

Volume II of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Robin B. Stilwell, Circuit Court Judge

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SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

KERWIN PARKER,

APPELLANT

Appellate Case No. 2009-147266

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INDEX

INDEX.....i

TRIAL TRANSCRIPT DATED SEPTEMBER 14-18, 2009..... 1

TRIAL JUDGE’S OPENING REMARKS2

OPENING ARGUMENT BY SOLICITOR DIXON.....17

OPENING ARGUMENT BY MS. FULLWOOD22

OPENING ARGUMENT BY MR. DUNCAN.....26

TRIAL TESTIMONY

 AMY FLEMING

 Direct Examination by Solicitor Dixon30

 Cross Examination by Ms. Fullwood.....42

 Cross Examination by Mr. Duncan.....50

 Redirect Examination by Solicitor Dixon.....52

 REBEKAH FLEMING

 Direct Examination by Solicitor Dixon53

 Cross Examination by Ms. Fullwood.....67

 Cross Examination by Mr. Duncan.....81

 Redirect Examination by Solicitor Dixon.....85

 WALTER GADSON

 Direct Examination by Solicitor Myers86

 Cross Examination by Ms. Fullwood.....120

 Cross Examination by Mr. Duncan.....131

 Redirect Examination by Solicitor Myers.....144

 A. J. WILSON

 Direct Examination by Solicitor Dixon146

 Cross Examination by Ms. Fullwood.....168

 Cross Examination by Mr. Duncan.....177

 Redirect Examination by Mr. Solicitor Dixon.....193

 Re-cross Examination by Ms. Fullwood.....196

STEVE COLLINS	
Direct Examination by Solicitor Myers	198
Cross Examination by Ms. Fullwood.....	213
Cross Examination by Mr. Duncan.....	216
JOSE HERNANDEZ	
Direct Examination by Solicitor Myers	226
Cross Examination by Mr. Duncan.....	236
Cross Examination by Ms. Fullwood.....	251
TEDDY XANTHAKUS	
Direct Examination by Solicitor Myers	258
Cross Examination by Ms. Fullwood.....	273
Cross Examination by Mr. Duncan.....	274
DANNY LEWIS	
Direct Examination by Solicitor Myers	276
Cross Examination by Ms. Fullwood.....	281
BARBARA MCMULLEN	
Direct Examination by Solicitor Dixon	283
WILSON MATTHEWS	
Direct Examination by Solicitor Dixon	284
Cross Examination by Ms. Fullwood.....	292
HENRY DUKES	
Direct Examination by Solicitor Myers	294
Cross Examination by Mr. Duncan.....	299
LAWRENCE ASHFORD	
Direct Examination by Solicitor Dixon	299
OLGA CORA	
Direct Examination by Solicitor Dixon	305
DARIUS WADE	
Direct Examination by Solicitor Myers	311
OSCAR MCINTOSH	
Direct Examination by Solicitor Myers	314
Cross Examination by Ms. Fullwood.....	324
Cross Examination by Mr. Duncan.....	325
TROY LIVINGSTON	
Direct Examination by Solicitor Myers	327

ROGER BEAVER

Direct Examination by Solicitor Myers	333
Cross Examination by Mr. Duncan.....	336

LAURA GRIMES-GOULD

Direct Examination by Solicitor Dixon	339
Cross Examination by Ms. Fullwood.....	376
Cross Examination by Mr. Duncan.....	384

JIM HICKMAN

Direct Examination by Solicitor Myers	392
Cross Examination by Ms. Fullwood.....	413
Cross Examination by Mr. Duncan.....	414

BETH HARMON

Direct Examination by Solicitor Dixon	415
Cross Examination by Mr. Duncan.....	422

CANDY KYZER

Direct Examination by Solicitor Dixon	424
---	-----

STEVE COLLINS

Direct Examination by Solicitor Myers	426
Cross Examination by Ms. Fullwood.....	429
Cross Examination by Mr. Duncan.....	429
Redirect Examination by Solicitor Myers.....	434

NIKKI PERRY

Direct Examination by Solicitor Dixon	435
---	-----

LISA MCREYNOLDS

Direct Examination by Solicitor Dixon	445
---	-----

ILA SIMMONS

Direct Examination by Solicitor Dixon	450
Cross Examination by Mr. Duncan.....	461

DAVID BLACK

Direct Examination by Solicitor Dixon	468
Cross Examination by Mr. Duncan.....	479

BLAYD FINS

Direct Examination by Solicitor Myers	481
---	-----

JANICE BRYSON

Direct Examination by Solicitor Dixon	487
---	-----

JASPER HUMBERT	
Direct Examination by Solicitor Dixon	492
DOCTOR RANDALL SUAREZ	
Direct Examination by Solicitor Dixon	500
DOCTOR STEPHEN FANN	
Direct Examination by Solicitor Dixon	505
DOCTOR JANICE ROSS	
Direct Examination by Solicitor Dixon	511
Cross Examination by Ms. Fullwood.....	517
DIRECTED VERDICT MOTION.....	521
RULING ON DIRECTED VERDICT MOTION	521
TRIAL TESTIMONY CONTINUED	
DEBRA FIELDS	
Direct Examination by Mr. Duncan	522
Cross Examination by Solicitor Myers	523
Redirect Examination by Mr. Duncan	527
YOLANDA SPENSER	
Direct Examination by Ms. Fullwood.....	528
Cross Examination by Solicitor Dixon	533
DAVID MACDOUGALL	
Direct Examination by Ms. Fullwood.....	535
Cross Examination by Solicitor Myers	537
CURTIS JOHNSON	
Direct Examination by Ms. Fullwood.....	539
Cross Examination by Solicitor Myers	580
Cross Examination by Mr. Duncan.....	610
Redirect Examination by Ms. Fullwood	611
STEVE COLLINS	
Direct Examination by Solicitor Myers	614
Cross Examination by Ms. Fullwood.....	620
Cross Examination by Mr. Duncan.....	623
STEPHANIE FLOYD	
Direct Examination by Solicitor Myers	626
Cross Examination by Mr. Duncan.....	628

RENEWAL OF DIRECTED VERDICT MOTION633

RULING ON DIRECTED VERDICT MOTION633

CHARGE CONFERENCE.....633

CLOSING ARGUMENT BY MS. FULLWOOD 647

CLOSING ARGUMENT BY MR. DUNCAN659

CLOSING ARGUMENT BY SOLICITOR MYERS.....668

JURY CHARGE.....699

VERDICTS.....740

RULING ON NEW TRIAL MOTION.....742

SENTENCING HEARING TRANSCRIPT DATED OCTOBER 21, 2009744

NEW TRIAL MOTION PER STATE V. BELCHER, 385 SC 597 685 S.E. 2D 802 (2009)748

NEW TRIAL MOTION DENIED751

SENTENCING775

RECONSTRUCTION HEARING TRANSCRIPT DATED OCTOBER 3, 2011779

HEARING TESTIMONY

 CURTIS JOHNSON

 Direct Examination by Ms. Fullwood.....797

 KERWIN PARKER

 Direct Examination by Trial Judge847

TRIAL JUDGE’S CLOSING REMARKS.....865

INDICTMENTS AND SENTENCING SHEETS.....868

CERTIFICATE OF COUNSEL.....876

Doctor Randall Suarez - Direct examination
by Solicitor Dixon

609

1 BY SOLICITOR DIXON:

2 Q Doctor Suarez, where do you work?

3 A Lexington Orthopedic, Lexington Medicals, Medical
4 Center.

5 Q What do you do there?

6 A Orthopedic surgeon.

7 Q Educational background.

8 A Four years of Presbyterian College for my Bachelor's
9 Degree, and four years of College of Medicine for an M.D.
10 Degree, and then five years of residency at U.S.C. School
11 of Medicine at Richland Memorial.

12 MS. FULLWOOD: Your Honor, we stipulate to Doctor
13 Suarez's expertise in the field of orthopedics.

14 THE COURT: Mr. Duncan.

15 MR. DUNCAN: Yes, sir.

16 THE COURT: Accept that stipulation?

17 SOLICITOR DIXON: Yes, sir.

18 THE COURT: A stipulation, an agreement on the record
19 that he is an expert in the field of orthopedic surgery?

20 SOLICITOR DIXON: Yes, sir.

21 THE COURT: You may proceed.

22 Q Did you have occasion to treat a patient by the name
23 of Walter Gadson, Doctor Suarez?

24 A Yes, ma'am, I did.

25 Q Tell me were you -- how did you get involved in the

1 case?

2 A I was on orthopedic coverage for the emergency room
3 when I was called early in the morning of 11/20 to see him
4 in the emergency room.

5 Q Did you respond in the emergency room?

6 A Yes, ma'am.

7 Q Can you tell me what you found when you got there?

8 A A young gentleman who had been in an altercation. He
9 had an open femur fracture, femur being the thigh bone,
10 open meaning what happened, the bone had come through the
11 muscle and the skin and exited, what used to be called a
12 compound fracture, but it was in his thigh bone.

13 Q What is the course of treatment for that type of
14 injury?

15 A Two things. One, because it was open I had to take
16 him to the operating room to wash and clean the tissues,
17 and then I put a metal rod down inside the thigh bone to
18 stabilize it. So, we did that that morning, that at the
19 same time.

20 Q Taking him to the operating room and cleaning it and
21 then inserting a metal rod in his leg---

22 A That's correct.

23 Q ---did that require anesthesia?

24 A Yes, ma'am.

25 Q Required some surgery about, obviously?

Doctor Randall Suarez - Direct examination
by Solicitor Dixon

611

1 A Absolutely.

2 Q How long is that surgery approximately?

3 A Takes about an hour and a half.

4 Q What kind of recovery are we talking about?

5 If you know, how long was Mr. Gadson in the hospital?

6 A He was in the hospital for three days.

7 Q Okay. Afterwards is he going to have -- would he
8 have any type of continuing injury or pain in that area?

9 MS. FULLWOOD: Objection, Your Honor. Irrelevant.

10 SOLICITOR DIXON: That's fine.

11 THE COURT: Okay.

12 SOLICITOR DIXON: I withdraw the question.

13 THE COURT: Based on that, you, you withdraw the
14 question?

15 SOLICITOR DIXON: Yes, sir.

16 Q Doctor Suarez, this type of injury, is it serious?

17 A Yes, potentially life-threatening.

18 Q With an open fracture, are you talking about blood
19 loss?

20 A Significant amount of blood loss, contamination of
21 the deep tissues which lead to a high rate of infection,
22 which is why there was an emergent operation.

23 Q I believe you already said this, Doctor Suarez, but
24 this injury, is it serious enough that it could
25 potentially cost someone their life?

1 A Yes, it is, is.

2 SOLICITOR DIXON: No further questions, Your Honor.

3 THE COURT: Ms. Fullwood, any questions?

4 MS. FULLWOOD: No questions.

5 THE COURT: Mr. Duncan.

6 MR. DUNCAN: No questions.

7 THE COURT: Thank you for being here. Appreciate
8 your time. Have a great day.

9 All right, sir. You have two more witnesses you need
10 to wait for?

11 SOLICITOR DIXON: Yes, sir.

12 THE COURT: Okay. Ladies and gentlemen, the State
13 tells me they have two more witnesses, and we were
14 speaking at the bench here, that's what we're talking
15 about is just scheduling. I've got two additional
16 witnesses. Obviously I'm not going to hold them to that.
17 They may have another one, but two is what they anticipate
18 right now. They are also doctors who will be here in
19 short order. We anticipate they will be here at three
20 o'clock, and when they get here we will begin the trial of
21 the case.

22 So, we are going to be in a short recess until such
23 time as the first of those two witnesses shows up, and
24 then we will commence rather quickly.

25 Thank you very much. Please don't discuss the case.

Stephen Fann - Direct examination
by Solicitor Dixon

613

1 (WHEREUPON, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right. Ladies and gentlemen, we'll
4 be in recess until the first of two get here. Y'all just
5 let me know when you need me and we'll resume then.

6 SOLICITOR MYERS: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: Ready to proceed?

10 SOLICITOR DIXON: Yes, sir.

11 THE COURT: Bring the jury in please.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE COURT: Call your witness.

15 SOLICITOR DIXON: Thank you, Your Honor.

16 The State calls Doctor Stephen Fann.

17 STEPHEN FANN, having been first
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY SOLICITOR DIXON:

21 Q Doctor Fann, where are you employed?

22 A Palmetto Health, Richland Memorial Service through
23 the University of South Carolina Department of surgery.

24 Q What do you do there?

25 A I am a surgical attending with responsibilities in

1 critical care, trauma, and general surgery.

2 Q Tell me about your educational background.

3 A I graduated from high school in 1990, attended
4 Methodist College---

5 MS. FULLWOOD: Your Honor, we would stipulate to
6 Doctor Fann's qualifications and expertise in the fields
7 of surgery and trauma treatment.

8 THE COURT: You accept the stipulation?

9 SOLICITOR DIXON: Yes, sir, Your Honor.

10 THE COURT: All right.

11 A Undergraduate education was completed---

12 Q That's okay. The defense has stipulated to your
13 expertise in surgery and trauma.

14 A Okay.

15 THE COURT: He's accepted as an expert.

16 Q Let's talk about this case.

17 Did you have an opportunity to treat a patient named
18 A.J. Wilson?

19 A Yes, I did.

20 Q Tell me about how you got involved in Mr. Wilson's
21 treatment.

22 A I was the attending of record on the night he was
23 brought in as a trauma alert, 9-1-1, and responded to the
24 trauma call.

25 Q When you responded to the trauma call, can you tell

Stephen Fann - Direct examination
by solicitor Dixon

615

1 me, what did you find?

2 A The patient was brought in by E.M.S. He received
3 multiple injuries and we began a A.T.L. life support for
4 him, which is an all variety. We follow life support for
5 multiple injuries.

6 Q Give us an account of where he was injured.

7 A By my review there was an injury to the right
8 maxillary area, injuries to the extremities on both sides,
9 injury to the right shoulder, the right flank area, the
10 left axilla, and I think the right wrist and another
11 injury at the right thumb.

12 Q Okay. Doctor, when a patient comes in with this kind
13 of trauma, is it normal practice for the hospital or
14 treating physicians to order a drug screening?

15 A We order drug screening routinely on our trauma
16 alert.

17 Q Have you had an opportunity to review the drug
18 screening you ordered the night A.J. Wilson came into the
19 hospital?

20 A Yes, I have.

21 Q Did A.J. Wilson test positive for any drugs?

22 A No, ma'am, he did not test positive for the screening
23 we performed for any drugs.

24 Q Can you tell us what drugs you screened for?

25 A We screened for benzodiazepines, cannabinoids,

1 cocaine metabolites, opiates, phencyclidine, methadone,
2 and methamphetamines.

3 Q And his results for screenings were all negative?

4 A Yes, ma'am.

5 Q Okay. When you come in and you're analyzing the
6 patient, what is the first thing you did with Mr. Wilson?

7 A We have a prioritized response and the airway is of
8 the highest priority. Given his maxilla facial trauma
9 injury to the right cheek, we intubated the patient to
10 secure his airway and provide safe protection of the
11 airway as we completed his evaluation.

12 Q Was Mr. Wilson bleeding from these injuries?

13 A There was some hemorrhaging, yes.

14 Q After you protected his airway, what is the next
15 thing you did?

16 A A systems base for bleeding, circulation, and a
17 secondary survey with adjustments such as chest x-rays,
18 arterial blood gases, and other tests are drawn. He had
19 blood in the left chest, injuries on both sides of the
20 body with low blood pressure, a rapid heart rate, and then
21 we proceeded for respiration to exclude his intraabdominal
22 injury.

23 Q How do you exclude that exploration?

24 A Would have been abdominal exploration via midline
25 incision.

Stephen Fann - Direct examination
by Solicitor Dixon

617

1 Q Is this done in the surgical room?

2 A Operating room, yes, ma'am.

3 Q You do a midline incision and I guess look around?

4 A A thorough evaluation systematically from the dome of
5 the liver, the intestines, everything is ran. The colon
6 is inspected. The pelvis is inspected. The
7 retroperitoneum is inspected for evidence of hematoma
8 evidence or injury as well as the diaphragm.

9 Q Were there any consultations called in for
10 Mr. Wilson?

11 A We would have obtained orthopedic and neurosurgery
12 call consultations. The timing, I don't know exactly.
13 Again, it's a priority to stop the bleeding, stabilize the
14 patient, and then, as the, the care evolves, life
15 threatening situations are dealt with or treated or
16 excluded, other consultations would have been brought in.
17 Neurosurgery, I was involved with his heart as well.

18 Q Can you tell me, doctor, about the wounds that caused
19 Mr. Wilson's injury to his spinal cord?

20 A He had damage to his thoracic vertebral body. I'll
21 refer to the neurosurgeon's consultation. I think it was
22 the ninth thoracic vertebral body.

23 Q Can you tell us, doctor, where that is?

24 A Well, the cervical vertebrae of seven in number, and
25 end at the base of the neck here. The thoracic ones have

1 ribs. So, the first thoracic vertebra would be located
2 with the first rib high at the collar bone and counting
3 down there from nine would be, would be about mid-back.

4 Q Is this the injury that resulted in Mr. Wilson's
5 paralysis?

6 A To the best of my knowledge, I believe that's the
7 injury that resulted in paralysis.

8 Q You talked about wounds to his face, his arms, his
9 back, and his lower forearm.

10 Are these wounds life threatening?

11 A The patient did present with tachycardia and low
12 blood pressure. So, the blood loss was enough. He had
13 manifested signs of shock. The injury to the face could
14 have compromised the airway. So, they were potentially
15 fatal injuries.

16 Q If Mr. Wilson had not received medical treatment, he
17 could have died?

18 A Could have.

19 SOLICITOR DIXON: One second, Your Honor.

20 (Pause.)

21 SOLICITOR DIXON: Thank you. Answer any questions
22 the defense has.

23 THE COURT: Ms. Fullwood.

24 MS. FULLWOOD: Beg the Court's indulgence?

25 THE COURT: Yes, ma'am.

Janice Ross - Direct examination
by Solicitor Dixon

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(Pause.)

MS. FULLWOOD: No questions, Your Honor.

THE COURT: All right. Thank you very much.

MR. DUNCAN: No questions.

THE COURT: Doctor, thank you, sir. Appreciate your time.

THE WITNESS: Thank you.

THE COURT: Have a great day.

SOLICITOR DIXON: State calls Doctor Janice Ross.

DOCTOR JANICE ROSS, having been first
duly sworn, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR DIXON:

Q Doctor Ross, where are you employed?

A For Newberry Pathology Associates in Newberry, South Carolina.

Q Tell me what you do there.

A We do hospital pathology and also do forensic autopsies for approximately 30 counties of the State of South Carolina.

Q Is one of those counties Lexington County?

A Yes.

Q How long have you been doing autopsies?

A Myself personally, 32 years.

Q okay. Can you tell us, Doctor Ross, about your

1 educational background?

2 A Yes, I received a Bachelor's Degree from the
3 University of South Carolina, and an M.D. from Upstate
4 Medical Center in Syracuse, New York---

5 MS. FULLWOOD: Your Honor, we will stipulate to
6 Doctor Ross' expertise in the field of forensic pathology.

7 THE COURT: Do you accept the stipulation?

8 SOLICITOR DIXON: Yes, sir.

9 THE COURT: So qualified as an expert in forensic
10 pathology.

11 You may proceed.

12 Q Doctor Ross, were you asked to do an autopsy on Isaac
13 Wilson?

14 A Yes.

15 Q Can you tell the jury, before we speak about
16 Mr. Wilson, the process of doing an autopsy, just
17 generally, and how you do that?

18 A Yes, we received the body. We do the autopsy in the
19 morgue at Newberry County Memorial Hospital. We look at
20 the body externally to look for any injuries, look at the
21 clothing, take photographs, take the clothing off and look
22 at the external skin of the body, again, looking for
23 injuries or evidence of natural disease, and then we do a
24 systematic review of the internal organs.

25 Q Okay. Doctor Ross, let's speak about Mr. Wilson if

1 you don't mind.

2 Do you have a copy of your report with you?

3 A Yes.

4 Q Okay. Let me first direct you to the part of your
5 external examination, Page 2 of your report, Doctor Ross.

6 You noted that there were two gunshot wounds, is that
7 right?

8 A Yes.

9 Q Can you tell me where those were located?

10 A Both of them went into the chest, one on the right
11 side of the chest, and one more on the left side of the
12 chest.

13 Q Was Mr. Wilson still clothed when you received his
14 body?

15 A Yes.

16 Q And I see, under evidence of injury, at the bottom of
17 Page 2, doctor, that you noted some things about that
18 t-shirt. I'd like to talk to you about that if you don't
19 mind.

20 A Yes.

21 Q You noted that there were holes in the t-shirt. No
22 soot is obvious from the front of the t-shirt.

23 Is that right?

24 A Correct.

25 Q There were tiny holes around the gunshot entrance

1 wounds?

2 A Yes.

3 Q Can you tell me, doctor, what do those tiny holes
4 mean to you?

5 A When a bullet comes out of a gun some burning powder
6 also comes out, but the powder only goes a certain
7 distance depending on the ammunition and the type of gun.
8 When those little burning powder, pieces of powder hit
9 skin or clothing, they form holes or on the skin. They
10 will make little marks.

11 Q And there were holes in the t-shirt that Isaac Wilson
12 was wearing?

13 A Yes.

14 Q Were there corresponding marks on the skin underneath
15 that t-shirt?

16 A Yes.

17 Q Okay. Doctor, can you tell me the presence of those
18 marks?

19 Does that say anything to you about the distance that
20 Mr. Wilson was from the gun when it was fired?

21 A Yes.

22 Q Can you tell us what that is?

23 A That -- again, it depends to be precise on the type
24 of gun, the ammunition, the length of the barrel, and
25 various things, but we can say that it should be -- the

1 barrel of the gun would be within inches of the victim's
2 shirt and skin.

3 Q All right. Doctor, you had previously said there
4 were two gunshot wounds. I'd like to talk to you first
5 about the wounds you designated as gunshot wound number
6 one.

7 A Yes.

8 Q Begins on Page 3 of your report.

9 Can you tell us where that wound was located?

10 A It was in the right chest, basically maybe an inch or
11 so above the right nipple, and that bullet proceeded to go
12 towards the left and towards the back and downward. It
13 went through both lungs and the heart.

14 Q And did this entrance wound have that stippling or
15 tattooing around it?

16 A Yes.

17 Q Okay. Can you tell us anything about the exit wounds
18 from gunshot number one?

19 A The exit wound was in the left back and it was
20 called -- I called a shored exit. Excuse me. The -- when
21 a bullet goes into the skin, the entrance wound, it pushes
22 the skin in and the, the skin that, that is pushed along
23 the bullet will be abraded. It will leave a little red
24 area. When the bullet comes out of the skin it pulls, it
25 pushes the skin outward and does not abrade the skin

1 unless the skin is against something, against a wall,
2 against a, tight clothing, against something firm so the,
3 the exit wounds on what we call this first gunshot wound
4 was, is called a shore exit. It had that abrasion around
5 it.

6 Q Now, that abrasion ring, doctor, would that be
7 consistent with someone laying on a concrete patio when
8 the bullet went through their body?

9 A Yes.

10 Q Okay. Let's talk about the gunshot wound that you
11 designated number two.

12 Can you tell us where that was located?

13 A That went in the left chest just the, just to the
14 left of midline and sort of on the same level as the left
15 nipple. That one also went from front to back, from -- it
16 went towards the left and it went downward. That one went
17 through the left lung.

18 Q Did gunshot wound number two exhibit the same type of
19 tattooing and stippling around it?

20 A Yes.

21 Q Doctor, I believe that you said the injuries that
22 these bullets caused, but can you tell us again, bullet
23 number one and bullet number two, where did they pass
24 through the body?

25 A Number one went through both lungs and through the

1 heart and caused internal bleeding and number two went --
2 it bruised the left lung and went through the stomach
3 actually.

4 Q Can you tell me, doctor, you said this caused
5 internal bleeding.

6 After these wounds were sustained, do you have an
7 opinion as to how long Isaac Wilson would have lived after
8 those gunshots?

9 A A matter of minutes. He was young. So, his heart
10 could keep up with it, with the bleeding a little better
11 than older people with already heart disease.

12 Q And your official cause of death, Doctor Ross?

13 A Exsanguination, which means bleeding out due to the
14 laceration of the heart and lungs due to the gunshot
15 wounds of the chest.

16 SOLICITOR DIXON: Court's indulgence, Your Honor.

17 (Pause.)

18 Q Thank you, Doctor Ross. Answer any questions the
19 defense has.

20 MS. FULLWOOD: Beg the Court's indulgence.

21 THE COURT: Yes, ma'am.

22 (Pause.)

23 CROSS-EXAMINATION

24 BY MS. FULLWOOD:

25 Q Sorry, Doctor Ross. I had to consult with my

1 colleague there.

2 You told us that Mr. Wilson came to your lab and he
3 was wearing a short-sleeved white t-shirt, is that
4 correct?

5 A Yes. Yes.

6 Q And when you looked at him, what type of hair style
7 did he have?

8 A It's just very short.

9 Q Very short?

10 A Uh-huh. (Affirmative).

11 Q All right. And you testified about the stippling. I
12 believe your findings were that both wounds had sparse
13 stippling around them, although no soot was obvious on the
14 front of the t-shirt, is that right?

15 A Correct.

16 Q Okay. Doctor Ross, can you give me a range of what
17 the most probable distance was between Mr. Wilson and the
18 barrel of the gun when he was shot?

19 A It's very difficult. Again, you have to really
20 practice, take the gun or the same ammunition and practice
21 shoot to get an exact range, but you could say anywhere
22 from maybe four to twelve inches.

23 Q Okay. No further questions. Thank you very much,
24 doctor.

25 THE COURT: Mr. Duncan, questions?

1 MR. DUNCAN: No questions.

2 THE COURT: Any redirect?

3 SOLICITOR DIXON: None, Your Honor.

4 THE COURT: Thank you for being here. Appreciate it.
5 Have a great day.

6 SOLICITOR MYERS: Your Honor, with Doctor Ross, the
7 State would rest its case in chief at this time.

8 THE COURT: Thank you very much.

9 All right. Ladies and gentlemen, the State has
10 presented its witnesses in its case in chief and would
11 rest. Therefore, I'm going to ask you to take a break,
12 retire to your jury room. There are some matters of law
13 that I need to take up with these attorneys, and we will
14 discuss whether we will proceed today with additional
15 witnesses or whether -- well, what our scheduling should
16 be going forward.

17 So, if you'll take a recess and I'll call you back in
18 here at the appropriate time. Please don't discuss the
19 case or begin deliberations.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: Any motions?

23 MS. FULLWOOD: Yes, sir.

24 Your Honor, at this time, on behalf of Curtis
25 Johnson, I would move for a directed, directed verdicts of

1 not guilty on all indictments. Concerning all of the
2 indictments, the grounds would be that there is
3 insufficient competent evidence from which a rational
4 trier of fact could conclude, beyond a reasonable doubt,
5 that the State has proved every element of the offenses
6 charged.

7 Specifically, Your Honor, as to Indictment Number
8 07-1473 and 07-1474, taking the evidence as a whole in the
9 light most favorable to the State, and these are the
10 indictments charging murder and ABWIK on A.J. Wilson,
11 viewing the, the evidence thusly, at best it shows that
12 this killing and assault occurred under circumstances
13 where the deceased, the deceased was armed and the injured
14 party was in federation with the deceased, and I think, as
15 a matter of law, being provoked by the decedent or by the
16 person who was assaulted with a deadly weapon that, as a
17 matter of law, constitutes heat of passion upon sufficient
18 legal provocation. Therefore, there can be no malice
19 proved here.

20 Malice is an essential element of both of these
21 offenses. And, so, I would ask for a directed verdict on
22 these on that specific ground.

23 As to Indictment Number 07-1475, that is the -- well,
24 that is the indictment charging possession of a firearm
25 and I would rely on my general grounds on that one.

1 As to Indictment 1476, that is ABWIK on Walter
2 Gadson. Mr. Gadson's own testimony was that he was
3 pointing a shotgun at Mr. Johnson in the car. He had a
4 beat on him. He was trying to pull the trigger, but the
5 safety was on and that's the only reason that Mr. Johnson
6 didn't get shot and killed himself.

7 As a matter of law, Your Honor, I believe that
8 constitutes self-defense or, at a minimum, the type of
9 provocation that would preclude any proof of malice and
10 those are my grounds.

11 THE COURT: Thank you very much.

12 Mr. Duncan.

13 MR. DUNCAN: I would join in those for Mr. Parker.
14 In addition, I don't believe there's any evidence of
15 Mr., any malice by Mr. Parker towards anyone in this
16 matter, and we would just join on the same grounds as
17 Mr. Wilson, I'm sorry, Mr. Johnson.

18 THE COURT: All right. Thank you for those
19 arguments. I respectfully deny your motion for a directed
20 verdict. I believe those arguments go to the evidence and
21 I believe, at this point, there has been evidence in the
22 record of malice from which the jury could determine there
23 was malice as alleged under the incident indictments.

24 Anything further?

25 MS. FULLWOOD: No, Your Honor.

1 DEBRA FIELDS, having been first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. DUNCAN:

5 Q Ms. Fields, you're in uniform?

6 A Yes, sir.

7 Q Obviously it says paramedic.

8 What do you do?

9 A I'm a paramedic for Lexington County E.M.S.

10 Q How long have you been so employed?

11 A I've been with Lexington County almost four years.
12 E.M.S. about seven and a half years.

13 Q On November 20th of 2006 did you have occasion, in
14 the early morning hours, to respond to a location in
15 Lexington County?

16 A Yes, sir.

17 Q Do you recall those events?

18 A Yes, sir.

19 Q All right. You had occasion, as I understand it, to
20 treat a Walter Gadson?

21 A Yes, sir.

22 Q All right. Did Mr. Gadson tell you how he was hurt?

23 A From what I can recall I believe he told me that a
24 vehicle in the parking lot had been backing up and he was
25 hit by the car as it was going in reverse.

1 Q And you're certain that's what he told you?

2 A I can't quote exact words but, yes, that was how he
3 said he got injured.

4 Q A vehicle backing up had struck him?

5 A Yes.

6 MR. DUNCAN: Answer any questions anyone else might
7 have, please.

8 CROSS-EXAMINATION

9 BY SOLICITOR MYERS:

10 Q Ms. Fields, are you one of several units that went
11 over to the apartments?

12 A Yes.

13 Q And the supervisor was a Jason Heights?

14 A Yes.

15 Q He was in charge?

16 A Yes.

17 Q Y'all got there around 1:30 I believe?

18 A Approximately, yes. Yes, apparently I got there
19 about 1:40.

20 Q And think, you think Jason directed y'all not to come
21 around to the back of the apartments?

22 A Correct.

23 Q To go to Apartment [redacted]?

24 A Correct.

25 Q So, while they were around back, y'all went down here

1 to Apartment ■ in the front part out here?

2 A I believe so, yes.

3 Q Okay. And out back they were dealing with a person
4 on the patio and a deceased person inside.

5 Were you aware of that?

6 A I believe, I believe so, yes. At that time I knew
7 there were other patients, another situation around the
8 back side of the building.

9 Q Yes, ma'am.

10 And when y'all went to the front part of the
11 apartments down here, are you -- you found Walter Gadson,
12 he was lying down?

13 A I believe so, yes.

14 Q And you said he had a hole in his leg. Y'all thought
15 it was a gunshot wound, didn't you?

16 A Yes, sir, we did.

17 Q He said, no, he hadn't been shot or anything?

18 A Correct.

19 Q But the hole was such y'all thought it was a gunshot
20 wound?

21 A Yes, sir.

22 Q And y'all dealt with him and did your unit transport
23 him to the Lexington Hospital?

24 A Yes, we transported him.

25 Q Did you ever go back around back to where the other

Debra Fields - Cross-examination
by Solicitor Myes

638

1 ones were?

2 A NO, I never saw---

3 Q Did you see that trail of blood that led around the
4 side to where Mr. Gadson---

5 A NO, sir.

6 Q BUT you notarized a statement about that trail of
7 blood?

8 You notarized Jason's statement?

9 Do you remember that?

10 A I don't recall that.

11 Q Is that your signature where you notarized Jason's
12 statement?

13 MR. DUNCAN: Your Honor, this is hearsay and I'm
14 going to object to Mr. Myers asking any further questions.
15 There's no relevance.

16 THE COURT: I sustain that as to any hearsay. I
17 believe the question that's posed right now is did you
18 notarize it.

19 SOLICITOR MYERS: Yes, sir.

20 THE COURT: And then that question is allowable, but
21 I sustain it with respect to any hearsay that may be
22 derived from the statement.

23 Q Do you recall that now?

24 A Yes, I witnessed to his signature, that statement.

25 Q When did you do that?

1 A I don't recall.

2 Q Was it that night?

3 A It may have been. It was a really hectic night.

4 Q That's what I'm getting at. It was a hectic night of
5 a whole lots of things going on?

6 A From what I remember, yes.

7 Q Y'all had several units out there?

8 A We had three responding transporting units and our
9 supervisor.

10 Q Right.

11 So, at least three units?

12 A Yes.

13 Q Yes, ma'am.

14 A whole bunch of police officers out there?

15 A Yes.

16 Q whole bunch of people running around?

17 A Yes.

18 Q Very hectic night?

19 A Yes.

20 Q And these reports that y'all have, y'all didn't do
21 them right then?

22 Y'all did that later on?

23 A Correct.

24 SOLICITOR MYERS: Thank you.

25 MS. FULLWOOD: No questions, Your Honor.

Debra Fields - Cross-examination
by Solicitor Myers

640

1 MR. DUNCAN: Since Mr. Myers has questioned her
2 veracity---

3 SOLICITOR MYERS: I take that back. I haven't
4 questioned her voracity at all. Not at all.

5 THE COURT: Specifically with regard to what in
6 questioning her voracity?

7 MR. DUNCAN: That it was a hectic night, that she's
8 going to try to imply that she didn't remember that
9 evening. That's the implication, and since he's
10 questioned her voracity, I think I'm entitled to put her
11 written statement, her sworn statement in.

12 SOLICITOR MYERS: I have no objection to that, Your
13 Honor.

14 THE COURT: Without objection, you may ask about her
15 statement.

16 RE-CROSS-EXAMINATION

17 BY MR. DUNCAN:

18 Q I have it highlighted if you'd look at that.

19 Do you recall your signature? I'm sorry. Did you
20 sign that?

21 A Yes.

22 Q Okay. Read, if you would, what's in that statement?

23 A The highlighted section.

24 Q Yes, ma'am.

25 A He related that he was struck by a car that had been

1 backing up.

2 MR. DUNCAN: I'd like to make that our---

3 THE COURT: Without objection.

4 (WHEREUPON, the statement was marked as Defendant's
5 Exhibit No. 16 and received into evidence at this time.)

6 THE COURT: Anything further from the defense?

7 MR. DUNCAN: That's our case.

8 MS. FULLWOOD: Yolanda Spenser.

9 YOLANDA SPENSER, having been first
10 duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. FULLWOOD:

13 Q Where do you live, Ms. Spenser?

14 A [REDACTED], Columbia, 29201.

15 Q Where -- are you married or single?

16 A Married.

17 Q How long you been married?

18 A Approximately '05.

19 Q You have children?

20 A I have three.

21 Q Are you employed?

22 A Yes, ma'am.

23 Q Where do you work?

24 A I work for Richland District 1 School System. I'm a
25 substitute teacher and I am, also am a part-time server at

Yolanda Spenser - Direct examination
by Ms. Fullwood

642

1 a restaurant on Parklane.

2 Q How about your husband, where does he work?

3 A He was employed at Columbia Farms, but he got laid
4 off about two months ago.

5 Q What is your maiden name?

6 A Fleming.

7 Q And are you related to Amy and Rebekah Fleming?

8 A Yes, ma'am, they're my two little sisters.

9 Q And how many girls are there in your family?

10 A Seven.

11 Q Seven?

12 Okay. Now, have you had occasion to be around your
13 sister and Curtis Johnson and Walter Gadson?

14 A Yes, ma'am.

15 Q Okay. Can you tell us about an incident that
16 occurred about a month before November 20 of 2006?

17 A We were over at Amy's house. It was me, Amy,
18 Rebekah, Curtis, my husband, and Rebekah and Curtis was
19 arguing. They was just outside arguing. About what I
20 don't know. Walter and Isaac showed up and circled the
21 parking lot a couple of times. I just -- Isaac said a
22 couple obscenities out the window, but he never got out
23 the truck.

24 Q Who did he direct those obscenities at?

25 A Curtis Johnson.

1 Q Did Curtis do anything to retaliate?

2 A So, no, we mainly just tried to get Curtis and my
3 sisters to come upstairs before it escalated any further.

4 Q Have you had occasion to talk to your sister, Amy,
5 about what happened on the night of November 20 of 2006?

6 A Yes, ma'am.

7 Q Did Amy make any statements to you as to whether or
8 not she heard Kerwin Parker say anything?

9 A Yes, ma'am.

10 Q What was that?

11 SOLICITOR DIXON: Objection, Your Honor. Hearsay.

12 MS. FULLWOOD: Your Honor, I believe she denied or
13 said something different as to what this witness is going
14 to say.

15 THE COURT: The question again?

16 MS. FULLWOOD: What statements -- what did her sister
17 tell her she heard Kerwin Parker say.

18 THE COURT: The basis of the objection?

19 SOLICITOR DIXON: It's hearsay, Your Honor.

20 THE COURT: I will sustain the objection.

21 MS. FULLWOOD: Your Honor, may I be heard?

22 THE COURT: You may.

23 Ladies and gentlemen, if you'll retire to your jury
24 room. Don't discuss the case.

25 (WHEREUPON, the following takes place outside the

Yolanda Spenser - Direct examination
by Ms. Fullwood

644

1 presence of the jury.)

2 MS. FULLWOOD: Your Honor might recall I made -- Amy
3 Fleming made certain statements with regards to her
4 sister. And if you remember, it is her statement he
5 didn't shoot. Might be let me proffer the---

6 THE COURT: Go ahead.

7 CONTINUED DIRECT EXAMINATION

8 BY MR. FULLWOOD:

9 Q what, if anything, did Amy tell you about what she
10 heard Kerwin Parker state that night?

11 A She stated to me she heard Kerwin Parker state to
12 Isaac that, you know, we don't have to be shooting each
13 other, we can just fight this out.

14 THE COURT: Okay.

15 SOLICITOR DIXON: Your Honor, I may remember her
16 testimony incorrectly. I don't remember her denying
17 having heard that, but---

18 MS. FULLWOOD: I'll withdraw it then.

19 THE COURT: Having refreshed my memory, I remember
20 that having been asked and answered.

21 MS. FULLWOOD: All right.

22 THE COURT: We can view the record if you want to,
23 but I have a specific recollection of your asking that
24 question.

25 MS. FULLWOOD: All right.

1 THE COURT: Mine coupled with yours, I'll allow you
2 to ask it just under that limited question.

3 MS. FULLWOOD: Okay.

4 THE COURT: All right. Thank you.

5 Bring the jury back in please.

6 (WHEREUPON, the following takes place within the
7 presence of the jury.)

8 CONTINUED DIRECT EXAMINATION

9 BY MS. FULLWOOD:

10 Q Ms. Spenser, the question I asked you is what, if
11 anything, did you -- Ms. Spenser, what, if anything, did
12 you hear Amy say Kerwin Parker---

13 A She made a statement that she heard Kerwin Parker say
14 we don't need to fight this out, to be shooting. We can
15 just fight this out.

16 Q How long have they been together?

17 A They been on and off for years.

18 Q What, if anything, did Amy tell you about with Walter
19 when he gets upset about something?

20 A He flips out. He just gets angry and flips out.

21 Q What do you mean by flip out?

22 A When things don't go his way or he feels like, you
23 know, he's losing, you know, control on the situation---

24 SOLICITOR DIXON: Object, Your Honor.

25 A ---he just gets mad.

Yolanda Spenser - Direct examination
by Ms. Fullwood

646

1 SOLICITOR DIXON: Relevance.

2 THE COURT: I will overrule on grounds of relevance.

3 You may proceed.

4 Q You may continue if you have more of an answer.

5 A He gets mad, yes, ma'am, and screams, flips out.

6 Q He has an uncontrollable temper?

7 A I would say at times.

8 MS. FULLWOOD: No further questions.

9 CROSS-EXAMINATION

10 BY SOLICITOR DIXON:

11 Q Ms. Spenser, you said there was an incident about a
12 month prior to the shooting?

13 A Month, month and a half.

14 Q You said Rebekah and Curtis were outside arguing?

15 A Uh-huh. (Affirmative).

16 Q Do Rebekah and Curtis argue a lot?

17 A They argue.

18 Q Have you been around Rebekah and Curtis while they
19 were dating?

20 A Yes, ma'am.

21 Q At this point, they were broken up, right, in
22 November?

23 A Yes, ma'am.

24 Q Curtis was jealous a lot, wasn't he?

25 A I wouldn't say that. I would say that, you know,

1 situation just was -- it was a lot of back and forth.

2 Q Did you see Curtis lose his temper?

3 A I've seen him argue with her. I've never seen him
4 hit her or anything like that.

5 Q You saw him lose his temper with Rebekah?

6 A Yeah.

7 Q On numerous occasions?

8 A Not numerous occasions.

9 Q More than once?

10 A I've seen it once or twice. I haven't seen it like a
11 lot of times.

12 Q They argue about other guys?

13 A The arguments that I've witnessed wasn't about other
14 guys.

15 Q You never heard Curtis and Rebekah argue over Isaac?

16 A Yeah.

17 Q So, they did argue about other guys?

18 A It wasn't so much -- yeah.

19 Q Now, you said that incident where Curtis and Rebekah
20 were outside arguing that Walter and Isaac showed up,
21 right?

22 A Yes, ma'am.

23 Q You said Isaac said some stuff out of the window, but
24 he didn't get out of, of the car, did he?

25 A No, ma'am.

Yolanda Spenser - Cross-examination
By Solicitor Dixon

648

1 Q No physical confrontation?

2 A No, ma'am.

3 Q Walter didn't get out of the car?

4 A No, ma'am.

5 Q No physical confrontation?

6 A No, ma'am.

7 Q Nobody throw any punches?

8 A No, ma'am.

9 Q Nobody threw anything out the car?

10 A No, ma'am.

11 SOLICITOR DIXON: That's all I have.

12 THE COURT: Mr. Duncan, any questions?

13 MR. DUNCAN: No questions.

14 THE COURT: Ms. Fullwood, any redirect?

15 MS. FULLWOOD: No redirect, Your Honor.

16 THE COURT: You may be---

17 MS. FULLWOOD: I ask Ms. Spenser be excused if she
18 chooses to go on her way.

19 SOLICITOR DIXON: No objection.

20 THE COURT: Without objection.

21 MS. FULLWOOD: Your Honor, I call David MacDougall.

22 DAVID MACDOUGALL, having been first duly
23 sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. FULLWOOD:

1 Q Mr. MacDougall, how are you employed?

2 A Licensed private investigator licensed by SLED and
3 have been so since 1979.

4 Q At the request of the defense in this case, have you
5 been performing work for us?

6 A I have.

7 Q I want to hand you this photograph and ask you if you
8 can identify it.

9 A Yes, I can.

10 Q Okay.

11 A This is, is a photograph that I took at Church Hill
12 Apartments August 27 of 2008. It is the parking area
13 behind apartments, among other apartments, ■, and it was
14 the area that, through my investigation, I determined a
15 lot of the activity we've been discussing here took place.

16 Q So, those depict the back of Apartment ■?

17 A At Church Hill Apartments, yes, it does.

18 Q Does it depict the area between the buildings that,
19 that's been testified about?

20 A Apartment ■, it does, yes.

21 Q Does it depict the area around the mailbox where
22 there are parking spaces?

23 A The parking area and mailboxes are -- you can see
24 slightly on the right-hand side of the mailboxes.

25 MS. FULLWOOD: Your Honor, I would move to introduce

David MacDougall - Direct examination
by Ms. Fullwood

650

1 this photograph into evidence.

2 SOLICITOR MYERS: No objection.

3 THE COURT: So admitted as Defendant's next in order
4 without objection.

5 MS. FULLWOOD: Your Honor, while the court reporter
6 is marking that photograph, I have an additional two.

7 SOLICITOR MYERS: No objection.

8 MS. FULLWOOD: We might as well get them marked right
9 now. Your Honor, further we had had Defense Exhibit 12
10 marked and move to introduce it into evidence at this
11 time.

12 SOLICITOR MYERS: No objection.

13 THE COURT: Without objection.

14 (WHEREUPON, three photographs were marked as
15 Defendant's Exhibit Nos. 17 through 19 and received into
16 evidence at this time.)

17 Q Mr. MacDougall, answer any questions the prosecution
18 has for you.

19 CROSS-EXAMINATION

20 BY SOLICITOR MYERS:

21 Q David, you have been over to the Sheriff's Department
22 with folks of my office and others to look at all this
23 evidence or most of it?

24 A Twice to the Sheriff's Department, yes.

25 Q You agree this pistol, No. 32, holds 14 rounds?

1 A I have never examined the pistol to make any such
2 determination.

3 Q And the shotgun holds five rounds, one in the chamber
4 and four in the---

5 A To the best of my understanding, it would hold five
6 in the magazine so to speak, and one in the chamber, but,
7 again, I have not examined it in detail. I do know
8 traditionally they would hold four or five rounds, and
9 then the chamber one. So, you could have a total of six.

10 Q Come down here and let's see.

11 A (Witness comes down from the stand.)

12 SOLICITOR MYERS: Your Honor, could we take these
13 things off and see how many shells it holds?

14 THE COURT: Yes, sir, you may.

15 (WHEREUPON, the witness comes down from the stand to
16 load shells in the shotgun.)

17 Q Holds four in the magazine and one in the chamber?

18 A Four in the magazine and one in the chamber.

19 Q Four in the magazine and one in the chamber. Total
20 of five.

21 SOLICITOR MYERS: That's all we have. Thank you.

22 THE COURT: Redirect?

23 MS. FULLWOOD: No redirect, Your Honor.

24 THE COURT: Thank you.

25 THE WITNESS: Thank you.

Curtis Johnson - Direct examination
by Ms. Fullwood

652

1 MS. FULLWOOD: We call Curtis Johnson.

2 CURTIS JOHNSON, having been first
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. FULLWOOD:

6 Q Curtis, I want you to talk slowly in the microphone
7 so everybody can hear you.

8 A Yes, ma'am.

9 Q How old are you?

10 A Twenty-two.

11 Q How old were you on November 20 of 2006?

12 A Nineteen.

13 Q Where did you grow up, Curtis?

14 A Columbia, South Carolina.

15 Q Did you graduate from High School?

16 A Yes, ma'am.

17 Q Where?

18 A Eau Claire.

19 Q Did you continue your education?

20 A Yes, ma'am.

21 Q Where?

22 A Midlands Technical College.

23 Q What?

24 A Technical education.

25 Q Were you in school in November 2006, 2006?

1 A Yes.

2 Q Had you worked since high school?

3 A Richland Memorial Hospital, PDR, Wal-Mart.

4 Q On November 20 of 2006 were you employed?

5 A Yes, ma'am.

6 Q Where?

7 A At Wal-Mart.

8 Q Now, where did you live in November of 2006?

9 A At my mother's.

10 Q And who lived in that house?

11 A My mother, my stepfather, Frankie Blue, my brother,
12 Kerwin Parker, and myself.

13 Q Who is older, you or Kerwin?

14 A My brother, Kerwin.

15 Q How much older than you is Kerwin?

16 A About eight years.

17 Q All right. Did you and Kerwin grow up together?

18 A Yes, ma'am.

19 Q And are you close to Kerwin?

20 A Yes, ma'am.

21 Q Can you describe your relationship with your brother
22 Kerwin?

23 A He was always a supportive brother. He was always
24 there for me, always looking out for me, make sure I was
25 doing the right things in life.

Curtis Johnson - Direct examination
by Ms. Fullwood

654

1 Q what kind of things did he do for you as a big
2 brother?

3 A He helped me, pushed me to make the right decisions,
4 always make sure I went to school, make sure I didn't stay
5 on the streets, or do anything wrong, make sure I made the
6 right decisions, try to grow and be a responsible
7 individual.

8 Q Were you proud of him?

9 A Yes, ma'am.

10 Q Look up to him?

11 A Yes, ma'am.

12 Q How old were you when you met Rebekah?

13 A I was eighteen.

14 Q were you still in high school then?

15 A Yes, ma'am.

16 Q And did the two of you begin having a romantic
17 relationship?

18 A Yes, ma'am.

19 Q when did that occur?

20 A The day I met her.

21 Q okay. Kind of love at first sight?

22 A Yes, ma'am.

23 Q And what was her marital status when you two started
24 dating?

25 A It was separated.

1 Q Separated.

2 Did she have any children?

3 A Yes, ma'am.

4 Q How many?

5 A She had two at the time.

6 Q Okay. And how did you feel about dating a woman with
7 children?

8 A I didn't mind.

9 Q You didn't mind?

10 A No, ma'am.

11 Q Did you do things with the children as well as have a
12 dating relationship with Rebekah?

13 A Yes, ma'am.

14 Q Now, did Rebekah eventually become pregnant with your
15 child?

16 A Yes, ma'am.

17 Q And how did you feel about that?

18 A I was happy because we was finally going to be a
19 family.

20 Q And with you and Rebekah were -- was it a steady,
21 continuous relationship or was it kind of on again off
22 again?

23 A It was a normal relationship.

24 Q Did you live with your parents the entire time you
25 dated Rebekah?

Curtis Johnson - Direct examination
by Ms. Fullwood

656

- 1 A No, ma'am.
- 2 Q Okay. Where else did you live?
- 3 A We had our own apartment at Copper Field Apartments.
- 4 Q When you say we had our own apartment, who are you
5 talking about?
- 6 A Rebekah, I, and the children.
- 7 Q And when did you live at Copper Field Apartments with
8 Rebekah?
- 9 A In 2006.
- 10 Q Okay. And do you remember how long you lived there?
- 11 A For almost a year.
- 12 Q And why did you two stop living there?
- 13 A Cause we got evicted.
- 14 Q You got evicted?
- 15 A Yes, ma'am.
- 16 Q Did you move from together after that?
- 17 A No, ma'am.
- 18 Q Where did you go?
- 19 A I moved back in my mother's house.
- 20 Q Where did she go?
- 21 A She moved back into her father's.
- 22 Q Okay. Did she stay at her father's or go somewhere
23 else?
- 24 A She went somewhere else.
- 25 Q Where was that?

- 1 A She moved in with her sister, Amy.
- 2 Q Where?
- 3 A Over at Cross Roads Apartments.
- 4 Q How long did she live there?
- 5 A Probably a couple of months.
- 6 Q Okay. Did she go somewhere after that?
- 7 A Yes, ma'am.
- 8 Q where?
- 9 A She moved back in with her father.
- 10 Q Did she stay there until this incident occurred?
- 11 A Yes, ma'am.
- 12 Q Now, Amy has -- Rebekah has all these sisters, right?
- 13 A Yes, ma'am.
- 14 Q Do you know Amy?
- 15 A Yes, ma'am.
- 16 Q And how did you get along with Amy?
- 17 A She was always nosey and wanted to be in our
- 18 relationship, wanted to try to tell us always what to do,
- 19 and direct us in our relationship.
- 20 Q How did you feel about that?
- 21 A I felt that it was none of her business and she
- 22 needed to worry about her own life and her own
- 23 relationship.
- 24 Q what was Amy's boyfriend?
- 25 A Walter Gadson.

Curtis Johnson - Direct examination
by Ms. Fullwood

658

- 1 Q what name do you know him by?
- 2 A Rome.
- 3 Q You knew Walter before this happened?
- 4 A We talked off and on, but I didn't really associate
5 with him like that.
- 6 Q Was he a friend of yours?
- 7 A No, ma'am.
- 8 Q Did you have any bad feelings towards him?
- 9 A No, ma'am.
- 10 Q How about Isaac?
- 11 A No, ma'am.
- 12 Q Was he an acquaintance?
- 13 A No, ma'am.
- 14 Q Had you seen him around?
- 15 A Yeah, I seen him around.
- 16 Q Where did you see him around at?
- 17 A I seen him around Amy and Walter apartment.
- 18 Q What would he be doing over there?
- 19 A He'd just come over and talk to Walter, and they
20 would go ride somewhere and that's about it.
- 21 Q He was Walter's friend?
- 22 A Yes, ma'am.
- 23 Q What about A.J., had you seen him around?
- 24 A I never seen him before.
- 25 Q Now, on November 20, what was the status of your

1 relationship with Rebekah?

2 I mean -- yeah, with Rebekah.

3 what was the status of that relationship?

4 A Me and her was taking some time apart.

5 Q whose idea had that been?

6 A My idea.

7 Q what were you trying to accomplish by taking time
8 apart?

9 A By us taking time apart I thought it would be better
10 for our relationship.

11 Q And were you unhappy that y'all were apart?

12 A No, ma'am, I felt like it would be better so that we
13 could both be better parents, be better for each other
14 cause we use to argue sometimes, and I felt like we been
15 around each other too much.

16 Q Were you free if you wanted to, to go out with other
17 girls?

18 A Yes, ma'am.

19 Q And was she free if she wanted to, to go out with
20 other guys?

21 A Yes, ma'am.

22 Q Were you okay with that?

23 A Yes, ma'am.

24 Q Now, were you aware that Rebekah had sort of started
25 some sort of a relationship with Isaac?

Curtis Johnson - Direct examination
by Ms. Fullwood

660

- 1 A No, ma'am.
- 2 Q Had you heard anything to that evening?
- 3 A I heard a little gossip and rumors, but I really
4 didn't pay no attention because it was always jokes.
- 5 Q Did that type of thing upset you?
- 6 A No, ma'am.
- 7 Q You, you said you were taking time off?
- 8 A Yes, ma'am.
- 9 Q At some point before November 20 did you decide you
10 might want to take some steps to try to get back together?
- 11 A Ma'am?
- 12 Q Did you decide, at some point before the 20th of
13 November, that you wanted to maybe try to get back
14 together with Rebekah as boyfriend and girlfriend?
- 15 A Oh, yes, ma'am.
- 16 Q And when was that?
- 17 A That was, I think, the morning of the 19th.
- 18 Q The morning of the 19th.
19 why did you decide that?
- 20 A Because her mother came and talked to me early that
21 morning and Rebekah's mother wanted me and Rebekah to get
22 back over for the sake of the kids.
- 23 Q Did you go over to Rebekah's house on the 19th?
- 24 A Yes, ma'am.
- 25 Q How did you go over there on the 19th?

1 A I drove my car over there.

2 Q Did you just show up uninvited or what?

3 A No, ma'am, Rebekah called me earlier and she wanted
4 me to come over to her apartment.

5 Q What were your intentions of going over there?

6 A My intentions of going over there was to talk to her,
7 make up, and to get my hair done.

8 Q And who was going to do your hair over there?

9 A Rebekah.

10 Q And tell me, how did you wear your hair at that time?

11 A I had my hair long.

12 Q And what do you mean by long?

13 A I used to have my hair long and I wear it in corn
14 rolls.

15 Q In corn rolls?

16 A Yes, ma'am.

17 Q Is that the type of hairdo that you can do by
18 yourself or do you have to go somewhere, somebody do it
19 for you?

20 A I had to have somebody do it for me.

21 Q Did Rebekah know how to do that?

22 A Yes, ma'am.

23 Q About what time did you get to Rebekah's house on the
24 19th?

25 A I don't recall. It was nighttime because she told me

Curtis Johnson - Direct examination
by Ms. Fullwood

662

1 earlier on the phone come at any time.

2 Q So, it was already dark?

3 A Yes, ma'am.

4 Q And who was over there?

5 A Rebekah, the children, and her father.

6 Q And was her father out in, of the apartment or where
7 was her father in the apartment?

8 A Her father was in the apartment in the kitchen.

9 Q And what did you do once you got there?

10 A I got there, I hugged the children, I hugged Rebekah,
11 gave them all a kiss, and I said hello to her father.

12 Q Did Rebekah proceed to start fixing your hair?

13 A Yes, ma'am.

14 Q Okay. Did anything happen while she was fixing your
15 hair?

16 A Yes, ma'am.

17 Q What's that?

18 A I told her -- I asked her really to put clothes on
19 the kids because it was getting late and they were falling
20 asleep and it was really cold in the apartment and she
21 gets upset when I ask her to do that.

22 Q Okay. From this, what happened?

23 A From this she gets upset. She gets up, takes the
24 kids, go in the room, and lock the door.

25 Q Did the two of you argue?

1 A No, ma'am.

2 Q No?

3 well, she went in her room and locked the door.

4 What happened from there?

5 A I, I was trying to talk to her through the door, tell
6 her let's talk it over because the situation wasn't really
7 that serious. The only thing I asked her to do was put
8 clothes on the children.

9 Q And did you eventually go into her room?

10 A Yes, ma'am.

11 Q How did you get in?

12 A The oldest, Gabby, opened the door.

13 Q One of her children opened the door?

14 A Yes, ma'am.

15 Q Did you talk to Rebekah in her room?

16 A Yes, ma'am.

17 Q And were either of you yelling at the other?

18 A No, ma'am, not at the time, the beginning of the
19 conversation in the room.

20 Q well, at any time during the conversation was anybody
21 yelling?

22 A Not exactly.

23 Q Okay.

24 A Our voices was raised, but it wasn't really like
25 yelling.

- 1 Q Whose voices were raised?
- 2 A Rebekah's.
- 3 Q And yours?
- 4 A Sometimes, but I was trying to talk to her and calm
5 her down because she was really getting mad.
- 6 Q Did this disagreement wake up Mr. Fleming?
- 7 A No, ma'am.
- 8 Q All right. About how long did the two of you have
9 this disagreement?
- 10 A We was talking for a while and I asked her, I said,
11 hey, you shouldn't be mad at me putting clothes on the
12 kids, why you mad like that, and I told her she needs to
13 be a better mother to her kids because I can't raise kids
14 alone, and she gets really upset and then she gets on the
15 phone.
- 16 Q Do you know who she calls?
- 17 A Yes, ma'am.
- 18 Q Who?
- 19 A She called her sister Amy first.
- 20 Q You said first.
21 Did she make any other calls?
- 22 A Yes, ma'am.
- 23 Q To who?
- 24 A She called the police.
- 25 Q okay. At that point, what did you do?

- 1 A I asked her why did she call Amy and why she call the
2 police because the situation still wasn't that serious.
- 3 Q And did you wait for the police to get there?
- 4 A Yes, ma'am.
- 5 Q At any point did Mr. Fleming wake up?
- 6 A Yes, ma'am.
- 7 Q How did he end up waking up?
- 8 A I went to his room to knock on the door to tell him
9 what was going on.
- 10 Q At that point were you acting up emotionally?
- 11 A No, ma'am.
- 12 Q Were you kicking things, hollering or---
- 13 A No.
- 14 Q ---anything like that?
- 15 A No, ma'am.
- 16 Q How was Rebekah acting?
- 17 A She got really upset when her father came out to talk
18 to her and told her she shouldn't have been upset and mad
19 at me, and she shouldn't have called Amy and the cops.
20 So, Rebekah started, went in the room again, and started
21 throwing stuff around. She was real angry, throwing stuff
22 around.
- 23 Q Who got there first, Amy or the police?
- 24 A Amy got there first and then her father told her to
25 leave cause she wasn't going to do nothing but cause

Curtis Johnson - Direct examination
by Ms. Fullwood

666

1 trouble, and then the police came and Amy try to come back
2 and get me.

3 Q Did you see anyone there with Amy?

4 A No, ma'am, the only person I saw was Amy.

5 Q When the police got there, what happened?

6 A The police got there, the police officer talked to
7 Mr. Fleming.

8 Q And did you give the police any lip?

9 A No, ma'am.

10 Q Okay. Were you calm with them or upset?

11 A I was calm.

12 Q Did they arrest you?

13 A No, ma'am.

14 Q You talked to the police, correct?

15 A Yes, ma'am.

16 Q After talking to the police, what did you decide to
17 do?

18 A I decide to go home.

19 Q Was that their suggestion to you?

20 A Yes, ma'am.

21 Q All right. Now, you -- tell me where your home is.

22 A My home is over off North Main.

23 Q And how do you get from Mr. Fleming's house to your
24 home off North Main?

25 A You have to drive on Broad River Road and go on the

1 interstate to I-20 and get off on the Monticello exit.

2 Q From there, it's where your mom lives?

3 A Yeah, you drive up past Eau Claire, go down Columbia
4 College Drive, turn on North Main, make a right on North
5 Main, turn in the neighborhood.

6 Q As you left Mr. Fleming's house, did you see anybody?

7 A Yes, ma'am.

8 Q Who is that?

9 A I went downstairs, seen the police officer, talked to
10 him one more time again, and then I went to go inside my
11 vehicle, and I seen Amy on the left side talking on the
12 phone.

13 Q Did you see anybody else?

14 A No, ma'am.

15 Q You saw Amy on the phone?

16 A Yes, ma'am.

17 Q Now, what kind of car were you driving that night?

18 A 1997 white Mitsubishi Mirage.

19 Q As you were leaving Rebekah's house, did you see any
20 other person or other vehicles?

21 A I seen another vehicle.

22 Q Where did you see this other vehicle?

23 A I seen this other vehicle when I was leaving out my
24 parking space at Rebekah's father's apartment.

25 Q Can you describe that vehicle for us?

Curtis Johnson - Direct examination
by Ms. Fullwood

668

- 1 A A champagne gold in color, Vibe, looked to be a
2 Honda, had tinted windows.
- 3 Q Had you ever seen that car before?
- 4 A Yes, ma'am.
- 5 Q Where?
- 6 A I seen -- I know it was Isaac's.
- 7 Q So, you knew that -- you knew that to be Isaac's car?
- 8 A Yes, ma'am.
- 9 Q Okay. Could you see who was in the car?
- 10 A No, ma'am, the windows were tinted.
- 11 Q So, did you leave -- did you stop when you saw the
12 car or go on your way?
- 13 A I went on my way cause at first I didn't really pay
14 no attention to it until I got on Broad River Road.
- 15 Q What happened when you got on Broad River Road?
- 16 A When I turn to Broad River Road, the car was
17 already -- when I turn on Broad River Road in the left
18 lane, I was driving and the car, Isaac car, was in the
19 right lane, slowed down and pulled in the left lane right
20 behind me.
- 21 Q This was on Broad River Road?
- 22 A Yes, ma'am.
- 23 Q And did you see the vehicle the entire time you were
24 on Broad River?
- 25 A Yes, ma'am.

1 Q And it was either beside you or behind you?

2 A It was beside me, but it was beside me, had turned
3 behind me, slowed down, and turned behind me.

4 Q Okay.

5 A Yes, ma'am.

6 Q And while you were on Broad River, were you engaging
7 in any type of horseplay with this vehicle?

8 A No, ma'am.

9 Q Is -- what, if anything, happened once you got on the
10 interstate?

11 A A car followed me.

12 Q Okay. In what way did it follow you?

13 A Followed me everywhere closely.

14 Q Were you aware that it was behind you then?

15 A Yes, ma'am.

16 Q Okay. What happened once you got off on the
17 Monticello Road exit?

18 First of all, explain to us how that exit is set up.

19 A The exit is set up where you turn north, and it's a
20 stop line, and there is different lanes at the exit.

21 Q And did you get off on the exit?

22 A Yes, ma'am.

23 Q Where did the Honda go?

24 A The Honda got off and rode past me through the light,
25 which was green at the time, and I was still getting off

Curtis Johnson - Direct examination
by Ms. Fullwood

670

1 the exit. By the time I got to the exit, the light turned
2 red.

3 Q So, the Honda got up to the light while it was green?

4 A Yes, ma'am, there was like a middle lane.

5 Q Did it go through the light?

6 A No, ma'am.

7 Q Then you pulled up to the light and it was red?

8 A Yes, ma'am, it was red and other cars in the other
9 lane, the other way, were going at the time.

10 Q Okay. And what happened next?

11 A What happened next?

12 Walter jumped out of the car with a gun in his hand.

13 Q Do you know what kind of gun it was?

14 A No, ma'am, by the time I looked to see if he had a
15 gun I ducked down.

16 Q And was Walter in the driver's or passenger's seat?

17 A Passenger's seat.

18 Q And what happened next?

19 A I ducked down thinking he was going to shoot me and
20 he kicked in the car, kicked me in the head.

21 Q Now, you were in the car and he kicked you in the
22 head?

23 A Yes, ma'am.

24 Q Was your window up or down?

25 A It was down since I left Mr. Fleming's apartment.

1 Q How was he able to kick your head through a car
2 window---

3 A Because---

4 Q ---even if it was down?

5 A Because when he jumped out the car he pulled the gun
6 at me. My first reaction was to duck down like he was
7 going to shoot me.

8 Q How did you duck down?

9 A I ducked down thinking he was going to shoot me and
10 he kicked in the car because I was trying to see what was
11 going on at the same time and then he kicked in the car
12 and hit me right across here.

13 Q Once you were kicked, what happened next?

14 A Once I was kicked I started being hit.

15 Q By who?

16 A Walter.

17 Q What was he using to hit you with?

18 A He was hitting me with his hand.

19 Q Where was the gun at that point?

20 A I didn't know where the gun was at, was at that
21 point.

22 Q What were you doing while he was hitting you?

23 A I was still trying to duck down trying to look and
24 see if it was clear to drive off.

25 Q And do you know if he was hitting you with both hands

Curtis Johnson - Direct examination
by Ms. Fullwood

672

1 or just one hand?

2 A I know that he was hitting me with one hand. Then he
3 slowed down hitting me, and then I felt another pair of
4 hands hitting me also.

5 Q Did you see who that other pair of hands belonged to?

6 A Yes, ma'am, I was trying to look and trying to drive
7 and see if it was clear enough to drive, trying to protect
8 myself.

9 Q Were you moving at that point or you're still
10 stopped?

11 A Ma'am?

12 Q Was your car moving then or still stopped?

13 A I'm still stopped.

14 Q Why didn't you just drive off?

15 A Because, like I said, other cars were going, happened
16 so fast, other cars were going and they was all hitting.

17 Q Did any of these other cars stop or try to help you
18 or anything?

19 A No, ma'am.

20 Q So, did you remain in your vehicle during this entire
21 encounter?

22 A No, ma'am.

23 Q What happened then that you weren't in the car any
24 more?

25 A He pulled me out of my vehicle.

1 Q Explain for us -- first off, were you in your
2 seatbelt?

3 A Yes, ma'am.

4 Q Was there a peculiar way you had to use your seatbelt
5 in that car?

6 A Yes, ma'am, the driver's side seatbelt with the locks
7 in that, that's broke.

8 Q Uh-huh. (Affirmative).

9 A But I had to put the seat belt in the passenger's
10 seatbelt lock and it sticks out on this side. So, I put
11 it over here, but it leaves a wide gap going across.

12 Q Did you get pulled all the way out of the car?

13 A Yes, ma'am, about half of my legs were kind of still
14 sticking in the car. Then I got pulled out some more.

15 Q What kept the car from rolling once that happened?

16 A Kept the car from rolling?

17 Q Uh-huh. (Affirmative).

18 A I don't really know. I was stopped right there, but
19 at the time I was getting hit.

20 Q Had you put your car in park?

21 A No, ma'am, at the time I was getting hit and I wasn't
22 really paying attention to the car.

23 Q Do you remember whether or not your foot stayed on
24 the break?

25 A No, ma'am, I was getting dragged out and at the time

Curtis Johnson - Direct examination
by Ms. Fullwood

674

1 I was trying to protect myself.

2 Q Did your car move at all?

3 A I know when I got up I had to run and jump into my
4 car.

5 Q Okay. And about how long did this attack last?

6 A It happened so quickly. Didn't last that long,
7 probably about a minute tops.

8 Q At any time when you were around Walter and Isaac at
9 that exit off of Monticello Road did you lean over into
10 the passenger's side of your car as if you were going to
11 retrieve any kind of weapon or anything?

12 A Yes, ma'am, when he was hitting me I was trying to
13 move away to check to see if it was clear to drive away.

14 Q Did you move away to look for a weapon?

15 A No, ma'am.

16 Q Did you indicate to them you had some type of weapon?

17 A No, ma'am.

18 Q How did you finally get away from them?

19 A When I seen the guy pulling me again, I traveled and
20 got up and ran to my car.

21 Q Okay. And -- now, do you know what that gun looked
22 like that Walter had?

23 A No, ma'am, if it was any color, all I seen was black
24 and I ducked down.

25 Q All right. Now, during this entire encounter, did

1 walter or Isaac say anything to you?

2 A Yes, ma'am.

3 Q What were they saying to you?

4 A They said---

5 Q You can say what they were saying.

6 A They said what's that shit you talking.

7 Q They said what's that shit you been talking?

8 A Yes, ma'am.

9 Q Do you know what they meant by that?

10 A No, ma'am, only thing I thought was me arguing with
11 Rebekah. That's the only thing I know.

12 Q Do you mean -- by that, you mean the argument you two
13 had been having earlier that evening?

14 A Yes, ma'am.

15 Q Did you see where they went after you got away from
16 them?

17 A No, ma'am, I was trying to duck down still making
18 sure they don't shoot at me, and I was trying to get to my
19 mother's house and looking in my rear view, trying to duck
20 down, at the same time make sure they don't shoot at me
21 while I was driving off.

22 Q Were you injured during this incident?

23 A Yes, ma'am.

24 Q How were you injured?

25 A I had a little cut right here up under my lip.

Curtis Johnson - Direct examination
by Ms. Fullwood

676

1 Q Uh-huh. (Affirmative).

2 A A little nick.

3 Q It was just a superficial type of injury?

4 A Yes, ma'am, and also when I got kicked I had some
5 dirt in my left eye.

6 Q Did you need medical treatment for what happened?

7 A At the time not really cause I didn't even feel it at
8 the time.

9 Q Was it the type of cut you would need stitches for?

10 A No, ma'am.

11 Q Was getting assaulted in your eye something you'd
12 need to go to the doctor about?

13 A No, ma'am.

14 Q So, did you, in fact, go to your mom's house?

15 A Yes, ma'am.

16 Q Okay. How did you feel after this ambush?

17 A I felt hurt and upset.

18 Q Okay. What do you mean by -- when you say I felt
19 hurt, what were you hurt about?

20 You mean physically or something else?

21 A Emotionally hurt.

22 Q Why did that emotionally hurt you?

23 A Because I was upset that she got these two
24 individuals to jump me, over me and her arguing about
25 putting clothes on the children.

- 1 Q You believed that Rebekah had had them do this to
2 you?
- 3 A Yes, ma'am.
- 4 Q Were you upset with Walter and Isaac too?
- 5 A Yes, ma'am.
- 6 Q Were you mad at them?
- 7 A Yes, ma'am, a, a little bit.
- 8 Q Were you crying?
- 9 A Yes, ma'am.
- 10 Q Who was at home once you got to your mom's?
- 11 A My mother, stepfather, brother.
- 12 Q Did you talk to your mom and stepfather?
- 13 A Yes, ma'am.
- 14 Q How about Kerwin?
- 15 A Yes, ma'am.
- 16 Q And was he up when you got home?
- 17 A No, ma'am.
- 18 Q Okay. Did you wake him up?
- 19 A At the same time he was getting up at the same time I
20 was telling him. I went to go get him, tell him what was
21 going on.
- 22 Q Did you tell him what was going on?
- 23 A Yes, ma'am.
- 24 Q Did you and Kerwin have a talk?
- 25 A Not really a talk. It was me, my mother, and Kerwin,

1 he was standing right there in like the middle of the
2 house and we was talking over what's happened.

3 Q What did you and Kerwin decide to do?

4 A Kerwin said he was going to go talk to the
5 individuals.

6 Q Did you and Kerwin have some kind of plan for talking
7 to him?

8 A No, ma'am, we -- wasn't really no plan whatsoever,
9 was no plan to do anything. He said he was going to go
10 talk to them.

11 Q What did you want to accomplish by talking to these
12 fellows?

13 A Hopefully get this whole thing worked out cause that
14 didn't make no sense for something like that to happen.

15 Q What do you mean this whole thing worked out?

16 A Like them jumping on me and find out what was going
17 on, the reason for that happening.

18 Q Did you know why they had done it?

19 A No, ma'am, the only thing I'm thinking of was me
20 arguing with Rebekah about putting clothes on the
21 children.

22 Q Did you want two men going around jumping you all the
23 time?

24 A No, ma'am.

25 Q Did you want to have to keep looking over your

1 shoulder?

2 A No, ma'am.

3 Q Did you want to work that out?

4 A Yes, ma'am.

5 Q When you and Kerwin left the house, did you have a
6 gun?

7 A No, ma'am.

8 Q Did you have a metal pipe?

9 A No, ma'am.

10 Q When the two of you walked out the house, did Kerwin
11 have a gun?

12 A No, ma'am, I didn't see him with one on him at all.

13 Q Did Kerwin have a metal pipe?

14 A No, ma'am, I didn't see one on him at all.

15 Q Did you have brass knuckles in your pocket?

16 A I didn't remember at the time, but I had them earlier
17 on me when I was working on my car.

18 Q So, you did have brass knuckles in your pocket?

19 A Yes, ma'am.

20 Q Can you tell us why you had them there?

21 A Cause I was using them to finish fixing my car
22 because I had a car accident, but then the night or two
23 before, and I had to finish fixing under my car to why I
24 use them so I don't hurt my hand. So, I really don't have
25 no money to buy tools like that. So, I have to use

1 whatever tools that I have and the tools that I have are
2 not really that good.

3 Q Do you consider brass knuckles a tool?

4 A Yes, ma'am.

5 Q What do you do with brass knuckles to fix a car?

6 A I use them to fix the car or to bend anything I need
7 to bend, like a nail, or use them around the house or
8 anything. Like I said, protect my hand, be -- if I had to
9 take a, anything or hit or anything.

10 Q What do you mean to protect your hand?

11 A Like up under my cars, under my left control panel.

12 Q Say that slower.

13 You were doing what under your car?

14 A Lower left control panel under my car. I had to fix
15 that when I got in a car accident that night. Not that
16 night, but some nights before. When I went up under my
17 car I had to use a ratchet and turner, tighten bolts.
18 Whenever I tighten it, I always hit my hands. So, to stop
19 doing that I always use brass knuckles because I work on
20 my car a lot and instead of hitting my hand and injuring
21 myself, the brass knuckles are the---

22 Q So, you were having to go under your car and fix it?

23 A Yes, ma'am, I had to jack the car up and go up under.

24 Q You would use them on top of your knuckles to avoid
25 hitting them on the other metal parts of the car under

1 there?

2 A Yes, ma'am, say I'm tightening a bolt and then tight
3 without the brass knuckles on, but I need to get it real
4 tight, and if I tighten it, sometimes if you use a
5 ratchet, and tighten the bolt, it will slip off and you'll
6 hit your hand.

7 Q Okay.

8 A So, to stop doing that, I had the brass knuckles on.

9 Q Had you worked under your car that day?

10 A Yes, ma'am.

11 Q And what did you do with the knuckles after you
12 finished working?

13 A I put them in my pocket.

14 Q Okay.

15 A I always put a lot of stuff in my pocket.

16 Q Do you know how long those knuckles had been in your
17 pocket that day?

18 A I forgot all about them.

19 Q which car did you take to go talk to curtis and
20 Isaac?

21 A My brother's.

22 Q what kind of car is that?

23 A A Mazda Tribute S.U.V.

24 Q That's the car we've been talking about all week,
25 right?

Curtis Johnson - Direct examination
by Ms. Fullwood

682

1 A Yes, ma'am.

2 Q When you got in that car at any time on the ride over
3 to Mr. Fleming's and a, to Church Hill Apartments, did you
4 see any guns in the car?

5 A No, ma'am.

6 Q Did you see any metal pipes in the car?

7 A No, ma'am.

8 Q Who drove the car when you left your house?

9 A My brother.

10 Q Okay. And where did you go first?

11 A Miss Fleming's apartment.

12 Q Did anybody get out of the car?

13 A Yes, ma'am.

14 Q Who?

15 A My brother.

16 Q Did he go to the door?

17 A Yes, ma'am.

18 Q Did you see that?

19 A Yes, ma'am.

20 Q Did Mr. Fleming come to the door?

21 A Yes, ma'am.

22 Q Did you see your brother talking to Mr. Fleming?

23 A Yes, ma'am.

24 Q And after he came back to the car, where did the two
25 of you go?

- 1 A Isaac's apartment.
- 2 Q Who drove over to Isaac's apartment?
- 3 A I drove over there.
- 4 Q Was there any reason you switched drivers?
- 5 A I told my brother I knew Isaac and then, where Isaac
- 6 lived at, had been there before. So, I told him he was
- 7 riding around the corner and I said I'll just drive there.
- 8 Q And that apartment complex has two ways you can get
- 9 to it off of two roads, right?
- 10 A At the time I only knew one way to get in there.
- 11 Q Which way did you go to get in there?
- 12 A I -- St. Andrews Road.
- 13 Q Once you got inside the streets and the apartment
- 14 complex itself, would Walter and Isaac's apartment be on
- 15 the left or the right?
- 16 A On the left.
- 17 Q Okay. Did you drive by Walter's building?
- 18 A Yes, ma'am.
- 19 Q All right. Is there a parking area in front of the
- 20 building?
- 21 A Yes, ma'am.
- 22 Q Why didn't you park there?
- 23 A Cause there was a lot of cars out there they had in
- 24 parking spots that night.
- 25 Q Where did you go?

Curtis Johnson - Direct examination
by Ms. Fullwood

684

1 A Went around the back---

2 Q Let me see. I might have what I need.

3 Your Honor, the mystery of the missing -- Curtis, let
4 me show you this picture.

5 Have I shown you this picture before?

6 A Yes, ma'am.

7 Q And do you recognize the place that this picture
8 depicts?

9 A It's the backside area because that night I couldn't
10 really see.

11 Q Okay. You heard Mr. MacDougall testify.

12 A Yes, ma'am.

13 Q And he said that he took this I believe in 2008.

14 Is there anything different about this area in this
15 picture than when you were there on November 20 of 2006?

16 A I didn't see all them bushes there at the time. I
17 didn't remember seeing a lot of bushes.

18 Q So, the bushes weren't that big?

19 A No, ma'am.

20 Q Let me show you these photographs of, part of the
21 same area that the police took.

22 Is this more like how the bushes were?

23 A Yes, ma'am.

24 MS. FULLWOOD: Okay. Your Honor, if I may, I'd like
25 Mr. Johnson to come down and show the jury, on Defense

1 Exhibit 19, where he was parked.

2 First let me ask you, does Defense Exhibit 19 depict
3 the area where you were parked?

4 A Yes.

5 Q Okay.

6 A Yes, ma'am.

7 Q I'd like you to come on down here, Curtis.

8 A (Witness comes down from the stand.)

9 Q Hold the picture. I'll hold the picture and you use,
10 just use this to point and show the jury -- probably have
11 to show them two or three times to get everybody -- show
12 them where you were parked.

13 A Right here.

14 Q Okay. Show them where you were parked.

15 Okay. Show them where you were parked.

16 A (Witness complies.)

17 Q You can go back up to the stand.

18 A (Witness returns to the stand.)

19 Q All right. Now, did you park nose in or tail in when
20 you went into that area?

21 A Parked the way I always parked, tail in.

22 Q That's the way you always, always parked?

23 A Yes, ma'am.

24 Q Now, by the time you had gotten over to Isaac and
25 Walter's house, what was your frame of mind?

Curtis Johnson - Direct examination
by Ms. Fullwood

686

1 How were you feeling emotionally then?

2 A I was still a little upset because I was happy that I
3 was going to get this resolved.

4 Q what do you mean by get this resolved?

5 A By talking the situation over and trying to find some
6 peace about it.

7 Q okay. So, what were your intentions when you stopped
8 over there?

9 A Go talk to the individuals about the situation.

10 Q Did somebody leave the car?

11 A Yes, ma'am.

12 Q who?

13 A My brother.

14 Q Did you leave the car?

15 A No, ma'am.

16 Q why not?

17 A Because my brother told me to stay in the truck.

18 Q If you'll come down, Curtis.

19 A (Witness comes down from the stand.)

20 Q Did you see where your brother went when he left the
21 truck?

22 A (Witness nods affirmatively.)

23 Q How were you able to see where he went?

24 A I had to turn around over my right shoulder and look.

25 Q And if you would please, show the people on the jury

- 1 where he went.
- 2 A Right here.
- 3 Q Come on. We need to show everybody.
- 4 A (Witness complies.)
- 5 Q You can return to the stand.
- 6 A (Witness returns to the stand.)
- 7 Q How far down the walkway did he go?
- 8 A All the way to the end.
- 9 Q Did he, at all times, stay in your view or disappear
- 10 from your view at any point?
- 11 A Disappeared from my view.
- 12 Q Which way did he go?
- 13 A I guess to the left because when we, when we came
- 14 into the apartment complex we seen Walter, A.J., and Isaac
- 15 standing out front.
- 16 Q When your brother left the car, did he have a gun on
- 17 him?
- 18 A No, ma'am.
- 19 Q Did he have a metal pipe with him?
- 20 A No, ma'am.
- 21 Q So, you saw your brother walk down the wall, he turns
- 22 to the left, and you don't see him?
- 23 A Yes, ma'am.
- 24 Q What did you see or notice next?
- 25 A After that I seen three guys coming out of the back

Curtis Johnson - Direct examination
by Ms. Fullwood

688

1 of an apartment with three shotguns.

2 Q Okay. Did you know who the three guys were?

3 A I knew who two were, but the other guy I didn't know
4 who he was.

5 Q Who were the two that you knew?

6 A Walter Gadson and Isaac Wilson.

7 Q All right. Now, how many shotguns did you see?

8 A I seen three.

9 Q Okay. What was the lighting like out there?

10 A Light was -- I was able to see some areas.

11 Q Were there street lights out there in that area?

12 A Yes, ma'am.

13 Q Can you describe the gun that Isaac had?

14 A Yes, ma'am.

15 Q What did it look like?

16 A It was a big, long shotgun like the one right there
17 on the floor.

18 Q Okay. So, is this the shotgun you saw Isaac with?

19 A Yes, ma'am.

20 Q What kind of shotgun did you see Walter with?

21 A Walter had a shotgun that had a curved butt at the
22 end of it. He was walking with that in his hand.

23 Q And what kind of shotgun did A.J. have?

24 A A.J. had a shotgun that looked like Isaac's, but it
25 was a smaller version.

1 THE COURT: Let me ask this question, anybody on the
2 jury need to take a break?

3 (No response.)

4 THE COURT: Nobody?

5 (No response.)

6 THE COURT: Go ahead. You may proceed.

7 Q Curtis, I'm having you look at Defense Exhibit 17,
8 18, and 19.

9 Can you show me, using any of those pictures, where
10 you saw those men come from?

11 A Yes, ma'am.

12 Q Which picture shows it best?

13 This one?

14 A This one.

15 Q Okay. This is Defense Exhibit 17.

16 Where did the men come from?

17 A That direction.

18 Q So, let's come on down here again.

19 A (Witness comes down from the stand.)

20 Q I want you to show the people on the jury where they
21 came from.

22 A Right in this direction.

23 Q So, this patio area by the tree?

24 A Yes, ma'am.

25 Q Where did they go from there?

Curtis Johnson - Direct examination
by Ms. Fullwood

690

1 A They was walking towards my brother's truck.

2 Q All right. Which of these pictures can you best use
3 to show us the direction they walked and where they
4 walked?

5 A (Witness points.)

6 Q This one?

7 A Yes, ma'am.

8 Q Where did they walk?

9 A Is---

10 Q Go to the stand and demonstrate.

11 What direction did they go?

12 Show me up there.

13 A They walked in like a slanted direction towards my
14 brother's truck. In these bushes, they wasn't that big at
15 the time, but at the time I could see him walking in the
16 same direction towards my brother's truck.

17 Q So then the bushes were more like this?

18 A Yes, ma'am.

19 Q Okay. They were able to walk through the bushes?

20 A Yes, ma'am.

21 Q And how far down did they come?

22 A It came about halfway, about halfway because they had
23 stopped at a certain point.

24 Q Okay. So, I'm going to get you to come down and show
25 the direction they walked and where they came to at a

1 certain point.

2 Okay. I'll tell you what I'm going to put you over
3 here because your voice that way will carry over to our
4 court reporter.

5 A They came this direction right here and they stopped.
6 They stopped because once I seen, once I seen them come
7 out with shotguns -- actually I heard them come out. When
8 they came out, Isaac asked Walter is that the truck right
9 there. Walter said yes. Isaac says well, we're going to
10 shoot the niggers. When I heard that, I turn my brother
11 truck on and I started bumping the horn and when they
12 heard that they stopped.

13 Q Show us where they stopped.

14 A Right about here.

15 Q Use this as a pointer cause you're using your whole
16 hand there.

17 A Stopped right about there.

18 Q Right about there?

19 A Yes, ma'am.

20 Q Were they on the asphalt or still in the shrubbery
21 area?

22 A I couldn't really make out cause I was looking over
23 them at the shotgun at the time. My whole focus was on
24 the shotgun.

25 Q Move down and show these next people the way they

Curtis Johnson - Direct examination
by Ms. Fullwood

692

1 came out and stopped.

2 A Came out and stopped right there.

3 Q Move down a, a little bit more so everybody can be
4 sure to see that.

5 A Came down and stopped right here.

6 Q So, what did you hear Isaac say as they were coming
7 out of---

8 A I heard Isaac say to Walter is that the truck right
9 there. Walter said yeah. Then Isaac said well, we're
10 going to shoot the niggers.

11 Q Okay. And niggers, how did you react to that?

12 A I was terrified.

13 Q Okay. And why?

14 A Because my brother, my brother was out of the truck
15 and I was in the truck and I was scared.

16 Q Okay. So---

17 A I was scared we were going to lose our lives that
18 night. I was terrified. I was terrified.

19 Q Had they noticed you?

20 A When I turn the truck on and started bumping the horn
21 for my brother to come back they, they stopped.

22 Q Okay. When did you see your brother next?

23 A I seen my brother run back towards the---

24 (The remaining portion of Defendant Johnson's
25 testimony is missing.)

1 THE COURT: You may proceed.

2 CROSS-EXAMINATION

3 BY SOLICITOR MYERS:

4 Q You said when Walter kicked you through the car
5 window he cut your lip, is that right?

6 A I don't know when it was cut. I don't know when.

7 Q So, if I heard you testify earlier that when Walter
8 kicked you through the window and you put your hand up to
9 your lip and said he cut my lip along here---

10 A No, sir.

11 Q I'm wrong?

12 A He kicked the window -- I was putting my hand up to
13 cut my face, and he kind of kicked me in the eye area. I
14 had some dirt in my eye.

15 Q I heard you say about dirt in your eye, but I also
16 saw you point to your lip, said he cut your lip---

17 A I said I was injured up under my lip. I had an
18 injury to my lip I recognized later at the time. I didn't
19 even feel anything.

20 Q When did you recognize you had an injury around your
21 lip?

22 A Later on after I came to the jail.

23 Q After you came to the jail?

24 A Yes, sir.

25 Q How come this police officer didn't see any kind of

Curtis Johnson - Cross-examination
by Solicitor Myers

694

1 injury to your lip?

2 A I don't know, sir.

3 Q Did you tell him that Walter kicked you?

4 A Yes.

5 Q Did you point to where your lip was cut?

6 A I didn't know my lip was cut at the bottom. I was
7 just know -- I was trying to protect my face from getting
8 shot. All I know is I got hit and I jumped on, pulled out
9 the car.

10 Q When you told him Walter kicked you, he looked at
11 your face and he didn't see no injury.

12 where was that injury?

13 A Later on, sir?

14 Q Uh-huh. (Affirmative).

15 A The injury that I had was down here up under down
16 here.

17 Q Did you get it in jail?

18 A No, sir.

19 Q Where did you get it?

20 A I got it when they jumped on me I guess.

21 Q Where?

22 A They jumped on me off Monticello.

23 Q But you couldn't see it?

24 A How I, was I supposed to see it, sir?

25 Q Your brother drives from Broad River and in his

1 S.U.V., is that right?

2 A Yes, sir.

3 Q Walter and Isaac are not there. So, your quest to
4 find them, your trip to find them, you go back to the
5 apartments where Isaac lives, is that right?

6 A Yes, sir.

7 Q Who drove?

8 A I drove over there.

9 Q Why?

10 A Because I told my brother I knew where he was at and
11 I'd drive over there.

12 Q You knew where Isaac lived?

13 A Yes, sir, from dropping the kids off to get babysit.

14 Q So, if they weren't at Broad River, on your hunt to
15 find them, the next thing was to go over to the
16 apartments, is that right?

17 A Wasn't the hunt to find them at all, sir.

18 Q All right. Before you got over there, did, did you
19 call up anybody, Rebekah, Walter, Isaac, or any of them
20 and say, look, we're coming over so we can talk it out?

21 A No, sir.

22 Q Did you want to?

23 Huh?

24 A No, sir.

25 Q Why?

1 why didn't you want to if all you're going to do is
2 talk?

3 why didn't you say, fellows, can't wait till
4 tomorrow, my brother and I, we can't wait, we're coming to
5 just talk it out?

6 why didn't you want to?

7 A Sir, I---

8 Q Huh?

9 A I was still upset and hurt at the time.

10 Q Upset and hurt at the time?

11 A Yes, I wasn't---

12 Q That's your reason for not calling up these men
13 saying we just want to talk it out?

14 A I wasn't thinking about no phone, sir.

15 Q What were you thinking about?

16 You were thinking at going over there to do some
17 harm, to fight it out, wasn't you?

18 A No, sir, I wasn't, sir.

19 Q why didn't you call them?

20 A I just wanted to go over there and talk to them.

21 Q why didn't you say look, I'm just wanting to come
22 over and talk with you?

23 why didn't you do that?

24 A That's what we did when we got over there.

25 Q why didn't you warn them and---

1 MS. FULLWOOD: Asked and answered.

2 SOLICITOR MYERS: He hasn't answered it. If he
3 answers it, I'll be happy to stop.

4 THE COURT: Ask it one more time.

5 Q Why didn't you call them?

6 Tell this jury one good common sense sound reason why
7 you did not call them.

8 A I didn't think about calling nobody, sir, at the
9 time.

10 Q Didn't think about calling them, sir, at the time?

11 A I was just thinking about going, trying to talk it
12 over, sir.

13 Q Just thinking about going over to talk it over, but
14 not let them know you're coming, is that right?

15 Is that right?

16 A I just wanted to talk to them.

17 Q You have to speak up louder.

18 A Just going to go talk to them.

19 Q Just going to go talk with them.

20 You said a little while ago you saw them out front
21 when you pulled up to the apartments, didn't you?

22 A Yes, sir.

23 Q If you saw them out front, why didn't you pull up and
24 talk with them out front?

25 Why did you have to sneak around back?

Curtis Johnson - Cross-examination
by Solicitor Myers

698

- 1 A I ain't sneak around back, sir.
- 2 Q Why didn't you drive around back?
- 3 Why didn't you just drive around out front?
- 4 A The parking lot was full of cars and plus they seen
5 the truck already.
- 6 Q Let's break that down. The parking lot is full of
7 cars. They -- these places are full?
- 8 A Yes, sir.
- 9 Q You can't stop in the middle of the road and say
10 fellows, we're here just to talk it out?
- 11 Why didn't you do that?
- 12 A Sir, I didn't want them thinking I was trying to go
13 over and hurt them or anything like that.
- 14 Q Why didn't you stop there?
- 15 All you wanted to do was talk?
- 16 A I was just gonna get a parking spot and go talk to
17 them.
- 18 Q Why didn't you stop there?
- 19 You're already out there, why didn't you go around
20 back?
- 21 A They seen the truck.
- 22 Q If they seen the truck, why didn't you stop and talk
23 with them?
- 24 Why did you sneak around there?
- 25 A I wasn't trying to sneak.

1 Q Why did you---

2 A They seen it.

3 Q What difference does it make if they have seen the
4 truck?

5 You---

6 A They seen the truck.

7 Q What difference does that make?

8 A I wasn't trying to ride or cause any harm or do
9 anything. I wanted to try to park, get out, and try to
10 talk it over with them.

11 Q The reason you didn't stop right then and is all
12 these places, all these parking places, ain't no vacant
13 one, is that right?

14 A Sir, when I looked I ain't seen no parking lot open.

15 Q The parking lot is full?

16 A When I look I aint seen no parking spot.

17 Q Do you tell them hey, there's no parking spaces, so
18 we're going to pull around back so we can talk it out?

19 A No, sir.

20 Q Why not?

21 A I wanted to park and talk to them.

22 Q You were really upset then. You're still upset?

23 A Sir, I was upset, concerned, whatever. Just wanted
24 to talk it over.

25 Q Wanted to talk it over, upset and talking it over,

Curtis Johnson - Cross-examination
by Solicitor Myers

700

1 but you sure have got a clear memory of where you parked.
2 You said you parked by some mailboxes. You even remember
3 the mailboxes, is that right?

4 A No, sir, I didn't say I parked by any mailboxes.

5 Q We're going to talk about that. Drove by the
6 apartment and I parked the vehicle down from the apartment
7 near the mailboxes. That's what you told the officer at
8 the jail on November 20, 2006, when you were talking with
9 him.

10 A No, sir.

11 Q You parked by the mailboxes?

12 A No, sir.

13 Q You deny you told him you parked by the mailboxes?

14 A I didn't tell him that, sir.

15 Q I'm going to put you, him on the stand, put you on
16 notice.

17 A Yes, sir.

18 Q You still deny you told him you parked by the
19 mailboxes?

20 A I didn't tell him I parked by any mailboxes.

21 Q You're so upset you just want to talk, but you
22 remember even the height of the bushes.

23 A I know the bushes wasn't that big. I barely even
24 seen any bushes when I went back. I never been back there
25 before.

1 Q You just had two photographs a while ago Ms. Fullwood
2 was showing you, and you said, no, the bushes here in this
3 one, they weren't that tall back that night. You even
4 remembered the height of the bushes in your upset,
5 confused state?

6 A Sir, I didn't see a bushy tree like that when I was
7 riding back there. I did not see that.

8 Q You're talking about all kind of details,
9 Mr. Johnson. Even the height of bushes and where you
10 parked, but you're so confused and upset.

11 Is that what you want us to believe?

12 A I didn't say the height. I said the bushes wasn't
13 that big. It was small. I couldn't even see. It was
14 dark outside.

15 Q Three men come out and all three of them have guns?

16 A Yes, sir.

17 Q I heard you a little while ago describe those guns in
18 detail, what each one of them looked like.

19 A Yes, sir.

20 Q Do you remember even what the guns looked like?

21 A When they came out, the shotgun gun, sir, I was so
22 scared and terrified I didn't want to make a move
23 whatsoever in the vehicle cause I didn't know what was
24 going to happen next.

25 Q They came out with shotguns and you're so scared and

Curtis Johnson - Cross-examination
by Solicitor Myers

702

1 terrified you're able to look and see what each shotgun
2 looked like?

3 You even described the butt of one of them.

4 A Yes, sir, I seen, by the way they was holding and
5 walking, walking towards the truck.

6 Q You saw?

7 A Yes, sir.

8 Q And you were so scared because they were pointing
9 three shotguns at your brother?

10 A No, they came out first pointing the gun at the
11 truck.

12 Q Huh?

13 A Then I start the truck. After I hear, after I hear
14 Isaac say was that the truck right there, officer said
15 yeah, and---

16 Q Oh, as soon as they came out, you started up the
17 truck?

18 A No, sir.

19 Q Before they're talking?

20 A No, sir.

21 Q Didn't you just say that right there?

22 A No, sir, I didn't.

23 Q I'm sorry. I misunderstood you. Go ahead. I'm
24 sorry to cut you off. Go ahead.

25 A After -- Isaac said we gonna shoot them niggers.

1 Q Uh-huh. (Affirmative).

2 A I turn the truck on and start bumping the horn
3 because my brother was out there. I was scared for my
4 brother's life.

5 Q Where was your brother when they first came out?

6 A Already walked to the beginning of the patio to talk
7 to them.

8 Q He was coming back around this way or where?

9 A He was coming back.

10 Q Why did he go to the front to begin with?

11 A He was in the front where we seen him at.

12 Q He was going around the front to talk with them?

13 A Yes.

14 Q Y'all had seen them at the front. So, you park back
15 down over here so he could go back over and there's no
16 parking spaces over here either, right?

17 A No, sir.

18 Q All that is full?

19 The whole thing is full?

20 A Yes, sir.

21 Q So, he's going to do your talking for him.

22 Why didn't you go talk?

23 A Because.

24 Q Because what?

25 A My brother said we wasn't going to talk to them.

Curtis Johnson - Cross-examination
by Solicitor Myers

704

1 Q why didn't you talk?

2 A My brother told me I want you to stay here, want you
3 to go talk to them because --

4 Q Had they confronted your brother on Monticello?

5 A No, sir.

6 Q Who did they confront?

7 A Me.

8 Q why didn't you---

9 A My brother told me to stay there cause I didn't want
10 them to think I was trying to do anything.

11 Q Go ahead.

12 A They don't know him. So, my brother want to go talk
13 to him.

14 Q If they don't know him, why -- is he a good fellow to
15 talk with them?

16 A No, sir, I don't know. Maybe they thought I was
17 trying to do something.

18 Q why would they think that?

19 A They just jumped him.

20 Q They just jumped on you?

21 A Yes, sir.

22 Q Three guys come out with shotguns, is that right?
23 That's what you told us.

24 A Yes.

25 Q You tell this officer over here that your brother

1 says put down the gun, we can fight it out. I think you
2 told us that here a, a little while ago, is that right?

3 A No, sir.

4 Q You didn't tell us that a little while ago?

5 A No, sir, my brother said, please, put down the gun,
6 please, we didn't come over here to harm anybody, shoot
7 anybody, just came to talk.

8 Q I wrote down here you said please three or four
9 times.

10 Where in your statement to Officer Collins did you
11 say your brother said please, please, please?

12 A Sir, I was so scared and shook up when I wrote that
13 statement. I didn't want to write the statement.

14 Q You weren't so scared and shook up you couldn't
15 describe the shotguns, were you?

16 A I was scared and shook up.

17 Q Didn't you tell this officer here that they came out,
18 I see them come out with shotguns, Isaac, Rome, and the
19 other dude named A.J.?

20 How do you know his name was A.J.?

21 A Because the officer told me what his name was.

22 Q The officer told you what his name was?

23 A Yes.

24 Q You sure about that?

25 A Yes, sir.

Curtis Johnson - Cross-examination
by Solicitor Myers

706

1 Q You sure about that?

2 A Yes, sir.

3 Q The other dude named A.J. and they pointed it at my
4 brother's truck and I was the driver. My brother was
5 outside and he said put the guns down and let's fight it
6 out.

7 He didn't say that?

8 A No, sir, the officer---

9 Q Huh?

10 A The officer asked me was it going to turn into a
11 fight. I said I didn't want a fight. I was going to talk
12 it over and the officer asked me do you think it would
13 turn into a fight. He said, sir, my intention wasn't to
14 go fight, and I said could it possibly turn into a fight,
15 and I said sure, possibly, that could have happened, but
16 my intention wasn't to fight, but to talk to them.

17 Q Listen to this carefully cause your signature is
18 right below it here. My brother said put the gun down and
19 let's fight, and Isaac says, yeah, and then they start
20 fighting.

21 A Sir, I---

22 Q You deny you told officer Steve Collins that on
23 November 20, 2006, at Lexington County Sheriff's
24 Department---

25 A Sir, I was so shook up trying to explain to them, and

1 he was trying to calm me down, and he told me the story
2 what happened, knew it was self-defense, don't worry about
3 it, and I said, sir---

4 Q If your brother told them to put the guns down and
5 let's fight it out, and they put the guns down and start
6 fighting, that isn't self-defense, that's mutual combat,
7 they're agreeing to fight it out.

8 A No, sir, they did not start a fight.

9 Q why did you say in here they started a fight?

10 A I was shook up. I didn't want to make the statement
11 at all. I told the officer I did not want to make a
12 statement. My brother was shot. I think I shot the kids.
13 I think I shot the kids.

14 Q Woe. Let me stop here.

15 You told this officer you did not want to make a
16 statement?

17 A Yes, sir.

18 Q You did not want to make a statement?

19 A Yes, sir, I didn't want to write anything down. I
20 was so hurt. I---

21 MS. FULLWOOD: Your Honor, I believe we're getting
22 into an area where we might have to take up a matter of
23 law.

24 SOLICITOR MYERS: Yeah, I don't think so, but I would
25 like to talk about that a little bit, yes, sir.

Curtis Johnson - Cross-examination
by Solicitor Myers

708

1 THE COURT: Ladies and gentlemen, please, if you
2 would, retire to your jury room. Don't discuss the case
3 or begin any deliberations.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Ms. Fullwood, be happy to hear from you.

7 MS. FULLWOOD: With -- if we're going to get into
8 questioning that's going to involve -- we probably need to
9 have a Jackson v. Denno hearing.

10 SOLICITOR MYERS: I don't think we need a Jackson v.
11 Denno hearing because he's taken the stand, and when he
12 takes the stand, it's just like any other witness.

13 THE COURT: I understand. Is there a -- here is the
14 question. Do you wish to -- are you going to attempt to
15 admit the statement?

16 SOLICITOR MYERS: No, sir, I'm just asking him what
17 he told this officer.

18 THE COURT: Yes, ma'am.

19 MS. FULLWOOD: This is my understanding of the law,
20 judge. When he testifies, any type of technical fifth
21 amendment warnings of the rights, just basically not an
22 issue, but voluntariness -- if -- an involuntary statement
23 is never admissible for any reason even for impeachment.

24 Now, I might have it backwards, but I'm pretty sure
25 that it's that way.

1 presence of the jury.)

2 THE COURT: Mr. Myers, you may continue.

3 CONTINUED CROSS-EXAMINATION

4 BY SOLICITOR MYERS:

5 Q When your brother came around, your brother said put
6 down the guns and let's fight, your brother started
7 fighting?

8 A No, sir.

9 Q Isn't that what you told this officer?

10 A No, sir.

11 Q And the reason you ran over Walter is cause your
12 brother was fighting with A.J. and Isaac, isn't that
13 right?

14 A No, sir.

15 Q Why did you run over Walter and not the other two?

16 A Because Walter was pointing the gun at my brother.
17 He cocked it and ran towards my brother to shoot him.

18 Q Other two didn't have guns pointed at your brother?

19 A Yes, sir, he did.

20 Q Why didn't you run over towards the other two?

21 A Cause Walter was running towards my brother to shoot
22 him.

23 Q Walter was running towards your brother to shoot him?

24 A Yes, sir.

25 Q The other two had shotguns pointed at your brother?

Curtis Johnson - Cross-examination
by Solicitor Myers

730

- 1 A Yes, sir.
- 2 Q But you choose to run over Walter?
- 3 A Yes, sir, he was running towards my brother while he
4 was trying to come back to the truck and trying to shoot
5 my brother after he cocked the shotgun.
- 6 Q Your brother was trying to come back to the truck?
- 7 A Yes, sir.
- 8 Q And you said, when you cranked up the car, the car
9 was cranked up, and you started running at him, Walter
10 started running sideways and backwards?
- 11 A The car was already cranked up when I heard him say
12 they was going to shoot us, start the car----
- 13 Q Right.
- 14 A And Walter was run back sideways?
- 15 Q He's running back sideways?
16 How is he pointing a gun at you if he's trying to get
17 away from you?
- 18 A He was running back, running back sideways pointing
19 the gun up at the truck.
- 20 Q Running back sideways pointing the gun up at the
21 truck?
- 22 A Yes, sir, at first he was pointing the gun at my
23 brother, stop from running, shoot my brother with the gun.
- 24 Q Yeah.
- 25 A He ran back.

1 Q Yeah.

2 A When he was run back sideways he ran back upon the
3 shotgun up at my brother. My brother was out of the
4 truck.

5 Q Uh-huh. (Affirmative).

6 A He was going to shoot me.

7 Q He's going to shoot you now?

8 A Yes, sir.

9 Q Because you're trying to run him over?

10 A No, sir, cause I was trying to stop him from killing
11 my brother.

12 Q What were you doing going at him with that car
13 accelerating?

14 A Trying to stop him from shooting my brother.

15 Q You didn't even know you hit him?

16 Is that you told the jury?

17 A Yes, sir.

18 Q Run over a man and you told us you didn't even know
19 you hit him?

20 A Later on I found out I hit him.

21 Q Later on you said you found out you hit him. You
22 said everything went black.

23 A Yes, sir, I remember seeing a tree and I hit
24 something.

25 Q You hit something. You said then you looked over,

Curtis Johnson - Cross-examination
by Solicitor Myers

732

1 and your brother is fighting with two people and two
2 people are holding guns on him?

3 A No, sir, my brother was trying to get away and A.J.
4 was trying to hold him down and Isaac had the gun pointed
5 at my brother.

6 Q You said A.J. was trying to hold him down and Isaac
7 had the shotgun on him. You told this officer here your
8 brother was fighting with the dudes. You started the
9 truck up, and aimed it at Rome, that's Walter, and that
10 you ran over him, hit him?

11 Didn't you tell the officer here you hit him?

12 A He told me that he found out they hit him when we was
13 having a verbal conversation before I wrote that
14 statement.

15 Q You were interviewing the officer?

16 He was giving you the information and you were asking
17 him the questions?

18 A He was interviewing me. He asked me what was going
19 on. We talked before I wrote that statement.

20 Q Anyhow, in this statement you said I hate him and
21 then he hit the tree and then you said I seen my brother
22 still fighting. Now, how -- you didn't name A.J. and
23 Isaac holding a gun or fighting with your brother in the
24 statement.

25 why didn't you put that in there?

1 That's new today. That's the first time we heard
2 that.

3 A Sir, I told the detective that.

4 Q You told the detective that?

5 A I told him that.

6 Q You told this detective that night at the jail A.J.
7 was fighting with your brother and Isaac was holding a
8 shotgun?

9 A Yes, sir.

10 Q I'm going to put him on the stand to deny you told
11 him that.

12 Q You still want to stick to it?

13 A Yes, sir.

14 Q And then you told him that you -- you reached in the
15 glove box, but you didn't know a gun was in there, but you
16 reached in the glove box and pulled out the pistol?

17 A Yes, sir, I seen one in there before when I was
18 driving my brother's truck.

19 Q You said when you went over this there wasn't any
20 guns in the truck. You told Ms. Fullwood that earlier.

21 A I wasn't thinking about any guns in the truck when we
22 run over there.

23 Q You had run over a man, blacked out, and all of a
24 sudden you knew to stick your hand in the glove box with
25 the gun in there?

Curtis Johnson - Cross-examination
by Solicitor Myers

734

1 A No, sir, when I seen my brother's life in danger I
2 looked in the glove box and try to save his life.

3 Q So, you ain't so upset and confused and terrorized
4 now that you can't think straight, that you know to reach
5 in there and get a gun, isn't that right?

6 A I was still terrified.

7 Q You were still terrified?

8 A Still terrified. He had a shotgun on him.

9 Q Said I still seen my brother fighting, and then you
10 said you shot one shot to get them off my brother, and you
11 said when I got out with the gun, after you'd shot at
12 them, they all stop and they get up and start running
13 away. The fellows with your brother try to run away after
14 you shot one time.

15 Isn't that what you told this officer?

16 A No, sir.

17 Q I'm going to put him on the stand.

18 A We had a verbal conversation---

19 Q That night you told him you shot one time, and then
20 they got off your brother and tried to run away. You
21 deny---

22 A No, sir, I shot him through the tree, and they was
23 pressing me down hard, and my brother was on the ground
24 and Isaac had the shotgun on him. They was about to shoot
25 him. My action was to go save my brother's life. I shot

1 the gun in the tree hoping they would get off my brother
2 and stop.

3 Q And there's three people over there, and you said I
4 shot the gun until it was empty.

5 You told the officer that, didn't you?

6 A I told them I shot the gun. He asked me how many
7 times I shot it. I just said I shot and pulled the gun
8 out the way.

9 Q Let me ask you this,

10 Didn't you tell the officer that night at the
11 Lexington County Sheriff's Department I shot it until it
12 was empty?

13 A I told him I shot it. I don't know how many times I
14 shot it.

15 Q Didn't you tell him I shot it until it was empty?

16 A He asked me how many times did I shoot it. He said
17 how many times I shoot it, once, twice, or what. I said,
18 sir, I don't know. I was just---

19 Q I tell you what I'm going to do, I'm going to call
20 him to testify in a little bit, and I'm going to ask him
21 what you said, and if he says I shot it until it was
22 empty, is he lying or are you lying?

23 MS. FULLWOOD: Objection. Pitting.

24 THE COURT: Sustained.

25 Q Did you tell him that?

Curtis Johnson - Cross-examination
by Solicitor Myers

736

1 A All I'm saying is what I told him that night.

2 Q That's good.

3 You deny telling him you shot it until it was empty?

4 You deny that?

5 A I told him I shot the gun.

6 Q We'll put him on the stand. You said in here a
7 little while ago I don't know what I did with the gun.
8 You said that a little while ago.

9 A Yes, sir.

10 Q Didn't you tell this officer here that night at the
11 Sheriff's Department that, after shooting, the guy dropped
12 the gun on the ground, my brother left with it?

13 A He asked me what could happen to the gun. I said I
14 don't know. He said don't you think you could have popped
15 and dropped it. I said I don't know. He asked me that
16 that's the one that said don't you think it probably
17 dropped.

18 Q He's the one who said that?

19 A Because I was in shock.

20 Q He was the one that told you that?

21 A I said, sir, I'm in shock. I don't even feel like
22 talking about that right now. We had a verbal
23 conversation before I even made that statement.

24 Q Your brother's over these two guys, Isaac and A.J.,
25 and they're all together, now you empty that gun, and

1 don't hit your brother, kill a man, and paralyze another?

2 A I did shoot my brother.

3 Q Pardon?

4 A I did shoot my brother.

5 Q You shot your brother?

6 A As you seen earlier in trial, he was shot.

7 Q You're the one that shot your brother?

8 A Yes, sir.

9 Q Why didn't you tell this officer you shot your
10 brother?

11 A I did.

12 Q Sure?

13 A I did.

14 Q You did it.

15 A I was screaming and the kids heard. Other people
16 can't believe what happened. I was so hurt.

17 Q Why didn't you tell that officer that night not only
18 did I shoot and kill one and paralyze another one I shot
19 my own brother?

20 why didn't you tell him that?

21 A I did.

22 Q You did?

23 A Yes, sir.

24 Q You told this man that that night?

25 A Yes, sir.

Curtis Johnson - Cross-examination
by solicitor Myers

738

1 Q I'm going to call him to the stand and ask him
2 whether you did or you didn't.

3 You told him you shot your brother that night?

4 A Yes.

5 Q With that gun?

6 A Yes, sir.

7 Q Do you remember him asking you -- Detective Collins
8 asked you if you were shooting at the men fighting with
9 your brother, how was it that you shot them, but your
10 brother was not shot and you didn't have an answer to it.

11 He asked you how did you kill one and paralyze
12 another and shot two men, but you didn't have an answer
13 for him at all, did you?

14 A Sir, he did not ask me that question at all.

15 Q I'm going to put him on the stand.

16 Let me ask you a few more questions.

17 You don't remember kicking Isaac?

18 A No, sir, I don't recall kicking nobody. I was still
19 in shock. I shot my brother. Beverly told me I shot the
20 kids. So---

21 Q You don't remember shooting A.J.?

22 A I was hurt about that. I shot the kids she said, and
23 I thought I shot my brother also, and---

24 Q You don't recall kicking Isaac?

25 A Sir, I don't recall kicking nobody. I was more

1 worried about what happened. I told my brother and
2 Rebekah told me I shot the kids.

3 Q You don't remember kicking A.J.?

4 A Sir, nobody don't recall kicking nobody at all.

5 Q How about explain something to us?

6 How do you get A.J. and Isaac's blood on your shoes
7 and socks if you didn't kill them?

8 A Sir, I do not know.

9 Q Huh?

10 A I do not know, sir.

11 Q You went to shop -- you were in shock again?

12 A Sir?

13 Q You were in shock again and can't remember?

14 A Sir, I did not kick him. I was more worried about my
15 brother and the kids.

16 Q Explain to the jury how, on your left shoe, is A.J.'s
17 blood, your left shoe and sock, and on your right shoe and
18 sock is Isaac's blood?

19 How did that get on your shoes?

20 A I do not know. I was more worried about the kids and
21 my sister being shot, and more worried about Rebekah. I
22 couldn't believe what happened. I almost got shot also.

23 Q You remember telling, screaming at Isaac you been
24 sleeping with my girlfriend before you shot him and killed
25 him?

Curtis Johnson - Cross-examination
by Solicitor Myers

740

1 A Sir, I did not say nothing.

2 MS. FULLWOOD: Objection. That's outside of the
3 evidence.

4 SOLICITOR MYERS: No, that's the testimony.

5 THE COURT: I sustain. I don't remember that.

6 SOLICITOR MYERS: We can call the latest testimony
7 back.

8 THE COURT: Y'all come forward.

9 SOLICITOR MYERS: I'll go onto another thing.

10 Q You remember telling Rebekah, after you shot Isaac,
11 is this the nigger you love?

12 A No, sir, I did not say that. I was asking where is
13 the kids, is she okay, are they okay. I was more worried
14 about them than anything.

15 Q You don't remember saying that?

16 A No, sir, I did not say that.

17 Q After the shooting you then get more upset, more
18 terrified, and more in shock that you think the kids are
19 hurt, right?

20 A Yes, sir.

21 Q And you go in and you talk with Rebekah and the kids
22 to see if they're all right?

23 A No, sir, I did not see the kids at all. I was asking
24 Rebekah where are the kids, where is your sister because
25 you said I shot the kids.

1 Q You're really terrified now, but you're talking with
2 Rebekah and everything?

3 A Rebekah was screaming.

4 Q And everybody is screaming. We hear on that tape.
5 Amy's screaming.

6 A I didn't see Amy.

7 Q They're all upset, is that right?

8 A I didn't see Amy.

9 Q What do you do when the police arrive?

10 You're outside because they arrested you?

11 A Sir, I walked away. I was so hurt. I was so hurt.

12 I shot the kids. I was so hurt that I shot my brother. I
13 was hurt about the whole situation which just happened
14 that wasn't suppose to happen.

15 Q What happened to your brother?

16 A He went to go get help.

17 Q He went to go get help?

18 A Yes.

19 Q So, he left?

20 A Yes.

21 Q He took the gun with him?

22 A Sir, I didn't know what happened to the gun
23 whatsoever.

24 Q After you shot and killed Isaac, murdered him, and
25 your brother comes out of that area, anybody else come out

Curtis Johnson - Cross-examination
by Solicitor Myers

742

1 that sliding glass door?

2 A Rebekah did.

3 Q Anybody else?

4 A No, sir.

5 Q So, nobody else and then the police come out back and
6 they arrest you?

7 A Yes, Rebekah came out -- when she was screaming she
8 came out -- she told me the kid was shot, the kids was
9 shot.

10 Q Right.

11 Nobody else other than Rebekah?

12 A No, I was walking with her, asking where the kids
13 were, where are the kids. She was back inside and
14 screaming oh, my God, the kids shot, oh, my God, why you
15 do that. I said that I was going on with my brother
16 trying to help me.

17 Q I got one final question for you.

18 If one man's dead, one man is paralyzed, one man is
19 around the front of the apartments with a bone sticking
20 out of his leg, your brother is gone, Rebekah is there
21 with you, nobody comes out that sliding glass door, the
22 police come up and arrest you, who took all them other
23 shotguns?

24 A Sir, I do not know.

25 Q What happened to them other two shotguns you said he

1 had?

2 A Sir, I do not know where they was at.

3 Q Where is the shotgun shells?

4 A Sir, I do not know.

5 Q Because it wasn't but one shotgun.

6 That's the truth, isn't it?

7 A No, sir.

8 Q Thank you. I don't have---

9 A It was more than one shotgun.

10 SOLICITOR MYERS: Nothing further.

11 THE COURT: Mr. Duncan, any questions of this
12 witness?

13 MR. DUNCAN: Excuse me just a second.

14 CROSS-EXAMINATION

15 BY MR. DUNCAN:

16 Q Mr. Johnson, prior to being in court here had you
17 ever seen this sweatshirt?

18 A No, sir.

19 Q Okay. Your brother didn't own this sweatshirt, did
20 he?

21 A No, sir.

22 Q And you lived with him.

23 So, you knew?

24 A Yes, sir.

25 Q And your brother worked at the hospital with you

Curtis Johnson - Cross-examination
by Mr. Duncan

744

1 or -- I'm sorry.

2 Did you say that or did I hear that?

3 A No, sir, I didn't say that. I work at the hospital
4 at the time, but he was working there too.

5 Q Okay. So, that was the job he maintained?

6 A Yes, sir.

7 Q Okay. And your brother has never been in any other
8 trouble before, has he?

9 A No, sir.

10 Q Thank you.

11 MS. FULLWOOD: Briefly, Your Honor.

12 THE COURT: Yes, ma'am.

13 REDIRECT EXAMINATION

14 BY MS. FULLWOOD:

15 Q Curtis, is this the statement that you signed that
16 night?

17 A Yes, ma'am.

18 Q All right. And flip to the back.

19 A (Witness complies.)

20 Q How many pages is it?

21 A Five pages.

22 Q Okay. Who wrote -- whose handwriting is on it, these
23 first two and a half pages?

24 A Those are -- that, that's my handwriting.

25 Q whose handwriting is on the next two and a half

1 pages?

2 A Officer Collins.

3 Q And that's where he would write a Q with a question
4 that he asked you and an A and then he'd wrote down your
5 answer?

6 A Yes, ma'am.

7 Q Did you place your initials after each answer?

8 A He told me after---

9 Q Did you or didn't you?

10 A Yes, ma'am.

11 Q So, is some of the stuff Mr. Myers was challenging
12 you about written by you or by Detective Collins?

13 A By Detective Collins.

14 Q Now, Mr. Myers was also asking you about where in
15 your statement you say that you saw A.J. and Isaac on
16 Kerwin.

17 will you read out this highlighted portion?

18 First of all, whose handwriting is it?

19 A That's mines.

20 Q Read out the highlighted portion.

21 A I didn't see my brother -- talking about this person
22 right here?

23 Q See where the -- yeah. See where it is highlighted
24 in yellow. Right here, uh-huh, all the way down to there.

25 A I then see my brother still fighting. I see a gun

Curtis Johnson - Redirect examination
by Ms. Fullwood

746

1 pointed at him. So, I grabbed his gun out the glove box
2 and shoot one shot to get him off my brother so they don't
3 shoot him. But they're still fighting and the gun is
4 pointed at him. So, I lay out with the gun and shoot at
5 them and they all stop and get up and try to run.

6 Q So, when Mr. Myers was questioning you about this
7 part of your statement, was he writing down everything you
8 wrote?

9 A No, ma'am.

10 Q That's all I have.

11 THE COURT: Any further questions?

12 SOLICITOR MYERS: No, sir.

13 THE COURT: Mr. Johnson, thank you. You can stand
14 down.

15 DEFENDANT JOHNSON: Yes, sir.

16 THE COURT: Anything further from the defendant?

17 MS. FULLWOOD: Defendant Johnson rests.

18 THE COURT: Yes, sir.

19 MR. DUNCAN: Nothing further.

20 THE COURT: Any motions we need to take up at this
21 time?

22 SOLICITOR MYERS: We have two reply witnesses.

23 THE COURT: Two reply witnesses?

24 All right. How long do you think those may take,
25 sir?

1 SOLICITOR MYERS: They will be short on direct.

2 THE COURT: Short?

3 SOLICITOR MYERS: Yes, sir.

4 THE COURT: I want to protect their lunch. I know
5 we've gone past the lunch hour now. I'm going to pose it
6 to y'all.

7 Okay. We can either go with two short witnesses if
8 you think you still have the capacity right now to take it
9 in before you have a break for lunch or we can do it after
10 lunch. So, just by a show of hands, who wants to go ahead
11 and finish these next two before we take a lunch break and
12 who wants to take a lunch break now?

13 (WHEREUPON, jurors respond.)

14 THE COURT: You want to finish these next two?

15 (WHEREUPON, jurors respond.)

16 THE COURT: Y'all are a big part of the process. I
17 respect your position.

18 Go ahead and go forward.

19 SOLICITOR MYERS: Call Steve Collins to the stand.

20 THE COURT: Continue under oath, sir.

21 STEVE COLLINS, having been first duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR MYERS:

25 Q Steve, when you talked to Curtis Johnson at the

1 Sheriff's Department in the early morning hours of
2 November 20, 2006, did he talk with you about a
3 confrontation over on I-20 and Monticello Road with Isaac
4 Wilson and Walter Gadson?

5 A Yes, sir, he did.

6 Q Who did he say pulled up to the stoplight first?

7 A I'm sorry. I had it and then it closed on me. He
8 states he pulled up to the stoplight first.

9 Q What, if anything, did he say about Walter Gadson
10 having a pistol or a gun?

11 A He said in his statement he looked like Rome, he
12 refers to as Walter Gadson, was reaching in his waist like
13 he had a gun. He never said he had a gun.

14 Q Did you ask him specifically whether or not he saw a
15 gun?

16 A Yes, sir.

17 Q What did Curtis Johnson say?

18 A No, he never saw a gun on the Monticello I-20
19 incident.

20 Q Did he say he was struck over there on Monticello
21 Road?

22 A Yes, he was kicked in the face and being hit.

23 Q Did you see any bruises, marks, cuts, contusions, or
24 anything on his face or lips?

25 A I saw no visible injuries.

1 Q Were you looking?

2 A Part of looking -- I, I asked if you were assaulted,
3 where are your injuries, and he didn't have any.

4 Q Going over to the apartments, again, where did he say
5 he parked the S.U.V. when he got over to the apartments?

6 A The apartments where the shooting took place?

7 Q Yes, sir.

8 A By the mailboxes was the frame of reference we used.

9 Q Did you ask him why he and his brother went back to
10 the apartments?

11 A Yes, sir, we talked about why they went back to the
12 apartments.

13 Q What did Curtis Johnson tell you?

14 A He said they were going there to talk and that they
15 knew that it was probably going to turn into a fight. He
16 said that they were going over there to talk.

17 Q And did you have his statement of what he said when
18 you asked him that question?

19 A Yes.

20 Q You asked him why did you go to the apartments where
21 your girlfriend was.

22 What was his answer?

23 A We went over there to fight it out. I was really
24 upset. We were going to talk, but I knew it was going to
25 turn into a fight.

1 Q What did he say his brother, Kerwin Parker, said to
2 Isaac and A.J. when they first confronted each other?

3 A Paraphrase. He said that when his brother, Kerwin,
4 was initially confronted that they didn't have to shoot it
5 out, that they could put down the guns, that they could
6 fight it out.

7 Q Did they start fighting?

8 A I was told that, yes, this was an altercation between
9 I believe Isaac Wilson and Kerwin Parker, that they were
10 moving towards a physical altercation.

11 Q When he said, after he ran over Walter, ran the car
12 into the tree, and he looked over, what did he say was
13 going on with his brother and anybody else?

14 A That there was an altercation taking place on the
15 patio.

16 Q His brother and how many people?

17 A Two others.

18 Q Did he ever name those two others?

19 A I know that he did. I just wanted to make sure I
20 have it in front of me, but he tells me that they were in
21 an altercation with A.J. and Isaac.

22 Q Did he ever tell you that one was fighting and the
23 other was holding the gun?

24 A No, sir.

25 Q Did you ask him about the shooting it over in that

1 direction?

2 A Yes, sir, that was part of the questioning, if he was
3 shooting, and these guys were in a fight, how was his
4 brother not shot, and the other two men were shot.

5 Q What was Curtis Johnson's response?

6 A He never gave really any answer to that. He couldn't
7 answer that question.

8 Q Now, after he shot over in that area, what did he say
9 the other two guys did?

10 Did he say they stayed there or not?

11 A I don't think he ever really gave a clear answer as
12 to what had happened. We talked about the other two guys
13 and if he had shot them, and he said he thought he had
14 shot both of those men that were over there, but I don't
15 see he ever gave a clear answer to that.

16 Q You say after he shot, did he say how many times he
17 shot?

18 You see on Page 4 of his statement.

19 A Thank you.

20 Q Down there you said how many times did you shoot the
21 gun?

22 A I shot it until it was empty.

23 Q On Page 3 of this statement, you see up there down a,
24 a little ways, says when he got out of the car with the
25 gun and shot it, then what did he say that they did?

1 A Is this where he is writing or asking a question?

2 Q That's where he was writing on Page 3.

3 A I shot to get them off my brother so they don't shoot
4 him.

5 Is that where you're talking about?

6 Q Says I get out with the gun and shoot them.

7 A I get off with -- yes, sir, I'm where you are. I
8 shoot it then and then they stop and get up and they try
9 to run.

10 Q Talking about the people over there with his brother?

11 A Yes, sir.

12 Q Now, what did he say he did with the gun after the
13 shooting was over with?

14 A He told me he dropped the gun.

15 Q Now, let me ask you this, Steve.

16 At any time when you were talking with him on
17 November 20, 2006, did he ever indicate to you he shot his
18 brother?

19 A No, sir.

20 Q When was that, the first time you heard that?

21 A The first time was when it was brought up in court
22 today, and the first time is when he said he shot his
23 brother was when he was on the stand today.

24 Q Did you see his brother at the Lexington County
25 Sheriff's Department?

1 A Yes, sir.

2 Q Did he have any wounds or request any medical
3 attention?

4 A I did not observe any wounds nor did he ever request
5 any medical attention in my presence.

6 SOLICITOR MYERS: Answer any questions.

7 CROSS-EXAMINATION

8 BY MS. FULLWOOD:

9 Q Detective Collins?

10 A Yes, ma'am.

11 Q I guess I don't need to come all the way up there.

12 What are the sources that you're referring to while
13 you're on the stand in answering Mr. Myers' questions?

14 A My recollection of that evening and the notes that I
15 have in front of me.

16 Q Okay. Would those notes be, looking at the incident
17 report, the investigative report?

18 A No, I did not. I have this statement in front of me,
19 got my incident report in there, but I wasn't looking at
20 that during Mr. Myers questioning, no.

21 Q You were looking at his statement and then relying on
22 your memory?

23 A Yes, my memory of that evening with Mr. Johnson.

24 Q Okay. Part of the statement we call Mr. Johnson's
25 statement is written in his handwriting, is that correct?

Steve Collins - Cross-examination
by Ms. Fullwood

754

1 A That is correct.

2 Q That's about two and a half page's worth, is that
3 right?

4 A Correct. That is correct.

5 Q And the remainder is written in your handwriting in
6 question and answer format, is that correct?

7 A Yes, when he finished his, writing his statement,
8 yes, the rest is written in mine.

9 Q Okay. Was Mr. Myers asking you some questions both
10 about the portion Curtis wrote and the portions you wrote?

11 A Yes, he was.

12 Q Okay. And he wasn't going -- he was jumping around
13 throughout the statement, wasn't he?

14 A He may have been going in order. I may have not been
15 following him. He may have an order, order. I don't know
16 whether---

17 Q Did it go right down the statement or different parts
18 of the statement?

19 A Not that I was able to follow that it went right down
20 the statement.

21 Q Conversely relying on memory, on at least one
22 occasion in this trial we have found that your memory and
23 your notes of what transpired did not correspond.

24 Is that fair to say?

25 A Not that I recall. If you have a specific

1 incident -- I think my notes and what is in my report is
2 consistent.

3 Q Didn't you testify to something wasn't in your notes
4 that you said you remembered about A.J. going back
5 upstairs?

6 A I know what you're talking about and I know what
7 you're trying to say, but, no, I take notes in a shorthand
8 that I understand and simply because I didn't put it in my
9 incident report doesn't mean it's not correct. I
10 apologize for that though.

11 Q If I recall correctly, that fact was not in your
12 incident report, but you testified to it was in your
13 notes, is that right?

14 A I never testified whether A.J. ran up the stairs or
15 not. I don't recall that. I testified, during the
16 shooting, that A.J. told me he had ran. When he
17 recognized Isaac was not with him, that he had gone back.
18 At that point he was back involved in the incident. At --
19 my notes became more detailed again with what Mr. Wilson
20 was telling me.

21 Q I believe that fact had been left out of the incident
22 report, is that right?

23 A That he had run up the stairs?

24 Q Yeah.

25 A Yes, because I will agree I had put he did not run up

Steve Collins - Cross-examination
by Ms. Fullwood

756

1 the stairs in the incident report.

2 Q So, your notes and your report were congruent, they
3 didn't contain the exact same information?

4 A No, they did not contain the exact same information.

5 MS. FULLWOOD: Thank you.

6 CROSS EXAMINATION

7 BY MR. DUNCAN:

8 Q Investigator Collins, you just said you knew before
9 they went over it would be a fight. That was your
10 testimony. You used the word they.

11 A Yes.

12 Q Would you show me in that report where it says they
13 knew before they went over to the apartment it would be a
14 fight?

15 A It's not in there, and I did not use the words they
16 when I wrote the report or who -- then I'll agree, at that
17 point, I did not use it. If I'm looking for something
18 that you're trying to tell me's not there, I'm not going
19 to waste the Court's time looking for it.

20 Q So, the words you just used that, they knew, is
21 incorrect and it's not in your report?

22 A It is not in the statement that I am looking at right
23 now. If I take time I will go back and look at my notes
24 in my incident report and---

25 Q If you can find it in Curtis Johnson's statement let

1 me know where it says they knew before they went over.

2 A No.

3 Q Now, no one at the scene puts Kerwin Parker in a gray
4 sweatshirt, do they, a gray hoodie?

5 A I would have to go back and look at everybody,
6 everybody's description of who saw what to say exactly
7 what people said. I know there was some light issues.
8 Some people put him in a white t-shirt. Some people put
9 him in a sweatshirt. Some people put him in a white
10 sweatshirt. I know there were inconsistencies with what
11 is there. I don't feel confident to say that nobody puts
12 him in a gray sweatshirt though.

13 Q You don't recall anyone saying that nobody said he
14 was in a gray sweatshirt that night?

15 You remember that's true?

16 A No, I don't remember anybody telling me right now
17 that he was in a gray hooded sweatshirt, but I'm not
18 saying that somebody did not tell myself or another
19 officer that either.

20 Q You already testified that Rebekah and Amy abandoned
21 the one, two, and three year old babies.

22 A I don't think I testified to that because I had no
23 knowledge of what Rebekah and Amy did at the scene. I
24 left shortly after getting there with Mr. Johnson, well,
25 following Mr. Johnson, and I don't remember testifying to

Steve Collins - Cross-examination
by Mr. Duncan

758

1 that.

2 Q I'm sorry. It may not have been you, but---

3 A Okay.

4 Q Do you know if the car that Amy and Rebekah were
5 attempting to leave in was ever searched?

6 A I do not know whether it was ever searched.

7 Q Okay. You don't recall that ever occurring?

8 A As a police officer I would see no reason to ever
9 search witness' cars. So, I would say that it probably
10 never happened, no, sir.

11 Q The search did not occur?

12 A No, sir, the search did not occur to my knowledge.

13 Q And that's with, that's with a report that there were
14 multiple firearms on the scene, correct?

15 A I can't say what officers on the scene knew as far as
16 what had been reported to them. So, I have no
17 knowledge---

18 Q Mr. Johnson told you there were multiple firearms.

19 A Yes, but I can't say whether the officers on the
20 scene were involved with Rebekah and Amy's car before,
21 during, or after. When Mr. Johnson told me that I had no
22 knowledge of any traffic stop involving anything. So, I
23 can't answer your question what those officers knew unless
24 Mr. Johnson informed anybody else about the multiple
25 firearms.

Stephanie Floyd - Direct examination
by Solicitor Myers

759

1 SOLICITOR MYERS: No further questions.

2 Stephanie Floyd.

3 STEPHANIE FLOYD, having been first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY SOLICITOR MYERS:

7 Q Ms. Floyd, you have a uniform on.

8 By whom are you employed?

9 A Lexington County Detention Center.

10 Q That's the jail?

11 A Yes, sir.

12 Q What are some of your duties?

13 A I intake people through the day, I fingerprint, take
14 people to court.

15 Q How long have you been with the Sheriff's Department?

16 A I've been at the Sheriff's Department for six years.

17 Q I'd like to hand you this sheet of paper and ask you
18 is your name on there.

19 A Yes, my name is at the bottom.

20 Q Are you the person completing that form?

21 A Most of it.

22 Q Okay. Who would be the other person completing it?

23 A The other person would be the search officer.

24 Q Okay. And who would it involve?

25 A Whoever took the person would do questions. One

Stephanie Floyd - Direct examination
by Solicitor Myers

760

1 thousand I think it's eight on here.

2 Q Okay.

3 A Then the booking officer would do the rest. Now,
4 also, as a booking officer, if you notice something on the
5 ones, one through eight that need to be changed, you can
6 also do that.

7 Q Who is the inmate that was for?

8 A This one is Kerwin Parker.

9 Q And that was when he was booked into the jail?

10 A Yes.

11 Q And is -- does the inmate ask questions also
12 represented to---

13 A Yes, sir.

14 Q Now, for number three, it's got on there is the
15 inmate showing signs of illness, injury, pain, bleeding,
16 or other symptoms suggesting the need for emergency care.

17 what is put in there, yes or no?

18 A No.

19 Q Number four, are there any signs of infections, cuts,
20 bruises, or minor injuries.

21 what is put in there for Kerwin Parker, yes or no?

22 A No.

23 Q No cuts, no bruises, no injuries?

24 A No.

25 Q And that indicated no medical care was given on the

1 question?

2 A Right.

3 Q And that's when Kerwin Parker was booked into the
4 jail?

5 A Yes, sir.

6 SOLICITOR MYERS: Thank you, ma'am.

7 THE COURT: Ms. Fullwood, Mr. Johnson?

8 MS. FULLWOOD: I have no questions.

9 CROSS-EXAMINATION

10 BY MR. DUNCAN:

11 Q Ms. Floyd, no physical examination was conducted, was
12 it?

13 A As they come in we look at them. Not by a medical --
14 not by a nurse.

15 Q But on your report it says no physical examination?

16 A Yes, sir.

17 Q That's correct.

18 If someone had suffered a cut or some kind of grazing
19 wounds, it had bled into this sweatshirt and had stopped
20 bleeding, would you have noted that?

21 A If someone had a cut and they were bleeding I would
22 have notified medical cause they need to take a look at
23 it.

24 Q That's not what I asked you, is it, ma'am?

25 I said if it stopped bleeding.

Stephanie Floyd - Cross-examination
by Mr. Duncan

762

1 A If it had stopped bleeding?

2 Q Yes, ma'am, if---

3 A I---

4 Q You booked him in like -- you know, what time did you
5 book him in?

6 A I'm not certain what time I booked him in, sir.

7 Q Some time around 7:00 a.m., wasn't it?

8 A Okay.

9 Q Okay.

10 A Around 7:20, yes.

11 Q If this injury had happened at 1:30 in the morning,
12 it would be very easy for a wound to stop bleeding,
13 correct?

14 A That would be correct.

15 Q All right. And, so, then it would not be noted on
16 your report, would it?

17 A Yes.

18 Q Oh, it would be?

19 A If you have someone that comes in and it looks like
20 any kind of scratch or anything, I have a nurse take a
21 look at it because, you know, they could have further
22 problems with it down the road.

23 Q You specifically looked at it?

24 A At the time when I was booking this person I did not
25 observe any. Now, I was not the intake officer.

1 Q So, someone else could have observed this and you
2 wouldn't know anything about it, correct?

3 A If they were the intake officer, yes.

4 Q Okay. Would you mark down scars?

5 A Mark down scars, tattoos.

6 Q Okay. Did you mark a scar on the forearm?

7 A Not on this sheet. I do not have any.

8 Q Do you have it anywhere?

9 A In the booking report there should be.

10 Q So, there should be -- if he already had a
11 preexisting scar, you would have it there?

12 A It won't be on this sheet. It will be in the
13 booking.

14 Q You would have it?

15 A It should be, yes, sir.

16 Q And if it's not there, you didn't look very closely,
17 did you?

18 A I couldn't say. I asked him the questions, you know,
19 do you have any tattoos, scars, and what they answer I put
20 in.

21 Q Okay.

22 A Unless it's a very notable, you know, noticeable scar.

23 Q So, you've got an abrasion that had bled five, six
24 hours earlier --

25 A Uh-huh. (Affirmative).

Stephanie Floyd - Cross-examination
by Mr. Duncan

764

1 Q -- and had stopped bleeding. The blood had collected
2 on the inside of the sweatshirt and there hadn't been time
3 for a scar to form.

4 There wouldn't be a scar?

5 A Right.

6 Q Correct?

7 okay. But there would certainly be the abrasion and
8 y'all didn't look very closely, did you?

9 A Well, I mean he wouldn't have had the sweatshirt on
10 when I would have booked him. He would have had on a
11 short-sleeved red shirt. So---

12 Q But y'all -- you didn't see it because you didn't
13 look at him, did you?

14 A I would have had to have looked at him to book him.

15 Q All right. But you weren't the intake officer?

16 A I was not the intake officer. I was the booking
17 officer.

18 MR. DUNCAN: Thank you.

19 SOLICITOR MYERS: No further questions.

20 THE COURT: Step down. Thank you very much.

21 Any further reply?

22 SOLICITOR MYERS: Nothing further, Your Honor.

23 THE COURT: If counsel would approach please.

24 (WHEREUPON, a bench conference was held out of the
25 hearing of the jury at this time.)

1 THE COURT: Ladies and gentlemen, I was discussing
2 with the attorneys some issues. What we have to do now is
3 take up a few matters of law and we need to discuss the
4 charge that I'm going to give you on the law as well. The
5 attorneys are going to argue. They need to know what I'm
6 going to charge. That's only fair to the State and the
7 defense.

8 So, we've got a little time to spend before we need
9 y'all back. So, I'm going to ask y'all -- you can go
10 ahead and go to lunch. I know it is a little late lunch,
11 but I do want you to get a break and recharge your
12 batteries a little bit. So, be back at 3:15, at 3:15 this
13 afternoon, an hour and a half. I think that my math is
14 right on that, an hour and a half.

15 If you'd please be timely. I think we're in the home
16 stretch. Thank you very much. Don't discuss the case or
17 make any deliberations.

18 (WHEREUPON, the following takes place outside the
19 presence of the jury.)

20 THE COURT: Any motions?

21 MS. FULLWOOD: At this time I renew my motions made
22 at the close of the State's case and add the additional
23 ground that, in light of Mr. Johnson's testimony, we
24 established self-defense and defense of another as a
25 matter of law.

1 THE COURT: Mr. Duncan.

2 MR. DUNCAN: Renew those motions.

3 THE COURT: Respectfully deny the motion. I
4 recognize your establishment of the defense, and I presume
5 that may be some subject of our charge conference. So, at
6 this point let's move on to our requests for charge.

7 Do I have a request for charge from either side?

8 MS. FULLWOOD: Your Honor, in general, we will be
9 requesting charges on voluntary manslaughter, assault and
10 battery of a high and aggravated nature, defense of
11 another, and self-defense. Now, I have seven specific
12 requests to charge that go to various aspects of the
13 general requests and they are probably already in Your
14 Honor's general charge any way. But since sometimes with,
15 especially when you're talking about self-defense you get
16 the particularized charges. So, I wanted to make sure
17 Your Honor was aware of all the individual aspects of
18 that---

19 THE COURT: Okay.

20 MS. FULLWOOD: ---we wanted to include.

21 THE COURT: Have you given the State copies of these
22 requests?

23 MS. FULLWOOD: I just did.

24 THE COURT: Mr. Duncan.

25 MR. DUNCAN: I have done the same thing.

1 THE COURT: All right. Mr. Myers, before we get into
2 your arguments on those, do you have any specific requests
3 for charge?

4 SOLICITOR MYERS: No, sir, I don't have any specific
5 requests for charge. At this time I have a, legal
6 arguments concerning some requests by the defense.

7 THE COURT: Yes, sir, be happy to hear that.

8 SOLICITOR MYERS: Your Honor, I think that State
9 versus Cole prohibits manslaughter, 525 S.E.2d 511, and
10 has to do with the cooling off period. In Cole the
11 defendant fought with the victim's companion in an
12 apartment and the defendant said he would thug or beat the
13 defendant if he did not stop fighting. As the victim and
14 his companion were leaving through one door, the defendant
15 went out another door to his mother's apartment, got a
16 rifle, came back, and confronted the victim, killed him,
17 and this happened three to five minutes after the
18 altercation.

19 The Court said the defendant was not entitled to
20 instructions on voluntary manslaughter. Both heat of
21 passion and adequate provocation must be present at the
22 time of the homicide. Even if there had been adequate
23 provocation and heat of passion, neither of which the
24 Court found, the three to five minutes that it took to get
25 the rifle suggested cooling and reflection.

1 In this case we have a confrontation, and if this
2 killing took place on I-20 and Monticello we wouldn't be
3 here probably. But after that, there was an hour and a
4 half or more under the testimony for the cool reflection
5 to set in on the defendant's part. But they come armed
6 back to the victim's apartments. I don't think
7 self-defense is involved because they can't prove that
8 they were not at fault in bringing on the difficulty.

9 So, based on the cooling off element, where
10 provocation and heat of passion at this time for cool
11 reflection, I think manslaughter is out. We submit that
12 they can't prove that the defendants in any way were not
13 at fault in bringing on the difficulty. As a matter of
14 fact, the victim's body was found in his apartment where
15 he lived. So, there's no duty for him to retreat. So, we
16 would submit that, those issues for Your Honor's
17 consideration.

18 THE COURT: From the defense?

19 MS. FULLWOOD: Yes, sir, I think a lot of the
20 arguments that Mr. Myers made go to matters that are jury
21 questions basically. I don't think there's any such thing
22 as a cooling off period as a matter of law.

23 According to Mr. Johnson's testimony, the impetus,
24 what broke -- what started the -- the, a driving the car
25 and the using of the weapon was seeing his brother in

1 danger when a pumped shotgun was pointed at him, he
2 testified that he was cooled off by the time he got to
3 Church Hill Apartments, but that when the men came out
4 with the guns, that's what got him in the heat of passion
5 if the jury believes that his state of mind was heat of
6 passion. So, it is a jury question here as to whether or
7 not there had been sufficient cooling off time.

8 As far as him trying to say we're not entitled to a
9 self-defense charge cause we can't prove that we were not
10 at fault, first of all, aside from the fact that we don't
11 have to prove anything, I think it's a jury question as to
12 what they intended when they went over there. Mr. Johnson
13 testified that they intended to try to talk it out.
14 That's not, you know, really, really looking toward the
15 trouble.

16 Again, under his testimony, the trouble began when
17 the other men brought guns out. So, these are all things
18 that are jury questions.

19 SOLICITOR MYERS: One further thing we'd like to put
20 in the record, that self-defense is not available to
21 mutual combatants, and I think there clearly was mutual
22 combat in this, and that's indicated by the defendants
23 having, under the testimony, brass knuckles admittedly, a
24 pistol admittedly, contested metal pipe, and they go back
25 over there. I think that's clearly mutual combat.

1 THE COURT: All right. Mr. Duncan, anything you need
2 to add to join in Ms. Fullwood's argument?

3 MR. DUNCAN: Exactly just that these are jury
4 questions, Your Honor.

5 THE COURT: All right. While y'all are arguing, I
6 wasn't texting people. I was busily looking up the case
7 of State versus Cole and I agree with the defense that I
8 believe those are ultimate questions of fact to be
9 determined by the jury. Quoting from Cole, the law to be
10 charged must be determined from the evidence presented at
11 trial. In determining whether the evidence requires a
12 charge on voluntary manslaughter, this Court must view the
13 facts in the light most favorable to the defendant. Given
14 that finding, I am going to view it in the light most
15 favorable to the defendant and recognize that the Court is
16 not concerned with the sufficiency or the weight of the
17 evidence, but merely whether there was evidence submitted
18 at trial. Therefore, on that basis I will charge
19 voluntary manslaughter, and I will charge self-defense,
20 and I will certainly charge the law with respect to mutual
21 combat, and the jury can make a determination of the facts
22 in this case.

23 All right. I have these in front of me, these
24 specific charges. I don't know if there's anything else
25 that y'all need to argue to me. I'm going to look over

1 to, them very briefly so I can tell you whether or not I
2 will charge them or not so you can fashion your arguments
3 appropriately, and really what I'm looking for is to see,
4 in my general charge, whether these are sufficiently
5 covered.

6 MS. FULLWOOD: In light of Mr. Myers' request and
7 your decision to charge mutual combat, I believe the law
8 is that while it would defeat a claim of self-defense,
9 that it should reduce the grade of the offense to
10 manslaughter depending upon whether or not the action was
11 taken with malice or in sudden heat of passion.

12 THE COURT: I'm looking up my specific charge.

13 MS. FULLWOOD: Sir?

14 THE COURT: I'm looking at my specific charge with
15 respect to mutual combat. The specific charge that I
16 would make with respect to mutual combat is the, if the
17 defendant voluntarily participated in mutual combat other
18 than for purposes of protection or killing of the victim
19 would not be in self-defense. This is true that even in
20 combat if the defendant feared death or serious bodily
21 injury. However, if the defendant withdraws to try to
22 avoid faith, any further conflict, either by word or act,
23 makes that fact known to the victim, combat must be mutual
24 intent and willingness to fight. This intent may be shown
25 by the conduct of the parties and the circumstances

1 surrounding the combat. In addition, it must be shown if
2 party, both parties were armed with a deadly weapon.
3 That's what I'll charge with respect to self-defense.

4 MS. FULLWOOD: If Your Honor please, Your Honor, I'm
5 looking here at State v. Taylor.

6 THE COURT: Yes, ma'am.

7 MS. FULLWOOD: You can find at 589 S.E.2d 1 and it is
8 a 2003 case.

9 THE COURT: Yes, ma'am.

10 MS. FULLWOOD: Our Court modified the doctrine of
11 mutual combat a bit. It seems to now require an
12 (untranslate) agreement of fighting before mutual combat
13 can even be charged to the jury. Then the other
14 limitation would not apply in this case because it only
15 applies when it is armed with a deadly weapon.

16 So, I would say the State is not entitled to a charge
17 on mutual combat because there's no proof this was an
18 (untranslate) agreement to fight. We have, we have the
19 thing on Monticello, but we don't -- there is no proof I
20 think the -- that rises to the level where it would come
21 to the, to the extent that they have shown in the evidence
22 viewed in the light most favorable to the State that there
23 was an (untranslate) agreement to fight. That is my
24 position.

25 THE COURT: I appreciate that position in that

1 regard. I don't read that case to suggest there has to be
2 a firm verbal (untranslate) agreement of fact. I think
3 that can be deduced from the evidence and the conduct of
4 the peers.

5 Anything further?

6 MS. FULLWOOD: That's all.

7 THE COURT: Mr. Myers, have you had the opportunity
8 to review the requests for charge?

9 SOLICITOR MYERS: Not on -- our basic position is to
10 leave it up to your discretion.

11 THE COURT: Good enough. In reading Mr. Parker's
12 request for charge, the defendant's memorandum regarding
13 mere presence, I will give a mere presence instruction.
14 That will be covered in my instruction. Understand, of
15 course, it's not going to be verbatim. However, I'm not
16 here to advocate either side, but to give a fair
17 recitation of the law as it exists in South Carolina.

18 Mr. Duncan, it would appear, in your request for
19 charge, and it's not numbered though, there is a request
20 for charge and you are requesting that I charge assault
21 and battery of a high and aggravated nature as a lesser
22 included offense?

23 MR. DUNCAN: Yes, sir.

24 MS. FULLWOOD: I make that request also because it
25 would seem as though if the jury concludes that these

1 individuals were not acting with malice on these ABWIK
2 charges, it could be assault and battery of a high and
3 aggravated nature because an element of aggravation can
4 include use of a deadly weapon or reflection of serious
5 bodily injury. So, definitely a lesser included that
6 falls within the fact of this case.

7 THE COURT: State wish to be heard.

8 SOLICITOR MYERS: I don't think assault and battery
9 is, is a lesser included in this, the facts of this case.

10 THE COURT: Do not?

11 SOLICITOR MYERS: No, sir.

12 THE COURT: With -- if she can do assault and battery
13 of a high and aggravated nature, as I look at the facts,
14 I'm not so certain that, on a strictly personal, that I
15 think it is appropriate. However, having said that, it's
16 not my job to look at it personally and determine whether
17 I think it is appropriate or not, but view it in the light
18 most favorable to the defendant, and it would appear to
19 me, from the recent progeny of Supreme Court cases, that
20 they are suggesting the Trial Courts charge more as
21 opposed to less, and given that fact, that if the jury,
22 Court were, jury were to determine there was no analysis
23 that they could, in that event, come back with a version
24 of assault of a high and aggravated nature. So, I'll
25 charge that as well and give a standard charge as to

1 assault and battery of a high and aggravated nature.

2 Yes, sir.

3 MR. DUNCAN: Your Honor, you may be about to cover
4 this, but tell us what your definition of reasonable doubt
5 is.

6 THE COURT: I am going to tell you that before I
7 conclude. With respect to Mr. Johnson's request to
8 charge, in, in substance, I will charge what you have
9 requested. However, I am not going to charge the specific
10 cases that you have recited. The cases that are included
11 here substantively are covered in my general charge.
12 Again, I'm not in a position of giving a charge to the
13 jury that may advocate one side or the other.

14 This is a general challenge on the law. I don't want
15 to duplicate or communicate or complicate this charge any
16 more than it has to be, and the more I give them the less
17 likely they are to understand it. Therefore, my ruling on
18 those requests for charge is that, in substance, I will
19 charge those. However, I won't charge them verbatim.

20 MS. FULLWOOD: I would just ask that the request be
21 made part of the record---

22 THE COURT: Yes, ma'am, absolutely.

23 MS. FULLWOOD: ---as usually is done.

24 THE COURT: I'm going to make both of these requests
25 Court's Exhibits.

1 MS. FULLWOOD: Thank you, Your Honor.

2 THE COURT: Yes, ma'am.

3 Next Court's Exhibit, a request from Mr. Parker and
4 then a request from Mr. Johnson.

5 (WHREUPON, the request to charge were marked as
6 Court's Exhibit Nos. 6 and 7 and received into evidence at
7 this time.)

8 THE COURT: With respect to the definition of
9 reasonable doubt, I will charge in accordance with the
10 ruling Victor v. -- I'm sorry. Excuse my. Victor v.
11 Nebraska is what it is, and I will read it to you. I'm
12 not going to charge the type of doubt that would cause a
13 reasonable person to hesitate to act cause I just don't
14 think that that means anything. The reasonable doubt
15 charge will be the state has the burden of proving the
16 defendant guilty, guilty beyond a reasonable doubt.

17 Some of you may have observed civil cases where you
18 are told it is not only necessary to prove the facts are
19 more likely true than not true such as the greater weight
20 or preponderance of the evidence. In such cases the
21 state's weight must be more powerful than that, proof
22 beyond a reasonable doubt. That is, convinced you of the
23 defendant's -- very few things we know with absolute
24 certainty. Not requires all possible doubt, but if you're
25 firmly convinced the defendant is guilty, but in other

1 words, if you think the defendant is not guilty, you must
2 think the, give the defendant the benefit of the doubt and
3 find him not guilty. Good enough.

4 Anything further?

5 SOLICITOR DIXON: If we could get a copy of your
6 charge on mutual defense and combat just so we can know
7 your general charge.

8 THE COURT: You can fashion, if you want to, with
9 respect to what I will charge, of usually the general
10 criminal charge. I will charge with respect to multiple
11 defendants and how each should be treated independently
12 and differently, presumption of innocence, charge on
13 intent, on identification inasmuch as there is
14 identification, will give a mere presence charge.

15 I will give a direct and circumstantial evidence
16 charge, credibility of witnesses, expert witnesses, charge
17 with respect to failure of the defendant to testify, prior
18 inconsistent statements, prior record of the witness, that
19 applies to State's witness. Obviously the defendants, I
20 don't think there was any prior record of the defendants
21 introduced if I'm not mistaken.

22 SOLICITOR MYERS: No, sir.

23 THE COURT: I will charge they not take into
24 consideration any punishment I give. With respect to a
25 statement of the defendant was not offered into the record

1 as a physical piece of record, but there was a question on
2 the stand with respect to voluntariness. Therefore, I
3 will make a charge as to the statement of the defendant.

4 SOLICITOR MYERS: what will that be, Your Honor?

5 THE COURT: I'll give you a copy.

6 SOLICITOR MYERS: Wouldn't involve Miranda, would it?

7 THE COURT: It doesn't specifically involve any
8 Miranda, but it does discuss whether it was voluntarily,
9 voluntary or not. I can give you a copy of that. I
10 believe on cross the defendant stated he didn't want to
11 give a statement. So, that ultimately is a question for
12 the jury as to whether it's a voluntary question or not.
13 General charge, proximate cause resulting in death. I
14 will give voluntary manslaughter, assault and battery with
15 intent to kill, assault and battery of a high and
16 aggravated nature, possession of a weapon during the
17 commission of an attempt to commit a violent crime,
18 self-defense, defense of others, usual comment regarding
19 the verdict, and that's it.

20 Also give a charge on the hand of one, hand of all,
21 and I'm going to give y'all a copy of this charge, and
22 y'all can make copies of it and review it. But you need
23 to return it to me within the next ten minutes, okay,
24 because I need to review it as well so that when I give it
25 I, I give it. I won't be stumbling over it.

1 MS. FULLWOOD: I think there's a copy down here.

2 THE COURT: I'll hand it to you. We'll be back on
3 the record in one hour.

4 (WHEREUPON, a short recess was taken at this time.)

5 THE COURT: Ladies and gentlemen, I just had a
6 conversation in chambers with the attorneys regarding
7 scheduling. It was my intent to begin argument and charge
8 today and to allow the jury to deliberate. However, after
9 some deal of reflection during the lunch hour, it occurred
10 to me that perhaps that may not suit everybody who has a
11 vested interest in this case. So, I put it to the
12 attorneys, put it to the court reporter, and ultimately I
13 put it to the jury as well to decide what their preference
14 was. My concern obviously was that if we went for three
15 hours that they wouldn't begin deliberations until six
16 o'clock, and I didn't want them, didn't want to send them
17 home after I gave them the case, and I didn't want them to
18 be here till twelve o'clock this evening either.

19 So, after consultation with everyone, we're going to
20 come back on the record tomorrow at 8:30, and I'm going to
21 bring the jury in and tell them the same thing.

22 (WHEREUPON, the following takes place within the
23 presence of the jury panel.)

24 THE COURT: Ladies and gentlemen, obviously I sent
25 back word to you and I posed a question to you, and y'all

1 told you, at the beginning of the case, you would receive
2 evidence in this matter and receive it from the stand,
3 receive appropriately admitted evidence, but I told you
4 that the attorney's arguments were not to be considered
5 evidence. They are simply arguments, each side advocating
6 their specific case. So, obviously listen to them.
7 You've been very patient throughout this trial, and I
8 certainly appreciate that. Just exercise a little bit
9 more patience and pay attention to the lawyers as they
10 give their very important closing arguments.

11 MS. FULLWOOD: If it please the Court?

12 THE COURT: Yes, ma'am.

13 MS. FULLWOOD: Mr. Myers.

14 Madam Forelady, ladies and gentlemen of the jury,
15 when I first spoke to you Monday I told you that this case
16 was about Curtis Johnson's state of mind on the night of
17 November 20 of 2006. After hearing all the evidence, I
18 think one thing is clear, that's, that the State's
19 evidence doesn't show, beyond a reasonable doubt, that he
20 acted with malice that night. I think here, at best, the
21 State's case makes out a case of voluntary manslaughter
22 and assault and battery of a high and aggravated nature.

23 Without a doubt, Curtis was provoked by the use of a
24 deadly weapon that night. It's not disputed. If nothing
25 else, Walter Gadson aimed a shotgun at him. That is

1 sufficient legal provocation. He told you himself what
2 reaction that induced in him. He told you he wasn't
3 acting upon reason. He was going on instinct. Amy's
4 testimony is corroborating that testimony.

5 He was feeling fear. He was feeling shock. He was
6 feeling horror. That's heat of position. That's
7 sufficient legal provocation, and this isn't a case of
8 murder. This isn't a case of assault and battery with
9 intent to kill. This is a case -- this isn't a case of
10 assault and battery with intent to kill. I don't really
11 dwell on that aspect of a case.

12 what I want to talk to you about mostly this morning
13 is self-defense and defense of another. Monday, when Ms.
14 Dixon came up and talked to you, she told you this was a
15 case about jealousy and anger and a desire for revenge,
16 and, you know, I actually agree with her about that. It's
17 about Isaac Wilson's jealousy, it's about his rage, and
18 it's about his long standing desire to do violence to the
19 man that he viewed as his rival for Rebekah.

20 Think about it, ladies and gentlemen.

21 who is the man who, about a month before this
22 incident, drove by in a car where Curtis and Rebekah were
23 screaming out obscenities?

24 who's the man who, at some times prior to
25 November 20, plotted with his side kick, Walter, to jump

1 Curtis when he was on the way to work at wal-Mart?

2 Who's the man who always kept his shotgun pumped and
3 who, according to Walter, knew tactics?

4 Who is the man who, on November 20th, ambushed
5 Curtis at a stop light and roughed him up?

6 That was Isaac.

7 Isaac was the man consumed by rage. Isaac was the
8 man who was just hatefully jealous and Isaac was the man
9 who, time and time again, showed that he wanted to do
10 violence. There's no evidence in the record that Curtis
11 had any grudge against Isaac. There's no evidence in the
12 record that Curtis had any pre-disposition towards
13 violence. There is no evidence that he bore a grudge or
14 resented Isaac in any way whatsoever.

15 Now, I guess, at this point, what I'd like to do is
16 talk to you a, a little bit about Mr. Hernandez because I
17 really am not sure how he fits if, into all of this. I
18 suppose that Mr. Myers is going to want you to use him to
19 dispute the testimony of a lot of the witnesses including
20 some of his own, and, well, he's a pretty likable
21 character, I'll grant him that. I think you might end up
22 concluding that he saw something that night, but I also
23 think, if you examine his testimony critically, you're
24 going to conclude that he's mighty confused about what
25 went on and his testimony's mightily confused.

1 I'd ask you to keep in mind the way that he
2 testified. He just refused to testify like the other
3 witnesses and conform to the question and answer format
4 that we use in courts. He just wanted to stand up there
5 and give you his statement. I think he said that is my
6 statement and I am not changing it.

7 He wouldn't respond appropriately to
8 cross-examination questions, and if he really saw the
9 essence of what he claims now that he saw, would he have
10 reacted the way you know he did that night?

11 I mean he claimed that he saw just some terrible
12 violence.

13 He saw one person shooting another, but what did he
14 do?

15 Did he call 9-1-1?

16 No.

17 Just went back inside and went about whatever he was
18 doing that night. He didn't come forward until the police
19 came to him.

20 You know, he might be a likable person, but you might
21 ask yourself if, under your oaths as jurors, do you really
22 want to accept the entirety of his testimony?

23 I think the answer there is no.

24 I told you this Monday, and I'm going to tell you
25 again today. Curtis Johnson acted in self-defense and in

1 defense of his brother, Kerwin, under the law of the State
2 of South Carolina.

3 Now, Judge Stillwell is going to charge you initially
4 about all the law that applies to this case including the
5 law of self-defense after us lawyers sit down and be
6 quiet. It will give the judge a chance to talk, but I'll
7 go into it a little bit now.

8 Four circumstances have to be present in order for a
9 person to be justified in acting in self-defense or in
10 defending somebody else. First, you have to be in a
11 situation where you or is, somebody else is in imminent
12 danger of being killed or suffering great bodily harm in
13 that situation, and that situation has to be the type of
14 situation where the theoretical reasonable person would
15 think the same thing and would believe the same type of
16 action was necessary. You have to try to retreat from the
17 danger if you can, but you don't have to retreat if, in
18 doing so, you would increase the risk to yourself or to
19 the other person that you're defending, and then also you
20 have to be without fault in bringing all the difficult,
21 bringing on the difficulty.

22 All of these circumstances, which are called
23 elements, are present here in this case. I think it is
24 without a doubt. Kerwin and Curtis were in danger of
25 being killed that night. They went out there to talk and

1 they ended up being confronted by three men with shotguns.
2 He -- now, there's a conflict in the testimony about who
3 was armed and who wasn't. But think about it. The
4 circumstantial evidence supports what Curtis told you.
5 Amy went over to where Walter was before the police came.
6 Later she and Rebekah were caught trying to leave that
7 apartment complex in a car. They had left their very
8 young children alone with nobody to keep them. Amy lied
9 about all that. She tried to tell it to you different,
10 but Detective McIntosh set you straight.

11 That is what happened. They did try to leave. They
12 did leave those children alone. Ask yourself why.

13 That car wasn't searched. The upstairs of the
14 apartment where A.J. headed to wasn't searched. That
15 storage closet on the, the patio wasn't searched.

16 What about that box of ammunition we put in evidence?

17 That box originally held 25 rounds of ammunition, but
18 when the police collected it it only contained seven.

19 Ask yourself, what reason is there to believe Walter
20 or A.J., you know, a burglar who lynches other people on
21 the highway, a man who deals Ecstasy and writes bad checks
22 who went along with his cousin to see what was going down
23 when he saw that guns were involved?

24 Remember this, Walter can't admit to possessing a gun
25 because he's on probation. He was on probation then, and

1 from what he seemed to be saying, he's still on probation,
2 much as he hates that fact. But, you know, he said a few
3 things where he unexceptionally let us know that there was
4 more than one shotgun there that night. For example, he
5 testified that he took aim with the shotgun, tried to fire
6 at that car, but he couldn't because the safety was off,
7 was on. The gun wouldn't fire.

8 Now, that might be the one true thing that he said in
9 this trial because if that is true the gun that he was
10 aiming wasn't this one because remember what Laura
11 Grimes-Gould told you. This one was found with the safety
12 off. It wasn't the same gun that was put in evidence
13 here.

14 Think about this. After he was hit by the car, he
15 had a compound fracture and the doctor told you that meant
16 where the bone had broken through the skin. That was a
17 bad break, it was painful, that somehow he managed to get
18 from the back of 86 Church Hill Apartments all the way
19 around the back of that building and over into the front
20 of the adjacent building to an apartment nearby.

21 Now, he says that he crawled and got there before the
22 police got there.

23 Well, don't you think he could have done it if he had
24 some kind of a crutch to use to help him on his way?

25 Remember this, both Rebekah and Walter admitted, in

1 their own way, that Walter has asked Rebekah to lie for
2 him about what took place out there that night. You've
3 got to ask yourself about what, and I think you can
4 conclude it's probably about the gun.

5 But, you know, here's the bottom line. One gun,
6 three guns, it doesn't matter. One gun is enough to cause
7 death. One gun is enough to cause serious bodily harm.
8 One gun is enough to make a reasonable person believe that
9 they or their loved one is in danger of being killed or
10 being hurt very very badly.

11 Now, Curtis and Kerwin weren't at their own house
12 that night. So, they had to retreat, if they could to
13 avoid the danger, and that's only right, but on that
14 particular occasion they found themselves in a situation
15 where they couldn't get away without putting themselves in
16 more danger. They tried to get away.

17 When Curtis saw those men with the guns he honked the
18 horn to get Kerwin back to the car so they could leave,
19 but Isaac and A.J. and Walter, they confront Kerwin with
20 their guns. They point their guns at Kerwin and he
21 crouches down with his hands in the air. At that point he
22 is in danger. He's got guns pointed at him, and he can't
23 run without risking his life. He was entitled to defend
24 himself at that point in time, and because he was entitled
25 to defend himself his brother was entitled to defend him

1 too.

2 So, Curtis started the car and drove. Walter aimed
3 the gun at him and tried to pull the trigger. He was
4 going to shoot him that night. Walter was going to shoot
5 Curtis. That car wasn't a safe haven at that point. Not
6 when somebody's got a beat on you and going to shoot you
7 while you're in it.

8 Curtis did what was absolutely necessary to save his
9 life then. After he saw the car crash, he saw that his
10 brother was struggling with A.J. on that patio, while
11 Isaac, in a white t-shirt, was holding a gun on him.
12 Kerwin couldn't get away there. He was being held there.
13 There was no way to get himself out of that situation
14 without defending himself. Kerwin was entitled to defend
15 himself then, and Curtis was entitled to defend Kerwin at
16 that point in time.

17 I would submit to you that neither of these men was
18 at fault in bringing on this problem, and I really ask you
19 to keep yourself focused on what escalated this incident.
20 I imagine Mr. Myers is going to get up here and tell you,
21 oh, well, they went over there with malice in their hearts
22 and murder on their minds, that they were mad about
23 Monticello Road and went back over there to get even.

24 Well, what evidence supports that?

25 None.

1 There's no evidence that Curtis has an explosive
2 temper. Compare that to Isaac's past behavior. Compare
3 that to Walter, whose girlfriend says he flips out when he
4 gets mad.

5 Where was Mr. Fleming?

6 Don't you know if they had gone, were over there
7 acting mad at the Fleming residence when they went there
8 first, Mr. Myers would have put Mr. Fleming on the stand
9 to tell you about that. He didn't. I think it's because
10 you can conclude they weren't mad when they went over
11 there.

12 If they went over there to rumble with these other
13 fellows, why didn't Kerwin -- why did only Kerwin get out
14 of the car?

15 That's undisputed. That is completely undisputed.
16 And he walked to go to the front door. Not the back.
17 Even the State's witnesses remember him saying we'd rather
18 talk it out. All of this corroborates what Curtis told
19 you yesterday about them wanting to go over there and
20 reach some sort of peaceful understanding about how Isaac
21 was going to act around Curtis. This is what escalated
22 the situation, and this is who escalated the situation.

23 Isaac saw that Curtis was out there. He hated
24 Curtis. He went and he got his shotgun. He got his
25 ammunition. He put it on the kitchen counter and he

1 loaded up, the man with the tactics. In all likelihood,
2 the other men loaded up too. They went out the back door
3 of their house, but they didn't stop there.

4 They left their patio, they went outside, they went
5 behind the areas in back of their neighbor's apartments
6 and they went out into the roads and the common areas of
7 that apartment complex. They went out there. They were
8 the ones who went out there and intended to cause a
9 problem. That was the difficulty. They wanted to use
10 violence. They wanted to incite terror and fear. They
11 were the ones who put Curtis and Kerwin in the position of
12 having to defend themselves.

13 Judge Stillwell is going to tell you that the State
14 must prove, beyond a reasonable doubt, that Curtis was not
15 acting to defend himself or his brother. Well, there's no
16 doubt about who was predisposed to violence in this case.
17 There's no doubt about who was armed in this case.
18 There's every doubt and there's a reasonable doubt as to
19 Curtis' guilt on all of these charges.

20 You know, Curtis was 19 when this happened, High
21 School graduate, going onto college, had a job at
22 Wal-Mart, had a baby on the way, but he was nineteen and
23 he was young. He talked to the police that night, and I
24 imagine Mr. Myers is going to go in here and ask you to
25 hold against Curtis inconsistencies between some of what

1 he told the police on the 20th and his testimony
2 yesterday.

3 But I'd ask you to remember some things. Remember
4 Curtis' youth, and remember what he went through that
5 night. He went through a horrific, shocking experience.
6 Remember. He was questioned by a trained detective. I'm
7 not up here to try to smear Mr. Collins' integrity. Not
8 at all.

9 But he's admitted to you, and just like everybody
10 else, he's not perfect and he admitted to you that that,
11 some of his other reports were not completely accurate,
12 and his memory differed from what was contained in the
13 reports. Think about this.

14 When Mr. Myers was cross-examining Curtis, he was
15 bringing out just isolated little snippets between a
16 statement that was half-written by Curtis, half-written by
17 Detective Collins, parts of a narrative Mr. Collins wrote,
18 but Mr. Myers chose not to put that statement in evidence
19 and I think that here's why. Because Curtis has stayed
20 consistent about what's relevant in this case. He stayed
21 consistent that three armed men attacked him, aimed guns
22 at them, and cornered them.

23 That's self-defense and that's defense of another
24 person. The evidence doesn't prove otherwise beyond a
25 reasonable doubt. Curtis is entitled to verdicts of not

1 guilty.

2 Thank you very much.

3 MR. DUNCAN: Ladies and gentlemen, I'm going to
4 confront right away the only two witnesses who say Kerwin
5 Parker did anything wrong that evening, A.J. Wilson,
6 someone who got dragged into this by two people he
7 apparently trusted, his cousin, and Walter Gadson.

8 A.J., he told you he had no memory problems. He was,
9 by his own admission, carrying marijuana. He knew what to
10 do with it. Who knows how that's affected his memory over
11 the years. He also was carrying an hallucinogenic drug
12 that night. Who knows if he was under the influence that
13 night.

14 You'll recall the doctor read a list of drugs they
15 tested for and hallucinogenics were not on that list, and
16 Ecstasy was not on that list. The doctor did not say
17 anything at all about Ecstasy. A.J. couldn't just not
18 remember things, he absolutely denied them. He denied
19 seeing or signing a second lineup sheet. He told you he
20 didn't see shotgun shells on the kitchen table. He
21 doesn't remember this shotgun we have right next to him.
22 He told y'all he leaned over to help Isaac fight one. He
23 also denied, you'll remember, that this was a high stress
24 situation.

25 His cousins got this chest high. He's got, A.J., two

1 different kinds of illegal drugs on him. Walter has drugs
2 on him. He's right in the middle of Isaac and Walter and
3 at least one shotgun and he's fighting to help Isaac.
4 A.J. indicated Kerwin had a gun, but he finally admitted
5 that he never saw it. He had two to three minutes to --
6 I'm sorry. He had two to three months, as you'll recall,
7 to think about this before he talked to Investigator
8 Collins and he got it wrong.

9 Y'all will remember, I put the second lineup into
10 evidence. The prosecution didn't do it because A.J.
11 couldn't remember who he had identified and who he hadn't
12 identified. Remember A.J. telling you that the gunshot
13 residue being on Curtis' hands and not on Kerwin Parker's
14 hands made no difference to him.

15 In fact, at the end of my questioning I asked him,
16 the facts don't matter to you, do they, physical evidence,
17 and Curtis Johnson all contradict A.J. The only person
18 who backs him up at all is Mr. Hernandez.

19 By the way, does anyone find it strange that's been
20 an alleged excuse, and Mr. Hernandez goes right back to
21 reruns at 2:00 a.m., doesn't say anything to anybody?

22 A logical inference is that he wasn't sure what he
23 saw. There's lots of reasons for self-doubt from a
24 hundred feet away, two o'clock in the morning, 1:30 in the
25 morning, glasses off, taking prescription painkillers,

1 picking out the man in the white t-shirt as a shooter when
2 A.J. and Isaac were the only ones with the white t-shirts
3 on.

4 But there's a bigger doubt. I found certain photos,
5 the last one, the small one and the back porch to be
6 merely compelling, but I would like y'all to look at, and
7 I know you will, look at all the pictures and tell me one
8 picture out of any of those, find one picture that
9 corroborate Mr. Hernandez's, that his vision wasn't
10 blocked, that that S.U.V., in that position that it was
11 in, did not affect his view of the carport or, I'm sorry,
12 of the patio. He was strangely combative about his view
13 being blocked.

14 I'll submit -- we submit there is no picture that
15 corroborates his position there. Remember, I asked him if
16 Kerwin was entitled to his best testimony and he balked.
17 He had his memorized statement and facts be danged. He
18 did admit he didn't see the gun when it was allegedly
19 fired. He told y'all he saw these people's feet though,
20 but no hand. That makes no sense. The diagrams, the
21 C.S.I. people drew up the photos, the obvious position of
22 the S.U.V., and the tree is more than enough hard evidence
23 an eyewitness was wrong and just didn't want to concede
24 the obvious.

25 Let's review Investigator Collins. Not knowing what

1 Parker and Johnson intended, Isaac Wilson retrieved a
2 shotgun. Then he, A.J. Wilson and Walter Gadson, went out
3 the back door. While walking out they were confronted by
4 Parker who had exited the vehicle and mere words were
5 exchanged. Johnson, who had stayed in the vehicle for his
6 own reasons, put the vehicle in drive and drove towards
7 Gadson, A.J., and Isaac Wilson. Johnson, who has crashed
8 the vehicle into the apartment building, then retrieves a
9 handgun from the vehicle and gets out shooting.

10 During the attack, Isaac Wilson is shot twice and
11 dies as a result of his wound. A.J. Wilson is shot five
12 times and is paralyzed from the waist down. This account
13 of the incident is confirmed by the statements of
14 witnesses, victims, and the defense. The physical
15 evidence says eight shots were fired. Investigator
16 Collins, in this summary, tells you there were seven
17 shots. The only one he left out was the one inside the
18 car, but there were seven around the patio.

19 Now, you'll remember Mr. Hernandez said definitely
20 only five shots and a gunman in white. Contrary to what
21 some may think, Walter Gadson was perfectly consistent.
22 He'll never admit to doing anything wrong unless he's
23 pushed into a corner. His words, that was a
24 misunderstanding, not necessarily, not really. Walter
25 ought to have those answers on speed dial. Just press a

1 number and you'll pick his excuse.

2 when we did get Walter into that corner, the witness
3 chair, he passed up something. He reluctantly said
4 Kerwin wanted to talk. His reaction to that, this
5 shotgun. His reaction is he tries to shoot. He tries to
6 shoot either Curtis or Kerwin with the shotgun, a shotgun
7 with the safety on.

8 Walter never explains how this shotgun got from
9 outside to being right next to A.J., a shotgun, this
10 shotgun that we'll never know if A.J. handled because no
11 one checked the gunshot or the shotgun for fingerprints.
12 No one.

13 where is the shotgun with the safety on?

14 It's not here.

15 Mrs. Grimes testified this one was off. Walter
16 corroborates Curtis, that Curtis got out of the car
17 shooting. Walter tried to get Amy to kind of lie for him.
18 I'm not quite certain what that means, but that seems to
19 be the story of Walter's life. The only reason Kerwin
20 Parker is here today alive is Walter Gadson didn't take
21 the safety off because he would have shot it. The only
22 other reason he's alive is his brother, Curtis Johnson,
23 who stopped other people from shooting Kerwin.

24 Walter sure tried to shoot somebody. His own words
25 from that corner, he was pushed into. Walter Gadson's a

1 hot head. He attacked Curtis Johnson getting out of his
2 car. He wanted Kerwin Parker dead. Kerwin Parker wants
3 to talk and Walter freaks out on him. You heard from the
4 stand. He nips out like he always does. This shotgun and
5 others blew this situation up causing this tragedy.

6 Agent Simmons, the gunshot residue analyst, tried to
7 defend the prosecution's view, but she assumed something
8 that wasn't true. Her findings corroborate Curtis' story.
9 Her testimony about the gray sweatshirt, gunshot residue,
10 is consistent with what Frankie Blue says. Agent Simmons
11 also tripped up deciding not to test the gray t-shirt when
12 she had it in her lab. She didn't test the gray
13 sweatpants. You'll remember she didn't test Walter, A.J.,
14 and Isaac for gunshot residue.

15 Bottom line, she said Curtis' gunshot residue test
16 was a valid and negative test. The Solicitor's Office
17 doesn't like it, that the test was valid. They don't like
18 it that it was negative. A.J, I'm sorry, Kerwin had been
19 in custody for three and a half hours. So, any delay in
20 testing wasn't his fault, but you'll remember, Agent
21 Simmons said that doesn't affect the validity of the test.
22 The gunshot residue testing is proof beyond a reasonable
23 doubt Kerwin did not fire a weapon. You'll remember, in
24 my opening, I talked about emotion versus science, and
25 that's what we've got here.

1 Let's talk about the other witnesses, the women.
2 Rebekah saw Curtis get out of the car shooting just like
3 Walter said, just like Curtis said. Amy and Rebekah have
4 a lot to hide from boyfriends. It drove them to abandon
5 three small babies, one, two, three years old. Home alone
6 is not a comedy here.

7 This happened. They had a dark secret, so strong it
8 overcame a mother's instinct to protect her babies. They
9 abandoned these three children. They were trying to hide
10 something, trying to get out of there. Their car, their
11 purses, none of that was searched. They were hiding
12 Walter's gun. Walter, who couldn't have a gun, because he
13 was on probation, the shotgun, with the, with the safety
14 on.

15 Amy Fleming stated Kerwin said let's talk. The women
16 alone know their secret, but it is a logical step. They
17 wanted to protect Walter and hide bad things. Curtis says
18 there were more guns than the shotgun used by Walter to
19 try to shoot Kerwin.

20 Is that what they were trying to hide and abandon
21 their babies for?

22 Remember, also none of these folks has Kerwin wearing
23 a gray sweatshirt on the scene. The form says no physical
24 exam was done on Kerwin nor did they test for what
25 Investigator Collins says, told y'all was consistent with

1 blood on the inside sleeve of the shotgun. To, to this
2 day, 34 months afterwards, the prosecution has never
3 tested these items.

4 Folks, I'll submit there is no evidence Kerwin had
5 any evil or wicked intent that night. You've got somebody
6 living at home, good job at the hospital, never been in
7 any trouble. What escalated Kerwin wanting to talk was
8 Isaac's shotgun and whatever gun Walter had. Mr. Myers
9 will try to tell you hey, Kerwin was an accomplice, but
10 they have to prove, beyond a reasonable doubt, Kerwin
11 intended to commit a crime with Curtis.

12 Remember Investigator Collins backtracking when I
13 asked him to point out to me in his statement when he said
14 they, they knew there would a, be a fight. It wasn't in
15 his statement.

16 If Curtis and Kerwin conspired wickedly to
17 intentionally harm these fellows, then why do you suppose
18 the prosecution didn't charge Kerwin with breaking
19 Walter's leg?

20 The prosecution wanted you to think Curtis and Kerwin
21 are one person. They allege a car has one steering wheel,
22 but a gun has two triggers. If they don't believe Curtis
23 and Kerwin conspired together to commit murder, they have
24 doubts. There was no deadly weapon. This was no common
25 man.

1 Does it sound like something that was planned?

2 There are big holes in the prosecution's case,
3 self-inflicted wounds. The sweatshirt wasn't tested for
4 gunshot residue. Gray t-shirt, gray sweatpants weren't
5 tested. No fingerprints taken on the one shotgun
6 recovered. No searches of the cars when these women tried
7 to leave. Drugs were found three years after the
8 investigation. When the State's case is as full of
9 contradictions as it is here, when it is put to the test
10 of beyond a reasonable doubt, it fails.

11 The judge will tell you when a real possibility of
12 being not guilty exists. You're compelled to come back
13 with a not guilty. You must be convinced beyond a
14 reasonable doubt as to Kerwin's guilt.

15 I'll conclude with Investigator Collins' last
16 sentence. This account of the incident is confirmed by
17 the statements, plural, of witnesses, plural, victims,
18 plural, and the defendants plural.

19 Thank you for your close attention.

20 SOLICITOR MYERS: Could we take about five minutes,
21 Your Honor?

22 THE COURT: Certainly.

23 Ladies and gentlemen, we'll take a very brief recess
24 and then the, the solicitor will give his closing
25 argument. Please do not discuss the case or begin any

1 deliberations. Hold on.

2 I'm going to give you a menu. The clerk of court is
3 going to give you a menu so you can order lunch so they
4 can have it ready for you. So, when you begin your
5 deliberations, you can have lunch right in your jury room.
6 Thank you.

7 (WHEREUPON, the following takes place outside the
8 presence of the jury.)

9 THE COURT: Ready for the?

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: You may proceed.

13 SOLICITOR MYERS: Thank you, Your Honor.

14 MS. Dixon told y'all the other day that jealousy,
15 anger, the need for revenge, wickedness, a heart fatally
16 bent on mischief, and a weapon, these are all the
17 ingredients for murder and that's what this case is about.

18 Now, you folks have listened here. This is the fifth
19 day we've been here, and you've listened very attentively,
20 and as the judge told you to start with, you, you are
21 collectively the 12 Judges of the facts. I'm not going to
22 tell you what the truth is. That's for you to decide.

23 It's for you to determine, as the judge said, the
24 believeability. You can believe all of what a witness
25 says or none of what a witness says. You can believe part

1 and disregard the other. That's for you good folks.
2 That's why we selected you to be on this jury.

3 The judge, as he told you, is the referee, the judge
4 of the law, and when I sit down he's going to tell you
5 what the law is. He's going to tell you it's going to be
6 several things for you to consider. The defendants are
7 charged with murder, assault and battery with intent to
8 kill, a couple of counts, and possessing firearms during a
9 felony. But the judge is going to tell you murder, and
10 he's going to give you the definition of it.

11 Murder is the taking of another life of a human being
12 with malice aforethought. All that means is you kill
13 somebody and you meant to kill them.

14 You think somebody meant to kill Isaac Wilson?

15 That's for you to decide.

16 But all you've got to do is mean to kill somebody and
17 they are killed.

18 If you pick up a weapon and you aim it and you start
19 pulling the trigger at another human being or human beings
20 until it's empty, did you intend to kill somebody?

21 Why else would you do that?

22 The judge is going to tell you there is a smaller
23 crime than murder, and that smaller crime is voluntary
24 manslaughter. It's a lesser crime and he'll tell you that
25 is when somebody is in the heat of passion and they are

1 legally provoked, then that can reduce it down to
2 manslaughter. In the heat of passion and they are legally
3 provoked by another person. That can move it down.

4 We say, as to A.J., who is sentenced to that
5 wheelchair out here, and Walter, who will always have a
6 metal rod in his leg, that they assaulted them and they
7 did -- assault's trying to do harm to somebody and that
8 they battered them and they did. That means come in
9 contact. A war with a leg, a bullet with a body with
10 intent to kill.

11 Now, if you ram a gas pedal down on a vehicle, and
12 you go nearly 55 feet, accelerating the whole time, and
13 you're aiming it at another human being, did you know
14 that's assault and battery with intent to kill?

15 Automobiles are a dangerous weapon.

16 If you take a pistol that holds 14 rounds, and you
17 aim it at somebody and you pull that trigger, and you
18 shoot that person five times until his whole body is
19 splattered, his spinal cord is severed, did you mean to
20 kill him?

21 That's for you to decide.

22 Now, there's a smaller crime than assault with intent
23 to kill, and the judge will tell you about that, that's
24 aggravated assault and battery, assault and battery of a
25 high and aggravated nature. That's usually when somebody

1 hits someone else with a stick or---

2 MS. FULLWOOD: objection, Your Honor. Misstatement
3 of the law.

4 THE COURT: I will allow him to go forward since the
5 jury will hear my charge as to the law.

6 SOLICITOR MYERS: That's usually when you inflict an
7 injury on somebody that doesn't put them in a wheelchair,
8 that doesn't put a metal rod down their leg, but if you
9 want to give them a lesser sentence, if you find them
10 guilty, go ahead and find them of that little small
11 aggravated assault and battery. And if you don't think
12 it's murder, go ahead and give them the little smaller
13 manslaughter. That's up to you.

14 Now, let me tell you something about murder and
15 manslaughter. You remember, I told you manslaughter had
16 to be heat of passion, that somebody legally provoked you.
17 If I came up to a person, and I just started wearing them
18 out with my fist or if I hit them with something, then I
19 put them in heat and passion and provoked them for, to do
20 something to me. But now, if I do that to them, and they
21 walk out the courthouse and they drive down the street,
22 maybe they might go home, maybe they might get a drink of
23 water or use the restroom. They can't come back then and
24 kill me cause they've had time for cool reflection. It's
25 called cooling off, and the judge is going to tell you

1 that.

2 He's going to tell you about cooling. In cooling
3 off, he's going to say this. If there was enough time to,
4 between the provocation and the killing for the passion,
5 the heat of passion of a reasonable person to cool, the
6 killing would then not be voluntary manslaughter.

7 Now, if Curtis Johnson had pulled out those brass
8 knuckles at Monticello Road or if he had pulled a gun out
9 at Monticello Road and shot Walter and shot Isaac we
10 wouldn't be here because that was provoked, but once
11 everyone left and Walter and Isaac went back home and
12 Curtis Johnson went back home, we had about an hour and a
13 half break, that's cooling, folks. That's time enough to
14 cool down for a reasonable person and that's the test.

15 If I slap you today and you come back tomorrow and
16 shoot me, you can't come back and say I provoked you into
17 doing it. If I hit you with something and two hours later
18 you come back and shot me, you've cooled down. The
19 provoking and the heat of passion has to be convincing,
20 and together with the killing, that's a good law
21 otherwise. You could have people shooting people weeks
22 afterwards and saying he provoked me last night or he
23 provoked me last night or he provoked me two hours ago.

24 We'd be back to the old wild west, but they had that
25 wickedness, that revenge, that jealousy, and that danger,

1 and they sought their prey. We're going to get them back.
2 The judge is going to tell you about self-defense, and for
3 self-defense you have four elements to prove and the judge
4 will tell you about that.

5 Number one, the defendant must be without fault in
6 bringing on the difficulty.

7 Were these two guys without fault about what happened
8 at the apartments on November 20 about 1:30?

9 They were the provokers because they went over there.
10 The victims went back to their house. Curtis Johnson went
11 back to his house. Everything's over with. But rather
12 than listen to their mama and stay at home, rather than
13 listening to mama calling the police, no, we are now going
14 to be the provokers and they leave their house and go to
15 the victim's house and now they want to claim
16 self-defense. Now they want to claim self-defense.

17 Were they without fault in bringing on this whole
18 mess?

19 If they had stayed home it wouldn't have happened,
20 but they went over there. If you think that they were not
21 without fault and they had, they had nothing to do with
22 all this happening, then that's up to you to decide if
23 that's justice, if that's the facts. They are the
24 instigators now. The revenge, the get back at them. He's
25 going to tell you the defendants must have actually been

1 in imminent danger.

2 If they were in imminent danger, didn't they cause it
3 by going back over there?

4 They wouldn't have been in danger had they stayed at
5 [REDACTED] in Columbia, South Carolina. They put
6 themselves in danger if they were in danger. If the
7 defendants were in imminent danger, the circumstances were
8 such it would warrant an ordinary person to act like that.

9 Would an ordinary person have gone back there in the
10 first place, the reasonable person, a person that had cool
11 reflection, cooling time to cool off from the prior
12 confrontation at Monticello Road to go back?

13 No, the heat of passion wasn't by the victims. The
14 defendants are now causing the heat of passion. They're
15 the provokers by going back to the apartments, and that's
16 for you to decide. That's for you to decide. The last
17 one is a duty to retreat, and what that means is the
18 defendant had no other probable means of avoiding the
19 danger, of losing his own life, or sustaining serious
20 bodily injury than to act as he did, which means the only
21 act they could have taken was to murder a man, put one in
22 a wheelchair, and run over one with a car and have them
23 break his leg.

24 Could they not have just retreated and left?

25 Not only that, could they not just have stayed away

1 in the first place?

2 You go to somebody's house. You're on their
3 curtilage, which means the surrounding area, the inside of
4 the house, and you have brass knuckles, you have a metal
5 pipe, you have a pistol in the middle of the night, and
6 you claim self--defense. It's like somebody coming in
7 your yard shooting you and saying, oh, I did it in
8 self-defense because they came out of their house with a
9 gun. That's what they've got to do to claim self-defense.

10 Now, worse than that, the judge is going to tell you
11 something called mutual combat. He's going to say this,
12 folks. If the defendants participated in mutual combat,
13 the killing would not be self-defense. That's right cause
14 if you agree to fight, and it's mutual combat you can't
15 say I was without fault in bringing on the difficulty.

16 Didn't they go over there to fight?

17 Isn't that the reason they went back there?

18 Didn't they agree to have it out?

19 So, they can't claim self-defense. It's mutual
20 combat.

21 Now, all these legal terms the judge is going to tell
22 you and you'll apply it to the facts, and he'll tell you
23 to reach a verdict that speaks the truth, and that's your
24 job and I know you will carry it out.

25 Let's talk about some things that are not in dispute.

1 what is not in dispute is that Curtis Johnson has a woman
2 who has his children, that Curtis Johnson is in love with,
3 that she has now moved on to Isaac Wilson, and maybe back
4 and forth. I submit to you it was: You remember earlier
5 that day Curtis Johnson went over to her father's place to
6 see her, said something about patching it up, and stuff.

7 Well, they now are back together so concretely that
8 they have to call the Columbia Police Department. The
9 police came out and then she calls her sister, who is over
10 with Walter and Isaac, and, you know, brought Amy over
11 there to Broad River Road, but the defendant said he
12 didn't see Isaac over there.

13 How does he get over there?

14 He said he didn't see her. From there we go to
15 Monticello Road and there was a confrontation there.
16 Don't dispute that at all. I don't think that guy's Hong
17 Kong Phooey out there where he can get, kick somebody
18 through the window of a car, I find that hard to believe,
19 but Curtis Johnson said Walter pulled a pistol, but that's
20 not what he told Steve Collins that night. I don't care
21 whether he did or not. If there hadn't been a killing I
22 wouldn't be out here. I would be on Lake Murray fishing,
23 but then everybody leaves, nobody is hurt, but Curtis said
24 he couldn't -- don't make a difference.

25 Everything cooled down. Walter, Isaac, they are back

1 over in Lexington County inbetween Bush River and St.
2 Andrews Road. Curtis is over in Columbia over by Columbia
3 College, way over there at [REDACTED] here and
4 here. The provocation is over. The heat of passion has
5 cooled.

6 Let's just leave it there. Goes back, calls the
7 police, tells him we're going to fight it out. We're
8 going to get them. We're going back. The provoked now
9 becomes the provokers. A reasonable person would have
10 cooled down. A reasonable person wouldn't go back. The
11 defendants ain't reasonable. They are out for revenge.
12 They're fatally bent on mischief. They have wickedness in
13 their heart. They have fighting on their mind. They have
14 a metal rod. They have brass knuckles, and they have a
15 pistol that holds 14 rounds.

16 That's malice right there. That's meanness.

17 why did they change cars?

18 They were in a white car or Curtis was.

19 why do they now get into Kerwin's black S.U.V.?

20 I tell tell you why.

21 They go back over to the apartments and drive around
22 front. They don't want to be seen. They get a different
23 vehicle, a vehicle that now has a pistol, in their pocket.

24 You know why they pulled up front?

25 Because they stopped talking, snuck around back.

1 why?

2 Didn't want to be seen. That's right in itself.

3 There is no dispute that shots were fired from that
4 pistol. There is no evidence that any other gun was
5 fired. That pistol, the fellow from S.L.E.D., all the
6 shots, that pistol, nothing else, Isaac's dead, A.J.'s in
7 a wheelchair, Walter's got a bone sticking out his leg.

8 The police arrive and Curtis is arrested at the
9 scene. Kerwin takes off. Don't know where he went.
10 Don't know what he did. Showed up at some lady named
11 Frazier's house.

12 who is Frazier?

13 where is she?

14 Just heard about her yesterday.

15 where did she come from?

16 The Columbia Police arrest him at his house. His
17 father's house in the yard. Kerwin Parker is inside
18 sitting in a chair with no shoes on. That's the facts.
19 It's not in dispute. It is not in dispute at all.

20 what is some of the testimony?

21 what does Amy say?

22 Amy says she heard Curtis Johnson say you've been
23 sleeping with my girlfriend. Isaac's out there, but he
24 doesn't hate Isaac. He now doesn't love Rebekah.

25 If this ain't about her, then why is he yelling at

1 Isaac you been sleeping with my girlfriend?

2 What else did she say?

3 Later she says she sees Kerwin Parker, and he's out
4 on the patio and he says I should kill all of you.

5 And what's he got in his hand?

6 That pistol.

7 Rebekah, what does she say?

8 Kerwin Parker said we gonna fight. We gonna fight it
9 out. Curtis told Steve Collins that night we only over
10 there to fight it out, knew we were going to fight it out,
11 but now he's denying it on the stand. She says a man with
12 a black hoodie, that's Curtis Johnson with the black
13 hoodie, he jumped onto the patio with a gun and fired two
14 or three times and Isaac falls. Curtis Johnson then comes
15 inside after Isaac made it into the kitchen and starts
16 kicking Isaac while he's dying on the kitchen floor and
17 saying to her is this the fellow you love.

18 But he's not jealous. Curtis Johnson's not jealous.
19 Not at all.

20 Kicking a man that's sleeping with his girlfriend
21 who's on the floor dying with two bullets through his
22 body, him saying is this the fellow you love, does that
23 make any sense to you to get up and leave somebody after
24 he shot a man that's going with his girlfriend and he's
25 dying and Curtis Johnson is kicking him?

1 when you get them down and kick them, when they're
2 dying and you kick them, that's malice right there, folks.
3 Curtis Johnson then goes out and kicks A.J. on the patio
4 as A.J. is yelling help, help.

5 what did A.J. do?

6 He was at home asleep.

7 what in the world did A.J. do?

8 oh, but it's self-defense. It's self-defense.

9 Walter Gadson, Monticello Road, after the confrontation,
10 Curtis Johnson says y'all gonna get y'all's. You can
11 believe Curtis or you can't. Doesn't make any difference.
12 That's going to show malice whether you believe it right
13 there. I don't care if you believe Walter or not. And
14 then at the apartments says, when he confronts Kerwin
15 Parker when Kerwin comes around the side of the building
16 that later Walter is crawling around with a bone sticking
17 out his leg.

18 Kerwin Parker said why did y'all do that to my
19 brother, talking about Monticello Road.

20 A.J. Wilson, you think A.J.'s lying to you?

21 That's up to you to decide.

22 By why would A.J. lie?

23 He ain't got a dog in this fight. His cousin's going
24 to Rebekah. He's over there minding his own business.

25 why in the world would he lie?

1 That's up to y'all to decide.

2 Kerwin Parker says out there when they confront him
3 that his problem is he walked out with him because he was
4 worrying what was going to happen. Kerwin Parker says
5 outside, why did y'all do that to my brother. That's the
6 same thing that Walter said. He says that they were
7 fighting out there, and then the car starts up, and then
8 he runs back into the apartments. He's got a shotgun,
9 folks.

10 Why does he turn around to run back in the apartments
11 and Isaac's running with him?

12 If Isaac's got a shotgun and he's running back in the
13 apartment and Kerwin Parker is unarmed, how is Kerwin
14 chasing two men with shotguns at the apartment?

15 That's what they want you to believe. But they went
16 back into the apartment. The facts show that. He says he
17 went back inside, heard one shot, was going in and got to
18 the stairs and heard two more. They jumped on him with
19 about whether he went upstairs or downstairs or told the
20 officer. Doesn't make any difference.

21 I wouldn't know where I was probably either hearing
22 shots, a car just ran over one of my roommates, but three
23 shots, you know what?

24 They don't want you to believe Jose Hernandez. He's
25 a liar because he's on medication for his back. Of

1 course, everybody's on drugs on the State's side, and he
2 couldn't see and that man said I ain't lying, I'm telling
3 the truth. If y'all want to disbelieve what he said,
4 disregard it.

5 He said I heard a shot, pow, and I heard two more,
6 pow, pow. He's corroborating A.J. A.J. is corroborating
7 him. He says that he went back in there and he said he
8 looked and Isaac wasn't by him. That's because Isaac's
9 already been shot. Pow. That was one through the window
10 of the car.

11 Curtis Johnson getting -- pow, pow. Isaac's been
12 shot twice. He says I go back out and I see a long-haired
13 man on top of Isaac on the patio, and I go out there to
14 try to pull the long-haired man, the long haired man,
15 Curtis Johnson, I try to pull him off A.J. He said while
16 I'm doing that I look over by that air conditioning unit
17 and I see the short-haired man over there, Kerwin Parker,
18 and the short-haired man's got a gun. And I'm looking at
19 him and he shoots me and I fall down and I just don't
20 remember much any more after that.

21 That corroborates several people, Jose Hernandez for
22 one. The short-haired guy, aiming down. It's up to you
23 to believe Jose Hernandez. I hear one shot and then two
24 more, pow, pow.

25 What did A.J. say?

1 He goes out on his patio and he's looking, sees that
2 S.U.V. and the tree, the short-haired man he says aims
3 down, fired two times as the man is saying, please,
4 please, don't shoot were his words. Please don't. That's
5 shooting A.J.

6 Isaac's already inside and a woman comes up and says
7 what have you done, whatever Jose said. what have you
8 done. Long-haired man who got out of the S.U.V. is over
9 there and he sees him kicking somebody on the patio. He
10 said he can't see who that person was, but he's over there
11 kicking, the long-haired man.

12 What did Rebekah say?

13 When he kicked Isaac in, in the kitchen, he went out
14 and started kicking A.J. on the patio.

15 Wickedness?

16 Meanness?

17 A heart fatally bent on mischief?

18 Malice?

19 It's wrapped up in this. Short-hair man walks out of
20 the patio with his gun and says I see it in his hand, and
21 he walks out with his friend, with his friend. Two people
22 working together with a common plan or common goal to do
23 some harm and the harm, folks, is now done.

24 One is dead, one is in a wheelchair, one's got a bone
25 sticking out his leg, walks out saying the man with the

1 gun walks down the road, and I don't see him any more.
2 Says the other fellow stays back in the S.U.V. and gets
3 back in and tries to crank it up and it won't crank up.

4 How do we know Jose is telling the truth?

5 Because he's corroborated by a bunch of people. Jose
6 says he sees short-haired man aiming down and shooting.

7 What does Jim Hickman say?

8 Jim Hickman says the shots were going down back over
9 there by the air conditioner.

10 What does A.J. say?

11 I saw the short-haired man, he was by the air
12 conditioning unit, turn around and shoot. Jim Hickman,
13 shots going down. Dr. Ross, shots going from right to
14 left, right to left, down. Rebekah, kicking Isaac on the
15 patio. Long-haired man with the S.U.V. Curtis, kicking
16 on the patio.

17 Now, how can all of these four or five people, the
18 pathologist in Newberry, a retired police officer with 30
19 some odd years, Rebekah, A.J., and Jose Hernandez, how can
20 they all give the same facts?

21 They might not be verbatim, but it's the same facts
22 but you can't believe that. You can't believe that
23 because they all are on drugs even though they read out
24 that list of A.J.

25 You know, if you've got somebody's paralyzed, and

1 you've got emergency surgery doctor's got to check
2 everything in their body before they start pumping them up
3 in the, the operating room, they say they didn't list for
4 Ecstasy, you don't think they start checking stuff before
5 they operate?

6 He's on drugs just losing his mind, going out of his
7 head, don't know what he's talking about, don't make a
8 difference, four other people are corroborating what he
9 said. If he's out of his mind, he's pretty good because
10 other people said what he's telling you is the truth.
11 Jose Hernandez, he's got back problems too, he can't see,
12 he came in here for one purpose and one purpose only, to
13 lie to you.

14 You believe he's lying?

15 That's up for you to decide.

16 Gunshot residue. They say I can't stand the gunshot
17 residue. I don't like it. I love it because that shows
18 that two people were around the gun when it was fired,
19 Curtis Johnson and Kerwin Parker, the defendants. Curtis
20 Johnson's got gunshot powder residue, which means he was
21 holding a gun or around a gun when it was fired. He's got
22 it on his right palm, his left palm, got it on his left
23 arm hoodie, on right arm hoodie.

24 Kerwin Parker's got it on his left arm shirt, got it
25 on the right arm shirt, but he says, wait a minute, folks,

1 he didn't have that shirt on. well, let's say he didn't
2 have a shirt on. Let's say he had a white t-shirt on,
3 which we haven't found by the way, but he must have had a,
4 it because either Jose Hernandez saw a gray shirt or he
5 saw a white shirt. So, while they are running from
6 G.S.R., they're running right into their own trap.

7 Doesn't make any difference.

8 You know what may?

9 I find this kind of funny.

10 They said that what happened was is he got over
11 somehow, left the apartments, where did he go?

12 What did he do?

13 How far is it from those apartments to cross I-20 and
14 way across I-20 is this mysterious Ms. Frazier?

15 What did he do when he got to Ms. Frazier's house?

16 Well, they said Ms. Frazier gave them a shirt.

17 If she gave them a shirt, don't you have to run your
18 hand through a shirt to put it on?

19 Can you get a drink of water?

20 Did he put his hand in and out of his pockets?

21 Did he rub them together?

22 Did they put that shirt on them without his hand
23 touching them or did his hand touch them?

24 When his father comes to get him, I wonder who called
25 his father?

1 His father shows up at mysterious Ms. Frazier's and
2 they go back to [REDACTED]. Then they ride around looking
3 for some police department, and I don't know about the
4 limit, folks, but I can find a police department in
5 Lexington County, somebody there. Columbia might close
6 down around 12:00. I don't know. But I guarantee you I
7 can find a law enforcement officer in the middle of the
8 night.

9 But they can't?

10 what they been doing riding around?

11 He hadn't been sweating, anything to drink, nothing
12 to eat, and they get back to [REDACTED].

13 You remember Ms. Olga Cora, German lady who was the
14 supervisor over there?

15 She said she went in and here he is sitting in a
16 chair with no shoes on. She says where is the shoes. His
17 mother says Kerwin Parker went in the kitchen to clean up
18 and left his shoes. His mother is telling you he went in
19 the kitchen to clean up, but he hadn't washed his hands.
20 His mother goes in there and brings the shoes out. The
21 father said, no, they're in the bedroom. Mama said
22 they're in the kitchen. The father said I had him in my
23 sight the whole time.

24 How is the father out in the yard when the police
25 arrive?

1 Cause that's where the police officer said the father
2 was, out in the yard. He let them in. Like Hong Kong
3 Phooey, father must be Superman with them eyes that can
4 see through walls and everything with him all the time.
5 That's for you to decide. It's five hours, hands aren't
6 coming in contact, and no sweat during all this stuff.

7 You've got one fellow terrified to death, in shock,
8 about to jump out his own skin. The other one is cool,
9 calm, just like a doctor walking around with his hands
10 out. DNA, they can't get rid of that. They don't talk
11 about it. They haven't said a word about it. Kerwin
12 Parker's left shoe had Isaac's blood.

13 If he ain't involved in any killings, how does he get
14 Isaac's blood on his shoe if he is innocent as Ivory soap?

15 Curtis Johnson, on his socks, is A.J.'s blood. On
16 his left shoe, A.J.'s blood. You remember several
17 witnesses talking about the long-haired guy in the blood
18 hoodie kicking A.J. A.J.'s blood on his socks and his
19 left shoe. Right shoe had Isaac's blood. You remember,
20 in the kitchen, telling Rebekah is this the fellow you
21 love. Stomping him when he's down. They can't get around
22 that. Ain't nothing they can say about that. That's why
23 they didn't.

24 Remember A.J. said number three, number three. He
25 said, oh, he's wrong. He's wrong. A.J. said the man at

1 the air conditioning turned around when I'm trying to get
2 the long haired one on -- the man at the air conditioning
3 unit shot me. But he's wrong. Got to be wrong, can't be
4 right, lying about something. This is the worst police
5 mistake.

6 Boys call the police. We're going to get revenge.
7 We're going to get them back. Oh, no, let's go back over
8 there. Stay away.

9 why didn't you wait until the next morning, Curtis
10 Johnson?

11 I don't know. I was in shock. Terrified of them.
12 why didn't you call the police?

13 I was in shock. I was terrified. Don't know.

14 why didn't you stay home and listen to your mama?

15 I'm shocked. I'm terrified. I don't know.

16 You believe him?

17 You can believe him that he didn't listen to his
18 mama. He was cool and reflective.

19 Let's talk about those shotguns. They say it's three
20 shotguns. Here is the two mysterious shotguns that they
21 claim A.J. had and that Isaac had. That's what Curtis
22 Johnson says. Oh, he's so shocked and scared and fearful,
23 they've got all them shotguns out there.

24 How did they disappear?

25 How did they get dumped?

1 If they had shotguns and they, they were out there,
2 then how does A.J. and Isaac run back in the apartments
3 with Kerwin Parker chasing them?

4 Does that make sense to you, folks?

5 Does that make sense?

6 If they've got shotguns back in here and Curtis
7 Johnson said, oh, you killed my brother, they're the one
8 that is got the shotgun.

9 Let me ask you this, how, if Curtis has a shotgun,
10 if, as they would have you believe, if Isaac's got a
11 shotgun, how does someone come within four to seven inches
12 of you and murder you?

13 That's what is, the pathologist said. When this gun
14 was fired and killed Isaac, it was four to twelve inches
15 away from him.

16 Now, how in the world, if a man's got a shotgun on
17 you do you get four to twelve inches away?

18 Does that make any sense to you?

19 If it is -- y'all believe what they say. But they
20 get back in here and that's where Isaac is murdered.
21 That's where A.J. is paralyzed. He's crying he shot his
22 brother. He shot his own brother. That's the first time
23 we've heard about it. He didn't tell Detective Collins
24 that. He said he was shot, but he -- Amy told no police
25 officer. They ain't told a single police officer I shot

1 my brother.

2 Officers from Columbia come over to get Kerwin
3 Parker. He ain't bleeding. They ain't nothing about a
4 wound. He's taken to the Lexington County jail. Steve
5 Collins talks with him. Ain't no wound on him. The lady
6 takes the G.S.R. on his hand.

7 Now, if you're taking G.S.R. on his hand, got a
8 short-sleeved shirt, don't you think you'd see the blood?

9 Laura didn't see anything. Stephanie Floyd, the lady
10 at the jail had that form. No wounds, no cuts, nothing.
11 But you don't have to believe them cause right here Curtis
12 Johnson told you he wasn't shot, and he told you well, he
13 said he was shot, but you believe where he is. Go back to
14 one more thing.

15 You remember what the father said?

16 The father said yeah, when he was home he had an open
17 wound that was bleeding, and this is close, I don't know
18 where he was, came from other than when they arrested him.
19 But there is a, that open gunshot wound, bleeding gunshot
20 wound. I thought he was going to say he was shot with the
21 shotgun. I knew he couldn't prove that.

22 So, then Curtis Johnson said you got to -- you
23 believe that?

24 Where is the doctor that treated him?

25 Where is the medical records?

1 Where is anything other than him and his father that
2 said he was shot and all of this has the shotguns? Curtis
3 Johnson didn't disprove any more shotguns.

4 When all of this is over with, what do you do?

5 He says Curtis leaves and I go to Rebekah and the
6 kids are shot, and he went, while then, and he went in
7 there with Rebekah, wanted to know about the kids, and
8 he's with Rebekah, and he stomps out, and the cops
9 arrested him. He is with Rebekah.

10 How can she remove two guns?

11 The cops are there by then.

12 How did she get outside and remove two guns?

13 Curtis Johnson is there with him.

14 Did he remove them?

15 Oh, Amy didn't, Amy did. She's out removing shotguns
16 now while she's making this call. You can listen to the
17 rest of it, but she was out removing evidence when she was
18 making that call because she was calm. She wasn't
19 excited. That's on the tape.

20 Let me ask you this. If somebody wanted to remove
21 two shotguns and they wanted to get rid of them, why did
22 they leave two?

23 You going to take all of them?

24 This was found on the patio. This whole five shells,
25 their investigator tried to say six, doesn't make any

1 loaded. Laura takes two out, and will gets over there
2 reviewing evidence, finds three more in it. wholes fired.
3 No fired, no fired shots. S.L.E.D. agent, nothing to the
4 shotgun.

5 Y'all believe that?

6 Y'all believe those shotguns were out there?

7 If you do, get it whatever you want. Even if they
8 did have shotguns, somebody coming around my house
9 tonight, I probably would get one too because the provoked
10 at Monticello is now the provokers, and they're the ones
11 coming over instigating. They're at fault. They started
12 it. They didn't want to cool off like they should and
13 stay home and listen to their mama because they're out for
14 murder and meanness.

15 what have, you want to believe?

16 Here is what happened, folks. what happened was
17 these guys, Kerwin Parker, Curtis Johnson, decided that
18 they were going to get even, and you know what they said?
19 Curtis said I didn't want them jumping on me anymore.

20 How you stop that?

21 You get rid of them.

22 They got rid of the problem. Rather than staying
23 home like they should have, rather than letting things go
24 to the next day or calling the police, then they go back
25 over. They pull around front and they see everyone, but

1 they don't talk with them. They want to sneak around like
2 criminals in the night, which they are.

3 They go around back and they park back up in here
4 where they shouldn't have. They park back over by those
5 tennis courts, and he even said by the mailboxes. He
6 didn't remember that then he sat by the mailboxes. Kerwin
7 gets around that road he's going to do some business in
8 case somebody comes armed back. The other ones there, the
9 fellows come back there with one, two, over here, and
10 Isaac's got the shotgun. I don't doubt that. You've got
11 Kerwin coming right here saying we're going to fight,
12 dropping the guns, and they start fighting it.

13 Walter is over here. The car creeps up somehow for
14 Isaac. Walter gets the up.

15 How did that happen?

16 I don't know.

17 You decide on what you heard. They say Walter now is
18 aiming at the car. Car coming up for me, and I got a
19 shotgun. I'm going to try to get that fellow off me,
20 coming around my house and coming at me with a gun. The
21 provoker trying to kill me. He runs over and breaks his
22 leg and the bone sticking out. These guys run back into
23 the apartment.

24 Who follows them?

25 Kerwin.

1 He's following them now. Go into the tree. They
2 back over here, right here. Curtis Johnson, he's saying
3 he blacked out. He blacked out. He's terrified. He's
4 shocked, but you remember the pistol.

5 Boy, that's amazing. He remembered the pistol in the
6 glove box and he shot through the window. He did. The
7 window's got a hole in it. That's the first shot that
8 A.J. heard and Jose heard. He comes inside and he sees
9 Isaac. Got to get rid of Isaac. You been sleeping with
10 my girlfriend, pow, pow, two shots A.J. heard and two
11 shots Jose heard, right here, and right here.

12 Jim Hickman is -- Dr -- and Dr. Ross. Isaac's down.
13 Well, that ain't enough because Curtis is on top of it.
14 Now, A.J. is inside the apartment. A.J. says Curtis ain't
15 there, heard these shots, he made the mistake of turning
16 around and coming back out. The long-haired fellow is on
17 Curtis. He tries to get him off. The short-haired fellow
18 is over there, but has got the gun, and he's over by the
19 air conditioning unit, and he looks over there and number
20 three, the short-haired guy, shoots A.J. five times I
21 think it was.

22 Isn't that malice?

23 That isn't malice?

24 That's overkill.

25 Paralyzed for life.

1 Number 3, one fellow's hair is different than the
2 other. Yes, one is long and one is short. There's
3 another fellow. The fellow you saw aiming down shoots
4 here, Kerwin Parker. Shooting down. Jim Hickman. Yes,
5 shooting down, Dr. Ross. Yes.

6 Somehow Isaac makes it inside the kitchen. Curtis
7 follows him in and while he's dying Curtis continues to
8 kick him with blood on his shoe. Asks Rebekah is that the
9 fellow you love. She ain't going to love him any more
10 because he's dead and he was. He ain't through. He goes
11 back out, starts stomping A.J.

12 Why?

13 What did A.J. do?

14 Then he, Curtis Johnson, and he, Kerwin Parker,
15 because Kerwin was the last one to shoot, walk out and Mr.
16 Hernandez sees the short-haired fellow with the gun and
17 his friend. They take off. Kerwin does. Curtis Johnson
18 stays around there. He's crying so much when he shot his
19 brother. I shot my brother. He's so upset that Rebekah
20 said he shot the kids.

21 You see a car, tear in his eye when he's talking
22 about the shooting of Isaac.

23 You see a tear in his eye when he shot Isaac?

24 He said he was happy to go over there. We're going
25 to get this thing resolved, and I felt happy to go over

1 there.

2 senseless killings. That's all this is. Senseless
3 killings. An Iraqi war veteran. A young man who was
4 asleep in a chair for the rest of his life, fellow with
5 the rod in his leg.

6 Folks, there's one type of justice, and that's pure
7 justice based on the facts and the facts in this case say
8 it doesn't make any difference who pulled the trigger
9 because Curtis Johnson and Kerwin Parker had a common
10 plan. They were told not to leave the house, to call the
11 police, and they disregarded it. They had their own minds
12 made up.

13 They had a common design, a common plan that to go to
14 those appartments and take care of business they did, and
15 when they went over there they were joined hand in hand,
16 one with the other. They knew what they were going to do.
17 Everybody had a weapon. Kerwin had the middle road.
18 Curtis had the brass knuckles. It's Kerwin's gun in the
19 glove compartment. Curtis gets it first. Kerwin does
20 some shooting. Curtis does some shooting, but the hand of
21 one is the hand of all because when you're fatally bent on
22 mischief, and you've got wickedness all over, that's
23 murder.

24 They're both guilty of murdering Isaac. They're both
25 guilty of assault and battery with intent to kill on

1 Isaac, and, yeah, we only indicted Curtis for running over
2 Walter because we know that. We know he ran over Walter.
3 And I'm criticized for giving Kerwin a break on that.

4 Well, forgive me, folks. I ain't doing my job and I
5 apologize to you, but I'm asking you to do yours. Go back
6 to your jury room and give us justice, justice for Curtis,
7 justice for A.J., justice for Walter, and justice for
8 Isaac.

9 Thank you.

10 THE COURT: Ladies and gentlemen, we're going to take
11 a short break, and when we come back I'm going to charge
12 you on the law. So, please go back to your jury room.
13 We're getting very close to the end of the case. So,
14 don't discuss the case yet, begin any deliberations.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. Ladies and gentlemen, we'll
18 go back on the record at 20 minutes to the hour.

19 (WHEREUPON, a short recess was taken at this time.)

20 THE COURT: Bring the jury in and we'll take about 45
21 minutes I estimate. After I give the charge, I'm going to
22 send the alternates back until y'all have opportunity to
23 make objections to what's been charged, and then I release
24 the alternates before I send back to begin deliberations,
25 and then I give you the opportunity, if appropriate, to

1 object to any issues that arise between now and then, and
2 I know Ms. Counts left to take care of something. She can
3 come back in the back.

4 okay.

5 (WHEREUPON, the following takes place within the
6 presence of the jury.)

7 THE COURT: All right. Ladies and gentlemen, we have
8 reached the conclusion of all the evidence and the
9 arguments in this trial. So, at this point it is my job
10 to give you an instruction as to the law.

11 You have heard all the evidence. All the evidence
12 that you heard, as I indicated to you before, has been
13 presented in the form of evidence, and it has been
14 admitted appropriately in this courtroom. You are not to
15 consider anything outside of the courtroom or any other
16 facts or conjecture. The evidence is here. Now it is
17 your duty to take that evidence and to consider it and to
18 determine what the facts are.

19 As I indicated to you before, you are the judge of
20 the facts. You're going to decide what the facts are in
21 this case. My job is to tell you the law.

22 Now, what I would tell you is you took an oath when
23 you came in here, and in accordance with that oath, you
24 swore you were going to make the verdict in accordance
25 with the law as I give it to you. A lot of times, in

1 society, we have certain preconceptions or belief about
2 what the law is or should be. what I'm going to tell you
3 is you need to forget about that. You need to take the
4 law as I give it to you and apply the law as I give it to
5 you to the facts in this case.

6 I'm about to read a good portion of the law to you.
7 Now, I tell you I'm going to read it to you. I don't like
8 to read. It suggests to you that I don't know the subject
9 matter and I have to read it, and also it's not very
10 compelling and it's not very engaging. But this is what
11 I'm going to tell you. This is a very important case and
12 important for everyone in this courtroom, and I wouldn't
13 be doing it justice and conducting myself appropriate if I
14 were to just wing it because I think I know everything
15 there is to know about the law.

16 So, having said that, I'm going to be very deliberate
17 and read a good portion of this to you, and, in advance, I
18 apologize to you for that, because I know that can be
19 fairly dry. However, having said that, I will get into
20 the charge on the law.

21 Ladies and gentlemen, I'm going to tell you a few
22 things twice. That is, I'm going to tell you things again
23 that I may have told you in my opening statement or the
24 conduct of the trial, but when I tell you things twice
25 it's because it's important, and when I give you the

1 charge as to the law, again, all of it is important.

2 The first thing I need to tell you is this
3 indictment, these indictments that I have previously read
4 to you at the beginning of the trial I will restate for
5 you. Again, these are simply allegations by the State not
6 to be considered as evidence by you. The evidence has
7 been presented appropriately in trial.

8 Also, ladies and gentlemen, I would charge you, let
9 me sit down, there are multiple defendants in this case.
10 You know that already. Obviously you've sat through
11 enough of this trial to gather that, and I would charge
12 you that two defendants in this case, each of whom is
13 charged with assault and battery with intent to kill.
14 Mr. Parker is charged with one count, and Mr. Johnson is
15 charged with two counts of assault and battery with intent
16 to kill. Each is charged with the one count of murder and
17 each is charged with possession of a firearm during the
18 commission of a violent act.

19 The case, in each defendant and the evidence and the
20 law concerning each defendant should be considered
21 separately and individually. Your verdict does not have
22 to be the same for both defendants. The fact that you may
23 find one defendant guilty or not guilty should not control
24 your verdict as to the other defendant.

25 When more than one person is charged with a crime, if

1 the evidence warrants it; you may convict one and acquit
2 the other or you may acquit both or you may convict both.
3 It would depend upon your view of the testimony and
4 evidence. You must take each defendant and consider the
5 evidence as to the defendant, and my instructions to you
6 on the law. You would then write a separate verdict,
7 guilty or not guilty, for each individual defendant.

8 Ladies and gentlemen I have spoke to you at the
9 beginning of the case about presumption of innocence.
10 Each of these defendants has a presumption of innocence.
11 As they sit here right now, they still have that
12 presumption of innocence and they will maintain that
13 presumption of innocence until such time as you determine
14 that this State has met its burden of proving each and
15 every element of the charged offenses beyond a reasonable
16 doubt, and I would submit to you that that presumption of
17 innocence isn't just a legal theory, and it's not
18 something that we banty around haphazardly, and it's not
19 just a legal phrase. It is a substantial right which you
20 should take seriously.

21 All right. Ladies and gentlemen, it is important for
22 me now to define for you reasonable doubt. Now, I've said
23 it several times, but I want to make, I want to define it.
24 Reasonable doubt, let me read to you the portion regarding
25 reasonable doubt.

1 The State has the burden of proving the defendant
2 guilty beyond a reasonable doubt. Some of you may have
3 served as jurors in civil cases. In those cases you were
4 told it's only necessary to prove that a fact is more
5 likely true than not true. Such as by the greater weight
6 or preponderance of the evidence, of the evidence.

7 However, in criminal cases, the state's proof must be more
8 powerful than that. It must be beyond a reasonable doubt.

9 Proof beyond a reasonable doubt is proof that leaves
10 you firmly convinced of the defendant's guilt. There are
11 very few things in this world that we know with absolute
12 certainty, and in criminal cases the law does not require
13 proof that overcomes every possibility.

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

21 Now, in coming into your determination, obviously
22 you're going to determine what the facts are. In
23 determining what the facts are, you're going to judge the
24 credibility of witnesses. I told you this before, and I
25 will tell you again. You are tasked with determining

1 whether witnesses are credible. You have heard several
2 witnesses get on the stand and you are in the position of
3 determining how much weight to put on each individual
4 witness' testimony. You can determine that, that a
5 witness was very believable or you determine that a
6 witness' testimony was not believable, completely within
7 your discretion and providence. You may take a portion of
8 that person's testimony and give it great weight, and you
9 may take another portion of its testimony and give it not
10 so great weight. That's certainly up to you.

11 Now, you see evidence comes into the record in
12 several forms, and there are two types of evidence which
13 are generally presented at trial, and that's direct
14 evidence and circumstantial evidence. Direct evidence is
15 the testimony of the person who claims to have actual
16 knowledge of the facts such as an eyewitness. It is
17 evidence which immediately establishes the fact to be
18 proved.

19 Circumstantial evidence is a proof of a chain of
20 facts and circumstances indicating the existence of a
21 fact. It is evidence which immediately establishes
22 collateral facts from which the main fact may be inferred.
23 Circumstantial evidence is based on inference, not on
24 personal knowledge or observation, and they give you an
25 example which I hope illustrates to you the difference.

1 Say that you were to wake up one fine morning in
2 Lexington County and it had snowed, and I know that
3 happens all the time. But it has snowed and you walk out
4 and you go to your front door and you see that there are
5 footprints in the snow which lead to your door and then
6 which go away.

7 Well, there's direct evidence that there are
8 footprints in the snow. However, you may infer from that
9 direct evidence that someone came to your door. That is
10 circumstantial evidence. Therein lies the distinction.

11 The law makes absolutely no distinction between the
12 weight or value to be given to either direct or
13 circumstantial evidence nor is, is a greater degree of
14 certainty required of circumstantial evidence than of
15 direct evidence. You should weigh all the evidence in the
16 case. After weighing all the evidence, if you are not
17 convinced of the guilt of the defendant beyond a
18 reasonable doubt, you must find the defendant not guilty.

19 Ladies and gentlemen, you also heard some evidence
20 submitted through expert witnesses. I would tell you that
21 a witness, who by education and experience, has become an
22 expert in some art, science, profession, or calling may
23 state an opinion as to relevant and material matters in
24 which the witness claims to be an expert. They also may
25 state the reasons for the opinion. You should consider an

1 expert's opinion received in evidence in the case, and
2 like any other evidence, give to it the weight you think
3 it deserves. If you decide the opinion of an expert is
4 not based on sufficient education or experience or
5 conclude the reasons given in support of the opinion is
6 not sound or is outweighed by the evidence, you may
7 disregard the opinion entirely. An expert's witness
8 testimony is to be given no greater weight than that of
9 other witnesses simply because the witness is an expert.
10 Further, you are not required to accept an expert's
11 opinion even though it is not contradicted.

12 Now, ladies and gentlemen, in order to establish
13 criminal liability, criminal intent is required. For
14 example, the mental state to be proven by the State for a
15 particular might be purpose, intent, knowledge,
16 restlessness, or criminal negligence. Criminal intent
17 must be proven by the State beyond a reasonable doubt.
18 Criminal intent is always a matter and must be determined
19 by the jury from the circumstances surrounding the
20 situation.

21 There is no way to prove intent to a mathematical
22 certainty. There is no medical science -- no medical
23 science can dissect the person's brain and determine what
24 the person had in mind. So, the law says criminal intent
25 may be indicated from the circumstances shown to have

1 existed. That is how you make a determination of whether
2 or not the element requiring intent was present.

3 It is not necessary to establish intent by direct and
4 positive evidence, but intent may be established by
5 implication or circumstantial evidence in the same way as
6 any other act or other fact by taking into consideration
7 the acts of the parties and all the facts and
8 circumstances of the case. Criminal intent is a middle,
9 is, is a mental state, conscious wrongdoing. It is up to
10 you to determine what the defendant intended to do based
11 on the circumstances shown to have existed. Criminal
12 intent can arise from action or failure to act. It may
13 arise from negligence, restlessness, or an indifference to
14 duty or consequences that is considered by the law to be
15 the equivalent of criminal intent.

16 Now, ladies and gentlemen, moving on, I also submit
17 to you that there was an issue in this case regarding
18 identification of the defendant as the person who
19 committed the crime charged. The State has the burden of
20 proving identity beyond a reasonable doubt. You must be
21 satisfied, beyond a reasonable doubt, of the accuracy of
22 the identification of the defendant before you may convict
23 the defendant.

24 Identification testimony is an expression of a belief
25 or impression by a witness. You must determine the

1 accuracy of the identification of the defendant. You must
2 consider the believability of each identification witness
3 in the same way as any other witness.

4 You may consider whether the witness had an adequate
5 opportunity to observe the offender at the time of the
6 offense. This would be affected by things like how long
7 or short time was available, how far or close the witness
8 was, the lighting conditions, or whether the witness had
9 the chance to see or know the person in the past. Once,
10 again, I instruct you the burden of proof on the State
11 extends to every element of the crime charged, and this
12 specifically includes the burden of proving, beyond
13 reasonable doubt, the identity of the defendant as the
14 person who committed the crime. If, after examining the
15 testimony, you have reasonable doubt as to the accuracy of
16 the identification, you must find the defendant not
17 guilty.

18 Ladies and gentlemen, mere presence at the scene of a
19 crime is not sufficient to prove someone guilty of a
20 crime. A defendant's presence where a crime is being
21 committed or mere association with a person who commits a
22 crime does not make a defendant an accomplice or an aider
23 or abettor of the person committing the crime. The burden
24 is on the State to prove every element of the crime
25 charged.

1 If you find, after viewing all the evidence, the
2 State has proved the defendant was only present at the
3 scene of the crime, and that they have not proved, beyond
4 a reasonable doubt, any other participation in the crime,
5 then you must find the defendant not guilty. The law is
6 that proof of, at the scene of the crime is not sufficient
7 to find someone guilty.

8 Now, you may note, in this instance, one of the
9 defendants elected not to testify. That is certainly his
10 right not to testify. He has a constitutional right not
11 to take the stand, and I instruct you and emphasize that
12 the fact that the defendant did not testify is not a
13 factor to be considered by you in any way by your
14 deliberation and in your consideration on the question of
15 guilt or innocence of the defendant. It must not be
16 considered by you in any manner whatsoever.

17 The defendant has the Constitutional right to remain
18 silent, and the assertion must not be considered by you in
19 your deliberations. I repeat, under your oath, you are to
20 draw no conclusion whatsoever from the fact that the
21 defendant in this case did not testify. The fact that
22 this defendant did not testify should not even be
23 discussed in the jury room. The burden of proof, as I
24 have stated to you, is on the State. The defendant is not
25 required to prove his or her innocence, but the burden of

1 proof remains on the State to prove guilt beyond a
2 reasonable doubt.

3 Now, ladies and gentlemen, you have heard entered
4 into the record some statements, and there has been
5 evidence presented that witnesses have made prior
6 statements which may or may not be consistent with the
7 witness' present testimony. That certainly is up to you
8 to determine. You may use this evidence to determine
9 whether to believe the witness. You may also use the
10 evidence of the earlier contradictory statements, if you
11 find them to be so, to determine the truth of those
12 statements. It is up to you to decide whether to believe
13 the earlier statements or the testimony given at trial.

14 If a witness is shown to have knowingly testified
15 untruthfully concerning any material matter, you may
16 consider this in determining whether to trust the
17 defendant's testimony as to other matters. You may reject
18 all testimony of a witness or give the testimony the
19 weight that you think it deserves.

20 You also heard, ladies and gentlemen, introduction of
21 a criminal record of a witness during this trial, and I
22 would tell you that a person who has a past criminal
23 record is competent to testify during trial. Past record
24 does not affect the ability of that witness to testify.
25 That past record may only be considered by you, if at all,

1 in determining the witness' believability or credibility.
2 Remember, you're the judges of the facts in this case and
3 of the believability of any or all of the witnesses.

4 Ladies and gentlemen, there was a statement, several
5 statements that were referenced in the trial of this case.
6 While the Court has determined that the reference to those
7 statements is admissible, I instruct you that to make the
8 ultimate decision of whether or not the defendant made
9 those statements. If the defendant did make the
10 statement, you must determine whether the statement was
11 made by the defendant voluntarily and of his own free
12 will. This means that the statement was not caused by
13 pressure, force, fear, pressure, coercion, or
14 intimidation, or by hope or promise of leniency or reward
15 of any kind.

16 In determining whether the statement was voluntary,
17 you should consider both the characteristics of the
18 defendant and the details of the question. Some of the
19 factors that you must consider are the age of the
20 defendant, the defendant's education or lack of education,
21 the defendant's mental ability or capacity, the
22 defendant's I.Q. or intelligence, the defendant's
23 background and environment, place and length of any
24 detention, the nature of the questioning, the advice or
25 lack thereof to the defendant of his or her continued

1 Constitutional rights including the right to remain
2 silent, that any statement should be used against him in
3 the court of law, the right to have a lawyer present, and
4 whether he or she could afford an attorney and were
5 advised that a lawyer would be appointed to represent him
6 without any cost and that he may stop making the statement
7 at anytime.

8 You must consider all the surrounding circumstances
9 before you give any weight to any alleged statement. The
10 State has the burden of proving, beyond a reasonable
11 doubt, that the alleged statement was voluntary. If you
12 determine it was, you may give the statement any further
13 consideration that you deem proper. You must decide what
14 weight, if any, should be given to the alleged statement.
15 If you decide the alleged statement is not the free and
16 voluntarily statement of the defendant, you should not
17 consider the statement at all.

18 Now, ladies and gentlemen, we had two people at the,
19 two defendants which are before you today. And if a crime
20 is committed by two or more people who are acting together
21 and committing a crime, the act of one is the act of all.
22 The person who joins with another to commit an unlawful
23 act is criminally responsible for everything done by the
24 other person which happens as a probable or natural
25 consequence of the facts done in carrying out the common

1 plan and purpose.

2 Just by way of example, two people walk into a bank
3 and they are there, they rob the bank, one of the person,
4 one of the persons is the active participant, the person
5 who actually takes the money, who makes any untoward
6 motions, makes any threats. The other person simply
7 stands at the door, they walk out of that bank, then you
8 could consider those people having acted in concert. If
9 two or more people are together acting together assisting
10 each other in committing the offense, the act is the act
11 of all, or as it is sometimes said, the hand of one is the
12 hand of all.

13 Prior knowledge that a crime is going to be committed
14 without more is not sufficient to make a person guilty of
15 that crime. Mere knowledge that another person is going
16 to commit a crime, even if the defendant is present when
17 the crime is committed, is not sufficient to convict the
18 defendant as a principal. Guilt as a principal is shown
19 by actual or constructive presence at the scene as a
20 result of prior arrangement. Therefore, a finding of a
21 prior arranged plan or common scheme is necessary for a
22 finding of guilt as a principal.

23 The state must prove, beyond a reasonable doubt by
24 competent evidence, the theory of the hand of one is the
25 hand of all. The principal in a crime is the one who

1 either actually commits the crime or is present aiding,
2 abetting, or assisting in committing a crime. When the
3 person does an act in the performance of and with the
4 assistance of another, the act is done by both. Where two
5 or more acting with a common plan or intent are present at
6 the commission of a crime, it does not matter who actually
7 commits the crime, all are guilty. The hand of one is the
8 hand of all.

9 Present at the commission, present at the commission
10 of a crime means to be sufficiently near to aid and abet
11 and assist in the commission of a crime. However, mere
12 presence at the scene of a crime is not sufficient to
13 convict one as the principal on the theory of aiding and
14 abetting. Intent is also a necessary element for there
15 must have been a common design or intent to commit the
16 crime, and the crime must have been committed thereto with
17 the person aiding and abetting by some overt act.

18 Intent means intending the act which actually occurs.
19 Not voluntarily. The intent may be shown by acts of the
20 defendant and other circumstances from which you may
21 naturally and reasonably infer intent. The State must
22 prove these elements beyond a reasonable doubt.

23 Now, ladies and gentlemen, the indictment, the first
24 indictment against each of the individuals is for murder,
25 and I will charge you the law as to murder. The State

1 must prove, beyond a reasonable doubt, that the defendant
2 killed another person with malice aforethought. Malice is
3 hatred, ill will, or hostility towards another person. It
4 is the intentional doing of a wrongful act without just
5 cause or excuse and with the intent to inflict an injury,
6 or under certain circumstances that the law will implicate
7 an evil intent.

8 Malice aforethought does not require malice exist for
9 any particular time before the act is committed, but
10 malice must exist at, in the mind of the defendant just
11 before and at the time the act is committed. Therefore,
12 there must be a combination of the previous evil intent
13 and the act.

14 Malice aforethought may be expressed or inferred.
15 These terms, expressed or inferred, do not mean different
16 types of malice, but merely the manner which the malice
17 may be shown to exist. That is either by direct inference
18 or facts and circumstances which are proved. Express
19 malice is shown when a person speaks words which expresses
20 hate or ill will or the person who prepared beforehand to
21 do the act which was later accomplished. For example,
22 lying in wait for a person or any other acts of
23 preparation going to show the deed in the defendant's mind
24 would be express malice.

25 Ladies and gentlemen, malice may be indicated from

1 conduct showing a disregard for human life. An
2 implication of malice may also arise when the deed is done
3 with a deadly weapon. That implication is merely an
4 evidentiary fact which may be taken into consideration
5 along with any other evidence in this case. The deadly
6 weapon is an article, instrument, or substance which is
7 likely to cause death or great bodily harm. Whether an
8 instrument has been used as a deadly weapon depends on the
9 facts and circumstances of each case.

10 Just by way of example, some instruments which could
11 be deadly weapons are pistol, shotgun, a rifle, a dirk, a
12 dagger, a knife, a slingshot, a razor, gasoline, fire
13 bomb, Molotov cocktail, or lighter fluid, and those are
14 merely presented to you as examples of what could be a
15 deadly weapon.

16 Now, where a person inflicts a fatal injury on
17 another person and that person dies at a later time, you
18 must be convinced, beyond a reasonable doubt, that the
19 infliction of the first injury was the proximate cause of
20 the victim's death. A proximate cause is the direct
21 cause, the immediate cause, the cause without which the
22 death of the victim would not have resulted. There must
23 be a chain of causation from the time of the injury
24 inflicted by the defendant until the time of the victim's
25 death.

1 Proximate cause does not necessarily mean that it
2 occurred immediately prior to death. Simply that it is
3 the proximate cause of death. There could be more than
4 one proximate cause. The acts of two or more persons may
5 combine together to be a cause of proximate cause of death
6 and the defendant's act may be regarded as a proximate
7 cause if it is the contributing death of the cause of the
8 victim. The fact that other causes of death also
9 contribute to the victim does not relieve the defendant
10 from responsibility. The defendant's acts may not be the
11 sole cause of the death, but must be a proximate cause
12 contributing to the death of the victim.

13 Now, ladies and gentlemen, if you find that the state
14 has failed to prove murder beyond a reasonable doubt, you
15 may consider whether the State has proved, beyond a
16 reasonable doubt, that the defendant committed voluntary
17 manslaughter. Voluntary manslaughter, the State must
18 prove, beyond a reasonable doubt, that the defendant took
19 the life of another in the sudden heat of passion based on
20 sufficient legal provocation. Both heat of passion and
21 sufficient legal provocation must be present at the time
22 of the killing to constitute voluntary manslaughter.

23 Sudden heat of passion may, for a time affect a
24 person's self-control and temporarily disturb a person's
25 reason. The sudden heat of passion must be the type that

1 would make an ordinary person unable to coolly reflect on
2 his actions, and would produce an uncontrollable impulse
3 to do action. Sufficient legal provocation must be the
4 type that would make a person of ordinary reason and cause
5 become enraged and to lose control temporarily.

6 The provocation needed from voluntary manslaughter
7 must come of some act of or related to the victim. Words
8 alone, however vulgar or insulting, are not enough to be
9 legal provocation. Where death is caused by the use of a
10 deadly weapon, the words must be accompanied by some
11 threatening or overt act which could have produced the
12 heat of passion. If the heat of passion cooled or there
13 was enough time between the provocation of the killing of
14 heat of position, if any, or time for the person to cool,
15 the killing would not be voluntary manslaughter.

16 In deciding whether a reasonable person would have
17 had time to cool off, you should consider all the
18 circumstances surrounding the killing. You may consider
19 the nature of the provocation, the defendant's mental and
20 physical state, and the circumstances and relationships
21 between the parties.

22 Now, ladies and gentlemen, if you will pardon me for
23 just a second please. I am missing a portion of my charge
24 as to assault and battery with intent to kill. What I'm
25 going to do, ladies and gentlemen, because I'm missing --

1 as I indicated to you before, this is too important for me
2 to wing. So, if you would, please give me a few seconds.
3 Let me grab that, and then I will continue.

4 I gave y'all a copy of my charge, did I not?

5 Do you have a copy of my assault and battery with
6 intent to kill charge?

7 MS. FULLWOOD: I am looking, Your Honor.

8 MR. DUNCAN: Judge, you said voluntary manslaughter?

9 THE COURT: No, I have voluntary manslaughter. All
10 I'm looking for is assault and battery with intent to
11 kill, and I'm looking for it on my computer. So, when I
12 find it on the computer I'm going to drive on.

13 MS. FULLWOOD: Your Honor, I don't have a copy of it.
14 I'm sorry.

15 THE COURT: Okay. Ladies and gentlemen, I apologize
16 for that. I'm going to look at it as I look at my
17 computer. As we went through the charging conference,
18 that is when we were talking about the law, I was handing
19 things out and I just must have placed it someplace else.
20 So, I apologize for that brief break.

21 But I would submit to you that you do have
22 indictments, as I indicated to you, for assault and
23 battery with intent to kill, and the defendants have been
24 charged with assault and battery of, with intent to kill.
25 In order to, in order to prove assault and battery with

1 intent to kill, the state must prove, beyond a reasonable
2 doubt, that the defendant committed an unlawful act of a
3 violent nature to the person of another with malice
4 aforethought. Assault occurs when a person unlawfully
5 attempts or offers to commit a violent injury upon another
6 person and have the presentability to complete the
7 attempted injury. An assault is the intentional creation
8 of a reasonable fear of immediate bodily harm, and is not
9 necessary that the attempted injury or harm actually take
10 place. For example, I walk up to you and when we're in
11 arm's length I draw back to hit you, that is an assault.

12 A battery, in other words, is the unlawful touching
13 by another person, by a person who has committed the
14 assault. An unlawful touching can be caused by a part of
15 the accused body or any object that the accused puts into
16 motion. A battery is the completion of the assault by
17 using or applying force to another person, however slight,
18 in a rude, angry, or resentful manner without legal
19 justification for doing so.

20 Using my earlier example, if I carried through the
21 assault by hitting you, then that is a battery. Malice,
22 as I have previously defined to you, is ill will or
23 hostility towards another person and the intentional doing
24 of a wrongful act without just cause or excuse with the
25 intent to inflict an injury or under circumstances that

1 the law will infer an evil intent.

2 Ladies and gentlemen, I have previously given you the
3 charge as to malice and I have previously defined that for
4 you. Now, if you find that the State has not proven the
5 defendant guilty of assault and battery with intent to
6 kill, you must then determine whether the State has proved
7 that the defendant is guilty of assault and battery of a
8 high and aggravated nature. Assault and battery of a high
9 and aggravated nature includes all the elements of assault
10 and battery with intent to kill except malice. In
11 addition, the State must prove, beyond a reasonable doubt,
12 an aggravating circumstance. The difference between
13 assault and battery with intent to kill and assault and
14 battery of a high and aggravated nature is the presence of
15 or the absence of malice.

16 Circumstances of aggravation include the use of a
17 deadly weapon, the intent to commit a felony, the
18 infliction of serious bodily injury, the great disparity
19 between the ages or physical condition of the parties, the
20 difference in the genders of the parties, the taking of
21 liberties of a female with the use of force, a purposeful
22 infliction of shame and disgrace, and the resistance of
23 lawful authorities. These are only examples that I give
24 to you of the circumstances of aggravation.

25 Now, ladies and gentlemen, you have indictments for

1 the possession of a weapon during the commission of a
2 violent crime. The defendant, the defendant is charged
3 with the, with possession of a weapon during the
4 commission of a violent crime. The State must prove,
5 beyond a reasonable doubt, that the defendant was in
6 possession of a firearm or visibly displayed what appeared
7 to be the firearm here in the commission of a violent
8 crime.

9 Let me restate that. It needs to be -- the State
10 must prove, beyond a reasonable doubt, the defendant was
11 in the possession of a firearm or other weapon during the
12 commission of a violent crime. A firearm means any
13 machine gun, automatic rifle, revolver, pistol, or any
14 weapon which will, is designed or may be readily converted
15 to expel a projectile. In order to define, in order to
16 find the defendant guilty of possession of a weapon during
17 the commission of a violent crime, you must first find the
18 defendant guilty of either committing a violent crime or
19 attempting to commit a violent crime. Murders and assault
20 and battery with intent to kill are violent crimes.

21 Now, you have heard presented a defense of
22 self-defense. self-defense is, is a complete defense, and
23 if it is established, you must find the defendant not
24 guilty. The State has the burden of disproving
25 self-defense by proof beyond a reasonable doubt. If you

1 have a reasonable doubt of the defendant's guilt, after
2 considering all the evidence including the evidence of
3 self-defense, then you must find the defendant not guilty.
4 On the other hand, if you have no reasonable doubt as to
5 the defendant's guilt, after considering all the evidence,
6 including the defense of self-defense, you must find the
7 defendant guilty.

8 The following elements are required to establish
9 self-defense. First, the defendant must be without fault
10 in bringing on the difficulty. If the defendant's conduct
11 was the type which was reasonably calculated to and did
12 provoke a deadly assault, the defendant would be at fault
13 in bringing on the difficulty, and would not be entitled
14 to an acquittal based on self-defense.

15 Now, if the defendant voluntarily participated in
16 mutual combat for purposes other than protection, the
17 killing of the victim would not be self-defense. This is
18 true if, during the combat, the defendant feared death or
19 serious bodily injury. However, if, before the killing is
20 committed, the defendant withdraws and tried to, in good
21 faith, to avoid further conflict either by word or act
22 makes that fact known to the victim, he would be without
23 fault in bringing on the difficulty.

24 For mutual combat there must be a mutual intent and
25 willingness to fight. This intent may be shown by acts

1 and conduct of the parties and circumstances surrounding
2 the conduct. In addition, it must be shown the parties
3 were armed with a deadly weapon. A finding that the
4 defendant was engaged in mutual conduct does not preclude
5 the jury from convicting the defendant of manslaughter as
6 opposed to murder. When two persons mutually engage in
7 combat, and one kills another, and at the time of the
8 killing it may be maliciously done, it is a murder if it
9 be done in sudden heat and passion upon sufficient
10 provocation without premeditation or malice.

11 The second element, ladies and gentlemen, of
12 self-defese is that the defendant was actually in imminent
13 danger of death or serious bodily injury or that the
14 defendant actually believed that he was in imminent danger
15 of death or serious bodily injury. If the defendant was
16 actually in imminent danger, it must be shown that the
17 circumstances would have warranted a person of ordinary
18 firmness and courage to strike the fatal blow to prevent
19 death or serious bodily injury.

20 If the defendant believed he was in imminent danger
21 of death or serious bodily injury, it must be shown a
22 person of ordinary prudence, person of reasonable firmness
23 and courage would have had the same belief. In deciding
24 whether the defendant actually was or believed he was in
25 imminent danger of death or serious bodily injury, you

1 should consider all the facts and circumstances
2 surrounding the crime including the physical condition and
3 characteristics of the defendant and the victim. The
4 defendant does not have to show that he was actually in
5 danger. It is enough that the defendant believed that he
6 was in imminent danger and a reasonably prudent person of
7 ordinary firmness and courage would have had the same
8 belief. The defendant has the right to act on
9 appearances.

10 Even though the defendant's beliefs may have been
11 mistaken, it is for you to decide whether the defendant's
12 fear of imminent danger of death or serious bodily injury
13 was reasonable, and would have been felt by an ordinary
14 person in the same situation. Words accompanied by
15 hostile acts may, depending on the circumstances,
16 establish self-defense. Evidence of prior difficulties
17 between the defendant and the victim may be considered in
18 deciding whether a threat existed, whether the defendant
19 had reason to believe the threat existed, and how serious
20 that threat was.

21 Prior instances of violence by the victim may be
22 considered in deciding whether the defendant actually
23 believed he or she was in imminent danger of death or
24 serious bodily injury or was actually in imminent danger.
25 Threats made by the victim can be considered in

1 determining whether the defendant actually was or believed
2 he was in imminent danger.

3 The final element of self-defense is that the
4 defendant had no other probable way to avoid the danger of
5 death or serious bodily injury than to act as the
6 defendant did in this particular instance. The defendant
7 had no duty to retreat if, by doing so, the danger of
8 being killed or suffering serious bodily injury would
9 increase.

10 Now, ladies and gentlemen, I also need to give you
11 some instructions regarding the defense of others, and
12 under the law of self-defense the defendant may take
13 another's life in the defense of others. The right to
14 intervene to protect another person is subject to the same
15 rights and limitations as the right of self-defense. The
16 defendant may take the life of a person who assaults a
17 friend, relative, or bystander of that friend. Relative
18 or bystander would have had the right of self-defense.

19 To show that the person being defended had the right
20 of self-defense, it must be shown that the person being,
21 being the, defended and the defendant were both without
22 fault in bringing on the difficulty. I'll say that again.
23 It must first be shown that the person being defended and
24 the defendant were both without fault in bringing on the
25 difficulty. If the conduct of the person defends or the

1 defendant was the type which reasonably calculated and did
2 pro, seek a, a deadly assault, the person at fault in
3 bringing on the right of difficulty would not have the
4 right of self-defense, and, therefore, not have the right
5 to use deadly force of, defending from that person, the
6 defendant is, if he had reasonable grounds to believe and
7 the good faith person did believe the person being
8 defended was in imminent danger or death of serious bodily
9 harm from the victim.

10 In deciding whether the defendant actually was or the
11 defendant actually believed that person was in imminent
12 danger of death or serious bodily injury, you should
13 consider all the facts and circumstances surrounding the
14 crime including the physical condition from
15 characteristics of the parties. The defendant does not
16 have to show that that person the defendant defended was
17 actually in danger. It is enough if the defendant
18 believed the person was in imminent danger. The defendant
19 has the right to act on appearances even though the
20 defendant's beliefs may have been mistaken. The defendant
21 must show that, under the circumstances as they appeared
22 to the defendant, the defendant believed the person
23 defended was in danger and that a reasonably prudent
24 person of ordinary firmness and courage would have had the
25 same belief under the same circumstances.

1 It is for you, the jury, to decide whether the
2 defendant's fear of imminent danger, death, or serious
3 bodily injury to the person defended was reasonable and
4 would have been felt by a ordinary person in the similar
5 situation. The defendant does not have to wait until the
6 victim gets the drop on the person defended. The
7 defendant has the right to, under the law of
8 self-preservation, to prevent the victim from getting a
9 drop on the person defended.

10 Words accompanied by hostile acts may, depending on
11 circumstances, establish self-defense. Prior instances of
12 violence by the victim may be considered in deciding
13 whether the defendant actually believed the person being
14 defended was in imminent danger of serious death or bodily
15 danger, was in imminent death or threats made by the
16 victim may be considered in determining whether the person
17 actually believed the person was in imminent danger of
18 death or serious bodily injury or in imminent, of imminent
19 danger.

20 In order to be entitled to, the person must have had
21 no other probable way to avoid the danger of death or
22 serious bodily injury than to act as the defendant did in
23 this particular instance. Where the person being defended
24 had no duty to retreat, the defendant likewise would have
25 no duty to retreat. The defendant had no duty to retreat

1 if, by doing so, the danger of being killed or suffering
2 serious bodily injury would have increased.

3 All right. Ladies and gentlemen, I have come just
4 about to the end of my charge. I want to tell you, again,
5 I'm sorry that I read a good portion of that to you. I
6 know that that doesn't make for very enthralling
7 listening. But, like I said, this is way too important
8 for me to just wing because I may have stated something
9 not only inartfully, but may have said it improperly as
10 well. That wouldn't be fair to the parties and wouldn't
11 have been fair to you either.

12 Now, we're at that point where I am about to give you
13 the case and let you begin your consideration, and I just
14 want to make sure that you recognize and remember your
15 oath. Your job and my job is to see that the trial and
16 the verdict is fair and just to both parties. I wouldn't
17 suggest to you what your verdict should be.

18 As I indicated to you before, I don't have an
19 opinion. I honestly don't have an opinion. That's not my
20 job, but to just make sure the trial is fair. At the end
21 of the trial, if you think I have commented on facts or
22 stated some type of opinion, I would charge you now to
23 disregard that entirely because if you got that impression
24 I can assure you that presentation was not right. Okay.
25 And if I did do that, I apologize to you. I don't think I

1 did. I want to make sure you know I do not have any bias
2 or an opinion either way.

3 However, I am going to now give you a verdict form.
4 I'm going to show you the verdict form. The verdict form
5 is fairly straightforward and I'm going to have seven
6 verdict forms. You know, there are seven indictments in
7 this case. So, there is a verdict form for each and every
8 indictment. Each, of course, should be considered
9 separately and independently, and I will pass these back
10 to you when you go back for your deliberations.

11 And, Ms. McGraw, you, as the forelady of the jury,
12 will execute, after the jury has come to a decision, will
13 be your, your primary responsibility to make sure that
14 everybody has the opportunity to participate and everybody
15 has the opportunity to say what they need to say with
16 respect to this verdict. Remember that this verdict
17 should be unanimous. This verdict must be unanimous.
18 That is, all 12 of you have to come to.

19 Now, I am going to send you back to your jury room.
20 I'm going to ask you please don't begin your deliberations
21 yet. Please don't begin considering the case yet. What's
22 going to happen is I'm going to go over some matters of
23 law with these attorneys. There may be things in my
24 charge on the law that I left out. There may be things
25 that I misstated. They're going to tell me that. If I

1 did, in fact, leave something out or misstate something,
2 then I will bring you back in and I will correct my
3 misstatement. When it is time for you to deliberate, I
4 will send back to you that you may begin your
5 deliberations.

6 I'm going to give you access to all of the evidence,
7 and I will send back a good portion of the evidence, but
8 know this, I'm not going to send back to you the guns and
9 the ammunition. Y'all don't know each other that well.

10 Okay. So, if you need to see the guns or you need to
11 see the ammunition, then send me a message and say we need
12 to see it. I'm going to send it back to you separately.
13 That is all I'll send you, a gun, and then you give it
14 back to me; you need some ammunition, I'll send you the
15 ammunition.

16 All right. So, that's the way we'll conduct that,
17 and you will know when it's time for you to begin the
18 deliberations because I'll send that word back to you and
19 send you the evidence as well.

20 Thank you very much. Please retire to your jury
21 room.

22 (WHEREUPON, the following takes place outside the
23 presence of the jury.)

24 THE COURT: Exceptions to the charge?

25 SOLICITOR MYERS: None.

1 MS. FULLWOOD: None, Your Honor.

2 MR. DUNCAN: None, Your Honor.

3 THE COURT: If there are no exceptions to the charge,
4 I'm going to bring the alternates back in and I'm going to
5 release them if there's no objection from either side.

6 MS. FULLWOOD: No objection.

7 THE COURT: Now, what I would like -- what I'd like
8 y'all to do is review the evidence to make sure that
9 what's going back to the jury is the evidence that was
10 appropriately submitted. Not Court's Exhibits and that I
11 may have put in the record for my purposes, but actual
12 evidence. That was appropriately submitted. If y'all
13 want to segregate guns and ammunition from everything
14 else, you're welcome to do that. If y'all don't have any
15 objection, while y'all are doing that, I'm going to go
16 ahead and call y'all back in.

17 Any objection?

18 MS. FULLWOOD: No, sir.

19 (WHEREUPON, the alternates were excused, and the jury
20 began deliberations at 11:46 and returned back into the
21 courtroom at 11:58.)

22 THE COURT: I have a note you passed out to me, and
23 it is a, may we have a copy of the charge, and I want to
24 make that as Court's Exhibit 8.

25 (WHEREUPON, the note from the jury was marked as

1 Court's Exhibit No. 8 for identification purposes only at
2 this time.)

3 THE COURT: And I brought that out because of that
4 question, and the reason is communication between me and
5 you is sensitive and both parties have to be, know exactly
6 what's being asked and what my response is, and it's a
7 good question, and I owe you the answer and is -- the
8 answer is no. I wanted -- I didn't want to write that
9 down and send it back to you, and the answer is because I
10 don't want to think I'm trying to conceal anything from
11 you because I'm not.

12 A charge on the law is more art than science. And if
13 you look at my charge, I have things highlighted and
14 notes, and as you can go on, I have things scratch,
15 scratched out, replaced words with other words. That's
16 because it was approved for me to modify this charge to
17 make sure that it fit this case. If I give you this
18 charge, what's going to happen is you're going to start
19 looking at what I scratched out or things that, words here
20 that I may not have used or said or try to interpret my
21 notes, and you're not going to be able to determine what I
22 meant. And from that you may infer things that are
23 inappropriate.

24 So, I want you to have all of the law and I'm giving
25 you all of the law and I know -- I realize that that's

1 hard to remember. If it weren't hard to remember I
2 wouldn't have had to have read it cause practicing law for
3 20 years you'd think I know all this stuff. But I have to
4 read it because I forget things too.

5 So, what I would tell you is this. Take the law as I
6 have given it to you, go back into your jury room. If you
7 have specific questions regarding the law or a definition,
8 I will do one of two things. I will either bring you back
9 out here and I will recharge you on that specific point of
10 law or that definition or I will get together with the
11 attorneys and we will fashion a written charge to send
12 back to you. One of the two, depending on circumstances.

13 Okay. All right. Thank you very much.

14 (WHEREUPON, the jury began deliberations again and
15 returned with another question at 2:17.)

16 THE COURT: Ladies and gentlemen, we received a
17 question from the jury. The question specifically is --
18 two questions actually. What are the differences between
19 murder and voluntary manslaughter, and the next question
20 is at what point does malice determine murder or voluntary
21 manslaughter. Make that a Court's Exhibit.

22 (WHEREUPON, the note from the jury was marked as
23 Court's Exhibit No. 9 for identification purposes only at
24 this time.)

25 THE COURT: And I've looked at that and tried to

1 determine or divide what it is they actually want to know,
2 but I am not certain I can divide what it is they actually
3 want to know. So, what I propose to do is to just
4 recharge them as to murder and as to voluntary
5 manslaughter, and with respect to voluntary manslaughter,
6 and in direct answer to their question I want to know if
7 there is any objection to my charging them that malice is
8 not an element of voluntary manslaughter.

9 SOLICITOR MYERS: No objection.

10 THE COURT: Sir?

11 SOLICITOR MYERS: No objection.

12 MS. FULLWOOD: No objection.

13 MR. DUNCAN: No objection.

14 THE COURT: That objection will bring -- without
15 objection, we'll bring the jury.

16 You may be seated.

17 (WHEREUPON, the following takes place within the
18 presence of the jury.)

19 THE COURT: Ladies and gentlemen, I've received your
20 question. So, what I'm going to do is I'm just going to
21 read again malice and voluntary manslaughter charge so
22 that you can hear each of them and draw the distinctions
23 that may hopefully answer your questions.

24 So, with respect for murder, the State must prove,
25 beyond a reasonable doubt, that the defendant killed

1 another person with malice aforethought. Malice is
2 hatred, ill will, or hostility towards another person.
3 The intentional doing of a wrongful act without just cause
4 or excuse and with an intent to inflict an injury under
5 circumstances the law will infer either intent.

6 Malice aforethought does not require malice exists
7 for any particular time before the act is committed, but
8 malice must exist at the time the act was committed, and
9 in the mind of the defendant. Therefore, malice must be a
10 combination of the previous evil intent and the act.

11 Malice aforethought may be expressed or inferred. These
12 terms expressed and inferred do not mean the different
13 kinds of malice, but merely the manner in which malice may
14 be shown to exist. That is either by direct evidence or
15 by implication from the facts and circumstances which are
16 proved.

17 Express malice is shown when a person speaks words
18 which expresses hatred or ill will for another or when the
19 person prepared beforehand to do the act which was later
20 committed. For example, lying in wait for a person or any
21 other acts of preparation going to show the deed was
22 within the defendant's mind may be expressed malice. It
23 may be implicated from showing a total disregard for human
24 life or with deeds done from a deadly weapon.

25 That implication case is merely an evidentiary fact

1 that make be taken into consideration with all the other
2 evidence in the case. A deadly weapon is an article,
3 instrument, or substance which is likely to cause death or
4 great bodily harm. Whether an instrument is used as a
5 deadly weapon depends on the facts and circumstances of
6 each case.

7 All right. Ladies and gentlemen, voluntary
8 manslaughter, you may consider whether the State has
9 proved, beyond a reasonable doubt, that the defendant has
10 committed voluntary manslaughter. To prove voluntary
11 manslaughter, the State must prove, beyond a reasonable
12 doubt, that the defendant took the life of another in the
13 sudden heat of passion based on sufficient legal
14 provocation. Both heat of passion and sufficient legal
15 provocation must be present at the time of the killing to
16 constitute voluntary manslaughter.

17 Sudden heat of passion may, for a time, effect a
18 person's self-control and certain rarely disturb a
19 person's reason. The sudden heat of passion must be the
20 type that would make an ordinary person unable to calmly
21 reflect on his actions and would produce an uncontrollable
22 impulse to do violence. Sufficient legal provocation
23 would be the type that makes a person of ordinary reason
24 and caution to be enraged and lose control temporarily.
25 Provocation for temporary (untranslate) must come from

1 some act of are related to the victim. Words alone,
2 however vulgar or insulting, are not enough to be legal
3 provocation where death is caused by a, the use of a
4 deadly weapon. The words must be accompanied by some
5 overt threatening act which could have produced the heat
6 of passion. If the heat of passion had cooled or there
7 was enough time between the provocation, if any, and the
8 killing for the passion of a reasonable person to cool,
9 the killing would not be voluntary manslaughter.

10 In deciding whether a reasonable person would have
11 had enough time to cool off, you should consider all the
12 circumstances surrounding the killing. You may consider
13 the nature of the provocation, if any, the defendant's
14 mental and physical state, and the circumstances and
15 relationships between the parties. Note that malice is
16 not an element of voluntary manslaughter.

17 All right. Ladies and gentlemen, having given you
18 that charge, I ask you to go back.

19 Thank you.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right. Anything further from the
23 State or defense?

24 SOLICITOR MYERS: No.

25 THE COURT: We'll be in recess until we get a verdict.

1 or a question.

2 (WHEREUPON, the jury reached a verdict at 5:15.)

3 THE COURT: The jury has advised me they have reached
4 a verdict in this case.

5 Just let me say on the record to, even before we come
6 back with a verdict, I don't know what the verdict is. I
7 certainly don't know. But I do want to commend all of the
8 attorneys in this case. Each of you did an excellent job
9 representing your respective clients. It is always nice
10 for me to have professional prepared attorneys in the
11 courtroom in these matters, and in this instance y'all did
12 an excellent, excellent job.

13 All the witnesses and the defendants as well. You
14 all conducted yourself very well during the course of the
15 trial, and I appreciate that and will tell you we are
16 about to get the verdict and it is a very sober
17 experience. So, I want to make sure that there is no
18 emotional outburst, no yelling, nothing of that sort, no
19 clapping, nothing of that sort. We are going to take it
20 very civilly just like we have conducted this trial.

21 All right. Having said that, I'll ask the jury to
22 come in.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: Madam Forelady, have you reached a

1 verdict?

2 FORELADY: We have.

3 THE COURT: Is that a unanimous verdict?

4 FORELADY: It is unanimous.

5 THE COURT: Pass that verdict to the Clerk of Court.

6 (Forelady complies.)

7 THE COURT: Take it and publish the verdict please.

8 THE CLERK: Indictment 2007-GS-32-1473, the State
9 versus Curtis Johnson, as to the charge of murder, we, the
10 jury, by unanimous consent, find the defendant guilty of
11 manslaughter.

12 Indictment 2007-GS-32-1476, State versus Curtis
13 Johnson, as to the charge of assault and battery with
14 intent to kill, we, the jury, by unanimous consent, find
15 the defendant guilty of assault and battery of a high and
16 aggravated nature of Walter Gadson.

17 Indictment 2007-GS-32-1474, State versus Curtis
18 Johnson, as to the charge of assault and battery with
19 intent to kill, we, the jury, by unanimous consent, find
20 the defendant guilty of assault and battery of a high and
21 aggravated nature.

22 Indictment 2007-GS-32-1475, State versus Curtis
23 Johnson, as to the charge of possession of a weapon during
24 the commission of a violent crime, we, the jury, by
25 unanimous consent, find the defendant guilty.

1 Indictment 2007-GS-32-1542, State versus Kerwin
2 Parker, as to the charge of assault and battery with
3 intent to kill, we, the jury, by unanimous consent, find
4 the defendant guilty of assault and battery with intent to
5 kill.

6 Indictment 2007-GS-32-1540, State versus Kerwin
7 Parker, as to the charge of murder, we, the jury, by
8 unanimous consent, find the defendant not guilty.

9 Indictment 2007-GS-32-1541, State versus Kerwin
10 Parker, as to the charge of possession of a weapon during
11 the commission of a violent crime, we, the jury, by
12 unanimous consent, find the defendant guilty. It is so
13 signed by the forelady.

14 Ladies and gentlemen of the jury, if these are your
15 verdicts, please indicate by raising your right hand.

16 (WHEREUPON, all jurors raise their hands at this
17 time.)

18 THE CLERK: Thank you.

19 THE COURT: Ladies and gentlemen, any requests to
20 poll the jury?

21 MS. FULLWOOD: We would so request, Your Honor.

22 THE COURT: Poll the jury please.

23 (WHEREUPON, all jurors were polled at this time and
24 answered that this was and is still their verdicts.)

25 THE COURT: All right. Thank you very much.

1 (WHEREUPON, the jury was dismissed at this time.)

2 THE COURT: Any motions?

3 MS. FULLWOOD: Your Honor, at this time we would move
4 for a new trial on the grounds of all the objections made
5 and exceptions taken during the course of the trial.

6 MR. DUNCAN: I would join in that, judge.

7 THE COURT: Having considered all the motions and
8 specifics taken heretofore, I respectfully deny them on
9 the same grounds as set forth heretofore.

10 Anything else?

11 MS. FULLWOOD: No, Your Honor.

12 MR. DUNCAN: No, Your Honor.

13 THE COURT: All right. Ladies and gentlemen, we will
14 proceed to the sentencing phase. I will tell you this.
15 This has been a long trial. I have a, heard a lot in this
16 case and I intend to order a sentence. However, I am
17 going to order a presentence investigation from the
18 probation department. That may not be instructive to me,
19 but I do want to get as much information as I can before I
20 make such a profound sentence. This is indeed a profound
21 case and sentence. I need to take into consideration
22 everything that was presented to me and take into
23 consideration the position of the victims and the victim's
24 family.

25 I need to take into consideration the position of the

1 defendants, the defendant's family, the position of the
2 state, and the defense, and that's not a decision which I
3 should come to lightly. I take that as an awesome
4 responsibility. And in order for me to do that, approach
5 radially, I think I should have as much information at my
6 fingertips as possible and for that reason I order a
7 presentence investigation. Once I have received that, we
8 will proceed to the sentencing phase.

9 The defendants are, will remain incarcerated during
10 that period, of course. I think that they have been out
11 on bond since the period of arrest, and they will remain
12 incarcerated until such time as they can come before me
13 for sentencing.

14 All right.

15 MR. DUNCAN: Thank you, Your Honor.

16 MS. FULLWOOD: Thank you, Your Honor.

17 THE COURT: Thank you very much. I appreciate it.

18 SOLICITOR MYERS: Your Honor, will you come back
19 after you get that report for any statements?

20 THE COURT: Yes, sir, I will be in Lexington I think
21 the end of October, and I will talk to Mr. Rense next week
22 and tell him I want to get it when I'm back here for my
23 next term of General Sessions, which I think is three
24 weeks.

25 Thank you.

COPY

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF LEXINGTON)

State of South Carolina,)	SENTENCING HEARING
)	2007-GS-32-1473
PLAINTIFF,)	2007-GS-32-1474
)	2007-GS-32-1475
-VS-)	2007-GS-32-1476
)	2007-GS-32-1540
Kerwin Parker and Curtis)	2007-GS-32-1541
Johnson,)	2007-GS-32-1542
)	
DEFENDANTS.)	

BEFORE THE HONORABLE ROBIN B. STILWELL, JUDGE

OCTOBER 21, 2009

LEXINGTON, SOUTH CAROLINA

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

Donald Myers, Esq.
 Colleen Dixon, Esq.
 For the State

Jack Duncan, Esq.
 Beth C. Fullwood, Esq.
 For the Defendants

REMA K. GANTT THOMAS
 CIRCUIT COURT REPORTER

I N D E X

PAGE NO.

Exhibit List.	3
Motions.	6
Sentence of the Court.	31
Court Reporter's Certification	35

E X H I B I T S

PAGE NO.

Court's Exhibit Number 1A, Black Binder with Letters.	32
Court's Exhibit Number 1B, Plastic Case with Letters.	32
Court's Exhibit Number 1C, Yellow Envelope 11/14.	32
Court's Exhibit Number 1D, Red Folder with Letters.	32

1 (The defendants,
2 together with counsel, were personally present in
3 the courtroom.)

4 THE COURT: Ladies and gentlemen, please
5 take your seats.

6 Good afternoon. Thank you all for being
7 here. I apologize that I'm running a little bit
8 late, but what I was doing was allowing everyone the
9 opportunity to review all of the documents that I
10 have had the benefit of reviewing.

11 And it was quite a substantial amount of
12 documents, and I have reviewed it all. So this
13 afternoon obviously we are here on a sentencing of
14 Mr. Johnson and Mr. Parker.

15 As I indicated to you, I have had the
16 benefit of reviewing a voluminous amount of
17 documents, letters from people on either side. I
18 have also had the benefit of the presentence
19 investigation I received from the Department of
20 Probation.

21 So the way I would like to proceed this
22 afternoon is I would like to hear from the State,
23 counsel for the State, then I'll hear from counsel
24 for the defendants, and then I'd be happy to hear
25 from the defendants as well.

1 With respect to everyone else in the
2 courtroom, I have read everything that I have
3 received, and I have read it more than once. So I
4 hope that that is sufficient.

5 If either side takes exception to that,
6 then please let me know and I will consider
7 listening to others as well. But know that I have
8 read all of the statements that have been submitted
9 to me, and have spent a significant amount of time
10 reviewing all of those documents, and feel like I
11 have a substantial flavor of the relative positions
12 of most everyone in the courtroom.

13 Mr. Duncan, you appear to have something
14 to say.

15 MR. DUNCAN: Your Honor, if Your Honor is
16 finished.

17 THE COURT: Yes, sir. Well, yes, sir, I'm
18 done.

19 MR. DUNCAN: Your Honor, at this time I'd
20 like to take up a matter of law and move for a new
21 trial for Mr. Parker. On October 12, 2009, the
22 South Carolina Supreme Court indicated they had
23 carefully scrutinized the historical antecedent to
24 the permissive inference that a jury may infer
25 malice from the use of a deadly weapon in a

1 prosecution for murder and/or assault and battery
2 with intent to kill.

3 The Supreme Court held that that is no
4 longer good law in South Carolina where evidence is
5 presented that would reduce, mitigate, excuse, or
6 justify the homicide. And the remedy granted was to
7 remand for a new trial.

8 As the Supreme Court has held repeatedly
9 in cases such as State v. Gregori, cited February 7,
10 2000; State v. Robinson, April 9, 1985; State v.
11 Washington, May 13, 1985, the decision in this case
12 here is not final until sentencing.

13 The only remedy that is available to Mr.
14 Parker would be the granting of a new trial. As
15 Belcher indicates, the use of that jury charge is
16 unconstitutional, illegal under state law, and
17 constitutes reversible error.

18 As this case is not final, Mr. Parker is
19 entitled to the benefit of this case. And that
20 would be our motion at this time.

21 THE COURT: All right. Thank you, sir. I
22 appreciate that.

23 Ms. Dixon, Mr. Myers, any response to
24 that?

25 MR. MYERS: Yes, sir. This case is final

1 as to the trial. The only thing left pending is a
2 sentence being imposed. State versus Johnny Rufus
3 Belcher, which Mr. Duncan was citing, overturned
4 about 114 years of law in South Carolina.

5 In that case, the Supreme Court said,
6 "Because our decision represents a clear break from
7 our modern precedent, today's ruling is effective in
8 this case and for all cases which are pending on
9 direct review or not yet filed where the issue is
10 preserved."

11 No issue was preserved because that matter
12 was not raised to the Court and no exception was
13 taken to your charge. And, therefore, the law and
14 the facts are final and the issue was not preserved
15 and was not raised. The only thing we have to do
16 today is impose a sentence.

17 THE COURT: All right, any reply to that,
18 sir?

19 MR. DUNCAN: Your Honor, the only thing
20 would be at the time, it could very easily be held
21 that that would have been a specious objection to
22 the law. As the Belcher case indicates, it applies
23 to any cases not final.

24 This is not final. This case is not
25 final. It is pending. The only remedy would be to

1 grant him a new trial. Judicial economy, whether
2 it's here through an ineffective assistance claim,
3 the remedy would be a new trial. And so on those
4 bases, we would renew the motion.

5 THE COURT: All right. Thank you, sir. I
6 appreciate it. Your motion is well received, sir.

7 I have had the benefit of reviewing the
8 case of Belcher, and the question obviously which
9 arose in my mind is what impact does it have upon
10 this case that came out subsequent to the jury's
11 verdict and after the issuance of the jury charge.

12 Certainly, you could not or would not have
13 objected to the charge under the circumstances,
14 because, just like you had indicated, it would have
15 been specious because that was well settled South
16 Carolina law.

17 However, not having objected at the time,
18 the trial court did not have the opportunity to give
19 any curative charge, did not have the opportunity to
20 revise the charge that was given to the jury.

21 And based on the evidence that was
22 presented during trial and based on the jury, the
23 verdict, which seemed to me -- and I think it's a
24 fair characterization of that verdict, to call it a
25 compromise verdict -- that it was not prejudicial to

1 your client.

2 Therefore, having made that determination
3 collectively, I will respectfully deny your motion.
4 Thank you, sir.

5 All right, I'll be happy to hear from the
6 State.

7 MR. MYERS: Your Honor, the State has
8 presented its evidence. The only thing we would
9 have is some of the victims family would like to
10 make a statement.

11 THE COURT: Okay, all right. How many?

12 MS. DIXON: We have two separate groups,
13 Your Honor. One is from the Isaac Wilson family,
14 and one is from the A. J. Wilson family. And I
15 believe A. J. and his father would like to speak as
16 well.

17 THE COURT: Okay, all right. As I told
18 you, I have already read everything into the record.
19 However, I do recognize that this is very important
20 for the victims. Therefore, notwithstanding the
21 fact that I had anticipated moving forward, I'll be
22 happy to hear from you.

23 MS. DIXON: Yes, sir.

24 MR. JEROME WILSON: I'm Jerome Wilson.
25 Your Honor, we certainly thank you for allowing us

1 to say a few more words. Like you said, you've
2 already read over the documents. And we are here
3 today to hear sentencing, even though we have
4 received our sentencing almost three years ago.

5 And we live with it, and we pray that God
6 can live with it as well. Every time we think about
7 our son in his condition, we have to also focus on
8 my nephew Isaac as well, and it's been devastating
9 for us, because everybody knows him.

10 But it just means so much to us to be able
11 to support him. He was just getting his life
12 together at that point, and we just ask that you do
13 give them the maximum sentence that there is.

14 We've done well the past three years
15 struggling with it. And we are happy to see some
16 conclusion to it so we can at least move forward and
17 put this behind us, dealing with it. So thank you
18 very much, Your Honor.

19 THE COURT: Thank you, sir. I appreciate
20 your being here.

21 MR. ANTHONY WILSON: Your Honor, I am
22 Anthony Wilson. I just want to say, you know, it
23 has changed me and changed my whole life around. I
24 can't use the bathroom no more. I've got to wear a
25 leg bag so I don't wet up my clothes.

1 I can't control my bladder. It's just
2 hectic, just the whole three years and my cousin's
3 gone. We had a music thing going. All that's been
4 kind of pushed under the rug for right now.

5 So, like my father just said, we just want
6 justice. And that's about it. I appreciate you
7 letting me talk.

8 THE COURT: Thank you, Mr. Wilson, and I
9 appreciate it, sir.

10 MRS. MICHELLE WILSON: I'm Anthony's
11 mother, Your Honor, Michelle Wilson, and his
12 siblings are here.

13 THE COURT: Okay, certainly.

14 MS. MELISSA WILSON: My name is Melissa
15 Wilson, and Isaac was my oldest brother. Your
16 Honor, my brother meant the world to me. He was
17 like a father figure after my father died.

18 He took care of me, took me places, and
19 also lived right by our mother. The last time I saw
20 my brother Isaac was when he took me and my brother
21 to the fair. We had so much fun with him, and now
22 it is all just memories.

23 Isaac had great plans for his life, Your
24 Honor. I love my brother. I love my oldest
25 brother. He was such a good person. I miss him so

1 much. I really care deeply for my brother.

2 My biggest memory that I will not forget
3 was when he escorted me in an elementary school
4 parent. I would like to say to those boys who
5 killed my brother the following is why -- why would
6 you kill him?

7 What if the story was turned? Do you
8 think it was right? Do you believe that you
9 accomplished something? No, all that you have done
10 is bring heartbreak to me and my family, and you
11 have brought hate.

12 I may only be 13, but I know that having a
13 gun doesn't make you a bigger person. This is what
14 I think of you. You are a coward, and you should be
15 ashamed of yourself.

16 You deserve to hold your head down in
17 shame. You deserve the sentence that you get, and I
18 hope it's a long one.

19 THE COURT: Thank you, ma'am.

20 MR. WILSON: Mr. Carson Wilson.

21 THE COURT: Yes, sir.

22 MR. CARSON WILLSON: Judge, I was ten
23 years old, and my father was in a car accident. And
24 so I really didn't know him that well. And the
25 closest thing I had to a father was my brother.

1 these are three very strong children. And we have
2 been to hell and back since losing my husband and
3 then losing my son less than two years later.

4 And it's been rough, and we have went
5 through some challenges as a family. But I wanted
6 them to be here today so that they could bring some
7 closure to everything that has happened.

8 I know you've read the letter that I
9 wrote. I had brought it, and I was going to go over
10 it all again today. But I just need a moment of
11 your time --

12 THE COURT: Yes, ma'am.

13 MS. WILSON: -- because I need to cleanse
14 me.

15 THE COURT: Yes, ma'am.

16 MS. WILSON: First of all, as a family, as
17 the Wilson family, I would just like to thank A. J.
18 right now in front of this courtroom, because my
19 nephew had made it back into the house, and he was
20 safe.

21 And he went back out because of the love
22 that he had for my son, his first cousin. And for
23 that, A. J. is sentenced to that wheelchair for the
24 rest of his life.

25 And, A. J., I just want to say in this

1 courtroom today that I thank you for the love.

2 And I know that we as a family taught our
3 children love. And I think it showed the night when
4 he went back out there to help his first cousin,
5 because they were like brothers.

6 And, A. J., I would like to say thank you.

7 And my heart hurts so much when I think
8 about everything that he has to go through and deal
9 with on a daily basis just to survive. And for a
10 period of time, I went through the thing that if he
11 had not went back out, where he would be today.

12 So I have dedicated my life to being there
13 for A. J., because he basically was willing to give
14 his life for my son. I would also like to say in
15 the letter that I wrote to you that through my son's
16 high school, Lake Marion High School in Orangeburg
17 School District Three, I have started a foundation
18 in his honor.

19 And through that, I am going to address --
20 first of all, I've given scholarships to students
21 that graduated that were in the sports or the
22 activities that Isaac was in in his high school.

23 But I also hope to also address domestic
24 violence in teens, which was something that was not
25 allowed in court to be brought out. I would like to

1 address some of those things and gun violence and
2 everything, because we need to set an example, and
3 it needs to start today, that our children have to
4 stop killing each other.

5 And they can't continue to do it and get a
6 slap on the wrist and just go on, because it's
7 horrible when my son and A. J. can be shot, and my
8 son killed, and their bodies still stomped in the
9 ground.

10 It has to stop somewhere. We had an
11 incident, we have all of these incidents going on
12 where we are just killing each other! And it has to
13 stop somewhere.

14 And I ask you -- I ask you today -- for
15 the maximum sentence that these young men can
16 receive for the crimes that they have committed.
17 And I also would like to say today that I have
18 watched and paid attention to the defendants' mom.

19 And I want you to know that I do feel your
20 care. I know that you are hurting, and I feel your
21 care as a mom, and we're both struggling. But I
22 think what it is, is that you can touch your
23 struggle, and you can hug your struggle, and you can
24 talk to your struggle.

25 But I can't do that to mine. I can't do

1 that to mine. So I ask you today -- because I do
2 not understand how the jury came back with the
3 verdict they did. But I have to live with that,
4 because that's the judicial system.

5 And there's nothing that I can do about
6 that. But I ask you today to please give the
7 maximum sentence that's allowed by the law. And I
8 also would like to say to the defendants, if I may,
9 that I pray one day that these boys will come to me
10 and admit everything that was done that night and
11 admit everything, because it's quite obvious I have
12 got a good dose of the judicial system when I was at
13 trial for my son.

14 I had never been in a courtroom before in
15 my life, never even for jury duty. But I got a good
16 dose of the judicial system, and I see exactly how
17 it works now. And it is really not fair from what I
18 saw, because I saw what the defense will use by any
19 means necessary -- any means necessary.

20 And I also would like to say that all
21 black males are not involved in drugs, or gangs, or
22 anything like that. It is not like that, because I
23 know my son was not involved in that.

24 But when nothing else fits the M.O. of a
25 black male, you say that it's drugs. So it was

1 quite obvious that it was a thing of any means
2 necessary. But I can sleep at night because I truly
3 feel that A. J. has told me what happened, because,
4 as Solicitor Myers said, A. J. did not have a dog in
5 this fight at all.

6 And I do believe what he said happened
7 that night, so I can sleep and I can rest at night.
8 I don't know how some people do. But I know that I
9 can do that.

10 And I ask you to please give the maximum
11 sentence allowed by the law, because we have to set
12 an example for our young people. The violence has
13 to stop, and let's let it stop in the Lexington
14 courtroom today. Thank you.

15 THE COURT: Thank you, ma'am. I
16 appreciate that.

17 All right, Ms. Dixon, Mr. Myers, anything
18 further?

19 MR. MYERS: That's all the State has.
20 We've announced our decision and our opinions and
21 the presentence report which we stand by.

22 THE COURT: Yes, sir. Thank you very
23 much. We appreciate that.

24 All right, Mr. Duncan, Ms. Fullwood, as I
25 had indicated initially, I have read all the

1 statements that have been submitted. If you would
2 like to have a representative of the defendants'
3 families speak to me, I would be happy to hear from
4 it.

5 I just want to give everyone the equal
6 opportunity to be heard. I'm not suggesting that
7 you should. I just want to make sure everyone is
8 being treated fairly.

9 MS. FULLWOOD: The parents, Ms.
10 Richardson, is standing up.

11 Do you want to speak, Ms. Richardson?

12 MS. RICHARDSON: Yes.

13 THE COURT: Sure, you're welcome to,
14 ma'am. You're very welcome to. You can come
15 forward and stand at the podium, ma'am, so that
16 everyone can hear you.

17 MS. FULLWOOD: How about here with the
18 microphone?

19 THE COURT: That's just fine.

20 MS. RICHARDSON: Honorable Judge Stilwell,
21 I'm just going to keep this short. First off, I'd
22 like to express to the family, to the Wilson family
23 and everybody that's involved to let them know that
24 I'm so sorry for all that has happened.

25 This has actually been a mother's worst

1 nightmare for all of us, and we all do share the
2 same suffering and pain. And I'd also like them to
3 know that I do -- as a parent raising children that
4 I do feel your pain of what you've been going
5 through, because I just recently lost the death of
6 my 17-year-old nephew and the death of my 2-year-old
7 stepdaughter -- granddaughter.

8 I'm not much of a speaker. I'm very
9 nervous, first of all.

10 A. J., like I said, I'll keep you in my
11 prayers, and I know God is good all the time. I am
12 a Christian woman, you know. I believe in God's
13 faith that He is there for all of us.

14 And whatever happened and transpired that
15 night, we all know that He was there. And I pray to
16 the Lord to at least find some type of closure
17 toward this incident.

18 On behalf of my son, I raised my son to
19 try hard, to get a career, be a part of society, to
20 do what's necessary to have a family. This is not
21 what I thought would have occurred at any time.

22 But we all never know when we have
23 children, and I'm so sorry. You know, the only
24 thing I say, Your Honor Stilwell, is that I throw
25 myself on the mercy of the Court.

1 I pray and ask for leniency toward my son
2 and toward this sentencing and also to give him a
3 chance to give back in the community and uphold if
4 there's any way they can help, what's good. And if
5 there's any way that they can help with the Wilson
6 family, you know.

7 THE COURT: All right, thank you, ma'am.
8 I appreciate that.

9 Yes, sir?

10 STEPFATHER: Good evening, Your Honor, I'm
11 Frank (inaudible), stepfather of Kerwin and Curtis.
12 And I just want to say, having been around them for
13 about 12 years, they are the most respectful,
14 honest, and decent people that I have ever met.

15 Kerwin is the type that would work on two
16 jobs for 30 years, retire, and be happy.

17 Curtis, on the other hand, is the type
18 that had plans to change the world through
19 technology. If given the opportunity, I think he
20 would have achieved great things.

21 And tragedy comes in all of our lives. I
22 lost a two-year-old granddaughter last week. It was
23 a homicide by child abuse. Tragedy is no stranger
24 in this world. But most of the time, tragedy just
25 don't walk on two. Everybody has to take a little

1 blame for everything that happens. Thank you.

2 THE COURT: Thank you, sir.

3 MS. RICHARDS: And, Your Honor, there's
4 one more thing I wanted to say --

5 THE COURT: Yes, ma'am.

6 MS. RICHARDS: -- especially to Mr. Isaac
7 Wilson's mom. I understand her grief, yes, that she
8 may not be able to touch her son. And I just want
9 to express the fact that, even though it may seem
10 like I can touch my son, but it's not the same.

11 It still feels like there is a closed door
12 when I have to come and see him, and he sits in this
13 type of situation. I still feel a part of that and
14 it's beside me also, and I just wanted to stress
15 that.

16 THE COURT: All right, thank you very
17 much. I do appreciate that.

18 Ms. Fullwood, Mr. Duncan?

19 MS. FULLWOOD: Your Honor, if I just may
20 make some brief remarks.

21 THE COURT: Yes, ma'am.

22 MS. FULLWOOD: I'm not going to rehash
23 what you have in the sentencing reports or the
24 materials that we provided you. At least I hope I'm
25 not going to do that. You can see from those

1 materials that prior to that night, Curtis was
2 living life the way he should have lived it.

3 He was a high school graduate. He was a
4 college student studying computer technology and
5 working at Wal-Mart. He had no prior record. In
6 his youth, he was a Boy Scout. He had played on the
7 B team football at Columbia High School.

8 He participated in middle school in the
9 Department of Justice Junior Special Agent Program.
10 He was doing everything right. And very fortunately
11 -- and I think very much thanks to Ms. Richardson
12 and Mr. (inaudible) -- he had not succumbed to the
13 temptations and pressures that unfortunately so
14 often beckon our youth these days.

15 His relatives describe him as a very
16 focused and nurturing young man. I, of course, did
17 see that focus. In my opinion, he is much more
18 mature at 22 than people in similar circumstances
19 twice his age.

20 He was always very realistic and focused,
21 is just a good word. On dealing with this case, he
22 was appropriately concerned about it, as I say, just
23 very mature for his age.

24 I only saw it a little -- I think given
25 the fact that anyone facing criminal charges is

1 under a lot of tension and pressure. But I also had
2 a chance to see there is another side to Curtis, a
3 very, kind, loving sort of person.

4 His family tells me he was the sort of kid
5 that was always bringing in hurt animals and pets
6 and, you know, just loving all things. I think that
7 explains why he had gotten so attached to Ms.
8 Fleming, because she had those three children, and
9 to him that truly -- even though he was young, that
10 was a big attraction.

11 He loved those children. You know, his
12 own biological father had never paid him much
13 attention. And in spite of the club that was was
14 something he'd always missed. And I think he felt a
15 real connection with those kids.

16 And I think that was a big attraction in
17 that relationship to him, a big responsibility he
18 felt and probably at his age, with the
19 responsibility and those feelings he wasn't ready to
20 take on.

21 Your Honor, we would ask for concurrent
22 sentencing in this case. We ask you to consider his
23 youth as a factor in the sentencing. We ask you to
24 consider his good conduct in the past.

25 We would ask you to consider remorse in

1 this case. He has expressed his remorse to me. As
2 Ms. Richardson has told you, this family has
3 recently experienced their own losses.
4 Specifically, as far as it affected Curtis, while
5 he's been incarcerated awaiting trial, a close
6 cousin was the random victim of a homicide.

7 And I think he tells me it really let him
8 see how the Wilson family felt and how his conduct
9 would have affected them. And more than ever after
10 that, he -- it really was sort of sobering and
11 really brought completely to his heart the impact
12 that this had on a lot of people.

13 We'd also ask that you consider in
14 sentencing, of course, all the facts and
15 circumstances in this case under the evidence that
16 you've heard. That's all I have to tell the Court.
17 I believe that Curtis, though, would like to address
18 Your Honor.

19 THE COURT: Curtis, I'll be happy to hear
20 from you, sir.

21 MR. JOHNSON: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 MR. JOHNSON: May it please the Court,
24 Your Honor, I would like to say to everyone here
25 today, most especially family and friends and

1 everybody whose lives have been affected, Your
2 Honor, that truly from my heart and soul that I'm
3 really sorry, Your Honor.

4 I pray for everyone every night and keep
5 them in my prayers and that God blesses them and
6 keeps them also. It's a rough situation, Your
7 Honor, every day, and I feel their pain every day.
8 Every day, I feel their pain, Your Honor.

9 You know, I'm really feel sorry for A. J.
10 and Isaac Wilson. And we was supposed to come out
11 to a peaceful outcome, Your Honor. I never expected
12 anyone to get hurt, Your Honor, and I'm hurting for
13 that every day.

14 Like I said, Your Honor, I keep everyone
15 in my prayers. I'm going to try my best to be a
16 more positive role model, be more productive in
17 society, and still continue to take care of them and
18 be there for them to help them.

19 I pray that God always keep them, and that
20 God blesses everyone here. I hope God blesses
21 everyone here, Your Honor. You're all in my
22 prayers. I just wish peace and love for everyone,
23 Your Honor. Thank you.

24 THE COURT: Thank you. I appreciate that,
25 sir.

1 MS. FULLWOOD: Thank you, Your Honor.

2 THE COURT: Yes, ma'am.

3 Mr. Duncan?

4 MR. DUNCAN: Your Honor, both Curtis and
5 Kerwin have other family members here who want to
6 support these boys as much as they can. They have
7 responded by writing the letters that you've seen.

8 The fellow workers -- I was a little
9 astounded that he could generate that sort of
10 letter-writing campaign from people who he had not
11 seen in three years. These were strangers to him
12 before that job.

13 You've seen his employment evaluation.
14 Kerwin was a law-abiding citizen all of his life up
15 to this point. His remorse and sadness over this
16 whole tragedy is reflected in the mental health
17 records.

18 My mental health notebook that I meant to
19 bring up here is over an inch thick with records
20 from the mental health records of the detention
21 center reflecting those problems. Kerwin had always
22 been involved in service to the community type jobs,
23 the Babcock Center at Palmetto Richland.

24 He had tried to serve in the military, but
25 he suffered from panic attacks. And even with the

1 medication, he wasn't able to complete his service
2 there. He's what I call a workhorse.

3 He wasn't a show horse. He was just a
4 solid person, do anything that family or friends
5 would ask. He wanted to help his brother here.
6 That night, everything fell apart, and it is such a
7 tragedy on both sides.

8 I would join Ms. Fullwood in asking Your
9 Honor to consider concurrent sentencing. I do
10 believe that Kerwin wanted to say a few words.

11 THE COURT: Mr. Parker, I'll be happy to
12 hear from you, sir.

13 MR. PARKER: Your Honor, this is my first
14 time having an opportunity to be able to speak. I
15 just want to first off thank you for this
16 opportunity.

17 THE COURT: Yes, sir.

18 MR. PARKER: For a long time, I've been
19 having serious thoughts in my head on how to address
20 this issue as well as the Wilsons. I wanted to make
21 sure -- I know that from the bottom of my heart, I
22 have for y'all and what happened:

23 This tragic event has changed a lot of
24 people's lives. I know and I feel your pain, and
25 I'd change it if I could. But it's not possible.

1 It's hard to put into words what I'm
2 trying to say. It's very hard.

3 THE COURT: All right, thank you, Mr.
4 Parker. I appreciate that, sir.

5 All right, ladies and gentlemen, I don't
6 have any type of prepared speech or anything
7 prepared to say. So if you will just grant me,
8 please, the latitude to just speak a little bit to
9 you.

10 This is an absolute tragedy. It's a
11 tragedy for everyone in the courtroom. After this
12 case came to a conclusion, I too went home that
13 evening, and before I went to bed, I said a prayer
14 for Isaac and A. J., and I said one for Curtis and
15 Kerwin as well, because obviously we have any number
16 of victims in this case.

17 And it was tragedy all the way around.
18 There's nothing that I can do to go back and change
19 that, as much as I'd like to. I'd like to reverse
20 time and make it all stop. The thing that is
21 particularly tragic, as Ms. Wilson said, is it is
22 young boys who just let a situation spiral out of
23 control and, instead of handling it like adults,
24 chose to handle it in a way which was entirely
25 inappropriate.

1 The jury's verdict, as I indicated to you,
2 seemed to me to be somewhat of a compromise verdict.
3 And I don't know what they heard, but it seems to me
4 that what they took away from it is that there was
5 some blame to go on both sides of the equation.

6 I don't know that that's the truth. I
7 don't know that that's the case, but that's what it
8 seems like they found in this matter. If, in fact,
9 that is what they decided, and the victims were to
10 some degree to blame for what happened, then I can
11 tell you now that the victims received their
12 sentence.

13 And their sentence in one instance was a
14 death penalty, and in the other instance, it was a
15 life committed to a wheelchair. So if, in fact,
16 that was a compromise verdict and they decided that
17 there was blame to be shared, then the punishment to
18 the victims has been exacted.

19 Now, I'm saddled with the responsibility
20 of deciding what the punishment for the defendants
21 will be. And I have read and reread the letters and
22 the submissions that I have received.

23 And I can read one side, and I can be
24 persuaded that they should receive the absolute
25 maximum under the law. And then I'll read the other

1 side, and I will be persuaded that perhaps they
2 should not and that they should be treated
3 significantly more leniently because of their prior
4 lives before the incident.

5 And every time I read it, I go back and
6 forth and I vacillate. And I just come to the
7 conclusion again that this is just an unfortunate
8 and senseless tragedy all the way around.

9 So I ask myself as I drive up and down the
10 road for the last month coming back and forth to
11 Lexington County, what am I going to do? What am I
12 going to do? How am I going to get it right? How
13 am I going to serve justice?

14 And I've come to this conclusion. I'm not
15 going to get it right, because this can't be made
16 right. And my sentence is not going to serve
17 justice, and that's because here on this earth, as
18 we walk this earth, justice is not to be had.

19 Justice to us in this world is simply a
20 word, and we all interpret it differently. Both
21 sides of the aisle have a different idea of what
22 justice is in this case. So I would tell you this.
23 Don't look to my sentence for justice.

24 There's only one measure of justice, and
25 it is not to be measured and doled out on this

1 earth. Justice will be doled out by your Lord and
2 Maker. So when you go home tonight, not
3 withstanding what I may decide today, I would submit
4 to you that it's really not relevant, because that
5 is not the justice that ultimately should be doled
6 out in this case.

7 I would suggest that you should look into
8 your hearts and try to find peace. Whatever side of
9 the aisle you're on, look into your heart and try to
10 find peace, and renew that relationship with your
11 Lord and Maker to have closure on this case,
12 because, as I indicated, I'm not going to get it
13 right.

14 I'm not going to serve justice, because,
15 as I indicated, I can't do it. There's no sentence
16 that I can give you that's going to be right and
17 that's going to serve justice.

18 Having said that, with the worldly means
19 that are at my disposal, I will try and I will
20 impose a sentence. Gentlemen, the sentence of the
21 Court is as follows.

22 Mr. Parker, on Indictment 2007-1542,
23 assault and battery with intent to kill, you are
24 committed to the State Department of Corrections for
25 20 years.

1 On Indictment Number 2007-1541, possession
2 of a firearm during the commission of a violent
3 crime, the sentence of the Court is five years.
4 That is concurrent.

5 Mr. Johnson, on Indictment Number 2007-
6 1473, voluntary manslaughter, the sentence of the
7 Court is that you be committed to the State
8 Department of Corrections for 30 years.

9 On Indictment Number 2007-1476, assault
10 and battery of a high and aggravated nature, the
11 sentence of the Court is ten years.

12 On Indictment Number 2007-1474 for assault
13 and battery of a high and aggravated nature, the
14 sentence of the Court is ten years.

15 For Indictment 2007-1475, the sentence of
16 the Court is five years.

17 For the two assault and battery of a high
18 and aggravated nature, each with ten-year sentences,
19 those shall run concurrent to each other and the
20 voluntary manslaughter. The five-year sentence for
21 possession of a firearm during the commission of a
22 violent crime will run consecutive.

23 All right, ladies and gentlemen, such is
24 the order of the Court. Let me say this. I extend
25 my sincere personal condolences to everyone in the

1 courtroom. Thank you very much, and I wish you all
2 the luck.

3 And, for matters of the record, I am
4 presenting all of the submissions to the Court to
5 include the presentence investigation to the Clerk
6 of Court to be an exhibit. Thank you very much.

7 (Court's Exhibit Number 1A, Black
8 Binder with Letters; Court's Exhibit Number 1B,
9 Plastic Case with Letters; Court's Exhibit Number
10 1C, Yellow Envelope 11/14; and Court's Exhibit
11 Number 1C, Red Folder with Letters, were entered in
12 the record.)

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON OCTOBER 21, 2009, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE TWENTY-NINTH DAY OF NOVEMBER, 2009.



REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/13/2013

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON

STATE OF SOUTH CAROLINA :

:

-vs-

:

TRANSCRIPT OF RECORD

:

KERWIN S. PARKER and :

CURTIS T. JOHNSON :

October 3, 2011

Lexington, South Carolina

B E F O R E:

HONORABLE ROBIN B. STILWELL, Judge.

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

COLLEEN DIXON, ESQ.

Attorney for the Plaintiff

JACK DUNCAN, ESQ.

WANDA CARTER, ESQ.

Attorneys for Defendant Parker

ELIZABETH FULLWOOD, ESQ.

ROB PACHAK, ESQ.

Attorneys for Defendant Johnson

MARY E. DIGIROLAMO

Court Reporter

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I N D E X

WITNESSES

CURTIS JOHNSON

Questioning by Ms. Fullwood 19

EXHIBITS

MARKED

FILED

C1 - Notes	5	5
C2 - CD (D15)	9	9
C3 - Statement	70	70
C4 - Notes	72	88
C5 - Notes	72	88
C6 - Photo (D14)	72	88
C7 - Photo (D13)	72	88

CHARGE OF THE COURT N/A

1 THE COURT: Okay, ladies and gentlemen. Let's call
2 to the bar the case of the State of South Carolina versus
3 Kerwin Parker and the State of South Carolina versus
4 Kerwin Johnson -- or Curtis Johnson, excuse me. We are
5 here for purpose of a reconstruction hearing. This case
6 was remanded to the circuit court by the South Carolina
7 Court of Appeals for purposes of reconstructing certain
8 portions of the transcript that are missing. And we have
9 had a discussion in chambers regarding what portions
10 those are and how we will proceed. I believe we'll
11 proceed in order of the witnesses.

12 The first one that is missing in the transcript is a
13 Mr. Gadson. Am I correct in that regard?

14 MS. DIXON: Yes, Your Honor.

15 THE COURT: And what is his first name?

16 MS. DIXON: Walter.

17 THE COURT: Mr. Walter Gadson. So let's proceed and
18 put on the record any recollections that we may have with
19 respect to Mr. Gadson's testimony and see if we can in
20 salient and relevant portion get on the record that
21 testimony.

22 Before we start with that, is there anything that
23 anybody would like to put on the record?

24 Okay. Hearing nothing.

25 MR. JOHNSON: Excuse me.

1 THE COURT: Yes, sir.

2 MR. JOHNSON: Would me and my brother be allowed to
3 input what areas we found in the transcript also?

4 THE COURT: You may. Now, we're going to get to
5 that after a little bit. Okay. All right. And we'll
6 take that up after we go -- after we deal with Mr.
7 Gadson. Okay. And then we'll move to the next portion
8 of the transcript. Okay.

9 MR. JOHNSON: All right. Thank you.

10 THE COURT: Ms. Dixon, I think that you had had some
11 notes and a fairly good recollection of Mr. Gadson's
12 testimony?

13 MS. DIXON: Thank you, Your Honor. Mr. Gadson was
14 called during the State's case originally. He was
15 recalled by Mr. Duncan, attorney for Mr. Parker. He was
16 recalled, Your Honor, basically according to my
17 recollection and my notes because of a tape. I have that
18 tape here. It's Defense Exhibit 15. Let me double check
19 and make sure. This is a CD of an interview on which Mr.
20 Gadson gave some testimony to a Nationwide Insurance
21 agent. It's my recollection, Your Honor, that this CD
22 came into evidence without objection by the State. We
23 would have no objection to it being re-entered into
24 evidence for the record, to make sure we have everything
25 in. The CD is entitled excerpt of Walter Gadson

1 interview with Nationwide Insurance on December 15, 2006.

2 Your Honor, I also have, which I would like to enter
3 into the record, a copy of, with the Court's permission,
4 and I'll hand this to the court reporter, Your Honor, or
5 if you'd like to see ---

6 THE COURT: Okay. Well, give it to the court
7 reporter because she needs to mark it. And before we go
8 any further, Gadson is spelled?

9 MR. DUNCAN: G-a-d-s-o-n.

10 MS. DIXON: Yes, sir.

11 THE COURT: G-a-d-s-o-n. Okay. All right. If you
12 want to mark that as Court's Exhibit Number 1 for the
13 reconstruction hearing.

14 (Court's Exhibit Number 1 was marked and filed.)

15 THE COURT: Okay. I have in my hand Court's Exhibit
16 Number 1, which is Ms. Dixon's notes with respect to Mr.
17 Gadson's testimony. Any objections to the introduction
18 of these notes from defense?

19 MS. CARTER: No objection.

20 THE COURT: Okay. Then it shall be admitted as
21 Court's Exhibit Number 1 without objection. Ms. Dixon,
22 anything further, ma'am?

23 MS. DIXON: Your Honor, I just want to say that I
24 did give a copy of these notes to the defense. And I
25 have looked over the notes. As far as I can determine

1 what is in the notes is what Mr. Gadson testified to the
2 second time he was called. Just for the record in case
3 there's any question later as to my shorthand, any time I
4 write the capital letter I that is standing for Isaac.
5 Any time I write the capital letter A that's AJ Wilson.
6 Any time I wrote K it's Kerwin Parker, and CJ would be
7 Mr. Johnson. Because I didn't write out their names
8 every time and I don't want there to be any confusion as
9 to what these notes actually mean at a later date.

10 At the bottom, Your Honor, underneath the case cite
11 on the left I wrote redirect. That I believe was the
12 cross-examination of Mr. Gadson by Mr. Meyers. And so
13 those are my notes from his testimony.

14 THE COURT: I also note for the record that you
15 signed it three times. Is that like a super
16 authentication?

17 MS. DIXON: Yes, sir.

18 THE COURT: Okay.

19 MS. DIXON: That's what that is.

20 THE COURT: All right. Good enough. All right. So
21 just so that I'll be clear, what I heard you say was that
22 the primary purpose of Mr. Gadson's testimony was to
23 authenticate his voice on Exhibit Number 15, is that
24 correct?

25 MS. DIXON: Yes, sir, Your Honor. I believe that

1 when he -- just to summarize, when he gave that statement
2 to Nationwide he gave a different version as to who was
3 doing the shooting than he had in his direct examination
4 when the State called him. When the State called him in
5 its case in chief he had indicated that Mr. Parker had
6 done some of the shooting. That was in direct
7 contradiction to what he said on the tape, which is I
8 believe why Mr. Duncan called him. And my notes reflect
9 kind of how he explained the difference in what he said
10 in testimony and what he said on the tape. But that was
11 to my recollection, Your Honor, the only issue that was
12 addressed with him. And for the record also I don't
13 believe any objections were made by the State during his
14 testimony.

15 THE COURT: Okay. Had -- and is Exhibit Number 15,
16 is that included in the record on the appeal or was that
17 missing?

18 MS. DIXON: It was -- it was noted, Your Honor, in
19 the record but the portion of the testimony where it was
20 actually entered into evidence was not there.

21 THE COURT: Okay.

22 MS. DIXON: And so that's why I wanted the record to
23 be clear. We have no objection to this being a part of
24 the record.

25 THE COURT: Okay. And I just want to make sure that

1 we don't need to re-introduce that CD. Appellate Defense
2 and the Court of Appeals has that as part of the record
3 on appeal already?

4 MS. FULLWOOD: They have the actual CD? No they do
5 not. I was wondering if maybe at this time we wanted to
6 play it so what's on the CD can be transcribed.

7 THE COURT: Either that or we can introduce that
8 into the record. And if it's your preference to play it
9 then we can.

10 MS. DIXON: I think if we ---

11 MS. FULLWOOD: I would defer to the appellate
12 lawyers.

13 THE COURT: Because when -- it is my understanding
14 that when the court reporters, when there is something
15 played onto the record they don't transcribe what is
16 being played. They admit it into the record.

17 MS. FULLWOOD: Then if that's the case I would
18 withdraw that.

19 THE COURT: Are we getting the north and south head
20 bob from Ms. DiGirolamo?

21 MS. DIXON: We are, Your Honor.

22 MS. FULLWOOD: We are.

23 THE COURT: Okay. All right. Good. Then let's
24 admit Court's Exhibit Number -- was that defense?

25 MS. DIXON: It's Defense Number 15.

1 THE COURT: Defense Exhibit Number 15. And we'll
2 admit that as Court's Exhibit Number 2 for purposes of
3 this hearing. Any objections to that?

4 MS. FULLWOOD: No, Your Honor.

5 THE COURT: All right.

6 (Court's Exhibit Number 2 was marked and filed.)

7 THE COURT: Good enough. All right. Anything from
8 the defense with respect to Mr. Gadson -- or Gadson, I'm
9 sorry? Is -- I'll ask you at first blush does the
10 defense concede or acknowledge that that's a fair and
11 accurate recitation of the relevant, salient portions of
12 Mr. Gadson's testimony?

13 MR. DUNCAN: In the sense that he authenticated that
14 it was his voice, that he had given it in relatively
15 close proximity to the events that had occurred, the
16 incident date that led to the arrest, and that his
17 answers on direct testimony when called by the State were
18 directly contradicted by his statements in the recorded
19 statement to Nationwide.

20 THE COURT: Okay.

21 MS. FULLWOOD: I would just state for the record
22 that I no longer have my trial notes taken during the
23 trial, but what's been said here today is the same as my
24 recollection of what happened as far as that portion of
25 that witness' testimony.

1 THE COURT: Okay. All right.

2 MR. DUNCAN: If I can just?

3 THE COURT: Sure.

4 MR. DUNCAN: We wouldn't have anything else.

5 THE COURT: Okay. All right. Anything else with
6 respect to Mr. Gadson's testimony?

7 MS. DIXON: Nothing from the State, Your Honor.

8 THE COURT: Okay.

9 MR. DUNCAN: And Your Honor, I don't think -- can we
10 establish on the record that we do not know where Mr.
11 Gadson is.

12 MS. DIXON: I apologize, Your Honor. The last time
13 we tried to find Mr. Gadson he was out of state.

14 THE COURT: Okay.

15 MS. DIXON: He came back to South Carolina as far as
16 an out of state subpoena. We don't know where he is now.
17 So -- and didn't -- I don't know that we've exhausted all
18 efforts but he's not at the contact information that we
19 had for him. And so, you know, with the notes and the
20 short portion of testimony that he gave, I believe that
21 we have adequately reconstructed his testimony as far as
22 his second -- the second time he was called to the stand.
23 If the Court determines that we need to find him then we
24 could maybe try again. But as of right now we have not
25 located him.

1 THE COURT: All right. And I'm sorry I didn't put
2 that on the record to begin with. I do find that the
3 State and the defense have made efforts to find Mr.
4 Gadson and have him in -- have him in court today and
5 that he is unavailable for testimony. And it's
6 appropriate that we proceed with this hearing in his
7 absence given that fact.

8 MS. FULLWOOD: Beg the Court's indulgence.

9 (A discussion was held off the record between
10 defense counsel and their clients.)

11 MS. FULLWOOD: Your Honor?

12 THE COURT: Yes, ma'am.

13 MS. FULLWOOD: I believe Mr. Johnson would like to
14 make a statement at this point only about Mr. Gadson's
15 testimony. I don't know if you want him sworn.

16 THE COURT: Yeah, I can swear him. And I can swear
17 you from right there.

18 MS. FULLWOOD: Okay.

19 THE COURT: And I'll be happy to hear a statement
20 from you. Mr. Johnson, if you would stand up and raise
21 your right hand, please, sir, to the extent that you're
22 capable.

23 CURTIS JOHNSON

24 Having been first duly sworn, testified as follows:

25 THE COURT: All right. You can take your seat. I'd

1 be happy to hear from you, Mr. Johnson, with respect to
2 Mr. Gadson's testimony that we're talking about
3 specifically, which I believe was when he was called in
4 reply. Am I correct?

5 MS. JOHNSON: Okay. My issue is Ms. Collins said
6 that Mr. Gadson said in his testimony that Mr. Parker did
7 some of the shooting. But as you look on page 175 of
8 that transcript Mr. Gadson did not say that. I addressed
9 with my attorneys also in the back room and they seen it
10 also. Right here it says, line five, could you see who
11 was over there on the patio. Mr. Gadson says, I couldn't
12 see. At the time I did not see who was on the patio.
13 Line eight, what happened to Kerwin Parker during all
14 this time when Isaac and them started running. What
15 happened to Kerwin Parker. Mr. Gadson said, that's a
16 question I still don't know the answer to. I didn't see
17 him. You don't know where he went. You don't know where
18 he went. I don't know. See right then and there Mr.
19 Gadson did not say Mr. Parker did some of the shooting
20 also. So what Ms. Collins said is not accurate about
21 what Mr. Gadson said in the transcript. And there's
22 nowhere in his testimony where he said Mr. Parker did any
23 of the shooting, period.

24 THE COURT: Okay.

25 MR. JOHNSON: He said he did not see Mr. Parker.

1 THE COURT: Okay. And I'll ask you, Mr. Duncan, in
2 your recollection of your testimony I believe it was
3 designed to impeach that witness with respect to that
4 specific bit of testimony that he had offered earlier in
5 direct examination?

6 MR. DUNCAN: My purpose was to show that his direct
7 testimony was directly contradicted by the Nationwide
8 interview.

9 THE COURT: Okay.

10 MS. DIXON: And Your Honor, if I could? In my notes
11 it indicates that at the beginning of the tape, and I
12 believe we played the tape during Mr. Gadson's testimony.
13 At some point he says Parker was doing the shooting and
14 then he corrects himself and says, oh, no, it was
15 Johnson. And I think that's where maybe the confusion is
16 coming from. It wasn't in his direct testimony maybe
17 that he said that but the tape was a little bit confusing
18 as to him getting the two confused. So if I wasn't clear
19 about that I apologize, but ---

20 THE COURT: Okay.

21 MS. DIXON: But that was in my notes and I think
22 also on the tape.

23 MR. PACHAK: Mr. Johnson, he wanted to hear the
24 tape. I think we're making that -- we're putting that
25 into evidence.

1 THE COURT: We're going to put it in the record.
2 Okay. And let me say for purposes of this hearing, I'm
3 not making any findings of fact. What I am doing is
4 reconstructing the record. Therefore I'm not going to
5 make any determination of what the jury found were facts
6 in this case. The findings I'm going to make is what was
7 actually put in the record. And we're not going to put
8 any characterization necessarily on that testimony,
9 because we're going to be objective in what came out.

10 There are certain differences and distinctions which
11 will be drawn between the parties from the nature of that
12 testimony, and I think that that's what we're kind of
13 getting into now. That is, what should be taken from
14 that testimony. I'm not necessarily concerned with what
15 was taken from that testimony, because only the jury
16 knows what was taken from that testimony. We're just --
17 we are just reproducing it in substance. Okay.

18 So I think that I'm satisfied, based on what has
19 been put into the record so far, that what Ms. Dixon has
20 offered into the record is a fair and accurate recitation
21 of the substance, the relevant and salient portions of
22 the testimony and I believe that there is no exception or
23 objection taken from defense as to the substance of the
24 testimony.

25 And Mr. Johnson, your point is well made but I think

1 it goes to what the jury believed and what they didn't
2 believe.

3 Okay. All right. So I'm not making -- understand,
4 I'm not making any qualitative determinations about what
5 the -- about what that testimony meant, or what the jury
6 may have inferred from that testimony.

7 MR. JOHNSON: But excuse, me, Your Honor.

8 THE COURT: Yes, sir.

9 MR. JOHNSON: Well, Mrs. Collins, what she said
10 today about what was actually on that tape is not on the
11 tape and the jury did not hear that. That's why I asked
12 him to play the tape. What she said is not accurate. I
13 understand you can admit it into evidence but you can
14 play and listen to it.

15 THE COURT: Yeah.

16 MR. JOHNSON: To see that what Ms. Collins is saying
17 true that Mr. Gadson said that ---

18 THE COURT: Okay. Here's what I'm going to do. I'm
19 going ---

20 MR. JOHNSON: --- Kerwin Parker did the shooting and
21 the jury actually did get it.

22 THE COURT: I gotcha. I'm going to ask Ms. Fullwood
23 and Mr. Pachak, as officers of the bar, knowing that this
24 has been put into the record and that the transcript is
25 not going to reflect the actual word for word playing of

1 this tape, do you think that it serves any useful purpose
2 for us to play this CD in this proceeding?

3 MR. JOHNSON: Yes, sir, to make sure what Ms.
4 Collins says is ---

5 THE COURT: Mr. Johnson, I know what you think.
6 Okay. I'm asking your attorneys as officers of the bar
7 right now, officers of the Court, whether they think it
8 would serve any useful purpose. Because understand, I'm
9 not going to make any qualitative determination about
10 what this means. I'm just making a determination as to
11 was this part of the record. And I made a determination
12 it is part of the record. Okay. So I'm just not so sure
13 if I listen to it how it's going to change anything that
14 I have already decided.

15 MR. DUNCAN: Your Honor, as I understand it, the
16 tape is in evidence. So anyone who's going to review
17 this is going to hear it. So on behalf of Mr. Parker I
18 don't see any purpose in playing it now, because it is in
19 evidence. And there is -- it doesn't matter what
20 anybody's characterization of it is. It is what it is.
21 It says whatever is on the tape. So that's our position.

22 THE COURT: And for the record I agree with that.

23 MR. PACHAK: Judge Stilwell, when we get this record
24 back to appellate defense.

25 THE COURT: Yes, sir.

1 MR. PACHAK: I will have a court reporter make a
2 written transcript of this CD for whatever purposes
3 that Mr. Johnson wants to use it for, either for -- for
4 this -- for purposes of this hearing or later in post
5 conviction relief.

6 THE COURT: All right.

7 MR. PACHAK: But we'll have documentation of that.
8 Thank you.

9 THE COURT: Okay. Good enough. And it's in the
10 record. So you're protected in that regard. Okay. All
11 right. Good enough. All right. Any other issues with
12 respect to Mr. Gadson's testimony?

13 (No response.)

14 THE COURT: Okay. Then let us move on. I recognize
15 that we are lacking certain portions on Mr. Blue's
16 testimony. And he's scheduled to be here at one o'clock
17 this afternoon. But it's also my understanding that
18 we're missing other portions of the testimony as well,
19 and I believe that may be portions of Mr. Johnson's
20 testimony, am I correct?

21 MS. FULLWOOD: That's correct, Your Honor.

22 THE COURT: Okay. And it's my understanding that it
23 gets -- the transcript is clear up to a certain point and
24 then it stops.

25 MS. DIXON: Yes, sir.

1 THE COURT: And what I would suggest we do is, Ms.
2 Fullwood, I believe it was on direct examination that the
3 testimony stops. So absent objection I would suggest
4 that we put Mr. Johnson on the stand and let him resume
5 his testimony from that point at which the transcript
6 stops. Okay.

7 MS. FULLWOOD: Your Honor, I would be glad to do
8 that. I do want the record to reflect the fact that at
9 trial I had sets of questions I was asking Mr. Johnson.
10 Those -- the complete set of questions is no longer with
11 my records. I have located on my office computer a draft
12 of the questions that pretty much ends where the
13 testimony ends, the direct testimony ends in the
14 transcript. I cannot locate the final version of those
15 questions. I believe what happened is that I was working
16 a lot of nights and weekends also on Mr. Johnson's trial
17 and I was transferring computer data with a jump drive.

18 THE COURT: Yes, ma'am.

19 MS. FULLWOOD: My home computer became infected with
20 a virus. The jump drive did too. So it was discarded
21 and I believe that the final questions were on that jump
22 drive. So certainly we can proceed forward but they're
23 not going to be the exact questions that were asked
24 during the trial.

25 THE COURT: Okay. Thank you, Ms. Fullwood, I

1 appreciate that. And I know that at the trial counsel
2 did an outstanding job, I'll note for the record. That's
3 my recollection. And I'll also note that substantively
4 we can reconstruct what happened from the point that the
5 transcript left off, if not verbatim.

6 Mr. Johnson, would you come up here to the stand.

7 MR. JOHNSON: Oh, sorry.

8 THE COURT: That's all right. Mr. Johnson, I'll
9 remind you, I've already placed you under oath today so
10 you continue under your oath, sir.

11 And again, I want to -- I want to remind Mr.
12 Johnson, you and Ms. Fullwood, and anyone else, that what
13 we're doing is reconstructing that portion of the
14 testimony. So we're going to confine ourselves to that
15 portion of the testimony. Okay. What's missing. Okay.
16 So try to -- try to resist the urge to go outside of that
17 subject matter that was contained in that portion of the
18 testimony. Okay. You got it?

19 MR. JOHNSON: Yes, sir.

20 THE COURT: Okay. Ms. Fullwood, you may proceed.

21 QUESTIONING

22 BY MS. FULLWOOD:

23 Q Mr. Johnson, I know you have already gotten a copy
24 of your trial transcript, right?

25 A Yes, ma'am.

1 Q And I know you've gone over it in great detail,
2 right?

3 A Yes, ma'am.

4 Q Okay. Do you have a copy of it up there?

5 A No, ma'am.

6 Q Okay. Do you -- would it be easier for you if maybe
7 I -- we reread some of the last few lines of what's
8 recorded to get back into the swing of it?

9 A Yes, ma'am. I have my copy done over there.

10 Q Okay.

11 A On the floor.

12 Q Okay.

13 THE BAILIFF: I'll get it for you.

14 BY MS. FULLWOOD:

15 Q All right. Thank you. Why don't you get it out and
16 turn to page 692?

17 A Yes, ma'am. 692?

18 Q Yes, sir. Got it?

19 A Yes, ma'am.

20 Q Why don't we just start at line 12 and then we'll go
21 from there. Line 12 is your answer and what is your
22 answer?

23 A I was terrified.

24 Q Okay. And why?

25 A Because my brother was out of the truck and I was --

1 and I was in the truck and I was scared. That's what I
2 said.

3 Q Okay. So ---

4 A I was scared we were going to lose our lives that
5 night. I was terrified. I was terrified.

6 Q Had they noticed you?

7 A When I turned the truck on and started bumping the
8 horn for my brother to come back they stopped.

9 Q Okay. When did you see your brother next?

10 A I seen my brother run -- I seen my brother run back
11 towards the ---

12 Q Okay. And you saw your brother back towards the?

13 A The truck.

14 Q To the truck. What happened after that?

15 A My brother looked to the right. He seen Walter, AJ
16 and Isaac all had their shotguns pointed towards him.

17 Q Okay. And where were Walter, AJ and Isaac at that
18 point?

19 A From that point from what I seen, they were close by
20 that -- by the public walkway that was right there.

21 Q Okay. Were they still in the bushes or did they
22 come down on the public lane?

23 A What I seen they was probably still in the bushes
24 somewhere.

25 Q Okay.

1 A But as I said before I was concentrating on -- my
2 main focus was on them holding shotguns towards my
3 brother.

4 Q Okay. And where was the -- did Kerwin keep moving
5 or did he stop?

6 A He stopped once he seen the shotguns pointed at him.

7 Q Okay. And where was he when he stopped?

8 A My brother?

9 Q Yeah.

10 A He was on the public sidewalk there.

11 Q He was on the public sidewalk. What did your
12 brother do at that point?

13 A My brother told them, hey, hold up, hold up, please,
14 please, please, put the guns down.

15 Q And about how far away was your brother from Isaac
16 and Walter and AJ?

17 A I'm not going to sit on the stand right here and
18 fabricate the distance.

19 Q No, no. If you don't know, you don't know, that's
20 fine. Okay. Your brother says, let's -- don't shoot,
21 don't do that. What did they do in response to his
22 statement?

23 A My brother said, please, please, put the gun down.
24 We just came to talk.

25 Q Um-hm.

1 A That's when Walter -- not Walter, but that's when
2 Isaac said, a lot of cussing, we're not going to talk
3 about nothing.

4 Q Um-hm.

5 A My brother said, okay, you know, please we didn't
6 come over here to harm anybody, we just came to talk
7 about the situation which just occurred, but since we
8 can't talk, me and my brother now we're going to leave.

9 Q Okay. And was Kerwin just standing there facing
10 them?

11 A By the time we came back we seen the guns that was
12 pointed towards him.

13 Q Um-hm.

14 A He had crouched down with his hands up.

15 Q He crouched down?

16 A Yes, ma'am. He had his hands up.

17 Q Okay.

18 A And he was talking to them.

19 Q You mean he just stooped all the way to the ground?

20 A Yes, ma'am. When he was coming back, as soon as he
21 seen them he was shocked and surprised and he ducked down
22 and had his hands up.

23 Q Okay. Okay. So you saw Isaac point the gun?

24 A I saw Isaac, Walter and AJ, all three of them had
25 their shotguns pointed towards my brother.

1 Q Okay. What happened next?

2 A After that my brother says, I'm going to stand up.
3 I'm going to the truck and I'm going to leave, me and my
4 brother.

5 Q Um-hm.

6 A At that time my brother was getting up, he's walking
7 back, that's when Walter, he cocked his shotgun and ran
8 towards my brother with the shotgun.

9 Q Okay. And were the windows in your truck up or
10 down?

11 A Ma'am?

12 Q Were the windows in you truck up or down?

13 A They were up.

14 Q Okay. How did you hear the cocking of the gun?

15 A How did I hear the cocking?

16 Q Um-hm.

17 A It's not loud late at night at that time.

18 Q Okay.

19 A And I heard the cocking. I heard them talking.

20 Q You heard the cocking?

21 A Yes, ma'am.

22 Q Okay. And what happened next?

23 A What happened next when -- after I seen Walter cock
24 the shotgun and ran towards my brother, I pressed the gas
25 on the truck.

1 Q Okay.

2 A And I drive the truck towards Walter.

3 Q Okay. And where did you drive the truck? I mean I
4 know towards Walter, but was it in the roadway, off the
5 roadway, or what?

6 A It was on the roadway at first.

7 Q Um-hm.

8 A Like I said, once Walter seen that I was trying to
9 stop him from shooting my brother, he then turned the
10 shotgun towards the truck.

11 Q Um-hm.

12 A And he tried to fire when I was trying to run the
13 truck towards him. I see him move towards the side but
14 he's still had the shotgun pointed at the truck. Then he
15 was going to try to shoot me for trying to stop him from
16 shooting my brother.

17 Q Um-hm.

18 A At that time I missed him with the truck. I do not
19 recall hitting Isaac period -- not Isaac, but I do not
20 recall hitting Walter period with the truck.

21 Q Um-hm.

22 A I seen him pass on the right side.

23 Q Okay. And do you remember whether or not at trial,
24 when you were actually testifying, whether or not we used
25 any diagrams or the photographs for you to show the jury

1 the path that you drove in the truck?

2 A Yes, ma'am.

3 Q Did we?

4 A Yes, ma'am.

5 Q Okay. Do you happen to remember if it was a picture
6 or a diagram?

7 A It was a picture.

8 Q You think it was a photograph?

9 A Yes, ma'am.

10 Q Okay. So you saw Walter point the gun at your
11 brother Kerwin, so you drove towards him. He pointed the
12 gun at you and you didn't even realize you had hit
13 Walter. Fair summary?

14 A No, ma'am. Like I was saying, after they had their
15 guns pointed towards my brother, my brother said that he
16 was -- that he and I was going to leave.

17 Q Um-hm.

18 A My brother was walking back towards the truck with
19 his hands still up saying that we didn't want to do no
20 harm we just want to leave.

21 Q Okay.

22 A Walter cocked his shotgun and ran towards my
23 brother. Then that's when I drove towards Walter. I did
24 that to stop him from shooting my brother and risk my
25 brother's life.

1 Q Okay. And it's your testimony he also pointed the
2 shotgun at you at that point?

3 A When he seen -- once he seen that I was trying to
4 stop him from shooting my brother, he then had pointed
5 the shotgun at me also.

6 Q Okay. And you didn't even know at the time that you
7 had actually hit Walter with your truck?

8 A My recollection, ma'am, when I rolled past him, it
9 was a great distance and I did not hit him with that SUV,
10 because if you know medical records you get hit with a
11 SUV against the wall you just ain't going to have a
12 bullet wound looking like it's in your leg.

13 Q Okay. Where did that truck end up?

14 A The truck ended up -- the next thing I seen after I
15 rolled past Walter Gadson, I seen a tree, and I was still
16 thinking my brother was outside, and the individuals were
17 out there with shotguns. That's when I thought I ran
18 into a tree.

19 Q Okay. And I'm going to show you what was our
20 exhibit 19 at trial. Is that where you were drawing
21 pictures of where people were standing and everything
22 like that?

23 A What year is this that this picture was taken?
24 Because those bushes were smaller than that.

25 Q Okay. And I think we talked about that at trial,

1 didn't we?

2 A And that was 2008 you said the pictures were taken,
3 so that means that those bushes had grown in great length
4 since they were small on the night of 2006.

5 Q So they were immature bushes on the night that this
6 occurred?

7 A Yes, ma'am, they were a lot more smaller than that.
8 The individuals were standing right there with them
9 bushes were small. But this picture -- if the picture
10 was taken (sic) in 2008, so this is not an accurate
11 picture of the size of the bushes that was there that
12 night.

13 Q All right.

14 A Where the individuals were standing.

15 Q Because they were -- that night the bushes were
16 smaller and people could walk through them and around
17 them?

18 A Yes, ma'am.

19 Q Okay.

20 A Yes, ma'am.

21 Q But this is the tree where your SUV ended up, right?

22 A Yes, ma'am.

23 Q All right. And again, this is Johnson's Exhibit 19
24 from the trial. Now, how was your truck positioned once
25 it hit the tree?

1 A I didn't actually hit the tree.

2 Q Okay.

3 A When I was driving I seen -- the last sight I saw I
4 was about to hit the tree.

5 Q Okay.

6 A But I actually didn't hit the tree because when I
7 looked to the side, like I said, when I looked to the
8 side my brother, he was trying to come up the patio area
9 but AJ was trying to fight him and hold him down.

10 Q Was this when you were driving the truck or ---

11 A This was after I hit.

12 Q Okay.

13 A After I hit whatever I hit, what I thought was a
14 tree, but I didn't, because my door had gotten jammed
15 right there where the tree was and I could only barely
16 open it up some.

17 Q Okay. So remember, we're getting you to tell it
18 again so somebody who's never heard it before can
19 accurately review it. I mean, we all -- probably our
20 memory is coming back on it, but -- so you -- you
21 testified you drove the truck, you almost hit the tree,
22 swerved and hit something else?

23 A No, I didn't swerve. Last sight I seen was the tree
24 but I actually hit the wall.

25 Q That's what -- okay. You hit the wall. Okay. So

1 your truck was kind of wedged against that tree that's in
2 State's Exhibit 16 -- I mean, Defense Exhibit 15?

3 A Yes, ma'am.

4 Q All right.

5 A The tree is right beside me.

6 Q All right. 19. Okay. Once that collision occurred
7 what happened next?

8 A What happened next was, I thought my brother was
9 still outside and the individuals still had the shotguns
10 out there.

11 Q Okay.

12 A When I looked around for my brother I looked to the
13 side, I seen my brother on the patio area and he was
14 trying to push off and get from the patio area.

15 Q Okay.

16 A But AJ is trying to hold him back towards the patio
17 area where the wall was at. But Isaac had his shotgun
18 still pointed at my brother. At that moment that's when
19 I decided I need to get out and help my brother and save
20 risking his life.

21 Q Okay.

22 A When I tried get out of the driver's side the door
23 was edged up against the ---

24 Q Okay. Wedged against what?

25 A Wedged by the tree.

1 Q All right.

2 A When I looked to the side again I also tried to get
3 on the passenger side but that door was jammed and messed
4 up also.

5 Q Okay.

6 A When I looked up again, this is all happening real
7 quick. When I looked up again I seen my brother was on
8 the ground. AJ was holding him down. Isaac had the
9 shotgun towards his face. At that moment I felt my
10 brother was going to lose his life, I needed to rescue
11 him.

12 Q Okay.

13 A So I remember doing that. I went into the glove box
14 and got my brother's gun, he has a registered gun in his
15 name, out of the glove box.

16 Q Okay. And how did you know that he had a gun there?

17 A Because I knew he bought a registered gun and kept
18 it in the glove box.

19 Q Okay. So you got the gun and what did do you next?

20 A After I had the gun I shot a warning shot out of the
21 driver's side window. The shot that was in the tree.
22 Hopefully they would get off my brother.

23 Q So was -- so you shot the gun through a closed
24 window in the driver's side of the SUV?

25 A Yes, ma'am, because at the time I couldn't get out.

1 Q And hit the tree?

2 A Yes, ma'am.

3 Q Okay. And what did you see after you fired the
4 warning shot?

5 A After I fired the warning shot, I looked and my
6 brother was still on the ground.

7 Q Okay.

8 A And I thought then that quick instance, my brother
9 was about to lose his life.

10 Q So what did you do?

11 A So what I did was I tried with all my might to
12 squeeze out the driver's side door.

13 Q Okay.

14 A And when I squeezed out the driver's side door
15 that's when I ran to the patio area.

16 Q And what was happening at that point on the patio?

17 A At that patio area, the same situation. My brother
18 was held down and Isaac had the shotgun to his face.

19 Q Okay. Who is holding him down?

20 A AJ was holding my brother down, and Isaac had the
21 shotgun towards my brother's face.

22 Q Okay. So what did you do next?

23 A What I did next was, I ran over where AJ was. He
24 was holding my brother down on top of him. I shot AJ
25 five times, I want to put that in the record. I shot AJ

1 five times. And next I turned to the left and I shot
2 Isaac two times. I did that to save my brother's life so
3 he didn't get killed.

4 Q All right. And what happened after that?

5 A After that, because like I was saying, once I turned
6 toward Isaac he was automatically trying to come up with
7 the shotgun, but I shot him two times.

8 Q Okay.

9 A After that he threw the gun down.

10 Q Okay.

11 A But I was still -- before he even threw the gun down
12 I was still clicking, pulling the trigger, but the gun
13 was empty.

14 Q Okay.

15 A So basically I shot the gun until it was empty. My
16 brother didn't shoot the gun period.

17 Q Okay.

18 A After that, once I seen that there was no more --
19 once I seen that there was no longer a threat, I grabbed
20 my brother and pulled him off the patio area.

21 Q Okay. After you rescued your brother, did you go
22 inside of that apartment?

23 A Yes, ma'am.

24 Q Okay. And tell us about how that happened?

25 A The only reason I went back inside that apartment

1 because I heard Rebecca Flemming, who was my baby's
2 mother, screaming that I shot the kids.

3 Q Okay. And what happened when you went inside?

4 A What happened when I went inside?

5 Q Um-hm.

6 A I asked her was she okay, was the kids, are they
7 okay.

8 Q Okay.

9 A And she was screaming that I shot the kids, that I
10 shot the kids.

11 Q Okay. And did you find out that that had actually
12 happened?

13 A I found out after all this had occurred, once I'd
14 been detained at the Lexington County Detention Center
15 that the kids were okay.

16 Q But not -- but not that night?

17 A Ma'am?

18 Q That night though?

19 A At the incident I didn't know.

20 Q Okay.

21 A I thought the kids were shot, and plus also I shot
22 my brother also who was up under AJ Wilson also.

23 Q Okay. And so after that, did you leave the
24 apartment? Did you talk Rebecca briefly in the
25 apartment?

1 A I was talking to her trying to find out the
2 whereabouts of the kids and stuff, her sister, is she
3 okay.

4 Q Okay. Then you left the apartment?

5 A Yes, ma'am. I just walked into the roadway area.

6 Q Okay. And where was Kerwin at that point?

7 A Kerwin, he already left earlier because he said he
8 was going to get help.

9 Q Okay. Well, tell us about how that happened.

10 A After I pulled -- after I pulled my brother off the
11 patio area?

12 Q Um-hm.

13 A He was like, oh, my goodness, oh, my goodness, I
14 can't believe what happened.

15 Q Okay.

16 A He said I saved his life.

17 Q Um-hm.

18 A See what I'm saying? I was in shock. I was scared.
19 I knew I shot my brother because looking at the look on
20 his face he was hurting.

21 Q Um-hm.

22 A So I guess in order of the midst of that I dropped
23 the gun. My brother told me, stay right here, he's going
24 to get help, he's going to go get the police. That
25 wasn't supposed to happen.

1 Q Okay. So do you know where you dropped the gun?

2 A No, ma'am. Like I said, I was in the shock. I
3 can't believe what just happened. Me and my brother's
4 life was on the line. I dropped the gun.

5 Q Okay. And once you had talked to Rebecca did you
6 leave the apartment complex, or what did you do?

7 A After she was telling me that the kids were shot and
8 I knew I shot my brother.

9 Q Um-hm.

10 A I was pretty messed up.

11 Q Um-hm.

12 A Because those are my children also. So my mind
13 state was, I can't believe what just happened.

14 Q Yeah.

15 A Not only did I save my brothers' life and -- but I
16 shot him, I also shot my children too. At that moment I
17 was torn up inside and I just walked away into the
18 roadway.

19 Q Okay. So did you -- so did you stay there until the
20 police came?

21 A Yes, ma'am.

22 Q Okay. When you and Kerwin left your mama's house
23 that night to go over to Walter and Isaac's, did you go
24 over there with the intention of shooting, or hurting
25 anybody in any way?

1 A No, ma'am. My intention was to go over there and
2 talk over the situation, make some peace out of it, not
3 to go harm anybody.

4 Q Okay. What do you think would have happened to
5 Kerwin if you hadn't fired those shots at AJ and Isaac
6 when all three of them were on the patio?

7 A I knew that my brother would have lost his life that
8 night and I had to rescue him.

9 Q Okay. What do you think would have happened to you
10 if you had gotten out of that car without any weapon?

11 A Most likely I would have been shot with the shotgun
12 also. As in trial, I remember, there's a line in the
13 transcript where Mr. Duncan said that -- he asked one of
14 the witnesses, don't you know the shotgun had been fired,
15 which my lawyers didn't go over in great detail on, if
16 they knew that that shotgun had been fired.

17 Q Okay.

18 A But there's a line in here where Mr. Duncan says
19 that that shotgun was fired.

20 Q Okay. Okay. Well, we're talking now about your
21 testimony at the trial. Okay?

22 A Yes, ma'am. I just wanted to get that on record.

23 Q Okay. Don't worry, I'm sure Judge Stilwell is going
24 to give you the opportunity to put everything you'd like
25 to put on the record.

1 A Yes, ma'am.

2 Q That has to do with reconstructing the record.

3 A Yes, ma'am.

4 MS. FULLWOOD: Beg the Court's indulgence?

5 THE COURT: Yes, ma'am.

6 MS. FULLWOOD: Thank you for being so patient.

7 THE COURT: Yes, ma'am.

8 BY MS. FULLWOOD:

9 Q Now, Mr. Johnson, you know right now the only thing
10 the Court is dealing with is what your direct testimony
11 was at the trial. Okay. Is there anything that you
12 testified to, just you, testified to back at your trial
13 that we haven't been over today and wasn't transcribed by
14 the court reporter?

15 A Ma'am, I just want to put on the record once and
16 again, that my brother did not shoot that gun that night.
17 I shot AJ Wilson and I shot Isaac Wilson. And the reason
18 why I did that was to save my brother's life because his
19 life was in danger. I just want to make sure that's put
20 on the record.

21 Q Yes, sir. And other than that?

22 A My brother did not shoot that gun, period, that
23 night. He did not shoot that gun, period. I shot the
24 gun until it was empty.

25 MS. FULLWOOD: Okay. Thank you, sir. I don't know

1 whether or not any of the other lawyers are going to have
2 any questions for you. Okay.

3 THE COURT: Ms. Dixon, any questions you'd like to
4 ask him in cross-examination just for purposes of
5 reconstruction?

6 MS. DIXON: Your Honor, I don't have any questions
7 to ask. I do have a couple of places where I would like
8 to put on the record some things that I remember
9 differently from his original testimony. But I don't
10 think I need to get into that with Mr. Johnson.

11 THE COURT: Okay. All right. If I remember
12 correctly, the cross-examination was conducted by Mr.
13 Meyers.

14 MS. DIXON: That's correct, Your Honor. And the
15 entire thing is contained in the transcript.

16 THE COURT: Oh, it is?

17 MS. DIXON: Yes, sir.

18 THE COURT: Oh, okay.

19 MS. DIXON: His cross-examination as well Mr.
20 Duncan's cross-examination are fully contained in the
21 transcript.

22 THE COURT: Okay. All right. So yours is in there?

23 MR. DUNCAN: Yeah.

24 THE COURT: Okay. Good enough. Any other questions
25 then with respect to cross-examination, or for purposes

1 of reconstruction -- hold on, Mr. Johnson, hold on. I'm
2 going to get that. I'm going to get to you. Okay.

3 MR. DUNCAN: No, sir, Judge. The record on Mr.
4 Parker's behalf is all -- you know, my cross-examination
5 was one page and it's totally contained in there. So ---

6 THE COURT: Okay. Good enough.

7 MR. DUNCAN: --- we had the opportunity to be heard.

8 THE COURT: Okay. All right. Ms. Dixon, if you'd
9 tell me what exceptions that you do take to what Mr.
10 Johnson has said today.

11 MS. DIXON: Yes, sir, Your Honor. I believe it's
12 just two small points. The first, Your Honor, I don't
13 believe in Mr. Johnson's original testimony in the trial
14 that he indicated he saw Walter Gadson after he had hit
15 the wall or the tree. I believe he's correct, his
16 testimony did indicate that he didn't know he had hit Mr.
17 Gadson. But today he testified that he saw him beside
18 the car. I don't believe that was testified to at trial.

19 Also, Your Honor, as I believe Mr. Meyer's
20 cross-examination will confirm this, Mr. Johnson did not
21 give a number of times he shot in the original trial. He
22 did not say -- his testimony today was he shot AJ Wilson
23 five times and Isaac Wilson twice. His testimony at
24 trial was that he did not know how many times he fired
25 the gun. I believe that's confirmed through Mr. Meyers'

1 cross-examination on page 735, Your Honor.

2 THE COURT: Okay. All right. Good enough. Mr.
3 Johnson, you got something you want to tell me?

4 MR. JOHNSON: Yes, sir. She just said that I said I
5 seen Mr. Walter Gadson on the side of the truck. But my
6 testimony just now I did not say that. Also, when I shot
7 that gun shot, I shot all the shots in it. The only
8 reason I said how many times I shot it is because I found
9 out how many times that gun actually fired from the
10 victims being injured.

11 THE COURT: Okay.

12 MR. JOHNSON: That's why I said I shot AJ five
13 times, which I did, and I shot Isaac two times, which I
14 did. Once I found out how many times they were shot, at
15 that time I was saving my brother's life and I wasn't
16 counting the shots. I was counting on saving my
17 brother's life. That's what I was doing.

18 THE COURT: Okay. All right. I got that. And let
19 me just say that in listening to Mr. Johnson testify I
20 believe that that's consistent with his testimony at
21 trial. I believe that kind of stood out to me too, the
22 specific number of rounds that were fired at the time,
23 but I think Mr. Johnson has explained why there was a
24 distinction at this hearing as opposed to the first one.

25 And I find as a matter of fact that at the initial

1 hearing that there was not a specific recitation or
2 testimony regarding the amount of times that the gun was
3 fired. However, I'm not certain that that distinction
4 makes a significant difference as well. However, I will
5 say that Mr. Johnson's testimony today, by my
6 recollection, is substantially consistent with the
7 testimony that he gave at trial. And I believe that same
8 salient points that he made in his testimony he has made
9 today as well. All right.

10 MS. DIXON: And Your Honor, just for the record, the
11 State would agree with that and my recollection as well
12 is that the State made no objections during Mr. Johnson's
13 direct examination that were ruled on by the Court.

14 THE COURT: Okay. All right. Anything further with
15 respect to Mr. Johnson's testimony?

16 MR. DUNCAN: Nothing from Mr. Parker.

17 THE COURT: Okay.

18 MS. DIXON: Oh, I'm sorry. Your Honor, Mr. Pachak
19 from appellate defense has also asked me to put on the
20 record, I spoke to both the lead investigator from the
21 sheriff's department, the lead investigator from the
22 solicitor's office, as well as Solicitor Meyers, the
23 three people who were in the trial with me, none of those
24 three have any notes or any independent recollection that
25 they felt would help us in this hearing and that's why

1 they're not here. I just wanted to put that on the
2 record. Apparently I was the only person from the State
3 that took any notes during that trial.

4 THE COURT: Okay. All right. Thank you, Ms.
5 Dixon, I appreciate that. And I do recognize that --
6 that the -- that there is a dearth of notes. But as I
7 suggested to you, my independent recollection is that Mr.
8 Johnson testified substantially in the same manner that
9 he did at trial. Hold on two seconds. Okay. All right.
10 Anything else with respect to Mr. Johnson's testimony?

11 MS. FULLWOOD: No, sir.

12 THE COURT: Okay. All right. Mr. Johnson, we've
13 got another witness who's going to come in at 1:00. And
14 I know that there is some things that you want to say.
15 And I'm going to let you say them. Okay? I do want -- I
16 do want you to know that I understand your point, and I
17 understood it at the time. And I'm sympathetic to it as
18 well, particularly with respect to Mr. Parker. And I've
19 got -- personally I have a good deal of sympathy for you
20 in that regard. And -- but understand, that the purpose
21 of this hearing of course is not to put additional facts
22 into the record, but to reconstruct those missing
23 portions of the record.

24 Now, if you want to take exception to something that
25 is in that transcript, I'm going to let you say it.

1 Okay? I'm not sure that it's going to make a difference
2 because the record is the record, is the record. But I'm
3 going to let you say it because my sole interest here
4 today and in your trial was just that it was fair. Okay?
5 And I want you to walk away from this hearing today
6 thinking that I treated you fairly. And I hope you felt
7 like I did in the first trial too. So I'm going to let
8 you say it. I don't know what difference it's going to
9 make. But I'm going to let you tell me what exceptions
10 you may take to other portions of the record. Okay?

11 MR. JOHNSON: Okay.

12 THE COURT: Yes, sir. Go ahead.

13 MR. JOHNSON: Yes, also, as my lawyer -- I know
14 y'all can remember that. Once I was talking on the
15 stand, you know, crying from my ordeal what happened, I
16 also was stating that we just wanted to go home. After
17 we seen that we couldn't talk it out we just wanted to go
18 home. I just want to make sure that's on record.

19 Ms. Collins, I don't know if you have any objections
20 but I remember saying it myself that once I seen that we
21 couldn't talk it over I just wanted me and my brother to
22 go home.

23 So do my lawyers, do y'all remember that also? That
24 once I was on the stand, crying, and saying what was
25 going to happen, I just wanted to go home since I seen we

1 couldn't talk it out anymore.

2 MS. FULLWOOD: I do remember that.

3 MR. DUNCAN: I do remember that phrase too, Your
4 Honor.

5 THE COURT: I remember that. I remember that that
6 was very compelling and impassioned testimony. And I
7 remember hearing that specifically as well. All right.

8 MS. DIXON: The State agrees, Your Honor.

9 THE COURT: All right. All right, Mr. Johnson,
10 anything else you want to tell me?

11 MR. JOHNSON: Later on, other issues I have.

12 THE COURT: How many more you got?

13 MR. JOHNSON: A whole bunch.

14 THE COURT: A whole bunch?

15 MR. JOHNSON: Yes, sir.

16 THE COURT: Okay. All right. And that's with
17 respect to that ---

18 MR. JOHNSON: Not to my testimony.

19 THE COURT: Not with your testimony, but what's in
20 the record already?

21 MR. JOHNSON: Yes, sir.

22 THE COURT: Okay. All right. Well, how long do we
23 anticipate Mr. Blue is going to take? Because I want to
24 give the court personnel the opportunity to go to lunch.
25 I might just let Mr. Johnson put it on afterwards, but I

1 want y'all to talk to him about it too. Like I said, I
2 want to be fair to Mr. Johnson. I mean, this is his life
3 and all that, but I just don't know that it's going to
4 make a difference for purposes of this hearing. Y'all
5 might talk to him.

6 MR. DUNCAN: Judge, I'd be amazed if Mr. Blue took
7 over half an hour.

8 THE COURT: Okay.

9 MS. DIXON: I think his testimony at the original
10 trial was maybe 15 minutes, Judge.

11 THE COURT: Well, let's -- okay. Let's do this.
12 Let's come back on the record at let's say 1:15 because
13 he's going to have to get in here, you're going to need
14 to talk to him, and then we'll resume testimony at 1:15.
15 Okay.

16 And I want y'all, if you would, Mr. Pachak, Ms.
17 Fullwood, to talk to Mr. Johnson and see what it is
18 that -- that Mr. Johnson may feel he needs to put on
19 the record. Like I said, I want Mr. Johnson to feel
20 like he's being treated fairly, but we don't need to
21 conduct an exercise of futility. Okay. So just have a
22 talk. And if y'all tell me that he needs to put
23 something on the record and it's material, then I'm
24 okay with that. Okay. All right. Okay. We'll be in
25 recess until 1:15.

1 (A lunch recess was taken, after which, the hearing
2 continued as follows:)

3 THE COURT: Did we find Mr. Blue?

4 MS. DIXON: No, sir.

5 THE COURT: No, huh-uh?

6 MS. DIXON: He has not arrived. My investigator
7 just attempted to call him.

8 THE COURT: Okay.

9 MS. DIXON: And he did not answer his phone. We
10 left him a message.

11 THE COURT: Okay. All right. Well, let's go ahead
12 then and see if Mr. Johnson needs to put anything on the
13 record. We'll go forward with that. And then we'll
14 deal -- we'll talk about Mr. Blue a little bit in a
15 minute. Okay. All right. Ms. Fullwood, Mr. Pachak, is
16 there is there anything that Mr. Johnson would like to
17 put on the record?

18 MS. FULLWOOD: Your Honor, he did say he wants to
19 point out some portions of the transcript where he thinks
20 things have been omitted or they were transcribed
21 incorrectly. And I don't know if you want him to make a
22 statement or you'd rather do it in a question and answer
23 format or what?

24 THE COURT: I'll tell you what. I see that Mr.
25 Johnson is set up over there.

1 MS. FULLWOOD: Um-hm.

2 THE COURT: So I'll go ahead and just remind Mr.
3 Johnson that he's under oath. And you can point those
4 things out on the record, Mr. Johnson. Okay?

5 MR. JOHNSON: Yes, sir.

6 THE COURT: All right. You may proceed.

7 MR. JOHNSON: Stand right here or ---

8 THE COURT: Yeah, yeah, you're fine just right
9 there, because I know you got all your stuff right there.

10 MR. JOHNSON: Yes, sir. May it please the Court,
11 sir?

12 THE COURT: Yes, sir.

13 MR. JOHNSON: Now, we have the jury selection on
14 page 13.

15 THE COURT: Yes, sir.

16 MR. JOHNSON: There is no jury selection in the
17 index. It's supposed to be in there. Now, go to page
18 39, it says whereupon the jury panel was selected at this
19 time. What I see in the court reporter manual for South
20 Carolina it says this, in all criminal cases -- well, in
21 all criminal jury cases the court reporter should
22 maintain a record of all proceedings during the jury
23 selection process and create a list of the jury panel.
24 The list should indicate each juror's name, race and sex
25 and should include those jurors seated as well as those

1 stricken. The jury panel list should be included when it
2 is specifically requested as part of the transcript.

3 Another portion, attorneys may order any portion of a
4 transcript which they desire but the court reporter would
5 not be required to -- well, the court reporter would not
6 be required to transcribe with greater specificity than
7 the following examples, voir dire by juror, juror
8 selection, plaintiff or defendant's opening statements,
9 closing arguments, the entire direct, cross, redirect or
10 recross-examination of a particular witness by a
11 particular attorney, or the ruling of the Court. Right
12 there it says that the jury selection should be included.

13 As the same as the voir dire by juror, the
14 plaintiffs or defendants opening statements or closing
15 arguments, the entire direct, cross, redirect, or
16 recross-examination of a particular witness by a
17 particular attorney, or the ruling of the Court. The
18 jury selection is not in here, in the transcript.

19 THE COURT: Okay.

20 MR. JOHNSON: It says the jury has been picked.

21 THE COURT: Okay.

22 MR. JOHNSON: Now, another issue is I have bench
23 conferences. The court reporter manual says, the judge
24 may wish to hold a bench conference in the process --
25 well, the court reporter manual says, excuse me, says a

1 judge may wish to hold a bench conference in the presence
2 of the jury to avoid having the jury enter and leave the
3 courtroom numerous times. If the bench conference is on
4 the record it is to be included in the transcript.

5 However, if the bench conference is off the record this
6 should be noted. A parenthetical should be used by the
7 court reporter in preparing the transcript to indicate
8 the nature of such a conference.

9 Now, also have right here where you have in this
10 case the petitioner claims that certain bench and
11 chambers conferences during the trial were not properly
12 recorded in violation of the court reporter's act. The
13 reporter's act states in relevant part, B, one of the
14 reporters appointed for each court shall attend at each
15 session of the court and at every other proceeding
16 designated by rule or order of the court, or by one of
17 the judges, and shall record verbatim by shorthand or by
18 mechanical means which maybe argument by electric --
19 electronic sound recordings subject to regulations
20 promulgated by the judicial conference.

21 Number one, all proceedings in criminal cases had in
22 open court. Number two, all proceedings in other cases
23 had in open court unless the parties with approval of the
24 judge shall agree specifically to the contrary. And
25 three, such other proceedings as of a judge -- of the

1 Court may direct or as may be required by the rule order
2 of the court, or as may be requested by any party to the
3 proceedings. Court's have generally held that bench and
4 chamber conferences are subject to the requirements of
5 the court reporter's act. This is a mandatory rule, and
6 it is the duty of the trial court rather than the parties
7 to meet the requirements of the act.

8 And there's a lot of bench conferences that was in
9 the transcript that's not put on the record. What it is,
10 one, dealing when you're polling the jury during voir
11 dire but the juror did come up there and was talking to
12 you. That bench conference on the -- is on record, but
13 other ones are not. Even chamber conferences are not on
14 record.

15 Another issue I'd like to point out -- excuse me for
16 a second while I find it. Turn to page 779 in the
17 transcript. And Your Honor, page 779, line five, it
18 says, the Court, ladies and gentlemen, I just had a
19 conversation in chambers with the attorneys regarding
20 scheduling. The Court says, regarding scheduling, but as
21 you turn to page 781, line number three, Mr. Dixon says,
22 Judge, if we can get a copy of the added requests Ms.
23 Fullwood made back in chambers. So it's obvious to me
24 that there was more talking about other things instead of
25 just conferences on scheduling. But those wasn't put in

1 the record. So my issue is all these bench conferences
2 and chamber conferences, I don't know what's been said,
3 what matter of law has been taken up. There's even bench
4 conferences here where matters of law had been took up
5 and you told our lawyers to come up there and talk to
6 you, but that's not put on record.

7 THE COURT: Okay.

8 MR. JOHNSON: So how would my appellate lawyer
9 actually see if there were matters of law that was ruled
10 rightly or inrightly (sic).

11 Page 428 of the transcript, line nine, page 428,
12 what are the things you put in the bag and the clothes of
13 Curtis Johnson? Item number one was the PJ marked grey
14 sweatshirt shorts. The next item was one pair of blue
15 and white boxers. Item number three was a pair of white
16 socks. Item number four was a Rocawear extra large white
17 t-shirt. Next item was a Rocawear six waist, 34 waist,
18 32 slash 34 black jeans. The item was a Miller High Life
19 black hoodie sweatshirt, 10 and a half black Reeboks
20 tennis shoes, one penny. A baby tech ID for Curtis
21 Johnson, and one Spring LG cell phone series number
22 604KPVH012983.

23 Now, these items, which has item number four the
24 Rocawear extra large white t-shirt, that is not what I
25 had on. So like I told my lawyer, like I told my lawyer,

1. Ms. Fullwood, and my appellate lawyer, Mr. Pachak, that
2. either this witness stated it incorrectly or the court
3. reporter typed in incorrectly what I had on. Well, we
4. already know that this is not -- these items what I had
5. on a white t-shirt and Rocawear size 34 waist jeans, was
6. not what I actually had. So it was either or.

7. All right. On page 648 -- excuse me, page 645.
8. Now, you have Elana (phonetically) saying she made a
9. statement that she heard Kerwin Parker say, we don't need
10. to fight this out or this shooting, we can just fight it
11. out. From my recollection Elana said -- she made the
12. statement that she heard Kerwin Parker say, we don't need
13. to fight this out with shooting, we can just talk it out.
14. Also, on the next page, the following page, 644, line 13,
15. also says, fight this out, but it was actually talk it
16. out.

17. Now, we go down on the same page, 645, we have my
18. lawyer, Ms. Fullwood questioning Elana on her state of
19. mind, or Walter, what if anything did Amy tell you about
20. with Walter when he gets upset about something. He flips
21. out. He just get angry and flips out. Now, we have that
22. question right there. And we go back to page 103, my
23. lawyer questions Amy starting at the top of page 103,
24. line one, all right. You have a sister named Elana
25. Spencer? Yes. And Ms. Fleming, isn't it true that

1 shortly after this incident you told Elana that Walter
2 had a shotgun outside the apartment and he racked it and
3 pointed it at Kerwin? I guess. Yes, I guess. Okay.
4 And isn't it true you told your sister Elana shortly
5 after this incident that you moved Walter's shotgun out
6 of the apartment after the shooting? No. You deny you
7 told your sister that? I did not tell her that. Didn't
8 you tell your sister Elana shortly after the incident
9 that someone named Lelany (phonetically) who grew up with
10 Isaac may have hidden some of these men's guns and drugs
11 in her apartment at Churchill Apartments? No. Have you
12 told your sister Elana that when Walter gets mad he
13 looses his mind?

14 You have the questioning, have you told your sister
15 Elana that when Walter gets made he looses his mind when
16 she questions Amy. But when she questions Elana on that,
17 in Elana's examination, you only have asking her -- you
18 only have Ms. Fullwood asking Elana about what her sister
19 told her about this mindset. But you don't have the rest
20 of the questions where my lawyer asked Elana her sister
21 telling her that someone named Lelany actually hid the
22 other shotguns and drugs. And that she -- that Amy told
23 Lelany that Walter cocked the shotgun and that he was
24 going to shoot Kerwin and that Amy moved the shotgun.

25 But my thing is this, my lawyer questioned Elana

1 about Lelany and the other shotguns being moved by my
2 baby's mama, Rebecca Fleming and Amy Fleming. Now,
3 that's not in here. If was it in there, my lawyer
4 questioned Elana on it, it would collaborate my story
5 saying that there was more than one shotgun that night
6 instead of one.

7 Now on page 703, line six, cross-examination by
8 Solicitor Meyers. I'm going to go to line five. Mr.
9 Meyers questioned me, where was your brother when he
10 first came out. It says, already walked to the beginning
11 of the patio to talk to them. I did not say patio. I
12 said the walk way, the sidewalk, not patio. Because my
13 brother did not walk to the patio to talk to them. He
14 actually went to the front on the public sidewalk to go
15 talk to them. But it says patio in the transcript, but
16 it's not accurate.

17 Line number 25 on the same page. It says my brother
18 said he wasn't going -- we wasn't going to talk to them.
19 It supposed to say my brother said, he was going to go --
20 he was going to talk to them not we wasn't going to go to
21 talk to them. See that's kind of negating what I said,
22 which is not right. It should have been my brother said
23 we was going to go talk to them.

24 Page 804, line seven. You have, whereupon the
25 following takes place outside the presence of the jury.

1 The Court -- right before then goes into whereupon the
2 following takes place within the presence of the jury.
3 Seems like a part or a portion is missing right there.

4 Page 800, line 15. Mr. Duncan's closing argument.
5 Bottom line, she said, Curtis -- Curtis' gunshot residue
6 test was a valid and negative test. It's supposed to
7 say, the bottom line, she said, Kerwin's gunshot residue
8 test was a valid and negative test.

9 Page 817, line number two. It says, Kerwin Parker
10 says out there when they confront him that his problem is
11 he walked out with him because he was -- he was worrying
12 about what was going to happen. That is not correct.
13 Mr. Kerwin Parker did not say that. He didn't even
14 testify during trial.

15 Page 879, line nine. It said, the defendants are,
16 will remain incarcerated during that period of course. I
17 think they had me out on bond since the period of arrest
18 they will remain incarcerated until such time as they
19 come before me for sentencing. Now, we were not out on
20 bond at all. We didn't have bond at all. So since the
21 period of 2006, since that incident when we have been
22 arrested, we never was released out on bond.

23 And according to the C -- credit for time served
24 pursuant to SC code 24-13-40 we didn't get our time
25 served for that. Even in our sentencing, on our

1 sentencing sheet you have many errors on there. We
2 didn't get our time served since we've been in county
3 since 2006. So the Court was wrong by saying that we was
4 out on bond. We should have -- we actually should have
5 received our time served and got our credit for being
6 incarcerated since 2006.

7 Okay. Another incident. Page 651, as I told my
8 lawyers and Mr. McDougall, there's some missing after
9 Solicitor Meyers told McDougall to load the shotgun.
10 Then he tells him to unload it in the court but the
11 shotgun jammed and a round stuck in the shotgun. Now,
12 Detective Collins, he also gets up and tries to unjam the
13 cylinder that's in the shotgun but it's still jammed.

14 Now, after that Solicitor Meyers told Detective
15 Collins can you take the shotgun out back and shoot the
16 round off. I remember that. My brother remembers that.
17 My family remembers that happened. Even Rebecca
18 Flemming, my baby's mother, she told my mother that she
19 remembers that happening. But my lawyers they say they
20 don't remember it. Judge, I don't know if you remember
21 that or not, but that shotgun was loaded in court and the
22 slug was jammed in there and they did not get that slug
23 out. And Solicitor Meyers did tell Detective Collins to
24 go take the shogun out back and shoot the round off.

25 Page 674, line eight. Ms. Fullwood questioned me,

1 at any time when you were around Walter and Isaac at the
2 exit off of Montacella Road did you lean over into the
3 passenger side of your car as if you were going to
4 retrieve any kind of weapon or anything? It says right
5 here, yes, ma'am. I said, no, ma'am. When they was
6 hitting me I was trying to move away to check and see if
7 we were clear to drive away. I did not say yes, ma'am,
8 on weapon. That's incorrect. And my lawyer says she
9 remembers also that I did not say, yes, ma'am, I reached
10 for a weapon.

11 Now on page 684, line nine. It says that I said it
12 was the back side area because that night I couldn't
13 really see. Now, I said it's the backside area. Nowhere
14 have I said that I couldn't see that night. There were
15 street lights all around so I could clearly see what was
16 going on outside.

17 Page 704. Mr. Meyers says, if they don't know him
18 why is he able to go talk with them. It says that I
19 said, no, sir, I don't know, maybe they thought I was
20 trying to do something. But I said, yes, because maybe
21 they thought -- I said, yes, because maybe they think I
22 was trying to do something if I went too. Now, by him
23 saying no, sir, that means that I'm saying that my
24 brother is not a good person to talk with. But I
25 actually said, yes, sir, meaning that my brother is

1 actually a good person to talk to. Since I can stay here
2 and my brother go talk to them and say -- the situation
3 we're going to talk this over. But if I would have went
4 also maybe they would have thought I was trying to do
5 something.

6 Same page, line two. It says my brother told me I
7 want you to stay here. I want you to go talk to them
8 cause (sic). It's supposed to be my brother told me he
9 wanted me to stay in the truck when he goes to go talk to
10 them.

11 Page 705, line five -- or line four. Mr. Meyers
12 questions, you didn't tell us that a little while ago.
13 It says that I said, no, sir, my brother said please put
14 the guns down, please, we didn't come over here to harm
15 anybody, shoot anybody, just came to talk. I actually
16 said, no, sir, my brother said, please, put down the
17 guns. Please, we didn't come over here to harm anybody.
18 We just came to talk. See, it's kind of choppy. Like I
19 was telling my lawyers, it's kind of choppy but does that
20 matter? The lawyer told me on direct examination, the
21 redirect, whatever, you may have your statements that are
22 choppy. But if my statements are choppy how will the
23 appellate court look at that? Like if a witness'
24 statement is choppy, or the defendant's statement is
25 choppy, can the appellate courts actually determine and

1 interpret that in another way what it actually is?

2 Page 734, line 22. I'm going to go to line 19. My
3 next question. That night you told him he was shot one
4 time and then they got off your brother and tried to run.
5 You deny. And I said, it says here, no, sir, I shot him
6 through the tree. And they was pressing me hard and my
7 brother was on the ground. And Isaac had the shotgun on
8 him. He was about to shoot him. My action was to save
9 my brother's life. Now, it's supposed to say, no, sir, I
10 said that I shot at the tree first because AJ was holding
11 my brother on the ground and Isaac had his shotgun
12 pointed to my brother.

13 Also, Your Honor, do you want me to point out all
14 the places in the transcript where there was bench
15 conferences?

16 THE COURT: No, I think you've protected yourself in
17 that regard and I dully note your -- the exception that
18 you take to bench conferences that weren't transcribed by
19 the court reporter. Okay.

20 MR. JOHNSON: Thank you. That's all I have at this
21 time.

22 THE COURT: Okay. Thank you, Mr. Johnson, I
23 appreciate that. And your exceptions to the transcript
24 are dully noted on the record. I'll decline any requests
25 to amend or alter the transcript. I don't have

1 sufficient evidence to do so. And I will say this, I
2 heard a lot of the exceptions that you took to what was
3 in the transcript and I don't say this to be in any way
4 short with you by any stretch of the imagination, but I
5 do want you to keep this in mind, is that when the jury
6 made its decision it made its decision on what was said
7 in court not what appeared in the transcript. And you
8 understand that they didn't look at the transcript to
9 determine whether they were going to find you guilty or
10 not guilty, or find your brother guilty or not guilty.
11 And the appellate court is not going to go back and
12 determine what the facts are in this case based on very
13 fine distinctions or exceptions that you may find in the
14 transcript. Ordinarily they're going to overturn it if
15 at all based on matters of law and not matters of fact.
16 Go ahead.

17 MR. JOHNSON: May it please the Court, Your Honor?
18 That's the thing, Your Honor. If me and Mr. Parker's
19 lawyers, and the State's -- you know and the State came
20 up to you and discussed a matter of law, who is to say
21 that our lawyers represented us accurately in determining
22 a matter of law, or who is to say that the judge, that
23 the Court abused its discretion in determining a matter
24 of law when there was actually a bench conference that
25 was not put on the record. By that happening that does

1 not give any appeal lawyer a chance to see if he could
2 adequately find any appealable issues or errors in the
3 transcript to put down for me to perfect my appeal.

4 THE COURT: Okay. All right. I appreciate your
5 position in that regard. And I understand exactly what
6 you're saying. But let -- just to massage any concerns
7 that you may have let me say unequivocally and without
8 reservation that there were no legal decisions made in
9 your case that weren't put fully on the record during the
10 trial. Okay. We didn't go into the back room and make
11 any decisions, or determinations that wasn't subject to
12 the scrutiny of the sunlight and of the Court's record.
13 Okay. I want you to know that. We didn't. All right.

14 MR. JOHNSON: Even the changing of the jury charges?

15 THE COURT: The jury charges?

16 MR. JOHNSON: Y'all were in the chambers talking
17 about them?

18 THE COURT: We discussed those, and any exceptions
19 that were made to the jury charges were put on the
20 record. Any exceptions to jury charges were put on the
21 record.

22 MR. JOHNSON: Did you state in the transcript that
23 these are the exceptional changes that were made?

24 THE COURT: That's right. We discussed them. We
25 discussed them but that wasn't an issue with respect to

1 the admissibility of evidence, those were legal issues
2 bearing upon what was going to be charged to the jury.
3 And it is -- it is fairly common that the attorneys and I
4 talk about the law that is relevant to the evidence
5 that's presented into the -- in the case. And we'll have
6 a discussion and decisions are made by me and then when I
7 come into the court I put those decisions on the record
8 so there is no question but that there was a discussion
9 and this is the charge that I intend to give to the jury.
10 Then the charge in full is both -- is delivered to the
11 jury on the record and the attorneys have the opportunity
12 to object to those charges. So there aren't any
13 decisions that are made with respect to the charges that
14 then aren't fully put on the record and fully subject to
15 the scrutiny of the appellate review. Okay? All right.

16 MR. JOHNSON: Thank you. I don't know if Mr. Parker
17 has anything that he wants to put on the record as far as
18 errors.

19 MR. DUNCAN: If we can have just a minute, Your
20 Honor?

21 THE COURT: Sure.

22 MR. JOHNSON: Your Honor.

23 THE COURT: Hold on. Mr. Duncan, while you're
24 discussing that, before you go, Mr. Johnson, I know that
25 your investigator tried to get in touch with Mr. Blue?

1 MS. DIXON: Mr. Blue called our office, Your Honor,
2 indicated that he was in North Carolina and that he had
3 car trouble and would not be here. I've got my
4 investigator attempting to locate him and if we're able
5 to find him I have told him to go ahead and issue a
6 subpoena for him to appear tomorrow, but if he's out of
7 state ---

8 MR. DUNCAN: And Your Honor, my indication, what we
9 had been told was that he was working out of town. We
10 didn't know where but we were informed last week that he
11 was working out of town, so. ---

12 MS. DIXON: And I apologize, Judge. He did not tell
13 my investigator he was out of state when we spoke to him
14 this morning.

15 THE COURT: All right. So did he indicate that he's
16 going to try to be back here tomorrow morning?

17 MS. DIXON: No, sir. I don't believe he did.

18 THE COURT: You're still wide open? Okay.

19 MS. DIXON: I think what he told my office was that
20 he had car trouble and would not be able to come and
21 pretty much left it at that.

22 THE COURT: Well, let's just kind of have an open
23 discussion about whether Mr. Blue's testimony can be
24 handled similarly to Mr. Gadson's testimony. Can it?

25 MS. DIXON: From the State's position, Your Honor,

1 it can. I think we can all agree as to the purpose of --
2 as the substantive value of Mr. Blue's testimony as to
3 what he testified to. Again, I have detailed notes that
4 I would be happy to make part of the record. I have
5 pulled the two exhibits that were entered during Mr.
6 Blue's testimony so that we can have those -- be clear
7 that they're part of the record. I've spoken with Mr.
8 Duncan at a previous time as to what we individually
9 recall of Mr. Blue's testimony and I believe we can come
10 to an agreement as to what it was.

11 THE COURT: Okay. Is the defense comfortable with
12 that?

13 MR. DUNCAN: We're in the process, Judge.

14 THE COURT: Okay. Good enough.

15 MR. JOHNSON: Excuse me, Your Honor.

16 THE COURT: Yeah, hold on two seconds. Two seconds,
17 okay? Okay. All right, Mr. Johnson, something else you
18 want to tell me, sir?

19 MR. JOHNSON: Yes, sir. What about the matter or
20 issue I should say on the jury selection not being placed
21 in the transcript?

22 THE COURT: I don't know, because I don't have a
23 copy of the transcript. And I don't know in particular
24 what you take exception to. But there is nothing that I
25 can do right now to change that in any particular way.

1 And what I would tell you, if there is -- if there is
2 something in the record that needs to be addressed by the
3 appellate court then your appellate counsel can make a
4 motion to have that portion of the transcript
5 reconstructed. But as I stand here right now I don't
6 have before me as an issue the appellate -- or excuse me,
7 I'm sorry, jury selection.

8 MR. JOHNSON: But you do know that jury selection is
9 supposed to be in a transcript according to the court
10 reporter manual?

11 THE COURT: I understand. And I think, if I'm not
12 mistaken, it is. If you give me -- if you can point it
13 out to me, I don't know which portions are ---

14 MS. DIXON: Your Honor, I think what Mr. Johnson is
15 talking about is the actual striking of the jury. It was
16 not written out in the transcript but obviously the clerk
17 has a record of which jurors were called and which jurors
18 were struck by which side and who was seated. That's the
19 only portion of the jury selection that's missing.

20 THE COURT: So is the -- is the portion -- it's not
21 the voir dire because I heard you commenting on some voir
22 dire questions, it's the actual peremptory challenges,
23 that is the lawyers actually saying, please seat the
24 juror or please swear the juror?

25 MR. JOHNSON: Exactly, sir, and for what reasons.

1 THE COURT: Okay. All right. And I will ask
2 defense counsel and the State, I don't recall there being
3 any challenges for which you stated reasons. The law
4 doesn't require you to state reasons. In our jury
5 selection process a -- counsel can strike a juror for any
6 reason and there is -- there is no requirement for a
7 party to give the Court any cause, or reason why he may
8 have stricken, he or she may have stricken a juror with
9 the exception of a Batson challenge. And I don't
10 remember a Batson challenge in this case.

11 MR. DUNCAN: Your Honor, there were no Batson
12 challenges. And we -- Ms. Fullwood and I have talked and
13 there were no reasons given as is the custom. And at the
14 conclusion of the jury selection there were no Batson
15 challenges from either side.

16 THE COURT: And that's my recollection as well.
17 It's my recollection that there were no challenges for
18 cause which prompted any argument from counsel. Am I
19 correct?

20 MR. DUNCAN: I know there was no -- I know there
21 was no challenge for cause that was overruled. And if
22 there -- there were no controversies over the selection
23 of the jury.

24 THE COURT: Okay. All right. Okay. Mr. Johnson,
25 given that, I don't think that there are any deficiencies

1 in the transcript in that regard. Okay. So I'm not
2 going to reconstruct that. To the extent that we just
3 had a conversation about that, the record in this
4 proceeding can be clear that there were not appellate
5 issues that emanated from jury qualification or
6 selection.

7 MR. JOHNSON: Well, what I'm trying to say, Your
8 Honor, it's been over two years and I have trust issues.
9 And can my lawyers accurately actually say that the
10 reason why they struck a person or seated a person, or
11 the State doesn't sit a person and there was no
12 objections, can they actually accurately say that there
13 was no objections even after two years when my lawyer and
14 my brother's lawyer actually said some stuff they don't
15 remember?

16 THE COURT: I understand.

17 MR. JOHNSON: But I also want, can I have the jury
18 selection documents and please be given to me and my
19 brother of the jurors who were stricken (sic) and who
20 were seated in our trial, please?

21 THE COURT: Okay. Well, you're going to have to
22 talk to your counsel about that. Okay. To the extent
23 that it's available from the Clerk of Court I certainly
24 wouldn't preclude you from getting a copy of it.

25 MR. JOHNSON: Okay. Thank you.

1 THE COURT: Okay.

2 MR. DUNCAN: Just one more minute, Judge.

3 THE COURT: Sure.

4 MR. DUNCAN: Your Honor?

5 THE COURT: Yes, sir.

6 MR. DUNCAN: Mr. Parker does want to join in some of
7 the -- well, let me put it this way. He wants to join in
8 what his brother had indicated but he also had some
9 issues of his own.

10 THE COURT: Okay. All right. And Mr. Parker, you
11 intend to put that on the record, sir?

12 MR. PARKER: (Nodded his head.)

13 THE COURT: Okay. I'm going to get you to raise
14 your right hand to be sworn in. Okay.

15 KERWIN PARKER

16 Having been first duly sworn, testified as follows:

17 THE COURT: All right. Mr. Parker, I'd be happy to
18 hear from you, sir.

19 MR. PARKER: Page 633, line three through seven,
20 Thursday, September 17, 2009, whereupon part of the
21 transcript for this date are missing on the -- excuse me,
22 missing. The court reporter on until date is unable to
23 provide them for the transcript. They will be -- excuse
24 me.

25 THE COURT: Mr. Parker, let me ask you a question.

1 You have it all written down?

2 MR. PARKER: Yes, sir.

3 THE COURT: You want to just submit it as an
4 exhibit? Will that be easier for you?

5 MR. PARKER: Yeah.

6 THE COURT: Okay. All right. Any objection to him
7 submitting that written statement as an exhibit? Show it
8 to the State and let Ms. Dixon take a look at it.

9 MS. DIXON: No objection, Your Honor.

10 THE COURT: Okay. All right. Then I'll accept that
11 statement of Mr. Parker's exceptions to the record as
12 Court's Exhibit Number 3.

13 (Court's Exhibit Number 3 was marked and filed.)

14 THE COURT: All right. Okay. And I have accepted
15 Court's Exhibit Number 3 and have reviewed the same. The
16 exceptions from Mr. Parker are dully noted for the
17 record. Again, I'm going to decline to alter or amend
18 the transcript, other than in those particular ways that
19 we have discussed on the record with respect to Mr.
20 Gadson's testimony, the reconstruction of the missing
21 portion of Mr. Johnson's testimony. And that brings us
22 to Mr. Blue's testimony.

23 Do you want me to give y'all a little bit of time to
24 talk about it? Let me tell you what, let me just tell
25 you what's in my head, okay. I don't mind coming back to

1 Lexington tomorrow, but I don't want to drive back to
2 Lexington just on the potential that Mr. Blue may show
3 up. That's really not a wise expenditure of State
4 resources for me just to drive back here. So I don't
5 know exactly how you want to proceed on Mr. Blue's
6 testimony. But it may be, it may be that after some
7 discussion you may be able to handle it just as we did
8 Mr. Gadson's and that is to get into the record the
9 salient portions of that testimony. Because I think I
10 would characterize his testimony as similar to Mr.
11 Gadson's, that is it was really kind of peripheral to the
12 main issue. I think the jury probably made a decision
13 based on the testimony of those main witnesses. But
14 having said that I defer to y'all in that regard.

15 And what I'll do is I'll stand down for a few
16 minutes. Y'all can have a discussion about how you want
17 to handle that. I'm open to suggestions. And again, my
18 preference is not just to drive back tomorrow thinking
19 that he might show up. But y'all talk about it and then
20 y'all are welcome to come back and talk to me in chambers
21 and let me know what your preference is in that regard.
22 Okay. So we'll be in recess for 10 or 15 minutes so
23 y'all have the opportunity to discuss it. Okay.

24 (A short recess was taken, after which, the trial
25 continued as follows:)

1 (Court's Exhibit Numbers 4 through 7 were marked for
2 identification.)

3 THE COURT: All right. Back on the record. And we
4 have remaining Mr. Blue's testimony. And Mr. Duncan,
5 since you are standing I'll defer to you. It looks as
6 though you're just excited about taking the lead in this
7 matter.

8 MR. DUNCAN: I'm a little embarrassed, Judge, that
9 my notes to show my disorganization, but we have already
10 marked those, the questions that I believe that I asked
11 and the theme.

12 The witness is -- witness's name was Frankie,
13 F-r-a-n-k-i-e, Blue, B-l-u-e. And when I called him to
14 the stand I asked, what is your connection to the Kerwin
15 Parker. And the response was that I am his mother's
16 boyfriend. And that he also lived with -- Mrs.
17 Richardson is Mr. Parker's mother's name and that he
18 lived there at the residence with Kerwin and Curtis. So
19 four people in that residence.

20 And I asked him if he had received a call in the
21 early morning hours of November 20, 2006. And the
22 response was affirmative. And it was a Mrs. Frazier who
23 was a family friend calling. And further questioning he
24 indicated that he drove with Mrs. Richardson to
25 Mrs. Frazier's house off of St. Andrews Road which was

1 somewhere in the vicinity of Churchill apartments which
2 was the location of this incident. And these -- both of
3 these locations were off of Bush River Road in Lexington
4 County.

5 When they arrived at Ms. Frazier's house Kerwin was
6 there. He was not sweating, and he had on a grey t-shirt
7 and grey sweat pants. I asked him if he had a
8 conversation with Kerwin and as a result of that
9 conversation what did they do. The decision was to take
10 him to the Columbia police station, police department
11 station. At which point I indicated where and the
12 response was it was the Lincoln Street -- Lincoln and
13 Lady -- Lincoln and Washington Street in downtown
14 Columbia. And our Defendant's Exhibit 13 that we
15 introduced was the front of that building and that's
16 where we asked, did he take him there. And the response
17 was, yes, there was no one there.

18 To further the narrative he said they then drove to
19 the Columbia police department station in the O'Claire
20 North Main area of Columbia. And Defendant's Exhibit 14
21 that was introduced into evidence was a picture of that
22 facility. And this facility indicates that's not -- or
23 the sign indicates it's not staffed 24 hours a day.

24 They -- when they left this facility the -- the --
25 their residence was on Hyatt Avenue which is a very short

1 distance away from this police department station,
2 substation. They drove there. And were there for
3 approximately two minutes before the police arrived. And
4 I asked him what Kerwin had done during that two minute
5 period. And he Mr. Blue indicated that Kerwin been gone
6 to his room, taken off his shoes, that he did not go to
7 the bathroom or kitchen and wash his hands. And at that
8 point the police were there.

9 Now, I believe that I had previously asked him at
10 Mrs. Frazier's residence, did Kerwin have a weapon, a
11 handgun with him and he indicated, yes. And he said what
12 did he do with that. And it was placed in a plastic
13 baggie and that Kerwin did not handle that weapon at any
14 time during the trip to the residence. And in fact, the
15 police removed the weapon from the car still in the bag.

16 Now, I asked him to identify this sweatshirt which
17 had previously been introduced into evidence and I don't
18 know what number -- or what in ---

19 MS. DIXON: It was introduced in that box. There's
20 a box of clothing, and I don't know that the sweat shirt
21 itself has a number. I can look and see what ---

22 MR. DUNCAN: It's a -- it's a grey hooded Michigan
23 sweat shirt, unlike any other item. And I asked him if
24 Kerwin owned a sweat shirt like that. And his response
25 was, no, that Mrs. Frazier had provided it, it was her

1 son's, as I recall. And I asked him if -- if Mr. Blue,
2 before Kerwin put the shirt on, had he noticed anything
3 about Kerwin's right arm. And the response was, yes,
4 that there was a fresh wound on his right forearm with
5 blood on the surface of the skin. And I had Kerwin
6 approach him and show a scar, a diagonal scar on his
7 right forearm when Mr. Blue was testifying. And asked
8 him, Mr. Blue, did Kerwin have a scar on his right arm
9 prior to that evening and if that was the location of
10 where his arm was -- was -- it had bled at some point in
11 time that evening.

12 Did -- I asked him if Kerwin had cleaned up at
13 any -- at either of the locations, Ms. Frazier's or at
14 the Hyatt Avenue, and the answer was no. Did he have the
15 opportunity to wash his hands? No. Were you with him
16 the entire time so you would have noticed if he had
17 washed his hands? That Kerwin did not own such a sweat
18 shirt that -- as the one that Mrs. Frazier had given him.
19 That Kerwin was -- okay. That Kerwin was actually in ---

20 MS. DIXON: And Your Honor ---

21 MR. DUNCAN: And I believe that's -- let me check
22 with Mr. Parker. And then the solicitor's office
23 cross-examined him.

24 THE COURT: Okay.

25 MS. DIXON: Your Honor, I have and we've marked as

1 Court's Exhibit 4, a copy of my notes from both the
2 direct and cross-examination of Mr. Blue.

3 THE COURT: Yes, ma'am.

4 MS. DIXON: Solicitor Meyers actually cross-examined
5 Mr. Blue, but I have in my notes, and just to summarize
6 it for the Court. We -- he basically went back over
7 where Mr. Parker had been picked up. That it was at the
8 home of Ms. Frazier off of Bush River Road. What time he
9 had gotten there. Reiterated that he had gone to those
10 two police departments and no one was there. Solicitor
11 Meyers asked him why they didn't call the police and Mr.
12 Blue indicated that they were going to call the police
13 when they got back to the house but the police got there
14 before they could call 911, that they had only been at
15 the house for about a minute to a minute and a half
16 before the Columbia Police Department showed up.

17 He indicated upon questioning that Mr. Parker had
18 taken his shoes off in his bedroom, which was 30 to 40
19 feet from the living room where Mr. Blue was located.
20 Solicitor Meyers asked him, you know, questioned him on
21 direct that he had said he had never been away from Mr.
22 Parker such that Mr. Parker could not wash his hands, but
23 did have Mr. Blue testify and admit that he was outside
24 when the Columbia police department arrived and that Mr.
25 Parker was still inside.

1 He was questioned as to why -- as to the wound on
2 Mr. Parker's arm. Said that it wasn't really actively
3 bleeding, that it had blood on it. Admitted that he did
4 tell any officers that Mr. Parker had claimed to be shot,
5 that it was about a two inch gash on his arm. When he
6 was also questioned about where the gun was when they got
7 to that residence of Ms. Frazier, and he testified that
8 Mr. Parker had it in his hand. That the only people
9 located at that apartment were Ms. Frazier, her son and
10 daughter, and Mr. Parker. And then reiterated that Mr.
11 Parker had put the gun into that plastic bag and then put
12 it in the glove box.

13 Solicitor Meyers questioned him about the bullet
14 that was found in that bag along with the gun and Mr.
15 Blue did not have any knowledge as to where that bullet
16 came from. And then I think the transcript picks up,
17 Your Honor. Ms. Fullwood I believe only asked Mr. Blue
18 one question and I believe that is in the transcript.

19 MR. DUNCAN: And Your Honor, I've -- I'm almost
20 certain I asked -- I turned the sweat shirt inside out
21 and on the right hand of -- the right arm sleeve there --
22 I had Mr. Blue identify a rust colored streak on the
23 inside that resembled -- I mean, our contention was that
24 it was blood but it resembled dried blood and that
25 was ---

1 MS. DIXON: I do remember that, Your Honor. I don't
2 know if that was with this witness or if it was Detective
3 Collins. I'm not sure but I know that happened.

4 MR. DUNCAN: Yeah.

5 MS. DIXON: It may have been with Mr. Blue.

6 THE COURT: Okay. All right. Ms. Fullwood,
7 anything you need to add to that?

8 MS. FULLWOOD: No, Your Honor.

9 THE COURT: Okay.

10 MR. JOHNSON: Excuse me.

11 MS. DIXON: Your Honor, for the record -- I'm sorry.
12 And I'm sorry to interrupt Mr. Johnson, but I consulted
13 with Mr. Duncan and Ms. Fullwood and none of us remember
14 any objections being made during Mr. Blue's either direct
15 or cross-examination. To my recollection there were
16 none. And the two pictures that were entered were
17 entered without objection by the State.

18 THE COURT: Okay. All right.

19 MR. JOHNSON: Excuse me, Your Honor. May I make a
20 statement, please?

21 THE COURT: Sure, yeah. Yes, sir.

22 MR. JOHNSON: Thank you. I have to say, Your Honor,
23 a trial transcript gives us the right of due process to
24 provide the basis to determine whether our representation
25 by our counsel was adequate and our rights adequately

1 protected. Our trial transcript should be adequate to
2 accord effective appellate review and sufficient to
3 enable our appellate lawyers to identify possible errors
4 and formulate appropriate argument for appellate court
5 and other court's consideration. When we are represented
6 on appeal by counsel not involved at trial, counsel
7 cannot reasonably be expected to show specific prejudice.
8 In such a case to require our new counsel to establish
9 the irregularities that may have taken place were
10 rendered illusory our appellate rights to notice plain
11 errors or defects and render merely technical our right
12 to appeal.

13 Your Honor, Your Honor, you said that we are not
14 going to alter or change anything, even if it was
15 misquoted or missaid, right or wrong. Now, I feel that
16 we are groping in the dark to what witnesses Mr. Blue,
17 and Mr. Walter Gadson were actually questioned on and
18 testified to. Even the State and our lawyers said that.

19 They don't remember any objections. I clearly
20 recall they had objections and made a couple arguments.
21 But they said there was no objections, but as you can see
22 in the trial transcript you have many witnesses and there
23 were objections made on witnesses who were not even main
24 witnesses.

25 Also, like Elana's testimony, portions are missing.

1 That Amy told her the other two shotguns and drugs were
2 hidden. Ms. Fullwood can tell you, as I was talking to
3 her earlier, she says that she doesn't have any of her
4 notes. She can't remember everything she questioned
5 Elana on, but as I pointed to you in the trial transcript
6 there was more that she was questioned on.

7 Even Mr. McDougal has a statement from Elana saying
8 her sisters, Amy and Rebecca, they hid the shotguns, the
9 other two shotguns that I was saying that was there
10 present when this situation happened.

11 Like I said before, it would prove when I say there
12 was more than one shotgun at the scene of the crime.

13 THE COURT: All right.

14 MR. JOHNSON: Your Honor, I truly feel that we can
15 sit here and try our best effort to try to fix the
16 transcript, which we all are doing, which is actually
17 good, and the court of law we're supposed to do, but once
18 we sit here and just grope in the dark and just speculate
19 and think this happened and that happened, say, okay,
20 this objection didn't happen, then it's not right.

21 I feel like this, Your Honor. See, the law,
22 especially the federal law it says correction or
23 modification of the record. I would have State law but
24 the law library in South Carolina in our prison system at
25 Broad River is not up to date and doesn't have everything

1 that a defendant needs to actually try to find errors in
2 their case, or anything to work on to help them out in
3 their case in that situation.

4 Now, from what I see from federal law what I do
5 have, correction or modification of the record if any
6 difference arises about whether the record truly
7 discloses what occurred in district court the difference
8 must be submitted to and settled by that Court and the
9 record confirmed accordingly. If anything material to
10 either party is omitted from or misstated in the record
11 by error or accident, this omission or misstatement may
12 be corrected and a supplemental record may be certified
13 and forwarded on stipulations of the parties to the
14 district court before or after the record has been
15 forwarded or by the Court of Appeals. All other
16 questions as to the form and content of the record must
17 be presented to the Court of Appeals.

18 Now, Your Honor, it says right here things must be
19 fixed basically that were omissions and misstatements.
20 But as you said earlier we're not going to get into that.
21 And there was a lot more issues of wordings that -- in
22 your transcript that was misquoted and misstated. And
23 when I was telling y'all earlier that I was actually
24 verbalizing some of those things that was misquoted and
25 misstated, but you said you would not take notice of

1 things that were -- things that were actually changed or
2 altered, we would not change them at all. I would like
3 to get that on record, Your Honor.

4 THE COURT: I understand. Thank you, Mr. Johnson.
5 I appreciate that, sir.

6 MR. DUNCAN: And, Your Honor, to clear up the record
7 whenever there have been references made to Dave and Mr.
8 McDougall, Mr. McDougall was the investigator for Mr.
9 Parker and he did testify. So that's the person that's
10 being referred to.

11 THE COURT: Okay.

12 MS. DIXON: Your Honor, just to protect the State's
13 position, I don't know if it's necessary or not, but we
14 disagree with Mr. Johnson's contention that there are
15 additional portions of the record missing other than what
16 we have attempted to reconstruct here. I think that
17 after having reviewed the record on my own I state as an
18 officer of the Court that the three witnesses we have
19 tried to reconstruct today are the only portions of the
20 record that I can tell are missing. I think everything
21 else is -- has been completed by the court reporter.

22 THE COURT: Okay. All right.

23 MR. JOHNSON: Your Honor?

24 THE COURT: Yes, sir.

25 MR. JOHNSON: Can I have Ms. Fullwood, Ms. Fullwood,

1 can you actually stand, please, and tell the Court what
2 you told me earlier, that you cannot remember every
3 single last thing that you questioned Elana on and that
4 those portions are missing when you did question her
5 about the other shotguns and were they hidden?

6 MS. FULLWOOD: I would have to refer to it again.
7 And he is correct, I don't remember everything that
8 happened.

9 THE COURT: Yeah, and I can ---

10 MS. FULLWOOD: I don't think any of us did. And
11 earlier this morning he did show me a portion of the
12 testimony where it looked like maybe there had been a
13 little something that hadn't been transcribed concerning
14 that, either that witness or a witness I used to impeach
15 that witness. It didn't look like a major portion of it,
16 but it looked like -- it looks like, you know, we have
17 some major omissions of testimony, or portions of
18 testimony. And in going through things with Mr. Johnson
19 this morning, he did point out a couple of things where
20 it looks like things might have been cut short, if you
21 know what I mean, where we don't have big gaps but maybe
22 the court reporter stopped taking down testimony a little
23 prematurely.

24 MS. DIXON: Your Honor, I'm sorry. To protect the
25 Court's -- the State's position I have to object to that

1 characterization of the transcript.

2 THE COURT: I understand.

3 MS. DIXON: I know that there are portions where
4 things were being said that were cut off. I think that
5 that happens a lot in trials where the court reporter
6 starts to take down what we're saying maybe outside, are
7 you ready for the jury, and then stops. So there are
8 portions such as that. There are questions that don't
9 get fully asked. Answers that don't get fully given
10 because of the give and take of examination. And I just
11 don't want the appellate court to look at this record
12 that we've done on reconstruction and say that there are
13 portions that are missing that we don't know about.

14 THE COURT: Okay. Good enough. All right. All
15 right. With respect to Mr. Blue's testimony, I do find
16 that the recitation of, or the account of the testimony
17 given by counsel is a fair and accurate representation of
18 the salient, relevant portions of that testimony. As a
19 matter of fact I think that both of counsel, both State's
20 and defense counsel's notes together with their -- with
21 their recollection on the record of not only the
22 questions that were asked but the responses do marry up
23 with my recollection, with the Court's recollection of
24 the testimony that was elicited from Mr. Blue at the
25 time. So I do find that that is a sufficient --

1 sufficient reconstruction of Mr. Blue's testimony.

2 I will, because he is not here, I will leave the
3 record open for 10 days and you can recount to him those
4 salient portions of the testimony. If he wishes to take
5 exception to it he may do so by affidavit, which I'll
6 accept into the record as well. And if we have to have a
7 hearing after that, or if we have to have written
8 submissions then we'll do that after the fact. But as we
9 sit here I'm confident in the -- in Mr. Blue's testimony.

10 I also -- I don't find any evidence that there are
11 omissions in the transcript that we have not addressed
12 here today. I know that there are anecdotal suggestions
13 that perhaps there are some sentences, words, portions
14 missing, but based on what I've heard today I can't make
15 a finding that there are any portions that have been
16 omitted that are material to the appellate issues in this
17 case. Therefore as I suggested earlier I'm not going to
18 make any omissions -- or excuse me, I'm not going to make
19 any revisions or amendments to the transcript record
20 because I just don't have any evidence in front of me
21 that, first of all, they should be made, and second of
22 all that they are relevant to any appellate issues in
23 this case.

24 It maybe -- may have been after the fact relevant to
25 a jury's decision but the jury, as I have stated already,

1 didn't read the transcript, they heard the actual
2 testimony at trial. So in as much as it's not relevant
3 to any appellate issue that has been brought to this
4 Court's attention, I'm not going to make any amendment or
5 revision to the transcript. I find that none other than
6 the ones that we have specifically addressed are
7 necessary, material or relevant to the appellate process.

8 Some of the issues, Mr. Johnson, that you have
9 raised are probably, and I won't say probably, are more
10 appropriate for a post conviction relief application as
11 opposed to this hearing. All right. Because you read
12 some matters of law which are absolutely true. They just
13 may not necessarily be appropriate for this proceeding.
14 Okay. All right.

15 All right. Ladies and gentlemen, is there anything
16 else that we need to put on the record today?

17 MS. DIXON: Nothing from the State.

18 THE COURT: Okay. Good enough. Well, then I'm
19 going to consider this matter concluded with the
20 exception of the 10 day window for supplementation of the
21 record. At the conclusion of 10 days we can prepare the
22 record and send it back to the Court of Appeals. Okay.

23 MS. DIXON: Your Honor, just to be clear, can we
24 call off Mr. Blue for tomorrow, or call off my
25 investigator trying to find him?

1 THE COURT: You can try to find him for the rest of
2 the day. I don't think he needs to burn the midnight oil
3 trying to find him, you know ---

4 MS. DIXON: Yes, sir.

5 THE COURT: --- at the four corners of the earth.

6 MS. DIXON: Yes, sir.

7 THE COURT: But I really feel -- to be honest I feel
8 very comfortable that what y'all put into the record is a
9 very, very accurate account of what happened at trial.
10 And I don't remember, and I don't think there were any
11 objections either.

12 And Mr. Johnson, to your point, I don't think these
13 attorneys were suggesting that there were no -- they
14 don't remember any objections and there were no
15 exceptions taken in the trial, I think they were talking
16 specifically with respect to Mr. Blue's testimony. I
17 don't think they're making a blanket comment that there
18 were no objections and there were no exceptions taken.
19 Just during Mr. Blue's testimony, and that's all I was
20 concerned about at that point. Okay.

21 All right. All right. I have marked and accepted
22 for the record Court's Exhibits number 4 and 5 and I'm
23 going to hand back to you the original defendant's
24 Exhibits -- or actually, no, we made them a part of the
25 record, number 6 and 7, which are the pictures that were

1 introduced during Mr. Blue's testimony.

2 (Court's Exhibit Numbers 4 through 7 were filed.)

3 THE COURT: All right. Thank you, ladies and
4 gentlemen.

5 MS. DIXON: Thank you, Your Honor.

6 MR. DUNCAN: Thank you.

7 THE COURT: Good luck to y'all.

8 - - -END OF TRANSCRIPT OF RECORD- - -

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C E R T I F I C A T E

I, the undersigned Mary E. DiGirolamo, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General sessions for Lexington County, South Carolina, on the 3rd day of October, 2011.

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

November 29, 2011

Mary DiGirolamo

Mary E. DiGirolamo

Official Court Reporter

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DOCKET NO. 2007-GS-32-1540

WITNESSES

LCSD
Collins, S.M.
Isaac Wilson

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

April TERM 2007

THE STATE

vs.

KERWIN S. PARKER

A-2006-32-03053

4/30/2007 1:18 PM

ARREST WARRANT NUMBER

J053032

SECTION OF GRAND JURY
TRUE BILL

U. R. K.

Foreman

Foreperson of Grand Jury

Date: 4-30-07

CDR# 0116

Indictment for

Murder

§16-3-10,

VERDICT

NOT GUILTY

DONALD V. MYERS, SOLICITOR

David L. Myers 09/18/09
Foreperson of Petit Jury Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

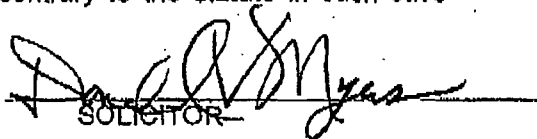
INDICTMENT FOR
Murder

§16-3-10

At a Court of General Sessions, convened on April, 2007, the Grand Jurors of Lexington County present upon their oath:

That **KERWIN S. PARKER**, aiding, abetting, assisting and participating with a **CURTIS T. JOHNSON**, did in Lexington County on or about November 20, 2006, willfully, feloniously and with malice aforethought kill one **ISSAC WILSON** by means of shooting the victim with a Smith and Wesson 40 Calibre pistol, and the victim died as a proximate result thereof in Lexington County on November 20, 2006.

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


SOLICITOR

WITNESSES

LCSD
Collins, S.M.

DOCKET NO. 2007-GS-32-1541

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

April TERM 2007

THE STATE
vs.
KERWIN S. PARKER

A-2006-32-03053

4/30/2007 12:21 PM

ARREST WARRANT NUMBER

J-053033

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreman

Foreperson of Grand Jury

Date: 4-30-07

CDR# 0549

VERDICT

Indictment for
POSSESSION OF FIREARM DRING
COMMISSION OF A VIOLENT CRIME
§ 16-23-490

Foreperson of Petit Jury

Date:

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)

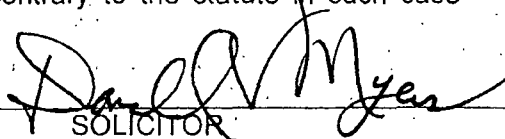
COUNTY OF LEXINGTON)

INDICTMENT FOR
POSSESSION OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME

At a Court of General Sessions, convened on April, 2007, the Grand Jurors of Lexington County present upon their oath:

That **KERWIN S. PARKER**, aiding, abetting, assisting and participating with **CURTIS T. JOHNSON**, did in Lexington County on or about November 20, 2006, possess a firearm, or visibly display what appeared to be a firearm, during the commission of violent crimes, to wit: a Smith and Wesson 40 Calibre pistol was possessed and fired killing **ISSAC WILSON** and striking **A. J. WILSON**, committing the violent crimes of Murder and Assault and Battery with Intent to Kill, in violation of § 16-23-490 of the 1976 South Carolina Code of Laws, as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE

INDICTMENT/CASE# 2007-GS-32-1541

vs.
Kerwin S Parker

AW#: J053033
Date of Offense: 11/20/2006
S.C. Code #: 16-23-0490
CDR Code #: 0549

AKA: _____
Race: B Sex: M Age: 29
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death
In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-46
(CSC w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury, _____ (defendants initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Soliditor _____ SC Bar # _____ Defendant _____ Attorney for Defendant _____ SC Bar # _____
WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of _____ days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable, the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED

Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ 100
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§14-1-213 (Drug Court Surcharge)	\$100	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7 (SCCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)		\$
TOTAL		\$ 1300

Random Drug/Alcohol Testing
Fine may be pd. In equal, consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge: _____

Clerk of Court/Deputy Clerk: Beth A. Carriss / BM

Judge Code: 2158

Court Reporter: Gene Thomas

Sentence Date: 21 OCT 2007

WITNESSES

LCSD
Collins, S.M.

DOCKET NO. 2007-GS-32-1542

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

April TERM 2007

THE STATE
vs.
KERWIN S. PARKER

A-2006-32-03053

4/30/2007 12:44 PM

ARREST WARRANT NUMBER

J053034, J053035

ACTION OF GRAND JURY
TRUE BILL

[Signature]

Foreman

Foreperson of Grand Jury

Date: 7-30-07

VERDICT

Foreperson of Petit Jury

Date:

CDR# 0014

Indictment for

Assault and Battery with Intent to Kill

§16-3-620

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE

INDICTMENT/CASE#: 2007-GS-32-1542

VS.
Kerwin S Parker

AW#: J053034, J053035
Date of Offense: 11/20/2006
S.C. Code §: 16-03-0620
CDR Code #: 0014

AKA:
Race: B Sex: M Age: 29
DOB: SS#:
Address:
City, State, Zip:
DL# SID#

SENTENCE SHEET

In disposition of the said Indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Assault / Assault and battery with Intent to Kill (ABWIK)

In violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (defendants Initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #
WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED

Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling

*Fine:		\$	_____
§14-1-206 (Assessments 107.5%)		\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	_____
§56-5-2995 (DUI Assessment)	\$12	\$	_____
§56-1-286 (DUI Breath Test)	\$25	\$	_____
§47.12 (Public Def/Prob)	\$500	\$	_____
§14-1-212 (Law Enforce. Funding)	\$25	\$	25.00
§14-1-213 (Drug Court Surcharge)	\$100	\$	_____
§50-21-114 (BUI Breath Test Fee)	\$60	\$	_____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	_____
§90.7 (SC CJA Surcharge)	\$5	\$	5.00
3% to County (if paid in installments)		\$	_____
TOTAL		\$	130

Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge _____

Clerk of Court/Deputy Clerk *Beth A. Bruggins*

Judge Code: 2158

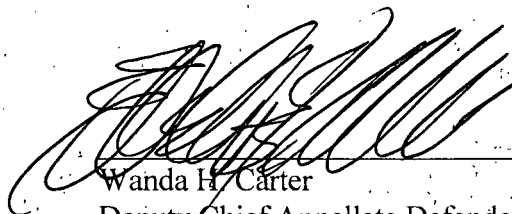
Court Reporter *Rena J. Smith*

Sentence Date 21 Oct 2008

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 6th, 2013



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KERWIN PARKER,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 6th day of February, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 6th day of February, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: November 16, 2022.

RECEIVED
FEB 06 2013
SC COURT OF APPEALS