

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2016-001067

Eugene Patterson.....Petitioner,

v.

State of South Carolina.....Respondent.

APPENDIX
VOLUME IV OF IV

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INDEX

Trial Transcript, May 5-13, 2008.....	1
Application for Post-Conviction Relief, February 25, 2014.	1703
State's Return and Motion for a More Definite Statement.	1711
PCR Hearing Transcript.....	1717
Order of Dismissal.....	1856
Final Brief of Appellant.....	1875
Final Brief of Respondent.	1885
<i>State v. Eugene Patterson</i> , Case No. 2008-090626.....	1913
Petition for Writ of Certiorari.	1923
Order Denying Petition for Writ of Certiorari.....	1933

1 not the other co-defendant, I'm just really
2 concerned about what that's going to express to that
3 jury, what they may try to read into it. And I
4 think the more limiting instructions I might try to
5 give or explanations I might try to give, the worst
6 I would make it.

7 Now, if Mr. Boone was not entitled to a
8 self-defense charge, fine. I would have to come up
9 with some language, I'd have to submit to a jury and
10 trust them to follow my instructions. But there is
11 evidence in the record whereby I think he can claim
12 self-defense.

13 Now, yesterday I talked about the fact that it
14 seemed pretty preposterous or it could be
15 interpreted as being pretty preposterous that he was
16 claiming that he had to fire back when he walked
17 away from what he considered to be the threat to
18 himself and nobody pulled a gun and nobody shot at
19 him. It also seemed to be a stretch to claim that
20 he had no other reasonable means to avoid the danger
21 of death or serious bodily harm except to act in the
22 manner in which he did. And then we also discussed
23 that it seemed like he had an ability to retreat and
24 that he ultimately did get in his car and drive
25 away.

1 that it is necessary to prevent death or great
2 bodily injury to himself or another person or to
3 prevent the commission of a violent crime.

4 Now, I guess in order for me to get to
5 self-defense for Mr. Boone, I've got to accept to
6 some degree the defense's contention that you've got
7 separate instances here. So that while Mr. Boone
8 claims he never really fired at anybody, he fired
9 above people's heads or fired up into the air, there
10 could be a construction of the evidence by the jury
11 which would say that he fired a warning shot -- I
12 think one of the statements said one shot in the
13 air, I think that might have been Mr. Patterson's
14 statement, and then he leveled the gun and started
15 firing it into the crowd or firing it at the other
16 two alleged shooters.

17 If I separate those two, then there would be
18 the person who does like they see in T.V. and movies
19 where somebody fires a shot into the air and then
20 everybody just freezes and stops all the bad stuff
21 they're doing, that Mr. Boone could have been
22 interpreted as having fired those warning shots into
23 the air with the intention of stopping what he
24 perceived to be an injury to another person, a great
25 bodily injury or death to another person, Corey, and

1 messing with you or you're in your car and
2 somebody's messing with you, attacking you, you can
3 stand your ground, I think that was the law all
4 along. So I'm probably going to add that.

5 Do y'all want to be heard on any of that?

6 MR. SUTHERLAND: I would certainly support the
7 addition of the language in the statute, sir.

8 THE COURT: And I will commend the State
9 because the State's the one that called this to my
10 attention. I think commend is the best word I can
11 give. They were aware of it and didn't try to hide
12 it and brought it forward.

13 Do y'all want to be heard any further?

14 MS. CAMPBELL: No, sir. We think your charge
15 would be appropriate.

16 THE COURT: Okay. What about the balance of
17 it? I think that's all of my questions. Do y'all
18 want to be -- I've got your specific requests to
19 charge and I'll be happy to make all of these
20 court's exhibits.

21 I've got two that have been handed up by
22 Mr. Boone. They're both numbered one, I think
23 because one was handed up Monday of the first week
24 and one was handed up Monday of the second week.

25 MS. PAYNE: Sorry.

1 that's why that's in there.

2 There were actually expressed -- there's
3 evidence of expressed malice, there's very
4 reasonable constructions the jury could come to that
5 when one or both of these defendants leveled guns,
6 if they did, that they intended to kill.

7 What do y'all want to tell me about the draft?
8 Does the State want to start?

9 **MS. CAMPBELL:** We have nothing to add, Your
10 Honor.

11 **THE COURT:** Mr. Sutherland, do you want to add
12 anything?

13 **MR. SUTHERLAND:** Yes, sir. Briefly with
14 respect to the mutual combat charge, just with
15 respect to -- well, the tendency of mutual combat
16 charge to do the burden shifting with respect to
17 self-defense, Your Honor, in the State versus Taylor
18 case, the evidence -- it says that the evidence of
19 the agreement to fight needs to be plain and that
20 arising out of a mere fist fight or a scuffle. It's
21 our position -- and I mean, I don't want to call it
22 a position, I mean, I believe there still needs to
23 be some sort of agreement to fight on equal footing.
24 And, Your Honor, I just don't see that with respect
25 to my client's actions in this case, with respect to

1 there was evidence that Mr. Patterson, am I getting
2 this wrong, Mr. Patterson always carried a .380, I
3 excluded that. But was there other evidence that he
4 had a gun on his person that night?

5 **MS. CAMPBELL:** Yes, sir. I believe it was
6 Corey Sanders who said that he flashed the gun at
7 him or made a gun sign -- he said, actually, the gun
8 itself was flashed at him that night prior to the
9 altercation.

10 **THE COURT:** In the car, okay, when the cousin
11 came up and brother -- was it brother?

12 **MS. CAMPBELL:** And I believe Feldman also
13 testified he had the gun.

14 **THE COURT:** There's a bunch of evidence about
15 everybody going there for a gang fight, a mob fight
16 or whatever fight. There's evidence of the wearing
17 of gang colors.

18 There's evidence -- a jury could -- I'm not
19 taking sides in this thing, I don't have a side in
20 this case, but a jury could very easily from this
21 evidence determine that it's ridiculous to assume
22 that people in that crowd weren't armed, because
23 almost all of the evidence is to the contrary that
24 there were numerous people in there armed, we
25 probably don't even know a lot of the people that

1 the Bruton issue, two is the one about self-defense.
2 What I'll do is I will make those a court's exhibit.
3 And if you wish to specifically object to the
4 failure of the Court to give the specific written
5 instructions that were proposed, make that objection
6 and it will be preserved. While I'm at it, I'll
7 make the State's request to charge a court's
8 exhibit, too.

9 (Court's Exhibit Number 7, requests to
10 charge, was marked for identification purposes.)

11 **THE COURT:** This is Court's 7.

12 Do y'all need to talk to me about anything
13 else?

14 **MS. CAMPBELL:** No, sir. Can we just have a few
15 minutes?

16 **THE COURT:** We're going to have a few minutes,
17 yes.

18 **MR. GOLDBERG:** Judge, actually there is one
19 other thing. I don't know if the defense plans on
20 getting into it. I believe at some point, I can't
21 remember the witness, I think it might have been
22 Captain Smith, where they entered into a line of
23 questioning basically showing him the indictment,
24 asking him where in the indictment there was a
25 mention of hand of one or mutual combat or

1 THE COURT: Do y'all want to be heard now or --

2 MS. PAYNE: I would just say that Your Honor
3 allowed us to proceed in that line of questioning
4 and it was brought out in evidence. And I believe
5 that exactly what we said in opening was that
6 they're not the charging papers; however, they are
7 what get us to this point and that Your Honor talks
8 about the law, but we do -- we did have the right to
9 ask them specifically what was in the indictment and
10 I think that because Your Honor allowed us to
11 proceed that way, that we should -- I don't know if
12 Ms. Everhart is going to, but I'm just responding.

13 THE COURT: Is there an objection that I
14 overruled?

15 MS. PAYNE: Yes, sir. They objected to us
16 asking about that and you overruled it and we
17 proceeded on with the questioning of Captain Smith.

18 THE COURT: I'm going to have to hear the
19 specific argument. I'm not going to let the defense
20 go down that road very far, if at all.

21 I'm going to tell -- in a civil case, one can
22 go to a complaint and one can assert, they didn't
23 even charge us with this, they didn't do this, they
24 didn't do that. I think the defense has some
25 opportunity to make arguments about the State not

1 appropriate, we will go with.

2 THE COURT: Yes, ma'am.

3 MS. CAMPBELL: I don't think a curative
4 instruction would be proper. And beyond that, the
5 defense specifically asked Captain Smith about that
6 theory of law. It's out there. We aren't going to
7 argue it. We aren't going to say it applies. But
8 they questioned him about that, that was brought up
9 and that is now in the record, testimony as to what
10 the hand of one, hand of all is.

11 THE COURT: I think you can argue to the jury
12 that they mentioned the hand of one, hand of all in
13 their opening statement, you can say more than
14 mentioned, and that they're not going to hear that
15 from me.

16 MS. PAYNE: Thank you, Your Honor.

17 THE COURT: But I don't know that I need to get
18 involved in that.

19 MS. CAMPBELL: That's fine, Your Honor. And we
20 will be sticking to what your law -- what you will
21 be charging as far as all of the other elements.

22 MS. PAYNE: Thank you, Judge.

23 THE COURT: I'm assuming you want to open and
24 close?

25 MS. CAMPBELL: Yes, sir.

1 digest what we talked about. And we'll probably
2 take breaks between these closings. I'm
3 anticipating this charge is going to take about 45
4 minutes. And any time I go beyond 30 minutes, I
5 generally break the charge.

6 Now, I will tell the jury that they are not to
7 consider the fact that I broke the charge at any
8 particular point, that I'm trying to emphasize one
9 portion over another, that that's not the case.
10 It's just a logical place to stop because I don't
11 want to talk to them for 45 minutes straight. And
12 I'll take a very brief break, usually it's just
13 enough time for them to stretch their legs, go to
14 the restroom if they need to and then get back and
15 give them the rest of it. So that's probably how
16 we'll operate.

17 We're at ease.

18 (Brief Recess.)

19 **THE COURT:** Bring in the jury, please.

20 (The jury enters the courtroom at 10:50
21 a.m.)

22 **THE COURT:** Ladies and gentlemen, as I told you
23 yesterday, there are two stages that remain in this
24 trial, the closing arguments and the charge. The
25 way this will work is that since the State has the

1 didn't anticipate that you would be involved in a
2 case such as this. However, over the last week or
3 ten days, you've all been very attentive, you've
4 paid close attention to the evidence and as I think
5 you have learned from the facts of the case, that is
6 very important.

7 Now, as the Judge just told you, I'm going to
8 have the opportunity to get up here and talk to you
9 a little bit. And I'm going to talk to you a little
10 bit at first about the law in this case, the legal
11 principles, which ultimately the Judge will tell you
12 what those are and that you're to apply, but I'm
13 allowed to talk to you a little bit about it because
14 they're very important in this case. You've heard
15 mention of them as we've gone along. The Judge will
16 charge you as to what the applicable law is and it's
17 very important.

18 As you know, three people were charged with
19 murder in this case, two of them are before you
20 today. Mr. Feldman is not one you consider today.
21 He will have his day in court at another time with
22 another jury. What is before you today are two
23 indictments for murder. And as you have heard,
24 Eugene Patterson has been charged with murder.

25 As the Judge told you in the beginning, and let

1 it's your job because the roles in this courtroom
2 are defined very narrowly.

3 The prosecution, to bring forth all possible,
4 relevant and admissible evidence. The defense is
5 obvious, to defend their clients to the best of
6 their ability. The Judge's role is to decide what's
7 admissible.

8 As you know, and I apologize, you've been sent
9 back and forth, back and forth as legal decisions
10 have been made by the Judge because he has to make
11 those decisions as to what is competent evidence to
12 come before you, but the most important role in this
13 courtroom is yours, each of you individually. And,
14 ultimately, after you hear from the Judge on the
15 law, once you get the evidence and go back in that
16 jury room collectively, because you all must
17 determine what happened back on February the 19th in
18 those two parking lots, you all must determine how
19 to apply the law as the Judge gives it to how you
20 find the facts.

21 And let's be clear, under our theory, under the
22 theory of this case and in the State of South
23 Carolina, more than one person can be held
24 responsible for a killing, more than one person can
25 be held responsible for an armed robbery. There are

1 expedition or just plain wishful thinking is not
2 evidence. The evidence is the sworn, credible,
3 corroborated testimony from the witnesses, be they
4 lay witnesses, experts or any others, that is the
5 evidence that you must base your verdict upon.

6 In criminal cases, you may have noticed, this
7 is somewhat unique, too, the defendant has an
8 absolute, as he should, right to confront each and
9 every witness before him. You have heard references
10 to reports, you have heard references to certain
11 video tapes and things of that nature that may not
12 be admissible because a defendant has a right for
13 every witness who's going to testify against him to
14 appear here on the stand, swear an oath and then
15 testify. And the reason for that is simple, because
16 you must judge their credibility.

17 We don't have video taped depositions. We
18 don't have any depositions. You haven't heard any
19 reference to that. The statements taken from the
20 witnesses, you've heard many references to them, but
21 they aren't admissible. You have the right to judge
22 the credibility of each and every witness.

23 You've also heard from a series of witnesses
24 and you may wonder why we put that up, but in every
25 case we must prove that any evidence, such as

1 guilt in this case, two defendants' guilt, beyond a
2 reasonable doubt. And let me repeat that because
3 it's a very important part of law. It is on the
4 State of South Carolina, the burden, to prove a
5 defendant guilty beyond a reasonable doubt. And I
6 submit, ladies and gentlemen, in this case, perhaps
7 more than any other, that is a burden the State
8 welcomes.

9 So what is guilty beyond a reasonable doubt?
10 The courts in South Carolina and in the United
11 States have come up with some definitions which may
12 help you, because as you were told in the beginning,
13 we don't have to prove the defendants guilty beyond
14 every doubt, just beyond every reasonable doubt.
15 Although I submit, ladies and gentlemen, the
16 evidence in this case is overwhelming.

17 Now, what is guilt beyond a reasonable doubt?
18 The courts have defined it in the following manner.
19 The Judge will instruct you that in civil cases, the
20 level of proof is not as strong as in criminal
21 cases, it's just got to be more likely than that.
22 Proof beyond a reasonable doubt is more than that,
23 it has to be stronger than that.

24 What is proof beyond a reasonable doubt? Proof
25 that leaves you firmly convinced of the defendant's

1 killing of any person with malice aforethought
2 either expressed or inferred.

3 And what do those terms mean, ladies and
4 gentlemen? Listen as the Judge instructs you. It's
5 the killing, an unlawful killing of any person with
6 malice aforethought either expressed or inferred.

7 And what does that mean? Malice has been
8 defined in many ways and the Judge will instruct you
9 on some of these. To constitute murder, the Judge
10 will tell you, the State has to prove that the
11 defendant was acting with malice. Malice is the
12 mental state required for murder. The necessary
13 criminal intent may be proven by acts and conduct of
14 the defendant and other circumstances in which you
15 may naturally and reasonably infer criminal intent.
16 All that means is that the defendant wasn't acting
17 lawful. And I'll get back to that.

18 Malice is a term that imports wickedness and
19 excludes just cause or legal excuse. It is
20 something that springs from wickedness, depravity, a
21 depraved spirit, from a heart devoid of social duty
22 and fatally bent on mischief. And let me repeat
23 that, from a heart devoid of social duty and fatally
24 bent on mischief. If that doesn't sum up this case,
25 I don't know what does because these young men were,

1 you, then go back to their car and get a gun and
2 start shooting, that would be expressed malice, the
3 words in and of themselves, laying in wait, actions
4 of hostility.

5 Inferred malice, because the law recognizes in
6 most cases there's not going to be expressed malice,
7 if I walk up to that same person, pull out a gun and
8 start shooting into a crowd, those actions alone
9 without any words are enough to infer malice, are
10 more than enough to infer malice.

11 So you can infer malice from the actions or
12 express malice from their words. There is no
13 difference. One is not better than the other and
14 listen carefully as the Judge talks to you about
15 that. It's merely the manner in what you may come
16 to a decision as to whether or not malice existed on
17 this night.

18 Now, the Judge will also instruct you that
19 there are further definitions of malice which may
20 aid you in determining whether or not malice existed
21 in the hearts and in the mind of these two young men
22 on that night. You may find malice if you find that
23 the State has proven beyond a reasonable doubt that
24 the defendant was consciously and unlawfully
25 involved in conduct that constituted an extremely

1 depraved heart or malignant heart, and if the
2 defendant having such mental state and acting with
3 malice aforethought engages in such conduct that
4 acts as a proximate cause the unlawful death of
5 another person, it does not matter whether he
6 actually intended to kill anyone, he may be found
7 guilty of murder. If his actions rise to the level
8 where the harm is such, it doesn't matter if he
9 intended to kill anyone, in this case Brian Wright
10 or anyone else in the crossfire, that makes it
11 murder. All we have to prove is an unlawful killing
12 of another person with malice aforethought. Those
13 are the elements.

14 There is another way the Judge will tell you
15 beyond just the ones we've gone over. And I submit,
16 ladies and gentlemen, the State has reached this
17 level in which you may infer malice. Malice may be
18 inferred from facts and circumstances which are
19 proven by the State. Malice may be inferred from
20 conduct showing a total disregard for human life.

21 And, ladies and gentlemen, I again submit this
22 was a total disregard for human life by those three
23 men on that night. They were shooting. The only
24 miracle here is more people weren't killed.

25 Malice may be inferred from the use of a deadly

1 And I submit that when you figure out that you may
2 not want to be part of the fist fight and you want
3 to up the level and go back and get your gun and
4 start shooting, that is aforethought.

5 We must show that at the time the fatal blow
6 was struck, that malice existed in the heart of
7 these two men. And I submit, ladies and gentlemen,
8 a shootout between willing participants at the
9 Waffle House at midnight on a Sunday night is
10 murder.

11 Now, in every case, the defense has gotten up
12 here, specifically, I believe, Tayson Boone, and
13 indicated that he was acting in self-defense. And
14 the Judge is going to instruct you on the elements
15 of self-defense. And unlike what I just told you
16 about how we have to prove every type of malice, and
17 listen to the Judge, there are four elements to
18 self-defense. And the Judge will tell you in order
19 to find the defendant not guilty because of
20 self-defense, you must find that they have reached
21 the level of each of these four different elements,
22 that all four of these elements exist before you may
23 find the defendant not guilty based on self-defense.
24 And I'll talk about the conduct in a little bit.

25 What are the elements of self-defense? If a

1 misquote so you remember it. And at that point, he
2 does the appropriate thing, he retreats back away
3 from the danger to his car where there is an avenue
4 of escape. He doesn't stop there.

5 I submit, ladies and gentlemen, he is there for
6 the purpose and he goes to that fight for the
7 purpose of fighting Dameon Dowling, that puts him at
8 fault. He has fault in this.

9 Then when confronted, he takes the fault
10 further. He grabs the nearest gun, which just
11 happens to be in his car from his friend, Jerome
12 Thompson.

13 I submit the defense may get up here and argue,
14 ladies and gentlemen, but how is that without fault?
15 How do they meet the very first prong? Well, prior
16 to that, was his conduct lawful? Number two, was he
17 without fault?

18 The second element of self-defense is the
19 defendant was actually in imminent danger of death
20 or serious bodily injury. His testimony and in his
21 statement, he says that someone flashed a gun at
22 him. He doesn't say anyone pulled a gun out. He
23 doesn't say anyone started shooting at him. He says
24 that someone threatened him.

25 Is he in imminent danger? At that point,

1 that decrease or increase -- decrease this danger?
2 At the point that he leaves, even if you can get
3 past the first two rounds of shots that you can,
4 he's out of danger at that point.

5 A defendant has no duty to retreat, ladies and
6 gentlemen, the Judge will say, if he is lawfully at
7 a place or business, that he is not engaged in
8 unlawful activity. And I submit no one is going to
9 get up here and say that going to a place to fight
10 Dameon is lawful. No one is going to say that
11 grabbing a gun from your friend when you're 16 is
12 lawful. And the defendant is attacked, there's no
13 testimony that he was ever attacked.

14 If you meet those three, then he could stand
15 his ground if there is a reasonable belief necessary
16 to prevent great bodily injury or death. Those are
17 the elements of self-defense, ladies and gentlemen,
18 without fault and imminent danger, no other way to
19 avoid the danger and they have a duty to retreat
20 unless out there acting lawfully.

21 I submit, ladies and gentlemen, it's not that
22 he just can't meet one of these elements, either one
23 of them, and I'll get back to that, they don't meet
24 any of them.

25 Remember the testimony, Eugene Patterson drives

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In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EUGENE D. PATTERSON,

APPELLANT

THE STATE,

RESPONDENT,

V.

ANDRE TAYSON BOONE,

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
TESTIMONY	
WILLIAM DAVID MCROBERTS (IN CAMERA)	
Direct by Ms. Campbell.....	134
Cross by Mr. Sutherland.....	146
Cross by Ms. Payne	150
Redirect by Ms. Campbell.....	151
JAMES STANLEY SMITH (IN CAMERA)	
Direct by Ms. Campbell.....	153
Cross by Mr. Sutherland.....	160
MARSDEN ROE (IN CAMERA)	
Direct by Ms. Campbell.....	161
Cross by Mr. Sutherland.....	169
EUGENE PATTERSON (IN CAMERA)	
Direct by Mr. Sutherland	172
Cross by Ms. Campbell	179
Redirect by Mr. Sutherland	189
MARSDEN ROE (IN CAMERA)	
Direct by Mr. Goldberg	194
Cross by Ms. Payne	205
JAMES STANLEY SMITH (IN CAMERA)	
Direct by Mr. Goldberg	211
Cross by Ms. Payne	220
ROBERT EUGENE MARTIN, JR (IN CAMERA)	
Direct by Mr. Goldburg	224
Cross by Ms. Payne	230
OPENING STATEMENTS BY MR. GOLDBERT	305
OPENING STATEMENTS BY MR. SUTHERLAND.....	316
OPENING STATEMENTS BY MS. PAYNE.....	322

TESTIMONY

MICHAEL RAY BEELER, JR	
Direct by Ms. Campbell.....	332
Cross by Mr. Sutherland.....	354
HOWARD JAMES AUSTIN, III (IN CAMERA)	
Direct by Mr. Goldberg	356
Cross by Mr. Sutherland.....	364
Cross by Ms. Payne	371
Redirect by Mr. Goldberg.....	374
Recross by Mr. Sutherland	374
ZANE PADGETT	
Direct by Ms. Campbell.....	375
Cross by Mr. Sutherland.....	410
Cross by Ms. Payne	426
Redirect by Ms. Campbell.....	436
ZANE PADGETT (IN CAMERA)	
Direct by Ms. Campbell.....	439
ZANE PADGETT	
Redirect by Ms. Campbell.....	441
Recross by Mr. Sutherland	450
Recross by Ms. Payne.....	452
DAVID JOSEPH DANIEL	
Direct by Mr. Goldberg	455
Cross by Mr. Sutherland.....	458
STAN RICHARDS	
Direct by Ms. Campbell.....	459
STAN RICHARDS (IN CAMERA)	
Direct by Ms. Campbell.....	467
STAN RICHARDS	
Cross by Ms. Campbell	469
Cross by Mr. Sutherland.....	480
Cross by Ms. Payne	480
HAROLD MICHAEL BOUKNIGHT	
Direct by Ms. Campbell.....	482
Cross by Mr. Sutherland.....	496
KARLEISA BRABHAM	
Direct by Mr. Goldberg	497

Cross by Mr. Sutherland.....	504
Cross by Ms. Everhart.....	505
Redirect by Mr. Goldberg.....	508
Recross by Mr. Sutherland.....	509
JEROME CHRISTOPHER THOMPSON	
Direct by Ms. Campbell.....	510
Cross by Mr. Sutherland.....	567
Cross by Ms. Everhart.....	568
Recross by Mr. Sutherland.....	575
Recross by Ms. Everhart.....	576
Redirect by Ms. Campbell.....	577
Recross by Mr. Sutherland.....	577
ROBERT PORTEE	
Direct by Ms. Campbell.....	579
Cross by Mr. Sutherland.....	600
Cross by Ms. Payne.....	605
Redirect by Ms. Campbell.....	608
QUINTEZ CLEMONS	
Direct by Mr. Goldberg.....	609
Cross by Mr. Sutherland.....	618
Cross by Ms. Everhart.....	619
Redirect by Mr. Goldberg.....	620
WILLIAM KEE	
Direct by Mr. Goldberg.....	621
Cross by Mr. Sutherland.....	627
Redirect by Mr. Goldberg.....	628
COREY SANDERS	
Direct by Mr. Goldberg.....	630
Cross by Mr. Sutherland.....	644
Cross by Ms. Everhart.....	649
Redirect by Mr. Goldberg.....	652
KARMINDAE LEGGETT (IN CAMERA)	
Direct by Ms. Campbell.....	655
Cross by Ms. Payne.....	663
Redirect by Ms. Campbell.....	665
SAMUEL CLEMONS (IN CAMERA)	
Direct by Ms. Campbell.....	666
Cross by Mr. Sutherland.....	671
MATTHEW ELLIS (IN CAMERA)	
Direct by Ms. Campbell.....	677

Cross by Mr. Sutherland.....	681
KARMINDAE LEGGETT	
Direct by Ms. Campbell.....	703
Cross by Mr. Sutherland.....	725
Cross by Ms. Everhart.....	729
Redirect by Ms. Campbell.....	733
Recross by Mr. Sutherland.....	734
SAMUEL CLEMONS	
Direct by Ms. Campbell.....	735
Cross by Mr. Sutherland.....	749
DERRICK GUILYARD	
Direct by Ms. Campbell.....	754
Cross by Mr. Sutherland.....	781
Cross by Ms. Payne.....	782
DEMON GRIFFON	
Direct by Mr. Goldberg.....	784
Cross by Mr. Sutherland.....	790
OLIVER FELDMAN	
Direct by Ms. Campbell.....	791
Cross by Mr. Sutherland.....	836
Cross by Ms. Everhart.....	841
Redirect by Campbell.....	847
Recross by Ms. Everhart.....	849
Redirect by Ms. Campbell.....	850
AMY WEBBER	
Direct by Ms. Campbell.....	851
Cross by Mr. Sutherland.....	859
MICHAEL MOSKAL	
Direct by Ms. Campbell.....	860
Cross by Mr. Sutherland.....	871
WILLIAM DAVID MCROBERTS	
Direct by Mr. Goldberg.....	873
Cross by Mr. Southerland.....	898
DARRELL THOMPSON	
Direct by Mr. Goldberg.....	899
TENA GOFF	
Direct by Ms. Campbell.....	903
Cross by Mr. Sutherland.....	906
Cross by Ms. Payne.....	906

MARSDEN ROE	
Direct by Mr. Goldberg	908
Cross by Mr. Sutherland	936
Cross by Ms. Payne	939
Recross by Mr. Sutherland	944
ROBERT MARTIN	
Direct by Mr. Goldberg	945
WALTER SHAWN MCDANIELS	
Direct by Mr. Goldberg	950
Cross by Mr. Sutherland	952
CHRIS GOLDEN	
Direct by Ms. Campbell	953
WILLIAM CARTWRIGHT, III	
Direct by Ms. Campbell	957
CHAD ROBINSON	
Direct by Mr. Goldberg	959
Cross by Mr. Sutherland	971
Cross by Ms. Everhart	974
JOHN BARRON	
Direct by Ms. Campbell	978
Cross by Mr. Sutherland	989
CLAY ALLEN NICHOLS	
Direct by Ms. Campbell	1016
Cross by Mr. Sutherland	1032
Cross by Ms. Everhart	1033
DAVID COLLINS	
Direct by Ms. Campbell	1035
DAVID COLLINS (IN CAMERA)	
Direct by Ms. Campbell	1059
Cross by Ms. Campbell	1064
Cross by Ms. Payne	1065
DAVID COLLINS	
Direct by Ms. Campbell	1071
Cross by Mr. Sutherland	1089
Cross by Ms. Payne	1101
Redirect by Ms. Campbell	1103
Recross by Mr. Sutherland	1107

TANESHA JOE (IN CAMERA)	
Direct by Mr. Goldberg	1109
Cross by Ms. Everhart	1114
Redirect by Mr. Goldberg	1118
WALTER SHAWN MCDANIELS (IN CAMERA)	
Direct by Mr. Goldberg	1119
Cross by Ms. Everhart	1122
MATTHEW ELLIS	
Direct by Ms. Campbell	1140
Cross by Mr. Sutherland	1196
Cross by Ms. Everhart	1204
Redirect by Ms. Campbell	1217
Recross by Mr. Sutherland	1221
Recross by Ms. Campbell	1227
JAMES STANLEY SMITH	
Direct by Ms. Campbell	1229
Cross by Mr. Sutherland	1296
Cross by Ms. Everhart	1314
DONALD C. GIRNDT	
Direct by Ms. Everhart	1360
Cross by Ms. Campbell	1366
Cross by Mr. Sutherland	1375
Redirect by Ms. Everhart	1376
Recross by Ms. Campbell	1377
ANDRE TAYSON BOONE	
Direct by Ms. Everhart	1378
Cross by Ms. Campbell	1393
Redirect by Ms. Everhart	1419
Recross by Ms. Campbell	1425
Redirect by Ms. Everhart	1427
CLOSING ARGUMENT BY MS. CAMPBELL	1480
CLOSING ARGUEMNT BY MR. SUTHERLAND	1513
CLOSING ARGUMENT BY MS. EVERHART	1544
CLOSING ARGUEMNT BY MS. CAMPBELL	1563
CHARGE OF THE COURT	1591
VERDICT OF THE JUDGE	1624
SENTENCE OF THE COURT	1642

INDICTMENT FOR EUGENE PATTERSON	1646
INDICTMENT FOR ANDRE BOONE	1648
CERTIFICATE OF COUNSEL	1650

1 willingness to fight.

2 And, ladies and gentlemen, I beg you look at
3 their actions prior to any fighting taking up, look
4 at their reasons for being there. Both these young
5 men, all three of these men wanted to fight. You
6 don't bring the gun to the fight, talk about how
7 you're going to shoot, flash the gun in people's
8 faces. The gangs don't come together because they
9 get along. It's all about who disrespected who and
10 who's going to show the other one.

11 A mutual intent and willingness to fight. This
12 intent may be shown by the acts and conduct of the
13 parties and the circumstances surrounding the
14 combat. In addition, it must be shown that both
15 sides in the conflict were armed with a deadly
16 weapon. And, ladies and gentlemen, bullets were
17 fired.

18 Now, you have heard how three people are
19 charged in this case. And the defense in their
20 opening argument talked to you about there's only
21 one dead person, thank goodness. Horrible for Brian
22 Wright and his family, I guess.

23 MR. SUTHERLAND: Objection, Your Honor, that's
24 inflammatory.

25 THE COURT: Disregard that statement, ladies

1 here, which they've put in, Captain Smith, the
2 nature of the room prevents the actual determination
3 of the murder weapon to ever be made; therefore, all
4 parties involved in the gun battle will be held
5 accountable for Wright's death. In instance (ph),
6 the gun battle itself and each contributor to that
7 gun battle killed the victim.

8 That's the law. Continuing sequence of events
9 unbroken by efficient intervening cause. In other
10 words, there's not a third person, another person
11 that came in and contributed to this. These three
12 people were in the shootout that night.

13 The intervening cause has to be independent of
14 that particular defendant's wrongful act. It has to
15 be an act that's adequate to bring about the death
16 on its own and it had to be an act that was not
17 foreseeable to that particular defendant. And I
18 submit, ladies and gentlemen, when people, young men
19 get together for purposes of fighting in gangs and
20 start spraying bullets across parking lots, whether
21 they meant to or not is not the issue.

22 However, an intervening act by another person
23 or another defendant that is simply a proximate
24 cause and merely joins with a particular defendant's
25 conduct to cause the victim's death will not break

1 intent to kill.

2 Intent is a mental state, exists in the mind.
3 So if the State proves the defendant acting with
4 malice had the intent to kill one person and
5 mistakenly killed another, the intent to kill is
6 merely transferred from the original person the
7 defendant intended to kill than the actual person
8 killed.

9 Now, as the Judge will tell you we don't have
10 to prove the specific intent to kill. We have to
11 prove the specific act coupled with malice that
12 could cause the killing. And we went through those
13 inferences earlier. Although I submit, ladies and
14 gentlemen, what other intent did the shootout have?

15 Now, the Judge is going to tell you that there
16 are different types of evidence in this case, you
17 have both, direct and circumstantial evidence. What
18 is direct evidence? Generally, it's referred to as
19 eyewitness evidence, ladies and gentlemen.

20 In this case, you've heard from many
21 eyewitnesses at the scene. They haven't seen the
22 actual shooting itself, but they are very, very
23 important because they saw parts of what happened
24 that night. In addition to that, you actually have
25 statements from the defendants and what they

1 find the defendant not guilty. If, on the other
2 hand, you are convinced of the defendant's guilt
3 beyond a reasonable doubt, then you must find him
4 guilty. That is what's circumstantial evidence.

5 The Judge will also charge you that you were
6 able to hear from some experts in this case. And
7 very simply, the law recognizes that lay people such
8 as myself aren't experts. I cannot come in here and
9 testify about what an expert is going to say or
10 about an opinion that I have, but if certain people
11 have certain training or a background in a certain
12 area, then they can be qualified as an expert and
13 come in here and give you opinions.

14 You heard from David Collins, he is an expert,
15 you heard from Zane Padgett, the crime scene expert,
16 things of that nature, they are qualified. However,
17 you judge their credibility the same way you judge
18 anyone else's.

19 Now, the Judge is also going to instruct you,
20 in this case, there was certain identifications
21 made. Now, identification procedures are not
22 necessary if a person knows someone, say, by name
23 and sight. In this case, you heard from many
24 witnesses who, say, the ones in the car with Tayson
25 that night. You also heard from witnesses, the ones

1 Before you can consider anyone's statements, we
2 have to prove that it was a voluntary statement.
3 The Judge will instruct you that if a person is not
4 in custody, it is not necessary for them to be given
5 the Miranda rights. As you can see with the first
6 statement of Eugene Patterson, he was merely brought
7 in and then he left that day. He was not in
8 custody. He was not under arrest. He was not
9 detained in any way and he was not read his rights
10 because of that. You just have to show that it was
11 a voluntary statement -- we have to show it was a
12 voluntary statement, but he doesn't have to get his
13 Miranda rights.

14 But as you will note and as the police should,
15 whenever they're going to question a suspect and
16 they detain him in any way, that they have to read
17 him his rights and the reason for that is because
18 the constitution is there to protect, as it should,
19 every defendant's rights before they take a
20 statement.

21 In this case, ladies and gentlemen, there is
22 absolutely no evidence that the police had any
23 misconduct. They jumped every hoop as they should
24 and be held to that level.

25 You have the advice of rights with the

1 were they forthright or hesitant, was their
2 testimony corroborated by other people, was their
3 testimony corroborated by the physical evidence. We
4 have brought some of these witnesses, we couldn't
5 get their statements, but you have their drawings
6 where they showed you the approximate areas where
7 they saw people shooting, who they saw shooting,
8 things of that nature.

9 Many of the people you heard from are members
10 of gangs. You must judge their credibility. And I
11 submit, ladies and gentlemen, in judging their
12 credibility, what do they have to gain or lose by
13 coming in here and saying that they saw Tayson Boone
14 shooting that night? What do they have to gain or
15 lose by saying what this man did?

16 They're going to talk about how you can't
17 believe Eugene -- excuse me -- Oliver Feldman.
18 Ladies and gentlemen, I submit Oliver Feldman's
19 testimony is totally corroborated. What does he
20 have to gain or lose? He's still charged with
21 murder and those other charges.

22 Yeah, he hopes the Judge will consider it one
23 day. What did he have to gain or lose when he
24 originally gave his statement back in February? Is
25 he credible? He even told you that, yeah, he

1 evidence at the scene?

2 All the State asks, ladies and gentlemen,
3 Tayson Boone, and he's young, Eugene Patterson, they
4 made choices, together with Oliver Feldman, that
5 cost 15-year-old Brian Wright his life. Malice and
6 an unlawful killing. All the State asks is that you
7 hold them responsible for their choices and what
8 they did. Thank you.

9 THE COURT: Thank you, Solicitor.

10 We'll take a five minute break, ladies and
11 gentlemen. I'll get you back out to hear the
12 closing argument of Mr. Sutherland. Don't discuss
13 the case.

14 (The jury retires to the jury room.)

15 THE COURT: Court's in recess for five minutes.

16 (Brief Recess.)

17 THE COURT: Mr. Sutherland, are you ready?

18 MR. SUTHERLAND: Yes, Your Honor.

19 THE COURT: Bring in the jury.

20 (The jury returns to the courtroom.)

21 THE COURT: Mr. Sutherland, you're recognized
22 for your closing argument.

23 MR. SUTHERLAND: Please the Court.

24 THE COURT: Yes, sir.

25 MR. SUTHERLAND: Ladies and gentlemen, good

1 kind of blanket to throw over these kids. This is
2 where they're going, the chain of inferences, chain
3 of events, the Court is going to instruct you on
4 that and, you know, make your own decision.

5 They talk about, you know, there's a chain of
6 people, person A does something, then person B does
7 something, person C does something and person D and
8 since -- or person C does something. And since we
9 don't know if there's an E, F, G, H, I, J, K, L, M,
10 N, O, P involved, we're going to confine it to these
11 three, we're going to cut it a deal with this one
12 here and then we're going to say that these two are
13 responsible for a chain that we don't know the
14 length of it, we can't determine the final point of.
15 That's their proximate cause argument, just think
16 about it.

17 They say, well, you know, but for this, but for
18 that, now y'all have heard evidence, you're going to
19 receive a jury charge on self-defense. They can
20 come up here and they can make fun about it, but the
21 issue is with self-defense, is someone in imminent
22 danger, and I'm not even going to write that stuff
23 down, is someone in imminent danger when someone is
24 shooting at you or at your friends? Uh, yes. And
25 it's self-defense, defense of others.

1 it?

2 MR. SUTHERLAND: It says 63 I.D.

3 COURT REPORTER: It's I.D.

4 THE COURT: Let me see it.

5 MR. SUTHERLAND: It was the drawing of Padgett.

6 THE COURT: Is there another version of that
7 somewhere?

8 MS. CAMPBELL: Yes, sir.

9 THE COURT: Is it in evidence?

10 MS. CAMPBELL: There's Bill Allen's, actually
11 it's --

12 MR. SUTHERLAND: I tell you what, I'll just
13 talk about it and just sort of point. I mean, y'all
14 have seen this and heard all of this stuff. But
15 sorry to disjoint that there for a second. And I'm
16 not going to spend a great deal of time on this
17 thing here.

18 Here's the Waffle House and all these parking
19 places, big 'ol Waffle House sign with these steel
20 beams supporting it, in between that a parking
21 place, one, two parking places, telephone pole and
22 this should shift down here a little bit. But the
23 point, you know, you heard testimony maybe the shots
24 were fired from in front of the door at the Waffle
25 House. Well, that's where the shell casings are

1 this stuff as we go along.

2 So we've got one here and here is this Ford
3 Explorer truck and we've got one there. Now, cut
4 this off, you can put it here, anywhere in this area
5 here. You've got one, two shell casings, one live
6 round. Shot one, back corner of the Waffle House.
7 Shot two at the truck. Is this projectile that they
8 recovered, and this is interesting, this is one of
9 their bullet fragments, one of their disintegrated
10 bullets, but that's a substantive portion of this
11 thing and that was nonsense anyway frankly.

12 Now, they recovered this here. Well, did that
13 belong to this firearm? Now, y'all know I can't
14 stand up here and say that because Investigator
15 Collins -- for whatever reason, they left this thing
16 I went through with Investigator Collins up here for
17 like five days where there's a .357, a .380 firearm,
18 a .38 Special and nine millimeter. And then there's
19 a group of the different makers, manufacturers,
20 under each one. There's a little plus sign out
21 there because we don't know what's in the FBI data
22 base. So at least 21 and certainly more than 21,
23 that's his testimony, 21 different firearms,
24 according to the science that's available, according
25 to the forensics that's available, 21 different

1 number of reasons, first of all, physics, second of
2 all, what kind of sense does it make.

3 Again, they're over here, they're these rotten
4 little gang bangers and they're just horrible human
5 beings and, you know, they have no souls or whatever
6 they're saying about them. But we know from the
7 testimony that people over here are friends,
8 associates from the neighborhood, a couple of
9 neighborhoods, and people over here are from the
10 other neighborhood.

11 Now, are there tensions between the
12 neighborhoods? It's been that way as long as I can
13 remember when I was a kid and kids come from across
14 the street and come through there, they're going to
15 get beat up or don't go in the other neighborhood.
16 I mean, it's been like that.

17 Now, again, there are firearms in this equation
18 and it blows my mind, but, again, there's no
19 distinction here between, you know, human history
20 and human nature. Your friends are over here, the
21 people you're trying to protect, that their
22 witnesses testified that he was trying to protect.
23 Now, remember they said once all of these people
24 were out of the way, they stopped shooting at the
25 car and left, okay. That's defense of others even

1 for her. My late grandfather used to say something
2 about persuasive people. She'd sell milk to a cow,
3 okay.

4 Now, let's take it back here since there are
5 some statements saying, well he was at the back
6 corner, so obviously the State's theory, aha, then
7 he has a better shot over here at his friend, his
8 associate, his person from his neighborhood or his
9 fleeing friends because they're saying it was bad
10 aim or something, anyway. But if he's here, let's
11 see, back of the Waffle House, strikes the Explorer,
12 recovered a projectile, keeping in mind it could
13 have been 21 different kinds, but that's something,
14 you know, that -- actually that's some
15 circumstantial evidence for you to consider, you
16 know, they say he shot at this truck, they recovered
17 this in this truck. Well, okay, okay. Now -- and
18 you combine that with direct evidence that
19 somebody's saying that he was shooting at the truck,
20 but here we've got one, two, the shell casings are
21 still found up by the door here. Ah, so maybe
22 they're saying he actually turned and shot into his
23 fleeing friends rather than shooting up here at all.

24 The problem that they have with that is nobody
25 said that. Nobody says anything. And, you know,

1 words and legal theories, I think she did work in
2 there somehow that he got there, she did, he got
3 there and he's waving this gun around or whatever
4 and that's unlawful she says. So since Corey
5 Sanders says that he was waving a gun from the
6 window of a car, you can infer that he's a murderer,
7 if you follow the zigzags, the ups and downs and the
8 throughs of their proximate causes and their hand of
9 one, the hand of all, which they've abandoned at
10 this point. I think I might have mentioned I
11 consider that changing the rules again.

12 Now, I actually should look at my notes at some
13 point because there's some stuff that I can't
14 forget. I mean, honestly, I was watching that, and
15 there's more to come, that opening presentation and
16 I was trying to figure out, I was asking myself what
17 am I seeing here, what am I seeing here. And it's
18 just this world wind of bits and pieces of this and
19 bits and pieces of a fact just coming together.
20 It's like a tornado coming through the courtroom.

21 You know, by the time -- I may perhaps think
22 something's improper like, oh, this is us against
23 them, the citizens of Richland County. No, no, no.
24 The Constitution of the United States is written for
25 us against them. It protects us from them. There's

1 Some of the other stuff they did, I did manage
2 to get in an objection. At one point, I thought
3 frankly was -- well, I didn't think it was right.
4 Now, this I was characterizing it as sort of a
5 tornado pulling in little bits and pieces of stuff.
6 And, you know, enough people's lives have been
7 ripped apart by this incident, you know. And so are
8 we going to say -- you know, because we think
9 there's something wrong with kids today, there's
10 something wrong with these teenagers. Well, I agree
11 that this gun business, I'll tell you it's the same
12 as it's always been.

13 I never got in any trouble in school. If we
14 got in a fist fight with another kid, they stuck us
15 in a room and they made us do math work, okay.
16 Today they arrest you for disturbing schools and,
17 you know, get DJJ involved and, you know, that's the
18 government's typical answer to every problem that we
19 have in this country is to go in there like a bull
20 elephant and stomp all over everything, stomp all
21 over these kids.

22 And by the way, if they're successful with this
23 net, with this mess, guess what, they've got a
24 template to where any time anybody says someone is
25 discharging a firearm at a scene like that where

1 MR. SUTHERLAND: Yes, sir. So I'll step off
2 that, Your Honor.

3 THE COURT: Okay. Thank you.

4 MR. SUTHERLAND: Thank you, sir.

5 All right. Well, I did ask Captain Smith about
6 some of the procedures. And I know that I asked
7 him, you all investigate crimes, you do reports, you
8 gather evidence and you go in front of a magistrate
9 judge and you swear out an affidavit and magistrate
10 reviews the facts in those affidavits and decides
11 whether or not there's probable cause. And remember
12 there were some things, I was all up, what's
13 probable cause, what's this, what's that.

14 And I mean, the point of it is, you know, from
15 the beginning of this thing, they just sort of threw
16 this all together and they're like, you know, we can
17 do this, we're the government, we'll have a meeting
18 and, you know, we'll figure this out. We'll come up
19 here with 10,000 words worth of this, that and the
20 other. And, you know, everybody's going to be sad
21 because of the tragedy and it will work out. And
22 we'll get all these convictions and, you know, the
23 media, the newspaper, the T.V.'s going to say, you
24 know, convicted, guilty of murder. And then they
25 can use it again and again and again.

1 hand of one and inject it and now they back off of
2 that. The through and through nature of the wound
3 to Wright's head prevents the actual determination
4 as to the murder weapon ever to be made; therefore,
5 all parties involved in the gun battle are to be
6 held accountable.

7 That sounds good, holding people accountable
8 for something. You know, you've got to make sure
9 that somebody's done it. They say murder, you know,
10 make -- it's a good idea to know who did it. And
11 they can't come up here even at the end, because
12 they told you in the beginning, we don't know. We
13 think it was one of these three. We believe that it
14 was one of these three, you know, all of this
15 corroborating stuff. It could have been somebody
16 else. You know, what was it, people come up here,
17 at first, there's two shooters, then there's one
18 shooter, whatever it is.

19 And frankly there was talk of .357s that people
20 had and all this other kind of stuff. And I mean, I
21 think y'all have got a picture of the environment,
22 you know, I mean it's certainly not unreasonable to
23 believe that there were other firearms out there,
24 you know, other people were discharging firearms.
25 You know, they say, well tires come in and they pick

1 especially with the way it turned out where they've
2 got three people that they can't prove killed
3 anybody, but they're calling them murderers?

4 I'm supposed to respond or answer or go
5 through, you know, this means this with respect to
6 self-defense, this means that. It's common sense
7 stuff. They say you have a duty to retreat. Can
8 you run faster than a bullet? No. Fair enough.

9 Take your personal experience, your common
10 sense, your life and define them to all this stuff,
11 all these -- and the instructions will come from the
12 Court not from Ms. Campbell and her things here,
13 again sort of like mixing all this stuff up, well
14 here's a fact, here's a fact, here's a piece of law,
15 here's a fact, here's a fact, here's a piece of law,
16 here's a piece of law. There you go, that's it,
17 they're murderers.

18 And they're going to come back and do it again
19 and maybe talk about some of this stuff, you know,
20 that I'm talk -- that will be fine, let them talk
21 about this mess. It's their mess. They can't clean
22 it up. They weren't able to clean it up with their
23 witnesses, their firearms expert, you know, I mean,
24 they had two, they had this Padgett guy who was just
25 up there and he doesn't want to give me anything.

1 get rid of these pesky little gang bangers, these
2 little monsters with this tool. All these people,
3 you know, they have an agenda, they have an
4 interest.

5 These kids, they got up here and testified that
6 with all these, you know, ABWIKs, this, that and the
7 other and drug charges, they have an interest,
8 they're scared because they're kids and they're
9 charged with serious crimes. And, you know what, if
10 they're guilty of them, they shouldn't have been
11 doing this stuff. And half of the stuff that
12 they're doing out there anyway is ridiculous. If I
13 would have been out at midnight when I was a kid, I
14 would have wanted to go to jail because my dad would
15 have killed me. You know, I mean, this is all stuff
16 they're not supposed to be doing.

17 But with respect to their credibility, again,
18 going back to Sanders, you know, pick the parts that
19 you believe or you can just throw it all out. You
20 know, I think the part that Sanders talked about
21 that was particularly interesting because it could
22 be of no use whatever to the State in as far as
23 throwing these kids under the bus, I mean, he
24 doesn't have, like Feldman, he doesn't have the
25 evidence, he doesn't have their reports, he doesn't

1 to have a reason for it. Reasonable doubt, it's a
2 doubt you have a reason for. That's me. Y'all will
3 get the Court's instruction on the law of reasonable
4 doubt.

5 But I think the fact that to this point in time
6 that they don't know who did it, although they say
7 they know because three people that they know were
8 shooting so it must have been one of them, but they
9 can't tell you who did it, I would say a little
10 something about whether or not there's a reasonable
11 doubt. I mean, holy cow, you know, you don't know
12 who the murderer is so it's everybody.

13 It's like I said in the beginning, of course
14 it's more complex than that and it gets more complex
15 as we proceed through the months and as we proceed
16 through the trial, as they change their theories in
17 mid-trial.

18 I guess the decision is, is it okay, is it okay
19 because these little monsters -- well, they're
20 American citizens and, you know, maybe whether
21 they're little gang bangers and, you know, mean or
22 confused or stupid or smoking dope or whatever, you
23 know, they're American citizens and they have that
24 much in common with us. And do we want to give the
25 government the power to come in here and make stuff

1 MR. SUTHERLAND: Yes, sir.

2 Okay. Well, I think I should grab my note pad
3 and I should look because the last thing I want to
4 do is get over there and say to myself, idiot, you
5 forgot that, you know, whatever it is. And I
6 already know from having this in my hands sort of
7 through osmosis, transferred intent, transferred
8 intent. They say you take a shot at a particular
9 person, you miss, you hit another person. The
10 intent is reasonable, if you intend to kill someone
11 and you miss, it's fair that your intent to kill
12 that person transfers to the next person over. Does
13 it transfer to the person over here? Is it really a
14 magic bullet?

15 Oh, maybe they didn't find more -- there were
16 more shell casings that they didn't find. No, you
17 know, this is their evidence and the doubts are
18 resolved in favor of the citizen on trial. They say
19 two to three shots. They're stuck with two.
20 They've got two shell casings, one, two. No magic
21 bullet.

22 Who could he have possibly been shooting at
23 over here in the direction in which his friends are
24 fleeing, who? And nobody's ever said that, but
25 because of the -- but because of the theory, I have

1 cars in the parking spaces, you put in steel support
2 beams on either side of one car, you put the
3 telephone pole here, pack, Ms. Campbell's own words,
4 the place was packed with cars, trick shot, you
5 can't make that shot. It's a wall of vehicles,
6 steel, wood and because of the difference in the
7 elevation where it's five feet lower down here, if
8 they had the tiniest little car up here, the thing
9 would have been eight, nine, ten feet tall if it had
10 been in the Mobil station. You see what I'm saying
11 about obstruction -- about the obstruction? It's
12 hard to somehow leaning around or get him up on some
13 sort of ladder or something, again impossible,
14 impossible.

15 Okay. Dr. Nichols got into this somewhat,
16 their firearms, their ballistics expert, Mr.
17 Collins, characterize him as the most failure in the
18 balance of their government agent witnesses, Ms.
19 Campbell goes up to them and she's trying to take
20 this away from Feldman, you know, oh, it couldn't
21 have possibly happened -- well, no. Then she says,
22 well let me make sure -- well, actually, I mean,
23 y'all are going to remember it because you can
24 actually view the testimony if there's any sort of
25 dispute between what I say and what these people

1 doing like this (indicating). So he's at fault for
2 something earlier, then you need to be taking that
3 as true, well it's all his fault.

4 They're all in this together because they're
5 all a bunch of rotten kids and we can do whatever we
6 want with them. It's self-defense and a complete
7 defense. They have to affirmatively disprove
8 self-defense. So in addition to proving the
9 tornado, they have to disprove self-defense, so
10 there's another hurdle for them to jump. And I'm
11 sure you'll hear all kinds of stuff about how they
12 did it in not too long.

13 And that's everything I got, ladies and
14 gentlemen. I mean, no need to talk about hand of
15 one since it's disintegrated along with the
16 projectile like a lot of other stuff these people
17 were throwing up against the wall. Use your common
18 sense, use your judgment. And believe me, from the
19 bottom of my heart, this is wrong. Please do not
20 find Eugene Patterson guilty of murder. He killed
21 no one, no one. Seventeen years old.

22 Some of these kids are -- I can congratulate
23 Derrick Guilyard, yeah, good job, buddy, you know,
24 getting a job, 17 years old, he's staying employed,
25 that's something, that's progress, that's moving

1 on trial. The State is right, someone murdered
2 Brian Wright that night. The State is also right
3 that someone should be held accountable, but that
4 someone should be the person who shot and killed
5 Brian Wright and that is not Mr. Boone.

6 Now, you've heard from a lot of different
7 witnesses this week. You've heard from multiple
8 officers. You've heard from officers who came to
9 the scene initially. You've heard from crime scene
10 investigators and you've heard from the lead
11 detectives on these cases. And we've learned a
12 variety of things.

13 We have learned that they never recovered a
14 bullet either from Brian Wright or from the crime
15 scene. We have learned that they have absolutely no
16 idea what kind of gun shot this bullet. We have
17 learned they have no idea who shot the gun that
18 killed Brian Wright.

19 We have learned that Eugene Patterson and Andre
20 Boone don't know each other. They never met before
21 that night. They had no plan to get together and
22 come to this Waffle House.

23 We have learned that some guns do not expel
24 bullet casings. We have learned that .357s are more
25 powerful than .32s. And two witnesses put a .357 in

1 How many people walked through the Waffle House
2 parking lot over those three days? How many people
3 drove through the parking lot there or at the Mobil
4 Gas Station? There were a lot of shots that night.
5 Could there have been other bullet casings at this
6 scene from different guns? We'll never know.

7 The police told you that they talked to
8 numerous eyewitnesses in this case. Matt Ellis took
9 the stand and he said that there were people there
10 that night that they didn't speak with. He let you
11 know that some of these people were uncooperative
12 and didn't want to talk to the sheriff's department.
13 We also heard that there were numerous people they
14 interviewed and they got statements from that did
15 not come up here and testify this week. He let us
16 know that these people didn't want to be here and
17 that's why they weren't.

18 Well, with all due respect, the people
19 investigating this crime were the sheriff's
20 department. If they wanted to bring someone into
21 court, they could have. If they wanted to talk to
22 them about what they saw that night, they could have
23 done it.

24 Captain Stan Smith took the stand this week and
25 he told y'all that they have no idea what Brian

1 ground.

2 Chad Robinson took the stand, he was right up
3 in that fight. He says there were two shots that
4 were fired and everyone ran and he ran all the way
5 from the Waffle House through the Mobil parking lot
6 to the far end to Randy's Trailblazer and he did not
7 see Brian Wright.

8 Karmindae Leggett also testified this week and
9 he knew Brian. He didn't see him there either.

10 Additionally, we learned from the police that
11 there may have been more people with weapons that
12 night at the Waffle House. They did not follow up
13 on all these leads.

14 Also, this week the police did not put up a CSI
15 expert to talk about blood stains. You did hear
16 from Don Girndt and he told you that he looked at
17 the crime scene photographs and there was not a lot
18 of blood spatter on the ground. This was a through
19 and through head wound. Clay Nichols told you that
20 that kind of wound would bleed and it could bleed
21 profusely. There was not substantial blood on the
22 ground and not a blood trail.

23 Now, in addition, to all of the officers you
24 heard from, you heard from other eyewitnesses.
25 Thirteen different people who were there that night

1 testified that he thought there might have been two
2 shooters at the back of the Waffle House. And he
3 knew there were a lot of shots out there that night.

4 Oliver Feldman took the stand, too. And he
5 admitted to you that the first time he talked to the
6 police 12 days after this occurred, he told the
7 police there were two different individuals at the
8 back of the Waffle House, one who shot up into the
9 air and another one who was standing five feet from
10 the back of the Waffle House, this was the person he
11 was exchanging fire with.

12 Now, granted when he took the stand, he changed
13 his story and said, no, it was probably just one
14 person back there, but Oliver Feldman was charged
15 with this murder and he is not on trial this week.
16 He told you that he hopes if Eugene Patterson and
17 Andre Boone are convicted of this crime, he won't
18 be. He has a motive to change his story.

19 We also learned from witnesses who took the
20 stand that there was a party that night out at the
21 Windsor Lakes Clubhouse and that this party was
22 broken up by a gunshot from Byron Morant. We
23 learned Byron Morant was also at the Waffle House
24 that night. Where was he? What was he doing?
25 Could he have been this guy at the back of the

1 old the night this happened, 10th grader. He told
2 you he went out that night to go to a party, didn't
3 get to go to that party so he drove around with his
4 friends and stopped at a Waffle House. Yes, he
5 learned that Dameon Dowling, the guy he had fought
6 with before at the Main Event Club, was out that
7 night and he thought about fighting him and they
8 picked a couple of different spots, but this fight
9 never happened.

10 Andre, determined that it wasn't going to
11 happen at all, so when his girlfriend, Doneisha
12 Smallwood, called him up, he agreed to meet her at
13 this Waffle House. Andre Boone did not go to this
14 Waffle House to fight. He did not bring a gun to
15 this Waffle House. He gets out, he goes in and
16 talks to his girlfriend and they come back out of
17 the restaurant. His friend, Jerome Thompson, does
18 have a gun, a gun he didn't know about until they
19 got to this Waffle House that night.

20 While he's talking with his girlfriend, this
21 fist fight breaks out between Corey and Chad and
22 other people jump in. He sees Dameon Dowling down
23 there, so he decides he's going to go down there and
24 join in as well, but before he can get to this
25 fight, before he can even throw a punch, a

1 he had shot the nine millimeter before out at Meadow
2 Lakes at a dead end near the woods and he took them
3 out there and they searched around until they found
4 these bullets.

5 He admitted, after being confronted, that there
6 had been a story about a .22 that Derrick Gullyard
7 made up and he went along with and that wasn't the
8 case. It was a nine millimeter belonged to Jerome
9 Thompson, but Andre told them he used it.

10 In his statement, Andre Boone indicated he was
11 in a gang, but he told you on the stand he was not
12 in a gang, that he had told that to the police over
13 and over, but they didn't believe him. And they
14 kept accusing him of being in a gang and he was
15 scared, someone had died at the Waffle House, he
16 wanted to tell his story. So, finally, he told the
17 police what they wanted to hear that he was in a
18 gang. He said it was the Bloods and he was a TTP.
19 Corey Sanders used to be a TTP and he took the stand
20 and said Andre Boone wasn't in his sect, wasn't in
21 his gang.

22 A lot of these gang references are irrelevant
23 because ultimately this fight was about what
24 occurred between Chad and Corey at a basketball
25 game. It was a dispute over one of them tripping

1 You also got to hear about blood stains. This
2 is part of the silent witness, the crime scene. The
3 blood spatter on the ground was minimal. There was
4 no blood trail leading in to the gas station parking
5 lot. You learned that this was a through and
6 through wound that would have bled heavily.

7 Brian Wright himself is also a part of this
8 crime scene. His body fell with the momentum of the
9 bullet. It fell with his feet diagonal toward the
10 Waffle House.

11 You have heard numerous theories this week
12 about the law and about this case. In their
13 opening, the State told you they arrested Andre
14 Boone and Eugene Patterson using the concepts of
15 mutual combat and transferred intent and also a
16 concept known as hand of one, hand of all. These
17 theories do not work.

18 Mutual combat by it's very title requires that
19 the combat be mutual, two people need to agree to
20 enter into a fight with weapons. That did not occur
21 in this case. Additionally, the person who ended up
22 getting shot was not involved in that fight.

23 With transferred intent, that's when one
24 person, person A, decides they want to kill person B
25 and by accident, they hit person C. In order to

1 Andre Boone did not talk to Rob Portee that
2 night, he told you that. Rob Portee was the first
3 person that people thought shot at the Waffle House.
4 He called the police that night in an attempt to
5 clear his name and that's when he told them that
6 Andre Boone said he wanted to chunk someone.

7 Malice doesn't have to be expressed. It can be
8 implied. It can be implied through the use of a
9 weapon. It can be implied through your actions.
10 Andre Boone did have a weapon in his hands that
11 night, but he did not bring it to the Waffle House.
12 He did not fire that weapon with any intent to harm
13 anyone. He fired into the air to make people
14 scatter and run. He did not have malice.

15 The State also introduced a concept called
16 proximate cause and they defined proximate cause for
17 you. The Judge will define it again. But,
18 essentially, proximate cause is the direct cause,
19 what act, what incident occurred that made this
20 outcome inevitable.

21 There were so many things that happened that
22 night out at the Waffle House, who can determine
23 what the proximate cause of Brian Wright's death
24 was. This is a slippery slope. If Corey and Chad
25 had never fought that night, would Brian Wright be

1 to protect people who are on trial so that they are
2 not convicted of something they didn't do. And we
3 have it to protect the men and women who serve on
4 our juries so they can be confident in their
5 decisions.

6 The police told you they don't know what kind
7 of gun was used that night. They don't know who
8 shot Brian Wright. The State has told you they
9 don't know who shot Brian Wright. So what they've
10 done is they brought you everything they could find
11 about his case and they presented it to you and they
12 have asked you to do something they cannot. This is
13 reasonable doubt.

14 There were three people charged with murder in
15 this case, two that are on trial, one's missing, but
16 there was only one wound that night in Brian Wright,
17 that's reasonable doubt.

18 Andre Boone was 16 years old the night this
19 occurred. He made a stupid, juvenile decision, but
20 he did not kill Brian Wright. If ever there was a
21 case for a reasonable doubt, this is that case.

22 Thank you.

23 **THE COURT:** Thank you, Ms. Everhart.

24 Ladies and gentlemen, we'll take a recess.

25 I'll decide whether -- if your food is here or

1 THE COURT: Solicitor, are you ready?

2 MS. CAMPBELL: Yes, sir. May it please the
3 Court.

4 THE COURT: Yes, ma'am.

5 MS. CAMPBELL: Preparing for every case before
6 it comes to trial, you try to anticipate what the
7 possible defenses may be. You never really know
8 until you get into court. And as I have listened
9 this morning and into this afternoon to the defense
10 attorneys argue, basically, as I can sum it up, the
11 defense is this, they're victims.

12 Eugene Patterson, who was 17 years old, is a
13 victim. Tayson Boone, who was 16 years old, is a
14 victim. They aren't in gangs, just everyone else
15 they hung with was. They're just boys, children,
16 don't hold them responsible. I believe, and I wrote
17 this down, as Mr. Sutherland said, enough people's
18 lives have been ripped apart by this incident.

19 Ladies and gentlemen, Brian Wright's life
20 wasn't just ripped apart, it was ended when he fell
21 forward as his brains lay there on the sidewalk.
22 And the people that are responsible, three of them,
23 together, all contributing are Oliver Feldman,
24 Eugene Patterson and Andre Tayson Boone. Enough
25 people's lives have been ripped apart? Don't hold

1 convict because there's only one bullet and one
2 murder. There aren't enough shell casings at the
3 scene for you to convict. You're supposed to ignore
4 all the testimony.

5 Interestingly enough they got up here and each
6 one mentioned that they were acting in self-defense.
7 Did either one ever talk about the elements of
8 self-defense, the four elements they must meet for
9 there to be self-defense involved in this case? No.

10 They got up here and now they bashed Oliver
11 Feldman who is charged with murder, who has received
12 no deals. By the way, Oliver Feldman got to that
13 scene because he's friends with Big Gene, that's who
14 he chooses to hang out with. But then in the other
15 breath, you're aren't supposed to believe him
16 because they don't want you to remember the part
17 about how Oliver Feldman told you that after the two
18 shots were up in the air, they ran back to the car
19 and got the guns, that negates self-defense, along a
20 myriad of other things. You aren't supposed to
21 believe him about how the guns were there.

22 No one got up and argued that Eugene Patterson
23 wasn't shooting. No one got up and argued that
24 Andre Tayson Boone wasn't shooting and that they're
25 shooting at people and that infers the intent to

1 this Judge. He's going to talk to you about
2 proximate cause, transferred intent, mutual combat.
3 Listen to what the law is that you're to apply. We
4 aren't asking you to go out on a limb. We're asking
5 you to follow the law. We want you to talk about
6 the elements of self-defense. We want to talk about
7 the elements of mutual combat.

8 They talked about we had this theory of hand of
9 one, hand of all. Where has that gone? Listen
10 carefully when the Judge charges you on proximate
11 cause. What is proximate cause?

12 Defendant cannot be convicted of murder unless
13 his acts were a proximate cause of the death of the
14 victim. Proximate cause is akin to being a direct
15 cause, the cause without which death would not have
16 resulted. The law recognizes there can be more than
17 one proximate cause of an injury or death. In other
18 words, in situations that acts of malice by more
19 than one person contribute to each other and combine
20 to proximately cause the death. An intervening act
21 by another person or another defendant is simply a
22 proximate cause and merely joins with that
23 particular defendant's conduct to cause the victim's
24 death to form the causal link.

25 No one's abandoned any theory here. It is up.

1 Ladies and gentlemen, I want to take this
2 opportunity, and I'll try to be brief, but it's
3 important, I want to take this opportunity to talk
4 about the cold, hard facts in this case. Nobody's
5 selling anything here. I want to talk about the law
6 because that is ultimately what you must decide when
7 you all go back there, each of you individually and
8 then collectively.

9 And you've heard from a number of witnesses in
10 this case. Some of the witnesses from different
11 gangs, did they come forward willingly with the
12 police? Some did, some didn't. Did ultimately they
13 corroborate what they said? But let's talk about
14 which ones were friends with each defendant and what
15 that evidence shows ultimately.

16 Jerome Thompson was the first person that got
17 up here and talked to you. He is a member of the
18 Bloods. He is good friends with his friend, Andre
19 Tayson Boone. On the night in question, he had his
20 nine millimeter with him, but give him credit, he
21 didn't use it.

22 What did Jerome Patterson testify about?
23 Jerome Patterson -- excuse me -- Jerome Thompson
24 told you that on the night in question, he was
25 driving, he had his nine millimeter in his lap, he

1 statement. I'll get to that in a minute.

2 Derrick Guilyard told you he was in the car, he
3 was in the back seat. Remember he got his little
4 brother Demon get in the way back because he didn't
5 really see anything. What did he tell you happened?
6 The same thing everyone else tells you happens.
7 They get in the car, sees Tayson shooting from one
8 end of the car. He then runs around to the front of
9 the car shoots some more, gets into the car, pulls
10 off, Jerome jumps in, they leave the scene. William
11 Bernard Kee, what did he tell you? The same thing.

12 What's interesting about Derrick Guilyard is
13 remember he had a conversation the next day with
14 Andre Tayson Boone, and what was Tayson worried
15 about? He even mentioned it in his statement.
16 Tayson's worried about that he may have a body on
17 that gun. And notice they got rid of it. He's
18 worried he may have a body on the gun. You remember
19 the testimony, if I'm misquoting, something similar
20 to that, but you remember what he testified to and
21 these are his friends.

22 Corey Sanders testified. He was there that
23 night. He's the cause of the fight. He's in the
24 middle of it. He hears gunshots from different
25 areas. He thinks it's three areas.

1 Was that when he was unjamming the gun over, because
2 he's over in that corner of the parking lot? Corey
3 Sanders corroborates what happened, doesn't dispute
4 it.

5 You heard from Rob Portee. Rob Portee, he's
6 the one that was trying to help Corey, came in and
7 remember hit Chad on the back of the head and he
8 ended up getting hit and going down himself. What
9 does Rob Portee tell police? By the way, he called
10 the police. Tayson Boone never calls the police.
11 Rob Portee calls the police the night within hours
12 of it happening, because remember they can do a
13 gunshot residue kit. They do one on him and one
14 other guy that's still responsible enough to be
15 there. They're both negative. What is that
16 consistent with? Not having handled a gun, not
17 having shot a gun, not having had a gun.

18 Rob Portee, he walks by Tayson Boone's car that
19 night. And what does Tayson Boone, his friend, say
20 to him? I'm going to chunk those, and I won't use
21 the word. What did that mean? I asked that
22 question specifically. Shoot. This is way before
23 the fight breaks out. This is way before anybody
24 else is there with more guns.

25 What were his intentions? Was he acting with

1 front of his car, remember, or behind his car, he
2 was backed in. So there is a cross fire going on.
3 Did he want to help out Big Gene?

4 And then Oliver Feldman, who came before you,
5 and, ladies and gentlemen, the fact that he said he
6 thought it was two people, that gives him
7 credibility. He saw two people he couldn't see
8 their face, remembered the clothing description,
9 shooting from different areas, one on one side of
10 the car, one on the other. He puts him within five
11 feet of the corner of the Waffle House, that makes
12 him credible. I don't think he was out there
13 measuring things that night.

14 Do the witnesses corroborate each other and do
15 they corroborate what happened that night?

16 Now, you heard from law enforcement, crime
17 scene. And what's significant? Deputy Beeler, he
18 was the first officer on the scene, he did his best
19 to contain it. He's going to tell you that there
20 were still some people out there when he got there.

21 And, ladies and gentlemen, no one, no matter
22 how good the police are, can control a crime scene
23 before they get there. They can't control what
24 happens to every single shell casing. And we know
25 for a fact that some shell casings are missing

1 reason the photographs is so important in this case
2 as to why, because in addition to having the luxury
3 that y'all had in going to the scene itself, even
4 though it is 15 months later and some things are
5 going to be slightly different, you know, some
6 things may have been painted over, some things may
7 have been moved a little bit, but you get the
8 essence of the scene out there, but you've got the
9 photographs from that night and it's specifically
10 very important because they talked about how Tayson
11 Boone could not have shot Brian Wright because he
12 fell too far in front of the gas station. Look
13 where his feet are.

14 The testimony from the pathologist, the expert,
15 was that the momentum of him going forward, not the
16 momentum of the bullet would have carried him
17 forward. He told you he couldn't tell you which way
18 his head was turned at the time, which is one thing
19 we -- it can't be done, but what he can say is that
20 he could have continued as he was running lowering
21 his head as if to duck, which would be consistent
22 with gunshots coming towards him forward.

23 As far as any blood spatter, it's going to
24 follow, the blood spatter is not coming out here,
25 it's going to come out here and he is going forward

1 the testimony about? He said all three of these
2 guns could have created a through and through
3 gunshot, that's common sense, depending on the
4 circumstances, how far away, things of that nature.

5 Investigator Collins testified the strongest of
6 these weapons was a nine millimeter, the next was a
7 .380 and the weakest would be the .32 revolver. He
8 testified about the testing he did on those items,
9 that he was even able to match up those old, and
10 you'll see them, weathered shell casings from the
11 back of Meadow Lake where Tayson Boone did his, I
12 guess, his practice range to that. Ballistics in
13 this case, even though two of the guns were never
14 recovered, which is not unusual, that's the
15 testimony.

16 You also heard from a number of investigators
17 about how many people they interviewed. They went
18 out there, they interviewed a lot of people, 30
19 something written statements, more than that
20 interviewed. We brought forth everyone who could
21 add something, who was willing to.

22 You heard about how they were looking for
23 Dameon Dowling, he's on the run.

24 Every witness that came before you, though, was
25 talking about who the shooters were and where the

1 again after being advised of his rights. At that
2 point, he's confronted with the overwhelming
3 evidence that he's in the burgundy car and that he's
4 shooting. All he says at that point is, well I was
5 in the burgundy car with Eugene -- it was Eugene,
6 Bay and Oliver in the car, that he saw a guy in the
7 back of the parking lot shoot one time and that he
8 saw the Crip shoot a lot.

9 He never came forward. His own attorney didn't
10 get up here and argue that he wasn't the shooter.
11 Why would he not tell the truth? And I submit,
12 ladies and gentlemen, because he's guilty:

13 Andre Tayson Boone gave a statement after being
14 advised of his rights. And in his statement, he
15 made the following assertions and he admits in his
16 statement -- and oddly enough, somewhat interesting,
17 they want you to believe certain parts of his
18 statement like when he says he was firing over their
19 head, but they just want you to not believe certain
20 parts they don't like. Like this first part:

21 Tayson, are you in the Bloods gang?

22 Yes.

23 What sect are you in?

24 TTP, Tree Top Piru.

25 Have you been promised anything or threatened

1 shot into the air with the .22 pistol you found at
2 my house this morning. I said I shot in the air to
3 scare Folks from coming at me and the guys that I
4 was with with the guns.

5 What is the real truth? This is his initial
6 statement. He blames a bunch of Folks. What is the
7 real truth?

8 Corey was outside by then. He yelled over that
9 the people in the cars were Folks we were supposed
10 to fight earlier that night. We were supposed to
11 have met up earlier at the Waffle House by the
12 Kangaroo, then it changed to the Wendy's by Spring
13 Valley. The Folks never showed at either place. We
14 were either -- supposed to meet at the Waffle House
15 on Hard Scrabble.

16 That would be the same Waffle House, I think,
17 that they couldn't stay because, I think, Jerome
18 testified that there were too many police around.

19 They didn't show up there either. Then Corey
20 and Chad started fighting in the parking lot. That
21 is when I ran up there, and remember his testimony
22 from yesterday, this is what's in his statement
23 before he knew, that is when I ran up there to try
24 to fight a guy named Dameon who was right there
25 where Corey and Chad were fighting. Dameon and I

1 air is going to cause a gun fight? Is he without
2 fault in bringing it on? Again, the elements of
3 self-defense.

4 When I got behind the Explorer, I fired five
5 more times. I fired at the Crip dude. After I
6 fired those five shots I got into the truck.

7 Then he talks about how as he pulls out, he
8 hears more gunshots as he's leaving. And isn't it
9 interesting, you heard from Demon Griffin, you heard
10 from Guilyard, all those people, no one else
11 testified about hearing more shots once Tayson got
12 in the driver's seat and left. Why does he want to
13 do that? He needs to divert attention from himself.

14 Did you feel one of the shots you fired may
15 have hit the boy?

16 I was worried about it. This is when he was
17 talking about his girlfriend, so that's when he
18 asked where he got shot. But I knew I couldn't have
19 done it because he was shot in front of the gas
20 station.

21 Again, the expert's testimony, he could have
22 been shot at that corner and continued forward. And
23 we know where his momentum was as he was running
24 because his feet dropped right there at that door
25 and he falls forward, that puts his back to the

1 see the wall of the Mobil. I was running with the
2 gun in my hand and I quickly turned to fire after I
3 took cover behind my Explorer. When I fired that
4 shot, it wasn't well aimed. I took better aim.

5 Specifically asked about is anyone else out
6 there around where he is when he's shooting.

7 I'm not sure.

8 Do you know if anyone was firing from anywhere
9 behind you or not?

10 I don't think so, but maybe.

11 When asked about people running back and forth,
12 I was ducking and dodging because those two boys
13 were shooting and coming at me.

14 When asked then, not yesterday, why he was
15 there, so you were basically looking to fight Dameon
16 all that night; is that correct?

17 Yes. I was upset because he hit me for no
18 reason. He waited for a fight to break out in the
19 club and he punched me when my attention was on that
20 fight.

21 Have you ever fired the same nine millimeter
22 before?

23 Yes.

24 Ladies and gentlemen, there is no dispute, we
25 were the first people to tell you, there was one

1 of the parties and the circumstances surrounding the
2 combat. In addition, it must be shown that both
3 sides were armed. And there's no dispute in this
4 case, both sides were armed.

5 Ladies and gentlemen, mutual combat is an old,
6 old law, negates any possibility of self-defense and
7 holds them responsible if they shoot each other, and
8 even more importantly, when they shoot an innocent
9 person.

10 The Judge is going to talk to you about
11 transferred intent. Again, what is transferred
12 intent? If two people engage in mutual combat
13 acting with malice, and all we have to show is
14 malice, we don't even have to show a specific intent
15 to kill, then they are both guilty.

16 Proximate cause, I talked to you a little bit
17 about it. And the best way I can put it, the
18 easiest way to understand it is but for these three
19 young men's actions that night, Brian Wright would
20 still be alive. To say one is more culpable than
21 the other is not correct because each directly
22 contributed because but for Andre Boone going to get
23 that gun and started firing, but for the fact that
24 Eugene Patterson and Oliver Feldman brought their
25 guns so that they could run back and get them and

1 Everybody in that wants to come in?

2 BAILIFF: I asked them, Your Honor.

3 THE COURT: Thank you. I appreciate the help.

4 Bring in the jury.

5 (The jury returns to the courtroom.)

6 THE COURT: Ladies and gentlemen, this charge
7 on the law that I'm going to give you is 22 pages
8 long, which means it's going to take me right at 44
9 minutes to tell you the law. This is just a matter
10 of my personal practice, it has nothing to do with
11 this particular case, but I don't ever like to talk
12 that long to a jury without taking a break in there.
13 So if I get beyond 30 minutes, a charge that's going
14 to go beyond 30 minutes, I usually will break it
15 into two parts. That's what I'm going to do here.

16 I've got a logical breaking part at page 11
17 right in the middle, so I'm going to go 11 pages and
18 then I'm going to stop, but I have to tell you that
19 you are not to glean from that that I'm trying to
20 emphasize one section over another or anything like
21 that. That's just the way it's going to work. I
22 just don't want to talk at you for 44 minutes, all
23 right.

24 All right. Members of the jury, all of the
25 evidence has been presented, you've heard the

1 common sense, use your sense of logic and reason and
2 your good judgment.

3 It's improper for me to give you a charge on
4 the facts of the case. I can't discuss the facts
5 with you. I'm not even permitted to convey to you
6 an impression as to what, if any, personal opinions
7 I may have about the facts of a case. So if, during
8 any stage of this trial, you develop an impression
9 that I've got a personal opinion about the facts,
10 you must remove that totally from your mind. You're
11 the sole judges of the facts.

12 Now, I am the Judge of the law that applies to
13 the case. And under your oath, you have to accept
14 and apply the law as I give it to you. If you've
15 got conflicting ideas about what the law is or what
16 it should be, you have to abandon those. I give you
17 the law, you apply it to the facts as you determine
18 them to be and in that way, you reach your verdicts.

19 It's also my job to decide what evidence is
20 admissible. If I've told you to disregard something
21 or rule something inadmissible, you're not to
22 consider those things in arriving at your verdicts.
23 Base your verdicts on the competent evidence before
24 you, consider the testimony of the witnesses and the
25 exhibits admitted in the trial.

1 evidence than of direct evidence. What you need to
2 do is weigh all of the evidence in the case. And
3 after weighing all of the evidence, if you're not
4 convinced of the guilt of the defendant beyond a
5 reasonable doubt, you must find him not guilty.

6 I remind you that the fact that Mr. Patterson
7 elected not to testify is not a factor to be
8 considered by you in any way in your deliberations
9 and in your consideration on the question of whether
10 he is guilty or not guilty. It must not be
11 considered by you in any manner whatsoever against
12 him. An accused has the constitutional right to
13 remain silent and the assertion of that right cannot
14 and must not be considered by you in any way in your
15 deliberations.

16 Under your oath, you are to reach no inference,
17 you're to draw no conclusion whatsoever from the
18 fact that Mr. Patterson elected not to testify. His
19 decision not to testify should not be discussed by
20 you in the jury room. It should not enter your mind
21 in making your decision on his case. The State has
22 the entire burden of proof. The accused has no
23 obligation to prove anything at all.

24 Now, the defendants in these cases,
25 Mr. Patterson and Mr. Boone, are presumed to be

1 probable, that it's more likely than not, and that
2 is called the greater weight or preponderance of the
3 evidence. But in a criminal court setting such as
4 we're in now, the standard is much higher and the
5 proof has to be much stronger than what we require
6 in civil court. As I've told you numerous times,
7 the burden of proof in a criminal case is proof
8 beyond a reasonable doubt.

9 What do I mean by that term? Proof beyond a
10 reasonable doubt is proof that leaves you firmly
11 convinced of the defendant's guilt. There are few
12 things in the world that we know with absolute
13 certainty and in criminal cases, the law does not
14 require proof that overcomes every possible doubt.

15 If, based on your consideration of the
16 evidence, you are firmly convinced that a defendant
17 is guilty of the crime charged, then you must find
18 him guilty. If, on the other hand, you think there
19 is a real possibility that he is not guilty, you
20 must give him the benefit of the doubt and find him
21 not guilty.

22 There is no obligation on the part of the
23 defendant to raise any doubt or any other
24 possibility. The defendants are presumed to be
25 innocent and the State has the entire burden of

1 great scrutiny.

2 Now, testimony has been given in this trial
3 about statements allegedly made by the defendants.
4 In evaluating alleged statements, you first need to
5 determine if the State has proven that the
6 defendant, in fact, made the statement. If not,
7 then you cannot consider that alleged statement in
8 any way against the defendant.

9 If you find that the defendant made the
10 statement, the next thing you're going to have to
11 determine is whether the defendant was in police
12 custody and if he was, whether the statement was
13 given in response to police questioning.

14 So in order for you to know what the law
15 requires concerning statements, I have to explain
16 some things to you. You've probably heard about
17 Miranda warnings. Miranda warnings are that you
18 have the right to remain silent; that any statement
19 made can and will be used against you in court; that
20 you have the right to an attorney; and if you do not
21 have the resources to hire a lawyer, the court will
22 appoint one at no expense; that you have the right
23 to consult a lawyer before answering any questions
24 or making any statement; that you have the right to
25 have a lawyer present with you at all times during

1 not in custody, the police may question him without
2 first giving Miranda warnings. But if he is in
3 custody, the police cannot question him without
4 first giving him Miranda warnings.

5 Now, whether the person was in custody or not,
6 Miranda warnings only relate to interrogations by
7 the police. Police interrogation means that the
8 police are questioning the person or performing the
9 substantial equivalent of questioning, in other
10 words, where the police makes some statement or
11 engage in some conduct that is designed to elicit a
12 response.

13 So Miranda warnings are not required unless the
14 police are questioning a person in custody. So if a
15 person makes a spontaneous statement, a spontaneous
16 statement that's not prompted by police
17 interrogation, the statement can be considered by
18 the jury even if Miranda warnings have not been
19 given.

20 If someone is in custody, the police cannot
21 question or interrogate that person unless Miranda
22 warnings have been given and the person has waived
23 his rights and voluntarily elected to answer the
24 police questions.

25 If a person was in custody, before you may

1 instructed you on, that Miranda warnings were given,
2 that there was a knowing and intelligent waiver of
3 rights and that the statement in question was freely
4 and voluntarily given.

5 The last thing I have to tell you in this
6 section is this. I need to remind you the limiting
7 instruction I gave you earlier. That a statement by
8 one co-defendant can be used against him, but it is
9 not to be used against the other co-defendant. If
10 you determine to consider a statement by one
11 defendant, you may consider it as it relates or
12 pertains to his case and it may not in any way be
13 used against the co-defendant.

14 Okay, folks, that's a logical point to break.
15 It will be a very short break. I'll let you stretch
16 your legs, clear your minds a second and I'll get
17 you back in. Don't discuss the case.

18 (The jury retires to the jury room.)

19 (Brief recess.)

20 (The jury returns to the courtroom.)

21 **THE COURT:** Now, let's turn to the specific
22 crimes charged in these indictments. As you know,
23 each defendant has been separately charged with
24 murder. Each indictment has to be evaluated
25 separately on its own merit or lack of merit. And

1 expressed or implied. So you see that malice is the
2 mental state required for murder.

3 I will explain to you these concepts in more
4 detail, but while murder may involve an actual
5 intent to kill, it does not necessarily require the
6 intent to kill. Murder does not necessarily require
7 that the malice be directed towards the specific
8 person who was killed. But to prove that a
9 defendant is guilty of murder in this case, the
10 State has to prove that the defendant in question
11 intentionally committed an act, and here that's
12 alleged to be the firing of a handgun, that the act
13 took place in Richland County, that he did so with
14 malice aforethought, that the act was a contributing
15 proximate cause of the death of Brian Wright and
16 that the killing was unlawful.

17 Now, first, I'm going to talk to you about
18 proximate cause. A defendant cannot be convicted of
19 murder unless his acts were a proximate cause of the
20 death of the victim. Proximate cause is akin to
21 being a direct cause, a cause without which the
22 death would not have resulted.

23 The law recognizes that there can be more than
24 one proximate cause of an injury or death. You can
25 have a situation where an act is the proximate cause

1 To constitute murder, the State has to prove that
2 the defendant was acting with malice. Malice is the
3 mental state required for murder. The necessary
4 criminal intent may be proven by acts and by conduct
5 of the defendant and other circumstances from which
6 you may naturally and reasonably infer criminal
7 intent.

8 Malice is a term that imports wickedness and it
9 excludes just cause or legal excuse. It is
10 something that springs from wickedness, from
11 depravity, a depraved spirit, from a heart devoid of
12 social duty and fatally bent on mischief. It
13 connotes hostility and ill will towards another,
14 though, not necessarily towards the specific person
15 who is injured. It is the intentional doing of a
16 wrongful act without just cause or excuse with an
17 intent to inflict an injury or under such
18 circumstances that the law will infer such an evil
19 intent.

20 Now, malice may be expressed or it may be
21 inferred, which is to say that the element of malice
22 may be shown by direct evidence or by inference.
23 Now, these terms express and inferred do not mean
24 different types of malice, but merely the manner in
25 which malice may be shown to exist.

1 aforethought. Whether the malice is expressed or
2 whether it's inferred, the malice must be
3 aforethought.

4 Now, to make sure that you know the word I'm
5 using and you're not confusing it with similar
6 sounding words, I'm going to spell it for you. It's
7 A-F-O-R-E-T-H-O-U-G-H-T, aforethought. The malice
8 has to exist in the mind of the accused just before
9 and at the time of the commission of the act. It is
10 not required that the malice exist for any
11 particular amount of time, but there has to be a
12 combination of the previous evil intent and the act
13 producing the fatal result.

14 Now, you may find malice if you find that the
15 State has proven beyond a reasonable doubt that a
16 defendant was consciously and unlawfully involved in
17 conduct that constituted an extremely high risk of
18 death or serious injury to others and that he was
19 acting with such recklessness and wantonness to
20 indicate a depravity of mind and a disregard of
21 human life beyond a reckless disregard for the
22 safety of others rising to the level where he
23 consciously disregarded the extremely high risk of
24 death that his conduct was creating.

25 Where this state of mind exists, it is known as

1 intent to kill is merely transferred from the
2 original person the defendant attempted to kill to
3 the actual person killed.

4 And then I need to explain to you that to
5 constitute murder, the killing has to be unlawful,
6 meaning that the killing was not justified or
7 warranted under the law.

8 Now, one of the issues that you will need to
9 consider is whether either defendant was acting in
10 self-defense. Self-defense is a complete defense.
11 If a defendant was acting in self-defense, his
12 conduct was lawful and you must find him not guilty.

13 A defendant does not have to prove
14 self-defense. He does not have any burden of proof,
15 so he doesn't have to prove self-defense. Rather,
16 the State has to prove beyond a reasonable doubt
17 that the defendant did not act in self-defense.

18 If you have a reasonable doubt of a defendant's
19 guilt after considering all the evidence in the case
20 including the evidence of self-defense, then you
21 must find that defendant not guilty. On the other
22 hand, if you have no reasonable doubt of the
23 defendant's guilt after considering all of the
24 evidence including evidence of self-defense, you
25 must find the defendant guilty.

1 danger of death or serious bodily injury.

2 If the defendant was actually in imminent
3 danger, it must be shown that the circumstances
4 would have warranted a person of ordinary firmness
5 and courage to strike as the defendant did to
6 prevent death or serious bodily injury. So if he
7 actually was in imminent danger of death or serious
8 bodily injury, the circumstances have to be such to
9 warrant a person of ordinary firmness and courage to
10 strike as the defendant did to prevent death or
11 serious bodily harm.

12 If the defendant believed he was in imminent
13 danger of death or serious bodily harm, it has to be
14 shown that a reasonably prudent person of ordinary
15 firmness and courage would have had the same belief
16 under the circumstances.

17 Now, in deciding whether the defendant actually
18 was or believed he was in imminent danger of death
19 or serious bodily harm, you need to consider all of
20 the facts and circumstances surrounding the
21 incident. It is not necessary that a defendant
22 actually be in danger. It is enough if the
23 defendant believed he was in imminent danger and a
24 reasonably prudent person of ordinary firmness and
25 courage would have had the same belief. A defendant

1 and not retreat, he has to have a reasonable belief
2 that it is necessary to strike back and not retreat.
3 He must have been acting lawfully himself. He must
4 have been in a place where he was entitled to be and
5 he must have been attacked.

6 Now, a person who is confronted with a
7 self-defense situation is not required to make an
8 exact calculation of the amount of force needed to
9 avoid death or serious bodily harm, but the person
10 is permitted to use the degree of force and
11 self-defense that a person of ordinary reason and
12 firmness would have believed to be needed to prevent
13 his own death or serious bodily injury.

14 The force used in self-defense does not have to
15 be limited to the degree or amount of force that was
16 used by the opposing party. A defendant has the
17 right to use so much force as appeared to be
18 necessary for complete self protection in which a
19 person of ordinary reason and firmness would have
20 believed to be needed to prevent death or serious
21 bodily harm.

22 If a defendant was justified in acting in
23 self-defense, if a defendant was justified in
24 defending himself and firing a weapon, that
25 defendant is also justified in continuing to defend

1 have to operate under in every case, it has nothing
2 to do specifically with this case, it's just what we
3 have to do. With regard to firearms, I cannot send
4 the firearms back. If you want to look at the
5 firearms that are in evidence, send me a note, I'll
6 send it back. If there's ammunition back there that
7 fits that firearm, the ammunition has to come out.
8 That's just the Supreme Court's ruling.

9 Second, clothing was introduced which purports
10 to have blood on it, so if you want to handle that
11 clothing, you'll be given some latex gloves that you
12 may use to handle that clothing.

13 All right. These are the verdict forms.
14 You'll see that there is one for each case. There
15 is one that is captioned the State versus Eugene
16 Peterson and -- Patterson, I'm sorry, and there's
17 one captioned State versus Andre Boone. You need to
18 look at the caption so you can tell which one fits
19 which.

20 You have two possible forms of verdict on each
21 case. Each case is separate and distinct. On this
22 one for Mr. Patterson, it reads, As to the charge of
23 murder, we, the jury, unanimously find the
24 defendant, and you have two options, you may find
25 the defendant not guilty or you may find the

1 requirement, the verdicts must be unanimous, all 12
2 jurors must agree before the foreman can record your
3 verdict. When you come out and your verdicts are
4 published, you can be asked individually about that.
5 So please make sure you understand you cannot do
6 anything to change the requirement of a unanimous
7 verdict. Verdicts must be unanimous.

8 When you've reached your verdicts, knock on the
9 door, the bailiff will respond to your knock.

10 Over the course of the last eight days, I
11 probably told you dozens and dozens of times not to
12 discuss the case. Well, it's not time yet. The law
13 says that I have to go over with the attorneys what
14 I just told you.

15 Now, what I did, as I mentioned to you
16 yesterday, is I did this last night. I worked on it
17 the last eight days, I put it together last night.
18 I e-mailed it to the attorneys. We met early this
19 morning and we've been over this. This shouldn't
20 take long, but I have to give them a chance to point
21 out to me anything I may have said wrong. And
22 that's just common sense. We don't want you back
23 there deciding these cases using the wrong law. I
24 never read the charge verbatim, sometimes I say
25 things I don't even realize I said, so they have to

1 MR. SUTHERLAND: I don't believe so, Your
2 Honor. I do believe that the folding in of the
3 section C of the statute did include violent injury
4 to himself or another person to cover the defense of
5 others.

6 THE COURT: Do you want to preserve any
7 objections raised in the other conferences to the
8 charge?

9 MR. SUTHERLAND: Yes, sir.

10 THE COURT: All right. Subject to previous
11 objections.

12 And do you all have anything, Ms. Payne?

13 MS. PAYNE: Subject to previous objections,
14 Your Honor.

15 THE COURT: All right. Thank you.

16 Well, folks, I want to thank you for the manner
17 in which you've conducted yourselves. I appreciate
18 the respect you've shown to the Court, everybody.
19 It's a very difficult case. It's been a lot of hard
20 work for a lot of people and a lot of emotion for a
21 lot of people. The jury's got the toughest job in
22 the courthouse and we're going to put it in their
23 hands and we're going to see what they decide, but I
24 do thank you. If you attorneys will please check
25 the verdict forms and check the exhibits and send

1 (The alternates leave the courtroom.)

2 THE COURT: We're at ease pending a verdict.

3 (The jury commenced its deliberations at

4 3:46 p.m.)

5 (A recess transpired.)

6 THE COURT: I've been informed that the jury
7 has reached its verdicts. Obviously, I have no way
8 of knowing what the jury's decided.

9 This is something I say in every case. I'm not
10 singling any of you out. You've conducted yourself
11 very well throughout the trial, but, folks, it's
12 really important that you understand that you are
13 not to show any sign of approval or disapproval with
14 the jury's verdict. Whether the verdicts to you are
15 good, bad or indifferent, I expect you to stay still
16 and stay quiet. Don't show any signs of approval or
17 disapproval, don't shake your head in agreement or
18 disagreement, don't make any sounds, control your
19 emotions, we'll get through this just fine.

20 Now, if you violate what I've just told you, I
21 can hold you in contempt, I can have you arrested, I
22 can put you in jail for six months without a jury
23 trial. I've never had to do that before, don't
24 expect to do it today, just feel better if I make
25 sure everybody knows the ground rules.

1 **THE COURT:** Thank you.

2 Ladies and gentlemen, if the verdicts have been
3 properly read, that is guilty as to both defendants
4 on the charge of murder as to each, please signify
5 by raising your right hand.

6 All 12 hands are raised.

7 Are there any matters to take up prior to the
8 jury being discharged on behalf of Mr. Patterson?

9 **MR. SUTHERLAND:** Your Honor, could we poll the
10 jury individually?

11 **THE COURT:** On behalf of Mr. Boone?

12 **MS. PAYNE:** We'd also like to poll the jury,
13 Your Honor.

14 **THE COURT:** Ladies and gentlemen, what I'm
15 going to do, just start with Mr. Patterson, and the
16 clerk will ask you were these your verdicts and are
17 they still your verdicts. So what she'll do is she
18 call your juror number, when she calls your number,
19 raise your hand so she knows where to look, all
20 right, and then she'll ask you those questions, were
21 these your verdicts, are they still your verdicts.
22 Answer her truthfully. We'll start with
23 Mr. Patterson, was this your verdict and is it still
24 your verdict.

25 **THE CLERK:** Number 135, was this your verdict?

1 THE CLERK: Is it still your verdict?
2 JUROR: Yes.
3 THE CLERK: Number 29, was this your verdict?
4 JUROR: Yes.
5 THE CLERK: Is it still your verdict?
6 JUROR: Yes.
7 THE CLERK: Number 199, was this your verdict?
8 JUROR: Yes.
9 THE CLERK: Is it still your verdict?
10 JUROR: Yes.
11 THE CLERK: Number 214, was this your verdict?
12 JUROR: Yes.
13 THE CLERK: Is it still your verdict?
14 JUROR: Yes.
15 THE CLERK: Number 282, was this your verdict?
16 JUROR: Yes.
17 THE CLERK: Is it still your verdict?
18 JUROR: Yes.
19 THE CLERK: Number 264, was this your verdict?
20 JUROR: Yes.
21 THE CLERK: Is it still your verdict?
22 JUROR: Yes.
23 THE CLERK: The jury's been polled, Your Honor.
24 THE COURT: As to Mr. Boone's case, the same
25 thing, the clerk will ask you was this your verdict,

1 JUROR: Yes.
2 THE CLERK: Number 152, was this your verdict?
3 JUROR: It is.
4 THE CLERK: Is it still your verdict?
5 JUROR: It is.
6 THE CLERK: Number 29, was this your verdict?
7 JUROR: Yes.
8 THE CLERK: Is it still your verdict?
9 JUROR: Yes.
10 THE CLERK: Number 199, was this your verdict?
11 JUROR: Yes.
12 THE CLERK: Is it still your verdict?
13 JUROR: Yes.
14 THE CLERK: Number 214, was this your verdict?
15 JUROR: Yes.
16 THE CLERK: Is it still your verdict?
17 JUROR: Yes.
18 THE CLERK: Number 282, was this your verdict?
19 JUROR: Yes.
20 THE CLERK: Is it still your verdict?
21 JUROR: Yes.
22 THE CLERK: Number 264, was this your verdict?
23 JUROR: Yes.
24 THE CLERK: Is it still your verdict?
25 JUROR: Yes.

1 Court. We would also renew all motions and
2 objections previously overruled, specifically with
3 respect to our motion to suppress all mention of
4 gang references; to Mr. Boone's statement coming in
5 as a voluntary statement; as to the photo lineups
6 that were done on Andre Boone, I believe, Karmindae
7 Leggett; to item number 73, which was put into
8 evidence, which was the red shirt of Mr. Brian
9 Wright's; Mr. Patterson's third statement, I believe
10 under Bruton some of it was not redacted fully, Your
11 Honor; and then a motion for a mistrial based on Ms.
12 Campbell's use of the excluded photo that she showed
13 the jury.

14 Your Honor, we would also move for a new trial
15 on the grounds that the verdict is not supported by
16 the evidence in this case, Your Honor, specifically
17 the Solicitor did not present substantial
18 circumstantial evidence in this case to go past a
19 directed verdict motion, Your Honor. Also, the jury
20 did not deliberate in a time equivalent to the
21 length of the trial and the evidence. And we would
22 respectfully ask that the Court grant a new trial in
23 this case.

24 **THE COURT:** All right. The motions are also
25 respectfully denied. With regard to the jury, I

1 **MS. PRESSLEY:** I prepared this while I was
2 sitting in trial listening to all the evidence and
3 everything and never intended to be a poem or never
4 intended it to rhyme, but these are my final words.

5 Brian was more than a brother to me. There are
6 many years between us; therefore, I saw him as my
7 baby, my Tank Man, which is the name I gave to him,
8 and now he is gone forever. Although most people
9 would say that we, the family, can have rest or
10 closure when this trial is over, but little do they
11 realize we laid my brother at the tender age of 15
12 to his final rest on February 23rd, 2007. For every
13 time I think about how I will never have my Tank Man
14 present in my life again, there isn't any true
15 closure.

16 To the young men that are responsible for
17 taking my brother's life, I forgive each and
18 everyone of you with my Christian heart. I pray
19 that you repent for your sins and judgment falls
20 down upon you as justice prevailed.

21 It hurts my heart to know that Brian's life is
22 cut short for foolishness by some teenagers in a
23 rage. My final words are left by saying you say you
24 didn't know him nor was you shooting at him, but
25 should that minimize my family's pain. My brother's

1 years probation.

2 I believe Mr. Boone's only prior record is a
3 conviction for simple possession of marijuana, that
4 was when he was arrested on these charges.

5 THE COURT: Okay. Mr. Sutherland, do you have
6 anything on behalf of Mr. Patterson?

7 MR. SUTHERLAND: Yes, sir. Your Honor,
8 obviously, I'm disappointed at the verdict, but the
9 verdict is what it is. I've known Eugene since he
10 was 15. I guess they felt under the theory that he
11 was a murderer, sir.

12 He's a good kid. He had a state job. He had
13 been in that trouble before and that's how I met him
14 earlier, but he was working and he was working at
15 the state job. He had a good plan and he was
16 picking himself up and he was on his way out of
17 these circumstances, sir.

18 I would ask the Court please consider the
19 minimum possible sentence. Twenty-five years from
20 now he'll certainly be a completely different
21 person, although I hope he doesn't change that much.

22 THE COURT: Thirty years is the minimum.
23 Anything else, Mr. Sutherland?

24 MR. SUTHERLAND: That's all from me, sir.

25 THE COURT: Mr. Patterson, do you want to say

1 Your Honor, I have spent so much time with both
2 he and his family over the duration of the last 13
3 months. His family is loving and generous and they
4 have expressed to me nothing but concern and love
5 for him. His mom and I talk on a regular basis.

6 I met with him at the jail numerous times to
7 see him. I've had multiple conversations with him.
8 And I can honestly say from the bottom of my heart,
9 that he did not intend this outcome on this night.
10 He is a good person. He's going to be a good man.
11 I know he regrets that Brian Wright died that night.
12 And, Your Honor, I know he wants his family to know
13 that that was not an intended outcome.

14 I would ask the Court to consider the minimum
15 sentence in this case. And I'm sure Ms. Payne would
16 also like to address the Court.

17 **THE COURT:** Yes, ma'am.

18 **MS. PAYNE:** If it pleases the Court, Your
19 Honor. I've also had the privilege to get to know
20 Andre over the past couple of weeks as we prepared
21 and his family. And he comes from a good family and
22 they care about him and they love him and they're
23 going to support him.

24 And I know, we talked at length about this,
25 Andre's here today, he's accepting what the jury has

1 to medical school. There is so much I can't even
2 begin to name, Your Honor. I just ask that you
3 please take mercy on my baby, please.

4 **THE COURT:** Thank you, ma'am.

5 Anything else?

6 **DEFENDANT BOONE:** I'd just like to say I'm
7 sorry for what happened to Brian Wright. And if I
8 could take back the hands of time, I'd do a lot of
9 things differently.

10 Even though I did not commit this crime, it
11 seemed like 12 people thought different. If I'd
12 known any of this would have happened -- was going
13 to happen that night, surely I would have did
14 different, I would have thought differently. The
15 first time in trouble, now look at me. But I know
16 the grace of God, something good's got to come from
17 this.

18 If only I could change back the hands of time,
19 I would take everything back. I would have never
20 showed up there that night. The female I did go
21 see, you see where she's at. A lot of things -- a
22 lot of things happened out there that night, a lot
23 of things that couldn't be taken back.

24 I just like to say sorry to the victim's family
25 for any hatred y'all might have against me, but I

1 visitation. And the father of the victim, I know
2 him from in the past, talked to him from day one
3 since I got here, since we were up here. And he
4 shared some things with me. I shared some things
5 with him. And one of the things was something about
6 being making an example of. I ask the Court please
7 don't make an example of my son or Mr. Boone here.
8 Both of them are young, they just were the victims
9 in a sad situation.

10 The night that this incident happened, I woke
11 up out of my sleep just called my son and asked him
12 about it. He said, yeah, dad, I heard about it, you
13 know. I said, well -- then every time the officers
14 would call for an interrogation or whatever, I would
15 get him off the job to come down here, I'll take you
16 down there, you know.

17 Because I was always taught, the way I was
18 brought up, don't run from the law. My mom, like
19 Tivis had said earlier this week, they probably
20 would -- going to jail would have been a good thing,
21 you know what I mean, that's the way I was raised
22 up. I spanked my son several years ago, I spent the
23 night in jail for domestic violence. I wish we
24 could do something about that law because that's the
25 way I was raised. It wasn't to hurt him or to harm

1 their lives. So I'll keep this short.

2 I'm satisfied without any doubt that both
3 Mr. Patterson and Mr. Boone come from fine families,
4 as did Mr. Wright. I'm satisfied that the jury
5 deliberated with proper motives and that they
6 rendered a verdict that complies with the law.

7 Now, if I'm wrong about that, we'll find out
8 about it down the road, but I can promise you that I
9 could not have put anymore effort into trying to
10 determine what the law actually is and to apply it
11 and the rulings fairly.

12 It's a tragedy all the way around. Nobody's
13 going to like this sentence, but there is no doubt,
14 in my mind, it was a crime. And sometimes when
15 people mess up, they mess up with something rather
16 trivial. And sometimes when people mess up, they
17 mess up with something that is completely
18 devastating.

19 The sentence of the Court is that each of these
20 men be committed to the South Carolina Department of
21 Corrections for 45 years plus costs and assessments.
22 They're given credit for jail time under section
23 24-13-40 to be calculated and applied by the
24 department of corrections.

25 Good luck to you, folks. Court's adjourned.

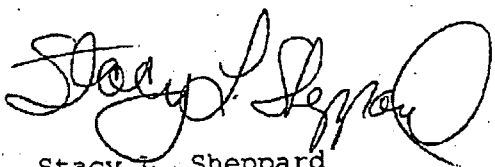
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

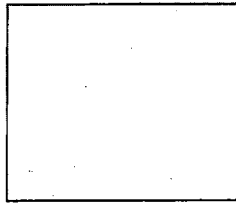
I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Richland County, South Carolina, on the 5th of May, 2008.

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

November 9, 2008



Stacy L. Sheppard
Circuit Court Reporter



CRYSTAL M. HOLMES
OFFICIAL COURT REPORTER
P.O. BOX 611
COLUMBIA, SOUTH CAROLINA 29202-0611

TO: Jill B. Abernethy, Paralegal
BLUME & FRANKLIN-BEST, LLC
900 Elmwood Avenue, Suite 200
Columbia, SC 29201

IN RE: William Dickerson Vs. State of SC
Case No.: 2016-CP-10-3216

DATE: November 22, 2016

INVOICE

TRANSCRIPT OF RECORD,

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TOTAL.....\$123.
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PLEASE RETURN

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FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Richland

Eugene D. Patterson Jr. #
Full name and prison number (if any) of Applicant.

321525

v.

State of South Carolina

2014 CP 4001202
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2014 FEB 25 PM 5:04

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 fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution, 990 W. Sackville Hwy, Bishopville SC, 29010
2. Name and location of Court which imposed sentence Richland County, P.O. Box 2766, Columbia SC, 29202
3. Name(s) of co-defendant(s) (if any) Oliver Feldman, Andre Boone
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder 2007-GS-40-2137
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 13, 2008; 45 years
 - (b) _____

- (a) Ineffective Assistance of Counsel
(b) _____
(c) _____

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

- (a) (see Reverse side of page)
(b) _____
(c) _____

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

- (a) any petition in a State Court under South Carolina Law? _____
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
(d) any other petitions, motions or applications in this or any other Court? _____

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

- (a) the specific nature thereof:
i. N/A
ii. _____
iii. _____
iv. _____
(b) the name and location of the Court in which each was filed:
i. N/A
ii. _____
iii. _____
iv. _____
(c) the disposition thereof:
i. N/A
ii. _____
iii. _____

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

- (a) the name and address of each attorney who represented you:
- i. Tivis C. Sutherland, IV, Esquire (Address unknown)
- ii. LaNelle C. Durant, 1330 Lady Street, Suite 401,
Columbia SC, 29211
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Sentencing
- ii. Direct Appeal
- iii. _____

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

Reversal of conviction, vacate sentence, and a new trial

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

No

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Eugene D. Patterson Jr.

I, E, 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.

Eugene D. Patterson Jr.
Applicant

SWORN or affirmed to and subscribed before me this
19 day of February, 2014

Mrs. A. Smith
Notary Public

My Commission Expires: 9/30/2023

2014 FEB 25 PM 5:04
Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Eugene Patterson, #321525,
Applicant,

v.

State of South Carolina,
Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

) 2014-CP-40-01202
)

) **RETURN AND MOTION FOR A MORE**
) **DEFINITE STATEMENT**
)

)
Respondent, making its Return to the Application for post-conviction relief filed February 25, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during April 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-2137). He was represented by Tivis C. Sutherland, IV, Esquire. On May 5-13, 2008, Applicant proceeded to a jury trial before the Honorable William P. Keesley, where he was convicted as indicted. Judge Keesley sentenced Applicant to forty-five years.

Applicant filed a notice of appeal. Following briefing and oral arguments, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence by unpublished opinion. State v. Eugene D. Patterson, 2013-UP-154 (Ct. App. filed April 17, 2013). Thereafter, Applicant petitioned the South Carolina Supreme Court for certiorari. The South Carolina Supreme Court denied Applicant's petition by Order dated January 23, 2014. The Remittitur was sent on January 31, 2014.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's appellate records, Applicant's records

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests a hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

In his application, Applicant alleges that he is being held in custody unlawfully based on "ineffective assistance of counsel." However, Applicant has wholly failed to set forth any "facts which support each ground" or to explain with any specificity whatsoever, the actual scenarios/facts upon which this supposed claim is based. The Uniform Post-Conviction Procedure Act requires the applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added).

Respondent submits that it would be unfair to wait until the day of the hearing to finalize the specificity of trial counsel's supposed errors. Respondent and trial counsel are entitled to adequately prepare for the hearing; to withhold the specific grounds and amend only on the day of the hearing prejudices Respondent and trial counsel. Respondent respectfully submits that it is incumbent on Applicant to amend the application and provide specifics so that adequate

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

EUGENE PATTERSON, #321525

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

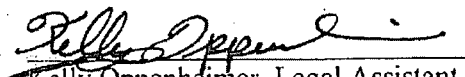
2014-CP-40-01202

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan Waller, Esquire
The Law Office of Jonathan Waller, LLC
1720 Main Street, Suite 104
Columbia, South Carolina 29201

DATED this 24th day of June, 2014.


Kelly Oppenheimer, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	2014-CP-40-1202
	)	
	)	
Eugene Patterson	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
State Of South Carolina	)	)
<u>RESPONDENT</u>	)	July 15, 2015
		Columbia, South Carolina

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JUDGE.

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

J. CLAYTON MITCHELL, ASSISTANT ATTORNEY GENERAL
Attorney for the State

JONATHAN D. WALLER, ESQ.
Attorney for the Applicant

KESHIA REED
Official Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
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Euguen Patterson

Mr. Waller 5

Mr. Mitchell 18

Tivis Sutherland

Mr. Waller 22 62

Mr. Mitchell 52

Certificate of Reporter 69

1 THE COURT: You, Mr. Patterson?

2 MR. PATTERSON: Yes, sir.

3 THE COURT: All right, come on around.

4 MR. MITCHELL: Your Honor, may it please the

5 Court. This is Eugene Patterson vs. The State of South

6 Carolina case number 2014 ---

7 THE COURT: Let him get seated.

8 MR. MITCHELL: Yes, sir.

9 THE COURT: Mr. Waller, you need to make a

10 disclosure to your client?

11 MR. WALLER: Yes, Your Honor.

12 THE COURT: All right, thank you.

13 (WHEREUPON, a pause in the proceedings.)

14 MR. WALLER: Your Honor, I've spoken with my

15 client. I believe he has no objection.

16 THE COURT: All right, you ready to proceed?

17 MR. WALLER: Yes, Your Honor.

18 THE COURT: All right. Mr. Attorney General.

19 MR. MITCHELL: Your Honor, this is Eugene

20 Patterson vs. The State of South Carolina 2014-CP-40-1202.

21 He was indicted April of 2007 for murder. He was

22 represented on these charges by Mr. Tivis Sutherland. He

23 was tried May 5th through May 13th of 2008 before Judge

24 Keesley where he was convicted as indicted. He was

25 sentenced to 45 years imprisonment.

1 The notice of appeal was taken and the Court of
2 Appeals affirmed his conviction. Applicant then petitions
3 the Supreme Court for certiorari, that was then denied.
4 This application was filed in February of 2014. We filed
5 the returned motion for more definite statement.
6 Mr. Waller, who I know for the record is Mr. Patterson's
7 attorney, he's filed amended application with a number of
8 allegations and they were moved forward on today. It
9 should be included in the packet.

10 THE COURT: I have it.

11 MR. MITCHELL: Yes, sir. All right. I will
12 turn it over to Mr. Waller at this time.

13 THE COURT: Mr. Waller.

14 MR. WALLER: Thank you, Your Honor. I will call
15 Eugene Patterson.

16 THE COURT: Mr. Patterson, you're being called
17 as a witness in this case. You solemnly swear or affirm
18 the testimony you're about to give in this case will be
19 the truth, the whole truth and nothing but the truth so
20 help you God?

21 THE WITNESS: I do.

22 THE COURT: All right, have a seat.

23 WHEREUPON,

24 Eugene Patterson,
25 after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q How you doing, Mr. Patterson?

A I'm okay.

Q Mr. Patterson, I need you to speak up a little bit so the judge can hear everything and Ms. Reed can take everything down. Mr. Patterson, how did Mr. Sutherland come to be your attorney?

A He was appointed back in 2007, I mean, to the best of my knowledge that's pretty much all I'm aware of.

Q He was appointed to represent you?

A Yeah, back in 2007.

Q Had he represented you before, did you know him before?

A Yeah, he represented me back on juvenile cases in 2005, 2006.

Q Okay. And when you were first charged in this case, what were you first charged with?

A Initially, I was charged with obstruction of justice.

Q Okay. And then later on you were charged with murder?

A Yeah, about two weeks later I was charged with murder.

Q Now, how long after you were charged with murder was Mr. Sutherland appointed to represent you?

1 A I say about a week and a half, two weeks somewhere
2 around there.

3 Q Okay. In your meetings with him, did y'all discuss
4 the charge of murder and the potential penalties?

5 A I mean, it wasn't extensive I would say -- to a
6 degree.

7 Q Did you know what you were charged with?

8 A Yeah, I knew what I was charged with.

9 Q Did you know what you were facing?

10 A Not necessarily. I mean, to the extent, I mean, I
11 knew what was on paper, but as far as like the
12 consequences and everything I wasn't -- I'm going to say
13 fully apprized of, you know, in depth of what it actually
14 carried and everything.

15 Q Okay. Did you and Mr. Sutherland talk about the
16 evidence that the State had?

17 A I mean to the degree that -- I mean, actually at that
18 point in time it was -- there really was a lack of
19 evidence. It was never anything that was brought to my
20 attention as far as the State having any evidence, you
21 know, actually to be in a position to convict me of
22 murder.

23 Q Okay. Did you and Mr. Sutherland talk about that?

24 A The only thing to the best of my recollection only
25 thing that we spoke upon on that particular point was he

1 apprized me that you had a witness or a few witnesses that
2 was facing either a weapon in my hand or stated I arrived
3 with individuals who were involved in the altercation.

4 Q Okay. Well, let me back up for one second. You were
5 charge with murder; is that right?

6 A Yes, I was.

7 Q In this case, were other individuals charged with
8 murder?

9 A You had two other individuals that was initially
10 charged with murder.

11 Q Who are the two other individuals?

12 A You have Oliver Feldman and Andre Boone.

13 Q Okay. Andre Boone or Andre Tason Boone, I think, was
14 his full name. He was the one that was tried with you; is
15 that correct?

16 A Yes, sir.

17 Q Did you know Mr. Boone?

18 A No, me and him never met each other a day in our
19 life.

20 Q Okay. Was there ever any allegation that you and
21 Mr. Boone knew each other?

22 A No, there was never any allegation.

23 Q Did you and Mr. Sutherland talk about the fact that
24 you two didn't know each other?

25 A I mean, we did, but I'm gone say that it really came

1 out whenever we was -- once I knew we were being jointly
2 tried, that was -- I was like me and him don't know each
3 other, you know, how could this be. At the time the only
4 thing that I was became aware of at that point in time
5 basically when I was being jointly tried was that it was
6 more so for purposes of convenient rather than, you know,
7 the fact that we knew or did not know each other.

8 Q Okay. What did you and Mr. Sutherland talk about
9 about you and Mr. Boone being tried jointly?

10 A I mean, it was pretty brief. There really was -- I
11 mean, there really wasn't any extensive conversation about
12 it. It was just at that point in time, you know, I was
13 like me and him I don't know this man. But only thing
14 that he made me aware of at that point in time was that it
15 was for purposes of convenience. He never really went in
16 depth into why other than, you know, it being convenient
17 at that point in time.

18 Q Okay. Back it up just a little bit, when Mr.
19 Sutherland was first appointed to represent you and
20 leading up to the trial, how many times do you think you
21 and Mr. Sutherland met?

22 A Hold up, okay, state that question one more time.

23 Q How many times did you and Mr. Sutherland meet prior
24 to the trial?

25 A Prior to the trial, okay, I say about between five or

1 six times something like that.

2 Q Okay. During those meetings, did y'all talk about
3 defenses to the case?

4 A Only in respect to self-defense, you know, things of
5 that nature. It was never really -- I mean, okay, to be
6 honest with you at that point in time like the only thing
7 that he was apprizing me of was, you know, a, man, this
8 looking good for you like they don't have anything against
9 you except you have, you know, this individual who was
10 alleged to be with me that particular night that you had
11 this individual placing a weapon in my hand, you know what
12 I mean, but stated that I had fired back after -- directed
13 towards myself. But other than that, I mean, there was
14 never anything to much on that particular level.

15 Q Okay. Two things you just said the other individual
16 was that Oliver Feldman that you were just speaking of?

17 A Oliver Feldman, the individual who I was allege to
18 have been with that night, yeah.

19 Q Okay. And he actually testified at trial; is that
20 right?

21 A Yeah, he testified.

22 Q Okay. You and Mr. Sutherland, I believe, you just
23 testified discussed self-defense?

24 A Yeah, we did.

25 Q Okay. What did y'all talk about?

1 A Well, you had evidence that was introduce during the
2 trial that I'm going to say indicated that myself as well
3 as Mr. Feldman had been fired upon first and evidence was
4 brought out alleging that we had returned fire, you know.
5 But prior to myself being alleged to have been injected
6 into the situation, it was the evidence pretty much
7 indicated that I had no parts of it that it was basically
8 myself and Mr. Feldman going to watch a fight. And that
9 we had no parts in it initially, but then, of course, the
10 secret to that then like I say evidence was introduced to
11 indicate that we returned fire only after being fired
12 upon.

13 Q Okay. But you and Mr. Sutherland did discuss
14 self-defense?

15 A We discussed it.

16 Q Okay. Did y'all talk about any other potential
17 defenses that you might have?

18 A There was something about defense of others. I can't
19 really speak in depth on it because you never really -- it
20 wasn't extensive conversation, but it was something about
21 defense of others.

22 Q Okay. Did you provide Mr. Sutherland with any
23 information about the events that took place that night?

24 A Yeah, pretty briefly. What we did speak about or
25 rather what I spoke to him about it was pretty brief just,

1 you know, from the time that I got off work that night.
2 until, you know, getting my hair cut and things like that
3 and, you know, basically what led up to us actually
4 getting to the Waffle House.

5 Q Okay. Did you give Mr. Sutherland the names of any
6 witnesses that you might have that would help in your
7 defense?

8 A I did, but I'm not sure whether there was any follow
9 up on it. I did, but like I say, I don't really know
10 whatever became of it apparently nothing.

11 Q Did you ever meet with a private investigator in this
12 case?

13 A Yeah, I met with a private investigator once.

14 Q Okay. And that private investigator was working for
15 your defense?

16 A Yes, sir.

17 Q Okay. You gave the statement in this case?

18 A Yeah.

19 Q Is that right?

20 A Yes, sir.

21 Q Did you and Mr. Sutherland talk about your statement
22 and how that might be used against you at trial?

23 A Yeah, we did.

24 Q Okay. When y'all were getting ready for trial, did
25 you understand what would take place at the trial and how

1 things would go?

2 A My basic explanation is this at that point in time my
3 understanding was that the State had the burden of proof.
4 Now, and that there was a presumption of innocence upon
5 myself until proven guilty. However, at that point in
6 time, I really didn't see any need -- rather, I mean, as
7 far as like preparations, I didn't really see a need for
8 me to have to present any type of defense because I know
9 that I was innocent of the charge. And so in my eyes the
10 only thing that I was prepared for was for them to, you
11 know, render a verdict of not guilty, you know.

12 Q Did you think Mr. Sutherland was prepared?

13 A So and so. I'll say this at certain points I thought
14 so, but then at other points, it was like -- for instance
15 the fact that myself as well as Mr. Boone had no knowledge
16 of each other, the fact we never met each other a day in
17 our life and yet we're being jointly tried, and I can
18 recall that the first day during the pretrial proceedings
19 when I ask Mr. Sutherland about Mr. Feldman as far as, you
20 know -- the allegations was that me and Mr. Feldman had
21 arrived together that night. So my position was that if
22 the allegations that me and Mr. Feldman know each other
23 and yet he has no allegations to link myself with
24 Mr. Boone, then how am I being tried with someone who I
25 don't know and yet the individual who I do know, you know,

1 he's basically being afforded his right or not right or
2 privilege to accept a trial. I did not understand that.

3 Q Did you and Mr. Sutherland ever talk about that in
4 the manner of a possible severance motion?

5 A No, to be honest with you, I knew nothing of a
6 severance motion until the trial court -- the trial judge
7 spoke upon how one of the things that concerned him that
8 there was never a severance motion presented.

9 Q Okay. During the trial -- and this was a long trial
10 about ten days; is that right?

11 A Approximately.

12 Q It went into the second ---

13 A It went into the second week, yeah.

14 Q Okay. During the entire process of the trial, were
15 you able to communicate with Mr. Sutherland?

16 A I mean, we was at the same table, yeah.

17 Q During breaks and stuff were you able to talk to him?

18 A Yeah, we were able, yeah.

19 Q Over the weekend were y'all able to talk at all?

20 A No, no, sir, we did not.

21 Q One thing that occurred during the trial that I don't
22 think the transcript makes real clear, can you -- was
23 there a time when an investigator was dry firing a weapon
24 in the courtroom?

25 A Actually what had occurred was that I want to say it

1 was the firearm expert witness David Collins. At that
2 particular point he was operating the weapon and he
3 actually begin to depress the trigger about two or three
4 times and, you know -- I mean, at that point in time like
5 there was never anything stated. And, of course, based
6 upon my ignorance of, you know, what was and what should
7 not had occurred at that point in time, you know. I
8 didn't really -- I felt some type of way about it, but,
9 you know, what could I really say. I pretty much relied
10 on my attorney and nothing really came about it until like
11 a little later on in the trial when the co-defendant
12 attorney spoke upon how, you know, basically, I guess, it
13 wasn't suppose to be occurring as far as him depressing
14 the trigger and everything.

15 Q When you were arrested, the officers served a search
16 warrant on your house; is that right?

17 A They did.

18 Q Did and you and Mr. Sutherland ever talk about that
19 search warrant?

20 A There was never any conversation about the search
21 warrant.

22 Q Was there anything located in the search warrant?

23 A No, not that I know of.

24 Q Okay. Both you and Mr. Boone appealed this case; is
25 that correct?

1 A True indeed, yes, sir.

2 Q Okay. Did you ever have a chance to speak with your
3 appellate attorney?

4 A Initially, I had -- initially, Ajodis Savis (sic),
5 but I didn't really have him long. We spoke probably
6 about twice and that was like -- that's the individual who
7 actually submitted the brief to the Court of Appeals. We
8 spoke I say about two times. Ultimately, he end up
9 retiring, so then my case was transferred to another
10 assistant appellate defender and me and her spoke probably
11 about six or seven times something like that.

12 Q Okay. And so Mr. Savis (sic) filed the original
13 memoranda to the Court of Appeals; is that right?

14 A Yes, sir.

15 Q And then you got another appellate attorney after he
16 retired what part did she play, what did she file?

17 A I mean, she -- well, at the juncture or as far as the
18 Court of Appeals stage, she told -- what she apprized me
19 of was she couldn't file anything at that point in time
20 because he had already filed the brief. However, I
21 believe, she pretty much, you know, to me being denied in
22 the Court of Appeals she filed a petition for rehearing
23 and that petition writ of certiorari, that petition for
24 writ of certiorari but that's pretty much it.

25 Q Okay. But it's your understanding that she was bound

1 by the issues that Mr. Savis (sic) had raised?

2 A I mean, that's actually what she had apprized me,
3 yeah.

4 Q Okay. Did you -- when Mr. Savis (sic) raised those
5 issues, did you have any input on what was actually raised
6 to the Court or how did y'all conversation go?

7 A What actually happened was I had -- once I became
8 aware of who my appellate attorney was, I immediately
9 wrote him and I actually gave him about six or seven
10 issues, you know, at that point in time. However, he
11 informed me that the ultimate decision as to what issues
12 to or not to present was his. So as a result, he only
13 presented one particular issue which was directed verdict
14 motion -- well my entitlement to a verdict of acquittal.

15 Q Okay. Mr. Patterson, I've asked you all the
16 questions that I have. Is there anything that you think
17 I've left out or you think the Court needs to be aware of?

18 A I mean, to put it in a nutshell, I believe, that I
19 was deprived of my right to an impartial jury. I don't
20 believe that I received my right to an impartial jury as I
21 am guaranteed by, you know -- well, I'm gone say I don't
22 believe that I received effective assistance of counsel as
23 guaranteed by the Sixth, you know, United States
24 Constitution Amendment for the simple fact that at that
25 point in time when it gets to the point where I'm being

1 jointly tried with someone who I never met before and yet
2 you have evidence that indicates that it links this
3 individual in some form or fashion to being a possible
4 killer and you don't have any evidence against me. You
5 know, I feel like that created -- it had a burden shifting
6 affect that -- instead of me being in a position where I
7 have the presumption of innocence, now it places the
8 burden on me instead of the State which who is suppose to
9 have the burden of proof or proving me guilty beyond a
10 reasonable doubt. Now, this burden has been shifted to me
11 and now I must prove that not that I'm -- I mean, not so
12 much, that I'm innocent, but to one degree or another to
13 prove that I am innocent as well as to prove that I'm not
14 guilty of this murder. And, I mean, aside -- I believe
15 that at the end of the day that's pretty much what it
16 really resolves around the fact that -- oh, you can go
17 ahead.

18 Q Were you and Mr. Boone tried as co-defendants?

19 A Of course, yeah, we were tried as co-defendants.

20 Q Did -- what is the understanding of how the State
21 originally proceeded what their theory of the case was?

22 A I mean, originally they was saying that the hands of
23 one was the hands of all. In the opening statements, they
24 were saying they was going to prove that the hands of one
25 is the hands of all that me and Mr. Boone was acting in

1 concert et cetra. However, once it got to the point to
2 where they were incapable of proving this theory that they
3 proceeded under, then they were in turn allowed to switch
4 the theory to -- well, from the hands of one to the hands
5 of all to proximate cause. Being that the reason that
6 occurred was because the trial judge stated that there's
7 no way that me and Mr. Boone could have been acting in
8 concert knowing that we confederates for the simple fact
9 that we did not even know each other. There was no
10 evidence nor any type of allegation to linking myself to
11 Mr. Boone.

12 MR. MITCHELL: I have no further questions.
13 Please answer any questions of Mr. Mitchell.

14 THE COURT: Mr. Mitchell, you may proceed.

15 CROSS-EXAMINATION

16 BY MR. MITCHELL:

17 Q Good afternoon, Mr. Patterson.

18 A How you doing?

19 Q You had known Mr. Sutherland going into this trial;
20 is that right?

21 A Yeah, I had knowledge of him, yeah.

22 Q He represented you before on some other stuff?

23 A Yeah, previously.

24 Q When you were a juvenile?

25 A Yeah.

1 Q That's how he became involved in this case, right?

2 A I don't know about that's how he became involved, but

3 I mean, he became involved I don't know why or how.

4 Q Now, what the State proceeded under is that kind of
5 there was a gang fight going on? Wasn't that kind of the
6 theory there was just gang violence going back and forth;
7 is that right?

8 A I don't know about none of that.

9 Q They talked a lot about who is a Blood, who was a
10 Crips, who is a Folk; isn't that right?

11 A That's what it ultimately became, yeah.

12 Q They got into that there was a fight there between
13 other Bloods or excuse me -- Blood and some other gang
14 robbery gang member and that's what kind of started this
15 whole confrontation about guns, right?

16 A Yeah.

17 Q And testimony was that your co-defendant, Mr. Boone,
18 he shoot the gun a couple times in the air, right?

19 A I mean, that was apart of the evidence. Then you
20 have had another part where that as introduced that stated
21 that he fired into the air and then he succinctly fired
22 into the crowd.

23 Q Right. He shot there and then he admitted to trying
24 to shoot towards the other side too, is that right?

25 A Yeah.

1 Q And that they proceeded under the theory that you
2 fired back after those shots had gone off?

3 A Yeah, allegedly, yeah.

4 Q I mean, that's what they were trying to prove to the
5 jury, right?

6 A That's what they were trying to prove, yeah.

7 Q Now, you talk about how the hand of one is the hand
8 of all, that was mentioned in opening statements, wasn't
9 it?

10 A Yeah.

11 Q That was one of the, I guess, one of the first things
12 they talked about was this was hand of one hand of all
13 case something along those lines?

14 A True indeed, yeah.

15 Q Mr. Sutherland jumped all over that, didn't he? He
16 was pretty excited about coming into hand of one hand of
17 all, didn't he?

18 A As he should, yeah.

19 Q So he didn't think that was a viable theory that they
20 could proceed under; is that correct?

21 A Apparently, they didn't either, yeah.

22 Q So kind of more from hand of one hand of all and they
23 mentioned and they're proceeding under mutual combat, are
24 you familiar with that?

25 A Yeah, mutual combat, yeah.

1 Q And that was addressed -- that might have been
2 addressed a little bit in your appeal; is that right or
3 might not?

4 A No.

5 Q There was testimony from a Mr. Rob Portee; is that
6 correct?

7 A Rob Portee, yeah. He was a witness, yeah.

8 Q Okay. Now, he identified you as someone who was
9 shooting towards the other part of the parking lot; is
10 that right?

11 A No.

12 Q Well, what he testify to. He identified you were
13 standing out there?

14 A He identified me as being present. He never stated
15 anything about me having a weapon or anything like that,
16 no.

17 Q Now, the State also proceeded under the theory that
18 -- well, the State also attempted to prove that you were
19 affiliated with a gang; is that right?

20 A Allegedly, yeah.

21 Q And that you were in a Folk Nation gang.

22 A So they say.

23 Q And there was some testimony on that who was in what
24 gang and who was affiliated with who; is that about right?

25 A Yeah.

1 MR. MITCHELL: No further questions. Thank you,
2 Mr. Patterson.

3 MR. WALLER: No further questions, Your Honor.

4 THE COURT: All right. Mr. Patterson, you can
5 come down.

6 (WHEREUPON, the witness leaves the witness
7 stand.)

8 THE COURT: Next witness.

9 MR. WALLER: Thank you, Your Honor. I would
10 call Tivis Sutherland.

11 THE COURT: Do you solemnly swear or affirm the
12 testimony you're about to give in this hearing will be
13 truth, the whole truth, and nothing but the truth so help
14 you God?

15 MR. SUTHERLAND: Yes, sir.

16 THE COURT: State your full name.

17 MR. SUTHERLAND: It's Tivis Sutherland.

18 WHEREUPON,

19 Tivis Sutherland,

20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WALLER:

23 Q Good afternoon, Mr. Sutherland.

24 A Good afternoon.

25 Q I see that you have a transcript up there. You have

1 the whole transcript with you?

2 A This should be it. I think, this is what y'all sent
3 me. I don't know though it looks kind of small. Were
4 there three packets or two?

5 Q There were four.

6 A There were four. Just square me away.

7 Q Let's just see what we got and then I'll help you out
8 if I need to. How did you come to represent Mr.
9 Patterson?

10 A I had initially represented Eugene, he was 16. And
11 he had some burglaries -- first degree burglaries and Ms.
12 Scott, Barbara Scott appointed me to represent him. And
13 went, you know, met him talk to him and ended up getting
14 him like a youthful offender suspended on probation. At
15 the time that he was arrested, I saw him on television
16 like they put everybody's face up there accusing them of
17 stuff. And I mention to Ms. Scott that I had represented
18 him before. And if she needed to appointed somebody if
19 they were co-defendant appointments that went out, be
20 happy to represent Eugene. And so ultimately I ended up
21 getting appointed to represent him. I had already known
22 his family and everybody.

23 Q What made this situation with the individuals that
24 were charge different than typical cases that you seen in
25 the past?

1 A I don't understand the case that they brought. I
2 don't understand that verdict. When Dan Goldberg gets up
3 there in opening and says -- his wife ain't still here, is
4 she? He says the hand of one is the hand of all. I had
5 not heard them say that before because I was wondering in,
6 you know, talk to Eugene about it just exactly how are
7 they going to try to prove this thing. And so my jaw
8 dropped a little bit, you know, let him finish up. And I
9 just ran right up there I said a couple things before, you
10 know, I was happy to be there for sure and all that. But
11 I just told the jury I say the hand of one, the hand of
12 all, they don't know each other. They never met. The
13 hand of one hand of all is not just roping people in to
14 some little thing or another. It's a meeting of the
15 minds, it's a conspiracy, that's what it is. How did two
16 people who don't know each other conspire. And I knew at
17 that point -- because you really don't want to hand it out
18 there in opening, but I knew at that point they were going
19 to be able to do it because they didn't know each other.
20 So I kind of closed on it in the opening a little bit.

21 Q That was your understanding when he was originally
22 charged and you originally saw discovery; is that right
23 that he didn't know Mr. Boone?

24 A Initially -- well, he had told me initially what
25 happened and you could see part of the defense is that

1 they had charged him with a couple of things. One of them
2 was aggravated breach of peace and that's kind of what,
3 you know, I was getting all over Major Smith about. The
4 defense was this they had him charged with aggravated
5 breach of peace, fine, discharging a firearm, you know,
6 out there in public there's people around. Well, you
7 know, that's what it is. It wasn't until Major Smith,
8 Barney Giese, John Meadors until they had this big meeting
9 up in the Solicitor's office or all of a sudden they're
10 sitting up there for however long, then they come out and
11 all of a sudden he's a murderer where he was just
12 breaching the peace before. So that was the defense. The
13 defense was that they all got up in there because this
14 stuff was all over the papers. They're putting every
15 single kid, you know, seven, eight kids at a time in these
16 headlines in the newspaper as these gang victims or gang
17 violence and all that stuff. He was a janitor at the
18 department of mental health is what he was. I was
19 irritated about it and that's the way I defended. They're
20 just up there trying to cover themselves, trying to make
21 it something that it's not. I told the jury every bit of
22 that and I cross examined Major Smith along those lines.

23 Q When you were first appointed to Mr. Patterson, did
24 you meet with him?

25 A I'm sure I did. I mean, I have to look and see

1 exactly, you know, what the time line was. I don't know
2 if I maybe had talk to some family members or something of
3 his prior, but it would certainly have -- early on they
4 probably didn't even have a case jacket together, but
5 sometime early on I'm sure I did.

6 Q Did you on this case did you obtain the services of a
7 private investigator?

8 A I did. Frank Hemming he's since passed away, but
9 Frank use to do most of my work for me.

10 Q Did -- in your meetings with Mr. Patterson, did he
11 give you any information that might -- that would allow a
12 private investigator to follow up?

13 A Well, my recollection of it was just -- I was sort of
14 going over, you know, what I see and what they have. It's
15 up to the government to prove this thing and I don't go in
16 and lean on my guys and like, hey, you know, you tell me
17 how to get you out from under this stuff. It's what, you
18 know, all the officers and everybody saying their reports
19 what all the witnesses say. I mean, I don't -- if my guys
20 want to talk, that's fine. Typically, early on I'll say
21 you might want to wait. Now, we knew each other, but if I
22 don't know somebody, you know, they might lie to me or
23 something and then feel bad about it later and it's like
24 weird uncomfortable stuff. I'm sure we talked about it.
25 I can look at Frank's report and see what they talked

1 about, but just sort of keeping him abreast of whatever
2 was developing in the case for sure.

3 Q Okay. Did y'all talk about any possible defenses
4 that he might have?

5 A Well, with the facts that they were alleging, you
6 know, there was self-defense, defense of others. I think
7 it's pretty straightforward. I mean, the other guy who
8 says he's firing up in the air whatever maybe that was the
9 case. I know, I believe from the evidence and I think
10 some of the testimony corroborates that he was shooting at
11 them wasn't just shooting up in the air or whatever. And
12 then one of the bullets from his firearm was in the wall
13 of the mobile station down next to the body of the kid,
14 which was downhill and behind a bunch of parked cars and
15 post and stuff from where he suppose to have been
16 shooting. It just could not have happened and I explain
17 that to them as well as I could. I don't understand the
18 verdict.

19 Q To the best of your recollection, was there ever an
20 allegation that Mr. Patterson shot first?

21 A I don't remember hearing anybody say that. I
22 remember Ms. Campbell reloading or something, which was
23 silly, you know, because of a bullet basically, you know,
24 one was in the slid apparently. And when it was racked
25 and one came out, but other than trying to make him look

1 bad that way, he was -- they were either shot up in the
2 air or shot at by someone that was hostile to them -- to
3 him and the snitch.

4 Q In your opinion, that was pretty clear throughout the
5 whole trial?

6 A Yeah, certainly, certainly.

7 Q What was you and Mr. Patterson's discussion about
8 attempting to sever the trials with him and Mr. Boone?

9 A I don't really recall any discussion of that. My
10 thought was and, I think, even throughout the trial, I was
11 thinking listen, you know, that -- they're not going to
12 put you two together. However, they're trying to do under
13 this hand of one or whatever in the world they're trying
14 to do with this thing. And frankly he looks pretty bad
15 and he is going down and I don't think any of that's going
16 to rub off on you. I mean, how could it, it's not like
17 they're cousins or nothing, you know.

18 Q So you thought that Mr. Boone was going to be
19 convicted with a jury or separate evidence against him
20 from Mr. Patterson?

21 A By the end of that trial, you always worry going into
22 these things about what's going to develop but nothing
23 ever really seem to develop against Eugene other than -- I
24 mean, there was one fellow who came in there and said he
25 was, you know, pointing a gun out of a window when he said

1 he stuck his finger out the window before. You get little
2 stuff like that. In my view, I was with Judge Keesley the
3 day before the State was going to rest. He said I'm
4 seriously considering a directed verdict in this case, I
5 just want you people to know that because I didn't think
6 they had anything. Maybe an aggravated breach of peace or
7 something, which is not insignificant. I mean, that was a
8 zero to ten or something along those lines. Maybe like a
9 little pistol -- I think, there were pistol charges
10 ultimately that ended up getting dismissed after this, but
11 I didn't see it. I mean, I'll, you know, tell any of my
12 clients it's always risky because you don't know what's
13 going to happen, but I didn't see it. I didn't really see
14 -- I mean, I guess you could say there's some sort of
15 object lesson there. I didn't see anyway that they were
16 going to come back and they were going to convict him.

17 Q Were you concerned going into the trial that they
18 might -- that the jury might go the other way using and
19 use the evidence against Mr. Boone against Mr. Patterson?

20 A I think, that's certainly a possibility. And under
21 these circumstances, you got to worry about absolutely
22 everything, everything from every angle. At the same time
23 my view of the thing -- and, I mean, I went in, you know,
24 I was making copies in the public defender's office and
25 they were like you need to get out of here, you know,

1 you're the enemy this, that and the other. Because my
2 view looking at the evidence was, I mean, who in the world
3 did do it if it wasn't Boone. I mean, actually though
4 another thing that developed during the trial was -- gosh,
5 I can't remember the kid's name. He had a couple ABIK's
6 pending against him and sort of ran into him after that
7 got up there and actually said something about hearing
8 shots being fired down in the gas station parking lot.
9 And this is something that was nowhere in any report or
10 anything that anyone said this was a development during
11 the trial. So I did not think that it would be harmful to
12 him. I didn't think that they would, you know, sort of
13 put him in -- lump him in with this other fellow because
14 after all he was a victim of this other person shooting in
15 his direction shooting at him.

16 Q So based on that before the trial started, before any
17 of these new developments you spoke of, that was your
18 reasoning for not filing a severance motion?

19 A I mean, it had to be because I didn't do it.

20 Q Did you ever give any thought to it once Judge
21 Keesley mentioned that that concerned him?

22 A I don't recall that.

23 Q There were several pictures that were attempting to
24 be introduced of the victim lying on the ground. And Mr.
25 Boone's counsel objected to some of those pictures. Do

1 you recall that?

2 A I recall there were a bunch of pictures that weren't
3 any good as far as getting over to the jury.

4 Q Okay. The State -- this occurred they were
5 attempting to be reintroduced and objecting to page 344
6 State's Exhibits Number 14 and 15 were excluded by Judge
7 Keesley under Rule 403. Do you recall that?

8 A I do recall a number of them being excluded, sure.

9 Q Fast forward all the way to the testimony of Dr. Clay
10 Nichols. One of those pictures that was excluded was held
11 up by Ms. Campbell and Dr. Nichols was asked a question
12 about it and went on to give some explanation while
13 Ms. Campbell was holding it up and presenting it to the
14 jury, do you recall that?

15 A If any individual picture that I had or anybody had
16 objected to and gotten excluded; at some later point was
17 introduced, that was certainly an oversight.

18 Q Okay. That was my next question what was the
19 strategy behind not objecting?

20 A I mean, there's no strategy. I mean, that has to be
21 -- it's just an oversight. You argue to keep something
22 out and they introduce it and you object to it, it's not
23 being on the ball.

24 Q Do you recall the testimony of Investigator Zane
25 Padgett?

- 1 A I remember him.
- 2 Q What do you remember about him?
- 3 A He was just -- and I actually got called down a
4 little bit from talking to the jury about him versus David
5 Collins the other guy. He was just being difficult. He
6 didn't want to sit up there and give an inch. I mean, it
7 was silly. It was my view. And I got in trouble for
8 pitting him versus Collins to the jury because I'm telling
9 the truth, look this is how you do it you get up there and
10 give up whatever the truth is. You don't sit up there and
11 try to withhold everything. Then I'm sure I was trying to
12 spin that into some metaphor for the whole thing that they
13 were doing. It's just throwing all this junk up in the
14 air and hoping it lands on these kids.
- 15 Q He was qualified as an expert in crime scene analysis
16 without objection is that your recollection?
- 17 A If that's what the record says whatever -- was he the
18 lieutenant or something at that time or was that later? I
19 mean, he's been around.
- 20 Q Was he qualified as an expert in firearms to your
21 knowledge?
- 22 A I do not recall.
- 23 Q Was he qualified as a medical expert to your
24 knowledge?
- 25 A I don't see how. I don't think so.

1 Q Okay. If I could turn your attention to page 407
2 line ten. Page 407 line 10 testifies about the speed of
3 bullet would need to travel to penetrate a wall and to
4 also kill the victim. Do you see that?

5 A I do see that.

6 Q Did you feel that his qualifications as a crime scene
7 expert may have qualified to give opinion testimony on
8 both ballistics and potential cause of death?

9 A What I do recall is the penetrating power of the .380
10 was actually sort of fed in. I talked to the jury about
11 this I am certain, sort of fed into what my argument was
12 that, you know, if you had a through and through that a
13 .380, you know, does not have penetrating power to go in
14 and come out the other side at that distance, which is
15 ultimately what I believe -- what the testimony was either
16 that or I just pulled it and took it with me to closing,
17 but it's one of the things where they were saying, I
18 think, he had a .380 and the other kid a 9 millimeter.
19 And I remember Ms. Campbell having an issue and maybe it
20 was with Collins about the penetrating power of the .380.
21 But that -- and I don't know who came first Collins or him
22 or something, but that was an issue that was addressed
23 with respect to the jury that actually I was arguing to
24 the jury in addition to the million other reasons it
25 couldn't have been him that shot that young man, it's

1 because of the penetrating power of the .380. Ms.
2 Campbell actually asked whoever it was testifying twice
3 like are you sure kind of thing is it possible. I think
4 it was Collins because she's like is it possible trying to
5 do something and basically demonstrate the penetrating
6 power of something that it was not according to collins.
7 And maybe he said it or that was the conflict between
8 those two witnesses, but I believe it was Collins where
9 he's like pretty non-responsive about the answer and I
10 remember her saying is it possible, is it possible and he
11 said, well, it's possible. In other words, he wasn't
12 being as affirmative as she wanted him to be, so she had
13 to ask him again. And that's where I sort of took that
14 and I think possible. I think, that's where I said I've
15 seen a dog searched once in closing.

16 Q If I can back you up against to Mr. Padgett not
17 Mr. Collins.

18 A Sure.

19 Q The State called a firearms expert to testify; is
20 that correct?

21 A Uh-huh.

22 Q Was Mr. Padgett qualified as a firearms expert?

23 A I don't believe he was. He has been in some trials.

24 Q Okay. Did you feel that the -- that his
25 qualifications as a crime scene expert allowed him to

1 testify to ballistics and cause of death?

2 A I wouldn't necessarily say so. I mean, you know,
3 just the issue is does it sort of feed into anything, is
4 it helpful, is it not helpful, but certainly if he was
5 testifying to something that he wasn't qualified as an
6 expert for, then naturally there should have been an
7 objection here.

8 Q Was there any trial strategy behind not objecting?

9 A Other than sort of trying to fling him around against
10 the other guy, but, I mean, I distinctly remember the
11 thing about the .380. I was sort of harping on in
12 addition to just about everything else in the closing and
13 I was outraged.

14 Q Do you recall the testimony of the other actual
15 co-defendant Oliver Feldman?

16 A I remember him testifying.

17 Q Do you recall that his -- there was a bit of a dust
18 up in that his story changed a pretty significant way from
19 this previous statement to what he testified to?

20 A I mean, it may have. I can see him sitting on the
21 stand right now, but I'm not remembering exactly the way
22 he was testifying. But, I mean, he was up there basically
23 throwing his buddy under the bus to cut a deal, is what it
24 was.

25 Q Would it help to refresh your recollection if I show

1 you the transcript?

2 A Sure, I got half of it.

3 Q It's page 807 section number 2.

4 A I do not have that one and I apologize. I think I
5 got it mixed up with the Wallace transcript.

6 MR. WALLER: Your Honor, may I approach the
7 witness?

8 THE COURT: Yes, sir.

9 A You said it was 807?

10 Q 807.

11 A Okay, I'm looking at it.

12 Q That continues onto the next page. There is objected
13 to and there is quite a bit of discussion. Essentially,
14 he went from saying there are two people shooting as to
15 then say it was just one person shooting, that he was
16 originally mistaken. You recall?

17 A I mean, it could be. I'll certainly take your word
18 for it.

19 Q Okay. That testimony came out following the leading
20 question by the Solicitor?

21 A Was it Ms. Campbell? I will say with respect to
22 that, that's every time. And there just comes a certain
23 point, I don't know you just got to make judgment calls
24 about it because otherwise you start looking suspect if
25 you're just about objecting to everything she's doing, but

1 still what -- if it was leading, I certainly should have
2 objected to it.

3 Q Okay. And I don't belabor the point, I'll move on
4 from that. Did you -- after Mr. Feldman changed his
5 testimony in a significant way, did you consider moving
6 for a continuance to re-access?

7 A I probably went up and called him a liar in whatever
8 technical ways or whatever that I did just accused him of
9 something. And really what he's doing if he's changing
10 his story up there, well, you know, were you lying then or
11 were you lying now, which is true. My thought is that
12 that detracts from someone's credibility, but, I mean,
13 that's just the way that I see these things because
14 somebody changes their story, oh, what is it, is it this,
15 is it that sort of thing.

16 Q Mr. Boone counsel's made a motion to either disallow
17 the testimony or for mistrial. Did you ever give any
18 consideration to joining in on that motion?

19 A She did a mistrial because he changed his story. I
20 don't believe I would have joined that. If I did oops,
21 but no.

22 Q All right. Do you recall the testimony of
23 Investigator Rowe?

24 A Investigator Rowe I remember him -- I mean, I
25 remember him sure sitting there talk to him a little bit

1 sort of in between stuff.

2 Q Okay. If I can get you to turn to page 911 beginning
3 on line 4 going through line ten?

4 A Okay. I mean, I see that. I mean, I don't remember
5 particularly the testimony, but I see it.

6 Q Okay. On those lines, he testified that his first
7 involvement in the case was looking into a drive-by
8 shooting in the Summit that may have been related to this
9 case, is that your recollection?

10 A Said Ellis directed me to the Summit area because
11 there was a situation where there was a drive-by-type
12 shooting being reported that may or may not be related.

13 Q What was the trial strategy behind not objecting to
14 this reference of any possible relation?

15 A If I'm sitting there and I'm listening to that, then
16 I don't object to it. Maybe they're not going -- I don't
17 know if he go any further into that. If I don't object to
18 it sitting there listening to something like that, I mean,
19 to me they're not getting to a point where it's going to
20 start to me where we're feeling horrible. We're getting
21 some sort of blow back from. I mean, testimony I can't
22 put a percentage on it, but there's just a ton of
23 testimony that is objectionable in some way, shape or
24 form, but that's all I can say, I don't remember that
25 specifically though.

1 Q There was quite a bit of discussion regarding
2 Mr. Boone's statement and how it related to Mr. Patterson.
3 Do you recall that?

4 A I do. I do.

5 Q Can you elaborate on it a little bit?

6 A I just remember we were sort of going back and forth
7 about what to take out of here and what to take out there.
8 And basically trying to cull all the references from one
9 to another along those lines.

10 Q Okay. You move for the Court -- you move the Court
11 for it to either heavily redacted or not come in at all;
12 is that your recollection?

13 A I'm sure, yeah, that's Bruton motion.

14 Q You further on page 995 you should still be in that
15 volume two told the Court that you did not want a limiting
16 instruction as it would draw attention to the redaction?

17 A It's like cat's out of the bag sort of thing. I
18 mean, it could be. I'm looking at it and I'm saying that
19 a limiting instruction would draw attention to it. And
20 maybe I'm trying to not accept limiting instruction under
21 circumstances that if I say that I'm okay with it, then on
22 appeal there's an issue with it maybe.

23 Q Okay.

24 A I have to sort of get back into the real moment on
25 this thing.

1 Q Okay. Ultimately, when the judge finally issue a
2 ruling on page 1011 continuing to 1012?

3 A And I have this -- I have that.

4 Q Judge Keesley ultimately ruled that the statement
5 cannot come in, is that your recollection?

6 A I remember he said he was going to keep statement in
7 unless we work something out, if we didn't mutually agree
8 to something he was going to keep the statements out.
9 Now, that's what I remember. You said page it was 1011
10 and continuing onto 1012.

11 Q Okay.

12 A Okay, I see it.

13 Q Ultimately, shortly thereafter upon the agreements of
14 the parties, you agreed to a redacted version coming into
15 evidence?

16 A Of Boone's?

17 Q Yes. What was the trial strategy behind agreeing for
18 it to come in after Judge Keesley had already ---

19 A I have to think that it made the other fellow look
20 bad.

21 Q Okay.

22 A But that got it in, I mean, I don't remember exactly
23 what he admitted to, but, I think, he admitted to
24 discharging the firearm or something along those lines.
25 So if agreeing to a redacted version -- if that was just

1 agreeing to a redacted, heavily redacted version versus it
2 not coming in, would have been to make the other fellow
3 look bad.

4 Q Okay. You testified that Dr. Nichols was the
5 forensic pathologist in this case?

6 A He was.

7 Q Okay. And he was qualified as such without any
8 objection?

9 A Probably.

10 Q Okay. On page 1031, he testifies about the power of
11 different weapons, different caliber bullets. Did you
12 feel he was qualified to testify about the power of
13 different weapons?

14 A Is this penetrating power thing? There was something
15 they were doing that I seized on with respect to that
16 maybe from a couple of different witnesses. You said
17 1030?

18 Q 31.

19 A 1031. With less penetrating power and there would
20 have been another -- maybe another one I got penetrating
21 power thing from. I just remember squawking about it.

22 Q Okay. What was the trial strategy behind not
23 objecting to him testifying outside the scope of his
24 expertise?

25 A Well, if we're getting to the penetrating power

1 issue, that was one of the things that I was using to try
2 and make it clear to the people on the jury that he could
3 not have did -- that that did not come from .380 and
4 travel all that distance and by the way have to go up and
5 over like the Kennedy magic bullet or something to get
6 down there. But even if it did, it still wouldn't have
7 been able to do a through a through.

8 Q Before penetrating power was ever mentioned by
9 Ms. Campbell in question, did you ever feel the need to
10 object to him testifying to the power of different
11 weapons?

12 A Probably not.

13 Q Do you recall Investigator Collins dry firing a
14 weapon in the courtroom?

15 A I don't -- maybe -- wait a minute was that the slid
16 work slid was him working the lever of the slide because I
17 do remember objecting at one point, but, I think, it was
18 Ms. Campbell tried to grab a firearm out of a box. It was
19 like a green box and she picked it up and started trying
20 to waive it around or something. I remember objecting to
21 that, but I don't remember objecting to that unless it was
22 the operation of the slid if that was with respect to
23 maybe that round just coming out and been sitting there up
24 near the door of the Waffle House or something. I don't
25 know if I objected to that. I did object to something

1 with respect to a firearm being sort of banned about.

2 Q Okay. Do you recall Investigator Ellis being asked
3 if the victim's father was present in the courtroom?

4 A Well, if it's in there, I'll take your word for it,
5 I'm getting something like I missed something with Ellis
6 that he was sitting here and I just can't put my finger on
7 it.

8 Q Do you recall then going on in response to a question
9 of him identifying the victim's father to the jury?

10 A I don't recall that if it's in the transcript.

11 Q If I could direct your attention to page 1150.

12 A Oh, is this about him making the identification?

13 Q Of the father.

14 A Is this about the father having to come down and ID
15 his son? Exceedingly prejudicial to point out the family
16 of the victim. Okay, yeah.

17 Q You made an objection. Did you consider moving for a
18 mistrial after he was pointed out to the jury sitting in
19 the courtroom?

20 A If I didn't make the motion for mistrial, I mean,
21 maybe I was thinking about it, but, I mean, I don't have a
22 specific recollection of that. I mean, there was a lot.

23 Q Okay. Judge Keesley ruled that your objection that
24 you did make was not contemporaneous. Was there a trial
25 strategy behind not making a contemporaneous objection?

1 A Well, if he said it was not contemporaneous, then it
2 wasn't contemporaneous I'm sure. I mean, I didn't really
3 have any -- Judge Keesley was solid during this thing.

4 Q Did you and Mr. Patterson ever discuss the search
5 warrant that was performed on his home when he was
6 arrested?

7 A Maybe, they find like some weed or something in there
8 and some pictures or something maybe.

9 Q Did y'all ever consider trying to suppress anything
10 that was found?

11 A I'm not remembering that anything significant was
12 pulled out of there. I remember they tried to introduce
13 -- and I got a discovery violation on this. They tried to
14 introduce some pictures that he had and some writings, I
15 think, in some sort of book that they were saying gang
16 symbols or something. And I had just been meeting with
17 Dan and Ms. Campbell the Friday before the trial and we
18 were going through everything. And there was this box of
19 all this stuff. And we been there for a while and I said
20 look are you going to introduce any of this stuff and they
21 said no. And I said, well, if you are going to introduce
22 it, here's my fax number and please let me know over the
23 weekend. And then on day four of the trial low and behold
24 here comes this stuff, you know, them wanting to introduce
25 it and I believe it was excluded. I mean, the only thing,

1 I think, they find in there -- I keep thinking about
2 marijuana for some reason. But they did have a bunch of
3 pictures in like little journal entries or scribblings or
4 something like that, that they were pictures of girls and
5 also scribblings that they were saying were gang symbols
6 or something to that effect.

7 Q Okay. Moving on and finishing up with Investigator
8 Ellis. On redirect, he was asked why certain witness
9 wasn't going to testify that week and he responded that
10 she been murdered. You objected, but did not ask for a
11 curative instruction from the sustained objection. Was
12 there a trial strategy behind that?

13 A No, I can't. There wouldn't be one unless -- well,
14 unless I was angling for a mistrial in which case -- the
15 thing about the curative instruction to me is just like
16 a -- it's an appeal killer.

17 Q Moving on to Captain Smith. Captain Smith read --
18 published the entire statement of Tason Boone to the jury.
19 Do you recall that?

20 A I remember him testifying and crossing him.

21 Q Did you have any issues with him testifying?

22 A Well, it was pretty feisty and firey. I mean, that's
23 what I recall. I mean, I almost took his head off with a
24 pointer at one point.

25 Q The statement that he read was the one that had been

1 redacted. Again, did you have any objections to that
2 statement coming in by agreement after you already been
3 suppressed by Judge Keesley?

4 A I think -- actually, I do remember there was
5 something in there that was during the redaction that was
6 like a he or him or something like that. I do remember
7 that there was something in there that during the
8 redaction was missed and it should not have been.

9 Q Okay. In your investigation leading up to this case
10 and throughout the trial of this case, there was a lot of
11 discussion about where all the parties came from and who
12 they were affiliated with; is that correct?

13 A Yeah, I mean, and it's all over the newspaper. I
14 mean, it was almost back at that time it was like an every
15 other thing, it's on the front page. And, I mean, that's
16 why, you know, I don't know. I mean, my view when I
17 probably told the jury is, you know, that's what they're
18 up here trying to do here, something along those lines
19 that it was more sort of a political trial.

20 Q Okay. There did not seem to be any testimony or
21 witnesses presented as to where the victim -- how he got
22 there. Did that concern you at all?

23 A I remember where he was. Now, what the situation is
24 here is there's just a bunch of people standing around
25 like a ton and just a bunch of cars and, I mean, it's

1 Waffle House. And, you know, typically, you know, people
2 go to Waffle House after, you know, maybe they're out
3 having a drink. I mean, that's just typical Waffle House
4 things will be a little bit rowdy. And so, you know,
5 there's a bunch of cars. There's a bunch of people in the
6 parking lot and then all of sudden this fight breaks out.
7 You know, one person's inside and they're going outside.
8 And then a couple people start fighting and people start
9 arriving. And then all of sudden, you know, all hell
10 breaks loose, then there's gunshots. I remember -- I
11 can't remember somebody saying that was Corey Sanders by
12 the way who testified about the third shooter possibly
13 down in the gas station parking lot where his body was,
14 but, I mean, I pointed out where he was with respect to my
15 guy. I remember that.

16 Q When you and Mr. Patterson were discussing your
17 defense for this case and you were discussing
18 self-defense, was there ever any question that you will
19 need to request a charge on withdrawal to be charged to
20 the jury?

21 A Well, at, I think, at that time there was this sort
22 of duty to retreat business and I remember telling the
23 jury you can't out run a bullet as far as retreating from
24 that. But, I mean, as far as withdrawal, that's not my
25 recollection of this thing. It's just that big scrum up

1 there and then that fellow starts basically shooting into
2 the crowd and shooting at people over that way. And then
3 supposedly him and Feldman discharge a firearm back in his
4 direction.

5 Q Solicitor Campbell argued that Mr. Patterson and
6 Mr. Feldman flashed their weapons or pointed their weapons
7 at someone earlier in the evening and because of that,
8 they can't then claim self-defense because they brought on
9 the harm?

10 A And that was that fellow, I think, who went up and
11 testified the guy in his statement said there was a finger
12 coming out the window and all of a sudden mysteriously on
13 the stand it's a gun. I remember what you're talking
14 about.

15 Q There was additional testimony that when Mr. Boone
16 shot into the air that Mr. Feldman and Mr. Patterson ran
17 to the car to get their weapons?

18 A I remember that.

19 Q Okay. At that point would that -- would
20 Ms. Campbell's argument be negated by them having to put
21 their weapons in the car?

22 A You mean, her -- you're talking about her argument
23 that they're not without fault in bringing on the
24 difficulty is what she was saying in that their firearms
25 were in the vehicle, that that was obviate what she was

1 saying about neutralize her saying that?

2 Q Yes.

3 A Okay, I mean, if you believe the testimony or
4 whatever witnesses are saying they went through this whole
5 rigmarole to go back and get their firearms. I mean,
6 sure, I don't think if she's going to say that you can
7 say, well, look, you know, they didn't have their
8 firearms. They were in the vehicle, so how were they
9 bringing the difficulty on. It's just -- it was difficult
10 to wade through this just all this stuff they were
11 throwing up against the wall. I mean, it was
12 unbelievable.

13 THE COURT: How is Feldman involved from a
14 factual standpoint? We got Mr. Patterson and Mr. Boone on
15 trial?

16 MR. WALLER: Mr. Feldman was also charged, Your
17 Honor.

18 THE COURT: He turn State witness?

19 MR. WALLER: Yes, sir.

20 THE COURT: Testified for the State?

21 MR. WALLER: Yes, sir.

22 MR. SUTHERLAND: Yes, sir. He was alleged to be
23 up there with my guy on the other side -- the receiving
24 end of the fire initially.

25 THE COURT: Okay. I understand now. Thank you.

1 BY MR. WALLER:

2 Q Based on the testimony that they once the shooting
3 started had to retrieve their weapons from the car because
4 they no longer had them on their respective persons any
5 more. Did you ever consider charge of withdrawal to the
6 jury?

7 A I did not consider asking for withdrawal.

8 Q Investigator Ellis testified about Mr. Patterson
9 statement, do you recall that?

10 A I remember him testifying.

11 Q Okay. Did Investigator Ellis to the best of your
12 knowledge take Mr. Patterson's first statement?

13 A I can't tell you off the top of my head who it was,
14 but I'll take your word for whatever the transcript says.

15 Q Okay. On page 1160, he is testifying about
16 Mr. Patterson's statement, did you feel that he had laid
17 -- that a proper foundation laid for him to testify he had
18 prior knowledge of that statement.

19 A All this neon about the color of the car and the
20 different color of the car, I don't know if they were
21 trying to say that he was making stuff up because the
22 color of the car was different, but, I mean, I don't know
23 is it that he did not take the statement and that it
24 wasn't introduced through him or it was introduced through
25 Major Smith or somebody else.

1 Q I'll move on. Do you take issue with the jury
2 charge?

3 A With jury charge?

4 Q Yes.

5 A On -- with which one? You mean just in general?

6 Q In general?

7 A I remember arguing about the proximate cause charge,
8 which I didn't -- you know, it sort of sprung up on us
9 there when they shifted gears on this thing, but there was
10 some -- I think, we talked about this before. There was
11 some 1969 case that was footnoted in State vs. Fennel in
12 2000, that had said that proximate cause is
13 inappropriate -- inappropriate standard for criminal cases
14 where it's not in the statute. And that had revolved
15 around that and whatever them changing their stories, I
16 objected to everything they were doing. Judge, look, you
17 know, first they said this and now they say that. You
18 know, they been telling everybody cross-examine these
19 witnesses according to this theory of theirs. You know
20 now once they're done, they want to switch it around to
21 something else and I objected. It was objectionable to
22 me. I don't know specifically -- I know I had to object
23 with proximate cause in some way.

24 MR. WALLER: Beg the Court's indulgence please.

25 (WHEREUPON, a pause in the proceedings.)

1 MR. WALLER: No further questions.

2 THE COURT: Cross-examination.

3 MR. MITCHELL: May it please the Court.

4 CROSS-EXAMINATION

5 BY MR. MITCHELL:

6 Q Good afternoon, Mr. Sutherland?

7 A Good afternoon.

8 Q Let's see here now Mr. Goldberg and Ms. Campbell
9 prosecuted this case, right?

10 A They did.

11 Q In opening, Mr. Goldberg he went through and kind of
12 did this hand of one hand of all and I think mention
13 something about mutual combat as well; is that your
14 recollection?

15 A He did. I mean, I just spun off on them about the
16 hand of one thing in opening.

17 Q Okay. So you were able to go through that and just
18 counter it's not a viable theory because they don't know
19 each other and they're not hand of one hand of all that
20 got some kind of ---

21 A I was floored. I was stunned. They had not said
22 that to me before by the way. They just dropped it in
23 that thing. And I'm like what is this, you know, a car
24 with four kids and a bag of weed somewhere. This is what
25 you're going to do with this.

1 Q The theory eventually evolved to a mutual combat; is
2 that correct?

3 A And combination with transferred intent?

4 Q Yeah, right, because it would be mutual combat.

5 A They show up supposedly to fight each other or to
6 watch a fight. Somebody I'm sure had testified about
7 their people going there to get in a fistfight or
8 something. Then because it turns into a gun fight whoever
9 these first two people were who agreed to a fistfight now
10 everyone who discharges a firearm is guilty under the
11 theory of mutual combat because two kids were going to
12 fistfight each other. And then people start shooting at
13 each other had some sort of agreement with these two kids
14 who are beating each other up, that was their theory to
15 the best that I could tell. And I'm sorry, you know, to
16 be so cynical about this, but I'm still irritated about
17 this thing.

18 Q I understand. And there was testimony that
19 Mr. Patterson went back to the car after Mr. Boone fired
20 the shots, went back to the car and retrieved a gun that
21 returned fire?

22 A I remember.

23 Q Okay. And that was presented to the jury. I
24 understand the -- conclusions to draw from that, but that
25 was present; is that right?

1 A It was.

2 Q I'm going to try and run through these fairly
3 quickly. The severance issue would you say Mr. Boone was
4 more culpable in your eyes than Mr. Patterson?

5 A If anybody did it, it was him.

6 Q So you believe he's the one who fired the shot?

7 A Well, of course, the development of the third shooter
8 down in the gas station parking lot, but just from the
9 evidence that was available to me and what they were
10 saying was in the side of the that mobile station right
11 down where the kid was, that was the kind of gun he was
12 firing. He admitted to shooting it up in the air, which
13 maybe he did, maybe he didn't. A lot of people say that
14 when they're shooting that way. It made perfect sense to
15 me.

16 Q Boone's statement also was that he fired towards the
17 crowd where Mr. Patterson was, but he said that he aim
18 above their head?

19 A Above their heads, yes.

20 Q So he be sure not to hit any one assuming that, I
21 guess?

22 A Naturally.

23 Q Now, getting back to the severance issue could that
24 play into your decision not to move for severance and then
25 you could -- you had a chance to get an acquittal here on

1 this where he would get convicted and the evidence coming
2 in is showing that Boone maybe more culpable than Mr.
3 Patterson?

4 A My thought was that it was just going to rain all
5 over Boone's parade and what did they really have with
6 respect to Eugene. And that that would be
7 distinguishable, which I guess it wasn't.

8 Q Which was argued by you that the evidence was much
9 stronger in favor of convicting Mr. Boone?

10 A Sure. But also, I mean, I wasn't about to go up
11 there and help the government with their case against him
12 either, but it's just with respect to my guy, there's just
13 a wall of steel and wood and there's a hill. I mean, it
14 just didn't make any sense.

15 Q On the -- on State's Exhibit 14 that Ms. Campbell
16 mistakenly showed to the jury, do you recall she brought
17 that to the judge's attention. She had actually hold up
18 Exhibit 14 instead of Exhibit 15. Do you recall that?

19 A That's certainly possible. But, again, if she'd put
20 that up and put that in after I had objected to it, it was
21 certainly an oversight.

22 Q Again, I think, the judge said something along the
23 lines of the jury didn't see it, photos were pretty far
24 away and couldn't tell the difference of what was in the
25 photos from that distance. Is that -- do you remember

1 that taking place?

2 A It could be. Maybe, it was kept out for being
3 cumulative, but I don't remember precisely. But it sounds
4 right.

5 Q Moving to Mr. Padgett. So he was qualified as a
6 crime scene expert. You think some of that testimony was
7 helpful with the power of the .380, but it could not go
8 through the steel part of the Waffle House?

9 A I think that anything that sort of diminishes -- I
10 was thinking and I would think presently that anything
11 that sort of diminishes the capacity for the firearm that
12 my guy's allege to have been discharging to have done what
13 the wound to do what happened to basically be the gun that
14 shot the guy. Anything that diminishes the likelihood
15 that people would believe that, I mean, it's helpful.
16 That's the kind of stuff that you're trying to dig out or
17 at least I'm trying to dig during these things.

18 Q To your knowledge, has Mr. Padgett been qualified as
19 a firearms expert before?

20 A I mean, it seems to me like he has testified in that
21 regard previously. I mean, I can't remember. He's been a
22 lieutenant. He's been in a couple of different places. I
23 haven't seen him in a while though.

24 Q If you did object to him testifying outside the
25 scope, the State could have then voir dired him further

1 then qualified him as a specific expert in ballistics?

2 A Well, sure. I mean, he would have had to testify to
3 the specific qualifications in that regard, but sure they
4 could have done it. Sure, he's testifying about it in
5 other things or maybe I'm thinking it is, but he's sort of
6 a villain in my mind because of this case probably. So
7 may be I'm overstating.

8 Q Your testimony of Investigator Rowe and he testified
9 to something along the lines that there's a drive-by
10 shooting when he got called away?

11 A That might be related.

12 Q Right. May or may not be related. You think that
13 rises to the level of a mistrial at that point?

14 A I don't know. I mean, there's some people that
15 probably would do it. Again, it's like what's the real
16 harm here. It's -- and it's my view in different trial
17 lawyers may try things different ways is you don't want to
18 be sitting there squawking about everything all the time
19 and, you know, the sky is falling, the sky is falling.
20 You want to be taken seriously when you do things.

21 Q You think you kind of lose credibility with the jury
22 if you're objecting to every little thing?

23 A Sure. And with the Court.

24 Q All right, moving to Bruton issue we were talking
25 deal. Bruton deals with a non-testifying co-defendant; is

1 that right?

2 A That's right.

3 Q But Mr. Boone testified?

4 A He did.

5 Q Okay. So it kind of makes it a Bruton issue mute,
6 but you didn't know that at the time when you were going
7 through the statements?

8 A Sure. There was no telling. I was just wanting to
9 -- for him to inculcate himself as much as possible.

10 Q I believe, in the statements said something along the
11 lines, he admitted to shooting the gun and then admitting
12 to even shooting above the heads of people, that was his
13 story?

14 A It was something like that, but I don't know why in
15 the world they put him up frankly.

16 Q And you were able to cross-examine him on all the
17 statements and all his testimony?

18 A I mean, if I did, you know, to whatever extent that I
19 did. I mean, here's a guy saying, hey, you know, I was
20 doing this stuff, so it's good enough. Wouldn't go up
21 there and say were you really doing this stuff, you know.
22 It's there to talk about.

23 Q Investigator Ellis ID the victim's father at the
24 trial. I think, Judge Keesley said something along the
25 lines, that's not -- you did object, but it was

1 contemporaneous. But then he goes on to say we'll just
2 kind of sustain the objection any way and says move along
3 from this. You know, get rid of this line of questioning?

4 A I mean, there was a little dust up there about that.

5 Q Did you think that rose to the level of a mistrial at
6 that point?

7 A I mean, if I would have thought so, you know, I would
8 have done it.

9 Q This kind of relates to the Bruton issue as well
10 where -- Investigator Mr. Smith where he goes through and
11 publishes Boone's statement and this kind of goes to the
12 Bruton issue that he end up testifying any way, but he --
13 I believe he left out a redaction too with reading it.
14 Did you see a problem with that that you could not address
15 on cross-examination of Mr. Boone?

16 A Of Mr. Boone?

17 Q Well ---

18 A When he was publishing Tason statement?

19 Q Right.

20 A I mean, if ultimately there was something that was
21 not redacted that should have been, then, you know, that
22 was an oversight. With respect, you know, to
23 cross-examining people, if that's possibly an oversight is
24 an oversight. If we go through and we go through this
25 long process of doing all this stuff and there's something

1 in there that at some point the police not then, but
2 whatever time it is I'm like, hey, that shouldn't be in
3 there. You know, that's an oversight. It is what it is.

4 Q I mean, redactions -- they weren't redacting
5 Mr. Patterson's name, were they? Do you recall how the
6 redaction went through? What the statement exactly was do
7 you recall that?

8 A All I'm seeing -- I'm not recalling what was in
9 there. I'm just seeing a bunch of blacked out stuff in --
10 I probably have to look at it.

11 Q I believe, the statement that was redacted was where
12 they're referring to Mr. Patterson as a crip, I believe?

13 A I thought that they were saying, no, the crip is the
14 snitch is Feldman is the rolling 20 from Florida whose dad
15 is at Fort Jackson, who says he's a crip whatever. I
16 think, they were trying to accuse Eugene of being in the
17 Folk or something along those lines. I mean, maybe they
18 were trying to accuse him, accuse him of everything else.

19 Q On the issue of withdrawal, did you -- was there any
20 evidence presented that Mr. Patterson withdrew from the
21 conflict?

22 A That did not -- that wasn't how I was looking at it.
23 I was looking at it if, you know, if he was discharging a
24 firearm, it was after being fired upon and here's somebody
25 shooting up in the air, shooting into a crowd in its

1 defense of others if it's not defense to yourself. You
2 know, you want to say well, he wasn't shooting at me. He
3 was certainly shooting at somebody, even if he's saying he
4 was shooting over their heads.

5 Q You were able to get a self-defense charge and
6 defense of others charge?

7 A That's my recollection of it.

8 Q And moving to the charges, you took issue with
9 proximate cause, mutual combat a couple other things; is
10 that -- do you recall that in the charge conference?

11 A I'm sure.

12 Q Do you believe that to be preserved for appeal your
13 objections to the charges as they were read to the jury?

14 A I believe so. You know, when I make objections and I
15 renewed them, you know, what I believe are appropriate
16 times hopefully, sure.

17 Q Let's get back to what the State's theory of the case
18 was. I mean, they proceeded under this mutual combat.
19 These people came together to fight each other and that
20 they then used transfer intent to get through the
21 causation of the actual murder. Is that how you
22 understand it?

23 A I'll just say, yes, I won't be snippy about it, but
24 that's what they said.

25 Q Have you seen these types of cases being tried in

1 other instances?

2 A Transferred intent cases and mutual combat cases?

3 Q Yes.

4 A Sure.

5 Q Was this a bit of a novel theory at the time or were
6 you pretty familiar with how these things...

7 A Sure. I mean, again, I have my opinions on it, but,
8 I mean, I knew what they were -- what they were saying or
9 trying to say.

10 MR. MITCHELL: No further questions. Thank you,
11 Mr. Sutherland.

12 MR. SUTHERLAND: You're quite welcome.

13 THE COURT: Redirect?

14 MR. WALLER: Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. WALLER:

17 Q Mr. Sutherland, you talked about transferred intent.
18 You were quite, I guess, upset about it during the trial.
19 Do you feel that they proved that the original intent for
20 it then to be transferred?

21 A Well, if it is true what they were alleging that he
22 was discharging a firearm, if that's true, it is only true
23 that he was discharging a firearm in the direction of
24 someone that was shooting at him. So, I mean, you don't
25 -- I just don't see it. I mean, I don't see it. So

1 they're going to say his intent was transferred -- the
2 other guy was trying to shoot him and since it was his
3 bullet at this angle, that guys intent to shoot him is
4 transferred to him because he was shooting back at the guy
5 that was shooting at him when it's a 9 millimeter or
6 whatever down in the thing beside the young man that was
7 shot. I mean, it did not make any sense to me. But, I
8 mean, that's what they were doing.

9 Q Back to the severance issue and I don't want to
10 belabor the point. Is it your testimony that you did not
11 move for a severance pretrial because you thought
12 Mr. Boone the evidence was stronger against him and that
13 the jury would be able to set their passions aside like
14 they're suppose to do and take each case individually and
15 not lump the two together; is that your testimony?

16 A And really that could have been a mistake. I mean,
17 you know, there was Henson that came out last January
18 about severances, but my view of it was that they had the
19 goods on the other fellow. And they did not on him and
20 that it would be distinguishable that it would be clear,
21 should have been.

22 Q Okay. The trial transcript 1645 pages long. On page
23 1462, Judge Keesley makes a comment that it's very
24 concerning to him that a severance motion has not been
25 made. Did it occur to you then to then make a severance

1 motion?

2 A On 1462?

3 Q Yes, sir.

4 A I mean, that may have been -- listen, he was a good
5 trial judge. I mean, that may have been where he was at
6 the end. I mean, this was just a ten-day brawl is what it
7 was in the courtroom. And, I mean, it was passionate, it
8 was argued. It was a big fight. And I'm sure after, you
9 know, one minute we're on the cuffs of D.V. and then maybe
10 the next minute we're looking at getting jury charges on
11 proximate cause. I mean, I did not make that
12 consideration at that point when he mentioned that. I
13 need to be sure of my answers.

14 Q You testified and you did object to Investigator
15 Ellis identifying the father of the victim in the
16 courtroom. But you testified that you didn't think it
17 rose to the level of mistrial or asking for a mistrial?

18 A Sure. And all that is is if I thought it, I'd done
19 it is the way that I look at it.

20 Q With respect to the Bruton issue and the statement, a
21 redaction of the Tason Boone's statement, I believe, it
22 was your testimony that you agreed to the redacted version
23 coming in because you were attempting to have him
24 implicated himself?

25 A Right, just inculcate himself and just to sort of

1 make it clear in that regard.

2 Q At that time still having not made a severance
3 motion, was there any concern that after Judge Keesley had
4 ruled that it was going to be excluded, that that would be
5 used against your client?

6 A I can say, you know, looking back if you're talking
7 about hindsight, I mean, I got to wish that every decision
8 had been slanted one way or the other and particularly
9 with the development of case law these days with respect
10 to Bruton and with respect to severances. I mean, it's
11 trending in that direction, so if you are asking me if it
12 was a mistake not to move for a severance and mistake not
13 to keep the entirety of the other guys statement out, I
14 will say yes.

15 Q Okay. At the time you agreed for the statement to
16 come in, you had no idea Mr. Boone was going to testify?

17 A Well, there's -- you never know until you know. They
18 may have talked about it and -- but any problem with the
19 redaction isn't going to be tied to that. If there's an
20 oversight, there's an oversight, doesn't matter if
21 somebody's going to testify or not. If they're saying
22 he's going to testify, you going to do Bruton, you going
23 to do redact something, you got to do it right.

24 Q In your mind in discussing the self-defense and the
25 Solicitor's argument against self defense applying, did

1 you ever consider that the fact that Mr. Patterson or Mr.
2 Feldman might have had a weapon on them, did that
3 constitute them bringing about the harm, they would not be
4 able to claim self-defense?

5 A I would say, no. If someone is unlawfully carrying a
6 pistol -- and this is my view on it. If someone's
7 unlawfully carrying a pistol and somebody starts shooting
8 at them, does that then mean that because they're
9 unlawfully carrying that pistol they can't defend
10 themselves. And that would be sort of the way that I
11 would address that, if it must be the case that you can.
12 Now, I know that they had -- somebody had changed their
13 testimony to him sticking a finger out the window earlier
14 to a gun, but in any event that's my view of that and, I
15 mean, I'm happy to explain that to jurors or whomever
16 under those circumstances.

17 Q In your view of the evidence, Mr. Patterson had not
18 brought that harm on himself where he would be precluded
19 from claiming self-defense?

20 A He may have even been at work that day. I'm too
21 sure, but, you know, he's going up to this place with his
22 friends where if a couple of people are going to -- you
23 know, he's still a teenager. I mean, I represented him on
24 the burglaries when he's 16. And what is this, you know,
25 again Y suspended on probation and then this happens, but

1 they're still teenagers and they doing teenage things.
2 And they're going to Waffle House. And, you know, the
3 tough guys are out there. I mean, I think over time young
4 people are going to get together and try to show off for
5 women and beat each other up or something to that effect.
6 I mean, I don't know. I'm sorry just even to this day,
7 I'm still aghast at this conviction.

8 MR. WALLER: I have no further questions. Thank
9 you.

10 MR. MITCHELL: Nothing further from the State,
11 Judge.

12 THE COURT: All right. You may come down, Mr.
13 Sutherland.

14 (WHEREUPON, the witness leaves the witness
15 stand.)

16 THE COURT: This witness be excused?

17 MR. WALLER: Yes, sir, Your Honor.

18 THE COURT: All right. Next witness?

19 MR. WALLER: I have no further witnesses, Your
20 Honor.

21 THE COURT: Witness from the State?

22 MR. MITCHELL: No witnesses from the State, Your
23 Honor.

24 THE COURT: All right. Thank you very much.
25 Proposed orders, I'll accept proposed orders within 30

1 days.

2 MR. WALLER: Your Honor, we have a legal
3 argument would you like to see it included in the proposed
4 order?

5 THE COURT: I prefer that you do that, yes,
6 because I can't rule on it at this point in time until I
7 have an opportunity to review the transcript.

8 MR. WALLER: Yes, sir, Your Honor.

9 THE COURT: Thank you very much.

10 END OF REQUESTED TRANSCRIPT

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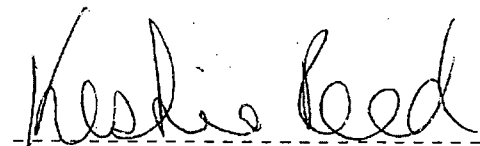
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 69, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Richland County, South Carolina, on the 15th day of July, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 24th day of October 2016.



Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4001202

Eugene D #321525 Patterson Jr

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ 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.
- ☐ 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 _____
- ☐ 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

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
		\$
		\$
		\$

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.

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 30 day of Dec, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 30 day of Dec, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Eugene D #321525 Patterson Jr

Jonathan D Waller

Megan Harrigan Jameson

Eugene D #321525 Patterson Jr

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

jury trial before the Honorable William P. Keesley, where he was convicted as indicted. Judge Keesley sentenced Applicant to forty-five (45) years' imprisonment.

Applicant filed a notice of appeal. Following briefing and oral arguments, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence by unpublished opinion. State v. Eugene D. Patterson, 2013-UP-154 (Ct. App. filed April 17, 2013). Thereafter, Applicant petitioned the South Carolina Supreme Court for certiorari. The South Carolina Supreme Court denied Applicant's petition by Order dated January 23, 2014. The Remittitur was sent on January 31, 2014.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Trial counsel was ineffective in:
 - a. Failing to move for a severance;
 - b. Failing to object to the jury instructions on mutual combat, transferred intent and proximate cause;
 - c. Failing to request suppression or complete redaction of co-defendant, Tayson Boone's statement pursuant to Bruton¹
 - d. Failing to contemporaneously object to the victim's family being pointed out during testimony of Investigator Matt Ellis;
 - e. Failing to object to State's Exhibit 14 being published to the jury after previously having been excluded;
 - f. Failing to request a curative instruction after sustained objection to reference of a witness being murdered in an unrelated incident;
 - g. Failing to object to testimony outside the scope of expertise for
 - i. Zane Padgett and
 - ii. Dr. Clay Nichols.
 - h. Failing to object and move for a mistrial where witness pointed a weapon while testifying;
 - i. Failing to object to leading questioning of Oliver Feldman;
2. Appellate counsel was ineffective in:
 - a. Failing to raise the issue of whether Judge Keesley erred in allowing Robert Portee's testimony regarding threats made to him because he was cooperating with law enforcement.

¹ Bruton v. United States, 391 U.S. 123 (1968).

convictions, the transcripts, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the appellate records, 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 Applicant's testimony and assertions to be not credible.

Ineffective Assistance of Trial Counsel

Failure to Move for a Severance

Applicant alleges Counsel was ineffective for failing to make a motion to sever his case from co-defendant, Andre Tayson Boone's trial. This Court finds Applicant failed to meet his burden of proving trial counsel ineffective. Counsel testified he did not move for a severance because he believed the evidence against Boone was much stronger. He believed Boone was much more culpable and that Applicant would likely be acquitted when tried with Boone.

"Criminal defendants who are jointly tried [...] are not entitled to separate trials as a matter of right." State v. Dennis 337 S.C. 275, 281, 523 S.E.2d 173, 176 (1999) (citing State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); State v. Holland, 261 S.C. 488, 201 S.E.2d 118 (1973); State v. Crowe, 258 S.C. 258, 188 S.E.2d 379 (1972)). "Charges can be joined in the same indictment and tried together where they 1) arise out of a single chain of circumstances; 2) are proved by the same evidence, 3) are of the same general nature; and 4) no real right of the defendant has been prejudiced." State v. Beekman 405 S.C. 225, 229, 746 S.E.2d 483, 486 (2013). A court should only grant a severance "when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent a jury from making a reliable judgment about a co-defendant's guilt." Id. at 282, 523 S.E.2d at 176.

Failing to object to the jury instructions on mutual combat, transferred intent and proximate cause

Applicant alleges Counsel was ineffective in failing to object to the jury charges on mutual combat, transferred intent, and proximate cause. Counsel testified he did take issue with the State's theory of the case. Counsel testified that the State, in its opening statement, alleged that they would prove the case as an accomplice liability case under the hand of one, hand of all theory. Counsel testified he jumped all over that in his opening statement because he did not believe there to be any proof of the two defendants acting in concert. Counsel also testified that he objected to Judge Keesley's instructions on mutual combat.

This Court agrees with Counsel and finds that he did properly object and preserve for appeal the issue of whether the jury should have been charged with mutual combat. Counsel objected to the mutual combat charge, and Judge Keesley ruled there was ample evidence supporting the charge. (Trial Tr. p. 1469, line 13 – p. 1472, line 10). See Jackson v. State, 355 S.C. 568, 571, 586 S.E.2d 562,562 (2003) (quoting State v. Graham, 260 S.C. 449, 450, 196 S.E.2d 495 (1973)) (“Mutual combat exists when there is ‘mutual intent and willingness to fight.’”). Codefendant's counsel objected to the transferred intent charge. (Trial Tr. p. 1472, lines 15-22). Judge Keesley charged transferred intent because there was a specific intent to kill a person but another person was killed. (Trial Tr. p. 1468, line 9 – p. 1469, line 1). This Court finds that although Counsel did not seem to join this objection to transferred intent, it would have been overruled. The charge was clearly applicable as a bystander to the fighting was shot and killed. Finally, as to the proximate cause charge, Applicant has similarly failed to meet his burden. Applicant cannot show that if he had made a challenge to the charge that it would have been successful. In any event, this Court finds the three challenged jury instructions were properly charged to the jury. This allegation is denied and dismissed with prejudice.

Q: And he actually had to identify his son there at the scene?

A: He did have to identify the son on the scene so we could have a positive I.D.

Mr. Sutherland [Counsel]: Your Honor, I'm sorry, it's just exceedingly prejudicial to point out the victim. I'm sorry.

Court: Say again.

Mr. Sutherland: I think it's exceedingly prejudicial to point out the family of the victim to the jury, sir.

Ms. Payne [Boone's Counsel]: We would join in as well.

Court: Well, the objection's not contemporaneous. And I don't want y'all to go into this any further.

(Trial Tr. p. 1149, line 24 – p. 1150, line 18) (parentheticals added). Counsel testified that while Judge Keesley stated that the objection was not contemporaneously made, he thought it was fairly close.

This Court finds Applicant failed to meet his burden. Applicant only argues that Counsel should have objected earlier in the questioning. This Court finds Counsel was not ineffective because he made the proper objection which Judge Keesley seemed to sustain because he scolded the solicitor for raising this line of questioning.

Failing to object to State's Exhibit 14 being published to the jury after previously having been excluded

Applicant further argues Counsel was ineffective for failing to object to State's Exhibit 14 being shown to the jury after it was excluded. Boone's counsel objected to a number of photographs of the victim that the State intended to introduce through forensic pathologist Dr. Clay Nichols. Judge Keesley previously ruled would Exhibit 14 be excluded under a Rule 403, SCRE, analysis. (Trial Tr. p. 344, lines 5-13). Applicant argues Exhibit 14 was shown to the jury during Dr. Nichols's testimony. (Trial Tr. p. 1029, lines 11-16). Solicitor Campbell brought it to Judge Keesley's attention that she referenced Exhibit 14 during her examination of Dr. Nichols. (Trial Tr. p. 1067, line 23 – p. 1071, line 7). Counsel made a motion for a mistrial which was joined by Boone's counsel. (Trial Tr. p. 1068, lines 15-23). Judge Keesley then ruled: "All right.



sustained it, and then issued a *sua sponte* curative instruction. Counsel also did not want to bring attention to the statement by arguing for any further instructions. Applicant cannot prove deficiency or prejudice. This allegation must be denied and dismissed with prejudice.

Failing to object to testimony outside the scope of expertise

Applicant alleges Counsel was ineffective for failing to object to two experts testifying outside the scope of their expertise and qualifications. Applicant argues that both Lieutenant Zane Padgett and Dr. Clay Nichols testified outside the bounds of their qualifications. The Court will address each in turn.

Lieutenant Zane Padgett

Padgett was qualified as an expert in crime scene investigations. Padgett testified during voir dire as to his training which included fingerprint comparison, arson investigation, trajectory analysis, blood pattern analysis, crime scene reconstruction. (Trial Tr. p. 376, line 22 – p. 377, line 10). He testified he had been in forensics for nearly twenty-four (24) years and that he has been qualified in several other areas as an expert as well. (Trial Tr. p. 377, lines 5-10). Applicant argues Padgett testified outside of the scope of those qualifications on redirect by Solicitor Campbell when asked about the speed of a projectile.

Q: Is there any way that the same bullet that went into the wall could have been the same one that killed him [victim]?

A: I don't think so. The problem is that the bullet would have to be traveling at such a rate of speeds to penetrate that steel wall and once it did, it didn't come out because there's no evidence that the bullet came out of that wall anywhere. There's no way that that bullet could have been the one that actually killed Mr. Wright. As to where that projectile is, my best answer is that it did fragment. It hit something hard behind the wall and it completely fragmented away. I went back at a later date and removed several panels from the Mobil State with tools in order to locate the projectile behind the wall, it was never found.

(Trial Tr. p. 407, lines 7-23).

GE 10

SCANNED

Q: Once the bullet entered the back of the head and exited out the front, can you say where it went?

A: No.

Q: Could it have continued to travel?

A: Yes. It will continue to travel until it runs out of energy and falls to the ground or is embedded in another object.

(Trial Tr. p. 1030, line 22 – p. 1031, line 20).

This Court finds Counsel was not ineffective in failing to object to the challenged testimony because Dr. Nichols was able to testify to the caliber of certain handguns because the penetrating power is a part of a pathologist's analysis in determining a likely murder weapon. Pathologists routinely give expert testimony on the type of gun they believe was used in a murder. Applicant has failed to meet his burden in proving Counsel was ineffective.

Furthermore, Applicant has not shown he was prejudiced by this testimony. Applicant has failed to show that if he had made that objection it would have been sustained or that its admission likely affected the trial. Investigator David Collins, the next witness called by the State, was qualified as an expert in firearms. He testified and explained how semiautomatic pistols and revolvers work. He also testified to their penetrating power. So even if Dr. Nichols's testimony was excluded, the testimony still gets before the jury through Investigator Collins. This allegation is denied and dismissed with prejudice.

Failing to object and move for a mistrial where witness pointed a weapon while testifying

Next, Applicant alleges Counsel was ineffective in failing to object and move for a mistrial when Investigator Collins was handling a weapon while testifying. Investigator Collins was qualified as an expert in firearms and explained to the jury how nine millimeters, .380, and .32 caliber handguns work and their differences. Counsel did make an objection that Investigator Collins should not be able to "waive these scary looking guns around up there, sir, I just don't see where it would be – where it would outweigh the prejudice." (Trial Tr. p. 1056, lines 18-19).

62-12

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Failing to object to leading questioning of Oliver Feldman

Applicant further alleges Counsel was ineffective in failing to object to the leading questioning of witness Oliver Feldman. Applicant points specifically to a portion of Feldman's testimony where Feldman says that he "made a mistake [in his prior statement] and thought it was two people." (Trial. Tr. p. 807, lines 24-25). Applicant argues this response was elicited after a leading question. Counsel testified that it is a judgement call on whether to object to a leading question. He explained that he could not object to every leading question asked by the solicitor. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). This Court finds Counsel provided a reasonable strategy for not objecting. This Court also notes that Judge Keesley denied the motion for a mistrial and motion to disallow any further testimony which was made by codefendant's counsel. Applicant cannot show that if he had joined those motions that Judge Keesley would have ruled in his favor. Judge Keesley also ruled that the proper way to deal with Feldman allegedly changing his statement was by impeaching him with his prior inconsistent statement. Counsel does this effectively on cross examination. This allegation is denied and dismissed with prejudice.

Ineffective Assistance of Appellate Counsel

A defendant is entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004), citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial.

ER 14

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appeal all trial errors is not deficient performance. Griffin v. Aiken, 775 F.2d 1226, 1235 (4th Cir. 1985).

"To establish prejudice relating to the actions of appellate counsel, Defendant must establish a reasonable probability that, but for his counsel's unreasonable failure to include a particular issue on appeal, he would have prevailed on his appeal." United States v. Mason, 2012 WL 5845807 at *1 (citing Smith v. Robbins, 528 U.S. at 285-86, 120 S. Ct. at 764).

Here, appellate counsel argued the trial judge erred in denying Counsel's motion for a directed verdict of acquittal as the State's circumstantial evidence against him did not rise above mere suspicion. Appellate counsel argued that the State could not prove Applicant fired the fatal shot and that the evidence was clear that the codefendant was responsible for the murder.

As an initial matter, this Court notes that appellate counsel did not testify at the PCR hearing. This Court finds that a presumption of effectiveness applies and that it is Applicant's burden to prove that appellate counsel was ineffective in failing to raise stronger issues that would have resulted in a reversal of Applicant's conviction. This Court cannot speculate as to whether appellate counsel considered raising these issues or believed they would have any merit. See Bannister v. State, 333 S.C. at 303, 509 S.E.2d at 809. Applicant alleges appellate counsel was ineffective in failing to raise an issue regarding a hearsay objection.

Applicant argues Counsel was ineffective in failing to raise the issue of Judge Keesley allowing alleged hearsay testimony from witness Robert Portee that he was threatened when others learned he was cooperating with law enforcement.

A: I mean, I didn't see anyone with a firearm. I told you why I said that. I was getting threatening phone calls before the police even came to my house. I don't want to put my family in jeopardy when I'm getting threatening phone calls saying, I know what your mom drive, I know where you live, I'm going to kill your parents, I'm going to kill your brother.

CE 416

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IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty-(30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 22 day of December, 2015.


G. THOMAS COOPER, JR.
Presiding Judge

Counsel, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EUGENE D. PATTERSON,

APPELLANT

FINAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF AUTHORITIES

Cases

<i>State v. Hernandez</i> , 382 S.C. 620, 677 S.E.2d 603 (2009).....	6
<i>State v. Hyder</i> , 242 S.C. 372, 131 S.E.2d 96 (1963).....	6
<i>State v. Lollis</i> , 343 S.C. 580, 541 S.E.2d 254 (2001).....	6
<i>State v. Weston</i> , 367 S.C. 279, 625 S.E.2d 641 (2006)	6

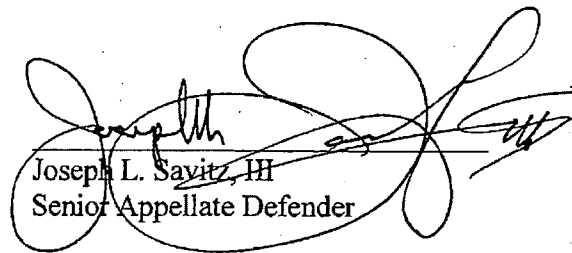
STATEMENT OF THE CASE

On May 5 through 13, 2008, Eugene Patterson and Andre Tayson Boone stood trial in Richland County, before Judge William P. Keesley and a jury, on indictments charging them with the murder of Bryan Wright the night of February 19, 2007. A third co-defendant, Oliver Feldman, testified for the State. In addition to murder, the judge instructed the jury on self defense. The jury nevertheless found Patterson and Boone guilty of Wright's murder, and the judge sentenced them both to imprisonment for forty-five years.

A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. *State v. Hernandez*, 382 S.C. 620, 677 S.E.2d 603 (2009). If there is any direct evidence or substantial 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. Weston*, 367 S.C. 279, 625 S.E.2d 641 (2006). A trial judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001). "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. *State v. Hyder*, 242 S.C. 372, 131 S.E.2d 96 (1963).

By all accounts, Patterson returned fire only after Boone began shooting. While the fatal projectile was never recovered, circumstantial evidence suggests that Boone fired the fatal shot. Under these circumstances, Patterson can not be held criminally liable for Wright's tragic death. For this reason, the Court should reverse Patterson's conviction for murder and direct a verdict of acquittal.

Respectfully submitted,



Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT.

April 6, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

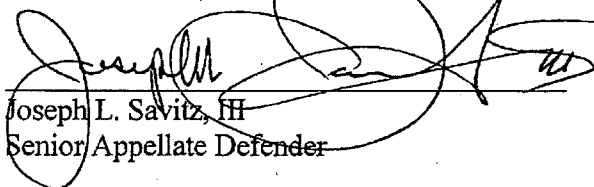
V.

EUGENE D. PATTERSON,

APPELLANT

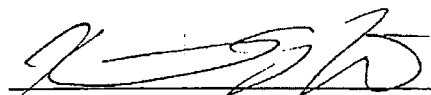
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 6th day of April, 2010.


Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of April, 2010

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 1, 2019.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
William P. Keesley, Circuit Court Judge

The State,

Respondent,

vs.

Eugene D. Patterson,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF AUTHORITIES

Cases:

<i>Alston v. State</i> , 643 A.2d 468, 469 (Md. App.1994)	20
<i>Owens v. State</i> , 906 A.2d 989, 1026 (Md. App. 2006)	19
<i>Reyes v. State</i> , 783 So.2d 1129, 1133 -1134 (Fla.App. 3 Dist. 2001)	20
<i>Robinson v. State</i> , 307 Md. 738, 745-746, 517 A.2d 94, 98 (Md. 1986)	19
<i>Roy v. United States</i> , 871 A.2d 498, 507 (D.C. 2005), <i>cert. denied</i> , 547 U.S. 1162, 126 S.Ct. 2346 (2006)	20
<i>State v. Brown</i> , 589 N.W.2d 69 (Iowa App. 1998), <i>reversed on other</i> <i>grounds, State v. Reeves</i> , 636 N.W. 2d 22 (Iowa 2001)	18, 19
<i>State v. Buckmon</i> , 347 S.C. 316, 321, 555 S.E.2d 402, 404 (2001)	14
<i>State v. Burton</i> , 302 S.C. 494, 496-97, 397 S.E.2d 90, 91 (1990)	21
<i>State v. Cherry</i> , 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004)	15
<i>State v. Dantonio</i> , 376 S.C. 594, 605, 658 S.E.2d 337, 343 (Ct. App. 2008)	21
<i>State v. Dickey</i> , 380 S.C. 384, 393, 669 S.E.2d 917, 922 (Ct. App. 2008)	17
<i>State v. Fennell</i> , 340 S.C. 266, 272, 531 S.E.2d 512, 515 (2000)	16
<i>State v. Finley</i> , 277 S.C. 548, 551-552, 290 S.E.2d 808, 809- 810 (1982)	17
<i>State v. Frazier</i> , 375 S.C. 575, 581, 654 S.E.2d 280, 283 (2007)	14, 15, 18
<i>State v. Freiburger</i> , 366 S.C. 125, 136, 620 S.E.2d 737, 743 (2005)	14
<i>State v. Heyward</i> , 15 S.E.2d 669, 672 (1941)	16
<i>State v. Hendrix</i> , 270 S.C. 653, 244 S.E.2d 503 (1978)	17
<i>State v. Jenkins</i> , 276 S.C. 209, 210-211, 277 S.E.2d 147, 147 - 148 (1981)	21
<i>State v. Kelsey</i> , 331 S.C. 50, 502 S.E.2d 63 (1998)	15
<i>State v. Marti</i> , 290 N.W.2d 570, 579 (Iowa 1980)	19

APPELLANT'S STATEMENT OF ISSUE ON APPEAL

The trial judge erred by denying Patterson's motion for a directed verdict of acquittal as the State's circumstantial evidence against Patterson was too insubstantial to rise above a mere suspicion that he was guilty.

RESPONDENT'S STATEMENT OF FACTS

In the closing minutes of February 18, 2007, a shootout occurred in the parking lot of a Waffle House in Richland County. Just after midnight, on February 19, 2007, an officer from the Richland County Sheriff's Department responded to the scene and found victim's body on the ground. As he approached, he saw blood on the ground and the victim's fatal head wound. Knowing there was nothing to be done for the victim, the officer began to secure the scene and ask what had happened. Though numerous people were milling about, the only response he received was that "nobody saw anything." (R. p. 334, line 17 - p. 336, line 23). Other officers from the Department arrived to investigate the scene. A forensics officer recovered shell casings from "two general areas basically," near the front door and a separate area to the right of the Waffle House. There was a live bullet and two shell casing from a .38 found near the front door, and two 9mm casings recovered from the area to the right of the Waffle House. (R. p. 387, line 3- p. 388, line 20). A search during daylight hours turned up an entrance mark in the Mobil station adjacent to the Waffle House. Investigation of that mark also led to the recovery of three additional 9mm casings in the grass also near the right front of the Waffle House. (R. p. 392, line 19 - p. 394, line 12). The reverse trajectory of the bullet mark in the Mobil station pointed directly to the area where the 9mm shells were recovered. (R. p. 400, line 12 - p. 401, line 18). The investigator noted that while the shell casings could give a general area where the shooter was standing, location of the shell casings were not tied to where the shooter pointed his gun, "[i]t could be anywhere around that circle of the shell casings when he fired it." (R. p. 421, lines 12-20). The victim's body was "directly across" from the front door area of the Waffle House. (R. p. 448, lines 2-11). Either of the two weapons had the range to strike the victim if fired

535, lines 24-25). Tayson went to where Corey was fighting, near the front of the Waffle House, and "one dude say, if he jump in, he was going to shoot them." (R. p. 539, lines 1-25). Tayson asked Jerome for Jerome's 9mm pistol. Tayson took the pistol and fired two times into the air. (R. p. 526, line 17 - p. 527, line 10; p. 542, lines 2-22). Jerome saw two people, one light-skinned man wearing blue colors and one dark-skinned man, also open fire. (R. p. 544, lines 2-4). Tayson fired back. (R. p. 552, lines 12-25). Jerome, Tayson, and the rest of their group drove away. Jermon disposed of the gun because he "thought it had a body on it." (R. p. 555, line 2 - p. 556, line 11).

Robert Portee, also a TTP Blood, was also present at the Waffle House. He saw Corey fight with another individual named Chad. Robert also recalled that Chad had several people come to the fight with him, and basically described two groups coming together over the fight. He identified Eugene Patterson as being one of the individuals present in the front of the parking lot. Robert eventually joined the fist fight with Corey when he believed Chad was winning. Shots were then fired, from the front and the back, and Robert left. (R. p. 585, line 20 - p. 589, line 19; p. 590, line 11 - p. 591, line 20). Prior to the beginning of the fight, and the shooting, Robert spoke to Tayson. Tayson told Robert that he "was going to chunk at these niggers," meaning he intended to shoot at them, and Robert heard the "racking of a gun." (R. p. 592, line 4 - p. 593, line 4).

Quintez Clemons testified that he and Sylvester Boone were in the parking lot that night speaking with Tayson when a maroon car and a green car with white writing came by. Quintez recognized his friend, Karmidae a/k/a "Bay," driving the maroon car. He went up to the car to say hello. There were two other people in the car - - "a light skinned" young man with braids, wearing blue colors, and another. The light-skinned man pulled a gun on

Corey also noticed another group at the back of the parking lot, a group that included Tayson and Jermone. Tayson was a Blood, but from a different sect, a "Six Deuce Brim." (R. p. 637, lines 2-8; p. 638, line 16 - p. 639, line 15; p. 640, lines 6-15). Corey acknowledged the "only beef" he had with Eugene Patterson was, "I'm Blood, he's a Folk." (R. p. 642, line 25 - p. 643, line 1). Though he did not see who was shooting, he heard shots from what he believed to be three areas, from the nearby Mobil station and from the more immediate parking lot areas. (R. p. 648, line 3 - p. 649, line 13).

Chad Robinson testified similarly, that he and Corey were fighting, another intervened, and "the [n]ext thing you know, pow, pow, we heard shots." (R. p. 964, lines 2-9). Though he could not identify any of the shooters, testifying only that he ran when shots were fired, he did recall seeing Eugene Patterson at the Waffle House in a burgundy car. (R. p. 969, line 14 - p. 970, line 2).

Karmindae Legget, a/k/a "Bay," testified that he went to the Waffle House with friends Eugene "Big Gene" Patterson, a Folk, and Oliver Feldman, a Crip, to see the fight. (R. p. 703, line 15 - p. 705, line 17; p. 721, lines 8-13). After the fight began, Karmindae heard gunshots fired from the back of the lot. (R. p. 710, lines 5-19). Oliver and Eugene Patterson retrieved their guns from the car. Oliver had a .32 and Eugene Patterson had a .38. They fired several shots toward the back of the lot. More shots were fired toward them. Karmindae, Eugene Patterson, and Oliver jumped in their car and left. (R. p. 711, line 15 - p. 713, line 20).

Samuel Clemons, who was with Tayson at the Waffle House, recalled seeking Bay, Oliver and Eugene Patterson pull up. He recalled Oliver was wearing blue, and holding a

between gang members.” (R. p. 803, lines 13-15). He then saw someone from the back of the parking lot shoot into the air. (R. p. 803, lines 17-22). The shooter then began to fire directly at Oliver. Oliver and Eugene Patterson retrieved their weapons from their car and returned fire. (R. p. 804, line 11 - p. 805, line 17). He testified that neither he nor Patterson would have fired but for the fact that they were fired upon first. (R. p. 840, lines 3-12). In cooperating with the investigation, Oliver advised that his hand gun, a .32 caliber handgun, was in a coat in his bedroom. The gun was recovered. (R. p. 954, line 7 - p. 956, line 7; p. 1171, line 22 - p. 1172, line 25).

Sgt. William McRoberts of the Richland County Sheriff's Department took Eugene Patterson's initial statement at the sheriff's department. In his initial statement, voluntarily given during the investigation, he admitted being at the Waffle House and seeing the fight, but claimed that he left when the fight started. He further claimed that he heard gunshots as he was backing out to leave, and drove “straight home to [his] mom's house....” (R. p. 880, line 20 - p. 881, line 5). Patterson was later arrested as the investigation revealed more facts of his involvement. In his second statement, this one given while in custody, Patterson still denied involvement but stated that he saw Oliver shoot at the crowd and toward the gas station. (R. p. 892, line 9 - p. 895, line 21). He would later admit, in a third statement, that he did not drive himself to the Waffle House, but was with Karmindae, and Oliver in Oliver's burgundy Malibu. He saw a fellow from the back of the lot fire into the air once and into the crowd twice. He then stated he and Oliver ran to the car, and Oliver began to return fire. (R. p. 920, line 25 - p. 922, line 14).

Forensic testing confirmed that all five 9mm casings recovered from the Waffle House parking lot were fired by the same gun. Further, the two .38 casing recovered from

Tayson Boone presented a defense in the case. Boone called Donald Girndt, a forensic consultant, who testified that the victim did not move very far after being shot, "just a few feet," before collapsing, and, according to the shell casing groups from the far left of the Waffle House, the victim would not have been in the line of fire from that area. (R. p. 1363, lines 1-23). Boone also testified in his own defense. He essentially restated the facts of his prior statement, i.e. that he shot twice in the air, the light-skinned man and a dark-skinned man fired toward him, and he fired back, over their heads. He reiterated that no one was in the cross-fire. He claimed, however, that he did not know who the people were pulling up to the Waffle House before the fight, and he was not a gang member. He also claimed that he believed he needed to "stop this" or "somebody [is] going to end up getting hurt," and the only way he knew to do so was to fire in the air so every one would disperse and go home. (R. p. 1380, line 1 - p. 1384, line 8; p. 1386, line 11 - p. 1387, line 7; p. 1392, lines 8-15; p. 1394, lines 5-9).

... What I think you've got is a proximate cause issue. I think you've got two people allegedly engaged - - three people allegedly engaged in improper activity. And the question is can you hold all three responsible when you don't know which bullet went through Mr. Wright's head?

I think the answer to that question is, yes, you can hold all three responsible....

(R. p. 1344, lines 13-22). (See also R. p. 1348, line 25 - p. 1349, line 3).

Defense counsel renewed his motion at the close of the defense case, and argued that the State had failed to show liability where the evidence suggested that another shooter fired the fatal bullet. (R. p. 1440, line 4 - p. 1441, line 17).

The trial judge charged the jury on proximate cause:

... A defendant cannot be convicted of murder unless his acts were a proximate cause of the death of the victim. Proximate cause is akin to being a direct cause, a cause without which the death would not have resulted.

The law recognizes that there can be more than one proximate cause of an injury or death. You can have a situation where an act is the proximate cause or, perhaps stated better, the sole proximate cause of the death or you can have a situation where an act is a proximate cause. In other words, a situation where acts of malice by more than one person contributed to each other and combine to proximately cause death.

Now, in criminal law, proximate cause is a cause which in the natural and continuing sequence of events unbroken by an efficient, intervening cause produces death and without which the death would not have occurred.

To ... be an efficient cause sufficient to break the causal link, the intervening cause has to be independent of that particular defendant's wrongful conduct. It has to be an act that was adequate to bring about the death on its own. And it had to be an act that was not foreseeable to that particular defendant.

However, an intervening act by another person or another defendant that is simply, quote, A, unquote, proximate cause and merely joins with the

existence or nonexistence of evidence, not with its weight.” *Frazier*, 375 S.C. at 581, 654 S.E.2d at 283, *quoting State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004); *State v. Odems*, 385 S.C. 399, 684 S.E.2d 573 (Ct.App. 2009). “The court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt.” *Frazier*, 375 S.C. at 581, 654 S.E.2d at 283. “ ‘Suspicion’ implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. However, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.” *Id.* (citations omitted). *See also Odems*, 385 S.C. at 404, 684 S.E.2d at 575.

“South Carolina law defines murder as “the killing of any person with malice aforethought, either express or implied.” *Zeigler*, 364 S.C. at 103, 610 S.E.2d at 864, *quoting S.C. Code Ann. § 16-3-10* (2003). “Malice is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong.” *Id.*, *citing State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998).

The evidence, when taken in the light most favorable to the State, as it must, shows that gang warfare was at play in the shooting. There is ample evidence that appellant brought his gun to the Waffle House intending to use the gun that night. Respondent specifically points to appellant’s gesturing with the gun prior to any violence breaking out, pointing his gun directly at Corey Sanders, a rival gang member, (R. p. 632, lines 15-25; p. 633, line 17 - p. 634, line 25; p. 650, lines 18-22), and evidence of the basic animosity between the rival gangs Blood and Crips/Folks, (R. p. 642, line 25 - 643, line 1; p. 756, line 20 - p. 757, line 4). Additionally, there is ample evidence that appellant actually fired his weapon toward Tayson, (R. p. 614, line 25 - p. 615, line 8; p. 711, line 14 - p. 712, line 12; p. 713, lines 11-12; p. 742, line 7 - p. 743, line 3; p. 804, line 21 - p. 805, line 17; p. 1383, lines 19-22).

guilty of the crime charged, it matters not whether he killed his intended victim or a third person through mistake.”). *See also State v. Fennell*, 340 S.C. 266, 272, 531 S.E.2d 512, 515 (2000)(“This Court in several cases has held that a defendant may be found guilty of murder or manslaughter in a case of bad or mistaken aim under the doctrine of transferred intent. In the classic case, the defendant intends to kill or seriously injure one person, but misses that person and mistakenly kills another.”).² Moreover, the anemic reliance on self-defense, (See FBOA, p. 6, “Patterson returned fired only after Boone began shooting”), is easily dispatched. Any claim of self-defense could be disproved since appellant was not without fault as he brought a gun to a fight.³ *See State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007)(“In the instant case, the record clearly reflects that Slater approached an altercation that was already underway with a loaded weapon by his side. Such activity could be reasonably calculated to bring the difficulty that arose in this case.”). Additionally, there is no imperfect self-defense in South Carolina. *See State v. Finley*, 277 S.C. 548, 551-552, 290 S.E.2d 808, 809- 810 (1982). But that is not relevant to the analysis here as it necessarily depends on accepting some evidence, rejecting other evidence. For purposes of this analysis, the assertion importantly concedes that appellant fired his weapon in a gang shootout, which

² The Supreme Court of South Carolina has recently termed “unsettled” the law of transferred intent as to voluntary manslaughter. *State v. Wharton*, 381 S.C. 209, 215, 672 S.E.2d 786, 789 (2009)(“the applicability of the doctrine of transferred intent to voluntary manslaughter cases where the defendant kills an unintended victim upon sufficient legal provocation committed by a third party remains an unsettled question in South Carolina”).

³ The trial judge did charge self-defense, based mainly on his interpretation of S.C. Code Ann. § 16-11-440 (2006). (See R. p. 1464, line 8 - p. 1467, line 4). Importantly, though, in this appeal, appellant *does not* claim the evidence of self-defense was so overwhelming and unchallenged as to entitle him to a verdict of acquittal. *Compare State v. Dickey*, 380 S.C. 384, 393, 669 S.E.2d 917, 922 (Ct. App. 2008)(“Dickey argues under *State v. Hendrix*, 270 S.C. 653, 244 S.E.2d 503 (1978), the trial court should have directed a verdict of acquittal because the State failed to provide evidence to negate his claim of self-defense as a matter of law.”).

court rejected Brown's assertion that "he cannot be a proximate cause of Davis's death because her death was not reasonable and therefore not foreseeable" and "conclude[d] the probability of death or injury during a moving shoot-out through downtown Des Moines is highly foreseeable." 636 N.W.2d at 74. The sound reasoning on proximate cause is reflected in the following passage:

Brown's engagement in conduct that created a very high risk of death or serious bodily injury to others was a proximate cause of Davis's death. *See State v. Marti*, 290 N.W.2d 570, 579 (Iowa 1980). This is true whether it was the defendant or another participant in the shoot-out who fired the shot that killed the innocent bystander. *See id.* ("It is not essential for conviction in all cases that the accused actively participated in the immediate physical impetus of death"). *See also State v. McFadden*, 320 N.W.2d 608, 609-10 (Iowa 1982)(holding the fact the defendant's auto, while drag racing, did not contact the victim's car did not preclude his conviction). Iowa law requires only the defendant did some act which resulted in the victim's death. *Id.*

589 N.W.2d 69, 74 -75.

A Maryland Court of Appeals consider a similar circumstances in regard to a conviction for a "depraved murder"⁶ conviction, reasoned as follows:

on the other hand, does not require deliberation and premeditation; it requires only proof of malice aforethought. *Compare* Iowa Code § 707.2(1) with § 707.3." *State v. Reeves*, 636 N.W.2d 22, 25 (Iowa 2001). Thus, it appears that the charge would be in definition, though not statutory structure, comparable to the murder charge in this State.

⁶ Again, though we have no such offense, this charge appears similar to the "second degree murder" charge in Iowa, and omits only an otherwise required deliberation or premeditation element of first degree. *See Owens v. State*, 906 A.2d 989, 1026 (Md. App. 2006)(describing one way of proving second degree murder as "what has become known as depraved heart murder--a killing resulting from 'the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not.'"). It is not, however, limited to unintentional acts, but apparently professed unintentional results. *Robinson v. State*, 307 Md. 738, 745-746, 517 A.2d 94, 98 (Md. 1986). The inclusion of the "depraved heart" and "reckless and wanton" aspect, however, places the charge on similar footing with our requirement of malice. *See Zeigler, supra; State v. Wilds*, 355 S.C. 269, 276-277, 584 S.E.2d 138, 142 (Ct.App. 2003)("Implied malice is when circumstances demonstrate a 'wanton or reckless disregard for human life').

the evidence was unclear as to whether Roy's or Settles' bullet was responsible for the fatal shot, such a determination is unnecessary if both men prepared for and undertook to participate in the gun battle where it was clearly foreseeable that others would be endangered." 871 A.2d at 509.

Likewise, our state courts have long upheld a proximate cause analysis in regard to murder charges. *See, for example, State v. Dantonio*, 376 S.C. 594, 605, 658 S.E.2d 337, 343 (Ct. App. 2008), *citing State v. Burton*, 302 S.C. 494, 496-97, 397 S.E.2d 90, 91 (1990) ("A defendant's act may be regarded as the proximate cause if it is a contributing cause of the death of the deceased"). Though state proximate cause issues have generally dealt with extenuating causes of death, and not who inflicted the wound, (*See, for example, State v. Jenkins*, 276 S.C. 209, 210-211, 277 S.E.2d 147, 147 - 148 (1981) (murder conviction upheld when stabbing victim who was being treated in hospital had an allergic reaction to dye used in testing and died), this is merely a factual variation on an accepted legal theory. Therefore, our state law should support a proximate cause analysis in this context.

At any rate, the evidence here does not foreclose a finding the appellant actually fired the fatal bullet. Having ample evidence support of guilt, the trial judge properly denied the motion for a directed verdict. Appellant's argument to the contrary must be rejected.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
William P. Keesley, Circuit Court Judge

The State,

Respondent,

vs.

Eugene D. Patterson,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR. The undersigned also certifies that the Final Brief is in compliance with the South Carolina Supreme Court's Order of August 13, 2007.

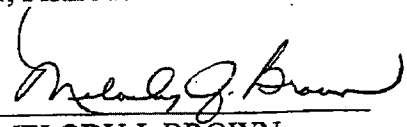
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April 9, 2010.
Columbia, South Carolina.

APPENDIX 001911

**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.

Eugene D. Patterson, Appellant.

Appellate Case No. 2008-090626

Appeal From Richland County
William P. Keesley, Circuit Court Judge

Unpublished Opinion No. 2013-UP-154
Heard April 1, 2013 – Filed April 17, 2013

AFFIRMED

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Attorney General Donald J. Zelenka, Assistant Attorney
General Melody Jane Brown, and Solicitor Warren B.
Giese, all of Columbia, for Respondent.

contributing to the death of the deceased."); *State v. Fennell*, 340 S.C. 266, 272, 531 S.E.2d 512, 515 (2000) ("[A] defendant may be found guilty of murder or manslaughter in a case of bad or mistaken aim under the doctrine of transferred intent."); *Heyward*, 197 S.C. at 377, 15 S.E.2d at 672 ("If there was malice in [defendant's] heart, he was guilty of the crime charged, it matters not whether he killed his intended victim or a third person through mistake.").

AFFIRMED.

SHORT, THOMAS, and PIEPER, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

EUGENE D. PATTERSON,

APPELLANT

APPELLATE CASE NO. 2008-090626

Appeal from Richland County

William P. Keesley, Circuit Court Judge

Opinion No. 2013-UP-154

PETITION FOR REHEARING

The Court of Appeals affirmed the above named appellant's conviction and sentence for murder April 17, 2013. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, appellant submits the following:

Patterson argued on appeal that the trial judge erred by denying Patterson's motion for a directed verdict of acquittal as the State's circumstantial evidence against Patterson was too insubstantial to rise above a mere suspicion that he was guilty.

Wright.” ROA p. 305 lines 17-23. Its theory of the case, as summarized by one of the investigating officers, was that “[t]he gun battle itself killed Bryan Wright.” ROA p. 1138 lines 6-10; ROA p. 1278 lines 4-7. They also conceded that Wright’s death was unintentional. ROA p. 1306 lines 4-8.

At the conclusion of the State’s case, counsel for Patterson moved for a directed verdict of acquittal. ROA p. 1322 line 22- ROA p. 1327 line 25; ROA p. 1338 line 14- ROA p. 1339 line 8. The judge denied the motion. ROA p. 1343 lines 2-5. Counsel unsuccessfully renewed his directed verdict motion at the conclusion of the defense case. ROA p. 1440 line 4- ROA p. 1441 line 17. A post-verdict new trial motion was also denied. ROA p. 1630 lines 16-23.

A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. *State v. Hernandez*, 382 S.C. 620, 677 S.E.2d 603 (2009). If there is any direct evidence or substantial 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. Weston*, 367 S.C. 279, 625 S.E.2d 641 (2006). A trial judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001). “Suspicion” implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. *State v. Hyder*, 242 S.C. 372, 131 S.E.2d 96 (1963).

The Court of Appeals misapprehended the issue. The state did not prove that Patterson’s bullet killed Bryan Wright. By all accounts, Patterson fired only after Boone began shooting. While the fatal projectile was never recovered, circumstantial evidence suggests that Boone fired the fatal shot. The state committed burden shifting by making Patterson prove that his shot did not hit the victim. Under these circumstances, Patterson can not be held criminally liable for Wright’s tragic death.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

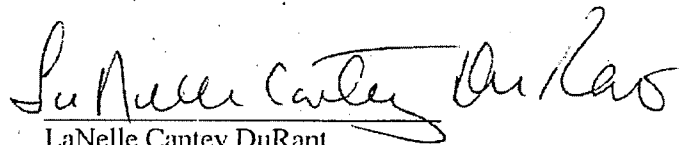
EUGENE D. PATTERSON,

APPELLANT

APPELLATE CASE NO. 2008-090626

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Melody J. Brown, Esquire, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of May, 2013.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 1st day
of May, 2013.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires:

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

William P. Keesley, Circuit Court Judge

Opinion No. 2013-UP-154 (S.C. Ct. App. filed 4/17/2013)

07-GS-40-2137

THE STATE,

RESPONDENT,

V.

EUGENE D. PATTERSON,

PETITIONER

APPELLATE CASE NO. 2013-001369

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on 5/24/2013.

STATEMENT OF THE CASE

On May 5 through 13, 2008, Eugene Patterson and Andre Tayson Boone stood trial in Richland County, before Judge William P. Keesley and a jury, on indictments charging them with the murder of Bryan Wright the night of February 19, 2007. Patterson was represented by Tivis Sutherland, and Boone was represented by Camille Everhart, Danielle Payne, and Ashley Thomas. The state was represented by Kathryn Luck Campbell and Daniel Goldberg. A third co-defendant, Oliver Feldman, testified for the State. The jury found Patterson and Boone guilty of Wright's murder, and the judge sentenced them both to imprisonment for forty-five years.

Patterson's attorney filed a notice of appeal. The Court of Appeals affirmed Patterson's conviction on April 17, 2013. State v. Patterson, Op. No. 2013-UP-154 (Ct. App. filed April 17, 2013). App. 1 – 3. Petitioner filed a petition for rehearing on May 1, 2013. App. 4-7. The Court of Appeals filed an order denying the petition for rehearing on May 24, 2013. App. 9. This petition for a writ of certiorari to the Court of Appeals follows.

evidence or substantial 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. Weston*, 367 S.C. 279, 625 S.E.2d 641 (2006); *State v. Lewis*, 403 S.C. 345, 743 S.E.2d 124 (Ct. App. 2013). A trial judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001). "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. *State v. Hyder*, 242 S.C. 372, 131 S.E.2d 96 (1963).

The Court of Appeals held that a defendant's act may be regarded as the proximate cause if it is a contributing cause of the death of the deceased. *State v. Dantonio*, 376 S.C. 594, 605, 658 S.E.2d 337 (Ct. App. 2008). App. 2. The Court also held that if there was malice in the defendant's heart, he was guilty of the crime charged; it matters not whether he killed his intended victim or a third person through mistake. App. 3. The Court of Appeals misapprehended the issue. Patterson's actions were not a contributing cause because Patterson fired only after other shots were fired, and did not even know Wright. This was not a case of mistaken aim as the Court of Appeals held because Patterson did not know Wright and was not aiming at him.

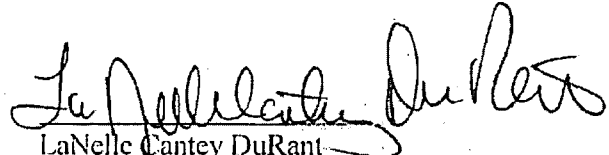
The state did not prove that Patterson's bullet killed Bryan Wright. By all accounts, Patterson fired only after Boone began shooting. While the fatal projectile was never recovered, circumstantial evidence suggests that Boone fired the fatal shot. The state committed burden shifting by making Patterson prove that his shot did not hit the victim. Under these circumstances, Patterson can not be held criminally liable for Wright's tragic death.

In *State v. Burris*, 334 S.C. 256, 513 S.E.2d 104 (1999), the Supreme Court ruled on proximate cause by citing 40 Am.Jur.2d at Sect. 13 (1968) which provided:

CONCLUSION

Based on the above, certiorari should be granted, and the case remanded for the entry of a directed verdict.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER.

This 22nd day of August, 2013

The Supreme Court of South Carolina

The State, Respondent,

v.

Eugene D. Patterson, Petitioner.

Appellate Case No. 2013-001369

Lower Court Case No. 2007GS4002137

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ORDER

Petitioner seeks a writ of certiorari to review the Court of Appeals' opinion in *State v. Patterson*, Op. No. 2013-UP-154 (S.C. Ct. App. filed April 17, 2013). We deny the petition.

 C.J.
FOR THE COURT

Columbia, South Carolina

January 23, 2014

cc: LaNelle Cantey DuRant, Esquire
Melody Jane Brown, Esquire
The Honorable Jenny Kitchings
The Honorable Jeanette W. McBride

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