TESTIFIED HE KNEW HE DID. I AM
24 NOT SURE HOW HE COULD HAVE KNOWN IF HE DIDN'T SEE HIM. HE
25 DID NOT SAY THAT THE PERSON SPOKE BEFORE HE WAS SHOT, RIGHT

1 BEFORE HE WAS SHOT. HE SAYS HE WAS WALKING AWAY. THERE
2 WERE TWO PEOPLE BY HIS OWN TESTIMONY, STANDING OUTSIDE BY
3 THE CAR. IT COULD HAVE BEEN EITHER ONE OF THEM THAT SHOT
4 MR. ROBINSON.

5 THE COURT: AND OF COURSE THERE ARE PROBABLY MANY CASES
6 IN WHICH NO ONE ACTUALLY SEES THE SHOOTING. BUT A PERSON
7 CAN BE CONVICTED IF THERE IS OTHER EVIDENCE THAT LEADS TO
8 THAT CONCLUSION. AND THAT'S WHAT RULE 19 AND THE CASES
9 CITED UNDER THE RULES OF CRIMINAL PROCEDURE. AND THE RULES
10 REQUIRE ME TO VIEW THE EVIDENCE AT THIS JUNCTURE IN THE
11 LIGHT MOST FAVORABLE TO THE STATE; AND IF I FIND ANY
12 EVIDENCE EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE WHICH
13 REASONABLY TENDS TO PROVE THE GUILT. I AM GOING TO HAVE TO
14 DENY YOUR MOTION. IN THIS CASE AS YOU SAID, THERE IS NO ONE
15 WHO SAID IN SO MANY WORDS THAT I SAW THE DEFENDANT SHOOT THE
16 VICTIM. EVEN THE VICTIM DID NOT SAY THAT. HE SAYS HE SAW
17 THE DEFENDANT WITH A GUN, AND HE BEGAN RUNNING AND HE HEARD
18 THE SHOT. AND HE WAS STRUCK AND HE FELL DOWN.

19 THAT MAKES IT A JURY ISSUE AS TO WHETHER THE MAN HE SAW
20 WITH THE GUN AS HE BEGAN RUNNING WAS THE MAN WHO ACTUALLY
21 SHOT HIM, OR WHETHER IT WAS SOMEONE ELSE. SO IT IS
22 CIRCUMSTANTIAL EVIDENCE THAT LEADS TO THAT CONCLUSION IF THE
23 JURY WANTS TO VIEW THAT EVIDENCE IN THE LIGHT MOST FAVORABLE
24 TO THE STATE. AND SO FOR THAT REASON, I MUST RESPECTFULLY
25 DENY YOUR MOTION AT THIS TIME AND SEND THIS CASE TO THE

1 JURY.

2 LET'S TALK ABOUT CHARGES AT THIS JUNCTURE. ARE THERE
3 ANY OTHER MOTIONS, I'M SORRY, MS. FERRARI?

4 MS. FERRARI: WELL, YOUR HONOR, I WOULD MAKE THE SAME
5 MOTION AS FAR AS THE KIDNAPPING, THE LYNCHING AND POSSESSION
6 OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME. AS
7 YOU STATE, HE DOES PUT MY CLIENT THERE; HOWEVER, HE DOES
8 NOT SAY THAT MY CLIENT IS THE ONE THAT FORCED HIM IN THE
9 CAR. HE DOES NOT SAY THAT THESE INDIVIDUALS PLANNED THIS
10 AHEAD OF TIME. EVEN BY HIS OWN ADMISSION, ONLY ONE PERSON
11 IS THE PERSON THAT INFLICTED THIS VIOLENCE UPON HIM. IT IS
12 MY UNDERSTANDING LYNCHING INVOLVES MOB LIKE VIOLENCE. THERE
13 WAS NO MOB.

14 THE COURT: WELL A MOB IS DEFINED UNDER THE LAW AS A
15 MATTER OF FACT, BY THE CASES SPECIFICALLY, AND AS WELL AS BY
16 STATUTE AS TWO OR MORE PEOPLE. AND SECTION 16-3-320 SAYS A
17 MOB IS DEFINED FOR THE PURPOSE OF THIS ARGUMENT AS THE
18 INCENTIVE FOR 2 OR MORE PERSONS WITHOUT AUTHORITY OF THE LAW
19 FOR THE PREMEDITATED PURPOSE AND WITH A PREMEDITATED INTENT
20 OF COMMITTING AN ACT OF VIOLENCE ON SOMEONE ELSE. LET'S
21 TALK ABOUT THESE FOLKS GETTING TOGETHER AND RIDING AROUND.
22 THERE IS CONVERSATION THAT THEY WERE GOING TO GET SOME
23 MONEY. NO ONE REMEMBERS EXACTLY WHO SAID THAT. AND I
24 DON'T THINK THAT THAT TESTIMONY QUITE FRANKLY IS ESSENTIAL
25 TO THE ACT OF PREMEDITATION.

1 THE CASE LAW STATE V. BARKSDALE, WHICH IS THE ONLY
2 LYNCHING CASE WE HAVE OF ANY SIGNIFICANCE. FOUND AT 428,
3 S.E. 2D, AT PAGE 498. SAYS THAT TO CONSTITUTE A MOB UNDER
4 THE LAW FOR THE PURPOSE OF FIRST DEGREE LYNCHING, AN
5 ASSEMBLAGE NEED NOT HAVE FORMED WITH PREMEDITATED PURPOSE
6 AND INTENT OF COMMITTING AN ACT OF VIOLENCE ON THE PERSON OF
7 ANOTHER, BUT MAY FORM THE REQUISITE PURPOSE AND INTENT
8 AFTER THEY HAVE BEEN ASSEMBLED, WHICH IS THE CASE IN THIS
9 CASE. IF THERE WAS ANY INTENT AT ALL, IT WAS APPARENTLY
10 FORMED AFTER THE PEOPLE HAD ASSEMBLED.

11 SO THERE IS EVIDENCE ONCE AGAIN, TAKING THAT EVIDENCE
12 ~~IN THE~~ LIGHT MOST FAVORABLE TO THE STATE. NOW ON THE ISSUE
13 OF KIDNAPPING, YOUR CLIENT IS ENTITLED ON THAT PARTICULAR --
14 OR THE STATE IS ENTITLED ON THAT PARTICULAR CHARGE TO A
15 CHARGE OF AIDING AND ABETTING; THE HAND OF ONE BEING THE
16 HANDS OF ALL. BECAUSE THERE IS NO EVIDENCE, AS YOU HAVE
17 SAID, THAT YOU CLIENT RESTRAINED; BEING THAT THEY PUT HIM IN
18 THE CAR. THE EVIDENCE IS THAT SOMEBODY ELSE DID THAT. YOUR
19 CLIENT WAS ALONG AND WAS A PART OF THIS. SO THE HAND OF
20 ONE, HAND OF ALL, BECOMES A RELEVANT CHARGE AS TO THAT
21 PARTICULAR CHARGE OR COUNT OF THE INDICTMENT. YOU ARE ALSO
22 ENTITLED TO A CHARGE OF CIRCUMSTANTIAL EVIDENCE IN THIS
23 PARTICULAR CASE BECAUSE THERE IS NO DIRECT EVIDENCE THAT
24 ANYONE SAW MR. STUCKEY SHOOT MR. ROBINSON.

25 THE CHARGES THAT SEEM APPROPRIATE TO ME UNDER THE FACTS

1 AS I HAVE HEARD THEM, ARE MY GENERAL CHARGE. MY GENERAL
2 FELONY CHARGE CONTAINS THE BURDEN OF PROOF. THE REASONABLE
3 DOUBT DEFINITION THAT I USE IS FROM VICTOR V. NEBRASKA.
4 THE FACT THAT THE DEFENDANT DID NOT TESTIFY -- THE FACT THAT
5 THE DEFENDANT DID NOT TESTIFY. ON THE CREDIBILITY OF
6 WITNESSES, THE CONVICTION OF A WITNESS TO A PRIOR CRIME WILL
7 BE CHARGED. THE ELEMENTS OF ASSAULT AND BATTERY WITH INTENT
8 TO KILL. THE ELEMENTS OF KIDNAPPING, POSSESSION OF A WEAPON
9 DURING THE COMMISSION OF A VIOLENT CRIME, LYNCHING IN THE
10 SECOND DEGREE. THE HAND OF ONE IS THE HAND OF ALL,
11 CIRCUMSTANTIAL EVIDENCE. AND THAT APPEARS TO BE THE ONES
12 THAT OCCUR TO ME TO BE APPROPRIATE.

13 MR. CONNER, I WILL BE GLAD TO HEAR ANY EXCEPTIONS TO
14 ANY OF THOSE REQUESTS OR ANY REQUESTS FOR ADDITIONAL CHARGES
15 NOW FROM THE STATE.

16 MR. CONNER: HAVE NOTHING FURTHER, YOUR HONOR.

17 THE COURT: THANK YOU. MS. FERRARI, FROM THE DEFENSE?

18 MR. FERRARI: I NOTHING FURTHER, YOUR HONOR.

19 THE COURT: MR. CONNER, YOU WILL MAKE THE FIRST OF THE
20 ARGUMENTS SINCE THE DEFENSE HAS NOT OFFERED ANY EVIDENCE AND
21 TESTIMONY. HOW LONG DO YOU THINK IT MIGHT TAKE YOU IN YOUR
22 ARGUMENT TO THE JURY?

23 MR. CONNER: YOUR HONOR, I WOULD SAY ABOUT 15 TO 20
24 MINUTES.

25 THE COURT: MS. FERRARI, HOW LONG DO YOU THINK I MIGHT

1 TAKE?

2 MS. FERRARI: NO MORE THAN THAT, YOUR HONOR.

3 THE COURT: THANK YOU. THE FORMS OF THE VERDICT AS TO
4 EACH OF THESE CHARGES WOULD BE GUILTY OR NOT GUILTY. I
5 DON'T BELIEVE THERE ARE ANY LESSER INCLUDED WHICH APPLY.
6 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE IN THIS
7 CASE DOES NOT APPLY. THE ONLY EVIDENCE IS THAT SOMEONE SHOT
8 MR. ROBINSON IN THE BACK AS HE WAS RUNNING AWAY. IF THE
9 JURY BELIEVES THAT IT WAS THE DEFENDANT WHO SHOT HIM IN THE
10 BACK AS HE WAS RUNNING AWAY, THERE IS NO EVIDENCE IN THAT
11 PARTICULAR SET OF CIRCUMSTANCES THAT WOULD LEND ITSELF TO A
12 LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND
13 AGGRAVATED NATURE. IF THEY BELIEVE THAT SOMEBODY ELSE WAS
14 DOING IT, THEN OBVIOUSLY THE VERDICT AS TO THAT CHARGE WOULD
15 BE NOT GUILTY. AND NO LESSER INCLUDED APPEARS AS TO THE
16 OTHER TWO, THE OTHER THREE, I AM SORRY.

17 WHY DON'T WE TAKE A BRIEF RECESS OF ABOUT 10 MORE
18 MINUTES AND GIVE Y'ALL A CHANCE TO GET YOUR THOUGHTS
19 TOGETHER. AND US TO PREPARE FOR THE FINAL ARGUMENTS. WE'LL
20 RESUME AT 10 AFTER THE HOUR. THANK YOU.

21 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

22 THE COURT: MR. CONNER, IS THE STATE READY TO PROCEED?

23 MR. CONNER: WE'RE READY, YOUR HONOR.

24 THE COURT: MS. FERRARI, IS THE DEFENSE READY?

25 MS. FERRARI: YES, SIR, YOUR HONOR.

1 THE COURT: THE JURY WILL BE BROUGHT IN AND YOU CAN
2 REST IN THE PRESENCE OF THE JURY. WE WILL GO IMMEDIATELY TO
3 FINAL ARGUMENTS AFTER THAT. BRING US OF THE JURY, PLEASE.

4 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
5 PRESENCE OF THE JURY.)

6 THE COURT: MADAM FORELADY AND MEMBERS OF THE JURY,
7 BEFORE WE BROKE A FEW MOMENTS AGO, YOU WILL RECALL THAT THE
8 STATE RESTED ITS CASE IN CHIEF. AND NOW THE DEFENDANT HAS
9 THE OPPORTUNITY TO OFFER EVIDENCE IF HE WISHES TO, BUT HE
10 IS UNDER NO OBLIGATION TO DO SO FOR REASONS I TOLD YOU
11 BEFORE THIS TRIAL BEGAN. MS. FERRARI.

12 MS. FERRARI: YOUR HONOR, THE DEFENSE RESTS.

13 THE COURT: LADIES AND GENTLEMEN, YOU HAVE NOW HEARD
14 ALL OF THE EVIDENCE THAT YOU WILL HEAR IN THE TRIAL OF THIS
15 CASE. AND WE WILL NOW PROCEED TO THE FINAL ARGUMENTS. THE
16 STATE THROUGH MR. CONNER WILL PRESENT THE FIRST OF THOSE
17 FINAL ARGUMENTS. AND WHEN HE HAS COMPLETED HIS ARGUMENT,
18 AND THEN MS. FERRARI ON BEHALF OF THE DEFENDANT WILL PRESENT
19 AN ARGUMENT. AND THEN AFTER THAT HAS BEEN DONE, THEN I
20 WILL INSTRUCT YOU OR CHARGE YOU ON WHAT THE LAW IS IN THIS
21 CASE. AND THEN FINALLY YOU WILL BE ABLE TO GO BACK ACROSS
22 THE HALL AND START TALKING ABOUT THIS CASE AMONG YOURSELVES.
23 YOU HAVE BEEN ATTENTIVE THROUGHOUT THE TRIAL. IT HAS
24 NOT TAKEN A LONG TIME TO TRY THIS CASE. THE LAWYERS HAVE
25 MOVED SWIFTLY THROUGH THE EVIDENCE IN THE RECORD. BUT I AM

1 SURE THAT YOU FOLKS UNDERSTAND THAT THE IMPORTANCE OF A
2 TRIAL IS NEVER DETERMINED BY THE LENGTH OF TIME IT TAKES TO
3 TRY IT. THE IMPORTANCE OF A TRIAL IS DETERMINED BY THE
4 ISSUES THAT ARE INVOLVED.

5 AND YOU CERTAINLY UNDERSTAND THE IMPORTANCE OF THE
6 ISSUES THAT ARE INVOLVED IN THIS CASE. AND YOU'VE BEEN
7 ATTENTIVE THROUGHOUT THE TRIAL, AND WE APPRECIATE THAT.
8 IT'S IMPORTANT THAT YOU BE ATTENTIVE NOW TO THE LAWYERS AND
9 TO THE COURT DURING THIS FINAL PHASE OF THE TRIAL. THANK
10 YOU. MR. CONNER.

11 MR. CONNER: MAY IT PLEASE THE COURT.

12 THE COURT: YES, SIR.

13 MR. CONNER: LADIES AND GENTLEMEN, I WANT TO THANK YOU
14 FOR YOUR ATTENTION AND ASK YOU FOR YOUR ATTENTION A FEW
15 MINUTES LONGER AT THIS POINT. YOU KNOW WHEN I FIRST TALKED
16 WITH DONNELL ROBINSON, I THOUGHT TO MYSELF, WHAT A STRANGE
17 STORY. IT JUST PUZZLED ME. BUT THEN I BEGAN TO TALK WITH
18 HIS MOMMA. AND I BEGIN TO TALK WITH CAROLYN, HIS SISTER,
19 SEATED OVER HERE WITH HIM TODAY. AND TO FIND OUT MORE ABOUT
20 HIM AND TO BEGIN TO UNDERSTAND WHAT THE PROBLEM THAT WE WERE
21 WORKING WITH HERE.

22 BUT ONE THING ABOUT THIS CASE THAT STRUCK HOME WITH ME
23 IS, THIS FELLOW WAS SHOT IN THE BACK. HE WASN'T FIGHTING
24 ANYBODY. ALL HE WAS DOING WAS GOING THE OTHER WAY. HE, IT
25 WASN'T ANY SELF-DEFENSE ISSUE OR ANYTHING. IT WASN'T ANY

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1 ACCIDENT, HE WAS LEAVING. HE WAS TRYING TO GET AWAY, AND HE
2 GOT SHOT DOWN LIKE A DOG. YOU KNOW, WE HAVE IN THE LAW WE
3 HAVE SOMETHING CALLED SIMPLE ASSAULT AND BATTERY. THIS
4 DEFENDANT IS CHARGED WITH ASSAULT AND BATTERY WITH INTENT TO
5 KILL. AND SOMETIMES I SAY TO SOME PEOPLE, I SAY, YOU KNOW
6 SIMPLE ASSAULT AND BATTERY IS WHEN SOMEBODY ELSE GOT HURT.
7 BUT ASSAULT AND BATTERY WITH INTENT TO KILL THAT'S WHEN I
8 GOT HURT. THAT'S THE WAY MOST PEOPLE LOOK AT IT. BUT,
9 LADIES AND GENTLEMEN, I WOULD SAY TO YOU, IF YOU SUSTAINED A
10 WOUND THAT THIS DEFENDANT SUSTAINED, IF YOU WERE SHOT IN THE
11 BACK, THERE IS NO QUESTION, AND YOU SAW THE LEVEL OF IT UP
12 IN HIS BACK IN THERE, IT WAS CLOSE TO SOME VITAL ORGANS. IT
13 COULD HAVE KILLED HIM. FORTUNATELY HE DIDN'T DIE. BUT THE
14 BULLET IS JUST, ACCORDING TO WHAT HIS FAMILY SAYS, THE
15 BULLET IS STILL THERE. THIS IS NO EXIT HOLES. THERE IS
16 ONLY ONE HOLE, THE HOLE THAT IT WENT IN.

17 THIS IS A SERIOUS MATTER. AND ONE OTHER THING THAT
18 STRUCK ME IS PECULIAR ABOUT IT IS, DONNELL DIDN'T SEEM TO
19 HAVE THE BEST EXPLANATION OR A GOOD EXPLANATION FOR WHY IT
20 HAPPENED. THE ONLY THING I THOUGHT ABOUT IS I THOUGHT ABOUT
21 THE CONVERSATION WITH HIM. I ASKED HIM, IT WAS THE 3RD OF
22 THE MONTH WHEN HE WAS PICKED UP; THE 3RD OF OCTOBER.
23 AND THE SHOOTING HAPPENED LATER THAT NIGHT. IT WAS ACTUALLY
24 THE EARLY HOURS OF THE 4TH. IN OTHER WORDS, IT'S CLOSE TO
25 THE FIRST OF THE MONTH. AND HE GETS AN S.S.I. CHECK. AND

1 I WAGER THERE IS NO MORE PEOPLE THAN JUST HIS FAMILY THAT
2 KNOWS HE GETS THIS S.S.I. MONEY.

3 AND AS CAROLYN EXPLAINED TO YOU WHEN SHE WAS TALKING
4 ABOUT HIM, SHE SAYS, YOU KNOW, WHEN HE WAS GROWING UP, HE
5 HAD DEVELOPMENT PROBLEMS. HIS SPEECH, HE HAD -- THEY HAD TO
6 WORK WITH HIM TO GET HIM TO TALK, AND WORK WITH HIM TO HELP
7 HIM WITH HIS SPEECH. BUT HE THINKS OTHER PEOPLE ARE JUST
8 PLAYING WITH HIM. HE LOOKS ON EVERYBODY AS A FRIEND; THAT
9 HE IS EASY TO LEAD. THOSE ARE ALL THINGS SHE SAID, AND THAT
10 HE WOULD GET IN A CAR AND JUST RIDE OFF WITH ANYONE. AND
11 THAT'S WHAT HAPPENED IN THIS CASE.

12 OF COURSE, I THINK HE WAS ENTICED TO GET IN THE CAR.
13 YOU NOTICE THAT THEY WOULD BUY HIM -- THEY WOULD GET HIM A
14 FEW BEERS. AND HE TESTIFIED THAT HE DID GO OVER THERE AND
15 THAT HE DID DRINK BEER WITH THEM. AND THAT HE DID SMOKE
16 WEED WITH THEM. HE'S JUST A HANDICAPPED INDIVIDUAL AND HE
17 ALWAYS WILL BE. HE TRIED TO DO A LITTLE YARD WORK AND
18 THINGS OF THAT SORT, BUT HE WILL NEVER BE LIKE MOST OF US,
19 HAVE A REGULAR JOB. NOW ONE THING THAT DID IMPRESS ME HIM
20 ABOUT HIM, IS THAT HE HAS BEEN STEADFAST IN HIS
21 IDENTIFICATION OF THESE PEOPLE AS THE PEOPLE WHO DID IT TO
22 HIM. IN OTHER WORDS, THE PEOPLE WHO DID HIM WRONG; THE MAN
23 WHO SHOT HIM.
24 ONCE HE LEARNED THAT NAME, HE TOLD YOU, HE DIDN'T KNOW THEIR
25 NAMES AT FIRST.

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1 HE DIDN'T KNOW WHO -- THE ONLY ONE OF THE THREE THAT HE
2 COULD IDENTIFY WAS KENDELL NELSON. HE SAID I WENT, AND
3 TOLD MR. TURNER, I WENT TO SCHOOL WITH KENDELL NELSON. AND
4 THAT FROM THERE MR. TURNER BEGIN TO GO ALONG THE PATH
5 BECAUSE HE HAD SOME INFORMATION HE COULD WORK WITH. BUT HE
6 COULD IDENTIFY THIS ONE PERSON, THIS KENDELL NELSON. HE
7 SAYS KENDELL NELSON WASN'T THE PERSON THAT SHOT HIM, BUT
8 KENDELL NELSON WAS THE DRIVER OF THE CAR. SO MR. TURNER
9 BEING A GOOD POLICEMAN, FOLLOWING UP ON THE INFORMATION HE
10 HAD, HE GETS THESE PHOTO DISPLAYS TOGETHER.

11 HE FIRST OF ALL, THE ONE HE GOT INFORMATION ON FIRST
12 WAS A DEFENDANT BY THE NAME OF DONALD BUSH. HE IS NO. 4 IN
13 THIS PHOTO DISPLAY, WHICH IS IN EVIDENCE IN THIS CASE. AND
14 YOU WILL HAVE IT IN THE JURY ROOM AND YOU CAN EXAMINE IT.
15 HE SHOWED HIM THAT ON OCTOBER 12TH. THIS CASE HAPPENED ON
16 OCTOBER 4TH. OR THE SHOOTING OCCURRED ON OCTOBER THE 4TH.
17 AND OCTOBER THE 12TH, HE SHOWED HIM THESE PHOTOS. AND HE
18 WENT TO -- HE PICKED OUT A PHOTO THERE. HE SAID THIS MAN
19 WAS THE MAN WHO RAN ME DOWN; THE MAN WHO PUT ME IN THAT CAR.
20 SO HE, AND WAS ONE OF THE TWO THAT CAME AROUND THERE AND
21 PICKED HIM UP. HE SAYS, HIS TESTIMONY SIMPLY IS, THAT THE
22 TWO THAT CAME AND PICKED HIM UP AT HIS HOUSE WAS DONALD BUSH
23 WHO IS SHOWN IN THIS PHOTO DISPLAY. AND ALSO CASEY STUCKEY
24 WHO IS SHOWN IN PHOTO DISPLAY NO. 2. HE ACTUALLY, MR.
25 TURNER SHOWED HIM THIS PHOTO DISPLAY ON, THE DATE IS WRITTEN

1 IN THE FOLDER HERE, AS NOVEMBER THE 9TH. SO ABOUT A MONTH
2 AFTER THE OCCURRENCE OF THE EVENT. HE LOOKED AT THIS PHOTO
3 DISPLAY AND HE PICKED OUT NO. 1. AND HE SAID THAT'S THE MAN
4 WITH THE GUN; THAT IS THE MAN WHO SHOT ME.

5 AND THEN OF COURSE MR. TURNER TOLD HIM THE NAMES, AND
6 HE BEGAN TO USE THE NAMES. AND HE HAS BEEN STEADFAST IN
7 WHAT THEIR RELATIVE POSITIONS AND WHAT THEY DID, AND WHO
8 THE SHOOTER WAS AND WHO THE DRIVER WAS, AND WHO WAS THE GUY
9 WHO RAN HIM DOWN, AND WHO WERE THE TWO THAT PICKED HIM UP.
10 KENDELL NELSON WASN'T IN THE ORIGINAL GROUP THAT PICKED HIM
11 UP. HE SAW KENDELL NELSON WHEN HE GOT OVER THERE TO GLENN'S
12 -- EXCUSE ME, GLENN'S TRAILER. NOW ONE THING, LADIES AND
13 GENTLEMEN, I WOULD LIKE FOR YOU TO REFLECT ON, YOU PROBABLY
14 NEVER THOUGHT TOO MUCH ABOUT IT. BUT THESE POLICE ARE
15 TRAINED TO DO THESE PHOTO DISPLAYS. WE DON'T WANT -- THE
16 POLICE DON'T WANT TO PRESENT EVIDENCE THAT'S FALSE, BECAUSE
17 THEY'RE TRYING TO GET 6 PEOPLE WHO LOOK SIMILAR. YOU
18 WOULDN'T WANT ONE THAT -- IF THE FELLOW THAT DID THE
19 SHOOTING HAD SHORT HAIR AND YOU PUT 5 PEOPLE WITH DREADLOCKS
20 BY HIM, AND HE WAS THE ONLY ONE WITH SHORT HAIR IN THE PHOTO
21 DISPLAY TO HAVE Y, WELL THEN HE WOULD BE KIND OF A MARKED
22 MAN IF YOU'RE LOOKING FOR THE SHORT HAIRED GUY.

23 AND SO IF THE FELLOW HAD A LITTLE BIT OF HAIR ON HIS
24 FACE, YOU'D LIKE TO HAVE SOME FACIAL HAIR ON THE OTHER
25 PEOPLE. YOU LOOK AT THESE PHOTO DISPLAYS. MR. TURNER HAS

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1 PUT THEM TOGETHER. YOU CAN'T BE PERFECT WITH THEM, BUT
2 THAT'S THE IDEA. THAT WAY YOU HAVE AN UNBIASED SELECTION BY
3 THE WITNESS. AND AS MR. TURNER TOLD YOU, DONNELL PICKED OUT
4 THESE TWO PEOPLE. AND THEN HE ASKED DONNELL TO PLACE HIS
5 NAME, TO WRITE DONNELL ON TOP OF THE ONE THAT HE PICKED OUT
6 THE PICTURE OF. AND THAT'S WHY HIS NAME APPEARS ON TOP OF
7 THEM. HE JUST WROTE OVER THE PICTURE THERE, THAT'S THE ONE.
8 HE INDICATED THAT'S THE ONE HE SELECTED.

9 AND ANOTHER THING, YOU CAN HAVE A CASE WHERE YOU HAVE
10 JUST ONE PHOTO. IN OTHER WORDS, HE COULD JUST RUN ONE PHOTO
11 IN AND SAY IS THIS THE GUY. AND THAT'S NOT WHAT THE GOOD
12 POLICE PROCEDURE REQUIRES. GOOD POLICE PROCEDURE REQUIRES
13 EXACTLY WHAT HAS BEEN DONE HERE. AT LEAST A HALF A DOZEN
14 PHOTOS FOR THE PERSON TO VIEW AND MAKE A SELECTION. NOW
15 THEY WERE AROUND THERE AT THIS GLENN'S TRAILER, ACCORDING TO
16 DONNELL FOR SEVERAL HOURS. BECAUSE HE WAS PICKED UP BEFORE
17 MIDNIGHT ON OCTOBER 3RD, AND HE SAT AROUND THERE AND DRANK
18 BEER AND HE SMOKED WEED WITH THEM RIGHT THERE IN THE LIVING
19 ROOM AT GLENN'S PLACE. AND WE DON'T KNOW GLENN. WE DON'T
20 KNOW WHO GLENN IS. WE CAN'T PRODUCE MR. GLENN. WE DON'T
21 HAVE A LAST NAME AND WE HAVEN'T GOT AN ADEQUATE ADDRESS.

22 HE HAD A GOOD OPPORTUNITY TO GET A GOOD LOOK AT HIM.
23 AND HE SAID THAT KENDELL NELSON CAME THERE. NOW KENDELL --
24 WHILE HE WAS THERE. NOW KENDELL NELSON DENIES THAT. HE
25 SAID -- KENDELL NELSON TESTIFIED TO THIS; THAT HE WENT TO

1 GLENN'S TRAILER BUT HE DIDN'T SEE DONNELL. THAT'S WHAT HE
2 SAYS NOW IN ANY EVENT. BUT HE -- DONNELL SAYS HE SAW HIM
3 THERE. IN ANY EVENT, HE GOT A GOOD LOOK AT THESE PEOPLE
4 BECAUSE HE WAS THERE WITH THEM FOR A GOOD WHILE. AND FOR
5 SOME REASON, AND THIS HARD FOR ME TO UNDERSTAND TOO.
6 DONNELL SAID HE SENSED THAT HE WAS IN DANGER. HE SENSED
7 THAT HE NEEDED TO TRY TO GET AWAY. AND HE TRIED TO RUN.
8 AND HE RAN TOWARD MAIN STREET AND HE WAS CAUGHT ON SOUTH
9 MAIN STREET BY DONALD BUSH. AND OF COURSE KENDELL NELSON
10 AND OF COURSE CASEY STUCKEY RIDING IN THAT CAR. AND THEY
11 PICKED HIM UP AND TOOK HIM OUT ALONG A STREET CALLED RED BAY
12 OR BRENT STREET SOMEWHERE. THE STREETS ARE CLOSE TO EACH
13 OTHER.

14 THEY WENT OUT THAT WAY, AND THEY GOT TO A POINT WHERE
15 THEY LET HIM OUT OF THE CAR. AND THE TWO OF THEM GOT OUT,
16 CASEY STUCKEY AND DONALD BUSH. AND CASEY STUCKEY HAD A GUN
17 AND HE TOLD HIM TO WALK. AND HE STARTED WALKING, AND HE
18 SHOT HIM IN THE BACK. AND HE FELL DOWN. AND HE SAID HE
19 SHOT AGAIN. AND HE THOUGHT THE BULLET WENT NEAR HIS HEAD.
20 BUT IN ANY EVENT, THEY JUMPED BACK TO CAR AND THEY LEFT.
21 AND Y'ALL REMEMBER THAT WOMEN MS. SINGLETON THAT TESTIFIED
22 THAT FIRST DAY, SHE SAID SHE HEARD SOMETHING. SHE HEARD A
23 GUNSHOT. SHE GOT UP AND WENT TO THE WINDOW AND SAW THE
24 PEOPLE JUMP. AND SHE HEARD SOMETHING ACROSS HER ROAD,
25 ACROSS HER DRIVE OR HER YARD OUTSIDE HERE. THIS IS THE

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1 LITTLE DIAGRAM WE USE. SHE LIVED RIGHT HERE. SHE SAW THE
2 CAR OVER HERE. SHE LOOKED OUT THE WINDOW AND SHE SAW PEOPLE
3 JUMPING BACK IN THE CAR.

4 SHE HEARD SOMETHING IN THE EDGE OF A YARD SHE INDICATED
5 WHEN SHE WOKE UP. AND THEY PULLED OUT AND THEY WENT BACK
6 THAT WAY DOWN REAVES STREET. THIS IS GAMBLE STREET HERE.
7 IN ANY EVENT, DONNELL WAS ON THE GROUND THERE. HE SAID HE
8 LOOKED BACK. HE SAW THEM GET IN A CAR. HE GOT UP AND HE
9 WENT UP ACROSS THE WAY HERE TO LEROY GOODMAN'S HOUSE. AND
10 OF COURSE LEROY FOUND OUT THAT HE HAD BEEN SHOT. AND HE AND
11 MS. BURCH, OR LEROY GOODMAN AND MS. BURCH LIVED THERE
12 TOGETHER. AND ALSO MARK MOSES WHO TESTIFIED THIS MORNING
13 INDICATED THAT HE HEARD THE SHOTS; THAT HE THOUGHT HE HEARD
14 AT LEAST 2 SHOTS, MAYBE 3. THERE WERE MULTIPLE SHOTS.
15 WHICH INCIDENTALLY COINCIDE WITH WHAT DONNELL SAID.
16 DONNELL SAID THERE WERE TWO SHOTS.

17 WE THROW OFF A WE, INCLUDING MYSELF, I QUESTIONED
18 DONNELL'S STORY. BUT ONE THING ABOUT IT, I WAS UNEASY
19 ABOUT USING MR. NELSON AS A WITNESS QUITE FRANKLY, KENDELL
20 NELSON, THE LAST WITNESS WE USED. AND I WOULDN'T BELIEVE
21 KENDELL NELSON IF HE STOOD ON A STACK OF BIBLES A MILE HIGH.
22 QUITE FRANKLY, HE HAS GOT AN EXTENSIVE CRIMINAL RECORD AND
23 HE'S IN THE PENITENTIARY FOR CRIMINAL VIOLATIONS THAT
24 INDICATE THAT HE HASN'T GOT ANY REGARD FOR THE LAW. AND I
25 SUBMIT HE HADN'T GOT TOO MUCH REGARD FOR THE TRUTH EITHER.

1 HOWEVER KNOWING THAT DONNELL HAS HIS LIMITATIONS; THAT HE'S
2 A HANDICAPPED PERSON. I THOUGHT IT MIGHT BE -- ONE THING
3 ABOUT PEOPLE THAT ARE NOT TELLING 100 PERCENT OF THE TRUTH,
4 IS THEY WILL TELL THE TRUTH PART OF THE TIME BECAUSE THEY
5 WILL VIEW THIS THING LIKE THIS, LIKE SOME OF THESE THINGS
6 DON'T HURT ME. SOME OF THESE THINGS DON'T ENDANGER ME. AND
7 THEREFORE I CAN TELL PART OF THE TRUTH; THAT PART WON'T HURT
8 ME.

9 AND A LOT OF WHAT HE SAYS FITS RIGHT LIKE A GLOVE WITH
10 WHAT DONNELL SAID. IN OTHER WORDS, KENDELL NELSON SAID HE
11 WAS THE DRIVER OF THE VEHICLE. DONNELL SAID THAT KENDELL
12 NELSON WAS THE DRIVER OF THE VEHICLE. KENDELL NELSON SAYS
13 DONALD BUSH WAS IN THE VEHICLE -- I MEAN DONNELL SAYS THAT
14 AND KENDELL NELSON SAYS THAT. THEY BOTH SAY THAT. KENDELL
15 NELSON PUTS DONNELL IN THE VEHICLE. AND DONNELL SAYS HE WAS
16 IN THE VEHICLE. YOU KNOW THERE WAS A CONVERSATION ABOUT
17 GASOLINE, IF YOU REMEMBER THAT, THAT'S JUST A LITTLE THING.
18 BUT DONNELL SAID THEY TALKED ABOUT TAKING HIM OUT HIGHWAY
19 15. BUT KENDELL NELSON -- AND THIS IS DONNELL'S VERSION IS
20 THAT, KENDELL NELSON SAID NO, HE DIDN'T HAVE ENOUGH GASOLINE
21 TO TAKE THEM OUT 15 BUT WOULD TAKE THEM OUT RED BAY.

22 AND KENDELL NELSON JUST TODAY HE TOLD YOU THAT HE TOLD
23 THEM HE DIDN'T HAVE MUCH GASOLINE. HE DOESN'T HAVE EXACTLY
24 THE SAME STORY. BUT THERE'S JUST A CONVERSATION ABOUT
25 GASOLINE; THAT NO DOUBT THAT DONNELL WAS IN THE CAR WITH

1 KENDELL NELSON AND DONALD BUSH WAS IN THERE. AND I SUBMIT
2 TO YOU THAT CASEY STUCKEY WAS IN THERE TOO. YOU KNOW,
3 KENDELL NELSON MAYBE HE IS SMARTER THAN ALL OF THE REST OF
4 US. EITHER THAT OR HE IS SCARED OF MR. STUCKEY OR HE'S A
5 BUDDY OF MR. STUCKEY. I DON'T KNOW WHAT HIS CONNECTIONS
6 WITH MR. STUCKEY ARE. HE JUST SAID THERE WAS AN UNKNOWN
7 FELLOW IN THAT VEHICLE WITH US. MR. UNKNOWN. AND I'LL TELL
8 YOU WHO MR. UNKNOWN IS, LADIES AND GENTLEMEN. MR. UNKNOWN
9 IS SEATED OVER YONDER IN THAT BLUE SHIRT, WITH A NUMBER 18
10 ON THE FRONT OF IT.

11 LADIES AND GENTLEMEN OF THE JURY, I WANT TO THANK YOU
12 FOR YOUR ATTENTION. I SUBMIT TO YOU THAT THERE IS AMPLE
13 EVIDENCE IN THIS RECORD IN THIS CASE, TO CONVICT THIS MAN OF
14 COMMITTING WHAT COULD HAVE EASILY CAUSED THE DEATH OF
15 ANOTHER HUMAN BEING BY SHOOTING HIM IN THE BACK. THANK YOUR
16 FOR YOUR ATTENTION.

17 THE COURT: MS. FERRARI.

18 MS. FERRARI: THANK YOU. LADIES AND GENTLEMEN, I HAVE
19 BEEN WATCHING YOU THROUGHOUT THIS TRIAL AND YOU HAVE DONE
20 WHAT I'VE ASKED YOU TO DO. YOU HAVE BEEN LISTENING VERY
21 ATTENTIVELY AND I APPRECIATE THAT. AND MR. CONNER IS
22 RIGHT, THIS IS A SERIOUS MATTER. DONNELL ROBINSON WAS SHOT
23 IN THE BACK AND THAT IS A SERIOUS MATTER. AND THE FACT THAT
24 HE MAY BE MENTALLY CHALLENGED IS A SERIOUS MATTER AS WELL.
25 BUT I THOUGHT IT WAS KIND OF ODD THAT HE DIDN'T SEEM TO HAVE

1 ANY TROUBLE ANSWERING THE PROSECUTION'S QUESTIONS. AND YET
2 MY QUESTIONS WERE THE ONES, MY YES OR NO QUESTIONS WERE THE
3 ONES THAT SEEMED TO CAUSE HIM TROUBLE. AND I TOLD Y'ALL TO
4 BE CAREFUL OF THAT; TO NOT LET HIS ALLEGEDLY MENTAL STATE
5 THROW YOU. TO NOT LET -- TO NOT LET YOU SYMPATHIZE THAT,
6 AND BULLY YOU IN TO THINKING OKAY, HE IS NOT ANSWERING
7 SERIOUS QUESTIONS BECAUSE HE IS MENTALLY CHALLENGED. AND
8 AGAIN, I COULD TELL AS I WAS QUESTIONING HIM, THAT Y'ALL
9 WERE PAYING ATTENTION AND AGAIN, I APPRECIATE ALL THAT.

10 MR. CONNER WANTS YOU TO THINK THAT BECAUSE CAROLYN
11 DIXON KNOWS THAT DONNELL ROBINSON GETS A SOCIAL SECURITY
12 CHECK, THAT EVERYBODY KNOWS THAT DONNELL ROBINSON GETS A
13 SOCIAL SECURITY CHECK. BUT YET MR. CONNER TOLD YOU WHEN HE
14 STOOD HERE ON MONDAY THAT YOU CAN'T TELL JUST BY LOOKING AT
15 HIM THAT THERE IS SOMETHING WRONG WITH HIM. BUT NOW HE
16 WANTS YOU TO BELIEVE THAT THE REASON THAT THESE THREE PEOPLE
17 WENT OVER THERE WAS BECAUSE THEY KNEW THAT HE HAD A CHECK
18 AND WANTED HIS MONEY. BUT NO ONE TESTIFIED, NOT EVEN
19 MR. ROBINSON WHEN HE GOT IN THE CAR, THAT THEY WERE AFTER
20 HIS MONEY.

21 LET'S TALK ABOUT THE PEOPLE WHO TESTIFIED AND WHAT THEY
22 DID TELL US. MS. SINGLETON TESTIFIED. SHE SAID SHE HEARD
23 MORE THAN ONE SHOT. SHE SAID HE COULDN'T TELL US HOW MANY,
24 BUT IT WAS PROBABLY MORE THAN ONE. SHE DIDN'T SEE WHO RAN
25 ACROSS HER YARD. SHE COULDN'T EVEN TELL US HOW MANY PEOPLE

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1 RAN ACROSS HER YARD, BUT SHE THOUGHT IT WAS TWO. SHE WASN'T
2 SURE. SHE COULDN'T GIVE YOU A DESCRIPTION OF THOSE PEOPLE.
3 SHE COULDN'T GIVE YOU A DESCRIPTION OF THE CAR EVEN THOUGH
4 IT WAS RIGHT OUT IN FRONT OF HER HOUSE. CAROLYN DIXON, SHE
5 TESTIFIED THAT THE FAMILY KNOWS DONALD BUSH; THAT DONALD
6 BUSH CAME BY THE NEXT DAY BECAUSE HE WAS CONCERNED ABOUT
7 DONNELL ROBINSON. BUT DONNELL WANTS US TO BELIEVE THAT HE
8 DIDN'T KNOW DONALD BUSH. HE DIDN'T KNOW DONALD BUSH. HE
9 TESTIFIED RIGHT THERE THAT HE DIDN'T KNOW ANY OF THESE
10 PEOPLE.

11 AND THEN HE TELLS YOU THAT HE WENT TO SCHOOL WITH
12 KENDELL NELSON. WHICH IS IT? MR. FITZPATRICK REALLY DIDN'T
13 HAVE MUCH TO TELL US. HE SAID THAT HE GOT THERE BEFORE
14 DONNELL ROBINSON WAS TAKEN OFF IN THE AMBULANCE AND HAD A
15 BRIEF OPPORTUNITY TO TALK TO HIM. MR. ROBINSON KNOWS
16 KENDELL NELSON; WENT TO SCHOOL WITH HIM. I SUBMIT TO YOU HE
17 KNEW DONALD BUSH. AND YET HE DIDN'T DESCRIBE EITHER ONE OF
18 THOSE TO MR. FITZPATRICK. HE HAS JUST BEEN SHOT BY THESE
19 MEN. AND YOU COULD ARGUE THAT HE WAS IN SHOCK AND HE DIDN'T
20 UNDERSTAND OR HE WAS SCARED OR WHATEVER. BUT THERE IS A MAN
21 WITH A GUN RIDING AROUND SUMTER, THAT HAS JUST SHOT THIS
22 MAN. HE DOES NOT IDENTIFY THE ONE PERSON IN THAT CAR. HE
23 CANNOT ARGUE TO YOU HE DOES NOT KNOW. HE DIDN'T TELL THE
24 POLICE, I AM NOT SURE WHO THE OTHER TWO GUYS WAS, BUT
25 KENDELL NELSON WAS DRIVING THAT CAR. HE DIDN'T DO THAT.

1 HE DIDN'T DESCRIBE THE PEOPLE TO MR. FITZPATRICK AT
2 ALL, THREE BLACK MALES; THAT'S IT. HE DIDN'T TELL
3 FITZPATRICK ABOUT A GUN. THEN MR. TURNER GOT ON THE STAND.
4 HE TELLS YOU ABOUT THE PHOTO LINEUP AND, YOU KNOW, HOW THEY
5 DO THAT AND ALL THAT STUFF AND SAYS THAT HE TALKED TO
6 DONNELL ROBINSON. DONNELL DIDN'T MENTION A GUN TO HIM
7 EITHER. DONNELL WAS SITTING RIGHT THERE WHERE HE IS SITTING
8 NOW, WHEN I ASKED MR. TURNER THAT QUESTION ABOUT THE GUN.
9 DID ANYBODY KNOW ABOUT THE GUN. DID ANYBODY ASK ABOUT THE
10 GUN. AND MR. TURNER SAID NO. AND YET DONNELL ROBINSON
11 COMES UP HERE TODAY, FIRST TIME HE'S MENTIONED THAT HE SAW A
12 GUN. A COINCIDENCE? I SUBMIT TO YOU THAT DONNELL
13 ROBINSON IS NOT AS DUMB AS MR. CONNER WANTS YOU TO THINK HE
14 IS.

15 I SUBMIT TO YOU HE IS PRETTY SMART, BECAUSE HE HEARD ME
16 ASK JAMIE TURNER THAT QUESTION. AND REALIZED THAT HE HADN'T
17 MENTIONED THE GUN TO ANYBODY BEFORE, THAT MIGHT BE A GOOD
18 IDEA TO DO THAT. YOU CAN'T TELL ME THAT THE MANY TIMES HE
19 TALKED TO MR. TURNER THAT THE FACT THAT HE SAW THE GUN IN MY
20 CLIENT'S HANDS, DIDN'T COME TO HIS BRAIN, AND THAT MIGHT BE
21 IMPORTANT TO TELL SOMEBODY? BUT YET THE FIRST TIME HE
22 MENTIONS IT IS TODAY'S DATE. AND WHEN I ASKED HIM WHY, HE
23 GAVE ME ONE OF THOSE NO ANSWERS. THE SAME ONE HE GAVE ME TO
24 ALMOST EVERY QUESTION I ASKED HIM. LADIES AND GENTLEMEN, I
25 SUBMIT TO YOU, I DID NOT ASK DIFFICULT QUESTIONS. I DID NOT

1 ASK QUESTIONS WITH BIG WORDS, THAT SOMEONE WHO WAS MENTALLY
2 CHALLENGED WOULD NOT UNDERSTAND. I ASKED SIMPLE YES OR NO
3 QUESTIONS. AND YOU SAW THE DEER IN THE HEADLIGHTS LOOK,
4 BECAUSE HE DIDN'T WANT TO ANSWER MY QUESTIONS. BECAUSE THEY
5 WEREN'T GOING TO FIT HIS STORY, OR THEY WEREN'T GOING TO
6 CONVICT MY CLIENT, BECAUSE HE NEVER SAW MY CLIENT THERE.

7 MR. GOODMAN AND MS. BURCH ALL THEY COULD REALLY TELL
8 YOU WAS THAT DONNELL HAD BEEN SHOT. THEY DIDN'T TALK TO
9 HIM. THEY DIDN'T ASK HIM QUESTIONS. OR HE DIDN'T OFFER
10 INFORMATION TO HIM. THEY COULDN'T TELL YOU ANYTHING EXCEPT
11 THAT DONNELL WAS SHOT. I ADMITTED TO YOU MONDAY THAT
12 DONNELL WAS SHOT. WE ARE NOT TRYING TO SAY HE WASN'T SHOT.
13 HE WAS, AND AGAIN, VERY SERIOUS. MR. MOSES GOT UP THIS
14 MORNING AND HE SAID TWO OR THREE SHOTS. HE TOLD THE POLICE
15 OFFICER THREE. WHEN I ASKED HIM THAT, I SAID WOULD IT
16 SURPRISE YOU TO KNOW YOU TOLD HIM THREE. NO. IT WAS THREE
17 THE NIGHT IT HAPPENED. BUT NOW IT'S TWO BECAUSE DONNELL
18 SAID IT TWO. I THOUGHT THAT WAS REAL INTERESTING ALSO.
19 HE DIDN'T SEE ANYONE OR ANYTHING. HE SAID HE HEARD THESE
20 SHOTS. IMMEDIATELY MENTIONED IT TO HIS WIFE AND THEN WENT
21 AND LOOKED OUT THE WINDOW. HE LIVES ACROSS THE STREET FROM
22 THE FIRST LADY WHO TESTIFIED, OR FROM THE GOODMAN'S.
23 HE LIVES RIGHT THERE. HE DIDN'T SEE ANYTHING AT THE SAME
24 TIME MS. SINGLETON DID. I DON'T UNDERSTAND THAT.

25 MR. GOODMAN AND MS. BURCH DID SAY HE NORMALLY GETS UP

1 AT 4:45 TO GO TO WORK AND THEY WERE SOUND ASLEEP WHEN
2 DONNELL KNOCKED ON THE DOOR. AND THEY DIDN'T HEAR THE
3 SHOTS. YET THEY ARE RIGHT NEXT DOOR TO TWO HOUSES THAT DID.
4 I DON'T UNDERSTAND THAT EITHER. WE'RE GOING TO SKIP MR.
5 ROBINSON FOR A MINUTE AND GO TO MR. NELSON. MR. CONNER
6 WANTS TO SAY HE WOULDN'T BELIEVE A WORD HE SAID. THEN WHY
7 BRING HIM OUT HERE? WHAT DID HE OFFER YOU? HE OFFERED YOU
8 NO EVIDENCE THAT MY CLIENT WAS THERE. HE SAYS AN UNKNOWN
9 BLACK MALE. MR. STUCKEY IS SITTING RIGHT THERE. HE DIDN'T
10 SAY THAT MAN. HE SAID AN UNKNOWN MAN.

11 HE SAYS HE WENT TO GLENN'S AND HE DIDN'T SEE ANYBODY
12 THERE. HE SAW THREE PEOPLE WALKING DOWN SOUTH MAIN STREET
13 AND DROPPED THEM OFF ON BRENT STREET AND LEFT. MR. CONNER
14 WANTS TO POINT OUT HOW MANY TIMES KENDELL'S STORY MATCHES
15 DONNELL'S STORY, ET CETERA, ET CETERA, ET CETERA. WELL THEY
16 DO MATCH IT IN SOME INSTANCES. BUT IT'S WHERE THEY DON'T
17 MATCH THAT IT'S IMPORTANT. HE DOES NOT SAY THAT HE AND MY
18 CLIENT DROVE AFTER A RUNNING DONALD BUSH AND DONNELL
19 ROBINSON. HE DOESN'T SAY THAT. HE SAID HE PICKED ALL THREE
20 OF THEM UP. HE SAYS HE DROPPED THEM OFF ON BRENT STREET AND
21 THEN HE LEFT. THAT DOESN'T MATCH MR. ROBINSON'S STORY
22 EITHER. MR. GOODMAN AND MS. BURCH SAID THAT THEY'RE A
23 RELATIVE OF MR. ROBINSON. BUT HE DIDN'T KNOW THAT THOSE
24 WERE HIS RELATIVES THAT LIVED IN THAT HOUSE?

25 SO LET'S TALK ABOUT MR. ROBINSON. HE SAYS THAT HE DID

1 NOT KNOW ANY OF THE PEOPLE INVOLVED IN THIS. IT WAS A
2 DIRECT QUESTION. MR. CONNER ASKED IT. HE SAID NO, HE
3 DIDN'T KNOW ANY OF THEM. BUT THEN TWO DAYS LATER HE KNEW
4 KENDELL NELSON; WENT TO SCHOOL WITH HIM. KENDELL TOLD US
5 THAT; WENT TO SCHOOL WITH HIM. WHEN I ASKED HIM ABOUT
6 DONALD BUSH HE SAID HE DIDN'T KNOW HIM. BUT YET DONNELL
7 BUSH STOPPED BY HIS HOUSE. HIS FAMILY KNEW DONALD BUSH.
8 MS. DIXON DIDN'T SAY I SAW A PICTURE OF DONALD BUSH AND
9 THAT'S WHO CAME BY. SHE SAID DONALD BUSH CAME BY.

10 HE SAYS HE'D BEEN DRINKING BEER AND SMOKING POT.

11 BUT COULDN'T TELL US HOW MUCH BEER. COULDN'T TELL US HOW
12 MUCH POT. COULDN'T TELL US WHERE THE TRAILER WAS. COULDN'T
13 TELL US ANYTHING. HE SAYS BUSH CHASED HIM,. BUT HE DOESN'T
14 KNOW BUSH, REMEMBER? BUT BUSH IS THE ONE THAT CHASED HIM.
15 THEN HE SAYS KENDELL AND MY CLIENT CAME UP IN A CAR. OF
16 COURSE, HE IS SAYING THAT'S MY CLIENT BECAUSE THAT IS THAT
17 PICTURE THAT HE'S PULLED; NOT BECAUSE HE SAYS HE KNOWS MY
18 CLIENT. THEN HE SAYS THAT DONALD BUSH ORDERED HIM IN THE
19 CAR. WITH WHAT? DID HE THREATEN HIM? WE DON'T KNOW. HE
20 DIDN'T SAY THAT. DID DONALD BUSH HAVE THE GUN AND THAT'S
21 WHY HE GOT IN THE CAR? WE DON'T KNOW THAT EITHER. HE JUST
22 SAYS THAT DONALD BUSH ORDERED HIM IN THE CAR AND HE GOT IN.
23 BUT HE WAS SCARED. BUT HE JUST GOT IN. DIDN'T CONTINUE
24 TRYING TO RUN, BUT JUST GOT IN.

25 REMEMBER, HE DIDN'T TELL THE FIRST OFFICER ABOUT

1 NELSON. HE DIDN'T TELL MR. TURNER ABOUT BUSH. DIDN'T TELL
2 ANYONE ABOUT THE GUN BEING IN MY CLIENT'S HAND UNTIL TODAY.
3 AND WHEN I ASKED HIM WHY, WE GOT NO ANSWER. COULDN'T TELL
4 US WHY HE HADN'T TOLD ANYONE. HE ADMITTED, SORT OF, THAT HE
5 DIDN'T SEE THE GUN SHOOT HIM. HE ADMITTED HE DIDN'T SEE THE
6 FACE. ACTUALLY HE TOLD ME SEVERAL TIMES HE DIDN'T SEE
7 ANYBODY'S FACE. BUT THEN WHEN IT WAS CONVENIENT ALL OF A
8 SUDDEN HE DID SEE MY CLIENT'S FACE. I DON'T KNOW IF Y'ALL
9 NOTICED THAT OR NOT. SAYS HE DIDN'T SEE ANYTHING.

10 FIRST HE TOLD ME HE COULDN'T. HE DIDN'T TURN AROUND.
11 AND THEN WHEN THAT DIDN'T FIT THE STORY, HE TURNED AROUND.
12 AND AGAIN, YOU CAN SIT HERE AND SAY WELL HE'S SLOW SO I AM
13 GOING TO GIVE HIM THE BENEFIT OF THE DOUBT. WHY? THIS
14 HAPPENED TO HIM. EITHER HE KNOWS WHAT HAPPENED TO HIM OR HE
15 DOESN'T. BUT HE IS SMART ENOUGH TO CHANGE HIS STORY, LADIES
16 AND GENTLEMEN, TO FIT. WHEN I ASKED HIM THAT QUESTION, I
17 GOT THE DEER IN THE HEADLIGHT LOOK. I COULD JUST SEE THOSE
18 WHEELS TURNING; I GOT TO ANSWER THIS A CERTAIN WAY. AND SO
19 GIVE HIM SOME CREDIT, BECAUSE HE IS NOT DUMB. HE IS VERY
20 SMART. HE COULDN'T TELL YOU WHEN KENDELL ENTERED THE
21 PICTURE. SAYS HE SAW HIM AT GLENN'S. I CAN'T FIGURE OUT
22 WHETHER HE SAW HIM INSIDE OR OUTSIDE, BECAUSE HE CAN'T
23 REALLY TELL US WHEN HE SAW KENDELL.

24 BUT HE SAYS HE KNOWS KENDELL WAS AT THE TRAILER. MR.
25 CONNER MADE A BIG POINT ABOUT SYMPATHIZING WITH THE VICTIM.

1 AND YOU SHOULD, BECAUSE HE WAS SHOT. AND AGAIN, THAT IS A
2 BAD THING. BUT DO NOT SYMPATHIZE WITH HIM SO MUCH BECAUSE
3 OF HIS ALLEGEDLY MENTAL DISABILITY THAT YOU DISCOUNT HIS
4 TROUBLE ANSWERING MY SIMPLE YES OR NO QUESTIONS. I DIDN'T
5 USE 12-LETTER WORDS THAT HE COULD NOT UNDERSTAND. DO YOU
6 KNOW WHO SHOT YOU? THERE WAS SILENCE. AND WHEN HE FINALLY
7 CHANGED HIS STORY TO SAY YES, I ASKED HIM HOW. HE NEVER
8 ANSWERED THAT QUESTION, LADIES AND GENTLEMEN. HE NEVER
9 ANSWERED THE QUESTION HOW HE KNEW WHO SHOT HIM. BECAUSE HE
10 DOESN'T KNOW WHO SHOT HIM. BECAUSE HE HAD HIS BACK TURNED.
11 HE IS THE ONLY PERSON THAT CAN PUT CASEY STUCKEY AT THE
12 SCENE. HE CONVENIENTLY PUT THE GUN IN HIS HAND FOR THE
13 FIRST TIME. AND HE CONVENIENTLY TURNED AROUND AND SAW MY
14 CLIENT SHOOT HIM ONLY AFTER REALIZING THAT HE DID SEE WHO
15 SHOT HIM. AND HE COULDN'T TELL YOU WHO SHOT HIM BECAUSE HE
16 DOESN'T KNOW. I SUBMIT TO YOU HE NEVER TURNED AROUND,
17 BECAUSE IF HE WAS AS SCARED AS SAYS HE WAS, DO YOU REALLY DO
18 YOU REALLY THINK HE'S GOING TO TURN AROUND AND SEE WHAT'S
19 HAPPENING BEHIND HIM? HE'S GOING TO BE HAULING TURKEY SO HE
20 CAN GET THE HECK OUT OF THERE. I WOULD. I WOULDN'T TURN
21 AROUND AND SEE WHAT WAS COMING, I WOULD JUST GO.
22 AND I SUBMIT TO YOU AS SCARED AS HE WAS, THAT'S EXACTLY
23 WHAT HE DID. HE JUST KEPT RUNNING. HE NEVER LOOKED BACK.
24 SO HE DOESN'T KNOW WHO SHOT HIM. HE DOESN'T KNOW WHO GOT
25 OUT OF THAT CAR. HE DOESN'T EVEN KNOW WHO WAS IN THAT CAR.

1 MR. CONNER WANTS TO TALK ABOUT HOW MUCH CARE THEY TAKE TO
2 MAKE THESE. YOU KNOW, HOW THEY TRY TO MAKE PEOPLE LOOK
3 SIMILAR SO THERE IS NOT ONE WHITE MAN AND 5 BLACK MALES.
4 AND OBVIOUSLY THE WHITE MAN IS THE ONE WHO DID IT AND VICE
5 VERSA. SO HE WANTS YOU TO FOCUS ON GOOD POLICE PROCEDURE.
6 NO ONE KNEW THERE WAS A GUN. NOT ONE POLICE OFFICER
7 TESTIFIED TO YOU UP THERE THAT THEY KNEW CASEY STUCKEY HAD A
8 GUN IN HIS HAND. HE SAYS WE DON'T HAVE GLENN HERE BECAUSE
9 THEY COULDN'T FIND HIM. WELL THEY SORT OF KNEW WHERE HIS
10 TRAILER WAS, DIDN'T THEY? BUT HE IS NOT HERE. THEY DON'T
11 HAVE A LAST NAME ON HIM. THAT DOESN'T SOUND LIKE GOOD
12 POLICE PROCEDURE TO ME. IT SOUNDS TO ME LIKE WE SHOULD HAVE
13 GLENN HERE, AND THAT WE COULD HAVE GLENN HERE, BUT WE DON'T.
14 AND THE LAST THING I WOULD LIKE TO SAY IS, HE SAYS HE
15 RAN FROM GLENN'S TRAILER BECAUSE HE SENSED SOMETHING WAS
16 WRONG. I SUBMIT TO YOU THAT'S A SMART PERSON. BECAUSE HE
17 WAS RIGHT, SOMETHING WAS WRONG. BUT HE IS MENTALLY
18 CHALLENGED, LADIES AND GENTLEMEN. MENTALLY CHALLENGED
19 PEOPLE PROBABLY WOULDN'T HAVE THAT INTUITIVENESS, WOULD
20 THEY? HE IS SMART. HE IS SMART. AND I SUBMIT TO YOU,
21 LADIES AND GENTLEMEN, THAT ONCE YOU GO BACK INTO THAT JURY
22 ROOM AND YOU TALK ABOUT WHAT YOU DID HEAR AND WHAT YOU
23 DIDN'T HEAR AND YOU LISTEN TO WHAT THE JUDGE SAYS ABOUT WHAT
24 THE LAW IS, AND HE EXPLAINS INNOCENT UNTIL PROVEN GUILTY AND
25 REASONABLE DOUBT AND ALL THOSE OTHER THINGS THAT HE WILL NOW

1 EXPLAIN TO YOU, I SUBMIT TO YOU THAT YOU WILL GO BACK THERE
2 AND YOU WILL FIND THAT THE STATE HAS NOT, I REPEAT, HAS NOT
3 MET ITS BURDEN. AND HAS NOT PROVEN BEYOND A REASONABLE
4 DOUBT THAT CASEY STUCKEY WAS THERE, MUCH LESS SHOT HIM.
5 THANK YOU.

6 THE COURT: THANK YOU, MS. FERRARI.

7 MS. FERRARI: THANK YOU, YOUR HONOR.

8 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
9 PLEASE GIVE ME YOUR ATTENTION FOR A FEW MORE MOMENTS NOW AS
10 I INSTRUCT YOU OR CHARGE YOU AS TO WHAT THE LAW IS IN THIS
11 CASE. YOU HAVE INDEED BEEN PATIENT THROUGHOUT THE TRIAL AND
12 THROUGHOUT THE ARGUMENTS THAT HAVE BEEN CAPABLY PRESENTED
13 HERE ON BEHALF OF THE STATE AND THE DEFENDANT. AND NOW IT
14 BECOMES MY DUTY UNDER OUR CONSTITUTION TO INSTRUCT YOU OR
15 TELL YOU WHAT THE LAW IS IN THIS PARTICULAR CASE. AND IT IS
16 YOUR DUTY AS JURORS TO ACCEPT THE LAW AND APPLY IT AS I NOW
17 STATE IT TO YOU. AS JURORS, LADIES AND GENTLEMEN, IT IS
18 YOUR EXCLUSIVE DUTY TO DECIDE ALL ISSUES OF FACT IN THIS
19 CASE. AND FOR THAT PURPOSE, YOU HAVE TO DETERMINE THE
20 EFFECT, THE VALUE, AND THE WEIGHT AND THE TRUTHFULNESS OF
21 THE EVIDENCE AND THE TESTIMONY THAT YOU HAVE HEARD.

22 BOTH STATE AND THE DEFENDANT HAVE A RIGHT TO EXPECT
23 THAT YOU WILL CONSCIENTIOUSLY CONSIDER AND EVALUATE THE
24 EVIDENCE, AND THAT YOU WILL APPLY THE LAW THAT I AM GIVING
25 YOU TO THAT EVIDENCE SO THAT BOTH THE STATE AND THE

1 DEFENDANT WILL RECEIVE A FAIR AND IMPARTIAL TRIAL AT YOUR
2 HANDS. THROUGHOUT THIS CHARGE, LADIES AND GENTLEMEN, WHEN I
3 USE THE WORD, DEFENDANT, I AM REFERRING TO CASEY BERNARD
4 STUCKEY. MR. STUCKEY HAS BEEN INDICTED BY THE GRAND JURY OF
5 SUMTER COUNTY AND CHARGED IN COUNT 1 OF THE INDICTMENT WITH
6 ASSAULT AND BATTERY WITH INTENT TO KILL. THAT COUNT OF THE
7 INDICTMENT ACCUSES MR. STUCKEY HERE IN SUMTER COUNTY ON OR
8 ABOUT OCTOBER THE 4TH OF THE YEAR 2000 WITH MALICE
9 AFORETHOUGHT, COMMITTING AN ASSAULT AND BATTERY UPON DONNELL
10 ROBINSON BY SHOOTING HIM WITH A PISTOL WITH THE INTENT TO
11 KILL HIM.

12 COUNT 2 OF THE INDICTMENT CHARGES POSSESSION OF A
13 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME. AND THAT
14 COUNT OF THE INDICTMENT ACCUSES MR. STUCKEY AT THE SAME TIME
15 AND PLACE OF POSSESSING A FIREARM; A PISTOL, DURING THE
16 COMMISSION OR ATTEMPTED COMMISSION OF A VIOLENT CRIME;
17 SPECIFICALLY, THE CRIME OF ASSAULT AND BATTERY WITH INTENT
18 TO KILL. COUNT 3 OF THE INDICTMENT ACCUSES MR. STUCKEY AND
19 TWO OTHER INDIVIDUALS, DONALD BUSH AND KENDELL NELSON, WITH
20 THE CRIME OF LYNCHING IN THE SECOND DEGREE. AND THAT COUNT
21 OF THE INDICTMENT SAYS THAT MR. STUCKEY, MR. BUSH AND
22 MR. NELSON, DID IN SUMTER COUNTY AT THE SAME TIME AND PLACE
23 ACTING AS A MOB, INFLICT AN ACT OF VIOLENCE UPON THE BODY OF
24 DARNELL ROBINSON WHICH DID NOT RESULT IN DEATH. COUNT 4
25 CHARGES KIDNAPPING. AND THAT COUNT OF THE INDICTMENT

1 ACCUSES MR. STUCKEY AND MR. BUSH AND MR. NELSON HERE IN
2 SUMTER COUNTY AT THE SAME TIME AND PLACE WITH UNLAWFULLY
3 KIDNAPPING. BUT THE LAW SAYS THAT UNLAWFULLY SEIZING,
4 KIDNAPPING, INVEIGLING, DECOYING, ABDUCTING, OR CARRYING
5 AWAY DARNELL ROBINSON WITHOUT AUTHORITY OF LAW.

6 NOW, LADIES AND GENTLEMEN, THE INDICTMENT AS I TOLD
7 YOU, IS NOT EVIDENCE OR PROOF OF THE CHARGES THAT IT
8 CONTAINS. IT'S WHAT WE CALL A CHARGING PAPER. IT'S A PIECE
9 OF PAPER THAT SAYS WHAT THE CHARGES ARE ABOUT SO THAT YOU OR
10 I OR ANYONE ELSE WHO READS THE INDICTMENT WILL KNOW WHAT
11 THIS CASE IS ALL ABOUT. TO THE CHARGES CONTAINED IN THIS
12 INDICTMENT MR. STUCKEY HAS ENTERED PLEAS OF NOT GUILTY.
13 OBVIOUSLY REQUESTING A JURY TRIAL AT YOUR HANDS. NOW THE
14 LEGAL EFFECT OF A PLEA OF NOT GUILTY BY A DEFENDANT IN A
15 CRIMINAL CASE IS TO PLACE THE BURDEN OF PROOF UPON THE STATE
16 TO PROVE BY EVIDENCE THE GUILT OF THE ACCUSED BEYOND A
17 REASONABLE DOUBT BEFORE YOU AS A JURY CAN CONVICT HIM AND
18 FIND HIM GUILTY.

19 THE DEFENDANT, MR. STUCKEY IS PRESUMED IN LAW TO BE
20 INNOCENT OF THE CHARGES CONTAINED IN THIS INDICTMENT.
21 IT IS A FUNDAMENTAL RULE OF OUR LAW OF EVIDENCE THAT A
22 PERSON REGARDLESS OF THE NATURE OF THE CHARGES, OR THE
23 NUMBER OF CHARGES OR THE SERIOUSNESS OF THE CHARGES AGAINST
24 HIM, WILL ALWAYS BE PRESUMED INNOCENT OF THE CRIMES FOR
25 WHICH HE HAS BEEN INDICTED UNLESS AND UNTIL HIS GUILT HAS

1 BEEN PROVEN BY EVIDENCE; EVIDENCE THAT SATISFIES YOU OF THAT
2 GUILT BEYOND A REASONABLE DOUBT. THE PRESUMPTION OF
3 INNOCENCE IS NOT A MERE LEGAL THEORY. IT IS NOT AN EMPTY
4 LEGAL PHRASE. THE PRESUMPTION OF INNOCENCE HAS BEEN LIKENED
5 TO A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE
6 DEFENDANT AND IT REMAINS WITH HIM AND IT ASSIGNS TO HIM THAT
7 CLASS KNOWN AS THE INNOCENT UNTIL THAT PRESUMPTIVE ROBE OF
8 RIGHTEOUSNESS HAS BEEN STRIPPED FROM HIS PERSON BY EVIDENCE
9 THAT SATISFIES YOU OF HIS GUILT BEYOND A REASONABLE DOUBT.

10 THE PRESUMPTION OF INNOCENCE ACCOMPANIES A DEFENDANT
11 FROM THE TIME OF HIS ARREST. IT FOLLOWS HIM THROUGHOUT
12 EVERY COURSE OF THESE PROCEEDINGS. INDEED EVEN IF YOU GO IN
13 YOUR JURY ROOM TO DELIBERATE AND DISCUSS YOUR VERDICT, THE
14 PRESUMPTION OF INNOCENCE CONTINUES TO EXIST UNTIL YOU THE
15 JURY HAVE REACHED THE CONCLUSION THAT THE STATE HAS PROVEN
16 HIS GUILT BY EVIDENCE THAT SATISFIES YOU BEYOND A REASONABLE
17 DOUBT. SO I TELL YOU THEN THAT THE STATE HAS THE BURDEN OF
18 PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

19 SOME OF YOU TOLD ME THAT YOU HAD SERVED AS JURORS IN OTHER
20 CASES BEFORE.

21 AND YOU MAY HAVE SERVED JURORS IN CIVIL CASES. AND IN CIVIL
22 CASES YOU WERE TOLD THAT IT IS ONLY NECESSARY THAT THE PARTY
23 WHO HAS THE BURDEN OF PROOF PRESENT EVIDENCE TO INDICATE
24 THAT THE FACTS CHARGED IS MORE LIKELY TRUE THAN NOT TRUE IN
25 ORDER FOR THAT SIDE TO PREVAIL.

1 BUT IN CRIMINAL CASES, THE STATE'S PROOF HAS TO BE MORE
2 POWERFUL THAN THAT. IN CRIMINAL CASES, THE STATE'S PROOF
3 MUST BE BEYOND A REASONABLE DOUBT. AND SO WHAT DO WE MEAN
4 BY THE PHRASE PROOF BEYOND A REASONABLE DOUBT? PROOF BEYOND
5 A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED
6 OF THE DEFENDANT'S GUILT. NOW LADIES AND GENTLEMEN, THERE
7 ARE VERY FEW THINGS IN THIS WORLD THAT YOU AND I KNOW WITH
8 ABSOLUTE CERTAINTY. AND IN CRIMINAL CASES THE LAW DOES NOT
9 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. AND SO
10 IF BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE
11 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME
12 CHARGED, YOU MUST FIND HIM GUILTY. IF ON THE OTHER HAND
13 YOU THINK THERE IS A REAL POSSIBILITY THAT HE IS NOT GUILTY,
14 YOU MUST GIVE HIM THE BENEFIT OF DOUBT AND FIND HIM NOT
15 GUILTY.

16 REASONABLE DOUBT MIGHT ARISE FROM EVIDENCE THAT HAS
17 PRESENTED IN THE CASE OR IT MIGHT ARISE FROM THE LACK OF
18 EVIDENCE IN THIS CASE. BUT YOU, LADIES AND GENTLEMEN, MUST
19 DECIDE WHETHER OR NOT REASONABLE DOUBT EXISTS AS TO THE
20 GUILT OF THE DEFENDANT. I TELL YOU THAT THE DEFENDANT IS
21 ENTITLED TO EVERY REASONABLE DOUBT WHICH ARISES IN THE CASE.
22 AND SO IF ON ANY ISSUE OF FACT WHICH IS ESSENTIAL TO A
23 CONVICTION AND A VERDICT OF GUILTY YOU HAVE A REASONABLE
24 DOUBT AS TO HOW THAT ISSUE SHOULD BE RESOLVED, IT IS YOUR
25 DUTY TO RESOLVE THAT REASONABLE DOUBT IN FAVOR OF THE

1 DEFENDANT. BECAUSE THE DEFENDANT, LADIES AND GENTLEMEN, IS
2 NEVER REQUIRED TO PROVE HIS INNOCENCE. THE STATE ON THE
3 OTHER HAND IS REQUIRED IN LAW TO PROVE EVERY ESSENTIAL
4 ELEMENT OF THE OFFENSE CHARGED AGAINST HIM BY EVIDENCE THAT
5 SATISFIES YOU OF HIS GUILT BEYOND A REASONABLE DOUBT BEFORE
6 YOU CAN CONVICT AND FIND HIM GUILTY.

7 AND IN THAT REGARD, I TELL YOU NOW AND I EMPHASIZE TO
8 YOU THAT THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT
9 HIMSELF TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN
10 ANY WAY IN YOUR DELIBERATION AND IN YOUR CONSIDERATION OF
11 THE QUESTION OF HIS GUILT OR INNOCENCE. THAT FACT SHOULD
12 NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. IT
13 SHOULD NOT WEIGH AGAINST HIM IN ANY RESPECT WHATSOEVER.
14 BECAUSE THE DEFENDANT HAS A CONSTITUTIONAL RIGHT TO REMAIN
15 SILENT. AND IF HE CHOOSES TO ASSERT THAT CONSTITUTIONAL
16 RIGHT, THAT FACT CAN NOT AND MUST NOT BE CONSIDERED BY YOU
17 IN YOUR DELIBERATIONS.

18 AND SO UNDER YOUR OATH THEN YOU ARE TO REACH NO
19 INFERENCE AND DRAW NO CONCLUSION WHATSOEVER FROM THE FACT
20 THAT THE DEFENDANT IN THIS CASE DID NOT HIMSELF TESTIFY.
21 THAT FACT SHOULD NOT EVEN BE DISCUSSED BY YOU IN YOUR JURY
22 ROOM. THE BURDEN OF PROOF AS I SAID, IS UPON THE STATE.
23 THE DEFENDANT HAS NO OBLIGATION TO PROVE HIS INNOCENCE. THE
24 BURDEN OF PROOF REMAINS UPON THE STATE TO PROVE GUILT BEYOND
25 A REASONABLE DOUBT. AND THE FACT THAT THE DEFENDANT DID NOT

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1 TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN
2 DETERMINING HIS GUILT OR INNOCENCE. SO, LADIES AND
3 GENTLEMEN, IF THEN UPON THE WHOLE CASE YOU HAVE A REASONABLE
4 DOUBT AS TO THE GUILT OR THE INNOCENCE OF THE DEFENDANT, HE
5 IS ENTITLED TO THAT REASONABLE DOUBT AND WOULD BE ENTITLED
6 TO AN ACQUITTAL AND A VERDICT OF NOT GUILTY. BUT ON THE
7 OTHER HAND IF UPON THE WHOLE CASE YOU FIND THAT THE STATE
8 HAS PROVEN BY EVIDENCE THAT SATISFIES YOU AS A JURY OF HIS
9 GUILT BEYOND A REASONABLE DOUBT THEN IN SUCH CIRCUMSTANCES
10 IT IS EQUALLY YOUR DUTY TO CONVICT HIM AND FIND HIM GUILTY.

11 NOW DURING THE TRIAL, LADIES AND GENTLEMEN, EACH OF US,
12 YOU AND I HAVE OUR SEPARATE DUTIES TO PERFORM. AS THE TRIAL
13 JUDGE IT'S MY JOB TO PRESIDE OVER THE TRIAL OF THIS CASE.
14 AND I ALSO HAVE THE RESPONSIBILITY OF PASSING UPON THE
15 ADMISSIBILITY OF THE EVIDENCE WHICH HAS BEEN OFFERED DURING
16 THIS TRIAL. AND SO YOU'RE TO CONSIDER IN YOUR DELIBERATIONS
17 ONLY THE COMPETENT EVIDENCE BEFORE YOU; THAT IS, THE
18 TESTIMONY OFFERED FROM THIS WITNESS STAND. AND THOSE ITEMS,
19 THOSE DOCUMENTS, THOSE DIAGRAMS AND THINGS OF THAT NATURE
20 WHICH HAVE BEEN OFFERED INTO THE RECORD OF THIS CASE. I HAVE
21 THE ADDITIONAL DUTY TO INSTRUCT YOU AS TO WHAT THE LAW IS IN
22 THIS CASE. AS A PRESIDING JUDGE, I AM MADE THE SOLE JUDGE
23 OF THE LAW IN THIS CASE. IT IS YOUR DUTY TO ACCEPT AND
24 APPLY THE LAW PRECISELY AS I STATE IT TO YOU. YOU MIGHT
25 NOT LIKE WHAT THE LAW IS. YOU MIGHT NOT AGREE WITH WHAT

1 CREDIBILITY OR THE BELIEVABILITY IN THE TESTIMONY OFFERED BY
2 THAT WITNESS HIMSELF. AND SO YOU CAN GIVE THAT EVIDENCE,
3 THAT EVIDENCE OF A PRIOR CRIMINAL RECORD SUCH WEIGHT YOU
4 THINK IT SHOULD RECEIVE ON THE SOLE ISSUE OF THE CREDIBILITY
5 OR BELIEVABILITY OF THE TESTIMONY OFFERED BY THAT WITNESS.

6 LADIES AND GENTLEMEN, AS JURORS, YOU'VE GOT THE RIGHT
7 TO BELIEVE A SMALL PART OF WHAT A WITNESS TELLS YOU AND TO
8 DISBELIEVE THE LARGER PART OF WHAT THAT SAME WITNESS TELLS
9 YOU, OR YOU CAN BELIEVE EVERYTHING THAT A WITNESS TELLS, OR
10 NONE OF WHAT A WITNESS TELLS YOU. BUT YOU DON'T EXERCISE
11 THESE CONSIDERATIONS ARBITRARILY. THERE HAS GOT TO BE SOME
12 GOOD REASON IN THE RECORD FOR YOU TO DO SO, LADIES AND
13 GENTLEMEN, BECAUSE WHAT THE COURT AND THE LAW EXPECT YOU TO
14 DO IS TO EXERCISE YOUR MENTAL PROCESS. AND IN DETERMINING
15 WHAT YOU CONSIDER TO BE TRUE, THE LAW REQUIRES THAT YOU
16 EXERCISE YOUR GOOD JUDGMENT, YOUR COMMON SENSE, YOUR SENSE
17 OF LOGIC AND REASON AND YOUR EXPERIENCES IN LIFE.
18 AND YOU THEN APPLY THOSE ABILITIES THAT EACH OF YOU HAS TO
19 THE EVIDENCE THAT YOU HAVE HEARD IN THIS PARTICULAR CASE AND
20 THUS YOU DETERMINE THE TRUTH OF THIS PARTICULAR CASE. AND
21 ONCE YOU HAVE DECIDED THE TRUTH OF THIS CASE, YOU TAKE THAT
22 TRUTH THAT YOU FIND AND YOU APPLY THE LAW THAT I AM GIVING
23 YOU TO THAT TRUTH, AND BOTH OF THOSE THINGS WILL COME
24 TOGETHER, THE TRUTH THAT YOU FIND AND THE LAW I AM GIVING
25 YOU TO RESULT IN A VERDICT WHICH WILL SPEAK THE TRUTH OF

1 THIS CASE.

2 AND, NOW LADIES AND GENTLEMEN, I WANT TO INSTRUCT YOU
3 NOW AS TO ELEMENTS OF THE CHARGES CONTAINED IN THE
4 INDICTMENT. THE DEFENDANT IS CHARGED IN THE FIRST COUNT OF
5 THE INDICTMENT WITH ASSAULT AND BATTERY WITH INTENT TO KILL.
6 SO WHAT THEN IS THE RESPONSIBILITY OF THE STATE? WHAT DOES
7 THE STATE HAVE TO PROVE TO YOU BEYOND A REASONABLE DOUBT IN
8 ORDER TO SUSTAIN A VERDICT OF GUILTY ON THE CHARGE OF
9 ASSAULT AND BATTERY WITH INTENT TO KILL? I AM GOING TO
10 DEFINE FOR YOU THE OFFENSE OF ASSAULT AND BATTERY WITH
11 INTENT TO KILL. AND IN DOING THAT, I WILL DEFINE FOR YOU
12 ELEMENTS OF THAT PARTICULAR OFFENSE.

13 BECAUSE IN ORDER TO PROVE ASSAULT AND BATTERY WITH
14 INTENT TO KILL BEYOND A REASONABLE DOUBT, THE STATE MUST
15 PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED
16 AN UNLAWFUL ACT OF A VIOLENT NATURE TO THE PERSON OF ANOTHER
17 WITH MALICE AFORETHOUGHT. AND SO I AM GOING TO DEFINE FOR
18 YOU WHAT WE MEAN BY THE WORD ASSAULT. AND THEN I AM GOING
19 TO TELL YOU WHAT WE MEAN BY THE WORD BATTERY. AND THEN WHAT
20 WE MEAN BY THE PHRASE MALICE AFORETHOUGHT. BECAUSE ALL OF
21 THOSE ARE ELEMENTS OF THE CHARGE OF ASSAULT AND BATTERY WITH
22 TO KILL. FIRST OF ALL, LET'S SAY WHAT AN ASSAULT IS. AN
23 ASSAULT OCCURS WHEN A PERSON UNLAWFULLY ATTEMPTS OR OFFERS
24 TO COMMIT A VIOLENT INJURY ON SOMEBODY ELSE WHEN THAT PERSON
25 HAD THE PRESENT ABILITY TO CARRY OUT THAT ASSAULT OR TO

1 COMPLETE THAT ATTEMPTED INJURY. AN ASSAULT IS THE
2 INTENTIONAL CREATION OF A REASONABLE FEAR OF IMMEDIATE
3 BODILY HARM.

4 NOW IT IS NOT NECESSARY THAT THE ATTEMPTED INJURY OR
5 HARM ACTUALLY TAKE PLACE. FOR EXAMPLE, IF I WALK UP TO YOU
6 ON THE STREET AND WE ARE IN ARMS LENGTH OF EACH OTHER AND I
7 DRAW BACK MY HAND AND FIST TO STRIKE YOU, OR IF I PICK UP A
8 STICK AND DRAW IT BACK AS IF TO STRIKE YOU AND DON'T STRIKE,
9 AS LONG AS I HAVE THE ABILITY TO CARRY THAT OUT AND AM IN
10 ARMS LENGTH OF YOU, WHERE I COULD YOU STRIKE IF I CHOOSE TO
11 DO SO EITHER WITH MY HAND OR FIST OR THAT STICK, I HAVE
12 COMMITTED AN ASSAULT ON YOU. I DIDN'T TOUCH YOU. I DIDN'T
13 HARM A HAIR ON YOUR HEAD, BUT I COMMITTED AN ASSAULT.
14 BECAUSE WHAT I DID WAS TO CREATE INTENTIONALLY A REASONABLE
15 FEAR IN YOU OF IMMEDIATE BODILY HARM. SO THAT'S AN ASSAULT.

16 WHAT IS A BATTERY? THE BATTERY IS THE ACTUAL UNLAWFUL
17 TOUCHING OF ANOTHER PERSON BY THE PERSON WHO COMMITS THE
18 ASSAULT. IT IS THE UNLAWFUL TOUCHING EITHER BY A PART OF
19 THE ACCUSED BODY OR BY ANY OBJECT WHICH THE ACCUSED PUTS IN
20 MOTION. A BATTERY THEN IS THE COMPLETION OF THE ASSAULT BY
21 USING OR APPLYING FORCE TO ANOTHER PERSON HOWEVER SLIGHT
22 THAT FORCE MIGHT BE, IN A RUDE, ANGRY OR RESENTFUL MANNER
23 WITHOUT LEGAL JUSTIFICATION FOR DOING SO. USING MY EARLIER
24 EXAMPLE IF I WERE TO CARRY OUT THE ASSAULT BY ACTUALLY
25 STRIKING YOU WITH MY HAND OR MY FIST OR WITH THAT STICK,

1 THAT WOULD BE A BATTERY. AND SO IN THAT CASE, THE ASSAULT
2 AND THE BATTERY WOULD BE COMPLETE.

3 SO WHAT THEN IS ASSAULT AND BATTERY WITH INTENT TO
4 KILL? ASSAULT AND BATTERY IS AN ASSAULT AND A BATTERY AS I
5 JUST DESCRIBED IT TO YOU, ACCOMPANIED BY MALICE
6 AFORETHOUGHT. AND SO NOW YOU HAVE TO UNDERSTAND WHAT WE
7 MEAN BY THE PHRASE MALICE AFORETHOUGHT. WHAT IS MALICE?
8 MALICE IS A HATRED. IT IS AN ILL WILL. IT IS A HOSTILITY
9 TOWARD SOMEBODY ELSE. IT IS THE INTENTIONAL DOING OF A
10 WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT
11 TO INFLICT AN INJURY OR UNDER THE CIRCUMSTANCES THAT THE LAW
12 WILL INFER EVIL INTENT.

13 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT THE MALICE
14 EXIST FOR ANY PARTICULAR LENGTH OF TIME BEFORE THE ACT IS
15 COMMITTED IN ORDER FOR IT TO BE MALICE AFORETHOUGHT. BUT
16 MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE
17 AND AT THE TIME THE ACT IS COMMITTED. AND THEREFORE THERE
18 MUST BE A COMBINATION OF THE PREVIOUS EVIL AND THE ACT IN
19 ORDER FOR THERE TO BE MALICE AFORETHOUGHT. MALICE
20 AFORETHOUGHT CAN BE EXPRESSED OR IT MIGHT BE INFERRED.
21 THAT DOESN'T MEAN THAT THERE ARE MORE ONE THAN TYPE OF
22 MALICE. IT JUST MEANS THAT THERE IS MORE THAN ONE WAY THAT
23 THE MALICE CAN BE SHOWED; THAT IS, BY EITHER DIRECT EVIDENCE
24 OR BY INFERENCE AND FROM CIRCUMSTANTIAL EVIDENCE AND THE
25 FACTS WHICH WERE EXISTING AT THE TIME MALICE CAN BE SHOWN TO

1 EXIST.

2 EXPRESS MALICE CAN BE SHOWN WHEN A PERSON ACTUALLY
3 SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR SOMEBODY
4 ELSE LIKE I AM GOING TO KILL YOU. OR IT MIGHT BE WHEN THE
5 PERSON PREPARED BEFOREHAND TO DO THE ACT OR WAS LYING IN
6 WAIT IN OTHER WORDS TO ACCOMPLISH THAT ACT. OR ANY OTHER
7 ACT OF PREPARATION WHICH SHOWS THAT THE DEED WAS WITHIN THE
8 DEFENDANT'S MIND AT THE TIME COULD BE EXPRESS MALICE. NOW
9 MALICE CAN BE INFERRED FROM THE CONDUCT OF AN INDIVIDUAL
10 WHICH SHOWS A TOTAL DISREGARD FOR HUMAN LIFE. INFERRED
11 MALICE MAY ARISE WHEN THE DEED IS DONE WITH A DEADLY WEAPON.
12 A DEADLY WEAPON, LADIES AND GENTLEMEN, CAN BE A HANDGUN, A
13 KNIFE, ANY TYPE OF WEAPON WHICH COULD BE REASONABLY USED TO
14 CAUSE SERIOUS BODILY HARM OR DEATH.

15 AND SO IF FACTS ARE PROVEN BEYOND A REASONABLE DOUBT
16 SUFFICIENT TO RAISE AN INFERENCE OF MALICE FROM THE USE OF A
17 DEADLY WEAPON TO YOUR SATISFACTION, THIS INFERENCE WOULD
18 SIMPLY BE AN EVIDENTIARY FACT TO BE CONSIDERED BY YOU ALONG
19 WITH ALL THE EVIDENCE IN THE CASE BEARING ON THE ISSUE OF
20 MALICE. AND YOU CAN GIVE IT THE WEIGHT YOU THINK IT SHOULD
21 RECEIVE ACCORDING TO YOUR VIEW OF THE EVIDENCE. NOW, LADIES
22 AND GENTLEMEN, A SPECIFIC INTENT TO KILL IS NOT AN ELEMENT
23 OF ASSAULT AND BATTERY WITH INTENT TO KILL. BUT THERE HAS
24 TO BE A GENERAL INTENT TO COMMIT SERIOUS BODILY INJURY.
25 INTENT MEANS INTENDING THE RESULT WHICH NATURALLY OCCURS.

1 IN OTHER WORDS, IT'S NOT ACCIDENTAL OR INVOLUNTARY.

2 INTENT CAN BE SHOWN BY ACTS AND CONDUCT OF THE
3 DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU CAN
4 NATURALLY AND REASONABLY INFER INTENT. FOR EXAMPLE, THE
5 EVIDENCE OF THE CHARACTER OF THE ASSAULT, THE CHARACTER OF
6 THE INSTRUMENT USED. THE MANNER IN WHICH IT WAS USED. THE
7 PURPOSE TO BE ACCOMPLISHED AND THE RESULTING WOUNDS OR
8 INJURIES. ALL OF THESE ARE TO BE CONSIDERED BY YOU IN
9 DETERMINING THE INTENT WITH WHICH THE ASSAULT WAS COMMITTED.
10 INTENT MAY BE INFERRED WHEN IT IS DEMONSTRATED THAT THE
11 DEFENDANT VOLUNTARILY AND WILLFULLY COMMITTED AN ACT, THE
12 NATURAL TENDENCY OF WHICH IS TO DESTROY ANOTHER'S HUMAN
13 LIFE.

14 SO LADIES AND GENTLEMEN, IN SUMMARY THEN, THE BURDEN OF
15 PROOF IS UPON THE STATE TO PROVE THAT THE DEFENDANT IN THIS
16 CASE COMMITTED AN ASSAULT AND A BATTERY ACCOMPANIED BY
17 MALICE AFORETHOUGHT IN ORDER FOR YOU TO CONVICT THE
18 DEFENDANT OF ASSAULT AND BATTERY WITH INTENT TO KILL. IF
19 YOU HAVE BEEN CONVINCED BEYOND A REASONABLE DOUBT THAT THE
20 DEFENDANT DID THOSE THINGS; THAT IS, DID COMMIT AN ASSAULT
21 AND BATTERY ACCOMPANIED BY MALICE AFORETHOUGHT, THEN THE
22 STATE HAS MET ITS BURDEN OF PROOF. IF YOU ARE NOT CONVINCED
23 THAT ALL OF THOSE ELEMENTS ARE PRESENT THEN THE STATE HAS
24 NOT MET ITS BURDEN OF PROOF IN THAT REGARD.

25 AND NOW, LADIES AND GENTLEMEN, THE DEFENDANT IS ALSO

1 CHARGED WITH POSSESSION OF A WEAPON DURING THE COMMISSION --
2 OF A FIREARM SPECIFICALLY, DURING THE COMMISSION OF A
3 VIOLENT CRIME. OUR LAW MAKES IT ILLEGAL TO POSSESS A
4 FIREARM DURING THE COMMISSION OF VIOLENT CRIME. AND OUR LAW
5 ALSO PROVIDES THAT ASSAULT AND BATTERY WITH INTENT TO KILL
6 AND KIDNAPPING ARE VIOLENT CRIMES UNDER THE LAW. AND SO IN
7 ORDER FOR YOU TO FIND THE DEFENDANT GUILTY OF THIS SEPARATE
8 OFFENSE OF POSSESSING A FIREARM DURING THE COMMISSION OF A
9 VIOLENT CRIME, YOU MUST FIRST FIND THE DEFENDANT GUILTY OF
10 EITHER KIDNAPPING OR ASSAULT AND BATTERY WITH INTENT TO
11 KILL. AND IF YOU FIND THE DEFENDANT IS GUILTY OF KIDNAPPING
12 OR ASSAULT AND BATTERY WITH INTENT TO KILL THEN YOU MUST
13 DETERMINE WHETHER THE STATE HAS PROVEN BEYOND A REASONABLE
14 DOUBT THAT THE DEFENDANT WAS IN POSSESSION OF A FIREARM
15 DURING THE COMMISSION OF THAT VIOLENT CRIME. IF THE STATE
16 IS ABLE TO MET BOTH OF THOSE ELEMENTS OF THE CHARGE OF
17 POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT
18 CRIME, IT HAS MET ITS BURDEN OF PROOF AND WOULD BE ENTITLED
19 TO A VERDICT OF GUILTY. IF THE STATE FAILS IN EITHER OF
20 THOSE ELEMENTS, IT HAS NOT MET THAT BURDEN, AND THE
21 DEFENDANT IS ENTITLED TO A VERDICT OF NOT GUILTY AS TO THAT
22 CHARGE.

23 LADIES AND GENTLEMEN, THE DEFENDANT IS ALSO CHARGED
24 WITH THE CRIME OF KIDNAPPING. KIDNAPPING IS DEFINED IN THE
25 LAW IN THE FOLLOWING MANNER. THE LAW SAYS THAT WHOEVER

1 KNOWINGLY SEIZES OR CONFINES OR INVEIGLES OR DECOYS OR
2 KIDNAPS OR ABDUCTS OR CARRIES AWAY SOMEBODY ELSE BY ANY
3 MEANS WITHOUT AUTHORITY OF LAW, IS GUILTY OF KIDNAPPING. SO
4 THE STATE HAS TO CONVINCE YOU BEYOND A REASONABLE DOUBT THAT
5 THE VICTIM IN THIS CASE WAS KNOWINGLY, UNLAWFULLY SEIZED OR
6 CONFINED OR KIDNAPPED OR ABDUCTED OR CARRIED AWAY BY THE
7 DEFENDANT BY SOME MEANS AND WITHOUT AUTHORITY OF LAW BEFORE
8 YOU CAN CONVICT THE DEFENDANT OF THE CRIME OF KIDNAPPING.
9 THE OFFENSE OF KIDNAPPING LIKE ANY OTHER CRIMINAL OFFENSE
10 HAS SEVERAL ELEMENTS WHICH MAKE IT UP. AND AS I HAVE TOLD
11 YOU ALREADY, THE STATE HAS THE BURDEN OF PROVING EACH OF
12 THESE ELEMENTS BEYOND A REASONABLE DOUBT.

13 THE FIRST ELEMENT THE STATE HAS TO PROVE IS THAT THE
14 VICTIM IN THIS CASE WAS EITHER SEIZED OR CONFINED OR
15 KIDNAPPED OR ABDUCTED OR CARRIED AWAY. AND SECONDLY, THE
16 STATE HAS TO PROVE THAT THAT SEIZURE OR CONFINEMENT OR
17 ABDUCTION OR CARRYING AWAY WAS DONE BY SOME MEANS. AND
18 THIRDLY, THE STATE HAS TO PROVE IT WAS DONE WITHOUT
19 AUTHORITY OF LAW. SO LET ME DEFINE FOR YOU SOME OF THE
20 WORDS THAT I'VE JUST USED IN DESCRIBING FOR YOU THE CRIME OF
21 KIDNAPPING. LET'S START WITH THE WORD SEIZE. SEIZE MEANS
22 TO TAKE HOLD OF SUDDENLY AND FORCIBLY. WHAT DOES THE WORD
23 CONFINEMENT MEAN? THE WORD CONFINEMENT MEANS TO LIMIT OR TO
24 RESTRICT OR TO ENCLOSE WITHIN CONFINES. IT CAN MEAN TO
25 LOCK UP, TO IMPRISON OR TO SHUT UP OR KEEP IN, BUT IT

1 DOESN'T NECESSARILY HAVE TO MEAN THAT.

2 THE WORD KIDNAP MEANS TO REMOVE OR STEAL A PERSON
3 AGAINST HIS WILL BY UNLAWFUL FORCE. AND THE WORD ABDUCT
4 MEANS TO CARRY OFF SURREPTITIOUSLY WITHOUT CONSENT OF
5 SOMEONE. NOW, LADIES AND GENTLEMEN, LET ME TELL YOU IT IS
6 NOT NECESSARY TO PROVE THAT A SEIZURE AND A CONFINEMENT AND
7 A KIDNAPPING AND AN ADDUCTION AND A CARRYING AWAY ALL
8 OCCURRED IT IS SUFFICIENT UNDER THE LAW TO ESTABLISH THIS
9 FIRST ELEMENT IF THE STATE PROVES THAT ONLY ONE OF THOSE
10 THINGS OCCURRED; THAT IS, IF ONLY ONE, EITHER A SEIZURE OR A
11 CONFINEMENT OR A KIDNAPPING OR AN ABDUCTION OR CARRYING
12 AWAY. ANY ONE OF THOSE THINGS IF IT IS PROVEN BEYOND A
13 REASONABLE DOUBT TO HAVE OCCURRED, SATISFIES THAT FIRST
14 ELEMENT.

15 AND THE STATUTE ALSO REQUIRES THAT THE ACT BE DONE
16 UNLAWFULLY. OBVIOUSLY IF SOMETHING IS DONE UNLAWFULLY IT IS
17 DONE CONTRARY TO THE LAW. IT IS ALSO DONE WILLFULLY AND
18 KNOWINGLY AND VOLUNTARILY AND INTENTIONALLY. THE STATE IS
19 ALSO REQUIRED TO PROVE THAT THE PERSON WHO WAS SEIZED OR
20 CONFINED MIGHT HAVE -- THAT THE PERSON THAT WAS SEIZED OR
21 KIDNAPPED WAS DONE BY SOME MEANS. THAT MEANS THERE WAS SOME
22 OBJECT OR SOME METHOD WAS USED, AGENCY OR SOME
23 INSTRUMENTALITY WAS USED TO CARRY OUT THE KIDNAPPING. AND
24 THE LAST ELEMENT THAT THE STATE HAS TO PROVE IS THAT THOSE
25 THINGS WERE DONE WITHOUT AUTHORITY OF LAW. IN OTHER WORDS,

1 IT WAS DONE WITHOUT LEGAL PERMISSION. TO DO SOMETHING
2 WITHOUT AUTHORITY OF LAW IS TO DO SOMETHING WHICH THE LAW
3 DOES NOT ALLOW, WHICH IT DOES NOT PERMIT OR PROVIDE
4 JUSTIFICATION FOR.

5 NOW, LADIES AND GENTLEMEN, I FURTHER TELL YOU THAT THE
6 KIDNAPPING NEED NOT BE DONE FOR ANY PERSONAL OR MONETARY
7 GAIN OR FOR ANY LEGAL PURPOSE. IT CAN BE FOR ANY REASON
8 WHATSOEVER. STATED ANOTHER WAY, IT IS NOT NECESSARY THAT
9 THE KIDNAPPING BE FOR A RANSOM IN ORDER FOR TO IT BE AGAINST
10 THE LAW.

11 I ALSO CHARGE YOU THAT THE INVOLUNTARINESS OR THE
12 COERCION IN CONNECTION WITH THE VICTIM'S ALLEGED KIDNAPPING
13 MUST BE SHOWN BY THE STATE. THE BURDEN OF PROOF IS ALWAYS
14 UPON THE STATE TO PROVE EVERY ELEMENT OF THE OFFENSE CHARGED
15 BEYOND A REASONABLE DOUBT. I REMIND YOU OF THAT AS I DO
16 EACH OF THESE CHARGES. NOW, LADIES AND GENTLEMEN, FINALLY,
17 THE DEFENDANT IN THIS CASE IS CHARGED WITH LYNCHING IN THE
18 SECOND DEGREE. LYNCHING UNDER THE LAW IS DEFINED AS ANY ACT
19 OF VIOLENCE INFLICTED BY A MOB UPON SOMEONE ELSE FROM WHICH
20 DEATH DOES NOT RESULT, CONSTITUTES THE CRIME OF LYNCHING IN
21 THE SECOND DEGREE.

22 NOW, LADIES AND GENTLEMEN, THE ELEMENTS THEN OF
23 LYNCHING IN THE SECOND DEGREE THAT THE STATE HAS TO PROVE
24 BEYOND A REASONABLE DOUBT ARE FIRST OF ALL, THAT THE
25 DEFENDANT AND OTHERS ACTING AS A MOB INFLICTED AN ACT OF

1 VIOLENCE UPON THE BODY OF ANOTHER WHICH DOES NOT -- DID NOT
2 RESULT IN DEATH. NOW, LADIES AND GENTLEMEN, A MOB IS ALSO
3 DESCRIBED VERY SPECIFICALLY BY THE LAW. A MOB IS DEFINED
4 FOR THIS PURPOSE, AS THE ASSEMBLING OF TWO OR MORE PERSONS
5 WITHOUT THE COLOR OR AUTHORITY OF LAW FOR THE PREMEDITATED
6 PURPOSE AND WITH THE PREMEDITATED INTENT OF COMMITTING AN
7 ACT OF VIOLENCE ON SOMEBODY ELSE.

8 AND NOW TO CONSTITUTE A MOB AS DEFINED UNDER THE LAW,
9 THE ASSEMBLING NEED NOT HAVE BEEN FORMED WITH THE
10 PREMEDITATED PURPOSE OF COMMITTING THE ACT OF VIOLENCE ON
11 THE PERSON OF ANOTHER. BUT THE PURPOSE AND THE INTENT CAN
12 BE FORMED AFTER THE PERSONS HAVE ALREADY ASSEMBLED. UNDER
13 THE LAW IT IS PERMISSIBLE FOR YOU TO INFER THAT ALL PERSONS
14 PRESENT ARE MEMBERS OF A MOB WHEN AN ACT OF VIOLENCE IS
15 COMMITTED AND HAVE AIDED AND ABETTED IN THE CRIME ARE GUILTY
16 AS PRINCIPLES. THAT IS AN EVIDENTIARY FACT THAT YOU MAY
17 TAKE INTO ACCOUNT IF YOU CHOOSE TO AND GIVE IT THE WEIGHT
18 THAT YOU THINK IT SHALL RECEIVE ACCORDING TO YOUR VIEW OF
19 THE EVIDENCE. BECAUSE UNDER THE LAW, LADIES AND GENTLEMEN,
20 WHEN TWO OR MORE PERSONS AID AND ENCOURAGE AND ABET OR
21 ASSIST EACH OTHER IN THE COMMISSION OF A CRIME, ALL WHO ARE
22 PRESENT ARE PRINCIPLES AND ARE EQUALLY GUILTY. AND SO WHEN
23 TWO OR MORE PERSONS COMBINE TOGETHER TO COMMIT A CRIME AND
24 THE CRIME IS COMMITTED. ALL OF THOSE WHO ARE PRESENT TO AID
25 AND ABET AND ASSIST IN THE COMMISSION OF THAT CRIME ARE

1 GUILTY. IN OTHER WORDS, THE ACT OF ONE BECOMES THE ACT OF
2 ALL. THE HAND OF ONE BECOMES THE HAND OF ALL.

3 IT MAKES NO DIFFERENCE BY WHOSE IMMEDIATE AGENCY OR
4 HAND THAT CRIME IS CARRIED OUT, ALL ARE PRINCIPLES. HOWEVER
5 I TELL YOU THAT THE MERE PRESENCE OF ONE AT THE SCENE OF A
6 CRIME EVEN WITH THE KNOWLEDGE THAT THE CRIME IS BEING
7 COMMITTED BUT WITHOUT THE INTENT TO AID OR ASSIST OR ABET IN
8 ITS COMMISSION WOULD NOT CONSTITUTE GUILT. AND SO THE
9 BURDEN IS UPON THE STATE TO ESTABLISH BEYOND A REASONABLE
10 DOUBT THAT DEFENDANT IN THIS CASE COMBINED WITH OTHERS AS A
11 MOB AND EACH WAS PRESENT TO AID AND ABET WITH A CRIMINAL
12 INTENT OF COMMITTING THE OFFENSE OF LYNCHING.

13 NOW, LADIES AND GENTLEMEN, ONE OF THE ISSUES IN THIS
14 CASE IS THE IDENTIFICATION OF THE DEFENDANT AS THE PERSON
15 WHO ACTUALLY CARRIED OUT THE CRIME. THE PROSECUTION HAS THE
16 BURDEN OF PROVING IDENTITY BEYOND A REASONABLE DOUBT. AND
17 YOU THE JURY MUST DETERMINE WHETHER THE STATE HAS
18 ESTABLISHED THE IDENTITY OF THE DEFENDANT BEYOND A
19 REASONABLE DOUBT. IF YOU'RE NOT CONVINCED BEYOND A
20 REASONABLE DOUBT THAT THE DEFENDANT WAS THE PERSON WHO
21 COMMITTED THE CRIME YOU MUST FIND HIM NOT GUILTY. AND YOU
22 MUST CONSIDER THE CREDIBILITY OF EACH IDENTIFICATION WITNESS
23 IN THE SAME WAY AND THE SAME MANNER AS ANY OTHER WITNESS.
24 YOU SHOULD CONSIDER THE CAPACITY AND THE OPPORTUNITY TO MAKE
25 A RELIABLE OBSERVATION IN THE MATTER COVERED IN HIS

1 TESTIMONY. AND IF AFTER CONSIDERING THE TESTIMONY YOU HAVE
2 A REASONABLE DOUBT AS TO THE ACCURACY OF THE IDENTIFICATION,
3 YOU MUST FIND THE DEFENDANT NOT GUILTY.

4 NOW, LADIES AND GENTLEMEN, THERE ARE TWO TYPES OF
5 EVIDENCE WHICH ARE GENERALLY PRESENTED IN THE COURSE OF A
6 TRIAL. THERE IS DIRECT EVIDENCE AND CIRCUMSTANTIAL
7 EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO
8 CLAIMS TO HAVE ACTUAL KNOWLEDGE OF THE FACTS; SUCH AS, AN
9 EYE WITNESS. CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF
10 FACTS AND CIRCUMSTANCES WHICH INDICATE THE EXISTENCE OF
11 ANOTHER FACT. NOW THE LAW MAKES ABSOLUTELY NO DISTINCTION
12 BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR
13 CIRCUMSTANTIAL EVIDENCE. AND IT DOES NOT REQUIRE A GREATER
14 DEGREE OF CERTAINTY OF CIRCUMSTANTIAL EVIDENCE THAN IT DOES
15 OF DIRECT EVIDENCE. BECAUSE CIRCUMSTANTIAL EVIDENCE IS GOOD
16 EVIDENCE SO LONG AS IT MEETS THE TEST OF STRICT PROOF.

17 BY WAY OF EXAMPLE, LADIES AND GENTLEMEN, LET ME DEFINE
18 FOR YOU BY WAY OF EXAMPLE THE DISTINCTION THAT I USE
19 SOMETIMES TO DRAW THE CONCLUSION BETWEEN WHAT IS DIRECT AND
20 WHAT IS CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS
21 EVIDENCE THAT APPEALS TO OUR SENSES. IT IS SOMETHING THAT
22 SOMEONE SEES OR SMELLS OR HEARS OR TOUCHES. CIRCUMSTANTIAL
23 EVIDENCE IS EVIDENCE THAT APPLIES TO THOSE SENSES AND TO
24 THOSE CHAIN OF CIRCUMSTANCES THAT LEADS TO THE CONCLUSION OF
25 ANOTHER FACT. FOR EXAMPLE, LET'S SUPPOSE THAT THIS WEEKEND

1. WHEN THE WEATHER GETS COLD YOU GO TO SLEEP ONE NIGHT AND
2. BEFORE YOU DO, YOU LOOK OUT ACROSS YOUR FRONT YARD AND ALL
3. YOU SEE IS JUST FRONT LAWN OUT THERE. AND YOU WAKE UP THE
4. NEXT MORNING AND YOU LOOK ON THAT FRONT LAWN AND YOU SEE IT
5. IS COVERED WITH SNOW. AND ACROSS THAT SNOW YOU SEE
6. FOOTPRINTS LEADING UP TO YOUR FRONT DOOR.

7. NOW WHAT CAN YOU GATHER CIRCUMSTANTIALY FROM WHAT YOU
8. SAW THE NEXT MORNING? WELL ONE OF THE THINGS YOU CAN GATHER
9. IS THAT IT SNOWED AFTER YOU WENT TO BED LAST NIGHT.
10. YOU DIDN'T SEE IT SNOW. YOU DIDN'T SEE A SINGLE FLAKE FALL.
11. BUT YOU KNOW FROM WHAT YOU LOOKED AT THE NEXT MORNING THAT
12. IT SNOWED AFTER YOU SENT TO SLEEP. AND ANOTHER THING THAT
13. YOU CAN GATHER IS THAT SOME TIME AFTER IT SNOWED SOMEBODY
14. CAME ACROSS YOUR FRONT LAWN UP TO YOUR FRONT DOOR. YOU
15. DIDN'T SEE THEM. YOU DON'T KNOW WHO THEY WERE. BUT YOU
16. KNOW THAT AFTER IT SNOWED THEY CAME THERE BECAUSE OF WHAT
17. YOU SAW THE NEXT MORNING. AND THAT'S THE WAY THAT WE USE
18. FACTS AND CIRCUMSTANCES AND APPLY YOUR COMMON SENSE TO THOSE
19. THINGS TO INDICATE THE EXISTENCE OF ANOTHER PARTICULAR FACT.

20. NOW TO THE EXTENT THAT THE STATE RELIES UPON
21. CIRCUMSTANTIAL EVIDENCE TO PROVE ITS CASE, NOT ONLY MUST THE
22. CIRCUMSTANCES THEMSELVES BE PROVEN, BUT THEY MUST POINT
23. CONCLUSIVELY TO THE GUILT OF THE ACCUSED. THEY MUST BE
24. WHOLLY AND IN EVERY PARTICULAR PERFECTLY CONSISTENT WITH
25. EACH OTHER AND THEY MUST FURTHER BE ABSOLUTELY INCONSISTENT

1 WITH ANY OTHER REASONABLE EXPLANATION THAN THE GUILT OF THE
2 ACCUSED. EVERY CIRCUMSTANCE WHICH IS RELIED UPON BY THE
3 PROSECUTION AS MATERIAL MUST BE BROUGHT TO THE TEST OF
4 STRICT PROOF. AND ALL OF THE FACTS PROVEN MUST BE
5 CONSISTENT WITH EACH OTHER AND TAKEN TOGETHER SHOULD BE OF A
6 CONCLUSIVE NATURE AND TENDENCY PRODUCING A REASONABLE
7 CERTAINTY THAT THE DEFENDANT AND NO ONE ELSE COMMITTED THE
8 OFFENSE CHARGED. IT IS NOT ENOUGH THAT THE FACTS CREATE A
9 POSSIBILITY OF GUILT EVEN A STRONG ONE. AND THEREFORE IF
10 ASSUMING THE FACTS TO BE TRUE THERE IS ANY OTHER REASONABLE
11 EXPLANATION WHICH DOES NOT INCLUDE THE GUILT OF THE
12 DEFENDANT THEN THE PROOF FAILED. AND THE REASON FOR THIS IS
13 THAT PRESUMPTIONS OF LAW ARE INDEPENDENT OF EVIDENCE AND ARE
14 IN FAVOR OF INNOCENCE. AND EVERY PERSON IS PRESUMED TO BE
15 INNOCENT UNTIL PROVEN TO BE GUILTY. IT IS NOT ENOUGH TO
16 ESTABLISH A PROBABILITY OF GUILT ARISING FROM THE DOCTRINE
17 OF CHANCES THAT A FACT CHARGED IS LIKELY TO BE TRUE IN ORDER
18 TO MET THE BURDEN OF PROOF.

19 NOW, LADIES AND GENTLEMEN, LET ME TELL YOU THAT YOU ARE
20 NOT PARTISANS OR ADVOCATES FOR EITHER SIDE IN THIS CASE.
21 YOU DON'T SERVE AS JURORS TO PUNISH YOUR ENEMIES NOR TO
22 REWARD YOUR FRIENDS. YOU HAVE BEEN CHOSEN BY BOTH SIDES IN
23 THIS CASE TO BE FAIR AND IMPARTIAL JURORS. IT IS YOUR DUTY
24 THEN BY YOUR JOINT DELIBERATIONS TO DETERMINE THE TRUTH OF
25 THIS CASE GIVING TO THE DEFENDANT THE BENEFIT OF EVERY

1 REASONABLE DOUBT ON EACH AND EVERY ISSUE. AND THEN TO THE
2 FACTS WHICH YOU DETERMINE TO BE TRUE, YOU TAKE AND APPLY THE
3 LAW WHICH I HAVE JUST GIVEN YOU AND THUS ARRIVE AT A VERDICT
4 WHICH SPEAKS THE TRUTH OF THIS CASE. THAT'S WHAT THE WORD
5 VERDICT MEANS. IT COMES FROM A LATIN PHRASE WHICH MEANS
6 TRUTHFUL SAYING.

7 ONCE YOU HAVE DONE THOSE THINGS YOU WILL HAVE SATISFIED
8 THE OATH THAT YOU TOOK BEFORE YOU BEGIN THIS TRIAL TO WELL
9 AND TRULY TRY THIS CASE AND TO RENDER A TRUE VERDICT
10 ACCORDING TO THE EVIDENCE SO HELP YOU GOD. WE'VE GOT EVERY
11 RIGHT TO BELIEVE THAT YOU WILL DO ALL THAT AND THAT YOU WILL
12 DO NOTHING LESS THAN THAT.

13 NOW, MADAM FORELADY AND LADIES AND GENTLEMEN OF THE
14 JURY, I AM NOW GOING TO INSTRUCT YOU AS TO THE FORMS OF THE
15 VERDICT THAT APPLY IN THIS CASE. I HAVE WRITTEN THEM DOWN
16 ON A SHEET THAT I AM GOING TO GIVE YOU. AND THE ORDER THAT
17 I HAVE PUT THEM DOWN ON THIS SHEET OF PAPER DOESN'T MEAN
18 ANYTHING AT ALL. SO YOU'RE NOT TO DRAW ANY INFERENCE OR
19 REACH ANY CONCLUSION WHATSOEVER FROM THE ORDER THAT I HAVE
20 WRITTEN THESE THINGS DOWN IN. I SIMPLY WRITE THEM IN THE
21 ORDER THAT I FIND EASIEST TO EXPLAIN.

22 THERE ARE FOUR COUNTS OF THE INDICTMENT; THEREFORE,
23 THERE WILL BE FOUR VERDICTS. YOU WILL WRITE A SEPARATE
24 VERDICT FOR EACH OF THE FOUR COUNTS OF THE INDICTMENT. YOUR
25 VERDICT ON ONE COUNT OF THE INDICTMENT DOES NOT NECESSARILY

1 DETERMINE YOUR VERDICT ON ANOTHER COUNT OF THE INDICTMENT.
2 THE DEFENDANT MIGHT BE ACQUITTED OR CONVICTED OF ANY OR ALL
3 OF THE CHARGES ON THE INDICTMENT ACCORDING TO YOUR VIEW OF
4 THE EVIDENCE AND THE LAW THAT I HAVE JUST GIVEN YOU. THE
5 VERDICT FORM AS TO EACH OF THE FOUR COUNTS OF THE INDICTMENT
6 IS THE SAME. WE THE JURY FIND THE DEFENDANT, UNANIMOUSLY
7 GUILTY OF THE CRIMES CHARGED. AND I HAVE LISTED THOSE
8 CRIMES CHARGED: GUILTY OF ASSAULT AND BATTERY WITH INTENT TO
9 KILL, GUILTY OF POSSESSION OF A WEAPON DURING THE COMMISSION
10 OF A VIOLENT CRIME, GUILTY OF LYNCHING IN THE SECOND DEGREE,
11 GUILTY OF KIDNAPPING.

12 YOU WILL USE THAT VERDICT FORM AS TO ANY OF THOSE FOUR
13 OFFENSES OR ALL OF THOSE FOUR OFFENSES IF YOU FIND THAT THE
14 STATE HAS SATISFIED ITS BURDEN OF PROOF. AND IF THAT IS
15 YOUR VERDICT AS TO ANY OR ALL OF THOSE CHARGES, LADIES AND
16 GENTLEMEN, AND, MADAM FORELADY, YOU WILL INDICATE IT BY
17 PUTTING AN X OR A CHECK MARK TO THE LEFT OF THAT VERDICT
18 FORM IN THE SPACE THAT YOU SEE WE HAVE PROVIDED FOR YOU.
19 THE OTHER POSSIBLE VERDICT FORMS AS TO EACH OF THOSE FOUR
20 COUNTS IS, WE THE JURY BY A UNANIMOUS CONSENT FIND THE
21 DEFENDANT NOT GUILTY OF THE CRIME CHARGED. NOT GUILTY OF
22 ASSAULT AND BATTERY WITH INTENT TO KILL, NOT GUILTY OF
23 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
24 CRIME. NOT GUILTY OF LYNCHING IN THE SECOND DEGREE, NOT
25 GUILTY OF KIDNAPPING.

1 YOU WILL USE THAT FOR ANY AND ALL THE CHARGES FOR WHICH
2 YOU FIND THAT THE STATE HAS FAILED TO MEET ITS BURDEN OF
3 PROOF AS I HAVE DEFINED THAT YOU. AND LIKEWISE, MADAM
4 FORELADY, YOU WILL INDICATE THE VERDICT FORM BY ANY OR ALL
5 THE CHARGES THAT THE JURY FINDS THE STATE HAS FAILED TO MEET
6 ITS BURDEN BY INDICATING THAT BY PUTTING AN X OR A CHECK
7 MARK TO THE LEFT OF THAT VERDICT FORM.

8 NOW I HAVE SHOWN THE FORELADY THE VERDICT FORM, LADIES
9 AND GENTLEMEN, BECAUSE SHE IS THE PERSON WHO HAS GOT TO FILL
10 IT OUT. BUT THIS IS NOT GOING TO BE HER VERDICT. IT'S
11 GOING TO BE THE VERDICTS OF ALL OF YOU, ALL 12 OF YOU HAVE
12 TO AGREE AS TO WHAT EACH OF THESE VERDICTS WILL BE BEFORE
13 THE FORELADY IS AUTHORIZED TO WRITE THAT VERDICT FORM OR TO
14 SIGN IT. BUT PLEASE, MADAM FORELADY, MAKE SURE ALL 12 OF
15 YOUR NUMBER DO IT BEFORE YOU FILL OUT THE VERDICT FORM AND
16 BEFORE YOU SIGN IT.

17 NOW, LADIES AND GENTLEMEN, I AM GOING TO SEND YOU THE
18 JURY ROOM FOR A FEW MOMENTS. I AM GOING TO ASK YOU TO WAIT
19 JUST A FEW MOMENTS, PLEASE, BEFORE YOU BEGIN YOUR
20 DELIBERATIONS. I HAVE GOT TO TALK TO THE LAWYERS TO SEE IF
21 I'VE LEFT OUT ANYTHING OUT OF MY INSTRUCTIONS ON THE LAW.
22 AND IF I HAVE, OR IF I'M MISSTATED SOMETHING, I WILL HAVE TO
23 BRING YOU BACK OUT HERE TO CORRECT IT. BUT IF I DON'T HAVE
24 TO BRING YOU BACK OUT, WE WILL SEND IN THE ITEMS OF
25 EVIDENCE. ONCE THE ITEMS OF EVIDENCE ARE BROUGHT IN TO YOU,

1 THAT WILL BE YOUR SIGNAL TO BEGIN YOUR DELIBERATIONS.
2 PLEASE DO NOT START YOUR DELIBERATIONS UNTIL THE ITEMS OF
3 EVIDENCE ARE BROUGHT IN. ONCE THE ITEMS OF EVIDENCE HAVE
4 BEEN DELIVERED THEN, MADAM FORELADY, YOU WILL BEGIN YOUR
5 DELIBERATIONS AND YOU WILL DELIBERATE UNTIL SUCH TIME AS YOU
6 HAVE REACHED A VERDICT. AT WHICH TIME YOU WILL FILL OUT THE
7 FORM AND SIGN IT AND KNOCK ON THE DOOR AND THE BAILIFF WILL
8 THEN BRING YOU BACK OUT HERE TO RECEIVE YOUR VERDICT.

9 NOW WHILE YOU ARE DELIBERATING THIS CASE IF YOU HAVE
10 ANY QUESTIONS THAT YOU WOULD LIKE FOR US TO TRY TO ANSWER,
11 AND I DON'T SUGGEST THAT YOU HAVE ANY QUESTIONS, AND I AM
12 NOT ENCOURAGING YOU TO HAVE QUESTIONS. BUT IF YOU DO HAVE
13 QUESTIONS, THERE IS A SET PROCEDURE THAT WE HAVE TO DEAL
14 WITH. YOU HAVE TO WRITE THOSE QUESTIONS DOWN FIRST, AND
15 SEND THEM OUT FOR US IN WRITTEN FORM TO DEAL WITH OUTSIDE OF
16 YOUR PRESENCE. AND THEN BRING YOU OUT TO DEAL WITH THOSE
17 QUESTIONS IN YOUR PRESENCE. SOME QUESTIONS WE MIGHT NOT
18 KNOW THE ANSWER. SOME QUESTIONS WE MIGHT NOT BE ALLOWED TO
19 ANSWER. BUT NONETHELESS IF YOU HAVE A QUESTION YOU WOULD
20 LIKE FOR US TO TRY TO ANSWER, THAT'S THE WAY WE HAVE TO DEAL
21 WITH IT. MADAM FORELADY AND LADIES AND GENTLEMEN, IF YOU
22 WILL GO TO YOUR JURY ROOM.

23 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
24 PRESENCE OF THE JURY.)

25 THE COURT: MR. CONNER, ANY EXCEPTIONS OR REQUESTS FOR

1 ADDITIONAL CHARGES FROM THE STATE?

2 MR. CONNER: NONE FROM US, YOUR HONOR.

3 THE COURT: THANK YOU. MS. FERRARI, FROM THE DEFENSE?

4 MS. FERRARI: NO, SIR, YOUR HONOR.

5 THE COURT: YOU CAN TAKE IN THE ITEMS OF EVIDENCE AND
6 INSTRUCT THEM THEY CAN BEGIN DELIBERATING.

7 (THEREUPON, AT 12:27 P.M. JURY DELIBERATES.)

8 (THEREUPON, THE ALTERNATE IS EXCUSED.)

9 (THEREUPON, AT 2:02 P.M. THE JURY HAS A QUESTION.)

10 THE COURT: LADIES AND GENTLEMEN, WE HAVE NOTE FROM THE
11 JURY THAT CAME SOME TIME SHORTLY AFTER THE MEAL WAS HERE AND
12 SO WE WAITED UNTIL THEY HAD CHANCE TO EAT AND YOU DID TOO..
13 HERE IS THE QUESTION, REGARDING THE LAW, CAN A PERSON BE
14 GUILTY OF ASSAULT AND BATTERY WITH THE INTENT TO KILL IF HE
15 IS PRESENT DURING THE CRIME AS STATED FOR THE DEFINITION OF
16 LYNCHING, NOT BY HIS HAND, BUT GUILTY BY BEING THERE? SO
17 WHAT THEY'RE ASKING IS WHETHER OR NOT IT WOULD BE POSSIBLE
18 FOR SOMEONE TO BE GUILTY FOR SOME CRIME OTHER THAN THE
19 LYNCHING CRIME. UNDER THE HAND OF ONE IS THE HAND OF ALL
20 THAT THEORY. AS IT SAYS NOT BY HIS HAND, BUT GUILTY BY
21 BEING THERE. AND THE ANSWER TO THAT QUESTION IS YES. BUT I
22 WILL RECHARGE THEM THE LAW OF AIDING AND ABETTING; THAT IS,
23 THE HAND OF ONE IN ORDER TO GIVE BALANCE TO IT, BECAUSE
24 THERE IS THE PROVISION IN THAT CHARGE THAT SAYS MERE
25 PRESENCE AT THE SCENE OF COURSE IN AND OF ITSELF DOES NOT

1 CONSTITUTE GUILT. ARE BOTH SIDES NOW READY FOR THE JURY?

2 MR. CONNER: WE ARE, YOUR HONOR.

3 MS. FERRARI: YES, SIR, YOUR HONOR.

4 THE COURT: GOOD. BRING US THE JURY, PLEASE, SIR.

5 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
6 PRESENCE OF THE JURY.)

7 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE
8 RECEIVED YOUR QUESTION SOME TIME AGO, AND IT WASN'T REALLY
9 ALL THAT HARD OF A QUESTION. IT DIDN'T TAKE US THIS LONG TO
10 COME UP WITH THE ANSWER. AND WE REALIZED YOUR FOOD HAD JUST
11 COME. AND SO WE GAVE YOU A CHANCE TO FINISH YOUR LUNCH AND
12 OURS AS WELL BEFORE I BROUGHT YOU OUT TO ANSWER THIS
13 QUESTION. BEFORE I GET TO THE ANSWER TO THE QUESTION WHICH
14 IS RATHER SUCCINCT, AND IT WON'T REALLY TAKE US THAT LONG.

15 NOW, LADIES AND GENTLEMEN OF THE JURY, THE SHORT ANSWER
16 TO YOUR QUESTION: CAN A PERSON BE GUILTY OF ASSAULT AND
17 BATTERY WITH THE INTENT TO KILL IF HE IS PRESENT DURING THE
18 CRIME AS STATED FOR THE DEFINITION OF LYNCHING, NOT HIS HAND
19 BUT GUILTY BY BEING THERE. THE SHORT ANSWER TO THAT
20 QUESTION IS YES. BUT THERE IS MORE TO IT AS THERE ALWAYS IS
21 IN THE LAW. AND SO THE COMPLETE INSTRUCTIONS THAT YOU NEED
22 TO KEEP IN MIND, I WILL REREAD TO YOU ON THAT PARTICULAR
23 ASPECT OF THE LAW. WHEN TWO OR MORE PERSONS AID OR
24 ENCOURAGE OR ABET OR ASSIST EACH OTHER IN THE COMMISSION OF
25 A CRIME, AND IT IS NOT JUST LYNCHING. IT CAN BE ASSAULT

1 AND BATTERY WITH INTENT TO KILL, IT CAN BE KIDNAPPING, IT
2 CAN BE ANY OF THE OFFENSES NAMED IN THIS INDICTMENT AND ANY
3 OTHER OFFENSE ALMOST. WHEN TWO OR MORE PERSONS AID,
4 ENCOURAGE AND ASSIST AND ABET EACH OTHER IN THE COMMISSION
5 OF A CRIME, ALL WHO ARE PRESENT ARE PRINCIPLES AND EQUALLY
6 GUILTY.

7 WHEN TWO OR MORE PERSONS COMBINE TOGETHER TO COMMIT A
8 CRIME, AND THE CRIME IS COMMITTED, ALL OF THOSE WHO ARE
9 PRESENT TO AID AND ABET AND ASSIST IN THE COMMISSION OF A
10 CRIME ARE GUILTY. THE ACT OF ONE BECOMES THE ACT OF ALL.
11 THE HAND OF ONE BECOMES THE HAND OF ALL. IT MAKES NO
12 DIFFERENCE BY WHOSE IMMEDIATE AGENCY OR WHOSE IMMEDIATE HAND
13 THE CRIME IS COMMITTED, ALL ARE PRINCIPLES. HOWEVER, MERE
14 PRESENCE AT THE SCENE OF THE CRIME EVEN WITH THE KNOWLEDGE
15 OF THE COMMISSION OF THE CRIME BUT WITHOUT AN INTENT TO AID
16 OR ABET OR ASSIST IN ITS COMMISSION WOULD NOT CONSTITUTE
17 GUILT. AND SO THE BURDEN IS UPON THE STATE THEN TO
18 ESTABLISH BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS
19 THERE, WAS PRESENT, AND THAT HE OR THEY WITH SOMEONE ELSE
20 WERE THERE WITH A CRIMINAL INTENT; THAT IS, TO SAY WITH THE
21 INTENT TO AID, ENCOURAGE AND ABET EACH OTHER OR ANOTHER IN
22 COMMITTING THE OFFENSE OF ASSAULT AND BATTERY WITH INTENT TO
23 KILL OR KIDNAPPING OR LYNCHING IN THE SECOND DEGREE. I HOPE
24 THAT ANSWERS THE QUESTION, MADAM FORELADY. YOU STATED IT
25 VERY CLEARLY AND VERY SUCCINCTLY. AND I HOPE MY ANSWER HAS

1 BEEN JUST AS SUCCINCT. IF IT HAS NOT BEEN, IF YOU WILL LET
2 ME KNOW AND WE'LL TRY TO DO IT. THANK YOU. IF YOU WILL
3 RETIRE TO YOUR JURY ROOM, CONTINUE DELIBERATIONS PLEASE.

4 (THEREUPON, THE JURY RETIRES TO THE JURY ROOM AND
5 COMMENCES DELIBERATIONS.)

6 THE COURT: ANY ADDITIONS OR EXCEPTIONS TO THE CHARGE
7 FROM THE STATE?

8 MR: CONNER: NO, YOUR HONOR.

9 THE COURT: MS. FERRARI, FROM THE DEFENSE?

10 MS. FERRARI: NO, SIR, YOUR HONOR.

11 THE COURT: WE WILL STAND AT EASE THEN, FOLKS, UNTIL WE
12 HEAR FROM THE JURY.

13 (THEREUPON, AT 2:47 P.M. THE JURY REACHED A VERDICT.)

14 THE COURT: MR. CONNER, AND, MS. FERRARI, ARE BOTH THE
15 STATE AND THE DEFENSE READY TO RECEIVE THE VERDICT?

16 MR. CONNER: WE ARE, YOUR HONOR.

17 MS. FERRARI: YES, SIR, YOUR HONOR.

18 THE COURT: THANK YOU. FOLKS, THE VERDICTS WILL BE
19 ANNOUNCED SHORTLY. NONE OF US AT THIS POINT KNOW WHAT THE
20 VERDICTS ARE GOING TO BE. OBVIOUSLY, THERE IS GOING TO BE
21 EITHER DISAPPOINTMENT OR RELIEF DEPENDING UPON YOUR POSITION
22 IN THIS TRIAL. THOSE OF YOU WHO HAVE AN INTEREST IN THIS
23 TRIAL, I URGE YOU PLEASE NOT TO HAVE ANY OUTBURSTS OR ANY
24 OUTWARD SHOW OF EMOTIONS WHEN THE VERDICT IS ANNOUNCED.
25 IF YOU DON'T THINK YOU WILL BE ABLE TO CONTROL YOUR EMOTIONS

1 AS THE VERDICT IS ANNOUNCED, I'LL GIVE YOU A CHANCE TO LEAVE
2 THE COURTROOM AT THIS TIME. IF YOU REMAIN IN THE COURTROOM,
3 I EXPECT YOU TO ABIDE BY THOSE INSTRUCTIONS.

4 THANK YOU. BRING US THE JURY, PLEASE.

5 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
6 PRESENCE OF THE JURY.)

7 THE COURT: MR. CLERK, YOU CAN RECEIVE THE VERDICT.

8 THE CLERK: MADAM CLERK, HAVE YOU REACHED A VERDICT?

9 THE COURT: YOU DON'T HAVE TO ANNOUNCE IT. JUST LET
10 US KNOW IF YOU HAVE REACHED IT.

11 THE FORELADY: CAN WE GO BACK OUT FOR A MINUTE?

12 THE COURT: YES, MA'AM, YOU CAN GO BACK TO YOUR JURY
13 ROOM.

14 (THEREUPON, THE JURORS RETURN TO THE JURY ROOM AND
15 COMMENCE DELIBERATIONS.)

16 THE COURT: THE FORELADY HAS INDICATED THEY HAVE
17 REACHED A VERDICT. YOU MAY BRING THE JURY.

18 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
19 PRESENCE OF THE JURY.)

20 THE COURT: MADAM FORELADY, HAVE YOU REACHED A VERDICT
21 IN CONNECTION WITH THIS CASE?

22 THE FORELADY: YES, SIR.

23 THE COURT: IS IT UNANIMOUS?

24 THE FORELADY: YES, SIR, IT IS.

25 THE COURT: YOU PUBLISH THE VERDICT.

1 THE CLERK: CASE NO. 2001-GS-43-283. THE STATE OF
2 SOUTH CAROLINA VERSUS CASEY BERNARD STUCKEY, WE THE JURY BY
3 A UNANIMOUS CONSENT FIND THE DEFENDANT GUILTY OF ASSAULT AND
4 BATTERY WITH INTENT TO KILL.

5 THE COURT: NO, SIR.

6 THE CLERK: NO, SIR. EXCUSE ME. NOT GUILTY OF ASSAULT
7 AND BATTERY WITH INTENT TO KILL. AS TO COUNT 2, GUILTY OF
8 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
9 CRIME, NOT GUILTY. AS TO COUNT 3, WE THE JURY BY A
10 UNANIMOUS CONSENT FIND THE DEFENDANT GUILTY OF LYNCHING IN
11 THE SECOND DEGREE. AS TO COUNT 4, WE THE JURY BY UNANIMOUS
12 CONSENT FIND THE DEFENDANT GUILTY OF KIDNAPPING. SIGNED
13 LANNA BETHEA, FOREPERSON. DATED NOVEMBER 12TH 2003. IF
14 THIS BE YOUR VERDICT SO SAY YOU ALL BY RAISING YOUR RIGHT
15 HAND.

16 (THEREUPON, ALL THE JURORS AFFIRM.)

17 THE COURT: LADIES AND GENTLEMEN, THE VERDICT AS
18 INITIALLY RECORDED UNDER COUNT 1 HAD BEEN MARKED GUILTY OF
19 ASSAULT AND BATTERY WITH INTENT TO KILL. THE FORELADY HAD
20 STRICKEN THAT AND INITIALED THAT CHANGE AND WAS PROBABLY THE
21 REASON THEY HAD TO GO BACK ACROSS THE HALL A MOMENT, IS THAT
22 RIGHT?

23 THE FORELADY: YES, SIR.

24 THE COURT: SO THAT THE VERDICTS NOW AS TO COUNT 1,
25 ASSAULT AND BATTERY WITH INTENT TO KILL, THE VERDICT IS NOT

1 GUILTY. AND THAT COUNT 2, POSSESSION OF A WEAPON DURING THE
2 COMMISSION OF A VIOLENT CRIME THE VERDICT IS NOT GUILTY. AS
3 TO COUNT 3 LYNCHING IN THE SECOND DEGREE, THE VERDICT IS
4 GUILTY. COUNT 4, KIDNAPPING, THE VERDICT IS GUILTY. MADAM
5 FORELADY, IF I COULD GET YOU TO SIGN THE BOTTOM OF PAGE 1 AS
6 WELL, SINCE THERE IS NOT A SIGNATURE LINE THERE. IT WENT
7 OVER TO THE SECOND. IF I COULD GET YOU TO SIGN THAT PAGE AS
8 WELL, PLEASE, MA'AM.

9 THANK YOU. MR. CLERK, IF YOU WILL NOW POLL THE JURY
10 PLEASE. LADIES AND GENTLEMEN OF THE JURY, THE CLERK IS NOW
11 GOING TO POLL YOU. THAT MEANS HE IS GOING TO CALL YOUR
12 NAMES INDIVIDUALLY. AND AS YOUR NAMES ARE CALLED
13 INDIVIDUALLY IF YOU WILL STAND IN PLACE RIGHT WHERE YOU ARE.
14 AND HE WILL ASK YOU, WERE THESE YOUR VERDICTS AND ARE THEY
15 STILL YOUR VERDICTS. AND IF YOU WILL GIVE HIM WHATEVER THE
16 APPROPRIATE ANSWER IS TO THOSE QUESTIONS. THANK YOU.
17 MR. CLERK.

18 THE CLERK: ROBERT ROGERS, IS THIS YOUR VERDICT AND
19 STILL YOUR VERDICT?

20 MR. ROBERTS: YES, SIR.

21 THE CLERK: THANK YOU. KENNETH PURVIS,---

22 MR. PURVIS: YES, SIR.

23 THE COURT: ---IS THIS YOUR VERDICT AND STILL YOUR
24 VERDICT?

25 MR. PURVIS: YES, SIR.

1 THE COURT: CHRISTIAN CRIBB, IS THIS YOUR VERDICT AND
2 STILL YOUR VERDICT?

3 MR. CRIBB: YES, SIR.

4 THE CLERK: THANK YOU. ROSA LEE WILEY,---

5 MS. WILEY: YES, SIR.

6 THE CLERK: ---IS THIS YOUR VERDICT AND STILL YOUR
7 VERDICT?

8 MS. WILEY: YES, SIR.

9 THE CLERK: THANK YOU. HENRY OAKES, IS THIS YOUR
10 VERDICT AND STILL YOUR VERDICT?

11 MR. OAKES: YES, SIR.

12 THE CLERK: MARY BRANCH, IS THIS YOUR VERDICT AND STILL
13 YOUR VERDICT?

14 MS. BRANCH: YES.

15 THE CLERK: MABEL ADAMS, IS THIS YOUR VERDICT AND STILL
16 YOUR VERDICT?

17 MS. ADAMS: YES.

18 THE CLERK: BRYON BENDENBAUGH, IS THIS YOUR VEHICLE AND
19 STILL YOUR VERDICT?

20 MR. BENDENBAUGH: YES, SIR.

21 THE CLERK: MELISSA JEFFERSON, IS THIS YOUR VERDICT AND
22 STILL YOUR VERDICT?

23 MS. JEFFERSON: YES, SIR.

24 THE CLERK: NATASHA FULLARD, IS THIS YOUR VERDICT AND
25 STILL YOUR VERDICT?

1 MS. FULLARD: YES, SIR.

2 THE CLERK: ALEXIS ADAMS, IS THIS YOUR VERDICT AND
3 STILL YOUR VERDICT?

4 MS. ADAMS: YES, SIR.

5 THE CLERK: LANNA BETHEA, IS THIS YOUR VERDICT AND
6 STILL YOUR VERDICT?

7 MS. BETHEA: YES.

8 THE CLERK: THANK YOU. YOUR HONOR, THE JURY HAS BEEN
9 POLLED AND THE JURY STANDS.

10 THE COURT: THANK YOU, SIR. IS THERE ANYTHING FURTHER
11 BEFORE THIS JURY IS DISMISSED FOR THE DAY FROM EITHER THE
12 STATE OR THE DEFENSE? MR. CONNER?

13 MR. CONNER: NOTHING FURTHER AT THIS POINT, YOUR HONOR.
14 MS. FERRARI?

15 MS. FERRARI: NOT AS FAR AS THE JURY IS CONCERNED, YOUR
16 HONOR.

17 THE COURT: THANK YOU. LADIES AND GENTLEMEN, I WANT TO
18 THANK YOU FOR YOUR SERVICE IN THIS PARTICULAR TRIAL. AND
19 FOR THE ATTENTION THAT YOU HAVE GIVEN TO THE TRIAL. AND TO
20 THE DELIBERATIONS THAT YOU'VE ENGAGED IN BEFORE YOU REACHED
21 A VERDICT. OBVIOUSLY YOU DID NOT RUSH TO JUDGMENT IN THIS
22 CASE. YOU HAVE THOUGHTFULLY DELIBERATED THESE ISSUES, AND
23 YOU ASKED QUESTIONS THAT ARE RELEVANT TO THE ISSUES. I
24 APPRECIATE THAT. I NEVER COMMEND OR CRITICIZE A JURY FOR
25 THE VERDICTS THEY REACH. THOSE MATTERS ARE ENTIRELY WITHIN

1 YOUR PROVINCE AND I AM GLAD YOU ARE THE ONES THAT HAVE TO
2 MAKE THOSE DIFFICULT DECISIONS. I SIMPLY COMMENT UPON THE
3 QUALITY OF YOUR SERVICE, YOUR ATTENTION, YOUR PROMPTNESS,
4 AND YOUR THOUGHTFULNESS THROUGHOUT THIS TRIAL. AND YOU HAVE
5 CERTAINLY MET AND EXCEEDED ANYONE'S EXPECTATIONS IN THAT
6 REGARD.

7 LADIES AND GENTLEMEN, YOU ARE NOW FREE TO DISCUSS THIS
8 CASE AS YOU ARE RELEASED TODAY FROM FURTHER JURY SERVICE IN
9 CONNECTION WITH THIS CASE. YOU CAN DISCUSS IT WITH ANYBODY
10 YOU WANT TO IF YOU WANT TO. AND SO IF ANYONE SHOULD ASK
11 YOU ABOUT THIS CASE AND IF YOU WANT TO TALK WITH THEM ABOUT
12 IT, YOU CAN. BUT IF YOU DON'T WANT TO TALK WITH THEM ABOUT
13 IT, YOU DON'T HAVE TO. ALL YOU'VE GOT TO DO IS TELL THEM
14 YOU DON'T CARE TO DISCUSS IT. AND IF THEY CONTINUE IN THEIR
15 EFFORTS TO TALK TO YOU AFTER YOU HAVE TOLD THEM THAT, THE
16 SAME INSTRUCTIONS WHICH I GIVE YOU EARLIER ABOUT THAT SORT
17 OF THING STILL APPLIES. IF THEY PERSIST IN THEIR EFFORTS TO
18 TALK WITH YOU ABOUT THIS CASE AFTER YOU HAVE MADE THAT PLAIN
19 TO THEM, PLEASE FIND OUT WHO THEY ARE AND LET THE CLERK'S
20 OFFICE KNOW AND THEY WILL GET IN TOUCH WITH ME AND WE'LL
21 RESOLVE THAT MATTER FOR YOU.

22 BECAUSE ULTIMATELY, LADIES AND GENTLEMEN, YOU DON'T
23 HAVE TO ANSWER TO A SOLE IN THIS WORLD FOR THE VERDICT YOU
24 REACHED IN THIS CASE EXCEPT YOURSELVES AND YOUR OWN
25 CONSCIENCE. AND I CAN TELL YOU BECAUSE I HAVE HEARD

1 EVERYTHING IN THIS CASE THAT YOU HAVE HEARD; THAT YOU DON'T
2 HAVE ANY NEED TO FEAR YOUR CONSCIENCE BECAUSE OF THE
3 VERDICT YOU HAVE REACHED IN THIS CASE. AND NOW, LADIES AND
4 GENTLEMEN, I WISH I COULD SAY THAT THE REWARD FOR A JOB WELL
5 DONE IS FOR THE QUALITY OF SERVICE THAT YOU HAVE RENDERED IS
6 TO LET YOU GO AND NOT HAVE TO BOTHER YOU ANY MORE THIS WEEK,
7 BUT THAT'S NOT GOING TO BE THE CASE. I NEED FOR YOU TO
8 CALL BACK THIS AFTERNOON AFTER 6 O'CLOCK. WE ARE GOING TO
9 DRAW A JURY IN JUST A FEW MOMENTS FOR THESE FOLKS THAT ARE
10 SEATED OUT HERE THAT HAVE NOT HAD A CHANCE TO SERVE ON A
11 JURY. AND I AM NOT SURE EXACTLY HOW FAR ALONG WE WILL GET
12 IN THE NEXT TRIAL AND WHEN WE MIGHT NEED YOU. BUT IF YOU
13 WILL CALL BACK AFTER THE 6 O'CLOCK TODAY, THE NUMBER ON
14 THAT CARD YOU WERE GIVEN ON MONDAY, THEN YOU WILL GET
15 INSTRUCTIONS THAT WILL TELL YOU WHEN YOU NEED TO CALL BACK
16 OR WHEN YOU NEED TO COME BACK TO COURT. SO FOLLOW THOSE
17 INSTRUCTIONS. IN ALL PROBABILITY YOU MAY HAVE TO COME BACK
18 SOME TIME TOMORROW.

19 IF YOU DON'T, LET ME TAKE ADVANTAGE OF THIS
20 OPPORTUNITY TO TELL YOU THAT YOU WILL GET A SMALL CHECK IN
21 THE MAIL IN A COUPLE OF WEEKS NOT BEGINNING TO PAY YOU FOR
22 THE FULL VALUE OF YOUR SERVICE AS JURORS. Y'ALL NEED TO ADD
23 OUR GRATITUDE TO THAT CHECK TO BE EVEN PARTIALLY PAID FOR
24 WHAT YOU HAVE DONE. IF YOU NEED A SLIP FROM THE CLERK'S
25 OFFICE, THEY WILL EITHER MAIL THAT TO YOU WITH YOUR CHECK OR

1 YOU CAN PICK THEM UP AT THE CLERK'S OFFICE. THAT WILL TELL
2 ANYONE WHO NEEDS TO KNOW WHERE YOU'VE BEEN AND THE FACT THAT
3 YOU'VE BEEN SERVING HERE ON THE JURY THESE LAST DAYS MONDAY
4 AND WEDNESDAY OF THIS WEEK. WE STILL HAVE MATTERS AND
5 MOTIONS AND SENTENCING TO TAKE CARE OF IN THIS CASE YET, BUT
6 THOSE THINGS WILL NOT NECESSARILY INVOLVE Y'ALL. YOUR ROLE
7 IN THIS CASE HAS ENDED. YOU ARE FREE TO GO. GO HOME,
8 WHEREVER YOU WANT TO GO. SALVAGE A PART OF YOUR WORK DAY IF
9 YOU CAN. I'LL POSSIBLY SEE YOU LATER IN THE WEEK. CALL
10 THAT NUMBER AFTER 6 O'CLOCK TODAY. THANK YOU SO MUCH.

11 (THEREUPON, THE JURY IS DISMISSED.)

12 THE COURT: MS. FERRARI, I WILL BE GLAD TO HEAR MOTIONS
13 FROM THE DEFENSE.

14 MS. FERRARI: YES, SIR, YOUR HONOR. I WOULD MAKE A
15 MOTION FOR A NEW TRIAL. THE VERDICT IS INCONSISTENT YOUR
16 HONOR. IF THEY FIND HIM GUILTY OF THE LYNCHING AND THE
17 KIDNAPPING BECAUSE HE WAS THERE, AND EVEN SPECIFICALLY CAME
18 OUT AND ASKED YOU COULD HE BE GUILTY OF THE ASSAULT AND
19 BATTERY WITH INTENT TO KILL FOR JUST BEING THERE, FOR NOT
20 ACTUALLY PULLING THE TRIGGER. AND YET THEY FIND HIM GUILTY
21 OF TWO CRIMES AND NOT GUILTY OF ONE CRIME. THERE WAS NO
22 EVIDENCE TO SUGGEST THAT HE INITIATED THE KIDNAPPING. THE
23 EVIDENCE WAS THAT DONALD BUSH FORCED HIM IN TO THE CAR. SO
24 THEY'RE FINDING HIM GUILTY ON THE KIDNAPPING, HAND OF ONE IS
25 THE HAND OF ALL. I DON'T KNOW WHERE THEY GOT THE GUILTY OF

1 LYNCHING. I WOULD ASSUME FOR THE SAME REASON AS THAT. BUT
2 IT SEEMS INCONSISTENT TO ME THAT THEY COULD FIND HIM GUILTY
3 OF TWO CRIMES FOR BEING, THE HAND OF ONE IS THE HAND OF ALL,
4 AND BEING THERE. AND FIND HIM NOT GUILTY OF A CRIME OF A
5 HAND OF ONE IS THE HAND OF ALL WHEN HE WAS THERE.

6 THE COURT: THANK YOU, MA'AM. THE MOTIONS ARE
7 RESPECTFULLY DENIED. ASSUMING FOR PURPOSE OF ARGUMENT THAT
8 THE VERDICTS ARE INCONSISTENT, OF COURSE, THE LAW, DOES NOT
9 NECESSARILY GRANT THE RELIEF IN THE CASE OF AN INCONSISTENT
10 VERDICT. THERE ARE MANY CASES IN WHICH INCONSISTENT
11 VERDICTS HAVE BEEN SUSTAINED AS LONG AS THERE IS EVIDENCE TO
12 SUPPORT THE INDEPENDENT CHARGE FOR WHICH GUILT HAS BEEN
13 DETERMINED. AND THIS IS ONE OF THOSE CASES. AND I OF
14 COURSE, DON'T HAVE INSIGHT INTO THE RATIONALE BEHIND THE
15 JURY ANYMORE THAN ANYBODY ELSE DOES, EXCEPT FOR THE FACT
16 THAT THEY COULD HAVE DETERMINED THAT HE DID NOT DO THE
17 SHOOTING.
18 AND PERHAPS MAY HAVE EVEN BEEN JUST A BYSTANDER IN THAT
19 REGARD, IN THE AIDING AND ABETTING SENSE OF THE WORD. AND
20 THEY GAVE HIM THE BENEFIT OF THE DOUBT FOR THAT, AND FOUND
21 HIM NOT GUILTY OF THE CHARGE OF ASSAULT AND BATTERY WITH
22 INTENT TO KILL. WHEREAS, THE OTHER CHARGES THE FOLLOWING
23 HIM DOWN THE ROAD, PUTTING HIM IN THE CAR, DOING THOSE SORTS
24 OF THINGS, CARRYING HIM AWAY, WERE A PART OF THE DESIGN OF
25 MR. STUCKEY AND OTHERS WHO WERE INVOLVED. THERE IS

1 EVIDENCE HOWEVER, TAKING THE EVIDENCE IN THE LIGHT MOST
2 FAVORABLE TO THE STATE THAT SUPPORTS THE VERDICTS OF GUILTY
3 ON THE LYNCHING AND THE KIDNAPPING CHARGES. FOR THAT REASON
4 THOSE MOTIONS MUST RESPECTFULLY DENIED. THANK YOU.

5 MR. CONNER, IS STATE READY TO PROCEED WITH THE MATTER
6 OF SENTENCING?

7 MR. CONNER: WE ARE READY, YOUR HONOR.

8 THE COURT: COME AROUND, PLEASE, MR. STUCKEY.

9 MR. CONNER: MAY IT PLEASE THE COURT, I HAVE HANDED UP
10 A SENTENCING SHEET ON THE LYNCHING COUNT AND THE KIDNAPPING
11 COUNT, WHICH WAS COUNT 3 AND COUNT 4 OF THE INDICTMENT.

12 THE COURT: RIGHT.

13 MR. CONNER: BUT YOUR HONOR, I WOULD ALSO INFORM THE
14 COURT THAT THE DEFENDANT WAS PREVIOUSLY CONVICTED OF
15 VOLUNTARY MANSLAUGHTER AND COMMON LAW ROBBERY HERE IN SUMTER
16 COUNTY. THAT OCCURRED ON DECEMBER 14, 1993. HE GOT A
17 12-YEAR SENTENCE FOR THAT. HE WAS ALSO CONVICTED IN ANOTHER
18 COUNT BACK IN OCTOBER OF 2001 FOR BURGLARY SECOND DEGREE.

19 MS. FERRARI: IT WAS NONVIOLENT BURGLARY.

20 MR. CONNER: IT WAS A NONVIOLENT BURGLARY. IT WAS
21 BURGLARY SECOND DEGREE. APPARENTLY HE GOT 2 YEARS ON THAT.
22 IN ANY EVENT, HE WAS SERVED, AND HIS LAWYER WAS SERVED WITH
23 NOTICE OF INTENT TO SEEK LIFE WITHOUT PAROLE. AND I HAND UP
24 THE PAPERS INDICATING THE SERVICE AS WELL AS A COPY OF THE
25 INDICTMENT WHERE HE WAS PREVIOUSLY CONVICTED OF VOLUNTARY

1 MANSLAUGHTER HERE IN SUMTER COUNTY.

2 THE COURT: ANYTHING FURTHER FROM THE STATE?

3 MR. CONNER: NOTHING FURTHER, YOUR HONOR.

4 THE COURT: MS. FERRARI, I WILL BE GLAD TO HEAR FROM
5 YOU NOW.

6 MS. FERRARI: YES, SIR, YOUR HONOR. CASEY STANDS HERE
7 BEFORE YOU. HE HAS SOME OF HIS FAMILY THAT IS OUT IN THE
8 AUDIENCE AS WELL AS, YOUR HONOR. THE WAY I READ THE
9 STATUTE, YOU DO NOT HAVE A CHOICE AS TO WHAT YOU SENTENCE
10 MR. STUCKEY TO DUE TO THE CONVICTION FOR KIDNAPPING WHICH IS
11 A SECOND MOST SERIOUS UNDER THE TWO-STRIKE LAW. THE WAY I
12 INTERPRETED THE STATUTE, AND I EXPLAINED IT MR. STUCKEY WAS
13 THAT YOU DON'T HAVE A CHOICE. THIS IS NOT SOMETHING WHERE
14 -- BASICALLY THE DISCRETION HAS BEEN TAKEN OUT OF YOUR
15 HANDS AND PUT IN THE HANDS OF THE LEGISLATURE.

16 THE COURT: YES, MA'AM, I THINK YOU'RE RIGHT

17 MS. FERRARI: AND MR. STUCKEY UNDERSTANDS THAT. AND
18 THERE IS REALLY NOT MUCH WE CAN SAY IF THE DISCRETION IS OUT
19 OF YOUR HANDS, YOUR HONOR.

20 THE COURT: MR. STUCKEY, DO YOU WANT TO SAY ANYTHING
21 BEFORE THE COURT PASSES SENTENCE?

22 THE DEFENDANT: YES, SIR. WHEN THIS CHARGE -- WHEN I
23 WAS INITIALLY GIVEN THIS CHARGE, I WAS NOT CHARGED WITH
24 KIDNAPPING AND LYNCHING. I WAS SERVED NO WARRANT ON THAT
25 UNTIL MONDAY WHEN I WAS GETTING READY TO GO TO TRIAL WHEN

1 THEY BROUGHT FORTH A KIDNAPPING AND LYNCHING CHARGE. I DID
2 NOT KNOW ANYTHING ABOUT THAT. THE ONLY THING I KNEW WAS
3 ABOUT THE ASSAULT AND BATTERY CHARGE. AND NOW THEY SAY I AM
4 CONVICTED OF KIDNAPPING AND LYNCHING THAT I DO NOT KNOW
5 ANYTHING ABOUT. I WAS NOT THERE. I DO NOT KNOW THIS GUY
6 RIGHT HERE. AND I DON'T KNOW HOW I AM CONVICTED FOR
7 SOMETHING I DIDN'T EVEN DO. AND I WASN'T EVEN THERE. I
8 WOULDN'T BE TAKING THIS TRIAL. IF I KNEW I WAS GUILTY, I
9 WOULDN'T EVEN PUT MYSELF IN THAT PREDICAMENT.

10 THE COURT: I CAN'T EXPLAIN THE MATTER OF NOTICE TO
11 YOU. ALL I CAN TELL YOU IS THAT YOU WERE INDICTED BY THE---

12 THE DEFENDANT: BUT I NEVER RECEIVED NOTHING.

13 THE COURT: ---THE GRAND JURY---

14 THE DEFENDANT: NO NOTICE.

15 THE COURT: ---IN APRIL OF 2001.

16 THE DEFENDANT: NO ONE GAVE ME A NOTICE ABOUT IT. NO
17 NOTICE OF KIDNAPPING OR LYNCHING OR NONE OF THAT. I WAS
18 CHARGED WITH ASSAULT AND BATTERY WITH INTENT TO KILL. AND
19 THAT WAS THE ONLY ONE I EVER RECEIVED. I HAD NO -- I JUST
20 GOT MY RULE 5 MONDAY. I DIDN'T KNOW ANYTHING ABOUT IT.

21 THE COURT: ALL RIGHT, SIR.

22 MR. CONNER: I WOULD SAY IN RESPONSE TO THAT, YOUR
23 HONOR, THAT WE SERVED MS. FERRARI ON SEPTEMBER 12TH WITH THE
24 DISCOVERY PACKAGE.

25 MS. FERRARI: OF THE DRUG COUNT, YES.

1 MR. CONNER: AND SUBSEQUENTLY SERVED -- AND PREVIOUS TO
2 THIS, HE HAD BEEN REPRESENTED BY ANOTHER PUBLIC DEFENDER,
3 MR. RYAN. AND WE HAD ALSO SERVED HIM WITH DISCOVERY
4 MATERIALS.

5 THE DEFENDANT: BUT I NEVER GOT THAT.

6 MR. CONNER: THAT WAS BACK IN FEBRUARY OF 2003. AND
7 THEN HE SERVED AS PUBLIC DEFENDER UP UNTIL, UNTIL JULY THE
8 1ST I BELIEVE, OR JUNE THE 30TH. AND THEN OTHER PEOPLE IN
9 THE PUBLIC DEFENDER'S OFFICE TOOK OVER THE CASE. AND I
10 SERVED HER WITH THE DISCOVERY MATERIALS. AND WE ALSO SERVED
11 THEM WITH THE NOTICE OF INTENT TO SEEK LIFE WITHOUT PAROLE.

12 MS. FERRARI: THAT WAS FOR DRUGS, NOT THE OTHER STUFF.

13 THE DEFENDANT: THAT'S RIGHT. IT WAS NOT FOR THE
14 KIDNAPPING. I KNEW NOTHING ABOUT THE KIDNAPPING AND LYNCHING
15 UNTIL I AM IN TRIAL FOR IT. AND NOW I'M IN TRIAL FOR MORE
16 THAN JUST WHAT I WAS SERVED THE WARRANT ON.

17 MR. CONNER: ACCORDING TO MY FILE, WE SERVED COPIES OF
18 INDICTMENTS ON SOME DRUGS CHARGES WE HAVE. AND ALSO WITH
19 INDICTMENTS ON 2001-283.

20 THE DEFENDANT: IT HAS NOTHING TO DO WITH THIS CASE.

21 MR. CONNER: WHICH IS THE INDICTMENT HE WAS CONVICTED
22 ON. AND ALSO INDICTMENT 504 AND 505 AND 506, WHICH IS THE
23 DRUG CHARGES.

24 THE DEFENDANT: BUT THAT DOESN'T HAVE NOTHING TO DO
25 WITH -- THE DRUG CHARGES IS DIFFERENT THAN THE KIDNAPPING

1 AND THE LYNCHING. WHAT -- ITS NO -- THEY DON'T FIT. IT IS
2 NOT EVEN IN THIS CASE. NOW I AM CONVICTED OF KIDNAPPING AND
3 I WAS ORIGINALLY CHARGED WITH ASSAULT AND BATTERY.

4 THE COURT: THOSE MIGHT VERY WELL BE APPELLATE ISSUES
5 THAT YOU CAN RAISE, MR. STUCKEY. YOU'VE GOT THE RIGHT TO
6 APPEAL THIS WITHIN 10 DAYS OF TODAY'S DATE. NONETHELESS,
7 THE JURY HAS SPOKEN IN THIS REGARD. THERE HAS BEEN NO
8 MOTION UP TO THIS POINT TO QUASH THE INDICTMENT; TO DISMISS
9 ANY OF THOSE OTHER CHARGES PRIOR TO THIS TRIAL BEGINNING.

10 THE DEFENDANT: I'VE ASKED, AND THEY TOLD ME THAT I WAS
11 INDICTED, THAT I SHOULD HAVE KNOWN.

12 THE COURT: YES, SIR. I AM NOT SURE WHAT THEY TOLD
13 YOU. BUT ALL I KNOW IS WHAT IS BEFORE ME IS A VALID
14 INDICTMENT, TRUE BILLED IN APRIL OF 2001. MORE THAN 2 YEARS
15 PRIOR TO TODAY'S DATE. CHARGING YOU WITH THE OFFENSES FOR
16 WHICH YOU'VE BEEN CONVICTED, AS WELL AS THE TWO FOR WHICH
17 YOU WERE ACQUITTED IN THIS CASE.

18 MR. STUCKEY, ON THE COUNT OF LYNCHING IN THE SECOND
19 DEGREE, THE SENTENCE IS THAT YOU BE COMMITTED TO THE STATE
20 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 20 YEARS. ON THE
21 CHARGE OF KIDNAPPING BEING YOUR SECOND CONVICTION FOR A
22 MOST SERIOUS OFFENSE UNDER THE LAW, THE FIRST BEING
23 VOLUNTARY MANSLAUGHTER IN DECEMBER OF 1993. IN ACCORDANCE
24 WITH SECTION 17-25-45 OF THE CODE OF LAWS ON THAT CHARGE IS
25 THAT YOU BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS

1 FOR THE BALANCE OF YOUR NATURAL LIFE WITHOUT THE POSSIBILITY
2 OF PAROLE. THOSE SENTENCES WILL RUN CONCURRENT TO EACH
3 OTHER. THANK YOU.

4 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE

I, THE UNDERSIGNED, MARGARET T. SULLIVAN, OFFICIAL
COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE
OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE RECORD OF ALL THE PROCEEDINGS
HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED
CASE, RELATIVE TO APPEAL, IN GENERAL SESSIONS COURT ON
NOVEMBER 10TH AND 12TH, 2003, IN SUMTER COUNTY, SUMTER, S.C.

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

March 6, 2004

(DATE)

Margaret T. Sullivan

MARGARET T. SULLIVAN

CERTIFIED SHORTHAND REPORTER

FORM 5

CERTIFIED TRUE COPY
OF ORIGINAL FILED

STATE OF SOUTH CAROLINA

RECORDED

County of

Sumter

2005 APR 15

AM 11:34

IN THE COURT OF COMMON PLEAS
SOUTH CAROLINA

CASEY Stuckey #

297810

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2005-CP-43

432

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

- Place of detention LEE County Correctional Institution
990 Wisacky Hwy. Bishopville, SC 29010
- Name and location of Court which imposed sentence GENERAL SESSIONS
Court, Sumter County
- Name(s) of co-defendant(s) (if any) Donald Sherman Bush,
KENDALL NELSON
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2001-GS-43-283

RECEIVED

APR 20 2005

Referred to

Magistrate ds

Answered

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 11-12-03
- (b) Life
- (c) 20 yrs.
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MARCH 10, 2005
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. unpublished opinion no. 2005-up-180
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) NA

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) PROSECUTOR MISCONDUCT
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACH AFFIDAVIT
- (b) PROSECUTOR failed to send material to Attorney (Page in trans)
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? DIRECT Appeal
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NA
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NA
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. DIRECT Appeal
- ii. ~~NA~~
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. The South CAROLINA Court of Appeals
- ii. _____
- iii. _____

iv.

(c) the disposition thereof:

i.

Dismissed

ii.

iii.

iv.

(d) the date of each such disposition:

i.

March 10, 2005

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

No. 2005-up-180

ii.

iii.

iv.

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

No

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

(a) which grounds have been presented:

i.

NA

ii.

iii.

(b) the proceedings in which each ground was raised:

i.

NA

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) Not Available for Direct Appeal
 (b) _____
 (c) _____

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

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

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

(a) the name and address of each attorney who represented you:

i. LAUREN B. FERRARI
P.O. Box 2444 Sumter, SC 29151
 ii. Ass. Appellate Defender Robert M. Pachak
1205 Pendleton St. Bm # 306
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. TRIAL
 ii. Direct Appeal
 iii. _____

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

REVERSAL of my Sentence

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Sumter)

VERIFICATION

I, Casey Stuckey, 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.

Casey Stuckey

SWORN to and subscribed before me this 11
day of April, 2005.

Barbara Reckert (L.S.)
Notary Public

My Commission Expires: Oct 28 2012

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

I, Casey Stickey, 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.

Casey Stickey
Applicant

SWORN or affirmed to and subscribed before me this
11 day of April, 2005.

Barbara Richman
Notary Public

My Commission Expires: Oct 28 2018

11. (A) 1. Indictment presented Day of trial

II. Ineffective Assistance of Counsel

A. FOR not ASKING to Squash Indictment
OR for not ASKING FOR Continuance.

B. This Fell under Reasonable Standard

It Didn't Allow Attorney to prepare Defense
Also this Violated 14th Admendment Due process
of law. Also Sixth Admendment Effective
Assistance of Counsel.

C. Failure to Investigate A valid ALIBI.

{ STATE OF South CAROLINA }
 { County of Sumter }
 { Casey Stuckey #297810 }

v.

State of South CAROLINA

RECORDED

2005 APR 15 AM 11:34

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2005-CP-43-437

I am writing this order to send
 to the Clerk of Court. I Am sending this Post
 Conviction RELIEF Application And would like
 for this to Be Copied And send my-self Back
 A Copy of this. Thank-you for your time.

Casey StuckeyApril 14, 2005

STATE OF SOUTH CAROLINA

IN THE COMMON PLEAS COURT

COUNTY OF SUMTER

RECORDED

2006 JAN 12 AM 11:32

CASE NUMBER: 2004-CP-43-432

Casey Stuckey, #297810

JAMES BELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Applicant,

-versus-

STATE OF SOUTH CAROLINA

Respondent,

AMENDED APPLICATION FOR
POST-CONVICTION RELIEFCERTIFIED TRUE COPY
OF ORIGINAL FILED
James Bell
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

The applicant, through undersigned, counsel, states the following:

1. That the Applicant has previously filed an Application for Post Conviction Relief with the Sumter County Clerk of Court.
2. That the original Application filed with the aforementioned authority outlined one (1) basic assertion in support of his Application.
3. That the Applicant believes that other issues should be addressed with regard to his pending Application with this Honorable Court, to wit:
4. That the Applicant is informed and believes and asserts that his conviction by a plea of not guilty was unlawfully induced due the Trial Court's lack of subject matter jurisdiction; more specifically that the Indictment of Charges failed to allege the "essential elements" of the crime allegedly committed by the Defendant.
5. That the Applicant alleges that he is being held in custody unlawfully, for he believes his assistance of Appellate Counsel was ineffective.

6. Trial Counsel rendered ineffective assistance of Counsel, by not ascertaining that there were proper investigatory techniques.
7. The Trial Counsel rendered ineffective assistance of Counsel, by failure to investigate a valid alibi.
8. That the Applicant alleges that he had an alibi during the time the crime was committed. No one could place the Applicant at the crime, but the victim. However, the victim's story was very confusing. The Applicant did not know the victim and had never seen the victim before.
9. That the Applicant believes that, if he had been given the opportunity to voice his concerns in regards to the Kidnapping and Lynching charge, he would not have been convicted or would have received a lesser sentence.
10. Trial Counsel rendered ineffective assistance of Counsel, by not asking the Court to dismiss the Indictment nor did the Counsel ask for a Continuance.
11. That the Applicant alleges that the Trial Counsel rendered ineffective assistance of Counsel, by failing to consult with him before the trial about other charges that were brought forth that he had no knowledge of.
12. That the Applicant was convicted of Kidnapping and 2nd Degree Lynching. After the Applicant's conviction, he filed an appeal and it was dismissed on March 10, 2005 by the South Carolina Appellate

Court. The Applicant believes that his appeal was dismissed because his Counsel did not formulate any objections nor did the Counsel allow him to defend himself on the stand.

13. That the Applicant alleges that the Trial Counsel rendered ineffective assistance to Counsel, for the lack of information pertaining to his case. (Transcript p. 238 & 239 L. 25-12).

14. That the Applicant believes that the Trial Counsel did not represent him to the fullest or the best of the Trial Counsel ability.

15. That the Applicant re-asserts all arguments in his memorandum previously filed on April 15, 2005 in Sumter Clerk of Court, including all allegations against Trial Counsel and Appellate Counsel.

RESPECTFULLY SUBMITTED ON BEHALF
OF THE APPLICANT, Casey Stuckey, BY:



Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post Office Box 3512
Sumter, SC 29151
803-418-5708

Dated: January 10, 2006

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
Casey Stuckey, 297810,
Applicant,
v.
State of South Carolina,
Respondent.

RECORDED
2005 OCT 25 AM 11:08
IN THE COURT OF COMMON
PLEAS
JAMES O. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C. 2005-CP-43-432
RETURN

The Respondent, making its Return to the Application for Post-Conviction Relief filed April 15, 2005, 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 Clerk of Court for Sumter County. The Applicant was indicted at the April, 2001, term of the Court of General Sessions for Sumter County for Assault and Battery with Intent to Kill, Possession of a Weapon During a Violent Crime, Lynching - second degree, Kidnapping, Accessory before the fact and Accessory after the fact (2001-GS-43-283). He was represented by Lauren Ferrari, Esquire. On November 10 and 12, 2003, the Applicant proceeded to trial after which he was found guilty of Lynching - second degree and Kidnapping. He was sentenced by the Honorable Thomas W. Cooper, Jr., to confinement for a period of twenty (20) years for Lynching - second degree and life imprisonment for Kidnapping.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Stuckey, Op. No. 2005-UP-180 (S.C. Ct. App. filed March 10, 2005).

Attached herewith and incorporated herein by reference are the records of the Sumter County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
2. "Indictment presented day of trial"
 - a. "For not asking to squash indictment or for not asking for continue"
 - b. "This fell under reasonable standard it didn't allow attorney to prepare defense also this violated 14th Admendment effective assistance of counsel."
 - c. "Failure to investigate a valid alibi"
3. Prosecutorial Misconduct

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged

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).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal 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.

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

PAULA S. MAGARGLE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

10/3, 2005.

STATE OF SOUTH CAROLINA

RECORDED

COUNTY OF SUMTER

2005 OCT 05 PM 12:05 IN THE COURT OF COMMON PLEAS

JAMES J. WISELL
CLERK OF COURT
SUMTER COUNTY, S.C. 2005-CP-43-432

CASEY STUCKEY, 297810

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

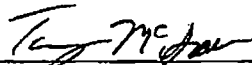
STATE OF SOUTH CAROLINA,

Respondent.

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

Charles T. Brooks, III., Esquire
309 Broad Street
Sumter SC 29150

DATED this 4th day of October, 2005.


Tommy McGrath, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
COUNTY OF SUMTER	)	COURT OF COMMON PLEAS
THE STATE,	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
v.	)	C/A #: 2005-CP-43-432
CASEY STUCKEY,	)	
DEFENDANT.	)	

BEFORE:

HONORABLE HOWARD P. KING, PRESIDING JUDGE.

APPEARANCES:

Teri Salane, Esquire
 Assistant Attorney General
 Attorney General's Office
 Post Office Box 11549
 Columbia, South Carolina 29211-1549
 Attorney for State of South Carolina

Charles T. Brooks, Esquire
 Attorney at Law
 308 Broad Street
 Sumter, South Carolina 29150
 Attorney for Casey Stuckey

TAKEN BY MELISSA R. WINFIELD
 CERTIFIED VERBATIM REPORTER

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EXHIBITS

(There were no exhibits marked in this Transcript)

HEARING

3

1 THE COURT: ALL RIGHT, COUNSEL, WHAT'S THE FIRST
2 MATTER?

3 MS. SALANE: YOUR HONOR, ON THE MATTER OF STUCKEY,
4 I BELIEVE MR. BROOKS WANTS TO MAKE A MOTION.

5 THE COURT: ALL RIGHT. THE FIRST MATTER BEFORE THE
6 COURT IS THE MATTER OF CASEY STUCKEY, POST-CONVICTION RELIEF
7 APPLICATION, CASE NUMBER 05-CP-43-432. MR. STUCKEY IS PRESENT
8 BEFORE THE COURT WITH HIS COUNSEL, MR. BROOKS. MOTIONS ON
9 BEHALF OF THE APPLICANT, MR. BROOKS?

10 MR. BROOKS: THAT'S CORRECT, YOUR HONOR. I MET
11 WITH MY CLIENT TODAY. I'VE ALSO MET WITH HIM EARLIER THIS
12 WEEK AT THE CORRECTIONAL FACILITY AND AFTER MEETING WITH
13 HIM TODAY HE WANTS TO ASK THE COURT TO CONTINUE THIS
14 MATTER BECAUSE HE HAS SOME ... SOME OTHER AMENDMENTS HE
15 WANTS TO PUT FORTH ON HIS POST-CONVICTION RELIEF APPLICATION.
16 HE TELLS ME THAT HE'S GOT SOME POTENTIAL ALIBI WITNESSES THAT
17 HE WANTS TO HAVE SOME TIME TO LOCATE THOSE INDIVIDUALS AND
18 HAVE THEM PRESENT IN THE COURT.

19 THE COURT: ALL RIGHT. SO THE MOTION IS ONE FOR
20 CONTINUANCE?

21 MR.. BROOKS: YES, SIR.

22 THE COURT: MS. SALANE, THE STATE'S POSITION.

23 MS. SALANE: YOUR HONOR, WE'RE OPPOSING THE MOTION
24 FOR A CONTINUANCE. THE RETURN OR THE APPLICATION FOR POST-
25 CONVICTION RELIEF ... THE ... THE ACTUAL PETITION ... ACTUAL

HEARING

4

1 APPLICATION WAS FILED APRIL THE 15TH, 2005. OUR WITNESS IS HERE,
2 YOUR HONOR, AND WE'RE READY TO GO FORWARD.

3 THE COURT: ALL RIGHT. I'M GONNA RESPECTFULLY DENY
4 THE MOTION FOR A CONTINUANCE. THE APPLICANT'S APPLICATION
5 HAS BEEN FILED FOR A YEAR OR ALMOST A YEAR. IN ADDITION TO
6 THAT THE RETURN BY THE STATE WAS FILED IN OCTOBER. THE
7 MATTER HAS BEEN ISSUED ENJOINING THIS CASE NOW FOR SOME SIX
8 MONTHS WITH THE DEFENDANT KNOWING WHAT THE RETURN
9 PROVIDED. THERE HAS BEEN NO MOTION UP UNTIL THIS TIME TO
10 AMEND THE APPLICATION UNTIL THE MATTER WAS ON THE DOCKET. I
11 FEEL LIKE THAT HE'S HAD AMPLE OPPORTUNITY TO AMEND HIS
12 APPLICATION IF THAT'S WHAT HE WANTED TO DO OR TO SUBPOENA
13 WITNESSES FOR TODAY'S HEARING. THE ROSTER'S BEEN OUT FOR
14 SEVERAL WEEKS SO THE COURT WILL RESPECTFULLY DENY THE
15 MOTION FOR A CONTINUANCE.

16 MS. SALANE: THANK YOU, YOUR HONOR.

17 THE COURT: YES, SIR?

18 MR. BROOKS: BEG THE COURT'S INDULGENCE. JUDGE.

19 THE COURT: ALL RIGHT. BEFORE WE DO THAT, THERE'S
20 ONE THING I NEED TO TELL MR. STUCKEY. MR. STUCKEY, I WANT YOU
21 TO UNDERSTAND AND I'M SURE MR. BROOKS HAS EXPLAINED THIS TO
22 YOU THAT THE COURT CANNOT DO ANYTHING TO ALTER OR CHANGE
23 YOUR SENTENCE BUT CAN ONLY DETERMINE IF YOU'RE ENTITLED TO
24 A NEW TRIAL ON ONE OR MORE OF THE GROUNDS IN YOUR
25 APPLICATION. IN OTHER WORDS, I CAN'T ORDER THAT YOUR

HEARING

5

1 SENTENCE BE REDUCED OR CHANGED IN ANY MANNER WHATSOEVER
2 NOR CAN I ORDER THAT YOU BE RELEASED. ALL I CAN DO IF YOU ARE
3 SUCCESSFUL IN THE GROUNDS THAT YOU HAVE FOR POST-
4 CONVICTION RELIEF ALL I CAN DO IS ORDER THE MATTER BE
5 REMANDED TO THE TRIAL COURT FOR A NEW TRIAL. YOU
6 UNDERSTAND THAT?

7 MR. STUCKEY: YES, SIR.

8 THE COURT: ALL RIGHT. ALL RIGHT, THANK YOU. YOU
9 MAY BE SEATED. ALL RIGHT, THE BURDEN FOR PROOF IN A POST-
10 CONVICTION RELIEF APPLICATION IS ON THE APPLICANT. MR.
11 BROOKS, YOU MAY CALL YOUR FIRST WITNESS.

12 MR. BROOKS: JUDGE, AT THIS TIME WE WOULD CALL
13 CASEY STUCKEY.

14 THE COURT: ALL RIGHT, MR. STUCKEY, COME AROUND,
15 PLEASE. COME UP HERE, PLEASE. SIR?

16 MR. BROOKS: I WANT TO LET HIM BRING HIS MATERIALS ...

17 THE COURT: YES, SIR, THAT'S ALL RIGHT.

18 BAILIFF: PLACE YOUR LEFT HAND ON THE BIBLE, RAISE
19 YOUR RIGHT HAND AND STATE YOUR NAME, PLEASE.

20 MR. STUCKEY: CASEY STUCKEY.

21 BAILIFF: DO YOU SOLEMNLY SWEAR OR AFFIRM YOUR
22 TESTIMONY YOU GIVE THIS COURT SHALL BE THE TRUTH, THE WHOLE
23 TRUTH AND NOTHING BUT THE TRUTH SO HELP YOU GOD?

24 MR. STUCKEY: YES, SIR.

25 THE COURT: ALL RIGHT, BEFORE WE BEGIN THE

HEARING

6

1 EXAMINATION LET ME SAY FOR THE RECORD THAT MR. STUCKEY WAS
2 INDICTED IN 2001 IN SUMTER COUNTY FOR POSSESSION OF WEAPON
3 DURING A VIOLENT CRIME, LYNCHING IN THE SECOND DEGREE,
4 KIDNAPING, ACCESSORY BEFORE THE FACT AND ACCESSORY AFTER
5 THE FACT. HE WAS REPRESENTED BY MS. RORY AND ON NOVEMBER
6 10th THROUGH THE 12TH OF 2003 THE MATTER WAS TRIED BY A JURY
7 AND HE WAS FOUND GUILTY OF LYNCHING IN THE SECOND DEGREE,
8 KIDNAPING AND WAS SENTENCED BY THE HONORABLE THOMAS W.
9 COOPER TO 20 YEARS FOR LYNCHING SECOND DEGREE AND LIFE IN
10 PRISON FOR KIDNAPING. AND HE HAS FILED A POST-CONVICTION
11 RELIEF PROCEEDING ... SEEKING RELIEF FROM THAT PROCEEDING. ALL
12 RIGHT. YOU MAY PROCEED.

13 BAILIFF: STATE YOUR FULL NAME AND SPELL YOUR LAST
14 NAME, PLEASE.

15 MR. STUCKEY: CASEY STUCKEY, S-T-U-C-K-E-Y.

16 THE COURT: ONE OTHER THING I FAILED TO NOTE FOR
17 THE RECORD THAT THERE WAS AN APPEAL WAS FILED AND THE
18 COURT OF APPEALS AFFIRMED THIS CONVICTION IN AN UNPUBLISHED
19 OPINION ON MARCH 10TH, 2005. ALL RIGHT. YOU MAY PROCEED, MR.
20 BROOKS.

21 MR. STUCKEY - DIRECT EXAMINATION BY MR. BROOKS:

22 Q: MR. STUCKEY, ...

23 A: YES, SIR.

24 Q: YOU ARE OBVIOUSLY CURRENTLY INCARCERATED, IS THAT
25 CORRECT?

HEARING

7

- 1 A: YES, SIR.
- 2 Q: AND MS. FERRARI WAS THE ONE REPRESENTING YOU IN THIS
- 3 CASE?
- 4 A: YES, SIR.
- 5 Q: OKAY. DID YOU RETAIN HER OR WAS SHE APPOINTED TO YOU?
- 6 A: APPOINTED.
- 7 Q: OKAY. AND HOW MANY TIMES DID YOU MEET WITH MS.
- 8 FERRARI?
- 9 A: SHE WAS ONLY MY LAWYER LIKE FOR TWO MONTHS SO NOT ...
- 10 NOT MANY TIMES BUT EVERY CHANCE I COULD I MET WITH
- 11 HER.
- 12 Q: OKAY. AND WHO ... DO YOU KNOW WHO YOUR LAWYER WAS
- 13 BEFORE THEN?
- 14 A: MR. JACK HOWLE, I BELIEVE.
- 15 Q: OKAY. NOW, AS FAR AS MS. FERRARI REPRESENTATION, DID
- 16 YOU ALL EVER DISCUSS ANY TYPE OF PLEA NEGOTIATIONS?
- 17 A: WE DISCUSS IT LIKE A COUPLE DAYS BEFORE TRIAL. IT WAS
- 18 LIKE A THURSDAY AND SHE SAID THAT ... THAT HER AND THE
- 19 SOLICITOR WAS TALKING ABOUT A TIME AND THAT WE WOULD
- 20 HAVE SOMETHING IN BLACK AND WHITE AND SHE WOULD GET
- 21 BACK WITH ME, YOU KNOW. BUT THAT WAS BASICALLY IT.
- 22 Q: OKAY. DID SHE TELL YOU ANY DETAILS OF WHAT THEY WERE
- 23 TALKING ABOUT POSSIBLY DOING FOR YOU ON A PLEA?
- 24 A: SHE SAID THE NATURE OF DROPPING SOME CHARGES AND
- 25 THINGS LIKE THAT. AND THAT THEY WOULD CHANGE IT TO

HEARING

8

1 ASSAULT AND BATTERY WITH A HIGH AGGRAVATED NATURE
2 ON MY CHARGE CAUSE I HAD ASSAULT AND BATTERY WITH
3 INTENT TO KILL.

4 Q: WAS ... WAS THERE ANY DISCUSSION ABOUT A TIME ...
5 PROPOSED TIME THAT WOULD BE?

6 A: SHE SAID THEY HAD A TIME I THINK 15, SOMEWHERE IN THAT
7 AREA. IM ... IM NOT SURE CAUSE WE DIDN'T REALLY DISCUSS IT
8 MUCH CAUSE SHE SAID IT'S IN BLACK AND WHITE. SHE WAS
9 STRIVING TO GET IT IN THERE.

10 Q: ALL RIGHT. WHEN WAS THE NEXT TIME YOU SAW MS. FERRARI?

11 A: WHEN I CAME TO TRIAL.

12 Q: OKAY. NOW, TELL THE COURT ABOUT THAT.

13 A: WHEN I CAME ... WELL, THE DAY OF THE TRIAL I WAS A LITTLE
14 LATE COMING SO WHEN I GOT HERE SHE CAME ... I WENT TO HER
15 OFFICE, SHE WAS ALREADY UP HERE. SO WHEN I CAME SHE
16 TOLD ME TO COME UP FRONT, MY TRIAL WAS STARTING. SHE
17 TOLD ME THEY WAS GONNA START THE TRIAL WITHOUT ME IF I
18 DIDN'T COME CAUSE I WAS A LITTLE LATE.

19 Q: OKAY. NOW, IN YOUR ... IN YOUR ... DID YOU AT THAT TIME ASK
20 HER ABOUT A PLEA?

21 A: NO, SIR.

22 Q: OKAY. WAS THERE ANY TALK ABOUT THE PLEA BARGAIN AT
23 THAT TIME?

24 A: NO, SHE NEVER MENTIONED NO MORE. I NEVER ASKED HER.

25 Q: OKAY. NOW, YOU WENT THROUGH A TRIAL, IS THAT CORRECT?

HEARING

9

- 1 A: YES, SIR.
- 2 Q: AND DURING THE TRIAL TO YOUR KNOWLEDGE DID MS.
- 3 FERRARI EVER MAKE A MOTION TO QUASH THE INDICTMENT?
- 4 A: NO, SIR.
- 5 Q: DO YOU THINK THAT'S SOMETHING SHE SHOULD HAVE DONE?
- 6 A: YES, SIR.
- 7 Q: OKAY. WHY YOU THINK THAT?
- 8 A: BECAUSE I NEVER KNEW ... SHE WAS EXPLAINING DURING THAT,
- 9 LIKE THAT THURSDAY ABOUT THAT AND I ASKED HER ABOUT
- 10 WHERE DID THE KIDNAPING AND LYNCHING COME FROM. SHE
- 11 TOLD ME THEY CAN DO THAT AND I WAS LIKE BUT I NEVER SAW
- 12 NOTHING IN BLACK AND WHITE. WHEN I CAME TO TRIAL
- 13 MONDAY THAT'S WHEN I GOT MY RULE FIVE, THAT'S WHEN I
- 14 SAW THE INDICTMENT. I STILL WAS LIKE WHERE DID THESE
- 15 CHARGES COME FROM.
- 16 Q: DID YOU GET A CHANCE TO REVIEW THE DISCOVERY PRIOR TO
- 17 TRIAL?
- 18 A: NO, SIR. I NEVER HAD IT. I NEVER SEEN IT UNTIL I WENT TO
- 19 TRIAL.
- 20 Q: OKAY. NOW, WHAT ELSE DID ... DID YOU EVER HAVE ... TO
- 21 YOUR KNOWLEDGE WAS THERE AN INVESTIGATOR ASSISTING
- 22 MS. FERRARI?
- 23 A: NO. NO, SIR.
- 24 Q: OKAY. YOU ALSO PUT IN YOUR CLAIM ABOUT A POTENTIAL
- 25 ALIBI.

HEARING

10

- 1 A: YES, SIR.
- 2 Q: DID YOU HAVE DISCUSSIONS WITH MS. FERRARI ABOUT THAT?
- 3 A: YES, SIR.
- 4 Q: WHAT DID YOU TELL HER?
- 5 A: I TOLD HER MY ALIBI WITNESS WAS MY BROTHER AND YOU
- 6 KNOW, HIS ... HIS FRIEND, HIS GIRLFRIEND AT THE TIME, SHE
- 7 TOLD ME THAT SHE WASN'T GONNA CALL THEM BECAUSE THE
- 8 JURY WOULDN'T BELIEVE ME AND BELIEVE HIM BECAUSE THAT
- 9 WAS MY BROTHER. SO WE NEVER CALLED HIM. WE NEVER ...
- 10 SHE NEVER CALLED HIM. HE WAS HERE. HE WAS READY BUT
- 11 SHE NEVER CALLED HIM.
- 12 Q: OKAY. NOW, WAS THERE ANY OTHER PEOPLE THAT WERE
- 13 WILLING TO TESTIFY AS AN ALIBI OTHER THAN YOUR BROTHER?
- 14 A: HIS GIRLFRIEND. YOU KNOW, I HAD ... I HAD A FRIEND ALSO BUT
- 15 I NEVER TOLD HER, YOU KNOW, BECAUSE AT THAT TIME MY ...
- 16 MY BROTHER WAS WILLING TO TESTIFY BECAUSE HE CAME ...
- 17 Q: OKAY.
- 18 A: ... YOU KNOW AND HIS GIRLFRIEND WAS ... THEY CAME SO I
- 19 TOLD HER DURING TRIAL CAUSE WE NEVER DISCUSSED THE
- 20 DEFENSE UNTIL TRIAL, YOU KNOW, SO ...
- 21 Q: WHAT ...
- 22 A: NONE. BASICALLY NONE BECAUSE WE NEVER ... BECAUSE
- 23 EVERY TIME I WENT TO TALK TO HER IT WAS BASICALLY SHE
- 24 NEVER HAD THE PAPERWORK, SHE WAS STILL WAITING ON THE
- 25 PAPERWORK TO COME SO I NEVER GOT MY RULE FIVE. I NEVER

HEARING

11

1 GOT NO DISCOVERY OR NOTHING UNTIL I CAME TO TRIAL.
2 THAT'S WHEN I GOT ... THAT'S WHEN I WAS READ EVERYTHING
3 DEALING WITH THIS CASE.

4 Q: OKAY.

5 A: ON THE DAY OF TRIAL.

6 Q: OKAY. YOU ... YOU ALSO CLAIM THAT THERE WAS SOMETHING
7 WITH THE VICTIM'S TESTIMONY.

8 A: RIGHT.

9 Q: AND MS. FERRARI DIDN'T DO SOMETHING WITH THAT. CAN YOU
10 EXPLAIN TO THE COURT ABOUT THAT?

11 A: I FEEL THAT THE VICTIM ... THE VICTIM, HIS STORY WAS
12 INCONSISTENT, YOU KNOW, WHEN SHE ... SHE ASKED FOR THE
13 INCONSISTENT VERDICT AND YOU KNOW, BUT THE STORY OF
14 THAT AND THEY ... THE JURY AND THE JUDGE, THEY SAID THE
15 HANDS OF ONE THE HANDS OF ALL. DURING MY INDICTMENT I
16 WAS BASICALLY THE PRINCIPLE OR BASICALLY THE MAIN NO
17 FACTOR AND THEY CHARGED ME WITH THE HAND OF ONE THE
18 HAND OF ALL I FELT THAT SHE DIDN'T, YOU KNOW, TRY TO
19 OBJECT TO THAT BECAUSE THAT'S WHAT I GOT FOUND GUILTY
20 OF BASICALLY. NOBODY PLACED ME THERE AT THE SCENE BUT
21 THE VICTIM BASICALLY, YOU KNOW. THEY CHARGED ME WITH
22 KIDNAPING AND LYNCHING. MY BASIC CHARGE WAS THAT I
23 WAS OUT ON BOND FOR AND BASICALLY THAT I KNEW FOR AND
24 I WAS COMING TO ROLL CALL FOR WAS ASSAULT AND BATTERY
25 WITH INTENT TO KILL.

HEARING

12

1 Q: OKAY. IN REGARDS TO YOU CLAIM MS. FERRARI DID NOT ASK
2 FOR A CONTINUANCE IN YOUR CASE?

3 A: RIGHT. AND FEELING ... WELL, I FELT THAT IF SHE WOULD ASK
4 BECAUSE WE WASN'T READY AS FAR AS HER NOT BEING READY
5 AND I WASN'T READY AS FAR AS CONTINUING A TRIAL, LETTING
6 THE TRIAL GO ON, YOU KNOW. I FEEL THAT IF WE WOULD
7 HAVE, YOU KNOW, TALKED A LITTLE LONGER OR YOU KNOW,
8 WE WOULD HAVE ... WE WOULD HAVE WENT OVER THE CASE A
9 LITTLE BETTER THE OUTCOME MAY HAVE BEEN DIFFERENT.

10 Q: OKAY. NOW, DID YOU TESTIFY IN YOUR TRIAL?

11 A: NO, SIR.

12 Q: DID YOU THINK THAT WAS A PROBLEM?

13 A: YES, SIR.

14 Q: WHY DO YOU THINK THAT?

15 A: BECAUSE I WAS WILLING TO TESTIFY AND I WAS WILLING TO
16 TESTIFY UP UNTIL THE LAST DAY OF THE TRIAL AND YOU
17 KNOW, DURING THOSE TIMES SHE WAS TELLING ME THAT I
18 SHOULDN'T BECAUSE THEY WOULD ATTACK MY PRIOR
19 CONVICTION WHICH I STATED I DIDN'T CARE BECAUSE THAT'S
20 OLD AND I'VE DONE THAT, YOU KNOW, I'M ... THAT ONE'S OVER.

21 Q: IF YOU HAD TESTIFIED WHAT ... WHAT ... WHAT WOULD YOU
22 HAVE TOLD THE COURT?

23 A: I WOULD HAVE ... THAT'S WHEN MY ALIBI WITNESSES WOULD
24 HAVE CAME OUT. EVERYTHING ABOUT THIS CASE WOULD
25 HAVE BEEN DIFFERENT, YOU KNOW, BECAUSE THIS GUY WAS

HEARING

13

1 SITTING UP THERE THAT HE WAS COERCED OF SAYING THINGS
2 DEALING WITH ME AND IF I WOULD HAVE BEEN UP THERE I
3 COULD HAVE STRAIGHTENED THIS WHOLE THING OUT.

4 Q: DID MS. FERRARI PUT FORTH ANY EVIDENCE ON YOUR BEHALF?

5 A: AS FAR AS SHE JUST ... AS FAR AS WE WAS TRYING TO FIND OUT
6 DO THIS GUY SAYS THAT I SHOT HIM. BASICALLY SHE WAS JUST
7 ME ... WE JUST DEFENDED THAT. THAT'S THE ONLY THING THAT
8 WE JUST CONCENTRATED ON, THE KIDNAPING AND LYNCHING
9 WE DIDN'T CONCENTRATE ON THAT.

10 Q: OKAY. AND YOU THINK SHE SHOULD HAVE DONE THAT?

11 A: RIGHT. THAT'S WHAT I GOT FOUND GUILTY FOR.

12 Q: OKAY.

13 A: AND I FEEL THAT, YOU KNOW, ASK ME IF I WOULD HAVE
14 TESTIFIED SHE TOLD ME THAT THEY WOULD HAVE ATTACKED
15 MY PRIOR HISTORY. I FEEL THAT, YOU KNOW, IF SHE WOULD
16 HAVE, YOU KNOW, PUT OBJECTIONS TO THAT THEN WE WOULD
17 HAVE ... WE WOULD HAVE KNOWN SOMETHING DIFFERENT BUT
18 SHE NEVER PUT AN OBJECTION TO THAT. THE JUDGE NEVER
19 EXPLAINED ANYTHING ABOUT MY PRIOR HISTORY OR YOU
20 KNOW, LIKE IT WAS MADE A MOTION TO EXPLAIN TO THE JURY
21 ABOUT MY PRIOR HISTORY BECAUSE THEY WAS SIMILAR, YOU
22 KNOW.

23 Q: OKAY.

24 A: AND THAT WOULD HAVE MADE, YOU KNOW, MY TESTIMONY
25 BELIEVABLE OR NOT BELIEVABLE. THAT WOULD HAVE BEEN UP

HEARING

14

1 TO THE JURY BUT WE NEVER ...

2 Q: THEY NEVER HEARD THAT.

3 A: THEY NEVER HEARD THAT, NO, SIR. THEY JUST KNOW I DIDN'T
4 TESTIFY.

5 Q: OKAY. AND DID ANYBODY ... DID YOU HAVE ANY CO-
6 DEFENDANTS TESTIFY AGAINST YOU?

7 A: I HAD ONE GUY THEY SAID WAS MY CO-DEFENDANT. HE CAME
8 BUT YOU KNOW, I GUESS WHEN HE DIDN'T TESTIFY LIKE THEY
9 WANTED THEY GOT MAD AT HIM, THE SOLICITOR BUT ...

10 Q: OKAY.

11 A: KENDALL NELSON.

12 Q: OKAY.

13 A: THE OTHER GUY I NEVER SEEN. BUSH, HE NEVER CAME AND I
14 DON'T KNOW WHAT HAPPENED.

15 Q: AND YOU ALSO ... YOU BROUGHT A CLAIM AGAINST YOUR
16 APPELLATE COUNSEL.

17 A: RIGHT.

18 Q: APPELLATE DEFENSE.

19 A: RIGHT.

20 Q: TELL US ABOUT THAT.

21 A: HOW I FEEL ABOUT THE INDIRECT VERDICT BECAUSE LIKE I
22 SAID THEY FOUND ME GUILTY AS FAR AS BEING HANDS OF ONE
23 HANDS OF ALL AND WITH ME BEING THE PRINCIPLE IN THE CASE
24 AND NO ONE ELSE IS CHARGED, NO ONE ELSE HAS GOT
25 CONVICTED. IN MY INDICTMENT IT STATED NO ... I WAS NOT AN

HEARING

15

1 ACCESSORY, YOU KNOW, I WAS THE PRINCIPLE. SO THEY
2 FOUND ME BASICALLY GUILTY AS BEING THE HAND OF ONE IS
3 THE HAND OF ALL, YOU KNOW, SO HOW CAN THEY DO THAT
4 WHEN I WAS NOT ACCESSORY. I WAS THE PRINCIPLE FROM THE
5 START.

6 Q: DO YOU THINK THE APPELLATE SHOULD HAVE FOCUSED THAT
7 ISSUE AND BROUGHT IT FORTH TO THE COURT OF APPEALS?

8 A: RIGHT.

9 Q: DID THEY DO THAT TO YOUR KNOWLEDGE?

10 A: NO, SIR.

11 Q: OKAY. DID MS. FERRARI RAISE ANY OF THOSE ISSUES AT TRIAL?

12 A: SHE RAISED ABOUT THE INEFFECTIVE ASSISTANCE OF COUNSEL
13 ... I MEAN, THE INDIRECT VERDICT.

14 Q: OKAY. SHE DID DO THAT?

15 A: YES, SIR.

16 Q: OKAY. NOW, IS THERE ANYTHING ELSE THAT WE HAVEN'T
17 COVERED WITH REGARDS TO YOUR CLAIMS? COVERED THE
18 INDICTMENT.

19 A: RIGHT.

20 Q: COVERED THE ALIBI. FAILURE TO TESTIFY. CROSS EXAMINING
21 THE WITNESS. DIDN'T ASK FOR A CONTINUANCE. DIDN'T ...

22 A: I FEEL ...

23 Q: WHAT ELSE? ANYTHING WE LEFT OUT?

24 A: AS FAR AS HER BEFORE TRIAL I FEEL THAT SHE SHOULD HAVE
25 MADE A MOTION TO SQUASH THE INDICTMENT OR A

HEARING

16

1 CONTINUANCE.

2 Q: WE COVERED THAT.

3 A: RIGHT.

4 Q: IS THERE ANYTHING ELSE?

5 A: BASICALLY ... THAT'S BASICALLY IT, YOU KNOW, BASICALLY IT.

6 Q: ARE YOU SURE?

7 A: BASICALLY IT.

8 Q: YOU SURE?

9 A: RIGHT. YES.

10 Q: TAKE YOUR TIME AND DO THAT TO MAKE SURE.

11 A: THAT'S BASICALLY IT. CAN I TALK TO YOU?

12 Q: YOU GOT SOMETHING ELSE ...

13 A: I JUST WANT TO TALK TO YOU.

14 Q: OKAY. HAVE WE COVERED EVERYTHING AS FAR AS YOUR POST-
15 CONVICTION RELIEF?

16 A: YES, SIR.

17 Q: OKAY.

18 MR. BROOKS: NO OTHER QUESTIONS, JUDGE.

19 THE COURT: CROSS EXAMINATION, PLEASE.

20 MR. STUCKEY - CROSS EXAMINATION BY MS. SALANE:

21 Q: IT'S MR. STUCKEY, IS THAT RIGHT, SIR?

22 A: YES, SIR.

23 Q: OKAY.

24 A: YES, MA'AM, PARDON ME.

25 Q: NOW, I WANT TO GET SOME THINGS CLEAR ... A LITTLE BIT

HEARING

17

1 CLEARER. YOU SAID THAT THERE WERE NO PLEA
2 NEGOTIATIONS UNTIL LIKE TWO DAYS BEFORE THE TRIAL?
3 A: IT WAS LIKE A THURSDAY, A COUPLE DAYS BEFORE, RIGHT.
4 Q: OKAY.
5 A: THAT'S THE FIRST TIME I HEARD IT.
6 Q: FIRST TIME YOU HEARD IT.
7 A: AND THAT'S BASICALLY THE ONLY TIME I HEARD IT.
8 Q: AND YOU DECIDED NOT TO TAKE THAT ...
9 A: I TOLD ...
10 Q: ... PLEA, RIGHT?
11 A: ... SHE TOLD ME, SHE SAID IF THEY GET IT IN BLACK AND WHITE
12 AND I TOLD HER WELL, IF THEY CAN GET IT IN BLACK AND
13 WHITE WE CAN DISCUSS IT BUT I NEVER SEEN ANYTHING, YOU
14 KNOW, AND I'M ... AND SHE TOLD ME, SHE SAID A SET TIME LIKE
15 15 YEARS, SHE SAID I'M STRIVING TO GET THAT IN BLACK AND
16 WHITE NOW WITH THE SOLICITOR. AND YOU KNOW, I SAID
17 OKAY, IF YOU GET THAT IN BLACK AND WHITE THEN WE, YOU
18 KNOW, BUT I NEVER SEEN IT NO MORE, NEVER HEARD ABOUT IT
19 NO MORE.
20 Q: OKAY. LET'S MOVE ON TO THE DAY OF THE TRIAL WHERE YOU
21 SAID YOU WERE A LITTLE LATE.
22 A: YES, SIR. YES, MA'AM.
23 Q: WHY WERE YOU LATE TO TRIAL, LATE TO COURT?
24 A: I HAD ... MY UNCLE ... MY UNCLE HAD ... HE TOOK ... HE
25 COULDN'T COME GET ME UNTIL IT WAS LIKE 9:00, 10:00 O'CLOCK.

HEARING

18

1 I WAS WAITING ON MY UNCLE TO COME. AND HIS CAR WAS
2 MESSED UP AND WHEN WE CAME IT WAS TIME FOR TRIAL. THAT
3 WAS BASICALLY IT.

4 Q: AND YOU ... YOU ... THE BONDING COMPANY HAD GONE OUT OF
5 BUSINESS AND SO YOU HAD TO BE TAKEN INTO CUSTODY ...

6 A: YES, MA'AM.

7 Q: ... IS THAT RIGHT?

8 A: YES, MA'AM.

9 Q: BUT MS. STEVENS ... THAT'S HER NAME NOW ... SHE USED TO BE
10 MS. FERRARI BUT MS. STEVENS IS HER NAME NOW ...

11 A: YES, MA'AM.

12 Q: SHE DID TRY TO KEEP YOU OUT OF JAIL AND KEPT YOU ...

13 A: YES.

14 Q: ... TRIED TO KEEP YOU OUT ON BOND, DIDN'T SHE?

15 A: SHE DID THAT, YES ... YES, MA'AM.

16 Q: YOU ALSO SAID THERE WAS ... THERE WAS ... SHE DIDN'T MAKE
17 A MOTION TO QUASH THE INDICTMENT.

18 A: NO, NO, MA'AM.

19 Q: NOW, HOW WOULD THAT HAVE HELPED YOU?

20 A: HOW WOULD THAT HAVE HELPED ME BECAUSE ...

21 Q: YEAH.

22 A: ... WE WAS NOT PREPARED AS FAR ... OKAY, SAY FOR INSTANCE
23 THE KIDNAPING? WHERE DID THAT COME FROM? THE
24 LYNCHING? WHERE DID THAT COME FROM? I HAD NO
25 KNOWLEDGE OF IT, YOU KNOW, I HAD NO KNOWLEDGE OF ... I

HEARING

19

1 NEVER SEEN IT. I DIDN'T KNOW THAT WOULD CHANGE THE
2 WHOLE OUTCOME OF THE TRIAL BECAUSE WE HAD NO
3 DEFENSE. YOU KNOW, I DIDN'T ... HOW COULD WE ATTACK IT?
4 UNTIL AND SO NOW I'M SITTING IN TRIAL WITH MORE CHARGES
5 THAN ...

6 Q: SO IT PROBABLY ... IT WOULDN'T HAVE HELPED YOU AT ALL.

7 A: YES, IT WOULD HAVE BECAUSE ...

8 Q: YOU SAID YOU DIDN'T HAVE A DEFENSE.

9 A: WE WOULD HAVE HAD A DEFENSE. I'M SAYING MY ... MY MAJOR
10 FOCUS WAS ON THE ASSAULT AND BATTERY WITH INTENT TO
11 KILL. THAT'S BASICALLY ALL I KNEW.

12 Q: BUT OF COURSE YOU KNOW IT'S UP TO THE SOLICITOR ABOUT
13 WHICH CHARGE THEIR GONNA ...

14 A: RIGHT. I UNDERSTAND BUT SHOULDN'T IT BE UP TO MY
15 LAWYER FOR HER TO MAKE SURE I RECEIVE THIS?

16 Q: WHAT ABOUT THE ALIBI? YOU SAID THAT YOUR BROTHER AND
17 GIRL ... HIS GIRLFRIEND ...

18 A: YES, MA'AM.

19 Q: ... ARE YOUR ALIBI?

20 A: YES, MA'AM.

21 Q: AND YOU SAID YOU HAD ANOTHER FRIEND THAT YOU NEVER
22 TOLD HER ABOUT.

23 A: NO, SHE ... CAUSE SHE NEVER ... SEE THE THING ABOUT IT IS SHE
24 NEVER CAME ... TIL TRIAL SHE NEVER CAME, YOU KNOW, BUT
25 MY BROTHER AND MY BROTHER AND HIS GIRLFRIEND WAS

HEARING

20

1 HERE, THEY WAS WILLING AND READY AND I TOLD HER, YOU
2 KNOW, I TOLD HER THEY WAS WILLING AND READY AND SHE
3 TOLD ME THAT THE JURY WOULDN'T BELIEVE ME BECAUSE OF
4 MY BROTHER, YOU KNOW, AND I FEEL THAT WE HAD TEN DAYS
5 THAT ... I BELIEVE WE HAVE TEN DAYS FOR AN ALIBI WITNESS
6 NOTICE TO BE SERVED. SHE NEVER SERVED IT CAUSE WE
7 NEVER WENT OVER NONE OF THIS.

8 Q: DID YOU EVER TELL HER ABOUT THE OTHER FRIEND?

9 A: NO, MA'AM.

10 Q: OKAY.

11 A: YOU SEE IT WAS ... THAT WAS ...

12 Q: WHY WOULDN'T YOU TELL YOUR OWN LAWYER ABOUT THE
13 OTHER FRIEND.

14 A: BECAUSE I COULDN'T ... I DON'T DEAL ... WHAT I'M SAYING I
15 WASN'T DEALING WITH HER ANY ... I DON'T EVEN KNOW WHERE
16 SHE'S AT, YOU KNOW, MY OTHER FRIEND. BUT I KNOW MY
17 BROTHER AND HIS GIRLFRIEND WAS THERE.

18 Q: NOW, WHEN YOU DECIDED NOT TO TESTIFY THE JUDGE WENT
19 OVER WITH YOU IN COURT YOUR RIGHTS ABOUT TESTIFYING,
20 DID HE NOT?

21 A: RIGHT.

22 Q: AND WAS THAT YOUR DECISION NOT TO TESTIFY?

23 A: I'M GONNA SAY THE REASON WHY IT WAS MY DECISION
24 BECAUSE OF WHAT MY LAWYER TOLD ME

25 Q: RIGHT.

HEARING

21

- 1 A: I WAS WILLING TO GO ... I WAS WILLING TO TESTIFY THEN BUT
2 SHE TOLD ME WHAT THEY WOULD DO AND THE JUDGE, HE
3 NEVER WENT OVER AND LET THE JURY KNOW THAT IF THEY ...
4 THEY SEE MY OTHER CRIME AND THIS ... WHAT THEY WAS
5 TRYING TO SAY THIS, MY OTHER CHARGE WAS SIMILAR. WE
6 NEVER WENT OVER. SHE NEVER WENT OVER THAT BECAUSE
7 SHE KEPT SAYING THEY WAS GONNA ATTACK YOU. I WAS LIKE I
8 DON'T CARE. BUT I FELT IF SHE WOULD HAVE MADE A MOTION
9 TO LET THE JURY KNOW CAUSE I REALLY WANTED TO TESTIFY,
10 YOU KNOW, IN MY OWN BEHALF AND IF I FELT IF SHE WOULD
11 HAVE LET THE JURY KNOW THAT IF SHE HAD PUT A MOTION UP
12 FOR THE IMPEACHMENT MOTION EVERYTHING ... IT WOULD
13 HAVE BEEN MORE FAVORABLE IN MY CASE. THIS WOULD HAVE
14 BEEN FAVORABLE TO ME.
- 15 Q: YOU ... YOU WERE MORE CONCERNED ABOUT THE ALLEGATIONS
16 THAT YOU SHOT HIM, RIGHT?
- 17 A: YES.
- 18 Q: NOT THE LYNCHING AND THE KIDNAPING.
- 19 A: NO, I CAN'T SAY I WASN'T. I ... BECAUSE I JUST KNEW ABOUT IT.
20 BASICALLY WE ... WE ALL ... WE WAS IN HERE ... WHEN I GOT ...
21 WHEN SHE GAVE ME THAT PAPERWORK AT THAT DESK THAT
22 DAY THIS IS WHEN I SEE THE INDICTMENT. THIS IS WHEN I SEE
23 MY RULE FIVE. THIS IS WHEN I SEE EVERYTHING THAT'S
24 WRITTEN DOWN. SO NOW I'M ... I'M FOLLOWING HER. BUT AS
25 FAR AS ME SAYING THE KIDNAPING AND LYNCHING, I ASKED

HEARING

22

1 HER WHERE IT CAME FROM. SHE SAID THEY COULD DO THAT. IF
2 I HAD AN ALIBI WITNESS, MY ALIBI WITNESS WOULD HAVE BEEN
3 THERE WE WOULD HAVE WENT OVER THE KIDNAPING AND
4 LYNCHING. HE ONLY ... HE'S THE ONLY ONE PLACING ME AT THE
5 SCENE AND HIS STORY WAS INCONSISTENT, YOU KNOW.

6 Q: YOU'RE TALKING ABOUT THE VICTIM?

7 A: THE VICTIM.

8 Q: BUT THE CO-DEFENDANT ALSO PLACED YOU AT THE SCENE,
9 RIGHT?

10 A: NO ... NO, MA'AM. NO, MA'AM. READ THE TRIAL.

11 Q: ONE MOMENT, PLEASE, YOUR HONOR. IS YOUR BROTHER IN THE
12 COURTROOM TODAY?

13 A: NO, MA'AM.

14 Q: IS HIS GIRLFRIEND IN THE COURTROOM ...

15 A: NO, MA'AM. SEE THAT'S WHY I ASKED FOR A CONTINUANCE
16 BECAUSE ME AND MY LAWYER, I DIDN'T KNOW I WAS GOING TO
17 ... TO THIS HEARING TODAY. I SEEN MY LAWYER TUESDAY AND
18 HE TOLD ME I WAS GOING TO HEARING THURSDAY SO I NEVER
19 HAD NO TIME TO REALLY GET WITH ANYONE. I'M SAYING THEY
20 KNOW THAT THEY SUPPOSED TO COME BUT I HAD NO TIME TO ...
21 I DIDN'T HAVE ANY TIME IN ... I FELT THAT HE WASN'T UP TO
22 SPEED ON WHAT I'M STRIVING TO DO CAUSE I HAVE ONE
23 MOTION THAT I WANTED TO AMEND. SO NOW ALL OF A SUDDEN
24 I GOT NO LETTER SAYING I WAS GOING TO TRIAL OR GETTING
25 THIS HEARING. ALL OF A SUDDEN I'M JUST GONE. SO NOW HERE

HEARING

23

1 I AM AGAIN.

2 Q: THIS WHOLE THING HAS BEEN PENDING MORE THAN A YEAR,
3 RIGHT?

4 A: IT'S BEEN PENDING A YEAR.

5 Q: THANK YOU, NO FURTHER QUESTIONS.

6 THE COURT: REDIRECT?

7 MR. BROOKS: NOTHING, YOUR HONOR.

8 THE COURT: ALL RIGHT. ALL RIGHT. THANK YOU, MR.
9 STUCKEY, YOU MAY STEP DOWN. ALL RIGHT, MR. BROOKS, YOU MAY
10 CALL YOUR NEXT WITNESS.

11 MR. BROOKS: BEG THE COURT'S INDULGENCE, YOUR
12 HONOR.

13 THE COURT: OKAY.

14 MR. BROOKS: YOUR HONOR, WE CALL MS. STEVENS TO
15 THE STAND.

16 THE COURT: ALL RIGHT.

17 MS. SALANE: BEG THE COURT'S INDULGENCE.

18 THE COURT: ALL RIGHT. WHILE SHE'S COMING UP LET ME
19 JUST NOTE FOR THE RECORD A NOTATION AFTER HEARING HIS
20 TESTIMONY THAT PAGE 158 OF THE TRANSCRIPT REFLECTS THE
21 BETWEEN THE TRIAL JUDGE, JUDGE COOPER, AND THE DEFENDANT
22 WITH REGARD TO FIFTH AMENDMENT RIGHTS.

23 BAILIFF: PLACE YOUR LEFT HAND ON THE BIBLE, RAISE
24 YOUR RIGHT HAND AND STATE YOUR NAME, PLEASE.

25 MS. STEVENS: LAUREN STEVENS.

HEARING

24

1 BAILIFF: DO YOU SOLEMNLY SWEAR OR AFFIRM THE
2 TESTIMONY YOU GIVE IN THIS COURT WILL BE THE TRUTH, THE
3 WHOLE TRUTH AND NOTHING BUT THE TRUTH SO HELP YOU GOD?

4 MS. STEVENS: YES, I DO.

5 BAILIFF: HAVE A SEAT, PLEASE. STATE YOUR FULL NAME
6 AND SPELL YOUR LAST NAME, PLEASE.

7 MS. STEVENS: LAUREN BOSWELL STEVENS, S-T-E-V-E-N-S.

8 MS. STEVENS - DIRECT EXAMINATION BY MR. BROOKS:

9 Q: MS. STEVENS ...

10 A: YES?

11 Q: ... YOU WERE APPOINTED TO MR. STUCKEY, IS THAT CORRECT?

12 A: YES.

13 Q: HOW LONG WERE YOU APPOINTED TO HIM BEFORE GOING TO
14 TRIAL?

15 A: PROBABLY ABOUT TWO MONTHS.

16 Q: OKAY. AND HOW MANY TIMES DO YOU RECALL MEETING WITH
17 HIM PRIOR TO TRIAL?

18 A: I DO NOT KNOW EXACTLY HOW MANY TIMES. I KNOW WE MET
19 DOWNSTAIRS IN MY OFFICE WHERE WE WENT OVER ALL OF HIS
20 CHARGES. WE WENT OVER A PLEA OFFER. I THINK ... I DO
21 BELIEVE IT WAS BEFORE THE WEEKEND AND I DID TELL HIM
22 THAT THE TRIAL WAS GOING TO BE MONDAY. AND THEN I
23 KNOW THAT WE ... WE TALKED ON THAT MONDAY OF TRIAL.

24 Q: OKAY. YOU SAID A PLEA OFFER. WHAT ... WHAT WAS HIS PLEA
25 OFFER?

HEARING

25

- 1 A: MR. STUCKEY HAD FIVE INDICTMENTS THAT CONTAINED DRUG
2 ... VARIOUS DRUG CHARGES AND THIS INDICTMENT WHICH
3 CONTAINED FOUR CHARGES AND MR. CONNER WAS OFFERING
4 TO ALLOW HIM TO PLEAD TO ASSAULT AND BATTERY OF A HIGH
5 AND AGGRAVATED NATURE AND DROP EVERYTHING ELSE.
- 6 Q: WHEN YOU SAY DROP EVERYTHING ELSE, DOES THAT MEAN
7 THE KIDNAPING AND THE LYNCHING?
- 8 A: POSSESSION OF A WEAPON DURING A CRIME OF VIOLENCE AND
9 ALL OF THE DRUG CHARGES AS WELL.
- 10 Q: OKAY. AND THE KIDNAPING AND LYNCHING?
- 11 A: AND THE LYNCHING, YES.
- 12 Q: DID ... DID YOU EFFECTIVELY COMMUNICATE THAT TO MR.
13 STUCKEY?
- 14 A: I DID. I TOLD HIM WHAT CHARGES HE WAS CHARGED WITH, ALL
15 OF THEM. WE DISCUSSED THE TIME PERIODS HE WAS FACING
16 SHOULD MR. CONNER CHOOSE TO PURSUE THE DRUG CHARGES
17 AND THE ASSAULT AND BATTERY WITH INTENT TO KILL, THE
18 LYNCHING AND THE KIDNAPING AND THE POSSESSION OF A
19 WEAPON. WE TALKED ABOUT THE FACT THAT ABHAN CARRIES
20 ZERO TO TEN, IT'S A MISDEMEANOR, IT'S NOT A STRIKE. WE
21 TALKED ABOUT ALL THE VARIOUS SCENARIOS AND I
22 ENCOURAGED HIM ...
- 23 Q: WHEN YOU SAY WE ... EXCUSE ME ... WHEN YOU SAY WE
24 TALKED THAT'S YOU AND HIM.
- 25 A: YES. IN DETAIL.

HEARING

26

- 1 Q: OKAY. AND WHAT WAS HIS RESPONSE?
- 2 A: HE SAID THAT HE DID NOT WANT TO TAKE THE DEAL, HE
- 3 WANTED TO TAKE HIS CHANCES AT TRIAL.
- 4 Q: WERE YOU SURE THAT HE UNDERSTOOD WHAT YOU WERE
- 5 TELLING HIM?
- 6 A: I TOLD HIM IF WE LOST AT TRIAL THE NEXT TIME HE WOULD SEE
- 7 THE LIGHT OF DAY WAS IN A PINE BOX. I THOUGHT HE
- 8 UNDERSTOOD WHAT I MEANT.
- 9 Q: NOW, WHEN YOU GUYS WENT TO TRIAL, YOU RECOGNIZED HE
- 10 WAS RUNNING LATE.
- 11 A: I DID.
- 12 Q: DID YOU ASK THE COURT FOR A CONTINUANCE?
- 13 A: I ASKED THE COURT ... I TOLD THE COURT THAT HE WAS ON HIS
- 14 WAY, THAT HE HAD BEEN SHOWING UP FOR COURT AND THEN
- 15 HE CAME IN AS WE WERE HAVING THAT DISCUSSION.
- 16 Q: OKAY. DID ... DID YOU ALL HAVE DISCUSSIONS ABOUT ALIBI
- 17 WITNESS?
- 18 A: I DON'T EVER REMEMBER MR. STUCKEY TELLING ME HE HAD
- 19 AN ALIBI.
- 20 Q: AT ALL?
- 21 A: I DO NOT REMEMBER THAT CONVERSATION.
- 22 Q: NOTHING ABOUT HIS BROTHER?
- 23 A: I'M NOT SAYING THE CONVERSATION DIDN'T HAPPEN. I DON'T
- 24 HAVE ANY NOTES AND I DON'T PERSONALLY DON'T REMEMBER
- 25 IT. I WOULD ... I WOULD HAVE AT LEAST TRIED TO MAKE THE

HEARING

27

- 1 MOTION OF ALIBI IF HE HAD TOLD ME THAT I DO BELIEVE.
- 2 Q: OKAY. NOW, DID YOU RAISE ANY MOTIONS TO QUASH THE
- 3 INDICTMENT?
- 4 A: NO, I DID NOT. I WAS MR. STUCKEY'S THIRD ATTORNEY OF
- 5 RECORD. HE HAS MR. RYAN FOR A WHILE WHILE HE WAS
- 6 INCARCERATED IN FLORENCE. THERE ARE LETTERS IN MY FILE
- 7 BACK AND FORTH FROM MR. STUCKEY AND MR. RYAN SAYING
- 8 THAT DISCOVERY HAD PASSED HANDS. HE ASKED FOR A
- 9 SPEEDY TRIAL AT THAT POINT. HE NEVER SAID TO ME WHEN WE
- 10 WERE DISCUSSING HIS CHARGES, YOU KNOW, I DON'T
- 11 UNDERSTAND WHERE THIS LYNCHING CAME FROM, THIS
- 12 KIDNAPING CAME FROM SO I DID NOT KNOW THAT HE WAS
- 13 UNAWARE OF THOSE CHARGES BECAUSE WHEN HE AND I
- 14 DISCUSSED THEM HE DIDN'T ACT LIKE HE DIDN'T KNOW WHAT I
- 15 WAS TALKING ABOUT. SO I DID NOT MOVE TO QUASH THE
- 16 INDICTMENT BECAUSE I DIDN'T REALIZE THAT IT WAS AN ISSUE
- 17 FOR HIM CAUSE HE NEVER MENTIONED IT TO ME.
- 18 Q: OKAY. DID YOU GO OVER THE INDICTMENT WITH HIM?
- 19 A: YES, I DID.
- 20 Q: AND THAT'S HIS ... THAT'S AS IT RELATES TO ALL OF THESE
- 21 CHARGES, THE LYNCHING AND KIDNAPING INCLUDED?
- 22 A: YES, AND I EXPLAINED TO HIM WHAT THE PENALTIES WERE AND
- 23 EVERYTHING.
- 24 Q: OKAY. ARE YOU SURE ... DID HE UNDERSTAND THOSE?
- 25 A: I THOUGHT THAT HE DID, YES.

HEARING

28

1 Q: OKAY. DID YOU EVER DISCUSS WITH HIM HIS EDUCATIONAL
2 BACKGROUND TO MAKE SURE THAT HE TOTALLY UNDERSTOOD
3 YOUR CONVERSATIONS WITH HIM ABOUT GOING TO TRIAL, NOT
4 GOING TO TRIAL, THE INDICTMENT?

5 A: HE ... HE SEEMED TO UNDERSTAND OUR CONVERSATIONS. I DID
6 NOT HAVE ANY QUESTION AS HIS ... AS TO HIS ABILITY TO
7 UNDERSTAND OUR CONVERSATIONS.

8 Q: OKAY. NOW, DO YOU RECALL WHETHER OR NOT YOU ALL PUT
9 UP A DEFENSE?

10 A: I KNOW FROM LOOKING AT THE TRANSCRIPT THAT WE DID NOT.
11 I ALWAYS DISCUSS WITH MY CLIENTS THEIR RIGHT TO TESTIFY.
12 IF MY CLIENTS HAVE A PRIOR RECORD I ENCOURAGE THEM NOT
13 TO TESTIFY ALTHOUGH THE JUDGE INSTRUCTS A JURY THEY
14 ARE NOT SUPPOSED TO TAKE THEIR PAST, YOU KNOW, TO HOLD
15 IT AGAINST THEM AND TO TAKE IT INTO CONSIDERATION,
16 JURIES ARE PEOPLE AND SOMETIMES THEY THINK WELL, HE DID
17 SO AND SO BEFORE SO MAYBE HE DID THIS SO IF MY CLIENTS
18 HAVE A RECORD I ENCOURAGE THEM NOT TO BUT I DON'T MAKE
19 THAT ULTIMATE DECISION.

20 Q: OKAY.

21 A: I ... I ALSO ... I ALSO ENCOURAGE THEM NOT TO IF THEY HAVE A
22 PRIOR RECORD BECAUSE IT'S IMPORTANT TO HAVE THE LAST
23 WORD AS THE DEFENSE AND I EXPLAIN ALL ... I EXPLAIN THAT
24 CONCEPT TO THEM AS WELL. IF WE PUT UP A DEFENSE THEN WE
25 LOSE THE ABILITY TO BE THE LAST THING THAT THE JURY

HEARING

29

- 1 HEARS.
- 2 Q: DO YOU RECALL EXPLAINING THAT TO MR. STUCKEY?
- 3 A: YES.
- 4 Q: DID YOU GO OVER WITH HIM HIS RECORD THAT COULD
- 5 POSSIBLY USE ...
- 6 A: YES.
- 7 Q: ... FOR IMPEACHMENT PURPOSES?
- 8 A: YES.
- 9 Q: DID YOU RAISE ANY ISSUES ABOUT WHAT HE COULD BE
- 10 IMPEACHED FOR AND WHAT HE COULD NOT BE IMPEACHED FOR
- 11 SHOULD HE TESTIFY?
- 12 A: YOU MEAN DURING THE TRIAL?
- 13 Q: WELL, DURING THE IN CAMERA HEARING WHERE THE JUDGE
- 14 GAVE HIM THE FIFTH AMENDMENT ...
- 15 A: NO, I ... THE JUDGE JUST GAVE HIM THE STANDARD
- 16 INFORMATION ABOUT HIS RIGHT TO TESTIFY AND WHAT THAT
- 17 THE JURY CAN'T HOLD IT AGAINST HIM.
- 18 Q: DID YOU HAVE ANY CONVERSATIONS WITH MR. CONNER ABOUT
- 19 WHAT COULD BE USED ...
- 20 A: NO.
- 21 Q: ... AGAINST HIM?
- 22 A: NO.
- 23 Q: DID YOU RAISE ANY ISSUES ABOUT CERTAIN CONVICTIONS
- 24 THAT COULD BE USED VERSUS CERTAIN CONVICTIONS THAT
- 25 COULD NOT BE USED?

HEARING

30

1 A: IF MR. STUCKEY HAD EXPRESSED A DESIRE TO TESTIFY THEN I
2 WOULD HAVE DONE SO BUT HE NEVER EXPRESSED A DESIRE TO
3 TESTIFY TO ME.

4 Q: DID HE AFFIRMATIVELY SAY I DON'T WANT TO TESTIFY?

5 A: YES.

6 MR. BROOKS: BEG THE COURT'S INDULGENCE.

7 THE COURT: YES, SIR.

8 Q: WHEN DID YOU GET THE DISCOVERY IN THAT LYNCHING
9 CHARGE?

10 A: I DON'T ... I DON'T KNOW EXACTLY WHEN I GOT IT. THERE ARE
11 COPIES OF RULE FIVE RESPONSES FROM THE STATE THAT WERE
12 TO MR. RYAN THAT INCLUDE THAT INDICTMENT SO I WOULD
13 ASSUME I GOT IT WHEN I GOT THE DISCOVERY MATERIALS
14 FROM ... ACTUALLY IT WENT FROM MR. RYAN TO MR. SPIGNER
15 TO MR. HOWLE TO ME SO ...

16 Q: DURING YOUR CONVERSATIONS WITH MR. STUCKEY PRIOR TO
17 THE TRIAL DID YOU HAVE THE DISCOVERY IN YOUR
18 POSSESSION?

19 A: YES, I DID.

20 Q: AND DID YOU HAVE THE DISCOVERY IN YOUR POSSESSION AS IT
21 RELATES TO THE KIDNAPING AND LYNCHING?

22 A: YES.

23 Q: AND DID YOU GO OVER THAT WITH HIM?

24 A: THERE WAS NOT A WARRANT FOR KIDNAPING AND THERE WAS
25 NOT A WARRANT FOR LYNCHING SO I DID NOT GO OVER THE

HEARING

31

1 WARRANT FOR THAT BUT WE WENT OVER THE FACTS OF THE
2 CASE AS IT PERTAINED TO THAT INDICTMENT THAT INCLUDED
3 THOSE CHARGES.

4 Q: OKAY. SO HE NEVER HAD A WARRANT FOR THAT, HE JUST GOT
5 SUBSEQUENTLY I GUESS INDICTED FOR THAT.

6 A: CORRECT.

7 Q: DID YOU EVER RAISE THAT AS AN ISSUE?

8 A: NO, I DID NOT BECAUSE YOU DON'T NECESSARILY HAVE TO
9 HAVE AN ARREST WARRANT TO BE INDICTED ON A CHARGE.

10 MR. BROOKS: BEG THE COURT'S INDULGENCE, YOUR
11 HONOR.

12 Q: MS. STEVENS ...

13 A: YES?

14 Q: ... IN THE TRANSCRIPT ... DO YOU HAVE A COPY OF THE
15 TRANSCRIPT?

16 A: YES, I DO.

17 Q: PAGE 238 ...

18 A: UH-HUH (AFFIRMATIVE RESPONSE).

19 Q: ... LINE 22, MR. CONNER ... DO YOU SEE WHERE MR. CONNER
20 REFERS TO HAVING SERVED YOU WITH DISCOVERY ON
21 SEPTEMBER 12TH?

22 A: YES.

23 Q: AND YOU REMARKED THAT IT'S OF THE DRUG COUNT.

24 A: CORRECT.

25 Q: AND ON PAGE 239 MR. CONNER REFERS TO ... AND I'M KIND OF

HEARING

32

1 PARAPHRASING HERE ... HE HAD SERVED DISCOVERY
2 MATERIALS BACK IN FEBRUARY 2003.

3 A: YES.

4 Q: AND HE ALSO INDICATES THAT HE SERVED YOU WITH
5 DISCOVERY MATERIALS.

6 A: YES.

7 Q: AND YOU REMARKED IN LINE 12 THAT WAS FOR DRUGS NOT THE
8 OTHER STUFF.

9 A: RIGHT. HE PERSONALLY SERVED ME A COPY OF THE
10 DISCOVERY MATERIALS ON THE DRUG CHARGE, YES.

11 Q: OKAY. SO BASICALLY WHAT ... WHAT YOU'RE SAYING IS THAT
12 THE DISCOVERY ON THE KIDNAPING AND LYNCHING HE DIDN'T
13 ACTUALLY SERVE UPON YOU. IT WAS SERVED ON HIS PRIOR
14 LAWYER.

15 A: CORRECT.

16 Q: OKAY. WAS IT IN YOUR FILE?

17 A: YES.

18 Q: OKAY. YOU HAVE ... THERE'S NO QUESTION ABOUT THAT IT WAS
19 IN YOUR FILE?

20 A: I HAVE NO QUESTION ABOUT IT BECAUSE THERE ARE SEVERAL
21 PAGES OF MY NOTES THAT I PREPARED FOR TRIAL USING THE
22 DISCOVERY MATERIAL SO I HAD TO HAVE HAD THEM.

23 Q: ALL RIGHT. AND DID YOU GO OVER THAT WITH MR. STUCKEY?

24 A: I ... I DO BELIEVE THAT I PREPARED THIS BEFORE OUR MEETING
25 WITH HIM AND THE REASON THAT I SAY THAT IS BECAUSE IT

HEARING

33

1 CONTAINS ALL OF THE FACTS ABOUT THIS CASE, ALL OF THE
2 FACTS ABOUT ALL OF THE DRUG CASES, AND I WOULDN'T HAVE
3 PREPARED THAT PARTICULAR DOCUMENT IN PREPARING FOR
4 THE TRIAL ON JUST THIS KIDNAPING CASE SO I BELIEVE I
5 PREPARED THAT DOCUMENT BEFORE HE AND I MET BECAUSE
6 WE HAD MADE THE APPOINTMENT SEVERAL DAYS BEFORE AND
7 I WANTED TO GO OVER EVERYTHING WITH HIM.

8 Q: MS. STEVENS ...

9 A: YES?

10 Q: ... DO YOU HAPPEN TO HAVE THOSE NOTES THAT YOU
11 PREPARED FOR YOUR TRIAL WITH YOU TODAY?

12 A: I DO INDEED.

13 Q: IS THERE ANY WAY I CAN TAKE A LOOK AT THOSE?

14 A: IT'S WORK PRODUCT.

15 THE COURT: THAT IS WORK PRODUCT WITH THIS CLIENT.
16 HE ... IT'S HIS PRIVILEGE IF HE WAIVES IT THEN HE CAN WAIVE IT. BUT
17 WE'RE NOT GONNA RETRY THE CASE NOW, MR. BROOKS. THIS IS NOT
18 THE ISSUE HERE. IT'S NOT WHETHER ... THERE HAVEN'T BEEN ANY
19 ISSUES WITH REGARD TO EVIDENTIARY MATTERS OR ANYTHING. THE
20 ISSUES THAT HE'S RAISED AS FAR AS INEFFECTIVE ASSISTANCE OF
21 COUNSEL HAVE TO DO WITH PLEA NEGOTIATIONS, MOTION TO QUASH
22 THE INDICTMENT, REQUEST FOR CONTINUANCE AND THE QUESTION
23 ABOUT WHETHER OR NOT HE WAS ADVISED OF HIS RIGHT TO TESTIFY.
24 THERE'S NOT ANYTHING WITH REGARD TO HER PRESENTATION OF THE
25 CASE THAT'S BEEN RAISED AS A ... AS AN OFFENSE IN THIS MATTER OR

HEARING

34

1 BEEN RAISED AS AN ISSUE IN THIS MATTER. SO I'M NOT GONNA LET
2 THE TRIAL DOCUMENTS COME IN.

3 MR. BROOKS: I UNDERSTAND, JUDGE. MY CLIENT'S
4 POSITION IN LIGHT OF THE FACTS, YOUR HONOR, DENYING HIS
5 MOTION FOR A CONTINUANCE WE WOULD LIKE TO HAVE A LITTLE
6 LATITUDE AT LEAST TO ... TO PROBE THIS PARTICULAR AREA.

7 THE COURT: YOU'D LIKE TO HAVE LATITUDE TO DO
8 WHAT?

9 MR. BROOKS: TO PROBE INTO THIS PARTICULAR AREA AS
10 TO HER PRESENTATION OF THE CASE AND HOW ...

11 THE COURT: NO, SIR, THAT'S NOT A PART OF HIS
12 ALLEGATIONS. HE HAD A CHANCE TO AMEND ... HE HAD A CHANCE TO
13 AMEND HIS APPLICATION PRIOR TO TODAY IF THAT WERE ... IF HE
14 WERE CONTENDING THAT HER TRIAL STRATEGY WAS WRONG THEN
15 HE COULD HAVE PUT THAT IN HIS APPLICATION. IT'S NOT AN ISSUE
16 AND I'M NOT GONNA ALLOW THE AMENDMENT OF THE PLEADINGS AT
17 THIS LATE DATE.

18 MR. BROOKS: BEG THE COURT'S INDULGENCE, YOUR
19 HONOR.

20 THE COURT: YES, SIR. ALL RIGHT, MR. BROOKS, LET'S GO.
21 NOT TRYING ... PREPARING THE CASE AS YOU GO ALONG.

22 Q: MS. STEVENS, DID ONE OF THE PRINCIPLE THEORIES THAT
23 CONVICTED MR. STUCKEY WAS THE HAND OF ONE IS THE HAND
24 OF ALL, IS THAT CORRECT?

25 A: YES.

HEARING

35

1 Q: OKAY. NOW, WAS HE THE ONLY ONE ON TRIAL?

2 A: YES.

3 Q: AND YOU ... YOU STATED YOU DIDN'T ... YOU DIDN'T MAKE A
4 MOTION TO QUASH THE INDICTMENT?

5 A: NO, I DID NOT.

6 Q: DID YOU RAISE ANY OBJECTIONS TO THE INDICTMENT OR
7 DURING THE TRIAL ABOUT THE HAND OF ONE IS THE HAND OF
8 ALL IN THIS CASE?

9 A: NO.

10 Q: EVEN THOUGH HE WAS THE ONLY ONE ON TRIAL?

11 A: ONE OF HIS CO-DEFENDANTS WAS TESTIFYING AGAINST HIM
12 AND I DON'T REMEMBER WHERE THE OTHER ONE WAS.

13 Q: OKAY.

14 MR. BROOKS: NO OTHER QUESTIONS, JUDGE.

15 THE COURT: ALL RIGHT, CROSS EXAMINATION, MS.

16 SALANE.

17 MS. SALANE: THANK YOU, YOUR HONOR.

18 MS. STEVENS - CROSS EXAMINATION BY MS. SALANE:

19 Q: MS. STEVENS, HOW LONG HAVE YOU BEEN PRACTICING LAW?

20 A: SINCE MAY OF 1996.

21 Q: AND HOW MUCH OF THAT TIME HAS BEEN DEVOTED TO THE
22 AREA OF CRIMINAL LAW?

23 A: SINCE JULY OF 1997.

24 Q: AND WHAT IS YOUR CURRENT CAPACITY? WHAT IS YOUR
25 CURRENT JOB?

HEARING

36

- 1 A: I'M AN ASSISTANT PUBLIC DEFENDER.
- 2 Q: SO THAT'S BASICALLY ALL YOU DO.
- 3 A: I ALSO AM THE ATTORNEY FOR THE GUARDIAN AD LITEM
- 4 PROGRAM IN SUMTER COUNTY BUT BOTH OF THOSE JOBS ARE
- 5 FULL TIME AND THAT IS WHAT I DO.
- 6 Q: SO HOW MUCH OF YOUR WEEK ASSUMING YOU HAD A 40 HOUR
- 7 WORK WEEK, HOW MUCH OF YOUR WEEK IS DEVOTED TO
- 8 CRIMINAL LAW?
- 9 A: 30 HOURS.
- 10 Q: OKAY. AND YOU WERE THE ATTORNEY FOR THE APPLICANT IN
- 11 THIS CASE, IS THAT RIGHT?
- 12 A: YES.
- 13 Q: YOU SAID THAT THERE WERE SOME OTHER ATTORNEYS BEFORE
- 14 YOU.
- 15 A: YES, MA'AM.
- 16 Q: MR. RYAN.
- 17 A: HUGH RYAN, YES.
- 18 Q: ONE. AND TELL US ABOUT THE DISCOVERY.
- 19 A: I HAVE A CERTIFICATE OF MAILING DATED FEBRUARY 14TH, 2003,
- 20 FROM THE SOLICITOR'S OFFICE THAT SAYS THEY SERVED ON
- 21 MR. RYAN A COPY OF THE DISCOVERY FOR THIS INDICTMENT.
- 22 Q: OKAY. SO MR. STUCKEY GOT THE ... THE DISCOVERY
- 23 MATERIALS? YOU HAVE SOME COMMUNICATIONS IN YOUR FILE
- 24 ABOUT THAT, TOO, RIGHT?
- 25 A: I HAVE SEVERAL LETTERS FROM MR. RYAN TO MR. STUCKEY.

HEARING

37

1 MR. STUCKEY WAS INCARCERATED IN FLORENCE COUNTY
2 AWAITING THE DISPOSITION OF SOME CHARGES THERE AND HE
3 AND MR. RYAN WERE WRITING BACK AND FORTH. IF YOU'LL
4 GIVE ME A MOMENT TO GET MY HANDS ON THAT. HE DID SEND
5 MR. STUCKEY SOME DISCOVERY MATERIALS IN OCTOBER OF
6 2002. THERE'S A LETTER FROM JANUARY OF 2003. I ... I DON'T
7 KNOW IF THERE'S A LETTER FROM MR. RYAN SPECIFICALLY
8 ABOUT THESE DISCOVERY MATERIALS BUT I DO KNOW THAT HE
9 WAS SENDING HIM DISCOVERY MATERIALS AS HE GOT THEM.

10 Q: OKAY. DID YOU GO OVER DISCOVERY MATERIALS?

11 A: WITH MR. STUCKEY? YES.

12 Q: WITH MR. STUCKEY, YES. DID HE APPEAR TO UNDERSTAND
13 WHAT WAS IN THE DOCUMENTS?

14 A: HE DID.

15 Q: HOW MANY TIMES DID YOU MEET WITH HIM ALTOGETHER THAT
16 YOU REMEMBER?

17 A: I ONLY KNOW OF ONE, THAT DAY IN MY OFFICE. I WAS
18 APPOINTED TO MR. STUCKEY IN SEPTEMBER AND I KNOW THAT I
19 SENT HIM A LETTER IN OCTOBER LETTING HIM KNOW ... AND
20 THIS IS 2003, SORRY ... LETTING HIM KNOW OF A CHANGE OF
21 ADDRESS AND A NEW WAY TO GET IN TOUCH WITH ME AND THE
22 ONLY TIME MR. STUCKEY EVER CONTACTED ME WAS WHEN ...
23 OR EVER SPOKE TO ME WAS WHEN I CONTACTED HIM TO SET UP
24 THIS MEETING BECAUSE I KNEW WE WERE SET FOR TRIAL.

25 Q: YOU WERE GOING TO TRIAL.

HEARING

38

1 A: YES.

2 Q: AND HE HADN'T CONTACTED YOU.

3 A: NO.

4 Q: DURING YOUR MEETING YOU DID DISCUSS THE ELEMENTS OF
5 THE CHARGES?

6 A: YES, MA'AM.

7 Q: DID HE APPEAR TO UNDERSTAND ALL THAT?

8 A: HE DID.

9 Q: DID HE KNOW WHAT HE WAS FACING IN TERMS OF JAIL TIME?

10 A: WE EXPLAIN ... WE WENT OVER WHAT HE WAS CHARGED WITH,
11 WHAT THE PENALTIES WERE FOR THOSE CHARGES BUT HE ALSO
12 HAD BEEN SERVED WITH NOTICE OF SEEKING LIFE SO HE HAD
13 NOTICE FROM THEM SEPARATE FROM THE DISCUSSIONS THAT
14 HE AND I HAD THAT THEY WERE SEEKING LIFE WITHOUT
15 PAROLE.

16 Q: OKAY. LET'S MOVE TO THE PLEA THAT HE TURNED DOWN.
17 WOULD YOU GIVE US A LITTLE BIT MORE DETAIL ABOUT THAT
18 PLEA?

19 A: OKAY. HE HAS ... AT THIS TIME HE HAD AN INDICTMENT FOR
20 ASSAULT AND BATTERY WITH INTENT TO KILL, POSSESSION OF
21 A WEAPON DURING A CRIME OF VIOLENCE, LYNCHING AND
22 KIDNAPING AND HE HAD AN INDICTMENT FOR POSSESSION OF
23 MARIJUANA, SECOND, AN INDICTMENT FOR POSSESSION WITH
24 INTENT TO DISTRIBUTE CRACK COCAINE, SECOND, AND
25 POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE

HEARING

39

1 WITHIN PROXIMITY OF A CHURCH OR SCHOOL OR PARK, A
2 POSSESSION OF CRACK SECOND AND ANOTHER POSSESSION OF
3 MARIJUANA SECOND. AND I THINK I HAVE A NOTE HERE THAT
4 THERE WAS A POSSESSION WITH INTENT TO DISTRIBUTE CRACK
5 AND I DON'T KNOW IF THAT WAS MAYBE AN OFFER THAT HAD
6 BEEN MADE OR SOMETHING BUT HE HAD ALL OF THOSE
7 CHARGES AND MR. CONNER OFFERED TO ALLOW HIM TO PLEA
8 TO ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
9 NATURE AND DROP ALL OF HIS PENDING CHARGES.

10 Q: AND WAS THAT A GOOD DEAL IN YOUR VIEW?

11 A: YES.

12 Q: IN YOUR PROFESSIONAL OPINION YOU'VE SEEN ... YOU'VE SEEN
13 LOTS OF DEALS I'M SURE AND THIS WAS A PRETTY GOOD DEAL,
14 WASN'T IT?

15 A: TO GO FROM FACING LIFE WITHOUT PAROLE TO A TEN YEAR
16 MISDEMEANOR I REALLY TRIED TO TALK MR. STUCKEY INTO
17 TAKING THE DEAL.

18 Q: NOW, AS I UNDERSTAND IT, HE WAS TRIED ON TWO CHARGES,
19 THE KIDNAPING AND THE LYNCHING.

20 A: HE WAS ACTUALLY CHARGED ON THE ASSAULT AND BATTERY
21 WITH INTENT TO KILL, THE LYNCHING, THE KIDNAPING AND ...
22 BEG THE COURT'S INDULGENCE, I HAVE THE VERDICT FORM
23 RIGHT HERE ... COUNT ONE WAS THE ASSAULT AND BATTERY
24 WITH INTENT TO KILL. HE WAS FOUND NOT GUILTY. COUNT
25 TWO WAS POSSESSION OF A WEAPON DURING A CRIME ...

HEARING

40

1 DURING THE COMMISSION OF A CRIME OF VIOLENCE AND HE
2 WAS FOUND NOT GUILTY. COUNT THREE WAS LYNCHING. HE
3 WAS FOUND GUILTY AND COUNT FOUR WAS KIDNAPING AND HE
4 WAS FOUND GUILTY.

5 Q: THE DRUG CHARGES WERE NOT TRIED.

6 A: THEY WERE SUBSEQUENTLY DISMISSED BECAUSE OF THE
7 SENTENCE THAT HE RECEIVED. BUT IT WAS AFTER THE TRIAL,
8 NOT BEFORE.

9 Q: AFTER THE TRIAL.

10 A: YES, MA'AM.

11 Q: NOW, YOU ... YOU TALKED IN TERMS OF A PINE BOX. TELL US
12 WHAT THAT MEANS.

13 A: LIFE WITHOUT PAROLE MEANS THAT THEY DIE IN PRISON. THEY
14 ARE NOT ELIGIBLE ... ELIGIBLE FOR PAROLE AT ANY TIME. I
15 HAVE HEARD INSTANCES OF ... OF SOMEONE BEING SO OLD AND
16 SICKLY THAT THEY DO LET THEM OUT BUT IT'S MORE OF A COST
17 EFFECTIVE THING THAN A BECAUSE THEY'VE MET A CERTAIN
18 AMOUNT OF TIME. I ... I KNOW THAT SOUNDS A LITTLE HARSH
19 BUT I TRY TO MAKE SURE MY CLIENTS UNDERSTAND THAT THIS
20 IS ... THEY'RE NOT GOING TO BE ELIGIBLE FOR PAROLE.
21 THEY'RE'S NOT A CHANCE THAT THEY WILL EVER SEE THE
22 LIGHT OF DAY IF THEY ARE FOUND GUILTY OF SOMETHING
23 THAT CARRIES LIFE WITHOUT PAROLE.

24 Q: YOU WERE TRYING TO BE REALISTIC WITH HIM.

25 A: I ... I WAS, YES.

HEARING

41

1 Q: NOW, YOU TALKED EARLIER ABOUT TRIAL STRATEGY AND THE
2 ABILITY TO HAVE THE LAST WORD.

3 A: YES.

4 Q: ELABORATE ON THAT FOR US IF YOU WOULD JUST A LITTLE BIT,
5 PLEASE.

6 A: WELL, ONE OF THE THINGS THAT THEY TEACH YOU IN LAW
7 SCHOOL IS THAT THE JURY REMEMBERS THE FIRST THING THEY
8 HEAR AND THE LAST THING THEY HEAR. WELL, OBVIOUSLY THE
9 PROSECUTION GETS TO GO FIRST BECAUSE THEY GET TO DO THE
10 FIRST OPENING. AND IF THE JURY HEARS THE PROSECUTION
11 FIRST AND THE PROSECUTION LAST THAT'S IN MY ... MY MIND
12 I'M THINKING THEY'VE ONLY HEARD THE PROSECUTION'S SIDE
13 BECAUSE IF THEY'RE PAYING ATTENTION TO WHAT THEY HEAR
14 FIRST AND WHAT THEY HEAR LAST AND I'M NOT EITHER ONE OF
15 THOSE THEN THEY'RE NOT FOCUSING ON ... ON ME, ON OUR
16 STRATEGY ON US HAVING THE LAST WORD. SO I TRY TO
17 ENCOURAGE MY CLIENTS UNLESS THERE IS ... IF THEY DON'T
18 HAVE A PRIOR RECORD, YOU KNOW, I WANT THEM TO TESTIFY
19 CAUSE THERE'S NO IMPEACHMENT ISSUES THERE BUT ONE OF
20 MY STRATEGIES IS TO TRY TO GET THE LAST WORD IF WE CAN.

21 Q: AND ABOUT HIS DECISION NOT TO TESTIFY, YOU DID MAKE A
22 RECOMMENDATION, CORRECT?

23 A: WHEN MY CLIENTS HAVE A PRIOR RECORD ESPECIALLY WHEN
24 YOU'RE FACING, YOU KNOW, THE CHARGES THAT HE WAS, YOU
25 KNOW, I ENCOURAGE THEM NOT TO TESTIFY. BUT AGAIN I

HEARING

42

1 EXPLAIN TO THEM THAT IT'S NOT MY DECISION, IT'S YOUR
2 DECISION AND IF YOU WANT TO TESTIFY THEN ... THEN THAT'S
3 WHAT WE'LL DO.

4 Q: SO IT WAS HIS DECISION AND HIS ALONE?

5 A: YES.

6 Q: ALL RIGHT. AND YOU SAID HE NEVER BROUGHT UP ANY ALIBI
7 WITNESSES TO YOU?

8 A: I REALLY DO NOT REMEMBER HIM BRINGING UP THE ALIBI
9 WITNESSES TO ME.

10 Q: YOU HAVE A PRETTY EXTENSIVE FILE. ABOUT HOW MANY
11 INCHES THICK DO YOU THINK YOUR FILE IS?

12 A: THREE.

13 Q: AND YOU KEPT PRETTY GOOD NOTES?

14 A: YES.

15 Q: AND ... AND YOU DON'T HAVE ANY NOTES ABOUT ANY ALIBI?

16 A: NO AND WHEN HE CAME IN AND TALKED TO ME THAT DAY I
17 KNOW WE ... WE SPOKE FOR ... FOR SOME TIME AND I DON'T ... I
18 WOULD HAVE WRITTEN IT DOWN AND I ... IF HE HAD TOLD ME
19 ABOUT AN ALIBI EVEN IF I, YOU KNOW, THOUGHT THAT THE
20 JURY MIGHT NOT BELIEVE THEM I STILL WOULD HAVE MADE
21 THE NOTICE OF ALIBI AND DONE WHAT I COULD.

22 Q: WHAT ABOUT THE CONTINUANCE?

23 A: I HAVE ASKED FOR CONTINUANCES FOR ... FROM JUDGE COOPER
24 IN THE PAST IN SIMILAR SITUATIONS WHERE I WAS NEWLY
25 APPOINTED AND HIS RESPONSE HAS ALWAYS BEEN TO LOOK AT

HEARING

43

1 THE AGE OF THE CASE NOT THE AGE OF APPOINTMENT AND MR.
2 STUCKEY, THIS CASE WAS FROM 2001. IT WAS AN OLDER CASE
3 AND MR. STUCKEY IN HIS CORRESPONDENCE WITH MR. RYAN
4 HAD ASKED FOR A SPEEDY TRIAL SO I DIDN'T REALIZE THAT,
5 YOU KNOW, HE WANTED A CONTINUANCE OR THAT THAT
6 WOULD BE SOMETHING THAT WOULD, YOU KNOW, HE WOULD
7 WANT.

8 Q: YOU ... YOU PARTICIPATED IN THE TRIAL.

9 A: YES.

10 Q: YOU CROSS EXAMINED WITNESSES?

11 A: YES.

12 Q: YOU MADE MOTIONS?

13 A: YES.

14 Q: YOU MADE OBJECTIONS?

15 A: YES.

16 MS. SALANE: A MOMENT, PLEASE, YOUR HONOR. YOUR
17 HONOR, WOULD THE COURT CARE IF I ASKED --- BRIEFLY?

18 THE COURT: NO, I NORMALLY WOULDN'T ALLOW IT BUT
19 I'M GONNA ALLOW IT IN THIS CASE BECAUSE THIS IS MS. LANDS ... MS.
20 LAND'S FIRST TERM OF COURT. SHE'S TAKEN OVER. I WILL ALLOW
21 YOU TO ASK A FEW QUESTIONS IF YOU NEED TO.

22 MR. BROOKS: JUDGE ...

23 THE COURT: YES, SIR?

24 MR. BROOKS: MY CLIENT WANTS TO OBJECT FOR THE
25 RECORD.

HEARING

44

1 THE COURT: OVERRULED.

2 MS. SALANE: THANK YOU, YOUR HONOR. MAY IT PLEASE
3 THE COURT. JUST BRIEFLY.

4 MS. STEVENS - CROSS EXAMINATION BY MS. SALANE:

5 Q: YOU STATED THAT YOU DIDN'T SEE ANYTHING WRONG WITH
6 THE INDICTMENT, RIGHT?

7 A: CORRECT.

8 Q: SO IF WHAT WE INDICTED HIM HAD FOR SOME REASON THE
9 INDICTMENT BEEN QUASHED THEY WOULD HAVE JUST
10 REINDICTED HIM, ISN'T THAT CORRECT?

11 A: YES.

12 Q: OKAY. IF YOU'D HAD FAVORABLE WITNESSES TO CALL FOR HIM
13 YOU'D OF CALLED THEM, CORRECT?

14 A: YES.

15 Q: I THINK YOU HAD SAID THAT YOU ... THAT IT WAS HIS DECISION
16 TO PLEAD GUILTY, CORRECT? I MEAN TO ... NOT TO TAKE THE
17 STAND, CORRECT?

18 A: YES.

19 Q: AND ISN'T IT CORRECT THAT YOU WERE PREPARED AND READY
20 TO GO TO TRIAL?

21 A: YES.

22 MS. SALANE: YOUR HONOR, THAT'S ALL THE ...

23 Q: OH, I'M SORRY, ONE MORE. BEG YOUR PARDON, YOUR HONOR.
24 ON THE HAND OF ONE HAND OF ALL, IF YOU HAD MADE AN
25 OBJECTION TO THAT IT WOULD HAVE BEEN FRIVOLOUS, ISN'T

HEARING

45

1 THAT CORRECT?

2 A: IN MY OPINION, YES.

3 MS. SALANE: THANK YOU, YOUR HONOR, THAT'S ALL I'VE
4 GOT.

5 THE COURT: REDIRECT?

6 MR. BROOKS: YES, YOUR HONOR.

7 MS. STEVENS - REDIRECT EXAMINATION BY MR. BROOKS:

8 Q: THE SOLICITOR HAD GIVEN HIM THE NOTICE OF LIFE WITHOUT ...
9 SEEKING ... THE NOTICE TO SEEK LIFE WITHOUT PAROLE, ISN'T
10 THAT CORRECT?

11 A: YES.

12 Q: YES THERE WERE STILL PLEA NEGOTIATIONS GOING ON?

13 A: YES.

14 Q: COULD THE SOLICITOR HAVE RESCINDED THAT AND ENTERED
15 INTO THAT DEAL THAT YOU DESCRIBED?

16 A: UMM ...

17 Q: AFTER SENDING OUT THE NOTICE?

18 A: I THOUGHT IT WAS VERY ODD THAT HARRY CONNER OF ALL
19 PEOPLE MADE ME THAT OFFER BUT HE DID.

20 Q: AND THAT WAS AFTER HE HAD SENT THE NOTICE?

21 A: I GAVE THEM MY RULE FIVE ON SEPTEMBER 9TH. I THINK I GOT
22 NOTICE ABOUT FIVE MINUTES LATER. THEY CAME DOWN TO
23 THE OFFICE AND SERVED IT ON ME.

24 Q: AND THE TRIAL WAS HELD ...

25 A: NOVEMBER.

HEARING

46

1 Q: AND WHEN DID HARRY TALK TO YOU ABOUT THE DISMISSING
2 EVERYTHING ELSE AT HAND ...

3 A: DURING THE PLEA WEEK.

4 Q: OKAY.

5 A: WHICH WAS THE WEEK BEFORE TRIAL. YEAH.

6 Q: COULD HE HAVE DONE THAT? COULD HE HAVE RESCINDED THE
7 NOTICE?

8 MS. SALANE: YOUR HONOR, I WOULD OBJECT TO
9 SPECULATION.

10 THE COURT: I'M GONNA SUSTAIN THE OBJECTION AND I
11 THINK IT IS SPECULATION. SECONDLY IS THAT I THINK THAT WHAT
12 YOU'RE ASKING IS THAT SHE WAS TRYING TO DO THE BEST JOB FOR
13 HER CLIENT. SHE DIDN'T CARE WHETHER HE COULD DO IT OR NOT
14 FROM THE LEGAL STANDPOINT. IF SHE COULD GET THAT DEAL FOR
15 HER CLIENT SHE'S CERTAINLY GOING TO GET IT.

16 MR. BROOKS: JUDGE, WHAT I'M TRYING TO GET AT IS, YOU
17 KNOW, WHAT MY CLIENT INSISTS THAT THERE WAS NEVER ANY
18 DISCUSSION ABOUT THAT. AND OBVIOUSLY IF THERE WAS A NOTICE
19 SENT AND WHETHER OR NOT THE NOTICE COULD BE RESCINDED GO
20 TOWARDS WHETHER OR NOT THERE WAS EVER A DISCUSSION ABOUT
21 THIS DEAL.

22 THE COURT: ALL RIGHT. YOU CAN ASK HER ABOUT
23 WHETHER THERE WAS ANY DISCUSSION ABOUT IT BUT WHETHER IT
24 CAN BE DONE LEGALLY, THAT WOULD HAVE BEEN THE MATTER UP TO
25 THE COURT'S DETERMINATION AND WE HAVE THE SAME ISSUE

1 BEFORE US JUST YESTERDAY ON A PLEA WHERE A PLEA WAS TAKEN
2 BY ME AND THEN IT WAS DISCOVERED THAT IT WAS A LIFE WITHOUT
3 PAROLE CASE AND I THEN VACATED THE PLEA AND HE LATER WAS
4 TRIED AND DID GET A LIFE SENTENCE AND THAT ISSUE CAME UP
5 YESTERDAY AS TO WHETHER OR NOT THAT IS LEGAL SENTENCE OR
6 NOT OR WHETHER MR. CONNER COULD HAVE WITHDRAWN THE
7 NOTICE UNDER THE STATUTE IS A MATTER OF LAW AND YOU
8 CERTAINLY CAN'T FAULT THE DEFENSE ATTORNEY FOR TRYING TO
9 GET THE ... THE STATE TO DO THAT EVEN THOUGH THEY MAY NOT BE
10 ABLE TO DO IT. I'LL LET YOU ASK QUESTIONS WITH REGARD TO THE
11 DISCUSSIONS THAT THEY HAD. NOT HER OPINION AS TO WHETHER
12 THEY COULD DO IT OR NOT.

13 Q: WERE THESE DISCUSSIONS THAT YOU AND MR. CONNER HAD?

14 A: YES.

15 Q: OKAY. AND YOU DID SAY YOU TOLD HIM?

16 A: YES.

17 Q: ARE YOU ABSOLUTELY SURE YOU COMMUNICATED THAT TO
18 MR. STUCKEY?

19 A: THAT'S WHY I CALLED HIM AND SET UP THE MEETING.

20 Q: CALLED MR. STUCKEY?

21 A: YES. SO WE COULD DISCUSS THAT PLEA.

22 Q: DID YOU EVER GO OVER WITH HIM WHETHER OR NOT HE HAD A
23 POSSIBLE ALIBI OR NOT?

24 A: AS I STATED BEFORE I DON'T REMEMBER THAT CONVERSATION
25 BUT I CAN'T IMAGINE IF HE TOLD ME HE HAD AN ALIBI THAT

HEARING

48

1 EVEN THOUGH WE DIDN'T HAVE TEN DAYS I WOULD HAVE AT
2 LEAST FILED THE MOTION.

3 Q: DID YOU ASK ... DID YOU ASK HIM DID HE HAVE AN ALIBI?

4 A: I DON'T KNOW.

5 Q: DO YOUR NOTES REFLECT WHEN YOU WENT OVER THE
6 DISCOVERY AND THIS POTENTIAL PLEA DEAL WITH MR.
7 STUCKEY?

8 A: NO, IT'S NOT DATED. BUT I KNOW IT WAS ... IT WAS SHORTLY
9 BEFORE THE TRIAL WAS CALLED.

10 Q: OKAY.

11 THE COURT: ALL RIGHT, MR. BROOKS.

12 MR. BROOKS: NO OTHER QUESTIONS.

13 THE COURT: ALL RIGHT, SIR. ANYTHING FURTHER?

14 MS. SALANE: NOTHING FURTHER, YOUR HONOR.

15 THE COURT: ALL RIGHT. THANK YOU. YOU MAY STEP
16 DOWN.

17 MS. STEVENS: THANK YOU, YOUR HONOR.

18 THE COURT: ANYTHING ELSE ON BEHALF OF THE
19 APPLICANT, MR. BROOKS?

20 MR. BROOKS: NOTHING ELSE, YOUR HONOR.

21 THE COURT: ALL RIGHT. THE APPLICANT RESTS.
22 EVIDENCE ON BEHALF OR ANY MOTIONS ON BEHALF OF THE STATE,
23 MS. SALANE?

24 MS. SALANE: YOUR HONOR, AT THIS TIME WE'D LIKE TO
25 MOVE FOR A DIRECTED VERDICT. WE BELIEVE THAT THE APPLICANT

HEARING

49

1 HAS FAILED TO PRODUCE THE BURDEN OF PROOF AND REQUEST THAT
2 THE ...

3 THE COURT: ALL RIGHT. THAT MOTION WILL BE
4 RESPECTFULLY DENIED. I BELIEVE THERE IS A FACTUAL QUESTION
5 FOR THE COURT'S DETERMINATION TO WEIGH THE EVIDENCE AND
6 DETERMINE THE CREDIBLE EVIDENCE AND THE ... ANY EVIDENCE IN
7 THE RECORD BY THE APPLICANT'S TESTIMONY OF WHAT HE ALLEGES
8 TO BE INEFFECTIVE ASSISTANCE AND IT'S UP TO THE COURT TO
9 DETERMINE THE WEIGHT OR THE CREDIBILITY OF THAT EVIDENCE. SO
10 I WOULD RESPECTFULLY DENY THE MOTION FOR A DIRECTED
11 VERDICT. EVIDENCE ON BEHALF OF THE STATE?

12 MS. SALANE: YOUR HONOR, AT THIS TIME WE WOULD
13 LIKE TO REQUEST THAT THE INEFFECTIVE ASSISTANCE OF COUNSEL
14 AS TO APPELLATE COUNSEL BE DISMISSED.

15 THE COURT: THE MOTION THAT THE ... THE RULING THAT I
16 JUST MADE WAS WITH REGARD TO THE DIRECTED MOTION ...
17 DIRECTED VERDICT MOTION WITH REGARDS TO TRIAL COUNSEL. I DID
18 DENY THAT MOTION. NOW THE MOTION HAS BEEN MADE FOR A
19 DIRECTED VERDICT FOR THE INEFFECTIVE ASSISTANCE OF COUNSEL
20 ON THE GROUNDS THAT THE INEFFECTIVE ASSISTANCE OF COUNSEL,
21 OF APPELLATE COUNSEL, WHAT SAY YOU TO THAT, MR. BROOKS?

22 MR. BROOKS: WE RESPECTFULLY OPPOSE THAT MOTION.

23 THE COURT: WHERE'S THE EVIDENCE IN THE RECORD OF
24 ANY INEFFECTIVE ASSISTANCE OF COUNSEL?

25 MR. BROOKS: MY CLIENT TESTIFIED THAT HE FELT THAT

HEARING

50

1 THEY DIDN'T ... APPELLATE COUNSEL DID NOT THOROUGHLY --- THE
2 ISSUE IN REGARDS TO INCONSISTENCE VERDICT. JUDGE, I ...

3 THE COURT: THAT'S A LEGAL CONCLUSION. THAT'S NOT ..
4 HE HASN'T GIVEN ANY FACTUAL BASIS FOR IT. THE MOTION WITH
5 REGARD TO THE INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL IS
6 GRANTED. THERE IS NO EVIDENCE IN THE RECORD THAT APPELLATE
7 COUNSEL WAS INEFFECTIVE AND SO I WILL GRANT THAT MOTION.
8 ALL RIGHT. EVIDENCE ON BEHALF OF THE STATE, MS. SALANE?

9 MS. SALANE: NOTHING FURTHER.

10 THE COURT: ALL RIGHT. THE STATE RESTS. ALL RIGHT.
11 WITH REGARD TO THE TRIAL COUNSEL'S PERFORMANCE IN THIS CASE,
12 THE COURT WILL TAKE THE MATTER UNDER ADVISEMENT AND WILL
13 BE IN TOUCH. THIS WILL CONCLUDE THE HEARING. GOOD LUCK TO
14 YOU, MR. STUCKEY AND I WILL BE IN TOUCH WITH YOUR LAWYER
15 AND THE ATTORNEY GENERAL.

16 MS. SALANE: THANK YOU, YOUR HONOR.

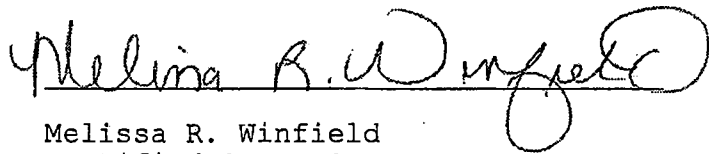
17 (WHEREUPON THERE WAS A PAUSE).
18
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CERTIFICATE

This is to certify that the hearing in State vs. Casey Stuckey, consisting of Fifty (50) pages is a true and correct transcript of the testimony given after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 25th, day of October, 2006.

A handwritten signature in cursive script, reading "Melissa R. Winfield", is written over a horizontal line. The signature is enclosed within a large, hand-drawn circle.

Melissa R. Winfield
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Casey Stuckey, 297810,

Applicant,

v.

State of South Carolina,

Respondent.

ORDERED
IN THE COURT OF COMMON PLEAS
2006 MAY 22 AM 9:15

2005-CP-43-432

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Shirley L. Hoff
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for post-conviction relief filed April 15, 2005, and amended Application filed January 12, 2006. The State filed a Return on October 4, 2005. An evidentiary hearing into the matter was convened on April 7, 2006, at the Sumter County Courthouse. The Applicant was present in court and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Teri Hutson Salane, of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified in his own behalf. Lauren Ferrari, now Stevens, also testified. This Court also had before it a copy of the transcript of the Applicant's trial, the records of the Sumter County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and the appellate court records.

PROCEDURAL HISTORY

The Applicant is incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. The Applicant was indicted at the April 2001, term of the Court of General Sessions for Sumter County for Assault and Battery with Intent to Kill, Possession of a Weapon During a Violent Crime, Lynching - second degree, Kidnaping, Accessory before the Fact and Accessory after the fact (2001-GS-43-283). He was represented by Lauren Ferrari Stevens. On November 10 and 12, 2003, the Applicant proceeded to trial after which he was found guilty of Lynching-second degree and Kidnaping. He was

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Hoff

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sentenced by the Honorable Thomas W. Cooper, Jr., to confinement for a period of twenty (20) years for Lynching-second degree, and life imprisonment for Kidnaping.

The Applicant appealed his conviction and sentence. The South Carolina Court of Appeals affirmed the conviction on March 10, 2005. State v Stuckey, Op. No. 2005-UP-180 (S.C. Ct. App. filed March 10, 2005).

ALLEGATIONS

Applicant alleges he is being held in custody unlawfully for the following reasons;

1. He received ineffective assistance of trial counsel for counsel's failure to:

1. discuss plea negotiations with him;
2. discuss any amount of time that he could get or that was being negotiated;
3. request a continuance;
4. allow him to testify in his own defense;
5. make a motion to quash the indictment;
6. investigate alibi or call alibi witnesses;
7. challenge the jury instruction on "hand of one is the hand of all";
8. ascertain proper investigatory techniques.

2. Court lacked subject matter jurisdiction as indictment failed to allege the "essential elements."

3. He received ineffective assistance of appellate counsel because Counsel did not formulate any objections nor did the Counsel allow him to defend himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony presented at the evidentiary hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, pass upon their credibility, and weigh the testimony accordingly. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

At the post-conviction relief hearing, the Applicant testified he received ineffective assistance of counsel because counsel did not (1) discuss plea negotiations or sentencing

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possibilities with him, (2) request a continuance, (3) move to quash the indictment, (4) call alibi witnesses, (5) challenge the jury instruction on "hand of one is the hand of all," and (5) allow him to testify in his own defense. Trial counsel testified at the post-conviction relief hearing, and this Court finds her testimony credible. This Court finds the Applicant's testimony lacking in credibility and the allegations to be without merit.

In a post-conviction relief action, 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, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, 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 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.

This Court finds that trial counsel was appointed to represent Applicant. Trial counsel is an experienced criminal law practitioner, having represented numerous clients since 1996 in her employment with the public defender's office. Counsel testified she was Applicant's third

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attorney, and discovery materials were in the file when she received it. Counsel met with Applicant and reviewed all discovery material. She believed he understood her explanations. She fully participated in the trial, made cogent arguments, and fully cross-examined the State's witnesses.

Regarding plea negotiations and sentencing possibilities, trial counsel testified she was surprised that the prosecutor offered a plea to a ten-year misdemeanor (ABHAN) and a ten-year sentence and would drop all of the remaining charges. She encouraged applicant to take the plea offer, but applicant declined, wanting to take his chances at trial. Counsel advised Applicant that he faced a sentence of life without parole, and told him that meant he would die in prison and would come out only in a "pine box."

Counsel testified she had no recollection of Applicant ever telling her about any alibi witness. The Applicant testified that his brother and the brother's girlfriend were his alibi witnesses, but neither of these individuals testified at the post-conviction relief hearing. Applicant also testified that he had another alibi witness that he never told trial counsel about. Counsel testified that she would have made a motion to provide notice to the State if Applicant had discussed alibi witnesses with her. This Court finds counsel's testimony is credible and that the applicant's testimony regarding this issue is not credible.

Moreover, prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witness' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). Applicants must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). This Court finds that the Applicant has failed to carry the burden of proof that it was ineffective assistance of

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counsel to not call these witnesses.

Regarding the continuance and the indictment, counsel testified she saw no reason to move for more time or to quash the indictment. Trial counsel testified that she did not believe she had a meritorious argument to support a request to quash the indictment. She also testified that she did not request a continuance because she knew the trial judge would not grant it, and a continuance would not have made any difference to her preparations for Applicant's case. Applicant must show that a continuance or quashing the indictment would have yielded a different result, and he has not made such a showing.

Additionally, this Court finds that counsel's failure to challenge the trial judge's charge on "the hand of one is the hand of all" did not constitute ineffective assistance of counsel. This charge was given after the jury had a question during deliberation. The jury asked "Can a person be guilty of assault and battery with the intent to kill if he is present during the crime as stated for the definition of lynching, not his hand but guilty by being there?" The trial judge charged "hand of one" as well as "mere presence." (Tr. 224-225). This Court finds the jury acquitted applicant of assault and battery with intent to kill; therefore, applicant cannot show prejudice from counsel's failure to challenge the charge.

Finally, Applicant complains that he received ineffective assistance of counsel because trial counsel erroneously advised him not to testify at trial. The evidence before this Court reflects that trial counsel discussed with Applicant the right to testify and provided her assessment of the possible benefit and harm. It was counsel's testimony that Applicant's prior criminal record exposed Applicant to cross-examination that could be detrimental to the success of Applicant's case. This Court finds counsel's conduct to be based upon reasonable strategy. The applicant failed to show counsel was deficient in this regard or that he was prejudiced by counsel's conduct.

This Court find Applicant's trial attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strick-

land, 466 U.S. at 668; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant failed to show that counsel's performance was deficient or that he was prejudiced by counsel's performance. Applicant's complaints concerning trial counsel are without merit and are denied and dismissed.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Applicant also alleges he received ineffective assistance of appellate counsel because counsel "did not formulate any objections nor did the Counsel allow him to defend himself on the stand." This Court also finds this allegation to be without merit.

This Court finds that the Applicant's allegations reveal a misunderstanding of appellate counsel's role. Appellate counsel is powerless to make objections or allow or deny a criminal defendant access to the "stand." Moreover, Applicant's appellate attorney submitted a brief to the South Carolina Supreme Court pursuant to Anders v. California, 386 U.S. 738 (1967). (See Final Anders Brief of Appellant). When a brief is submitted pursuant to Anders v. California, the appellate court conducts a review of the entire record for meritorious issues. If meritorious issues are suspected, the appellate court will direct the parties to brief the issues and proceed with the appeal. Anders v. California. In this case, the appellate court did not find any meritorious issues and dismissed the appeal accordingly. The Applicant failed to make the requisite showing of the ineffective assistance of appellate counsel. Applicant's complaints concerning appellate counsel are without merit and are denied and dismissed.

ALL OTHER ALLEGATIONS

Any and all other allegations raised at the hearing or in the application for post-conviction relief which are not specifically addressed in this Order are waived because the Applicant failed to present sufficient evidence to meet his burden of proof regarding them. Therefore, they are denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his

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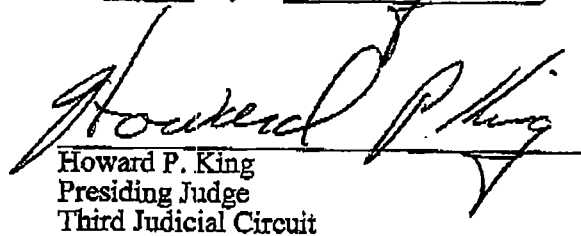
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court advises the Applicant that notice of appeal must be served within thirty (30) days from receipt of written notice of entry of this Order to secure the appropriate appellate review. His attention is also directed to Rule 227 of the South Carolina Appellate Court Rules for appropriate procedures to follow after notice of appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 22nd day of May, 2006.


Howard P. King
Presiding Judge
Third Judicial Circuit

Senter, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

CASEY STUCKEY, 297810

☒ Plaintiff

v.

State Of S.C.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2005-CP-43-432

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Charles Brooks, Bar No. Address: 309 Broad St Sumter SC 29150 phone: fax: e-mail: other:		Defendant's Attorney: Teri Salane, Bar No. Address: P.O. Box 11549 Columbia, SC 29211 phone: fax: e-mail: other:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO			
SECTION II: Motion/Order Type			
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☒ Defendant			May 19, 2006 Date submitted
SECTION III: Motion Fee			
☐ PAID - AMOUNT: ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

COPY

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO SUMTER COUNTY

HOWARD P. KING, CIRCUIT COURT JUDGE

RECEIVED

MAR 27 2007

S.C. SUPREME COURT

CASEY STUCKEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

JOHNSON PETITION FOR WRIT OF CERTIORARIWANDA H. CARTER
Deputy Chief AttorneySouth Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

RECEIVED
MAR 28 2007

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ISSUE PRESENTED

Trial counsel erred in misunderstanding petitioner's position on the state's plea offer in the case.

STATEMENT

Petitioner Casey Stuckey was convicted of second degree lynching and kidnapping during the November 2003 term of the Sumter County General Sessions Court before the Honorable Thomas W. Cooper, Jr., Judge. Petitioner was sentenced to life imprisonment on the kidnapping conviction and twenty years on the second degree lynching conviction. App. pp. 241 – 253. Petitioner appealed, but his convictions and sentences were affirmed. See State v. Stuckey, Op. No. 2005-UP-180 (S.C. Ct. App. filed March 10, 2005). App. p. 243.

On April 15, 2007, petitioner filed a PCR application with the Sumter County Office of the Clerk of Court. App. pp. 255 – 272. An amended PCR application was filed on January 10, 2006. App. pp. 273 – 275. A hearing was convened on April 7, 2006, at the Sumter County Courthouse before the Honorable Howard P. King, Judge, (App. pp. 276 – 325), who subsequently issued an order of dismissal in the case. App. pp. 327 – 332.

Petitioner appealed. This petition follows.

ARGUMENT

Trial counsel erred in misunderstanding petitioner's position on the state's plea offer in the case.

During the hearing, trial counsel testified that she understood petitioner's response to the plea offer to mean that he did not want to take or accept the plea offer.¹ App. p. 301, lines 2 – 4. Apparently, petitioner wanted to accept the plea offer because he testified that there was a discussion with counsel about how many days they had until the offer expired and about the attempt to get the offer firmed up in black and white, and that the next thing that happened was he learned that the case was going to trial. App. p. 282, line 7 – p. 283, line 11. Apparently, petitioner wanted to accept the offer, but trial counsel was not clear on this and failed to communicate this to the state.

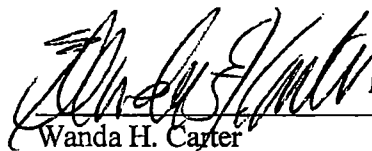
As a rule, counsel has a duty to inform a client of any plea offers, and there should be no confusion as to whether a client desires to accept or not accept the offer. See Fogle v. Secretary, 2007 WL 44064 (M.P. Fla. 2007). Counsel erred in failing to clarify petitioner's intentions regarding the acceptance or rejection of the plea in this case in violation of Hill v. Lockhart, 484 U.S. 52 (1985), and the sixth and fourteenth amendments to the United States Constitution and article 1 § 14 of the South Carolina State Constitution.

¹ Petitioner was indicted for assault and battery with intent to kill, possession of a weapon during the crime of violence, lynching, kidnapping, possession of marijuana (two counts), possession of crack cocaine, possession with intent to distribute crack cocaine, possession with intent to distribute crack cocaine with proximately of a church, school, or park and the plea offer was to plead to assault and battery on a high and aggravated nature in exchange for having the other charges dropped. App. p. 313, line 19 – p. 314, line 9.

CONCLUSION

By reason of the foregoing argument, petitioner's writ of certiorari should be granted in order to allow full briefing on the issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Attorney

ATTORNEY FOR PETITIONER

This 27th day of March, 2007.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SUMTER COUNTY
HOWARD P. KING, CIRCUIT COURT JUDGE

CASEY STUCKEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

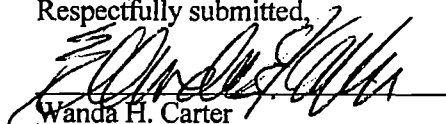
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Casey Stuckey states:

1. She is Deputy Chief Attorney for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on April 7, 2006. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Casey Stuckey.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Attorney

ATTORNEY FOR PETITIONER

This 27th day of March, 2007

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO SUMTER COUNTY
HOWARD P. KING, CIRCUIT COURT JUDGE

CASEY STUCKEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

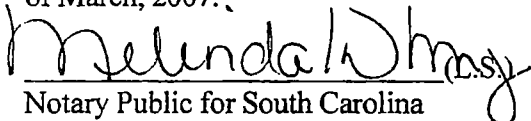
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix and supplemental appendix in this case have been served on Ashley McMahan, Esquire, and Casey Stuckey, #297810, Lee Correctional Institution, this 27th day of March, 2007.



Wanda H. Carter
Deputy Chief Attorney

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 27th day
of March, 2007.



Notary Public for South Carolina

My Commission Expires: November 16, 2008.



327

103-08

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 28, 2008

REMITTITUR

The Honorable James C. Campbell
141 N. Main Street., Rm 308
Sumter, SC 29150-4965

Re: Stuckey, Casey, v. State
2005-CP-43-432

Dear Mr. Campbell:

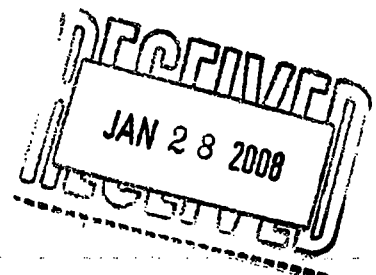
The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,

Daniel E. Shearouse
CLERK

DES/klb

cc: Casey Stuckey #297810
Deputy Chief Attorney Wanda H. Carter ✓
Assistant Attorney General Ashley McMahan



The Supreme Court of South Carolina

Casey Stuckey,

Petitioner,

v.

State of South Carolina,

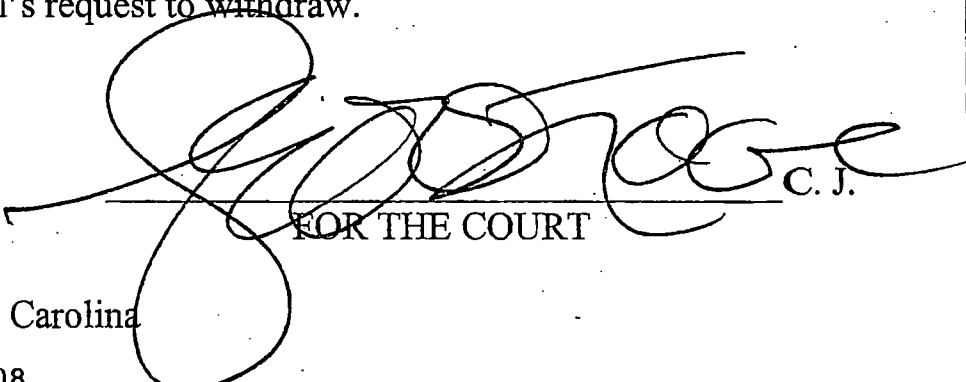
Respondent.

ORDER

This matter is before the Court on a petition for a writ of certiorari following the denial of petitioner's application for post-conviction relief.

Petitioner's counsel asserts that the petition is without merit and requests permission to withdraw from further representation. Petitioner has not filed a pro se petition.

After careful consideration of the entire record as required by Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.


C.J.
FOR THE COURT

Columbia, South Carolina

January 10, 2008

STATE OF SOUTH CAROLINA

County of SUMTER

CASEY BERNARD STUCKEY 00297810

Full name and prison number (if any) of Applicant

v.

State of South Carolina

RECORDED

IN THE COURT OF COMMON PLEAS

2016 SEP -8 PM 2:58

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

APPLICATION FOR

POST-CONVICTION RELIEF

2016-CP-43- 1660

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
2. Name and location of Court which imposed sentence SUMTER CO. GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) DONALD BUSH AND KENDALL NELSON
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 01-GS-43-283 KIDNAPPING
 - (b) 01-GS-43-283 LYNCHING 2ND DEGREE

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 11/12/03 LWOP
- (b) 11/12/03 20 YRS
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DIMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 3/10/2005
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2005-UP-180
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) NEWLY DISCOVERED EVIDENCE; VICTIM HAS RECANTED.
- (b) SEE ATTACHED MEMORANDUM.
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? YES
- (d) any other petitions, motions or applications in this or any other Court? YES
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. PCR 2005-CP-43-432
- ii. _____
- iii. PRO SE HABEAUS CORPUS C/A 0:09-00203-HFF-PJG
- iv. PRO SE MOTION FOR NEW TRIAL 29(B)
- (b) the name and location of the Court in which each was filed:
- i. SUMTER COUNTY COURT OF COMMON PLEAS
- ii. _____
- iii. US DISTRICT COURT
- iv. SUMTER COUNTY CLERK - WAS CLOKED RECEIVED BUT NOT FILED

(c) the disposition thereof:

i. DISMISSED

ii. _____

iii. DISMISSED

iv. NOT RULED UPON

(d) the date of each such disposition:

i. 5/22/2006

ii. _____

iii. 2/8/2010

iv. NOT RULED UPON

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. C/A NO: 0-09-203-HFF-PJG

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?
see attached

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

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

(a) NEWLY DISCOVERED EVIDENCE

(b) _____

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
yes

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

(a) the name and address of each attorney who represented you:

i. LAUREN B. FERRARI (TRIAL & SENTENCING

ii. ROBERT PACHAK - SC APPELLATE DEFENSE (DIRECT APPEAL)

iii. CHARLES BROOKS (PCR)
WANDA CARTER - SC APPELLATE DEFENSE (PCR PPEAL

(b) the proceedings at which each such attorney represented you:

i. trial and sentencing

ii. direct appeal to SC Court of Appeals

iii. PCR
PCR petition for writ of certioari

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

Petitioner seeks a vacation of his conviction based on recantation by the state's only witness, or in the alternative, a new trial.

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

no

STATE OF SOUTH CAROLINA)

County of Sumter)

VERIFICATION

I, Casey Bernard Stuckey, 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.

Casey Stuckey

SWORN to and subscribed before me this 1st
day of July, 2016.

Eleanor A Cleary (L.S.)

Notary Public

Eleanor Duffy Cleary

My Commission Expires: September 8, 2020

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) RECORDS
2016 SEP -8 PM 2:50
CASEY BERNARD STUCKEY)
APPLICANT) JAMES C. CAMPBELL
) CLERK OF COURT
) SUMTER COUNTY, S.C.
) MEMORANDUM IN SUPPORT OF
) APPLICATION FOR POST CONVICTION
) RELIEF
V.)
STATE OF SOUTH CAROLINA) 2016-CP-43-
RESPONDENT)
) 2016-CP-43-1660

PROCEDURAL HISTORY

Applicant Casey Bernard Stuckey was charged with assault and battery with intent to kill, possession of a weapon during a violent crime, kidnapping, and lynching from an incident occurring about 5:00 a.m. on October 4, 2000. Stuckey was charged with two co-defendants, Donald Bush and Kendall Nelson.¹ Stuckey was indicted during the April 2001 term. (Applicant's Ex. 1 (indictment)).

He was tried in Sumter County Court of General Sessions before the Honorable Thomas W. Cooper, Jr. on November 10, 2003. Appointed counsel Lauren B. Ferrari represented him. Neither co-defendant went to trial.

On November 12, 2003, the jury found Stuckey not guilty of ABWIK and possession of a weapon. However, Stuckey was found guilty of lynching and kidnapping and pursuant to section 17-25-45 of the South Carolina Code of Laws, and based on Stuckey's prior conviction for voluntary manslaughter, Judge Cooper sentenced Stuckey to life without parole for the kidnapping

¹ According to the Sumter County Clerk of Court's office, there is no information in their file for Donald Bush or Kendall Nelson relating to indictment #2001-GS-43-283).

conviction. He sentenced him to twenty years, concurrent, for the lynching conviction. (Applicant's Ex. 2 (Sentencing sheets)).

After an unsuccessful *Anders* appeal, Stuckey filed an application for post-conviction relief, alleging, *inter alia*, his trial counsel was ineffective for failing to investigate his case. Ferrari represented Stuckey for two months prior to the trial after which he was sentenced to life without parole. Charles Brooks represented him on post-conviction relief. Relief was denied on May 22, 2006.

On November 12, 2012, the victim of the shooting, Donnell Robinson, signed a typed statement, which was witnessed by a notary. He stated that Stuckey was not the person "who shot, kidnapped or beat me up. I am coming forth because he was falsely accused mistakenly of crimes he didn't commit." He stated that Donald Bush committed the crimes against him. (Applicant's Ex. 3 (Robinson statement)).

Stuckey received this affidavit at the prison approximately a week later after his friend, Chamere Currie, mailed it to him. (Applicant's Ex. 4 (Currie affidavit)).

On November 20, 2013, Stuckey mailed a *pro se* motion for a new trial pursuant to Rule 29(b), along with Robinson's statement, to the Sumter County Clerk of Court. The clerk clocked it as "recorded" on November 22, 2013. The State was not served with this motion. (Applicant's Ex. 5 (Pro se motion)).

On July 29, 2014, Glenn Washington wrote a notarized statement averring that Stuckey, Bush and two other men came to his house that evening. He stated that Bush and the other two men left without Stuckey. Stuckey sent this statement, as well as an affidavit, to the Sumter Clerk of Court on August 4, 2014. The Clerk recorded it on August 6, 2014. (Applicant's Ex. 6 (2nd pro se motion)).

In his affidavit, Stuckey stated that his family had heard stories of Robinson's recantation throughout the years. Mr. Robinson saw Stuckey's family and told them he was willing to write a statement, which he did in November 2012. Based on this statement, Stuckey asserted a *pro se* claim based "on actual innocence."

On July 27, 2015, Stuckey again sent an affidavit to the Sumter County Clerk of Court. This was recorded on July 31, 2015. (Applicant's Ex. 7 (3rd *pro se* motion)).

On July 14, 2016, Leroy Dixon, Donnell Robinson's brother, signed a statement verifying Donnell's signature and stating that Donnell had previously told him that Stuckey did not commit these crimes. (Applicant's Ex. 8 (Dixon statement)).

On August 26, 2016, Kenya Stuckey, applicant's brother, signed an affidavit stating that Applicant was with him after midnight on October 4, 2000, when Robinson was shot. Kenya's home in 2000 was very near Mr. Washington's but was not near where Robinson was shot. (Applicant's Ex. 9 (Kenya Stuckey statement)).

Ms. Currie stated in her affidavit that she has tried unsuccessfully to find an attorney to help Applicant properly file his motions but they were unable to afford one until they found undersigned counsel in March 2016. (Applicant's Ex. 4)

This application is based on this after-discovered evidence and is made pursuant to section 17-27-20(4) of the South Carolina Code of Laws which provides the remedy of post-conviction relief when "there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. (2016).

SUMMARY OF FACTS FROM TRIAL

In the early morning hours of October 4, 2000, Kendell Nelson drove Donnell Robinson and two other men to an unlit backroad. One of the men, who sat in the front seat was identified by Robinson as Applicant Casey Stuckey. The other man, who sat in the backseat with Robinson was identified as Donald Bush.

According to the trial transcript, Robinson, who was "born slow, premature, and handicapped," was ordered out of the car and then shot in the lower back. After seeking help from nearby homeowners, Robinson was taken to the hospital and released two days later. Sgt. James Turner of the Sumter County Sheriff's Department questioned Robinson, who told him that Kendell Nelson, a former classmate, was part of the group involved in his shooting. Robinson did not know the other men and only described them as black males. Robinson identified Bush and Stuckey from six-person photo arrays.

At trial, he testified that had never seen Bush or Stuckey before the incident. Using the names provided by the State, he testified that Bush and Stuckey picked him up from his home and took him to "Glenn's house" where they talked. They drank and smoked marijuana there. Robinson tried to run away for an unspecified reason and Bush ran after him and caught him. Bush put him in a car driven by Nelson. According to Robinson, Stuckey was in the passenger seat. Robinson testified that Stuckey wanted to take Robinson to the location where Robinson was eventually shot. Stuckey told him to get out of the car. Robinson testified that he complied and Bush and Stuckey also got out. According to Robinson's trial testimony, Stuckey told him to walk and as Robinson walked away from them, Stuckey shot him. They got back in the car and left him on the ground.

Prior to trial, Stuckey was developed as a suspect solely from information provided by Bush. Sgt. Turner testified he received a tip that Donald Bush was involved. He put together a six-person photo array and Robinson identified Bush as one of the men involved. According to the incident report, which, of course, was not introduced into evidence, Bush was arrested and stated that he had nothing to do with the shooting and that Casey Stuckey shot Robinson. (Applicant's Ex. 10 (incident report)). Bush did not testify at Stuckey's trial and has never been tried for his involvement in this case. He was indicted for lynching, kidnapping, accessory before the fact of ABWIK, and accessory after the fact of ABWIK. The Sumter County public index indicates the charges were "nolle prosequi" on November 12, 2003. No further information is available from the Sumter County Clerk of Court.

Nelson was indicted for these same charges. He testified at Stuckey's trial that he did not know Stuckey. His earlier identification of Stuckey from a six-person photo array was not admitted at trial because Sgt. Turner presented the array in a highly suggestive manner – i.e. Robinson's signature was emblazoned across Stuckey's face. At trial, Nelson testified that he saw Robinson, a former classmate, at "Glenn's trailer." Nelson left and then saw Robinson, Bush, and a person who he did not know walking down the street. They waived him down and Bush and Robinson got in the back seat. The unknown person got in the front passenger seat. They asked for a ride to a location to pick up some money. Nelson testified he dropped them off after a short car ride and then drove away.

After the jury found Stuckey guilty of kidnapping and lynching, Stuckey proclaimed his innocence to the Court. At this PCR hearing, trial counsel Ferrari testified that Stuckey opted for a trial even though he was offered a plea to ten years. She was Stuckey's third appointed counsel and did not conduct an investigation of the case beyond what was provided in discovery.

The newly-discovered material, non-cumulative, evidence -- that the victim mistakenly identified Applicant as participating in the crime meets the standard for a new trial because it has been discovered since trial, it could not have in the exercise of due diligence been discovered before trial, and it would change the result if a new trial were granted.

When seeking relief based on after-discovered evidence, the Applicant must show that the evidence:

(1) would probably change the result if a new trial were granted; (2) has been discovered since trial; (3) could not have in the exercise of due diligence been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching.

State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999); *Hayden v. State*, 178 S.C. 610, 611, 299 S.E.2d 854, 855 (1983); *State v. Caskey*, 273 S.C. 325, 329, 256 S.E.2d 737, 739 (1979); *State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011).

I. The evidence would probably have changed the result at trial.

Evidence, "not known to accused at his trial, which will tend to prove that the crime of which he has been convicted was committed by another person, may be ground for a new trial."

State v. Fowler, 264 S.C. 149, 213 S.E.2d 447 (S.C. 1975).

As outlined in the factual summary, the only evidence of Stuckey's guilt came from the testimony of the victim, Donnell Robinson, who receives disability payments based on intellectual deficits. Evidence that Applicant was not involved in any of the acts committed against Donnell would clearly change the result at trial. Donnell's statement is corroborated by Leroy Dixon's statement, as well as Glenn Washington and Kenya Stuckey's statements.

II. The newly discovered evidence has been discovered since trial.

Applicant discovered that Robinson recanted his statement after the trial in 2012, as indicated in his filings with the Sumter County Clerk of Court and the affidavit of Chamere Currie.

III. The evidence could not have in the exercise of due diligence been discovered before trial.

Applicant was unaware of Robinson's recantation until 2012. Applicant could not have known that Robinson would recant prior to trial.

IV. The newly discovered evidence is material to the issue of guilt or innocence.

Materiality of evidence is "determined based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense." *Strickler v. Greene*, 527 U.S. 263, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999). The question is whether "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).

This newly discovered evidence puts the "whole case" in a different light such that the confidence in the verdict is undermined.

Applicant's conviction was based solely on Robinson's testimony that Applicant was involved in the kidnapping and lynching. Without Robinson's testimony, there was absolutely no evidence that Applicant was even with the men who committed these crimes. The evidence is clearly material to the issue of guilt.

Furthermore, Applicant has presented "new reliable evidence . . . that was not presented at trial" and "show[n] that it is more likely than not that no reasonable juror would have found [him] guilty beyond a reasonable doubt." *McQuiggin v. Perkins*, 133 S.Ct. 1924, 185 L.Ed. 2d 1019

(2013). His claim meets the standard for actual factual innocence of the offenses under federal law and his claim establishes “a fundamental miscarriage of justice by showing that he is actually innocent of the crime for which he was convicted.” *Id.*

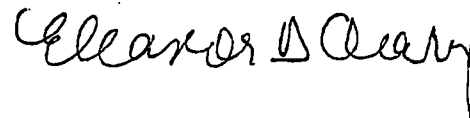
V. The evidence is not merely cumulative or impeaching.

Because Robinson recanted his statement, which was the only evidence of Applicant’s guilt, the evidence is not merely cumulative or impeaching.

CONCLUSION

Based on the foregoing, Applicant respectfully requests a hearing be held to determine the merits of his claim.

Respectfully submitted,



Eleanor Duffy Cleary
SC Bar #7068
ellen@clearylawnllc.com
Cleary Law LLC
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201
(803) 376-0075

Columbia, South Carolina
September 6, 2016

CASEY STUCKEY

MEMORANDUM
EXHIBITS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR
 ASSAULT & BATTERY WITH INTENT TO
 KILL, POSSESSION OF WEAPON DURING
 VIOLENT CRIME, LYNCHING - SECOND
 DEGREE, KIDNAPPING, ACCESSORY
 BEFORE FACT & ACCESSORY AFTER FACT

At a Court of General Sessions, convened on April 9, 2001, the Grand Jurors of Sumter County present upon their oath:

COUNT ONE - ASSAULT & BATTERY WITH INTENT TO KILL

That one CASEY BERNARD STUCKEY did in Sumter County on or about October 4, 2000, with malice aforethought, commit an assault and battery upon one [REDACTED] by shooting him with a deadly weapon, to wit: pistol, with intent to kill the said victim, in violation of S.C. Code Section 16-3-620.

COUNT TWO - POSSESSION OF WEAPON DURING VIOLENT CRIME

That one CASEY BERNARD STUCKEY did in Sumter County on or about October 4, 2000, possess or visibly display a firearm, to wit: pistol, during the commission or attempted commission of a violent crime, in violation of S.C. Code Section 16-23-490, as amended.

COUNT THREE - LYNCHING - SECOND DEGREE

That one CASEY BERNARD STUCKEY, one DONALD SHERMAN BUSH and one KENDELL NELSON did in Sumter County on or about October 4, 2000, as a mob, inflict an act of violence upon the body of [REDACTED] which did not result in death, in violation of S.C. Code Section 16-3-220.

That CASEY BERNARD STUCKY, one DONALD SHERMAN BUSH and one KENDELL NELSON did in Sumter County on or about October 4 2000, unlawfully seize confine inveigle, decoy, kidnap, abduct or carry away [REDACTED] without authority of law, in violation of S.C. Code Section 16-3-910, as amended.

COUNT FIVE - ACCESSORY BEFORE FACT

That one KENDELL NELSON and one DONALD SHERMAN BUSH did in Sumter County on or about October 4, 2000, aid, abet, counsel or procure the commission of a felony, to wit: Assault and Battery With Intent to Kill, by the principal felon Casey Bernard Stuckey, in violation of S.C. Code Section 16-1-40, as amended.

COUT SIX - ACCESSORY AFTER FACT

That one KENDELL NELSON and one DONALD SHERMAN BUSH did in Sumter County on or about October 4, 2000, knowing of the commission and completion of the felony, to wit: Assault and Battery With Intent to Kill by the principal felon Casey Bernard Stuckey aid, harbor, and assist such felon to escape detection or arrest or otherwise avoid the consequences of the crime, in violation of S.C. Code Section 16-1-55, as amended.

Against the peace and dignity of the State and contrary to the statute in such case as made and provided.

C. Kelly Jackson
SOLICITOR C. KELLY JACKSON

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

(11-12-03)

SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

SUMTER

AKA:

Race: BLACK Sex: MALE Age:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

2001

-GS-

43

283

AW#:

Date of Offense:

10-4-00

S.C. Code §:

16-3-220

CDR Code #:

0131113

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: COUNT 3 LUNCHING 2ND DEGREE

in violation of § 16-3-220 of the S.C. Code of Laws, bearing CDR Code #

0131113

☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

W. Harry Conner, Jr.

Solicitor

Defendant

Lauren B. Ferrari

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☒ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

OVR [Signature]

Clerk of Court/Deputy Clerk

Court Reporter:

Margaret Sullivan

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

[Signature]
101519
11/12/03

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER
 STATE VS.
CASEY BERNARD STUCKEY
 AKA:
 Race: BLACK Sex: MALE Age: 21
 DOB: 01/01/91
 Address:
 City, State, Zip
 DL# SID#

INDICTMENT/CASE#: 2001 -GS- 43 - 283
 A/W#:
 Date of Offense: 10-4-00
 S.C. Code §: 16-3-910
 CDR Code #: 0101915
☐ CASE RESTORED
 SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: COUNTY KIDNAPPING
 in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0101915
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
W. Harry Conner, Jr. Laurie B. Ferrari
 Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$ 470 provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered PTUP
 Total: \$ plus 20% fee: \$ days/hours Public Service Employment:

Payment Terms:
☐ set by SCDPPPS

Recipient:
 *Fine: \$
 §14-1-206 (Assessments 107.5%) \$
 §14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 §14-1-211(A)(2) (DUI Surcharge) \$100 \$
 §56-5-2995 (DUI Assessment) \$12 \$
 § 35.13 (Public Def/Prob) \$500 \$
 §73.3, 1B TP (Law Enforce. Funding) \$25 \$ 1500
 §33.7, 1B TP (Drug Court Surcharge) \$100 \$
 §50-21-114(BUI Breath Test Fee) \$50 \$
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 3% to County (if paid in installments) \$ 3.75
 TOTAL \$ 1287.5

D. V. P. [Signature]
 Clerk of Court/Deputy Clerk
 Court Reporter: Margaret Sullivan

Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol Testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning
 \$ paid to Public Defender Fund

Other: LIFE w/o Parole
2d most serious offense

☐ Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE [Signature]
 Judge Code: 101547
 Sentence Date: 11-13-03

11-12-03

White - Clerk Green - Corrections Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

I Donnell Robinson am admitting in this statement that Casey Stuckey wasn't the person, who shot, kidnapped or beat me up. I am coming forth today to say he was falsely accused mistakenly of crimes he didn't commit and now today I want to verify the actual criminals. Today I know with my heart and total mind it was Donald Bush the man who committed these crimes against me. I am writing this statement so this innocent man Casey Stuckey can be set free.

Donnell Robinson

Signed and Subscribed before me this 20th of Nov. 2012
Gloria Miller Harris
Notary Public of South Carolina

My Commission Expires 4/26/16

APP. EX. 4

AFFIDAVIT OF CHAMERE CURRIE

I, CHAMERE CURRIE, am giving this statement of my own accord, under no duress or undue influence. I have not received anything and I have not been promised anything in exchange for giving this statement. I make this statement freely and voluntarily. I am not under the influence of any substances that would affect my ability to understand. I am in the presence of Eleanor Duffy Cleary.

I am a friend of Casey Stuckey. I have reviewed the attached affidavit of Donnell Robinson.

I learned that Donnell Robinson wanted to make things right because he felt bad that he had mistakenly identified Casey Stuckey as one of the participants in this crime.

I talked to Donnell Robinson and he stated to me that Casey Stuckey was not the person who shot, kidnapped, or beat me up. I typed up what he told me, which is reflected in the statement he signed. I brought the typed statement to him. I drove him to the notary's office and he signed it in her presence. I stayed outside while he met with the notary.

I did not coerce Donnell or promise him anything for his statement. I did not provide him any compensation, monetary or otherwise.

I mailed the statement to Casey and he received it approximately a week later, November 18, 2012.

Casey Stuckey and I have tried to find attorneys to help him file papers with the Court but we could not afford their fees, until we found Attorney Cleary in March 2016.

Further affiant sayeth not.

Chamere Currie

Chamere Currie

Address: , Dalzell, SC 29040-8374

Sworn before me on this 23 day of August, 2016

Breanne Clough (Signature)
Breanne Clough (Printed name)

Notary Public for South Carolina

My commission expires 4-21-21.

G571588

APP. EX. 5, p. 1

Casey Stuckey, #297810
Lee Corr., Inst., RID-225
990 Wisacky Highway,
Bishopville, SC 29010

RECORDED

2013 NOV 22 PM 1:40

November 20, 2013

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY S.C. ☉

James C. Campbell
Clerk of Court, Sumter County
215 N. Hardin St., Rm. 303
Sumter, SC 29150

RE: State of South Carolina v. Casey Stuckey
Indictment No. 2001-GS-43-0283
MOTION FOR NEW TRIAL

Dear Mr. Campbell:

Enclosed for filing, please find a MOTION FOR NEW TRIAL pursuant to Rule 29(b), SCRCrim.P. Also enclosed, please find a copy of the documents that I would like to have clock-stamped and returned to me for my records.

I have enclosed a self addressed, postage prepaid envelope for your convenience.

Thank you in advance for your assistance in this matter.

Sincerely & Respectfully,



Casey Stuckey

cc: FILE

APP. EX. 5, P.2

STATE OF SOUTH CAROLINA) **RECORDED** IN THE COURT OF GENERAL SESSIONS
COUNTY OF SUMTER 2013 NOV 22 PM 1:47 FOR THE THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL
THE STATE OF SOUTH CAROLINA CLERK OF COURT
SUMTER COUNTY, S.C.

v.
CASEY STUCKEY,

Defendant.

**NOTICE OF MOTION AND MOTION
FOR NEW TRIAL**

Indictment No. 2001-GS-43-0283

PLEASE TAKE NOTICE, that Casey Stuckey, the above named Defendant herein, based on newly after discovered evidence and upon the accusatory instrument and all proceedings previously held herein, will move this Court at the next term of the Court of General Sessions For Sumter County, at 215 North Harvin Street, Sumter, South Carolina, or as soon thereafter as Defendant or his counsel may be heard, for An Order pursuant to SCRCrim.P, Rule 29(b), granting Defendant a New Trial Based upon After Discovered Evidence on the grounds set forth below:

Defendant Casey Stuckey, ("Defendant") hereby files this Notice And Motion For A New Trial pursuant to SCRCrim.P, Rule 29(b) and S.C. Code Ann. § 17-23-110 (1976). Defendant invokes the jurisdiction of the Court of General Sessions to grant a new trial, or any other relief this court deems just and proper, in the interests of justice, based on after discovered evidence, as set forth in the attached memorandum of law in support of Rule 29(b). RE: #2001-GS-43-283, Lynching, 2nd Degree.

JURISDICTION

This Court has jurisdiction over this matter pursuant to Art. V, § 11,

§ 20 and § 21 of the South Carolina Constitution; See also S.C. Code of Laws, § 17-23-110 (1976) as amended (1985) (All the circuit courts of this State shall have power to grant new trials in cases in which there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law of the United States.)

This Court has Power, Jurisdiction, and Duty, to grant a new trial.

(a) No proof exists to support Lynching 2nd Degree Element 16-3-220. (b) S.C. Code of Laws. See "Trial Court has duty to direct verdict when there is absence of evidence of a Material Element of the offense."

BACKGROUND OF THE CASE

Defendant was indicted at the April 2001 term of the Court of General Sessions for Sumter County, for Assault and Battery with Intent To Kill, Possession of a Weapon during a Violent Crime, Lynching 2nd Degree, and Kidnapping. The indictment containing the charges of Lynching 2nd Degree and Kidnapping also contained the names of Donald Sherman Bush and Kendall Nelson.

Defendant proceeded to trial by jury on November 10th & 12th 2003, before the Honorable Thomas W. Cooper, Jr., Judge of the Court of General Sessions for Sumter County. The Co-defendants were not for whatever reason, tried on any of the above charges, either with or without the Defendant.

The jury found the Defendant guilty of Lynching in the 2nd degree and kidnapping, but acquitted him of Assault and Battery with Intent to Kill ("ABWIK"), and Possession of a Weapon During a Violent Crime.

Judge Cooper sentenced Defendant to life without parole for kidnapping and twenty (20) years for the lynching conviction, to run concurrently.

APP. EX. 5, P.4

At the close of the case, Defendant's counsel moved the Court to grant a new trial. He argued that the verdict was inconsistent with the evidence stating among other things, that no elements of lynching were produced at trial. He further argued as to how the jury could find Defendant guilty of lynching and Kidnapping solely because he was there. He specifically asked if Defendant could be guilty of the Assault and Battery with Intent to Kill for just being there when he did not actually pull the trigger and how a jury could find him guilty of two crimes [lynching and kidnapping], and not guilty of one crime [ABWIK]. See (Trial Tr., pp. 234-235).

During the trial, Defendant's counsel stated:

"Even by his own admission only one person is the person that inflicted this violence upon him. It is my understanding lynching involves mob like violence, there was no mob."

See (Trial Tr., p. 171, line 10-13).

Defendant avers that nowhere in the trial was any evidence presented that would support the elements of lynching 2nd degree. When the victim claims that only the Defendant shot him and Defendant was found guilty of lynching 2nd degree and kidnapping, but not guilty of the (ABWIK), beyond a reasonable doubt, the conviction cannot stand.

During charges to the jury, the trial judge stated:

"However I tell you that mere presence is one at the scene of a crime even with the knowledge that the crime is being committed but without the intent to aid or assist or abet in it's commission would not constitute guilt."

See (Trial Tr., p. 215 - L. 4-8).

Defendant avers that he is actually and factually innocent of lynching 2nd degree and kidnapping, that by acquitting him of ABWIK the jury did the

same as found him innocent of those charges and therefore, the trial Judge should have granted Defendant a directed verdict. See Martin v. State, 533 S.E.2d 572 (SC 2000) (The trial judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty.).

The only allege witness to place Defendant at the scene of the crime was Mr. Robinson. See (Trial Tr., p.169, 1. 16-17).

STANDARD OF REVIEW

The standard for granting a New Trial based upon after discovered evidence is that as set forth in State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999). In order to obtain a new trial based upon after discovered evidence, the Defendant must show that: (1) The evidence is such as will probably change the result if a new trial is granted; (2) the evidence has been discovered since the trial; (3) the evidence could not have been discovered prior to trial by the exercise of due diligence; (4) the evidence is material; and, (5) the evidence is not merely cumulative or impeaching. See also State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998); State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993).

The Defendant herein is able to meet all five (5) requirements as set forth below:

Attached hereto and incorporated into the record by reference, is an Affidavit of Donnell Robinson, the alleged victim of the incident, who now comes forward of his own free will and accord, to state the truth of the matter as is within his own knowledge.

This affidavit meets all five (5) of the requirements as set forth above in that it, among other things, refers to evidence of facts existing at time of trial which the aggrieved party [Defendant] was excusably ignorant. See State v. Haulcomb, 260 S.C. 260, 195 S.E.2d 601, 606 (1973), cert. denied, 414 U.S. 886.

In addition, the disposition of Donald Sherman Bush establishes that he [the Defendant] had no knowledge and did not participate in any type of lynching. Kendall Nelson's disposition shows the same.

VICTIM STATEMENT

Donnell Robinson's statement clearly states that the Defendant had nothing to do with the incident for which he was tried and convicted. He now gives sworn testimony that is based upon his own knowledge, that the Defendant had nothing to do with any attack upon him as was alleged prior to and during the trial in this matter.

The Defendant only received a Warrant for ABWIK and never received a warrant for lynching 2nd degree and kidnapping. The night victim was shot which was on or about October 4, 2000, Donald Bush was named a second suspect. On November 9, 2009, Casey Stuckey was named suspect. The evidence presented during trial clearly shows that the victim never knew who Casey Stuckey [the Defendant] was. (See Trial Tr., p.42, l. 11 - p.43).

It was odd that the victim called out Defendant's name [Casey Stuckey] because when Defendant's lawyer asked the victim if he knew Mr. Nelson the night this incident occurred, he answered: "Yes, Ma'am." She asked the victim if he knew Mr. Bush on the night that this incident occurred, and he

answered, "Yes, Ma'am." However, when asked if he knew Mr. Stuckey the night this incident occurred, he clearly responded: "No, I didn't know him. No, No." See (Trial Tr., p.43). Further, he was asked how he knew what Mr. Stuckey's name was and he replied that: "Mr. Turner had told me." Then the lawyer asked: "was that before or after you looked at his picture." The victim clearly stated: "Before." See (Trial Tr., p.43, lms. 22-25).

The record clearly shows that the victim pointed out the Defendant's picture only because he was told who Defendant Stuckey was before the I.D. phase, by the detective on the case. Throughout the entire trial, there was no one with any credibility that could place defendant at the scene of the crime.

The Victim never stated that he was lynched or kidnapped by the Defendant. He stated that only one man, Donald Bush, told him to get in the car. Dealing with the fact that he never mentioned anything to police that night but waits until a month and some days later to complain would seem to support the claim that his statement was unreliable. Remember, it was the victim who said at one point that he saw the Defendant point a gun at him from the back and shot him and Defendant was found not guilty.

This Court should also take notice that even the prosecutor questioned the victim's story at time of trial. See (Trial Tr., p.183, l. 17-18).

This Affidavit is substantial evidence of Defendant's innocence. This case was based on victim's testimony, no other evidence is even brought forth, or was brought against Defendant.

I also swear under Oath and under penalty of perjury, that I do not know the victim, nor ever had any relationship with him.

APP. EX. 5, P.8

I Donnell Robinson am admitting in this statement that Casey Stuckey wasn't the person, who shot, kidnapped or beat me up. I am coming forth today to say he was falsely accused mistakenly of crimes he didn't commit and now today I want to verify the actual criminals. Today I know with my heart and total mind it was Donald Bush the man who committed these crimes against me. I am writing this statement so this innocent man Casey Stuckey can be set free.

Donnell Robinson

Signed and Subscribed before me this 20th of Nov. 2012
Gloria Miller Harris
Notary Public of South Carolina
My Commission Expires 4/26/16

DISPOSITION

As shown by exhibits, Defendant was the only one brought forth on 2nd degree lynching. Donald Bush only shows knowledge of kidnapping and Kendall Nelson also does not have history of 2nd degree lynching. Lynching states: And so the burden is upon the state to establish beyond a reasonable doubt that Defendant in this case "**combined with others as a mob**" and each was present to aid and abet with a criminal intent of committing the offense of lynching. (Emphasis Added). See State v. Smith, 352 S.C. 133, 572 S.E.2d 473 (2002).

As shown in the record, Defendant's lawyer stated: "Even by his own admission, only one person is the person that inflicted this violence upon him. It is my understanding lynching involves mob like violence, **there was no mob.**" See (Trial Tr., p.171, lines 10-13) (Emphasis Added).

During the course of the trial, the Trial Judge stated that this was a Hands of One, Hands of All case. So how then, is the Defendant charged with 2nd degree lynching when he clearly is the only one prosecuted for the alleged crime. It was unjust when Defendant was found guilty for being with Donald Sherman Bush and Mr. Kendall Nelson. How can Defendant be charged with lynching by him-self when it states mob? Under the common intent to do violence element in the lynching statute, the state failed to produce any evidence of premeditation. Defendant and others did not act as a mob. State v. Smith, 352 S.C. 133, 572 S.E.2d 473 (2002).

The trial Judge states when explaining to the jury about a mob, that no conversation made on the record showed premeditation. See (Trial Tr., p.171, lines 14-25).

The Defendant now shows that there is no way he should have been charged and convicted of lynching in the 2nd degree when he was misled to think that it was more than one and found guilty under the Hands of One, Hands of All Doctrine. How is that true, when Defendant is the only one that now wears that charge? This Disposition shows that Donald Sherman Bush and Kendall Nelson were never prosecuted. This is contrary to the lynching statute when it states clearly: "~~when two~~ persons aid, encourage and assist and abet each other in a commission of a crime, All who are present are principals and equally guilty." (Emphasis added).

When the jury found Defendant not guilty of ABWIK, they clearly convicted Defendant of lynching, 2nd degree and kidnapping relying solely on his alleged mere presence.

CONCLUSION

The DNA of this case is Defendant went to trial alone. No evidence was presented other than the victim's testimony. Even the Defendant's lawyer stated:

"No one knew there was a gun. Not one Police Office testified to you up there that they knew Casey Stuckey had a gun in his hand. He say's we don't have Glenn here because they couldn't find him. Well they sort of knew where his trailer was, didn't they? But he is not here. They don't have a last name on him. That doesn't sound like good police procedure to me. It sounds to me like we should have Glenn here, and that we could have Glenn here, but we don't."

See (Trial Tr., p.194, lines 6-13).

The police procedure was flawed. The victim stated at trial that he didn't know Defendant Stuckey before hand. He knew Defendant at trial only because Detective Turner told victim who Defendant Stuckey was just before the victim was shown a photo of the Defendant. See (Trial Tr., p.43). This

evidence, as well as other evidence as shown in the complete record, shows that the Hands Of One, Hands Of All Doctrine and the Lynching Statutes were applied to this Defendant in an unconstitutionally manner.

The police never interviewed Glenn, a key witness when a statement or testimony from Glenn would have exonerated Defendant. The Affidavit now presented is crucial to this case because the victim previously was coerced to implicate Defendant but now would like to step forward to tell the truth so as to finally bring justice to an innocent man.

For the above stated reasons and based on the attached Affidavit of Donnell Robinson and the complete record of this case, the above Defendant herein respectfully requests that this Honorable Court grant Defendant a New Trial or any such other and further relief this Court deems fair and just under the particular circumstances of this case.

Respectfully Submitted,

November 20, 2013
Bishopville, South Carolina

Casey Stuckey
Casey Stuckey

Aug. 4, 2014 361

DEAR
CLERK OF COURT.

APP. EX. 6, P.1

I Am sending this AFFIDAVIT TO
Indictment No. 2001-GS-43-0283. FOR MOTION FOR NEW
TRIAL And would like A Stamp copy RETURNED BACK.

THANK you FOR your TIME

Sincerely
Casey Stucky

RECORDED

2014 AUG -6 PM 1:51

JAMES L. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

mailed 8/12/14

AFFIDAVIT BY CASEY STUCKEY

AFFIDAVIT

RECORDED

2014 AUG -6 PM 1:51

I, Casey Stuckey hearby give the following statement freely
and voluntarily that is true & correct under oath:

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

On Nov. 9, 2000 I was given a warrant for Assault and Battery
with Intent to Kill (ABWIK) on one Darnell Robinson at Sumter
County Jail, by one Det. Turner. I clearly told Mr. Turner I
had no knowledge of this crime and I knew of no-one damed Darnell
Robinson. I was set a bond on ABWIK and was released.

I only had a warrant for ABWIK and nothing else. I went to
trial on Nov. 10, 2003 with Laurnen Stevens Ferrari as my trial
attorney. She was my lawyer maybe two (2) months. Before the
trial we never discussed any defense or strategy motions. So I
was very shocked that we would even be going to trial yet. The
week before we discussed a plea and I asked her could she get it in
black and white she said she would see. I even asked Mr. Conner
about it and he said he wasn't able to speak on it. When I would
speak with Mrs. Ferrari she would state everything dealing with my
case wasn't passed on to her yet. I was indicted on ABWIK, Poss-
ession of a Fire-Arm, Kidnapping, and 2nd degree lynching on one
Darnell Robinson along with Kendall Nelson and Donald Bush but only
received a warrant for (ABWIK).

On day of trial I was the only one going up for the charges.
One co - defendant came back (Kendall Nelson) and was used as a
witness. He stated at trial that I wasnen't the guy he saw that
night. And Donald Bush never came in which my lawyer stated was

odd, because I was the only one on trial. They never found no gun, no fingerprints, no anything, just Mr. Robinson word that I was the shooter that night.

I was found not guilty of the shooting but found guilty of Kidnapping & 2nd degree lynching with no proof just his word of (Robinson). Even he only states I shot him. Never did he state I had physical contact with him. I have been trying to prove my innocence from day one (1) that I didn't shoot Mr. Robinson and was falsely accused of this crime.

Since this incident, there have been stories told to my family that Mr. Robinson was saying he (Casey Stuckey) was wrongly convicted and is the wrong guy. In fact, Donald Bush was heard saying this as well in my community. Years later, Mr. Robinson saw my family and told them he is now willing to right this wrong so he wrote this affidavit stating: "it wasn't Casey Stuckey but indeed Donald Bush who shot him". And that he didn't want an innocent man to go to prison or stay in prison for this.

My position is that if I was aware of Mr. Robinson truth statement, I wouldn't be incarcerated today and this case against me would have never existed.

I also learned that years later that Kendall Nelson and Donald Bush were never brought before a judge on those charges as well. I learned this information based on the fact they would come around my family as well, and my family would question them "how could Casey be found guilty of hands of one - hands of all theory when they both was never tried. So my family went to get their dis-

position rap sheet on Kendall Nelson and they found out he had no record showing this or anything on that day. And Donald Bush 2nd degree lynching was never shown, when lynching states two (2) or more act as a mob, inflict an act of violence upon the body of Darnell Robinson.

However, after I received this information and got the dis positions, I immediately pursued due diligence by having the vic- tim Donald Robinson come forth with Material Evidence that I would have not knew at trial since he was a lead witness and ony wit- ness and victim in this case. I'm presenting my case to the court of common pleas with a prevailing claim of actual innocence.

Sincerely,

Casey Stuckey

Casey Stuckey

Sworn to and Subscribed before me this 5
day of Aug., 2014

Debra Supas (L.S.)
Notary Public

My Commission Expires: 11-4-2015

01-6S-43-283

Casey Stuckey #297810
L.C.I. Inst. F-1-B #1260
990 Wisacky Hwy.
Bishopville, SC 29010

James C. Campbell
Clerk of Court, Sumter County
215 N. Harvin St. Rm 303
Sumter, SC 29150

Dear: Mr. Campbell:

Enclosed for filing, Please find an AFFIDAVIT to attach to my motion for new trial pursuant to Rule 29(b) SCRCrimP. Also, I would like to have clock stamped and returned to me for my records.

Sincerely,

Casey Stuckey

July 27, 2015

APP. EX. 7, P. 2.

WITNESS STATEMENT

RECORDED

2015 JUL 31 PM 2:36

Glenn Washington brings forth a statement years later stating on that night of this so-called incident for which defendant was tried and convicted. He now gives sworn testimony that is based upon his own knowledge, that the defendant had nothing to do with any attack upon the victim as was alleged prior to and during the trial in this matter which he has always stated his innocence.

The defendant only received a warrant for ABWIK and never received a warrant for lynching 2nd degree and kidnapping. On November 9, 2000, Casey Stuckey was named suspect. Stuckey was found guilty of lynching 2nd degree and kidnapping. There was no evidence only victim statement who we now see is a whole different story. This affidavit is substantial evidence of defendant's innocence. This case was built around this witness statement Mr. Glenn Washington. Once again, even the defendant lawyer stated:

"No one knew there was a gun. Not one police officer testified to you up there that they knew Casey Stuckey had a gun in his hand. He says we don't have Glenn here because they couldn't find him. Well they sort of knew where his trailer was, didn't they? But he is not here. They don't have a last name on him. That doesn't sound like good police procedure to me. It sounds to me like we should have Glenn here, and that we could have Glenn here, but we don't." See: (Trial tr. p. 194, line 6-13)

Once again this shows police procedure was flawed, because

when victim stated that he was taken to Glenn's trailer where he first claimed this happen, Glenn was never questioned. Even though Det. Turner was put on case late why wasn't Glenn questioned after victim told him where this occurred.

Q: Did they take blood samples from Mr. Robinson?

A: The hospital probably did, I didn't.

See: (Trial tr. p.36, lines 7-8)

Then Casey's lawyer asked Detective Turner a question.

Q: So you don't know whether his admission in his statement that they were smoking pt and drinking beer is true or not?

A: No, I do not.

See: (Trial tr. p. 36, lines 9-12)

Dealing with the victim statement was made about where and when this happened. Why was Glenn never questioned by Detective Turner or any detective? In trial transcript Glenn's name came up numerous times to detectives and during trial and was never questioned. Even detective knew where glenn stayed.

Q: Did he indicate to you at the time that he went to a fellow named Glenn's trailer on Brent Street here in Sumter?

A: Yes, He did.

See: (Trial Tr., p. 119, lenes 3-6)

So it was no way detective should have not interviewed Glenn Johnson.

The defendant's lawyer never interviewed this witness as well, when this witness could have been key to the case. Even in pcr transcript she never put up a defense.

Q: Okay. Now, do you recall whether or not you all put a defense?

A: I know from looking at the transcript that we did not.

See: (pcr transcript, pg. 28 lines 8-10).

This shows my lawyer was unprepared as well. "A criminal defense attorney has a duty to perform a reasonable investigation. While the scope of a reasonable investigation depends upon a number of issues at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." See: Ard v. Catoe, 642 S.E.2d 597 (2007).

Petitioner argues that trial counsel was ineffective for failing to adequately prepare for petitioner's trial, especially given the fact that counsel had ample notice this was an LWOP case. See: Lounds v. State, 670 S.E.2d 646 (2008)

Petitioner shows that this evidence will change the result if a new trial is granted. Petitioner shows that if lawyer did her duty a proper defense would have been put up. Instead, she chose not to put a defense which was her strategy which was crucial to case to case to know his involvement in this case.

Defense counsel chose to forego a defense and stand on reasonable doubt in conjunction with the presumption of innocence charged by the court. Defense counsel made the above strategic choice based on a failure to reasonably investigate the facts of the case, in diligent search for a defense or mitigation. See: Lambrix v. Singletary 72 F.3d 1500, 1504) (1996)

Defendant states that lawyer should have made sure he was there or

questioned detective why Glenn Washington wasn't there during trial instead of waiting to closing argument or did her own investigation about that night.

Years later, Mr. Glenn Washington saw defendant's family and wanted to tell defendant's family of what happened that night. He informed defendant's family that it was no-way possible that he would be involved in this incident when defendant left hours later and that none of this happened at his home that night and it was naver a problem. See: (Attached Affidavit)
He told defendant's family he is willingly going to give a statement because he knows defendant is noocent.

The record clearly shows that only victim stated these charges against defendant which he clearly now comes foward to give the truth see victim affidavit. Defendant now shows with witness statement that this would have clearly changed outcome of trial. Mr. Glenn Washington has now made this affidavit under oath. Therefore, Mr. Stuckey respectfully request that this court convene a hearing for grounds to prove his innocence which he has been saying all along, and grant Mr. Stuckey a new trial.

Respectfully submitted,

s/_____
Casey Stuckey

July __, 2015

APP. EX. 7, P. 5

RECORDED

2015 JUL 31 PM 2:36

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

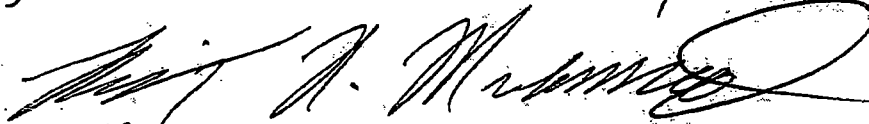
July 29, 2014

On Oct.4, 2000 around 11:00pm on this night Mr. Stuckey was at my house. Donald Bush and two others guys came a short time later. I left them all in the front room watching TV. It was getting late so Donald Bush and the two other guys left out and Casey left much later than they did that night. At the same time I never sensed any problems between anyone at my house that particular night. I am writing this statement because I was never interviewed or questioned for the incident that occurred on that night 10-4-2000. I made this statement freely and voluntarily without any threats, rewards or promises of any rewards have been made to me for this statement.



Glenn A. Washington

Sign before me on July 29, 2014



Rodrick N. Muhammad Exp Jan 23, 2017

AFFIDAVIT OF LEROY DIXON

I, Leroy Dixon, am giving this statement of my own accord, under no duress or undue influence. I have not received anything and I have not been promised anything in exchange for giving this statement. I make this statement freely and voluntarily. I am not under the influence of any substances that would affect my ability to understand. I am in the presence of Latanya Dixon. Others present are Morgan Lee.

I am the brother of Donnell Robinson. I have reviewed the attached affidavit of Donnell Robinson. Based on my knowing him for 35 years, I verify the signature on the affidavit appears to be his signature.

Donnell Robsionson told me in person that he gave this statement. He told me that Casey Stuckey was not in the car with Donald Bush and Kendell Nelson when they him out to where Donnell was shot. He told me that Casey Stuckey was not involved in this shooting in any way.

Further affiant sayeth not.

Leroy Dixon
Leroy Dixon

Address: 215 Thomas Dr. Sumner

[Signature]
Witness

[Signature]
Witness

Sworn before me on this 14th day of July, 2016

Eleanor Duffy Cleary
Eleanor Duffy Cleary

Notary Public for South Carolina

My commission expires 9-8-2020

AFFIDAVIT OF KENYA STUCKEY

I, Kenya Stuckey, am giving this statement of my own accord, under no duress or undue influence. I have not received anything and I have not been promised anything in exchange for giving this statement. I make this statement freely and voluntarily. I am not under the influence of any substances that would affect my ability to understand. I am in the presence of Eleanor Duffy Cleary.

I am Casey Stuckey's brother. I was born _____ . I remember the evening of October 3, 2000 and the morning of October 4, 2000.

I left in the afternoon and left Casey in my house on _____ . He went to Glen's trailer at about 11:30 pm for about 15 minutes. Glen's trailer was very near me between Olive and Branch streets. Casey came back to the house on Hoyt Street. Casey had been stabbed and could barely walk. He had a colostomy bag. I specifically remember that Casey was with me at all times on Hoyt Street after midnight on October 4, 2000. I am positive that Casey did not leave at any time on October 4, 2000. He never got into a car.

Donald Bush and I had a long history of disagreements and I believe that is why falsely named by brother, Casey, as being involved.

Donald Bush was brought up to testify against Casey for his November 2013 trial. Bush refused to testify. Bush was in prison at the time. Bush was brought to the county from prison.

Bush got out a month later and I talked to him and he said we will get it straight and he would tell the cops that Casey wasn't there. Bush said he would make it right. At some point, he stated that he would not go forward because "there is no statute of limitations" in SC and he didn't want to be charged.

Further affiant sayeth not.

Kenya Stuckey
Kenya Stuckey

Address: _____, Sumter, SC 29153

Sworn before me on this 26 day of August, 2016

Eleanor D Cleary (Signature)

Eleanor D Cleary (Printed name)

Notary Public for South Carolina

My commission expires 9/8/2020.

2001-283

Sumter County Sheriff's Office Investigative Report

Case #:00088788
 Incident Type:Assault & Battery W/I to Kill, Kidnapping
 Incident Location:Wooded area near Reeve St.
 Victim(s):Darnell Robinson
 Address.....: Hobson St.
 Suspect(s).....:Kendall Nelson, Donald Bush and Casey Stuckey
 Case Investigated By...:Inv/Sgt. James Turner *RT*

10/4/00 received copy of incident report. Capt. Alsbrooks told me that Inv. Dana Wingate responded to the scene and was not able to locate the primary scene. Wingate also said that no Eyewitnesses were located, only witnesses that heard shots.

10/06/00 11:10am Carolyn Dixon B/F Dob. Sumter, SC.
 29150 said that around 9:00pm on 10/3/00 she was sitting on the front porch of her home located at . She said a small newer model burgundy vehicle with silver rims and white letter tires. The letter "D" is in the tire name, pulled up in front of the trailer. Two black males were in the car. One of them asks, "Where's your brother?" She asked which brother Darnell or Mike. They asked for Darnell. She got up to see who it was and they pulled off.

10/06/00 11:20pm Darnell Robinson B/M Dob. or
 Sumter SC. 29150 Phone # (Aunt's Residence Julia Pleasant)
 said that around 11:00pm two B/Ms (later identified as Casey Stuckey and Donald Bush) came to his house on Hobson St and asked him to ride with them. They took him to a trailer somewhere near Olive St the owner is called Glen. Robinson said that they drank beer and smoked some marijuana. Kendall came up driving a small gray car with tinted windows. Kendall just sat in his car. Robinson told Donald he wanted to go home. Donald told him he could spend the night. Robinson believed something was about to happen and ran out the door. Donald Bush ran Robinson down. Kendall and Casey came to South Main St in Kendall's car. Donald Bush made Robinson get in the car. Casey told Kendall to take them to Hwy 15 South because he was going to kill Robinson. Kendall told Casey he did not have enough gas to go out 15. Kendall drove them to a location off of East Red Bay. Casey told Robinson to get out the car and start walking. Casey walked up behind Robinson and shot him in the back and a second shot passed Robinson's left ear. Robinson he fell to the ground and heard Casey get back into the car. The car spun off and they were gone. Robinson got back up and went to a near-by house to call for help.

10/06/00 12:13pm Local and NCIC criminal history ran on Kendall Nelson

10/06/00 1:00pm I got a picture of Kendall Nelson from the jail.

10/9/00 8:30am I rec'd a phone call that the second suspect is a Donald Bush.

APP. EX. 10, P. 2

10/9/00 11:15am Local and NCIC criminal history ran on Donald Bush.
2:15pm I met with Darnell at . I showed him a picture of Kendall Nelson and asked him is this the Kendall Nelson that he is talking about. Darnell said he is the one. I told Darnell that I would do a line-up of Donald Bush for him to view on 10/10/00.

10/12/00 9:30am I showed a photo line-up including Donald Bush which Robinson said was the second suspect.

11/8/00 10:15am Kendall Nelson was arrested, advised of his rights. Kendall Nelson said that he went over to "Glens" trailer on Branch St. Darnell Robinson was sitting in the living room with another black male. The black male told Kendall that Darnell owed him \$200.00 dollars for drugs that he fronted Darnell and Darnell was waiting till 9:00pm to cash a check to pay him back. Kendall said that he went to a back room with Glen. They heard someone say "He running". Kendall and Glen returned to the living Room. Darnell and the black male were gone. Kendall said he did not see Darnell any more that night.

11/8/00 5:20pm Donald Bush was arrested and advised of his Miranda Rights. He said he had nothing to do with the shooting of Darnell Robinson and that the person who shot Darnell was Casey Stuckey.

11/09/00 12:50pm I showed a photo line up with Casey Stuckey included. Darnell Robinson identified Stuckey has the one who shot him.

11/09/00 3:00pm I served a warrant on Casey Stuckey at the Jail. Stuckey denied the charge.

This case is submitted to the Sumter County Solicitor's Office for whatever action that office deems necessary.

Respectfully,

James Turner

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

CASEY BERNARD STUCKEY

APPLICANT

V.

STATE OF SOUTH CAROLINA
RESPONDENT

) IN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT

2016 SEP -8 PM 2:58

) JAMES C. COMPTON
) CLERK OF COURT
) SUMTER COUNTY, S.C.
) CERTIFICATE OF SERVICE OF
) APPLICATION FOR POST CONVICTION
) RELIEF

2016-CP-43-_____

2016-CP-43-1662

I, ELEANOR DUFFY CLEARY, hereby declare that I served a copy of the application for post-conviction relief, upon Assistant Attorney General Julie Coleman by placing in the US Mail with appropriate postage and addressed to:

Julie Coleman
SC Attorney General, PCR Division,
P.O. Box 11549
Columbia, S.C. 29211,

on this 6th day of September 2016.

Eleanor Duffy Cleary
Eleanor Duffy Cleary

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) FOR THE THIRD JUDICIAL CIRCUIT

RECORDED
2017 MAY 10 PM 1:34

Casey Bernard Stuckey, #0027816)
JAMES G. CAMPBELL)
CLERK OF COURT) Case No.: 2016-CP-43-1660
SUMTER COUNTY, S.C.)

Applicant,)

v.)

RETURN AND MOTION TO DISMISS

State of South Carolina,)

Respondent.)

In response to the application for post-conviction relief filed by Casey Bernard Stuckey (Applicant) on September 08, 2016, Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted at the April, 2001 term of the Sumter County Grand Jury for assault and battery with intent to kill (ABWIK), possession of a weapon during a violent crime, lynching-2nd degree, kidnapping, accessory before fact, and accessory after fact (2001-GS-43-283). Applicant was represented by Lauren Ferrari, Esquire. W. Harry Conner Jr., Esquire, prosecuted the case. On November 10-12, 2003, Applicant proceeded to trial and was found guilty of lynching - 2nd degree and kidnapping. Applicant was found not guilty of the other offenses for which he was charged. The Honorable Thomas W. Cooper, Jr. sentenced Applicant to imprisonment for a period of twenty (20) years for lynching-2nd degree and life imprisonment without parole for kidnapping. The sentences were to run concurrently. Applicant appealed his convictions.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders¹ appeal was perfected. Robert M. Pachak, Esquire, of the South Carolina Office of Appellate Defense, represented Applicant. On March 1, 2005, the South Carolina Court of Appeals dismissed the appeal. State v. Stuckey, Op. No. 2005-UP-180 (S.C. Ct. App. filed March 10, 2005). The Remittitur was filed on April 13, 2005.

2005-CP-43-432

In his first application for post-conviction relief on April 15, 2005, Applicant alleged that he was being held in custody unlawfully on the following grounds:

1. Ineffective assistance of trial counsel.
 - a. Indictment presented day of trial.
 - b. For not asking squash indictment or for not asking for [continuance]. This fell under reasonable standard it didn't allow attorney to prepare defense. Also, this violated 14th amendment due process of law. Also, sixth amendment effective assistance of counsel.
 - c. Failure to investigate a valid alibi.
2. Prosecutor Misconduct.
 - a. Prosecutor failed to send material to attorney.

Applicant subsequently filed an amendment to his application on January 12, 2006.

Applicant alleged that;

1. "A plea of not guilty was unlawfully induced due the trial court's lack of subject matter jurisdiction; more specifically that the indictment charges failed to allege the essential elements of the crime allegedly committed by the Defendant."
2. Ineffective assistance of counsel :
 - a. "Appellate counsel was ineffective."
 - b. "Trial counsel rendered ineffective assistance of counsel by not ascertaining that there were proper investigatory techniques."
 - c. "Trial counsel rendered ineffective assistance of counsel by failure to investigate a valid alibi."
 - d. "Trial counsel rendered ineffective assistance of counsel by not asking the court to dismiss the indictment nor did the counsel ask for a continuance."

¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

- e. "Trial counsel rendered ineffective assistance of counsel by failing to consult with him before the trial about other charges that were brought forth that he had no knowledge of."
 - f. "Counsel did not formulate any objections nor did the Counsel allow him to defend himself on the stand."
 - g. "Trial counsel rendered ineffective assistance of counsel for lack of information pertaining to his case."
 - h. "Trial counsel did not represent him to the fullest or the best of the trial counsel ability."
3. "Applicant alleges that he had an alibi during the time the crime was committed. No one could place the Applicant at the crime but the victim. However, victim's story was very confusing. The Applicant did not know the victim and had never seen the victim before."
 4. "Had Applicant been given the opportunity to voice his concerns in regards to the kidnapping and lynching charge, he would not have been convicted or would have received a lesser sentence."

Respondent filed its Return on October 4, 2005. An evidentiary hearing into the matter was convened on April 7, 2006, at the Sumter County Courthouse before the Honorable Howard P. King. Applicant was present in court and represented by Charles T. Brooks III, Esquire. Respondent was represented by Teri Hutson Salane, Esquire, of the South Carolina Attorney General's Office. On May 22, 2006, by written order Judge King, denied and dismissed the application with prejudice. Applicant appealed the denial of relief.

On March 27, 2007, Wanda H. Carter, Esquire, of the South Carolina Commission on Indigent Defense filed a Johnson Petition for Writ of Certiorari in the Supreme Court of South Carolina. By written order dated January 10, 2008, the petition was denied and counsel's request to withdraw was granted.

C/A No. 0:09-203-HFF-PJ

On January 25, 2009, Applicant filed a pro se Petition for Writ of Habeas corpus under 28 U.S.C. § 2254. Applicant set forth the following grounds for relief (verbatim):

1. Trial Court erred in refusing to grant a directed verdict to second degree lynching.

- a. A violation of fourteenth amendment due process. I was found not guilty for the principle charge, and found guilty of second degree lynching. It was not enough evidence to prove guilt beyond a reasonable doubt dealing with the existence of the offense.
2. Ineffective assistance of counsel.
 - a. For not asking to squash indictment for not asking to/for contin[uance]. Fell under reasonable standard violated 14th Amendment Due Process & Six Amendment effective of assistance of counsel. Failure to investigate a valid alibi. Prosecutor misconduct failure to send material to trial attorney.
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4. Trial Counsel erred in misunderstanding petitioner's position on the states plea offer in the case.
 - a. The counsel failed to clarify up until the day of trial if I wanted to accept plea offer. App. pg. 301 lines 2-4 and App. 282 line 7-p. 282 line 11. Violation of sixth and fourteenth amendment writ of certiorari.

On February 8, 2010, the Honorable Paige J. Gossett, United States Magistrate Judge, issued the Report and Recommendation, recommending that Respondent's motion for summary judgment be granted. By written order on March 19, 2010, the Honorable Henry F. Floyd, United States Magistrate Judge, granted Respondent's motion for summary judgement.

II.

In his second and current application for post-conviction relief and the supporting memorandum attached thereto, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Newly Discovered Evidence.
 - a. Victim has recanted.

Attached and incorporated herein are the: records of the Sumter County Clerk of Court, Applicants records from the South Carolina Department of Corrections, the final orders from Applicant's prior post-conviction relief action, Applicant's appeal records, Applicant's records from the federal habeas corpus action, and the records from this post-conviction relief action. Respondent reserves the right to amend this Return.

III.

The application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Offense Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of offense or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

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). 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) 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."

Applicant was sentenced on November 10, 2003. The Remittitur from Applicant's direct appeal was issued on April 13, 2005. The current application was not filed until September 8, 2016, well beyond the statutory filing period. Therefore, the Court should dismiss the

application as barred by the statute of limitations.

IV.

The application should be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the offense or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-offense relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-offense relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-offense relief. Therefore, he has failed to meet the burden imposed upon him, and the Court should summarily dismiss the application as successive to Applicant's previous PCR application.

V.

Applicant's assertion that he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to an evidentiary hearing, is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)).

In support of his claim of newly discovered evidence, Applicant has offered affidavits from Kenya Stuckey (Applicant's brother), Leroy Dixon, Glenn Washington, Chamere Currie, and Donnell Robinson (victim). Respondent contends that Applicant cannot satisfy all of the elemental requirements for newly discovered evidence such that he should be entitled to a new trial. Specifically, the evidence offered by Applicant in support of his claim could have been discovered before trial with the exercise of due diligence. Applicant's brother, Kenya Stuckey and Glen Washington, both signed affidavits stating that the Applicant was with them on the day that the victim was shot, and therefore could not have been involved in the shooting. Mr. Stuckey alleges in his statement that he "was never interviewed or questioned" about the incident. The facts alleged by both Mr. Stuckey and Mr. Washington pertaining to the Applicant's whereabouts on the night of the incident, could have with due diligence been discovered before trial by merely investigating and locating witnesses.

Furthermore, Applicant cannot satisfy the requirement that the evidence "is not impeaching or cumulative." The "well-established general rule is that newly discovered evidence which "merely impeaches or contradicts the testimony of a witness at the trial" affords no sufficient grounds for a new trial." State v. Strickland, 201 S.C. 170, 22 S.F.2d 417, 418 (1942) (citing, State v. Pittman, 137 S.C. 75, 134 S.E. 514, 518 (1926)). Donnell Robinson testified under oath at trial that Applicant was the person who shot him. The affidavit allegedly written by Mr. Robinson directly impeaches his prior testimony. Furthermore, Respondent submits that Mr. Robinson's written statement recanting the testimony he offered at trial is unreliable and incredible. The South Carolina Supreme Court has previously held that; "recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny

when offered as ground for a new trial.” State v. Mayfield, 235 S.C. 11, 35, 109 S.E.2d 716, 729 (1959) (citing, State v. Whitener, 228 S.C. 244, 89 S.E.2d 701 (1955)).

Finally, even assuming arguendo that Applicant can successfully meet all five factors of the Hayden test, the application is barred under S.C. Code Ann. §17-27-45(C). Mr. Robinson’s affidavit recanting his testimony was written and notarized on November 20, 2012. However, Applicant did not file this PCR action until September 6, 2016, nearly five years later.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter should be summarily dismissed with prejudice.

VI.

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

VII.

WHEREFORE, Respondent moves to summarily dismiss the application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (1976), is successive, and Applicant fails to make a *prima facie* showing of newly discovered evidence.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

RASHEEDA CLEVELAND
Staff Attorney

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

May 9, 2017

RECORDED

STATE OF SOUTH CAROLINA

2017 MAY 10 PM 1:31

COUNTY OF SUMTER

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COURT OF COMMON PLEAS

2016-CP-43-1660

CASEY B. STUCKEY, #297810

Applicant,

vs

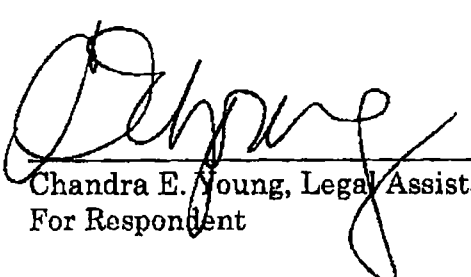
AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

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

Eleanor Duffy Cleary, Esquire
1116 Blanding St., Ste 2B
Columbia, SC 29201

DATED this 9th day of May, 2017.

Chandra E. Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2017 JUN -5 PM 2: 15

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Casey Bernard Stuckey, #00197805, COURT Case No.: 2016-CP-43-1660
SUMTER COUNTY, S.C.

Applicant,

v.

State of South Carolina,

Respondent.

CONDITIONAL ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief filed by Casey Bernard Stuckey (Applicant) on September 08, 2016. Respondent made its Return requesting the application be summarily dismissed.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted at the April 2001 term of the Sumter County Grand Jury for assault and battery with intent to kill (ABWIK), possession of a weapon during a violent crime, lynching--2nd degree, kidnapping, accessory before fact, and accessory after fact (2001-GS-43-283). Applicant was represented by Lauren Ferrari, Esquire. W. Harry Conner Jr., Esquire, prosecuted the case. On November 10-12, 2003, Applicant proceeded to trial and was found guilty of lynching -- 2nd degree and kidnapping. Applicant was found not guilty of the other offenses for which he was charged. The Honorable Thomas W. Cooper, Jr. sentenced Applicant to imprisonment for a period of twenty (20) years for lynching--2nd degree and life imprisonment without parole for kidnapping. The sentences were to run concurrent. Applicant appealed his convictions.

RJC

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2005-CP-43-432

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 - b. For not asking squash indictment or for not asking for [continuance]. This fell under reasonable standard it didn't allow attorney to prepare defense. Also, this violated 14th amendment due process of law. Also, sixth amendment effective assistance of counsel.
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 ¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

- e. "Trial counsel rendered ineffective assistance of counsel by failing to consult with him before the trial about other charges that were brought forth that he had no knowledge of."
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CURRENT APPLICATION

In his second and current application for post-conviction relief and the supporting memorandum attached thereto, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. Newly Discovered Evidence.
 - a. Victim has recanted.

RJC

Also, before this Court are the records of the Aiken County Clerk of Court, Applicants records from the South Carolina Department of Corrections, the final orders from Applicant's prior post-conviction relief action, Applicant's appeal records, Applicant's records from the federal habeas corpus action, and the records from this post-conviction relief action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statute of limitations

The application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Offense Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of offense or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

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). 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) 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."

Applicant was sentenced on November 10, 2003. The Remittitur from Applicant's direct appeal was issued on April 13, 2005. The current application was not filed until September 8, 2016, well beyond the statutory filing period. Therefore, the Court must dismiss the application

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as barred by the statute of limitations.

Successive

The application should be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the offense or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-offense relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Agc

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-offense relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-offense relief. Therefore, he has failed to meet the burden imposed upon him, and the Court must summarily dismiss the application as successive to Applicant's previous PCR application.

Newly discovered evidence

Applicant's assertion that he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to an evidentiary hearing, is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
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Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979).

In support of his claim of newly discovered evidence, Applicant has offered affidavits from Kenya Stuckey (Applicant's brother), Leroy Dixon, Glenn Washington, Chamere Currie, and Donnell Robinson (victim). Applicant cannot satisfy all of the elemental requirements for newly discovered evidence such that he should be entitled to a new trial. Specifically, the evidence offered by Applicant in support of his claim, could have been discovered before trial with the exercise of due diligence. Applicant's brother, Kenya Stuckey and Glen Washington, both signed affidavits stating that the Applicant was with them on the day that the victim was shot, and therefore could not have been involved in the shooting. Mr. Stuckey alleges in his statement that he "was never interviewed or questioned" about the incident. The facts alleged by both Mr. Stuckey and Mr. Washington pertaining to the Applicant's whereabouts on the night of the incident, could have with due diligence been discovered before trial by merely investigating and locating witnesses.

Furthermore, Applicant cannot satisfy the requirement that the evidence "is not impeaching or cumulative." The "well-established general rule is that newly discovered evidence which "merely impeaches or contradicts the testimony of a witness at the trial" affords no sufficient grounds for a new trial." State v. Strickland, 201 S.C. 170, 22 S.E.2d 417, 418 (1942) (citing, State v. Pittman, 137 S.C. 75, 134 S.E. 514, 518 (1926)). Donnell Robinson testified under oath at trial that Applicant was the person who shot him. The affidavit allegedly written by Mr. Robinson directly impeaches his prior testimony. Mr. Robinson's written statement recanting the testimony he offered at trial is unreliable and incredible. The South Carolina Supreme Court has previously held that; "recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new

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trial." State v. Mayfield, 235 S.C. 11, 35, 109 S.E.2d 716, 729 (1959) (citing, State v. Whitener, 228 S.C. 244, 89 S.E.2d 701 (1955)).

Finally, even assuming arguendo that Applicant can successfully meet all five factors of the Hayden test, the application is barred under S.C. Code Ann. §17-27-45(C). Mr. Robinson's affidavit recanting his testimony was written and notarized on November 20, 2012. However, Applicant did not file this PCR action until September 6, 2016, nearly five years later.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter must be summarily dismissed with prejudice.

RSC

{Conclusion and signature on the following page.}

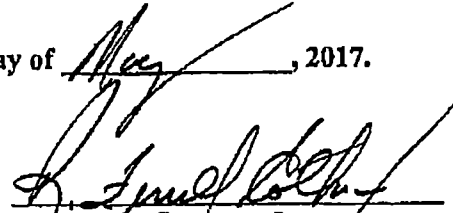
CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. 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. Applicant shall file any reasons he may have with the Sumter County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
 Attn: Julie A. Coleman, Esquire
 Rasheeda Cleveland, Esquire
 PCR Division – 3rd Circuit
 P.O. Box 11549
 Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Aiken County Clerk of Court and opposing counsel within twenty (20) days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 24 day of May, 2017.


 R. FERRELL COTHRAN JR.
 Chief Administrative Judge
 Third Judicial Circuit


 _____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2017 JUN 20 PM 1:58

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

CASEY BERNARD STUCKEY

JAMES C. CAMPBELL

APPLICANT CLERK OF COURT
SUMTER COUNTY, S.C.

REPLY TO CONDITIONAL ORDER OF
DISMISSAL
PURSUANT TO SECTION 17-27-70 (B)

V.

STATE OF SOUTH CAROLINA
RESPONDENT

2016-CP-43-1660

The Applicant, through his undersigned counsel, submits this Reply to the Conditional Order of Dismissal pursuant to South Carolina Code of Laws Section 17-27-70 (b). The Conditional Order was signed by the Honorable R. Ferrell Cothran, Jr., Chief Administrative Judge, Third Judicial Circuit, on May 24, 2017 and served upon Applicant on June 1, 2017. Applicant incorporates by reference his Memorandum in Support of Application for Post-Conviction Relief filed with this Court on September 8, 2016.

ARGUMENTS IN REPLY

Standard of Review

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. S.C. Code Ann. § 17-27-70 (2016). When reviewing the propriety of a dismissal, this Court must view the facts presented by an applicant as true and in the light most favorable to the applicant. See S.C. Code Ann. § 17-27-80 (2016) (PCR actions are governed by the usual rules of civil procedure); *Leamon v. State*, 611 S.E.2d 494, 363 S.C. 432 (2005); *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002); *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000).

I. Applicant's PCR application should not be summarily dismissed for failing to comply with the Statute of Limitations because he filed the application within one year of learning of the newly discovered evidence.

Applicant Casey Stuckey submitted his newly discovered evidence to the Sumter County Clerk of Court within one year of learning of its existence. References refer to exhibits submitted with his most recent PCR application.

A. Filing with Donnell Robinson's Statement

On November 12, 2012, the victim of the shooting, Donnell Robinson, signed a typed statement, which was witnessed by a notary. He stated that Stuckey was not the person "who shot, kidnapped or beat me up. I am coming forth because he was falsely accused mistakenly of crimes he didn't commit." He stated that Donald Bush committed the crimes against him. (Applicant's Ex. 3 (Robinson statement)).

Stuckey received this affidavit at the prison approximately a week later, after his friend, Chamere Currie, mailed it to him. (Applicant's Ex. 4 (Currie affidavit)).

On November 20, 2013, Stuckey mailed a *pro se* motion for a new trial pursuant to Rule 29(b), along with Robinson's statement, to the Sumter County Clerk of Court. The clerk clocked it as "recorded" on November 22, 2013. The State was not served with this motion. (Applicant's Ex. 5 (Pro se motion)).

This *pro se* filing on November 22, 2013, which was filed within one year of Stuckey's receipt of Robinson's affidavit, was within the statute of limitations. In this case, Stuckey filed a Rule 29, SCRCF, motion, which was apparently not acted upon by the Clerk. This motion should have been in the form of a PCR application since the trial court had lost jurisdiction. However, the Clerk of Court should not have ignored it but instead should have treated it like a PCR

application and forwarded it to the Attorney General's office. "An informal format or improperly titled petition ordinarily should not form the basis for summary dismissal." *Al-Shabazz v. State*, 338 S.C. 354, 381, 527 S.E.2d 742 (1999).

In addition, it is clear that Stuckey did not sit on his rights, ignoring the statute of limitations, as he submitted a *pro se* motion again on July 27, 2015, which was recorded (and ignored) on July 31, 2015.

In his affidavit, Stuckey stated that his family had heard stories of Robinson's recantation throughout the years. Mr. Robinson saw Stuckey's family and at that time Robinson told them he was willing to write a statement, which he did in November 2012. Based on this statement, Stuckey asserted a *pro se* claim based "on actual innocence."

B. Filing with Glenn Washington's Statement

On July 29, 2014, Glenn Washington wrote a notarized statement averring that Stuckey, Bush and two other men came to his house that evening. He stated that Bush and the other two men left without Stuckey. Stuckey sent this statement, as well as an affidavit, to the Sumter Clerk of Court on August 4, 2014. The Clerk recorded it on August 6, 2014. (Applicant's Ex. 6 (2nd *pro se* motion)).

This newly-discovered evidence in the form of Glenn Washington's statement was filed within the statute of limitations. Stuckey submitted this to the Clerk of Court and it was also recorded but not acted upon. As stated in reference to Robinson's statement, it should have been treated as a PCR application and forwarded to the Attorney General's office. *Al Shabazz, supra*.

II. Applicant's case should not be dismissed based on successiveness because Applicant has raised new grounds that could not have been raised in previous applications.

Applicant bears the burden of proving that his new grounds could not have been raised in a previous application. *Arnold v. State*, 309 S.C. 157, 430 S.E.2d 834 (1992). As argued in the memorandum submitted with this most recent PCR application, Stuckey did not know that Donnell Robinson has recanted his testimony until November 2012. He had no way of knowing that Donnell would do so. His public defender could not have learned of this before trial and his PCR attorney could not have known the state's only witness to the crime would recant.

III. Applicant has presented sufficient evidence to merit a hearing on whether he should be granted a new hearing based on after-discovered evidence.

When seeking relief based on after-discovered evidence, the Applicant must show that the evidence:

- (1) would probably change the result if a new trial were granted; (2) has been discovered since trial; (3) could not have in the exercise of due diligence been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching.

State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999); *Hayden v. State*, 178 S.C. 610, 611, 299 S.E.2d 854, 855 (1983); *State v. Caskey*, 273 S.C. 325, 329, 256 S.E.2d 737, 739 (1979); *State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011).

A. The evidence would probably have changed the result at trial.

Evidence, "not known to accused at his trial, which will tend to prove that the crime of which he has been convicted was committed by another person, may be ground for a new trial."

State v. Fowler, 264 S.C. 149, 213 S.E.2d 447 (S.C. 1975).

As outlined in the factual summary in the Memorandum in Support of Application for Post Conviction Relief, the only evidence of Stuckey's guilt came from the testimony of the victim, Donnell Robinson, who receives disability payments based on intellectual deficits. Evidence that Applicant was not involved in any of the acts committed against Donnell would clearly change the result at trial. Donnell's statement is corroborated by Leroy Dixon's statement, as well as Glenn Washington and Kenya Stuckey's statements.

B. The newly discovered evidence has been discovered since trial.

Applicant discovered that Robinson recanted his statement well after the 2003 trial in 2012, as indicated in his filings with the Sumter County Clerk of Court and the affidavit of Chamere Currie.

C. The evidence could not have in the exercise of due diligence been discovered before trial.

Applicant was unaware of Robinson's recantation until 2012. Applicant could not have known that Robinson would recant before the trial.

D. The newly discovered evidence is material to the issue of guilt or innocence.

Materiality of evidence is "determined based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense." *Strickler v Greene*, 527 U.S. 263, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999). The question is whether "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).

This newly discovered evidence puts the "whole case" in a different light such that the confidence in the verdict is undermined.

Applicant's conviction was based solely on Robinson's testimony that Applicant was involved in the kidnapping and lynching. Without Robinson's testimony, there was absolutely no evidence that Applicant was even with the men who committed these crimes. The evidence is clearly material to the issue of guilt.

Furthermore, Applicant has presented "new reliable evidence . . . that was not presented at trial" and "show[n] that it is more likely than not that no reasonable juror would have found [him] guilty beyond a reasonable doubt." *McQuiggin v. Perkins*, 133 S.Ct. 1924, 185 L.Ed. 2d 1019 (2013). His claim meets the standard for actual factual innocence of the offenses under federal law and his claim establishes "a fundamental miscarriage of justice by showing that he is actually innocent of the crime for which he was convicted." *Id.*

E. The evidence is not merely cumulative or impeaching.

Because Robinson recanted his statement, which was the only evidence of Applicant's guilt, the evidence is not merely cumulative or impeaching.

F. A hearing is necessary to determine if the new statements are credible.

The State submits that Robinson's statements are not credible. However, Robinson's statement recanting was signed and notarized. In addition, his brother wrote a statement verifying that Donnell Robinson wrote the statement. Applicant should have the opportunity to present witnesses and evidence at a PCR hearing, during which the trial judge can judge the credibility of the witness's recantation.

CONCLUSION

Based on the foregoing, as well as the Memorandum In Support of Application for Post Conviction relief filed on September 8, 2016, Applicant respectfully requests that the Conditional Order not be finalized and that this matter be set for a hearing before the Court.

Respectfully submitted,

Eleanor A. Cleary

Eleanor Duffy Cleary
SC Bar 7068
ellen@clearylawnllc.com
1116 Blanding Street, Suite 2B
Columbia, South Carolina 29201
(803) 376-0075

Columbia, South Carolina
June 19, 2017

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2017 JUN 20 PM 1:58

CASEY BERNARD STUCKEY

APPLICANT: JAMES C. CAMPBELL
CLERK OF COURT
STATE OF SERVICE OF REPLY
SUMTER COUNTY, SC
TO CONDITIONAL ORDER OF
DISMISSAL

V.

STATE OF SOUTH CAROLINA
RESPONDENT

2016-CP-43-_____

I, ELEANOR DUFFY CLEARY, hereby declare that I served a copy of the REPLY TO
CONDITIONAL ORDER OF DISMISSAL, upon Assistant Attorney General Julie Coleman by
placing in the US Mail with appropriate postage and addressed to:

Julie Coleman
SC Attorney General, PCR Division,
P.O. Box 11549
Columbia, S.C. 29211,

on this 19th day of JUNE 2017.

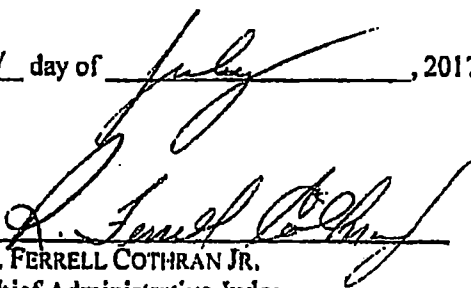
Eleanor A Cleary
Eleanor Duffy Cleary

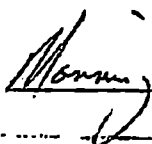
This Court finds Applicant has failed to show he should be entitled to a hearing on his untimely PCR application. Accordingly, this Court finds that Applicant has failed to provide sufficient reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 14 day of July, 2017.


R. FERRELL COTHRAN JR.
Chief Administrative Judge
Third Judicial Circuit

 _____, South Carolina.

1 of 2

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTERSTATE VS.CASEY BERNARD STUCKEY

AKA:

Race: BLACK Sex: MALE Age: DOB: 4-05-76 SS#: 252-46-4721

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

2001

-GS-

43283

A/W#:

Date of Offense:

10-4-00

S.C. Code §:

16-3-220

CDR Code #:

013113☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: COUNT 3 LUNCHING 2ND DEGREEin violation of § 16-3-220 of the S.C. Code of Laws, bearing CDR Code # 013113☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

W. Harry Conner, Jr.

Solicitor

Defendant

Lauren B. Ferrari

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$	100.00
\$	100
\$	12
\$	500
\$	25
\$	25.00
\$	100
\$	50
\$	
\$	40/ea
\$	3.75
\$	128.75

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender FundOther:
☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

11/12/03
01514

(11-203)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

282

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

SUMTER

STATE

VS.

CASEY BERNARD STUCKEY

AKA:

Race: BLACK Sex: MALE Age:

DOB: SS#:

Address:

City, State, Zip

DL# SID#

INDICTMENT/CASE#:

2001 -GS- 43 - 283

AW#:

Date of Offense:

10-4-00

S.C. Code §:

16-3-910

CDR Code #:

0101915

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: COUNTY #4 KIDNAPPING

In violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0101915

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☒ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

W. Harry Conner, Jr.

Solicitor

Defendant

Lauren B. Ferrari

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ w/o parole provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

LIFE w/o Parole2d Most Serious offense☐ Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$	\$
\$	\$
\$100	\$ 100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$ 25.00
\$100	\$
\$50	\$
\$40/ea	\$
\$	\$ 3.75
\$	\$ 128.75

D. V. Player

Clerk of Court/Deputy Clerk

Court Reporter: Margaret Sullivan

PRESIDING JUDGE

Judge Code:

Sentence Date:

11-12-03

DOCKET NO. 2001-GS-43-283

CON

The State of South Carolina,

County of SUMTER

COURT OF GENERAL SESSIONS

APRIL TERM 2001

THE STATE

vs.

DONALD SHERMAN BUSH

KENDELL NELSON

✓ CASEY BERNARD STUCKEY

Indictment for

**ASSAULT & BATTERY WITH INTENT TO KILL,
POSSESSION OF WEAPON DURING VIOLENT CRIME,
LYNCHING - SECOND DEGREE,
KIDNAPPING,
ACCESSORY BEFORE THE FACT
& ACCESSORY AFTER THE FACT**

WITNESSES

SHERIFF'S DEPT.

Jamie Turner

Breerw/5000 (N)

Breerw/5000 (S)

ARREST WARRANT NO. _____

G 571588 (1)

G 571419 & 571420 (4)

10/12/2000

ACTION OF GRAND JURY

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

MSTATE OF SOUTH CAROLINA)	INDICTMENT FOR
)	ASSAULT & BATTERY WITH INTENT TO
COUNTY OF SUMTER)	KILL, POSSESSION OF WEAPON DURING
)	VIOLENT CRIME , LYNCHING – SECOND
)	DEGREE, KIDNAPPING, ACCESSORY
)	BEFORE FACT & ACCESSORY AFTER FACT

At a Court of General Sessions, convened on April 9, 2001, the Grand Jurors of Sumter County present upon their oath:

COUNT ONE – ASSAULT & BATTERY WITH INTENT TO KILL

That one CASEY BERNARD STUCKEY did in Sumter County on or about October 4, 2000, with malice aforethought, commit an assault and battery upon one Darnell Robinson by shooting him with a deadly weapon, to wit: pistol, with intent to kill the said victim, in violation of S.C. Code Section 16-3-620.

COUNT TWO – POSSESSION OF WEAPON DURING VIOLENT CRIME

That one CASEY BERNARD STUCKEY did in Sumter County on or about October 4, 2000, possess or visibly display a firearm, to wit: pistol, during the commission or attempted commission of a violent crime, in violation of S.C. Code Section 16-23-490, as amended.

COUNT THREE – LYNCHING – SECOND DEGREE

That one CASEY BERNARD STUCKEY, one DONALD SHERMAN BUSH and one KENDELL NELSON did in Sumter County on or about October 4, 2000, as a mob, inflict an act of violence upon the body of Darnell Robinson which did not result in death, in violation of S.C. Code Section 16-3-220.

COUNT FOUR – KIDNAPPING

That CASEY BERNARD STUCKY, one DONALD SHERMAN BUSH and one KENDELL NELSON did in Sumter County on or about October 4 2000, unlawfully seize confine inveigle, decoy, kidnap, abduct or carry away Darnell Robinson without authority of law, in violation of S.C. Code Section 16-3-910, as amended.

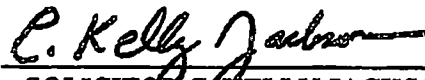
COUNT FIVE – ACCESSORY BEFORE FACT

That one KENDELL NELSON and one DONALD SHERMAN BUSH did in Sumter County on or about October 4, 2000, aid, abet, counsel or procure the commission of a felony, to wit: Assault and Battery With Intent to Kill, by the principal felon Casey Bernard Stuckey, in violation of S.C. Code Section 16-1-40, as amended.

COUNT SIX – ACCESSORY AFTER FACT

That one KENDELL NELSON and one DONALD SHERMAN BUSH did in Sumter County on or about October 4, 2000, knowing of the commission and completion of the felony, to wit: Assault and Battery With Intent to Kill by the principal felon Casey Bernard Stuckey aid, harbor, and assist such felon to escape detection or arrest or otherwise avoid the consequences of the crime, in violation of S.C. Code Section 16-1-55, as amended.

Against the peace and dignity of the State and contrary to the statute in such case as made and provided.


SOLICITOR C. KELLY JACKSON