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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Lee S. Alford, Circuit Court Judge

Appellate Case No. 2014-002630

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SC Court of Appeals

THE STATE,

Respondent,

v.

JEFFREY LYNN CHRONISTER,

Appellant

SUPPLEMENTAL RECORD ON APPEAL

JEFFREY LYNN CHRONISTER, #189827
Kirkland Correctional Institution
4344 Broad River Road
Columbia, S.C. 29210

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CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA
COUNTY OF YORK

STATE OF SOUTH CAROLINA

Vs.

JEFFREY LYNN CHRONISTER
MOVANT

IN THE COURT OF GENERAL SESSIONS

CA. NO. 92-GS-46-1224

RE: MOTION FOR AFTER NEWLY DISCOVERED EVIDENCE

EVIDENTIARY HEARING REQUESTED

MOVANT, JEFFREY LYNN CHRONISTER, MOVES BEFORE THIS HONORABLE COURT PROSE FOR A MOTION FOR AFTER NEWLY DISCOVERED EVIDENCE UNDER RULE 29(b) SCR CRIM. P, AND PURSUANT TO RULE 60(b) SCRCP. UNDER CATOE V STATE SUPRA, THERE IS NO TIME LIMITATIONS WITHIN A PARTY THAT SUCH MOTION MUST BE MADE. IN AOUDA V MOBIL OIL CORP, 892 F3d 1115, 1118 (1ST CIR. 1997) THERE IS NO STATUTE OF LIMITATIONS WHEN A PARTY SEEKS TO SET ASIDE A JUDGMENT DUE TO FRAUD ON THE COURT. UNDER U.S. V MC DONALD, 161 F3d 4 (TABLE) C.A. 4 (N.C.) 1998: "A DECISION PRODUCED BY FRAUD ON THE COURT IS NOT IN ESSENCE A DECISION AT ALL AND NEVER BECOMES FINAL," SEE WRIGHT AND MILLER, FEDERAL PRACTICE AND PROCEDURE §2870 AT 409 (1995) QUOTING KENNES V COMMISSION OF INTERNAL REVENUE, 387 F2d 689, 691 (7TH CIR. 1968)

CASE HISTORY: MOVANT IS PRESENTLY CONFINED IN THE KIRKLAND CORRECTIONAL CENTER OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS PURSUANT TO ORDERS OF COMMITMENT OF THE CLERK OF COURT FOR YORK COUNTY. MOVANT WAS INDICTED AT THE APRIL 1992 TERM OF THE COURT OF GENERAL SESSIONS FOR MURDER AND UNLAWFUL POSESSION OF FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME (92 GS-46-1224), AND PROCEEDED TO A JURY TRIAL ON SEPTEMBER 21 AND 22, 1992 WHERE REPRESENTED BY GERALD W. SMITH, ESQUIRE, OF THE YORK COUNTY PUBLIC DEFENDERS OFFICE. MOVANT WAS FOUND GUILTY

AS CHARGED, AND SENTENCED BY THE HONORABLE DON S. RUSHING TO CONFINEMENT FOR A PERIOD OF LIFE PLUS FIVE YEARS CONSECUTIVE. AFTER AN APPEAL WAS HAD THE CONVICTION WAS AFFIRMED BY THE SUPREME COURT OF SOUTH CAROLINA (94-MO-226)

GROUNDS

STATEMENT: OFFICER/DETECTIVE OTIS WHITSTINE'S TESTIMONY SHOWS THAT HE WAS WITH THE YORK COUNTY SHERIFF'S DEPARTMENT, AND WAS INVOLVED IN AN INVESTIGATION OF THE TRAGEDY ON THE DATE IT HAD OCCURRED [TR.P.133, L.12-23]. HE WAS THE PRIMARY OFFICER THROUGHOUT THE CASE. BECAUSE OF BEING THE "AFFIANT," THE "PROSECUTING OFFICER" OF THE ARREST WARRANT, AND THE SOLE WITNESS OF THE INDICTMENT FOR MURDER (EXHIBITS - A + B, P. 22+23). HE WAS ALSO THE ONLY LAW OFFICER TO TESTIFY INTERVIEWING, AND OR HAVING TALKED WITH WITNESS TOMMY AUTEN ON THAT MORNING OF THE TRAGEDY. THE SOLICITOR ADDRESSING THE WITNESS AS "THE EYEWITNESS IDENTIFICATION AND LINE-UP" [TR.P.119, L.17-20], AND THE ARREST WARRANT STATES, "PROBABLE CAUSE BASED ON WITNESS'S."

A = WAS THE DIRECTED VERDICT PRODUCED BY PROSECUTORIAL MISCONDUCT, AND MISREPSENTATION BY COUNSEL?

ARGUMENT AND SUPPORTING FACTS: THE RECORD FAILS TO SHOW ANY INITIAL DIRECT EXAMINING OF OFFICER WHITSTINE AS TO HAVING INTERVIEWED OR TALKED WITH WITNESS AUTEN ON THAT MORNING OF THE TRAGEDY [TR.P.133, L.12-TO-P.137], AND ONE OF THE MAIN SUBJECTS OF THIS ISSUE IS THE OFFICER'S/DETECTIVE'S TESTIMONY AS FOLLOWS;

INITIAL CROSS-EXAMINING: (Q) NOW WHEN YOU TALKED WITH HIM DID YOU TALK WITH HIM EARLIER IN THE MORNING THAT DAY?" (A) " I DONT RECALL BUT ITS POSSIABLE THAT I DID." [TR.P.135, L.19]
DIRECT EXAMINING: (Q) " AND WHERE DID YOU TALK TO HIM PLEASE?

(A) "THE FIRST TIME I BELIEVE WAS AT DUKE POWER CATAWBA NUCLEAR STATION, AND THE SECOND TIME WAS AT HIS RESIDENCE." [TR.P. 205, L.10]

FINAL CROSS-EXAMINING: (Q) "DETECTIVE, YOU SAY THAT YOU HAD TALKED WITH MR. AUTEN OUT AT THE CATAWBA STATION EARLY IN THE MORNING, CORRECT, SIR?"

(A) "YES, SIR. DOING INTERVIEWS."

(Q)" AND THAT THAT WOULD HAVE BEEN ABOUT 8:00-- 7:30, 8:00 O'CLOCK, CORRECT, SIR?"

(A) "I ASSUME, IT WAS EARLY IN THE MORNING." [TR P. 207, L.10-17]

MOVANT RESPECTFULLY CONTENDS THAT THE FOREGOING INSTANCE RAISES FRAUD ON THE COURT BY COUNSEL'S REPSENTATION OF MISLEADING THE COURT IN INDUCING FALSE TESTIMONY TO APPEAR THAT THE OFFICER HAD INTERVIEWED THE WITNESS. MOVANTS CONTENTION IS SUPPORTED BY COUNSEL'S ABUSE OF RULE 611 (c) SCRC BY THAT OF IMPROPERLY USE OF LEADING QUESTIONS. WHICH IS EVIDENT IN THE FINAL CROSS EXAMINING. BECAUSE OF THE FOLLOWING FACTS OF THIS ISSUE OF THE INTERVIEW AND OF THE ISSUE OF THE PHOTO LINE-UP SHOWS THAT THE ONLY EVIDENCE OF THE OFFICER'S INVOLVEMENT IN THE INVESTIGATION WAS THE PRESENTATION OF THE LINE-UP. TO WITNESS AT WITNESS'S RESIDENCE. RULE 407 SCACR RULES OF PROFESSIONAL CONDUCT "MISREPSENTATION" [1] SEE RULE 8.4 (a), (b), (d), (e) (g). ALSO THE FACTS OF THESE TWO ISSUES LEADS UP TO THE DIRECTED VERDICT BEING PRODUCED BY FRAUD UPON THE COURT.

THE FACTS THAT REFUTE OFFICER WHITSTINE'S TESTIMONY OF HAVING INTERVIEWED THE WITNESS, AND SUPPORTS THAT THERE BEING NO EVIDENCE THAT HE WAS INVOLVED IN THE INTERVIEWING OF ANY OF THE WITNESSES ON THAT MORNING ARE IN THE FOLLOWING THAT DIRECTS TO; (1) THE OFFICER'S OWN TESTIMONY, AND THAT OF WITNESS AUTEN'S (2) EXHIBIT COPY OF THE ONLY KNOWN INCIDENT REPORT FROM THE YORK COUNTY SHERIFF'S DEPARTMENT, AND (3) THERE ARE THE TESTIMONIES BY THE OTHER WITNESSES OF THAT MORNING; JOEL

SMITH, NO EVIDENCE OF BEING INTERVIEWED, [TR.P. 87-To-P. 99]: DANNY WILSON, INTERVIEWED BY OFFICER WILLIAMS, [TR.P. 112, L. 2-6]: AND SIDNEY BALLANGER, NO EVIDENCE OF BEING INTERVIEWED ON THAT MORNING, OR WHEN AND WHO THE AUTHORITIES WERE THAT HE GAVE THE PARTIAL REGISTRATION To, [TR.P. 179-To-P. 189]

(1) TESTIMONIES: OFFICER WHITSTINE'S TESTIMONY SHOWING THAT HIS PRESENTATION OF THE LINE UP WAS THE FIRST TIME THAT HE HAD MET THE WITNESS. BECAUSE OF HIS TESTIFYING To BEING INVOLVED IN AN INVESTIGATION OF THE TRAGEDY WAS DURING THE INITIAL DIRECT EXAMINATION, AND HIS ANSWERS To THE VERY NEXIS QUESTIONS SHOWS THAT HE MET WITH THE WITNESS AT WITNESS'S "RESIDENCE" To PRESENT THE LINE-UP, INSTEAD OF ANSWERING HAVING TALKED WITH WITNESS OR HAVING INTERVIEWED HIM ON THAT MORNING [TR.P. 133, L. 24-To-P. 134]

WITNESS AUTEN'S TESTIMONY SHOWING THAT THE OFFICER ARRIVED AT HIS RESIDENCE ON THAT AFTERNOON OF THE TRAGEDY, AND HIS TESTIMONY OF OFFICER WHITSTINE HAVING To IDENTIFY HIMSELF SUPPORTS THAT THIS WAS THE FIRST TIME THEY HAD EVER MET. BECAUSE OF TESTIFYING THAT:

"HE TOLD ME WHO HE WAS, IDENTIFIED HIMSELF", [TR. P. 201, L. 13]

(2) INCIDENT REPORT: THE ONLY COPY OF AN INCIDENT REPORT FROM THE YORK COUNTY SHERIFF'S DEPARTMENT THATS BEEN ENTERED INTO MOVANT'S TRANSCRIPT OF RECORD SHOWS THAT WITNESS AUTEN WAS THE REPORTS "COMPLAINTANT" [P. 452] THOUGH BECAUSE OF THE COPY BEING ENTERED WITHOUT THE SHOWING OF THE REPORTS REPORTING OFFICER(S) NAME (MOTION EXHIBIT-C, P. 24) MOVANT ASKED FAMILY MEMBER To REQUEST COPIES OF ALL INCIDENT REPORTS, AND NOTES WRITTEN OF THE TRAGEDY FROM THE SHERIFF'S DEPARTMENT THERE WAS NO COPIES OF ANY NOTES PROVIDED AND THE ONLY COPY OF AN INCIDENT REPORT PROVIDED WAS OF THE SAME REPORT THAT ITS COPY WAS ENTERED INTO THE TRANSCRIPT. (MOTION EXHIBIT-D, P. 25). WHICH THIS COPY NOT ONLY SUPPORTS THAT THERE IS NO

PHYSICAL EVIDENCE THAT WITNESS AUTEN WAS INTERVIEWED BY OFFICER WHITSTINE IT ALSO SUPPORTS THERE IS NO LAWFUL PHYSICAL EVIDENCE OF ANY WITNESS BEING INTERVIEWED ON THAT MORNING BECAUSE OUTSIDE OF ITS SHOWING OF AN OFFICER "T. B. SMITH" BEING THE REPORTING OFFICER THE FOLLOWING EXAMPLES OF THE REPORT'S PRESENTMENTS AS TO WITNESS AUTEN'S TESTIMONY, AND WITNESS'S LACK OF TESTIMONY SHOWS THAT THE REPORT WAS FALSELY WRITTEN, AND ALSO FABRICATED FROM OTHER SOURCES / WITNESSES S.C. CODE ANN. 16-9-10, (A), (2);

REPORT: "R/P STATED AS HE WAS EXITING THE VEHICLE HE DROVE TO WORK THAT HE HEARD APPROXIMATELY 5 RAPID GUN SHOTS"; WITNESS: "AS I PARKED MY VEHICLE I DID HEAR SOMETHING THAT WAS A LITTLE STRANGE. I HEARD WHAT I THOUGHT WAS A SMALL PACK OF FIRECRACKERS BEING DISCHARGED OVER IN THE ADMINISTRATIONS PARKING LOT."
(Q) "ALL RIGHT SIR WHERE WERE YOU WHEN YOU HEARD THAT?"
(A) "I WAS IN MY VEHICLE, IN MY PICK-UP TRUCK" [TR P. 190, L. 23-TO-P. 191]

WITNESS AUTEN'S TESTIMONY SHOWING THAT THE NOISES HE HEARD WAS "AT LEAST 5," AND THEY WERE IN "VERY RAPID SUCCESSION" [TR. P. 121, L. 8-11] BUT WITNESS WILSON'S TESTIMONY SHOWS THAT HE HEARD "AT LEAST 5 SHOTS" WHICH WERE IN FAIRLY RAPID SUCCESSION" [TR. P. 109, L. 2-6] HIS TESTIMONY ALSO SHOWING THAT THE REPORT'S PRESENTMENT OF THE "N.C. PARTIAL REGISTRATION DRL" WAS GIVEN TO LAW ENFORCEMENT BY WITNESS BALLANGER [TR. P. 101, L. 12-14; P. 110, L. 1-5; P. 186, L. 5; AND P. 188, L. 7-9]. WHEREAS WITNESS AUTEN'S TESTIMONY FAILS TO SHOW HAD GOTTEN THE REGISTRATION

THE RECORD FAILS TO SHOW ANY WITNESS TESTIMONY AS TO THE REPORT'S PRESENTMENTS OF THE SUSPECT'S AGE, 38/42, COLOR OF HAIR, BROWN, NOR COLOR OF HIS EYES, BROWN. MOVANT WAS 42 YEARS OF AGE AT THE TIME, HAS BROWN HAIR, AND BROWN EYES. THE ONLY IDENTITY PRESENTMENT THAT WITNESS AUTEN COOROBORATES

IS OF THE SUSPECT BEING A "MALE", AND THE NARRATIVE PRESENTMENT OF "WHITE DODGE VAN". WHICH MOVANT RESPECTFULLY CONTENDS IS INSUFFICIENT TO OVERCOME THE MAJOR DISCREPANCIES OF THE REPORT AND SUPPORT AN INTERVIEW HAD OCCURRED. PLUS THE FACT OF ITS SHOWING TO HAVE BEEN FABRICATED FROM OTHER WITNESSES, AND WITNESS WILSONS TESTIMONY ALSO SHOWING THE SUSPECT WAS A MALE, AND A WHITE DODGE VAN [TR P. 101, L. 23, P. 102, L. 5]. WHICH WAS ALSO SHOWN IN WITNESS BALLANGER'S TESTIMONY [TR. P. 187, L. 8, P. 2

OFFICER SMITH'S NAME WAS CALLED ON THE FIRST DAY OF THE TRIAL [TR P. 21, L. 2-3] THOUGH HE WAS NOT PRESENT THROUGHOUT THE PROCEEDINGS, AND HIS PRESENCE SHOULD HAVE BEEN ENSURED. BECAUSE OF WITNESS AUTEN BEING THE STATE'S CHIEF WITNESS, AND THE REPORT IS THE ONLY POSSIABLE PHYSICAL EVIDENCE THAT MAY WOULD HAVE SUPPORTED AN INTERVIEW HAVING OCCURRED. THUS MOVANT RESPECTFULLY CONTENDS THAT FRAUD UPON THE COURT WAS FURTHERED BY COUNSEL'S MISREPSENTATION, AND MISCONDUCT BY THE SOLICITOR IN THEIR NOT ENSURING THE OFFICERS PRESENCE TO TESTIFY AS TO HIS WRITING OF THE REPORT. THEIR NOT ENSURING THE OFFICER'S PRESENCE WAS BECAUSE OF HAVING PRIOR KNOWLEDGE TO THE TRIAL OF THE REPORT BEING FALSELY CONSTRUCTED, AND THIS WOULD HAVE BEEN SHOWN IN COURT BY THE TESTIMONY OF WITNESS AUTEN, AND ALSO BY THE OTHER WITNESSES. THUS THE OFFICER'S ABSENCE TO TESTIFY WOULD HAVE LEAD THE COURT IN TO AN INTERVIEW OCCURRED. AND MOVANT'S CONTENTION OF THEIR HAVING PRIOR KNOWLEDGE IS SUPPORTED BY THE FOLLOWING SHOWING OF COUNSEL'S INITIAL CROSS-EXAMINING OF WITNESS AUTEN. BECAUSE OF THE RECORD FAILING TO SHOW ANY INITIAL DIRECT EXAMINING OF THE WITNESS AS TO HAVING "TALKED WITH" OR HAVING GAVE "A DESCRIPTION" ON THAT MORNING. THUS COUNSEL HAD KNOWLEDGE OF WITNESS TOLD THIS TO SOLICITOR PRIOR TO THE TRIAL, AND WHEREAS THE WITNESS'S PRIOR TESTIMONY OF THE SUSPECT'S IDENTITY WAS "5'10" TO 6 FOOT," AND "PROBABLY 170, 180

POUNDS" [TR.P. 124, L. 24 - To - P. 125, L. 4] COUNSEL IS SHOWN ATTEMPTING TO INDUCE WITNESS INTO COOROBORATING THE SUSPECT'S HEIGHT AND WEIGHT OF THE PRESENTMENTS ON THE REPORT. WHICH ALSO SHOWS PRIOR KNOWLEDGE. NOW COMES THE CROSS-EXAMINING.

(Q)" DID YOU GIVE A DESCRIPTION TO ANY OFFICER AT THE SCENE?"

(A)" YES SIR. I DID"

(Q)" AND THAT DESCRIPTION WAS APPROXIMATELY 5'9"; 160, 170 POUNDS?"

(A)" YES SIR. THAT SOUNDS ABOUT RIGHT I THINK."

(Q)" AND YOU TOLD THE SOLICITOR THAT YOU TALKED WITH THE ORIGINAL-- GAVE A DESCRIPTION -- ORIGINALLY GIVEN AT APPROXIMATELY 8:30 OR SO IN THE MORNING. VERY EARLY IN THE MORNING RIGHT AFTER THIS HAPPENED?"

(A)" YES. SIR" [TR.P. 131, L. 20 - To - P. 132, L. 4]

MOVANT'S CONTENTION OF COUNSEL'S REPSENTING MISLEADING EFFORT TO ESTABLISH AN ALLEGED INTERVIEW HAD OCCURRED IS ALSO SUPPORTED BY HIS NOT QUESTIONING THE WITNESS OF THE OFFICERS NAME, WAS THERE ANY REPORT TAKEN, AND WHEN HAD HE TOLD THE SOLICITOR? THUS NOT DEVELOPING FACTS.

MOVANT RAISES THE MISCONDUCT BY COUNSEL IN NOT ENSURING THE OFFICER'S PRESENCE, AND OR OBJECTING TO HIS ABSENCE, COMES FROM COUNSEL GOING OVER AN "SUMMARY OF THE INTERVIEW" DURING CROSS EXAMINATION OF WITNESS WILSON [TR. P. 111, L. 25 - To P. 113] WHEREAS THE RECORD FAILS TO SHOW <u>ANY</u> MENTIONING OF THE SUMMARY DURING PRIOR DIRECT EXAMINATION OF THE WITNESS [TR. P. 100 - To - P. 111, L. 23]. ALSO THE SUMMARY WAS SHOWN INVALID AS LAWFUL PHYSICAL EVIDENCE BY THE WITNESS'S TESTIMONY OF THE OFFICER USING HIS OWN INTERPRETATION INSTEAD OF WHAT THE WITNESS ACTUALLY SAID, AND ALSO ERRED IN WRITING OF THE SUMMARY [TR P. 111, L. 25 - To - P. 115]

<u>PHOTO LINE-UP</u>: MOVANT RESPECTFULLY CONTENDS THAT THE

FOLLOWING FACTS CONCERNING THE PHOTO LINE UP RAISES FURTHER FRAUD UPON THE COURT BY COUNSEL'S ACTIVE MISREPSENTATION, AND MISCONDUCT BY THE SOLICITOR.

MOVANT HAS NEVER SEEN THE ALLEGED LINE-UP NOR HAS OBTAINED A COPY OF IT THROUGH MOTIONS OF DISCOVERIES, AND PRIOR TO THE BEGINNING OF TESTIMONIES COUNSEL NOTIFIED THE COURT THAT THERE WOULD BE AN IDENTIFICATION BASED ON IT. ALSO COUNSEL MOVING TO QUASH THE LINE-UP "AS HAVING TAINTED THE IN-COURT IDENTIFICATION" [TR P. 119, L.3-6]. AFTER WHICH CAME WITNESS AUTEN'S INITIAL TESTIMONY AS FOLLOWS, AND HIS FURTHER TESTIMONY AS SHOWN. THAT NOT ONLY SHOWS HE WAS UNRELIABLE, BUT ALSO SHOWS THAT THE LINE-UP WAS THE LINCHPIN TO IDENTIFICATION.

WITNESS: "AND I KNOW SOME PEOPLE IN THE PLANT WHO LOOK LIKE THAT, YOU KNOW, THAT THEY HAVE DARK HAIR AND A RED BEARD, SO IT KIND OF STRUCK A NOTE. IT LOOKED A LITTLE FAMILIAR TO SOMEONE" [TR. P. 124, L. 20-23]

THIS TESTIMONY WAS FOLLOWED BY HIS TESTIFYING THAT MOVANT'S EYES (NO TESTIMONY OF THEIR COLOR) AND MOVANT'S COLOR OF MUSTACHE LOOKED THE SAME AS THE SUSPECT'S WHICH WAS FOLLOWED BY TESTIFYING THAT:

(A) "NO SIR. WHAT I'M TELLING YOU IS THE PERSON I IDENTIFIED IN THE LINE-UP WAS THE PERSON I SAW IN THE PARKING LOT." [TR. P. 130, L. 1-20] AND "IF THIS MAN IS THE MAN THAT I IDENTIFIED ON THE PHOTOGRAPH, THEN HE IS INDEED THE SAME PERSON." [TR. P. 204, L. 1-3]

AFTER THE WITNESS'S TESTIMONY THEN CAME OFFICER WHITSTINE'S THAT SHOWS HE HAD THE LIST OF NAMES THAT WERE ASSOCIATED WITH THE NUMBERS THAT WERE BESIDE OF SUSPECTS PHOTOGRAPHS OF THE LINE-UP, AND HAD PREPARED THE LINE-UP PRIOR TO GOING TO SEE WITNESS AUTEN [TR. P. 133, L. 24-TO-P. 134, L. 4] ALSO TO THE QUESTION OF "WHO MADE THAT RECORD?" THE OFFICER ANSWERED "THE LINE-UP WAS MADE BY DETECTIVE JETER IN GASTON COUNTY" [TR.

P.135, L.14-19]. BUT THE ONLY EVIDENCE OF THE DETECTIVE'S INVOLVEMEN IN THE PREPARING OF THE LINE-UP IS PREPARING OF THE SUSPECTS "PHO TOGRAPHS" TO MAKE THE RECORD FOR THE LINE-UP. THERE IS NO TESTIMO NY MADE BY THE DETECTIVE OF THE LIST OF NAMES [TR.P. 210-TO-P. 212, ATTEN TION TO P. 211, L. 23-TO-P. 212, L.1]. THUS OFFICER WHITSTINE'S PREPARING OF THE SUSPECTS NAMES THAT WAS ASSOCIATED WITH THE NUMBERS THAT WERE BESIDE OF THEIR PHOTOGRAPHS WOULD HAVE RENDERED THE LINE UP UNDULY SUGGESTIVE IN THAT AIDING IN THE OFFICER'S IDEN- TIFICATION TESTIMONY. WHICH IS FURTHER SHOWN IN THIS MOTION, AND THE IDENTIFICATION IS ALSO SHOWN BASED ON THE LINE-UP. OUTSIDE OF THIS OFFICER WHITSTINE'S TESTIMONY SHOWS THAT THE PRESEN TATION VIOLATED MOVANT'S CONSTITUTIONAL RIGHT. BECAUSE OF BEING ALONE WITH WITNESS. [TR.P. 133, L.12-TO-P. 139, L.9] UNDER USC AMEND. VI (20) "AN OUT OF COURT IDENTIFICATION OF AN ACCUSED AT A POLICE LINE- UP IS A CRITICAL STAGE AT WHICH THE ACCUSED HAS A CONSTITUTIONAL RIGHT TO ASSISTANCE OF COUNSEL" STATE V LYONS, 251 S.C. 541, 164 SE 2d 445.

NOW COMES COUNSEL'S INITIAL CROSS-EXAMINING OF OFFICER WHITST- INE AS FOLLOWS;

(Q) "NOW, YOU DID NOT PREPARE THE LINE-UP, IS THAT CORRECT OFFICER?"

(A) "NO, SIR

(Q) "AND YOU DONT KNOW WHERE THE PHOTOGRAPHS CAME FROM OR WHO OBTAINED THEM OR ANYTHING OF THAT NATURE?"

(A) "THEY CAME FROM DETECTIVE JETER WITH THE GASTON COUNTY POLICE DEPARTMENT."

(Q) "BUT THEY PUT IT TOGETHER?"

(A) "YES, SIR."

(Q) "AND THE PHOTOGRAPHS WERE IN THE FOLDER AS THEY ARE TODAY?"

(A) "YES, SIR. THE FOLDER WAS COMPLETE AS NOW" [TR P. 138, L.9-19]

MOVANT RESPECTFULLY CONTENDS THAT COUNSEL SHOWING ACTIVE MISREPSENTATION, AND FURTHER FRAUD UPON THE COURT BY: (1) ATTEMPTING TO INDUCE OFFICER WHITSTINE INTO TESTIFYING AS TO HAVING NO KNOWLEDGE ABOUT THE LINE UP'S PREPARATION BY THAT OF ALSO NOT QUESTIONING HIM ABOUT HIS TESTIMONY OF HAVING HAD THE LIST OF NAMES, AND ALSO HIS PREPARING OF THE LINE UP PRIOR TO GOING TO SEE THE WITNESS. THUS AVOIDING ANY IMPLICATING QUESTIONING; (2) NOT RENEWING QUASHING OR OBJECTING TO THE LINE-UP WHEN IT WAS ENTERED AS THE STATE'S EXHIBIT DURING THE INITIAL DIRECT EXAMINATION OF THE OFFICER [TR.P. 135, L. 2-2]; (3) NOT OBJECTING TO THE PRESENTATION OF THE LINE-UP UPON THE OFFICER'S SHOWING TO HAVE BEEN ALONE WITH WITNESS, OR PROTECTING MOVANT'S RIGHT AND APPEARED AT THE PRESENTATION; (5) NOT MAKING THE OBJECTIONS DEPRIVED MOVANT OF CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW OF EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. U.S.C.A. CONST. AMEND 6, 14

PHOTOGRAPH'S NUMBER: MOVANT RESPECTFULLY CONTENDS THAT GIVEN THE OFFICER WAS ALONE WITH WITNESS THE WITNESS'S TESTIMONY AS TO WHICH OF THE NUMBERS THAT HE TESTIFIED HE GAVE THE OFFICER UNDER INITIAL DIRECT EXAMINING [TR.P. 127, L. 12-13] WAS REQUIRED INORDER TO HAVE COOROBORATED THE OFFICER'S TESTIMONY OF THE NUMBER. THUS FRAUD UPON THE COURT WAS FURTHER HAD BY THE SOLICITOR'S, AND COUNSEL'S KNOWLEDGE OF THE OFFICER BEING ALONE WITH WITNESS, AND THEY ONLY QUESTIONING THE OFFICER ABOUT THE NUMBER, AND NOT QUESTIONING THE WITNESS. INITIAL DIRECT EXAMINING OF WITNESS SHOWING ONLY OFFICER / DETECTIVE WHITSTINE ARRIVING AT HIS RESIDENCE [TR P. 126, L. 14-15], AND NO FOLLOW-UP QUESTIONING AS TO WHICH NUMBER HE GAVE [TR.P. 127, L. 14 - TO P. 130]. WHICH WAS ALSO THE CASE DURING THE SECOND DIRECT EXAMINATION OF THE WITNESS [TR.

P. 201, L. 4 - To - P. 203, L. 10]. INITIAL DIRECT EXAMINING OF THE OFFICER, SECOND DIRECT EXAMINING, AND REDIRECT EXAMINING AT [TR. P. 136, L. 10 - To - P. 137, L. 2-3; P. 206, L. 5; P. 208, L. 22-25] UNDER S. v NORTHCUTT 372 S.C. 202, 222, 641 SE2d 373, 880 (2007) THE SOLICITOR'S "DUTY IS NOT TO CONVICT A DEFENDANT, BUT TO SEE JUSTICE DONE."

COUNSEL'S INITIAL CROSS EXAMINATION OF WITNESS [TR. P. 132, L. 5 - To P. 133, L. 6]. THOUGH ALSO NOT QUESTIONING THE OFFICER UNDER INITIAL CROSS EXAMINATION. NOT QUESTIONING THE WITNESS UNDER SECOND CROSS EXAMINATION [TR P. 203, L. 18 - To - P. 204] BUT QUESTIONING OFFICER DURING HIS SECOND AND RECROSS EXAMINATIONS [TR. P. 207, L. 22; P. 208, L. 6 - AND - P. 209, L. 10-13]

THE RECORD SHOWING THAT AFTER THE INITIAL CROSS EXAMINATION OF OFFICER WHITSTINE COUNSEL THEN MOVED THE COURT TO SUPPRESS ANY IN-COURT IDENTIFICATION BY WITNESS AUTEN BY STATING (IN-PART) THAT THE WITNESS WAS "SIMPLY UNSURE". [TR. P. 139, L. 20 - To P. 140]

THE JUDGE RAISED "TWO ISSUES", "WHETHER OR NOT THE STATE WOULD BE PERMITTED TO USE THE LINE-UP IDENTIFICATION", AND "ANY IN-COURT IDENTIFICATION OF THE WITNESS." [TR. P. 141, L. 16-19]. THE JUDGE'S FINDINGS (IN-PART) WAS THAT, "THE PHOTOGRAPHIC LINE-UP AS PRESENTED TO THE COURT, AND EVIDENCE BEFORE THE COURT IS NOT SO UNDULY SUGGESTIVE", AND ALSO PERMITTING THE WITNESS "A LIMITED EXTENT THE IDENTIFICATION" [TR. P. 142, L. 24 - To - P. 143, L. 1-20]

MOVANT RESPECTFULLY CONTENDS THAT FRAUD UPON THE COURT WAS FURTHERED BY COUNSEL'S ACTIVE MISREPSENTATION IN NOT REQUESTING ANY IN COURT IDENTIFICATION MADE BY OFFICER WHITSTINE ALSO BE SUPPRESSED, BECAUSE OF THE OFFICER'S TESTIMONY THAT WOULD HAVE RENDERED THE LINE-UP UNDULY SUGGESTIVE AIDING IN HIS IDENTIFICATION, AND ALSO COUNSEL'S KNOWLEDGE OF THE PRESENTATION BEING UNLAWFUL / UNCONSTITUTIONAL

THE FOLLOWING SHOWS OFFICER WHITSTINE'S IDENTIFICATION TESTIMONY THAT WAS ALSO INADMISSIBLE BY LAW. BECAUSE OF THE RECORD FAILING TO SHOW ANY EVIDENCE OF THE OFFICER HAVING MET, OR OBSERVED MOVANT PRIOR TO BEGINNING OF THE TRIAL INORDER TO HAVE MADE SUCH AN IDENTIFICATION RULE 801, 1.(C) SCRC, AND THIS IS SUPPORTED BY HIS ANSWER UNDER RECROSS EXAMINING OF NOT KNOWING NO. 3 / MOVANT. WHICH THIS ALSO SHOWS THE IDENTIFICATION WAS BASED UPON THE LINE-UP / UNDULY SUGGESTIVENESS. UNDER U.S. v WADE, 87 S.CT. 1926 (1987), "ABSENCE OF COUNSEL AT PRE TRIAL LINE-UP RENDERS COURT ROOM IDENTIFICATION INADMISSIBLE UNLESS COURT ROOM IDENTIFICATION IS BASED ON OBSERVATION OF SUSPECT OTHER THAN LINE-UP." STATE v ANDERSON, 422 SE2d 161 (S.C. APP. 1992) "RELIABILITY IS LINCHPIN IN DETERMINING ADMISSIBILITY OF IDENTIFICATION TESTIMONY" USCA CONST. AMEND 5, 6, 14

SOLICITOR: (Q) "WAS ANYBODY THERE BESIDES YOU AND HIM?"
(A) "NO, SIR"
(Q) "AND WHO WAS THE PICTURE THAT HE PICKED-OUT?"
(A) "JEFFREY LYNN CHRONISTER. NO. 3 IN THE LINE-UP."
(Q) "AND DOES MR. CHRONISTER APPEAR DIFFERENT TODAY IN-COURT?"

COUNSEL: OBJECTION TO LEADING, YOUR HONOR"
(Q) "IS THERE ANY DIFFERENCE IN MR. CHRONISTER'S APPEARANCE TODAY IN COURT AS IN THE PICTURE LINE UP?"

COUNSEL: "YOUR HONOR THE SAME OBJECTION."

THE COURT: "NO SIR. I OVERRULE YOU. GO AHEAD"
(A) "HE HAS NO BEARD AT THIS TIME." [TR P. 206, L. 22 - TO - P. 207]

RECROSS EXAMINING: "AND YOU DIDN'T KNOW NO. 3 FROM ADAM'S HOUSE CAT OF YOUR OWN KNOWLEDGE. DID YOU SIR?"
(A) "NO, SIR" [TR. P. 209, L. 5-19]

FRAUD UPON THE COURT WAS FURTHERED BY COUNSEL'S ACTIVE MISREPSENTATION, AND ACTIVE MISCONDUCT BY THE SOLICITOR IN THAT OF THE SOLICITOR ALLOWING THE INJUSTICE OF THE

IDENTIFICATION. Id. NORTHCUTT, AND THE OFFICER'S NOT KNOWING MOVANT CAME FORTH UNDER COUNSEL'S CROSS EXAMINING. THUS COUNSEL'S NOT OBJECTING TO THE IDENTIFICATION AS INADMISSIBLE SUPPORTS THE MISCONDUCT BEING COMMITTED, AND ALSO DEPRIVED MOVANT OF DUE PROCESS OF LAW TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. USCA CONST. AMEND. 5, 6, 14

AFTER OFFICER WHITSTINE'S IDENTIFICATION CAME COUNSEL'S CROSS EXAMINING OF THE OFFICER AS FOLLOWS. WHICH ALSO TOOK PLACE BEFORE THE JURY, AND SUPPORTS MOVANT'S CONTENTION OF FRAUD BEING COMMITTED UPON THE COURT BY COUNSEL'S MISREPSENTATION THAT WAS RAISED IN THE INITIAL CROSS EXAMINING OF THE OFFICER (P. 8-10) BECAUSE OF ITS SHOWING OF COUNSEL'S FURTHER MISLEADING EFFORTS TO FALSELY APPEAR THAT THE OFFICER HAD NOTHING TO DO WITH, OR HAVING ANY KNOWLEDGE OF THE LINE-UP'S PREPARATION. WHICH MOVANT RESPECTFULLY CONTENDS WAS TO HAVE FALSELY IMPRESS UPON THE JURY THAT THE IDENTIFICATION WAS RELIABLE, AND THE OFFICER'S INVOLVEMENT (ONLY) WAS PRESENTING OF THE LINE-UP. MOVANT'S CONTENTION IS SUPPORTED BY COUNSEL NOT QUESTIONING ABOUT THE OFFICER'S IMPLICATING TESTIMONY OF HAVING HAD THE LIST OF NAMES AND PREPARING OF THE LINE UP PRIOR TO SEEING THE WITNESS. NOT PROPERLY QUESTIONING TO DEVELOPE FACTS OF THE MATTER SUCH AS; WHO DID PREPARE THE LINE-UP, AND DID YOU HAVE A ROLE IN IT? WHERE AND WHO DID PREPARE THE LIST OF NAMES, AND WHO DID PREPARE THE NAMES ASSOCIATED WITH THE NUMBERS? WHO DID PREPARE THE PHOTOGRAPHS? WHEREAS SHOWING THE OFFICER KNEW WHO DID, P. 9)

COUNSEL: (Q) "NOW I BELIEVE YOU YOURSELF DID NOT PREPARE THE LINE-UP, CORRECT, SIR?
(A) "NO, SIR."

(Q) "DETECTIVE, YOU DID NOT PREPARE THE PHOTO LINE-UP?"
(A) "NO. SIR"
(Q) "NOR DID YOU PREPARE THE LIST OF NAMES ASSOCIATED WITH THE NUMBERS DID YOU SIR.? (A) "NO. SIR."
(Q) "ALL YOU KNOW IS THAT NO. 3 WAS THE PERSON THAT WAS PICKED OUT BY MR. AUTEN?"
(A) "ON THE SHEET IT HAS A LIST OF NAMES OF THE PEOPLE IN THE PICTURES, AND MR. CHRONISTER WAS LISTED AS NO. 3".
(Q) "BUT YOU DIDNT PREPARE THAT LIST YOU DIDNT PREPARE THE PHOTOGRAPHS?"
(A) "NO. SIR." [TR. P. 209, L. 5-19]

DIRECTED VERDICT

COUNSEL MOVED FOR A DIRECTION OF VERDICT ON THE GROUNDS OF (1) "THE EVIDENCE VIEWED IN LIGHT MOST FAVORABLE TO THE STATE SHOWS A KILLING, BUT THE IDENTIFICATION ISSUE, IT DOES NOT SHOW THAT MY CLIENT DID THAT, BECAUSE OF THE NATURE OF THE TESTIMONY BY THE PEOPLE AS TO IDENTITY" (2) "I WOULD ALSO SUBMIT THAT THERE HAS BEEN NO WEAPON THAT HAS BEEN PRODUCED. THERE HAVE BEEN NO PROJECTILES" AND (3) "THE PRIMARY FAILURE IN THE STATES CASE, YOUR HONOR, IS THAT THERE HAS NOT BEEN ANY EVIDENCE TO MAKE OUT THE NECESSARY CASE FOR MALICE. EVENTHOUGH MALICE MAY BE INFERRED FROM THE USE OF A WEAPON. THERE HAS BEEN NO WEAPON CONNECTED TO MY CLIENT, AND I SIMPLY FEEL THAT BASED ON THE TESTIMONY THAT WE HAVE, THAT THE STATE HAS FAILED TO MAKE OUT A CASE FOR MURDER. THE PRIMARY FAILURE BEING THE STATE HAS FAILED TO SHOW THE REQUIRED MALICE" [TR. P. 231, L. 19-TO-P. 232]

THE JUDGES DECISION: "THE TESTIMONY IN THE CASE IS THAT THE DEFENDANT WAS IDENTIFIED AS BEING THE PERSON AT THE SCENE THAT HE WAS IN POSSESSION OF A WEAPON THAT GUNSHOTS WERE HEARD, AND VERY SHORTLY IN SECONDS THEREAFTER THE VICTIMS BODY WAS FOUND. SHE WAS DEAD OF COURSE, THE STATEMENTS MADE

BY THE OFFICER -- ALL OF THOSE, AND THE USE OF A WEAPON, YOU DONT HAVE TO FIND THE WEAPON IF THERE'S TESTIMONY OF USE OF A WEAPON"

"USE OF A WEAPON IS SUFFICIENT FOR INFERENCE OF MALICE TO SUPPORT A CONVICTION FOR MURDER. MALICE AFORETHOUGHT."

"FOR THOSE REASONS THE MOTION FOR DIRECTED VERDICT AT THIS STAGE IS DENIED" [TR. P. 231, L. 16-TO-P. 232]

COUNSEL SUBSEQUENTLY RENEWED THE MOTION ON THE SAME GROUNDS, AND WAS DENIED BY THE JUDGE ON THE SAME REASONS. [TR. P. 240, L. 8-]

MOVANT RESPECTFULLY CONTENDS THAT HE WAS ENTITLED TO THE VERDICT. BECAUSE OF THE FOLLOWING FACTS OF THE MATTER SHOWS THAT THE JUDGE'S DECISION WAS PRODUCED BY THE FRAUDULENT IDENTIFICATION TESTIMONY OF OFFICER WHITSTINE Id. McDONALD

(1) AS TO COUNSEL'S INCLUSION OF "THE TESTIMONY BY THE PEOPLE AS TO IDENTITY," AND THE JUDGE'S STATEMENT OF "THE TESTIMONY IN THE CASE IS THAT THE DEFENDANT WAS IDENTIFIED AS BEING THE PERSON AT THE SCENE". WHEREAS UNDER THE FACTS OF THE PHOTO LINE-UP ON PAGE 8 THEY SHOW THAT AT NO TIME DID WITNESS AUTEN MAKE SUCH A POSITIVE IDENTIFICATION OF MOVANT BEING THE PERSON AT THE SCENE NOR WAS HE CERTAIN WHEN CONFRONTING MOVANT THAT MOVANT WAS THE PERSON THAT HE PICKED OUT OF THE LINE-UP

(2) OUTSIDE OF WITNESS AUTEN THERE WAS NO OTHER WITNESS OF THAT MORNING TO ALSO HAVE MADE SUCH A POSITIVE IDENTIFICATION ON JOEL SMITH [TR P. 99, L. 10-12]; DAN WILSON [TR P. 105, L. 24-TO-P. 106], AND SIDNEY BALLANGER [TR P. 187, L. 8-17]. WHICH LEAVES,

(3) THE OFFICER'S IDENTIFICATION THATS SHOWN RESULTING FROM MISCONDUCT BY THE SOLICITOR AND COUNSEL'S FRAUD BEING COMMITTED UPON THE COURT. SUPPORTIVE OF THE JUDGE'S USE OF THE OFFICER'S IDENTIFICATION/TESTIMONY IS THE STATEMENT, "OF COURSE THE STATEMENT MADE BY THE OFFICER--," AND IT BEING USED IN THE CONTEXT

OF THE TRAGEDY'S OCCURRENCE ON THAT MORNING.

(4) THE JUDGE'S DECISION GOING AGAINST COUNSEL'S INCLUSION OF "THE TESTIMONY BY THE PEOPLE AS TO IDENTITY, AND USING OF THE OFFICER'S IDENTIFICATION ALSO SUPPORTS COUNSEL'S COMMITTING ACTIVE MISREPSENTATION. BECAUSE OF HIS NOT OBJECTING THAT ALSO DEPRIVED MOVANT OF DUE PROCESS OF LAW TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. USCA CONST. AMEND. 6, 14

(5) THE DECISION CONTAINS THE NINE ELEMENTS OF FRAUD AS UNDER RULE 9, (1) SCRCP ARDIS V COX (SC APP. 1993), 314 SC 512 431 SE2d 267, REHEAR. DENIED, CERT. DENIED, FRAUD 41, AND THE ELEMENTS AS THEY APPLY TO THE OFFICER'S IDENTIFICATION, AND ALSO THE DECISION ARE; (1) REPSENTATIONS BY THE SOLICITOR AND COUNSEL OF (2) FALSE TESTIMONY BY THE OFFICER, AND (3) IT BEING MATERIAL TO THE DECISION, (4) SOLICITOR'S AND COUNSEL'S KNOWLEDGE OF THE TESTIMONY BEING FALSE, AND (5) THEIR INTENT THAT THEIR REPSENTATIONS WOULD BE ACTED UPON. (6) THE JUDGE'S /COURT'S LACK OF KNOWLEDGE OF THE TESTIMONY BEING FALSE AND (7) THE JUDGE'S RELIANCE ON THE TRUTH (8) THE JUDGE'S RIGHT TO RELY THEREON AND (9) THE INJURY WAS TO MOVANT'S CASE IN DEPRIVED OF DUE PROCESS OF LAW TO A FAIR TRIAL. S.C. CONST. ART I §3 USCA CONST. AMEND. 14

GROUND-B: WAS MOVANT'S ARREST MADE WITHOUT PROBABLE CAUSE VIOLATING OF THE CONSTITUTION OF THIS STATE AND OF THE 4TH AND 14TH AMENDMENTS TO THE U.S. CONSTITUTION?

ARGUMENT AND SUPPORTING FACTS: MOVANT RESPECTFULLY CONTENDS THAT THE FOREGOING SUPPORTING FACTS OF THE INTERVIEW AND ALSO OF THE PHOTO LINE-UP SHOWS THAT THE ARREST WAS MALICIOUSLY MADE FOR THE REASON OF LACK OF PROBABLE CAUSE. BECAUSE THE FACTS SHOW THAT THERE WAS NO WITNESS TESTIMONY OR LAWFUL PHYSICAL EVIDENCE TO SUPPORT THAT OFFICER

WHITSTINE HAD INFACT INTERVIEWED ANY OF THE WITNESSES ON THAT MORNING OF THE TRAGEDY WHICH SHOWS THAT HE LACKED ANY SUFFICIENT KNOWLEDGE OF THE FACTS AND CIRCUMSTANCES OF THE OCCURRENCE INORDER TO HAVE WARRANTED PROBABLE CAUSE IN THE OBTAINING OF THE ARREST WARRANT. SEE S.C. CONST. 1976 SUPP. VOL. 21, USC CONST. AMEND IV, NOTE(10) UNDER STATE V DUNBAR, (S.C APP 2003), 354 S.C. 479, 581 SE2d 840, 356 S.C. 138, 587 SE2d 691, 361 S.C. 240, 603 SE2d 615; ARREST 63.4 (2); UNDER U.S. V GRAY, 137 F3d 756 (4TH CIR. 1998), "TO COMPLY WITH THE FOURTH AND FOURTEENTH AMENDMENT AN ARREST MUST BE PREDICATED ON PROBABLE CAUSE" SEE PAPCHUON V CITY OF JACKSONVILLE, 405 U.S. 156, 92 S. Ct. 156, 31 LE 2d 110.

GIVEN THAT OFFICER WHITSTINES OBTAINING OF THE WARRANT WAS UNLAWFULL BECAUSE OF THE LACK OF PROBABLE CAUSE. THE ARREST WAS THEREFORE MALICIOUSLY MADE BY AN SERGEANT JOHNNIE MIMS OF THE GASTON COUNTY (NORTH CAROLINA) POLICE DEPARTMENT [TR. P. 212, L. 24] BECAUSE OF HIS TESTIMONY SHOWING THAT AFTER HE FIRST OBSERVED MOVANT OPERATING HIS VEHICLE "AT 8:01 A.M" ON THAT MORNING OF THE TRAGEDY THAT HE TOOK MOVANT "INTO CUSTODY" [TR. P. 213, L. 5 - AND - P. 215, L. 17-18]. Id. DUNBAR Id. GRAY

GROUND - C: WAS THE CIRCUIT COURT PROPERLY VESTED WITH SUBJECT MATTER JURISDICTION TO HAVE CONVICTED AND SENTENCED MOVANT?

ARGUMENT AND SUPPORTING FACTS: MOVANT RESPECTFULLY CONTENDS THAT IT APPEARS THE GRAND JURY CAME BACK WITH AN NO BILLED INDICTMENT, AND THE COURT LACKED SUBJECT MATTER JURISDICTION TO HAVE ACTED IN ACCORDANCE TO THE LAW OVER THE CASE. BECAUSE OF THE INDICTMENT (EXHIBIT-B, P. 22) FAILS TO SHOW ANY INDICATION OF BEING STAMPED "TRUE BILLED"; AND AS UNDER THE CASE OF STATE V SCOTT (S.C. APP. 2003) UNPUBLISHED OP. No. 2003 -

UP-037, "A REVIEW OF THE 1998 INDICTMENTS REVEALS NO INDICATIO
THAT EITHER OF THEM WAS STAMPED "TRUE BILLED" NOR THAT A WAI
VER OF PRESENTMENT WAS EXECUTED BY SCOTT." ALSO THAT "BECAU
SE OF ITS FUNDAMENTAL NATURE, THE ISSUE OF A DEFECT IN SUBJE
CT MATTER JURISDICTION MAYBE RAISED AT ANY TIME INCLUDING
WHEN RAISED FOR THE FIRST TIME ON APPEAL TO THIS COURT," BROWN
v STATE 343 SC 342, 346, 540 SE2d 846, 848-49 (2001), "A COURT WITH
OUT SUBJECT MATTER JURISDICTION MAY NOT PROPERLY ACT AND ANY
ACTION TAKEN BY THAT COURT IS VOID AND WITHOUT LEGAL EFFECT
BROWN, 343 SC AT 346, 540 SE2d AT 849; STATE v FUNDERBURK, 259
S.C. 256, 261, 191 SE2d 520, 522 (1972); STATE v EVANS 307 SC 477, 415
SE2d 816 (1992), HOLDS "A VALID INDICTMENT, OR WAIVER OF PRESENT
MENT PREREQUISITE FOR CIRCUIT COURTS SUBJECT MATTER JUR-
ISDICTION." FURTHERMORE SUBJECT MATTER JURISDICTION IS THE
POWER TO HEAR AND DETERMINE CASES OF GENERAL CLASS TO WH-
ICH THE PROCEEDINGS QUESTIONS BELONGS BELLS v MONANTO CORP.
577 SE2d 325 (S.C. 2003), AND INASMUCH THE COURTS POWER TO HE-
AR AND DETERMINE CASES SUBJECT MATTER JURISDICTION DOES NOT
ONLY COVER AND OR INVOLVE WHETHER OR NOT THE MATTER RESIDES
IN A PROPER COURT OF JURISDICTION TO HEAR AND DETERMINE IT
BUT ALSO INVOLVES AN ISSUE THAT MAY AFFECT THAT POWER AND OR
ABILITY TO ACT IN ACCORDANCE TO LAW. THIS ISSUE CAN BE RAISED
AT ANYTIME, CAN NOT BE WAIVED BY THE MOVANT, AND THE COU-
RT SHALL NOT FAIL TO TAKE NOTICE. BROWN v STATE 343 SC 342, 540
SE2d 846 (2001); STATE v BROWNING 320 SC AT 368, 465 SE2d AT
359, CITING STATE v MUNN, 357 SE2d 461 (SC 1987)

THE ISSUE PRESENTED IS THAT THE COURT OF GENERAL SESSIONS
FAILED TO COMPLY WITH STATUTORY LAW JURISDICTIONAL IN NA-
TURE OF TRUE BILLED INDICTMENTS S.C. CODE ANN. 17-19-10, AND
NOT A CHALLANGE TO THE COURTS GENERAL GRANT OF AUTHORITY
TO HEAR AND DETERMINE CASES THAT AUTHORITY IS RIGHTFULLY
GRANTED BY OUR CONSTITUTION STATE v GENTRY 363 SC 93, 601 SE2d

464 (2005), AND WILL NOT BE AN ISSUE HERE.

THE APPEALS COURT IN THE CASE OF SCOTT HOLDS THAT, "MOREOVER WHEN A QUESTION EXISTS REGARDING WHETHER AN INDICTMENT WAS TRUE BILLED OR A VALID WAIVER WAS EXECUTED, THIS COURT SHOULD REMAND THE CASE TO THE CIRCUIT COURT TO CONDUCT AN EVIDENTIARY HEARING TO DETERMINE WHETHER THE INDICTMENT WAS TRUE BILLED: OR RESUBMIT THE INDICTMENT FOR GRAND JURY'S RECONSIDERATION OR EFFECT A WAIVER OF PRESENTMENT OF THE INDICTMENT TO THE GRAND JURY, AND THE JURY AGAIN ENTERTAIN THE DEFENDANT'S PLEA, OR SIMPLY ALLOW WITHDRAWAL OF THE PLEA, AND PROCEED ANEW": STATE V GRIM 533 SE2d 330.

THE COURT REMANDED SCOTTS CASE FOR AN EVIDENTIARY HEARING PURSUANT TO GRIM'S 341 SC 63, 533 SE2d 330 (2000) INORDER TO DETERMINE WHETHER THE ABSENCE OF THE WORDS TRUE BILLED FROM THE FACE OF THE INDICTMENT WAS A MERE SCRIVERER'S ERROR, AND ON THE RAMAND IF THE STATE COULD NOT PROVE THAT THE CIRCUIT COURT WAS PROPERLY VESTED WITH SUBJECT MATTER JURISDICTION IT WAS ORDERED BY THE APPEALS COURT TO VACATE SCOTT'S CONVICTION. WHEREAS IN MOVANT'S CASE THE TRANSCRIPT OF RECORD FAILS TO REFLECT ANY WAIVER OF ANY CONSTITUTIONAL OR STATUTORY RIGHT / INDICTMENT. PATTERSON V U.S. 50 S. CT. 253 (1930): STATE V PATERSON, 278 SC. 319, 295 SE2d 264 (1982) AND A PLEA OF NOT GUILTY TO THE MURDER WAS ENTERED AT TRIAL. [TR. P. 261, L. 9-19]. ALSO UNDER THE CASE OF GRIM'S 533 SE2d AT 329, "RELYING ON PRINGLE (339 SE2d 127, 287 SC 409) THE COURT OF APPEALS HAS HELD THAT AN INDICTMENT PROPER EVEN THOUGH IT WAS NOT STAMPED TRUE BILL WHERE THERE IS EVIDENCE IN THE FORM OF SWORN TESTIMONY FROM THE GRAND JURY'S DOCKET COORDINATOR, A COURT REPORTER AND A LEGAL SECRETARY THAT THE INDICTMENT WAS INFACT TRUE BILLED." IN MOVANT'S CASE THE RECORD ALSO FAILS TO SHOW ANY SUCH TESTIMONY WAS MADE, AND UNDER STATE V MUNN SUPRA, "SUBJECT TO CERTAIN MINOR EXCEPTIONS NOT PRESENT THE TRIAL COURT LACKS SUBJECT MAT-

TER JURISDICTION TO CONVICT DEFENDANT FOR AN OFFENSE WHERE THERE IS NO TRUE BILLED INDICTMENT AGAINST DEFENDANT" ALSO SEE CARTER V STATE, 329 SC 355, 495 SE2d 273; STATE V BEACHUM 288 SC 335, 342 SE2d 595 (1986); UNDER INDICTMENT AND INFORMATION SECTION 111 OF WEST'S SOUTH CAROLINA DIGEST SECOND EDITION AN TRUE BILL IS OF THE FORMAL REQUISITES OF AN INDICTMENT. ALSO S.C. CODE OF LAWS (1976) 17-19-10, 17-23-130, AND 17-23-140.

MOVANT RESPECTFULLY CONTENDS THAT CUMULATIVE TO THIS ISSUE IS THE INDICTMENT SHOWING NO INDICATION THAT IT WAS WRITTEN AND PUBLISHED BY THE CLERK, AND THE GRAND JURY'S FOREMAN SIGNING "T BILL" DID NOT COMPLY WITH THE LEGAL FORMALITY PROCEDURE OF INDICTMENTS. Id. WEST'S DIGEST. UNDER Id. PRINGLE, "WHILE IT IS PREFERABLE FOR GRAND JURY FOREMAN TO SIGN TRUE BILL, FOREMAN'S SIGNATURE IS NOT ESSENTIAL TO VALIDITY OF INDICTMENT WHERE INDICTMENT IS WRITTEN AND PUBLISHED BY CLERK." ALSO SEE ANDERSON V STATE 529 SE2d 398, 338 SC 629, "A FACIAL IRREGULARITY DOES NOT RENDER AN INDICTMENT INVALID WHERE INDICTMENT IS IN WRITING AND PUBLISHED BY THE CLERK."

MOVANT'S RIGHT TO DUE PROCESS OF LAW WAS VIOLATED IN BEING ALLOWED CONVICTED ON THE INVALID / DEFECTIVE INDICTMENT, AND ALSO DEPRIVED OF RIGHT TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL REVIEW ON THE ISSUES BY THE SOLICITOR AND OR COUNSEL USCA CONST. AMEND. 6, 14. FOR UNDER Id. BEACHUM, 342 SE2d 577, AFTER THE JURY WAS SWORN AND TESTIMONY FROM SEVERAL WITNESSES WAS TAKEN THE SOLICITOR NOTICED THAT THE INDICTMENT WAS NEITHER SIGNED BY THE GRAND JURY FOREMAN NOR HAD BEEN STAMPED "TRUE BILLED" AND EVEN THOUGH WITH CONSENT OF THE DEFENSE COUNSEL TO TEMPORARILY SUSPEND THE TRIAL WHILE THE INDICTMENT WAS SUBMITTED TO THE GRAND JURY, TRUE BILLED, AND PUBLISHED BY THE CLERK THIS DID NOT FIX THE DEFECT OF SUBJECT MATTER JURISDICTION. ALSO UNDER S.C. CODE ANN. 1-7-930,

AND 17-3-150, "REQUIRES THAT THE PROSECUTOR FULFILL AND SEE THAT ALL DUTIES REQUIREMENTS AND RULES OF CRIMINAL PROCEDURES RELATED TO DUE PROCESS AND THE SOUTH CAROLINA CONSTITUTION ARE ADHERED TO AND COMPLETED WITHIN THE COURT" Id. NORTHCUTT

MOVANT RESPECTFULLY CONTENDS THAT GIVEN THE SERIOUSNESS OF THE CHARGES, AND TRUE BILL BEING OF THE FORMAL REQUISITES OF AN INDICTMENT MISREPSENTATION WAS THEREFORE RAISED BY COUNSEL IN NOT INVESTIGATING THE INDICTMENT, AND/OR NOT OBJECTING TO IT. THOUGH ACCORDING TO AMERICAN JOURNAL 2d, INDICTMENT AND INFORMATION SECTION 299 (1968), "ALTHOUGH THE MOVANT DID NOT OBJECT TO BEING TRUE BILLED THE NO BILL RENDERED THE INDICTMENT WHOLLY INVALID. AN NO BILL INDICTMENT IS OF SUCH FUNDAMENTAL CHARACTER AS TO MAKE AN INDICTMENT WHOLLY INVALID, AND SUBJECT TO WAIVER BY THE MOVANT"

CONCLUSION

FOR ALL THE FOREGOING REASONS MOVANT REQUEST OF THIS HONORABLE COURT TO VACATE THE CONVICTIONS AND SENTENCES; APPOINTMENT OF AN COMPETENT, EXPERENCED CRIMINAL LAW ATTORNEY; GRANT AN EVIDENTIARY HEARING OR AN FAST AND SPEEDY NEW TRIAL

EXECUTED ON;
THIS 11TH DAY OF NOVEMBER, 2014

RESPECTFULLY SUBMITTED;
Jeffrey Lynn Chronister, #89827
JEFFREY LYNN CHRONISTER

D- 228986

STATE OF SOUTH CAROLINA

[XX] County/ [ ] Municipality of York

THE STATE

against

442

Lynn Jeffery Chronister

Address: [redacted] N.C.

Phone: _____ SSN: _____

Sex: M Race: W Height: 5'8" Weight: 170

DL State: _____ DL #: _____

DOB: [redacted] Agency ORI #: 0460000

Prosecuting Agency: YCSD

Prosecuting Officer: Whistine

Offense: Murder

Offense Code: _____

Code/Ordinance Sec. 16-3-10

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Lynn Jeffery Chronister on 2-21-92.

Chris Byrd
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CERTIFIED TRUE COPY
YORK CO. S.C.
FEB 21 12 03 PM '92

-22-

22

[X] County/ [ ] Municipality of York

AFFIDAVIT

July 26, 1990
SCCA 518

Personally appeared before me the affiant Otis Whistine who being duly sworn deposes and says that defendant Lynn Jeffery Chronister did within this county and state on February 14th, 1992 violate the criminal laws of State of South Carolina (or ordinance of [ ] County/ [ ] Municipality of _____) in the following particulars:

DESCRIPTION OF OFFENSE: Murder: Section 16-3-10

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I further state that there is probable cause to believe that the defendant named above did comm the crime set forth and that probable cause is based on the following facts: Defendant did wilfully and unlawfully, and with Malice Aforethought kill Marie Gail Chronister by shooting her. This unlawful act occured at the Catawba Nuclear Station, Concord Rd., Clove York County S.C. All against the Peace and Dignity of the State and against such Laws as made and provided. Probable cause based on witness's.

EXHIBIT-A

FILED-RECEIVED
BOOK
FEB 21 12 03 PM '92
YORK CO. S.C.

Sworn to and subscribed before me on February 14th, 1992

_____ (L.S.)
Signature of Issuing Judge

Otis Whistine
Signature of Affiant

Affiant's Address Court House, South Congress St.
York S.C.

Affiant's Telephone 684-8522

STATE OF SOUTH CAROLINA

[XX] County/ [ ] Municipality of York

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe th on February 14th, 1992 defendant Lynn Jeffery Chronister did violate the criminal laws of the State of South Carolina (or ordinance of [ ] County/ [ ] Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: Murder (Section 16-3-10)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her bef me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to t defendant at the time of its execution, or as soon thereafter as is practicable.

_____ (L.S.)
Signature of Issuing Judge

Judge Code: 518

Judge's Address South Congress St.
York S.C.

Judge's Telephone 684-8514

Issuing Court: [XX] Magistrate [ ] Municipal [ ] Circ

ORIGINAL

FORM 32 (12/87) CERTIFIED TRUE COPY

JUN 20 10 41 AM '01

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF York)
MURDER AND
UNLAWFUL USE OF FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on April 6, 1992,

the Grand Jurors of York County present upon their oath:

COUNT ONE

That Lynn Jeffery Chronister did in York County on or about February 14, 1992 feloniously, wilfully and with malice aforethought, kill on e Marie Gail Cronister by means of shooting her and that the said victim died as a proximate result thereof.

COUNT TWO

That Lynn Jeffery Chronister did in York County on or about February 14, 1992 while in possession of a firearm or while visibly displaying what apperaed to be a firearm, committed the crime contained in Count One of this Indictment.

EXHIBIT - B

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

AGENCY I. D.
SC0460000

YORK COUNTY SHERIFF'S DEPARTMENT
INCIDENT REPORT

CASE NUMBER: 92-02-231

EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
1. Homicide Offense (Murder)	X YES ☐ NO	☐ YES ☐ NO	parking lot	
2.	☐ YES ☐ NO	☐ YES ☐ NO		
3.	☐ YES ☐ NO	☐ YES ☐ NO		

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): Administration Building Catawba Nuclear Stat. York, SC — ZIP CODE: 29745 — WEAPO: firear

INCIDENT DATE	24 HR CLOCK	TO	DATE	24 HR CLOCK	DISP DATE	DISP TIME	TIME ARRIVED	DEPART TIME	LOCAT
2-14-92	06:57				2-14-92	06:58	07:02	09:07	LW

VICTIM NO. 1

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE): Auten, Thomas F. — RELATIONSHIP TO SUBJECT #1: unknown — RESIDENT: (I) S O U — RACE: W — SEX: M — AGE: 32 — ETH: N — DAYTIME PHONE: [redacted] 327-

ADDRESS: [redacted] — CITY: Rock Hill — STATE: SC — ZIP CODE: 29730 — LOCAT: RH

VICTIM'S NAME (LAST, FIRST, MIDDLE): Chronister, Gail Marie — RELATIONSHIP TO SUBJECT #1: wife — RESIDENT: J S (@) U — RACE: W — SEX: F — AGE: 34 — ETH: N — DAYTIME PHONE: unknown — EVENI: unkr

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
510	145	Brn	Brn	

ADDRESS: [redacted] — CITY: Mt. Holly — STATE: NC — ZIP CODE: 28120 — LOCATI

VISIBLE INJURY (VICT 1) X YES ☐ NO ☐ EXPLAIN — gun shots to head + body — COMPLAINT OF ANY NON-VISIBLE INJURIES ☐

VICTIM (NO 1) USING ALCOHOL ☐ YES NO X UNK ☐ DRUGS: ☐ YES NO X UNK ☐ TYPE:

TWO-MAN VEH ☐ ONE-MAN VEH ☐ DETECTIVE/SPL ASMT ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ — J — This Jurisdiction. S — State. O — Out of State. U — Uni

SUBJECT (NO. 1)

X SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS

NAME (LAST, FIRST, MIDD...)	RACE	SEX	AGE	ETH	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR
unknown	W	M	38 / 42	N	unknown	509	160	Brn

FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.: beard

ADDRESS: unknown — CITY: unknown — STATE: unk — ZIP CODE: unknown

SUBJECT (NO. 1) USING ALCOHOL ☐ YES NO ☐ UNK X — DRUGS ☐ YES NO ☐ UNK X TY-E — ARRESTED NEAR OFFENSE SCENE ☐ YES NO ☐ — TOTAL # ARRESTED — DATE/TIME OF OFFENSE — DATE/TIME OF ARR

NARRATIVE

R/P stated as he was exiting the vehicle he drove to work that he heard approximately 5 rapid gun shots. R/P saw a w/m subject fitting the above description carrying a rifle walking away from the scene. Subject entered a white Dodge van N.C. partial registration DRL and left the scene. Victim sustained gunshot wound and was pronounced dead at the scene.

PROPERTY EST.

	JURISDICATION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICATION OF RECOVERY LAW ENFORCEMENT AGENCY	TOTAL VALU
TYPE (GROUP)			
STOLEN			
DAMAGED			
BURNED			
RECOVERED			
SEIZED			

EXHIBIT C -24-

DISPOSITION

SUBJECT IDENTIFIED ☐ YES NO X — SUBJECT LOCATED ☐ YES NO X — X ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED — ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER — ☐ EX-CLEAR UNDER ☐ EX-CLEAR 18 AND O

REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTIVE MERIT 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DENIES COOPERATION 5 ☐ JUVENILE—NO CUSTODY 6 ☐ CIVIL MATTE

REPORTING OFFICER(S) | DATE | UNIT NUMBER | APPROVING OFFICER | DATE

AGENCY I. D.
SC0460000

YORK COUNTY SHERIFF'S DEPARTMENT
INCIDENT REPORT

CASE NUMBER: 92-02-231

NCIC INQ. | ENTD.

EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
1. Homicide Offense (Murder)	X YES ☐ NO	☐ YES ☐ NO	parking lot	
2.	☐ YES ☐ NO	☐ YES ☐ NO		
3.	☐ YES ☐ NO	☐ YES ☐ NO		

TYPE VICTIM: X Individual; ☐ Business; ☐ Financial Inst.; ☐ Government; ☐ Relig. Orgn.; ☐ Soc./Public; ☐ Other; ☐ Unknown; ☐ Police Off.

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): Administration Building Catawba Nuclear Stat. York, SC | ZIP CODE: 29745 | WEAPON TYPE: firearm

INCIDENT DATE	24 HR. CLOCK	TO DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK: DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME	LOCATION NO.
2-14-92	06:57			2-14-92	06:58	07:02	09:07	LWD

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT (J) S O U	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
Auten, Thomas F.	unknown			(J) S O U	W	M	[redacted] 32	N	[redacted] H	[redacted] H B

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
[redacted] St.	Rock Hill	SC	29730	RHWD

VICTIM NO. 1

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT J S (O) U	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
Chronister, Gail Marie	wife			J S (O) U	W	F	[redacted] 34	N	unknown H	unknown H B

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
510	145	Brn	Brn	

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
1414 Copeland Park	Mt. Holly	NC	28120	

VISIBLE INJURY (VICT. 1) X YES NO ☐ EXPLAIN – gun shots to head & body | COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES NO X

VICTIM (NO. 1) USING: ALCOHOL ☐ YES NO X UNK ☐ | DRUGS: ☐ YES NO X UNK ☐ | TYPE:

TWO-MAN VEH. ☐ | ONE-MAN VEH. ☐ | DETECTIVE/SPLASMT. ☐ | OTHER ☐ | ALONE ☐ | ASSISTED ☐ | *J — This Jurisdiction. S — State. O — Out of State. U — Unknown

SUBJECT NO. 1

X SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS

NAME, (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
unknown	W	M	38 / 42	N	unknown	509	160	Brn	Brn

FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.: beard

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
unknown	unknown	unk	unknown	

SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES NO ☐ UNK. X | DRUGS: ☐ YES NO ☐ UNK. X TYPE: | ARRESTED NEAR OFFENSE SCENE ☐ YES NO ☐ | TOTAL # ARRESTED | DATE/TIME OF OFFENSE | DATE/TIME OF ARREST

NARRATIVE

R/P stated as he was exiting the vehicle he drove to work that he heard approximately 5 rapid gun shots. R/P saw a w/M subject fitting the above description carrying a rifle walking away from the scene. Subject entered a white Dodge van N.C. partial registration DRL and left the scene. Victim sustained gunshot wounds and was pronounced dead at the scene.

EXHIBIT D

JURISDICATION OF THEFT LAW ENFORCEMENT AGENCY | JURISDICATION OF RECOVERY LAW ENFORCEMENT AGENCY

PROPERTY EST.

TYPE (GROUP)							TOTAL VALUE
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED							

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES NO X | SUBJECT LOCATED ☐ YES NO X | X ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1 ☐ OFFENDER DEATH. 2 ☐ NO PROSECUTIVE MERIT. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DENIES COOPERATION. 5. ☐ JUVENILE—NO CUSTODY. 6. ☐ CIVIL MATTER.

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
Smith, T. B.	2-14-92	955			

FOLLOW-UP INVESTIGATION ☐ YES NO ☐ | OFFICER

THE STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF GENERAL SESSIONS

CA. No. 92-GS-46-1224

STATE OF SOUTH CAROLINA

Vs.

JEFFREY LYNN CHRONISTER
MOVANT

CERTIFICATE OF SERVICE
BY MAIL

I, JEFFREY LYNN CHRONISTER, DO CERTIFY THAT I HAVE SERVED THE ORIGINAL COPY OF THE MOTION FOR AFTER NEWLY DISCOVERED EVIDENCE ON CLERK OF COURT / REGISTER DAVID HAMILTON, POST OFFICE BOX 649, YORK SOUTH CAROLINA, 29745, AND A COPY OF THE MOTION ON CHIEF ATTORNEY GENERAL, ALAN WILSON, POST OFFICE BOX 11549, COLUMBIA, SOUTH CAROLINA, 29211, BY DEPOSITING EACH IN SEPERATE ENVELOPES, POSTAGE PAID, THROUGH THE UNITED STATES MAIL ON NOVEMBER 12TH, 2014

DATED THIS 12TH DAY OF NOVEMBER 2014

Jeffrey Lynn Chronister
JEFFREY LYNN CHRONISTER
KIRKLAND C.I., B-II, 34
4344 BROAD RIVER RD.
COLUMBIA, S.C., 29210

SC Attorney General
RECEIVED
NOV 19 2014
Referred to Johnson/dn.
Answered

KIRKLAND LAW LIBRARY

DEC 18 2014

State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

Lee S. Alford
Judge

Moss Justice Center
1675-1J York Highway
York, SC 29745-7434
Phone: (803) 628-3048
Fax: (803) 628-3139
lalfordj@sccourts.org

November 21, 2014

RECEIVED

DEC 22 2014

SC Court of Appeals

Jeff Chronister, #189827
Kirkland C.I., B-II, 34
4344 Broad River Road
Columbia, S. C. 29210

Dear Mr. Chronister:

This will acknowledge receipt of your motion and correspondence. This Court cannot grant relief on a motion unless timely made. You would need to file a Post-Conviction Relief Action in order for the Court to consider your motion.

With kind regards, I am

Yours Very Truly,

Lee S. Alford/S

Lee S. Alford
Resident Judge
of the Sixteenth Judicial Circuit

LSA:rgb

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Lee S. Alford, Circuit Court Judge

JEFFREY LYNN CHRONISTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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Chief Attorney

South Carolina Office
of Appellate Defense
1122 Lady Street, Suite 940
Columbia, S. C. 29201

ATTORNEY FOR PETITIONER

CHARLES M. CONDON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

ALLEN BULLARD
Assistant Deputy Attorney General

DAVID SPENCER
Assistant Attorney General

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

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

COURT OF GENERAL SESSIONS
92-GS-46-1224

STATE OF SOUTH CAROLINA :
:
-vs- : TRANSCRIPT OF RECORD
:
LYNN JEFFERY CHRONISTER :

SEPTEMBER 21, 22, 1992
YORK, SOUTH CAROLINA

B E F O R E:

HONORABLE DON S. RUSHING, JUDGE, AND A JURY.

A P P E A R A N C E S:

LARRY GRANT, SOLICITOR
ATTORNEY FOR THE STATE

GERALD SMITH, ESQUIRE
HARRY DEST, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

ORIGINAL

DIANNE A. JOSEPH
CIRCUIT COURT REPORTER

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(MONDAY, SEPTEMBER 21, 1992.)

THE COURT: LADIES AND GENTLEMEN OF THE PETIT JURY PANEL, IF YOU WOULD GIVE ME YOUR ATTENTION. BEFORE WE ACTUALLY PROCEED TO STRIKE, SELECTING THE JURY IN THE FIRST CASE, I'M GOING TO GIVE TO YOU, ALL OF YOU, ALL THE POTENTIAL JURORS A -- WHAT I CALL -- PRELIMINARY INSTRUCTION.

THE PURPOSE OF THE PRELIMINARY INSTRUCTION TO YOU IS TO REALLY ACQUAINT YOU WITH GENERAL SESSIONS COURT AND SOME VERY BASIC GUIDELINES THAT IF I WERE IN YOUR SHOES, IN YOUR POSITION SERVING AS A JUROR THAT I WOULD WANT TO KNOW.

THE PURPOSE BESIDES THAT IS TO HOPEFULLY MAKE YOU FEEL MORE COMFORTABLE AS YOU SERVE AS A JUROR. WE RECOGNIZE THAT BEING BROUGHT INTO A COURTROOM AND ASKED TO SERVE AS A JUROR IS SOMETHING THAT YOU RARELY DO. IT'S CERTAINLY A CIVIC OBLIGATION THAT EACH PERSON HAS TO PERFORM.

MR. CHURCHILL ONCE SAID THAT IT WAS THE GREATEST SERVICE THAT A PERSON CAN GIVE TO THEIR COUNTRY. SOME PEOPLE MAY DISPUTE THAT.

BUT THE PURPOSE OF THE PRELIMINARY INSTRUCTION TO YOU IS TO GIVE YOU SOME GUIDELINES, IN ESSENCE, TELL YOU HOW A CASE IS TRIED FROM BEGINNING TO END, TO TELL YOU SOME VERY BASIC PRINCIPLES THAT YOU SHOULD KNOW AND UNDERSTAND.

IN ADDITION TO WHICH, I'M GOING TO EXPLAIN TO YOU ABOUT WHAT WE CALL THE BURDEN OF PROOF IN EVERY CASE, WHETHER IT'S CRIMINAL OR CIVIL. ONE SIDE OR THE OTHER HAS AN OBLIGATION TO

PROVE WHAT THEY CHARGE OR ALLEGE. WE CALL THAT A BURDEN OF PROOF.

SO IF YOU WILL GIVE ME YOUR ATTENTION, I'M GOING TO GIVE YOU THIS PRELIMINARY INSTRUCTION AT THIS TIME, WHICH WILL APPLY TO EVERY CASE THAT WILL BE TRIED THIS WEEK IN GENERAL SESSIONS COURT.

AND I'LL ASK YOU NOW: ARE ALL OF YOU, ALL PROSPECTIVE JURORS, ARE YOU ABLE TO HEAR ME SUFFICIENTLY? IF YOU CANNOT, RAISE YOUR HAND.

(NO RESPONSE.)

THE COURT: VERY GOOD. LADIES AND GENTLEMEN, GENERAL SESSIONS COURT -- AND THAT'S WHAT CRIMINAL COURT IS CALLED -- IS HERE FOR THE PURPOSE OF RESOLVING QUESTIONS OF ALLEGED CRIMINAL CONDUCT BETWEEN THE STATE OF SOUTH CAROLINA AND THE DEFENDANTS.

IN THIS CASE THE STATE OF SOUTH CAROLINA, THE FIRST CASE FOR TRIAL THIS WEEK, WILL BE HANDLED BY THE ELECTED SOLICITOR, YOUR ELECTED SOLICITOR FOR THE SIXTEENTH CIRCUIT, SOLICITOR GRANT.

LARRY GRANT, WOULD YOU STAND UP PLEASE.

MR. GRANT: YES, SIR, YOUR HONOR.

THE COURT: THIS IS SOLICITOR GRANT. HE IS THE CHIEF PROSECUTING OFFICER FOR THE STATE OF SOUTH CAROLINA. HE PROSECUTES ALL THE CASES IN YORK AND UNION COUNTY. HE OR SOME MEMBER OF HIS STAFF WILL BE PROSECUTING ALL THE CASES

THAT YOU WILL HEAR THIS WEEK, AS WELL AS MYSELF.

MR. GERALD SMITH IS THE DEPUTY PUBLIC DEFENDER. YALE ZAMORE IS THE PUBLIC DEFENDER. MR. SMITH IS HIS CHIEF PUBLIC DEFENDER. HE WILL BE HANDLING THE FIRST CASE. HE WAS APPOINTED IN THIS CASE TO REPRESENT THE DEFENDANT.

MR. SMITH, STAND UP SO THEY KNOW WHO YOU ARE.

MR. SMITH: (COMPLIED.)

THE COURT: THIS IS MR. SMITH. THANK YOU, SIR.

LADIES AND GENTLEMEN, IT IS A GUARANTEED RIGHT OF EVERY CITIZEN THAT WHEN A PERSON IS CHARGED WITH THE VIOLATION OF A CRIMINAL LAW, THAT THAT CHARGE BE PRESENTED IN OPEN COURT -- AND THIS IS OPEN COURT, MEANS THAT THE PUBLIC HAS A RIGHT TO BE PRESENT -- AND THAT THAT HEARING BE CONDUCTED ACCORDING TO CERTAIN RULES OF PROCEDURE WHICH ENSURE FAIRNESS TO EACH.

EACH THEN, BOTH THE STATE OF SOUTH CAROLINA AND THIS DEFENDANT, HAVE AN EQUAL RIGHT TO HAVE THIS JUDICIAL PROCEEDING AND TO HAVE A JURY SELECTED FROM YOUR NUMBER TO BE THEN SELECTED AND THEN SWORN FOR THE TRIAL OF THIS CASE.

SO DURING THE COURSE OF THE TRIAL THE FIRST THING THAT WILL HAPPEN ONCE THE JURY IS SELECTED -- THE FIRST THING WE'RE GOING TO DO IS SELECT 12 OF YOU AND EITHER 1 OR 2 ALTERNATES WHO WILL SIT OVER HERE IN THE JURY BOX TO MY LEFT. ONCE YOU'VE BEEN SELECTED THEN AND SWORN, THEN THE PROCESS OF THE TRIAL WILL BEGIN.

IT WILL BEGIN IN THIS FASHION: THE SOLICITOR IN THE CASE

HANDLING THE CASE -- IN THIS CASE IT WILL BE SOLICITOR GRANT -- WILL WALK DOWN BEFORE YOU AND APPEAR BEFORE THE 12 JURORS AND THE ALTERNATE AND WILL EXPLAIN TO THEM OR READ TO THEM THE INDICTMENT, TELLING YOU IN OTHER WORDS WHAT CHARGE IS MADE. WE CALL THAT AN OPENING STATEMENT.

WHAT THE SOLICITOR SAYS IN HIS OPENING STATEMENT IS NOT EVIDENCE. AND I'M GOING TO COME BACK IN JUST A MOMENT AND TELL YOU WHAT EVIDENCE IS.

BUT AFTER THE SOLICITOR HAS MADE HIS OPENING STATEMENT -- AND THE PURPOSE IS TO IDENTIFY TO YOU WHAT THE CASE IS ABOUT. THEN AFTER HE'S MADE THAT OPENING STATEMENT, MR. SMITH -- MR. GERALD SMITH, WHO REPRESENTS THE DEFENDANT, THE ACCUSED PERSON IN THIS CASE, HE WILL BE GIVEN THE SAME OPPORTUNITY TO MAKE AN OPENING STATEMENT. WHAT MR. SMITH SAYS OR ANY LAWYER IN THEIR OPENING STATEMENT IS NOT EVIDENCE, AND THE JURY IS NOT TO CONSIDER THAT AS EVIDENCE.

BUT AFTER THOSE OPENING STATEMENTS HAVE BEEN COMPLETED, THEN THE STATE OF SOUTH CAROLINA WILL PROCEED BY PRESENTING ITS EVIDENCE BY SOLICITOR GRANT EITHER CALLING THE WITNESS OR SOME MEMBER OF HIS STAFF, WHO WILL BE PLACED UNDER OATH, AND THEN WILL GIVE THEIR TESTIMONY IN FRONT OF THE JURY UNDER OATH.

EACH WITNESS CALLED WILL BE EXAMINED BY THE SOLICITOR AND THEN CROSS EXAMINED BY COUNSEL FOR THE DEFENDANT. THE RIGHT OF CROSS EXAMINATION AND CONFRONTATION THAT IS AFFORDED TO

EACH OF US UNDER THE CONSTITUTION OF THE UNITED STATES AND THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA.

AFTER THE SOLICITOR HAS PUT UP THE WITNESSES THAT HE SAYS SUPPORTS THE CHARGES MADE, THEN THE STATE REST THEIR CASE.

THEN THE DEFENDANT THROUGH HIS ATTORNEY WILL BE EXTENDED THE SAME OPPORTUNITY IF THEY CHOOSE TO PRESENT ANY EVIDENCE THAT THEY WOULD CHOOSE.

I TELL YOU NOW THAT AN ACCUSED PERSON IS NOT REQUIRED UNDER THE CONSTITUTION OF THIS COUNTRY AND OUR STATE TO PROVE THEY DID OR DID NOT COMMIT A CRIME; THAT'S CALLED THE PRESUMPTION OF INNOCENCE. IT'S ONE OF THE GREAT FOUNDATIONS THAT OUR FOREFATHERS PROVIDED TO US.

AS A JUROR YOU TAKE AN OATH THAT YOU WILL FOLLOW THE LAW, AND THE LAW SAYS THAT AN ACCUSED PERSON, THE DEFENDANT, IS PRESUMED TO BE INNOCENT. HOWEVER, A PERSON IS PERMITTED TO PRESENT SUCH EVIDENCE AS THEY WOULD CHOOSE IF THEY CHOOSE.

SO AFTER ALL THAT EVIDENCE IS PRESENTED, THEN THE NEXT THING WILL BE FOR THE ATTORNEYS TO MAKE WHAT WE CALL THEIR CLOSING ARGUMENTS, THE SUMMATIONS. THE ATTORNEY FOR THE STATE AND THE ATTORNEY FOR THE DEFENDANT WILL APPEAR BEFORE THE JURY ONCE AGAIN AND BASICALLY THEY REVIEW THEIR VIEW OF THE TESTIMONY AND THE EVIDENCE IN THE CASE AND WILL ARGUE TO YOU EITHER THAT THE STATE HAS PROVEN THE CRIME OR THAT THE STATE HAS FAILED TO PROVE THE CRIME. THOSE ARE CALLED CLOSING ARGUMENTS.

AFTER THOSE CLOSING ARGUMENTS HAVE BEEN COMPLETED, I AS THE JUDGE OF THE LAW AND THE TRIAL JUDGE WILL THEN STATE TO YOU, THE JURY, THE PRINCIPLES OF LAW THAT APPLY TO THAT PARTICULAR CASE.

YOU WILL THEN AFTER I HAVE GIVEN YOU THOSE INSTRUCTIONS RETIRE TO THE JURY ROOM WHERE YOU WILL BEGIN YOUR DELIBERATIONS TO DETERMINE THE GUILT OR INNOCENCE OF THE DEFENDANT IN THAT PARTICULAR CASE.

AND THAT'S THE WAY THE CASE WILL BE TRIED FROM BEGINNING TO END. AND EVERY CASE IS TRIED THAT WAY, WHETHER THE CASE TAKES A DAY TO TRY, TWO MONTHS, OR WHATEVER. SO THEY'RE ALL THE SAME FORMAT.

LADIES AND GENTLEMEN, HAVING GIVEN YOU THE FORMAT YOU WILL BE ABLE TO TELL WHERE WE ARE AS WE PROCEED THROUGH THE TRIAL; THAT'S THE WAY EVERY CASE IS TRIED.

LADIES AND GENTLEMEN, WHATEVER THE VERDICT OF THE JURY IS, IT MUST BE UNANIMOUS; IN OTHER WORDS, THAT MEANS THAT ALL 12 JURORS MUST REACH THE SAME VERDICT. IT MUST BE UNANIMOUS.

SO, LADIES AND GENTLEMEN, IN EACH CASE TRIED IN GENERAL SESSIONS COURT THE STATE MUST PROVE BEYOND A REASONABLE DOUBT SO AS TO OVERCOME THE PRESUMPTION OF INNOCENCE AFFORDED TO AN ACCUSED PERSON OF THE GUILT OF THAT PERSON OF THE CRIME CHARGED BEFORE IT WOULD ENTITLE THE JURY TO RETURN A VERDICT OF GUILTY TO ANY CHARGE MADE BY THE INDICTMENT.

NOW, LADIES AND GENTLEMEN, THE JUDGE AND THE JURY HAVE

FUNCTIONS UNDER THE CONSTITUTION. IT IS THE JOB OF THE SOLICITOR TO PROSECUTE A PERSON; IN OTHER WORDS, PUT UP WHAT THEY SAY THE STATE'S EVIDENCE IS AGAINST THEM. HE IS AN ADVERSARY.

IT IS THE JOB OF THE DEFENSE ATTORNEY TO REPRESENT HIS CLIENT AND PROTECT HIS CONSTITUTIONAL RIGHTS THAT ARE AFFORDED TO HIM AND EVERY OTHER PERSON, INCLUDING MYSELF, YOURSELF, AND EVERYONE ELSE. THEY ARE ADVERSARIES.

THE JUDGE AND THE JURY, WE'RE NOT ADVERSARIES. WE'RE JUDGES.

MY FUNCTION IN THIS COURTROOM IS BASICALLY THREE. I PRESIDE OVER THE TRIAL. I'M CALLED THE PRESIDING OFFICER. I SAY WHEN WE START, WHEN WE STOP. SECONDARILY, I DETERMINE WHAT EVIDENCE IS ADMITTED INTO THE RECORD; IN OTHER WORDS, I RULE ON THE ADMISSIBILITY OF THE EVIDENCE. THIRDLY, I WILL INSTRUCT THE JURY AS TO THE LAW. THE JURY TAKES AN OATH THAT THEY WILL FOLLOW THE LAW AS THE JUDGE WILL GIVE IT TO THEM, SO I AM THE INSTRUCTOR OF THE LAW.

BESIDES IT BEING THAT WAY, THINK HOW PERFECTLY RIDICULOUS IT WOULD BE IF 12 PEOPLE SELECTED FOR A JURY TRIED TO STEP BACK AND DETERMINE WHAT LAW YOU WANTED TO FOLLOW?

I'M THE JUDGE OF THE LAW.

YOUR FUNCTION AS A JURY, IF YOU'RE SELECTED, IS TO DETERMINE THE TRUTH OF THAT CASE; IN OTHER WORDS, YOU ARE TO DETERMINE FROM THE TESTIMONY PRESENTED WHAT IS THE TRUTH

FIRST. IN OTHER WORDS, YOU'RE GOING TO DETERMINE WHO YOU BELIEVE AND WHAT YOU BELIEVE.

ONCE YOU'VE DETERMINED WHAT THE TRUTH IS, YOU WILL THEN DETERMINE WHETHER THOSE TRUTHFUL FACTS AS DETERMINED BY YOU SATISFY THE 12 OF YOU OF THE GUILT OF THE ACCUSED PERSON BEYOND A REASONABLE DOUBT. THE STATE OF SOUTH CAROLINA HAS THE BURDEN AND THE OBLIGATION TO PROVE THROUGH EVIDENCE PRESENTED IN THIS COURTROOM -- NOT OUTSIDE THE COURTROOM, BUT IN THIS COURTROOM -- TO THE 12 OF YOUR SATISFACTION THAT THE ACCUSED PERSON IS GUILTY OF THAT CHARGE OR SOME LESSER INCLUDED, IF THERE ARE ANY, BEYOND A REASONABLE DOUBT. SO THAT'S THE BURDEN OF PROOF, PROOF BEYOND A REASONABLE DOUBT.

NOW, I REMIND YOU ONCE AGAIN THAT AN ACCUSED PERSON IS PRESUMED INNOCENT, AND THAT IS A CONSTITUTIONAL PROTECTION AFFORDED TO HIM UNDER THE CONSTITUTION OF THE UNITED STATES AND THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA.

WHAT THAT MEANS IS IF YOU TAKE AN OATH TO FOLLOW THE LAW AND YOU STEP BACK TO THE JURY ROOM AND YOU WERE TO SAY, FOR EXAMPLE, THE DEFENDANT DIDN'T PROVE TO ME HE DIDN'T COMMIT THE CRIME, YOU'VE VIOLATED YOUR OATH AS A JUROR BECAUSE YOU'VE TAKEN AN OATH TO FOLLOW THE LAW. THE LAW SAYS HE'S PRESUMED INNOCENT, WHICH MEANS HE DOES NOT HAVE TO PROVE HIS INNOCENCE. THE STATE HAS TO PROVE GUILT BEYOND A REASONABLE DOUBT. SO YOU SEE, THE BURDEN OF PROOF IS UPON THE STATE.

NOW, ONCE YOU'VE DETERMINED THE TRUTH OF THE EVIDENCE,

YOU WILL APPLY IT TO THAT STANDARD AND THEN DETERMINE WHETHER OR NOT THE STATE HAS PROVED THAT OBLIGATION OR BURDEN THAT THEY HAVE.

NOW, LADIES AND GENTLEMEN, PROOF BEYOND A REASONABLE DOUBT HAS GENERALLY BEEN REFERRED TO AS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT; AND THAT BURDEN OF PROOF IS UPON THE STATE OF SOUTH CAROLINA TO PROVE THE GUILT BEYOND A REASONABLE DOUBT.

NOW, LADIES AND GENTLEMEN, I TOLD YOU AS THE JUDGES OF THE FACTS UNDER THE CONSTITUTION OF THIS STATE HAVE TO DETERMINE WHAT IS THE TRUTH. THE TRUTH OF WHAT? WHAT IS THE EVIDENCE THAT YOU WILL BE ASKED TO DETERMINE?

THERE ARE BASICALLY THREE CATEGORIES OF EVIDENCE FROM WHICH YOU WILL BE ASKED TO DETERMINE WHAT IS THE TRUTH OF IT.

THE FIRST CATEGORY OF EVIDENCE IS SWORN TESTIMONY PRESENTED UNDER OATH FROM THAT WITNESS STAND. IN OTHER WORDS, THE WITNESS WILL BE PUT UNDER OATH TO TELL THE TRUTH.

THE SECOND CATEGORY OF EVIDENCE IS WHAT WE CALL EXHIBITS. AN EXHIBIT MAY BE A PHOTOGRAPH. IT MAY BE A DOCUMENT. IT MAY BE A DRAWING, A MODEL, ANY OF THOSE, ANY OF THOSE WHICH ARE ADMITTED INTO THE RECORD. IF THEY'RE ADMITTED INTO THE RECORD, THEY'LL BE GIVEN AN EXHIBIT NUMBER, AND THE JURY WILL HAVE IT TO LOOK AT DURING THE COURSE OF THE TRIAL AND YOU WILL HAVE IT TO TAKE INTO THE JURY ROOM TO EXAMINE WHEN YOU BEGIN YOUR DELIBERATION. SO THAT'S THE SECOND CATEGORY OF EVIDENCE,

EXHIBITS.

THE THIRD CATEGORY OF EVIDENCE IS WHAT WE CALL A STIPULATION OF FACT. A STIPULATION OF FACT, LADIES AND GENTLEMEN, IS WHERE THE COUNSEL FOR THE STATE AND COUNSEL FOR DEFENSE AGREE THAT SOME ISSUE OR FACT THAT MAY BE IN DISPUTE, THEY SAY, JUDGE, WE AGREE. AND IF THEY AGREE, YOU MAY ACCEPT IT WITHOUT FURTHER PROOF THEREON.

FOR EXAMPLE, IF IT WERE NECESSARY TO PROVE THAT IT WAS RAINING ON JANUARY THE 1ST OF THIS YEAR OF 1992, FOR EXAMPLE, HOW WOULD YOU PROVE THAT? WELL, ONE WAY, YOU'D PUT A WITNESS UP WHO SAYS, I WAS THERE. IT WAS RAINING.

OF COURSE, THE JURY HAS A RIGHT TO BELIEVE OR DISBELIEVE ANY WITNESS, BECAUSE THAT'S WHAT YOU HAVE A RIGHT TO DO. JUDGE THE BELIEVABILITY OF THE WITNESSES.

THE SECOND WAY TO PROVE THAT WOULD BE HAVE A WITNESS QUALIFIED AS AN EXPERT WHO CAN RENDER AN OPINION, SUCH AS A CLIMATOLOGIST WHO WOULD SAY THAT BASED ON HIS RECORDS AND HIS STUDIES HIS OPINION WAS IT WAS RAINING. YOU, AGAIN, WOULD HAVE A RIGHT TO BELIEVE OR DISBELIEVE THAT WITNESS.

THE THIRD WAY TO PROVE THAT WOULD BE FOR THE STATE, THE SOLICITOR, TO SAY, JUDGE, WE AGREE, IT WAS RAINING ON JANUARY THE 1ST. WE STIPULATE IT AS A MATTER OF FACT. AND IF THEY DO THAT, I REQUIRE THEM TO SAY THAT OR PUT IT IN WRITING AND PUBLISH IT TO THE JURY. SO THAT'S CALLED A STIPULATION OF FACT AND YOU MAY ACCEPT IT.

THOSE ARE THE THREE CATEGORIES OF EVIDENCE FROM WHICH YOU, AS THE JURY, THE 12 OF YOU, WILL BE ASKED TO DETERMINE FIRST WHAT IS THE TRUTH. ONCE YOU'VE DETERMINED THE TRUTH, DO THOSE TRUTHFUL FACTS SATISFY THE 12 OF YOU THAT THE DEFENDANT, THE ACCUSED PERSON, IS GUILTY BEYOND A REASONABLE DOUBT OF THAT CHARGE?

SO DID YOU HEAR ME SAY AT ANY TIME THAT WHAT THE ATTORNEYS SAID WAS EVIDENCE? NO. UNLESS, THERE'S A STIPULATION OF FACT WHAT THEY SAY IN THEIR OPENING STATEMENTS AND CLOSING ARGUMENTS IS NOT EVIDENCE.

I'VE GIVEN YOU THE CATEGORIES OF EVIDENCE WHICH YOU AS THE JURY WILL NOW BE ASKED TO DETERMINE DURING THE COURSE OF THE TRIAL, ONCE AGAIN, WHAT IS THE TRUTH?

SO YOU SEE, LADIES AND GENTLEMEN, I'VE TOLD YOU IN ESSENCE HOW THE CASE WILL BE TRIED, WHAT MY FUNCTION IS, WHAT YOUR FUNCTION IS, AND WHAT THE ROLE AND FUNCTION OF THE ATTORNEYS IN THIS CASE. I'VE TOLD YOU WHAT THE BURDEN OF PROOF IS. I'VE TOLD YOU THAT EVERY CASE, IN EVERY CASE, THAT A PERSON -- THERE MUST BE A UNANIMOUS VERDICT BY THE JURY.

LADIES AND GENTLEMEN, IN ADDITION TO WHICH, YOU'RE NOT PERMITTED TO DISCUSS THIS CASE OR ANY CASE THAT YOU'RE SERVING ON AS A JURY DURING THE COURSE OF THE TRIAL. THAT MEANS THAT YOU CAN'T GO BACK IN THE JURY ROOM ON RECESSES OR OTHERWISE UNTIL I SEND YOU THERE AND SAY, REACH A VERDICT. YOU CANNOT GO BACK AND TALK ABOUT THE CASE. YOU CAN'T EVEN TALK ABOUT

IT WITH YOUR FAMILY OR FRIENDS.

WHEN THE CASE IS OVER, YOU MAY TALK TO WHOEVER YOU CHOOSE OR WHOMEVER YOU CHOOSE. BUT DURING THE COURSE OF THE TRIAL YOU'RE NOT PERMITTED TO DISCUSS THE CASE AMONG YOURSELVES, CERTAINLY NOT WITH ANYONE ELSE.

THE REASON FOR IT, LADIES AND GENTLEMEN, IS THIS: WE DON'T WANT YOU TO START FORMING ANY OPINIONS, BECAUSE THAT'S WHAT YOU'RE DOING IN ESSENCE WHEN YOU DETERMINE THE TRUTH OF THE CASE AND WHETHER OR NOT THE STATE HAS PROVEN ITS BURDEN OF PROOF UNTIL YOU'VE HEARD ALL OF THE TESTIMONY AND THE EVIDENCE ON THOSE ISSUES, UNTIL YOU'VE HEARD EVERY WITNESS. BECAUSE IF YOU START TALKING ABOUT IT, IT'S HUMAN NATURE TO START FORMING OPINIONS. AND WE DON'T WANT YOU TO FORM ANY OPINIONS UNTIL YOU'VE HEARD ALL THE TESTIMONY AND EVIDENCE.

REMEMBER THAT. NO DISCUSSION OF THE CASE.

IN ADDITION TO WHICH, LADIES AND GENTLEMEN, THE NEWS MEDIA, BE IT THE T.V., RADIO, NEWSPAPER, ALL HAVE A PERFECT RIGHT UNDER THE CONSTITUTION OF THIS COUNTRY TO REPORT THE NEWS. THAT IS THEIR JOB.

YOU AS A JUROR ARE NOT TO DECIDE A CASE BASED UPON WHAT YOU MAY SEE IN THE NEWS MEDIA. SO IF THERE'S ANY COVERAGE OF THIS CASE, YOU'RE NOT TO READ ANY NEWSPAPER ACCOUNTS OF IT, WATCH ANY T.V. ACCOUNTS OF IT, OR RADIO ACCOUNTS IF THERE BE ANY. WHEN THE CASE IS OVER, YOU LISTEN AND HEAR WHAT YOU WANT TO HEAR. BUT DURING THE COURSE OF THE TRIAL YOU'RE NOT TO

OBSERVE OR RECEIVE ANY NEWSPAPER ACCOUNTS AS WELL. PLEASE REMEMBER THAT; THAT'S A STANDING INSTRUCTION AS WELL.

NOW, LADIES AND GENTLEMEN, THE INDICTMENT IS THE CHARGE THAT THE STATE PRESENTS TO THE GRAND JURY TO MAKE A DETERMINATION OF PROBABLE CAUSE. IT IS NOT EVIDENCE.

THE INDICTMENT WILL BE SENT TO THE JURY SO THAT YOU WILL KNOW WHAT THE CHARGES MADE AGAINST AN ACCUSED PERSON ARE. I REMIND YOU, IT IS THE CHARGING PAPER. IT IS NOT EVIDENCE IN THE CASE.

NOW, LADIES AND GENTLEMEN, I HAVE TRIED TO OUTLINE TO YOU HOW A CASE IS TRIED, SOME BASIC THINGS I FEEL LIKE YOU WOULD NEED TO KNOW. BEFORE I ACTUALLY START YOU INTO THE FIRST TRIAL, I'M GOING TO GIVE YOU THE ELEMENTS OF THE CHARGE. I'M GOING TO TELL YOU WHAT THE CHARGE IS.

I CAN TELL YOU NOW THAT THE FIRST CHARGE IN THIS CASE, THE FIRST INDICTMENT, ALLEGES THE CRIME OF MURDER. MURDER IS THE KILLING, OBVIOUSLY THE UNLAWFUL KILLING, OF ANOTHER HUMAN BEING WITH MALICE AFORETHOUGHT EITHER EXPRESS OR IMPLIED; THAT IS A STATUTORY PROVISION PROVIDED UNDER THE LAW OF THIS STATE. THAT IS THE DEFINITION OF MURDER.

WE WILL EXPOUND ON THAT AS TO THE ELEMENTS OF IT AT THE CONCLUSION OF THE TRIAL WHEN I GIVE YOU ALL OF THE INSTRUCTIONS ON THE LAW.

SOLICITOR, AT THIS TIME, PLEASE CALL YOUR FIRST CASE.

MR. GRANT: YES, SIR, YOUR HONOR. THIS IS DOCKET 92-GS-

46-1224, THE STATE VERSUS JEFFERY CHRONISTER, INDICTMENT FOR MURDER AND POSSESSION OF A FIREARM IN THE COMMISSION OF A VIOLENT CRIME. HE'S REPRESENTED BY MR. GERALD SMITH AND HARRY DEST FROM THE PUBLIC DEFENDER'S OFFICE.

THE COURT: AND IS THE STATE READY TO PROCEED?

MR. GRANT: THE STATE IS READY TO PROCEED, YOUR HONOR.

THE COURT: IS THE DEFENDANT READY TO PROCEED, MR. SMITH?

MR. SMITH: YES, YOUR HONOR.

THE COURT: THANK YOU, SIR.

LADIES AND GENTLEMEN, I'M NOW GOING TO BE ADDRESSING TO YOU SOME ADDITIONAL QUESTIONS THAT APPLY TO YOUR QUALIFICATION TO SERVE ON THIS INDIVIDUAL CASE. IF ANY OF THESE QUESTIONS WILL REQUIRE A RESPONSE BY YOU, PLEASE STAND UNTIL I HAV RESOLVED THAT WITH YOU. I MAY EVEN ASK YOU TO COME DOWN HERE AND LET ME TALK TO YOU CLOSER WHERE EVERYONE CAN HEAR YOU.

THE PURPOSE, LADIES AND GENTLEMEN, GENERALLY OF THESE QUESTIONS ARE TO ENSURE THAT YOU EITHER DON'T HAVE ANY KNOWLEDGE CONCERNING THE PARTIES OR THE CASE OR THAT YOU HAVE ANY BIAS OR PREJUDICE WHICH WOULD PRESENT YOU FROM BEING A FAIR AND IMPARTIAL JUROR BOTH TO THE STATE OF SOUTH CAROLINA AND TO THE ACCUSED PERSON IN THIS CASE, THE DEFENDANT; THAT'S THE PURPOSE OF THESE QUESTIONS AND NO OTHER PURPOSE.

SO PLEASE IF ANY OF THESE QUESTIONS APPLY TO YOU, PLEASE STAND. IF YOU DON'T UNDERSTAND THE QUESTION, THE WORD, OR THE TERM, OR ANY OF THE NAMES THAT I'VE USED OR CALLED, RAISE YOUR

HAND, I'LL REPEAT IT FOR YOU.

THE FIRST CASE CALLED, LADIES AND GENTLEMEN, AS THE SOLICITOR CALLED THIS CASE IS 92-GS-46-1224, THE STATE VERSUS LYNN JEFFERY CHRONISTER, C-H-R-O-N-I-S-T-E-R, CHARGED IN THIS BILL OF INDICTMENT BY THE GRAND JURY FOR YORK COUNTY WITH THE OFFENSES, TWO COUNTS, MURDER AND UNLAWFUL POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.

THE DEFENDANT, ONCE AGAIN, LADIES AND GENTLEMEN, IS REPRESENTED BY MR. GERALD SMITH OF THE YORK COUNTY BAR.

MR. SMITH, WOULD YOU PLEASE HAVE THE DEFENDANT STAND UP, TURN AROUND, AND FACE THE PETIT JURY PANEL.

(COMPLIED.)

THE COURT: THANK YOU. YOU MAY BE SEATED.

LADIES AND GENTLEMEN, ONCE AGAIN, THESE QUESTIONS ARE DIRECTED TO YOU. SO IF ANY OF THEM APPLY, PLEASE STAND.

ARE THERE ANY MEMBERS OF THE PETIT JURY PANEL, THAT'S YOURSELF, OR ANY MEMBER OF YOUR IMMEDIATE FAMILY -- YOUR IMMEDIATE FAMILY WOULD BE YOUR MOTHER, FATHER, BROTHER, SISTER, SPOUSE, CHILD, OR CHILDREN, ANY OF THOSE PEOPLE -- ARE ANY OF YOU RELATED BY BLOOD OR CONNECTED BY MARRIAGE WITH THE DEFENDANT, LYNN JEFFERY CHRONISTER? IF YOU ARE, PLEASE STAND.

(NO RESPONSE.)

THE COURT: THERE'S NO RESPONSE.

WHAT IS THE MAIDEN NAME OF THE VICTIM PLEASE?

MR. GRANT: YOUR HONOR, IT'S MENARD, M-E-N-A-R-D.

THE COURT: M-E-N-A-R-D?

MR. GRANT: YES, SIR.

THE COURT: IS ANY MEMBER OF THE PETIT JURY PANEL RELATED BY BLOOD OR CONNECTED BY MARRIAGE, ANY MEMBER OF YOUR IMMEDIATE FAMILY WITH THE VICTIM IN THIS CASE, WHO IS MARIE GAIL MENARD CHRONISTER? IF SO, PLEASE STAND.

(NO RESPONSE.)

THE COURT: THERE'S NO RESPONSE.

NOW, LADIES AND GENTLEMEN, I'M GOING TO CALL OUT TO YOU A LIST OF WHAT ARE KNOWN AS POTENTIAL WITNESSES. ALL OF THESE WITNESSES MAY NOT TESTIFY, BUT THEY ARE POTENTIAL WITNESSES. SO WE WANT TO KNOW IF YOU, ANY MEMBER OF THE JURY, OR ANY MEMBER OF YOUR IMMEDIATE FAMILY -- AS I HAVE EXPLAINED TO YOU WHAT THE IMMEDIATE MEMBER OF YOUR FAMILY MEANS -- IS RELATED BY BLOOD OR CONNECTED BY MARRIAGE WITH ANY OF THESE NAMED INDIVIDUALS OR IF YOU HAVE ANY PROFESSIONAL, SOCIAL, OR BUSINESS RELATIONSHIPS WITH ANY OF THESE INDIVIDUALS. SO PLEASE STAND UP IF THAT APPLIES TO ANY OF THESE.

THE FIRST NAME, TRACY STRICKLAND. IS MR. STRICKLAND PRESENT? IF SO, PLEASE STAND.

MR. GRAND: STAND UP.

(COMPLIED.)

THE COURT: THANK YOU, SIR. YOU MAY BE SEATED.

DEAN SHILLINGLAW. MR. SHILLINGLAW.

JIM WILLIAMS. MR. WILLIAMS IS NOT PRESENT.

EDDIE THOMASSON. MR. THOMASSON.

T.B. SMITH.

MR. GRANT: HE'S NOT IN THE COURTROOM, YOUR HONOR.

THE COURT: OTIS WHITSTINE, W-H-I-T-S-T-I-N-E. MR. WHITSTINE.

CORPORAL B.L. LYTTON, L-Y-T-T-O-N.

MR. GRANT: HE'S NOT IN THE COURTROOM.

THE COURT: SERGEANT J. R. MIMS. SERGEANT MIMS IS TO MY RIGHT.

SERGEANT J. R. PHILLIPS. SERGEANT PHILLIPS IS NOT IN THE COURTROOM?

MR. GRANT: NOT IN THE COURTROOM.

THE COURT: R. S. JOHNSTON. HE'S NOT IN THE COURTROOM.

MR. GRANT: NOT PRESENT.

THE COURT: DETECTIVE R. K. POWERS.

MR. GRANT: NOT IN THE COURTROOM, YOUR HONOR.

THE COURT: DETECTIVE W.A. JETER, J-E-T-E-R.

MR. GRANT: HE'S NOT IN THE COURTROOM, YOUR HONOR.

THE COURT: PATROLMAN D.M. ROBINSON. MR. ROBINSON IS TO MY RIGHT. THANK YOU, SIR.

PATROLMAN A.L. SCHMIDT. PATROLMAN SCHMIDT.

BILL RAUM, R-A-U-M.

MR. GRANT: HE'S NOT IN THE COURTROOM, YOUR HONOR.

THE COURT: THESE PEOPLE ARE DUKE POWER EMPLOYEES?

MR. GRANT: YES, SIR.

THE COURT: DAN WILSON. NOT IN THE COURTROOM -- THERE HE IS RIGHT THERE, DAN WILSON.

JOEL SMITH. MR. SMITH IS PRESENT.

EDDIE HUMPHRIES. MR. HUMPHRIES.

MR. GRANT: NOT IN THE COURTROOM, YOUR HONOR.

THE COURT: SHARON LEE. MS. LEE.

SCOTT CRAWFORD. MR. CRAWFORD.

THOMAS AUTEN, A-U-T-E-N. HE'S PRESENT.

GENE WATTS.

MR. GRANT: NOT IN THE COURTROOM, YOUR HONOR.

THE COURT: LARONNE SISK, S-I-S-K.

MR. GRANT: NOT IN THE COURTROOM.

THE COURT: THERE SHE IS.

MR. GRANT: BEG YOUR PARDON.

THE COURT: MARY WALLACE. MS. WALLACE IS PRESENT.

FLOYD NEAL. MR. NEAL.

SIDNEY BALLANGER. MR. BALLANGER.

DR. THOMAS BEHRMAN, B-E-H-R-M-A-N, BEHRMAN.

BARBARA GIBSON.

MR. GRANT: NOT HERE, YOUR HONOR.

THE COURT: DR. EARL JENKINS.

MR. GRANT: NOT IN THE COURTROOM, YOUR HONOR.

THE COURT: JACK CANIPE, C-A-N-I-P-E. JACK CANIPE, NOT PRESENT.

WENDY CHRONISTER. WENDY CHRONISTER. NOT PRESENT.

ALAN G. CLONINGER. NOT PRESENT.

PORTIA JONES. NOT PRESENT.

SCOTT WILLIAMS. NOT PRESENT.

ONCE AGAIN, LADIES AND GENTLEMEN, IF ANY OF YOU ARE RELATED BY BLOOD OR CONNECTED BY MARRIAGE TO ANY OF THOSE NAMED INDIVIDUALS, PLEASE STAND.

(NO RESPONSE.)

THE COURT: NO RESPONSE.

HAS ANY MEMBER OF THE PETIT JURY PANEL, HAVE YOU FORMED OR EXPRESSED AN OPINION AS TO THE GUILT OR INNOCENCE OF THE ACCUSED PERSON, THE DEFENDANT, JEFFERY L. CHRONISTER? IF SO, PLEASE STAND.

YES, MA'AM. COME UP PLEASE. COME ALL THE WAY AROUND PLEASE MA'AM.

(PAUSE.)

THE COURT: I NEED FOR YOU TO COME RIGHT UP HERE TO THIS MICROPHONE BECAUSE THEY NEED TO BE ABLE TO HEAR YOU PLEASE. GIVE US YOUR NAME PLEASE AND YOUR NUMBER.

JUROR: JUDY FAILE, JUROR 34.

THE COURT: GO AHEAD AND STATE ---

JUROR: BECAUSE OF MY PERSONAL RELIGIOUS BELIEFS, I WOULD NOT BE ABLE TO MAKE A JUDGMENT ON THIS CASE.

THE COURT: ALL RIGHT. ANY INQUIRY OF THE STATE OR THE DEFENSE OF THIS JUROR?

MR. SMITH: WE HAVE NONE.

MR. GRANT: NONE BY THE STATE, YOUR HONOR.

THE COURT: ANY POSITION?

MR. GRANT: YOUR HONOR, I WOULD LEAVE IT TO THE DISCRETION OF THE COURT. I'M NOT SURE IT'S A DISQUALIFYING POSITION. IF SHE HAS THOSE PROBLEMS, I CERTAINLY WOULD HAVE SOME RESERVATIONS ABOUT HER BEING ABLE TO BE ON THE JURY, PROPERLY GIVE THE STATE AND THE DEFENSE A FAIR TRIAL.

THE COURT: MR. SMITH.

MR. SMITH: YOUR HONOR, MY POSITION WOULD BE THAT IF THERE IS SUCH A BELIEF, WE WOULD ---

THE COURT: I'M SORRY. I CAN'T HEAR YOU.

MR. SMITH: MY POSITION WOULD BE THAT IF THERE IS SUCH A BELIEF THAT WOULD MAKE IT DIFFICULT FOR THE JUROR TO RENDER AN OPINION, THAT JUROR SHOULD BE EXCUSED.

THE COURT: ALL RIGHT. STAND HER ASIDE ON THIS CASE. YOU MAY STEP BACK. THANK YOU, MA'AM.

ANYONE ELSE?

(NO RESPONSE.)

THE COURT: VERY GOOD. IS ANY MEMBER OF THE PETIT JURY PANEL, ARE YOU CONSCIOUS -- IN OTHER WORDS, ARE YOU AWARE OF ANY INTEREST OR BIAS OR PREJUDICE FOR OR AGAINST THE DEFENDANT IN THIS CASE, JEFFERY L. CHRONISTER? IF SO, PLEASE STAND.

(NO RESPONSE.)

THE COURT: THERE'S NO RESPONSE. DOES ANY MEMBER OF THE PETIT JURY PANEL KNOW OF ANY REASON WHY YOU CANNOT GIVE BOTH

THE STATE OF SOUTH CAROLINA AND THIS DEFENDANT A FAIR AND IMPARTIAL TRIAL? THAT MEANS THAT YOU WOULD FOLLOW THE INSTRUCTIONS OF THE LAW IN THE CASE AS WELL. IF SO, PLEASE STAND IF YOU CANNOT GIVE A FAIR AND IMPARTIAL TRIAL.

(NO RESPONSE.)

THE COURT: THERE HAVE BEEN REQUESTED VOIR DIRE. AT THIS TIME I WILL COVER THOSE VOIR DIRE REQUESTS.

IS ANY MEMBER OF THE PETIT JURY PANEL RELATED BY BLOOD OR CONNECTED BY MARRIAGE WHO IS EMPLOYED BY THE STATE, BY ANY STATE, CITY, COUNTY, OR FEDERAL LAW ENFORCEMENT AGENCY, OR ANY SOLICITORS, DISTRICT ATTORNEYS, STATE ATTORNEY GENERAL OR UNITED STATES ATTORNEYS OFFICE, OR THE UNITED STATES ATTORNEY GENERALS OFFICE? SO THEY WANT TO KNOW IF YOU'RE RELATED BY BLOOD OR MARRIAGE TO ANY ONE WHO IS EMPLOYED IN ANY OF THOSE OFFICES. IF SO, PLEASE STAND.

(NO RESPONSE.)

THE COURT: NO RESPONSE. HAS ANY MEMBER OF THE PETIT JURY PANEL HEARD ANYTHING ABOUT THIS CASE, EITHER HAVING PEOPLE TALK -- HEARD OTHER PEOPLE TALK ABOUT IT, READ IT IN THE NEWSPAPER, SEEN IT ON THE T.V., OR LISTENED TO IT ON THE RADIO PRIOR TO YOUR COMING INTO THE COURTROOM THIS MORNING? IF SO, PLEASE STAND.

(NO RESPONSE.)

THE COURT: THANK YOU. TO IDENTIFY THE CASE IN ADDITION FOR YOU, THE INDICTMENT'S BEEN READ TO YOU. IT IS ALLEGED IN

THE CASE THAT ON OR ABOUT FEBRUARY THE 14TH, 1992 IN YORK COUNTY, THAT THE DEFENDANT, LYNN JEFFERY CHRONISTER, DID FELONIOUSLY, WILFULLY, AND WITH MALICE AFORETHOUGHT KILL ONE MARIE GAIL CHRONISTER BY MEANS OF SHOOTING HER AND THAT SHE, THE SAID VICTIM, DIED AS A PROXIMATE RESULT THEREOF IS COUNT ONE. AND THEN AT THAT TIME THE DEFENDANT WAS IN POSSESSION OF A FIREARM.

TO IDENTIFY THE CASE FURTHER TO YOU, LADIES AND GENTLEMEN, IT IS ALLEGED THAT IT OCCURRED ON OR ABOUT THE PREMISES OF THE CATAWBA NUCLEAR PLANT, AND SPECIFICALLY, THE PARKING AREA AT APPROXIMATELY 6:00 O'CLOCK A.M.

AND ONCE AGAIN, WITH THAT INFORMATION, HAS ANY MEMBER OF THE PETIT JURY PANEL HEARD ABOUT THIS CASE, READ ABOUT IT, SEEN IT ON T.V., OR LISTENED TO IT ON THE RADIO PRIOR TO COMING TO COURT? IF SO, PLEASE STAND.

COME DOWN. I WANT YOU TO STAND UP FIRST. ALL RIGHT. I WANT YOU TO COME RIGHT OVER HERE TO THIS RAIL AND FORM A LINE. EACH OF YOU GET IN A LINE. FORM A LINE RIGHT THERE.

(PAUSE.)

THE COURT: MR. SMITH, MR. GRANT, THE TWO OF YOU COME RIGHT HERE PLEASE.

(PAUSE.)

THE COURT: MA'AM, IF YOU WOULD, COME ON UP HERE PLEASE.

(COMPLIED.)

(THE FOLLOWING TOOK PLACE OUT OF THE HEARING OF THE PETIT

JURY PANEL.)

THE COURT: THE FIRST THING WE NEED TO DO IS WE NEED TO FIND OUT YOUR NAME AND NUMBER.

JUROR: CAROLYN S. MITCHELL, NO. 68.

THE COURT: LET'S CHECK MS. MITCHELL. YES, THAT'S CORRECT. OKAY. MS. MITCHELL, STAND RIGHT BACK JUST A LITTLE. THAT'S FINE. OKAY. NOW, YOU'VE INDICATED THAT YOU HEARD ABOUT THIS CASE IN THE MEDIA OF SOME FASHION OR ANOTHER BEFORE YOU CAME TO COURT?

JUROR: RIGHT.

THE COURT: WHERE DID YOU HEAR ABOUT IT?

JUROR: NEWSPAPER AND T.V.

THE COURT: WHAT HAVE YOU HEARD SPECIFICALLY?

JUROR: JUST WHAT WAS IN THE MEDIA AND THE NEWSPAPER, A MAN AT DUKE POWER SHOT HIS WIFE.

THE COURT: BASED UPON THE INFORMATION YOU HAVE ALREADY HEARD HAVE YOU DECIDED THE GUILT OR INNOCENCE OF THE DEFENDANT IN THIS CASE OR WOULD YOU BE ABLE TO SET THAT ASIDE -- WHATEVER YOU HAVE HEARD, AND LISTEN ONLY TO THE TESTIMONY AND EVIDENCE THAT WILL BE PRESENTED IN THIS COURTROOM?

JUROR: PROBABLY AFFECTED.

THE COURT: DO YOU FEEL YOU COULD NOT SET THAT ASIDE?

JUROR: PROBABLY.

THE COURT: ANY QUESTIONS OF THE JUROR?

MR. SMITH: NO.

MR. GRANT: NO, SIR.

THE COURT: I WANT YOU TO STEP BACK AND GO BACK OUT THERE. HAVE A SEAT.

(JUROR COMPLIED.)

THE COURT: WHAT SAY THE STATE?

MR. GRANT: EXCUSE THE JUROR.

MR. SMITH: I THINK SHE ---

THE COURT: JUROR NO. 68 WE STOOD ASIDE ON THIS CASE. JUROR 68.

NEXT JUROR.

CLERK: THIS IS NO. 107, MS. KENT.

THE COURT: COME ON UP, MS. KENT. (PAUSE.) GOOD MORNING. HOW ARE YOU?

JUROR: FINE.

THE COURT: IF YOU WOULD JUST STAND RIGHT THERE WHERE YOU WILL BE FACING ME. THIS IS JUROR 107, DOROTHY KENT. YOU INDICATED THAT YOU HEARD ABOUT THE CASE BEFORE YOU CAME UP HERE?

JUROR: RIGHT, IN THE NEWSPAPER.

THE COURT: ANY OTHER PLACE OR TALKED ABOUT IT?

JUROR: NO. I KNOW I SAW IT IN THE NEWSPAPER.

THE COURT: DO YOU RECALL WHAT YOU HAVE SEEN?

JUROR: JUST THE REPORTING OF IT. I DON'T REMEMBER IF I READ ANY DETAILS. I JUST REMEMBER THAT IT HAD BEEN A PARKING LOT AT THE CATAWBA NUCLEAR STATION. OTHER THAN THAT, I DON'T

KNOW ANYTHING ABOUT IT, JUST WHAT WAS IN THE NEWSPAPER.

THE COURT: HAVE YOU FORMED AN OPINION?

JUROR: NO, I HAVEN'T.

THE COURT: CAN YOU SET ASIDE WHAT YOU MAY HAVE HEARD OR READ IN THE NEWSPAPER AND LISTEN TO THE TESTIMONY AND EVIDENCE THAT WILL BE PRESENTED UNDER OATH IN THIS COURTROOM AND DETERMINE WHAT THE TRUTH OF THE CASE IS BASED ON THE TESTIMONY AND EVIDENCE HEARD IN THIS COURTROOM AND FOLLOW INSTRUCTIONS OF THE LAW BY THE COURT AND BE FAIR AND IMPARTIAL TO THE DEFENDANT AND TO THE STATE?

JUROR: I BELIEVE I FEEL I CAN BECAUSE I DON'T KNOW ENOUGH ABOUT IT TO MAKE AN OPINION.

THE COURT: DO YOU THINK YOU CAN STAND IT ASIDE, IN OTHER WORDS, DISREGARD IT COMPLETELY?

JUROR: YES.

THE COURT: ANY QUESTIONS?

MR. GRANT: NONE.

MR. SMITH: I DON'T HAVE ANY.

THE COURT: STEP BACK AND HAVE A SEAT.

(JUROR COMPLIED.)

THE COURT: ANY OBJECTION TO THE JUROR?

MR. GRANT: NO, SIR.

MR. SMITH: NO.

THE COURT: THE JUROR IS FINE.

NEXT JUROR.

CLERK: THIS IS NO. 20, MR. CHERRY.

THE COURT: MR. CHERRY. STAND RIGHT THERE PLEASE. HOW ARE YOU DOING?

JUROR: FINE.

THE COURT: MR. CHERRY, YOU INDICATED THAT YOU HAVE HEARD ABOUT THE CASE BEFORE YOU CAME UP HERE THIS MORNING. TELL ME WHAT YOU HAVE HEARD.

JUROR: I READ IN THE CHARLOTTE OBSERVER AND ANOTHER PAPER.

THE COURT: DO YOU REMEMBER WHAT YOU READ?

JUROR: THEY SAY THAT IT WAS HIS WIFE AND HE RUN AND SHOT HER THREE OR FOUR TIMES.

THE COURT: IS THAT ALL YOU REMEMBER?

JUROR: UH-HUH.

THE COURT: BASED ON WHAT YOU READ IN THE PAPER OR HEARD, HAVE YOU DECIDED THE DEFENDANT IS GUILTY OR INNOCENT? IN OTHER WORDS, HAVE YOU FORMED AN OPINION?

JUROR: I HAVE. YES, I HAVE.

THE COURT: CAN YOU SET ASIDE ANY OPINION THAT YOU MAY HAVE FORMED BY WHAT YOU HEARD ABOUT OR READ ABOUT IN THE NEWSPAPER -- IS THAT THE ONLY PLACE?

JUROR: THAT'S THE ONLY PLACE.

THE COURT: CAN YOU SET THAT ASIDE AND LISTEN ONLY TO THE TESTIMONY AND EVIDENCE THAT WILL BE PRESENTED HERE IN THE COURTROOM UNDER OATH FROM THE WITNESS STAND AND FOLLOW THE LAW

AND BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT OR WOULD WHAT YOU HAVE READ IN THE NEWSPAPER PREVENT YOU FROM DOING THAT?

JUROR: I COULD DO THAT.

THE COURT: DO WHAT?

JUROR: I COULD FOLLOW THE LAW.

THE COURT: LET ME ASK YOU THIS: THE STATE OF SOUTH CAROLINA HAS TO PROVE THAT THE PERSON COMMITTED THE CRIME BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

JUROR: THAT'S RIGHT.

THE COURT: HE DOESN'T HAVE TO PROVE HE DIDN'T COMMIT THE CRIME. DO YOU UNDERSTAND HE IS PRESUMED INNOCENT? DO YOU UNDERSTAND THAT?

JUROR: UH-HUH.

THE COURT: WOULD YOU FOLLOW THESE PRINCIPLES OF LAW?

JUROR: YEAH. THE WAY I FEEL ABOUT IT I THINK HE'S GUILTY.

THE COURT: YOU CAN'T SET THAT ASIDE?

JUROR: NO, SIR, I SURE CAN'T.

THE COURT: YOU CAN STEP BACK.

(JUROR COMPLIED.)

THE COURT: WE'LL SET HIM ASIDE. WITHOUT OBJECTION, HE'S STOOD ASIDE.

CALL THE NEXT JUROR.

CLERK: NO. 79, MR. ROBBINS.

THE COURT: GOOD MORNING, MR. ROBBINS. HOW ARE YOU DOING?

JUROR: FINE.

THE COURT: MR. ROBBINS, YOU HAVE INDICATED THAT YOU HEARD ABOUT THIS CASE BEFORE YOU CAME UP HERE THIS MORNING. WHERE HAVE YOU HEARD ABOUT IT?

JUROR: I HEARD IT IN THE NEWSPAPER.

THE COURT: AND DO YOU RECALL WHAT YOU READ?

JUROR: SEEMS LIKE A SHOOTING HAD TAKEN PLACE IN A PARKING LOT; THAT'S ABOUT ALL I REMEMBER.

THE COURT: MR. ROBBINS, HAVE YOU FORMED AN OPINION? IN OTHER WORDS, HAVE YOU DECIDED FROM WHAT YOU READ OR HEARD ABOUT THE GUILT OR INNOCENCE OF THE DEFENDANT?

JUROR: NO, SIR.

THE COURT: CAN YOU SET ASIDE ANYTHING YOU READ ABOUT IN THE NEWSPAPER CONCERNING THE CASE AND DETERMINE WHAT THE TRUTH OF THE CASE IS BASED ON THE TESTIMONY AND EVIDENCE HEARD IN THIS COURTROOM AND FOLLOW THE INSTRUCTIONS OF THE LAW BY THE COURT AND BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT?

JUROR: YES.

THE COURT: ANY QUESTIONS OF THE JUROR?

MR. GRANT: NO.

MR. SMITH: NOT FROM ME.

THE COURT: STEP BACK AND HAVE A SEAT.

(JUROR COMPLIED.)

THE COURT: UNLESS YOU GENTLEMEN HAVE SOME BASIS, I WOULD SAY HE'S QUALIFIED.

MR. SMITH: I THINK SO.

THE COURT: HE'S OKAY.

CLERK: THIS IS NO. 9, MR. BRANDON.

THE COURT: COME UP PLEASE, MR. BRANDON. HOW ARE YOU DOING?

JUROR: JUST FINE.

THE COURT: MR. BRANDON, YOU INDICATED YOU HEARD ABOUT THE CASE BEFORE YOU CAME UP HERE THIS MORNING. WHERE DID YOU HEAR ABOUT IT?

JUROR: JUST THE CHARLOTTE NEWSPAPER WHEN IT JUST HAPPENED.

THE COURT: RADIO, T.V.?

JUROR: T.V. AND THE NEWSPAPER.

THE COURT: T.V. AND THE NEWSPAPER. I SEE THAT YOU WORK AT CLOVER YARNS?

JUROR: RIGHT.

THE COURT: DO YOU RECALL WHAT YOU HEARD AND READ?

JUROR: WELL, I HEARD THE MAN GOT OUT OF HIS CAR AND STEPPED UP AND SHOT HER WHEN SHE WAS COMING OUT.

THE COURT: NOW, BASED UPON THAT, HAVE YOU ALREADY DECIDED AND FORMED AN OPINION THAT THE DEFENDANT IS EITHER GUILTY OR INNOCENT?

JUROR: WELL, I DON'T KNOW ALL THE EVIDENCE, JUST WHAT I HEARD, YOU KNOW.

THE COURT: COULD YOU SET THAT ASIDE? IN OTHER WORDS, DISREGARD THAT AND DETERMINE WHAT THE TRUTH IS IN THE CASE BASED ON ONLY WHAT IS PRESENTED UNDER OATH HERE FROM THE WITNESS STAND AND THE EXHIBITS AND FOLLOW THE INSTRUCTIONS OF THE LAW? COULD YOU DO THAT?

JUROR: YES, SIR, I COULD.

THE COURT: COULD YOU BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT?

JUROR: I COULD, YES.

THE COURT: THE STATE HAS TO PROVE THE PERSON WAS GUILTY BEYOND A REASONABLE DOUBT. IF THE STATE DID NOT DO THAT, WOULD YOU BE ABLE TO WRITE A VERDICT OF NOT GUILTY?

JUROR: YES, SIR, I BELIEVE SO.

THE COURT: DO YOU UNDERSTAND HE DOESN'T HAVE TO PROVE HE DIDN'T COMMIT THE CRIME. THE STATE HAS GOT TO PROVE THAT HE COMMITTED IT.

JUROR: RIGHT.

THE COURT: WOULD YOU FOLLOW THAT RULE OF LAW?

JUROR: (NODS HEAD.)

THE COURT: ALL RIGHT. ANY QUESTIONS BY THE STATE OR DEFENSE?

MR. GRANT: NONE BY THE STATE.

MR. SMITH: HE SAYS HE BELIEVES. HE'S UNCERTAIN.

THE COURT: YOU SAY YOU BELIEVE. IS THERE ANY UNCERTAINTY IN YOUR MIND? IN OTHER WORDS, WOULD YOU BE ABLE TO SET ASIDE WHAT YOU HAVE READ ABOUT?

JUROR: WELL, YOU KNOW, I WOULD HAVE TO HEAR THE EVIDENCE BEFORE I MAKE A DECISION.

THE COURT: THAT'S ALL WE ASKED. WHAT YOU HEARD BEFORE YOU CAME IN HERE TODAY, WOULD THAT AFFECT YOUR ABILITY TO NOW LISTEN TO WHAT IS PRESENTED IN THE COURTROOM?

JUROR: NO, SIR.

THE COURT: CAN YOU SET ASIDE WHAT YOU MAY HAVE HEARD BEFORE YOU CAME IN HERE? IN OTHER WORDS, NOT CONSIDER ANY OF IT? CAN YOU DO THAT?

JUROR: YES, SIR.

THE COURT: ALL RIGHT. ANYTHING ELSE?

MR. SMITH: NOTHING ELSE.

THE COURT: STEP BACK.

(JUROR COMPLIED.)

MR. SMITH: I ASK HE BE EXCUSED BASED ON WHAT I PERCEIVE AS SOME HESITANCY.

THE COURT: WELL, I DON'T SEE ANY EVIDENCE OF THAT WHATSOEVER. HE SAYS HE CAN SET IT ASIDE. HE'S QUALIFIED.

BRING THE NEXT JUROR.

CLERK: NO. 62, MS. MCMOORE.

THE COURT: 62, CATHERINE B. MCMOORE. HOW ARE YOU DOING?

JUROR: FINE.

THE COURT: YOU INDICATED YOU HEARD ABOUT THE CASE BEFOR
YOU CAME UP HERE THIS WEEK?

JUROR: WE TALKED ABOUT IT BECAUSE WE WERE GOING OVER TH
NEWSPAPER AND STUFF, TALKING WITH FRIENDS AND STUFF ABOUT IT,
YOU KNOW.

THE COURT: WHAT DID YOU TALK OVER AND WHAT HAVE YOU
HEARD?

JUROR: I MEAN, WE HAVE TALKED ABOUT IT AND SAW IT IN TH
NEWSPAPER, YOU KNOW, WHEN IT HAPPENED, JUST DISCUSSING IT, YOU
KNOW.

THE COURT: WHAT DO YOU REMEMBER ABOUT IT? WHAT DO YOU
REMEMBER READING?

JUROR: WHAT DID I READ?

THE COURT: YES.

JUROR: WHAT I REMEMBER? THAT IT HAPPENED AT DUKE POWER
OUT IN THE PARKING LOT.

THE COURT: ANYTHING ELSE?

JUROR: NO.

THE COURT: BASED ON WHAT YOU READ ABOUT THIS AND WHAT
YOU HAVE DISCUSSED WITH OTHER PEOPLE, FRIENDS, OR OTHERWISE,
HAVE YOU DECIDED THAT THE DEFENDANT IS GUILTY OR INNOCENT OF
THIS CASE?

JUROR: NO, I HAVEN'T. JUST WHAT I READ WHEN IT
HAPPENED, I HADN'T THOUGHT ABOUT IT.

THE COURT: CAN YOU SET IT ASIDE? I MEAN, NOT JUST

FORGET ABOUT WHAT YOU HAVE HEARD, BUT SET IT ASIDE, STAND IT ASIDE, AND NOT ASSIGN ANY WEIGHT OR BELIEVABILITY TO WHAT YOU MAY HAVE HEARD BEFORE YOU CAME HERE?

JUROR: YES.

THE COURT: AND THEN LISTEN TO ALL THE TESTIMONY AND EVIDENCE PRESENTED UNDER OATH?

JUROR: YES, I CAN.

THE COURT: AND FOLLOW THE LAW AS I GIVE IT TO YOU AND BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT?

JUROR: I CAN. I JUST HAVE TO LISTEN.

THE COURT: THAT'S RIGHT. DO YOU HAVE ANY QUESTION IN YOUR MIND AS TO YOUR ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT IN THIS CASE?

JUROR: ON THE EVIDENCE I CAN HEAR I CAN DECIDE.

THE COURT: DO YOU UNDERSTAND THAT THE STATE HAS THE BURDEN OF PROVING THE PERSON COMMITTED THE CRIME BEYOND A REASONABLE DOUBT?

JUROR: RIGHT.

THE COURT: THAT THE PERSON WHO IS CHARGED, THE DEFENDANT, HE'S INNOCENT. HE IS PRESUMED TO BE INNOCENT.

JUROR: THAT'S RIGHT.

THE COURT: HE DOESN'T HAVE TO PROVE ANYTHING.

JUROR: RIGHT.

THE COURT: DO YOU UNDERSTAND THAT?

JUROR: RIGHT.

THE COURT: WOULD YOU BE ABLE TO FOLLOW THAT PRINCIPLE OF LAW?

JUROR: RIGHT.

THE COURT: ANY QUESTIONS?

MR. GRANT: NONE.

MR. SMITH: NONE, YOUR HONOR.

THE COURT: STEP BACK.

(JUROR COMPLIED.)

THE COURT: ANY QUESTIONS ABOUT HER?

MR. GRANT: NO, SIR.

MR. SMITH: NO.

THE COURT: THE JUROR IS QUALIFIED.

NEXT JUROR.

CLERK: THIS IS NO. 8, MS. BOLIN.

THE COURT: NO. 8, MS. BOLIN. HOW ARE YOU TODAY?

JUROR: FINE.

THE COURT: MS. BOLIN, YOU INDICATED THAT YOU HEARD ABOUT THE CASE BEFORE YOU CAME UP HERE TODAY. WHERE DID YOU HEAR ABOUT IT?

JUROR: ON THE T.V.

THE COURT: JUST THE T.V.?

JUROR: UH-HUH.

THE COURT: DO YOU REMEMBER HOW LONG AGO?

JUROR: I THINK IT WAS RIGHT AT THE TIME IT HAPPENED.

THE COURT: DO YOU RECALL WHAT YOU HEARD AND SAW?

JUROR: JUST THAT A LADY WAS SHOT AT THE DUKE POWER PARKING LOT.

THE COURT: HAVE YOU BASED ON WHAT YOU HEARD OR SEEN ON THE NEWS YOU HAVE ALREADY DECIDED IN YOUR MIND -- HAVE YOU ALREADY FORMED YOUR OPINION THAT THE DEFENDANT IS EITHER GUILTY OR INNOCENT? HAVE YOU DECIDED THAT?

JUROR: NO, I HAVEN'T.

THE COURT: CAN YOU STAND IT ASIDE? IN OTHER WORDS, CAN YOU DISREGARD WHAT YOU MAY HAVE HEARD ABOUT THE CASE BEFORE YOU CAME UP HERE OR SAW AND DETERMINE THE TRUTH OF THE CASE IS BASED ON WHAT IS PRESENTED UNDER OATH FROM THE WITNESS STAND AND THE EXHIBITS AND FOLLOW THE LAW THAT I GIVE YOU AND BE FAIR AND IMPARTIAL BOTH TO THE STATE AND THE DEFENDANT?

JUROR: I THINK SO.

THE COURT: AND DO YOU UNDERSTAND THAT A PERSON WHO IS CHARGED OF A CRIME, IN THIS CASE THE DEFENDANT, IS PRESUMED TO BE INNOCENT? HE DOESN'T HAVE TO PROVE HE DIDN'T COMMIT THE CRIME. THE STATE HAS TO PROVE THAT HE COMMITTED THE CRIME BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

JUROR: YES.

THE COURT: CAN YOU FOLLOW THAT PRINCIPLE OF LAW?

JUROR: YES.

THE COURT: ANY QUESTIONS OF THE JUROR BY THE STATE OR DEFENSE?

MR. GRANT: NOT ANY BY THE STATE?

MR. SMITH: I DON'T THINK SO.

THE COURT: STEP BACK. THANK YOU.

(JUROR COMPLIED.)

THE COURT: ANY QUESTION?

MR. GRANT: NOT BY THE STATE.

MR. SMITH: I THINK SHE'S SUFFICIENTLY QUALIFIED.

THE COURT: NEXT JUROR.

CLERK: NO. 82, MS. SHAVER.

THE COURT: NO. 82. MS. SHAVER, HOW ARE YOU DOING?

JUROR: JUST FINE.

THE COURT: LET ME FIND YOUR NAME ON HERE. JUROR NO. 82, BONNIE J. SHAVER, RIGHT?

JUROR: YEAH.

THE COURT: MS. SHAVER, YOU INDICATED THAT YOU HEARD ABOUT THE CASE BEFORE YOU CAME UP HERE THIS MORNING.

JUROR: I HAVE READ IT IN THE PAPER.

THE COURT: NEWSPAPER. OKAY. DO YOU RECALL WHAT YOU READ?

JUROR: JUST THAT A LADY WAS KILLED AT DUKE POWER. I DON'T KNOW THE NAME OR THE SITUATION OR ANYTHING.

THE COURT: BASED ON WHAT YOU READ HAVE YOU ALREADY DECIDED, IN OTHER WORDS, FORMED YOUR OPINION AS TO THE DEFENDANT'S GUILT OR INNOCENCE IN THIS CASE?

JUROR: (SHAKES HEAD.)

THE COURT: MA'AM?

JUROR: NO.

THE COURT: YOU NEED TO ANSWER OUT. THIS LADY NEEDS TO HEAR YOU TOO. SHE'S THE COURT REPORTER. SHE'S PUTTING EVERYTHING DOWN OF WHAT YOU'RE SAYING.

ARE YOU ABLE TO STAND IT ASIDE, IN OTHER WORDS, DISREGARD WHAT YOU MAY HAVE READ ABOUT IN THIS CASE AND DETERMINE THE TRUTH OF THE CASE BASED UPON WHAT WOULD BE PRESENTED UNDER OATH FROM THE WITNESS STAND AND THE EXHIBITS AND THEN FOLLOW THE LAW THAT I CHARGE AND BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENSE? WOULD IT AFFECT YOUR ABILITY TO DO THAT?

JUROR: NO, SIR, IT WOULDN'T.

THE COURT: DO YOU FEEL YOU COULD BE FAIR AND IMPARTIAL BOTH TO THE STATE AND THE DEFENDANT?

JUROR: YES, SIR.

THE COURT: HAVE YOU FORMED ANY OPINIONS AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT IN THIS CASE?

JUROR: NO.

THE COURT: ANY QUESTIONS BY THE STATE OR DEFENSE?

MR. GRANT: NONE.

MR. SMITH: NO.

THE COURT: THANK YOU. STEP BACK.

(JUROR COMPLIED.)

THE COURT: THE JUROR IS FINE.

NEXT JUROR.

CLERK: NO. 61, MR. MCMANUS.

THE COURT: MR. MCMANUS, HOW ARE YOU DOING?

JUROR: JUST FINE.

THE COURT: DAVID D. MCMANUS, RIGHT?

JUROR: RIGHT.

THE COURT: MR. MCMANUS, YOU RESPONDED TO A QUESTION THAT YOU HEARD ABOUT THE CASE BEFORE YOU CAME UP HERE THIS MORNING.

JUROR: YES.

THE COURT: WHAT HAVE YOU HEARD?

JUROR: THE ONLY THING I HEARD WAS ON THE T.V. THAT A LADY HAD BEEN SHOT IN THE PARKING LOT AT DUKE POWER AND THAT HER HUSBAND HAD BEEN CHARGED -- I BELIEVE IT WAS LATER. OUTSIDE OF THAT, THAT'S ALL I KNOW ABOUT THE CASE.

THE COURT: HAVE YOU BASED ON WHAT YOU HEARD ABOUT THIS CASE DECIDED OR FORMED AN OPINION THAT THE DEFENDANT IS EITHER GUILTY OR INNOCENT OF THE CHARGE?

JUROR: NO, SIR.

THE COURT: CAN YOU STAND ASIDE WHAT YOU MAY HAVE HEARD ABOUT THE CASE AND DETERMINE THE CASE BASED ONLY UPON THE EVIDENCE INTRODUCED UNDER OATH FROM THE WITNESS STAND AND THE EXHIBITS AND FOLLOW THE LAW THAT I WILL GIVE YOU AND BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT? WOULD IT AFFECT YOUR ABILITY TO DO THAT?

JUROR: IT WOULDN'T. I FEEL I COULD BE ABLE TO DO THAT.

THE COURT: THANK YOU. ANY QUESTION?

MR. GRANT: NONE.

MR. SMITH: NONE.

THE COURT: NO RESERVATION. THANK YOU. YOU MAY STEP BACK.

(JUROR COMPLIED.)

THE COURT: THIS JUROR IS QUALIFIED.

NEXT JUROR.

CLERK: NO. 103, MS. BENNETT.

THE COURT: THIS IS JUROR 103, SHIRLEY B. BENNETT. HOW ARE YOU DOING?

JUROR: FINE.

THE COURT: MS. BENNETT, YOU RESPONDED TO HAVING HEARD ABOUT THE CASE BEFORE YOU CAME HERE THIS MORNING. WHAT AND WHERE HAVE YOU HEARD IT?

JUROR: THE MEDIA AND READ THE NEWSPAPER, THOSE KINDS OF THINGS.

THE COURT: ANYTHING OTHER THAN THE NEWSPAPER, RADIO, OR T.V.?

JUROR: NO. JUST HAD SOME DISCUSSIONS WITH MY RELATIVES OF THAT, THAT'S ALL.

THE COURT: YOU DISCUSSED IT WITH FAMILY?

JUROR: (NODS HEAD.)

THE COURT: TELL ME WHAT YOU HEARD AND WHAT YOU DISCUSSED WITH FAMILY AS TO THIS CASE?

JUROR: IT APPEARED FROM WHAT I READ AND SAW ON T.V. IT SEEMED TO BE A PREMEDITATED KIND OF SITUATION. AND WE

DISCUSSED THE FACT THAT WHEN THIS CAME TO TRIAL WOULD IN FACT IT BE A SITUATION WHERE AN INSANITY KIND OF THING MIGHT BE DISCUSSED OR USED AS A DEFENSE.

THE COURT: THAT'S WHAT WE WANT.

JUROR: THAT THERE WAS LACK OF PROTECTION FOR THE WOMAN, WHO I THINK SHE HAD MADE SEVERAL PLEAS FOR HELP WITH REFERENCE TO THE HARASSMENT -- THOSE KINDS OF THINGS IF THAT'S -- I THINK THAT'S WHAT I RECALL.

THE COURT: BASED ON WHAT YOU HEARD ABOUT THIS AND DISCUSSED WITH FAMILY MEMBERS AND OTHERWISE OR READ ABOUT IT, HAVE YOU ALREADY FORMED AN OPINION? HAVE YOU DECIDED IF THE DEFENDANT IS GUILTY OR INNOCENT IN THIS CASE?

JUROR: I WOULD LIKE TO SAY I COULD HEAR THE EVIDENCE AND BE TOTALLY FAIR BECAUSE I FEEL I'M A FAIR MINDED PERSON, BUT I'M NOT REALLY SURE.

THE COURT: WHAT HAVE YOU DECIDED IN YOUR OWN MIND BASED UPON WHAT YOU READ ABOUT AND HEARD ABOUT THE CASE AND DISCUSSED ABOUT THE DEFENDANT?

JUROR: IT APPEARS TO ME THAT FROM WHAT I HAVE READ THAT HE'S GUILTY OF THE CRIME.

THE COURT: IS THAT AN OPINION SUCH THAT YOU COULD NOT SET IT ASIDE AND DETERMINE THE TRUTH OF THE CASE BASED ON THE TESTIMONY AND EVIDENCE PRESENTED IN THE COURTROOM AND FOLLOW THE INSTRUCTIONS OF THE LAW THAT THE COURT WOULD GIVE TO YOU AND BE FAIR AND IMPARTIAL BOTH TO THE STATE AND THE DEFENDANT

OR WOULD IT AFFECT YOUR ABILITY TO DO THAT? WE WANT YOU TO BE VERY CANDID WITH US IN THAT REGARD.

JUROR: AGAIN, I WOULD THINK I CAN BE FAIR ENOUGH TO DO THAT, BUT I'M NOT REALLY SURE.

THE COURT: DO YOU UNDERSTAND THE PRINCIPAL OF LAW THAT THE STATE HAS TO PROVE THE PERSON GUILTY BEYOND A REASONABLE DOUBT?

JUROR: YES, SIR.

THE COURT: THE PERSON ACCUSED IS PRESUMED INNOCENT AND DOES NOT HAVE TO PROVE THEIR INNOCENCE.

JUROR: YES, SIR.

THE COURT: FROM WHAT YOU HAVE READ AND HEARD IN THIS CASE, WOULD YOU BE ABLE TO PRESUME THE PERSON INNOCENT OR WOULD YOU EXPECT HIM TO PROVE HE DID NOT COMMIT THE CRIME?

JUROR: I'M NOT SURE I KNOW HOW TO ANSWER THAT, TO BE HONEST WITH YOU.

THE COURT: ANY QUESTIONS OF THE STATE?

MR. GRANT: NO, SIR, I DON'T THINK SO.

MR. SMITH: YOUR HONOR, I WOULD JUST ASK THAT HAS THE DISCUSSIONS SHE HAS HAD HAD AN IMPACT ON HER. I WOULD JUST ASK YOU TO INQUIRE FURTHER AS TO THE IMPACT OF THE DISCUSSIONS, ARE THEY GOING TO STAY WITH HER IN THE JURY ROOM? I'M NOT SURE HOW TO PHRASE THE QUESTION. I'M JUST CONCERNED ABOUT THE IMPACT OF THE DISCUSSIONS ON HER.

THE COURT: WELL, SHE'S RESPONDED TO THAT. YOU MAY STEP

BACK. THANK YOU, MA'AM.

(JUROR COMPLIED.)

THE COURT: WHAT SAY THE STATE?

MR. GRANT: YOUR HONOR, AS MUCH AS I WOULD LIKE TO HAVE HER, I THINK SHE HAS TOO MUCH RESERVATIONS TO BE CONSIDERED.

THE COURT: AGREED. JUROR 103 IS STOOD ASIDE.

NEXT JUROR.

CLERK: NO. 67. MS. MILLER.

THE COURT: ALL RIGHT. MS. MILLER. JUROR 67, PEARLIE B MILLER. YOU STOOD IN RESPONSE TO THE QUESTION ABOUT HAVING HEARD ABOUT THIS CASE BEFORE YOU CAME HERE THIS MORNING. WHERE DID YOU HEAR ABOUT THIS CASE BEFORE?

JUROR: I DIDN'T HEAR THIS MORNING.

THE COURT: I MEAN BEFORE.

JUROR: OH, ON THE TELEVISION.

THE COURT: TELEVISION. WHAT ABOUT THE NEWSPAPER?

JUROR: I DON'T TAKE THE PAPER.

THE COURT: WHAT DO YOU RECALL?

JUROR: ABOUT IT?

THE COURT: YES.

JUROR: I THINK IT MIGHT HAVE BEEN A NEWS BULLETIN. IT HAPPENED AT THE CATAWBA NUCLEAR PLANT AND THAT A LADY HAD BEEN KILLED.

THE COURT: ANYTHING ELSE?

JUROR: NO.

THE COURT: HAVE YOU PERSONALLY DECIDED THAT THE DEFENDANT IS GUILTY OF THIS CHARGE OR INNOCENT? HAVE YOU DECIDED THAT?

JUROR: I DIDN'T FORM ANY OPINION AT THE TIME AND I HAVEN'T FORMED ONE. I DIDN'T KNOW ABOUT THE CASE UNTIL I CAME TODAY.

THE COURT: IF YOU WERE SELECTED AS A JUROR, CAN YOU STAND ASIDE WHAT YOU MAY HAVE HEARD ABOUT THIS CASE FROM THE NEWS MEDIA AND DETERMINE THE TRUTH OF THE CASE BASED ON WHAT IS PRESENTED UNDER OATH FROM THE WITNESS STAND AND THE EXHIBITS AND FOLLOW THE LAW WHICH I WILL GIVE TO THE JURY AND BE FAIR AND IMPARTIAL TO BOTH THE STATE AND THE DEFENDANT OR WOULD IT AFFECT YOUR ABILITY?

JUROR: NO, IT WOULD NOT AFFECT MY ABILITY BECAUSE AFTER HEARING WHAT YOU SAID THIS MORNING ABOUT IT.

THE COURT: HE IS PRESUMED INNOCENT?

JUROR: YEAH, RIGHT.

THE COURT: CAN YOU FOLLOW THAT?

JUROR: YES.

THE COURT: ANY OTHER QUESTIONS?

MR. GRANT: NOT BY THE STATE.

MR. SMITH: NOTHING.

THE COURT: THANK YOU. STAND BACK.

(JUROR COMPLIED.)

THE COURT: SHE'S QUALIFIED.

(PAUSE.)

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THANK YOU FOR YOUR PATIENCE WITH US. THE NEXT QUESTION, LADIES AND GENTLEMEN: IS ANY MEMBER OF THE PETIT JURY PANEL, YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY, A MEMBER OF ANY GROUP SUCH A M.A.D.D., MOTHERS AGAINST DRUNK DRIVERS, S.A.D.D., STUDENTS AGAINST DRUNK DRIVING, C.A.V.E., CITIZENS AGAINST VIOLENT CRIME, OR ANY OTHER GROUP THAT IS AFFILIATED WITH SUCH ORGANIZATIONS? SO IF YOU ARE, PLEASE STAND. IT'S NOT DISQUALIFYING, IT'S JUST INFORMATION. WE JUST NEED TO KNOW THAT.

YES, MA'AM, YOUR NAME PLEASE AND NUMBER.

JUROR: NO. 10. MY NAME IS ANN FORD. MY DAUGHTER IS A MEMBER OF S.A.D.D.

THE COURT: YOUR DAUGHTER IS A MEMBER OF S.A.D.D. THANK YOU, MA'AM. YOU MAY BE SEATED.

ANYONE ELSE?

(NO RESPONSE.)

THE COURT: NO OTHER RESPONSE.

HAS ANY MEMBER OF THE PETIT JURY PANEL OR ANY MEMBER OF YOUR IMMEDIATE FAMILY EVER BEEN THE VICTIM OR THE COMPLAINANT IN ANY CRIMINAL MATTER? IN OTHER WORDS, HAVE YOU BEEN THE VICTIM OF A CRIME OR YOU MADE A COMPLAINT AGAINST SOMEONE CONCERNING A CRIME? IF SO, PLEASE STAND.

(NO RESPONSE.)

THE COURT: I MEAN, A VICTIM, LIKE FOR EXAMPLE HAS YOUR HOME BEEN BROKEN INTO OR THAT YOU WERE ASSAULTED FOR EXAMPLE OR ANYTHING LIKE THAT, YOU WERE A VICTIM.

YES, MA'AM, YOUR NAME PLEASE AND NUMBER.

JUROR: MY NAME IS LILLIAN SHELBORNE. I WAS NOT A VICTIM. MY HUSBAND WAS A VICTIM OF A VIOLENT CRIME.

THE COURT: YOUR NAME AGAIN PLEASE.

JUROR: LILLIAN SHELBORNE.

THE COURT: MS. SHELTON?

JUROR: SHELBORNE.

THE COURT: SHELBORNE. I CAN HARDLY HEAR YOU BECAUSE OF THE AIR CONDITION ABOVE ME.

CLERK: NO. 116.

THE COURT: NO. 116. AND IT WAS YOUR HUSBAND THAT WAS A VICTIM, RIGHT?

JUROR: YES, SIR.

THE COURT: THANK YOU, MA'AM. YOU MAY BE SEATED.

DO YOU NEED SOMETHING?

MR. SMITH: MAY WE APPROACH, YOUR HONOR?

THE COURT: YES.

(A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE PETIT JURY PANEL BUT NOT IN THE HEARING OF THE PETIT JURY PANEL.

THE COURT: YES, MA'AM, YOU MAY BE SEATED. WE'VE STOOD YOU ASIDE IN THIS CASE.

YES, SIR, YOUR NAME.

JUROR: KENNETH NUNNERY, NO. 73. MY HOME WAS BURGLARIZED.

THE COURT: YOUR HOME WAS BURGLARIZED. THANK YOU, SIR.

ANYONE ELSE?

(NO RESPONSE.)

THE COURT: NO. 8 HAS BEEN SUBSTANTIALLY ASKED.

NO. 9 HAS.

IS ANY MEMBER OF THE PETIT JURY PANEL OR ANY MEMBER OF YOUR IMMEDIATE FAMILY AN EMPLOYEE OF DUKE POWER COMPANY OR AN SUBSIDIARY OF DUKE POWER OR IF YOU'RE ENGAGED IN ANY WORK FOR OR AT THE CATAWBA NUCLEAR POWER STATION? SO THEY WANT TO KNOW IF YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY WORKS AS AN EMPLOYEE AT DUKE POWER OR THE CATAWBA NUCLEAR POWER STATION OR ANY SUBSIDIARY OF DUKE POWER? IF SO, PLEASE STAND.

STARTING ON THE FIRST RIGHT THERE, SIR. YOUR NAME AND NUMBER -- I'M SORRY, THIS LADY IN FRONT OF YOU. YOUR NAME PLEASE, MA'AM.

JUROR: ELIZABETH JENNINGS, NO. 48.

THE COURT: AND DO YOU WORK FOR ONE OF THESE OR SOME MEMBER ---

JUROR: I HAVE AN EX-DAUGHTER-IN-LAW THAT DOES. SHE'S VERY CLOSE TO ME THOUGH.

THE COURT: OKAY. WHERE DOES SHE WORK?

JUROR: SHE WORKS AT SENECA FOR DUKE POWER.

THE COURT: SENECA. WORKS FOR DUKE POWER?

JUROR: YES, SIR.

THE COURT: THANK YOU. YOU MAY BE SEATED.

YES, SIR, YOUR NAME PLEASE.

JUROR: STEPHEN EPPS, NO. 32. I HAVE A BROTHER EMPLOYED AT CATAWBA PROJECT.

THE COURT: AT THE CATAWBA NUCLEAR PROJECT?

JUROR: YES.

THE COURT: THANK YOU.

YES, MA'AM, YOUR NAME PLEASE AND NUMBER.

JUROR: BRENDA SMITH, NO. 83. MY BROTHER, HE WORKS AT OCONEE FOR DUKE POWER.

THE COURT: WORKS AT OCONEE. THANK YOU. YOU MAY BE SEATED.

YES, MA'AM.

JUROR: ANN FORD, NO. 10. I HAVE ONE BROTHER EMPLOYED BY DUKE POWER AT THE SENECA STATION, ANOTHER BROTHER EMPLOYED BY DUKE NUCLEAR MAINTENANCE. HE WORKS FOR VARIOUS PLANTS. HE HAS WORKED AT CATAWBA.

THE COURT: HAVE ANY OF THEM WORKED AT THE CATAWBA NUCLEAR POWER STATION?

JUROR: YES.

THE COURT: WHICH ONE?

JUROR: OCCASIONALLY. THE ONE THAT'S IN NUCLEAR MAINTENANCE.

THE COURT: OKAY. THANK YOU, MA'AM. YOU MAY BE SEATED.

YES, SIR, YOUR NAME PLEASE AND NUMBER.

JUROR: I HAVE TWO SONS THAT WORK FOR DUKE AT OCONEE.

THE COURT: WHAT'S YOUR NAME SIR?

JUROR: IRA ADAMS.

THE COURT: AND YOUR NUMBER, MR. ADAMS?

JUROR: NO. 1.

THE COURT: NO. 1. AND YOUR TWO SONS WORK AT OCONEE, RIGHT?

JUROR: (NODS HEAD.)

THE COURT: THANK YOU, SIR. YOU MAY BE SEATED.

ANYONE ELSE?

(NO RESPONSE.)

THE COURT: ALL RIGHT. ANY FURTHER INQUIRY OF THE STIT JURY PANEL BY THE STATE?

MR. GRANT: NONE BY THE STATE, YOUR HONOR.

THE COURT: BY THE DEFENSE?

MR. SMITH: NONE FROM THE DEFENSE.

THE COURT: THANK YOU.

LADIES AND GENTLEMEN, THE NEXT PROCESS WILL BE FOR US TO BEGIN SELECTING YOU. THAT PROCESS WILL BE BY THE CLERK DRAWING NAMES FROM THE JURY BOX. WHAT'S OCCURRED IS YOUR NAME IS PLACED IN LITTLE CAPSULES AND DRAWN OUT ONE AT A TIME.

WE'RE FAIRLY CLOSE TO LUNCHTIME. WE CAN GO AHEAD AND PROCEED, CAN'T WE GENTLEMEN?

MR. GRANT: YES, SIR.

MR. SMITH: YES, SIR.

THE COURT: WE MIGHT AS WELL DO THAT.

AS THEY CALL YOUR NAME, LADIES AND GENTLEMEN, PLEASE COME FORWARD. BRING WITH YOU ANY ITEMS THAT YOU MAY HAVE BROUGHT WITH YOU THIS MORNING, UMBRELLA, POCKETBOOK, WHATEVER.

WHERE DO YOU ALL NORMALLY HAVE THE JURORS STAND? RIGHT HERE IN FRONT OF YOU OR OVER HERE TO THE LEFT?

STAND RIGHT HERE WHERE THE BAILIFF IS STANDING TO MY LEFT, THE LADY IN THE RED JACKET. YOU COME THERE AND STAND JUST LIKE SHE'S STANDING, FACING OUT, AND REMAIN STANDING UNTIL I DIRECT YOU OTHERWISE.

LET THE RECORD REFLECT THE BOX HAS BEEN PREPARED IN ACCORDANCE WITH THE LAW AND WILL BE DRAWN BY THE DEPUTY CLERK WITHOUT OBJECTION FROM COUNSEL. STATE OR DEFENSE?

MR. SMITH: NO OBJECTION.

MR. GRANT: NO OBJECTION.

THE COURT: THANK YOU, GENTLEMEN.

YOU MAY CALL YOUR FIRST JUROR.

(THE JURY WAS EMPANELED AT 1:13 P.M.)

THE COURT: GENTLEMEN, EVEN THOUGH I'M NOT GOING TO SWEAR THE JURY AT THIS TIME, UNTIL AFTER LUNCH, ARE THERE ANY CHALLENGES TO THE SWEARING OF THE JURY BY THE STATE OR THE DEFENSE?

MR. GRANT: NONE BY THE STATE, YOUR HONOR.

MR. SMITH: NONE, YOUR HONOR.

THE COURT: VERY GOOD.

LADIES AND GENTLEMEN, WE'RE GOING TO BRING YOU BACK. WE'VE YOU OVER THE LUNCHTIME, AND I APOLOGIZE TO YOU, BUT I WAS TRYING SO WE DON'T HAVE TO BRING EVERYBODY BACK. I APOLOGIZE. I'M GOING TO GIVE YOU A LITTLE EXTRA TIME.

WHAT I'M GOING TO DO LADIES AND GENTLEMEN IS I'M GOING TO ASK YOU TO STEP TO THE JURY ROOM. THEY'LL SHOW YOU WHERE IT IS SO YOU WILL KNOW WHERE TO REPORT BACK TO.

THERE IS A MATTER I MUST DEAL WITH, CERTAIN THINGS ABOUT LAW I HAVE TO DEAL WITH FIRST. AND I'M GOING TO BRING THESE PEOPLE BACK IN TIME TO DO THAT. GENTLEMEN, ARE WE PREPARED TO DO THAT AT 2:30? WILL 30 MINUTES GIVE US ENOUGH TIME?

MR. GRANT: YES, SIR.

THE COURT: MR. SMITH, WILL 30 MINUTES GIVE US ENOUGH TIME DO YOU THINK?

MR. SMITH: I BELIEVE SO.

THE COURT: ALL RIGHT. I'M GOING TO BRING THE JURY BACK AT 3:00, SO THEY WON'T HAVE TO BE WAITING.

I'M GOING TO EXCUSE YOU UNTIL 3:00 O'CLOCK. AS SOON AS YOU KNOW WHERE THE JURY ROOM IS, YOU MAY GO AHEAD AND GO DO WHATEVER YOU LIKE, JUST BE BACK IN THE JURY ROOM.

PLEASE NOW, NO DISCUSSION AMONG YOURSELVES NOR ALLOW ANYONE ELSE TO TALK TO YOU ABOUT THIS CASE. WHEN WE COME BACK, WE'RE GOING TO PROCEED THROUGH THE TRIAL OF THE CASE.

NOW, MR. PALMER, I HAVE DESIGNATED YOU AS THE FOREPERSON

FOR THE JURY. YOU WILL BE THE SPOKESPERSON FOR THE JURY. IN THAT REGARD IF THE JURY HAS ANY COMMUNICATIONS TO MAKE WITH ME, THEN THEY HAVE TO DO IT THROUGH YOU. YOU WOULD WRITE IT OUT, WHATEVER THE COMMUNICATION WAS, THE QUESTION, SIGN YOUR NAME, GIVE IT TO THE BAILIFF, THEY'LL GIVE IT TO ME. THAT'S THE ONLY WAY I'M PERMITTED TO COMMUNICATE WITH YOU. IT HAS TO BE OUT HERE ON THE RECORD.

IN ADDITION TO WHICH, YOU WILL WRITE THE VERDICT FOR THE JURY WHEN IT HAS A VERDICT. ALL RIGHT, SIR. THANK YOU FOR BEING WILLING TO SERVE IN THAT CAPACITY. THAT SEAT THAT YOU ARE OCCUPYING IS RESERVED FOR YOU THROUGHOUT THE TRIAL OF THE CASE. ALL RIGHT.

THERE ARE TWO ALTERNATES IN THIS CASE, MS. GIBSON AND MR. MCMANUS. THOSE TWO SEATS ARE RESERVED FOR YOU. ALL RIGHT. YOU GO BACK TO THAT SAME SEAT EACH TIME.

MR. JORDAN, I'M GOING TO RESERVE THAT SEAT FOR YOU. ALL RIGHT.

THE REST OF YOU CAN SWITCH AROUND. YOU SIT ANYWHERE YOU LIKE OVER THERE IN THE JURY BOX BUT NOT IN THOSE FOUR SEATS. OKAY.

ANY QUESTIONS ABOUT THAT?

(NO RESPONSE.)

THE COURT: I'M GOING TO LET YOU GO AHEAD AND GO TO LUNCH. JUST LET THEM SHOW YOU WHERE THE JURY ROOM IS SO YOU YOU'LL REPORT BACK THERE. DON'T COME INTO THE COURTROOM. GO

STRAIGHT TO THE JURY ROOM. BUT BE BACK THERE BY 3:00 O'CLOCK
ALL RIGHT. YOU MAY NOW GO.

EVERYONE ELSE REMAIN SEATED WHILE THE JURY GOES.

YOU MAY GO.

(THE JURY LEAVES THE COURTROOM AT 1:15 P.M.)

(THE PETIT JURY PANEL WAS EXCUSED.)

THE COURT: GENTLEMEN, I'LL BE PREPARED TO HEAR THAT MATTER AT 2:30. THAT'LL GIVE YOU TIME, I THINK, TO EAT LUNCH 2:30?

MR. SMITH: YES, YOUR HONOR.

THE COURT: IF NOTHING ELSE, WE'LL BE IN RECESS. WHEN W COME BACK AT 2:30 I'LL ALSO PLACE ON THE RECORD THE HANDLING OF THE WRITTEN MOTIONS THAT ARE NOW NOTICED TO THE COURT BY MR. SMITH.

ANYTHING ELSE BEFORE WE STOP FOR LUNCH?

MR. GRANT: YOUR HONOR, THE ONLY THING IS TO MAKE SURE I'M CLEAR.

(A BENCH CONFERENCE WAS HELD.)

THE COURT: MADAM COURT REPORTER, WE HAVE ANOTHER MATTER THE STATE NEEDS IN ANOTHER CASE RESOLVED. I TOLD HIM WE'D BE BACK AT 2:15 FOR US. ALL RIGHT.

COURT WILL BE IN RECESS FOR PARTIES IN THIS CASE UNTIL 2:30, FOR THE COURT AND COURT REPORTER AT 2:15 TO HANDLE THE OTHER MATTERS. COURT IS IN RECESS.

(LUNCH RECESS WAS TAKEN.)

(THE FOLLOWING WAS TAKEN IN CAMERA.)

MOTIONS:

THE COURT: ALL RIGHT. WE'RE NOW GOING TO RETURN TO THE CASE OF THE TRIAL, THE CASE OF STATE VERSUS JEFFERY L. CHRONISTER. COUNSEL FOR THE STATE IS PRESENT. COUNSEL FOR DEFENSE AND DEFENDANT ARE PRESENT.

STATE READY TO PROCEED?

MR. GRANT: STATE IS, YOUR HONOR.

THE COURT: DEFENDANT READY TO PROCEED?

MR. SMITH: YES, YOUR HONOR. I BELIEVE AT THIS TIME YOU WERE GOING TO PUT ON THE RECORD THE MOTIONS.

THE COURT: I AM. I'M GOING TO COVER THEM RIGHT NOW.

MR. SMITH: ALL RIGHT, SIR.

THE COURT: YOU LISTEN, MR. SMITH. THEY MADE WRITTEN MOTIONS, THE FIRST ONE WAS TO DETERMINE WHETHER OR NOT THE STATE HAS COMPLIED WITH RULE 5 DISCOVERY AND BRADY.

THE STATE HAS REPRESENTED TO THE COURT AND TO MR. SMITH IN CHAMBERS THAT HE HAS COMPLIED; IS THAT CORRECT, SOLICITOR?

MR. GRANT: THAT'S CORRECT, YOUR HONOR.

THE COURT: THE SECOND IS THE QUESTION IN ESSENCE, A JACKSON VERSUS DENNO HEARING. THAT WILL BE HELD IN CAMERA.

THE THIRD WAS A MOTION TO DETERMINE COMPETENCY OF THE DEFENDANT TO STAND TRIAL, A BLAIR HEARING. WE'RE GOING TO PROCEED WITH THAT NEXT.

THE FOURTH WAS TO SUPPRESS PHYSICAL EVIDENCE SEIZED FROM

THE PREMISES AND/OR VEHICLES OF THE DEFENDANT.

THE STATE REPRESENTS AS I UNDERSTAND THAT THERE WOULD BE NO OFFER OF EVIDENCE OF SUCH ITEMS; IS THAT CORRECT?

MR. GRANT: THAT IS CORRECT, YOUR HONOR. WE'RE GOING TO OFFER A PHOTOGRAPH OF THE VEHICLE, BUT THAT'S NOT EVIDENCE THAT WAS SEIZED.

THE COURT: ALL RIGHT. THE NEXT ONE, THE FIFTH ONE, IS A MOTION TO SUPPRESS ANY AND ALL STATEMENTS, WHETHER WRITTEN OR ORAL, MADE BY THE DEFENDANT TO NON-LAW ENFORCEMENT PERSONS. WE'LL TREAT THAT AS AN IN-CAMERA HEARING TOO.

I UNDERSTAND THE STATE'S POSITION IS IT DOES NOT APPLY TO MIRANDA, OF COURSE, AND IT'S ADMISSIBLE AS A DECLARATION AGAINST INTEREST, PENAL.

THE SIXTH ONE IS THE MOTION TO DETERMINE THE ADMISSIBILITY OF ANY AUDIO OR VIDEO RECORDINGS.

AS I UNDERSTAND THE STATE DOES NOT SEEK TO OFFER ANY OF THOSE?

MR. GRANT: THAT'S CORRECT, YOUR HONOR.

THE COURT: THE SEVENTH WAS TO DETERMINE WHAT CRIMES IF ANY AND THE PRIOR RECORD THE DEFENDANT MAY HAVE AS TO CRIMES OF MORAL TURPITUDE FOR PURPOSES OF IMPEACHMENT.

THE STATE HAS REPRESENTED THEY HAVE NO RECORD WHICH THEY WOULD SEEK TO IMPEACH ON.

MR. GRANT: YOUR HONOR, MY UNDERSTANDING, HE HAS NO RECORD OF CRIMES OF MORAL TURPITUDE.

THE COURT: ALL RIGHT. AND THAT BEING NONE, YOU WILL NOT BE ALLOWED TO USE ANY.

MR. GRANT: YES, SIR.

THE COURT: NO. 8 IS A MOTION TO LIST THE STATE'S WITNESSES; THAT'S BEEN COMPLIED WITH.

MR. SMITH: I HAVE NOT BEEN GIVEN A LIST.

THE COURT: I READ THEM OUT WHEN ---

MR. SMITH: I HAVE THAT, YOUR HONOR.

THE COURT: ALL RIGHT. IF YOU WANT A COPY FROM MINE, I'LL GIVE YOU MINE BUT YOU GIVE IT BACK TO ME. DO YOU WANT IT?

MR. SMITH: IF I COULD, YOUR HONOR.

THE COURT: SURE. WE'RE NOT PLAYING GAMES. EVERYBODY'S ENTITLED.

NO. 9, MOTION FOR A PRIOR RECORD OF ANY OF THE STATE'S LAY WITNESSES AND WHETHER OR NOT THERE'S ANY CRIMES OF MORAL TURPITUDE.

THE STATE HAS REPRESENTED TO THE COURT THAT NONE OF THEM HAVE RECORDS THAT WILL BE CRIMES OF MORAL TURPITUDE; IS THAT CORRECT, SOLICITOR?

MR. GRANT: THAT IS CORRECT. NONE OF THE STATE'S LAY WITNESSES OR ANY OTHER WITNESS, YOUR HONOR, BY THE STATE.

THE COURT: NO. 10 IS A MOTION TO PRECLUDE THE STATE FROM MENTIONING TO THE JURY IN THEIR OPENING STATEMENT OR ARGUMENT THAT THIS IS NOT A CASE FOR A DEATH PENALTY CASE. IT IS NOT A

DEATH PENALTY CASE. JURORS' TENDENCY IS TO EXPECT ALL MURDER CASES WILL BE DEATH PENALTY CASES.

I'M GOING TO ALLOW THE STATE TO EXPLAIN TO THE JURY THAT IT IS NOT ALLOWED OR AUTHORIZE TO SEEK THE DEATH PENALTY, BECAUSE IT'S ONLY STATUTORILY AUTHORIZED. THEY OUGHT TO HAVE A RIGHT TO KNOW THAT.

SO I HAVE RULED THAT THE STATE MAY FOR LIMITED PURPOSES EXPLAIN TO THE JURY THAT NOT ALL MURDER CASES ARE DEATH PENALTY CASES WHICH ARE UNDER STATUTE ONLY AUTHORIZED BY STATUTE. THERE MUST BE AN AGGRAVATING CIRCUMSTANCE. THE STATE DOES NOT ALLEGE OR HAVE ANY AND CANNOT SEEK THE DEATH PENALTY. IT'S MURDER.

THE NEXT ONE IS A MOTION TO SEQUESTER STATE'S WITNESSES. THE STATE JOINED IN THAT AS A RECIPROCAL MOTION. THE WITNESSES WILL BE SEQUESTERED. THE NAMES ARE BEING CALLED. I'VE DIRECTED COUNSEL FOR THE STATE, COUNSEL FOR THE DEFENSE THAT THEY MUST ASSIST THE COURT IN KEEPING THE WITNESSES FROM IN THE COURTROOM UNTIL THEY'VE TESTIFIED; THAT IF THEY FAIL TO ASSIST THE COURT IN THAT REGARD, IT MAY RESULT IN THEIR NOT BEING ALLOWED TO TESTIFY.

THE STATE'S WITNESSES AS I UNDERSTAND ARE GOING TO BE RETAINED IN THE BACK AREA, TO BE BROUGHT UP WHERE YOU CAN GET THEM ONE AT A TIME. THE DEFENSE WITNESSES WILL BE IN THE BACK OF THE COURTROOM.

MR. SMITH: THAT'S CORRECT, YOUR HONOR, OR AT OUR OFFICE.

THE COURT: YES, SIR. WHICHEVER. SOLICITOR, SINCE YOU'RE GOING FIRST, HAVE SOMEBODY FROM YOUR STAFF, SOMEONE -- WE DON'T HAVE TO SIT AND WAIT FOR 5 MINUTES FOR EVERY WITNESS TO COME IN, OKAY?

MR. GRANT: YES, SIR. MR. RUSHING, MY INVESTIGATOR, WILL WITH THE COURT'S PERMISSION, GO OUT TO MAKE SURE THEY'RE READY.

THE COURT: THAT'S PERFECTLY FINE. IF YOU WILL, BRING THEM THROUGH THIS DOOR OVER HERE. BRING THEM THAT WAY. HAVE THE NEXT ONE ALWAYS READY. OKAY?

MR. RUSHING: YES, SIR.

THE COURT: I BELIEVE THAT COVERS THEM, DOESN'T IT?

MR. SMITH: YES, YOUR HONOR.

THE COURT: ANYTHING ELSE?

MR. GRANT: NO, SIR, NOT AS FAR AS MOTIONS GO.

THE COURT: READY TO MOVE INTO THE BLAIR HEARING?

MR. GRANT: YES, SIR.

THE COURT: LET THE RECORD REFLECT THE PURPOSE OF THIS HEARING IS FOR THE COURT TO DETERMINE WHETHER OR NOT THE DEFENDANT IS COMPETENT TO STAND TRIAL, WHICH IS THE MOTION MADE BY COUNSEL FOR DEFENSE. THE COURT AT THIS TIME WILL NOW PROCEED TO CONDUCT WHAT IS COMMONLY REFERRED TO AS A BLAIR HEARING, B-L-A-I-R, BLAIR, FOR THE PURPOSES OF DETERMINING WHETHER OR NOT THE DEFENDANT IS COMPETENT TO STAND TRIAL AND ABLE TO ASSIST HIS COUNSEL IN THE REPRESENTATION OF HIM IN

THIS CASE.

READY TO PROCEED. SOLICITOR.

MR. GRANT: YOUR HONOR, WE WOULD CALL DR. BEHRMAN.

THOMAS WILLIAM BEHRMAN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: SOLICITOR, DO YOU HAVE THE INDICTMENT NUMBER ON IT? I KNOW 92-GS-46, WHAT?

MR. GRANT: 1224.

THE COURT: THANK YOU, SOLICITOR. I'M SORRY. YOU MAY PROCEED.

DIRECT EXAMINATION

BY MR. GRANT:

Q DOCTOR, IF YOU WOULD, STATE YOUR FULL NAME FOR THE COURT

A MY NAME IS THOMAS WILLIAM BEHRMAN.

Q BY WHOM ARE YOU EMPLOYED?

A I'M CURRENTLY EMPLOYED BY THE UNIVERSITY OF SOUTH CAROLINA MEDICAL SCHOOL IN COLUMBIA, SOUTH CAROLINA.

Q AND WHAT IS YOUR PROFESSION PLEASE, SIR?

A I AM A PSYCHIATRIST WITH A SPECIAL INTEREST IN FORENSIC PSYCHIATRY.

Q AND HOW LONG HAVE YOU BEEN IN THE AREA OF PSYCHIATRY?

A I'M BEEN INVOLVED IN THE TRAINING AND THE PRACTICE OF PSYCHIATRY SINCE 1988.

Q AND ARE YOU A MEDICAL DOCTOR?

A YES, SIR.

Q AND ARE YOU AFFILIATED WITH THE WILLIAM S. HALL INSTITUTE?

A YES, SIR, I'M A MEMBER OF THE MEDICAL STAFF FOR THE WILLIAM S. HALL INSTITUTE.

Q AND ARE PART OF YOUR DUTIES EVALUATING PEOPLE FOR COURT, THE PURPOSE OF DETERMINING COMPETENCY, INSANITY, GUILT BUT MENTALLY ILL, DO YOU PERFORM THOSE TYPE OF THINGS?

A YES, SIR.

Q HOW LONG HAVE YOU BEEN INVOLVED IN THAT TYPE OF WORK?

A FOR APPROXIMATELY A YEAR AND A HALF?

Q AND HAVE YOU ---

MR. SMITH: YOUR HONOR, I WILL STIPULATE THE DOCTOR'S QUALIFICATION.

THE COURT: HE'S QUALIFIED AS A PSYCHIATRIST AND AUTHORIZED TO RENDER AN OPINION IN THOSE FIELDS?

MR. SMITH: YES, SIR, I WILL STIPULATE TO THAT.

THE COURT: WITHOUT OBJECTION, THE WITNESS IS SO QUALIFIED. YOU MAY RENDER AN OPINION.

Q DR. BEHRMAN, I WILL ASK YOU IF YOU HAD AN OCCASION TO SEE AND EVALUATE JEFFERY CHRONISTER BY ORDER OF THIS COURT?

A YES, SIR. MR. CHRONISTER WAS AT THE FORENSIC SERVICES OF THE WILLIAM S. HALL INSTITUTE FROM FEBRUARY 15, 1992 UNTIL APRIL 14, 1992. IN ADDITION, I ALSO HAD THE OPPORTUNITY TO SEE MR. CHRONISTER AGAIN THIS MORNING.

Q AND AS A RESULT OF YOUR EVALUATION OR SEEING HIM BACK IN

FEBRUARY -- BEFORE -- OF 1992 DID YOU RENDER A WRITTEN REPORT TO THE COURT CONCERNING YOUR FINDINGS?

A YES, SIR.

Q I SHOW YOU THIS, DOCTOR, AND ASK YOU TO IDENTIFY THAT?

A THIS IS THE REPORT THAT WAS SUBMITTED.

Q ALL RIGHT.

MR. GRANT: FOR THE PURPOSE OF THIS HEARING WE WOULD OFFER THE REPORT.

THE COURT: ANY OBJECTION?

MR. SMITH: NO OBJECTION.

THE COURT: HAND IT TO THE COURT REPORTER AND HAVE IT MARKED AS A COURT'S EXHIBIT FOR THE PURPOSE OF THIS HEARING, COURT'S EXHIBIT NO. 1. AFTER SHE'S MARKED IT, HAND IT UP TO THE COURT. YOU WILL RETAIN IT, MADAM COURT REPORTER. IT WILL NOT GO WITH ANY OTHER EXHIBITS PLEASE.

(REPORT OF FINDING MENTAL CAPACITY, 3 PAGES, MARKED FOR IDENTIFICATION AS COURT'S EXHIBIT NO. 1.)

Q DOCTOR, IN SEEING MR. CHRONISTER BACK IN FEBRUARY THEREABOUTS IN 1992 DID YOU EVALUATE HIM AS TO HIS CAPABILITY TO UNDERSTAND THE NATURE OF THE CHARGES AGAINST HIM?

A YES, SIR.

Q ALL RIGHT. WHAT WAS YOUR DETERMINATION PLEASE, SIR?

A IT WAS OUR DETERMINATION AT THAT TIME THAT MR. CHRONISTER DID HAVE A RATIONAL AND FACTUAL UNDERSTANDING OF THE CHARGES AGAINST HIM.

Q AND IN SEEING HIM THIS MORNING AND TALKING TO HIM THIS MORNING DO YOU HAVE AN OPINION OF EVALUATION AS TO HIS ABILITY TO UNDERSTAND THE NATURE OF THE CHARGES AGAINST HIM?

A MY OPINION REMAINS THE SAME, THAT HE STILL HAS THAT RATIONAL AND FACTUAL UNDERSTANDING.

Q AND IN SEEING HIM BACK IN FEBRUARY, DOCTOR, DID YOU MAKE AN EVALUATION CONCERNING HIS ABILITY TO ASSIST COUNSEL IN HIS OWN DEFENSE, AS TO WHETHER OR NOT HE WAS CAPABLE OF DOING THAT?

A YES, SIR. IT WAS OUR OPINION THAT HE WAS ABLE TO ASSIST COUNSEL IN HIS OWN DEFENSE.

Q AND FROM SEEING HIM THIS MORNING AND SPENDING TIME WITH HIM THIS MORNING, ARE YOU STILL OF THAT OPINION?

A YES, SIR.

Q AND AS HE SITS HERE TODAY IS HE CAPABLE OF ASSISTING COUNSEL IN THE TRIAL PREPARATION OF HIS CASE?

A IN MY OPINION HE IS.

Q DOCTOR, DID YOU FURTHER EVALUATE MR. CHRONISTER AS TO WHETHER OR NOT HE WAS SUFFERING FROM ANY MENTAL DISEASE OR DEFECT?

A YES, SIR.

Q WHAT WERE YOUR FINDINGS IN THAT AREA PLEASE, SIR?

A AS A RESULT OF OUR EVALUATION WE DIAGNOSED MR. CHRONISTER WITH AN ADJUSTMENT ORDER WITH MIXED EMOTIONAL FEATURES, AND WE ALSO DIAGNOSED HIM WITH ALCOHOL ABUSE.

Q AND DID YOU DETERMINE WHETHER OR NOT HE AS A RESULT OF THAT ON THE DATE OF THIS ALLEGED OCCURRENCE WAS ABLE TO DETERMINE RIGHT FROM WRONG -- THIS ALLEGED OCCURRENCE HAVING BEEN FEBRUARY 14, 1992?

A IT WAS OUR OPINION THAT ON THE DATE OF THE ALLEGED OFFENSE MR. CHRONISTER DID POSSESS THE ABILITY TO DIFFERENTIATE RIGHT FROM WRONG.

Q AND UNDER WHAT WE COMMONLY CALL THE MCNAGHTEN STANDARD, WOULD HE HAVE BEEN SANE OR INSANE?

A UNDER THE MCNAGHTEN STANDARD HE WOULD HAVE BEEN SANE.

Q DID YOU FURTHER EVALUATE HIM AS TO WHETHER OR NOT HE HAD A MENTAL DISEASE OR DEFECT THAT WOULD RENDER HIM INCAPABLE OF CONFORMING HIS CONDUCT TO THE REQUIREMENTS OF LAW?

A ONCE AGAIN, WE DIAGNOSED HIM WITH THE TWO DIAGNOSES THAT I'VE ALREADY MENTIONED. HOWEVER, WE DID NOT FEEL THAT THERE WAS ANY EVIDENCE OF A MENTAL DISEASE OR DEFECT WHICH WOULD HAVE PREVENTED HIM FROM CONTROLLING HIS BEHAVIOR AND COMPLYING WITH THE REQUIREMENTS OF THE LAW AT THAT TIME.

Q AND FROM THAT HE WOULD NOT FIT UNDER WHAT WE CALL GUILTY BUT MENTALLY ILL STANDARD?

A NO, SIR.

Q AND YOUR OPINION AS YOU TALKED TO HIM TODAY ON THOSE TWO ISSUES, HAS IT CHANGED AT ALL?

A MY OPINION HAS NOT CHANGED AT THIS TIME, NO, SIR.

Q AND IS THE DEFENDANT UNDER ANY TYPE OF MEDICATION THAT

WOULD INTERFERE WITH HIS ABILITY TO ASSIST HIS ATTORNEY IN WHAT'S GOING ON AND UNDERSTAND THE NATURE OF THE CHARGES?

A THE DEFENDANT REPORTS TO ME THAT HE IS CURRENTLY BEING TREATED WITH PROZAC, AN ANTI-DEPRESSANT, AND HE'S ALSO BEING GIVEN A MEDICATION FOR SLEEP AT NIGHT. HE WAS STARTED ON THE PROZAC WHILE HE WAS STILL WITH US AT THE HOSPITAL.

I WOULD NOT EXPECT EITHER OF THESE MEDICATIONS TO INTERFERE WITH HIS ABILITY TO PARTICIPATE WITH HIS ATTORNEY IN HIS OWN DEFENSE.

Q DOCTOR, AS HIS DOCTOR, HAVING SEEN HIM, WOULD YOU WANT TO CONTINUE ON HIS REGULAR MEDICATION?

A I WOULD RECOMMEND THAT HE WOULD CONTINUE ON THOSE MEDICATIONS FOR THE TIME BEING, YES, SIR.

Q AND, DOCTOR, FROM TALKING TO HIM BOTH THIS MORNING AND BACK IN FEBRUARY, DID YOU SEE ANY LIKELIHOOD OF A DETERIORATION IN THE NEXT TWO OR THREE DAYS OF HIS CONDITION OF MENTAL ABILITIES?

A IN MY OPINION I DON'T FEEL THAT HE WOULD BE LIKELY TO DECOMPENSATE OVER THE NEXT SEVERAL DAYS, NO, SIR.

MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY HAVE.

CROSS EXAMINATION

BY MR. SMITH:

Q DOCTOR, YOU DID DIAGNOSE AN ADJUSTMENT DISORDER WITH MIXED EMOTIONAL FEATURES?

A YES, SIR.
Q AND BASICALLY THIS PARTICULAR DISORDER, THIS WOULD BE A MAL-ADAPTIVE RESPONSE TO CERTAIN STRESSORS?
A THAT'S CORRECT.
Q AND THAT MAL-ADAPTIVE RESPONSE MANIFESTS ITSELF BY IMPAIRMENT IN VARIOUS AREAS OF FUNCTIONING, CORRECT, SIR?
A THE MAL-ADAPTIVE RESPONSE IN MR. CHRONISTER'S CASE WAS A MIXTURE OF BOTH SYMPTOMS OF DEPRESSION AND ANXIETY, HENCE THE MIXED EMOTIONAL FEATURE.
Q AND THIS PARTICULAR DISORDER -- ONE OF THE CRITERIA FOR THIS PARTICULAR DISORDER IS THAT THERE IS IMPAIRMENT IN THE SOCIAL RELATIONSHIPS, PERHAPS IMPAIRMENT AT WORK, IMPAIRMENT IN THAT ---
A YES, SIR. THE TYPICAL FEATURES WOULD BE IMPAIRMENT IN USUAL SOCIAL RELATIONSHIPS, WORK RESPONSIBILITIES, THAT SORT OF THING.
Q AND ONE OF THE OTHER CRITERIA IS THAT THE DISTURBANCE THAT YOU FOUND DOESN'T FIT ANY CRITERIA FOR ANY KIND OF MENTAL DISORDER OR ILLNESS?
A THAT'S TRUE.
Q AND BASICALLY, IN YOUR EVALUATION OF HIM AND CERTAINLY BASED UPON YOUR DIAGNOSIS YOU HAVE, THERE IS AN EMOTIONAL ASPECT TO HIS CHARACTER WHEN REACTING TO SITUATIONS?
A YES, SIR.
Q YOU ALSO DIAGNOSED THAT THE ADJUSTMENT DISORDER WAS

CONNECTED WITH ALCOHOL ABUSE?
A YES, SIR.
Q IN TERMS OF YOUR EVALUATION OF HIM DID YOU RATE THE STRESSORS THAT HE WOULD HAVE BEEN UNDER DURING THIS PERIOD OF TIME?
A WE RATED HIS STRESSORS AS BEING FAIRLY SEVERE AT THE TIME THAT WE SAW HIM BECAUSE OF THE SEPARATION HE'D ENDURED WITH HIS WIFE, BECAUSE OF THE CHARGES AGAINST HIM, AND ALSO BECAUSE OF HIS INCARCERATION AT THAT TIME. ALL THREE OF THOSE THINGS I THINK COMBINE TO PLACE HIM UNDER A SEVERE LEVEL OF STRESS.
Q AND A DOMESTIC SITUATION OR DIVORCE, THAT TYPE OF SITUATION, THAT IS A FAIRLY SEVERE STRESSOR FOR MOST PEOPLE?
A YES, FOR THE AVERAGE PERSON THAT IS A SEVERE STRESSOR.
Q IS THIS PARTICULAR DISORDER, THIS IS A FAIRLY COMMON DISORDER?
A YES, SIR.
Q THE EMOTIONAL ASPECT OF THIS DISORDER AND THE RESPONSES OR THE MAL-ADAPTIVE RESPONSE TO CERTAIN STRESSORS, DOCTOR, THAT HAS TO DO WITH A PERSON'S STATE OF MIND, CORRECT?
A YES, SIR.
Q IN LAYMAN'S TERMS, WHAT YOU'RE SAYING IS THAT IT WOULD HAVE HAD AN AFFECT UPON HIS ABILITY TO THINK PROPERLY OR THINK, SAY IN SOMEONE WHO IS NOT SUFFERING FROM SUCH A DISORDER?
A IT WOULD HAVE AN EFFECT IN TERMS OF HOW HE MIGHT HAVE

RESPONDED TO CERTAIN KINDS OF SITUATIONS. WE DID NOT FIND AN EVIDENCE THAT IT WOULD HAVE AFFECTED HIS ABILITY TO KNOW THE THINGS THAT AN AVERAGE PERSON WOULD KNOW.

Q BUT IN TERMS OF THE RESPONSE TO CERTAIN OF THE STRESSORS A DOMESTIC ARGUMENT OR AN ON-GOING STRIFE IN THE MARRIAGE, HE WOULD REACT EMOTIONALLY RELATED TO THAT?

A WELL, THAT'S -- THAT'S THE ESSENCE OF THE DISORDER. AND IT'S SOMETHING THAT VARIES FROM PERSON TO PERSON DEPENDING ON THEIR OWN EMOTIONAL MAKEUP.

Q AND HE WOULD NOT REACT TO THOSE AS PERHAPS, SAY, A PERSO -- A PERSON WHO DIDN'T HAVE THE DISORDER OR A PERSON WHO PERHAPS THINKING WAS NOT -- WOULD NOT REACT IN A NORMAL WAY, PERHAPS TO STRESSORS OR ARGUMENTS OR SITUATIONS THAT AROSE AROUND THE STRESSOR?

A WELL, OUR OPINION OF HIM WAS HE WAS NOT REACTING IN A WA THAT WOULD ORDINARILY BE EXPECTED FROM AN AVERAGE PERSON IN HIS SITUATION. IT WAS ABOVE AND BEYOND WHAT WE WOULD NORMALL EXPECT.

Q IT WOULD HAVE BEEN AN ABNORMAL EMOTIONAL REACTION?

A YES, SIR.

MR. SMITH: THANK YOU, DOCTOR.

THE COURT: SOLICITOR.

MR. GRANT: YOUR HONOR, I'M SORRY.

REDIRECT EXAMINATION

BY MR. GRANT:

Q I DIDN'T UNDERSTAND, DOCTOR. WHAT ABNORMAL EMOTIONAL REACTION WAS HE JUST REFERRING TO? I'M SORRY.

A WELL, MY UNDERSTANDING OF THE QUESTION IS: WOULD HE RESPOND TO EMOTIONAL SITUATIONS IN A NORMAL MANNER? AND THE ESSENCE OF THE DIAGNOSIS THAT HE HAS IS THAT HE WAS REACTING TO THE CIRCUMSTANCES IN A WAY WHICH WAS IN EXCESS OR GREATER THAN OR MORE MAL-ADAPTIVE THAN WHAT WE WOULD NORMALLY EXPECT FROM THE AVERAGE PERSON GIVEN THE SAME SITUATION.

NOW, I DON'T KNOW SPECIFICALLY WHAT MAL-ADAPTIVE RESPONSE WE'RE TALKING ABOUT. I'M SPEAKING IN GENERAL TERMS FOR A PATIENT WHO IS GIVEN A DIAGNOSIS SUCH AS THE ONE WE GAVE TO MR. CHRONISTER.

Q OKAY. THE PERSON GOING THROUGH THESE STRESSORS OF DIVORCE ---

A YES, SIR.

Q --- AM I FOLLOWING YOU, WOULD NOT NORMALLY SHOOT AND KILL HIS WIFE; IS THAT WHAT MAKES IT MAL-ADAPTIVE? IF I FOLLOW YOU.

A WELL, CERTAINLY, WE WOULDN'T EXPECT THE AVERAGE PERSON GOING THROUGH DIVORCE TO SHOOT AND KILL HIS WIFE, NO, SIR.

Q OKAY. IS THAT BEHAVIOR YOU'RE TALKING ABOUT, MAL-ADAPTIVE, THE STRESSOR?

A IT'S NOT ONLY THAT, BUT HIS EMOTIONAL RESPONSE TO THE SITUATION WAS MAL-ADAPTIVE IN THAT IT WAS MORE SEVERE AND MORE DYSFUNCTIONAL THAN WHAT WE WOULD EXPECT FOR THE AVERAGE

PERSON.

Q HIS EMOTIONAL RESPONSE TO THE STRESS OF THE DIVORCE SITUATION?

A WELL, YES.

Q AND THAT IS SEPARATE FROM THE RESPONSE TO BEING CHARGED WITH MURDER AND BEING IN JAIL FOR MURDER, FACING THAT CHARGE, AND KNOWING HIS WIFE HAD BEEN KILLED?

A WELL, WHAT WE INTERPRETED AS THE STRESSFUL SITUATION IN HIS DIAGNOSIS WAS THE SEPARATION AND ESTRANGEMENT FROM HIS WIFE; THAT WAS WHAT WE INTERPRETED AS BEING THE INCITING EMOTIONAL STRESSOR, IF YOU WILL, THAT HE WAS RESPONDING TO.

MR. GRANT: THANK YOU, SIR.

MR. SMITH: JUST A COUPLE OF BRIEF QUESTIONS.

RECROSS EXAMINATION

BY MR. SMITH:

Q DOCTOR, WHAT YOU HAVE JUST TOLD THE SOLICITOR IN TERMS O HIS REACTION, HIS CONDITION, THAT WOULD HAVE BEEN THE CONDITION ON THE 14TH OF FEBRUARY, THE ADJUSTMENT DISORDER WITH MIXED EMOTIONAL FEATURES?

A TO THE BEST OF MY KNOWLEDGE AND GIVEN THE INFORMATION THAT WE HAVE AVAILABLE, THAT WOULD HAVE BEEN MY DIAGNOSIS OF HIM ON THAT DATE.

Q AND I BELIEVE HE FIRST ACTUALLY CAME INTO THE HOSPITAL O THE 15TH OF FEBRUARY?

A THE FOLLOWING DAY, YES, SIR.

Q SO IT'S IMMEDIATELY AFTER?
A RIGHT.
Q PERSONS SUFFERING FROM THIS PARTICULAR DISORDER, THEIR ABILITY TO FUNCTION, THEIR ABILITY TO RESPOND, THEIR PERCEPTIONS OF SITUATIONS, THOSE WOULD BE IMPAIRED OR THERE WOULD BE IMPAIRMENT IN THAT AREA?
A THEIR ABILITY TO RESPOND TO A CERTAIN SITUATION MAY BE ALTERED. BUT ONCE AGAIN, IT'S AN INDIVIDUAL SITUATION THAT HAS TO BE EVALUATED FOR EACH PERSON. I DON'T THINK YOU CAN MAKE GENERALIZED STATEMENTS REGARDING THIS PARTICULAR DIAGNOSIS BECAUSE IT'S ONE THAT'S REALLY BASED ON THE INDIVIDUAL RESPONSE TO SOME STRESSOR. SO INHERENT IN THE WHOLE DIAGNOSIS IS THE IDEA OF THE INDIVIDUAL'S RESPONSE TO THE SITUATION. SO I DON'T THINK YOU CAN MAKE THAT A BLANKET STATEMENT FOR ALL PERSONS WITH THIS PARTICULAR DIAGNOSIS. I THINK YOU HAVE TO LOOK AT EACH PERSON INDIVIDUALLY.
Q BUT IN THIS PARTICULAR CASE, MR. CHRONISTER'S CASE, WHAT WE'RE TALKING ABOUT IN TERMS OF THE ADJUSTMENT DISORDER, THAT IS WHAT LED TO THE MAL-ADAPTIVE RESPONSE IN TERMS OF SOME KIND OF ARGUMENT, FOR EXAMPLE, WITH HIS ESTRANGED WIFE?
A WELL, THE ADJUSTMENT DISORDER ITSELF IS THE MAL-ADAPTIVE RESPONSE. NOW, WHAT IT LED TO I THINK -- I THINK IS VERY DIFFICULT TO DEFINE. CERTAINLY ---
THE COURT: EXCUSE ME, DR. BEHRMAN. GENTLEMEN, THE QUESTION IS COMPETENCY; THAT'S THE ISSUE RIGHT NOW.

MR. SMITH: YES, SIR.

THE COURT: I DON'T KNOW HOW THAT HAS ONE THING TO DO WITH WHETHER OR NOT HE'S COMPETENT TO STAND TRIAL TODAY.

MR. SMITH: ALL RIGHT.

THE COURT: LET'S STICK TO THE ISSUE THAT WE'RE HERE ON. I'M NOT GOING TO TRY 40 ISSUES EACH DAY. WE'RE GOING TO TRY THE ISSUES WE'RE SUPPOSED TO TRY. COMPETENCY. LET'S DO IT.

MR. SMITH: I HAVE NO QUESTIONS IN TERMS OF COMPETENCY.

THE COURT: WELL, THAT'S WHAT THIS HEARING IS ABOUT, IS COMPETENCY.

ANY OTHER QUESTIONS BY THE STATE?

MR. GRANT: NONE, YOUR HONOR.

THE COURT: DR. BEHRMAN, IN YOUR DISCUSSION AND EVALUATION WITH THE ACCUSED BOTH FEBRUARY THROUGH APRIL AND THIS MORNING, WERE YOU ABLE TO DETERMINE WHETHER OR NOT HE UNDERSTOOD THE NATURE OF THE CHARGES MADE AGAINST HIM?

WITNESS: YES, SIR, IN MY OPINION HE DID UNDERSTAND THE NATURE OF THE CHARGES.

THE COURT: AND DOES HE UNDERSTAND THE ROLE AND FUNCTION THAT HIS ATTORNEY PLAYS IN THIS CASE?

WITNESS: YES, SIR.

THE COURT: AND DID YOU DISCUSS THAT ASPECT WITH HIM?

WITNESS: YES, SIR.

THE COURT: DOES HE UNDERSTAND THE ROLE AND FUNCTION OF THE SOLICITOR, THE PROSECUTING OFFICER FOR THE STATE?

WITNESS: YES, SIR.

THE COURT: AND IN HIS OPINION DOES HE UNDERSTAND THE ROLE AND FUNCTION OF THE SOLICITOR?

WITNESS: I BELIEVE HE DOES.

THE COURT: DOES HE UNDERSTAND THE ROLE AND FUNCTION OF THE COURT, THE JUDGE OF THE CASE?

WITNESS: I BELIEVE HE DOES.

THE COURT: AND DID YOU DISCUSS THAT WITH HIM AS WELL?

WITNESS: YES, SIR.

THE COURT: DID YOU ALSO EXPLAIN TO HIM THE ROLE AND FUNCTION OF THE JURY?

WITNESS: YES, SIR, WE DID TALK ABOUT THAT.

THE COURT: DOES HE UNDERSTAND THE ROLE AND FUNCTION OF THE JURY?

WITNESS: I BELIEVE HE DOES.

THE COURT: AND BASED ON THOSE EVALUATIONS IT'S YOUR OPINION THAT HE'S COMPETENT TO ASSIST HIS COUNSEL IN THE TRIAL AND THE DEFENSE OF THIS CASE?

WITNESS: YES, SIR, IN MY OPINION HE IS COMPETENT.

THE COURT: THANK YOU. ANY FURTHER QUESTIONS?

MR. GRANT: NONE BY THE STATE, YOUR HONOR.

MR. SMITH: NONE, YOUR HONOR.

THE COURT: THANK YOU. YOU MAY STEP DOWN.

CALL YOUR NEXT WITNESS, SOLICITOR.

MR. GRANT: YOUR HONOR, THAT WOULD BE THE STATE'S OFFER

OF PROOF ON COMPETENCY. WE'D ASK THAT DR. BEHRMAN BE EXCUSED

THE COURT: YOU MAY STEP DOWN, DOCTOR.

(THE WITNESS LEAVES THE WITNESS STAND.)

THE COURT: DO YOU WISH TO OFFER ANY TESTIMONY AND EVIDENCE ON THE ISSUE OF COMPETENCY? YOU HAVE THE RIGHT, MR. SMITH, TO PUT UP TESTIMONY AND EVIDENCE THROUGH OTHER EXPERTS THE INDIVIDUAL HIMSELF, OR OTHERWISE.

MR. SMITH: YOUR HONOR, WE HAVE NOTHING TO OFFER ON THE ISSUE OF COMPETENCY.

THE COURT: HIS REQUEST OF DR. BEHRMAN -- DO YOU HAVE AN OBJECTION TO HIM BEING EXCUSED?

MR. SMITH: YOUR HONOR, I HAVE THE DOCTOR UNDER SUBPOENA I'VE ALREADY TOLD HIM THAT HE CAN GO TODAY AND I WOULD NOTIFY HIM IF I NEEDED HIM BACK.

THE COURT: VERY GOOD. DEPENDING ON HIS SCHEDULE, IF HE CALLS YOU, YOU NEED TO BE BACK HERE TOMORROW.

WITNESS: WE'LL WORK IT OUT.

THE COURT: THANK YOU. YOU MAY GO.

ANY ARGUMENTS ON THE ISSUE?

MR. GRANT: NO, SIR.

MR. SMITH: I DON'T HAVE ANY, YOUR HONOR.

THE COURT: FOR THE RECORD, THERE'S A THREE-PAGE COURT EXHIBIT, THAT BEING THE REPORT GIVEN INITIALLY BY THE STATE HOSPITAL. IT'S DATED THE 25TH OF APRIL, 1992.

I'M SORRY. MR. SMITH, DO YOU WISH TO MAKE ANY ARGUMENTS

IN THIS CASE ON THE ISSUE OF COMPETENCY?

MR. SMITH: YOUR HONOR, NOT AS TO COMPETENCY. I WOULD ASK THAT THE REPORT BE INCLUDED IN THE RECORD.

THE COURT: IT IS. IT'LL BE A COURT'S EXHIBIT ONLY, MR. SMITH. THANK YOU.

LET THE RECORD REFLECT THE COURT FINDS THE DEFENDANT IS COMPETENT TO STAND TRIAL. HE UNDERSTANDS THE NATURE OF THE OFFENSE AND THE CHARGES MADE AGAINST HIM. HE UNDERSTANDS THE ROLE OF HIS COUNSEL, THE STATE, THE COURT, AND THE JURY. UNDER STATE VERSUS BLAIR THOSE ARE ISSUES WHICH THE COURT IS CONCERNED WITH, THAT IS COMPETENCY TO STAND TRIAL.

I THEREFORE FIND HE'S COMPETENT TO STAND TRIAL.

THE STATE READY TO PROCEED?

MR. GRANT: THE STATE IS, YOUR HONOR.

THE COURT: DEFENDANT READY TO PROCEED?

MR. SMITH: YES, YOUR HONOR.

THE COURT: BRING THE JURY IN.

GENTLEMEN, ON ANY EXHIBITS THAT YOU WILL BE OFFERING, PLEASE AFTER YOU'VE LAID THE FOUNDATION FOR IT OR IF YOU'VE AGREED TO ENTER IT, OTHERWISE THERE'S NO OBJECTION, HAND IT TO THE COURT REPORTER. AS IT IS MARKED IT, YOU MAINTAIN YOUR POSITION WITH THE COURT REPORTER. WHEN SHE'S MARKED IT, YOU HAND IT UP TO ME. I WILL THEN PUT IT IN THE RECORD BY SAYING, NOW IN THE RECORD OF THIS CASE EITHER OVER OBJECTION OR WITHOUT OBJECTION AN EXHIBIT DESIGNATED -- I'LL DESCRIBE IT.

AFTER I'VE DESCRIBED IT, I'LL GIVE IT BACK TO YOU. YOU CAN PUBLISH IT, READ IT YOURSELF TO THE JURY, YOU CAN GIVE IT TO THE JURY. ALL I ASK THAT YOU DO THAT.

IF YOU'RE USING ANY EXHIBITS, DO NOT TAKE THEM BACK TO YOUR DESK. ONCE IT'S IN THE RECORD, IT BELONGS TO THIS COURT THE COURT REPORTER. IT STAYS AT HER TABLE. ALL RIGHT?

MR. GRANT: YES, SIR.

MR. SMITH: YES, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU, GENTLEMEN.

BRING THE JURY IN PLEASE.

(THE JURY RETURNS TO THE COURTROOM AT 3:12 P.M.)

THE COURT: ALL RIGHT. LET THE RECORD REFLECT THAT ALL 12 JURORS AND THE 2 ALTERNATES ARE NOW BACK PRESENT BEFORE THE COURT AND READY TO PROCEED. EVERYBODY OKAY? VERY GOOD.

AT THIS TIME I'M GOING TO ASK THE CLERK OF COURT TO PLACE YOU UNDER OATH, TO GIVE YOU YOUR OATH AS A JUROR.

MADAM CLERK, YOU MAY SWEAR THE JURY.

(THE JURY WAS SWORN AT 3:14 P.M.)

THE COURT: THANK YOU, MADAM CLERK.

MR. FOREMAN, LADIES AND GENTLEMEN, AS I TOLD YOU WHEN WE STOPPED AT LUNCH AND BEFORE WE ACTUALLY SELECTED YOU, I GAVE A PRELIMINARY INSTRUCTION TO YOU CONCERNING HOW THE CASE WILL PROCEED. SO YOU'VE NOW BEEN SWORN. WE'RE NOW READY TO PROCEED WITH THE TRIAL OF THE CASE IN THE FASHION THAT I TOLD YOU. COUNSEL FOR THE STATE WILL MAKE THEIR OPENING STATEMENT

THEN COUNSEL FOR DEFENSE WILL MAKE THEIR OPENING STATEMENT.

THE STATE WILL THEN PROCEED BY PUTTING UP ITS EVIDENCE AFTER WHICH THE SAME OPPORTUNITY WILL BE AFFORDED MR. SMITH. AFTER THAT WE'LL HAVE CLOSING ARGUMENTS AND THEN I'LL CHARGE THE JURY ON THE LAW.

I IMPRESS UPON YOU AND REMIND YOU ONCE AGAIN, NO DISCUSSION OF THIS CASE AMONG YOURSELVES AND CERTAINLY NOT WITH ANYONE ELSE. AND YOU'RE NOT TO OBSERVE, LISTEN TO, READ, DISCUSS ANY NEWS MEDIA AS WELL, ANY NEWS MEDIA ACCOUNTS OF IT IF THERE BE ANY UNTIL THIS CASE IS OVER.

THANK YOU VERY MUCH.

MR. SOLICITOR, ON BEHALF OF THE STATE YOU MAY MAKE YOUR OPENING STATEMENT.

MR. GRANT: MAY IT PLEASE THE COURT.

OPENING STATEMENT BY MR. GRANT

ON BEHALF OF THE STATE:

MR. FOREMAN AND LADIES AND GENTLEMEN OF THE JURY, I'M LARRY GRANT, SOLICITOR FOR THE SIXTEENTH CIRCUIT, YORK AND UNION COUNTIES. I REPRESENT THE STATE OF SOUTH CAROLINA IN THE PROSECUTION AND PRESENTATION OF CRIMINAL CASES.

YOU HAVE BEEN DRAWN TO TRY THE CASE OF THE STATE VERSUS JEFFERY CHRONISTER, WHO IS SEATED HERE BETWEEN HIS COUNSEL, MR. GERALD SMITH WHO YOU HAVE ALREADY INTRODUCED TO, AND MR. HARRY DEST OF THE PUBLIC DEFENDER'S OFFICE.

THIS WHITE PIECE OF PAPER I HAVE IS SIMPLY AN INDICTMENT.

IT IS NOT EVIDENCE. YOU MAY OR MAY NOT HAVE IT WITH YOU IN THE JURY ROOM. BUT IT IS SIMPLY A FORMAL STATEMENT OF THE CHARGE. THIS INFORMS ANYBODY WHO NEEDS TO KNOW, THE COURT, THE DEFENDANT, ANYBODY ELSE WHO HAS A NEED TO KNOW OF THE FORMAL STATEMENT OF THE CHARGE.

THIS INDICTMENT CHARGES JEFFERY CHRONISTER WITH MURDER, WITH THE MURDER OF HIS WIFE, MARIE CHRONISTER.

YOU WILL HEAR THE FACTS FROM THE WITNESS STAND. YOUR JOB, AS HIS HONOR HAS ALREADY TOLD YOU -- AND I WON'T REPEAT THAT -- IS TO FIND THE TRUE FACTS OF THE MATTER, AND THEN APPLY THOSE FACTS TO THE LAW AS HIS HONOR CHARGES YOU. AND HIS HONOR IS IN CHARGE OF THE LAW OF THIS CASE. AND YOU DO NOT KNOW WHAT THE LAW IN THIS CASE IS AND YOU WILL NOT KNOW UNTIL HIS HONOR CHARGES YOU THE LAW AT THE END OF THE CASE.

BUT AT THE END OF THE CASE WHEN HE CHARGES YOU THE LAW, THEN YOU TAKE THE FACTS AS YOU FOUND THEM TO BE, APPLY THE LAW AS HIS HONOR CHARGES YOU, AND RENDER A VERDICT WHICH SPEAKS THE TRUTH.

THAT'S AS EASILY AS I CAN SAY IT. IT'S NOT AN EASY JOB. JURY DUTY IS CALLED A DUTY BECAUSE IT IS A DUTY. IT'S A DUTY THAT YOU HAVE TO YOUR COUNTRY, TO MR. CHRONISTER, TO THE STATE OF SOUTH CAROLINA TO WELL AND FAIRLY TRY AND A TRUE DELIVERANCE MAKE, A VERDICT WHICH SIMPLY SPEAKS THE TRUTH.

AND I ASK YOU TO KEEP AN OPEN MIND THROUGHOUT THIS CASE AND TO THE VERY END, UNTIL YOU'VE HEARD IT ALL, ALL OF THE

FACTS AND ALL OF THE LAW, AND THEN THROUGH YOUR DELIBERATIONS, RENDER A VERDICT WHICH SPEAKS THE TRUTH.

NOW, THE STATE HAS CHARGED JEFFERY CHRONISTER BY THIS INDICTMENT WITH THE FORMAL CHARGE OF MURDER. I WILL PUBLISH THAT TO YOU: STATE OF SOUTH CAROLINA, COUNTY OF YORK, INDICTMENT FOR MURDER AND USE OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME AT A COURT OF GENERAL SESSIONS CONVENED ON APRIL THE 6TH, 1992, THE GRAND JURORS OF YORK COUNTY PRESENT UPON THEIR OATH: COUNT ONE, THAT JEFFERY CHRONISTER DID IN YORK COUNTY ON OR ABOUT FEBRUARY 14, 1992 WILFULLY, FELONIOUSLY, AND WITH MALICE AFORETHOUGHT KILL ONE MARIE GAIL CHRONISTER BY MEANS OF SHOOTING HER, AND THAT THE SAID VICTIM DIED AS A PROXIMATE RESULT THEREOF.

COUNT TWO CHARGES THAT JEFFERY LYNN CHRONISTER DID COMMIT THE CRIME OF MURDER WHILE USING A FIREARM AGAINST THE PEACE AND DIGNITY OF THE STATE AND CONTRARY TO THE STATUTE AND SUCH CASE MADE AND PROVIDED.

SIGNED, LARRY F. GRANT, SOLICITOR.

HIS HONOR HAS ALREADY CHARGED YOU VERY BRIEFLY EARLIER ON ABOUT THE DEFINITION OF MURDER. YOU HOLD YOUR MIND OPEN UNTIL HE CHARGES YOU AT THE END OF THIS CASE AS TO WHAT THE LAW THAT APPLIES TO THIS CASE IS.

I SUBMIT TO YOU AGAIN, IF I MISSTATE ANY OF THE LAW OR MR. SMITH, YOU TAKE THE LAW AS HIS HONOR CHARGES IT TO BE.

MURDER IS THE UNLAWFUL KILLING, I UNDERSTAND, OF A HUMAN

BEING WITH MALICE AFORETHOUGHT. HIS HONOR WILL CHARGE YOU AS TO THOSE TERMS. THEY HAVE BASICALLY THEIR COMMON-SENSE MEANING. UNLAWFUL KILLING OF A HUMAN BEING WITH MALICE AFORETHOUGHT. MALICE BEING A MALICIOUS ACT OR AN EVIL STATE OF MIND OR A HEART BENT ON MISCHIEF OR DEVOID OF GOOD. AND AFORETHOUGHT, MEANING A THOUGHT, A PERIOD OF TIME. IT DOESN' HAVE TO BE A MEASURABLE PERIOD OF TIME, BUT IT'S AN AFORETHOUGHT, A THOUGHT EITHER AT OR BEFORE THE TIME OF THE FATAL ACT.

THE STATE IS REQUIRED AND THE STATE ACCEPTS THE BURDEN - THE STATE THAT I REPRESENT AND THE STATE THAT MR. SMITH REPRESENTS AS PUBLIC DEFENDER -- WOULD NOT PRESUME ANY ONE OF ITS DEFENDANTS TO BE GUILTY OF ANY CHARGE, ANY ONE OF IT CITIZENS TO BE GUILTY OF ANY CHARGE. AND THE STATE AGREES WITH THAT AND WELCOMES THAT BURDEN.

THE STATE HAS CHARGED MR. CHRONISTER WITH THE CHARGE OF MURDER BY KILLING HIS WIFE WITH MALICE AFORETHOUGHT. PREMEDITATION IS NOT REQUIRED IN SOUTH CAROLINA. IT MAY BE A PART OF THE AFORETHOUGHT FROM YOUR FINDING OF THE FACTS; THAT'LL BE UP TO YOU.

MOTIVE IS NOT REQUIRED IN A MURDER CASE IN SOUTH CAROLINA. THERE MAY BE FROM YOUR FINDING OF THE FACTS A MOTIVE, BUT IT'S NOT REQUIRED THAT THE STATE PROVE PREMEDITATION OR MOTIVE, BUT SIMPLY UNLAWFUL KILLING OF A PERSON WITH MALICE AFORETHOUGHT. AND THE AFORETHOUGHT CAN BE

FOR ANY LENGTH, HOWEVER SHORT OR HOWEVER LONG, EITHER DURING OR PRIOR TO THE FATAL ACT, AN EVIL ACT PRIOR TO OR DURING THE FATAL ACT; THAT IS WHAT THE STATE HAS ALLEGED, THAT JEFF CHRONISTER KILLED HIS WIFE WITH MALICE AFORETHOUGHT.

COUNT TWO SIMPLY ALLEGES THAT HE COMMITTED THE CRIME OF MURDER WHILE USING A FIREARM. COUNT TWO IS A SEPARATE CHARGE THAT YOU WILL HAVE TO CONSIDER.

THE CHARGE IS MURDER. THIS IS NOT A CASE IN WHICH THE STATE IS ALLOWED UNDER THE LAW TO SEEK THE DEATH PENALTY. THIS IS NOT A DEATH PENALTY CASE. AND YOU, AS JURORS, ARE NOT CONCERNED AND SHOULD NOT CONCERN YOURSELF WITH THE POSSIBLE PENALTY IN THIS CASE. THE STATE CAN ONLY SEEK THE DEATH PENALTY IN A MURDER CASE WHERE THERE ARE STATUTORY, AGGRAVATING CIRCUMSTANCES. NONE OF THOSE EXIST IN THIS MURDER CASE.

THEREFORE, THE CASE CANNOT AND DOES NOT SEEK THE DEATH PENALTY IN THIS CASE AND YOU SHOULD NOT HAVE THAT ON YOUR MINDS. IT'S NOT A PART OF THIS CASE, AS SIMPLE AS THAT.

THE STATE SIMPLY CHARGES THAT JEFFERY CHRONISTER WITH MALICE AFORETHOUGHT KILLED HIS WIFE, MARIE CHRONISTER, ON FEBRUARY THE 14TH, 1992.

I ASK YOU TO LISTEN TO ALL OF THE EVIDENCE, ALL THE ARGUMENTS OF COUNSEL, MOST IMPORTANTLY TO HIS HONOR'S CHARGE OF THE LAW, AND THEN RENDER A VERDICT THAT UNDER THE FACTS AND UNDER THE LAW AND UNDER WHAT'S TRUE AND RIGHT SPEAKS -- A

VERDICT THAT IS TRUE AND JUST. TRUE AND JUST TO JEFFERY LYNN CHRONISTER, TO HIS LATE WIFE, TO YOU AS CITIZENS OF YORK COUNTY, AND TO THIS COUNTRY. THE STATE ASKS NO MORE. THE STATE EXPECTS NO LESS.

THANK YOU FOR YOUR TIME AND ATTENTION. I ASK YOU TO VERY SIMPLY KEEP AN OPEN MIND, FIND THE FACTS, AND APPLY THE LAW, AND RENDER A VERDICT THAT SPEAKS THE TRUTH AND SPEAKS JUSTICE

THE COURT: THANK YOU, SOLICITOR.

MR. SMITH ON BEHALF OF THE DEFENDANT.

MR. SMITH: MAY IT PLEASE THE COURT.

THE COURT: YES, SIR.

OPENING STATEMENT BY MR. SMITH
ON BEHALF OF THE DEFENDANT:

LADIES AND GENTLEMEN, MY NAME IS GERALD SMITH. I REPRESENT MR. CHRONISTER. MR. HARRY DEST, ALSO OF MY OFFICE WILL BE IN THE TRIAL HERE.

THESE ARE NOT PLEASANT SITUATIONS FOR PEOPLE TO COME INTO A COURTROOM. THESE ARE NOT THE ORDINARY SITUATIONS. AND WHAT YOU'RE GOING TO BE CALLED UPON TO DO IS TO MAKE A DECISION, A VERY DIFFICULT DECISION, A VERY IMPORTANT DECISION.

WHAT I TELL YOU IS NOT EVIDENCE ANYMORE THAN WHAT THE SOLICITOR TELLS YOU IS EVIDENCE. THE EVIDENCE YOU'LL HEAR FROM UP THERE AND YOU'LL MAKE A DECISION BASED UPON THAT.

THERE ARE ONLY A FEW THINGS THAT I WANT TO SPEAK WITH YOU AT THIS POINT IN TIME ABOUT. YOU ARE HERE TO DECIDE IF MR.

CHRONISTER UNLAWFULLY WITH MALICE AFORETHOUGHT MURDERED HIS WIFE; THAT'S WHAT YOU'RE HERE TO DECIDE.

MOST OF YOU IN EVERYDAY LIFE ARE FAMILIAR WITH WHAT A PROMISSORY NOTE IS. IT'S, I PROMISE TO PAY IN FULL X AMOUNT OF DOLLARS OVER X PERIOD OF TIME INSTALLMENTS UNTIL IT'S PAID IN FULL.

BASICALLY, THAT IS WHAT AN INDICTMENT IS. AN INDICTMENT IS A PROMISE. IT IS A PROMISE THAT THE SOLICITOR OR THE STATE HAS MADE TO YOU THAT BASICALLY SETS OUT, I PROMISE TO PROVE BEYOND A REASONABLE DOUBT CERTAIN THINGS, UNLAWFUL KILLING WITH MALICE AFORETHOUGHT, AND PROVING IT BEYOND A REASONABLE DOUBT WOULD BRING ABOUT A CONVICTION.

JUST LIKE THE PROMISSORY NOTE, THE INDICTMENT CHARGE HAS TO BE MET IN FULL. EVERY CRIME THAT'S CHARGED HAS CERTAIN ELEMENTS. EACH ONE OF THOSE ELEMENTS MUST BE PROVEN, NOT JUST 1, NOT 50 PERCENT OF IT, NOT 80 PERCENT OF THEM, BUT 100 PERCENT OF THEM MUST BE PROVEN BEYOND A REASONABLE DOUBT BY EVIDENCE, GOOD EVIDENCE, THAT'S PRESENTED BEFORE YOU, EVIDENCE UNDER OATH.

AS I SAID, THIS IS NOT A PLEASANT PLACE TO BE. THIS IS NOT AN EASY MATTER TO HAVE TO DECIDE. THE REASON WE HAVE JURORS IS BECAUSE THESE DECISIONS ARE SO IMPORTANT AND SO COMPLEX THAT 12 MINDS ARE MUCH BETTER THAN 1 MIND.

BUT I ASK THAT YOU LISTEN, AND LISTEN VERY CAREFULLY TO WHAT IS PRESENTED TO YOU.

IN OUR SYSTEM A CONVICTION CAN'T REST UPON WHAT POSSIBLY MIGHT HAVE HAPPENED OR WHAT PROBABLY MAY HAVE HAPPENED. IT HAS TO BE PROVEN BY VERY CONVINCING EVIDENCE OF PROOF BEYOND REASONABLE DOUBT.

YOU'RE ASKED TO DO SOME VERY -- YOU'RE ASKED TO DO TREMENDOUS THINGS SITTING IN THAT BOX. YOU PUT ASIDE ANY KIN OF BIAS OR PREJUDICE AND MAKE A DECISION BASED UPON THE EVIDENCE OR THE LACK OF EVIDENCE THAT IS PRESENTED TO YOU. THERE AIN'T NOBODY TO REWARD. THERE AIN'T NOBODY TO WORRY ABOUT -- A DECISION THAT'S BASED UPON THE EVIDENCE THAT'S PRESENTED.

I APPRECIATE YOUR COURTESY IN LISTENING TO ME. AND I KNOW THAT WHEN YOU HAVE HEARD THE EVIDENCE, THAT YOU WILL FIN THAT THE STATE HAS NOT PROVEN WHAT IT HAS CHARGED. MR. CHRONISTER IS NOT GUILTY OF MURDER. THANK YOU.

THE COURT: THANK YOU, MR. SMITH.

SOLICITOR, JUST ONE MOMENT.

LADIES AND GENTLEMEN, IT HAS ALWAYS BEEN MY PRACTICE TO ALLOW JURORS TO TAKE NOTES IF YOU CHOOSE TO DO SO. YOU DO NO HAVE TO. I WANT YOU TO FEEL COMFORTABLE AND GOOD ABOUT WHATEVER YOU DO IN THIS COURTROOM. IF IT MAKES YOU FEEL COMFORTABLE TO TAKE NOTES, THEN I WILL ALLOW IT. WE'LL MAKE PADS AVAILABLE TO YOU.

DOES ANYBODY WANT TO TAKE NOTES? NOW, DON'T DO IT. ONL IF YOU CHOOSE TO DO SO. I'M NOT ASKING YOU TO DO IT. JUST

DOES ANYBODY WANT NOTES?

(NO RESPONSE.)

THE COURT: VERY GOOD. IF ANYONE STARTS TAKING NOTES, YOU NOTIFY ME FIRST. I HAVE TO GIVE YOU A LITTLE CHARGE IN THAT REGARD. OKAY. THANK YOU VERY MUCH.

AT THIS TIME, SOLICITOR, YOU MAY CALL YOUR FIRST WITNESS.

MR. GRANT: WE CALL JOEL SMITH.

THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, IF AT ANY TIME YOU CAN'T HEAR OR SEE, RAISE YOUR HAND AND LET ME KNOW. THE COURT REPORTER WILL PLAY IT BACK FOR YOU OR HAVE THE WITNESS SPEAK UP. IF YOU GET TIRED BEFORE I GIVE YOU A BREAK, JUST RAISE YOUR HAND AND WE'LL STOP FOR YOU.

BE SWORN PLEASE.

JOEL GORDON SMITH, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: IF YOU WILL, SIR, THAT MICROPHONE WILL MOVE AROUND. JUST TRY TO SPEAK INTO IT. IF YOU WOULD, SPEAK OUT. THANK YOU, SIR.

DIRECT EXAMINATION

BY MR. GRANT:

Q MR. SMITH, IF YOU WOULD, STATE YOUR FULL NAME FOR THE COURT?

A JOEL GORDON SMITH.

THE COURT: PULL THAT MICROPHONE A LITTLE BIT CLOSER.

A JOEL GORDON SMITH.

THE COURT: VERY GOOD.

Q WHERE DO YOU LIVE PLEASE, SIR?

A 450 SOUTH SHILOH ROAD, YORK.

Q AND WHERE DO YOU WORK?

A FOR DUKE POWER COMPANY AT CATAWBA NUCLEAR STATION.

Q BACK ON FEBRUARY 14, 1992 WHERE WERE YOU WORKING?

A AT CATAWBA NUCLEAR STATION.

Q AND DO YOU RECALL THE MORNING OF FEBRUARY 14?

A YES, I DO.

Q DO YOU RECALL WHAT DAY OF THE WEEK IT WAS?

A FRIDAY.

Q ALL RIGHT, SIR. WHAT TIME WOULD YOU HAVE GONE TO WORK THAT FRIDAY MORNING?

A I WAS SCHEDULED TO REPORT TO WORK AT 7:00 O'CLOCK A.M.

Q AND DID YOU GO TO WORK?

A YES, I DID.

Q WHERE HAD YOU PARKED WHEN YOU GOT TO WORK PLEASE, SIR?

A IN THE ADMIN PARKING LOT, JUST IN FRONT OF THE MAIN ENTRANCE TO THE ADMINISTRATION BUILDING AT CATAWBA NUCLEAR STATION.

Q WAS ANYBODY ELSE WITH YOU?

A NO, THERE WAS NO ONE ELSE IN MY VEHICLE WITH ME.

Q DID YOU KNOW THE LADY, MARIE GAIL CHRONISTER?

A YES, I DID.

Q HOW DID YOU KNOW HER?

A JUST FROM -- A FELLOW EMPLOYEE AT WORK.
Q HOW LONG HAD YOU KNOWN HER AS A FELLOW EMPLOYEE?
A APPROXIMATELY SEVEN YEARS I WOULD THINK.
Q WERE YOU FAMILIAR WITH THE TYPE VEHICLE THAT SHE HAD?
A YES, I WAS.
Q WHAT TYPE OF VEHICLE DID SHE HAVE?
A IT WAS A TAN COLORED SMALL DODGE, TWO-DOOR. I'M NOT SURE OF THE YEAR OR MODEL.
Q AND WHEN YOU GOT TO WORK THAT MORNING IN THE PARKING LOT, DID YOU SEE MARIE GAIL CHRONISTER?
A YES, I DID.
Q WHERE WAS SHE WHEN YOU FIRST SAW HER?
A SHE HAD JUST EXITED HER VEHICLE WHICH WAS PARKED JUST IN FRONT OF ME. AND SHE WAS WALKING TOWARD THE FRONT DOOR OF THE ADMIN BUILDING.
Q AND COULD YOU SEE HER VEHICLE WHERE YOU WERE?
A YES, I COULD.
Q HOW NEAR WERE YOU TO HER?
A PROBABLY WITHIN 50 TO 60 FEET.
Q WAS ANYBODY ELSE IN HER VEHICLE?
A I DIDN'T SEE ANYONE ELSE.
Q ALL RIGHT. AND WHAT DID YOU SEE HER DO? DID YOU SEE HER GET OUT OF THE VEHICLE?
A I DID NOT ACTUALLY SEE HER GET OUT OF HER VEHICLE. APPARENTLY, SHE HAD JUST EXISTED THE VEHICLE AND WAS WALKING

TOWARDS THE FRONT DOOR AS I WAS PARKING MY VEHICLE.

Q ALL RIGHT, SIR. AND AFTER YOU PARKED YOUR VEHICLE, DID YOU SEE ANYTHING GOING ON RIGHT WHEN YOU PARKED YOUR VEHICLE?

A NO, I DIDN'T.

Q DID YOU HEAR ANYTHING?

A NO, I DID NOT.

Q WHAT DID YOU DO AFTER YOU PARKED YOUR VEHICLE?

A APPROXIMATELY -- THE BEST I CAN RECALL, 30 TO 45 SECONDS LATER I EXITED MY VEHICLE AND I ALSO HEADED TOWARDS THE FRONT DOOR OF THE ADMIN BUILDING. WHEN I CLEARED THE VEHICLES THAT WERE PARKED IN FRONT OF ME, THAT'S WHEN I SAW HER LAYING ON THE SIDEWALK JUST OUTSIDE THE DOOR.

Q THIS WAS HOW LONG AFTER YOU HAD SEEN HER GET OUT OF HER VEHICLE?

A I'M THINKING ABOUT 30 TO 45 SECONDS.

Q WHEN YOU SAW HER, WHAT POSITION WAS SHE IN?

A SHE WAS LAYING ON HER LEFT SIDE AND HER HEAD LAYING ON THE -- ON THE SIDEWALK.

Q WAS ANYBODY ELSE AROUND HER AT THAT TIME?

A I DIDN'T SEE ANYONE ELSE AT THAT TIME.

Q I WOULD LIKE TO SHOW YOU THIS PHOTOGRAPH FIRST AND ASK IF YOU CAN IDENTIFY THE VEHICLE AND THE LOCATION OF THAT PHOTOGRAPH?

A YES, THIS APPEARS TO BE MARIE'S VEHICLE AND THIS IS THE PARKING LOT OF ADMIN PARKING LOT WHERE BOTH OF US PARKED OUR

VEHICLES.
Q AND IS THAT WHERE HERE VEHICLE WAS LOCATED ON THE MORNING THAT YOU SAW HER, FEBRUARY 14?
A YES, IT IS.
Q AND DOES IT ACCURATELY REFLECT WHERE SHE PARKED HER VEHICLE IN RELATION TO THE ADMIN BUILDING?
A YES, IT DOES.
Q THE WAY YOU SAW IT?
A YES.
MR. GRANT: WE WOULD OFFER THIS AS STATE'S EXHIBIT NO. 1.
THE COURT: ANY OBJECTION?
MR. SMITH: YOUR HONOR, I DON'T THINK THE PROPER FOUNDATION HAS BEEN -- HAS BEEN ELICITED FOR THAT TO GO IN.
THE COURT: WHAT DO YOU MEAN BY THAT? THE WITNESS SAYS THAT HE CAN IDENTIFY THE PHOTOGRAPH. IT ACCURATELY SHOWS THE CONDITION IN THE PHOTOGRAPH ON THE DATE THAT HE SAW HER. WHAT OTHER FOUNDATION WOULD HE HAVE TO LAY?
MR. SMITH: HE SAID THAT APPEARED -- HE SAID THAT APPEARED TO BE THE VEHICLE THAT -- THERE'S NO INDICATION WHEN IN TIME THIS PHOTOGRAPH WAS TAKEN, YOUR HONOR. AND ON THAT BASIS, I SAY THAT THE PROPER FOUNDATION HAS NOT BEEN LAID.
THE COURT: MOTION IS OVERRULED. HAVE THE COURT REPORTER MARK THE EXHIBIT PLEASE AND HAND IT UP TO THE COURT, SOLICITOR.
(5 X 7 COLOR PHOTOGRAPH MARKED IN EVIDENCE AS STATE'S

EXHIBIT NO. 1.)

THE COURT: NOW IN THE RECORD OF THIS CASE OVER THE OBJECTION OF THE DEFENDANT AN EXHIBIT DESIGNATED AS STATE'S EXHIBIT NO. 1. IT IS DESCRIBED AS A COLOR PHOTOGRAPH APPROXIMATELY 5 X 7 IN SIZE NOW ENTERED OVER OBJECTION. YOU MAY PUBLISH IT TO THE JURY.

MR. GRANT: YOUR HONOR, IF I MAY, I'D LIKE TO OFFER ONE OTHER, THEN PUBLISH BOTH AT THE SAME TIME.

THE COURT: THAT WILL BE FINE, SOLICITOR.

Q I SHOW YOU THIS PHOTOGRAPH AND ASK YOU IF YOU CAN IDENTIFY THAT? WHO'S VEHICLE IS THAT IN THAT PHOTOGRAPH PLEASE, SIR?

A THAT APPEARS TO BE MARIE'S VEHICLE ALSO.

Q AND IS THAT THE LOCATION IT WAS ON THE MORNING OF THE 14TH?

A YES, I BELIEVE IT IS.

Q WHERE WERE YOU PARKED?

A MY POSITION WOULD HAVE BEEN FURTHER BEHIND. AND IF YOU WERE LOOKING AT THE BACK OF HER CAR, PROBABLY ABOUT 2 PARKING SPACES TO THE RIGHT.

Q AND LOOKING AT THAT PHOTOGRAPH, DOES IT ACCURATELY REFLECT WHERE SHE PARKED ON THAT MORNING?

A YES, IT DOES.

Q IS THAT AS YOU SAW IT THAT MORNING?

A YES, IT IS.

Q ALL RIGHT, SIR. I BELIEVE THAT'S A CLOSER PHOTOGRAPH THAN THE OTHER SHOWING THE LOCATION OF THE BUILDING?

A THAT'S CORRECT.

MR. GRANT: WE WOULD OFFER IT, YOUR HONOR.

THE COURT: COUNSEL PLEASE?

MR. SMITH: YOUR HONOR, I'VE SEEN IT AND SUBJECT TO THE SAME OBJECTION.

THE COURT: THE SAME OBJECTION. OBJECTION IS OVERRULED. HAVE THE COURT REPORTER MARK IT.

(5 X 7 COLOR PHOTO MARKED IN EVIDENCE AS STATE'S EXHIBIT NO. 2.)

THE COURT: NOW IN THE RECORD OF THIS CASE OVER THE OBJECTION OF THE DEFENDANT AN EXHIBIT WHICH WILL BE DESIGNATED AS STATE'S EXHIBIT NO. 2 DESCRIBED AS A COLOR PHOTOGRAPH APPROXIMATELY 5 BY 7 IN SIZE. YOU MAY PUBLISH IT TO THE JURY.

MR. GRANT: THANK YOU, YOUR HONOR.

Q MR. SMITH, COULD YOU COME DOWN AND IDENTIFY THIS PHOTOGRAPH FOR THE JURY PLEASE, SIR?

(WITNESS STEPS DOWN FROM THE WITNESS STAND.)

THE COURT: SOLICITOR, IF YOU WOULD, HAVE HIM STAND THERE IN FRONT OF THAT MICROPHONE WHEN HE MAKES A DESCRIPTION.

MR. GRANT: YES, SIR.

THE COURT: AND HOLD THE PHOTOGRAPH UP SO ALL THE JURORS CAN SEE IT. STAND BACK JUST A LITTLE MR. SMITH.

MR. GERALD SMITH, YOU MAY MOVE OVER WHERE YOU CAN SEE AS

WELL.

MR. SMITH: THANK YOU, YOUR HONOR.

Q SHOWING YOU STATE'S EXHIBIT NO. 1, IF YOU COULD, DESCRIBE FOR THE JURY WHAT IS SHOWN IN THAT PHOTOGRAPH? YOU COULD JUST START WITH THE ADMINISTRATION BUILDING IF YOU WOULD.

A OKAY. THAT'S -- THE DOORWAY YOU SEE IS THE ENTRANCE, MAIN ENTRANCE, TO THE ADMIN BUILDING.

Q GO AHEAD AND POINT OUT THE ---

THE COURT: HOLD IT JUST A MINUTE. THIS IS SUPPOSED TO BE THE MICROPHONE HERE.

WITNESS: ALL RIGHT, SIR.

A THIS IS THE MAIN ENTRANCE TO THE CATAWBA NUCLEAR STATION TO THE ADMIN BUILDING. AND THIS IS MARIE CHRONISTER'S VEHICLE.

THE COURT: TAKE IT DOWN TO THE OTHER END SO THE OTHER JURORS MAY SEE.

MR. GRANT: ALL RIGHT.

THE COURT: GIVE THE SAME INFORMATION.

A THIS IS THE MAIN ENTRANCE TO THE CATAWBA NUCLEAR STATION ADMIN BUILDING. THIS VEHICLE IS MARIE CHRONISTER'S.

THE COURT: WERE ALL THE JURORS ON THIS SIDE ABLE TO SEE

(NO RESPONSE.)

THE COURT: IF NOT, RAISE YOUR HAND AT ANY TIME.

YOU MAY PROCEED.

Q WHERE WERE YOU PARKED IN RELATION TO MARIE'S VEHICLE?

A OKAY. FROM BEHIND LOOKING AT THE BACK OF HER VEHICLE, I'D HAVE BEEN APPROXIMATELY 50 FEET BEHIND HER VEHICLE IN THE NEXT PARKING ROW, APPROXIMATELY 2 SPACES TO THE RIGHT.

THE COURT: AND IF YOU WOULD, POSITION IN FRONT OF THAT MICROPHONE.

MR. GRANT: YES, SIR.

THE COURT: POSITION SO THAT EVERYBODY CAN HEAR.

MR. GRANT: YES, SIR.

Q WHERE WERE YOU PARKED FOR THIS PORTION OF THE JURY PLEASE, SIR?

A OKAY. LOOKING AT THE BACK OF MARIE'S VEHICLE, I WAS IN THE NEXT PARKING ROW BEHIND HER APPROXIMATELY 50 FEET AND APPROXIMATELY 2 SPACES TO THE RIGHT IF YOU WERE LOOKING AT THE BACK OF THE VEHICLE.

THE COURT: THAT WAS ON STATE'S EXHIBIT 1, SOLICITOR?

MR. GRANT: YES, SIR, ALL THAT WAS ON STATE'S 1.

Q NOW SHOWING YOU STATE'S EXHIBIT NO. 2, IF YOU CAN IDENTIFY THE ADMINISTRATION BUILDING PLEASE, SIR?

A THE ADMINISTRATION BUILDING -- AND THIS IS THE MAIN ENTRANCE TO THE ADMIN BUILDING. AND THIS IS MARIE CHRONISTER'S VEHICLE.

Q AND WHEN YOU SAW MARIE CHRONISTER LYING ON THE GROUND, WHERE WOULD SHE HAVE BEEN PLEASE, SIR?

A IF YOU WERE LOOKING -- IF YOU WERE WALKING TOWARDS THE DOOR, SHE WAS ON THIS SIDEWALK JUST TO THE LEFT OF THE

DOORWAY, JUST OUTSIDE THE DOOR.
Q CAN YOU MARK THAT ON THIS PHOTOGRAPH PLEASE, SIR?
A APPROXIMATELY RIGHT HERE.
Q IF YOU WOULD, SHOW THE JURY WHERE?
A APPROXIMATELY HERE IS WHERE SHE WAS.
THE COURT: HOW ---
A WHERE SHE WAS LAYING.
THE COURT: HOW DID YOU MARK THAT? WITH AN "X"?
WITNESS: WITH AN "X".
Q LET'S SHOW THIS PORTION VERY BRIEFLY.
A THIS IS WHERE I SAW MARIE LAYING.
Q APPROXIMATELY HOW FAR IS THAT FROM HER VEHICLE?
A I'D SAY 40 TO 50 FEET.
Q YOU MAY GO BACK ON THE WITNESS STAND.
(THE WITNESS RETURNS TO THE WITNESS STAND.)
Q WHEN YOU SAW MARIE LYING THERE, WHAT DID YOU DO?
A WHEN I SAW HER LYING THERE, I RAN UP TO HER. AND AT THA TIME SHE WAS LAYING THERE, I COULD TELL SHE WAS HURT REAL BAD SO AT THAT TIME I RAN INTO THE ADMIN BUILDING, THROUGH THAT FRONT DOOR TO A TELEPHONE EXTENSION, CALLED THE SECURITY CENTRAL ALARM STATION AND ADVISED THEM THAT THERE WAS A FEMAL EMPLOYEE THAT WAS INJURED IN THE PARKING LOT AND THAT THEY NEEDED TO SEND THE MEDICAL RESPONSE TEAM DOWN HERE.
Q AND WHEN YOU SAW YOU COULD TELL SHE WAS HURT, WHAT DID YOU SEE ABOUT HER THAT INDICATED SHE WAS HURT?

A SHE HAD BLOOD POOLED UP IN HER EAR AND SOME BLOOD RUNNING DOWN BEHIND HER EAR, DOWN THE SIDE OF HER FACE.

Q COULD YOU TELL BY LOOKING AT HER WHAT HER INJURIES WERE?

A I WASN'T SURE AT THE TIME. I JUST KNEW SHE WAS REALLY HURT BAD.

Q AND DID SHE APPEAR TO BE ALIVE WHEN YOU SAW HER LYING THERE?

A NO, SHE DID NOT.

Q WHAT DID YOU DO AFTER YOU HAD CALLED FOR MEDICAL ASSISTANCE?

A THAT'S WHEN I WENT BACK OUTSIDE, AND AT THAT TIME TOMMY AUTEN, WHO IS ---

Q DON'T GO INTO ANYTHING ANYBODY ELSE MAY HAVE TOLD YOU.

A RIGHT.

Q BUT WHAT DID YOU DO?

A OKAY. WHEN I CAME BACK OUTSIDE, ANOTHER EMPLOYEE AT THE PLANT HAD RAN OVER ALSO TO THE FRONT DOOR. AND HE ---

Q DON'T. AS A RESULT OF TALKING TO HIM WHAT DID YOU DO?

A AS A RESULT OF TALKING TO HIM, I THEN REALIZED WHAT HAD HAPPENED, THAT SHE ---

Q WHAT DID YOU DO AFTER YOU TALKED TO HIM PLEASE, SIR?

A AT THAT TIME I WENT BACK TO MY PERSONAL VEHICLE AND ATTEMPTED TO CATCH THE VEHICLE THAT I HAD A DESCRIPTION OF IN ORDER TO GET THE TAG NUMBER OFF OF IT.

Q DID YOU EVER SEE THAT VEHICLE?

A NO, I DIDN'T.
Q MR. SMITH, DID YOU KNOW THIS DEFENDANT, JEFF CHRONISTER?
A NEVER SEEN HIM BEFORE, NO, EXCEPT ON TELEVISION.
Q AND THE CATAWBA NUCLEAR PLANT IS LOCATED IN YORK COUNTY; IS THAT CORRECT?
A YES, IT IS.
MR. GRANT: PLEASE ANSWER ANY QUESTIONS THAT GERALD SMITH MAY HAVE.
CROSS EXAMINATION
BY MR. SMITH:
Q MR. SMITH, WHAT YOU'RE TELLING US IS THAT ON THIS PARTICULAR MORNING THAT YOU ARRIVED AND YOU WERE IN THE PARKING LOT OUT IN FRONT OF THE ADMIN BUILDING, CORRECT, SIR?
A THAT'S RIGHT.
Q AND YOU NOTICED MRS. MARIE CHRONISTER IN THE PARKING LOT?
A YES, I DID.
Q YOU TOLD US THAT YOU DID NOT SEE HER GET OUT OF HER VEHICLE, CORRECT, SIR?
A THAT'S CORRECT.
Q AND THE NEXT THING YOU TOLD US ABOUT IS THAT YOU SAW MRS. CHRONISTER ON THE SIDEWALK OUT IN FRONT OF THE ADMIN BUILDING?
A THAT'S CORRECT.
Q THIS WAS RIGHT NEAR THE FRONT DOOR AND THE FLOWER BED AND WHERE THE MULCH IS, WHATEVER YOU WANT TO CALL IT, UP THERE?
A ON THE SIDEWALK IS WHERE SHE -- I SAW HER LAYING AT.

Q YOUR INITIAL LOCATION YOU SAID WAS SOME 50 FEET APPROXIMATELY BEHIND HER CAR; THAT'S WHAT ---

A THAT'S WHERE I PARKED MY VEHICLE, YES.

Q AND ACCORDING TO YOUR BEST ESTIMATE, HER AUTOMOBILE WOULD HAVE BEEN ABOUT 50 FEET FROM THE ADMIN BUILDING?

A APPROXIMATELY, YES.

Q AND YOU TOLD US THAT YOU THEN SUBSEQUENTLY LEFT; IS THAT CORRECT, GOING AFTER SOME KIND OF VEHICLE?

A YES.

Q OKAY. YOU TOLD THE SOLICITOR THAT YOU PULLED UP OR YOU PARKED AND YOU SAW NOTHING AND HEARD NOTHING, CORRECT, SIR?

A THAT'S CORRECT.

MR. SMITH: THANK YOU, MR. SMITH.

THE COURT: ANY REDIRECT?

MR. GRANT: NO, SIR. YOU MAY COME DOWN.

(THE WITNESS LEAVES THE WITNESS STAND.)

MR. GRANT: WE WOULD CALL DAN WILSON.

THE COURT: SOLICITOR, IF YOU INTEND TO USE THIS WITNESS AGAIN ---

MR. GRANT: NO, SIR, I DO NOT.

THE COURT: --- YOU NEED TO SEND HIM BACK OUT OR HE CAN BE RELEASED FROM SUBPOENA UNLESS THERE'S NO OBJECTION.

MR. GRANT: I WOULD ASK HE BE RELEASED IF HE CHOOSES TO DO SO.

THE COURT: ANY OBJECTION TO HIM BEING EXCUSED?

MR. SMITH: I HAVE NO OBJECTION.

THE COURT: WITHOUT OBJECTION, MR. SMITH, YOU MAY STAY O GO, WHATEVER YOU CHOOSE. THANK YOU.

COME AROUND PLEASE, SIR.

DANNY HAROLD WILSON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. GRANT:

Q MR. WILSON, I NEED YOU TO PULL THE MIKE UP A LITTLE CLOSER AND STATE YOUR FULL NAME TO THE COURT.

A MY NAME IS DANNY HAROLD WILSON.

Q PULL A TINY BIT CLOSER AND SPEAK JUST A LITTLE BIT LOUDER. WHERE DO YOU LIVE PLEASE, SIR?

A I LIVE AT 6688 PINE FOREST DRIVE, YORK.

Q AND WHERE DO YOU WORK?

A I WORK FOR DUKE POWER.

Q WHERE?

A MAGUIRE NUCLEAR STATION.

Q BACK ON FEBRUARY THE 14TH OF 1992 WHERE DID YOU WORK?

A CATAWBA NUCLEAR STATION.

Q CATAWBA NUCLEAR?

A YES, SIR.

Q IS THAT IN YORK COUNTY?

A YES, SIR.

Q ALL RIGHT. DO YOU RECALL THE MORNING OF FEBRUARY THE

14TH, 1992?
A YES, SIR, I DO.
Q DID YOU WORK THAT MORNING?
A I WORKED THAT NIGHT AND I WAS GETTING OFF THAT MORNING.
Q ALL RIGHT. WHAT TIME DID YOU GET OFF WORK?
A APPROXIMATELY 20 MINUTES UNTIL 7:00.
Q IN THE MORNING?
A YES, SIR.
Q WHAT DID YOU DO ONCE YOU GOT OFF WORK?
A I WALKED TO THE PARKING LOT WITH ANOTHER MAN.
Q WHO WAS THAT?
A SI BALLANGER.
Q SI BALLANGER?
A YES, SIR.
Q WHAT DID YOU DO WHILE YOU WERE THERE IN THE PARKING LOT?
A I BROUGHT A BOAT IN THAT NIGHT THAT I WAS SELLING TO SI. AND WE WERE CHANGING THE TRAILER HITCH BALL ON HIS TRUCK. WE WERE KIND OF BENT DOWN, SQUATTED DOWN BEHIND HIS TRUCK. AND WE WERE GETTING READY TO ATTACH THE BOAT TO HIS TRAILER HITCH.
Q ALL RIGHT. AND WHAT HAPPENED WHILE YOU AND MR. BALLANGER WERE THERE WORKING WITH THE TRAILER HITCH?
A WHILE WE WERE WORKING A WHITE VAN PULLED UP AND A MAN GOT OUT OF IT. AND HE WALKED AROUND, ABOUT HALFWAY DOWN THE RIGHT-HAND SIDE OF THE TRUCK WE WERE WORKING BEHIND. I STOOD UP. AND WHEN I STOOD UP, HE TURNED AROUND AND WALKED BACK

DOWN THE FRONT SIDE OF THE VAN AND WALKED OVER TOWARD THE ADMIN BUILDING PARKING LOT.

Q WHEN YOU SAY A "WHITE VAN," CAN YOU DESCRIBE WHAT TYPE OF VAN IT WAS PLEASE, SIR?

A YES, SIR. IT WAS A WHITE DODGE VAN WITH WINDOWS ALL THE WAY AROUND IT.

Q AND HOW NEAR WERE YOU TO IT?

A PARDON ME?

Q HOW NEAR WERE YOU TO THE VAN?

A THE LENGTH OF A SMALL PICK-UP TRUCK.

Q I'D LIKE TO SHOW YOU THESE FOUR PHOTOGRAPHS. JUST LOOK AT EACH ONE OF THEM FIRST AND THEN I WOULD ASK YOU IF YOU CAN IDENTIFY THE VAN IN THOSE PHOTOGRAPHS?

(PAUSE.)

Q CAN YOU IDENTIFY THE VEHICLE, SIR?

A THAT'S THE VAN LIKE THE ONE THAT WAS PARKED IN FRONT OF THE TRUCK.

Q LIKE THE ONE THAT WAS PARKED THERE?

A YES, SIR.

Q YOU CAN'T SAY IT WAS THE SAME VAN?

A I THINK IT WAS THE SAME VAN, BASED ON THE LICENSE PLATE NUMBER. ME AND SI BALLANGER TRIED TO GET THE LICENSE PLATE NUMBER, AND WE GOT THE FIRST THREE LETTERS. AND IT'S THE SAME AS WHAT'S ON THERE NOW, ON THAT PICTURE.

Q WHAT WERE THE FIRST THREE LETTERS THAT YOU GOT AS FAR AS

THE LICENSE PLATE?

A I THINK THEY WERE D.R.L.

MR. GRANT: WE WOULD OFFER THESE, YOUR HONOR. I THINK WE'LL OFFER THEM FOR IDENTIFICATION AT THIS TIME.

THE COURT: YOU ARE GOING TO OFFER THEM OR ARE YOU JUST GOING TO HAVE THEM MARKED?

MR. GRANT: HAVE THEM MARKED.

THE COURT: HAVE THEM MARKED STATE'S I.D. ONLY.

(FOUR, 4, 8 X 10 COLOR PHOTOS MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NOS. 3, 4, 5, AND 6.)

Q AND I BELIEVE YOU STATED THE VAN WAS HOW NEAR WHERE YOU AND MR. BALLANGER WERE?

A IT WAS AT THE FRONT OF THE VEHICLE, WE WERE AT THE REAR OF IT. HE HAD US BLOCKED IN OUR PARKING SPACE.

Q AS FAR AS IN THE COURTROOM, HOW CLOSE WOULD YOU HAVE BEEN? CAN YOU TELL WHERE TO STAND?

A PROBABLY ABOUT WHERE YOU ARE, MAYBE A LITTLE CLOSER.

Q A LITTLE CLOSER? ALL RIGHT, SIR.

A ABOUT THERE.

Q ALL RIGHT, SIR. AND WHAT TIME OF THE MORNING WAS THIS?

A IT WAS -- LIKE I SAID, IT WAS IN FEBRUARY IT WAS DARK. THE PARKING LOT WAS DIMLY LIT.

Q AND COULD YOU SEE THE VAN?

A I SAW THE VAN WELL.

Q COULD YOU SEE THE PERSON THAT WAS IN THE VAN?

A YES, SIR.
Q WHAT COULD YOU SEE HIM DO?
A WELL, AS I STATED, HE GOT OUT OF THE VAN AND WALKED HALFWAY DOWN ON THE RIGHT-HAND SIDE OF THE VEHICLE THAT WE WERE CROUCHED DOWN BEHIND.

WHEN I -- I SAW THE VAN PULL UP, JUST SAW THE TOP REAR O IT. AT FIRST I THOUGHT IT WAS A SECURITY VAN FOR DUKE POWER. SO I STOOD UP AND I SAW THE INDIVIDUAL COMING BETWEEN THE TWO VEHICLES ON MY RIGHT.

AND WHEN I STOOD UP, HE TURNED AROUND AND WALKED BACK TO THE FRONT OF THE VEHICLE, THEN HE WALKED TO THE FRONT OF IT. I STEPPED OVER TO THE LEFT-HAND SIDE. AS HE WALKED PAST I SA HE WAS CARRYING -- AT THAT TIME I THOUGHT IT WAS A SHOTGUN. IT WAS A -- YOU KNOW, A LONG RIFLE-TYPE WEAPON. HE WAS HOLDING IT DOWN BESIDE HIS LEG. AND HE WALKED OVER TO THE ADMIN PARKING LOT, TO THE REAR OF IT.

Q ALL RIGHT, SIR. LET ME ASK YOU THIS: IF YOU WOULD, COULD YOU DESCRIBE HOW HE WAS HOLDING THIS LONG WEAPON THAT YOU THOUGHT WAS A SHOTGUN? COULD YOU JUST DESCRIBE HOW IT WA BEING HELD?
A WELL, HE WAS HOLDING IT, YOU KNOW, ABOUT THE MIDDLE OF THE WEAPON. I'M NOT SURE IF HE HAD HIS HAND ON THE TRIGGER GUARD. I COULDN'T SEE THAT. I JUST SAW THE WEAPON, AND HE WAS HOLDING IT DOWN HIS RIGHT HAND NEXT TO HIS RIGHT LEG.
Q IF YOU WOULD, JUST STAND WHERE YOU ARE AND SHOW THE JURY

HOW HE WAS HOLDING IT PLEASE?

A JUST KIND OF HOLDING IT DOWN LIKE THIS. AS HE WALKED HE TRIED TO KEEP IT NEXT TO HIS LEG.

Q AND WAS ANYBODY ELSE IN THE VAN?

A NOT TO MY KNOWLEDGE. I DIDN'T SEE ANYBODY ELSE.

Q DID YOU SEE ANYBODY ELSE WITH THAT PERSON?

A NO, SIR.

Q AND WHERE DID HE GO WITH THE WEAPON?

A THERE'S TWO PARKING AREAS AT CATAWBA. AND WE WERE IN THE MAIN PARKING LOT, WHICH IS A BIG PARKING LOT. THERE'S A SMALLER PARKING LOT THAT'S IN FRONT OF THE ADMIN BUILDING WITH A SEPARATE ENTRANCE. AND THERE'S A ROW OF DIAGONAL PARKING IN BETWEEN THOSE TWO AREAS. AND THIS INDIVIDUAL WALKED THROUGH THOSE DIAGONALLY PARKED CARS AND WENT TO THE REAR OF THE ADMIN BUILDING PARKING LOT. AND HE MOVED AROUND THERE A LITTLE BIT AND THEN HE STARTED BACK THROUGH THE CARS AGAIN IN THE GENERAL DIRECTION OF THE FRONT DOOR OF THE ADMIN BUILDING.

Q AND WHEN HE WAS WALKING FROM THE VAN DOWN TO THAT AREA, HOW WAS HE WALKING?

A ALL THE TIME SLOWING AND DELIBERATELY. HE LOOKED BACK ACROSS THE PARKING LOT A COUPLE TIMES AT ME -- YOU KNOW, IN MY DIRECTION. I NEVER MADE EXACT EYE CONTACT WITH HIM EXCEPT WHEN HE WALKED PAST THE VAN TO START WITH.

Q DID YOU EVER SEE THE PERSON WELL ENOUGH TO IDENTIFY HIM?

A NO, SIR. MY ATTENTION WAS RIVETED ON HIS WEAPON AND I

DIDN'T LOOK AT HIS FACE THAT WELL.

Q ALL RIGHT, SIR. AFTER HE WALKED DOWN TOWARD THE ADMINISTRATION BUILDING, WHAT DID YOU SEE HIM DOING?

A WELL, I THOUGHT HE GOT IN THE CAR ---

MR. SMITH: OBJECTION, YOUR HONOR. HE CAN TESTIFY TO WHAT HE SAW.

WITNESS: OKAY.

THE COURT: I SUSTAIN THE OBJECTION. MR. WITNESS, YOU ARE TO TESTIFY TO WHAT YOU SAW AND OBSERVED, NOT IF YOU THOUGHT OCCURRED.

A OKAY. HE ---

THE WITNESS: THE JURY IS INSTRUCTED TO DISREGARD THE LAST RESPONSE. YOU MAY CONTINUE, SOLICITOR.

A MOST OF THE TIME THAT HE WAS IN THE PARKING LOT, I COULD SEE HIS HEAD AN SHOULDERS. AND AS HE NEARED WITHIN A CAR LENGTH OF THE LAST CAR NEXT TO THE FRONT OF THE BUILDING, HIS HEAD DROPPED FROM MY SIGHT; THAT'S THE LAST TIME I SAW HIM BEFORE THE SHOTS WERE FIRED.

Q ALL RIGHT. SO YOU SAW HIS HEAD GO OUT OF SIGHT?

A YES, SIR.

Q ALL RIGHT, SIR. AND HOW NEAR WOULD HE HAVE BEEN TO THE FRONT OF THE ADMINISTRATION BUILDING WHEN YOU SAW HIS HEAD GO OUT OF SIGHT?

A I WOULD ---

MR. SMITH: OBJECTION, YOUR HONOR, UNLESS THE WITNESS ---

THE COURT: I'M SORRY. I CAN'T HEAR YOU, MR. SMITH.

MR. SMITH: OBJECTION, YOUR HONOR. HE ASKED HIM HOW NEAR HE WOULD HAVE BEEN TO A CERTAIN POINT. THIS WITNESS HAS TESTIFIED HE WAS SOME DISTANCE AWAY IN ANOTHER PARKING LOT, AND I OBJECT TO THE -- I OBJECT TO THAT QUESTION.

THE COURT: I OVERRULE THE OBJECTION. THE WITNESS CAN TESTIFY TO WHAT HE SAW. IT'S UP TO THE JURY TO DETERMINE WHETHER OR NOT THEY BELIEVE HIM.

GO AHEAD, SIR.

A THE PARKING LOT IS LAID OFF IN SINGLE PARKING SPACES, THE APPROXIMATE LENGTH OF COMMON VEHICLES. AND HE WAS -- THE LAST I SAW OF HIM, HE WAS ONE CAR AWAY FROM THE END OF THE ROW. SO THAT WOULD MAKE HIM THE LENGTH OF A VEHICLE AND THE WIDTH OF THE ROAD FROM WHERE THE SHOOTING OCCURRED.

Q AND DID YOU HEAR ANYTHING AT THAT TIME?

MR. SMITH: YOUR HONOR, OBJECTION. LEADING, I MEAN.

THE COURT: ALL RIGHT. SOLICITOR, YOU ARE LEADING FROM TIME TO LEAD. DON'T LEAD. YOU'VE GOT HIM ON DIRECT. THE RULES REQUIRE THAT YOU LET THE WITNESS ANSWER. DON'T GIVE HIM ANSWERS.

Q AFTER YOU SAW HIS HEAD GO OUT OF SIGHT, WHAT HAPPENED NEXT?

A WELL, I TURNED AWAY AT THAT TIME AND I SQUATTED BACK DOWN WHERE SI WAS WORKING ON THE TRAILER HITCH. AND I REMEMBERED THE HEADS MOVING IN THE PARKING LOT, AND I THINK THAT WAS THE

FIRST CONSCIOUS THOUGHT THAT I HAD.

MR. SMITH: YOUR HONOR, HE'S TESTIFYING AGAIN AS TO WHAT HE THOUGHT. I THINK THAT IS THE FIRST CONSCIOUS THOUGHT, AND I OBJECT TO THAT AND I ASK THE JURY BE INSTRUCTED TO DISREGARD IT.

THE COURT: COUNSEL, SOMETIMES WITNESSES TESTIFY ON THE FACTS THAT THEY KNOW. IT DIDN'T APPEAR TO ME THAT HIS TESTIMONY IN THAT REGARD WAS TESTIFYING IN THAT REGARD. HE'S TESTIFYING AS TO WHAT HE SAW.

MR. WITNESS, I REMIND YOU TO TESTIFY AS TO WHAT YOU SAW AND OBSERVED, NOT WHAT YOU MAY THINK. ALL RIGHT, SIR. THAT'S REACHING A CONCLUSION OR OPINION.

WITNESS: OKAY.

THE COURT: YOU'RE NOT PERMITTED TO DO THAT. YOU ARE PERMITTED TO TESTIFY TO WHAT YOU SAW AND OBSERVED. TO THAT EXTENT, YOUR OBJECTION IS SUSTAINED.

YOU MAY CONTINUE, SOLICITOR.

A ALL RIGHT. AS I SQUATTED BACK DOWN TO SI, I SAID TO HIM THEN, I THINK WE BETTER GET OUT OF HERE. SOMETHING BAD IS GETTING READY TO HAPPEN. THAT WAS MY FIRST CONSCIOUS THOUGHT OF THERE BEING ANY DANGER OR OF ANYTHING HAPPENING.

Q AFTER YOU SPOKE TO SI, WHAT HAPPENED NEXT PLEASE, SIR?

A OKAY. SI -- SI'S RESPONSE ---

Q DON'T GO INTO ANYTHING ---

A I'M SORRY.

Q --- SI MAY HAVE TOLD YOU.
A OKAY. I HEARD -- THE NEXT THING WAS I HEARD THE SHOTS. AND THERE WERE AT LEAST FIVE SHOTS.
Q AND WHAT IN SUCCESSION? HOW CAN YOU DESCRIBE THE SHOTS PLEASE, SIR?
A THEY WERE IN FAIRLY RAPID SUCCESSION. THE WAY I REMEMBER IT IS THREE SHOTS, A PAUSE, AND THEN MAYBE TWO MORE. BUT IT WAS FROM ABOUT 150 FEET WITH SOME BUILDINGS THERE. AND I COULDN'T DISTINGUISH BETWEEN THE SHOTS AND ECHOES.
Q AND WHEN YOU HEARD THE SHOTS, WHAT DID YOU DO THEN?
A I GRABBED SI BY THE ARM AND WE RAN TO THE END OF THE ROW. I KNEW THAT THE PERSON WITH THE GUN WAS COMING BACK TO THE LOCATION WE WERE AT, AND I DIDN'T WANT TO BE NEAR THERE. SO WE RAN DOWN TO THE OPPOSITE END OF THE SAME ROW THAT WE WERE PARKED ON, AND WE HID BEHIND A VEHICLE THERE.
Q AND DID YOU SEE THE PERSON WITH THE GUN AFTER YOU HEARD THE SHOT?
A YES, SIR. HE WAS -- WHEN WE RAN DOWN TO THE END OF THE ROW, WE STOOD UP AND WE SAW HIM WALKING BACK TOWARD THE WHITE VAN STILL HOLDING THE RIFLE AT THAT POINT. AND HE GOT IN THE VAN. AND WE WERE STANDING UP TRYING TO GET THE LICENSE TAG NUMBER. AND HE KIND OF SURPRISED US BECAUSE HE BACKED UP AND CAME ALL THE WAY BACK TO WHERE WE WERE AND TURNED AROUND, THEN WENT OUT THE UPPER END OF THE PARKING LOT.
Q WERE YOU ABLE TO SEE THE TAG NUMBER?

A WE COULD SEE THAT IT WAS A NORTH CAROLINA PLATE, AND WE GOT THE FIRST THREE LETTERS, WHICH TO THE BEST OF MY MEMORY WERE D.R.L.

Q DID YOU GIVE THAT INFORMATION TO THE LAW ENFORCEMENT?

A I DIDN'T, NO. THEY -- SI GAVE IT TO THEM. WE TALKED ABOUT IT AT THAT TIME. HE WAS CLEAR ON WHAT ---

MR. SMITH: I OBJECT, YOUR HONOR.

THE COURT: I SUSTAIN THE OBJECTION. THE JURY IS INSTRUCTED TO DISREGARD THE RESPONSE BY THE WITNESS. IT DOES NOT APPEAR TO BE A STATEMENT OF HIS OWN KNOWLEDGE OR SIGHT.

Q AND WHERE DID THE VAN GO PLEASE, SIR, FROM YOUR OBSERVATION?

A HE DROVE OUT FROM THE PARKING LOT OUT OF THE UPPER DRIVEWAY. AND OUT FROM THERE I DIDN'T SEE WHERE HE WENT AFTE THAT.

Q AFTER THE VAN LEFT, WHAT DID YOU DO?

A WELL, I WAS PRETTY CERTAIN THAT SOMEONE HAD BEEN SHOT AT OR ---

MR. SMITH: I OBJECT. YOUR HONOR, WHAT HE IS CERTAIN OF AND PRETTY CERTAIN OF, THAT'S SPECULATIVE. I MEAN, HE CAN TESTIFY OF WHAT HE OBSERVED.

THE COURT: I SUSTAIN THE OBJECTION. JUST TESTIFY TO WHAT YOU SAW, WHAT YOU DID. DON'T TESTIFY TO WHAT YOU BELIEVI OCCURRED.

WITNESS: I'M SORRY.

THE COURT: THE ULTIMATE CONCLUSION WILL BE REACHED BY THE JURY, NOT BY WITNESSES.

Q WHAT DID YOU DO AFTER THE VAN LEFT?

A I RAN TO THE AREA WHERE I THOUGHT THE SHOOTING OCCURRED; AND THAT'S WHERE ME AND SOME OTHER PEOPLE CONVERGED AT ABOUT THE SAME TIME AND FOUND MARIE CHRONISTER'S BODY.

Q WHERE WAS MARIE CHRONISTER'S BODY?

A HER BODY WAS LAYING ON THE SIDEWALK JUST TO THE LEFT OF THE ADMIN BUILDING ENTRANCE.

Q AND DID YOU OBSERVE HER BODY?

A YES, SIR, I DID.

Q DID SHE APPEAR TO BE DEAD OR ALIVE?

A SHE -- SHE APPEARED TO BE DEAD.

Q DID YOU SEE ANY WOUNDS ON HER?

A YES, SIR.

Q WHERE?

A I SAW WOUNDS IN HER -- HER RIGHT EAR, HER RIGHT NECK WERE THE ONLY WOUNDS THAT I SAW.

Q DID YOU KNOW HER?

A YES, SIR, JUST AS AN ACQUAINTANCE. SHE WORKED IN THE SAME AREA THAT I DID.

(PAUSE.)

MR. GRANT: MR. WILSON, PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY HAVE.

CROSS EXAMINATION

BY MR. SMITH:

Q MR. WILSON, I BELIEVE THAT ON THE 14TH OF FEBRUARY AT 8:45 A.M. YOU TALKED TO OFFICER JIM WILLIAMS, CORRECT, SIR?

A YES, SIR.

Q AND DO YOU RECALL WHAT YOU TALKED TO HIM ABOUT? WOULD YOU CARE TO SEE THE SUMMARY OF THE INTERVIEW?

A BASICALLY I TALKED TO HIM ABOUT WHAT I JUST DESCRIBED TO THE COURT.

Q ALL RIGHT. LET'S GO OVER THAT. I ASK YOU TO LOOK AT THIS PAGE HERE PLEASE, SIR.

A (COMPLIED.)

Q NOW, WHEN YOU TALKED WITH THE LAW ENFORCEMENT OFFICER AT 8:45 ON FEBRUARY 14 OF THIS YEAR, YOU TOLD HIM THAT YOU AND ANOTHER PERSON WERE WORKING ON A BOAT?

A YES, SIR.

Q AND YOU THEN SAID THAT A WHITE DODGE VAN PULLED IN, CORRECT, SIR?

A YES, SIR.

Q AND YOU TOLD HIM THAT IT POSSIBLY PULLED IN FRONT OF THE TWO OF YOU, CORRECT, SIR?

A THAT'S WHAT'S WRITTEN ON THE PAPER. BUT HE PULLED DIRECTLY IN FRONT OF US.

Q THAT'S WHAT YOU SAID THEN; IS THAT CORRECT?

A NO, I DON'T REMEMBER SAYING THAT. THAT'S HOW HE INTERPRETED WHAT I SAID.

Q ALL RIGHT.
A I'M REAL CLEAR ON THE POINT WHERE THE VAN WAS PARKED.
Q ALL RIGHT. MUCH CLEARER TODAY THAN YOU WERE?
A I DON'T KNOW HOW THE MAN WROTE THAT DOWN -- THAT'S NOT MY HANDWRITING. I DON'T KNOW HOW HE INTERPRETED WHAT I SAID, BUT I'M REAL CLEAR ON THAT POINT. I REMEMBER IT VIVIDLY.
Q BUT YOU DID TALK WITH OFFICER JIM WILLIAMS?
A YES, SIR.
Q OKAY. NOW, ON FEBRUARY THE 14TH WHEN YOU TALKED WITH OFFICER WILLIAMS, YOU TOLD HIM THAT YOU NOTICED A RIFFLE, AND AT THAT TIME ---

THE COURT: HOLD IT JUST A MINUTE. YOU ARE GOING TO HAVE TO EITHER TALK UP OR STEP RIGHT UP HERE IN THIS MICROPHONE.

MR. SMITH: I APOLOGIZE.

THE COURT: SPEAK INTO THAT MICROPHONE. WE CANNOT HEAR. PUSH IT UP SO IT WILL BE POINTING TOWARD YOUR FACE. PUSH IT ON UP. IT'LL GO UP. THAT'LL BE FINE. JUST TRY TO SPEAK INTO IT AND USE IT.

MR. SMITH: ALL RIGHT, SIR.

Q MR. WILSON, ON THAT DAY YOU DID NOT GO INTO THE DETAIL WITH THE OFFICER THAT YOU HAVE GONE INTO FOR THE JURY'S BENEFIT TODAY, DID YOU, SIR?
A YES, I DID. I TOLD THAT STORY SEVERAL TIMES ---
Q BUT THAT'S ---
A --- THAT MORNING.

Q --- NOT REFLECTED ---

MR. GRANT: YOUR HONOR, I BELIEVE HE'S TRYING TO ANSWER THE QUESTION.

THE COURT: I SUSTAIN THE OBJECTION.

MR. GRANT: GIVE HIM AN OPPORTUNITY.

THE COURT: YOU'VE GOT TO GIVE HIM AN OPPORTUNITY TO ANSWER. MR. SMITH, YOU HAVE GOT TO GIVE HIM AN OPPORTUNITY T ANSWER. YOU MAY USE IT FOR PURPOSE OF IMPEACHING HIM ON A PRIOR INCONSISTENT STATEMENT OF SOMEONE ELSE, BUT YOU CAN'T B ARGUMENTATIVE ABOUT IT. YOU CAN ASK HIM, DID HE SAY IT? IF HE DENIES IT, YOU CAN CALL THE OTHER WITNESS. LET'S DO IT THE RIGHT WAY.

MR. SMITH: I APOLOGIZE.

A I TOLD THE STORY TO THE OFFICER JUST AS I TOLD IT TO THE COURT. BUT I TOLD THAT STORY TO SEVERAL PEOPLE AND I DON'T KNOW WHOSE HANDWRITING THAT IS.

Q WHEN YOU TALKED WITH OFFICER WILLIAMS THAT MORNING, YOU TOLD HIM THAT YOU LOST TRACK OF THE PERSON CARRYING THE RIFFLE, DIDN'T YOU, SIR?

A YES, SIR, I DID JUST PRIOR TO THE SHOOTING -- OR THE SHOTS BEING FIRED.

Q AND THAT YOU THOUGHT THAT THE PERSON HAD GOTTEN INTO A VEHICLE; IS THAT CORRECT, SIR?

A YES, SIR, I DID. THAT'S WHAT I EXPECTED HIM TO DO.

Q AND YOU THEN TOLD THE OFFICER THAT THAT WAS SOME FEW

MINUTES BEFORE ANY SHOTS, CORRECT, SIR?
A THAT WAS A FEW SECONDS BEFORE THE SHOTS.
Q SO YOU NEVER TOLD THE OFFICER IT WAS A FEW MINUTES?
A NO, SIR, I DON'T THINK SO. I REMEMBER THE INCIDENT CLEARLY, AND IT WAS JUST A FEW SECONDS AFTER I TURNED AWAY THAT THE SHOTS WERE FIRED.
Q THEN IF THE OFFICER HAD NOTED THAT YOU SAID A FEW MINUTES, THE OFFICER WOULD BE IN ERROR?
A YES, SIR. THIS WHOLE INCIDENT ONLY TOOK A FEW MINUTES.
Q YOU TOLD THE OFFICER THAT MORNING AT 8:45 ON FEBRUARY 14, THAT WHEN ALL THIS OCCURRED, IT WAS STILL DARK; IS THAT CORRECT, SIR?
A YES, SIR, IT WAS PRETTY DARK.
Q OKAY.
A BUT YOU HAVE TO REMEMBER THAT WE WERE IN A DIMLY LIT PARKING LOT.
Q DIMLY LIT PARKING LOT?
A YES, SIR.
Q AND IT WAS STILL DARK?
A IT WAS DARK OUTSIDE, BUT, YOU KNOW, YOU COULD SEE FOR A PRETTY GOOD WAYS IN THE LIGHTS OF THE PARKING LOT.
Q AND JUST A COUPLE MORE QUESTIONS. BUT YOU SAY THAT YOU AND MR. BALLANGER WERE INITIALLY CONCENTRATING ON WORKING ON THE BOAT?
A MR. BALLANGER WAS ACTUALLY WORKING ON THE BOAT. I WAS

KNELT DOWN. I WAS DOING NOTHING EXCEPT WATCHING HIM. I HAD ALREADY DISCONNECTED THE BOAT AND MOVED IT OVER FROM MY VEHICLE AND HE WAS CHANGING THE TRAILER HITCH BALL ON HIS AS THIS INCIDENT OCCURRED.

MR. SMITH: THAT'S ALL I HAVE.

THE COURT: ANY REDIRECT, SOLICITOR?

MR. GRANT: NO, SIR.

THE COURT: YOU MAY STEP DOWN. DO YOU WANT HIM EXCUSED?

MR. GRANT: YES, SIR.

THE COURT: ANY OBJECTION TO ME EXCUSING HIM, MR. SMITH?

MR. SMITH: NONE, YOUR HONOR.

THE COURT: YOU MAY GO.

(THE WITNESS LEAVES THE WITNESS STAND.)

MR. GRANT: MR. WILSON, YOU ARE FREE TO GO IF YOU WOULD LIKE.

THE COURT: MR. FOREMAN, I'M GOING TO GIVE THE PEOPLE OU HERE A BREAK. WE STARTED BACK BEFORE YOU ALL CAME DOWN. STE BACK IN THE JURY ROOM. TELL THE BAILIFF WHEN EACH OF YOU HAV HAD AN OPPORTUNITY TO GO TO THE BATHROOM THAT NEEDS TO GO, SO THAT I KNOW THAT YOU'VE HAD ENOUGH TIME. ALL RIGHT. AND WE'LL PROCEED AS SOON AS I HEAR FROM YOU. ALL RIGHT.

YOU MAY STEP BACK. NO DISCUSSION OF THE CASE. THIS WIL BE THE ONLY RECESS WE TAKE UNTIL WE STOP FOR THE DAY.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: MR. BAILIFF, IF YOU WILL, TELL ME AS SOON AS

THE JURY HAS LET YOU KNOW THEY'VE HAD ENOUGH TIME SO WE WILL PROCEED.

THE COURT WILL BE IN RECESS.

(A RECESS WAS TAKEN.)

THE COURT: BRING THE JURY IN PLEASE.

(PAUSE.)

THE COURT: MR. SMITH, THE JURY SENT A NOTE WITH THE BAILIFF THAT YOU NEED TO SPEAK UP OR USE THAT MICROPHONE, ONE OR THE OTHER.

MR. SMITH: YES, SIR.

THE COURT: THERE'S A MICROPHONE OVER BEHIND YOU OVER THERE. YOU'RE GOING TO HAVE TO USE THE MICROPHONE, SIR.

MR. SMITH: ALL RIGHT, SIR.

(THE JURY RETURNS TO THE COURTROOM.)

THE COURT: ALL RIGHT. LET THE RECORD REFLECT THE JURORS ARE ALL BACK PRESENT BEFORE THE COURT.

MR. FOREMAN, AT THE BREAK I DISCUSSED WITH COUNSEL FOR THE STATE AND COUNSEL FOR THE DEFENDANT ABOUT PROCEEDING. AND THERE ARE SOME MATTERS THAT I'M REQUIRED TO DEAL WITH FIRST. INSTEAD OF MAKING YOU AND THE REST OF THE JURY SIT BACK THERE FOR PROBABLY 45 MINUTES TO AN HOUR BEFORE WE CAN PROCEED AGAIN, WE'RE GOING TO DO THAT THIS EVENING AND HAVE IT OUT OF THE WAY SO THAT WE CAN PROCEED IN THE MORNING ON TIME.

SO I'M GOING TO LET YOU GO AHEAD AND GO HOME FOR THE EVENING. WE'RE GOING TO CONTINUE ON. I ASSURE YOU OF THAT.

I WANT YOU BACK IN THE JURY ROOM AT 9:30 IN THE MORNING. AND I REMIND YOU: YOU'RE NOT TO DISCUSS THIS CASE NOR ARE YO TO READ ANY NEWSPAPER ACCOUNTS, T.V. ACCOUNTS, OR RADIO ACCOUNTS OF THIS CASE NOR ARE YOU TO ALLOW ANYONE TO TALK TO YOU ABOUT THE CASE.

IN THE MORNING WE'RE GOING TO PROCEED RIGHT ON IN THE TRIAL OF THE CASE.

EVERYBODY GOT A RIDE HOME?

(NO RESPONSE.)

THE COURT: REMEMBER THIS: IF YOU HAVE A PARTICULAR PROBLEM, EACH OF YOU SHOULD BE HERE PROBABLY BY 9:20, 9:25 TO GET YOU A CUP OF COFFEE IF YOU WANT IT OR TO GO TO THE BATHROOM. WE WANT TO START BACK AT 9:30. ALL RIGHT. YOU HAVE A PROBLEM, CALL THE CLERK'S OFFICE AND TELL US WHO YOU ARE, WHERE YOU ARE, WHAT THE PROBLEM IS, AND TELL THEM TO SEN JUDGE RUSHING THAT INFORMATION. WE'RE GOING TO BE LOOKING FO YOU ANYWAY.

YOU DON'T DO ENOUGH SITTING AROUND WAITING WITHOUT CAUSING IT YOURSELVES, SO PLEASE IF YOU'LL HELP US IN THAT REGARD, IT'LL MOVE THINGS ALONG.

IF THERE ARE NO QUESTIONS, YOU MAY GO. I'LL SEE YOU IN THE MORNING. HOPE YOU HAVE A NICE AFTERNOON.

EVERYONE ELSE REMAIN SEATED WHILE THE JURY LEAVES.

(THE JURY LEAVES THE COURTROOM AT 4:23 P.M.)

THE COURT: ALL RIGHT. THE JURY IS NOW OUTSIDE THE

PRESENCE OF THE COURT. AT THIS TIME THE COURT IS NOW GOING TO TAKE UP WHATEVER LEGAL MATTERS THE COURT NEEDS TO RESOLVE. AS I UNDERSTAND, I'VE BEEN NOTIFIED BY COUNSEL THAT THERE WILL BE AN IN-COURT IDENTIFICATION MADE BASED ON A LINE-UP, THAT THE DEFENSE MOVES TO QUASH THE LINE-UP AS HAVING TAINTED THE IN-COURT IDENTIFICATION.

THERE IS ALSO BEEN AN ALLEGED STATEMENT MADE BY THE DEFENDANT WHICH THE STATE CONCLUDES OR IS OF THE OPINION IS NOT APPLICABLE. I WILL HEAR IT IN CAMERA BOTH AS TO LAW ENFORCEMENT INDIVIDUAL AND A NON-LAW ENFORCEMENT INDIVIDUAL.

SO WE'RE GOING TO TAKE UP ALL OF THOSE ISSUES FOR THE COURT TO RULE ON. AND THAT SHOULD RESOLVE THE LEGAL ISSUES IN THIS CASE UP TO THE POINT THAT WE ARE AWARE OF; ISN'T THAT CORRECT, GENTLEMEN?

MR. GRANT: YES, SIR, YOUR HONOR.

MR. SMITH: YES, SIR.

THE COURT: YOU MAY PROCEED, MR. SOLICITOR. WHICH ONE ARE YOU GOING TO PROCEED ON FIRST?

MR. GRANT: THE EYEWITNESS IDENTIFICATION AND LINE-UP. I CALL TOMMY AUTEN FIRST.

THE COURT: LET THE RECORD REFLECT THAT THIS IS BEING CONDUCTED IN CAMERA, OUTSIDE THE PRESENCE OF THE JURY.

MR. GRANT: MR. AUTEN. AUTEN OR AUTEN?

WITNESS: AUTEN.

MR. GRANT: AUTEN. I'M SORRY. COME AROUND HERE PLEASE.

THOMAS EDWARD AUTEN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. GRANT:

Q MR. AUTEN, STATE YOUR FULL NAME FOR THE COURT PLEASE.

A MY FULL NAME IS THOMAS EDWARD AUTEN.

Q BY WHOM ARE YOU EMPLOYED?

A I AM EMPLOYED BY DUKE POWER COMPANY, CATAWBA NUCLEAR STATION.

Q ON FEBRUARY 14TH OF THIS YEAR WERE YOU WORKING?

A I WAS REPORTING FOR DAY SHIFT DUTY, YES, SIR.

Q APPROXIMATELY WHAT TIME WOULD THAT HAVE BEEN?

A APPROXIMATELY 10 MINUTES BEFORE 7:00.

Q AND WHEN YOU WENT TO WORK THAT MORNING, WHERE DID YOU PARK?

A I PARKED IN OUR MAIN PARKING LOT, WHICH BORDERS THE SMALLER ADMIN LOT WHERE THE INCIDENT TOOK PLACE. I PARKED ON THE END OF THE FIRST DOUBLE ROW TOWARD THE BACK.

Q AND WHAT DID YOU OBSERVE UNUSUAL ONCE YOU STARTED TO WORK IN THE PARKING LOT, WHAT IF ANYTHING DID YOU OBSERVE UNUSUAL?

A WELL, WHEN I GOT THERE, I PULLED IN THE PARKING LOT AND I SAW TWO OF MY CO-WORKERS IN THE ROW IN FRONT OF ME LOOKING AT A BOAT. AND I KNEW THEY WERE LEAVING FROM THE NIGHT SHIFT. WENT AHEAD AND PARKED MY VEHICLE. AS I WAS TURNING OFF THE IGNITION, I HEARD WHAT I THOUGHT WAS A SMALL PACK OF

FIRECRACKERS BEING DISCHARGED OVER IN THE SMALLER ADMIN LOT.

SO NATURALLY WHEN I HEARD SOMETHING, I LOOKED OVER THERE TO SEE WHAT WAS GOING ON. AND I SAW ONE INDIVIDUAL STANDING ON THE SIDEWALK IN FRONT OF THE ADMIN BUILDING.

Q HOW FAR WERE YOU FROM THE ADMIN BUILDING WHERE YOU WERE STANDING?

A APPROXIMATELY 100, 120 FEET, SOMETHING LIKE THAT.

Q ALL RIGHT, SIR. WHEN YOU SAY YOU HEARD WHAT SOUNDED LIKE FIRECRACKERS, HOW MANY NOISES DID YOU HEAR?

A IT WAS AT LEAST FIVE, SOMEWHERE AROUND THERE. THEY WERE IN VERY RAPID SUCCESSION. AND SO IT WOULD BE HARD TO COUNT, BUT AT LEAST FIVE.

Q WHEN YOU HEARD THOSE NOISES, WHERE DID YOU LOOK?

A WELL, FROM WHERE I WAS SITTING, I WAS STILL IN MY VEHICLE AT THE TIME SO I HAD TO LOOK OUT MY DOOR WINDOW RIGHT OVER THE TOP OF MY REAR VIEW MIRROR. AND I SAW THE INDIVIDUAL OVER IN FRONT OF THE ADMIN BUILDING AT THAT TIME.

Q WHAT IF ANYTHING DID YOU SEE THIS INDIVIDUAL DOING?

A HE WAS STANDING THERE ON THE SIDEWALK AT THAT TIME. I MEAN, JUST NORTH OF THE FRONT DOOR THAT GOES INTO OUR ADMIN BUILDING.

Q AND AFTER YOU SAW HIM STANDING THERE WHAT DID YOU DO PLEASE, SIR?

A WELL, I WAS TRYING TO GET TO WORK, SO I STILL WAS THINKING THAT WHAT I'D HEARD WAS FIRECRACKERS, SO I WENT AHEAD

AND GOT MY LUNCH BOX, GOT OUT OF MY TRUCK, AND STARTED WALKIN TOWARD OUR PERSONNEL ENTRANCE WHICH I HAVE TO GO BY THE DIRECTION IN WHICH THIS -- WHERE I SAW THIS INDIVIDUAL.

AS I STARTED TO WALK IN THAT DIRECTION, THE INDIVIDUAL LEANED OVER LIKE HE WAS LOOKING AT SOMETHING OR TO PICK UP SOMETHING. AND, YOU KNOW, I STILL WAS TRYING TO FIGURE OUT WHAT WAS GOING ON OVER THERE. I TOOK A FEW MORE STEPS AND I SAW THAT THIS INDIVIDUAL HAD A GUN WITH HIM.

SO, YOU KNOW, I STILL DIDN'T KNOW EXACTLY WHAT WAS GOING ON, TOOK A FEW MORE STEPS, AND I SAW A PERSON'S BODY LAYING O THE SIDEWALK.

Q AND HOW NEAR WAS THE PERSON WITH THE GUN TO THE BODY ON THE SIDEWALK?

A APPROXIMATELY 10 FEET.

Q ALL RIGHT. WHAT DID YOU SEE HAPPEN THEN AFTER YOU SAW THAT?

A THE INDIVIDUAL WITH THE GUN STOOD UP ERECT AND STARTED WALKING DOWN THE SIDEWALK TOWARD THE MAIN PARKING LOT AND IN MY DIRECTION. AND I WAS JUST PROCEEDING ON.

YOU KNOW, ONCE I SAW -- ONCE IT WAS CLEAR TO ME WHAT WAS TAKING PLACE, I WAS ALREADY IN THE MAIN THOROUGHFARE IN WHICH MOST THE VEHICLES EXIT. THERE'S NOTHING -- NOWHERE TO GO OR ANYTHING. SO I DECIDED THE BEST THING FOR ME TO DO WOULD JUS PRETEND I DIDN'T SEE HIM OR THE PERSON LAYING THERE AND JUST KIND OF IGNORE IT AND WALK ON BY UNTIL I FELT I WAS SAFE.

THE INDIVIDUAL WITH THE GUN DIDN'T RUN. HE JUST WALKED PERPENDICULAR TO MY PATH. AND I MADE SURE HE CROSSED IN FRONT OF ME. AND THEN HE PROCEEDED ON TO GET IN A VAN OVER IN THE MAIN PARKING LOT.

Q AND HOW NEAR DID HE COME TO YOU WHEN YOU SAW HE CROSSED IN FRONT OF YOU?

A APPROXIMATELY 15 FEET.

Q AS FAR AS IN THE COURTROOM, YOU CAN DIRECT ME ABOUT HOW CLOSE OR ---

A APPROXIMATELY WHERE YOU'RE AT NOW.

Q AND COULD YOU SEE HIM FROM THAT DISTANCE?

A YES, SIR.

Q HOW WAS THE PARKING LOT LIGHTED?

A WELL, THAT TIME OF DAY THE SKY WAS BECOMING FAIRLY WELL LIT, BUT THE PARKING LOT HAS LIGHTS IN IT AND WE DO HAVE SIDEWALK LIGHTS ALSO. IT WAS VERY WELL LIT.

Q AND WAS THERE ANYTHING BLOCKING YOUR VIEW OF THIS INDIVIDUAL?

A NO, SIR, NOT WHEN OUR PATHS CROSSED. WE WERE BOTH IN THE MAIN THOROUGHFARE OF THE PARKING LOT AND WE BOTH FACED EACH OTHER.

Q WHERE DID HE HAVE THE WEAPON?

A HE WAS CARRYING IT IN HIS RIGHT HAND DOWN BY HIS SIDE. HE HAD IT BY THE GRIP DOWN BY HIS RIGHT LEG.

Q AND WHEN YOU LOOKED, WHAT PORTION OF HIS BODY DID YOU

SEE?

A I SAW THE FRONT PART OF HIS BODY, JUST FACING ME.

Q YOU ALL FACING EACH OTHER?

A YES, SIR.

Q FOR HOW LONG A PERIOD OF TIME WERE YOU ALL THERE, WERE YOU ABLE TO OBSERVE HIS FACE?

A JUST A FEW SECONDS, JUST LONG ENOUGH FOR US TO -- WE WER BOTH WALKING IN A NORMAL FASHION. SO JUST LONG ENOUGH FOR BOTH OF US TO CONTINUE OUR PATHS.

Q DO YOU RECALL HOW HE WAS DRESSED?

A YES, SIR. I NOTICED FIRST HIS HAIR, THAT HE HAD LONG WAVY HAIR AND IT WAS REAL APPARENT THAT IT HADN'T BEEN COMBED, LIKE THIS PERSON HAD JUST GOTTEN OUT OF BED. A HE HAD ON A LIGHT COLORED SHIRT. IT SEEMED LIKE HE HAD ON A LOOSE FITTING JACKET, LIKE A BLUE JEAN JACKET, LIGHT JACKET AND DARK PANTS, MAYBE BLUE JEANS.

Q ANY FACIAL HAIR?

A YES, SIR, HE HAD A FULL BEARD. AND I NOTICED THAT RIGHT OFF BECAUSE HIS BEARD DIDN'T MATCH HIS HAIR ON HIS HEAD. IT WAS A RED COLOR. AND I KNOW SOME PEOPLE IN THE PLANT WHO LOO LIKE THAT, YOU KNOW, THAT THEY HAVE DARK HAIR AND A RED BEARD SO IT KIND OF STRUCK A NOTE. IT LOOKED A LITTLE FAMILIAR TO SOMEONE.

Q AND APPROXIMATELY HOW TALL WAS HE?

A HE WAS APPROXIMATELY MY HEIGHT, 5'10" TO 6 FOOT,

SOMEWHERE IN THERE.

Q AND HIS SIZE?

A HE WAS A LITTLE SMALLER BUILD THAN I AM. I'D SAY PROBABLY 170, 180 POUNDS, SOMEWHERE IN THERE.

Q AND DID YOU SAY ANYTHING TO HIM?

A NO, SIR.

Q DID HE SAY ANYTHING TO YOU?

A NO, SIR. WE DID MAKE EYE CONTACT FOR JUST A SECOND OR SO IN THE PARKING LOT.

Q YOU MADE EYE CONTACT?

A YES, SIR.

Q AND THEN WHERE DID HE GO?

A HE CROSSED MY PATH AND WALKED IN HIS NORMAL FASHION ON OVER TO A WHITE DODGE VAN THAT WAS PARKED IN THE MAIN PARKING LOT. IT WASN'T PARKED IN A SPACE. IT WAS PARKED IN THE AISLE. THE HEADLIGHTS WERE ON. AND I'M PRETTY SURE THE ENGINE WAS RUNNING. IT WAS ALMOST AT THE END OF THE AISLE.

I MADE A DIAGRAM JUST SO I -- FOR PERSONAL REFERENCE. THIS IS OUR PARKING LOT. I PUT ON THERE WHERE I PARKED AND WHERE THE VAN WAS PARKED AND WHERE THE INCIDENT TOOK PLACE.

AND YOU'RE WELCOME TO LOOK AT THAT IF YOU NEED TO.

BUT THE VAN WAS LINED UP WITH THE SIDEWALK THAT HE WAS WALKING DOWN. HE DIDN'T HAVE TO TURN OR ANYTHING. IT WAS JUST A STRAIGHT LINE FROM WHERE THE INCIDENT TOOK PLACE BACK TO THE VAN.

Q AND WHERE DID YOU GO? AFTER HE WENT TO THE VAN, WHERE DID YOU GO?
A ONCE I FELT SURE HE WAS GETTING IN THE VAN, I TURNED AND RAN BACK TO WHERE THE INDIVIDUAL WAS LAYING ON THE SIDEWALK.
Q AND THE MAN WITH THE GUN, DID YOU SEE HIM ANY MORE THAT MORNING?
A NO, SIR. WHEN I GOT BACK TO WHERE THE PERSON WAS LAYING I LOOKED BACK OVER TO SEE WHERE THE VAN HAD GONE, AND HE HAD BACKED UP AND WAS LEAVING BY ANOTHER ENTRANCE UP BY OUR TRAINING CENTER. AND THAT'S THE LAST I SAW OF THE VAN, WAS I GOING UP THE HILL AND THAT'S THE LAST I SAW IT.
Q AND LATER ON THAT SAME DAY DID YOU HAVE AN OCCASION TO SEE A PICTURE LINE-UP?
A YES, SIR, I DID. ONE OF THE DETECTIVES CAME UP TO MY RESIDENCE AND HAD A PICTURE LINE-UP WITH SEVERAL PICTURES IN IT AND ASKED ME TO PICK OUT THE PERSON I SAW THAT MORNING.
Q DO YOU RECALL APPROXIMATELY WHAT TIME IT WAS PLEASE, SIR?
A THAT AFTERNOON?
Q WHEN THE DETECTIVE CAME?
A SOMEWHERE AROUND 3:00 O'CLOCK. I'M NOT EXACTLY SURE.
Q AND WAS ANYBODY ELSE WITH THE DETECTIVE?
A NO, SIR.
Q DO YOU RECALL HOW MANY PHOTOGRAPHS HE SHOWED YOU?
A IT WAS AROUND SIX.
Q HOW DID HE SHOW YOU THESE? WHAT PROCEDURE DID HE USE

PLEASE, SIR?

A HE TOLD ME WHAT HE WANTED ME TO DO, THAT HE HAD SOME PHOTOS HERE AND HE WANTED ME TO LOOK AT AND TAKE MY TIME AND SEE IF I SAW THE INDIVIDUAL THAT I'D SAW AT THE PLANT THAT MORNING. AND THEY WERE NUMBERED. THEY WERE ARRANGED ON A MANILA FOLDER AND HE ASKED ME TO LOOK AT IT AND TAKE MY TIME AND GIVE HIM THE NUMBER OF THE PERSON THAT I THOUGHT WAS THERE.

SO I TOOK MY TIME AND LOOKED OVER EACH ONE OF THEM.

AND HE ASKED ME DID I SEE THE PERSON?

I SAID, YES, SIR, I DO.

AND SO I GAVE HIM THE NUMBER THAT WAS BESIDE THE INDIVIDUAL'S PICTURE.

Q DID THE OFFICER -- I BELIEVE IT WAS MR. WHITSTINE?

A YES, SIR.

Q DID HE IN ANY WAY INDICATE TO YOU WHICH PHOTOGRAPH TO PICK OUT?

A NO, SIR. NO, SIR.

Q DID YOU LOOK AT ALL THE PHOTOGRAPHS BEFORE YOU PICKED ONE OUT?

A VERY DEFINITELY, YES, SIR.

Q WERE YOU ABLE TO SEE THE MAN THAT YOU HAD SEEN EARLIER THAT MORNING?

A YES, SIR.

Q WAS THERE ANY DOUBT IN YOUR MIND?

A NO, SIR.
Q WERE YOU ABLE TO PICK HIM OUT?
A YES, SIR.
Q DID YOU SHOW MR. WHITSTINE WHICH ONE YOU PICKED OUT?
A I DID.
Q DID YOU KNOW THE MAN?
A NO, SIR.
Q HAD YOU EVER SEEN HIM BEFORE THAT MORNING?
A NO, SIR.
Q HAVE YOU SEEN HIM SINCE THEN?
A NO, SIR.
Q AND HOW MUCH ATTENTION DID YOU PAY TO THIS INDIVIDUAL WHEN YOUR PATH'S CROSSED IN THE PARKING LOT?
A I WAS PAYING A WHOLE LOT OF ATTENTION TO HIM BECAUSE, YOU KNOW, IT WAS VERY APPARENT WHAT HAD JUST TAKEN PLACE. AND I FELT I WAS IN PRETTY MUCH DANGER. SO I WAS WATCHING WHERE HE WAS LOOKING AND WHERE HE WAS POINTING THE WEAPON. SO I WAS LOOKING, WATCHING FOR HIS -- YOU KNOW, SOME KIND OF MOTION OR EMOTION FROM HIS FACE TO INDICATE MAYBE HE WAS GOING TO ATTACK ME OR WHATEVER.
Q WHEN YOU ALL WERE MEETING, WHAT DIRECTION WAS HE COMING FROM? CAN YOU JUST POSITION YOU AND I SO YOU CAN -- WHAT DIRECTION HE WAS COMING TO? YOU SAY YOU ALL CROSSED PATHS. HOW DID ---
A FROM WHERE THE INCIDENT TOOK PLACE ON THE SIDEWALK, HE

WAS WALKING BACK DOWN THE SAME SIDEWALK TOWARD THE MAIN PARKING LOT IN THIS DIRECTION. AND I WAS HAVING TO CROSS HIS PATH GOING THIS WAY. SO WE MET PERPENDICULAR IN THE MAIN THOROUGHFARE WHERE THE CARS EXIT THE MAIN PARKING LOT.

Q WOULD HIS LEFT SIDE HAVE BEEN TO YOU OR HIS RIGHT SIDE?

A HIS RIGHT SIDE.

Q HOW FAR DID YOU OBSERVE HIM AS HE WALKED IN FRONT OF YOU?

A THE ENTIRE DISTANCE FROM WHERE THE PERSON WAS LAYING UNTIL WE CROSSED PATHS. AND I HAD TO LOOK BACK TO MAKE SURE HE WAS GOING TO HIS VEHICLE.

Q AND WHAT IS THAT DISTANCE FROM YOUR ESTIMATION?

A FROM WHERE THE INCIDENT TOOK PLACE?

Q YES.

A I'D SAY AROUND 80 FEET.

Q HOW FAR PAST YOU DID HE GO?

A ANOTHER 60 FEET.

Q YOU MADE EYE CONTACT ONE TIME?

A YES, SIR, JUST FOR A COUPLE OF SECONDS THERE WHEN HE -- YOU KNOW, IN THE CLOSEST PROXIMITY TO HIM.

Q THE PERSON THAT YOU SAW THERE, IS THAT THE PERSON THAT YOU PICKED OUT OF THE PICTURE LINE-UP ---

A YES, SIR.

Q --- THAT MR. WHITSTINE HAD?

A YES, SIR.

Q AND DO YOU SEE THAT PERSON IN THE COURTROOM TODAY?

A YES, SIR. HE -- THE DEFENDANT LOOKS VERY FAMILIAR. OF COURSE, THE HAIR IS CUT AND THE BEARD IS GONE, BUT THE EYES LOOK THE SAME.

Q I ASK YOU: DO YOU SEE THE MAN THAT YOU SAW PASSING YOU IN THE PARKING LOT?

A THE PART THAT WAS UNCOVERED FROM THE FACIAL HAIR AND ALL LOOKS LIKE HIM. THAT INDIVIDUAL LOOKS VERY DIFFERENT BECAUSE OF THE HAIR STYLE AND THE ABSENCE OF THE BEARD. BUT THE MUSTACHE COLOR IS THE SAME AS THE PERSON I SAW THAT MORNING.

MR. GRANT: ALL RIGHT. PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY HAVE.

CROSS EXAMINATION

BY MR. SMITH:

Q MR. AUTEN, WHAT YOU'RE TELLING US IS WHAT YOU ARE IDENTIFYING IS A RED MUSTACHE, CORRECT, SIR?

A NO, SIR. WHAT I'M TELLING YOU IS THE PERSON I IDENTIFIE IN THE LINE-UP WAS THE PERSON I SAW IN THE PARKING LOT.

Q WHAT YOU ARE IDENTIFYING TODAY, YOU ARE IDENTIFYING A COLOR OF THE MUSTACHE, CORRECT, SIR?

A THE EYES AND THE COLOR OF THE MUSTACHE, YES, SIR.

Q JUST A FEW QUESTIONS THAT I WOULD LIKE TO ASK YOU. YOU TOLD US THAT INITIALLY YOU SAW THIS INDIVIDUAL -- SAW AN INDIVIDUAL ON THE SIDEWALK SOME 120 FEET AWAY FROM YOU; IS THAT CORRECT?

A YES, SIR.

Q AND THAT PART OF YOUR LINE OF SIGHT WAS OBSTRUCTED BY YOUR REAR VIEW MIRROR; IS THAT CORRECT?
A NO, SIR.
Q WELL, YOU TOLD US YOU HAD TO LOOK OVER YOUR REAR VIEW MIRROR?
A RIGHT. BUT THE INCIDENT WAS FAR ENOUGH AWAY, YOU KNOW, IT WASN'T ON A DOWN GRADE OR ANYTHING, IT WAS JUST THAT DIRECTION I HAD TO LOOK.
Q BUT YOU TOLD US YOU DID LOOK OVER YOUR REAR VIEW MIRROR?
A YES, SIR.
Q OKAY. AND YOU SAID THAT WHAT YOU WERE -- AT THAT POINT IN TIME WHAT YOU WERE INTENT UPON WAS GETTING TO WORK?
A RIGHT.
Q YOU TOLD US THEN THAT THE INDIVIDUAL THAT YOU SAW STARTED WALKING AND YOU PRETENDED THAT YOU DIDN'T SEE; IS THAT CORRECT?
A ONCE -- YES, SIR. ONCE I HAD DETERMINED WHAT HAD JUST TAKEN PLACE OVER THERE, I FIGURED IT WAS IN MY BEST INTEREST TO PRETEND.
Q DID YOU GIVE A DESCRIPTION TO ANY OFFICERS AT THE SCENE?
A YES, SIR, I DID.
Q AND THAT DESCRIPTION WAS APPROXIMATELY 5'9", 160, 170 POUNDS?
A YES, SIR, THAT SOUNDS ABOUT RIGHT I THINK.
Q AND YOU TOLD THE SOLICITOR THAT YOU TALKED WITH THE

ORIGINAL -- GAVE A DESCRIPTION -- ORIGINALLY GIVEN AT APPROXIMATELY 8:30 OR SO IN THE MORNING, VERY EARLY IN THE MORNING, RIGHT AFTER THIS HAPPENED?

A YES, SIR.

Q AND YOU VIEWED THE PHOTOGRAPHS APPROXIMATELY 3:00 O'CLOCK IN THE AFTERNOON?

A YES, SIR, THAT'S CORRECT.

Q OKAY. LET ME ASK YOU: DID YOU KNOW MRS. CHRONISTER?

A I WAS AN ACQUAINTANCE OF HERS AT THE PLANT. I DID NOT KNOW HER PERSONALLY. BUT, YES, I DID.

Q BUT YOU HAD OBSERVED -- YOU SAW HER AT WORK?

A RIGHT, YES, SIR.

Q BETWEEN THE TIME YOU GAVE THE DESCRIPTION AND THE TIME THAT YOU LATER TALKED TO THE OFFICERS AND VIEWED THE PHOTOGRAPHS, YOU TALKED WITH OTHER CO-WORKERS ABOUT THIS INCIDENT, CORRECT, SIR?

A NO, SIR. NO, SIR. I WAS A LITTLE UPSET THAT MORNING AND I HAD ASKED MY SUPERVISOR, YOU MIND IF I WENT HOME?

AND THEY AGREED TO LET ME DO THAT.

Q SO YOU WERE UPSET AND YOU WENT HOME?

A YES, SIR. I DIDN'T WANT TO HAVE TO TALK TO ALL MY CO-WORKERS ABOUT WHAT I HAD SEEN THAT MORNING. AND IT IS A LITTLE UPSETTING TO SEE SOMEONE LAY THERE DIE ON THE SIDEWALK YES, SIR.

Q YOU TOLD US ABOUT THE EYE CONTACT AND YOU SAID THE

APPROXIMATE TIME WAS JUST A COUPLE OF SECONDS, THIS EYE CONTACT THAT YOU HAD?

A YES, SIR.

MR. SMITH: OKAY. JUST ONE MOMENT, YOUR HONOR.

(PAUSE.)

MR. SMITH: THANK YOU. NOTHING FURTHER.

THE COURT: ANY REDIRECT?

MR. GRANT: NO, SIR.

THE COURT: YOU MAY STEP DOWN.

(THE WITNESS LEAVES THE WITNESS STAND.)

MR. GRANT: WE CALL OTIS WHITSTINE PLEASE.

OTIS J. WHITSTINE, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. GRANT:

Q IF YOU WOULDN'T MIND, STATE YOUR FULL NAME FOR THE COURT?

A OTIS JULLIAN WHITSTINE.

Q I BELIEVE YOU'RE WITH THE YORK COUNTY SHERIFF'S DEPARTMENT?

A I AM.

Q AND WERE YOU INVOLVED IN AN INVESTIGATION OF THE DEATH OF MARIE CHRONISTER ON FEBRUARY THE 14TH, 1992?

A I WAS.

Q DID YOU HAVE OCCASION TO MEET WITH MR. THOMAS AUTEN, A-U-T-E-N?

A YES, SIR.
Q WHEN DID YOU MEET WITH HIM PLEASE, SIR?
A IT WAS ON FEBRUARY THE 14TH OF THIS YEAR.
Q WHERE DID YOU SEE HIM?
A HE WAS AT HIS RESIDENCE.
Q AND PRIOR TO GOING TO SEE HIM HAD YOU PREPARED A PHOTOGRAPHIC LINE-UP FOR HIM TO VIEW?
A YES, SIR.
Q AND I'LL ASK YOU: DID YOU HAVE THE DEFENDANT'S PICTURE IN THAT PHOTOGRAPHIC LINE-UP?
A I DID.
Q DO YOU HAVE THAT SAME LINE-UP THAT YOU USED?
A YES, SIR.
Q SHOW IT TO ME PLEASE.
(PAUSE.)
Q AND IF YOU WOULD IDENTIFY THAT, THAT'S CONTAINED IN THE MANILLA ENVELOPE. WHAT IS THAT PLEASE, SIR?
A THAT'S THE PHOTOGRAPHIC LINE-UP THAT I SHOWED MR. AUTEN.
Q AND THIS PIECE OF PAPER, WHAT IS THAT PLEASE?
A THESE ARE THE NAMES OF THE PEOPLE IN THE SIX PICTURES IN THE PHOTOGRAPHIC LINE-UP.
Q WERE THESE NAMES IN THERE WHEN YOU SHOWED IT TO MR. AUTEN?
A NO, SIR.
Q WHERE WAS THIS ITEM?

A I HAD IT IN MY POSSESSION.

MR. GRANT: FOR THE PURPOSE OF THIS HEARING, WE WOULD OFFER THIS.

THE COURT: HAND IT TO COUNSEL.

(PAUSE.)

THE COURT: MARK IT FOR THE PURPOSE OF THIS HEARING, IT'S AN IN-CAMERA HEARING.

(PHOTO LINE-UP MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NO. 7.)

Q YOU IDENTIFIED THAT AS WHAT AGAIN PLEASE, SIR?

A THESE ARE THE NAMES OF THE PICTURES. THE LINE-UP CONSIST OF SIX PICTURES, AND THESE ARE THE NAMES OF THE PEOPLE IN THE SIX PICTURES.

Q WHO MADE THAT RECORD?

A THE LINE-UP WAS MADE BY DETECTIVE JETER IN GASTON COUNTY.

Q THESE ARE NAMES THAT YOU HAD?

A YES, SIR.

MR. GRANT: WE WOULD OFFER THIS FOR THE PURPOSE OF THIS HEARING.

THE COURT: WITHOUT OBJECTION ---

MR. SMITH: WITHOUT OBJECTION TO THE MOTION.

THE COURT: --- MARK IT.

(LIST OF NAMES AND D.O.B. OF PHOTO LINE-UP MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT NO. 8.)

Q MR. WHITSTINE, WOULD YOU DESCRIBE WHEN YOU TOOK THAT

LINE-UP TO MR. AUTEN WHAT PROCEDURE DID YOU USE PLEASE, SIR? WHAT DID YOU DO WHEN YOU GOT THERE?

A WHEN I WENT TO MR. AUTEN'S RESIDENCE, I TALKED WITH HIM BRIEFLY, EXPLAINED THE REASON THAT I WAS THERE, AND ADVISED HIM THAT I HAD A PICTURE LINE-UP TO SHOW HIM. AND IF HE WOULD, JUST TAKE HIS TIME AND LOOK THE PICTURES OVER REAL GOO AND SEE IF THE DEFENDANT OR THE SUSPECT AT THAT TIME WAS IN THAT LINE-UP. AND HE DID SO.

Q AND WHAT DID MR. AUTEN DO ONCE YOU GAVE HIM THIS FOLDER WITH THE PICTURES IN IT?

A WHAT DID ---

Q WHAT DID MR. AUTEN DO? WHEN YOU GAVE HIM THE FOLDER WIT THE PICTURES IN IT, WHAT DID HE DO?

A WHEN I GAVE HIM THE FOLDER WITH THE PICTURES IN IT, HE LOOKED AT THEM FOR ABOUT THREE OR FOUR MINUTES AND THEN HE SAID THAT WAS HIM.

AND THEN I ASKED HIM WHICH -- WHAT NUMBER?

HE SAID, NO. 3.

Q AND WAS HE CERTAIN WHEN HE PICKED OUT NO. 3?

A HE WAS POSITIVE.

Q DID YOU IN ANY WAY INDICATE TO HIM WHICH PICTURE HE SHOULD CHOOSE?

A NO, SIR.

Q DID HE SHOW ANY HESITATION AT ANY TIME WHILE YOU WERE SHOWING HIM THE LINE-UP?

A NO, SIR.
Q WHO WAS PICTURE NO. 3?
A JEFFERY L. CHRONISTER.
Q WAS ANY OTHER OFFICER WITH YOU WHEN YOU SHOWED MR. AUTEN THE LINE-UP?
A NO, SIR.
MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY HAVE.
CROSS EXAMINATION
BY MR. SMITH:
Q OFFICER, YOU TOLD THE SOLICITOR THAT WHEN YOU WENT AND TALKED WITH MR. AUTEN AT HIS HOME, BASICALLY YOU ASKED HIM TO SEE IF JEFFERY CHRONISTER WAS IN THE LINE-UP?
A NO, SIR.
Q YOU SAID TO SEE IF THE DEFENDANT WAS IN THE LINE-UP?
A WELL, WHAT I DID WHEN I SHOWED HIM THE LINE-UP, I SHOWED HIM THE PICTURES AND ASKED HIM IF THE MAN THAT WAS AT DUKE POWER ON THAT -- EARLIER THAT DAY WAS IN THAT LINE-UP.
Q NOW, WHEN YOU TALKED WITH HIM -- DID YOU TALK WITH HIM EARLIER IN THE MORNING THAT DAY?
A I DON'T RECALL, BUT IT'S POSSIBLE THAT I DID.
Q AND YOU HAD TO GO TO HIS HOUSE TO TALK TO HIM BECAUSE HE WAS SOMEWHAT UPSET, CORRECT, SIR? HE HAD TO LEAVE WORK?
A AS I REMEMBER CORRECTLY, WE TALKED WITH A BUNCH OF WITNESSES THAT MORNING AT DUKE POWER. AND THEN HE HAD LEFT

AND WENT HOME. AND I CALLED HIM AT HOME. AND THEN I WENT AN
TOOK THE LINE-UP TO HIS HOME.
Q AND WHEN YOU GOT THERE, HE WAS STILL UPSET CONCERNING
THIS INCIDENT THAT HAD HAPPENED?
A I WOULD SAY SO.
Q YOU SAID THAT WHEN HE LOOKED AT THE PHOTOGRAPHS, THAT HE
LOOKED AT THEM THREE OR FOUR MINUTES?
A YES, SIR.
Q NOW, YOU DID NOT PREPARE THE LINE-UP; IS THAT CORRECT,
OFFICER?
A NO, SIR.
Q AND YOU DON'T KNOW WHERE THE PHOTOGRAPHS CAME FROM OR WH
OBTAINED THEM OR ANYTHING OF THAT NATURE?
A THEY CAME FROM DETECTIVE JETER WITH THE GASTON COUNTY
POLICE DEPARTMENT.
Q BUT THEY PUT IT TOGETHER?
A YES, SIR.
Q AND THE PHOTOGRAPHS WERE IN THE FOLDER AS THEY ARE TODAY
A YES, SIR. THE FOLDER WAS COMPLETE AS IT IS NOW.
Q YOU SAID THAT YOU TALKED WITH HIM, MR. AUTEN, BRIEFLY.
IN TALKING WITH HIM YOU DISCUSSED WHAT HAD OCCURRED OUT AT
CATAWBA?
A YES, SIR.
Q DID YOU DISCUSS THE DECEASED LADY, MRS. CHRONISTER?
A AS FAR AS WHEN I WENT TO HIS HOME?

Q YES, SIR.
A NO, SIR. HE HAD ALREADY ANSWERED THE QUESTIONS AT DUKE POWER EARLIER IN THAT DAY.
Q AND YOU HAVEN'T GONE BACK AND TALKED WITH HIM FURTHER CONCERNING ANY IDENTIFICATION SINCE THE LINE-UP ON THE 14TH?
A NO, SIR.

MR. SMITH: THAT'S ALL I HAVE OF THIS WITNESS, YOUR HONOR.

THE COURT: REDIRECT?

MR. GRANT: NO, SIR. THANK YOU. YOU MAY COME DOWN.

(THE WITNESS LEAVES THE WITNESS STAND.)

MR. GRANT: YOUR HONOR, THAT WOULD BE OUR OFFER ON THE IDENTIFICATION AND LINE-UP PROCEEDING.

THE COURT: ALL RIGHT. DO YOU WISH TO OFFER ANY TESTIMONY OR EVIDENCE, MR. SMITH, ON THAT?

MR. SMITH: I HAVE NO EVIDENCE AS TO THAT, YOUR HONOR. I WOULD JUST BRIEFLY ---

THE COURT: ALL RIGHT.

MR. SMITH: --- LIKE TO STATE MY POSITION.

YOUR HONOR, THE TESTIMONY OF MR. AUTEN I BELIEVE IN AND OF ITSELF IS SUFFICIENT TO SUPPRESS ANY IN-COURT IDENTIFICATION BY MR. AUTEN. THE TESTIMONY FROM HIM WAS THAT HIS IDENTIFICATION IN COURT TODAY WAS BASED UPON THE COLOR OF THE MUSTACHE, THAT HE -- AND I THINK THAT IN AND OF ITSELF WOULD BE SUFFICIENT TO SUPPRESS -- OR TO SUPPRESS ANY IN-COURT

IDENTIFICATION. HE WAS SIMPLY NOT SURE.

I THINK THE LAST QUESTION THAT I ASKED WAS: WAS THE IDENTIFICATION TODAY BASED UPON THE COLOR OF THE BEARD -- OR THE MUSTACHE?

AND HE ANSWERED THAT IT WAS, YOUR HONOR.

AND I THINK THAT BASED UPON THAT THE IN-COURT IDENTIFICATION SHOULD NOT BE PERMITTED.

HE'S TESTIFIED HE OBVIOUSLY WAS UPSET. AND IT WAS OBVIOUS FROM HIS DEMEANOR ON THE STAND THAT HE WAS UPSET. HE WAS UPSET TODAY.

AND I JUST THINK THAT THE IN-COURT IDENTIFICATION BY MR. AUTEN SHOULD BE SUPPRESSED. I DO NOT THINK THAT IT HAS THE INDICIA OF RELIABILITY THAT IT SHOULD HAVE TO BE -- TO HAVE HIM SIT UP THERE AND POSITIVELY POINT OUT THAT THIS IS THE PERSON THAT HE SAW.

THE COURT: SOLICITOR.

MR. GRANT: YOUR HONOR, FOR THE COURT, HE DID NOT AND HAS NOT SAID THIS IS THE MAN. HE DESCRIBED HIM AS BEING THE SAME EYES, THE SAME MUSTACHE, THE SAME HAIR. AND I SUBMIT THAT THAT BASED UPON HIS DEGREE OF OPPORTUNITIES TO VIEW HIM AS HE DESCRIBED TO YOU, THE DEGREE OF ATTENTION WHICH HE DESCRIBED THAT HE WAS CONCERNED ABOUT THE SITUATION. HE WAS WATCHING THIS GUY THE BEST HE COULD. THE LEVEL OF CERTAINTY WHEN HE PICKED THE PICTURE OUT OF THE PHOTOGRAPHIC LINE-UP AND THE TIME BETWEEN THAT BETWEEN 7:00 AND 3:00 AND THAT THE FACT THAT

HE PICKED HIM OUT OF THE LINE-UP IS PROBATIVE AND ADMISSIBLE.

AND THE FACT FROM THE WITNESS STAND HE CAN SAY THIS MAN HAS THE SAME EYES AND THE SAME MUSTACHE, SAME EYES AS THE MAN I SAW IN THE PARKING LOT WOULD BE PROBATIVE AND ADMISSIBLE.

OF COURSE, THE OFFICER'S TESTIMONY I WOULD SUBMIT WOULD BE PROBATIVE AS TO THE LINE-UP PROCEDURE, HE PICKED OUT THE PICTURE OF THE DEFENDANT.

MR. SMITH: YOUR HONOR, JUST ONE MORE BRIEF THING IN SUPPORT OF MY ARGUMENT. NEVER AT ANY TIME ON THE WITNESS STAND, EVEN WITH THE PHOTOGRAPHS IN FRONT OF HIM TODAY, DID MR. AUTEN IDENTIFY MR. CHRONISTER. AND THERE WAS NO CERTAINTY TODAY WITH BOTH THE PHOTOGRAPH AND MR. CHRONISTER HERE ON THE PART OF MR. AUTEN.

AND I SUBMIT THAT IT IS NOT -- IT IS NOT RELIABLE AND IT SHOULD BE SUPPRESSED.

THE COURT: WELL, THERE ARE TWO THINGS, TWO ISSUES: AND THAT IS WHETHER OR NOT THE STATE WOULD BE PERMITTED TO USE THE LINE-UP IDENTIFICATION, THEN OF COURSE ANY IN-COURT IDENTIFICATION OF THE WITNESS.

INSOFAR AS THE IN-COURT IDENTIFICATION, HE TESTIFIED THAT BASED UPON HIS MUSTACHE AND HIS EYES THAT HE APPEARS TO BE THE ONE THAT HE IDENTIFIED; THAT'S WHAT THE WITNESS SAID.

ON THE ISSUE OF THE LINE-UP, PHOTOGRAPHIC LINE-UP IDENTIFICATION, WHICH IS BEFORE THE COURT, THERE ARE SIX PHOTOGRAPHS. THEY APPEAR TO BE ALL SIX WHITE MALES. YOU

CANNOT DISTINGUISH ANY DIFFERENCES IN HEIGHT. ONE OF THEM LOOKS A LITTLE HEAVIER, ONE OF THEM LOOKS A LITTLE SMALLER THAN THE OTHER THREE OR FOUR. EACH OF THEM HAVE FACIAL HAIR, THE SAME TYPE OF FACIAL HAIR, THAT APPEARING TO BE A BEARD AN A MUSTACHE. ONE OF THEM HAS A LITTLE LESS, THERE'S A LITTLE DIFFERENT CUT OF IT I GUESS.

THERE DOESN'T APPEAR TO BE ANYTHING SUGGESTIVE IN THE PHOTO LINE-UP.

THE TESTIMONY IS IN ADDITION TO WHICH THEY HAD A LISTING OF WHO THE ACTUAL INDIVIDUALS WERE SHOWING BIRTH DATES. THER IS A WIDE RANGE OF AGE IF THE BIRTH DATES ARE CORRECT. HOWEVER, YOU CANNOT CONCERN THAT FROM THE PHOTOGRAPHIC PICTURES -- OR THE PHOTOGRAPHIC LINE-UP.

THE COURT FIRST EXAMINES THE PHOTOGRAPH ARRAY, LOOKING A THE SIZE OF THE ARRAY, THAT BEING THE SIX, THE AMOUNT OF THE PRESENTATION BY THE OFFICER, AND WHAT IS PRESENTED BY THE ARRAY OF PHOTOGRAPHS AND DETERMINE WHETHER OR NOT THERE IS ANYTHING INHERENTLY PREJUDICIAL ABOUT THE PRESENTATION IN THIS.

THERE CERTAINLY DOESN'T APPEAR TO BE ANYTHING PREJUDICIAL. AS I SAID, THERE'S NO CHARACTERISTICS THAT WERE GIVEN BY THE WITNESS TO THE OFFICERS THAT ARE NOT SHOWN IN THE PHOTOGRAPHIC LINE-UP.

I DO FIND THAT THE PHOTOGRAPHIC LINEUP AS PRESENTED TO THE COURT AND EVIDENCE BEFORE THE COURT IS NOT SO UNDULY

SUGGESTIVE. IT'S NOT UNDULY SUGGESTIVE AT ALL FROM THIS COURT'S VIEW. IT MATCHES THE DESCRIPTION, OF COURSE, OF THE PROPER PHOTOGRAPH I.D.

THE REAL QUESTION NOW IS WHETHER OR NOT THE WITNESS WILL BE PERMITTED TO MAKE WHATEVER IDENTIFICATION. AS I UNDERSTAND IT, HE CANNOT SAY THAT THIS IS THE INDIVIDUAL. HE CAN SAY THAT THAT IS THE PHOTOGRAPH THAT HE PICKED ON THAT DAY. OF COURSE, OTHER PEOPLE CAN IDENTIFY THE PERSON AS BEING THAT PERSON SHOWN IF THEY KNOW HIM.

HIS TESTIMONY WAS THAT HE APPEARED TO BE.

OF COURSE, ALSO THE TESTIMONY IS THAT THE DEFENDANT IS NOT IN THE SAME CONDITION THAT HE WAS ON THE DATE THIS OCCURRED, WHEN THE INITIAL I.D. IS MADE. THAT IS A FACTOR TO BE CONSIDERED.

THE WITNESS CAN SAY THAT BASED ON HIS MUSTACHE AND HIS EYES THAT HE APPEARS TO BE THE ONE. I'M GOING TO LET HIM MAKE THE IN-COURT IDENTIFICATION. I FIND IT'S NOT UNDULY SUGGESTIVE. I THEREFORE AM GOING TO PERMIT HIM TO A LIMITED EXTENT THE IDENTIFICATION. THE OBJECTION FOR THAT IS OVERRULED.

ALL RIGHT, GENTLEMEN. MOVE TO YOUR NEXT ISSUE.

MR. GRANT: MR. SHILLINGLAW.

THE COURT: MADAM, CLERK, HAND THAT DOWN TO THE COURT REPORTER.

THE MOTION TO SUPPRESS IS DENIED.

MR. GRANT: MR. SHILLINGLAW.

JOHN DEAN SHILLINGLAW,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: SOLICITOR, WHICH ONE IS THIS?

MR. GRANT: YOUR HONOR, THIS IS CONCERNING A STATEMENT MADE TO MR. SHILLINGLAW BY THE DEFENDANT AFTER THE DEFENDANT WAS IN CUSTODY. AND WE WOULD INTEND TO USE IT.

I WOULD STATE, YOUR HONOR, THAT THE STATEMENT THE STATE INTENDS TO USE COMES IN THE VERY END OF A SEQUENCE OF EVENTS. JUST SO THE COURT WILL KNOW AND MR. SMITH WILL KNOW THAT THE ONLY THING THE STATE INTENDS TO USE ARE THE STATEMENTS THAT WERE MADE AT THE VERY END OF THIS SITUATION. BUT, I THINK IT ---

THE COURT: IS IT A WRITTEN STATEMENT OR ORAL?

MR. GRANT: NO, SIR. NO, SIR. THIS OCCURRED WHEN HE WA IN CUSTODY IN GASTONIA. OFFICER SHILLINGLAW WAS THERE WITH HIM. VERY BRIEFLY, HE TOOK HIM TO THE BATHROOM AND SOME CONVERSATION ---

THE COURT: WELL, LET'S HEAR IT.

MR. GRANT: --- WAS UNSOLICITED.

THE COURT: LET'S HEAR IT WITHOUT ADDING ANYTHING ELSE T IT.

MR. GRANT: I JUST WANTED THE COURT TO KNOW I DON'T INTEND TO PUT ALL THAT IN.

THE COURT: WELL, THE ISSUE BEFORE THE COURT IS WHETHER

OR NOT THERE WAS A STATEMENT MADE BY THE DEFENDANT, IT WAS ---

MR. GRANT: YES, SIR.

THE COURT: --- A STATEMENT MADE BY THE DEFENDANT WHILE HE WAS IN CUSTODY, WHETHER OR NOT THE DEFENDANT HAD BEEN AFFORDED HIS CONSTITUTIONAL RIGHTS, WHETHER OR NOT HE UNDERSTOOD THOSE RIGHTS, AND THEREAFTER WAIVED HIS RIGHTS, AND MADE THE STATEMENT FREELY AND VOLUNTARILY.

MR. GRANT: ALL RIGHT, SIR.

DIRECT EXAMINATION

BY MR. GRANT:

Q MR. SHILLINGLAW, STATE YOUR FULL NAME FOR THE COURT?

A JOHN DEAN SHILLINGLAW.

Q AND BY WHOM ARE YOU EMPLOYED?

A YORK COUNTY SHERIFF'S DEPARTMENT.

Q HOW LONG HAVE YOU BEEN WITH THEM?

A I'VE BEEN IN LAW ENFORCEMENT FOR 19 YEARS.

Q AND ON FEBRUARY THE 14TH OF 1992 DID YOU HAVE AN OCCASION TO SEE THIS DEFENDANT?

A YES, SIR, I DID.

Q WHERE DID YOU FIRST SEE MR. CHRONISTER?

A I FIRST SAW THE DEFENDANT IN A POLICE CAR ON THE SIDE OF THE ROAD IN GASTON COUNTY, NORTH CAROLINA.

Q AND IF YOU WOULD, YOUR CONTACT, PERSONAL CONTACT, WITH MR. CHRONISTER? WAS HE IN CUSTODY AT THAT TIME?

A YES, SIR, HE WAS.

Q ALL RIGHT, SIR. WHAT DID YOU DO PERSONALLY WHEN YOU SAW MR. CHRONISTER?

A DO YOU WANT ME TO START THE FIRST OF THIS OR ---

Q GO AHEAD AND START. I WANT YOU TO INCLUDE EVERYTHING YO DID CONCERNING MR. CHRONISTER THAT DAY.

A OKAY. DETECTIVE STRICKLAND AND MYSELF FIRST MET WITH GASTON COUNTY OFFICERS AT 511 ELLINGTON STREET IN BELMONT, WHERE THEY HAD STOPPED HIM AND HE WAS IN THE COUNTY POLICE CAR.

I TALKED TO SERGEANT MIMS. AND THEN WE WENT OVER TO THE CAR THAT DEFENDANT CHRONISTER WAS IN. AND SERGEANT MIMS INTRODUCED HIM TO ME AT THAT TIME AND TOLD HIM THAT WE WERE DETECTIVES FROM SOUTH CAROLINA.

Q WHAT DID YOU DO THEN AT THAT TIME?

A I GOT IN THE FRONT SEAT AND DETECTIVE STRICKLAND GOT IN THE BACKSEAT. AND I ASKED CHRONISTER HOW HE WAS DOING. AND DO YOU WANT ME TO GO INTO WHAT HE SAID?

Q GO OVER THE WHOLE THING, EVERYTHING THAT WAS SAID?

A OKAY. AT THAT TIME HE TOLD ME HE WANTED TO TALK TO HIS ATTORNEY.

I TOLD HIM, OKAY.

DETECTIVE STRICKLAND AND MYSELF EXITED THE VEHICLE.

APPROXIMATELY 5 MINUTES LATER HE MOTIONED FOR ME TO COME BACK TO THE CAR. I OPENED THE CAR DOOR AND SAT DOWN BESIDE HIM IN THE FRONT SEAT.

HE ASKED ME HOW HIS WIFE WAS DOING.

I TOLD HIM, NOT TOO GOOD.

HE THEN STATED THAT HIS WIFE HAD ACCUSED HIM OF MOLESTING THEIR DAUGHTER AND THAT HIS WIFE HAD LEFT HIM. HE STATED HE HAD BEEN UP ALL NIGHT.

I TOLD HIM THAT HIS WIFE WAS DECEASED AND THAT I COULD NOT TALK TO HIM ABOUT IT BECAUSE HE HAD REQUESTED TO TALK TO HIS ATTORNEY.

HE STATED HE DID NOT WANT TO SAY ANYTHING ELSE UNTIL HE TALKED TO HIS ATTORNEY.

I THEN EXITED THE VEHICLE AGAIN.

Q AND AFTER THAT WHAT CONTACT DID YOU HAVE WITH MR. CHRONISTER?

A HE WAS TRANSPORTED TO THE GASTON COUNTY POLICE DEPARTMENT. AND SOMETIME LATER I WAS WITH HIM IN CAPTAIN HOFFSTEADLER'S (PHONETIC) OFFICE IN THE DETECTIVE DIVISION AT THE GASTONIA POLICE DEPARTMENT. WE WERE WAITING TO GET A FUGITIVE WARRANT FOR HIM -- TO LET THEM GET A FUGITIVE WARRANT FOR US.

Q DID YOU HAVE A CONVERSATION WITH HIM?

A YES, SIR, I DID.

Q WHAT IF ANYTHING WAS SAID?

A AT ONE POINT HE ASKED -- WELL, HE HAD BEEN CRYING OFF AND ON. AND I'D ASKED HIM -- EARLIER I'D ASKED HIM HOW MANY CHILDREN THEY HAD.

AND HE TOLD ME THAT HE HAD TWO BY HIS FIRST WIFE AND TWO BY HIS SECOND WIFE. AND NOTHING ELSE WAS DISCUSSED.

HE LATER WANTED TO GO TO THE BATHROOM. I TOOK HIM TO TH BATHROOM.

WHILE HE WAS IN THE BATHROOM HE STATED THAT HIS WIFE SHOULD NOT HAVE ACCUSED HIM OF MOLESTING THEIR DAUGHTER.

THEN WE WENT BACK INTO THE CAPTAIN'S OFFICE AFTER HE FINISHED. WE SAT THERE A FEW MORE MINUTES. AND HE CRIED SOM MORE ON AND OFF.

AND THEN HE LOOKED AT ME AND STATED MORE OR LESS AS A QUESTION, I DID KILL HER?

AT THAT TIME I SAID, DO WHAT?

HE THEN SAID, SHE IS DEAD?

AND I SAID, YES. AND THAT WAS THE END OF THE CONVERSATION.

Q AND THE TWO LAST QUESTIONS THAT HE STATED TO YOU IN THE FORM OF A QUESTION, I DID KILL HER AND SHE IS -- WELL, LET'S TAKE THAT ONE. DID YOU ASK HIM ANY QUESTIONS OR SAY ANYTHING TO ELICIT THAT RESPONSE?

A NO, SIR. JUST AFTER HE STATED, I DID KILL HER?

I SAID, DO WHAT?

Q AND AFTER YOU SAID, WHAT, WHAT DID HE SAY TO YOU?

A HE SAID, SHE IS DEAD?

AND I SAID, YES.

Q AND THOSE TWO RESPONSES, DID YOU ASK HIM ANY QUESTIONS

ABOUT THOSE MATTERS?

A NO, SIR, I DID NOT.

Q DID YOU MAKE ANY STATEMENT TO HIM TO GET HIM TO TALK TO YOU OR SAY ANYTHING ABOUT HIS WIFE?

A NO, SIR.

Q AND AFTER HE HAD TOLD YOU HE WANTED AN ATTORNEY, DID YOU TRY TO QUESTION HIM AT ALL?

A NO, SIR.

Q THESE TWO STATEMENTS THAT -- QUESTIONS -- STATEMENTS/QUESTIONS, I DID KILL HER AND SHE IS DEAD, DID HE MAKE THOSE TO YOU SPONTANEOUSLY?

A YES, SIR.

Q OF HIS OWN WILL?

A YES, SIR.

Q FREELY AND VOLUNTARILY?

A YES, SIR.

Q WAS ANYBODY ELSE PRESENT WITH YOU WHEN HE MADE THOSE TWO STATEMENTS?

A NO, SIR.

MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY HAVE.

CROSS EXAMINATION

BY MR. SMITH:

Q DETECTIVE, WHEN YOU TALKED WITH HIM, HE WAS IN A VERY EMOTIONAL CONDITION, CORRECT, SIR?

A YES, SIR, HE WAS.
Q HE WAS CRYING AND VERY UPSET?
A YES, SIR.
Q NOW, YOU TOLD US THAT YOUR FIRST CONTACT WITH HIM WAS UP IN GASTON COUNTY WHEN HE WAS SITTING IN THE POLICE CAR AND YO WERE INTRODUCED AS A SOUTH CAROLINA OFFICER?
A YES, SIR.
Q AT THAT POINT IN TIME DID YOU ADVISE HIM OF HIS RIGHTS?
A NO, SIR. AT THAT POINT IN TIME HE TOLD ME THAT HE WANTE AN ATTORNEY, SO I DIDN'T THINK I HAD TO. I DIDN'T ---
Q DID YOU -- I'M SORRY. GO AHEAD.
A I DIDN'T THINK I HAD TO BECAUSE HE HAD ALREADY REQUESTED AN ATTORNEY AND I COULDN'T TALK TO HIM. AND ---
Q DID YOU TAKE STEPS TO GET AN ATTORNEY FOR HIM?
A NO, SIR, NOT AT THAT TIME.
Q OKAY. NOW, I BELIEVE THEN YOU WENT BACK TO THE CAR AND YOU SAT DOWN BESIDE HIM?
A AFTER HE ASKED ME TO, YES, SIR.
Q AND HE ASKED HOW HIS WIFE WAS?
A YES, SIR.
Q AND HE WAS STILL UPSET, CRYING, WEEPING, EXTREMELY EMOTIONAL?
A YES, SIR, THAT'S CORRECT.
Q WAS IT AT THAT POINT IN TIME THAT -- AFTER YOU TOLD US THAT HE SAID HIS WIFE HAD ACCUSED HIM OF MOLESTING THEIR

DAUGHTER?
A YES, SIR.
Q THEN YOU TOLD HIM HIS WIFE WAS DECEASED?
A YES, SIR.
Q AND AT THAT TIME HE BECAME EVEN MORE EMOTIONAL, CORRECT, SIR?
A I DON'T KNOW IF YOU'D SAY EVEN MORE EMOTIONAL. HE WAS STILL VERY EMOTIONAL, YES, SIR.
Q IN OTHER WORDS, HE COULDN'T GET MUCH MORE EMOTIONAL THAN HE WAS ALREADY?
A I'M NOT SURE ABOUT THAT.
Q AND HE ASKED AGAIN TO TALK WITH AN ATTORNEY?
A YES, SIR.
Q THEN WHEN YOU WENT TO CAPTAIN HOFFSTEADLER'S OFFICE, HOW MUCH LATER WAS THAT?
A APPROXIMATELY AN HOUR LATER.
Q AN HOUR. AND BASICALLY WHAT YOU TOLD US THEN IS THAT HE ASKED TWO QUESTIONS TO YOU: I DID KILL HER AND SHE IS DEAD? QUESTIONS, NOT STATEMENTS?
A YES.
Q OKAY. AND HE WAS STILL AT THAT POINT IN TIME CRYING, EMOTIONAL?
A YES, SIR.
Q IN FACT, I BELIEVE THAT SHORTLY AFTER HIS ARREST ON THE 14TH HE HAD TO BE CARRIED TO -- BASICALLY TO THE STATE

HOSPITAL, CORRECT, SIR?
A I'M NOT SURE.
Q YOU DON'T KNOW THAT OF YOUR OWN KNOWLEDGE?
A NO, SIR.
Q OKAY. DID YOU ATTEMPT TO CALM HIM IN ANY WAY?
A NO, SIR.
Q AND YOU TOLD US THAT YOU DON'T REALLY KNOW HOW UPSET HE WAS, YOU COULDN'T GAUGE THE DEGREE OF HIS EMOTIONS, COULD YOU SIR?
A NO, SIR.
Q THEREFORE, YOU CAN'T TELL US WHAT HIS UNDERSTANDING MAY OR MAY NOT HAVE BEEN, CAN YOU, SIR?
A IF YOU'RE ASKING ME FOR AN OPINION, I THINK THAT H UNDERSTANDING AS FAR AS AN ATTORNEY WOULD BE PRETTY GOOD BECAUSE THE FIRST THING HE TOLD ME IS THAT HE WANTED AN ATTORNEY BEFORE HE WOULD TELL ME ANYTHING.
Q WELL, YOU DID NOT GET HIM AN ATTORNEY, DID YOU?
A NO, SIR.
Q YOU DID NOT ASSIST IN THE PROVIDING OF THAT ATTORNEY IN ANY WAY, DID YOU?
A NO, SIR. WE WERE IN A DIFFERENT STATE AT THE TIME.
Q WELL, YOU WERE PRESENT WITH OTHER POLICE OFFICERS WHO HA THEIR FACILITIES AT YOUR DISPOSAL, CORRECT, SIR?
A YES. BUT WE WERE WAITING ON A FUGITIVE WARRANT.
Q AND YOU DID NOT GIVE HIM ANY MIRANDA WARNINGS WHATSOEVER

DID YOU?

A NO, SIR, NONE WHATSOEVER.

Q AND YOU SAY YOU DIDN'T RECORD ANY OF THIS? THERE'S NOTHING WRITTEN?

A I MADE NOTES OF THE CONVERSATION.

Q WERE OTHER PEOPLE PRESENT DURING THIS PERIOD OF TIME OR WAS IT JUST GENERALLY YOU AND HE BY YOURSELF?

A AT WHICH POINT ARE YOU TALKING ABOUT?

Q WELL, AT THE POINT THAT YOU WERE IN THE POLICE CAR THERE WERE OTHER PEOPLE PRESENT?

A YES, SIR, THERE WAS.

Q AT THE POINT THAT YOU WENT TO THE GASTON COUNTY POLICE DEPARTMENT IN CAPTAIN HOFFSTEADLER'S OFFICE, IT WAS JUST YOU AND HE PRESENT?

A YES, SIR. IN CAPTAIN HOFFSTEADLER'S OFFICE JUST HE AND I WERE PRESENT.

Q AND THEN YOU TOOK HIM TO THE BATHROOM IT WAS JUST YOU AND HE?

A YES, SIR, THAT IS CORRECT.

Q AND THESE STATEMENTS YOU TESTIFIED TO, THAT'S THE EXTENT OF ANY CONFESSION OR STATEMENT THAT YOU ALLEGE THAT HE MADE?

A YES, SIR, THAT'S CORRECT.

MR. SMITH: THAT'S ALL, YOUR HONOR.

THE COURT: REDIRECT?

MR. GRANT: NO, SIR, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN.

(THE WITNESS LEAVES THE WITNESS STAND.)

MR. GRANT: THAT WOULD BE OUR OFFER, YOUR HONOR, FOR THOSE TWO. MY INTENTION ONLY BEING TO THE TWO QUESTION OR STATEMENTS OR WHATEVER THAT WERE MADE THERE IN THE BATHROOM. I WOULD SUBMIT THAT THEY WERE VOLUNTARY RESPONSES, NOT ELICITED BY ANYTHING THE POLICE OFFICER SAID AND EVEN THOUGH HE HAD INVOKED HIS MIRANDA RIGHTS, NOTHING THE POLICE OFFICER DID WAS INTENDED TO ELICIT ANYTHING. HE JUST TOOK HIM TO THE BATHROOM AND HE MADE THOSE STATEMENTS, THOSE QUESTIONS.

THE COURT: MR. GRANT, YOU HAVE NO OTHER WITNESSES ON THAT ISSUE?

MR. GRANT: NO, SIR. I'M SORRY.

THE COURT: DEFENSE HAS THE RIGHT TO PRESENT WITNESSES ON THAT ISSUE. THE DEFENDANT HIMSELF HAS THE RIGHT TO TESTIFY. MR. SMITH, DO YOU WISH TO OFFER ANY TESTIMONY OR EVIDENCE ON THAT ISSUE?

MR. SMITH: YOUR HONOR, I DO NOT WISH TO OFFER ANY TESTIMONY ON THAT.

THE COURT: HAVE YOU DISCUSSED THAT WITH YOUR CLIENT?

(PAUSE.)

MR. SMITH: HE DOES NOT WISH TO TESTIFY, YOUR HONOR.

THE COURT: HE UNDERSTANDS THAT HE HAS THE RIGHT TO DO THAT AT THIS POINT IN TIME, AND WHAT OCCURS IN THE IN-CAMERA HEARING CANNOT BE USED AGAINST HIM IN THE STATE'S CASE IN

CHIEF.

MR. SMITH: YES, SIR, HE UNDERSTANDS. AND I'LL ASK HIM AGAIN IF HE WISH TO TESTIFY ON THAT ISSUE.

(PAUSE.)

THE COURT: MR. CHRONISTER, WOULD YOU COME FORWARD PLEASE. COME RIGHT UP HERE TO THE MICROPHONE.

(COMPLIED.)

THE COURT: RIGHT HERE AT THIS MICROPHONE IS FINE. HOW OLD ARE YOU, MR. CHRONISTER?

DEFENDANT: 43.

THE COURT: AND HOW FAR DID YOU GO IN SCHOOL?

DEFENDANT: I WENT ALL THE WAY TO THE TWELFTH.

THE COURT: WHAT TYPE OF WORK DO YOU DO, DID YOU DO?

DEFENDANT: I HAD MY OWN VAN. I WAS RUNNING AIR FREIGHT.

THE COURT: RUNNING AIR FREIGHT?

DEFENDANT: YES, SIR.

THE COURT: AND ARE YOU ABLE TO READ AND WRITE?

DEFENDANT: YES, SIR.

THE COURT: HAVE YOU EVER BEEN TREATED FOR ANY MENTAL OR EMOTIONAL PROBLEMS PRIOR TO THE DATE THAT YOU WERE ARRESTED?

DEFENDANT: NO, SIR. I THINK IN SERVICE I HAD A LITTLE PROBLEM.

THE COURT: DO YOU UNDERSTAND THAT IT IS YOUR RIGHT TO TESTIFY IN THE CASE, THAT'S A PRIVILEGE AFFORDED TO YOU. IT'S YOUR RIGHT NOT TO TESTIFY EVEN IN AN IN-CAMERA HEARING?

DEFENDANT: YES, SIR.
THE COURT: DO YOU UNDERSTAND THAT, SIR?
DEFENDANT: YES, SIR.
THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT THAT?
DEFENDANT: NO, SIR, NOT RIGHT NOW.
THE COURT: HAVE YOU GONE OVER THIS WITH YOUR LAWYER?
(PAUSE.)
DEFENDANT: YES, SIR.
THE COURT: DO YOU NEED TO TALK TO HIM FURTHER BEFORE YO
DECIDE WHETHER OR NOT YOU WISH TO OFFER ANY TESTIMONY OR
EVIDENCE ON THIS ISSUE?
DEFENDANT: YES, SIR.
THE COURT: GO AHEAD AND TALK TO HIM.
MR. SMITH: MAY WE STEP ---
THE COURT: SURE, STEP BACK OVER TO YOUR SEAT. YOU CAN
TALK TO HIM THERE.
MR. SMITH: ALL RIGHT.
(PAUSE.)
THE COURT: JUST REMAIN WHERE YOU ARE. I'M GOING TO STE
IN MY OFFICE. I'LL BE RIGHT BACK.
(PAUSE.)
THE COURT: HAVE YOU TALKED WITH YOUR LAWYER NOW?
DEFENDANT: YES, SIR.
THE COURT: READY TO PROCEED?
DEFENDANT: YES, SIR.

THE COURT: WHAT DO YOU WISH TO DO?

DEFENDANT: I WISH NOT TO TESTIFY.

THE COURT: ALL RIGHT, SIR.

I'LL BE HAPPY TO HEAR ANY ARGUMENTS ON THE ISSUE.

MR. SMITH: YOUR HONOR, THE TESTIMONY THAT HAS BEEN PRESENTED BY THE DETECTIVE, THERE IS -- IT IS CLEAR THERE WAS NO ADVISEMENT OF ANY RIGHTS BY THE YORK COUNTY DETECTIVE NOR BY GASTON COUNTY DETECTIVES. IT IS ALSO CLEAR THAT ---

THE COURT: MR. SMITH, PLEASE SPEAK UP OR EITHER COME UP TO THE MICROPHONE.

MR. SMITH: ALL RIGHT.

THE COURT: I CAN'T HEAR YOU.

MR. SMITH: IT IS ALSO CLEAR THAT THERE IS A SITUATION WHERE YOU HAVE A MAN IN A VERY EMOTIONAL STATE AND DISTRAUGHT, HAD ASKED FOR AN ATTORNEY. THE STATEMENTS IN AND OF THEMSELVES, THE LAST TWO ARE QUESTIONS, YOUR HONOR. THEY'RE NOT STATEMENTS. THEY'RE POSED IN THE FORM OF QUESTIONS.

I THINK LOOKING AT THE TOTALITY OF THE CIRCUMSTANCES, THAT THERE WAS NEVER ANY GIVING OF MIRANDA, THAT AN ATTORNEY WAS REQUESTED, AND THE EMOTIONAL CONDITION OF MR. CHRONISTER AT THAT TIME; I DO NOT BELIEVE THAT THESE COULD BE CLASSIFIED AS VOLUNTARY -- VOLUNTARY STATEMENTS, YOUR HONOR.

IT'S CLEAR HE WAS IN CUSTODY. AND IT'S CLEAR THAT THE POLICE KNEW THEY WERE DEALING WITH A MAN WHO WAS CHARGED WITH A SERIOUS CRIME. THEY WERE WAITING ON A FUGITIVE WARRANT.

AND THAT HE WAS VERY EMOTIONAL.

AND I DON'T THINK THAT THESE CAN BE CATEGORIZED AS CONFESSIONS, YOUR HONOR.

THE COURT: MA'AM, YOU NEED TO BE QUIET OR EITHER GET OU OF THE COURTROOM, ONE OF THE TWO. I'VE ASKED PEOPLE NOT TO TALK IN THE COURTROOM. YOU'RE NOT A PARTICIPANT. YOU EITHER BE QUIET OR LEAVE.

GO AHEAD, MR. SMITH.

MR. SMITH: YOUR HONOR, I BELIEVE THAT IS ALL. THIS IS SOMEWHAT AN UNUSUAL CIRCUMSTANCE WHERE YOU HAVE ABSOLUTELY NO ADVISEMENT OF ANY MIRANDA WARNINGS. HE IS IN CUSTODY.

THE COURT: DO YOU CONTEND THAT THEY HAVE TO ADVISE HIM OF HIS RIGHTS IF HE'S IN CUSTODY IF THEY'RE NOT GOING TO ASK HIM ANY QUESTIONS?

MR. SMITH: YOUR HONOR, THE SITUATION THAT WE GET INTO I THAT YOU HAVE HERE BASICALLY FIFTH AMENDMENT AND THE RIGHT TO COUNSEL TOO BECAUSE HE -- THEY STATED HE DID REQUEST COUNSEL. AT THAT POINT IN TIME I WOULD CONTEND THAT THEY SHOULD NOT HAVE CONVERSED WITH HIM IN ANY WAY.

IT'S CLEAR THEY MADE NO EFFORT TO -- YOU KNOW, COUNSEL WAS NOT OBTAINED FOR HIM. I THINK UNDER ---

THE COURT: CLEARLY -- NOW, LET'S GET THE FOUNDATION RIGHT. OKAY? THE ISSUE TO THE COURT IS IF THE PERSON IS IN CUSTODY BEFORE ANY CUSTODIAL QUESTIONING OR INTERROGATION, THERE'S NO ISSUE RAISED, NO TAYLOR VERSUS ALABAMA, THE

PROBABLE CAUSE, THE RIGHT TO STOP AND ARREST.

THE QUESTION THEN ONCE A PERSON IS LAWFULLY UNDER ARREST -- THERE'S NO QUESTION ABOUT THAT. THEN IF THEY'RE NOT GOING TO ASK HIM ANY QUESTIONS, WHAT RIGHTS DOES HE HAVE TO BE AFFORDED? BECAUSE AS I UNDERSTAND, THE OFFICERS SAY -- AND THE ONLY EVIDENCE BEFORE THE COURT IS -- NO OTHER EVIDENCE ON THIS ISSUE -- IS THAT THE DEFENDANT SAID HE WANTED TO TALK TO A LAWYER BEFORE HE TALKED TO THEM, THAT THEY STOPPED. THEY DIDN'T DO ANYTHING, THAT ALL CONVERSATIONS THEREAFTER WERE INITIATED BY HIM. THEY DIDN'T INITIATE ANY QUESTION.

IS THAT NOT WHAT THE TESTIMONY IS?

MR. SMITH: THAT IS THE TESTIMONY, YOUR HONOR.

THE COURT: OKAY. IF THAT IS THE FACTUAL SCENARIO, THEN WHAT LAW, WHAT CASE DO YOU SAY SUPPORTS YOUR PROPOSITION THAT ANY ALLEGED STATEMENT -- YOU KNOW UNDER THE CASE OF STATE VERSUS OWENS, I BELIEVE IT IS FILED IN 1987, THE SUPREME COURT DECISION OF THIS STATE SAYS THAT VOLUNTARILY INCULPATORY STATEMENTS THAT ARE NOT IN RESPONSE TO CUSTODIAL INTERROGATION ARE ADMISSIBLE WITHOUT MIRANDA WARNINGS.

MR. SMITH: YOUR HONOR ---

THE COURT: SO THE QUESTION IS: IS IT THAT TYPE OF A STATEMENT?

MR. SMITH: THE PROBLEM -- THE PROBLEM IN THIS PARTICULAR SITUATION IS IN MY MIND A QUESTION OF IS THIS INDEED A VOLUNTARY STATEMENT IF THERE IS AN EMOTIONAL CONDITION? IT

GOES NOT TO DID THEY INTERROGATE HIM. IT GOES TO THE VOLUNTARINESS.

THE COURT: WHAT EVIDENCE DO I HAVE THAT IT IS NOT VOLUNTARY? OBVIOUSLY, THE TESTIMONY IS THAT HE WAS EMOTIONAL WAS CRYING. JUST BECAUSE YOU'RE EMOTIONAL OR CRYING DOESN'T MEAN THAT YOU CAN'T MAKE VOLUNTARY STATEMENTS.

WHAT IS A VOLUNTARY STATEMENT? IT MEANS ONE WITHOUT THREAT, COMPULSION, FORCE, OR INDUCEMENT. THREATS. WHAT EVIDENCE IS THERE OF THAT IS WHAT I'M SAYING?

I HAVE TO DEAL WITH THE EVIDENCE BEFORE ME. THE EVIDENC BEFORE ME IS WHAT THE OFFICER TESTIFIED TO.

MR. SMITH: I UNDERSTAND THAT, YOUR HONOR. THERE IS NO EVIDENCE OF A THREAT. I CERTAINLY CONCEDE THAT. BUT T QUESTION -- HERE AGAIN, THE QUESTION I HAVE IN MY MIND IS AS TO IF YOU ARE TALKING ABOUT ONE WHO -- I THINK THIS DEALS WIT A QUESTION OF VOLUNTARINESS IF YOU HAVE A PERSON WHO IS IN OBVIOUS EMOTIONAL STRESS.

THE FACT THAT HE DID ASK FOR AN ATTORNEY -- I WOULD SUBMIT AT THE POINT IN TIME WHERE ONE HAD ASKED FOR AN ATTORNEY, EVEN THOUGH THEY DID NOT QUESTION HIM, THAT SOMEONE SHOULD HAVE MADE AN EFFORT TO OBTAIN ONE FOR HIM.

THE COURT: WELL, UNITED STATES VERSUS MIRANDA, MIRANDA VERSUS ARIZONA DOES NOT REQUIRE THAT. MIRANDA VERSUS ARIZONA THE UNITED STATES CONSTITUTION SAYS THAT BEFORE ANY CUSTODIAL INTERROGATION OR QUESTIONING -- OBVIOUSLY, HE WAS IN CUSTODY.

THERE'S NO ARGUMENT ABOUT THAT.

THE QUESTION IS WHETHER OR NOT THEY ASKED HIM QUESTIONS OR DID HE MAKE STATEMENTS HIMSELF UNSOLICITED, IN OTHER WORDS, VOLUNTEER?

THE PROBLEM I'VE GOT IS THERE'S NO TESTIMONY THAT THE LAW ENFORCEMENT ASKED HIM ANYTHING, THAT HE VOLUNTEERED WHATEVER STATEMENTS WERE GIVEN IF BELIEVED. ONCE AGAIN, I'M NOT HERE TO DETERMINE WHETHER OR NOT I BELIEVE ANY OF THIS. I'M HERE TO DETERMINE WHETHER OR NOT IT'S ADMISSIBLE UNDER THE RULES OF COURT, THE CONSTITUTIONAL PROTECTIONS.

IT DOESN'T APPEAR TO ME, MR. SMITH, THAT THERE WAS ANY QUESTION THAT OCCURRED BY LAW ENFORCEMENT, THAT HE DID ASK FOR AN ATTORNEY. IF THEY HAD QUESTIONED HIM IN ANY FASHION UNDER EDWARDS VERSUS ARIZONA, THEY WOULD HAVE HAD TO -- HE WOULD HAVE INITIATED IT. BUT FRANKLY, THERE'S NO TESTIMONY THEY ASKED HIM ANYTHING, THAT HE ASKED THE QUESTION. YOU KNOW, DID I KILL HER? IS SHE DEAD?

I MEAN, THAT'S A QUESTION BY HIM. THEY RESPONDED, YES.

AND, YOU KNOW, THAT'S A VOLUNTEERED STATEMENT. THERE'S NOTHING TO PREVENT A PERSON FROM ASKING A QUESTION OF LAW ENFORCEMENT.

PROTECTIONS OF THE CONSTITUTION IN MIRANDA VERSUS ARIZONA WHICH SIMPLY INTERPRETED THE CONSTITUTION WAS THAT BEFORE YOU COULD BE QUESTIONED, THAT YOU HAD TO BE ADVISED OF YOUR RIGHT TO REMAIN SILENT AND YOUR RIGHT TO AN ATTORNEY BEFORE ANY

INTERROGATION COULD BE PERFORMED, AND THAT YOU KNOW AND UNDERSTAND THOSE RIGHTS AND THAT YOU WAIVE AND GIVE UP.

MR. SMITH, DO YOU HAVE ANY CASE THAT SUPPORTS YOUR POSITION IN ANY FASHION?

MR. SMITH: NO, SIR, I DO NOT.

THE COURT: I DON'T BELIEVE THERE'S ONE OUT THERE.

MR. SMITH: I WOULD LIKE TO SAY THAT THERE WAS, BUT I CANNOT SAY THAT.

THE COURT: I KNOW THAT. I KNOW THAT. WELL, UNLESS YOU HAVE SOMETHING FURTHER, IT APPEARS TO THE COURT AND I SO FIND THAT THIS IS NOT A CUSTODIAL INTERROGATION SO AS TO REQUIRE THE MANDATE OF MIRANDA VERSUS ARIZONA OR THE PROTECTIONS BE AFFORDED TO HIM AS PROVIDED UNDER THE FOURTH, FIFTH, AND SIXTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES, IN THAT HE VOLUNTEERED ANY STATEMENTS. IT WAS HIS QUESTION BACK TO THEM, NOT A QUESTION BY THEM.

I THEREFORE FIND THAT THAT IS NOT PROTECTED BY THE CONSTITUTION. IT'S A VOLUNTEERED STATEMENT. MOTION TO QUASH OR SUPPRESS IS DENIED.

MR. SMITH: JUST ONE THING. YOUR HONOR, I WOULD -- I UNDERSTAND YOUR HONOR'S RULING. I DO HAVE SOME PROBLEM WITH THIS BEING CHARACTERIZED BY THE STATE AS A CONFESSION TO A MURDER. I WOULD ASK THAT IT BE CHARACTERIZED IN QUESTIONING AS A STATEMENT AS OPPOSED TO A CONFESSION.

THE COURT: WELL, I DON'T KNOW HOW THEY CAN SAY THAT

EITHER BECAUSE IF THEY SAY THAT, THAT'S RENDERING AN OPINION. I DON'T THINK ANYBODY -- SOLICITOR, YOU ALL DON'T INTEND TO HAVE SOMEBODY SAY IT WAS THAT, DO YOU?

MR. GRANT: YOUR HONOR, IF I USED THE WORD CONFESSION, I DIDN'T MEAN TO. JUST AS SIMPLE AS THAT. IT'S A STATEMENT OF WORDS.

THE COURT: WHAT THE WITNESS SAID -- THE WITNESS IN THIS CASE SAYS THEY WERE QUESTIONS.

MR. GRANT: YES, SIR.

THE COURT: HE WILL NOT BE PERMITTED, THE OFFICER WHO TESTIFIED, MR. SHILLINGLAW, TO SAY IT WAS A STATEMENT OR CONFESSION OR WHATEVER; THAT'S FOR THE JURY TO DETERMINE WHETHER OR NOT THE CHARACTERIZATION OF IT.

ANYTHING ELSE?

MR. SMITH: NO, SIR, NOT ON THIS ISSUE.

THE COURT: NEXT ISSUE.

MR. GRANT: YES, SIR, YOUR HONOR. THE NEXT ISSUE INVOLVES A PHONE CALL MADE BY WE ALLEGE THIS DEFENDANT TO A PRIVATE INDIVIDUAL IN WHICH INCRIMINATING STATEMENTS WERE MADE.

THE COURT: CALL HIM.

MR. GRANT: WE CALL MR. CRAWFORD.

THE COURT: AS I UNDERSTAND, YOU CONTEND THAT THAT SHOULD BE SUPPRESSED?

MR. SMITH: YOUR HONOR, I THINK THE ISSUE -- THE ISSUE IN

THIS PARTICULAR PHASE IS AS TO COMPETENCY OF THE WITNESS TO RENDER AN OPINION AS TO WHO THAT TALKED.

THE COURT: ALL RIGHT. YOU'RE SAYING WHETHER OR NOT THE CAN IDENTIFY THE DEFENDANT AS THE PERSON WHO MADE THE CALL.

WE'LL HEAR THAT. LET'S HEAR THAT ISSUE; THAT'S THE ISSUE.

BRING HIM AROUND PLEASE.

FRED SCOTT CRAWFORD, BEING FIRST DULY SWORN TESTIFIED AS FOLLOWS:

THE COURT: THAT MICROPHONE WILL MOVE AROUND. YOU CAN MOVE IT AROUND. TRY TO SPEAK INTO IT PLEASE, SIR. WHAT'S YOUR FULL NAME.

WITNESS: BEG YOUR PARDON?

THE COURT: WHAT'S YOUR NAME? STATE IT INTO THE RECORD.

WITNESS: FRED SCOTT CRAWFORD.

THE COURT: FRED SCOTT CRAWFORD?

WITNESS: YES, SIR.

THE COURT: TRY TO SPEAK INTO THAT MICROPHONE SO THEY CA HEAR YOU OUT THERE.

DIRECT EXAMINATION

BY MR. GRANT:

Q MR. CRAWFORD, WHERE DO YOU WORK?

A I WORK AT CATAWBA NUCLEAR STATION.

Q AND DID YOU KNOW MARIE CHRONISTER?

A NO, SIR, NOT TO THE EFFECT OF KNOWING HER PERSONALLY, NO

Q AND DO YOU KNOW THE DEFENDANT JEFFERY CHRONISTER?
A NO, SIR.
Q WERE YOU AT THE CATAWBA NUCLEAR STATION ON THE DAY OF THE MURDER, FEBRUARY 14, 1992?
A NO, SIR, I WAS NOT.
Q FOLLOWING THAT IN MARCH DID YOU RECEIVE A PHONE CALL, A SERIES OF PHONE CALLS CONCERNING THIS MATTER?
A YES, SIR, I DID.
Q WOULD YOU JUST TELL US HOW THAT STARTED FROM THE FIRST?
A OKAY. ON MARCH THE 2ND ABOUT 9:00 O'CLOCK IN THE MORNING -- I ALSO HAVE A -- INSTEAD OF I NORMALLY WORK AT DUKE POWER. I WORK THERE FULL-TIME AND HAVE A PART-TIME LANDSCAPING AND TREE SERVICE. AND ON MY BUSINESS LINE I RECEIVED A CALL AT MY HOME -- I WAS IN THE PROCESS OF MOVING -- FROM A GUY THAT IDENTIFIED HIMSELF AS KEN RYAN.

THE COURT: WHO?

WITNESS: KEN RYAN.

A AND WHEN THE -- THIS MAN SAID THAT HE HAD SOME LANDSCAPING THAT HE WANTED ME TO TAKE A LOOK AT. AND I TOLD HIM I WAS IN THE PROCESS OF MOVING, THERE WAS NO WAY THAT I COULD, YOU KNOW, HAVE TIME TO COME OUT AND TAKE A LOOK AT IT.

AND HE SAID THAT HE WAS GOING TO BE IN DOWNTOWN BELMONT AND HE UNDERSTOOD THAT'S WHERE I WAS LOCATED.

AND I SAID, YES, THAT'S WHERE I'M MOVING TO.

AND HE WANTED TO KNOW IF HE COULD JUST COME BY AND TALK

TO ME AND LET HIM GIVE ME MY IDEA OF WHAT HE HAD TO DO AND MAYBE I COULD GIVE HIM A BALLPARK PRICE ON WHAT TYPE OF WORK HE WAS WANTING DONE.

SO AT THE TIME I WAS REALLY PUSHED FOR TIME, AND I DIDN' HAVE A LOT OF, YOU KNOW, FREE TIME JUST TO GO OUT AND LOOK, S I TOLD HIM JUST TO COME BY MY HOUSE AND LOOK AND TALK TO ME THERE.

AND WHEN -- I SET HIM UP AN APPOINTMENT THAT I WOULD -- TIME THAT I WOULD BE THERE WHILE I WAS MOVING, AND HE NEVER SHOWED UP.

SO THIS WAS ON A MONDAY. AND THEN ON WEDNESDAY ABOUT 9:00 O'CLOCK, ABOUT THE SAME TIME IN THE MORNING, THE GUY CALLS BACK. AND WHEN HE CALLED BACK HE AGAIN IDENTIFIE HIMSELF AS KEN RYAN.

AND THE FIRST THING HE SAID WAS, I'M SORRY I DIDN'T MAKE IT TO BELMONT. SO I'M SORRY I DIDN'T -- WASN'T ABLE TO KEEP THE APPOINTMENT.

I SAID, NO PROBLEM.

SO I WENT ON TO ASK HIM JUST WHAT KIND OF LANDSCAPING DO YOU NEED DONE?

AND BEFORE WE GOT INTO THE ACTUAL CONVERSATION OF WHAT H NEEDED DONE, I SAID, WHERE DID YOU HEAR ABOUT ME AS FAR AS -- I ALWAYS ASK THAT BECAUSE WE USE THE YELLOW PAGE ADVERTISING. WE LIKE TO KNOW.

AND HE SAID, WELL, I GOT YOUR CARD FROM MARIE CHRONISTER

AND IT WAS REALLY BAFFLING TO ME BECAUSE I NEVER -- I NEVER HEARD THE NAME MARIE CHRONISTER OR DIDN'T, YOU KNOW, KNOW OF ANYBODY.

AND HE SAID, YOU'VE EITHER DONE SOME WORK FOR HER OR SHE SAID THAT YOU DID REAL GOOD LANDSCAPING AT A CHEAP PRICE.

SO WHEN -- I SAID, WELL, I STILL DON'T KNOW WHO THAT MIGHT BE BECAUSE I'VE NEVER DONE ANY WORK FOR ANY CHRONISTERS AND I, YOU KNOW, DON'T KNOW ANY MARIES. AND SO, I SAID, OKAY. SHE MUST HAVE GOTTEN MY CARD OFF THE BULLETIN BOARD, BECAUSE I PUT IT ON THE BULLETIN BOARD AT WORK FOR PEOPLE TO GET OFF, YOU KNOW, SO IN CASE THEY NEED ANY WORK DONE.

SO I SAID, OKAY. WHAT TYPE OF WORK DO YOU NEED DONE? YOU KNOW, GIVE ME YOUR ADDRESS AND I'LL COME OUT AND TAKE A LOOK AT IT NOW THAT I'VE GOT SOME OF MY STUFF MOVED AND I'LL TAKE TIME TO COME OUT AND DO IT.

HE SAID, WELL, LET ME JUST LEVEL WITH YOU. HE SAID, I'M NOT KEN RYAN.

I SAID, YOU'RE NOT?

HE SAID, NO. HE SAID, I'M NOT KEN RYAN. HE SAID, I'M JEFF CHRONISTER.

IT STILL DIDN'T DAWN ON ME THEN UNTIL WE GOT FURTHER IN THE CONVERSATION.

HE SAID, I'M MARIE CHRONISTER'S HUSBAND.

AND I SAID, MARIE CHRONISTER?

HE SAID, YES, THE GIRL THAT WAS KILLED DOWN AT CATAWBA.

I THOUGHT AT FIRST IT MIGHT HAVE BEEN A GAG, YOU KNOW, SOMEBODY PLAYING A SICK JOKE ON ME.

AND I SAID, ARE YOU SURE YOU'RE THE GUY THAT, YOU KNOW, KILLED HIS WIFE DOWN IN FRONT OF CATAWBA NUCLEAR STATION?

AND HE TOLD ME, HE SAID, YEAH. HE SAID, SHE GOT EXACTLY WHAT SHE DESERVED.

AND HE ALSO TOLD ME THAT HE WAS GOING TO MAKE SURE THAT SAME THING HAPPENED TO THE GUY THAT STOLE HER AWAY FROM HIM.

AGAIN, I ASSURED HIM THAT I DIDN'T HAVE ANY IDEA WHAT HE WAS TALKING ABOUT, AS TO WHETHER IT WAS, YOU KNOW, HIS WIFE OR -- YOU KNOW, I DIDN'T KNOW HIS WIFE.

SO THE CONVERSATION KIND OF GOT A LITTLE HEATED FROM THA -- FROM THAT RESPECT.

I ASKED HIM, I SAID, YOU KNOW, ARE YOU NOT IN JAIL?

AND HE -- HE SAID, IT DON'T MATTER WHERE I'M AT.

I SAID, THEY'RE JUST LETTING YOU USE THE PHONE AT WILL, YOU KNOW, THEY DON'T HAVE ANY CONTROL OVER YOU USING THE TELEPHONE?

HE SAID, NO, THEY'RE NOT GOING TO STOP ME FROM USING THE TELEPHONE.

AND I TOLD HIM, I SAID, YOU KNOW, I DON'T UNDERSTAND WHY YOU'RE CALLING ME. YOU KNOW, I HAVE NOTHING TO DO WITH YOU OR YOUR WIFE OR I DIDN'T KNOW YOUR WIFE.

AND HE SAID, WELL, THAT'LL -- HE SAID, THAT'S ABOUT ALL I NEEDED TO KNOW.

AND I THOUGHT, YOU KNOW, BY THE END OF THE CONVERSATION THAT HE WAS MAYBE CONVINCED THAT IT WASN'T ME BECAUSE HE HAD SAID THAT HE HAD GOTTEN SOME -- HAD FOUND SOME LETTERS THAT SOMEBODY NAMED SCOTT HAD WRITTEN TO MARIE AND HAD SIGNED THEM -- LETTERS CONCERNING HER PERSONAL LIFE WITH JESUS CHRIST AND RELIGIOUS TYPE, YOU KNOW, LETTERS AND THEN SIGNED THEM AT THE BOTTOM, SCOTT.

AND HE SAID HE TOOK THAT AND HE ALSO FOUND MY BUSINESS CARD IN HER POCKETBOOK. AND THEN WHEN HE FOUND MY BUSINESS CARD, HE PUT MY NAME AND THE LETTER SIGNED AT THE BOTTOM AS BEING THE SAME PERSON.

BUT I ASSURED HIM THAT IT WASN'T ME THAT HAD WRITTEN THE LETTERS. I DIDN'T KNOW HER.

AND HE SAID, WELL, THAT'S ALL I NEEDED TO KNOW AND HE HUNG UP.

SO I PROCEEDED THEN TO TRY AND LOCATE WHERE HE WAS AT, BECAUSE I WANTED TO FIND OUT IF THAT WAS INDEED WHO IT WAS THAT HAD ACTUALLY CALLED. AND WHEN I CALLED THE ROCK HILL, THEY CONVEYED ME ONTO COLUMBIA WHERE I CALLED AND I TALKED TO A LADY NAMED BARBARA, WHICH I UNDERSTAND -- SHE CALLED ME BACK AFTER THE SWITCHBOARD OPERATOR TOOK MY NAME AND NUMBER.

SHE CALLED ME BACK AND I EXPLAINED THE SITUATION TO HER, WHAT HAD TAKEN PLACE. AND SHE WANTED TO TALK TO DR. ELLISON, I BELIEVE. AND WHEN SHE TALKED WITH DR. ELLISON, DR. ELLISON CALLED ME BACK.

AND HE SAID THAT HE HAD ALREADY BEEN AWARE OF THE SITUATION AND THAT HE HAD TALKED TO JEFF, AND THAT JEFF DID ADMIT TO CALLING ME. AND HE HAD SAID HE HAD MADE A WRONG ASSUMPTION AND THAT HE WAS SORRY HE HAD CALLED.

AND AT THE TIME DR. ELLISON HAD TOLD ME THAT HE HAD REVOKED HIS PHONE PRIVILEGES, TO WHERE HE MADE SURE THAT HE WOULDN'T CALL ME BACK.

I SAID, WELL, YOU KNOW, THAT'S ALL I WANT. I JUST DON'T WANT SOMEBODY CALLING ME, YOU KNOW, ON SOMETHING I HAD NOTHIN TO DO WITH.

AND THAT WAS THE LAST CONTACT I HAD WITH ANYBODY, YOU KNOW, CONCERNING THE MATTER.

Q DID HAVE ANY MORE PHONE CALLS FROM HIM?

A NO, SIR.

Q AND IN THE SECOND PHONE CALL HE TOLD YOU HE WAS JEFF CHRONISTER?

A YES, SIR, HE DID.

Q THE MAN WHO KILLED HIS WIFE?

A YES, SIR.

MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY HAVE, MR. CRAWFORD.

CROSS EXAMINATION

BY MR. SMITH:

Q THE ONLY -- LET'S PUT IT THIS WAY: YOU HAD NEVER TALKED WITH JEFF CHRONISTER BEFORE, HAD YOU?

A NO, SIR.
Q AND YOU DO NOT KNOW THE VOICE CHARACTERISTICS OF JEFF CHRONISTER, DO YOU, SIR?
A NO, I COULDN'T UNDERSTAND THE QUESTION.
Q YOU DO NOT KNOW THE VOICE CHARACTERISTICS OF JEFF CHRONISTER, DO YOU?
A NO, SIR.
Q THE WAY YOU CAME UP WITH A NAME, YOU SAY, IS THIS VOICE TOLD YOU; IS THAT CORRECT?
A NO, SIR. THIS ---
Q THE VOICE ON THE TELEPHONE?
A THE MAN THAT WAS TALKING TO ME ON THE TELEPHONE ---
Q OKAY.
A --- ADMITTED TO ME THAT HE WAS JEFF CHRONISTER.
Q AND THEN YOU MADE A CALL TO COLUMBIA AND SOMEONE ELSE, A BARBARA, TOLD YOU SOMETHING; IS THAT CORRECT?
A NO. WHEN I CALLED -- WHEN I CALLED COLUMBIA TO THE COOPER BUILDING, THESE SWITCHBOARD OPERATOR TOLD ME THAT SHE COULDN'T DIRECT CALLS STRAIGHT IN, THAT SHE HAD TO TAKE A NAME AND PHONE NUMBER AND THAT THE SOCIAL WORKER WOULD CALL ME BACK. AND I WAITED ON THE SOCIAL WORKER, WHICH HER NAME WAS BARBARA -- I WROTE IT DOWN WHEN SHE CALLED.

SHE CALLED ME BACK. AND WHEN -- WHEN I TALKED WITH HER, SHE SAID THAT SHE WOULD CHECK INTO IT. AND SHE SAID THAT SHE WOULD ALSO TALK WITH DR. ELLISON, FIND OUT WHAT THE STORY WAS,

AND THEY WOULD ACTUALLY TALK TO JEFF AND FIND OUT, YOU KNOW, IF INDEED HE HAD MADE THE PHONE CALL.

Q SO THE ONLY WAY THAT YOU KNOW AND CAN TESTIFY THAT JEFFERY CHRONISTER MADE A TELEPHONE CALL TO YOU IS BECAUSE SOMEONE ELSE TOLD YOU SO?

A DR. ELLISON AND THE SOCIAL WORKER, YES.

Q THAT'S CORRECT, SOMEONE ELSE TOLD YOU THAT JEFFERY CHRONISTER MADE A TELEPHONE CALL; IS THAT WHAT YOU'RE TELL ME

A WHAT I'M TELLING YOU IS THAT THE PERSON THAT I TALKED WITH ADMITTED TO ME THAT HIS NAME WAS JEFF CHRONISTER.

Q THAT PERSON YOU DID NOT KNOW WHO THAT WAS? YOU HEARD AN UNIDENTIFIED ---

A NO, SIR.

Q --- VOICE?

A THAT'S CORRECT.

Q AND THE NEXT PART OF THIS IS THAT YOU CALLED DOWN TO COLUMBIA?

A I CALLED TO ROCK HILL. THEY TOLD ME THAT JEFF WAS BEING HELD IN THE COOPER BUILDING IN COLUMBIA, SOUTH CAROLINA.

Q AND SOMEONE CALLED YOU BACK?

A NO. AT THAT TIME THEY GAVE ME THE NUMBER TO THE COOPER BUILDING AND I CALLED AND TALKED TO THE SWITCHBOARD OPERATOR.

Q OKAY. SO WHAT YOU LEARNED FROM THE COOPER BUILDING, YOU LEARNED BECAUSE YOU WERE TOLD THAT BY OTHER PEOPLE?

A THAT HE WAS BEING THERE -- THAT HE WAS STAYING THERE OR

THAT HE HAD MADE THE CALL?

Q WHATEVER IT IS THAT YOU LEARNED FROM THE COOPER BUILDING, YOU LEARNED BECAUSE SOMEONE ELSE TOLD YOU, CORRECT?

A YES, SIR.

Q OKAY.

MR. SMITH: THAT'S ALL I HAVE.

THE COURT: SOLICITOR?

REDIRECT EXAMINATION

BY MR. GRANT:

Q THE ONLY QUESTION -- BARBARA, WOULD HAVE BEEN BARBARA GIBSON FROM THE WILLIAM S. HALL INSTITUTE?

A IT WAS A SOCIAL WORKER. HER NAME -- SHE NEVER -- SHE JUST SAID HER NAME WAS BARBARA. AND I DON'T KNOW IF HER NAME WAS BARBARA GIBSON. SHE NEVER IDENTIFIED HERSELF.

I DON'T THINK THAT IF -- IF FROM MY UNDERSTANDING FROM TALKING WITH THEM THAT THERE HAD BEEN -- THAT -- THE PHONE CALLS THAT HE HAD BEEN MAKING WERE PLACED ON A CREDIT CARD. THAT IF THERE'S ANY VALIDATION AS TO WHETHER HE MADE THE CALL, IT MIGHT BE CHECKED THAT WAY; THAT WAS JUST -- THAT WAS WHAT THEY TOLD ME WAS HE WAS USING A CREDIT CARD TO CALL HOME, AND THAT HE HAD SAID THAT HE HAD TO MAKE A PHONE CALL TO ME.

MR. GRANT: THANK YOU.

THE COURT: ANYTHING ELSE?

(NO RESPONSE.)

THE COURT: YOU MAY STEP DOWN.

(THE WITNESS LEAVES THE WITNESS STAND.)

THE COURT: ANY OTHER WITNESS ON THIS ISSUE?

MR. GRANT: NO, SIR.

MR. SMITH: YOUR HONOR, I WOULD SUBMIT THAT THE ISSUE IS THE COMPETENCY OF THE WITNESS TO TESTIFY OF HIS OWN KNOWLEDGE TO THE VOICE THAT FIRST CALLED. AND I WOULD SUBMIT THAT THE TESTIMONY FROM WHAT HE MAY HAVE ASCERTAINED FROM OTHER PEOPLE WOULD BE HEARSAY AND WOULD BE INADMISSIBLE.

THERE IS NO QUALIFICATION OF THIS GENTLEMAN AS AN EXPERT IN ANY WAY IN THE IDENTIFICATION OF MR. CHRONISTER'S VOICE OR ANY OTHER VOICE. IT WOULD BE DIFFERENT PERHAPS IF THERE HAD BEEN -- IF HE KNEW THE PERSON, HAD TALKED WITH HIM SEVERAL TIMES BEFORE. BUT I SUBMIT THAT THESE ARE NOT ADMISSIBLE, YOUR HONOR, BECAUSE OF THE LACK OF COMPETENCY OF THE WITNESS TO TESTIFY TO THE ORIGINAL PHONE CALL. AND, OF COURSE, THE OTHER THINGS WOULD BE HEARSAY AND I WOULD SUBMIT, INADMISSIBLE.

THE COURT: SOLICITOR.

MR. GRANT: YES, YOUR HONOR. WE WOULD SUBMIT THAT IT IS ADMISSIBLE. IT ONLY GOES TO THE WEIGHT OF THE EVIDENCE. HE SAYS THE CALLER IDENTIFIED HIMSELF AS THE DEFENDANT, SAID HE WAS THE ONE THAT KILLED HIS WIFE, WHATEVER STATEMENTS HE MADE, AND THEN HE MADE SOME EFFORTS TO VERIFY THAT, YOUR HONOR.

AS FAR AS WHAT WAS MADE TO HIM OVER THE PHONE I WOULD SIMPLY SUBMIT WOULD GO TO THE WEIGHT OF THE EVIDENCE AND NOT

TO THE ADMISSIBILITY.

I WOULD STATE TO THE COURT THAT WE DO INTEND TO CORROBORATE THAT THROUGH THE TESTIMONY OF MS. BARBARA GIBSON AS FAR AS THIS WITNESS HAVING MADE A PHONE CALL TO HER CONCERNING THIS SITUATION, WHAT HE TESTIFIED TO.

SHE'S NOT AVAILABLE THIS AFTERNOON. DR. ELLISON IS NOT AVAILABLE PERIOD. BUT MS. GIBSON CAN TESTIFY SHE DID RECEIVE A PHONE CALL AS THIS INDIVIDUAL HAS TESTIFIED FROM HIM IN REFERENCE TO MR. CHRONISTER. MR. CHRONISTER WAS IN THEIR FACILITY AT THAT TIME.

WE WOULD SUBMIT THAT THAT EVIDENCE GOES TO THE WEIGHT AND THE BELIEVABILITY AND THE CREDIBILITY, THE ISSUE THAT THE JURY WILL DECIDE WHETHER OR NOT HE WAS THE ONE THAT MADE THIS CALL.

MR. SMITH: YOUR HONOR, I SIMPLY WOULD SUBMIT THERE IS NOTHING TO VERIFY THE IDENTITY OF THE VOICE. AND THERE ARE CERTAINLY NO CREDIT CARDS SLIPS THAT WERE BROUGHT IN.

AND AS FAR AS THE PERSON FROM THE STATE HOSPITAL TESTIFYING, YOUR HONOR, THEY CAN TESTIFY TO WHAT THE WITNESS DID BUT NOT ANYTHING ELSE. THERE ALSO MAY BE SOME DIFFICULTIES WITH AN EMPLOYEE OF THE STATE HOSPITAL DISCUSSING -- DISCUSSING THE RECORDS OR DISCUSSING PATIENTS WHO ARE THERE.

BUT I WOULD SUBMIT THAT NOTHING HAS BEEN PRESENTED THAT WOULD MAKE THE WITNESS COMPETENT TO SAY THAT HE RECEIVED A CALL FROM JEFFERY CHRONISTER.

THE COURT: WELL, SOLICITOR, YOUR POSITION CONCERNING TH WEIGHT OF THE TESTIMONY, I'M NOT SATISFIED I AGREE WITH THAT AT ALL. IF THE WITNESS HAD TESTIFIED THAT HE KNEW THE VOICE, KNEW THE PERSON, AND COULD IDENTIFY HIM -- YOU DON'T HAVE TO BE AN EXPERT TO DO THAT. IF YOU SAY YOU'RE FAMILIAR WITH ANOTHER PERSON, YOU'VE TALKED TO THEM, OR YOU COULD IDENTIFY THEIR VOICE EVEN THOUGH THEY DON'T IDENTIFY THEMSELVES, YOU HAVE A RIGHT TO SAY THAT BASED ON THE KNOWLEDGE OF THE VOICE.

NOW YOU WANT ME TO ADMIT INTO THE RECORD THE TESTIMONY O A WITNESS WHO SAYS HE RECEIVED A PHONE CALL FROM A PERSON HE DOES NOT KNOW THEIR VOICE AT THE TIME. HE MAY KNOW IT NOW. DON'T KNOW.

BUT WHAT I HAVE BEFORE ME RIGHT NOW IS THAT HE DIDN'T KNOW THAT VOICE, WHO SAYS HE'S SOMEONE ELSE.

SOLICITOR, YOU HAVE TO GO FURTHER THAN THAT ON A TELEPHONE. I'LL GIVE YOU OVER THE EVENING TIME TO LOOK AT SOME CASES ON IT. BUT YOU'VE GOT TO GO FURTHER THAN THAT, SOLICITOR. IT WOULD BE THE SAME AS HIM SAYING IT WAS LARRY GRANT WHO CALLED ME, THE CHARGING YOU WITH IT. THERE'S GOT T BE SOME IDENTIFICATION OF THAT VOICE THAN JUST SOMEONE SAYING WHO I AM.

I DON'T AGREE WITH YOU ABOUT GOING TO THE WEIGHT. I'M GOING TO LOOK AT IT FURTHER AND I'M GOING TO LET YOU LOOK AT IT TO SEE IF YOU CAN FIND ANY CASES ON THAT ISSUE THERE ARE BECAUSE YOU CAN COMPEL VOICE EXEMPLARS, AS YOU KNOW. THERE

ARE A NUMBER OF OTHER THINGS THAT CAN BE DONE. BUT AT THIS POINT IN TIME I'M CONCERNED. I MAY QUASH IT, NOT ALLOW IT TO BE USED.

IN THE MORNING. THANK YOU.

MR. GRANT: THANK YOU.

THE COURT: COURT'S IN RECESS.

(COURT IS IN RECESS.)

(TUESDAY, SEPTEMBER 22, 1992.)

THE COURT: ALL RIGHT. GENTLEMEN, WHEN WE STOPPED AT THE EVENING TIME, WE TOOK UP THE IN-CAMERA ISSUES CONCERNING THE STATEMENTS MADE, THE IDENTIFICATION ISSUE, THE IN-COURT IDENTIFICATION, LINE-UP, AS WELL AS THE TELEPHONE CONVERSATIONS ALLEGEDLY MADE BETWEEN THE DEFENDANT AND THE WITNESS.

I RULED ON ALL THE ISSUES EXCEPT WHETHER OR NOT TO ALLOW THE TESTIMONY CONCERNING THE TELEPHONE CONVERSATION. SOLICITOR, I GAVE YOU OVER THE EVENING TIME TO DO ANY RESEARCH YOU'D LIKE ON THAT ISSUE. I'D BE HAPPY TO HEAR FROM YOU ON THAT ISSUE AS WELL AS FROM MR. SMITH IF THERE IS ANY FURTHER ARGUMENT ON IT.

MR. GRANT: YES, SIR, YOUR HONOR. AND I THINK THE CASE IS FAMILIAR WHICH IS STATE VERSUS PORTER, THE SITUATION. I'LL BE VERY FRANK WITH THE COURT, YOUR HONOR, MY UNDERSTANDING IS VOICE IDENTIFICATION CAN BE BASED ON OTHER EVIDENCE AS WELL AS IDENTIFICATION.

IN THIS CASE WE DO NOT HAVE THE ABILITY FOR THE WITNESS TO IDENTIFY THE VOICE BECAUSE THERE WERE ONLY THE TWO PHONE CALLS. THE FURTHER EVIDENCE, YOUR HONOR, IS SLIM. AND I CANNOT MAKE A GOOD-FAITH ARGUMENT TO OVERCOME THE COURT'S RESERVATIONS AS YOU STATED YESTERDAY BASED UPON MY READING OF THE COURT.

THE COURT: THANK YOU, SOLICITOR. THANK YOU FOR YOUR CANDOR WITH THE COURT.

THAT TESTIMONY AND EVIDENCE WILL NOT BE ADMITTED THEN.

ARE YOU ALL READY TO PROCEED?

MR. SMITH: YOUR HONOR, JUST ONE HOUSEKEEPING MATTER.

THE COURT: SURE.

MR. SMITH: IN TALKING WITH THE SOLICITOR THIS MORNING, IT APPEARS THAT THE CASE WILL BE SHORTER -- THE STATE'S CASE WILL PERHAPS BE SHORTER THAN I HAD ANTICIPATED. I WANTED TO TRY AND ASCERTAIN WHEN TO HAVE MY WITNESSES HERE. I HAD ORIGINALLY TOLD ---

THE COURT: YOU OUGHT TO HAVE YOUR STAFF TELL THEM TO GE HERE NOW.

MR. SMITH: THAT'S WHAT I ---

THE COURT: WE'RE IN TRIAL, MR. SMITH. YOU'RE SUPPOSED TO BE PREPARED TO GO FORWARD. YOU SHOULD HAVE HAD THEM HERE YESTERDAY. WE'RE READY TO GO. IF THERE'S ANY QUESTION ABOUT IT, YOU TELL THEM TO BE HERE NOW. ALL RIGHT?

MR. SMITH: THAT'S WHAT I HAVE DONE, BUT I WANTED TO --

HAVE ONE THAT MAY BE IN COURT IN GASTONIA.

THE COURT: WELL, YOU HAVE THE RIGHT TO THE USE OF THE SUBPOENA POWER OF THIS COURT AND IT HAS NOT BEEN RESTRICTED. IF YOU HAVE NOT SUBPOENAED THEM, I CANNOT DO ANYTHING ABOUT IT. BUT WE'RE READY TO GO. THE CASE WAS CALLED YESTERDAY. THAT MEANS EVERYBODY'S SUPPOSED TO BE HERE. LET'S PROCEED.

MR. SMITH: ALL RIGHT, SIR.

THE COURT: ANYTHING ELSE?

MR. SMITH: NOTHING.

THE COURT: BRING THE JURY IN PLEASE.

(THE JURY RETURNS TO THE COURTROOM AT 9:38 A.M.)

THE COURT: GOOD MORNING, MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY. I HOPE YOU HAD A NICE EVENING. WE COMPLETED THOSE MATTERS THAT WE NEEDED TO DO YESTERDAY EVENING, AND I THANK YOU FOR YOUR PATIENCE WITH US. WE'RE READY TO PROCEED.

SOLICITOR, YOU MAY CALL YOUR NEXT WITNESS.

MR. GRANT: WE CALL SIDNEY BALLANGER.

SIDNEY BALLANGER, III,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: MR. BALLANGER, YOU CAN MOVE THAT MICROPHONE AROUND, JUST TO KIND OF POSITION IT WHERE YOU CAN SPEAK INTO IT FOR US PLEASE, SIR.

WITNESS: OKAY.

DIRECT EXAMINATION

BY MR. GRANT:

Q MR. BALLANGER, IF YOU WOULD, STATE YOUR FULL NAME FOR TH COURT?

A SIDNEY HOLMES BALLANGER, III.

Q AND WHAT DO YOU GO BY PLEASE, SIR?

A SI, S-I.

Q AND WHERE DO YOU LIVE, MR. BALLANGER?

A ROCK HILL.

Q WHERE DO YOU WORK?

A DUKE POWER, CATAWBA NUCLEAR STATION.

Q BACK ON FEBRUARY THE 14TH OF 1992 WHERE WERE YOU WORKING

A CATAWBA NUCLEAR STATION.

Q DO YOU RECALL THE MORNING OF FEBRUARY 14, 1992?

A YES, SIR.

Q AND EARLY THAT MORNING WHERE WOULD YOU HAVE BEEN?

A I'D BEEN WORKING ON SHIFT THAT NIGHT AND THEN DAN WILSON AND I HAD GONE OUT TO THE PARKING LOT TO SWAP A TRAILER HITCH ON MY TRUCK AND HOOK UP A SMALL FISHING BOAT.

Q AT APPROXIMATELY WHAT TIME WERE YOU AND MR. WILSON WORKING ON THE TRAILER HITCH?

A IT WAS BETWEEN 6:30 AND 7:00 O'CLOCK IN THE MORNING.

Q ALL RIGHT, SIR. AND WHILE YOU WERE THERE DID YOU OBSERV ANYTHING UNUSUAL GOING ON?

A YES, SIR, THERE APPEARED TO BE A SHOOTING IN THE PARKING LOT.

Q AND PRIOR TO THAT WHAT DID YOU SEE HAPPENING THERE IN THE AREA OF THE PARKING LOT?

A DAN AND I CAME OUT AND UNHITCHED THE SMALL BOAT FROM HIS TRUCK AND PICKED THE TRAILER UP AND MOVED IT OVER TO THE BACK OF MY TRUCK. AND THE TRAILER HITCH ON THE BOAT TRAILER TAKES A 1 7/8 INCH TRAILER BALL AND I HAD A 2 INCH ON MY TRUCK, SO I WAS SWAPPING IT OUT, PUTTING THE 1 7/8 INCH TRAILER HITCH ON THE BACK OF MY TRUCK.

I SQUATTED DOWN AND WAS CHANGING OUT THE NUT -- TAKING THE NUT OFF AND CHANGING THE BALLS. AND THE FIRST THING I NOTICED, DAN WAS -- WE WERE MAKING SOME SMALL TALK, BUT DAN SAID ---

MR. SMITH: OBJECTION, YOUR HONOR.

THE COURT: I SUSTAIN THE OBJECTION. DON'T TESTIFY TO WHAT SOMEBODY ELSE TOLD YOU. JUST TESTIFY TO WHAT YOU SAW, WHAT DID YOU DID. ALL RIGHT, SIR?

WITNESS: OKAY.

THE COURT: YOU MAY SAY AS A RESULT OF SOME STATEMENT YOU OBSERVED OR SAW SOMETHING.

WITNESS: OKAY.

A I WAS DOWN CHANGING THE TRAILER HITCH. AND ONCE I GOT THE TRAILER BALL ATTACHED AND HOOKED THE TRAILER UP ONTO THE BALL, I GOT UP, WALKED AROUND THE SIDE OF MY TRUCK. AND I NOTICED THERE WAS A WHITE VAN WAS PARKED RIGHT IN FRONT OF MY PICK-UP TRUCK. AND IT KIND OF MIFFED ME OFF JUST A LITTLE BIT

BECAUSE I HAD MY TRUCK CRANKED UP WARMING UP AND THERE WAS THIS VAN THAT HAD PULLED UP RIGHT IN FRONT OF MY TRUCK, BLOCKING WHERE I COULDN'T PULL OUT, AND IT WAS SITTING THERE RUNNING.

Q HOW NEAR WAS THE VAN TO YOUR TRUCK?

A I'D SAY IT WAS 5 TO 6 FEET AWAY FROM THE FRONT OF MY TRUCK.

Q AND WHERE WERE YOU IN RELATION TO YOUR TRUCK IN RELATION TO THE VAN, HOW FAR AWAY WERE YOU?

A OKAY. WHEN I GOT UP FROM THE BACK OF MY TRUCK AND MOVED AROUND THE RIGHT-HAND SIDE, CAME UP TO APPROXIMATELY THE PASSENGER DOOR ON THE RIGHT-HAND SIDE OF MY TRUCK AND STOPPED AND THERE'S THIS VAN SITTING THERE.

Q WHAT DID YOU SEE THERE? WAS THE VAN RUNNING?

A YES, SIR.

Q ALL RIGHT, SIR.

A SO THEN I WONDERED MYSELF AND SAID TO DAN, WELL, WHO'S GOT ME BLOCKED IN NOW? SO I SAID, WELL, I'LL GO BACK AND CHECK THE LIGHTS ON THE TRAILER BECAUSE I HADN'T CHECKED THOSE. SO I WENT BACK AROUND TO DAN AND SQUATTED BACK DOWN AND CONNECTED THE TRAILER LIGHTS -- WORKING ON CONNECTING THE TRAILER LIGHTS UP.

AND WHILE I WAS SQUATTED DOWN WORKING ON THAT I HEARD THREE POPS: POP, POP, POP. AND IT CAUGHT MY ATTENTION BECAUSE IT WAS FAIRLY QUIET. THERE WASN'T ANYTHING ELSE

REALLY GOING ON IN THE PARKING LOT, WASN'T A LOT OF NOISE OR TRAFFIC OR ANYTHING LIKE THAT. IT WAS JUST POP, POP, POP.

AND IT KIND OF CAUGHT MY ATTENTION.

AND DAN TURNED AROUND AND SAID ---

MR. SMITH: OBJECTION.

WITNESS: OKAY.

THE COURT: I RECOGNIZE THE OTHER PERSON HAS TESTIFIED, COUNSEL. I STILL WANT HIM TO SAY WHAT HE DID.

MR. GRANT: YES, SIR.

Q DON'T GO INTO WHAT DAN SAID OR YOU ALL'S CONVERSATION, JUST WHAT YOU DID AND WHAT YOU SAW AND WHAT YOU HEARD.

A OKAY.

Q BUT NOT WHAT DAN SAID.

A OKAY.

Q YOU HEARD THREE POPS I BELIEVE YOU SAID?

A I HEARD THREE POPS. AT THAT TIME IT APPEARED THAT SOMETHING WAS GOING ON. AND SO I GOT UP AND MOVED DOWN THE LINE OF CARS AWAY FROM THE PLANT. THE CARS -- THERE'S A ROW OF THEM PARKED LIKE THAT. I MOVED DOWN THE BACK ROW OF THE CARS, DOWN TO THE LAST CAR ON THE END AND MOVED IN AROUND BEHIND IT, STAYED THERE. I COULD LOOK DOWN THE ROW OF CARS, THERE WAS THIS WHITE VAN SITTING -- STILL SITTING DOWN IN FRONT OF MY TRUCK.

AFTER SOME SHORT INTERVAL A MAN COMES WALKING AROUND THE SIDE OF THE TRUCK, AROUND CARS AND KIND OF TOWARD THE SIDE OF

THE VAN HEADED TOWARD ME AND THE VAN.

THIS INDIVIDUAL HAD -- IT APPEARED TO BE A RIFLE, A FAIRLY SMALL BARREL ON IT. AND AT THAT TIME HE WAS WALKING SORT OF TOWARD ME. I WAS LOOKING UP OVER THE HOOD OF THE CAR SO I EASED BACK DOWN BEHIND THE HOOD OF THE CAR.

AND THE INDIVIDUAL STOPPED, GOT IN THE TRUCK, AND SHUT THE DOOR.

AND AT THAT TIME I WASN'T REALLY SURE WHAT WAS GOING ON. I DIDN'T THINK ANYTHING REALLY SUPER SERIOUS WAS GOING ON. S I MOVED OUT FROM AROUND THE CARS AND MOVED UP ON THE BACK OF THE TRUCK TO SEE IF I COULD GET A MAKE ON THE TAG SO I COULD REPORT IT TO SECURITY. I GOT CLOSE ENOUGH AND STARTED READIN THE TAG WHERE I COULD READ IT, AND THEN THE BACK-UP LIGHTS CAME ON THE TRUCK -- ON THE VAN.

AND AT THAT TIME I MOVED BACK AROUND INTO THE CARS THAT WERE PARKED THERE. AND THE VAN STARTED BACKING UP. IT CAME BACKING BACK DOWN THE ROW. SO I MOVED -- AS IT CAME BACK THIS WAY, I KIND OF DUCK WALKED BACK BEHIND THE CARS AND MOVE IN THE OPPOSITE DIRECTION SORT OF LIKE THAT.

AS THE VAN BACKED UP, I NOTICED AN INDIVIDUAL WAS IN THE DRIVER'S SEAT.

AND ONE THING I THOUGHT WAS KIND OF STRANGE ---

MR. SMITH: OBJECTION, YOUR HONOR.

THE COURT: JUST TESTIFY AS TO WHAT YOU SAW.

WITNESS: OKAY.

THE COURT: WHEN YOU SAY THOUGHT STRANGE, YOU'RE REACHING A CONCLUSION.

WITNESS: OKAY.

THE COURT: AND YOU'RE NOT AN EXPERT, YOU CAN'T RENDER AN OPINION. YOU HAVE A RIGHT TO TESTIFY TO WHAT YOU SAW. ALL RIGHT, SIR?

WITNESS: OKAY.

THE COURT: AND DESCRIBE IT.

A I SAW THE GENTLEMAN DRIVING THE TRUCK NEVER LOOKED AROUND. HE WAS BACKING THE TRUCK USING THE MIRROR. I ONLY GOT A SIDE VIEW OF THE FACE, BECAUSE THE INDIVIDUAL NEVER LOOKED AROUND AND TURNED AROUND IN THE VAN THAT I SAW. HE WAS LOOKING IN THE MIRROR BACKING THE VAN. HE BACKED IT DOWN TO THE END OF THE ROW.

AND WHEN HE GOT DOWN TO THE END OF THE ROW OF CARS, HE -- THE VAN KIND OF TURNED LIKE THAT AND THEN IT STOPPED FOR A LITTLE BIT. AND THEN IT -- AFTER SOME SECONDS IT MOVED OFF AND DROVE OUT OF THE PARKING LOT.

IT WASN'T MOVING WITH ANY GREAT SPEED, SQUEALING OF TIRES OR ANYTHING LIKE THAT. IT SEEMED TO BE CALM AND CONTROLLED MOVEMENT UP AROUND AND OUT OF THE PARKING LOT AND UP THE HILL.

Q ALL RIGHT, SIR. DID YOU SEE THE VAN ANYWHERE AFTER THAT?

A NO, SIR.

Q AND YOU INDICATED YOU WERE LOOKING AT THE TAG. WERE YOU ABLE TO SEE THE TAG?

A YES, SIR.
Q WERE YOU ABLE TO GET THE TAG NUMBER?
A PARTIAL NUMBER.
Q AND WHAT WAS THAT?
A I BELIEVE IT WAS D.R.L. AND THERE WERE SOME OTHER LETTERS, BUT THE BACK-UP LIGHTS CAME ON THE VAN AT THAT TIME AND I STOPPED TRYING TO READ THE LETTERS -- THE NUMBERS.
Q AND PRIOR TO HEARING THE POPS THAT YOU DESCRIBED, HOW MANY POPS DID YOU HEAR?
A MY RECOLLECTION IS I HEARD THREE, THEY WERE SHORT, STACCATO TYPE BURST, POPS. IT WASN'T A RANDOM TYPE THING. THE THING THAT CAUGHT MY ATTENTION WAS IT WAS A POP, POP, POP IT WASN'T POP. POP. IT WAS POP, POP, POP.
Q PRIOR TO HEARING THOSE, HAD YOU SEEN ANY PERSON AROUND NEAR THE VAN?
A NO, SIR, HADN'T SEEN ANY PERSON. THERE WAS SOME MOVEMEN IN THE PARKING LOT OF PEOPLE COMING AND GOING, BUT THERE WAS NO -- I DIDN'T NOTICE ANY CLOSE PERSONAL ACTIVITY AROUND WHER I WAS.
Q AND WHEN YOU FIRST SAW THE MAN WITH THE WEAPON, WHERE WA HE IN RELATION TO YOUR VAN AND THE ADMINISTRATION BUILDING?
A HE WAS COMING FROM THE FRONT OF THE VAN. THE ADMINISTRATION BUILDING RAN ALONG LIKE THIS. THE CARS ARE PARKED IN ROWS, SORT OF PARALLEL TO THE LINE OF THE BUILDING. THE FRONT OF THE BUILDING IS RIGHT THERE. THE VAN HAD PULLED

DOWN IN FRONT OF MY TRUCK. AND WHEN I SAW -- FIRST SAW THE INDIVIDUAL, HE CAME WALKING FROM AROUND THIS DIRECTION, AROUND THE EDGE OF THE CARS AND UP TO THE SIDE OF THE VAN RIGHT THERE, TURNED AND GOT IN THE VAN.

Q HOW WAS HE WALKING?

A VERY DELIBERATE, CALM, AND CONTROLLED.

Q WERE YOU ABLE TO SEE HIM WELL ENOUGH TO RECOGNIZE HIM?

A I GOT A GENERAL FEATURES LOOK AT THE INDIVIDUAL, BUT HE WAS SOME DISTANCE OFF AT THAT TIME, AND IT WAS ---

Q WOULD YOU DESCRIBE HIM AS BEST YOU COULD?

A SORT OF A DARK FACIAL HAIR WITH A MUSTACHE. LOOKED LIKE A BEARD TYPE GROWTH DOWN HERE. IT BEING SORT OF DARK, HIS HAIR LOOKED DARK.

Q WHAT SIZE WAS HE?

A AVERAGE SIZE, AVERAGE BUILD.

Q COULD YOU TELL HOW HE WAS DRESSED?

A I DON'T REALLY REMEMBER SPECIFICALLY HOW HE WAS DRESSED.

Q I SHOW YOU THESE PHOTOGRAPHS WHICH ARE FOR IDENTIFICATION 6, 5, 4, AND 3, AND ASK YOU TO LOOK AT THEM -- LOOK AT ALL FOUR OF THEM FIRST PLEASE, SIR.

A OKAY.

Q WHAT IS THAT A PICTURE OF?

A THAT LOOKS LIKE THE VAN THAT I SAW THAT MORNING.

Q LOOKS LIKE THE VAN THAT YOU SAW?

A YES, SIR.

Q WHEN YOU LAST SAW THE WHITE VAN, WHERE WAS IT?
A IT PULLED OUT AROUND AND WENT OUT THE -- SORT OF THE FA ENTRANCE TO THE PARKING LOT -- NOT THE EXTREME REAR, BUT THERE'S SORT OF A SIDE ENTRANCE -- WENT OUT IT, TURNED TO THE LEFT AND MANEUVERED UP THE HILL AND WENT ON UP THE HILL TOWAR THE TRAINING CENTER.
Q AND THE PARTIAL TAG NUMBER THAT YOU HAD GOTTEN, DID YOU REPORT THAT TO THE AUTHORITIES?
A YES, SIR.
Q COULD YOU TELL WHAT STATE THE VAN WAS REGISTERED IN, THE TAG?
A IT LOOKED LIKE A NORTH CAROLINA TAG. AS BEST I COULD TELL IT WAS NORTH CAROLINA.
MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MIGHT HAVE.
CROSS EXAMINATION
BY MR. SMITH:
Q MR. BALLANGER, BASICALLY WHAT YOU'RE TELLING US IS ON THAT PARTICULAR MORNING YOU HEARD THREE POPS IN RAPID SUCCESSION AND YOU ---
A YES, SIR.
Q --- NOTICED THE VAN; IS THAT CORRECT, SIR?
A YES, SIR.
Q AND THAT YOU SAW SOMEONE ---
A YES, SIR.

Q --- THEN GET INTO THE VAN AND LEAVE?
A YES, SIR.
MR. SMITH: THAT'S ALL.
THE COURT: YOU MAY STEP DOWN.
(THE WITNESS LEAVES THE WITNESS STAND.)
MR. GRANT: WE'D ASK MR. BALLANGER BE EXCUSED.
THE COURT: ANY OBJECTION?
MR. SMITH: NONE, YOUR HONOR.
THE COURT: WITHOUT OBJECTION, MR. BALLANGER, YOU MAY BE EXCUSED.
MR. GRANT: WE CALL TOMMY AUTEN.

THOMAS EDWARD AUTEN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. GRANT:

Q MR. AUTEN, STATE YOUR FULL NAME FOR THE COURT?
A MY NAME IS THOMAS EDWARD AUTEN.
Q AND WHERE DO YOU LIVE PLEASE, SIR?
A I LIVE AT 2882 BILLY WILSON ROAD IN ROCK HILL.
Q WHERE DO YOU WORK?
A I WORK FOR DUKE POWER AT THE CATAWBA NUCLEAR STATION.
Q BACK ON FEBRUARY THE 14TH OF 1992 WHERE DID YOU WORK?
A I WORKED AT CATAWBA NUCLEAR STATION.
Q AND EARLY ON THE MORNING OF FEBRUARY THE 14TH DID YOU HAVE AN OCCASION TO BE IN THE PARKING LOT THERE AT THE CATAWBA

NUCLEAR STATION?

A YES, SIR, I WAS REPORTING FOR WORK ON THE DAY SHIFT WHIC BEGINS AT 7:00 O'CLOCK. AND I REPORTED TO WORK ABOUT 10 MINUTES BEFORE 7:00.

Q ALL RIGHT. AND WHEN YOU REPORTED TO WORK, WHERE DID YOU PARK YOUR CAR?

A I PARKED IN THE LARGER PARKING LOT THAT WE HAVE FOR EMPLOYEES. I PARKED ON THE END OF THE FIRST DOUBLE ROW TOWAR THE BACK. AND THAT PARKING LOT BORDERS A SMALLER PARKING LOT THAT WE USE FOR ADMINISTRATION -- FOR OUR ADMINISTRATION BUILDING.

Q AND WHAT DID YOU NOTICE THERE IN THE PARING LOT WHEN YOU WERE ON YOUR WAY TO WORK? DID YOU NOTICE ANYTHING UNUSUAL?

A WELL, WHEN I PULLED IN THE PARKING LOT I CHOSE THE SPACE THAT I WAS GOING TO PARK IN. I NOTICED TWO OF MY CO-WORKERS IN THE ROW IN FRONT OF ME LOOKING AT A BOAT. THEY WERE EXAMINING ---

Q WHO WERE THEY?

A THAT WAS SI BALLANGER AND DAN WILSON.

Q MR. BALLANGER AND MR. WILSON?

A RIGHT. AND I KNEW THAT THEY WERE ON THE NIGHT SHIFT AND FIXING TO LEAVE, AND I DIDN'T THINK ANYTHING UNUSUAL OF THAT.

AS I PARKED MY VEHICLE, I DID HEAR SOMETHING THAT WAS A LITTLE STRANGE. I HEARD WHAT I THOUGHT WAS A SMALL PACK OF FIRECRACKERS BEING DISCHARGED OVER IN THE ADMINISTRATION

PARKING LOT.

Q ALL RIGHT, SIR. WHERE WERE YOU WHEN YOU HEARD THAT?

A I WAS STILL IN MY VEHICLE, IN MY PICK-UP TRUCK.

Q ALL RIGHT, SIR. AND THEN WHAT DID YOU DO ONCE YOU HEARD THAT SOUND THAT SOUNDED LIKE A FIRECRACKER?

A WELL, I WANTED TO SEE WHAT IT WAS SO I LOOKED UP. AND FROM WHERE I WAS SITTING I HAD TO LOOK OUT THE DOOR WINDOW AND IT WAS KIND OF IN THE DIRECTION OF RIGHT OVER MY REAR VIEW MIRROR -- I HAD TO LOOK IN THAT DIRECTION TO SEE. AND WHAT I NOTICED WHEN I LOOKED OUT THE WINDOW WAS I SAW ONE INDIVIDUAL STANDING ON THE SIDEWALK RIGHT IN FRONT OF THE ADMINISTRATION BUILDING.

Q AND COULD YOU TELL WHAT THAT INDIVIDUAL WAS DOING? WHEN YOU SAW THAT PERSON, WHAT WERE THEY DOING?

A WHEN I FIRST SAW HIM, HE WAS JUST STANDING THERE -- JUST STANDING THERE.

Q ALL RIGHT, SIR. DID YOU SEE ANYBODY ELSE FROM WHERE YOU WERE AT THAT TIME?

A NO, SIR, I SAW NO ONE.

Q ALL RIGHT, SIR. WHAT HAPPENED THEN? WHAT DID YOU SEE?

A WELL, I NEEDED TO GET TO WORK SO I WENT AHEAD AND GOT MY LUNCH BOX AND GOT OUT OF MY TRUCK AND STARTED WALKING TOWARD OUR PERSONNEL ENTRANCE DOOR. I HAVE TO WALK IN THE SAME DIRECTION PRETTY MUCH AS THE DIRECTION I SAW THE INDIVIDUAL. AS I TOOK A COUPLE OF STEPS, THE INDIVIDUAL BENT OVER LIKE HE

WAS LOOKING ---

MR. SMITH: OBJECT ---

A --- AT SOMETHING.

MR. SMITH: --- TO WHAT THE INDIVIDUAL -- HIS TESTIMONY IS HE WAS BENT OVER LIKE.

THE COURT: WELL, COUNSEL, A WITNESS CAN ONLY TESTIFY AS TO WHAT APPEARS TO HIM. I'M GOING TO LET HIM TESTIFY TO WHAT IT APPEARED HE WAS DOING.

YOU'RE DESCRIBING WHAT YOU SAW, AREN'T YOU, MR. AUTEN?

WITNESS: YES, SIR.

THE COURT: DESCRIBE WHAT YOU SAW.

A WHEN I TOOK A COUPLE STEPS, THE INDIVIDUAL STOOPED OVER AS IF HE WERE LOOKING AT SOMETHING OR TO PICK UP SOMETHING. AND I CONTINUED MY PROGRESS TOWARD THE DOOR. AND THE INDIVIDUAL STOOD UP ERECT, WALKED AT A NORMAL PACE. HIS PATH WAS GOING TO CROSS MINE. AND I NOTICED AT THAT TIME THAT HE DID HAVE A WEAPON WITH HIM, A LONG BARREL WEAPON, AND HE WAS CARRYING IT IN HIS RIGHT HAND DOWN BY HIS RIGHT LEG.

AND, YOU KNOW, IT DID SEEM VERY STRANGE TO ME AND IT GOT MY ATTENTION, SO I KEPT MY EYES ON HIM, JUST TRY TO FIGURE OU WHAT WAS GOING ON OVER THERE.

I TOOK A COUPLE MORE STEPS AND I DID FOCUS ON A PERSON'S BODY LAYING ON THE SIDEWALK AT THE SAME PLACE WHERE I'D FIRST SEEN THIS INDIVIDUAL WAS STANDING. IT BECAME VERY APPARENT T ME WHAT HAD JUST TAKEN PLACE.

Q ALL RIGHT, SIR. AND THEN WHO DID YOU FOCUS YOUR ATTENTION ON?

A I KEPT WATCHING THE INDIVIDUAL WITH THE GUN. AT THAT TIME I WAS IN THE MAIN THOROUGHFARE, THE MAIN WIDE ROAD WHERE EVERYONE LEAVES, EXITS THAT PARKING LOT. THERE WAS NO PLACE TO RUN OR HIDE OR ANYTHING, SO I WAS -- YOU KNOW, I WAS SURE OF WHAT HAD JUST TAKEN PLACE OVER THERE, THAT THIS PERSON WITH THIS WEAPON HAD JUST SHOT THIS PERSON.

MR. SMITH: OBJECTION, YOUR HONOR.

THE COURT: I SUSTAIN THAT OBJECTION. THE JURY IS INSTRUCTED TO DISREGARD IT. IT'S A CONCLUSION ON THE PART OF THE WITNESS. CONCLUSIONS AS TO THE EVIDENCE IS FOR THE JURY, NOT THE WITNESSES. TESTIFY AS TO WHAT YOU SAW, NOT WHAT YOU CONCLUDED.

WITNESS: YES, SIR.

A AT THAT TIME I FIGURED THE BEST THING FOR ME TO DO WAS JUST TO PRETEND THAT I DIDN'T SEE HIM OR THE PERSON LAYING THERE AND FOR MY OWN SAFETY, JUST GO AHEAD WITH MY PROGRESS AT A NORMAL PACE.

Q ALL RIGHT, SIR. WHERE DID YOU GO AND WHERE DID HE GO?

A HE CONTINUED HIS PROGRESS TOWARD THE MAIN PARKING LOT THAT I WAS PARKING IN. I CONTINUED MY PROGRESS TOWARD OUR PERSONNEL DOOR. LIKE I SAID, WE HAVE -- IT WAS -- OUR PATHS WERE PERPENDICULAR TO EACH OTHER AND WE WERE GOING TO MEET IN THAT THOROUGHFARE. WE BOTH CONTINUED OUR PROGRESS. WE PASSED

WITHIN 15 FEET OF EACH OTHER.

Q WHEN YOU SAY 15 FEET, HOW FAR HERE IN THE COURTROOM -- COULD YOU JUST TELL ME, POSITION ME FROM YOU -- DID YOU PASS?

A YOU COME JUST A LITTLE CLOSER.

Q (COMPLIED.)

A SOMEWHERE RIGHT IN THERE.

Q ALL RIGHT. AND GO AHEAD AND DESCRIBE WHEN YOU ALL PASSED, WHAT HAPPENED THEN PLEASE, SIR? WHERE WERE YOU DOING

A WELL, I WAS KEEPING MY EYE ON HIM. I WANTED TO SEE WHER HE WAS LOOKING AND WHERE HE WAS GOING TO POINT THE WEAPON. I HE WAS GOING TO CHANGE ANYTHING, I DON'T KNOW WHAT I WOULD HAVE DONE. BUT WE DIDN'T SPEAK. WE DID MAKE EYE CONTACT FOR JUST A COUPLE OF SECONDS AS HE PASSED BY. I MADE SURE WEN AHEAD AND PASSED ON, AND I CONTINUED MY PROGRESS LIKE I WAS GOING ON INTO THE DOOR. I DID LOOK BACK OVER MY SHOULDER TO MAKE SURE WHERE HE WAS GOING AND THAT HE WASN'T GOING TO TURN AROUND AND ---

MR. SMITH: OBJECT ---

A --- COME AFTER ME.

MR. SMITH: --- YOUR HONOR. THAT WOULD GIVE A CONCLUSION.

THE COURT: I'M GOING TO OVERRULE THE OBJECTION. THAT DOESN'T APPEAR TO ME TO BE A CONCLUSION. GO AHEAD, SIR.

A I JUST WANTED ---

Q WHEN YOU LOOKED OVER YOUR SHOULDER, WHERE WAS HE?

A HE CONTINUED TO GO ON INTO THE MAIN PARKING LOT. HE WALKED IN A STRAIGHT LINE FROM THE TIME THAT I SAW HIM ON THE SIDEWALK AT FIRST UNTIL HE PROCEEDED TO ENTER A VEHICLE IN THE MAIN PARKING LOT.

Q DID YOU SEE HIM GET INTO THE VEHICLE?

A YES, SIR, I DID.

Q WHAT TYPE OF VEHICLE WAS IT?

A IT WAS A WHITE DODGE VAN. AND I NOTICED THAT THE HEADLIGHTS WERE STILL ON. AND I ASSUME THE ENGINE WAS RUNNING.

Q AND THEN WHAT DID YOU DO AFTER HE HAD PASSED YOU AND YOU SAW HIM GET INTO THE VAN?

A ONCE I FELT SAFE I TURNED ---

MR. SMITH: YOUR HONOR ---

A --- AROUND AND ---

MR. SMITH: --- I OBJECT TO THAT. THAT IS CERTAINLY NOT RESPONSIVE TO THAT. I OBJECT TO THAT ANSWER.

THE COURT: WHAT DO YOU SAY, SOLICITOR?

MR. GRANT: YOUR HONOR, AGAIN, I KNOW IT'S DIFFICULT FOR THE WITNESS. IT IS A MENTAL STATE THAT THE WITNESS PROBABLY SHOULDN'T TESTIFY TO.

THE COURT: I SUSTAIN THE OBJECTION. THE JURY IS INSTRUCTED TO DISREGARD IT. GO AHEAD, SIR.

Q GO AHEAD, SIR. NOT WHAT YOU WERE FEELING, BUT WHAT DID YOU DO?

A OKAY. I TURNED AND RAN BACK TO WHERE I SAW THE VICTIM LYING ON THE SIDEWALK. AND AT THAT POINT THERE WAS ANOTHER PLANT EMPLOYEE, JOEL SMITH, THERE AT THE SAME TIME. AND WHEN I SAW THE VICTIM, I SET MY LUNCH BOX BESIDE -- I SAW IT WAS A YOUNG LADY. AND I NOTICED THAT HER EYES WERE FIXED. I NOTICED THAT SHE HAD BLOOD COMING FROM HER EAR, DOWN THE SIDE OF HER FACE, AND THERE WASN'T ANY MOVEMENT.

JOEL SMITH WAS THERE. WE HAD A BRIEF CONVERSATION. AND HE SEEMED TO BE UNDER ---

MR. SMITH: OBJECTION.

Q DON'T GO INTO ---

THE COURT: ONCE AGAIN, DON'T TESTIFY ---

WITNESS: OKAY.

Q WHAT DID YOU DO AFTER TALKING WITH MR. SMITH?

A I TOLD JOEL WHAT I HAD SAW, THE MAN WITH THE GUN AND THE VEHICLE THAT HE WAS IN. AND AT THAT TIME HE WAS EXITING BY ANOTHER ENTRANCE UP BY OUR TRAINING CENTER. I HAD TO JUST POINT TO IT FOR HIM. HE TOLD ME TO GO IN AND CALL ---

MR. SMITH: YOUR HONOR, I OBJECT.

THE COURT: THAT'S KIND OF HARMLESS IF HE TOLD HIM TO GO IN. REALLY, TRY TO STICK TO WHAT YOU DID YOURSELF ---

WITNESS: OKAY.

THE COURT: --- NOT WHAT CONVERSATION YOU HAD WITH ANYONE. IT'S WHAT YOU SAW AND WHAT YOU DID THAT'S IMPORTANT. ALL RIGHT.

A OKAY. AT THAT POINT MR. SMITH WAS GOING TO GO AFTER THE PERSON. I WENT INSIDE AND CALLED 9-1-1 AND TOLD THEM WHAT I'D SEEN.

Q DID YOU MAKE A DIAGRAM, A PERSONAL DIAGRAM TOO?

A YES, SIR, I DID OF THE PARKING LOT FOR MY PERSONAL REFERENCE.

Q DID YOU MAKE THAT YOURSELF?

A YES, SIR, I DID. I USED SOMETHING THAT THE PLANT PUTS OUT. IT SHOWS THE PARKING LOT. BUT I MARKED IN WHERE I WAS PARKED AND WHERE THE VAN WAS PARKED AND WHERE THE INCIDENT TOOK PLACE.

Q AND IS THAT THE DIAGRAM THAT YOU MADE?

A YES, SIR, THIS IS IT.

Q AND DOES IT, YOUR MARKINGS, REFLECT THE AREAS WHERE YOU SAW THE INDIVIDUAL ---

A YES, SIR.

Q --- PEOPLE, VEHICLES, WHATEVER?

A YES, SIR.

MR. GRANT: YOU'RE HONOR, WE'RE GOING TO OFFER THIS. I THINK MR. SMITH HAS A COPY OF IT.

THE COURT: DO YOU HAVE A COPY?

MR. SMITH: I HAVE A COPY, YOUR HONOR. I HAVE NO OBJECTION TO THE DIAGRAM.

THE COURT: LET THE COURT REPORTER MARK IT PLEASE.

(DIAGRAM OF PARKING LOTS AND BUILDINGS WITH BLUE, GREEN,

AND RED MARKINGS MARKED IN EVIDENCE AS STATE'S EXHIBIT NO. 9.

THE COURT: NOW IN THE RECORD OF THIS CASE WITHOUT OBJECTION AN EXHIBIT WHICH WILL BE DESIGNATED STATE'S EXHIBIT NO. 9. IT'S A ONE-PAGE EXHIBIT, FRONT ONLY. IT IS DESCRIBED AS A DRAWING OF THE PARKING AREA. AT THE TOP IT HAS, GENERATION SERVICES MAINTENANCE CENTRAL. IT'S ALSO GOT THREE COLORS DESIGNATED BLUE, RED, AND GREEN.

Q MR. AUTEN, I'M GOING TO ASK YOU TO COME DOWN. WE'LL PUBLISH THIS TO THE JURY SO THEY CAN UNDERSTAND WHAT YOU'RE TALKING. IF YOU COULD STAND IN FRONT OF THIS MICROPHONE.

(THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

THE COURT: BACK JUST A LITTLE BIT, SOLICITOR. NOW YOU STAND BEHIND HIM. LET HIM HOLD IT UP.

MR. GRANT: ALL RIGHT, SIR.

Q THIS IS STATE'S EXHIBIT NO. 9. AND IF YOU WOULD, JUST HOLD IT UP SO THE JURY CAN SEE IT AND EXPLAIN TO THEM WHAT TH COLOR MARKINGS ARE?

A OKAY. THIS BLUE DOT RIGHT HERE IS WHERE I PARKED. THIS IS OUR MAIN PARKING LOT RIGHT HERE. THIS IS THE SMALLER ADMI LOT. THIS RIGHT HERE IS OUR ADMINISTRATION BUILDING. WHEN I PARKED MY VEHICLE, THIS RED DOT REPRESENTS WHERE I SAW THE INDIVIDUAL STANDING THE FIRST TIME. AND THIS GREEN DOT HERE IS WHERE I SAW HIM ENTER THE VEHICLE. THIS IS WHERE HIS VAN WAS PARKED, RIGHT HERE.

Q AND WHEN YOU SAW THE BODY, WHERE WAS THE BODY?

A THE BODY WAS LAYING IN THE SAME AREA THAT I SAW THE INDIVIDUAL STANDING.

Q AND IT'S DESIGNATED BY?

A THE RED DOT.

Q THE RED DOT. AND WHAT ROUTE DID YOU TAKE FROM YOUR VEHICLE?

A THE DOOR THAT I HAVE TO GO IN IS RIGHT DOWN HERE. SO I JUST STEPPED OUT AND WENT IN THIS DIRECTION.

Q WHERE DID YOUR PATHS CROSS WITH THE MAN WITH THE RIFLE?

A RIGHT HERE. HE CAME RIGHT ALONG THE SIDEWALK HERE TO THE VAN, AND I PROCEEDED THIS WAY. SO WE MET RIGHT HERE IN THIS MAIN -- THIS IS THE EXIT THOROUGHFARE HERE.

Q THANK YOU. YOU CAN SIT BACK DOWN.

(THE WITNESS RETURNS TO THE WITNESS STAND.)

Q AND THE AREA THERE WHERE YOUR PATHS CROSSED, WHAT WAS THE LIGHTING IN THAT AREA?

A WELL, IT WAS ABOUT 10 MINUTES BEFORE 7:00. THE SKY WAS BECOMING LIT. WE HAVE ADEQUATE LIGHTING IN OUR PARKING LOT. THOSE LIGHTS WERE ON THAT MORNING. AND THERE ARE ALSO LIGHTS ALONG THE SIDEWALK.

Q AND COULD YOU CLEARLY SEE ---

MR. SMITH: OBJECTION, LEADING, YOUR HONOR.

THE COURT: SUSTAIN THE OBJECTION.

A THE LIGHTING WAS ADEQUATE FOR ME TO SEE THE INDIVIDUAL FROM THE DISTANCE, AND ESPECIALLY FROM THE 15-FOOT DISTANCE.

I COULD SEE ALL OF HIS FEATURES.

Q AND DESCRIBE THE INDIVIDUAL AS YOU SAW HIM THAT MORNING AS HE PASSED YOU THERE IN THE PARKING LOT?

A THE INDIVIDUAL WAS ABOUT 5'10" AND I WOULD GUESS AROUND ---

MR. SMITH: OBJECTION, YOUR HONOR. HE'S GUESSING. HE CAN TESTIFY TO WHAT HE OBSERVED BUT NOT WHAT HE GUESSES.

THE COURT: COUNSEL, THE WITNESS IS GIVING A DESCRIPTION A DESCRIPTION BY ITS TERMS IS OFTENTIMES AN APPROXIMATION. A GUESS IS SOMETIMES AN APPROXIMATION. I'M GOING TO ALLOW HIM TO TESTIFY IN THAT FASHION. GO AHEAD, SIR.

A I WOULD SAY AROUND 170 POUNDS. THE INDIVIDUAL'S HAIR WAS FAIRLY LONG. IT WAS DARK, WAVY TYPE. I COULD TELL IT HADN'T BEEN COMBED. IT WAS LIKE THIS INDIVIDUAL HAD JUST GOTTEN OUT OF BED. HE HAD A FULL BEARD. AND I NOTICED IT WAS KIND OF STRANGE BECAUSE THE HAIR ON HIS HEAD AND THE FACIAL HAIR DIDN'T MATCH. HIS HAIR WAS DARK. HIS FACIAL HAIR WAS RED.

Q ALL RIGHT, SIR. HOW ABOUT HIS CLOTHING?

A HE HAD ON A LIGHT COLORED SHIRT AND SOME TYPE OF LIGHT JACKET, OPEN, MAYBE LIKE A BLUE JEAN TYPE JACKET AND DARK COLORED TROWSERS LIKE BLUE JEANS.

Q HAD YOU EVER SEEN HIM BEFORE?

A NO, SIR.

Q DID YOU KNOW HIM?

A NO, SIR.

Q AFTER YOU PASSED HIM THERE ON THE SIDEWALK AND HE GOT IN HIS TRUCK DID YOU EVER SEE HIM IN PERSON AGAIN?
A NO, SIR.
Q DID YOU HAVE OCCASION TO TALK TO ONE OF THE DETECTIVES THAT SAME AFTERNOON?
A YES, SIR, I DID. ONE OF THE DETECTIVES THAT AFTERNOON CAME OUT TO MY RESIDENCE. AND HE WANTED ME TO LOOK AT SOME PICTURES IN A FOLDER AND SEE IF I COULD IDENTIFY THE MAN THAT I SAW THAT MORNING.
Q DO YOU REMEMBER WHICH DETECTIVE THAT WAS?
A WHITSTINE.
Q APPROXIMATELY WHAT TIME WAS THIS?
A IT WAS APPROXIMATELY 3:00 O'CLOCK IN THE AFTERNOON.
Q AND WHAT DID OFFICER WHITSTINE DO WHEN HE GOT THERE PLEASE, SIR?
A HE TOLD ME WHO HE WAS, IDENTIFIED HIMSELF, AND TOLD ME WHAT HE WANTED ME TO DO, THAT HE WANTED ME TO LOOK AT THE PICTURES AND TAKE AS LONG AS I NEEDED TO AND SEE IF I COULD IDENTIFY THE MAN THAT I SAW THAT MORNING. AND SO HE SAT ON ONE SOFA I HAVE. I SAT ON ANOTHER. AND I DID, I TOOK A FEW MINUTES AND LOOKED THEM OVER, LOOKED AT EACH PICTURE.
Q HOW MANY PICTURES WERE THERE?
A ABOUT SIX.
Q HOW WERE THEY PRESENTED TO YOU, IN WHAT FORMAT?
A THEY WERE ALL ON A FOLDER AND THEY WERE JUST ARRANGED

DIFFERENT -- IN DIFFERENT CORNERS AND AREAS ON -- THEY HAD A PROFILE VIEW AND A FRONT VIEW OF DIFFERENT INDIVIDUALS WITH THE SAME CHARACTERISTICS. THEY EACH HAD A NUMBER BESIDE THEM

AND HE ASKED ME AFTER A COUPLE MINUTES, DID I SEE THE MAN THAT I SAW THAT MORNING?

AND I SAID, YES, SIR, I DO.

Q AND DID YOU SEE THE MAN IN THAT PHOTOGRAPHIC LINE-UP THAT YOU SAW THAT MORNING?

A YES, SIR, I DID.

Q ARE YOU SURE?

A YES, SIR, POSITIVE.

Q DID YOU HAVE ANY PROBLEM PICKING HIM OUT?

A NO, SIR.

Q AND DID YOU TELL MR. WHITSTINE, SHOW HIM WHICH ONE?

A YES, SIR, I DID.

Q AND THE PHOTOGRAPH THAT YOU PICKED OUT, WHERE HAD YOU SEEN THAT MAN BEFORE?

A I SAW HIM AT DUKE POWER PROPERTY THAT MORNING ON THE SIDEWALK WITH THE RIFLE.

Q AND DO YOU RECOGNIZE THIS MAN, MR. CHRONISTER, AS HE SITS HERE TODAY?

A THE GENTLEMAN LOOKS FAMILIAR. BUT -- AND HIS HAIR COLOR, HIS MUSTACHE COLOR ARE THE SAME. THE INDIVIDUAL THAT MORNING, THE HAIR WAS LONGER. IT WAS ALL DISARRAYED. AND HE HAD A FULL BEARD. THE EYE AREA, THE PART THAT WAS NOT COVERED THAT

MORNING DOES LOOK VERY FAMILIAR.

Q AND, AGAIN, WHEN YOU SAW THE PHOTOGRAPHIC LINE-UP, DID YOU HAVE ANY PROBLEM IDENTIFYING THE PERSON THAT YOU HAD SEEN?

A NO, SIR, I DID NOT.

Q AND YOU'RE SURE THAT'S THE PERSON YOU SAW IN THE PARKING LOT THAT MORNING?

A ABSOLUTELY.

MR. GRANT: BEG THE COURT'S INDULGENCE.

(PAUSE.)

MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY HAVE.

CROSS EXAMINATION

BY MR. SMITH:

Q MR. AUTEN, WHAT YOU ARE TELLING US IS THAT ON THIS PARTICULAR DAY THAT YOU WERE OUT THERE, THAT AN UNUSUAL EVENT OCCURRED; IS THAT RIGHT?

A YES, SIR.

Q AND THAT LATER ON AT YOUR HOUSE THAT THE DETECTIVE CAME AND SHOWED YOU SOME PHOTOGRAPHS, CORRECT?

A THAT'S CORRECT.

Q AND THAT YOU PICKED OUT ONE OF THOSE PHOTOGRAPHS?

A YES, SIR.

Q AND YOU'RE TELLING US THAT TODAY YOU CAN'T BE SURE THAT THIS IS THE MAN YOU SAW, CORRECT, SIR?

A I CAN TELL YOU THAT THIS MAN IN THE COURTROOM HAS SIMILAR

CHARACTERISTICS. A LOT OF FEATURES ARE THE SAME. IF THIS MA
IS THE MAN THAT I IDENTIFIED ON THE PHOTOGRAPH, THEN HE IS
INDEED THE SAME PERSON.

Q AND YOU CAN'T BE SURE BECAUSE YOU'RE TELLING US THAT THI
MAN LOOKS SIMILAR; ISN'T THAT CORRECT?

A WITH THE ABSENCE OF THE HAIR AND THE ABSENCE OF THE
BEARD, I CAN ONLY TELL YOU HIS FEATURES ARE VERY SIMILAR.

Q AND THERE ARE A LOT OF VERY SIMILAR PEOPLE IN THE WORLD,
CORRECT, SIR?

A TRUE.

MR. SMITH: THAT'S ALL.

MR. GRANT: THANK YOU, MR. AUTEN. YOU MAY COME DOWN.

(THE WITNESS LEAVES THE WITNESS STAND.)

MR. GRANT: WE CALL OTIS WHITSTINE. WE WOULD ASK MR.
AUTEN BE EXCUSED IF HE SO DESIRES, YOUR HONOR.

THE COURT: ANY OBJECTION?

MR. SMITH: NONE, YOUR HONOR.

THE COURT: WITHOUT OBJECTION YOU MAY BE EXCUSED.

MR. GRANT: YOU MAY STAY IF YOU LIKE.

OTIS J. WHITSTINE, BEING
FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. GRANT:

Q MR. WHITSTINE, STATE YOUR FULL NAME FOR THE COURT?

A OTIS JULLIAN WHITSTINE.

Q AND BY WHOM ARE YOU EMPLOYED?
A YORK COUNTY SHERIFF'S DEPARTMENT.
Q I'M GOING TO NEED YOU TO GET THAT MICROPHONE A LITTLE BIT CLOSER TO YOU SO I CAN HEAR YOU BACK OVER HERE.
(PAUSE.)
A YORK COUNTY SHERIFF'S DEPARTMENT.
Q THANK YOU, SIR. DID YOU HAVE OCCASION ON FEBRUARY THE 14TH TO TALK TO MR. TOMMY AUTEN?
A I DID.
Q AND WHERE DID YOU TALK TO HIM PLEASE?
A THE FIRST TIME I BELIEVE WAS AT DUKE POWER, CATAWBA NUCLEAR PLANT, AND THE SECOND TIME WAS AT HIS RESIDENCE.
Q AND WHEN YOU WENT TO HIS RESIDENCE, DID YOU TAKE ANYTHING WITH YOU?
A I DID. I TOOK A PHOTOGRAPHIC LINE-UP.
Q AND HOW MANY PICTURES ARE IN THE PHOTOGRAPHIC LINE-UP?
A IT CONTAINED SIX PICTURES.
Q HOW WERE THEY LAID OUT?
A THEY WERE NUMBERED 1 THROUGH 6.
Q DID THE LINE-UP CONTAIN THE PICTURE OF THIS DEFENDANT, MR. CHRONISTER?
A IT DID.
Q WHAT DID YOU DO WHEN YOU WENT TO MR. AUTEN'S RESIDENCE THAT AFTERNOON WITH THE LINE-UP? WHAT DID YOU DO?
A I BRIEFLY TALKED WITH HIM AND TOLD HIM -- ASKED HIM TO

TAKE HIS TIME AND LOOK AT THE PICTURES AND SEE IF HE RECOGNIZED ANYBODY IN IT, AND WAS THE MAN IN THE LINE-UP AT DUKE POWER ON THAT PARTICULAR DAY.

Q AND WHAT DID MR. AUTEN DO?

A HE LOOKED AT THE PICTURES FOR ABOUT THREE OR FOUR MINUTE AND SAID, THAT'S HIM.

AND I ASKED HIM, WHICH ONE?

HE SAID, NO. 3.

Q WHOSE PICTURE WAS PICTURE NO. 3?

A JEFFERY L. CHRONISTER.

Q DID MR. AUTEN HESITATE ---

MR. SMITH: OBJECT TO LEADING, YOUR HONOR.

THE COURT: JUST ASK HIM TO TELL WHAT HE DID.

Q DESCRIBE HOW MR. AUTEN PICKED THE PICTURE OUT AND HOW MUCH TIME HE TOOK?

A IT TOOK HIM -- I TOLD HIM WHEN I EXPLAINED THE DIRECTION AS FAR AS LOOKING AT THE PICTURES, I TOLD HIM TO TAKE AS MUCH TIME AS HE NEEDED AND LOOK AT THE PICTURES GOOD.

AND HE SAID, THAT'S THE MAN RIGHT THERE.

Q DID ANYBODY INDICATE WHICH PICTURE OF HIM TO PICK?

A NO, SIR.

Q WAS ANYBODY THERE BESIDES YOU AND HIM?

A NO, SIR.

Q AND WHO WAS THE PICTURE THAT HE PICKED OUT?

A JEFFERY L. CHRONISTER, NO. 3 IN THE LINE-UP.

Q AND DOES MR. CHRONISTER APPEAR DIFFERENT TODAY IN COURT?

MR. SMITH: OBJECT TO LEADING, YOUR HONOR.

Q IS THERE ANY DIFFERENCE IN MR. CHRONISTER'S APPEARANCE TODAY IN COURT AS IN THE PICTURE LINE-UP?

MR. SMITH: YOUR HONOR, THE SAME OBJECTION.

THE COURT: NO, SIR. I OVERRULE YOU. GO AHEAD.

A HE HAS NO BEARD AT THIS TIME.

MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY HAVE.

CROSS EXAMINATION

BY MR. SMITH:

Q DETECTIVE, YOU SAY THAT YOU HAD TALKED WITH MR. AUTEN OUT AT THE CATAWBA STATION EARLY IN THE MORNING, CORRECT?

A YES, SIR, DOING INTERVIEWS.

Q AND THAT THAT WOULD HAVE BEEN ABOUT 8:00 -- 7:30, 8:00 O'CLOCK, CORRECT, SIR?

A I ASSUME. IT WAS EARLY IN THE MORNING.

Q EARLY IN THE MORNING. AND THEN AT ROUGHLY 3:00 IN THE AFTERNOON YOU TALKED WITH HIM AT HIS HOUSE?

A I DON'T REMEMBER WHAT TIME IT WAS, BUT I PHONED HIM AND THEN WENT TO HIS RESIDENCE. IT WAS IN THE EVENING.

Q AND YOU SHOWED HIM CERTAIN PHOTOGRAPHS AND HE PICKED A PHOTOGRAPH, CORRECT?

A YES, SIR.

Q AND HE PICKED A NUMBER, CORRECT, SIR?

A YES, SIR.
Q NO. 3?
A HE POINTED FIRST. AND THEN I ASKED HIM WHICH ONE? HE SAID, NO. 3.
Q AND HE PICKED NO. 3?
A NO. 3.
Q NOW, I BELIEVE YOU YOURSELF DID NOT PREPARE THE LINE-UP, CORRECT, SIR?
A NO, SIR.
Q HOW LONG ALL TOLD WERE YOU AT HIS HOUSE, DO YOU RECALL?
A ABOUT 15 MINUTES.
Q ABOUT 15 MINUTES. AND WHEN YOU -- YOU HAD TO TALK WITH HIM AT HIS HOUSE BECAUSE HE HAD LEFT THE POWER STATION BECAUS HE WAS UPSET?
A WELL, FROM WHAT -- FROM WHAT I KNOW HE TOLD ME HE WAS GOING HOME. I DON'T KNOW WHAT THE REASON WAS, BUT.
Q BUT YOU HAD TO GO TO HIS HOUSE?
A YES, SIR.

MR. SMITH: THAT'S ALL, YOUR HONOR.

THE COURT: REDIRECT?

MR. GRANT: YES, SIR.

REDIRECT EXAMINATION

BY MR. GRANT:

Q AND, MR. WHITSTINE, PHOTO NO. 3 IS A PHOTOGRAPH OF WHOM?
A JEFFERY L. CHRONISTER.

MR. GRANT: THANK YOU, SIR.

MR. SMITH: JUST ONE -- I JUST HAVE A QUESTION.

RECROSS EXAMINATION

BY MR. SMITH:

Q DETECTIVE, YOU DID NOT PREPARE THE PHOTO LINE-UP?

A NO, SIR.

Q NOR DID YOU PREPARE THE LIST OF NAMES ASSOCIATED WITH THE NUMBERS, DID YOU, SIR?

A NO, SIR.

Q ALL YOU KNOW IS THAT NO. 3 WAS THE PERSON THAT WAS PICKED OUT BY MR. AUTEN?

A ON THE SHEET IT HAS A LIST OF NAMES OF THE PEOPLE IN THE PICTURES, AND MR. CHRONISTER WAS LISTED AS NO. 3.

Q BUT YOU DIDN'T PREPARE THAT LIST, YOU DIDN'T PREPARE THE PHOTOGRAPHS?

A NO, SIR.

Q AND YOU DIDN'T KNOW NO. 3 FROM ADAM'S HOUSE CAT OF YOUR OWN KNOWLEDGE, DID YOU, SIR?

A NO, SIR.

MR. SMITH: THANK YOU.

THE COURT: ANYTHING ELSE?

MR. GRANT: NO, SIR. WE'D ASK MR. WHITSTINE COME DOWN.

THE COURT: YOU MAY STEP DOWN, SIR.

(THE WITNESS LEAVES THE WITNESS STAND.)

MR. GRANT: WE CALL WILLIE JETER.

WILLIE ALLEN JETER, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. GRANT:

Q MR. JETER, STATE YOUR FULL NAME FOR THE COURT PLEASE?

A WILLIE ALLEN JETER.

Q BY WHOM ARE YOU EMPLOYED?

A GASTON COUNTY POLICE.

Q AND I ASK YOU: BACK IN FEBRUARY OF 1992 DID YOU HAVE OCCASION TO PREPARE A LINE-UP FOR THE YORK COUNTY SHERIFF'S DEPARTMENT?

A YES, SIR, I DID.

Q DID YOU PERSONALLY PREPARE THAT LINE-UP?

A YES, SIR, I DID.

Q AND DO YOU KNOW JEFFERY CHRONISTER?

A I KNOW HIM NOW, YES, SIR.

Q AND AT THAT TIME DID YOU KNOW WHO HE WAS?

A NO, SIR, I DID NOT.

Q WOULD YOU DESCRIBE HOW YOU PREPARED A LINE-UP WITH HIS PICTURE IN IT PLEASE, SIR?

A AFTER A PHOTOGRAPH OF THE SUSPECT WAS MADE I GOT THAT PHOTOGRAPH AND WENT THROUGH OUR MUG BOOK, WHICH CONTAINS NUMEROUS PHOTOGRAPHS. I WENT THROUGH THAT BOOK AND FOUND PHOTOGRAPHS THAT WAS SIMILAR TO THE SUSPECT, WHITE MALE WITH BEARD.

Q AND THE PHOTOGRAPH OF MR. CHRONISTER DID YOU PLACE THAT INTO THE LINE-UP?

A YES, SIR, I DID.

MR. GRANT: YOUR HONOR, THIS IS FOR IDENTIFICATION.

Q BUT I'D LIKE TO ASK YOU, CAN YOU IDENTIFY THAT LINE-UP?

A YES, SIR, I CAN.

Q AND WHERE DID YOU PLACE THE PHOTOGRAPH OF JEFF CHRONISTER IN THAT LINE-UP PLEASE, SIR?

A I PLACED HIM IN PHOTOGRAPH NO. 3.

Q AND THAT PHOTOGRAPH WAS TAKEN AFTER HE HAD BEEN ARRESTED THAT MORNING?

A THAT'S CORRECT.

Q DID YOU THEN GIVE THIS LINE-UP TO YORK COUNTY AUTHORITIES?

A YES, SIR, I DID.

MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY HAVE.

CROSS EXAMINATION

BY MR. SMITH:

Q MR. JETER, YOU SAID THAT YOU DID NOT KNOW MR. CHRONISTER PRIOR TO THIS?

A NO, SIR, I DID NOT.

Q AND YOU TESTIFIED THAT ALL -- WHAT YOU DID IS YOU JUST TOOK THE PHOTOGRAPH AND PUT IT IN THE FOLDER ALONG WITH OTHER PHOTOGRAPHS THAT YOU PICKED OUT RANDOMLY?

A THAT'S CORRECT.
Q ALL RIGHT. YOU DID NOT TAKE THE PHOTOGRAPH, CORRECT, SIR?
A THAT'S CORRECT, I DID NOT.
Q AND AFTER YOU HAD TAKEN -- HAD BEEN GIVEN THIS PHOTOGRAPH, YOU PLACED IT AND YOU GAVE THAT FOLDER TO SOMEONE WITH THE YORK COUNTY SHERIFF'S DEPARTMENT?
A THAT'S CORRECT.
MR. SMITH: THANK YOU, SIR.
MR. GRANT: THANK YOU. YOU MAY COME DOWN.
(THE WITNESS LEAVES THE WITNESS STAND.)
MR. GRANT: WE'D ASK MR. JETER BE EXCUSED.
MR. SMITH: I HAVE NO OBJECTION.
THE COURT: WITHOUT OBJECTION, YOU MAY GO.
MR. GRANT: WE CALL SERGEANT MIMS.

JOHNNIE R. MIMS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. GRANT:

Q SERGEANT MIMS, IF YOU WOULD, SPEAK INTO THE MICROPHONE AND STATE YOUR FULL NAME FOR THE COURT?
A SERGEANT JOHNNIE R. MIMS.
Q AND BY WHOM ARE YOU EMPLOYED?
A THE GASTON COUNTY POLICE DEPARTMENT.
Q AND ON FEBRUARY 14, MR. MIMS -- NOT ANYTHING YOU WERE

TOLD OR SAID, BUT ON THAT MORNING, DID YOU HAVE OCCASION TO SEE THIS DEFENDANT, JEFFERY LYNN CHRONISTER?

A YES, SIR, I DID.

Q AT APPROXIMATELY WHAT TIME DID YOU FIRST SEE HIM?

A I FIRST OBSERVED HIM AT 8:01 A.M. IN THE MORNING.

Q AND WHERE WOULD THAT HAVE BEEN?

A IT WAS ON ELLINGTON DRIVE IN THE SOUTHERN PART OF GASTON COUNTY.

Q AND WHAT WAS MR. CHRONISTER DOING WHEN YOU FIRST OBSERVED HIM?

A HE WAS OPERATING A WHITE DODGE VAN.

Q AND WHAT DID YOU DO WHEN YOU SAW HIM OPERATING A WHITE DODGE VAN?

A I PASSED HIM GOING IN OPPOSITE DIRECTIONS. AND WHEN I OBSERVED HIM, I TURNED AROUND AND STARTED FOLLOWING HIS VEHICLE.

Q AND DID YOU EVENTUALLY STOP THE VEHICLE?

A PARDON ME, I DIDN'T ---

Q WAS THE VEHICLE EVENTUALLY STOPPED?

A YES, SIR, IT WAS.

Q I SHOW YOU THESE PHOTOGRAPHS FOR IDENTIFICATION 3 THROUGH 5, 6, AND ASK YOU TO IDENTIFY THEM PLEASE, SIR?

A YES, SIR, I CAN.

Q WHAT ARE THEY PHOTOGRAPHS OF?

A THESE ARE PHOTOGRAPHS OF THE VAN THAT MR. CHRONISTER WAS

DRIVING THAT DAY.

Q AND DO THEY ACCURATELY REFLECT THE VAN AS IT WAS WHEN YO STOPPED HIM IN IT?

A YES, SIR, THEY DO.

Q JUST DIFFERENT VIEWS, JUST FOUR DIFFERENT VIEWS?

A THAT'S CORRECT.

MR. GRANT: WE WOULD OFFER THESE.

MR. SMITH: YOUR HONOR, SUBJECT TO THE PREVIOUS OBJECTION.

THE COURT: HAVE THE COURT REPORTER MARK THEM ENTERED FO THE COURT.

(FOUR, 4, PHOTOGRAPHS RECEIVED IN EVIDENCE AS STATE'S EXHIBIT NOS. 3, 4, 5, AND 6.)

THE COURT: MR. SMITH, YOU SAID PREVIOUS OBJECTION. I DON'T RECALL ANY PREVIOUS OBJECTIONS TO THIS.

MR. SMITH: YOUR HONOR, THEY WERE OFFERED AND ---

THE COURT: HE'S OFFERING THEM NOW. THE QUESTION IS WHETHER OR NOT YOU HAVE ANY OBJECTION TO THEM NOW.

MR. SMITH: YOUR HONOR ---

THE COURT: IF THERE ARE, STATE YOUR OBJECTION.

MR. SMITH: THE OBJECTION WOULD BE THAT THEY HAVE NOT BEEN PROPERLY -- THEY HAVE NOT BEEN PROPERLY -- I OBJECT TO - THE PROPER FOUNDATION HAS NOT BEEN LAID AS TO WHO TOOK THE PHOTOGRAPHS, WHEN THE PHOTOGRAPHS WERE TAKEN. THEY WERE CERTAINLY TAKEN AT A TIME SUBSEQUENT TO ANY EVENT THAT THIS

OFFICER IS NOW TESTIFYING TO.

THE COURT: WITH THAT OBJECTION, THEN YOUR OBJECTION IS OVERRULED.

NOW IN THE RECORD OF THIS CASE OVER THE OBJECTION OF THE DEFENDANT AS STATED AN EXHIBIT WHICH WILL BE DESIGNATED STATE'S EXHIBITS 3, 4, 5, AND 6, EACH BEING COLOR PHOTOGRAPHS APPROXIMATELY 8 BY 10 IN SIZE NOW ENTERED.

YOU MAY PUBLISH THEM, SOLICITOR.

MR. GRANT: THANK YOU.

Q AND SHOWING YOU, OFFICER, STATE'S NO. 3, SPECIFICALLY DOES IT SHOW THE TAG NUMBER OF THAT VAN?

A YES, SIR, IT DOES.

Q WHAT IS THAT TAG NUMBER PLEASE, SIR?

A D.R.L. 8643.

Q IS IT A NORTH CAROLINA TAG?

A YES, SIR, IT IS.

Q DID YOU TAKE MR. CHRONISTER INTO CUSTODY THAT MORNING?

A YES, SIR, I DID.

Q WAS HE LATER TURNED OVER TO THE SHERIFF'S DEPARTMENT -- YORK COUNTY SHERIFF'S DEPARTMENT?

A I TURNED HIM OVER TO ONE OF OUR DETECTIVES.

Q AND WHEN YOU FIRST SAW MR. CHRONISTER IN THE VAN, HOW WAS HE DRESSED?

A I DON'T RECALL, SIR.

Q ALL RIGHT, SIR. HIS FACIAL APPEARANCE DESCRIPTION, CAN

YOU RECALL THAT?

A YES, SIR. HE HAD A BEARD AND MUSTACHE.

MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY HAVE.

CROSS EXAMINATION

BY MR. SMITH:

Q OFFICER, YOU TOLD THE SOLICITOR THAT BASICALLY YOU CAME UPON MR. CHRONISTER AT ABOUT 8:00 O'CLOCK IN THE MORNING?

A YES, SIR.

Q AND WHERE WAS THAT? WOULD THAT HAVE BEEN WARREN (PHONETIC) ROAD, SOUTH POINT ROAD, THAT AREA?

A THIS WAS OFF OF LOWER ARMSTRONG FORD (PHONETIC) ROAD -- IT CUTS ONTO ELLINGTON ROAD WHEN I FIRST OBSERVED HIM.

Q AND I BELIEVE THAT ACTUALLY SOMEONE ELSE STOPPED THE VAN IS THAT CORRECT, SIR?

A THERE WAS THREE VEHICLES INVOLVED, YES, SIR.

Q AND ELLINGTON ROAD, THAT IS WHERE HIS HOUSE IS LOCATED; IS THAT CORRECT?

A I'M SORRY, I DIDN'T ---

Q THAT'S WHERE HIS HOUSE IS LOCATED, ELLINGTON ROAD?

A YES, SIR.

Q AND YOU SAY YOU RECALL NOTHING ABOUT THE WAY -- YOU DON' KNOW THE WAY HE WAS DRESSED OR DON'T RECALL?

A NO, SIR, I DON'T RECALL THAT.

Q AND YOU TURNED HIM OVER TO SOMEBODY ELSE?

A YES, SIR, EVENTUALLY.

MR. SMITH: THAT'S ALL.

MR. GRANT: THANK YOU. YOU MAY COME DOWN.

(THE WITNESS LEAVES THE WITNESS STAND.)

MR. GRANT: WE CALL DEAN SHILLINGLAW.

JOHN DEAN SHILLINGLAW,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. GRANT:

Q MR. SHILLINGLAW, PLEASE STATE YOUR FULL NAME FOR THE COURT?

A JOHN DEAN SHILLINGLAW.

Q BY WHOM ARE YOU EMPLOYED?

A YORK COUNTY SHERIFF'S DEPARTMENT.

Q AND WERE YOU WORKING ON FEBRUARY 14?

A YES, SIR, I WAS.

Q AND ON THAT DAY DID YOU HAVE OCCASION TO SEE JEFFERY CHRONISTER?

A YES, SIR, I DID.

Q WHERE DID YOU FIRST SEE HIM?

A HE WAS IN A GASTON COUNTY POLICE CAR.

Q AND DO YOU KNOW HOW HE WAS DRESSED WHEN YOU FIRST SAW HIM?

A NO, SIR, I DON'T REMEMBER HOW HE WAS DRESSED.

Q HIS FACIAL APPEARANCE?

A YES, SIR.
Q DESCRIBE HIS FACIAL APPEARANCE?
A HE HAD BEEN CRYING. HIS FACE WAS RED.
Q AS FAR AS ANY DESCRIPTION OF HIS PHYSICAL CHARACTERISTIC OF HIS FACE?
A HE HAD A BEARD, WHICH HE DOES NOT HAVE TODAY.
Q AND LATER ON WERE YOU WITH HIM?
A YES, SIR.
Q WHERE WOULD THAT HAVE BEEN?
A GASTON COUNTY POLICE DEPARTMENT.
Q DID YOU HAVE OCCASION TO TAKE HIM TO THE BATHROOM?
A YES, SIR, I DID.
Q WHERE WERE YOU ALL BEFORE YOU WENT TO THE BATHROOM?
A CAPTAIN HOFFSTEADLER'S OFFICE, WHICH IS IN THE GASTON COUNTY POLICE DEPARTMENT.
Q WHAT HAPPENED WHEN YOU WENT TO THE BATHROOM? WHAT HAPPENED PLEASE, SIR?
A WHILE HE WAS IN THE BATHROOM HE STATED TO ME THAT HIS WIFE SHOULD NOT HAVE ACCUSED HIM OF MOLESTING THEIR DAUGHTER.
Q DID YOU ASK HIM ANY QUESTIONS ABOUT THAT?
A NO, SIR, I DIDN'T.
Q DID HE JUST SAY IT?
A YES, SIR.
Q WHAT HAPPENED THEN IN THE BATHROOM?
A WE LATER CAME OUT OF THE BATHROOM AND WENT BACK INTO

CAPTAIN HOFFSTEADLER'S OFFICE.

Q AND DID HE MAKE ANY OTHER STATEMENTS TO YOU LATER ON CONCERNING HIS WIFE?

A YES, SIR. HE -- AT ONE POINT HE LOOKED AT ME AND SAID MORE OR LESS AS A QUESTION, I DID KILL HER?

I SAID, DO WHAT?

AND HE THEN SAID, SHE IS DEAD?

I SAID, YES, SHE IS.

Q AND DID YOU QUESTION HIM ABOUT ANY OF THAT?

A NO, SIR, I DIDN'T.

Q AS FAR AS THOSE COMMENT/STATEMENTS HE MADE TO YOU, WERE THOSE AS A RESULT OF ANY QUESTIONS YOU HAD ASKED?

A NO, SIR.

Q AND HE BASICALLY SAID, I DID KILL HER?

AND YOU SAID, WHAT?

A YES, SIR, I SAID, DO WHAT?

AND HE THEN SAID, SHE IS DEAD?

AND I SAID, YES, SHE IS.

MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MIGHT HAVE.

CROSS EXAMINATION

BY MR. SMITH:

Q DETECTIVE, YOU SAID THAT WHEN YOU SAW HIM, HE WAS RED FACED, CRYING?

A YES, SIR, THAT'S CORRECT.

Q WHEN YOU SAW HIM THERE, HE WAS VERY EMOTIONAL, CORRECT, SIR?
A YES, SIR, HE WAS.
Q AND THERE WAS A LOT OF CRYING DURING THIS PERIOD OF TIME CORRECT, SIR?
A YES, SIR, THAT'S CORRECT.
Q AND WHEN YOU TOOK HIM INTO THE BATHROOM AND HE SAID THIS THAT YOU TOLD US THAT HIS WIFE SHOULDN'T HAVE SAID THAT HE HA DONE SOME -- MOLESTED HIS DAUGHTER?
A YES, SIR.
Q IS THAT WHAT HE SAID?
A HE SAID SHE SHOULDN'T HAVE ACCUSED HIM OF MOLESTING THEIR DAUGHTER.
Q OKAY. AND FROM THE FIRST TIME YOU HAD CONTACT WITH HIM HE WAS OBVIOUSLY IN AN EMOTIONAL CONDITION AND UPSET?
A YES, SIR.
Q AND THAT EMOTIONAL CONDITION CONTINUED FOR THE TIME YOU HAD CONTACT WITH HIM ON THAT DAY, CORRECT, SIR?
A YES, SIR.
Q AND YOU TOLD US ABOUT THE QUESTIONS AND YOU TOLD US THAT WHEN YOU -- THE SECOND TIME THAT HE JUST CAME OUT WITH SOMETHING, HE JUST ASKED A QUESTION, I DID KILL HER?
A YES, SIR. TO ME IT APPEARED TO BE A QUESTION. I DID KILL HER?
AND THEN I SAID, DO WHAT?

HE SAID, SHE IS DEAD?

Q RIGHT. AND THOSE WERE TWO QUESTIONS ASKED OF YOU?

A YES, SIR.

Q AND YOU TOLD HIM THEN THAT MRS. CHRONISTER WAS DEAD?

A YES, SIR.

Q DID YOU QUESTION HIM IN ANY WAY DURING ---

A AT THAT PARTICULAR TIME?

Q YES.

A NO, SIR.

Q AND THAT WAS BECAUSE OF -- STRIKE THAT. DID YOU TRANSPORT HIM FROM GASTON COUNTY BACK DOWN HERE?

A NO, SIR, I DIDN'T.

Q AND ON THAT DAY WHEN YOU SPOKE WITH HIM IN GASTONIA, YOU COULDN'T GAUGE WHAT KIND OF CONDITION HE WAS IN, COULD YOU?

A NO, SIR.

Q AND YOU COULDN'T TELL WHAT HE UNDERSTOOD OR WHAT HE DID NOT UNDERSTAND, COULD YOU?

A YES, SIR, HE APPEARED TO UNDERSTAND. I -- I THINK THAT HE WAS UNDERSTANDING WHAT WAS GOING ON IF THAT'S YOUR QUESTION.

Q AND HE WAS CRYING AND VERY EMOTIONAL?

A YES, SIR.

Q OKAY. YOU WERE AWARE THAT HE HAD TO BE SENT TO THE STATE HOSPITAL WHEN HE GOT BACK DOWN HERE?

MR. GRANT: YOUR HONOR, I OBJECT TO THAT, THE RELEVANCE

OF THAT, YOUR HONOR. IT'S A NORMAL PROCEDURE.

THE COURT: WHAT'S THE RELEVANCE OF THAT?

MR. SMITH: YOUR HONOR, HE'S TESTIFIED AS TO AN EMOTIONA CONDITION. AND I WANT TO ASK HIM: IS HE AWARE?

THE COURT: WHAT WOULD HIS AWARENESS HAVE ANYTHING TO DO WITH IT? I SUSTAIN THE OBJECTION. YOU MAY ON SOME OTHER ISSUE.

MR. SMITH: THAT'S ALL THE QUESTIONS I HAVE.

REDIRECT EXAMINATION

BY MR. GRANT:

Q MR. SHILLINGLAW, DID YOU HAVE OCCASION TO GO OUT TO THE SCENE OF THE MURDER?

A YES, SIR, I DID.

Q THAT WAS WHERE? WHERE WAS IT?

A THAT WAS AT THE CATAWBA PLANT AT DUKE POWER.

Q THAT IS IN YORK COUNTY?

A IT IS IN YORK COUNTY, YES, SIR.

MR. GRANT: THANK YOU, SIR.

THE COURT: ANYTHING ELSE?

MR. SMITH: NOTHING, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN.

(THE WITNESS LEAVES THE WITNESS STAND.)

MR. GRANT: YOUR HONOR, COULD WE HAVE A SHORT RECESS? M NEXT WITNESS IS ON THE WAY FROM ROCK HILL AND I APOLOGIZE. HE'S A PATHOLOGIST AND I WAS TRYING TO GIVE HIM A TIME

CERTAIN.

THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND GENTLEMEN, IF YOU WILL STEP BACK TO THE JURY ROOM. BE COMFORTABLE. AS SOON AS THE NEXT WITNESS IS HERE.

BAILIFF, WILL YOU HAND THOSE OVER THERE. THANK YOU, MR. BAILIFF.

MR. FOREMAN, GO AHEAD AND HAVE COKES, COFFEE, WHATEVER. AS SOON AS THE PATHOLOGIST IS HERE, WE'LL PROCEED ON. NO DISCUSSION.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: GENTLEMEN, ANYTHING ELSE?

MR. GRANT: NO, SIR. JUST FOR THE COURT'S INFORMATION, I'M CHECKING THE EXHIBITS. THE PATHOLOGIST MOST PROBABLY IS THE LAST WITNESS FOR THE STATE.

THE COURT: MR. SMITH.

MR. SMITH: I HAVE NOTHING AT THIS TIME.

THE COURT: COURT WILL BE IN RECESS.

(A RECESS WAS TAKEN.)

THE COURT: BRING THE JURY DOWN.

(THE JURY RETURNS TO THE COURTROOM.)

THE COURT: ALL RIGHT. THE JURY IS ALL PRESENT. MR. SOLICITOR, YOU MAY CALL YOUR NEXT WITNESS.

MR. GRANT: WE CALL DR. EARL JENKINS.

EDWARD EARL JENKINS, JR., BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. GRANT:

Q DR. JENKINS, STATE YOUR FULL NAME FOR THE COURT PLEASE?

A EDWARD EARL JENKINS, JR.

Q AND BY WHOM ARE YOU EMPLOYED?

A YORK PATHOLOGY ASSOCIATES AND PIEDMONT MEDICAL CENTER.

Q AND WHAT IS YOUR OCCUPATION?

A I'M A MEDICAL DOCTOR WITH SPECIALIZED TRAINING IN PATHOLOGY. I'M A PATHOLOGIST.

Q AND WHAT IS A PATHOLOGIST?

A A PATHOLOGIST IS A MEDICAL DOCTOR SPECIALIZING IN PATHOLOGY. PATHOLOGY IS DEFINED AS THE STUDY OF DISEASE, THE DIAGNOSIS OF DISEASE, TREATMENT OF DISEASE. IT INCLUDES TRAINING IN FIELDS INCLUDING ANATOMIC PATHOLOGY, CLINICAL PATHOLOGY, AND AUTOPSY PATHOLOGY.

Q AND BESIDE YOUR TRAINING AS A MEDICAL DOCTOR, HAVE YOU HAD TRAINING IN THE AREA OF PATHOLOGY?

A YES.

Q WHAT TYPE OF TRAINING?

A FOUR YEARS OF TRAINING IN PATHOLOGY, INCLUDING ANATOMIC, CLINICAL, AND FORENSIC PATHOLOGY, AND A SUB-SPECIALIZED AREA OF PATHOLOGY.

Q HAVE YOU TESTIFIED IN THE COURTS OF THIS STATE AS AN EXPERT IN THE AREA OF PATHOLOGY?

A YES, I HAVE.

MR. GRANT: YOUR HONOR, WE WOULD OFFER DR. JENKINS AS AN EXPERT PATHOLOGIST.

MR. SMITH: YOUR HONOR, I HAVE NO OBJECTION TO THE DOCTOR'S QUALIFICATION.

THE COURT: WITHOUT OBJECTION, THE WITNESS IS QUALIFIED AS AN EXPERT IN THE FIELD OF PATHOLOGY AND FORENSIC PATHOLOGY AND AUTHORIZED TO RENDER AN OPINION.

Q DR. JENKINS, AND IN YOUR FIELD OF PATHOLOGY, DO YOU HAVE OCCASIONS TO DO AUTOPSIES ON PEOPLE?

A YES, I DO.

Q WHAT IS THE PURPOSE OF THAT?

A TO DETERMINE CAUSE OF DEATH GENERALLY.

Q AND DID YOU HAVE AN OCCASION ON FEBRUARY 14, 1992 TO PERFORM AN AUTOPSY ON THE VICTIM, MARIE CHRONISTER?

A YES, I DID.

Q AND WOULD YOU DESCRIBE WHAT YOU FOUND AS FAR AS INJURIES TO THE BODY OF MARIE CHRONISTER?

A I FOUND SIX GUNSHOT WOUNDS, TWO INVOLVING THE RIGHT SIDE OF THE HEAD, THREE INVOLVING THE RIGHT SIDE OF THE CHEST AND UPPER ABDOMEN, AND ONE INVOLVING THE RIGHT HIP AREA.

THE TWO INVOLVING THE HEAD RESULTED IN INJURIES TO THE UPPER PORTION OF THE SPINAL CORD, WHICH COULD HAVE RESULTED IN PARALYSIS OR POSSIBLY DEATH.

THE THREE INVOLVING THE RIGHT SIDE OF THE CHEST AND UPPER ABDOMEN RESULTED IN INJURIES TO THE LUNG, THE RIGHT LUNG. ONE

OF THOSE WENT THROUGH THE AORTA, WHICH IS THE LARGEST BLOOD VESSEL IN THE BODY. THOSE RESULTED IN SIGNIFICANT AND FATAL BLOOD LOSS.

THE WOUND INVOLVING THE HIP WAS A NON-FATAL WOUND THAT DID DAMAGE TO SOFT TISSUE AND MUSCLE ONLY.

Q OTHER THAN THE GUNSHOT WOUNDS, WERE THERE ANY OTHER WOUNDS OR INJURIES TO THE BODY OF MARIE CHRONISTER?

A NO, THERE WEREN'T.

Q DOCTOR, COULD YOU DESCRIBE -- COME DOWN AND POINT OUT ON ME WHERE THESE WOUNDS WERE LOCATED, THESE GUNSHOT WOUNDS?

A YES, I WILL.

(THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

Q FACE THE COURT REPORTER AND TRY TO KEEP THE JURY IN ---

A THE WOUNDS WERE ALL ON THE RIGHT SIDE OF THE BODY. THE FIRST WOUND WAS APPROXIMATELY AT THIS LEVEL IN FRONT OF THE EAR. IT TRAVELED DOWNWARD INTO THE NECK.

Q WHAT ---

A THE SECOND ---

Q I'M SORRY. TAKE EACH WOUND -- DOCTOR, WHAT WAS THE DIRECTION OF THE FIRST WOUND?

A THE FIRST ONE WAS DOWNWARD, RIGHT TO LEFT INTO THE NECK.

Q AND THE BULLET WOULD HAVE TRAVELED -- I CAN'T SEE YOUR FINGER, I'M SORRY.

A SOMEWHAT IN THIS DIRECTION, DOWNWARD AND INTO THE SKIN, INTO THE NECK.

THE SECOND WOUND WAS JUST BELOW THE EARLOBE AND TRAVELED IN THE SAME PATH, THE SAME SIMILAR DIRECTION; THAT IS, THROUGH THE NECK AT A DOWNWARD, RIGHT TO LEFT DIRECTION. THOSE DID DAMAGE TO THE SPINAL CORD.

A THIRD WOUND WAS AT APPROXIMATELY THIS LEVEL, TRAVELING INTO THE CHEST FROM RIGHT TO LEFT. THIS WOUND DID DAMAGE TO THE LUNG AND THE AORTA.

A THIRD -- A FOURTH WAS AT APPROXIMATELY THIS LEVEL, TRAVELING IN A SIMILAR DIRECTION INTO THE CHEST FROM RIGHT TO LEFT. THIS WOUND INJURED THE LUNG.

A FOURTH (SIC) WAS AT APPROXIMATELY AT THIS LEVEL TRAVELING UPWARD TOWARDS THE CHEST AND INTO THE RIGHT LUNG, DAMAGE TO THE LUNG. THAT WAS NUMBER FIVE.

THE FIFTH -- THE SIXTH WOUND, THE LAST ONE, WAS AT APPROXIMATELY THIS LEVEL. IT TRAVELED UPWARD AND INTO THE SKIN AND SOFT TISSUES OF THE LEG AND THIGH.

Q THANK YOU, DOCTOR. YOU MAY GO BACK TO THE STAND.

(THE WITNESS RETURNS TO THE WITNESS STAND.)

Q AND, DOCTOR, FROM YOUR EXAMINATION OF MRS. CHRONISTER, DID YOU DETERMINE THE CAUSE OF DEATH?

A YES, I DID.

Q WHAT WAS THAT PLEASE, SIR?

A THE CAUSE OF DEATH WAS MULTIPLE GUNSHOT WOUNDS INVOLVING THE HEAD AND THE CHEST.

MR. GRANT: PLEASE ANSWER ANY QUESTIONS MR. SMITH MAY

HAVE.

CROSS EXAMINATION

BY MR. SMITH:

Q DOCTOR, WHAT YOU'RE TELLING US IS YOU FOUND SIX WOUNDS?

A YES, SIR.

Q AND THAT THREE OF THE WOUNDS WOULD HAVE BEEN MORE FATAL OR COULD HAVE BEEN FATAL; IS THAT CORRECT, SIR?

A MORE SO THAN THE OTHERS. THEY WERE MORE SERIOUS.

Q RIGHT. AND THREE OF THE WOUNDS COULD HAVE BEEN SURVIVABLE?

A THAT'S CORRECT.

Q AND ONE OF THE THREE THAT COULD HAVE BEEN FATAL, IT WOUL HAVE BEEN BASICALLY ONLY ONE OF THOSE WOULD HAVE CAUSED EATH CORRECT, SIR?

A (NO RESPONSE.)

Q WELL, LET ME PHRASE IT ANOTHER WAY.

A PLEASE DO.

Q ONE OF THOSE WOUNDS WOULD HAVE BEEN FATAL IN AND OF ITSELF?

A THAT'S CORRECT, MOST CERTAINLY.

Q DOCTOR, WHEN YOU PERFORMED THE AUTOPSY, ANYTHING THAT YO FOUND YOU TURNED OVER TO LAW ENFORCEMENT?

A I DID. I TURNED -- I RELINQUISHED BLOOD, CLOTHING, THOS PERSONAL EFFECTS TO MR. THOMASSON AND THE PROJECTILES, WHICH RETRIEVED.

Q AND THE PROJECTILES THEMSELVES?
A YES.
Q AND, OF COURSE, DOCTOR, THE POSITIONING OF ANY WOUND DEPENDS UPON THE POSITION OF THE PERSON; IS THAT CORRECT?
A YES, SIR.
MR. SMITH: THANK YOU, DOCTOR.
MR. GRANT: THANK YOU, DR. JENKINS. WE'D ASK THAT DR. JENKINS BE EXCUSED.
THE COURT: ANY OBJECTION?
MR. SMITH: NO OBJECTION.
THE COURT: WITHOUT OBJECTION, YOU MAY GO, DOCTOR.
(THE WITNESS LEAVES THE WITNESS STAND.)
MR. GRANT: YOUR HONOR, THAT WILL BE THE STATE'S CASE.
THE COURT: THE STATE RESTS.
MR. SMITH: YOUR HONOR, I WOULD HAVE MATTERS THAT I WOULD TAKE UP AT THIS TIME NORMALLY.
THE COURT: COME UP HERE PLEASE.
(A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY.)
THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, I APOLOGIZE TO YOU FOR ANY INCONVENIENCE THAT MAY CAUSE. COUNSEL NEEDS SOME TIME. WHILE HE WAS ADVISED THAT THE STATE MAY REST THEIR CASE, THEY WERE NOT QUITE PREPARED FOR IT TO BE THAT QUICK. SO THE STATE HAS RESTED ITS CASE AT THIS TIME.
SO COUNSEL HAS REQUESTED A FEW MOMENTS FROM THE COURT.

HE SAYS HE NEEDS ABOUT 15 MINUTES. I TOLD HIM I COULD GIVE I TO HIM. SO I'M GOING TO ASK YOU TO STEP BACK IN THE JURY ROOM ONCE AGAIN. JUST TRY TO BE COMFORTABLE.

THE OTHER WITNESS, AS YOU KNOW, WAS A MEDICAL WITNESS. AND WE TRY AS BEST WE CAN IN ALL CASES TO ACCOMMODATE THESE INDIVIDUALS IN THE MEDICAL FIELD BECAUSE OF THEIR SCHEDULES AND THE CARE FOR THE MEDICAL TREATMENT OF PEOPLE AS WELL AS THEIR OWN RESPONSIBILITIES. IT WAS A DELAY THAT WE DIDN'T PARTICULARLY WANT, BUT IT OCCURRED AND WE HAVE TO BE UNDERSTANDING.

AND I ASK FOR YOUR UNDERSTANDING AND PATIENCE WHILE WE TAKE ANOTHER FEW MINUTES AND DEAL WITH THESE MATTERS. IT SHOULD BE ABOUT 15 MINUTES. OKAY?

NO DISCUSSION OF THE CASE. WE'LL TRY TO START BACK AT 11:30. YOU MAY STEP OUT.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: ALL RIGHT. THE JURY'S OUTSIDE THE PRESENCE OF THE COURT. MR. SMITH, YOU MAY MAKE YOUR MOTIONS NOW.

MR. SMITH: YOUR HONOR, I WOULD AT THIS TIME MOVE FOR A DIRECTION OF VERDICT ON THE FOLLOWING GROUNDS: THAT THE EVIDENCE VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE CERTAINLY SHOWS A KILLING. BUT THE IDENTIFICATION ISSUE, IT DOES NOT SHOW THAT MY CLIENT DID THAT, BECAUSE OF THE NATURE OF THE TESTIMONY BY THE PEOPLE AS TO IDENTITY.

I WOULD ALSO SUBMIT THAT THERE HAS BEEN NO WEAPON THAT

HAS BEEN PRODUCED. THERE HAVE BEEN NO PROJECTILES.

THE PRIMARY FAILURE IN THE STATE'S CASE, YOUR HONOR, IS THAT THERE HAS NOT BEEN ANY EVIDENCE TO MAKE OUT THE NECESSARY CASE FOR MALICE. EVEN THOUGH MALICE MAY BE INFERRED FROM THE USE OF A WEAPON, THERE HAS BEEN NO WEAPON CONNECTED WITH MY CLIENT.

AND I SIMPLY FEEL THAT BASED ON THE TESTIMONY THAT WE HAVE, THAT THE STATE HAS FAILED TO MAKE OUT A CASE OF MURDER. THE PRIMARY FAILURE BEING THAT THE STATE HAS FAILED TO SHOW THE REQUIRED MALICE.

THE COURT: WELL, THE COURT IS NOT CONCERNED WITH THE WEIGHT OF THE TESTIMONY OR ITS BELIEVABILITY. THE COURT IS ONLY CONCERNED WITH THE EXISTENCE OF EVIDENCE FROM WHICH A JURY COULD REASONABLY CONCLUDE THAT THE PERSON IS GUILTY OF A CRIME BEYOND A REASONABLE DOUBT.

THE TESTIMONY IN THE CASE IS THAT THE DEFENDANT WAS IDENTIFIED AS BEING THE PERSON AT THE SCENE, THAT HE WAS IN POSSESSION OF A WEAPON, THAT GUNSHOTS WERE HEARD, AND VERY SHORTLY IN SECONDS THEREAFTER THE VICTIM'S BODY WAS FOUND. SHE WAS DEAD, OF COURSE, THE STATEMENTS MADE BY THE OFFICER -- ALL OF THOSE. AND THE USE OF A DEADLY WEAPON, YOU DON'T HAVE TO FIND THE WEAPON IF THERE'S TESTIMONY OF USE OF A WEAPON.

USE OF A DEADLY WEAPON IS SUFFICIENT FOR AN INFERENCE OF MALICE TO SUPPORT A CONVICTION FOR MURDER, MALICE AFORETHOUGHT.

FOR THOSE REASONS THE MOTIONS FOR DIRECTED VERDICT AT THIS STAGE IS DENIED.

ANY OTHER MOTIONS?

MR. SMITH: NOT AT THIS TIME, YOUR HONOR.

THE COURT: MR. SMITH, YOU INDICATED AT SIDE BAR BEFORE WE SENT THE JURY OUT THAT YOU ALSO WERE DISCUSSING WITH YOUR CLIENT CONCERNING HIS RIGHTS UNDER THE FIFTH AMENDMENT.

MR. SMITH: THAT IS CORRECT.

THE COURT: WOULD YOU LIKE FOR ME TO EXAMINE HIM ON THE RECORD CONCERNING THAT -- NOT EXAMINE HIM, BUT GO OVER THOSE WITH HIM?

MR. SMITH: YOUR HONOR, I HAVE ADVISED HIM. I WOULD APPRECIATE IT IF YOUR HONOR WOULD ALSO ADVISE HIM.

THE COURT: WOULD YOU PLEASE BRING HIM FORWARD, RIGHT TO THE FRONT.

(COMPLIED.)

THE COURT: YOU ARE JEFFERY L. CHRONISTER?

DEFENDANT: YES, SIR.

THE COURT: MR. CHRONISTER, IF YOU WILL SPEAK OUT. IF YOU DON'T UNDERSTAND ANY WORDS OR TERMS THAT I MAY USE, WOULD YOU TELL ME IF YOU DID NOT UNDERSTAND THEM?

DEFENDANT: YES, SIR.

THE COURT: FOR THE RECORD ONCE AGAIN, HOW FAR DID YOU G IN SCHOOL?

DEFENDANT: TWELFTH.

THE COURT: DID YOU GRADUATE?

DEFENDANT: I MISSED ONE COURSE FROM GRADUATION.

THE COURT: ARE YOU ABLE TO READ AND WRITE?

DEFENDANT: GOT MY DIPLOMA. YES, SIR.

THE COURT: DO YOU UNDERSTAND THE ENGLISH LANGUAGE?

DEFENDANT: YES, SIR.

THE COURT: WHAT TYPE OF WORK DO YOU DO?

DEFENDANT: I WAS RUNNING AIR FREIGHT.

THE COURT: OTHER THAN YOUR -- YOU WERE ADMITTED TO THE STATE HOSPITAL FOR AN EVALUATION UNDER MCNAGHTEN COMPETENCY AND WHETHER THERE WAS ANY LEVEL OF MENTAL RETARDATION BY ORDER OF THE COURT. OTHER THAN THAT TREATMENT ORDERED BY THE COURT IN EARLY FEBRUARY OF THIS YEAR, HAVE YOU BEEN TREATED FOR ANY MENTAL OR EMOTIONAL PROBLEMS?

DEFENDANT: NO, SIR.

THE COURT: YOU INDICATED SOMETHING IN THE SERVICE AS I RECALL?

DEFENDANT: THAT WAS IN THE SERVICE, YES, SIR. IT'S BEEN A LONG TIME AGO.

THE COURT: AND WAS THAT EMOTIONAL ---

DEFENDANT: YES, SIR.

THE COURT: --- ADJUSTMENT?

YOU MAY BE CALLED AS A WITNESS TO TESTIFY IN THIS CASE ON YOUR OWN BEHALF. I WANT TO ADVISE YOU NOW THAT YOU HAVE A RIGHT TO INVOKE THE PROTECTIONS THAT ARE GIVEN TO YOU BY THE

FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA AND TO A SIMILAR PART WRITTEN IN THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA.

THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND A SIMILAR COUNTER-PART OF THE SOUTH CAROLINA CONSTITUTION SAYS THAT NO PERSON -- WHICH INCLUDES YOURSELF - SHALL BE COMPELLED IN ANY CRIMINAL CASE -- THIS IS A CRIMINAL CASE -- TO BE A WITNESS AGAINST HIM OR HERSELF.

THIS PROVISION OF THE CONSTITUTION AND LAW MEANS THAT YO CANNOT BE COMPELLED -- WHICH MEANS REQUIRED -- TO TESTIFY IN THIS CASE. THIS IS A RIGHT AND A PRIVILEGE WHICH THE LAW EXTENDS TO YOU, THAT IS A PERSONAL PRIVILEGE. AND NO ONE CAN WAIVE, GIVE UP, THAT RIGHT EXCEPT YOU.

DO YOU UNDERSTAND THAT, SIR?

DEFENDANT: YES, SIR.

THE COURT: YOU HAVE A RIGHT NOT TO TESTIFY. BUT YOU ALSO HAVE A RIGHT TO TESTIFY. DO YOU UNDERSTAND THAT, SIR?

DEFENDANT: YES, SIR.

THE COURT: I WILL GRANT YOU THE RIGHT TO CONSULT WITH YOUR LAWYER BEFORE YOU MAKE YOUR DECISION IN THIS CASE. DO YOU UNDERSTAND THAT?

DEFENDANT: YES, SIR.

THE COURT: IF YOU DECIDE, ELECT, NOT TO TESTIFY, YOUR FAILURE TO TESTIFY CANNOT BE USED BY THE STATE OF SOUTH CAROLINA AS AN INFERENCE OF GUILT, AND YOUR FAILURE TO

TESTIFY CANNOT BE CONSIDERED BY THE JURY IN ITS DELIBERATIONS, AND I WILL SO INSTRUCT THE JURY.

IF YOU DECIDE, ELECT, TO TESTIFY AND GIVE UP, WAIVE, THE PRIVILEGES THAT ARE EXTENDED TO YOU BY THE CONSTITUTION OF THE UNITED STATES OF AMERICA AND THE SIMILAR COUNTER-PART OF THE SOUTH CAROLINA CONSTITUTION, I ADVISE YOU IF YOU DO SO, THEN YOU WILL THEN ASSUME THE ROLE OF A WITNESS IN THIS CASE. AND AS SUCH YOU THEN GIVE UP, WAIVE, YOUR CONSTITUTIONAL PRIVILEGE AGAINST SELF-INCRIMINATION.

WHAT THAT MEANS IS THAT IF YOU VOLUNTARILY -- MEANING A DECISION MADE BY YOURSELF AFTER HAVING THE KNOWLEDGE OF YOUR RIGHTS AND CONSEQUENCES IN THE EXERCISE OF THOSE RIGHTS, IF YOU VOLUNTARILY TAKE THE WITNESS STAND AND TESTIFY, THEN YOU WILL SUBJECT YOURSELF TO THE SAME RULES THAT APPLY AND GOVERN ALL OTHER WITNESSES WHO ARE CALLED TO TESTIFY IN A CASE. THAT MEANS YOU MAY BE EXAMINED AND CROSS EXAMINED ON ANY RELEVANT ISSUE OR FACT IN THIS CASE. AND YOU MAY BE IMPEACHED TO THE SAME EXTENT AS EACH AND EVERY OTHER WITNESS, ALL OF WHICH, OF COURSE, IS SUBJECT TO THE RULES OF EVIDENCE AND THE RULES OF LAW.

I FURTHER ADVISE YOU THAT IF YOU DECIDE, ELECT, TO TAKE THE WITNESS STAND AND TESTIFY, THAT THIS DECISION ON YOUR PART MUST BE MADE FREELY, VOLUNTARILY, AND INTELLIGENTLY ---

DEFENDANT: YES, SIR.

THE COURT: --- AND WITH THE KNOWLEDGE OF THE PROTECTIONS

THAT ARE GIVEN TO YOU BY THE FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND THE SIMILAR COUNTER-PAR OF THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA AND WITH THE KNOWLEDGE OF THE CONSEQUENCES OF YOUR ELECTION OR DECISIO TO TESTIFY.

DO YOU UNDERSTAND THAT, SIR?

DEFENDANT: YES, SIR.

THE COURT: DO YOU HAVE ANY QUESTION ABOUT WHAT I'VE EXPLAINED TO YOU?

DEFENDANT: NO, SIR.

THE COURT: DO YOU WISH TO CONSULT WITH YOUR LAWYER ---

DEFENDANT: YES, SIR.

THE COURT: --- BEFORE YOU ANSWER? HAVE YOU DISCU ED WITH YOUR LAWYER PRIOR TO THIS WHETHER YOU SHOULD OR SHOULD NOT TESTIFY?

DEFENDANT: I'D LIKE TO DISCUSS IT WITH HIM.

THE COURT: I'M GOING TO GIVE YOU THAT OPPORTUNITY.

DEFENDANT: OKAY.

THE COURT: I ASKED YOU IF YOU'VE DISCUSSED IT BEFORE.

DEFENDANT: UH-HUH.

THE COURT: DO YOU UNDERSTAND ONCE AGAIN WHAT I'VE EXPLAINED TO YOU UP TO THIS POINT?

DEFENDANT: YES, SIR.

THE COURT: WHEN YOU COME BACK IN, I'LL ASK YOU AGAIN: DO YOU HAVE ANY QUESTIONS ABOUT WHAT I'VE EXPLAINED TO YOU.

DO YOU HAVE ANY NOW?

DEFENDANT: NO, SIR.

THE COURT: WHEN YOU COME BACK, I'LL ASK YOU THE FINAL QUESTION AND THAT IS: DO YOU WISH TO TESTIFY? DO YOU UNDERSTAND THAT?

DEFENDANT: YES, SIR.

THE COURT: MR. SMITH, AS HIS ATTORNEY, DO YOU KNOW OF ANY REASON, BASIS, THAT HE WAS NOT ABLE TO UNDERSTAND HIS RIGHTS AFFORDED TO HIM BY THE CONSTITUTION OF THE UNITED STATES AND THE SIMILAR COUNTER-PART OF THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA?

MR. SMITH: I DO NOT KNOW OF ANY REASON THAT HE SHOULD NOT UNDERSTAND, YOUR HONOR.

THE COURT: AND DO YOU KNOW OF ANY REASON THAT ANY DECISION BY HIM TO EITHER TESTIFY OR NOT TO TESTIFY WOULD BE ONE THAT WAS NOT VOLUNTARILY AND INTELLIGENTLY MADE ON HIS PART?

MR. SMITH: I DO NOT KNOW OF ANY REASON, YOUR HONOR. I HAVE TOLD HIM IT'S HIS DECISION AND NOT MINE. AND ALSO, YOUR HONOR, I HAVE POINTED OUT TO HIM THAT AT THIS POSTURE THE QUESTION OF PRESENTING EVIDENCE -- THAT IF EVIDENCE IS PRESENTED, THE STATE WOULD HAVE THE RIGHT TO REPLY AND THAT CERTAIN EVIDENCE THAT HAS BEEN RULED AS INADMISSIBLE MAY ARISE AND BECOME ADMISSIBLE.

AND I APPRECIATE YOUR HONOR'S ---

THE COURT: IS THAT CORRECT, SIR? HAS HE EXPLAINED THAT TO YOU?

DEFENDANT: HE EXPLAINED THAT. I'D LIKE TO GO INTO IT FURTHER WITH HIM.

THE COURT: I'LL GIVE YOU ABOUT 10 MORE MINUTES TO DO THAT. ALL RIGHT?

DEFENDANT: YES, SIR.

THE COURT: ALL RIGHT.

MR. SMITH: THANK YOU, YOUR HONOR.

THE COURT: YOU MAY STEP BACK. YOU MAY TAKE HIM OUT IF YOU NEED TO.

(PAUSE.)

THE COURT: THE REST OF THE COURTROOM MAY BE AT EASE FOR ABOUT 10 MINUTES.

(A RECESS WAS TAKEN.)

THE COURT: BRING THE DEFENDANT AROUND PLEASE.

(PAUSE.)

THE COURT: MR. CHRONISTER, BEFORE WE STOPPED AT THE REQUEST OF YOURSELF AND YOUR ATTORNEY FOR YOU TO CONSULT WITH HIM, HAVE YOU NOW DISCUSSED WITH YOUR LAWYER WHETHER YOU SHOULD OR SHOULD NOT TESTIFY?

DEFENDANT: YES, SIR, I HAVE.

THE COURT: AND DO YOU HAVE ANY QUESTIONS ABOUT WHAT WAS EXPLAINED TO YOU BY THE COURT OR YOUR ATTORNEY?

DEFENDANT: NO, SIR.

THE COURT: DO YOU WISH TO TESTIFY?

DEFENDANT: NO, SIR.

THE COURT: IS THAT YOUR DECISION TO NOT TESTIFY?

DEFENDANT: YES, SIR.

THE COURT: MR. SMITH, DO YOU WISH TO ADD ANYTHING?

MR. SMITH: YOUR HONOR, I ALSO HAVE EXPLAINED TO MR. CHRONISTER THE POSTURE THAT THE CASE IS IN NOW. WE HAVE WITNESSES THAT ARE AVAILABLE OUTSIDE THE COURTROOM TO BE CALLED. I HAVE EXPLAINED TO HIM THAT IT IS MY OPINION THAT CERTAIN EVIDENCE THAT WE COULD PRESENT WOULD LEAD TO REPLY EVIDENCE BY THE STATE -- THEY WOULD HAVE THE RIGHT TO REPLY; THAT THE SITUATION BASED AS THE CASE STANDS NOW THAT IF HE IS NOT GOING TO TESTIFY HIMSELF, THAT IT WOULD BE MY OPINION THAT THE DEFENSE SHOULD REST.

I HAVE EXPLAINED THAT TO HIM, BUT I WANTED TO MAKE THE COURT AWARE THAT THERE WITNESSES ARE AVAILABLE AND I'VE TOLD HIM THAT, AND I HAVE TOLD HIM THAT THAT IS MY OPINION.

THE COURT: BUT YOU'RE LEAVING IT UP TO HIM?

MR. SMITH: BUT I AM LEAVING IT UP TO HIM. IT'S HIS CASE.

THE COURT: YES, SIR. THAT'S RIGHT.

DO YOU UNDERSTAND THAT, MR. CHRONISTER?

DEFENDANT: YES, SIR.

THE COURT: AND YOU UNDERSTAND THAT WHILE YOUR ATTORNEY RECOMMENDS YOU NOT PUT THESE PEOPLE UP, HE IS PREPARED TO PUT

THEM UP IF YOU INSIST ON IT?

DEFENDANT: YES, SIR.

THE COURT: ARE YOU GOING TO FOLLOW YOUR ATTORNEY'S ADVICE IN THAT REGARD?

DEFENDANT: YES, SIR.

THE COURT: ALL RIGHT, SIR. THEN YOU ARE RESTING IN ESSENCE?

MR. SMITH: YOUR HONOR, WE WOULD REST. AND I WOULD RENE MOTION FOR DIRECTED VERDICT AND IT WOULD BE THE SAME GROUND A PREVIOUSLY STATED.

THE COURT: THE SAME REASON THE COURT DENIED IT INITIALLY, DENIES IT AGAIN.

YOU HAVE THE RIGHT TO MAKE THE OPENING AND CLOSING ARGUMENTS SINCE YOU DID NOT OFFER ANY TESTIMONY AND EVIDENCE. ARE YOU GOING TO OPEN OR ARE YOU GOING TO WAIVE OPENING?

MR. SMITH: YOUR HONOR, I WOULD NOT OPEN. I WILL MAKE ONE FINAL CLOSING ARGUMENT.

THE COURT: ALL RIGHT. MR. SOLICITOR, HOW MUCH TIME DO YOU THINK YOU NEED TO MAKE YOUR ARGUMENT?

MR. GRANT: NO MORE THAN 30 MINUTES, PROBABLY 20, 25, YOUR HONOR.

THE COURT: WHAT ABOUT YOU? THE SAME AMOUNT?

MR. SMITH: ROUGHLY THE SAME, YOUR HONOR.

THE COURT: OKAY. I'LL LET YOU REST IN FRONT OF THE JUR BY MAKING THE STATEMENT IF YOU CHOOSE THAT THE DEFENDANT IS

EXERCISING HIS CONSTITUTIONAL RIGHT TO NOT OFFER ANY TESTIMONY AND RELY UPON HIS PRESUMPTION OF INNOCENCE; IS THAT WHAT YOU WANT TO DO?

MR. SMITH: YOUR HONOR, USUALLY I'D JUST SAY THE DEFENSE WOULD REST AND LEAVE IT.

THE COURT: ALL RIGHT. ARE YOU GENTLEMEN READY TO ARGUE?

MR. GRANT: EITHER WAY, YOUR HONOR. READY OR AN EARLY LUNCH AND DO IT WHEN WE COME BACK, WHATEVER YOU WANT.

THE COURT: NO. I'D RATHER YOU ARGUE AND THEN I'LL CHARGE THEM AFTER LUNCH.

ANY CHARGE, ANY SPECIAL REQUEST TO CHARGE OTHER THAN I'VE GIVEN YOU THE ONE -- I'LL GIVE AN IDENTIFICATION CHARGE ---

MR. SMITH: YES, SIR.

THE COURT: --- WHICH IS AN ISSUE IN THE CASE. I'LL GIVE A CHARGE ON MURDER, OF COURSE. ANY OTHER CHARGE ON, AS I UNDERSTAND YOU REQUESTED THE FAILURE OF THE DEFENDANT TO TESTIFY CANNOT BE CONSIDERED BY THE JURY NOR DISCUSSED?

MR. SMITH: YES, SIR. AND I HAD REQUESTED CIRCUMSTANTIAL.

THE COURT: CIRCUMSTANTIAL EVIDENCE CHARGE. ANYTHING ELSE?

MR. SMITH: I WOULD REQUEST, YOUR HONOR, A CHARGE OF MANSLAUGHTER BASED UPON THE TESTIMONY AS TO THE STATEMENT THAT WAS MADE TO THE OFFICER, THE EMOTIONALITY OF THE -- OF MY

CLIENT WHEN -- BY THE POLICE. I THINK THAT WOULD SHOW HEAT AND PASSION.

THERE HAS BEEN NO TESTIMONY, YOUR HONOR, IN TERMS OF WHA OCCURRED DURING THIS PERIOD OF TIME AT THE POWER STATION. THERE WAS NO WITNESS, BUT I BELIEVE THAT THE TESTIMONY AS TO THE EMOTIONAL CONDITION CERTAINLY WOULD GIVE HEAT AND PASSION AND I WOULD ASK FOR A MANSLAUGHTER CHARGE ON THAT BASIS.

THE COURT: THERE'S NO TESTIMONY IN THE RECORD OF THIS THAT WOULD SUPPORT A CHARGE ON VOLUNTARILY MANSLAUGHTER, MR. SMITH. VOLUNTARY MANSLAUGHTER REQUIRES THERE BE SOME TESTIMONY AND EVIDENCE AS TO THE KILLING OF A HUMAN BEING UPO A LEGAL SUFFICIENT PROVOCATION.

THERE'S JUST NO TESTIMONY OUT THERE. IN THE HEAT OF PASSION -- THERE'S NO TESTIMONY OF THAT. THE ONLY TESTIMONY IS THAT HE WAS EMOTIONAL AFTERWARDS, BUT THERE'S NO TESTIMONY THAT HE KILLED THE PERSON IN A SUDDEN HEAT AND PASSION FIRST; AND SECONDLY, THAT IT WAS UPON ANY SUFFICIENT LEGAL PROVOCATION. THERE'S NO TESTIMONY IN THE RECORD THAT SUPPORT THAT.

I CANNOT CHARGE A PRINCIPLE THAT'S NOT SUPPORTED BY SOME EVIDENCE. ONCE AGAIN, I'M NOT CONCERNED WITH WHETHER YOU BELIEVE TESTIMONY AND EVIDENCE. I NEVER AM. I'M CONCERNED ONLY WITH ITS EXISTENCE. THERE IS A TOTAL LACK OF EXISTENCE OF ANY EVIDENCE THAT WOULD SUPPORT A CHARGE ON VOLUNTARY MANSLAUGHTER. I CANNOT GIVE YOU A CHARGE ON THAT.

ANYTHING ELSE?

MR. SMITH: I BELIEVE THAT -- I BELIEVE THAT THAT IS ALL.

THE COURT: TWO POSSIBLE FORMS OF VERDICT WOULD BE EITHER GUILTY OR NOT GUILTY.

ANYTHING ELSE? SOLICITOR, ANY REQUEST TO CHARGE BY THE STATE?

MR. GRANT: NONE, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. GRANT: WOULD YOU RECONSIDER ARGUING AND CHARGING CONTINUOUSLY? I JUST ASK IF WE ARGUE, WOULD YOU GO AHEAD AND CHARGE THEM BEFORE LUNCH?

THE COURT: WELL, SOLICITOR, THE PROBLEM WITH THAT IS WE DON'T HAVE ENOUGH TIME TO DO THAT. WE COULD GET BOTH YOUR ARGUMENTS IN. WE CAN GIVE THEM LUNCH. AND THEN I CAN CHARGE THEM.

MR. GRANT: ALL RIGHT, SIR.

THE COURT: THE CASE IS DECIDED NOT BY ARGUMENTS AND CHARGE. THE CHARGE IS TELLING THEM THE LAW. THE CASE OUGHT TO BE DECIDED BASED ON THE TESTIMONY AND EVIDENCE, NOT BY WHAT YOU AND MR. SMITH SAY. AND THE PRINCIPLE OF LAW IS TO TELL THEM WHAT THE LAW IS. THE CHARGE IS SIMPLY TO OUTLINE THAT. THIS IS A BETTER PROCEDURE TO DO.

ANYTHING ELSE?

MR. SMITH: NOTHING.

MR. GRANT: NO, SIR.

THE COURT: BRING THE JURY IN PLEASE.

(THE JURY RETURNS TO THE COURTROOM.)

THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, THANK YOU AT THIS TIME, MR. SMITH.

MR. SMITH: YOUR HONOR, THE DEFENSE WOULD REST.

THE COURT: THE DEFENDANT HAS RESTED. AT THIS TIME, LADIES AND GENTLEMEN, AS I PREVIOUSLY HAVE TOLD YOU, THE NEXT THING WILL BE FOR THE ATTORNEYS TO MAKE THEIR CLOSING ARGUMENTS TO YOU. I'VE ALREADY REVIEWED THAT WITH THEM AND THIS IS WHAT WE'RE GOING TO DO: THE STATE IS GOING TO ARGUE AND THEN THE DEFENSE WILL ARGUE.

BASED ON THEIR ESTIMATES TO ME ABOUT THE TIME, IT SHOULD BE APPROXIMATELY 1:00 O'CLOCK. WE'LL STOP AT THAT TIME TO ALLOW YOU TO HAVE LUNCH. WE'LL COME BACK AFTER LUNCH AND I'LL CHARGE YOU IN THE CASE.

FOLLOWING THAT PROCEDURE THEN, I'M GOING TO TURN IT OVER TO COUNSEL TO MAKE THEIR CLOSING ARGUMENTS TO YOU.

I WOULD REMIND YOU, LADIES AND GENTLEMEN, THAT YOU HEARD ALL OF THE EVIDENCE AND THE TESTIMONY IN THE CASE. THE ARGUMENTS THAT THE ATTORNEYS MAKE IS NOT EVIDENCE. I WOULD ENCOURAGE YOUR KIND CONSIDERATION AND ATTENTION TO THE ARGUMENTS THAT ARE MADE BY COUNSEL FOR BOTH THE STATE AND THE DEFENSE.

MR. SOLICITOR, ON BEHALF OF THE STATE.

MR. GRANT: THANK YOU, YOUR HONOR.

CLOSING ARGUMENTS BY MR. GRANT

ON BEHALF OF THE STATE:

MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, I WOULD THANK YOU ON BEHALF OF THE STATE FOR YOUR TIME AND ATTENTION IN THIS CASE. AND AS YOUR HONOR HAS CHARGED YOU, YOU HAVE ALREADY HEARD ALL OF THE EVIDENCE THAT YOU'RE GOING TO HEAR. EVIDENCE COMES FROM THE WITNESS STAND, FROM TESTIMONY OF THE WITNESSES IN THIS CASE.

YOU, AS JURORS, ARE TO DETERMINE WHAT HAPPENED ON THIS DAY, FEBRUARY THE 14TH OF 1992 IN THE PARKING LOT AT CATAWBA NUCLEAR. YOU ARE TO DECIDE WHAT HAPPENED OUT THERE FROM THIS WITNESS STAND, NOT FROM WHAT I SAY OR WHAT MR. SMITH SAYS, BUT FROM THE WITNESS STAND.

AND, AGAIN, I ASK YOU TO RECALL THAT TESTIMONY AS YOU HEARD IT, AS YOU RECALL IT. IF I MISSTATE ANY OF IT, YOU TAKE IT AS YOU HEARD IT AND APPLY THOSE FACTS AS YOU FIND THEM TO BE TO A VERDICT THAT SPEAKS THE TRUTH; A VERDICT THAT SPEAKS JUSTICE UNDER THE LAW BECAUSE IT'S RIGHT, UNDER THE LAW AND UNDER THE FACTS.

AS I STATED EARLIER, THIS INDICTMENT CHARGES JEFFERY CHRONISTER WITH THE CRIME OF MURDER. MURDER IS THE UNLAWFUL KILLING OF A HUMAN BEING WITH MALICE AFORETHOUGHT.

AND I SUBMIT TO YOU, THAT MARIE CHRONISTER WAS A HUMAN BEING AND THAT HER KILLING WAS UNLAWFUL AND THAT IT WAS WITH MALICE AFORETHOUGHT, AND THAT UPON THE FACTS AS YOU HAVE HEARD

THEM TO BE AND AS UPON THE LAW AS HIS HONOR WILL CHARGE YOU THAT THE INESCAPABLE VERDICT IS THAT HER HUSBAND, JEFF CHRONISTER, IS GUILTY OF MURDERING HIS WIFE BY KILLING HER UNLAWFULLY WITH MALICE AFORETHOUGHT.

MALICE IS A STATE OF THE HEART, A STATE OF THE MIND. IT MEANS EVIL, BAD MOTIVE, MALICIOUS, A HEART THAT DOES NOT HAVE ANY SOCIAL DUTY OR SOCIAL JUSTICE IN IT.

THIS STATE IN ITS WISDOM PROVIDES REASONABLE WAYS FOR PEOPLE WHOSE MARRIAGES WILL NOT WORK TO DISSOLVE THEMSELVES O THAT MARRIAGE. THE LAW OF THIS STATE, I SUBMIT TO YOU, WILL NEVER GO TO THE POINT THAT A MAN OR A WOMAN MAY DIVORCE THEMSELVES FROM THEIR SPOUSE BY THE USE OF FIVE SHOTS IN A PARKING LOT AT A PLACE OF WORK.

I SUBMIT TO YOU THAT WHEN THAT OCCURS, THEN THAT IS AND FITS THE DEFINITION OF MURDER UNDER OUR LAW, AN UNLAWFUL KILLING OF A HUMAN BEING WITH MALICE AFORETHOUGHT.

MALICE AFORETHOUGHT. A STATE OF HEART, A STATE OF MIND INDICATING EVIL AT OR BEFORE THE TIME OF THE FATAL SHOTS.

HIS HONOR I BELIEVE WILL CHARGE YOU THAT YOU MAY INFER - YOU MAY FIND MALICE FROM THE USE OF A DEADLY WEAPON. YOU MAY INFER MALICE AND FIND MALICE FROM THE CIRCUMSTANCES.

I ASK YOU TO SIMPLY LOOK AT ALL THE CIRCUMSTANCES. LOOK AT THE USE OF THE DEADLY WEAPON. LOOK AT THE NUMBER OF TIMES THAT THIS LADY WAS SHOT, WHERE SHE WAS SHOT. NOT IN THE FRONT.

YOU HEARD THE DOCTOR, HEAD, HEAD, HERE, HERE, HERE. ALL FROM THE SIDE. ALL FROM THE SIDE.

SHOOT HER DOWN IN THE PARKING LOT WITHOUT A CHANCE, WITHOUT A CHANCE TO EVEN RUN. MALICIOUS. MALICIOUS. TO GO TO HER PLACE OF WORK AND WAIT FOR HER TO COME. YOU TAKE THE TESTIMONY AS YOU HEARD IT FROM THE MAN THAT SAW HIM WALKING DOWN. YOU TAKE IT AS YOU HEARD IT.

ONE OF THEM SAW HIM WALKING BACK AND FORTH DOWN IN THAT AREA DUCKING DOWN, LYING IN WAIT, WAITING FOR HER TO COME.

WHAT'S IN HIS HEART? WHAT'S IN HIS HEART WHEN HE CARRIES THAT WEAPON DOWN THERE? WHAT'S IN HIS HEART? ONE THING. ONE THING. MURDER IS IN HIS HEART. MURDER IS ON HIS MIND. KILLING SOMEBODY. KILLING HIS WIFE.

PREMEDITATED IS NOT REQUIRED IN THE LAW OF THE STATE OF SOUTH CAROLINA, NOT REQUIRED. PREMEDITATED. DRIVES DOWN THERE IN THIS VAN. I SUBMIT TO YOU, YOU HEARD THE PEOPLE WHO LOOKED -- THE OFFICER FIRST OF ALL TELLS YOU THIS IS THE VAN THAT THIS MAN AND NO OTHER MAN WAS ARRESTED IN, THAT JEFFERY CHRONISTER WAS ARRESTED DRIVING THIS VAN, HAD A BEARD, TAG NUMBER D.R.L. 8643.

MR. BALLANGER TELLS YOU HE'S IN THAT PARKING LOT LOOKING AT A VAN PARKED IN FRONT OF HIS TRUCK, A WHITE VAN AND HE TRIES TO GET THE TAG NUMBER AND HE GETS D.R.L. AND REPORTS IT.

PREMEDITATED. DRIVES DOWN TO DUKE POWER IN THIS VAN WITH A LOADED WEAPON THAT HE CALMLY WALKS IN THE PARKING LOT WITH

IT BY HIS SIDE DOWN TO THE AREA WHERE SHE HAS TO GO IN, WHERE SHE HAS TO GO IN. SHE GETS OUT OF HER CAR AND 30 SECONDS LATER -- YOU TAKE IT AS YOU HEARD IT -- SHE'S LYING DEAD. DEAD. SHOT FIVE TIMES IN THE HEAD AND IN THE CHEST AND IN TH HIP. A WOMAN IS DEAD.

AND THAT'S WHY IT'S CALLED MURDER. AND THAT'S WHAT'S MALICIOUS ABOUT IT. AND THAT'S WHERE YOUR AFORETHOUGHT COMES IN, WHEN HE RODE DOWN THERE WITH THAT GUN IN HIS VAN, STEPPED OUT AND WALKED DOWN THAT PARKING LOT LOOKING FOR HIS WIFE WIT ONE THING IN HIS HEART -- EVIL -- AND THEN CARRIED OUT THAT PLAN. FIVE TIMES HE EXECUTED HIS PLAN. FIVE TIMES HE SHOT THIS WOMAN.

UNLAWFUL KILLING WITH MALICE AFORETHOUGHT OF A HUM BEING; THAT IS MURDER. LOOK AT THE FACTS OF THIS CASE FOR WHAT IT IS. AND I SUBMIT TO YOU, IT IS NOTHING BUT MURDER.

EVERY CASE IS SAD. YOU'VE GOT LIVES TORN UP. EVERY CAS IS SAD. BUT WE HAVE A LIFE THAT IS GONE AT THE HANDS OF HER OWN HUSBAND, JEFF CHRONISTER, IN A MALICIOUS, PREMEDITATED MANNER. AND AFTER IT'S ALL OVER WITH, CALMLY WALKS OUT, WALK RIGHT PAST MR. AUTEN WITHIN 15 FEET.

MR. AUTEN GETS A GOOD LOOK AT HIM. WHEN THE OFFICER COMES OUT AND SHOWS HIM THE PICTURES, HE PICKS OUT HIS PICTURE; THAT'S THE MAN. IT'S THE PICTURE OF JEFF CHRONISTER BEFORE HE SHAVED HIS BEARD AND BEFORE HE CLEANED UP, THE SAME MAN I SAW WALKING OUT OF THE PARKING LOT WITH THE GUN AFTER H

HAD HEARD THE FIRECRACKER POPS AND SAW HIM LEANING OVER AND SAW A BODY DOWN THERE AND WAS CONCERNED AND WAS PAYING ATTENTION TO THIS MAN.

AND YOU USE YOUR COMMON SENSE, YOUR COMMON SENSE AS TO WHETHER OR NOT YOU'RE GOING TO PAY ATTENTION TO A MAN'S FACE UNDER THOSE CIRCUMSTANCES.

AND THEN TWO HOURS LATER HE'S IN THE SAME VAN OR SOME TWO HOURS LATER THIS MAN, JEFF CHRONISTER, IS TAKEN, STOPPED BY THE NORTH CAROLINA OFFICERS, TURNED OVER TO THE YORK COUNTY SHERIFF'S DEPARTMENT.

AND HE TALKS TO MR. SHILLINGLAW AND BASICALLY ASKED MR. SHILLINGLAW, IS SHE DEAD? I DID KILL HER? SHE IS DEAD?

YOU TAKE THE WORDS AS YOU HEARD IT.

I SUBMIT TO YOU, HE'S ASKING IS SHE DEAD. IS SHE DEAD?

AND, YES, THE ANSWER TO THAT QUESTION, SHE IS DEAD.

AND I SUBMIT TO YOU, SHE WAS DEAD AS SHE LAID THERE IN THAT PARKING LOT WITH THOSE BULLETS IN HER.

THE UNLAWFUL KILLING OF A HUMAN BEING WITH MALICE AFORETHOUGHT, UNJUSTIFIABLE GUNNING DOWN OF A WIFE IN A PARKING LOT.

THE LAW PROVIDES THAT EVERY DEFENDANT IS PRESUMED INNOCENT. THE STATE AGREES WITH THAT 100 PERCENT. THE STATE WOULD NOT PRESUME ANYONE OF ITS CITIZENS TO BE GUILTY OF ANY CHARGE.

THAT PRESUMPTION SHOULD REMAIN WITH YOU UNTIL YOU TAKE

HIS HONOR'S CHARGE ON THE LAW AND GO TO THAT JURY ROOM. AND THEN YOU TAKE THE LAW AS HIS HONOR CHARGES YOU. HE IS IN CHARGE OF THE LAW. AND IF HE TELLS YOU THE LAW AND YOU DON'T THINK THE LAW SHOULD BE THAT WAY, YOU HAVE A DUTY -- YOU'VE TAKEN AN OATH TO ACCEPT THE LAW AS HIS HONOR CHARGES YOU.

AND YOUR OATH IS TO YOU -- NOT ONLY TO THE STATE OF SOUT CAROLINA, BUT YOUR OATH IS TO YOU. AND IT MEANS NOTHING TO ANYBODY EXCEPT YOU. IF IT'S SERIOUS TO YOU, THEN IT MEANS SOMETHING TO YOU. AND YOUR OATH SAID YOU WOULD FOLLOW THE LA AS HIS HONOR CHARGED YOU, THAT YOU WOULD WELL AND TRULY TRY AND A TRUE DELIVERANCE MAKE, THAT YOU WOULD FIND THE TRUE FACTS -- THE TRUE FACTS.

AND I SUBMIT TO YOU THAT WHEN YOU GO TO THAT JURY OM AND YOU CONSIDER ALL THE FACTS THAT YOU'VE HEARD AND YOU CONSIDER THE LAW THAT HIS HONOR WILL CHARGE YOU, THAT THAT PRESUMPTION OF INNOCENCE, THAT EVERY DEFENDANT AND EVERY CITIZEN IS CLOTHED WITH AND THAT JEFFERY CHRONISTER IS CLOTHE WITH IT, AND IF THAT PRESUMPTION HAS BEEN STRIPPED FROM HIM AND THAT HE IS GUILTY BEYOND ANY REASONABLE DOUBT, BEYOND ANY REASON TO HESITATE, BEYOND ANY DOUBT WHATSOEVER -- BEYOND ANY DOUBT WHATSOEVER.

YOU WILL HAVE ONE OF TWO POSSIBLE VERDICTS IN THIS CASE: GUILTY OR NOT GUILTY. GUILTY OR NOT GUILTY. GUILTY OF AN UNLAWFUL KILLING OF A HUMAN BEING WITH MALICE AFORETHOUGHT OR NOT GUILTY.

I SUBMIT TO YOU THAT THE ONLY TRUE VERDICT, THE ONLY POSSIBLE VERDICT UNDER THE FACTS IS A VERDICT OF GUILTY OF MURDER. OTHERWISE, THIS DIDN'T EVEN HAPPEN. IT'S A FANTASY.

THE LAW PROVIDES THAT CASES -- THIS PARTICULAR CASE THAT THE STATE WHEN ALL THE TESTIMONY IS IN, THE STATE MAKE THE FIRST ARGUMENT, SUMMATION. DEFENSE CLOSES. AND THEN HIS HONOR WILL CHARGE YOU.

I HAVE NO IDEA WHAT MR. SMITH IS GOING TO SAY, WILL NOT HAVE THE OPPORTUNITY TO REFUTE HIM.

I ASK YOU SIMPLY TO JUDGE IT BY THE SAME STANDARD I ASK YOU TO JUDGE ME BY. DOES IT MAKE SENSE UNDER THE LAW? DOES IT MAKE SENSE UNDER YOUR COMMON SENSE, UNDER YOUR JUDGING OF EVERYDAY LIFE IN DETERMINING THE TRUTH OF MATTERS. ARE THESE PEOPLE TELLING YOU THE TRUTH? YOU CAN JUDGE THEIR CREDIBILITY AND BELIEVABILITY AS JURORS; THAT'S YOUR JOB, TO JUDGE THE TRUTH AND THE CREDIBILITY OF THE WITNESSES, TO FIND THE TRUTH OF THE MATTER -- TO FIND THE TRUTH OF THE MATTER.

AND YOU LISTEN TO HIS HONOR'S CHARGE VERY CLOSELY, BECAUSE THAT IS THE LAW THAT APPLIES IN THIS CASE. AND IF THERE ARE DISCUSSIONS THAT COME UP IN JURY DELIBERATION THAT REFER TO SOME OTHER LAW, THEN IT DOESN'T APPLY IN THIS CASE. THE LAW AS HIS HONOR GIVES YOU AT THE END OF THIS IS THE LAW THAT YOU MUST APPLY.

AND I ASK YOU TO LISTEN TO HIM ON THE DEFINITIONS OF MALICE, MALICE AFORETHOUGHT, MURDER, REASONABLE DOUBT, ALL

THOSE THINGS. LISTEN TO THAT CLOSELY, CAREFULLY. AND THEN RENDER A VERDICT THAT SPEAKS THE TRUTH -- A VERDICT THAT SPEAKS THE TRUTH.

WHEN YOU COME INTO THIS COURTROOM AND YOU ASSUME THE POSITION THAT YOU HAVE, CHOSEN BY BOTH THE STATE AND THE DEFENSE TO SIT IN JUDGMENT OF THIS CASE, APPROVED BY BOTH THE STATE AND DEFENSE, YOU HOLD THE HIGHEST OFFICE IN THIS COUNTY AT THIS TIME. I ASK YOU TO GIVE IT THAT DUE RESPECT AND TO RENDER A VERDICT WHICH SPEAKS THE TRUTH AND THAT SPEAKS JUSTICE.

YOU ARE NOT HERE TO REWARD ANYBODY OR PUNISH ANYBODY. YOU'RE HERE TO SPEAK THE TRUTH. YOUR JOB DOES NOT INVOLVE BEING SYMPATHETIC EITHER FOR THE FAMILY OF THE DECEASED, MARI CHRONISTER, OR FOR MARIE CHRONISTER OR FOR JEFF CHRONISTER. IT'S A SAD SITUATION ALL THE WAY AROUND. WE ALL HAVE SOME NATURAL SYMPATHY FOR ANYBODY WHO IS DEAD, ANYBODY WHO HAS KILLED SOMEBODY. TRAGEDY.

BUT THAT DOESN'T CHANGE THE FACTS. UNLAWFUL KILLING WIT MALICE AFORETHOUGHT, A LOADED WEAPON. YOU MAY INFER -- YOU MAY FIND MALICE FROM THAT ALONE IF YOU SO CHOOSE. YOU CAN DISREGARD ANY PART OF THE TESTIMONY YOU WANT TO.

BUT HOW DO YOU DISREGARD A DOCTOR WHO TELLS YOU THAT WHE HE EXAMINED THIS POOR LADY'S BODY, THAT SHE IS SHOT HERE, HERE, HERE, HERE, AND HERE, ALL FROM THIS SIDE? MALICIOUS? SHOOTING HER FIVE TIMES I SUBMIT TO YOU SHOWS THE EVIL IN THE

HEART AND THE MALICIOUSNESS. FROM THE SIDE, NOT EVEN FACE-TO-FACE CONFRONTATION. WAITING ON HER AS SHE CAME TO WORK.

ANYBODY THAT'S MARRIED KNOWS THAT MARRIAGES ARE HARD WORK. HARD WORK, EVEN THE BEST OF THEM. AND SOMETIMES THEY DON'T WORK OUT.

THIS IS NOT THE SOLUTION. THE LAW SAYS THIS IS NOT THE SOLUTION. YOU CANNOT -- CANNOT IN COLD BLOOD WAIT AND KILL A SPOUSE IN THE PARKING LOT OF THEIR PLACE OF BUSINESS. THE LAW SAYS THAT IS MURDER; THAT THAT IS AN UNLAWFUL KILLING WITH MALICE AFORETHOUGHT.

TAKING OF A LIFE UNDER THESE CIRCUMSTANCES I SUBMIT TO YOU CAN BE NOTHING BUT MURDER, NOTHING BUT MURDER. AND I ASK YOU ON BEHALF OF THE STATE OF SOUTH CAROLINA TO GO BACK, CONSIDER ALL THAT YOU'VE HEARD AND ALL THE EVIDENCE AND ALL THE WITNESSES, ALL THE SUMMATIONS, THE JUDGE'S CHARGE, AND RENDER THAT VERDICT THAT SPEAKS THE TRUTH -- THAT VERDICT THAT SPEAKS THE TRUTH BECAUSE IT'S THE RIGHT THING UNDER THE FACTS, UNDER THE FACTS AS YOU FIND THEM TO BE, WHETHER OR NOT THERE WAS AN UNLAWFUL KILLING, WHETHER OR NOT THERE WAS MALICE, WHETHER OR NOT THERE WAS AFORETHOUGHT, OR WHETHER HE'S NOT GUILTY OF MURDER.

BASED ON WHAT YOU HAVE HEARD AND SEEN I ASK YOU TO DO WHAT IS RIGHT, BECAUSE IT'S RIGHT UNDER THE FACTS AND UNDER THE LAW, BECAUSE IT SPEAKS TRUTH, AND BECAUSE IT SPEAKS JUSTICE. WEIGH IT OUT AND RENDER A VERDICT THAT SPEAKS THAT

TRUTH AND JUSTICE TO JEFFERY CHRONISTER, TO MARIE CHRONISTER, TO THE STATE OF SOUTH CAROLINA, AND MORE IMPORTANTLY, TO YOURSELF -- TO YOURSELF? WHAT IS JUSTICE? WHAT IS TRUTH UNDER THESE FACTS AND UNDER THE LAW?

GO BACK THROUGH ALL THE TESTIMONY OF THE WITNESSES. MR. AUTEN'S DIAGRAM HE MADE. YOU CAN SEE WHERE THE KILLING OCCURRED, THE RED DOT WHERE HE PARKED, WHERE THE WHITE VAN WA PARKED, WHERE THE PATHS CROSSED, WHOSE PATH? JEFFERY CHRONISTER'S PATH AND MR. AUTEN. HE GOT INTO WHICH VAN? THI VAN. AND GOES TO NORTH CAROLINA AND IS CAUGHT, AND THEN ASKE MR. SHILLINGLAW, IS SHE DEAD? I DID KILL HER? SHE IS DEAD? IS SHE DEAD?

YES, SHE'S DEAD.

AND I SUBMIT TO YOU THAT THE ONLY TRUE VERDICT UNDER THE FACTS AND UNDER THE LAW IS GUILTY OF MURDER, GUILTY AS CHARGED. AND I ASK YOU TO DO YOUR DUTY AND BRING BACK A VERDICT THAT SPEAKS THAT TRUTH.

THE COURT: MR. SMITH, ON BEHALF OF THE DEFENSE.

MR. SMITH: MAY IT PLEASE THE COURT.

THE COURT: YES, SIR.

CLOSING ARGUMENTS BY MR. SMITH
ON BEHALF OF THE DEFENDANT:

I TOLD YOU WHEN I FIRST ADDRESSED YOU THAT YOU WOULD FIN THAT THIS WOULD BE A DIFFICULT SITUATION TO BE IN. IT IS NOT PLEASANT. IT DOES NOT MATTER ONE BIT WHO YOU ARE, WHERE YOU

ARE FROM, WHAT YOUR POLITICAL AFFILIATION IS, WHAT YOU MAY OR NOT FEEL ABOUT ANYTHING. WHAT MATTERS IS THAT THERE WAS AN OATH. AND YOUR DECISION ON THIS CASE COMES FROM WHAT YOU HAVE HEARD FROM THIS CHAIR.

IT DOESN'T MATTER WHAT YOU MAY THINK OF ME, WHETHER YOU LIKE MY LOOKS OR NOT. NOTHING MATTERS EXCEPT WHAT HAS BEEN PUT OUT IN FRONT OF YOU. IT DOES NOT MATTER WHAT MAY HAVE BEEN. IT DOES NOT MATTER WHAT MIGHT HAVE BEEN. BECAUSE WHEN YOU CHARGE MURDER, YOU HAVE TO PROVE IT. IT DOES NOT MATTER WHAT MIGHT HAVE BEEN OR WHAT MAY HAVE BEEN. IT IS WHAT COMES OUT OF THAT CHAIR.

IT IS NOT A MATTER OF SYMPATHY. IT IS NOT A MATTER OF GRAMMATICS. IT IS NOT A MATTER OF HOW MANY PEARLS OF WISDOM CAN DROP FROM MY MOUTH IN TALKING TO GROUPS OF PEOPLE.

WHAT DOES MATTER IS THE PROOF. IN LOOKING BACK OVER THIS CASE THE CHARGE THAT HAS BEEN PRESENTED TO YOU BY THE STATE IS THAT OF MURDER, THE CHARGE OF KILLING SOMEONE WITH MALICE AFORETHOUGHT BY USING A DEADLY WEAPON.

WHERE IS THE WEAPON? WHERE ARE THE BALLISTICS, THE BULLETS? WHERE IS THE IDENTIFICATION?

YOU HEARD THE TESTIMONY. YOU HEARD WHAT WAS SAID.

WHERE IS THE TESTIMONY OF ONE PERSON AS TO WHAT OCCURRED THERE? NOTHING.

THE STATE HAS A CERTAIN BURDEN IN COURTROOMS. THE STATE HAS TO PUT UP OR SHUT UP. IT HAS TO PROVE WHAT IT SAYS.

AND JUST LIKE I TOLD YOU WHEN I FIRST ADDRESSED YOU, IT'S KIND OF LIKE THE PROMISSORY NOTE. IF $100 IS DUE BUT AIN'T BUT 50 PAID, THEN THE NOTE AIN'T BEEN PAID IN FULL.

THERE IS NOT ONE IOTA OF EVIDENCE FROM ANY PERSON THAT THIS INCIDENT THAT OCCURRED WAS A KILLING WITH MALICE OR AN EVIL INTENT. NOT ONE BIT.

IT IS ALWAYS SAID WHEN SOMEONE IS DEAD. IT IS A TERRIBLE THING. IT IS ALWAYS SAD WHEN RELATIONSHIPS ARE IN TROUBLE. IT IS TRULY, TRULY AN AMERICAN TRAGEDY. THIS IS A TRAGEDY THAT AFFECTS MANY, MANY, MANY PEOPLE OTHER THAN THE TWO PEOPLE WHO HAD THE RELATIONSHIP.

WHAT EVIDENCE HAS BEEN SHOWN BY THE PROOF PUT UP BY THE STATE, WHATEVER THAT MAY BE? IT IS NOT A MURDER. IT ISN'T. IT IS NOT A MURDER. IT HAS NOT BEEN PROVEN.

YES, IT'S TOUGH TO SIT IN THAT BOX. IT'S TOUGH, BECAUSE YOUR DECISION CAN'T BE MADE ON WHAT MIGHT HAVE HAPPENED, WHAT IF, OR UPON POSSIBILITY. BECAUSE IF IT IS, THEN THE OATH IS NO GOOD.

COURTROOMS ARE CRUEL PLACES. COURTROOMS ARE COLD PLACES INDEED, SOMETIMES HEARTLESS MIGHT BE THE WORD. BUT IT IS THE TEST OF WHAT EVIDENCE THERE IS. IT'S THE CRUCIBLE, IT'S THE FLAME THROUGH WHICH IT'S PUT.

THIS IS NOT A MURDER. I'M NOT GOING TO STAND HERE AND REPEAT TESTIMONY TO YOU. YOU'VE HEARD THAT. AND HIS HONOR WILL CHARGE YOU WHAT THE LAW IS.

IN LOOKING BACK OVER WHAT HAS BEEN PRESENTED TO YOU, THE TESTIMONY WILL SHOW CERTAINLY AN EMOTIONAL PERSON. THE TESTIMONY WAS FROM THE OFFICER: WELL, I TOOK HIM TO THE BATHROOM AND HE ASKED ME -- ASKED ME THE QUESTION. IS SHE DEAD?

YOU HEARD IT. THE TESTIMONY FROM THE OFFICER WAS THAT A MAN WAS CRYING. WE THINK EMOTIONAL.

THERE WAS NO TESTIMONY OF COLD, CALCULATING MALICE.

THE STATE HAS A BURDEN TO BRING INTO COURT SUFFICIENT EVIDENCE TO SUPPORT A CONVICTION.

WHEN YOU CHARGE A CRIME AS SERIOUS AS MURDER AND THERE ISN'T A WEAPON, THERE ISN'T A FINGERPRINT, THERE ISN'T A BOOK, SOMETHING IS NOT RIGHT. WE'RE NOT TALKING PETTY MATTERS HERE. WE'RE TALKING MURDER. AND THE SOLE CRITERIA FOR YOUR DECISION IS: HAS IT BEEN PROVEN?

THIS IS NOT A PLEASANT PLACE. IT TAKES MORE THAN TO ASSERT THAT BECAUSE OF THIS, BECAUSE OF POOR MRS. CHRONISTER LYING ON THE GROUND, IT'S GOT TO BE MURDER. IT'S A TRAGEDY THAT MARIE CHRONISTER IS DEAD. BUT THE ISSUE IS: HAS MURDER BEEN PROVEN? THAT'S WHAT THE ISSUE IS.

I MAKE NO APOLOGIES FOR DEFENDING CLIENTS. I MAKE NO APOLOGIES FOR DEFENDING ANY KIND OF UNPOPULAR WHATEVER IT MIGHT BE BECAUSE THAT IS MY JOB. THAT IS THE OATH I HAVE TAKEN.

AND THIS PROCESS IS WHAT KEEPS THE AMERICAN SYSTEM THE

ENVY OF A LOT OF PLACES IN THE WORLD. IT IS NOT PERFECT. IT HAS NOT ALWAYS FUNCTIONED AND LIVED UP TO WHAT IT SAID IT WOULD DO. BUT IT IS THE BEST AROUND.

THE ISSUE HERE IS ONE OF: CAN THE STATE WITH ITS POWER, WITH ITS AUTHORITY, WITH ITS RESOURCES -- CAN IT SIMPLY MAKE CHARGE ON A PIECE OF PAPER AND SAY, I SAY IT IS SO BECAUSE IT'S A TRAGIC SITUATION AND IT'S TERRIBLE AND A WOMAN IS DEAD AND IT IS MURDER?

NO.

THE TEST IS THE PROOF. AGAIN, NO WEAPON. NO BULLETS. NO FINGERPRINTS. AND A WEEPING WAILING MAN THAT DOESN'T EVEN KNOW WHAT HAS HAPPENED. YOU HEARD THE TESTIMONY.

THIS IS NOT A GAME. THIS IS NOT SOMETHING LIKE WHAT YOU SEE ON TELEVISION. THIS IS THE HARD, COLD REALITY.

IF THE EVIDENCE IS NOT THERE, IF IT HAS NOT BEEN PROVEN, A CONVICTION SHOULD NOT BE. IT IS THAT SIMPLE. YOU VIEW WHAT HAS BEEN PRESENTED TO YOU; THAT IS WHAT IS IMPORTANT.

LOOK BACK AT A COUPLE OF OTHER ELEMENTS IN THIS CASE. THE IDENTITY. SIMILAR. SIMILAR; THAT IS NOT SUFFICIENT FOR MURDER CHARGE, A MURDER CONVICTION.

FIVE TIMES SHOT. WHERE ARE THE BULLETS? WHERE IS THE OBJECTIVE EVIDENCE? THEY'VE GOT CRIME LABS. THEY'VE GOT EVERY LAW ENFORCEMENT AGENCY AVAILABLE TO THEM, EVERY RESOURCE THAT YOU CAN CONCEIVE OF. AND WHERE IS IT?

YES, THIS IS A TRAGEDY. YES, RELATIONSHIPS SHOULD NOT

END IN BAD WAYS. BUT WHATEVER THAT THIS IS AND WHATEVER HAPPENED, THE STATE HAS NOT PROVEN TO YOU THAT A MURDER OCCURRED. THERE IS NO WITNESS TO WHAT OCCURRED.

WHATEVER YOUR DAY AND A HALF HERE HAS SHOWN YOU, IT IS NOT A MURDER. YOU CANNOT CONVICT BECAUSE YOU THINK IT MAY BE, IT PROBABLY WAS, OR POSSIBLY WAS BECAUSE THAT IS NOT WHAT OUR SYSTEM IS ABOUT, AND THAT IS NOT WHAT THE OATH IS FOR.

THEY ARRESTED HIM UP AT HIS HOUSE OR CLOSE TO HIS HOUSE UP IN GASTON COUNTY. WHAT KIND OF A CONVICTING FACT FOR MURDER IS THAT?

THERE ARE A LOT OF DIFFICULTIES IN THIS CASE. THERE ARE A LOT OF DISCREPANCIES IN THIS CASE, BECAUSE THE EVIDENCE HASN'T BEEN PRESENTED TO YOU; THAT IS THE BURDEN OF THE STATE.

A MURDER WITH NO WEAPON. A MURDER WITH NO BALLISTICS. A MURDER WITH NO POSITIVE IDENTIFICATION. A MURDER WITH NO FINGERPRINTS. A MURDER WITH NO WITNESSES AS TO WHAT OCCURRED. AND A MURDER WITH NO EVIDENCE OF MALICE, NO EVIDENCE OF COLD, CALCULATED, EVIL. NONE. NONE.

IF THIS EVIDENCE OR THE LACK OF IT CAUSES A QUESTION -- CAUSES YOU TO HESITATE ABOUT CONVICTING FOR MURDER, THAT IS A REASONABLE DOUBT. THAT IS AN IMPORTANT PART OF THIS SYSTEM. A PERSON CANNOT PROVE THEY DIDN'T DO SOMETHING. BUT THE GROUP OF PEOPLE THAT MAKE THE CHARGE, THE STATE, HAVE TO PROVE WHAT THEY CHARGE.

THIS IS A TROUBLING CASE. IT IS A TRAGEDY. IT IS

TROUBLING THAT THERE IS NOT THE PROOF HERE. BUT WHATEVER IT IS, IT IS NOT A MURDER.

IF THE EVIDENCE IS NOT SUFFICIENT FOR A CONVICTION, YOU MUST ACQUIT HIM. NOTHING HAS BEEN SHOWN TO YOU -- NOTHING, THAT WILL MAKE THIS A MURDER.

THE STATE CHOSE THE CHARGE. THEY PRESENTED THE INDICTMENT. AND THEY HAVE FAILED IN PROVING IT. THEY HAVE FAILED.

I SUBMIT TO YOU THAT AT THE END OF THIS PROCESS AFTER EVERYTHING IS IN, THAT THEIR CASE IS SIMILAR TO THE BABYLONIAN KING WHO HAD BEEN WEIGHED IN THE BALANCE AND FOUND WANTING. THE EVIDENCE ISN'T THERE.

I OFTEN WISH IN COURTROOMS THAT I COULD THINK OF THINGS TO SAY THAT WOULD BE SO PERSUASIVE TO PEOPLE THAT THEY WOULD JUST -- THAT I COULD BE THE MOST FAMOUS ORATOR IN THE WORLD; THAT WON'T HAPPEN. I OFTEN WISH THAT PERRY MASON OR HIS WRITERS WOULD COME IN HERE AND BE OF SOME ASSISTANCE TO ME. BUT I DO NOT LOOK FOR THAT TO HAPPEN.

ALL I CAN DO IS TO SUMMARIZE TO YOU. IT IS YOUR RESPONSIBILITY TO FOLLOW THE OATH AND WEIGH THIS EVIDENCE AND LOOK AT THIS EVIDENCE. AND IF IT HAS NOT BEEN PROVEN, THEN IT AIN'T BEEN PROVED. IT IS THAT SIMPLE.

A MURDER WITH NO WEAPON. NO PRINTS. NO BULLETS. NO IDENTIFICATION THAT'S FIRM, AND NO WITNESSES AS TO WHAT OCCURRED. SOMEONE IS DEAD, AND IT'S A TRAGEDY. BUT THAT'S

NOT A MURDER. AND YOU CAN'T MAKE THE QUANTUM LEAP TO ASSUME THAT IT IS. IT MUST BE PROVEN.

I DON'T ENVY YOU YOUR JOB. BUT THIS IS A COLD AND CRUEL AND FAIRLY PRECISE PLACE. TELEVISION DOESN'T APPLY HERE. COURTROOM SCENES FROM NOVELS DON'T APPLY IN THIS ROOM. THIS IS WHERE THE GUT WRENCHING PROCESS IS CARRIED OUT, AND THIS IS WHERE YOU HAVE TO LOOK AT THE EVIDENCE. AND IF THEY HAVEN'T PROVEN IT, YOU MUST ACQUIT.

WHATEVER THIS IS, IT IS NOT A MURDER.

THERE ISN'T A LOT MORE THAT I CAN SAY TO YOU. I ASK YOU TO VIEW THIS EVIDENCE. AND IF THERE IS A QUESTION IN YOUR MIND THAT MAKES YOU HESITATE, DO YOU WISH TO CONVICT OF A MURDER WITH NO WEAPON, NO BULLET, NO FINGERPRINTS, NO WITNESSES? IF THAT CAUSES YOU TO HESITATE, THAT IS A REASONABLE DOUBT.

THE STATE HAS FAILED. THEY HAVEN'T MET THEIR BURDEN. THE NOTE AIN'T PAID IN FULL. IT'S JUST THAT SIMPLE.

THIS IS A TRAGEDY, BUT MY CLIENT IS NOT GUILTY OF ANY MURDER. AND IT IS THAT SIMPLE.

THANK YOU.

(A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: MR. FOREMAN, THE NEXT THING WOULD BE FOR THE COURT TO CHARGE YOU ON THE LAW. YOU CAN SEE THE TIME IS 20 TO 1:00. THE ATTORNEYS ARGUED A LITTLE LESS TIME THAN WAS

ANTICIPATED, AND THAT'S FINE.

MY CHARGE SHOULD TAKE, I'D SAY AT LEAST 30, 35, 40 MINUTES FROM PAST EXPERIENCE WITH IT. I CAN DO ONE OF TWO THINGS. YOU ALL LOOK AROUND AND KIND OF ASSIST ME WITH IT. CAN GO AHEAD AND CHARGE YOU AND THEN HAVE THEM ORDER LUNCH AN HAVE IT IN THERE BY THE TIME YOU'RE READY TO EAT OR I CAN STO NOW, LET YOU GO TO LUNCH ON YOUR OWN, AND COME BACK A LITTLE EARLY, LET'S SAY A QUARTER TO 2:00, 1:30, QUARTER TO 2:00, AN CHARGE YOU THEN. LOOK AROUND AND TELL ME WHAT YOU WOULD LIKE FOR ME TO DO.

FOREMAN: GO AHEAD.

THE COURT: DOES THAT SUIT EVERYBODY? GO AHEAD?

(NO RESPONSE.)

THE COURT: LOOK AROUND, MAKE SURE EVERYBODY HAS GOT A GENERAL CONSENSUS TO DO THAT.

(PAUSE.)

FOREMAN: LOOKS LIKE EVERYBODY.

THE COURT: GO AHEAD?

FOREMAN: GO AHEAD.

THE COURT: OKAY. MADAM CLERK, IF YOU WOULD, WOULD YOU GO AHEAD AND MAKE ARRANGEMENTS TO BRING THEIR LUNCH IN FOR THEM PLEASE. ORDER 14 PLEASE, FOR THE TWO ALTERNATES TOO. EVEN THOUGH THEY WILL NOT BE SENT WITH THEM, THEY'LL HAVE THEIR LUNCH AS WELL. I KNOW IT'S GOING TO TAKE THAT LONG TO CHARGE THEM, SO YOU GO AHEAD. GET IT UP HERE AS SOON AS YOU

CAN.

(PAUSE.)

THE COURT: LADIES AND GENTLEMEN IN THE AUDIENCE, IF ANY OF YOU DESIRE TO LEAVE, YOU MAY DO SO AT THIS TIME.

(PAUSE.)

CHARGE OF THE COURT:

NOW, MR. FOREMAN, LADIES AND GENTLEMEN, IF YOU WILL GIVE ME YOUR ATTENTION. YOU HAVE FOLLOWED VERY PATIENTLY AND YOU HAVE LISTENED VERY ATTENTIVELY TO THE PRESENTATION OF THE EVIDENCE IN THIS CASE. AND ON BEHALF OF THE COURT AND THE CITIZENS OF YORK COUNTY AND THE STATE, I WANT TO THANK YOU FOR THAT, AND ALSO FOR THE ABLE PRESENTATION OF THEIR ARGUMENTS MADE BY SOLICITOR GRANT ON BEHALF OF THE STATE AND BY MR. SMITH ON BEHALF OF THE DEFENDANT.

IT NOW BECOMES THE DUTY OF THE TRIAL JUDGE, THAT BEING MYSELF, UNDER THE CONSTITUTION OF THIS STATE TO CHARGE AND INSTRUCT YOU, THE JURY, IN THE LAW WHICH IS APPLICABLE IN THIS CASE. AND THEN IT IS YOUR DUTY AS THE JURY, AND THE JURORS IN THIS CASE, TO ACCEPT AND APPLY THE LAW AS I, THE COURT, WILL NOW GIVE IT TO YOU OR STATE IT TO YOU.

AND AS JURORS THEN, LADIES AND GENTLEMEN, AS I OUTLINED TO YOU BEFORE THE CASE BEGAN, WHILE I AM THE JUDGE OF THE LAW, YOU ARE THE JUDGES OF THE FACTS. IT THEREFORE IS YOUR EXCLUSIVE DUTY TO DECIDE ALL OF THE ISSUES OF FACT IN THIS CASE, AND FOR THAT PURPOSE, TO DETERMINE THE EFFECT, THE

VALUE, THE WEIGHT, AND THE TRUTH OF THE EVIDENCE.

NOW, BOTH THE STATE OF SOUTH CAROLINA AND THIS DEFENDANT HAVE A RIGHT TO EXPECT THAT YOU, AS A JURY, WILL CONSCIENTIOUSLY CONSIDER AND EVALUATE THE EVIDENCE AND APPLY THE LAW OF THE CASE THERETO, TO THE END THAT BOTH THE STATE OF SOUTH CAROLINA AND THIS DEFENDANT WILL RECEIVE AND OBTAIN A FAIR AND IMPARTIAL TRIAL IN THIS CASE.

LADIES AND GENTLEMEN, THROUGHOUT THESE INSTRUCTIONS WHEN I USE THE WORD OR TERM DEFENDANT, I WILL BE REFERRING TO LYNN JEFFERY CHRONISTER.

THE STATE OF SOUTH CAROLINA BY THIS BILL OF INDICTMENT, WHICH I HOLD IN MY HAND AND WHICH I PREVIOUSLY TOLD YOU IS NO EVIDENCE, CHARGES THE DEFENDANT WITH TWO OFFENSES. COUNT ONE IS THE ALLEGATION CHARGING THE OFFENSE OF MURDER. AND IT SAYS OR ALLEGES THAT THE DEFENDANT DID IN YORK COUNTY ON OR ABOUT FEBRUARY THE 14TH OF 1992 FELONIOUSLY, WILFULLY, AND WITH MALICE AFORETHOUGHT KILL ONE MARIE GAIL CHRONISTER BY MEANS OF SHOOTING HER, AND THAT THE SAID VICTIM DIED AS A PROXIMATE RESULT THEREOF.

COUNT TWO OF THAT INDICTMENT CHARGES THE DEFENDANT THAT HE DID IN YORK COUNTY ON OR ABOUT FEBRUARY THE 14TH, 1992 WHILE IN POSSESSION OF A FIREARM OR WHILE VISIBLY DISPLAYING WHAT APPEARED TO BE A FIREARM COMMITTED THE CRIME CONTAINED IN COUNT ONE OF THIS INDICTMENT.

THOSE ARE THE TWO CHARGES MADE BY THE BILL OF INDICTMENT

TO WHICH THE DEFENDANT HAS ENTERED PLEAS OF NOT GUILTY.

NOW, THESE PLEAS OF NOT GUILTY BY THE DEFENDANT PLACES THE BURDEN OF PROOF ON THE STATE OF SOUTH CAROLINA TO PROVE BY EVIDENCE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT BEFORE YOU, THE JURY, CAN FIND THE DEFENDANT GUILTY OF ANY CHARGE.

THE DEFENDANT IS PRESUMED IN LAW INNOCENT OF THE CHARGES THAT ARE ALLEGED AND CONTAINED IN THE INDICTMENT.

LADIES AND GENTLEMEN, IT'S A CARDINAL AND A FUNDAMENTAL RULE OF THE LAW OF EVIDENCE THAT A DEFENDANT IRRESPECTIVE OF THE ENORMITY OF THE CHARGE MADE AGAINST HIM WILL ALWAYS BE PRESUMED INNOCENT OF THE CRIME FOR WHICH HE IS INDICTED UNLESS AND UNTIL THE GUILT OF THE DEFENDANT HAS BEEN PROVED BY EVIDENCE THAT SATISFIES YOU, THIS JURY, THE 12 OF YOU, OF HIS GUILT BEYOND A REASONABLE DOUBT AS TO THAT PARTICULAR CHARGE.

THE PRESUMPTION OF INNOCENCE, LADIES AND GENTLEMEN, IS NOT A MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. THE PRESUMPTION OF INNOCENCE IS A SUBSTANTIAL RIGHT TO WHICH EVERY ACCUSED PERSON IS ENTITLED.

OUR SUPREME COURT IN DESCRIBING THE PRESUMPTION OF INNOCENCE HAS DECLARED THAT IT IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF A DEFENDANT AND IT REMAINS WITH HIM AND ASSIGNS HIM TO THAT CLASS, THE INNOCENT, UNTIL THAT PRESUMPTIVE ROBE OF RIGHTEOUSNESS HAS BEEN STRIPPED FROM HIS PERSON BY EVIDENCE SATISFYING YOU, THE JURY, OF THE GUILT OF

THE DEFENDANT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE, LADIES AND GENTLEMEN, ACCOMPANIES THE DEFENDANT FROM THE TIME OF HIS APPEARANCE AND ARRAIGNMENT IN THIS COURTROOM AND IT CONTINUES WITH THE DEFENDANT THROUGHOUT EVERY STAGE OF THE TRIAL AND IT CONTINUE WITH THE DEFENDANT AFTER YOU RETIRE TO THE JURY ROOM TO DELIBERATE UPON YOUR VERDICT.

THE PRESUMPTION OF INNOCENCE CONTINUES IN EXISTENCE TO THE BENEFIT OF THE DEFENDANT UNTIL YOU, THE JURY, HAVE REACHE THE CONCLUSION THAT THE STATE OF SOUTH CAROLINA HAS PROVED TH GUILT OF THE DEFENDANT AS TO THAT PARTICULAR CHARGE BEYOND A REASONABLE DOUBT.

NOW, LADIES AND GENTLEMEN, THE STATE IS NOT REQUIRED TO PROVE THE GUILT OF A DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY DOUBT, BUT BEYOND A REASONABLE DOUBT.

A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

I CHARGE YOU THAT THE DEFENDANT IS ENTITLED TO EVERY REASONABLE DOUBT ARISING IN THE WHOLE CASE. IF UPON ANY ISSU OF FACT THAT IS ESSENTIAL TO A CONVICTION AND A VERDICT OF GUILTY YOU HAVE A REASONABLE DOUBT AS TO HOW THAT ISSUE SHOUL BE RESOLVED, IT WOULD BE YOUR DUTY TO RESOLVE THAT REASONABLE DOUBT IN FAVOR OF THE DEFENDANT.

A DEFENDANT, LADIES AND GENTLEMEN, IS NOT REQUIRED TO PROVE HIS INNOCENCE. BUT THE STATE OF SOUTH CAROLINA IS

REQUIRED IN LAW TO PROVE EVERY ESSENTIAL ELEMENT OF THE OFFENSE CHARGED AGAINST THE DEFENDANT BY EVIDENCE WHICH SATISFIES YOU, THE JURY, OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT BEFORE YOU CAN CONVICT THE DEFENDANT AND FIND HIM GUILTY.

NOW, LADIES AND GENTLEMEN, IF THEN UPON THE WHOLE CASE YOU HAVE A REASONABLE DOUBT AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT, HE IS ENTITLED TO THAT REASONABLE DOUBT AND WOULD BE ENTITLED TO AN ACQUITTAL AND A VERDICT OF NOT GUILTY.

BUT ON THE OTHER HAND, IF UPON THE WHOLE CASE YOU FIND THAT THE STATE OF SOUTH CAROLINA HAS PROVED BY EVIDENCE WHICH SATISFIES YOU, THE JURY, OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, THEN IN SUCH CIRCUMSTANCES IT WOULD EQUALLY BE YOUR DUTY TO CONVICT THE DEFENDANT AND FIND HIM GUILTY.

I REMIND YOU ONCE AGAIN THAT THE INDICTMENT WHICH I HAVE DEMONSTRATED AND SHOWN TO YOU, WHICH I HOLD IN MY HAND, IS NOT EVIDENCE, CANNOT BE CONSIDERED BY YOU, THE JURY, AS EVIDENCE. IT'S SIMPLY THE FORMAL WRITTEN INSTRUMENT THAT CONTAINS THE CHARGE OR CHARGES MADE AGAINST THE DEFENDANT AND IT SERVES AS A FORMAL DOCUMENT BY WHICH THIS CASE IS PROCESSED INTO THIS COURTROOM.

DURING THIS TRIAL, LADIES AND GENTLEMEN, EACH OF US, THE JURY AND THE JUDGE, EACH OF US HAVE CERTAIN DUTIES TO PERFORM UNDER THE CONSTITUTION OF THIS STATE. AS THE TRIAL JUDGE IT

IS MY RESPONSIBILITY TO PRESIDE OVER THIS TRIAL. I ALSO HAVE THE DUTY TO RULE UPON OR PASS UPON THE ADMISSIBILITY OF THE EVIDENCE THAT HAS BEEN OFFERED DURING THE PROGRESS OF THE TRIAL.

AS THE JURY, YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU; THAT IS, THE SWORN TESTIMONY PRESENTED UNDER OATH FROM THE WITNESS STAND, TOGETHER WITH THE EXHIBITS THAT HAVE BEEN ADMITTED INTO THE RECORD, AND ANY STIPULATIONS OF FACT THAT HAVE BEEN ENTERED INTO BY COUNSEL FOR THE STATE, COUNSEL FOR THE DEFENDANT.

NOW, I REMIND YOU, YOU ARE TO DISREGARD AND DISABUSE FRO YOUR MIND ANY TESTIMONY THAT I HAVE ORDERED STRICKEN FROM THE RECORD OF THIS CASE DURING THE PROGRESS OF THIS TRIAL I THER BE ANY.

AS THE TRIAL JUDGE I ALSO HAVE THE DUTY TO CHARGE YOU TH LAW, THE APPLICABLE LAW, THAT APPLIES IN THIS CASE. I, AS TH PRESIDING JUDGE, AM THE SOLE JUDGE OF THE LAW. AND IT IS YOU DUTY AS THE JURY TO ACCEPT AND APPLY THE LAW AS I WILL NOW STATE IT TO YOU.

AND I REMIND YOU THAT IF YOU HAVE A PRECONCEIVED IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE IN THIS CASE AND IT SHOULD NOT AGREE WITH WHAT I NOW TELL YOU THE LAW IS, YOU ARE OBLIGATED UNDER YOUR OATH AS A JUROR TO ABANDON SUCH PRECONCEPTION ON YOUR PART BECAUSE YOU ARE SWORN, YOU HAVE TAKEN AN OATH, TO ACCEPT THE LAW PRECISELY AS I WILL STATE IT

TO YOU.

LADIES AND GENTLEMEN, IN EVERY CASE THAT'S TRIED IN THIS COURTROOM BEFORE A JUDGE AND BEFORE A JURY, THAT IS WHAT IS PROVIDED BY THE CONSTITUTION. THE JURY ARE THE SOLE EXCLUSIVE JUDGES OF THE FACTS. THE COURT IS THE JUDGE OF THE LAW.

IN THAT REGARD I WILL TELL YOU THAT THE CONSTITUTION OF OUR STATE CLEARLY PROVIDES THAT A TRIAL JUDGE SUCH AS MYSELF SHALL NOT INTIMATE, STATE, COMMENT UPON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN THE CASE.

THEREFORE, LADIES AND GENTLEMEN, SINCE YOU ARE THE SOLE JUDGES OF THE FACTS IN THIS CASE, YOU SHOULD NOT AND YOU ARE NOT TO INFER FROM ANYTHING THAT I'VE SAID DURING THE PROGRESS OF THIS TRIAL, IN MY RULING UPON THE ADMISSIBILITY OF THE EVIDENCE OR OTHERWISE, OR ANYTHING THAT I SAY TO YOU NOW IN THE COURSE OF THIS CHARGE TO YOU, THAT I HAVE AN OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN THE CASE; THAT IS FOR THE JURY TO DETERMINE.

AS JURORS, THEN, LADIES AND GENTLEMEN, IT IS YOUR DUTY TO DETERMINE AS I HAVE STATED TO YOU THE EFFECT, THE VALUE, THE WEIGHT, AND THE TRUTH OF THE EVIDENCE WHICH HAS BEEN PRESENTED DURING THE COURSE OF THIS TRIAL.

HOW DO YOU DO THAT? NECESSARILY, LADIES AND GENTLEMEN, THAT MEANS THAT YOU MUST ASSESS THE CREDIBILITY OF THE WITNESSES WHO HAVE TESTIFIED IN THE CASE.

CREDIBILITY IS SIMPLY A LEGALISTIC TERM WHICH SIMPLY MEANS BELIEVABILITY. IT BECOMES THEN YOUR DUTY TO ANALYZE AN TO EVALUATE THE EVIDENCE AND TO DETERMINE THAT EVIDENCE WHICH CONVINCES YOU OF ITS TRUTH.

I CHARGE YOU THAT IN DETERMINING THE QUESTION OF THE CREDIBILITY OR THE BELIEVABILITY OF THE WITNESSES, YOU MAY BELIEVE ONE WITNESS AS AGAINST SEVERAL OR JUST THE OTHER WAY AROUND. YOU MAY BELIEVE A PORTION OR A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PORTION OF THAT SAME WITNESS' TESTIMONY. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR YOU MAY REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY.

YOU MAY ALSO CONSIDER SUCH THINGS AS WHETHER A WITNESS HAS EXHIBITED ANY INTEREST, ANY BIAS, OR ANY PREJUDICE IN THE CASE. YOU MAY ALSO CONSIDER WHAT WE CALL THE DEMEANOR OF THE WITNESS. THAT SIMPLY MEANS THE APPEARANCE OF THE WITNESS UPON THE WITNESS STAND.

AND YOU MAY CONSIDER SUCH THINGS AS OPPORTUNITY FOR KNOWLEDGE CONCERNING THOSE THINGS ABOUT WHICH A WITNESS TESTIFIED. IN OTHER WORDS, DID THE WITNESS HAVE THE ABILITY TO KNOW OR SEE THE THINGS THAT THEY SAID THEY KNEW OR SAW?

NOW, LADIES AND GENTLEMEN, YOU DO NOT EXERCISE -- THESE CONSIDERATIONS YOU DO NOT EXERCISE ARBITRARILY, BUT IF IN YOUR GOOD JUDGMENT THERE IS SOUND REASON IN THE RECORD OF THIS CASE FOR SO DOING -- BECAUSE YOU HAVE BUT ONE OBJECTIVE, AND

THAT IS TO FIND THE TRUTH.

NOW, LADIES AND GENTLEMEN, IN DOING THIS, THE LAW SIMPLY REQUIRES THAT YOU EXERCISE YOUR MENTAL PROCESSES AND DETERMINE WHAT YOU CONSIDER TO BE TRUE. THE LAW SIMPLY REQUIRES THAT YOU EXERCISE YOUR GOOD, COMMON SENSE AND JUDGMENT, YOUR SENSE OF LOGIC AND REASON, AND YOUR EXPERIENCES IN LIFE.

YOU THEN APPLY THESE ATTRIBUTES OF ABILITY TO THE EVIDENCE WHICH YOU, THE JURY, HAVE DETERMINED TO BE THE TRUTHFUL EVIDENCE AND TO THESE TRUE STATED FACTS AS DETERMINED BY YOU, THE JURY, YOU TAKE AND APPLY THE LAW WHICH I WILL STATE TO YOU AS TO THESE OFFENSES AND THUS ARRIVE AT A TRUE VERDICT IN THIS CASE.

NOW, LADIES AND GENTLEMEN, THE DEFENDANT, AS I TOLD YOU, IS CHARGED WITH TWO OFFENSES. THE FIRST CHARGE IS MURDER.

MURDER IN THE CODE OF LAW FOR THE STATE OF SOUTH CAROLINA UNDER SECTION 16-3-10, WHICH I HOLD UP FOR YOU, READS THAT MURDER IS DEFINED AS THE KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT EITHER EXPRESS OR IMPLIED.

NOW, MURDER THEN, LADIES AND GENTLEMEN, IS THE UNLAWFUL KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT EITHER EXPRESSED OR IMPLIED.

HENCE, IN ORDER TO CONVICT A PERSON OF MURDER THE STATE OF SOUTH CAROLINA MUST NOT ONLY PROVE THE KILLING OF THE DECEASED BY THE DEFENDANT, BUT THAT IT WAS DONE WITH MALICE AFORETHOUGHT. AND SUCH PROOF MUST BE BEYOND A REASONABLE

DOUBT.

MALICE AFORETHOUGHT IS AN ESSENTIAL ELEMENT IN THE CRIME OF MURDER.

WHAT IS MALICE? MALICE IS DEFINED IN THE LAW OF HOMICIDE AS A TERM OF ART; THAT IS, A TECHNICAL TERM IMPORTING WICKEDNESS AND EXCLUDING JUST CAUSE OR LEGAL EXCUSE. IT IS SOMETHING WHICH SPRINGS FROM WICKEDNESS, FROM DEPRAVITY, FROM A DEPRAVED SPIRIT, FROM A HEART DEVOID OF SOCIAL DUTY, AND FATALLY BENT ON MISCHIEF.

THE WORDS EXPRESSED OR IMPLIED MALICE DO NOT MEAN DIFFERENT KINDS OF MALICE, BUT MERELY THE MANNER IN WHICH THE ONLY KIND OR KIND OF MALICE KNOWN TO THE LAW MAY BE SHOWN TO EXIST; THAT IS, EITHER BY DIRECT EVIDENCE OR BY INFERENCE.

MALICE MAY BE EXPRESSED AS WHERE PREVIOUS THREATS OF VENGEANCE OR LYING IN WAIT OR OTHER CIRCUMSTANCES SHOW DIRECTLY THAT AN INTENT TO KILL WAS ENTERTAINED.

MALICE MAY BE INFERRED WHERE THOUGH NO EXPRESSED INTENT TO KILL IS PROVED BY DIRECT EVIDENCE, IT MAY BE INFERRED FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED IN THE RECORD OF THE CASE.

MALICE MAY BE INFERRED FROM THE WILFUL, DELIBERATE, AND INTENTIONAL DOING OF AN UNLAWFUL ACT WITHOUT JUST CAUSE OR LEGAL EXCUSE. IN OTHER WORDS, IN ITS GENERAL SIGNIFICATION MALICE MEANS THE DOING OF A WRONGFUL ACT INTENTIONALLY WITHOUT JUSTIFICATION OR LEGAL EXCUSE.

NOW, LADIES AND GENTLEMEN, AN INFERENCE OF MALICE MAY ARISE WHERE THE STATE PROVES THAT THE DEED IS DONE OR THE ACT IS DONE WITH A DEADLY WEAPON, SUCH AS A KNIFE OR A PISTOL OR SOME WEAPON OF THAT NATURE WHICH WHEN USED WITH THE INTENT TO INJURE ANOTHER PARTY IS CALCULATED TO PRODUCE DEATH OR SERIOUS BODILY HARM.

I CHARGE YOU THAT IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTION, THIS INFERENCE WOULD BE SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU, THE JURY, ALONG WITH THE OTHER EVIDENCE IN THE CASE. AND YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE.

AND I REMIND YOU BUT EVEN IF FACTS PROVED ARE SUFFICIENT TO RAISE AN INFERENCE OF MALICE, THAT INFERENCE WOULD BE SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU, THE JURY, ALONG WITH ALL THE OTHER EVIDENCE IN THE CASE. AND YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE AS TO WHETHER OR NOT MALICE HAS BEEN PROVED BEYOND A REASONABLE DOUBT.

THE BURDEN IS ON THE STATE OF SOUTH CAROLINA TO PROVE MALICE BY EVIDENCE SATISFYING THE JURY BEYOND A REASONABLE DOUBT. AND IT WILL BE OBSERVED, LADIES AND GENTLEMEN, THAT THERE MUST BE MALICE AFORETHOUGHT.

AND WHILE THE LAW DOES NOT REQUIRE THAT MALICE SHALL EXIST FOR ANY PARTICULAR LENGTH OF TIME BEFORE THE COMMISSION

OF THE ACT, IT MUST BE AN AFORETHOUGHT. THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT PRODUCING THE FATAL RESULT.

AND I TELL YOU THE STATE IS NOT REQUIRED TO PROVE A MOTIVE FOR A HOMICIDE.

LADIES AND GENTLEMEN, THE STATE OF SOUTH CAROLINA ALSO CHARGES THE DEFENDANT WITH VIOLATION OF SECTION 16-23-490. I SAYS THAT ANY PERSON WHO IS CONVICTED OF COMMITTING OR ATTEMPTING TO COMMIT A VIOLENT CRIME AS DEFINED UNDER SECTION 16-1-60 IF THE PERSON IS IN POSSESSION OF A FIREARM OR VISIBL DISPLAYS WHAT APPEARS TO BE A FIREARM DURING THE COMMISSION O A VIOLENT CRIME, HE IS IN VIOLATION OF THAT LAW.

AND AS USED IN THAT STATUTE A FIREARM MEANS ANY MACHINE GUN, AUTOMATIC RIFLE, REVOLVER, PISTOL, OR ANY WEAPON WHICH WILL OR IS DESIGNED TO OR MAY READILY BE CONVERTED TO EXPEL A PROJECTILE.

16-1-60 SAYS THAT FOR PURPOSES OF DEFINITION UNDER THE SOUTH CAROLINA LAW, A VIOLENT CRIME INCLUDES THE OFFENSE OF MURDER.

SO IN ORDER FOR YOU TO FIND THE DEFENDANT GUILTY OF THAT SECTION, YOU WOULD HAVE TO FIRST FIND THE DEFENDANT HAD COMMITTED A VIOLENT CRIME. AND IN THIS CASE IT IS ALLEGED TO BE THE CRIME OF MURDER.

SO IF YOU HAVE FOUND THE DEFENDANT DID NOT COMMIT THE CRIME OF MURDER, YOU WOULD STOP RIGHT THEN AND ENTER A VERDIC

OF NOT GUILTY.

IF YOU FOUND THE DEFENDANT HAD COMMITTED THE CRIME OF MURDER, THEN YOU WOULD NEXT DETERMINE IF IT WAS COMMITTED WHILE IN POSSESSION OR VISIBLY DISPLAYING OF A FIREARM AS DEFINED IN THIS STATUTE, MEANING ANY MACHINE GUN, AUTOMATIC RIFLE, REVOLVER, PISTOL, OR ANY OTHER WEAPON WHICH WILL OR IS DESIGNED TO OR MAY READILY BE CONVERTED TO EXPEL A PROJECTILE; THAT IS COUNT TWO OF THE INDICTMENT.

LADIES AND GENTLEMEN, THERE ARE TWO KINDS OF EVIDENCE: DIRECT EVIDENCE AND INDIRECT EVIDENCE. WE ALSO REFER TO THE INDIRECT EVIDENCE AS BEING CALLED CIRCUMSTANTIAL EVIDENCE.

IN ORDER THAT YOU UNDERSTAND THESE TWO TYPES OR KINDS OF EVIDENCE, I'M GOING TO DEFINE AND EXPLAIN THEM TO YOU FOR FACTS IN A CASE MAY BE PROVED BY DIRECT EVIDENCE OR BY CIRCUMSTANTIAL EVIDENCE. AND FACTS MAY BE PROVED BY A COMBINATION OF BOTH DIRECT AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE OF A FACT, LADIES AND GENTLEMEN, MAY BE PROVED BY THE TESTIMONY OF A WITNESS WHO PERCEIVES THE EXISTENCE OF A FACT BY MEANS OF HIS OR HER OWN SENSES, SUCH AS FOR EXAMPLE WHERE A PERSON SEES A CRIME COMMITTED AND COMES INTO COURT AND TESTIFIES TO WHAT HE OR SHE SAW. THIS IS FREQUENTLY CALLED EYEWITNESS TESTIMONY. IN OTHER WORDS, IT COMES FROM A PERSON WHO BY HIS OR HER OWN SENSES HAD ACTUAL, PERSONAL KNOWLEDGE THAT AN EVENT HAD OCCURRED. IT MAY BE FROM THE USE OF ANY OF OUR SENSES -- SIGHT, SMELL, TASTE, SOUND, OR

FEELING -- WITHOUT THE AID OF ANY INFERENCES.

NOW, THAT'S DIRECT EVIDENCE.

WHAT IS CIRCUMSTANTIAL EVIDENCE WE CALL ALSO INDIRECT EVIDENCE? CIRCUMSTANTIAL EVIDENCE IS TESTIMONY OF SURROUNDIN FACTS FROM WHICH ONE MAY OR MAY NOT INFER THAT AN EVENT OR FACT HAS OCCURRED.

TO STATE THAT ANOTHER WAY, CIRCUMSTANTIAL EVIDENCE MEANS THE PROOF OF SOME OTHER FACT OR FACTS WHICH EITHER TAKEN SINGLY OR COLLECTIVELY, THE EXISTENCE OF A PARTICULAR FACT IN ISSUE MAY BE INFERRED AS A NECESSARY CONSEQUENCE. WHILE CERTAIN FACTS ARE KNOWN THROUGH ONE OR MORE OF YOUR FIVE SENSES -- FOR EXAMPLE, THE SENSE OF SIGHT, SMELL, HEARING, TASTE, OR TOUCH -- CAN GIVE RISE TO A LOGICAL INFERENCE THAT OTHER FACTS DO IN FACT EXIST WITHOUT DIRECTLY PROVING THOSE FACTS.

THE STATE IN ITS PROOF OF ITS CASE MAY RELY, LADIES AND GENTLEMEN, ON EITHER OF THESE TYPES, EITHER DIRECT OR INDIRECT, CIRCUMSTANTIAL, OR A COMBINATION.

NOW, WITH REGARD TO DIRECT EVIDENCE, THAT EVIDENCE, IT MUST BE SUCH SO AS TO PROVE THE GUILT OF THE ACCUSED, THE DEFENDANT BEYOND A REASONABLE DOUBT.

INSOFAR AS CIRCUMSTANTIAL EVIDENCE OR INDIRECT EVIDENCE, IT'S GOOD PROVIDED IT MEETS THE TEST REQUIRED BY LAW. IF IN CASE THERE IS NO DIRECT EVIDENCE AS TO THE CRIME IN QUESTION AND THEN THE STATE RELIES WHOLLY ON CIRCUMSTANTIAL EVIDENCE,

THIS MEANS THAT THE STATE THEN RELIES UPON INFERENCES. THE LAW THEREFORE REQUIRES THAT IN ADDITION TO THE REQUIREMENT THAT THE EVIDENCE MUST ESTABLISH TO YOUR SATISFACTION GUILT BEYOND A REASONABLE DOUBT, THE LAW ALSO REQUIRES THAT WHEN AND TO THE EXTENT THAT THE STATE RELIES ON CIRCUMSTANTIAL EVIDENCE, THE STATE MUST PROVE ALL THE CIRCUMSTANCES THEY RELY ON BEYOND A REASONABLE DOUBT.

THE CIRCUMSTANCES MUST BE WHOLLY AND IN EVERY PARTICULAR CONSISTENT EACH WITH THE OTHER AND THE CIRCUMSTANCES MUST POINT CONCLUSIVELY TO THE GUILT OF THE ACCUSED TO THE EXCLUSION OF EVERY OTHER REASONABLE HYPOTHESES; THAT IS, THE CIRCUMSTANCES MUST BE ABSOLUTELY INCONSISTENT WITH ANY OTHER REASONABLE HYPOTHESES OTHER THAN THE GUILT OF THE ACCUSED.

THEREFORE, LADIES AND GENTLEMEN, THE CONSIDERATION OF CIRCUMSTANTIAL EVIDENCE, THE JURY MUST SEE SOME OTHER REASONABLE EXPLANATION OTHER THAN THE GUILT OF THE ACCUSED. AND IF SUCH REASONABLE EXPLANATION CAN BE FOUND, THE JURY CANNOT CONVICT ON SUCH CIRCUMSTANTIAL EVIDENCE.

THEREFORE, IF THE JURY MAKES A DETERMINATION THAT SUCH CIRCUMSTANTIAL EVIDENCE DOES NOT MEET THESE TESTS, THEN YOU WOULD IN SUCH A CASE SET ASIDE SUCH CIRCUMSTANTIAL EVIDENCE AND DISREGARD IT AND FIND THE DEFENDANT NOT GUILTY UNLESS THE STATE OF SOUTH CAROLINA HAS PROVED BY DIRECT EVIDENCE OR THROUGH A COMBINATION OF DIRECT AND CIRCUMSTANTIAL EVIDENCE -- OF COURSE UNDER THE SAME BURDEN OF PROOF -- THE GUILT OF THE

DEFENDANT BEYOND A REASONABLE DOUBT.

I FURTHER INSTRUCT YOU THAT THE MERE FACT THAT THE CIRCUMSTANCES ARE STRONGLY SUSPICIOUS AND THE GUILT OF THE DEFENDANT IS PROBABLE IS NOT SUFFICIENT TO SUSTAIN A CONVICTION BECAUSE THE PROOF OFFERED BY THE STATE WHEN TO THE EXTENT IT RELIES UPON CIRCUMSTANTIAL EVIDENCE MUST EXCLUDE EVERY OTHER REASONABLE HYPOTHESES EXCEPT THE GUILT OF THE DEFENDANT, AND THAT SUCH PROOF MUST SATISFY YOU, THE JURY, BEYOND A REASONABLE DOUBT.

MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, I INSTRUC YOU NOW AND I EMPHASIZE TO YOU THAT THE EXERCISE OF THE RIGHT OF A DEFENDANT IN THE TRIAL OF A CRIMINAL CASE TO TESTIFY IN HIS OWN BEHALF IS NOT A FACT TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS AND IN YOUR CONSIDERATION ON THE QUESTION OF THE GUILT OR INNOCENCE OF THE ACCUSED, THE DEFENDANT, IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER AGAINST THE DEFENDANT OR MITIGATE AGAINST HIM IN ANY RESPECT WHATSOEVER.

A DEFENDANT, LADIES AND GENTLEMEN, AN ACCUSED PERSON HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT. AND THE ASSERTION OF SUCH CONSTITUTIONAL RIGHT CANNOT AND MUST NOT BE CONSIDERE BY YOU, THE JURY, IN YOUR DELIBERATIONS.

UNDER YOUR OATH AS A JURY THEN, YOU ARE TO REACH NO INFERENCE AND TO DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT A DEFENDANT IN THIS CASE DID NOT HIMSELF TESTIFY.

THE ELECTION OF THIS DEFENDANT TO NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM. THE ELECTION OF THIS DEFENDANT TO NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM.

THE BURDEN OF PROOF AS I HAVE STATED TO YOU IS UPON THE STATE OF SOUTH CAROLINA. THE DEFENDANT IS PRESUMED TO BE INNOCENT. IT IS NOT INCUMBENT UPON AN ACCUSED PERSON TO PROVE HIS OR HER INNOCENCE. THE BURDEN OF PROOF REMAINS UPON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT. AND THE EXERCISE, ELECTION, OF A DEFENDANT TO NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU, THE JURY, IN DETERMINING THE GUILT OR INNOCENCE OF THE DEFENDANT IN THIS CASE.

LADIES AND GENTLEMEN, ONE OF THE ISSUES IN THIS CASE IS THE IDENTIFICATION OF THE DEFENDANT AS THE PERSON WHO COMMITTED THE CRIME.

THE STATE OF SOUTH CAROLINA HAS THE BURDEN OF PROVING THE IDENTITY BEYOND A REASONABLE DOUBT. I TELL YOU THAT IT IS NOT ESSENTIAL THAT A WITNESS HIMSELF OR HERSELF BE FREE FROM DOUBT AS TO THE CORRECTNESS OF HIS OR HER STATEMENT.

HOWEVER, YOU, THE JURY, MUST BE SATISFIED BEYOND A REASONABLE DOUBT OF THE ACCURACY OF THE IDENTIFICATION OF THE DEFENDANT AS THE PERPETRATOR OF THE CRIME BEFORE YOU MAY CONVICT HIM.

IF YOU ARE NOT CONVINCED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS THE PERSON WHO COMMITTED THE CRIME, YOU MUST

FIND THE DEFENDANT NOT GUILTY.

IDENTIFICATION TESTIMONY, LADIES AND GENTLEMEN, IS AN EXPRESSION OF BELIEF OR IMPRESSION BY A WITNESS. ITS VALUE DEPENDS ON THE OPPORTUNITY THAT THE WITNESS HAD TO OBSERVE TH OFFENDER AT THE TIME OF THE OFFENSE AND TO MAKE A RELIABLE IDENTIFICATION LATER.

IN DETERMINING OR APPRAISING THE IDENTIFICATION TESTIMON OF A WITNESS, THERE ARE MAY THINGS THAT YOU MAY AND SHOULD CONSIDER. ONE IS, ARE YOU CONVINCED THAT THE WITNESS HAD THE CAPACITY AND AN ADEQUATE OPPORTUNITY TO OBSERVE THE OFFENDER? SUCH AS, WHETHER THE WITNESS HAD AN ADEQUATE OPPORTUNITY TO OBSERVE THE OFFENDER AT THE TIME THE OFFENSE WAS COMMITTED WILL BE AFFECTED BY SUCH MATTERS AS HOW LONG OR SHORT A TIME WAS AVAILABLE; HOW FAR OR HOW CLOSE THE WITNESS WAS; HOW GOOD WERE THE LIGHTING CONDITIONS; WHETHER THE WITNESS HAD THE OCCASION TO SEE OR KNOW THE PERSON IN THE PAST. ARE YOU SATISFIED THAT ANY IDENTIFICATION MADE BY A WITNESS SUBSEQUENT TO THE OFFENSE WAS THE PRODUCT OF HIS OR HER OWN RECOLLECTION?

YOU MAY ALSO TAKE INTO ACCOUNT BOTH THE STRENGTH OF THE IDENTIFICATION AND THE CIRCUMSTANCES UNDER WHICH THE IDENTIFICATION WAS MADE. YOU MAY ALSO CONSIDER IF THE IDENTIFICATION BY THE WITNESS MAY HAVE BEEN INFLUENCED BY THE CIRCUMSTANCES UNDER WHICH THE DEFENDANT WAS PRESENTED TO THE WITNESS FOR IDENTIFICATION.

YOU SHOULD SCRUTINIZE THE IDENTIFICATION WITH GREAT CARE. YOU MAY ALSO CONSIDER THE LENGTH OF TIME THAT ELAPSED BETWEEN THE OCCURRENCE OF THE CRIME AND THE NEXT OPPORTUNITY OF THE WITNESS TO SEE THE ALLEGED OFFENDER AS A FACTOR BEARING ON THE RELIABILITY OF THE IDENTIFICATION.

YOU MAY ALSO TAKE INTO ACCOUNT WHETHER OR NOT AN IDENTIFICATION WAS MADE BY PICKING A PERSON OUT OF A GROUP OF SIMILAR INDIVIDUALS AS TO WHETHER THAT IS GENERALLY MORE RELIABLE THAN ONE WHICH RESULTS FROM THE PRESENTATION OF A PERSON ALONE TO THE WITNESS.

YOU MAY TAKE INTO ACCOUNT ANY OCCASION TO WHICH THE WITNESS FAILED TO MAKE AN IDENTIFICATION OF THE DEFENDANT OR MAKE AN IDENTIFICATION THAT WAS INCONSISTENT WITH HIS OR HER IDENTIFICATION AT THE TRIAL.

FINALLY, YOU MAY CONSIDER THE CREDIBILITY OF EACH IDENTIFICATION WITNESS IN THE SAME WAY AS ANY OTHER WITNESS. CONSIDER WHETHER HE OR SHE IS TRUTHFUL, CONSIDER WHETHER HE OR SHE HAD A CAPACITY AND THE OPPORTUNITY TO MAKE A RELIABLE OBSERVATION ON THE MATTER COVERED BY HIS OR HER TESTIMONY.

AGAIN I EMPHASIZE TO YOU, THE BURDEN OF PROOF IS ON THE STATE OF SOUTH CAROLINA. AND IT EXTENDS TO EVERY ELEMENT OF THE CRIME CHARGED, AND THAT SPECIFICALLY INCLUDES THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THE IDENTITY OF THE DEFENDANT AS THE PERSON WHO COMMITTED THE CRIME TO WHICH HE IS NOW CHARGED.

LADIES AND GENTLEMEN, DURING THE COURSE OF THE TRIAL WE HAVE HAD WHAT WE CALL EXPERT TESTIMONY IN THE CASE. AND THAT REGARD I TELL YOU THAT ORDINARILY A WITNESS CANNOT TESTIFY AS TO THEIR OPINION OF A MATTER. THE WITNESS IS RESTRICTED TO TESTIFY AS TO WHAT THEY SAW OR OBSERVED THEMSELVES.

AN EXCEPTION TO THAT RULE IS WHERE A WITNESS IS QUALIFIE AS AN EXPERT. IN SUCH AN EVENT WHEN A WITNESS IS QUALIFIED A AN EXPERT, THAT WITNESS MAY GIVE AN OPINION.

NOW, INSOFAR AS CONCERNS THE OPINION EVIDENCE, THAT IS T SAY THE EFFECT OF ANY EXPERT WHICH IS A MATTER OF OPINION, YOU, THE JURY, ARE NOT TO PLACE ANY OPINIONS AS ABOVE THE IDE OF YOUR OWN OPINIONS ON THE SUBJECT. BUT YOU ARE TO CONSIDER THE OPINIONS OF EXPERTS, ALONG WITH THE OTHER EVIDENCE THE CASE IN FORMING YOUR OWN CONCLUSIONS.

THE OPINIONS OF EXPERTS ARE ONLY ADMITTED IN EVIDENCE FO WHATEVER LIGHT THEY MAY THROW UPON THE QUESTION BEFORE THE JURY. AND THE JURY IS TO CONSIDER THOSE OPINIONS JUST AS ANY OTHER EVIDENCE IN THE CASE IN FORMING YOUR OWN OPINIONS.

MR. FOREMAN, LADIES AND GENTLEMEN, YOU'RE NOT PARTISANS OR ADVOCATES FOR THE STATE OF SOUTH CAROLINA OR THIS DEFENDANT. YOU DON'T SERVE AS JURORS TO REWARD YOUR FRIENDS OR PUNISH YOUR ENEMIES. OBVIOUSLY, IF THAT WERE OUR SYSTEM O JUSTICE, IT WOULD BE A PERVERTED SYSTEM OF JUSTICE AND WOULD BE INTOLERABLE TO ALL.

YOU'VE BEEN SELECTED BY BOTH THE STATE OF SOUTH CAROLINA

AND THIS DEFENDANT AS FAIR AND IMPARTIAL JURORS. IT THEREFORE THEN IS YOUR DUTY BY YOUR JOINT DELIBERATIONS TO DETERMINE THE TRUTH IN THIS CASE, GIVING TO THE DEFENDANT THE BENEFIT OF EVERY REASONABLE DOUBT ON EACH AND EVERY ISSUE, THEN TO THE FACTS WHICH YOU DETERMINE TO BE TRUE, YOU THEN TAKE AND APPLY THE LAW WHICH I HAVE GIVEN TO YOU, AND THUS ARRIVE AT A VERDICT WHICH DOES SPEAK THE TRUTH IN THIS CASE.

FOR THE WORD VERDICT, WHICH HAS A LATIN DERIVATIVE, MEANS A TRUE SAYING. AND WHEN YOU HAVE ACCOMPLISHED THESE RESPONSIBILITIES, YOU WILL HAVE SATISFIED YOUR OATH AS A JUROR AND YOU WILL HAVE DISCHARGED YOUR JURY AS A JURY TO THIS COURT.

NOW, LADIES AND GENTLEMEN, I'M GOING TO INSTRUCT YOU AS TO THE POSSIBLE FORMS OF THE VERDICT IN THIS CASE.

MR. FOREMAN, I'VE WRITTEN THEM ON THIS WHITE SHEET OF PAPER WHICH SAYS, STATE OF SOUTH CAROLINA, THE STATE VERSUS JEFFERY L. CHRONISTER, 92-GS-46-1224. YOU WILL NOTE THAT COINCIDES WITH THE TITLE ON THE INDICTMENT. THE POSSIBLE FORMS OF THE VERDICT: AS TO COUNT ONE THERE ARE TWO POSSIBLE FORMS OF THE VERDICT. COUNT ONE IS THE CHARGE OF MURDER.

IF THE STATE OF SOUTH CAROLINA HAS FAILED TO PROVE THE GUILT OF THIS DEFENDANT BEYOND A REASONABLE DOUBT, YOUR VERDICT WILL BE THE TWO WORDS NOT GUILTY. SEE, NUMBER ONE, COUNT ONE, NOT GUILTY. GO TO THE BACK OF THE INDICTMENT AND WRITE, COUNT ONE, DASH, NOT GUILTY.

IF THAT BE YOUR VERDICT, YOU WOULD AUTOMATICALLY GO DOWN TO COUNT TWO AND WRITE NOT GUILTY AS WELL.

IF THE STATE OF SOUTH CAROLINA HAS PROVED THE GUILT OF THIS DEFENDANT BEYOND A REASONABLE DOUBT AS TO THE CHARGE OF MURDER, IT WILL BE FORM TWO THAT SAYS, COUNT ONE, DASH, GUILT OF MURDER. YOU'D GO TO THE BACK OF THE INDICTMENT WHERE THE PRINTED WORD VERDICT IS, PUT COUNT TWO (SIC), DASH GUILTY, MURDER. ALL OF THAT, COUNT ONE -- EXCUSE ME, COUNT ONE, GUILTY, MURDER; THAT'S THE WAY IT'S WRITTEN OUT.

IF YOU HAVE REACHED THAT VERDICT, THEN YOU WOULD NEXT CONSIDER COUNT TWO. COUNT TWO IS THE CHARGE OF BEING IN POSSESSION OF A FIREARM WHEN A VIOLENT CRIME HAD BEEN COMMITTED.

REMEMBER I TOLD YOU UNDER THE LAW OF SOUTH CAROLINA MURDER IS A VIOLENT CRIME. IF YOU HAVE FOUND THAT THE DEFENDANT WAS GUILTY OF THE CRIME OF MURDER AND THAT HE WAS IN POSSESSION OF A FIREARM AS DEFINED BY THE STATUTE AND THE STATE HAS PROVED THOSE THINGS TO YOU BEYOND A REASONABLE DOUBT, THEN YOU WOULD FIND THE DEFENDANT GUILTY, COUNT TWO, POSSESSION OF A FIREARM WHEN COMMITTING A VIOLENT CRIME.

IF THE STATE OF SOUTH CAROLINA HAS FAILED TO PROVE EITHER THAT HE WAS IN POSSESSION OF A FIREARM BEYOND A REASONABLE DOUBT OR THAT IT WAS A VIOLENT CRIME, THEN YOUR VERDICT WOULD BE COUNT TWO, NOT GUILTY.

YOUR VERDICTS DO NOT HAVE TO BE THE SAME. YOU MAY

CONSIDER THEM SEPARATELY. BUT I TELL YOU, YOU CANNOT FIND THE DEFENDANT GUILTY OF COUNT TWO UNLESS YOU HAVE REACHED A CONCLUSION THAT THE STATE HAS FOUND HIM GUILTY BEYOND A REASONABLE DOUBT OF COUNT ONE, AND THAT BEING MURDER.

IF YOU FOUND HIM NOT GUILTY AS TO MURDER, THEN HE WOULD AUTOMATICALLY BE NOT GUILTY AS TO COUNT TWO.

MR. FOREMAN, I'M GOING TO HAND YOU THE INDICTMENT AND THE POSSIBLE FORMS OF THE VERDICT. I WANT YOU TO LOOK AT THEM, READ THEM, MAKE SURE YOU UNDERSTAND THAT FIRST. BEFORE I DO THAT, I'M GOING TO SHOW YOU ON THE BACK OF THE INDICTMENT RIGHT HERE WHERE IT SAYS THE PRINTED WORD VERDICT, YOU WILL WRITE YOUR TWO VERDICTS. THERE WILL BE TWO VERDICTS, ONE AS TO COUNT ONE AND ONE AS TO COUNT TWO. YOU WILL SIGN YOUR NAME AS FOREMAN RIGHT THERE AND DATE IT. THERE IS A FORM.

THE TWO ALTERNATES AT THIS TIME WHEN I SEND THE JURY OUT, I'M GOING TO HOLD THE TWO OF YOU RIGHT HERE, BECAUSE ONCE THEY START AND I GIVE THE CASE TO THEM, YOU'RE NO LONGER WITH THEM.

ANY QUESTION, MR. FOREMAN?

FOREMAN: NO, SIR.

THE COURT: THE 12 JURORS, ARE ANY OF YOU UNABLE TO COMPLETE YOUR DELIBERATIONS AT THIS TIME? IF YOU'RE NOT FOR ANY REASON, TELL ME BECAUSE I'M GOING TO DISCHARGE THE ALTERNATES; THAT'S THE PURPOSE OF THE ALTERNATES. EVERYBODY OKAY?

(NO RESPONSE.)

THE COURT: THEY'RE GOING TO HAVE LUNCH FOR YOU. IT SHOULD BE. IF IT'S NOT THERE, IT SHOULD BE COMING SHORTLY. SUGGEST TO YOU, MR. FOREMAN, THAT IF YOUR LUNCH IS THERE, GO AHEAD AND HAVE LUNCH. DO NOT CONSIDER THE CASE. HAVE YOUR LUNCH. WHEN YOU ALL HAVE HAD A REASONABLE OPPORTUNITY TO HAV YOUR LUNCH AND DIGEST IT, I'LL HAVE THE BAILIFFS HAND THE EXHIBITS IN TO YOU AND YOU MAY BEGIN YOUR DELIBERATIONS.

DO NOT BEGIN YOUR DELIBERATIONS UNTIL YOU GET YOUR EXHIBITS. YOU CANNOT.

I AM REQUIRED BY LAW TO CONSULT WITH COUNSEL BEFORE I GIVE YOU THE CASE ANYWAY. SO I'M GOING TO LET YOU STEP INTO THE JURY ROOM. I DO NOT WANT YOU TO BEGIN YOUR DELIBERATIONS UNTIL YOU GET THE EXHIBITS. IF YOUR LUNCH IS THERE, YOU MAY TELL THE BAILIFFS TO EITHER HOLD THE EXHIBITS OUTSIDE OR YOU JUST TAKE THEM INSIDE AND HOLD THEM AND PUT THEM SOMEPLACE ELSE. YOU DO IT. ALL RIGHT.

THE TWO ALTERNATES, I WANT YOU TO STAND RIGHT HERE IN THIS HALLWAY AND DO NOT GO ANY PLACE ELSE. I'M GOING TO BRIN YOU BACK. AND IF I DISCHARGE YOU, I'M GOING TO LET THEM GIVE YOU YOUR LUNCH. ALL RIGHT. YOU MAY STEP OVER THERE.

(THE ALTERNATES STEP OUT OF THE COURTROOM.)

THE COURT: MR. FOREMAN, IT'S PROBABLY -- IF I DON'T HAV TO BRING YOU BACK OUT, I'LL LET YOU HAVE YOUR LUNCH. I'M GOING TO RELEASE THESE PEOPLE TO HAVE LUNCH AS WELL. ALL RIGHT, SIR. SO IF YOU WOULD, IF THERE'S SOME REASON, YOU SEN

ME A MESSAGE PROBABLY WITHIN THE NEXT 45 MINUTES AND I DON'T RESPOND PROMPTLY, IT'S BECAUSE WE'RE TRYING TO GET LUNCH TOO. OKAY.

ALL RIGHT. IF YOU WILL NOW, STEP INTO THE JURY ROOM. DO NOT BEGIN YOUR DELIBERATION UNTIL I SEND YOU THE EXHIBITS. ALL RIGHT, SIR. YOU MAY NOW RETIRE.

(THE JURY RETIRES TO THE JURY ROOM AT 1:20: P.M.)

THE COURT: THE JURY IS NOW OUTSIDE THE PRESENCE OF THE COURT. ANY EXCEPTIONS OR ADDITIONAL REQUEST TO CHARGE ON BEHALF OF THE STATE?

MR. GRANT: NONE BY THE STATE, YOUR HONOR.

THE COURT: ON BEHALF OF THE DEFENDANT?

MR. SMITH: YOUR HONOR, NONE OTHER THAN THOSE THAT YOU'VE ALREADY DEALT WITH.

THE COURT: THANK YOU, GENTLEMEN. GENTLEMEN, YOU MAY BE AT EASE.

(THE ALTERNATE JURORS WERE EXCUSED.)

THE COURT: GENTLEMEN, I WANT YOU TO GO OVER WITH THE COURT REPORTER THE EXHIBITS THAT HAVE BEEN ADMITTED. MR. DUNN, YOU MAY TAKE THE EXHIBITS ONCE THE SOLICITOR AND MR. SMITH AGREES THAT THOSE ARE THE ONES THAT GO. GIVE THEM TO THE JURY. ALL RIGHT, SIR.

(EXHIBITS WERE SENT TO THE JURY AT 1:23 P.M.)

THE COURT: YOU MAY PLACE THE DEFENDANT BACK IN CUSTODY. I TRUST YOU WILL TAKE HIM WHEREVER YOU NEED FOR LUNCH. WE'LL

BE IN EASE HERE UNTIL 2:30. COURT WILL BE IN RECESS HERE UNTIL 2:30.

(A LUNCH RECESS WAS TAKEN.)

THE COURT: MADAM COURT REPORTER, LET THE RECORD REFLECT THE CASE OF THE STATE VERSUS JEFFERY LYNN CHRONISTER, THAT TH JURY HAS SENT A COMMUNICATION TO THE COURT. COUNSEL FOR THE STATE IS PRESENT, COUNSEL FOR THE DEFENSE, AND THE DEFENDANT.

THE NOTE WHICH I HAVE ALREADY SHOWN COUNSEL FOR THE STAT AND DEFENSE IS: WHAT WERE EXHIBITS 7 AND 8? ARE WE ENTITLED TO SEE THEM? IF SO, WE WOULD LIKE TO REVIEW THEM.

THE ANSWER TO THAT, 7 AND 8 WAS THE PHOTOGRAPHIC LINE-UP THAT WAS 7. 8 WAS THE LIST OF THE INDIVIDUALS IN THE SIX PHOTOS.

WITHOUT QUESTION THE ANSWER TO THAT IS THEY WERE NOT EXHIBITS ADMITTED INTO THE RECORD, SO THEY CAN'T GET THEM.

YOU GENTLEMEN AGREE?

MR. GRANT: THE STATE DOES, YOUR HONOR.

MR. SMITH: YES, YOUR HONOR.

THE COURT: THE SECOND QUESTION WAS: WE WOULD LIKE TO REVIEW THE TESTIMONY OF THE DETECTIVE FROM GASTONIA WHO PRESENTED THE LINE-UP BOOK.

WELL, THE PROBLEM WITH THAT IS OFFICER JETER FROM GASTONIA WAS THE ONE WHO PREPARED THE LINE-UP. OFFICER WHITSTONE (SIC) IS THE ONE THAT PRESENTED IT. IT APPEARS TO ME THAT I'M GOING TO HAVE TO ASK THEM TO CLARIFY THAT FOR ME.

AND I'M ASKING YOU GENTLEMEN, CAN WE AGREE TO ASK THE JURY THIS THAT COUNSEL FOR THE STATE AND COUNSEL FOR DEFENSE AGREE THAT THE TESTIMONY AS TO THE PREPARATION OF A PHOTOGRAPHIC LINE-UP WAS DONE BY OFFICER JETER; THAT THE PRESENTATION OF THAT PHOTOGRAPHIC LINE-UP PRESENTED TO THE WITNESS WAS DONE BY OFFICER WHITSTONE. AND WITH THAT, WHICH ONE DO THEY WANT TO HEAR FROM? WHITSTONE OR JETER OR DO THEY WANT TO HEAR FROM BOTH?

ANY PROBLEM WITH THAT?

MR. GRANT: NO, SIR.

MR. SMITH: NO, SIR, YOUR HONOR.

THE COURT: THE LAST QUESTION WAS: CAN WE SEE THE LINE-UP BOOK?

THE ANSWER TO THAT IS ONCE AGAIN, AN EXHIBIT NOT ADMITTED INTO THE RECORD CANNOT BE NOW ADDED TO THE RECORD.

MR. SMITH: THAT IS CORRECT.

THE COURT: ALL RIGHT. BRING THE JURY IN.

MR. GRANT: THE OFFICER IS WHITSTINE, YOUR HONOR.

THE COURT: WHITSTINE?

MR. GRANT: YES, SIR.

THE COURT: WHAT AM I CALLING HIM, STONE?

MR. GRANT: YES, SIR.

(THE JURY RETURNS TO THE COURTROOM AT 2:38 P.M.)

THE COURT: LET THE RECORD REFLECT THE JURY IS NOW BACK PRESENT BEFORE THE COURT. COUNSEL FOR THE STATE, COUNSEL FOR

THE DEFENSE, AND THE DEFENDANT ARE PRESENT.

MR. FOREMAN, I'VE RECEIVED YOUR COMMUNICATION. I'M GOIN TO REVIEW IT WITH YOU. FIRST OFF, I'M GOING TO TELL YOU I'M NOT PERMITTED TO GET INTO AN ANSWER AND QUESTION PROPOSITION WITH THE JURY FOR A NUMBER OF REASONS; ONE OF WHICH, IF I WE ANSWERING QUESTIONS, I'D BE GIVING YOU MY OPINION. REMEMBER, I'M NOT PERMITTED TO HAVE AN OPINION.

TO REVIEW YOUR QUESTIONS. YOU SAY, WHAT WERE EXHIBITS 7 AND 8? ARE WE ENTITLED TO SEE THEM? IF SO, WE'D LIKE TO REVIEW THEM.

REMEMBER I TOLD YOU THAT WHEN I SENT YOU TO THE JURY ROOM, THAT EVERY EXHIBIT THAT WAS ADMITTED INTO THE RECORD WOULD BE SENT INTO THE JURY ROOM. IF YOU DID NOT GET AN EXHIBIT, YOU WOULD NOT GET AN EXHIBIT.

SO THE ANSWER TO THAT IS: YOU WILL NOT GET IT.

FOREMAN: OKAY.

THE COURT: THE SECOND QUESTION WAS: WE WOULD LIKE TO REVIEW THE TESTIMONY OF THE DETECTIVE FROM GASTONIA WHO PRESENTED THE LINE-UP BOOK.

BY CONSENT OF COUNSEL, THEY HAVE ALLOWED ME TO GET SOME FURTHER CLARIFICATION FROM YOU BECAUSE OF THAT QUESTION.

THEY AGREE THAT OFFICER JETER WAS THE OFFICER FROM GASTONIA WHO PREPARED THE ALLEGED PHOTOGRAPHIC LINE-UP; THAT OFFICER WHITSTONE, THE OFFICER FROM YORK COUNTY, WAS THE ONE WHO PRESENTED IT TO THE WITNESS, THE ALLEGED IDENTIFICATION

WITNESS.

DO YOU WANT BOTH OF THEM OR ONE OF THEM, AND THAT'S THE PROBLEM WITH THE QUESTION.

FOREMAN: THE FIRST ONE.

THE COURT: WHITSTONE?

FOREMAN: YES, SIR.

THE COURT: WHITSTINE, EXCUSE ME.

FOREMAN: THE ONE THAT PREPARED THE ---

THE COURT: THE ONE THAT PREPARED IT, THE OFFICER FROM GASTONIA?

FOREMAN: YES, SIR.

THE COURT: THAT'S OFFICER JETER, THAT'S THE ONE YOU WANT?

FOREMAN: YES.

THE COURT: ALL RIGHT, SIR. THE LAST QUESTION WAS: CAN WE SEE THE LINE-UP BOOK?

THE ANSWER TO THAT IS THE SAME AS THE ANSWER TO THE FIRST ONE. YOU HAVE EVERY EXHIBIT THAT WAS ADMITTED INTO THE RECORD. I CAN'T GIVE YOU SOMETHING THAT WAS NOT ADMITTED INTO THE RECORD.

ALL RIGHT. AS I UNDERSTAND IT, YOU WANT THE TESTIMONY OF THE OFFICER FROM GASTONIA WHO PREPARED THE LINE-UP -- PHOTOGRAPHIC LINE-UP.

ALL RIGHT. MADAM COURT REPORTER, THAT IS OFFICER JETER. YOU WILL GO TO THAT. SHE WILL PLAY IT BACK FOR YOU.

(THE TESTIMONY OF OFFICER JETER WAS PLAYED BACK FOR THE JURY.)

THE COURT: MR. FOREMAN, IF YOU WOULD, SIGN YOUR NAME ON THIS QUESTION SO I CAN GIVE IT TO THE COURT REPORTER. DO THA EVERY TIME.

(PAUSE.)

THE COURT: MADAM COURT REPORTER, MARK THAT AS A COURT'S EXHIBIT.

(NOTE FROM JURY WAS MARKED FOR IDENTIFICATION AS COURT'S EXHIBIT NO. 2.)

THE COURT: IF NOTHING ELSE, MR. FOREMAN, YOU MAY RETIRE TO THE JURY ROOM AND CONTINUE YOUR DELIBERATION. WAS LUNCH OKAY?

JURY: IT WAS OKAY.

(THE JURY RETURNS TO THE JURY ROOM AT 2:45 P.M. TO CONTINUE DELIBERATIONS.)

THE COURT: OKAY. GENTLEMEN, ANYTHING ELSE?

MR. SMITH: NOTHING, YOUR HONOR.

MR. GRANT: NO, SIR.

THE COURT: YOU MAY STEP BACK AND HAVE THE DEFENDANT PLACED BACK IN CUSTODY.

(COURT IS IN RECESS.)

THE COURT: MADAM COURT REPORTER, THE CASE OF THE STATE VERSUS JEFFERY L. CHRONISTER, 92-GS-46-1224, INDICTMENT FOR MURDER COUNT ONE, COUNT TWO VIOLATION OF THE GUN LAW, BEING I

POSSESSION OF A GUN DURING THE COMMISSION OR HAVING COMMITTED A VIOLENT CRIME. COUNSEL FOR THE STATE IS PRESENT, COUNSEL FOR DEFENSE, AND THE DEFENDANT.

GENTLEMEN, THE BAILIFF HAS INFORMED THE COURT, THE JURY HAS KNOCKED AND INDICATED THEY'VE REACHED A VERDICT.

IS THE STATE READY TO RECEIVE THE VERDICT?

MR. GRANT: THE STATE IS, YOUR HONOR.

THE COURT: DEFENDANT READY TO RECEIVE THE VERDICT?

MR. SMITH: YES, YOUR HONOR.

THE COURT: FOR THOSE PEOPLE WHO ARE FAMILY, FRIENDS, SPECTATORS, OR OTHERWISE, I DO NOT PERMIT ANY EXPRESSION OF HAPPINESS OR DISAPPOINTMENT IN THE VERDICT OF THE JURY; THAT IS NOT A PROPER THING TO DO. IF YOU FEEL LIKE YOU CANNOT HANDLE THE VERDICT OF THE JURY AS A SPECTATOR, FAMILY, OR FRIEND, PLEASE LEAVE NOW. IT IS NOT THE PROPER THING TO DO. I'M GOING TO TELL YOU RIGHT NOW, I WILL HOLD YOU IN CONTEMPT OF COURT. I CAN'T ALLOW THAT TO HAPPEN.

BRING THE JURY IN.

(THE JURY RETURNS TO THE COURTROOM AT 3:17 P.M.)

THE COURT: ALL RIGHT. THE CASE OF THE STATE VERSUS JEFFERY L. CHRONISTER. THE JURY IS NOW BACK PRESENT BEFORE THE COURT.

MR. FOREMAN, THE BAILIFF HAS INFORMED THE COURT THE JURY HAS KNOCKED AND INDICATED THEY'VE REACHED A VERDICT IN THIS CASE. HAS THE JURY REACH A VERDICT?

FOREMAN: YES, SIR.

THE COURT: AND HAVE YOU WRITTEN THAT VERDICT ON THE BAC OF THE INDICTMENT AT THE PLACE THAT I DIRECTED YOU TO AND SIGNED YOUR NAME AS FOREMAN?

FOREMAN: YES, SIR.

THE COURT: MADAM BAILIFF, WOULD YOU HAND IT TO THE CLER PLEASE.

(PAUSE.)

THE COURT: YOU MAY PUBLISH THE VERDICTS.

VERDICT OF THE JURY:

CLERK: 92-GS-46-1224, THE STATE VERSUS LYNN JEFFERY CHRONISTER INDICTED FOR MURDER AND UNLAWFUL POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME. THE VERDICT, COUNT ONE, GUILTY MURDER; COUNTY TWO, GUILTY POSSESSION OF A FIREARM WHEN COMMITTING A VIOLENT CRIME.

THIS IS SIGNED JOHN A. PALMER AND IS DATED 9/22/92.

MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, IF THIS B YOUR VERDICT, WOULD YOU SIGNIFY BY RAISING YOUR RIGHT HAND?

(ALL COMPLIED.)

CLERK: LET THE RECORD SHOW THAT ALL 12 JURORS HAVE AFFIRMED THIS VERDICT.

THE COURT: THANK YOU, MA'AM.

ANYTHING FURTHER FROM COUNSEL FROM THE STATE OR THE DEFENSE BEFORE I DISCHARGE THE JURY IN THIS CASE?

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

MR. SMITH: YOUR HONOR, I WOULD ASK THE JURY BE POLLED.

THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND GENTLEMEN, THERE'S BEEN A REQUEST THAT YOU BE POLLED. WHAT THAT MEANS IS THE CLERK NOW WILL CALL YOUR NAME INDIVIDUALLY. AND AFTER SHE'S CALLED YOUR NAME, SHE WILL ASK YOU TWO QUESTIONS. YOU WILL GIVE AN ANSWER TO EACH QUESTION.

THE FIRST QUESTION WILL BE: WHATEVER YOUR NAME IS, WAS THIS YOUR VERDICT?

AND YOU WILL RESPOND.

AND IS IT NOW STILL YOUR VERDICT?

AND YOU WILL RESPOND.

MADAM CLERK, YOU WILL PROCEED TO POLE THE JURY.

(THE JURY WAS POLLED.)

THE COURT: THE JURY HAVING BEEN POLLED, ANYTHING FURTHER FROM THE STATE OR THE DEFENSE?

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

MR. SMITH: NOTHING, YOUR HONOR.

(THE JURY WAS EXCUSED.)

THE COURT: WOULD YOU BRING THE DEFENDANT FORWARD FOR SENTENCING PLEASE.

(PAUSE.)

MR. SMITH: I WOULD, YOUR HONOR, FOR THE RECORD AT THIS TIME MOVE FOR A NEW TRIAL. I WOULD AT THIS TIME MOVE FOR A NEW TRIAL.

THE COURT: ALL RIGHT. WHAT ARE YOUR GROUNDS?

MR. SMITH: ON THE GROUNDS THAT THE VERDICT IS NOT SUPPORTED BY THE EVIDENCE THAT HAD BEEN PRESENTED. GIVEN THE LACK OF THE IDENTIFICATION, THE LACK OF THE WEAPONS, AND THE GROUNDS THAT I HAVE STATED BEFORE, I WOULD ASK FOR A NEW TRIAL.

THE COURT: THAT MOTION IS DENIED.

MR. SMITH, THE EVIDENCE IN THIS CASE IF BELIEVED WAS MOR THAN SUBSTANTIAL. THE JURY BELIEVED IT AND THEY CONVICTED HIM.

ANY OTHER MOTIONS?

MR. SMITH: NOT AT THIS TIME, YOUR HONOR.

THE COURT: MR. CHRONISTER, YOU HAVE A RIGHT TO APPEAL YOUR CONVICTION IN THIS CASE, THIS CONVICTION ON BOTH COUNTS. YOU MUST FILE THAT NOTICE OF INTENT TO APPEAL. I'M SURE YOUR MR. SMITH, WILL ADVISE YOU OF THAT AS WELL. BUT YOU DO HAVE THE RIGHT TO APPEAL. YOU MUST FILE THAT NOTICE OF INTENT TO APPEAL WITHIN 10 DAYS OF THE SITTING OF THE COURT.

DO YOU UNDERSTAND THAT, SIR?

DEFENDANT: YES, SIR.

THE COURT: MR. CHRONISTER, AT THIS TIME I EXTEND TO YOU THE OPPORTUNITY TO MAKE ANY OTHER STATEMENT THAT YOU WOULD LIKE TO MAKE. THE LAW OF THIS STATE ON THE OFFENSE OF MURDER CARRIES A MANDATORY LIFE IMPRISONMENT SENTENCE. THE CONVICTION FOR BEING IN POSSESSION OR USING A WEAPON WHEN THE VIOLENT CRIME IS COMMITTED CARRIES AN ADDITIONAL 5 YEARS

CONSECUTIVE TO ALL OTHER SENTENCES. SO THE MAXIMUM PENALTY AFFIXED BY LAW FOR THESE OFFENSES IS LIFE PLUS 5.

DO YOU UNDERSTAND THAT, SIR?

DEFENDANT: NO, SIR. BUT I WOULD LIKE TO SAY ONE THING: I LOVED MY WIFE. THAT WAS NOT ME DOWN THERE. AND I WANT TO FILE AN APPEAL.

THE COURT: YOU'RE ENTITLED TO DO SO. YOUR ATTORNEY, AS I'VE TOLD YOU ---

DEFENDANT: BECAUSE I ---

THE COURT: -- YOU HAVE THE RIGHT TO DO SO, AND HE WILL FILE IT FOR YOU. ANYTHING ELSE, SIR?

DEFENDANT: I DON'T FEEL LIKE I WAS PROPERLY REPRESENTED, AT LEAST CERTAIN THINGS THAT WAS MISSING THAT SHOULD HAVE BEEN BROUGHT UP; AND THAT -- THAT -- THAT'S WHAT I WANT TO SAY.

THE COURT: MR. CHRONISTER, THE PART I SAW, I THOUGHT YOU WERE VERY ABLY ---

DEFENDANT: WELL, SIR ---

THE COURT: --- REPRESENTED. AND YOU EVALUATED THE ISSUES ---

DEFENDANT: LIKE I SAID, I LOVED MY WIFE AND THAT WAS NOT ME, SIR.

THE COURT: MR. SOLICITOR, DO YOU HAVE ANYTHING YOU WANT TO ADD?

MR. GRANT: NO, SIR.

THE COURT: MR. SMITH, ANYTHING FURTHER?

MR. SMITH: NOTHING, YOUR HONOR. I WILL FILE THE APPEAL FOR HIM AUTOMATICALLY.

THE COURT: YES, SIR. ANYTHING ELSE?

MR. SMITH: I REALIZE YOUR HONOR'S DISCRETION IN SENTENCING -- THERE IS NO DISCRETION.

THE COURT: RIGHT.

MR. SMITH: THIS IS A VERY TRAGIC SITUATION. AND HE MAINTAINS HIS INNOCENCE; AND THAT WOULD BE ALL THAT I HAVE TO SAY, YOUR HONOR.

SENTENCE OF THE COURT:

THE COURT: ON COUNT ONE OF THE INDICTMENT, MR. CHRONISTER, YOU BEEN HAVING FOUND GUILTY OF THE CRIME OF MURDER, THE SENTENCE OF THE COURT IS THAT YOU BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS/THE YORK COUNTY DETENTION CENTER FOR A TERM OF LIFE IMPRISONMENT.

ON COUNT TWO OF THE INDICTMENT, YOU HAVING BEEN FOUND GUILTY OF THE OFFENSE OF UNLAWFUL POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME, THE SENTENCE OF THE COURT IS THAT YOU BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS/THE YORK COUNTY DETENTION CENTER, FOR A TERM OF 5 YEARS. THAT SENTENCE WILL BE CONSECUTIVE TO COUNT ONE.

I ONCE AGAIN REMIND YOU, YOU HAVE A RIGHT TO APPEAL. YOU MUST FILE THAT NOTICE OF INTENT TO APPEAL WITHIN 10 DAYS.

DO YOU UNDERSTAND THAT, SIR?

DEFENDANT: YES, SIR.

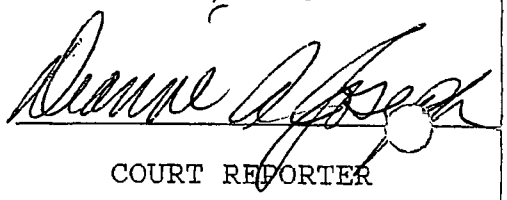
THE COURT: GOOD LUCK TO YOU.

--- END OF TRANSCRIPT OF RECORD ---

I, THE UNDERSIGNED DIANNE A. JOSEPH, OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON THE 21ST AND 22ND DAYS OF SEPTEMBER, 1992.

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

JANUARY 25, 1993



COURT REPORTER

301 Date: 9-21-92

County: Yoke

VOIR DIRE

No: 92-GS-46-1224 Judge: Rushing

State: State State/Pl's. Atty: Grant

dant: Lynn Jeffery Chronister Defense Atty: Smith / West

Reporter: Deanne A. Jeppe page 1882 Strikes 5-10

No.	Name	Sex	Race	*Court	Strikes Plaintiff ~~Plaintiff~~ State	Defense	Accept
04	Janet Gaither	F	W			✓	
3	Bonnie Shaver	F	W		✓		
83	Brenda Smith	F	W			✓	
49	Joyce Johnson	F	B			✓	
111	Chad Mitchell	M	W			✓	
50	Robert Johnson	M	W			✓	
72	Harrod Mullis	M	W				✓
52	Harold Jordan	M	W				✓
17	Robin Wagner	F	W			✓	
32	Stephen Epps	M	W			✓	
109	Anna McCullough	F	B				✓
73	Kenneth Nunnery	M	W			✓	
16	Betty Carroll	F	W				✓
57	Charles Krueger	M	W				✓
17	Jimmy Carter	M	W				✓
112	Michael Powell	M	B				✓
75	John Palmer	M	W	foreman			✓
40	Alice Goosen	F	W			✓	✓

r the court column, please indicate who made the motion to strike the jurors "for cause"
th a "C" for Court, "P" for Plaintiff or "D" for Defense.

302 Date: 9-21-92

County: York

VOIR DIRE

Case No: 92-GS-46-1224 Judge: Rushing

Pl./State: State State/Pl's. Atty: Grant

Defendant: Lynn Jeffrey Chronister Defense Atty: Smith / West

Court Reporter: DG Joseph

Juror No.	Name	Sex	Race	*Court	Strikes Plaintiff (State)	Defense	Accept
8	Dorothy Bolin	F	W				✓
41	Deborah Gray	F	W				✓
47	Jerry Hubbard	F	W		✓		○
60	Jeffrey Masters	M	W		✓	★	
36	Judy Finley	F	W			✓	
95	James Webb Jr	M	W				✓
6	Rosie Belton	F	B				✓
61	David McManus	M	W				✓
5	Roy Beckham	M	W		✓		
115	Colleen Rynders	F	W			✓	
110	Lisa McNinch	F	W			✓	
39	Gail Gibson	F	W				✓
							○

*For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Honorable Don S. Rushing, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFERY LYNN CHRONISTER,

APPELLANT.

FINAL BRIEF OF APPELLANT

TARA DAWN SHURLING
Assistant Appellate Defender

South Carolina Office
of Appellate Defense
1122 Lady Street Suite 940
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT.

TABLE OF AUTHORITIES

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STATEMENT OF ISSUES ON APPEAL

I. The lower court erred in overruling defense counsel's Motion to Suppress statements allegedly made by the Appellant while in custody where the record below fails to demonstrate that the Appellant was properly advised of his rights prior to the issuance of those statements.

II. The lower court erred in failing to issue a jury instruction concerning the proper standard for the use of statements attributed to the Appellant.

III. The lower court erred in denying the Appellant's request for a jury instruction on the lesser included offense of manslaughter where under one reasonable interpretation of the evidence as presented at trial, the jury might logically have found the Appellant not guilty of that lesser charge.

STATEMENT OF THE CASE

The Appellant, Lynn Jeffery Chronister, was brought before the York County Court of General Sessions on an indictment charging him with the murder of his wife. He proceeded to trial by jury before the Honorable Don S. Rushing, presiding circuit judge, on September 21-22, 1992. In the trial court, the State was represented by Larry Grant, Solicitor for the Sixteenth Judicial Circuit. The Appellant was represented by the York County Public Defenders Office in the persons of Gerald Smith, Deputy Public Defender and Harry Dest, Assistant Public Defender.

The Appellant was found guilty as charged and was sentenced by the lower court to incarceration in the custody of the South Carolina Department of Corrections for the remainder of his natural life-time. He served opposing counsel with timely Notice of Intent to Appeal this conviction and sentence. The original Notice, along with proof of service on opposing counsel, was duly filed with this Honorable Court. This appeal follows.

STATEMENT OF FACTS

The State's first witness at the Appellant's trial was Joel Gordon Smith.[1] At the time of Marie Gail Chronister's[2] death, Smith was employed at the Catawba Nuclear Station. He knew Chronister as a fellow employee. On the morning of February 14, 1992, he arrived at the parking lot to the Nuclear Station sometime prior to seven a.m. As he arrived, Smith saw Chronister walking toward the front door of the Administration Building. He could see her vehicle, a small tan colored two door Dodge, approximately fifty to sixty feet away. [ROA 27, line 5 - ROA 28, line 25]. Approximately thirty to forty-five seconds later, Smith exited his vehicle and headed toward the front door of the Administration Building. As he approached the front door, he saw Chronister's body laying on the sidewalk just outside the front door. He estimated that he saw her laying on the ground approximately thirty to forty-five seconds after he had first spotted her in the parking lot. [ROA 29, lines 8-18]. He did not see anyone with her at the scene. [ROA 29, lines 19-20].

After running to Chronister's side, Smith proceeded to the Administration Building where he instructed someone to send for medical care. He recalled that she did not however appear to be alive when he approached her. [ROA 35, line 17 - ROA 36, line 8].

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[1] Hereafter, Smith.

[2] Appellant's wife, hereafter, Chronister.

The State's second witness, Danny Harold Wilson[3] was also employed at the Catawba Nuclear Station on February 14, 1992. At the time of this incident, Wilson and another employee were in the Catawba Station parking lot after they got off work at six-forty a.m. Wilson was selling a boat to a fellow employee. They were in the process of attaching the boat to that individual's trailer-hitch, when they observed a white van pull up and a man exit it. As the individual who got out of the van and walked past them, Smith noticed he was carrying a long, "rifle type" weapon. Shortly thereafter, Wilson heard at least five shots in fairly rapid succession. [ROA 40, line 22 - ROA 48, line 9]. After the suspect returned to his van, Wilson and his companion stood up and attempted to get the license tag number from the vehicle. They were able to ascertain that it was a North Carolina plate bearing the first three letters DRL. That information was given to the police by the individual with Wilson in the parking lot.[4] [ROA 48, line 18 - ROA 49, line 15]. Wilson next ran to the area where he had heard the shots, and observed Chronister's body laying on the sidewalk just to the left of the Administration Building entrance. She appeared to be dead. [ROA 49, lines 4-13]. Wilson indicated that he heard the shots fired in this incident a few seconds after he first observed the suspect in

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[3] Hereafter, Wilson.

[4] Wilson's companion, Sidney Ballanger, also testified at this trial. ROA 118, line 19 - ROA 128, line 2.

the parking lot. He described the entire incident as one taking a few minutes. [ROA 54, lines 4-9].

During the course of the Appellant's trial, a Jackson v. Denno,[5] hearing was held pursuant to the Appellant's Motion to Suppress statements made by the Appellant while in custody in Gastonia, North Carolina. The State's first witness at this proceeding was John Dean Shillinglaw. Officer Shillinglaw testified that he went to North Carolina with another officer, Detective Strickland, where Gaston County officers had stopped the Appellant and placed him in custody. Officer Shillinglaw and Detective Strickland were introduced to the Appellant who was told that they were detectives from South Carolina. According to Officer Shillinglaw, he asked the Appellant "how he was doing." Following this sole inquiry, the Appellant announced that he wanted to talk to his lawyer. At the time of this initial meeting, the Appellant was seated in a Gaston County Police vehicle. After the Appellant announced that he wanted to speak with his lawyer, Detective Strickland and Officer Shillinglaw exited that vehicle. Approximately five minutes later, the Appellant motioned for Officer Shillinglaw to come back to the car. Officer Shillinglaw opened the car door and sat down beside Appellant in the front seat of the car. [ROA 83, line 2 - ROA 85, line 25]. At that juncture, Officer Shillinglaw testified

[5] 378 U.S. 368 (1964).

that the Appellant asked him "how his wife was doing." Officer Shillinglaw then told him that she was "not to good." The Appellant then stated that "his wife had accused him of molesting their daughter and that his wife had left him." He also advised the police that he had been up all night long. Officer Shillinglaw then told the Appellant that his wife was in fact deceased. He then advised the Appellant that he "could not talk to him about it because he had requested to talk to his attorney." At that point, the Appellant then reiterated his desire not to say anything else until he talked to his attorney. [ROA 85, line 19 - ROA 86, line 10]. The Appellant was then transported to the Gaston County Police Department.

The record in this case confirms that the Appellant was at no time advised of his rights pursuant to Miranda[6]. While at the Gaston County Police Department, Officer Shillinglaw continued his conversation with the Appellant.

According to Officer Shillinglaw's testimony, the Appellant was crying off and on while at the police department. Officer Shillinglaw asked him how many children he and his wife had. The Appellant responded that he had two children by his first wife and two by his second wife. Subsequently, the Appellant asked to go to the bathroom. Officer Shillinglaw recalled that while the Appellant was in the bathroom, he "stated that his wife should not have accused

[6] 384 U.S. 436 (1966).

him of molesting their daughter." After they returned from the bathroom, the Appellant continued to cry "some more on and off." [ROA 86, line 23 - ROA 87, line 9]. At that juncture, the Appellant allegedly looked at Officer Shillinglaw and stated, more or less as a question, "I did kill her?" [ROA 87, lines 10-11]. Officer Shillinglaw then responded by saying "do what?" to which the Appellant answered "she is dead?" [ROA 87, lines 10-13]. It was the State's position that these statements uttered by the Appellant were voluntarily and freely made and that they were spontaneous utterances not made in response to any form of interrogation. [ROA 88, lines 9-19]. As defense counsel pointed out on cross-examination, the Appellant was highly upset, crying, and extremely emotional during this time period. He was in custody and he had not been advised of his rights. [ROA 88, line 22 - ROA 89, line 23]. Despite the fact that the Appellant was obviously a prime suspect in his wife's murder and was in custody, the police did not give him any sort of Miranda warnings whatsoever. [ROA 91, line 19 - ROA 92, line 11]. Defense counsel argued that looking at the totality of the circumstances, the State had not established that these statements were voluntarily and intelligently given inasmuch as the Appellant was not advised of his rights pursuant to Miranda. Defense counsel additionally noted that the Appellant's extreme emotional condition at the time was further evidence of his inability to make a voluntary and

intelligent decision with regard to incriminating himself in this matter. [ROA 96, line 13 - ROA 97, line 11]. Simply put, once the Appellant requested counsel, the police should not have conversed with him in any manner until such time as the Appellant had legal counsel. [ROA 97, lines 15-19]. The lower court ultimately ruled that the statements attributed to the Appellant were volunteered and therefore, that this was not a custodial interrogation which required the issuance of Miranda warnings. [ROA 99, line 22 - ROA 101, line 19].

Following the Jackson v. Denno hearing held in this case, the State proceeded to present testimony from Sidney Ballanger, III.[7] On February 14, 1992, Mr. Ballanger was in the parking lot at the Catawba Nuclear Station between six-thirty and seven a.m. His testimony was consistent with that of an earlier State witness, Danny Wilson. [ROA 118, line 19 - ROA 128, line 10]. The State next presented testimony in the presence of the jury from Thomas Auten. Auten's testimony was likewise consistent with that given by him in camera. [ROA 128, line 12 - ROA 143, line 10]. Auten positively identified a photograph of the Appellant from a photographic lineup shown to him after this incident. He identified the Appellant's photograph as being the individual he had seen in the parking lot on the morning in question. He was not however, able to positively identify the Appellant in court.

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[7] Hereafter, Ballanger.

At the Appellant's trial he was only able to say that the Appellant's "features are very similar" to those of the individual he saw on the morning in question. [ROA 138, line 17 - ROA 148, line 19]. Gaston County Police Officer, Willie Allen Jeter, was presented by the prosecution for the purpose of describing the method used to prepare the photographic lineup presented to Auten. Jeter described the composition of the photographic display used in this case. [ROA 149, line 1 - ROA 151, line 8].

Gaston County Police Sergeant, Johnny R. Mims, testified that on February 14, 1992, he saw the Appellant driving a white Dodge van at approximately 8:01 a.m. His testimony confirmed that the van driven by the Appellant on that morning bore the license tag number DRL 8643. [ROA 151, line 16 - ROA 156, line 1].

In his testimony before the jury, Detective John Shillinglaw, testified that he first saw the Appellant on February 14, 1992. At that time the Appellant was in the custody of the Gaston County Police Department and was seated in a police vehicle. He described the Appellant as red in the face and noted that he had obviously been crying. As he had earlier done in camera, Detective Shillinglaw relayed statements allegedly made by the Appellant while he was being escorted to the bathroom. Appellant was quoted as saying that his wife should never have accused him of molesting their daughter. Additionally, Detective Shillinglaw stated that t

Appellant asked him "I did kill her?" after Detective Shillinglaw responded "do what?", the Appellant next stated "she is dead?" [ROA 156, line 6 - ROA 158, line 10].

Pathologist Edward Earl Jenkins, Jr., testified that Marie Chronister died from six gunshot wounds; two involving the right-side of the head, three involving the right-side of the chest, one in the upper abdomen and one involving the right hip area. [ROA 162, line 24 - ROA 165, line 8; ROA 166, lines 19-24]. Following the testimony of this pathologist, the State rested its case. [ROA 168, lines 13-14]. Defense counsel's Motion for a Directed Verdict of Acquittal was denied. [ROA 169, line 19 - ROA 171, line 2]. The defense presented no testimony in this case. [ROA 178, line 6 - ROA 179, line 8]. Defense counsel's renewed Motion for a Directed Verdict of Acquittal was denied. [ROA 179, lines 8-12].

Counsel for the defense requested that the lower court issue a jury instruction submitting for the jury's consideration, the lesser included charge of voluntary manslaughter. That motion was denied. [ROA 180, line 23 - ROA 182, line 4]. The Appellant's jury was accordingly charged only on the law concerning the charge of murder. [ROA 184, line 20 - ROA 208, line 14]. The Appellant was found guilty of murder and unlawful possession of a firearm or knife during the commission of a violent crime. [ROA 215, lines 11-16]. Following defense counsel's Motion for a New Trial,[8] the

[8] ROA 216, line 22 - *tr. 296, line 6.

Appellant was sentenced to incarceration in the custody of the Department of Corrections for the remainder of his natural lifetime. In addition, he received a five year consecutive term for the unlawful possession of a firearm during the commission of a violent crime.

ARGUMENT

Issues 1 and 2

The lower court erred in denying the Appellant's Motion to Suppress statements made while he was in custody where the record below supported his position that these statements were taken in violation of the Appellant's rights under the Fifth and Sixth Amendments to the United States Constitution. The lower court further erred in failing to issue an appropriate jury instruction concerning the use of confessions in the deliberation of guilt or innocence.

The record below demonstrates without question that the Appellant was in custody at the time these statements were made to the authorities. The State failed to meet its burden of proof with regard to its assertion that these statements were voluntarily and spontaneously uttered after the Appellant was adequately advised of his right to counsel and his right against self incrimination. For that reason, the lower court should have granted the Appellant's Motion to Suppress his oral statements from evidence. Having permitted the State to introduce evidence concerning these oral statements, the lower court further erred in failing to issue proper jury instructions concerning the jury's duty to determine as a threshold matter whether these statements were freely and voluntarily made upon proper advice of rights by the police.

It is a well established principal in South Carolina that the admissibility of challenged confessions is a question to be first determined by the trial judge and then finally

decided by the jury. State v. Harris, 212 S.C. 124, 46 S.E.2d 682, 689 (1948); State v. Miller, 211 S.C. 306, 45 S.E.2d 23, 26 (1947). In ruling on the admissibility of a confession the trial judge is required to apply a preponderance of the evidence standard. State v. Smith, 268 S.C. 349,354, 234 S.E.2d 19,21 (1977); State v. Neeley, 271 S.C. 33, 40, 244 S.E.2d 522,526 (1978). See also, Colorado v. Connelly, 479 U.S. 515 (1986); Lego v. Twomey, 404 U.S. 477 (1972). The jury however, must be instructed to apply a beyond a reasonable doubt standard in determining whether a confession was voluntarily made. State v. Washington, 296 S.C. 54, 370 S.E.2d 611, 612 (1988). State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987); State v. Drayton, 287 S.C. 226, 337 S.E.2d 216 (1985); State v. Adams, 277 S.C. 115, 283 S.E.2d 5 (1981). In the case at bar, the lower court erred in ruling that the oral statements attributed to the Appellant were admissible as spontaneous utterances not subject to the requirements of Miranda v. Arizona, 384 U.S. 436 (1966). The statements should have been suppressed by the trial judge. Having failed to suppress these statements from evidence, the lower court additionally erred in failing to instruct the jury of their duty to determine beyond a reasonable doubt that the statements were freely and voluntarily entered in compliance with Miranda before considering them as evidence of the Appellant's culpability.

"The prosecution may not use statements, exculpatory or

inculpatory, stemming from custodial interrogations of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or [is] otherwise deprived of his freedom of action in any significant way." Miranda, supra, 384 U.S. at 444. The warnings required by Miranda are:

1) The right to remain silent,

2) Anything that is said may be used against the defendant,

3) The right to the assistance of counsel, and

4) If indigent, that counsel will be appointed upon request.

In the Appellant's case, the police assert that he asserted his right to counsel immediately upon their initial contact with them. The State then uses his assertion of that one privilege as justification for the Appellant not being properly Mirandized. They argue, that since the Appellant asserted the right to counsel, it was not necessary to advise him of his other rights. This argument is faulty. The Appellant would respectfully submit that this argument, if sustained, would permit the police to deliberately violate the intent of the Miranda decision and the spirit of protection it embodies.

As a threshold matter it should be noted that no one has

questioned the fact that at the time these statements w made the Appellant was in custody and that he was clearly the State's chief suspect in his wife's homicide. He was in a highly emotional state. The State clearly acknowledged his assertion of Sixth Amendment right to counsel. Therefore, a determination as to whether the Appellant clearly invoked this right is not necessary. The clarity of the Appellant's request for counsel has not been contested. Smith v. Illinois, 469 U.S. 91 (1984). It is well established that a defendant's request for counsel constitutes a per se invocation of his Fifth Amendment rights as well. Such a request mandates that all interrogation must cease immediately. Fare v. Micheal C., 442 U.S. 707 (1979). Once a defendant has invoked his Sixth Amendment right to counsel, there is a presumption that any police initiated contact does not constitute a valid waiver of the defendant's right to counsel and his right to remain silent. Michigan v. Jackson, 475 U.S. 625 (1986).

Interrogation is not limited to any particular form of questioning. The operative question is whether the police should have known that their actions were likely to elicit an incriminating response. Rhode Island v. Innis, 446 U.S. 291 (1981). For example, in Brewer v. Williams, 430 U.S. 387 (1977), the police made remarks designed to appeal to the defendant's known religious beliefs and thereby obtained an unlawful confession. Here, State argues that the Appellant's

statements were spontaneous exclamations which should not have been considered as part of an interrogation. The Appellant respectfully submits that the lower court erred in adopting that reasoning.

The Appellant should have been given Miranda warnings. His expression of his desire to speak to his lawyer in no way eliminated the need for him to be advised of his right against self-incrimination and his right to have counsel appointed if he could not afford an attorney. the State has failed to demonstrate that the Appellant knew that anything he said could be used against him. Neither does the record support the State's claim that the Appellant's contact with the police was totally non-interrogational in nature. Unlike the facts confronted by this Court in State v. Morris, ___S.C.___, 415 S.E.2d 819 (1991), the Appellant had not been Mirandized. Neither can the conversation which resulted in these remarks by the Appellant be characterized as normal conversation. In Morris, the defendant had been advised of his rights *twice*. Appellant would further challenge the State's view that these utterances were entirely spontaneous and unresponsive. The record clearly establishes that Detective Shillinglaw sat down and initiated a conversation with the Appellant, while he was in a highly emotionally and agitated state, ***after*** *the Appellant had invoked his right to counsel and accordingly, his* right to remain silent. During that exchange, Detective Shillinglaw admittedly asked the Appellant about his children.

Considering the fact that the Appellant was being held in connection with his wife's fatal shooting, this question was likely to evoke an incriminating response. This was especially true since the Appellant had already indicated that allegations had been made by his wife concerning their daughter.

The Appellant would submit that once he invoked his right to counsel, all police initiated conversation with him should have ceased. Edwards v. Arizona, 451 U.S. 477 (1981). There is no way to know to what degree the Appellant's subsequent remarks were prompted by Officer Shillinglaw's improper inquiry concerning the Appellant's family. It is clear however, that the Appellant was never advised of his right against self-incrimination as protected by the Fifth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 12 of the South Carolina Constitution. The Appellant would submit that the State's position concerning this issue does not do justice to the spirit and intent of the Fifth Amendment and the Miranda decision. The police should not be able to place a suspect in custody and engage in conversation which is likely to evoke statements of an incriminating nature without first advising the accused of his basic rights under the Fifth and Sixth Amendments to the United States Constitution. The subtle distinctions between mere conversation and interrogation are too varied and elusive to permit such a decision based sole

on the assertion that no inquiries were made directly relevant to culpability. The lower court should have granted the Appellant's Motion to Suppress.

Having failed to grant the Appellant's Motion to Suppress, the lower court further erred in failing to issue adequate jury instructions concerning the admissibility of and use of statements by the jury in the deliberation of guilt.

Issue 3

The lower court erred in denying the Appellant's request for a jury charge on the lesser-included offense of voluntary manslaughter where on the facts of this case the jury might properly have found that the Appellant was guilty only of that lesser-included offense to murder.

The Appellant was on trial for murdering his estranged wife. Evidence was introduced by the State to demonstrate the existence of a serious domestic dispute in the Appellant's home. His wife had accused him of molesting their child. The Appellant would submit that on the facts demonstrated by the evidence submitted in this case, as sparse as they are, there was ample room for the jury to have concluded that the Appellant was guilty of not murder, but voluntary manslaughter. The Appellant would now argue that the lower court violated his right to a fair trial by refusing to charge the jury on this lesser-included offense. Beck v. Alabama, 447 U.S. 625 (1980). This court has consistently held that "a request to charge a lesser included offense is properly refused only when there is no evidence that the defendant committed the lesser rather than the greater offense." Casey v. State, 305 S.C. 445, 409 S.E.2d 391 (1991).

As noted Beck, the issue is not properly controlled by the fact that the jury convicted the Appellant of the greater offense. Rather, "providing the jury with the `third option' of convicting on a lesser included offense ensures that the jury will accord the defendant the full benefit of

reasonable-doubt standard." 447 U.S. at 634. (citation omitted). As the United States Supreme Court earlier observed:

> [A] defendant is entitled to a lesser offense instruction--in this context or any other-- precisely because he should not be exposed to the substantial risk that the jury's practice will diverge from theory. Where one of the elements of the offense charged remains in doubt, but the defendant is plainly guilty of *some* offense, the jury is likely to resolve its doubt in the favor of conviction.

Id., quoting Keeble v. United States, 412 U.S. 205 (1973) (emphasis in original).

For these reasons, the judgment of the lower court must be reversed.

CONCLUSION

For all the foregoing reasons, the Appellant now asks that his convictions and sentences be reversed and that his case be remanded for a new trial.

Respectfully submitted,

Tara Dawn Shurling
Assistant Appellate Defender

ATTORNEY FOR APPELLANT.

This 4th day of November, 1993.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 210(b), SCACR.

November 4, 1993

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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Honorable Don S. Rushing, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFERY LYNN CHRONISTER,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon opposing counsel by mailing three (3) copies in an envelope properly addressed with postage prepaid this 4th day of November, 1993.

Tara Dawn Shurling
Assistant Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 4th day of November, 1993.

(L.S.)
Notary Public for South Carolina

My Commission Expires: 3/24/2003.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From York County

The Honorable Don S. Rushing, Circuit Court Judge

THE STATE,

Respondent,

v.

JEFFERY LYNN CHRONISTER,

Appellant.

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STATEMENT OF ISSUES ON APPEAL

I.

Did the trial judge err in admitting Appellant's statements to the police in the absence of being accorded his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966)?

II.

Did the trial judge err in refusing to charge the jury on the law of voluntary manslaughter?

STATEMENT OF THE CASE

Jeffrey Lynn Chronister, Appellant herein, was indicted for murder by the Grand Jury for the Court of General Sessions for York County. This case proceeded to trial before the Honorable Don S. Rushing, Judge, and a jury, on September 21-22, 1992. At the conclusion of the trial, Appellant was convicted as charged. Judge Rushing thereafter sentenced Appellant to life imprisonment. Notice of appeal was timely served and filed; this appeal follows.

STATEMENT OF FACTS

This case arose from an incident which occurred in York County. Shortly before 7 a.m. on the morning of February 14, 1992, Joel Smith, an employee at Duke Power Company's Catawba Nuclear Station, arrived in the parking lot. (R. p. 26, line 4 - p. 27, line 22; p. 37, lines 11-14). Also, Marie Gayle Chronister (the victim) arrived in her car and parked nearby. The victim was also an employee at the Catawba Nuclear Station. The victim exited her car and then walked toward the front door of the administration building. (R. p. 27, line 23 - p. 29, line 1; p. 33, line 25 - p. 34, line 21; p. 37, lines 15-19). Also during this time, Danny Wilson (Danny) and Sidney "Si" Ballanger (Si) had just finished their evening shifts and were outside in the parking lot attaching a boat to Si's trailer hitch. (R. p. 34, line 5 - p. 40, line 19; p. 118, line 19 - p. 120, line 11).

Within a few minutes, a white Dodge van pulled up into the parking lot and parked directly in front of Si's pickup truck -- within six (6) feet. A male exited the van and walked around the front toward the administration building. The engine of the van was still running when the man exited it. (R. p. 40, line 20 - p. 41, line 2; p. 42, line 11 - p. 43, line 9; p. 120, line 21 - p. 121, line 15). When Danny stood up, he observed that the man was carrying a "long rifle-type weapon" down beside his right leg. (R. p. 43, line 10 - p. 44, line 7). According to Danny, the man was walking "slowly and deliberately" in front of the administration

building. (R. p. 44, lines 8-23). He then lost sight of the man in front of the building. (R. p. 45, line 2 - p. 46, line 14).

Shortly thereafter, Danny heard at least five (5) shots in fairly rapid succession. (R. p. 46, line 21 - p. 48, line 9). Si stated that he heard "three pops: pop, pop, pop." (R. p. 121, lines 17-25). Danny and Si then ran to the end of the parking lot and hid behind a car. (R. p. 48, lines 10-15; p. 122, lines 10-23). The same individual then returned to the van, still holding the rifle. He was described as "very deliberate, calm and controlled." (R. p. 48, lines 16-21; p. 122, line 24 - p. 123, line 5; p. 125, line 20 - p. 126, line 6).

During this same time, Thomas Auten, another employee at the Catawba Nuclear Station, had just arrived in the parking lot when he heard what he thought were firecrackers. (R. p. 128, line 12 - p. 130, line 3). He looked through his front window and observed an individual standing on the sidewalk in front of the administration building. (R. p. 130, lines 4-19). Thomas got out of his pickup truck and proceeded toward the entrance door, which was in the same direction as where he had seen the individual standing. He then observed him "stoop over as if he were looking at something or to pick up something." Thomas continued to walk, at which time this individual stood up and walked toward him. Thomas then noticed this individual was holding a long-barreled rifle by his right leg. (R. p. 130, line 20 - p. 131, line 18).

Thomas looked on the ground and observed the victim. (R. p. 131, line 19 - p. 132, line 19). Thomas' and the individual's paths crossed, and Thomas observed as the individual got into the van. (R. p. 132, line 20 - p. 134, line 10). Thomas positively identified Appellant as the individual he had seen. (R. p. 140, line 1 - p. 142, line 7). According to Joel Smith, the time between his exiting his car and observing the victim lying on the sidewalk was about 30 to 45 seconds after having seen the victim walk toward the administration building. (R. p. 29, lines 2-20; p. 37, lines 20-25; p. 38, lines 10-12).

As Appellant drove the van out of the parking lot, Danny and Si attempted to get the license tag number from the van. They were able to ascertain that it was a North Carolina plate bearing the first three letters "DRL." (R. p. 48, line 16 -p. 49, line 3; p. 123, lines 6-19; p. 125, lines 2-7; p. 127, lines 10-13). That information was given to the police.

They all ran to the area where they had heard the shots and observed the victim's body lying on the sidewalk just to the left of the administration building entrance. She appeared to be dead. The victim received six (6) gunshot wounds -- two (2) head wounds from bullets which traveled at a downward angle and damaged the spinal chord; two (2) chest wounds from bullets which penetrated the lungs and aorta; another chest wound from a bullet which traveled upward into the left lung; and a non-fatal hip wound. (R. p. 35, line 16 - p. 36, line 8; p. 50, lines 3-21; p. 134, line 24 - p. 135

line 18; p. 162, line 24 - p. 166, line 16). Dr. Edward Jenkins testified the victim died from multiple gunshot wounds to the head and chest. (R. p. 166, lines 17-24).

Approximately an hour later, Appellant was stopped in Gaston County, North Carolina. (R. p. 151, line 16 - p. 152, line 20). He was driving the same van which the witnesses had observed earlier. (R. p. 41, line 3 - p. 42, line 10; p. 126, lines 18-25; p. 152, line 21 - p. 153, line 13; p. 154, lines 10-16). Appellant was then taken into custody and turned over to the York County Sheriff's Department. (R. p. 154, lines 17-21).

Deputy John Shillinglaw of the York County Sheriff's Department testified that he observed Appellant as he was in custody at the Gaston County Police Department. (R. p. 156, lines 6-21). According to Deputy Shillinglaw, Appellant's face was red because it appeared he had been crying. (R. p. 156, line 22 - p. 157, line 10; p. 158, line 23 - p. 159, line 6). Deputy Shillinglaw was later with Appellant when he was at the Gaston County Police Department. (R. p. 157, lines 7-10). During this time, he took Appellant to the bathroom. According to Deputy Shillinglaw, "while he was in the bathroom he stated to me that [the victim] should not have accused him of molesting their daughter." (R. p. 157, lines 11-19). Later, while in an office, Appellant "at one point. . .looked at me and said more or less as a question, I did kill her?" Deputy Shillinglaw said, "Do what?" Appellant then said, "She is dead?" These were voluntary statements and not the result

of any questioning by Deputy Shillinglaw. (R. p. 157, line 24 - p. 158, line 18).

ARGUMENT

I.

The trial judge did not err by admitting Appellant's statements to the police in the absence of being accorded his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), since Appellant was not subject to "interrogation" for Miranda purposes. (Appellant's Issues I and II; Appellant's Argument 1).

As previously set forth in the Statement of the Facts herein, the victim arrived at the Catawba Nuclear Station on the morning of February 14, 1992. As she walked toward the administration building, Appellant arrived in his van and walked in the same direction, carrying a rifle. A few moments later, several shots were heard. Appellant was seen walking with the rifle back to the van. He then drove out of the parking lot. The victim was found lying on a sidewalk with six (6) gunshot wounds. Several witnesses at the scene were able to observe the partial license plate of the van and reported it to the police. Within an hour, Appellant was apprehended in Gaston County, North Carolina.

Deputy John Shillinglaw of the York County Sheriff's Department testified in camera that he went to North Carolina with Detective Strickland, where Gaston County officers had stopped Appellant and placed him in custody. Deputy Shillinglaw and Detective Strickland were introduced to Appellant, who was told that they were detectives from South Carolina. (R. p. 84, line 11 - p. 85, line 13). According to

Deputy Shillinglaw, he got into the front seat and Detective Strickland got into the back seat of the Gaston County police car in which Appellant was sitting. Deputy Shillinglaw asked Appellant, "how he was doing." (R. p. 85, lines 14-16). At that time, Appellant told Deputy Shillinglaw he wanted to speak with his attorney. (R. p. 85, lines 18-20). Deputy Shillinglaw and Detective Strickland then exited the car. (R. p. 85, lines 21-22).

Approximately five (5) minutes later, Appellant "motioned" for Deputy Shillinglaw to return to the car. He opened the car door and sat down beside Appellant in the front seat. (R. p. 85, lines 23-25; p. 89, lines 16-23). Appellant then "asked [Deputy Shillinglaw] how his [Appellant's] wife was doing." Deputy Shillinglaw told Appellant she was "not too good." Appellant then stated that "his wife had accused him of molesting their daughter and that his wife had left him." He also advised Deputy Shillinglaw that he had been up all night long. Deputy Shillinglaw informed Appellant that his wife was dead and that he could not talk to him about it because Appellant had asked to talk to his attorney. (R. p. 86, lines 1-8; p. 89, line 24 - p. 89, line 2). At that point, Appellant reiterated his desire not to say anything else until he talked to his attorney. (R. p. 86, lines 9-10). According to Deputy Shillinglaw, Appellant appeared extremely emotional and upset, and he was crying. (R. p. 88, line 24 - p. 89, line 3). Appellant was then transported to the Gaston County Police Department.

The Record further demonstrates that at no time was Appellant advised of his Miranda rights by Deputy Shillinglaw. (R. p. 91, line 25 - p. 92, line 2). Deputy Shillinglaw stated that he did not give Appellant his Miranda rights in the car because "he told me that he wanted an attorney, so I didn't think I had to." (R. p. 89, lines 4-15).

Deputy Shillinglaw further stated that while at the police station, Appellant continued "crying off and on." He and Appellant were apparently alone in a Captain Hoffstead-ler's office waiting for a fugitive warrant. (R. p. 86, lines 12-24; p. 92, lines 3-16). According to Deputy Shillinglaw, "earlier I'd asked him how many children they had." Appellant told him "that he had two by his first wife and two by his second wife and nothing else was discussed." (R. p. 86, line 20 - p. 87, line 2). Later, Appellant asked to go to the restroom. Deputy Shillinglaw recalled that while Appellant was in the bathroom, "he stated that his wife should not have accused him of molesting their daughter." (R. p. 87, lines 3-6; p. 92, lines 17-19).

After they returned from the restroom, Appellant continued to cry some more "on and off." (R. p. 86, line 23 - p. 87, line 9). At that juncture, Deputy Shillinglaw stated Appellant looked at him and "stated more or less as a question, I did kill her?" At that time, Deputy Shillinglaw stated, "Do what?" Appellant then said, "She is dead?" Deputy Shillinglaw stated "Yes," and that was the end of the conversation. (R. p. 87, lines 10-24). Deputy Shillinglaw

testified that he did not question Appellant at all during this period of time. (R. p. 87, line 25 - p. 88, line 19).

Appellant did not present testimony on this issue. (R. p. 93, lines 18-19).

Appellant argued his statements to Deputy Shillinglaw were not voluntary because of his extreme emotional condition at the time and he had not been advised of his rights. Further, once Appellant requested counsel, Deputy Shillinglaw should not have conversed in any manner until such time as Appellant had obtained counsel. The trial judge ruled that Appellant's statements were volunteered and not a result of custodial "interrogation" which required the issuance of Miranda warnings. (R. p. 96, line 5 - p. 101, line 19).

Appellant's statements to Deputy Shillinglaw were subsequently introduced into evidence at trial. (R. p. 157, line 11 - p. 158, line 18; p. 159, line 7 - p. 160, line 9).

On appeal, Appellant maintains the statements were inadmissible on the ground that he was not informed of his rights prior to custodial "interrogation." Appellant further argues the trial judge erred in failing to issue proper jury instructions concerning their duty to determine whether these statements were freely and voluntarily made upon proper advice of rights by the police.

Respondent would first note that Appellant's Issue II is not available for review by this Court because the Record demonstrates that there were no requests to charge or exceptions to the instructions as given by the trial judge

(R. p. 208, lines 8-14). It has been consistently held by this Court that the failure to object to an alleged error constitutes a waiver of any right to complain on appeal and prevents appellate review of the issue. State v. Bailey, 287 S.C. 1, 377 S.E.2d 581 (1989); State v. Stone, 285 S.C. 368, 330 S.E.2d 286 (1985); Singletary v. State, 281 S.C. 444, 316 S.E.2d 369 (1984). Therefore, this Issue is not available for review by this Court.

Furthermore, the Record reveals the trial judge properly ruled that the statements in question were admissible because Appellant was not subject to "interrogation" for Miranda purposes.

The ultimate test of the admissibility of a statement is whether it was voluntarily and knowingly made. State v. Rochester, 301 S. C. 196, 391 S.E.2d 444 (1990); State v. Washington, 296 S.C. 54, 370 S.E.2d 611 (1988). A volunteered statement of any kind is not barred by the Fifth Amendment. Miranda v. Arizona, 384 U.S. at 478. See Arizona v. Mauro, 481 U.S. 529 (1987); United States v. Peoples, 748 F.2d 934 (4th Cir. 1984); State v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (1989); State v. Howard, 296 S.C. 481, 374 S.E.2d 284 (1988). Voluntariness is judged by the "totality of the circumstances." State v. Davis, ____S.C.____, 422 S.E.2d 133 (1992); State v. Atchison, 268 S.C. 588, 235 S.E.2d 292 (1974).

> The Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say,

> the term "interrogation" under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. . . .But, since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response.

Rhode Island v. Innis, 446 U.S. 291, 301-302 (1980). (emphasis added). See State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991). The interrogation must reflect a measure of compulsion above and beyond that inherent in custody itself. State v. Franklin, supra.

Applying these principles to the facts here, there is no question but that Appellant was in custody at the time Deputy Shillinglaw and Detective Strickland arrived in North Carolina. They were introduced to Appellant, who apparently was in the front seat of a Gaston County patrol car. When Deputy Shillinglaw asked Appellant how he was doing, Appellant asked to speak to an attorney. Deputy Shillinglaw and Detective Strickland then exited the car. About five (5) minutes later, Appellant motioned for Deputy Shillinglaw to come back to the car. Deputy Shillinglaw then got into the car beside Appellant, where Appellant asked "how his wife was doing." Appellant, who was described as upset and crying, was told "not too good." Appellant then stated "his wife had accused him of molesting their daughter and that his wife had

left him. He stated he had been up all night." Deputy Shillinglaw informed Appellant the victim was dead, but that he could not talk to him about it because Appellant had requested to talk to an attorney. Appellant then stated that he did not want to say anything else until he talked to his attorney. Deputy Shillinglaw then exited the patrol car again. Appellant was transported to the Gaston County Police Department, and Deputy Shillinglaw later saw Appellant in an office. Sometime "earlier [Deputy Shillinglaw] asked [Appellant] how many children they had." Appellant told Deputy Shillinglaw "that he had two by his first wife and two by his second wife." Nothing else was discussed. Sometime later, Appellant stated that he wanted to go to the restroom. While there, Appellant again stated that his wife should not have accused him of molesting their daughter. They returned to the office after leaving the restroom and sat there for a few more minutes. Appellant continued to cry. He then looked at Deputy Shillinglaw and "stated more or less as a question, I did not kill her?" Deputy Shillinglaw responded, "Do what?" Appellant then said, "She is dead?" Deputy Shillinglaw said, "Yes," and "that was the end of the conversation."

Applying the above-referenced principles to the statements of Appellant to Deputy Shillinglaw, Respondent submits the trial judge ruled correctly on their admissibility. It was Appellant who first stated he wanted to talk to an attorney and who later summoned Deputy Shillinglaw back to the patrol car. After asking how his wife was doing,

Appellant volunteered his statement that the victim had accused him of molesting their daughter and had left them. Despite Appellant's "emotional" state of mind, inferably from having been caught, this statement was not the result of any coercion or "interrogation" by Deputy Shillinglaw. Although Deputy Shillinglaw informed Appellant the victim was deceased, he specifically told Appellant he could not talk to him about it because of Appellant's request for an attorney. Further, while there appeared to be some type of general conversation in an office at the Gaston County Police Department regarding how many children the victim and Appellant had, there is no evidence this was designed to elicit any incriminating responses from Appellant and, in fact, none were obtained at that time. At a later point, Appellant asked to go to the restroom and, without any prompting, Appellant again told Deputy Shillinglaw that his wife should not have accused him of molesting their daughter. This statement, too, was not the result of "interrogation" or its "functional equivalent." Finally, after returning to the office from the restroom, Appellant continued crying and stated, "I did kill her?" Deputy Shillinglaw's response ("Do what?") to which Appellant answered ("She is dead?") cannot be said to have been an attempt to elicit an incriminating response from Appellant. All the evidence demonstrates the statements by Appellant were not the result of "interrogation" as the term is defined in Rhode Island v. Innis, supra. It was Appellant, not Deputy Shillinglaw, who asked questions and made statements. Deput

Shillinglaw's responses were not reasonably likely to elicit an incriminating response from Appellant. Appellant, obviously upset at having just shot his wife in cold blood, volunteered the statements without any solicitation from Deputy Shillinglaw. It follows, therefore, that the trial judge did not err in finding these volunteered statements admissible and that it was not necessary for Deputy Shillinglaw to have advised Appellant of his Miranda rights before he made the volunteered statements in question. State v. Franklin, supra; State v. Howard, supra. Compare State v. Caulder, 287 S.C. 507, 339 S.E.2d 876 (Ct. App. 1986) (questions by medical doctor regarding how a defendant received a particular scratch on his chest, the scratch having first been noticed by arresting officers, were reasonably likely to produce incriminating responses since the purpose of the medical examination was to gather evidence and not to provide medical treatment).

Respondent further submits there can be no question but that Appellant's initial statements to Deputy Shillinglaw when he was summoned back to the patrol car by Appellant -- that the victim should not have accused him of molesting their daughter -- provided a possible motive for the killing. Thus, Appellant's subsequent statements to Deputy Shillinglaw were merely cumulative. Arguably, the jury would not have reached a different result if these statements had been excluded. Moreover, several witnesses observed Appellant at the scene of the murder in possession of the rifle. Since there is no

reasonable likelihood the admission of the subsequent statements contributed to Appellant's conviction for this crime, any error was harmless beyond a reasonable doubt. State v. Rochester, supra; State v. Newell, 303 S.C. 471, 401 S.E.2d 420 (Ct. App. 1991); State v. Henderson, 286 S.C. 465, 334 S.E.2d 519 (Ct. App. 1985). This Court, when assessing the error in context of the entire Record, can readily conclude beyond a reasonable doubt that the statements to Deputy Shillinglaw alone did not influence the jury's verdict. These statements, therefore, could not have been prejudicial. State v. Rochester, supra.

For the foregoing reason, Appellant's Issue is without merit.

II.

The trial judge properly refused to charge the jury on the law of voluntary manslaughter because the evidence presented at trial did not warrant such a charge. (Appellant's Issue III; Appellant's Argument 3).

At trial, Appellant requested a charge on voluntary manslaughter. His request was denied by the trial judge as not being supported by the evidence. (R. p. 108, line 23 - p. 181, line 25). On appeal, Appellant argues the trial judge erred by refusing to charge the jury on the lesser-included offense of voluntary manslaughter because the evidence adduced at trial supported the charge.

Respondent disagrees. Inasmuch as there was no evidence tending to establish Appellant's guilt of only voluntary manslaughter, the trial judge properly refused Appellant's request to charge.

It is well settled the law to be charged is determined from the evidence presented at trial. Frazier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991); Battle v. State, 305 S.C. 460, 409 S.E.2d 400 (1991); State v. Dingle, 279 S.C. 278, 306 S.E.2d 223 (1983); State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981). Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon a sufficient legal provocation. State v. Parker, Op. No. 23865 (S.C. Sup. Ct. filed Aug. 9, 1993); State v. Gandy, 283 S.C. 571, 324 S.E.2d 65 (1984); State v. Norris, 253 S.C. 31, 168 S.E.2d 564 (1959). A charge on a lesser-included offense is properly

refused unless the evidence tends to show the defendant is only guilty of the lesser offense. State v. Brown, 269 S.C. 491, 238 S.E.2d 174 (1977); State v. Funchess, 267 S.C. 426, 229 S.E.2d 331 (1976). Where the evidence presented at a murder trial does not support a conviction for voluntary manslaughter, the trial judge is not required to charge the jury as to that lesser-included offense. State v. Damon, 285 S.C. 125, 328 S.E.2d 628 (1985); State v. Dingle, supra. In fact, it is improper to do so. State v. Damon, supra. See State v. Edwards, 194 S.C. 410, 10 S.E.2d 587 (1940). A mere contention that the jury might accept the State's evidence in part and reject in part will not support a request for the lesser-included offense charge. State v. Funchess, supra.

In the instant case, as summarized in the Statement of Facts herein, the Record is simply devoid of any evidence of provocation on the part of the victim, much less sufficient legal provocation. The evidence demonstrates Appellant was observed by several employees at the Catawba Nuclear Station exiting his van and in possession of a rifle, which he held against his right leg. He approached the victim, who had just arrived and was heading toward the administration building. These witnesses then heard several shots in rapid succession. Appellant was then seen walking "very deliberate, calm and controlled" back to his van, still in possession of the rifle. Appellant then drove out of the parking lot and was arrested a short time thereafter. The victim was shot six (6) times -- twice in the head; three (3) times in the chest; and once i

the hip. Appellant later stated to the police that the victim should not have accused him of molesting their daughter. He further asked, "I did kill her?" and "she is dead?"

Appellant argues that because Appellant's wife had apparently accused him of molesting their daughter, this demonstrated the existence of a "serious" domestic dispute in which "there was ample room for the jury to have concluded that the Appellant was guilty of not murder, but voluntary manslaughter." (Brief of Appellant at 21). Even assuming arguendo, without conceding, that Appellant might have become mad or disturbed under these circumstances, such anger was clearly not engendered by sufficient legal provocation to warrant the killing of the victim. State v. Norris, supra. A killing in the absence of legal provocation, even in the heat of passion, is murder and not manslaughter. Here, there was no evidence of any provocation by the victim at the time she was shot down in front of the administration building. The only evidence shows the defenseless victim was gunned down by Appellant while she went to work that morning. That the victim had allegedly accused Appellant of sexually assaulting their daughter merely provided evidence of a possible motive for the killing, and nothing more. Cf. State v. Hartley, ____S.C.____, 414 S.E.2d 182 (Ct. App. 1992). Words alone, however, opprobrious, will not constitute legal provocation which is necessary to reduce a killing from murder to manslaughter where death is caused by use of a deadly weapon. State v. Plemmons, 286 S.C. 78, 332 S.E.2d 765 (1985); State

v. Gardner, 219 S.C. 97, 64 S.E.2d 130 (1951); State v. Lowry, ____S.C.____, 424 S.E.2d 549 (Ct. App. 1992). The killing in this case was "a murder or nothing." State v. Dingle, 306 S.E.2d at 229. Because there was no evidence that Appellant committed the killing in the sudden heat of passion upon sufficient legal provocation, the trial judge properly refused to instruct the jury on the law of voluntary manslaughter. State v. Gandy, supra; State v. Lowry, supra; State v. Franklin, ____S.C.____, 425 S.E.2d 758 (Ct. App. 1992).

For the foregoing reasons, Appellant's Issue is without merit.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

T. TRAVIS MEDLOCK
Attorney General

DONALD J. ZELENKA
Chief Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General
Chief, Criminal Appeals Section

NORMAN MARK RAPOPORT
Assistant Attorney General

THOMAS E. POPE
Solicitor, Sixteenth Judicial Circuit

BY: _____

_____

Office of the Attorney General
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Columbia, SC 29211
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ATTORNEYS FOR RESPONDENT

November 8, 1993

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From York County

The Honorable Don S. Rushing, Circuit Court Judge

THE STATE,

Respondent,

v.

JEFFERY LYNN CHRONISTER,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 210(b), SCACR.

T. TRAVIS MEDLOCK
Attorney General

DONALD J. ZELENKA
Chief Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General
Chief, Criminal Appeals Section

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November 8, 1993

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From York County

The Honorable Don S. Rushing, Circuit Court Judge

THE STATE,

Respondent,

v.

JEFFERY LYNN CHRONISTER,

Appellant.

PROOF OF SERVICE

I certify that I have served the within Final Brief of Respondent on Appellant by depositing three (3) copies of the same in the United States mail, addressed to his attorney of record, Tara Dawn Shurling, Esquire, 1122 Lady Street, Suite 940, Columbia, South Carolina 29201. I further certify that all parties required to be served have been served this 8th day of November, 1993.

T. TRAVIS MEDLOCK
Attorney General

DONALD Z. ZELENKA
Chief Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General
Chief, Criminal Appeals Section

NORMAN MARK RAPOPORT
Assistant Attorney General

THOMAS E. POPE
Solicitor, Sixteenth Judicial Circuit

By: _____

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Post Office Box 11549
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ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Jeffrey Lynn Chronister, Appellant.

ATTORNEY GENERAL'S OFFICE
Received: 9-2-94
Instructions:

Appeal From York County
Don S. Rushing, Judge

Memorandum Opinion No. 94-MO-226
Submitted April 8, 1994 - Filed September 1, 1994

AFFIRMED

Assistant Appellate Defender Tara Dawn Shurling, of S.C. Office of Appellate Defense, of Columbia, for appellant.

Attorney General T. Travis Medlock, Chief Deputy Attorney General Donald J. Zelenka, Senior Assistant Attorney General Harold M. Coombs, Jr., Assistant Attorney General Norman Mark Rapoport, all of Columbia; and Solicitor Thomas E. Pope, of York, for respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b)(1), SCACR, and the following authorities: Issue I: Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981); Rhode Island v. Innis, 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980); State v. Howard, 296 S.C. 481, 374 S.E.2d 284 (1988); State v. Owens, 293 S.C. 161, 359 S.E.2d 275 (1987). Issue II: State v. Parker, ___ S.C. ___, 433 S.E.2d 831 (1993) (jury charge must be requested to preserve the issue for appeal). Issue III:

te v. Gilliam, 296 S.C. 395, 373 S.E.2d 596 (1988); State v. Damon, 285 S.C. 125, 328 S.E.2d 628 (1985); State v. Rogers, 275 S.C. 485, 272 S.E.2d 792 (1980); State v. Franklin, ___ S.C. ___, 425 S.E.2d 758 (Ct. App. 1992).

A. Lee Chandler C.J.

Ernest A. Finney, Jr. A.J.

[illegible] A.J.

James E. Moore A.J.

DAVID W. HARWELL, C.J., not participating.

STATE OF SOUTH CAROLINA

County of YORK

In the Court of Common Pleas

95CP-46-1104

JEFF CHRONISTER # 189827
Full name and prison number (if any) of Applicant.

STATE OF SOUTH CAROLINA AND
GERALD SMITH, ESQUIRE
Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

FILED-RECEIVED
BOOK ____ PAGE ____
AUG 28 8:59 AM '95
ROBERT FIELD
C.C.P. & G.S.
YORK COUNTY, S.C.

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention KIRKLAND CORRECTIONAL INSTITUTION

2. Name and location of Court which imposed sentence YORK COUNTY, YORK SOUTH CAROLINA

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

   (a) 92-GS-46-1224

   (b)

   (c)

4. The date upon which sentence was imposed and the terms of the sentence:

   (a) SEPTEMBER 22, 1992

   (b) LIFE FOR MURDER CONSECUTIVE WITH FIVE YEARS FOR POSSESSION OF A

   (c) FIREARM WHILE COMMITTING A VIOLENT CRIME.

5. 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 _____

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

YES

7. If you answered "yes" to (6), list

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

i. SOUTH CAROLINA SUPREME COURT

ii. _____

iii. _____

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

i. DECISION AFFIRMED

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

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

(a) INEFFIECTIVE ASSISTANCE OF COUNSEL.

(b) _____

(c) _____

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

(a) _____

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? NO

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

_____

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the 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? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. GERALD SMITH

ii. TARA SHURLING

iii. _____

(b) the proceedings at which each such attorney represented you:

i. TRIAL AND SENTENCING.

ii. APPEAL TO SOUTH CAROLINA SUPREME COURT.

iii. _____

18. State clearly the relief you seek in filing this application.

CONVICTION AND SENTENCE BE VACATED, AND A NEW TRIAL GRANTED.

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

NO

STATE OF SOUTH CAROLINA

County of _____

VERIFICATION

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

_____

SWORN to and subscribed before me this 2nd

day of August, 19 95.

_____ (L.S.)
Notary Public

My Commission Expires: ~~[illegible]~~ May 12, 1999
~~May 12, 1999~~

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

I, _____, hereby apply for leave t
proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declar
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 therefor.

_____
Applicant

SWORN or affirmed to and subscribed before me this

_____ day of _____, 19 ___

_____
Notary Public

My Commission Expires _____.

FILED-RECEIVED
BOOK ____ PAGE ____
'95 SEP 5 10 03 AM
ROD BENFIELD
C.C.C.P. & G.S.C.
YORK COUNTY, S.C.

ARGUMENTS
INEFFECTIVE ASSISTANCE OF COUNSEL

I. TRIAL COUNSEL FAILED TO EFFECTIVELY DISCUSS THE CASE AND STRATEGY WITH THE CLIENT.

Jeff Chronister was arrested on February 14, 1992 and charged with Murder. Mr. Chronister was housed for three months at the South Carolina State Hospital in the Cooper Building.

Trial counsel first visit to discuss the case with his client was five (5) months after his initial arrest. Trial counsel only met with his client for approximately three hours total to discuss the facts, law, and strategy of the case. Additionally, Mr. Chronister was taken prescribed medication (Prozac), which affected his ability to understand and reason. Trial counsel failure to adequately interview and discuss case strategy denying Mr. Chronister his right to effective legal representation.

The serious nature of the charge (Murder) requires much more than spending three hours discussing the case with your client. The effects of the Prozac would entail that additional time would be needed to explain, simplify and reinforce the details and strategy of the case.

II. TRIAL COUNSEL FAILED TO SECURE A PRELIMINARY HEARING FOR HIS CLIENT.

Trial counsel did not effect a Preliminary Hearing for his client, thus waiving the hearing. A Preliminary Hearing is a "critical" stage in the process, and the Defendant has a constitutional right to effective counsel at that stage.

Failure of trial counsel to preserve his client right to a Preliminary Hearing deems his actions to be ineffective and less than reasonable.

III. <u>TRIAL COUNSEL FAILED TO SUBPOENA AND CALL WITNESS ON BEHALF OF HIS CLIENT.</u>

Trial counsel did not put forth any evidence nor witnesses on behalf of client. Mr. Chronister had provided trial counsel with a list of witnesses he would like to have testify at the trial, but trial counsel failed to subpoena and call the witneeses to testify.

Trial counsel in the transcript, pg. 178-179, specifically lines 6-23, represented to the court that there were witnesses present to testify on behalf of Mr. Chronister. Actually, there were not witnesses available to testify on behalf of Mr. Chronister and two potential witnesses have prepared Affidavits stating that trial counsel knew that they wanted to testify but neither was called or subpoenaed to court (see enclosed copies).

The testimony of the potential character witness would not have only been helpful, but the testimony was essential to any possible defense that the Defendant could put forth. Trial counsel by failing to put forth the witnesses rendered his client up to the prosecutor's allegations without a strand of contradicting evidence or supportive evidence for his client.

The failure to call the witnesses is a not harmless error, and in violation of the Defendant's right to call and subpoena witnesses. Additionally, trial counsel misled the court and his client in stating that there were witnesses available to testify, when in actuality, there were not witnesses present.

IV. TRIAL COUNSEL FAILURE TO OBTAIN AN INDEPENDENT PSYCHIATRIC EXAM AND PSYCHIATRIST FOR HIS CLIENT AMOUNTS TO INEFFECTIVE ASSISTANCE OF COUNSEL.

Mr. Chronister suffers from a mental illness (Maladaptive Behavior), and as indicated earlier, he was taking Prozac. Mr. Chronister should have been evaluated as to his ability to understand and comprehend his rights as to his right not to testify and right to call witnesses, and his ability to assist in his defense.

An independent psychiatric evaluation would have indicated that Mr. Chronister was not mentally fit to understand his right, thus he could not waive such rights. Trial counsel failure to seek an independent psychiatric evaluation precluded his client from availing himself of the defenses of guilty but mentally ill and the insanity defense.

V. TRIAL COUNSEL FAILED TO REQUEST A MOTION FOR CHANGE OF VENUE.

Trial counsel should have requested that the Court change Venue of the trial considering the pre-trial publicity, the relatively small size of the County, and the nature of the trial. Trial counsel did not attempt to secure Affidavits as required for a Motion for Change of Venue.

That the Transcript reflects that a substantial writer of potential juror had knowledge of the case, had heard and read news correspondence of the case, and had discussed the case with other people.

That the failure of trial counsel to secure the Affidavits, and Motion the Court for a Change of Venue, thus depriving the Defendant of his right to an impartial and fair jury.

VI. FAILURE TO PROPERLY INVESTIGATE THE CASE

Trial counsel failed to adequately investigate the case and ascertain facts to help in his clients defense. Trial counsel by failing to visit this client for five months after his arrest allowed for crucial evidence to be forgotten, lost, or destroyed. The crime scene was old, the client and potential witnesses memory of the events were not fresh, and the recall not as good.

Additionally the client never talk to an investigator, implying that the defense did not use the services of an investigator in the case. The use of an investigator in a case of murder is crucial in the collection of physical material, interviewing potential witnesses, collecting statements and doing background checks on the State's witnesses.

Finally, the defense should have retained the services of an expert in firearms to trace the path of the bullet and to explain the gun powder evidence and the failure of trial counsel to improperly investigate the case was ineffective assistance of counsel, causing prejudice to the Defendant.

LAW OFFICES OF STARK AND HUDSON, P.C.

I. Pernell "Pug" Starks
2005 Hampton Street, Suite G
Post Office Box 5782
Columbia, South Carolina 29250
(803) 765-9177

Columbia, South Carolina
4-13, 1995

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS
Lynn Jeffrey Chronister, 189827, Applicant, vs. State of South Carolina, Respondent.	)	95-CP-46-1109 RETURN AND MOTION TO DISMISS

The Respondent, making its return to the application for post-conviction relief filed August 28, 1995 and received by the Office of the Attorney General on September 26, 1995, would respectfully show this Court:

I.

The Applicant is presently confined in the Kirkland Correctional Center of the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the April 1992 term of the Court of General Sessions for York County for Murder and Unlawful Possession of Firearm or Knife During the Commission of a Violent Crime (92-GS-46-1224). He was represented by Gerald Smith, Esquire, of the York County Public Defender's Office. On September 21 and 22, 1992, the Applicant proceeded to jury trial, at the conclusion of which he was found guilty as charged. He was sentenced by the Honorable Don S. Rushing to confinement for a period of Life and five years consecutive. The Applicant filed a timely Notice of Intent to Appeal and an appeal was perfected on his behalf by Tara Shurling, Esquire. Subsequently, the

Applicant's conviction was affirmed (the Court's Order will be forwarded and is to be attached and incorporated in this Return).

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject conviction; the Applicant's records from the South Carolina Department of Corrections; and the application for post-conviction relief.

II.

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Trial counsel failed to effectively discuss the case and strategy with the client.

2. Trial counsel failed to secure a preliminary hearing for his client.

3. Trial counsel failed to subpoena and call witness on behalf of his client.

4. Trial counsel (sic) failure to obtain an independent psychiatric exam and psychiatrist for his client amounts to ineffective assistance of counsel.

5. Trial counsel failed to request a motion for change of venue.

6. Failure to properly investigate the case.

III.

The Respondent submits that this application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of

conviction or within one y Filed 8/28/95 PCR
remittitur to the lower court Remitt. - 9/1/94 ng of the
the final decision upon an apr filing o
er.

The Applicant was convicted or 1992 for the offenses he now challenges in his appli ... The (remittitur was sent down/ Supreme Court's decision was filed) after the Applicant's unsuccessful appeal on %%. This application was filed on August 28, 1995, well after the statutory filing period had expired.

The South Carolina Supreme Court has held that a motion for summary judgement may properly be used to raise the defense of statute of limitations. McConnell v. Consolidated School District of Aiken, ___ S.C. ___, 455 S.E.2d 638 (1994). Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by statute.

IV.

If the Court does not see fit to summarily dismiss the application, then the Respondent submits the following:

The Respondent interprets Applicant's claims one through six to allege that he received ineffective assistance of counsel. The respondent submits that the applicant's allegations are without merit. When an ineffectiveness claim is presented the defendant must show that counsel's representation was deficient. Deficient representation amounts to conduct that is not objectively reasonable under the circumstances. Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052 (1984). In addition, the defendant

must show that the outcome of his proceeding was prejudiced and it is reasonably probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. The respondent submits that the applicant's attorney demonstrated a normal degree of skill, knowledge and professional judgment that is expected of an attorney who practices criminal law. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, supra; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent therefore moves for summary dismissal on the basis that the application does not comply with the filing mandates of the Post-Conviction Relief Act.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests that the matter be summarily dismissed. If the Court does not see fit to dismiss the application, then the Respondent request that an evidentiary hearing be convened.

CHARLES MOLONY CONDON
Attorney General

JOHN W. McINTOSH
Deputy Attorney General

TERESA NESBITT COSBY
Assistant Deputy Attorney General

MATTHEW M. McGUIRE
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

Columbia, South Carolina
January 24, 1995.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

Lynn Jeffrey Chronister, 189827,

Applicant,

vs

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE
95-CP-46-1109

The undersigned hereby certifies that on the 25th day of January, 1996, a true copy of the Respondent's Return, along with a copy of the Clerk Records, SCDC Records, and the Application for Post-Conviction Relief in regard to the above captioned case have been served on the following:

I. Pernell "Pug" Starks, Esquire
2005 Hampton Street, Suite G
Columbia, South Carolina 29204

Judy A. Jennings
Administrative Assistant to
Matthew M. McGuire
Assistant Attorney General

0376

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS 95-CP-46-1109
Lynn Jeffrey Chronister, 189827, Applicant, vs. State of South Carolina, Respondent.	)	AMENDED RETURN AND MOTION TO DISMISS

The Respondent, making its return to the application for post-conviction relief filed August 28, 1995 and received by the Office of the Attorney General on September 26, 1995, would respectfully show this Court:

I.

The Applicant is presently confined in the Kirkland Correctional Center of the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the April 1992 term of the Court of General Sessions for York County for Murder and Unlawful Possession of Firearm or Knife During the Commission of a Violent Crime (92-GS-46-1224). He was represented by Gerald Smith, Esquire, of the York County Public Defender's Office. On September 21 and 22, 1992, the Applicant proceeded to jury trial, at the conclusion of which he was found guilty as charged. He was sentenced by the Honorable Don S. Rushing to confinement for a period of Life and five years consecutive. The Applicant filed a timely Notice of Intent to Appeal and an appeal was perfected on his behalf by Tara Shurling, Esquire. Subsequently, the

Applicant's conviction was affirmed State v. Chronister, 94-MO-226 (filed September 1, 1994).

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject conviction; the Applicant's records from the South Carolina Department of Corrections; and the application for post-conviction relief.

II.

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Trial counsel failed to effectively discuss the case and strategy with the client.
2. Trial counsel failed to secure a preliminary hearing for his client.
3. Trial counsel failed to subpoena and call witness on behalf of his client.
4. Trial counsel (sic) failure to obtain an independent psychiatric exam and psychiatrist for his client amounts to ineffective assistance of counsel.
5. Trial counsel failed to request a motion for change of venue.
6. Failure to properly investigate the case.

III.

The Respondent submits that this application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of

conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Applicant was convicted on September 22, 1992 for the offenses he now challenges in his application. The Supreme Court affirmed the Applicant's conviction on September 1, 1994 (State v. Chronister, 94-MO-266 (filed September 1, 1994)). The Remittitur was sent down September 19, 1994. This application was filed on August 28, 1995, well after the statutory filing period had expired.

The South Carolina Supreme Court has held that a motion for summary judgement may properly be used to raise the defense of statute of limitations. McConnell v. Consolidated School District of Aiken, ___ S.C. ___, 455 S.E.2d 638 (1994). Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by statute.

IV.

If the Court does not see fit to summarily dismiss the application, then the Respondent submits the following:

The Respondent interprets Applicant's claims one through six to allege that he received ineffective assistance of counsel. The respondent submits that the applicant's allegations are without merit. When an ineffectiveness claim is presented the defendant must show that counsel's representation was deficient. Deficient representation amounts to conduct that is not objectively reasonable under the circumstances. Strickland v. Washington, 466

U.S. 668, 688, 104 S.Ct. 2052 (1984). In addition, the defendant must show that the outcome of his proceeding was prejudiced and it is reasonably probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. The respondent submits that the applicant's attorney demonstrated a normal degree of skill, knowledge and professional judgment that is expected of an attorney who practices criminal law. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, supra; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent therefore moves for summary dismissal on the basis that the application does not comply with the filing mandates of the Post-Conviction Relief Act.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests that the matter be summarily dismissed. If the Court does not see fit to dismiss the application, then the Respondent request that an evidentiary hearing be convened.

CHARLES MOLONY CONDON
Attorney General

JOHN W. McINTOSH
Deputy Attorney General

TERESA NESBITT COSBY
Assistant Deputy Attorney General

MATTHEW M. McGUIRE
Assistant Attorney General

By: Matthew M. McGuire
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

Columbia, South Carolina
January 29, 1996.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

Lynn Jeffrey Chronister,
189827,

Applicant,

vs

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE
95-CP-46-1109

The undersigned hereby certifies that on the 29th day of January, 1996, a true copy of the Respondent's Amended Return in regard to the above captioned case have been served on the following:

I. Pernell "Pug" Starks, Esquire
2005 Hampton Street, Suite G
Columbia, South Carolina 29204

Judy A. Jennings
Administrative Assistant to
Matthew M. McGuire
Assistant Attorney General

COUNTY OF YORK

SIXTEENTH JUDICIAL CIRCUIT

C/A # 95-CP-46-1109 0382

Lynn Jeffrey Chronister
Applicant,

-vs-

State of South Carolina

Charles Condon, Attorney Gen.
Respondent

APPLICANT'S MOTION IN OPPOSITION TO RESPONDENT'S MOTION TO DIMISS

The Applicant in the above captioned action hereby opposes the Respondent's Motion To Dismiss and would respectfully submit to, and show this Honorable Court that said Motion is without merit based on the following:

The Respondent, in the Motion, has claimed that the Applicant has (1) not complied with filing procedures of the Uniform Post-Conviction Procedures Act, specifically S.C. Code Ann. § 17-27-45 (a); and (2) failed to prove his claim of ineffective assistance of counsel and prejudice as required by Strickland v. Washington, 466 U.S. 668, 104 S.C 2052(1984), 80 L.Ed.2d 674.

Initially, the Applicant contends that the Respondent's application of S.C. Code Ann. § 17-27-45 is both a violation of the ex post facto clause and an inappropriate application of laches. In State v. Huiett, 394 S.E.2d 486, (S.C. 1990), the South Carolina Supreme Court stated that: "It has been held that an ex post facto law "is an enactment, criminal or penal in nature, which is retrospective and disadvantages the offender affected by it." United States v. Mest, 789 F.2d 1069, 1071 (4th Cir. 1986; Weaver v. Graham, 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981).

[1] The purpose of an ex post facto clause is to "assure that federal and state legislatures [are] restrained from enacting arbitrary or vindictive legislation" and that "legislative enactments "give fair warning of their effect and permit individuals to rely on their meaning untill explicitly changed'." Miller v. Florida, 482 U.S. 423, 429-430, 107 S.Ct, 2446,2451, 96 L.Ed.2d 351, 359 (1987) (citations omitted). Therefore, in order for a law to fall within the ex post facto prohibition, two critical elements must be present: (1) the law must be retrospective as to apply to events

ccurring before its enactment, and (2) the law must disadvantage the ffender affected by it. Miller v. Florida, supra. 0383
2,3] No ex post facto violation occurs if a change does not alter 'substantial personal rights', but merely changes 'modes of procedure hich do not affect matters of substance'." Miller v. Florida, 482 U.S. t 430, 107 S.Ct. at2451, 96 L.Ed.2d at 360 (citations omitted)."

As to the first element, S.C. Code Ann. § 17-27-45 was enacted as 995 Act No. 7, part II, § 40, effective July 1, 1995 (became law without he Governor's signature January 12, 1995). If this statute were to be applied to anyone convicted and sentenced prior to its enactment, it would certainly fulfill this first element. The proper statutes to apply in this case should be S.C. Code Ann. §§ 17-27-20 through 17-27-40. S.C.Code Ann. § 17-27-20 basically states that the Uniform Post-Conviction Procedures Act, "except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remidies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them." Since the applicant is qualified under S.C.Code Ann. § 17-27-30 to use the only avenue open to him under S.C.Code Ann. § 17-27-20 to address the problems and violations concerning his conviction and sentence, this avenue would fulfill the second, or "substantial personal rights", element of the ex post facto clause.

The concept of laches implies (a) some type of time limit, (b) some type of prejudice to be suffered by the Respondent due to delay, or (c) that the Applicant has "slept", or done nothing to pursue his rights. Since S.C.Code Ann. §§ 17-27-10 et. seq.,. as originally enacted, specifies no time limit for filing, and the time between the Applicant's appeal ruling and the filing of this action actually prejudices the Applicant rather that the Respondent, and most of the Applicant's contentions stand on the record, which will not change with the passage of time, and the Applicant has in fact been researching statutes and case law as much as time has allowed him, under the circumstances, since the ruling on his appeal, the application of laches in this case is inappropriate and should not apply.

In addition, if this Honorable Court should find that S.C.Code Ann. § 17-27-45 does apply in this case, the Applicant would show that, as admitted by the Respondent, the remittitur or final decision from the South Carolina Supreme Court regarding this case was filed September 1, 1994 and the Applicant's application in this case was filed August 28, 1995.

Ih looking at those two dates, the Respondent should obviously have seen that the difference between these dates is slightly less than the one year period as required by S.C. Code Ann. § 17-27-45 (a). 0384

Secondly, the Applicant contends and maintains that the actions and lack of actions by counsel, as listed in his application, as well as those that may be presented at an evidentiary hearing, definitely violate Rule 407, S.C.A.C.R., which sets forth the standards of performance for an attorney in criminal cases thereby fulfilling the requirement of "ineffective assistance" as required by Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The Applicant also contends and maintains that the outcome of his trial would have been different had it not been for counsel's unprofessional errors as also required by Strickland v. Washington.

THEREFORE, the Applicant hereby requests and prays that this Honorabl Court will deny the Respondent's Motion To Dismiss and grant and schedule an evidentiary hearing for the above captioned matter to ascertain that the Applicant's constitutional rights have indeed been violated.

Respectfully submitted:

Lynn Jeffrey Chronister P.C.S.

Lynn Jeffrey Chronister, pro se

This 8 day of FEBRUARY, 1996

in Columbia South Carolina, 29210

0385

STATE OF SOUTH CAROLINA

County of York

In the Court of Common Pleas

JEFF CHRONISTER

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

vs.

The State of South Carolina

Name of Respondent.

APPLICATION FOR POST-CONVICTION RELIEF

95CP46-1109

AMENDED APPLICATION

INSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to under oath, any false statement of a material fact therein may serv the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that 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) set orth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. W the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant convicted.

1. Place of detention KIRKLAND CORRECTIONAL INSTITUTION

2. Name and location of Court which imposed sentence SIXTEENTH JUDICIAL CIRCUIT, 1675 1A YORK HWY, YORK, SOUTH CAROLINA

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence imposed:

(a) 92_GS-46-1224

(b)

(c)

4. The date upon which sentence was imposed and the terms of the sentence:

(a) see original P.C.R. # 95 CP 46-1109

(b)

(c)

(b) after a plea of not guilty X 0386

(c) after a plea of nolo contendere

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

See original P.C.R.

7. If you answered "yes" to (6), list

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

i. See original P.C.R.

ii.

iii.

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

i. See original P.C.R.

ii.

iii.

(c) the date of each such result:

i. See original P.C.R.

ii.

iii.

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

i.

ii.

iii.

8. If you answered "no" to (6), state your reasons for not so appealing:

(a)

(b) N-A

(c)

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

(a)

(b) SEE ADDITIONAL PAGE

(c)

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

(a)

(b) SEE ADDITIONAL PAGE

(c)

(9) GROUNDS FOR RELIEF:

(a) Ineffective Assistance of Counsel.

(b) Applicant was denied Due-Process of law in violation of the Sixth and Fourteenth Amendments.

(10) Facts Supporting Grounds For Relief:

(a) Counsel was ineffective where, knowing that applicant had a history of mental illness before trial, yet, made no effort to discuss insanity defense with applicant and made no efffort to investigate or develop possible sources of evidence to prove insanity defense.

Trial counsel failed to bringforth or discuss with applicant the "request for notice of insanity defense", which was requested by the State on August 31, 1992. Applicant did not learn about trial counsel concern about an insanity defense until July 1996. It is applicant claim that trial counsel never discuss with applicant the defense of an insanity defense. Applicant did in fact discuss with trial counsel his past history of mental illness, stress, alcohol abuse, drug abuse, loss of memory, previous suicidal attempt. Trial counsel failed to investigate claims by applicant when he state to counsel and doctors, "that morning was like a blackhole in my life", and "if that was me, then that wasn't me", thus, showing that applicant infact did suffer from mental illness at the time of the offense. See, Loe v. United State, 545 F. Supp. 662 (1982). Trial counsel failure to request examination by private psychiatrist as to criminal responsibility was ineffective assistance of counsel. Whereas applicant did not have an examination from a partisan point of view and that the only expert determination of mental condition at time of offense was the State evidence.

Trial records shows that applicant was diagnosed with alcohol abuse and also mixed emotional features Pp 65(24-25), applicant also question Pp.62 (3), why the solicitor call Dr. Thomas W. Behrman to testify as to competency, whereas Pp. 76 (15-17), shows applicant counsel had said that doctor was under subpoena. Also showing that witness was not called back for court the next day of trial, as witness was perpareed to do so. In his testimony Dr. Behrman gave the following assessment of applicant mental condition at time of offense:

> "Applicant suffer from severe depression, anxiety, severe stressors present, mal adaptive, affects upon his ability to think properly, abnormal emotional reaction (yes), excess or greater than, more mal-adaptive than normally expected from the average person given the same situation, also more severe and more dysfunctional than expected. "

Applicant contend that the above testimony shows definate signs of a mental illness, insanity at the time of offense. Applicant also contends that he discuss the blackouts with Dr. Behrman, Dr. Becamy an psychatrist at the Piedmont Medicial Hospital in Rock Hill, South Carolina. Applicant also gave this information to trial counsel, but trial counsel failed to bring this issue before the court and trial counsel failed to call Dr. Becamy as a expert witness to testify as to applicant competency and criminal responsibility at the time of offense. See, Wood v. Zahradnick, 430 F. Supp. 107 (1977).

It is applicant claim that "to be guility of any crime a person must engage responsibly in the action, thus, an insane or a person who is incompetent, who does the act is not guilty of the crime. See, Davenport v. State, 389 S.E.2d 649 (1990), where the court states " when trial counsel failed to advise his client of the insanity defense, which if established (in applicant case this was established through the State evidence) would relieved client of any criminal responsibility, then trial counsel have render ineffective assistance of counsel.

It is applicant claim that where trial counsel relied solely on the written medical reports, counsel failure to request further mental examination, to determine criminal responsibility at time of offense, by private psychatrist, prejudice applicant defense in that applicant was denied the opportunity to present a partisan witness for his defense. Expert witness, Dr. Thomas W. Behrman who examined applicant to determine his capacity to stand trial, was expected to be neutral and detached, but a private psychiatrist who would have examine applicant in order to ascertain his mental condition at time of the offense would have been a partisan witnes for applicant defense. See. Loe v. United States, 545 F.Supp. 662 (4th cir. 1982), also see, United States v. Reason, 549 F.2d 309, 311 (4th cir. 1977).

Applicant claim is consistent with the Fourth Circuit Court of Appeals decision in McLaughin v. Royster, 346 F.Supp. 297 (E.D.Va. 1972), where the Court stateed, " The report from the hospital does not conclude the issue of competency. Counsel has a duty to explore the matter further and adduce evidence in court, when there is reason for doubt as to the mental condition of the accused.

Thus it is applicant claim that trial counsel failure, despite all the information available to him, to request further psychiatrist examination before proceeding to trial was ineffective assistance of counsel in violation of applicant sixth amendment rights.

It is applicant claim that trial records shows that trial counsel failed to investigation mitigating circumstances 16-3-20 S.C. Code of Law, Title 16=17. The applicant has no significant history of prior criminal conviction involving the use of viocence against another person. The murder was committed while the applicant was under the influence of mental or emotional disturbance. The capacity of the applicant to appreciate the criminality of his conduct or to conform his conduct to the requirement of the law was substantially impaired.

(b) It is applicant claim that trial records Pp 264, line 16-17 shows that applicant was denied effective assistance of counsel when his trial counsel allowed a mandatory presumption of malice to be charge to the jury without objection, see, Carter v State, 392 S.E.2d 184 (1990), also see, Frett v. State, 378 S.E.2d 249 (1988).

By pervasive an general incompetence of trial counsel this denied applicant of a fair trial, also by the South Carolina P.C.R. Ineffective Legal Counsel Test, the previous issues shows..... (1) Counsel failed to advise or inform applicant of important laws, case, or defense. (2) Counsel failed to make objection during trial Pp 91 line 5, this accurately shows, was an impermissive comment on the facts Art. 4 Sec. 17- S.C.S.C., State v. Smith, 88 S.E.2d (1955). Trial records Pp 112 line 24-25, witness quotes, " No I don't remember saying that, that's how he interpreted what I said," showing mishandling of investigation by officer should have been objected to by trial counsel, after showing officer using his interpreation instead of what was actually said.

It is applicant claim that he was denied due-process of law in that. (1) Trial counsel failed to request a specific jury instruction, see trial records Pp 163 line 15; trial counsel failed to adequately prepare fpr the case or call witnesses at trial to investigate claims covered in P.C.R. and this amendment first issues; (2) Trial counsel failed to seek or prefect an appeal, review orders please refer to (B) applicant feels that these issues should have been used in appeal mishandling by officer, Tr. Pp 9 line 15, impermissive comments on the facts by the Court. It accurately shows, Simpkins v. State, 401 S.E.2d 142 (1991), counsel ineffective for failing to brief meritorios issues on appeal.

It is applicant claim that procedure error was committed at trial or ommission occuring Tr. Pp 114 line 7-13, where counsel stated " lets do it the right way" Tr. Pp 158 line 20-23 the court in respond stated " clearly now lels get the foundation right, okay Tr. Pp 214 line 8-25, Pp 215 line 1-3.

In conclusion, it is applicant that he was denied due-process of law in violation of the Sixth and Fourteenth Amendments, where the failure of the trial court to hold additional hearing on applicant criminal responsibility and competence to stand trial, deprived applicant of the right not to be put on trial while legally incompetent.

(a) any petition in a State Court under South Carolina Law? SEE ORIGINAL P.C.R.

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, al
in (7)? _____

0390

(d) any other petitions, motions or applications in this or any other Court?

_____

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or applicati

(a) the specific nature thereof:

i. _____

N-A

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition

i. _____

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, tion, motion or application which you have filed?

SEE ORIGINAL P.C.R.

iii. _____

(b) the proceedings in which each ground was raised: 0391

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth ground, and state concisely the reasons why such ground has not previously been presented:

(a) SEE ORIGINAL P.C.R.

(b) _____

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? _____

(c) your sentencing? _____

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. _____

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. _____

ii. _____

iii. _____

18. State clearly the relief you seek in filing this application.

SEE ORIGINAL P.C.R.

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

NO

County of York) 0392

I, Jeffrey L. Chronister being duly sw
oath, depose and say that I have subscribed to the foregoing application; that I know the con[illegible]s ther
cludes every ground known to me for vacating, setting aside or correcting the conviction and se[illegible]ence a
application; and that the matters and allegations therein set forth are true.

Jeffrey L. Chronister

SWORN to and subscribed before me this 12th
day of September 19 96

Tammy C. York (L.S.)
Notary Public

My Commission Expires: Nov. 2, 2004

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

I, Jeffrey L. Chronister hereby apply
proceed in this action without prepayment of fees or costs or security therefor. In support of my applicat
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 therefo

Jeffrey L. Chronister
Applicant

SWORN or affirmed to and subscribed before me this
12th day of September 19 96

Tammy C. York
Notary Public

My Commission Expires Nov. 2, 2004

STATE OF SOUTH CAROLINA)) COUNTY OF YORK)	IN COURT OF COMMON PLEAS
LYNN JEFFREY CHRONISTER,)) PLAINTIFF,)) VS.)) THE STATE,)) DEFENDANT.)	C.A. NO. 95-CP-46-1109 TRANSCRIPT OF POST CONVICTION RELIEF HEARING SEPTEMBER 18, 1996 YORK, SOUTH CAROLINA

B E F O R E :

HONORABLE JOHN C. HAYES, III, PRESIDING JUDGE

A P P E A R A N C E S:

DAVID G. GUYTON
ATTORNEY AT LAW
ROCK HILL, SOUTH CAROLINA
ATTORNEY FOR THE PLAINTIFF

MATTHEW M. MCGUIRE
ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA
ATTORNEY FOR THE STATE

JANET M. FISCHER
COURT REPORTER

I N D E X

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PLAINTIFF'S EXHIBITS

NO.	DESCRIPTION	
1	AFFIDAVIT OF RANDALL STRYDER	15
2	AFFIDAVIT OF ALLEN CLONINGER	15

PROCEEDINGS

THE COURT: ALL RIGHT, THIS IS THE CASE OF LYNN JEFFREY CHRONISTER. MR. GUYTON, ARE YOU READY TO GO FORWARD?

MR. GUYTON: YES, SIR. YOUR HONOR, INITIALLY I WANT TO MAKE SURE THAT YOU HAVE A COPY OF THE AMENDED APPLICATION.

THE COURT: I DO, FILED, SEPTEMBER 15TH?

MR. GUYTON: YES, SIR.

THE COURT: AT 11:23 A.M.

MR. GUYTON: I GAVE A COPY OF THIS THIS MORNING TO MR. MCGUIRE. I JUST WONDERED IF HE HAD ANY OBJECTION TO THE AMENDED APPLICATION.

MR. MCGUIRE: NO OBJECTION.

THE COURT: ALL RIGHT, YOU MAY PROCEED. LET ME ASK YOU, DOES THE AMENDED APPLICATION CONTAIN ALL ALLEGATIONS FOR GROUNDS FOR RELIEF OR ARE SOME OF THOSE STILL SET FORTH IN THE ORIGINAL?

MR. GUYTON: SOME OF THOSE ARE STILL SET FORTH IN THE ORIGINAL APPLICATION, WE WILL BE LOOKING AT BOTH.

THE COURT: OKAY, THANK YOU.

MR. GUYTON: YOUR HONOR, I ALSO WANT TO MAKE SURE -- INITIALLY IN THE STATE'S RESPONSE I BELIEVE THEY STATED THAT MR. CHRONISTER'S APPLICATION WAS NOT TIMELY FILED, AND I BELIEVE THAT WAS TAKEN CARE OF IN THE PELLIQUIN CASE. IN

THE PELLIQUIN CASE ---

THE COURT: WE WILL CONSIDER IT TIMELY.

MR. GUYTON: YOUR HONOR, AT THIS TIME WE WOULD CALL MR. CHRONISTER TO THE STAND.

THE COURT: PLEASE COME UP AND BE SWORN, THERE'S A BIBLE UP HERE; PUT YOUR LEFT HAND ON IT, AND RAISE YOUR RIGHT.

LYNN J. CHRONISTER, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. GUYTON:

Q. MR. CHRONISTER, THIS MORNING WHEN I INITIALLY SPOKE WITH YOU, YOU TOLD ME YOU WANTED A CONTINUANCE, IS THAT CORRECT?

A. I THOUGHT AT THAT TIME IT WOULD BE BEST. I HADN'T SPOKEN WITH YOU UNTIL THIS MORNING; I HAD HAD NO CONTACT WITH YOU UNTIL THIS MORNING.

Q. WELL, YOU SAY YOU HAD NO CONTACT, BUT WE'VE HAD CORRESPONDENCE ---

A. WELL, BY LETTER, YES, SIR.

Q. AFTER WE SPOKE THEN DID YOU CHANGE YOUR MIND, DID YOU TELL ME THAT YOU FELT YOU WERE READY TO GO FORWARD?

A. IF YOU THINK THAT WE'RE READY.

Q. WELL, I THINK WE'RE READY, BUT THE CHOICE IS YOUR'S, MR. CHRONISTER.

THE COURT: MR. CHRONISTER, LET ME INTERRUPT. THE CONCERN IS THAT IF YOU'RE NOT READY, IF YOU DON'T FEEL COMFORTABLE, WE SHOULDN'T GO FORWARD. I'M NOT ENCOURAGING YOU EITHER WAY.

A. YES, SIR.

THE COURT: BUT MR. GUYTON WANTS TO MAKE IT CLEAR TO YOU THAT IT IS YOUR DECISION, NOT HIS.

A. YES, SIR.

THE COURT: THE COURT, AND YOU, AND HE, AND THE STATE OF SOUTH CAROLINA DON'T WANT TO FIND THEMSELVES IN THE POSITION LATER IF I DENY YOUR RELIEF, AND YOU APPEAL IT, AND THE COURT OF APPEALS OR THE SUPREME COURT DENIES YOUR RELIEF, THEN YOU RAISE AN ISSUE SAYING, WELL, WE SHOULD HAVE CONTINUED IT, AND WE DIDN'T. SO, I'M NOT ENCOURAGING YOU EITHER WAY. I JUST WANT TO TELL YOU WHY WE ARE SO CONCERNED THAT YOU MAKE SURE EXACTLY WHAT YOU WANT TO DO.

A. YES, SIR.

THE COURT: IF YOU WANT TO GO FORWARD, I'M SITTING HERE WITH MY PEN IN MY HAND READY TO GO. AND IF YOU DON'T, I'LL UNDERSTAND THAT, TOO. IT'S YOUR DECISION. ALL RIGHT, MR. GUYTON, I APOLOGIZE FOR INTERRUPTING YOU.

Q. THAT'S FINE, YOUR HONOR. AND, AGAIN, IN AN ABUNDANCE OF CAUTION, MR. CHRONISTER, YOU INFORMED ME THAT YOU ARE TAKING A PRESCRIPTION BY THE NAME OF ZYLOF OR ZOLOF?

A. YES, SIR.

Q. DO YOU TAKE THAT ON A DAILY BASIS?
A. YES, SIR.
Q. THAT IS AN ANTIDEPRESSANT?
A. YES, SIR.
Q. AND YOU TAKE ONE PER DAY?
A. I TAKE TWO.
Q. TWO PER DAY?
A. YES, SIR.
Q. HAVE YOU HAD ANY TODAY?
A. NO, SIR.
Q. DO YOU FEEL THAT YOU CAN THINK CLEARLY, MAKE CLEAR DECISIONS, AND CLEAR JUDGMENTS?
A. I FEEL I CAN.
Q. MR. CHRONISTER ---

THE COURT: LET ME INTERJECT ONE MORE THING.

MR. GUYTON: YES, SIR.

THE COURT: THERE IS SOME INDICATION OF ALLEGATION ABOUT PRIOR MENTAL ILLNESS. I NOTICE AT ONE TIME YOU WERE TAKING PROZAC, AND YOU'RE TELLING ME NOW THAT YOU'RE TAKING ANOTHER MEDICATION THAT I'M NOT FAMILIAR WITH. FIRST, I'LL ASK MR. GUYTON, DO YOU BELIEVE THERE IS ANY QUESTION CONCERNING HIS ABILITY TO GO FORWARD -- I KNOW HE'S NOT ON TRIAL, SO IT'S NOT A CRIMINAL CASE, BUT JUST SO FAR AS HIS MENTAL CAPACITY, DO YOU HAVE ANY QUESTIONS ABOUT HIS MENTAL CAPACITY, HIS ABILITY TO GO FORWARD AND UNDERSTAND WHAT WE

DOING HERE TODAY?

MR. GUYTON: IN MY EXPERIENCE AND IN MY OPINION I DO NOT HAVE ANY DOUBTS, YOUR HONOR, BASED ON HIS CORRESPONDENCE WITH ME, AND HIS FILING OF THE AMENDED APPLICATION, I FEEL THAT HE HAS A GOOD GRASP OF WHAT HE FEELS ARE THE IMPORTANT ISSUES; THAT HE HAS A GOOD KNOWLEDGE OF THE FACTS SURROUNDING THIS CASE.

I DO KNOW THAT THIS MORNING HE BECAME VERY EMOTIONAL IN SPEAKING ABOUT THE CASE. HE HAS BEEN VERY EMOTIONAL IN TALKING ABOUT THIS BEFORE. I FEEL HE UNDERSTANDS WHAT HE IS DOING. I'M IN THE SAME POSITION YOU ARE IN THE SENSE THAT WE ARE NOT A DOCTOR AND ABLE TO MAKE AN OPINION TO THAT EFFECT.

THE COURT: MR. CHRONISTER, DO YOU FEEL LIKE YOU'VE GOT YOUR FACULTIES AND EVERYTHING TODAY, I MEAN I'M NOT PUTTING YOU DOWN, OBVIOUSLY, BUT BASED ON YOUR PAST HISTORY I WANT TO MAKE SURE YOU DO FEEL MENTALLY ALERT, AND ARE READY TO GO FORWARD TODAY.

A. YES, SIR.

THE COURT: I FIND THAT HIS RESPONSES HAVE BEEN APPROPRIATE. HE DOES APPEAR TO KNOW WHAT'S GOING ON, AND I FIND THAT HIS APPLICATION FOR POST CONVICTION RELIEF WHICH WAS PREPARED SEPTEMBER 12, AND HE MAY HAVE HAD HELP ON IT, I DON'T KNOW, BUT IT WAS EXTREMELY WELL DONE. AS FAR AS FORMAT, TYPING, LACK OF TYPOGRAPHICAL ERRORS AND THOSE SORT

OF THINGS, IT'S PROBABLY ONE OF THE BEST ONES I'VE SEEN, AND IN SETTING FORTH EXACTLY WHAT HIS CONCERNS ARE. SO, LET'S GO FORWARD.

Q. MR. CHRONISTER, YOU WERE TRIED FOR THE MURDER OF YOUR WIFE ON, THE DATE OF THE MURDER WAS FEBRUARY 14TH, 1992?

A. YES, SIR.

Q. YOU HAD A TRIAL ON SEPTEMBER 22ND, 1992; IS THAT CORRECT?

A. I BELIEVE THAT'S CORRECT.

Q. WHO REPRESENTED YOU AT TRIAL?

A. MR. GERALD SMITH, AND MR. HARRY DEST WAS THERE THE FIRST DAY OF THE TRIAL; HE WAS NOT THERE THE SECOND DAY OF THE TRIAL.

Q. AND YOU ENTERED A PLEA OF NOT GUILTY?

A. YES, SIR.

Q. AND YOU HAD A JURY TRIAL?

A. YES, SIR.

Q. AND YOU ARE BRINGING THIS POST CONVICTION RELIEF APPLICATION ON THE GROUNDS OF INEFFECTIVE ASSISTANCE OF COUNSEL BY MR. SMITH?

A. YES, SIR.

Q. WHEN DID YOU FIRST MEET MR. SMITH?

A. I MET MR. SMITH APPROXIMATELY SIX OR SEVEN MONTHS AFTER I WAS ARRESTED.

Q. AND HOW LONG DID HE MEET WITH YOU THE FIRST TIME?

A. THE FIRST TIME WAS APPROXIMATELY AN HOUR OR AN HOUR AND A HALF.

Q. HOW MANY MORE TIMES BEFORE TRIAL DID HE MEET WITH YOU?

A. TWO MORE TIMES AS I RECALL.

Q. AND HOW LONG EACH TIME DID HE MEET WITH YOU?

A. APPROXIMATELY THE SAME, AN HOUR TO AN HOUR AND A HALF.

Q. SO, IN TOTAL HOW MANY HOURS DID Y'ALL MEET PRIOR TO GOING TO TRIAL?

A. MAYBE THREE AND A HALF TO FOUR HOURS.

Q. DID YOU GO OVER YOUR FACT SITUATION WITH HIM?

A. YES, SIR. I TOLD HIM EVERYTHING THAT I TOLD THE DOCTORS AT WILLIAM S. HALL, AND THE DOCTOR AT THE ROCK HILL HOSPITAL.

Q. DID YOU DISCUSS WITH MR. SMITH -- DID HE EXPLAIN TO YOU THE CHARGES THAT HAD BEEN BROUGHT?

A. HE -- I WAS NEVER SHOWN A COPY OF THE INDICTMENT. I NEVER WAS AWARE OF ANY POSSESSION OF A FIREARM OR ANYTHING LIKE THAT.

Q. DID HE GO OVER THE ELEMENTS OF EACH OFFENSE WITH YOU?

A. THE ELEMENTS OF -- HE NEVER REALLY INFORMED ME OF ALL THE FACTS AROUND THE CASE.

Q. DID Y'ALL EVER DISCUSS A POSSIBILITY OF A MOTION FOR CHANGE OF VENUE?

A. NO, SIR.

Q. DO YOU KNOW WHAT THAT IS?

A. YES, SIR. I DO NOW.
Q. YOU DIDN'T KNOW THAT THAT WAS A POSSIBILITY AT THE TIME?
A. NO, SIR.
Q. AND MR. SMITH NEVER BROUGHT THAT UP TO YOU?
A. NO, SIR.
Q. DID MR. SMITH EVER BRING UP -- DID YOU HAVE A PRELIMINARY HEARING IN THIS CASE?
A. NO, SIR.
Q. DID YOU REQUEST ONE?
A. I ASKED HIM ABOUT A BOND HEARING WHICH HE SAID I'LL GET BACK TO YOU ON THAT, BUT HE NEVER DID.
Q. SO, YOU NEVER DID HAVE A PRELIMINARY HEARING?
A. NO, SIR.
Q. AND YOU ARE UNAWARE OF ANY REQUEST BEING MADE FOR A PRELIMINARY HEARING?
A. I'M NOT AWARE OF ANY. I HAD NEVER BEEN IN ANY SERIOUS TROUBLE TO BE AWARE OF THE DUE PROCESS THAT I WAS SUPPOSED TO HAVE.
Q. SO, THE JUDICIAL PROCEDURES FOR A CRIMINAL TRIAL WERE ALL NEW TO YOU?
A. YES, SIR.
Q. DID MR. SMITH GO OVER YOUR POSSIBLE DEFENSES; DID Y'ALL DISCUSS POSSIBLE DEFENSES?
A. NO, SIR, HE DIDN'T GO INTO THE DEFENSES.
Q. DID HE MENTION ANYTHING TO YOU ABOUT THE POSSIBILITY

AN INSANITY DEFENSE?

A. NO, SIR.

Q. HOW ABOUT A GUILTY BUT MENTALLY ILL DEFENSE?

A. NO, SIR.

Q. DID YOU TALK ABOUT THE POSSIBILITY OF A CHARACTER DEFENSE?

A. I HAD GIVEN MR. SMITH A CHARACTER REFERENCE LIST AS HE REQUESTED ME TO, AND FROM WHAT I UNDERSTAND NO ONE WAS SUBPOENAED.

Q. YOU GAVE HIM A LIST OF WITNESSES?

A. YES, SIR.

Q. TO CALL IN YOUR BEHALF?

A. YES, SIR.

Q. DID YOU ASK MR. SMITH TO INVESTIGATE OR HIRE AN INVESTIGATOR FOR YOUR CASE?

A. HE HAD TOLD ME THAT HE WENT OUT TO MY WIFE'S WORK, AND TALKED TO PEOPLE HIMSELF. THAT'S ALL I REMEMBER HIM SAYING.

Q. DID HE EVER OBTAIN FOR YOU AN INDEPENDENT PSYCHOLOGICAL EXAM?

A. NO, SIR.

Q. DID YOU SEE ANY OTHER DOCTORS BESIDES, I BELIEVE DR. BERRYMAN?

A. AND DR. BELLAMY.

Q. WHO IS DR. BELLAMY?

A. HE WAS AT THE ROCK HILL HOSPITAL, PIEDMONT.
Q. HOW OFTEN DID YOU SEE HIM?
A. ONCE EVERY TWO WEEKS I THINK.
Q. AND WHO SET THOSE MEETINGS UP?
A. I DON'T KNOW, I WAS JUST AUTOMATICALLY TAKEN OVER THERE TO THE HOSPITAL ONCE EVERY TWO WEEKS.
Q. DID YOU EVER SEE ANY REPORTS FROM DR. BELLAMY?
A. NO, SIR.
Q. DID YOU EVER SEE ANY REPORTS FROM DR. BERRYMAN?
A. NO, SIR, NOT UNTIL AFTER YOU SENT ME THE FORMS THIS PAST JULY.
Q. THE REQUEST FOR NOTICE OF INSANITY DEFENSE, AND E COMPETENCY EVALUATION?
A. YES, SIR.
Q. THAT WAS THE FIRST TIME THAT YOU HAD SEEN THOSE?
A. YES, SIR. THAT WAS THE FIRST TIME I'VE EVER SEEN ANYTHING PERTAINING TO MY CASE.
Q. THOSE WERE NOT DISCUSSED WITH YOU BY MR. SMITH?
A. NO, SIR.
Q. AT THE TIME OF TRIAL, WERE YOU ON MEDICATION AT THAT TIME?
A. YES, SIR.
Q. WHAT MEDICATION WERE YOU ON?
A. I WAS ON PROZAC, AND A SLEEPING MEDICATION.
Q. DO YOU KNOW WHAT THE SLEEPING MEDICATION WAS?

A. NOT RIGHT OFF HAND; NO, SIR.

Q. WERE YOU TAKING THOSE AT THE TIME OF TRIAL?

A. YES, SIR, THEY HAD ME ON IT.

Q. DID THEY AFFECT YOUR ABILITY TO THINK CLEARLY?

A. I BELIEVE IT DID BECAUSE I WAS ---

MR. MCGUIRE: OBJECTION, YOUR HONOR, THIS WAS TAKEN CARE OF ON THE RECORD.

THE COURT: WELL, I'M GOING TO LET HIM GO INTO IT; GO AHEAD.

A. YES, SIR, I BELIEVE THEY DID AFFECT MY ABILITY TO HELP MR. SMITH. I WAS NOT THINKING CORRECTLY, AND I HAD PRIVATE THOUGHTS. I WAS LIKE I WAS IN SHOCK. I COULDN'T SPEAK. I WAS JUST IN SHOCK.

Q. DID YOU INFORM MR. SMITH THAT YOU WERE TAKING PROZAC?

A. THEY ASKED MR. BERRYMAN DURING THE TRIAL, AND MR. BERRYMAN ADMITTED I WAS ON PROZAC.

Q. WHAT OTHER THINGS DID YOU ASK MR. SMITH TO DO THAT YOU FEEL THAT HE DID NOT DO IN PREPARATION FOR YOUR TRIAL?

A. WELL, I DIDN'T REALLY GET TO TALK TO MR. SMITH THAT MUCH, AND I WAS PRETTY EMOTIONAL EACH TIME I SEEN MR. SMITH. I WENT OVER WHAT I HAD TOLD THE DOCTORS, AND LIKE I SAID, HE ASKED FOR A WITNESS LIST, AND I GAVE IT TO HIM. AND I REQUESTED MY NORTH CAROLINA LAWYER TO BE THERE. APPARENTLY HE WASN'T SUBPOENAED OR CALLED TO DO SO. LIKE I SAY, NOT HAVING BEEN IN SERIOUS TROUBLE, I

DIDN'T KNOW WHAT TO ASK. I KNOW THAT'S NO DEFENSE OR ANYTHING, BUT WITH MY CONDITION, I JUST BASICALLY LEFT IT IN MR. SMITH'S HANDS.

Q. YOU JUST COMPLETELY TRUSTED HIM TO HANDLE YOUR CASE?

A. BASICALLY, YES, SIR.

Q. DO YOU FEEL YOU WERE IN A STATE OF MIND WHERE YOU COULD MAKE COMPETENT DECISIONS?

A. BACK THEN?

Q. YES, SIR.

A. NO, SIR, I DON'T FEEL LIKE I WAS.

Q. NOW WAS ONE OF THE WITNESSES THAT YOU REQUESTED MR. SMITH TO CALL ON YOUR BEHALF RANDALL STRYDER?

A. YES, SIR.

Q. AND WAS ANOTHER ONE OF THOSE WITNESSES ALLEN G. CLONINGER?

A. YES, SIR. I REMEMBER NOW I REQUESTED MR. SMITH TO GET AFFIDAVITS, AND HE SAID HE WANTED THEM FRESH, BUT NEVER DID OBTAIN ANY AFFIDAVITS.

Q. YOUR HONOR, AT THIS TIME I WOULD OFFER THESE TWO PAGES FOR IDENTIFICATION WHICH PURPORTS TO BE AN AFFIDAVIT OF RANDALL STRYDER.

A. I OBTAINED THOSE AFFIDAVITS MYSELF.

Q. AND YOU FORWARDED THIS PARTICULAR AFFIDAVIT WITH YOUR POST CONVICTION RELIEF APPLICATION?

A. YES, SIR. I HAD A LAWYER THAT DID THAT, AND I GOT

THE AFFIDAVITS MYSELF, AND GAVE THEM TO HIM, INCLUDING THE INFORMATION ON PROZAC.

Q. NOW, WHICH LAWYER WAS THAT?

A. THAT WAS MR. STARTZ.

Q. IS HE ALSO KNOWN AS PUG STARTZ?

A. YES, SIR.

Q. WAS HE YOUR FIRST P.C.R. ATTORNEY?

A. HE WAS MY FIRST P.C.R. ATTORNEY.

Q. WHY IS HE NOT REPRESENTING YOU ANYMORE?

A. I CALLED HIS OFFICE ONE DAY, AND THEY SAID HE WAS TOO ILL TO HANDLE THE CASE. I HAD TO GO ASK THE BAR FOR HELP JUST TO GET MY P.C.R. FILED.

Q. YOUR HONOR, I AM GOING TO HAND TO THE COURT REPORTER FOR IDENTIFICATION A ONE PAGE AFFIDAVIT PURPORTING TO BE BY ALLEN G. CLONINGER. YOUR HONOR, THE REASON I'M PRESENTING THEM, THEY WERE NOT WITH THE P.C.R. APPLICATION THAT I ORIGINALLY RECEIVED.

THE COURT: THEY ARE NOT IN THIS ONE EITHER. THEY ARE NOTED, BUT NOT INCLUDED.

Q. YOUR HONOR, I HAVE PREVIOUSLY GIVEN A COPY OF EACH TO MR. MCGUIRE, AND AT THIS TIME I WOULD ASK THAT THEY BE ENTERED INTO EVIDENCE.

THE COURT: ANY OBJECTION?

MR. MCGUIRE: NO, SIR.

(AT THIS TIME THE AFFIDAVITS OF RANDALL STRYDER AND ALLEN

CLONINGER WERE MARKED IN EVIDENCE AS PLAINTIFF'S EXHIBITS 1 AND 2, WITHOUT OBJECTION.)

A. MR. GUYTON, WAS THE INFORMATION ON PROZAC FILED TOO WITH MY AFFIDAVITS?

Q. I DO NOT RECALL SEEING AN AFFIDAVIT CONCERNING PROZAC.

A. IT WAS FROM THE F.D.A. CONCERNING THE EFFECTS OF PROZAC ON A PERSON.

Q. I WOULD NOTE FOR THE COURT IN MY P.C.R. PACKAGE THAT I GOT FROM OUR CLERK OF COURT'S OFFICE THAT I DID NOT HAVE A PROZAC REPORT, I GUESS TO SHOW THE EFFECTS OF PROZAC.

MR. MCGUIRE: I DON'T EITHER.

THE COURT: WHO IS IT ALLEGEDLY BY?

A. MR. STARTZ WAS SUPPOSED TO FILE THAT WITH MY AFFIDAVITS.

THE COURT: WHO ARE YOU SAYING IT WAS BY?

A. IT WAS FROM THE FEDERAL DRUG ADMINISTRATION, F.D.A.

THE COURT: WHAT WAS THE PURPOSE OF THAT?

A. WELL, IT JUST SAID PROZAC WAS, YOU KNOW, AFFECTED A PERSON'S THINKING, YOU KNOW, APPREHENDING THINGS, AND BASICALLY IT HAD THAT AFFECT ON A PERSON WHEN FULLY TESTED.

THE COURT: GO AHEAD, YOU MAY PROCEED.

Q. MR. CHRONISTER, DID YOU AND MR. SMITH DISCUSS YOUR DOMESTIC SITUATION PRIOR TO MRS. CHRONISTER'S MURDER?

A. I TOLD MR. SMITH, LIKE I SAID, EVERYTHING THAT I TOLD THE DOCTORS, WHAT I COULD REMEMBER.

Q. DID IT INCLUDE FALSE ALLEGATIONS OF SEXUAL MOLESTATION AGAINST THE DAUGHTER?

A. YES, SIR.

Q. AND YOU HAD SOME SERIOUS DOMESTIC PROBLEMS WITH MRS. CHRONISTER?

A. WE DIDN'T HAVE NO SERIOUS DOMESTIC PROBLEMS.

Q. WERE YOU SUFFERING FROM DOMESTIC STRIFE, MARITAL DIFFICULTIES?

A. YES, SIR. I MISSED MY WIFE AND MY CHILDREN.

Q. WERE Y'ALL SEPARATED?

A. WELL, WE WERE LIVING APART. THERE WERE NO SEPARATION PAPERS OR ANYTHING.

Q. YOU WEREN'T LEGALLY SEPARATED, BUT YOU WERE LIVING SEPARATE AND APART?

A. YES, SIR.

Q. BUT YOU DISCUSSED THIS INFORMATION WITH MR. SMITH?

A. YES, SIR. AS FAR AS I REMEMBER I DID.

Q. ARE THERE ANY OTHER ITEMS OR ISSUES THAT YOU WANT TO BRING TO THE COURT'S ATTENTION AT THIS TIME CONCERNING THE ALLEGATIONS THAT MR. SMITH DID NOT PROVIDE YOU WITH EFFECTIVE COUNSEL?

A. MR. SMITH DIDN'T DISCUSS ANY OF THE OFFENSES WITH ME UNTIL -- I DIDN'T KNOW ANYTHING ABOUT THE REQUEST FOR A INSANITY DEFENSE UNTIL YOU PROVIDED ME WITH THAT INFORMATION. I NEVER DID QUITE UNDERSTAND HOW -- WELL,

WHAT THE DOCTOR TESTIFIED TO ABOUT MY MENTAL CONDITION, DEPRESSION, ANXIETIES, SEVERE STRESS DISORDER, I FEEL MR. SMITH SHOULD HAVE DISCUSSED ALL THAT WITH ME. ALL THE EVIDENCE WAS OUT THERE THAT THERE WAS A MENTAL ILLNESS, IT WASN'T ME, AND I TRIED TO EXPRESS THAT TO MR. SMITH BUT I NEVER DID UNDERSTAND THE DEFENSE THAT MR. SMITH PUT UP.

Q. I'M HANDING TO YOU A ONE PAGE PIECE OF PAPER THAT STATES REQUEST FOR NOTICE OF INSANITY DEFENSE, IS THAT WHAT YOU HAVE BEEN REFERRING TO?

A. YES, SIR, THIS IS IT.

Q. YOUR HONOR, I WOULD NOTE THAT IT APPEARS TO HAVE BEEN CLOCKED IN, SO THERE SHOULD BE A COPY OF IT.

MR. MCGUIRE: I RECEIVED THAT.

Q. IS THERE ANYTHING ELSE, MR. CHRONISTER, THAT YOU WOULD LIKE TO STATE TO THE COURT AT THIS TIME?

A. WELL, YES, SIR. I'D LIKE FOR THE COURT TO UNDERSTAND THAT I LOVED MY WIFE, MY CHILDREN; I NEVER WOULD HARM THEM. THIS WAS A SHOCK; THIS WASN'T ME, BUT I WAS ACCUSED OF DOING THAT, AND I THINK THE STATE'S DOCTOR, AND DR. BELLAMY, THEY WOULD SHOW THAT IT WAS A MENTAL ILLNESS THAT WAS ME. IT'S LIKE A BLACK HOLE IN MY LIFE. I MISS MY WIFE AND CHILDREN.

Q. AND AT TRIAL DR. BERRYMAN WAS NOT CALLED BY MR. SMITH TO COME BACK AND TESTIFY; IS THAT CORRECT?

A. THAT'S RIGHT. FIRST, HE WAS CALLED BY THE SOLICITOR TO TAKE THE STAND, BUT THEN THE COURT ASKED MR. SMITH -- MR. SMITH APPARENTLY HAD HIM UNDER SUBPOENA, BUT HE WAS NEVER CALLED BACK THE NEXT DAY TO TESTIFY.

Q. AND DID MR. SMITH CALL DR. BELLAMY TO TESTIFY?

A. NO, SIR. I NEVER DID SEE A REPORT, OR DR. BELLAMY WASN'T THERE ALSO.

Q. NO FURTHER QUESTIONS, YOUR HONOR.

CROSS EXAMINATION BY

MR. MCGUIRE:

A. MR. CHRONISTER, LET ME GO THROUGH WHAT I THINK ARE YOUR COMPLAINTS, AT LEAST THE ONES YOU HAVE BEEN ADDRESSING, NOT THE ONES THAT HAVE TO BE REFUTED BY MR. SMITH. THE FIRST ONE I SEE IS HE DIDN'T DISCUSS YOUR DEFENSES. WHAT DEFENSE DID YOU HAVE?

A. I EXPLAINED EVERYTHING TO MR. SMITH JUST LIKE I EXPLAINED IT TO THE DOCTORS. IT WAS LIKE A BLACK HOLE IN MY LIFE ---

Q. SIR, LET ME STOP YOU AND ASK YOU WHAT DEFENSES DID YOU HAVE TO THIS CHARGE?

A. WHAT DEFENSES?

Q. YES.

A. I DON'T KNOW WHAT DEFENSES THAT MR. SMITH PUT UP.

Q. WELL, I HEARD INSANITY MENTIONED.

A. WELL, HE DID MENTION THAT TO ME.

Q. ARE YOU CLAIMING INSANITY NOW?
A. WELL, THEY ACCUSED ME OF A CRIME, AND I HAVE NO MEMORY OF ---
Q. DO YOU HAVE A DOCTOR TO TESTIFY THAT YOU WERE INSANE AT THE TIME?
A. I DO NOT.
Q. YOU KNOW THAT IT'S YOUR BURDEN IN P.C.R. TO PROVE YOUR ALLEGATIONS, DON'T YOU?
A. WELL, THAT'S WHAT I ASKED MY LAWYER BEFORE WE WENT TO COURT.
Q. LET'S TRY AGAIN, MR. CHRONISTER. BESIDE INSANITY, DO YOU HAVE ANY OTHER DEFENSES THAT MR. SMITH SHOULD HAVE RAISED?
A. NO, SIR.
Q. AND IN FACT, DIDN'T YOU HAVE A BLAIR HEARING AT THE TRIAL?
A. YES, SIR.
Q. AND DR. BERRYMAN TESTIFIED AND STATED THAT YOU WERE COMPETENT, YOU WERE NOT INSANE. ISN'T THAT CORRECT?
A. WELL, THAT WAS BY THE STATE'S DOCTOR.
Q. WELL, SIR, DO YOU HAVE A DOCTOR HERE TO REFUTE THAT?
A. WELL, MR. SMITH SHOULD HAVE HAD A INDEPENDENT PSYCHIATRIST TO ---
Q. SIR, THE BURDEN IS ON YOU HERE TODAY, DO YOU HAVE A DOCTOR?

A. NO, SIR, I DON'T. BUT I THINK ALL THE TESTIMONY THAT DR. BERRYMAN GAVE ---

Q. SIR, YOU ALSO STATED THAT MR. SMITH FAILED TO SUBPOENA WITNESSES FOR YOU. WHO ARE THOSE WITNESSES?

A. ALLEN CLONINGER, MY NORTH CAROLINA LAWYER, AND MR. RANDALL STRYDER.

Q. ARE EITHER OF THOSE PEOPLE HERE TODAY?

A. NO, SIR, BUT I HAVE AFFIDAVITS FROM THEM.

Q. ARE THOSE THE TWO THAT WE HAVE?

A. YES, SIR.

Q. THE FIRST AFFIDAVIT IS FROM ALLEN CLONINGER, AND I'M NOT DISPUTING ANYTHING IN THIS. YOU SHOW ME WHERE IN THIS THAT -- YOU SHOW ME WHERE IN HERE THAT THIS TESTIMONY WOULD HELP YOU AT A TRIAL.

A. WELL, IT HASN'T GOT IT IN HERE, BUT HE WAS PREPARED TO COME THOUGH.

Q. OKAY, SIR, LET ME SHOW YOU THE AFFIDAVIT FROM, IS IT SNYDER?

A. STRYDER.

Q. NOW, THE ONLY ACCUSATION I SEE IN HERE IS ABOUT THE PHONE CALL THAT YOU SUPPOSEDLY MADE TO A LANDSCAPER. I WANT YOU TO TELL ME WHERE IN HERE IS THERE ANY EVIDENCE OR ANY TESTIMONY THAT WOULD HELP YOU.

A. WELL, "WHEN HIS WIFE LEFT HIM, HE SEEMED VERY DEPRESSED."

Q. UH HUH.

A. DEPRESSION, THAT SHOWS DEPRESSION. I WAS VERY SHAKEN ABOUT THE SITUATION. "HE TOLD ME HE LOVED HIS WIFE AND CHILDREN VERY MUCH AND WANTED TO BRING THEM BACK TOGETHER."

Q. THANK YOU, SIR. LET ME SEE WHAT ELSE YOU HAVE HERE. YOU MENTION A DR. BELLAMY, IS HE HERE TODAY?

A. NO, SIR.

Q. OTHERWISE, I DON'T SEE ANYTHING THAT YOU HAVE ACCUSED MR. SMITH OF NOT DOING.

A. I FEEL MR. SMITH SHOULD HAVE GOTTEN A REPORT FROM DR. BELLAMY.

Q. SIR, DO YOU HAVE THE REPORT?

A. THAT WAS MR. SMITH'S JOB AT THAT TIME.

THE COURT: HE'S ASKING AT THIS TIME.

A. AT THIS TIME, NO, SIR.

Q. MR. CHRONISTER, DO YOU HAVE ANY OTHER COMPLAINTS AGAINST MR. SMITH BESIDE THE FACT THAT HE DIDN'T RAISE THESE DEFENSES?

A. NOW MR. MOBLEY, THE ATTORNEY THAT TOOK MR. STARTZ' PLACE SAID THAT HE HAD THE REPORT FROM DR. BELLAMY, AND I WAS UNDER THE ASSUMPTION THAT HE WOULD SEND IT TO MR. GUYTON, BUT APPARENTLY IT HAS NOT ARRIVED. HE DID SEND ME A LETTER.

MR. MCGUIRE: I BEG THE COURT'S INDULGENCE.

THE COURT: CERTAINLY.

(AFTER A BRIEF PAUSE.)

Q. MR. CHRONISTER, YOU IN FACT SHOT YOUR WIFE DIDN'T YOU?

A. NO, SIR, IT WASN'T ME.

Q. NOTHING FURTHER.

THE COURT: ANY REDIRECT?

REDIRECT EXAMINATION BY

MR. GUYTON:

Q. YOU DON'T UNDERSTAND IF YOU HAD ANY DEFENSES OR NOT BECAUSE THEY WERE NEVER EXPLAINED TO YOU BY MR. SMITH; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND YOU ARE HERE TODAY FOR THE REASONS PREVIOUSLY STATED, AND THAT INCLUDES THERE WAS NEVER A PRELIMINARY HEARING, OR A MOTION FOR A CHANGE OF VENUE AS WELL AS THE OTHER THINGS YOU'VE LISTED IN YOUR APPLICATION?

A. YES, SIR, THAT'S CORRECT.

Q. NO FURTHER QUESTIONS.

A. I FEEL LIKE MR. SMITH SHOULD HAVE INVESTIGATED THE USE OF PROZAC WHILE I WAS IN COURT.

MR. MCGUIRE: NOTHING FURTHER, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN. THANK YOU.

MR. GUYTON: YOUR HONOR, IF IT IS APPROPRIATE AT THIS TIME, WHAT I WANTED TO DO WAS TO GO THROUGH THE TRANSCRIPT AND POINT OUT SOME ITEMS, AS THE RECORD SPEAKS FOR

ITSELF.

THE COURT: ALL RIGHT.

MR. GUYTON: I WANT TO GO TO PAGE 22, LINE 23. AT THAT POINT JUDGE RUSHING WAS GOING THROUGH A LIST OF THE POTENTIAL WITNESSES; THESE WERE A LIST OF WITNESSES THAT HAD BEEN GIVEN TO HIM BY MR. SMITH. I BELIEVE HE NAMES FIVE THERE, JACK CANNIPE, WENDY FARNSWORTH, ALLEN CLONINGER, PORTIA JONES AND SCOTT WILLIAMS. AND AT THAT TIME IT WAS NOTED THAT NONE OF THEM WERE PRESENT FOR THE TRIAL, AND THIS IS THE LIST THAT WAS REFERRED TO BY MR. CHRONISTER.

THE COURT: WELL, WITH THE EXCEPTION OF ALLEN CLONINGER, I DON'T KNOW WHAT ANY OF THOSE PEOPLE WOULD TESTIFY TO. WHAT AM I SUPPOSED TO CONCLUDE FROM THE FACT THAT THEY WERE NAMED AND THEN NOT CALLED.

MR. GUYTON: WE ARE TRYING TO SHOW HERE THAT MR. SMITH WAS INEFFECTIVE BECAUSE HE WAS NOT PREPARED TO GO TO TRIAL.

THE COURT: WELL, HE LISTED THESE PEOPLE, AND THESE PEOPLE AREN'T PRESENT TODAY TO TELL ME WHAT THEY WOULD HAVE SAID OR BY WAY OF AFFIDAVIT EXCEPT FOR MR. CLONINGER, AND HE JUST SAYS HE WAS MR. CHRONISTER'S LAWYER. WHAT I'M ASKING IS, I DON'T KNOW WHY YOU ARE POINTING THIS OUT TO ME. WHAT AM I TO GET FROM THIS?

MR. GUYTON: THAT IF THEY WERE CALLED TO TESTIFY, THAT THEY WOULD HAVE POTENTIALLY BEEN CHARACTER WITNESSES.

THE COURT: ALL RIGHT, WHAT NEXT?

MR. GUYTON: ON PAGE 75 -- PAGE 74, YOUR HONOR, LINE 8, MR. SMITH'S ANSWER TO THE QUESTION BY THE COURT ABOUT COMPETENCY, MR. SMITH SAYS "I HAVE NO QUESTIONS IN TERMS OF COMPETENCY." ON PAGE 76 ---

THE COURT: ALL RIGHT, LET ME STOP YOU THERE. I HAVEN'T HEARD HIM SAY ANYTHING ABOUT HIS COMPETENCY AT TRIAL, I BELIEVE HIS POSITION WAS THAT HE HAD A DEFENSE OF EITHER INSANITY OR NOT GUILTY BUT MENTALLY ILL.

MR. GUYTON: HE'S SAYING HE WANTED AN INDEPENDENT PSYCHIATRIC REVIEW, AND HE DID NOT GET THAT. MR. SMITH WAS INEFFECTIVE BY NOT OBTAINING THAT FOR HIM.

THE COURT: WELL, WHAT HE'S SAYING HERE IS THAT HE WAS COMPETENT TO STAND TRIAL, AND I HAVEN'T HEARD MR. CHRONISTER TESTIFY THAT HE WASN'T ON THE DATE OF THE TRIAL COMPETENT. I JUST WANT TO MAKE SURE I'M UNDERSTANDING THE ISSUE.

MR. CHRONISTER: I FEEL LIKE BEING UNDER PROZAC AND THE OTHER SLEEPING MEDICATION, AND THE INFORMATION ABOUT IT THAT MR. STARTZ DID NOT PROVIDE, THAT IT DID HAVE AN AFFECT ON MY ABILITY.

THE COURT: ALL RIGHT, THANK YOU. NEXT?

MR. GUYTON: THE SAME PAGE. YOUR HONOR, LINE 19 JUDGE RUSHING ASKED, "ARE THERE ANY ARGUMENTS ON THE ISSUE?" LINE 21, MR. SMITH, "I DON'T HAVE ANY, YOUR HONOR."

THE COURT: WAIT A MINUTE, WHAT PAGE?

MR. GUYTON: ON PAGE 76.

THE COURT: ALL RIGHT, I SEE IT.

MR. GUYTON: ON LINE 8 MR. SMITH SAID, "YOUR HONOR, WE HAVE NOTHING TO OFFER ON THE ISSUE OF COMPETENCY." AND THEN LATER ON SAYS, "I DON'T HAVE ANY, YOUR HONOR." JUDGE RUSHING ON LINE 25 ONCE AGAIN ASKED HIM IF HE WISHED TO MAKE ANY ARGUMENT ON THE ISSUE OF COMPETENCY. ON PAGE 72, LINE 2, "YOUR HONOR, NOT AS TO COMPETENCY; I WOULD ASK THAT THE REPORT BE INCLUDED IN THE RECORD." SO, HE ACTUALLY INCLUDED THE COMPETENCY EVALUATION OF DR. BERRYMAN IN THE RECORD ITSELF. AND LATER HE DID NOT CALL DR. BERRYMAN BACK TO GO INTO THE INFORMATION IN THAT REPORT THAT DEALT WITH HIS ALCOHOL PROBLEM, HIS BEHAVIOR DISORDER. I JUST WANTED TO MAKE NOTE OF THAT.

THE COURT: ALL RIGHT.

MR. GUYTON: YOUR HONOR, I KNOW THIS MAY SEEM SOMEWHAT PETTY TO THE COURT, BUT AGAIN I WANT TO BRING THIS UP ON MR. CHRONISTER'S BEHALF. ON PAGE 113, LINE 12 AND 13, JUDGE RUSHING HAVING TO TELL MR. SMITH TO PLEASE SPEAK UP, AND THE REASON I BRING IT UP IS BECAUSE IT HAPPENED A COUPLE OF OTHER TIMES, AND PART OF OUR ARGUMENT IS THAT UNDER THE TOTALITY OF THE CIRCUMSTANCES IN THIS CASE, THAT THERE WAS INEFFECTIVE ASSISTANCE OF COUNSEL.

ON PAGE 114 LINES 6 THROUGH 12 JUDGE RUSHING'S

TALKING TO MR. SMITH AND ON THE LAST OF LINE 11 GOING INTO 12 HE SAYS "LET'S DO IT THE RIGHT WAY". HE IS CORRECTING MR. SMITH.

ON PAGE 117 LINE 7 ---

THE COURT: WHAT DOES JUDGE RUSHING'S COMMENTS HAVE TO DO WITH INEFFECTIVE ASSISTANCE OF COUNSEL? THIS IS NOT AN APPEAL. IF YOU'RE LOOKING AT THE TOTALITY OF THE CASE, AND YOU THINK THERE WAS SOMETHING THAT PERMEATED THE CASE TO MAKE IT UNFAIR, THAT'S DIFFERENT. HE'S SAYING HIS LAWYER WAS INEFFECTIVE. HIS LAWYER HAS GOT NO CONTROL ON WHAT JUDGE RUSHING SAYS.

MR. GUYTON: WELL, HE FEELS THAT JUDGE RUSHING IS SAYING WHAT HE IS SAYING BECAUSE AT THE TIME MR. SMITH WAS NOT PREPARED OR WAS NOT HANDLING HIS CASE PROPERLY.

THE COURT: OKAY, I FOLLOW YOU.

MR. GUYTON: AND, AGAIN, ALL OF THAT TOGETHER IS GOING TO COME UNDER THE TOTALITY OF THE CIRCUMSTANCES.

ON PAGE 117, YOUR HONOR, THE JURY -- ON LINE 7, JUDGING RUSHING IS NOTING THAT THE JURY HAD SENT A NOTE TO THE BAILIFF THAT MR. SMITH NEEDED TO SPEAK UP OR USE THE MICROPHONE, ONE OR THE OTHER. AGAIN, TO SHOW THAT HE WAS NOT EVEN SPEAKING LOUD ENOUGH FOR THE JURY TO HEAR HIM SO THAT THE JURY HAD TO MAKE A REQUEST, EVEN AFTER JUDGE RUSHING'S COMMENTS.

YOUR HONOR, AT PAGE 178, LINE 21, JUDGE RUSHING,

28

AGAIN, SEEMS TO BE TO A CERTAIN EXTENT, AND I KNOW IT IS PART OF JUDGE RUSHING'S STYLE TO SOMEWHAT CHASTISE MR. SMITH, "WE'RE IN TRIAL, MR. SMITH, YOU'RE SUPPOSED TO BE PREPARED TO GO FORWARD, YOU SHOULD HAVE HAD HIM HERE YESTERDAY", REFERRING TO THE WITNESSES THAT I MENTIONED ON PAGE 22 OF THE TRANSCRIPT. "IF THERE IS ANY QUESTION ABOUT IT, YOU TELL HIM TO BE HERE NOW", AND THAT COLLOQUY GOES ON INTO PAGE 179 TO LINE 6.

YOUR HONOR, ON PAGE 237 OF THE TRANSCRIPT, JUDGE RUSHING AT LINE 7 IS ASKING MR. SMITH IF HE KNOWS ANY REASON AS ATTORNEY FOR MR. CHRONISTER THAT HE'S NOT ABLE TO UNDERSTAND HIS RIGHTS AFFORDED TO HIM BY THE CONSTITUTIO IN OTHER WORDS, DOES HE KNOW WHAT'S GOING ON. AND MR. SMITH RESPONDED, I DO NOT KNOW OF ANY REASON THAT HE SHOULD NOT UNDERSTAND, YOUR HONOR." EVEN THOUGH, AGAIN, HE HAD ORIGINALLY FILED A NOTICE OF INSANITY DEFENSE, AND HAD CROSS EXAMINED DR. BERRYMAN IN THE COMPETENCY ---

THE COURT: WAIT JUST A MINUTE, I MISSED SOMETHING. WHERE IS A COPY OF HIS FILING AN INSANITY DEFENSE? I THINK MR. GRANT FILED A NOTICE FOR HIM TO NOTIFY ---

MR. GUYTON: I'M SORRY, THAT WAS MR. GRANT. BUT I BELIEVE -- I'M SORRY, YOUR HONOR.

THE COURT: AND, OF COURSE, IF THAT WAS MR. SMITH'S FEELING, THEN HE WAS DUTY BOUND AS AN OFFICER OF THE COURT TO RELATE IT.

MR. GUYTON: YES, SIR.

THE COURT: HE COULDN'T SAY NO JUST FOR THE BENEFIT OF HIS CLIENT, BECAUSE HE HAS A DUTY TO BE UP FRONT WITH THE COURT.

MR. GUYTON: AND THEN PAGE -- I CAN'T RECALL THE PAGE NUMBER IN THE TRANSCRIPT, YOUR HONOR, BUT MR. SMITH RESTED HIS CASE WITHOUT CALLING ANY WITNESSES OR WITHOUT PRESENTING ANY EVIDENCE AT ALL ON BEHALF OF MR. CHRONISTER.

MR. CHRONISTER ASKED ME TO POINT OUT ONE OTHER ADDITIONAL PAGE, PAGE 158 OF THE TRANSCRIPT IN WHICH THE COURT AGAIN IS ASKING "LET'S GET THE FOUNDATION RIGHT, OKAY", ON LINE 22 AND LINE 23.

YOUR HONOR, ONE OF THE THINGS THAT WE WOULD BRING UP AT THIS TIME WOULD BE -- WELL, NOW IS NOT THE TIME FOR ARGUMENT.

THE COURT: ANY FURTHER WITNESSES?

MR. GUYTON: NO, SIR, YOUR HONOR.

THE COURT: MR. MCGUIRE:

MR. MCGUIRE: YOUR HONOR, THE STATE AT THIS TIME WOULD MOVE FOR A DIRECTED VERDICT ON THE GROUNDS THAT MR. CHRONISTER HAS NOT PROVIDED ANYTHING THAT WOULD SHOW A DEFICIENCY OR PREJUDICE ON THE PART OF MR. SMITH.

THE COURT: DO YOU WANT TO ADDRESS THAT AT THIS TIME, MR. GUYTON?

MR. GUYTON: WELL, YOUR HONOR, WE WOULD AGAIN AT

THIS TIME ARGUE -- WE UNDERSTAND, I HAVE EXPLAINED TO MR. CHRONISTER, AND I BELIEVE HE FULLY UNDERSTANDS UNDER THE CASE LAW THAT THERE IS A TWO PRONG TEST INVOLVED IN A P.C.R. APPLICATION IN WHICH THE BURDEN OF PROOF IS THE PREPONDERANCE OF THE EVIDENCE, AND THAT HE HAS TO SHOW INEFFECTIVE ASSISTANCE OF COUNSEL, AND HE ALSO HAS TO SHOW THAT THAT PREJUDICED HIS CASE.

YOUR HONOR, I WILL HAND YOU A COPY, I HAVE PROVIDED A COPY TO MR. MCGUIRE OF A CASE, RAYMOND THREATT VERSUS THE STATE OF SOUTH CAROLINA WHICH IS CITED AT 378 SOUTHEAST 2D 249, A 1988 CASE. AND, YOUR HONOR, WE ARE PROVIDING THAT AT THIS TIME BECAUSE I WANT TO READ KEYNOTE NUMBER 3. "WHERE THE DEFENDANT MUST ORDINARILY SHOW COUNSEL'S INEFFECTIVE ASSISTANCE RESULTED IN ACTUAL PREJUDICE, SUCH A SHOWING MAY BE EXEMPTED WHERE COUNSEL'S INEFFECTIVENESS IS SO PERVASIVE AS TO RENDER A PARTICULARIZED PREJUDICE INQUIRY UNNECESSARY."

MR. MCGUIRE: YOUR HONOR, THIS APPLIES TO A CONFLICT OF INTEREST. IN A CONFLICT OF INTEREST CASE IF THE APPLICANT SIMPLY SHOWS THERE IS AN ACTUAL CONFLICT, HE DOESN'T HAVE TO SHOW PREJUDICE, AND THERE IS NO CONFLICT BEING ALLEGED HERE.

MR. GUYTON: IN READING THROUGH THIS, YOUR HONOR, I BELIEVE THERE WERE TWO SECTIONS THAT DEALT WITH -- THE CASE TALKS ABOUT TWO CLASSES OF INEFFECTIVE ASSISTANCE OF COUNSEL AND ON PAGE 250, NUMBER 2 IN BRACKETS, I THINK THERE

CASE IS TALKING ABOUT THE SECOND TYPE OF INEFFECTIVE ASSISTANCE OF COUNSEL. I BELIEVE THAT DOES APPLY TO THIS CASE. IN THE SECOND PARAGRAPH THE CASE CITES STRICKLAND V. WASHINGTON WHICH IS ONE OF OUR MOST CITED CASES WHEN IT COMES TO P.C.R. APPLICATIONS. IT INCLUDES FAILURE TO REQUEST A PRELIMINARY HEARING AND LACK OF PREPAREDNESS AS TWO OF THE FOUR ITEMS THAT WERE MENTIONED AS PART OF THIS SUPPORTING ARGUMENT FOR FINDING INEFFECTIVE ASSISTANCE OF COUNSEL IN THAT P.C.R. CASE.

MR. MCGUIRE: I BELIEVE THE FIRST SENTENCE IN THAT PARAGRAPH SAYS HAVING DETERMINED THAT PETITIONER'S CASE DOES NOT FALL WITHIN THE FIRST CATEGORY, I.E., IT DOESN'T FALL WITHIN THIS FIRST SECTION THAT WE DISCUSSED. I DON'T THINK THE CASE APPLIES AT ALL.

MR. GUYTON: YOUR HONOR, I BELIEVE THAT FIRST CLASS IS TALKING ABOUT GOVERNMENT INTERFERENCE. THE FIRST CLASS INVOLVES ACTUAL OR CONSTRUCTIVE DENIAL OF COUNSEL RESULTING FROM GOVERNMENTAL INTERFERENCE OR CONFLICT OF INTEREST THAT PREVENTS COUNSEL FROM ---

THE COURT: WHICH OF THOSE APPLY HERE?

MR. GUYTON: I BELIEVE THE SECOND CLASS IS WHAT APPLIES, THE SECOND TYPE OF INEFFECTIVE ASSISTANCE.

THE COURT: BUT THE FIRST ONE DOES NOT?

MR. GUYTON: NO, SIR. WE HAVEN'T ALLEGED GOVERNMENTAL INTERFERENCE AT ALL.

THE COURT: ALL RIGHT. I WOULD NOTE THAT TRIAL COUNSEL IN THAT CASE DID ADMIT HIS OWN INEFFECTIVENESS, AND WE DON'T HAVE THAT IN THIS CASE.

ALL RIGHT, ANYTHING FURTHER?

MR. MCGUIRE: NO, SIR, I JUST THINK ---

THE COURT: I REALLY WAS ASKING MR. GUYTON. I GUESS I'M KIND OF BOUNCING BACK AND FORTH.

MR. GUYTON: NO, THAT'S IT, YOUR HONOR.

THE COURT: WELL, I'M GOING TO GRANT THE MOTION FOR A DIRECTED VERDICT. I HAVE LISTENED CAREFULLY TO THE EVIDENCE PRESENTED BY THE APPLICANT, AND GONE OVER THE APPLICATIONS. I CANNOT FIND WHERE HE HAS CARRIED HIS BURDEN OF PROOF.

I CAN'T FIND THAT THERE HAS BEEN ANY SUPPORT FOR HIS GROUNDS; THERE IS NOTHING TO SUPPORT ANYTHING REGARDING THE EFFECT PROZAC MAY HAVE HAD; NOTHING TO SUPPORT A FAILURE TO PREPARE; NOTHING THAT WOULD INDICATE THAT ANY OF THE WITNESSES WOULD HAVE BEEN OF ANY ASSISTANCE, INCLUDING THE TWO AFFIDAVITS THAT HAVE BEEN HANDED UP.

THERE IS NOTHING TO INDICATE THAT AN INDEPENDENT PSYCHIATRIC EXAM WOULD HAVE SHOWN ANYTHING DIFFERENT FROM THAT WHICH JUDGE RUSHING BASED HIS DECISION AFTER THE BLAIR HEARING ON.

THERE IS NOTHING TO SHOW THAT THERE WOULD BE ANY INSANITY DEFENSE.

AND THERE ARE SOME OTHERS ALLEGED SUCH AS FAILURE TO PERFECT AN APPEAL, AND IT APPEARS TO ME THAT AN APPEAL WAS IN FACT PERFECTED, AND DISMISSED BY THE COURT.

SO, MR. CHRONISTER, I'M GOING TO DENY YOUR APPLICATION FOR POST CONVICTION RELIEF. I'M GOING TO ASK MR. MCGUIRE TO PREPARE THE ORDER. YOU WILL HAVE A RIGHT TO APPEAL THAT.

MR. MCGUIRE: THANK YOU, YOUR HONOR.

(WHEREUPON THE HEARING ENDED.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

CERTIFICATE

I, Janet M. Fischer, the undersigned Reporter, hereby certify that the foregoing pages consisting of 33 pages, constitute a true record of the Post Conviction Relief Hearing held in the case of Lynn Jeffrey Chronister vs. The State, as taken by me on September 18, 1996, in York County.

I do further certify that the persons were present as stated, that I am not of counsel for, related, or in the employ of any of the parties to this action and that I have no interest whatsoever in the outcome of this case.

This the 9th day of June, 1997.

Janet M. Fischer, Court Reporter
Sixteenth Judicial Circuit
State of South Carolina

State of North Carolina)
) **Affidavit**
County of Mecklenburg)

I Randall C. Snider, being duly sworn, deposes and says that the information herein stated are true to the best of his knowledge and belief: That, Mr. Jeff Chronister was employed by my company Special Services, up to the time of the tradagy. Mr. Chronister seemed to get along with other employees well, and not a trouble maker, he was a good worker and family oriented. He did not like to go on overnight trips and leave his family. When his wife left him he became very depressed. Jeff confided in me and was very shaken about the situation. He told me that he loved his wife and children very much, and wanted his family back together.

I was prepared to be at Mr. Chronister trial to help in any way I could. I had talked with his Public Defender Mr. Gerald Smith and he told me that my character testimony would only hurt Mr. Chronister case, and that I need not testify. I didn't understand this, but I was going to attend the trial on October 22,1992. When I arrived at the York County Courthouse I was surprise to learn that the trial was already over. I talk to Mr. Smith and he told me that the evidence against Mr.Chronister were overwhelming, and that a phone call made by him (Mr. Chronister) had hurt his case. I have spoken to Mr. Chronister by phone since his trial, and that he didn't testify in his own behalf because Mr. Smith told him that the State did not have enough evidence against him,

was of great concern to Mr. Chronister, and Mr. Smith also told him that the phone call wasn't proven to be his, so the trial judge didn't allow it. Mr. Chronister also told me that he was confused and dis-satisfied with the way Mr. Smith handled his case.

/s/ Randall C. Shrader

Sworn to and subscribed before me at
Coliseum office NationsBank
this 19 day of December 1994
Heather Williams
Notary Public
My Commission Expires 4/14/98

AFFIDAVIT

RE: Jeff Chronister

1. That I am Alan G. Cloninger, Attorney in Gaston County, North Carolina. That I am licensed in the State of North Carolina. I am an attorney in good standing.

2. That I have represented Jeff Chronister concerning his domestic matters, prior to the death of his wife.

3. That I discussed, with the permission of Mr. Chronister the issues of his domestic situation in Gaston County with his public defender in South Carolina.

4. That I had told the public defender I would if called come to Mr. Chronister's criminal trial and testify on his behalf.

5. To my knowledge I was never called to come and testify on behalf of Mr. Chronister.

Alan G. Cloninger
Attorney at Law

Sworn and Subscribed to
before me this the 11th
day of January, 1995.

Notary Public

My Commission Expires: 5-30-96

(Seal)

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
		95-CP-46-1109
Lynn Jeffrey Chronister, 189827, Applicant, v. State of South Carolina, Respondent.	)	ORDER OF DISMISSAL

A. PROCEDURAL HISTORY

This matter is before the Court by way of an Application for Post-Conviction Relief filed August 28, 1995, and received by the Office of the Attorney General on September 26, 1995. The Respondent made its Return and Motion to Dismiss on January 24, 1996, and its Amended Return and Motion to Dismiss on January 29, 1996. A hearing into the matter was convened on September 18, 1996, in the Moss Judicial Center of York County. The Applicant was present in court and represented by David G. Guyton, Esquire, of the York County Bar. The Respondent was represented by Matthew M. McGuire, of the Office of the South Carolina Attorney General.

At the hearing, the Applicant testified on his own behalf. The Court also had before it a copy of the Applicant's trial transcript, the records of the York County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the final appellate briefs, the South Carolina Supreme Court's Order affirming Applicant's conviction, and the Application for Post-Conviction Relief.

The Applicant is presently confined in the Kirkland Correctional Center of the South Carolina Department of Corrections

pursuant to orders of commitment from the Clerk of Court for York County. The Applicant was indicted at the April 1992 term of the Court of General Sessions of York County for Murder and Unlawful Possession of Firearm or Knife During the Commission of a Violent Crime (92-GS-46-1224). He was represented by Gerald Smith, Esquire, of the York County Public Defender's Office. On September 21 and 22, 1992, the Applicant proceeded to jury trial; at the conclusion of which he was found guilty as charged. He was sentenced by the Honorable Don S. Rushing to confinement for a period of Life and five years, consecutive. The Applicant filed a timely Notice of Intent to Appeal and an appeal was perfected on his behalf by Tara Shurling, Esquire, of the South Carolina Office of Appellate Defense. Subsequently, the Applicant's conviction was affirmed. State v. Chronister, Memo. Op. No. 94-MO-226 (S.C. Sup. Ct. filed September 1, 1994).

B. ALLEGATIONS

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reason:

1. Trial counsel failed to effectively discuss the case and strategy with the client.

2. Trial counsel failed to secure a preliminary hearing for his client.

3. Trial counsel failed to subpoena and call witness on behalf of his client.

4. Trial counsel (sic) failure to obtain an independent psychiatric exam and psychiatrist for his client amounts to ineffective assistance of counsel.

5. Trial counsel failed to request a motion for change of venue.

6. Failure to investigate the case.

C. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court had the opportunity to review the record in its entirety and hear the testimony presented at the post-conviction relief hearing. Further, this Court observed the witnesses presented at the hearing, passed upon their credibility, and weighed their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S. C. Code Ann. § 17-27-80 (1976).

1. Ineffective Assistance of Counsel

Regarding the allegations of ineffective assistance of counsel, this Court finds that the matters raised either are refuted by the record, do not indicate any deficiency on the part of trial counsel, or are not sufficient to show prejudice to the Applicant's case. Strickland v. Washington, 466 U.S. 668 (1984). Further, this Court specifically finds that the representation provided to the Applicant by his trial attorneys, both prior to and during his trial, is well within the standards of competence demanded of attorneys in criminal matters and is within the wide range of reasonable professional assistance. Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977); Strickland v. Washington, supra; Watson v. State, 287 S.C. 356, 338 S.E.2d 636 (1985); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

However, the principle reason that the Court must rule that the Applicant's trial attorneys were effective is that the Applicant did not show otherwise. The burden of proof in a post-conviction relief case rests squarely on the applicant's shoulders

jcH#3

and this Applicant did not in any way carry his burden of proof. The Applicant did not show this Court any reason why further action on the part of his attorneys would have benefitted him or why his attorneys should have acted in any other way than they did.

This Court will now address the specific grounds upon which the Applicant proceeded at his hearing.

a. Prozac

Applicant claims that counsel was ineffective for proceeding to trial where Applicant could not meaningfully aid his own defense because of the effects of Prozac on the Applicant. The Court finds the allegation meritless.

This Court finds that Applicant provided no evidence to support his claim that Prozac effected his ability to aid in his defense. Further, this Court finds that the trial court was notified of Applicant's use of Prozac during Applicant's Blair hearing (Tr. p. 67, line 6). This Court finds that Applicant was found to be competent to stand trial (Tr. p. 77, lines 12-13). This Court finds no deficiency on counsel's part, and no prejudice to applicant. Curtis v. State, 305 S.C. 225, 407 S.E.2d 643 (1991).

b. Counsel's preparation

Applicant claims that counsel was ineffective by not adequately preparing for Applicant's trial. The Court finds the allegation meritless.

This Court finds that Applicant provided absolutely no evidence to support his claim that counsel was not adequately prepared for trial. This Court finds that Applicant did not demonstrate any type of trial preparation which counsel failed to

perform. This Court finds that Applicant provided no examples of how counsel could have further prepared for Applicant's case. This Court finds no deficiency on counsel's part, and no prejudice to applicant. Curtis, supra.

c. Witnesses

Applicant claims that counsel was ineffective for not calling Applicant's witnesses at trial. The Court finds the allegation meritless.

This Court finds that Applicant provided no testimony as to how his alleged witnesses would have benefitted him at trial. Further, this Court finds that neither of Applicant's alleged witnesses testified at the PCR hearing. Glover v. State, ___ S.C. ___, 458 S.E.2d 538 (1995). This Court finds no deficiency on counsel's part, and no prejudice to applicant. Curtis, supra.

d. Psychiatric examination

Applicant claims that counsel was ineffective by failing to obtain an independent psychiatric evaluation for Applicant. The Court finds the allegation meritless.

This Court finds that Applicant provided no evidence or testimony to demonstrate how an independent examination would have aided his defense. This Court finds no deficiency on counsel's part, and no prejudice to applicant. Curtis, supra.

e. Insanity defense

Applicant claims that counsel was ineffective for failing to raise an insanity defense. The Court finds the allegations meritless.

5 JC # 11F

This Court finds that Applicant provided no evidence or testimony to demonstrate that he was insane at the time he committed the murder. This Court finds no deficiency on counsel's part, and no prejudice to applicant. Curtis, supra.

f. Appeal

Applicant claims that counsel was ineffective for failing to appeal the conviction. The Court finds the allegation meritless.

This Court finds that an appeal was filed and perfected on Applicant's behalf. State v. Chronister, Memo. Op. No. 94-MO-226 (S.C. Sup. Ct. filed September 1, 1994).

2. All Other Allegations

As to any and all other allegations which were or could have been made in the allegations or at the evidentiary hearing in this matter, this Court finds that the Applicant failed to present any evidence regarding any such additional allegation. Accordingly, this Court finds that the Applicant failed to meet his burden of proof as required by Rule 71.7(e), S.C.R.C.P. See also Butler v. State, 302 S.C. 466, 397 S.E.2d 87 (1990). Accordingly, all additional allegations are denied and dismissed with prejudice.

D. CONCLUSION

In summary, upon careful review of the transcript and upon hearing the testimony presented, this Court finds that the Applicant's allegations are unsubstantiated by the record or the testimony presented. The Applicant was not denied any constitutional or due process rights. The attorney for the Applicant was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Accordingly, this Court

Exh #6

finds that the entire Application is hereby denied and dismissed with prejudice.

In addition, this Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rules 203, 206 and 227, South Carolina Appellate Court Rules, for appropriate procedures allowing or appellate review of post-conviction relief actions.

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 21 day of October, 1996.

JOHN C. HAYES, III
Resident Judge
Sixteenth Judicial Circuit

Conway, South Carolina

#7

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

Lynn Jeffrey Chronister, 189827, Applicant,) 95-CP-46-1109

vs) AFFIDAVIT OF SERVICE BY MAIL

State of South Carolina, Respondent.

PERSONALLY APPEARED before me, Elaine C. Neth, who being first duly sworn, states:

1. That I am one of the secretaries for Respondent in the above-captioned action.

2. That regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. That I have this day served a copy of the Order of Dismissal in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Lynn Jeffrey Chronister, 189827
Kirkland Correctional Institution
4344 Broad River Road
Columbia, South Carolina 29210

David G. Guyton, Esquire
P.O. Box 904
Rock Hill, SC 29731

DATED this 28th day of October, 1996.

Elaine C. Neth
ELAINE C. NETH

SWORN TO before me this
28th day of October, 1996.

Judy A. Jem (L.S.)
Notary Public for South Carolina
My Commission Expires: 5-2-2004

WITNESSES

Otis Christine YCSD

438

ARREST WARRANT NO. D-228986

ACTION OF GRAND JURY

TBill 4/6/92

TM Weldon

Foreman of Grand Jury

VERDICT

Count one - Guilty Murder
Count two - Guilty Possession
of a Firearm when committing
a Violent Crime

Foreman of Petit Jury *Date:*

The State of South Carolina,

County of York

COURT OF GENERAL SESSIONS

April 6, TERM 1992

THE STATE

vs.

Lynn Jeffery Chronister

Indictment for

MURDER

AND

UNLAWFUL POSSESSION OF FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

(S. C. Code 16-3-10)
(CDR Code 116)

467

FORM 32 (12/87)

439

STATE OF SOUTH CAROLINA)
)
COUNTY OF York)

INDICTMENT FOR

MURDER AND
UNLAWFUL USE OF FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on April 6, 1992,

the Grand Jurors of York County present upon their oath:

COUNT ONE

That Lynn Jeffery Chronister did in York County on or about February 14, 1992 feloniously, wilfully and with malice aforethought, kill on e Marie Gail Cronister by means of shooting her and that the said victim died as a proximate result thereof.

COUNT TWO

That Lynn Jeffery Chronister did in York County on or about February 14, 1992 while in possession of a firearm or while visibly displaying what apperaed to be a firearm, committed the crime contained in Count One of this Indictment.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

M.R. "Sandy" Nicholl, Jr.
CLERK OF COURT
YORK COUNTY, S.C.

MAR 22 11 37 AM '93

CERTIFIED TRUE COPY

SOLICITOR

FORM 32 (12/87)

439A

STATE OF SOUTH CAROLINA)
)
COUNTY OF York)

INDICTMENT FOR

MURDER AND
UNLAWFUL USE OF FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

M.H. Boyle, Jr.
CLERK OF COURT
YORK COUNTY, S.C.
MAR 22 11 37 AM '93
CERTIFIED TRUE COPY

Lewy S. Spencer
SOLICITOR

440

~~SENTENCE~~

COUNT ONE (1) MURDER

STATE OF SOUTH CAROLINA

York COUNTY

CASE NO. 92-GS-46-1224

The defendant Lynn Jeffrey Abernathy is committed to the State Department of Corrections/County for a term of Life, ~~months/years and/or to pay a fine of $_____~~; provided upon the ~~service of_____ months/years and/or payment of $_____, plus pay/waive costs and assessments~~ as applicable**, ~~the balance suspended with probation for_____ months/years~~.

Restitution**

Yes/No

To be paid _____

For physical injury $_____

property damage $_____

To clerk for _____.**

Other conditions _____

Date 9-22-92

Presiding Judge

Costs and Assessments

FINE	$_____
ACADEMY	$_____
C.C.A.	$ No
L.C.F.	$_____
C.A.T.	$ Fee
OTHER	$_____
GRAND TOTAL	$_____

MH Carroll Jr.
Clerk of Court

*Pay to Victim's Compensation Fund if subrogated

CCA Form 217 (3/86)

M.H. CARROLL, JR.
CLERK OF COURT
YORK COUNTY, S.C.
MAR 22 11 35 AM '93

CERTIFIED TRUE COPY

470

441

SENTENCE

STATE OF SOUTH CAROLINA

York COUNTY

CASE NO. 92-GS-46-12

COUNT TWO: UNLAWFUL POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.

The defendant Lyons Jeffery Chronister is committed to the State Department of Corrections/County for a term of FIVE (5) months/years and/or to pay a fine of $_____; provided upon the service of _____ months/years and/or payment of $_____, plus pay/waive costs and assessment as applicable**, the balance suspended with probation for _____ months/years.

CONSECUTIVE TO COUNT ONE (1)

Restitution**

Yes/No

to be paid _____

For physical injury $_____

property damage $_____

to clerk for _____.

Other conditions _____

Date 9-22-92

Presiding Judge

Costs and Assessments

FINE	$_____
ACADEMY	$_____
C.C.A.	$_____
L.C.F.	$ ND
C.A.T.	$ fee
OTHER	$
GRAND TOTAL	$_____

M.H. Carrigo Jr.

Clerk of Court

M.H. CARRIGO, JR.
CLERK OF COURT
YORK COUNTY, S.C.

MAR 22 11 34 AM '93

CERTIFIED TRUE COPY

**Pay to Victim's Compensation Fund if subrogated.

SCCA Form 217 (3/86)

471

ARREST WARRANT

D- 228986

STATE OF SOUTH CAROLINA

[XX] County/ [ ] Municipality of

York

THE STATE

against

442

Lynn Jeffery Chronister

Address: [redacted]

[redacted] N.C.

Phone: _____ SSN: _____

Sex: M Race: W Height: 5'8" Weight: 170

DL State: _____ DL #: _____

DOB: [redacted] Agency ORI #: 0460000

Prosecuting Agency: YCSD

Prosecuting Officer: Whistine

Offense: Murder

_____ Offense Code: _____

Code/Ordinance Sec. 16-3-10

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Lynn Jeffery Chronister on 2-21-92.

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

YORK CO. S.C. CLERK OF COURT FILED FEB 21 12 03 PM '92

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

York

Personally appeared before me the affiant Otis Whistine who being duly sworn deposes and says that defendant Lynn Jeffery Chronister did within this county and state on February 14th, 1992 violate the criminal laws of the State of South Carolina (or ordinance of [ ] County/ [ ] Municipality of _____) in the following particulars:

DESCRIPTION OF OFFENSE: Murder: Section 16-3-10

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: Defendant did wilfully and unlawfully, and with Malice Aforethought kill Marie Gail Chronister by shooting her. This unlawful act occured at the Catawba Nuclear Station, Concord Rd., Clover York County S.C. All against the Peace and Dignity of the State and against such Laws as made and provided. Probable cause based on witness's.

FILED-RECEIVED BOOK _____ PAGE _____ FEB 21 12 03 PM '92 YORK CO. S.C. CLERK OF COURT

Sworn to and subscribed before me on February 14th, 1992

Signature of Issuing Judge (L.S.)

Otis Whistine

Signature of Affiant

Affiant's Address Court House, South Congress St. York S.C.

Affiant's Telephone 684-8522

ARREST WARRANT

STATE OF SOUTH CAROLINA

[XX] County/ [ ] Municipality of

York

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on February 14th, 1992 defendant Lynn Jeffery Chronister did violate the criminal laws of the State of South Carolina (or ordinance of [ ] County/ [ ] Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: Murder (Section 16-3-10)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)

Judge Code: 518

Judge's Address South Congress St. York S.C.

Judge's Telephone 684-8514

Issuing Court: [XX] Magistrate [ ] Municipal [ ] Circuit

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

_____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

_____ _____

_____ _____

_____ _____

WITNESSES

Name: _____
Address: _____
_____
Telephone: _____

Name: _____
Address: _____
_____
Telephone: _____

Name: _____
Address: _____
_____
Telephone _____

Name: _____
Address: _____
_____
Telephone: _____

Name: _____
Address: _____
_____
Telephone: _____

Name: _____
Address: _____
_____
Telephone: _____

Name: _____
Address: _____
_____
Telephone: _____

Name: _____
Address: _____
_____
Telephone: _____

CODEFENDANTS

_____

FORENSIC UNIT STAFFING

April 9, 1992

444

PRESIDING: Thomas W. Behrmann, M.D.

OTHERS PRESENT: Richard A. Ellison, M.D.
Geoffrey R. McKee, Ph.D.

DIAGNOSES: AXIS I: Adjustment Disorder with Mixed Emotional Features.
Alcohol Abuse.
AXIS II: No Diagnosis.
AXIS III: No Diagnosis.

COMPETENCY TO STAND TRIAL: Yes.

CRIMINAL RESPONSIBILITY: Yes.

CAPACITY TO CONFORM: Yes.

DISPOSITION: Return to York County Authorities for disposition of charges.

PERTINENT STATEMENTS: Jeffery Chronister is a 42-year-old white male who is admitted to the Forensic Services of William S. Hall Psychiatric Institute (WSHPI) pursuant to a court order from the York County Court of General Sessions ordering an evaluation for competency to stand trial, criminal responsibility, and capacity to conform behavior to the requirements of the law. The patient is charged with the offense of murder which allegedly occurred on 02/14/92 in York County, South Carolina.

Prior to beginning the interview, the nature and purpose of the evaluation were explained to the patient. The patient was able to read his Miranda Rights, explain them, and demonstrate understanding of his rights. The patient was able to competently waive his rights for the purposes of the evaluation.

Mr. Chronister states that prior to the alleged offense, he had been feeling depressed and had been drinking large amounts of alcoholic beverages on essentially a daily basis.

MENTAL STATUS EXAM: The patient is alert, cooperative, and his manner is pleasant. The patient is dressed in casual clothing and displays good grooming. Speech is normal in rate, fluent, and coherent. Affect is sad with the patient occasionally appearing on the verge of tears. Mood is described as sad. Thought process is logical and linear without evidence of tangential thought or loosening of associations. Thought content reveals no evidence of delusions, paranoia, or ideas of reference. The patient denies current homicidal or suicidal ideation. The patient denies exper-

M.H. CHRONISTER, JR.
CLERK COURT
MAR 22 11 35 AM '93
CERTIFIED TRUE COPY

iencing hallucinations in the past but says that since he has come to the hospital, he sees his wife at night while he is lying in bed. Intellectual function is judged to be in the average range. The patient's abilities to concentrate are preserved as noted by his ability to compute serial 7's. The patient is able to abstract similarities and proverbs without difficulty. The patient is alert and oriented in all 3 spheres. Memory is intact. The patient registers 3 of 3 items and is able to recall 3 of 3 items at 5 minutes. Remote memory appears to be intact except for the patient claims some difficulty in remembering the exact events around the time of the alleged offense. The patient's insight into his situation appears to be somewhat limited and that the patient frequently wishes to deny the reality of the situation. The patient's judgment similarly appears limited.

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL: The patient is aware of the nature of the charges against him and has at least a general notion of the potential penalties if he is found guilty of these charges. The patient is aware of the adversarial nature of the court and has a general knowledge of the duties of the various court officers. The patient demonstrates the ability to sit quietly with his attorney and discuss the facts of the matter in a rational and factual manner. The patient clearly possesses a self-protective attitude and expresses the wish that his trial go as well for him as it possibly could. We therefore conclude that Mr. Chronister is competent to stand trial.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: There was no evidence of a major mental illness or defect which would have prevented the patient from recognizing the nature of his actions or differentiating between moral and legal right from moral and legal wrong at the time of the alleged offense. We therefore conclude that Mr. Chronister is criminally responsible towards the charge against him pursuant to the McNaghten standard.

CONCLUSION REGARDING CAPACITY TO CONFORM: The patient states that he had been drinking large amounts of alcohol for sometime prior to the alleged offense. Alcohol consumption aside, there is no evidence of a major mental illness or defect which would have prevented the patient from conforming his behavior to the requirements of the law. We therefore conclude that at the time of the alleged offense, the patient did possess the capacity to conform his behavior to the requirements of the law.

RECOMMENDATIONS: Return to York County authorities for disposition of charges.

Thomas W. Behrmann, M.D.
Fellow In Forensic Psychiatry

TWB/jpw

D: 04/10/92
FT: 04/11/92,04/16/92

CHRONISTER, JEFFERY L.
921-3083
ADMITTED: 02/15/92

WILLIAM S. HALL PSYCHIATRIC INSTITUTE
FORENSIC UNIT STAFFING 3489 2

FORENSIC UNIT STAFFING

April 9, 1992

PRESIDING: Thomas W. Behrmann, M.D.

OTHERS PRESENT: Richard A. Ellison, M.D.
Geoffrey R. McKee, Ph.D.

DIAGNOSES: AXIS I: Adjustment Disorder with Mixed Emotional Features.
Alcohol Abuse.
AXIS II: No Diagnosis.
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M.H. DANNELLY JR.
YORK COUNTY CLERK
MAR 22 11 35 AM '93
CERTIFIED TRUE COPY

DEFENSE OF INDIGENTS ACT

FORM NO. IV

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
COUNTY OF York)
DOCKET NO. _____)

STATE OF SOUTH CAROLINA)
VS.)
Jeffrey L. Aronster)
DEFENDANT)
_____)

ORDER OF APPOINTMENT OF LEGAL COUNSEL OF INDIGENT DEFENDANT

The Defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, Public Defender, Attorney-at-Law, is appointed as Counsel for the Defendant.

Charges: Murder

This 27th day of February,
19 92, at 2:30
(~~A.M.~~/P.M.)

John C. Hayes

CERTIFIED TRUE COPY
Deputy Clerk
MAR 22 11 36 AM '93
M.H. CARROLL, JR.
CLERK OF COURT
YORK COUNTY, S.C.

DMH South Carolina Department of Mental Health

FEB 26 1992

William S. Hall Psychiatric Institute
Cooper Bldg. 1800 Colonial Drive
WARD 174 P.O. Box 202
Columbia, S.C. 29202
Telephone: (803) 734-7113

Larry R. Faulkner, M.D.
Director

February 21, 1992

DEAR Judge HAYES,

I Am WRITING you to APPLY for COUNSEL. I AM CURRENTLY at William S. HALL Psychiatric INSTITUTE AND upon Discharge FROM this FACILITY, I will RETURN to YORK COUNTY DETENTION CENTER. I AM CURRENTLY CHARGED with MURDER AND YORK COUNTY CLERK of COURT STATED you NEEDED to be CONTACTED IN ORDER FOR me to OBTAIN A public Defender. THANK you FOR your CONSIDERATION of my CASE.

SINCERELY,

Jeffrey L. Chronister

M.H. CARROLL, JR.
CLERK OF COURT
YORK COUNTY, S.C.

MAR 22 11 36 AM '93

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MENTAL HEALTH COMMISSION:
Richard K. Harding, M.D., Chairman, Columbia
C. Alex Harvin, Jr., Vice-Chairman, Summerton
Elizabeth L. Forrester, Georgetown
Fred H. Gantt, Columbia
E.A. Hall, Jr., Columbia
Louise R. Hassenplug, Rock Hill
John P. Linton, Esq., Charleston
Joseph J. Bevilacqua, Ph.D., State Commissioner

DMH South Carolina Department of Mental Health

William S. Hall Psychiatric Institute
Cooper Bldg. 1800 Colonial Drive
WARD 174 P.O. Box 202
Columbia, S.C. 29202
Telephone: (803) 734-7113

Larry R. Faulkner, M.D.
Director

FEB 26 1992

2/27/92

February 21, 1992

Mr. Chronister -
I have turn over to the public defender a copy of your letter (This letter) to me. John C. Hayes Judge

DEAR Judge HAYES,

I Am WRITING you to APPLY FOR COUNSEL. I Am CURRENTLY at William S. HALL Psychiatric INSTITUTE AND upon DISCHARGE FROM this FACILITY, I will RETURN to YORK COUNTY DETENTION CENTER I Am CURRENTLY CHARGED with MURDER AND YORK COUNTY CLERK of COURT STATED you NEEDED to be CONTACTED IN ORDER FOR me to OBTAIN A PUBLIC DEFENDER. THANK you FOR YOUR CONSIDERATION IN THIS MATTER.

SINCERELY,

Jeffrey L. Chronister

M.H. CARROLL, JR.
CLERK OF COURT
YORK COUNTY, S.C.
MAR 22 11 36 AM '93

RECEIVED TRUE COPY

MENTAL HEALTH COMMISSION:

Richard K. Harding, M.D., Chairman, Columbia
C. Alex Harvin, Jr., Vice-Chairman, Summerton
Elizabeth L. Forrester, Georgetown
Fred H. Gantt, Columbia
E.A. Hall, Jr., Columbia
Louise S. Hasselbring, Rock Hill
John P. Linton, Esq., Charleston
Joseph J. Bevilacqua, Ph.D., State Commissioner

450

STATE OF SOUTH CAROLINA)
) IN THE Court of General Sessions
COUNTY OF YORK)

FILED-RECEIVED
BOOK PAGE
FEB 28 12 ORDER FOR COMPETENCY EVALUATION AND
H.M. CARROLL, JR. CRIMINAL RESPONSIBILITY
C.C.C.P. & G.S.
YORK COUNTY, S.C.

The State of South Carolina,

-vs-

Jeffery Chronister

Defendant.

This matter comes before me upon Motion of Gerald W. Smith, for an Order requiring the Defendant, Jeffery Chronister, charged with Murder, Unlawful Use of a Firearm, to submit to a psychiatric examination.

I have considered the showing made in respect to the Motion for such an Order, and am of the opinion that the Defendant should be examined pursuant to the statutory provisions of this State.

THEREFORE, IT IS ORDERED that the Defendant shall be:

(a) Examined and observed at the appropriate facility of the South Carolina Department of Mental Health for a period not to exceed Fifteen (15) days, relative to his mental capacity to stand trial. (Section 44-23-410 (1) or Section 44-23-410 (2), Code of Laws of South Carolina, 1976)

And he/she shall/shall not be;

(b) Examined as aforesaid to determine whether or not the above-named Defendant is criminally responsible pursuant to the McNaughten test for his/her actions on or about February 14, 1992,

And he/she shall/shall not be:

(c) If found responsible pursuant to the McNaughten test, examined as aforesaid to determine whether or not, because of mental disease or defect, the Defendant lacked sufficient capacity to conform his/her conduct to the requirements of the law. (Section 17-24-20 (A), Code of Laws of South Carolina, 1976)

YORK COUNTY, S.C.
M.H. CARROLL, JR.
MAR 22 11 36 AM '93

The Ordered examination shall be requested by the Solicitor and scheduled by

CERTIFIED TRUE COPY

480

SOUTH CAROLINA VICTIM IMPACT STATEMENT

451

STATE VS. Jeff Chronister

CASE # _____ CHARGE Murder

NAME OF VICTIM (or next of kin) Marie Chronister
AGE of victim _____ Parents: Elgin-Lucille Menard

ADDRESS HOME [redacted] Gastonia, N.C. 28056 WORK Menard's Shop Elgin - [redacted] Lucille - [redacted]

PHONE [redacted] Linda + Robert [redacted] [redacted] Anderson, SC 29624 Catherine Calhoun

It is your responsibility to inform the Solicitor's Office, the Department of Corrections and the Parole and Community Corrections Board of any change in the above.

I do ✓ wish to be present or I do not ____ wish to appear in court unless needed.

I do ✓ do not ____ wish to be notified of post sentence hearings affecting criminal probation or parole and also release or escape from prison.

1. If you have suffered any property damage or other economic loss, please explain. NA

2. If you have suffered any physical injury, please explain. _____

3. If you have suffered any psychological or emotional injury and/or if you or your family have received any counseling, please explain. Loss of my daughter has left an empty space in my life - one that I will never get over.

4. If your personal welfare or family relationship has changed as a result of the crime, please explain. _____

If necessary, use back of this sheet for your answers.

SUMMARY OF FINANCIAL COSTS

	COSTS TO DATE	FUTURE COSTS EXPECTED
Property/economic loss	$	$
Medical expenses		
Counseling expenses		
Income lost from work		
Other expenses (explain)		
Total	$	$
Subtract insurance recovery		
Net loss to victim	$	$

It would be helpful if copies of receipts or cancelled checks were attached.

SWORN and subscribed before me,
THIS _____ day of
_____, 19 ___

Notary Public for South Carolina
My Commission expires _____

Elgin P. Menard + Family
Signature of victim (or next of kin)

3-23-92
Date

AG 7-86

451-A

10212 Harbor Dr., Charlotte, NC 28214

Mrs. Lucille Mernard
(work) 704-866-2000
704-866-2913(direct)
Business Office

(3) Mr. Elger Mernard
(work) 704-822-2170
Shop

AGENCY I. D.
SC0460000

YORK COUNTY SHERIFF'S DEPARTMENT
INCIDENT REPORT

CASE NUMBER: 92-02-2310

EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
1. Homicide Offense (Murder)	X YES ☐ NO	☐ YES ☐ NO	parking lot	
2.	☐ YES ☐ NO	☐ YES ☐ NO		
3.	☐ YES ☐ NO	☐ YES ☐ NO		

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): Administration Building Catawba Nuclear Stat. York, SC — ZIP CODE: 29745 — WEA: fired

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME	LO
2-14-92	06:57				2-14-92	06:58	07:02	09:07	L

VICTIM NO. 1

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT (J S O U)	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EV
Auten, Thomas F.	unknown			J S O U	W	M	[redacted] 32	N	[redacted]	

ADDRESS: [redacted] — CITY: Rock Hill — STATE: SC — ZIP CODE: 29730 — LO: R

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT (J S O U)	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EV
Ebrenister, Gail Marie	wife			J S O U	W	F	[redacted] 34	N	unknown	

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
510	145	Brn	Brn	

ADDRESS: [redacted] — CITY: Mt. Holly — STATE: NC — ZIP CODE: 28120 — LO:

ASSAULT INJURY (VICT 1) X YES ☐ NO ☐ EXPLAIN — gun shots to head + body — COMPLAINT OF ANY NON-VISIBLE INJURIES:

VICTIM (NO. 1) USING ALCOHOL ☐ YES NO X UNK ☐ DRUGS: ☐ YES NO X UNK ☐ TYPE:

TWO-MAN VEH ☐ ONE-MAN VEH ☐ DETECTIVE/SPL ASMT ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ — J — This Jurisdiction, S — State, O — Out of State, U —

SUBJECT NO. 1

X SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS

NAME (LAST, FIRST, MIDD.)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT
unknown	W	M	38 42	N	unknown	5[illegible]	60

FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.: beard

ADDRESS: unknown — CITY: unknown — STATE: unk — ZIP CODE: unknown

SUBJECT (NO. 1) USING ALCOHOL ☐ YES NO ☐ UNK X — DRUGS ☐ YES NO ☐ UNK X TYPE — ARRESTED NEAR OFFENSE SCENE ☐ YES NO ☐ — TOTAL # ARRESTED — DATE/TIME OF OFFENSE — DATE/TIME O

NARRATIVE

R/P stated as he was exiting the vehicle he drove to wo that he heard approximately 5 rapid gun shots. R/P saw a w/m subject fitting the above description carrying a rifle walking away from the scene. Subject entered a white Dodge van NC. partial registration DRL and left the scene. Victim sustained gunshot wo and was pronounced dead at the scene.

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY — JURISDICTION OF RECO LAW ENFORCEMENT AGE

PROPERTY EST.

TYPE (GROUP)							TOTA
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED							

ADMINISTRATIVE

SUBJECT IDENTIFIED	SUBJECT LOCATED	X ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18. ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR ☐ EX-CLEAR
☐ YES NO X	☐ YES NO X			

REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTIVE MERIT 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DENIES COOPERATION. 5 ☐ JUVENILE—NO CUSTODY 6 ☐ CIVI

REPORTING OFFICER(S) — DATE — UNIT — APPROVING OFFICER — DATE

Victim's father (D/K) SHOP 704-822-2170 452-A

Mr. Edgar Mernard (62)
121 Valley Dale Road
Gastonia, N.C. 28056
704-865-1571

Gaston Memorial Hospital
Lucille Mernard (Office Busine)
Linda — (Sister)
704-866-2000 Gaston Mem
direct-866-2913
line to Mrs. Mernard

Kids Wendi + Justin
Live w/ Bill + Sally Yanacsek (Jeff's Ex Wife)
10212 Harold Drive
Charlotte, N.C. 28214
H. 704-393-7273
W. 704-338-6300
Sally in Records

Lady heard him threat Marie day before

Herb + (his father said heard) Jeff ran off Earlier
records of security — that morning

9/2/92 trial Guilty - Life

NOTICE OF INTENT TO APPEAL
THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM YORK COUNTY
THE HONORABLE DONALD L. RUSHING, JUDGE
INDICTMENT NUMBER 92-GS-46-1224

The State of South Carolina

-vs-

Lynn Jeffery Chronister

Defendant

NOTICE OF APPEAL

The Defendant appeals form the rulings, and sentence of September 22, 1992, to the Supreme Court of the State of South Carolina, said Appeal being from errors committed by trial Judge, all based upon the case and exceptions to be hereafter served.

Gerald W. Smith
GERALD W. SMITH
Attorney for Defendant

York, South Carolina
September 24, 1992

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BOOK 4M PAGE —
SEP 25 11 53 AM '92
M.H. CARROLL, JR.
C.C.C.P.&G.S.
YORK COUNTY, S.C.

CERTIFIED TRUE COPY
Audrey Coates
MAR 22 11 35 AM '93
M.H. CARROLL, JR.
CLERK OF COURT
YORK COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK	)	
The State of South Carolina	)	
-vs-	)	NOTICE OF ACCEPTANCE
Lynn Jeffery Chronister	)	
Defendant	)	

A copy of the within Notice of Intent to Appeal is accepted and a copy thereof retained this 25th day of September, 1992.

Solicitor

FILED-RECEIVED
BOOK 44 PAGE 454
SEP 25 11 53 AM '92
M.H. CARROLL, JR.
C.C.C.P. & G.S.
YORK COUNTY, S.C.

CERTIFIED TRUE COPY
MAR 22 11 35 AM '93
M.H. CARROLL, JR.
CLERK OF COURT
YORK COUNTY, S.C.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REPORT 1 OFFENDER SUMMARY

INMATE NO:189827 NAME:CHRONISTER, LYNN JEFFREY

********** PERSONAL/IDENTIFICATION DATA **********

RACE----------:WHITE
SEX----------:MALE
HEIGHT--------:5 FT 10 IN
WEIGHT--------:185
EYE COLOR-----:BROWN
HAIR COLOR----:BROWN
SKIN TONE-----:FAIR
BODY BUILD----:MEDIUM
MARKS/SCARS---:SEE REPORT 3

FBI NUMBER---------:NONE
BIRTH DATE---------:08/28/49
RELIGION-----------:[redacted]
U.S.CITIZEN--------:CITIZEN - NATIVE BOR
MARITAL STATUS-----:[redacted]
MEDICAL STATUS-----:NONE ON FILE
SOCIAL SECURITY #--:246808443
DRIVER LIC # & ST--:2477813 NC
AIMS GRP ASSIGNMENT:BETA V

********** DATA CURRENT AS OF 10/04/95**********

CUR STATUS----:INCARCERATED
CURR INST.----:KCI
CURR CUST LVL-: BL3
CURR ASSIGN.--:MAINTENANCE
ESCAPE/ATTEMPT:SEE ESCAPE HISTORY
DETAINER/WARR:NONE ON FILE
VICTIM/WITNESS:*** V/W ***
PRIOR CONV OVER 90 DYS---: 0
PRIOR CONV 90 DYS OR LESS: 0

TOTAL SENTENCE-----:999 YRS 0 MOS 0
CURR SENT SERVING--:999 YRS 0 MOS
CURR SENT START----:02/14/92
SCDC JOB LEVEL-----:03120
CURRENT LOCK-------: A10060A
SCDC ADMIT DTE-----:09/23/92
PROJ EWC-MAX-OUT---:99/99/9999
PROJ EWC PAR-ELIG--:02/14/2010
WORK RELEASE ELIG--:02/14/2010

********** COMMITMENT INFORMATION **********

SEC # STATUS	CURRENT OFFENSE	INCARC SENTENCE YRS	MO	DYS	CLASS	TYPE	CONT IND	VIOL IND	CONS YRS	SU-
1	FIREARMS PROVISION	5	0	0	F	1	ST TIM	N	Y	
AC	NO PROBATION									
2	99-001 MURDER	999	0	0	F	1	ST TIM	V	N	
AC	NO PROBATION									

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
OFFENDER SUMMARY

EPORT 1 CONTINUED

NMATE NO:189827 NAME:CHRONISTER, LYNN JEFFREY

********** CONSECUTIVE STRUCTURE **********

ONVICTION NUMBER		CONSECUTIVE TO: NUMBER
00002	IS CONS TO -->	S00001
00001		

** COMMITMENT TEXT **
ECORD AUDITED 11/30/92, RR.
RE-ITED 218 DAYS JAIL TIME TO SENTENCE #1 FOR TIME IN YORK FROM 2-14-92 TO
-22-92. BAB. 10/7/93.

FILED-RECEIVED
BOOK PAGE
JUN 19 10 45 AM '01

STATE OF SOUTH CAROLINA

County of York

In the Court of Common Pleas

Jeffrey Lynn Chronister, #189827
Full name and prison number (if any) of Applicant.

vs.

State of South Carolina
Name of Respondent.

01 CP 46 1338

APPLICATION FOR POST-CONVICTION RELIEF

CERTIFIED MAIL JUN 19 11 23 AM

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Lee Correctional Institution, 1204 E. Church St. Bishopville, SC 29010

2. Name and location of Court which imposed sentence The Couert of General Sessions fro York County, York, SC

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

   (a) 92-GS-46-1224 Count I Murder

   (b) Count II Possession of a firearm during the

   (c) commission of a violen crime.

4. The date upon which sentence was imposed and the terms of the sentence:

   (a) September 22, 1992. Life and five (5) years consecutive.

   (b)

   (c)

5. 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

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

Yes.

7. If you answered "yes" to (6), list

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

i. South Carolina Supreme Court

ii.

iii.

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

i. Convictions affirmed

ii.

iii.

(c) the date of each such result:

i. September 1, 1994.

ii.

iii.

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

i. Memorandun Opinion Number 94-MO-226.

ii.

iii.

8. If you answered "no" to (6), state your reasons for not so appealing:

(a)

(b)

(c)

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

(a)

(b)

(c)

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

(a)

(b)

(c)

9(a) Ineffective assistance of trial counsel.

(b) Ineffective assistance of PCR counsel.

(c) Conviction obtained in violation of Applicant's USCA 5 right against compulsory self-incrimination.

(d) Conviction obtained in violation of Applicant's USCA 5 right to have counsel present during interrogation.

(e) Conviction obtained in violation of Applicant's USCA 5&14 right to due process of law.

10(a)(i) Trial counsel was constitutionall ineffective and unduly prejudiced Applicant denying him a fair trial through counsel's failure to effectively discuss the case and strategy with Applicant.

(ii) Trial Counsel was constitutionally ineffective and unduly prejudiced Applicant denying him a fair trial through counsel's failure to secure a preliminary hearing for Applicant.

(iii) Trial Counsel was constitutionally ineffective and unduly prejudiced Applicant denying him a fair trial through counsel's failure to subpoena and call witnesses on behalf of Applicant.

(iv) Trial counsel was constitutionally ineffective and unduly prejudiced Applicant denying him a fair trial through counsel's failure to obtain an independent psychiatric exam and psychiatrist to present expert testimony for Applicant.

(vi) Trial counsel was constitutionally ineffective and unduly prejudiced Applicant denying him a fair trial through

counsel's failure to adequately investigate and present an insanity defense as Applicant's defense to the charges.

(vii) Trial counsel was constitutionally ineffective and unduly prejudiced Applicant denying him a fair trial through counsel's failure to request a change of venue on the grounds of pre-trial publicity where voir dire showed jury to be both knowledgeable about the case and biased against Applicant

(b)(i) Post-Conviction relief counsel was ineffective and unduly prejudiced Applicant denying him a fair PCR hearing through PCR counse's failure to amend Applicant PCR application to include all available grounds for relief; and through PCR counsel's failure to assist Applicant in meeting his burden of proof at the PCR hearing.

(c)(i) Applicant was subjected to custodial interrogation by police without being properly warned of his rights against self-incrimination.

(d)(i) Applicant twice stated that he wanted his counsel present before talking to police. Despite this request Applicant was subjected to the psychological ploys and interrogation tactics of Officer John Dean Shillinglaw.

(e)(i) The trial court erred and violated Applicant's rights when it allowed into evidence an illegally obtained statement.

12(a)(v) Petition for writ of cert.

(vi) Petition for writ of habeas corpus.

(vii) Petition for writ of habeas corpus.

(b)(v) U.S. Supreme Court, Washington, DC.

(vi) S.C. Supreme Court, Columbia, S.C.

(vii) U.S. Supreme Court, Washington, DC.

(c)(v) Cert. denied.

(vi) Petition denied.

(vii) Petition denied.

(d)(v) October 2, 2000.

(vi)

(vii) May 14, 2001.

14(a)(i) 9(a,c,d and e.)

(b)(i) Application for post-conviction relief.

Petition for writ of habeas corpus.

Appeal from denial of petition for writ of habeas corpus.

Writ of Cert. to U.S. Supreme Court.

Petition for writ of habeas corpus to S.C. Supreme Court.

Peririon for writ of habeas corpus to U.S. Supreme Court.

15(a) Ineffective assistance of PCR counsel. This claim is based on PCR counsel's failure to adequately present Applicant's case in the first PCR hearing, and this Court is the proper venue to raise this issue.

(b) Trial counsel was constitutionally ineffective and unduly prejudiced Applicant denying him a fait trial through counsel's failure to object to the trial court's indirect reference to Applicant's right not to testify

or put forth evidence. This issue was not previously presented through PCR counsel's failure to properly amend Applicant's PCR.

(c) Trial counsel was constitutionally ineffective and unduly prejudiced Applicant denying him a fair trial through counsel's failure to object to the court's charge on circumstantial evidence that the jury "must see some other reasonable explanation" of the evidence before they could find the Applicant not guilty. This issue was not previously presented through PCR counsel's failure to properly amend Applicant's PCR.

17(a)(iv) M. Anne Pearce
SC Office of Appellate Defense
Columbia, SC
17(b)(iv) Petition for writ of Cert. to S.C. Supreme Court.

STATE OF SOUTH CAROLINA COUNTY OF YORK Jeffrey Lynn Chronister, S.C.D.C. No., 189827 Applicant, VS. State of South Carolina, Respondent.	)	IN THE COURT OF COMMON PLEAS C.A. NO. 01-CP-46-1338 **RETURN AND MOTION TO DISMISS**

In response to the post-conviction relief application filed June 19, 2001, the Respondent would show this Court:

I.

The Applicant, Jeffrey Lynn Chronister, is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. During the April 1992 term of General Sessions, the York County Grand Jury indicted the Applicant for murder and unlawful possession of a firearm during the commission of a crime.

Applicant was tried and convicted by a jury on September 22, 1992. The Honorable Don S. Rushing sentenced the Applicant to life imprisonment for murder and a consecutive five year sentence for the weapons charge. On appeal, his conviction and sentence was affirmed by the South Carolina Supreme Court on September 1, 1994 (94-MO-226).

Applicant filed a previous application for post-conviction relief on September 26, 1995. A hearing into the matter was held at the York County Moss Justice Center on September 18, 1996 before the Honorable John C. Hayes, III. Post-conviction relief was denied. It also appears th

Applicant appealed the denial of post-conviction relief, which was dismissed by the Supreme Court.

For the purpose of this Return, the Respondent attaches and incorporates the Clerk of Court's records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In this current application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. ineffective assistance of trial counsel;
2. ineffective assistance of PCR counsel;
3. conviction obtained in violation of right against compulsory self-incrimination;
4. conviction obtained in violation of right to have counsel present during interrogation;
5. conviction obtained in violation of right to due process of law.

III.

The statute of limitations applicable to post-conviction relief actions bars the entire application. Under S.C. Code Ann. § 17-27-45 (Supp. 2000), an inmate is required to file a post-conviction relief application "within one year after the entry of a judgment of conviction . . . ." For convictions prior to the July 1, 1995 effective date of the statute, the applicant was allowed one year after the statutes effective date to file an application. *See* Peloquin v. State, 321 S.C. 468, 470 S.E.2d 606, 607 (1996). For such a conviction the application must have been filed prior to July 1, 1996.

As shown above, the Applicant's conviction and sentence occurred on September 22, 1992. Applicant's appeal was affirmed on September 1, 1994. The Applicant should have filed this application on or before July 1, 1996. As shown above, the Applicant filed this post-conviction relief application on June 19, 2001, exceeding the applicable statute of limitations by almost five years. Accordingly, since the Applicant did not present these allegations in a timely manner, this application should be summarily dismissed with prejudice as barred by the statute of limitations.

IV.

The Court should summarily dismiss the current Application because it is clearly successive to the previous applications for post-conviction relief. Successive applications for post-conviction relief are clearly disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) 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 conviction 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-conviction relief applications are forbidden unless an applicant can point to 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

ave been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. 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. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present **any** reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, this application should be summarily dismissed.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code §17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

Further, should the Applicant make any false claims, commit perjury or abuse the legal process, the State reserves the right to seek punitive and remedial sanctions. These include, but are not limited to, the forfeiture of all earned work, education and good time credits. See

S.C. Code 24-27-200 (Supp. 2000).

VIII.

WHEREFORE, having made Return, the Respondent requests that this Court dismiss this application with prejudice.

Respectfully submitted,

CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

B. ALLEN BULLARD
Assistant Deputy Attorney General

DAVE SPENCER
Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211

By: _____
Attorneys for the Respondents

January 9, 2002

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

Case No. 2001-CP-46-1338

JEFFREY LYNN CHRONISTER,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Return and Motion to Dismiss of the Respondent has been served upon opposing counsel, David L. Little, by mailing one (1) copy in an envelope properly addressed with postage prepaid this 11th day of January, 2002, to the below address:

David L. Little, Jr., Esquire
ATTORNEY AT LAW
Post Office Box 12070
Rock Hill, South Carolina 29731

DAVID A. SPENCER
ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. NO. 01-CP-46-1338
COUNTY OF YORK	)	
	)	
Jeffrey Lynn Chronister, S.C.D.C. No., 189827	)	
	)	
Applicant,	)	**RULE TO SHOW CAUSE**
	)	
VS.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before this Court by way of an application for post-conviction relief filed June 19, 2001. The State made its return and motion to dismiss on January 9, 2002, requesting that this application be dismissed as successive and for being untimely filed. This Court has before it the pleadings of both parties, the Clerk of Court's records regarding the subject convictions, and the Applicant's records from the South Carolina Department of Corrections. This Court announces its intention to dismiss this application with prejudice.

PROCEDURAL HISTORY

The Applicant, Jeffrey Lynn Chronister, is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. During the April 1992 term of General Sessions, the York County Grand Jury indicted the Applicant for murder and unlawful possession of a firearm during the commission of a crime.

Applicant was tried and convicted by a jury on September 22, 1992. The Honorable Don S. Rushing sentenced the Applicant to life imprisonment for murder and a consecutive five year sentence for the weapons charge. On appeal, his conviction and sentence was affirmed by the

South Carolina Supreme Court on September 1, 1994 (94-MO-226).

Applicant filed a previous application for post-conviction relief on September 26, 1995. A hearing into the matter was held at the York County Moss Justice Center on September 18, 1996 before the Honorable John C. Hayes, III. Post-conviction relief was denied. It also appears that Applicant appealed the denial of post-conviction relief, which was dismissed by the Supreme Court.

ALLEGATIONS

In this current application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. ineffective assistance of trial counsel;
2. ineffective assistance of PCR counsel;
3. conviction obtained in violation of right against compulsory self-incrimination;
4. conviction obtained in violation of right to have counsel present during interrogation;
5. conviction obtained in violation of right to due process of law.

DISCUSSION

For the reasons set out below, this Court finds that it must summarily dismiss this application with prejudice:

Statute of limitations

The statute of limitations applicable to post-conviction relief actions bars the entire application. Under S.C. Code Ann. § 17-27-45 (Supp. 2000), an inmate is required to file a post-conviction relief application "within one year after the entry of a judgment of conviction . . . ."

For convictions prior to the July 1, 1995 effective date of the statute, the applicant was allowed one year after the statutes effective date to file an application. *See* Peloquin v. State, 321 S.C. 468, 470 S.E.2d 606, 607 (1996). For such a conviction the application must have been filed prior to July 1, 1996.

As shown above, the Applicant's conviction and sentence occurred on September 22, 1992. Applicant's appeal was affirmed on September 1, 1994. The Applicant should have filed this application on or before July 1, 1996. As shown above, the Applicant filed this post-conviction relief application on June 19, 2001, exceeding the applicable statute of limitations by almost five years. Accordingly, since the Applicant did not present these allegations in a timely manner, this Court finds the Application should be summarily dismissed with prejudice as barred by the statute of limitations.

Successive Application

The Court should summarily dismiss the current Application because it is clearly successive to the previous applications for post-conviction relief. Successive applications for post-conviction relief are clearly disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) 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 conviction 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-conviction relief applications are forbidden unless an applicant can point to 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." [Emphasis in original]. Id., 305 S.C. 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. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present **any** reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, this application should be summarily dismissed.

A motion for summary judgement may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, this Court finds that it must summarily dismiss the Application for PCR as successive and for failure to file within the time mandated by statute.

CONCLUSION

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual

or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty days from the date of service of this Order upon him to show why this order should not become final by filing any reasons he may have with the Clerk of Court for York County, South Carolina; and sending a copy of the same to Dave Spencer, Assistant Attorney General; Office of the South Carolina Attorney General; PO Box 11549; Columbia, SC 29211.

AND IT IS SO ORDERED this 10th day of January, 2002.

Lee S. Alford
Administrative Judge
Sixteenth Judicial Circuit

York, South Carolina.

#5
2004

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	Sixteenth Judicial Circuit
	2001-CP-46-1338
Jeffrey L. Chronister,)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
State of South Carolina,)	
)	
Respondent.)	
)	

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Personally appeared before me, David A. Spencer, who being first duly sworn, states:

1. That I am an employee of the Office of the Attorney General.

2. That regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance of service by mail.

3. That I have this day served a copy of the Order in the above-captioned matter on the following persons by depositing same in the United States mail, postage prepaid:

Jeffrey L. Chronister, 189827
Lee Correctional Institution
1204 East Church Street
Bishopville, South Carolina 29010

David L. Little, Esquire
Post Office Box 12070
Rock Hill, South Carolina 29731

DATED this 20th day of February, 2002.

DAVID A. SPENCER

SWORN to before me this
20th day of February, 2002.

(L.S.)
Notary Public for South Carolina
My Commission Expires: June 2, 2007.

CU 475

STATE OF SOUTH CAROLINA

COUNTY OF YORK

COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

2001 CP46 1338

JEFFERY LYNN CHRONISTER, #189827,

APPLICANT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPLICANT'S REPLY TO RULE TO SHOW CAUSE

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CLERK OF COURT
YORK COUNTY, SC

The Applicant, in making this Reply to the Court's Rule to Show Cause dated January 14, 2002, and served by mail on February 20, 2002, would respectfully show this Court the following:

I. STATEMENT OF FACTS

A. Original Conviction.

The Applicant is presently confined in the Lee Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. Applicant was indicted at the April 1992, term of the Court of General Sessions for York County for murder and unlawful possession of a firearm or knife during the commission of a violent crime. Indictment number 92-GS-46-1224. On September 21 and 22, 1992, Applicant proceeded to trial by jury, at the conclusion of which Applicant was found guilty as charged. Gerald Smith of the York County Public Defender's Office, represented applicant at trial. Applicant was sentenced by the Honorable Don S. Rushing to confinement for a period of life plus five years. Applicant filed a timely Notice of Intent to Appeal and a direct appeal was perfected on Applicant's behalf by Tara Dawn Shurling, of the Office of Appellate

Defense. Applicant's convictions were affirmed in Memorandum Opinion No. 94-MO-226 filed September 1, 1994.

B. First PCR Application.

Applicant filed his first Application for Post-Conviction Relief on August 28, 1995, Case number 95-CP-46-1109. In that application, Applicant alleged that trial counsel was ineffective in the following respects:

1. Failure effectively to discuss the case and strategy with client.
2. Failure to secure a preliminary hearing for his client.
3. Failure to subpoena and call witnesses on behalf of his client.
4. Failure to obtain an independent psychiatric examination and psychiatrist for his client.
5. Failure to request a motion for change of venue.
6. Failure to investigate the case properly.

Applicant also filed an Amended Application dated September 12, 1996. A hearing on the Amended Application was held on September 18, 1996. Applicant was present at the hearing and was represented by David G. Guyton, of the York County Bar who was appointed by the Court. At the close of Applicant's case, the State moved for a directed verdict which the Court granted. The Application was dismissed by Order of the Honorable John C. Hayes, III, dated October 21, 1996. A Johnson Petition for Writ of Certiorari dated October 13, 1997, was filed on Applicant's behalf by M. Anne Pearce, of the South Carolina Office of Appellate Defense. Applicant also filed a *pro se* petition. Certiorari was denied in an Order dated May 28, 1998. Applicant has also filed petitions in the United States District Court, the Court of Appeals, the United States Supreme Court and the South Carolina Supreme Court, all of which have been denied.

C. Current PCR Application.

Applicant's current Application presents three new grounds for relief that were not and could not have been brought in Applicant's first PCR Application:

1. Ineffective assistance of PCR counsel. This claim is based on PCR counsel's failure to present Applicant's case adequately in the first PCR hearing resulting in prejudice to Applicant.

2. Trial counsel was constitutionally ineffective and unduly prejudiced Applicant denying him a fair trial through counsel's failure to object to the trial court's indirect reference to Applicant's right not to testify or put forth evidence. This issue has not been previously presented to any court through PCR counsel's failure properly to amend Applicant's first PCR Application to include all grounds for relief available to Applicant.

3. Trial counsel was constitutionally ineffective and unduly prejudiced Applicant denying him a fair trial through counsel's failure to object to the Court's charge on circumstantial evidence that the jury "must see some other reasonable explanation" of the evidence before they could find the Applicant not guilty. This issue has not been previously presented to any court through PCR counsel's failure properly to amend Applicant's first PCR Application to include all grounds for relief available to Applicant.

II. DISCUSSION

When considering the State's motion for summary dismissal of a PCR application, the Court must assume facts presented by an applicant to be true and view those facts in the light most favorable to the Applicant. *Al-Shabazz v. State*, 338 S.C. 354, 364, 527 S.E.2d 742, 747 (2000)(citing *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995)). Here, Applicant has alleged that his original PCR counsel was ineffective in failing to amend his application to include additional grounds for relief, allegations which must be taken as true at this stage of the proceedings. The State nevertheless argued, and the Court tentatively has found, that Applicant's current PCR application is successive and therefore should be dismissed. The State also argued, and the Court tentatively has found, that the application is barred by the applicable

statute of limitations. Both grounds for dismissal are, however, unavailing, and Applicant is entitled to an evidentiary hearing on the merits of his current application.

Applicant concedes that his current PCR Application is "successive." However, that an application is successive is alone insufficient to justify dismissal. South Carolina law permits successive PCR applications in rare procedural circumstances. *Odom v. State*, 337 S.C. 256, 523 S.E.2d 753 (1999). *See also Carter v. State*, 293 S.C. 528, 362 S.E.2d 20 (1987) (permitting a successive application where the applicant did not have PCR counsel that differed from his trial counsel); *Case v. State*, 277 S.C. 474, 289 S.E.2d 413 (1982) (allowing a successive PCR application where the applicant's first PCR application was dismissed without assistance of legal counsel and without a hearing). Moreover, our Supreme Court has held that "[u]nder the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or 'one bite at the apple'" and that the denial of his "one bite at the apple" justifies a successive PCR application. *Odom*, 337 S.C. at 261, 523 S.E.2d at 755 (citing *Aice v. State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991)). Here, PCR counsel's ineffectiveness in failing to amend Applicant's first PCR Application to raise the issues contained herein deprived Applicant of the "one bite at the apple" to which he is entitled thereby justifying his successive application.

Pursuant to the South Carolina Rules of Civil Procedure, once counsel has been appointed, an Applicant may no longer file amendments to his Application pro se, he must instead rely on his attorney. Rule 11, SCRCP; State's Return and Motion to Dismiss at p. 4. Rule 71.1(d) of the South Carolina Rules of Civil Procedure further requires such counsel, not the applicant, to insure that all available grounds for relief are included in the application and to amend it if necessary. Consequently, Applicant was unable to assert any grounds for relief in his original application which came to his attention after counsel was appointed without such

counsel's involvement. Counsel's failure to amend the application to include such grounds therefore rendered Applicant unable to present those grounds in his original PCR proceedings. Moreover, because issues not raised in an application or argued at a hearing thereon are not preserved for appeal, counsel's failure to amend Applicant's original application necessarily deprived Applicant of a full adjudication on the merits of his original application. *Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992) (issue must be raised to and ruled on by the PCR judge in order to be preserved for review). Our Supreme Court has held in analogous circumstances that PCR counsel was ineffective thereby entitling an applicant to a successive application. *See Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991); *Odom v. State*, *supra*. Although *Odom* and *Austin* concerned PCR counsel's failure timely to appeal the denial of an application, because issues not raised in an application or in a hearing thereon are not preserved for appeal, *Pruitt*, *supra*, PCR counsel's failure to amend the application in Applicant's original PCR proceeding deprived Applicant of his "one bite at the apple" the same as the failure timely to file an appeal did in *Odom* and *Austin*. *Contra Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991) (ineffective assistance of counsel is not "per se" sufficient grounds to permit a successive PCR application). As such, this case presents the same type of rare procedural circumstance in which Applicant was effectively denied PCR counsel and an adequate, full and fair opportunity to present all claims for relief available at this first PCR hearing as existed in *Odom* and *Austin*.

Moreover, because Applicant is entitled to an evidentiary hearing on these issues in order to rectify the defects of his first PCR hearing, the statute of limitations should not apply in this case for the same reasons the Supreme Court held it did not apply in *Odom*. To hold otherwise would deny Applicant a full hearing on the merits of his original application through no fault of his own. Such a result would be manifestly unjust.

III. CONCLUSION

Our Supreme Court has held that South Carolina law entitles applicants for post-conviction relief to a full adjudication on the merits of his original PCR petition or, in other words, to "one bite at the apple." *Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). Here, PCR counsel's failure to amend Applicant's original application to add the grounds discussed herein deprived Applicant of his "bite at the apple." As such, the Court should direct that proceedings on Applicant's current PCR petition continue and hold an evidentiary hearing to resolve the merits of the issues raised in his Application for Post-Conviction Relief.

Respectfully Submitted,

David L. Little, Jr.
S.C. Bar No. 15878
ROBINSON BRADSHAW & HINSON, P.A.
223 East Main Street – Suite 600
P.O. Drawer 12070
Rock Hill, South Carolina 29731
Telephone: (803) 325-2900
Facsimile: (803) 325-2929

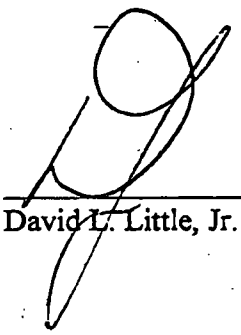
ATTORNEY FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPLICANT'S REPLY TO RULE TO SHOW CAUSE.** has been served upon each of the parties to this action by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

David A. Spencer
Office of the Attorney General
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211-1549

This 12th day of March, 2002.



David L. Little, Jr.

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BOOK ___ PG ___
MAR 12 2 59 PM '02
DAVID HAMILTON
CLERK OF COURT
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA COUNTY OF YORK Jeffrey Lynn Chronister, S.C.D.C. No., 189827 Applicant, VS. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS C.A. NO. 01-CP-46-1338 **FINAL ORDER**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 19, 2001. The Respondent (the State) made its Return and Motion to Dismiss on January 9, 2002, requesting that the Application be summarily dismissed as successive and for being untimely filed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Rule to Show Cause dated January 14, 2002, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated February 20, 2002, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Applicant's Reply to Rule to Show Cause" and dated March 12, 2002, the Applicant argues that his prior PCR counsel was ineffective for failing to raise two claims during his first PCR. This Court has reviewed the Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a

sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. A claim of ineffective assistance of PCR counsel is not sufficient grounds to permit a successive application absent an extraordinary procedural circumstance. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). The test is not whether a claim was raised in a prior PCR application but whether the claim could have been raised in a prior PCR application. Id. If a claim could have been raised in the prior PCR application, the Court need not look any further to determine why it was not raised. Id. These claims could have been raised in a prior application. Therefore, based on the pleadings, this Court is satisfied that Applicant has received his "one bite at the apple" and has failed to show sufficient reason why the State's motion should not be granted. An evidentiary hearing is therefore not required as no question of fact or law remains to be determined.

IT IS THEREFORE ORDERED that, for the reasons set forth in this Court's Rule to Show Cause, the Application for PCR is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 17th day of April, 2002.

Lee S. Alford
Administrative Judge
Sixteenth Judicial Circuit

York, South Carolina.

#2

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
Sixteenth Judicial Circuit
2001-CP-46-1338

Jeffrey L. Chronister,

Applicant,

vs

State of South Carolina,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Personally appeared before me, David A. Spencer, who being first duly sworn, states:

1. That I am an employee of the Office of the Attorney General.

2. That regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance of service by mail.

3. That I have this day served a copy of the Order in the above-captioned matter on the following persons by depositing same in the United States mail, postage prepaid:

Jeffrey L. Chronister, 189827
Gilliam Psychiatric
Post Office Box 2039
Ridgeland, South Carolina 29936

David L. Little, Esquire
223 East Main Street
Suite 600
Rock Hill, South Carolina 29731

DATED this 30th day of May, 2002.

DAVID A. SPENCER

SWORN to before me this
30th day of May, 2002.

Kim C. Gomo (L.S.)
Notary Public for South Carolina
My Commission Expires: June 7, 2007.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

Case No. 01-CP-46-1338

Jeffrey Lynn Chronister,

Appellant,

v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on David A. Spencer, Assistant Attorney General by depositing a copy of it in the United States Mail, postage prepaid, on June 24, 2002, at his office at Post Office Box 11549, Columbia, South Carolina 29211-1549.

This the 24th day of June, 2002.

David L. Little, Jr.
ROBINSON, BRADSHAW & HINSON, P.A.
The Guardian Building
223 East Main Street, Suite 600
Post Office Box 12070
Rock Hill, South Carolina 29731
(803) 325-2900
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

Case No. 01-CP-46-1338

Jeffrey Lynn Chronister,

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Jeffrey Chronister appeals the Order of the Honorable Lee S. Alford dated April 19, 2002 dismissing his application for post-conviction relief. Appellant received written notice of entry of the Court's Order on May 31, 2002.

This 24th day of June, 2002

David L. Little, Jr.
S.C. Bar No. 15878

ROBINSON, BRADSHAW & HINSON, P.A.
The Guardian Building
223 East Main Street, Suite 600
Post Office Box 12070
Rock Hill, South Carolina 29731
(803) 325-2900
Attorney for Appellant

Other Counsel of Record:

David A. Spencer
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina
(803) 734-3970
Attorney for Respondent

CERTIFIED TRUE COPY

SENTENCE

STATE OF SOUTH CAROLINA 30 10 41 AM '01 COUNT ONE(1) MURDER CASE NO. 92-GS-46-

JOHN E. YORK
York COUNTY

The defendant Lyric Tiffany Abernathy is committed to the S
Department of Corrections/County for a term of Life ~~months/years and/or to pay a fine of $_____~~; pro
ed upon the ~~service of _____ months/years and/or payment of $_____~~, plus pay/waive costs and assessm
as ~~applicable**, the balance suspended with probation for _____ months/years~~.

Restitution**
Yes/No
to be paid _____

For physical injury $_____
property damage $_____

to clerk for _____

er conditions _____

Date 9-22-92

Presiding Judge

Costs and Assessments

FINE	$_____
ACADEMY	$_____
C.C.A.	$ no fee
L.C.F.	$_____
C.A.T.	$ no fee
OTHER	$_____
GRAND TOTAL	$_____

MH Carnell Jr
Clerk of Court

**Pay to Victim's Compensation Fund if subrogated.

SCCA Form 217 (3/86)

488

CERTIFIED TRUE COPY

SENTENCE

STATE OF SOUTH CAROLINA
IN THE COURT OF GENERAL SESSIONS
York COUNTY

COUNT TWO(2): UNLAWFUL POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

CASE NO. 92-GS-46-1224

The defendant Lyons Jeffery Chronister is committed to the State Department of Corrections/County for a term of FIVE(5) ~~months~~ years and/or to pay a fine of $_____; provided upon the service of _____ months/years and/or payment of $_____, plus pay/waive costs and assessments as applicable**, the balance ~~suspended~~ with probation for _____ months/years.

CONSECUTIVE TO COUNT ONE(1)

Restitution** Yes/No

For physical injury $_____

property damage $_____

to be paid _____

to clerk for _____**

Other conditions _____

Date 9-22-92

Presiding Judge

Costs and Assessments

FINE	$_____
ACADEMY	$_____
C.C.A.	$_____
L.C.F.	$ NB
C.A.T.	$ fee
OTHER	$ _____
GRAND TOTAL	$_____

M H Carroll Jr.
Clerk of Court

**Pay to Victim's Compensation Fund if subrogated.

SCCA Form 217 (3/86)

D- 228986 CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of York

JUN 20 10 41 AM '92

THE STATE

against

Lynn Jeffery Chronister

Address: [redacted]
Belmont N.C.

Phone: _____ SSN: _____

Sex: M Race: W Height: 5'8" Weight: 170

DL State: _____ DL #: _____

DOB: [redacted] Agency ORI #: 0460000

Prosecuting Agency: YCSD

Prosecuting Officer: Whistine

Offense: Murder

Offense Code: _____

Code/Ordinance Sec. 16-3-10

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Lynn Jeffery Chronister on 2-14-92

Otis Dixon
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York)

Personally appeared before me the affiant Otis Whistine who being duly sworn deposes and says that defendant Lynn Jeffery Chronister did within this county and state on February 14th, 1992 violate the criminal laws of the State of South Carolina (or ordinance of [ ] County/ [ ] Municipality of _____) in the following particulars:

DESCRIPTION OF OFFENSE: Murder: Section 16-3-10

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: Defendant did wilfully and unlawfully, and with Malice Aforethought kill Marie Gail Chronister by shooting her. This unlawful act occured at the Catawba Nuclear Station, Concord Rd., Clover, York County S.C. All against the Peace and Dignity of the State and against such Laws as made and provided. Probable cause based on witness's.

Sworn to and subscribed before me on February 14th, 1992

_____ (L.S.)
Signature of Issuing Judge

Otis Whistine
Signature of Affiant

Affiant's Address Court House, South Congress St. York S.C.

Affiant's Telephone 684-8522

FILED-RECEIVED
BOOK _____ PAGE _____
FEB 21 12 03 PM '92
M.H. CARROLL, JR.
C.C.C.P. & G.S.
YORK COUNTY, S.C.

STATE OF SOUTH CAROLINA
[XX] County/ [ ] Municipality of York

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on February 14th, 1992 defendant Lynn Jeffery Chronister did violate the criminal laws of the State of South Carolina (or ordinance of [ ] County/ [ ] Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: Murder (Section 16-3-10)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

_____ (L.S.)
Signature of Issuing Judge

Judge Code: 518

Judge's Address South Congress St. York S.C.

Judge's Telephone 684-8514

Issuing Court: [XX] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL

125

FORM 32 (12/87) CERTIFIED TRUE COPY

JUN 20 10 41 AM '01

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF York)

MURDER AND
UNLAWFUL USE OF FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on April 6, 1992,

the Grand Jurors of York County present upon their oath:

COUNT ONE

That Lynn Jeffery Chronister did in York County on or about February 14, 1992 feloniously, wilfully and with malice aforethought, kill on e Marie Gail Cronister by means of shooting her and that the said victim died as a proximate result thereof.

COUNT TWO

That Lynn Jeffery Chronister did in York County on or about February 14, 1992 while in possession of a firearm or while visibly displaying what apperaed to be a firearm, committed the crime contained in Count One of this Indictment.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Barry S. Gross
SOLICITOR

491

WITNESSES

Otis Whistine YCSD

ARREST WARRANT NO. D-228986

ACTION OF GRAND JURY

True Bill 4/6/92

Jm Weldon

Foreman of Grand Jury

VERDICT

Count one - Guilty Murder
Count two - Guilty Possession of a Firearm when Committing a Violent Crime

Foreman of Petit Jury *Date:*

The State of South Carolina,

County of York

COURT OF GENERAL SESSIONS

April 6, TERM 1992

THE STATE

vs.

Lynn Jeffery Chronister

Indictment for

MURDER

AND

UNLAWFUL POSSESSION OF FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

(S. C. Code 16-3-10)
(CDR Code 116)

523