

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2018-000157
Lower Case No. 2017-CP-46-00689

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S.C. SUPREME COURT

Francis Victor Larmand, Jr., # 00337635 Petitioner,

vs.

The State Respondent.

APPENDIX
VOLUME II

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INDEX

PCR Transcript of August 3, 2017, hearing	P1
Opinion of South Carolina Court of Appeals filed March 13, 2013 reversing Larmand's convictions	P91
State's Petition For Writ of Certiorari to the South Carolina Court of Appeals filed May 29, 2013	P99
Appendix filed May 29, 2013	P123
SC Court of Appeal Record on Appeal and Briefs	
Record on Appeal Volume 1 dated March 15, 2011	P145
Record on Appeal Volume II dated March 15, 2011	
Final Brief of Respondent dated April 1, 2011	P715
Final Brief of Appellant dated April 4, 2011;	P760
Final Reply Brief of Appellant dated April 4, 2011	P779
Petition For Writ of Supersedeas, or in the Alternative, To Expedite filed May 29, 2013 ..	P794
Return to Petition for Writ of Certiorari filed July 3, 2013	P852
Order Denying Petition for Writ of Supersedeas dated July 11, 2013	P867
Order of Supreme Court Granting Certiorari dated June 26, 2014	P868
Brief of Petitioner filed July 14, 2014	P870
Brief of Respondent (labeled Return to Petition for Writ of Certiorari) filed August 20, 2014	P899
Reply Brief of Petitioner filed August 28, 2014	P920
Opinion of Supreme Court filed August 12, 2015 reversing Court of Appeals decision ...	P928
Petition for Rehearing and Memorandum in Support of Petition for Rehearing filed August 26, 2015	P935
Order and Opinion from Supreme Court refiled December 23, 2015	P954
Petition for Rehearing and Memorandum in Support of Petition for Rehearing filed January 7, 2016	P962
Informal Return to Petition for Rehearing filed January 11, 2016	P970

Order of Supreme Court denying Petition for Rehearing dated February 11, 2016	P971
Unpublished Opinion No. 2016-UP-373 filed July 20, 2016	P973
Order of SC Court of Appeals denying Petition for Rehearing filed September 15, 2016 ..	P976
Amended Application for Post-Conviction Relief filed August 4, 2017	P977
Order of Dismissal filed October 6, 2017	P982
Rule 59 Motion to Alter or Amend Judgment dated October 19, 2017	P1007
Order Denying Applicants’s Motion to Alter or Amend Judgment dated January 11, 2018	P1012
Notice of Appeal dated January 31, 2018	P1023

- 1 Q YOU WERE ON THE PHONE WITH WHO MOST OF THE TIME?
- 2 A MY WIFE.
- 3 Q MY CLIENT STAYED IN THE TRUCK, TO YOUR KNOWLEDGE AT
- 4 THE TIME YOU WENT UP THERE. CORRECT?
- 5 A CORRECT.
- 6 Q DID YOU EVER SEE HIM GET OUT OF THE TRUCK?
- 7 A NEVER ONCE.
- 8 Q YOU HAD YOUR BACK TO THE TRUCK WALKING UP TO SEE MR.
- 9 LOCHBAUM?
- 10 A CORRECT.
- 11 Q AND WHEN YOU WERE TALKING WITH MR. LOCHBAUM, MY
- 12 CLIENT WOULD HAVE BEEN WALKING TOWARDS THE HOUSE AREA, UP
- 13 THE SIDEWALK. CORRECT?
- 14 A I GUESS. YEAH.
- 15 Q SO, Y'ALL WOULD HAVE BEEN LOOKING DIFFERENT WAYS.
- 16 CORRECT?
- 17 A YEAH. I WOULD HAVE NEVER SEEN HIM COMING.
- 18 Q BUT HE WOULD BEEN LOOKING PAST YOU?
- 19 A YES.
- 20 Q DID YOU HAVE YOUR BACK TO THE AREA WHERE THE OTHER
- 21 PEOPLE WERE?
- 22 A I WAS STANDING IN THE STREET. AND THEN WHEN I TURNED
- 23 AROUND TO WALK AWAY BECAUSE I WAS THROUGH TALKING WITH
- 24 MR. LOCHBAUM, MY BACK WAS TOWARDS EVERYBODY.
- 25 Q YOUR BACK WAS TOWARDS EVERYBODY?

1 A YES.

2 Q YOU COULDN'T SEE WHAT, IF ANYTHING, WAS HAPPENING
3 BEHIND YOU?

4 A I HAD NO IDEA.

5 MR. GREELEY: THAT'S ALL I HAVE FOR NOW, YOUR HONOR.
6 THE COURT: SOLICITOR.

7 MS. JOYNER: THANK YOU, YOUR HONOR.

8 CROSS EXAMINATION BY MS. JOYNER:

9 Q MR. LARMAND, WHAT WAS WRONG WITH YOUR CAR?

10 A WITH MY CAR?

11 Q YEAH.

12 A I HAVE A VAN. I DON'T HAVE A CAR.

13 Q WHAT WAS WRONG WITH YOUR VAN?

14 A NOTHING. IT SAYS POP-A-LOCK ALL OVER IT.

15 Q OH... SO, THAT'S WHY YOU BROUGHT YOUR DAUGHTER'S,
16 ASHLEY'S, CAR?

17 A NO. I WAS DRIVING IT ALL DAY BECAUSE I HAD JUST GOT DONE
18 WORKING ON IT.

19 Q AND THAT'S YOUR DAUGHTER'S PRIMARY CAR. CORRECT?

20 A YES.

21 Q YOU DON'T FREQUENTLY DRIVE IT, DO YOU?

22 A NO, NOT OFTEN. EVERY NOW AND AGAIN WHEN I HAVE TO
23 SERVICE IT FOR HER.

24 Q IT WOULD HAVE BEEN A CAR THAT RYAN LOCHBAUM WASN'T
25 FAMILIAR WITH. ISN'T THAT CORRECT?

1 A I DON'T KNOW. I THINK HE SEEN IT WHEN I BOUGHT IT. I'M NOT
2 SURE.

3 Q DID HE SEE YOU IN IT A WHOLE BUNCH?

4 A I COULDN'T TELL YOU.

5 Q WAS IT A CAR THAT YOU FELT LIKE YOU COULD DRIVE PAST HIS
6 HOUSE AT NIGHT WITH PEOPLE IN THE DRIVEWAY AND IT WOULDN'T
7 ATTRACT ATTENTION?

8 A I DIDN'T EVEN THINK OF IT THAT WAY.

9 Q BUT YOU DID THINK THAT YOUR POP-A-LOCK VAN WOULD
10 ATTRACT ATTENTION?

11 A OH, ABSOLUTELY. WHEN YOU'RE SETTING UP A CALL TO SEE IF
12 SOMEONE'S GONNA TAKE IT, YEAH. THEY'RE GONNA SAY WELL,
13 ANOTHER DRIVER'S ALREADY HERE.

14 Q WELL, IF ANOTHER DRIVER WAS ALREADY THERE, WOULDN'T A
15 LEGITIMATE CALL PERSON JUST KIND COME AROUND AND SAY, HEY?

16 A WELL, IF YOU'RE TRYING TO DO A MYSTERY CALL, WHY WOULD
17 YOU ALREADY HAVE A POP-A-LOCK VAN THERE?

18 Q SO, IN FACT, THE CAR, ASHLEY'S CAR THAT YOU TOOK
19 WOULDN'T HAVE BEEN SOMETHING THAT WOULD HAVE BEEN
20 READILY FAMILIAR TO ANY OF YOUR POP-A-LOCK EMPLOYEES,
21 WOULD IT?

22 A NO. A FEW OF THEM HAVE SEEN IT.

23 Q WELL, HOW WOULD THAT HAVE BEEN MORE EFFECTIVE THAN A
24 HUGE POP-A-LOCK VAN, THEN, SITTING IN THE PARKING LOT, AS YOU
25 WERE SAYING?

- 1 A BECAUSE IT WAS JUST SITTING OFF TO THE SIDE.
- 2 Q OH, OKAY. SO, YOU WEREN'T GOING THERE TO GET RYAN
- 3 LOCHBAUM?
- 4 A NO.
- 5 Q AT THE POINT IN TIME WHEN YOU MADE THE DECISION TO GO
- 6 TO RYAN LOCHBAUM'S HOUSE YOU HAD ABSOLUTELY NO PROOF THAT
- 7 MIKE TAYLOR WAS SENDING HIM BUSINESS OR ANYTHING OF THE
- 8 KIND, DID YOU?
- 9 A IT WASN'T ABOUT GOING THERE TO SEE IF HE WAS SENDING HIM
- 10 BUSINESS. I WANTED TO SEE IF ANY OF MY EMPLOYEES WAS THERE
- 11 OR A RED CAR WAS THERE WITH MAGNETS ON IT. THAT'S ALL.
- 12 Q THAT'S THE ONLY REASON YOU WENT, ---
- 13 A YES MA'AM.
- 14 Q ---TO SEE IF YOUR EMPLOYEES WERE THERE OR IF THERE WAS A
- 15 CAR WITH RED MAGNETS ON IT?
- 16 A YES MA'AM.
- 17 Q AND YOU DRIVE PAST THE HOUSE?
- 18 A YES MA'AM.
- 19 Q AND THOSE THREE GUYS THAT YOU SAW IN THE DRIVEWAY,
- 20 WERE ANY OF THEM YOUR EMPLOYEES?
- 21 A I COULDN'T TELL BECAUSE THEY ALL HAD THEIR HEADS INSIDE
- 22 HIS VAN.
- 23 Q DID YOU SEE ANY MAGNETS, ANY POP-A-LOCK MAGNETS
- 24 SITTING ON ANY CARS?
- 25 A NO MA'AM.

1 Q SO, FOR YOUR TWO PURPOSES, RIGHT OFF THE BAT, ON YOUR
2 DRIVE THROUGH CHECK, NO MAGNETS?

3 A UH-HUH.

4 Q SO, IF ALL YOU WERE GOING TO DO THEN, THE SECOND THING,
5 THE REASON FOR PARKING ALL THE WAY DOWN THE STREET, IS YOU
6 WANTED TO PARK ALL THE WAY DOWN THE STREET JUST TO WALK UP
7 AND SEE IF ANY OF THOSE THREE GUYS IN THE DRIVEWAY WERE
8 YOUR EMPLOYEES?

9 A WELL, WHEN I SEEN HE WAS OUTSIDE I WANTED TO SAY, HEY,
10 JUST LEAVE THE COMPANY ALONE. IF HE WASN'T OUTSIDE I WOULD
11 HAVE KEPT ON GOING.

12 Q OH, I'M SORRY. I CONFUSED. BECAUSE I THOUGHT YOU DIDN'T
13 SEE HIM.

14 A WELL, OBVIOUSLY, LIKE I SAID, I ASSUMED HE WAS THERE
15 BECAUSE HIS VAN WAS THERE AND THERE WAS THREE GUYS IN HIS
16 VAN.

17 Q BUT YOU DIDN'T SEE HIM?

18 A NO MA'AM.

19 Q AND YOU DIDN'T THINK OF JUST STOPPING AND PARKING IN
20 FRONT OF HIS HOUSE TO ASK HIM A QUICK QUESTION OR SAY
21 SOMETHING TO HIM?

22 A NO. I DIDN'T WANT MY BROTHER-IN-LAW TO GET INVOLVED
23 WITH ANYTHING.

24 Q YOU DIDN'T WANT YOUR BROTHER-IN-LAW TO GET INVOLVED
25 WITH ANYTHING?

- 1 A YES.
- 2 Q WHAT WOULD HE GET INVOLVED WITH?
- 3 A THERE AIN'T NO TELLIN' WHAT'S GONNA HAPPEN, YOU KNOW.
- 4 Q THERE'S NO TELLING WHAT'S GONNA HAPPEN?
- 5 A NO.
- 6 Q BECAUSE WHEN YOU GO TO SOMEBODY'S HOUSE AT MIDNIGHT
- 7 IT'S NORMALLY ABOUT TROUBLE, ISN'T IT?
- 8 A NO, NOT NECESSARILY.
- 9 Q IS THAT HOW YOU NORMAL DO YOUR BUSINESS CALLS,
- 10 COMPANY BUSINESS CALLS, UNANNOUNCED AT MIDNIGHT?
- 11 A IT WASN'T A BUSINESS CALL.
- 12 Q WELL, WHAT WAS IT?
- 13 A IT WAS JUST TO SEE IF THERE WAS EMPLOYEES THERE.
- 14 Q BUT YOU CHANGED YOUR PURPOSE WHEN YOU GOT THERE,---
- 15 A NO,---
- 16 Q ---TO SEE IF THOSE WERE YOUR EMPLOYEES THERE?
- 17 A --- I NEVER CHANGED MY PURPOSE.
- 18 Q SO, YOU WALKED UP TO SEE IF THERE WERE EMPLOYEES THERE,
- 19 AND WERE THOSE MEN YOUR EMPLOYEES?
- 20 A NO, THEY WERE NOT.
- 21 Q AND WHILE YOU WERE THERE, DID YOU DECIDE YOU WERE
- 22 GONNA HAVE AN ARGUMENT WITH RYAN?
- 23 A IT WASN'T SUPPOSED TO BE AN ARGUMENT, MA'AM.
- 24 Q IT WASN'T SUPPOSED TO BE AN ARGUMENT?
- 25 A NO MA'AM.

1 Q IT WASN'T SUPPOSED TO BE AN ARGUMENT, BUT YOU DIDN'T
2 WANT LEO TO GET INVOLVED IN ANYTHING.

3 A YEAH. HE HAS NO-- HE'S NOT PART OF THE BUSINESS.

4 Q SO, NO TELLING WHAT COULD HAPPEN?

5 A HE'S NOT PART OF THE BUSINESS.

6 Q RIGHT. AND THERE'S NO TELLING, THERE'S NO TELLING WHAT
7 COULD HAPPEN?

8 A OBVIOUSLY, WHAT HAPPENED, IT WAS PRETTY ABSURD WHAT
9 HAPPENED.

10 Q FRANK, BUT, ISN'T IT YOUR TESTIMONY THAT LEO CAUSED
11 WHAT HAPPENED?

12 A I DON'T KNOW IF HE CAUSED WHAT HAPPENED.

13 Q WELL, I MEAN, I'M GOING TO TRY TO GET THE TIME LINE RIGHT,
14 BECAUSE THIS IS SOMETHING THAT I'M GETTING A LITTLE CONFUSED
15 ABOUT.

16 A OKAY.

17 (WHEREUPON SOLICITOR EMPLOYS USE OF DRY ERASE BOARD)

18 Q NOW, WHAT TIME DID YOU GET TO THE KNIGHTS' STADIUM
19 PARKING LOT?

20 A I WOULD HAVE TO SAY IT WAS SOMEWHERE AROUND 10:00, 10:11,
21 10:12, SOMEWHERE IN THERE.

22 Q OKAY, 10:12. SO, WHAT TIME WOULD YOU HAVE LEFT
23 KANNAPOLIS TO COME DOWN TO KNIGHTS' STADIUM.

24 A I LEFT KANNAPOLIS, IT WAS PROBABLY ABOUT 9:15.

25 Q DID LEO RIDE WITH YOU?

- 1 A YES, HE DID.
- 2 Q OKAY. I WANT YOU TO BE ABLE TO SEE WHAT I'M WRITING SO
- 3 YOU CAN STOP ME IF I'M WRITING ANYTHING WRONG.
- 4 SO, IS THIS ABOUT RIGHT, 10:14, THE CALL GOES IN?
- 5 A YES.
- 6 Q AND THEN HOW LONG DID YOU WAIT IN THE PARKING LOT
- 7 BEFORE YOU ASKED KERRIANN TO DO AN ETA CALL?
- 8 A ABOUT THIRTY MINUTES.
- 9 Q SO, 10:45. HOW LONG AFTER THAT CALL DID YOU WAIT FOR?
- 10 A MAYBE TWENTY-FIVE, ANOTHER THIRTY MINUTES, MAYBE.
- 11 Q ANOTHER TWENTY-FIVE, THIRTY MINUTES. THAT PUTS US AT
- 12 11:15. ELEVEN-FIFTEEN, YOU LEAVE?
- 13 A ROUGHLY, YEAH. I DIDN'T LOOK AT THE CLOCK, SO, ROUGHLY, I
- 14 WOULD SAY.
- 15 Q HOW LONG DID IT TAKE YOU TO GET GAS?
- 16 A MAYBE FIVE MINUTES, TEN MINUTES, TOPS.
- 17 Q SO, 11:20?
- 18 A FAIR TO SAY.
- 19 Q TO GET GAS?
- 20 A FAIR TO SAY.
- 21 Q NOW, HOW LONG DID IT TAKE YOU FROM THE TIME YOU GOT
- 22 GAS TO GET TO RYAN LOCHBAUM'S HOUSE?
- 23 A PROBABLY ABOUT TWENTY-FIVE MINUTES.
- 24 Q TWENTY-FIVE MINUTES?
- 25 A YES.

- 1 Q AND WHAT TIME DID YOU PARK THE CAR?
- 2 A OVER AT RYAN'S PLACE?
- 3 Q YEAH.
- 4 A I WASN'T LOOKING AT THE CLOCK, MA'AM. I DON'T KNOW.
- 5 Q SO, WE'LL JUST LEAVE IT AT 11:45. OKAY?
- 6 A THAT'S FAIR ENOUGH.
- 7 Q HOW LONG DID IT TAKE YOU TO WALK TO HIS HOUSE?
- 8 A IT TOOK ME LESS THAN THIRTY-FIVE, FORTY SECONDS TO WALK
- 9 TO HIS HOUSE.
- 10 Q OKAY.
- 11 A MAYBE A MINUTE.
- 12 Q OKAY. AND HOW LONG DID YOU STAND IN HIS DRIVEWAY
- 13 LOOKING AT HIM?
- 14 A IT FELT LIKE FOREVER. IT COULD HAVE BEEN A COUPLE
- 15 MINUTES.
- 16 Q OKAY, A COUPLE MINUTES. SO, MAYBE WE'RE AT 11:50, NOW,
- 17 MAYBE?
- 18 A YEAH, THAT'S FAIR TO SAY.
- 19 Q (WRITING ON DRY ERASE BOARD) THAT'S WHEN YOU START
- 20 TALKING TO RYAN. HOW LONG DID YOU TALK TO RYAN?
- 21 A JUST BRIEFLY, MAYBE THREE MINUTES OR SO.
- 22 Q THREE MINUTES?
- 23 A THREE, FOUR MINUTES, MAYBE.
- 24 Q AND THEN YOU---
- 25 A STARTED WALKING AWAY.

1 Q YOU STARTED WALKING AWAY?

2 A YES MA'AM.

3 Q HOW LONG AFTER YOU START WALKING AWAY DOES LEO
4 APPEAR?

5 A IT WAS THREE SECONDS, FOUR SECONDS.

6 Q THREE SECONDS, FOUR SECONDS. HOW LONG DID IT TAKE YOU
7 TO GET TO THE CAR?

8 A MAYBE FORTY-FIVE SECONDS TO A MINUTE.

9 Q HOW LONG AFTER YOU GET IN THE CAR DO THE POLICE PULL
10 YOU OVER?

11 A MAYBE A MINUTE, MINUTE AND A HALF, MAYBE. IT WASN'T
12 VERY LONG AT ALL. THEY RESPONDED QUITE FAST.

13 Q SO, WE'RE SOMEWHERE AROUND 12:00, NOW, YOU'RE PULLED
14 OVER?

15 A I'M GUESSING, YES.

16 Q OKAY. SO, JUST HELP ME UNDERSTAND. FROM THE TIME YOU
17 ARRIVE AT THE PARKING LOT AT 10:12, ---

18 A UH-HUH.

19 Q ---NOT KNOWING WHO YOU'RE EXPECTING---

20 A UH-HUH.

21 Q ---FROM THE TIME THAT YOU GET GAS---

22 A UH-HUH.

23 Q ---AT 11:20, WHAT'S CHANGED IN YOUR MIND THAT NOW YOU'RE
24 GONNA GO AHEAD AND GO OVER TO RYAN LOCHBAUM'S HOUSE?

1 A BECAUSE I TALKED TO MY WIFE AND SAID NO ONE EVER
2 SHOWED.

3 Q NO ONE EVER SHOWED. SO, NO ONE EVER SHOWED, SO IT MUST
4 BE RYAN?

5 A NO. I DIDN'T SAY THAT.

6 Q WHEN YOU GOT OVER THERE, IF YOU WERE GOING OVER THERE
7 TO SEE IF YOUR EMPLOYEES WERE THERE, WHY DID YOU SAY TO HIM--
8 WHAT IT YOUR TESTIMONY, "I KNOW WHAT YOU'RE DOING."?

9 A YES.

10 Q "YOU'RE BUSTED."

11 A I DIDN'T SAY YOU'RE BUSTED.

12 Q BUT YOU DID SAY, I KNOW WHAT YOU'RE DOING.

13 A I DIDN'T---

14 Q AND YOU KNEW BY THAT---

15 A I DIDN'T SAY, I KNOW WHAT YOU'RE DOING.

16 Q WHAT DID YOU SAY?

17 A I SAID, YOU KNOW WHAT I'M HERE FOR.

18 Q YOU KNOW WHAT I'M HERE FOR?

19 A YES.

20 Q AND THEN WHAT WAS THE NEXT THING THAT YOU SAID?

21 A LEAVE US ALONE, LEAVE THE COMPANY ALONE.

22 Q LEAVE US ALONE, LEAVE THE COMPANY ALONE?

23 A YES.

24 Q AND BY THAT YOU MEANT?

1 A STOP PLAYING WITH OUR COMPANY. STOP CONTACTING OUR
2 GUYS.

3 Q SO, THE NIGHT STARTS OUT, YOU'RE TRYING TO SEE WHO'S
4 STEALING BUSINESS AND YOU DON'T HAVE RYAN LOCHBAUM AS A
5 TARGET?

6 A NO MA'AM.

7 Q BUT IT CONCLUDES, WHEN NOBODY ARRIVES, NOBODY COMES
8 TO STEAL YOUR BUSINESS, YOU GO SEEK OUT RYAN LOCHBAUM?

9 A NO, I DIDN'T GO TO SEEK OUT RYAN LOCHBAUM.

10 Q OH, YOU DIDN'T GO TO HIS HOUSE?

11 A I DID GO TO HIS HOUSE.

12 Q OKAY.

13 A SO, WHEN YOU STOOD IN RYAN'S DRIVEWAY, YOU SAID YOU
14 STOOD THERE FOR ABOUT TWO TO THREE MINUTES, YOUR ARMS
15 CROSSED AND UNCROSSED---

16 A YEAH,---

17 Q --AND YOU'RE, LIKE, HELLO? LIKE, HELLO?

18 A YEAH, LIKE, HELLO, I'M HERE.

19 Q SO, YOU DIDN'T JUST STAND THERE IN THE DRIVEWAY AND
20 DIDN'T SPEAK?

21 A I WAS STANDING IN THE STREET AT THE BOTTOM OF HIS
22 DRIVEWAY.

23 Q AND---

24 A AND THE GUYS LOOKED UP AT ME, LOOKED BACK IN THE VAN,
25 KEPT ON TALKING. I STOOD THERE FOR ANOTHER TWO, ANOTHER

1 MINUTE AND A HALF AND THEN SOMEONE FINALLY SAID, CAN I HELP
2 YOU.

3 Q YOU DON'T THINK THAT'S A LITTLE CREEPY?

4 A IT IS WEIRD.

5 Q IT'S CREEPY FOR YOU TO STAND IN THE STREET AND STARE AT A
6 GROUP OF PEOPLE, ISN'T IT?

7 A NO.

8 Q AND THAT'S NOT KIND OF CREEPY?

9 A NO, I DON'T THINK IT'S CREEPY. I WASN'T INVADING NOBODY'S
10 SPACE.

11 Q YOU WERE STANDING THERE STARING AT THEM?

12 A YES.

13 Q AND SO, MARK, AND YOU WOULDN'T KNOW HIS NAME, BUT A
14 GUY SAID, CAN I HELP YOU?

15 A YES MA'AM.

16 Q AND YOU SAID, I WANT TO TALK TO RYAN?

17 A I SAID, IS RYAN AVAILABLE, YES.

18 Q AND RYAN WAS SURPRISED TO SEE YOU?

19 A YES MA'AM.

20 Q BECAUSE HE DIDN'T EXPECT YOU?

21 A YES MA'AM.

22 Q AND HE DIDN'T EVEN KNOW HOW YOU KNEW WHERE HE LIVED?

23 A YES MA'AM.

24 Q IT'S ALMOST MIDNIGHT AT THIS POINT?

25 A YES.

1 Q AND YOU IMMEDIATELY ACCUSE HIM OF THINGS IN FRONT OF A
2 GROUP OF PEOPLE, DON'T YOU?

3 A YES, I DID ACCUSE HIM.

4 Q SO, YOU WERE UPSET?

5 A NO, I WASN'T UP-- I WAS UPSET THAT I EVEN HAD TO GO DOWN
6 THERE TO TELL HIM TO LEAVE THE BUSINESS ALONE. I MEAN, IT'S
7 BEEN SIX MONTHS; LET IT GO.

8 Q RIGHT. YOU JUST COULDN'T PICK UP THE PHONE AND CALL?

9 A I DIDN'T-- LIKE I TOLD YOU, I DIDN'T KNOW HIS CELL PHONE
10 NUMBER OFF THE TOP OF MY HEAD.

11 Q BUT KERRIANN KNEW HIS CELL PHONE NUMBER?

12 A YES MA'AM.

13 Q AND THAT'S YOUR WIFE?

14 A YES MA'AM.

15 Q THE LADY THAT YOU BRUSH YOUR TEETH WITH EVERYDAY?

16 A YOU COULD SAY THAT.

17 Q AND YOU TALK BUSINESS WITH HER?

18 A YEAH, WE DISCUSS THINGS ON OCCASION.

19 Q BECAUSE, REALLY, WHEN YOU TALK ABOUT POP-A-LOCK,
20 YOU'RE REALLY TALKING ABOUT YOUR OWN COMPANY, TOO, DON'T
21 YOU?

22 A NO, I DO NOT.

23 Q YOU DON'T?

24 A NO, I DO NOT.

1 Q YOU NEVER REFERRED TO RYAN LOCHBAUM AS YOUR FORMER
2 EMPLOYEE?

3 A I NEVER DID, MA'AM.

4 Q YOU NEVER DID?

5 A HE WORKED FOR MY WIFE'S COMPANY.

6 Q OKAY. WAS IT DARK IN RYAN'S NEIGHBORHOOD?

7 A NO, THERE WERE STREET LIGHTS RIGHT THERE AT THE EDGE,
8 AT EACH CORNER OF THE ROAD. AND I THINK MIGHT HAVE EVEN
9 BEEN ONE OR TWO IN THE MIDDLE OF THE ROAD. I DON'T--

10 Q WHAT ABOUT--

11 A --RECALL.

12 Q I'M SORRY. I DIDN'T MEAN TO INTERRUPT YOU. WHAT WERE
13 YOU SAYING?

14 A I DIDN'T RECALL IF THERE WAS ONE IN THE MIDDLE OF THE
15 ROAD OR NOT.

16 Q IS THIS NEIGHBORHOOD IN THE COUNTRY, WOULD YOU SAY?

17 A I DON'T--

18 Q IT'S IN THE MIDDLE OF NOWHERE?

19 A I GUESS, IF THAT'S WHAT YOU'RE SAYING.

20 Q WAS IT QUIET?

21 A AT 12:00 AT NIGHT, YEAH, IT'S USUALLY QUIET.

22 Q SO, WHEN YOU LEFT YOUR CAR ON PLEASANT VIEW ROAD, IT'S
23 YOUR TESTIMONY YOU WALKED ALONE?

24 A YES MA'AM.

25 Q DID YOU WALK UP THE SIDEWALK?

- 1 A YEAH, I WALKED ALL THE WAY DOWN THE SIDEWALK, MA'AM.
- 2 Q AND YOU NEVER HEARD LEO LEMIRE FOLLOWING YOUR TRAIL?
- 3 A NO MA'AM.
- 4 Q IT WAS QUIET?
- 5 A YEAH, IT WAS QUIET, YES MA'AM.
- 6 Q IT SEEMS LIKE YOU WOULD HAVE HEARD SOMEBODY WALKING
- 7 UP BEHIND YOU, DOESN'T IT?
- 8 A IF THEY WERE WALKING UP BEHIND ME, YES.
- 9 Q BUT YOU WERE ONLY THERE FOR, WHAT, HOW LONG BEFORE
- 10 LEO APPEARED OUT OF THE DARKNESS?
- 11 A I COULDN'T TELL YOU. LIKE I SAID, MAYBE A MINUTE AND A
- 12 HALF. IT TOOK ME MAYBE A MINUTE TO WALK DOWN TO HIS HOUSE,
- 13 TALK TO HIM. THEN I STARTED WALKING AWAY. I WAS THERE MAYBE
- 14 A TOTAL OF FIVE MINUTES.
- 15 Q AND LEO IN THIS NEIGHBORHOOD JUST COMPLETELY SNUCK
- 16 (SIC) UP ON YOU?
- 17 A I WAS---
- 18 Q YOU HAD NO IDEA HE WAS OUT OF THE CAR?
- 19 A I WAS TALKING TO RYAN AND RYAN WAS BEING AWFUL LOUD.
- 20 Q NOW, CAN I ASK YOU TO STEP DOWN---
- 21 A YES MA'AM.
- 22 Q ---AND TAKE A LOOK AT THIS MAP WITH ME?
- 23 (WHEREUPON WITNESS EXITED WITNESS STAND FOR DEMONSTRATION WITH
- 24 STATE'S EXHIBIT NUMBER FIVE)

1 WHERE WERE YOU STANDING? YOU MAY HAVE GONE OVER
2 THIS WITH MR. RHEA. BUT THIS MAP, I WISH IT WERE BIGGER. WHERE
3 WERE YOU STANDING WHEN YOU REALIZED THAT LEO HAD COME OUT
4 OF THE DARKNESS?

5 A I WAS PROBABLY WALKING HERE SOMEWHERE, WALKING BACK
6 TO MY TRUCK.

7 Q SO, IF LEO HAD COME FROM THIS STREET PART RIGHT HERE YOU
8 WOULD SEEN HIM. HE DIDN'T BRUSH PAST YOU TO GET TO RYAN?

9 A NO.

10 Q SO, HE HAD TO HAVE COME FROM THIS DARK AREA OVER HERE,
11 DIDN'T HE?

12 A LIKE I SAY, I DIDN'T KNOW WHERE HE WAS.

13 Q BUT HE DIDN'T COME FROM THE STREET?

14 A NO, HE WASN'T IN THE STREET. I WAS IN THE STREET.

15 Q YOU WERE IN THE STREET?

16 A YES.

17 Q WHERE ELSE WOULD HE HAVE COME FROM IF HE DIDN'T COME
18 FROM THE STREET BESIDE YOU?

19 A I DON'T SEE HIM.

20 Q YOU DIDN'T SEE HIM. ALL RIGHT. THANK YOU. YOU MAY TAKE
21 YOUR SEAT NOW.

22 (WHEREUPON WITNESS RETURNED TO WITNESS STAND)

23 NOW, YOU DIDN'T BRING A GUN. IS THAT RIGHT?

24 A EXCUSE ME?

25 Q YOU DIDN'T BRING A GUN?

- 1 A I DON'T A GUN MA'AM.
- 2 Q BUT YOU DO OWN A KNIFE?
- 3 A YES, I DO HAVE ONE.
- 4 Q AND THAT WAS IN YOUR POCKET THAT NIGHT, WASN'T IT?
- 5 A YES, IT WAS.
- 6 Q NOW, I'VE LOST TRACK AND I JUMPED AWAY FROM SOMETHING I
- 7 WANTED TO ASK YOU ABOUT. IT WAS ONE OF THE FIRST THINGS YOU
- 8 TESTIFIED ABOUT.
- 9 A YES MA'AM.
- 10 Q THE FAKE CALL.
- 11 A EXCUSE ME?
- 12 Q THE FAKE CALL.
- 13 A WHAT FAKE CALL?
- 14 Q THE MYSTERY SHOPPER CALL.
- 15 A YES MA'AM, THE MYSTERY SHOPPER CALL.
- 16 Q WHEN THERE'S A MYSTERY SHOPPER CALL, ISN'T IT
- 17 CUSTOMARY-- YOU SAID IT'S CUSTOMARY TO LEAVE A NUMBER, A
- 18 CALL BACK NUMBER?
- 19 A FOR THE MOST PART, YEAH. YOU TRY TO LEAVE A CALL BACK
- 20 PHONE NUMBER.
- 21 Q UH-HUH.
- 22 A SOMETIMES THERE'S NONE AVAILABLE. SOMEONE MIGHT BE A
- 23 GOOD SAMARITAN AND LET YOU USE THEIR CELL PHONE.
- 24 Q UH-HUH.

1 A SOMEONE MAY CALL IT IN FOR YOU. SOMETIMES IT'S HARD TO
2 GET A PHONE NUMBER.

3 Q BUT IF YOU DO LEAVE A PHONE NUMBER, IS THAT DEFINITIVE OF
4 THE PERSON RESPONDING TO THE CALL?

5 A YES. IF THEY CAN'T FIND THE CUSTOMER BECAUSE THEY'RE
6 GOING TO TAKE LONGER THAN THE THIRTY-MINUTE ETA THEY WERE
7 GIVEN, THEY CAN CALL AND GIVE THEM A COURTESY CALL AND SAY,
8 HEY, I'M GONNA BE A LITTLE BIT LATE.

9 OF COURSE, IF THEY HAVE A HARD TIME CALLING THEM, THEY
10 CAN CALL THEM AND ASK THEM WHERE THEIR ACTUAL LOCATION IS.
11 LOOK FOR ME, I'M DRIVING SUCH AND SUCH A VEHICLE.

12 Q WHAT WAS THE NAME OF YOUR MYSTERY CALLER?

13 A I COULDN'T TELL YOU.

14 Q WAS IT A FEMALE?

15 A YES, IT WAS A FEMALE CALLER.

16 Q SO, WHEN YOU GAVE LEO'S PHONE NUMBER FOR A CALL BACK
17 AND ONE OF YOUR DRIVERS CALLS BACK AND A MALE ANSWERS,
18 WOULD THAT HAVE BEEN SUSPICIOUS TO THEM?

19 A COULD HAVE BEEN HIS GIRLFRIEND, BOYFRIEND, WHATEVER.

20 Q WOULD THAT HAVE BEEN SOMETHING THAT IN YOUR LINE OF
21 WORK, RESPONDING TO CALLS LATE AT NIGHT, THAT WOULD HAVE
22 RAISED A RED FLAG?

23 A NEVER.

24 Q IT WOULDN'T HAVE RAISED A RED FLAG?

25 A NO MA'AM.

1 Q YOU SEND PEOPLE OUT IN THE NIGHT TO MEET WITH
2 WHOMEVER?

3 A YES MA'AM. IF WE'RE CALLED OUT TO A CALL, WE GO TO THE
4 CALL. IF THE TECHNICIAN FEELS HE'S IN ANY DANGER, HE CAN CALL
5 FOR OFFICER BACK UP, WHICH WE'VE DONE IN THE PAST. WE'VE
6 PRACTICED THAT IN THE PAST. IF YOU'RE IN A BAD SITUATION AND
7 YOU DON'T FEEL COMFORTABLE, YOU CALL FOR AN OFFICER AND AN
8 OFFICER WILL BACK YOU UP AND BRING YOU INTO THE AREA FOR
9 YOUR CALL.

10 Q I WANT TO TALK TO YOU ABOUT YOUR TRAFFIC STOP. DO YOU
11 REMEMBER WHAT TIME YOUR TRAFFIC STOP OCCURRED?

12 A NO MA'AM.

13 Q IF I GAVE YOU TIME OF ABOUT 12:11 OR 12:12 A.M., WOULD THAT
14 SOUND ABOUT CORRECT?

15 A I WOULD GUESS, IF YOU'RE GIVING ME THAT TIME THAT'S WHAT
16 IT'S GONNA BE. I DIDN'T LOOK. I DIDN'T GET A CITATION OR
17 ANYTHING. SO, AGAIN, ---

18 Q YOU DIDN'T GET ANY WHAT?

19 A CITATIONS ON ANYTHING, SO I DIDN'T LOOK.

20 Q AND YOU MET WITH SEVERAL POLICE OFFICERS ON THE SIDE OF
21 THE ROAD. ISN'T THAT CORRECT?

22 A THERE WAS TWO.

23 Q AND ONE OF THOSE OFFICERS WAS OFFICER WATSON, WASN'T
24 HE?

25 A CORRECT, MA'AM.

- 1 Q AND HE'S THE OFFICER WHO TESTIFIED EARLIER IN THE TRIAL?
- 2 A YES MA'AM.
- 3 Q WAS THAT THE OFFICER YOU SPOKE WITH?
- 4 A YES MA'AM.
- 5 Q AND MR. RHEA ASKED YOU IF YOU TOLD HIM... SORRY. I'M
- 6 LOOKING FOR IT. (PAUSE) MR. RHEA ASKED YOU DID YOU TELL THAT
- 7 OFFICER WHAT HAPPENED THAT NIGHT AND YOU ANSWERED YES.
- 8 A YES MA'AM.
- 9 Q YOU TOLD OFFICER WATSON WHAT HAPPENED?
- 10 A YES.
- 11 Q DID YOU TELL OFFICER WATSON WHAT YOU TOLD THE JURY?
- 12 A YES.
- 13 Q DO YOU RECALL TELLING OFFICER WATSON THAT THERE WERE
- 14 FOUR OR FIVE BIG GUYS THERE?
- 15 A YEAH.
- 16 Q AND WHO WERE THOSE FOUR OR FIVE BIG GUYS?
- 17 A WELL, RYAN BEING ONE, AND THE OTHER THREE THAT WERE
- 18 WITH HIM, AND THEN THE OTHER GUY THAT CAME OUT. THERE WAS
- 19 FOUR GUYS OUT THERE WHEN I WAS THERE.
- 20 Q AND THEY WERE BIG GUYS?
- 21 A THEY WERE TO ME, YES.
- 22 Q DID YOU SEE DEVIN FIVECOAT ON THE STAND, THE LAST KID TO
- 23 TESTIFY?
- 24 A YES.
- 25 Q WAS HE A BIG GUY?

395

1 A HE WAS ABOUT MY SIZE.

2 Q SO, HE'S NOT ONE OF THE BIG GUYS?

3 A WELL, I WAS STANDING DOWN AT THE BOTTOM OF THE
4 DRIVEWAY. THE DRIVEWAY GOES UP LIKE THIS. SO, WHEN YOU'RE
5 LOOKING UP THE DRIVEWAY, YEAH, THEY LOOKED BIGGER.

6 Q SO, YOU FIGURED DEVIN WAS A BIG GUY?

7 A WELL, HE WAS THERE, LIKE, I SAID.

8 Q DO YOU RECALL WHETHER RYAN'S GARAGE LIGHT WAS ON, OR
9 FRONT DOOR LIGHT WAS ON?

10 A THE GARAGE DOOR WAS SHUT. HIS LIGHTS WERE ON TOWARD
11 HIS DOORWAY, WAS ON.

12 Q DO YOU RECALL TELLING OFFICER WATSON THAT YOU WERE
13 JUST COMING BACK FROM SPEAKING WITH AN OLD EMPLOYEE?

14 A WITH AN EX-EMPLOYEE, YES.

15 Q AN EX-EMPLOYEE. SO, YOU CALLED RYAN LOCHBAUM YOUR
16 EX-EMPLOYEE?

17 A I DIDN'T SAY HE WAS MY EMPLOYEE.

18 Q YOU SAID HE WAS AN OLD---

19 A AN EX-EMPLOYEE.

20 Q OKAY.

21 A BUT EVERY NOW AND AGAIN, I MIGHT REFER TO HIM AS THAT. I
22 DON'T KNOW. I DON'T PAY MUCH ATTENTION TO THAT.

23 Q DO YOU RECALL TELLING OFFICER WATSON THAT YOUR CO-
24 DEFENDANT JUST CAME OF THE WOODS WHEN I WAS TALKING TO
25 RYAN?

- 1 A THAT'S THE ONLY LOGICAL EXPLANATION. AND THEN, COME TO
2 FIND OUT, THERE IS NO WOODS THERE.
- 3 Q THEN COME TO FIND OUT THERE IS NONE?
- 4 A NO WOODS THERE. THERE'S NO WOODS.
- 5 Q BUT YOU TOLD THE OFFICER THERE WERE WOODS?
- 6 A I DIDN'T KNOW WHERE HE COME FROM. I HAD NO IDEA. I WAS
7 ALREADY WALKING UP THE STREET WITH MY BACK TOWARDS HIM.
- 8 Q SO, YOU DIDN'T TELL HIM YOU WERE TALKING WITH RYAN
9 LOCHBAUM WHEN LEO CAME OUT OF THE WOODS?
- 10 A NO. I TOLD HIM I WAS WALKING AWAY.
- 11 Q DO YOU RECALL TELLING THE OFFICER THAT THESE FOUR OR
12 FIVE BIG GUYS WERE AT A DISTANCE?
- 13 A NO, I DON'T RECALL EVER SAYING THAT.
- 14 Q YOU DON'T RECALL TELLING HIM THAT?
- 15 A NO MA'AM.
- 16 Q DO YOU RECALL TELLING OFFICER WATSON THAT YOUR WIFE
17 TOLD YOU THIS WAS A BAD IDEA, IT WAS A BAD IDEA TO GO TO RYAN
18 LOCHBAUM'S HOUSE?
- 19 A I DON'T RECALL SAYING THAT TO HIM.
- 20 Q NOW, THAT YOU'VE HAD THE BENEFIT OF SEEING SOME OF THE
21 FOLKS FROM THIS NIGHT IN THIS COURTROOM, MAYBE YOU CAN HELP
22 ME FIGURE OUT WHO WAS WHERE ON THIS DOG PILE. SO, I'M JUST
23 GOING TO TRY TO WALK THROUGH WHAT YOU SAID.
- 24 YOU'RE WALKING BACK DOWN GENTLE BREEZE LANE, AND
25 YOU'RE ABOUT HERE? IS THAT CORRECT?

- 1 A YES MA'AM.
- 2 Q AND THAT LEO COMES FROM SOMEWHERE DOWN HERE?
- 3 A RIGHT.
- 4 Q AND WHO WAS THE FIRST PERSON THAT LEO GOES TO?
- 5 A THE FIRST THING I SEE IS THAT HIM AND RYAN WERE
- 6 STRUGGLING.
- 7 Q AND THEN AFTER HE AND RYAN START STRUGGLING, WHO IS
- 8 THE NEXT PERSON THAT JUMPS IN?
- 9 A THE NEXT DOOR NEIGHBOR.
- 10 Q JESSE HARRIS?
- 11 A YES.
- 12 Q JESSE HARRIS JUMPS IN?
- 13 A YEAH.
- 14 Q AND JESSE HARRIS WASN'T IN THE DRIVEWAY. HE'S NOT ONE OF
- 15 THE FOUR OR FIVE BIG GUYS, WAS HE?
- 16 A I---
- 17 Q OR THE THREE GUYS WHO---
- 18 A ---GUESS. I DIDN'T KNOW WHO WAS WHERE.
- 19 Q SO, JESSE HARRIS JUMPS IN?
- 20 A YEAH.
- 21 Q WHO WAS THE NEXT GUY TO JUMP IN?
- 22 A THAT WOULD HAVE BEEN ME.
- 23 Q AND WHAT DID YOU DO?
- 24 A I TRIED TO GET RYAN OFF THE TOP OF MY BROTHER-IN-LAW.

1 Q YOUR BROTHER-IN-LAW THAT BROUGHT THE GUN THAT YOU
2 DIDN'T KNOW ANYTHING ABOUT?

3 A YES MA'AM.

4 Q NOW, YOU NEVER ONCE SAID, OH, MY GOD, OH, MY GOD, LEO,
5 WHAT ARE YOU DOING WITH A GUN, WHEN ALL THIS WAS GOING ON,
6 DID YOU?

7 A I DIDN'T KNOW HE HAD THE GUN.

8 Q NOW, AFTER-- SO, LEO AND RYAN AND JESSE AND THEN YOU
9 AND THEN WHO?

10 A I DON'T KNOW. THERE WAS ONE OTHER GUY, I THINK, OR SOME
11 OTHER GUYS THAT JUMPED ON ME THAT PULLED ME OFF OF RYAN.

12 Q THAT PULLED YOU OFF OF RYAN. THEY DIDN'T PUNCH YOU.
13 THEY---

14 A I DON'T KNOW. I---

15 Q ---DIDN'T---

16 A ---DON'T FEEL THAT I WAS ASSAULTED, MA'AM?

17 Q HUH?

18 A I DON'T FEEL THAT I WAS ASSAULTED.

19 Q YOU DON'T FEEL THAT YOU WERE ASSAULTED. SO,---

20 A NO MA'AM.

21 Q ---THOSE GUYS, YOU GOT NO BEEF, GOT NO BEEF WITH THE
22 GUYS THAT PULLED YOU OFF OF RYAN?

23 A NO MA'AM. WE ALL WERE JUST TRYING TO GET CONTROL OF
24 THE SITUATION, I WOULD SAY.

1 Q BUT YOU WERE JUST RIGHT THERE WITH MARK WHITTINGTON,
2 THE GUY THAT PULLED YOU OFF? YOU'RE JUST TRYING TO GET
3 CONTROL OF THE SITUATION?

4 A YES MA'AM.

5 Q YOU HAD NO BEEF WITH JESSE HARRIS?

6 A I AIN'T GOT NO BEEF WITH NOBODY, MA'AM.

7 Q SO, WHEN JESSE JUMPS ON YOUR BROTHER, OR WHEN-- WHO
8 JUMPED ON YOUR BROTHER-IN-LAW?

9 A I DON'T KNOW. THE MR. HARRIS GUY AND RYAN, THOSE TWO
10 WERE ON TOP OF EACH OTHER, STRUGGLING. OR I SHOULD SAY, RYAN
11 WAS ON TOP OF MY BROTHER. AND THEN I GUESS MR. HARRIS IS HIS
12 NAME, THE NEXT DOOR NEIGHBOR, HE'S IN THERE.

13 AND THERE'S, LIKE, FOUR HANDS, THREE HANDS ON THE GUN OR
14 SOMETHING LIKE THAT. I DON'T KNOW EXACTLY. IT'S LIKE YOU SAID.
15 IT'S IN THE EVENING. SO, I JUST BASICALLY TRIED TO MAKE SURE I
16 WAS OUT OF THE WAY OF THE BARREL OF THE GUN.

17 Q YOU WANTED TO MAKE SURE YOU WERE OUT OF THE WAY OF
18 THE BARREL OF THE GUN?

19 A YEAH.

20 Q SO, YOU SEE FOUR OR FIVE HANDS ON THE GUN. CAN YOU TELL
21 WHO THE GUN'S POINTING AT?

22 A WHEN I GOT ON TOP OF THE PILE TO START PULLING PEOPLE
23 OFF, JESSE WAS OFF TO THE SIDE, HIS FEET FACING THE STREET, AND
24 HIS HEAD FACING HIS HOUSE.

1 RYAN WAS ON TOP OF LEO. LEO WAS ON THE GROUND WITH HIS
2 HEAD FACING MY TRUCK, HIS FEET FACING THE DRIVEWAY. RYAN ON
3 TOP OF HIM IN THE SAME POSITION. AND I'M OFF TO THE SIDE, AND
4 THE GUN WAS POINTING ACROSS THE STREET TO THE OPEN FIELD
5 OVER THERE.

6 Q SO, WHO WAS THE GUN POINTING AT?

7 A ACROSS THE STREET IN THE OPEN---

8 Q POINTING ACROSS---

9 A ---FIELD.

10 Q ---THE STREET. IT DIDN'T POINT AT DEVIN FIVECOAT?

11 A NO, IT DIDN'T POINT---

12 Q IT DIDN'T POINT AT JESSE HARRIS?

13 A NO MA'AM.

14 Q IT DIDN'T POINT AT ANYBODY?

15 A NO MA'AM, NOT TO MY KNOWLEDGE.

16 Q DID YOU KNOW YOUR BROTHER-IN-LAW HAD A GUN?

17 A NO, I DID NOT.

18 Q YOU DIDN'T KNOW IF HE EVEN OWNED A GUN?

19 A I KNEW HE OWNED A GUN.

20 Q YOU KNEW HE OWNED A GUN?

21 A YES MA'AM.

22 Q BUT YOU DIDN'T KNOW THAT HE HAD A LOADED GUN?

23 A NO MA'AM, I DIDN'T KNOW HE HAD A GUN.

24 Q WAS HE WEARING SOME KIND OF HOLSTER TO KEEP THE GUN?

25 A I DIDN'T SEE A GUN ON HIM.

1 Q YOU NEVER SAW THE GUN?

2 A NO MA'AM.

3 Q SO, YOU'RE IN THE CAR WITH HIM FROM 9:16 TILL JUST AFTER
4 MIDNIGHT AND NEVER ONCE DID YOU SEE A GUN?

5 A NEVER SAW A GUN ONCE, MA'AM.

6 Q IT'S A BIG GUN, ISN'T IT?

7 A DECIDEDLY, YES.

8 Q BUT YOU NEVER SAW IT?

9 A NO MA'AM.

10 Q PRIOR TO GOING OVER TO RYAN LOCHBAUM'S HOUSE, DID IT
11 EVER OCCUR TO YOU TO JUST PICK UP THE PHONE AND CALL HIM?

12 A NO MA'AM. I WANTED TO SEE IF THE RED VEHICLE WAS THERE
13 WITH MAGNETS ON IT.

14 Q SO, WHEN THERE ARE NO MAGNETS ON IT, AND YOU COULDN'T
15 TELL WHO THE GUYS WERE IN THE DRIVEWAY, DID IT OCCUR TO YOU
16 THEN AT THAT POINT THAT IT MIGHT BE A BAD IDEA TO GO WALKING
17 UP TO THE HOUSE?

18 A NO MA'AM.

19 Q AND YOU DON'T NORMALLY CONDUCT BUSINESS THIS WAY?

20 A IT WASN'T BUSINESS.

21 Q THAT'S RIGHT. IT WAS PERSONAL, WASN'T IT? THIS WAS A
22 PERSONAL---

23 A NO, IT WASN'T PERSONAL.

24 Q IF IT WASN'T BUSINESS AND IT WASN'T PERSONAL, WHAT WAS
25 IT?

- 1 A I GUESS YOU COULD SAY IT WAS A LITTLE BIT OF BOTH.
- 2 Q IT WAS A LITTLE BIT OF BOTH.
- 3 A IT WAS LEAVE MY WIFE'S BUSINESS ALONE, YEAH.
- 4 Q LEAVE MY WIFE ALONE?
- 5 A NO, NOT MY WIFE; MY WIFE'S BUSINESS ALONE.
- 6 Q LEAVE MY WIFE'S BUSINESS ALONE?
- 7 A YES. AND LEAVE OUR EMPLOYEES---
- 8 Q AND I'M GOING---
- 9 A ---ALONE.
- 10 Q --- TO SHOW UP IN THE MIDDLE OF THE NIGHT TELLING YOU TO
- 11 LEAVE MY WIFE'S BUSINESS ALONE?
- 12 A ONLY BECAUSE HE WAS OUTSIDE.
- 13 Q ONLY BECAUSE HE WAS OUTSIDE?
- 14 A YES MA'AM.
- 15 Q BECAUSE YOU HAD THE OPPORTUNITY?
- 16 A HE WAS OUTSIDE. I COULD SEE HIM FACE TO FACE AND SAY,
- 17 YOU KNOW, JUST LEAVE THE BUSINESS ALONE. LEAVE, STOP
- 18 HARASSING THE EMPLOYEES.
- 19 Q SO, IF YOU WERE TELLING HIM TO STOP HARASSING EMPLOYEES,
- 20 WHY WOULD YOU TELL HIM HE COULD HAVE MIKE TAYLOR?
- 21 A BECAUSE HE COULD HAVE MIKE TAYLOR.
- 22 Q WHAT DOES THAT HAVE TO DO WITH THE BUSINESS? YOU STILL
- 23 HAVE NO PROOF.
- 24 A IT DIDN'T-- IT DOESN'T MATTER.

1 Q SO, IT DOESN'T MATTER. BUT YOU DIDN'T LIKE RYAN
2 LOCHBAUM?

3 A EXCUSE ME?

4 Q YOU DIDN'T LIKE RYAN LOCHBAUM, DID YOU?

5 A HE GOT CHOSEN TO WORK WITH THE COMPANY. I HAVE NO
6 PROBLEM WITH HIM WORKING FOR THE COMPANY OR HAD ANY
7 PROBLEM WITH HIM WORKING FOR THE COMPANY. I FIXED HIS
8 VEHICLE FOR HIM SEVERAL TIMES.

9 Q SO, YOU--

10 A SO, YEAH, I THINK I LIKED RYAN.

11 Q SO, DID YOU LIKE RYAN OR DID YOU HAVE A PERSONAL AND
12 BUSINESS PROBLEM WITH RYAN? WHICH ONE WAS IT?

13 A I LIKE RYAN. RYAN, I THOUGHT WAS A DECENT GUY AT FIRST.

14 Q SO, YOU LIKE RYAN. AND YOU DECIDE TO GO OVER TO HIS
15 HOUSE IN THE MIDDLE OF THE NIGHT AND CONFRONT HIM?

16 A TO LET HIM KNOW TO LEAVE HER BUSINESS ALONE. IT'S BEEN

17 SIX---

18 Q TO TELL HIM TO--

19 A ---MONTHS. IT'S TIME--

20 Q ---LEAVE YOUR WIFE--

21 A ---TO MOVE---

22 Q ---ALONE.

23 A LEAVE-- NOT MY WIFE, MY WIFE'S BUSINESS AND THE
24 EMPLOYEES. STOP HARASSING THEM. IT'S BEEN SIX MONTHS. YOU'VE
25 GOT TO---

- 1 Q STOP HARASSING EVERYONE THAT YOU'RE FRIENDS WITH, THE
2 ONES YOU EMPLOY?
- 3 A IF THAT'S THE WAY YOU'RE PUTTING IT, I DIDN'T---
- 4 Q ISN'T THAT---
- 5 A ---FINISH.
- 6 Q ---HOW YOU PUT IT?
- 7 A I DIDN'T SAY THAT.
- 8 Q NOW, WHEN YOU CALLED RYAN LOCHBAUM---
- 9 A YES MA'AM.
- 10 Q ---AFTER YOUR BROTHER-IN-LAW CHARGED AT HIM WITH A
11 GUN, SCREAMING, THIS IS WHAT YOU GET WHEN YOU FUCK WITH MY
12 FAMILY, WERE YOU SURPRISED THAT HE WAS UPSET?
- 13 A WAS I SURPRISED WHAT, THAT RYAN---
- 14 Q THAT HE WAS UPSET.
- 15 A NO, I WANTED TO MAKE SURE THAT HE WAS OKAY.
- 16 Q BECAUSE YOU LIKED RYAN?
- 17 A I THOUGHT THAT RYAN AT THE TIME, OR PREVIOUS TO THAT
18 TIME WAS A DECENT GUY, YES.
- 19 Q BUT AT SOME POINT PRIOR TO THAT YOUR OPINION HAD
20 CHANGED, HADN'T IT?
- 21 A I MEAN, YOU FIND THINGS OUT ABOUT SOMEBODY, YEAH, YOU
22 KIND OF GET AN OPINION CHANGING PERSPECTIVE ON THEM. BUT,
23 YOU KNOW, EVERYBODY MAKES MISTAKES IN LIFE.
- 24 Q YOUR BROTHER-IN-LAW HAD BACK SURGERY---
- 25 A YES.

1 Q ---PRIOR TO THIS INCIDENT?

2 A YES MA'AM.

3 Q WAS HE ABLE TO WALK UP TO THE HOUSE ALL BY HIMSELF?

4 A HE WALKED, YEAH.

5 Q HE DIDN'T DART OUT OF THE DARKNESS, THEN, WITH A GUN?

6 A I WOULDN'T SAY DART, NO.

7 Q YOU TURN YOUR BACK FOR A FEW SECONDS AND ALL OF A
8 SUDDEN HE'S THERE. YOU WOULDN'T CALL THAT FAST?

9 A I TURN MY BACK FOR MORE THAN TWO SECONDS. I WAS
10 TALKING TO RYAN. WHEN I LEFT I SAW HIM WALKING UP THE STREET.
11 AND THEN THE NEXT THING I KNOW THERE WAS A SCUFFLE.

12 Q THE NEXT THING YOU KNOW?

13 A YES MA'AM.

14 Q SO, WHEN YOU SAID THE NEXT THING YOU KNOW, YOU DON'T
15 MEAN BY THAT SURPRISINGLY IN A SHORT PERIOD OF TIME AFTER
16 THAT?

17 A EVERYTHING HAPPENED SO FAST, AS YOU'VE ALREADY HEARD.
18 IT DOESN'T TAKE LONG. IT WAS A QUICK, LITTLE SCUFFLE.

19 Q SO, IF YOUR BROTHER-IN-LAW HAS TO WALK SO SLOW, HE HAS
20 TO WALK SO SLOW BECAUSE OF HIS BACK PROBLEM, AND YOU
21 PARKED YOUR CAR DOWN HERE. AND ALL THIS HAPPENED WITHIN
22 FIVE MINUTES, HE WOULD HAVE BEEN ABLE TO WALK THIS DISTANCE
23 IN FIVE MINUTES?

24 A HE DID IT, SO HE MUST HAVE.

1 Q SO, HE WOULD HAVE WALKED THAT DISTANCE IN LESS THAN
2 FIVE MINUTES BECAUSE HE DIDN'T WALK WITH YOU. RIGHT?

3 A I DIDN'T KNOW WHERE HE WAS. I LEFT HIM IN THE TRUCK WHEN
4 I WENT DOWN THERE.

5 Q YOU LEFT HIM IN THE TRUCK, AND YOUR BROTHER WITH BACK
6 PROBLEMS MADE IT ALL THE WAY UP THERE WITHOUT YOUR HELP?

7 A YEAH, SOMEWHERE UP THERE.

8 Q CARRYING A GUN?

9 A (NO RESPONSE)

10 Q CARRYING A BIG GUN?

11 A YES.

12 Q AND HE DIDN'T WALK UP THERE WITH YOU?

13 A NO MA'AM.

14 Q DID YOU TALK TO YOUR BROTHER-IN-LAW AT ALL IN THE CAR
15 ON THE WAY OVER?

16 A I CAN'T RECALL.

17 Q YOU CAN'T RECALL. WELL, YOU WERE ABLE TO RECALL WHEN
18 MR. GREELEY ASKED IF YOU TALKED TO KERRIANN AT 11:07. IS THAT
19 CORRECT?

20 A IF THAT'S WHAT TIME HE SAID IT WAS, YES.

21 Q THAT'S THE TIME HE SAID, BUT YOU DIDN'T KNOW THAT FOR
22 SURE?

23 A I DIDN'T KNOW EXACTLY WHAT TIME IT WAS, NO. I WAS ON---

24 Q DID YOU---

25 A ---THE PHONE---

407

1. Q ---HOW LONG---
2. A ---WITH HER.
3. Q I'M SORRY. I DIDN'T MEAN TO INTERRUPT YOU.
4. A I WAS ON THE PHONE WITH HER.
5. Q DO YOU REMEMBER HOW LONG YOU WERE ON THE PHONE WITH
6. HER?
7. A I COULDN'T TELL YOU. IT SEEMED LIKE A LONG TIME THAT I
8. WAS ON THE PHONE WITH HER. LIKE I SAID, FROM CAROWINDS
9. BASICALLY ALL THE WAY TO RYAN'S HOUSE.
10. Q I'M SORRY. I THOUGHT YOU SAID, YOU AGREED WITH MR.
11. GREELEY THAT YOU TALKED HER AGAIN AT 11:42.
12. A I POSSIBLY DID. I MIGHT HAVE. I DON'T KNOW.
13. Q AND THEN YOU CALLED HER AGAIN AT 11:54?
14. A A POSSIBILITY.
15. Q SO, WHEN YOU SAID YES, YOU DIDN'T KNOW THOSE TIMES FOR A
16. FACT? YOU WERE JUST AGREEING WITH MR. GREELEY?
17. A I KNOW I TALKED TO HER. I JUST DON'T KNOW EXACTLY WHAT
18. TIME IT WAS.
19. Q AND YOU DON'T KNOW HOW LONG IT IS THAT YOU TALKED
20. WITH HER ON ANY OF THESE PHONE CALLS?
21. A SOME WERE FOR PERIODS OF TIME. SOME WERE SHORT AND
22. SWEET.
23. Q OKAY. SO, LET'S SAY-- LET'S GO BACK TO OUR, TO MY LITTLE
24. TIMELINE. SO, LET'S SAY 11:07 WAS THE, RIGHT BEFORE, RIGHT
25. AROUND THE TIME THAT YOU LEFT KNIGHTS' STADIUM. RIGHT?

- 1 A YEAH.
- 2 Q WELL,---
- 3 A I'M GUESSING.
- 4 Q ---WAS IT?
- 5 A I'M GUESSING, MA'AM.
- 6 Q AND YOU PRETTY MUCH CONTINUOUSLY TALKED WITH
- 7 KERRIANN UNTIL ABOUT 11:45?
- 8 A IT WAS ON AND OFF. I'M SURE I MADE THREE OR FOUR PHONE
- 9 CALLS TO HER. SHE MADE PROBABLY TWO OR THREE TO ME.
- 10 Q BUT YOU TALKED TO HER AGAIN-- WELL, LET'S ADJUST THIS. IF
- 11 YOU TALKED TO HER AGAIN AT 11:54, THEN YOU ACTUALLY GOT TO
- 12 RYAN'S A LITTLE LATER THAN OUR GUESTIMATE. IS THAT A FAIR
- 13 STATEMENT?
- 14 A I DON'T WHAT TIME THE GUESTIMATE WAS. SO, WHATEVER
- 15 TIME YOU WANT TO PUT IT ON.
- 16 Q WELL, YOU TALKED AGAIN TO KERRIANN AGAIN AT 11:54, AND
- 17 THAT'S WHAT THE---
- 18 A I'M GUESSING, YES.
- 19 Q SO, THEN, YOU WOULD HAVE BEEN AT RYAN'S HOUSE, THEN,
- 20 APPROXIMATELY MIDNIGHT. THEN, 12:01, YOU WOULD HAVE WALKED.
- 21 THEN 12:06, YOU WOULD HAVE STARTED TALKING. WOULD THAT
- 22 MATCH UP FAIRLY WITH THE TIME FRAME THAT YOU GAVE THE
- 23 POLICE OFFICER?
- 24 A WHAT YOU'RE PUTTING THERE, I'M GUESSING THAT'S SO.

1 Q SO, FROM 11-- THIS BLOCK TIME OF TIME, THEN, PRETTY MUCH
2 YOU'RE ON THE PHONE WITH KERRIANN?

3 A YES MA'AM.

4 Q SO, WOULD IT BE FAIR TO SAY THAT FROM THE TIME YOU LEFT
5 KANNAPOLIS TO THE TIME THAT YOU STARTED IN YOUR LENGTHY
6 PHONE CONVERSATION WITH KERRIANN, THAT YOU AND LEO, YOUR
7 BROTHER-IN-LAW, WOULD HAVE TIME TO TALK, TIME TO KILL?

8 MR. RHEA: I'M SORRY. I DIDN'T HEAR THE TAIL END OF HER
9 QUESTION. IF YOU WOULD JUST REPEAT THE QUESTION. I'M SORRY.

10 MS. JOYNER: YES SIR, MR. RHEA.

11 Q IS IT FAIR TO SAY THAT DURING THE TIME PERIOD FROM THE
12 TIME THAT YOU LEFT KANNAPOLIS TO THE TIME YOU STARTED THE
13 LENGTHY PHONE CONVERSATIONS WITH KERRIANN YOU HAD TIME TO
14 TALK, YOU HAD TIME TO KILL, SO TO SPEAK?

15 A TIME TO KILL, YEAH, WHATEVER.

16 Q AND Y'ALL PROBABLY CHATTED, DIDN'T YOU?

17 A I DON'T RECALL. LISTEN TO MUSIC, CHAT, WHATEVER, YEAH.

18 Q JUST NORMAL STUFF, NORMAL SITTING IN THE PARKING LOT
19 WAITING FOR SOMEBODY, OR SITTING ANYWHERE WAITING FOR
20 SOMEBODY, YOU GUYS, YOU ARE GOING TO TALK A LITTLE BIT
21 AREN'T YOU?

22 A YEAH. UNLESS I'M ON THE PHONE.

23 Q SO, WAS IT DURING THIS TIME PERIOD FROM 9:15 TO 11:07, THAT
24 YOU TALKED TO YOUR BROTHER-IN-LAW, LEO LEMIRE, ALL ABOUT
25 RYAN LOCHBAUM?

1 A NO MA'AM.

2 Q DID YOU---

3 A I SPENT A LOT OF TIME ON THE PHONE WITH MY WIFE.

4 Q EVEN BEFORE THIS YOU SPENT A LOT OF TIME ON THE PHONE
5 WITH YOUR WIFE?

6 A I BELIEVE SO, YEAH.

7 Q SO, I NEED TO MOVE THIS UP A LITTLE BIT? WHEN SHOULD I
8 START WITH THE WHOLE BLOCK OF TIME THAT YOU WEREN'T
9 TALKING TO LEO BECAUSE YOU WERE TALKING TO YOUR WIFE?

10 A IT WAS OFF AND ON. I PROBABLY TALKED TO LEO, BUT I DON'T
11 KNOW WHAT IT WAS PERTAINING TO. MAYBE MUSIC, WORKING ON
12 CARS, I DON'T KNOW.

13 Q BUT YOU DIDN'T TALK ABOUT RYAN LOCHBAUM?

14 A NO MA'AM.

15 Q AND THE TIME YOU WERE DRIVING OVER TO KNIGHTS' STADIUM
16 WHEN YOU ASKED HIM TO KEEP YOU COMPANY, YOU'RE NOT TALKING
17 ABOUT RYAN LOCHBAUM, EITHER?

18 A NO MA'AM.

19 Q SO, ALL THIS TIME YOU'RE NOT TALKING ABOUT RYAN
20 LOCHBAUM, WHAT IS IT THAT LEO LEMIRE THINKS THAT HE DID TO
21 FUCK WITH YOUR FAMILY?

22 A I DON'T KNOW WHAT YOU'RE TALKING ABOUT.

23 Q ALL THIS TIME YOU'RE ON THE PHONE WITH KERRIANN AND
24 YOU'RE NOT TALKING ABOUT RYAN LOCHBAUM BECAUSE EVERY TIME
25 YOU HAD A THOUGHT ON YOUR MIND, WHAT IS IT EXACTLY, WHEN IT

1 IS IT EXACTLY THAT YOU TOLD HIM THAT GOT HIM SO ALL FIRED
2 MAD? WHEN DID YOU TELL HIM WHAT RYAN LOCHBAUM DID TO F
3 WITH YOUR FAMILY?

4 A I NEVER SAID ANYTHING TO HIM.

5 Q THAT CONVERSATION NEVER CAME UP?

6 A NO MA'AM.

7 Q YOU HAVE NO IDEA WHY YOUR BROTHER-IN-LAW, WHO HAS
8 NOTHING TO DO WITH THAT BUSINESS, IS ALL WORKED UP?

9 A NO MA'AM.

10 Q THANK YOU, MR. LARMAND.

11 THE COURT: MR. RHEA, RE-DIRECT.

12 MR. RHEA: YES SIR.

13 RE-DIRECT EXAMINATION BY MR. RHEA:

14 Q WERE YOU PRIVY TO ANY CONVERSATIONS THAT YOUR SISTER
15 HAD WITH HER BROTHER ABOUT THE BUSINESS?

16 A EXCUSE ME?

17 Q DO YOU KNOW IF YOUR SISTER-- I'M SORRY. IF YOUR WIFE,
18 KERRIANN TALKED WITH HER BROTHER ABOUT THE BUSINESS, POP-A-
19 LOCK?

20 A NO, SHE NEVER TALKED TO HIM ABOUT BUSINESS, NO.

21 Q NOW, WHEN YOU WERE AT MR. LOCHBAUM'S RESIDENCE YOU
22 STATED THAT YOU WAITED IN THE DRIVEWAY FOR RYAN FOR A
23 COUPLE OF MINUTES. IS THAT CORRECT?

24 A YES SIR, SEVERAL MINUTES.

1 Q SO, YOU DIDN'T GO IN THERE AND DEMAND, HEY, I WANT TO
2 TALK TO RYAN, OR ANYTHING LIKE THAT?

3 A NOT AT ALL.

4 Q NOW, SHE ASKED YOU ABOUT-- YOU HAD A KNIFE IN YOUR
5 POCKET. IS THAT CORRECT?

6 A YES SIR.

7 Q IS THAT SOMETHING YOU NORMALLY HAVE IN YOUR POCKET BY
8 VIRTUE OF WHAT BUSINESS YOU WERE IN AT THE TIME?

9 A YES.

10 Q IT'S NOT UNCOMMON FOR A MAN WHO WORKS WITH HIS HANDS
11 TO HAVE A KNIFE IN HIS POCKET, IS IT?

12 A NO SIR.

13 Q DID YOU EVER USE THAT KNIFE OR HAVE ANY INTENTION OF
14 USING THAT KNIFE ON THAT NIGHT?

15 A NO SIR.

16 Q AND HAVE YOU HEARD ANYBODY'S TESTIMONY IN THIS
17 COURTROOM DURING YOUR TRIAL WHO HAS SUGGESTED YOU
18 REACHED FOR A KNIFE TO TRY AND USE IT?

19 A NO SIR.

20 Q WHEN YOU SAW THE DOG PILE, AS IT WERE, YOU HAD YOUR
21 KNIFE IN YOUR POCKET. RIGHT?

22 A YES SIR.

23 Q YOU COULD HAVE USED IT. RIGHT?

24 A I GUESS, YES.

25 Q BUT YOU DIDN'T, DID YOU?

- 1 A NO SIR.
- 2 Q DID YOUR BROTHER-IN-LAW EVER TELL YOU, I'M WALKING UP
3 RIGHT BEHIND YOU?
- 4 A NO SIR.
- 5 Q DID YOU EVER ASK HIM TO WALK UP RIGHT BEHIND YOU?
- 6 A NO SIR.
- 7 Q DURING THE TIME THAT YOU WERE TALKING WITH YOUR WIFE
8 ON THE PHONE WERE YOU GETTING DIRECTIONS?
- 9 A YES SIR.
- 10 Q AND HOW WAS SHE ACCESSING THOSE DIRECTIONS?
- 11 A ON THE INTERNET.
- 12 Q DID THAT REQUIRE CALLING BACK AND FORTH BETWEEN Y'ALL?
- 13 A YES SIR. THINGS GOT KIND OF CONFUSING THE WAY THE
14 STREETS SPLIT UP. I'M NOT FAMILIAR WITH THE AREA.
- 15 MR. RHEA: BEG THE COURT'S INDULGENCE.
- 16 THE COURT: YES SIR.
- 17 (PAUSE)
- 18 Q WHERE'D YOU GET GAS?
- 19 A CAROWINDS BOULEVARD.
- 20 Q WHO GOT OUT TO PUMP THE GAS?
- 21 A I DID.
- 22 Q THAT'S USUALLY THE WAY IT WORKS, WHOEVER'S DRIVING IS
23 THE ONE THAT PUMPS THE GAS. RIGHT?
- 24 A YES SIR.

1 Q DID LEO GET OUT OF THE VEHICLE AT THAT TIME TO GO IN AND
2 GET A COCA-COLA, PACK OF NABS, CIGARETTES, ANYTHING?

3 A NO, HE NEVER GOT OUT.

4 Q THE FAKE CALL. SHE WAS ASKING YOU ABOUT THE DIFFERENCE
5 IN GENDERS, YOU KNOW, MALE CALL, FEMALE ANSWERS, OR VICE-
6 VERSA. IS THAT UNUSUAL IN YOUR BUSINESS FOR ONE PERSON TO
7 CALL AND ANOTHER TO ANSWER A CALL BACK FROM THE SAME
8 CALL?

9 A NO. THE REASON BEING A WIFE MAY CALL HER HUSBAND AT
10 THE HOUSE AND SAY I'M LOCKED OUT OF MY CAR, LOOK UP A PHONE
11 NUMBER FOR ME, CALL A LOCKSMITH OUT. AND HE'S GIVING US THE
12 INFORMATION WHERE SHE MAY BE LOCATED. AND THEN WHEN WE
13 CALL BACK WE'RE ACTUALLY GETTING THE RESIDENCE AND HE'S AT
14 HOME AT HIS HOUSE SAYING MY WIFE'S AT THE LOCATION.

15 SO, YEAH, IT'S COMMON TO WHERE YOU DON'T HAVE A
16 WOMAN'S NAME AS THE CONTACT FOR THE LOCATION FOR THE
17 VEHICLE, BUT WHEN YOU TALK TO SOMEBODY ON THE PHONE, IT
18 MAY BE A MALE.

19 Q YOU STATED YOU WERE WALKING, STARTED TO WALK AWAY---

20 A YES.

21 Q ---BEFORE EVERYTHING KIND OF WENT BAD?

22 A YES.

23 Q BEFORE LEO SHOWED UP?

24 A YES.

25 Q DO YOU HAVE ANY IDEA WHAT WAS GOING ON BEHIND YOU?

1 A I HAVE NO IDEA.

2 Q AND HOW FAR BEHIND YOU WAS MR. LOCHBAUM?

3 A TEN FEET MAYBE, I'M THINKING. I'M NOT SURE. IT COULD HAVE
4 BEEN CLOSER.

5 Q YOU COULDN'T SEE HIM?

6 A NO.

7 Q DO YOU KNOW WHETHER HE WAS FOLLOWING YOU OR
8 WALKING BACK THE OTHER WAY?

9 A I DON'T KNOW. I COULDN'T SEE HIM.

10 MR. RHEA: NOTHING FURTHER.

11 THE COURT: MR. GREELEY.

12 MR. GREELEY: MAY IT PLEASE THE COURT.

13 RE-CROSS EXAMINATION BY MR. GREELEY:

14 Q DID YOU SEE MR. LOCHBAUM'S VAN IN HIS DRIVEWAY WHEN
15 YOU STOOD THERE AT THE BOTTOM OF THE DRIVEWAY?

16 A YES.

17 Q DID IT HAVE WINDOWS IN IT?

18 A YEAH, COMPLETELY BLACKED IN.

19 Q COMPLETELY BLACKED IN?

20 A YES.

21 Q ALL THE WAY AROUND?

22 A YES SIR.

23 Q SO, IT HAD REAR GLASS WINDOWS?

24 A IT HAD WINDOWS ALL THE WAY AROUND IT.

25 Q ALL THE WAY AROUND?

1 A LIKE IN THE OLD SCHOOL BUSES, THE VAN SCHOOL BUSES
2 WITH WINDOWS ALL THE WAY AROUND.

3 Q AND YOU FOUND OUT LATER MR. LOCHBAUM WAS IN THE VAN
4 THAT HAD WINDOWS ALL THE WAY AROUND?

5 A YES.

6 Q AND YOU SAID THAT YOU STOOD AT THE BOTTOM OF THE
7 DRIVEWAY KIND OF WAITING?

8 A YES.

9 Q AND YOU STOOD, YOU KIND OF WAITED. IS THAT CORRECT?

10 A YES SIR.

11 Q AND YOU STOOD AND YOU KIND OF WAITED. IS THAT CORRECT?

12 A YES SIR.

13 Q WITH YOUR ARMS BY YOUR SIDE?

14 A YES SIR.

15 Q WAS THERE ANY WAY FOR YOU TO HAVE BEEN SEEN STANDING
16 AT THE BOTTOM OF THE DRIVEWAY FROM INSIDE THE VAN?

17 A ABSOLUTELY.

18 Q AND YET, EVERYBODY KIND OF KEPT THEIR HEAD IN THE VAN
19 FOR A WHILE, DIDN'T THEY?

20 A YES SIR.

21 Q AND IT WASN'T UNTIL YOU HAD STOOD THERE FOR SOME TIME
22 THAT THEY DECIDED TO RECOGNIZE YOU?

23 A YES SIR.

24 Q IS THERE DOUBT IN YOUR MIND THAT ANYBODY SITTING IN
25 THAT VAN COULD HAVE BEEN ABLE TO SEE YOU ON THE ROADSIDE?

1 A OH, YEAH. THEY ALL HAD VISUAL OF ME, UNDERNEATH LIGHTS
2 FROM THE, YOU KNOW.

3 Q OKAY.

4 A THE MOON'S OUT.

5 Q AND MR. LOCHBAUM WAS SURPRISED WHEN YOU CAME UP TO
6 THE VAN?

7 A I NEVER WENT TO THE VAN.

8 Q BUT WHEN HE SAW YOU, HE WAS SURPRISED?

9 A YES.

10 Q THE SOLICITOR ASKED YOU ABOUT QUESTIONS I HAD POSED
11 REGARDING YOUR CALLS TO KERRIANN, THE NUMBER OF TIMES YOU
12 CALLED HER AND THE TIMES YOU CALLED HER. CORRECT?

13 A YES.

14 Q AND WAS THE PHONE NUMBER THAT YOU WERE USING THAT
15 NIGHT, 704-361-5995?

16 A THAT'S MY CELL PHONE, YES.

17 Q THAT'S YOUR CELL PHONE?

18 A YES.

19 Q AND ISN'T IT TRUE THAT THE STATE GOT A SEARCH WARRANT
20 FROM SPRINT CELLULAR TELEPHONE ON MAY 7 FOR THAT PHONE
21 NUMBER AND GOT ALL THE RECORDS?

22 A I GUESS THEY DID, YES.

23 Q AND GAVE THEM TO US.

24 A I GUESS, YES.

1 Q SO, THE STATE KNOWS EXACTLY WHEN YOU CALLED AND HOW
2 MANY TIMES, DOESN'T IT?

3 A THEY WOULD, YES.

4 MR. GREELEY: THAT'S ALL I HAVE, YOUR HONOR.

5 THE COURT: SOLICITOR.

6 MS. JOYNER: NOTHING FURTHER, YOUR HONOR.

7 THE COURT: YOU MAY STEP DOWN. FOLKS, I THINK WE'RE
8 GOING TO CALL IT QUILTS FOR THE DAY. AND WE WILL RESUME AT 9:30
9 SHARP TOMORROW. AGAIN, DO NOT DISCUSS THE CASE AMONG
10 YOURSELVES, WITH YOUR FAMILY, WITH YOUR FRIENDS OR WITH
11 ANYBODY. THANK YOU VERY MUCH, AND YOU'RE EXCUSED.

12 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4:54 P.M.)

13 ALL RIGHT, MR. RHEA, HOW MANY WITNESSES LEFT FOR YOU?

14 MR. RHEA: ONE OR TWO. YOU KNOW, I MIGHT HAVE TO...

15 THE COURT: ONE OR TWO?

16 MR. RHEA: I MIGHT TWEAK THAT.

17 THE COURT: ALL RIGHT. MR. GREELEY, HOW MANY DO YOU
18 HAVE?

19 MR. GREELEY: I DON'T KNOW AT THIS TIME. IT WOULD ONLY BE
20 ONE.

21 THE COURT: ONE. GOTCHA.

22 MR. GREELEY: IF I CALL ANY.

23 THE COURT: THAT'LL BE FINE. I'M READY NOW TO MAKE A
24 RULING ON PAGE 17 OF THE COURT'S CHARGES. I AM GOING TO
25 CHARGE THAT, AND I JUST ALL Y'ALL TO KNOW THAT.

1 MR. RHEA: THANK YOU, YOUR HONOR.

2 MS. JOYNER: THANK YOU, YOUR HONOR.

3 THE COURT: THANK YOU. I'LL SEE Y'ALL TOMORROW AT 9:30.

4 COURT IS ENDED FOR THE DAY.

5 (WHEREUPON COURT WAS IN RECESS AT 5:00 P.M.)

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C O P Y

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
PLAINTIFF,)
VERSUS) TRANSCRIPT OF RECORD
FRANCIS VICTOR LARMAND, JR.,) 09-GS-46-02833
LEO DAVID LEMIRE,) 09-GS-46-02834
DEFENDANTS.) 09-GS-46-02835
) 09-GS-46-02837
) 09-GS-46-02838
) 09-GS-46-02839

VOLUME III
OCTOBER 22, 2009
YORK, SOUTH CAROLINA

BEFORE:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE, AND A JURY

APPEARANCES:

FOR THE STATE:
ERIN JOYNER, ESQ., ASSISTANT SOLICITOR
JENNIFER COLTON, ASSISTANT SOLICITOR

FOR THE DEFENDANT, FRANCIS VICTOR LARMAND, JR.:
JOHN D. RHEA, ESQ.

FOR THE DEFENDANT, LEO DAVID LEMIRE:
LELAND GREELEY, ESQ.

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

1 **THURSDAY, OCTOBER 22, 2009 - COURT IN SESSION - 9:30 A.M.**

2 THE COURT: IS THE STATE READY?

3 MS. JOYNER: THE STATE IS READY, YOUR HONOR.

4 THE COURT: MR. RHEA?

5 MR. RHEA: THE DEFENSE IS READY, YOUR HONOR.

6 THE COURT: MR. GREELEY?

7 MR. GREELEY: READY, YOUR HONOR.

8 THE COURT: BRING IN THE JURY, PLEASE.

9 (WHEREUPON THE JURY ENTERED THE COURTROOM)

10 LADIES AND GENTLEMEN, WE'RE NOW READY TO RESUME THE
11 TRIAL. MR. RHEA, CALL YOUR NEXT WITNESS.

12 MR. RHEA: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
13 COURT. WE CALL LEO LEMIRE TO THE STAND.

14 **LEO DAVID LEMIRE, DULY SWORN,**
15 TESTIFIED AS FOLLOWS:

16 **DIRECT EXAMINATION BY MR. RHEA:**

17 Q PLEASE STATE YOUR FULL NAME FOR THE LADIES AND
18 GENTLEMEN OF THE JURY.

19 A LEO DAVID LEMIRE.

20 Q WHERE DO YOU LIVE, MR. LEMIRE?

21 A KANNAPOLIS, NORTH CAROLINA.

22 Q WHAT IS YOUR RELATIONSHIP WITH MY CLIENT, MR. FRANK
23 LARMAND?

24 A THAT'S MY BROTHER-IN-LAW.

25 Q KERRIANN LARMAND IS YOUR SISTER. IS THAT CORRECT?

- 1 A YES SIR.
- 2 Q HOW LONG HAVE YOU LIVED IN KANNAPOLIS?
- 3 A ABOUT TEN YEARS.
- 4 Q ARE YOU MARRIED?
- 5 A YES.
- 6 Q WHAT'S YOUR WIFE'S NAME?
- 7 A DONNA.
- 8 Q HOW LONG HAVE Y'ALL BEEN MARRIED?
- 9 A SINCE 1996.
- 10 Q DO Y'ALL HAVE ANY CHILDREN?
- 11 A YES.
- 12 Q WHAT ARE THEIR NAMES AND AGES?
- 13 A NICHOLAS, HE'S NINE.
- 14 Q TELL ME, WHAT KIND OF BUSINESS ARE YOU IN?
- 15 A IT'S A OFFICE FURNITURE BUSINESS, OFFICE CUBICLES AND
- 16 PARTITIONS, STUFF LIKE THAT.
- 17 Q WHAT IS THE NAME OF THE BUSINESS?
- 18 A L&L INSTALLATIONS OF NORTH CAROLINA.
- 19 Q WHO HELPS MANAGE THE COMPANY? IS YOUR WIFE INVOLVED
- 20 IN THE COMPANY?
- 21 A YES. MY WIFE ACTUALLY OWNS IT AND I RUN THE COMPANY
- 22 WITH HER. I MANAGE, I ACTUALLY MANAGE IT, YEAH. SHE DOES ALL
- 23 THE PAYROLL AND THE BOOKS. AND SHE GETS THE GLORIOUS PART
- 24 OF IT WITH THE CLIENTS AND MEETS THE CLIENTS. AND I'M DOWN IN
- 25 THE DITCHES WITH THE GUYS.

1 Q SO, IS IT MAINLY OFFICE FURNITURE? WHAT KIND OF
2 FURNITURE IS IT? WHAT ARE SOME PLACES YOU'VE...?

3 A WE ACTUALLY PUT THE FURNITURE IN THIS BUILDING, MOSS
4 COUNTY JUSTICE CENTER. WE ALSO DO FBI BUILDINGS, FORT BRAGG,
5 CAMP LEJEUNE, MILITARY BASES AROUND HERE. SOCIAL SECURITY.
6 WE DID IN ROCK HILL. WE DID THE POLICE DEPARTMENT, THE
7 COURTHOUSE, TELEPHONE COMPANY, IN ROCK HILL. SO, WE DO ALL
8 THE GOVERNMENT INSTALLATIONS AROUND THE AREA.

9 PRISONS, WE DO. I DID BUTNER PRISON. AND I'VE DONE PRISONS
10 DOWN IN SOUTH CAROLINA ALSO.

11 Q NOW, TURNING YOUR ATTENTION TO APRIL 30, ON THAT DATE
12 THIS YEAR. WHEN WAS THE FIRST TIME THAT YOU SAW YOUR
13 BROTHER-IN-LAW, FRANK, ON THAT DATE?

14 A UH...

15 Q IF YOU RECALL.

16 A PROBABLY AROUND NINE-ISH, A LITTLE EARLIER THAN NINE, I'D
17 SAY.

18 Q WHAT, IF ANYTHING, WAS SAID TO YOU? WHAT DID MR.
19 LARMAND SAY TO YOU?

20 A ACTUALLY, HE SEEN ME AT A INTERSECTION. I WAS ON MY WAY
21 TO MY SHOP AND WE HAPPEN TO CROSS AT AN INTERSECTION. AND
22 HE ASKED ME WHAT I WAS DOING. I SAID I WAS GOING TO MY SHOP.
23 HE ASKED ME IF I WANTED TO GO ON A STING. I SAID, YEAH, I'LL GO.
24 HE SAID, ALL RIGHT, MEET ME AT MY HOUSE.

25 Q WHAT DID YOU-- DO YOU KNOW MUCH ABOUT HIS BUSINESS?

1 A I JUST KNOW THAT THEY OPEN UP CAR DOORS. I NEVER BEEN
2 INTO IT THAT GREAT, YOU KNOW.

3 Q OKAY.

4 A I'VE HAD HIM OPEN UP MY CAR DOOR A COUPLE OF TIMES IN
5 THE PAST. MY GUYS HAVE HAD MY VANS-- THEY'VE LOCKED THEIR
6 KEYS IN THE VANS ON JOB SITES AND HE'S COME OUT AND OPENED
7 THEM UP FOR ME.

8 Q NOW, WE CAN'T REALLY PICK WHO ARE OUR SISTERS-IN-LAW OR
9 BROTHERS-IN-LAW ARE IN LIFE, WHO MARRY OUR SIBLINGS.
10 SOMETIMES WE HAVE GOOD RELATIONSHIPS, SOMETIMES NOT SO
11 GOOD. WHAT IS YOUR RELATIONSHIP WITH MR. LARMAND?

12 A IT'S GOOD. I ACTUALLY KNEW FRANK BEFORE HE KNEW MY
13 WIFE.

14 Q DO YOU MEAN YOUR SISTER?

15 A YEAH, I'M SORRY. MY SISTER, YEAH.

16 Q AND YOU'RE HAPPY WITH YOUR SISTER'S CHOICE, AND YOU
17 HAVE A GOOD-- DO YOU HAVE A GOOD RELATIONSHIP WITH MR.
18 LARMAND?

19 A YES SIR.

20 Q BEFORE WE GO ANY FURTHER, I WANT TO ASK YOU. YOU'RE
21 WALKING VERY GINGERLY UP TO THE WITNESS STAND. WHY IS THAT?

22 A I'VE GOT BACK PROBLEMS.

23 Q DID YOU IN FACT HAVE BACK PROBLEMS BACK ON THE NIGHT
24 OF APRIL 30 AND THE MORNING OF MAY 1 OF THIS YEAR?

25 A YES SIR.

1 Q HAVE YOU HAD SURGERY?

2 MS. JOYNER: YOUR HONOR, I'M GOING TO OBJECT TO HIM
3 LEADING.

4 THE COURT: SUSTAINED. REPHRASE.

5 A YES, I---

6 Q HOW DID YOUR BACK PROBLEMS OCCUR?

7 A WELL, LIKE I SAID, DOING FURNITURE FOR GOING ON TWENTY
8 YEARS NOW, IT'S BEEN BEAT UP. SO, I THINK IT WAS DECEMBER I HAD
9 BACK SURGERY. I HAD A DISC EXPLODE AND A PIECE OF A DISC
10 EMBEDDED IN MY SPINAL CORD. SO THEY HAD TO GO IN AND MOVE
11 THE NERVES TO PULL THE PIECE OF DISC OUT FROM MY SPINAL CORD.
12 AND I'VE GOT SOME NERVE DAMAGE LEFT OVER FROM THE SURGERY.

13 Q WHEN APPROXIMATELY WAS THAT SURGERY?

14 A DECEMBER 20, OF '08.

15 Q OKAY. SO, WERE YOU STILL ON SOME PAIN ON THE NIGHT OF
16 APRIL 30?

17 A YEAH. I WAS DOWN TO, LIKE, ABOUT THREE TO FOUR DAYS I
18 COULD GO WITHOUT MY CANE THEN. I WAS GETTING BETTER.

19 Q AND ACTUALLY, AFTER YOU WERE ARRESTED IN THE BOOKING
20 REPORT, THEY ASKED YOU WHEN YOU WERE IN JAIL IF YOU HAD ANY
21 PROBLEMS OR WHAT NOT---

22 MS. JOYNER: YOUR HONOR, I OBJECT.

23 THE COURT: ON WHAT GROUNDS?

426

1 MS. JOYNER: FIRST OF ALL, I HAVEN'T SEEN WHAT HE'S
2 SHOWING HIM, AND HE'S ASKING HIM TO READ FROM A DOCUMENT
3 THAT IS NOT IN EVIDENCE.

4 MR. RHEA: YOUR HONOR, THIS WAS PRODUCED BY THE STATE IN
5 DISCOVERY, THE BOOKING REPORT.

6 MS. JOYNER: YES SIR, YOUR HONOR. HE CAN TESTIFY TO HIS
7 CONDITION, BUT HE CAN'T TESTIFY FROM A REPORT THAT HE DIDN'T
8 PREPARE.

9 THE COURT: SUSTAINED.

10 Q WHEN THEY ASKED YOU IF YOU HAD ANY PROBLEMS, WHAT DID
11 YOU TELL THEM?

12 A WHEN WAS THAT? WHEN I GOT ARRESTED?

13 Q WHEN YOU WERE IN JAIL, YES SIR.

14 A WHEN I WAS IN JAIL?

15 Q DID YOU TELL THEM YOU HAD RECENT BACK SURGERY?

16 A YES SIR.

17 Q OKAY. NOW, YOU SAID THAT YOU SAW YOUR BROTHER-IN-LAW,
18 MR. LARMAND, AT---

19 MS. JOYNER: YOUR HONOR, I HAVE TO OBJECT. HE'S LEADING
20 AGAIN.

21 THE COURT: SUSTAINED.

22 Q WHAT DID MR. LARMAND SAY TO YOU ABOUT THE STING?

23 MS. JOYNER: I'M GOING TO OBJECT TO HEARSAY, YOUR HONOR.

24 THE COURT: SUSTAINED.

25 MR. RHEA: YOUR HONOR, MAY WE APPROACH?

1 THE COURT: YES SIR.

2 (WHEREUPON A BENCH CONFERENCE TOOK PLACE)

3 THE OBJECTION IS OVERRULED.

4 MR. RHEA: THANK YOU, YOUR HONOR.

5 MS. JOYNER: THANK YOU, YOUR HONOR.

6 Q WHAT DID FRANK SAY TO YOU ABOUT THIS ALLEGED STING?

7 A JUST SAID THAT WE WERE GOING TO KNIGHTS' STADIUM AND HE
8 WANTED TO KNOW IF I WANTED TO GO WITH HIM. I SAID YEAH.

9 Q NOW, YOU PREVIOUSLY STATED THAT YOU DIDN'T KNOW MUCH
10 ABOUT THE BUSINESS. IS THAT CORRECT?

11 A YEAH. I DON'T KNOW MUCH ABOUT THE INTERNAL WORKINGS.
12 I DON'T KNOW ANYTHING ABOUT THE INTERNAL WORKINGS. I KNOW,
13 LIKE I SAID, THAT THEY UNLOCK CAR DOORS AND DO LOCKSMITH
14 WORK.

15 Q DID YOU KNOW WHAT HE MEANT WHEN HE SAID THAT IT WAS A
16 STING?

17 A YEAH. I KIND OF FIGURED THAT THEY WERE TRYING TO FIGURE
18 OUT SOMETHING. I MEAN, STING IS PRETTY SELF-EXPLANATORY.

19 Q WHAT---

20 A YOU KNOW, LIKE IN BUSINESS TRYING TO FIGURE SOMETHING
21 OUT.

22 Q WHAT DID YOU THINK IN YOUR MIND THAT HE WAS
23 ATTEMPTING TO ACCOMPLISH?

24 A PROBABLY TRYING TO FIGURE OUT IF SOMEBODY WAS
25 STEALING FROM HIM.

- 1 Q DID HE SAY ANY MORE SPECIFICS ABOUT THE STING?
- 2 A JUST THAT WE WERE GOING TO KNIGHTS' STADIUM, AND WE
- 3 WERE GOING TO PUT IN A CALL AND WE WERE GOING TO USE MY
- 4 PHONE.
- 5 Q OKAY.
- 6 A AND I WAS GONNA BE THE CALL BACK PERSON.
- 7 Q DO YOU RECALL HIM MENTIONING THE NAME, RYAN
- 8 LOCHBAUM?
- 9 A NO.
- 10 Q SO, WHAT HAPPENED WHEN YOU GOT TO KNIGHTS' STADIUM?
- 11 A HE CALLED AND WE SAT THERE FOR A WHILE, AND SAT THERE
- 12 FOR A WHILE. AND THEN HE CALLED BACK KERRIANN AND I GUESS
- 13 SHE PUT IN THE ETA. AND A LITTLE BIT AFTER THAT THE PHONE
- 14 RANG.
- 15 Q LET'S BACK UP JUST A LITTLE BIT IF WE CAN.
- 16 A ALL RIGHT.
- 17 Q DID YOU HAVE A GUN WITH YOU?
- 18 A YES, I DID.
- 19 Q DID YOU HAVE A GUN WITH YOU WHEN MR. LARMAND SAW YOU
- 20 AT THE INTERSECTION?
- 21 A YES, I DID.
- 22 Q AFTER YOU SAW HIM AT THE INTERSECTION, DID YOU GO PARK
- 23 YOUR CAR SOMEWHERE OR SOMETHING LIKE THAT?
- 24 A I WENT TO HIS HOUSE.
- 25 Q YOU WENT TO FRANK'S HOUSE?

1 A YES.

2 Q WHAT DID YOU DO WITH YOUR GUN?

3 A WHEN WE GOT TO THE HOUSE, WE PULLED UP. AND HE KIND OF
4 LIVES ON A CUL-DE-SAC AT THE END. HE'S THE ONLY HOUSE DOWN
5 THERE. AND HE WAS GOING IN TO TALK TO HIS DAUGHTER BECAUSE
6 IT WAS HER CURFEW WHEN SHE GETS HOME. AND HE SAID, JUMP IN
7 THE FOUR RUNNER, IN ASHLEY'S TRUCK. AND---

8 Q IS ASHLEY HIS DAUGHTER?

9 A YES.

10 Q OKAY, CONTINUE.

11 A SO, FRANK RAN IN THE HOUSE, TALKED TO ASHLEY. AND I
12 GRABBED MY STUFF AND JUMPED IN FRANK'S TRUCK. AND I PUT THE
13 GUN UNDER THE SEAT.

14 Q WHEN YOU SAY, GRABBED YOUR STUFF, WHAT DO YOU MEAN?

15 A I GRABBED MY PHONE. SEE, I WAS GOING TO MY SHOP, MY SHOP
16 TO DROP OFF PER DIEM. AND I HAD TO GO BECAUSE MY GUYS WERE
17 LEAVING TO GO TO CAMP LEJEUNE THE NEXT DAY, AND CAMP
18 LEJEUNE'S LIKE A FIVE HOUR RIDE. AND THEY GOT TO BE DOWN
19 THERE AT 8:00 TO MEET THE ROADWAY TRUCKS AT CAMP LEJEUNE.
20 SO, THEY GOT TO LEAVE OUT OF THE SHOP ABOUT 3:00, 3:30 IN THE
21 MORNING.

22 SO, WHAT I DO IS I GO DOWN THERE AND I GIVE THEM ALL THEIR
23 PER DIEM MONEY FOR BEING OUT OF TOWN AT THE HOTELS. AND I
24 PUT THEM IN THE VAN. I TRY TO DO IT AT THE LAST MINUTE BECAUSE
25 OUR WAREHOUSE IS IN A KIND OF HIGH CRIME AREA. SO, I TRY TO GO

1 DOWN THERE AT THE LAST MINUTE. PLUS, YOU KNOW, BEING A
2 SMALL BUSINESS WE ACTUALLY DON'T HAVE THE CASH FLOW AND
3 SOMETIMES I GOT TO WAIT TILL THE LAST MINUTE TILL I GET THE
4 MONEY TOGETHER. THAT'S JUST THE WAY IT HAPPENS SOMETIMES.

5 SO, I HAD THE PER DIEM MONEY. I HAD MY PHONE, MY
6 CIGARETTES AND MY GUN AND I GRABBED MY STUFF AND I THREW IT
7 IN THE TRUCK, THREW IT UNDER THE SEAT. FRANK CAME OUT
8 AFTERWARDS WHEN HE WAS DONE TALKING TO WHOEVER HE WAS
9 TALKING TO IN THE HOUSE, WHICH I ASSUME WAS ASHLEY.

10 Q SO, AM I CORRECT IN UNDERSTANDING THAT HAD YOU NOT
11 SEEN FRANK---

12 MS. JOYNER: OBJECTION TO LEADING, YOUR HONOR.
13 THE COURT: REPHRASE.

14 Q WAS THAT JUST A HAPPENSTANCE, MEETING WITH YOUR
15 BROTHER-IN-LAW?

16 A ACTUALLY, YEAH, IT WAS. YEP. BECAUSE I WAS GOING TO MY
17 SHOP.

18 Q AND THAT'S WHY-- IS THAT WHY YOU HAD THE GUN?

19 A YEAH. THAT'S WHY. THE PISTOL ACTUALLY GOES TO MY SHOP.
20 I ACTUALLY BRING IT TO MY SHOP. IT'S USUALLY IN MY DRAWER ON
21 A DAY TO DAY. THAT'S WHERE IT GOES. I LEAVE IT IN MY DESK
22 DURING THE DAY. BECAUSE, AS I SAID, IT IS IN A HIGH CRIME AREA.
23 WE'VE HAD PROBLEMS DOWN THERE BEFORE WITH STUFF.

24 Q DID YOUR BROTHER-IN-LAW EVER TELL YOU, LEO, BRING A
25 PISTOL WITH YOU?

1 A NO SIR.

2 Q DID YOU EVER TELL FRANK THAT YOU HAD THE PISTOL?

3 A NO SIR.

4 Q DID HE EVER ASK YOU, DO YOU HAVE A PISTOL?

5 A NO.

6 Q AND WHERE DID YOU PUT THE GUN?

7 A UNDER MY SEAT.

8 Q AND WHERE WAS MR. LARMAND AT THAT TIME?

9 A IN THE HOUSE.

10 Q DURING THE RIDE DOWN TO KNIGHTS' STADIUM, WHAT DID
11 Y'ALL TALK ABOUT, IF YOU RECALL?

12 A ACTUALLY, WE WERE TALKING ABOUT SPOILING OUR KIDS.
13 FRANK COME OUT OF THE HOUSE AND GOT IN THE TRUCK AND WAS
14 ACTUALLY COMPLAINING ABOUT ASHLEY. HE HAD JUST GOT DONE
15 TALKING WITH HER. AND HE WAS COMPLAINING ABOUT HER NOT
16 BEING HAPPY ABOUT SOMETHING ABOUT THE CURFEW. AND HE WAS
17 COMPLAINING HE'S WORKING ON HER TRUCK ALL DAY, AND - I'M
18 SORRY, EXCUSE MY LANGUAGE - SHE WAS BITCHING ABOUT THIS AND
19 BITCHING ABOUT THAT.

20 SO, WE TALKED ABOUT HER A LITTLE BIT. AND HOW THEY SPOIL
21 THEIR KIDS AND HOW ME AND MY WIFE SPOIL OUR KID. AND YOU
22 KNOW, THAT'S ABOUT IT. BASICALLY, COMPLAINING ABOUT THE KIDS
23 MOST OF THE WAY. NOT COMPLAINING ABOUT THEM, BUT JUST
24 TALKING ABOUT HOW WE'VE RAISED THEM AND STUFF LIKE THAT.
25 AND DAVE WITH HIS ARM GOING THROUGH SURGERY WITH BEING

1 PITCHING, IF HE WAS GONNA GET-- A SCOUT WAS LOOKING AT HIM
2 FROM THE CHICAGO WHITE SOCKS ACTUALLY. SO, WE WERE TALKING
3 A LITTLE BIT ABOUT THAT.

4 Q SO, IS IT SAFE TO SAY THIS WAS BASICALLY FAMILY TALK?

5 A YEAH.

6 Q YOU WERE TALKING ABOUT YOUR CHILDREN?

7 A YEAH.

8 Q DID YOU EVER TALK ABOUT HAVING A GUN?

9 A NO.

10 Q DID YOU EVER TALK ABOUT CONSPIRING TO DO SOMETHING TO
11 RYAN, AN INDIVIDUAL BY THE NAME OF RYAN LOCHBAUM?

12 A NO.

13 Q HAD YOU EVER HEARD THE NAME, RYAN LOCHBAUM, BEFORE,
14 AS AN EMPLOYEE OF FRANK AND YOUR WIFE'S COMPANY, JUST
15 HEARING IT BY CHANCE?

16 A YEAH. HE ACTUALLY OPENED ME UP YEARS AGO. HE TESTIFIED
17 THE OTHER DAY I HEARD ABOUT TIME WARNER CABLE. I DON'T
18 RECALL THAT. HE OPENED ME UP HALLOWEEN A COUPLE YEARS
19 BACK. I REMEMBER I WAS TRICK OR TREATING WITH MY SON AND MY
20 FAMILY AND HE CAME OUT ON HALLOWEEN UP IN HUNTERSVILLE AND
21 HE OPENED ME UP AT NIGHT. AND THAT WAS REALLY THE ONLY TIME
22 I REMEMBER.

23 NOW, WHETHER HE WENT TO TIME WARNER CABLE, BECAUSE
24 TIME WARNER CABLE IS ONE OF OUR CLIENTS WITH THE COMPANY.
25 HE MIGHT HAVE WENT THERE AND OPENED UP ONE OF OUR GUYS IN

1 MY VAN. BUT I REMEMBER HIM SPECIFICALLY OPENING UP US. THAT'S
2 THE FIRST TIME I EVER MET HIM AND THE ONLY TIME I EVER MET HIM.
3 AND THAT WAS QUITE A FEW YEARS AGO, HALLOWEEN, BECAUSE I
4 REMEMBER MY SON WAS REALLY YOUNG WHEN WE WENT IN
5 HUNTERSVILLE. SO, THAT'S THE ONLY TIME I EVER MET HIM.

6 Q DO YOU EVER REMEMBER MR. LARMAND SAYING THAT THIS
7 STING WAS FOR THE PURPOSE OF GETTING THIS PERSON WHO YOU
8 HAD COME IN CONTACT WITH BEFORE, RYAN LOCHBAUM?

9 A NO SIR.

10 Q SO, YOU GET TO KNIGHTS' STADIUM. WHAT HAPPENS THEN?

11 A HE DID STUFF, TALKED ON THE PHONE TO KERRIANN. AND I
12 GUESS THEY MADE THE CALL.

13 Q WHEN YOU SAY TALKED ON THE PHONE TO KERRIANN, WHAT
14 KIND OF-- BUSINESS CALLS OR WHAT?

15 A I REALLY WASN'T PAYING ATTENTION. I WAS WATCHING MY TV
16 ON MY PHONE. MY SON GOT THIS THING, HE USED TO WATCH HANNAH
17 MONTANA. SO, I GET TO WATCH THESE SPRINT SHOWS. SO, I WAS
18 ACTUALLY WATCHING GHOST HUNTERS ON THE SCIFI CHANNEL
19 WHILE HE WAS TALKING TO HER ON THE PHONE.

20 Q BUT AT SOME JUNCTURE DID YOU ACT AS A---

21 A OH, YEAH, YEAH.

22 Q ---BAIT.

23 A ONCE HE SAID THE CALL WENT THROUGH, THAT'S WHEN I SAT
24 AND WAITED BECAUSE I WAITED FOR MY PHONE TO GO OFF.

25 Q OKAY.

1 A BUT WHEN WE FIRST GOT THERE, WHEN WE WERE ACTUALLY
2 GETTING THERE, DRIVING ON THE WAY UP, I WAS WATCHING IT, ON
3 THE PHONE.

4 Q OKAY. SO, TELL THE LADIES AND GENTLEMEN OF THE JURY
5 ABOUT YOUR PART OF THE MYSTERY CALL AND YOUR PARTICIPATING
6 IN THAT.

7 A THE PHONE RANG AND A GUY SAID I'M CALLING FOR POP-A-
8 LOCK AND HE ASKED FOR THE GIRL. AND I SAID, WELL, I'M HER
9 BOYFRIEND. I SAID SHE'S ACTUALLY GONE BACK INTO THE STADIUM
10 TO GET SOME MORE OF OUR FRIENDS. BECAUSE, ACTUALLY, WHEN
11 THE CALL CAME IN, THE GAME WAS JUST GETTING OVER AND PEOPLE
12 WERE COMING OUT.

13 I SAID, SHE'S GETTING OUR FRIENDS. I SAID, BUT WE'RE HERE.
14 AND HE SAID, DO YOU HAVE A CREDIT CARD NUMBER. AND I SAID, NO,
15 I DON'T HAVE A CREDIT CARD NUMBER. AND I SAID I'M PAYING CASH.
16 AND HE SAID ALL RIGHT, AND THEN HE HUNG UP. AND THAT WAS IT.

17 Q DID YOU FEEL LIKE THE CALL WENT WELL?

18 A YES.

19 Q THAT IT WORKED OR NOT?

20 A YES.

21 Q WAS THERE ANY WAY FOR YOU TO KNOW?

22 A NO. HE JUST SAID, OKAY, WE'RE ON OUR WAY, SOMEONE WILL
23 BE OUT THERE.

24 Q DID YOU KNOW WHO THIS PERSON WAS THAT YOU WERE
25 TALKING TO?

1 A NO. HE JUST SAID, I'M CALLING FOR POP-A-LOCK.

2 Q AND THEREAFTER, DID FRANK TALK TO KERRIANN AGAIN
3 WHILE YOU WERE WAITING?

4 A YES. A LITTLE WHILE WENT BY AND HE CALLED BECAUSE
5 NOBODY SHOWED UP.

6 Q WHAT WERE YOU WEARING THAT NIGHT?

7 A BLACK SHIRT, BLACK PANTS.

8 Q WAS THAT BY DESIGN TO DO THAT?

9 A NO.

10 Q WHY WERE YOU DRESSED IN BLACK?

11 A THAT'S WHAT I USUALLY WEAR.

12 Q DID MR. LARMAND TELL YOU, LEO, DRESS ALL IN BLACK SO WE
13 CAN BE HARD TO SEE IN THE DARK, OR ANYTHING LIKE THAT?

14 A NO. IT'S ACTUALLY KIND OF A VANITY THING. THEY ALWAYS
15 SAY BLACK KIND OF MAKES YOU LOOK A LITTLE THINNER. I HATE TO
16 SAY THAT, BUT YOU KNOW, THAT'S USUALLY THE WAY IT IS.

17 Q SO, THAT'S WHY---

18 A I WEAR DARK COLORS, YEAH.

19 Q WERE YOU WEARING THOSE SAME BLACK CLOTHES AT THE
20 INTERSECTION WHEN YOU BY HAPPENSTANCE SAW YOUR BROTHER-
21 IN-LAW AND HE ASKED YOU TO COME ALONG?

22 A SAY THAT AGAIN?

23 Q DID YOU EVER CHANGE CLOTHES---

24 A OH, NO.

- 1 Q ---BETWEEN THE TIME THAT YOU SAW FRANK AT THE
2 INTERSECTION?
- 3 A NO.
- 4 Q HAD YOU TOLD MR. LARMAND THAT MORNING WHAT YOU
5 WERE GONNA WEAR TO WORK?
- 6 A NO.
- 7 MS. JOYNER: YOUR HONOR, I HAVE TO OBJECT TO THE LEADING
8 QUESTIONS.
- 9 THE COURT: SUSTAINED.
- 10 MR. RHEA: YOUR HONOR, MAY WE APPROACH?
- 11 THE COURT: YES SIR.
- 12 (WHEREUPON A BENCH CONFERENCE TOOK PLACE)
- 13 Q MR. LEMIRE, ---
- 14 A YES SIR.
- 15 Q ---HOW LONG DID YOU AND YOUR BROTHER-IN-LAW WAIT AT
16 KNIGHTS' STADIUM TO SEE IF SOMEONE FROM POP-A-LOCK ARRIVED
17 ON THE MYSTERY SHOPPER CALL?
- 18 A PROBABLY ABOUT AN HOUR.
- 19 Q WHAT DO YOU RECALL FRANK SAYING DURING THAT TIME?
- 20 A WHAT DO YOU MEAN, SAYING?
- 21 Q WITH REGARD TO ANYTHING REGARDING THE MYSTERY
22 SHOPPER CALL.
- 23 A REGARDING THAT, JUST THAT WE HAD TO WAIT. NOBODY
24 SHOWED UP AND THAT WAS ABOUT IT. HE WAS TALKING TO
25 KERRIANN. HE CALLED KERRIANN BACK AND SHE CALLED BACK IN

1 AGAIN. WE DIDN'T REALLY TALK ABOUT THE MYSTERY CALL. WE
2 TALKED ABOUT THE KIDS.

3 AND ACTUALLY, I THINK I WAS TALKING ABOUT, STARTED
4 TALKING ABOUT BASEBALL AND JOSE CONSECO, I WAS TALKING
5 ABOUT HIM.

6 Q DID MR. LARMAND EVER DISCUSS WITH YOU WHAT WOULD
7 HAPPEN IF SOMEONE SHOWED UP, EITHER FROM POP-A-LOCK OR NOT
8 FROM POP-A-LOCK?

9 A YEAH.

10 Q WHAT DID HE SAY?

11 A HE SAID HE WAS GONNA GET PROOF AND HE WOULD HAVE
12 PROOF OF WHO IT WAS. HE WAS GONNA TRY TAKING A PICTURE OF
13 THE VEHICLE. THAT'S WHY WE WERE UNDER THE LIGHTS, SO HE
14 COULD GET A NICE LOOK AT HIM, AT THE VEHICLE.

15 Q DID HE HAVE A CAMERA?

16 A UH-HUH, CAMERA PHONE.

17 Q A CAMERA PHONE?

18 A YEAH.

19 Q NOW, TELL ME, WAS THE GAME JUST CONCLUDING AT KNIGHTS'
20 STADIUM?

21 A I BELIEVE SO. I MEAN, PEOPLE WERE COMING OUT.

22 Q WAS THE PARKING-- HOW FULL OR UN-FULL WAS THE PARKING
23 LOT?

24 A IT WAS-- AT ONE POINT IT HAD GOTTEN PRETTY FULL AND THEN
25 IT KIND OF FADED OFF. BUT, YEAH, THERE WAS PEOPLE COMING OUT.

1 Q OKAY. WOULD YOU AGREE WITH THE APPROXIMATE TIMES
2 THAT HAVE BEEN INTRODUCED IN THE TRIAL AS TO WHEN THAT WAS,
3 TO YOUR RECOLLECTION?

4 A YEAH, I'D SAY CLOSE TO THAT. I WASN'T REALLY PAYING
5 ATTENTION AT THE TIME. I WAS KIND OF ALONG FOR THE RIDE.

6 Q OKAY. WHAT WAS FRANK'S REACTION WHEN NO ONE SHOWED
7 UP?

8 A A LITTLE AGITATED.

9 Q WHAT DID HE SAY TO YOU ABOUT THAT, IF YOU RECALL?

10 A I DON'T REALLY RECALL WHAT HE SAID. I THINK IT WAS
11 MOSTLY JUST FOR THE FACT OF HAVING TO GO OUT THERE. HE WAS
12 RUNNING THE OTHER BUSINESS AND STUFF, YOU KNOW. HE DIDN'T
13 REALLY WANT TO BE PART OF POP-A-LOCK.

14 Q OKAY. SO, THEN WHAT DID HE SAY?

15 A HE HAD TO GET GAS.

16 Q WHERE'D Y'ALL GO?

17 A CAROWINDS BOULEVARD.

18 Q WHO PUMPED THE GAS?

19 A FRANK.

20 Q DID YOU LEAVE THE VEHICLE?

21 A NO.

22 Q YOU HAD YOUR CELL PHONE. WHERE WAS THAT?

23 A THE CELL PHONE WAS ON THE CONSOLE.

24 Q YOUR SMOKES?

25 A SMOKES, ON THE FLOOR.

1 Q UNDERNEATH THE SEAT?

2 A NO, ACTUALLY, NO, MY SMOKES WERE ON THE CONSOLE.

3 Q OKAY. YOUR GUN?

4 A UNDER THE SEAT.

5 Q THEN WHERE'D Y'ALL GO?

6 A THEN WE PULLED OUT AND HE ASKED ME IF I WANTED TO GO
7 FOR A RIDE WITH HIM.

8 Q DID HE SAY WHERE TO?

9 A YES.

10 Q WHAT DID HE SAY IN FACT?

11 A HE SAID HE WANTED TO TAKE A RIDE OUT TO RYAN'S HOUSE.

12 Q IS THAT THE FIRST TIME YOU HAD HEARD MR. LOCHBAUM'S
13 NAME MENTIONED ON THAT NIGHT?

14 A YES SIR.

15 Q AND DID HE SAY WHAT THE PURPOSE WAS FOR GOING TO MR.
16 LOCHBAUM'S HOUSE?

17 A YEAH. HE SAID SOMETHING ABOUT HE WANTED TO SEE-- THERE
18 WAS A RED CAR THAT WAS SEEN DRIVING AROUND WITH POP-A-LOCK
19 MAGNETS ON IT. AND HE WANTED TO GO UP THERE AND SEE IF THAT
20 WAS THERE OR IF ANY PEOPLE THAT WORKED FOR MY SISTER WERE
21 UP THERE HANGING OUT WITH HIM.

22 Q WHAT ELSE DID HE TELL YOU?

23 A THAT THE ONLY OTHER THING HE SAID WAS HE DIDN'T KNOW
24 WHERE IT WAS. HE WAS GONNA CALL KERRIANN AND GET
25 DIRECTIONS TO WHERE IT WAS.

1 Q DID HE IN FACT DO SO?

2 A YES.

3 Q SO, WHAT DID Y'ALL TALK ABOUT ON THE RIDE FROM
4 CAROWINDS BOULEVARD TO ROCK HILL? IF YOU RECALL.

5 A NOT TOO MUCH BECAUSE HE WAS ON THE PHONE A LOT WITH
6 MY SISTER TALKING BACK AND FORTH. I WAS ACTUALLY PLAYING
7 WITH MY PHONE.

8 Q DID HE EVER TELL YOU HE WANTED YOU TO PULL A GUN ON
9 RYAN LOCHBAUM?

10 A NO, ABSOLUTELY NOT.

11 Q DID HE EVER TELL YOU HE WANTED YOU TO HELP HIM IN A
12 FIGHT BEAT UP RYAN LOCHBAUM?

13 A NO.

14 Q SO, WHAT HAPPENED WHEN YOU GOT THERE?

15 A WE PULLED IN AND CAME AROUND THE CORNER. AND FRANK
16 HAD SEEN HIS VAN IN THE DRIVEWAY, AND HE SAID RYAN MUST BE
17 HOME. AND HE WENT PAST HIS HOUSE, AND HE LOOKED OVER AT ME
18 AND SAID, WELL, I'M JUST GONNA GO AND TALK TO HIM. IT WAS KIND
19 OF QUICK. HE SAID, I'M JUST GONNA GO AND TALK TO HIM. HE SAID,
20 JUST STAY HERE AND I'LL BE BACK. SO, HE PULLED OVER AND GOT
21 OUT AND HE WENT DOWN THERE.

22 Q BACKING UP JUST A LITTLE BIT, MR. LEMIRE. APPROXIMATELY
23 HOW MANY PHONE CALLS WOULD YOU GUESS, IF YOU RECALL, YOUR
24 BROTHER-IN-LAW MADE TO YOUR SISTER ON THE WAY DOWN THERE?

1 A OH, GOD. TO BE HONEST WITH YOU, I REALLY DON'T-- I'M
2 GONNA SAY I REMEMBER TWO BECAUSE I WAS WATCHING, LIKE I
3 SAID, I WAS WATCHING THE PHONE. I WASN'T PAYING ATTENTION AT
4 THAT POINT.

5 Q WAS IT DIFFICULT FOR FRANK, IN YOUR OPINION, TO FIND THE
6 LOCATION?

7 A YEAH. I ACTUALLY-- I REMEMBER WE WENT BY IT. I
8 REMEMBER WE WENT BY IT ONCE AND HE HAD TO TURN AROUND. I
9 REMEMBER HIM TURNING AROUND.

10 Q NOW, WHEN YOU RODE BY, WHAT DID YOU OBSERVE OF THE
11 PEOPLE OUTSIDE? OR DID YOU? WERE YOU PAYING ATTENTION AT
12 THAT JUNCTURE?

13 A AT THAT POINT, I JUST, I CAUGHT THE VAN. BECAUSE HE WENT
14 AROUND THE CORNER, AND IT WAS EVIDENTLY, LIKE, RIGHT THERE
15 WHEN WE WENT AROUND THE CORNER. IT WASN'T-- IT WAS REAL
16 QUICK. AND I CAUGHT THE VAN WHEN HE WENT BY IT.

17 Q WHAT DO YOU MEAN WHEN YOU SAY YOU CAUGHT THE VAN?

18 A I CAUGHT THE VAN OUT OF THE CORNER OF MY EYE.

19 Q OKAY.

20 A UH-HUH.

21 Q AND HOW DID YOU RECOGNIZE IT?

22 A I DIDN'T EVEN RECOGNIZE IT. I DIDN'T KNOW WHAT HE DROVE.

23 Q WELL, HOW---

1 A FRANK CAUGHT THE VAN. FRANK SEEN-- FRANK SAID, HE MUST
2 BE HOME. AND I CAUGHT THE VAN OUT OF THE CORNER OF MY EYE.
3 HE SAID THAT'S HIS VAN.

4 Q OKAY.

5 A AND WE WERE ACTUALLY ALREADY GOING BY IT WHEN I SEEN
6 IT.

7 Q DID YOU SEE PEOPLE STANDING AROUND THE VAN?

8 A WHEN I TURNED, I SEEN ONE, I THOUGHT I SEEN ONE PERSON
9 THROUGH THE WINDOW BECAUSE HIS LIGHT WAS ON ON THE OTHER
10 SIDE OF THE VAN. SO, YOU COULD SEE, LIKE, THROUGH THE WINDOWS
11 OF THE VAN. BUT I DIDN'T KNOW WHO IT WAS, NO CLUE.

12 Q WERE THERE HOUSE LIGHTS ON?

13 A AT THAT POINT, I DIDN'T KNOW. I SEEN DRIVEWAY LIGHTS. I
14 SEEN THE DRIVEWAY LIT UP BECAUSE THAT'S WHERE I CAUGHT THE
15 VAN.

16 Q OKAY. AND SO, YOU HEARD, AND THE TESTIMONY WAS, IN
17 TERMS OF WHERE Y'ALL PARKED. IF YOU WOULD, PLEASE STEP DOWN.

18 (WHEREUPON WITNESS EXITED WITNESS STAND FOR
19 DEMONSTRATION WITH STATE'S EXHIBIT NUMBER FIVE)

20 JUST USE THAT POINTER. WHERE DID FRANK PARK THE FOUR
21 RUNNER?

22 A (INDICATES AREA ON STATE'S EXHIBIT NUMBER FIVE)

23 Q WHAT WAS SAID BETWEEN YOU AND MR. LARMAND AT THAT
24 POINT IN TIME WHEN THE VAN WAS PARKED-- I MEAN, WHEN FRANK
25 PARKED THE FOUR RUNNER?

1 A HE SAID WAIT HERE, I'M GONNA GO TALK TO HIM.

2 Q IS THAT ALL HE SAID?

3 A YES SIR.

4 Q DID HE SAY TO COVER HIM?

5 A NO.

6 MS. JOYNER: OBJECTION, YOUR HONOR, TO LEADING.

7 THE COURT: SUSTAINED.

8 Q YOU CAN TAKE YOUR SEAT.

9 (WHEREUPON WITNESS RETURNED TO WITNESS STAND)

10 ANYTHING ELSE THAT YOUR BROTHER-IN-LAW SAID?

11 A NO.

12 Q SO, THEN, WHAT HAPPENED?

13 A I WAS SITTING THERE AND THEN I HEARD A LOUD VOICE AND
14 SOME SWEARING. AND IT WASN'T MY BROTHER-IN-LAW'S VOICE. SO, I
15 GOT OUT OF THE CAR, OUT OF THE TRUCK. AND I GRABBED MY GUN
16 AND I WALKED DOWN THERE.

17 Q WHAT WAS YOUR UNDERSTANDING OF WHY, BASED ON WHAT
18 YOUR BROTHER-IN-LAW SAID TO YOU, WHY HE WAS GOING TO TALK
19 TO MR. LOCHBAUM?

20 A HE WAS GOING TO-- HE DIDN'T SAY WHY HE WAS GOING TO
21 TALK TO HIM. HE DIDN'T TELL ME WHY HE WAS GOING. HE JUST SAID
22 HE WAS GONNA GO AND TALK TO HIM.

23 Q DID YOU HAVE IN YOUR MIND THAT MR. LOCHBAUM WAS
24 SOMEONE THAT FRANK WAS AGITATED WITH?

25 A NO, I DIDN'T KNOW.

1 Q SO, YOU HEARD VOICES, OR A VOICE, YOU SAID. DID YOU KNOW
2 WHOSE VOICE IT WAS?

3 A NO. I KNOW IT WASN'T FRANK'S, THOUGH.

4 Q SO, THEN WHAT HAPPENED?

5 A I GOT OUT OF MY CAR AND GRABBED MY PISTOL AND I WENT
6 DOWN THERE.

7 Q WHY?

8 A BECAUSE I WAS SCARED.

9 Q SCARED FOR WHO?

10 A I WANTED TO MAKE SURE HE WAS ALL RIGHT.

11 Q SO, THEN WHAT HAPPENED?

12 A WHEN I WALKED DOWN THERE---

13 Q EXCUSE ME. I DON'T WANT TO HAVE YOU GET UP AGAIN. BUT IF
14 YOU CAN TELL, BY WHAT ROUTE DID YOU WALK TO GO TO MR.
15 LOCHBAUM'S RESIDENCE?

16 A I WALKED DOWN THE STREET, KIND OF ON THE OPPOSITE SIDE
17 OF THE STREET.

18 Q OF GENTLE BREEZE?

19 A YES.

20 Q ALL RIGHT.

21 A I STAYED ON THE STREET, WALKED DOWN THE STREET.

22 Q OKAY.

23 A AND WHEN I GOT DOWN THERE I COULD HEAR THEM SWEARING.
24 AND RYAN - NOW I KNOW AT THE TIME - WAS GETTING PRETTY LOUD.
25 AND BY THE TIME I GOT DOWN THERE FRANK WAS WALKING UP

1 TOWARDS THE CAR AGAIN. AND RYAN WAS COMING UP BEHIND HIM
2 AND HE SAID SOMETHING ON THE LINES OF WELL, YOU KNOW WHAT
3 MY F'N PROBLEM IS. HE SAID, MY F'N PROBLEM IS COMPANY AND MY
4 F'N PROBLEM IS YOU.

5 AND WHEN HE WALKED UP TO FRANK, FRANK WAS, LIKE, ON
6 THE OUTSIDE AND HE WAS ON THE INSIDE OF THE SIDEWALK
7 TOWARDS THE GRASS. AND HE WALKED UP BEHIND HIM AND HE WAS
8 LOOKING UP AT HIM LIKE THIS WHEN HE SAID IT. AND I SEE HIS
9 HANDS GO UP AND GO LIKE THIS WHEN HE SAYS IT.

10 AND NO SOONER THAN HE DID THAT, I'M ON THE STREET AND I'M
11 LOOKING TOWARDS THE HOUSE AND I SEE BODIES COME OUT OF THE
12 YARD, RIGHT BEHIND HIM. SO, WHEN I SEE THAT COME, THAT'S WHEN
13 I GO IN.

14 AND FRANK WAS LIKE THIS, AND I KIND OF WALKED IN BEHIND,
15 BETWEEN THE GUYS AND FRANK. WELL, AS SOON AS I COME IN, RYAN
16 BACKS UP. AND THAT'S WHEN--

17 I MEAN, I DON'T KNOW HOW MUCH. DO YOU WANT ME TO KEEP
18 ON GOING?

19 Q WELL, WHAT DID YOU SAY WHEN YOU CAME IN?

20 A WHEN I CAME IN RYAN BACKED UP AND I SAID THAT'S IT,
21 FRANK. AND I LOOKED AT RYAN AND I SAID THIS IS IT, DON'T F WITH
22 MY FAMILY. THAT'S WHAT I SAID TO HIM, DON'T F WITH MY FAMILY.
23 AND I HAD THE GUN LIKE THIS.

1 Q HOW FAR WOULD YOU ESTIMATE THE PEOPLE THAT YOU SAID
2 YOU THOUGHT WERE COMING TOWARDS FRANK, HOW FAR AWAY
3 WERE THEY FROM MR. LARMAND?

4 A AT THAT TIME?

5 Q YES.

6 A AS SOON AS I CAME IN?

7 Q WELL, AS---

8 A THEY HAD JUST COME OFF THE GRASS INTO THE DRIVEWAY. I'D
9 SAY FIFTEEN, TWENTY FEET, IF THAT.

10 Q FIFTEEN, TWENTY FEET?

11 A YEAH, PROBABLY ABOUT FIFTEEN, TWENTY FEET.

12 Q AND WHAT WAS FRANK DOING AT THE TIME?

13 A FRANK WAS WALKING UP THE STREET. I MEAN, UP THE
14 SIDEWALK.

15 Q FACING WHICH WAY?

16 A FACING WHICH WAY? FACING THE TOP OF THE STREET WHERE
17 THE TRUCK WAS PARKED.

18 Q WAS MR. LARMAND'S BACK TURNED TO WHERE MR. LOCHBAUM
19 AND THESE OTHER INDIVIDUALS WERE?

20 A YES SIR.

21 Q HOW CLOSE WAS MR. LOCHBAUM TO FRANK AT THAT TIME,
22 APPROXIMATELY?

23 A WELL, HE WAS BENT OVER. FRANK LOOKED DOWN AT HIM, THE
24 WAY HE LOOKED UP AT HIM. SO, PROBABLY TWO FEET BEHIND HIM, A
25 COUPLE OF FEET BEHIND HIM.

1 Q OKAY. SO, YOU CAME IN WITH A GUN. HOW DID YOU HAVE THE
2 GUN?

3 A I HAD IT UP IN THE AIR.

4 Q WAS IT EVER POINTED AT MR. LOCHBAUM?

5 A NO. EXCEPT MAYBE WHEN I WAS RAISING IT UP IN THE AIR, BUT
6 THAT'S ABOUT IT.

7 Q HOW FAR AWAY WERE YOU FROM MR. LOCHBAUM WHEN YOU
8 CAME IN?

9 A I WAS TEN FEET, FIFTEEN FEET WHEN I STARTED WALKING IN.
10 MAYBE EVEN FURTHER, MAYBE TWENTY FEET.

11 Q THEN WHAT HAPPENED?

12 A HE BACKED UP. AND I REMEMBER THE BIG GUY, HE STOPPED
13 DEAD IN HIS TRACKS AND HE BACKED-- SEE, THE GRASS, WHERE THE
14 GRASS WAS, IT'S LIKE HIS LIGHTS IN HIS DRIVEWAY KIND OF CAST A
15 VEE SHADOW, A VEE. AND BESIDES THAT VEE IT WAS, LIKE, PITCH
16 BLACK. YOU COULDN'T SEE BEYOND THAT VEE.

17 SO, WHEN THE BIG GUY, HE WAS THE FIRST ONE, HE STOPPED
18 DEAD IN HIS TRACKS AND DIDN'T MOVE. HE BACKED RIGHT BACK ON.
19 I MEAN, THAT WAS IT. AND THEN ONE GUY JETTED AROUND THE VAN
20 TO, LIKE, COME UP BEHIND. AND AS SOON AS I TURNED TO LOOK AT
21 THAT GUY GOING AROUND THE VAN TO COME UP BEHIND, THAT'S
22 WHEN MR. LOCHBAUM JUMPED AND GRABBED MY ARM.

23 Q THEN WHAT HAPPENED?

1 A THEN HE PUSHED ME AND I TOOK TWO STEPS BACK AND MY
2 BACK GAVE OUT, AND I HIT THE GROUND. AND THEN IT WAS JUST
3 SLAM-BAM-BOOM. I WAS PUMMELED.

4 Q HOW MANY PEOPLE WERE ON TOP OF YOU, AS YOU RECALL?

5 A AS I RECALL, I REMEMBER GETTING HIT BY THE RIGHT SIDE, AND
6 BEING HIT BY THE LEFT SIDE, AND I KNOW RYAN WAS ON TOP OF ME.
7 SO, WHAT I KNOW IS THREE.

8 Q DID THAT INCLUDE FRANK?

9 A I DON'T KNOW WHERE FRANK WAS. I WAS UNDER THE PILE. I
10 DON'T KNOW WHERE FRANK WAS. I HAVE NO CLUE.

11 Q DID YOU HEAR THE TESTIMONY ABOUT YOU BEING KICKED IN
12 THE GROIN?

13 A YEAH, I HEARD THAT.

14 Q WERE YOU?

15 A NO.

16 Q DID YOU EVER RELINQUISH THE GUN?

17 A YES, I DID.

18 Q WHY WAS THAT?

19 A BECAUSE I HEARD THE POLICE WERE COMING.

20 Q DID YOU EVER ATTEMPT TO FIRE THE GUN?

21 A NO.

22 Q WAS THE GUN LOADED?

23 A YES, IT WAS.

24 Q DO YOU RECALL WHAT WAS SAID IN THIS DOG PILE OF FOLKS,
25 AS IT'S BEEN DESCRIBED?

1 A YES. MR. HARRIS DID SAY THAT HE, HE SAID, JUST LET THE GUN
2 GO. AND I SAID, I'M JUST TRYING TO PROTECT MY BROTHER, JUST
3 TRYING TO PROTECT MY BROTHER.

4 I SAID I'M LETTING THE GUN GO UNTIL THE POLICE GET HERE.
5 AND THAT WAS ALL THAT I REMEMBER. AND RYAN JUST KEPT
6 SAYING, GET THE F'IN GUN, GET THE F'IN GUN, GET THE F'IN GUN.
7 THAT'S ALL I REMEMBER.

8 AND I REMEMBER MY BROTHER-IN-LAW SAYING, ACTUALLY. I
9 REMEMBER FRANK SAYING LET HIM GO, I'LL TAKE CARE OF THIS. I
10 THINK HE SAID IT A COUPLE OF TIMES, JUST LET HIM GO, I'LL TAKE
11 CARE OF IT.

12 Q HOW DID YOU PHYSICALLY RELINQUISH THE GUN?

13 A I SAID, OKAY, I'M LETTING IT GO, DON'T SHOOT IT, AND I JUST
14 LET IT GO.

15 Q TO YOUR RECOLLECTION, WHO HAD THE GUN WHEN YOU
16 RELINQUISHED IT?

17 A RYAN.

18 Q AND THEN WHAT HAPPENED?

19 A RYAN GRABBED THE GUN, HELD IT IN HIS HAND, LOOKED AT IT,
20 JUMPED UP, MADE SOME, LIKE, A BACK NOISE, AND SAID, LOOKED AT
21 US AND SAID LOOK, ANY ASSHOLE CAN CARRY A GUN, HE SAYS, BUT I
22 KNOW HOW TO SHOOT ONE. AND HE PICKED IT UP AND POINTED IT AT
23 US AND COCKED IT.

24 ME AND FRANK TURNED AROUND AND WENT UP THE STREET.
25 AND THAT'S THE LAST I SEEN HIM.

1 Q WHEN YOU SAY YOU WENT UP THE STREET, HOW DID YOU GO UP
2 THE STREET?

3 A KIND OF SLOWLY. I HURT MY BACK AGAIN PRETTY BAD. IT WAS
4 NO RUNNING INVOLVED, THAT'S FOR SURE.

5 Q YOUR STATEMENT ABOUT F'IN WITH MY FAMILY.

6 A YES SIR.

7 Q WHY DID YOU SAY THAT?

8 A BECAUSE I THOUGHT THEY WERE GONNA JUMP FRANK AND
9 BEAT THE SNOT OUT OF HIM.

10 Q DO YOU RECALL ANYBODY BEING BEHIND YOU AND MR.
11 LARMAND WHEN YOU WERE GOING DOWN THE SIDEWALK?

12 A ABSOLUTELY NOT.

13 Q WHEN YOU GET BACK TO THE, WAS A FOUR RUNNER? IS THAT
14 CORRECT?

15 A YES SIR.

16 Q TOYOTA FOUR RUNNER?

17 A YES SIR.

18 Q WHEN YOU GET BACK TO THAT WHO GETS IN WHAT POSITION IN
19 THE CAR?

20 A SAME AS WE ARRIVED. I GOT IN THE PASSENGER'S SIDE AND HE
21 GOT IN THE DRIVER'S SIDE.

22 Q THEN WHAT OCCURRED?

23 A WE PULLED OUT AND THEN GOT PULLED OVER.

24 Q DO YOU RECALL WHICH OFFICER YOU SPOKE WITH WHEN YOU
25 GOT PULLED OVER?

1 A NO.

2 Q DO YOU RECALL EVER TALKING TO OFFICER WATSON, WHO
3 TESTIFIED IN THE TRIAL EARLIER?

4 A YEAH, I ACTUALLY REMEMBER TALKING TO HIM.

5 Q AS A RESULT OF YOUR CONVERSATIONS WITH HIM AND
6 PERHAPS SOMEONE ELSE, WERE YOU ARRESTED?

7 A YES.

8 Q AND WHAT WERE YOU ARRESTED FOR? AT THAT TIME, TO YOUR
9 KNOWLEDGE, WHAT WERE YOU BEING ARRESTED FOR?

10 A HAVING A GUN, PULLING A GUN.

11 Q ANYTHING ELSE?

12 A NO.

13 Q WERE YOU TOLD AT THAT TIME YOU WERE BEING CHARGED
14 WITH LYNCHING?

15 A NO.

16 Q WERE YOU TOLD AT THAT TIME YOU WERE BEING CHARGED
17 WITH CONSPIRACY?

18 A NO.

19 Q AND YOU WERE TAKEN WHERE?

20 A ROCK HILL POLICE DEPARTMENT.

21 Q WHAT HAPPENED TO FRANK THAT NIGHT, IF YOU RECALL,
22 AFTER THE INTERACTION WITH LAW ENFORCEMENT?

23 A I SAT IN THE BACK OF THE POLICE OFFICE AND WATCHED HIM
24 SHAKE THE POLICE OFFICER'S HAND AND GET IN THE TRUCK AND PULL
25 AWAY.

- 1 Q COULD YOU HEAR FRANK'S CONVERSATION WITH THE POLICE
2 OFFICER?
- 3 A NO. THERE WAS TOO MUCH CHATTER ON THE POLICE RADIO IN
4 THE CAR. I REALLY COULDN'T HEAR ANYTHING.
- 5 Q HOW LONG WOULD YOU SAY THAT INTERACTION WITH THE
6 POLICE TOOK PLACE?
- 7 A TO ME, IT SEEMED LIKE FOREVER. I'D SAY TEN MINUTES,
8 MAYBE.
- 9 Q HOW LONG?
- 10 A TEN, FIFTEEN MINUTES, TOPS.
- 11 Q WERE YOU AT ALL TIMES COOPERATIVE WITH THE LAW
12 ENFORCEMENT OFFICERS?
- 13 A I THINK SO, YES.
- 14 Q YOU WERE BROUGHT WHERE?
- 15 A ROCK HILL POLICE DEPARTMENT.
- 16 Q AT WHAT TIME DID YOU LEARN YOU WERE BEING CHARGED
17 WITH THE ADDITIONAL CHARGES?
- 18 A WHEN THEY CAME AND SLID THESE PIECES OF PAPER UNDER
19 THE CELL DOOR. I SAID WHAT'S THAT AND THEY SAID, READ THEM.
- 20 Q WHEN WAS THAT?
- 21 A THE NEXT DAY.
- 22 Q THE NEXT DAY. WAS THAT PRIOR TO YOUR BOND HEARING?
- 23 A YES.

1 Q WAS THERE ANY TYPE OF AGREEMENT BETWEEN YOU AND
2 YOUR BROTHER-IN-LAW FOR YOU TO COME UP WITH THAT GUN AT
3 RYAN LOCHBAUM'S HOUSE?

4 A NO SIR.

5 Q WHY'D YOU DO IT?

6 A BECAUSE I WAS BRINGING IT TO GO TO MY SHOP.

7 Q PARDON ME?

8 A FRANK WAS GONNA BRING ME TO MY SHOP AFTER THIS WAS
9 ALL DONE.

10 Q OKAY.

11 A MY SHOP'S IN A BAD AREA. I HAD MONEY ON ME. AND I BRING
12 MY PISTOL TO MY SHOP, THAT'S WHAT I DO.

13 Q ONCE AGAIN, WHY DID YOU INTERVENE IN FRANK'S SITUATION
14 WITH MR. LOCHBAUM?

15 A BECAUSE I WAS SCARED AND I WAS STUPID. I WAS SCARED.

16 Q DID YOUR BROTHER-IN-LAW EVER ASK YOU TO INTERVENE IN
17 HIS BUSINESS?

18 A NO SIR.

19 MR. RHEA: BEG THE COURT'S INDULGENCE, YOUR HONOR.

20 THE COURT: SURE.

21 (PAUSE)

22 MR. RHEA: NO FURTHER QUESTIONS AT THIS TIME.

23 THE COURT: MR. GREELEY.

24 MR. GREELEY: MAY IT PLEASE THE COURT.

25

1 CROSS EXAMINATION BY MR. GREELEY:

2 Q MR. LEMIRE, AT THE TIME THAT YOU INTERVENED WITH THE
3 PISTOL DID YOU BELIEVE THAT YOUR BROTHER-IN-LAW WAS GOING
4 TO BE SERIOUSLY INJURED?

5 A YES, I DID.

6 Q WHY?

7 A BECAUSE THEY WERE COMING OUT AFTER HIM.

8 Q HE HAD-- WAS HE FACING THEIR DIRECTION?

9 A NO, HE WASN'T.

10 Q DID HE SEE WHAT YOU SAW?

11 A NO, HE DIDN'T.

12 Q AND ON WHICH SIDE WAS MR. LOCHBAUM?

13 A FRANK WAS ON THE OUTSIDE OF THE SIDEWALK AND MR.
14 LOCHBAUM WAS ON THE INSIDE OF THE SIDEWALK, CLOSEST TO HIS
15 HOUSE.

16 Q NOW, AS YOU HAVE SAID, AND YOU HAVE TALKED ABOUT HOW
17 YOU HAVE HAD SURGERY. IS THAT CORRECT?

18 A YES SIR.

19 Q IF YOU WOULD, PLEASE STEP DOWN AND COME OVER HERE TO
20 THE JURY BOX.

21 (WHEREUPON WITNESS EXITED WITNESS STAND FOR
22 DEMONSTRATION BEFORE JURY)

23 IF YOU WOULD, ON THIS SIDE OF THE JURY BOX, I'M GOING TO
24 ASK THAT YOU TURN AROUND AND LIFT UP YOUR SHIRT AND SHOW
25 THE JURY.

1 A (WHEREUPON DEFENDANT LIFTED SHIRT BEFORE JURY)

2 Q IS THIS THE INCISION?

3 A YES SIR.

4 Q YOU CAN GO BACK AND HAVE A SEAT.

5 (WHEREUPON WITNESS RETURNED TO WITNESS STAND)

6 AND SO, IS IT A FAIR STATEMENT TO SAY THAT IT WAS ABOUT
7 FOUR AND A HALF MONTHS OUT OF THAT SURGERY WHEN THIS
8 OCCURRED?

9 A YES SIR.

10 Q WERE YOU STILL IN RECOVERY?

11 A YES SIR.

12 Q WERE YOU IN ANY CONDITION TO BE ABLE TO PHYSICALLY
13 DEFEND YOUR BROTHER-IN-LAW?

14 A NO SIR.

15 Q WERE YOU IN ANY CONDITION TO BE ABLE TO FIGHT LIKE A
16 MAN?

17 A NO SIR.

18 Q BUT WHEN YOU SHOWED THE PISTOL, WHAT DID THE BIG GUY
19 DO?

20 A HE STOPPED, WENT BACK.

21 Q OKAY. AND MR. LOCHBAUM, WHAT DID HE DO?

22 A HE STOPPED AND MOVED BACK.

23 Q AND AT THAT POINT IN TIME NO ONE HAD STRUCK ANYBODY. IS
24 THAT CORRECT?

25 A YES SIR.

456

- 1 Q AND WHEN MR. LOCHBAUM GRABBED THE PISTOL WERE YOU
2 ABLE TO FEND HIM OFF AT ALL?
- 3 A NO.
- 4 Q DID YOU EVER INTEND TO SHOOT ANYBODY WITH THAT PISTOL?
- 5 A NO.
- 6 Q WHEN YOU WERE ON THE GROUND AND YOU HAD PEOPLE ON
7 TOP OF YOU, DID YOU STRIKE ANYBODY?
- 8 A NO.
- 9 Q WERE YOU HOLDING ON TO THE PISTOL?
- 10 A YES.
- 11 Q WHY DIDN'T YOU WANT TO GIVE THE PISTOL UP TO MR.
12 LOCHBAUM?
- 13 A I WAS AFRAID HE WAS GONNA SHOOT SOMEBODY, ME OR MY
14 BROTHER-IN-LAW.
- 15 Q HE WAS ANGRY, WASN'T HE?
- 16 A YES.
- 17 Q BUT YOU DID THEN RELEASE THE PISTOL EVENTUALLY?
- 18 A YES, WHEN I KNEW THE POLICE WERE COMING.
- 19 Q WHEN YOU KNEW OR WHEN YOU WERE TOLD?
- 20 A YES, I WAS TOLD THE POLICE WAS COMING. WELL, ACTUALLY, I
21 WASN'T TOLD; I HEARD.
- 22 Q YOU HEARD SOMEBODY ELSE SAY IT?
- 23 A YES.
- 24 Q DO YOU KNOW WHO SAID IT?
- 25 A NO.

- 1 Q ARE YOU STILL HAVING TROUBLE WITH YOUR BACK?
- 2 A YES.
- 3 Q ARE YOU STILL UNDER A DOCTOR'S CARE?
- 4 A YES.
- 5 Q ARE YOU AND HAVE YOU BEEN IN PAIN THIS WEEK?
- 6 A YES.
- 7 Q AND YOU WERE COOPERATIVE WITH THE POLICE WHEN YOU
- 8 WERE STOPPED?
- 9 A YES.
- 10 Q AT THE TIME THAT YOU APPROACHED FROM THE STREET SIDE,
- 11 HAD YOU SEEN YOUR BROTHER IN ANY WAY BE VIOLENT TOWARDS
- 12 MR. LOCHBAUM?
- 13 A NO.
- 14 Q AND THE VOICE THAT YOU HEARD THAT CAUSED YOU TO COME
- 15 OUT OF THE CAR WASN'T FRANK'S?
- 16 A NO.
- 17 Q MR. LOCHBAUM, WHEN HE GOT THE GUN, WHAT DID HE SAY,
- 18 AGAIN?
- 19 A HE SAID THAT ANY ASSHOLE CAN CARRY A GUN, BUT I KNOW
- 20 HOW TO USE ONE.
- 21 Q AND HOW DID HE APPEAR WHEN HE SAID THAT?
- 22 A HE ACTUALLY JUMPED UP IN THE AIR WHEN HE SAID IT. HE WAS
- 23 PRETTY UPSET.
- 24 Q ANSWER ANY QUESTIONS THE STATE MAY HAVE.
- 25 THE COURT: SOLICITOR.

1 CROSS EXAMINATION BY MS. JOYNER:

2 Q WHERE WERE YOU WHEN YOU PUT THE GUN UNDER THE SEAT?

3 A I WAS OUTSIDE THE TRUCK GETTING IN.

4 Q WAS THAT IN KANNAPOLIS?

5 A YES.

6 Q AND THAT'S IN NORTH CAROLINA?

7 A YES.

8 Q DO YOU NORMALLY CARRY YOUR GUNS IN VIOLATION OF
9 NORTH CAROLINA STATE LAW, WHICH STATES YOU'RE SUPPOSED TO
10 CARRY THEM IN PLAIN VIEW?

11 A DO I NORMALLY DO THAT?

12 Q YEAH. DO YOU NORMALLY VIOLATE NORTH CAROLINA STATE
13 LAW BY CARRYING YOUR HAND GUN IN WAYS INSTEAD OF IN PLAIN
14 VIEW?

15 A I JUST PUT IT IN MY VEHICLE.

16 Q YOU JUST PUT IT IN YOUR VEHICLE---

17 A YES.

18 Q ---WHEREVER YOU FEEL LIKE IT?

19 A (NO RESPONSE)

20 Q WHEREVER YOU FEEL LIKE IT?

21 A NO, NOT USUALLY.

22 Q DO YOU HAVE A CONCEALED WEAPONS PERMIT?

23 A NO.

24 Q HAVE YOU EVER THOUGHT ABOUT LEARNING THE LAW ABOUT
25 HOW YOU'RE SUPPOSED TO CARRY YOUR HANDGUN?

1 A I HAVEN'T TAKEN A CONCEALED WEAPONS COURSE, NO, I
2 HAVEN'T.

3 Q IS THIS THE ONLY GUN THAT YOU HAVE OR IS THIS THE BIGGEST
4 GUN?

5 A IT'S ACTUALLY THE SMALLEST GUN I HAVE.

6 Q THIS IS THE SMALLEST GUN YOU HAVE?

7 A YES, IT IS.

8 Q YOU--

9 A I'VE GOT TWO RIFLES. I'VE GOT A .22 AND I'VE GOT A 12 GAUGE
10 SHOTGUN THAT I SKEET SHOOT WITH.

11 Q SO, THIS WOULD BE THE EASIEST ONE TO CARRY AROUND?

12 A YEAH. YOU CAN'T, YOU KNOW, PUT RIFLES IN THE CAR TO
13 BRING TO THE SHOP.

14 Q YOU DON'T WANT TO CARRY AROUND A RIFLE IN YOUR CAR,
15 HUH?

16 A NO, YOU REALLY CAN'T PUT THAT IN THE DESK AT YOUR SHOP.

17 Q DO YOU ALWAYS CARRY YOUR GUN FULLY LOADED?

18 A WHEN I'M AT THE SHOP, YES. WHEN I GO TO THE SHOP, YES.

19 Q SIX BULLETS, DO YOU ALWAYS CARRY SIX BULLETS IN THAT
20 REVOLVER?

21 A THAT'S WHAT IT HOLDS, MA'AM.

22 Q SO, YOU FEEL LIKE WHEN YOU'RE IN YOUR SHOP THAT YOU
23 NEED ALL SIX BULLETS?

- 1 A WELL, MA'AM, IF ANYTHING WAS EVER TO HAPPEN AND YOU
2 PULL THE TRIGGER, AND YOU KNOW, IT WAS AN EMPTY CHAMBER, I
3 GUESS IT WOULD BE USELESS TO CARRY IT.
- 4 Q SO, YOU CARRY A GUN BECAUSE YOU PLAN TO USE A GUN?
- 5 A NO, SELF-DEFENSE, MA'AM.
- 6 Q YOU CARRY IT FOR SELF-DEFENSE?
- 7 A YES.
- 8 Q AND YOU FEEL LIKE YOU MIGHT NEED SIX WHOLE BULLETS TO
9 ACT IN SELF-DEFENSE?
- 10 A YES MA'AM.
- 11 Q BECAUSE, REALLY, YOU DON'T CARRY A GUN JUST SO YOU CAN
12 HOLD IT UP IN THE AIR AND SCARE PEOPLE AWAY, DO YOU?
- 13 A I DON'T KNOW WHAT THAT QUESTION MEANS, MA'AM.
- 14 Q SO, WHEN YOU SAID THAT YOU HELD THIS GUN UP IN THE AIR TO
15 MAKE EVERYBODY AT THE SCENE STOP AND MOVE BACK, THAT'S NOT
16 WHY YOU CARRY A GUN. YOU DON'T CARRY A GUN TO HOLD IT UP IN
17 THE AIR AND MAKE PEOPLE STOP, DO YOU?
- 18 A YES MA'AM. THAT WAS SELF-DEFENSE.
- 19 Q THAT'S NOT THE QUESTION I ASKED YOU. THE GUN, IF A GUN IS
20 GOOD, IF JUST A GUN IS GOOD TO MAKE PEOPLE STOP AND MOVE
21 BACK, WHY DO YOU NEED SIX BULLETS INSIDE THE GUN?
- 22 A BECAUSE THAT'S WHAT THE CHAMBER TAKES, MA'AM, SIX
23 BULLETS.
- 24 Q SO, YOU HAD IT LOADED, JUST IN CASE?
- 25 A YES MA'AM, THAT'S WHAT THE CHAMBER TAKES, SIX BULLETS.

1 Q ARE YOU FAMILIAR WITH THE SOUTH CAROLINA LAW FOR
2 CARRYING A HANDGUN?

3 A NO MA'AM, I'M NOT.

4 Q YOU'RE NOT FAMILIAR WITH THE SOUTH CAROLINA LAW THAT
5 APPLIES TO CARRYING A GUN INSIDE A GLOVE BOX, INSIDE A BOX, OR
6 SEPARATE CONTAINER?

7 A NO MA'AM, I DON'T.

8 Q YOU WORK A LOT IN SOUTH CAROLINA, DON'T YOU?

9 A YES.

10 Q AND SO, YOU JUST CARRY YOUR HANDGUN WHEREVER YOU
11 FEEL LIKE CARRYING YOUR HANDGUN WHEN YOU COME TO SOUTH
12 CAROLINA?

13 A I DON'T CARRY MY HANDGUN TO SOUTH CAROLINA, MA'AM.

14 Q YOU DON'T?

15 A NOT ON MOST OCCASIONS. I GO TO MY SHOP WITH THIS.

16 Q THIS WAS JUST A SPECIAL NIGHT, THEN?

17 A FRANK WAS DRIVING ME TO MY SHOP AFTER WE WERE DONE,
18 MA'AM.

19 Q WHY WAS HE DRIVING YOU TO YOUR SHOP? I THOUGHT YOUR
20 CAR WAS AT FRANK'S HOUSE.

21 A IT WAS AT FRANK'S HOUSE. WHEN WE WERE COMING BACK WE
22 WOULD HAVE WENT BY MY SHOP. SO, HE WAS JUST GONNA STOP.

23 Q YOUR SHOP'S IN A DANGEROUS NEIGHBORHOOD?

24 A YES.

25 Q THAT YOU NEED A GUN TO GO TO?

1 A YES.

2 Q DID FRANK KNOW YOU HAD A GUN?

3 A NO.

4 Q HE WAS TAKING YOU TO YOUR DANGEROUS SHOP AND YOU
5 ALWAYS CARRY A GUN?

6 A YES.

7 Q AND HE DIDN'T KNOW YOU HAD A GUN?

8 A NO.

9 Q DO YOU THINK CARRYING A GUN IS A SERIOUS RESPONSIBILITY?

10 A I DO BELIEVE SO, MA'AM.

11 Q AND DO YOU THINK A PERSON WHO TAKES THAT
12 RESPONSIBILITY VERY SERIOUSLY WOULD UNLOAD THEIR GUN WHEN
13 THEY FEEL LIKE THEY'RE NO LONGER GOING TO NEED TO USE THAT
14 GUN?

15 A I BELIEVE SO, MA'AM. THAT'S WHY WHEN IT GOES INSIDE MY
16 HOUSE IT ISN'T LOADED.

17 Q BUT WHEN YOU DRIVE AROUND IN THE CAR, BUMPING AROUND
18 IN A CAR FOR TWO AND A HALF HOURS, UNSECURED, UNDER A SEAT,
19 THAT'S OKAY?

20 A MA'AM, IF YOU KNEW THAT GUN, YOU WOULD KNOW IT
21 WOULDN'T GO OFF JUST BUMPING AROUND.

22 Q HOW WOULD IT GO OFF? WHAT WOULD I NEED TO DO TO MAKE
23 THIS GUN GO OFF?

24 A YOU WOULD NEED TO PULL THE TRIGGER.

25 Q I WOULD NEED TO PULL THE TRIGGER?

- 1 A UH-HUH.
- 2 Q BUT YOU DIDN'T HAVE YOUR HAND ON THE TRIGGER THAT
- 3 NIGHT?
- 4 A NO MA'AM.
- 5 Q BECAUSE YOU WERE JUST GOING TO HOLD IT IN THE AIR?
- 6 A YES MA'AM.
- 7 (WHEREUPON SOLICITOR EMPLOYS USE OF DRY ERASE BOARD)
- 8 Q SO, THIS IS THE APPROXIMATE TIME THAT EVERYTHING
- 9 HAPPENED? DO YOU NEED ME TO SCOOT THAT UP A LITTLE CLOSER?
- 10 A YES, COULD YOU, PLEASE?
- 11 Q SURE. I JUST NEED TO TILT IT THIS WAY SO THE JURY CAN SEE.
- 12 DO YOU WANT TO STEP DOWN?
- 13 A NO.
- 14 Q NO?
- 15 A THANK YOU.
- 16 Q I MEAN, SO THE JURY CAN SEE IT AND YOU CAN SEE IT. DO YOU
- 17 WANT ME TO JUST THROUGH THESE OUT LOUD? WOULD THAT MAKE
- 18 IT EASIER?
- 19 A NO, I CAN READ IT.
- 20 Q IS THIS FAIR-- IS THIS CORRECT, ABOUT 9:15? YOU'RE NOT
- 21 LOOKING AT YOUR WATCH. BUT, ABOUT 9:15 YOU LEFT KANNAPOLIS?
- 22 A YEAH, I'D SAY RIGHT AROUND THERE.
- 23 Q LET ME JUST TRY TO FIGURE THIS OUT. I WANT TO ADD ONE
- 24 MORE TIME. YOU TESTIFIED A MINUTE AGO THAT IT WAS ABOUT 9:00
- 25 WHEN YOU BY HAPPENSTANCE RAN INTO FRANK. IS THAT RIGHT?

1 A DID YOU SAY BY COINCIDENCE?

2 Q HAPPENSTANCE?

3 A OKAY. YES.

4 Q WASN'T THAT MR. RHEA'S TERM?

5 A I GUESS SO.

6 Q NOW, WHICH INTERSECTION WAS THAT?

7 A THE INTERSECTION OF 29 AND DALE EARNHARDT BOULEVARD.

8 Q AND IS THAT IN KANNAPOLIS?

9 A NO, IT'S ACTUALLY-- I THINK THAT INTERSECTION'S ACTUALLY--
10 I DON'T KNOW IF THAT'S KANNAPOLIS. YEAH, THAT'S KANNAPOLIS,
11 YEAH.

12 Q THAT'S IN THE GENERAL AREA OF KANNAPOLIS?

13 A YES, YEAH.

14 Q OKAY.

15 A THE WAY IT'S-- IT'S MESSED UP UP THERE.

16 Q I CAN'T DRIVE UP THERE.

17 A YEAH.

18 Q SO, YOU SAID Y'ALL TALKED AND HE SAID I'M GOING TO DO THIS
19 STING?

20 A NO. WE DIDN'T ACTUALLY TALK. HE JUST SAID WHAT ARE YOU
21 DOING. THEN HE SAID I'M GOING TO A STING. IF YOU WANT TO GO,
22 MEET ME AT MY HOUSE. SO, IT WAS THAT QUICK.

23 Q HE CALLED YOU OR RAN INTO YOU?

24 A RAN INTO ME.

25 Q AND HE SAID I'M GOING TO DO A---

1 A STING. IF YOU WANT TO GO, MEET ME AT MY HOUSE.

2 Q OKAY.

3 A YELLED OUT THE WINDOW, ACTUALLY.

4 Q SO, YOU WERE AT THE INTERSECTION. WAS THAT CLOSE TO
5 YOUR SHOP?

6 A NO, IT WAS CLOSE TO HIS HOUSE.

7 Q WHAT WERE YOU DOING THERE?

8 A IT'S ON THE WAY TO MY SHOP.

9 Q SO, YOU WERE ON THE WAY TO YOUR SHOP?

10 A YES.

11 Q AT 9:00, ABOUT 9:00 AT NIGHT?

12 A YES.

13 Q SO, YOU SAID YOU-- WHAT WERE YOU GOING TO DO AT THE
14 SHOP?

15 A I WAS BRINGING PER DIEM MONEY DOWN THERE. AND I WAS
16 TAKING THE KEYS AND PUTTING THEM WHERE WE HIDE THEM IN THE
17 VAN SO WHEN THE GUYS GET THERE AT 3:00 IN THE MORNING TO
18 HEAD OUT TO CAMP LEJEUNE, WHICH IS A LONG RIDE, THEY CAN GET
19 THE KEYS AND THEIR PER DIEM'S ALREADY WAITING FOR THEM.

20 Q WHEN YOU SAY PER DIEM MONEY, ARE YOU TALKING ABOUT
21 CASH?

22 A CASH, YES MA'AM.

23 Q HOW MUCH CASH WAS IT?

24 A IT WAS \$1200, \$1300.

- 1 Q SO, INSTEAD OF GOING STRAIGHT TO THE SHOP WITH THAT
2 \$1200, \$1300, YOU WENT OVER TO FRANK'S HOUSE?
- 3 A YES.
- 4 Q WHERE'D YOU PUT THAT MONEY?
- 5 A IT WAS IN AN ENVELOPE.
- 6 Q WHERE DID YOU LEAVE IT?
- 7 A IN HIS GLOVE BOX.
- 8 Q IN HIS GLOVE BOX?
- 9 A UH-HUH.
- 10 Q SO, YOU PUT THE MONEY IN THE GLOVE BOX?
- 11 A YES MA'AM.
- 12 Q SO, YOU LEAVE AT APPROXIMATELY 9:15?
- 13 A UH-HUH.
- 14 Q AND YOU STATED IN YOUR DIRECT THAT YOU GOT THERE AT
15 ABOUT 10:11. DOES THAT SOUND ABOUT RIGHT? COULD IT BE
16 CORRECT, TO GET TO THE STADIUM?
- 17 A WHAT'S MY DIRECT, MA'AM?
- 18 Q I'M SORRY. YOUR DIRECT EXAMINATION WITH MR. RHEA.
- 19 A OKAY.
- 20 Q HE ASKED YOU THESE ARE ALL APPROXIMATELY RIGHT.
21 THEY'RE 10:12...
- 22 A I DON'T KNOW IF HE ASKED ME IF THOSE WERE APPROXIMATELY
23 RIGHT, DID HE?
- 24 Q I THINK HE ASKED YOU IF YOU GENERALLY AGREED WITH THIS
25 TIMELINE.

- 1 A OH, OKAY.
- 2 Q DO YOU REMEMBER THAT QUESTION?
- 3 A YEAH, I THINK SO.
- 4 Q SO, WOULD 10:12 WOULD BE ABOUT RIGHT FOR WHEN YOU GET
5 TO KNIGHTS' STADIUM?
- 6 A YEAH, I WOULD SAY SO. WE WERE THERE ABOUT AN HOUR. I
7 KNOW WE WERE ABOUT THERE AN HOUR.
- 8 Q OKAY. AND RIGHT WHEN YOU GET THERE FRANK CALLED
9 KERRIANN?
- 10 A YES, PRETTY MUCH SO.
- 11 Q HOW MANY CARS WERE IN THE PARKING LOT AT KNIGHTS'
12 STADIUM?
- 13 A IT WAS PRETTY FULL. THERE WAS A BASEBALL GAME.
- 14 Q A BASEBALL GAME. HOW DID YOU PICK YOUR CAR, YOUR
15 MYSTERY SHOPPER CAR?
- 16 A I DIDN'T PICK NOTHING.
- 17 Q DID FRANK PICK IT?
- 18 A YEAH.
- 19 Q HOW'D HE PICK IT?
- 20 A I DON'T KNOW HOW HE PICKED IT.
- 21 Q YOU KNOW A LOT ABOUT THE STING, THOUGH. I MEAN, Y'ALL
22 TALKED ABOUT HOW YOU DO THE STING AND HE'S GONNA USE YOUR
23 NUMBER AND ALL THIS STUFF.
- 24 A WE DIDN'T TALK ABOUT HOW WE DID THE STING. HE JUST SAID
25 HE WAS GONNA USE MY PHONE, FOR ME TO BE THE CALLER.

- 1 Q BUT YOU ACTUALLY RODE DOWN FROM KANNAPOLIS
2 TOGETHER. RIGHT?
- 3 A UH-HUH.
- 4 Q AND THE PARKING LOT WAS FULL WHEN YOU GOT THERE?
5 RIGHT?
- 6 A UH-HUH.
- 7 Q DID YOU WALK AROUND UNTIL YOU GOT TO A CAR THAT
8 LOOKED GOOD?
- 9 A HE PULLED OVER WHERE HE COULD SEE THE ENTRANCE. I
10 KNOW THAT. BECAUSE HE WANTED TO SEE. HE WANTED TO GET A
11 SHOT WHERE HE COULD GET A PICTURE OF THE PERSON COMING IN.
- 12 Q DID HE PICK A REAL CAR IN THE PARKING LOT, THEN, TO CALL
13 ABOUT?
- 14 A YEAH. I GUESS HE PICKED OUT, I THINK IT WAS A NISSAN HE
15 PICKED.
- 16 Q AND THIS WAS AFTER HE WAS DRIVING UP AND DOWN THE
17 AISLES FIRST TO PICK THE CAR. RIGHT?
- 18 A I GUESS HE DID.
- 19 Q YOU'RE IN THE CAR.
- 20 A YEAH, BUT I WASN'T PAYING ATTENTION.
- 21 Q OKAY. YOU WEREN'T PAYING ATTENTION. SO, THE CALL GOES
22 OUT.
- 23 A UH-HUH.
- 24 Q AND HE WAITS. AND HE WAITS AND HE WAITS AND HE WAITS.
25 AND THEN AT SOME POINT A SECOND CALL GOES OUT. IS THAT RIGHT?

1 A UH-HUH.

2 Q WHERE IN ALL OF THIS BETWEEN ABOUT 10:12 AND 11:15 DOES
3 THE PERSON THAT'S SUPPOSED TO BE FROM POP-A-LOCK CALL YOU
4 BACK?

5 A THAT'S A GOOD ONE. IT'S TOWARDS THE END. BECAUSE WE
6 DIDN'T WAIT-- I THINK WE WAITED, LIKE, FIFTEEN MINUTES AFTER
7 THAT. I CAN'T REALLY REMEMBER WHEN THEY CALLED ME.

8 Q SO, LET'S SAY-- AND WE CAN CHANGE THIS IF WE FIGURE OUT
9 THIS IS WRONG. SO, AROUND 11:00, SOMEONE CALLED AND THEY SAY
10 WHAT? WHAT DID THEY SAY WHEN THEY CALLED?

11 A THIS IS POP-A-LOCK.

12 Q AND WE'RE COMING?

13 A NO. HE SAID WHAT THE PROBLEM WAS. AND I TOLD HIM I
14 NEEDED TO GET IN MY CAR. I DIDN'T KNOW IF THE KEYS WERE IN
15 THERE. HE ASKED FOR MY GIRL AND I SAID SHE WENT IN TO GET OUR
16 FRIENDS. THEY'RE COMING OUT FROM THE BASEBALL GAME. THERE'S
17 PEOPLE COMING OUT.

18 Q UH-HUH.

19 A AND HE WANTED A CREDIT CARD AND I SAID I DON'T HAVE A
20 CREDIT CARD. I SAID, WE'LL PAY IN CASH. AND HE SAID, ALL RIGHT,
21 I'LL BE THERE, AND HUNG UP.

22 Q ALL RIGHT. SO, THEN---

23 A HE NEVER DID. HE NEVER SHOWED.

24 Q I'M SORRY?

25 A HE NEVER SHOWED.

1 Q HE NEVER SHOWED?

2 A NO.

3 Q SO, IT'S 10:12 TO 11:15, AND SO IT TAKES ABOUT FORTY-FIVE
4 MINUTES FOR SOMEONE TO EVEN CALL. RIGHT?

5 A I WASN'T PAYING ATTENTION TO TIME. FRANK WAS PAYING
6 ATTENTION TO---

7 Q BUT, YOU WERE---

8 A ---TIME.

9 Q OKAY. YOU SAID IT WAS CLOSE TO THE END, ABOUT FIFTEEN
10 MINUTES BEFORE YOU LEFT?

11 A I DON'T EVEN KNOW IF IT WAS FIFTEEN MINUTES BEFORE WE
12 LEFT, THE PHONE CALL.

13 Q COULD HAVE BEEN?

14 A I REALLY DON'T REMEMBER, TO BE HONEST WITH YOU, HOW
15 LONG IT WAS.

16 Q OKAY.

17 A I REALLY DON'T.

18 Q SO, WE'LL SAY, WE'LL JUST PUT A BIG QUESTION MARK HERE.
19 AND WE'LL SAY IT WAS DEFINITELY AFTER THE CALL WENT OUT AND
20 DEFINITELY BEFORE YOU LEFT, SOMEONE CALLED.

21 BUT, WOULD IT BE FAIR TO SAY THAT THAT PERSON, THAT POP-
22 A-LOCK PERSON DIDN'T CALL BEFORE---

23 A ACTUALLY, YOU HAVE MY PHONE RECORDS. RIGHT? YOU
24 COULD TELL WHEN THEY CALLED ME, COULDN'T YOU, SO WE'D KNOW
25 EXACTLY WHAT TIME IT WAS? I BELIEVE.

1 Q WHY DON'T YOU TELL ME FROM YOUR MEMORY?

2 A I DON'T KNOW. I DON'T REMEMBER.

3 Q YOU DON'T REMEMBER?

4 A NO. THAT'S WHY I'M ASKING YOU. THAT WAY WE COULD PUT
5 SOMETHING ON THAT LINE.

6 Q WELL, I'M NOT ASKING WHAT YOUR PHONE RECORDS ARE. I'M
7 ASKING YOU WHAT YOU REMEMBER.

8 A I DON'T REMEMBER WHAT TIME IT WAS.

9 Q YOU DON'T REMEMBER. OKAY.

10 A I MEAN, IT IS, IT DID HAPPEN.

11 Q IT DID HAPPEN. OKAY.

12 A I DON'T REMEMBER WHEN IT WAS.

13 Q SO, HELP ME. JUST TRY TO HELP ME, MR. LEMIRE. WAS IT, DO
14 YOU THINK, BEFORE OR AFTER THE SECOND PHONE CALL, THE ETA
15 PHONE CALL?

16 A THAT'S A GOOD ONE. THE ETA PHONE CALL. I REMEMBER THE
17 ETA BECAUSE WE WAITED AND HE DIDN'T SHOW UP. AND THEN FRANK
18 CALLED KERRIANN AND SAID WE'RE STILL WAITING. THEN THEY PUT
19 IN THE ETA. IT MIGHT HAVE BEEN AFTER THE ETA CALL. IT MIGHT
20 HAVE BEEN AFTER.

21 Q OKAY.

22 A I REALLY CAN'T TELL YOU.

23 Q I'LL JUST SAY RIGHT AROUND THE SAME TIME, 10:45. DOES THAT
24 SOUND FAIR. YOU'D BEEN DOWN THERE FOR ABOUT THIRTY MINUTES?

25 A I GUESS SO.

- 1 Q AND YOU WAITED ABOUT THIRTY MORE MINUTES?
- 2 A UH-HUH.
- 3 Q AND YOU DECIDED TO LEAVE. WHO DECIDES TO LEAVE?
- 4 A FRANK.
- 5 Q AND HE DECIDES TO LEAVE WHY?
- 6 A BECAUSE NOBODY SHOWED.
- 7 Q BECAUSE NOBODY SHOWED UP?
- 8 A UH-HUH.
- 9 Q AND HE JUST DECIDED THAT NOBODY WAS GOING TO SHOW UP?
- 10 A I GUESS. THAT'S WHAT HE DOES. LIKE I SAID, I WAS ALONG FOR
- 11 THE RIDE.
- 12 Q OKAY.
- 13 A YEAH.
- 14 Q SO, LET'S TALK ABOUT THIS TIME PERIOD WHEN YOU LEAVE TO
- 15 THE TIME YOU GET TO RYAN'S HOUSE.
- 16 A OKAY.
- 17 Q AND YOU TESTIFIED YOU'RE JUST ALONG FOR THE RIDE. RIGHT/
- 18 A UH-HUH.
- 19 Q RIGHT?
- 20 A RIGHT.
- 21 Q AND Y'ALL DON'T REALLY TALK A LOT ABOUT RYAN.
- 22 A RIGHT.
- 23 Q IS THAT CORRECT?
- 24 A YEAH.

1 Q YOU GUYS, YOU DON'T TALK A LOT ABOUT RYAN. YOU DON'T
2 TALK AT ALL ABOUT RYAN?

3 A NO.

4 Q WERE YOU AT ALL CURIOUS ABOUT IT BEING 11:30 AT NIGHT TO
5 TAKE OFF AND GO TO THE MIDDLE OF NO WHERE TO TALK TO
6 SOMEBODY?

7 A I TOLD HIM JUST AS LONG AS I GET TO MY SHOP BEFORE MY
8 GUYS LEAVE FOR CAMP LEJEUNE TO THE JOB. I SAID, I'M FINE.

9 Q OKAY.

10 A YEAH. SO, I WAS ALONG FOR THE RIDE. I TOLD HIM I NEED TO
11 MAKE SURE MY GUYS GOT THEIR PER DIEM SO I DON'T GET SCREAMED
12 AT.

13 Q OKAY. SO, AND I DON'T WANT TO MAKE YOU UNCOMFORTABLE.
14 BUT IF YOU COULD STEP DOWN IT WOULD ACTUALLY-- OR IF YOU CAN
15 SEE THIS FROM HERE. OR IF IT'S MORE COMFORTABLE FOR YOU---

16 A YOU KNOW WHAT, I CAN COME DOWN.

17 Q OKAY.

18 (WHEREUPON WITNESS EXITS WITNESS STAND FOR
19 DEMONSTRATION WITH STATE'S EXHIBIT FIVE)

20 IF YOU COULD, STAND ON THIS SIDE OF THE MAP AND
21 ACTUALLY POINT TO A FEW THINGS.

22 DO YOU AGREE THAT THE CAR WAS PARKED DOWN HERE?

23 A YES.

1 Q WHEN YOU GOT OUT OF THE CAR AND CAME UP THE STREET, IS
2 IT YOUR TESTIMONY THAT YOU DIDN'T WALK ALONG THIS SIDE OF
3 THE ROAD, YOU WALKED ALONG THAT SIDE OF THE ROAD?

4 A ACTUALLY I WAS WALKING DOWN THE MIDDLE OF THE ROAD.

5 Q YOU JUST WALKED DOWN THE MIDDLE OF THE ROAD?

6 A YEAH.

7 Q WERE THERE STREET LIGHTS?

8 A NO. IT WAS DARK.

9 Q IT WAS DARK. OKAY. WHEN YOU GOT CLOSER TO OVER HERE
10 WERE THERE STREET LIGHTS?

11 A NO. THE ONLY LIGHT I REMEMBER, LIKE I SAID, FROM HIS
12 PORCH, HIS DRIVEWAY LIGHT, SHINING LIKE A VEE.

13 Q OKAY.

14 A YOU KNOW WHAT I MEAN?

15 Q OKAY. SO, WOULD YOU SAY THE VEE WAS EMANATING FROM
16 THE DRIVEWAY? IS THAT WHAT YOU'RE SAYING?

17 A YES.

18 Q SO, WERE YOU STANDING IN THE ROADWAY IN THE DARKNESS
19 OR IN THE LIGHT?

20 A AT FIRST I WAS IN THE DARKNESS. THAT'S WHEN I SEEN THEM.
21 AND THEN WHEN I SEEN HIS HANDS MOVE, THAT'S WHEN I CAME INTO
22 THE LIGHT.

23 Q OKAY. SO, ---

24 A I WAS ALMOST WHERE THAT ARROW IS, ACTUALLY.

25 Q THAT'S WHERE YOU WERE?

1 A WHERE THAT ARROW IS.

2 Q OKAY.

3 A THAT'S WHERE THEY KIND OF MOVED IN AND OUT OF, THAT
4 ARROW.

5 Q IS THAT WHERE YOU WERE STANDING IN THE DARKNESS?

6 A I WAS KIND OF LIKE ON THE-- I WAS WALKING UP. SEE, I NEVER
7 REALLY STOPPED WALKING.

8 Q OKAY.

9 A AS I WAS WALKING IS WHEN IT ALL HAPPENED. I WAS WALKING
10 AND AS I KEPT WALKING, AND I NEVER ACTUALLY STOPPED WALKING.

11 Q BUT FRANK WAS RIGHT THERE. YOU WALKED RIGHT PAST
12 FRANK?

13 A YEAH.

14 Q YOU WALKED RIGHT PAST FRANK?

15 A FRANK WAS WAY UP HERE. SEE, EVERYTHING HAPPENED IN THE
16 DRIVEWAY.

17 Q OH, OKAY. SO, AT THE POINT IN TIME IN WHICH YOU RAN IN,
18 FRANK WASN'T UP THERE?

19 A NO.

20 Q OH, I MUST HAVE MISUNDERSTOOD. SO, YOU WALKED ON THE
21 OPPOSITE SIDE OF THE STREET THAN FRANK?

22 A WHAT ARE YOU TALKING ABOUT?

23 Q IF FRANK'S STANDING OVER HERE, YOU'RE STANDING, LIKE,
24 HALFWAY IN THE MIDDLE OF THE ROAD OVER HERE?

25 A I'M STANDING IN THE ROAD. FRANK'S ALREADY DOWN THERE.

1 Q FRANK IS ALREADY DOWN THERE. SO, YOU'RE STANDING IN THE
2 ROAD. DID YOU-- SO, WHERE ARE YOU STANDING WHEN FRANK
3 STARTS TO WALK AWAY?

4 A I WAS WALKING DOWN THE ROAD. FRANK WAS WALKING THIS
5 WAY, MA'AM.

6 Q UH-HUH.

7 A I NEVER STOPPED WALKING.

8 Q DID YOU SEE HIM?

9 A YES, I DID.

10 Q DID HE SEE YOU?

11 A I DON'T KNOW IF HE DID.

12 Q BUT YOU WERE ABLE TO SEE HIM?

13 A YES.

14 Q SO, IT WASN'T SO DARK THAT YOU COULDN'T MAKE HIM OUT?

15 A I WAS IN THE ROAD WHERE IT WAS DARK.

16 Q BUT YOU COULD SEE HIM. SO, IT WASN'T SO DARK THAT YOU
17 COULDN'T SEE HIM.

18 A NO. EVERYBODY WAS IN THE LIGHT. THEY WERE IN THE LIGHT.

19 Q OKAY. AND SO, YOU WALKED PAST FRANK, LIKE TWO SHIPS IN
20 THE NIGHT?

21 A CAN I SHOW IT? CAN I SHOW YOU?

22 Q THAT WOULD BE GREAT.

23 A THAT WOULD BE GOOD.

24 Q YOU WANT ME TO BE FRANK?

25 A YEAH, YOU BE FRANK.

! 477

- 1 Q OKAY. THIS IS THE ROAD.
- 2 A FRANK IS RIGHT WHERE YOUR HAND IS.
- 3 Q OKAY.
- 4 A I'M WALKING THIS WAY.
- 5 Q OKAY.
- 6 A YOU'RE WALKING THIS WAY.
- 7 Q OKAY.
- 8 A THAT'S HOW IT HAPPENED, JUST LIKE THAT.
- 9 Q SO, HE'S WALKING. OKAY. AND SO, THEN YOU STARTED ACROSS
- 10 THE STREET?
- 11 A NO, IT WAS REALLY DARK OVER THERE.
- 12 Q SO, YOU WALKED AS QUICKLY AS YOU COULD WALK THEN---
- 13 A YEAH, UH-HUH.
- 14 Q --ACROSS THE STREET?
- 15 A UH-HUH. NOT ACROSS THE STREET, HALFWAY.
- 16 Q HALFWAY ACROSS THE STREET.
- 17 A UH-HUH.
- 18 Q SO, FRANK'S LIKE THIS, AND YOU'RE GOING LIKE THAT?
- 19 A UH-HUH.
- 20 Q AS CLOSE AS WE ARE?
- 21 A UH-HUH. WELL, MAYBE A LITTLE FURTHER THAN THAT. I'D SAY
- 22 ABOUT FIFTEEN TO TWENTY FEET.
- 23 Q I THOUGHT YOU WERE IN THE MIDDLE OF THE ROAD.
- 24 A YEAH, ABOUT EIGHT FEET FROM ONE SIDE, HALF OF THE ROAD.
- 25 Q OKAY. SO, YOU'RE EIGHT FEET AWAY FROM---

- 1 A TEN, TEN TO FIFTEEN FEET BECAUSE YOU'RE ON THE CURB. I
2 DIDN'T HAVE A MEASURING TAPE, MA'AM..
- 3 Q OKAY. I'M NOT TRYING TO ARGUE WITH THAT. I'M JUST TRYING
4 TO FIGURE IT OUT.
- 5 A OKAY.
- 6 Q SO, THERE'S ABOUT EIGHT FEET DISTANCE BETWEEN THE POINT
7 IN THE ROAD WHERE FRANK WAS---
- 8 A YOU GOT A FOUR FOOT CURB AND THEN YOU GOT EIGHT FEET
9 HALF OF THE ROAD. SO, EIGHT, FOUR, TWELVE, RIGHT AROUND
10 THERE.
- 11 Q YOU'RE TWELVE FEET AWAY?
- 12 A YES MA'AM.
- 13 Q OKAY. BUT IN TERMS OF WHERE YOU WERE, WERE YOU AND
14 FRANK WERE PARALLEL, LIKE WE ARE RIGHT NOW, WHEN YOU
15 DARTED SORT OF CATTY-CORNER? IS THAT FAIR TO SAY?
- 16 A KIND OF CATTY-CORNER.
- 17 Q SO, Y'ALL WOULD HAVE BEEN THIS WAY, BUT FURTHER APART?
- 18 A NO. WE WEREN'T THAT FAR APART.
- 19 Q YOU AND FRANK-- YOU WEREN'T-- YOU DIDN'T-- I'M SORRY. I
20 THOUGHT YOU WERE TRAVELING THIS WAY.
- 21 A YES. AND THEN I CAME ACROSS HERE.
- 22 Q THEN YOU CAME CATTY-CORNER. OKAY. THANK YOU. YOU
23 CAN TAKE YOUR SEAT.
- 24 (WHEREUPON WITNESS RETURNED TO WITNESS STAND)

- 1 Q HOW LONG DID IT TAKE YOU TO WALK TO THE SCENE WHERE
2 FRANK WAS?
- 3 A MAYBE A MINUTE AND A HALF, TWO MINUTES.
- 4 Q A MINUTE?
- 5 A MINUTE AND A HALF, TWO MINUTES.
- 6 Q HOW LONG HAD FRANK BEEN GONE FROM THE CAR?
- 7 A A COUPLE MINUTES, MAYBE.
- 8 Q A COUPLE MINUTES AND THEN YOU HEARD VOICES?
- 9 A I'D SAY MAYBE... IT'S TOUGH. I MEAN, YOU CAN'T PIN ME DOWN
10 TO A PRECISE TIME. I MEAN, I'D SAY MAYBE TWO, THREE MINUTES.
11 MAYBE THREE MINUTES. I DON'T KNOW.
- 12 Q HE'D BEEN GONE ABOUT THREE MINUTES AND THEN YOU HEARD
13 THE LOUD VOICES?
- 14 A I CAN'T REALLY TELL YOU, PINPOINT A TIME.
- 15 Q WAS A CLOCK ON THE CENTER CONSOLE OF THE CAR?
- 16 A NO. I WAS WATCHING MY THING, GHOST HUNTERS ACTUALLY.
- 17 Q AND IT TOOK YOU ABOUT A MINUTE AND A HALF TO WALK ALL
18 THAT WAY?
- 19 A YOU KNOW, THAT'S FUNNY, TOO. BECAUSE ALL THAT WAY ISN'T
20 REALLY THAT LONG, YOU KNOW. THAT'S WHAT KILLS ME. THAT
21 LOOKS SO FAR. IT'S REALLY NOT THAT LONG. IT'S REALLY MAYBE A
22 HUNDRED YARDS.
- 23 Q WAIT. YOU'RE SAYING---
- 24 A YEAH, MAYBE A HUNDRED, HUNDRED AND FIFTY YARDS.
- 25 Q FROM HERE TO HERE IS A HUNDRED AND FIFTY YARDS?

1 A YEAH. IT'S REALLY NOT THAT LONG. THESE HOUSES ARE TINY
2 AND THEY'RE BUILT RIGHT ON TOP OF EACH OTHER. IT'S LIKE
3 FIVECOAT SAID YESTERDAY, YOU KNOW, FIVE HOUSES IS ONLY LIKE
4 SIXTY FEET. SO, IT WASN'T THAT LONG OF A WALK. YOU GUYS ARE
5 MAKING IT OUT TO BE A MILE, AND IT'S MAYBE A HUNDRED YARDS, A
6 HUNDRED AND FIFTY YARDS.

7 Q WELL, ISN'T ANY DISTANCE FOR A PERSON IN YOUR CONDITION
8 A LONG WAY?

9 A OH, YEAH, IT'S A LONG WAY, BUT IT DIDN'T TAKE ME NO FIVE
10 MINUTES TO WALK DOWN THERE. IT TOOK ME ABOUT TWO MINUTES
11 TO WALK DOWN THERE.

12 Q YOU WERE IN RECOVERY FROM YOUR SURGERY---

13 A YES MA'AM.

14 Q ---AND IT TOOK YOU ONLY ABOUT TWO MINUTES TO WALK THAT
15 WAY?

16 A YES MA'AM.

17 Q I'M GOING TO TALK ABOUT SOME PEOPLE-- AND IT'S HARD
18 BECAUSE YOU DON'T REALLY KNOW THE STATE'S WITNESS BEFORE
19 THAT NIGHT. AND I KNOW YOU'VE GOT TO DESCRIBE THEM A CERTAIN
20 WAY AND THEY'VE GOT TO DESCRIBE YOU A CERTAIN WAY, TO TRY TO
21 MAKE OUT WHAT WE'RE TALKING ABOUT.

22 A RIGHT.

23 Q BUT THE BIG GUY, THE BIG GUY, IS THAT RON LEE, THAT YOU
24 TALKED ABOUT?

25 A AS OF YESTERDAY, YES.

- 1 Q OKAY.
- 2 A OR THE DAY BEFORE.
- 3 Q WAS HE THE GUY THAT TESTIFIED YESTERDAY FIRST THING IN
- 4 THE MORNING?
- 5 A YEAH, I GUESS SO.
- 6 Q RON LEE?
- 7 A UH-HUH.
- 8 Q AND HE'S THE BIG GUY, AND HE GOT THERE FIRST, YOU SAID?
- 9 A WHAT DO YOU MEAN, GOT THERE? THEY WERE ALREADY
- 10 THERE.
- 11 Q THEY WERE ALREADY THERE. OH, OKAY. WHERE WERE THEY?
- 12 A THEY WERE IN THE YARD RIGHT NEXT TO HIS HOUSE.
- 13 Q SO, YOU COULD SEE THEM WHEN YOU WERE STANDING THERE
- 14 RIGHT IN FRONT OF HIS HOUSE IN THE LIGHT?
- 15 A WHEN I WALKED UP?
- 16 Q YEAH.
- 17 A YEAH, THEY WERE ALL THERE.
- 18 Q SO, RON LEE'S THE ONE WHO STOPPED IN HIS TRACKS WHEN HE
- 19 SAW YOUR GUN?
- 20 A UH-HUH.
- 21 Q AND THEN RYAN LOCHBAUM?
- 22 A YEAH, RYAN BACKED UP.
- 23 Q WHEN DID JESSE HARRIS-- DO YOU REMEMBER WHO JESSE
- 24 HARRIS WAS FROM THE FIRST DAY?
- 25 A HE'S THE GUY IN THE SUIT?

- 1 Q UH-HUH.
- 2 A UH-HUH.
- 3 Q WHEN DID HE GET THERE?
- 4 A I DON'T KNOW WHO, WHEN ANYBODY GOT THERE. ALL I
- 5 REMEMBER IS BODIES. I CAN TELL YOU WHAT BODIES I SEEN DO
- 6 WHAT.
- 7 Q OKAY. SO, YOU SAID FRANK WAS WALKING AWAY AND YOU'RE
- 8 WALKING PAST HIM LIKE TWO SHIPS IN THE NIGHT.
- 9 A YES MA'AM.
- 10 Q RYAN IS WALKING BEHIND HIM AND SHOUTING. IS THAT RIGHT?
- 11 A YES MA'AM.
- 12 Q AND YOU SEE RYAN'S HANDS GO OUT LIKE THIS?
- 13 A BEND OVER A LITTLE BIT.
- 14 Q BEND OVER?
- 15 A LIKE YOU'RE TALKING UP AT SOMEBODY.
- 16 Q LIKE---
- 17 A AND THE WAVE THEM UP LIKE THIS.
- 18 Q (SOLICITOR MAKES GESTURE AS INSTRUCTED)
- 19 A THERE YOU GO. THAT WAS IT.
- 20 Q AH. AND AT THAT POINT YOU SEE BODIES COMING?
- 21 A YES MA'AM.
- 22 Q SO, AT THIS POINT YOU CAN SEE ALL OF THESE PEOPLE BUT
- 23 NONE OF THESE PEOPLE CAN SEE YOU?
- 24 A I DON'T KNOW IF THEY COULD SEE ME.
- 25 Q THEY'RE ALL REACTING TO YOU?

- 1 A FROM WHAT THEY SAID YESTERDAY, I GUESS THEY WERE
2 REACTING TO ME.
- 3 Q YOU GUESS THEY WERE RACING TO YOU?
- 4 A I DON'T KNOW.
- 5 Q OKAY.
- 6 A YOU WERE TALKING TO THEM YESTERDAY.
- 7 Q SO, NONE OF THEM SAW YOU UNTIL YOU CAME RUSHING OUT OF
8 THE DARKNESS?
- 9 A ONCE I CAME ACROSS THE STREET, BIG BOY STOPPED, AND---
- 10 Q OKAY.
- 11 A ---HE STOPPED QUICK.
- 12 Q WHEN YOU'RE WALKING DOWN THE STREET, HOW ARE YOU
13 HOLDING YOUR GUN?
- 14 A IT WAS IN MY PANTS ACTUALLY.
- 15 Q IN YOUR PANTS. WAS IT IN YOUR PANTS POCKET?
- 16 A NO, IT WAS IN THE BACK OF MY PANTS.
- 17 Q THE BACK OF YOUR PANTS?
- 18 A UH-HUH.
- 19 Q AND SO, YOU'RE WALKING-- IT'S A HEAVY GUN AND YOU'RE
20 WALKING DOWN THE STREET AND IT'S IN THE BACK OF YOUR PANTS.
- 21 A UH-HUH.
- 22 Q SO, AT WHAT POINT DO YOU DRAW THE GUN OUT?
- 23 A ONCE I SEEN EVERYBODY COME.
- 24 Q SO, IS THAT AFTER YOU PASSED FRANK THAT YOU SEE
25 EVERYBODY COMING, AND THEN YOU DRAW THE GUN OUT?

- 1 A NO.
- 2 Q NO?
- 3 A NO.
- 4 Q BEFORE YOU PASSED FRANK?
- 5 A YES.
- 6 Q AND SO, YOU'RE STANDING THERE AND YOU CAN SEE
- 7 EVERYBODY BUT NOBODY CAN SEE YOU, AND YOU'RE HOLDING THE
- 8 GUN HOW?
- 9 A KIND OF LIKE THE WAY YOU ARE.
- 10 Q OKAY.
- 11 A A LITTLE FURTHER DOWN, NOT SO STIFF.
- 12 Q OKAY.
- 13 A YEAH.
- 14 Q LIKE YOU'RE COMFORTABLE WITH IT, THE WAY YOU'RE
- 15 HOLDING IT?
- 16 A COMFORTABLE WITH IT, YEAH, THAT WOULD BE IT.
- 17 Q AND YOUR FINGER NOT ON THE TRIGGER?
- 18 A NOPE.
- 19 Q YOU'RE JUST HOLDING IT?
- 20 A UH-HUH.
- 21 Q LIKE THIS?
- 22 A UH-HUH.
- 23 Q LIKE THIS?
- 24 A NO. WRAP YOUR FINGER AROUND THE BOTTOM..
- 25 Q THIS, AROUND THE BOTTOM?

485

- 1 A YEAH, LIKE THAT. THERE YOU GO.
- 2 Q AND THEN YOU-- AND THEN THAT'S WHEN YOU RAISE IT UP IN
- 3 THE AIR?
- 4 A YEAH.
- 5 Q AND THEN THAT'S WHEN EVERYBODY CAN SEE YOU?
- 6 A YES MA'AM.
- 7 Q I WANT TO TALK TO YOU ABOUT WHAT YOU WERE THINKING
- 8 WHEN YOU WERE SITTING IN THAT CAR FOR, LIKE, TWO, THREE
- 9 MINUTES AND THEN YOU HEAR THE LOUD VOICES.
- 10 A UH-HUH.
- 11 Q WAS IT ONE VOICE OR COULD YOU TELL?
- 12 A I HEARD ONE VOICE TILL I STARTED WALKING, AND THEN I
- 13 HEARD FRANK'S VOICE GET LOUD, TOO.
- 14 Q AND YOU TESTIFIED EARLIER THAT YOU BROUGHT THE GUN
- 15 WITH YOU BECAUSE YOU WERE SCARED?
- 16 A YEAH, YEAH.
- 17 Q YOU WERE SCARED WHY?
- 18 A BECAUSE I HEARD-- I MEAN, IF YOU WOULD HAVE HEARD THE
- 19 VOICES, IF YOU WOULD HAVE HEARD THE OTHER VOICE, IT WAS
- 20 GETTING PRETTY HEATED. IT WAS PRETTY LOUD. AND IT WAS, YOU
- 21 COULD TELL SOMETHING WAS GONNA HAPPEN.
- 22 Q BECAUSE YOU THOUGHT THERE WAS TROUBLE. YOU THOUGHT
- 23 THERE WAS GONNA BE TROUBLE.
- 24 A AT THAT POINT, YEAH, I DID.

1 Q SO, YOU'RE SITTING IN THE CAR WITH YOUR CELL PHONE, AND
2 YOU THINK THERE'S TROUBLE, DO YOU CALL THE POLICE?

3 A NO, I DIDN'T.

4 Q NO. AND YOU GOT OUT OF THE CAR AND YOU WALKED DOWN
5 THE STREET, DID YOU HAVE YOUR CELL PHONE WITH YOU THEN?

6 A NO, I DIDN'T.

7 Q SO, YOU DIDN'T THINK THAT YOU NEEDED TO CALL THE POLICE?

8 A NO, I DIDN'T THINK ABOUT.

9 Q YOU WERE SCARED, BUT YOU DIDN'T THINK ABOUT CALLING
10 THE POLICE?

11 A NO. I REACTED. I DIDN'T SAY IT WAS SMART. IT WAS STUPID. I
12 REACTED.

13 Q AND SO, YOU LEFT YOUR CELL PHONE IN THE CAR AND YOU
14 WALKED ALL THE WAY DOWN THE STREET WITH YOUR GUN?

15 A (NO RESPONSE)

16 Q CORRECT?

17 A YES MA'AM.

18 Q AND AFTER YOU GOT THERE AND RYAN TRIED TO GRAB THE
19 GUN AWAY, IT'S YOUR TESTIMONY THAT YOU WOULDN'T GIVE UP THE
20 GUN BECAUSE YOU WANTED THE POLICE TO COME. IS THAT CORRECT?

21 Q NOT BECAUSE I WANTED THE POLICE TO COME, BECAUSE I
22 HEARD THE POLICE WERE COMING, IS WHAT I SAID. I HEARD THE
23 POLICE WERE COMING.

24 Q JESSE SAID, LET GO OF THE GUN, AND I SAID I WON'T UNTIL THE
25 POLICE GET HERE. AND THEN YOU RELINQUISHED THE GUN WHEN

1 YOU HEARD THE POLICE WERE COMING. HOW DID YOU HEAR THE
2 POLICE WERE COMING?

3 A SOMEBODY YELLED.

4 Q SOMEBODY YELLED, THE POLICE ARE COMING?

5 A UH-HUH.

6 Q AND IN THIS MELEE YOU'RE ABLE TO DIFFERENTIATE THESE
7 DIFFERENT VOICES AND WHAT THEY'RE SAYING?

8 A JESSE WAS RIGHT NEXT TO ME, BUT I DIDN'T KNOW IT WAS
9 JESSE.

10 Q JESSE WAS RIGHT NEXT TO YOU AND WHAT?

11 A I DIDN'T KNOW IT WAS JESSE.

12 Q YOU DIDN'T KNOW WHAT WAS JESSE?

13 A YOU JUST SAID, JESSE SAID, ON THERE.

14 Q YEAH, JESSE SAID LET GO OF THE GUN. SO, YOU HEARD
15 SOMEBODY SAY LET GO OF THE GUN?

16 A YEAH.

17 Q AND THEN YOU SAID I WON'T UNTIL THE POLICE GET HERE.

18 A HOW DID I SAY THAT?

19 Q DID YOU NOT SAY THAT IN YOUR DIRECT EXAMINATION? JESSE
20 SAID LET GO OF THE GUN AND I SAID I WON'T UNTIL THE POLICE GET
21 HERE.

22 A I DIDN'T KNOW IT WAS JESSE. HOW COULD JESSE SAY THAT?

23 Q WELL, I'M JUST ASKING YOU-- I GUESS WHAT I'M ASKING YOU IS
24 DID SOMEBODY SAY LET GO OF THE GUN?

25 A YEAH.

1 Q AND DID YOU RESPOND, I WON'T UNTIL THE POLICE GET HERE?

2 A NO, I DON'T BELIEVE I SAID I WON'T UNTIL THE POLICE GET
3 HERE. I THINK I SAID-- ALL I REMEMBER SAYING WAS I WANT TO
4 PROTECT MY BROTHER. AND WHEN I HEARD THE POLICE WERE
5 CALLED, THAT'S WHEN I SAID, I'LL LET THE GUN GO.

6 Q AND YOU HEARD THE POLICE WERE CALLED BECAUSE YOU
7 HEARD SOMEBODY'S VOICE IN THE BACKGROUND, ---

8 A YEAH.

9 Q ---AND---

10 A YELLING, THE POLICE ARE COMING, THE POLICE ARE ON THE
11 WAY RIGHT NOW.

12 Q AND SO, THAT'S WHEN-- YOU KNEW THE POLICE WEREN'T ON
13 THE SCENE YET, AND YOU DECIDED YOU WERE GOING TO GO AHEAD
14 AND LET GO OF THE GUN?

15 A YES MA'AM.

16 Q AND YOU WERE GONNA GO AHEAD AND LET GO OF THE GUN
17 BECAUSE WHY, IF THE POLICE WEREN'T ON THE SCENE YET? AND
18 YOU WEREN'T GONNA WAIT FOR RYAN LOCHBAUM TO HAVE IT. WHY
19 WERE YOU GONNA GO AHEAD AND GIVE IT UP?

20 A BECAUSE I WAS JUST GIVING IT UP. IT JUST WENT TOO FAR.
21 PLUS, I WAS GETTING KNEED IN THE BACK REALLY BAD. THEY WERE
22 BEATING ON ME PRETTY GOOD. SOMEBODY WAS KNEEING ME IN THE
23 BACK PRETTY GOOD, AND RYAN WAS CHOKING ME PRETTY DAMN
24 GOOD, TOO.

25 Q RYAN WAS CHOKING YOU?

- 1 A UH-HUH. I DIDN'T GET A CHANCE FOR ANYBODY TO TAKE
- 2 PICTURES OF ME. BUT, YOU KNOW, ---
- 3 Q NOW,---
- 4 A ---I DID HAVE THE GUN. SO....
- 5 Q I'M SORRY?
- 6 A NOTHING.
- 7 Q NO, I DIDN'T UNDERSTAND YOU.
- 8 A I SAID NOBODY GOT TO TAKE PICTURES OF ME.
- 9 Q WHAT WAS THE LAST THING YOU SAID?
- 10 A I SAID THAT I GOT BEAT ON PRETTY GOOD.
- 11 Q DID YOU TAKE PICTURES?
- 12 A NO. I WAS INCARCERATED RIGHT AWAY AND WASN'T ALLOWED
- 13 TO DO ANYTHING.
- 14 Q DID FRANK GET BEAT ON PRETTY GOOD?
- 15 A DON'T KNOW.
- 16 Q YOU DON'T KNOW?
- 17 A NO, I WAS AT THE BOTTOM OF THE PILE, MA'AM.
- 18 Q SO, YOU RELINQUISHED THE GUN?
- 19 A YES MA'AM.
- 20 Q AND WHY DID YOU RELINQUISH THE GUN AND YOU WENT BACK
- 21 TO THE CAR? YOU SAID YOU DIDN'T RUN BACK TO THE CAR. IS THAT
- 22 RIGHT?
- 23 A NO. WE WALKED PRETTY QUICK, AS QUICK AS WE COULD.
- 24 Q YOU WALKED. AND YOU WALKED ALL THIS WAY. RIGHT?
- 25 A YES.

- 1 Q AND DEVIN FIVECOAT, MARK WHITTINGTON, THEY DIDN'T
2 FOLLOW YOU?
- 3 A I SURE DIDN'T HEAR ANYBODY.
- 4 Q YOU DIDN'T HEAR ANYBODY?
- 5 A NO.
- 6 Q AND SO, BUT YOU HEARD THE POLICE WERE COMING. IS THAT
7 RIGHT?
- 8 A YES MA'AM.
- 9 Q AND NOBODY FOLLOWED YOU DOWN HERE?
- 10 A NO MA'AM.
- 11 Q AND INSTEAD OF WAITING IN THE CAR RIGHT HERE FOR THE
12 POLICE TO GET HERE, YOU LEFT?
- 13 A YES.
- 14 Q YOU FLED?
- 15 A I DON'T KNOW---
- 16 Q YOU DON'T KNOW IF YOU FLED?
- 17 A FRANK WAS DRIVING, MA'AM.
- 18 Q YOU DON'T KNOW THAT FRANK WAS STOPPED FOR SPEEDING
19 FOR GOING TWENTY-FIVE MILES AN HOUR ABOVE THE SPEED LIMIT?
- 20 A FRANK DIDN'T GET NO SPEEDING TICKET.
- 21 Q HE DIDN'T GET A SPEEDING TICKET?
- 22 A NO.
- 23 Q BUT HE WASN'T RUNNING AWAY FROM THE SCENE?
- 24 A NO.
- 25 Q AND YOU HAD YOUR CELL PHONE IN THE CAR THEN?

- 1 A YES MA'AM.
- 2 Q AND DID FRANK HAVE HIS CELL PHONE IN THE CAR?
- 3 A YES MA'AM.
- 4 Q DID EITHER ONE OF YOU CALL THE POLICE?
- 5 A WE DIDN'T HAVE A CHANCE, MA'AM.
- 6 Q YOU DIDN'T--
- 7 A WE GOT PULLED OVER PRETTY QUICK.
- 8 Q LET ME MAKE SURE I UNDERSTAND. NO QUESTION, NO
- 9 QUESTION THAT YOU WERE AT RYAN LOCHBAUM'S HOUSE THAT
- 10 NIGHT?
- 11 A NO QUESTION.
- 12 Q AND YOU WERE IN THE CAR WITH YOUR BROTHER-IN-LAW,
- 13 FRANK LARMAND. NO QUESTION?
- 14 A NO QUESTION.
- 15 Q NO QUESTION THAT YOU PARKED ALL THE WAY AROUND THE
- 16 CORNER ON PLEASANT VIEW ROAD?
- 17 A NO QUESTION.
- 18 Q NO QUESTION. NO QUESTION IT WAS MIDNIGHT?
- 19 A NO QUESTION.
- 20 Q AND IT WAS DARK OUTSIDE?
- 21 A NO QUESTION.
- 22 Q AND THAT YOU HAD THIS GUN. AND I KEEP CALLING IT THIS
- 23 GUN, BUT STATE'S EXHIBIT THREE, AND THAT YOU HAD THIS?
- 24 A NO QUESTION.
- 25 Q AND THAT YOU HAD IT FULLY LOADED?

1 A NO QUESTION.

2 Q AND AT NO POINT IN TIME DURING THIS PERCEIVED TROUBLE
3 DID YOU CALL THE POLICE TO REQUEST THEIR HELP?

4 A NO QUESTION.

5 Q AND IT'S YOUR TESTIMONY THAT YOU WERE JUST ALONG FOR
6 THE RIDE FOR ALL THESE THREE HOURS IN THE MIDDLE OF THE NIGHT
7 IN SOUTH CAROLINA? IS THAT RIGHT? JUST GOING ALONG FOR THE
8 RIDE?

9 A YES MA'AM, NO QUESTION.

10 Q AND YOU WERE GOING TO SOMEBODY'S HOUSE IN THE MIDDLE
11 OF THE NIGHT AND YOU DIDN'T REALLY TALK ABOUT WHY YOU WERE
12 GOING THERE?

13 A I'D SAY I WAS SIGNED UP TO GO TO KNIGHTS' STADIUM. THAT'S
14 WHAT I ORIGINALLY WAS GOING TO, AND THIS JUST HAPPENED
15 AFTERWARDS.

16 Q SO, YOU JUST HAPPENED TO DECIDE TO GO TO RYAN
17 LOCHBAUM'S HOUSE AND YOU HAD NO IDEA WHAT YOU WERE THERE
18 TO DO?

19 A NO MA'AM, NO QUESTION.

20 Q AND YOU NEVER ASKED ANY QUESTIONS ABOUT WHAT YOU
21 WERE DOING THERE?

22 A NO, I DIDN'T. IT'S MY BROTHER-IN-LAW.

23 Q IT'S YOUR BROTHER-IN-LAW AND HE TELLS YOU WHERE YOU'RE
24 GOING AND YOU GO THERE WITHOUT COMPLAINING. RIGHT?

25 A NO QUESTION.

1 Q THANK YOU, MR. LEMIRE.

2 THE COURT: MR. RHEA?

3 MR. RHEA: NOTHING, YOUR HONOR.

4 THE COURT: MR. GREELEY?

5 MR. GREELEY: NO FURTHER QUESTIONS.

6 THE COURT: YOU MAY STEP DOWN.

7 A THANK YOU.

8 THE COURT: ANY FURTHER WITNESSES?

9 MR. RHEA: NO MORE FOR MR. LARMAND, YOUR HONOR.

10 THE COURT: MR. GREELEY?

11 MR. GREELEY: MR. LEMIRE RESTS.

12 THE COURT: MEMBERS OF THE JURY, WE'RE GOING TO TAKE A
13 LUNCH BREAK. WE'RE GOING TO TAKE A LONG LUNCH BREAK
14 BECAUSE WE HAVE TO DO SOME WORK WHILE YOU'RE GONE.

15 IF YOU WOULD, BE BACK AT 2:30, AND BE WELL-RESTED, AS WE
16 WILL HAVE THE CLOSING ARGUMENTS AND THEN I WILL CHARGE YOU
17 ON THE LAW AND TURN THE CASE OVER TO YOU.

18 AT THIS TIME, BE SURE, DO NOT TALK ABOUT THIS CASE AMONG
19 YOURSELVES OR WITH ANYBODY.

20 THANK YOU, AND WE'LL SEE YOU BACK AT 2:30.

21 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11:08 A.M.)

22 THE COURT: MR. RHEA, YOU DID REST?

23 MR. RHEA: YES, YOUR HONOR.

1 MR. GREELEY: YOUR HONOR, IF I MAY, I JUST WANT TO CLARIFY
2 THE OBJECTION I HAD YESTERDAY WITH REGARD TO A CHARGE. I
3 DIDN'T STATE IT COMPLETELY.

4 THE COURT: SURE.

5 MR. GREELEY: THE OBJECTION IS THE INFERENCE LANGUAGE
6 COMING FROM THE LYNCHING STATUTE. AND THE BASIS OF MY OF MY
7 OBJECTION WOULD BE THAT I WOULD SUBMIT TO THE COURT THAT
8 THE INFERENCE LANGUAGE FROM THAT STATUTE IS
9 UNCONSTITUTIONAL. ALONG WITH THAT, IT IS IN VIOLATION OF
10 BURDEN SHIFTING BOTH UNDER THE UNITED STATES CONSTITUTION
11 AND THE STATE OF SOUTH CAROLINA CONSTITUTION.

12 THE COURT: THANK YOU, MR. GREELEY. SOLICITOR,
13 ANYTHING?

14 MS. JOYNER: NO MOTIONS FROM THE STATE, YOUR HONOR.

15 THE COURT: ANYTHING FROM YOU, MR. RHEA?

16 MR. RHEA: JUST BRIEFLY, YOUR HONOR. AT THIS TIME I WOULD
17 RENEW MY PREVIOUS MOTION FOR A DIRECTED VERDICT.

18 THE COURT: THAT MOTION IS DENIED.

19 MR. RHEA: THANK YOU, YOUR HONOR.

20 THE COURT: WE'LL START BACK AT 2:30, WHICH WILL GIVE US
21 SOME TIME TO DO A LITTLE BIT OF WORK. WILL THAT BE ENOUGH
22 TIME FOR Y'ALL TO GET YOUR THINGS TOGETHER?

23 MR. RHEA: YOUR HONOR, IS THERE TO BE A PLEA AT 2:30
24 BEFORE WE GET STARTED?

25 THE COURT: I'M GOING TO DO THAT RIGHT NOW.

1 MR. RHEA: THANK YOU, YOUR HONOR.

2 MR. GREELEY: YOUR HONOR, THE ORDER OF THE CLOSING
3 WOULD BE?

4 THE COURT: DOES THE STATE WAIVE OPENING ON THE LAW?

5 MS. JOYNER: YES, YOUR HONOR.

6 MR. GREELEY: YOUR HONOR, I WOULD OBJECT TO THE STATE
7 NOT OPENING ON THE LAW.

8 THE COURT: ON WHAT GROUNDS?

9 MR. GREELEY: THERE IS SOME AUTHORITY FOR MY OBJECTION,
10 YOUR HONOR.

11 THE COURT: WELL, IF YOU CAN FIND IT AND SHOW IT TO ME
12 AFTER LUNCH, I'LL TAKE IT UNDER ADVISEMENT.

13 MR. GREELEY: THANK YOU, YOUR HONOR.

14 THE COURT: WE'LL BE AT EASE IN THIS CASE UNTIL 2:30.

15 COURT IN SESSION - 2:35 P.M.

16 THE COURT: IS THE STATE READY?

17 MS. JOYNER: THE STATE IS READY, YOUR HONOR.

18 THE COURT: MR. RHEA?

19 MR. RHEA: WE'RE READY, YOUR HONOR.

20 THE COURT: MR. GREELEY?

21 MR. GREELEY: WE'RE READY, YOUR HONOR.

22 THE COURT: BRING THE JURY IN.

23 (WHEREUPON THE JURY ENTERED THE COURTROOM)

24 GOOD AFTERNOON.

25 (JURY RESPONDS IN KIND)

1 THE COURT: WE'RE GOING TO FINISH UP THINGS RIGHT NOW AND
2 TURN IT OVER TO YOU LATER ON. BUT RIGHT NOW WE'RE GOING TO
3 PROCEED WITH THE ATTORNEYS' CLOSING STATEMENTS. I WANT YOU TO
4 UNDERSTAND RIGHT OUT OF THE BLOCK THAT THEIR STATEMENTS ARE NOT
5 EVIDENCE. THEY ARE SIMPLY ARTICULATING THEIR CLIENTS' POSITIONS.

6 AND WITH THAT BEING SAID, WE'LL NOW PROCEED WITH MR. RHEA'S
7 CLOSING STATEMENT.

8 MR. RHEA: MAY IT PLEASE THE COURT, YOUR HONOR.

9 THE COURT: SURE.

10 MR. RHEA: MADAM FORELADY, LADIES AND GENTLEMEN OF THE
11 JURY. THANK YOU FOR YOUR VERY CLOSE ATTENTION TO THIS IMPORTANT
12 MATTER.

13 I WANT TO TALK TO YOU A LITTLE ABOUT THE PHONE CALL THAT MY
14 CLIENT, FRANK LARMAND, MADE AFTER THE INCIDENT TO RYAN
15 LOCHBAUM. I SUBMIT TO YOU THAT PHONE CALL WAS OF A SPONTANEOUS
16 NATURE, JUST LIKE THE ACTIONS THAT HE TOOK AT MR. LOCHBAUM'S
17 HOUSE WERE OF A SPONTANEOUS NATURE IN REACTION TO EVENTS THAT HE
18 DID NOT PLAN OR CONSPIRE TO DO WITH MR. LEMIRE.

19 WHAT DOES OUR COMMON, EVERYDAY EXPERIENCE TELL US ABOUT A
20 PHONE CALL LIKE THAT? DOES IT SOUND LIKE THE PHONE CALL WAS, YEAH,
21 I GOT YOU, OUR CONSPIRACY TO LYNCH YOU, TO DO THINGS TO YOU WAS
22 SUCCESSFUL? BUT DOES IT SOUND MORE LIKE WHAT IT REALLY WAS,
23 WHICH WAS, HEY, IS EVERYBODY OKAY, I HAD NO IDEA THINGS WOULD GET
24 OUT OF HAND LIKE THEY DID? I SUBMIT TO YOU IT'S THE LATTER.



19185

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

**APPEAL FROM YORK COUNTY
In the Court of Common Pleas**

Honorable William H. Seals, Jr., Circuit Court Judge

**Case No. 2009-GS-46-02834
Case No. 2009-GS-46-02835**

The State Respondent

vs

Francis Larmand Appellant

**RECORD ON APPEAL
VOLUME TWO**

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INDEX VOLUME 2

Transcript of Record pp.520-606	249
Certificate of Counsel	586

1 I WANT TO TALK A LITTLE BIT ABOUT THE LOCATION OF THE PARTIES.
2 A LOT'S BEEN SAID ON DIRECT EXAMINATION AND CROSS EXAMINATION
3 WITH REGARD TO WHERE EVERYBODY WAS.

4 THE FIRST THING I ASK YOU TO CONSIDER IS WHEN THINGS LIKE THIS
5 HAPPEN, THEY HAPPEN VERY FAST, VERY QUICKLY. ALTERCATIONS HAPPEN
6 LIGHTNING FAST (SNAPPING OF FINGERS) AND SOMETIMES PEOPLE HAVE TO
7 REACT.

8 WHERE DO THE PIECES OF THE PUZZLE FIT? WHAT I DON'T REALLY
9 UNDERSTAND SO CLEAR IN MY MIND IS WHY DIDN'T THE THREE FRIENDS OF
10 MR. LOCHBAUM THAT WERE RUNNING FROM ALLEGEDLY SO FAR AWAY, MR.
11 LEE, MR. FIVECOAT, AND THE OTHER GENTLEMAN. WHY DIDN'T THEY SEE
12 JESSE HARRIS COME OUT OF THE HOUSE?

13 I SUBMIT TO YOU THE ONLY LOGICAL EXPLANATION IS THEY WERE A
14 LOT CLOSER THAN THEY SAID THEY WERE TO WHERE MR. LOCHBAUM AND
15 MY CLIENT, MR. LARMAND, WERE HAVING A HEATED DISCUSSION.

16 COMMON SENSE TELLS US IF YOU SEE A FRIEND OF YOURS OR AN
17 ACQUAINTANCE, WHATEVER, INVOLVED IN WHAT SEEMS LIKE A
18 POTENTIALLY VOLATILE SITUATION, YOU DON'T HAVE TO BE TOO TERRIBLY
19 FAR AWAY, AND THAT CAME OUT IN CROSS EXAMINATION.

20 NOW, WITH REGARD TO MR. LOCHBAUM, HAVE YOU EVER SEEN A
21 WITNESS, OR A MORE DISGRUNTLED EMPLOYEE WITH AN AXE TO GRIND IN
22 YOUR LIFE? ADMITTEDLY SO. HE DIDN'T TRY AND HIDE THAT AT ALL. AND I
23 SUBMIT TO YOU THAT COLORS THIS ENTIRE CASE. HE'S CERTAINLY SITTING
24 IN THE DRIVER'S SEAT, THIS ONE, BECAUSE HOW COULD YOU HAVE MORE
25 POWER OVER SOMEBODY YOU DISLIKE THAN HAVE THE LONG ARM OF THE

1 LAW, THE PROSECUTION ON YOUR SIDE? IT WOULD BE HARD TO BE IN MORE
2 OR A POSITION OF POWER THAN THAT.

3 NOW, THE PROBLEM IS, MR. LOCHBAUM THINKS HE'S SMARTER THAN
4 EVERYBODY ELSE. IT MIGHT NOT BE THAT HARD TO BE SMARTER THAN ME.
5 HE THINKS HE'S SMARTER THAN EVERYBODY ELSE IN THE COURTROOM. MS.
6 JOYNER, TO HIS DETRIMENT, HE THINKS THAT HE'S SMARTER THAN HER,
7 NOT. SHE CAN'T CONTROL HIM. YOU HEARD HIM ON THE STAND. HE
8 BLURTED OUT THAT MR. LARMAND SAID YOU CAN KEEP MIKE TAYLOR. SHE
9 TRIED TO CUT HIM OFF THERE. BUT THE TOOTHPASTE WAS ALREADY OUT
10 OF THE TUBE., YOU CAN KEEP MIKE TAYLOR.

11 AND WHAT DOES THAT MEAN? WELL, THAT'S GOING TO LINE UP WITH
12 EVERYTHING ELSE HE TRIED TO PORTRAY, WHETHER WITH DETECTIVE
13 HERRING OR IN FRONT OF Y'ALL HERE IN THIS COURTROOM. HE WANTS YOU
14 TO THINK THAT BY PLAYING DUMB, I DON'T UNDERSTAND WHAT A CALL
15 FROM MIKE TAYLOR, WHAT'S THAT GOT TO DO WITH ME.

16 THE PROBLEM IS THE MECHANISM IN WHICH HE USED ONE OF THEM,
17 THEY TRIED TO LURE ME. AND MAKING A BIG DEAL OF THAT WITH
18 DETECTIVE HERRING WAS, IN FACT, AN ADMISSION THAT HE WAS IN
19 CAHOOTS WITH MR. TAYLOR TO STEAL CALLS AND GO TO POP-A-LOCK
20 CALLS. IT'S A CLEAR ADMISSION OF THAT FACT.

21 WHY ELSE WOULD THEY BE THINKING THAT THEY'RE TRYING TO GET
22 HIM UP THERE? WHAT'S HE GOT TO DO WITH POP-A-LOCK? HE'D BEEN
23 WORKING FOR THEM FOR SIX MONTHS OR THEREABOUTS AT THAT
24 JUNCTURE. BUT HE WANTS YOU TO THINK THAT, OKAY?

1 HE CAN'T EVEN BE TRUTHFUL ABOUT LITTLE THINGS. AND IF YOU'RE
2 NOT TRUTHFUL ABOUT LITTLE THINGS I SUBMIT TO YOU, CHANCES ARE
3 YOU'RE NOT GOING TO TRUTHFUL ABOUT THE BIGGER THINGS.

4 MR. GREELEY WAS ASKING ABOUT THE PHONE CALLS. THOSE ARE
5 PHONE CALLS THAT WERE PROVIDED TO ME AND MR. GREELEY BY THE
6 STATE. MR. GREELEY ASKED HIM, DID YOU CALL WBT. I THINK HE GAVE
7 HIM TWO CRACKS AT THAT QUESTION. NO, I DIDN'T CALL WBT, I DIDN'T
8 CALL WBT. AND THEN MR. LOCHBAUM GOES ON TO SAY, AND I THINK THE
9 TIME WAS AROUND 7:30, HE REMEMBERED, AS YOU HEARD IT. HE SAID,
10 WELL, THEY DON'T ANSWER THE PHONE, OR THEY'RE NOT OPEN AT 7:30,
11 THEY DON'T TAKE CALLS AT 7:30. YOU GOT TO WAIT TILL 9:00.

12 PHONE RECORDS DON'T LIE. DO YOU KNOW OF ANYTHING MORE
13 INHERENTLY RELIABLE THAN PHONE RECORDS?

14 MS. JOYNER: OBJECTION. THE PHONE RECORDS AREN'T IN EVIDENCE,
15 YOUR HONOR.

16 MR. RHEA: THERE'S BEEN MUCH TESTIMONY ABOUT THEM, YOUR
17 HONOR.

18 THE COURT: I'LL LET YOU DISCUSS THE TESTIMONY, BUT THEY ARE
19 NOT IN EVIDENCE.

20 MR. RHEA: THANK YOU, YOUR HONOR. WHAT ABOUT MR.
21 LOCHBAUM'S INTERACTION WITH THE EMPLOYMENT SECURITY
22 COMMISSION? WE TALKED ABOUT THAT. HE WAS UNTRUTHFUL WITH THEM.
23 HE TRIED TO GET UNEMPLOYMENT AND THEN HE CAME IN HERE ON CROSS
24 EXAMINATION AND TESTIFIED ON THE STAND AND SAID HE'D BEEN
25 WORKING AT THIS PLACE IN ROCK HILL SINCE NOVEMBER, APPROXIMATELY

1 A MONTH AFTER HE WAS TERMINATED FROM POP-A-LOCK FOR GOOD CAUSE.
2 HE WAS DISQUALIFIED BY THE EMPLOYMENT SECURITY COMMISSION AND
3 RIGHTFULLY SO. IN LARGE PART BECAUSE MRS. LARMAND, WHO HE ALSO
4 DISLIKED, AND HE MENTIONED IT LATER, BECAUSE SHE POINTED OUT THE
5 FACT THAT HE WAS CAHOOTS. JUST ANOTHER EXAMPLE.

6 ALSO, WEAVING THE STORY OF TRYING TO LURE HIM. OBVIOUSLY,
7 THAT HAD AN IMPACT ON DETECTIVE HERRING. THAT'S WHY HE DID IT. HE
8 CONTINUES ON WITH THEY TRIED TO LURE ME INTO THE DARKNESS OF THE
9 NEIGHBORHOOD, HIS OWN NEIGHBORHOOD. THE BERM AREA, DRESSED ALL
10 IN BLACK. THAT'S WHAT A WORKING MAN LIKE FRANK WEARS. IT'S ALL
11 BLACK. A FACTUAL INCONSISTENCY. OKAY?

12 HE WAS ALSO IN CAHOOTS WITH A WITNESS. OH, YEAH, EVERYBODY
13 POINTED OUT, YOU KNOW, THEY WERE WEARING ALL BLACK. PART OF A
14 CONSPIRACY. JUST ANOTHER EXAMPLE OF WEAVING THIS STORY WHICH IS
15 ALL BASED ON UNTRUTHS.

16 NOW, WITH REGARD TO THE LURING OUT TO THE DARK LOCATION,
17 WELL, EVEN THE STATE'S WITNESSES' TESTIMONY ABOUT WHERE THE PILE
18 WAS, WAS RIGHT IN THE YARD OF MR. LOCHBAUM'S HOUSE. THAT GOES
19 AGAINST HIS THEORY RIGHT THERE. ANOTHER FACTUAL INCONSISTENCY.

20 THE SAME THING WITH MR. LARMAND. MR. LARMAND WAS IN FACT
21 WALKING AWAY, AS YOU HEARD. REMEMBER? THE PILE LOCATION'S STILL
22 RIGHT IN FRONT OF THE HOUSE. WHAT DOES THAT TELL YOU? ANOTHER
23 UNTRUTH, FACTUAL INCONSISTENCY.

24 HIS EXPLANATION FOR TALKING WITH MIKE TAYLOR WAS THAT MIKE
25 CALLED HIM TO ASK HIM FOR DIRECTIONS TO KNIGHTS' STADIUM. ONCE

1 AGAIN, I ASK YOU TO THINK ABOUT OUR OWN LIVES, COMMON SENSE. MIKE
2 TAYLOR HAS BEEN WITH THAT COMPANY FOR YEARS AND YEARS AND
3 YEARS IN THIS GENERAL GEOGRAPHIC AREA. MR. LOCHBAUM WANTS YOU
4 TO BELIEVE THAT HE DOESN'T KNOW THE LOCATION OF KNIGHTS' STADIUM.
5 I SUBMIT THAT'S NOT TRUTHFUL.

6 LIKE ANY OTHER BUSINESS-- AND TO THIS DAY, MR. LOCHBAUM
7 STILL HAS HIS NOSE IN POP-A-LOCK'S BUSINESS, GIVING OPINIONS ON THE
8 STAND ABOUT THE STATE OF THE BUSINESS AS HE KNOWS IT, UP UNTIL THIS
9 DAY, AND WHAT MRS. LARMAND IS OR IS NOT DOING.

10 IT GOES TO THE THEME OF THIS GUY CANNOT LET IT GO. HIS HATRED
11 FOR FRANK AND KERRIANN LARMAND, HE CANNOT AND WILL NOT LET IT
12 GO. AND THAT'S A BIG PART OF THIS TRIAL, I SUBMIT TO YOU.

13 NOW, THIS HAS BEEN SOMETHING OF A SANITIZED TRIAL SOMETIMES.
14 MRS. LARMAND'S A NICE LADY. SHE GOT ON THE STAND, USED
15 TERMINOLOGY THAT'S BEEN USED THROUGHOUT THE TRIAL, ABOUT THE
16 CALL INTERCEPTION AND UNAUTHORIZED SERVICES.

17 WELL, IN CLOSING ARGUMENT, I'M NOT GONNA BE SO SANITIZED.
18 BECAUSE THIS IS THE TRUTH CHAIN. THIS IS WHERE IT COUNTS. YOU'RE
19 ASKED TO DETERMINE WHAT THE TRUTH OF THE MATTER IS, TO SIPHON
20 THROUGH THE FACTS.

21 WELL, LET'S CALL CALL INTERCEPTION AND UNAUTHORIZED
22 SERVICES WHAT THEY ARE. IT'S STEALING, IS WHAT IT IS. THAT AND
23 NOTHING MORE. MR. LARMAND WENT DOWN THERE SIMPLY WITH THE
24 INTENTION OF SAYING YOU NEED TO STOP. I THINK HE EXERCISED BAD
25 JUDGMENT, CERTAINLY, IN GOING TO MR. LOCHBAUM'S HOUSE. HE SHOULD

1 HAVE HANDLED IT ANOTHER WAY. BUT HE DIDN'T KNOW WHAT WAS ABOUT
2 TO GO DOWN THERE. HE'S NOT GUILTY OF THE CHARGES THAT HAVE BEEN
3 LEVELED AGAINST HIM TODAY.

4 THE PROSECUTION BROUGHT UP THE FACT ABOUT MR. LARMAND
5 HAVING A KNIFE. OKAY? A LOT OF WORKING FOLKS WORK WITH THEIR
6 HANDS, CARS, WHAT NOT, HAVE A KNIFE IN THEIR POCKET. MR. LARMAND
7 NEVER USED THE KNIFE. THAT SHOWS HE DIDN'T GO DOWN THERE WITH ILL
8 WILL. HE NEVER PUNCHED, HIT MR. LOCHBAUM WHEN HE WAS ON TOP OF
9 HIM. HE SIMPLY REACTED AS ANYONE MIGHT WHEN HIS BROTHER-IN-LAW IS
10 ON THE GROUND, TRYING TO MAKE SURE THE GUN'S SECURE, NOBODY GETS
11 HURT, AND TRYING TO GET EVERYBODY OFF OF LEO, WHOM HE KNOWS HAS
12 A BAD BACK.

13 HE SHOWED YOU HIS BACK. AND HE'S HAD BACK PROBLEMS, AND I
14 KNOW YOU'RE NOT ONE HUNDRED PERCENT WHEN YOU'VE GOT A BAD
15 BACK. HE'S NEAR CROOKED. IS THAT THE KIND OF GUY YOU'RE GOING TO
16 TAKE WITH YOU ON YOUR PLAN TO GO LYNCH SOMEBODY? IS PART OF
17 YOUR CONSPIRACY, HEY, LET'S GO BEAT THIS GUY UP, AND YOU'RE GONNA
18 TAKE MR. LEMIRE WITH YOU?

19 THERE HAVE BEEN MANY OBJECTIONS TO INTRODUCTION OF PHONE
20 RECORDS, MR. GREELEY GETTING INTO PHONE RECORDS THAT HAVE BEEN
21 PROVIDED TO US AND ME. ONCE AGAIN, I SUBMIT TO YOU THERE'S NOTHING
22 MORE INHERENTLY RELIABLE THAN PHONE RECORDS.

23 NOW, WITH REGARD TO THE SPECIFIC CHARGES. YOU HEARD MR.
24 LOCHBAUM DESCRIBE THE REASONS FOR HIM BEING TERMINATED FROM

1 POP-A-LOCK AS BEING TRUMPED UP. YOU REMEMBER THE TESTIMONY AS
2 YOU HEARD IT, BUT I THINK THAT'S WHAT I HEARD, TRUMPED UP.

3 WELL, IF ANYTHING WAS TRUMPED UP IN THIS PROCEEDING AND THE
4 INTERACTION BETWEEN THESE PARTIES AT THIS TRIAL, IT'S THESE
5 EXCESSIVE CHARGES AGAINST MY CLIENT.

6 NOW, MR. LARMAND'S CHARGED, AS YOU'VE HEARD, WITH LYNCHING.
7 YOU TAKE THE LAW AS HIS HONOR READS IT TO YOU, NOT AS THE LAWYERS
8 GIVE IT TO YOU. BUT THAT REQUIRES PREMEDITATION. OKAY?
9 PREMEDITATED. PREMEDITATED PURPOSE AND INTENT. I SUBMIT TO YOU
10 THOSE ARE NOT PRESENT IN THIS CASE. OKAY?

11 LET'S THINK ABOUT THE WAY THINGS WENT DOWN. OKAY? THE
12 CHRONOLOGY, THE TIMING OF THE WAY THINGS WENT DOWN. MR.
13 LARMAND'S BEEN TALKING WITH MR. LOCHBAUM. THEY'RE HAVING A LESS
14 THAN HARMONIOUS CONVERSATION. MR. LARMAND IS WALKING AWAY.
15 THAT'S WHEN MR. LEMIRE APPEARS. HE THINKS THAT HIS BROTHER-IN-LAW
16 IS IN DANGER. HE SEES THESE OTHER FOLKS IN CLOSE PROXIMITY. AND HE
17 BROUGHT OUT THE GUN.

18 THEREAFTER, MR. LOCHBAUM JUMPS ON, JUMPS ON LEO. HOW IN THE
19 WORLD CAN MR. LARMAND HAVE ANTICIPATED THAT? THEREAFTER HE
20 SIMPLY REACTED SPONTANEOUSLY, AS PERHAPS ANYONE WOULD. THAT'S
21 TOTALLY DIFFERENT FROM A SITUATION WHERE THEY GO DOWN THERE
22 WITH AN AGREEMENT THAT MR. LEMIRE HOLDS MR. LOCHBAUM AT
23 GUNPOINT WHILE MR. LARMAND BEATS HIM SENSELESS, AND MR. LEMIRE
24 JOINS IN, KICKING HIM IN THE HEAD, KICKING HIM IN THE RIBS. THAT'S NOT
25 WHAT HAPPENED HERE. THAT'S NO WHERE CLOSE TO WHAT HAPPENED

1 HERE. IT'S NOT ON ALL FOURS WITH WHAT THIS STATUTE IS. WHAT
2 OCCURRED ON THIS NIGHT IS NOT WHAT THIS STATUTE IS MEANT FOR, I
3 SUBMIT TO YOU.

4 THE SERIOUS PHYSICAL ALTERCATION DID NOT OCCUR WHILE MR.
5 LARMAND AND MR. LOCHBAUM WERE TALKING WITH ONE ANOTHER. HE
6 DIDN'T TAKE A SWIPE AT HIM. HE DIDN'T PULL A GUN ON HIM. HE DIDN'T
7 GET HIS KNIFE OUT. HE SIMPLY TOLD HIM TO LEAVE HIS WIFE'S COMPANY
8 ALONE. OKAY? AND THEN HE PROCEEDED TO WALK AWAY.

9 I WANT TO POINT OUT AGAIN, IS THAT THE MAN YOU'RE GONNA TAKE
10 FOR YOUR LYNCHING PLAN?

11 BEG THE COURT'S INDULGENCE.

12 (PAUSE TO RETRIEVE EXHIBITS)

13 HE'S ALSO CHARGED WITH CRIMINAL CONSPIRACY. THE JUDGE IS
14 GOING TO READ YOU THE LAW ON THAT. I SUBMIT YOU THERE'S NO
15 TESTIMONY AND NO EVIDENCE WHATSOEVER OF UNITING, COMBINING, AND
16 CONSPIRING ON THE PART OF FRANK AND LEO, ESPECIALLY NOT WITH
17 REGARD TO LYNCHING AND POINTING A FIREARM. NONE WHATSOEVER

18 YOU HEARD MR. LEMIRE'S TESTIMONY AND MR. LARMAND'S
19 TESTIMONY. WHAT DOES THE STATE HAVE OTHER THAN THAT'S THE WAY
20 RYAN WANTS IT TO BE? BECAUSE IF IT'S THAT WAY IT'S A LOT MORE
21 SERIOUS THAN JUST A DISORDERLY SITUATION OR A BREACH OF PEACE
22 SITUATION, PEOPLE GETTING LOUD IN THE STREET.

23 HE KNOWS THAT TAKES IT TO ANOTHER HIGHER LEVEL. HE KNEW
24 THAT WHEN HE WENT DOWN TO THE ROCK HILL POLICE DEPARTMENT. HE

1 WAS IN THERE EARLY IN THE MORNING AND HE'S RAISING CAIN. OKAY?

2 AND IT WAS SEVERE ENOUGH FOR LES HERRING TO GO DEAL WITH IT.

3 AS I SAID IN OPENING ARGUMENT, AS YOU WILL RECALL, THE
4 SQUEAKY WHEEL GOT THE GREASE THAT DAY, AND HAS CONTINUED TO GET
5 THE GREASE THROUGHOUT THE PENDENCY OF THIS CASE AND INTO THIS
6 CASE, AND THROUGHOUT. THAT'S NOT WHAT THE CRIMINAL JUSTICE
7 SYSTEM SHOULD BE ABOUT. IT'S A SEARCH FOR TRUTH.

8 THIS IS STATE'S EXHIBITS SIX AND SEVEN. THESE ARE MR.
9 LOCHBAUM'S INJURIES. AND I DON'T WANT TO MINIMIZE ANYTHING IN THE
10 WORLD OF HUMAN INTERACTION. I DON'T LIKE TO SEE ANYBODY GET HURT.
11 BUT THESE OCCURRED INCIDENTAL TO THE STRUGGLE FOR THE GUN. I
12 DON'T KNOW WHETHER THESE ARE FINGERNAIL MARKS FROM PEOPLE
13 TRYING TO GET THEIR HANDS ON THE GUN OR WHAT NOT. MY CLIENT'S NOT
14 RESPONSIBLE FOR THOSE. THESE ARE PICTURES, I SUBMIT TO YOU, OF A
15 LYNCHING?

16 POINTING A FIREARM. THERE'S ABSOLUTELY NO TESTIMONY-- MY
17 CLIENT IS CHARGED WITH POINTING A FIREARM. THERE'S ABSOLUTELY NO
18 EVIDENCE WHATSOEVER THAT MR. LARMAND EVER HAD A FIREARM, KNEW
19 THAT MR. LEMIRE HAD A FIREARM, KNEW THAT MR. LEMIRE WOULD BRING
20 A FIREARM DOWN TO MR. LOCHBAUM'S HOUSE, MUCH LESS TAKE THE
21 FIREARM OUT AND BRANDISH THE FIREARM. YOU HEARD WHAT MR. LEMIRE
22 SAID, NEVER HAPPENED.

23 BUT THAT'S NOT ENOUGH FOR MR. LOCHBAUM BECAUSE HE AS MUCH
24 AS SAID WHEN HE WAS ON THE STAND, HE DOESN'T CARE ANYTHING ABOUT
25 LEO. WHAT DID HE SAY? HE'S JUST FRANK'S THUG. IS THAT WHAT HE SAID?

1 HE DIDN'T CARE WHAT HAPPENS TO MR. LEMIRE. HE HOLDS AGAINST MR.
2 LARMAND. HE DOESN'T HOLD ANY DISGRUNTLED FEELINGS ABOUT MR.
3 LEMIRE. HE WANTS FRANK. A COURT OF LAW IS NOT THE PLACE TO EXACT
4 REVENGE. IT'S A PLACE FOR THE SEARCH FOR TRUTH. THERE'S NO EVIDENCE
5 OF A CONSPIRACY FOR MY CLIENT TO HAVE A GUN.

6 AS I SAID TO YOU IN THE BEGINNING OF THIS TRIAL, ALL OF THE
7 HALLMARKS OF OUR CRIMINAL JUSTICE SYSTEM APPLY IN THIS CASE. THIS
8 IS THE STUFF OF REAL LIFE. YOU READ IT IN BOOKS, SEE IT IN MOVIES AND
9 TV. TODAY, IT IS A LIVING, BREATHING CONCEPT.

10 THE FIRST AND FOREMOST HALLMARK OF OUR CRIMINAL JUSTICE
11 SYSTEM IS THIS MAN AS HE SITS HERE BEFORE YOU IS PRESUMED INNOCENT.
12 THE STATE IN THE FORM OF PROSECUTION HAS THE BURDEN OF PROOF. HE
13 NEED NOT PROVE ANYTHING IN THIS CASE. CERTAINLY, WE PUT OUR
14 CLIENTS ON THE STAND. THERE'S NOTHING TO HIDE.

15 THE STATE'S BURDEN IN A CRIMINAL CASE IS A HIGH ONE. IT IS
16 BEYOND A REASONABLE DOUBT, THE KIND OF DOUBT THAT WOULD CAUSE
17 A REASONABLE PERSON TO HESITATE TO ACT. THAT'S OUR BLUEPRINT FOR
18 JUDGING THIS CASE.

19 I SUBMIT TO YOU THE STATE HAS NOT COME CLOSE TO PROVING THEIR
20 CASE BEYOND A REASONABLE DOUBT. NOT BECAUSE MS. JOYNER ISN'T
21 WORKING HARD. IT'S BECAUSE MY CLIENT IS NOT GUILTY OF THOSE
22 CHARGES. AND THAT IS THE SUM AND SUBSTANCE OF THE REASONS WHY
23 THAT HAS NOT BEEN DONE. AND I ASK YOU TO SO FIND HIM NOT GUILTY OF
24 THOSE CHARGES.

1 BAD JUDGMENT DOES NOT RISE TO THE LINE FOR LYNCHING. ACTING
2 TO HELP YOUR BROTHER-IN-LAW WHO DID SOMETHING YOU DIDN'T KNOW
3 HE WAS GOING TO DO AND SPONTANEOUSLY JUMPING INTO THE DOG PILE
4 DOES NOT AMOUNT TO LYNCHING OR POINTING A FIREARM.

5 MY GRANDDADDY USED TO BE FOND OF AN OLD SAYING WHICH IS
6 STILL USED IN THE SOUTH, CALLED WHEN PEOPLE ARE IN CAHOOTS WITH
7 ONE ANOTHER. GOT SOMETHING GOING ON, COULD BE LEGAL, COULD BE
8 ILLEGAL, COULD BE JUST FRIENDLY, WHATEVER. IT COULD BE BAD INTENT,
9 GOOD INTENT. WHO KNOWS? YOU CAN BE IN CAHOOTS WITH ONE
10 ANOTHER.

11 THE STATE WANTS YOU TO BELIEVE THAT MY CLIENT AND MR.
12 LEMIRE WERE IN CAHOOTS WITH ONE ANOTHER. THEY WEREN'T. I SUBMIT
13 TO YOU THE ONLY PEOPLE IN CAHOOTS WITH ONE ANOTHER WERE MR.
14 LOCHBAUM AND HIS FRIENDS. WHETHER IT'S MIKE TAYLOR AND OTHER
15 EMPLOYEES OF POP-A-LOCK WHO WERE HELPING HIM STEAL, OR TO SAY, OH,
16 YEAH, THEY WERE WEARING ALL BLACK, TRYING TO LURE ME INTO THE
17 DARKNESS. THAT, I SUBMIT TO YOU, IS WHAT BEING IN CAHOOTS IS ALL
18 ABOUT.

19 THANK YOU FOR YOUR TIME AND ATTENTION TO THIS MATTER. I
20 RESPECTFULLY ASK YOU THE JURY TO FIND NOT GUILTY OF ALL CHARGES
21 AGAINST MR. LARMAND. THANK YOU.

22 THE COURT: MR. GREELEY.

23 MR. GREELEY: MAY IT PLEASE THE COURT. GOOD AFTERNOON. IN
24 THE BEGINNING I TOLD YOU ABOUT THE STATE'S BURDEN OF PROOF AND

1 HOW THE STATE WAS ON TRIAL. AND THE STATE IS ON TRIAL IN EVERY
2 CRIMINAL CASE THAT IS TRIED ACROSS THIS LAND.

3 AND ONE OF THE THINGS THAT YOU'RE GOING TO HAVE TO LOOK AT IS
4 YOU'RE GOING TO HAVE TO DECIDE WHETHER OR NOT THE STATE HAS
5 PROVED BEYOND A REASONABLE DOUBT EVERY ELEMENT OF EACH
6 OFFENSE.

7 NOW, WHAT AM I TALKING ABOUT ELEMENTS? WHAT'D HE MEAN BY
8 THAT? THERE ARE THREE ALLEGATIONS FOR BOTH OF THESE GENTLEMEN.
9 ONE IS POINTING A FIREARM. TWO IS CONSPIRACY TO EITHER POINT A
10 FIREARM OR DO A LYNCHING. THE STATE'S GONNA GO WITH WHICHEVER
11 ONE, I GUESS, THEY THINK, OR BOTH.

12 THEN THEY'RE GOING TO HAVE TO PROVE EACH AND EVERY ELEMENT
13 OF THE OFFENSE OF LYNCHING. AND THE JUDGE IS GOING TO GIVE YOU AN
14 INSTRUCTION AND EXPLAIN TO YOU WHAT EACH OF THOSE OFFENSES ARE
15 AND WILL DEFINE THEM. AND HE WILL DEFINE THEM BY THE ELEMENTS.

16 AND THEN WHAT YOU ARE TO DO IS TO LOOK AT WHAT YOU'VE SEEN
17 AND WHAT YOU'VE HEARD AND MAKE A DETERMINATION AS TO WHETHER
18 OR NOT THE GOVERNMENT HAS SATISFIED YOU BEYOND A REASONABLE
19 DOUBT THAT THESE MEN ARE GUILTY OF EACH OF THOSE ELEMENTS OF
20 EACH OFFENSE.

21 AND IF ON ONE ELEMENT OF THAT OFFENSE YOU FIND THAT THEY
22 HAVE NOT PROVED THAT BEYOND A REASONABLE DOUBT, THEN YOU ARE
23 TO RESOLVE THAT IN FAVOR OF MR. LARMAND AND MR. LEMIRE, AND FIND
24 THEM NOT GUILTY OF THAT.

1 THERE'S SOMETHING ELSE THAT YOU'RE GOING TO HEAR IN THE
2 INSTRUCTIONS. YOU'RE GOING TO HEAR THE LAW ON DEFENSE OF ANOTHER.
3 THE LAW RECOGNIZES AS A COMPLETE AND ABSOLUTE DEFENSE THE
4 DEFENSE OF ANOTHER. AND WHAT DEFENSE OF ANOTHER IS, IS IT IS VERY
5 SIMILAR AND LIKE SELF-DEFENSE. BUT IT IS WHEN A THIRD PERSON COMES
6 TO THE RESCUE OF ANOTHER PERSON.

7 AND THE JUDGE IS GOING TO TELL YOU WHAT THE ELEMENTS ARE OF
8 SELF-DEFENSE. HOWEVER, IT'S VERY IMPORTANT FOR YOU TO UNDERSTAND
9 THAT MR. LEMIRE HAS NO RESPONSIBILITY TO PROVE ANYTHING, EVEN IN
10 REGARDS TO SELF-DEFENSE. WHAT YOU ARE TO DO IS TO LISTEN TO THE
11 SELF-DEFENSE AND THEN SAY DID THE STATE PROVE THEM GUILTY EVEN
12 OVER AND ABOVE ANY SELF-DEFENSE. AND SO, THAT IS THE WAY THAT
13 YOU TREAT SELF-DEFENSE. SO, THAT IS AN WHOLE OTHER ASPECT THAT
14 YOU HAVE TO CONSIDER ON BEHALF OF MR. LEMIRE.

15 AND WHAT THOSE ELEMENTS ARE GOING TO BE IS WHETHER OR NOT A
16 REASONABLE PERSON BELIEVED THAT ANOTHER WAS IN THE THREAT OF
17 SERIOUS BODILY INJURY OR DEATH, BUT SERIOUS BODILY INJURY. BASED
18 ON THOSE CIRCUMSTANCES YOU'RE ALSO GOING TO HEAR THAT THE
19 PERSON WHO WAS BEING DEFENDED DID NOT DO ANYTHING TO BRING
20 ABOUT THE TROUBLE. OKAY?

21 NOW, I SUBMIT TO YOU THAT MR. LEMIRE REMEMBERED. MR. LEMIRE
22 WAS ABOUT THREE AND A HALF MONTHS OFF OF BACK SURGERY. YOU SAW
23 THE SCAR. I SUBMIT TO YOU HE'S NOT FAKING, HE'S NOT TRYING TO BEG ON
24 YOUR SYMPATHY. THIS IS AN ACTUAL CONDITION THAT HE HAD THEN AND
25 HE STILL HAS IT NOW.

1 AND SO, WHEN HE HEARD THE LOUD VOICES HE GOT OUT OF THE
2 VEHICLE AND HE WENT UP THERE. YES, IT WAS DARK. BUT AT THE SAME
3 TIME HIS BROTHER-IN-LAW HAD HIS BACK TURNED AND WAS WALKING
4 BESIDE MR. LOCHBAUM. MR. LOCHBAUM WAS THE ONE WHO WAS CUSSING
5 ABOUT THE COMPANY AND ABOUT FRANK. AND MR. LEMIRE SAW BEHIND
6 FRANK.

7 NOW, I SUBMIT TO YOU ONE OF THE THINGS, YOU REMEMBER WHAT
8 RON LEE SAID. THEY WERE READY TO FIGHT IF NEED BE. THAT'S KIND OF AN
9 ATTITUDE. THAT'S A MINDSET THAT YOU REALLY HAVE TO GET YOURSELF
10 INTO. IT'S NOT SOMETHING THAT SAYS, OH, I MIGHT NEED TO FIGHT HERE IN
11 A MINUTE. OKAY? AND I'M READY. NO. GETTING READY TO FIGHT, BEING
12 IN A MINDSET TO FIGHT. AND HE SAYS THEY WERE THINKING ABOUT IT.

13 AND YOU'RE NOT GOING TO BE THINKING ABOUT FIGHTING AND
14 WALKING A THOUSAND FEET AWAY, ACCORDING TO HIS DEFINITION, FROM
15 THE PERSON THAT YOU'RE THERE TO TRY AND PROTECT. THE PERSON THAT
16 THEY REALLY DIDN'T KNOW THAT WELL. THEY JUST MET HIM RECENTLY
17 AND THAT HAD KIND OF BECOME FRIENDS. OKAY? ALL OF FOUR OR FIVE
18 PEOPLE WHO LIVED IN THE HOUSE TOGETHER, DOWN THE STREET FROM THE
19 CONTROL GUY, MR. LOCHBAUM.

20 I SUBMIT TO YOU MR. LOCHBAUM HAS GOT CONTROL ISSUES. HE
21 LIKES TO HAVE CONTROL. HE LIKES TO CONTROL PEOPLE. NOT A SINGLE
22 FEMALE WHO WAS OUT THERE THAT NIGHT TESTIFIED. BUT THE GUYS DID.
23 THE GUYS CAME TO TESTIFY.

24 MR. LOCHBAUM IS A CONTROL GUY AND HE LIKES TO CONTROL THE
25 POLICE. HE WENT DOWN THE NEXT MORNING TO CONTROL THE POLICE

1 BECAUSE IT WASN'T HAPPENING THE WAY HE WANTED IT TO HAPPEN
2 BECAUSE FRANK HAD GONE HOME.

3 AFTER CONFERRING WITH THE POLICE, AFTER THE POLICE DID THEIR
4 JOB, THEIR JOB, FRANK WENT HOME. LEO COOPERATED. THERE WAS A GUN.
5 LEO WAS ARRESTED FOR POINTING AND PRESENTING A FIREARM. OF
6 COURSE, HERE WE HAVE TO DETERMINE WHETHER OR NOT HE'S GUILTY OF
7 THAT. AND BY DOING THAT WE HAVE THE DEFENSE OF DEFENSE OF
8 ANOTHER.

9 AND HAVE YOU NOTICED ABOUT HOW IN THIS CASE THERE'S ONLY
10 TWO VERSIONS? THE POLICE WERE NOT THERE WATCHING WHAT
11 HAPPENED. THERE'S NOBODY WHO IS UNCONNECTED WHO HAS COME IN
12 HERE AND GIVEN YOU A VERSION. YOU'VE GOT ONE VERSION AND YOU'VE
13 GOT THEIR VERSION. THAT'S ALL YOU GOT.

14 AND THE GOVERNMENT WANTS YOU TO SAY THAT THEIR VERSION,
15 MR. LOCHBAUM'S VERSION IS SUFFICIENT BEYOND A REASONABLE DOUBT
16 AND THAT THESE MEN ARE GUILTY, THEY'RE CRIMINALS.

17 SO, YOU'RE GOING TO HAVE TO RELY UPON MR. LOCHBAUM AND HIS
18 VERSIONS AND HIS NEIGHBORS' VERSIONS. IF YOU CAN'T RELY UPON IT, YOU
19 DON'T EVEN HAVE TO ACCEPT WHAT THEY SAY. YOU CAN FIND THEM NOT
20 GUILTY, IF YOU CAN'T RELY UPON MR. LOCHBAUM'S VERSION.

21 LET'S TALK ABOUT THAT. OH. BEFORE I FORGET IT, AND I APOLOGIZE.
22 PLEASE BE PATIENT WITH ME. THIS IS THE LAST OPPORTUNITY I HAVE TO
23 SPEAK TO YOU ON BEHALF OF MR. LEMIRE. WHEN I SIT DOWN, IF I THINK OF
24 SOMETHING ELSE I CAN'T SAY IT. SO, PLEASE BE PATIENT WITH ME.

1 THE SOLICITOR WAS QUESTIONING MR. LEMIRE. OKAY? MR. LEMIRE.
2 AND SHE MENTIONED ABOUT HIM CARRYING THE GUN DOWN THE ROAD,
3 BEING IN VIOLATION OF THE STATE LAW. THAT'S A RED HERRING IN THIS
4 CASE. THAT'S A RED HERRING IN THIS CASE. HIM CARRYING IT DOWN THE
5 ROAD HAS GOT NOTHING TO DO WITH POINTING AND PRESENTING A
6 FIREARM.

7 THAT IS NOT POINTING AND PRESENTING A FIREARM IF HE'S NOT
8 BEING TRIED FOR ANY VIOLATION OF WALKING DOWN THE ROAD WITH THE
9 GUN. SO, THAT'S A RED HERRING. DO NOT FIND HIM GUILTY OF ANYTHING
10 OF WALKING DOWN THE ROAD ALLEGEDLY IN VIOLATION OF SOUTH
11 CAROLINA LAW. BECAUSE HE'S NOT. THEY'RE NOT ACCUSING HIM OF THAT
12 BEFORE YOU. SO, DON'T CONFUSE THAT WITH POINTING A FIREARM.

13 THE POINTING A FIREARM HAS THE DEFENSE OF SELF DEFENSE. AND
14 THIS ABOUT LYNCHING: THE EVOLUTION OF THE LAW IS VERY INTERESTING
15 IN THE WAY THAT IT WOULD APPLIES TO THOSE. OKAY? YOU'RE GOING TO
16 HEAR THE LAW ABOUT THAT. LYNCHING IS ABOUT MOBS.

17 HOWEVER, THE LAW DOES SAY THAT A MOB CAN BE TWO OR MORE
18 PEOPLE. SO, THANK GOODNESS WE HAVE TWO PEOPLE SO THAT WE CAN DO
19 LYNCHING AND WE CAN HAVE A MOB. THERE'S YOUR MOB. DON'T THINK
20 ABOUT MR. LOCHBAUM'S MOB. THIS MOB OVER HERE, THESE TWO. A VERY
21 SERIOUS OFFENSE, LYNCHING, HISTORICALLY A VERY SERIOUS OFFENSE.
22 SO, THE EVOLUTION OF THE APPLICATION BRINGS US INTO COURT ON THESE
23 FACTS BY THE GOVERNMENT THAT WE HAVE LYNCHING IN THE CASE.

24 NOW, LET ME TALK TO YOU ABOUT SOME OF THE TESTIMONY. YOU
25 KNOW IN CASES SOMETIMES-- IF CASES WEREN'T SO SERIOUS SOMETIMES,

1 THEY WOULD BE A LOT MORE FUN TO TRY FROM OUR PERSPECTIVE. BUT
2 WHEN THEY'RE SERIOUS IT'S NOT FUN. BUT IT IS INTERESTING. OKAY? IT'S
3 INTERESTING. AND THE REASON THAT IT'S INTERESTING IS BECAUSE IN
4 TRIALS SOMETIMES YOU NEVER QUITE KNOW WHAT'S GONNA HAPPEN. YOU
5 TRY TO PREPARE AND PREPARE AND PREPARE. AND YOU TRY TO GET THIS
6 STATEMENT AND THIS STATEMENT AND THIS STATEMENT, BUT SOMETIMES
7 YOU'RE JUST NOT QUITE SURE OF EVERYTHING THAT MAY HAPPEN IN A
8 TRIAL.

9 AND OUT OF THOSE THINGS, SOMETIMES THINGS THAT YOU DO
10 PREPARE FOR AND SOMETIMES THINGS YOU DON'T PREPARE FOR, YOU FIND
11 NUGGETS, LITTLE NUGGETS. AND LITTLE NUGGETS CAN MEAN A LOT.
12 OKAY?

13 NOW, I'M GOING TO TALK TO YOU ABOUT A COUPLE OF THOSE LITTLE
14 NUGGETS. THIS CASE, BASICALLY, THAT EVENING AROUND MIDNIGHT, OF
15 APRIL 30-MAY 1, INTO THE NEXT DAY, TWO THINGS WERE BEING CREATED.
16 TWO THINGS. PHONE LOGS AND A STORY. AND YOU KNOW, SOMETIMES
17 THINGS DON'T MATCH UP ESPECIALLY WHEN A STORY'S BEING CREATED.
18 OKAY?

19 REMEMBER THE TESTIMONY OF THE OFFICER AND FROM MR.
20 LOCHBAUM? THEY'RE ALL THESE OTHER PEOPLE TESTIFYING ABOUT HOW
21 THEY'RE CALLING THE POLICE. BECAUSE WE'VE GOT THIS MOB OVER HERE
22 WHO HAD COME TO CREATE ALL THIS HAVOC AND THEY'RE CALLING THE
23 POLICE. THIS OTHER MOB DIDN'T WANT TO CALL THE POLICE AT THAT TIME.
24 SO, WHERE'S THE CONSISTENCY?

1 MR. HARRIS CAME ACROSS WELL. HE CAME ACROSS WELL. BUT
2 THERE'S A PROBLEM. YOU REMEMBER MR. HARRIS LOOKED OUT THE
3 WINDOW AND THEN WENT OUT THE DOOR. IT WAS BEFORE HE SAID PEOPLE
4 WERE ON THE GROUND. AND WHAT DID HE DO BEFORE HE WENT OUT THE
5 DOOR? BECAUSE HE WAS WATCHING MR. LOCHBAUM AND MR. LARMAND.
6 WHAT DID HE DO? TOLD HIS WIFE, CALL THE POLICE. YET, THE FIRST CALL
7 TO THE POLICE ACCORDING TO THE TESTIMONY CAME AT 12:09:55.

8 MS. JOYNER: OBJECTION, YOUR HONOR. THE PHONE LOGS ARE NOT IN
9 EVIDENCE.

10 THE COURT: AS I TOLD THE JURY EARLIER, CLOSING ARGUMENTS ARE
11 NOT EVIDENCE. THESE ATTORNEYS ARE SIMPLY STATING THEIR POSITIONS.
12 PLEASE CONTINUE.

13 MR. GREELEY: THANK YOU. MR. LOCHBAUM ADMITTED THAT HE
14 CALLED THE POLICE. IT'S ON THE CAD REPORT. NOW, HOW DID MR.
15 LOCHBAUM CALL THE POLICE ON THE CAD REPORT WHILE HE'S OUT THERE
16 FIGHTING? MAYBE HE WAS MULTI-TASKING THAT NIGHT. DO WE KNOW WHO
17 CALLED? MAYBE HE DID. AND REMEMBER, HE'S THE ONE WHO'S KEEPING
18 CONTROL. HE'S THE ONE WHO'S KEEPING CONTROL.

19 AND ABOUT THREE MINUTES AFTER THIS HE CALLS MIKE TAYLOR. HE
20 CALLED MIKE TAYLOR BEFORE HE CALLED HIS WIFE. AND THEN
21 THROUGHOUT THE EVENING, THE WHOLE EVENING HE ADMITTED TO YOU HE
22 DIDN'T GO TO SLEEP. AND THE REASON HE DIDN'T GO TO SLEEP I SUBMIT TO
23 YOU IS BECAUSE HE WAS BUSY. HE WAS BUSY. HE WAS ABOUT TO LOSE
24 CONTROL. AND THE REASON HE WAS ABOUT TO LOSE CONTROL WAS

1 BECAUSE HE HAD BEEN BUSTED AND HE KNEW IT. HE HAD BEEN A THIEF
2 AND THEY KNEW IT.

3 SO, WHO WAS HE CALLING IN THE MIDDLE OF THE NIGHT AT 1:30 IN
4 THE MORNING, AT 2:00 IN THE MORNING, AT 3:00, WHO IS HE TALKING TO? HE
5 ADMITTED TO TALKING TO AT LEAST FOUR EMPLOYEES OF THE COMPANY IN
6 THE MIDDLE OF THE NIGHT. HE ADMITTED TO CALLING THE ROCK HILL
7 POLICE DEPARTMENT TO FIND OUT-- AN OFFICER ADMITTED THAT HE
8 TALKED TO MR. LOCHBAUM LATE THAT NIGHT. WHY? HE WAS OUT OF
9 CONTROL. HE WANTED FRANK IN JAIL AND FRANK WASN'T IN JAIL.

10 ALL RIGHT. AND YOU KNOW THE REST OF IT, HOW IT WENT DOWN.
11 HOW THE CHARGES CAME OUT AFTER HE MET WITH MR. LOCHBAUM.
12 REMEMBER, HE MET WITH NOBODY ELSE BUT MR. LOCHBAUM AND THAT'S
13 HOW ALL THESE OTHER CHARGES CAME ABOUT. MR. LOCHBAUM'S STORY
14 THAT WE SHOWED DID NOT HAPPEN. OKAY?

15 NOW, WHAT'S THE OTHER ELEMENT? LET'S TALK ABOUT PLANNING
16 AND CONSPIRING. I THINK THE EVIDENCE IS CLEAR AND IT IS UNREFUTED
17 THAT WHEN FRANK WALKED UP TO THE DRIVEWAY HE STOOD AT THE END
18 OF THE DRIVEWAY. NOW, MIND YOU, THIS IS 12:00 AT NIGHT AND FRANK'S
19 STANDING THERE AT THE END OF THE DRIVEWAY. HE BELIEVES RYAN'S
20 THERE. THERE ARE PEOPLE IN THE VAN, LEANING INTO THE VAN, LOOKING
21 AT THIS SPIDER. WERE THEY LOOKING AT THE SPIDER?

22 REMEMBER HOW LONG HE STOOD THERE BEFORE THEY RECOGNIZED
23 HIM? USE YOUR COMMON SENSE ON THIS. YOU'VE GOT GUYS WHO ARE, YOU
24 HAVE ALL OF THEM TOGETHER IN A VAN. THERE ARE WINDOWS ALL THE

1 WAY AROUND THE VAN. MR. LOCHBAUM IS IN THE VAN. AND SOMEBODY
2 WALKS UP AT MIDNIGHT AND STANDS AT THE END OF HIS DRIVEWAY.

3 THEY KNEW HE WAS THERE. THEY KNEW HE WAS THERE. THE
4 DRIVEWAY WAS LIT. AND YET, NOBODY IMMEDIATELY WENT OUT AND
5 SAID, WHAT ARE YOU DOING HERE. HE HAD TO WAIT. HE HAD TO WAIT. HE
6 HAD TO WAIT. FINALLY, NOT MR. LOCHBAUM, BUT MARK, WHATEVER HIS
7 NAME WAS, SAID CAN WE HELP YOU. THINK OF THE REASONABLENESS OF
8 THAT. THINK OF THE RATIONALITY. THINK OF THE LOGIC OF THAT.

9 MR. LOCHBAUM IS IN THE VAN WITH WINDOWS ALL THE WAY
10 AROUND. LOOK AT MR. LARMAND HERE. HE IS A DISTINCTIVE LOOKING
11 PERSON. MR. LOCHBAUM KNEW HE WAS AT THE END OF THE DRIVEWAY.
12 MR. LOCHBAUM KNEW HIM. HE SAW HIM. HIM COMING OUT OF THE VAN,
13 AND SAYING, OH, IT WAS A SCAM.

14 WHY WAS IT A SCAM? THEY WEREN'T LOOKING AT A SPIDER. THEY
15 WERE IN THERE TALKING ABOUT THE GUY STANDING BACK AT THE END OF
16 THE DRIVEWAY.

17 HAVE YOU NOTICED HOW ALL OF THEM USED THE SAME PHRASE,
18 RYAN ASKED US FOR PRIVACY. RYAN ASKED US FOR PRIVACY. RYAN ASKED
19 US FOR PRIVACY. WHY? WHY DID RYAN ASK THEM FOR PRIVACY. THEY
20 ALREADY TALKED ABOUT IT. THINK ABOUT IT. THEY ALREADY TALKED
21 ABOUT IT. RYAN KNEW HE WAS THERE. THEY TALKED ABOUT WHAT THEY
22 WERE GONNA DO AND THEN THEY CAME OUT OF THE VAN AND ACTED
23 SURPRISED. AND THEN RYAN ASKS FOR SOME PRIVACY. AND SO, THEY
24 SHUFFLE OVER A LITTLE BIT AND RYAN LEADS FRANK AWAY FROM THE
25 VAN WITH HIS BACK TO THE CROWD. OKAY?

1 AT THAT POINT IN TIME IT WAS JUST FRANK. IT WAS JUST FRANK.
2 THEY'RE NOT GONNA SIT IN A VAN FOR A COUPLE OF MINUTES WHILE A GUY
3 STANDS AT THE END OF THE DRIVEWAY AT MIDNIGHT LIKE FRANK DID
4 WHERE THEY CAN ALL SEE HIM UNLESS THEY'RE NOT READY TO TALK TO
5 HIM.

6 THOSE ARE THE LITTLE NUGGETS. THOSE ARE THE LITTLE NUGGETS. I
7 SUBMIT TO YOU MRS. HARRIS DIDN'T CALL THE POLICE. NOBODY CALLED
8 THE POLICE UNTIL RYAN WAS READY TO CALL THE POLICE AND HE CALLED
9 THE POLICE. WHO HAD A MIND TO FIGHT THAT NIGHT? WHO WAS ANGRY
10 THAT NIGHT? WHO HAD A REASON TO BE ANGRY THAT NIGHT?

11 RYAN GOT THE GUN, MADE THE COMMENT TO THEM ABOUT THE GUN.
12 WAS THAT EVER REBUTTED? NO. RYAN HAD WON THAT SMALL VICTORY.
13 HE HAD THE GUN. SO, HE MADE HIS LITTLE COMMENT AND THEN HE TAKES
14 THE GUN IN THE HOUSE AND LOADS HIS OWN SHOTGUN AND BRINGS IT OUT
15 AFTER HE CALLS THE POLICE. AFTER HE CALLS THE POLICE.

16 MY CLIENT HAD EVERY REASON TO BE ABLE TO-- PEOPLE CAN BE
17 CRITICAL OF HIM. PEOPLE CAN SAY THEY DON'T LIKE HIM. I'M SORRY.

18 THIS COUNTRY, I SUBMIT TO YOU, THIS COUNTRY HAS A HISTORY TO
19 WHERE PEOPLE APPRECIATE THAT FIREARMS CAN BE USED FOR
20 PROTECTION. AND SO EVERY TIME A FIREARM IS PICKED UP OR IS USED IN
21 ORDER TO INSURE THAT PROTECTION, IT'S NOT A CRIME. IT'S NOT A CRIME.
22 WE HAVE A CONSTITUTIONAL RIGHT - THAT'S WHY IT'S IN THERE - TO BEAR
23 ARMS.

24 NOW, IT'S ILLEGAL IF YOU POINT AND PRESENT AND DON'T HAVE A
25 REASON TO DO THAT. IF MY CLIENT WANTED TO HURT ANYBODY THERE HE

1 HAD THIS GUN AND HE CERTAINLY COULD HAVE DONE SO. HE HAD ON THAT
2 GUN ALMOST THE WHOLE TIME AND THE GUN WAS NEVER, NEVER
3 DISCHARGED.

4 SO, CONTRARY TO WHAT THE SOLICITOR WAS SAYING ON CROSS
5 EXAMINATION, PISTOLS LIKE THIS ONE ARE NOT ALWAYS BROUGHT OUT TO
6 BE USED AND TO SHOOT. THEY CAN BE BROUGHT OUT TO QUELL, TO CALM,
7 TO STOP PEOPLE BEFORE SOMETHING HAPPENS. ESPECIALLY WHEN THEY
8 SEE THEIR FAMILY MEMBER GETTING READY TO BE BUSHWHACKED. AND
9 SO, WHAT DID HE DO? HE SHOWED IT. HE DIDN'T SHOOT IT. HE SHOWED IT
10 TO THEM AND WHAT HAPPENED IS IT STOPPED THEM.

11 MR. LEE SAID HE STOPPED IN HIS TRACKS WHEN SOMEBODY SAID
12 THERE WAS A GUN. I SUBMIT TO YOU MR. LEE STOPPED IN HIS TRACKS
13 BECAUSE HE WAS CLOSE ENOUGH TO COME OVER THERE TO HELP MR.
14 CONTROL OVER HERE BECAUSE HE SAW IT. AND THAT IS THE GOOD THING
15 ABOUT IT. IT CAN STOP VIOLENCE THAT'S GETTING READY TO OCCUR AND
16 SOMEBODY BEING HURT. BECAUSE HE CERTAINLY WASN'T IN ANY
17 CONDITION TO FIGHT, AND HE STOPPED IT.

18 THE FIRST TIME THAT ANYBODY TOUCHED ANOTHER PERSON WAS
19 WHEN MR. LOCHBAUM BECAME THE AGGRESSOR TO TAKE IT AWAY. AND
20 YOU HEARD HOW THAT OCCURRED. DO YOU THINK MR. LEMIRE WAS GOING
21 TO SIT THERE AND GO, WOULD YOU TAKE THIS FOR ME? NO. IT'S THE
22 REVERSE. HE'S GONNA SIT THERE AND HE'S GONNA STOP IT. HE'S GONNA
23 STOP THE FRACAS AND THEY CAN LEAVE.

24 BUT A PERSON GOT HIS ATTENTION AND HE TURNED AROUND AND DID
25 LIKE THIS. THERE HAD TO BE A DISTRACTION. THERE YOU GO. THERE WAS

1 A DISTRACTION. AND THAT WAS MR. LOCHBAUM'S OPENING TO DO WHAT HE
2 WANTED TO DO, SO THAT HE COULD TAKE CONTROL.

3 I'M GOING TO SIT DOWN IN A MINUTE. THE DAY IS DONE. IT'S BEEN A
4 LONG ROAD. WE'VE WAITED A LONG TIME FOR A JURY TO BE ABLE TO HEAR
5 THE EVIDENCE. AND WE'RE GLAD THAT YOU'RE HAVING THAT
6 OPPORTUNITY.

7 I ASK THAT YOU LOOK AT THE CASE AND I ASK THAT YOU LOOK AT
8 THE STATE'S CASE.. AND IF YOU CAN RELY UPON THE WITNESSES OF THAT
9 CASE, ESPECIALLY IN LIGHT OF THE OTHER VERSION OF WHAT OCCURRED
10 AND THE LAW OF SELF-DEFENSE, I WOULD ASK THAT YOU NOT RELY ON THE
11 WITNESSES FOR THE STATE WHEN YOU REACH YOUR VERDICT. AND ASK
12 THAT YOU FIND MY CLIENT NOT GUILTY OF ALL THE CHARGES. THANK YOU.

13 THE COURT: SOLICITOR.

14 MS. JOYNER: THANK YOU, YOUR HONOR. THESE DEFENDANTS, THEY
15 DON'T HAVE TO LIKE RYAN LOCHBAUM. NOBODY HAS TO LIKE ANY OTHER
16 PERSON. BUT IF YOU DON'T LIKE SOMEBODY, EVEN IF YOU CANNOT STAND
17 SOMEBODY, YOU DO NOT HAVE THE RIGHT TO GO TO THEIR HOME AND
18 POINT A LOADED GUN AT THEM. YOU DON'T HAVE THE RIGHT TO GO TO
19 THEIR HOME TO ATTACK THEM.

20 THE DEFENSE WANTS FOR THIS CASE TO BE COMPLICATED. THIS CASE
21 ISN'T COMPLICATED. IT'S AS SIMPLE AS A CASE CAN BE. THESE DEFENDANTS
22 WENT TO RYAN LOCHBAUM'S HOME. THAT'S THE HOME THAT HE SHARED
23 WITH HIS WIFE AND HIS CHILD. THEY PARKED ALL THE WAY DOWN THE
24 STREET, ALL THE WAY OUT OF VIEW. THEY WERE DRESSED IN ALL BLACK

1 IN THE MIDDLE OF THE NIGHT. THEY WALKED UP TO HIS HOME. ONE WENT
2 ONE WAY, ONE WENT THE OTHER WAY.

3 LEO LEMIRE HAD A GUN AND FRANK LARMAND GOT RYAN ALONE.
4 AND ONCE RYAN WAS ALONE AND DEFENSELESS, LEO LEMIRE CHARGED
5 OUT OF THE DARKNESS, CHARGED OUT OF THE DARKNESS WITH THIS GUN
6 LOADED AND POINTED.

7 WHAT WERE THEY THERE TO DO, LADIES AND GENTLEMEN? WHAT
8 WERE THERE TO DO? THEY WANTED TO SURPRISE HIM. THEY WANTED TO
9 AMBUSH HIM. THEY WANTED TO HURT HIM OR WORSE. AND THEY MIGHT
10 HAVE SUCCEEDED IF EVERYTHING AT THEY PLANNED TO ACCOMPLISH THAT
11 DAY BUT FOR THE INTERVENTION OF NEIGHBORS.

12 YOU ARE THE FINDERS OF FACT. ULTIMATELY, YOU HAVE THE TOUGH
13 JOB OF GOING BACK THERE IN THAT JURY ROOM AND DECIDING WHAT
14 HAPPENED AT MIDNIGHT ON GENTLE BREEZE LANE. AND AS THE FINDERS OF
15 FACT YOU ARE JUDGES OF CREDIBILITY. YOU DECIDE WHO IS TELLING THE
16 TRUTH.

17 IN A CRIMINAL TRIAL, THE BURDEN ALWAYS REMAINS WITH THE
18 STATE. WE HAVE THE BURDEN OF PROVING THE DEFENDANTS GUILTY
19 BEYOND A REASONABLE DOUBT. NO CRIMINAL DEFENDANT HAS TO TAKE
20 THE STAND. IN FACT, THEY HAVE THE RIGHT NOT TO TAKE THE STAND. AND
21 IF THEY DON'T TAKE THE STAND YOU CAN'T USE IT AGAINST THEM.

22 BUT THE MINUTE A CRIMINAL DEFENDANT PUTS HIS HAND ON THE
23 BIBLE, RAISES HIS HAND AND SWEARS TO THE TELL THE TRUTH, AND
24 TESTIFIES FORM THAT SEAT, YOU JUDGE HIS CREDIBILITY THE WAY YOU
25 JUDGE EVERY OTHER WITNESS' CREDIBILITY.

1 LET'S TALK ABOUT FRANK LARMAND'S STORY FIRST. IT'S
2 INTERESTING. SO, FRANK LARMAND, HE'S GONNA GO TO KNIGHTS' STADIUM
3 WITH HIS BROTHER-IN-LAW FOR SOMETHING THAT HAS ABSOLUTELY
4 NOTHING TO DO WITH RYAN LOCHBAUM. RYAN'S NOT EVEN A THOUGHT IN
5 HIS MIND.

6 AND THEN WHEN THIS MYSTERY CALLER THING DOESN'T PRODUCE
7 ANY EVIDENCE OR INFORMATION HE INEXPLICABLY DECIDES THAT TONIGHT
8 IS THE NIGHT HE'S GONNA GO TO THIS MAN'S HOUSE. AND BY HIS OWN
9 TIMELINE, IT'S, LIKE, 11:20 AT NIGHT WHEN HE DECIDES THIS. NO PHONE
10 CALL. HE DIDN'T BOTHER TO CALL HIM. HE CALLS HIS WIFE HE SAYS TO GET
11 DIRECTIONS TO GO TO THIS HOUSE. AND HE HAS TO STAY ON THE PHONE
12 WITH HIS WIFE THE WHOLE TIME BECAUSE THE ROADS ARE CONFUSING AND
13 HE'S HAVING A HARD TIME FINDING HIS WAY.

14 HE'S GOING TO THIS HOUSE AT 11:30 AT NIGHT. AND REMEMBER, HE'S
15 JUST GOING THERE TO TALK ABOUT TWO THINGS. RIGHT? HE'S GONNA TALK
16 ABOUT MAGNETS AND HE'S GONNA SEE IF ANY OF HIS EMPLOYEES ARE
17 THERE. WHEN HE FINALLY GETS THERE HE MAKES A SLOW DRIVE BY AND
18 THERE ARE NO MAGNETS ON THE CAR. SO, SCRATCH THAT ONE OFF THE
19 LIST.

20 AND HE SAYS HE CAN'T SEE WHO THE PEOPLE ARE, SO, HE'S JUST
21 GONNA PARK HIS CAR ALL THE WAY AROUND THE CORNER AND HE'S JUST
22 GONNA WALK IN. BUT HE'S GONNA LEAVE HIS BROTHER-IN-LAW, LEO, IN
23 THE CAR BECAUSE HE DOESN'T WANT TO GET LEO INVOLVED. HE DOESN'T
24 WANT ANY TROUBLE. HE DOESN'T WANT LEO INVOLVED.

1 AND WE'LL TALK ABOUT LEO IN JUST A MINUTE AND WHAT FRANK
2 SAID ABOUT LEO. BECAUSE THEY'RE IN THE CAR FOR NEARLY THREE HOURS
3 BY THIS TIME AND THEY HAVEN'T TALKED ABOUT RYAN LOCHBAUM ONCE.
4 THEY HAVEN'T DISCUSSED THIS AT ALL. LEO'S JUST SITTING IN THE DRIVER'S
5 SEAT, GOING WHEREVER FRANK SAYS TO GO. HE DOESN'T KNOW ANYTHING
6 ABOUT WHY THEY'RE GOING ANYWHERE.

7 AND SO, THEY PULL UP AND THIS SUBDIVISION, SOUTH WINDS, IN THE
8 MIDDLE OF NOWHERE. AND HE LEAVES HIM ON A DARK STREET TO GO TO A
9 HOUSE TO SEE A GUY. IT DOESN'T REALLY MAKE SENSE, DOES IT? IT
10 DOESN'T MAKE ANY SENSE AT ALL.

11 AND AS FOR LEO, FOR HIS PART, FRANK SAYS HE HAD NO IDEA THIS
12 GUN, THIS LOADED GUN WAS IN THE CAR. FOR THREE HOURS IN THE CAR
13 AND HE HAS NO IDEA, RIDING ALL OVER TOWN, THERE'S THIS BIG GUN.

14 SO, HE PARKS ALL THE WAY DOWN THE STREET BECAUSE HE DOESN'T
15 WANT LEO WHO DOESN'T KNOW ANYTHING AND HAS NO BEEF WITH
16 ANYBODY TO GET INVOLVED IN ANYTHING, EVEN THOUGH THERE'S NOT
17 GONNA BE ANY TROUBLE. HE'S JUST GOING THERE TO TALK ABOUT
18 EMPLOYEE THINGS. BUT HE LEAVES HIM OVER HERE AND HE WALKS ALL
19 THIS WAY BY HIMSELF.

20 AND HE STANDS AT THE END OF THE DRIVEWAY AND HE FOLDS HIS
21 ARMS. THIS IS HIS TESTIMONY. STANDING IN SOMEONE'S DRIVEWAY IN THE
22 MIDDLE OF THE NIGHT WAITING TO BE ACKNOWLEDGED BECAUSE THESE
23 GUYS HE THINKS HAVE SEEN HIM AND ARE IGNORING HIM. HE DOESN'T
24 EVEN THINK IT'S CREEPY.

1 REMEMBER, I ASKED HIM WAS THAT CREEPY. WELL, HE THOUGHT IT
2 WAS CREEPY THEY DIDN'T ACKNOWLEDGE HIM. HE DIDN'T THINK IT WAS
3 CREEPY HE WAS STANDING THERE CROSSING AND UNCROSSING HIS ARMS
4 AT THE END OF SOMEONE'S DRIVEWAY AT MIDNIGHT.

5 AND SO, WHEN HE FINALLY-- OH, I REMEMBER HIS TESTIMONY. HE'S
6 NOT REALLY UPSET. THAT'S CONSISTENT THROUGHOUT HIS TESTIMONY.
7 RIGHT? IT'S AT THIS POINT, MIDNIGHT, MIDNIGHT, AND HE'S NOT UPSET. HE'S
8 JUST DRIVEN THIRTY MINUTES OUT OF HIS WAY TO GO TO SOMEONE'S
9 HOUSE TO TALK AND HE'S NOT UPSET AT ALL.

10 SO, HE ASKED TO SPEAK WITH RYAN, AND THE FIRST THING HE SAYS
11 IS, I KNOW WHAT YOU'RE DOING, LEAVE MY WIFE'S BUSINESS ALONE. BUT,
12 REMEMBER, HE SAID, RYAN WAS THE ONE WHO WAS REALLY UPSET. HE'S
13 REALLY NOT THAT UPSET. DOES THAT MAKE ANY SENSE?

14 AND THE LAST THING HE SAYS IS, YOU CAN HAVE MIKE TAYLOR.
15 NOW, EVEN THOUGH KNIGHTS' STADIUM HAD NOTHING TO DO WITH LURING
16 RYAN LOCHBAUM OUT, AND MAYBE HE'S THROWING MIKE TAYLOR'S NAME
17 AROUND, LIKE MIKE TAYLOR IS THIS GUY'S BIG CONSPIRATOR. BUT THIS BIG
18 CONSPIRACY THEY DIDN'T PROVE. AND SO, NOW HE'S OVER THERE BECAUSE
19 HE DIDN'T PROVE IT.

20 AND EVEN THOUGH KNIGHTS' STADIUM HAD NOTHING TO DO WITH
21 RYAN LOCHBAUM, YOU CAN KEEP MIKE TAYLOR. HE COULDN'T REALLY
22 EXPLAIN WHY HE SAID THAT.

23 AND HE'S GONNA TURN AND WALK AWAY BECAUSE HE'S DONE. HE'S
24 DONE TALKING. THE NEXT THING HE HEARS IS A NOISE AND HE TURNS
25 AROUND AND OUT OF NO WHERE, BECAUSE HE'S NEVER SEEN LEO, AND HE

1 CAN'T TELL YOU WHERE LEO CAME FROM. THE LAST TIME HE SAW LEO WAS
2 AT THE CAR. LEO AND RYAN ARE SCUFFLING OVER THIS GUN. AND THESE
3 BIG GUYS ARE JUMPING ON HIS BROTHER-IN-LAW. AND HE'S JUST, LIKE,
4 JESSE HARRIS OR MARK WHITTINGTON, HE'S JUST TRYING TO DEFUSE THE
5 SITUATION. THAT'S ALL. AND THEY GAVE UP THE GUN AND LEFT.

6 LADIES AND GENTLEMEN, HIS STORY DOESN'T MAKE SENSE. HE WENT
7 THERE FOR TROUBLE. ABSOLUTELY, POSITIVELY, HE WENT THERE FOR
8 TROUBLE.

9 LET'S TALK ABOUT LEO'S TESTIMONY. NOW, LEO, HE'S JUST ALONG
10 FOR THE RIDE. THREE HOURS IN A CAR. AND THEY'RE JUST WAITING FOR A
11 VOICE ON A CELL PHONE AT KNIGHTS' STADIUM AND HE DOESN'T KNOW
12 ANYTHING ABOUT RYAN. HE DOESN'T REALLY QUESTION WHY HE'S GOING
13 WHERE HE'S GOING IN THE MIDDLE OF THE NIGHT. HE JUST GOES WHERE HIS
14 BROTHER-IN-LAW TELLS HIM TO.

15 AND HE SAYS, YEAH, HE'S PARKED AT THE END OF THE STREET AND HE
16 LEFT ME THERE. THEN, ABOUT THREE MINUTES LATER, I HEARD VOICES AND
17 I WAS SCARED. HE HEARS VOICES AND HE'S SCARED. AND THIS FEEBLE
18 MAN-- NOT MY WORDS, THAT'S HOW HE'S BEING PORTRAYED BY MR. RHEA.
19 THIS FEEBLE MAN MAKES IT ALL THE WAY UP THE STREET IN ABOUT TWO
20 MINUTES.

21 AND REMEMBER WHICH WAY HE SAYS HE WENT? HE SAYS HE
22 WALKED STRAIGHT UP THE MIDDLE OF THE STREET. RIGHT? HE'S GOING
23 RIGHT UP THE STREET. AND REMEMBER, FRANK'S GOING THIS WAY DOWN
24 THE STREET.

1 FRANK SAID IN HIS TESTIMONY THAT HE NEVER SAW WHERE LEO
2 CAME FROM. HE JUST CAME OUT OF NOWHERE. RIGHT? WELL, LEO SAYS I
3 WALKED RIGHT BY HIM. OH, HE TRIES TO SAY EIGHT FEET OR FIFTEEN FEET
4 OR HOW EVER MANY FEET, I DON'T KNOW BIG THE ROADS ARE IN THE SOUTH
5 WINDS NEIGHBORHOOD. BUT HE WALKED RIGHT BY HIM. HE WALKED BY
6 HIM ON THE STREET.

7 LEO SAW HIM. LEO SAW FRANK. LEO SAW RYAN. BUT, YOU KNOW,
8 NOBODY CAN SEE LEO EVEN THOUGH HE'S RIGHT THERE IN THE STREET,
9 WALKING RIGHT UP. DOES THAT REALLY MAKE SENSE?

10 AND IF LEO LEMIRE IS DOWN HERE AND HEARS VOICES, AND SO MUCH
11 SO, SO SCARY, THAT HE THINKS THERE'S GONNA BE TROUBLE, LADIES AND
12 GENTLEMEN, THERE'S SOMETHING ELSE THAT HE'S GOT IN HIS CAR THAT'S
13 EVEN MORE EFFECTIVE THAN THIS IN QUELLING THE PROBLEM. HE'S GOT A
14 PHONE. AND DOES HE STOP TO CALL 911 BECAUSE HE'S FEEBLE AND HE
15 THINKS THERE'S TROUBLE, AND HE'S NOT THE TYPE OF PERSON WHO CAN
16 DEFEND SOMEBODY? NO. HE GETS THAT GUN, IT'S ALL LOADED UP AND IT'S
17 READY TO GO. AND HE WALKS DOWN THE STREET.

18 AND IF YOU BELIEVE HE'S AS FEEBLE AS THEY SAY HE IS, WALKING
19 DOWN THE STREET IN THE MIDDLE OF THE NIGHT WITH HIS GUN, NO. LADIES
20 AND GENTLEMEN, NONE OF THIS MAKES SENSE. ABSOLUTELY NONE OF THIS
21 MAKES SENSE. IF HE THOUGHT THERE WAS TROUBLE AND HE'S SO FEEBLE
22 WHY DOESN'T HE DRIVE THE CAR DOWN THE STREET?

23 IT DOESN'T MAKE SENSE BECAUSE NONE OF IT'S TRUE. NONE OF IT IS
24 TRUE. HE WALKED DOWN THAT STREET THAT NIGHT WITH HIS BROTHER-IN-
25 LAW. THEY WERE GOING HERE. THEY WERE GOING HERE.

1 NOW, JUST A WORD ABOUT THE VICTIM. YES, LADIES AND
2 GENTLEMEN, THE VICTIM WAS UPSET THAT HE HAD LOST HIS JOB. HE
3 ABSOLUTELY WAS. I THINK MOST PEOPLE WOULD BE.

4 MR. GREELEY'S FOUND THIS NEW THEORY ABOUT THE VICTIM BEING
5 ABLE TO ARRANGE TO CONSPIRE WITH HIS OWN LYNCHING IN THREE
6 MINUTES TO GET THESE GUYS. WELL, LADIES AND GENTLEMEN, THEY CAME
7 TO HIS HOUSE. THEY CAME TO HIS HOUSE. HE DIDN'T MAKE THIS SITUATION
8 UP AND HE DIDN'T MAKE THIS HAPPEN. THEY MADE THIS HAPPEN. THEY
9 CAME TO HIS HOME AT MIDNIGHT, ONE OF THEM CARRYING THIS.

10 AND THEY FAULTED HIM. THEY FAULTED HIM IN CROSS
11 EXAMINATION. THEY FAULTED HIM IN THEIR CLOSING. BECAUSE HE HAD
12 THE UNMITIGATED GALL OF CALLING THE POLICE. IMAGINE. IMAGINE
13 ADDRESSING CONCERNS ABOUT SOMETHING TO PROPER AUTHORITIES.

14 REALLY, IS THAT WORST-- IS THAT THE BIGGEST TAX THEY CAN LEVY
15 AGAINST THE VICTIM, HE CALLED THE POLICE? HE WAS CONCERNED ABOUT
16 HIS CASE AND HE CALLED THE POLICE. HE WANTED AN ANSWER ABOUT
17 SOMETHING, SO HE WENT TO THE POLICE DEPARTMENT. THAT'S THE WAY
18 THAT YOU'RE SUPPOSED TO HANDLE QUESTIONS AND PROBLEMS. THAT'S
19 WHAT PEOPLE DO IN THE SOCIETY WE HAVE. YOU HAVE A PROBLEM, YOU
20 GO TO THE POLICE.

21 THEY WANT, THE DEFENSE WANTS HIM TO BE A SVENGALI, AND HE'S
22 GOT THIS CONTROL OVER THE GUY THAT LIVES RIGHT THERE, OR USED TO
23 LIVE RIGHT THERE. THE ONE THAT CAME HERE FROM FLORIDA TO TESTIFY.
24 THAT GUY, AND THESE OTHER GUYS DOWN THE STREET. THAT HE'S
25 SOMEHOW GOT THEM LYING TO TELL WHAT HAPPENED.

1 LADIES AND GENTLEMEN, THEY DON'T HAVE TO. THEY DON'T HAVE A
2 DOG IN THIS FIGHT. THEY DON'T KNOW THE DEFENDANTS. THEY'RE
3 NEIGHBORS OF THE VICTIM. THEY HAPPENED TO BE THERE WHEN
4 SOMETHING HAPPENED. THEY DIDN'T MAKE IT HAPPEN. THESE GUYS MADE
5 IT HAPPEN. THEY JUST HAPPENED TO BE THERE. THEY'VE GOT NO REASON
6 TO LIE.

7 THE DEFENSE ATTORNEYS KEPT ASKING, THEY TALKED TO EACH
8 OTHER, TALKED TO EACH OTHER BEFORE THEY CAME IN WITH THEIR
9 STORIES. AND I THINK IT WAS IN CROSS EXAMINATION OF RONALD LEE
10 THAT MR. GREELEY SAID YOU TALKED WITH EACH OTHER TO GET YOUR
11 STORIES STRAIGHT. RIGHT? NO.

12 LADIES AND GENTLEMEN, THE ONLY TWO WITNESSES IN THIS CASE
13 WHO TRIED TO GET THEIR STORIES STRAIGHT WERE THESE TWO.

14 THE DEFENDANTS ARE CHARGED WITH CRIMINAL CONSPIRACY,
15 POINTING AND PRESENTING, LYNCHING. POINTING AND PRESENTING, THAT'S
16 REALLY SIMPLE. TO POINT AND/OR PRESENT A FIREARM AT ANOTHER
17 PERSON.

18 CRIMINAL CONSPIRACY, THE WAY THE LAW IS WRITTEN IS IT'S
19 UNLAWFUL, IT'S UNLAWFUL, WILLFUL, FELONIOUS TO CONSPIRE, TO
20 CONFEDERATE, TO AGREE, TO HAVE AN UNDERSTANDING WITH ANOTHER
21 PERSON FOR A CRIMINAL PURPOSE.

22 AND FINALLY, LYNCHING, AN ACT OF VIOLENCE INFLICTED UPON
23 ANOTHER-- OR, AN ACT OF VIOLENCE INFLICTED BY A MOB ON THE PERSON
24 OF ANOTHER.

1 I WANT TO TALK TO YOU ABOUT A CONCEPT CALLED THE HAND OF
2 ONE IS THE HAND OF ALL. AND THE JUDGE IS GOING TO CHARGE YOU ON
3 THIS. AND HE'S GOING TO READ YOU A LONGER INSTRUCTION. BUT HERE'S
4 THE HIGHLIGHTS: IF A CRIME IS COMMITTED BY TWO OR MORE PEOPLE WHO
5 ARE ACTING TOGETHER IN COMMITTING A CRIME, THE ACT OF ONE IS THE
6 ACT OF ALL. A PERSON WHO JOINS WITH ANOTHER WHO COMMITS AN
7 UNLAWFUL ACT IS CRIMINALLY RESPONSIBLE FOR EVERYTHING DONE BY
8 THE OTHER PERSON WHICH HAPPENS AS A NATURAL CONSEQUENCE OF THE
9 ACTS DONE IN CARRYING OUT THE COMMON PLAN OR PURPOSE.

10 FOR EXAMPLE, TWO PEOPLE CAN BE GUILTY OF KILLING ANOTHER
11 PERSON WHEN ONE OF THE TWO HAD A GUN, THERE WAS ONLY ONE BULLET,
12 AND ONLY ONE OF THE TWO FIRED THE SHOT THAT CAUSED THE DEATH. SO,
13 THE HAND OF ONE IS THE HAND OF ALL.

14 WHEN YOU ARE THINKING ABOUT THE CRIME OF LYNCHING, AN ACT
15 OF VIOLENCE INFLICTED BY A MOB UPON THE PERSON OF ANOTHER, THINK
16 OF IT THIS WAY: MOST PEOPLE HAVE HEARD OF THE CRIME OF ASSAULT
17 AND BATTERY. A BATTERY IS AN UNWANTED TOUCH. SO, IF I DRAW MY FIST
18 BACK AT YOU AND YOU'RE AFRAID THAT I'M GOING TO HIT YOU, THEN I'VE
19 ASSAULTED YOU. BUT IF I ACTUALLY FOLLOW THROUGH AND I DO PUNCH
20 YOU, THEN I'VE COMMITTED A BATTERY.

21 LYNCHING IS AN ASSAULT AND BATTERY COMMITTED BY A MOB.
22 THAT'S TWO OR MORE PEOPLE THAT COME TOGETHER FOR THE PURPOSE OF
23 COMMITTING AN ACT OF VIOLENCE. THE STATE DOES NOT HAVE TO PROVE
24 SERIOUS INJURY. AND THEY DON'T HAVE TO PROVE ANY INJURY.

1 RYAN LOCHBAUM WASN'T SERIOUSLY INJURED. HE WAS VERY, VERY
2 LUCKY. BUT IT WASN'T BECAUSE THEY-- HE WASN'T SERIOUSLY INJURED
3 BECAUSE OF HIS NEIGHBORS, LADIES AND GENTLEMEN, WHO WERE ABLE TO
4 STOP THIS ACT.

5 SO, WHEN YOU THINK ABOUT THIS CASE, THINK ABOUT IT THIS WAY:
6 THE CRIMINAL CONSPIRACY IS THE AGREEMENT, THE AGREEMENT TO DO
7 THE CRIMINAL ACT. IT IS BASICALLY TWO PEOPLE COMING TOGETHER AND
8 HAVING AN UNDERSTANDING. ONCE TWO PEOPLE GET TOGETHER AND
9 HAVE THAT UNDERSTANDING AND THEY TAKE THAT EXTRA STEP OF GOING
10 AND DOING WHAT THEY PLANNED TO DO, LADIES AND GENTLEMEN, THEY'RE
11 BOTH THERE AND PRESENT AND DOING WHAT THEY PLANNED TO DO. THEN
12 WHAT ONE DOES, THE OTHER DOES, TOO. THEY'RE BOTH GUILTY. THE
13 HAND OF ONE IS THE HAND OF ALL.

14 AND WHEN YOU TAKE THAT UNDERSTANDING AND YOU PUT IT IN THE
15 CONTEXT OF LYNCHING, THE TWO PEOPLE COME TOGETHER FOR THE
16 PURPOSE OF COMMITTING THAT VIOLENT INJURY, THAT VIOLENCE, THAT
17 ASSAULT AND BATTERY, AND THEY ACTUALLY FOLLOW THROUGH WITH IT,
18 THEY HAVE COMMITTED LYNCHING.

19 SO, REALLY, THE CRUX OF THIS CASE IS THE CONSPIRACY. IT IS THE
20 PLAN, LADIES AND GENTLEMEN. THE PLAN, THE INTENT. WE DON'T HAVE TO
21 SHOW YOU INTENT BY DIRECT EVIDENCE. YOU'RE NOT SUPPOSED TO BE
22 MIND READERS. THE POLICE AREN'T SUPPOSED TO BE MIND READERS. HOW
23 DO YOU KNOW WHAT SOMEBODY INTENDED TO DO? YOU LOOK TO THEIR
24 ACTIONS. WHAT DO THEIR ACTIONS TELL YOU ABOUT WHAT THEY PLAN TO
25 DO?

1 THESE GUYS PULLED UP IN A DARK NEIGHBORHOOD AND PARKED ALL
2 THE WAY DOWN THE STREET, OUT OF VIEW. THIS GUY OVER HERE HAD NO
3 IDEA THEY WERE COMING. THEY DIDN'T CALL HIM. THIS VICTIM DIDN'T
4 EVEN KNOW THEY KNEW WHERE HE LIVED. THEY HAD TO GET DIRECTIONS
5 TO FIND HIS HOUSE, ACCORDING TO MR. LARMAND. AND THEY SHOW UP
6 THERE UNINVITED. THEY WALK DOWN THIS STREET AND THEY SPLIT APART.

7 BECAUSE THE PLAN ISN'T TO APPROACH TOGETHER. BECAUSE WHERE
8 WOULD BE THE ELEMENT OF SURPRISE IN THAT? THEY SPLIT UP, LADIES
9 AND GENTLEMEN. AND FRANK APPROACHES AND LEO CROUCHES IN THE
10 DARKNESS WITH HIS LOADED, BIG GUN.

11 I WANT YOU TO THINK ABOUT WHAT HAPPENED ONCE RYAN'S ALONE
12 AND ONCE LEO COMES RUNNING OUT OF THE DARKNESS. NOW, I KNOW
13 FRANK SAID HE HAD HIS BACK TO HIM. LADIES AND GENTLEMEN, IT SIMPLY
14 DOESN'T MAKE SENSE. THE ONLY THING THAT MAKES SENSE, REMEMBER
15 THE TESTIMONY OF JESSE HARRIS, AND THE TESTIMONY OF EVERYBODY
16 ELSE, ALL THESE NEIGHBORS WITH NO DOG IN THIS FIGHT.

17 THE ONLY THING THAT MAKES SENSE IS FRANK LARMAND IS
18 STANDING AT THE END OF THAT DRIVEWAY WITH RYAN LOCHBAUM, THERE
19 ALONE. AND FRANK (SIC) COMES DARTING OUT OF THE DARKNESS AND HE'S
20 GOT THIS LOADED GUN, AND HE'S IS SCREAMING, THIS IS WHAT YOU GET
21 WHEN YOU F WITH MY FAMILY. HE GETS THAT GUN. HE GETS THIS GUN SO
22 CLOSE TO RYAN LOCHBAUM, THIS LOADED GUN THAT HE CAN REACH OUT
23 AND HE CAN TOUCH IT.

24 AND WHAT IS FRANK DOING? WHAT IS FRANK DOING WHEN LEO
25 RUSHES OUT? DOES HE SAY, OH, NO, OH, NO, LEO, WHAT ARE YOU DOING?

1 NO. STOP, LEO, STOP, LEO. WHERE'D YOU GET A GUN? NO. DOES HE REACT
2 LIKE POOR, LITTLE, OLD DEVIN FIVECOAT THE FIRST TIME HE SEES THE
3 BARREL OF THIS GUN? AND WHAT DOES HE SAY? OH, MY GOD, THERE'S A
4 GUN? NO. HE DOESN'T REACT ANY OF THOSE WAYS BECAUSE HE'S NOT
5 SURPRISED. THIS WAS PART OF THE PLAN.

6 RYAN LOCHBAUM GRABBED THAT GUN AND HE THINKS HE IS
7 FIGHTING FOR HIS LIFE. DOES FRANK LARMAND TRY TO GET THE GUN AWAY
8 FROM HIS BROTHER-IN-LAW WHO CAME RUNNING OUT OF THE DARKNESS?
9 NO. HE TAKES THE VICTIM AND HE JERKS HIM UP IN A CHOKE HOLD. HE'S
10 GOT HIM AROUND THE NECK. HE'S NOT TRYING TO DEFUSE THE SITUATION.
11 HE'S TRYING TO GET THE VICTIM BECAUSE THAT'S BEEN THE PLAN. THAT IS
12 THE PLAN.

13 LADIES AND GENTLEMEN, THIS SITUATION IS SO SERIOUS, IT'S SO
14 SERIOUS. IF RYAN LOCHBAUM DIDN'T WALK AWAY WITH A BULLET, IF
15 NOBODY ELSE WALKED AWAY WITH A BULLET, SHOULD NOT MAKE THIS
16 CASE ANY SMALLER IN YOUR MIND. WHEN TWO PEOPLE GO AFTER
17 ANOTHER PERSON AND THEY GO AFTER ANOTHER PERSON TO DO WHAT
18 THESE GUYS WERE GOING TO DO, IT CANNOT BE TOLERATED.

19 THIS SITUATION WAS SO SERIOUS THAT IT TOOK TWO OTHER MEN
20 COMING IN TO MAKE, TO DEFUSE THIS SITUATION. JESSE HARRIS HAD HIS
21 FINGER IN THE HAMMER OF THIS GUN, STOPPING THIS HAMMER FROM
22 MOVING. HE WAS STOPPING THIS GUN FROM FIRING. THIS IS AS SERIOUS AS
23 YOU GET. THIS WAS ALL PART OF THE PLAN, LADIES AND GENTLEMEN.

24 YOU'RE GOING TO HEAR AN EXPRESSION OF SELF-DEFENSE, LADIES
25 AND GENTLEMEN. IN ORDER FOR SELF-DEFENSE TO APPLY, THE PERSON

1 MUST BE WITHOUT FAULT IN BRINGING ON THE DIFFICULTY. THEY MUST BE
2 IN FEAR OF IMMINENT DANGER OR THEY MUST REASONABLY BELIEVE
3 THEMSELVES TO BE IN IMMINENT DANGER. AND THEY MUST HAVE NO
4 OTHER PROBABLE MEANS OF ESCAPE.

5 WHEN YOU COME TO THE DEFENSE OF ANOTHER, THEN YOU STAND IN
6 THEIR SHOES, LADIES AND GENTLEMEN. IF YOU LOOK, IF YOU SEE PERSON A
7 AND YOU THINK THAT PERSON NEEDS YOUR HELP AND YOU COME IN TO
8 DEFEND THEM, THE PERSON A WOULD NOT HAVE BEEN ENTITLED TO
9 DEFEND THEMSELVES BECAUSE THEY WERE WITH FAULT IN BRINGING ON
10 THE DIFFICULTY OR WERE IN DANGER OR HAD MEANS OF ESCAPE, WELL,
11 LADIES AND GENTLEMEN, THE DEFENSE OF OTHERS DOESN'T APPLY.

12 AND I'M FRANKLY CONFUSED ON HOW THAT WOULD APPLY TO
13 ANYBODY. EITHER OF THOSE TWO THINGS WOULD APPLY TO ANYBODY IN
14 THIS CASE. BUT RYAN LOCHBAUM, HE WAS THE ONLY PERSON THAT NIGHT
15 ACTING IN SELF-DEFENSE. THE DEFENSE OF OTHERS, JESSE HARRIS AND
16 MARK WHITTINGTON, THEY WERE ACTING IN DEFENSE OF ANOTHER. THESE
17 GUYS WEREN'T.

18 LOOK AT THE CONCEPT OF SELF-DEFENSE AND APPLY IT TO WHAT
19 THESE MEN DID. START WITH MR. LARMAND. HE CAME TO THE FIGHT. HE
20 BROUGHT THE FIGHT. HE BROUGHT ON THE DIFFICULTY, LADIES AND
21 GENTLEMEN. HE WAS NEVER IN DANGER. HE WASN'T THE ONE IN DANGER.
22 RYAN LOCHBAUM WAS THE ONE IN DANGER.

23 LEO LEMIRE, HE WAS PART OF THE PLAN, TOO, LADIES AND
24 GENTLEMEN. HE CAME, HE WALKED TO FIGHT. YOU CANNOT FIND HE
25 ACTED IN SELF-DEFENSE. IT'S SIMPLY NOT REASONABLE. HE WASN'T IN ANY

1 DANGER. THE PEOPLE WITH THE GUN POINTED AT THEM, THEY WERE IN
2 DANGER. AND DID THEY HAVE A MEANS TO LEAVE? DID THEY HAVE A WAY
3 TO GET AWAY? ABSOLUTELY, LADIES AND GENTLEMEN. AND THEY TOOK
4 THAT WAY.

5 THEY TOOK THAT WAY BACK TO THEIR CAR JUST AS SOON AS THE
6 VICTIM AND THE NEIGHBORS TOOK THEIR BIG GUN AWAY THEY HAD NO
7 MORE PROBLEM RUNNING BACK DOWN THE STREET. THEY WEREN'T ACTING
8 IN SELF-DEFENSE. NEITHER ONE OF THEM WAS ACTING LAWFULLY IN THE
9 DEFENSE OF THE OTHER. IT JUST DOESN'T STICK.

10 AND WHEN YOU HEAR THE INSTRUCTIONS ON SELF-DEFENSE, PAY
11 PARTICULAR ATTENTION, LADIES AND GENTLEMEN TO THIS, THIS
12 INSTRUCTION: THE WRONGDOER ENGAGED IN VIOLATION OF THE LAW THAT
13 WAS REASONABLY CALCULATED FOR PROVOKE CONFRONTATION HAS NO
14 RIGHT TO SELF-DEFENSE, BECAUSE HE WOULD BE CONSIDERED TO BE THE
15 AGGRESSOR..

16 LADIES AND GENTLEMEN, THESE MEN CAME TO RYAN LOCHBAUM'S
17 HOME WITH A PLAN. IT IS THE ONLY THING THAT IS REASONABLE. IT IS THE
18 ONLY THING THAT MAKES SENSE AS EVERYTHING THAT YOU'VE HEARD IN
19 THESE LAST THREE DAYS. THEY CAME TOGETHER AND THEY TRIED TO GET
20 HIM. THEY CONSPIRED. FIND THEM GUILTY OF CRIMINAL CONSPIRACY.

21 THEY CAME WITH A LOADED GUN. LEO LEMIRE POINTED IT. IT WAS
22 LOADED. ABSOLUTELY, POSITIVELY, HIS HAND WAS ON THE GUN. FIND HIM
23 GUILTY.

24 FRANK LARMAND, HE WAS THERE. IT WAS A PLAN. THEY WERE THERE
25 TOGETHER. THEY WERE THERE TO GET RYAN LOCHBAUM. EVERYTHING

1 THAT THIS MAN DOES AS PART OF THAT PLAN, HE'S RESPONSIBLE FOR, TOO.
2 LADIES AND GENTLEMEN, THE HAND OF ONE IS THE HAND OF ALL. FIND HIM
3 GUILTY.

4 LYNCHING, AN ACT OF VIOLENCE. AN ACT OF VIOLENCE WAS
5 COMMITTED AGAINST RYAN LOCHBAUM, LADIES AND GENTLEMEN. IT WAS
6 COMMITTED BY TWO OR MORE PEOPLE, THESE TWO PEOPLE. AND THEY
7 HAVE A PLAN. THEY HAVE A PLAN. AND THEIR PLAN WAS TO GET HIM. IT
8 WAS PREMEDITATED, LADIES AND GENTLEMEN, AND IT WAS PREMEDITATED
9 IN THE EXTREME. THEY DROVE THIRTY MINUTES TO GET TO HIM. THEY HAD
10 TO GET DIRECTIONS TO HIS HOUSE. THEY HAD TO FIND HIM, LADIES AND
11 GENTLEMEN. FIND THEM GUILTY.

12 TO PROVE THEM GUILTY BEYOND A REASONABLE DOUBT, THE STATE
13 HAS THAT BURDEN. THE JUDGE IS GOING TO TELL YOU A REASONABLE
14 DOUBT, THAT THERE ARE VERY FEW THINGS IN LIFE THAT CAN BE PROVED
15 BEYOND ANY AND ALL DOUBT. THERE ARE VERY FEW THINGS THAT CAN BE
16 PROVED WITH ABSOLUTE CERTAINTY. BUT IT'S ONLY THE DOUBT WHICH IS
17 REASONABLE, LADIES AND GENTLEMEN.

18 MR. RHEA SAID THAT A TRIAL IS ABOUT THE SEARCH FOR TRUTH. AND
19 THAT'S WHY A TRIAL IS ABOUT THE SEARCH FOR TRUTH. IT'S NOT ABOUT
20 THE SEARCH FOR DOUBT.

21 IS THERE ANY DOUBT IN YOUR MIND THAT THESE MEN PLANNED THIS?
22 IF YOU WANT TO KNOW IF THE STATE HAS MET ITS BURDEN, GO BACK IN THE
23 JURY DELIBERATION ROOM, THROW OUT ALL THESE WHAT IF'S, MAYBES,
24 COULD BE'S. AND IF IN YOUR HEART AND YOUR MIND YOU BELIEVE THE

1 STATE HAS PROVEN ITS CASE BEYOND A REASONABLE DOUBT, THEN IT IS
2 YOUR DUTY TO FIND THEM GUILTY. THANK YOU.

3 THE COURT: MEMBERS OF THE JURY, IT IS NOW MY DUTY UNDER THE
4 CONSTITUTION OF THIS STATE TO CHARGE AND INSTRUCT YOU IN THE LAW
5 APPLICABLE TO THIS CASE. AND IT IS YOUR DUTY AS JURORS TO ACCEPT
6 AND APPLY THE LAW AS THE COURT WILL NOW STATE IT TO YOU. AND AS
7 JURORS IT IS YOUR EXCLUSIVE DUTY TO DECIDE ALL THE ISSUES OF FACT IN
8 THIS CASE, AND TO THAT PURPOSE, TO DETERMINE THE EFFECT, VALUE,
9 WEIGHT AND TRUTH OF THE EVIDENCE.

10 BOTH THE STATE AND DEFENDANTS HAVE A RIGHT TO EXPECT THAT
11 YOU WILL CONSCIOUSLY CONSIDER AND EVALUATE THE EVIDENCE AND
12 APPLY THE LAW OF THE CASE THERETO TO THE END THAT BOTH THE STATE
13 OF SOUTH CAROLINA AND THE DEFENDANTS WILL RECEIVE AND OBTAIN A
14 FAIR AND IMPARTIAL TRIAL IN THIS CASE.

15 WHEN I USE THE WORD, DEFENDANTS, I REFER TO MR. FRANCIS
16 LARMAND AND MR. LEO LEMIRE. THE STATE OF SOUTH CAROLINA BY BILLS
17 OF INDICTMENT IN THIS CASE CHARGES THE DEFENDANTS WITH THE
18 OFFENSES KNOWN AS SECOND DEGREE LYNCHING, POINTING AND
19 PRESENTING A FIREARM, AND CRIMINAL CONSPIRACY.

20 TO THESE CHARGES THE DEFENDANTS HAVE ENTERED THEIR PLEAS OF
21 NOT GUILTY. THESE PLEAS OF NOT GUILTY BY THE DEFENDANTS PLACES
22 THE BURDEN OF PROOF ON THE STATE TO PROVE BY THE EVIDENCE THE
23 GUILT OF THE DEFENDANTS BEYOND A REASONABLE DOUBT BEFORE YOU
24 THE JURY CAN FIND THE DEFENDANTS GUILTY.

1 PLEASE KEEP IN MIND THAT THE DEFENDANTS ARE PRESUMED IN LAW
2 INNOCENT OF THE CHARGES CONTAINED IN THE INDICTMENTS. IT IS A
3 CARDINAL AND FUNDAMENTAL RULE OF THE LAW OF EVIDENCE THAT A
4 DEFENDANT, IRRESPECTIVE OF THE SERIOUSNESS OF THE CHARGE AGAINST
5 HIM WILL ALWAYS BE PRESUMED INNOCENT OF THE CRIME FOR WHICH HE IS
6 INDICTED, UNLESS AND UNTIL THE GUILT OF THE DEFENDANT HAS BEEN
7 PROVED BY EVIDENCE THAT SATISFIES YOU THE JURY OF HIS GUILT BEYOND
8 A REASONABLE DOUBT.

9 THE PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL THEORY. IT
10 IS NOT JUST A LEGAL PHRASE. THE PRESUMPTION OF INNOCENCE IS LIKE A
11 ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE
12 DEFENDANT AND IT REMAINS WITH HIM AND ASSIGNS HIM TO THAT CLASS,
13 THE INNOCENT, UNTIL THE PRESUMPTIVE ROBE OF RIGHTEOUSNESS HAS
14 BEEN STRIPPED FROM THEIR PERSONS BY EVIDENCE SATISFYING YOU THE
15 JURY OF THE GUILT OF THE DEFENDANTS BEYOND A REASONABLE DOUBT.

16 THE PRESUMPTION OF INNOCENCE ACCOMPANIES THE DEFENDANTS
17 FROM THE TIME OF THEIR ARRAIGNMENT AND THEIR APPEARANCE IN THIS
18 COURT AND CONTINUES WITH THE DEFENDANTS AFTER YOU RETIRE TO THE
19 JURY ROOM TO DELIBERATE YOUR VERDICTS.

20 THE PRESUMPTION OF INNOCENCE CONTINUES IN EXISTENCE TO THE
21 BENEFIT OF THE DEFENDANTS UNTIL YOU THE JURY REACH THE
22 CONCLUSION THAT THE STATE HAS PROVED THE GUILT OF THE DEFENDANTS
23 BEYOND A REASONABLE DOUBT. PLEASE UNDERSTAND THAT THE STATE
24 HAS THE BURDEN OF PROVING THE DEFENDANTS GUILTY BEYOND A
25 REASONABLE DOUBT.

1 SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES WHERE
2 YOU WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS
3 MORE LIKELY TRUE THAN NOT TRUE. IN CRIMINAL CASES, THE STATE'S
4 PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A
5 REASONABLE DOUBT. PROOF BEYOND A REASONABLE DOUBT IS PROOF
6 THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANTS' GUILT.

7 THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH
8 ABSOLUTE CERTAINTY. AND IN CRIMINAL CASES THE LAW DOES NOT
9 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF BASED ON
10 YOUR CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED
11 THAT THE DEFENDANTS ARE GUILTY OF THE CRIME CHARGED, YOU MUST
12 FIND THEM GUILTY.

13 IF ON THE OTHER HAND YOU THINK THERE IS A REAL POSSIBILITY
14 THAT THEY ARE NOT GUILTY, YOU MUST GIVE THEM THE BENEFIT OF THE
15 DOUBT AND FIND THEM NOT GUILTY.

16 REASONABLE DOUBT MAY ARISE FROM EVIDENCE WHICH IS IN THE
17 CASE OR FROM THE LACK OF OR ABSENCE OF EVIDENCE IN THE CASE. YOU
18 THE JURY MUST DETERMINE WHETHER OR NOT REASONABLE DOUBT EXISTS
19 AS TO THE GUILT OF THE DEFENDANTS.

20 I CHARGE YOU THAT THE DEFENDANTS ARE ENTITLED TO EVERY
21 REASONABLE DOUBT ARISING IN THE WHOLE CASE, OR ARISING IN ANY
22 DEFENSE ASSERTED BY THE DEFENDANTS.

23 IF UPON ANY ISSUE OF FACT ESSENTIAL TO A CONVICTION AND A
24 VERDICT OF GUILTY YOU HAVE A REASONABLE DOUBT AS TO HOW THAT

1 ISSUE SHOULD BE RESOLVED, IT WOULD BE YOUR DUTY TO RESOLVE THAT
2 REASONABLE DOUBT IN FAVOR OF THE DEFENDANTS.

3 A DEFENDANT, LADIES AND GENTLEMAN, IS NOT REQUIRED TO PROVE
4 HIS INNOCENCE. BUT THE STATE IS REQUIRED AT LAW TO PROVE EVERY
5 ESSENTIAL ELEMENT OF THE OFFENSES CHARGED AGAINST THE
6 DEFENDANTS BY EVIDENCE WHICH SATISFIES YOU THE JURY OF THE GUILT
7 OF THE DEFENDANTS BEYOND A REASONABLE DOUBT BEFORE YOU CAN
8 CONVICT THE DEFENDANTS AND FIND THEM GUILTY.

9 IF, THEN, UPON THE WHOLE CASE YOU HAVE A REASONABLE DOUBT
10 AS TO THE GUILT OR THE INNOCENCE OF THE DEFENDANTS THEY ARE
11 ENTITLED TO THAT REASONABLE DOUBT AND WOULD BE ENTITLED TO AN
12 ACQUITTAL AND A VERDICT OF NOT GUILTY.

13 BUT ON THE OTHER HAND, IF UPON THE WHOLE CASE YOU FIND THAT
14 THE STATE HAS PROVED BY EVIDENCE WHICH SATISFIES YOU THE JURY OF
15 THE GUILT OF THE DEFENDANTS BEYOND A REASONABLE DOUBT, THEN IN
16 SUCH CIRCUMSTANCE IT WOULD EQUALLY BE YOUR DUTY TO CONVICT THE
17 DEFENDANTS AND FIND THEM GUILTY.

18 I INSTRUCT YOU THAT THE INDICTMENTS IN THIS CASE ARE NOT
19 EVIDENCE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE IN THIS
20 CASE. THE INDICTMENTS ARE SIMPLY THE FORMAL, WRITTEN INSTRUMENT
21 WHICH CONTAIN THE CHARGES AGAINST THE DEFENDANTS. AND IT SERVES
22 AS THE FORMAL DOCUMENT BY WHICH THIS CASE IS PROCESSED INTO THIS
23 COURT.

24 DURING THIS TRIAL EACH OF US, YOU AND I, HAVE CERTAIN DUTIES TO
25 PERFORM. AS THE TRIAL JUDGE IT IS MY RESPONSIBILITY TO PRESIDE OVER

1 THE TRIAL IN THIS CASE. AND I ALSO HAVE THE DUTY TO RULE UPON OR
2 PASS UPON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THE
3 PROCESS OF THIS TRIAL.

4 YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE
5 YOU. AND YOU ARE TO DISREGARD FROM YOUR MIND ANY TESTIMONY
6 ORDERED STRICKEN FROM THE RECORD OF THIS CASE DURING THE
7 PROGRESS OF THE TRIAL, IF THERE BE ANY. AND YOU ARE TO CONSIDER
8 ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS
9 STAND, TOGETHER WITH ANY EXHIBITS ADMITTED INTO THE RECORD OF
10 THIS CASE AND ANY STIPULATIONS OF COUNSEL MADE INTO THE RECORD, IF
11 THERE BE ANY.

12 I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE APPLICABLE LAW
13 IN THIS CASE. I AS PRESIDING JUDGE AM THE SOLE JUDGE OF THE LAW IN
14 THE CASE, AND IT IS YOUR DUTY TO ACCEPT AND APPLY THE LAW AS I NOW
15 STATE IT TO YOU.

16 IF YOU HAVE A PRECONCEIVED IDEA AS TO WHAT THE LAW IS OR
17 WHAT THE LAW OUGHT TO BE IN THIS CASE THAT SHOULD NOT AGREE WITH
18 WHAT I TELL YOU THE LAW IS, YOU ARE OBLIGATED UNDER YOUR OATH TO
19 ABANDON THIS PRECONCEPTION ON YOUR PART BECAUSE YOU ARE SWORN
20 TO ACCEPT THE LAW PRECISELY AS I NOW STATE IT TO YOU.

21 IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY THE JURY
22 BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS OF THE CASE.
23 YOU THE JURY ARE THE JUDGE OF THE FACTS IN THIS CASE. THE COURT IS
24 NOT THE-- THE COURT IS THE JUDGE OF THE LAW IN THIS CASE.

1 THE CONSTITUTION OF THIS STATE HAS DECLARED THAT THE TRIAL
2 JUDGE SHALL NOT INTIMATE, STATE, COMMENT, OR MAKE ANY
3 STATEMENTS TO A TRIAL JURY ABOUT THE FACTS OF THE CASE. SINCE YOU
4 ARE THE SOLE JUDGE OF THE FACTS YOU ARE NOT TO INFER FROM
5 ANYTHING I HAVE SAID DURING THE PROGRESS OF THIS TRIAL IN RULING
6 UPON THE ADMISSIBILITY OF THE EVIDENCE OR OTHERWISE OR ANYTHING
7 THAT I NOW SAY DURING THE COURSE OF THIS CHARGE TO YOU THAT I
8 HAVE ANY OPINION ABOUT THE FACTS OF THIS CASE.

9 THE LAW DOES NOT PERMIT ME TO HAVE AN OPINION ABOUT THE
10 FACTS OF THE CASE. THIS IS A MATTER SOLELY FOR YOU THE JURY TO
11 DETERMINE. AS JURORS THEN IT IS YOUR DUTY TO DETERMINE AS I HAVE
12 STATED TO YOU, THE EFFECT, THE VALUE, THE WEIGHT, AND THE TRUTH OF
13 THE EVIDENCE PRESENTED DURING THE COURSE OF THIS TRIAL.

14 IN DETERMINING WHAT THE FACTS IN THE CASE ARE, YOU MUST
15 NECESSARILY PASS UPON THE CREDIBILITY WHICH SIMPLY MEANS THE
16 BELIEVABILITY OF THE WITNESSES AND THE VALUE AND WEIGHT TO BE
17 GIVEN THEIR TESTIMONY.

18 YOU ALONE MUST DECIDE THE FORCE AND EFFECT OF THE TRUTH OF
19 THE TESTIMONY. IN MAKING THAT DECISION, THERE ARE MANY THINGS
20 YOU MAY AND SHOULD TAKE INTO CONSIDERATION SUCH AS THE
21 APPEARANCE AND MANNER OF THE WITNESS ON THE STAND, SOMETIMES
22 REFERRED TO AS THE DEMEANOR OF THE WITNESS.

23 WAS THE WITNESS FORTHRIGHT OR HESITANT. WAS THE WITNESS'
24 TESTIMONY CONSISTENT OR DID IT CONTAIN DISCREPANCIES. WHAT WAS
25 THE ABILITY OF THE WITNESS TO KNOW THE FACTS ABOUT WHICH HE OR

1 SHE TESTIFIED. DID THE WITNESS HAVE A CAUSE OR REASON TO BE BIASED
2 OR PREJUDICED IN THE STATEMENT OR TESTIMONY THAT HE OR SHE GAVE.
3 WAS THE TESTIMONY OF THE WITNESS CORROBORATED OR MADE
4 STRONGER BY OTHER TESTIMONY AND EVIDENCE. OR WAS IT MADE
5 WEAKER OR IMPEACHED BY SUCH OTHER TESTIMONY AND EVIDENCE.

6 AS JURORS YOU HAVE THE RIGHT TO BELIEVE A SMALL PORTION OF A
7 WITNESS' TESTIMONY AND DISCARD THE LARGER, AND VICE-VERSA. YOU
8 MAY BELIEVE ALL OF A WITNESS' TESTIMONY OR NONE. YOU MAY BELIEVE
9 THE TESTIMONY OF A SINGLE WITNESS AGAINST THAT OF MANY, OR THE
10 OTHER WAY AROUND.

11 IN EXERCISING YOUR MENTAL PROCESSES IN DETERMINING WHAT
12 YOU CONSIDER TO BE TRUE, THE LAW SIMPLY REQUIRES THAT YOU
13 EXERCISE YOUR GOOD JUDGMENT, YOUR COMMON SENSE, YOUR SENSE OF
14 LOGIC AND REASON AND YOUR EXPERIENCES OF LIFE.

15 YOU THEN APPLY THESE ATTRIBUTES OF ABILITY TO THE EVIDENCE
16 AND DETERMINE WHAT YOU CONSIDER THE TRUTHFUL EVIDENCE. AS TO
17 THESE TRUE STATEMENTS OF FACT AS DETERMINED BY YOU THE JURY, YOU
18 TAKE AND APPLY THE LAW AS I NOW STATE IT TO YOU, AND THUS ARRIVE
19 AT A TRUE VERDICT IN THE CASE.

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

1 OR NATURAL CONSEQUENCE OF THE ACT DONE IN CARRYING OUT THE
2 FURTHER PLAN AND PURPOSE.

3 FOR EXAMPLE, TWO PEOPLE CAN BE GUILTY OF KILLING ANOTHER
4 PERSON WHEN ONLY ONE OF THE TWO HAD A GUN, THERE WAS ONLY
5 BULLET AND ONLY ONE OF THE TWO FIRED THE SHOT THAT CAUSED THE
6 DEATH.

7 IF TWO OR MORE PEOPLE ARE TOGETHER, ACTING TOGETHER,
8 ASSISTING EACH OTHER IN COMMITTING THE OFFENSE, THE ACT OF ONE IS
9 THE ACT OF ALL. OR AS IT IS SOMETIMES SAID, THE HAND OF ONE IS THE
10 HAND OF ALL.

11 PRIOR KNOWLEDGE THAT A CRIME IS GOING TO BE COMMITTED
12 WITHOUT MORE IS NOT SUFFICIENT TO MAKE A PERSON GUILTY OF THAT
13 CRIME. MERE KNOWLEDGE THAT ANOTHER PERSON IS GOING TO COMMIT A
14 CRIME EVEN IF THE DEFENDANT IS PRESENT WHEN THE CRIME IS
15 COMMITTED IS NOT SUFFICIENT TO CONVICT THE DEFENDANT AS THE
16 PRINCIPAL. GUILT AS THE PRINCIPAL IS SHOWN BY ACTUAL OR
17 CONSTRUCTIVE PRESENCE AT THE SCENE AS A RESULT OF PRIOR
18 ARRANGEMENT.

19 THEREFORE, A FINDING OF A PRIOR ARRANGEMENT, PLAN, OR
20 COMMON SCHEME IS NECESSARY FOR A FINDING OF GUILT AS A PRINCIPAL.
21 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT BY COMPETENT
22 EVIDENCE THE THEORY OF THE HAND OF ONE IS THE HAND OF ALL.

23 A PRINCIPAL IN A CRIME IS ONE WHO EITHER ACTUALLY COMMITS THE
24 CRIME OR WHO IS PRESENT, AIDING, ABETTING, ASSISTING, OR COMMITTING

1 THE CRIME. WHEN A PERSON DOES AN ACT IN THE PRESENCE OF AND WITH
2 THE ASSISTANCE OF THE ANOTHER, THE ACT IS DONE BY BOTH.

3 WHEN TWO OR MORE ACTING WITH A COMMON PLAN OR INTENT ARE
4 PRESENT AT THE COMMISSION OF A CRIME IT DOES NOT MATTER WHO
5 ACTUALLY COMMITS THE CRIME. ALL ARE GUILTY. THE HAND OF ONE IS
6 THE HAND OF ALL.

7 PRESENT AT THE COMMISSION OF THE CRIME MEANS TO BE
8 SUFFICIENTLY NEAR TO AID AND ABET AND ASSIST IN THE COMMISSION OF
9 A CRIME. HOWEVER, MERE PRESENCE AT THE SCENE OF A CRIME IS NOT
10 SUFFICIENT TO CONVICT ONE AS THE PRINCIPAL ON THE THEORY OF AIDING
11 AND ABETTING.

12 INTENT IS ALSO A NECESSARY ELEMENT, FOR THERE MUST HAVE BEEN
13 A COMMON DESIGN OR INTENT TO COMMIT THE CRIME, AND THE CRIME
14 MUST HAVE BEEN COMMITTED PURSUANT THERETO WITH THE PERSON
15 AIDING AND ABETTING BY SOME OVERT ACT.

16 INTENT MEANS INTENDING THE RESULT WHICH ACTUALLY OCCURS,
17 NOT ACCIDENTALLY OR INVOLUNTARY. INTENT MAY BE SHOWN BY ACTS
18 OR CONDUCT OF THE DEFENDANTS AND OTHER CIRCUMSTANCES FROM
19 WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT. THE STATE
20 MUST PROVE THESE ELEMENTS BEYOND A REASONABLE DOUBT.

21 THE DEFENDANTS ARE CHARGED WITH SECOND DEGREE LYNCHING.
22 THE STATE MUST FIRST PROVE BEYOND A REASONABLE DOUBT THAT THE
23 DEFENDANTS ACTING AS A MOB COMMITTED AN ACT OF VIOLENCE UPON
24 THE BODY OF ANOTHER THAT DID NOT RESULT IN DEATH.

1 A MOB IS DEFINED AS AN ASSEMBLAGE OF TWO OR MORE PERSONS
2 FOR THE PREMEDITATED PURPOSE AND WITH PREMEDITATED INTENT OF
3 COMMITTING AN ACT OF VIOLENCE UPON ANOTHER PERSON.

4 THE STATE DOES NOT NEED TO PROVE PHYSICAL INJURY IN ORDER
5 FOR YOU TO FIND AN ACT OF VIOLENCE OCCURRED. IT IS PERMISSIBLE TO
6 INFER THAT ALL PERSONS PRESENT AS MEMBERS OF A MOB WHEN AN ACT
7 OF VIOLENCE IS COMMITTED HAVE AIDED AND ABETTED THE CRIME AND
8 ARE ACTUALLY GUILTY AS PRINCIPALS. OR WHEN THE COMMON INTENT TO
9 DO VIOLENCE MAY BE PERFORMED BEFORE OR DURING THE ASSEMBLAGE,
10 THE STATE MUST PRODUCE AT LEAST SOME EVIDENCE OF PREMEDITATION
11 TO SUSTAIN A CONVICTION OF LYNCHING.

12 THE PREMEDITATED PURPOSE AND INTENT UNDERLYING THE CHARGE
13 OF LYNCHING CANNOT BE SPONTANEOUS. RATHER, THE STATE MUST
14 PRODUCE EVIDENCE THAT SHOWS THAT THE DEFENDANTS ASSEMBLED FOR
15 THE FURTHER PURPOSE AND INTENT OF COMMITTING AN ACT OF VIOLENCE
16 AGAINST THE VICTIM.

17 PREMEDITATION CONNOTATES WILLFUL DELIBERATION IN PLANNING
18 OR CONSCIOUS CONSIDERATION PRECEDING A PARTICULAR EVENT. A
19 PREMEDITATED PURPOSE AND INTENT UNDERLYING A CHARGE FOR
20 LYNCHING CANNOT BE SPONTANEOUS. THE STATE MAY PROVE THE INTENT
21 ELEMENT OF LYNCHING BY POSITIVE TESTIMONY OR EVIDENCE OR BY
22 CIRCUMSTANTIAL EVIDENCE. INTENT MAY BE SHOWN BY ACTS AND
23 CONDUCT FROM WHICH A JURY CAN NATURALLY AND REASONABLY INFER
24 INTENT.

1 THE DEFENDANTS HAVE ALSO BEEN CHARGED IN THE INDICTMENTS
2 WITH THE CRIME OF POINTING AND PRESENTING A FIREARM. THE STATE
3 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANTS
4 PRESENTED OR POINTED AT ANOTHER PERSON A LOADED OR UNLOADED
5 FIREARM.

6 TO PRESENT MEANS TO BRING INTO THE PRESENCE OF, AND
7 INTRODUCE FORMALLY TO ANOTHER OR OTHERS THEIR OFFER FOR VIEWING
8 OR NOTICE TO DISPLAY OR SHOW.

9 THE DEFENDANTS ARE ALSO CHARGED WITH CRIMINAL CONSPIRACY.
10 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE
11 DEFENDANTS COMBINED WITH ONE ANOTHER FOR THE PURPOSE OF
12 COMMITTING AN UNLAWFUL ACT OR OF COMMITTING A LAWFUL ACT BY
13 UNLAWFUL MEANS.

14 THERE MUST BE A MUTUAL UNDERSTANDING, AGREEMENT OR
15 COMMON INTENTION AND PLAN. MERE PASSIVE KNOWLEDGE OF OR
16 CONSENT TO THE CRIMINAL CONDUCT OF ANOTHER IS NOT ENOUGH TO
17 MAKE A PERSON A CONSPIRATOR. THERE MUST BE GUILTY KNOWLEDGE
18 AND PARTICIPATION.

19 SIMILARLY, THE MERE FACT THAT THE DEFENDANTS MAY HAVE
20 ASSOCIATED WITH ONE ANOTHER OR MET WITH ANOTHER AND DISCUSSED
21 COMMON AIMS AND INTEREST DOES NOT NECESSARILY ESTABLISH PROOF
22 OF THE EXISTENCE OF A CONSPIRACY, OR THAT THE DEFENDANTS WERE
23 INVOLVED IN A CONSPIRACY.

24 ON THE OTHER HAND IT IS NOT NECESSARY THAT THE AGREEMENT BE
25 A FORMAL ONE, THAT IT BE IN WRITING, THAT THE PERSONS HOLD A

1 MEETING AND EXPRESSLY STATE THE TERMS OF A COMMON PLAN OR THAT
2 THE AGREEMENT BE STATED IN WORDS BETWEEN THEM. THE AGREEMENT
3 OF A CRIMINAL CONSPIRACY MAY COME INTO BEING MERELY BY MUTUAL
4 UNDERSTANDING.

5 THE WILLFUL, INTENTIONAL AND KNOWING ADOPTION BY TWO
6 KNOWING PERSONS OF A COMMON PLAN IS SUFFICIENT. NO OVERT ACTS
7 NEED TO BE SHOWN TO ESTABLISH A CONSPIRACY. A CONSPIRACY MAY BE
8 SHOWN BY CIRCUMSTANTIAL EVIDENCE IN THE CONDUCT OF THE PARTIES.
9 SUBSTANTIAL CRIMES COMMITTED IN FURTHERANCE OF A CONSPIRACY
10 CONSTITUTE CIRCUMSTANTIAL EVIDENCE OF THE EXISTENCE OF A
11 CONSPIRACY, IT'S OBJECTIVE AND ITS SCOPE.

12 IN ORDER TO CONVICT THE DEFENDANTS OF CONSPIRACY THE STATE
13 MUST PROVE BEYOND A REASONABLE DOUBT NOT ONLY THAT THE
14 DEFENDANTS KNEW OF THE UNLAWFUL CONDUCT, BUT THAT THE
15 DEFENDANTS AGREED TO COMBINE WITH ONE ANOTHER FOR THE PURPOSE
16 OF ACCOMPLISHING THE UNLAWFUL CONDUCT.

17 HOWEVER ONCE A CONSPIRACY HAS BEEN ESTABLISHED, EVIDENCE
18 ESTABLISHING BEYOND A REASONABLE DOUBT, THE CONNECTION OF THE
19 DEFENDANTS WITH THE CONSPIRACY, EVEN THOUGH THE CONNECTION IS
20 SLIGHT, IS SUFFICIENT TO CONVICT HIM WITH KNOWING PARTICIPATION IN A
21 CONSPIRACY.

22 FURTHER, THE ACTS AND DECLARATIONS OF ANY CONSPIRATOR MADE
23 DURING THE CONSPIRACY AND IN FURTHERANCE THEREOF ARE DEEMED TO
24 BE ACTS AND DECLARATIONS OF EVERY OTHER CONSPIRATOR AND ARE
25 ADMISSIBLE AGAINST ALL.

1 I WILL NOW CHARGE YOU ON THE LAW OF SELF-DEFENSE AS IT
2 APPLIES IN THIS CASE. A PERSON IS JUSTIFIED IN USING DEADLY FORCE IN
3 SELF-DEFENSE IF FOUR ELEMENTS ARE MET.

4 ONE: THAT HE WAS WITHOUT FAULT IN BRINGING ON THE
5 DIFFICULTY.

6 TWO: THAT HE ACTUALLY BELIEVED HE WAS IN IMMINENT DANGER
7 OF LOSING HIS LIFE OR OF A SUSTAINED SERIOUS BODILY INJURY. OR, HE
8 ACTUALLY WAS IN IMMINENT DANGER OF LOSING HIS LIFE, OR OF
9 SUSTAINING SERIOUS BODILY INJURY.

10 THREE: IF HIS DEFENSE IS BASED ON HIS ACTUAL BELIEF OF IMMINENT
11 DANGER THAT A REASONABLY PRUDENT MAN OF ORDINARY FIRMNESS AND
12 COURAGE WOULD HAVE ENTERTAINED THE SAME BELIEF. OR IF HIS
13 DEFENSE IS BASED ON HIS BEING IN ACTUAL IMMINENT DANGER THAT THE
14 CIRCUMSTANCES WERE SUCH AS WOULD WARRANT A MAN OF ORDINARY
15 PRUDENCE, FIRMNESS AND COURAGE TO STRIKE A FATAL BLOW IN ORDER
16 TO SAVE HIMSELF FROM SERIOUS BODILY HARM OR LOSING HIS OWN LIFE.

17 FOUR: THAT HE HAD NOT OTHER PROBABLE MEANS OF AVOIDING THE
18 DANGER OF LOSING HIS OWN LIFE OR SUSTAINING SERIOUS BODILY INJURY
19 THAN TO ACT AS HE DID IN THE PARTICULAR INSTANCE.

20 HOWEVER, A WRONGDOER ENGAGED IN A VIOLATION OF LAW THAT
21 WAS REASONABLY CALCULATED TO PROVOKE A CONFRONTATION HAS NO
22 RIGHT TO SELF-DEFENSE BECAUSE HE WOULD BE CONSIDERED THE
23 AGGRESSOR.

24 THE ELEMENTS OF SELF-DEFENSE ARE APPLICABLE TO THE DEFENSE
25 OF OTHERS. A PERSON ACTING IN DEFENSE OF ANOTHER STANDS IN THE

1 SHOES OF THE PERSON TO WHOSE AID HE CAME. AND HE HAS NO GREATER
2 RIGHT THAN TO ACT IN THAT PERSON.

3 YOU MAY CONSIDER THE ALLEGED VICTIM'S CONDUCT, ACTIONS AND
4 GENERAL Demeanor IMMEDIATELY BEFORE THE INCIDENT AS BEARING ON
5 THE ALLEGED VICTIM'S TEMPER AND STATE OF MIND AT THE TIME OF THE
6 ENCOUNTER.

7 AND THE DEFENDANT DOES NOT HAVE TO SHOW THAT HIS CO-
8 DEFENDANT WAS ACTUALLY IN DANGER. IT IS ENOUGH IF THE DEFENDANT
9 BELIEVES HE WAS IN IMMINENT DANGER AND A REASONABLY PRUDENT
10 PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE
11 SAME BELIEFS. THE DEFENDANT HAS THE RIGHT TO ACT ON APPEARANCE,
12 EVEN THOUGH THE DEFENDANT'S BELIEFS MAY HAVE BEEN RESPECTED.

13 WHEN A PERSON IS ATTACKED WITH A DEADLY WEAPON UNLESS HE IS
14 WITHIN HIS OWN HOME OR THE CLOSELY SURROUNDING PREMISES HE HAS
15 THE DUTY TO RETREAT FROM THE DANGER IF POSSIBLE BEFORE RESORTING
16 TO DEADLY FORCE TO DEFEND HIMSELF.

17 HOWEVER, HE DOES NOT HAVE A DUTY TO RETREAT IF BY DOING SO
18 HE WOULD INCREASE HIS DANGER OF BEING KILLED OR SUFFERING SERIOUS
19 BODILY INJURY.

20 LADIES AND GENTLEMEN, YOU ARE NOT PARTISANS OR ADVOCATES
21 FOR THE STATE OF SOUTH CAROLINA OR FOR THE DEFENDANTS. YOU DO
22 NOT SERVE AS JURORS TO REWARD YOUR FRIENDS OR PUNISH YOUR
23 ENEMIES. OBVIOUSLY, SUCH A PERVERTED SYSTEM OF JUSTICE WOULD BE
24 INTOLERABLE. YOU HAVE BEEN SELECTED BY BOTH THE STATE AND THE
25 DEFENDANTS AS FAIR AND IMPARTIAL JURORS.

1 IT IS YOUR DUTY, THEN, BY YOUR JOINT DELIBERATIONS TO
2 DETERMINE THE TRUTH IN THIS CASE, GIVING TO THOSE DEFENDANTS THE
3 BENEFIT OF EVERY REASONABLE DOUBT ON EACH AND EVERY ISSUE. THEN
4 TO THE FACTS WHICH DETERMINE TO BE TRUE YOU MAY THEN TAKE AND
5 APPLY THE LAW WHICH HAS BEEN GIVEN TO YOU BY THIS COURT, AND THUS
6 ARRIVE AT A VERDICT WHICH SPEAKS THE TRUTH OF THE CASE. FOR THE
7 WORD, VERDICT, WHICH HAS A LATIN DERIVATIVE THAT MEANS A TRUE
8 SAYING. AND WHEN YOU HAVE ACCOMPLISHED THESE RESPONSIBILITIES
9 YOU WILL HAVE SATISFIED YOUR OATH AS JURORS AND YOU WILL HAVE
10 DISCHARGED YOUR DUTY TO THIS COURT.

11 I WILL NOW INSTRUCT YOU IN THE FORMS OF THE VERDICT IN THIS
12 CASE. I HAVE IT RIGHT HERE AND I AM GOING TO GIVE IT TO THE CLERK
13 WHO WILL PASS IT TO YOU IN JUST A MOMENT. IT IS VERY SIMPLE. IT HAS
14 ONE, TWO, THREE, FOUR, SIX SEPARATE QUESTIONS. YOU WILL NEED TO
15 ANSWER EACH ONE EITHER GUILTY OR NOT GUILTY. THAT IS FOR YOU TO
16 DECIDE.

17 THEY ARE IN NO PARTICULAR ORDER FOR NO REASON. WE JUST HAVE
18 TO PUT THEM DOWN IN SOME FORM OR FASHION. ONCE ALL OF YOU HAVE
19 REACHED A VERDICT, MS. FOREPERSON, I WOULD ASK THAT YOU DATE IT,
20 SIGN IT AND KNOCK ON THE DOOR.

21 FOR EACH CHARGE IF THE STATE HAS FAILED TO PROVE THE GUILT OF
22 THESE DEFENDANTS BEYOND A REASONABLE DOUBT YOUR VERDICT WILL
23 BE TWO WORDS: NO GUILTY.

24 IS THE STATE HAS PROVED THE GUILT OF THESE DEFENDANTS BEYOND
25 A REASONABLE DOUBT YOUR VERDICT WILL BE ONE WORD: GUILTY.

1 THE VERDICT THAT YOU RENDER IN THIS CASE MUST BE THE VERDICT
2 OF EACH AND EVERY JUROR. IT MUST BE YOUR UNANIMOUS VERDICT. ALL
3 TWELVE OF YOU MUST AGREE ON THE VERDICT WHICH YOU AUTHORIZE THE
4 FOREPERSON TO WRITE FOR THE JURY.

5 MS. FOREPERSON, I HAND YOU NOW FOR THE JURY THE VERDICT
6 FORMS. I WOULD ASK THAT YOU NOW GO BACK TO YOUR JURY ROOM, BUT
7 DO NOT BEGIN YOUR DELIBERATIONS. DO NOT BRING YOUR DISCUSSIONS OF
8 THE CASE AT THIS TIME. I HAVE TO TAKE UP MY CHARGES WITH THE
9 ATTORNEYS TO MAKE SURE THAT I DIDN'T LEAVE SOMETHING OUT AND
10 THAT I DIDN'T STATE SOMETHING INCORRECTLY.

11 ONCE WE HAVE DECIDED THAT ISSUE I WILL THEN SEND THE BAILIFF
12 BACK TO THE JURY ROOM TO YOU AND HE WILL INSTRUCT YOU
13 SPECIFICALLY TO BEGIN YOUR DELIBERATIONS AT THAT TIME.

14 SO, IF YOU WOULD, PLEASE STEP BACK TO YOUR JURY ROOM, BUT DO
15 NOT BEGIN YOUR DELIBERATIONS.

16 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4:26 P.M.)

17 ARE THERE ANY EXCEPTIONS TO THE CHARGE OR ADDITIONAL
18 REQUESTS TO THE CHARGE FROM THE STATE?

19 MS. JOYNER: NOT FROM THE STATE, YOUR HONOR.

20 THE COURT: FROM THE DEFENSE, MR. RHEA?

21 MR. RHEA: NO ADDITIONS OR EXCEPTIONS ON BEHALF OF MR.
22 LARMAND, YOUR HONOR.

23 THE COURT: MR. GREELEY?

1 MR. GREELEY: YOUR HONOR, I WOULD JUST MAKE AN EXCEPTION
2 WITH REGARD TO INFERENCE LANGUAGE OF THE STATUTE IN THE LYNCHING
3 STATUTE, THE SAME THING I HAD STATED EARLIER.

4 THE COURT: ALL RIGHT. SAME RULING ON THAT. ALL RIGHT. IF YOU
5 WILL GO THROUGH THE EVIDENCE BEFORE WE SEND IT BACK. ALSO, IF WE
6 SEND THE GUN BACK I WOULD LIKE FOR THE BAILIFF TO SEND JUST THE GUN
7 BACK AND LET THEM EXAMINE THE GUN FOR FIFTEEN MINUTES AND SEND IT
8 BACK OUT. THEN SEND THE BULLETS IN AND LET THEM EXAMINE THEM AND
9 LET THEM ALSO SEND THAT BACK OUT.

10 (WHEREUPON EXHIBITS WERE RECONCILED BY COUNSEL AND COURT
11 REPORTER AND GIVEN TO BAILIFF, AND DELIBERATIONS BEGAN AT 4:30
12 P.M.)

13 COURT IN SESSION - 5:38 P.M.

14 THE COURT: I HAVE A NOTE FROM THE JURY THAT I WILL READ TO
15 YOU. "IF WE THINK ONE IS GUILTY OF A CHARGE, DO WE HAVE TO
16 AUTOMATICALLY VOTE THAT THE OTHER PARTY IS ALSO GUILTY OF THE
17 CHARGE?"

18 DOES ANYBODY WANT TO RESPOND?

19 MR. GREELEY: I DON'T KNOW IF IT'S A PROPER QUESTION. I MEAN,
20 THEY'RE ASKING DO WE HAVE TO DO SOMETHING.

21 THE COURT: HOW CAN YOU FIND ONE PARTY GUILTY OF LYNCHING?

22 MR. GREELEY: THERE IS THE-- THERE'S CASE LAW SHOWING, TALKING
23 ABOUT INCONSISTENT VERDICTS. I HAD ONE YEARS AGO, A CASE THAT
24 CAME OUT, STATE VERSUS, AND I CAN'T REMEMBER MY CLIENT I WAS
25 APPOINTED TO, WHO ALLEGEDLY BURNED A CROSS IN THE CHIEF OF

1 POLICE'S YARD IN YORK. AND HE SAID HE DIDN'T DO IT, SO WE HAD TO TRY
2 THE CASE. AND HE WAS CHARGED WITH THREAT BY THE USE OF AN
3 INCENDIARY DEVICE AND HE WAS CHARGED WITH BURNING A CROSS.

4 THE JURY CAME BACK, FOUND HIM GUILTY OF THE INCENDIARY
5 DEVICE, BUT NOT GUILTY OF BURNING A CROSS. AND IT WAS APPEALED, IT
6 WENT UP. HIS LAST NAME STARTS WITH A G, STATE VERSUS GARRETT, I
7 THINK IT WAS, TED GARRETT. AND THE COURT ENDED UP FINDING THAT IT'S
8 PERMISSIBLE FOR THE JURY TO GIVE INCONSISTENT VERDICTS BECAUSE
9 THEY CAN PRETTY MUCH DO WHAT THEY WANT IN THE CASE. SO, THEY'RE
10 NOT REQUIRED TO DO ANYTHING IN PARTICULAR. AND THEY UPHELD HIS
11 CONVICTION ON THAT, AND SAID INCONSISTENT VERDICTS ARE ALLOWED.

12 THE COURT: I'LL BE GLAD TO HEAR FROM YOU, MR. RHEA.

13 MR. RHEA: YOUR HONOR, MY UNDERSTANDING OF THEIR QUESTION,
14 IT DIDN'T ALLUDE TO THE LYNCHING DIRECTLY. IT'S JUST THAT GENERAL
15 QUESTION THAT IF WE BELIEVE ONE IS GUILTY--

16 THE COURT: IF WE THINK ONE IS GUILTY OF A CHARGE DO WE HAVE
17 TO AUTOMATICALLY VOTE THAT THE OTHER PARTY IS ALSO GUILTY?

18 MR. RHEA: YOUR HONOR, I WOULD SUBMIT THAT UNDER THE LAW
19 THAT THE CHARGE AS I KNOW IT, THE ANSWER TO THAT QUESTION WOULD
20 BE NO, THEY DO NOT HAVE TO AUTOMATICALLY FIND THE OTHER GUILTY.
21 THAT ONLY MAKES SENSE.

22 THE COURT: I'LL BE GLAD TO HEAR FROM YOU, SOLICITOR.

23 MS. JOYNER: I THINK THE EVIDENCE HAS TO BE EVALUATED AS TO
24 EACH DEFENDANT AS TO EACH CHARGE. THE EVIDENCE SPEAKS TO EACH
25 OFFENSE. I THINK THE INFERENCE, THOUGH, BEARS A LITTLE BIT MORE

1 EXPLANATION THAN THAT. THEY MUST EVALUATE THE EVIDENCE AGAINST
2 EACH DEFENDANT ON EACH OFFENSE.

3 THE COURT: I DON'T SEE HOW THEY CAN FIND ONE PARTY GUILTY OF
4 CONSPIRACY AND NOT THE OTHER. AND I DON'T SEE HOW YOU CAN HAVE
5 ONE PARTY GUILTY OF LYNCHING. BECAUSE THEN YOU DON'T HAVE
6 LYNCHING, AND YOU DON'T HAVE A CONSPIRACY.

7 MR. GREELEY: I AGREE WITH YOU ON THAT, JUDGE.

8 THE COURT: IT SEEMS TO ME THAT THE ANSWER WOULD BE YES TO
9 POINTING AND PRESENTING, AND NO TO SECOND DEGREE LYNCHING AND NO
10 TO CONSPIRACY.

11 MR. GREELEY: WHAT WAS THE QUESTION THEY ASKED?

12 THE COURT: IF WE THINK ONE IS GUILTY OF A CHARGE, DO WE HAVE
13 TO AUTOMATICALLY VOTE THAT THE OTHER PARTY IS ALSO GUILTY.
14 MAYBE WE SHOULD ASK THEM WHAT CHARGE.

15 MR. GREELEY: I HAVE NO OBJECTION TO THAT.

16 THE COURT: I'M THINKING OUT LOUD. THE ANSWER IS YES TO
17 POINTING AND PRESENTING AND NO TO CONSPIRACY AND LYNCHING.

18 MR. GREELEY: RIGHT. MAYBE IF THEY COULD REPHRASE THE
19 QUESTION.

20 MS. JOYNER: YOUR HONOR, MY CONCERN IS THAT WE JUST SIMPLY
21 ANSWER THE WAY THAT MR. RHEA AND I HAVE SAID, THAT THE EVIDENCE
22 HAS TO BE EVALUATED AS TO EACH DEFENDANT. THEN IF THERE'S SOME
23 ISSUE WITH THE VERDICTS LATER, THEN I THINK A MOTION CAN BE MADE. I
24 GUESS. I GUESS I'M NOT CLEAR WHAT THE QUESTION IS ALSO. BUT IF WE
25 ANSWER BEYOND WHAT THEY'RE ASKING, THAT'S MY CONCERN.

1 MR. GREELEY: THEN I WOULD ASK THAT THEY BE ASKED WHAT
2 CHARGE.

3 THE COURT: I'LL TELL YOU WHAT. LET'S TAKE A FIFTEEN MINUTE
4 RECESS AND LET ME RESEARCH IT A LITTLE BIT. THEN WE'LL COME BACK
5 WITH A DECISION.

6 (WHEREUPON THE COURT WAS IN RECESS AT 5:45 P.M.)

7 COURT IN SESSION - 6:00 P.M.

8 THE COURT: COUNSEL, LET ME TELL YOU WHAT I'M THINKING. WHAT
9 I'M THINKING ABOUT DOING IS BRINGING THEM BACK IN HERE AND
10 RECHARGING THEM ON LYNCHING AND CONSPIRACY. GIVE THEM THAT
11 CHARGE ONE MORE TIME, WITH SPECIAL ATTENTION TO IT. AND THEN SEND
12 THEM BACK IN. HOW DOES THAT SOUND WITH RESPECT TO THE QUESTION?

13 MS. JOYNER: THAT SOUNDS WONDERFUL. MAY WE ALSO ASK FOR AN
14 ADDITIONAL CHARGE ON THE HAND OF ONE, SINCE I BELIEVE THAT MAY BE
15 THE SOURCE OF THE CONFUSION WITH THE QUESTION.

16 THE COURT: HOW DO Y'ALL FEEL ABOUT THAT?

17 MR. GREELEY: YOUR HONOR, I WOULD JUST ASK FOR AN INSTRUCTION
18 ON THE CHARGE BECAUSE THAT'S WHAT THE QUESTION WAS.

19 MR. RHEA: I AGREE, YOUR HONOR. I DON'T THINK WE NEED THE HAND
20 OF ONE IS THE HAND OF ALL. I MEAN, I THINK THAT LEADS TO ALL THE
21 OTHER PERIPHERAL THINGS LIKE MERE PRESENCE AND ALL THAT. I'M FINE.
22 BUT YOUR OBJECTION WAS BEING CHARGED ON LYNCHING AND
23 CONSPIRACY AND POINTING A FIREARM.

24 THE COURT: I THINK I'M NOT GONNA CHARGE THEM ON THE HAND OF
25 ONE JUST BECAUSE THEY DON'T HAVE A QUESTION ABOUT THAT. IT SEEMS

1 TO ME THEIR QUESTION IS PERTAINING TO THE THREE PARTICULAR
2 CHARGES.

3 MS. JOYNER: YOUR HONOR, MAY WE ALSO---

4 THE COURT: IF THEY COME BACK AND ASK ABOUT THAT, THEN WE
5 CAN GO BACK THERE.

6 MS. JOYNER: YOUR HONOR, CAN---

7 THE COURT: I'M NOT GONNA CHARGE THEM ON THE HAND OF ONE. I
8 DON'T THINK THEY HAD A QUESTION ABOUT THE HAND OF ONE. IT APPEARS
9 TO ME THAT THE QUESTION APPLIES TO THE CONSPIRACY AND THE
10 LYNCHING.

11 MS. JOYNER: YOUR HONOR, CAN WE ALSO ADD AN ADDITIONAL
12 INSTRUCTION THAT THEY ARE TO CONSIDER EACH OF THE CRIMINAL
13 CHARGES AS TO EACH OF THE DEFENDANTS SEPARATELY, EVEN THOUGH IT
14 WASN'T PART OF THE ORIGINAL CHARGE, IN ADDITION?

15 THE COURT: I DON'T THINK WE NEED TO ADD TO THE CHARGE. THEY
16 HAVE THE VERDICT FORM AND IT SEPARATES EACH AND EVERY ONE OF
17 THEM INDIVIDUALLY TO EACH PERSON AND EACH CHARGE. I THINK THAT
18 WOULD CAUSE MORE CONFUSION.

19 ALL RIGHT. LET'S BRING THEM BACK OUT.

20 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 6:05 P.M.)

21 MEMBERS OF THE JURY, I HAVE RECEIVED YOUR QUESTION, AND THE
22 QUESTION AGAIN IS AS FOLLOWS: "IF WE THINK ONE IS GUILTY OF THE
23 CHARGE, DO WE HAVE TO AUTOMATICALLY VOTE THAT THE OTHER PARTY
24 IS ALSO GUILTY?"

1 WHAT I'M GOING TO DO IS I'M GOING TO READ TO YOU THE CHARGE AS
2 IT PERTAINS ONLY TO THE SECOND DEGREE LYNCHING, POINTING AND
3 PRESENTING A FIREARM AND CRIMINAL CONSPIRACY. AND I WOULD ASK
4 THAT YOU LISTEN CAREFULLY.

5 THE DEFENDANTS ARE CHARGED WITH SECOND DEGREE
6 LYNCHING. THE STATE MUST FIRST PROVE BEYOND A REASONABLE DOUBT
7 THAT THE DEFENDANTS ACTING AS A MOB COMMITTED AN ACT OF
8 VIOLENCE UPON THE BODY OF ANOTHER THAT DID NOT RESULT IN DEATH.

9 A MOB IS DEFINED AS AN ASSEMBLAGE OF TWO OR MORE PERSONS
10 FOR THE PREMEDITATED PURPOSE AND WITH PREMEDITATED INTENT OF
11 COMMITTING AN ACT OF VIOLENCE UPON ANOTHER PERSON.

12 THE STATE DOES NOT NEED TO PROVE PHYSICAL INJURY IN ORDER
13 FOR YOU TO FIND AN ACT OF VIOLENCE OCCURRED. IT IS PERMISSIBLE TO
14 INFER THAT ALL PERSONS PRESENT AS MEMBERS OF A MOB WHEN AN ACT
15 OF VIOLENCE IS COMMITTED HAVE AIDED AND ABETTED THE CRIME AND
16 ARE ACTUALLY GUILTY AS PRINCIPALS. OR WHEN THE COMMON INTENT TO
17 DO VIOLENCE MAY BE PERFORMED BEFORE OR DURING THE ASSEMBLAGE,
18 THE STATE MUST PRODUCE AT LEAST SOME EVIDENCE OF PREMEDITATION
19 TO SUSTAIN A CONVICTION OF LYNCHING.

20 THE PREMEDITATED PURPOSE AND INTENT UNDERLYING THE CHARGE
21 OF LYNCHING CANNOT BE SPONTANEOUS. RATHER, THE STATE MUST
22 PRODUCE EVIDENCE THAT SHOWS THAT THE DEFENDANTS ASSEMBLED FOR
23 THE FURTHER PURPOSE AND INTENT OF COMMITTING AN ACT OF VIOLENCE
24 AGAINST THE VICTIM.

1 PREMEDITATION CONNOTATES WILLFUL DELIBERATION IN PLANNING
2 OR CONSCIOUS CONSIDERATION PRECEDING A PARTICULAR EVENT. A
3 PREMEDITATED PURPOSE AND INTENT UNDERLYING A CHARGE FOR
4 LYNCHING CANNOT BE SPONTANEOUS. THE STATE MAY PROVE THE INTENT
5 ELEMENT OF LYNCHING BY POSITIVE TESTIMONY OR EVIDENCE OR BY
6 CIRCUMSTANTIAL EVIDENCE. INTENT MAY BE SHOWN BY ACTS AND
7 CONDUCT FROM WHICH A JURY CAN NATURALLY AND REASONABLY INFER
8 INTENT.

9 THE DEFENDANTS HAVE ALSO BEEN CHARGED IN THE INDICTMENTS
10 WITH THE CRIME OF POINTING AND PRESENTING A FIREARM. THE STATE
11 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANTS
12 PRESENTED OR POINTED AT ANOTHER PERSON A LOADED OR UNLOADED
13 FIREARM.

14 TO PRESENT MEANS TO BRING INTO THE PRESENCE OF, AND
15 INTRODUCE FORMALLY TO ANOTHER OR OTHERS THEIR OFFER FOR VIEWING
16 OR NOTICE TO DISPLAY OR SHOW.

17 THE DEFENDANTS ARE ALSO CHARGED WITH CRIMINAL CONSPIRACY.
18 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE
19 DEFENDANTS COMBINED WITH ONE ANOTHER FOR THE PURPOSE OF
20 COMMITTING AN UNLAWFUL ACT OR OF COMMITTING A LAWFUL ACT BY
21 UNLAWFUL MEANS.

22 THERE MUST BE A MUTUAL UNDERSTANDING, AGREEMENT OR
23 COMMON INTENTION AND PLAN. MERE PASSIVE KNOWLEDGE OF OR
24 CONSENT TO THE CRIMINAL CONDUCT OF ANOTHER IS NOT ENOUGH TO

1 MAKE A PERSON A CONSPIRATOR. THERE MUST BE GUILTY KNOWLEDGE
2 AND PARTICIPATION.

3 SIMILARLY, THE MERE FACT THAT THE DEFENDANTS MAY HAVE
4 ASSOCIATED WITH ONE ANOTHER OR MET WITH ANOTHER AND DISCUSSED
5 COMMON AIMS AND INTEREST DOES NOT NECESSARILY ESTABLISH PROOF
6 OF THE EXISTENCE OF A CONSPIRACY, OR THAT THE DEFENDANTS WERE
7 INVOLVED IN A CONSPIRACY.

8 ON THE OTHER HAND IT IS NOT NECESSARY THAT THE AGREEMENT BE
9 A FORMAL ONE, THAT IT BE IN WRITING, THAT THE PERSONS HOLD A
10 MEETING AND EXPRESSLY STATE THE TERMS OF A COMMON PLAN OR THAT
11 THE AGREEMENT BE STATED IN WORDS BETWEEN THEM. THE AGREEMENT
12 OF A CRIMINAL CONSPIRACY MAY COME INTO BEING MERELY BY MUTUAL
13 UNDERSTANDING.

14 THE WILLFUL, INTENTIONAL AND KNOWING ADOPTION BY TWO
15 KNOWING PERSONS OF A COMMON PLAN IS SUFFICIENT. NO OVERT ACTS
16 NEED TO BE SHOWN TO ESTABLISH A CONSPIRACY. A CONSPIRACY MAY BE
17 SHOWN BY CIRCUMSTANTIAL EVIDENCE IN THE CONDUCT OF THE PARTIES.
18 SUBSTANTIAL CRIMES COMMITTED IN FURTHERANCE OF A CONSPIRACY
19 CONSTITUTE CIRCUMSTANTIAL EVIDENCE OF THE EXISTENCE OF A
20 CONSPIRACY, ITS OBJECTIVE AND ITS SCOPE.

21 IN ORDER TO CONVICT THE DEFENDANTS OF CONSPIRACY THE STATE
22 MUST PROVE BEYOND A REASONABLE DOUBT NOT ONLY THAT THE
23 DEFENDANTS KNEW OF THE UNLAWFUL CONDUCT, BUT THAT THE
24 DEFENDANT AGREED TO COMBINE WITH ONE ANOTHER FOR THE PURPOSE OF
25 ACCOMPLISHING THE UNLAWFUL CONDUCT.

1 HOWEVER ONCE A CONSPIRACY HAS BEEN ESTABLISHED, EVIDENCE
2 ESTABLISHING BEYOND A REASONABLE DOUBT, THE CONNECTION OF THE
3 DEFENDANTS WITH THE CONSPIRACY, EVEN THOUGH THE CONNECTION IS
4 SLIGHT, IS SUFFICIENT TO CONVICT HIM WITH KNOWING PARTICIPATION IN A
5 CONSPIRACY.

6 FURTHER, THE ACTS AND DECLARATIONS OF ANY CONSPIRATOR MADE
7 DURING THE CONSPIRACY AND IN FURTHERANCE THEREOF ARE DEEMED TO
8 BE ACTS AND DECLARATIONS OF EVERY OTHER CONSPIRATOR AND ARE
9 ADMISSIBLE AGAINST ALL.

10 ALL RIGHT. SO, I WOULD ASK THAT YOU TAKE THAT, RETURN TO
11 YOUR JURY ROOM, AND BEGIN DELIBERATIONS AGAIN.

12 (WHEREUPON THE JURY EXITED THE COURTROOM AT 6:10 P.M. TO
13 RESUME DELIBERATIONS)

14 ARE THERE ANY OBJECTIONS FROM THE STATE?

15 MS. JOYNER: NONE, YOUR HONOR.

16 THE COURT: ANY OBJECTION, MR. RHEA?

17 MR. RHEA: YOUR HONOR, I WOULD JUST REITERATE MR. GREELEY'S
18 OBJECTION MADE EARLIER IN THE COURSE OF THE PROCEEDING IN THE MOB
19 DEFINED, MEMBERS OF A MOB, WITH REGARD TO WHERE IT SAYS IT IS
20 PERMISSIBLE TO INFER THAT ALL PERSONS PRESENT ARE MEMBERS OF A
21 MOB WHEN AN ACT OF VIOLENCE IS COMMITTED HAVE AIDED AND ABETTED
22 A CRIME AND ARE GUILTY. MY MOTION IS BASED ON THE CASE CITED BY
23 MR. GREELEY, AND WE OBJECT TO THAT LANGUAGE.

24 THE COURT: THAT IS NOTED FOR THE RECORD.

1 MR. GREELEY: AND I'LL JUST RENEW THAT SAME OBJECTION TO THAT
2 PREVIOUSLY MADE.

3 THE COURT: YOUR OBJECTIONS ARE OVERRULED AND NOTED FOR THE
4 RECORD. WE ARE AT EASE AGAIN.

5 (WHEREUPON COURT'S EXHIBIT ONE WAS MARKED FOR THE RECORD
6 AND COURT WAS AT EASE AT 6:15 P.M.)

7 COURT IN SESSION - 7:53 P.M.

8 THE COURT: FOR THE RECORD, WE HAVE ANOTHER JURY NOTE THAT
9 SAYS "TWO SMOKERS AND TWO PHONE CALLS".

10 (LAUGHTER)

11 I'M GOING TO SAY NO AND NO. BUT I WILL ADD A NOTE THAT SAYS, "I
12 WILL HAVE THE BAILIFF CALL YOUR HOUSE IF YOU WILL SEND OUT THE
13 NAME AND NUMBER TO BE CALLED."

14 ANY OBJECTION FROM THE STATE?

15 MS. JOYNER: NO OBJECTION, YOUR HONOR.

16 THE COURT: ANY OBJECTION, MR. RHEA?

17 MR. RHEA: NO OBJECTION.

18 THE COURT: MR. GREELEY?

19 MR. GREELEY: I'M A SMOKER. MAY I ABSTAIN?

20 (LAUGHTER)

21 NO OBJECTION, YOUR HONOR.

22 THE COURT: THANK YOU.

23 (WHEREUPON DELIBERATIONS RESUMED AT 7:56 P.M.)
24
25

COURT IN SESSION - 8:00 P.M.

1
2 THE COURT: WE'VE GOT A NOTE FROM THE JURY. WELL, WE SENT A
3 NOTE INTO THE JURY AND THE NOTE SAID, "ARE YOU CLOSE TO REACHING A
4 VERDICT, OR WOULD YOU LIKE FOR US TO ORDER DINNER? IT WILL TAKE
5 APPROXIMATELY FORTY-FIVE MINUTES TO AN HOUR." THEY SENT A NOTE
6 BACK OUT AND THEY ACTUALLY WROTE ON THAT SAME NOTE AND THEY
7 SAID, "ORDER DINNER. NOT CLOSE ON VERDICT." THEN THEY SAID, "CAN WE
8 HAVE A COPY PRINTOUT OF THE STATUTE OF THE THREE CHARGES?"

9 AND WHAT I'M GONNA DO IS PRINT THE CHARGE, BRING THE
10 FOREPERSON AND JUST GIVE HER THE CHARGE. THAT WAY IF THEY HAVE
11 ANY QUESTIONS THEY HAVE THE CHARGE EXACTLY AS I READ IT TO THEM.
12 ANY OBJECTION FROM THE STATE?

13 MS. JOYNER: YOUR HONOR, CAN WE HAVE A MOMENT TO RESEARCH?
14 I THINK THERE MAY BE A CASE. I'M NOT SURE IF MR. GREELEY AND MR.
15 RHEA ARE FAMILIAR WITH THE CASE REGARDING---

16 THE COURT: I'LL BE GLAD TO GIVE YOU A MOMENT, BUT WHERE I'M
17 FROM, IT HAPPENS ALL THE TIME. MOST OF THE JUDGES GIVE THE CHARGE
18 TO START WITH, AND I'M GOING TO START DOING THAT AFTER THIS TRIAL.

19 MR. RHEA: I JUST WANT TO MAKE SURE. ARE YOU PROPOSING TO GIVE
20 THEM TO THE CHARGE THAT YOU JUST READ OR THE STATUTES?

21 THE COURT: THE CHARGE.

22 MR. GREELEY: THE WHOLE CHARGE YOU READ?

23 THE COURT: THE EXACT, SAME THING THAT I READ.

24 MR. RHEA: NOT JUST WHAT YOU READ, BUT THE WHOLE CHARGE?

1 THE COURT: THE WHOLE CHARGE. THAT WAY THEY GET EVERYTHING
2 FROM BEGINNING TO END. THAT WAY, IF THEY HAVE A QUESTION, THEY
3 CAN JUST GO TO WHAT I CHARGED.

4 MR. GREELEY: YOUR HONOR, THE ONLY HESITATION THAT I HAVE
5 AND THE OBJECTION THAT I WOULD MAKE FOR THE RECORD IS THAT NOT
6 KNOWING THE DYNAMIC OF THE JURY, AND THERE BEING ONE COPY OF THE
7 CHARGE, I WOULD HESITATE A JUROR OR A GROUP OF JURORS BEING ABLE
8 TO TRY AND USE THE WRITTEN CHARGE TO CITE AND TO OVERCOME WHAT
9 THE JURY HAS HEARD IN THEIR MINDS. BUT I UNDERSTAND THE COURT'S
10 POSITION. AND I WOULD JUST OBJECT TO THE WRITTEN CHARGE AS SUCH
11 GOING BACK TO THE JURY.

12 MR. RHEA: FOR THE RECORD, I WOULD CONCUR IN THAT OBJECTION,
13 RESPECTFULLY

14 THE COURT: YOU'RE NOT SURE THEY WOULD UNDERSTAND YOUR
15 OBJECTION?

16 MR. GREELEY: IT WOULD HAVE TO DO WITH CERTAIN-- IT WOULD
17 HAVE TO DO IF A JUROR WAS TO PICK AND CHOOSE FROM THE CHARGE, I
18 GUESS.

19 THE COURT: THE WHOLE CHARGE?

20 MR. GREELEY: THE WHOLE CHARGE.

21 THE COURT: BEING BACK THERE WITH THEM?

22 MR. GREELEY: TO PICK AND CHOOSE AND POINTING DIFFERENT
23 SECTIONS OF THE CHARGE AS OPPOSED TO OTHER SECTIONS. IF THE OTHER
24 JURORS DID NOT WISH TO READ THE WHOLE CHARGE. IT'S ABOUT TWENTY-
25 TWO PAGES, TWENTY-ONE PAGES. AND THAT'S THE REASON THAT I WOULD

1 HAVE, THAT THERE IS THE POSSIBILITY THAT THERE MIGHT BE SOME JURORS
2 WHO WOULD EMPHASIZE CERTAIN SECTIONS OF THAT AND POINT TO
3 OTHERS AND SEE IF THERE'S SOMETHING ELSE IN THE CHARGE. AND THEY
4 MAY REMEMBER THINGS DIFFERENTLY.

5 THE COURT: WELL, THAT'S WHAT THEY'RE DOING RIGHT NOW
6 ANYWAY. THAT'S THE EXACT SAME THING. THIS WAY THEY WILL HAVE THE
7 CHARGE TO REFER TO.

8 MR. GREELEY: I AGREE WITH THAT, BUT I OBJECT.

9 THE COURT: LET ME HEAR THE SOLICITOR'S RESPONSE.

10 MS. JOYNER: YOUR HONOR, IT'S BEEN PASSED ON TO ME THAT YOU
11 WANT TO SEND BACK THE INSTRUCTIONS. THE TWO CASES THAT I'VE FOUND
12 URGE CAUTION TO THE COURT TO USE THE PRACTICE SPARINGLY, THE
13 WHOLE STATUTE OR CHARGE, TO USE IT SPARINGLY ONLY WHERE IT WILL
14 NOT PREJUDICE THE DEFENDANT. SO I DO BELIEVE IT IS IN THE COURT'S
15 DISCRETION.

16 THE COURT: AND OF COURSE, I RESPONDED TO THE NOTE, AND THEY
17 WERE CALLED BACK OUT A SECOND TIME AND I READ A PORTION TO THEM,
18 GIVING THEM THE CHARGE. AND SINCE THEY ARE ASKING FOR IT I AM
19 GOING TO SEND IT BACK TO THEM.

20 MS. JOYNER: IS IT THE WHOLE CHARGE THAT YOU READ?

21 THE COURT: YES. I'LL GIVE YOU COPIES OF IT, JUST TO MAKE SURE
22 YOU ARE GETTING EXACTLY WHAT THEY ARE GETTING.

23 (WHEREUPON COPIES OF JURY CHARGE WERE MADE AND DISTRIBUTED
24 TO COUNSEL.)

1 FOR THE RECORD, I HAVE PASSED OUT TO ALL THREE ATTORNEYS
2 COPIES OF THE CHARGE THAT I GAVE EARLIER TODAY. NOW, BRING IN THE
3 FOREPERSON.

4 (WHEREUPON JURY FOREPERSON WAS BROUGHT INTO THE
5 COURTROOM)

6 MADAM FOREPERSON, WE HAVE HAD PRINTED OUT FOR THE JURY OF
7 THE THREE CHARGES. WHAT I AM GOING TO DO IS SEND YOU BACK THE
8 CHARGE THAT I HAVE READ.

9 JURY FOREPERSON: THANK YOU.

10 THE COURT: THANK YOU VERY MUCH.

11 (WHEREUPON JURY FOREPERSON RETURNED TO THE JURY ROOM)

12 ANYTHING FURTHER FROM THE STATE AT THIS TIME?

13 MS. JOYNER: NO, YOUR HONOR.

14 THE COURT: ANYTHING FURTHER FROM MR. RHEA?

15 MR. RHEA: NO, YOUR HONOR.

16 THE COURT: MR. GREELEY?

17 MR. GREELEY: NO, YOUR HONOR.

18 THE COURT: ALL RIGHT. WE'LL BE AT EASE UNTIL WE GET ANOTHER
19 QUESTION OR A VERDICT.

20 (WHEREUPON JURY NOTE WAS MARKED AS COURT'S EXHIBIT NUMBER.
21 TWO)

22 (WHEREUPON DELIBERATIONS RESUMED AT 8:10 P.M.)

23

24

25

1 COURT IN SESSION - 9:04 P.M.

2 THE COURT: I HAVE RECEIVED A NOTE THAT SAYS, "REACHED
3 VERDICT ON THREE CHARGES, DEADLOCKED ON THE REMAINING CHARGE."

4 SO, I THOUGHT I'D BRING THE JURY BACK OUT AND GIVE THEM AN
5 ALLEN CHARGE. ANY OBJECTION FROM THE STATE?

6 MS. JOYNER: NO OBJECTION, YOUR HONOR.

7 THE COURT: ANY OBJECTION, MR. RHEA?

8 MR. RHEA: NO, YOUR HONOR.

9 THE COURT: MR. GREELEY?

10 MR. GREELEY: NO OBJECTION.

11 THE COURT: BRING IN THE JURY.

12 (WHEREUPON THE JURY ENTERED THE COURTROOM)

13 LADIES AND GENTLEMEN OF THE JURY, WE HAVE RECEIVED YOUR
14 NOTE THAT SAYS YOU'VE REACHED A VERDICT ON THREE CHARGES,
15 DEADLOCKED ON THE REMAINING CHARGE. WITH THAT IN MIND, I AM
16 REQUIRED BY LAW TO GIVE YOU YET ANOTHER CHARGE. AND I NEED FOR
17 YOU TO LISTEN CAREFULLY.

18 LADIES AND GENTLEMEN, YOU HAVE STATED THAT YOU HAVE BEEN
19 UNABLE TO AGREE ON A VERDICT IN THIS CASE. AS I INSTRUCTED YOU
20 EARLIER, THE VERDICT OF THE JURY MUST BE UNANIMOUS. WHEN A
21 MATTER IS IN DISPUTE IT ISN'T ALWAYS EASY FOR EVEN TWO PEOPLE TO
22 AGREE. SO, WHEN TWELVE PEOPLE MUST AGREE IT BECOMES EVEN MORE
23 DIFFICULT.

24 IN MOST CASES, ABSOLUTE CERTAINTY CANNOT BE REACHED OR
25 EXPECTED. HOWEVER, YOU HAVE A DUTY TO MAKE EVERY REASONABLE

1 EFFORT TO REACH A UNANIMOUS VERDICT. IN DOING THIS YOU SHOULD
2 CONSULT WITH ONE ANOTHER, EXPRESS YOUR OWN VIEWS AND LISTEN TO
3 THE OPINIONS OF YOUR FELLOW JURORS. TELL EACH OTHER HOW YOU FEEL
4 AND WHY YOU FEEL THAT WAY. DISCUSS YOUR DIFFERENCES WITH AN
5 OPEN MIND.

6 ALTHOUGH THE VERDICT MUST BE UNANIMOUS EVERYONE OF YOU
7 HAS THE RIGHT TO YOUR OWN OPINION. THE VERDICT YOU AGREE TO MUST
8 BE YOUR OWN VERDICT, THE RESULT OF YOUR OWN CONVICTIONS. AND
9 YOU SHOULD NOT GIVE UP YOUR FIRMLY HELD BELIEFS MERELY TO BE IN
10 AGREEMENT WITH YOUR FELLOW JURORS.

11 THE MAJORITY SHOULD CONSIDER THE MINORITY'S POSITION AND THE
12 MINORITY SHOULD CONSIDER THE MAJORITY'S POSITION. YOU SHOULD
13 CAREFULLY CONSIDER AND RESPECT THE OPINIONS OF EACH OTHER AND
14 REEVALUATE YOUR POSITION FOR REASONABLENESS, CORRECTNESS AND
15 PARTIALITY.

16 YOU MUST LAY ASIDE ALL OUTSIDE MATTERS AND REEXAMINE THE
17 QUESTIONS BEFORE YOU BASED ON THE LAW AND THE EVIDENCE IN THIS
18 CASE.

19 IF YOU DO NOT AGREE IN A VERDICT IN THIS CASE I MUST DECLARE A
20 MISTRIAL. IN THAT CASE IT DOES NOT MEAN THAT ANYBODY WINS. IT JUST
21 MEANS THAT AT SOME FUTURE TIME I WILL TRY THIS CASE WITH SOME
22 OTHER JURY SITTING WHERE YOU SIT NOW. THE SAME PARTICIPANTS WILL
23 COME AND THE SAME LAWYERS WILL ASK BASICALLY THE SAME QUESTIONS
24 AND GET BASICALLY THE SAME ANSWERS. AND WE WILL GO THROUGH THE
25 WHOLE PROCESS AGAIN.

1 YOU ARE SELECTED IN THE SAME MANNER AND FROM THE SAME
2 JURORS AS ANY FUTURE JURY WILL BE AND THERE IS NO REASON FOR ME TO
3 SUPPOSE THAT THE CASE WILL EVER BE SUBMITTED TO TWELVE MORE
4 INTELLIGENT, IMPARTIAL, COMPETENT AND CONSCIENTIOUS JURORS THAN
5 YOU. AND THAT MORE OR CLEARER EVIDENCE WILL BE PRODUCED ON ONE
6 SIDE THAN THE OTHER.

7 I, THEREFORE, ASK YOU TO RETURN TO YOUR DELIBERATIONS WITH
8 THE HOPE THAT YOU CAN ARRIVE AT A VERDICT WITHIN A REASONABLE
9 TIME. THANK YOU, AND WITH THAT IN MIND, I WILL ASK YOU TO RETURN TO
10 THE JURY ROOM.

11 (WHEREUPON THE JURY EXITED THE COURTROOM AND
12 DELIBERATIONS RESUMED AT 9:09 P.M.)

13 ANY OBJECTIONS FROM THE STATE?

14 MS. JOYNER: NO, YOUR HONOR.

15 THE COURT: MR. RHEA?

16 MR. RHEA: NO, YOUR HONOR.

17 THE COURT: MR. GREELEY?

18 MR. GREELEY: NO, YOUR HONOR.

19 THE COURT: WE'LL BE AT EASE AGAIN.

20 (WHEREUPON COURT WAS AT EASE)

21 (WHEREUPON JURY NOTE WAS MARKED AS COURT'S EXHIBIT NUMBER
22 THREE)

23

24

25

COURT IN SESSION - 9:50 P.M.

1
2 THE COURT: I WANT TO SPEAK TO ALL THE SPECTATORS. THAT JURY'S
3 HAD A HARD JOB. THEY HAVE WORKED ALL DAY TODAY AND ALL EVENING.
4 AND THEY DON'T NEED A REACTION FROM ANYBODY. NONE, POSITIVE,
5 NEGATIVE, NONE. IF ANY OF YOU ARE GOING TO HAVE ANY REACTIONS, IF
6 YOU'RE GONNA HICCUP, COUGH, RAISE YOUR HAND, ANYTHING, I'LL PUT
7 YOU IN JAIL. IF YOU THINK YOU CAN'T RESTRAIN YOURSELF, YOU NEED TO
8 LEAVE NOW.

9 BRING THE JURY IN.

10 (WHEREUPON THE JURY ENTERED THE COURTROOM)

11 MADAM FOREPERSON, HAVE YOU REACHED A VERDICT.

12 JURY FOREPERSON: YES, WE HAVE, YOUR HONOR.

13 THE COURT: IF YOU WOULD, PASS THE VERDICT TO THE BAILIFF.

14 (WHEREUPON THE VERDICT FORMS WERE PASSED BY THE BAILIFF TO
15 THE COURT AND ON TO THE CLERK OF COURT)

16 MADAM CLERK, PLEASE PUBLISH THE VERDICTS.

17 CLERK OF COURT: AS TO INDICTMENT 2009-GS-46-2833, LYNCHING IN
18 THE SECOND DEGREE, WE THE JURY UNANIMOUSLY FIND THE DEFENDANT,
19 FRANCIS LARMAND, JR., GUILTY.

20 AS TO INDICTMENT NUMBER 2009-GS-46-2834, CRIMINAL CONSPIRACY,
21 WE THE JURY UNANIMOUSLY FIND THE DEFENDANT, FRANCIS LARMAND,
22 GUILTY.

23 AS TO INDICTMENT NUMBER 2009-GS-46-2835, POINTING AND
24 PRESENTING A FIREARM, WE THE JURY UNANIMOUSLY FIND THE
25 DEFENDANT, FRANCIS LARMAND, GUILTY.

1 AS TO INDICTMENT NUMBER 2009-GS-46-2838, LYNCHING IN THE
2 SECOND DEGREE, WE THE JURY FIND THE DEFENDANT, LEO LEMIRE, GUILTY.

3 AS TO INDICTMENT NUMBER 2009-GS-46-2837, CRIMINAL CONSPIRACY,
4 WE THE JURY UNANIMOUSLY FIND THE DEFENDANT, LEO LEMIRE, GUILTY.

5 AS TO INDICTMENT NUMBER 2009-GS-46-2839, POINTING AND
6 PRESENTING A FIREARM, WE THE JURY UNANIMOUSLY FIND THE
7 DEFENDANT, LEO LEMIRE, GUILTY.

8 LADIES AND GENTLEMEN OF THE JURY, IF THIS BE YOUR VERDICT,
9 PLEASE STATE SO BY RAISING YOUR RIGHT HAND.

10 (WHEREUPON JURORS RAISED THEIR RIGHT HANDS)

11 LET THE RECORD REFLECT ALL JURORS AFFIRMED THIS VERDICT.

12 THE COURT: IS THERE ANY NEED FOR FURTHER POLLING FROM THE
13 STATE?

14 MS. JOYNER: NO SIR, YOUR HONOR.

15 THE COURT: MR. RHEA?

16 MR. RHEA: NO, YOUR HONOR.

17 THE COURT: MR. GREELEY?

18 MR. GREELEY: I WOULD ASK THAT THE JURY BE POLLED.

19 THE COURT: ALL RIGHT. MADAM CLERK, PLEASE DO SO.

20 CLERK OF COURT: Y'ALL STAND.

21 (WHEREUPON ALL JURORS STOOD)

22 NUMBER 217, DELLA SZABO, IS THIS YOUR VERDICT?

23 JUROR SZABO: YES.

24 CLERK OF COURT: IS THIS STILL YOUR VERDICT?

25 JUROR SZABO: YES.

1 CLERK OF COURT: PLEASE BE SEATED. NUMBER 99, JENNIFER HART, IS
2 THIS YOUR VERDICT?

3 JUROR HART: YES MA'AM.

4 CLERK OF COURT: IS THIS STILL YOUR VERDICT?

5 JUROR: YES MA'AM.

6 CLERK OF COURT: PLEASE HAVE A SEAT. NUMBER 115, TERESA
7 JOHNSON-DUNLAP, IS THIS YOUR VERDICT?

8 JUROR JOHNSON-DUNLAP: YES.

9 CLERK OF COURT: IS THIS STILL YOUR VERDICT?

10 JUROR JOHNSON-DUNLAP: YES.

11 CLERK OF COURT: PLEASE BE SEATED. NUMBER 62, WILLIAM DUDLEY,
12 IS THIS YOUR VERDICT?

13 JUROR DUDLEY: YES MA'AM.

14 CLERK OF COURT: IS THIS STILL YOUR VERDICT?

15 JUROR DUDLEY: YES MA'AM.

16 CLERK OF COURT: PLEASE TAKE YOUR SEAT. NUMBER 148, DONNA
17 MATTHEWS, IS THIS YOUR VERDICT?

18 JUROR MATTHEWS: YES.

19 CLERK OF COURT: IS THIS STILL YOUR VERDICT?

20 JUROR MATTHEWS: YES.

21 CLERK OF COURT: PLEASE HAVE A SEAT. NUMBER 11, DIANNE
22 BARBER, IS THIS YOUR VERDICT?

23 JUROR BARBER: YES.

24 CLERK OF COURT: IS THIS STILL YOUR VERDICT?

25 JUROR BARBER: YES.

1 CLERK OF COURT: TAKE YOUR SEAT, PLEASE. NUMBER 176, EDWARD
2 PHELPS, IS THIS YOUR VERDICT?

3 JUROR PHELPS: YES.

4 CLERK OF COURT: IS THIS STILL YOUR VERDICT?

5 JUROR PHELPS: YES.

6 CLERK OF COURT: PLEASE TAKE YOUR SEAT. NUMBER 223, TERRY
7 THOMPSON, IS THIS YOUR VERDICT?

8 JUROR THOMPSON: YES, IT IS.

9 CLERK OF COURT: IS THIS STILL YOUR VERDICT?

10 JUROR THOMPSON: YES, IT IS.

11 CLERK OF COURT: PLEASE TAKE YOUR SEAT. NUMBER 169, DARYL
12 PARTYKA, IS THIS YOUR VERDICT?

13 JUROR PARTYKA: YES.

14 CLERK OF COURT: IS THIS STILL YOUR VERDICT?

15 JUROR PARTYKA: YES.

16 CLERK OF COURT: PLEASE BE SEATED. NUMBER 224, REGINALD
17 JACKSON, IS THIS YOUR VERDICT?

18 JUROR JACKSON: YES.

19 CLERK OF COURT: IS THIS STILL YOUR VERDICT?

20 JUROR JACKSON: YES.

21 CLERK OF COURT: PLEASE BE SEATED. NUMBER 66, VIRGINIA EMERY,
22 IS THIS YOUR VERDICT?

23 JUROR EMERY: YES.

24 CLERK OF COURT: IS THIS STILL YOUR VERDICT?

25 JUROR EMERY: YES.

1 CLERK OF COURT: PLEASE BE SEATED. NUMBER 210, DANA STATON, IS
2 THIS YOUR VERDICT?

3 JUROR STATON: YES.

4 CLERK OF COURT: IS THIS STILL YOUR VERDICT?

5 JUROR STATON: YES.

6 CLERK OF COURT: PLEASE BE SEATED.

7 THE COURT: MEMBERS OF THE JURY, I WANT TO SINCERELY THANK
8 YOU FOR THE EFFORTS YOU HAVE MADE. YOU HAVE BEEN HERE A LONG
9 TIME AND YOU HAVE PAID CAREFUL ATTENTION. THANK YOU FOR WHAT
10 YOU'VE DONE. THE STATE HAS THE CHECKS READY TO PAY YOU FOR YOUR
11 SERVICES. IF YOU HAVE ANY COMPLAINTS ABOUT YOUR CHECKS, DON'T
12 TAKE IT UP WITH ME, TAKE IT UP WITH THE CLERK OF COURT. YOU ARE NOW
13 DISMISSED AND YOU HAVE EARNED A THREE YEAR EXEMPTION FROM AGAIN
14 SERVING ON A JURY.

15 (WHEREUPON THE JURY WAS DISMISSED AND EXITED THE
16 COURTROOM)

17 ANY MOTIONS FROM THE STATE?

18 MS. JOYNER: NO SIR, YOUR HONOR.

19 THE COURT: ANY MOTIONS FROM MR. RHEA?

20 MR. RHEA: BEG THE COURT'S INDULGENCE, YOUR HONOR.

21 (PAUSE)

22 YOUR HONOR, AT THIS I WOULD RESPECTFULLY MAKE A MOTION FOR
23 A NEW TRIAL BASED UPON MY EARLIER MOTIONS FOR A DIRECTED VERDICT.

24 THE COURT: YOUR MOTION IS DENIED. MR. GREELEY?

25 MR. GREELEY: NOT AT THIS TIME.

1 THE COURT: IF YOU WOULD, BRING THE PARTIES FORWARD.

2 (WHEREUPON DEFENDANTS CAME FORWARD TO THE BAR)

3 MR. RHEA: YOUR HONOR, I DIDN'T KNOW WHETHER YOU WANTED
4 MRS. LARMAND TO COME UP WITH HIM AT THIS TIME.

5 THE COURT: WHATEVER YOU WANT TO DO.

6 MR. RHEA: THANK YOU, YOUR HONOR. YOUR HONOR, YOU KNOW A
7 GOOD BIT ABOUT MY CLIENT OBVIOUSLY FROM THE BIOGRAPHICAL
8 TESTIMONY THAT WAS PRESENTED. OBVIOUSLY HE IS ACCOMPANIED IN
9 COURT TODAY BY HIS LOVING WIFE OF SEVENTEEN YEARS, KERRIANN.

10 AS YOU HEARD, YOUR HONOR, THEY HAVE TWO CHILDREN THAT ARE
11 THE LIGHT OF THEIR LIVES. THEIR SON IS IN COLLEGE, A BASEBALL PITCHER.
12 THEY SPEND MOST OF THEIR WEEKENDS TRAVELING GOING TO HIS GAMES.
13 THEY ATTEND WHETHER HE'S PITCHING OR NOT. THEIR LOVELY DAUGHTER
14 IS SIXTEEN YEARS OF AGE.

15 YOUR HONOR, THIS IS A MAN-- AND I DON'T WANT TO MISSTATE. IT'S
16 MY UNDERSTANDING THAT HIS PRIOR CRIMINAL HISTORY IS A
17 PARAPHERNALIA CHARGE IN NORTH CAROLINA. THAT'S HIS ENTIRE
18 CRIMINAL HISTORY.

19 YOUR HONOR, AT THIS TIME, I'D LIKE FOR MRS. LARMAND TO ADDRESS
20 THE COURT JUST BRIEFLY, IF SHE MAY.

21 THE COURT: I'LL BE HAPPY TO HEAR FROM YOU. IF YOU WOULD,
22 PLEASE STATE YOUR NAME.

23 KERRIANN LARMAND: KERRIANN LARMAND.

24 THE COURT: I'LL BE GLAD TO HEAR FROM YOU.

1 KERRIANN LARMAND: YOUR HONOR, IF YOU WOULD, PLEASE HAVE
2 MERCY ON MY HUSBAND AND MY FAMILY, MY CHILDREN, MY SON, MY
3 DAUGHTER, ALL OF MY FAMILY. THANK YOU.

4 THE COURT: ANYTHING FURTHER?

5 MR. RHEA: YOUR HONOR, HE'S JUST SPENT FOURTEEN DAY IN JAIL NOT
6 INCLUDING WHEN HE'S BEEN IN JAIL DURING THE PENDENCY OF THIS TRIAL.
7 YOUR HONOR, HE'S HARD WORKING. HE AND HIS WIFE BOTH ARE HARD
8 WORKING, GOOD CITIZENS. I WOULD SUBMIT TO THE COURT THAT FRANK
9 EXERCISED ON THAT NIGHT COMING DOWN TO YORK COUNTY WAS AN
10 ERROR IN JUDGMENT, AND IT IS ATYPICAL OF HIM AS HIS HISTORY SHOWS,
11 CLEARLY.

12 YOUR HONOR, WE WOULD PASS UP A LETTER. IT'S FROM OFFICER
13 ANDREW DIEHL WITH THE CITY OF KANNAPOLIS DEPARTMENT. HE WAS
14 PRESENT AT THE BOND HEARING. HE COULD NOT BE PRESENT HERE TODAY.
15 HE'S KNOWN FRANK AND KERRIANN FOR A LONG TIME. HE IS VERY ACTIVE
16 IN HIS DAUGHTER ASHLEY'S ACTIVITIES, AND THAT'S HOW HE CAME TO
17 KNOW FRANK AND KERRIANN. WE CERTAINLY ASK YOUR HONOR TO
18 CONSIDER THAT. HE IS WELL KNOWN IN THE KANNAPOLIS COMMUNITY AND
19 VERY WELL LIKED.

20 THE COURT: ANYTHING YOU WANT TO TELL ME, MR. LARMAND?

21 MR. LARMAND: IT WAS POOR JUDGMENT. I'M GLAD NOBODY GOT
22 HURT. THAT WAS NOT MY ATTENTION AT ALL. I HAVE NOTHING ELSE TO
23 SAY, JUST IT WAS POOR JUDGMENT. THANK YOU.

24 THE COURT: MR. GREELEY.

25 MR. GREELEY: MAY IT PLEASE THE COURT.

1 THE COURT: SURE.

2 MR. GREELEY: YOUR HONOR, I HAVE WORKED WITH MY CLIENT AND
3 HIS WIFE SINCE THIS OCCURRED. HE HAS ALWAYS BEEN FORTHRIGHT WITH
4 ME. WHEN HE SAW THE POLICE ON THE SIDE OF THE ROAD THAT DAY HE
5 WAS TOLD THAT HE SHOULD NOT HAVE HAD THE GUN. HE ADMITTED TO
6 THEM, COOPERATED WITH THEM, AS FAR AS THE GUN GOES.

7 THIS IS A MAN WHO TO MY KNOWLEDGE HAS NO PRIOR CRIMINAL
8 RECORD, ANYTHING OF ANY SIGNIFICANCE. IF THEY DID FIND SOMETHING
9 OUT, IT WAS NEVER RECEIVED BY---

10 MS. JOYNER: NO RECORD, YOUR HONOR.

11 THE COURT: NO RECORD.

12 MR. GREELEY: I MEAN, NO RECORD, WHATSOEVER. AND HE ALSO HAS
13 A MEDICAL CONDITION WHICH YOUR HONOR HAS SEEN. AND I'VE GOT A
14 MEDICAL REPORT HERE THAT I WOULD LIKE FOR THE COURT TO SEE
15 BECAUSE HIS MEDICAL PROBLEMS ARE REAL. AND THEY WERE REAL
16 BEFORE THIS INCIDENT AND THEY ARE REAL TODAY. AND I WOULD SUBMIT
17 TO THE COURT IT'S GOING TO BE VERY, VERY DIFFICULT FOR HIM TO BE
18 ABLE TO SERVE AN INCARCERATED SENTENCE IN REGARDS TO THIS.

19 I DO NOT BELIEVE THAT THERE IS MANDATORY TIME THAT IS
20 REQUIRED BY STATUTE FOR THIS. HE HAS GOT NO PRIOR RECORD. AND HE
21 DOES HAVE A VERY BAD BACK. HE HAS APPLIED FOR LONG TERM
22 DISABILITY SOCIAL SECURITY.

23 THESE CONVICTIONS OF COURSE HAVE NOW RUINED HIS SECURITY
24 CLEARANCE THAT HE HAD FOR YEARS DOING WORK FOR NOT ONLY YORK
25 COUNTY AT THIS JAIL BUT WITH THE U. S. DEPARTMENT OF JUSTICE.

1 SO, IT IS A VERY, VERY SAD THING. AND FORTUNATELY NOBODY GOT
2 SERIOUSLY HURT. THIS COURT HAVE BEEN A MURDER CASE BUT IT WASN'T.
3 FORTUNATELY NOBODY GOT HURT.

4 BUT WHAT CAN STAND TO HAPPEN OUT OF THIS AND OUT OF THAT
5 SINGLE INCIDENT IS THAT FAMILIES CAN BE DAMAGED FOR A LONG TIME AS
6 A RESULT OF THEIR LACK OF JUDGMENT POSSIBLY ON THAT EVENING, FOR
7 THAT ONE SINGLE EVENING.

8 AND YOUR HONOR, I HAVE TO, I CAN'T IGNORE THIS, AND IT DOESN'T
9 POSSIBLY CALL FOR THE REACTION THAT MY CLIENT HAD THAT NIGHT WITH
10 THE GUN. BUT THE ALLEGED VICTIM IN THIS CASE ALSO HAD BEEN A
11 VICTIMIZER. AND SO, I'M NOT TRYING TO BELITTLE WHAT MY CLIENT DID,
12 BUT WE'RE NOT TALKING ABOUT FOLKS WHO JUST DID AN ACT OF VIOLENCE
13 AGAINST SOMEBODY WHO WAS INNOCENT AND DIDN'T HAVE A HISTORY.

14 SO, NOW, THEY HAVE THESE FELONY CONVICTIONS, WHICH IN AND OF
15 ITSELF, AS I SAID, IS GOING TO LIMIT THEIR ABILITY IN THE FUTURE.

16 I WOULD JUST ASK ON BEHALF OF MY CLIENT'S CHILD AND HIS
17 SISTER'S CHILDREN THAT THE COURT CONSIDER ALLOW THEM TO TRY
18 PROBATION ON THESE CHARGES. AND IF THEY CAN'T MAKE PROBATION,
19 WHICH THEY WILL BE ABLE TO MAKE BECAUSE THEY'RE WORKING CITIZENS
20 WHO HAVE DONE WELL WITH THEIR CHILDREN, THEN THE STATE OF SOUTH
21 CAROLINA CAN PAY FOR THEM AT \$20,000 A YEAR. BUT I SUBMIT THAT IT
22 MAY NOT BE TIME FOR THAT YET.

23 SO, I WOULD ASK THE COURT TO CONSIDER GIVING THEM BOTH A
24 PROBATIONARY SENTENCE. AND BOTH CAN BE TRANSFERRED TO
25 KANNAPOLIS AND THEY CAN CONTINUE TO SUPPORT THEIR FAMILIES AND

1 THEIR CHILDREN DESPITE THE FACT THAT THEY NOW HAVE THREE FELONY
2 CONDITIONS. THANK YOU.

3 THE COURT: MR. RHEA.

4 MR. RHEA: I RESPECTFULLY ASK THE COURT FOR A SENTENCE THAT
5 THE COURT DEEMS JUST AND PROPER, TEMPERED WITH MERCY.

6 THE COURT: SOLICITOR.

7 MS. JOYNER: YOUR HONOR, THE VICTIM WANTS TO ADDRESS THE
8 COURT, MR. LOCHBAUM.

9 MR. GREELEY: YOUR HONOR, I AM SORRY, BUT I FORGOT TO ASK, HIS
10 WIFE, DONNA, WOULD LIKE TO SPEAK TO THE COURT. I THINK WE CAN DO
11 THAT REAL QUICKLY.

12 THE COURT: I'LL BE GLAD TO HEAR FROM HER. GIVE ME YOUR NAME,
13 PLEASE.

14 DONNA LEMIRE: MY NAME IS DONNA LEMIRE.

15 THE COURT: YES MA'AM.

16 DONNA LEMIRE: YOUR HONOR, HE HAS AN EIGHT YEAR OLD SON, A
17 LITTLE BOY. HE'S A DADDY TO HIS LITTLE BOY. HE LOVES HIS DAD. HIS
18 DAD, HE'S A GREAT GUY. HE'S A GOOD HUSBAND. HE'S SUPPORTED US
19 THROUGH THICK AND THIN. AS MR. RHEA HAS MENTIONED, HE HAD DONE A
20 LOT OF GOVERNMENT WORK AND HE NEVER HAD ANY ISSUES OR PROBLEMS
21 WITH THAT. AND I JUST ASK FOR THE MERCY OF THE COURT.

22 THE COURT: THANK YOU.

23 DONNA LEMIRE: THANK YOU.

24 MS. JOYNER: MR. LOCHBAUM.

25 THE COURT: STATE YOUR NAME, PLEASE.

1 RYAN LOCHBAUM: MY NAME IS RYAN LOCHBAUM. YOUR HONOR, I
2 WANTED TO COME HERE AND TELL YOU THANK YOU. THIS IS NOT-- THIS
3 BEHAVIOR THAT WE SAW IS JUST A CULMINATION OF A PATTERN OF
4 BEHAVIOR, I REPRESENT, NOT JUST TO MYSELF, BUT TO OTHER FAMILIES.
5 THEY HAVE DONE THIS TO OTHER FAMILIES, LEFT THEM IN THIS STATE.

6 I DIDN'T KNOW WHAT FEAR WAS UNTIL I SAW THIS MAN WHO IS IN A
7 POSITION OF RESPONSIBILITY AS A LOCKSMITH. BECAUSE OF THE FEAR HE
8 HAS BROUGHT TO MY FAMILY I'M SURE OTHER FAMILIES HE'S CHILLED,
9 CHILLED TO THE BONE REGULARLY. AND WHEN HE GETS OUT OF JAIL I
10 KNOW THAT I HAVE TO BE IN FEAR FOR THE REST OF MY LIFE. AND NOT OF
11 MY OWN CHOOSING, ONLY BECAUSE I CHOSE TO DEFEND MYSELF.

12 I AM GLAD TO BE IN THE POSITION OF THANKING THE COURT. I WANT
13 TO THANK ON THE RECORD THE LOWERY FAMILY AND THE HERRING
14 FAMILY, BECAUSE I PROBABLY WOULDN'T BE HERE TODAY IF IT WEREN'T
15 FOR THEM. THANK YOU ALL, THE COURT, FOR WHAT YOU HAVE DONE.
16 THANK YOU.

17 THE COURT: THANK YOU. THE SENTENCE ON THE COURT ON
18 INDICTMENT 2009-GS-46-02833, LYNCHING IN THE SECOND DEGREE, IS THAT
19 THE DEFENDANT IS COMMITTED TO THE STATE OF CORRECTIONS FOR A
20 TERM OF TEN YEARS. HE WILL BE GIVEN CREDIT FOR THE FOURTEEN DAYS
21 HE HAS SERVED THUS FAR.

22 IN CONNECTION WITH 2009-GS-46-02834, THE DEFENDANT IS
23 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A TERM OF
24 FIVE YEARS. HE WILL ALSO BE GIVEN CREDIT FOR FOURTEEN DAYS. AND
25 THAT SHALL RUN CONCURRENT.

1 IN CONNECTION WITH 2009-GS-46-02835, THE DEFENDANT IS
2 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A TIME OF
3 FIVE YEARS. THAT WILL ALSO RUN CONCURRENT, AND HE WILL BE GIVEN
4 CREDIT FOR FOURTEEN DAYS THAT HE HAS SERVED.

5 IN CONNECTION WITH 2009-GS-46-02838, THE DEFENDANT IS
6 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A TERM OF
7 TEN YEARS. HE WILL BE GIVEN CREDIT FOR THE FOURTEEN DAYS HE HAS
8 SERVED THUS FAR.

9 IN CONNECTION WITH 2009-GS-46-02837, THE DEFENDANT IS
10 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A TERM OF
11 FIVE YEARS. THAT SHALL RUN CONCURRENT, AND HE WILL BE GIVEN
12 CREDIT FOR FOURTEEN DAYS SERVED THUS FAR.

13 IN CONNECTION WITH INDICTMENT 2009-GS-46-02839, THE DEFENDANT
14 IS COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A TERM
15 OF FIVE YEARS. THAT SHALL RUN CONCURRENT AND HE WILL BE GIVEN
16 CREDIT FOR FOURTEEN DAYS SERVED THUS FAR.

17 THANK YOU, AND THAT CONCLUDES THIS CASE.

18 (WHEREUPON COURT WAS ADJOURNED AT 10:13 P.M.)
19
20
21
22
23
24
25

C O P Y

STATE OF SOUTH CAROLINA)
 :
COUNTY OF YORK)
 :

COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
 :

PLAINTIFF,)
 :

VERSUS)
 :

FRANCIS VICTOR LARMAND, JR.,)
LEO DAVID LEMIRE, :
):

DEFENDANTS. :
):

TRANSCRIPT OF RECORD

09-GS-46-02833

09-GS-46-02834

09-GS-46-02835

09-GS-46-02837

09-GS-46-02838

09-GS-46-02839

VOLUME IV

OCTOBER 23, 2009

YORK, SOUTH CAROLINA

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE, AND A JURY

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

FOR THE STATE:

ERIN JOYNER, ESQ., ASSISTANT SOLICITOR

JENNIFER COLTON, ASSISTANT SOLICITOR

FOR THE DEFENDANT, FRANCIS VICTOR LARMAND, JR.:

JOHN D. RHEA, ESQ.

FOR THE DEFENDANT, LEO DAVID LEMIRE:

LELAND GREELEY, ESQ.

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

1 FRIDAY, OCTOBER 23, 2009 - COURT IN SESSION - 11:00 A.M.

2 THE COURT: MR. GREELEY.

3 MR. GREELEY: YOUR HONOR, MAY IT PLEASE THE COURT. WE'RE
4 BACK ON THE RECORD FROM LAST NIGHT. JUST BRIEFLY, LAST NIGHT THE
5 JURY RETURNED THREE VERDICTS OF GUILTY AGAINST MR. LARMAND AND
6 MR. LEMIRE, WHO ARE HERE BESIDE ME TODAY.

7 YOUR HONOR SENTENCED THEM TO TEN YEARS AND FIVE YEARS AND
8 FIVE YEARS, TO BE CONCURRENT ON THOSE CHARGES.

9 I AM AT THIS TIME-- FIRST OF ALL FROM A PROCEDURAL STANDPOINT
10 AND FOR THE RECORD, I WOULD JUST MAKE-- I DID NOT DO IT LAST NIGHT.
11 WE'RE GIVEN TEN DAYS TO DO IT AND I'M GOING TO DO IT RIGHT NOW THIS
12 MORNING.

13 ON BEHALF OF MR. LEMIRE, I'M GOING TO ASK THE COURT TO
14 CONSIDER AND ASK FOR A SETTING ASIDE OF THE VERDICT, SET A NEW
15 TRIAL BASED UPON THE ISSUES THAT WE HAD IN THE CASE, ESPECIALLY
16 INVOLVING THE JURY CHARGE THAT WAS SENT BACK TO THE JURY, AS WELL
17 AS THE OBJECTIONS THAT MR. RHEA AND I HAD REGARDING THE LYNCHING
18 PORTION THAT HIS HONOR HAD GIVEN, WHICH IS IN THE STATUTE. WE DO
19 UNDERSTAND THAT.

20 AND SO, BASED ON THOSE, I WOULD ASK FOR A NEW TRIAL ON BEHALF
21 OF MR. LEMIRE. I BELIEVE THAT MR. LARMAND'S MOTION WAS MADE LAST
22 NIGHT BY MR. RHEA.

23 THE COURT: ANY RESPONSE FROM THE SOLICITOR IN THAT REGARD?

1 MS. JOYNER: YOUR HONOR, WE JUST RESPECTFULLY ASK THE COURT
2 TO DENY THE MOTIONS FOR ALL REASONS THE PREVIOUS MOTIONS WERE
3 DENIED.

4 THE COURT: YOUR MOTION IS RESPECTFULLY DENIED. THANK YOU.

5 MR. GREELEY: YOUR HONOR, THE NEXT IS, MR. LARMAND HAS
6 ALLOWED ME TO SPEAK ON BEHALF OF HIM AND MR. RHEA. MR. RHEA IS
7 NOT ABLE TO BE HERE THIS MORNING. AND I WOULD LIKE TO SEE IF MR.
8 LARMAND DOES AGREE WITH THAT.

9 MR. LARMAND: VERY MUCH SO.

10 MR. GREELEY: OKAY. YOUR HONOR, ON BEHALF OF BOTH CLIENTS,
11 MR. LEMIRE, FIRST, IN REGARDS TO 09-GS-46-2837, 2838, AND 2839, WHICH ARE
12 THE INDICTMENTS FOR WHICH HE WAS FOUND GUILTY. AND ON BEHALF OF--
13 THAT WAS MR. LEMIRE.

14 AND IN REGARDS TO MR. LARMAND, 2833, 2834, AND 2835, I WOULD,
15 YOUR HONOR, PURSUANT TO TITLE 18-01-90 OF THE SOUTH CAROLINA CODE
16 WHICH ALLOWS FOR BAIL TO BE GIVEN WHEN AN APPEAL IS TAKEN, WHICH
17 WE ARE TAKING AN APPEAL. WE HAVE ALREADY DONE THE NOTICES OF
18 APPEAL AND THEY'RE GOING OUT IN THE MAIL TODAY TO THE PARTIES. I
19 WOULD ASK FOR THE COURT TO GIVE BOND TO OUR CLIENTS PENDING THAT
20 APPEAL.

21 I WOULD SUBMIT TO THE COURT, YOUR HONOR, THAT AS YOU'VE
22 ALREADY HEARD, THE CLIENTS HAVE NO PRIOR CRIMINAL RECORD. THEY
23 ARE FAMILY PEOPLE. THEY HAVE HAD BUSINESSES BEFORE. I DO NOT
24 BELIEVE THAT THEY WOULD BE A DANGER TO THE COMMUNITY AT ALL IN
25 REGARDS TO THIS. THEY HAVE BEEN OUT ON BAIL SINCE THIS OCCURRED

1 AND SINCE THEIR TRIAL. THEY HAVE ABIDED BY ALL THE RULES SINCE
2 THAT HAPPENED AND THEY MADE ALL THE APPEARANCES THEY WERE
3 SUPPOSED TO MAKE. AND SO, THERE IS, OTHER THAN THE CONVICTION,
4 THERE IS NO REASON TO BELIEVE THAT THEY WOULD EITHER BE A THREAT
5 TO THE COMMUNITY OR WOULD FLEE.

6 YOUR HONOR, ANOTHER REASON I'M ASKING FOR THE COURT TO
7 CONSIDER BAIL IS THE CHARGE FOR WHICH THEY WERE GIVEN TEN YEARS IS
8 A VIOLENT OFFENSE, TO MY UNDERSTANDING, WHICH IS THE LYNCHING,
9 SECOND DEGREE.

10 WE BELIEVE THAT WE HAVE A MERITORIOUS APPEAL REGARDING THE
11 LANGUAGE THAT WAS INSTRUCTED TO THE JURY REGARDING THE
12 PERMISSIVE INFERENCE AND IN LIGHT OF THE BELCHER CASE THAT CAME
13 DOWN TWO WEEKS AGO, TALKING ABOUT PERMISSIVE INFERENCES,
14 ESPECIALLY IN CASES INVOLVING SELF DEFENSE, AND ALSO IN THIS CASES,
15 WHERE IN THIS PARTICULAR CASE, THE COURT WAS INSTRUCTED, DID
16 INSTRUCT THE JURY ABOUT MERE PRESENCE. AND SO, YOU HAD A
17 PERMISSIBLE INFERENCE THAT WAS GIVEN OVER THE TOP OF MERE
18 PRESENCE IN REGARDS TO THE LYNCHING CHARGE.

19 GIVEN THESE CONVICTIONS, IF THEY HAVE TO REMAIN
20 INCARCERATED PENDING THE APPEAL THEY WILL BE INCARCERATED FOR A
21 YEAR AND A HALF OR TWO YEARS AS VIOLENT OFFENDERS.

22 WE WOULD LIKE TO HAVE THE LYNCHING AND THE OTHER CHARGES
23 REVIEWED PRIOR TO THEM HAVING TO UNDERGO SUCH AN INCARCERATION.
24 BECAUSE IF THAT IS SET ASIDE, THEN THEY WOULD HAVE HAD TO ENDURE
25 ONE AND A HALF TO TWO YEARS AS VIOLENT OFFENDERS IN THE SOUTH

1 CAROLINA DEPARTMENT OF CORRECTIONS, EVEN THOUGH OUR APPEAL MAY
2 END UP BEING, COULD VERY WELL END UP BEING SUCCESSFUL.

3 AND SO, I WOULD ASK FOR THE COURT TO GRANT A REASONABLE
4 APPEAL BOND UNDER SECTION 18-01-90 ON BOTH DEFENDANTS.

5 THE COURT: SOLICITOR.

6 MS. JOYNER: YOUR HONOR, I KNOW THAT SECTION. IF YOU WANT TO
7 GRANT IT, IT'S CLEARLY IN THE COURT'S DISCRETION. PURSUANT TO CASE,
8 IN THE INTEREST OF MICHAEL H., 360 SC 540, A SUPREME COURT CASE, SOUTH
9 CAROLINA SUPREME COURT CASE FROM 2004. THE FACTORS TO BE
10 CONSIDERED IN ADMITTING A PERSON TO BAIL PENDING APPEAL INCLUDE
11 THE PROBABILITY OF REVERSAL, THE NATURE OF THE CRIME AND THE
12 POSSIBILITY OF ESCAPE AND THE CHARACTER AND CIRCUMSTANCES OF THE
13 APPELLANT.

14 OBVIOUSLY, THEY HAVE NO PRIOR CRIMINAL RECORD OTHER THAN
15 THIS. THE STATE DOESN'T BELIEVES THERE'S A PROBABILITY OF REVERSAL
16 BASED ON THE ISSUES STATED BY MR. RHEA.

17 THE COURT: I AGREE WITH THE STATE AND ALSO FIND THAT THE
18 NATURE OF THE CRIME WAS A VIOLENT ACT. THERE'S OBVIOUS BAD BLOOD
19 BETWEEN THE DEFENDANTS AND THE VICTIM AND I WOULD FIND THAT
20 RELEASING THEM ON BOND WOULD BE A DANGER TO THE COMMUNITY.

21 I'M GOING TO DENY THE MOTION ON BOTH PARTIES. THANK YOU.

22 MR. GREELEY: THANK YOU, JUDGE.

23 MS. JOYNER: THANK YOU, YOUR HONOR.

24 (WHEREUPON THE MATTER WAS ADJOURNED)

25

1585

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
In the Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Case No. 2009-GS-46-02834
Case No. 2009-GS-46-02835

The State Respondent

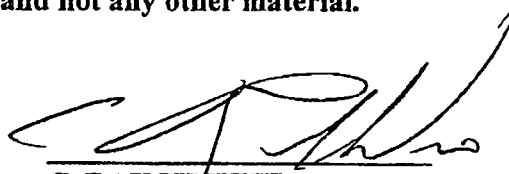
vs

Francis Larmand Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 15th, 2011



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From York County
The Honorable William H. Seals, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

FRANCIS LARMAND,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
ARGUMENT	17
I. The circuit court exercised caution and did not abuse its discretion in sending the jury a written copy of the entire charge as given. (Appellant's Issue I)	17
II. The circuit court properly denied Appellant's directed verdict motions on the charge of lynching in the second degree because there was ample evidence of Appellant's guilt to submit the charge to the jury. (Appellant's Issues II & III)	21
III. The circuit court properly denied Appellant's directed verdict motions on the charges of criminal conspiracy and pointing and presenting a firearm, because there was ample evidence of Appellant's guilt to submit the charges to the jury. (Appellant's Issues IV & V)	29
IV. The circuit court's jury charge on the inference of guilt as a principal under S.C. Code §16-3-240 was a proper statement of the law. (Appellant's Issue VI)	32
CONCLUSION	40

TABLE OF AUTHORITIES

Cases:

<u>Joiner ex rel. Rivas v. Rivas</u> , 342 S.C. 102, 536 S.E.2d 372 (2000)	23
<u>Auto Owners Ins. Co. v. Rollison</u> , 378 S.C. 600, 663 S.E.2d 484 (2008)	23
<u>Clark v. Cantrell</u> , 339 S.C. 369, 529 S.E.2d 528 (2000)	17
<u>Glenn v. State</u> , 68 Md.App. 379, 511 A.2d 1110 (1986)	36
<u>Sheppard v. State</u> , 357 S.C. 646, 594 S.E.2d 462 (2004)	33
<u>State v. Adkins</u> , 353 S.C. 312, 577 S.E.2d 460 (Ct. App. 2003))	33
<u>State v. Al-Amin</u> , 353 S.C. 405, 578 S.E.2d 327 (Ct. App. 2003)	26
<u>State v. Barksdale</u> , 311 S.C. 210, 428 S.E.2d 498 (Ct. App. 1993)	25
<u>State v. Barroso</u> , 320 S.C. 1, 462 S.E.2d 862 (Ct. App. 1995)	30
<u>State v. Beckham</u> , 334 S.C. 302, 513 S.E.2d 606 (1999)	27
<u>State v. Belcher</u> , 385 S.C. 597, 685 S.E.2d 802 (2009)	35, 36, 38
<u>State v. Buckmon</u> , 347 S.C. 316, 555 S.E.2d 402 (2001)	29
<u>State v. Covert</u> , 368 S.C. 188, 628 S.E.2d 482 (Ct. App. 2006), <i>aff'd as modified</i> , 382 S.C. 205, 675 S.E.2d 740 (2009)	18
<u>State v. Covert</u> , 382 S.C. 205, 675 S.E.2d 740 (2009)	18
<u>State v. Crawford</u> , 362 S.C. 627, 608 S.E.2d 886 (Ct. App. 2005)	26, 27, 30
<u>State v. Crocker</u> , 366 S.C. 394, 621 S.E.2d 890 (Ct. App. 2005)	30
<u>State v. Dickey</u> , 380 S.C. 384, 669 S.E.2d 917 (Ct. App. 2008)	37
<u>State v. Douglas</u> , 369 S.C. 424, 632 S.E.2d 845 (2006)	17
<u>State v. Dunbar</u> , 356 S.C. 138, 587 S.E.2d 691 (2003)	22, 32

<u>State v. Elmore</u> , 279 S.C. 417, 308 S.E.2d 781 (1983)	36
<u>State v. Foust</u> , 325 S.C. 12, 479 S.E.2d 50 (1996)	33
<u>State v. Gaines</u> , 380 S.C. 23, 667 S.E.2d 728 (2008)	23, 25
<u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005)	25
<u>State v. Hernandez</u> , 382 S.C. 620, 677 S.E.2d 603 (2009)	27, 31
<u>State v. Jackson</u> , 297 S.C. 523, 377 S.E.2d 570 (1989)	37
<u>State v. Kelsey</u> , 331 S.C. 50, 502 S.E.2d 63 (1998)	29
<u>State v. Kerr</u> , 330 S.C. 132, 498 S.E.2d 212, 218 (Cl. App. 1998)	34
<u>State v. Lcc-Grigg</u> , 374 S.C. 388, 649 S.E.2d 41 (Cl. App.2007)	33
<u>State v. Mattison</u> , 388 S.C. 469, 697 S.E.2d 578 (2010)	33
<u>State v. Moore</u> , 357 S.C. 458, 593 S.E.2d 608 (2004)	21, 32
<u>State v. Pittman</u> , 373 S.C. 527, 647 S.E.2d 144 (2007)	23, 33
<u>State v. Price</u> , 368 S.C. 494, 629 S.E.2d 363 (2006)	21, 32
<u>State v. Prince</u> , 335 S.C. 466, 517 S.E.2d 229 (Cl. App. 1999)	24
<u>State v. Rayfield</u> , 369 S.C. 106, 631 S.E.2d 244 (2006)	37, 38
<u>State v. Sanders</u> , 388 S.C. 292, 696 S.E.2d 592 (Cl. App. 2009)	29, 30
<u>State v. Sims</u> , 377 S.C. 598, 661 S.E.2d 122 (Cl. App. 2008), <i>aff'd</i> , 387 S.C. 557, 694 S.E.2d 9 (2010)	30
<u>State v. Smith</u> , 352 S.C. 133, 572 S.E.2d 473 (Cl. App. 2002)	25
<u>State v. Stuckey</u> , 347 S.C. 484, 556 S.E.2d 403 (Cl. App. 2001)	30
<u>State v. Taylor</u> , 355 S.C. 392, 585 S.E.2d 303 (2003)	21, 32
<u>State v. Turner</u> , 373 S.C. 121, 644 S.E.2d 693 (2007)	17-19

Other Authorities:

75A Am. Jur. 2d Trial § 978	19
Black's Law Dictionary 1199 (7th ed. 1999)	25
S.C. Code §16-17-410 (2003)	29
S.C. Code §16-3-210 (2003)	24
S.C. Code §16-3-220 (2003)	21-24, 34, 38
S.C. Code §16-3-230 (2003)	32, 34, 38
S.C. Code §16-3-240 (2003)	33, 34, 36, 38
S.C. Code §44-53-370 (Supp. 2006)	27

STATEMENT OF ISSUES ON APPEAL

I.

The circuit court exercised caution and did not abuse its discretion in sending the jury a written copy of the entire charge as given. (Appellant's Issue I)

II.

The circuit court properly denied Appellant's directed verdict motions on the charge of lynching in the second degree because there was ample evidence of Appellant's guilt to submit the charge to the jury. (Appellant's Issues II & III)

III.

The circuit court properly denied Appellant's directed verdict motions on the charges of criminal conspiracy and pointing and presenting a firearm, because there was ample evidence of Appellant's guilt to submit the charges to the jury. (Appellant's Issues IV & V)

IV.

The circuit court's jury charge on the inference of guilt as a principal under S.C. Code §16-3-240 was a proper statement of the law. (Appellant's Issue VI)

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On July 16, 2009, the York County Grand Jury indicted Appellant Francis V. Larmand, Jr. ("Larmand"), and his brother-in-law Leo David Lemire ("Lemire"), on one count of lynching in the second degree, one count of conspiracy, and one count of pointing and presenting a firearm. The matter was called for a jury trial on October 20, 2009, before the Honorable William H. Seals, Jr., Circuit Court Judge.

Prior to trial, the State moved to amend each of the lynching indictments to strike language alleging physical injury resulted to the victim. The State explained this language was included as a result of a drafting error, physical injury is not an element of lynching, and such language should be removed to avoid confusion to the jury. Larmand and Lemire both consented to the proposed amendment. (Trial Transcript [TT], pp. 14-15; Record on Appeal [R.], pp. 6-7).

Officer William Watson ("Officer Watson") of the Rock Hill Police Department testified he was on duty the night of April 30, 2009, and around midnight he responded to a call about a fight involving a gun in a near-by subdivision, and a BOLO for a dark SUV fleeing the scene. As he approached the subdivision, he saw a dark Toyota 4Runner traveling away from the subdivision at approximately sixty miles per hour in a twenty-five mile per hour zone, and suspecting it could be the SUV in the BOLO, he pulled it over. When Officer Watson stopped the vehicle, Larmand was driving and Lemire was the passenger, and both were wearing dark shirts and dark pants. After talking to them, Officer Watson arrested Lemire for pointing and presenting a firearm, and allowed Larmand to leave at that time. (Trial Transcript [TT], pp. 53-66; R., pp. 8-21).

The victim, Ryan Lochbaum ("Lochbaum"), testified he knew Larmand prior to April 30, 2009, because he worked for Larmand's locksmith business, Pop-A-Lock, until October, 2008, but had only met Lemire once. He stated he never invited Larmand or Lemire to his home in Rock Hill, and to his knowledge neither individual had ever been there. (TT, pp. 141-143; R., pp. 96-98).

On April 30, 2009, Lochbaum had a birthday party for his son, and that night he and some of his neighbors continued to socialize in his driveway. Around midnight, a neighbor Mark Whittington ("Whittington") told him a man, subsequently identified as Larmand, was standing in front of his home and wanted to talk to him. Lochbaum testified he was shocked to see Larmand, and when he realized Larmand was upset, he asked his neighbors for some privacy and they walked away. (TT, pp. 141-147, pp. 96-102).

Lochbaum and Larmand began having a heated discussion. At some point, Larmand broke eye contact and looked off to the side. When Lochbaum looked in the same direction, he saw Lemire approaching him at a fast pace, carrying a handgun. He testified Lemire got within about fifteen feet of him, extended his arm, pointed the gun at him, stated "this is what you get when you f**k with my family," and pulled the hammer back on the gun. When Lemire got closer, Lochbaum grabbed the gun, and as they struggled on the ground for the gun, Larmand put Lochbaum in a choke hold from behind. (TT., pp. 146-151, 211; R., pp. 101-106, 166).

Lochbaum's neighbors ran back and tried to get Larmand off Lochbaum and the gun away from Lemire. During the struggle with Lemire, Lochbaum sustained injuries to his knuckles and hands from being dragged across the pavement. Lochbaum eventually got the

gun from Lemire, and took it inside his home because he "knew no one would believe this" unless he had it. After Larmand and Lemire left, he brought the gun back outside, emptied the bullets on the ground, and laid the gun next to the bullets. (TT, pp. 146-156; R., pp. 101-111).

Whittington testified he lived about five houses down from Lochbaum, and on the night of April 30, 2009, he, Ronald Lec Edward ("Edward"), and Michael Devin Fivecoat ("Fivecoat") were standing in the driveway of Lochbaum's home. Around midnight, he noticed a man he had never seen before standing in front of Lochbaum's driveway. He stated the man, identified in court as Larmand, wore a black shirt and black pants, and appeared to be "kind of edgy." After Lochbaum and Larmand started talking, Whittington, Edward, and Fivecoat walked down the street, but Whittington thought there might be trouble and observed Lochbaum and Larmand from a distance because "[i]t's not normal for somebody to come up dressed in dark clothes in the middle of the night just to talk to somebody." (TT, pp. 66-73; R., pp. 21-28).

As Lochbaum and Larmand continued to talk, Whittington saw a second man, later identified as Lemire, suddenly emerge from the darkness and run toward Lochbaum with his hand up. Whittington, Fivecoat, and Edward immediately ran back to help Lochbaum, and saw Lochbaum trying to disarm Lemire. Whittington testified Lemire was on the ground, Lochbaum was on top of Lemire, and Larmand had Lochbaum in a choke hold. Whittington grabbed Larmand around the waist, and pulled him off Lochbaum while the other men got the gun away from Lemire. Larmand and Lemire then ran down the street and Whittington called the police as he chased them. Larmand and Lemire sped away in their vehicle, which

was parked about a half a mile down the road from Lochbaum's house. (TT, pp. 73-106; R., pp. 28-61).

Jesse Harris ("Harris") testified he lived next door to Lochbaum in April, 2009. Around midnight on April 30, 2009, he looked out his window and saw Lochbaum arguing with a man he identified in court as Larmand. When he saw Larmand push Lochbaum, he told his wife to call the police and ran outside to help. By the time he got outside, the men were behind Lochbaum's van where he could not see them, but he heard a loud voice say, "this is what you get when you f**k with my family." When he got around the van, Harris realized a third person, identified as Lemire, was involved in the scuffle, and Larmand had Lochbaum in a choke hold. Harris initially attempted to put Larmand in a choke hold to get him off Lochbaum, but he let go when he realized a gun was involved. (TT., pp. 108-111; R., pp. 63-66).

Harris testified Lemire held the gun around the handle and the trigger, and Lochbaum was trying to push the gun away. Harris saw the hammer was back on the gun, so he stuck a finger in between the hammer and the gun to prevent it from going off, and used the other hand to try to pull the gun away. He testified the hammer closed on his finger at some point, leaving a bruise or blister on his finger. When he demanded Lemire let go of the gun, Lemire repeatedly yelled, "f-you, he's f'ing with my family, he's f'ing with my family." The other neighbors arrived on scene, and Harris told Whittington to get Larmand off of Lochbaum, who could not breathe because of Larmand's choke hold, was purple in the face, and appeared to be dying. He further testified Lemire did not let go of the gun until he kicked him twice in the groin. (TT, pp. 108-117; R., pp. 63-72).

Edward testified he accompanied Whittington to Lochbaum's house that night, and Lochbaum appeared shocked when Larmand, who appeared to be agitated, unexpectedly showed up. He walked away with Whittington and Fivecoat after Lochbaum and Larmand started talking, but they all ran back when Whittington yelled "there's more than one." He was the last one to get back, and he saw everyone scuffling in a "dog pile." Lemire was at the bottom below Lochbaum, and Larmand's arms were around Lochbaum's neck in a choke hold. He heard Fivecoat say "oh, my god, there's a gun," and heard another person using "cuss words" to say something to the effect of "don't be messing with my family." Eventually, Lochbaum emerged from the pile with the gun, and Lemire and Larmand ran down the street. (TT, pp. 218-231; R., pp. 174-187).

Fivecoat's testimony regarding the events of April 30, 2009, corroborated the testimony of Lochbaum, Whittington, Harris and Edward. He stated he did not know how Larmand arrived, and he did not see or hear a car go by. He walked away when Lochbaum asked for privacy, but continued to observe from a distance. When Whittington said someone else was there, he ran back to help and saw several people fighting in a dog pile, but he did not realize there was a gun involved until it was pointing at him. After Lemire was disarmed, Fivecoat followed Lemire and Larmand as they fled to their vehicle, and he yelled at them to stop because the police were coming. When they sped away in their vehicle, he described the vehicle to Whittington. (TT, pp. 249-263; R., pp. 205-219).

Detective Leslie Herring ("Detective Herring") of the Rock Hill Police Department testified he was assigned to investigate the incident on May 1, the morning after it occurred. As a result of his investigation, he issued additional warrants against Lemire, and issued

warrants against Larmand. Herring testified he has been to Larmand and Lemire's hometown of Kannapolis, North Carolina, and estimated it is at least an hour drive away from Rock Hill. (TT, pp. 273-281; R., pp. 229-237).

After the State rested, Larmand moved for a directed verdict on the charge of pointing and presenting a firearm. He argued the State only proved he was merely present when Lemire brandished the gun, and thus presented no evidence or testimony he agreed or conspired to have Lemire bring and brandish the gun. The State argued it presented sufficient circumstantial evidence of a common agreement or understanding between Larmand and Lemire to find each responsible for the other's actions under the hand of one is the hand of all doctrine. The circuit court denied Larmand's motion on the ground the acts and declarations of any conspirator in furtherance of the conspiracy are deemed to be the acts and declarations of every other conspirator. (TT, pp. 302-305; R., pp. 258-261).

Larmand then moved for a directed verdict on the charge of second degree lynching "based on chronology more than anything else." He argued the sequence of events established by the State's evidence showed Larmand was speaking with Lochbaum, Lemire appeared, Lochbaum jumped on Lemire, and Larmand merely reacted to Lochbaum's actions by jumping into the fray. He further argued the State failed to prove the required premeditation. The State argued it presented strong circumstantial evidence Larmand's and Lemire's actions that night were not spontaneous, but instead resulted from a premeditated plan and purpose to commit an act of violence against Lochbaum. The circuit court denied the motion, stating "[c]learly this is an issue for the jury to consider." (TT, pp. 305-310; R., pp. 261-266).

The circuit court then asked Lemire if he had any motions. Counsel responded "[n]othing from us at this time." (TT, p. 310; R., p. 266).

Kerriann Larmand ("Kerriann"), Larmand's wife, testified she and Larmand bought Pop-A-Lock in 1997, and she took it over completely in 2004. Pop-A-Lock employed Lochbaum for almost three years, and she fired him in October, 2008, because he was giving his personal cell phone number to customers. When Lochbaum subsequently applied for unemployment benefits, she objected and testified against him.

On April 30, 2009, she set up a "mystery shopper call," a technique used to catch individuals who try to illegally intercept their customers before their authorized employee can respond to a call. She testified Larmand and Lemire waited at a place called Knight's Stadium. Her records indicate Pop-A-Lock received a call requesting assistance at Knight's Stadium at 10:14 p.m. that night, and one of her employees, Mike Taylor, accepted the job at 10:18 p.m., and then called Lochbaum at 10:40 p.m. Neither Mike Taylor nor Lochbaum showed up at Knight's Stadium that night. (TT, pp. 323-337; R., pp. 279-293).

The April 30th mystery shopper call alleged someone locked their keys in their car after a baseball game and needed a key made. Larmand and Lemire were at Knight's Stadium to see if anyone responded to the call, but no one did. Kerriann testified her business is located north of Charlotte in Kannapolis, but Knight's Stadium is located closer to Rock Hill in South Carolina. (TT, pp. 337-343; R., pp. 293-299).

On cross-examination, Kerriann claimed the April 30 mystery call did not target Lochbaum, but also stated a couple of employees told her Lochbaum had access to Pop-A-Lock's calls on his computer, and she stated she wanted to see if Lochbaum or anyone else

would show up at Knight's Stadium. She testified it was normal for Larmand to go out on mystery calls, but this was Lemire's first time, and Larmand planned to drive by Lochbaum's home to see if any Pop-A-Lock magnets or employees were there. She looked up Lochbaum's address on the Internet, and gave Larmand and Lemire directions there. (TT, pp. 344-360; R., pp. 300-316).

Larmand testified he ran his own business called Frank's Service Center in April 2009, but sometimes helped his wife with the Pop-A-Lock business, and it was not unusual for him to wear black clothing because he worked on cars. Around the time of this incident, there were concerns about non-employees intercepting Pop-A-Lock calls and taking their business before they could respond, and with non-employees using Pop-A-Lock magnets on their cars to take their business. (TT, pp. 363-370; R., pp. 340-347).

Larmand testified Lemire was not an employee of Pop-A-Lock, but Lemire participated in the April 30 mystery call because Pop-A-Lock employees would not recognize his voice or phone number. When no one responded to the mystery call that night at Knight's Stadium, Larmand was going to head home after getting gas, but then decided to drive to Lochbaum's home in Rock Hill to see if any Pop-A-Lock employees, or a vehicle with a Pop-A-Lock magnet on it, were there. He asked Lemire to go with him, but stated he did not know Lemire had a gun with him, and did not conspire with Lemire to point and present a firearm or lynch Lochbaum. (TT, pp. 371-378; R., pp. 348-355).

When he arrived at Lochbaum's house, Larmand saw three men standing outside Lochbaum's van in the driveway. He did not see any Pop-A-Lock employees or magnets on cars at Lochbaum's house, but drove past Lochbaum's house and parked up the street, out

of sight. He stated he told Lemire he wanted to talk to Lochbaum, and to stay in the truck.

He walked down the sidewalk and stood at the bottom of Lochbaum's driveway for two or three minutes before one of the men asked if he could help him. Larmand testified Lochbaum appeared shocked to see him, and asked "what the hell are you doing here?" and "how the hell did you find out where I live?" He told Lochbaum to leave his wife's business alone, and Lochbaum responded by asking why they were denying his unemployment and stating they were railroading him. Larmand testified he told Lochbaum he could "keep Mike Taylor, too," because he suspected Lochbaum was working with the current Pop-A-Lock employee. (TT, pp. 378-382; R., pp. 355-359).

Larmand testified he then turned his back on Lochbaum and was walking back to his vehicle when he heard Lemire say, "don't f**k with my family." He turned around, and saw Lemire and Lochbaum struggling for the gun, and the neighbors running back. He stated he jumped into the pile because there were two guys on Lemire, and he put one hand on the gun to make sure the barrel faced across the street, and one arm around Lochbaum to try and pull him off Lemire. At that point, one or two guys jumped on him. Lochbaum came out of the pile with the gun and stated, "[s]ome idiots know how to hold a gun, but I know how to use one." (TT, pp. 382-389; R., pp. 359-366).

Larmand testified he helped Lemire up, they walked back to their vehicle, and drove away, and they were pulled over by police about a minute later. Lemire was arrested during the traffic stop, but Larmand was allowed to leave. He was arrested the next day when he went to the courthouse to bail out Lemire. (TT, pp. 389-396; R., pp. 366-373).

On cross-examination, Larmand again admitted he did not see any Pop-A-Lock

magnets and could not identify any Pop-A-Lock employees at Lochbaum's house when he drove by. He decided he wanted to talk with Lochbaum anyway, and parked down the street because he did not want Lemire to get involved. He admitted he walked up and immediately accused Lochbaum of doing things in front of the group of people there, but stated he never heard or saw Lemire coming behind him. (TT, pp. 399-414; R., pp. 376-391).

Lemire testified Larmand asked him to help him with a "sting" at Knight's Stadium on April 30, 2009, after he just happened to see Larmand at an intersection, and he agreed to go along, use his phone to make the call, and be the call-back person. He had the gun on him when he saw Larmand at the intersection, and put it under the seat in Larmand's vehicle. He testified he never told Larmand he had the pistol, and Larmand never asked him to bring it along, they never talked about doing anything to Lochbaum, and Larmand never told him the sting was designed to get Lochbaum. He stated he was wearing a black shirt and black pants that night because that is what he usually wears. (TT, pp. 444-459; R., pp. 422-437).

When no one responded to the mystery call at Knight's Stadium, they left and Larmand stopped to get gas. Lemire then agreed to go with Larmand to Lochbaum's home to see if there were any Pop-A-Lock signs on any car at Lochbaum's house, or if any Pop-A-Lock employees were there.

When they arrived at Lochbaum's house, Larmand saw Lochbaum's van in the driveway, drove past the house, and parked the vehicle. Larmand told Lemire to wait in the vehicle while he went to talk to Lochbaum. Lemire testified he was waiting in the vehicle, when he heard a loud voice that was not Larmand's and some swearing. He then grabbed his gun and walked toward the house because he wanted to make sure Larmand was alright.

(TT, pp. 459-467; R., pp. 437-445).

As Lemire approached the house, he saw Larmand walking up the street toward the vehicle, with Lochbaum walking behind him. He then saw people running up behind Lochbaum and Larmand from the yard, so he walked up, told Lochbaum "don't F with my family," and held the gun up in the air. He claimed he never pointed the gun at Lochbaum, except maybe when he was raising it up in the air.

Lemire further testified one of the men stopped in front of him while another tried to sneak up behind him, and when he tried to look at the man coming up behind him, Lochbaum grabbed his arm and pushed him. He stated his back gave out, he hit the ground, and Lochbaum and two other men jumped on top of him. He admitted the gun was loaded, but stated he never attempted to fire it. (TT, pp. 467-471; R., pp. 445-449).

Lemire testified he let go of the gun, and Lochbaum grabbed it, said "any a**hole can carry a gun . . . but I know how to shoot one," pointed it at him and Larmand, and cocked it. He and Larmand ran back to the their vehicle and drove away, but they were quickly stopped by police, and he was arrested for pointing and prescnting a gun. He learned about the additional charges against him the next day while he was in jail waiting for his bond hearing. (TT, pp. 472-475; R., pp. 450-453).

After the defense rested, Larmand renewed his previous motion for a directed verdict, which the circuit court again denied. Lemire did not move for a directed verdict. (TT, pp. 516-517; R., pp. 494-495).

During the jury charge conference, Larmond and Lemire objected to the language in the proposed lynching instruction permitting the jury to infer that all persons present as

members of a mob when an act of violence is committed have aided and abetted the crime and are guilty as principals.¹ Relying on a recent appellate case striking down an instruction allowing the inference of malice from the use of a deadly weapon, they contended the jury should not be given any inferences regarding the elements of the crimes when self-defense or defense of others is asserted. He also contended the language unconstitutionally shifted the burden of proof from the State to the defense. Noting the language in the charge came directly from the lynching statute, the circuit court overruled the objection. (TT, pp. 320-322, 517; R., pp. 276-278, 495).

The circuit court charged the jury on the law applicable to this case, including the State's burden of proof, the jury's duty to find the facts and judge the weight of the evidence, and the principle of accomplice liability. As to the specific charges, the court again charged the jury the State had to prove each element beyond a reasonable doubt, and used the exact language from the second degree lynching statute to instruct the jury what the State had to prove in order to find Larmand and Lemire guilty, including the definition of a mob and the requirement of premeditation. After the jury was excused, Lemire again objected to the portion of the jury charge containing the inference language from the lynching statute, and the circuit court again overruled it. (TT, p. 558-574; R., pp. 536-552).

After deliberating approximately one hour, the jury asked: "[i]f we think one is guilty of a charge, do we have to automatically vote that the other party is also guilty of the charge?" The circuit court recharged the jury on the elements of second degree lynching,

¹Lemire's counsel expressly included Larmand when arguing the objection. (TT, p. 321; R., p. 277).

pointing and presenting a firearm, and criminal conspiracy. Lemire and Larmand renewed their objections to the inference language from the lynching statute, and the circuit court again overruled it. (TT, pp. 574-583; R., pp. 552-561).

Approximately two and a half hours later, the jury indicated it was not close to a verdict, and asked for a printout of the statutes on the three charges. The circuit court indicated it was going to give the jury foreperson a print out of the entire charge exactly as it was read to the jury. Lemire and Larmand objected to giving the jury only one copy, contending jurors may use the written copy "to cite and overcome what [they have] already heard in their minds," and jurors may emphasize certain sections of the charge. The circuit court overruled their objection and gave the jury foreperson a copy of the entire charge. (TT, pp. 584-587; R., pp. 562-565).

Approximately an hour later, the jury indicated it had reached a verdict on three charges, but remained deadlocked on the remaining charge. Without objection, the circuit court gave them the standard Allen charge. (TT, pp. 588-590; R., pp. 566-568)

The jury convicted Larmand and Lemire on all charges. After the jury rendered its verdict, Larmand asked the court to set the verdict aside on the grounds previously raised regarding the inference language in the jury charge on lynching and providing the jury a written copy of the jury charges. The circuit court denied the motion, and moved to sentencing. (TT, pp. 591-592, 595; R., pp. 569-570, 573).

By way of mitigation, Larmand asserted he only had a prior paraphernalia charge, he was a hard working citizen, and was well known and liked in his community. Lemire asserted he had a medical condition that would make incarceration difficult for him, the

security clearance he had in connection with his business was ruined, and Lochbaum was himself a "victimizer." The circuit court then sentenced each of them to ten years incarceration on the second degree lynching conviction, with five year concurrent terms on the criminal conspiracy and firearm convictions. (TT, pp. 596-602; R., pp. 574-602).

The following day, Lemire moved for a new trial on the grounds raised during the trial. After the circuit court denied his motion, both Larmand and Lemire moved for bond pending appeal. In denying their motion, the circuit court found "the nature of the crime was a violent act," there was "obvious bad blood between the Defendants and the victim," and releasing Larmand and Lemire "would be a danger to the community," (TT, pp. 603-606; R., pp. 582-585). This appeal followed.

ARGUMENT

I. The circuit court exercised caution and did not abuse its discretion in sending the jury a written copy of the entire charge as given. (Appellant's Issue I)

Larmand contends the circuit court erred in submitting the charge to the jury in writing. In support of this contention, Larmand argues the charge was prejudicial because the jury only requested a copy of the statutes, only one copy of the charge was sent back with the foreperson, the jury was not instructed to consider the entire charge and not take a portion out of context, and the written charge was submitted after the jury was struggling to reach a verdict. To the contrary, the circuit court properly exercised its discretion in sending the jury a written copy of the entire charge, rather than portions of it.

Appellate courts will not reverse the trial court's decisions regarding jury instructions absent an abuse of discretion, and a show of prejudice. State v. Turner, 373 S.C. 121, 644 S.E.2d 693, 697 (2007); Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528, 539 (2000); *see also* State v. Douglas, 369 S.C. 424, 632 S.E.2d 845, 849 (2006) ("Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result).

While there is no statute or rule on point, our Supreme Court has held "[a] trial court may, in its discretion, submit its instructions to the jury in writing." Turner, 644 S.E.2d at 697. In Turner, the trial judge charged the jury and informed them he would send back a written copy of his charge. *Id.* The defendant objected, and the trial court submitted the written charge without addressing the objection. *Id.*

On appeal, the Supreme Court upheld the trial court's submission of the entire written charge, and further found the appellant failed to show any prejudice resulting from the

alleged error. *Id.* While noting the submission of written instructions could help a jury properly apply the law to the facts, the Court cautioned that the practice is not appropriate for every case and should be exercised carefully. *Id.* at 697-98.

The Supreme Court revisited this issue in State v. Covert, 382 S.C. 205, 675 S.E.2d 740 (2009), and held it was error to submit only a portion of a charge in writing. In Covert, the trial judge allowed the jury to have a copy of the relevant trafficking statute during deliberations. *Id.* at 741. The defendant objected, expressing concern the jury would emphasize the portion submitted over the charge as a whole. See State v. Covert, 368 S.C. 188, 628 S.E.2d 482 (Ct. App. 2006) (Anderson, J., concurring), *aff'd as modified*, 382 S.C. 205, 675 S.E.2d 740 (2009).

In affirming the conviction, the Supreme Court held the trial court erred in submitting only the statutes in writing, but found the error was harmless. Covert, 675 S.E.2d at 741-743. The Court reiterated its warning in Turner: “[T]his practice should be used sparingly, and only where it will aid the jury and where it will not prejudice the defendant. It is **never appropriate**, however, to give **only part** of the charge to the jury as was done in this case.” *Id.* at 743 (emphasis added).

Similar to the procedure upheld in Turner, the circuit court in this case properly submitted a written copy of the **entire** charge to the jury. Further, this case is clearly distinguishable from the procedure deemed inappropriate by the Court in Covert, because the circuit court expressly declined to give the jury a copy of the statutes only.

Even if it was error to give the jury a written copy of the entire jury charge, Larmand’s attempts to show prejudice are without merit and lack authority. Contrary to his

assertions; the submission of written instructions after the jury has requested them, as opposed to the beginning of deliberations, is actually *less* likely to result in prejudice. See 75A Am. Jur. 2d Trial § 978 ("It has been recognized that when a jury desires to be handed the written instructions, no good reason exists to deny such request because giving the instructions to them might avoid confusion in the jury room as to the contents of the instructions"). In fact, Turner expressly recognized written instructions could assist a jury in properly applying the law to the facts, but sought to prevent the systematic submission of written instructions at the beginning of deliberations in every case without prior consideration. Turner, 644 S.E.2d at 697-98.

Waiting for the jury to request written instructions allows the jurors to first deliberate from memory on the charges and evidence presented. The trial judge may then consult with counsel and assess the propriety of written charges, as the circuit court did in this case.

Larmand's contention every member of the jury should receive an individual copy of the jury charge is equally misguided. Such a practice would tempt jurors to deliberate individually, thus hindering the jury's ability to collectively reach a verdict. On the other hand, submitting one copy of the charge with the foreperson allows the jury to collectively discuss the law it must apply to the facts before it.

Finally, Larmand contends prejudice resulted from the circuit court's failure to instruct the jury not to consider any portion of the charge out of context. Significantly, Larmand did not request such a charge. In any event, the circuit court properly precluded this very possibility by sending the jury a copy of the entire charge, rather than just the portions requested. It defies logic to argue, as Larmand does, that giving the jury the entire charge,

rather than just the specific portions of the charge it requested, somehow made it more likely the jury would focus on only a portion of the charge.

It was clear the jury was struggling with its understanding of the law as charged. After it requested copies of the applicable statutes, the circuit court properly decided, in accordance with applicable law, to give the jury a written copy of the entire jury charge rather than portions of it. The circuit court properly exercised caution and did not abuse its discretion in giving the entire charge to the jury in writing, and its decision on this issue should be affirmed.

II. The circuit court properly denied Appellant's directed verdict motions on the charge of lynching in the second degree because there was ample evidence of Appellant's guilt to submit the charge to the jury. (Appellant's Issues II & III)

Larmand contends the circuit court erred in denying his directed verdict motions because the State failed to prove he, along with co-defendant Lemire, committed an act of violence upon the victim. In support of this contention, Larmand asserts the State failed to prove the victim suffered physical injury as alleged in the indictment. Further, Larmand argues S.C. Code §16-3-220 (2003) requires a *serious* act of violence resulting in *serious* bodily injury, and contends the State failed to show such.

In addition, Larmand contends the State failed to prove he and Lemire assembled with the premeditated purpose and intent of committing an act of violence upon the body of Lochbaum. In support, Larmand argues the State's evidence as to premeditation is purely speculative and establishes only their mere presence at the scene of the crime.

A. Issue Preservation

As a threshold matter, Larmand never asserted at trial that the State failed to present sufficient evidence of an act of violence, and therefore, this issue is not preserved for appellate review. It is axiomatic an issue must have been raised and ruled on by the trial court to preserve the issue for review on appeal. *See e.g., State v. Price*, 368 S.C. 494, 629 S.E.2d 363 (2006) (issue must have been raised to and ruled on by trial judge to be preserved for appellate review); *State v. Moore*, 357 S.C. 458, 593 S.E.2d 608 (2004) (argument procedurally barred when it was not made to the trial judge); *State v. Taylor*, 355 S.C. 392, 585 S.E.2d 303 (2003) (when particular argument was not presented to the trial court, it was

not preserved for appellate review); State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003) (party need not use exact name of legal doctrine to preserve an issue for appellate review, but it must be clear that the argument was presented on that ground).

The only ground Larmand asserted as a basis for his directed verdict motion was insufficient evidence of premeditation. After the State rested, Larmand moved for a directed verdict "based on chronology more than anything else," and asserted no evidence showed Larmand and Lemire acted with premeditation, intent, or as part of any plan. After the defense rested, Larmand renewed his directed verdict motion on the same grounds. After the jury rendered its verdict, Larmand moved "for a new trial based on my earlier motions for a directed verdict." (TT, pp. 305-310, 517, 595; R., pp. 261-266, 495, 573).

Further, Larmand is precluded from arguing the State failed to prove the victim suffered physical injury as alleged in the indictment because prior to trial Larmand consented to striking this language from the indictment. The State moved to amend the indictment to strike the language alleging physical injury resulted to the victim on the grounds this was a drafting error, physical injury is not an element of second degree lynching, and to avoid confusing the jury. Counsel for Larmand and Lemire both stated they had no objection, and the circuit court granted the motion. (TT, p. 15; R., p. 7). Having consented to the amendment, Larmand cannot now claim he was entitled to a directed verdict because the State failed to prove physical injury.

B. Statutory Construction

Even if issues regarding the level of violence and physical injury were preserved, however, Larmand is misguided in contending S.C. Code §16-3-220 (2003) requires a

“serious” act of violence resulting in “serious” bodily injury. In support of his contention, Larmand argues the legislature “by implication meant for the act of violence to be serious,” because the only difference between first and second degree lynching is whether death results. Larmand further asserts the legislature could not have intended the severity of the punishments provided under §16-3-220 to be based on whether “more than one person was involved and not because the injury was more severe or the beating more heinous.”

Contrary to Larmand’s assertions, the plain language of §16-3-220 is satisfied by **any** degree of violence, and physical injury to the victim is clearly **not** an element of the statute. Further, reading §16-3-220 in conjunction with its companion statutes reveals the legislature intended second degree lynching to be a serious crime based on whether more than one person committed the act of violence with premeditated intent.

Courts look to the plain meaning of a statute and the intent of the legislature when interpreting statutes. *See State v. Gaines*, 380 S.C. 23, 667 S.E.2d 728, 733 (2008); *see also Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 663 S.E.2d 484, 488 (2008) (“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature”). “All rules of statutory constructions are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used.” *Gaines*, 667 S.E.2d at 733 (quoting *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007)). “The court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute’s operation.” *Rollison*, 663 S.E.2d at 488. Further, statutes addressing the same subject matter must be construed together if possible. *See Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 536 S.E.2d 372, 375 (2000) (“It is well settled that statutes

dealing with the same subject matter are *in pari material* and must be construed together, if possible, to produce a single, harmonious result”).

Lynching in the second degree is defined as:

Any act of violence inflicted by a mob upon the body of another person and from which death does not result shall constitute the crime of lynching in the second degree and shall be a felony.

§16-3-220. The plain statutory language does not require physical injury, but focuses on the act of violence rather than the result. The statute clearly criminalizes all violent acts committed by a mob on the body of a person, regardless of the degree of violence associated with such acts.

The legislature’s use of the phrase “any act of violence” precludes interpretations limiting or qualifying the statute. If the legislature intended the statute apply narrowly to more serious forms of violence, or intended to require a more specific showing of physical injury, it could have easily included such limiting language in the statute. See State v. Prince, 335 S.C. 466, 517 S.E.2d 229, 234 (Ct. App. 1999) (declining to adopt narrow interpretation of “act of violence” for purposes of aggravated stalking statute where legislature could have easily inserted limiting language and declined to do so).

In addition, reading §16-3-220 in conjunction with S.C. Code §16-3-210 (2003) (first degree lynching), clearly reveals the legislative intent that any analysis of the difference between first and second degree lynching begin and end with whether death resulted. If death results from lynching, §16-3-210 applies and the punishment is as severe as death, or five (5) to forty (40) years in prison. If death does not result, §16-3-220 applies and the act is punishable by three (3) to twenty (20) years in prison.

C. Sufficiency of the Evidence

When ruling on a directed verdict motion, the trial court is concerned with the existence or nonexistence of evidence, not its weight. Gaines, 667 S.E.2d at 732-33. In reviewing the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. *Id.* at 733. "If there is any direct evidence or circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." State v. Gentry, 363 S.C. 93, 610 S.E.2d 494, 500 (2005).

The intent of those assembled to mutually assist each other may be proven by "positive testimony" or by circumstantial inferences. State v. Barksdale, 311 S.C. 210, 428 S.E.2d 498, 500 (Cl. App. 1993). "The common intent to do violence to the person of another may be formed before or during the assemblage;" however, "to sustain a conviction for lynching the State must produce at least some evidence of premeditation." *Id.*; State v. Smith, 352 S.C. 133, 572 S.E.2d 473, 475 (Cl. App. 2002). Premeditation is defined as "willful deliberation and planning" or "conscious consideration" preceding an act. Smith, 572 S.E.2d at 475. (*quoting* Black's Law Dictionary 1199 (7th ed. 1999)). "By definition then, the premeditated purpose and intent underlying a charge of lynching cannot be spontaneous." *Id.*

Contrary to Larmand's contentions, there is ample evidence in the record he and Lemire assembled together with the premeditated intent and purpose of committing an act of violence on Lochbaum, and subsequently committed such an act of violence. The record establishes that on April 30, 2009, Larmand and Lemire traveled together over an hour's

distance from their home to Rock Hill, waited for approximately an hour at Knights Stadium, and then drove to Lochbaum's home. They drove a vehicle unfamiliar to Lochbaum, wore all black, and brought a loaded revolver. They arrived at Lochbaum's home around midnight, drove past the house and parked out of sight down the street. Larmand approached the house alone, and asked to speak with Lochbaum. After Lochbaum's neighbors walked off, Larmand initiated an argument. Lemire approached along the dark street, unnoticed by Lochbaum or his neighbors, then suddenly emerged from the darkness and ran toward Lochbaum with the loaded revolver. Lemire cocked the gun and pointed it at Lochbaum, stating "this is what you get when you f**k with my family."

Lochbaum defended himself by grabbing for the gun. As he and Lemire struggled on the ground, Larmand put Lochbaum in a choke hold. One witness testified Lochbaum was purple in the face, could not breathe, and appeared to be dying. When Lochbaum's neighbors intervened and tried to get Lemire to release the gun, he responded, "f**k you, he's f**king with my family." Fortunately, due to his neighbors' intervention, Lochbaum only suffered minor injuries to his knuckles and hand from being dragged on the pavement. Without the neighbors' courage, however, Lochbaum could have been shot and killed by Lemire, or choked to death by Larmand.

In addition, attempts to flee the scene of a crime serve as evidence of guilt. See State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32, 36-37 (Ct. App. 2003) ("Flight from prosecution is admissible as evidence of guilt"); see also State v. Crawford, 362 S.C. 627, 608 S.E.2d 886, 890 (Ct. App. 2005) ("Evidence of flight has been held to constitute evidence of defendant's guilty knowledge and intent"). "The critical factor to the admissibility of

evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities.” Crawford, 608 S.E.2d at 891 (citing State v. Beckham, 334 S.C. 302, 513 S.E.2d 606, 612 [1999]). “It is sufficient that circumstances justify an inference that the accused’s actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose.” *Id.* (citing Beckham, 513 S.E.2d at 612).

In this case, Larmand and Lemire knew the police were coming because as he ran after them, Fivecoat yelled at them that the police were on the way. (TT, p. 262; R., p.218). Rather than stay and deal with the police, they immediately left the scene in Larmand’s vehicle, but were quickly stopped by the police after speeding at a rate of about twenty-five miles per hour over the speed limit. (TT, p. 54; R., p. 9). Thus, their attempt to flee the scene serves as further circumstantial evidence of their guilt.

Larmand relies on State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009), to contend the State’s proof of premeditation is purely speculative, and merely proved he and Lemire were present at the scene of the crime. The defendants in Hernandez were convicted of trafficking marijuana under S.C. Code §44-53-370 (Supp. 2006), which criminalizes knowingly possessing or attempting to possess marijuana. They rented and drove a Ryder truck to a location where they met and formed a caravan with a tractor trailer and a Thunderbird, the occupants of which were also implicated in the crime. The tractor trailer, driven by undercover agents, contained 900 pounds of marijuana for transport. When the tractor trailer and Ryder truck got stuck in the mud, the agents call off the operation and arrested the defendants, but the occupants of the Thunderbird escaped. *Id.* at 605.

The Supreme Court held there was insufficient circumstantial evidence the defendants knew about the contents of the tractor trailer or knew the occupants of the Thunderbird, finding the conclusion they did was "mere speculation." The Court further found, "[a]lthough [defendants'] actions may have been suspicious, mere suspicion is insufficient to support the verdict." *Id.* at 605-606.

This case is distinguishable from Hernandez. Even if the surreptitious manner in which Larmand and Lemire arrived at Lochbaum's house could be described as merely suspicious, their subsequent attack on Lochbaum undoubtedly evinced their guilty intent and purpose. Their premeditated intent as brothers-in-law to inflict harm on Lochbaum is further manifested in Lemire's statement to Lochbaum: "this is what you get when you f**k with my family." Finally, their attempt to flee indicates they were not merely present at the scene with innocent intentions, but committed the crime with the requisite premeditated intent and purpose.

There is more than sufficient evidence indicating Larmand and Lemire assembled with the premeditated plan and intent to commit the act of violence they did in fact commit. Considering the evidence in the light most favorable to the State, there was ample evidence warranting submission of the case to the jury, and the circuit court properly denied Larmand's directed verdict motion as to the second degree lynching charge.

III. The circuit court properly denied Appellant's directed verdict motions on the charges of criminal conspiracy and pointing and presenting a firearm, because there was ample evidence of Appellant's guilt to submit the charges to the jury. (Appellant's Issues IV & V)

Larmand also contends the circuit court erred in denying his directed verdict motions on the charge of criminal conspiracy because the State failed to provide sufficient evidence of an agreement with Lemire to commit the crimes of lynching or pointing and presenting a firearm. In support of his contention, Larmand argues the State's evidence was speculative and established a conspiracy "by piling inference upon inference." He further contends the lack of evidence on the conspiracy charge mandated a directed verdict on the pointing and presenting charge since it was undisputed he never had the gun. Contrary to his contentions, there was ample evidence Larmand and Lemire conspired to commit the crimes of lynching and pointing and presenting a firearm.

Criminal conspiracy is defined under S.C. Code §16-17-410 (2003) as "a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means." "The essence of a conspiracy is the agreement." State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402, 405 (2001). "[P]roof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties." *Id.* (citing State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 [1998]); see also State v. Sanders, 388 S.C. 292, 696 S.E.2d 592, 596 (Cl. App. 2009) ("Often proof of conspiracy is necessarily by circumstantial evidence alone").

"[T]he law calls for an objective, rather than subjective, test in determining the

existence of a conspiracy.” State v. Crocker, 366 S.C. 394, 621 S.E.2d 890, 897 (Ct. App. 2005). It is sufficient to show the participants involved “intended to act together for their shared mutual benefit within the scope of the conspiracy charged.” State v. Sims, 377 S.C. 598, 661 S.E.2d 122, 126 (Ct. App. 2008), *aff’d*, 387 S.C. 557, 694 S.E.2d 9 (2010) (*quoting State v. Stuckey*, 347 S.C. 484, 556 S.E.2d 403, 412-13 [Ct. App. 2001]).

The evidence in this case of a premeditated plan to attack Lochbaum is discussed in depth above. That evidence was also sufficient to support the remaining charges. The suspicious manner and circumstances under which Larmand and Lemire sought out Lochbaum late at night, got him alone, and then effectively ambushed him, were indicative of their intent and agreement to commit these crimes. *See State v. Barroso*, 320 S.C. 1, 462 S.E.2d 862, 867-68 (Ct. App. 1995) (“Although . . . a conspiracy does not require overt acts, where there is evidence of overt acts done in furtherance of the conspiracy, an inference may be drawn as to the existence and object of the conspiracy.”).

Further, Lemire’s statement “this is what you get when you f**k with my family” indicated he and Larmand, as brothers-in-law, were acting together for their shared mutual benefit. Finally, Larmand and Lemire’s attempt to flee the scene further evinces their guilty intent. *See Crawford*, 608 S.E.2d at 890 (“Evidence of flight has been held to constitute evidence of defendant’s guilty knowledge and intent”).

Evidence of Larmand and Lemire’s suspicious conduct, overt acts, statements, and flight from the scene, constituted sufficient proof of “acts, declarations, or specific conduct” necessary to withstand a directed verdict motion on the charge of conspiracy. *See Sanders*, 696 S.E.2d at 592 (“Although each of these factors alone may have supported only a mere

suspicion of a conspiracy . . . when considered together, they yield the requisite level of proof of 'acts, declarations, or specific conduct' . . . to withstand a directed verdict motion") (quoting Hernandez, 677 S.E.2d at 605). Lemire's act of pointing the gun at Lochbaum was an overt act in furtherance of the conspiracy, for which Larmand was criminally liable under the hand of one doctrine. Considering the evidence in the light most favorable to the State, the circuit court properly denied Larmand's direct verdict motion as to the conspiracy and firearm charges, and its ruling should be affirmed.

IV. The circuit court's jury charge on the inference of guilt as a principal under S.C. Code §16-3-240 was a proper statement of the law. (Appellant's Issue VI)

Larmand asserts the circuit court erred in charging the jury they could infer all persons present as members of a mob when the act of violence is committed are guilty as principals. He argues this charge was redundant, confusing, and ambiguous in light of the circuit court's other charges on the statutory definition of a "mob" under S.C. Code §16-3-230 (2003), liability for the "natural and probable consequences" of the acts of a co-conspirator, the theory of "the hand of one is the hand of all," and "mere presence." He further contends the instruction improperly constituted a charge on the facts, an instruction that particular evidence receive special weight or consideration, or an opinion as to the weight or sufficiency of the evidence, all in violation of the South Carolina Constitution.

As a threshold matter, these particular issues concerning the jury charge were never raised at trial, and are not preserved for appellate review. It is axiomatic an issue must have been raised to and ruled on by the trial court to preserve the issue for review on appeal. *See e.g., State v. Price*, 368 S.C. 494, 629 S.E.2d 363 (2006) (issue must have been raised to and ruled on by trial judge to be preserved for appellate review); *State v. Moore*, 357 S.C. 458, 593 S.E.2d 608 (2004) (argument procedurally barred when it was not made to the trial judge); *State v. Taylor*, 355 S.C. 392, 585 S.E.2d 303 (2003) (when particular argument was not presented to the trial court, it was not preserved for appellate review); *State v. Dunbar*, 356 S.C. 138, 587 S.E.2d 691 (2003) (party need not use exact name of legal doctrine to preserve an issue for appellate review, but it must be clear that the argument was presented on that ground).

At trial, the only objection Larmand and Lemire made regarding the permissive inference under S.C. Code §16-3-240 (2003), was that it unconstitutionally shifted the burden of proof. (TT, pp. 321-322, 517, 574, 582, 603; R., pp. 277-278, 495, 552, 560, 582). Neither Larmand nor Lemire ever asserted the inference language was ambiguous, redundant, or confusing to the jury. Further, neither asserted the jury charge amounted to an improper charge on the facts, an instruction to give certain evidence special weight or consideration, or an opinion as to the weight or sufficiency of the evidence. Therefore, those issues were not preserved for appellate review and should not be considered by this court.

Even if those issues were preserved, however, they are meritless. The circuit court's charge was a clear, comprehensible, and proper statement of the law. In reviewing jury charges for error, an appellate court must consider the trial court's jury charge as a whole in light of the evidence and issues presented at trial. State v. Mattison, 388 S.C. 469, 697 S.E.2d 578, 583 (2010). "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." *Id.* (quoting State v. Adkins, 353 S.C. 312, 577 S.E.2d 460, 463 [Ct. App. 2003]). "A jury charge that is substantially correct and covers the law does not require reversal." *Id.* (citing State v. Foust, 325 S.C. 12, 479 S.E.2d 50 [1996]).

"The trial court is required to charge only the current and correct law of South Carolina." *Id.* (citing Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462, 472 [2004]). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *Id.* at 584 (citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 [2007]). "A confusing charge alone is insufficient to warrant reversal." State v. Lee-Grigg,

374 S.C. 388, 649 S.E.2d 41, 50 (Cl. App.2007) (citing State v. Kerr, 330 S.C. 132, 498 S.E.2d 212, 218 [Cl. App. 1998]).

The jury charge at issue in this case simply stated the law pertaining to second degree lynching. Consistent with §16-3-220, the circuit court instructed the jury the State must prove "the defendants acting as a mob committed an act of violence upon the body of another that did not result in death." The charge defined a "mob" as "an assemblage of two or more persons for the premeditated purpose and with the premeditated intent of committing an act of violence upon another person." See §16-3-230. Using language taken directly from §16-3-240, the circuit court then instructed the jury "[i]t is permissible to infer that all persons **present as members of a mob when an act of violence is committed** have aided and abetted the crime and are actually guilty as principals." (TT, p. 566-567; R., pp. 544-545) (emphasis added).

In support of his contention the §16-3-240 inference charge was redundant, Larmand argues the court's previous charge on the statutory definition of a mob under §16-3-230 already told the jury "if a person plans on inflicting an act of violence upon a person and is present they are guilty of the crime of lynching." This contention is meritless because §16-3-230 contemplates only the *intent* of those assembled to commit an act of violence, while §16-3-240 contemplates the actual *commission* of the act of violence and the contemporaneous *presence* of mob members. Simply stated, the charge under §16-3-240 instructed the jury it must first find the person to be a member of a mob under §16-3-230, *i.e.*, the person assembled with others with the premeditated intent to commit an act of violence, before it could infer the person was guilty as a principal if he was present when the

act of violence was actually committed.

In support of his contention the permissive inference charge was confusing. Larmand argues the court's previous charges on natural or probable consequences, the hand of one is the hand of all, and mere presence could have led the jury to believe "they may infer all persons present are members of a mob." To the contrary, the charges Larmand references further clarified that the jury could not infer guilt from mere presence.

The circuit court's charge explained the hand of one is the hand of all "[i]f two or more people are together, acting together, assisting each other in committing the offense." Further, "[w]hen two or more acting with a common plan or intent are present at the commission of a crime it does not matter who actually commits the crime. . . . The hand of one is the hand of all." The court further explained "[a] person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the act done in carrying out the further plan and purpose." Finally, the court plainly instructed the jury "mere presence at the scene of a crime is insufficient to convict one as principal on the theory of aiding and abetting." (TT, pp. 564-566; R., pp. 542-544) (emphasis added).

Larmand relies on State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), in support of his contention the permissive inference in this case is improperly ambiguous and confusing. In Belcher, the Supreme Court held a trial court errs in charging malice may be inferred by the use of a deadly weapon where "evidence is presented that would reduce, mitigate, excuse, or justify" the commission of a homicide or assault and battery with intent to kill. 685 S.E.2d at 809. In its reasoning, the Court observed the definition of malice

"includes the absence of justification, excuse and mitigation," and the absence of these factors "cannot be inferred from the use of a deadly weapon standing alone." *Id.* at 808 (citing Glenn v. State, 68 Md.App. 379, 511 A.2d 1110, 1126 [1986]). By way of illustration, the Court stated:

Say, for example, a homicide occurs by the use of a deadly weapon under circumstances warranting a self-defense instruction. The killing would be intentional, yet under our currently sanctioned charge, the jury would be permitted to find malice merely because "if one intentionally kills another with a deadly weapon, the implication of malice may arise."

Id. at 809 (quoting State v. Elmore, 279 S.C. 417, 308 S.E.2d 781, 784 [1983]). In these specific circumstances, the Court found the inference of malice from the use of a deadly weapon would be confusing and prejudicial. *Id.*

This case is readily distinguishable from Belcher. Notably, the permissive inference in this case pertained to second degree lynching, a crime for which malice is **not** an express element. Further, the permissive inference in this case did not allow the jury to infer the existence of any of the substantive elements of second degree lynching. Through accomplice liability principles, the charge only permitted the jury to infer persons guilty of lynching as **principals**, rather than mere accessories, if the jury **first** found those persons were present as **members of a mob** when the act of violence was committed, i.e., they assembled with the premeditated intent and purpose of committing an act of violence. Finally, unlike the judicially created malice inference at issue in Belcher, the inference in §16-3-240 is legislatively created for cases involving lynching, and reveals the legislative intent to allow the jury to infer principal versus accessory liability under properly delineated circumstances.

Larmand's contentions the permissive inference charged to the jury was improper as a charge on the facts, an instruction that particular evidence receive special weight or consideration, or an opinion as to the weight or sufficiency of evidence are equally without merit. "Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error." State v. Jackson, 297 S.C. 523, 377 S.E.2d 570, 572 (1989). "[T]he test is what a reasonable juror would have understood the charge as meaning." *Id.*

In this case, the circuit court's instruction on the permissive inference of §16-3-240 merely explained the legal conclusion the jury could find if certain facts were established. See State v. Dickey, 380 S.C. 384, 669 S.E.2d 917, 927 (Ct. App. 2008) ("A charge that states the legal conclusions that would result from the establishment of certain facts is not necessarily an improper charge on the facts, nor a mandate to the jury to assume the truth of the facts stated."). The instruction at issue properly instructed the jury they could legally hold persons liable as principals if they found the evidence showed those persons **assembled** as a **mob** with the **premeditated** intent to commit an act of violence, and those persons were **present** when the act of violence was committed.

The instant case is analogous to the jury charge upheld by the Supreme Court in State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006). In Rayfield, the trial judge charged the jury, consistent with applicable statutory law, that a victim's testimony need not be corroborated for a conviction of first degree criminal sexual conduct with a minor. *Id.* at 249. On appeal, the defendant argued the charge improperly commented on the facts, emphasized the testimony of one witness, and carried a strong possibility of biasing the jury.

Id.

In upholding the trial judge's charge, the Court concluded a judge's decision to charge the statutory law "does not constitute reversible error when this single instruction is not unduly emphasized and the charge as a whole comports with the law." *Id.* at 250. The Court noted the trial judge "fully and properly" instructed the jury on "the State's burden of proof and the jury's duty to find the facts and judge the credibility of the witnesses." *Id.* The Court further observed, "[t]he Legislature has decided it is reasonable and appropriate in criminal sexual conduct cases to make abundantly clear - not only to the judge but also to the jury - that a defendant may be convicted solely on the basis of a victim's testimony." *Id.*

Similar to the jury instructions in Rayfield, the instructions in this case did not unduly emphasize the permissive inference of §16-3-240, and the charge as a whole comported with the law. The circuit court repeatedly instructed the jury on the State's burden of proof and the jury's exclusive duty to decide all issues of fact and assess the credibility of witnesses. (TT, pp. 564-567; R., pp. 542-545).

Finally, any alleged error in the circuit court's jury instructions was harmless. *See Belcher*, 685 S.E.2d at 809 ("Errors, including erroneous jury instructions, are subject to harmless error analysis"). For purposes of §16-3-240, the State presented ample evidence Larmand and Lemire were more than merely present at the scene. The record shows they assembled as a mob for purposes of §16-3-230, and committed an act of violence on Lochbaum for purposes of §16-3-220. In light of the overwhelming evidence of Larmand and Lemire's guilt, any error in charging the applicable statutory law was harmless beyond a reasonable doubt.

The circuit court charge as a whole was substantially correct and adequately covered the applicable law. Accordingly, Larmand's conviction should be affirmed.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Larmand's convictions and sentences should be affirmed.

Respectfully submitted,

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April 1, 2011

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

**APPEAL FROM YORK COUNTY
In the Court of Common Pleas**

Honorable William H. Seals, Jr., Circuit Court Judge

**Case No. 2009-GS-46-02834
Case No. 2009-GS-46-02835**

The State Respondent

vs

Francis Larmand Appellant

FINAL BRIEF OF APPELLANT

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INDEX

Page:

Table of Authorities	ii
Questions Presented	1
Statement of the Case	
Procedural History	2
Factual History	2
Argument	
Question I: Did the trial court err in submitting his written charge to the jury when the jury had not requested it and after they had been deliberating for over three hours and forty minutes?	5
Question II: Did the trial court err in failing to direct a verdict on the charge of lynching second degree when the state failed to prove either defendant committed an act of violence upon the body of Ryan Lochbaum as alleged in the indictment and required by the statute?	7
Question III: Did the trial court err in failing to direct a verdict of not guilty on the charge of lynching second degree because the state failed to prove a premeditated purpose or intent to commit an act of violence upon another person?	10
Question IV: Did the trial court err in failing to direct on the charge of conspiracy on the ground that the State failed to prove any facts that would reasonably support an agreement between Frank Larmand and Leo Lemire to inflict an act of violence upon the person of Ryan Lochbaum or present or point a firearm at the person of Ryan Lochbaum?	12
Question V: Did the trial court err in failing to direct a verdict on the charge of presenting and pointing a firearm when the State has failed to prove a conspiracy and there was no other evidence sufficient to convict Frank Larmand for presenting and pointing a firearm? .	15
Question VI: Did the trial court err in charging the jury that they may infer that all persons present as members of a mob when an act of violence is committed are guilty as principles?	15
Conclusion	20

Table of Authorities

Cases:	Page:
<i>Direct Sales Co. v. United States</i> , 319 U.S. 703 (1943)	14
<i>State v. Bagwell</i> , 201 S.C. 387, 23 S.E.2d 244 (1942)	18, 19
<i>State v. Belcher</i> , 385 S.C. 597, 685 S.E.2d 802 (2009)	15
<i>State v. Cherry</i> , 361 S.C. 588, 606 S.E.2d 475 (2004)	10
<i>State v. Covert</i> , 382 S.C. 205, 675 S.E.2d 740 (2009)	5
<i>State v. Gunn</i> , 313 S.C. 124, 437 S.E.2d 75 (1993)	13, 14
<i>State v. Hammitt</i> , 341 S.C. 638, 535 S.E.2d 459 (2000)	14
<i>State v. Hartley</i> , 307 S.C. 239, 414 S.E.2d 182 (1992)	18
<i>State v. Hernandez</i> , 382 S.C. 620, 677 S.E.2d 603 (2009)	11, 12
<i>State v. James</i> , 362 S.C. 557, 608 S.E.2d 455 (Ct. App. 2004)	10
<i>State v. Mouzon</i> , 321 S.C. 27, 467 S.E.2d 122 (Ct. App. 1996), <i>aff'd</i> , 326 S.C. 199, 485 S.E.2d 918 (1997)	14
<i>State v. Smith</i> , 352 S.C. 133, 572 S.E.2d 473 (Ct. App. 2002)	10
<i>State v. Stewart</i> , 278 S.C. 296, 295 S.E.2d 627 (1982)	13
<i>State v. Turner</i> , 373 S.C. 121, 644 S.E.2d 693 (2007)	5, 6
<i>Yarborough v. Southern Ry</i> , 78 S.C. 103, 58 S.E. 936 (1907)	17, 18
Statutes:	
South Carolina Code § 16-3-210	8
Constitutional Provisions:	
Article V, § 21 of the Constitution of the State of South Carolina	17

Questions Presented

Question I: Did the trial court err in submitting his written charge to the jury when the jury had not requested it and after they had been deliberating for over three hours and forty minutes?

Question II: Did the trial court err in failing to direct a verdict on the charge of lynching second degree when the state failed to prove either defendant committed an act of violence upon the body of Ryan Lochbaum as alleged in the indictment and required by the statute?

Question III: Did the trial court err in failing to direct a verdict of not guilty on the charge of lynching second degree because the state failed to prove a premeditated purpose or intent to commit an act of violence upon another person?

Question IV: Did the trial court err in failing to direct a verdict on the charge of conspiracy on the ground that the State failed to prove any facts that would reasonably support an agreement between Frank Larmand and Leo Lemire to inflict an act of violence upon the person of Ryan Lochbaum or present or point a firearm at the person of Ryan Lochbaum?

Question V: Did the trial court err in failing to direct a verdict on the charge of presenting and pointing a firearm when the State has failed to prove a conspiracy and there was no other evidence sufficient to convict Frank Larmand for presenting and pointing a firearm?

Question VI: Did the trial court err in charging the jury that they may infer that all persons present as members of a mob when an act of violence is committed are guilty as principles?

Statement of the Case

Procedural Statement

Frank Larmand was arrested on May 1, 2009.¹ The grand jury for York County indicted him on July 16, 2009 for the charges of lynching second degree, conspiracy, and presenting and pointing a firearm. He was tried before the Honorable William H. Seals, Jr. and a jury on October 20-24, 2009. He, along with his co-defendant, was convicted on all charges. He was sentenced to ten years in prison on the lynching charge. He was given concurrent five year sentences on the charge of conspiracy and presenting and pointing a firearm.

A notice of intent to appeal was filed on October 28, 2009.

Factual Statement

Kerriann Larmand, the wife of the Defendant Frank Larmand, owned and operated a business in the Charlotte area known as Pop-A-Lock. The business was a basic locksmith business. As part of a franchise operation the business would also respond to calls to open car doors and other emergency calls. Rec. on App. at 280. Mrs. Lamard had reason to believe that someone in the company was stealing calls when a cash customer called for services such as a request to unlock an automobile. As a result she, with the assistance of her husband, set up a call for service in an attempt to determine who was stealing the calls from her company. Rec. on App. at 282, ll 12-25 to 283, ll 1-23.

As part of the mystery call, Frank Larmand was to go to the Knights Stadium outside of Charlotte. There he would wait and see who came in response to the mystery call.

¹ He was originally arrested for lynching second degree, conspiracy, and assault with intent to kill.

Prior to leaving Kanapolis, NC, where he lived, he met his brother-in-law, Leo Lemire. He requested Mr. Lemire to join him as another person was needed to receive the call as that person's voice would not be recognized by any employee or former employee of Pop-A-Lock who may be involved. Rec. on App. at 348, ll 20-349, ll 1-12. Mr. Larmand went to Knights Stadium and his wife placed the called requesting assistance in unlocking an automobile. The call was placed at 10:14 pm. Rec. on App. at 285, ll 10-22. Mike Taylor, who at the time was employed by Pop-A-Lock, received the call at 10:18 pm. Rec. on App. 285 at 23-25. Mr. Taylor called Ryan Lochbaum, a former employee who was terminated in October of 2008, at about 10:43. Rec. on App. at 131, ll 6-8. Mr. Lochbaum testified that Mr. Taylor was simply asking him for directions to Knight Stadium. He had previously told officers involved in the case that Mr. Larmand and Mr. Lemire were trying to lure him out to Knight Stadium that evening. Rec. on App. at 129, ll 5-11. As he had been terminated several months before, Mr. Lochbaum had no legitimate reason to be responding to a call for Pop-A-Lock. Mr. Lochbaum had also been denied unemployment benefits because of his misconduct while employed by Pop-A-Lock. This upset Mr. Lochbaum. Rec. on App. at 122, ll 3-15..

After no one from Pop-A-Lock or anyone trying to steal the service call came to Knights Stadium, Mr. Larmand decided to go by the residence of Mr. Lochbaum. He went for the purpose of seeing if any employees of Pop-A-Lock were there and to determine if a red car with a Pop-A-Lock sign was at the residence. Rec. on App. at 354, ll 1-12. Mrs. Larmand had received reports of a red car with a Pop-A-Lock sign being seen in the Charlotte area. Rec. on App. at 297, ll 17-25. When Mr. Larmand drove by Mr. Lochbaum's residence, he noticed several people gathered around a van but did not see a red car. He parked his truck past the

house and instructed Mr. Lemire to remain in the truck. Rec. on App. at 355, ll 12-16. He then walked to the residence of Mr. Lochbaum. He stood in the street near the van for a short period of time until someone acknowledged his presence. He stated that he wished to speak to Mr. Lochbaum. A person notified Mr. Lochbaum that someone was there to see him. Rec. on App. at 357, ll 12-20. Mr. Lochbaum then asked the others present to leave as he wanted to talk to Mr. Larmand in private. Rec. on App. at 27, ll 10-14. At least three other people were present when Mr. Lochbaum asked to speak to Mr. Larmand in private. Rec. on App. at 23, ll 21-25 to 69, ll 1-4.

After Mr. Lochbaum and Mr. Larmand had spoken for a brief time, Mr. Lemire, who had left the truck after Mr. Larmand left, came at Mr. Lochbaum with a pistol. Rec. on App. at 105, ll 14-22. Mr. Lochbaum turned to confront Mr. Lemire and grabbed the pistol. In the struggle they both fell to the ground. At that point the neighbors who were with Mr. Lauchbaum earlier came and helped subdue Mr. Lemire. When the two fell to the ground, Mr. Lochbaum testified that Mr. Larmand tried to pull him off of Mr. Lemire. Rec. on App. at 106, ll 18-24. Mr. Lauchbaum was successful in obtaining the pistol from Mr. Lemire. At that point the struggle ended and Mr. Larmand and Mr. Limire left the area. 109, ll 4-14. Mr. Lauchbaum received only a very minor scratch to his hand. Rec. on App. at 114, ll 16-22.

After leaving the scene Mr. Larmand was stopped by William Watson of the Rock Hill Police Department. Mr. Lemire was arrested that night for presenting and pointing a firearm. Mr. Larmand was briefly questioned and released. Rec. on App. at 14, ll 1-16. Mr. Larmand was arrested the next day when he came to arrange bail for Mr. Lemire.

Argument

Question I

Did the trial court err in submitting his written charge to the jury when the jury had not requested it and after they had been deliberating for over three hours and forty minutes?

While South Carolina has no rule that permits a trial judge to send written instructions to a jury, the South Carolina Supreme Court has held that such a decision, while discouraged, is left to the sound discretion of the trial judge. As the Court said “While the written submission of the jury instructions could aid a jury in properly applying the law to the facts before it, this practice should be carefully exercised by the Bench.” *State v. Turner*, 373 S.C. 121, 129, 644 S.E.2d 693, 697-698 (2007). In *State v. Covert*, 382 S.C. 205, 675 S.E.2d 740 (2009) the Supreme Court reversed the decision of the trial judge to send just a statute to the jury. In that case the Court said “We caution the bench again, as we did in *Turner*, that this practice should be used sparingly, and only where it will aid the jury and where it will not prejudice the defendant.” *Id.* at 210, 675 S.E.2d at 743.

In the present case the trial judge did not fully examine the facts concerning the submission of written instructions as urged by the South Carolina Supreme Court. First the jury did not ask for the entire charge. The note from the jury requested “Can we have a copy printout of the statute of the three charges.” Rec. on App. at 562, ll 7-8. The trial court then proceeded to give the jury one copy of the entire charge. He did not give each juror a copy of the charge. As defense counsel argued “And there being one copy of the charge, I would hesitate a juror or a group of jurors being able to try and use the written charge to cite and to overcome what the jury

has heard in their minds.” Rec. on App. at 563, ll 6-8. Defense counsel further argued that as the charge was about twenty-two pages long and only one copy, a juror may have a tendency to pick and choose certain portions to the exclusion of other parts.” Rec. On App. at 563, ll 22-25 to 564, ll 1-4. This tendency was amplified when the charge was given only to the jury foreman while the rest of the jury was in the jury room. (Court report’s written notes). The foreman then re-entered the jury room as the “keeper of the law” with no instructions to the remaining jurors as to their right to fully read the instructions nor an admonishment not to take portions of the charge out of context.

In *Turner*, where sending the written charge to the jury was approved with the admonition that it should be used sparingly, the charge went to the jury at the beginning of the deliberations. The opinion in *Turner* is not clear if one copy or twelve copies of the charge went to the jury room. But the likelihood of prejudice from a charge given at the beginning of deliberations is not the same as one when the jury is struggling to reach a verdict. And the prejudice is enhanced when only one copy is sent and the jury is not cautioned to read the entire charge and not cautioned against taking a portion out of context. In addition, as noted above, the jury never asked for the entire charge. They were only interested in the statute. This fact increases the probability that the jury concentrated on only a portion of the written charge and not the entire charge. The prejudice to the defendant is readily apparent as the record reflects that the jury sent out a note that said “Reached verdict on three charges, deadlocked on the remaining.”²

² This note is very confusing at the very least. As the conspiracy and lynching charges would require the jury to find that both defendants were involved, the jury should have reached a verdict as to the lynching and conspiracy charges against both defendants. They could not have found one defendant guilty of lynching or conspiracy without finding the other defendant guilty. The only charge they could have reached a verdict on that would not require a conviction of the

Obviously the jury had not carefully read the jury instructions or had taken some of the instructions out of context.

The trial judge did not use caution in deciding to send the entire charge to the jury as the jury had not requested the entire charge. He further did not exercise caution when he sent only one copy of the charge to the jury. And finally he did not exercise caution when he failed to instruct the jury not to take a portion of the charge out of context and to consider the entire charge. As no caution was exercised, the submission of the written charge was reversible error.

Question II

Did the trial court err in failing to direct a verdict on the charge of lynching second degree when the state failed to prove either defendant committed an act of violence upon the body of Ryan Lochbaum as alleged in the indictment and required by the statute?

The indictment against Frank Larmand alleged that he along with Leo David Lemire did "inflict an act of violence upon the body of another resulting in physical injury to the victim, to wit: he did along with Leo David Lemire attack and assault Ryan Lochbaum, all in violation of Section 16-03-220." (Indictment against Frank Larmand.) Neither defendant inflicted an act of violence upon the body of Ryan Lochbaum as alleged in the indictment. The sole injury to Mr. Lochbaum was some scratches to his hand that occurred while he was struggling with Mr. Lemire. Rec. on App. at 114, ll 16-19. Mr. Lochbaum described the efforts of Mr. Larmand as "trying to pull me off Leo." Rec. on App. at 106, l 24. Mr. Lochbaum

other co-defendant was to have found Mr. Lemire guilty of pointing and presenting a firearm. The confusion by the jury had existed for some time as earlier they had asked "If we think one is guilty of a charge, do we have to automatically vote that the other party is also guilty of the charge?" Rec. on App. at 552, ll 15-17.

admitted Mr. Larmand never struck him. Rec. on App. at 143, ll 5-13. Neither the injury or the actions of Mr. Larmand would, under any reasonable interpretation, constitute an act of violence upon the body of Mr. Lochbaum.

Under *Jackson v. Virginia*, 443 U.S. 307 (1979), the state is not permitted simply to produce some evidence by which the conviction could be sustained. It must do more. The civil rule that if there is a scintilla of evidence the case must be submitted to the jury, is, after *Jackson*, not applicable to a criminal case. In *Jackson*, the United States Supreme Court specifically held that a modicum of evidence was not sufficient to convict in a criminal case. While cases frequently say that a court does not weigh evidence, to determine the difference between a modicum of evidence and sufficient evidence to convict in a criminal case, a court must, to some extent, weigh the evidence. In *Jackson* the United States Supreme Court said "Any evidence that is relevant - - that has a tendency to make the existence of an element of a crime more probable than it would be without the evidence . . . could be deemed a 'modicum.' But it could not seriously be argued that such a 'modicum' of evidence could by itself rationally support a conviction beyond a reasonable doubt." *Id.* at 320. Thus, for an appellate court to decide whether there is more than a modicum of evidence, as required by *Jackson*, does require the court, at least to some degree, to weigh the evidence. What an appellate court may not do is to determine the credibility of the witnesses. That function is strictly for the jury. In the present case on the question of an act of violence upon the body of Ryan Lochbaum, there is at the very least only a modicum of evidence to sustain the conviction.

South Carolina Code § 16-3-210 defines lynching in the second degree as "any act of violence inflicted by a mob upon the body of another person and *from which death does*

not result." (emphasis added) The only difference between lynching first degree and second degree is that a death results from the act of violence in lynching first degree. The legislature thus by implication meant for the act of violence to be serious. The fact that the minimum punishment is three years and a maximum of twenty further supports this position.

To be guilty of lynching second degree an attempt to inflict an act of violence would not be sufficient. The statute requires that the act of violence actually be inflicted upon the person. Nor is it sufficient to commit a simple assault and battery upon another person. To interpret the statute in such a manner that a simple assault and battery is an act of violence sufficient to invoke the lynching statute would permit the state to elevate a misdemeanor that carries a maximum sentence of 30 days, and make it a twenty year felony with a three year minimum. The basis for this increase in punishment would be simply because more than one person was involved and not because the injury was more severe or the beating more heinous. Such is not a reasonable interpretation of the statute. While theoretically possible, death generally does not result from a simple assault and battery and therefore would not be an act of violence "from which death does not result."³

The statute also requires that the act of violence be inflicted upon the person. An act of violence directed at a person is not sufficient. A threat of an act of violence is not sufficient. The act of violence must make contact with the body of the person. The legislature

³ The trial judge instructed the jury at one point that if the jury found an act of violence *against* the victim, then they could convict. Rec. on App. at 545, ll 12-16. The word "against" has a different meaning from "upon." While no objection to the use of "against" was made, the jury very easily in reading the written instruction have latched on to that word in arriving at a verdict. Even without an objection, a finding of guilt based on a finding of "against" as opposed to "upon" would not be proper.

did not say "to use an act of violence toward another person" or "in relationship to another person" or "in regard to another person." They used the word "upon" which requires that some contact exist between the act and the person acted upon. An act of violence upon the body of Ryan Lochbaum was simply not proven in this case.

Question III

Did the trial court err in failing to direct a verdict of not guilty on the charge of lynching second degree because the state failed to prove a premeditated purpose or intent to commit an act of violence upon another person?

The State is required to prove more than the fact that two or more people inflicted an act of violence upon the body of a third party. They must prove that prior to the act the individuals involved in the act planned and premeditated the attack upon the body of the person. This Court has recognized that the premeditation may be proven by circumstantial evidence. *State v. Smith*, 352 S.C. 133, 572 S.E.2d 473 (Ct. App. 2002). Proof of this element of the offense must not, however, be left to speculation, conjecture or surmise.

In *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004) the South Carolina Supreme Court said "The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. 'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *Id.* at 594, 606 S.E.2d at 478. This Court in *State v. James*, 362 S.C. 557, 608 S.E.2d 455 (Ct. App. 2004) said "If there is any direct evidence or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury." *Id.* at 561, 608 S.E.2d at 457 (emphasis added). No direct evidence of

premeditation was presented by the State. The question here, therefore is was there substantial, circumstantial evidence reasonably tending to prove the guilt of Frank Larmand?

In this case the government produced no evidence of any planning or premeditation prior to the altercation. The evidence at trial showed that when Mr. Lochbaum confronted Mr. Lemire, who had the gun, Mr. Larmand did not immediately start attacking Mr. Lochbaum by striking him and attempting to inflict any act of violence upon Mr. Lochbaum. Instead he simply attempted to pull Mr. Lochbaum off his brother-in-law without inflicting any act of violence upon Mr. Lochbaum. Rec. on App. at 1506 ll 18-24. No actions by Mr. Larmand and Mr. Lemire indicated any plan to jointly inflict an act of violence upon Mr. Lochbaum. Even if the act of Mr. Lemire in presenting or pointing a firearm at Mr. Lochbaum is considered an act of violence, the record is devoid of any direct or circumstantial evidence that Mr. Larmand planned, encouraged, or aided Mr. Lemire in such an act. Under the law that applies to this case, two people simply arriving at the same area is not sufficient to show planning and sustain the conviction.

In *State v. Hernandez*, 382 S.C. 620, 677 S.E.2d 603 (2009) the South Carolina Supreme Court held that merely showing up at the scene of a crime under suspicious circumstance is not sufficient to prove the defendants knew the crime of trafficking marijuana was occurring. In *Hernandez* three individuals came to the location of a tractor trailer that contained 900 pounds of marijuana. The three individuals arrived at the scene in a Ryder rental truck following a Thunderbird that had been at the previous location of the tractor trailer. The occupants of the Thunderbird had unloaded some furniture from the tractor-trailer. The three vehicles then left together and went down a dirt road until they became stuck. At that point the

under cover agent who was driving the tractor trailer called off the operation and arrested the driver and two passengers of the Ryder truck. The occupants of the Thunderbird escaped.

In reversing the conviction the Court said "The State claims that it is 'nonsensical' to find that the Thunderbird occupants did not know [Defendants] prior to this transaction. However the State failed to present any evidence such as acts, declarations or specific conduct to support this inference, and thus, we find that conclusion that [Defendants] knew the Thunderbird and therefore had knowledge of the drugs in the trailer is mere speculation." *Id.* at 624, 677 S.E.2d at 606.⁴ The same is true in this case. All the State established is that the two defendants were at the scene together. The State produced no testimony "such as acts, declarations, or specific conduct" to support the fact that any alleged act of violence upon Mr. Lochbaum was premeditated. The State produced no statements by either party that encouraged or egged on any alleged attack upon Mr. Lochbaum. The conclusion that there was a prior plan is mere speculation and not sufficient to sustain a conviction.

Question IV

Did the trial court err in failing to direct a verdict on the charge of conspiracy on the ground that the State failed to prove any facts that would reasonably support an agreement between Frank Larmand and Leo Lemire to inflict an act of violence upon the person of Ryan Lochbaum or present or point a firearm at the person of Ryan Lochbaum?

The South Carolina Supreme Court has said concerning a conspiracy, "The

⁴ Even if the occupants of the Ryder truck had known the driver of the Thunderbird, that still would not prove they knew of the marijuana.

gravamen of the offense of conspiracy is the agreement or combination. Thus, we focus here on the sufficiency of the evidence of an *agreement* between the alleged conspirators, and not, as the State would have us do, on the alleged common *object*” *State v. Gunn*, 313 S.C. 124, 134, 437 S.E.2d 75, 80 (1993)(emphasis in original). A conspiracy is not proven simply because individuals may be together or engage in a common activity. “What is required is a *shared*, single criminal objective, not just similar or parallel objectives between similarly situated people.” *Id.* Thus, the mere fact that Mr. Larmand and Mr. Lemire were at the same place at the same time is not sufficient to establish the agreement required to prove a conspiracy.

In the present case all the state has established is that Mr. Larmand and Mr. Lemire arrive at the same place together. The State has not established that they both agreed or even engaged in the same conduct as it related to Mr. Lochbaum. The conspiracy alleged by the State is to commit either the act of lynching or the act of presenting or pointing a firearm. Therefore, as noted above, the State must prove either a conspiracy to commit an act of violence upon the body of Ryan Lochbaum or a conspiracy to present or point a firearm at Mr. Lochbaum. The evidence in this case shows that Mr. Lochbaum attacked Mr. Lemire when Mr. Lemire came at him with a pistol. Mr. Larmand did nothing to promote, assist or aid Mr. Lemire in the act of presenting and pointing a firearm. All the testimony as to Mr. Larmand’s action shows that he, according to Mr. Lochbaum, attempted to pull Mr. Lochbaum off Mr. Lemire. Rec. on App. at 106, ll 18-24. While a conspiracy may be proven by circumstantial evidence, such evidence may not be based upon speculation, conjecture or surmise. *State v. Stewart*, 278 S.C. 296, 295 S.E.2d

627 (1982)(Ness, concurring)⁵ Nor may the conspiracy be established "by piling inference upon inference." *Gunn*, 313 S.C. at 134, 437 S.E.2d at 81. *State v. Mouzon*, 321 S.C. 27, 467 S.E.2d 122 (Ct. App. 1996), *aff'd*, 326 S.C. 199, 485 S.E.2d 918 (1997).

The United States Supreme Court has said "Without knowledge, the intent cannot exist. Furthermore, to establish the intent, the evidence of knowledge must be clear, not equivocal. This, because charges of conspiracy are not to be made out by piling inference upon inference, thus fashioning what . . . was called a dragnet to draw in all substantive crimes." *Direct Sales Co. v. United States*, 319 U.S. 703, 711 (1943). In the present case the State has piled inference upon inference. The state has charged a conspiracy to commit the crimes of lynching second degree or presenting or pointing a firearm. The lynching second degree was to be committed by the use of the firearm. To prove this, the State asked the jury to infer the following facts: 1. Mr. Larmand and Mr. Lemire both agreed to come to the residence of Mr. Lochbaum. 2. Mr. Larmand knew Mr. Lemire had a firearm. 3. Mr. Larmand agreed with Mr. Lemire to use the firearm to commit the lynching second degree. 4. They both agreed to go to the residence of Mr. Lochbaum for the expressed intent to inflict an act of violence upon Mr. Lochbaum. No direct facts exist to prove any of those facts. Thus, to prove the case the State is required to pile inference upon inference to reach the conclusion that Mr. Larmand and Mr. Lemire committed the conspiracy. Such a practice is not permitted in South Carolina. *State v. Hammitt*, 341 S.C. 638, 535 S.E.2d 459 (2000); *State v. Vasquez*, 341 S.C. 648, 535 S.E.2d 465 (Ct. App. 2000); *State v. Mouzon*, 321 S.C. 27, 467 S.E.2d 122 (Ct. App. 1995); *State v. Gunn*,

⁵ While the fact seems self evidence that a criminal conviction may not rest upon speculation, conjecture and surmise, the concurring opinion by Hon. Julius B. Ness is the only reported criminal case in South Carolina that uses the phrase.

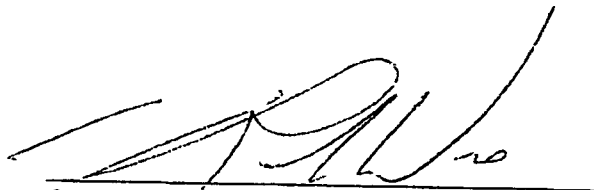
In *State v. Bagwell*, 201 S.C. 387, 23 S.E.2d 244 (1942)⁷ the defendant had requested a simple charge that the testimony of a co-defendant was to be "received by the jury with caution and should be scrutinized by the jury with great caution." *Id.* at ___, 23 S.E.2d at 249. In holding the trial court did not commit error, the South Carolina Supreme Court said "A judge cannot express in his charge, or intimate any opinion as to the *weight or sufficiency* of testimony of accomplice without violating the prohibition of the Constitution as to charging upon the facts." *Id.* (emphasis added). When a judge instructs a jury that they may infer guilt from the proof of certain facts that judge is both expressing and intimating an opinion as to the weight and sufficiency of the evidence. He was making a comment on the facts.

⁷ T. FELDOR DORN, GUNS OF MEETING STREET (The University of South Carolina Press 2006) chronicles this murder and trial in great detail.

CONCLUSION

For the foregoing reason, this Court should reverse the conviction of Frank Larmand and direct that a judgment of not guilty be entered in this matter. In the alternative the Court should remand this matter for a new trial.

April 4th, 2010



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

**APPEAL FROM YORK COUNTY
In the Court of Common Pleas**

Honorable William H. Seals, Jr., Circuit Court Judge

**Case No. 2009-GS-46-02834
Case No. 2009-GS-46-02835**

The State	Respondent
vs	
Francis Larmand	Appellant

FINAL REPLY BRIEF OF APPELLANT

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Index

Page:

Table of Authorities	ii

Argument

Question I: Did the trial court err in submitting his written charge to the jury when the jury had not requested it and after they had been deliberating for over three hours and forty minutes?	1

Question II: Did the trial court err in failing to direct a verdict on the charge of lynching second degree when the state failed to prove either defendant committed an act of violence upon the body of Ryan Lochbaum as alleged in the indictment and required by the statute?	2

Question III: Did the trial court err in failing to direct a verdict of not guilty on the charge of lynching second degree because the state failed to prove a premeditated purpose or intent to commit an act of violence upon another person?	4

Question IV: Did the trial court err in failing to direct on the charge of conspiracy on the ground that the State failed to prove any facts that would reasonably support an agreement between Frank Larmand and Leo Lemire to inflict an act of violence upon the person of Ryan Lochbaum or present or point a firearm at the person of Ryan Lochbaum?	7

Question V: Did the trial court err in failing to direct a verdict on the charge of presenting and pointing a firearm when the State has failed to prove a conspiracy and there was no other evidence sufficient to convict Frank Larmand for presenting and pointing a firearm? ..	8

Question VI: Did the trial court err in charging the jury that they may infer that all persons present as members of a mob when an act of violence is committed are guilty as principals?	9

Conclusion	12

Table of Authorities

Cases:

Page:

<i>Jackson v. Virginia</i> , 443 U.S. 307 (1979)	7
<i>State v. Blackmon</i> 304 S.C. 270, 403 S.E.2d 660 (1991)	4
<i>State v. Grant</i> , 275 S.C.404, 272 S.E.2d 169 (1980)	6
<i>State v. James</i> , 362 S.C. 557, 608 S.E.2d 455 (Ct. App. 2004)	7
<i>State v. Page</i> , 378 S.C. 476, 663 S.E.2d 357 (Ct. App. 2008)	9
<i>State v. Smith</i> , 352 S.C. 133, 572 S.E.2d 473 (Ct. App. 2002)	5

Statutes:

South Carolina Code § 16-3-230	11
South Carolina Code § 16-3-240	11

Rules:

Rule 19(a) of the South Carolina Rules of Criminal Procedure	3
Rule 50 of the South Carolina Rules of Civil Procedure	3

Constitutional Provisions:

Article I § 5 of the Constitution of the State of South Carolina	3
Article V, § 21 of the Constitution of the State of South Carolina	9
Fifth Amendment of the Constitution of the United States of America	3
Fourteenth Amendment of the Constitution of the United States of America	3

Argument

Question I

Did the trial court err in submitting his written charge to the jury when the jury had not requested it and after they had been deliberating for over three hours and forty minutes?

The State argues that Mr. Larmand cannot prove prejudice in the manner in which the trial judge gave the foreman of the jury the written jury instructions. First, when written instructions are given to a jury in an improper matter, this court should presume prejudice. The State should have the burden of proving the error was harmless beyond a reasonable doubt. The State cannot establish the improper sending of the written jury instructions to the jury was harmless.

Secondly, the State has argued that sending the instructions to the jury after they begin deliberations is less likely to cause any prejudice to the defendant than giving the instructions before the deliberations begin. The State cites virtually no authority to support this position. Only when the written instructions are given with proper instructions on their use can the State adequately argue that sending the instructions was not prejudicial to a defendant.

Contrary to the argument of the State, sending the written instructions with no clarifying instruction that they are not to consider one part of the charge to the exclusion of other parts does not preclude the jury from considering only one portion of the written instructions. In fact, with the written instructions being only given to the forewoman out of the presence of the other jurors, the probability of the jury using the instructions in an improper manner is increased. The other eleven jurors were not told they even had the right to look at the instructions much less

that they had the right to read the entire instructions themselves. If the forewoman elected to read only a portion of the charge to them, the other jurors had no basis for determining that the forewoman was acting improperly.

The State has argued that the accepted federal practice of giving each individual juror a copy of the charge would cause them "to deliberate individually, thus hindering the jury's ability to collectively reach a verdict." Br. of Resp. at 19. First this has not been found to be true in the federal courts. Secondly, each juror is suppose to deliberate individually and arrive at their verdict. This is exactly what the trial judge instructed the jury to do in this case. Rec. on App. at 567, ll 6-10. A jury room does not have a majority rule. Any procedure that enables each individual juror to arrive at their individual decision as to guilt or innocence is not a hindrance to our system of jurisprudence.

Mr. Larmand has not argued that giving the entire charge is more prejudicial than giving a portion. Under the facts of this case they are both equally prejudicial to Mr. Larmand. When, as the State concedes, a jury is struggling with its understanding of the law, a trial judge should clearly and unequivocally instruct a jury how to use the written instructions the forewoman was given. The trial judge did not exercise caution in giving the instructions to the jury because the trial judge gave no guidance to the jury in how to use the written instructions he gave only to the forewoman out of the presence of the other jurors.

Question II

Did the trial court err in failing to direct a verdict of lynching second degree when the state failed to prove either defendant committed an act of violence upon the body of Ryan Lochbaum as alleged in the indictment and required by the statute?

Issue Preservation

The State first contends that the issue of a directed verdict being granted on various grounds was not properly preserved. Unlike other appellate issues, the question of the sufficiency of the evidence to convict whether a directed verdict is requested or not, is always preserved. Rule 19(a) of the South Carolina Rules of Criminal Procedure provides "On motion of the defendant or *on its own motion*, the court *shall* direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment." (Emphasis added) Thus, as the rule says "shall" the trial judge is under an obligation under the rule to direct a verdict on his on motion if the evidence is not sufficient to convict. No corresponding obligation on the part of the trial judge is present under Rule 50 of the South Carolina Rules of Civil Procedure.

The logic behind such a rule is simple. No greater denial of due process under Article I § 5 of the Constitution of the State of South Carolina and the Fifth and Fourteenth Amendments to the Constitution of the United States of America could occur than to have an innocent man in prison because his lawyer failed to asked for a directed verdict, failed to ask for a direct verdict on an proper ground or failed to clearly express his grounds for a directed verdict. When the state has failed in its proof, a citizen should not be incarcerated. Surely the State does not argue that a citizen should be incarcerated when the state has failed in its burden of proof and either his lawyer failed to ask for a directed verdict or asked for a directed verdict on the wrong grounds.

The amendment to the indictment has no effect upon the issue raised by Mr.

Larmand. Mr. Larmand does not dispute that the statute does not require a serious injury, but it does require that an act of violence be inflicted upon a person and not merely threatened or attempted. The legislature used the word "upon" which can only be interpreted to mean actual contact with the body of another. While arguably the state could have charged Mr. Larmand with attempted lynching, they did not do so.

And while the State argues that any degree of violence will satisfy the statute, the State does not dispute the fact that no act of violence was inflicted upon the person of Ryan Lauchbaum, which is required by the statute. While the statute, as urged by the State, does focus on the act of violence, it also focuses on the act of violence being inflicted upon the person.

The State does in fact argue that a simple assault and battery committed by two or more people would result in a minimum sentence of three year and up to twenty years. If the legislature had so intended they would have used the phrase "any assault and battery" rather than "any act of violence." Most people would not think of a simple assault and battery as being an act of violence. As the statute must be interpreted strictly against the state, this Court should give a meaning to "act of violence" to exclude a simple assault and battery. "[W]hen a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant." *State v. Blackmon* 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). Strictly construing the words "violence" and "upon" this Court should conclude it means substantially more than a mere assault and battery and reverse the conviction of Mr. Larmand.

Question III

Did the trial court err in failing to direct a verdict on the charge of lynching second degree because the state failed to prove a premeditated purpose or intent to commit

an act of violence upon another person?

The charges against Mr. Larmand are based entirely upon circumstantial evidence. There is no direct proof of any agreement between Mr. Larmand and Mr. Lemire to commit the crimes for which they were charged. As the State correctly argues "By definition then, the premeditated purpose and intent underlying a charge of lynching cannot be spontaneous." Br. of Resp. at 25, quoting *State v. Smith*, 352 S.C. 133, 137, 572 S.E.2d 473, 475 (Ct. App. 2002). Thus the state is required to prove that prior to the arrival of Mr. Lemire at the scene, there was an agreement between Mr. Larmand and Mr. Lemire to commit an act of violence upon the person of Ryan Louchbaum.

Every fact in this case is consistent with an innocent explanation. What was the act of violence the two allegedly conspired to inflict upon the person of Ryan Louchbaum? Were they going to shoot him? Were they going to merely threaten him which is not an act of violence upon a person and therefore not lynching? Were they going to beat him up or just push him around? The jury is simply left to speculate as to what the intent was, if any. The facts simply do not support a planned intent to harm Mr. Louchbaum.

Both Mr. Larmand and Mr. Lemire knew that other people were present as they saw them when they drove by Mr. Louchbaum's residence. Mr. Larmand did not request to meet with Mr. Louchbaum alone. This request was made by Mr. Louchbaum. When Mr. Larmand and Mr. Louchbaum met privately, at Mr. Louchbaum's request, Mr. Larmand did not direct him away from Mr. Louchbaum's house to the open field area next to his house. Instead they went to the area closer to his neighbor, Jessie Harris. Rec. on App. at 35, ll 1-9; 110, ll 1-3; 150, ll 7-9. Mr. Larmand never hit, pushed or shoved Mr. Lochbaum before Mr. Lochbaum grabbed Mr.

Lemire. Rec. on App. at 144, ll 12-17. The melee that followed was described as a "chain reaction." Rec. on App. at 49, ll 5-6.

The State further argues that the circumstantial evidence in this case proves a conspiracy because Mr. Lemire approached Mr. Louchbaum saying "this is what you get when you f**k with my family." Brief of Resp. at 30. This statement only indicates a personal statement of Mr. Lemire. It does not indicate a joint venture of any type. Had Mr. Lemire said "this is what you get when you f**k with *our* family" then the sentence would have indicated a joint venture by Mr. Lemire and at least one other person. By using the word "my" Mr. Lemire is indicating his personal opinion and actions and not an opinion and action Mr. Larmand shared with him.

The State argues that because Mr. Larmand parked one-half mile away he planned on attacking Mr. Lochbaum. First, according to the scale of the Google Earth map used as an exhibit, the distance is slightly over 1,110 feet. The car was parked in the vicinity of several houses from which people could observe and describe the car. After the alleged attack they would both have to go over 1,000 feet to the automobile. The logic of placing a get away car so far from the scene of the alleged planned attack simply does not support the inference that the attack was planned by both Mr. Larmand and Mr. Lemire.

The State further argues that the fact that Mr. Larmand fled the scene also evidence of their guilt. In *State v. Grant*, 275 S.C.404, 272 S.E.2d 169 (1980) the South Carolina Supreme Court said "evidence of flight tends to be only marginally probative as to the ultimate issue of guilt or innocence." *Id.* at 408, 272 S.E.2d at 171. Under the facts of this case evidence of flight is even less than marginal. After the fight the firearm Mr. Lemire possessed was in the

hands of Mr. Louchbaum. Both Mr. Larmand and Mr. Lemire had been in a altercation with several individuals. They were out numbered. Mr. Jessie Harris testified that someone, he thought Mr. Lochbaum, told Mr. Larmand and Mr. Lemire to leave. Rec. on App. at 78, ll 18-25. They quickly left the scene. When the officer turned on his blue light, Mr. Larmand stopped his automobile and did not try to evade the police. Rec. on App. At 12, ll24-25 to 13, ll 1-3. Apparently Mr. Larmand was not even given a ticket for speeding. Rec. on App. at 14, ll 1-13.

Mr. Lemire testified that he was told to remain in the car. Rec. on App. at 441, ll 15-20. He did not leave the truck until after he heard a loud argument. Rec. on App. at 444, ll 13-16. He testified that his leaving the truck was not part of any plan or scheme.

This Court has held, when a case is based only upon circumstantial evidence, the evidence must be substantial. *State v. James*, 362 S.C. 557, 561, 608 S.E.2d 455, 457 (Ct. App. 2004). *See, also, Jackson v. Virginia*, 443 U.S. 307 (1979). The reason for such a rule is simple. A purely circumstantial evidence case is the only case ever tried in our criminal justice system in which every witness can tell the truth and an innocent man be convicted. While cross-examination may be effective in some cases to prove that a witness is not being truthful, cross-examination is seldom able to discredit the witness in a purely circumstantial evidence case because the witness is being truthful. Under the facts of this case there is simply no substantial evidence that Mr. Larmand planned any attack on Mr. Louchbaum. The facts are simply not sufficient to convict Mr. Larmand of the crimes for which he was convicted.

Question IV

Did the trial court err in failing to direct a verdict on the charge of conspiracy on the ground that the state failed to prove any facts that would reasonably

support an agreement between Frank Larmand and Leo Lemire to inflict an act of violence upon the person of Ryan Lochbaum?

For the reasons stated in Argument III above, the trial court should have directed a verdict on the conspiracy charge. As a practical matter, if a person is guilty of lynching the person also has to be guilty of conspiracy as the crime of lynching requires a prior agreement. While conspiracy may be proven by circumstantial evidence the evidence still must be substantial and be more than speculation.

The State argues that each individual factor may not be sufficient to convict but added together they do provide substantial evidence against Mr. Larmand. Brief of Resp. at 30-31. In essence, the State argues that the whole is greater than the individual parts. Such an argument is not sufficient to establish substantial circumstantial evidence to sustain the conviction. The facts proved by the state in this case all equally point to the innocence of Mr. Larmand. The state produced no substantial evidence of any agreement between Mr. Larmand and Mr. Lemire to injure or hurt Mr. Lochbaum.

Question V

Did the trial court err in failing to direct a verdict on the charge of presenting and pointing a firearm when the State has failed to prove a conspiracy and there was no other evidence sufficient to convict Frank Larmand for presenting and pointing a firearm?

The argument that the state failed to prove any agreement which is a necessary element to prove Mr. Larmand committed the crime of lynching or conspiracy, likewise applies to the argument as to a directed verdict on the charge of presenting and pointing a firearm. The

argument for Mr. Larmand on this issue would be the same argument made by Mr. Larmand in Argument III and IV stated above.

Question VI

Did the trial court err in charging the jury that they may infer that all persons present as members of a mob when an act of violence is committed are guilty as principles?

Issue Preservation

The State first argues that the issue of whether the inference charge given in this case is a charge on the facts in violation of Article V, § 21 of the Constitution of the State of South Carolina is not preserved. At the trial when the objection to the inference charge was being discussed, counsel for Mr. Lemire objected to the charge on the ground that it is unconstitutional. Rec. on App. at 495, ll 5-18; Rec. on App. at 278, ll 8-12. The trial court summarily denied the motion without asking for any further clarification. Unless this Court were to assume the trial judge did not know the Constitution of the State of South Carolina, the issue is preserved. The state asks too much when they required that an objection made at a trial be with the same clarity and specification as that on appeal. Trial counsel simply does not have the luxury of the time that appellate counsel has to articulate the issues on appeal. What the State has argued for is a perfect record on appeal and not a fair record. Just as a defendant is not entitled to a perfect trial but a fair trial, an appellate court is not entitled to a perfect record but a fair record. *State v. Page*, 378 S.C. 476, 663 S.E.2d 357 (Ct. App. 2008). At a Post Conviction Relief hearing the State would not argue that trial counsel need be perfect in their objections. The same rule should apply on appeal.

Discussion of Issue

The trial judge in this case gave confusing charges to the jury. The jury was instructed "please understand that if a crime is committed by two or more people who are acting together in committing a crime the act of one is the act of all," (Rec. on App. at 542, ll 20-22) "mere presence at the scene of a crime is not sufficient to convict as the principal on the theory of aiding and abetting." (Rec. on App. at 544, ll 9-11) and "it is permissible to infer that all persons present as members of a mob when an act of violence is committed have aided and abetted the crime and are actually guilty as principals." (Rec. on App. at 545, ll 5-11). The difficulty in reconciling these three statements is readily apparent.

To tell a jury they may infer a person is "actually guilty" from mere presence is a charge on the facts. Whether the inference is created by judicial decision or enacted by the legislature, telling a jury to infer guilt from the state proving certain facts is a comment on the facts and violates the Constitution of the State of South Carolina.

The jury charge in this case is confusing at best. A jury should not be required to make the fine distinction between knowing that to be a member of a mob means that a person has previously agreed to participate in an act of violence upon a person and their presence would make them a principal, and then are told that their presence there as a member of the mob makes them guilty as a principal. Surely a jury is going to assume that the inference means something. Add to the mix that they are also told that mere presence is not sufficient to convict and no reasonable juror would be able to understand what the charge means.

Evidence of confusion on the part of the jury is evidenced by the fact that after about four and one-half hours of deliberations, and after the foreman had received the written

instructions to carry into the jury room, they announced they had reached a verdict on three charges but not on the remaining charges. Under no analysis of the facts could the jury have reached a guilty verdict on three of the charges and then not to be able to reach a verdict on the other three as two of the three charges against Mr. Lemire required the participation of Mr. Larmand. All the charges against Mr. Larmand required the conviction of Mr. Lemire. The only charge the jury could have reached a verdict on that did not require the conviction of the co-defendant would have been presenting and pointing a firearm by Leo Lemire.

The State's discussion of the inference issue on page 34 of the brief simply confuses the issue more. What element of the crime of lynching is the inference used to help prove? Section 16-3-230 and § 16-3-240 cannot be read separately. Lynching is committed by a combination of a pre-existing intent to commit an act of violence and being present when the act is committed regardless of whether the person actually personally inflicts an act of violence. As that is the definition of lynching independent of the "inference" in § 16-3-240, the charge on an inference simply adds nothing to the definition and can only serve to confuse the jury.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the opening brief of appellant, the conviction of Francis Larmand should be reversed and this matter remanded with directions to enter a verdict of not guilty or order a new trial because of the erroneous judge charge on inference and the improper giving of the jury instruction to the foreman to be carried into the jury room without adequate instruction.

April 4, 2011



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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From York County
The Honorable William H. Seals, Jr., Circuit Court Judge
On Petition for Writ of Certiorari to the Court of Appeals
Appellate Case No. 2009-144086

THE STATE,

Petitioner,

vs.

FRANCIS LARMAND,

Respondent.

**PETITION FOR WRIT OF SUPERSEDEAS, OR
IN THE ALTERNATIVE, TO EXPEDITE**

Respondent Francis Larmand was convicted on October 22, 2009, of second degree lynching, conspiracy and pointing and presenting a firearm, and sentenced to ten years incarceration on the lynching conviction, with concurrent five year sentences on the other two convictions. By *en banc* Opinion filed March 13, 2013, the South Carolina Court of Appeals reversed Respondent's convictions, finding the circuit court erred in denying his directed verdict motion. Petitioner State of South Carolina filed a Petition for Rehearing on March 28, 2013. By Motion dated March 20, 2013, Respondent sought release on bond pending further proceedings in this appeal, which the State opposed. The Court of Appeals denied the Petition for Rehearing on May 16, 2013, and by separate Order filed the same day, granted Respondent's Motion for Appeal Bond. *See* Order, attached hereto as Exhibit A. For the reasons set forth below, the State seeks a writ of supersedeas staying the effect of the Order granting an appeal bond until this appeal is concluded. In the alternative, the State requests that consideration of this appeal be expedited.

1. Respondent was convicted by a jury after a two day trial with ten witnesses, including Respondent and his co-defendant. After sentencing, both Respondent and the co-defendant moved for an appeal bond before the circuit court. In denying the motions, the circuit court, which observed the witnesses and was in a position to make its own determinations regarding credibility, found “the nature of the crime was a violent act,” “there’s obviously bad blood between the defendants and the victim,” and “releasing [Respondent and his co-defendant] on bond would be a danger to the community.” (Record on Appeal [R.]. pp. 583-585). Respondent also moved for an appeal bond in the South Carolina Court of Appeals in December 2010, which was not granted. *See* Motion for Bond Pending Appeal, attached hereto as Exhibit B.

2. “The factors to be considered in admitting a person to bail pending appeal include the probability of reversal, the nature of the crime, the possibility of escape, and the character and circumstances of the Respondent.” *In Re: Michael H.*, 360 S.C. 540, 602 S.E.2d 729, 736 (2004) (citing *Nichols v. Patterson*, 202 S.C. 352, 25 S.E.2d 155 [1943]); *see also* Rule 243(k), SCACR (factors to be considered in determining whether to grant bail in a post-conviction relief matter).

4. Respondent’s Motion for Bond asserted he is entitled to bond pending appeal because: 1) this Court reversed his convictions; 2) he has no other criminal history; 3) he honored all bond conditions while the case was pending before the circuit court; 4) he has an excellent reputation in his community; and 5) if the State petitions for a writ of certiorari, a decision from the South Carolina Supreme Court could take up to a year or more. *See* Motion for Bond, attached hereto as Exhibit C. With one exception, Respondent made the exact same arguments before the circuit court, and before the Court of Appeals in December 2010, and the character statements attached to his May 2013 appeal bond motion are exactly the same statements submitted with his December 2010 motion. The **only** change in circumstances from December 2010 is the Court of

Appeals' reversal of Respondent's convictions on the directed verdict issue.

5. Simultaneous herewith, the State filed a Petition for Writ of Certiorari to the Court of Appeals in this case. For the reasons set forth in the Final Brief of Respondent, the Petition for Rehearing, and the Petition for Writ of Certiorari, the State submits the Court of Appeals erred as a matter of law in reversing Respondent's convictions, and there is a high probability of reversal by this Court. The State submits Respondent should remain incarcerated on the sentence properly imposed after the jury determined beyond a reasonable doubt that he and his co-defendant premeditated and carried out the violent attack on the victim.

7. Respondent's lack of prior criminal history or bond violations, and his community reputation prior to his conviction, do not differentiate him from many convicted criminals who appeal their convictions, and are required to remain incarcerated during appeal. Until the appellate process is complete, the March 13, 2013, Opinion is stayed, and Respondent still stands convicted of committing a premeditated act of violence on the victim, which included the use of a loaded gun. There is every reason to believe Respondent's time in prison may have exacerbated the "bad blood" the circuit court noted existed between Respondent and the victim that led to the violent attack in April 2009, and allowing Respondent to roam free in relatively close proximity to the victim makes the victim fear for his personal safety and the safety of his family. *See* Letter dated March 26, 2013, attached hereto as Exhibit D.

If the Court of Appeals Order granting an appeal bond stands, the State alternatively requests this case be considered on an expedited basis in light of the victim's safety concerns. Respondent's status must be resolved for the sake of all parties involved.

Based on the foregoing, as well as the arguments set forth in the Final Brief of Respondent, the Petition for Rehearing, and the Petition for Writ of Certiorari, the State of South

Carolina respectfully submits the May 16, 2013, Order from the Court of Appeals should be vacated, and Respondent required to continue to serve the sentence duly imposed upon his conviction. In the alternative, the case should be expedited to reach a final resolution of Respondent's status for the benefit of the victim, his family, and all parties involved.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

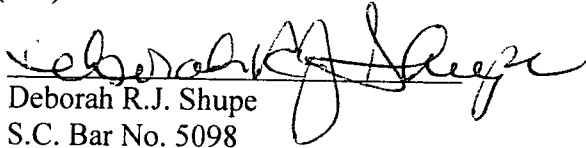
DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3797

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

Moss Justice Center
1675-1A York Highway
York, SC 29745
(803) 628-3025

By:


Deborah R.J. Shupe
S.C. Bar No. 5098

ATTORNEYS FOR RESPONDENT

May 29, 2013

Columbia, South Carolina

EXHIBIT A

The South Carolina Court of Appeals

The State, Respondent,

v.

Francis Larmand, Appellant.

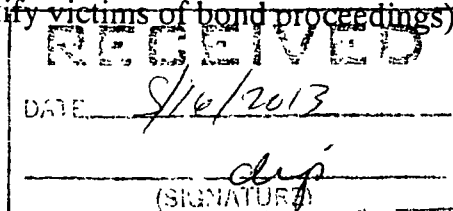
Appellate Case No. 2009-144086

ORDER

On March 13, 2013, this court reversed Appellant's convictions for second-degree lynching, conspiracy, and pointing and presenting a firearm because we found no evidence to support any conviction. *State v. Larmand*, 402 S.C. 184, 739 S.E.2d 898 (Ct. App. 2013) (en banc). We denied the State's petition for rehearing on May 16, 2013. Appellant has filed a motion to be released on bond. We grant the motion with the conditions set forth below.

Section 18-1-90 of the South Carolina Code (Supp. 2012) provides, "Bail may be allowed to the defendant in all cases in which the appeal is from the trial, conviction, or sentence for a criminal offense." Subsection 14-8-200(a) (Supp. 2012) provides, "The court [of appeals] has the same authority to . . . grant petitions for bail as the Supreme Court would have in a similar case." This court has authority to grant bail pursuant to these sections after reversing a defendant's conviction. *See In re Michael H.*, 360 S.C. 540, 552-53, 602 S.E.2d 729, 735-36 (2004) (affirming this court's decision to grant bail after reversal and remand for new trial).

The State filed a return to Appellant's motion opposing his release and representing it intends to petition the supreme court for a writ of certiorari. In a separate letter dated March 29, 2013, the State presented us with a letter from the victim dated March 26, 2013. We interpret the State's letter to be a representation that the State complied with the Victim's Rights Act. *See* S.C. Code Ann. § 16-3-1525 (2003 & Supp. 2012) (requiring the State to notify victims of bond proceedings). In



granting bail, we have considered this court's determination that no evidence supports any conviction, the record of Appellant's trial, the arguments made by Appellant and the State, the victim's letter, and other factors we are required to consider. See S.C. Code Ann. § 17-15-30 (Supp. 2012) (listing factors to be considered in granting bail); § 16-3-1525 (H)(3), (I)(3) (requiring imposition of "bond conditions which are sufficient to protect a victim from harassment or intimidation by the defendant or persons acting on the defendant's behalf"); *In re Michael H.*, 360 S.C. at 553, 602 S.E.2d at 736 (listing "factors to be considered in admitting a person to bail pending appeal"). See generally Rule 243(k), SCACR (listing factors to consider in granting bail on appeal from a post-conviction relief judgment). The State did not ask for any specific conditions of release.

Appellant may be released if he meets the following conditions:

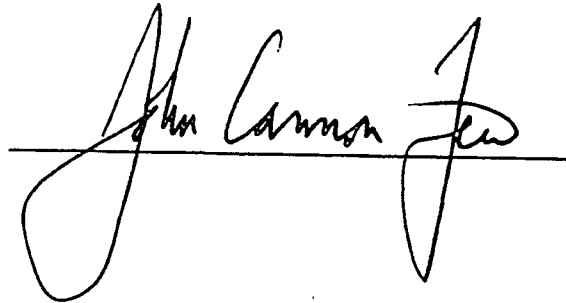
- (1) He must execute a surety appearance bond in the amount of \$10,000.00, to be approved and accepted by the York County clerk of court. Deposit of a cash percentage in lieu of bond pursuant to Code section 17-15-15 (2003) will not be permitted.
- (2) He may not leave the State of South Carolina. § 17-15-20(A) (Supp. 2012).
- (3) He must "be of good behavior toward all the citizens of the State." *Id.*
- (4) He may have no contact whatsoever with the victim, any member of the victim's family, or anyone associated with the victim's business.
- (5) He must stay more than one mile from the victim's residence at all times.
- (6) He must notify the clerk of this court and the York County clerk of court of his current address and any changes in his address.
- (7) He must immediately surrender to the York County sheriff upon any order of the circuit court, this court, or the supreme court.

Either party may petition this court to amend the conditions set forth above. See *In re Michael H.*, 360 S.C. at 552, 602 S.E.2d at 735 (stating "the Court of Appeals retains jurisdiction until [the supreme court] grants or denies a petition for certiorari" (citing Rule 221(b), SCACR)). This order no longer applies after remittitur is sent down pursuant to Rule 221, SCACR.

The circuit solicitor or attorney general may bring alleged violations of this order before the circuit court or this court. A finding by either court of a violation of this

order will result in the forfeiture of the appearance bond and the immediate issuance of a warrant for the arrest of Appellant.

For the court,

 C.J.

Columbia, South Carolina

cc: Deborah R.J. Shupe
C. Rauch Wise
John Dunlap Rhea
The Honorable David Hamilton, York County clerk of court

EXHIBIT B

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
The Honorable William H. Seals, Jr. Circuit Court Judge

Case N^o 2009-GS-46-02834
Case N^o 2009-GS-46-02835

The State,

Respondent,

vs.

Francis Larmand,

Appellant.

Motion for Bond Pending Appeal

Pursuant to Rule 246 of the South Carolina Appellate Court Rules, Francis Larmand, the Appellant herein, moves the Court for an order granting him bail in this matter.

This motion is based upon the following facts:

1. Francis Larmand was arrested on May 1, 2009 and indicted for the charges of lynching second degree, presenting and pointing a firearm, and conspiracy.
2. He was tried before the Honorable William H. Seals, Jr on October 20-23, 2009. He was convicted and sentenced to ten years imprisonment on the lynching second degree charge. He was given a concurrent five year sentence on the presenting and pointing a firearm

))
and conspiracy charge.

3. A Notice of Intent to Appeal was filed on October 28, 2009.

4. On June 14, 2010 Francis Larmand filed his brief in this matter. Prior to the filing the attorney for Mr. Larmand had requested one extension within which to file his brief. The state then requested two extension within which to file its brief. The second extension request was made on August 11, 2010. This Court granted both extensions. The brief of the state was due on September 27, 2010. Shortly before the due date for the brief the state then filed a request to consolidate the case of Mr. Larmand with his co-defendant. This court denied the request and ordered that the state's brief be filed on November 22, 2010. The state then requested a third extension to file the brief which this Court granted. The brief for the state is now due January 18, 2011.

5. On October 23, 2009 Mr. Larmand applied for bail pending appeal before the Honorable William H. Seals, Jr. This request was denied on the same date. Exhibit A attached.

6. Mr. Larmand alleges and believes that he is entitled to reasonable bail under S.C. Code § 18-1-90. This is based upon the following facts:

- a. Mr. Larmand has no criminal history.
- b. Mr. Larmand honored the conditions of his bond while the case was pending.
- c. As is evidenced by the attached affidavits, Mr. Larmand has an excellent reputation in the community for being a law bidding citizen.
- d. The issues in this case raise substantial questions which include whether the facts were sufficient to convict Mr. Larmand as he did not have a

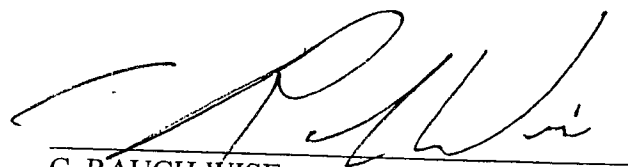
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firearm and did not point or present any firearm at Ryan Lochbaum. The sole basis for criminal liability was on a conspiracy theory or being present aiding and abetting. The case further raises the issue of the trial judge sending one copy of the written instructions to the jury, over the objection of Mr. Larmand, after the jury had been deliberating for over three hours. The copy was given only to the foreman without the other jurors present. The case also has the issue of whether the charge to the jury improperly used an inference that could have been improperly interpreted by the jury.

e. In the event this case is reversed for a re-trial and if Mr. Larmand is convicted, the maximum sentence he could receive under the new lynching law, S.C. Code § 16-3-210(D), is one year as Mr. Lochbaum did not receive a serious bodily injury.

Based upon the above, Francis Larmand, the appellant herein, hereby requests that this Court set a reasonable bond in this matter pending the final ruling by the appellate courts of South Carolina.

December 23, 2010



C. RAUCH WISE
305 Main Street
Greenwood, South Carolina 29649
(864) 229-5010
rauch@simplepc.net
S.C. Bar N^o 06188

Attorney for Francis Larmand

C O P Y

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
PLAINTIFF,)

VERSUS)

FRANCIS VICTOR LARMAND, JR.,)
LEO DAVID LEMIRE,)
DEFENDANTS.)

TRANSCRIPT OF RECORD
09-GS-46-02833
09-GS-46-02834
09-GS-46-02835
09-GS-46-02837
09-GS-46-02838
09-GS-46-02839

VOLUME IV
OCTOBER 23, 2009
YORK, SOUTH CAROLINA

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE, AND A JURY

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

FOR THE STATE:
ERIN JOYNER, ESQ., ASSISTANT SOLICITOR
JENNIFER COLTON, ASSISTANT SOLICITOR

FOR THE DEFENDANT, FRANCIS VICTOR LARMAND, JR.:
JOHN D. RHEA, ESQ.

FOR THE DEFENDANT, LEO DAVID LEMIRE:
LELAND GREELEY, ESQ.

Exhibit A

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

1 **FRIDAY, OCTOBER 23, 2009 - COURT IN SESSION - 11:00 A.M.**

2 THE COURT: MR. GREELEY.

3 MR. GREELEY: YOUR HONOR, MAY IT PLEASE THE COURT. WE'RE
4 BACK ON THE RECORD FROM LAST NIGHT. JUST BRIEFLY, LAST NIGHT THE
5 JURY RETURNED THREE VERDICTS OF GUILTY AGAINST MR. LARMAND AND
6 MR. LEMIRE, WHO ARE HERE BESIDE ME TODAY.

7 YOUR HONOR SENTENCED THEM TO TEN YEARS AND FIVE YEARS AND
8 FIVE YEARS, TO BE CONCURRENT ON THOSE CHARGES.

9 I AM AT THIS TIME-- FIRST OF ALL FROM A PROCEDURAL STANDPOINT
10 AND FOR THE RECORD, I WOULD JUST MAKE-- I DID NOT DO IT LAST NIGHT.
11 WE'RE GIVEN TEN DAYS TO DO IT AND I'M GOING TO DO IT RIGHT NOW THIS
12 MORNING.

13 ON BEHALF OF MR. LEMIRE, I'M GOING TO ASK THE COURT TO
14 CONSIDER AND ASK FOR A SETTING ASIDE OF THE VERDICT, SET A NEW
15 TRIAL BASED UPON THE ISSUES THAT WE HAD IN THE CASE, ESPECIALLY
16 INVOLVING THE JURY CHARGE THAT WAS SENT BACK TO THE JURY, AS WELL
17 AS THE OBJECTIONS THAT MR. RHEA AND I HAD REGARDING THE LYNCHING
18 PORTION THAT HIS HONOR HAD GIVEN, WHICH IS IN THE STATUTE. WE DO
19 UNDERSTAND THAT.

20 AND SO, BASED ON THOSE, I WOULD ASK FOR A NEW TRIAL ON BEHALF
21 OF MR. LEMIRE. I BELIEVE THAT MR. LARMAND'S MOTION WAS MADE LAST
22 NIGHT BY MR. RHEA.

23 THE COURT: ANY RESPONSE FROM THE SOLICITOR IN THAT REGARD?

1 MS. JOYNER: YOUR HONOR, WE JUST RESPECTFULLY ASK THE COURT
2 TO DENY THE MOTIONS FOR ALL REASONS THE PREVIOUS MOTIONS WERE
3 DENIED.

4 THE COURT: YOUR MOTION IS RESPECTFULLY DENIED. THANK YOU.

5 MR. GREELEY: YOUR HONOR, THE NEXT IS, MR. LARMAND HAS
6 ALLOWED ME TO SPEAK ON BEHALF OF HIM AND MR. RHEA. MR. RHEA IS
7 NOT ABLE TO BE HERE THIS MORNING. AND I WOULD LIKE TO SEE IF MR.
8 LARMAND DOES AGREE WITH THAT.

9 MR. LARMAND: VERY MUCH SO.

10 MR. GREELEY: OKAY. YOUR HONOR, ON BEHALF OF BOTH CLIENTS,
11 MR. LEMIRE, FIRST, IN REGARDS TO 09-GS-46-2837, 2838, AND 2839, WHICH ARE
12 THE INDICTMENTS FOR WHICH HE WAS FOUND GUILTY. AND ON BEHALF OF--
13 THAT WAS MR. LEMIRE.

14 AND IN REGARDS TO MR. LARMAND, 2833, 2834, AND 2835, I WOULD,
15 YOUR HONOR, PURSUANT TO TITLE 18-01-90 OF THE SOUTH CAROLINA CODE
16 WHICH ALLOWS FOR BAIL TO BE GIVEN WHEN AN APPEAL IS TAKEN, WHICH
17 WE ARE TAKING AN APPEAL. WE HAVE ALREADY DONE THE NOTICES OF
18 APPEAL AND THEY'RE GOING OUT IN THE MAIL TODAY TO THE PARTIES. I
19 WOULD ASK FOR THE COURT TO GIVE BOND TO OUR CLIENTS PENDING THAT
20 APPEAL.

21 I WOULD SUBMIT TO THE COURT, YOUR HONOR, THAT AS YOU'VE
22 ALREADY HEARD, THE CLIENTS HAVE NO PRIOR CRIMINAL RECORD. THEY
23 ARE FAMILY PEOPLE. THEY HAVE HAD BUSINESSES BEFORE. I DO NOT
24 BELIEVE THAT THEY WOULD BE A DANGER TO THE COMMUNITY AT ALL IN
25 REGARDS TO THIS. THEY HAVE BEEN OUT ON BAIL SINCE THIS OCCURRED

1 AND SINCE THEIR TRIAL. THEY HAVE ABIDED BY ALL THE RULES SINCE
2 THAT HAPPENED AND THEY MADE ALL THE APPEARANCES THEY WERE
3 SUPPOSED TO MAKE. AND SO, THERE IS, OTHER THAN THE CONVICTION,
4 THERE IS NO REASON TO BELIEVE THAT THEY WOULD EITHER BE A THREAT
5 TO THE COMMUNITY OR WOULD FLEE.

6 YOUR HONOR, ANOTHER REASON I'M ASKING FOR THE COURT TO
7 CONSIDER BAIL IS THE CHARGE FOR WHICH THEY WERE GIVEN TEN YEARS IS
8 A VIOLENT OFFENSE, TO MY UNDERSTANDING, WHICH IS THE LYNCHING,
9 SECOND DEGREE.

10 WE BELIEVE THAT WE HAVE A MERITORIOUS APPEAL REGARDING THE
11 LANGUAGE THAT WAS INSTRUCTED TO THE JURY REGARDING THE
12 PERMISSIVE INFERENCE AND IN LIGHT OF THE BELCHER CASE THAT CAME
13 DOWN TWO WEEKS AGO, TALKING ABOUT PERMISSIVE INFERENCES,
14 ESPECIALLY IN CASES INVOLVING SELF DEFENSE, AND ALSO IN THIS CASES.
15 WHERE IN THIS PARTICULAR CASE, THE COURT WAS INSTRUCTED, DID
16 INSTRUCT THE JURY ABOUT MERE PRESENCE. AND SO, YOU HAD A
17 PERMISSIBLE INFERENCE THAT WAS GIVEN OVER THE TOP OF MERE
18 PRESENCE IN REGARDS TO THE LYNCHING CHARGE.

19 GIVEN THESE CONVICTIONS, IF THEY HAVE TO REMAIN
20 INCARCERATED PENDING THE APPEAL THEY WILL BE INCARCERATED FOR A
21 YEAR AND A HALF OR TWO YEARS AS VIOLENT OFFENDERS.

22 WE WOULD LIKE TO HAVE THE LYNCHING AND THE OTHER CHARGES
23 REVIEWED PRIOR TO THEM HAVING TO UNDERGO SUCH AN INCARCERATION.
24 BECAUSE IF THAT IS SET ASIDE, THEN THEY WOULD HAVE HAD TO ENDURE
25 ONE AND A HALF TO TWO YEARS AS VIOLENT OFFENDERS IN THE SOUTH

1 CAROLINA DEPARTMENT OF CORRECTIONS, EVEN THOUGH OUR APPEAL MAY
2 END UP BEING, COULD VERY WELL END UP BEING SUCCESSFUL.

3 AND SO, I WOULD ASK FOR THE COURT TO GRANT A REASONABLE
4 APPEAL BOND UNDER SECTION 18-01-90 ON BOTH DEFENDANTS.

5 THE COURT: SOLICITOR.

6 MS. JOYNER: YOUR HONOR, I KNOW THAT SECTION. IF YOU WANT TO
7 GRANT IT, IT'S CLEARLY IN THE COURT'S DISCRETION. PURSUANT TO CASE,
8 IN THE INTEREST OF MICHAEL H., 360 SC 540, A SUPREME COURT CASE, SOUTH
9 CAROLINA SUPREME COURT CASE FROM 2004. THE FACTORS TO BE
10 CONSIDERED IN ADMITTING A PERSON TO BAIL PENDING APPEAL INCLUDE
11 THE PROBABILITY OF REVERSAL, THE NATURE OF THE CRIME AND THE
12 POSSIBILITY OF ESCAPE AND THE CHARACTER AND CIRCUMSTANCES OF THE
13 APPELLANT.

14 OBVIOUSLY, THEY HAVE NO PRIOR CRIMINAL RECORD OTHER THAN
15 THIS. THE STATE DOESN'T BELIEVES THERE'S A PROBABILITY OF REVERSAL
16 BASED ON THE ISSUES STATED BY MR. RHEA.

17 THE COURT: I AGREE WITH THE STATE AND ALSO FIND THAT THE
18 NATURE OF THE CRIME WAS A VIOLENT ACT. THERE'S OBVIOUS BAD BLOOD
19 BETWEEN THE DEFENDANTS AND THE VICTIM. AND I WOULD FIND THAT
20 RELEASING THEM ON BOND WOULD BE A DANGER TO THE COMMUNITY.

21 I'M GOING TO DENY THE MOTION ON BOTH PARTIES. THANK YOU.

22 MR. GREELEY: THANK YOU, JUDGE.

23 MS. JOYNER: THANK YOU, YOUR HONOR.

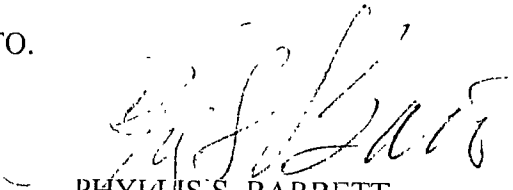
24 (WHEREUPON THE MATTER WAS ADJOURNED)

25

CERTIFICATE

I, THE UNDERSIGNED PHYLLIS S. BARRETT, OFFICIAL COURT REPORTER FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE TRIAL HELD IN THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR THE SIXTEENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, YORK COUNTY, ON THE 20TH, 21ST, 22ND, 23RD AND 24TH DAYS OF OCTOBER, 2009.

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



PHYLLIS S. BARRETT

06-29-2010

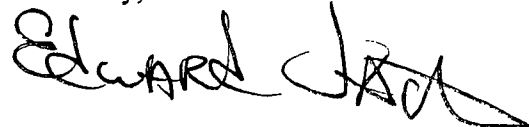
To whom it may concern,

My name is Edward Jackson, Chief Probation and Parole Officer for Mecklenburg County. I have known Frank Larmand about six years. We met at the ball park. Our sons played baseball for A. L Brown High School. We have had many opportunities to share and talk about our children's experiences as baseball players. During those four years I have witnessed a man who loves his family. He was there at every game to support, not only his son but the entire team.

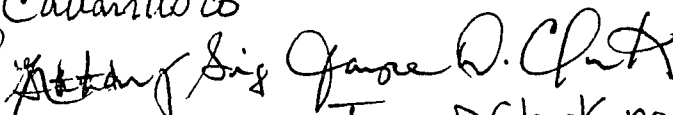
We know Frank as a dedicated father and husband. When our boys graduated from High School they attended Stanly Community College. The boys were roommates and remain very close friends. Frank and his wife treated my son as if he was his own. The day the boys moved into their apartment, Frank got a truck and loaded it with his son's personal things and made a special trip to my home to get my son's items. During the time the boys were roommates Frank and his wife made sure they had everything they needed.

My general impression of Frank is that he was a hard working family man. Frank was also a successful business owner of Pop a Lock and Frank's Auto Shop. He has even worked on my personal vehicle. Frank Larmand is a honest hardworking caring and loving person. He has shown nothing but love towards my family, especially the way he has treated my son. He deserves a second chance, we all do.

Sincerely, Edward Jackson



State of NC
County of Cabarrus

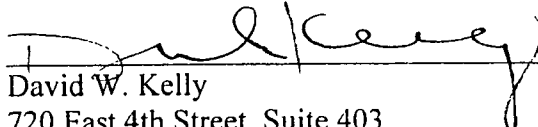

Joyce D. Clark notary
my commission expires 12/31/12

AFFIDAVIT

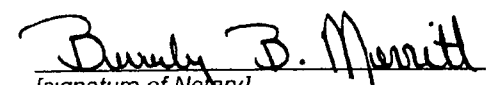
In the matter of Frank Larmand

1. I am an Assistant District Attorney for the 26th Prosecutorial District in North Carolina. I am a member of the North Carolina State Bar (Bar No. 32769). I have been a prosecutor in Charlotte, North Carolina, since 2004 and currently prosecute offenders under North Carolina's habitual felon law.
2. This affidavit is *not* prepared in my official capacity as a prosecutor nor in my capacity as a licensed attorney. I am not a licensed attorney in the State of South Carolina.
3. I have known Frank Larmand since the fall of 2006. I was the head coach of a competitive travel softball team on which his daughter, Ashley Larmand, played. Two of the many purposes of this team included providing a venue for the junior- and high-school aged players to have a positive and constructive activity in which to participate while they were not in school, while also preparing them to play at the collegiate level.
4. During my time coaching Ashley and the other players on my team, I came to know the parents who spent time at the ballfields, during practices and games, watching and supporting their daughters. Frank Larmand was one such parent.
5. Frank appeared as a supportive father, and supported not only his daughter, but also the other players on the team and entire team concept.
6. Frank volunteered to be available, whenever he was not working, to assist in drills or other practice activities as needed by the coaches. On occasion, I called upon Frank's volunteered services. His interaction with the players on the team was always positive.
7. Frank offered his place of business as a location for the team to conduct a carwash fundraiser where the players could raise money to pay tournament entry fees and to purchase uniforms.
8. Frank always acted in a courteous and professional manner in his interaction with me, as well as in his interaction with my two assistant coaches.
9. Having coached for approximately thirteen years and had several experiences with parents of bad character and quick tempers, it is always a relief to have parents of good character and high values -- such was the case with Frank.

10. Frank appeared to be a very hard worker in the operation of his own business. His obligation to earn a living for his family was the only obligation that would keep him away from a few of Ashley's games; otherwise, Frank was always present in support of his daughter and all of the other girls on the team.
11. If permitted release by the Court, I believe that Frank will take advantage of his time out of custody by working hard to support his family, just as he did before his incarceration.
12. Based upon my own daily professional experiences and my personal knowledge of Frank Larmand's character, I do not believe that Frank's release would pose any danger to the communities of North or South Carolina; in fact, I believe Frank's family and community would benefit from his presence.
13. Further, it is my belief that Frank does not pose a risk of flight. I believe that, if released, Frank would appear, as directed, at all court proceedings and comply with all court orders.


David W. Kelly
720 East 4th Street, Suite 403
Charlotte, NC 28202
704.686.0845 (tel)

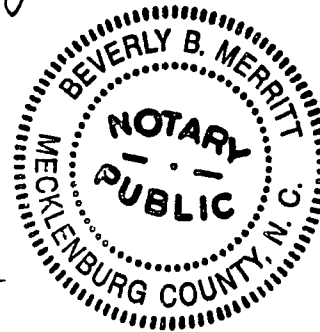
Subscribed and sworn to before me, this the 30th day of June, 2010.


[signature of Notary]
BEVERLY B. MERRITT
[printed name of Notary]

NOTARY PUBLIC

State of North Carolina, County of Mecklenburg

My commission expires: _____, 20____.



MY COMMISSION EXPIRES JULY 7, 2010

A. L. Brown High School

(704) 932-6125 • 415 EAST FIRST STREET • KANNAPOLIS, NC 28083

June 28, 2010

To the Honorable Court:

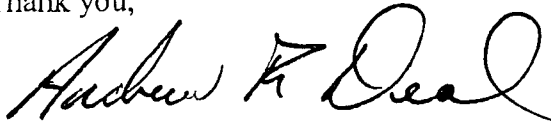
This correspondence is a character reference for Frank Larmond. I had the privilege to meet Frank about three and a half years ago when his daughter started playing softball for A. L. Brown High School. I serve as the assistant coach and the School Resource Officer at A. L. Brown and in that capacity I got to see Frank frequently.

Early on I saw that Frank was dedicated to his children. He often made it to at least some of his daughter's softball practices daily. He would help work with her after practice and offer to assist the softball team in anyway that he could. I can not remember many games, if any, that Frank was not present. Frank also operated two businesses in Kannapolis, one as a mechanic and the other as a locksmith. However, I never saw him put his work in front of his family.

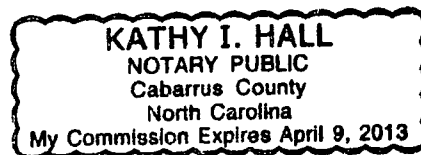
During the time that I have known Frank and his family I have never known him to be a violent person. I know under the circumstances now, Frank may be looked at differently by the court. However, I can only speak for how I knew Frank. I know that his family, especially his daughter, has taken this time in their life very hard. I know that they would appreciate and cherish the time that they would have together if Frank is allowed to be released on an appeal bond.

If you have any other questions or I can be of any assistance to the court, please feel free to contact me at 704-202-4188.

Thank you,



Andrew R. Deal
Kannapolis Police Department
School Resource Officer
A. L. Brown High School.



Kathy I. Hall
My Commission
Expires 4-9-2013

Affidavit for Frank Larmand

Written by Nick Safrit

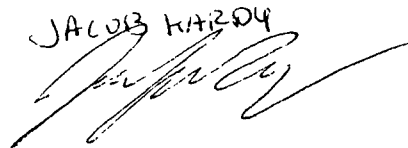
I am a Police Officer for the University of North Carolina at Charlotte for 6 years this August. I have known Frank just about 12 years. I met Frank while watching his kids David and Ashley, at an afterschool daycare for the YMCA. At that time Frank owned and still owns a business called Pop-a-Lock and went out of his way to help me when I would lock myself out of my vehicle. I locked myself out of my vehicle about 4 or 5 times and would not take any money from me stating that is what friends are for. During this time I also would house sit for Frank while him and his family went on vacation. When Frank and his family would return he would not take the key to house back and I still have it to this day. The entire time I have known Frank he went out of his way to make everybody happy. Frank has a love for his family and everyone he comes into contact with. Every time I would see Frank, he would always ask how my family is doing and if he could do anything to help. Frank is a hard working, loving, compassionate, friendly, family man who would give his shirt off his back to help someone out.

Frank is a man who I would trust my life and/or my family's life with. I have always looked up to Frank as a father figure and a person I would turn to if I was in trouble or needed advice. Frank is a outstanding human being and this world would be a better place if there were more people like Frank.

Signed



Nick Safrit



JACOB HARBO
My Commission Exp
June 17 2012

Kenneth S. Bogacz
121 Hurley Avenue
Dracut, MA, 01826

June 21, 2010

To Whom It May Concern:

My name is Kenneth Bogacz, I am a teacher in the Westford Public Schools, Westford, Massachusetts currently teaching computer and technology skills at the Blanchard Middle School. I have been a teacher for 25 years originally working with Special Education students and a Vocational educator before transitioning into an Elementary teacher and finally into my current position.

I have known Frank Larmand since 1984. I first came in contact with Frank Larmand when he was living with his mother in Lowell, Massachusetts. At that time, I was dating his sister. Frank was a high-energy boy who was struggling with the recent separation of his mother and father. During those early years, I came to know Frank as a person with a big heart and a gift for mechanics. I often found myself getting car advice and learning from this young man.

I later married his sister and was proud to have Frank as a brother-in-law. Because of our differences in age, we did not really connect socially, rather we would interact within the family and remained in contact as both our lives developed. It was later in our lives that we reconnected. At some point, Frank and his family moved to North Carolina.

Strangely enough, the move only served to bring our families closer together. My wife, children and I would look forward to our "Uncle Frankie" visits. Frank and his wife put great effort and planning to make time to visit each member of the family during his visits home, usually spending most of his vacation time with relatives. It was not unusual for Frank to spend his vacation repairing a friend's car or helping with household chores.

I cannot stress enough how much joy the "Uncle Frankie" visits brought to my family. We anxiously looked forward to the visit and reminisced long afterward. Here was a man and his family whose visit picked up like we saw him yesterday instead of six months ago. Annually, our families would come together several times a year, Frank and his family traveling north for the Holidays and our family traveling south for the April vacation. We often met at Myrtle Beach for several days of camping near the beach before we were welcomed back to his home in North Carolina.

This relationship continued, rather unremarkably for several years. Frank spent his time in North Carolina building an office furniture company before turning his focus on helping his wife grow a locksmith business. He later realized his own goal of owning and operating his own auto mechanic garage repair business.

All was well until the Spring of 2003. At that time I was diagnosed with cancer. Honestly it was a frightening time for me. Here I was a man in my early forties with a beautiful wife, two young children and many dreams of my own. I began the process: doctor visits, surgery and radiation treatments. Through out this time, it was Frank and his family who quietly kept track of my progress, carefully balancing their concern and my need for privacy.

In the spring of 2004 I was given the news that every cancer patient wants to hear. It was at that time I moved forward on a dream I had held for 20 years, to build a log cabin in the White Mountains of New Hampshire. So in the summer of 2004 I began. As soon as school let out, I broke ground and began building my retreat in the woods. As construction took off, I began to realize the scope of my task ahead. The building was going well, but one man and his 12 year son just wasn't going to be enough to get weather-tight before school began in September.

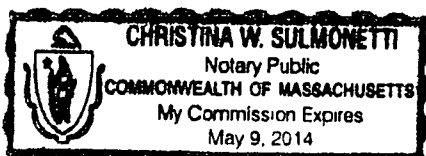
Out of nowhere, there was Frank. He traveled from North Carolina to spend several weeks working with me to complete the daunting task of finishing the upper walls and installing the main beam and roof rafters. The energy he brought revived me. No longer was I thinking I'd taken on too much. He worked, he laughed, he motivated. His spirit was contagious. He had come a thousand miles to work along side me while my own 3 brothers hadn't bother to even call to see how I was doing.

I've watched Frank Larmand grow from a young boy to a family man. He has become of man of integrity, family value and most recently perseverance. Thank God for his perseverance. He is a man who continually reinvents himself to provide for his family. In the course of my twenty-five year teaching career I have had the opportunity to interact with thousands of children. I can only hope each of them develop the high character that I've seen grow in Frank.

Respectfully,



Kenneth S. Bogacz, M. Ed.



July 1st, 2010

To whom it may concern,

My name is Matt Mitchem. I am a twenty year old collage student going to RCCC. I have worked at Super Target for almost two years. I have known Frank Larmand eight years. I met him through his son David. David and I played baseball and also went to school together.

Frank has been around for everything. I knew at every game I could look up into to the stands and know that he was there no matter where we were playing because he didn't miss a single game. He supported us no matter what the outcome of the game. He was there to help everyone that needed and asked for help.

He is at very outgoing man. It doesn't matter the task you put in front of him, he will help and go beyond what is asked of him. He put up a batting cage beside his house and allowed the team to come and hit on the weekends to get better. He never complained or asked for anything in return. Frank is the type of man that cares for others before himself.

Frank has done a lot for me. He was my mentor for my senior project. Since he owned his own auto shop business, I was allowed to work under him in it for my project. I took out a transmission for the first time at Frank's shop. I learned a lot about motors, how they work, and all the parts that make up one.

When I think of a great family man, Frank is the first person to come to my mind. His son David, and his daughter Ashley could always go to Frank for anything. He has become like a father to me. I was always welcomed to stay the night at his house, go to the lake to fish, swim, and go boating with him. Frank would always make sure we were all ok, doing well, and having fun.

Sincerely,



Matt Mitchem

On 7/3/210, I Tina Sutton-Nall
Notary Public for Cabarrus County witness
the signature of Matthew m. tchem
Tina Sutton Nall 7/3/10

Tina Sutton Nall
Cabarrus County
North Carolina
Expires June 23, 2012

Steve Grimes
606 Chrysler Street
Kannapolis, NC 28083

July 1, 2010

To Whom It May Concern:

My name is Steve Grimes. I am a small business owner in Kannapolis, NC. I own and operate an automobile garage and have done so for 9 years. Previous to purchasing my business, I was in management in the textile industry. My wife of 21 years is a registered nurse at CMC-Northeast in Concord, NC and was also previously in the textile industry.

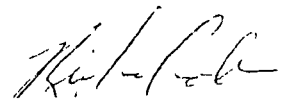
I have known Frank for 11 years. We actually met through our sons. Our sons were in class together at school. Like all of his son's friends, my son was invited for a sleepover at Frank's house. Frank and his family welcomed my son and my family with open arms from the very start of our friendship. Since day one, Frank has opened his home and his heart to me and my family. Frank would give anyone the shirt off of his back if it would help them.

Over time, Frank's son and my son became inseparable. One was always at the other's house to play or spend the night. Our families began to spend more and more time together. We shared family meals and holidays together. We began spending time at the lake together and even vacations to Myrtle Beach as best friends. My wife and I learned of Frank's good hearted nature towards everyone that he meets. Frank is like a brother to me.

Frank is always so willing to give a helping hand. If I needed help with working on a car or motorcycle, Frank was the one person who volunteered to give a hand. When we were riding ATVs in the snow and I injured my shoulder, Frank and his wife were insistant to watch my son while my wife took me to the hospital for x-rays.

Before I purchased my business, I was laid off from work for 3 monthes. Frank was willing to give me a job with his locksmith

7/1/2010



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business to help me provide for my family. Even with knowing the job was temporary, Frank took his personal time to train me for the task. Frank's concern for my family was as true and deep as my concern for my family.

More recently, my son and his wife lost their is first child. Frank and his wife were by our sides throughout the grief. Frank was willing to help in any way that I or my family needed him. That is how Frank is to everyone.

Frank has a heart bigger than most people. He shows kindness and love to everyone he meets. Frank is a positive attitude that is needed in the world today. He is kind, helpful and full of love for others. I am so blessed to have Frank as my friend. I wish more people had the opportunity to know Frank as I know him.

Respectfully submitted,

Steve M. Grimes

7/1/2010
Rick [Signature]
7/25/2010

Jerry W. Herman
2019 Applegate Drive
Concord, NC 28027

July 1, 2010

To Whom It May Concern:

My name is Jerry Herman; I own a cabinet shop, Crafted Cabinet Designs, in Concord, NC. I have been a self employed business owner for 15 years. My wife, Telka Herman is a Home Care Specialist with Advanced Home Care, also here in Concord, NC and has been employed with them for 25 years.

We first met Frank Larmand about 7 years ago through mutual friends. After learning he was a business owner also, we began using his services both as a locksmith and a mechanic, both of which he excelled at. Frank has always been honest and fair, not only with us but with others we referred to him and his employees. He always has a smile on his face and is ready to help others even if they are strangers. Over the years, I have spent time with Frank on fishing trips to Oak Island, NC and other places and weekends at High Rock Lake, NC where we are "rental neighbors". He is always surrounded by family and it is very evident that family is his first priority. Many weekends he would not be at our weekend getaway because his teenage children had sporting events, sometimes out of state, and he always supported them by being an active part of their lives and an encouraging father.

Last year, over Memorial Day Weekend, our home was burglarized while we were away. We were devastated. My gun safe housed some important documents and valuables, and all we knew was that the criminals had broken the lock. We could not open it and there was no one around on a holiday weekend to call. But, there was Frank. He heard about what had happened and came to our rescue. In no time, he had opened the safe and eased our minds that our valuables were still safe. That was payment enough for Frank; he would not accept our offer to pay him for his expertise. That's the kind of friend he is.

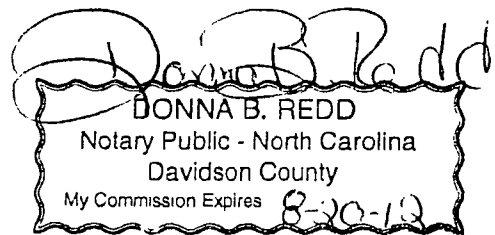
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We, as a family, have grown to know and love not only Frank, but his entire family. He is a dependable caring friend, always there when you need him and willing to help with nothing expected in return. We have seen how much his family misses and needs him to be back in their lives and our hearts ache for them. In our opinion, Frank is one of the most caring and loyal people we have ever had the privilege of knowing.

Sincerely,

Jerry W. Herman

Jerry W. Herman



Jerry Ray Herman
1263 Clyde Fitzgerald Road
Linwood, NC 27299

July 2, 2010

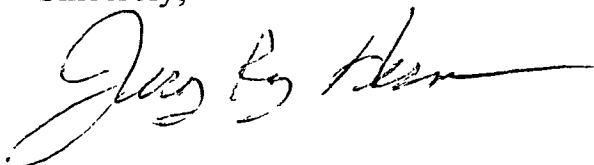
To Whom It May Concern:

My name is Jerry Ray Herman. I am retired. I have known Frank Larmand for approximately 5 years as a business owner and friend. I have never known Frank to do anything except set a good example for his family and friends. He has always been extremely honest as a business owner and very loyal as a friend and will help anyone that needs his help. As my neighbor at High Rock Lake, I have needed his help many times and he has never turned me down. Always ready to lend a helping hand when needed. He has worked on my truck and boat for just a thank you.

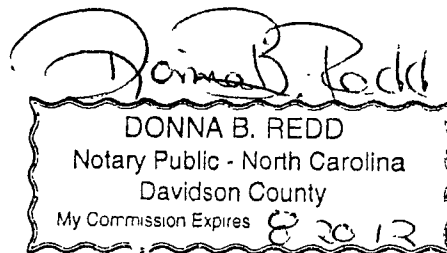
Frank is a very loving father and husband and has always shown how important his family is to him. His children have played sports and he never misses the opportunity to support them and be there to cheer them on.

Frank needs to be with his family where he can continue to be the fantastic father that I know him to be. I have grown to love Frank and his family and can't wait for him to be within our presence soon.

Sincerely,



Jerry Ray Herman



David A. Mariano
3070 Bingham Drive
Concord, NC 28027

July 1, 2010

To Whom It May Concern:

My name is David Mariano. I am currently employed with Advanced Home Care. I was previously employed with the Kannapolis Home Depot for 11 years. I have known Frank Larmand for 8 years. I met Frank through another friend and our friendship began to grow.

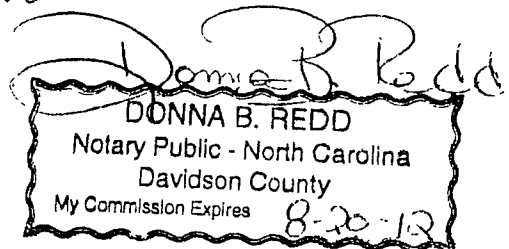
Frank is a local business owner in Kannapolis. He owns a Locksmith business and an Automobile Mechanic Shop. He has gotten my family and myself out of several automobile problems and never accepted any money for his services. He always puts other first. He is the most respectable person I know and with Frank, family comes first. You can always tell a lot about a man by the way his children turn out. That brings me to his stepson, David. He has "stepped up to the plate" and is doing his very best to keep the family locksmith business going. Now the way I see it, if a man is going to raise a kid with that kind of family values he has to be a pretty descent, law abiding citizen.

In closing, I know how hard it is to make friends when you're young and how hard it is to keep friends when you're older. I consider myself very fortunate to have met and kept a great friend like Frank in my adult life.

Sincerely,

David A. Mariano

David A. Mariano



David Bailey
4210 Fringewood Dr
Concord, NC 28025

June 28, 2010

To Whom It May Concern:

My name is David Bailey. I have worked for the State of North Carolina for 25 years. I have known Frank Larmand for 5 years. Frank owned a repair shop in Concord. Frank was certified to perform N.C. State vehicle inspections at his place of business. This was how I met Frank. It was part of my duties to complete quarterly audits at Frank's place of business. During all these audits, Frank never had a single violation. Frank was always very professional and kept his records and station in excellent order. Many times during an audit, customers would drop by and ask Frank questions about their vehicles. Frank would always go the extra mile to help people and often would not even charge them. Frank was always very friendly and outgoing and would gladly help anyone he could. Frank often spoke about his family and how much he loves them.

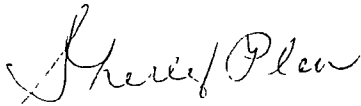
In closing, I think Frank Larmand is a man of excellent character, a wonderful family man, and a credit to this community.

Sincerely,

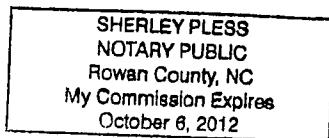


David Bailey

Acknowledged before me this 29th day of June 2010



10-06-2012



Member
ASSOCIATED LOCKSMITHS OF AMERICA, INC.
recognizes that

Frank Larmand

is a member in good standing and is entitled to the rights and privileges as provided in the bylaws and, as such has agreed to abide by the Code of Ethics of ALOA, effective January 1, 2009 to December 31, 2009.

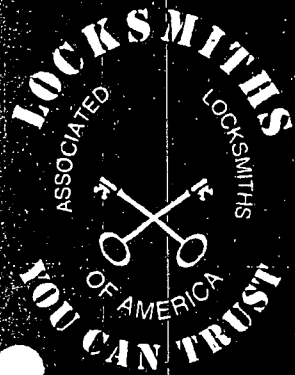
MEMBER SINCE
2009

David Lowell, CML, CMST

David Lowell, CML, CMST
Executive Director

Ken Kupferman, CML CPS

Ken Kupferman, CML, CPS
ALOA President



2009

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
The Honorable William H. Seals, Jr. Circuit Court Judge

Case N^o 2009-GS-46-02834

Case N^o 2009-GS-46-02835

The State,

Respondent,

vs.

Francis Larmand,

Appellant

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the receptionist for C. Rauch Wise, Attorney for the Appellant in the above entitled case. That on January 6, 2003, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Motion for Bond Pending Appeal in the above case addressed to Deborah R.J. Shupe, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211-1549.

SWORN to and Subscribed

Sandy Traynham

before me this 23 day

of December, 2010.

Mary Jane Harter (L.S.)

Notary Public for South Carolina

My Commission expires: 1/24/10

EXHIBIT C

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
The Honorable William H. Seals, Jr. Circuit Court Judge

The State,

Respondent,

vs.

Francis Larmand,

Appellant.

Opinion No. 5097

Motion for Bond

Pursuant to Rule 246 of the South Carolina Appellate Court Rules, Francis Larmand, the Appellant herein, moves the Court for an order granting him a bond in this matter.

This motion is based upon the following facts:

1. Francis Larmand was arrested on May 1, 2009 and indicted for the charges of lynching second degree, presenting and pointing a firearm, and conspiracy.
2. He was tried before the Honorable William H. Seals, Jr on October 20-23, 2009. He was convicted and sentenced to ten years imprisonment on the lynching second degree charge. He was given a concurrent five year sentence on the presenting and pointing a firearm

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DATE	3/25/2013
P830	(SIGNATURE) <i>[Signature]</i>

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and conspiracy charge.

3. On March 13, 2013 this Court reversed the conviction of Francis Larmand on the ground that the facts were not sufficient to convict.

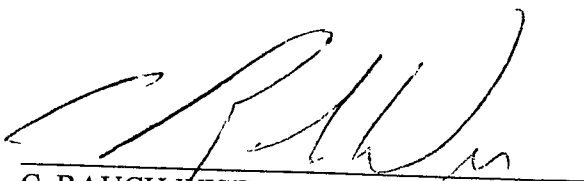
4. Mr. Larmand alleges and believes that he is entitled to reasonable bond under S.C. Code § 18-1-90 and *In the Interest of Michael H.*, 360 S.C. 540, 602 S.E.2d 729 (2004).

This request for bond pending further appeal by the state is based upon the following facts:

- a. Mr. Larmand has no criminal history.
- b. Mr. Larmand honored the conditions of his bond while the case was pending for trial.
- c. If the State applies for a petition for writ of certiorari the decision by the South Carolina Supreme Court could take up to one year or more.
- d. As is evidenced by the attached affidavits, Mr. Larmand has an excellent reputation in the community for being a law abiding citizen.

WHEREFORE, ased upon the above, Francis Larmand, the appellant herein, hereby requests that this Court set a reasonable amount for a bond in this matter pending any further action by the State of South Carolina.

March 20, 2013



C. RAUCH WISE
305 Main Street
Greenwood, South Carolina 29649
(864) 229-5010
rauch@simplepc.net
S.C. Bar N^o 06188

Attorney for Francis Larmand

06-29-2010

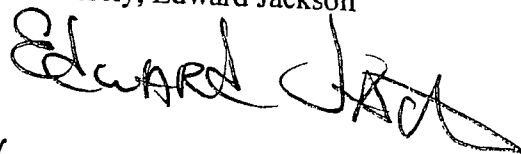
To whom it may concern,

My name is Edward Jackson, Chief Probation and Parole Officer for Mecklenburg County. I have known Frank Larmand about six years. We met at the ball park. Our sons played baseball for A. L Brown High School. We have had many opportunities to share and talk about our children's experiences as baseball players. During those four years I have witnessed a man who loves his family. He was there at every game to support, not only his son but the entire team.

We know Frank as a dedicated father and husband. When our boys graduated from High School they attended Stanly Community College. The boys were roommates and remain very close friends. Frank and his wife treated my son as if he was his own. The day the boys moved into their apartment, Frank got a truck and loaded it with his son's personal things and made a special trip to my home to get my son's items. During the time the boys were roommates Frank and his wife made sure they had everything they needed.

My general impression of Frank is that he was a hard working family man. Frank was also a successful business owner of Pop a Lock and Frank's Auto Shop. He has even worked on my personal vehicle. Frank Larmand is a honest hardworking caring and loving person. He has shown nothing but love towards my family, especially the way he has treated my son. He deserves a second chance, we all do.

Sincerely, Edward Jackson



State of NC
County of Cabarrus

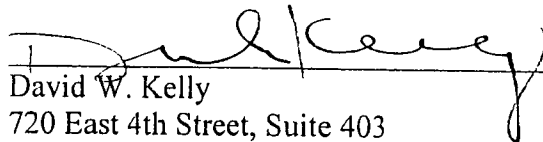
Attest: 
Joyce D. Clark Notary
my commission expires: 10/1/11 P832

AFFIDAVIT

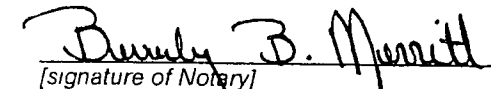
In the matter of Frank Larmand

1. I am an Assistant District Attorney for the 26th Prosecutorial District in North Carolina. I am a member of the North Carolina State Bar (Bar No. 32769). I have been a prosecutor in Charlotte, North Carolina, since 2004 and currently prosecute offenders under North Carolina's habitual felon law.
2. This affidavit is *not* prepared in my official capacity as a prosecutor nor in my capacity as a licensed attorney. I am not a licensed attorney in the State of South Carolina.
3. I have known Frank Larmand since the fall of 2006. I was the head coach of a competitive travel softball team on which his daughter, Ashley Larmand, played. Two of the many purposes of this team included providing a venue for the junior- and high-school aged players to have a positive and constructive activity in which to participate while they were not in school, while also preparing them to play at the collegiate level.
4. During my time coaching Ashley and the other players on my team, I came to know the parents who spent time at the ballfields, during practices and games, watching and supporting their daughters. Frank Larmand was one such parent.
5. Frank appeared as a supportive father, and supported not only his daughter, but also the other players on the team and entire team concept.
6. Frank volunteered to be available, whenever he was not working, to assist in drills or other practice activities as needed by the coaches. On occasion, I called upon Frank's volunteered services. His interaction with the players on the team was always positive.
7. Frank offered his place of business as a location for the team to conduct a carwash fundraiser where the players could raise money to pay tournament entry fees and to purchase uniforms.
8. Frank always acted in a courteous and professional manner in his interaction with me, as well as in his interaction with my two assistant coaches.
9. Having coached for approximately thirteen years and had several experiences with parents of bad character and quick tempers, it is always a relief to have parents of good character and high values -- such was the case with Frank.

10. Frank appeared to be a very hard worker in the operation of his own business. His obligation to earn a living for his family was the only obligation that would keep him away from a few of Ashley's games; otherwise, Frank was always present in support of his daughter and all of the other girls on the team.
11. If permitted release by the Court, I believe that Frank will take advantage of his time out of custody by working hard to support his family, just as he did before his incarceration.
12. Based upon my own daily professional experiences and my personal knowledge of Frank Larmand's character, I do not believe that Frank's release would pose any danger to the communities of North or South Carolina; in fact, I believe Frank's family and community would benefit from his presence.
13. Further, it is my belief that Frank does not pose a risk of flight. I believe that, if released, Frank would appear, as directed, at all court proceedings and comply with all court orders.


David W. Kelly
720 East 4th Street, Suite 403
Charlotte, NC 28202
704.686.0845 (tel)

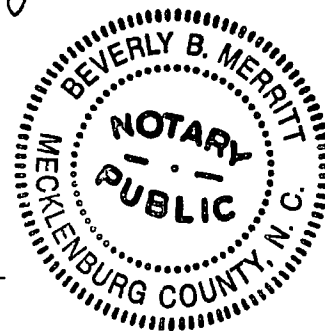
Subscribed and sworn to before me, this the 30th day of June, 2010.


[signature of Notary]
BEVERLY B. MERRITT
[printed name of Notary]

NOTARY PUBLIC

State of North Carolina, County of Mecklenburg

My commission expires: _____, 20____.



MY COMMISSION EXPIRES JULY 7, 2010

A.L. Brown High School

(704) 932-6125 • 415 EAST FIRST STREET • KANNAPOLIS, NC 28083

June 28, 2010

To the Honorable Court:

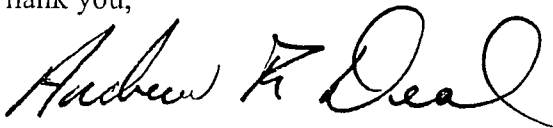
This correspondence is a character reference for Frank Larmond. I had the privilege to meet Frank about three and a half years ago when his daughter started playing softball for A. L. Brown High School. I serve as the assistant coach and the School Resource Officer at A. L. Brown and in that capacity I got to see Frank frequently.

Early on I saw that Frank was dedicated to his children. He often made it to at least some of his daughter's softball practices daily. He would help work with her after practice and offer to assist the softball team in anyway that he could. I can not remember many games, if any, that Frank was not present. Frank also operated two businesses in Kannapolis, one as a mechanic and the other as a locksmith. However, I never saw him put his work in front of his family.

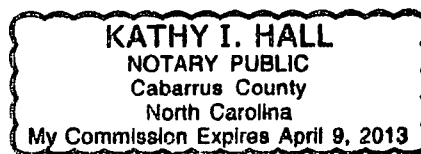
During the time that I have known Frank and his family I have never known him to be a violent person. I know under the circumstances now, Frank may be looked at differently by the court. However, I can only speak for how I knew Frank. I know that his family, especially his daughter, has taken this time in their life very hard. I know that they would appreciate and cherish the time that they would have together if Frank is allowed to be released on an appeal bond.

If you have any other questions or I can be of any assistance to the court, please feel free to contact me at 704-202-4188.

Thank you,



Andrew R. Deal
Kannapolis Police Department
School Resource Officer
A. L. Brown High School.



Kathy I. Hall
my commission
expires 4-9-2013

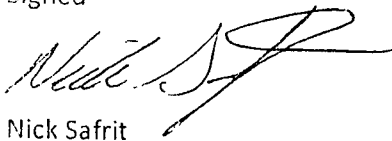
Affidavit for Frank Larmand

Written by Nick Safrit

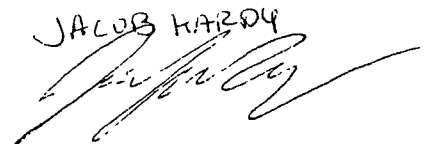
I am a Police Officer for the University of North Carolina at Charlotte for 6 years this August. I have known Frank just about 12 years. I met Frank while watching his kids David and Ashley, at an afterschool daycare for the YMCA. At that time Frank owned and still owns a business called Pop-a-Lock and went out of his way to help me when I would lock myself out of my vehicle. I locked myself out of my vehicle about 4 or 5 times and would not take any money from me stating that is what friends are for. During this time I also would house sit for Frank while him and his family went on vacation. When Frank and his family would return he would not take the key to house back and I still have it to this day. The entire time I have known Frank he went out of his way to make everybody happy. Frank has a love for his family and everyone he comes into contact with. Every time I would see Frank, he would always ask how my family is doing and if he could do anything to help. Frank is a hard working, loving, compassionate, friendly, family man who would give his shirt off his back to help someone out.

Frank is a man who I would trust my life and/or my family's life with. I have always looked up to Frank as a father figure and a person I would turn to if I was in trouble or needed advice. Frank is a outstanding human being and this world would be a better place if there were more people like Frank.

Signed



Nick Safrit



My Commission Exp
June 17 2012

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Kenneth S. Bogacz
121 Hurley Avenue
Dracut, MA, 01826

June 21, 2010

To Whom It May Concern:

My name is Kenneth Bogacz, I am a teacher in the Westford Public Schools, Westford, Massachusetts currently teaching computer and technology skills at the Blanchard Middle School. I have been a teacher for 25 years originally working with Special Education students and a Vocational educator before transitioning into an Elementary teacher and finally into my current position.

I have known Frank Larmand since 1984. I first came in contact with Frank Larmand when he was living with his mother in Lowell, Massachusetts. At that time, I was dating his sister. Frank was a high-energy boy who was struggling with the recent separation of his mother and father. During those early years, I came to know Frank as a person with a big heart and a gift for mechanics. I often found myself getting car advice and learning from this young man.

I later married his sister and was proud to have Frank as a brother-in-law. Because of our differences in age, we did not really connect socially, rather we would interact within the family and remained in contact as both our lives developed. It was later in our lives that we reconnected. At some point, Frank and his family moved to North Carolina.

Strangely enough, the move only served to bring our families closer together. My wife, children and I would look forward to our "Uncle Frankie" visits. Frank and his wife put great effort and planning to make time to visit each member of the family during his visits home, usually spending most of his vacation time with relatives. It was not unusual for Frank to spend his vacation repairing a friend's car or helping with household chores.

I cannot stress enough how much joy the "Uncle Frankie" visits brought to my family. We anxiously looked forward to the visit and reminisced long afterward. Here was a man and his family whose visit picked up like we saw him yesterday instead of six months ago. Annually, our families would come together several times a year, Frank and his family traveling north for the Holidays and our family traveling south for the April vacation. We often met at Myrtle Beach for several days of camping near the beach before we were welcomed back to his home in North Carolina.

This relationship continued, rather unremarkably for several years. Frank spent his time in North Carolina building an office furniture company before turning his focus on helping his wife grow a locksmith business. He later realized his own goal of owning and operating his own auto mechanic garage repair business.

All was well until the Spring of 2003. At that time I was diagnosed with cancer. Honestly it was a frightening time for me. Here I was a man in my early forties with a beautiful wife, two young children and many dreams of my own. I began the process: doctor visits, surgery and radiation treatments. Through out this time, it was Frank and his family who quietly kept track of my progress, carefully balancing their concern and my need for privacy.

In the spring of 2004 I was given the news that every cancer patient wants to hear. It was at that time I moved forward on a dream I had held for 20 years, to build a log cabin in the White Mountains of New Hampshire. So in the summer of 2004 I began. As soon as school let out, I broke ground and began building my retreat in the woods. As construction took off, I began to realize the scope of my task ahead. The building was going well, but one man and his 12 year son just wasn't going to be enough to get weather-tight before school began in September.

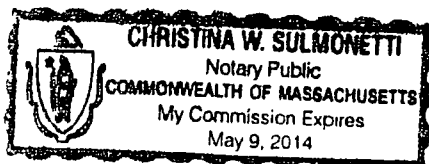
Out of nowhere, there was Frank. He traveled from North Carolina to spend several weeks working with me to complete the daunting task of finishing the upper walls and installing the main beam and roof rafters. The energy he brought revived me. No longer was I thinking I'd taken on too much. He worked, he laughed, he motivated. His spirit was contagious. He had come a thousand miles to work along side me while my own 3 brothers hadn't bother to even call to see how I was doing.

I've watched Frank Larmand grow from a young boy to a family man. He has become of man of integrity, family value and most recently perseverance. Thank God for his perseverance. He is a man who continually reinvents himself to provide for his family. In the course of my twenty-five year teaching career I have had the opportunity to interact with thousands of children. I can only hope each of them develop the high character that I've seen grow in Frank.

Respectfully,



Kenneth S. Bogacz, M. Ed.



July 1st, 2010

To whom it may concern,

My name is Matt Mitchem. I am a twenty year old collage student going to RCCC. I have worked at Super Target for almost two years. I have known Frank Larmand eight years. I met him through his son David. David and I played baseball and also went to school together.

Frank has been around for everything. I knew at every game I could look up into to the stands and know that he was there no matter where we were playing because he didn't miss a single game. He supported us no matter what the outcome of the game. He was there to help everyone that needed and asked for help.

He is at very outgoing man. It doesn't matter the task you put in front of him, he will help and go beyond what is asked of him. He put up a batting cage beside his house and allowed the team to come and hit on the weekends to get better. He never complained or asked for anything in return. Frank is the type of man that cares for others before himself.

Frank has done a lot for me. He was my mentor for my senior project. Since he owned his own auto shop business, I was allowed to work under him in it for my project. I took out a transmission for the first time at Frank's shop. I learned a lot about motors, how they work, and all the parts that make up one.

When I think of a great family man, Frank is the first person to come to my mind. His son David, and his daughter Ashley could always go to Frank for anything. He has become like a father to me. I was always welcomed to stay the night at his house, go to the lake to fish, swim, and go boating with him. Frank would always make sure we were all ok, doing well, and having fun.

Sincerely,



Matt Mitchem

On 7/3/2010, I Tina Sutton-Nall
Notary Public for Cabarrus County witness
the signature of Matthew Mitchem
Tina Sutton-Nall 7/3/10

Tina Sutton-Nall
Cabarrus County
North Carolina
Expires June 23, 2012

Steve Grimes
606 Chrysler Street
Kannapolis, NC 28083

July 1, 2010

To Whom It May Concern:

My name is Steve Grimes. I am a small business owner in Kannapolis, NC. I own and operate an automobile garage and have done so for 9 years. Previous to purchasing my business, I was in management in the textile industry. My wife of 21 years is a registered nurse at CMC-Northeast in Concord, NC and was also previously in the textile industry.

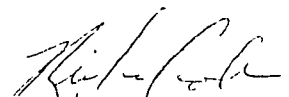
I have known Frank for 11 years. We actually met through our sons. Our sons were in class together at school. Like all of his son's friends, my son was invited for a sleepover at Frank's house. Frank and his family welcomed my son and my family with open arms from the very start of our friendship. Since day one, Frank has opened his home and his heart to me and my family. Frank would give anyone the shirt off of his back if it would help them.

Over time, Frank's son and my son became inseparable. One was always at the other's house to play or spend the night. Our families began to spend more and more time together. We shared family meals and holidays together. We began spending time at the lake together and even vacations to Myrtle Beach as best friends. My wife and I learned of Frank's good hearted nature towards everyone that he meets. Frank is like a brother to me.

Frank is always so willing to give a helping hand. If I needed help with working on a car or motorcycle, Frank was the one person who volunteered to give a hand. When we were riding ATVs in the snow and I injured my shoulder, Frank and his wife were insistant to watch my son while my wife took me to the hospital for x-rays.

Before I purchased my business, I was laid off from work for 3 monthes. Frank was willing to give me a job with his locksmith

7/1/2010



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business to help me provide for my family. Even with knowing the job was temporary, Frank took his personal time to train me for the task. Frank's concern for my family was as true and deep as my concern for my family.

More recently, my son and his wife lost their first child. Frank and his wife were by our sides throughout the grief. Frank was willing to help in any way that I or my family needed him. That is how Frank is to everyone.

Frank has a heart bigger than most people. He shows kindness and love to everyone he meets. Frank is a positive attitude that is needed in the world today. He is kind, helpful and full of love for others. I am so blessed to have Frank as my friend. I wish more people had the opportunity to know Frank as I know him.

Respectfully submitted,

Steve M. Grimes

7/1/2010

Rich P.C.
7/25/2010

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Jerry W. Herman
2019 Applegate Drive
Concord, NC 28027

July1, 2010

To Whom It May Concern:

My name is Jerry Herman; I own a cabinet shop, Crafted Cabinet Designs, in Concord, NC. I have been a self employed business owner for 15 years. My wife, Telka Herman is a Home Care Specialist with Advanced Home Care, also here in Concord, NC and has been employed with them for 25 years.

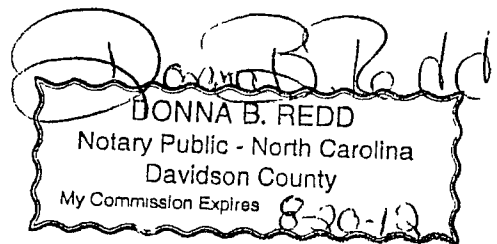
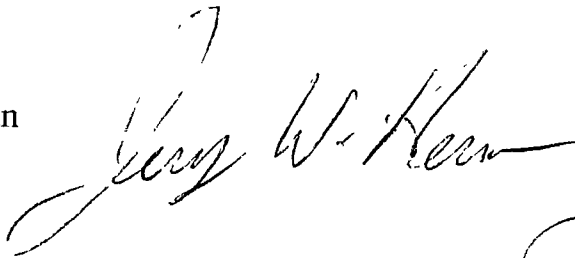
We first met Frank Larmand about 7 years ago through mutual friends. After learning he was a business owner also, we began using his services both as a locksmith and a mechanic, both of which he excelled at. Frank has always been honest and fair, not only with us but with others we referred to him and his employees. He always has a smile on his face and is ready to help others even if they are strangers. Over the years, I have spent time with Frank on fishing trips to Oak Island, NC and other places and weekends at High Rock Lake, NC where we are "rental neighbors". He is always surrounded by family and it is very evident that family is his first priority. Many weekends he would not be at our weekend getaway because his teenage children had sporting events, sometimes out of state, and he always supported them by being an active part of their lives and an encouraging father.

Last year, over Memorial Day Weekend, our home was burglarized while we were away. We were devastated. My gun safe housed some important documents and valuables, and all we knew was that the criminals had broken the lock. We could not open it and there was no one around on a holiday weekend to call. But, there was Frank. He heard about what had happened and came to our rescue. In no time, he had opened the safe and eased our minds that our valuables were still safe. That was payment enough for Frank; he would not accept our offer to pay him for his expertise. That's the kind of friend he is.

We, as a family, have grown to know and love not only Frank, but his entire family. He is a dependable caring friend, always there when you need him and willing to help with nothing expected in return. We have seen how much his family misses and needs him to be back in their lives and our hearts ache for them. In our opinion, Frank is one of the most caring and loyal people we have ever had the privilege of knowing.

Sincerely,

Jerry W. Herman



Jerry Ray Herman
1263 Clyde Fitzgerald Road
Linwood, NC 27299

July 2, 2010

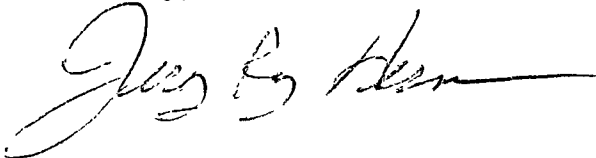
To Whom It May Concern:

My name is Jerry Ray Herman. I am retired. I have known Frank Larmand for approximately 5 years as a business owner and friend. I have never known Frank to do anything except set a good example for his family and friends. He has always been extremely honest as a business owner and very loyal as a friend and will help anyone that needs his help. As my neighbor at High Rock Lake, I have needed his help many times and he has never turned me down. Always ready to lend a helping hand when needed. He has worked on my truck and boat for just a thank you.

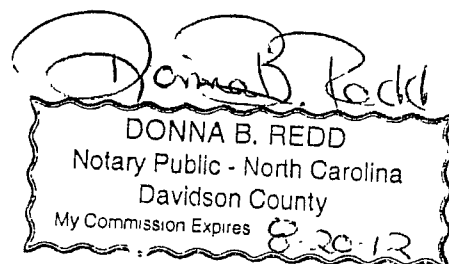
Frank is a very loving father and husband and has always shown how important his family is to him. His children have played sports and he never misses the opportunity to support them and be there to cheer them on.

Frank needs to be with his family where he can continue to be the fantastic father that I know him to be. I have grown to love Frank and his family and can't wait for him to be within our presence soon.

Sincerely,



Jerry Ray Herman



David A. Mariano
3070 Bingham Drive
Concord, NC 28027

July 1, 2010

To Whom It May Concern:

My name is David Mariano. I am currently employed with Advanced Home Care. I was previously employed with the Kannapolis Home Depot for 11 years. I have known Frank Larmand for 8 years. I met Frank through another friend and our friendship began to grow.

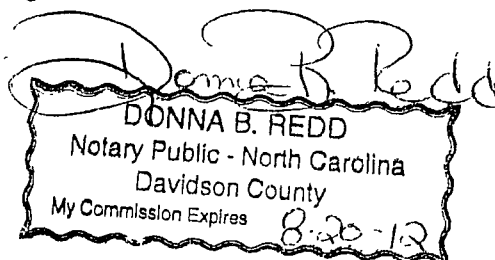
Frank is a local business owner in Kannapolis. He owns a Locksmith business and an Automobile Mechanic Shop. He has gotten my family and myself out of several automobile problems and never accepted any money for his services. He always puts other first. He is the most respectable person I know and with Frank, family comes first. You can always tell a lot about a man by the way his children turn out. That brings me to his stepson, David. He has "stepped up to the plate" and is doing his very best to keep the family locksmith business going. Now the way I see it, if a man is going to raise a kid with that kind of family values he has to be a pretty descent, law abiding citizen.

In closing, I know how hard it is to make friends when you're young and how hard it is to keep friends when you're older. I consider myself very fortunate to have met and kept a great friend like Frank in my adult life.

Sincerely,

David A. Mariano

David A. Mariano



David Bailey
4210 Fringewood Dr
Concord, NC 28025

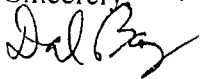
June 28, 2010

To Whom It May Concern:

My name is David Bailey. I have worked for the State of North Carolina for 25 years. I have known Frank Larmand for 5 years. Frank owned a repair shop in Concord. Frank was certified to perform N.C. State vehicle inspections at his place of business. This was how I met Frank. It was part of my duties to complete quarterly audits at Frank's place of business. During all these audits, Frank never had a single violation. Frank was always very professional and kept his records and station in excellent order. Many times during an audit, customers would drop by and ask Frank questions about their vehicles. Frank would always go the extra mile to help people and often would not even charge them. Frank was always very friendly and outgoing and would gladly help anyone he could. Frank often spoke about his family and how much he loves them.

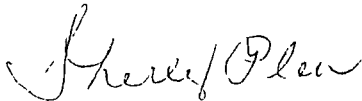
In closing, I think Frank Larmand is a man of excellent character, a wonderful family man, and a credit to this community.

Sincerely,

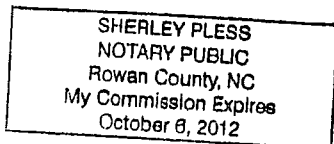


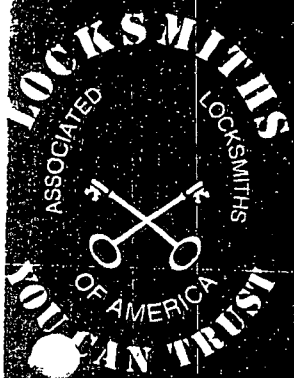
David Bailey

Acknowledged before me this 29th day of June 2010



10-06-2012





2009

Member

ASSOCIATED LOCKSMITHS OF AMERICA, INC.

recognizes that

Frank Larmand

is a member in good standing and is entitled to the rights and privileges as provided in the bylaws and, as such has agreed to abide by the Code of Ethics of ALOA, effective January 1, 2009 to December 31, 2009.

MEMBER SINCE

2009

David Lowell, CML, CMST
Executive Director

Ken Kupferman, CML, CPS
ALOA President

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
In the Court of Common Pleas

Honorable William H. Seals, Jr. Circuit Court Judge

Case N° 2009-GS-46-02834
Case N° 2009-GS-46-02835

The State of South Carolina,

Respondent,

vs.

Francis Larmand,

Appellant

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the receptionist for C. Rauch Wise, Attorney for the Appellant in the above entitled case. That on March 20, 2013, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Motion for Bond in the above case addressed to Deborah R.J. Shupe, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211-1549.

SWORN to and Subscribed

Sandy Traynham

before me this 20 day

of March, 2013.

Mary Jane Harter (L.S.)

Notary Public for South Carolina

My Commission expires: 11/30/22

EXHIBIT D

March 26, 2013

To the Justices of the South Carolina Supreme Court

My name is Ryan Lochbaum and I respectfully ask you to deny Francis Larmand's request to be released from prison while the State files an appeal. I am shocked and horrified that the State of South Carolina is considering the release of Francis Larmand. He was one of two men who terrorized my family. He planned and carried out a vicious attack on me that would have resulted in my death had it not been for the happenstance aid of neighbors. No one at the trial, including the jury, doubted his intention to cause deadly harm.

I am terrified that this man, if released, will once again target me. My wife is 6 months pregnant and under doctor's orders to reduce her stress level for the safety of our unborn child. That will be impossible if Mr. Larmand is released. Just thinking of him being able to hurt my family again makes me anxious. It is neither fair nor just that I should live in fear while he walks around free and happy after he terrorized my family. My wife to this day locks every lock possible, even during the daytime, never truly feeling safe in her own home. Not that all the locks in the world would deter Mr. Larmand, as he is a skilled locksmith who could easily gain entry into my home, leaving little or no evidence, with only the simplest of tools.

My entire family is in turmoil. We have all been victimized by this man and to grant him release would not only be an injustice but would re-victimize us. He came to my house, at midnight, when my then 5 year old son was asleep. He knows where I live. He knows the business I am in. My family and I are terrified at the thought of him being released pending the appeal.

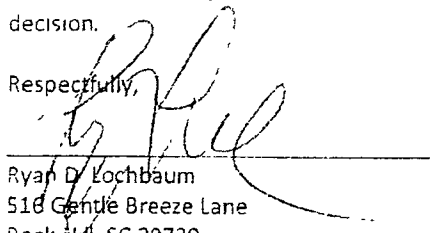
My 8 year old son who overheard my wife and I discussing this possibility is now afraid once again to fall asleep on his own for fear that the "bad men" will once again come to our home. My life was forever changed on April 30th, 2009. I struggle every day to put that horror behind me. My business and my livelihood as a locksmith require my response to many late night emergency calls for assistance. This is especially terrifying to me as Mr. Larmand originally faked an emergency locksmith call to try and lure me to a secluded area in order to cause me bodily harm. What is to stop him from trying again if released?

I am not sure what else to say except that I beg you to deny Mr. Larmand's request. He was tried and convicted by a jury of his peers and sentenced accordingly. I do not think he should be allowed to roam free while the appeal is being considered, once again, putting my family and myself in danger.

I plead with you to keep this man in prison while the appeal is considered. The health and sanity of myself, my pregnant wife, and my 8 year old son depends on your decision. We are the innocent victims. Why should our lives be shattered once again?

Thank you for taking the time to read this letter. I hope that the Court will take it into account when making its decision.

Respectfully,


Ryan D. Lochbaum
516 Gentle Breeze Lane
Rock Hill, SC 29730
(704) 307-8536

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From York County
The Honorable William H. Seals, Jr., Circuit Court Judge
On Petition for Writ of Certiorari to the Court of Appeals
Appellate Case No. 2009-144086

THE STATE,

Petitioner,

vs.

FRANCIS LARMAND,

Respondent.

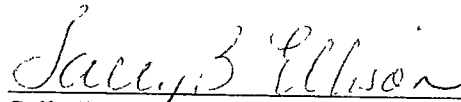
CERTIFICATE OF SERVICE

I, Sally B. Ellison, hereby certify I served the Petition for Writ of Supersedeas, or in the Alternative, to Expedite, on Respondent by placing a copy in the United States Mail Service, postage pre-paid, addressed as follows:

C. Rauch Wise, Esquire
305 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served.

This 29th day of May, 2013.


Sally B. Ellison
Legal Assistant

Office of the Attorney General
PO Box 11549
Columbia, SC 29211-1549
(803) 734-4156

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL - 3 2013

S.C. Supreme Court

Appeal from York County
The Honorable William H. Seals, Circuit Court Judge
Appellate Case № 2009-144086

The State,

Petitioner,

vs.

Francis Larmand,

Respondent.

Return to Petition for Writ of Certiorari

C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010

rauch@simplepc.net
S. C. Bar № 06188

Attorney for Francis Larmand

Index

Table of Authorities	ii
Question Presented	1
Statement of the Facts	2
Argument	4
Conclusion	11

Table of Authorities

Cases:	Page:
<i>State v. Cherry</i> , 348 S.C. 281, 559 S.E.2d 297 (2001)	4
<i>State v. Cherry</i> , 361 S.C. 588, 606 S.E.2d 475 (2004)	4
<i>State v. Daniels</i> , 401 S.C. 251, 737 S.E.2d 473 (2012)	5
<i>State v. Gilliland</i> , 402 S.C. 389 741 S.E.2d 521 (Ct. App. 2012)	4
<i>State v. Gunn</i> 313 S.C. 124, 437 S.E.2d 75 (1993)	5
<i>State v. Hernandez</i> , 677 S.E.2d 603, 382 S.C. 620 (2009)	6
<i>State v. Lollis</i> , 343 S.C. 580, 541 S.E.2d 254 (2001)	5
<i>State v. Martin</i> , 343 S.C. 580, 541 S.E.2d 254 (2000)	4
<i>State v. Meggett</i> , 398 S.C. 516, 728 S.E.2d 492 (Ct. App. 2012)	4
<i>State v. Odems</i> , 395 S.C. 582, 720 S.E.2d 48 (2011)	4
<i>State v. Smith</i> , 352 S.C. 133, 572 S.E.2d 473 (Ct. App. 2002)	5
Statutes:	
S. C. Code § 16-3-230	6

Question Presented

Did the Court of Appeals err in reversing the circuit court's denial of Respondent's directed verdict motion?

STATEMENT OF FACTS

Kerriann Larmand, the wife of the Defendant Frank Larmand, owned and operated a business in the Charlotte area known as Pop-A-Lock. The business was a basic locksmith business. As part of a franchise operation the business would also respond to calls to open car doors and other emergency calls. Rec. on App. at 324. Mrs. Lamard had reason to believe that someone in the company was stealing calls when a cash customer called for services such as a request to unlock an automobile. As a result she, with the assistance of her husband, set up a call for service in an attempt to determine who was stealing the calls from her company. Rec. on App. at 326, ll 12-25 to 327, ll 1-23.

As part of the mystery call, Frank Larmand was to go to the Knights Stadium outside of Charlotte. There he would wait and see who came in response to the mystery call. Prior to leaving Kanapolis, NC, where he lived, he met his brother-in-law, Leo Lemire. He requested Mr. Lemire to join him as another person was needed to receive the call as that person's voice would not be recognized by any employee or former employee of Pop-A-Lock who may be involved. Rec. on App. at 371, ll 20-372, ll 1-12. Mr. Larmand went to Knights Stadium and his wife placed the called requesting assistance in unlocking an automobile. The call was placed at 10:14 pm. Rec. on App. at 329, ll 10-22. Mike Taylor, who at the time was employed by Pop-A-Lock, received the call at 10:18 pm. Rec. on App. at 23-25. Mr. Taylor call Ryan Lochbaum, a former employee who was terminated in October of 2008, at about 10:43. Rec. on App. at 176, ll 6-8. Mr. Lochbaum testified that Mr. Taylor was simply asking him for directions to Knight Stadium. He had previously told officers involved in the case that Mr. Larmand and Mr. Lemire were trying to lure him out to Knight Stadium that evening. Rec. on

App. at 174, ll 5-11. As he had been terminate several months before, Mr. Lochbaum had no legitimate reason to be responding to a call for Pop-A-Lock. Mr. Lochbaum had also been denied unemployment benefits because of his misconduct while employed by Pop-A-Lock. This upset Mr. Lochbaum. Rec. on App. at 167, ll 3-15.

After no one from Pop-A-Lock, or anyone trying to steal the service call, came to Knights Stadium, Mr. Larmand decided to go by the residence of Mr. Lochbaum. He went for the purpose of seeing if any employees of Pop-A-Lock were there and to determine if a red car with a Pop-A-Lock sign was at the residence. Rec. on App. at 377, ll 1- 12. Mrs. Larmand had received reports of a red car with a Pop-A-Lock sign was seen in the Charlotte area. Rec. on App. at 341, ll 17-25. When Mr. Larmand drove by Mr. Lochbaum's residence, he noticed several people gathered around a van but did not see a red car. He parked his truck past the house and instructed Mr. Lemire to remain in the truck. Rec. on App. at 378, ll 12-16. He then walked to the residence of Mr. Lochbaum. He stood in the street near the van for a short period of time until someone acknowledged his presence. He stated that he wished to speak to Mr. Lochbaum. A person notified Mr. Lochbaum that someone was there to see him. Rec. on App. at 380, ll 12-20. Mr. Lochbaum then asked the others present to leave as he wanted to talk to Mr. Larmand in private. Rec. on App. at 72, ll 10-14. Mr. Larmand and Mr. Lochbaum then moved slightly down the street in the direction of the houses where his neighbors lived. Rec. on App. at 80, ll 1-9; 65, ll 1-3; 105, ll 7-9.¹ At least three other people were present when Mr. Lochbaum asked to speak

¹ The State in its petition has contended that Mr. Larmand "started walking down the street away from where the neighbors were standing." Pet. for Cert. at 18. Mr. Larmand walked with Mr. Lochbaum toward the front of the residence of Mr. Jesse Harris, his next door neighbor. On the other side of Mr. Lochbaum's residence is a large field.

to Mr. Larmand in private. Rec. on App. at 68, ll 21-25 to 69, ll 1-4.

After Mr. Lochbaum and Mr. Lamrad had spoken for a brief time, Mr. Lemire, who had left the truck after Mr. Larmand left, came at Mr. Lochbaum with a pistol. Rec. on App. at 150, ll 14-22. Mr. Lochbaum turned to confront Mr. Lemire and grabbed the pistol. In the struggle they both fell to the ground. At that point the neighbors who were with Mr. Lauchbaum earlier came and helped subdue Mr. Lemire. When the two fell to the ground, Mr. Lochbaum testified that Mr. Larmand tried to pull him off of Mr. Lemire. Rec. on App. at 151, ll 18-24. Mr. Lauchbaum was successful in obtaining the pistol from Mr. Lemire. At that point the struggle ended and Mr. Larmand and Mr. Limire left the area. 154, ll 4-14. Mr. Lauchbaum received only a very minor scratch to his hand. Rec. on App. at 159, ll 16-22.

After leaving the scene Mr. Larmand was stopped by William Watson of the Rock Hill Police Department. Mr. Lemire was arrested that night for presenting and pointing a firearm. Mr. Larmand was briefly questioned and released. Rec. on App. at 59, ll 1-16. Mr. Larmand was arrested the next day when he came to arrange bail for Mr. Lemire.

ARGUMENT

Did the Court of Appeals err in reversing the circuit court's denial of Respondent's directed verdict motion?

As this Court and the South Carolina Court of Appeals have said on numerous occasions, "If there is any direct evidence or any *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." *State v. Cherry*, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004)(emphasis added); *See, also, State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011); *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001); *State v. Martin*, 343 S.C. 580, 541 S.E.2d 254 (2000); *State v. Gilliland*, 402 S.C. 389 741 S.E.2d 521 (Ct. App. 2012); *State v. Meggett*, 398 S.C. 516, 728 S.E.2d 492 (Ct. App. 2012).² The standard is not is there some circumstantial evidence that by some stretch of the imagination, could be interpreted to be evidence of guilt.

The Respondent is critical of the Court of Appeals for referring to the evidence of the defense. What the Respondent fails to recognize is that the testimony of the State, including the neighbors, only proves the two defendants were at the scene at the same time. The State's case does not even support the proposition that the defendants traveled from North Carolina together. While that is an undisputed fact, the evidence came from the defense and the Court of

² The South Carolina Court of Appeals in *State v. Cherry*, 348 S.C. 281, 559 S.E.2d 297 (2001) discussed whether courts in applying the "substantial circumstantial evidence" standard are engaging in the weighing of evidence, which appellate courts are forbidden to do. The United States Supreme Court in *Jackson v. Virginia*, 443 U.S. 307 (1979) specifically rejected the "any evidence" standard in criminal cases. The Court said "But it could not seriously be argued that such a 'modicum' of evidence could by itself rationally support a conviction beyond a reasonable doubt." *Id.* at 320. To the extent that any appellate court determines whether the circumstantial evidence is "substantial" or if the evidence is more than a "modicum" an appellate court will, to some extent, weigh the evidence, notwithstanding frequent protestations to the contrary.

Appeals should not be criticized for citing such an uncontested fact.

As to circumstantial evidence this Court has said “‘Suspicion’ implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” *State v. Lollis*, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). This Court has further said circumstantial evidence is sufficient to convict when “the circumstances proven are consistent with each other, and when taken together, point conclusively to the guilt of Appellant to the exclusion of every other reasonable hypothesis.” *State v. Daniels*, 401 S.C. 251, ___, 737 S.E.2d 473 (2012).

As lynching is in essence a conspiracy, what this Court has to say about proving a conspiracy is also relevant to lynching. This Court has said “Thus, we focus here on the sufficiency of the evidence of an *agreement* between the alleged conspirators, and not, as the State would have us do, on the alleged common *object*, that is, the importation and distribution of Dilaudid in a defined geographic area.” *State v. Gunn* 313 S.C. 124, 134, 437 S.E.2d 75, 80 (1993) (emphasis in original) This is the standard against which the circumstantial evidence in this case must be viewed.

Here the state is urging this Court to focus upon the fact that Ryan Lochbaum was in fact attacked and not the proof of an agreement to attack Mr. Lochbaum. The evidence presented by the state only proved that Mr. Lochbaum was attacked. It did not prove an agreement. The Court of Appeals has held “[T]o sustain a conviction for lynching the State must produce at least some evidence of premeditation.” *State v. Smith*, 352 S.C. 133, 137, 572 S.E.2d 473, 475 (Ct. App. 2002). The proof of premeditation must be more than speculation or conjecture. The Respondent has not shown any proof of premeditation that is more than

speculation or conjecture. The Respondent urges that from the fact both defendants came to the scene together, there was premeditation and planning to assault Mr. Lochbaum. But just as likely, the two defendants arrived at the scene together so Mr. Larmand could speak with Mr. Lochbaum and Mr. Lermire was acting on his own when he attacked Mr. Lochbaum. In fact, considering that Mr. Larmand never attempted to get Mr. Lochbaum by himself and away from others, the latter version is more likely. The state has produced no evidence which makes a guilty explanation substantially more likely than the innocent explanation. For that reason, the state has failed in its proof. The question is not may a guilty explanation be inferred from the facts, but rather has the state proven that a guilty explanation is more likely to the extent that a reviewing court can conclude the guilty explanation is substantially more likely.

The Court of Appeals did not, as the Respondent contends, ignore the evidence of the state, but rather simply acknowledged that the evidence of the state simply puts the two defendants at the same place at the same time. In *State v. Hernandez*, 677 S.E.2d 603, 605, 382 S.C. 620, 625 (2009) this Court held, “[T]he State failed to present any evidence such as acts, declarations, or specific conduct to support this inference [knowledge], and thus, we find that the conclusion that Petitioners knew the Thunderbird occupants and therefore had knowledge of the drugs in the tractor trailer is mere speculation.” This Court did not consider the specific conduct of being at the same place at the same time sufficient to prove knowledge of the drugs even though the defendant followed the tractor trailer down a secluded road. The same principle is applicable here. Under the prior definition of lynching, as well as the current law, the State is required to prove premeditation. The premeditation required is to have the intent to commit an act of violence upon another person. S. C. Code § 16-3-230. The premeditation has to be formed

before the alleged attack.

In the present case no action or statement of Mr. Larmand indicated any intent to assault or strike Mr. Lochbaum as part of a conspiracy with Mr. Lermire. The wearing of dark clothes is no more an indication of a conspiracy than it is of the fact that the clothing is their work clothes. The state produced no evidence the clothing was not their normal work clothes. The state produced no testimony to make a guilty inference from the facts indicating guilt more likely than an innocent explanation of the facts. When Mr. Larmand approached Mr. Lochbaum, there was no attempt on Mr. Larmand's part to separate Mr. Lochbaum from his friends. The suggestion that his friends leave was made by Mr. Lochbaum. Mr. Larmand and Mr. Lochbaum then moved to an area toward a more populated area as opposed to the area where there were no houses. Mr. Larmand did not take Mr. Lochbaum to a place where Mr. Lermire was hiding. This certainly does not make a planed attacked upon Mr. Lochbaum more likely than not. When Mr. Lermire said "This is what you get for f***ing with *my* family," this is an indiction of Mr. Lermire's attitude and intent and not Mr. Larmand's.

The Respondent has urged that the "only" reasonable inference from the State's evidence is that there was a premeditated plan to attack Mr. Lochbaum, but the state has not shown what facts, other than they traveled together to Rock Hill, to support that conclusion. Under the facts of this case, a guilty explanation is not substantially more likely than an innocent explanation. When the state fails to give a jury a rational basis for rejecting an innocent explanation of the circumstantial evidence, then the state has not met its burden of proof. A jury should not be required to guess between two equal conclusions from the circumstantial evidence produced. Such proof is not proof of substantial circumstantial evidence.

The State argues that because Mr. Larmand parked some distance away he planned on attacking Mr. Lochbaum. First, according to the scale of the Google Earth map used as an exhibit, the distance is slightly over 1,110 feet. The car was parked in the vicinity of several houses from which people could observe and describe the car. After the alleged attack, they would both have to go over 1,000 feet to the automobile. The logic of placing a “get away” car so far from the scene of the alleged planned attack simply does not support an inference that the attack was planned by both Mr. Larmand and Mr. Lemire.

The State further argues that the fact that Mr. Larmand and Mr. Lemire fled the scene is also evidence of their guilt. In *State v. Grant*, 275 S.C.404, 272 S.E.2d 169 (1980) this Court said “evidence of flight tends to be only marginally probative as to the ultimate issue of guilt or innocence.” *Id.* at 408, 272 S.E.2d at 171. Under the facts of this case evidence of flight is even less than marginal. After the fight the firearm Mr. Lemire possessed was in the hands of Mr. Lochbaum. Both Mr. Larmand and Mr. Lemire had been in a altercation with several individuals. They were out numbered. Mr. Jessie Harris testified that someone, he thought Mr. Lochbaum, told Mr. Larmand and Mr. Lemire to leave. Rec. on App. at 123, ll 18-25. They quickly left the scene. When the officer turned on his blue light, Mr. Larmand stopped his automobile and did not try to evade the police. Rec. on App. At 57, ll24-25 to 58, ll 1-3. Apparently Mr. Larmand was not even given a ticket for speeding. Rec. on App. at 59, ll 1-13.

Mr. Lemire testified that he was told to remain in the car. Rec. on App. at 463, ll 15-20. He did not leave the truck until after he heard a loud argument. Rec. on App. at 466, ll 13-16. He testified that his leaving the truck was not part of any plan or scheme.

The Court of Appeals has held, when a case is based only upon circumstantial

evidence, the evidence must be substantial. *State v. James*, 362 S.C. 557, 561, 608 S.E.2d 455, 457 (Ct. App. 2004). *See, also, Jackson v. Virginia*, 443 U.S. 307 (1979). The reason for such a rule is simple. A purely circumstantial evidence case is the only case ever tried in our criminal justice system in which every witness can tell the truth and an innocent man be convicted. While cross-examination may be effective in some cases to prove that a witness is not being truthful, cross-examination is seldom able to discredit the witness in a purely circumstantial evidence case because the witness is being truthful. Under the facts of this case there is simply no substantial evidence that Mr. Larmand with Mr. Lemire planned any attack on Mr. Lochbaum. The facts are simply not sufficient to convict Mr. Larmand of the crimes for which he was convicted.

may be proven by circumstantial evidence the evidence still must be substantial and be more than speculation.

The State has argued that the Court of Appeals has ruled “that the State’s case failed because there was no testimonial evidence of an express agreement between Respondent and Co-Defendant to attack and injure the victim.” Pet. For Cert. at 21. What the Court of Appeals has ruled is simply a correct statement of the law that the state is required to produce direct evidence or substantial circumstantial evidence of a premeditated agreement by Mr. Larmand and Mr. Lemire to assault Mr. Lochbaum.

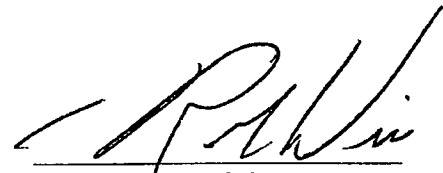
“Substantial circumstantial evidence” is more than one of two possible conclusions from the evidence. The phrase certainly means more than a 50/50 chance. If the phrase is to have any meaning, it must mean that the state is required to produce evidence that makes guilt substantially more likely than not from the circumstantial evidence presented. Such

a rule is rational and logical. A pure circumstantial evidence case is the only case tried in our criminal justice system in which every witness can tell the truth and an innocent person be convicted.

CONCLUSION

In this case the state failed to produce substantial circumstantial evidence Mr. Larmand had any premeditate agreement with Mr. Lermire to go to the residence of Ryan Lochbaum and commit the crime of lynching. Without proof of a premeditated agreement, no proof of the crime exist, this Court should deny the Petition for Writ of Certiorari.

June 28, 2013



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The Supreme Court of South Carolina

The State, Petitioner,

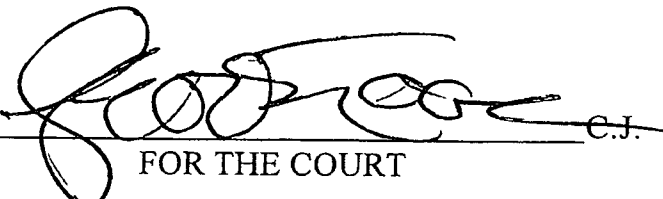
v.

Francis Larmand, Respondent.

Appellate Case No. 2013-001143

ORDER

The State's petition for writ of supersedeas, or in the alternative, to expedite this matter, is denied.


C.J.
FOR THE COURT
Donald W. Beatty, J., not participating

Columbia, South Carolina

July 11, 2013

cc:

Deborah R. J. Shupe

C. Rauch-Wise

John Dunlap Rhea

Alan McCrory Wilson

The Supreme Court of South Carolina

The State, Petitioner,

v.

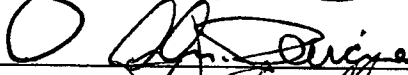
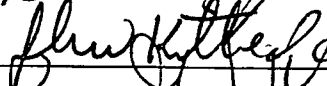
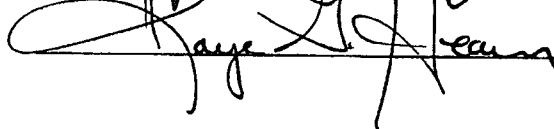
Francis Larmand, Respondent.

Appellate Case No. 2013-001143

Lower Court Case Nos. 2009-GS-46-02833, 2009-GS-46-02835, 2009-GS-46-02834

ORDER

We grant the petition for a writ of certiorari to review the Court of Appeals' decision in *State v. Larmand*, 402 S.C. 184, 739 S.E.2d 898 (Ct. App. 2013). The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina

June 26, 2014

cc:

The Honorable Jenny Abbott Kitchings
Deborah R.J. Shupe, Esquire
C. Rauch Wise, Esquire

John Dunlap Rhea, Esquire
Alan McCrory Wilson, Esquire
David Hamilton

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Appeal From York County
The Honorable William H. Seals, Jr., Circuit Court Judge JUL 14 2014
On Writ of Certiorari to the Court of Appeals
Appellate Case No. 2013-001143 S.C. Supreme Court

THE STATE,

Petitioner,

vs.

FRANCIS LARMAND,

Respondent.

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From York County
The Honorable William H. Seals, Jr., Circuit Court Judge
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TABLE OF CONTENTS

ISSUE PRESENTED.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	3
ARGUMENT.....	16
CONCLUSION.....	26

TABLE OF AUTHORITIES

Cases

<u>State v. Brown</u> , 402 S.C. 119, 740 S.E.2d 493 (2013)	16, 17
<u>State v. Gaines</u> , 380 S.C. 23, 667 S.E.2d 728 (2008).....	16
<u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005)	17
<u>State v. Gilliland</u> , 402 S.C. 389, 741 , S.E.2d 521 (Ct. App. 2012)	16, 17

ISSUE PRESENTED

In reversing the circuit court's denial of Respondent's directed verdict motion, the Court of Appeals failed to use the appropriate standard of appellate review, improperly weighed the evidence and made credibility determinations, and improperly substituted its judgment of the evidence for the circuit court's findings and the jury verdict.

STATEMENT OF THE CASE

A York County jury convicted Respondent and a Co-Defendant on one count of second degree lynching, one count of conspiracy, and one count of pointing and presenting a firearm. In an opinion filed March 13, 2013, the South Carolina Court of Appeals reversed Respondent's convictions, holding the circuit court erred in denying Respondent's directed verdict motion as to all charges. (Appendix, pp. 1-8).

Petitioner filed a Petition for Rehearing, which the Court of Appeals denied by Order filed May 16, 2013. (Appendix, pp. 9-20). Petitioner filed a Petition for Writ of Certiorari to the Court of Appeals on May 29, 2013, which this Court granted by Order dated June 26, 2014.

STATEMENT OF FACTS

On July 16, 2009, the York County Grand Jury indicted Respondent Francis V. Respondent, Jr. ("Respondent"), and his brother-in-law Leo David Lemire ("Co-Defendant"), on one count of lynching in the second degree, one count of conspiracy, and one count of pointing and presenting a firearm. The matter was called for a jury trial on October 20, 2009, before the Honorable William H. Seals, Jr., Circuit Court Judge.

Officer William Watson ("Officer Watson") of the Rock Hill Police Department testified he was on duty the night of April 30, 2009, and around midnight he responded to a call about a fight involving a gun in a near-by subdivision, with a BOLO for a dark SUV fleeing the scene. As he approached the subdivision, he saw a dark Toyota 4Runner traveling away from the subdivision at approximately sixty miles per hour in a twenty-five mile per hour zone, and he stopped it because it could be the SUV in the BOLO. Respondent was driving the vehicle, and Co-Defendant was the passenger, and both were wearing dark shirts and dark pants. After talking to them, Officer Watson arrested Co-Defendant for pointing and presenting a firearm, and allowed Respondent to leave at that time. (Record on Appeal [R.], pp. 8-21).

The victim, Ryan Lochbaum ("Lochbaum"), testified he knew Respondent prior to April 30, 2009, because he worked for Respondent's locksmith business, Pop-A-Lock, until October, 2008, but only met Co-Defendant once. He stated he never invited Respondent or Co-Defendant to his home in Rock Hill, and to his knowledge, neither individual had ever been there. (R., pp. 96-98).

On April 30, 2009, Lochbaum had a birthday party for his son, and that night he and some of his neighbors continued to socialize in his driveway. Around midnight, a neighbor Mark Whittington ("Whittington") told him a man, subsequently identified as Respondent, was standing in front of his home and wanted to talk to him. Lochbaum testified he was shocked to see Respondent, and when he realized Respondent was upset, he asked his neighbors for some privacy and they walked away. (R., pp. 96-102).

Lochbaum and Respondent began having a heated discussion. At some point, Respondent broke eye contact and looked off to the side. When Lochbaum looked in the same direction, he saw Co-Defendant approaching him at a fast pace, carrying a "very large handgun."¹ He testified Co-Defendant got within fifteen feet of him, extended his arm, pointed the gun at him, stated "this is what you get when you f**k with my family," and cocked the gun. When Co-Defendant got closer, Lochbaum grabbed the gun, and as they struggled on the ground for the gun, Respondent put Lochbaum in a choke hold from behind. (R., pp. 101-106, 166).

Lochbaum's neighbors ran back and tried to get Respondent off Lochbaum and the gun away from Co-Defendant. During the struggle with Co-Defendant, Lochbaum sustained injuries to his knuckles and hands from being dragged across the pavement. Lochbaum and the neighbors eventually got the gun away from Co-Defendant, and Respondent and Co-Defendant fled the scene. (R., pp. 101-111).

¹ The gun was subsequently identified as a .45 caliber revolver.

During cross-examination, Lochbaum was questioned extensively about "call interception," and testified he told the police Respondent tried to lure him to Knights Stadium. The following colloquy occurred:

Q - Isn't it a fact that Mrs. Larmand caught you? She made what's an industry-recognized way of finding someone who's scamming by making a mystery shopper call. Do you know anything about those?

A - I don't know about that.

Q - You say you know everything about the business. Tell the jury what a mystery shopper call is.

A - A mystery shopper, especially when you have a company where you have people in the field, you want to send someone out who's not, who can critique them, but them not know they're being critique (sic) because they act naturally.

Q - Isn't that in fact what Mrs. Larmand had done on that night?

A - No, it's not.

Q - He (Mike Taylor) called you to say, hey, how do I get to Knights Stadium, right?

A - Un-huh

Q - A legitimate question, okay?

A - Right, okay.

Q - And you became suspicious of that call?

A - No, not until they came to my home with a gun - -

Q - Just answer my question. Were you suspicious of that call at that time?

A – Not at all.

Q – How could they be trying to lure you to Knights Stadium if you weren't doing anything wrong? If you weren't going to go there and take the call from - - Mike Taylor?

A – Because I didn't realize until the next day that the fact that Mike Taylor was doing a call in Fort Mill was suspicious. It wasn't until I saw the facts in the correct context that I put two and two together.

Q – Well, you characterize it as they were trying to lure you there. Couldn't it also be characterized from a legitimate business standpoint of Kerriann Larmand of trying to find out who's stealing and who's doing call interception from her?

A – Well, you would have to say she would have to be focusing (sic) on Mike Taylor in order to make that statement.

Q – Exactly.

A – Right.

Q – Which is what she was doing.

A – Mike Taylor was by far her best employee.

Q – And was not Mike Taylor fired the day after this incident?

A – Yes, he was.

Q – Because he was making calls to you, right?

A – No.

Q – Why not?

A – Because Mrs. Larmand overheard me talking to the detectives at the bond hearing. Because they asked me specifically who gave me that information, and I told them.

(R., pp. 129-133).

Whittington testified he lived about five homes down from Lochbaum, and on the night of April 30, 2009, he, Ronald Lee Edward ("Edward"), and Michael Devin Fivecoat ("Fivecoat") were standing in the driveway of Lochbaum's home. Around midnight, he noticed a man he had never seen before standing in front of Lochbaum's driveway. He stated the man, identified in court as Respondent, wore a black shirt and black pants, and appeared to be "kind of edgy." After Lochbaum and Respondent started talking, Whittington, Edward, and Fivecoat walked down the street, but Whittington thought there might be trouble and observed Lochbaum and Respondent from a distance because "[i]t's not normal for somebody to come up dressed in dark clothes in the middle of the night just to talk to somebody." (R., pp. 21-28).

As Lochbaum and Respondent continued to talk, Whittington saw a second man, later identified as Co-Defendant, suddenly emerge from the darkness and run toward Lochbaum with his hand up. Whittington, Fivecoat, and Edward immediately ran back to help Lochbaum, and saw Lochbaum trying to disarm Co-Defendant. Whittington testified Co-Defendant was on the ground, Lochbaum was on top of Co-Defendant, and Respondent had Lochbaum in a choke hold. Whittington grabbed Respondent around the waist, and pulled him off Lochbaum while the other men got the gun away from Co-Defendant. Respondent and Co-Defendant then ran down the street and Whittington called the police as he chased them. Respondent and Co-Defendant sped away in their vehicle, which was parked about a half a mile down the road from Lochbaum's home. (R., pp. 28-61).

Jesse Harris ("Harris") testified he lived next door to Lochbaum in April, 2009. Around midnight on April 30, 2009, he looked out his window and saw Lochbaum arguing with a man he identified in court as Respondent. He saw Respondent push Lochbaum, told his wife to call the police, and ran outside to help. By the time he got outside, the men were behind Lochbaum's van where he could not see them, but he heard a loud voice say, "this is what you get when you f**k with my family." When he got around the van, Harris realized a third person, identified as Co-Defendant, was involved in the scuffle, and Respondent had Lochbaum in a choke hold. Harris initially attempted to put Respondent in a choke hold to get him off Lochbaum, but he let go when he realized a gun was involved. (R., pp. 63-66).

Harris testified Co-Defendant held the gun around the handle and the trigger, and Lochbaum was trying to push the gun away. Harris saw the hammer was back on the gun, so he stuck a finger in between the hammer and the gun to prevent it from going off, and used the other hand to try to pull the gun away. He testified the hammer closed on his finger at some point, leaving a bruise or blister on his finger. When he demanded Co-Defendant let go of the gun, Co-Defendant repeatedly yelled, "f-you, he's f'ing with my family, he's f'ing with my family." The other neighbors arrived on scene, and Harris told Whittington to get Respondent off of Lochbaum, who could not breathe because of Respondent's choke hold, was purple in the face, and appeared to be dying. He further testified Co-Defendant did not let go of the gun until he kicked him twice in the groin. (R., pp. 63-72).

Edward testified he accompanied Whittington to Lochbaum's home that night, and Lochbaum appeared shocked when Respondent, who appeared to be agitated, unexpectedly showed up. He walked away with Whittington and Fivecoat after Lochbaum and Respondent started talking, but they all ran back when Whittington yelled "there's more than one." He was the last one to get back, and he saw everyone scuffling in a "dog pile." Co-Defendant was at the bottom below Lochbaum, and Respondent's arms were around Lochbaum's neck in a choke hold. He heard Fivecoat say "oh, my god, there's a gun," and heard another person using "cuss words" to say something to the effect of "don't be messing with my family." Eventually, Lochbaum emerged from the pile with the gun, and Co-Defendant and Respondent ran down the street. (R., pp. 174-187).

Fivecoat's testimony regarding the events of April 30, 2009, corroborated the testimony of Lochbaum, Whittington, Harris and Edward. He stated he did not know how Respondent arrived, and he did not see or hear a car go by. He walked away when Lochbaum asked for privacy, but continued to observe from a distance. When Whittington said someone else was there, he ran back to help and saw several people fighting in a dog pile, but he did not realize there was a gun involved until it was pointing at him. After Co-Defendant was disarmed, Fivecoat followed Co-Defendant and Respondent as they fled to their vehicle, and he yelled at them to stop because the police were coming. When they sped away in their vehicle, he described the vehicle to Whittington. (R., pp. 205-219).

Detective Leslie Herring ("Detective Herring") of the Rock Hill Police Department testified he was assigned to investigate the incident on May 1, the morning after it occurred. In the course of that investigation, he spoke to Lochbaum, who told him he thought Respondent had tried to set him up to go to Knights Stadium. As a result of his investigation, he issued additional warrants against Co-Defendant, and issued warrants against Respondent. Herring testified Respondent's hometown of Kannapolis, North Carolina, is at least an hour drive away from Rock Hill. (R., pp. 229-237).

After the State rested, Respondent moved for a directed verdict on the charge of pointing and presenting a firearm. He argued the State only proved he was merely present when Co-Defendant brandished the gun, and thus presented no evidence or testimony he agreed or conspired to have Co-Defendant bring and brandish the gun. The State argued it presented sufficient circumstantial evidence of a common agreement or understanding between Respondent and Co-Defendant to find each responsible for the other's actions under the hand of one is the hand of all doctrine. The circuit court denied Respondent's motion on the ground the acts and declarations of any conspirator in furtherance of the conspiracy are deemed to be the acts and declarations of every other conspirator. (R., pp. 258-261).

Respondent then moved for a directed verdict on the charge of second degree lynching "based on chronology more than anything else." He argued the sequence of events established by the State's evidence showed Respondent was speaking with Lochbaum, Co-Defendant appeared, Lochbaum jumped on Co-Defendant, and Respondent merely reacted to Lochbaum's actions by jumping into the fray. He further

argued the State failed to prove the required premeditation. The State argued it presented strong circumstantial evidence Respondent's and Co-Defendant's actions that night were not spontaneous, but instead resulted from a premeditated plan and purpose to commit an act of violence against Lochbaum. The circuit court denied the motion, stating "[c]learly this is an issue for the jury to consider." (R., pp. 261-266).

Kerriann Larmand ("Kerriann"), Respondent's wife, testified Pop-A-Lock employed Lochbaum for almost three years before she fired him in October, 2008. On April 30, 2009, she set up a "mystery shopper call," a technique used to catch individuals who try to illegally intercept their customers before their authorized employee can respond to a call. Her records indicated Pop-A-Lock received a call requesting assistance at Knights Stadium at 10:14 p.m. that night, and one of her employees, Mike Taylor, accepted the job at 10:18 p.m., and then called Lochbaum at 10:40 p.m. Respondent and Co-Defendant waited at Knights Stadium, but neither Mike Taylor nor Lochbaum showed up at the stadium. (R., pp. 279-293).

Respondent testified he sometimes helped his wife with the Pop-A-Lock business, and around the time of this incident, there were concerns about non-employees intercepting Pop-A-Lock calls and taking their business before they could respond, and with non-employees using Pop-A-Lock magnets on their cars to take their business. (R., pp. 340-347). He stated he asked Co-Defendant to accompany him on the sting that night, but he did not know Co-Defendant had a gun with him, and they never conspired or agreed to do anything to Lochbaum. (R., pp. 354-355).

When no one responded to the mystery call at Knights Stadium, he decided to drive to Lochbaum's home in Rock Hill to see if any Pop-A-Lock employees, or a vehicle with a Pop-A-Lock magnet on it, were there, so he called his wife to get the address and directions. He then drove approximately twenty-five minutes to Lochbaum's home, and saw three men standing outside Lochbaum's van in the driveway. He did not see any Pop-A-Lock employees or magnets on cars at Lochbaum's home, but drove past Lochbaum's home and parked up the street, out of sight. He stated he told Co-Defendant he wanted to talk to Lochbaum, and to stay in the truck. (R., pp. 348-359, 382).

Respondent testified he and Lochbaum exchanged words, and he was walking back to his vehicle when he heard Co-Defendant say, "don't f**k with my family." He saw Co-Defendant and Lochbaum struggling for the gun, and the neighbors running back. He stated he jumped into the pile because there were two guys on Co-Defendant, and he put one hand on the gun to make sure the barrel faced across the street, and one arm around Lochbaum to try and pull him off Co-Defendant. (R., pp. 359-366). Respondent stated he helped Co-Defendant up when the struggle was over, they walked back to their vehicle, and drove away. (R., pp. 366-373).

On cross-examination, Respondent again admitted he did not see any Pop-A-Lock magnets and could not identify any Pop-A-Lock employees at Lochbaum's home when he drove by. He said he wanted to talk with Lochbaum anyway, and parked down the street because he did not want Co-Defendant to get involved. He admitted he walked up and immediately accused Lochbaum of misconduct in front of the group of people there, but stated he never heard or saw Co-Defendant coming behind him. (R., pp. 376-391).

Co-Defendant testified Respondent asked him to help him with a "sting" at Knights Stadium. He had the gun on him at the time, and put it under the seat in Respondent's vehicle, but said he never told Respondent he had it. He testified they only talked about family on the way to South Carolina, and never discussed Lochbaum. (R., pp. 422-437).

Co-Defendant stated they "didn't really talk about the mystery call" while they waited in the Knights Stadium parking lot. When they left the parking lot, he agreed to go with Respondent to Lochbaum's home to see if there were any Pop-A-Lock signs on any car at Lochbaum's home, or if any Pop-A-Lock employees were there, and he stayed in the vehicle when Respondent went to talk to Lochbaum. He said he heard a loud voice that was not Respondent's and some swearing, so he grabbed his gun and walked toward the home. (R., pp. 437-445).

As Co-Defendant approached the home, he saw Respondent walking up the street toward the vehicle, with Lochbaum walking behind him. He testified he then saw people running up behind Lochbaum and Respondent from the yard, so he walked up, told Lochbaum "don't F with my family," and held the gun up in the air. He claimed he never pointed the gun at Lochbaum, except maybe when he was raising it up in the air. (R., pp. 445-449).

After the defense rested, Respondent renewed his previous motion for a directed verdict, which the circuit court again denied. Co-Defendant did not move for a directed verdict. (R., pp. 494-495).

The jury convicted Respondent and Co-Defendant on all charges, and after the jury rendered its verdict, Respondent asked the court to set the verdict aside based on jury charge issues raised during trial. The circuit court denied the motion, and sentenced Respondent and Co-Defendant to ten years incarceration on the second degree lynching conviction, with five year concurrent terms on the criminal conspiracy and firearm convictions. (R., pp. 569-570, 573-602).

The following day, Co-Defendant moved for a new trial on the grounds raised during the trial. After the circuit court denied his motion, both Respondent and Co-Defendant moved for bond pending appeal. In denying their motion, the circuit court found "the nature of the crime was a violent act," there was "obvious bad blood between the Defendants and the victim," and releasing Respondent and Co-Defendant "would be a danger to the community," (R., pp. 582-585). This appeal followed.

In an *en banc* Opinion filed March 13, 2013, the Court of Appeals reversed Respondent's convictions, holding the circuit court erred in denying Respondent's motion for directed verdict because the State failed to present evidence of: 1) premeditation and intent as to the lynching charge; or 2) an agreement as to the conspiracy and pointing and presenting charges. (Appendix, pp. 1-8). The State petitioned for rehearing, and Respondent moved for an appeal bond. (Appendix, pp. 9-18). On May 16, 2013, the Court of Appeals denied the State's rehearing petition, and by

separate Order issued the same day, granted Respondent's appeal bond motion.²
(Appendix, pp. 19-20).

On May 29, 2013, the State filed a Petition for Writ of Certiorari to the Court of Appeals. This Court granted certiorari by Order dated June 26, 2014.

² Respondent is still out on bond.

ARGUMENT

The Court of Appeals erred in reversing the circuit court's denial of Respondent's directed verdict motion.

The State submits the Court of Appeals: 1) applied an improper standard of appellate review by construing the evidence and its inferences in the light most favorable to the defense, rather than properly construing the evidence in the light most favorable to the State; 2) expressly credited the defense evidence, which the jury implicitly rejected in its verdict, while ignoring significant parts of the State's evidence; 3) improperly made credibility determinations in accepting the defense's evidence; and 4) improperly weighed the evidence. In essence, the Court of Appeals erroneously substituted its judgment for the circuit court's findings regarding the sufficiency of the evidence at the directed verdict stage, and ultimately the jury's verdict.

When ruling on a directed verdict motion, the trial court is concerned with the existence or nonexistence of evidence, not its weight. State v. Gaines, 380 S.C. 23, 667 S.E.2d 728, 732-33 (2008). In reviewing the denial of a directed verdict motion, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State, and the appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Brown, 402 S.C. 119, 740 S.E.2d 493, 495 (2013); State v. Gilliland, 402 S.C. 389, 741, S.E.2d 521, 525 (Ct. App. 2012). If there is any direct evidence, or substantial circumstantial evidence, reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to

the jury. Brown, 740 S.E.2d at 495; State v. Gentry, 363 S.C. 93, 610 S.E.2d 494, 500 (2005); Gilliland 741 S.E.2d at 525.

A. Standard of Appellate Review

Even though the Court of Appeals expressly acknowledged the limited scope of appellate review on directed verdict issues, it failed to apply it. Rather than consider the evidence and all reasonable inferences in the light most favorable to the State, the Court ignored much of the State's evidence, including the testimony of witnesses to the attack on Lochbaum, instead relying extensively, and almost exclusively, on the testimony of Respondent and Co-Defendant.

The Court of Appeals opinion discusses the testimony of Respondent and Co-Defendant at length, while completely ignoring the State's witnesses' testimony. (Appendix, pp. 2-3, 5-6). In ultimately concluding the record was "devoid of any evidence" tending to prove Respondent and Co-Defendant acted with the premeditated purpose and intent required for the lynching conviction, the Court specifically relies on the defense testimony regarding events immediately preceding the attack on Lochbaum. (Appendix, pp. 5-6). As to the conspiracy and pointing and presenting charges, the Court again cited and relied on the defense testimony in concluding there was no evidence of an agreement to attack Lochbaum. (Appendix, pp. 7-8).

As set forth below, and contrary to the Court of Appeals' findings, the State presented substantial circumstantial evidence and direct evidence in its case-in-chief, much of which was subsequently corroborated by the defense's evidence, from which the jury could reasonably infer premeditation and intent as to the lynching charge, and the

Lock employee to scam the company by intercepting service calls: (R., pp. 97, 121-133, 137-138).

On April 30, 2009, Respondent and Co-Defendant (Respondent's brother-in-law) traveled together over an hour to Knights Stadium in Rock Hill in an attempt to prove Lochbaum was working with a current Pop-A-Lock employee (Mike Taylor) to intercept service calls, and then drove to Lochbaum's home when he did not show up at the stadium. They both wore all black clothing, and Co-Defendant had a "very large," loaded gun. When they arrived at Lochbaum's home around midnight, there was several men standing in the driveway around Lochbaum's van, so they parked around the corner out of sight of the home. (R., pp. 24-26, 33, 35, 64-66, 100-101, 105-106, 167-168).

Respondent approached the home alone, and asked to speak with Lochbaum. After the neighbors in Lochbaum's yard walked off, Respondent argued with Lochbaum about messing with Pop-A-Lock's business, shoved him and started walking down the street away from where the neighbors were standing. The neighbors were suspicious because Respondent suddenly showed up in the middle of the night, wearing dark clothes and acting nervous, so they stood down the street from Lochbaum's home and watched. (R., pp. 24, 27-29, 42-44, 64, 79, 92, 100-101, 177-179, 201, 204, 208-210, 221-222, 224-225). Significantly, the same circumstances the Court of Appeals dismissed as insufficient to support denial of the directed verdict motion were sufficient to make the

neighbors immediately suspect Respondent's intentions, but the Court of Appeals completely ignored the neighbors' testimony about the incident itself.⁴

While Respondent and Lochbaum were arguing, Co-Defendant approached along the dark street, unnoticed by Lochbaum or his neighbors, then suddenly emerged from the darkness and ran toward Lochbaum with the loaded handgun. Co-Defendant cocked the gun and pointed it at Lochbaum, yelling "this is what you get when you f**k with my family." (R., pp. 29-30, 45, 65-66).

Lochbaum defended himself by grabbing for the gun, and as he struggled with Co-Defendant, Respondent put Lochbaum in a choke hold from behind. One witness testified Lochbaum was purple in the face, could not breathe, and appeared to be dying. When Lochbaum's neighbors intervened and tried to get Co-Defendant to release the gun, he responded, "f**k you, he's f**king with my family." During the struggle for the gun, the trigger was pulled, and the gun would have fired but for a neighbor's finger between the hammer and the firing pin. (R., pp. 65-71, 105-108, 185).

After the neighbors pulled Respondent off Lochbaum, and Co-Defendant finally dropped the gun, Respondent and Co-Defendant ran down the street with Lochbaum's neighbors following them and yelling the police were on the way. Rather than wait on law enforcement to arrive, or even calling law enforcement themselves, however,

⁴ The Court of Appeals opinion referred to the neighbors as mere "bystanders," who "called the police," and did not discuss their testimony, or involvement in the incident, at all. (App., p. 3). In fact, the only testimony the opinion discusses in any depth is the defense's testimony, but then fails to note significant differences between that testimony and the neighbors' accounts of the events. (App., pp. 2-8). This establishes beyond any doubt the extent to which the Court of Appeals ignored the State's evidence.

Respondent and Co-Defendant fled the scene in Respondent's vehicle. (R., pp. 9-12, 32-33, 59-60, 74, 77, 109-110, 186-185, 215-219).

A reasonable inference from the State's evidence regarding the events of April 30, 2009, was that Respondent and Co-Defendant **jointly** traveled for over an hour from Kannapolis, NC, to York County that night to take care of someone they believed was "f**king with [their] family." When their **initial** plan to deal with Lochbaum at Knights Stadium failed, they were so determined to take care of the perceived problem, they took the time to get directions and drive over to Lochbaum's home in the middle of the night, and then parked out of sight of the home. Respondent approached Lochbaum and engaged him in an argument, with Co-Defendant waiting in the darkness.

While Respondent had Lochbaum distracted, Co-Defendant came out of the darkness, pointing a loaded, cocked gun at Lochbaum. Co-Defendant's words as he ran toward Lochbaum spoke volumes about why he and Respondent were there that night: "[t]his is what you get when you f**k with my family," a sentiment he repeated multiple times while Lochbaum and his neighbors attempted to get the gun away from him. (R., pp. 67, 72). When it became clear their plan to deal with Lochbaum had completely failed, they no longer had the "very large" gun and the police were on the way, Respondent and Co-Defendant fled the scene, from which guilt can also be inferred.

2. The Defense Evidence

Respondent and his wife confirmed their plan to lure someone to Knight's Stadium that night, but denied the plan targeted Lochbaum. Respondent ultimately

admitted, however, he suspected Lochbaum was "in cahoots" with one of the company employees. (R., pp. 282-288, 295-297, 300-301, 303, 308-312, 345-353, 358-359).

Respondent testified he and Co-Defendant sat in the Knight's Stadium parking lot for approximately an hour, but no one showed up to take the "mystery shopper" call. (R., pp. 351-353). After leaving the parking lot, Respondent stopped for gas on Carowind's Blvd., and called his wife for directions to Lochbaum's home, allegedly so he could drive by and see if there were any company signs on cars in the driveway, or any company employees there. The drive from the gas station to Lochbaum's home took approximately twenty-five minutes, and they drove by the home at approximately midnight. (R., pp. 353-354, 381-383, 409). Respondent stated he decided to go by Lochbaum's home because no one showed up at Knight's Stadium, but he continued denying Lochbaum was the target, even though he did not seek directions to anyone else's home that night.

Both Respondent and Co-Defendant testified they never talked about Respondent's suspicions regarding Lochbaum, or what they would do if they found Lochbaum, even though they were in the car together for almost three hours before arriving at Lochbaum's home. Significantly, in spite of purportedly having no conversations with Respondent about the purpose of the "mystery shopper" "sting, Co-Defendant knew exactly what to say when he received the confirmation call from a Pop-A-Lock employee. (R., pp. 381-385, 410-412, 432-436, 492-493).

While the Court of Appeals relied almost exclusively on the defense evidence, it ignored significant parts of that evidence less favorable to Respondent, such as his

specifically seeking directions to Lochbaum's home, and only Lochbaum's home, and the twenty-five minutes it took for them to get there, which provided even more time for Respondent and Co-Defendant to discuss what they were going to do if they saw Lochbaum. It is certainly possible Respondent and Co-Defendant were together in a vehicle for three hours and never talked about the reason for the trip, Lochbaum, or what they were going to do if they found Lochbaum, but that was ultimately a question of fact for the jury.

In addition, when asked on cross-examination why he did not simply call Lochbaum from the gas station and tell him to leave the business alone, Respondent stated he "didn't know [victim's] cell phone number off the top of [his] head," but then conceded his wife, the person he called to get Lochbaum's address and directions to his home, did know the number. (R., pp. 353-54, 388). The fact Respondent made no effort to call Lochbaum before showing up at his home, and traveled an additional twenty-five minutes to Lochbaum's home in the middle of the night, supports the implication Respondent and Co-Defendant intended to deal with Lochbaum in person that night, and to do far more than simply "talk" to him.⁵ Again, their intent was a question of fact for the jury.

C. Effect of Court of Appeals Analysis

The gist of the Court of Appeals' conclusion in this case is that the State's case failed because there was no testimonial evidence of an express agreement between

⁵While Respondent did not call Lochbaum **before** going to his home, Respondent did call him **after** Co-Defendant was arrested. (R., pp. 115, 368-369). Clearly, Respondent was able to get Lochbaum's number when it suited him to do so.

Respondent and Co-Defendant to attack and injure Lochbaum because they claimed there was no such agreement. The effect of the Court of Appeals' analysis is that unless the State can produce evidence of actual discussions between co-conspirators while planning the crime, a defendant's testimony (after the State rests its case-in-chief) that he never conspired with his co-defendants, and never intended to commit a crime, will mandate a directed verdict on any charge requiring an agreement, premeditation and intent to commit a crime.⁶ The defendants' concerted actions leading up to and during the crime will be irrelevant because their protestations of innocence and lack of intent will be paramount. Such a result renders the well-established directed verdict analysis, and the applicable standard of appellate review, completely meaningless.

It is undisputed there was a confrontation between Respondent and Lochbaum, which Respondent initiated by going to Lochbaum's home in the middle of the night and calling Lochbaum out. During that confrontation, Co-Defendant came out of the darkness toward Lochbaum with a very large, loaded and cocked gun (.45 caliber revolver), shouting "this is what you get when you f**k with my family." When Lochbaum tried to disarm Co-Defendant, Respondent put him in a chokehold from behind, to the point Lochbaum was purple in the face, and appeared to be dying. Fortunately, Lockbaum's neighbors were there to intervene, and Lockbaum only sustained injuries to his hand during the struggle

⁶Indeed, if the Court of Appeals published opinion stands, criminal defendants will no doubt cite it for this very proposition.

This case ultimately hinged on whether the jury believed Respondent and Co-Defendant were in a car together for over three hours, never discussed what they were going to do if they found Lochbaum, and everything that happened at Lochbaum's home occurred as a matter of happenstance. The jury was present in the courtroom and able to observe the witnesses' credibility, and by rendering guilty verdicts, it clearly determined the claims of innocence by Respondent and Co-Defendant were not credible. In essence, the Court of Appeals weighed the evidence, decided Respondent and Co-Defendant were credible, and substituted its judgment for the jury's verdict based on their testimony alone.

CONCLUSION

Based on the foregoing, Petitioner submits the Court of Appeals decision should be reversed, and Respondent's convictions and sentences reinstated.

Respectfully submitted,

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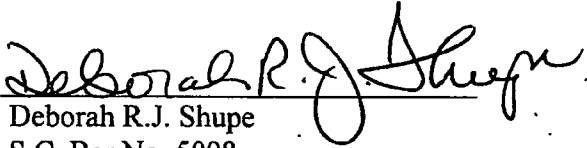
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ATTORNEYS FOR PETITIONER

July 14, 2014

Columbia, SC

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY
In the Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2013-001143

RECEIVED

AUG 20 2014

S.C. Supreme Court

The State Petitioner,

VS

Francis Larmand Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Index

Table of Authorities	ii
Question Presented	1
Statement of the Facts	2
Argument	6
Conclusion	16

Table of Authorities

Cases:	Page:
<i>Campbell v. State</i> , 2009 Ark. 540, 354 S.W.3d 41 (2009)	8
<i>Jackson v. Virginia</i> , 443 U.S. 307 (1979)	8
<i>State v. Al-Naseer</i> , 788 N.W.2d 469 (Minn. 2010)	7
<i>State v. Arnold</i> , 361 S.C. 386, 605 S.E.2d 529 (2004)	9, 13
<i>State v. Cherry</i> , 348 S.C. 281, 559 S.E.2d 297 (2001)	8
<i>State v. Cherry</i> , 361 S.C. 588, 606 S.E.2d 475 (2004)	8
<i>State v. Daniels</i> , 401 S.C. 251, 737 S.E.2d 473 (2012)	9
<i>State v. Gilliland</i> , 402 S.C. 389 741 S.E.2d 521 (Ct. App. 2012)	8
<i>State v. Grant</i> , 275 S.C. 404, 272 S.E.2d 169 (1980)	14
<i>State v. Gunn</i> 313 S.C. 124, 437 S.E.2d 75 (1993)	9
<i>State v. Hepburn</i> , 406 S.C. 416, 753 S.E.2d 402 (2013)	11
<i>State v. James</i> , 362 S.C. 557, 561, 608 S.E.2d 455, 457 (Ct. of App. 244)	8
<i>State v. Hernandez</i> , 677 S.E.2d 603, 382 S.C. 620 (2009)	7, 11
<i>State v. Logan</i> , 405 S.C. 83, 747 S.E.2d 444 (2013)	15
<i>State v. Lollis</i> , 343 S.C. 580, 541 S.E.2d 254 (2001)	9
<i>State v. Martin</i> , 343 S.C. 580, 541 S.E.2d 254 (2000)	8
<i>State v. Meggett</i> , 398 S.C. 516, 728 S.E.2d 492 (Ct. App. 2012)	8
<i>State v. Odems</i> , 395 S.C. 582, 720 S.E.2d 48 (2011)	8
<i>State v. Schrock</i> , 283 S.C. 129, 322 S.E.2d 450 (1984)	9
<i>State v. Smith</i> , 352 S.C. 133, 572 S.E.2d 473 (Ct. App. 2002)	10

Statutes:

S. C. Code § 16-3-230	11

Law Review Articles:

Irene Merker, Rosenberg, Yale L. Rosenberg, "*Perhaps What Ye Say is Based Only on Conjecture*" -- *Circumstantial Evidence, Then and Now*, 31 HOUS. L. REV. 1371 (1995) 7

Julie S. Chauvin, Comment, "*For It Must Seem Their Guilt*": *Diluting Reasonable Doubt by Rejecting the Reasonable Hypothesis of Innocence Standard*, 53 LOYOLA L. REV. 217 (2007) . . 6

Question Presented

Did the Court of Appeals err in reversing the circuit court's denial of Respondent's directed verdict motion when the state did not present substantial circumstantial evidence that Frank Larmand with Leo Lemire had the premeditated intent to inflict bodily injury upon Ryan Lochbaum?

STATEMENT OF FACTS

Kerriann Larmand, the wife of the Defendant Frank Larmand, owned and operated a business in the Charlotte area known as Pop-A-Lock. The business was a basic locksmith business. As part of a franchise operation, the business would also respond to calls to open car doors and other emergency calls. Rec. on App. at 324. Mrs. Lamard had reason to believe that someone in the company was stealing calls when a cash customer called for services such as a request to unlock an automobile. As a result she, with the assistance of her husband, set up a call for service in an attempt to determine who was stealing the calls from her company. Rec. on App. at 326, ll 12-25 to 327, ll 1-23.

As part of the mystery call, Frank Larmand was to go to the Knights Stadium outside of Charlotte. There he would wait and see who came in response to the mystery call. Prior to leaving Kanapolis, NC, where he lived, he met his brother-in-law, Leo Lemire. He requested Mr. Lemire to join him as another person was needed to receive the call as Mr. Lemire's voice would not be recognized by any employee or former employee of Pop-A-Lock who may be involved. Rec. on App. at 371, ll 20-372, ll 1-12. Mr. Larmand went to Knights Stadium and his wife placed the called requesting assistance in unlocking an automobile. The call was placed at 10:14 pm. Rec. on App. at 329, ll 10-22. Mike Taylor, who at the time was employed by Pop-A-Lock, received the call at 10:18 pm. Rec. on App. at 23-25. Mr. Taylor called Ryan Lochbaum, a former employee who was terminated in October of 2008, at about 10:43. Rec. on App. at 176, ll 6-8. Mr. Lochbaum testified that Mr. Taylor was simply asking him for directions to Knight Stadium. He had previously told officers involved in the case that Mr. Larmand and Mr. Lemire were trying to lure him out to Knight Stadium that evening. Rec.

on App. at 174, ll 5-11.¹ Mr. Lochbaum claimed that he was being "lured" to Knights Stadium is puzzling. If he was not attempting to steal calls from Pop-A-Lock, then he could not be lured to Knight's Stadium by a service call to Pop-A-Lock. When questioned by the officers about the alleged luring to Knight's Stadium, Mr. Lochbaum responded "Because Mrs. Larmand overheard me talking to the detectives at the bond hearing. Because they asked me specifically who gave me that information, and I told them if I told you that would leave me to be tried." Rec. on App. at 133, ll 16-19.² As he had been terminated several months before, Mr. Lochbaum had no legitimate reason to be responding to a call for Pop-A-Lock. Mr. Lochbaum had also been denied unemployment benefits because of his misconduct while employed by Pop-A-Lock. This upset Mr. Lochbaum. Rec. on App. at 167, ll 3-15.

After no one from Pop-A-Lock, or anyone trying to steal the service call, came to Knights Stadium, Mr. Larmand decided to go by the residence of Mr. Lochbaum. He went for the purpose of seeing if any employees of Pop-A-Lock were there and to determine if a red car with a Pop-A-Lock sign was at the residence. Rec. on App. at 377, ll 1- 12. Mrs. Larmand had received reports of a red car with a Pop-A-Lock sign being seen in the Charlotte area. Rec. on App. at 341, ll 17-25. When Mr. Larmand drove by Mr. Lochbaum's residence, he noticed several people gathered around a van but did not see a red car. He parked his truck past the house and instructed Mr. Lemire to remain in the truck. Rec. on App. at 378, ll 12-16. He then

¹ If the plan was to lure Mr. Lauchbaum to a secluded area of Knights's Stadium, the new plan to lure him to a better lighted area in front of friends does not make much logical sense.

² This statement implies that Mr. Lochbaum had something to hide by being truthful to the officers. Contrary to the implication in the Petitioner's brief, Mr. Lochbaum did not tell the officer who gave him the information. Br. of Pet. at 6.

walked to the residence of Mr. Lochbaum. He stood in the street near the rear of the van for a short period of time until someone acknowledged his presence. He stated that he wished to speak to Mr. Lochbaum. A person notified Mr. Lochbaum that someone was there to see him. Rec. on App. at 380, ll 12-20. Mr. Lochbaum then asked the others present to leave as he wanted to talk to Mr. Larmand in private. Rec. on App. at 72, ll 10-14. Mr. Larmand and Mr. Lochbaum then moved slightly down the street in the direction of the houses where his neighbors lived. Rec. on App. at 80, ll 1-9; 65, ll 1-3; 105, ll 7-9.

Mr. Lochbaum's house is the last house before a large area of empty lots.³ The area was lit with a street light, the porch light of Mr. Lochbaum's residence and the open door from the garage of Mr. Lochbaum. Rec. on App. at 196, ll 4-9; 100, ll 10-15. At least three other people were present when Mr. Lochbaum asked to speak to Mr. Larmand in private. Rec. on App. at 68, ll 21-25 to 69, ll 1-4. The van was pointed into the driveway. Mr. Lochbaum and Mr. Larmand met on the right side of the van. They never moved together toward the left side of the van and the empty lots. Rec. on App. at 105, ll 7-9. The entire incident occurred near the property line between Mr. Lochbaum's house and Mr. Jesse Harris' house. Rec. on App. at 65, ll 1-3. This area was better lit than the side of the van toward the empty lots.

At no time did Mr. Larmand strike, hit or threaten to inflict harm upon Mr. Lochbaum or encourage Mr. Lemire to inflict any harm. Rec. on App. at 117, ll 12-18; 151, ll 18-19; 142, ll 12-13; 143, ll 5-13. After Mr. Lochbaum and Mr. Larman had spoken for a brief time, Mr. Lemire, who had left the truck after Mr. Larmand left, came at Mr. Lochbaum with a

³ The house and the empty lots beside it can be seen on the Google Earth view for April 10, 2010. This is the date closest to the date of the incident. Visited by this writer on August 9, 2014. This view is virtually identical to the exhibit introduced by the state.

pistol. Rec. on App. at 150, ll 14-22. Mr. Lochbaum turned to confront Mr. Lemire and grabbed the pistol. In the struggle they both fell to the ground. At that point the neighbors who were with Mr. Lauchbaum earlier came and helped subdue Mr. Lemire.⁴ When the two fell to the ground, Mr. Lochbaum testified that Mr. Larmand tried to pull him off of Mr. Lemire. Rec. on App. at 151, ll 18-24. Mr. Lauchbaum was successful in obtaining the pistol from Mr. Lemire. At that point the struggle ended and Mr. Larmand and Mr. Limire left the area. 154, ll 4-14. Mr. Lauchbaum received only a very minor scratch to his hand. Rec. on App. at 159, ll 16-22.

After leaving the scene Mr. Larmand was stopped by William Watson of the Rock Hill Police Department. Mr. Lemire was arrested that night for presenting and pointing a firearm. Mr. Larmand was briefly questioned and released. Rec. on App. at 59, ll 1-16. Mr. Larmand was arrested the next day when he came to arrange bail for Mr. Lemire.

⁴ While not relevant to this appeal, the neighbors testimony was frequently somewhat contradictory. For example, Ronald Lee testified he was with everyone else "a couple of hundred feet" away when the scuffle began. Rec. on App. at 192, ll 11-14. Mark Whittington testified the distance was about 1,000 feet. Rec. on App. at 56, ll 10-11. Either way, there was sufficient light for them to see what was happening from either distance.

ARGUMENT

Did the Court of Appeals err in reversing the circuit court's denial of Respondent's directed verdict motion when the state did not present substantial circumstantial evidence that Frank Larmand with Leo Lemire had the premeditated intent to inflict bodily injury upon Ryan Lochbaum?

Standard of Review

The initial question in this appeal should be by what standard does an appellate court review a pure circumstantial evidence case? Does an appellate court use the same standard as a jury and determine if the evidence excludes every reasonable possibility except that of the guilt of the defendant? A pure circumstantial evidence case is different from every other case. A jury has determined every fact the state has proven is correct, but no fact points directly to the guilt of the defendant. An appellate court is not, as under the law it cannot, judging the credibility of the witnesses. In this case, the court of appeals, as this court, agreed that the state witnesses were truthful. If an appellate court finds a jury had two reasonable alternatives and because they choose the one favoring guilt the facts are sufficient to convict, the reasonable doubt standard is deluded. If an appellate court determines that two reasonable alternatives are present, then as a matter of law the case has not been proven beyond a reasonable doubt.

As noted by one author "[I]f two competing propositions are so close that they must be weighed, the possibility of innocence must be reasonable enough to create a reasonable doubt in the mind of a rational juror." Julie Schmidt Chauvin, Comment, "*For It Must Seem Their Guilt*": *Diluting Reasonable Doubt by Rejecting the Reasonable Hypothesis of Innocence Standard*, 53 LOYOLA L. REV. 217 (2007). Another writer has said:

In the case of circumstantial evidence, however, the ultimate determination of guilt is based also on inferences from the evidence, and the court is in as good, if not better, position to assess the rationality of these inferences and whether they establish guilt beyond a reasonable doubt. Thus, use of the reasonable hypothesis standard for appellate sufficiency review would preserve the appropriate roles of judge and jury in circumstantial evidence cases.

Irene Merker, Rosenberg, Yale L. Rosenberg, "*Perhaps What Ye Say is Based Only on Conjecture*" - - *Circumstantial Evidence, Then and Now*, 31 HOUS. L. REV. 1371 (1995)⁵

Minnesota recognizes that appellate courts should review a circumstantial evidence case under the same "to the exclusion of any other reasonable hypothesis standard" that is given to the jury. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) ("This heightened scrutiny requires us to consider 'whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt.'") The Respondent contends that this is the proper standard of review for this court, but even under a lesser standard, the judgment of the Court of Appeals should be affirmed. A heightened standard of review is important in a true circumstantial evidence case because such a case is the only type of case tried in our judicial system in which everyone can tell the truth and an innocent person be convicted. Cross examination may be useful in discrediting a lying or mistaken witness. However, cross examination frequently will not impeach the truthful witness in a circumstantial evidence case.

This Court and the South Carolina Court of Appeals have on numerous occasions, said "If there is any direct evidence or any *substantial* circumstantial evidence reasonably

⁵ On pages 1413 to 1422 this article discusses the various standards used in the state and federal courts when an appellate court reviews a circumstantial evidence case. Arguably footnote 2 of *State v. Hernandez*, 677 S.E.2d 603, 382 S.C. 620 (2009) supports the proposition that South Carolina uses a to the exclusion of any other reasonable hypothesis standard.

tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” *State v. Cherry*, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004)(emphasis added); *See, also, Jackson v. Virginia*, 443 U.S. 307 (1979); *State v. James*, 362 S.C. 557, 561, 608 S.E.2d 455, 457 (Ct. App. 2004); *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011); *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001); *State v. Martin*, 343 S.C. 580, 541 S.E.2d 254 (2000); *State v. Gilliland*, 402 S.C. 389 741 S.E.2d 521 (Ct. App. 2012); *State v. Meggett*, 398 S.C. 516, 728 S.E.2d 492 (Ct. App. 2012).⁶ The standard of review is not is there *some* circumstantial evidence that could be interpreted to be evidence of guilt. Nor is it to say that if one interpretation of the facts is consistent with guilt the verdict is to be sustained. To say a theory of guilt is possible is not substantial circumstantial evidence nor proof beyond a reasonable doubt. Concerning a review of a circumstantial evidence case, the Arkansas Supreme Court said “ In reviewing a challenge to the sufficiency of the evidence, we determine whether the verdict is supported by substantial evidence, direct or circumstantial. Substantial evidence is that evidence which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Campbell v. State*, 2009 Ark. 540, 354 S.W.3d 41, 44 (2009).

⁶ The South Carolina Court of Appeals in *State v. Cherry*, 348 S.C. 281, 559 S.E.2d 297 (Ct. App. 2001) discussed whether courts in applying the “substantial circumstantial evidence” standard are engaging in the weighing of evidence, which appellate courts are forbidden to do. The United States Supreme Court in *Jackson v. Virginia*, 443 U.S. 307 (1979) specifically rejected the “any evidence” standard in criminal cases. The Court said “But it could not seriously be argued that such a ‘modicum’ of evidence could by itself rationally support a conviction beyond a reasonable doubt.” *Id.* at 320. To the extent that any appellate court determines whether the circumstantial evidence is “substantial” or if the evidence is more than a “modicum” an appellate court will, to some extent, weigh the evidence, notwithstanding the frequent protestations to the contrary.

Argument

As to circumstantial evidence this Court has said "'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *State v. Lollis*, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). This Court has further said circumstantial evidence is sufficient to convict when "the circumstances proven are consistent with each other, and when taken together, point conclusively to the guilt of Appellant to the exclusion of every other reasonable hypothesis." *State v. Daniels*, 401 S.C. 251, ___, 737 S.E.2d 473 (2012). This Court has further said "It is not sufficient that they create a probability, though a strong one" *State v. Schrock*, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984).

In *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004) this Court upheld a Court of Appeals decision which reversed the murder conviction of the defendant. The facts were that the defendant knew the victim and had been involved in a sexual relationship with the victim, the victim was shot and the defendant had been seen possessing a firearm, the car used by the deceased was found about ten miles from where the defendant was living and a coffee cup lid found in the car contained the fingerprint of the defendant. This Court held those facts did not raise a substantial circumstantial evidence case that could be submitted to the jury.

As lynching is in essence a conspiracy, what this Court has to say about proving a conspiracy is also relevant to lynching. This Court has said "Thus, we focus here on the sufficiency of the evidence of an *agreement* between the alleged conspirators, and not, as the State would have us do, on the alleged common *object*, that is, the importation and distribution of Dilaudid in a defined geographic area." *State v. Gunn* 313 S.C. 124, 134, 437 S.E.2d 75, 80

(1993) (emphasis in original) This is the standard against which the circumstantial evidence in this case must be viewed.

Here the state is urging this Court to focus upon the fact that Ryan Lochbaum was in fact attacked and not the proof of an agreement to attack Mr. Lochbaum. The evidence presented by the state only proved that Mr. Lochbaum was attacked by Mr. Lemire. The evidence did not prove an agreement between Mr. Larmand and Mr. Lemire. The Court of Appeals has held "[T]o sustain a conviction for lynching the State must produce at least some evidence of premeditation." *State v. Smith*, 352 S.C. 133, 137, 572 S.E.2d 473, 475 (Ct. App. 2002). The proof of premeditation must be more than speculation or conjecture. The Petitioner has not shown any proof of premeditation that is more than speculation or conjecture. They may have shown that a premeditated agreement is a possibility, but that is not sufficient to sustain the conviction. The Respondent urges that from the fact both defendants came to the scene together, the jury could assume there was premeditation and planning to assault Mr. Lochbaum. But just as likely, the two defendants arrived at the scene together so Mr. Larmand could speak with Mr. Lochbaum and Mr. Lemire was acting on his own when he attacked Mr. Lochbaum. In fact, considering that Mr. Larmand never attempted to get Mr. Lochbaum by himself and away from others, the latter version is more likely. The state has produced no evidence which makes a guilty explanation substantially more likely than the innocent explanation. For that reason, the state has failed in its proof. The question is not may a guilty explanation be inferred from the facts, but rather has the state proven that a guilty explanation is more likely to the extent that a reviewing court can conclude the guilty explanation is substantially more likely.

In *State v. Hernandez*, 677 S.E.2d 603, 382 S.C. 620 (2009) this Court said

"The State claims that it is "nonsensical" to find that the Thunderbird occupants did not know Petitioners prior to this transaction. However, the State failed to present any evidence such as acts, declarations, or specific conduct to support this inference, and thus, we find that the conclusion that Petitioners knew the Thunderbird occupants and therefore had knowledge of the drugs in the tractor trailer is mere speculation." *Id.* at 625, 677 S.E.2d at 605. The same principles apply in this case. The state merely assumes an attack was planned without any proof of such a plan.

The Court of Appeals did not, as the Respondent contends, ignore the evidence of the state, but rather simply acknowledged that the evidence of the state simply put the two defendants at the same place at the same time. In *Hernandez* this Court further held, "[T]he State failed to present any evidence such as acts, declarations, or specific conduct to support this inference [knowledge], and thus, we find that the conclusion that Petitioners knew the Thunderbird occupants and therefore had knowledge of the drugs in the tractor trailer is mere speculation." *Id.* at 625, 677 S.E.2d at 605. This Court did not consider the specific conduct of being at the same place at the same time sufficient to prove knowledge of the drugs even though the defendant followed the tractor trailer down a secluded road. Mr. Hernandez well could have been guilty, but that was not sufficient to sustain the conviction. The same principle is applicable here. Under the prior definition of lynching, as well as the current law, the State is required to prove premeditation. The premeditation required is to have the intent to commit an act of violence upon another person. S. C. Code § 16-3-230. The premeditation has to be formed before the alleged attack.

The Petitioner argues "The effect of the Court of Appeals' analysis is that unless

the State can produce evidence of actual discussions between co-conspirators while planning the crime, a defendant's testimony (after the State rests its case-in -chief) that he never conspired with his co-defendants and never intended to commit a crime, will mandate a directed verdict on any charge requiring an agreement, premeditation and intent to commit a crime." Br. of Pet. at 24. This is not the position of the Respondent. The Respondent contends that if the state fails to produce evidence of an agreement by either direct or substantial circumstantial evidence, then a defendant is entitled to a directed verdict. The testimony of the defendant is not relevant to that determination. *See, State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013).⁷

In the present case no action or statement of Mr. Larmand indicated any intent to assault or strike Mr. Lochbaum as part of a conspiracy with Mr. Lermire. The wearing of dark clothes is no more an indication of a conspiracy than it is of the fact that the clothing is their work clothes. The state produced no evidence the clothing was not their normal work clothes. The state produced no testimony to make a guilty inference from the facts indicating guilt was more likely than an innocent explanation of the facts. When Mr. Larmand approached Mr. Lochbaum, there was no attempt on Mr. Larmand's part to separate Mr. Lochbaum from his friends. The suggestion that his friends leave was made by Mr. Lochbaum. Mr. Larmand and Mr. Lochbaum then moved to an area toward a more populated, lit area as opposed to the area where there were no houses and was darker. Mr. Larmand did not take Mr. Lochbaum to a place where Mr. Lermire was hiding. This certainly does not make a planned attack upon Mr.

⁷ On the issue of a directed verdict, the question of whether the jury believed the testimony of the defendant is simply not relevant to this case or any case. *Hepburn* establishes that the trial judge must look at the evidence at the end of the state's case. A jury's disbelief of a defendant's testimony simply cannot supply the absence of evidence in the state's case.

Lochbaum more likely than not. When Mr. Lermire said "This is what you get for f***ing with my family," this is an indication of Mr. Lermire's attitude and intent and not Mr. Larmand's. At no time did the state offer any evidence of any statement by Mr. Larmand that would even suggest any planning in the incident.

The Respondent argues that a reasonable inference from the State's evidence is that there was a premeditated plan to attack Mr. Lochbaum. Brief of Pet. at 21. The state, however, has not shown what facts, other than they traveled together to Rock Hill, to support that conclusion. Under the facts of this case, a guilty explanation is not substantially more likely than an innocent explanation. When the state fails to give a jury a rational basis for rejecting an innocent explanation of the circumstantial evidence, then the state has not met its burden of proof. A jury should not be required to guess between two equal conclusions from the circumstantial evidence produced. Such proof is not proof of substantial circumstantial evidence.

The State argues that because Mr. Larmand parked some distance away he planned on attacking Mr. Lochbaum. First, according to the scale of the map used as an exhibit, the distance is slightly over 1,089 feet.⁸ The car was parked at the end of the road in the vicinity of several houses from which people could observe and describe the car. After the alleged attack, they would both have to go over 1,000 feet to the automobile. The logic of placing a "get away" car so far from the scene of the alleged planned attack simply does not support an inference that the attack was planned by both Mr. Larmand and Mr. Lermire.

The State further argues that the fact that Mr. Larmand and Mr. Lermire fled the

⁸ This Court took judicial notice of the distance between Gary, TN and Johnson City, TN in *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), n. 3.

scene is also evidence of their guilt. In *State v. Grant*, 275 S.C.404, 272 S.E.2d 169 (1980) this Court said "evidence of flight tends to be only marginally probative as to the ultimate issue of guilt or innocence." *Id.* at 408, 272 S.E.2d at 171. Under the facts of this case evidence of flight is even less than marginal. After the fight the firearm Mr. Lemire possessed was in the hands of Mr. Lochbaum. Both Mr. Larmand and Mr. Lemire had been in a altercation with several individuals. They were out numbered. Mr. Jessie Harris testified that someone, he thought Mr. Lochbaum, told Mr. Larmand and Mr. Lemire to leave. Rec. on App. at 123, ll 18-25. They quickly left the scene. When the officer turned on his blue light, Mr. Larmand stopped his automobile and did not try to evade the police. Rec. on App. At 57, ll24-25 to 58, ll 1-3. Apparently Mr. Larmand was not even given a ticket for speeding. Rec. on App. at 59, ll 1-13.

Mr. Lemire testified that he was told to remain in the car. Rec. on App. at 463, ll 15-20. He did not leave the truck until after he heard a loud argument. Rec. on App. at 466, ll 13-16. He testified that his leaving the truck was not part of any plan or scheme.

The State has argued that the Court of Appeals has ruled "that the State's case failed because there was no testimonial evidence of an express agreement between Respondent and Co-Defendant to attack and injure the victim." Pet. For Cert. at 21. What the Court of Appeals has ruled is simply a correct statement of the law that the state is required to produce direct evidence or substantial circumstantial evidence of a premeditated agreement by Mr. Larmand and Mr. Lemire to assault Mr. Lochbaum. Under the facts of this case there is simply no substantial circumstantial evidence that Mr. Larmand with Mr. Lemire planned any attack on Mr. Lochbaum. The facts are simply not sufficient to convict Mr. Larmand of the crimes for which he was convicted..

“Substantial circumstantial evidence” is more than one of two possible conclusions from the evidence. The phrase certainly means more than a 50/50 chance. If the phrase is to have any meaning, it must mean that the state is required to produce evidence that makes guilt substantially more likely than not from the circumstantial evidence presented. Such a rule is rational and logical. A possible or probable conclusion from a circumstantial evidence case is not proof beyond a reasonable doubt.

This Court has recently approved a jury instruction that provides “ [T]o the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.” *State v. Logan*, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013).⁹ Against this standard, the state has simply failed to point to any evidence that points conclusively to the guilt of Mr. Larmand. A possible, or even probable, conclusion from the facts is not sufficient to convict. The state must show at the very least that the circumstantial facts must create a substantial probability of the guilt of the defendant. The State has not shown what facts in this case establish a substantial probability to the exclusion of every other reasonable hypothesis that Mr. Larmand is guilty of a premeditated attack upon Mr. Lochbaum.

Remedy

In the event this Court reverses the South Carolina Court of Appeals decision, this matter should be remanded to the *en banc* panel of the Court of Appeals to consider and decide the issues not ruled upon in the initial decision.

⁹ In this case no circumstantial evidence charge was given.

CONCLUSION

In this case the state failed to produce substantial circumstantial evidence Mr. Francis Larmand had any premeditated agreement with Mr. Leo Lermire to go to the residence of Ryan Lochbaum and commit the crime of lynching. Without proof of a premeditated agreement, no proof of the crime of lynching or conspiracy exists. The decision of the Court of Appeals should be affirmed.

August 18, 2014



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ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Appeal From York County
The Honorable William H. Seals, Jr., Circuit Court Judge AUG 28 2014
On Writ of Certiorari to the Court of Appeals
Appellate Case No. 2013-001143

S.C. Supreme Court

THE STATE,

Petitioner,

vs.

FRANCIS LARMAND,

Respondent.

REPLY BRIEF OF PETITIONER

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TABLE OF CONTENTS

ARGUMENT	1
CONCLUSION	5

TABLE OF AUTHORITIES

Cases:

<u>State v. Barksdale</u> , 311 S.C. 210, 428 S.E.2d 500 (Ct. App. 1993).....	3
<u>State v. Bennett</u> , 408 S.C. 302, 758 S.E.2d 743 (Ct. App. 2014)	1
<u>State v. Brown</u> , 402 S.C. 119, 740 S.E.2d 493 (2013)	4
<u>State v. Cherry</u> , 361 S.C. 588, 606 S.E.2d 475 (2004)	1
<u>State v. Gaines</u> , 380 S.C. 23, 667 S.E.2d 728 (2008)	4
<u>State v. Hepburn</u> , 406 S.C. 416, 753 S.E.2d 402 (2013)	1
<u>State v. Tuckness</u> , 257 S.C. 295, 185 S.E.2d 607 (1971)	3

ARGUMENT

A. Standard of Appellate Review

Respondent asserts this Court should use a “to the exclusion of any other reasonable hypothesis” standard of review regarding directed verdict, citing law review articles and case law from Minnesota as support for the assertion. Noticably absent from Respondent’s argument, however, is any meaningful discussion of South Carolina case law directly on point, and clearly contrary to his assertion.

In ruling on a directed verdict motion, “a trial judge is **not** required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.” State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402, 409 (2013) (*quoting State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475, 478 [2004]) (emphasis added); State v. Bennett, 408 S.C. 302, 758 S.E.2d 743, 745 (Ct. App. 2014) (same). Thus, as recently as May 2014 (Bennett), South Carolina appellate courts have rejected Respondent’s position.

If Respondent’s argument is accepted, it will effectively render the jury system meaningless. All a defendant need do is present an alternate interpretation of the evidence, and the trial court will be mandated to take the case from the jury and direct a verdict for the defendant. In essence, all trials will become bench trials, and juries will be eliminated from the process.

Jury trials are a cornerstone of our criminal justice system, and cases should be removed from the jury’s consideration only when there is **no** evidentiary basis to support a finding of guilt. If there are alternative theories of the evidence, deciding which theory to accept is, and should remain, a jury function.

B. The Evidence and Reasonable Inferences

Respondent asserts the Court of Appeals applied the appropriate standard, and properly determined the State failed to present sufficient evidence to warrant submitting the case to the jury. His entire argument is premised on his contention the State's case was "[a] pure circumstantial case." (Brief of Respondent, p. 6).

Contrary to Respondent's contention, the State presented **direct** evidence of Respondent's actions leading up to and following the attack on Lochbaum. The **only** circumstantial component of the State's case was the element of intent/premeditation, which almost always requires circumstantial proof. As discussed in the Brief of Petitioner, the direct evidence of the circumstances provided substantial circumstantial evidence of Respondent's and his Co-Defendant's intent that night.¹ (Brief of Petitioner, pp. 18-21). Notably, in denying Respondent's directed verdict motion, the circuit court stated: "[c]learly, this is an issue for the jury to decide." (R. Vol. I, p. 266).

The State's evidence did far more than simply put Respondent and the Co-Defendant in the same place at the same time. Rather, it established the purpose of their trip from North Carolina to Rock Hill was to deal with Lochbaum, and when the effort to lure him to Knights Stadium failed, they drove to his home in the middle of the night. Respondent parked his vehicle where it could not be seen from Lochbaum's house, and walked back to the house to confront him. While he had Lochbaum distracted, Co-

¹In response to Respondent's version of the evidence, the State craves reference to the Record on Appeal. At best, Respondent's assertions regarding the facts established by the evidence reveal exactly why the circuit court properly submitted the case to the jury.

Defendant came through the dark, approached Lochbaum while pointing a very large, cocked gun at him, and made it clear he believed Lochbaum was "f***ing" with his family. Even ignoring the attempt to lure Lochbaum to Knights Stadium, it is certainly inferable from the undisputed evidence regarding the circumstances preceding and during the attack that Respondent and Co-Defendant planned to attack Lochbaum after they realized he might be outside. See State v. Barksdale, 311 S.C. 210, 428 S.E.2d 500, 501 (Ct. App. 1993) ("[T]o constitute a mob under the statute the assemblage need not have formed with the premeditated purpose and intent of committing an act of violence upon the person of another, but the requisite purpose and intent may be formed after the participants are assembled[.]").

Whether Co-Defendant's reference to "my family" when he approached Lochbaum with a cocked gun indicated he was acting without Respondent's knowledge, or he was acting as part of a premeditated attack on Lochbaum because they believed he was stealing Pop-A-Lock's business, was a quintessential question of fact for the jury's determination. See State v. Tuckness, 257 S.C. 295, 185 S.E.2d 607, 608 (1971) ("The question of criminal intent with which an act is done is one of fact and is **ordinarily for jury determination except in extreme cases** where there is no evidence thereon.") (emphasis added). The jury was present in the courtroom and able to observe the witnesses' credibility, and by rendering guilty verdicts, it clearly determined Respondent and Co-Defendant **did** premeditate the attack.

The Court of Appeals improperly weighed the evidence, essentially ignored the State's evidence; decided Respondent and Co-Defendant were credible, and then

substituted its judgment for the jury's verdict based on their testimony alone.² That analysis is contrary to, and represents a dangerous departure from, well-established South Carolina law regarding appellate review of directed verdict motions. Accordingly, the Court of Appeals opinion should be reversed.³

²By way of footnote, Respondent acknowledges the standard of appellate review prohibits weighing the evidence, but contends appellate courts actually do weigh the evidence in spite of that well-established prohibition. (Brief of Respondent, p. 8, n. 6). Absent a change in the long-standing standard of review from directed verdict motions, the appellate courts may not weigh the evidence in determining if there was evidence to support the circuit court's ruling. State v. Brown, 402 S.C. 119, 740 S.E.2d 493, 495 (2013) (in reviewing the denial of a directed verdict motion, the appellate court is bound by the trial court's factual findings absent clear error); State v. Gaines, 380 S.C. 23, 667 S.E.2d 728, 732-33 (2008) (when ruling on a directed verdict motion, the trial court considered the existence or nonexistence of evidence, not its weight). Respondent asks this Court to use a broader analysis in determining whether the trial court erred that is beyond what the trial court is even allowed to consider in making its ruling.

³In the event this Court reverses the Court of Appeals *en banc* opinion, Respondent asserts the case should be remanded to the *en banc* Court of Appeals for rulings on the remaining issues he raised on appeal. In its Petition for Writ of Certiorari, the State relied on its Final Brief of Respondent as to those issues, and indicated it would provide further briefing as required by this Court, but remand was not warranted. Respondent did not address those issues in his Return, or even incorporate the arguments he made in the Court of Appeals on them, and he made no request for remand. This Court did not reference those issues in the Order granting certiorari, so arguably they are not before the Court. Even if they are before the Court, however, the State submits the record is sufficient for this Court to rule on them without remand to the Court of Appeals.

CONCLUSION

Based on the foregoing, Petitioner submits the Court of Appeals decision should be reversed, and Respondent's convictions and sentences reinstated.

Respectfully submitted,

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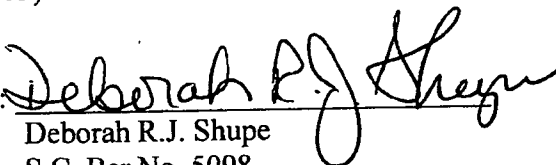
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ATTORNEYS FOR PETITIONER

August 28, 2014

Columbia, SC

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Petitioner,

v.

Francis Larmand, Respondent.

Appellate Case No. 2013-001143

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From York County
William H. Seals, Jr., Circuit Court Judge

Opinion No. 27562
Heard February 3, 2015 – Filed August 12, 2015

REVERSED

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, and Senior Assistant Deputy
Attorney General Deborah R.J. Shupe, all of Columbia,
and Solicitor Kevin S. Bracket, of York, all for
Petitioner.

C. Rauch Wise, of Greenwood, for Respondent.

CHIEF JUSTICE TOAL: The State appeals the court of appeals' decision in *State v. Larmand*, 402 S.C. 184, 739 S.E.2d 898 (Ct. App. 2013), reversing the trial court's denial of Frank Larmand's (Respondent) motion for a directed verdict on

charges for lynching, conspiracy, and pointing and presenting a firearm. We reverse.

FACTS/PROCEDURAL BACKGROUND¹

Respondent and his wife (collectively, the Larmands) are residents of Kannapolis, North Carolina. Together, they own a branch of Pop-A-Lock, a national locksmith franchise company providing customers with roadside assistance and locksmith services, and operate their branch in and around the Charlotte metropolitan area. Ryan Lochbaum worked at the Larmands' branch of Pop-A-Lock for several years until his termination in October 2008 for misconduct and providing unauthorized services to customers.

Approximately seven months after Lochbaum's termination, the Larmands became suspicious that he and one of their current employees, Mike Taylor, were conspiring to defraud Pop-A-Lock. Specifically, the Larmands believed that Taylor would occasionally relay a customer's location to Lochbaum, who would then place a removable magnetic sign on his vehicle and masquerade as the Pop-A-Lock locksmith. According to the Larmands, after the customer paid Lochbaum for "Pop-A-Lock's" services, Taylor and Lochbaum would split the money between themselves, and Taylor would inform the Larmands that the customer had left the designated location before he arrived.

To confirm their suspicions, the Larmands set up a "mystery shopper call" for Taylor. During the call, Respondent's brother-in-law, Leo Lemire, posed as a customer needing locksmith services at the Charlotte Knights' former stadium (Knights' Stadium) located in Fort Mill, South Carolina. Respondent and Lemire waited at the stadium in the hope of catching Taylor and Lochbaum.

Ultimately, neither Taylor nor Lochbaum responded to the telephone call. Therefore, around midnight, Respondent and Lemire drove to Lochbaum's house in Rock Hill, South Carolina, to investigate further, and potentially confront Lochbaum.² The two men parked at least one-quarter mile away from Lochbaum's

¹ Because this appeal involves Respondent's motion for a directed verdict, we view the evidence in the light most favorable to the State. *State v. Walker*, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002).

² At trial, a police officer and Lochbaum testified that it takes approximately one-and-a-half hours to drive from Respondent's home in Kannapolis to Lochbaum's home in Rock Hill.

house, despite the ample street parking available closer to the house. Further, they parked their vehicle facing the neighborhood's sole entrance and exit.

Meanwhile, Lochbaum and three of his neighbors—Mark Whittington, Devin Fivecoat, and Ron Lee—were socializing outside Lochbaum's house. Respondent, dressed in all-black clothing, approached the group and stood and stared silently, looking "edgy" and "agitated." Eventually, Respondent stated he wanted to speak to Lochbaum, and Lochbaum asked his neighbors to give them some privacy.

Respondent and Lochbaum began arguing loudly and pushing one another. Approximately one minute into the exchange, Respondent broke eye contact with Lochbaum and looked toward the vacant, darkened field abutting Lochbaum's house. Lochbaum then saw Lemire (also wearing all-black clothing) approaching quickly and pointing a handgun at Lochbaum. Lemire said, "This is what you get when you fuck with my family," and pulled the hammer of the gun back.

Lochbaum seized the gun and began to struggle with Lemire. Respondent placed Lochbaum in a chokehold and attempted to pull him away from Lemire. Whittington, Fivecoat, and Lee, who had been watching the exchange from several houses away, ran down the street and jumped into the fray in an effort to separate Lemire, Respondent, and Lochbaum. Lochbaum's next-door neighbor, Jesse Harris, also heard the commotion and ran out to stop the fight.³ Throughout the scuffle, Lemire screamed at everyone, "F-you, he's f'ing with my family, he's f'ing with my family."

Lochbaum, Whittington, Fivecoat, Lee, and Harris were able to wrestle the gun away from Lemire and pull Respondent away from Lochbaum. Respondent and Lemire quickly left the scene, driving at approximately sixty miles per hour in a thirty-five mile per hour zone without illuminating the vehicle's headlights.

Ultimately, a grand jury indicted Respondent and Lemire for lynching, conspiracy, and pointing and presenting a firearm. At trial, Respondent moved for a directed verdict at the conclusion of the State's case. He argued that the State had failed to provide any testimony that the attack on Lochbaum was premeditated, or

³ During the struggle, Harris placed his finger between the gun's hammer and the gun to prevent it from being fired. At some point, the hammer of the gun "clicked" on Harris's finger, indicating that the gun would have discharged during the fight had Harris's finger not stopped the hammer.

that Respondent and Lemire jointly planned the attack. Rather, Respondent asserted he was merely speaking with Lochbaum when Lemire appeared, and he only reacted to Lochbaum's "affirmative action" of "jump[ing] on [] Lemire" to grab the gun. The trial court denied Respondent's motion, and the jury later convicted Respondent and Lemire of second-degree lynching, criminal conspiracy, and pointing and presenting a firearm.

The court of appeals reversed the trial court's decision to deny Respondent's motion for a directed verdict. *Larmand*, 402 S.C. at 187, 739 S.E.2d at 900. Specifically, with respect to the lynching and conspiracy charges, the court of appeals found a complete lack of evidence of premeditation or a common plan to assault Lochbaum. *Id.* at 190–94, 739 S.E.2d at 901–03. With respect to the firearm charge, the court of appeals found that the State did not present any evidence of a conspiracy between Respondent and Lemire, and it was undisputed that Respondent never had possession of the gun. *Id.* at 194, 739 S.E.2d at 903–04. Therefore, the court of appeals reversed all three of Respondent's convictions. *Id.* at 194, 739 S.E.2d at 904.

We granted the State's petition for a writ of certiorari to review the court of appeals' decision.

ISSUE

Whether the court of appeals applied the correct standard of review in considering the trial court's denial of Respondent's directed verdict motion?

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). A court is "bound by the trial court's factual findings unless they are clearly erroneous." *Id.*

ANALYSIS

A defendant is only entitled to a directed verdict if the State fails to produce any evidence of the offense charged. *State v. Walker*, 349 S.C. 49, 53, 562 S.E.2d

313, 315 (2002). In reviewing a defendant's motion for a directed verdict, the trial judge is only concerned with the existence of evidence, not with its weight. *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014) (citation omitted).

On appeal from the denial of a directed verdict, appellate courts must view the evidence and reasonable inferences in the light most favorable to the State. *Id.* If there is either any direct evidence or any substantial circumstantial evidence reasonably tending to prove the defendant's guilt, appellate courts must find that the trial judge properly submitted the case to the jury. *State v. Cherry*, 361 S.C. 588, 593–94, 606 S.E.2d 475, 478 (2004); *see also Walker*, 349 S.C. at 53, 562 S.E.2d at 315 ("When a motion for a directed verdict is made in a criminal case where the State relies exclusively on circumstantial evidence, the trial judge is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." (citation omitted)).

In pursuing a lynching conviction, the State must produce at least some evidence that two or more persons had a common, premeditated intent to commit a joint act of violence on the person of another. *See* S.C. Code Ann. § 16-3-220 (2003) (defining second-degree lynching as "[a]ny act of violence inflicted by a mob upon the body of another person and from which death does not result") (recodified as amended at S.C. Code Ann. § 16-3-210(C) (Supp. 2014)); S.C. Code Ann. § 16-3-230 (2003) (defining a mob as "the assemblage of two or more persons, without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another") (recodified at S.C. Code Ann. § 16-3-210(A) (Supp. 2014)); *State v. Smith*, 352 S.C. 133, 137, 572 S.E.2d 473, 475 (Ct. App. 2002). The premeditated intent to do violence may be formed either before or during the assemblage, but by definition cannot be spontaneous. *Smith*, 352 S.C. at 137, 572 S.E.2d at 475.

Moreover, "[t]o establish the existence of a conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties." *State v. Kelsey*, 331 S.C. 50, 63, 502 S.E.2d 63, 70 (1998).⁴ Because the

⁴ *See also* S.C. Code Ann. § 16-17-410 (2003 & Supp. 2014) (defining a criminal conspiracy as "a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means"); *State v. Gunn*, 313 S.C. 124, 134, 437 S.E.2d 75, 80 (1993) (stating that the "gravamen of the offense of conspiracy is the agreement or combination," not merely a common

crime of conspiracy is the agreement itself, the State need not show any overt acts in furtherance of the common scheme or plan. *State v. Wilson*, 315 S.C. 289, 292, 294, 433 S.E.2d 864, 867, 868 (1993). Nonetheless, substantive crimes committed in furtherance of the conspiracy may constitute circumstantial evidence from which a jury could infer the existence of the conspiracy, its object, and scope. *Id.*

At issue here is whether the State presented any evidence demonstrating a premeditated intent on the part of Respondent to assault Lochbaum (for the lynching charge), or that Respondent and Lemire entered into an agreement to perpetrate the assault (for the conspiracy charge).⁵ The State contends that the court of appeals applied an improper standard of review in conducting its inquiry. Specifically, the State argues that the court of appeals expressly credited the defense evidence and made credibility determinations, thereby erroneously substituting its own judgment for that of the trial court and the jury. We agree.

While the court of appeals should have considered the evidence in the light most favorable to the State, it instead primarily cited to *Respondent's and Lemire's* testimony, including their explanations for their actions. *See, e.g., Larmand*, 402 S.C. at 191–92, 739 S.E.2d at 902; *id.* at 194, 739 S.E.2d at 903. In doing so, the court of appeals incorrectly minimized the circumstantial evidence the State presented regarding premeditation and an agreement between Respondent and Lemire.

Specifically, the State demonstrated: (1) Respondent and Lemire lived approximately one-and-a-half hours away from Lochbaum's house; (2) Respondent and Lemire arrived at Lochbaum's neighborhood late at night, unannounced; (3) Respondent and Lemire wore all-black clothing; (4) Respondent and Lemire parked their vehicle over one-quarter mile away from Lochbaum's house, facing the sole entrance and exit to the neighborhood, despite ample street parking near Lochbaum's house; (5) Respondent and Lemire approached Lochbaum's house on foot, rather than conducting a "drive by" to look for incriminating evidence of Lochbaum's involvement in the scheme to defraud Pop-A-Lock, such as the magnetic sign on Lochbaum's vehicle; (6) Respondent was "edgy" and "agitated" when he approached Lochbaum's house, and stood and stared silently at Lochbaum and his neighbors; (7) Respondent broke off arguing with and pushing Lochbaum

objective between similarly situated people (citations omitted)).

⁵ We need not address the firearm charge separately, as its validity rises and falls on the existence of a conspiracy under the "hand of one is the hand of all" theory.

to observe Lemire's approach from the adjoining vacant, darkened lot; (8) Lemire approached Respondent and Lochbaum a mere one minute after Whittington, Fivecoat, and Lee departed, despite parking at least one-quarter mile away; (9) Lemire approached from a vacant, darkened lot rather than from the lit street or sidewalk; (10) upon his approach, Lemire immediately pointed the gun at Lochbaum and drew the hammer of the gun back; (11) Lemire told Lochbaum, "This is what you get when you fuck with my family," and later during the altercation refused to let go of his gun because Lochbaum was "f'ing with [his] family;" (12) Respondent never confronted Lemire or tried to get him to lower the weapon or return to their vehicle; and (13) Respondent and Lemire drove away together at a high rate of speed without illuminating their vehicle's headlights.

Although Respondent presented plausible explanations for each of these facts, our duty is not to weigh the plausibility of the parties' competing explanations. Rather, we must assess whether, in the light most favorable to the State, there was *any* evidence from which the jury could infer Respondent's guilt. Given the deferential standard of review, we find the State presented sufficient circumstantial evidence of premeditation and a common plan or scheme such that the trial judge properly denied Respondent's motion for a directed verdict. Accordingly, the court of appeals erred in reversing Respondent's convictions.

CONCLUSION

For the foregoing reasons, the decision of the court of appeals is

REVERSED.

BEATTY, KITTREDGE and HEARN, JJ., concur. PLEICONES, J., concurring in result only.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 26 2015

APPEAL FROM YORK COUNTY
In the Court of Common Pleas

S.C. Supreme Court

Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2013-001143

Opinion № 27562

Heard February 3, 2015 - Filed August 12, 2015

ON THE WRIT OF CERTIORARI TO THE COURT OF APPEALS

The State, ... Petitioner,

vs

Francis Larmand, ... Respondent.

PETITION FOR REHEARING

Pursuant to Rule 221 of the South Carolina Rules of Appellate Practice, Francis Larmand respectfully requests that this Court rehear this matter to correct the following errors and omissions:

1. This Court erred in stating and reviewing the evidence in this case by an improper standard of review. This Court stated "A defendant is only entitled to a directed verdict if the State fails to produce any evidence of the offense charged." *State v. Larmand*, Op. № 27562 (S.C.Sup.Ct. filed August 12, 2015)(Shearouse Adv.Sh. № 31 at31, 35). The proper

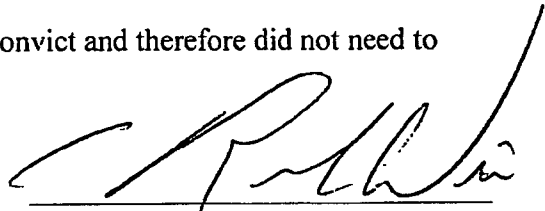
standard of review is if there is any *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.

2. The Court failed to consider the appellate standard of review of whether the state has excluded any other reasonable hypothesis other than the guilt of the accused when two recent cases in South Carolina support this standard of review.

3. The Court erred in failing to recognize that by finding that Francis Larmand “presented a plausible explanation of each of these facts, . . .” *State v. Larmand*, Op. № 27562 (S.C.Sup.Ct. filed August 12, 2015)(Shearouse Adv.Sh. № 31 at31, 37) this Court has found that the State has not proven the case beyond a reasonable doubt.

4. The Court failed to consider a remand to the en banc Court of Appeals to address the issues not discussed by the Court of Appeals as the Court of Appeals reversed the conviction on the ground the facts were not sufficient to convict and therefore did not need to address the other issues.

August 26, 2015



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 26 2015

S.C. Supreme Court

APPEAL FROM YORK COUNTY
In the Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case № 2013-001143
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ON THE WRIT OF CERTIORARI TO THE COURT OF APPEALS

The State, ... Petitioner,

vs

Francis Larmand, ... Respondent.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

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Index

Page:

Table of Authorities	ii

Issue to be Reheard:

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2. The Court failed to consider the appellate standard of review of whether the state has excluded any other reasonable hypothesis other than the guilt of the accused when two recent cases in South Carolina support this standard of review. 5

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Suggestion for Rescheduling Oral Argument 12

Conclusion 13

Table of Authorities

Page:

Cases:

<i>Bevins v. State</i> , 291 Ga. 814, 733 S.E.2d 744 (2012)	11
<i>Cherry v. U.S.</i> , 78 F.2d 334 (7 th Cir. 1935)	11
<i>Garcia v. State</i> , 227 So.2d 209 (1969)	9
<i>Gastineau v. Murphy</i> , 331 S.C. 565, 503 S.E.2d 712 (1998)	4
<i>Holland v. U.S.</i> 348 U.S. 121 (1954)	8
<i>In re Winship</i> , 397 U.S. 358 (1970):	4, 5, 7
<i>Jackson v. Virginia</i> , 443 U.S. 307 (1979)	1, 2, 10
<i>LaPrade v. Commonwealth</i> , 191 Va. 410, 61 S.E.2d 313 (1950)	9
<i>New Hampshire v. Roy</i> , 167 N.H. 276, 111 A.2d 1061 (2015)	9
<i>State v. Allen</i> , 139 W. Va. 818, 82 S.E.2d 423 (1954)	11
<i>State v. Al-Naseer</i> , 788 N.W.2d 469 (Minn. 2010)	9
<i>State v. Arnold</i> , 361 S.C. 386, 605 S.E.2d 529 (2004)	1
<i>State v. Baker</i> , 208 S.C. 195, 37 S.E.2d 525 (1946)	9
<i>State v. Bostick</i> , 392 S.C. 134, 708 S.E.2d 774 (2011)	2
<i>State v. Clemmons</i> , 579 S.W.2d 682 (Mo. Ct. App. 1979)	11
<i>State v. Daniels</i> , 401 S.C. 251, 737 S.E.2d 473 (2012)	7
<i>State v. Edwards</i> , 298 S.C. 272, 379 S.E.2d 888 (1989)	1, 6
<i>State v. Hernandez</i> , 382 S.C. 620, 677 S.E.2d 603 (2009)	7
<i>State v. Kimbrell</i> , 191 S.C. 238, 4 S.E.2d 121 (1939)	6

<i>State v. Lahue</i> , 585 N.W.2d 785 (Minn. 1998)	11
<i>State v. Larmand</i> , 402 S.C. 184, 191, 739 S.E.2d 898, 902 (Ct. App. 2013), rev'd, No. 2013 001143, 2015 WL 4751033 (S.C. Aug. 12, 2015)	4
<i>State v. Larmand</i> , Op. № 27562 (S.C.Sup.Ct. filed August 12, 2015)(Shearouse Adv.Sh. № 31 10	
<i>State v. Littlejohn</i> , 228 S.C. 324, 89 S.E.2d 924 (1955)	1
<i>State v. Logan</i> , 405 S.C. 83, 747 S.E.2d 444 (2013)	11
<i>State v. Lollis</i> , 343 S.C. 580, 541 S.E.2d 254 (2001)	1, 10
<i>State v. Manis</i> , 214 S.C. 99, 51 S.E.2d 370 (1949) <i>overruled by State v. Edwards</i> , 298 S.C. 272, 379 S.E.2d 888 (1989)	6
<i>State v. Martin</i> , 343 S.C. 580, 541 S.E.2d 254 (2000)	1
<i>State v. Odems</i> , 395 S.C. 582, 720 S.E.2d 48 (2011)	1
<i>State v. Smith</i> , 352 S.C. 133, 572 S.E.2d 473 (Ct. App. 2002)	3
<i>State v. Sterling</i> , 396 S.C. 599, 723 S.E.2d 176 (2012)	2
<i>State v. Turner</i> , 117 S.C. 470, 109 S.E. 119 (1921)	4
<i>U.S. v. Spradlen</i> , 662 F.2d 724 (1981)	9

Law Review Articles:

Irene Merker, Rosenberg, Yale L. Rosenberg, "*Perhaps What Ye Say is Based Only on Conjecture*" -- *Circumstantial Evidence, Then and Now*, 31 HOUS. L. REV. 1371 (1995) 8

Julie Schmidt Chauvin, Comment, "*For It Must Seem Their Guilt*": *Diluting Reasonable Doubt by Rejecting the Reasonable Hypothesis of Innocence Standard*, 53 LOYOLA L. REV. 217(2007) 7

1. This Court erred in stating and reviewing the evidence in this case by an improper standard of review. This Court stated “A defendant is only entitled to a directed verdict if the State fails to produce any evidence of the offense charged.” *State v. Larmand*, Op. № 27562 (S.C.Sup.Ct. filed August 12, 2015)(Shearouse Adv.Sh. № 31 at31, 35). The proper standard of review is if there is any *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.

This Court has long recognized that the proper standard of appellate review in a circumstantial evidence case is substantial circumstantial evidence. *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004); *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001); *State v. Martin*, 343 S.C. 580, 541 S.E.2d 254 (2000); *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989); *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924 (1955). “The circumstantial evidence presented by the State does not reasonably tend to prove Petitioner's guilt, and fails this Court's well-settled directive that circumstantial evidence that is not substantial is insufficient to go to a jury.” *State v. Odems*, 395 S.C. 582, 592, 720 S.E.2d 48, 53 (2011). “The United States Supreme Court specifically rejected the “any evidence” standard in *Jackson v. Virginia*, 443 U.S. 307 (1979). As the Court said “Any evidence that is relevant—that has any tendency to make the existence of an element of a crime slightly more probable than it would be without the evidence, . . . could be deemed a ‘mere modicum.’ But it could not seriously be argued that such a ‘modicum’ of evidence could by itself rationally support a conviction beyond a reasonable doubt.” *Id.* at 320. *Jackson* establishes a federal constitutional floor below which no state may go. An “any evidence” standard of review is below that floor.

In reviewing the evidence an appellate court is required to review all the evidence, including the evidence produced by the defendant. “[I]f it is found that upon the record evidence adduced at the trial” (*Jackson* at 324) that the evidence is not sufficient then an appellate court must reverse the conviction. “When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State.” *State v. Sterling*, 396 S.C. 599, 612, 723 S.E.2d 176, 183 (2012)(review not limited to just state’s evidence); *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011)(court recites state and defense evidence in finding no substantial circumstantial evidence). To say that a court does not weigh evidence is simply to say an appellate court does not pass upon the credibility of witnesses who provided the evidence. The Respondent has not and does not argue as to the basic facts of this case and accepts the state’s testimony at face value as is required under an appellate review standard.

In reciting the facts, this Court acknowledged that Mr. Larmand and his brother - in-law had been to the former Knights Stadium in an attempt to determine if Mike Taylor was in fact stealing customers from the business from the wife of Mr. Larmand.¹ Knights stadium is slightly less than 20 miles from the residence of Mr. Lochbaum.² Making that short drive is not unreasonable. None of the facts cited by the Court support a proposition that Mr. Larmand and Mr. Lemire had a premeditated plan to attack and beat up Mr. Lochbaum. In fact, as the Court acknowledged in the opinion, Mr. Lemire made the comment about “his” family and not “our”

¹ For some reason never explained, Mr. Lochbaum testified he thought there was an attempt to lure him to Knight’s Stadium. Rec. on App. at 129, ll 7-10; 169, ll 10-13.

² See Google Earth, directions from Knights Stadium, Fort Mill, SC to Gentle Breeze Lane, Rock Hill, SC. Visited August 21, 2015

family. This Court placed emphasis on the fact that Mr. Larmand left the scene when such an action was most reasonable considering that the state's case establishes they were told to leave, (Rec. on App. at 123, ll 18-250, the gun had been taken from Mr. Lemire, (Rec. on App. at 74, ll 8-15) and Mr. Lochbaum had a shotgun, (Rec. on App. at 109, ll 9-11). The shotgun was not actually displayed by Mr. Lochbaum until after Mr. Larmand left. While one witness did testify that Mr. Larmand was pushing Mr. Lochbaum, Mr. Lochbaum denied he was ever touched before Mr. Lemire appeared. Rec. on App. at 106, ll 18-20; 142, ll 12-14; 143, ll 5-6.

According to the exhibit used at trial, the distance was about 1,089 feet and not more than 1/4 mile. State's Exhibit № 5. All the factors listed by the Court in this case simply do not support a premeditated, planned intent to inflict injury upon Mr. Lochbaum. No one can reasonably infer that because one of two people have a firearm in an automobile that they both intend to inflict bodily injury to a third person. Wearing black clothes is simply not a basis to infer that Mr. Larmand agreed to inflict bodily injury upon a third person. One of the witnesses testified he was wearing similar clothing on that night. Rec. on App. at 80, ll 12-14. This Court simply made the sum of the parts greater than the individual parts. As the South Carolina Court of Appeals has said "Premeditation connotes 'willful deliberation and planning' or 'conscious consideration' preceding a particular act. Black's Law Dictionary 1199 (7th ed.1999); see also Webster's New World College Dictionary 1134 (4th ed.1999) (defining legal definition of premeditation as 'a degree of planning and forethought sufficient to show intent to commit an act'). By definition then, the premeditated purpose and intent underlying a charge of lynching cannot be spontaneous." *State v. Smith*, 352 S.C. 133, 137, 572 S.E.2d 473, 475 (Ct. App. 2002).

This Court failed to explain how the factors listed established substantial circumstantial evidence

of such premeditation and planning. The circumstantial facts equally support no plan or a plan and intent of only Mr. Lemire to attack Mr. Lochbaum. Speculation is not and never has been substantial circumstantial evidence to support a conviction.

In civil cases this Court has held that circumstantial evidence must be proven with reasonable certainty. *Gastineau v. Murphy*, 331 S.C. 565, 570-571, 503 S.E.2d 712, 714-715 (1998) ("Viewing the evidence in the light most favorable to Gastineau, the circumstances under which other inspections were performed do not lead with reasonable certainty to the conclusion that Hudson would have told anybody he was there because of Gastineau's report.") If "reasonable certainty" is required in a civil case, then a higher standard is required for a criminal case. The United States Supreme Court has said that a conviction cannot be sustained "without convincing a proper factfinder of his guilt with utmost certainty." *In re Winship*, 397 U.S. 358, 364 (1970). Again this constitutional floor exceeds the "any evidence" standard of review. As this Court said over ninety years ago "Neither the evidence nor the circumstances warrant his conviction; while the whole case raised a suspicion, and a grave one at that, it does not warrant a verdict of guilty." *State v. Turner*, 117 S.C. 470, ___, 109 S.E. 119, 120 (1921). At the most the evidence here raises a grave suspicion.

This Court further erred in finding that the Court of Appeals applied an improper standard. The Court of Appeals relied upon virtually the same facts cited by this Court. The Court of Appeals in reversing the conviction stated "The State argued it presented the following evidence of premeditation: Larmand and Lemire drove together to Lochbaum's house; at midnight; were uninvited; parked down the street from Lochbaum's house; wore dark clothing; and separately approached Lochbaum's house on foot with Lemire carrying a loaded gun pointed

at Lochbaum. The court denied Larmand's motion, finding it was an issue for the jury.” *State v. Larmand*, 402 S.C. 184, 191, 739 S.E.2d 898, 902 (Ct. App. 2013), rev'd, No. 2013 001143, 2015 WL 4751033 (S.C. Aug. 12, 2015). The Court of Appeals found those facts not sufficient to establish a premeditated intent to commit an act of lynching. In citing the testimony of the defendants the Court of Appeals was simply illustrating that no testimony of the defendants gave any support of a finding of premeditation. They properly considered the “record evidence adduced at the trial.” *Jackson*, 443 U.S. at 324. If the Court of Appeals committed any error in its standard of review, the error was also using the incorrect “any evidence” standard. But obviously if the Court of Appeals did not find “any evidence” they would also have reversed the conviction under the correct “substantial circumstantial evidence” standard.

To sustain this conviction under the proper standard of review this Court should state why the facts of this case support a finding of premeditated intent greater than the civil standard of to a reasonable degree of certainty. Substantial circumstantial evidence means more than a fifty-fifty chance of being right. Such odds are hardly “a subjective state of certitude of the facts in issue.” *In re Winship*, 397 U.S. at 364. If honorable people honestly trying to do justice can disagree as to whether the state has produced sufficient evidence to prove the case, then the case has not been proven beyond a reasonable doubt. This case illustrates that honorable people can disagree as to the conclusion to be drawn from the facts of this case.

2. The Court failed to consider the appellate standard of review of whether the state has excluded any other reasonable hypothesis other than the guilt of the accused when two recent cases in South Carolina support this standard of review.

Over seventy-five years ago our state had a standard of review in circumstantial

evidence cases that arguably was greater than “substantial circumstantial evidence.”³ “All of the facts proved must be consistent with each other, and, taken together, should be of a conclusive nature and tendency, producing a reasonable and moral certainty that the appellant and no one else committed the offense charged. It is not sufficient that they create a probability, though a strong one; and if, therefore, assuming all the facts to be true, which the evidence tends to establish, they may yet be accounted for upon any hypothesis which does not include the guilt of appellant, then the proof fails. The reason for this is that all presumptions of law, independent of evidence, are in favor of innocence, and every person is presumed to be innocent until he is proved to be guilty. As has often been stated, it is not sufficient to establish a probability of guilt arising from the doctrine of chances that the fact charged is likely to be true.” *State v. Kimbrell*, 191 S.C. 238, ___, 4 S.E.2d 121, 122 (1939). *See, also, State v. Manis*, 214 S.C. 99, 51 S.E.2d 370 (1949) *overruled by State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989) This standard of review became firmly entrenched until *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989) which held the standard is whether there is substantial circumstantial evidence. In *Edwards* this Court held a judge “should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury *if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.*” *State v. Edwards*, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989)(emphasis in original). The Court did not, however, provide any definition of “substantial circumstantial evidence.” The term remains undefined today.

³ Arguably “substantial circumstantial evidence” would have to exclude another reasonable hypothesis to be substantial. As mentioned earlier, if both hypothesis are close to equal the evidence is not substantial.

Recently, this court applied the *Kimbrell* and *Mains* standard in affirming a conviction. As Justice Toal stated in her concurring opinion “Put another way, the circumstances proven are consistent with each other, and when taken together, point conclusively to the guilt of Appellant to the exclusion of every other reasonable hypothesis.” *State v. Daniels*, 401 S.C. 251, 263, 737 S.E.2d 473, 479 (2012). Support for this standard of review is also found in *State v. Hernandez*, 382 S.C. 620, 677 S.E.2d 603 (2009) where in footnote 2, after citing the “to the exclusion of every other reasonable hypothesis” standard, this Court stated “it nonetheless illustrates the lack of evidence against Petitioners.” *Id.* at 626, 677 S.E.2d at 606. The same principle applies in this case. Applying the “to the exclusion of every other reasonable hypothesis” standard illustrates the lack of evidence against Mr. Larmand.

This Court should affirm the Court of Appeals under the recently used standard of appellate review that requires this Court to review the evidence to find if the state has excluded every reasonable hypothesis of innocence. As stated by one author:

As evidenced by the standards of review currently applied in the federal courts, there has been an apparent shift from a standard tailored to ensuring unjust convictions are overturned to a standard that ensures proper convictions are upheld. This shift implies a value shift from warranting that the innocent are not convicted to ensuring that the guilty are. If the standards causing this shift have been inadvertently implemented, the federal courts should reconsider the purpose of these standards. If the courts aim to follow the Fourteenth Amendment and *In re Winship*, they need to fully assess reasonable doubt under circumstantial evidence by consideration of every reasonable hypothesis of innocence and not which theory fashioned by the evidence preponderates.

Julie Schmidt Chauvin, Comment, “*For It Must Seem Their Guilt*”: Diluting Reasonable Doubt by Rejecting the Reasonable Hypothesis of Innocence Standard, 53 LOYOLA L. REV. 217, 253 (2007)

On three occasions this Court has cited with approval the law review article Irene Merker, Rosenberg, Yale L. Rosenberg, "*Perhaps What Ye Say is Based Only on Conjecture*" - - *Circumstantial Evidence, Then and Now*, 31 HOUS. L. REV. 1371 (1995). In that article the authors stated:

In the case of circumstantial evidence, however, the ultimate determination of guilt is based also on inferences from the evidence, and the court is in as good, if not better, position to assess the rationality of these inferences and whether they establish guilt beyond a reasonable doubt. Thus, use of the reasonable hypothesis standard for appellate sufficiency review would preserve the appropriate roles of judge and jury in circumstantial evidence cases.

Id. at 1416

In *Holland v. U.S.*, 348 U.S. 121 (1954), frequently cited as a basis for not giving a circumstantial evidence charge, the Court cautioned appellate courts to review circumstantial evidence case with great caution. The Court said "Appellate courts should review the cases, bearing constantly in mind the difficulties that arise when circumstantial evidence as to guilt is the chief weapon of a method that is itself only an approximation." *Id.* at 129. The reason for such caution, while not discussed in the opinion, is obvious. A circumstantial evidence case is the only type of case tried in our courts where every witness can tell the truth, but an innocent person be convicted. We should be reminded of the comments of Judge G. Duncan Bellinger in his concurring opinion when he stated "The maxim of the law is that it is better that many guilty should escape than that one innocent should suffer, and while I am far from expressing the opinion that the person involved is innocent, I think it consistent with the rules by which this Court is governed in like cases that the defendant should have the benefit of

the doubt.” *State v. Baker*, 208 S.C. 195, 207, 37 S.E.2d 525, 530 (1946)(concurring opinion)

Such a standard of review is used in many states. *New Hampshire v. Roy*, 167 N.H. 276, ___, 111 A.2d 1061, 1075 (2015) (“[T]he reviewing court evaluates the evidence in the light most favorable to the prosecution and determines whether the alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt.”); *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (“This heightened scrutiny requires us to consider ‘whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt.’”); *U.S. v. Spradlen*, 662 F.2d 724 (1981) (“When reviewing the sufficiency of the evidence supporting a criminal conviction, the standard of review is whether, viewing the evidence and all reasonable inferences derived therefrom in the light most favorable to the government, the jury could conclude that the evidence is inconsistent with every reasonable hypothesis of the defendant’s innocence.”); *Garcia v. State*, 227 So.2d 209, 210 (1969) (“[T]he circumstances relied upon must be not only consistent with guilt, but inconsistent with innocence; and must even go further by excluding every reasonable hypothesis except that of guilt.”); *LaPrade v. Commonwealth*, 191 Va. 410, 418, 61 S.E.2d 313, 316 (1950) (“[I]f the proof relied upon by the Commonwealth is wholly circumstantial, as it here is, then to establish guilt beyond a reasonable doubt all necessary circumstances proved must be consistent with guilt and inconsistent with innocence.”)

3. The Court erred in failing to recognize that by finding that Francis Larmand “presented a plausible explanation of each of these facts, ...” (*State v. Larmand*, Op. № 27562 (S.C.Sup.Ct. filed August 12, 2015)(Shearouse Adv.Sh. № 31 at 31, 37) this Court has found that the State has not proven the case beyond a reasonable doubt.

In the opinion, this Court found the defense presented was plausible. *State v. Larmand*, Op. No 27562 (S.C.Sup.Ct. filed August 12, 2015)(Shearouse Adv.Sh. No 31 at31, 37. A standard dictionary definition of “plausible” is “worthy of being accepted as true or reasonable” <http://www.merriam-webster.com/thesaurus/plausible> (Visited August 23, 2015). If a defense is found on appellate review to be “worthy of being accepted or true” then no court should find that the state has proven its case by either a substantial circumstantial evidence standard or that the state has excluded another reasonable hypothesis.

In *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001) this Court reversed the conviction of the defendant for arson. In reviewing the evidence this Court examined all the evidence, including the testimony of the Mr. Lollis. The circumstantial evidence was indeed suspicious. Lollis’s wife, the co-defendant, had removed much personal property from the house several days before the fire. The co-defendant, who admitted setting the fire, but denied that Lollis was involved, testified that the fire was set to relieve Lollis of his debts. The key to the storage room was found in Lollis’s possession. While the testimony from the finance companies, presumably presented in the defendant’s case, established he was current, he did owe several finance companies. In reversing the conviction this court said “ Finally, Lollis presented a plausible explanation for placing valuables in the storage room on the day of the fire—he was trying to protect them from drywall dust as he remodeled his home.” *Id.* at 585, 541 S.E.2d at 257.⁴ This Court gave credit to a plausible explanation offered by the

⁴ This Court in *Lollis*, as did the Court of Appeals in this case, discussed in some detail the evidence presented by the defense. As discussed earlier, *Jackson* requires that an appellate court review the entire record.

defendant to hold that the state had not proven the case based upon substantial circumstantial evidence.

If an appellate court finds in the record a plausible explanation, then obviously the trial jury did not follow the instruction that “all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt.” *State v. Logan*, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013).⁵ A plausible explanation is simply inconsistent with the state establishing the guilt of the defendant beyond a reasonable doubt. Several other states have held that when a plausible explanation is presented the state has failed as a matter of law to prove its case beyond a reasonable doubt. *Bevins v. State*, 291 Ga. 814, 733 S.E.2d 744 (2012)(“Jones's blood on Blevins's shirt, links him to the crimes, and Blevins provides no plausible explanation for the presence of Jones's blood that is consistent with his innocence.”); *Cherry v. U.S.*, 78 F.2d 334 (7th Cir. 1935) (In reversing the conviction the court said “The explanation offered by appellant is not disputed. It is not inherently unreasonable, and we are unable for that reason to reject it. In fact it was perfectly plausible.”); *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998) (“An alternative theory does not justify a new trial if that theory is not plausible or supported by the evidence.”); *State v. Allen*, 139 W. Va. 818, 822, 82 S.E.2d 423, 425 (1954) (“When two inferences, equally plausible, may be drawn from evidence, the law does not permit the jury to adopt the one more unfavorable to the accused.”); *State v. Clemmons*, 579 S.W.2d 682, 685 (Mo. Ct. App. 1979) (“For submission of a criminal offense on circumstantial proof, the prosecution evidence need

⁵ In this case, unfortunately, this or any other circumstantial evidence charge was not given or requested.

not preclusively refute every conceivable hypothesis of innocence, but only those plausible and reasonable under the evidence.”)

4. The Court failed to consider a remand to the en banc Court of Appeals to address the issues not discussed by the Court of Appeals as the Court of Appeals reversed the conviction on the ground the facts were not sufficient to convict and therefore did not need to address the other issues.

In the Return to the Petition for Writ of Certiorari filed by the state, Francis Larmand asked this Court, in the event the decision of the Court of Appeals is reversed, to remand the matter to the en banc panel of the Court of Appeals to address the issues not addressed by the Court of Appeals opinion. This is the only fair and logical manner to dispose of this case in the event this Court does not rehear this case. Our state has no rules as to the obligation of the winning party to file a Petition for Certiorari to address issues not addressed by the Court of Appeals. Obviously a petition for rehearing to the Court of Appeals would have been dismissed because they had no reason to rule on the remaining issues based upon their reversal based upon the lack of evidence. If this Court does not remand, Mr. Larmand will have no court that will have reviewed his other issues and rendered an opinion on those issues.

Suggestion for rescheduling Oral Argument

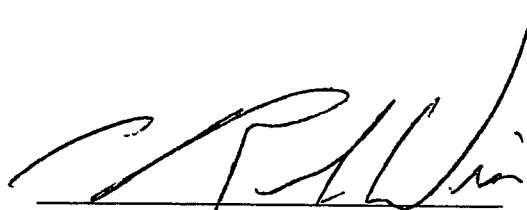
Francis Larmand suggests this Court reschedule an oral argument in this matter so that this Court can rule on the issue of the standard of review and the impact of this Court finding that the defense of Mr. Larmand was plausible.

Conclusion

For the foregoing reasons, this Court should:

1. Withdraw the opinion previously entered in this matter and affirm the decision of the South Carolina Court of Appeals.
2. In the alternative reschedule oral argument in this matter so that the issues involved in this matter can be fully discussed before the Court.
3. In the alternative, in the event this Court affirms the prior decision, this matter should be remanded to the South Carolina Court of Appeals to address the issues that the Court of Appeals did not rule upon.

August 26, 2015



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Attorney for Respondent

The Supreme Court of South Carolina

The State, Petitioner,

v.

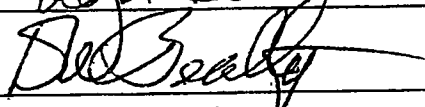
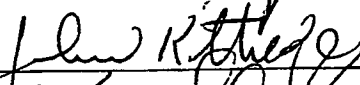
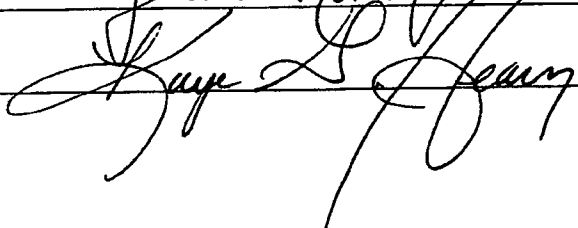
Francis Larmand, Respondent.

Appellate Case No. 2013-001143

ORDER

The petition for rehearing is granted on allegations 1 and 4 in the petition, and denied as to all other allegations in the petition. This Court dispenses with any further briefing and substitutes the attached opinion for the opinion previously filed in this matter. Contrary to the position taken by respondent in the petition for rehearing, the remand ordered in the substituted opinion is to a panel of the South Carolina Court of Appeals and not to the Court of Appeals *en banc*.

As to petitioner's motion to revoke bond, this Court declines to rule on this motion. Instead, this motion should be considered by the Court of Appeals once this matter is returned to that Court.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
December 23, 2015

cc: Deborah R.J. Shupe, Esquire

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Petitioner,

v.

Francis Larmand, Respondent.

Appellate Case No. 2013-001143

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From York County
William H. Seals, Jr., Circuit Court Judge

Opinion No. 27562
Heard February 3, 2015 – Refiled December 23, 2015

REVERSED

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W Elliott and Senior
Assistant Deputy Attorney General Deborah R.J. Shupe,
all of Columbia, for Petitioner.

C. Rauch Wise, of Greenwood, for Respondent.

CHIEF JUSTICE TOAL: The State appeals the court of appeals' decision in *State v. Larmand*, 402 S.C. 184, 739 S.E.2d 898 (Ct. App. 2013), reversing the trial court's denial of Frank Larmand's (Respondent) motion for a directed verdict on

charges for lynching, conspiracy, and pointing and presenting a firearm. We reverse.

FACTS/PROCEDURAL BACKGROUND¹

Respondent and his wife (collectively, the Larmands) are residents of Kannapolis, North Carolina. Together, they own a branch of Pop-A-Lock, a national locksmith franchise company providing customers with roadside assistance and locksmith services, and operate their branch in and around the Charlotte metropolitan area. Ryan Lochbaum worked at the Larmands' branch of Pop-A-Lock for several years until his termination in October 2008 for misconduct and providing unauthorized services to customers.

Approximately seven months after Lochbaum's termination, the Larmands became suspicious that he and one of their current employees, Mike Taylor, were conspiring to defraud Pop-A-Lock. Specifically, the Larmands believed that Taylor would occasionally relay a customer's location to Lochbaum, who would then place a removable magnetic sign on his vehicle and masquerade as the Pop-A-Lock locksmith. According to the Larmands, after the customer paid Lochbaum for "Pop-A-Lock's" services, Taylor and Lochbaum would split the money between themselves, and Taylor would inform the Larmands that the customer had left the designated location before he arrived.

To confirm their suspicions, the Larmands set up a "mystery shopper call" for Taylor. During the call, Respondent's brother-in-law, Leo Lemire, posed as a customer needing locksmith services at the Charlotte Knights' former stadium (Knights' Stadium) located in Fort Mill, South Carolina. Respondent and Lemire waited at the stadium in the hope of catching Taylor and Lochbaum.

Ultimately, neither Taylor nor Lochbaum responded to the telephone call. Therefore, around midnight, Respondent and Lemire drove to Lochbaum's house in Rock Hill, South Carolina, to investigate further, and potentially confront Lochbaum.² The two men parked at least one-quarter mile away from Lochbaum's

¹ Because this appeal involves Respondent's motion for a directed verdict, we view the evidence in the light most favorable to the State. *State v. Walker*, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002).

² At trial, a police officer and Lochbaum testified that it takes approximately one-and-a-half hours to drive from Respondent's home in Kannapolis to Lochbaum's home in Rock Hill.

house, despite the ample street parking available closer to the house. Further, they parked their vehicle facing the neighborhood's sole entrance and exit.

Meanwhile, Lochbaum and three of his neighbors—Mark Whittington, Devin Fivecoat, and Ron Lee—were socializing outside Lochbaum's house. Respondent, dressed in all-black clothing, approached the group and stood and stared silently, looking "edgy" and "agitated." Eventually, Respondent stated he wanted to speak to Lochbaum, and Lochbaum asked his neighbors to give them some privacy.

Respondent and Lochbaum began arguing loudly and pushing one another. Approximately one minute into the exchange, Respondent broke eye contact with Lochbaum and looked toward the vacant, darkened field abutting Lochbaum's house. Lochbaum then saw Lemire (also wearing all-black clothing) approaching quickly and pointing a handgun at Lochbaum. Lemire said, "This is what you get when you fuck with my family," and pulled the hammer of the gun back.

Lochbaum seized the gun and began to struggle with Lemire. Respondent placed Lochbaum in a chokehold and attempted to pull him away from Lemire. Whittington, Fivecoat, and Lee, who had been watching the exchange from several houses away, ran down the street and jumped into the fray in an effort to separate Lemire, Respondent, and Lochbaum. Lochbaum's next-door neighbor, Jesse Harris, also heard the commotion and ran out to stop the fight.³ Throughout the scuffle, Lemire screamed at everyone, "F-you, he's f'ing with my family, he's f'ing with my family."

Lochbaum, Whittington, Fivecoat, Lee, and Harris were able to wrestle the gun away from Lemire and pull Respondent away from Lochbaum. Respondent and Lemire quickly left the scene, driving at approximately sixty miles per hour in a thirty-five mile per hour zone without illuminating the vehicle's headlights.

Ultimately, a grand jury indicted Respondent and Lemire for lynching, conspiracy, and pointing and presenting a firearm. At trial, Respondent moved for a directed verdict at the conclusion of the State's case. He argued that the State had failed to provide any testimony that the attack on Lochbaum was premeditated, or

³ During the struggle, Harris placed his finger between the gun's hammer and the gun to prevent it from being fired. At some point, the hammer of the gun "clicked" on Harris's finger, indicating that the gun would have discharged during the fight had Harris's finger not stopped the hammer.

that Respondent and Lemire jointly planned the attack. Rather, Respondent asserted he was merely speaking with Lochbaum when Lemire appeared, and he only reacted to Lochbaum's "affirmative action" of "jump[ing] on [] Lemire" to grab the gun. The trial court denied Respondent's motion, and the jury later convicted Respondent and Lemire of second-degree lynching, criminal conspiracy, and pointing and presenting a firearm.

The court of appeals reversed the trial court's decision to deny Respondent's motion for a directed verdict. *Larmand*, 402 S.C. at 187, 739 S.E.2d at 900. Specifically, with respect to the lynching and conspiracy charges, the court of appeals found a complete lack of evidence of premeditation or a common plan to assault Lochbaum. *Id.* at 190–94, 739 S.E.2d at 901–03. With respect to the firearm charge, the court of appeals found that the State did not present any evidence of a conspiracy between Respondent and Lemire, and it was undisputed that Respondent never had possession of the gun. *Id.* at 194, 739 S.E.2d at 903–04. Therefore, the court of appeals reversed all three of Respondent's convictions. *Id.* at 194, 739 S.E.2d at 904.⁴

We granted the State's petition for a writ of certiorari to review the court of appeals' decision.

ISSUE

Whether the court of appeals applied the correct standard of review in considering the trial court's denial of Respondent's directed verdict motion?

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). A court is "bound by the trial court's factual findings unless they are clearly erroneous." *Id.*

ANALYSIS

"A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *State v. Walker*, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing a defendant's motion for a directed verdict, the trial

⁴ Because the court of appeals found these issues dispositive, it did not reach the remainder of Respondent's arguments on appeal.

judge is only concerned with the existence of evidence, not with its weight. *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014) (citation omitted).

On appeal from the denial of a directed verdict, appellate courts must view the evidence and reasonable inferences in the light most favorable to the State. *Id.* If there is either any direct evidence or any substantial circumstantial evidence reasonably tending to prove the defendant's guilt, appellate courts must find that the trial judge properly submitted the case to the jury. *State v. Cherry*, 361 S.C. 588, 593–94, 606 S.E.2d 475, 478 (2004); *see also Walker*, 349 S.C. at 53, 562 S.E.2d at 315 ("When a motion for a directed verdict is made in a criminal case where the State relies exclusively on circumstantial evidence, the trial judge is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." (citation omitted)).

In pursuing a lynching conviction, the State must produce at least some evidence that two or more persons had a common, premeditated intent to commit a joint act of violence on the person of another. *See* S.C. Code Ann. § 16-3-220 (2003) (defining second-degree lynching as "[a]ny act of violence inflicted by a mob upon the body of another person and from which death does not result") (recodified as amended at S.C. Code Ann. § 16-3-210(C) (Supp. 2014)); S.C. Code Ann. § 16-3-230 (2003) (defining a mob as "the assemblage of two or more persons, without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another") (recodified at S.C. Code Ann. § 16-3-210(A) (Supp. 2014)); *State v. Smith*, 352 S.C. 133, 137, 572 S.E.2d 473, 475 (Ct. App. 2002). The premeditated intent to do violence may be formed either before or during the assemblage, but by definition cannot be spontaneous. *Smith*, 352 S.C. at 137, 572 S.E.2d at 475.

Moreover, "[t]o establish the existence of a conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties." *State v. Kelsey*, 331 S.C. 50, 63, 502 S.E.2d 63, 70 (1998).⁵ Because the

⁵ *See also* S.C. Code Ann. § 16-17-410 (2003 & Supp. 2014) (defining a criminal conspiracy as "a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means"); *State v. Gunn*, 313 S.C. 124, 134, 437 S.E.2d 75, 80 (1993) (stating that the "gravamen of the offense of conspiracy is the agreement or combination," not merely a common objective between similarly situated people (citations omitted)).

crime of conspiracy is the agreement itself, the State need not show any overt acts in furtherance of the common scheme or plan. *State v. Wilson*, 315 S.C. 289, 292, 294, 433 S.E.2d 864, 867, 868 (1993). Nonetheless, substantive crimes committed in furtherance of the conspiracy may constitute circumstantial evidence from which a jury could infer the existence of the conspiracy, its object, and scope. *Id.*

At issue here is whether the State presented any evidence demonstrating a premeditated intent on the part of Respondent to assault Lochbaum (for the lynching charge), or that Respondent and Lemire entered into an agreement to perpetrate the assault (for the conspiracy charge).⁶ The State contends that the court of appeals applied an improper standard of review in conducting its inquiry. Specifically, the State argues that the court of appeals expressly credited the defense evidence and made credibility determinations, thereby erroneously substituting its own judgment for that of the trial court and the jury. We agree.

While the court of appeals should have considered the evidence in the light most favorable to the State, it instead primarily cited to *Respondent's and Lemire's* testimony, including their explanations for their actions. *See, e.g., Larmand*, 402 S.C. at 191-92, 739 S.E.2d at 902; *id.* at 194, 739 S.E.2d at 903. In doing so, the court of appeals incorrectly minimized the circumstantial evidence the State presented regarding premeditation and an agreement between Respondent and Lemire.

Specifically, the State demonstrated: (1) Respondent and Lemire lived approximately one-and-a-half hours away from Lochbaum's house; (2) Respondent and Lemire arrived at Lochbaum's neighborhood late at night, unannounced; (3) Respondent and Lemire wore all-black clothing; (4) Respondent and Lemire parked their vehicle over one-quarter mile away from Lochbaum's house, facing the sole entrance and exit to the neighborhood, despite ample street parking near Lochbaum's house; (5) Respondent and Lemire approached Lochbaum's house on foot, rather than conducting a "drive by" to look for incriminating evidence of Lochbaum's involvement in the scheme to defraud Pop-A-Lock, such as the magnetic sign on Lochbaum's vehicle; (6) Respondent was "edgy" and "agitated" when he approached Lochbaum's house, and stood and stared silently at Lochbaum and his neighbors; (7) Respondent broke off arguing with and pushing Lochbaum to observe Lemire's approach from the adjoining vacant, darkened lot; (8) Lemire approached Respondent and Lochbaum a mere one minute after Whittington,

⁶ We need not address the firearm charge separately, as its validity rises and falls on the existence of a conspiracy under the "hand of one is the hand of all" theory.

Fivecoat, and Lee departed, despite parking at least one-quarter mile away; (9) Lemire approached from a vacant, darkened lot rather than from the lit street or sidewalk; (10) upon his approach, Lemire immediately pointed the gun at Lochbaum and drew the hammer of the gun back; (11) Lemire told Lochbaum, "This is what you get when you fuck with my family," and later during the altercation refused to let go of his gun because Lochbaum was "f'ing with [his] family;" (12) Respondent never confronted Lemire or tried to get him to lower the weapon or return to their vehicle; and (13) Respondent and Lemire drove away together at a high rate of speed without illuminating their vehicle's headlights.

Although Respondent presented plausible explanations for each of these facts, our duty is not to weigh the plausibility of the parties' competing explanations. Rather, we must assess whether, in the light most favorable to the State, there was substantial circumstantial evidence from which the jury could infer Respondent's guilt. *Cf. Jackson v. Virginia*, 443 U.S. 307, 317 n.9 (1979) (citing *Holland v. United States*, 348 U.S. 121, 140 (1954) (rejecting the contention that circumstantial evidence must exclude every hypothesis but that of guilt)). Given the deferential standard of review, we find the State presented sufficient circumstantial evidence of premeditation and a common plan or scheme such that the trial judge properly denied Respondent's motion for a directed verdict. Accordingly, the court of appeals erred in reversing Respondent's convictions.

CONCLUSION

For the foregoing reasons, the decision of the court of appeals is reversed. However, because the court of appeals did not address the remainder of Respondent's arguments on appeal, we remand the matter to the court of appeals for further action not inconsistent with this opinion.

REVERSED.

PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY
In the Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2013-001143
Opinion No. 27562
Heard February 3, 2015 - Filed August 12, 2015

RECEIVED

JAN 07 2016

S.C. SUPREME COURT

ON THE WRIT OF CERTIORARI TO THE COURT OF APPEALS

The State Petitioner,

vs.

Francis Larmand, ... Respondent.

PETITION FOR REHEARING

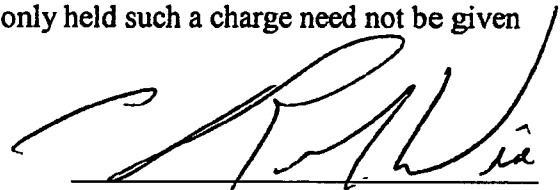
Pursuant to Rule 221 of the South Carolina Rules of Appellate Practice, Francis Larmand respectfully requests that this Court rehear this matter to correct the following errors and omissions:

1. This Court stated a standard of review as being "there was substantial circumstantial evidence from which the jury could infer Respondent's guilt." *State v. Larmand*, Op. No 27562 (S.C.Sup.Ct. Re-filed December 23, 2015)(Shearouse Adv.Sh. No 50 at ____). This

Court failed to identify the substantial circumstantial evidence upon which the Court relied upon. By finding as a matter of fact that the explanation of Francis Larmand to be plausible, the Court has in found the jury was trying to decide between two plausible explanations and as such, the State has not met its burden of proof.

2. This Court improperly interpreted *Holland v. United States*, 348 U.S. 121 as holding that the case rejects “the contention that circumstantial evidence must exclude every reasonable hypothesis but that of guilt” when the case only held such a charge need not be given to a jury.

January 6th, 2016



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
Rauchwise@gmail.com
S. C. Bar № 06188

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY
In the Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

RECEIVED

JAN 07 2016

S.C. SUPREME COURT

Appellate Case No. 2013-001143
Opinion No. 27562
Heard February 3, 2015 - Filed August 12, 2015

ON THE WRIT OF CERTIORARI TO THE COURT OF APPEALS

The State, ... Petitioner,

v.

Francis Larmand, ... Respondent

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

In reviewing the facts of this case, this Court has appeared to abandon the principle that a review of circumstantial evidence cases should be made objectively looking for substantial evidence of guilt. Instead, the Court appears to review the facts in this case to determine if there are any facts which the jury believed that could arguably support an inference of guilt. While the Court listed 13 factors to be considered, neither individually nor collectively

do those 13 factors amount to substantial circumstantial evidence to prove the guilt that Mr. Larmand entered into an agreement with Mr. Lermire to assault Ryan Lochbaum. One of the factors is inconsistent with the facts listed in the opinion. For example, the Court found that Mr. Larmand and Leo Lemire had gone to the former stadium of the Charlotte Knights to conduct a “mystery shopper” call. Knights stadium is slightly less than 20 miles from the residence of Mr. Lochbaum.¹ Thus, in keeping with the facts of the opinion, Mr. Larmand and Mr. Lemire had to travel only 20 miles to the residence of Ryan Lochbaum. The fact that they drove that short distance unannounced is not substantial evidence of a premeditated plan to assault Mr. Lachbaum.

The wearing of all black clothing is not proof of a premeditated intent to assault when Mr. Larmand presented himself to Mr. Lauchbaum and his associates. As he was not trying to keep from being seen by all present, the color of his clothing is simply not relevant. Parking a vehicle a quarter of a mile away is not indicative of a premeditated attempt to beat Mr. Lachbaum. Parking a vehicle that far away actually impedes a get away if there were an alleged planned attack. In addition, from a quarter of a mile away Mr. Lemire would not be able to determine if Mr. Larmand would be able to get Mr. Lochbaum alone. Both men would then have to run a quarter of a mile to retrieve their vehicle in order to make a getaway. The fact that Mr. Larmand broke off arguing with Mr. Lochbaum is as equally susceptible of his being surprised at the appearance of Mr. Lemire as any other explanation. While one witness did testify that Mr. Larmand was pushing Mr. Lochbaum, Mr. Lochbaum denied that Mr. Larmand ever touched him

¹ See Google Earth, directions from Knights Stadium, Fort Mill, SC to Gentle Breeze Lane, Rock Hill, SC. Visited August 21, 2015

before Mr. Lemire appeared. Rec. On App. At 106, ll 18-20; 142, ll 12-14; 143, ll506. All the 13 factors establish is that the two men rode together to the residence of Mr. Lochbaum. The factors do not establish substantial circumstantial evidence of a premeditated agreement to harm Mr. Lochbaum. There is not a scintilla of evidence that Mr. Larmand knew Mr. Lemire had a firearm. At best, this is an assumption based upon the fact that Mr. Lemire had a firearm.

If the same standard of review had been applied in *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004) this Court would have affirmed the conviction. Among the facts in that case were: 1. The defendant and the victim knew each other and had a sexual relationship. 2. The defendant was in the area at the time of the murder. 3. The defendant was known to carry a gun. 4. The fingerprint of the defendant was found on a cup in the BMW owed by the victim. 5. The defendant fled the area shortly after the shooting. 6. The BMW belonging to the victim was found about 10 miles of the home of the defendant's father in Tennessee. Those facts were deemed not to be sufficient to convict because they were not substantial circumstantial evidence. The facts against Mr. Larmand to prove that he had a premeditated agreement with Mr. Lemire to attack Mr. Lochbaum pale in comparison to facts against Mr. Arnold.

In *State v. Hernandez*, 382 S.C. 620, 677 S.E.2d 603(2009) this Court reversed the conviction of three defendants who were the driver and two passengers in a Ryder Rental truck following a Thunderbird and a tractor trailer on a back dirt road in Saluda County. The tractor trailer contained 900 pounds of marijuana. The Ryder truck was empty. The State also produced evidence that the defendants had rented the Ryder truck the day before the incident and spent the night before in a nearby motel. Logic and common sense would tell anyone that the driver of the Ryder truck and the two passengers were there to help off load the marijuana. The

jury certainly thought so. But this Court in keeping with the requirement that circumstantial evidence must be substantial, held that being present down a dirt road in rural county with a tractor trailer carrying 900 pounds of marijuana was not sufficient to convict.² *Hernandez* and *Arnold* both present very suspicious facts that a jury could use to convict them. But because this Court recognized that the standard of review is “substantial circumstantial evidence” the evidence was not sufficient to convict. This Court did not recognize a deferential standard of review but in fact recognized that substantial circumstantial evidence requires more than having two plausible theories, one of guilt and one of innocence. If the two theories are plausible, then the evidence is simply not substantial. This Court has found that the theory of the defendant is plausible but has not explained why the theory of the state is substantially more plausible to sustain the conviction.

This Court also misinterpreted the holding of *Holland v. United States*, 348 U.S. 121 (1954). All *Holland* holds is that a court is not required to charge a jury that the government must prove the case to the exclusion of every other reasonable doubt. *Holland* holds, however,

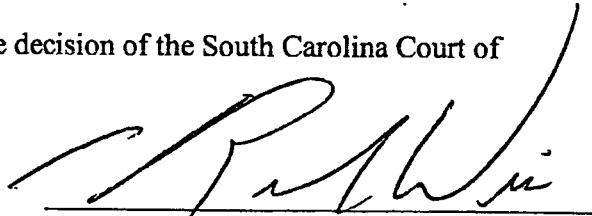
² In the case the court made this statement “The traditional circumstantial evidence charge provides that when the State relies on circumstantial evidence to prove its case, the jury may not convict the defendant unless: Every circumstance relied upon by the State be proven beyond a reasonable doubt; and ... all of the circumstances so proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. *State v. Edwards*, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989). Although in *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004) the Court abandoned this charge and held that it may confuse a jury by leading it to believe that the standard for measuring circumstantial evidence is different from that for measuring direct evidence, it nonetheless illustrates the lack of evidence against Petitioners.” *Herendez*, 382 S.C. at 625, 667 S.E.2d at 625. Such a standard of review in this case would result in affirming the decision of the Court of Appeals.

that a trial court and an appellate court must review a circumstantial evidence case differently. As the Court said "When the Government rests its case solely on the approximations and circumstantial inferences of a net worth computation, the cogency of its proof depends upon its effective negation of reasonable explanations by the taxpayer inconsistent with guilt." *Id.* at 135. The Court further said "Appellate courts should review the cases, bearing constantly in mind the difficulties that arise when circumstantial evidence as to guilt is the chief weapon of a method that is itself only an approximation." *Id.* at 129. Thus, *Holland* cautions appellate court to use a heightened review. Whether the standard of review be "substantial circumstantial evidence" or the "to the exclusion of every other reasonable hypothesis" the effect is the same. When the evidence, after viewing all credibility issues in favor of the state, viewed as a whole creates two reasonable inferences one consistent with innocence and the other guilt, the State has not produced substantial circumstantial evidence. Substantial Circumstantial evidence is certainly more than a 51% chance of being right. *See also U.S. v. Spradlen*, 662 F.2d 724 (11th Cir. 1981) ("When reviewing the sufficiency of the evidence supporting a criminal conviction, the standard of review is whether, viewing the evidence and all reasonable inferences derived therefrom in the light most favorable to the government, the jury could conclude that the evidence is inconsistent with every reasonable hypothesis of the defendant's innocence.")

CONCLUSION

For the foregoing reasons, this Court should rehear this matter and issue an opinion finding the State did not produce substantial circumstantial evidence to sustain the conviction of the Francis Larmand and affirm the decision of the South Carolina Court of Appeals.

January 6, 2015



C. Rauch Wise
305 Main Street
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rauchwise@gmail.com
S. C. Bar № 06188
Attorney for Francis Larmand



RECEIVED

JAN 11 2016

SC SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

January 11, 2016

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

Re: The State v. Francis Larmand
Appellate Case No. 2013-001143

Dear Mr. Shearouse:

The State received Petitioner's new Petition for Rehearing, filed January 8, 2016. Please consider this letter the State's return to the Petition.

The Petition raises no new issue or argument, legal or factual, not previously considered and decided by this Court. Further, this Court recently clarified the directed verdict standard in State v. Bennett, Op. No. 27600, filed January 6, 2016, and the decision in this case is consistent with the standard reiterated in Bennett. Accordingly, the Petition should be denied, and this case should proceed toward a final resolution.

Sincerely,

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

DRJS/sbe
Enclosures

cc: C. Rauch Wise, Esquire (w/enclosures)
Victim Services (w/enclosure)

The Supreme Court of South Carolina

The State, Petitioner,

v.

Francis Larmand, Respondent.

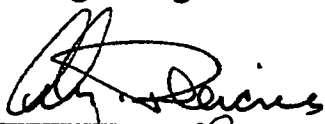
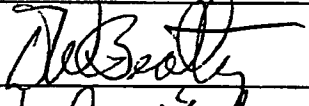
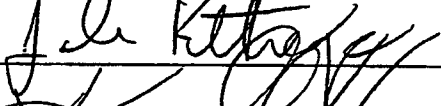
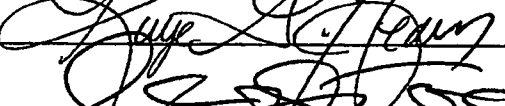
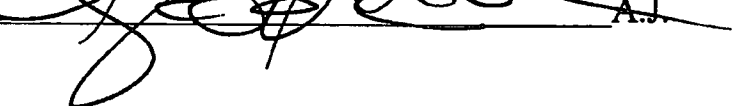
Appellate Case No. 2013-001143

Lower Court Case No. 2009GS4602833;

2009GS4602834 and 2009GS4602835

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	C.J.
	J.
	J.
	J.
	A.J.

Columbia, South Carolina

February 11, 2016

cc:

C. Rauch Wise, Esquire

David M. Tatarsky, Esquire
Kevin Scott Brackett, Esquire
Deborah R.J. Shupe, Esquire
John Benjamin Aplin, Esquire
John Dunlap Rhea, Esquire
Jenny Abbott Kitchings, Esquire
Frank Robert Addy, Jr., Esquire
The Honorable David Hamilton

4

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

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

The State, Respondent,

v.

Francis Larmand, Appellant.

Appellate Case No. 2009-144086

Appeal From York County
William H. Seals, Jr., Circuit Court Judge

Unpublished Opinion No. 2016-UP-373
Submitted June 1, 2016 – Filed July 20, 2016

AFFIRMED

John Dunlap Rhea, of Fairview, NC, and C. Rauch Wise,
of Greenwood, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Deborah R.J. Shupe,
of Columbia, for Respondent.

PER CURIAM: In this case remanded to our court from our supreme court, Francis Larmand appealed his convictions for second-degree lynching, conspiracy, and pointing and presenting a firearm. In his appeal to this court, heard en banc in

November 2012, Larmand argued the trial court erred in: (1) submitting its written charge to the jury; (2) failing to direct a verdict on the charge of lynching when the State failed to prove either an act of violence upon another person or a premeditated intent to commit an act of violence upon another person; (3) failing to direct a verdict on the charge of conspiracy when the State failed to prove any facts that would reasonably support an agreement between Larmand and his co-defendant Leo Lemire to inflict an act of violence upon another person; (4) failing to direct a verdict on the charge of pointing and presenting a firearm when the State failed to prove a conspiracy between Larmand and Lemire or present any evidence sufficient to convict Larmand for pointing and presenting a firearm; and (5) charging the jury it may infer that all persons who were present as members of a mob when an act of violence was committed are guilty as principals.

This court reversed Larmand's convictions based on the trial court's failure to direct verdicts on the charges of lynching, conspiracy, and pointing and presenting a firearm. *State v. Larmand*, 402 S.C. 184, 195, 739 S.E.2d 898, 904 (Ct. App. 2013) (en banc), *rev'd*, 415 S.C. 23, 780 S.E.2d 892 (2015). As to the remaining two issues, submitting the written jury charges to the jury and charging the jury it may infer that all persons who were present as members of a mob when an act of violence was committed are guilty as principals, this court declined to address the issues based on its disposition of the three directed verdict issues. *Id.*

In *State v. Larmand*, 415 S.C. 23, 26, 780 S.E.2d 892, 893 (2015), our supreme court reversed this court as to the three directed verdict issues, finding this court applied an incorrect standard in reviewing the denial of a motion for a directed verdict. As to the remaining two issues, our supreme court remanded to this court to address. *Id.* at 33, 780 S.E.2d at 896. We affirm both issues pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to the trial court's submission of the written charge to the jury: *State v. Lemire*, 406 S.C. 558, 565-68, 753 S.E.2d 247, 251-54 (Ct. App. 2013), *cert. denied* (June 26, 2014) (finding no reversible error in the submission to the jury of the written jury charges where the same issue was raised by Larmand's co-defendant, Lemire).
2. As to the trial court charging the jury it may infer that all persons who were present as members of a mob when an act of violence was committed are guilty as principals: *Id.* at 573, 753 S.E.2d at 255 (finding "the trial court properly overruled

Lemire's objection to the jury charge" where the issue was raised by Larmand's co-defendant).

AFFIRMED.¹

SHORT, WILLIAMS, and THOMAS, JJ., concur.

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

The South Carolina Court of Appeals

The State, Respondent,

v.

Francis Larmand, Appellant.

Appellate Case No. 2009-144086

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr. J.

W B Wise J.

Paula A. Thomas J.

Columbia, South Carolina

cc:

Deborah R.J. Shupe, Esquire

John Dunlap Rhea, Esquire

C. Rauch Wise, Esquire

FILED

September 15, 2010

2017 CP4600689

FILED-RECEIVED
FORM 5

STATE OF SOUTH CAROLINA

2017 AUG-4 AM 9:01

COUNTY OF YORK

DAVID HAMILTON IN THE COURT OF COMMON PLEAS
C.C.C.P. & GS
YORK COUNTY, SC

Francis Victor Larmand, Jr.
SCDC No. 00337635
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-RECEIVED
2017 JUL
AM 8:37
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC
CLOCK IN TIME
CANCELLED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

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

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

1. Place of detention: Palmer Pre-Release Center, Pisgah Road, Florence, SC
2. Name and location of Court which imposed sentence: General Sessions Court for York County
3. Name(s) of co-defendant(s) (if any): Leo Lemire

Revised 3/2003

- iii. July 20, 2016
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. *State v. Larmand*, 402 S.C. 184 739 S.E.2d 898 (Ct. App. 2013)
 - ii. *State v. Larmand*, 415 S.C. 23, 780 S.E.2d 892 (2015)
 - iii. —
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) N/A
 - (b) —
 - (c) —
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Trial Counsel was ineffective in failing to request a jury charge on on the issue of circumstantial evidence.
 - (b) Trial Counsel was ineffective in failing to properly prepare for trial
 - (c) Trial Counsel was ineffective in failing to preserve for appellate reivew the issue of whether the inference charge was a charge on the facts in violation of Article V, § 21 of the Consitution of the State of South Carolina.
 - (d) Trial Counsel was ineffective in failing to raise a double jeopardy argument for a conviction of both lynching and conspiracy.
 - (e) Trial counsel erred in failing to object to an improper charge as to self defense
 - (f) Trial counsel failed to ask for lesser included offense of assualt and battery or assualt and battery of a high and agravated nature.
 - (g) Trial counsel ered in conducting a joint trial with the co-defendant
- 11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) At the trial in this case trial counsel failed to ask the trial judge to charge the jury as to the law of circumstantial evidence when this was a circumstantial evidence case.
 - (b) At trial testimony established that myself and my brother-in-law were conducting an investigation into someone stealing calls from my locksmith business. This is a common

Revised 3/2003

No

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

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

(a) the specific nature thereof:

- i. —
- ii. —
- iii. —
- iv. —

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

- i. —
- ii. —
- iii. —
- iv. —

(c) the disposition thereof:

- i. —
- ii. —
- iii. —
- iv. —

(d) the date of each such disposition:

- i. —
- ii. —
- iii. —
- iv. —

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. None

Revised 3/2003

7

(a) the name and address of each attorney who represented you:

i. John Rhea, 640 Flat Top Mountain Rd., Fairview, NC 28730

ii. C. Rauch Wise, 305 Main St., Greenwood, SC 29646

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Mr. Rhea represented me at trial.

ii. Mr. Wise represented me in the appeal and preparation of this post conviction

relief petition

iii. _____

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

A New trial because of the errors committed by trial counsel

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

No

Revised 3/2003

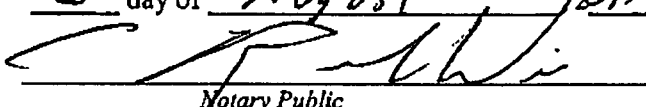
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

3 day of August 2017.

Notary Public

My Commission Expires: 12/7/2019

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP4600689**

Francis Victor Larmand Jr

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

ORDER OF DISMISSAL

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/R. Lawton McIntosh
Circuit Court Judge

2155
Judge Code

09/13/2017
Date

For Clerk of Court Office Use Only

This judgment was entered on **October 6, 2017**, and a copy mailed first class or placed in the appropriate attorney's box on **October 6, 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

Clarence Rauch Wise 305 Main St. Greenwood, SC 29646

**Justin James Hunter PO Box 11549 Columbia, SC
29211-1549**

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
Francis Victor Larmand, Jr.,)
S.C.D.C. No. 337635,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2017-CP-46-0689

ORDER OF DISMISSAL

FILED-RECEIVED
2017 OCT -6 PM 1:05
DAVID H. HILTON
C.C.P. & G.S.
YORK COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed March 8, 2017. Respondent made its Return on or about June 13, 2017. With the consent of the Respondent, Applicant filed an amended PCR application on August 4, 2017. An evidentiary hearing into the matter was convened on August 3, 2017, at the Moss Justice Center in York County, South Carolina. Applicant was present at the hearing and represented by Rauch Wise, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, John Rhea, Esquire (hereinafter "trial counsel" or "Counsel"), also testified. Also testifying were Kerriann Larmand. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's appellate records, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application and amendment, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In July 2009, the York County

Grand Jury indicted Applicant for second degree lynching (2009-GS-46-2833), criminal conspiracy (2009-GS-46-2834), pointing and presenting a firearm (2009-GS-46-2835), and assault with intent to kill (2009-GS-46-2836). John D. Rhea, Esquire represented Applicant. Assistant Solicitors Erin Joyner, Esquire and Jennifer Colton, Esquire prosecuted the case. On October 20-22, 2009, Applicant proceeded to trial before the Honorable William H. Seals, Jr. The jury found Applicant guilty as indicted for second degree lynching, criminal conspiracy, and pointing and presenting a firearm. Judge Seals sentenced Applicant to imprisonment for concurrent terms of ten years for lynching in the second degree, five years for criminal conspiracy, and five years for pointing and presenting a firearm.

Applicant filed a timely notice of appeal. C. Rauch Wise, Esquire, and John D. Rhea, Esquire perfected the appeal. The South Carolina Court of Appeals reversed Applicant's convictions on all charges on March 13, 2013. *State v. Larmand*, 402 S.C. 184, 739 S.E.2d 898 (Ct. App. 2013). The State filed a petition to the South Carolina Supreme Court, which granted a writ of certiorari on June 26, 2014. On December 23, 2015, the Supreme Court reversed the decision of the Court of Appeals and remanded the case to the Court of Appeals because the Court of Appeals did not address all of the arguments on appeal. *State v. Larmand*, 415 S.C. 23, 780 S.E.2d 892 (2015). By an unpublished opinion filed July 20, 2016, the Court of Appeals affirmed Applicant's convictions. *State v. Larmand*, Op. No. 2016-UP-373, (Ct. App. filed July 20, 2016). The remittitur was sent October 21, 2016.

PCR Application

Applicant filed an application for post-conviction relief and an amendment thereto, alleging he was being held unlawfully for the following reasons:

1. Trial Counsel was ineffective in failing to request a jury charge on the issue of circumstantial evidence.

2. Trial Counsel was ineffective in failing to properly prepare for trial
3. Trial Counsel was ineffective in failing to preserve for appellate review the issue of whether the inference charge was a charge on the facts in violation of Article V, § 21 of the Constitution of the State of South Carolina.
4. Trial Counsel was ineffective in failing to raise a double jeopardy argument for a conviction of both lynching and conspiracy.
5. Trial counsel erred in failing to object to an improper charge as to self defense
6. Trial counsel failed to ask for lesser included offense of assault and battery or assault and battery of a high and aggravated nature.
7. Trial counsel erred in conducting a joint trial with the co-defendant.

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have

been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Trial Counsel was ineffective in failing to request a jury charge on the issue of circumstantial evidence

Applicant alleged that Counsel was ineffective for failing to ask the trial court judge for a jury charge defining circumstantial evidence. Applicant argued that the evidence against him mainly consisted of circumstantial evidence, and Counsel should have requested the trial judge to define circumstantial evidence in a jury charge. Counsel testified that he did not ask for this charge. Counsel testified that defining "circumstantial evidence" to the jury could "cut both ways" as it could possibly help Applicant but could also bolster the State's own circumstantial evidence.

First, this Court finds the instructions given to the jury were proper and not objectionable. When read as a whole, the jury instructions adequately covered the law and the burden of proof required to find Applicant guilty. The trial court is required to charge only the current and correct

law of South Carolina. *Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). "A charge is sufficient if, when considered as a whole, it covers the law applicable to the case." *State v. Ezell*, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct.App. 1996).

Counsel's failure to request a circumstantial evidence charge was not deficient. The trial court mentioned circumstantial evidence in its jury charge when it stated that "the State may prove the intent element of lynching by positive testimony or evidence or by circumstantial evidence." See Tr. 567, ll. 20-22. On three other occasions the trial court explained that conspiracy and intent may be shown by circumstantial evidence in the conduct of the parties and that intent may be shown by acts and conduct from which a jury can naturally and reasonably infer intent. See Tr. 569, ll. 7-8; 580, ll. 4-8; 581, ll. 7-11. Counsel's decision not to request the charge was not unreasonable. Since many aspects of this case were circumstantial, this Court agrees with Counsel's testimony that requesting a charge would likely bolster the State's case and possibly give the jury more reasons to convict Applicant.

Most of all, Applicant has not shown that the outcome would have been different if the jury had heard the definition of circumstantial evidence, especially considering the fact that the "law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence." *State v. Gripton*, 327 S.C. 79, 84, 489 S.E.2d 462, 464 (1997) *holding modified by State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). Applicant has failed to show how he was prejudiced by Counsel's failure to ask for such a charge. There is not a substantial likelihood that the outcome would have been different when circumstantial evidence is not to be considered any differently than direct evidence. Accordingly, this allegation must be dismissed.

Trial Counsel was ineffective in failing to properly prepare for trial

Codefendant's Medical Condition

Applicant alleged that Counsel was ineffective for failing to obtain testimony from Codefendant Leo Lemire's wife or Lemire's doctor as to Lemire's physical condition. He argued that this testimony would have established that Lemire could not run from the scene as described by the witnesses nor would any rational person have selected him participate in a fight. Applicant testified that victim Ryan Lochbaum testified at trial that Lemire was not using a cane that night, which was inaccurate. Counsel testified that he could not recall if he had Lemire's medical records prior to the trial. He testified that there was a lot of testimony at trial about Lemire's medical condition, and his condition was obvious on sight as Lemire showed the jury his scar from back surgery.

First, the jury could observe during the trial that Lemire was still hindered by his back problems. Additionally, testimony came from Lemire and Applicant concerning Applicant's back issues at the time of the incident. When describing the end of the incident, Applicant testified "And Leo, you know, I helped Leo up, and kind of got him back to the truck." Tr. 389, ll. 15-16. Counsel then asked if Applicant knew that Lemire had back problems prior to the incident to which Applicant replied "Yeah. He had back surgery, like, four or five months prior." Tr. 389, 19-20. Counsel then asked if he and Lemire ran or walked back to their truck after the incident, to which Applicant replied, "We walked at a fast walk, as fast as [Lemire] could hobble." Tr. 390, ll. 3-4. On Applicant's cross-examination, the State emphasized Lemire's back problems, asking "So, if your brother-in-law has to walk so slow, he has to walk so slow because of his back problem, and you parked your car down here. And all this happened within five minutes, he would have been able to walk this distance in five minutes?" Tr. 429, ll. 19-22.

During Lemire's direct examination, his counsel Mr. Leland Greeley asked the following:

MR. GREELEY: Before we go any further, I want to ask you. You're walking very gingerly up to the witness stand. Why is that?

LEMIRE: I've got back problems.

MR. GREELEY: Did you in fact have back problems back on the night of April 30 and the morning of May 1 of this year?

LEMIRE: Yes sir.

Tr. 447 ll. 20-25. Mr. Greeley then asked Lemire to explain his back problems and Lemire detailed the extent of his injury, when the problems started to occur, and when the surgery took place. *See* Tr. 448, ll. 6-14. Lemire then explained that he was still in pain on the night of the incident and could go without his cane for a few days at a time. *See* Tr. 448 17-18. Lemire even pulled up his shirt and showed his incision scar to the jury, testifying that he was in no condition to physically defend Applicant or fight. Tr. 477-478. Lemire further emphasized on cross-examination that he did not run back to the car, but that he "walked pretty quick, as quick as we could." Tr. 512, l. 23. Counsel pointed out Lemire's condition to the jury during his closing argument, where he argued, "[Lemire] showed you his back. And he's had back problems, and I know you're not one hundred percent when you've got a bad back. He's near crooked. Is that the kind of guy you're going to take with you on your plan to go lynch somebody?" Tr. 252, ll. 13-16.

This Court finds Counsel was not ineffective for failing to enter specific medical records in evidence or elicit additional testimony because it would have been cumulative to other extensive testimony that already established that Lemire had back surgery and could not run quickly at the time of the incident. The question of whether or not Applicant ran or walked back to the car does not negate any element of the lynching crime. As such, Counsel was not deficient for failing to present Lemire's medical evidence. Additionally, introducing Applicant's medical history concerning his back problems would not have changed the outcome of the trial. Whether

or not Lemire ran or walked back to their car is a factual question for the jury, and the jury as presented with both arguments. It was well established that Lemire had previously had back surgery and was not in condition to run, but could hobble or briskly walk back to the car. Applicant cannot show that he was prejudiced by Counsel's performance in this regard. Accordingly, this allegation must be dismissed.

Codefendant's Intoxication

Applicant alleged that Counsel was ineffective for failing to present evidence that Lemire was intoxicated and on pain pills during the night of the incident. He argued that this was evident in the traffic stop video. He argued that this evidence would have explained to a jury why Lemire did not stay in the car as Applicant stated he instructed him to do. Counsel testified that he could not recall if Lemire was intoxicated the night of the incident. He testified that he could have used the evidence to impeach the police officers if they had said that Lemire was not drunk.

This Court finds that Counsel was not ineffective for failing to introduce this evidence. This video was excluded as evidence at trial, and the only way Applicant could have possibly used it was for impeachment purposes and only if the occasion arose. First, this Court finds that Counsel was not deficient because such evidence would have simply impeached a police officer's testimony and would not have negated any elements of lynching or conspiracy. Furthermore, Applicant has failed to show when and where in the trial this impeachment evidence could have been used. Although Counsel testified that he could have used this to impeach a police officer if the officer testified that Lemire was not drunk, such testimony was never produced by a police officer at trial and the possibility to impeach him with Lemire's intoxication never arose. This Court finds that the outcome of the trial would not have changed had Counsel presented evidence that Lemire was intoxicated on the night of the incident.

Accordingly, this allegation must be dismissed.

Pop-A-Lock as a Cash Business

Applicant alleged that Counsel was ineffective for failing to request from Applicant evidence of cash transactions received at calls to unlock vehicles. He argued that his would have shown a motivation for Lochbaum to lie about not making calls to steal business from Applicant's wife. Applicant testified that Lochbaum asserted at trial that he would have no reason to steal a call because Pop-A-Lock does not conduct business in cash. Applicant testified that Counsel should have produced Pop-A-Lock's business records to show that they do operate in cash. Applicant's wife, Kerriann Larmand testified at the hearing that her company, Pop-A-Lock, operated in cash and produced records showing the company's daily activity sheets which include cash transactions. Counsel testified that he could not recall if he was aware of the daily activity sheets prior to trial. He testified that he did not know what Lochbaum's testimony would be prior to trial and testified that he could have used the cash records to impeach Lochbaum's testimony.

This Court finds that Applicant has failed to show that Counsel was deficient for failing to produce the records of cash transactions at trial. This Court finds that Counsel did not act unreasonably, especially when he could not have predicted or speculated as to what Lochbaum would have testified to at trial. This Court further finds that such evidence would have been cumulative to Mrs. Larmand's testimony at trial where she testified that her business did accept cash. Tr. 326, l. 24- 327, l. 4. Additionally, such evidence would have simply been impeaching and would not have changed the outcome of the trial. Applicant has failed to show that he would have been found not guilty of all charges had he been able to impeach Lochbaum's testimony that Pop-A-Lock did not operate in cash. Whether or not Pop-A-Lock took payments in the form

of cash is a factual question for the jury, and the jury was presented with both arguments from Lochbaum and Mrs. Larmand. Applicant has failed to show that Counsel was ineffective for failing to enter these records, and this allegation must be dismissed.

Mystery Shopper Calls

Applicant alleged that Counsel was ineffective for failing to prepare for trial as Counsel failed to establish evidence from Pop-A-Lock as to how investigations using "mystery shopper calls" were common. Applicant argued that at trial testimony established that he and Lemire were conducting an investigation into someone stealing calls from Pop-A-Lock. He argued that this is a common practice in the business and mandatory for all Pop-A-Lock franchises. Mrs. Larmand presented documentation from Pop-A-Lock's parent company recommending mystery shopper calls for investigation and she testified that it is common for an employee to bring along an acquaintance or a friend.

Counsel testified that he discussed mystery shopper calls extensively with Applicant. He testified that he had phone records and his main defense was to destroy Lochbaum's credibility. He testified that he cross-examined Lochbaum thoroughly about these calls and established that this was a common practice.

This Court finds that Applicant has failed to show that Counsel was deficient for failing to establish that investigating mystery shopper calls was a common practice for locksmith businesses. This Court finds that Counsel presented extensive testimony throughout trial about this practice. Counsel questioned Lochbaum about Mrs. Larmand catching Lochbaum by making a mystery shopper call. Tr. 174, ll. 22-25. Counsel had Lochbaum explain to the jury what a mystery shopper call is and pressed Lochbaum about how he told police that Applicant and Mrs. Larmand were luring him out to Fort Mill the night of the incident. Tr. 175, ll. 2-18.

This Court also finds that Counsel elicited extensive testimony about mystery shopper calls throughout Mrs. Larmand's testimony. At trial, Mrs. Larmand discussed the problem of call interception, gave an extensive tutorial on how locksmith companies investigate these problems through mystery shopper calls, and explained how she set up the mystery shopper call on the night of the incident. Tr. 327-332, 339-340. Furthermore, Mrs. Larmand testified that it is normal for Applicant to conduct these investigations. Tr. 345, ll. 7-10. Counsel also elicited testimony from Applicant that mystery shopper calls are "an industry-recognized mechanism for detecting suspected activity" and his company has "248 stores that do this activity, do the mystery shopping." Tr. 369, ll. 3-6. Thus, Applicant has failed to show that Counsel was deficient as this Court finds Counsel thoroughly established the practice and commonality of mystery shopper calls through several witnesses. Further, Applicant has failed to show that the outcome of his trial would have been different had he presented additional evidence that would have been cumulative to the evidence already established at trial. Accordingly, Applicant has failed to meet his burden of proving that Counsel was ineffective and this allegation must be dismissed.

Applicant's Black Clothing

Applicant alleged that Counsel was ineffective for failing to present evidence at trial that Applicant frequently wore all black clothing. Applicant argued that this evidence could have been used at trial to rebut the State's argument that Applicant and Lemire were wearing all black the night of the incident to be covert. Mrs. Larmand presented pictures of Applicant that depicted him wearing black clothing and she testified that Pop-A-Lock's uniforms were black. Counsel testified that these pictures could have potentially been helpful, but also testified that there was testimony presented at trial that Applicant was wearing all black.

This Court finds that Applicant has failed to show that Counsel was ineffective for failing

to produce evidence at trial that Applicant frequently wore black. This Court finds that Counsel elicited testimony at trial from Applicant himself that he wore all black in the regular course of business because he works on cars. Tr. 365, ll. 19-23. Counsel also elicited testimony from Applicant that it would not be unusual for Applicant to be dressed in black. Tr. 365, l. 24 – 366, l. 1. Lemire testified at trial that he was wearing all black because he usually wears all black and testified that Applicant did not tell him to wear all black. Tr. 458, ll. 6-14. Counsel also argued to the jury that Applicant was wearing all black because that is what he wears as a working man. Tr. 523, l. 10. This Court finds that Counsel elicited testimony and argued to the jury that Applicant was wearing all black as he normally does in the course of business. This Court finds that any pictures would simply be cumulative to the testimony already presented to the jury. Applicant has failed to show that Counsel's performance was deficient in this regard. Additionally, this Court finds that Applicant has failed to show that the outcome of his trial would have been different had Counsel presented the jury with pictures of Applicant wearing black because he had already elicited such testimony. Accordingly, this allegation must be dismissed.

Pop-A-Lock's Business in South Carolina

Applicant alleged that Counsel was ineffective for failing to establish that Pop-A-Lock does business in South Carolina. He argued that this could be used to rebut Lochbaum's testimony that he talked to another employee, Mike Taylor, the night of the incident to give Taylor directions to Fort Mill because Pop-A-Lock does not do business in Fort Mill. Tr. 175, ll. 9-15. Lochbaum testified at trial that he thought he was being lured to Fort Mill because Pop-A-Lock has never done calls in Fort Mill. Tr. 212, 18-24. Mrs. Larmand testified at the PCR hearing that her company did do business in South Carolina.

This Court finds that Applicant has failed to show that Counsel was ineffective for failing to establish that Pop-A-Lock did business in South Carolina. This Court finds that Counsel elicited testimony at trial concerning how Mrs. Larmand set up the mystery shopper call and her company's business in the greater Charlotte area. This Court finds that the testimony that Pop-A-Lock did business in South Carolina would have been simply used to impeach Lochbaum's testimony and would not have changed the outcome of the trial. Applicant has failed to show that he would have been found not guilty on all charges had Counsel rebutted Lochbaum's testimony on this fact. Applicant has failed to show that Counsel was ineffective in this regard and this allegation must be dismissed.

Trial Counsel was ineffective in failing to preserve for appellate review the issue of whether the inference charge was a charge on the facts in violation of Article V, § 21 of the Constitution of the State of South Carolina

Applicant argued that the trial judge improperly charged the jury that they may infer that all persons present as members of the mob when the act of violence is committed are guilty as principals. He argued that this was an improper charge on the facts which is prohibited under the state constitution under Article V, § 21. He further argued that Counsel was ineffective for failing to make a proper objection to this charge and therefore it was not preserved for appellate review.

First, Counsel's performance was not deficient because, as he and Court of Appeals in Lemire's opinion (which the Court of Appeals cited in Larmand's opinion) noted, the language at issue was taken directly from S.C. Code § 16-3-240 (2003). Counsel testified that Lemire's Counsel, Leland Greeley, objected before the jury charge was given that the inference language from the lynching statute was unconstitutional as burden shifting. Tr. 517, ll. 5-11. On appeal, Mr. Greeley argued that the instruction unconstitutionally shifted the burden of proof, was

redundant and confusing in view of other parts of the charge, and amounted to a charge on the facts. The Court of Appeals found no error in Lemire's appeal, holding that the charge was a correct definition of the law when read as a whole. Additionally, the Court refused to agree with Lemire that *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), is controlling, because *Belcher* concerned a permissive inference of malice, which was not an element of lynching. The Court of Appeals also pointed out that trial court instructed the jurors they would first have to find a mob had been formed and Applicant was present as a member of the mob when the victim was attacked before they could find Applicant guilty as a principal as well as an accessory.

This Court finds that Counsel was not ineffective for failing to preserve for appellate review the issue of whether the inference charge was a charge on the facts. The Court of Appeals affirmed Applicant's convictions, finding that the inference given in the jury charge was not improper. The Court of Appeals cited to its decision in Lemire's opinion, finding that the trial court properly overruled Lemire's objection to the jury charge. The Court of Appeals did not make any determination in Applicant's appeal that any issue was not preserved for appeal. Applicant cannot show that he was prejudiced by Counsel's failure to argue that the charge was an improper charge on the facts because the Court of Appeals found that there was no error.

Most importantly, the Court of Appeals cited to Lemire's opinion which held that the trial court properly overruled Mr. Greeley's objection to the jury charge because "the jury charge on inference was a correct interpretation of the applicable statute in effect at the time of the incident and trial." *State v. Lemire*, 406 S.C. 558, 573, 753 S.E.2d 247, 255-56 (Ct. App. 2013). The trial court is required to charge only the current and correct law of South Carolina. *Sheppard*, 357 S.C. at 665, 594 S.E.2d at 472. "A charge is sufficient if, when considered as a whole, it covers the law applicable to the case." *Ezell*, 321 S.C. at 425, 468 S.E.2d at 681. As this jury charge has

been determined by the Court of Appeals to be a correct interpretation of the applicable statute, Counsel was not ineffective for failing to argue that it was a charge on the facts. As Applicant has failed to show that Counsel's actions were deficient or that the outcome of his trial would have been different, this allegation must be dismissed.

Trial Counsel was ineffective in failing to raise a double jeopardy argument for a conviction of both lynching and conspiracy

Applicant argues that Counsel was ineffective for failing to raise a double jeopardy argument for a conviction of both lynching and conspiracy. Counsel testified at the PCR hearing that he did raise this motion, asking that the State choose between going forward on lynching or conspiracy and not both because "lynching in and of itself under the statute requires a conspiracy or a tacit agreement, premeditated agreement between the parties to engage in lynching." Tr. 300, ll. 20-22. Although the words "double jeopardy" are not specifically used, it is clear in context that this is exact objection Counsel made at trial. The State argued to the trial court that the conspiracy consists of simply the agreement and that the lynching requires the separate action of the "act of violence."¹ Following the State's argument, the trial court denied Counsel's motion.

Regarding criminal conspiracy, our courts have held that "a conspiracy is a combination or agreement between two or more persons for the purpose of accomplishing a criminal or unlawful object, or of achieving by criminal or unlawful means an object that is neither criminal nor unlawful." *State v. Gunn*, 313 S.C. 124, 133-34, 437 S.E.2d 75, 80 (1993) (internal citations omitted). Our courts have also been clear that "the gravamen of the offense of conspiracy is the

¹ The code section for second degree lynching, § 16-3-220, (which has since been repealed) read as follows: "Any act of violence inflicted by a mob upon the body of another person and from which death does not result shall constitute the crime of lynching in the second degree and shall be a felony. Any person found guilty of lynching in the second degree shall be confined at hard labor in the State Penitentiary for a term not exceeding twenty years nor less than three years, at the discretion of the presiding judge."

agreement or combination.” *Id.* (internal citations omitted). Lynching requires an act of violence inflicted by a mob. Although it involved drug convictions, the South Carolina Supreme Court in *Harden v. State* is persuasive. There, the issue was whether the petitioner’s plea counsel was ineffective for failing to make a double jeopardy objection to the petitioner being convicted for trafficking cocaine based on conspiracy and based on distribution. In finding no error, the Supreme Court held that “[c]onspiracy is a separate offense from the substantive offense, which is the object of the conspiracy. A defendant may be separately indicted and convicted of both the conspiracy, and the substantive offenses committed in the course of the conspiracy.” *Harden*, 360 S.C. 405, 410-11, 602 S.E.2d 48, 50 (2004). This Court finds that the trial court could try Applicant for conspiracy and the substantive offense (lynching) committed in the course of the conspiracy. Furthermore, lynching requires an act of violence, which “conspiracy” does not require.

Given the language in *Harden*, Counsel was not ineffective for failing to raise a double jeopardy issue as Applicant can be indicted for and convicted of conspiracy and lynching. Additionally, Applicant cannot show that he was prejudiced by Counsel’s failure to make an objection because it is clear from the trial record that Counsel did make such an objection and argued that the cases should be separately tried, however the trial court denied his request. Accordingly, this allegation must be dismissed.

Trial counsel erred in failing to object to an improper charge as to self defense

Applicant alleged that Counsel was ineffective for failing to object to an improper jury charge on self-defense. Applicant argued that at the trial, the trial judge gave a self-defense charge but Counsel failed to object to the trial judge’s failure to instruct the jury that the burden was on the State to disprove self-defense.